

أهم أسباب الاختلاف بين العلماء
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**THE PRIMARY CAUSES FOR
DIFFERING AMONGST THE
SCHOLARS^{1 2}**

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Truly, all praise is for Allah. We seek His aid, forgiveness and turn in repentance to Him. We seek refuge with Him from the evils of our own selves and from the evils of our deeds. Whomsoever Allah guides, there is none to misguide, and whomsoever Allah misguides there is none to guide. I bear witness that there is no god in truth except for Allah, alone, free of any partner, and I bear witness that Muhammad is His slave and Messenger. May Allah's peace and blessings be upon His Messenger, his family, his companions and all those whom rightly follow him until the Day of Recompense.

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اتَّقُوا اللّٰهَ حَقَّ تُقَاتِهٖۚ وَلَا تَمُوْتُنَّ اِلَّا وَاَنْتُمْ مُّسْلِمُوْنَ ۝۱۰۲

**O you who believe, be careful of (your duty to) Allah with the care which is due to Him,
and do not die unless you are Muslims.**

[Al 'Imrān 102]

يٰۤاَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِيْ خَلَقَكُمْ مِنْ نَفْسٍ وَّاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ
مِنْهُمَا رِجَالًا كَثِيْرًا وَّنِسَاءً ۚ وَاتَّقُوا اللّٰهَ الَّذِيْ تَسَاءَلُوْنَ بِهِۦٓ وَاَلْرٰحِمٰٓةَ اِنَّ اللّٰهَ كَانَ
عَلَيْكُمْ رَقِيْبًا ۝۱

¹ Translation: Abu Ameenah AbdurRahman Bennett.

² From a lecture titled *al-Khilāf bayna al-'Ulamā Asbābuhu wa Mawqifuna minhu*.

O people! be careful of (your duty to) your Lord, Who created you from a single being and created its mate of the same (kind) and spread from these two, many men and women; and be careful of (your duty to) Allah, by Whom you demand one of another (your rights), and (to) the ties of relationship; surely Allah ever watches over you.

[An Nisā 1]

يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا

عَظِيمًا ٧١

He will put your deeds into a right state for you, and forgive you your faults; and whoever obeys Allah and His Messenger, he indeed achieves a mighty success.

[Al Ahzāb 71]

This subject matter [of this lecture] may raise some questions amongst the masses and some might even enquire about the need for this subject and topic when there are more important religious subjects to be addressed. However, this topic, particularly in our times today, occupies the minds of the masses. And I am not just talking about the minds of the general masses; I'm also talking about the students of knowledge. And this is a result of a rise in issuing rulings via various social media outlets and consequently conflicting opinions are causing confusion. Rather, they have become a source for breeding doubts and suspicion amongst the people, particularly amongst those who are uninformed about the origins of such disputes. Because of this, I have decided with the aid of Allah to discuss this matter which, in my opinion, is a matter of utmost importance to the Muslims.

From the favours of Allah that have been bestowed upon this Ummah is that differences in this Ummah are not found in the foundations of its religion or its principal sources. Differences are only found in matters that have no impact on the actual unity of the Muslims – such differences are inevitable. I have outlined the points which I would like to discuss as follows:

Firstly, the Book of Allah and the Sunnah of His Messenger (ﷺ) make it a well-known fact amongst the Muslims that Allah – exalted be He – sent Muhammad with **the Guidance** and **the Religion of Truth**. This entails that the Messenger (ﷺ) has comprehensively and explicitly made clear this religion because the very meaning of **'the Guidance'** negates misguidance in every sense of its

word. The phrase **‘the Religion of Truth’** negates every false religion that Allah has not sanctioned. So Allah’s Messenger (ﷺ) was sent with the guidance and the religion of truth and the people during his time used to refer all disputes back to him so that he could adjudicate between them with justice, irrespective if it were a dispute pertaining to Allah’s Speech or if it were linked to a ruling on a matter not yet revealed. Thereupon, revelation would be revealed to make the matter clear. How many times do we read in the Qur’an Allah’s statement, **“They ask you about...”** and then Allah responds to His Prophet (ﷺ) with a comprehensive answer and instructs him to convey it among the people. Allah – exalted be He – says,

يَسْأَلُونَكَ مَاذَا أُحِلَّ لَهُمْ قُلْ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَمَا عَلَّمْتُم مِّنَ الْجَوَارِحِ مُكَلِّبِينَ
تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهِ
وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ سَرِيعُ الْحِسَابِ ۝

They ask you, [O Muhammad], what has been made lawful for them. Say, "Lawful for you are [all] good foods and [game caught by] what you have trained of hunting animals which you train as Allah has taught you. So eat of what they catch for you, and mention the name of Allah upon it, and fear Allah." Indeed, Allah is swift in account.

[Al Mā'idah 4]

وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ٢١٩

And they ask you what they should spend. Say, "The excess [beyond needs]." Thus Allah makes clear to you the verses [of revelation] that you might give thought.

[Al Baqarah 219]

يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ
وَأَطِيعُوا اللَّهَ وَرَسُولَهُ إِن كُنْتُمْ مُؤْمِنِينَ ١

They ask you, [O Muhammad], about the bounties [of war]. Say, "The [decision concerning] bounties is for Allah and the Messenger." So fear Allah and amend that which is between you and obey Allah and His Messenger, if you should be believers.

[Al Anfāl 1]

يَسْأَلُونَكَ عَنِ الْأَهْلِ قُلْ هِيَ مَوَاقِيْتُ لِلنَّاسِ وَالْحَجِّ وَلَيْسَ الْبِرُّ بِأَنْ تَأْتُوا الْبُيُوتَ
مِنْ ظُهُورِهَا وَلَكِنَّ الْبِرَّ مَنِ اتَّقَى وَأْتُوا الْبُيُوتَ مِنْ أَبْوَابِهَا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ
تُفْلِحُونَ

They ask you, [O Muhammad], about the new moons. Say, "They are measurements of time for the people and for Hajj." And it is not righteousness to enter houses from the back, but righteousness is [in] one who fears Allah. And enter houses from their doors.

And fear Allah that you may succeed.

[Al Baqarah 189]

And this is a common theme found in other verses. However, after the Messenger (ﷺ) passed away, the Ummah fell into disputes and differences with regard to the legal rulings of Islam that had no detrimental impact on its legal foundations and the foundations of its sources. Nonetheless, it is still differing and we will clarify some of the causes for this differing.

All of us know for definite that none of the bearers of knowledge, who are replied upon and respected for their knowledge, deliberately go against what the Book and the Sunnah points to. And this is because anyone who is characterised with knowledge and religious commitment must be motivated by the truth, and anyone who seeks the truth then Allah will make finding the truth easy for him. Listen to the Speech of Allah:

وَلَقَدْ يَسَّرْنَا الْقُرْآنَ لِلذِّكْرِ فَهَلْ مِنْ مُدَكِّرٍ ۝۱۷

And We have certainly made the Qur'an easy for remembrance, so is there any who will remember?

[Al Qamar 17]

فَأَمَّا مَنْ أَعْطَى وَاتَّقَى ۝ وَصَدَّقَ بِالْحُسْنَى ۝ فَسَنِيسِرُهُ ۖ وَلِيُسرَى ۝۷

Then as for him who gives away and guards (against evil) and accepts the best, We will facilitate for him the easy end.

[Al Layl, 5-7]

Nevertheless, it is still possible for the likes of these Imams to fall into error with regard to the laws of Allah but not with respect to the fundamentals that we pointed to earlier. Such errors are inevitable and are bound to happen because mankind is as described by Allah:

وَأَخْلَقَ الْإِنْسَانَ ضَعِيفًا ۚ

And man was created weak.

[An Nisā 28]

So mankind is weak in terms of his capacity of knowledge and his aptitude to comprehend knowledge, and thus it is inevitable that he will err in some matters. I will summarise in point-form what I want to discuss concerning the reasons the scholars fall into errors—albeit the reasons are much more for they are a sea without a shore. The person who is blessed with insight into the sayings of the people of knowledge is familiar with the widespread causes for such differing.

THE FIRST CAUSE IS THAT THE EVIDENCE DID NOT REACH THE PERSON WHO MADE AN ERROR WHEN PASSING A RULING

This reason is not exclusive to those who came after the Companions. On the contrary, it includes the Companions and those who came after them. We will provide two examples that happened in the time of the Companions:

Based on what has been established in Saheeh Bukhari and other books of hadith, we know that when the Leader of the Believers, Umar ibn al-Khattāb travelled to Sham, he was informed that a plague had broken out there. So he halted to consult the Companions—both the Muhājireen and the Ansār. Both groups differed with regard to the right course of action. The correct course of action was to return. During this deliberation and consultation, Abdur-Rahmān ibn ‘Awf and said, “I have some knowledge pertaining to this matter. I heard the Messenger of Allah (ﷺ) say, **‘If you hear of its outspread in some land, do not go there, and if it breaks out in a land where you are, do not leave fleeing from it.’**”³ So this ruling was unknown to the major Companions - the Muhājireen and the Ansār until Abdur-Rahmān ibn ‘Awf came and informed them of this hadith.

³ Saheeh al-Bukhāri (3286).

Another example is that Ali ibn Abi Tālib and Abdullah ibn ‘Abbās were of the view that if a woman’s husband dies whilst she is pregnant then she should keep herself in waiting (*‘iddah*) – either four months and ten days or until giving birth. So if she gives birth before four months and ten days then this does not bring an end to the *‘iddah* – rather she remains in a state of *‘iddah* until four months and ten days have passed. If however four months and ten days have passed and she has still not given birth then her state of *‘iddah* remains until she gives birth. And this is due to Allah’s statement,

وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ ۚ

And for those who are pregnant, their term is until they give birth.

[At Talāq 4]

And He says,

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ۚ

And (as for) those of you who die and leave wives behind, they should keep themselves in waiting for four months and ten days.

[Al Baqarah 234]

The method of reconciling verses of this nature is to reconcile them by making sure it accommodates for both rulings and this was the method employed by ‘Ali and Ibn ‘Abbās. However, the Sunnah is to be given priority, since it is established in the Sunnah of Allah’s Messenger (ﷺ) in the hadith of Subay’ah al-Aslamiyyah that she gave birth some nights after her husband had died and that Allah’s Messenger (ﷺ) permitted her to marry. And this means that we adhere to the general ruling found in the chapter of at-Talāq, which is also known as *Surah an-Nisā as-Sughra’*, and it is Allah’s statement, **“And their prescribed time is that they lay down their burden”**. I have no doubt that if this hadith had reached Ali and Ibn ‘Abbās then they would have certainly adopted it and not held their own opinions.

THE SECOND CAUSE IS THAT A HADITH MAY HAVE REACHED A PERSON BUT HE DOES NOT REGARD ITS TRANSMITTER AS TRUSTWORTHY AND

REGARDS IT TO BE IN CONTRADICTION TO A STRONGER NARRATION AND SO HE HOLDS ON TO WHAT HE DEEMS TO BE STRONGER.

We will provide an example – and not an example of someone after the Companions, but from the Companions themselves. Fātimah bint Qays reported that her husband divorced her for the third and final time (irrevocable divorce), and so he sent his trustee with some wheat as maintenance for her during her *'iddah*. However, she was displeased with this wheat as her maintenance and promptly refused it. So they raised the matter before Allah's Messenger (ﷺ) and he said to her, **“There is neither maintenance nor housing for you.”**⁴ So this was because he had divorced her for the third and final time and the woman who has received the irrevocable divorce is neither entitled to maintenance nor housing unless she is pregnant, due to the Most High's statement:

وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ^٦

And for those who are pregnant, their term is until they give birth.

[At Talāq 6]

So Umar, to say nothing of his knowledge and virtue, was unaware of this Sunnah and was of the view that she was entitled to maintenance and housing. He rejected the hadith of Fātimah on the basis that she may have forgotten and stated, **“Am I to abandon the statement of my Lord for the statement of a woman while we know not if she has remembered correctly?”** And this means that the Leader of the Believers, Umar was uncertain with this as an evidence. Not only did this happen to Umar, other Companions and some of their Successors, it also happened to those who came afterwards, and likewise it happens today and it will happen until the Day of Resurrection – people will always be uncertain about the authenticity of certain evidences. How many times have we seen in the statements of the people of knowledge that rely on certain hadith, and how some of the scholars view these hadith as authentic and use them as evidences whilst others view them as weak and do not use them as evidences because they are not confident that such narrations were reported from the Prophet (ﷺ).

THE THIRD CAUSE IS THAT A HADITH HAS REACHED HIM BUT HE COULD NOT RECALL IT

⁴ Saheeh Muslim.

How majestic is He (Allah) who does not forget! How many people have forgotten hadith?! Actually, how many people have forgotten verses of the Qur'an?! One day, when Allah's Messenger (ﷺ) was leading the people in prayer he left out a verse forgetfully. When he had finished praying, Abi ibn Ka'b, who was present with him, came to him and reminded him of the verse. The Prophet (ﷺ) said to him, **"If only you had reminded me of it [during the prayer]."** And this is from the one who received revelation; the one whom was told by his Lord that

سَنُقَرِّئُكَ فَلَا تَنْسَى ۖ إِلَّا مَا شَاءَ اللَّهُ إِنَّهُ يَعْلَمُ الْجَهْرَ وَمَا يَخْفَى ۖ

We will make you recite so you shall not forget. Except what Allah pleases, surely He knows the manifest, and what is hidden.

[Al A'la, 6-7]

An example of failing to remember can be found in the story of 'Umar ibn al-Khattāb and 'Ammār ibn Yāsir. Allah's Messenger (ﷺ) sent them both on an errand. During their journey, they both suffered from seminal discharge. 'Ammār came to the understanding that purification performed with earth is the same as purification performed with water. And so he rolled around in the earth just as an animal does, making sure to cover his whole body and then he prayed. As for Umar, he did not pray. Afterwards, Allah's Messenger (ﷺ) instructed them on the correct way to perform *at-Tayammum* (dry ablution) and then said to 'Ammār, **"It would have been sufficient for you to do this with your hands."** Then he struck the ground with both hands and wiped his hands and face.

'Ammār used to relate this incident prior to and during the caliphate of 'Umar. So one day, 'Umar summoned him and said, **"What is this hadith you keep narrating?"** So he narrated the hadith to him and then said, **"Do you not recall when Allah's Messenger (ﷺ) sent us on an errand and we both suffered from seminal discharge? You decided not to pray and I rolled around in the dust and then the Messenger said to me, 'It would have been enough to do such and such'"** However, 'Umar could not recall this occasion and so said, **"Fear Allah, O 'Ammār!"** And so 'Ammār replied, **"O leader of the Believers, if you wish and because Allah has instructed me to remain in your obedience, I will not relate it."** So 'Umar said, **"We entrust you with what you claim (i.e., just because he could not remember the narration, it does not mean that it is not true and thus he has no right to stop it from being narrated)"**

So ‘Umar had forgotten that the Prophet (ﷺ) had made *at-Tayammum* a means of purification from sexual impurity just as he had made it a means of purification from minor impurity (e.g., going to the toilet, passing wind). The point here is that a person is liable to forget and consequently he is unaware of a particular legal ruling and so he is excused for holding a contrary view. As for the one who knows the evidences then he is not excused.

THE FOURTH CAUSE IS THAT A NARRATION HAS REACHED HIM BUT HE UNDERSTOOD IT IN A WAY THAT WAS UNINTENDED

We will provide two examples for this. The first is from the Book and the second is from the Sunnah. From the Qur’an we have Allah’s statement,

وَإِنْ كُنْتُمْ مَرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِّنْكُمْ مِنَ الْغَايِبِ أَوْ لَمَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا ۖ

But if you are ill or on a journey or one of you comes from the place of relieving himself or you have contacted women and do not find water, then seek clean earth and wipe over your faces and hands with it.

[Al Mā'idah 6]

So the scholars have differed with regard to the meaning of the words “or you have contacted women”. Some of them understood this to mean contact in any sense of the word. Others understood it to mean the type of contact that arouses sexual desire. Some scholars understood it to mean sexual intercourse, and this is the view of Ibn ‘Abbās. If you look carefully at the verse, you will find that the correct view is with those who regard it to mean sexual intercourse. And this is because Allah, the Mighty and Majestic, mentions two types of purification by water: minor ritual purification and major ritual purification. Regarding minor ritual purification, Allah states,

فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ ۖ

Then wash your faces and your hands as far as the elbows, and wipe your heads and your feet to the ankles.

[Al Mā'idah 6]

And as for major ritual impurity then Allah states,

وَإِنْ كُنْتُمْ جُنُبًا فَأَطَّهَرُوا^٦

And if you are in a state of janabah, then purify yourselves.

So Allah's statement **"or one of you comes from the place of relieving himself"** refers to the requirement of minor ritual purification and His statement **"or you have contacted women"** refers to requirement of major ritual purification. If we were to understand the word **'contacted'** to mean just mere contact then there would be two references given to the requirement of minor ritual purification with no reference given to the requirement of major ritual purification. This would be inconsistent with the eloquence of the Qur'an.

Those who understand the verse to mean contact in its most literal sense then they said that if a male touches the skin of a female then this nullifies his wudhu. Or if he touches her through desire, it nullifies his wudhu but without desire then it does not nullify his wudhu. However, the correct view is that neither of the two cases nullify wudhu. Moreover, it has been narrated that the Prophet (ﷺ) kissed one of his wives and then went to the prayer and did not perform wudhu.⁵ The various routes mentioned for this narration strengthen one another.

From the Sunnah is that when the Prophet (ﷺ) came back from the Battle of the Confederates and laid down his arms [to bathe], Jibreel came to him and said, **"You have laid down your arms? By Allah, we angels have not laid down our arms, so set out for Banu Quraitha."** So the Prophet (ﷺ) dispatched his Companions and said to them, **"None should offer the 'Asr prayer but at Banu Quraitha"**.⁶ So the Companions differed in their understandings of these words. Some of them understood his (ﷺ) words to make haste so that the time of 'Asr will come when they arrive at Banu Quraitha. But when the time of 'Asr did come whilst they were still travelling, they stop and prayed and they did not delay it. Others understood his (ﷺ) words to mean that they should only pray when they arrive at Banu Quraitha. So they delayed their prayer from its fixed

⁵ At-Tirmidhi (86).

⁶ Saheeh al-Bukhāri (3891).

time and prayed it when they arrived there. Thus, from the causes of differing is understanding the evidence in a way that Allah and His Messenger (ﷺ) never intended. This is the fourth cause.

THE FIFTH CAUSE IS THAT THE NARRATION HAS REACHED HIM BUT HE IS UNAWARE THAT IT WAS ABROGATED

So the narration is authentic and his understanding of the hadith is correct but the narration is abrogated. The scholar is excused because he is unaware that the narration is abrogated because the basic principle is that a text is not ruled as abrogated unless its abrogating text is known. An example of this is the view of Ibn Mas'ood concerning where a person should place his hands when in *rukoo'* (bowing). In the early stages of Islam, it was prescribed for a person to place both of his hands between his knees. This was the prescribed position in the early stages of Islam, but then this practice was abrogated and replaced with the practice of placing both hands on the knees. This particular case of abrogation has been recorded in Saheeh al-Bukhāri and other books. However, Ibn Mas'ood was unaware of this abrogation and so he carried on placing his hands between his legs. Once Alqamah and al-Aswad prayed besides him, placing their hands on their knees. Ibn Mas'ood prohibited them and instructed them to pray with their hands between their knees. Why? Because he was unaware of this particular case of abrogation, and no person is burdened beyond his scope. Allah, the Most High states,

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا أُكْتَسَبَتْ رَبَّنَا لَا تُؤَاخِذْنَا
إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إَصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا
رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ ۗ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا
فَأَنْصُرْنَا عَلَى الْكُفَرِينَ ۝۲۸۶

Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned. "Our Lord, do not impose blame upon us if we have forgotten or erred. Our Lord, and lay not upon us a burden like that which You laid upon those before us. Our Lord, and burden us not with that which we have no ability to bear. And pardon us; and forgive us; and have mercy upon us. You are our protector, so give us victory over the disbelieving people."

[Al Baqarah286]

THE SIXTH CAUSE IS THAT HE BELIEVES THE EVIDENCE AT HAND CONFLICTS WITH STRONGER TEXTUAL EVIDENCE OR A SCHOLARLY CONSENSUS

In other words, he is familiar with the evidence at hand but he regards it as being at odds with stronger textual evidence or a scholarly consensus. This type of scholarly difference happens frequently amongst the Imams. How often it is the case that we hear of a purported consensus, but the case does not actually stand up to scrutiny.

One of the most unusual cases of documented scholarly consensus is that some scholars reported a consensus concerning the legitimacy of a slave's testimony whilst others reported a consensus on the illegitimacy of a slave's testimony! This truly is from the most unusual cases to have been documented. This happens because when a person believes that the textual evidence necessitates his position and around him are people who only hold his view, it leads him to think that there is no other opposing view. Consequently, two types of evidence form in his mind: textual evidence and a scholarly consensus. He may even think that analogical deduction (*al-Qiyās*) and sound analytical reasoning (*an-Nadhr*) further supports his view. Thus, he determines that there is no difference of opinion over the textual evidence that, according to him, is further supported by correct analogical deduction. However, the matter turns out to be the exact opposite.

Ibn 'Abbās' opinion on *Ribā al-Fadlī*⁷ is an example of this. It has been authentically proven that the Prophet said, **“Ribā is only in credit.”** It has been reported from 'Ibādah ibn Sāmit and others that usury takes place in both *Nasee'ā*⁸ and *Fadl* transactions. The scholars after Ibn 'Abbās agreed that usury is of two types: *Ribā al-Fadli* and *Ribā an-Nasee'ā*. As for Ibn 'Abbās then he maintained that usury only came in the form of *an-Nasee'ā*. An example of *Ribā an-Nasee'ā* is when a portion of wheat is sold for two portions of wheat with the transaction being done on the spot then this, according to Ibn 'Abbās, is a legit transaction because he believed that usury is only in *an-Nasee'ā* transactions. Thus, if you were to sell one gram of gold for two grams of gold and the transaction was done on the spot then, according to Ibn 'Abbās, this is not a usury-based transaction. If however the transaction was delayed on my behalf, so you give me a gram of gold

⁷ [TN]: *Ribā al-Fadl*: The *Ribā* (usury) of exchange surplus. Any commodity-for-commodity exchange transaction in which the exchanged commodities are of the same type but of unequal measure.

⁸ [TN]: *Ribā an-Nasee'ā* takes place when two commodities are exchanged, one immediately and the other with a delay.

but I did not complete the exchange until sometime after we had parted then it would be a usury-based transaction.

Ibn ‘Abbās believed in one type of usury because the word *إِنَّمَا* (the Arabic word used in the hadith which means ‘only’) denotes limitation and thus stops usury from occurring in all other types of transactions. However, the truth of the matter is that the narration reported by ‘Ibādah ibn Sāmit proves that *al-Fadl* is also a type of usury transaction. For the Messenger said (ﷺ), **“Whoever gives more or asks for more has engaged in usury.”**⁹ So what should be our position towards the hadith that Ibn ‘Abbās uses as evidence? Our position is to understand it in a manner that is consistent with the other hadith that is proof for *al-Fadl* being a type of usury. We do this by saying that the major type of usury that the people of ignorance used to deal in and the type referred to in the verse of Allah

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُّضَاعَفَةً ۖ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ

O you who believe, do not devour usury, making it double and redouble, and be careful of (your duty to) Allah, that you may be successful

[Al ‘Imrān 130]

is none other than *Ribā an-Nasee’ā*. As for *Ribā al-Fadl* then it is not the major form of usury. And this is why Ibn Qayyim said in his book *‘Ilām al-Muwaqqi’een* that the prohibition on *Ribā al-Fadl* falls under a **prohibition as a precautionary measure** and not the **type of prohibition that is forbidden in and of itself**.

THE SEVENTH CAUSE IS THAT THE SCHOLAR FORMS HIS JUDGEMENT BASED ON A WEAK HADITH OR HIS POWERS OF DEDUCTION ARE POOR

This also happens quite frequently. Some of the scholars who approved of *Salah as-Tasbeeh* is an example of a judgment based upon a weak hadith. This prayer consists of two units of prayer with *al-Fātibah* being recited in each unit along with *Subhanallah*, *al-hamdulillah*, *wa la ilaha illallah*, *wa Allahu Akbar* being said 15 times and it is also said when bowing and prostration and so forth. I am not entirely sure of its details because I do not hold it to be a legal act of worship. Others hold it to be a detestable innovation and that the hadith on its subject are all weak. Imam Ahmed is

⁹ Saheeh al-Bukhāri (2067).

amongst those who held this view, for he said that these hadith are not authentically reported from the Prophet (ﷺ). Shaykh al-Islam ibn Taymiyyah said that these hadith are a lie against Allah's Messenger (ﷺ). The truth of the matter is that whoever looks closely at it will find something unusual about it, even from a legislative perspective. This is because worship is something useful for the heart and something that the heart can thrive off and so it is something legislated for all places and all times otherwise it is not useful and therefore not legislated. This hadith, however, states that a person can pray this particular prayer once a day, once a week, once a month or once in a lifetime. There is no act of worship like this in the Shari'ah, and so both its chain of narration and its text are peculiar. So those who say that this is a lie on Allah's Messenger (ﷺ), like Ibn Taymiyyah, are correct in stating that none of the Imams of the Muslims recommended its practice.

As for an example of poor deduction when using a particular hadith – in other words, the evidence is strong but the deductive reasoning is poor – is the understanding held by some scholars with respect to the hadith reported by Ahmed **“The slaughtering of a foetus is [a part of] the slaughtering of its mother.”**¹⁰ The people of knowledge commonly understand this hadith to mean that if a mother of the foetus is slaughtered then this act of slaughtering also includes the foetus. That is, when the foetus is removed after its mother has been slaughtered there is no need to slaughter the foetus because there is no benefit in slaughtering it after it is dead. Despite this, some of the scholars understood this hadith to mean that the foetus should be slaughtered separately by severing the two carotid arteries and letting the blood gush out. This understanding is has gone way beyond, and what makes it way beyond is that the blood will not gush out after death. The Prophet (ﷺ) said, **“Whatever causes the blood to flow and the name of Allah has been mentioned over it then eat.”** It is a well-known fact that blood does not gush out after death.

So these are the causes for differing amongst the scholars that I wanted to point out, albeit there are many more causes – so much more that they are like a sea without a shore.

¹⁰ Ahmed