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ALLAMA IQBAL OPEN UNIVERSITY, ISLAMABAD

Course: Ethics of Disagreement (1904) • Level: BS

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Assignment No. 2

Total Marks: 100 • Pass Marks: 50

SOLVED ASSIGNMENT GUIDE

(For Study & Reference)

Note: This guide is prepared for study and reference purposes. Students are advised to read the relevant units of the course book, understand the concepts, and then write the assignment in their own words.

Question 1: Differing Approaches to Evidence and Classical Juristic Diversity (20 Marks)

Explain how differing approaches to evidence have shaped classical juristic diversity.

Introduction

Classical Islamic law presents a striking combination: one revelation, one Prophet, and yet several enduring schools of law whose rulings differ on hundreds of questions. To outsiders this diversity can look arbitrary, as if each imam simply followed his temperament. The historical record shows the opposite. The schools differed mainly because they approached evidence (dalīl) differently: they did not always possess the same reports, they did not rank the sources

in identical order, they applied different conditions for accepting a hadith, they read the language of texts with different instruments, and they weighed analogy, public interest and custom by different rules. Juristic diversity, in other words, is largely the visible surface of an underlying diversity of method (uṣūl).

This answer explains that relationship in detail. It first outlines the shared sources on which all schools agreed, because the diversity only makes sense against a background of unity. It then examines the main axes of methodological difference — access to and authentication of hadith, the treatment of solitary reports, analogy and its rivals, juristic preference, public interest, blocking the means, consensus and the practice of Madinah — and shows, with concrete examples, how each axis generated clusters of differing rulings that hardened, over time, into the identities of the classical schools.

The Agreed Foundation: One Revelation, Shared Sources

All classical jurists agreed that the Qur'an is the first source of law, that the Sunnah of the Prophet explains and supplements it, that consensus (ijmāʿ) of the community or its scholars binds, and that reasoned derivation is required where texts are silent. They agreed on the great majority of rulings — the obligations of prayer, fasting, zakāh and pilgrimage in their main forms, the prohibitions of murder, theft, usury and adultery, the broad rules of marriage and inheritance. The often-quoted estimate that the schools agree on far more than they dispute is borne out by any comparative manual, which must spend most of its pages on shared law. Diversity shaped by evidence operated inside this agreement: it concerned how to extend the

sources to details, how to reconcile apparently conflicting texts, and how to proceed where the sources spoke probabilistically or not at all.

It is equally important that the founders did not set out to found schools. Abū Ḥanīfah in Kufa, Mālik in Madinah, al-Shāfiʿī between Iraq, the Hijaz and Egypt, and Aḥmad in Baghdad each taught students, answered questions and left methods, the "schools" (madhāhib) crystallised over generations as students systematised a master's approach to evidence. Diversity of method therefore came first, and institutional diversity followed from it — a point students grasp when they see that intra-school differences (two narrations from Aḥmad, two positions in the Ḥanafī school) reflect the same evidential tensions as inter-school ones.

Access to Hadith and the Geography of Evidence

The earliest and most concrete cause of diversity was unequal access to evidence. In the first two centuries, hadith circulated largely within the regions where their narrators lived. Mālik, in Madinah, stood at the end of a living local transmission and could also observe the continuous practice (ʿamal) of the Prophet's city, which he treated as a form of mass-transmitted Sunnah. Abū Ḥanīfah, in Kufa, worked in a city flooded with reports of uneven reliability — Iraq was notorious for fabricated hadith produced by sectarian conflict — and his school consequently imposed strict conditions on accepting solitary reports (akhbār al-āḥād), especially where a report contradicted analogy or a well-established principle, or where the narrator was not himself a jurist transmitting against the implications of his own report. Al-Shāfiʿī, who studied in both worlds and travelled widely, reacted against what he saw as excessive filtering: if a hadith is authentically transmitted by trustworthy narrators, he argued, it must be accepted and

followed even if it stands alone and even against analogy, because the Sunnah is itself revelation-guided evidence. Aḥmad ibn Ḥanbal, the great traditionist, pushed textual fidelity furthest, sometimes preferring a weak hadith to personal opinion or analogy, though his school later developed its own sophisticated hierarchy.

These stances produced predictable ruling patterns. Where a solitary hadith reached Madinah or Baghdad but not Kufa, or reached Kufa but failed its authenticity conditions, rulings diverged without anyone rejecting the Prophet: the difference was about what counted as established from him. The Ḥanafī requirement of widespread transmission (mashhūr) for certain additions to Qur'anic rulings, and their hesitation over reports that conflict with the Qur'an's apparent sense — as in their treatment of some reports on penalties and on the touching that nullifies ablution — follow from their evidential caution, while Shāfiʿī acceptance of the authenticated solitary report in the same places follows from his equally principled textualism. Modern students who map rulings onto these evidential rules find that hundreds of apparently miscellaneous disputes collapse into a handful of methodological decisions.

Interpreting Texts: Language, Abrogation and Reconciliation

Even where all parties possessed the same texts, their interpretive approaches differed. Schools varied in how they handled the general and the particular, the absolute and the qualified, commands and prohibitions, and the possibility of abrogation (naskh). The Ḥanafīs, for example, were reluctant to allow a solitary report to specify or qualify the Qur'an's general rulings, treating such specification as a kind of partial abrogation requiring stronger evidence; the majority allowed specification by authentic Sunnah more freely. When two texts appeared

to conflict, the order of reconciliation differed: some scholars preferred harmonisation (jamʿ) at almost any cost, others moved sooner to abrogation, others to preference (tarjīḥ) by strength of transmission or closeness to principle. Each preference is defensible; each redistributes dozens of rulings.

Analogy (qiyās) was the next great axis. All schools used it, but they differed over its reach and over how to identify the effective cause (ʿillah) of a ruling. The early Iraqi tradition was associated with systematic analogy and, within it, juristic preference (istiḥsān): departing from a strict analogy where it produced hardship or conflicted with a stronger indicant such as custom, necessity or a subtler analogy. Abū Ḥanīfah's school validated contracts like sharecropping arrangements and the manufacture contract (istiṣnāʿ) through such preference despite analogical objections. Al-Shāfiʿī famously resisted istiḥsān as unregulated preference — "whoever exercises istiḥsān has made himself a lawgiver" — yet his own school achieved some similar flexibilities through other doors. The Ḥanbalī tradition, especially through Ibn Taymiyyah and Ibn Qayyim, later mounted a searching critique of mechanical analogy, arguing that sound analogy and sound text never truly conflict. The debate about analogy was thus never about whether to reason, but about which controls keep reasoning faithful to revelation — and each control system generated its own map of rulings.

Subsidiary Proofs: Interest, Custom and Blocking the Means

Beyond the four famous sources, the schools differed over a family of subsidiary evidences, and these differences visibly shaped their characters. The Mālikī school gave unprecedented weight to unrestricted public interest (al-maṣāliḥ al-mursalah) — benefits neither explicitly

affirmed nor negated by a particular text, but consonant with the law's objectives — and to blocking the means to harm (sadd al-dharāʿiʿ), prohibiting what is in itself permissible when it reliably leads to the forbidden. Mālikī strictness about transactions that cloak usury, and their administrative rulings for the welfare of Madinah, grow from these two principles. The Ḥanafīs also used a form of blocking and relied heavily on custom; the Shāfiʿīs accepted public interest mainly when anchored in a recognised indicant and were cautious about independent maṣlaḥah, while still applying similar reasoning under other names. The Ḥanbalīs, through their scholars, developed the objectives-based approach that al-Shāṭibī — a Mālikī — brought to perfection in his theory of maqāṣid al-sharīʿah, the higher objectives of preservation of religion, life, intellect, progeny and property.

The presumption of continuity (istiṣḥāb) — that an established state persists until evidence changes it — the statements of Companions, the laws of earlier revelations, and the probative force of a scholar's own earlier doctrine all received different weights in different uṣūl systems. None of these principles is a footnote. A school's stance on Companion opinions, for instance, explains its rulings wherever a Companion's judgement exists without a Prophetic text; its stance on istiṣḥāb explains presumptions in ritual purity and in financial liability alike. To read the classical furūʿ literature with the uṣūl in hand is to watch evidence-approaches manufacture diversity in real time — orderly, principled diversity that students can reconstruct step by step.

What This Shaped: Character of the Schools and Lessons

The cumulative effect was that each school acquired a recognisable intellectual character. The Ḥanafī school, formed in a commercial metropolis far from the first centres of transmission,

became the most systematically rationalist in structure, with a highly developed casuistry that later served vast empires. The Mālikī school remained rooted in the lived practice of Madinah and in welfare-oriented principles. The Shāfiʿī school, founded by the author of the first surviving treatise on uṣūl (al-Risālah), became the great systematiser of textual method, mediating between the people of hadith and the people of reasoned opinion. The Ḥanbalī school preserved the most text-centred approach and, through its later reformers, periodically renewed the call to test school doctrine against evidence. These are tendencies, not caricatures — every school contains hadith scholars and rationalists — but they are unintelligible except as products of differing approaches to evidence.

For today's student the lesson is practical. When two fatwas differ, the first question should not be "which scholar do I like?" but "what evidence and what method produced each ruling?" That question converts loyalty into learning, explains why sincere giants differed, and shows where a new issue should be argued: at the level of sources, authentication, interpretation and objectives. It also disciplines reform: whoever wishes to revisit a classical ruling must do the evidential work the classical jurists did, in the open, by the rules they share.

Conclusion

In conclusion, differing approaches to evidence shaped classical juristic diversity at every stage: unequal access to hadith across regions; different conditions for accepting solitary reports; different rules for specifying, qualifying and reconciling texts; different calibrations of analogy and juristic preference; and different weights given to public interest, blocking the means, continuity, custom and Companion precedent. The schools are, in large measure, these

methodological choices made durable. Far from undermining the law's authority, this account strengthens it: the diversity is shown to be evidence-driven, rule-governed and explicable, the product of a civilisation that argued about proof with unmatched seriousness. Unity of sources with diversity of method — that formula describes both the classical achievement and the healthiest way to inherit it.

Question 2: Custom and Context in Juristic Disagreement (20 Marks)

Discuss the role of custom and context in juristic disagreement.

Introduction

A legal text is fixed; the world to which it applies is not. Between the fixed text and the changing world stand custom (ʿurf, ʿādah) and context — the time, place, condition and circumstance of the people addressed. Classical Muslim jurists recognised both as real forces in the law, and a significant portion of juristic disagreement, both among the early schools and within each school across centuries, is explained by their operation. Two scholars could share the same texts and the same method, yet rule differently because the custom of Kufa was not the custom of Madinah, or because the circumstance of necessity in one age was not present in another. This answer examines the meaning and authority of custom in Islamic law, the classical maxims that govern it, the fields in which custom most visibly generated disagreement, and the parallel role of context — including necessity, hardship and the changing of fatwa with changing times — before drawing conclusions about the limits of both.

Custom must be defined carefully. In the usage of the jurists, ʿurf is what people collectively recognise and practise in their speech and dealings, which sound minds accept and which does not contradict a revealed text. It includes verbal custom — what words mean in a community's usage — and practical custom — how people habitually conduct transactions, dress, work and celebrate. The later legal maxims literature, crowned by the Ottoman Majalla, enshrined its authority in the famous maxim: "Custom is authoritative" (al-ʿādatu muḥakkamah), alongside the equally famous "What is known by custom is as if stipulated by condition" (al-maʿrūf ʿurfan ka-l-mashrūṭ sharṭan).

The Authority of Custom in the Sources

Custom's authority was not invented by later jurists; it is anchored in the sources themselves. The Qur'an commands the Prophet to enjoin what is recognised as right — al-maʿrūf, literally "the known", a word built on the same idea as ʿurf (Q 7:199). Maintenance of a divorced woman, kindness between spouses, and several other obligations are expressly tied by the Qur'an to what is maʿrūf, leaving their concrete measure to the custom of each society. Reports from Ibn Masʿūd express the companion principle that what the Muslims collectively see as good carries weight with God. The Prophet himself ratified sound pre-Islamic commercial customs of Arabia, reformed corrupt ones, and judged many interpersonal matters by the norms his community recognised. The schools all therefore accepted ʿurf in principle; their disagreements concerned its scope and strength — whether custom can specify a general text, whether a local custom counts or only a widespread one, and what happens when custom

changes after a ruling has been built on it. Those apparently technical questions decided real cases in every century.

Jurists laid down conditions for a legally effective custom: it must be prevalent or dominant in practice, not rare; it must exist at the time of the act or contract being judged; it must not contradict an explicit text or an express stipulation of the parties; and, in the view of many, it must not be a corrupt custom that normalises what revelation forbids. Within these conditions, custom functioned like an unwritten clause in every contract and an unwritten dictionary for every text — which is precisely why, when customs differed from place to place, rulings built on them differed too, without any difference in piety or learning between the jurists involved.

Fields Where Custom Generated Disagreement

Commercial law is the richest field of examples. What counts as delivery of goods, what defects justify returning a purchase, what a merchant's promise implies, what weights, measures and qualities a contract assumes, and what counts as the "like-for-like" wage of a worker were all answered by local trade custom. A Ḥanafī ruling in the markets of Central Asia and a Mālikī ruling in the markets of Andalusia could differ on the same contract type because the underlying trades differed. The manufacture contract (istiṣnāʿ) was validated by the Ḥanafīs largely on the strength of universal practice despite analogical difficulty; partnership and irrigation arrangements (musāqāh, muzāraʿah) were assessed against regional agricultural custom. In each case the disagreement is unintelligible until the custom beneath it is described.

Family and social law show the same pattern. The amount and form of dower (mahr) "prompt" and "deferred" portions, the trousseau a bride is expected to bring, the standard of

maintenance corresponding to a couple's station, what clothing satisfies the requirements of covering in a given society's dress norms, and the arrangements of wedding celebrations were all measured by ʿurf. Jurists disagreed, for instance, over details of the marriage gift and of spousal maintenance not because any text was in dispute but because the "proper" standard (mahr al-mithl, nafaqah bi-l-maʿrūf) is custom-referential by the text's own design. Even oaths turned on verbal custom: whether swearing by "meat" includes fish, or by "house" includes a tent, was answered by what the swearer's people meant by the words — a rule the Ḥanafīs developed with particular thoroughness.

Ritual-adjacent matters were not exempt. What counts as "much" movement in prayer, what counts as travel that permits shortening prayers in an age of new transport, what counts as possession (qabḍ) of currency in an exchange — once a matter of hand-to-hand transfer, now debated for bank transfers — are questions in which the factual and customary substrate decides the ruling's application. The text's category stays constant; its instances migrate with context, and jurists who disagree about the instances appear to disagree about the law.

Context: Necessity, Hardship and the Change of Fatwa

Context in its wider sense includes the circumstances that activate the law's own built-in calibrations. The jurists' maxims "hardship brings facilitation" (al-mashaqqatu tajlibu al-taysīr) and "necessities permit the prohibited" (al-ḍarūrātu tubīḥu al-maḥẓūrāt) mean that a ruling's application legitimately differs for the ill, the travelling, the coerced and the starving. Two muftis giving different answers to superficially identical questions may both be right, because one questioner's context includes a necessity the other's does not. Fatwa, unlike abstract

doctrine, is context-sensitive by design: Ibn Qayyim al-Jawziyyah devoted a famous discussion in Iʿlām al-Muwaqqiʿīn to showing that fatwa changes with the change of times, places, conditions, intentions and customs, and that a mufti ignorant of people's realities does more harm than an ignorant physician.

Historical change produced the largest contextual disagreements within schools. Imām al-Shāfiʿī's "old" and "new" doctrines partly reflect his move from Iraq to Egypt — new evidence, but also a new society. Later Ḥanafī jurists in the Ottoman world validated practices, such as certain cash endowments (waqf of money), that earlier doctrine had resisted, arguing from prevalent custom and public need; critics replied in the name of textual discipline, and the intra-school argument continued for centuries. In the modern period, questions of insurance, banking, medical treatment, photography and digital transactions have reproduced the pattern at high speed: the texts are old, the contexts are new, and disagreement flourishes exactly where the factual description of the new context (what is this contract, really? what does this practice involve?) is itself contested. Scholars repeatedly observe that much contemporary juristic disagreement is disagreement in taṣawwur — the conception and description of the case — rather than in the rule that would govern it once described.

Limits: What Custom and Context Cannot Do

The tradition that empowered custom also fenced it. Custom cannot abrogate a text: where revelation is decisive, a contrary custom is classified as corrupt (ʿurf fāsid) and given no authority, which is why practices such as usurious lending or immodest display do not become lawful by becoming common. Custom operates where texts are silent, general, or expressly

custom-referential, and in the interpretation of people's words and contracts. Context likewise cannot manufacture necessity where none exists; the maxims tie facilitation to genuine hardship measured by the law's own standards, and they add the counterweight that necessity is measured by its extent (al-ḍarūratu tuqaddaru bi-qadarihā). Disagreement about whether those fences have been respected in a given case is itself a large part of juristic controversy — reformers invoking custom and need, conservatives invoking the fences — and the debate is healthiest when both sides name the principle they are applying instead of accusing each other of abandoning the law or of fossilising it.

A final limit is verification. A claimed custom must be proved like any other fact, by prevalence and continuity, not asserted from a mufti's impressions; and a claimed context must be described accurately, ideally with the help of experts in the relevant field — physicians for medical necessity, economists for financial instruments, engineers for technical processes. Several classical disagreements dissolved when the facts were clarified, and modern fiqh academies institutionalise expert consultation for exactly this reason. Custom and context, handled with this discipline, explain disagreement without dissolving law into relativism: the principles are God's, their application walks on the ground of human life, and the ground differs — lawfully — from place to place and age to age.

Conclusion

In conclusion, custom and context are not external intrusions into Islamic law but internal, textually authorised instruments of it, governed by maxims, conditions and limits. Because customs differ between regions and contexts differ between persons and centuries, juristic

disagreement arising from them is often a sign of the law working as designed: the same rule, faithfully applied to different ground. The student who learns to ask, in any dispute, “what custom or circumstance is doing the work here?” will understand a large share of both classical and contemporary disagreement, will judge the disputants more fairly, and will be better equipped to give or seek rulings that honour both the fixity of revelation and the reality of human life.

Question 3: Foundational Legal Principles of the Mālikī School of Law (20 Marks)

Outline the foundational legal principles of the Mālikī school of law.

Introduction

The Mālikī school is the school of Imām Mālik ibn Anas (d. 179 AH), the jurist of Madinah, author of al-Muwaṭṭaʾ — among the earliest surviving books of hadith and law combined. From Madinah the school spread across North and West Africa, al-Andalus, Upper Egypt and parts of Arabia, and it remains the school of much of the Muslim world’s west. To outline its foundational legal principles (uṣūl) is to describe the hierarchy of evidences by which Mālik and his systematising followers — scholars such as al-Qāḍī ʿAbd al-Wahhāb, Ibn al-Ḥājib, al-Qarāfī and al-Shāṭibī — derived rulings. The school is famous for principles found elsewhere only in weaker form or not at all, above all the practice of the people of Madinah (ʿamal ahl al-Madīnah) and unrestricted public interest (al-maṣāliḥ al-mursalah), together with a strong

doctrine of blocking the means (sadd al-dharāʿiʿ). This answer sets out the principles in their order and explains the distinctive logic that binds them.

Mālik himself wrote no treatise of uṣūl; his method is reconstructed from al-Muwaṭṭaʾ, from his recorded answers, and from the great Mālikī uṣūl works that later codified it. That reconstruction is unusually reliable because the school's identity was from the start a method: loyalty to the transmitted practice of the Prophet's city, disciplined by the objectives of the law.

The Qur'an and the Sunnah

Like every school, the Mālikīs place the Qur'an first: its decisive texts govern absolutely, and its general expressions, commands and prohibitions supply the framework of the law. The Sunnah follows as the Qur'an's interpreter. Within the Sunnah, however, the Mālikī hierarchy has a signature feature. Mālik distinguished between the Sunnah transmitted by narration (words and deeds reported in hadith) and the Sunnah transmitted by continuous communal practice in Madinah. Where a solitary hadith (khabar al-wāḥid) conflicted with the established practice of Madinah, Mālikī method could prefer the practice, reasoning that the unbroken conduct of the city that witnessed revelation is itself a mass-transmitted (mutawātir in effect) evidence, stronger than a single chain. This is the single most debated Mālikī principle: al-Shāfiʿī and others objected that practice may reflect later governors' ijtihād rather than the Prophet, while Mālikīs replied that Madinah's practice in matters of worship and public law was a living isnād no solitary report could overturn. The principle explains characteristic Mālikī positions, such as details of the call to prayer, measures of zakāh (the Madinan ṣāʿ), and the non-raising of hands at certain points in prayer, where Madinan practice sat beside narrated reports.

Consensus (ijmāʿ) holds its classical place, with Mālikīs according special weight to the consensus of Madinah's scholars in the early generations while accepting the binding consensus of the community's scholars generally. The opinion of a Companion (qawl al-ṣaḥābī) is also a strong evidence in the school, particularly where no disagreement among Companions is known, since the Companions witnessed the revelation's context; Mālik's constant citation of the rulings of ʿUmar, ʿĀʾishah and other Madinan Companions in al-Muwaṭṭaʾ embodies this principle in practice.

Table 1: Principal Mālikī foundational principles (uṣūl) in summary

Principle	Meaning in brief	Distinctive Mālikī note
Qur'an	The first and governing source of law	Decisive texts govern absolutely, as in all schools
Sunnah	The Prophet's words, deeds and approvals	Read together with Madinan practice as its living transmission
ʿAmal ahl al-Madīnah	Continuous practice of the people of Madinah	Can outweigh a solitary hadith report
Ijmāʿ	Consensus of scholars	Special weight to early Madinan consensus
Qawl al-ṣaḥābī	Opinion of a Companion	Strong evidence where no Companion disagreement is known
Qiyās	Analogy from a textually ruled case	Used below transmitted evidences; supervised by the objectives
Al-maṣāliḥ al-mursalah	Unrestricted public interest consonant with the law's objectives	Independent proof under strict conditions — a Mālikī hallmark
Sadd al-dharāʿiʿ	Blocking means that reliably lead to harm	Applied with particular strength, e.g. against usury-masking sales

ʿUrf	Prevalent custom not contradicting a text	Measures maintenance, dower and market obligations; rulings change as it changes
Istiṣḥāb	Presumption that an established state continues	Default rule in doubt, e.g. purity and freedom from liability

Analogy, Public Interest and the Objectives of the Law

Analogy (qiyās) is accepted and used, but in the Mālikī hierarchy it stands below the transmitted evidences including Madinan practice and strong Companion precedent, and it is supervised by a principle the school did more than any other to develop: consideration of public interest. Al-maṣlaḥah al-mursalah — a benefit that no specific text affirms or negates, but which accords with the general objectives of the Sharīʿah — is an independent proof in Mālikī uṣūl when three conditions, classically stated, are met: the benefit must be real and not imaginary, general in scope rather than a private advantage, and not in conflict with a text or a higher principle. By this door the school validated measures of public administration from the compilation of the Qur'an under the caliphs (the stock example, from ʿUmar's era) to later institutions of market inspection, taxation for public need and evidentiary procedures in court. Critics in other schools feared an open door to subjectivity; Mālikī theorists, above all al-Shāṭibī in al-Muwāfaqāt, answered by anchoring maṣlaḥah in the inductively established objectives (maqāṣid) of the whole law — the preservation of religion, life, intellect, progeny and property — so that "interest" means the law's own purposes verified across its texts, not the ruler's or jurist's preference. Through al-Shāṭibī, this Mālikī principle permanently enriched all schools.

Closely allied is juristic preference in its Mālikī forms and the principle of giving weight to outcomes (iʿtibār al-maʾālāt): acts are judged partly by what they lead to. This outcome-sensitivity powers the school's two famous gatekeeping doctrines. Blocking the means (sadd al-dharāʿiʿ) prohibits or restricts what is in itself lawful when experience shows it functions as a reliable conduit to the unlawful: the Mālikī strictness toward sale contracts that mask usury, toward gifts timed to evade zakāh, and toward arrangements whose form is clean but whose function is evasion, all flow from this source. Classified by al-Qarāfī and Ibn Qayyim (who adopted it enthusiastically) into means that certainly, probably, or rarely lead to harm, with rulings calibrated accordingly. Its mirror image, opening the means (fatḥ al-dharāʿiʿ), encourages what reliably leads to good. Together these principles give Mālikī law its characteristic realism about how people actually behave with legal forms.

Custom, Continuity and Subsidiary Principles

Custom (ʿurf) is a major Mālikī evidence in transactions and social rulings; the school that governed the markets of North Africa and Andalusia developed refined rules for when prevalent custom specifies texts, interprets contracts and measures obligations such as maintenance and dower. Al-Qarāfī insisted that rulings built on custom must change when custom changes, and that a mufti who answers for one land with the custom of another errs — a principle that makes Mālikī uṣūl explicitly dynamic in its applied branch. The presumption of continuity (istiṣḥāb) — an established state, such as purity, freedom from debt, or the permissibility of things, persists until evidence displaces it — operates as the school's default rule in doubt, as in the other schools. The law of earlier prophets (sharʿ man qablanā) is

accepted as binding where the Qur'an or Sunnah recounts it without abrogation, a position the Mālikīs share with the majority. The school also recognises, within limits, the blocking of stratagems (ḥiyal) designed to defeat the law's purposes, the mirror of its outcome-oriented method: where some traditions judged contracts largely by form, Mālikī analysis habitually interrogates purpose and result, a tendency its theorists justified from the Qur'an's own exposure of evasive devices.

For clarity, the school's hierarchy can be summarised: (1) the Qur'an; (2) the Sunnah, with Madinan practice as its mass-transmitted embodiment capable of outweighing solitary reports; (3) consensus, especially of Madinah; (4) Companion opinion; (5) analogy; (6) unrestricted public interest disciplined by the objectives; (7) blocking and opening the means; (8) custom; (9) continuity. Lists differ slightly among Mālikī authors in ordering the lower ranks, but the distinctive members and the spirit of the hierarchy are constant.

The Character the Principles Produce

Principles are not abstractions; they stamp a school's law with a character, and the Mālikī character is recognisably the child of this list. Reverence for Madinan practice gives the school a conservatism in worship joined to confidence in inherited communal religion. Maṣlaḥah and the objectives give it administrative flexibility and a public-law strength that made it the school of governance across the Maghrib. Blocking the means gives it a distinctive vigilance in financial law and family law against evasive forms. Custom gives its applied rulings a local adaptability that helped it govern societies from Senegal to Spain. And the cumulative effect of al-Shāṭibī's synthesis — often described as the maturest statement of legal philosophy in classical Islam —

grew directly from reflecting on these principles as a system. Students comparing schools should therefore resist memorising Mālikī rulings as a list; the rulings are conclusions, and the principles in this answer are the premises from which, generation after generation, Mālikī jurists have re-derived them for new cases.

Conclusion

In conclusion, the foundational legal principles of the Mālikī school form a coherent hierarchy: Qur'an and Sunnah at the summit, the Sunnah read with unique deference to the continuous practice of Madinah; consensus and Companion precedent; analogy supervised by an objectives-disciplined doctrine of public interest; blocking and opening of means according to outcomes; and custom and continuity as working rules of application. The school's distinctives — ʿamal ahl al-Madīnah, al-maṣāliḥ al-mursalah and sadd al-dharāʾiʿ — are not eccentric additions but expressions of one conviction: that the law of the Prophet is preserved both in transmitted words and in the transmitted life of his city, and that its rulings aim at real human welfare in the real world. That conviction explains Mālikī law's history, its geography, and its continuing contribution to Islamic legal thought.

Question 4: The Limits of Tolerance in Juristic Disagreement (20 Marks)

Critically examine the limits of tolerance in juristic disagreement.

Introduction

Tolerance of juristic disagreement is one of the glories of classical Islamic law: four schools and more have coexisted for over a millennium, their followers praying in the same mosques and intermarrying, on the shared understanding that a qualified scholar's reasoned conclusion deserves respect even when it is not followed. Yet the tradition never taught unlimited tolerance. The same scholars who defended a mujtahid's right to differ also policed boundaries — of subject matter, of method, of qualification and of conduct — beyond which a view was not treated as a legitimate difference at all. This answer critically examines those limits. It asks where the classical tradition drew them, why it drew them there, where the drawing of limits itself became a source of abuse, and how the balance between tolerance and boundary might be stated for today. "Critically" is the operative word: neither romanticising the tradition's tolerance nor accepting every historical boundary at face value, but testing each limit by the tradition's own principles.

Tolerance in this discussion needs definition. It is not agreement, endorsement, or the fiction that all views are equally sound. It is a practical and moral stance: recognising another's conclusion as a possible, excusable, communally acceptable position — one that may be followed by its adherents without sin or censure — even while believing it mistaken. The question of limits is then precise: under what conditions does a differing view lose that recognition?

The First Limit: Certain versus Interpretive Matters

The firmest classical limit divided the certain (qaṭʿī) from the probabilistic (ẓannī). Matters established by texts decisive in transmission and meaning, and confirmed by consensus — the five pillars in their agreed substance, the prohibition of wine, usury and murder, the shares of inheritance fixed by the Qur'an — admit no legitimate disagreement; a view denying them was not tolerated as ijtihād but corrected as error, and persistent public denial could attract legal consequences in classical polities. The rationale is structural, not merely authoritarian: ijtihād is by definition the exertion of judgement where judgement has room to operate. Where the evidence forecloses judgement, "disagreement" is no longer interpretation but contradiction of the known religion "by necessity" (maʿlūm min al-dīn bi-l-ḍarūrah).

Critical examination must note both the necessity and the danger of this limit. Its necessity is plain: a community that tolerates disagreement about its constitutive certainties dissolves, since nothing remains to be a community about. Its danger is inflation: the category of the "certain" can be expanded by zeal until it swallows the interpretive field whole. History supplies cases of scholars declaring consensus where later research found early disagreement, and of political authorities enforcing as "certain" what was in fact the ruling school doctrine of the state. The tradition's own safeguards against this inflation were scholarly: claims of consensus were themselves subjected to verification, and major uṣūl scholars warned that alleged consensus is often presumption. A defensible modern statement of the limit therefore keeps the category of the certain deliberately narrow — restricted to what is genuinely agreed across schools and centuries — and requires anyone invoking it against a differing view to prove the consensus, not merely assert it.

The Second Limit: Method and Qualification

Classical tolerance was extended to conclusions reached by a qualified mujtahid using the recognised sources and methods. Two corollaries followed. First, a view with no basis in the evidences — an anomalous opinion (qawl shādhdh) that contradicts text and consensus together, or that rests on no indicant at all — was not accorded the protection of legitimate difference; the books of the schools regularly mark such views as not to be followed or taught as fatwa. Second, the unqualified person's "ijtihād" was not ijtihād at all: tolerance of scholars' disagreement never implied that every opinion-holder stands equal, a distinction captured in the rule that the layperson's duty is to ask the people of knowledge (Q 16:43). The limit protected the public from charismatic amateurism in law as firmly as it protected scholars from persecution for learning.

Critically, this limit too has two faces. It rightly insists that disagreement earns tolerance by doing evidential work; a view that cannot show its sources may be refuted without ceremony. But qualification can harden into guild protection, and the history of taqlīd contains periods in which the door of tolerance effectively closed around the four schools' settled doctrines, so that a well-evidenced view from outside the canon — or from a scholar of a smaller tradition — received less tolerance than a weak view safely inside it. The careers of figures such as Ibn Taymiyyah, imprisoned partly over creedal and legal positions that later scholarship across schools has treated as legitimate differences, stand as the tradition's own cautionary exhibits. The critical conclusion is that the method-and-qualification limit is valid in principle but must be applied to arguments rather than pedigrees: the question is whether this view does the evidential work, not whether its author holds the customary licence.

The Third Limit: Conduct, Consequences and Public Order

Even a view within the interpretive field could exceed tolerance by its manner or its public consequences. Classical scholars distinguished between holding a view, teaching it, and acting on it publicly where action disrupts communal life. A judge's ruling, the jurists held, settles disputes practically (ḥukm al-ḥākim yarfaʿu al-khilāf): parties must comply with the court's adopted position even if their school differs, because the alternative is endless litigation. Rulers could adopt one legitimate view for public administration — in markets, courts and public worship arrangements — and require outward conformity, not as a judgement that other views were false but as the price of order. Likewise, propagating an eccentric view to the general public in a way calculated to scandalise or to license wrongdoing (the classical concern behind restricting fatwa by anomalous opinions) could be restrained, while the same view remained discussable in scholarly settings. Tolerance, in short, was setting-sensitive: widest in the seminar, narrower in the courtroom and the marketplace.

Conduct set a further limit from within disagreement itself. The scholar who accompanied his difference with contempt, takfīr of opponents, deception in citation or mobilisation of mobs forfeited the courtesies of the system even if his thesis, considered abstractly, fell within ijtihād. This is why the adab literature treats the manner of disputation as a legal-moral subject in its own right. The critical point for today is that this conduct limit is the one most often inverted in modern practice: online polemic tolerates any manner provided the conclusion matches the audience's camp, while classical tolerance did the reverse — it could accommodate a startling conclusion reached honourably, and it withdrew fellowship from dishonourable argument even

in a “correct” cause. Restoring the classical priority would by itself redraw the limits of tolerance in contemporary Muslim discourse more accurately than any new doctrinal test.

Critical Balance: Between Relativism and Rigidity

Standing back, the limits reveal a system trying to hold two truths at once: that truth is one and matters absolutely, and that human access to it in interpretive matters is mediated, fallible and plural. Unlimited tolerance denies the first truth and collapses into relativism, in which — as critics note — even tolerance itself loses any ground to stand on, and harmful innovations claim the same protection as the imams’ ijtihād. Unlimited rigidity denies the second truth and collapses into fanaticism, in which every difference becomes heresy and the community fragments at each generation. The classical settlement — broad tolerance inside the interpretive field, firm boundaries at certainty, method and public order, and courtesy as a condition throughout — is not beyond criticism in its historical applications, as the cases of inflated consensus and persecuted scholars show. But its structure remains the most coherent account available of how a text-centred community can be simultaneously principled and plural, and later thinkers who have tried to widen or narrow it wholesale have generally reproduced one of the two collapses it was designed to avoid.

For contemporary application, three working rules follow from the critical examination. First, verify before excluding: a view should be denied tolerance only after its evidence, its author’s method and the alleged consensus against it have actually been examined. Second, separate the judgement of a view from the judgement of its holder: a position may be ruled out of bounds while its holder remains excused, respected and un-takfīred, as the tradition excused

the erring mujtahid. Third, aim restriction at conduct and public harm rather than at thought: scholarly space should stay wide precisely so that public space can stay orderly. These rules do not dissolve hard cases — new movements will keep testing the boundaries of the certain and the interpretive — but they locate the argument where the classical tradition, at its self-critical best, located it: on evidence, not on volume.

Conclusion

In conclusion, tolerance in juristic disagreement has real limits, and the classical tradition was explicit about them: no legitimate difference exists against decisive texts and verified consensus; none exists for views without evidential method or for the unqualified posing as mujtahids; and even legitimate views may be restrained in public application by courts, administration and the ethics of disputation, while dishonourable conduct forfeits tolerance regardless of conclusion. Critically examined, these limits are defensible in structure and vulnerable in application — consensus can be inflated, qualification can become guild closure, and public-order reasoning can serve power. The mature position the tradition itself supplies is to hold the limits with the same fallibilism that justifies tolerance: boundaries drawn carefully, verified honestly, applied to arguments before persons, and enforced with the courtesy that is itself one of the boundaries. Within those limits, tolerance is not a concession wrung from the law; it is one of the law's own achievements.

Question 5: Practical Guidelines for Fostering Unity While Respecting Legitimate Differences Today (20 Marks)

Propose practical guidelines for fostering unity while respecting legitimate differences today.

Introduction

Muslim communities today are more internally diverse than at any previous moment in their history. A single city mosque may gather followers of four schools, several ethnic cultures, converts formed by different teachers, and young people whose religious information arrives through global media. Migration, education and the internet have not created juristic and cultural difference — those are as old as the schools themselves — but they have compressed difference into shared spaces where it must be managed daily, by ordinary people, without the classical world's slower institutions to absorb friction. The question for this final answer is therefore intensely practical: what guidelines, drawn from the ethics of disagreement studied in this course, can foster real unity while respecting the differences that are legitimate? The answer proposes guidelines for individuals, for mosques and institutions, for scholars and teachers, and for online conduct, and it closes by defining the unity being aimed at — because unity misunderstood as uniformity will defeat every guideline proposed.

A preliminary distinction governs everything that follows. Legitimate differences are those that arise from qualified interpretation of probabilistic evidence, from valid custom, and from cultural variation in matters the law leaves open. Unity worth fostering is unity of foundations, worship, fellowship and common purpose — not identity of opinion. Guidelines that aim at the

second kind of unity will always end by policing the first kind of difference, and will produce either hypocrisy or schism. The guidelines below are designed to prevent that substitution.

Guidelines for Individuals

First, learn the map of difference before judging a differing practice. A believer who knows that the schools differ over such matters as raising the hands in prayer, saying āmīn aloud, the details of wuḍūʾ, or the fiqh of travel will not experience a neighbour's different practice as deviance. Mosques and study circles can teach a short "fiqh of difference" curriculum — the causes of disagreement, the standing of the schools, the difference between certain and interpretive matters — because most grassroots intolerance is ignorance, not malice. Second, practise the classical presumption: a fellow Muslim's act is carried on the best interpretation it can bear. If his practice matches any recognised scholarly position, it is not one's business to correct it uninvited; correction (naṣīḥah) has its own etiquette — privacy, gentleness, knowledge, and a genuine wish for the other's good — and public, uninformed correction of interpretive matters should simply stop.

Third, separate essentials in one's own emotional economy. Individuals can train themselves to feel about branch differences the way the imams felt: as matters for the study circle, not for the heart's allegiance. Practical habits help: praying behind imams of other schools without comment; refusing to make school labels a condition of friendship, marriage consideration or business trust; and using the language of "the view I follow" instead of "the truth against their error" in probabilistic matters. Fourth, verify before transmitting. Much modern disunity is manufactured by clipped videos and misattributed quotations; the Qur'anic rule of verification

(Q 49:6) applied to religious content — checking a scholar's actual words and context before forwarding an exposé — is a concrete, daily unity practice available to every phone owner.

Guidelines for Mosques and Institutions

Institutions turn private virtue into public culture, and mosques need explicit disagreement policies rather than improvised reactions. A workable policy states: the mosque follows a defined practice for its own congregational arrangements (for example, in prayer format and moon-sighting procedure) chosen by its leadership and scholars; other recognised practices are respected and their followers are full members; and disputes about interpretive matters are referred to a named scholarly channel rather than debated in the congregation. Deciding arrangements in advance — especially recurring flashpoints such as Ramaḍān and ʿĪd dates, where a community should adopt one announced method (local sighting, calculation, or following a declared authority) and hold to it for the year — removes the annual re-litigation that exhausts communities. The point is not which legitimate method is chosen, but that it is chosen legitimately, announced clearly, and then honoured by those who preferred another.

Institutional programming should embody pluralism rather than merely permit it. Inviting qualified teachers from more than one school, stocking comparative fiqh in the library, and running joint service projects — food banks, refugee support, neighbourhood clean-ups — build the cooperation in righteousness (Q 5:2) that gives unity a content larger than tolerance of each other's rituals. Governance matters too: mosque boards that include the community's real diversity, that publish their decisions and reasons, and that provide a complaints-and-mediation route prevent the takeover dynamics by which one faction's preferences become "the

mosque's Islam" and everyone else becomes a guest. Where a genuine doctrinal dispute does arise, mediation by agreed scholars — the community-scale version of classical munāẓarah with its rules of evidence and courtesy — should precede any public campaign; most disputes referred early to such a process end as clarified ikhtilāf rather than hardened khilāf.

Guidelines for Scholars, Teachers and Media Voices

Those who teach carry disproportionate responsibility, because audiences imitate their manners before their arguments. The first guideline is representational honesty: a teacher presenting a disputed question should state the other schools' positions and evidences fairly before arguing his own, as the classical comparative manuals did, and should label clearly what is consensus, what is majority, and what is his preference. The second is proportion in rhetoric: reserving the vocabulary of deviation and innovation for what genuinely meets its classical tests, and refusing the audience-growth incentives — especially online — that reward ever-wider declarations of error. The third is modelling revision: scholars who publicly correct themselves when evidence requires teach a community more about the ethics of disagreement in one act than in a year of lectures on tolerance. Institutions of learning can support all three habits by teaching uṣūl and adab al-ikhtilāf as core curriculum rather than enrichment, and by assessing students on their ability to argue the position they reject.

Media guidelines deserve separate emphasis because digital platforms are now the main arena of Muslim disagreement. Practical rules with classical roots include: argue with posts, not persons; quote in context and link sources; do not clip scholars into apparent absurdity; observe the Prophetic discouragement of disputation that has become mere wrangling by

withdrawing from threads that have left evidence behind; and remember that an audience of thousands converts a scholarly quibble into a communal event, so that restraint in public and candour in scholarly settings — the classical setting-sensitivity — is a duty, not a PR strategy. Platforms will not supply these norms; communities must supply them to their own voices.

A Worked Framework and Final Considerations

The guidelines can be compressed into a five-step response whenever a difference surfaces, usable by an individual, a board or a teacher. (1) Classify: is the matter certain or interpretive, worship or custom, private or public? (2) Verify: what are the actual evidences and recognised positions, checked from sources rather than slogans? (3) Locate authority: whose decision governs this setting — the individual conscience, the mosque's adopted policy, a court, a scholarly council? (4) Choose manner: private, gentle, evidence-based, with the relationship explicitly preserved. (5) Agree the closure: follow the adopted arrangement, record the remaining difference as legitimate, and return to shared work. Communities that rehearse this sequence discover that most conflicts die at step one, because a large fraction of "doctrinal" disputes are, on classification, custom, personality or misunderstanding wearing doctrinal dress.

Two final considerations keep the guidelines honest. First, unity work has costs and limits: respecting legitimate difference does not require platforms for views outside the limits examined in this course — denials of the certain, methodless amateur rulings on public questions, or conduct that abuses others — and institutions serve unity, not threaten it, when they hold those boundaries calmly. Second, unity is finally a spiritual condition before it is an

organisational product. The Qur'an attributes the reconciliation of hearts to God (Q 8:63) and commands the believers to the practices — shared prayer, charity, visiting, forgiveness — in which He creates it. Guidelines organise the externals; humility and brotherhood, practised deliberately, supply the internals. A community that combines both will find that its legitimate differences have become what the classical tradition always said they could be: not cracks in the structure, but evidence of its breadth.

Conclusion

In conclusion, fostering unity while respecting legitimate differences today requires work at every level: individuals who learn the map of disagreement, presume good faith, and verify before they transmit; mosques that adopt clear, announced arrangements on recurring flashpoints, programme pluralism, and mediate disputes early through agreed scholars; teachers who represent opposing evidences honestly, keep rhetoric proportionate, and model revision; and a digital culture that argues with posts rather than persons and keeps public restraint for public spaces. Underneath all of it stands the course's central distinction: keep difference at the level of evidence-based ikhtilāf, conducted with the manners of the tradition, and refuse its decay into factional khilāf. The unity that results will not be uniformity — it will be something stronger and more Prophetic: one community, holding one rope, with room inside it for every difference that revelation itself left room for.