

Series of Answers by the Ameer of Hizb ut Tahrir, Eminent Scholar Ata Bin Khalil Abu Al-Rashtah to his Facebook Fiqhi Page

Answer to Question

The Comprehensive Evidence (Al-Kuli) and the Partial Evidence (Al-Juz'i) and Al-Malaka (Ability) in Ijtihad

To: Yeni Camii

(Translated)

Question:

As-Salam Alaikum Wa Rahmatullah Wa Barakatuh

I ask Allah Al-A'li Al-Qadeer, that this message of mine reaches you while you are safe and well, and Allah is pleased with you, and grants you success and guidance in word and deed.

During my preparation for the book, *The Islamic Personality* Volume I, I was confused in understanding issues related to the subject of ijtihad. Can you please answer my questions? May Allah reward you greatly, thank you very much.

First: In the book, *The Islamic Personality* Volume I, p 203 (Arabic):

“Because ijtihad is the derivation (Istinbat) of the rule from the text, whether it was derived from comprehensive (kuli) evidence, like the derivation that the one who steals is punished in Shariah by cutting off his hand, as hudood for theft. Or if it was derived from a partial (juz'i) evidence like the derivation of the ruling of hiring (ijara) because the Prophet (saw) hired a worker (ajeer).”

In *The Islamic Personality* Volume III, p. 445 (Arabic), the Chapter of the Comprehensive Rules stated: “The comprehensive (kuli) rules and Shariah definitions are comprehensive (kuli) rules, and as for the Shariah ruling, it is a partial ruling.” The questions are:

1- What is the comprehensive (Al-Kuli) evidence and the partial (Al-Juz'i) evidence? Why is the evidence of cutting off the hand of the thief called the comprehensive (Al-Kuli) evidence, and the evidence for the permissibility of hiring is called the partial (Al-Juz'i) evidence? (Is the Shariah ruling a comprehensive (Al-Kuli) ruling and a partial (Al-Juz'i) ruling as described in the topic of Ijtihad, or is it only a partial ruling and is not called comprehensive except in the Shariah definitions, and comprehensive rules as understood from the *Islamic Personality*, Volume Three?)

Second: regarding the subject of the conditions of Ijtihad, p. 213 (Arabic): (*Al-Malaka* (ability) means strength in understanding and linking, and this may happen from excessive intelligence with knowledge of some of the Shariah and linguistic knowledge and does not need to encompass Shariah and linguistic knowledge).

In the Answer to Question on 8/8/2017, it was stated: (And what is meant by *malaka*, the ability in jurisprudence, is not the innate aspect and the innate readiness that varies from one person to another, but rather the ability acquired through learning, study, in-depth and practice... Although the innate preparations can contribute to the birth and development of the jurisprudential ability quickly, but these innate predispositions are not the intended *malaka*).

2- And the question: Is what was stated in the answer contradicts what was stated in the book in terms of the relationship of innate preparations to the formation of *malaka* (ability)? The book made the basis for the ability the power of understanding and linking, but the answer made the basis is the acquired knowledge?

Barak Allah Feek and jazak Allah khair.

Answer:

Wa Alaikum As-Salam wa Rahmatullah Wa Barakatuh

Here are the answers to your questions:

First: The comprehensive (Al-kuli) evidence and the partial (Al-Juz'i) evidence: This matter is detailed in *The Islamic Personality* Volume Three- the chapter on Comprehensive Rules, as well as *The Islamic Personality* Volume One, and Al-Kurrassah (booklet), so you can refer to it... But I will explain the answer to you briefly:

If it is possible to derive from the evidence (or evidences) a Shariah rule under which other Shariah rulings are included, that are not mentioned in the text in the evidence or evidences, and by a different method of analogy (Qiyas), i.e. without the new rulings being measured against that mentioned in the text, rather they are included as parts of that rule, then the rule is comprehensive. And the ruling that falls under it is comprehensive. Often between the rule and the ruling that falls under it you find something like an I'llah (divine reason) (or equivalent to the I'llah (divine reason)), and sometimes a real I'llah (divine reason). In the *Islamic Personality* Volume Three, the chapter on the Comprehensive Rules, p. 455 (Arabic) it states: (And from that it became apparent that the universal rule makes the verdict like an 'illah for a universal verdict; because it is a cause for it, i.e. because it is resulted from it or originated by it, or it makes it a real 'illah for a universal verdict, so it is a universal verdict which is applicable on its partials; therefore it should be applied on every verdict on which it is applicable, the way the evidence is applied on the verdict it brought, so it is not proven by Qyaas, but they are partials of that universal rule and classified under it, so they are included in its connotation or in its literal meaning exactly as they are included in the denotation of the evidence, and the inference by it (the rule) is like the inference by the evidence. Hence the universal rule should be dealt with like the ('illah) in the Qyaas, However the universal rules are not a Shari'ah evidence like the Qyaas, nor are they one of the principles of the Shari'ah, but the rule is a Shari'ah verdict derived like all the derived Shari'ah verdicts, so it is not a Shari'ah evidence).

Second: to clarify this we mention two examples from the Islamic Personality, Volume Three, p. 454-455 (Arabic), one on equivalent to the I'llah (divine reason), and the other is on the I'llah (divine reason):

1- (As an example, Allah (swt) says: ﴿وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ﴾

“And insult not those whom they (disbelievers) worship besides Allah, then they insult Allah wrongfully without knowledge...” [Surat Al An'aam: 108], the (consequence) particle "ف" in the word ﴿فَيَسُبُّوا﴾ **“then they insult”** denotes that your insult to their idols leads to their insult to Allah, and this is forbidden, so it necessitates that your insult to their idols in this situation is forbidden, so it is like an 'illah. So the forbiddance of insulting the disbelievers is the evidence of the verdict, and beside its denotation of the verdict it denotes something else originated by it, which is His saying: the ﴿فَيَسُبُّوا اللَّهَ﴾ **“then they insult Allah”** so from this verse derived the rule: "The means which leads to what is forbidden is forbidden".

2- An example is the saying of the Prophet (saw): «الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْكَلْبِ وَالْمَاءِ وَالنَّارِ» **“The Muslims are partners in three: in the pasture, the water and the fire”** (compiled by Abu Dawood). It is proven that he (saw) approved people in Al Madinah and Al Taa'if on their private ownership of the water, and it is understood from the situation of the water which He (saw) allowed to be owned privately that the public had no need in it, hence the 'illah which made the people partners in those three is because they are from the utilities of the public, so the evidence denoted the verdict and the 'illah, i.e. it denoted the verdict and something else that was the reason of legislating the verdict, so the rule: "All that which is from the public utilities is a public property" was derived from it).

After that the book explains:

“And from that it became apparent that the universal rule makes the verdict like an 'illah for a universal verdict; because it is a cause for it, i.e. because it is resulted from it or

originated by it, or it makes it a real 'illah for a universal verdict, so it is a universal verdict which is applicable on its partials; therefore it should be applied on every verdict on which it is applicable, the way the evidence is applied on the verdict it brought, so it is not proven by Qyaas, but they are partials of that universal rule and classified under it, so they are included in its connotation or in its literal meaning exactly as they are included in the denotation of the evidence, and the inference by it (the rule) is like the inference by the evidence. Hence the universal rule should be dealt with like the ('illah) in the Qyaas, and everything falls under it takes its verdict, unless there is a text in contrast with the rule, then the verdict should be according to the text not according to the rule, like the situation in the Qyaas, if a Shari'ah text comes, the text should be taken and the Qyaas should be cancelled. However, the universal rules are not a Shari'ah evidence like the Qyaas, nor are they one of the principles of the Shari'ah, but the rule is a Shari'ah verdict derived like all the derived Shari'ah verdicts, so it is not a Shari'ah evidence; therefore, that which falls under it is considered a branch or like the branch of it. And similar to the universal rule is the universal definition, everything on which it is applicable takes its verdict, unless a Shari'ah text exists then the text should be followed."

Third: Now we come to your first question about theft and hiring:

Allah (swt) says: ﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾ "And the male thief, male and female, cut off their hands as a recompense for what they earned as a punishment from Allah, and Allah is Mighty, Wise" [Al-Ma'idah: 38]. From evidence, it can be derived, as a comprehensive (kuli) rule that **(trespassing on other people's money is forbidden and requires a penalty)**. This is because it can be said that the text of theft bears something similar to the 'illah (divine reason) or the equivalent of the *'illah* (divine reason), which is the link between cutting off the hand and theft... The order of cutting off the hand on theft has been confirmed with the letter (fa) (a consequence article), and here it is denoting a reason (sababiya), and there is a link between the ruling ﴿فَاقْطَعُوا أَيْدِيَهُمَا﴾ "so cut off their hands", and the one that necessitates cutting off, which is theft in His saying: ﴿وَالسَّارِقُ وَالسَّارِقَةُ﴾ "and the male thief and the female thief" The cutting of the hand is only in relation to theft, however, the presence of the connection between the ruling and its reason enables the mujtahid to formulate a comprehensive ruling that includes cases that fall under it, so it is said that **trespassing on other people's money is forbidden and requires a penalty...** Under this ruling falls: that the plunderer has a penalty even though the ruling on the plunderer is not mentioned in the verse, and for this reason the verse stated that the punishment for the thief is cutting off (the hand), and it stated in addition to that, based on its linguistic structure, that the transgressor of other people's money deserves a punishment, so the evidence for cutting off the thief's hand was a comprehensive evidence that establishes a comprehensive ruling.

As for the ruling on renting, which is taken, for example, from the fact that he (saw): «اسْتَأْجَرَ رَجُلًا مِنْ بَنِي الدُّنَلِ هَادِيًا خَرِيْتًا» "The Prophet (saw) hired a worker from Bani al-Du'l as an experienced guide", there is nothing in it that is comprehensive or one thing resulting due to another. Rather it is evidence that allows hiring, it is a partial evidence that establishes a partial ruling. In other words, the hiring (*ijara*) evidence is not related to other than the hired, and other contracts cannot be included under it, i.e., contracts other than hiring, so it is a partial evidence... This is naturally different from the definition of hiring because the definition is described as comprehensive (*kuli*), so the definition includes the types of hiring. The definition in this aspect has the description of the comprehensive, but the evidence of hiring itself is not fully described because it does not include anything other than the subject of hiring.

Fourth: As for your second question:

Is the Shariah ruling a comprehensive (Al-Kuli) ruling and the partial (Al-Juz'i) ruling as described in the topic of Ijtihad, or is it only a partial ruling and is not called comprehensive except in the Shariah definitions and comprehensive rules as understood from the Islamic Personality, Volume III?)

My brother, the comprehensive rules, Shariah definitions, and the Shariah ruling itself are all Shariah rulings, except that the ruling, if it is attributed to a comprehensive term with the l'la (divine reason) or what is similar to the l'la (equivalent to the l'la (divine reason)), then it is a comprehensive ruling. So, if you say (the means to what is forbidden is forbidden), then here you attributed the prohibition to (the means to the forbidden) i.e., its attribution to a comprehensive term and for this reason the deduced ruling was a comprehensive ruling and under this rule (the comprehensive Shariah ruling) comes the partials... it includes every means that leads to the forbidden.

And if you define the Shariah ruling as (the speech of the Legislator related to the actions of the servants by necessity, situation, or choice), then you made the definition focussed on a comprehensive term (the speech of the Legislator related to the actions of the servants...) so the definition is comprehensive and includes partials under it... it includes everything related to the actions of the servants, whether it was an obligation...or a reason...or the permissible...etc

As for, if you said (dead meat is forbidden) as in the noble verse ﴿حُرِّمَتْ عَلَيْكَ الْمَيْتَةُ﴾ **“Dead meat is forbidden to you”** then this text applies only to dead meat, and it is not understood from it that alcohol is forbidden, i.e., there are no partial rulings that fall under it, this is why it is defined as partial (juz'i), in other words it does not go beyond the mentioned rule in the text, so it is described as partial.

But the comprehensive rule, general Shariah definitions, and partial rulings are all Shariah rulings because they are derived from Shariah evidence, and as a matter of jurisprudential division, the rules and definitions are called comprehensive (kuli) and the Shariah rulings that do not apply to what is not mentioned in the text is the partial (juz'i) text, although they are all Shariah rulings. In conclusion, if the Shariah ruling is not a comprehensive rule or a Shariah definition, then it is a partial ruling.

Therefore, there is no contradiction between what was mentioned in the Islamic Personality, Volume I (p 207-208 Arabic/ p. 156 English): (Since Ijtihād is the inference of a hukm from the text whether from its wording (mantooq), understanding (mafهوم), from its indication (dalalah) or from the 'illah which has been mentioned in the text. Whether the inference was an inference of a comprehensive hukm (hukm kulli) from a comprehensive evidence (dalīl kulli); for example, the inference that a punishment should be imposed on the thief since the legislator made the cutting of the hand a hadd punishment for theft. Or the inference could be of a partial hukm (hukm juz'i) from a partial evidence (dalīl juz'i); such as the deduction of the hukm of hiring since the Prophet: «اسْتَأْجَرَ رَجُلًا مِنْ بَنِي الدَّنَلِ هَادِيًا خَرِيْتًا» **“He (saw) hired a worker from Bani al-Du'l as an experienced guide”** [Reported by Bukhari] and between what was mentioned in *The Islamic Personality* Volume Three, p. 445 (Arabic), in the Chapter of the Comprehensive Rules: (The comprehensive (kuli) rules and Shariah definitions are comprehensive (kuli) rules, and as for the Shariah ruling, it is a partial ruling).

Fifth: For information, the comprehensive and partial are among the characteristics of the singular, but as a matter of metaphor, it describes more than one, as stated in *The Islamic Personality* Volume Three, Arabic p. 451: [And in order to perceive the generality and the partiality in the Shari'ah verdict, it is inevitable to point out that this naming is a matter of the metaphor and not of the reality; because the generality and the partiality are from the denotations of the singular noun and not from the denotations of the assembled phrase, so there is no place for them in the denotation of the assembled phrases. And the Shari'ah verdict is an assembled phrase and not a singular noun, and your saying: the lease is an agreement on a benefit for a compensation, is an assembled phrase, and your saying: the means to what is forbidden is forbidden, is an assembled phrase, so the generality and the partiality are not included in it; because they are from the denotations of the singular noun. But since the common noun is the noun that many can share its meaning, like: the animal, the human and the author, and the definition is able to be shared by many, as the definition of the lease (Ijaarah) is applicable on hiring out the private employee and the common employee, and it is applicable on leasing the house, the car and the land ...etc. they

are called general verdicts as metaphor, and thus is the universal rule, and since the partial noun is unable to be shared by many, like Zaid as a proper noun for a man, and Fatimah as a proper noun of a woman, and like the pronouns like he and she, and the Shari'ah verdict is unable to be shared by many, like dead (un-slaughtered) meat is forbidden, and drinking the intoxicant is forbidden, and the likes, they are not applicable except on the dead meat and on the intoxicant, so it has been called partial verdict as a metaphor, so it is called general or partial metaphorically with respect to whether it includes other individual matters or it doesn't include, but with respect to its reality it is a Shari'ah verdict derived from a Shari'ah evidence. No difference between the universal rule, the definition and the verdict].

Sixth: As for your question about the subject of the *malaka*, the answer in the following:

1- The ability (*malaka*) that was discussed in the Answer to the Question dated 16 Dhul Qi'da 1438 AH corresponding to 08/08/2017 CE, it is not an absolute (*malaka*) ability, but rather a jurisprudential ability in particular, and it is related to the definition of a jurist. In the technical definition, the jurist is the one who achieved *malaka* (ability) in fiqh in jurisprudence. The meaning of *malaka* of the jurist, as we mentioned in the Answer to the Question:

[It is not meant by the word '*malka*' in fiqh the innate aspect and innate readiness that varies from one person to another. Rather, it is proficiency acquired by learning, studying, depth and practicing. Although innate preparations can contribute to the rapid birth and development of the jurisprudential proficiency (*malka*), but this innate readiness is not what is intended in the jurist].

As for the ability (*malaka*) for the mujtahid, it is as stated in the book, *The Islamic Personality* Volume One, (Arabic p 213, English p 162)

[Because aptitude (*malaka*) denotes the strength of understanding and linkage. This can be obtained by someone who is exceptionally intelligent with some knowledge of the linguistic and Shari'ah disciplines and does not need to encompass the linguistic and Shari'ah disciplines.]

In conclusion, the basic matter for the jurist is the ability (*malaka*) acquired by learning, studying, and acquiring knowledge of the Shariah. The innate preparations contribute to achieving this quickly.

As for the basic matter for the mujtahid, it is the power of understanding, connection, excessive intelligence, and the ability to deduce...with knowledge of some Shariah and linguistic knowledge, that do not need to encompass this knowledge.

Accordingly, there is no contradiction between the faculty (*malaka*) mentioned in the Answer to the Question, as it is with regards to the jurist... and the ability (*malaka*) mentioned in the book, *The Islamic Personality* Volume One, which is with regards to the mujtahid.

I hope the matter is clarified.

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer's Facebook page:

<https://www.facebook.com/HT.AtaabuAlrashtah/posts/736768038010568>