Al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah.

The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations

Foundation -11

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(d. 1376 A.H./1956 C.E.)

Discussion based upon:

1-Sh. Ibn Sa'di's original explanation
2-Our Sh. Muhammad ibn Saalih Al-'Uthaimeen's Commentary, and
3-Full explanation by our Sh. (Dr.) Sami ibn Muhammad As-Sghair (summer 1427 A.H./2006 C.E.)

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Basic Rulings and Foundations of Fiqh-11

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions, and those who follow them until the Day of Resurrection. This is a continuation of the explanation of *The Basic Rulings and Principles of Fiqh – The Beneficial, Eloquent Classifications and Differentiations* by Imaam 'Abd ar-Rahman bin Naasir as-Sa'di (رحمه الله : *rahimahullaah*).

Foundation eleven is entitled:

The *asl* (i.e. previous state or condition) remains in effect, and certainty is not annulled by mere doubt.

This great foundation covers many matters including:

1) Acts of worship
2) *Salaah* (prayer)
3) *Zakaah*
4) Fasting
5) Hajj
6) *Nikaah* (marriage)
7) Divorce

Evidence for Foundation 11

This foundation is established on the authentic *hadeeth* from 'Abbaad bin Tamim (رضي الله عنه : *radiyallaahu 'anhu*):

"My uncle (رضي الله عنه) asked Allaah's Messenger (ﷺ : *sallallaahu 'alayhi wa sallam*) about a person who imagined to have passed wind during the *salaah*. Allaah's Messenger (ﷺ) replied: *'He should not leave his salaah unless he hears sound or smells something.'*"[1]

Therefore, the person should not discontinue his prayer due to mere doubt. He should only leave when he is certain he has invalidated his state of purity.

Examples:

1) A person makes *wudhu* and later doubts whether he performed an act that would nullify it. In such a situation, the *asl* is the existence and continuity of purity. The fact that he thinks he may have done a ritual impurity is not to be considered as in origin, the person was in a state of purity. Certainty is never annulled except by certainty; it can never be annulled by mere doubt. Rather, it is strange that some people when they have doubts, they experience

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[1] Agreed upon. Reported in *Saheeh al-Bukhaari* (English translation vol. 1, *hadeeth* no. 139) and with a similar wording in *Saheeh Muslim* (English translation no. 702, book 3).

whispering which drives them to remove the doubt with certainty by intentionally invalidating their *wudhu*.

2) A person was certain that he was in a state of ritual impurity. Later, he doubts whether he made *wudhu*. In this case, the *asl* is that the state of ritual impurity remains in effect.

Therefore, the *asl* remains, and it does not cease except when there is certainty that renders it annulled.

Doubt in the Purity of an Object

Purity (*at-tahaarah*) is the origin of things (e.g. water, clothing, etc.); whenever someone doubts the purity of something, then he builds upon the *asl* that it is pure. For instance, if some water from a drain falls on him or he steps in moisture, then the origin is that this water is pure. However, if someone is sure filth has fallen on his garment but later doubts whether he washed it, then the *asl* is that the ritual impurity remains.

Doubt in the Number of Completed *Rakaah* in *Salaah*

In *salaah*, a person may doubt exactly how many *rakaah* he has performed. Such situations are divided into two categories: preponderance and total doubt. For example, if someone doubts how many *rakaah* he has already prayed (e.g. three or four units) but preponderates a certain number, then he builds on that preponderance and later makes two prostrations of forgetfulness (*sujuud as-sahw*). The evidence for relying on preponderance came in the *sunnah* from the *hadeeth* of Abdullaah bin Masood (ﷺ):

"The Prophet (ﷺ) prayed [and the subnarrator Ibrahim (رحمه الله) said, 'I do not know whether he prayed more or less than usual'], and when he had finished the prayers he was asked, 'O Messenger of Allaah! Has there been any change in the prayers?' He (ﷺ) said, *'What is it?'* The people said, 'You have prayed so much and so much.' So the Prophet bent his legs, faced the *qiblah* and performed two prostrations (of *sahw*) and finished his prayers with *tasleem* (by turning his face to the right and left saying: '*As-salaamu 'alaykum wa rahmatullaah*'). When he turned his face to us, he (ﷺ) said, *'If there had been anything changed in the prayer, surely I would have informed you, but I am a human being like you and liable to forget like you. So if I forget, remind me and if anyone of you is doubtful about his prayer, he should follow what he thinks to be correct (falyataharra as-sawab) and complete his prayer accordingly and finish it and do two prostrations (of sahw).'"[2]

However, when a person is in total doubt concerning how many *rakaah* he has already completed (e.g. two or three), then he builds upon certainty which is the lesser number; he then makes *sujuud as-sahw*

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[2] Reported in *Saheeh al-Bukhaari* (English translation vol. 1, *hadeeth* no. 394).

1) A person is unsure whether he prayed three or four *rakaah* and is unable to determine which is more likely. He should therefore build on certainty which is the lesser number (i.e. three) and make *sujuud as-sahw*.

2) A person is not certain whether he prayed three or four *rakaah* but preponderates that he prayed four. He should therefore build on the preponderance (i.e. four *rakaah*) and make *sujuud as-sahw*.

In addition, preponderance is used to determine the number of completed rounds in *tawaaf* and walks in *saa'ee* between Safa and Marwah. For instance, if a person is in total doubt as to whether he completed six or seven walks in *saa'ee*, then he builds on certainty and considers it to be as if he made six trips. Similarly, if he is able to preponderate that it is the sixth walk, then he should consider it the sixth and bring the seventh. However, there is no *sujuud as-sahw* legislated for *tawaaf* or *saa'ee* given the weakness of the narration from ibn 'Abbaas (⌘) that the *tawaaf* is *salaah*.

This foundation also is applicable to washing a utensil seven times after a dog has licked it. If someone is entirely unsure whether he washed it three or four times, then he builds upon certainty, but if he is able to preponderate, then he builds upon that.

Doubt in the Number of Missed Prayers and Fasts

When making up missed prayers or days of fasting, the person builds on certainty. However, this can be problematic. For instance, someone is unsure whether he broke his fast three or four days in Ramadan. In principle, he is certain he broke it at least three times. However, this origin is opposed by another *asl*, which is the obligation to fulfill that which is binding upon one's self. This can not be attained except by fasting four days.

Similarly, if someone does not know if he missed five *salaah* or six, then in origin he certainly missed at least five, but this is in opposition to the obligation to free one's responsibility. This can not be fulfilled except by performing six. In this case, he brings that which is higher.

Doubt Concerning which Specific Prayer was Missed

If someone knows that he missed one *salaah* on a given day but does not remember which prayer (e.g. *duhr*, *'asr*, etc.), then there are the following opinions concerning that:

1) The person should pray all five prayers because it is possible the missed *salaah* is any one of them.

2) He should pray one *salaah* with four *rakaah*, another *salaah* with three *rakaah*, and one *salaah* of two *rakaah*. This is because the *salaah* of four *rakaah* would cover for *duhr*, *'asr*, and *isha'* while the other two *salaah* would cover for *maghrib* and *fajr* respectively.

3) Our Shaykh, Muhammad bin Saalih al-Uthaymeen (رحمه الله), said, "He should exert the effort until he preponderates which is the correct one." If the person sincerely attempts to recall which *salaah* he missed, Allaah (ﷻ: *subhaanallaahu wa ta'aalaa*) will let him remember.

Doubt in Divorce

There are many different situations in which doubt in divorce can occur. They include:

1) A person doubts whether he uttered the statement of divorce at all. In this situation, the *asl* is that he did not say it, and the couple is still married. This is because the marriage is certain and is not annulled by mere doubt.

2) If someone doubts whether he conditioned the divorce on something, then the *asl* is that the divorce is unconditional.

3) Someone conditions his divorce on some matter. Later, he doubts whether the condition was fulfilled. The origin therefore is that it did not take place.

4) A person divorced his wife but is uncertain how many times he uttered the statement (i.e. once, twice or thrice). The *asl* is that he said it once.

5) A man has two wives (for example Hind and Fatimah), and he doubts which of his wives he uttered the divorce concerning. This matter should be decided by drawing lots. If the lot came on Fatimah, then she is divorced, and Hind remains his wife. If he later remembers he actually divorced Hind or found a paper documenting that, then he leaves Hind and returns Fatimah as long as the drawing of the lots and the accompanying decree was not issued by a judge (if it was performed by a judge, then it would be classified as the judge's direct ruling). However, if Fatimah got married to someone else in the meantime, then the husband can not return Fatimah because she is now the right of her new husband unless he brings proof, such as a document with testimony, that the divorce was for Hind; in this case, Fatimah can return to him.

6) A person doubts whether his wife finished her waiting period. The *asl* is that she has not finished it and is still in her *'iddah*.

Doubt in Suckling

Concerning suckling, doubts affect whether or not there is prohibition (*tahreem*) to marry the wet nurse and her daughters. Cases include:

1) Doubt exists concerning whether a particular child nursed from a woman at all. The *asl* in this situation is that he did not.

2) Someone doubts whether he suckled from a woman five times or less than that. This person builds upon certainty, which is that he suckled on less than five occasions.

3) There is doubt around when a child suckled from a wet nurse. In this matter, the scholars have two opinions.

    a. Some scholars hold that for *tahreem* to exist, the child must have suckled within the first two years. If there is doubt as to whether a child suckled from a woman within the first two years, then in principle the *asl* would be that he suckled within that period, which would entail *tahreem*. However, the scholars have explained that since this *asl* leads to *tahreem*, the origin is that there is no forbiddance.

    b. Other scholars have mentioned that the condition for *tahreem* is whether the child suckled before or after weaning. If there is doubt as to whether the child suckled before or after weaning, then in principle the *asl* would be before weaning. However, just as with the other opinion, the scholars have explained that in origin there is actually no forbiddance in this case.

Thus, with either opinion, there is no *tahreem*.

4) A mother is certain that a woman in a particular household nursed her child but is unsure as to which specific woman did it. In this case, the *tahreem* is upon all of the women in the household. For example, if there are two women in that house, then both women and their daughters are *haraam* for him to marry.

5) A woman is certain that she nursed a child in a particular household but is unsure as to which child. Therefore, it is as if she nursed all of them. Hence, all of the boys of this house are prohibited from marrying her as well as her daughters, and they become *mahaarim* (pl. of *mahram*) for her and her daughters.

Doubt in the Hunting of Game

When a person is hunting game, doubt can exist concerning whether the animal was killed by his shot or some other cause. Such situations are divided into two categories.

1) No cause is found for the death of the animal other than the shot. Therefore, the meat is *halaal*.

Example: Someone says the *basmalah* and shoots an animal. He later finds the animal dead with no sign of another cause for its death. As such, the *asl* is the nonexistence of another cause, which makes the meat *halaal*.

2) Another cause is found for the animal's death that is equally or close to equally as likely as the shot to have killed it. Therefore, the meat of the animal is *haraam*. This is proven by the *hadeeth* of Adi bin Hatim (رضي الله عنه) that the Messenger (ﷺ) said,

"When you set off your dog, recite the name of Allaah, and if it catches (game for you) and you find it alive, then slaughter it. If you find it dead and that (your dog) has eaten nothing out of that, (even then) you may eat it, but if you find along with your dog another dog and a kill has been made, then do not eat, for you do not know which of the two has killed it. And if you shoot your arrow, recite the name of Allaah, but if it (game) goes out of your sight for a day and you do not find on that but the mark of your arrow, then eat that it you so like, but if you find it drowned in water, then do not eat that."[3]

Example: A person shot an animal, but the shot did not kill it immediately. The animal was later found dead in a pool of water. It can not be known whether the shot killed the animal or it drowned. Thus, as proven by the *hadeeth* of Adi (ﷺ), this meat is forbidden.

Conclusion

Under this foundation many matters fall; anyone that studies *fiqh* will surely be benefited by it and will be better able to relate matters to their principles and origins. In summary, the continuity of the *asl* remains whenever the existence of a cause to nullify it is doubted. Similarly, in every matter where there is a doubt about the number, we build on preponderance, and if there is no preponderance, then we build on certainty.

The eleventh foundation in Imaam 'Abd ar-Rahman bin Naasir as-Sa'di's book, *al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah* (The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations), is entitled:

The *asl* remains in effect, and certainty is not annulled by mere doubt.

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions and those who follow them until the Day of Resurrection.

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[3] Agreed upon. Reported in *Saheeh Muslim* (English translation no. 4741, book 21) and with a similar wording in *Saheeh al-Bukhaari* (English translation vol. 7, *hadeeth* no. 384, 385, 386, 392, 393, 394, & 395).