

# **THE RULE OF ISLAMIC LAW** ***(HUKM SHAR'I)***

- Definition of *Hukm Shar'i*
- Classification of *Hukm Shar'i*

# Definition of *Hukm Shar'i*

## 1. From the legal theorists' (*Usuliyyun*) perspective

- According to legal theorists, *hukm shar'i* is the communication from Allah, the Exalted, relating to the acts of the subjects by way of a demand or an option or a declaration.

Communication	Demand
	Option
	Declaration

Continue...

Binding

Obligation (*ijab*)

Commission

Non-binding

Recommendation

(*nadb*)

Demand

Binding

Prohibition/Forbidden

(*tahrim*)

Omission

Non-binding

Disapproval (*karahah*)

# Continue...

Option    Commission or omission    Permissibility  
*(ibahah)*

Cause (*sabab*)

Declaration

Condition (*shart*)

Impediment (*mani'*)

# Continue...

## 2. From the jurists' (*fuqaha'*) perspective

- *Hukm shar'i* is the effect of that communication.

# Classification of *Hukm Shar'i*

- *Hukm Shar'i* is divided into two categories:
  - 1) Defining law (*hukm taklifi*) is a communication from the Law Giver which demands the subjects to do or not to do a thing or gives an option between the two. It mainly defines the extent of man's liberty of action.

Continue...

The majority of legal theorists divide *hukm taklifi* into five categories.

A- Obligation (*ijab*) is the communication which absolutely demands for the performance of an act.

- The legal effect of the communication is called *wujub* (being obligatory).
- The act to which *ijab* relates and which is characterized by *wujub* is called *wajib* (obligatory).
- E.g. “O you who believe, fulfill the obligation” (5:1)
- This Quranic verse is a *hukm shar’i* according to the legal theorists.
- The legal effect of the verse is *hukm shar’i* according to the jurists i.e. the obligatoriness of fulfilling the obligation.

## Continue...

- 2) Recommendation (*nadb*) is the communication which indecisively demands for the performance of an act.
- The legal effect of the communication is called *nadb*.
  - The act to which *nadb* relates and which is characterized by it, is called *mandub* (recommended)
  - E.g. “O you who believe, when you contract a debt for a fixed time, write it down.” (2:282)
  - The demand in the *hukm* to write down the contract of a debt is not absolute or decisive as the context indicates.



## Continue...

- C- Prohibition (*tahrim*) is the communication which absolutely demands to refrain from an act.
- The legal effect of the communication is called *hurmah* (being forbidden).
  - The act to which *tahrim* relates and which is characterized by *hurmah* is called *haram* (prohibited).
  - E.g. “And go not nigh to fornication, surely it is obscenity. And evil is the way. (17:32)

## Continue...

- D - Disapproval (*karahah*) is the communication which indecisively demands to refrain from an act.
- The legal effect of the communication is also called *karahah*.
  - The act to which *karahah* relates and which is characterized by it is called *makruh* (disapproved)
  - E.g. “O you who believe, when the call is proclaimed to (Friday) prayer on Friday, hasten to remembrance Allah, and leave off trading.” (62:9)

## Continue...

- Permissibility (*ibahah*) is the communication which confers a choice between the performance and omission of an act.
- The legal effect of the communication is also called *ibahah*.
- The act to which *ibahah* relates and which is characterized by it is called *mubah* (permissible).
- E.g. “And when the prayer is finished, you may disperse through the land and seek of the bounty of Allah.” (62:10)

# Continue...

- Thus the act which the lawgiver demands the subject to do is of two types: obligatory (*wajib*) and recommended (*mandub*).
- The act which the lawgiver demands the subject to refrain is also of two types; forbidden (*haram*) and disapproved (*makruh*)
- The act which the subject is having a choice between the commission and omission is only one i.e. permissible (*mubah*).

# Continue...

## Hukm Shar'i

Legal Theorists	Jurists	Act of the Subject
<i>Ijab</i>	<i>Wujub</i>	<i>Wajib</i>
<i>Nadb</i>	<i>Nadb</i>	<i>Mandub</i>
<i>Tahrim</i>	<i>Hurmah</i>	<i>Haram</i>
<i>Karahah</i>	<i>Karahah</i>	<i>Makruh</i>
<i>Ibahah</i>	<i>Ibahah</i>	<i>Mubah</i>

## Classification *Hukm Shar'i* continue...

- Declaratory law (*hukm wad'i*) is the communication from the Law Giver making something a cause (*sabab*) or condition (*shart*) of a rule or impediment (*mani'*) to it.
- It regulates the proper operation of defining law (*hukm taklifi*) by indicating the conditions, exceptions and qualifications.

## Continue...

- E.g. of cause
- “Establish regular prayers at the sun’s decline...” (17:78)
- In this verse the decline of the sun has been declared to be the cause of offering noon prayer.

# Continue...

- E.g. of condition
- “O you who believe, when you rise up for prayer, wash your faces, and your hands up to the elbows and wipe your head and (wash) your feet up to ankles.” (5:6)
- This communication of the lawgiver relates to making purification a condition for the validity of prayer.



## Continue...

- E.g. of impediment
- Abu Hurayrah reported the Prophet (peace be upon him) as saying: “A murderer of his relative shall not inherit (the property of his slain relative).”
- In this tradition from the Prophet (peace be upon him), homicide of one’s relative has been declared to be an impediment to receiving a share from inheritance