

Majallatul Ahkam al-A'dliyyah

Second Chapter: On the Explanation of the Universal Legal Maxims

The leading jurists have reduced the various branches of jurisprudence to universal legal maxims, each of which serves as a comprehensive principle encompassing numerous legal issues.

These maxims are well-established and authoritative in the books of jurisprudence. They are employed as proofs for establishing legal rulings and for facilitating their understanding from the outset. Their inclusion familiarizes the reader with the legal issues and helps firmly establish them in the mind. For this reason, ninety-nine legal maxims were compiled and presented here as the second chapter of this introduction.

Although some of these maxims, when considered individually, admit certain exceptions, this does not compromise their general or universal character as a whole, since some maxims qualify or restrict the application of others.

Article 1

الْأُمُورُ بِمَقَاصِدِهَا

Matters are judged according to their objectives (intentions).

That is, the legal ruling attached to an act depends upon the purpose intended by that act.

Article 2

الْعِبْرَةُ فِي الْعُقُودِ لِلْمَقَاصِدِ وَالْمَعَانِي لَا لِلْأَلْفَافِ وَالْمَبَانِي

In contracts, consideration is given to objectives and meanings, not to words and forms.

Accordingly, a sale with a right of redemption (*bay' al-wafā'*) is treated according to the rules governing pledges (mortgages).

Article 3

الْيَقِينُ لَا يَزُولُ بِالشَّكِّ

Certainty is not removed by doubt.

Article 4

الأَصْلُ بَقَاءُ مَا كَانَ عَلَى مَا كَانَ

The original state of affairs remains as it was.

Article 5

الْقَدِيمُ يُتْرَكُ عَلَى قَدَمِهِ

What has long existed is left upon its established state.

Article 6

الضَّرَرُ لَا يَكُونُ قَدِيمًا

Harm is never regarded as established by the mere passage of time.

Article 7

الأَصْلُ بَرَاءَةُ الذِّمَّةِ

The presumption is freedom from liability.

Thus, if a person destroys another's property and they disagree over its value, the statement of the person who caused the damage is accepted, while the owner bears the burden of proving any higher amount claimed.

Article 8

الأَصْلُ فِي الصِّفَاتِ الْعَارِضَةِ الْعَدَمُ

The presumption concerning incidental attributes is their non-existence.

For example, if the parties to a *muḍārabah* (investment partnership) dispute whether any profit was realized, the statement of the managing partner is accepted, and the investor must produce evidence to establish the existence of profit.

Article 9

مَا ثَبَتَ بِزَمَانٍ يُحْكَمُ بِبَقَائِهِ مَا لَمْ يُوجَدْ دَلِيلٌ عَلَى خِلَافِهِ

Whatever is established at one point in time is presumed to continue until evidence proves otherwise.

Thus, once ownership of property is established, it is presumed to continue unless something is shown that terminates it.

Article 10

الأَصْلُ إِضَافَةُ الْحَادِثِ إِلَى أَقْرَبِ أَوْقَاتِهِ

A newly occurring matter is attributed to the nearest possible time.

That is, when there is disagreement regarding the cause or timing of an event, it is attributed to the time closest to the present unless evidence establishes that it occurred earlier.

Article 11

الأَصْلُ فِي الْكَلَامِ الْحَقِيقَةُ

The basic rule in speech is that words are understood according to their literal meaning.

Article 12

لَا عِبْرَةَ لِلدَّلَالَةِ فِي مُقَابَلَةِ التَّصْرِيحِ

An implied meaning carries no weight in the face of an explicit statement.

Article 13

لَا مَسَاحَ لِلْإِجْتِهَادِ فِي مَوْرِدِ النَّصِّ

There is no room for independent legal reasoning where an explicit textual authority exists.

Article 14

مَا ثَبَّتَ عَلَى خِلَافِ الْقِيَاسِ فَغَيْرُهُ لَا يُقَاسُ عَلَيْهِ

What is established contrary to analogical reasoning cannot serve as the basis for further analogy.

In other words, a ruling established by an explicit text as an exception to general analogy is confined to the specific case for which it was legislated and is not extended by analogy to other cases.

Article 15

الاجْتِهَادُ لَا يُنْقَضُ بِمِثْلِهِ

One exercise of independent legal reasoning is not annulled by another.

Article 16

الْمَشَقَّةُ تَجْلِبُ التَّيسِيرَ

Hardship brings about facilitation.

That is, genuine difficulty becomes a reason for legal ease. Where hardship arises, the law provides broader allowances. Numerous legal rulings derive from this principle, including those concerning loans, assignment of debts, legal interdiction, and many other areas. Likewise, the concessions and legal dispensations recognized by the jurists are founded upon this maxim.

Article 17

الْأَمْرُ إِذَا ضَاقَ اتَّسَعَ

When a matter becomes constrained, it is expanded.

That is, whenever hardship arises in a matter, the law permits concessions and broader accommodations.

Article 18

لَا ضَرَرَ وَلَا ضِرَارَ

There shall be neither harm nor reciprocal harm.

Article 19

الضَّرَرُ يُزَالُ

Harm must be removed.

Article 20

الضَّرُورَاتُ تُبِيحُ الْمَحْظُورَاتِ

Necessities render prohibited things permissible.

Whatever is permitted due to necessity is limited to the extent of that necessity.

Article 21

مَا أُبِيحَ لِلضَّرُورَةِ يَتَقَدَّرُ بِقَدْرِهَا

Whatever is permitted due to necessity is limited to the extent of that necessity.

Article 22

مَا جَازَ لِعُذْرٍ بَطَلَ بِزَوَالِهِ

Whatever is permitted because of an excuse becomes invalid once the excuse ceases.

Article 23

إِذَا زَالَ الْمَانِعُ عَادَ الْمَمْنُوعُ

When the impediment is removed, the prohibited matter returns to its original ruling.

Article 24

الضَّرَرُ لَا يُزَالُ بِمِثْلِهِ

Harm is not removed by causing an equivalent harm.

Article 25

يُتَحَمَّلُ الضَّرَرُ الْخَاصُّ لِدَفْعِ ضَرَرٍ عَامٍ

A private harm is borne in order to avert a public harm.

A corollary of this maxim is that an incompetent physician, an unscrupulous muftī, or an insolvent carrier may be prevented from practicing their professions in order to protect the public.

Article 26

الضَّرَرُ الْأَشَدُّ يُزَالُ بِالضَّرَرِ الْأَخْفَى

A greater harm is removed by means of a lesser harm.

Article 27

إِذَا تَعَارَضَ مَفْسَدَتَانِ رُوعِيَّيَ أَكْثَرُهُمَا ضَرَرًا بِإِزْتِكَابِ أَحَقِّهِمَا

When two harms conflict, the greater harm is avoided by committing the lesser.

Article 28

يُخْتَارُ أَهْوَنُ الشَّرَّيْنِ

Of two evils, the lesser is chosen.

Article 29

دَرْءُ الْمَفَاسِدِ أَوْلَى مِنْ جَلْبِ الْمَنَافِعِ

Preventing harm takes precedence over procuring benefit.

Article 30

الضَّرَرُ يُدْفَعُ بِقَدْرِ الْإِمْكَانِ

Harm is to be prevented as far as possible.

Article 31

الْحَاجَةُ تُنَزَّلُ مُنْزِلَةَ الضَّرُورَةِ عَامَّةً أَوْ خَاصَّةً

Need, whether general or specific, is treated as necessity.

An example of this is the permissibility of a sale with a right of redemption (*bay' al-wafā'*). Because indebtedness became widespread among the people of Bukhara, the need for this type of transaction arose, and it came to be recognized in legal practice.

Article 32

الِاضْطِرَارُّ لَا يُبْطِلُ حَقَّ الْغَيْرِ

Necessity does not invalidate the rights of others.

Accordingly, if a starving person is compelled by necessity to eat another person's food, he remains liable to compensate its owner for its value.

Article 33

مَا حَرَّمَ أَخْذُهُ حَرَّمَ إِعْطَاؤُهُ

Whatever is unlawful to receive is likewise unlawful to give.

Article 34

مَا حَرَّمَ فِعْلُهُ حَرَّمَ طَلْبُهُ

Whatever is unlawful to do is likewise unlawful to request.

Article 35

الْعَادَةُ مُحْكَمَةٌ

Custom has legal authority.

That is, established custom—whether general or particular—is recognized as a basis for determining legal rulings.

Article 36

اسْتِعْمَالُ النَّاسِ حُجَّةٌ يَجِبُ الْعَمَلُ بِهَا

The established practice of people is a valid proof that must be acted upon.

Article 37

الْمُمْتَنِعُ عَادَةً كَالْمُمْتَنِعِ حَقِيقَةً

What is customarily impossible is treated as though it were actually impossible.

Article 38

لَا يَنْكُرُ تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَزْمَانِ

It cannot be denied that legal rulings change with the changing of times.

For example, it was once sufficient, when purchasing a house, to inspect only one room. Today this is no longer sufficient, because houses are no longer built according to a uniform style as they once were.

Article 39

الْحَقِيقَةُ تُتْرَكُ بِدَلَالَةِ الْعَادَةِ

The literal meaning may be set aside on the basis of customary usage.

Article 40

إِنَّمَا تُعْتَبَرُ الْعَادَةُ إِذَا اطَّرَدَتْ أَوْ غَلَبَتْ

Custom is only given legal consideration when it is consistent or predominant.

Article 41

الْعِبْرَةُ لِلْغَالِبِ الشَّائِعِ لَا لِلنَّادِرِ

Consideration is given to what is prevalent and common, not to what is rare.

This maxim conveys the same meaning as the preceding article.

Article 42

الْمَعْرُوفُ عُرْفًا كَالْمَشْرُوطِ شَرْطًا

What is established by custom is as though stipulated by contract.

Article 43

الْمَعْرُوفُ بَيْنَ التُّجَّارِ كَالْمَشْرُوطِ بَيْنَهُمْ

What is customarily recognized among merchants is as though expressly stipulated between them.

Article 44

التَّعْيِينُ بِالْعُرْفِ كَالْتَّعْيِينِ بِالنَّصِّ

Specification by custom is equivalent to specification by explicit text.

Article 45

إِذَا تَعَارَضَ الْمَانِعُ وَالْمُفْتَضِي يُقَدَّمُ الْمَانِعُ

When a prohibiting factor and a permitting factor conflict, the prohibiting factor takes precedence.

Accordingly, a pledgor may not sell pledged property to another while it remains in the possession of the pledgee.

Article 46

التَّابِعُ تَابِعٌ

An accessory follows that to which it belongs.

Thus, if an animal is sold while carrying a fetus, the fetus is included in the sale as an accessory.

Article 47

التَّابِعُ لَا يُفْرَدُ بِالْحُكْمِ

An accessory is not treated independently of that to which it belongs.

Accordingly, the fetus in the womb of an animal may not be sold separately from its mother.

Article 48

مَنْ مَلَكَ شَيْئًا مَلَكَ مَا هُوَ مِنْ ضَرُورَاتِهِ

Whoever owns a thing also owns what is necessary for its use.

For example, whoever purchases a house also acquires the access path leading to it.

Article 49

إِذَا سَقَطَ الْأَصْلُ سَقَطَ الْفَرْعُ

When the principal falls, the subsidiary falls with it.

Article 50

السَّاقِطُ لَا يَعُودُ

What has ceased to exist does not return.

Just as that which has ceased to exist cannot return.

Article 51

إِذَا بَطَلَ شَيْءٌ بَطَلَ مَا فِي ضَمْنِهِ

When something becomes void, everything contained within it also becomes void.

Article 52

إِذَا بَطَلَ الْأَصْلُ يُصَارُ إِلَى الْبَدَلِ

When the original is no longer available, recourse is made to its substitute.

Article 53

يُعْتَكَرُ فِي التَّوَابِعِ مَا لَا يُعْتَكَرُ فِي غَيْرِهَا

What is overlooked in accessories is not overlooked elsewhere.

For example, it is not permissible for the buyer to appoint the seller as his agent to take possession of the purchased goods. However, if the buyer gives the seller a sack to measure the purchased grain into, and the seller does so, this constitutes valid delivery to the buyer.

Article 54

يُعْتَكَرُ فِي الْبَقَاءِ مَا لَا يُعْتَكَرُ فِي الْإِبْتَدَاءِ

What is tolerated in continuation is not tolerated at the outset.

For example, the gift of an undivided share in jointly owned property is invalid at its inception. However, if someone gives an entire piece of real estate as a gift, and later part of it is successfully claimed by another, leaving only an undivided share, the gift remains valid with respect to what remains.

Article 55

الْبَقَاءُ أَسْهَلُ مِنَ الْإِبْتِدَاءِ

Continuation is easier than initiation.

Article 56

لَا يَتِمُّ التَّبرُّعُ إِلَّا بِقَبْضِ

A gratuitous transfer is not complete until possession is taken.

Thus, when one person gives something to another as a gift, the gift is not completed until the recipient takes possession of it.

Article 57

النَّصْرُفُ عَلَى الرَّعِيَّةِ مَنْوُطٌ بِالصَّحَّةِ

The conduct of those in authority over their subjects is governed by the public interest.

Article 58

الْوَلَايَةُ الْخَاصَّةُ أَقْوَى مِنَ الْوَلَايَةِ الْعَامَّةِ

Specific authority is stronger than general authority.

Accordingly, the authority of the trustee (*mutawallī*) over a charitable endowment (*waqf*) takes precedence over the authority of the judge with respect to it.

Article 59

إِعْمَالُ الْكَلَامِ أَوْلَى مِنْ إِهْمَالِهِ

Giving effect to speech is preferable to disregarding it.

That is, words should not be treated as meaningless so long as they can reasonably be given a valid meaning. For example, if a person dedicates property as a charitable endowment for "his children," but has no direct children and only grandchildren, the statement is understood to include the grandchildren in order to preserve the effect of his words.

Article 60

إِذَا تَعَذَّرَتْ الْحَقِيقَةُ يُصَارُ إِلَى الْمَجَازِ

When the literal meaning cannot be applied, recourse is made to the figurative meaning.

For example, if a person who has no heirs acknowledges someone older than himself and unrelated to him by lineage as "my son and heir," then dies, his words cannot be understood literally. They are therefore interpreted figuratively as a bequest, with the acknowledged person receiving the entire estate.

Article 61

إِذَا تَعَذَّرَ إِعْمَالُ الْكَلَامِ يُهْمَلُ

When it is impossible to give effect to speech, it is disregarded.

That is, if words cannot reasonably be understood according to either their literal or figurative meaning, they are treated as having no legal effect.

Article 62

ذَكَرَ بَعْضُ مَا لَا يَتَجَزَّأُ كَذَكَرِ كُلِّهِ

Mentioning part of an indivisible thing is equivalent to mentioning the whole.

Article 63

الْمُطْلَقُ يَجْرِي عَلَى إِطْلَاقِهِ إِذَا لَمْ يَفُتْ دَلِيلُ التَّقْيِيدِ نَصًّا أَوْ دَلَالَةً

An unrestricted expression is to be understood according to its unrestricted meaning unless there is textual or contextual evidence limiting it.

Article 64

الْوَصْفُ فِي الْحَاضِرِ لَعَوٌّ وَفِي الْغَائِبِ مُعْتَبَرٌ

A description of something present is disregarded, whereas a description of something absent is legally significant.

For example, if a seller intends to sell a gray horse that is present before the parties but says, "I sell you this black horse," while pointing to it, and the buyer accepts, the sale is valid and the incorrect description ("black") is disregarded. However, if the horse is absent and the seller describes it as gray when in fact it is black, the sale is not valid.

Article 65

السُّؤَالُ مُعَادٌ فِي الْجَوَابِ

The question is understood to be repeated in the answer.

Article 66

لَا يُنسَبُ إِلَى سَاكِتٍ قَوْلٌ لَكِنَّ السُّكُوتَ فِي مَعْرِضِ الْحَاجَةِ بَيَانٌ

No statement is attributed to one who remains silent; however, silence where a response is called for constitutes a declaration.

That is, a silent person is not regarded as having spoken. However, silence in circumstances that require a response amounts to acknowledgment and clarification.

Article 67

دَلِيلُ الشَّيْءِ فِي الْأُمُورِ الْبَاطِنَةِ يَقُومُ مَقَامَهُ

In matters that are hidden, the indication of a thing stands in place of the thing itself.

That is, where it is difficult to ascertain the true reality of a matter, judgment is based upon its outward indications.

Article 68

الْكِتَابُ كَالْخَطَابِ

Writing is equivalent to spoken communication.

Article 69

الْإِشَارَاتُ الْمَعْهُودَةُ لِلْأَخْرَسِ كَالْبَيَانِ بِاللِّسَانِ

The customary gestures of a mute person are equivalent to verbal expression.

Article 70

يُقْبَلُ قَوْلُ الْمُتَرْجِمِ مُطْلَقًا

The statement of an interpreter is accepted without qualification.

Article 71

لَا عِبْرَةَ بِالظَّنِّ الْبَيِّنِ خَطْؤُهُ

No consideration is given to a presumption whose error has become manifest.

For example, if a guarantor pays a debt on behalf of a debtor and later discovers that the debtor had already paid it beforehand, the guarantor is entitled to recover the money he paid.

Article 72

لَا حُجَّةَ مَعَ الْإِحْتِمَالِ النَّاشِئِ عَنْ دَلِيلٍ

No proof is effective where there exists a contrary probability supported by evidence.

For example, if a dying person acknowledges a debt in favor of one of his heirs, the acknowledgment is not valid unless the other heirs confirm it. This is because there is evidentiary support for the possibility that the acknowledgment was intended to deprive the remaining heirs of their shares. However, if the acknowledgment is made while the person is in good health, it is valid, since any suspicion of such an intention is then merely speculative and does not negate the legal force of the acknowledgment.

Article 73

لَا عِبْرَةَ لِلتَّوَهُّمِ

Mere conjecture is of no legal consequence.

Article 74

التَّابِتُ بِالْبُرْهَانِ كَالْتَّابِتِ بِالْعِيَانِ

What is established by proof is as though established by direct observation.

Article 75

الْبَيِّنَةُ لِلْمُدَّعِي وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

The burden of proof rests upon the claimant, and the oath rests upon the one who denies.

Article 76

الْبَيِّنَةُ لِاثْبَاتِ خِلَافِ الظَّاهِرِ وَالْيَمِينُ لِبَقَاءِ الْأَصْلِ

Evidence is required to establish what is contrary to the apparent state, while an oath serves to uphold the original presumption.

Article 77

الْبَيِّنَةُ حُجَّةٌ مُتَعَدِّيَّةٌ وَالْإِقْرَارُ حُجَّةٌ قَاصِرَةٌ

Evidence is proof whose effect extends beyond the person producing it, whereas an admission is proof binding only upon the one who makes it.

Article 78

الْمَرْءُ مُوَآخِذٌ بِإِقْرَارِهِ إِلَّا إِذَا كَانَ إِقْرَارُهُ مُكَذِّبًا شَرْعًا

A person is bound by his own admission unless the admission is rejected by the Sacred Law.

Article 79

لَا حُجَّةَ مَعَ التَّنَاقُضِ لَكِنْ لَا يُخْتَلُّ مَعَهُ حُكْمُ الْحَاكِمِ

Contradictory statements have no evidentiary value; however, they do not invalidate a judgment already rendered by a judge.

Article 80

قَدْ يَنْبُتُ الْفَرْعُ مَعَ عَدَمِ ثُبُوتِ الْأَصْلِ

A subsidiary matter may sometimes be established even though the principal matter has not been established.

Article 81

الْمُعْلَقُ بِالشَّرْطِ يَجِبُ ثُبُوتُهُ عِنْدَ ثُبُوتِ الشَّرْطِ

What is made contingent upon a condition becomes effective when the condition is fulfilled.

Article 82

يُلْزَمُ مُرَاعَاةُ الشَّرْطِ بِقَدْرِ الْإِمْكَانِ

A condition must be observed as far as possible.

Article 83

الْمَوَاعِيدُ بِاِكْتِسَابِ صُورِ التَّعَالِيقِ تَكُونُ لَازِمَةً

Promises become binding when they assume the form of conditional undertakings.

Article 84

الْخَرَا جُ بِالضَّمَانِ

The right to profit accompanies liability.

Article 85

الْأَجْرُ وَالضَّمَانُ لَا يَجْتَمِعَانِ

Compensation for use and liability for loss do not combine.

Article 86

الْغَرَمُ بِالْغَنَمِ

Liability accompanies entitlement to gain.

Article 87

النِّعْمَةُ بِقَدْرِ النِّقْمَةِ وَالنِّقْمَةُ بِقَدْرِ النِّعْمَةِ

Benefit is proportionate to burden, and burden is proportionate to benefit.

Article 88

يُضَافُ الْفِعْلُ إِلَى الْفَاعِلِ لَا الْأَمْرِ مَا لَمْ يَكُنْ مُجْبَرًا

An act is attributed to the one who performs it, not to the one who ordered it, unless the actor was compelled.

Article 89

إِذَا اجْتَمَعَ الْمُبَاشِرُ وَالْمُنْسَبِبُ أُصِيفَ الْحُكْمُ إِلَى الْمُبَاشِرِ

When both the direct actor and the indirect cause are present, the legal ruling is attributed to the direct actor.

Article 90

الْجَوَازُ الشَّرْعِيُّ يُنَافِي الضَّمَانَ

A legally authorized act does not entail liability.

Article 91

الْمُبَاشِرُ ضَامِنٌ وَإِنْ لَمْ يَتَعَمَّدْ

The direct actor is liable even if he acted unintentionally.

Article 92

الْمُنْسَبِبُ لَا يَضْمَنُ إِلَّا بِالتَّعَمَّدِ

The indirect cause is liable only when acting intentionally.

Article 93

جَنَایَةُ الْعُجَمَاءِ جُبَارٌ

Damage caused by an animal is not subject to compensation.

Article 94

الْأَمْرُ بِالتَّصْرِفِ فِي مِلْكِ الْغَيْرِ بَاطِلٌ

An order to dispose of another person's property is void.

Article 95

لَا يَجُوزُ لِأَحَدٍ أَنْ يَتَصَرَّفَ فِي مَالِكِ الْغَيْرِ بِلَا إِذْنِهِ

No one may dispose of another person's property without that person's permission.

Article 96

لَا يَجُوزُ لِأَحَدٍ أَنْ يَأْخُذَ مَالَ أَحَدٍ بِلَا سَبَبٍ شَرْعِيٍّ

No one may take another person's property without a lawful legal basis.

Article 97

تَبَدُّلُ سَبَبِ الْمِلْكِ قَائِمٌ مَقَامَ تَبَدُّلِ الذَّاتِ

A change in the legal basis of ownership is equivalent to a change in the thing itself.

Article 98

مَنْ اسْتَعْجَلَ الشَّيْءَ قَبْلَ أَوَانِهِ عُوِقِبَ بِحَرَمَانِهِ

Whoever hastens to obtain something before its proper time is punished by being deprived of it.

Article 99

مَنْ سَعَى فِي نَقْضِ مَا تَمَّ مِنْ جِهَتِهِ فَسَعْيُهُ مَرْدُودٌ عَلَيْهِ

Whoever seeks to undo what has been completed through his own act, his attempt is rejected against him.