

Difference Between al-Shubha al- ukmīyyah and al-Shubha al-Maw ūīyyah

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Jurists and scholars of legal theory divide uncertainty into two 1) those that concern a law (al-shubha al- ukmīyyah), and 2) those that concern the subject or an instance of a law (al-shubha al-maw ūīyyah). Perhaps the simplest way these two uncertainties can be explained is through the following three perspectives

The Root of Uncertainty .1

The root cause of al-shubha al- ukmīyyah is one's ignorance with respect to the legislation of a law. In other words, one does not know what law the Legislator has ordained for him or her. As far as one's access to the legislated laws is only possible through the Legislator's own words, one can say that the origin of al-shubha al- ukmīyyah is rooted in the evidence that we have in our hands. Some of this evidence could be lost, some of it could be ambiguous, or .some of them are contradictory

Al-Shubha al- ukmīyyah itself can be further divided into three

- a) Ignorance of the law itself An individual does not know what type of law God has legislated; for example, one does not know whether burying a deceased hypocrite has a ruling of obligation (wujūb) or prohibition (urmah).
- b) Ignorance of what the law is connected to (muta'allaq) An individual does not know to what action a law is connected to; for example, one does not know if wujūb has been legislated for the Friday prayers or for uhr. In this scenario, what the law (i.e. obligation) is connected to is unknown. Amongst contemporary scholars of legal theory, muta'allaq of a ukm is that action to which a law is connected to.
- c) Ignorance of the subject-matter of a law An individual does not know under what conditions the Legislator decided for there to have been a law; for example, one does not know whether permissibility of lying in an emergency is conditioned to incapability or only if it is a black lie (tawrīyah).

It is clear that in all these cases, the uncertainty of an individual is related to the realm of legislation. They either do not know what law the Legislator has legislated, or for what action it has been legislated upon, or under what conditions a law actually exists. However, the cause of

al-shubha al-maw ūṭīyyah is an individual's ignorance to the instance of a legislated law. This itself is divided into two

a) Ignorance of whether the subject-matter has been realized An individual does not know whether the subject-matter of a law (i.e. conditions that a law's application is based on) has been realized in external reality or not; for example, one does not know whether they have become capable (musta ṭ') or not.

b) Ignorance of whether the muta'allaq of a subject-matter has been realized An individual does not know whether the muta'allaq of a law has come into existence in external reality or not. For example, they may not know whether they performed a pilgrimage during their youth or not, or whether they performed it correctly or incorrectly.

In other words, in al-shubha al-maw ūṭīyyah an individual does not know whether a subject-matter of a law, or what it is connected to, has an instance in external reality or not. This is why sometimes al-shubha al-maw ūṭīyyah is also called uncertainty concerning an instance (al-shubha al-mi dāqīyyah). This term is in contrast to uncertainty concerning a concept (al-shubha al-mafhūmīyyah), which is a type of al-shubha al- ukmīyyah, since it refers to a case where an individual does not know what the Legislator meant by a specific concept that has been taken into consideration during legislation. For example, an individual may not know whether the term ghinā in the evidence al-ghinā arāmun is a concept that refers to a vibrant sound, or a melodious sound, or both

Universality and Particularity .2

The author has mentioned numerous times that al-shubha al- ukmīyyah is universal, and al-shubha al-maw ūṭīyyah is particular.^[1] For example, uncertainty regarding the impurity of alcohol is al-shubha al- ukmīyyah, and uncertainty regarding the impurity of a specific cloth is al-shubha al-maw ūṭīyyah. Even though this criterion is true for the most part, it is not a universal rule. This is because sometimes al-shubha al-maw ūṭīyyah can also be universal. As an example, one may doubt whether sharks have scales, or doubt what responsibility a hermaphrodite has.

Likewise, it is rationally possible to imagine al-shubha al- ukmīyyah which is particular. For example, it is possible for God to legislate a specific law for Zayd with respects to one of His .(swt) Prophets, and Zayd is uncertain as to what this law is

Acting upon Indications (Amārāt) and Procedural Principles (al-U ūl al-'Amalīyyah) .3

In both cases of uncertainty, an individual is first responsible for referring to all non-certain amārāt, and if relevant ones are absent, they are to refer to al-ū ūl al-'amalīyyah. However, the

difference is that in al-shubha al- ukmīyyah the jurists have a consensus that before acting on an amārah it is obligatory to investigate whether a contradicting amārah exists or not, and before applying a procedural principle they consider it obligatory to exhaustively investigate whether an amārah exists or not. This is to ensure that there is no evidence that might exist which contradicts with an amārah or prevents us from applying a procedural principle. Given this, before acting on a report of a trustworthy narrator, one must investigate all reliable reports and only after attaining despair with respects to finding contradictory evidence, one can give an edict based off of the report. Since such exhaustive investigation into contradictions and as well as looking into detailed evidence can only be carried out by a jurist, applying amārāt and procedural principles in al-shubha al- ukmīyyah is only permissible for a jurist. As for al-shubahāt al-maw ūīyyah, jurists do not consider it obligatory to look for contradictory reports in order to act on an amārāh, and neither do they consider looking for an amārāh obligatory in order to apply a procedural principle. Therefore, if two testimonies or a procedural principle is established with respects to the purity of a cloth for an individual, they can act in accordance to that without any delay. They do not need to further research or look into whether there exists another amārah which might suggest the cloth is impure. Thus, since no specific investigation with respects to amārāt and procedural principles is required for al-shubha al-maw ūīyyah, referring to them is not restricted to the jurists, but .rather even their followers can refer to them on their own

Note

This article is a summary of lessons given by Sayyid Mu ammad ādiq 'Alam al-Huda. The original post in Persian can be found here http://st.me/Alamolhoda_org209

Farā'id al-Ū ūl, vol. 2, pg. 18-19 [1]