Asl Rulings

1. 1:25 Q: A a bird whose meat can’t be eaten (predatory) drinks from the water container, then a person makes wudu and prays from it, must they repeat the prayer? A: The prayer counts. Q: How this is different from the predator whose meat isn’t eaten. A: In qiyas they’re the same, but I use *istiḥsān* in this, for don’t you see that I also dislike the leftovers (*suʾr*) of a chicken, but don’t command him to repeat the wudu and prayer from it?
2. 1:28 Q: A man makes wudu from a well and later an inflated chicken is found in it and no one knows when it fell in. A: Rules that he should repeat 3 days. Q: Why if no one is certain when it fell in? A: I use istiḥsān in this and take what is more reliable (*thiqa*), because it is prayer, and for a man to pray something that he already prayed and was free of obligation for is better then leaving something that was obligatory on him.
3. 1:36 A man wipes his head but not his ears. It counts. A man wipes his ears but not his head. It doesn’t count. You have abandoned your position! (***Tarakta Qawluk!*)** A: I rule for the ears with *istiḥsān*, and I rule for the head with *thiqa*.
   1. So if you don’t wipe the ears, istiḥsān its ok. If you don’t wipe the head, thiqa (qiyas) that its not ok.
4. 1:56 Q: You said repeat prayer if blood on clothes is bigger than a dirham, why? A: Because Nakhai said the size of a dirham, and some dirhams can be bigger than others, so we stipulated the largest that it can be, I use istiḥsān in this.
5. 1:60 why does sleep not break wudu if youre not lying down? Istiḥsān from athar, meanwhile I took qiyas in losing consciousness, cause losing consciousness is more severe. And kitab al-aathar, gets it from Ibrahim al-nakhai, but then also ahadith from ibn abbas marfoo3, and then even from Prophet peace be upon him.
6. 1:152 Q: An Imam breaks wudu and leaves masjid without appointing anyone. A: The prayer is invalid and they have to repeat it, out of *istiḥsān*, because I see it as *qabīḥ* that a people are in prayer in the masjid and their imam is out with his people.
7. 1:160 a man enters behind imam in prayer, then when imam finishing he has to make up rak’a but he’s illiterate, should he read/recite in that remainder? Yes. And if he’s not good at it? by qiyas, his prayer is fasid, but abandon qiyas and istiḥsān that it counts. Why? If he was mute, then his prayer would count, so this is equal to that case.
8. 1:161 if man prays 4 rak’as nafl without sitting in middle, by qiyas his first two rak’as were ruined, but abandon qiyas and istiḥsān, make it like fard prayer, cause if hes praying dhuhr and does that, he can just do sujud sahw at end and it counts.
9. 1:162 Q: In prayer, rows of men, then full row of women, then more rows of men.
   1. A: Prayer of the rows behind women are invalid, but the rest are valid.
   2. Q: Why if a woman by herself only invalidates prayer of row directly behind her but not further behind?
   3. A: Identical in qiyas, but I use istiḥsān, that if it’s a row of women it invalidates even 20 rows, but if just one or two women, then only invalidates those directly around them.
10. 1:182 Q: A man starts a prayer sitting then decides to stand for part of it. A: It counts. Q: What if he’s seated until ruku? A: No problem. Q: A man starts a prayer standing why can he then sit? And why is he not like a man says I owe Allah two rak’as standing? A: They are equal in qiyas but I use istiḥsān in this. But this is opinion of H, and Y and M don’t allow it.
11. 1:185 Q: Man enters a prayer behind imam and beside him is a slave girl not yet mature also praying with imam.
    1. A: If slave-girl rationally understands that it’s prayer, then by istiḥsān yes prayer invalid and I command him to repeat it. Don’t you see that if she prays without wudu or naked I command her to repeat her prayer, and similarly slave boy who hasn’t hit puberty?
12. 1:186 Q: Slavegirl pre-pubescent prays without qanaa3. A: By istiḥsān this suffices her, and doesn’t resemble if shes naked or without wudu.
    1. Is qina’ a shart in salat?
13. 1:194 Q: If one forgets tashahhud? A: Must do two rak’as sahw out of istiḥsān.
14. 1:202 if imam commits sahw, does pray sujud sahw with imam, continues praying after imam finishes, then finishes prayer, does he have to do sujud sahw of the imam? Yes. Why if he left them and didn’t do them in their appropriate place? Abandon qiyas here and istiḥsān.
15. 1:213 if imam makes mistake, then he breaks wudu and leads prayer and brings forward another imam, but that imam didn’t catch the first rak’a and no one else did either, then at end of 4th rak’a he simply steps back without saying salaam and everyone makes up their prayer, then they each do sujud sahw by themselves, even though usually only imam has to do the sajda sahw and none of them committed the sahw, but because they have no imam to do the sahw, then istiḥsān each of them must do it alone.
16. 1:228 if man is praying, then forgets if its dhuhr or asr, then remembers, he doesn’t have to do sujud sahw. But if he remains thinking about it for a while, such that it extend a ruku or sujud or otherwise make him do something unordinary in prayer, then istiḥsān he must do sujud sahw.
17. 1:238 Q: One is traveling, breaks wudu goes and makes tayammum, on way back sees water before reaching place of prayer, he stops and makes wudu and then continues prayer from where he left off, but if he only sees water after having reached his place, he makes wudu and starts prayer anew? A: Equal in qiyas, but I use istiḥsān
18. 1:247 if travelers praying 2 raka’s, slavegirl not pubescent prays with them, istihsan that those on right, left, and behind her broken, the rest have complete prayer, then same reasoning repeated as Case #11, **qiyas to another of own rulings**
19. 1:248 if someone misses a prayer then prays an entire month remembering that missed prayer, then he must repeat that prayer only, but if a day or less? Then abu hanifa would say then he must repeat that missed prayer and all after, must make up, but if more than a day and night later, then only that prayer, “and it is istihsan and not qiyas”, and abu yusuf and Muhammad the same except if its more than a day and night, then abu yusuf and Muhammad say repeat that day and night, ease

**Toss** 1:267 Q: If one leaves from Kufa intending to return to it, then intends to travel to Syria but stop by Kufa to pick up his bags? A: This and the first section are equivalent, and his leaving to Qadisiyya and to Jabbaana are equal, except that I use istiḥsān for Jabbana and qiyas for Qadisiyya. Don’t you see that if he leaves Kufa for Qadisiyya he must complete his prayers, and if he leaves from Qadisiyya to Hufayra he completes prayers? And likewise if he leaves to Bustan Bani Aamir and leaves his stuff there and goes to mecca for hajj, then leaves Mecca intending to return to Kufa and stops by bustan on the way to carry his stuff, that he’s a traveler as soon as he leaves Mecca?

* 1. Qadisiyya is in middle Iraq, is this Jabbana in Yemen?
     1. If its saying going somewhere near and far would be the same, but the far place I use istiḥsān and Qadisiyya I use qiyas?

1. 1:275 Q: Can you do ruku’ for sajda tilawa not sujud? A: By qiyas theyre equivalent, given aaya of quran kharra raki’an meaning sajidan, but by istiḥsān he has to do the sajda, but we take the qiyas here.
2. 1:283 if one reads a verse of sajda and does the sajda then sits a long time then reads the same verse again, the first suffices for him, but if he does some activity in the middle for a long time known to be something different, then comes back to it, he must repeat the sajda, so “I use istihsan that if the activity in the middle is prolonged that it is wajib on him to do the sajda”
3. 1:284 if he’s standing and reads a verse of sajda then gets on an animal and reads same verse, by istihsan if he hasn’t moved in location one sajda only, if hes moved in location then two sajdas
4. 1:307 traveler prays dhuhr two rak’as, then enters a city so prays jumua, which of them was the fard. By istiḥsān the jumua is the fard
5. 1:343 muslims and kaafirs in group together dead, do you pray on muslim? If its just one or two kuffar, by istiḥsān yes, but if its mostly kuffar, then no unless I can ID the muslim.
6. 1:355 people pray janaza riding or sitting, by qiyas it counts, but abandon qiyas and istiḥsān command them to repeat it.
7. 2:38 if woman sees blood for 2 days, then clean 3 days, then blood 2 more days, then none, that was all hayd, since total blood days more than that period in between. In this we take with istiḥsān and with what the woman do.
8. 2:47 AH says any bleeding in 40 days after childbirth is nifas, but by istiḥsān we say if theres a gap between the two bleedings which is less than 15 days, then yes that’s all time of nifas, but if more than 15 days, then the second is not nifas, because of ruling that time between two bleedings is 15 days. So limit setting but also qiyas of a kind.
9. 2:62 X sells camel to Y, charity was due on it, if poor person Z is present, can Y just pay Z directly, yes, but if X leaves, then by istiḥsān no
10. 2:116 if you find gold on someone’s land, who gets gold? H and M say the owner of land, based on athr. But abu yusuf says no its for the person who found it, I use istiḥsān here.
    1. **Going against athar**
11. 2:161 if you have 4 dhihars, so you free 4 slaves, or fast 8 months, or feed 240 poor half a sa3 of hinta, does this suffice? Yes, istiḥsān and abandon qiyas in it, though it doesn’t give for each woman a known amount (because it’s mushāʿ?), you can see based on rulings after that ya issue at play here is specifying which woman gets which expiation
    1. Related to, but different from, case 152
12. 2:166 a man enters Ramadan sane then goes crazy then sane after eid, must make up what he missed, but if he goes crazy then only goes sane after a whole new Ramadan has also passed, he must also only make up the first Ramadan for which he was partially sane, why? He says asta7sinu that if only part of it is wajib on him then he must make up the rest, but the second one in which none of it was wajib on it then he doesn’t have to make up any of it
13. 2:186 if doing i3tikaf wajib and if someone forefully removed him, if hes put in a different masjid then I use isti7saan that it is the same qiyam, wa ada3 al-qiyas fi dhalik, but if hes taken away from the masjid for more than half a day then the i3tikaf is nullified
14. 2:186 if doing i3tikaf wajib and leaves for a justified purpose, but then comes across someone who owes debt to him so pursues him for debt for over half a day then i3tikaaf is off, but if just for an hour then it’s ok. But this is only Y and M. H says leaving for any reason other than valid reasons not ok.
15. 2:231 if a slave rents himself to someone to serve him for a year for a wage, then serves him for 6 months then is set free, ten qiyas here is no ajr even for those 6 months, cause the renter was liable for him in that time and you cannot have both ajr and daman, but istiḥsān that if slave is healthy then he gets the wage and pays it to his master.
16. 2:266 if a witness upright testifies to a murder, and murderer says I have another witness like him who will testify to it, then by istiḥsān he should not kill him until he gets that second witness. If he does kill him before, that is ok, but its better to confirm.
17. 2:278 if man swears I must travel to Mecca, or go to it, or ride to it, then he doesn’t have to pay kaffara if he breaks it just has to do the act. and this and him swearing that he’ll walk there are equal, but in his swearing to walk there I take with istiḥsān, and because it is the oaths of people.
18. 2:358 if one swears ill give you your right asap, intending in his heart a specific time, then the matter is on his intention, because the whole dunya is 3aajil asap lol. And if he had no niyya then istiḥsān is that it is under a month.
    1. **Lol, how do you define asap**

**Toss** 2:361 if he swears he wont buy henna or rose, in qiyas these are equivalent, but I use istihsan that I divide these into leaves and flowers if he doesn’t have the specific intention, so if he buys a paint in this he has not violated oath, and if he buys foliage of the first(?) one he has not violated, **dividing two things that qiyas would group together**

1. 2:362 if one swears not to buy food without intention, then buys wheat or flour or dates or something of fruit then he violates oath, whereas in istiḥsān then only if he buys bread and wheat and flour
   1. 2:424 if x makes y wakil to do salam purchase for food, for us food is hinta, by istiḥsan, saw this much later, its istiḥsān as definition setting?
2. 2:364 swears he won’t get married that day but then marries a woman without witnesses. By qiyas he broke his oath, but by istiḥsān no, because if he had done any other faasid marriage it wouldn’t have counted, and we have the hadith that without witnesses marriage is faasid. **This really is a good example of conventional qiyas**
3. 2:365 if he swears he wont buy a slave then buys one in faasid purchase he broke oath. This is equal to the case of marriage by qiyas of the same position, and opinion of the forefathers, but this author uses istiḥsān and says no this hanatha, because you can see that if he frees this slave it actually frees him, whereas if he divorces the wife of faasid marriage it doesn’t count as divorce.
4. 2:365 if someone swears not to pray, then doesn’t make sujud but does ruku, he hasn’t prayed, until hes done a sajda or two, but this is istiḥsān, by qiyas he did pray. This relies on that interesting case whereby qiyas ruku and sujood are equal, so in this case it should have counted, but istiḥsān violates that qiyas.
5. 2:380, if you make salam purchase and take the money, then learn that dirhams are zuyuf, salam invalid, but abu yusuf and Muhammad say just exchange it and its valid

2:380 same premise as above, abu hanifa says istiḥsān if its just one dirham then exchange it still good by istiḥsān

1. 2:390 and if salam buyer conditions that the good be given to him in his house, no problem with that, by qiyas this is same as charging delivery, but we rule concerning delivery to his home by qiyas, whereas here we rule by istiḥsān.
2. 2:391, disputing over nature of a garment in which salam was made but it hasn’t been produced yet, one says order was for 5x3 other that its 6x3, but otherwise agree, then, by qiyas its identical to earlier case in which they trade oaths and the salam is voided, though the istiḥsān here is that yanbaghi that the opinion be that of the claimed upon by his oath unless the claimant has evidence, but in this case take qiyas
3. 2:393 if you tell someone you gave me salam for hinta by this thobe I gave you, then there is some dispute, yada yada, has to do with whether “aslamta” connotes qabd, here he’s saying it does
4. 2:400 and if he buys a slave woman or slave or clothes for makil or mawzoon delivered at a specific time, then they split before he gets item, the sale is valid and he can do qabd whenever. This and salam are equal by qiyas, but in salam we took istiḥsān. Don’t you see that he could buy clothes for hinta of specific weight and type but without ajal that’s valid, and if salam for the thawb for kurr hinta without ajal its fasid?
5. 2:420 if someone buys food with money or goods on stipulation that he carry them to his house, no good in that, but istiḥsān if they are in the same city no problem with that, Muhammad says its fasid
   1. Notice redundancy on 4:441
6. 2:423 If X agent for Y to give the money as salam for food, then X abandons the salam and takes the money then that’s ok and he’s liable for the price of the food to Y. But Abu Yusuf says this does not make X free and Y can ask again for that food itself. Use istiḥsān and abandon qiyas abu yusuf, disagree with H and M
7. 2:440 if the buyer istahlaka al-bay3, footnote says meaning al-mabee3 (after a faasid sale must be reversed perhaps) then he is liable for its value, except if slave was freed, then the price is whats owed not the value
8. 2:441 if you sell something on condition that you will give a rahn but don’t say what the rahn is, or that you have a kafeel (whether or not kafeel is named), then no good cause we’re not sure the kafeel will accept the kafala. unless the kafeel is present for the contract then by istiḥsān its cool, since you can assume his tacit consent.
9. 2:447 if seller dies and descendants dispute with buyer about price, then go with what descendants say if they have the object or with the buyer if he has object. Similarly if buyer dies and seller lives then go with whoever has the good, and this isn’t qiyas but istiḥsān, whereas qiyas is that in both the claim is to the buyer, but we abandoned it for athar H Y. but M says they mutually swear then return back everything, whether or not whoever died.
10. 2:453 you cant buy something for a stipulated time, and the buyer is liable for value of good if it perished when he had it. But buyer can nullify the invalid condition of timespan and then just pay the price by istihsan
11. 2:465 If someone says I buy a thobe and will take whoever of these 10 you want, or say I’ll take one of these animals from you for 10, this is fasid. But istiḥsān if its just between two or three thobes if the buyer already took it and picked it.
12. 2:466 buy one slave for 1000, another for 500, then 3ayb in both don’t know which is first and there was a condition that he would take one and give back the other, and he and seller disagree on whether he took the 1000 one first or the 500 one first, then go with buyer’s word, and he returns the other slave along with half the value of the ayb, but by istiḥsān he returns it but doesn’t pay half the value of the ayb
13. 2:471 if Christian buys alcohol from Christian but didn’t pick it up until buyer became muslim then no sale. Similarly if the seller becomes muslim. And this is istiḥsān not qiiyas.
14. 2:491 And every flaw that buyer finds and then afterwards does something to indicate acceptance then by qiyas these are all acceptance and he cant return it or ask for difference in value. And if he makes female slave serve after discovering ayb, istiḥsān he can still return her.
15. 2:491 And if animal and he rode it only to return it or to give it water then this isn’t consent, so istiḥsān again.
16. 2:492 If man buys slave then kills her then finds 3ayb that had been hidden he cant go back for anything, because he did jinaaya on her. And this is qiyas with freeing slave, but istiḥsān in 3itq.
17. 2:504 If someone buys slave for kurr of hinta but doesn’t have it, no sale, but if he says good hinta or average hinta or bad hinta, then permitted, istiḥsān here abandoning qiyas, because hadith that he bought a jazur with dates, but didn’t have all the dates, so exchanged to get more dates to pay him.
18. 2:506 you can buy something for certain amount in dirhams, then sell it for a certain amount less in other good, but if its dinars and dirhams must be same amount by istiḥsān, qiyas theyre distinct, but istiḥsān dinars and dirhams interchangeable.
19. 2:513 If a Christian owner’s slave converts and had not matured but spoke by word of conversion and is aaqil then this is islam and his owner must sell him
20. 2:515 Dhimmis can sell alcohol and pork based on athar of Omar
21. 2:526 If man has youth who cant talk who was born in his home and he claims he is his slave, then frees him then claims he is his son, then istiḥsān to make him son and abandon qiyas. But if he’s an adult and could have potentially been born of him then its not taken automatically unless that adult confirm it. In qiyas these are equal.
    1. Nice thing, son will be better taken care of
    2. 5:201 and if man owns a youth who cant speak but was born in his care and he swears its his slave, then frees him and swears its his son, by istiḥsān make him son and abandon qiyas here.
22. 2:526 and mudabbara owned by 2, has child, one of them claims him, then nasab established, he pays half value to the partner if he’s able
23. 2:526 and old slave, mudabbara by two owners, then one claims him, 3itq from him, owes half value to other, and he gets nasab.
24. 2:531 if man buys slave girl and doesn’t pick her up until seller undoes sale, by qiyas the seller shouldn’t approach her until she has a hayd, but abandon qiyas and do istiḥsān and theres no mandatory istibraa.
25. 2:543 If Christian buys salve girl he doesn’t have to do istibraa2 (wait for a period). If he converts, he doesn’t have to do istibraa2 by qiyas, but by istiḥsān he should do the istibraa2.
26. 2:544 X buys S from Y. S had sex with Y, then got married to Z then divorced him without having sex. Y should do istibraa2 of her after buying her, though it isn’t by qiyas
27. 2:558 AH says if a man buys slave and doesn’t take her until she marries another man then the marriage is valid. If she dies before he takes her then she dies in property of seller. And this is not qabd by the buyer. By qiyas this would be qabd because it’s a 3ayb in the slave girl. Don’t you see that at that point she could be returned by him. But AH says I use istiḥsān that it isn’t qabd, because it isn’t a 3ayb in her body
28. 2:603 If he buys a thobe for 10 dirhams, then does a sarf contract of 1 dinar that he has for 10 dirhams, then they exchange everything then, is it ok? Abu Hanifa says yes, it’s as if he bought it with 10.
29. 3:17 A man loans 10 of a currency, then the currency goes bust and people take up another one, then he has to pay back that type that went bust, not its value. But Abu Yusuf says he has to pay its value in silver, by istiḥsān.
30. 3:63 Disapproves of a type of exchange as a sale, but it can be used as a sulh, presumably encouraging reconciliation as a good end.
31. 3:85 X makes Y wakeel to buy a certain slave, so Y buys him then finds a flaw before Y takes the slave. Then Y can choose, either undoes the sale and no liability, or approves sale and takes slave. If flaw isn’t fatal to slaves usefulness then it must go to the X. And if it is a fatal flaw then Y liable and not X. So pins it on Y for making a bad purchase.
32. 3:123 If man buys silver thing of weight 10 dirhams and thobe for 20 dirhams, then pays 10 and exchanges everything and leaves, and theres still 10 to pay, then the 10 he did pay is the price of the silver thing and not the thobe, to make the contract valid, this is istiḥsān not qiyas. Because If I didn’t do this then the sale on half the silver thing would be invalid, so its better to have one full contract.
33. 3:124 X sells Y the sword S with the hilya H on it. S is worth 100, H is worth 50. Then Y pays 50 and says this is towards S and H, or just towards S, and whether or not he accepts that, then we must consider the 50 being towards H.

**Toss** 3:150 complicated not sure, but can clearly see reasoning at play is qiyas from another ruling, says and this is the qiyas of abu yusuf’s first opinion and of Muhammad, but then abu yusuf second opinion is qiyas

1. 3:153 And if N adds to M another rahn then it isn’t a rahn, but we use istiḥsān to make it a rahn with the first rahn, say H and M. and Y says I just let it go for all of them.

3:233 if man gives slave as rahn and value is 500, then gives another rahn, its valid, and its all rahn. By qiyas the additional one shouldn’t be rahn until the first rahn is undone and returned and then a second joint rahn is given together, but we abandon qiyas here. Progression of this one to next ruling shows that tark qiyas = istiḥsān.

1. 3:164 palm tree fruits and it’s a rahn, but murtahin fears fruit will perish so sells it without qadi telling him, baatil, and he’s liable for its value. And if he cuts fruit or grapes similarly by qiyas he’s liable, but by istiḥsān not liable, similar in milking cow or camel.
2. 3:190 If rahn R is in both their hands, but both claim it is theirs and they took possession of it, then it goes to whoever has evidence showing they were first in rahn. And if we don’t know who is first then neither gets it, and we take qiyas here. But by istiḥsān each of them gets half of it.
3. 3:190 Raahin dies, and rahn is in hand of multiple debtors each claiming it, then its half for each, then rest of value comes from rest of estate by proportions. Whereas Abu Yusuf says rahn doesn’t count and just everything by shares.
4. 3:233 if man gives slave as rahn for 1000, then gives some cash to add to rahn, its not in rahn. This and first type equal in qiyas, but first time we take istiḥsān, AH and M, but AY takes istiḥsān in both.

**Toss** 3:261 if a man makes slave girl a rahn and she is married, tats valid, and theyre still married, then if husband (ghashiyaha) has relations and she dies from it, So she’s no longer useful, then by qiyas it would be from the wealth of the raahin, but by istiḥsān we make it from the rahn

1. 3:273 qur’a is not ok by qiyas, but tark qiyas and by athar and sunna its ok
2. 3:273 If two men inherit a house together then they divide the land not yet knowing the value of the buildings, by qiyas not ok, but by istiḥsān ok.
3. 3:287 If people inherit house, and X agrees with Y on certain split with condition that he’ll pay a certain amount that’s ok, even in food, but not if he says food without weight or description of it. Although if he gives all details but doesn’t say where he’ll give it to him, that’s fine, and he gives it to him at the house. And this and salam are equivalent in qiyas, but in this case its ok by istiḥsān. Though qiyas of AH opinion is that its invalid until he says which place. And istiḥsān is Y and M.
4. 3:303 If court must do qisma between sabi who has no representative and ghaa2ib who has no wakeel then not jaiz. But if ghaib reurns or sabi grows up and they both approve then its cool. If ghaib dies and his inheritors approve it this doesn’t work by qiyas, but by istiḥsān we approve it, and similarly if youth dies, according to H and Y, though M doesn’t like it.
5. 3:316 If someone lives in a house after having seen its flaw, and had been living in It over, or used help of a servant, this isn’t rida that nullifies their khiyar al-ayb.

**Toss** 3:368 Harbi gives Muslim a gift and commands him to take it, but Muslim doesn’t take it until Harbi returns to dar al-harb, and then Muslim takes it, gift good? Yes. And if Harbi hadn’t commanded him? No. Why? Istihsan here and abandon qiyas.

1. 3:370 If a man gives a youth a gift and the youth’s wasi takes possession of it, is this ok? Yes. And if a man supports this orphan but isn’t a wasi and has no actual relationship to the orphan, but orphan has no one except for that man, does the man count as wasi for accepting the gift? Yes, by istiḥsān.
2. 3:370 by istiḥsān sabi can do qabd if they are aqil
3. 3:371 A slave boy or girl who haven’t had puberty yet but others like them have, can their qabd be valid? Yes.
4. 3:376 Can a man gift what is on an animals back of cotton and in its udders of milk? No, too undefined. But he also commands the recipient to shear the sheep and milk it? Then by istiḥsān that’s ok, abandon qiyas. Similarly fruit in a tree and plants.
5. 3:402 If you swear to give everything in sadaqa
   1. Then by istiḥsān you only have to give from dinars and dirhams and things that are zakat eligible. Use istiḥsān and abandon qiyas
6. 3:402 a man gifts something to the poor, can he go back for it? No
   1. Istiḥsān here and abandon qiyas in it, that this takes the standing of sadaqa, and if you give sadaqa you cant take it back
   2. 3:404 identical
7. 3:435 if man does salam to a tailor for a cloth with all the details, but doesn’t give the payment immediately, this by qiyas is like the khurr case, but this is something people don’t do, whereas for the khuffs we allowed it by istiḥsān cause people do that.
8. 3:445 if you buy a thobe with 10 dirhams on condition that seller sews it this is invalid, but you can do it with shoe, because its custom of people!
9. 3:457 if you hire a wetnurse on monthly salary, her upkeep usually on herself
   1. But if she stipulates certain amount on each feeding, and asks for clothes and comb and brush and stuff
   2. H says this is permissible by istiḥsān for a wetnurse and not for other
   3. But Y and M says not ok for anyone, and in that contract she would get ajr mithl
   4. 4:21 identical
10. 3:461 if wet nurse gives milk of cow and instead of her own, she doesn’t get wage
    1. And if she had hired a different wet nurse instead, by qiyas its identical, but take istiḥsān that she should get the wage and give any leftover in charity
11. 3:480 If you hire room out to someone and they start doing metalwork in it and you say you only rented it to them to live in
    1. If they both put proof against each other, the renters proof is accepted
    2. And if the room is still ok, then renter must pay rent, this is istiḥsān abandon qiyas
12. 3:506 hammam ruling by istiḥsān because its maa baynahum.
13. 3:513 if he rents land to someone for a month to graze specific livestock on it then by qiyas he cant graze any other livestock, but abandon qiyas here and he can add more animals, because if some give birth he’ll have to feed them too, unsure category but same as case 77
14. 3:513 if they stipulated in beginning of contract that he birh the animals and graze the children as well by qiyas its fasid because don’t know how many there will be, but istiḥsān here
15. 3:514 that if caretaker takes animal to location he wasn’t supposed to take animal to, but animal is ok, he should get ajr by istiḥsān
16. 3:515 if man rents animal for a day and didn’t say what hed do with it, then if they dispute before something happened then contract fasid, but if he did do something then it is valid contract and he pays rent, istiḥsān here
17. 3:515 if man rents a shirt to wear it for a day then doesn’t wear it, by qiyas he shouldn’t have to pay since he didn’t fulfill the contract, but by istiḥsān he pays because he was damin the whole time as well
18. 3:517 if man rents a dome? For a house, then its in the sun or rain and gets damaged, he is liable for it but no longer pays the rent, but if the dome is ok after having been in that situation then he still must pay rent (similar reasoning to the wearing clothes, or renting room with metalwork)
19. 3:521 if a woman rents clothes on a daily rate and says that also if she wants to she can keep it at that same rate per day, and she wears it once then doesn’t return it for another 10 days, well by qiyas this condition not valid, but istiḥsān to make it permissible and make her pay the rent
20. 3:524 if person rents animal to go to such a place but doesn’t say what he’ll haul on it, then if they dispute right away no rental, but if he does carry to that place then he must pay the rent, same as all these other rental contracts
21. 3:526 H says if man rents animal to ride it and hits it making it go lame, then he is damin
    1. But Y and M says no liability if his hitting was a customary amount
    2. 3:569 identical
22. 3:541 a man rents an animal and doesn’t say what he’ll haul on it, then hauls it but the animal goes lame, AH would say by istiḥsān that he pays the agreed on amount and isn’t liable for the animal, and AY and M agreed
23. 3:542 If a man rents a slave boy for ¼ or 1/3 what he earns on the animal then this rent is invalid. But if the slaveboy isn’t ma2dhoon (for trading) and he wasn’t rented from his owner, if he’s ok in the end then he gets the wage, and if not ok he’s liable for the value. AH did istiḥsān here.
24. 3:578 if you wanna rent two camels from kufa to mecca, to carry on one camel two men and what sustains them of bedding and blankets, and the person saw the two men but not their blankets and stuff, and the other camel to carry foodstuffs and oil and vinegar and utensils, but not specific how much, or water and not specified how much, all of this faasid by qiyas. But H said by istiḥsān its ok.
25. 4:25 can you rent a person to finish a certain task within a day, no because what if they finish task early, or don’t finish after the days over, does ijara stay or end? Cant have ijara on both a task and a time
    1. Y and M say istiḥsān its ok, and you consider it on the task not the time.
26. 4:34 and if a man rents in Kufa a man to dig him a grave and doesn’t clarify where, then by istiḥsān if he digs it in the cemetery that people of that place are buried in, then he gets the wage. But if not in that place, he doesn’t get wage unless he also buries him there.
    1. And if they then ask him to put plaster on the grave he doesn’t have to
27. 4:34 And if they don’t specify dimensions, by qiyas its invalid, but istiḥsān its valid, and he should approximate the average person’s size
28. 4:34 and if they stipulate that he bring plaster, and don’t say how much, by qiyas invalid, but istiḥsān its ok because that’s how people do it
29. 4:52 if craftsman keeps a man with him in the store to work for half, by qiyas invalid, but by istiḥsān its good
30. 4:58 If a slave co-owned by two, then they bring in someone as another owner, then by qiyas that man should get half and the other two share half, but by istiḥsān they split it into even thirds
31. 4:66 If two people have mufaawada, then by qiyas neither should be able to lend stuff for free. But if one of them does it, lends an animal, then it goes lame, then by qiyas the person who lent it owes half value to his mufaawada partner. But istiḥsān that he’s not liable, AH AY and M. similarly with clothing, neither the borrower nor lender are liable.
    1. 4:79 identical, “aariya is not like a loan”
32. 4:74 when people have mufaawada, then everything gets split, except for clothes and furniture and provisions for family and servants and umm walad, those stay with owner, 4:103 identical
33. 4:75 if two are disputing, and one has all the money and says its just mushaaraka, then other brings proof of mufaawada, and that he gets 2/3 and the one who has it in hand gets 1/3, then I use istiḥsān to credit their testimony, and to split money between them half half.
    1. But by qiyas when they confessed to mufaawada then we would have had to say the witnesses were dishonest when they granted the 2/3 to the person, but I abandon qiyas here and say its half half.
34. 4:80 One mufawid can give a man clothes or gift animal to someone, but then other mufawid can ask for half the value, or even the person who took it. But can’t do that in gold or silver or home goods or animals or grain. But istiḥsān that its ok to do for fruit and meat and all eatable
35. 4:122 Mudaraba can only be dinars and dirhams according to H and Y. M says can be with any form of money.
36. 4:125 if you give someone money and say trade with it for half, or for third, or for tenth, this is custom of how you announce mudaraba even if you don’t say it.
37. 4:127 X pays Y 1000 saying that X gets 1/3 of profit, not saying what Y gets, then all money goes to X, and Y just gets wage of mithl, because wage of Y wasn’t named making the mudaraba fasid. But by istiḥsān it counts and he gets the remainder (2/3).
38. 4:128 X pays Y 1000 and says take this and buy stuff with it, and what is leftover you get ½, and didn’t say anything more nor say you get ¼ of the goods, then this mudaaraba is valid, and he can buy whatever he wants and sell them, and whatever is leftover in that is half half, istiḥsān here and abandon qiyas.
39. 4:148 if mudaraba that he trade in market of kufa but he trades in a different market and wins profit, even though he’s still in kufa, AY says that’s valid, and its on mudaraba, if its in same city, istiḥsān that hes not liable. And M said same.
40. 4:154 what kind of stuff can you buy in mudaraba as naturally part of trading? You can’t buy a boat lol so its up to custom, istiḥsān that its whatever traders usually use
41. 4:162 if two people are both mudarib, and they together buy a slave with all that money, then one of them trades it for another item or slave without others knowledge, then not ok, but by istiḥsān its ok if the other person hears about it after and agrees to it
42. 4:189 if man on mudaraba in a different city, then the investor dies, the mudaarib can return to the investor’s city and expenses still part of mudaaraba by istiḥsān, but he cant do that to any other cities.
43. 4:204 man says I will buy this cloth from you for surplus over the 10 of 15, then by qiyas he owes 25, by abandon qiyas and istiḥsān that price is 15, because this is ma3aani kalam al-naas
44. 4:271 harbi enters dar islam with safety, then a muslim gives him money mudaraba to go trade in dar harb, then by istiḥsān that’s ok, and any loss is only on original investor, and any gain according to what they agreed if the place becomes muslim or the harbi comes back to dar al-islam as a muslim or with aman.
45. 4:290 if X appoints Y mudarib, then Y buys a house H, and both X and stranger S have shuf’a on H because X has another house next to H, then X gives up the shuf’a, then by qiyas S only gets half of H, but istiḥsān that S takes all of H, because we make Y like a normal outside party buying a house which has two people of shuf’a and one of them gives it up
46. 4:326 if x appoints Y mudarib with 1000 dirhams for half of profit, then Y buys slave girl for 50 dinars, and exchanges the dirhams and pays it in dinars, then by qiyas here Y bought the slave girl for himself and is liable, but Y and M said by istiḥsān that it is part of mudaraba. By qiyas no, but we abandon it for istiḥsān,
47. 4:327 Ay and M say don’t you see that if a man pays to another 1000 dirhams mudaraba for half, so the mudarib buys a slave girl for 1000 in the currency of that land, then exchanges dirhams for dinars, then exchanges to currency of that land, then gives that to seller, that’s fine. And by qiyas it wouldn’t be part of the mudaraba, but we abandon qiyas and take istiḥsān, that if mudaraba was on dirhams and he buys with dinars or vice versa. Basically same as above case 113.
48. 4:329 don’t know exact case but seems like alternate qiyas, saying case of dinars and dirhams different from makel and mawzoon, with explanation don’t you see that mudara can only be with dinars and dirhams, so for that reason its different from the other case, though by qiyas theyre equal.
49. 4:369 If a woman is divorced or husband died, then she breastfeeds a youth with milk from that man (i.e. from a baby born of that man?), then the mahram relationships result as if man hadn’t divorced or died. Such that even if she marries another man but breastfeeds with milk from the first. But if she gets pregnant from second man and gets milk from that pregnancy, AH says milk and mahram relationship still for the first man until she gives birth to new child. Y says if its known this milk is from second man then that’s where it cuts. M says by istiḥsān that its from both the men, and mahram relationship extended to both.
50. 4:383 If two brothers get married to two sisters, and each wife enters upon the other brother and they both consummate. Then by istiḥsān each brother should divorce the wife he didn’t consummate with, and pay her half the dowry, then each marries the one they actually consummated with, and pay her mahr like her mahr from the first marriage, then second mahr for the actual second marriage. So each woman gets 2.5 mahrs,
51. 4:402 If after the 3 hiyads of 3idda, then shes making ghusl but still hasn’t done ghusl of one limb, husband still has right of return until she washes that limb or time of prayer passes. But if its just a small finger or something then he doesn’t have right of return. These two equal in qiyas, but istiḥsān that if theres still a major limb he still has right of return.
52. 4:402 and if she marries another man she still needs to wash that part first then marry, take by **thiqa** here (precaution) also.
53. 4:422 if young boy was married but dies before consummation, then she shows to be pregnant after his death, her idda is 4 months and 10 days, and pregnany not considered cause its not from him, whereas if pregnancy was from before his death then idda is giving birth even though its known to be adulterous. And this and first case equal by qiyas, but istiḥsān here, because he died while she was already pregnant, so she must give birth.
54. 4:478 if man says if you menstruate you are divorced, and she says ive menstruated, then by qiyas she isn’t automatically believed, but we abandon qiyas here and go with istiḥsān that she is believed. And in this istiḥsān **enters a bit of qiyas**, because we believe her by her statement during her 3idda, so to be consistent we should in divorce also.
55. 4:481 converse to above, if she says ive given birth, and man says you haven’t, divorce doesn’t go straight through, stick to qiyas here and abandon the istiḥsān
56. 4:488 if man says if I don’t divorce you by single then you are triple divorced, then says after a pause you are divorced singly, then by qiyas she should be divorced triply cause of that pause in between, but by istiḥsān she isn’t
57. 4:517 to allow the transactions of a mute person you need istiḥsān
58. 4:517 if a man has two wives and two witnesses testify that he divorced a specific one of them, but don’t know which one and forget her name, then their testimony doesn’t count. And if they testify that he divorced one of them triple but cant say which one, by qiyas should be equal, but by istiḥsān we say this testimony valid and the divorce has to fall on one of the wives.
59. 4:537 if woman is on deathbed then apostates or joins dar harb before 3idda over, by istiḥsān husband still gets inheritance.
60. 4:551 abandon qiyas and take istiḥsān. If woman tells husband triple divorce me for 1000, and he divorces her thrive but at different times but in same majlis, that he should only get 1/3 of 1000, but we abandon qiyas here and go istiḥsān that he has full 1000.
61. 4:574 if you say if you love me you’re divorced, or anything having to do with feelings, then you just believe whatever she says she feels. So if she says it in a sitting where divore could fall on her then you believe her and divorce occurs. And by qiyas he doesn’t have to believe her. But we take the istiḥsān here.
62. 4:592 if husband says to wife choose between your family and marriage, and she says I choose my family, and husband meant by that divorce, by qiyas that’s not a divorce, but abandon qiyas here and by istiḥsān it counts.
63. 4:592 above premise, if choice was for a specific family member it doesn’t count. But istiḥsān that if she says mom or dad, or choose herself, then it does count.
64. 5:18 if a man buys his father intending to free him to expiate from his dhihar then its ok by istiḥsān
    1. Parallel to something above

5:18 if a man says you are free the day I buy you, then does dhihar then buys him intending to free him for that dhihar, not ok. And this opposes those of womb mahram, which are equal by qiyas, but we use istiḥsān for the previous, and qiyas here.

1. 5:20 if a man does dhihar of 4 women, then frees a slave and doesn’t have any other wealth, then fasts 4 months in a row to expiate but then gets sick, so feeds 60 poor people, but in all of these cases didn’t intent a specific one of the women, that all suffices.
   1. Parallel to something above
2. 5:34 if man repeats divorce three times in one majlis intending thereby emphasis and anger, then leaves her for 4 months, that is 1 baa2in divorce, I abandon qiyas here and take istiḥsān, by qiyas it would have been triple divorce. And AH and AY are istiḥsān, and M and Z are qiyas, so who is mystery narrator who took istiḥsān?
3. 5:50 if a man says to his wife you committed adultery, and she responds I committed it with you! Then there is no li3an between them, nor any 7add. This is istiḥsān. By qiyas she should have had li3an on her because this is not a tasdeeq, because a woman cant commit adultery with her husband. But we abandon qiyas and take istiḥsān.
   1. Not clear how li3an works here
4. 5:51 if man’s wife gives birth, then after a year or two he denies child, he must keep child and is guilty of slandering his wife. He cannot deny child after year or two. AH sets limit of at birth or day or two, by istiḥsān, while for AY and M it’s time of nifas, 40 days, and that’s what we take.
5. 5:59 and if a husband brings witnesses that a wife confessed to zina, no hadd cause she has to confess 4 times. Quotes hadith of ma3iz. And if witnesses are one man two woman, also idraa2. Istiḥsān here baandon qiyas, because (the husband) has avoided the hadd (for qadhf?) still idraa2, because she has to confess 4 time. istiḥsān here abandoning qiyas.
   1. I think issue here is clearly, if they made testimony she confessed once, but its insufficient, then clearly insufficient accusation should cause hadd, but they don’t get hadd either.
6. 5:78 if man says every slave I own is free, intending thereby a slave he co-owns, then he did free his share. But if no intention, no freedom there, because he’s not owned completely by him. But if he intended it, we do free him, by istiḥsān.
7. 5:90 if witnesses testify that on deathbed man said one of my two slaves is free but didn’t name which, by istiḥsān free each of them by hissa of the thuluth, and then they must work for remainder of their value, abandon qiyas here. And this is AH opinion. But AY and M disagree.
8. 5:123 if a mukatab buys her parents or children she cant sell them, but if she buys other mahrams she can. In qiyas the two are equal, but by istiḥsān the second is ok according to H. but Y and M say cant do mahrams either
   1. 5:155 um walad doing mukataba can buy family members and sell them, except for mother and father according to H. But Y and M say cant sell any of them.
   2. Identical to 120
   3. 5:209 identical though doesn’t give the Y and M disagreement
   4. 5:336 mukatab can sell any relatives by qiyas, but cant sell parents or kids (and up and down tree), this is AH opinion, abandoning qiyas. AY and M say that mukatab cant sell any relatives at all. So disagree with AH’s original qiyas position, not his istiḥsān.
9. 5:150 if slave co-owned, then has twins, or just two sons, and each owner claims a different son, then if twins then both owners get both sons, though if separate then father of older gets the older, is liable for half of value and upkeep, but the younger son followers her into household of older father, and other’s claim ignored…But that’s by qiyas. By istiḥsān, if their claim is joint, then younger attributed to the one who claimed him with value, and he is liable for all upkeep for him, and his value also.
10. 5:154 if um walad doing mukataba buys her son, then dies, son cant work for freedom but instead is sold off to make up the rest of her value, unlike the son she bears while a mukatab who can work for remainder of value. And if she had bought mom or dad its like her son (which son, one she bought or one she had?), except that AH said, I use istiḥsān for the boy (wudad) only, that if 3ajjala al-mukataba 7aalatan, it is accepted and they’re freed and theyre not made to work for the mukātaba.
    1. 5:210 if mukatab dies leaving a son he had bought while a mukaatab, and son says I can pay off the debt, he’s not free, but if he can pay it all at once, istiḥsān that we accept it and free him.
    2. So wudad should totally read walad, value of redundancies, check if wudad is actually wudad in the boynukalin version

**TOSS** 5:164 qiyas equal, took istiḥsān in first case. If man marries his son’s slave and she bears child, child is his, but woman stays son’s slave, this is istiḥsān position. But if man had ever owned her, then she becomes umm walad, this is qiyas position.

1. 5:176 x and y co-own woman z, both make her mudabbar. She gives birth, child also mudabbar between them with mom. If one claims child, then by qiyas shouldn’t have nasab, because he’s a slave to another, but abandon qiyas and istiḥsān that he gets nasab from him.
2. 5:187 if owner dies, then witnesses raise to qadi that he had freed a slave, then one slave share is freed, and this is distributed amongst all his slaves, and they work for rest of value, this by istiḥsān.
3. 5:188 man on deathbed says one of you two slaves is free, then dies and they both testify that he said it, unclear but seems to say then it counts somehow
4. 5:190 if two witnesses say he made one of his two slaves mudabbar, then testify he freed one of them batta when he was alive and healthy, and he had no money other than those two slaves, their testimony is baatil, because lam yuthbitaa al-shahaada, for AH. But I use istiḥsān to accept the testimony for tadbeer, because it’s a wasiyya, and so each of them is freed 1/3, and works for the other 2/3 value.
5. 5:208 man does mukaataba for two of his slaves and makes their amount to pay 1 amount, each of them kafil on the other, then it is permissible, even though by qiys mukatab cant be kafil for another mukatab of same owner.
   1. This is narrated from H from Hammad.
   2. Big one cause its looking super MISC, and also comes from old doctrine.
6. 5:210 mukatab can make his slave mukatab
   1. But he cant free a slave, so why
   2. 5:225 identical
7. 5:212 a man can make slave mukatan for 1000 dinars and another slave that has his skill/craft. From own ruling qiyas.
8. 5:219 If mawla free mukatab’s son that he had while mukatab, that’s valid, doesn’t lift from mukātaba anything, because mukatab cant sell his son. Similar if he’d bought that son. Similar mother or father. As for his umm walad, mawla cannot free her, since if mukatab is freed she’s still his umm walad, while mother and father and son go free with his freedom. And if mawla sets free a mahram of the mukatab who the mukatab owns, not ok, because that’s mawla eliminating mukatabs wealth. But mawla can free the child or parent with respect to the istiḥsān position, whereas by qiyas wouldn’t be ok because mukatab can use them as service. This is all AH. AY and M said that mawla can set free any mahram that mukatab owns, cause mukatab cant sell any of them.
9. 5:229 if master of mukattab dies leaving son and daughter, then mukaatab owes them value. If daughter frees him, invalid, because then she’d get a share of walaa’. But if they both free him, istiḥsān that its valid, and walaa’ goes to the son.
10. 5:234 if mukatab apostates and goes to dar harb and earns money then is taken captive and refuses to become muslim he is killed and all his money goes to his owner to suffice his mukataba and the rest of the estate divided among his inheritors. Istiḥsān here abandon qiyas. By qiyas all of it would have gone to owner, and if he wasn’t slave it would have been spoils of war, so abandon that and do istiḥsān.
    1. **fascinating**
11. 5:237 if a muslim buys a muslim slave in dar al harb and does mukataba there and that slave pays it off and becomes free, that’s ok, by qiyas shouldn’t work cause muslim law isn’t there, but we say ok since theyre both muslim
12. 5:237 if a muslim buys a kaafir slave in dar harb, then makes him mukaatab, and he pays and goes free, then they all become muslim, I make that ok on the muslim.
13. 5:244 if find foundling in kufa or another muslim city then he when he adraka he is kaafir then he is imprisoned and made to convert, because he was taken in a muslim city. By istiḥsān.
14. 5:364 if dog runs away and kills something can you eat it? No. but if dog runs of and catches something, then owner catches up and takes what he caught and says bismillah and slaughters it, can it be eaten? Yes if the dog was held back when saying the basmalah, istiḥsān that its ok if the dog has been held back, otherwise still that he cant.
15. 5:405 man slaughters for eid before imam prayed, this doesn’t count. But what if its before people of local prayer area dispersed, but after the people of bigger masjid have, does it count. Yes, istiḥsān here.
16. 5:407 sacrifices for eid adha. Cows count up to 7. If 6 intending udhiya, but the 7th is a boy intending sacrifice but whose father has already sacrificed on his behalf, it counts, but why if he didn’t have sacrifice upon him? Istiḥsān here and abandon qiyas. Same if its um walad.
    1. Quite miscellaneous?
17. 5:408 man buys a cow, then 6 more people join him in the cow intending sacrifice after he’d bought it even though he only bought it for himself, counts? Yes by istiḥsān, but better if its before he buys it
18. 5:410 man wants to slaughter cow intending udhiya, but then the knife misses the mark and strikes and pokes it out, by istiḥsān this counts for him if had intended by it sacrifice.
    1. Cause normally you cant sacrifice lame animals, ruling before it is about leg breaking
19. 5:411 a man sacrifices the udhiya of another man without the other man knowing, does that count? Yes by istiḥsān, though by qiyas hes liable for its value and it doesn’t count.
20. 5:411 if two men do the above to each other, still counts
    1. Possible a new type of reasoning here, that if both “victims” are equally unharmed then just move on with things
21. 5:444 if you have a will listing a bunch of things intended for Allah, and some of them are obligations on you, those are put first, even though by qiyas you should go in order of how the will was written
22. 5:459 if x leaves y wool of his sheep and milk and fat, forever, that’s not ok, only whats on them at that time. And this and ghalla are equal by qiyas, but abandon qiyas and take istiḥsān. Ghalla it could be forever.
23. 5:496 if he says in will that one son and all their inheritance is under wasi of one man, and the caretakership of his son and all their wealth is under wasi of another man, then we make them by istiḥsān two wasis together in the wealth and the child. But Muhammad says no keep them separate.
24. 5:509 and if man dies and leaves two sons and 20 dirhams, then they split it and one of them travels, then another man comes and claims that there was a will giving him 1/3 and he has evidence, he takes ½ of what the present son has. And if of the 20, 10 of it is in case itself, and other 10 he owes to the other brother, and the claimant brings evidence of wasiya, claimant also takes half of that 10. Theyre equal in qiyas (meaning he should have taken half the 20?) but istiḥsān here, and iqrar here is not like bayyina, don’t you see that if he does iqrar (the present brother) it doesn’t stick his brother with a debt, whereas if its evidence its stuck on both the brothers?
25. 5:518 man gives wasiya to man and he accepts it, but then returns it to the inheritors, that’s valid, and if he tries to return it only to some of them and the others would have a claim on it, then by istiḥsān its as if he returned it to all of them, and split according to rules of Allah
26. 5:528 if two witnesses say their father gave wasiyya to x, and x accepts it, then its permitted, by qiyas it shouldn’t be ok, but istiḥsān here abandon qiyas. Don’t you see that if two men testify that their father made someone a wakil while he was alive, that’s invalid, similarly the wasiyya by the qiyas.
27. 5:532 man says I give wasiya to another for what is between 10 and 20, then its 19, and between 100 and 200 is 199, but this is only H, Y and M say gets the whole 200 or 20
28. 5:543 if man says 1/3 of me is for x, or 1/6, then dies before qabd, by qiyas this is invalid since its unknown, but abandon qiyas istiḥsān its valid, and applies to entire estate.
29. 6:200 can man do mukataba for service for a month, even if service isn’t specified? Yes, just like you can do it for sum of money that isn’t known?
30. 6:201 similar to above, mukataba for building a house and he’s shown its raw materials, or a well knowing its dimensions and location? Yes also by istiḥsān of the above
31. 6:205 slave girl in mukataba then owner dies, mukataba ends and she’s owned by inheritors. But if she pays them the agreed amount after owner dies, then by istiḥsān she should go free.
32. 6:205 another istiḥsān ruling to free a slave even if asl of mukataba contract was fasid
33. 6:206 mukataba by saying 1000 by the next growing season? Yes because it’s a known time by istiḥsān is ok
34. 6:210 muktaba on you and on a missing slave for 1000 dirhams? Yes by istiḥsān ok.
    1. Also check end of page for ada3 al qiyas
35. 6:211 if man x says to slave y, I have made absent slave z mukatab for a amount on that you give it on his behalf, and y consents, permissible? No, because y is a slave, and hasn’t been mukaatab on himself. So if y actually does give it, is z free? Yes. Why? By istiḥsān.
36. 6:211
    1. Related to above, then if owner wants to sell the missing slave can he, by qiyas yes, but by istiḥsān only until the present slave does his thing with the mukataba
37. 6:212 if x says to y ill pay you 1000 if you free your slave, then he does so and man frees slave, then x wants to take 1000 back, can he? Yes. And what if y had spent 1000. Well if slave was put into mukātaba, then y cant go back for the money, but if straight 3itq then y can go back and it’s a debt on x.
38. 6:218 if mukatab does mukataba for own slave and that slave pays can he be set free, yes, why if mukatab cant set his slaves free? Istiḥsān, and its equal to bay3, not to 3itq
39. 6:221 if a mukataab does mukaatab of a slave woman, then has relations with her and she bears child, main owner doesn’t have share of child, child goes free with her mother. But if mother then cant pay what happens with child. Child is for owner with value, and woman is the mukaatab’s slave. Why? Because istiḥsān, because I dislike (akrahu) that his son be his own slave.
40. 6:222 if mukaatab has relations with his mukaatab then dies and doesn’t leave money, does she get a choice? If she didn’t give birth no, if she did give birth, choice between her and son working for that dead man’s mukātaba, or instead working towards her own mukātaba (Basically which contract is better). But if he had left money enough to suffice for his mukātaba, he’s’ free and then her mukātaba is over? Yes. What if she fails to pay in the first branch, and top master is claiming her son? The son is free and his father must pay value, and if theres enough in his value to suffice mukātaba then that dead man’s mukātaba is over and the mother becomes owned by his heirs if he has free sons as heirs. Why? Because her and her son are in position of wealth in the estate, and by istiḥsān I make son with value and isn’t sold.
41. 6:223 istihsan here abandon qiyas. If mukaatab x does mukātaba of y, then y does mukātaba of slave woman z. what if x has child with z? x takes her 3iqr over from y, z stays on mukātaba, and son has her status. If z is unable and becomes slave again? She is owned by y, and then son z goes to x with x paying his value to y. why? Istiḥsān abandon qiyas, and made this case like case of normal owner who has relations with mukaatab of his mukaatab. So alternate qiyas?
42. 6:233 if a man gives wasiya to another man and his inheritors are young, can the wasi do mukataba of their slave, no, but if theyre young yes he can
43. 6:237 mukatab woman has son then dies and leaves debt and a sum to be paid of her mukataba, the son must work both off. And if he pays the mukataba before the debt is he free? Yes, then the debtors go to him for the debt and he has to work it off, this is istiḥsān.
44. 6:248 abandon qiyas and use istiḥsān. If one owner does muktabaa for his share of slave with permission of co-owner, and permitted him to do qabd, so he did qabd of some, but then was unable to finish muktāba so was reutnred into slavery, does the co-owner get any part of the amount that first owner had taken for the mukātaba? No. because he had allowed the first owner to take it and made it his. So whats the qiyas then. Qiyas would be that they split what the muktāba amount was, but abandon qiyas and istiḥsān it seems for an alternate qiyas.
45. 6:255 woman co-owned and, then one owner dies and leaves 2 sons, what happens if 2 sons and the partner all gift her the money for her mukataba is she free, yes by istiḥsān because if the two inheritors agree to this then she takes with it the status of an inheritor?
46. 6:259 if man does muktaaba for half the slave, can slave be half in labor for hm. No. and If he wants to leave the city can owner prevent him? By qiyas yes, but abandon qiyas, and istiḥsān that he cannot prevent him from doing his business.
47. 6:260 if a man does mukaataba on half the slave, so he’s half free, can he have him serve him every other day and let him work the other days? By qiyas yes, but by istiḥsān no must be left alone to work, and if he does give the half then after that he’s made to work for the other half of the value and is free,
    1. **Istiḥsān here is more beloved to us**
48. 6:260 related to above, but instead of serving him, can he on the service days make him work towards that other half of his value
49. 6:263 if a slave is co-owned, one owner allows him to trade, and he takes on a loan, this loan is part of the share of the co-owner who let him trade. So if after that the other owner finds out he’s buying and selling and doesn’t prevent him, is he then liable for the whole debt? By qiyas no because it is still on its original condition where he was still only liable for it in his first half, but by istiḥsān yes the debt is mandatory on his entire ownership
50. 6:264 a man does mukataba for half his slave and then acquires some wealth, is half of it the property of his master? Yes. And if the master buys from his slave some of these goods is that permissible? Yes, he buys half, because he already owns the other half. So if mukatab buys from his master a slave, can he? By istiḥsān yes because he can buy and sell from anyone else, but by qiyas he can only buy half of something. And here we take the qiyas!
    1. Weird explanation for istiḥsān, yes because he is allowed to buy and sell from ghayrihi, so its like a more basic definition of mukataba not looking at the particulars of his case?
51. 6:277 can x make y’s slave z a mukaatab, no. if he then actually pays? Yes, and we make it like his saying if you give me x amount then I will free my slave.
52. 6:278 can man do mukataba for one of his slaves and a missing slave together? Yes. But if the present slave dies whats the state of the other one? He is slave, unless he can immediately pay full amount of mukataba, then hes free by istiḥsān (and the dead one too)
53. 6:279 same situation as above, if the hadir dies, the gha2ib who wasn’t there for the actual mukataba what can he do? Can he just pay his part of it? By qiyas yes, but by istiḥsān he has to give whole amount because they were part of a single contract
54. 6:279 can you do mukataba for two slaves but only demand the amount from one of them. By qiyas no, but by istiḥsān if it happens then yes they should be free
55. 6:280 x makes y mukaatab for freeing y and z, then x impregnates y and she decides not to pay, is z still slave? Yes. And if he had also had relations with z and she is pregnant, does she become umm walad. Whoever approves of their mukātaba together by istiḥsān, then she doesn’t become an umm walad, because if y pays then they both become free. And by qiyas z becomes umm walad and y must work for her value, but abandon qiyas and she doesn’t become umm walad, and remains in her mukātaba condition.
56. 6:282 can you do mukātaba to pay a slave or servant? Yes, and mukaatab free if her delivers it. Why? Istiḥsān and abandon qiyas, and by qiyas wouldn’t be ok.
57. 6:298 if a muslim frees a harbi slave, then H and M say he can take as wali who he wants, wheres Y says by istiḥsān the muslim stays the wali automatically, alternate qiyas but also ISLAM
58. 6:308 mukatab has a child from his slave girl, then mukatab dies but has a debt and has amount remaining of his mukataba?
    1. The son works for whats his father owes of mukataba, and if he gives it to owner is free by istiḥsān as if his father had given it
59. 6:311 if mukaatab gives wasiyya, not ok if hes not free. But if the heirs than validate the wasiyya, can they then undo it? Yes. Why if a normal man who gives wasiyya over 1/3, but heirs ok it after his death, they cant go back on it? the free here not equal to mukaatab, cause mukaatab cant do wasiyya at all, but istiḥsān that if heirs ok it and pay it then its ok, but by qiyas its invalid.
60. 6:314 master and mukatab disagree on amount, mukatab says its 1000, qadi rules in his favor and he is freed, then after that master comes with evidence showing it was 2000, what happens
    1. The mukatab stays free and owes a debt of 1000
61. 6:327 can mukatab buy his wife? Yes. Can he sell her? Yes if she doesn’t have his child.
    1. If she had given birth to a child before he owned her and he doesn’t have his own child from her, can he sell her? Yes, and I use istiḥsān to say he can sell her if she doesn’t have his child, and this is opinion of AH, but Y and M says he cant sell her.
62. 6:330 can mukatab permit his slave to marry? No because then he’s financially liable for mahr and upkeep hurting his mukataba. But can he permit female slave to marry? Yes by istiḥsān because he benefits from it with the mahr. And by qiyas it should not be permissible, but by istiḥsān we allow it.
63. 6:335 a man does mukataba for his slave girl and he has khiyar of three days then she gives birth to a son, then she dies still within those three days before the man acts on the khiyar, what then?
    1. Owner can approve mukataba for child, or reject it, and if he approves it then son is in status of his mom by istiḥsān, although by qiyas the mukataba would all be invalid because the woman died before approval of the mukataba.
64. 6:337 mukatab buys his son, then dies, can son work towards freedom? No he’s sold. Because he’s not same as child born into mukātaba. And similarly if he bought his father? Yes, except AH did istiḥsān specifically in case of son that if he brought the amount of mukātaba at that moment, then it be accepted from him, and he and father are free.
65. 6:345 mukatab and free man co-own slave woman, each has child with her, then mukatab and umm walad both cant pay!
    1. Then she becomes um walad for the free man and he pays half her value to the mukatab, and the son of the mukatab takes the status of his mom and doesn’t have a nasab, though M says no his nasab is established from the mukatab
66. 6:404 if a man confesses that his father set free a slave in his deathbed, or when healthy, and doesn’t have another heir, then the walaa2 of this freed slave his mawqoof by qiyas, and the son isn’t automatically believed over the father, but I abandon qiyas and require father to be his wali by istiḥsān if they share the same 3asaba and people and village
67. 6:405 another case where someone must be the wali
68. 6:413 dido of above
69. 6:417 abu hanifa saying someone must be a walie of someone
70. 6:559 if X hits Y’s tooth and it becomes loose, you wait a year to see if it rots or falls, and then if X says it did so because of another hit later, you go with the opinion of Y with an oath and X pays full amount, istiḥsān here due to athar and sunna
    1. And notice a deep wound (muwaddi7a) you actually trust X and not Y, notes that its equal in qiyas but istiḥsān for tooth cause of sunna
71. 6:564 if two witnesses to murder both say they don’t know what he killed him with, by qiyas this should be like other invalid murder testimonies, but istiḥsān that its valid and he must pay the diya.
72. 6:577 a man cuts the right arm of two men, he must pay diya and have his right arm cut. If the two men accept a mortgage in place of the money it is as if they accepted the money, so that if then after that one of them forgives him from the qisas, it is just like if theyd taken the money, where then no hadd and he gives the rest of the money. Though this is isthsan, for by qiyas there shouldn’t have been a sharika between them whether or not they accepted the money.
73. 6:583 if woman wounds man, then man marries her with mahr being the payment for the wound, but then man dies from it, by qiyas she should get qisas, because it has become a nafs, not what he had married her upon (just wound). But by istiḥsān, abandon qiyas, she must pay diya, and she gets mahr mithl, and she doesn’t get inheritance cause she murdered.
74. 6:584 X hurts Y with a sword then Y swears that X didn’t hurt him then Y dies from it, X not liable. And if Y doesn’t swear that, but his walis forgive X before Y dies, then Y dies, then by qiyas this forgiveness not valid, but by istiḥsān its cool. And similarly if Y forgives him, then Y dies, because Y has forgiven him before hes actually died and the recompense become obligatory.
75. 6:587 istihsan they aren’t liable because they have insisted they forgive
76. 6:591 if the one who was struck forgives, then heals, then forgiveness is valid. But if he dies from it, its invalid, because it has now become a nafs not the wound he had forgiven for. And by qiyas he should thus be killed, but abandon qiyas and istiḥsān, and AH says we just charge the diya.
77. 7:11 if two witnesses go back on testimony of murder before the penalty has been applied, istiḥsān that we don’t execute the penalty. By qiyas, if qadi had made ruling for murder, then it should be carried out, because it is in the same status as money payment, and in case of money he would pay then he would go claim it either from witnesses or from the wrongful claimant.
78. 7:26, we abandon qiyas and go to the athar that has come from shurayh!
79. 7:26 istihsan here abandon qiyas exception for liability if it’s a case of making wudu and other similar acts that are necessary
80. 7:29 in case of leaning wall and something else, theyre not equal by qiyas, but by istiḥsān treat them equally due to athar
81. 7:42 if people put a well in the masjid or some other nice facility then someone falls in, if they had permission then no liability, but if they didn’t have permission then Abu Hanifa says theyre liable, but yusuf and Muhammad say not liable if its in the public masjid because this is something that improves the masjid
82. 7:155 a man was sentenced to death by stoning, then another man murders him, is this other man liable for qisas? Yes by qiyas, but by istiḥsān no because qadi had sentenced first man and so he doesn’t get qisas anymore
    1. 7:160 istihsan literally uses word **adra2 al-qisas,** in case when someone is sentenced then another man comes and kills him, he isn’t liable for qiyas but is liable for diya
83. 7:160 if a man sentenced to hadd and gets part of it, like some of the lashes or some stoning, then he runs away, if they catch him right away finish the hadd, but if it’s a few days later, then no by istiḥsān, adara2ahu
84. 7:163 if Christian testifies to murder or cutting hand, and it was rules upon, then the one testified against became muslim, does it undo it? yes. Similarly if it was money, and he was ordered to pay it, then he became muslim, invalid now? NO. why is money case different from qisas and hadd case? Invalidate the qisas and hadd by istiḥsān, but with money it stays valid. Islam case it seems.
85. 7:165 if a man has relations with a young girl who otherwise shouldn’t have relations at that age, then no hadd on him.
    1. And in this case if he deflowered her, is her mom or daughter halal to him? Yes, but Y says by istiḥsān no
86. 7:175 difference of opinion case! Abandon qiyas for istiḥsān. That if man kisses mother in law out of desire, then has reltions with wife, hadd applied? No, because of shubha from the difference of opinion of some jurists.
87. 7:177 4 witnesses testify of man’s zina, disagree on location
    1. Testimony invalid, but they don’t get had for qadhf
    2. But if disagree over different two different sides of room, then by istiḥsān it counts
88. 7:191 if witnesses say someone committed zina, and judge sentences him to stoning but it hasn’t been executed yet, then one of the witnesses takes back his testimony
    1. Then I lash the takerback and the other 3 as well with hadd, and the one who had been sentenced no longer gets the hadd
    2. Y says asta7sin that only the taker back gets lashed, and this is his first opinion, and that of muhammad
89. 7:195 its good for imam to advise claimant to drop their hadd claim, yustahsan
90. 7:196 a man claiming that a slave slandered him and brings one witness and says I have another witness so imprison him until that witness comes, can he? No
    1. But what if the qadi knows this first witness his pious and stuff and that the other witness is in the city?
    2. Ya istiḥsān he can be imprisoned for 2 or 3 days, but if that other witness is out in Khorasan then no
    3. And if the one witness isn’t already known but brings forth a witness who is already known to say he did witness it? Then yes imprison like the previous one
91. 7:199 a man tells wasi to claim qadhf against someone, so the wasi doe, does it count
    1. Nope no hadd enforced
    2. And even if he appoints a wakil to claim it for him and the wakil does that while he’s alive?
    3. Yes, but by istiḥsān we accept the wakil to establish someones right, though no had until the actual slandered person then comes forth, abu hanifa says this.
    4. Y and m say you cant do this at all
92. 7:201 X says to Y, oh you female adulterer! Lol
    1. By qiyas he has had, but by istiḥsān avoid it according to H and Y, but M says you still do
    2. Interesting grammatical point **here check it out**
93. 7:202 does maqdhoof get zina if it’s a very old occurrence
    1. By istiḥsān no
    2. **Fascinating, statute of limitations**
94. 7:216 if qadi sees someone stealing, by istiḥsān he doesn’t get had
    1. Though if person confesses to qadi then he does
    2. In qiyas theyre equal, but istiḥsān that he doesn’t get had unless witnesses also swear to it
    3. **Interesting qadi witnessing, relates to modaressi article?**
95. 7:225 a man is borrowing or renting a slave then has sex with her, hadd on them?
    1. Then super unclear progression, but Y has no hadd as istihsan
96. 7:234 if two witnesses testify then die, do you still rule by qisas? Yes, cause its right of people, istiḥsān that I count it and judge based on it.
97. 7:235 I use istiḥsān, and I dislike killing a muslim by the testimony of kuffaar
98. 7:237 if a thobe is just 10 dirhams, is it mustahsan for the two witnesses to refuse to testify about the theft seeking to avoid the hadd for the thief
    1. Yes I use istiḥsān for that for them
99. 7:238 **famous case** of if people steal is it only the person carrying the stuff or everyone who gets hadd
    1. All 3 took this opinion that all of them get the hadd
100. 7:240 if witnesses say a man staked out a house and entered in then at night took out stuff worth 1000, hadd?
     1. But if it was in road of kufa night or day and he takes from it a thobe for 100, no hadd, qiyas equal but here istiḥsān idraa
101. 7:248 if witnesses testify that man stole a slave, is he cut? If slave is intelligent, no cut, if young or mute or doesn’t think, cut him. Why? If he’s intelligent, this is a khadi’a, not a theft or it’s a ghasb. But if young or doesn’t talk then its like stealing cattles. This is AH and M opinion. AY says no by istiḥsān don’t cut in either case.
102. 7:248 thief steals goods, cut, goods returned, then thief steals same goods again, cut again? No. why? Because he was cut for same goods once, so istiḥsān he doesn’t get cut for same goods again, though qiyas he would, but abandon qiyas. **lol**
103. 7:249 two witnesses say that a man stole, so his right hand is cut, then he steals again, do you cut his right leg?
     1. Yes, but if he steals again no more, due to **athar of ali**, but you do imprison him and make him liable and stuff
104. 7:257 if vigilante cuts his right hand, then no hadd
     1. If his left hand is cut instead of his right, the executioner not punished, nor does the thief have to have anything else cut, by istiḥsān here abandon qiyas
105. 7:264 if witnesses testify that he stole money of a harbi with aman. By qiyas same as first qiyas, but istiḥsān he avoids hadd, because it’s a harbi, not a dhimmi, and don’t you see if he murdered him he wouldn’t be murdered? But he’s liable for what he stole.
106. 7:269 how old before someones testimony admitted if they haven’t had physical maturity
     1. For slaveboy 19 years, for slavegirl 17 years, H
     2. But M and Y disagree due to hadith
107. 7:270 if imam is presented with a thief should he ask him (talqeen) have you stolen?
     1. Yes, due to hadith
108. 7:274 a man confesses to theft of someone who is not there, and it is established, should he be cut when the man he stole from is still absent? No, by istiḥsān avoid penalty, because if that person says he didn’t still from me then no hadd
109. 7:279 if a man looks at the farj of his wife from desire, or touches or kisses it, until her mother becomes haram to him and her daughter, then he steals from one of them, and he confesses or has witnesses, does he get cut?
     1. Yes, like milk mother mahram
     2. Why do you only apply hadd for theft from mother-in-law and not step-daughter?
     3. Istiḥsān that step-daughter takes the standing of her mother
110. 7:282 X says I stole from Y, but then X says it was ghasb, and now it has perished, is X now liable? Yes, but is he cut? No
     1. But because it is all connected speech, by istiḥsān we make him liable, even though by qiyas he wasnt
111. 7:295 statue of limitations, that if it been a while since hadd and man is penitent, then idraa of hadd, and this is for theft or highway robbery. And hadith of umar saying they do that testifying out of a grudge.
112. 7:312 if someone is being forced to sell by a gang and they say sell this slave that’s worth 10k for 1k, then if he sells for less than 1k, by qiyas he wasn’t forced and the sale is valid, but by istiḥsān nah he was still forced and the sale is not valid, because it’s the same in meaning for him
113. 7:312 iif gang forced him to sell slave for 1000 dirhams and he sells for 1000 dinars, by qiyas this is still a sale, but by istihsan sale invalid because theyre both forms of currency
114. 7:317 if man forced to say he disbelieved, and he has muslim wife, then by qiyas they would have to be split up because we don’t know what he really meant, but by istiḥsān we keep them together
115. 7:321 if a qadi does ikrah of a man and hits him or imprisons him until he confesses to theft or adultery or drinking alcohol or murder, and he confesses, then if that man was known to have down that but theres just no bayyina, then by qiyas penalties become valid in this random case we avoid qiyas and let him idra’ the qisas and just pay, though if another type of thing then we stick with the qiyas and he does qisas for part and pays other part, because this is a place of shubha (referring to the istiḥsān?)
116. 7:322 if the khalifas **deputy interesting** orders a man to kill another man oppressively or else be killed, then H says the charge of murder is on this commanding deputy, not the one who has commanded, and M agrees, but Y says that by istiḥsān the commanding deputy must pay diya but doesn’t get the murder qisas, but madhhab agrees with the nonistihsan position
117. 7:337 if a Christian forced to convert then he is called muslims and if he tries to go back is forced to stay muslim, but cant be killed due to the shubha here
     1. H’s ruling on marriage said that by istiḥsān the muslim who declares kufr shouldn’t be considered kafir, so also by istiḥsān we cant return a muslim to kufr and invalidate his islam **explanation doesn’t seem to jibe here**
118. 7:349 if buyer sabaqa with freeing slave, the slave is freed and purchase valid, qiyas here would be that buyer freeing slave is invalid, because he freed him without owning him, but by istiḥsān we say his freeing him is showing both consent for sale and ownership then freeing him, in the same expression. Cause don’t you see that a man can say to another I have made my slave free by way of you for 1000 dirhams, then if the other consents, he consents to two contracts at once, but this is not qiyas. s
119. 7:353 if X forces Y to give X the right to free Y’s slave or divorce Y’s wife whom he hasn’t consummated with yet, then by qiyas the slave would actually be freed or wife actually divorced and no liability because he didn’t actually force him to free or divorce, but by istiḥsān he is liable for value of slave and ½ mahr, because he forced him to do what would then transfer the power of the act
120. 7:354 if qadi says I know the testimony wasn’t good enough but I stone him as an oppressor and I knew he didn’t have stoning on him, and I forced the people to stone him, then the qadi is liable for diya
     1. And qiyas of M’s opinion would say that qadi should be executed, but he used istiḥsān to say qadi gets diya due to shubha of the testimony
121. 7:357-8 if man’s slave is mudabbar and so cant sell him, or is umm walad, and he’s forced to swear that if I approach her sexually then slave is free, then if he approaches her, slave is free by 3itq, and man who forced him to isn’t liable for anything. And if he leaves her for 4 months then she has talaq baa2in, and if he hadn’t consummated with her he is liable for half of the sadaq, and by qiyas doesn’t go back to person who had forced him, but we say by istihan that he goes back to the one who had forced him, for less than half sadaq and for the value of the slave he had to swear to free, because he prevented him from relations.
122. 7:358 and if he had consummated with her, then one who had forced him is not liable for anything if he continues avoiding her sexually, until he approaches her in the 4 months or until the 2eelaa (limit of 4 months after which there can be divorce?), by both qiyas and istiḥsān.
123. 7:366 if X forces Y to split off half of house then sell it to him, by then Y sells the whole house, by qiyas no liability here, but by istiḥsān nothing of it is valid
124. 7:370 if W forces X forces Y to buy X’s slave then kill slave, qiyas is that X should be killed, because the sale was fasid and he forced Y to kill, but by istiḥsān W is liable with money for value to X
125. 7:375 if X forces Y to swear oath on threat of death or injury that he permit X to kill his slave intentionally, so Y permits X to and X kills slave, Y can kill X for killing his property since the actual permission was batil. but if X forces Y by threat of prison, by qiyas these are equal, but by istiḥsān X liable for value of slave only and can’t be killed.
126. 7:376 if the thief forced his owner by and commanded him to kill intentionally on threat of imprisonment, and owner does but he wasn’t forced or scared, by qiyas he should be killed, because his command when forced by imprisonment is invalid, but by istiḥsān he’s only liable for value and not killed
127. 7:399 group threatents X we will kill you, or say you disbelieve in Allah, or kill this other Muslim
     1. He’s allowed to say he disbelieves, but to avoid is more righteous
     2. But he’s not allowed to kill Musilm, so if he doesn’t say he disbelieves then kills the Muslim, qiyas is that he should be killed, because he could have said he disbelieved, but by istiḥsān here we avoid the hadd, make him liable for diya if he didn’t know he could have disbelieved

7:400 if he was threatened eat this dead meat or kill a muslim

* 1. Diff is that if he doesn’t eat the dead meat and is killed he’s a sinner, whereas if he doesn’t say he disbelieves and is killed he’s rewarded
  2. And so when he refuses to disbelieve he doesn’t get killed, but when he refuses to eat dead meat he does get killed

1. 7:400 If man threated saying we’ll kill this other man or you commit zina with this woman, then he cant do anything until he’s killed, and if he does something he is sinful, because zina doesn’t become halal by being forced to do it. But if he does the zina, by qiyas he has hadd, but istiḥsān avoid the hadd.
2. 7:406 if someone threatents to imprison your father or you sell a slave, by qiyas that isn’t ikrah, but by istiḥsān it is
3. 7:415 if man in ihram told we’ll kill you unless you hunt this animal, and he doesn’t and is killed, then he’s rewarded
   1. And if he does he doesn’t need kaffara by qiyas, nor on the person who forced him because they weren’t in ihram, but by istiḥsān the forced person should pay the kaffara, and if they were both in ihram then both pay kaffara
4. 7:445 that ruling on when you split prisoners of war
   1. If the ghanima is divided then prisoners are generally among a group, then one of them frees a slave before its been further apportioned, that is valid
   2. But in the first case if its before the ghanima has been split in the first place, then not valid
5. 7:476 if someone with aman dies in dar islam and leaves wealth and his heirs in dar harb, his wealth is mawqoof until heirs come. So if heirs come to we trust them or ask for bayyina for what they claim of inheritance. Yes ask for bayyina. So if their bayyina is from dhimmis, do we accept it? By qiyas no, but istiḥsān yes, and we pay if they testify that no heirs other than them.
6. 7:511 man gets drunk, then declares apostasy, then sobers up and returns to islam, his is wife divorced? By qiyas yes, but abandon qiyas and istiḥsān, because drunk person has no aql, so he’s like a majnoon in this case.
7. 8:66 if X says his mukatab Y’s slave Z is his son, X isn’t believed
   1. Because Z had been bought, not born while owned by Y
   2. And if we believed him here then all of the mukatabs slaves could be set free by the owner claiming they were his sons then taking them
   3. But by istiḥsān we do believe him if Z was born while owned by Y
8. 8:71 f if woman is between two, bears two children, and one man claims older and another younger, and claim is joint, then older son is from the man, and slave is umm walad for him, and younger son is son of who claimed him, and he’s liable for his value and half of 3iqr, and father of older is liable for half of umm’s value and half of 3iqr to partner, by qiyas father of the younger shouldn’t count, cause she became umm walad for the older, but istiḥsān and approve his claim.
   1. 8:129 woman co-owned, two sons, wait, exactly identical to 8:71.
9. 8:72 if a slave girl is between a man and his son, then she gives birth to a boy and they both claim him, then he is the son of the father, not the son, by istiḥsān
10. 8:73 dido to above if its grandfather and grandson, it goes to grandfather, but all other relations he’s son of two people split between them
11. 8:74 a man founds a young boy, and no one places judgement on whose he is, then a freeman claims him as his son and describes some of his physical characteristics, then by istiḥsān he is his son, abandon qiyas in this
12. 8:74 if a foundling is found in a big muslim city, then a dhimmi claims him, by qiyas he isn’t believed, but by istiḥsān we say the claim is true by istiḥsān, and we hand him over and declare him muslim
13. 8:74 if a slave claims he is his son from so and so slave woman, and the master also backs them up, then by qiyas shouldn’t be given, but by istiḥsān we say ok
14. 8:75 if the claimant is dhimmi and the witnesses two dhimmis, and the foundling is in hands of dhimmi found in dhimmi village, if dhimmi is in hands of muslim then by qiyas don’t trust him, but by istiḥsān we make him muslim, even if he was found in church or synagogue in dhimmi town
15. 8:93 man submits that his slave woman had already given birth or had still birth, then she gave birth more than 6 months after that, then that is his son. Similarly if she delivered the son when he was missing or sick, because she is an um walad. But as long as the judgement hasn’t been made he can reject it. Abu hanifa says no time limit here, Muhammad puts on time limit of nifas
16. 8:131 If slave S co-owned by X and Y, and S is young boy, then X frees S, then Y claims S is his son, then H says that S is Y’s son, but X is half of his wali. If S is old and denies it, then Y’s claim is rejected. But if S is young, then it is accepted by istiḥsān, because (some kind of alternate qiyas) . Y and M reject it.
17. 8:151 man rents land, by qiyas he doesn’t hae right to waterway same as purchase, but abandon qiyas and istiḥsān that he has waterway and rights, because land is still woned by original owner, and those rights could be stipulated in contracted potentially.
18. 8:182 If a river is between different people’s land, and some of the people have irrigation ditches, and others have water wheels, and some have neither, and don’t have a known right to drink from that river or another, then claim a right to that river, and one owner of land on the bank of the river claims they have a right to water from it, then by qiyas the river is only for the people who have the ditches and wheels and not the others, but I abandon qiyas and use istiḥsān to give river right to all to the proportion of their land on the bank of the river.
19. 8:183 And if that land from above has known water right to another river then it has no claim on this river. And if the owner of it has another piece of land next to it which doesn’t have a known water right, then by istiḥsān all that land is put together and gets a water right from that river.
20. 8:257 A man X confesses that he and man Y co-own slave S. If he says Ashraktuhu bi hadha al-abd, or ashraktuhu fi nisfihi, then in both cases its ½ ownership, even though if you say fi nisfihi it technically means ¼ by qiyas.
21. 8:282 If you I owe him me 1000 dirhams except for a thawb, then the 1000 is set but the except a thawb is ignored cause it doesn’t make sense, you cant except a thawb from something of a different type. But by istiḥsān, if its something of kayl or wazn or sold by number then its ok and you just count the value.
22. 8:283 If you say I owe him 1000 dirhams and 100 dinars except for a dirham, then it counts, and you subtract the dirham from the 1000 dirhams before.
23. 8:286 if you say I owe him something inshallah, it doesn’t count. And AH said if a Sakk, written right, is made, of x right over y, owes him z dirhams, weight of 7 good ones, and due on a date, and whoever takes up mentioining this right is the wali of what is in it insha’Allah, then this is batil, and nothing is due according to this sakk. But AY and M said by istiḥsān in the case of a Sakk this is due, abandoning qiyas, for in this case the “in” exception is not regarding the money, but the person who will pursue it.
24. 8:301 if someone says I owe him 1000, no rather I owe this other guy 1000, then he owes both. If he says I owe him 1000, no rather I owe his slave 1000, and his slave is a trader who has a debt (maybe mukataba), then if he does have a debt on him then each gets 1000, but if not then he only owes a singl 1000 to the owner. Istihsan here abandoning qiyas.
25. 8:302 if X confesses I owe Y 1000 for a slave he sold me, no actually I owe Z 1000. If both continue to claim it then he owes 1000 to both, but Z/Y admit it was the other who sold it, then X only pays that one of them 1000.
26. 8:332 If X confesses that he took possession of a thawb from Y because Y loaned it to him, but Y says no it was ghasb, H says he believes X, but Y and M don’t believe him pending an oath from Y.
27. 8:360 If X confesses that what he owns belongs to Y and that he’s renting it, then that counts everything he owns that day, except for food and clothes.
28. 8:365 If slave S is in hands of X then says I’m actually a slave of Y, and both X and Y claim her, then H says you believe X. But Abu Yusuf says its Y if Y also claims her by istiḥsān.
29. 8:366 If slave S says to his owner X you freed me, but X denies it, then S still slave. But if S says I’m your son from this um walad you own, but X denies it, S is actually free, by istiḥsān abandoning qiyas, because he did not confess to being a slave? This is Muhammad’s opinion, though qiyas of Abu Hanifa’s opinion would make him a slave.
30. 8:369 if a man X says slave S belongs to Y, then brings evidence showing he owns slave, cant accept evidence cause the confession overrides. And if a man X says I own this house except for this room, and the man Y who has the house denies it, then X brings evidence that he owns the house and says this room used to be mine then I sold it, then that is accepted. (Questions was if evidence says he owns whole house, how does he not own the room). And if X says I never owned the room, then cant accept it. And if he doesn’t say either way, I ask him, and if he refuses to say, then qiyas default is that the evidence is accepted, but by istiḥsān I don’t accept. Because don’t you see that if I rule in his favor, then he later says I never owned the room, I negate the jdugement and return the house? So the judge cannot rule against the status quo unless the affair is certain.
31. 8:369 similar to above, X claims 1000 dirhams against Y, then brings evidence showing 2000 dirhams. If X says you only ever owed me 1000, then evidence rejected. If X says you used to owe me 2000, but then I forgave 1000, evidence is good. And if X doesn’t say j!either way, then by qiyas you accept the evidence and judge for 1000, but I use istiḥsān and say evidence not good, because contradictory story.
32. 8:370 If man X confesses to being owned by Y, then Y sells him, that’s good. Then if X suddenly claims being free after having been sold, must provide evidence. If there is evidence, that evidence, is accepted even if it contradicts her original confession. Istihsan here abandon qiyas, because it is a faraj!
    1. Don’t you see if her nasab was known I would have executed her confession of being owned, and I don’t for her concealment. Similarly for the slave.
33. 8:390 **Umm walad of zina** is not an umm walad by istiḥsān.
34. 8:392 if man confesses in writing. If he writes it in ground or on a scrap of paper doesn’t count. But if he writes it on a page similar to that which a man writes a letter to another man on, then it counts.
35. 8:392 H and M rule that letter from another judge doesn’t count unless witnesses testify to it having been written in front of them and them being told to witness it, or that judge read it on to them or them on to judge. But Abu Yusuf says if witnesses bear witness to a letter or official seal then it counts even if they don’t know mā “h n y h” istiḥsān abandoning qiyas
36. 8:401 If man X confesses that he owes Y 1000, then that he qadaahaa, then he brings evidence that he qadaahaa, this isn’t accepted, speech is contradictory, cant say that you owe 1000, and that you paid him. But by istiḥsān you accept the evidence that he paid.
37. 8:419 If deathsick confesses that X has a right on him, and X says yes its true, then deathsick dies, Abu Hanifa says he believes X and gives him that right up to 1/3 of the estate by istiḥsān.
38. 8:424 If deathsick man X with no debt due says to judge I owe Y 1000, no actually 2000, then the hakim makes it 2000, and this is istiḥsān. Whereas by qiyas he would have 3000 due, but I abandon qiyas here. But if he says 1000 dirhams no actually 100 dinars, he owes both amounts.
39. 8:425 If deathsick man X says I owe him a dinar or a dirham, and Y says he does, then he’s made to swear, if he doesn’t swear then he owes both, if he does swear he only owes dirham and not dinar. Similarly for everything makeel or mawzoon, like if he says I owe him a tub of oil or butt8er.
40. 8:438 if man says take this trust and hide it in this house, but not in that house, then he hides it in that house, is he liable? Yes. But istiḥsān is that if they are two rooms near to each other then I astaqbih to make him liable, but two different houses or cities then the separation is clear.
41. 8:441 If a man has a item for safekeeping, then his house catches on fire, so he takes his stuff out to his neighbor’s, and takes out the safekept item as well, is he liable? No, by istiḥsān, because it’s just a case of necessity (3udhr). Same if he was on a baot and it was sinking so he takes item out and hands it to someone to take.
42. 8:451 if a man borrows an animal saying ill carry this weight of wheat on it, but then carries the same weight of a different item, then the animal goes lame, is he liable? Istiḥsān no.
43. 8:453 istihsan, landowner cant kick guy out until plants mature.
44. 8:455 if a man borrows an animal then comes to return but doesn’t find anyone so ties it up to the house then it gets lost, by qiyas he’s liable, but by istiḥsān nah
45. 8:469 wasaya from a Ghulam who is mature but is not suitable from mudabbara or other things is that it is batil, except that if mudabbar if his owner dies his freedom isn’t undone and he works for him value. But istiḥsān in wasaya of Ghulam who reaches manhood but you see no goodness in him, then if there is wasiya for tadbeer or something else, then blla blab la, and wasiya is not same as other things because we have AATHAAR from shurayh and al-sha3bi.
46. 8:475 if someone is ma7joor but wants to do umra, then by istiḥsān ok because of the difference of opinion regarding whether or not 1 umra is obligatory
47. 8:499 if owner commands slave to go buy something for him for a dirham, then by qiyas this is permission to trade, but AH and AY and M all istiḥsān that this is not permission to trade.
48. 8:523 if man allows his slavewoman to trade, then have sex and she has child, then qiyas is that she still be able to trade. But abu hanifa said by istiḥsān she goes under hijr, and any trade after that not valid. And AY and M agree.
    1. When it was mudabbara, then there was no hijr imposed in same situation.
49. 8:532 If X and Y own S, and X says S can trade, but Y does not, then S tries making a trade with trader T and Y shows up and says I don’t permit S to trade so anything you do comes from share of X, then S and T trade, and Y is looking on, by qiyas Y looking on connotes consent, but by istiḥsān no, because he said the opposite.
50. 8:539 If X owns slave Y who trades and Y racks up huge debts, X can continue taking standard profit share from Y, but if it’s a crazy amount he can only take normal share and must give rest to debtors by istiḥsān.
51. 8:559 slave co-owned, one owner lets him trade, then slave confesses to 1000 dirhams that it’s a trust from another man, but the two owners dispute this, by qiyas the owner who didn’t allow tijara takes half of the 1000, and the other half is the trust. And the owner who didn’t permit trade is not believed. But by istiḥsān we validate what the slave says, and the 1000 is all for the person claiming wadiya. Don’t you see that if certain case happens I believe the slave. So seems like alternate qiyas, or qiyas from own ruling.
52. 8:565 if slave leaves to a city and trades and gets tons of debt, then says im x’s slave and don’t owe you anything because he didn’t let me trade, but debtors say no he did let you trade, then qadi sells all that slave has in his hands, then judges towards the debtors. Then if he has any money left, his owner owns it. And if he has nothing left, and he still owes debt, so they want the slave to be sold to pay off their debt, they cant sell him off until owner is present. By qiyas, nothing that he owned could be sold until owner comes, but istiḥsān his things could be sold, but not him.
53. 8:578 Slave making a confession after he is ma2dhoon to mahjoor of a debt or something. AY and M say by qiyas don’t believe slave about anything. But AH said this whole situation about when slave is believed or not by istiḥsān.
54. 9:12 If slave S buys a slave from X and makes money, then X comes to S’s owner Y, and S has 1000 dirhams, what happens. Y says that the 1000 is from a gift or charity, but X says no its clearly profit from selling the slave I sold him. Then you go with word of Y. And if both bring proof, you go with the word of X, but this is istiḥsān, and qiyas is that X cant get any of S’s money until S is free, but we abandon qiyas here.
55. 9:112 If slave can trade, and someone tells him to buy a slave for them, then he can, even though he gets Daman al-thaman for it, because Y and M say that slave can’t do kafaala, and that should be equal to daman al-thaman also, and by qiyas in both cases he would need his owner’s permission, but here by istiḥsān he can do daman al-thaman. So in kafala we stick with qiyas.
56. 9:113 if owner commanded slave ma2dhoon to buy him a slave or food for 1000 dirhams nasee2a for a year, so he does that, all that he bought is actually for the slave, and owner doesn’t get anything. And AY and M said that nasee2a purchase not like the actual naqd purchase, we use istiḥsān in the naqs and abandon qiyas, because slave can take the price from the owner before giving him the purchased slave, so the purchased slave is at that time in hands of the ma2dhoon, until owner pays him the price.
57. 9:137 if thobe that actual purchase happened on is found to have 3ayb, then buyer is liable for the value of the 3ayb, whereas if it was the other thobe that he just held onto for a while, he doesn’t owe anything for the 3ayb, so for one of them he’s fully liable and other he wasn’t at all, so by qiyas he should be liable for half of the value of the 3ayb, but abandon qiyas and istiḥsān, and buyer not liable for 3ayn at all.
58. 9:159 If slave S who can trade has a house, and in that house is a slave who murdered someone, then whether or not S has a debt, the diya is on S’s owner. By qiyas, if S has a debt, then the diya wouldn’t be on S’s owner, but by istiḥsān we put diya on the owner.
59. 9:159 If S who can trade has a debt to D, and S also commits a jinaaaya, then J those of jinaaya come to X the owner of S, then X can give S to J, and D then follow S for his debts until J might help S with those debts. But by qiyas X would owe the debt to D, instead of D chasing up S and J for it.
60. 9:168 Slave who can trade can lend things, or invite people over for food, and no liability on the person borrowing. And no problem for the person to accept it from the slave, whether or not slave has debt .This is istiḥsān, not qiyas.
61. 9:169 Slave who can trade can give food and clothes in charity by istiḥsān, but not cash money by qiyas.
62. 9:250 man buys land, plants in it, then shafi comes, by qiyas he can come and take plants out, but abandon qiyas and istiḥsān that he cant take it until plants mature.
63. 9:285 if wakil for a shuf3a confesses that his party gave up shuf3a, that counts, shuf3a over. But if he doesn’t do this in front of a judge, doesn’t count, even if theres evidence. These should be equal, that if its ok in front of qadi, ok in front of others, or shouldn’t be allowed in either case, but we abandon qiyas and take istiḥsān, AH and M, whereas AY says valid for both.
64. 9:288 If slave is wakeel, and homeowner dies, then slave says I sold the house before he died, and slave is mustahlik, then his opinion is trusted, after he swears oath, by istiḥsān.
65. 9:289 if one of two shafi’s made buyer wakil, buyer cant be wakil to shuf’a. nor can seller be wakil for shuf’a, because he is the one who sold it, so he cant be a wakil to contract that which he sold, same as buyer cant be for contradicting what he bought. Abandon qiyas here and istiḥsān.
66. 9:301 If harbi with amn buys land and plants it then shafee3 comes asking for land with shuf3a, then shafee3 can take land and take out plants by qiyas, but by istiḥsān that let plants grow then shafee3 takes it. Similarly if muslim is buyer and shafee3 is harbi or dhimmi.
67. 9:304 contrast qiyas and use istiḥsān here. If man claims money, does sulh for it on a wall of a house, then shafee3 can take it by shuf3a. and if he does sulh that he gets the location of the wall, shafee3 should have right to it by qiyas, but qiyas here is ugly, and so we don’t say with the qiyas, and both sulh and shuf3a invalid. We abandon the qiyas, and invalidate the sulh.
68. 9:304 and if sulh is that he run to him a known tariq in a house, the neighbor could take it by shuf3a, and in this case road is not like waterway. By qiyas its equal, but istiḥsān here.
69. 9:306 By istiḥsān, the person with guardianship of a laqit can accept gift on their behalf.
70. 9:309 you go with word of sahfi3 in given case over buyer.
71. 9:310 if man buys land, and shafi’ comes, man says I bought trees for 500 on that I can take them, and then land for 500, but shafi’ saying no you bought it all for 1000, by qiyas it would be buyer’s word with oath, but abandon qiyas and istiḥsān that shafi’ takes it all for 1000.
72. 9:354 If man X goes missing and has family F, and X is owed debt by D, then judge should have D pay debt to F to support them. But if D disputes date, then F seeks claim of the debt with evidence, don’t accept evidence, because she’s not party to it nor wakil nor inheritor, similarly if F is son or parents. But by istiḥsān, if D admits to debt, he should spend on them from it.
73. 9:367 If slave runs away then person returns slave to owner, is there reward? If he got him outside or inside the city, by istiḥsān he gets reward in proportion to distance, though if its more than 3 days away, then you hit flat rate of 40 dirhams.
74. 9:373 If a man rents a runaway slave, is he not liable for him? Yes. Then why does original owner get the rent-wages if the one renting him is the one damin. Because the wage was paid to the slave, so I don’t take the wealth from him but I return him to the owner, by istiḥsān abandoning qiyas. And similarly if slave hasn’t been paid yet, we still take slave and then pay the owner the wages. And also if paid in food stuffs, it gets paid to owner and he can eat it by istiḥsān.
75. 9:379 man finds brother’s slave, or other relatives, by qiyas theyre all the same, but abandon qiyas and istiḥsān, that if man finds son’s slave and son is in his care, then he doesn’t get the ransom. Nor his wife’s slave. Nor his father’s slave if he’s in father’s care. Though if he’s not in father’s care he gets it.
76. 9:413 Rental contract where if I take it all the way to Egypt its 100, but to ramla is 70, and somewhere else 50. Invalid fasid, but if he goes to Egypt then we say by istiḥsān its good.

9:416 If man rents a wet nurse hc can in contract say rent you for this much to nurse child plus I’ll feed you, otherwise the plus I’ll feed you must be incorporated into wage. **Wet nurse ruling**

1. 9:502 A wasi, can he give zakat on behalf of orphan’s wealth, whether young or old? No. What about sadaqat al-fitr? By qiyas should also be not allowed, but by istiḥsān AH said he can, though Muhammad disagreed.
2. 9:502 Then Muhammad makes ruling from the above that he can do the slaughtering of Eid, because it’s all food not money.
3. 9:512 foundling, if one who found it is kaafir, and kaafir comes claiming the child with two witnesses, then by qiyas the claimant wouldn’t get child, because what if its actually a muslim’s child someone else, but by istiḥsān we hand over the child.
4. 9:512 foundling is in hands of a muslim and a kafir, then two kaafir witnesses come, is their testimony accepted over Christian? By qiyas I wouldn’t accept testimony, but abandon qiyas and istiḥsān, that it would be accepted over a Christian who has the baby, but not over a muslim.
5. 9:531 If person says I’ll rent land from you muzara3a, on that you get 2/3 of produce, but he doesn’t say what he himself gets, qiyas says invalid, but by istiḥsān its fine and he gets 1/3
6. 9:563 If theres a muzara3a and owner of land dies, by qiyas contract should end right away, by istiḥsān avoid waste and let the season finish.
7. 9:573 if in a contract to take care of trees and split 50/50, then owner of trees dies when dates are unripe, then contract is over and the unripe dates should be split between heirs and worker 50/50, but if worker wants to keep caring for them and heirs want to sell them right away, worker is allowed to continue working on them until they ripen, and if worker wants to sell right away and heirs want to keep, they can pay off worker half value of the unripe dates.
8. 10:36 Someone can pay another in land with condition that he plant it that year and split it 50/50, by qiyas you’d have to say which plants are being planted cause they have differing effects on the Earth and so change its value, but by istiḥsān its ok.
9. 10:36 Someone can pay another land on condition that he plant it this season for the original owner to get ½ of proceeds, by qiyas youd have to specify what kind of plants because some labor is more intensive than others, but by istiḥsān its cool.
10. 10:40 If someone says I rent you this land this year for half, but didn’t name what would be planted and stuff, then its fasid. But if the man already planted, then by qiyas the owner would only get ajr al-mithl, and the planter would get everything he planted, but by istiḥsān we say they still split it half half.
11. 10:41 And if someone says I hire you this year to plant this Earth for me for half, without specifying half of what, then by qiyas the hired man should get ajr mithl and the land owner get the rest, but split it half half.
12. 10:62 If a man pays another man a tree on that he work it for half of fruits, and doesn’t name how many years, this is ok, and stipulation is that its until first fruit of first year by istiḥsān, abandon qiyas here. Cause this gives it an endpoint, and if no fruit comes out that year then contract is up.
13. 10:89 If apostate and man get into muzaara3a 50/50, then apostate is executed or dies or goes into dar al-harb
    1. 1)if planting deteriorated the land at all, then the planter is liable for it, but he gets all proceeds of plants, and he pays his debts and upkeep and so on then donates the resnt.
    2. 2) if planting didn’t deteriorate land, then its equal to number 1 by qiyas. But by istiḥsān you split it with inheritors of the apostate half half, and this is from Abu Hanifa.
14. 10:91 Abu Hanifa istiḥsān is that, as opposed to planter murtad keeping everything and land owner murtad only getting the money for the land degradation (or his inheritors), that they split it 50 50.
15. 10:103 If someone is mahjoor and then does a muzara3a contract with a laborer, by qiyas he shouldn’t get anything, but by istiḥsān he gets half half.
16. 10:104 If man gets a slave or boy who are mahjoor to plant, and they finish and are fine, then by istiḥsān they split half half, even though technically they shouldn’t get anything.
17. 10:126 Basically sets a limit to 1 year for muzara3a in a weird random situation.
18. 10:128 A man X makes Y wakeel to rent out his land muzara3atan this season, but he doesn’t do it this season, then it stop and doesn’t extend to the next season, by istiḥsān not qiyas.
19. 10:129 May the planter more than he things he’s supposed to get out of fairness.
20. 10:132 if man makes man wakil to give land as muzaara3a land, and man rents it out for a certain amount of wheat, that’s valid. Not valid if its for money though cause that’s not muzaara’a. so istiḥsān that if he rents it for some kind of produce that its fine, but if not then its not ok.
21. 10:135 For muzara3a contract you cant pay in slave or clothes or money, has to be produce, but in this particular case, its ok for it to be any form of produce not specifically tied to the produce of that land that season.
22. 10:151 If muzara3a and the worker plants seeds, but then owner waters and cares for them all the way until they produce without the worker having told him to, then by qiyas the owner gets everything, but by istiḥsān they split.
23. 10:151 If owner of land plants seeds, but then another random man waters it without being told to and they grow, by qiyas that random man would get everything, but by istiḥsān it goes to owner.
24. 10:190 By istiḥsān maternal relatives can be walis to marry the minors, according to hadith reports. But shaybani said no wali has to be paternal, and you need wali to marry a minor.
25. 10:193 if wasi marries off orphan and he is his wali, and he is daamin for his mahr, then wasi can go back on the orphan for the amount ie he has to pay it. and if he pays it after orphan dies, then we take the qiyas and don’t make just donor, whereas in case of father we take istiḥsān and make it just donation if he gives it while he’s alive.
26. 10:203 The father can accept the mahr on her behalf if she’s a virgin by istiḥsān.
27. 10:226 You can these random formulations for marriage because its customary.
28. 10:228 if both spouses die before mahr is paid, then wife’s inheritors claim the mahr, and the husband’s inheritors deny it, by istiḥsān hanifa says no mahr unless theres evidence for the clear amount of the mahr. But Y and M disagreed.
29. 10:254 if man marries woman and he’s mahjoob, then has khalwa, then she gets half of mahr according to AY and M, and by istiḥsān she should also have 3idda, though qiyas is that no 3idda, because mahjoob cannot have relations, and she gets half mahr cause he cant have relations, and this is not like case of 3inneen, because he could sometimes have relations, but mahjoob never can. But AH said he gets whole mahr, but this isn’t a disagreement on the istiḥsān case.
30. 10:276 If you try to marry off your slaves and they say they don’t want to be married, theyre still forced to. But if they actually say you’re lying then theyre not married. But Abu Hanifa says if the male slave claims owner is lying about having married him, then no marriage, but we don’t take the word of the female slave, and we believe him and say she’s married, even if she doesn’t want to be.
31. 10:288 Man marries woman then says she is my nursing sibling, then says no I made a mistake, then by istiḥsān theyre still married.
32. 10:289 if he says to slave this is my son or daughter, then slave is free, even if he says it was a mistake. Take the qiyas here not the istiḥsān.
33. 10:341 Y and M say father can’t sell his adult son’s stuff, land or otherwise, to provide for himself. But H says he can in other than land.
34. 10:344 Dhimmi dad must pay Muslim son’s nafaqa, even though by qiyas he wouldn’t have to.
35. 10:348 If woman gets nafaqa, money or clothes, then dies midway through the period, by istiḥsān the entire amount of nafaqa goes to inehritors, whereas Muhammad says nah just see how much of period for nafaqa she used, then rest goes back to husband.
36. 10:374 Any kafala in which other party isn’t present is invalid, except that Abu Hanifa said only in one case by istiḥsān, on deathbed when person says to his heirs be liable for my debt, but the debtors aren’t there.
37. 10:407 If kafeel says I’m responsible for whatever X confesses to, then X confesses to certain amount and kafeel says no youre only liable for this lower amount, we don’t believe the kafeel cause of self-interest it seems, take istiḥsān not qiyas which would normally take his testimony. **Remember between this and next were a bunch, including some citing abu hanifa to make that point stronger**
38. 10:409 if man claims against slave money, and slave denies it, then gives him as a kafeel for himself, that’s fine. And if a man asks a trading slave to buy him something for a certain amount but doesn’t pay him that amount, and slave buys it, that is valid for the slave stuck with it, he must then follow the man for his money. And this and kafala are equal in qiyas, but istiḥsān here.
39. 10:526 If man curses someone out, and is found guilty, but hes an upright man and this is the first time he’s done something like this, istiḥsān that he not be punishes, with hadith, avoid punishing upright people except in the hadd.
40. 10:597 if a wall is connected to one of their houses and it is known as such, then well is judged to be his. But if other has supports up on that wall, he gets the places where his supports are, and the owner of the wall cant move them. So if one of them has many supports and another only one support, AH says about that, each of them gets the area that they have. And if one of them has supports and the other more supports, then they split wall half half, but if theres only one support or whatever then you use istiḥsān.
41. 11:6 if slave and woman co-owned, they agree that slave serves one, servant serves other, and each of them pays the upkeep of the one serving them, that’s valid by istiḥsān.
42. 11:6 same premise above, if they each stipulate that the other must provide the clothing, invalid, because clothing doesn’t have a time. But if they set a time that is known, valid by istiḥsān.
43. 11:31 If someone cut another’s hand then says we can do sulh instead, Abu Hanifa said, if the person is healthy then sulh is ok, but if person died from the wound the sulh not ok and he should get qisas. However, by istiḥsān, we idraa2 the qisas from him, and he just has to pay diya.
44. 11:55 if man owed man dirhams, but neither knows how much, so they do sulh on a thobe, that’s fine. But if they do sulh on dirhams by qiyas not ok (for ribā), but istiḥsān abandon qiyas its ok.
45. 11:83 if the person who is receipient of salam purchase of a slave has already sold that slave, but then they do sulh and original owner says give me the principle (ie slave) back, then guy just pays value. Similarly if it was a gift with an exchange, or without an exchange, by qiyas, but by istiḥsān we say no the guy who sold that gift doesn’t owe anything
46. 11:98 if ghassib confesses to taking dirhams and hinta and theyre in his hands and can be taken back, then he does sulh for half of it on that he’s not liable for rest, then this is like first case by qiyas, but istiḥsān here that sulh not ok, and it all must go back to original person. First case was with the ghaasib denying it.
47. 11:166 and the mukatabs sulh is permissible as long as it doesn’t decrease anything in wealth that he has established for himself, unless theres a 3ayb, in which case by istiḥsān he can have a decrease in it

11:167 slave cant forgive a debt, and if slave sells someone a servant, then buyer says theres a flaw, so they do sulh that slave forgives a certain portion of the price, then by istiḥsān that’s ok, only for the 3ayb, nothing else

1. 11:189 if x makes y wakil concerning a house that he’s made a claim on then y makes sulh for that house on 100 dirhams then its permissible, and if he didn’t mention the name of x at all then by istiḥsān its still good
2. 11:198 if x buys a slave from y and takes him and pays, then complains of a flaw, then agree to a judge to judge between them, that’s fine. And y cant then make a claim against the person he himself bought the slave from, whether regarding that flaw or something else, if the hakam then returns the slave to him, because y accepted that slave without the judgement of a judge, but rather accepted him as a sulh. So if they all agree to this, so x returns it to y, then y returns it to z his supplier, that’s fine by istiḥsān, because by qiyas y shouldn’t have been able to return to z, because he accepted him as a sulh without judgement of a judge, but I abandon qiyas here dur to z’s consent to this.
3. 11:198 and if z disputes the ruling after slave returned to y, and go to a judge concerning that ayb (basically z saying it must have originated with y not him), then by qiyas judge cant return slave to z for same reason as above since it was a sulh without the judgement of a judge, but by istiḥsān again judge as if he accepted it without judgement of a judge.
4. 11:226 and if x makes a claim to house of y and z, then appoints a as lawyer, then y and z swear that x actually appointed a to represent them, its not permissible. Similarly if their sons or father or wives swear. But if they swear that a man died and gave a wasiyya to a then that is permissible, but wasiyya here not like wakaala. Don’t you see that I allow testimony of the sons of a dead man concerning his wasiyya and the testimony of the debtors, whether it was for or against themselves. But none of this works in wakaala. I use istiḥsān here and abandon qiyas.
5. 11:246 if two wasis are appointed, one cant do anything without first coordinating with other, except in clothes and food for the orphans care by istiḥsān according to AH and M, but AY says any action by either is fine always (so avoids the istiḥsān emergence entirely)
6. 11:246 and if a man’s newphew or cousin or other relative is in his hijr, he cannot make purchases on his behalf nor negotiate his rights, but by istiḥsān he can accept gifts or charity on kids behalf by istiḥsān
7. 11:246-7, and he cannot hire the boy out to labor for a wage by qiyas, although by istiḥsān its ok if it’s a mahram relationship and the boy is still young
8. 11:260 if father commands son buy me some food, so boy buys hinta then that sale is fully valid and applied to the father, but if he boughts meat or fruit then it is not immediately valid by istiḥsān
9. 11:262 a man makes another man wasi, and he has dependent minors, then man can sell anything other than property to spend on those dependents, by istiḥsān, and cant trade for them, but by istiḥsān can buy food and clothes
10. 11:277 if wakil sells slave on behalf of someone then says I sold him but I lost the amount, and that someone had died, then wakil must provide evidence he sold solve during that person’s life, and if he cant, then sale undone, slave returned to heirs, and the buyer goes to wakil for the amount. But if you cant find the slave, then you believe the wakil with an oath. Istiḥsān here and abandon qiyas.
11. 11:282 if man makes y wakil to sell cloth in kufa, but he sells it in basra, by qiyas hes not liable, but by istiḥsān he’s liable abandon qiyas.
12. 11:282 if x says I have made either y or z wakil to sell this thing, so one of them sells it, by qiyas its invalid, but ok by istiḥsān. Similar cases is when he says whichever of you sells it is ok, so relates to that case.
13. 11:283 if x gives y something and says sells this with condition of khiyar for a month, but y only gives khiyar of 3 days, then by istiḥsān its valid, by qiyas of AH’s opinion, but by AY and M its not permissible, and this is because for AH khiyar of month is invalid (so stipulation was invalid and is ignored), whereas for AY and M one month is valid
14. 11:283, if x makes y wakil saying sell this for me with a fasid sale, but then he sells it a valid sale, then the sale is valid, abandon qiyas here and take istiḥsān. This is AY opinion. And M said not valid.
15. 11:284 if x makes y wakil and says sell this at the price z sold it for, if z had sold some for 40 and some for 50, and y sells it all for 40, by istiḥsān that’s valid
16. 11:289 if x makes y wakil to buy him hinta from the Euphrates, so he does that then rents an animal and carries it on the animal, buy qiyas this rental does not apply to the command, but by istiḥsān its part of it
    1. Interesting seeing a different meaning of yajuz here very important, see above also
17. 11:299 if x makes y wakil to buy slave z, then y buys z, then z gets ayb while y still has him, then y has choice, he can do faskh of bay3, or he can take him and certify the sale. If the 3ayb is something that doesn’t prevent z from being useful, then x is stuck with z. but if it’s a 3ayb that makes z useless, then y is stuck with him but x doesn’t have to take him unless he wants him. By qiyas these are equal, but istiḥsān here and abandon qiyas.
18. 11:305 if x makes y wakil and gives him money to buy food, then y accepts the money, then that is valid and y must buy x food, by qiyas of AH and M, but qiyas of AY says wakil cannot do ibra’ or hiba or leaving it or delaying it, and that x can go back to him for his food, ay used istiḥsān in this and abandoned qiyas
19. 11:306 x makes y wakil to buy food, to us food = hinta, by istihsan.
    1. Like limit setting, but definition setting?
20. 11:313 if x makes y wakil in his debt and doesn’t say fi qabdihi he is still wakil fi qabdihi, by istiḥsān
21. 11:321 if x makes y wakil to collect debt then wakil collects it but finds its not good quality or not valid currency like torn bills basically so returns it then by qiyas he’s liably, but istiḥsān abandon qiyas he’s not liable.
22. 11:321 if x makes y wakil to pick up a bunch of his hinta from someone, then y rents an animal to carry the hinta, x doesn’t have to pay the rental, y is mutatawwi’. But if its in the same city and y picked it up from the food people and brought it to x’s house, then ya x should pay rental.
23. 11:328 and if x makes y and z wakils to pay to a 1000 dirhams and he gives them the 1000, then y pays it without z there, then by qiyas y is liable, but by istiḥsān he’s not liable.
24. 11:328 and if y and z make another man b wakil to pay a, they are both liable by qiyas, but by istiḥsān not liable
25. 11:337 x makes y wakil to make slave z rahn to person a, but he does it to person b, not ok. And if it goes to plan, but they record it as a purchase, but then both z and a confess its rahn, but was just called a purchase for sum3a (reputation? Or just convention), then istiḥsān it’s a rahn, but by qiyas not a rahn, invalid.
26. 11:343 if x makes y wakil to pick up item in trust, but man z keeping it in trust loses it to a, so z gets another item like it from a, then y cant pick it up. And similarly everything weighed or measured by qiyas, except abandon qiyas and istiḥsān for wakil to pick it up, and its not similar to case of value of slave.
27. 11:344 x makes y wakil to pick up trust that z has, so x tells y pick it up today, then y is allowed to pick it up the next day, istiḥsān here abandon qiyas, just as if he said pick it up this hour. And if he said pick it up when a is there, and he picks it up without him there, that’s ok too
28. 11:371 x and y partners in 3inaan in a specific trade or a servant or an animal or a home, so x makes z a wakil to sell it, that’s not ok. But if x and y are in a trade and they both buy and sell, then that wakala is valid for him and his companion too, by istiḥsān abandoning qiyas here.
29. 11:381 if slave x appoints wakil y to buy him or rent laborers, then his owner sells him to two men who permit him to trade, y is no longer wakil. Then if he appoints y wakil again, then one owner sells him to the other, and he permits him to trade, by qiyas the wakala should maintain for the half that hasn’t been sold, and not for half that has been sold, but abandon qiyas and istiḥsān that whole wakala is still valid.
30. 11:381 if slave owned by two and is mahjoor, then a man makes slave wakil to buy him something, then hes freed or his owners make him ma2dhoon, then he buys the thing, its valid, by istiḥsān and abandon qiyas
31. 11:384 if muwakkil is insane for an hour or goes unconscious, the wakala still valid
    1. Istiḥsān here and I don’t see it the same as the first
32. 11:385 if slave is co-owned, and one owner gives him mukātaba chance, then its valid as long as other owner doesn’t reject, so if mukatab then appoints a wakil, then its valid in the nasib of the owner who gave him mukātaba, then if the other owner also gives him a mukātaba, then the wakil remains a wakil as he was, and by qiyas the wakil could not extend to the share of the other owner, but by istiḥsān here we permit it and it becomes to both owners, and abandon qiyas and use istiḥsān here
33. 11:385 and if a mahjoor slave appoints wakil to buy something, then owner makes him mukatab, then wakil acts, by qiyas its invalid, but by istiḥsān its cool, and similarly if he was set free
34. 11:391 x makes y wakil to marry him to woman and doesn’t say who, so y does but shes not kuf2, by qiyas its valid, but istiḥsān abandon qiyas its not valid unless x agrees, and this is opinion of ya’qub and M. but AH says its find.
35. 11:399 if x makes y wakil to marry him to a woman, and doesn’t name the mahr, then mahr is named as one of x’s houses, by qiyas batil, because wakil opposed the command, but by istiḥsān marriage valid, and x has choice, give over the house or give the value

11:413 ruling like 330, if husband x makes y wakil for divorce, but if x falls in position where he cant get divorced then y no longer wakil. But if he just sleeps or unconscious for hour or insane for hour, the wakil still wakil, and this isn’t going insane fully, in qiyas equal, but istiḥsān that if the period is long then wakala invalid (so now the istiḥsān position is the extended time?) **not like 330**

1. 11:416 x makes y wakil to divorce his wife but y doesn’t say he accepts it, but doesn’t reject it, until he then tells her she’s divorced, by qiyas divorce doesn’t cound, but abandon qiyas and istiḥsān, and consider his pronouncing divorce acceptance of his wakala.
2. 11:440 abandon qiyas here, that if the x makes y wakil to rent land from z, then y dies, by qiyas ijara is over, but abandon qiyas and say by istiḥsān its valid
3. 11:440 if y takes back loan from z, if land is still in hands of z then yes all undone, but if he had given land over to x and y, then y disputed it, nope, abandon qiyas here take istiḥsān

11:442 if man is wakil to shafi’ and confesses that his party gave it up, only valid in front of judge, invalid in front of anyone else by istiḥsān. **Identical to above somewhere**

11:445 like **above ruling**, if cant find slave anymore, and wakil y says I sold the slave during life of x, then you trust him with oath, by istiḥsān here abandon qiyas

11:446 one of two shafi’s makes the buyer wakil, cant have that, nor can seller, **identical to somewhere else,** someone cant be wakil for a transaction negating their own transaction by istihsan

1. 11:453 if wakil y is harbi with aman, then goes back to dar al-harb, if muwakkil x was also harbi from dar harb, then wakala maintains, by istiḥsān abandon qiyas
2. 11:454 and if harbi with aman x makes another harbi with aman y wakil for a claim, then x goes back to dar harb, and y still there, then if y is claiming a right of x’s, then you still accept it, and if y being claimed against, you still accept wakala in istiḥsān, though by qiyas it would cut off, and we **take qiyas** here
3. 11:471 if x makes y wakil to do sulh of a certain thing, but ya does sulh for something else of nicer quality, wakil is now liable for it, but not x. but if he agrees for something cheaper, then yes applies to x.
   1. Again usage of jaaza 3ala for you’re stuck with
   2. And if kurr hinta of average quality, by istiḥsān yes he must, abandon qiyas
4. 11:489 if man who must pay diya? Gives it to x and y to pay it for him, its fine. And if the talib does sulh that’s fine, and x and y are mutatawwi3 in that because they opposed, and they must return he money to x. and if they paid dirhams other than the ones that they were paid then by qiyas it’s the same, but by istiḥsān they can keep the money.
5. 11:497 if x makes y wakil for a wound? But then y makes sulh, not ok, because he wasn’t told to make sulh. So he also cant forgive him. But if he takes its entire value, that’s valid, by istiḥsān abandon qiyas here.
6. 11:497 if the above thing was an intentional act, then y cannot take its arsh, because if a man makes another man wakil for his debt, I by istiḥsān rule that yataqaadaahuu, even though by qiyas la yataqaadaahu
7. 11:500 wakil cannot designate another as wakil, except in one place, if he makes another man wakil to buy something but first wakil is there in attendance for the transaction, by istiḥsān ok
8. 11:523 and witnessing of a business parter for another, even if not mufaawada, about something in their trade is not accepted, for possibility of collusion and immorality. And testimony of laborer in a man’s business for that man is not ok, even if he’s upright. We take the **thiqa** here by istiḥsān, due to a report from Shurayh, and because of the condition we see people in today. **Footnote quotes shurayh’s saying here.**
9. 11:541 if a man has a house, then two men each claim house had been given to them as a rahn separately, then by qiyas it wouldn’t be rahn for either of them, and we **take the qiyas**, and by istiḥsān each of them gets half the house as rahn for half of their debt
10. 11:550 qadi writing to amir within same city, brought by someone trustworthy, then amir signs it, thats good by istiḥsān, if it’s a diff city its not good.
11. 12:122 if x owns slave, y does ghasb of it and sells it to z, x must confirm purchase it seems. Is z had set her free, then by qiyas shes not free because he didn’t own her properly, but by istiḥsān its fine according to AH and AY. M says no.
12. 12:129 x steals a house from y then sells it, then testifies it was his house after he sold it, and y doesn’t have proof that its his house, is x liable in any way? No because he didn’t do any damage to it. But AY says he’s liable for its value by istiḥsān, abandon qiyas, but then AY retracted and went back to AH opinion of no liability.
13. 12:138 if x has item stolen, then y gives it to z as a trust, then x claims against z in court saying its his, but z says it a wadi’a to me, then usuall no claim arises between them. But if it’s a thawb, and x has proof its his, and z has proof y gave it to him as trust, then by istiḥsān we give it to x, and this is in sariqa, and we don’t say it similar to ghasb. And this is Ah and AY. But M says this and ghasb are equal, no case here.