The Theory of Context (*Ikhtilāf al-Ḥālayn*) and the Problem of *Ikhtilāf* in Islamic Legal Theory

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Abstract: *As the various parts of the Qur'ān were revealed in many different situations, and the orders contained in the* sunnah *also belong to various periods, a closer examination of the relationship between these "contexts" and the problem of* ikhtilāf *is necessary. Since these two foremost sources of Islamic law have come to Muslims in the language, grammar and morphology of the Arab, the study of this neglected area in Arabic and its relation to legal studies is likely to be of use to those interested in legal conflicts as well as in linguistics. The concern of this paper is the theory of context as it was conceived of by Imām al-Shāfiʿī (d.204 H) in the second/third century of Hijrah before it was developed by Western scholars/linguists in the early twentieth century.*

The topic in question is somewhat unwieldy in scope. To make the discussion more specific, this paper shall concern itself with only two works of al-Shāfiʿī (d. 204 H), namely, *al-Risālah* and *Ikhtilāf al-Hadīth*. This limitation is justified by the fact that al-Shāfiʿī, the founder of a school of law, is not only knowledgeable in Arabic language but is even regarded as *ḥujjah fī al-lughah*.[1] This is not surprising since he is purported to have spent a substantial period of time in the desert outside Makkah, with the tribe of Hudhayl, to

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acquire pure Arabic, for which this tribe was renowned.² He is said to have, consequently, excelled in the language, poetry, tales (*akhbār*) and history of the Arabs (*ayyām al-ʿArab*) and was able to compose poetry himself.³ The other reason for selecting al-Shāfiʿī's works for this study is that both *al-Risālah* and *Ikhtilāf al-Ḥadīth* are considered to be among the earliest available literature that subject both the issues, namely, *al-ḥāl* and *ikhtilāf,* to considerable discussion. In both, one can see how the knowledge of different situations and contexts was utilised by al-Shāfiʿī for solving legal conflicts. The application of this theory to actual cases in Islamic law can be easily observed in this kind of writing because the author of these valuable treatises was particularly concerned with the task of removing legal conflicts by any possible means; *ikhtilāf al-ḥālayn,* as we shall see, was one of these means.

Mention should be made at the outset that Islamic legal theory or *usūl al-fiqh* encompassed a system of thought expanding over several fields. In other words, it does not concern itself solely with the law proper but also with questions of linguistics, logic, methodology, custom, epistemology and theology.⁴ The knowledge of *tafsīr* is part of its subject matter, particularly the knowledge of the occasions of the revelation (*asbāb al-nuzūl*).⁵ As far as *asbāb al-nuzūl* is concerned, early exegists were well-versed with this knowledge by which they were able to distinguish between verses revealed in Makkah and those revealed after the Prophet's migration to Medina. Not only that, they were able to understand well the conditions in which a particular verse was revealed. Clearly, this knowledge is closely related to the theory of context, i.e., the contexts in which particular Qur'anic verses were revealed. The significance of this knowledge to the accurate understanding of legal texts or otherwise, i.e., *ikhtilāf,* has been summarised by al-Shāṭibī in the following statement, "... ignorance about the occasions of the revelation would raise doubt and uncertainty and would lead the texts to general interpretations that are liable to discrepancy. This (ignorance) would lead to *ikhtilāf*."⁶

An example of this can be illustrated through the seeming conflict of two Qur'anic verses: *al-Mursalāt*: 35 and *al-Zumar*: 31. The first reads as "This is a day wherein they will speak not," while the second verse reads, "Then lo! on the Day of Resurrection, before your Lord ye will dispute." Citing these two verses, Ibn Qutaybah has explained that each verse has its own situation (i.e., *mawqif*). On the Day of Judgement, humans will initially be permitted to argue before Allah; subsequently, the ability of man to speak shall be removed. Instead, the

hands and the legs will be given the ability to bear witness to the actual practices of their owners.[7] Viewed from these different contexts, these two verses are no longer contradictory.

This interesting study of the occasions of the revelation later influenced the study of the *hadīth* of the Prophet. The scholars of *hadīth* started to investigate the circumstances in which a particular tradition was situated. The concern given to this study is most evident from the huge amount of literature available on this aspect of the study of *hadīth* known as *asbāb wurūd al-hadīth*.[8] This knowledge is important because although the language of the *sunnah* is comprehensible, there is no guarantee that the jurist will necessarily understand the precise meaning and intent of the text's language. A word or a sentence may have a meaning that seems intelligible to the interpreter, but, it may be asked, is it the meaning intended by the Prophet? To ensure that the real meaning and intent are understood, scholars have emphasised the necessity of exploring the reasons and circumstances of the occurrence of *ahādīth* (*asbāb al-wurūd*) as well as *asbāb al-nuzūl* vis-a-vis the Qur'ān. This is so because a statement may have several meanings, or one meaning, but pronounced, for a specific situation. Only when the circumstances in which a particular verse occurred are known, is it possible to come closer to the real purpose and intended meaning of revealed texts.

As far as *hadīth* is concerned in establishing laws, there is no doubt that a large number of the *ahādīth* are seemingly contradictory. There are many ways used by jurists to reconcile the conflict. One such method involved inquiring closely into the meaning of each statement. If the jurists were clever enough in their exegetical techniques, they could remove the contradiction by showing that far from containing any conflict of meaning, these *ahādīth* complement each other. The same was true of the context by which these conflicts could be harmonised when argued from their proper contexts.[9] In other words, in certain cases, the contradiction could be removed by pointing out the different circumstances in which the contradictory instructions were given. In short, one can say that *ikhtilāf al-hālayn* is a philological analysis of apparently contradictory words or phrases in order to reconcile them through closer examination of circumstances surrounding the revelation or the occurrence of the legal text in question.

Before we proceed to examine the contribution of Imām al-Shāfiʿī to the theory of context, it would seem appropriate to sketch briefly the position of "context" in linguistic study. Generally speaking, Muslims

tend to credit al-Jāḥiz (160-255 H) with having been the first scholar to discuss this theory.[10] In the West, however, the credit is given to J. R. Firth, an English scholar in the early twentieth century who founded the London School of Linguistics.[11]

The discussion of *al-maqām* in Arabic has occupied a significant place in both *ʿilm al-maʿānī* and *ʿilm al-lughah*. In the former, the issue of *maqām* is commonly discussed under the science of *al-balāghah*, i.e., rhetoric, while in the latter, the discussion of *maqām* can be easily found in *ʿilm al-dilālah*. Muslim linguists have treated the theory of *al-maqām* as well as its relation to both rhetoric and language studies respectively. Modern scholars have done intensive study on the theory of *maqām* and have been able to demonstrate its value through the "theory of context" (*naẓariyyat al-siyāq*).[12] In the middle of this century, the London School was widely recognised as the "context-oriented school." Firth, has succeeded in formulating a comprehensive theory of meaning (*al-maʿnā*) from the theory of context (*maqām*). His formulations were one of the best achievements related to the study of the meaning because they were concerned with aspects of linguistics as well as of society, i.e., sociolinguistics.[13]

As far as context is concerned, it has been classified into two parts, namely, internal and external contexts. These are also known as linguistic context and circumstantial context respectively.[14] The former studies all the features pertinent to the structure of the wording, ranging from phonetic problems to the question of *dilālah*. The meaning given by this study is called by the *uṣūlīs* the "apparent meaning of the text," free from any consideration of external elements which might alter its simple and literal meaning. The latter, on the other hand, is more concerned with circumstantial conditions and surrounding social characteristics. It lays down general guidance on how language can be presented to suit different circumstances, conditions and contexts. In other words, the information that people have about their language is their "linguistic competence." The information about the situation and about the people involved in a particular discourse is "contextual knowledge." Both linguistic competence and contextual knowledge are necessary for understanding a speech or a text. For example, it is highly likely that a speech directed to educated people would be different from one directed to illiterate people. The same applies to similarly differing contexts and circumstances.[15] In short, understanding the context of a speech or text is necessary because it is the only means capable of determining the

correct meaning of a word or a phrase open to many possible interpretations, let alone contradictions. As such, theoretically, it can also play an important role in interpreting the text of both the Qur'ān and the *sunnah* with which we are particularly concerned in this article.

As far as al-Shāfiʿī is concerned, he was not only aware of this theory, but also repeatedly argued on the basis of difference of *ḥāl* (*ikhtilāf al-ḥālayn*),[16] a term used by al-Shāfiʿī to illustrate two different circumstances surrounding the occurrence of two conflicting traditions. In his *Risālah*, al-Shāfiʿī treats the issue of context at a number of places. The first occurs in his discussion of the significance of Arabic language to legal studies. He starts by saying, "It is obligatory upon every Muslim to learn the Arab tongue to the utmost of his power in order (to be able) to profess through it that 'there is no God at all but Allah and Muḥammad is His servant and Apostle' and to recite in it (i.e., the Arabic tongue) the Book of God..."[17] He continues to say that "(the reason) I began by explaining why the Qur'ān was communicated in the Arab tongue rather than in another, is that no one who understands clearly the total meanings of the (legal) knowledge of the Book of God could be ignorant of the extensiveness of that tongue (*ittsāʿuhā*) and of the various meanings (of its words) (just as) there are various words for a meaning. Doubts which occur to one who is ignorant (of the Arab tongue) will disappear from him who knows it."[18] He further expresses his concern by saying:

> Allah has addressed His Book to the Arabs in their tongue in accordance with the meanings known to them. Included (in the words) 'in accordance with the meanings they know' was the extensiveness of their tongue. It is (Allah's) divine disposition to express something, part of which is literally general which is intended to be obviously general with the very first part (of the phrase) not needing the second. (Something) 'literally general' means that (the concept of) the particular is included in the general; that is, indicated by some (of the words) expressed. Also, 'literally general' includes what is particular, with the word literally recognised in its contexts to mean what is not literally so. Knowledge of all of this is to be found either in the beginning of what is said or in the middle or at the end.[19]

In other words, *ʿāmm* is of three categories, namely, *ʿāmm* which is absolutely general, *ʿāmm* which is meant to imply *khāṣ* and *ʿāmm* which is not accompanied by any indication to show either the first or

the second meaning in which case the solution should be sought from
the proper "context."

In another instance i.e., in a section on category of declaration of
meaning which is clarified by the context (*al-ṣinf alladhī yubayyin
siyāquhū maʿnāhū*), al-Shāfiʿī quotes two Qur'anic verses to illustrate
the significance of context in understanding these two verses.[20]
However, only one example will be highlighted, which is, "Ask them
(O Muḥammad) of the township that was by the sea, how they did
break the sabbath, how their big fish came unto them visibly upon their
sabbath day and on a day when they did not keep sabbath they came
not unto them. Thus did We try them for that they were evil."(7:163)
Al-Shāfiʿi points out that God, glorious be His praise, initially makes
the town bordering the sea the subject of the verse, but when He states,
"how did they break the Sabbath," He obviously refers to the people
of the town, since the town (itself) can neither transgress nor deviate
from the sabbath or other (matters). Thus, by "transgression," (God)
means the people of the town whom He tried for their violation (of the
sabbath).[21]

Al-Shāfiʿī moves to discuss the issue of context under a section on
defects (*ʿilal*) in the traditions and this time, the issue of context is
explained by him in relation to the problem of *ikhtilāf*.[22] Not only that,
he also analyses the factors which, in his opinion, cause the apparent
contradiction between the two *aḥādīth*. Such contradiction, according
to al-Shāfiʿi, arises principally from misquotation and imperfect
transmission in the process of which the actual context surrounding the
aḥādith is altered. To illustrate the original idea of al-Shāfiʿī, we have
little choice but to quote the exact expression of al-Shāfiʿī as recorded
in *al-Risālah*. Al-Shāfiʿī replied to the questions put forward by his
interlocutor by saying:

> As to contradictory traditions, where no indications exist to specify
> which is the abrogating and the abrogated, they are all in accord
> with one another, and contradiction does not really exist among
> them. (For) the Apostle of God, being an Arab by tongue and by
> country, may have laid down a general rule intended to be general
> and another general rule intended to be particular, as I have already
> pointed out in my discussion on the Book of God and the *sunnah* of
> His apostle. Or a certain question may have been asked to which he
> gave a certain concise answer, leading some of the transmitters to
> relate the tradition in detail and others in brief, rendering the
> meaning of the tradition partly clear and partly vague. Or (it may
> happen) that the transmitter of a certain tradition related the answer

he heard (from the Prophet) without knowing what the question had been, for (had he known) the question, he would have understood the answer clearly from the reasoning on which the answer was based. The Prophet may have likewise laid down a *sunnah* covering a particular situation and another covering a different one, but some of those who (related what they) heard failed to distinguish between the two differing situations for which he had laid down the *sunnah*. And he may have laid down a *sunnah*-transmitted by one authority—on a certain matter in conformity with the text (of the Qur'ān) and another—transmitted by another authority—in one sense in agreement with the text but in another contradictory to it—owing to changes in the contexts. Hence the transmission by one authority appeared to some people as contradictory to the other while (in reality) no contradiction existed at all.[23]

In the *Risālah*, al-Shāfiʿī produces one example of how contradiction between *ahādīth* can be removed by observing the context in which contradictory *ahādīth* were pronounced by the Prophet. The majority of the Companions reported that both *ribā al-fadl* and *ribā al-nasī'ah* were prohibited by the Prophet. In contrast, Ibn ʿAbbās, one of the leading Companions, reported that Usāmah b. Zayd told him that the Prophet said, "*al-ribā* (usury) is to be found only in transactions with *al-nasī'ah* (deffered payment)." Ibn ʿAbbās concluded from this report that the prohibition of *ribā* was limited and confined to *ribā al-nasī'ah* alone. Al-Shāfiʿī removes this conflict by saying that Usāmah—the transmitter who heard directly from the Prophet—may have heard someone ask the Prophet about the (exchange of) two different kinds of property such as gold for silver, dates for wheat, or any other different property the transfer of which was to take place immediately, to which the Prophet replied: "*Ribā* is in *nasī'ah*." Or he (Usāmah) may have been absent when the question was asked, but heard only the answer. He therefore related the answer without knowing the question. Or he may have guessed what the question was, for there is nothing in Usāmah's tradition which is not in agreement with the other tradition.[24]

After elaborating on the issue of context at some length in his *Risālah*, al-Shāfiʿī evinces a deep understanding of it in his later treatise, namely, *Ikhtilāf al-Hadīth*.[25] In this work, the theory was used extensively by him to remove contradiction between two *ahādīth* pertaining to legal issues. The use of theory in this manner and not in another is reasonable, since, as mentioned earlier, al-Shāfiʿī was more concerned with legal studies—particularly legal conflicts—rather than

with pure linguistic application. At this stage, it is appropriate to examine closely the effort made by al-Shāfiʿī to reconcile contradictory *aḥādīth* through an appreciation of different contexts, with which this article is particularly concerned.

Ikhtilāf al-Ḥadīth and indeed, all the writings of al-Shāfiʿī, contain discussions with other jurists and scholars, particularly the represent-atives of both ʿIrāqī and Medinese schools. In other words, al-Shāfiʿī's work is concerned with a comparative study of legal opinions. It is only natural in this kind of study that al-Shāfiʿī must clarify his opinion as well as the basis of his opinion. Not only that, in case of conflict, he must also identify the cause of conflict and, as a distinguished jurist, must be able to respond to it either by making two contradictory opinions jointly applied i.e., reconciled, or by making one of them prevail (*tarjīḥ*). In this extensive juristic discussion, al-Shāfiʿī has recourse to the theory of context, particularly in his effort to reconcile two contradictory traditions.

We need to see the actual application of the theory of *al-ḥāl* (i.e., context), as it was called by al-Shāfiʿī himself, to certain cases disputed among jurists. The idea behind this is to see how this theory was used to solve legal conflicts. We shall begin with the problem of the prohibition of seeking marriage with a woman already engaged to another person.[26] This is taken from the *ḥadīth*, "Do not ask for a woman in marriage when another Muslim has already done so." There is another *ḥadīth* that records the conversation between the Prophet (SAS) and Fāṭimah bt. Qays; both Muʿāwiyah and Abū Jahm had offered marriage to Fāṭimah. This report clearly reveals that Fāṭimah was asked concurrently by two persons to which the Prophet (SAS) showed no objection.[27] Dealing with this apparent conflict, al-Shāfiʿī argued that the two *aḥādīth* should not be regarded as contradictory because each of them occurred in a special context.[28] The Prophet's tradition allows for a man to seek a woman's hand in marriage, despite her having been asked by others, as long as she has not yet expressed her choice of suitor to her guardian. Al-Shāfiʿi infers this from the fact that the Prophet had sought Usāmah b. Zayd as a suitor for Fatimah even though other men had already sought her hand in marriage.[29] Therefore, the possibility of seeking marriage with a woman is not precluded by other men's prior and, as yet, unaccepted proposals.[30]

However, al-Shāfiʿī points out, "someone may argue the basis of this conclusion."[31] Here, al-Shāfiʿī presents his theory of context vis-a-vis the above-mentioned conflict. He says that the transmitter of the first

ḥadīth might have been present on a particular occasion in which the Prophet (SAS) was questioned about a man who had asked for a woman in marriage. The woman agreed to the proposal and to this effect, the Prophet declared that "Do not ask for a woman in marriage when another Muslim has already done so." The problem arose when the transmitter (who was present at the time) narrated the saying of the Prophet without mentioning its context.[32] Or, al-Shāfiʿī argues, the transmitter missed the question and heard only the answer of the Prophet (SAS).[33] Whatever the reason, the implication of this *ḥadīth* would be contradictory to the *ḥadīth* of Fāṭimah, in which the Prophet (SAS) said nothing about the attitude of either Muʿāwiyyah or Abū Jahm because Fāṭimah had not yet given her consent to either. Instead she consulted the Prophet on her marriage, and he suggested that she marry Usāmah b. Zayd.[34] If this was not allowed, the Prophet (SAS) would certainly not have proposed that Fāṭimah should marry Usāmah b. Zayd. In other words, the prohibition was directed to a certain condition and not to another. Thus, it is the context of both *aḥādīth* that guarantees a sound understanding of the two, and, accordingly, resolves whatever conflict seemed inherent.

Throughout his *Ikhtilāf al-Ḥadīth*, al-Shāfiʿī uses the same line of "linguistic" argument to remove many other apparent conflicts. Among other cases is the disagreement over the problem of fasting while travelling.[35] Al-Shāfiʿī is of the view that that to break the fast while travelling is merely a *rukhṣah* i.e., concession. Other jurists view the problem differently.[36] They contend that fasting on a journey is disapproved of, since the Prophet (SAS) clearly stated that no good is accredited to those who fast while travelling,[37] and in another report, the Prophet (SAS) is reported to have named travellers who fasted on one of his expeditions as wrong-doers (*ʿuṣāt*).[38] Al-Shāfiʿī once again resorts to the theory of context in order to resolve this apparent contradiction. He produces many *aḥādīth* which support his thesis that fasting while travelling is optional and not blameworthy. He cites Ibn ʿAbbās's report that the Prophet (SAS) left for Makkah in Ramaḍān during the Year of Conquest, and fasted until he reached al-Kadīd. He then broke the fast as did everyone else. Al-Shāfiʿī argues that if fasting was condemned, the Prophet (SAS) would have abstained from fasting from the very beginning.[39] He also cites a report from Anas b. Mālik who said, "We once travelled with the Prophet in Ramaḍān, and those who were fasting did not find fault with those who were not, and those who were not fasting did not find fault with those who were."[40]

With reference to *ahādīth* produced by his disputants, al-Shāfiʿī was successful in his reconciliation of their *ahādīth* with those reported by himself. He says that every *hadīth* should be viewed within its context. It is true that the Prophet (SAS) blamed those who fasted while travelling, but this, al-Shāfiʿī argues, was due to their unwillingness to break the fast even though they were in extreme hardship;[41] as reported in another *hadīth,* "a group of people kept on fasting even though the Prophet had broken his fast."[42] The blame, therefore, was directed only to those who put themselves in great difficulty by not breaking fast while travelling.

From these two cases, we can conclude that al-Shāfiʿī was well-versed in the "contexts" of legal traditions. This finding can perhaps stimulate further study of the contribution of al-Shāfiʿī to the theory of context as known both to the contemporary Muslim and to Western linguists.[43] Although the theory was still in rudimentary form in al-Shāfiʿī's time, this should not prevent us from appreciating the latter's contribution and paying tribute to him for his systematic endeavour to resolve contradictions between traditions by means of employing the theory of context. *Al-hāl* in al-Shāfiʿī's thought might correspond to what is widely known among the Arabs as *likulli maqām maqāl* and *likulli insān khiṭāb.* The idea of *al-hāl* was further elaborated by later Muslim scholars of various disciplines, such as al-Jāhiz[44] and Ibn Qutaybah (d. 276H), according to their own particular interests.[45] It should also be made clear that al-Shāfiʿī, being a jurist, was less concerned with the linguistic application of the theory of context than with the problem of solving legal conflicts. Thus, whatever difference exists on this point between al-Shāfiʿī and linguists is merely a difference of emphasis and of how the theory of context was used; in al-Shāfiʿi's case, it was used in relation to legal matters, not for the purpose of lingistic analysis.

Nevertheless, we have to note that to appreciate the contribution of al-Shāfiʿī to this theory is one thing, to agree with the legal rulings he derived thereby is another. Our position in this article is concerned exclusively with the former i.e., to examine the meaning of "*al-hāl*" and its relation to the problem of *ikhtilāf,* and how it was deployed by al-Shāfiʿi to solve legal conflicts. As far as al-Shāfiʿī is concerned, we can see that he was aware of the fact that *hāl* or rather context, affects meaning and that a speech, a conversation, and especially the language of legal documents, should not be studied without reference to the context in which it is situated.

In other words, al-Shāfiʿī argues for the need to examine all the relevant traditions in the light of their proper contexts, if possible, when extracting a legal ruling from them. It is often the case, as he observes, that one or more traditions explicate on that is vague. If an adequate understanding of one part depends on another part, and given the fact that the traditions were pronounced in many different contexts, a part may therefore introduce, confirm, clarify or complement another. In this context, it seems to the writer that context as perceived by al-Shāfiʿī, is nothing other than a *qarīnah;* that is, any part of speech must, in order to be properly construed, be viewed within its own context. A context would be further determined by *qarīnah* (verbal or circumstantial evidence).[46] The knowledge of this aspect of the Arabic language (as well as other languages) is important to study and, accordingly, to appreciate the meaning and intent of legal texts satisfactorily.

Also, we must conclude that to conduct a thorough inquiry in this field of study would be an onerous task. To deal adequately with the topic, even when restricting inquiry to Islamic legal theory literature, would require a comprehensive survey. It is equally important to note that the contribution of al-Shāfiʿī in relating Arabic language to law studies proper influenced al-Shāṭibī,[47] an eighth century scholar, to follow the same methodology, giving more emphasis to Arabic the language and its characteristics in order to adequately understand the *sharīʿah, and* particularly to tackle the problem of legal conflict.[48]

Notes

1. See Fakhr al-Dīn al-Rāzī, *Manāqib al-Shāfiʿī*, ed. Aḥmad Ḥijāzī al-Saqā (Cairo: Maktabah al-Kulliyyah al-Azhariyyah, 1405 H), 237.

2. See Shams al-Dīn Aḥmad b. Muḥammad Ibn Khallikān, *Wafayāt al-Aʿyān wa Anbāʾ Abnāʾ al-Zaman*, ed. Iḥsān ʿAbbās (Beirut: Dār Ṣādir, n.d.) 4: 163-69. For details, see al-Sayyid Rizq al-Ṭawīl, *Lughah al-Imām al-Shāfiʿī wa Atharuhā fī Natājihi al-Fiqhī wa al-Uṣūlī* (Conference Proceedings: International Conference on Imām al-Shāfiʿī, al-Munaẓẓamah al-Islāmiyyah li al-Tarbiyyah wa al-ʿUlūm wa al-Thaqāfah, UNESCO, 1994) 19-36.

3. Ibid.

4. See Abū Ḥamid Muḥammad al-Ghazālī, *al-Mankhūl min Taʿlīqāt al-Uṣūl,*

ed., M. H. Hītū, (Damascus: Dār al-Fikr, 1980), 4; Ibn al-Ḥājib, *Mantahā al-Wuṣūl wa al-ᶜAmal fī ᶜIlmay al-Uṣūl wa al-Jadal* (Beirut: Dār al-Kutub al-ᶜIlmiyyah, 1983), 4.

5. *Asbāb al-nuzūl* which constitutes an important part of the field of Qur'anic exegesis, hold significant relationship with Islamic legal theory. It helps to discover and identify the rationale (*al-ḥikmah al-bāᶜithah*) behind divine legislation of legal rulings. See Badr al-Dīn Muḥammad al-Zarkashī, *al-Burhān fī ᶜUlūm al-Qur'ān*, ed. M. Abu al-Faḍl Ibrāhīm (Beirut: Manshūrāt al-Maktabah al-ᶜAṣriyyah, n.d.) 1:22ff.

6. Abū Isḥāq Ibrahīm Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīᶜah*, ed. ᶜAbd Allah Darrāz (Cairo: Dār al-Burāq, 1988)3: 347.

7. Abū Abdullah Muḥammad Ibn Qutaybah, *Kitāb Ta'wīl Mukhtalaf al-Ḥadīth* (Beirut: Dār al-Kitāb al-ᶜArabī), 66.

8. See for example Jalāl al-Dīn al-Suyūṭī, *Asbāb Wurūd al-Ḥadīth* (Cairo: Dār al-Daᶜwah, 1988), 8.

9. Muḥammad Zubayr Siddiqi, *Ḥadīth Literature: Its Origin, Development, Special Features and Criticism* (Calcutta: Calcutta University; distributed by the Islamic Texts Society, Cambridge, 1961), xxv.

10. See AbūᶜUmar al-Jāḥiz, *al-Bayān wa al-Tabyīn*, ed. 'Abd al-Salām Hārūn (Matbaᶜah Lujnah al-Ta'līf wa al-Tarjamah wa al-Nashr, 1948) 1:136.

11· Langendoen, *The London School of Linguistics: A Study of the Linguistic Theories of B. Malinowski and J.R. Firth* (Cambridge: The M.I.T. Press), 1. Firth was very much influenced by the ideas of Malinowski. See Ṭahir Sulaymān Ḥamūdah, *Dirāsah al-Maᶜnā ᶜind al-Uṣūliyyīn* (Alexandria: Dār al-Jāmiᶜiyyah, n.d.), 213.

12. Ḥamūdah, *Dirāsah al-Maᶜnā*, 213

13. Langendoen, *The London School of Linguistics*, 37. Firth speaks about phonological, lexical, morphological, syntactic and situational context. The expression of "Good day!" when uttered as a greeting, according to him, would be completely unrelated to the same "Good day!" when uttered as a farewell, and so on, for countless such instances.

14· Ḥamūdah, *Dirāsah al-Maᶜnā*, p. 213 ff; Ḥilmī Khalīl, *al-Kalimah* (Cairo: al-Hay'ah al-Miṣriyyah al-ᶜĀmmah li al-Kuttāb, 1980), 213; Tamām Ḥasan, *al-Lughah al-ᶜArabiyyah Mabnāhā wa Maᶜnāhā* (Cairo: al-Hay'ah al-Miṣriyyah al-ᶜĀmmah li al-Kuttāb, 1971), 337 ff.

15. Tamām Hasan, *al-Lughah al-ᶜArabiyah*, 356. Also see Langendoen, *The London School of Linguistics*, 46-47.

16· Al-Shāfiᶜī, *al-Risālah*, ed. Aḥamd Muḥammad Shākir (Cairo: Sharikah Maktabah wa Matbaᶜah al-Bābī al-Halbī wa Awlāduhū, 1940), 214, 239 (paras. 570, 670); Al-Shāfiᶜī, *Ikhtilāf al-Ḥadīth*, printed in volume eight of

al-Umm, ed. by Muhammad Zuhrī al-Najjār (Cairo: Maktabah al-Kulliyat al-Azhariyyah. 1961) 8: 545.

17· Al-Shāfiʿī, *al-Risālah*, 48 (para. 169). The translation is taken from Majīd Khaddūrī, *Islamic Jurisprudence, Shafiʿī's Risālah*, translated with an introduction, notes and appendices (Baltimore: The John Hopkins Press, 1961), 93ff.

18· Ibid., 50 (para, 169).

19· Ibid., 51-52 (para, 173).

20· Ibid., 62-64 (paras, 208-213).

21· Ibid., 62-63 (paras, 208-209).

22· Ibid., 210 ff. (para, 596ff).

23· Ibid., 213-214 (paras, 574-579).

24· Ibid., 278-281 (paras, 763-773).

25· According to Schacht, *Ikhitilāf al-Ḥadīth* was the last of al-Shāfiʿī's treatise. See Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Oxford University Press, 1950), 99, 300.

26. Al-Shāfiʿī, *Ikhtilāf al-Ḥadīth*, 545.

27· Ibid.

28· Ibid., al-Shāfiʿī wrote, *"...nahyuhu ʿanhā fī ḥāl dūnā ḥāl."*

29· Ibid. In this regard, al-Shāfiʿī quoted the incident of Khansā' bint. Khidhām to give further support to his argument.

30· Ibid.

31· Ibid.

32· Ibid., 546.

33· Ibid.

34· Ibid. 545.

35· Ibid., 492-494.

36. Ibid., 492.

37· Ibid., 492-493.

38· Ibid., 493.

39· Ibid.,492.

40· Ibid.,493.

41· Ibid., 494.

42· Ibid., 493

43. See e.g. Langendoen, *The London School of Linguistics*; Ḥamūdah, *Dirāsat al-Maʿnā ʿind al-Uṣūliyyīn.*

44· See al-Jāḥiẓ, *al-Bayān wa al-Tabyīn*, 1:136.

45· Ibn Qutaybah, *Ta'wīl Mushkil al-Qur'ān* (Cairo: Dār al-Turāth, 1973), 13.

46· For more details on *qarīnah* in legal discourse, see Wael Bahjat Hallaq, "Notes on the Term *Qarīna* in Islamic Legal Discourse," *Journal of the American Oriental Society* 108 (1988): 475-480.

47· Muḥammad Khalid Masʿūd, *Islamic Legal Philosophy* (Islamabad: Islamic Research Institute, 1977), 238.

48· The summary of this can be found in an article of Hallaq's "The Primacy of the Qur'ān in al-Shāṭibī's Legal Theory," in W. Hallaq and Donald P. Little ed., *Islamic Studies Presented to Charles J. Adam* (Amsterdam: E.J. Brill, 1991), 69-90.