



## Levity Makes the Law: Islamic Legal Riddles

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## Abstract

This article traces the emergence of compilations of a particular kind of legal riddle in the 8th/14th century, with special reference to the compilation of Ibn Farḥūn (d. 799/1397). Ibn Farḥūn's riddles could be solved only by someone with detailed knowledge of Islamic positive law (*furū*), and he argues that they are both an appropriate form of restful entertainment and a kind of competitive pedagogy. At the same time, Ibn Farḥūn derived novel legal opinions on the basis of his riddles, which demonstrates that jurists used hypothetical, imaginative situations to derive new rulings. The article also traces the origins of *furū*-based legal riddles in the more diffuse tradition of Islamic riddling and in the *adab* tradition of riddling.

## Keywords

Riddles – Islamic Law – legal change – legal pedagogy – Arabic literature – *hiyal* – *furūq*

## Islamic Legal Riddles and the Social Function of Islamic Law

Is it an act of piety to remove one's clothes in the presence of other people? One needs little knowledge of Islamic law to arrive at the most obvious answer: No. However, when the Mālikī judge of Medina, Burhān al-Dīn Ibrāhīm Ibn Farḥūn (d. 799/1397), posed this question in his collection of legal riddles, he was not looking for the most obvious answer. Instead, he was challenging his reader to transform the absurd into the licit. Thus, we find the following riddle in Ibn Farḥūn's *Durrat al-Ghawwāṣṣ fi Muḥāḍarat al-Khawāṣṣ* (The Pearl Diver's Prize on the Discourse of Elites):

[1] If you said: Is it recommended (*yundab*) for a man whose nudity (*'awra*) is covered to expose his nudity in cases not involving medical care or illness when he is in the presence of a group of people, such that it is an act of devotion and piety (*taqwā*)?

[2] Then I would say: Yes. If a group of people are gathered together in a confined space when the time of prayer arrives and one of them has a garment, then it is recommended for him to expose his nudity to his companions so that they may use [the garment] to pray alone, one by one. [Giving up his garment] is not required of him because he should not be forced to expose his nudity, but it is desirable (*yustahabb*) for him, according to God's word: "Aid one another in devotion and piety" [Qur'ān 5:2].

[3] Al-Lakhmī transmitted [this opinion].<sup>1</sup>

Riddles of this sort, what I call legal riddles, can be found in the *Durrat al-Ghawwāṣṣ* on nearly all the traditional subjects of Islamic law, from ritual purity to contracts to theft. Each riddle functions as a legal opinion (*fatwā*) in reverse. A typical *fatwā* begins with a request for legal advice (*istiftā*) about the appropriate application of Islamic law in a particular circumstance, followed by a legal assessment (*hukm*) in response to that question. By contrast, Ibn Farḥūn's riddle begins with [1] a legal assessment that is obviously incorrect or absurd. The solution to the riddle [2] involves describing the scenario that makes that legal ruling correct. Legal riddles are answers in search of questions and outcomes in search of the scenarios that lead to those outcomes.

I use the term "legal riddles" to describe this particular type of legal discourse in accordance with the modern Arabic term *alghāz fiqhīya*. Although Islamic legal sources tend to refer generally to "riddles," I wish to distinguish this particular form of *furū*-based riddle exemplified above from both the broader tradition of Islamic riddles and the more closely related legal genres, such as legal stratagems (*hiyāl*) and legal distinctions (*furūq*), all of which will be discussed in some detail in a later section of this article.<sup>2</sup> Unlike *furūq* and

<sup>1</sup> Ibn Farḥūn, *Durrat al-Ghawwāṣṣ fi Muḥāḍarat al-Khawāṣṣ*, ed. Muḥammad Abū al-Ajfan and 'Uthmān Baṭṭikh (Tūnis: al-Maktaba al-'Atīqa, 1979), 114-15. Ibn Farḥūn states in his introduction that the title is, in fact, *Durar al-Ghawwāṣṣ fi Muḥāḍarat al-Khawāṣṣ*. Ibid., 65. The third element in the riddle [3] cites Abū al-Ḥasan al-Lakhmī (d. 478/1085-6), author of *al-Tabṣira*, an extensive Mālikī work on *furū*, published with continuous pagination in fourteen volumes. For the ruling on which the riddle is based, see al-Lakhmī, *al-Tabṣira* (Qatar: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiya, 2011), 372-73.

<sup>2</sup> Unlike legal riddles, these other genres of legal discourse have received scholarly attention. Legal stratagems or "exits (*makhārij*)" have been studied by Satoe Horii and, many years ago, by Joseph Schacht. See Satoe Horii, "Reconsideration of Legal Devices (*hiyal*) in Islamic Jurisprudence: The Ḥanafis and their "Exits" (*Makhārij*)," *Islamic Law and Society* 9 (2002),

