ISLAMIC LEGAL SYSTEM AND LEBANON LEGAL SYSTEM.

.PRESENTED BY ABDEL ILAH HOUJAIRY 20LLA1

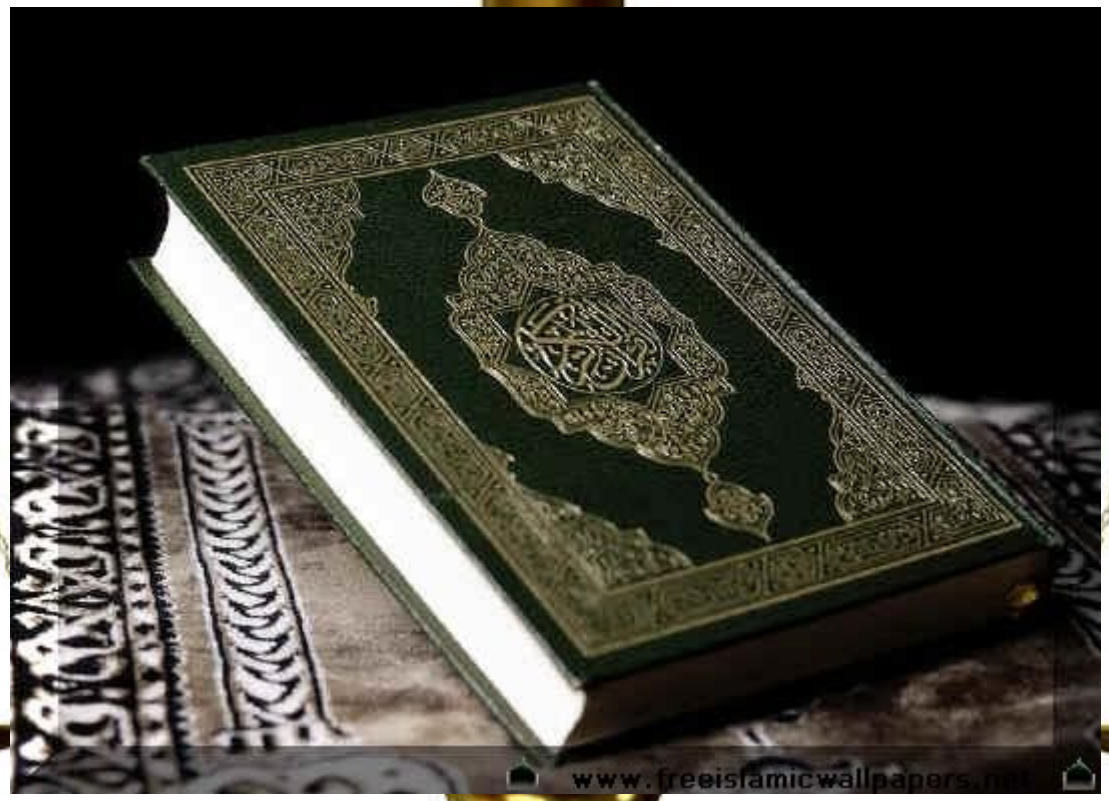
:PLANE

- DEFINITION SHARIA.
- HISTORY.
- PRINCIPLES OF JURISPRUDENCE.
- SOURCES OF SHARIA.
- LEGAL SYSTEM OF LEBANON.
- JUDICIAL FOUNDATION AND LEGAL CODIFICATION.
- JUDICIAL STRUCTURE AND COURT SYSTEM.
- JUDICIAL AUTHORITHY AND APPOINTMENT OF JUDGES.
- SUPREME COURT
- CONSTITUTIONALLY OF LAWS.
- SPECIAL BODIES.
- JUDICIAL EDUCATION AND PROFESSION.

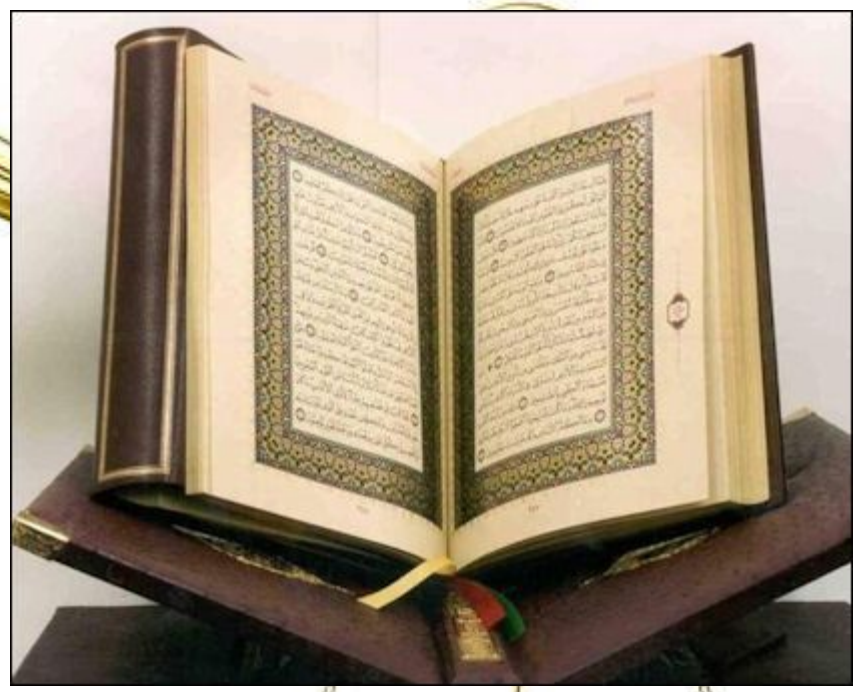
:SHARIA

Sharia is a religious law forming part of the Islamic tradition. It is derived from the religious precepts of Islam and is based on the sacred scriptures of Islam, particularly the Quran and the Hadith. In Arabic, the term sharīʿah refers to God's immutable divine law and is contrasted with fiqh, which refers to its human scholarly interpretations. The manner of its application in modern times has been a subject of dispute between Muslims and Secularists

:HISTORY

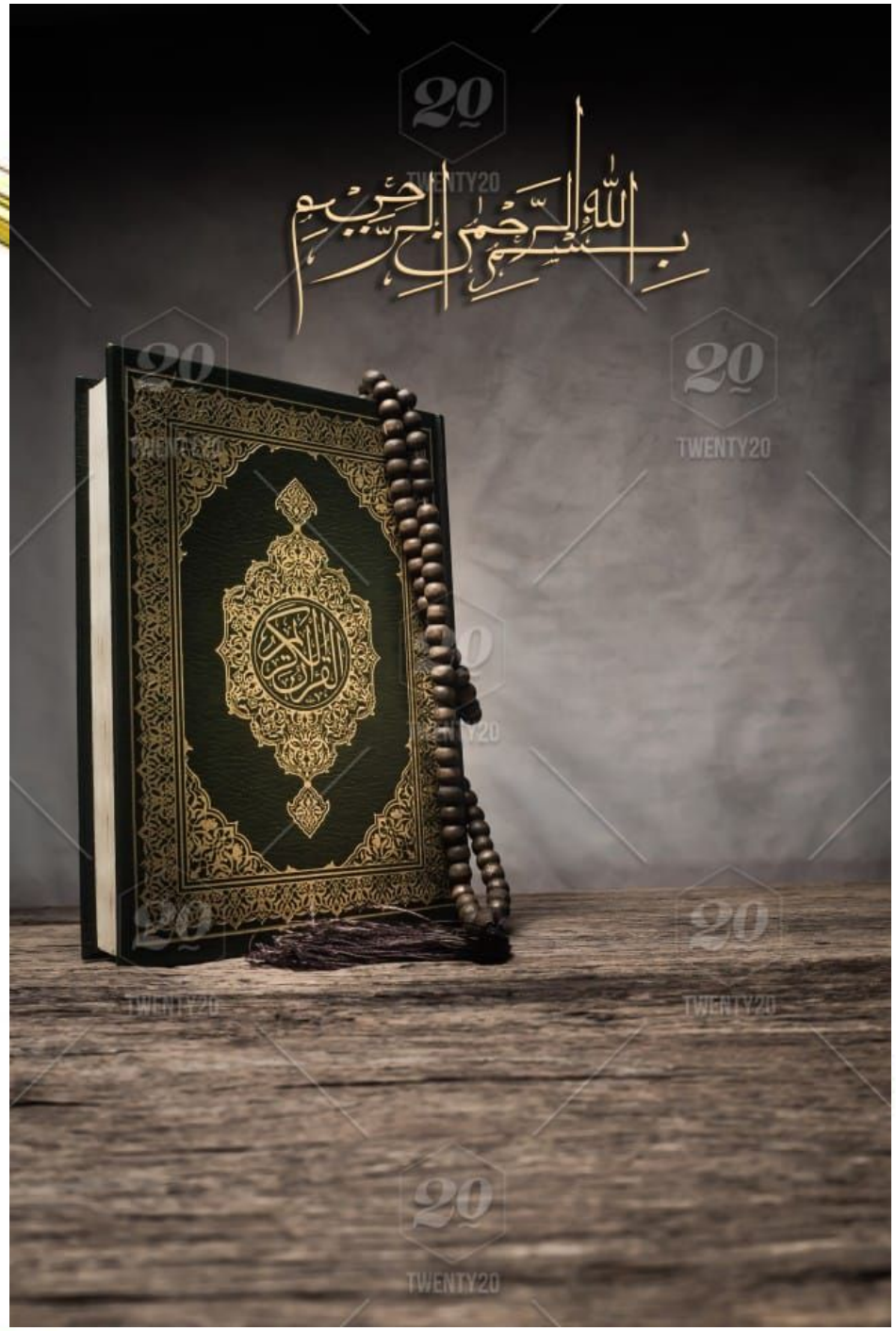


A similar legal concept Eye for an eye first recorded in the Code of Hammurabi. Qisas was a practice used as a resolution tool in inter-tribal conflicts in pre-Islamic Arab society. The basis of this resolution was that a member from the tribe to which the murderer belonged was handed over to the victim's family for execution, equivalent to the social status of the murdered person. The condition of social equivalence meant the execution of a member of the murderer's tribe who was equivalent to the murdered, in that the murdered person was male or female, slave or free, elite or commonone. For example, only one slave could be killed for a slave, and a woman for a woman. In these cases, compensatory payment (Diyya) could be paid to the family of the murdered person. On this pre-Islamic understanding added a debate about whether a Muslim can be executed for a non-Muslim during the Islamic period

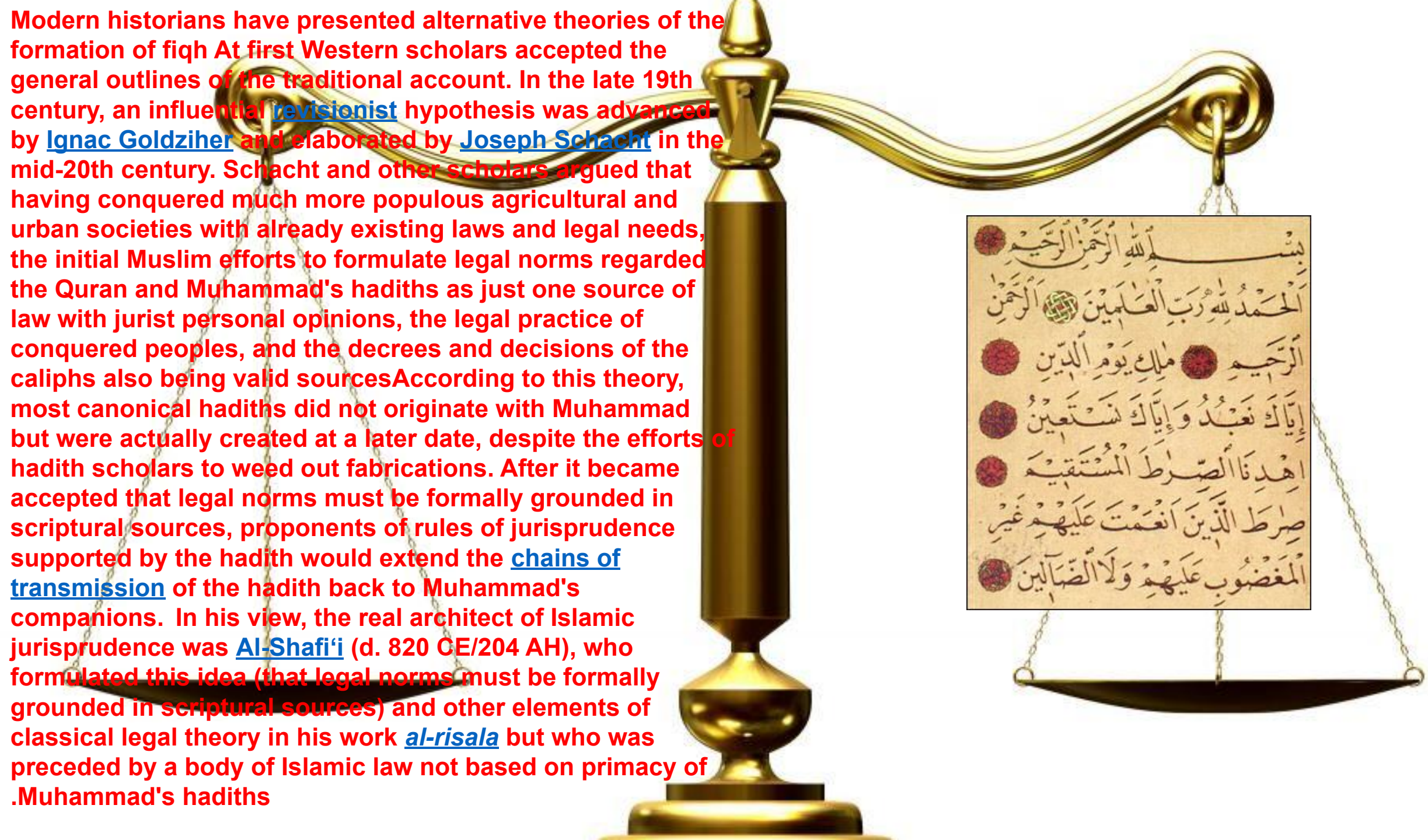


The main verse for implementation in Islam is Al Baqara; 178 verse; : 'Believers! Retaliation is ordained for you regarding the people who were killed. Free versus free, captive versus captive, woman versus woman. Whoever is forgiven by the brother of the slain for a price, let him abide by the custom and pay ".the price well

According to the traditional Muslim view, the major precepts of Sharia were passed down directly from the Islamic prophet Muhammad without "historical development, and the emergence of Islamic jurisprudence (*fiqh*) also goes back to the lifetime of Muhammad. In this view, his companions and followers took what he did and approved of as a model (sunnah) and transmitted this information to the succeeding generations in the form of hadith.[6][7] These reports led first to informal discussion and then systematic legal thought, articulated with greatest success in the eighth and ninth centuries by the master jurists Abu Hanifah, Malik ibn Anas, Al-Shafi'i, and Ahmad ibn Hanbal, who are viewed as the founders of the Hanafi, Maliki, Shafiʿi, and Hanbali legal schools .(*madhhabs*) of Sunni jurisprudence



Modern historians have presented alternative theories of the formation of fiqh At first Western scholars accepted the general outlines of the traditional account. In the late 19th century, an influential revisionist hypothesis was advanced by Ignac Goldziher and elaborated by Joseph Schacht in the mid-20th century. Schacht and other scholars argued that having conquered much more populous agricultural and urban societies with already existing laws and legal needs, the initial Muslim efforts to formulate legal norms regarded the Quran and Muhammad's hadiths as just one source of law with jurist personal opinions, the legal practice of conquered peoples, and the decrees and decisions of the caliphs also being valid sourcesAccording to this theory, most canonical hadiths did not originate with Muhammad but were actually created at a later date, despite the efforts of hadith scholars to weed out fabrications. After it became accepted that legal norms must be formally grounded in scriptural sources, proponents of rules of jurisprudence supported by the hadith would extend the chains of transmission of the hadith back to Muhammad's companions. In his view, the real architect of Islamic jurisprudence was Al-Shafi'i (d. 820 CE/204 AH), who formulated this idea (that legal norms must be formally grounded in scriptural sources) and other elements of classical legal theory in his work *al-risala* but who was preceded by a body of Islamic law not based on primacy of .Muhammad's hadiths



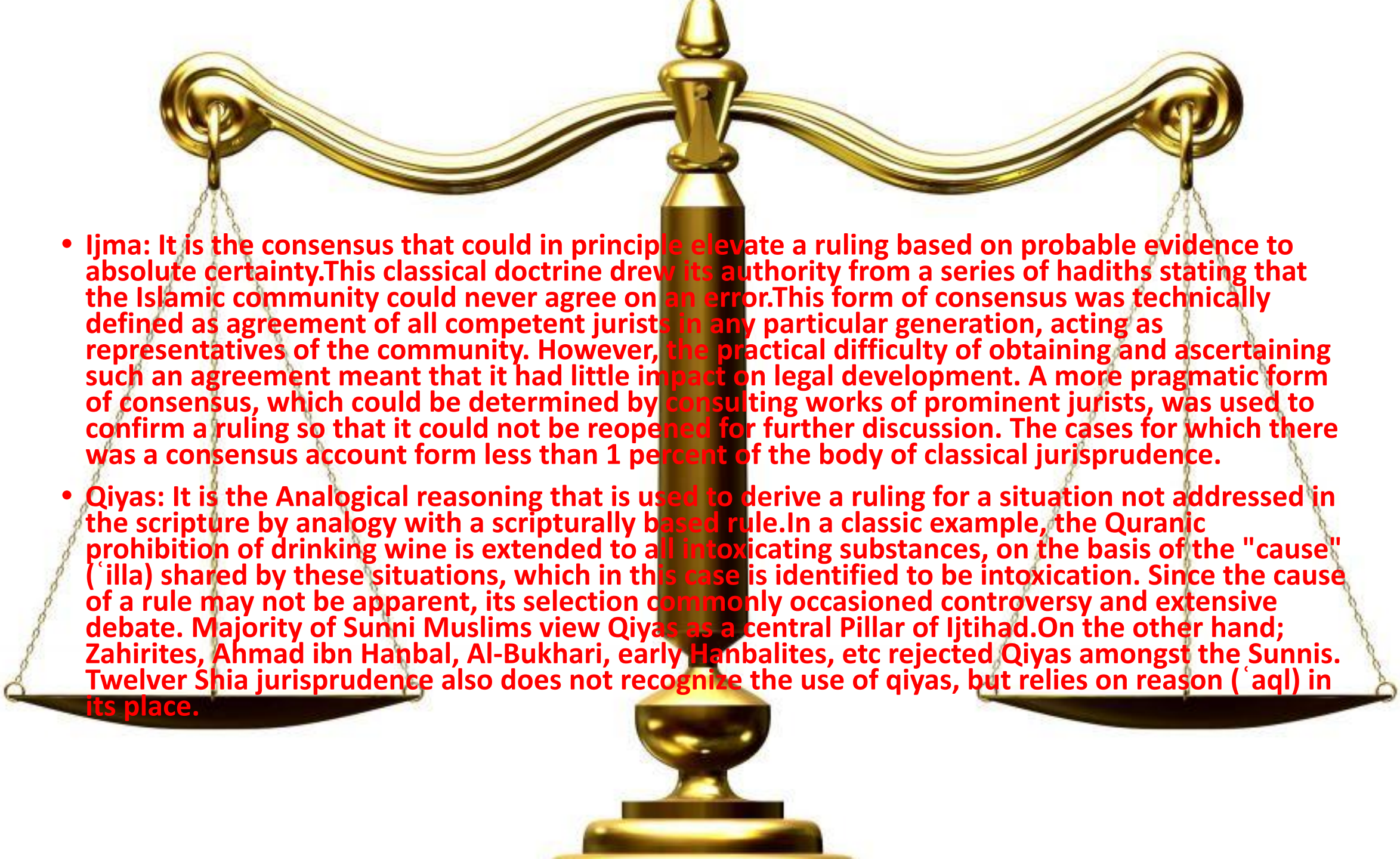
While the origin of hadith remains a subject of scholarly controversy, this theory (of Goldziher and Schacht) has given rise to objections, and modern historians generally adopt more cautious, intermediate positionsand it is generally accepted that early Islamic jurisprudence developed out of a combination of administrative and popular practices shaped by the religious and ethical precepts of Islam It continued some aspects of pre-Islamic laws and customs of the lands that fell under Muslim rule in the aftermath of the early conquests and modified other aspects, aiming to meet the practical need of establishing Islamic norms of behavior and adjudicating disputes arising in the early Muslim communitiesJuristic thought gradually developed in study circles, where independent scholars met to learn from a local master and discuss religious topicsAt first, these circles were fluid in their membership, but with time distinct regional legal schools crystallized around shared sets of methodological principles. As the boundaries of the schools became clearly delineated, the authority of their doctrinal tenets came to be vested in a master jurist from earlier times, who was henceforth identified as the school's founder In the course of the first three centuries of Islam, all legal schools came to accept the broad outlines of classical legal theory, according to which Islamic law had to be firmly rooted in the Quran and .hadith

:JURIDPRUDENCE

- Classical jurists held that human reason is a gift from God which should be exercised to its fullest capacity. However, they believed that use of reason alone is insufficient to distinguish right from wrong, and that rational argumentation must draw its content from the body of transcendental knowledge revealed in the Quran and through the sunnah of Muhammad.
- Traditional theory of Islamic jurisprudence elaborates how scriptures should be interpreted from the standpoint of linguistics and rhetoric. It also comprises methods for establishing authenticity of hadith and for determining when the legal force of a scriptural passage is abrogated by a passage revealed at a later date. In addition to the Quran and sunnah, the classical theory of Sunni fiqh recognizes two other sources of law: juristic consensus (ijmaʿ) and analogical reasoning (qiyas). It therefore studies the application and limits of analogy, as well as the value and limits of consensus, along with other methodological principles, some of which are accepted by only certain legal schools. This interpretive apparatus is brought together under the rubric of ijtihad, which refers to a jurist's exertion in an attempt to arrive at a ruling on a particular question. The theory of Twelver Shia jurisprudence parallels that of Sunni schools with some differences, such as recognition of reason (ʿaql) as a source of law in place of qiyas and extension of the notion of sunnah to include traditions of the imams.

:SOURCES OF SHARIA

- Quran: In Islam, the Quran is considered to be the most sacred source of law.Classical jurists held its textual integrity to be beyond doubt on account of it having been handed down by many people in each generation, which is known as "recurrence" or "concurrent transmission" (tawātur).Only several hundred verses of the Quran have direct legal relevance, and they are concentrated in a few specific areas such as inheritance, though other passages have been used as a source for general principles whose legal ramifications were elaborated by other means.
- Hadith: The body of hadith provides more detailed and practical legal guidance, but it was recognized early on that not all of them were authentic Early Islamic scholars developed a methodology for evaluating their authenticity by assessing trustworthiness of the individuals listed in their transmission chains. These criteria narrowed down the vast corpus of prophetic traditions to several thousand "sound" hadiths, which were collected in several canonical compilations The hadiths which enjoyed concurrent transmission were deemed unquestionably authentic; however, the vast majority of hadiths were handed down by only one or a few transmitters and were therefore seen to yield only probable knowledge The uncertainty was further compounded by ambiguity of the language contained in some hadiths and Quranic passages. Disagreements on the relative merits and interpretation of the textual sources allowed legal scholars considerable leeway in formulating alternative rulings.



- Ijma: It is the consensus that could in principle elevate a ruling based on probable evidence to absolute certainty.This classical doctrine drew its authority from a series of hadiths stating that the Islamic community could never agree on an error.This form of consensus was technically defined as agreement of all competent jurists in any particular generation, acting as representatives of the community. However, the practical difficulty of obtaining and ascertaining such an agreement meant that it had little impact on legal development. A more pragmatic form of consensus, which could be determined by consulting works of prominent jurists, was used to confirm a ruling so that it could not be reopened for further discussion. The cases for which there was a consensus account form less than 1 percent of the body of classical jurisprudence.
- Qiyas: It is the Analogical reasoning that is used to derive a ruling for a situation not addressed in the scripture by analogy with a scripturally based rule.In a classic example, the Quranic prohibition of drinking wine is extended to all intoxicating substances, on the basis of the "cause" (ʿilla) shared by these situations, which in this case is identified to be intoxication. Since the cause of a rule may not be apparent, its selection commonly occasioned controversy and extensive debate. Majority of Sunni Muslims view Qiyas as a central Pillar of Ijtihad.On the other hand; Zahirites, Ahmad ibn Hanbal, Al-Bukhari, early Hanbalites, etc rejected Qiyas amongst the Sunnis. Twelver Shia jurisprudence also does not recognize the use of qiyas, but relies on reason (ʿaql) in its place.

:LEGAL SYSTEM OF LEBANON

:JUDICIAL FOUNDATION

- The legal system of Lebanon is based on a combination of Civil Law, Islamic, and Ottoman legal principles, and the laws of the Lebanese legislature. Article 20 of the Lebanese Constitution guarantees that the judiciary is founded as an independent entity, subject only to the law. Decree Law No. 7855 of 1961, which is known as the Judicial Organization Law, governs the structure and function of the judiciary.

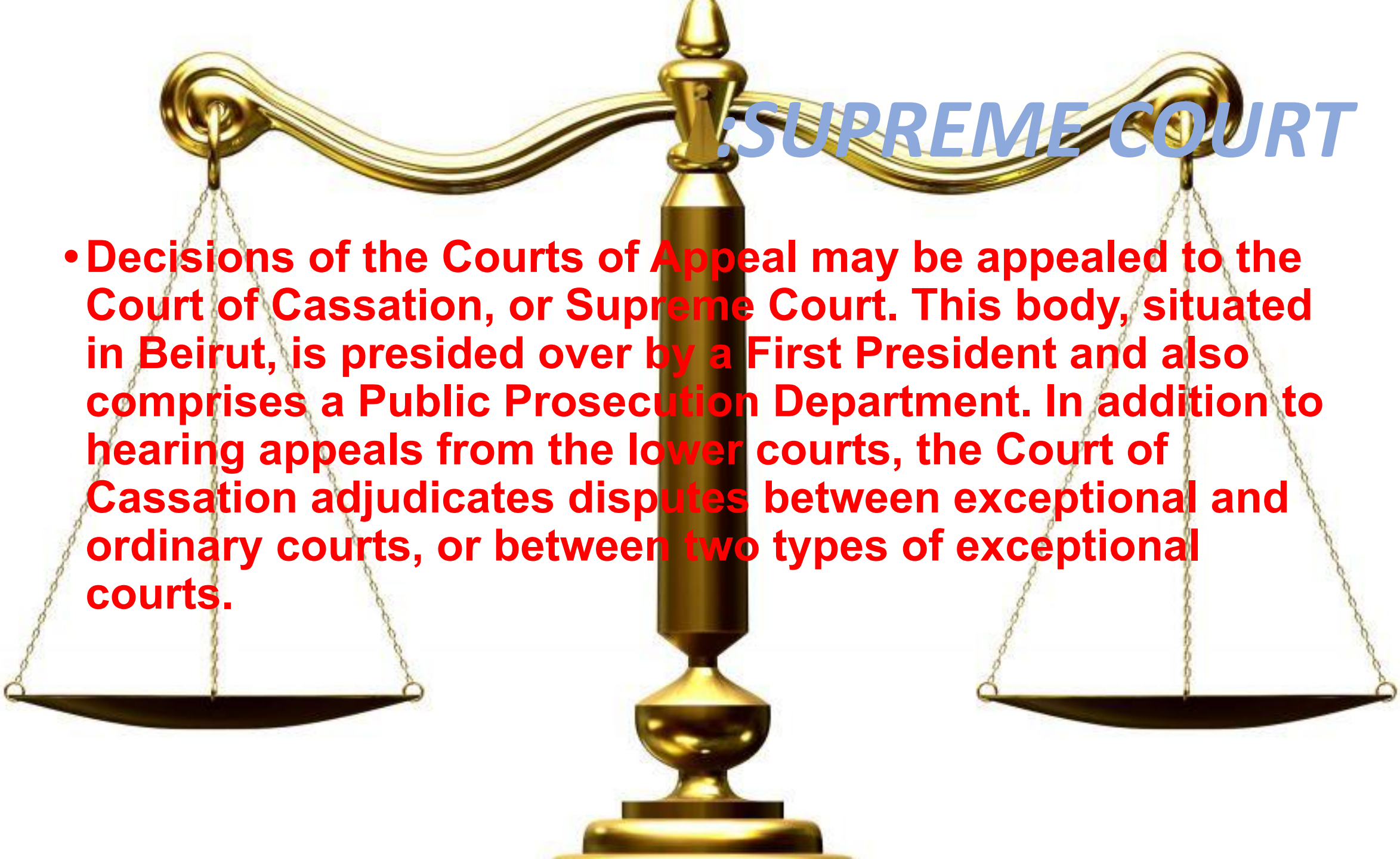
- The legal system is governed by a series of specialized codes of law. These include the Code of Obligations and Contracts of 1932, which is the primary source for civil law; the Code of Civil Procedure, contained in Decree Law No. 90 of 1983; the Code of Commerce of 1942; the Penal Code, originally formulated in Decree Law No. 340 of 1943; and the Code of Criminal Procedure.

: JUDICIAL STUCTURE

- The judiciary is comprised of ordinary and exceptional courts. The ordinary courts are arranged in a hierarchy, and they are subdivided into criminal and civil departments. At the base of the structure are the Courts of First Instance. These Courts are organized into chambers of three judges each, although a single judge may adjudicate civil cases of lesser value and minor criminal cases. Judgments from the Courts of First Instance can be appealed to the Courts of Appeal, which have both appellate and original jurisdictions over felonies. There are six Courts of Appeal, one located in each district (Mohafazat). They are presided over by a First President, or Chief Judge, with supervisory and administrative duties, and comprise a Public Prosecution Department headed by an attorney general.

:JUDICIAL AUTHORITY

- The Supreme Judicial Council, headed by the First President, or Chief Justice, of the Court of Cassation, is in charge of judicial appointments, transfers, training and disciplinary actions. Additional members of the Council include the Attorney General of the Court of Cassation, the head of and an inspector from the Judicial Inspection Board, and three justices appointed by decree who serve two-year appointments. Laws are published in the official Gazette and cases are published in the Lebanese Judicial Review, a publication of the Ministry of Justice.



:SUPREME COURT

- Decisions of the Courts of Appeal may be appealed to the Court of Cassation, or Supreme Court. This body, situated in Beirut, is presided over by a First President and also comprises a Public Prosecution Department. In addition to hearing appeals from the lower courts, the Court of Cassation adjudicates disputes between exceptional and ordinary courts, or between two types of exceptional courts.

:CONSTITUTIONALY OF LAWS

- The Constitutional Council, created in 1990, judges the constitutionality of laws and adjudicates election disputes.

Special Bodies

- The Council of the State, established in 1924, is empowered to try disputes between individuals and the state. The Shari'a Courts, which settle matters of personal status, are divided into Sunni and Shi'a units. The Ecclesiastical Courts, composed of various Christian and Jewish divisions, settle matters of personal status for individuals from their respective communities. In addition, there are several other courts with specialized jurisdiction, including the Labor Court, Land Court, Customs Committee, Military Courts, and Juvenile Courts.

:JUDICIAL EDUCATION AND PROFESSION

- There are four principal faculties of law in Lebanon. The Bar Association of Lebanon was first organized by the Decree of February 6, 1919.
- It organizes the profession into two Bars in Tripoli and in Beirut. A president, elected for a two-year term, and a 12-member panel, elected for three-year terms, head each Bar Association. All practicing lawyers must be registered in the appropriate Bar.

.THE END