

DIAMOND PARTNERS



PLATINUM PARTNERS



GOLD PARTNERS





# Dynamic Fiqh (Jurisprudence) Applications In Takaful

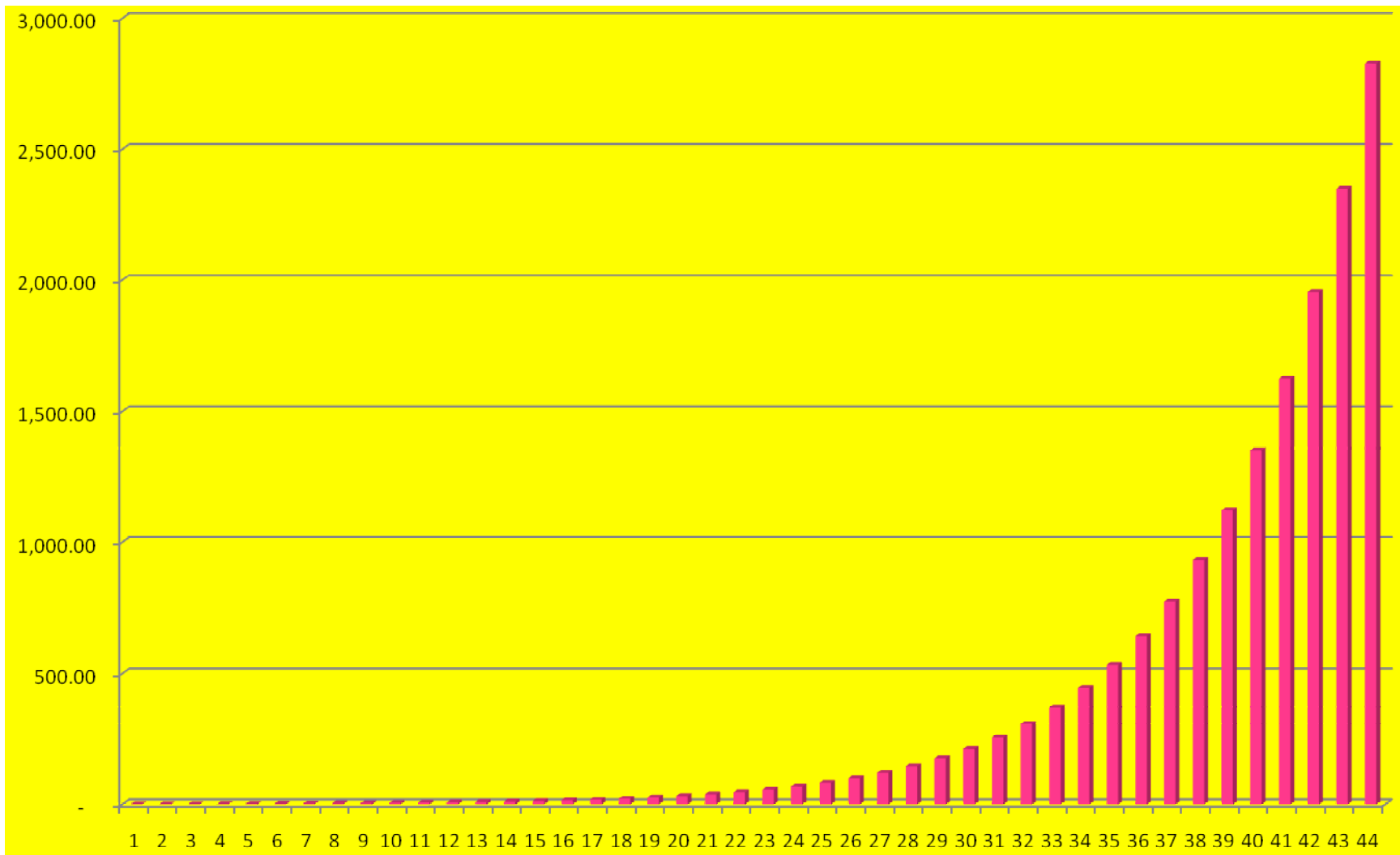
Azman Ismail



## Introduction

- In North America and Europe the insurance penetration is 8.5% and 7.5% of GDP
- Japan and the four Asian Tigers -> 11.4%.
- Most Muslim countries -> less than 2%.

## Berkshire Hathaway



## Dynamism of Fiqh

### MUTAKALLIMUN

al-Basri  
al-Juwaini  
al-Ghazali  
al-Amidi  
al-Baidawi

### MUTA'AKHIRIN

al-Razi  
al-Baghdadi  
Ibn al-Subki  
Ibn al-Hamam  
Al-Tufi

### KHALAFIYYUN

Shaukani  
al-Mihlawi  
Khudari Bek

### FUQAHA

al-Karkhi  
al-Jassas  
al-Dabusi  
al-Bazdawi  
al-Nasafi

### MAQASIDIYUN?

Ibn Abdul Salam  
al-Qarafi  
Ibn Taimiyah  
Ibn Qayyim  
al-Shatibi

### /MU'ASIRUN

Ibn Ashur  
Al-Qaradawi  
Al-Raisuni

800 AD

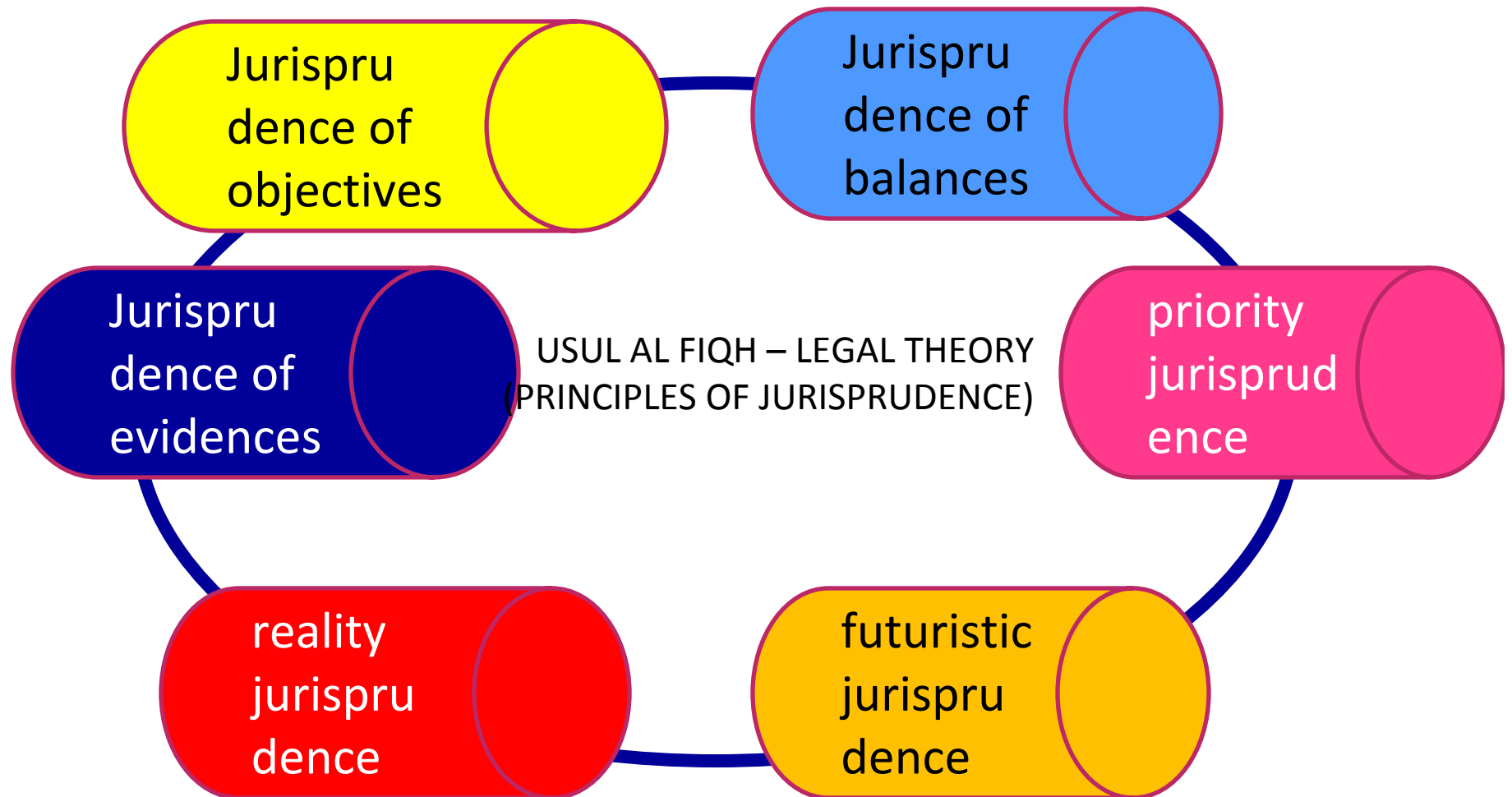
1200 AD

1600 AD

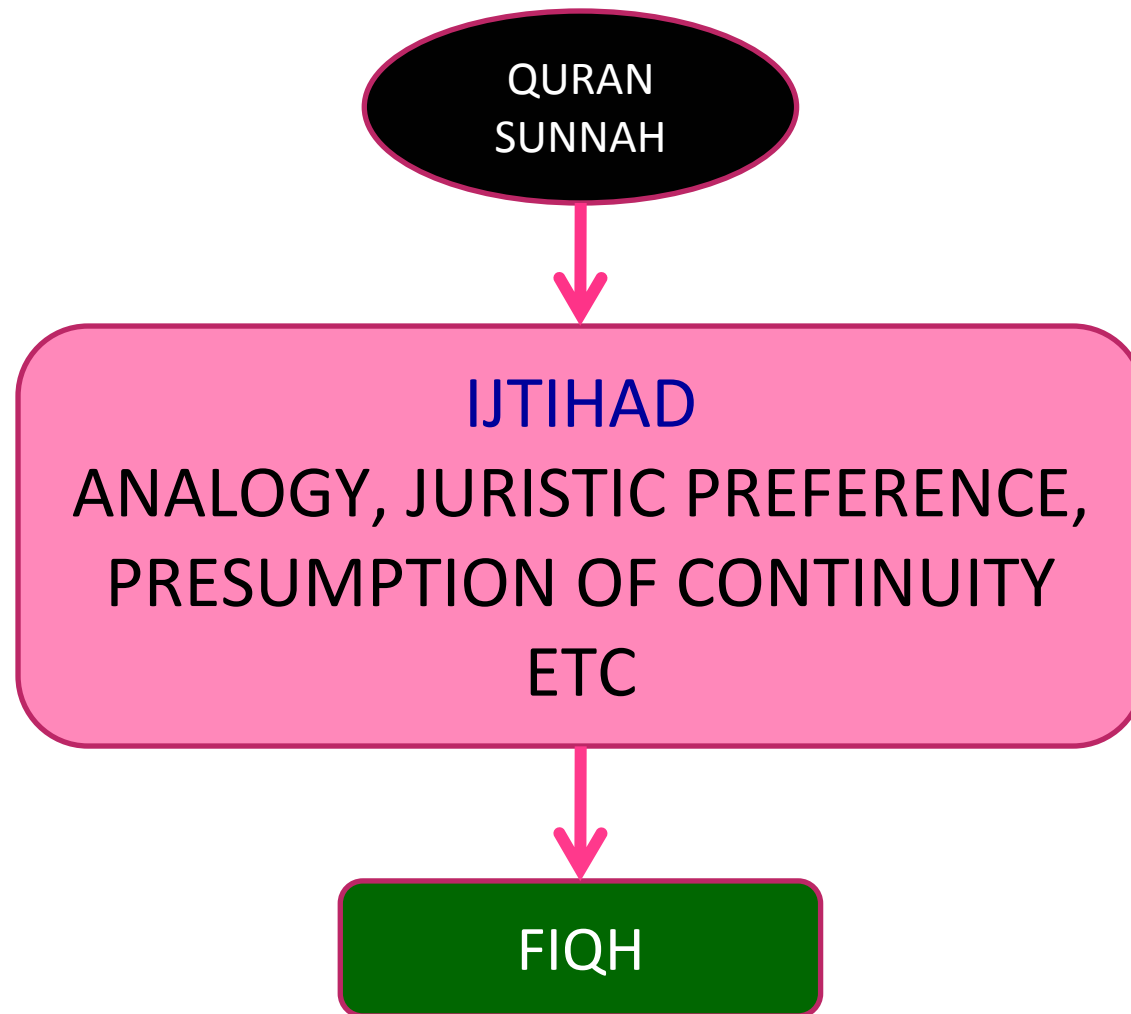
2000 AD



## RELATIONSHIP



# Dynamism of Fiqh



## IJTIHAD...

- (1) jurists who were capable of ijtihad existed at nearly all times;
- (2) ijtihad was used in developing positive law after the formation of the schools;
- (3) up to ca. 500 A.H. there was no mention whatsoever of the phrase 'insidad bab al-ijtihad' or of any expression that may have alluded to the notion of the closure;
- (4) the controversy about the closure of the gate and the extinction of mujtahids prevented jurists from reaching a consensus to that effect.

## Contemporary Advocates...

- Eg Qaradawi
  - ijtiḥad tarjīḥi intiqāʿi
    - extraction and comparison of the opinions of classical jurists and choosing the strongest opinion
  - ijtiḥad ibdaʿi inshaʿi
    - creative constructive ijtiḥad => developing a new ijtiḥad that has never existed before because of new developments in the contemporary world

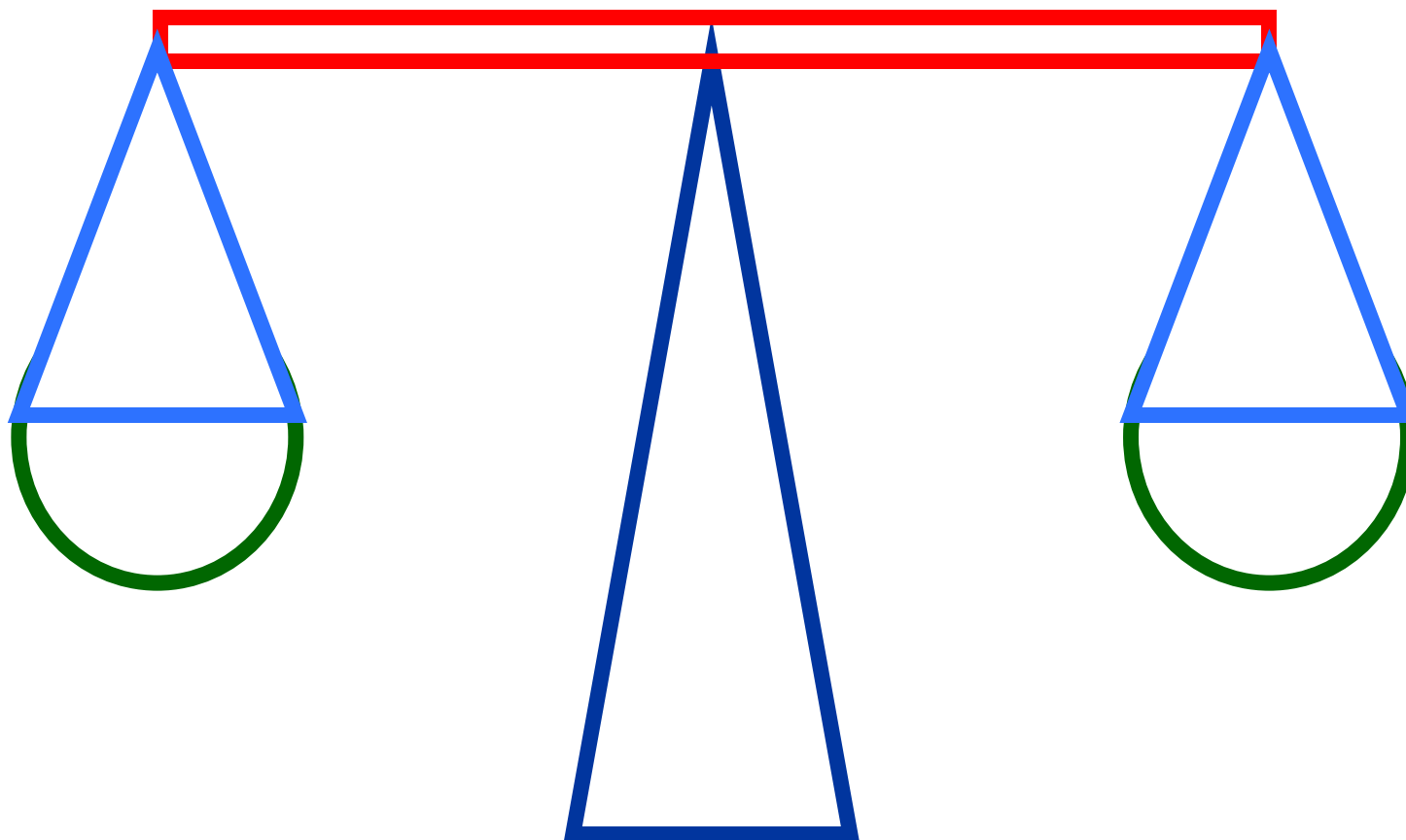
## Requirements for a mujtahid

- 1. Know the 500 verses needed in law
- 2. Know the way to relevant hadith literature;
- 3. Know the substance of furu' works and the points subject to ijma
- 4. Know the methods by which legal evidence is derived from the texts.
- 5. Know the Arabic language;
- 6. Know the rules governing the doctrine of abrogation.
- 7. Investigate the authenticity of hadith.

## Methodology of usul al-fiqh

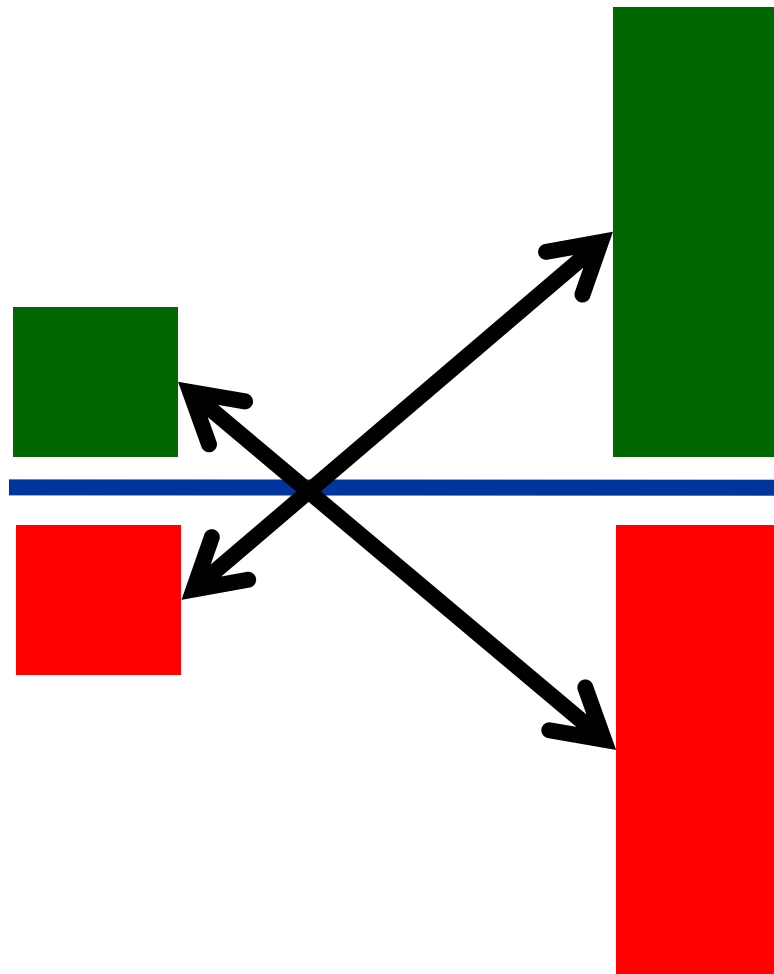
- established to discover the law of God
- maqasid al-shariah (objectives of the shariah)
  - Muhammad 'Abduh, Muhammad Rashid Rida, 'Abd al-Razzaq Sanhuri, 'Abd al-Wahhab Khallaf, Muhammad Abu Zahra, and Muhammad Hashim Kamali

## FIQH OF BALANCES



# PRIORITY JURISPRUDENCE

MASALIH  
MAFASID



FIQH  
AULAWIYAT

# MASLAHAH

MU'TABARAH

MURSALAHAH

MULGHAH

FIQH  
AULAWIYAT

## EXAMPLE

أولوية العمل الدائم على العمل المنقطع  
أولوية الأصول على الفروع  
أولوية حقوق الجماعة على حقوق الأفراد



LESSER **X**

UNCERTAIN **X**

INDIVIDUAL **X**

TEMPORARY **X**

SUBSIDIARY **X**

IMMEDIATE WEAK **X**

GREATER ✓

CERTAIN ✓

GROUP ✓

PERMANENT ✓

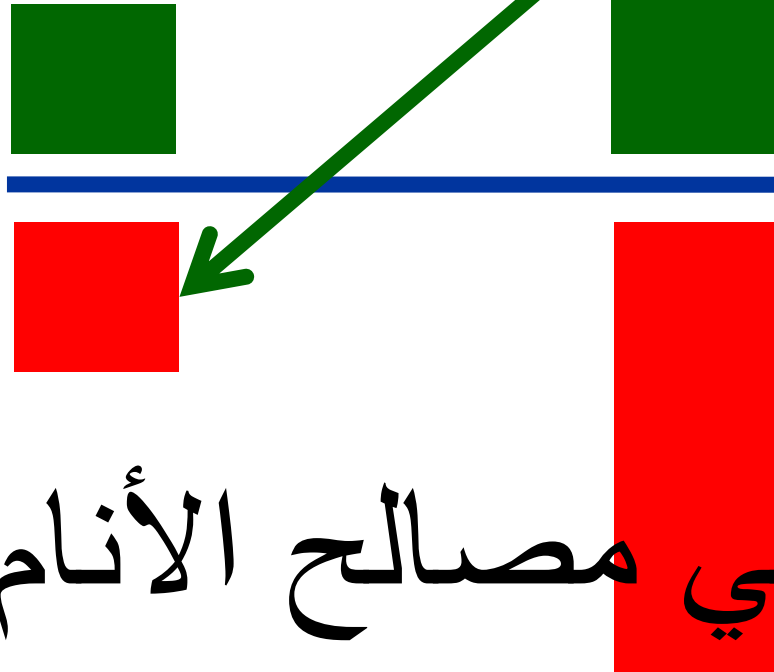
FUNDAMENTAL ✓

POTENT FUTURE ✓

## MORE DIFFICULT EXAMPLE

إن درء المفسد مقدم على جلب المصالح  
إن المفسدة الصغيرة تغتفر من أجل المصلحة الكبيرة  
تغتفر المفسدة العارضة من أجل المصلحة الدائمة

MASALIH  
MAFASID



FIQH  
AULAWIYAT

قواعد الأحكام في مصالح الأنام

## FIQH MAQASID EXPONENTS

- AFTER 600 YEARS
  - Ibn 'Ashur - Tunisia
  - Al-Fasi - “*Maqasid al-Shari'ah al-Islamiyah wa Makarimuha*”
  - al-Sadr,
  - al-Qaradawi,
  - al-Butiyy,
  - al-Raisuni,
  - al-'Alim
  - Jamaludin 'Atiyyah

## FIVE INDISPENSIBLES



## TAKAFUL'S ROLE IN MAQASID

- 1. Institutional organisation of the ummah
- 2. Maintenance of security
- 3. Establishment of justice
- 4. Preservation of religion and morals
- 5. Cooperation, Solidarity and shared responsibility
- 6. Disemmination of knowledge and preservation of reason in the ummah
- 7. Populating and developing the earth and preserving the ummah's wealth

# TAKAFUL'S ROLE IN MAQASID

- 1. Institutional organisation of the ummah

an autonomous financial  
responsibilityx and may apply  
pluralistic models

## TAKAFUL'S ROLE IN MAQASID

- 1. Institutional organisation of the ummah
- 2. Maintenance of security

“maintenance of security is the intent of legal rulings which provide for the protection of human life, honour and material wealth and legally prescribed penalties for their violation”

## TAKAFUL'S ROLE IN MAQASID

- 1. Institutional organisation of the ummah
- 2. Maintenance of security
- 3. Establishment of justice

Quran 4 : 58, 4 : 135, 5 : 8, 7 :  
29, 16 : 90, 42 : 15, 57 : 25

## TAKAFUL'S ROLE IN MAQASID

- 1. Institutional organisation of the ummah
- 2. Maintenance of security
- 3. Establishment of justice
- 4. Preservation of religion and morals

“I have been sent to perfect noble traits of character.

“His morals is the Quran,”

## TAKAFUL'S ROLE IN MAQASID

- 1. Institutional organisation of the ummah
- 2. Maintenance of security
- 3. Establishment of justice
- 4. Preservation of religion and morals
- 5. Cooperation, Solidarity and shared responsibility
- 6. Dissemination of knowledge and expertise

Takaful Act 1984

## TAKAFUL'S ROLE IN MAQASID

“imbalance or malfunction of the minds of entire communities and in the ummah as a whole is of greater concern than imbalance or malfunction of the mind or reason of the individual.”.

responsibility

- 6. Disemmination of knowledge and preservation of reason in the ummah
- 7. Populating and developing the earth and preserving the ummah's wealth

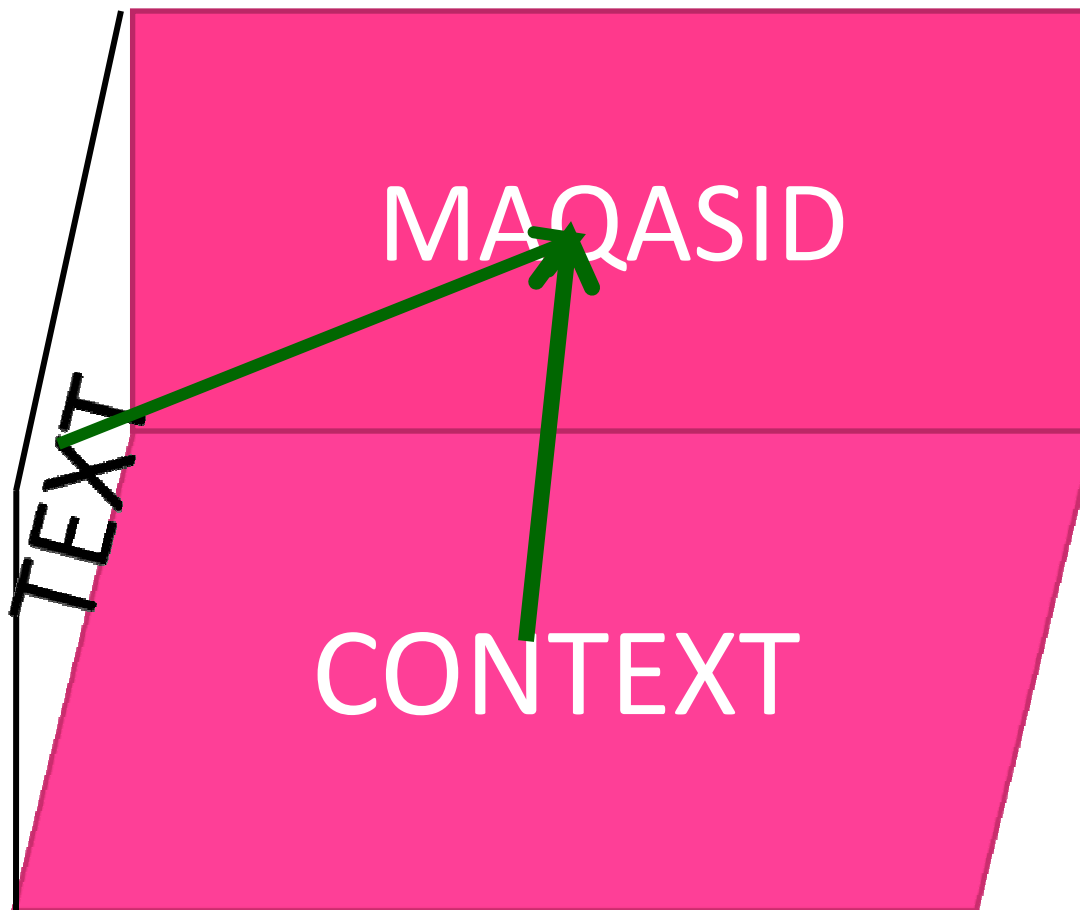
## TAKAFUL'S ROLE IN MAQASID

takaful is often touted as a  
wealth preservation instrument

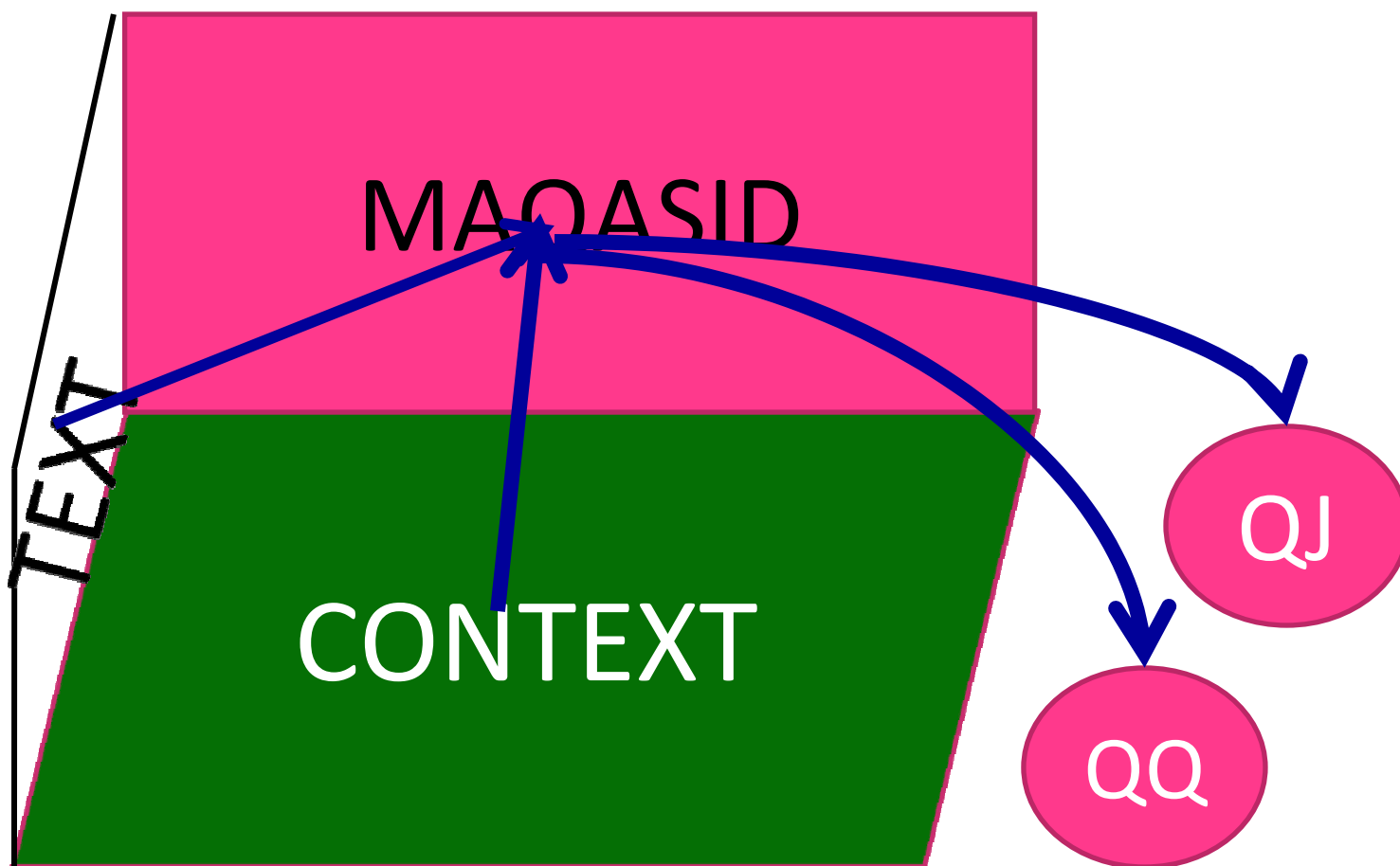
responsibility

- 6. Disemmination of knowledge and preservation of reason in the ummah
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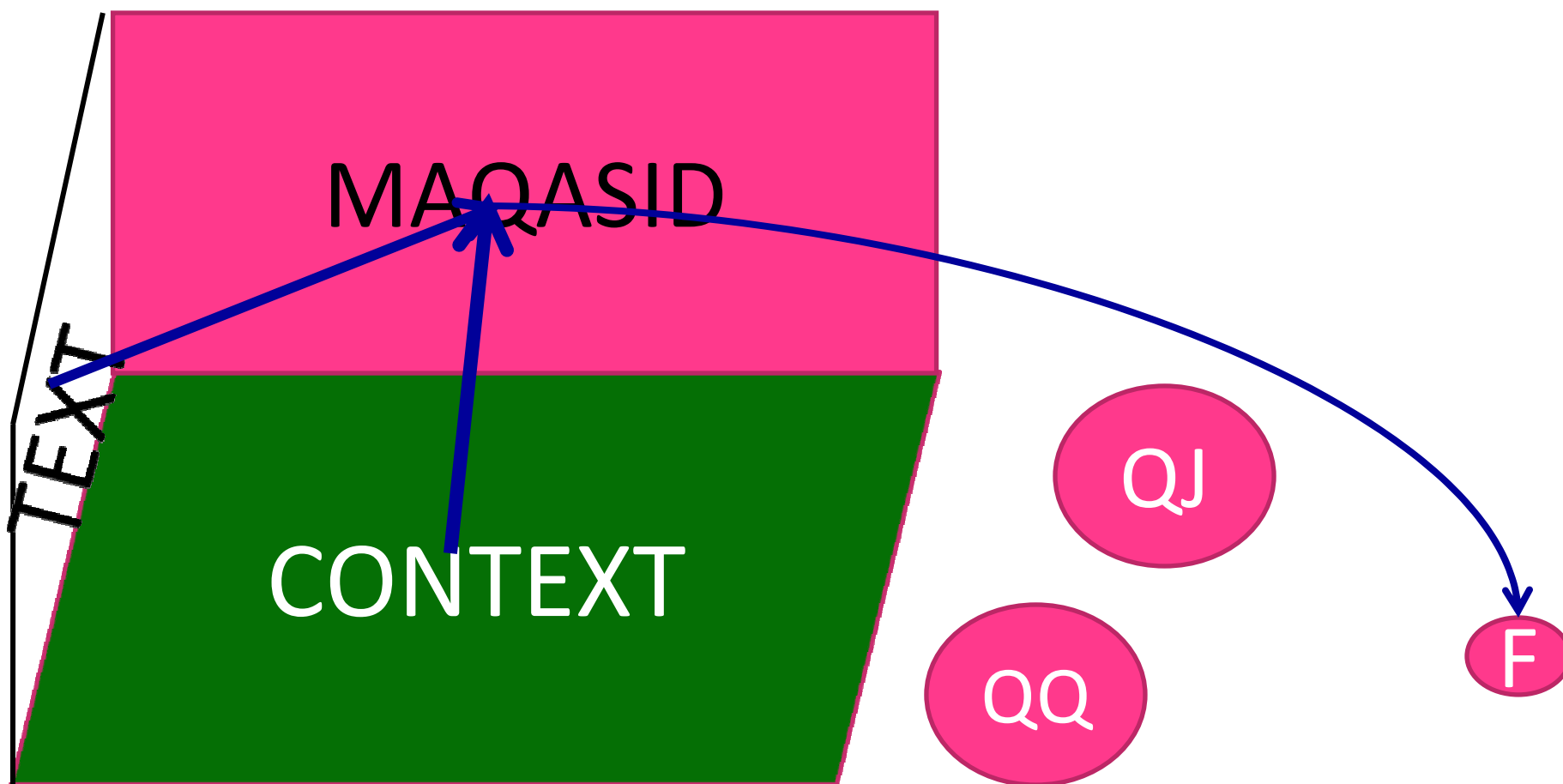
# UNDERSTANDING MAQASID



# REALITY JURISPRUDENCE



# FUTURISTIC JURISPRUDENCE





## Applications In Takaful

- Al-Rahn Takaful
- Long Term Fire/Houseowner
- cover conventional loans?
- use of loading



## Products & Issues...

- Masjid Takaful
- funeral takaful
- cover conventional loans issued by conventional banks to Muslims living or working in non Muslim countries
- retakaful cover of conventional insurance from risks insured by Muslims in jurisdictions where there is no takaful
- group employee provident, endowment and pension schemes
- Reverse mortgages

## Microtakaful

- Vikram Akula for example, has more than five million members, 2.5 million borrowers and has disbursed more than USD 700 million although it started with only USD 52,000 in 1996

## Conclusion

- Takaful funds can be increased through innovative products, technical competence, shariah savvy and ICT leverage. The assets of takaful companies and takaful funds stand much higher than what SKS but we have not been able to fulfil the maqasid al-shariah of eradicating poverty, extensive financial participation, sustained growth and equitable distribution of wealth. The spirit of takaful can be achieved with all parties playing their effective role.



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