

# RULE OF LAW IN THE EXPLORATION AND USE OF OUTER SPACE

Islamic Legal Perspective: Foundational  
Principles and Considerations

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# Rule of Law: Core Issues, Foundational Islamic Principles and Paradigms

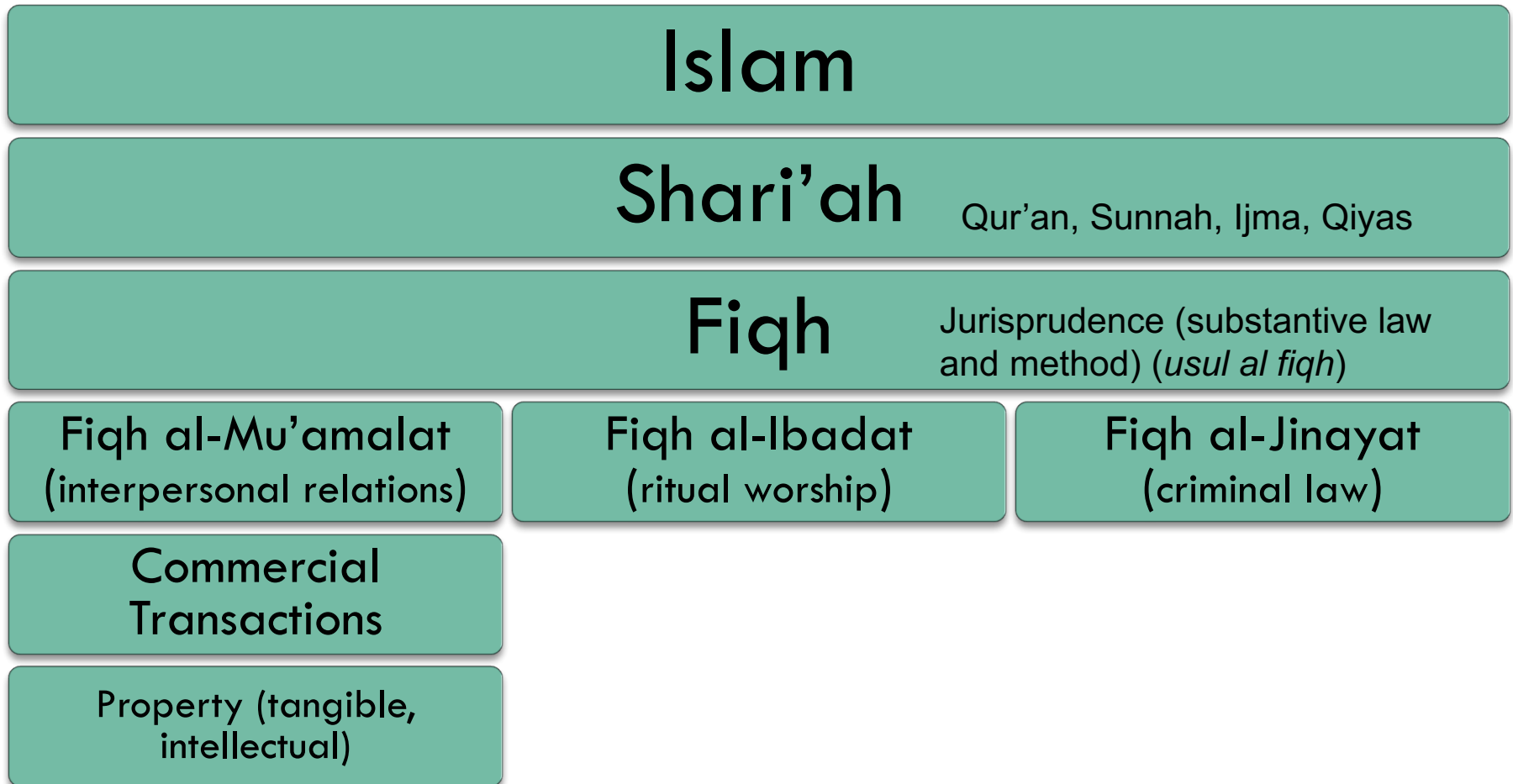
## Elements (General)

- Space Exploration and Use
  - ▣ Purpose of Exploration?
  - ▣ Sovereignty right?
  - ▣ Property right?
  - ▣ Conduct in Space
  - ▣ Governance
- Products/Tools of Space Exploration
  - ▣ Intellectual Property
  - ▣ Tangible Property

## Islamic Paradigms

- Qur'an/Islamic law on scientific endeavor
  - ▣ Encouraged
  - ▣ “Balance”
  - ▣ Legal Rulings
- Prohibited purposes?
- Property Rights (general)
- Objectives of Exploration (permissibility)

# Islam: Legal and Jurisprudential Framework\*



\*This is a simplified visualization.

# Islamic Context: Religion, Morality, Law Inextricable

“Law . . . in any sense in which a Western lawyer would recognize the term, is . . . *one of several inextricably combined elements thereof. Sharīʿa . . .* which is commonly rendered as ‘law’ is, rather, the ‘Whole Duty of Man . . . [A]ll aspects of law; public and private hygiene; and even courtesy and good manners are all part and parcel of the *Sharīʿa*, a system which sometimes appears to be rigid and inflexible; at other to be imbued with dislike of extremes, that spirit of reasonable compromise which was part of the Prophet’s own character.’”

# Islamic Law: Sources, Sunni Schools

## Primary Sources

- Qur'an
- Sunnah

## Secondary Sources

- Qiyas
- Ijma

## Four Prevailing “Schools” of Sunni Islamic Law

- **Hanafi** (Abu Hanifa Al No'man, 699-787)
- **Maliki** (Malik ibn Anas Al Asbahi, 710-795)
- **Shafi'i** (Muhammad ibn Idris ibn Abbas ibn Uthman ibn Al- Shafi'i, 768-820)
- **Hanbali** (Ahmed ibn Hanbal, 780-855).

## 5 Categories of Akham (Rules as to Legality): Acts Permissible, Prohibited, In-Between

- **Wajib/Obligatory.** A command is decisive and an omission (to do the act) invokes punishment.
- **Mandub/Recommended.** If there is a reward for the act and punishment is absent.
- **Mubah/Permissible.** When there is a choice between commission and omission of the act, the act is permitted.
- **Makruh/Reprehensible** (or disfavored). If there is urging to abstain from the act without invoking punishment.
- **Haram/Prohibited.** When the proscription is decisive and the commission invokes punishment.

# Objectives of Shari'ah (*Maqāṣid al-Shari'ah*)

## Five “Higher” Objectives of Shari'ah\*

- ▣ Religion of Islam
- ▣ Human Life
- ▣ Progeny
- ▣ Faculty of Reason
- ▣ Material Wealth

\*Articulated by Imam al Ghazali of the *Shafi'i* School, and later adopted by classical scholars of the Maliki and Hanafi Schools. See Abdelhady, *Islamic Finance as a Mechanism for Bolstering Food Security in the Middle East: Food Security Waqf (on Maqāṣid al-Shari'ah)* (Feb. 6 readings).

# Key Points of Jurisprudence (Methods)

- *Ijma* (juristic consensus)
- *Qiyas* (analogical reasoning)
- *Taqlid* (continuity/precedent, *stare decisis*?)
- *Sadd al-dhara'ia* (blocking the means)
- *Istihsan* (juristic preference/choice)
- *Istislah/Maslaha* (public interest)
- *Siyasa* (political question/charge)
- *Urf* (custom)



# Qur'an: The Universe (Natural Order, Balance), Example

[Allah] The Most Merciful

Taught the Qur'an,

Created man,

[And] taught him eloquence.

The sun and the moon [move] by precise calculation,

And the stars and trees prostrate.

And the heaven He raised and imposed the balance

That you not transgress within the balance.

And establish weight in justice and do not make deficient the balance.

And the earth He laid [out] for the creatures.

Therein is fruit and palm trees having sheaths [of dates]

And grain having husks and scented plants.

So which of the favors of your Lord would you deny?

# Space Exploration and Use: Islamic General Principles, Analytical Framework

- **General principles:**
  - What is not prohibited is permitted (but may be discouraged)
  - Jurisprudence: areas on which there is not consensus (ijma) are generally open.
  - Consideration, after “hard” law analysis, of public interest.
- **Basic Legal Analysis:**
  - Recognition of Basis of Right to Explore and Use (e.g., to assert ownership or sovereignty)
    - Some things not capable of individual ownership (e.g., air, rain), may be “owned” or “controlled” by the state. Licensing/use rights permissible (e.g., fishing).
  - Permissibility of Purpose and/or Effects or Exploration or Use?
    - Existing prohibition: e.g., based on nature of activity/property, objective of activity, competing claim?
    - Jurisprudential reasoning where no clear prohibitions or principles apply (entirely).

# Example: Islamic Legal Opinion on Scientific Endeavor (Cloning)

“Islam does not set up any obstacle or any obstruction to the freedom of scientific research that constitutes a mean to discover the order established by God Almighty in His creation. Nevertheless, Islam stresses that the door cannot be left wide open, without restriction, to the generalized implementation, without limit, of the results of scientific research, without examining them closely in the light of Shari'a, so as to authorize what is lawful ("Halal") and prohibit what is not ("Haram"). It is not allowed to apply a discovery just because such an application is technically possible. It has to be a useful science serving public interest and protecting people from harm's way. Science must respect human dignity, its place in the world and the purpose for which the Almighty God has created him.”

# Space Exploration and Use: Islamic General Principles, Analytical Framework

Basic legal analysis (continued): Assuming permissible purpose, activity, objectives:

- Nature and limits of legal rights:
  - Tangible and intangible property likely to be recognized, with direct application of or analogy to principles of transactions/relationships (*muamalat*) and property (e.g., equipment, IP).
  - Rights and obligations pursuant to agreements (encouraged by Qur'an/Islamic Law) or custom (*urf*).
  - Consideration of impact (positive and adverse) on public interest, which includes avoiding harm, promoting harmonious and predictable dealings, and the settlement of disputes (*sulh*).

# THANK YOU!

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