



96347 - Kitaab al-Usool by al-Shaashi and commentaries thereon, and what is meant by the word al-hukmiyaat

the question

In the book Usool al-Fiqh by al-Shaashi, which is about al-mushtarak wa'l-mu'awwal, there is the word al-hukmiyaat. What does it mean? I hope you can tell me if there are any commentaries on this book.

Detailed answer

Praise be to Allah.

Firstly:

The book known as Usool al-Shaashi is one of the well known Hanafi books, whose author is Abu 'Ali al-Shaashi: Ahmad ibn Muhammad ibn Ishaq Nizaam al-Deen, the Hanafi faqeeh (d. 344 AH).

He was one of the students of Abu'l-Hasan al-Karkhi, who praised him and said: No one came to us who was more learned than Abu 'Ali. Al-Shaashi lived in Baghdad and studied there.

The book of al-Shaashi was published in Kanpoor in India, by the Majeedi Press, in 1388 AH, and by Dar al-Kitaab al-'Arabi in Beirut in 1402 AH with its commentary, 'Umdat al-Hawaashi Sharh Usool al-Shaashi by Muhammad Fayd al-Hasan al-Kankoohi. It was published by Dar al-Kutub al-'Ilmiyyah in Beirut in 1423 AH, edited by 'Abd-Allaah Muhammad al-Khaleeli. The book was also published by Dar al-Gharb al-Islami in 1422 AH, edited by Muhammad Akram al-Nadawi.

Commentaries on this book include the following:

1. A commentary by al-Mawla Muhammad ibn al-Hasan al-Khawarazmi (d. 781 AH).
2. Husool al-Hawaashi 'ala Usool al-Shaashi by Muhammad Hasan, who was known by the kunyah of Abu'l-Hasan ibn Muhammad al-Sanbahli al-Hindi. Published in Nambshi Nawlakshoor 1302 AH.



3. 'Umdat al-Hawaashi by al-Mawla Muhammad Fayd al-Hasan al-Kankoohi, which was published with Usool al-Shaashi.

4. Tas-heel Usool al-Shaashi by Shaykh Muhammad Anwar al-Badakhshaani. This was published by Idaarat al-Qur'aan wa'l-'Uloom al-Islamiyyah in Karachi, first edition 1412 AH.

See the Introduction to Usool al-Shaashi by Shaykh Khaleel al-Mees.

Secondly:

As for the meaning of the word hukmiyaat that is mentioned in the book referred to and in other Hanafi books:

What it means is contracts, marriage, divorce and financial transactions, which are things that begin with words. They are intangible things in return for tangible things, in their view, and tangible things are things that involve physical actions, such as beating and slaughtering.

There follow some comments from their books which explain what is meant by this word:

1-

'Uthmaan ibn 'Ali al-Zayla'i al-Hanafi (may Allaah have mercy on him) said:

If one who is swearing an oath with regard to divorce and marriage and other such hukmiyaat says 'I intend not to speak of it or initiate it,' this may be accepted from him on the basis of honesty not on the basis of what has happened, unlike if he were to say concerning slaughtering a sheep or beating a slave: 'I intend not to do it myself'; in that case this may be accepted from him on the basis of honesty and on the basis of what has happened.

Tabyeen al-Haqaa'iq Sharh Kanz al-Daqaa'iq (3/148).

2-

He also (may Allaah have mercy on him) said:



Moreover, these things require prevention with regard to words and not deeds, because prevention has to do with hukmiyaat and not with tangible matters. To execute one's words comes under the heading of hukmiyaat. Don't you see that it may be accepted or rejected, but actions are something tangible that cannot be prevented once they have taken place. So prevention is not applicable to them.

Tabyeen al-Haqaa'iq Sharh Kanz al-Daqaa'iq (5/191).

3-

Muhammad ibn Farmooza Mulla Khusr al-Hanafi (may Allaah have mercy on him) said:

... the third has to do with tangible actions mentioned in al-Bahr, even if he intends to carry it out by himself only. He will be believed if he said that on the basis of honesty and on the basis of what happened with regard to tangible matters such as beating and slaughtering. This may be accepted from him only on the basis of honesty with regard to hukmiyaat, such as marriage and divorce, as it says in al-Fath.

Durar al-Hukkaam Sharh Gharar al-Ahkaam (2/57).

The book al-Bahr from which he quoted is one of the Hanafi books, whose full title is al-Bahr al-Raa'iq Sharh Kanz al-Daqaa'iq(4/378):

This explains the phrase used by al-Shaashi (may Allaah have mercy on him), which is that he was referring to financial transactions among the hukmiyaat, when he said:

The example of al-hukmiyaat when we say if there is nothing specified with regard to currency, then it should be taken as what is mostly used as the currency of the land they are in, because if there was some confusion regarding the currency, then the transaction is invalid.

Here he gave an example of hukmiyaat on business transactions, and that is clear, as quoted before. Therefore what is meant by this word is verbal, intangible contracts.

And Allaah knows best.