

Formal Logical Arguments in Islamic Law

Rehan Rafique 

Department of North African and Middle Eastern Studies, Al-Akhawayne University, Ifrane, Morocco

Email: rehan_07@hotmail.com

How to cite this paper: Rafique, R. (2025).
Formal Logical Arguments in Islamic Law.
Open Journal of Philosophy, 15, 174-180.
<https://doi.org/10.4236/ojpp.2025.151010>

Received: October 20, 2024

Accepted: February 10, 2025

Published: February 13, 2025

Copyright © 2025 by author(s) and
Scientific Research Publishing Inc.
This work is licensed under the Creative
Commons Attribution International
License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

Apart from the knowledge of specialists in the field of Islamic law, the perception of Islamic law, for the most part, is that of a law with no structure and, therefore, no logical consistency. This depiction is often theorized by using the term *Kadijustiz*. In this essay, I seek to undermine this view and propose that Islamic legal theorists developed a systematic process of employing formal logic in Islamic law. I argue that these arguments exist, were negotiated regarding the nuances of their form and modes of applicability, and were utilized in concrete cases in books of Islamic legal theory. By formal logic, I am referring to inferential forms of reasoning. The paper is divided into two main parts: first, I describe the notion of *Kadijustiz* and offer objections to this view. Second, I explain the primary arguments that fall under the category of *qiyas*. These include, broadly, deduction, induction, and legal analogy. My hope is that this essay contributes to the appreciation of Islamic Law as a rigorous legal system and serves as a reference for some of the modes of thinking and processes of legal reasoning when engaging with Islamic law.

Keywords

Logic, Formal Logic, Islamic Law, Inference, Legal Reasoning

1. Introduction

The use of formal logic in Islamic legal reasoning has long been a topic of interest in books of Islamic legal theory. Different logical arguments are often categorized under different headings, how they may be employed and the circumstances under which valid inferences may be made from authoritative sources (Al-Ghazali, 2018; Atcil, 2015).¹ However, apart from the knowledge of specialists in the field of Islamic law, the perception of Islamic law, for the most part, is that of a law with no structure and, therefore, no logical consistency. This particular conception is theorized with the phrase “Kadijustiz.” Fundamentally, Kadijustiz is the oriental-

ist depiction of Islamic law as arbitrary, via which a jurist is unbounded by systematic procedures and, as a result of this lack of restriction, may freely declare a legal verdict in accordance with full self-discretion. The idea was largely popularized by sociologist Max Weber in his “Economy and Society” (Weber, 1968), in which he depicts Islamic Law as an arbitrary law with no systematic reasoning (Weber, 1968). This idea was, then, further picked up by later American legal judges to the extent of being described by Justice Felix Frankfurter as a Qadi under a tree (Hamoudi, 2015). Harvard law professor Intisar Rabb argues in her paper, “Against Kadijustiz: on the negative citation of foreign law” that building up the image of Kadijustiz (KJ) is done with the object of appealing to a negative citation in American legal processes (Rabb, 2015).² In attempt to construct this image in American legal proceedings, the appeal to KJ is essentially an appeal to repudiation by contrast which, on an even deeper level, is an appeal to emotion (Rabb, 2015).

The inferential forms of reasoning in this paper will cover the primary arguments under *qiyas* are covered (Hallaq, 1989).³ These include deduction, legal analogy, and induction. To my knowledge, works on the historical theorization of logic in Arabic have gained increasing focus in the English language;⁴ however, the application of formal logic as an inferential tool remains to be comprehensively studied. Most works in the field are concerned with the conceptual framework of Islamic law and theorizations as to its nature and moral and ethical framework. For instance, in “*Techniques and Limits of Legal Reasoning in Shari’a Today*,” (Emon, 2009) Anver Emon examines conceptual frameworks for heuristic activity. Emon assesses complex heuristics drawing from axiomatic principles

¹Early debates in Islamic history regarding the place and role of logic in Islamic legal reasoning centered around its metaphysical nature, and the theological/metaphysical implications in accepting it. The early consensus seems to have been that only when stripped of all metaphysical assumptions, and employed only as a tool for inference, can the use of logic be considered acceptable. See, Wael Hallaq, “The logic of legal reasoning in religious and non-religious cultures: The case of Islamic law and the common law.” *Clev. St. L. Rev.* 34 (1985): 79. Abdurrahman Atci describes the early influence of Aristotelian logic on the development of Islamic law. Following Aristotle’s theory of sciences, early Muslim jurists and legal theorists provided a system of inference, drawing from the conclusion reached from the disciplines of Islamic theology and the Arabic language. The conclusion reached from these fields were the starting points for systematic and syllogistic arguments. See Atci, “Logic and Law.”

²Rabb’s article analyzes the idea of Kadijustiz from two aspects: Kadijustiz in the classroom and Kadijustiz in the courtroom. The former consists of popular theorizations of KJ such as Max Weber’s KJ; KJ in comparative law; and KJ in Islamic legal history. The latter consists of KJ as anti-textualism in that KJ appeals to substance over procedure; KJ as anti-federalism, meaning KJ prioritizes judicial power and discretion over states’ rights; and, KJ as anti-deference, or, the prioritization of values such as equity overriding procedural restraint on judicial discretion. Importantly, all these are evoked, as the title of Rabb’s article indicates, as a negative citation of Islamic law. In other words, evoking Islamic law is done not with the object of demonstrating what American law is; but, rather, with the object of demonstrating what American Law is not. And, by portraying Islamic law as KJ, a court may declare in their legal reasoning that certain opinions or verdicts have strayed from the restraint of procedure and textualism, and, instead, has fallen into KJ. Rabb proposes, in my view, reasonably, two problems with such negative citations: first, this only leads to confusion in judicial reasoning. This is so because it is never explicitly stated which particular value is being opposed to; and second, such a depiction of Islamic Law is at odds with most historical accounts of how the law is practiced and implemented. See Rabb, 346-347.

which, Emon argues, facilitates innovation and dynamism within the law. that these conceptions allow for innovation and dynamics within the law. John Makdisi, in his paper, “*Formal Rationality in Islamic Law and the Common Law*”, (Makdisi, 1985) argues that Islamic law fits into the category of an innovative and logically formal law. Makdisi does this by looking at examples of legal reasoning in contract law. However, even here, the focus is not the strict use of logic. The most recent work on the topic is, “*Defeasible Reasoning in Islamic Legal Theory*,” (Komath, 2024) in which Muhammed Komath argues that non-deductive forms of reasoning comprise the core of Islamic legal theories and that a dialectical method was utilized to engage with these forms of reasoning (Miller, 2020). I include some non-deductive forms of reasoning in my analysis. The above works provide insight into how Muslims conceptualized logic and theorized as to its nature. However, not many delve into the processes of legal reasoning which utilize logic as an inferential tool. Perhaps the foremost scholar who has written on the topic in English is Columbia University Professor of Islamic Law, Wael Hallaq. Therefore, to a significant extent, I draw on his work in laying out the forms of reasoning. Also, what follows is merely an introduction to forms of inferential reasoning in Islamic Law. Perhaps a more extensive treatment will be the topic of a future thesis.

2. Deduction

Generally, legal deduction is employed with the object of deducing laws from broad principles or propositions and its applicability to questions of fact. This is done so under three types of deductive reasoning: the first is syllogistics, under which, a law, or general legal norm is deduced from to apply to another case. For instance, the argument may be structured as follows: 1) The Qur’an prohibits intoxicants (5:90); 2) Whine/whisky etc. is an intoxicant; 3) therefore, whine/whisky

³Many contemporary Islamic scholars conceive of *qiyas* as solely consisting of legal analogy. However, as Wael Hallaq demonstrated in his paper, “Non-Analogical Arguments in Sunni Juridical Qiyās”, *qiyas* consisted of several inferential forms of legal reasoning – legal analogy being one of them. After describing various theories of classical Islamic jurists of the role of logic in the juridical methodology of *qiyas*, Hallaq states: “*Qiyas* thus cannot be given the fixed definition of analogy. Instead, it should be regarded as a relative term whose definition and structure vary from one jurist to another” see Hallaq, *Non-Analogical Arguments*, 305. From this, we know that different jurists categorized different inferential forms of reasoning under *qiyas*, and it is these arguments that I highlight here. I do not lay out which jurists substantiated the use of which argument in this paper. Rather, I take their existence and validity as a given—upon examination of the classical sources, the existence of these arguments is evident—and, seek to explain how these arguments were employed. Two examples of their existence may be found in the works of Ibn Taymiyyah and Al-Ghazali. Ibn Taymiyyah claimed that syllogistic argument and legal analogy have the same force in regards to the certainty yielded by such arguments. For Ibn-Taymiyyah, the epistemic certainty of these arguments rests on the truth of the premises; not the form of the arguments. See Hallaq, 302-305; Ibn Taymiyyah, *Jahd*, pp. 259, 1. 10, 289, 331, *passim*. Al-Ghazali’s admission of *qiyas* in law included legal analogy as well as legal deduction. See Hallaq, 302-303; Al-Ghazali, *Al Mustasfā*, II, 229, II. 5-6.

⁴For examples of this, see El Rouayheb, *The Development of Arabic Logic (1200-1800)*; El Rouayheb, *Relational Syllogisms and the History of Arabic Logic, 900-1900*, Street, “Arabic Logic.” For an overview of classical Islamic discourse on argumentation, see Benjamin Miller, *Islamic Disputation Theory: The Uses & Rules of Argument in Medieval Islam*.

etc. are forbidden in Islamic law (Hallaq, 1985). The second type of deductive argument is *reductio ad absurdum* which assumes the truth of a certain proposition and proceeds to demonstrate how the application of such proposition would contradict Qur'anic principles or values. For instance, suppose an Islamic jurist argues that a new recreational drug is permitted for use under Islamic law. An opposing jurist may argue: 1) Suppose that this new drug is permitted under Islamic law; 2) Taking this take leads to certain effects such as compromising the intellect via altered states of consciousness; 3) But, one of the values of preservation in the Islamic legal tradition is the intellect and its coherent and effective use; 4) This new drug undermines this value; 5) Therefore, the new drug is forbidden under Islamic law (Hallaq, 1985). The last type of deductive argument is the *fortiori* argument which takes a law or legal norm governing a certain situation and extends it, or infers from it, to a more obvious situation.⁵ The *fortiori* argument, itself, consists of two types: a *minori ad maius* which transfers from a limited act to a general one. For instance, 1) the Qur'an states to speak to one's parents kindly and be gracious with them (17:23); 2) if the Qur'an prohibits the nature of speaking in a certain way to parents, it is reasonable to conclude, by way of a *minori ad maius* that physical abuse towards one parents is prohibited in Islamic law; 3) therefore, physical abuse to ones parents in Islamic law is forbidden. The other type is a *maiori ad minus*, which, simply reverses this process—extending from a general act to a limited one. For instance: 1) the consumption of large quantities of wine is prohibited as it will induce intoxication; 2) there is no fixed limit as to how

⁵Early debates surrounding the nature of a *fortiori* arguments consisted of some jurists, mainly from the *Hanafi* school of thought employing the argument based on a question of linguistics, in contrast with it being based on logical inference per se. Regarding the linguistic view, if a textual injunction denotes clearly, in the language of the text, a legal injunction, than no logic inference is made, or needed, in extending a rule from a general case to a specific one, or, a specific case to a general one. For instance, in the above example of deducing a legal rule from the general to specific in regards to consuming large quantities of wine and small quantities, in accordance with the linguistic argument, if the language of the text indicates that wine, in itself, and irrespective of quantity is forbidden, then, no logical inferential reasoning is needed. The counter-argument to this, or the view that a *fortiori* arguments are based on logical inferential reasoning was posed by *Shaff'i* jurists as its main advocates. An example is Abu Ishaq al-Shirazi (d. 476/1083) who points out that a *fortiori* arguments are employed when there is no conspicuous linguistic injunction, or no clear law from the language of a text regarding a particular case. It is in such a situation that an inferential line of reasoning is employed, in the form of a *fortiori*. So, a *fortiori* is not linguistic. Furthermore, Abu al-Hasan al-Mawardi (d. 450 1058) claimed that by inferring a legal rule from one case to another, this necessarily entails an inferential line of reasoning; if no such process was required, and the language of the text is clear enough so as to not require the transference of a rule from one case to another, then, this is a linguistic argument. Wael Hallaq. On this, I'm inclined to agree with a *fortiori* arguments being employed as inferential methods of reasoning. I believe the point of contention on both sides is the scope of a *fortiori* arguments, with the linguistic position holding a narrower view of a strict matter of language, and the inferential position moving beyond language. If one concludes that the nature of a *fortiori* arguments is limited to the language of a text, then, the linguistic position has merit. However, if a transference of a rule from one case to another needs to be made, then, the inferential position has more merit. As al-Mawardi notes, the transference of a rule from one case to another implies that language of the text is not clear enough to include several, yet similar, cases. And so, it seems to me, a *fortiori* arguments, by nature, move beyond the language of a text, due to a lack of specification of the text, and extend into the area of an inferential line of reasoning with the object of transferring the legal rule of one case to another.

much wine, exactly, will induce intoxication, as reactions to wine vary according to different bodies; 3) but, the point is that wine, in itself, and irrespective of the amount, has the quality of inducing intoxication; 4) therefore, wine, even in what may be considered small amounts, is prohibited in Islamic law (Hallaq, 1985).

3. Legal Analogy

Perhaps the most commonly used argument in legal reasoning is legal analogy. That is, the transference of a known rule to another case based on a certain degree of similarity between the two. What is critical in determining the validity of this argument is the relevance of the similarity regarding the factors inducing the legal rule between the two cases—the operative cause, or, *illah*—which, then, gives greater justifiability for the transference of the rule. The question then becomes, what are the conditions for a justified transference of a rule? The first condition is the causal effect of a relevant similarity in, actually, inducing a judgment. The second condition is coextensiveness; meaning, assessing the presence of an *illah* in accordance with the presence of the legal rule and coexclusiveness; meaning, assessing the absence of an *illah* in accordance with the absence of a legal rule. Similar to the first condition, the object here is determining the causal relation, or lack thereof, between the *illah* and legal rule. A third condition is the method of agreement or difference. This method seeks to assess the relevant similarity and/or difference between two cases and draw a causal connection, whether in the positive or negative sense. For example, if X and Y both have numerous identical factors which casually induce a certain effect; however, X and Y also possess a couple of different factors that are immaterial in inducing the effect, then, a transference of the legal rule in this case may be considered valid. A fourth condition is the *argumentum e contrario* which seeks the absence of a causal connection and, therefore, draws a conclusion. For example, X is a Y; therefore, no non-X is a Y. X has properties A B C D; Y has properties A B C E; D is a material/necessary factor in inducing a legal rule in X; Y possesses E which opposes D; but D is material/necessary in inducing the legal rule for X; therefore, a transference of a legal rule between the two cases is invalid. Furthermore, in assessing the *illah*, a jurist follows an interpretive process of, first, seeking the *illah* stated explicitly in a text, or second, a certain degree of flexibility in interpreting the *illah* due to ambiguity in the text (Hallaq, 1985).⁶

4. Induction

The strongest argument, after deduction, is legal induction. The logic of this argument is that if numerous cases exist with identical material factors inducing a legal rule, then, a similar case with the same material factors may be given the same legal rule. The difference between legal induction and legal analogy is that uncertain premises, or propositions, may be strengthened with corroborating material, thereby, increasing the epistemic certainty of the legal rule. In fact, this pro-

⁶See Hallaq 85-91 also for some problems and limitations with legal analogy.

cess of corroboration, done to an indubitable extent, may even lead to the epistemic certainty of a legal rule on the level of legal deduction. Hence, legal induction takes a higher value, with regards to establishing certainty, than legal analogy (Hallaq, 1985).⁷

5. Conclusion

To conclude, the findings above demonstrate that formal logical arguments were discussed and theorized in Islamic legal texts throughout history, were negotiated regarding the nuances of their form and modes of applicability, and were utilized in concrete cases in books of Islamic legal theory. In this essay, I attempted to demonstrate the primary arguments employed for inferential reasoning in Islamic law. In contrast with the notion of KJ, these arguments were often restrictive on Islamic judges and assured a certain degree of process and procedure. However, as mentioned in the introduction, the notion of logic arguments employed as inferential forms of reasoning does not seem to be a critical component of the conception of Islamic law. And so, regarding this, I leave the reader with a couple of reflections: first is the question of the role that logic plays in jurisprudence. As demonstrated in the forms of reasoning presented above, the notion of employing logic in relation to jurisprudence is that of inferential forms of reasoning. Because these forms of reasoning are indispensable, the role of logic is a necessary one. As the influential Moroccan philosopher and logician Taha Abdurrahmane states, “Logic is a science that searches for the laws of necessity, or, in short, logic is the science of necessity.”⁸ Because logic is the methodological tool in inferring these laws, logic itself is necessary. In other words, logic is the science of necessity; the principles of jurisprudence is the science of inference and necessity; therefore, the principles of jurisprudence, in itself, is logic.⁹ The second point is that logic, or its use, is a means to an end. As such, logic is a necessary instrumentality in the process of manifesting the Shariah (Rafique, 2024).¹⁰ And so, essentially, logic, with the inferential forms of reasoning it consists of as laid out in this paper, is a necessary tool to manifest the moral and ethical precepts of Shariah.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Al-Ghazali, I. M. (2018). *Al Mustasfa Min Ilm Al Usul: On Legal Theory of Muslim Jurisprudence*. CreateSpace Independent Publishing Platform.
- Atcil, A. (2015). *Logic and Law*. The Oxford Encyclopaedia of Islam and Law.

⁷For more on how legal induction takes place by way of corroborating premises from a textual basis, see Hallaq 91-95.

⁸(Translation mine). “المنطق علم يبحث في قوانين اللزوم، أو قل باختصار المنطق هو علم اللزوم.” اللسان و الميزان أو التكوثر العقلي، طه عبد الحمين، الصفحة 87، المركز الثقافي العربي، الطبعة الثانية، الدار البيضاء، 2006.

⁹Ibid.

¹⁰For more on what I mean by manifesting the Shariah in the sense of the moral and ethical precepts of Shariah, see Rafique, “A Theory for a Virtue Ethics-Oriented Interpretation of the Qur’an.”

- Emon, A. (2009). Techniques and Limits of Legal Reasoning in Shari'a Today. *Berkeley Journal of Middle Eastern & Islamic Law*, 2, 1-26.
- Hallaq, W. B. (1985). The Logic of Legal Reasoning in Religious and Non-Religious Cultures: The Case of Islamic Law and the Common Law. *Cleveland State Law Review*, 34, 79-96.
- Hallaq, W. B. (1989). Non-Analogical Arguments in Sunni Juridical Qiyās. *Arabica*, 36, 286-306. <https://doi.org/10.1163/157005889x00133>
- Hamoudi, H. (2015). *Judges on Cushions and Under Trees: Thoughts on "Qadi Justice" and Hyperpolemics*. Islamic Law Blog. <https://islamiclaw.blog/2015/05/28/judges-on-cushions-and-under-trees-thoughts-on-qadi-justice-and-hyperpolemics/>
- Komath, M. (2024). Defeasible Reasoning in Islamic Legal Theory. *Informal Logic*, 44, 431-467. <https://doi.org/10.22329/il.v44i3.8910>
- Makdisi, J. (1985). Formal Rationality in Islamic Law and the Common Law. *Cleveland State Law Review*, 34, 97-112.
- Miller, L. B. (2020). *Islamic Disputation Theory: The Uses & Rules of Argument in Medieval Islam*. Springer. <https://doi.org/10.1007/978-3-030-45012-0>
- Rabb, I. A. (2015). Against Kadijustiz: On the Negative Citation of Foreign Law. *Suffolk University Law Review*, 48, 344-377.
- Rafique, R. (2024). A Theory for a Virtue Ethics-Oriented Interpretation of the Qur'an. *Open Journal of Philosophy*, 14, 602-608. <https://doi.org/10.4236/ojpp.2024.143040>
- Weber, M. (1968). *Economy and Society*. Bedminster.

Non-English Sources

المنطق علم يبحث في قوانين اللزوم، أو قل باختصار المنطق هو علم اللزوم. "اللسان و الميزان أو التكوثر العقلي، طه عبد الحمين، الصفحة 87، المركز الثقافي العربي، الطبعة الثانية، الدار البيضاء، 2006