

الرسالة
لابن أبي زيد القيرواني

THE RISĀLA

Treatise on Mālikī Law

of

`Abdallāh Ibn-abī-Zayd al-Qayrawānī

(922-996)

an annotated translation by
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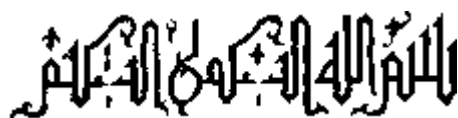
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FOREWORD

The *Risāla* of Ibn-abī-Zayd al-Qayrawānī has for already one thousand years enjoyed immense popularity in North and West Africa. It summarizes the principal elements of Sharī'a in a way that beginners can learn and masters can refresh their knowledge.

The book has a simple style, and a first reading can give the beginner a good idea of Sharī'a, but its simplicity hides an immense complexity that larger books explain in detail. Hardly a word does not have some technical overtone which needs to be understood if the reader wishes to have the precise meaning and not just a general idea.

This translation is the best attempt I have seen in presenting the precise technical meaning of the text, in an English style that can easily be read and understood.

It may be surprising that the translator is a Christian, a Catholic priest. In this age when people of different religions no longer live isolated in separate enclaves every kind of relationship emerges: violence, indifference and friendship. Writing and statements about other religions range from disdain, distortion to sympathy and objectivity. If we want peace we must begin by trying to understand our neighbours who are not of our faith, and encourage every effort in that direction.

I have known Fr. Kenny for over 20 years and know how he has persisted over these years in studying commentaries and asking advice to perfect this translation in every detail. No doubt scholars will quibble about many a point, but on the whole I find it a masterful piece of work.

I highly recommend it for all who are seeking a deeper knowledge of Islam, and of Sharī'a in particular.

Justice Sheikh Ahmed Lemu



TRANSLATOR'S PREFACE

General background

Ibn-abī-Zayd al-Qayrawānī's *Risāla* can be appreciated only in context of the development of Islamic Law up to the time of its composition in the year 938.

Unlike secular civil law or even the Canon Law of the Catholic Church, Sharī'a, for the Muslim community, means a legal system that is divinely ordained. Yet Sharī'a is not contained in one or even a few books. It is God's will as recognized first in Qur'ānic revelations and secondly in the Sunna, the pronouncements and precedents attributed to Muḥammad as the Prophetic leader of the Muslim community. The Qur'ān and Sunna, however, are not a systematic code, but scattered regulations. These regulations, moreover, do not cover every matter of life which requires decision, and they are sometimes open to various interpretations; so that human reason must come into play. The human effort to understand and interpret revealed law is known as *fiqh*.

For the first 150 years of Islam, *fiqh* was a very free adaptation of Islamic principles to new circumstances. Existing customary law was retained as far as possible, and Muslim jurists made new decisions on the basis of their considered personal opinion, or *ra'y*. In this way legal custom was evolving and, through common acceptance or agreement (*ijmā'*), even taking on the name and authority of *sunna*. *Sunna* concretely means "straight" or "beaten path", but commonly refers to an "established norm" or "set example".⁽¹⁾

The human element in the early development of Islamic law, to say nothing of the strife and civil wars of this period, naturally resulted in divergent legal practice. The peace established by `Abdalmalik (685-705) permitted the studied formation of these practices in regional schools of law. The earliest schools arose in Medina, the first political capital of Islam, and Kufa in Iraq, which was the principal Arab military base outside Arabia. Soon Basra, Damascus and Mecca also became centres of legal thought. Each of these towns developed its own Sunna or *ijmā'* reflecting local practice and/or the ideals propounded by the scholars of these towns.⁽²⁾ The confusion and anarchy prevailing during the last years of Umayyad

rule led to further diversity among the different schools of law. When the `Abbāsids gained power they found a situation of intolerable legal fragmentation, so that al-Manṣūr (754-775) decided to ask Mālik ibn-Anas to compile his *Muwatta'* to uniformize legal practice.⁽³⁾

Al-Manṣūr did not succeed in eliminating the differences of the schools, yet Mālik's work prompted a shift in legal opinion from local geographical loyalty to personal loyalty to an acknowledged scholar. The Medinans turned to Mālik ibn-Anas (d. 796) and the Iraqis to Abū-Ḥanīfa (d. 767). Other schools came into being purely as a result of the personal leadership of certain men. Such a man was Aḥmad ibn-Ḥanbal (d. 855), whose chief rallying point was the rejection of any philosophical reasoning about the faith, or any analogical reasoning about God's law. He would accept as legitimate authority only the letter of the Qur'ān or authentic Sunna of the Prophet.

A fourth school formed posthumously around ash-Shāfi'ī (d. 820), a man who had a deep and permanent impact on all of Sunnī thought. His principle was the total sovereignty of God and his revealed will, so that any purely human law was seen as a competition with God's authority. Ash-Shāfi'ī's conclusion and rallying point therefore was the rejection of *ra'y* or any form of human reasoning as a source of law, and the demand that every point of Sharī'a be founded on a Qur'ānic prescription or on a Sunna that can be authentically ascribed to the Prophet through a chain of witnesses, called an *isnād*.

Sunna, in strict Shāfi'ite terminology, became equivalent to Ḥadīth, or traditions about the Prophet. As a result of its new importance a massive movement of Ḥadīth gathering took shape. Of the hundreds of thousands of Ḥadīth reports, most were rejected as spurious from a critique of their *isnāds*, not from any internal reasons. The remainder were embodied in the commonly accepted "authentic" (*Ṣaḥīḥ*) collections of al-Bukhārī (d. 870), Muslim ibn-al-Ḥajāj (d. 875), Abū-Dā'ūd (d. 888), at-Tirmidhī (d. 892), an-Nasāī (d. 916), and Ibn-Māja (d. 886).

As for the authenticity of these collections of Prophetic Traditions, traditional Muslim scholarship has accepted the bulk of the authentic (*ṣaḥīḥ*) collections, while questioning on occasion individual ḥadīths. Joseph Schacht is of the opinion that the collections represent the customary law of the conquered lands or of Muslim jurists and are only projected back to Muḥammad to claim his authority.⁽⁴⁾ Although in general agreement with Schacht, Noel Coulson is prepared to recognize the substantive (though not verbatim) authenticity of many ḥadīths,⁽⁵⁾ and Fazlur Rahman thinks that these collections are at least faithful to the spirit of Muḥammad, in that his companions and their successors adopted as Sunna what he **would have** said or done in new circumstances.⁽⁶⁾

Ash-Shāfi'ī scored another more radical point in the debate about Sunna by decisively asserting the principle, which beforehand was not clearly accepted by everyone, that the Prophet's legal decisions were divinely inspired.⁽⁷⁾ To substantiate his point he interpreted Qur'ānic verses (e.g. 2:129) referring to "the Book and the Wisdom (*ḥikma*)" given to the Prophet to mean "The Qur'ān and the Ḥadīth". Before this time the Prophet was recognized as the most qualified to interpret the Qur'ān, but still as a human interpreter. Therefore scholars like Mālik held that his rulings could be rejected when better reasons were advanced. Such wavering regarding the Prophet's absolute authority was ended through the influence of ash-Shāfi'ī. Thereafter Muslims generally accepted the principle that the Qur'ān and the Sunna of Muḥammad (as presented in the collections of Ḥadīth) are the only possible sources of

Shari`a, while the Shari`a could be interpreted and applied to new cases through analogical reasoning (*qiyās*) and consensus (*ijmā*).

Independent reasoning, however, found its way back into the final formulation of Islamic jurisprudence in the 10th century through the re-introduction of the principles of *istihsān* or *istiślāh*. These make "equity" and "public interest" an intention of God which jurisprudence must bear in mind in cases where the Qur`ān and Sunna are silent, rather than follow analogical reasoning blindly, whatever the consequences. [\(8\)](#)

Four schools of law have been noted: the Mālikī, the Ḥanafī, the Ḥanbalī and the Shāfi`ī. There were others which died out, and there was a completely different development of law in Shī`ism which we pass over. The fact of divergence in laws which claim to represent the will of the one God was a scandal at first, and the different schools engaged in severe recrimination of one another for some time. The general acceptance, however, of ash-Shāfi`ī's theory of the sources of law made the rivalry die down, and a ḥadīth was discovered to say that differences of opinion come from God's mercy (*ikhtilāf al-umma raḥma*). [\(9\)](#)

According to ash-Shāfi`ī's peace formula, only the least common denominator about which all were in agreement (*ijmā*) was indubitably binding as God's will. Other laws were a matter of conjecture (*z`ann*). Such a principle, we might think, opens the door for all kinds of diversity in Sunnī Islam, but soon after ash-Shāfi`ī's time the principle of *ijmā* (consensus or agreement) was invoked to tolerate only those differences which were in circulation among the four schools at the time of ash-Shāfi`ī. No new opinions contradicting these positions would be allowed. Within such limits the scope of human reason in applying Shari`a by analogical reason, *qiyās*, or more generally by *ijtihād*, the "effort" of one's own judgement, quickly spent itself, and by the early 10th century jurists recognized that the "door of *ijtihād* was closed". *Ijmā* thereby became the all inclusive authority in Islam. It guaranteed the authenticity of the Qur`ān as the Word of God and the authenticity of Tradition or Ḥadīth, and set limits to the variations of opinion in Islamic law and theology. [\(10\)](#) A student thereafter had only to repeat or imitate (by *taqlīd*) the teaching of his predecessors. So writers of legal treatises kept to either condensing earlier long works or to versifying or expanding condensed works. The *Risāla* of al-Qayrawānī is important because it is perhaps the earliest example of condensation in the Mālikī school, and because of its lasting popularity.

The life and times of al-Qayrawānī

Ibn-abī-Zayd, as he is often simply called, is named al-Qayrawānī from the city where he spent most of his life. Qayrawān, in the center of modern Tunisia, was the first Arab base in the Maghrib and remained its Islamic intellectual centre even when political and military power was distributed elsewhere.

From the outset Mālikism was the predominant legal school in the Maghrib. Shāfi`ism had some influence, while Ḥanafism had the support of the Aghlabid aristocracy. [\(11\)](#) The Aghlabids ruled over the eastern third of the Maghrib under the nominal suzerainty of the `Abbāsīd caliphs in Baghdad from 800 until their overthrow by the Fāṭimid propagandist Abū-`Abdallāh in 909. The latter in 910 handed over power to `Ubaydallāh, introducing him as the Mahdī, or divinely guided heir to the authority of `Alī, the designated successor of Muḥammad according to Shī`ī belief. `Ubaydallāh then built the town of

Mahdiyya, on the Mediterranean, as his capital. The Fāṭimids engaged in active propaganda as well as persecution to win the people to their teachings. The Ḥanafī entourage of the Aghlabids consequently rallied to the Shīʿī cause, leaving all opposition in the hands of Mālikī scholars, located mainly in Qayrawān. [\(12\)](#)

In this environment al-Qayrawānī was born in 922. Before his death in 996 Fāṭimid power once was nearly wiped out by a Khārijite revolt in 944. This was put down, and in 969 al-Muʿizz added Egypt to the Fāṭimid domains and founded Cairo as his new capital. Moving from the Maghrib in 972, he left Buluggīn ibn-Zīr as governor. Buluggīn was very loyal to the Fāṭimid caliph, but his son al-Manṣūr (984-996) paid only lip service to the caliph, while laying the foundations of an independent Zīrid dynasty. In the pursuit of his ambitions al-Manṣūr found it politic to make concessions to the Mālikīs, paving the way for the eventual repudiation of Fāṭimid Shīʿism and the triumph of Mālikī Sunnism in the Maghrib.

Ibn-abī-Zayd grew up among the Qayrawān defenders of Mālikī law and Sunnī practice against the Fāṭimid regime. Many Mālikīs even refused to pray behind an imām who mentioned the name of the Fāṭimid caliph in the Friday prayers. [\(13\)](#) Yet the regime tolerated Mālikī activities as long as they were carried out quietly and in private.

Ṣūfī prayer gatherings were one such activity the Fāṭimids frowned on. Our author took part in Ṣūfī meetings, but opposed the claims of some members to visions of God while they were awake and to supernatural powers to work miracles. A controversy ensued, giving rise to al-Bāqillānī's (d. 1013) acclaimed distinction between a *muʿjiza*, a miracle adduced as evidence of prophesy, confounding any attempt to imitate it, and a *karāma*, a wonder or extraordinary work of God produced at the prayer of a holy man but not as evidence of a prophetic mission. [\(14\)](#)

Theologically, the Qayrawān school very early adopted the Kalām of al-Ashʿarī (d. 935). [\(15\)](#) Disputes with Muʿtazilites on the definition of faith, the creation of the Qurʾān and on free will versus determinism (*qadar*) sharpened the Qayrawānians for disputes with the Fāṭimid missionaries over the comparative merits of ʿAlī and other early companions of the Prophet. [\(16\)](#) Ibn-abī-Zayd adheres to a strict Ashʿarism in the first chapter of his *Risāla*, even on points where most later Sunnī theologians departed from al-Ashʿarī.

In legal matters Ibn-abī-Zayd was acclaimed in his lifetime as "Mālik the Younger". [\(17\)](#) Even in the narrow limits of Mālikī *fiqh* he exhibited a certain original genius in grasping the point of legal texts and presenting a reasonable solution without slavishly conforming to the letter, as many of his contemporaries did; this is especially true of his commentary on the *Mudawwana* of his master Saḥnūn (d. 854). [\(18\)](#) The voluminous *Mudawwana* is a collection of questions answered by Saḥnūn's master ʿAbdarraḥmān ibn-al-Qāsim (d. 806), who was a direct student of Mālik ibn-Anas. The chief early expositions of Mālikī law, then, are the *Muwattaʿa*, a collection of Ḥadīth related by Mālik and recorded by his students, Saḥnūn's *Mudawwana*, and finally al-Qayrawānī's popularization of this teaching in the *Risāla*.

The Risāla

Al-Qayrawānī wrote the *Risāla* - also known as *Bākūrāt as-sa`d* (the beginning of happiness) and *Zubdat al-madhab* (cream of the Mālikī school) - in 938 at the age of 17, and later revised it somewhat for public diffusion.⁽¹⁹⁾ Being a book of *fiqh*, or systematic understanding of Islamic revealed law (*sharī`a*) as taught in the Qur`ān and collections of Ḥadīth, the *Risāla* touches on the whole range of Islamic life, from dogmas of faith to details of table etiquette. As a summary of much longer works, it leaves much unsaid and has therefore been the subject of many commentaries. Yet in its conciseness it served its purpose well. It was designed primarily as a propaganda work of Mālikism against government propagated Fāṭimism, but subsequently enjoyed unabated popularity as a treatise of Mālikī law made simple.

Brockelmann's *Geschichte der arabischen Literatur*⁽²⁰⁾ gives little indication of the vast number of copies of the *Risāla* in sub-Saharan African libraries. For centuries it has been a basic introductory text for Islamic legal studies in West Africa. It is mentioned in the *Mahram* of Umme Jilmi of Borno (d.c. 1097),⁽²¹⁾ and is referred to over and over again among the texts studied by West African scholars whose biographies appear in Aḥmad Bābā's *Nayl* (1596),⁽²²⁾ as-Sa`dī's *Ta`rīkh as-Sūdān* (1655),⁽²³⁾ Ibn al-Mukhtār's *Ta`rīkh al-Fattāsh* (1664),⁽²⁴⁾ and Muḥammad aṣ-Ṣiddīq's *Fath ash-shukūr* (1799).⁽²⁵⁾ `Abdallāh Ɗan Fodiye mentions it six times in his autobiographical *Īdā` anusūkh* (1812).⁽²⁶⁾ His brother `Uthmān Ɗan Fodiye frequently mentions it in his many writings, such as *Bayān wujūb al-hijra `alā l-`ibād*,⁽²⁷⁾ *Ḥiṣn al-afḥām*,⁽²⁸⁾ and *Ihyā` as-sunna*.⁽²⁹⁾

Because of the customary and official position of Sharī`a in the northern states of Nigeria, the *Risāla* is still widely studied and forms part of the syllabus of government Arabic colleges. Numerous manuscript copies are to be found in the many public and private libraries of the country. Besides the abundant Egyptian and locally printed Arabic editions in circulation, Gaskiya Corporation of Zaria published in 1970 the Arabic text with a facing Hausa translation. While this edition was awaiting publication, the Arabic-English edition of Bello Muhammad Daura appeared (Gaskiya Corp., 1983).

Western studies on Mālikī law

In contrast to Ḥanafī and Shāfi`ī law, Mālikī law has received very little attention in English. Background information can be found in general works, such as Joseph Schacht's *The origins of Muhammadan jurisprudence* (Oxford: Clarendon, 1950) and *An introduction to Islamic law* (Oxford: Clarendon, 1964), and Noel Coulson's *A history of Islamic law* (Edinburgh U. Press, 1964) and *Conflicts and tensions in Islamic jurisprudence* (U. of Chicago Press, 1969). For long the fullest description of the particulars of Mālikī law in English was the second-hand work of F.H. Ruxton, *Mālikī law, being a summary from French translations of the Mukhtasar of Sīdī Khalīl with notes and bibliography, published by order of the Governor General of Nigeria, Sir F.D. Lugard* (London: Luzac, 1916, reprinted in 1980). For reliable works there are only a few articles or monographs on particular questions. Among them should be noted three works of Alexander David Russell and Abdullah al-Ma'mūn Suhrawardy: *First steps in Muslim jurisprudence, consisting of excerpts from Bākūrāt as-sa`d of Ibn-Abū-Zayd* (London: Luzac, 1906, reprinted in 1963), which contains the major parts of the chapters on marriage, `idda and inheritance and short excerpts of other chapters of the *Risāla*; *"A manual of the law of marriage" from the Mukhtasar of Sīdī Khalīl* (London, 1911); and *An historical introduction to the law of inheritance* (London, n.d.). Note also J.N.D. Anderson's *The Mālikī law of homicide* (Zaria: Gaskiya, 1959) and sections of his other

books and articles, as well as Noel Coulson's *Succession in the Muslim family* (Cambridge U.P., 1971). Numerous articles particularly of Nigerian interest have appeared in the *Journal of Islamic and Comparative Law*, published by the Centre of Islamic Legal Studies, Ahmadu Bello University, Zaria. A version of this very preface was first published in *Hamdard Islamicus*, 6:3 (1983), pp. 63-71.

In French, studies on Mālikī law abound. Note in particular the works of R. Brunschvig, H.R. Idris, J. Lèpanne-Joinville, and G.H. Bousquet. In Italian the work of J. Guidi and P. Santillana is important. There are two complete French translations of the *Risāla*, one by E. Fagnan, *La Risāla, ou traité abrégé de droit malékite et morale musulmane* (Paris, 1914), and another by Léon Bercher, *La Risāla, ou Eptre sur les éléments du dogme et de la loi de l'Islam selon le rite mālikite* (Algiers, 1945, and fifth edition 1968).

Guidelines for this translation

This translation is based on a comparison of several printed Arabic texts. There are many variations, but all of them inconsequential, and the reading that seemed to give best sense was chosen. Needless to say, commentaries were indispensable. The fullest and the one most relied on is that by Aḥmad ibn-Ghunaym ibn-Sālim ibn-Muḥannā an-Nafrāwī (d. 1708), *al-Fawākih ad-dawānī*, 2 vols. (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1955). Reference was also made to Ṣ āliḥ `Abdassamī al-Ābī al-Azharī, *ath-Thamar ad-dānī fī taqrīb al-ma`ānī* (Cairo: Maṭba`at al-Masjid al-Ḥusaynī, n.d.), and Abū-l-Ḥasan al-`Adawī, *Kifāyat aṭ-ṭālib `alā r-Risāla* (Cairo, n.d.). Naturally the translation was influenced by the commentators, and represents to a certain extent their later and more fixed Mālikism. But the notes to this translation pass over their long digressions on the detailed implications of the law, and only take what is necessary for understanding the text and what might be of interest in an African setting.

It is questionable whether the Arabic titles to the chapters are the work of al-Qayrawānī. In any case they are either too long or do not adequately indicate the contents of the chapters. Therefore I have revised them to be as brief and informative as possible, and have also added subtitles within the chapters for quicker reference. The only other liberty I have taken was to omit translating the blessings after the names of God and the Prophet, since such parentheses, when frequent, are clumsy in English; they are translated in the prologue and epilogue, where one would like to capture the style of the original; elsewhere a compressed Arabic blessing for the Prophet is used.

Arabic technical terms used in the text are too numerous to put in italics. Only titles of Qur'ān sūras or prayer formulas are set off in italics.

The pages of the Arabic used in the English and Hausa translations (Zaria) and a separate Arabic edition (Kano) are indicated within braces: { }.

Finally, I want to indicate my indebtedness to many friends for valuable elucidations of difficult points, legal, medical, historical and linguistic. Particular thanks are due to Sheikh Ahmad Lemu for his valuable detailed criticisms explanations and suggestions. Yet I take sole responsibility for all deficiencies. {2}



مقدمة

PROLOGUE

بسم الله الرحمن الرحيم
وصلى الله على سيدنا محمد
وعلى آله وصحبه وسلم

In the name of God the merciful and kind. God bless our master Muḥammad, his family and companions, and give them peace.

قال أبو محمد عبد الله بن
أبي زيد القيرواني رضي الله
عنه وأرضاه:

Abū-Muḥammad `Abdallāh ibn-abī-Zayd al-Qayrawānī God be pleased with him and give him pleasure says:

الحمد لله الذي ابتداء الإنسان
بنعمته، وصوره في الأرحام
بحكمته، وأبرزه إلى رفقته،
وما يسره له من رزقه،
وعلمه ما لم يكن يعلم. وكان
فضل الله عليه عظيماً،
ونبهه بأثار صنعته، وأعذر
إليه على أسنة المرسلين
الخيرة من خلقه. فهدى من
وفقه بفضلته، وأضل من
خذله بعدله. ويسر المؤمنين
لليسرى، وشرح صدورهم
للذكرى. فأمّنوا بالله بألسنتهم
ناطقين، وبقلوبهم مخلصين،
وبما أنتهم به رسله وكتبه
عاملين. وتعلموا ما علمهم،
ووقفوا عند ما حد لهم،
واستغنوا بما أحل لهم عما
حرم عليهم.

Praise be to God who created man by His favour, formed him in the womb by his wisdom, brought him forth to enjoy the blessings He put at his disposal, and taught him what he did not know. God's favour to man was great: He stimulated his mind by the imprints of His workmanship and made him accountable [for carrying out his Law by communicating it] through the tongues of messengers, the elite of His creation. God guided those He had destined by His favour, and made those wander whom He had abandoned by his justice. He made the way easy for believers and opened their hearts to recollection. So they believed in Him, as they acknowledged Him with their tongues, were sincere with Him in their hearts, and grasped what His messengers and books told them. They learned what He taught them and stood within the limits he set for them. Possessing what he declared lawful for them, they had no need for what He forbade them.

أما بعد أعاننا الله وإياك على
رعاية وحفظ ما أودعنا من
شرائعه. فإنك سألتني أن
أكتب لك جملة مختصرة من

Then God aid us all to take care of {3} the things He has deposited with us and guard the revealed laws he has entrusted us with you asked me to write for you a brief account of: 1) the obligatory matters of religion which the tongue speaks, the heart believes, and the

واجب أمور الديانة، مما تنطق به الألسنة، وتعتقده القلوب، وتعمله الجوارح، وما يتصل بالواجب من ذلك من السنن من مؤكدها ونوافلها ورغائبها، وشيء من الآداب منها، وجمل من أصول الفقه وفنونه، على مذهب الإمام مالك بن أنس- رحمه الله تعالى- وطريقته، مع ما سهل سبيل ما أشكل من ذلك من تفسير الراسخين وبياناً للمتقهبين،

لما رغبت فيه من تعليم ذلك للولدان، كما تعلمهم حروف القرآن، لينسق إلى قلوبهم من فهم دين الله وشرائعه ما ترحى لهم بركته، وتحد لهم عاقبته. فأجبتك إلى ذلك لما رجوته لنفسى ولك من ثواب من علم دين الله أو دعا إليه.

واعلم أن خير القلوب أوعاها للخير، وأرجى القلوب للخير ما لم يسبق الشر إليه، وأولى ما عني به الناصحون ورغب في أجره الراغبون إيصال الخير إلى قلوب أولاد المؤمنين ليرسخ فيها، وتنبيههم على معالم الديانة وحدود الشريعة ليراضوا عليها، وما عليهم أن تعتقده من الدين قلوبهم وتعمل به جوارحهم. فإنه روي أن تعليم الصغار لكتاب الله تطفى غضب الله، وأن تعليم الشيء في الصغر

bodily organs perform, 2) the sunnas which are connected with these obligatory matters, including those sunnas which are undisputed, supererogatory, and desirable,⁽³⁰⁾ 3) some of the obligations and sunnas pertaining to good manners and 4) the principles and details of jurisprudence according to the system and way of the imām Mālik ibn-Anas God the most high show him kindness including explanations of difficult points by legal authorities and experts, in order to facilitate the material.

You asked me this because of your desire to teach these matters to children, as you teach them the letters of the Qur'ān, so that an understanding of God's religion and his revealed laws will enter their hearts, spread its blessing there, and produce a praiseworthy result. I answered your request, because of the reward which I do hope both of us will receive, the reward of those who have taught or called men to the religion of God.

Know this, that the choicest heart is one which God has inspired to good, and the heart most inclined towards good is a heart which evil has never entered. The best thing any giver of advice can be concerned with or any seeker for reward can desire is to instill goodness in the hearts of believing children that it may take firm root there, and to help them appreciate the teachings of {4} religion and the limits set by revealed law, that they may know those religious teachings which their hearts must believe and their bodily organs perform. For there is a ḥadīth that teaching young children the Book of God quenches the anger of God, and that teaching someone while he is small is like engraving on rock.⁽³¹⁾

كالنقش في الحجر.

وقد مثلت لك من ذلك ما ينتفعون إن شاء الله بحفظه ويشرفون بعلمه وسيعدون باعتقاده والعمل به. وقد جاء أن يؤمروا بالصلاة لسبع سنين، ويضربوا عليها لعشر، ويفرق بينهم في المضاجع. فذلك ينبغي أن يعلموا ما فرض الله على العباد من قول وعمل قبل بلوغهم، ليأتي عليهم البلوغ وقد تمكن ذلك من قلوبهم، وسكنت إليه أنفسهم، وأنست بما يعملون به من ذلك جوارحهم. وقد فرض الله سبحانه على القلب عملاً من الاتقادات، وعلى الجوارح الظاهرة عملاً من الطاعات.

وسأفصل لك ما شرطت لك ذكره باباً باباً ليقرب من فهم متعلميه إن شاء الله تعالى. وإياه نستخير وبه نستعين. ولا حول ولا قوة إلا بالله العلي العظيم. وصلى الله على سيدنا محمد نبيه وآله وصحبه وسلم تسليماً كثيراً.

باب 1
ما تنطق به الألسنة
وتعتقده الأفئدة من
واجب أمور الديانات

1.1 01 الله

من ذلك الإيمان بالقلب والنطق باللسان أن الله إله

I have portrayed for you such matters as will God willing do children good to memorize, do them honour to know, and make them happy to believe and perform. There is another ḥadīth that at seven years children are to be commanded to do their prayers, at ten they are to be beaten for not doing them, and at that age they are to be separated from sleeping under one cover; (32) likewise they are required to be taught before puberty the words and deeds which God has enjoined upon his servants, so that their souls will be at rest with them, and their bodily organs will be at ease with what they do. (33) For God has enjoined upon the heart the work of believing, and on the outward bodily organs the work of obeying.

What I have promised you to discuss I will take up chapter by chapter, so that God willing it will be easy for learners to understand. We seek goodness and help from him. There is no force or power but in God the Exalted the Mighty. God bless our master and His prophet Muḥammad, together with his family and companions, and give them abundant peace. {5}

CHAPTER 1 **DOGMAS (34)**

1.01 God

Among obligatory matters of religion are faith from the heart and profession from the tongue that: Allāh is

واحد، لا إله غيره، ولا شبيهه له، ولا نظير له، ولا ولد له، ولا والد له، ولا صاحبة له، ولا شريك له. ليس لأوليته ابتداء، ولا لأخريته انقضاء. لا يبلغ كنه صفته الواصفون، ولا يحيط بأمره المتفكرون، يعتبر المتفكرون بآياته، ولا يتفكرون في مائية ذاته، ولا نحيطون بشيء من علمه إلا بما شاء.

وسع كرسيته السموات والأرض، ولا يؤده حفظهما، وهو العلي العظيم العالم الخبير المدبر القدير، السميع البصير، العلي الكبير. وإنه فوق عرشه المجيد بذاته، وهو في كل مكان بعلمه. خلق الإنسان، ويعلم ما توسوس به نفسه، وهو أقرب إليه من حبل الوريد. وما تسقط من ورقة إلا يعلمها، ولا حبة في ظلمات الأرض، ولا رطب ولا يابس إلا في كتاب مبين. على العرش استوى، وعلى الملك احتوى، وله الأسماء الحسنى والصفات العلى. لم يزل بجميع صفاته وأسمائه، تعالى أن تكون صفاته مخلوقة وأسمائه محدثة. كلم موسى بكلامه الذي هو صفة ذاته لا خلق من خلقه، وتجلي للجبل فصار دكاً من جلاله،

one God; there is no deity besides Him; there is none like Him and none equal to Him; He has no child nor parent nor woman companion nor associate.⁽³⁵⁾ There is no beginning to His being first, and no end to His being last. No one can describe what He is like in His inner-being, nor can intellectuals sound out what pertains to Him; they can only speak about His signs, and cannot think of what His Essence is; they grasp His Knowledge only in so far as He wishes.

God's throne embraces the heavens and the earth, and taking care of these cause Him no trouble.⁽³⁶⁾ He is Exalted, Mighty, Knowing, Aware, Disposing, Powerful, Hearing, Seeing, Exalted and Great. He is upon His glorious throne by His essence, yet is in every place by His knowledge. He created man, knows what he whispers inside himself, and is nearer to him than his jugular vein.⁽³⁷⁾ He knows whenever a leaf falls, or a grain drops into the dark earth, or a fresh or dried fruit falls down; it is all in a clear book.⁽³⁸⁾ He mounted the throne⁽³⁹⁾ and took possession of power. He has the beautiful names⁽⁴⁰⁾ {6} and the exalted attributes. He is never without any of his attributes or names it is far beneath Him that any of his attributes should be created or any of his names should have come into being. He spoke to Moses with his Speech which is an attribute of His essence, not something created by Him. He appeared to the mountain, and it was crushed by His majesty.⁽⁴¹⁾

وأن القربآن كلام الله، ليس بمخلوق فيبيد، ولا صفة لمخلوق فينفد.

The Qur'ān is the Speech of God. It is neither a created thing, such as can perish, nor an attribute of something created, such as can come to an end.⁽⁴²⁾

1.03 القدر

1.03 Determination (qadar)

والإيمان بالقدر خيره وشره، حلوه ومره، وكل ذلك قد قدره الله ربنا، ومقادير الأمور بيده، ومصدرها عن قضائه. علم كل شي قبل كونه، فجرى على قدره. لا يكون من عباده قول ولا عمل إلا وقد قضاه وسبق علمه به. «ألا يعلم من خلق وهو اللطيف الخبير»؟ يضل من يشاء فيخذله بعدله، ويهدي من يشاء فيوفقه بفضل. فكل ميسر بتيسيره إلى ما سبق من علمه وقدره من شقي أو سعيد، تعالى أن يكون في ملكه ما لا يريد أو يكون لأحد عنه غنى، أو يكون خالق لشيء إلا هو رب العباد ورب أعمالهم والمقدر لحركاتهم وأجالهم،

Also a matter of faith is determination, whether of good things or bad, of sweet things or bitter; God our Lord has determined all this. The measures of things are from Him, and their origin is from His decree. He knows everything before it exists, and it comes into being according to His decree. Every word and every deed of His servants He has decreed and foreknown. "Does He not know, He who created, who is Unfathomable and All-aware?" (Q. 67:14). He makes err whomever he wishes, abandoning him by his justice; He guides whomever He wishes, giving Him success by his favour.⁽⁴³⁾ He makes everything easily reach the pleasant or unpleasant outcome He knew and willed beforehand it is far beneath Him that there should be anything in His kingdom which He does not will, or that anything should not be in need of Him, or that anything should create something but He, the Lord of his servants, the Lord of their works, the Determiner of their movements and their deaths.

1.04 الرسل

1.04 Messengers and Muḥammad

الباعث الرسل إليهم لإقامة الحجة عليهم. ثم ختم الرسالة والندارة والنبوة بمحمد نبيه صلص، فجعله آخر المرسلين بشيراً ونذيراً وداعياً إلى الله بإذنه وسراجاً منيراً، وأنزل عليه كتابه الحكيم، وشرح به دينه القويم، وهدى به الصراط المستقيم.

God sent messengers to men to take away any excuse from them. He sealed the offices of messenger, warner and prophet with Muḥammad {7} His prophet, and made him the last of those sent, an announcer of good things, a warner, one calling to God by His permission, and an illuminating torch. He sent down to him His book of wisdom, by which He explained his solid religion and gave guidance onto the right path.

1.05 الساعة والحكم

1.05 Resurrection and judgement

وَأَنَّ السَّاعَةَ آتِيَةٌ لَا رَيْبَ فِيهَا. وَأَنَّ اللَّهَ يَبْعَثُ مَنْ يَمُوتُ كَمَا بَدَأَهُمْ يَعُودُونَ.

The hour is coming, without any doubt.⁽⁴⁴⁾ God will raise up those who die, and they will return as he had made them.

وَأَنَّ اللَّهَ سَبَّحَانَهُ ضَاعَفَ لِعِبَادِهِ الْمُؤْمِنِينَ الْحَسَنَاتِ، وَصَفَحَ لَهُمُ بِالْتَّوْبَةِ عَنِ الْكِبَائِرِ السَّيِّئَاتِ، وَغَفَرَ لَهُمُ الصَّغَائِرَ بِاجْتِنَابِ الْكِبَائِرِ، وَجَعَلَ مَنْ لَمْ يَتَّبِعْ مِنَ الْكِبَائِرِ صَائِرًا إِلَى مَشِيئَتِهِ.

For his believing servants, God multiplies their good works, wipes away the big sins they repent of, forgives their small sins if they have avoided big ones, and decides as He wishes the fate of those who do not repent of big sins.

إِنَّ اللَّهَ لَا يَغْفِرُ أَنْ يُشْرَكَ بِهِ، وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ.

God does not forgive making something an associate with Him in divinity (*shirk*), but forgives anything less than that to whom He wishes.

وَمَنْ عَاقَبَهُ بِنَارِهِ أَخْرَجَهُ مِنْهَا بِإِيمَانِهِ فَأَدْخَلَهُ بِهِ جَنَّتَهُ، «وَمَنْ يَعْمَلُ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ»، وَيُخْرِجُ مِنْهَا بِشَفَاعَةِ النَّبِيِّ صَلَّى مَنْ شَفَعَ لَهُ مِنْ أَهْلِ الْكِبَائِرِ مِنْ أُمَّتِهِ.

Those He will punish by fire God will bring out of it because of their faith, and bring them into Paradise. "Anyone who has done an atom's weight of good will see it" (Q. 99:7). Also because of the intercession of the Prophet God will bring out of the fire anyone of his people who is guilty of a big sin and the Prophet intercedes for him.

1.06 الجنة والنار

1.06 Reward and punishment

وَأَنَّ اللَّهَ سَبَّحَانَهُ قَدْ خَلَقَ الْجَنَّةَ فَأَعَدَّهَا دَارًا لِأَوْلِيَائِهِ وَأَكْرَمَهُمْ فِيهَا بِالنَّظَرِ إِلَى وَجْهِهِ الْكَرِيمِ، وَهِيَ الَّتِي أَهْبَطَ مِنْهَا آدَمَ نَبِيَّهُ وَخَلِيفَتَهُ إِلَى أَرْضِهِ بِمَا سَبَقَ فِي سَابِقِ عِلْمِهِ.

God has already created Paradise (*janna*) and prepared it as an eternal dwelling for his saints. He will honour them in it with the vision of his kind face.⁽⁴⁵⁾ This is the Paradise from which God sent Adam, his prophet and vice-gerent, down to the earth, as he foreknew.

وَخَلَقَ النَّارَ فَأَعَدَّهَا دَارَ خُلُودٍ لِمَنْ كَفَرَ بِهِ وَأَلْحَدَ فِي آيَاتِهِ وَكَتَبَهُ وَرَسَلَهُ، وَجَعَلَهُمْ مَحْجُوبِينَ عَنْ رُؤْيَيْهِ.

God created Hell fire, and prepared it as an eternal dwelling for those who do not believe in Him and are skeptical of His signs, books and messengers. {8} He will screen such people from seeing Himself.

1.07 أمور البعث

1.07 Concomitants of the resurrection

وأن الله تبارك وتعالى يجيئ
يوم القيامة والملك صفاً صفاً
لعرض الأمم وحسابها
وعقوبتها وثوابها.

God will come on the day of resurrection with His angels in array to put peoples on display, together with their accounts, their punishments and their rewards.

وتوضع الموازين لوزن
أعمال العباد. فمن ثقلت
موازينه فأولئك هم المفلحون
ويؤتون صحائفهم بأعمالهم.
فمن أوتي كتابه بيمينه
فسوف يحاسب حساباً
يسيراً، ومن أوتي كتابه
وراء ظهره فألئك يصلون
سعيراً.

The scales will be set up to weigh the works of men; ⁽⁴⁶⁾ whoever's balance is heavy has done well. Men will also be given sheets (*suhuf*) listing their deeds: Those who are given their scrolls in their right hands will have a light reckoning; those who are given their scrolls behind their backs shall face Hell fire. ⁽⁴⁷⁾

وأن الصراط حق يجوزه
العباد بقدر أعمالهم، فناجون
متفاوتون في سرعة النجاة
عليه من نار جهنم، وقوم
أوبقتهم فيها أعمالهم.

The path (*sirāt*) is real. ⁽⁴⁸⁾ Men will pass over it at different speeds, according to the measure of their works, being saved from the fire of Hell. But some will fall into the fire because of their works.

والإيمان بحوض رسول الله
صلس ترده أمته لا يظماً من
شرب منه، ويذاد عنه من
بدل وغير.

Another matter of faith is the basin (*hawḍ*) of the Messenger of God, from which his people drink. ⁽⁴⁹⁾ Someone who drinks from it will never thirst. Excluded from it will be anyone who substituted or changed [his beliefs].

1.08 الإيمان

1.08 Faith (īmān)

وأن الإيمان قول باللسان
وإخلاص بالقلب وعمل
بالجوارح، يزيد بزيادة
الأعمال وينقص بنقصها،
فيكون فيها النقص وبها
الزيادة. ولا يكمل قول
الإيمان إلا بالعمل، ولا قول
وعمل إلا بنية، ولا قول
وعمل ونية إلا بموافقة
السنة.

Faith is speech on the lips, faithfulness in the heart, and deeds in the bodily organs. It increases with the increase of works, and decreases with a decrease of works; thus there is a decrease or increase in faith according to works. ⁽⁵⁰⁾ The speech of faith is not perfect without works, and speech and works are not perfect without an intention; and speech, works and intention are not perfect without following the Sunna. ⁽⁵¹⁾

وأنه لا يكفر أحد بذنب من

None of the People of the *qibla* ⁽⁵²⁾ are made unbelievers by committing a sin.

أهل القبلة.

وأن اشهاداء أحياء عند ربهم
يرزقون.

Martyrs are living with their Lord and enjoying blessing. (53)

وأرواح أهل السعادة باقية
ناعمة إلى يوم يبعثون،
وأرواح أهل الشقاوة معذبة
إلى يوم الدين.

The spirits of those who possess happiness survive {9} and enjoy delight until the day they are risen. The spirits of those who possess unhappiness are tormented until the day of judgement.

وأن المؤمنين يفتنون في
قبرهم ويسألون، يثبت الله
الذين آمنوا بالقول الثابت في
الحياة الدنيا وفي الآخرة.

Believers are tested and questioned in their graves; God strengthens those who believe with a solid answer in this life and the next.

1.09 الملائكة

1.09 Angels

وأن على العباد حفظة
يكتبون أعمالهم، ولا يسقط
شيء من ذلك عن علم ربهم.

Men have guardian angels who record their deeds; none of these deeds escapes the knowledge of the Lord.

وأن ملك الموت يقبض
الأرواح بإذن ربه.

The angel of death, by the permission of the Lord, takes spirits.

1.10 الأئمة

1.10 Authorities

وأن خير القرون القرن
الذين رأوا رسول الله صلس
وآمنوا به، ثم الذين يلونهم،
ثم الذين يلونهم.

The best century is the century of those who saw the Messenger of God and believed in him. The next best is that of those who followed them, then that of those who followed these.

وأفضل الصحابة الخلفاء
الراشدون المهديون: أبو
بكر، ثم عمر، ثم عثمان، ثم
علي رضي الله عنهم
أجمعين، وأن لا يذكر أحد
من صحابة الرسول إلا
بأحسن ذكر والإمساك عما
شجر بينهم، وأنهم أحق
الناس أن يلتمس لهم أحسن
المخارج، ويظن بهم أحسن
المذاهب،

The best of the Companions are the orthodox, right-guided caliphs, first Abū-Bakr, then `Umar, then `Uthmān, then `Alī. (54) None of the companions of the Messenger are to be mentioned but with the highest respect, avoiding mention of the quarrels between them. They are the men most worthy to have the best explanation sought for what they did and the best opinion thought of their policies.

والطاعة لأئمة المسلمين من
ولاية أمورهم وعلمائهم،
واتباع السلف الصالح
واقْتفاء آثارهم، والاستغفار
لهم، وترك المراء والجدال
في الدين، وترك كل ما
أحدثه المحدثون.

وصلى الله على سيدنا محمد
ونبيه وعلى آله وأزواجه
وذريته وسلم تسليماً كثيراً.

باب 2 ما يجب منه الوضوء والغسل

2.01 الوضوء

الوضوء يجب لما يخرج من
أحد المخرجين من بول أو
غائط أو ريح أو لما يخرج
من الذكر من مذي مع غسل
الذكر كله منه، وهو ماء
أبيض رقيق يخرج عند اللذة
بالإنعاط عن الملاعبة أو
التذكار. وأما الودي فهو ماء
أبيض خائر يخرج بإثر
البول، يجب منه ما يجب من
البول. وأما المني فهو الماء
الدافق الذي يخرج عند اللذة
الكبرى بالجماع، رائحته
كرائحة الطلع. وماء المرأة
ماء رقيق أصفر، يجب منه
الطهر، فيجب من هذا طهر
جميع الجسد، كما يجب من
طهر الحيضة.

وأما دم الاستحاضة فيجب

Obligatory too is obedience to the leaders (*imāms*) of Muslims, that is, those who have charge of their affairs and their learned men. Also obligatory is following the worthy scholars of early times, imitating them and begging pardon for them; also avoiding hypocrisy and argumentation about religion, and avoiding the innovations some people have produced.

{10} God bless our master, His prophet Muḥammad, together with his family, his wives and children, and give them abundant peace.

CHAPTER 2 DEFILEMENTS REQUIRING WUḌŪ' (ABLUTION) OR GHUSL (BATHING)

(55)

2.01 Wuḍū'

Wuḍū' is obligatory in the case of what comes from either of the two openings, such as urine, excrement or gas; in the case of distillation from the penis it is obligatory to wash the entire penis from it. Distillation (*madhy*) is a fine clear liquid which comes out on the occasion of a pleasurable erection during play or thinking. *Wady* is a thick clear liquid which comes out after urinating; the rule for this is the same as that for urine. *Manī*⁽⁵⁶⁾ is a gushing liquid which comes out [of a man] on the occasion of the greatest pleasure in intercourse, and smells like a date palm blossom; in the case of a woman it is a fine and yellow liquid. Purification from *manī* is obligatory; moreover the whole body must be purified [by ghusl], just as after menstruation.

Wuḍū' alone is obligatory while menorrhagia

منه الوضوء ويستحب لها
ولسلس البول أن يتوضأ لكل
صلاة.

(*istiḥāḍa*) lasts. Both for menorrhagic bleeding and uncontrollable urination, to do wuḍū' before every ṣalāt is only desirable, not obligatory.

ويجب الوضوء من زوال
العقل بنوم مستثقل، أو إغماء
أو سكر أو تخبط جنزون.

Wuḍū' is obligatory after loss of consciousness from a deep sleep, fainting, intoxication or an attack of insanity.

ويجب الوضوء من
الملامسة للذة والمباشرة
بالجسد للذة والقبلة للذة ومن
مس الذكر، واختلف في مس
المرأة فرجها في إيجاب
الوضوء بذلك.

Wuḍū' is obligatory after petting, bodily embracing {11} or kissing for he sake of pleasure, likewise for petting one's penis. Opinions differ on whether wuḍū' is obligatory in the case of a woman petting her sexual part.

2.02 الغسل

2.02 Ghusl

ويجب الطهر مما ذكرنا من
خروج الماء الدافق للذة في
نوم أو يقظة من رجل أو
امرأة، أو انقطاع دم الحيضة
أو الاستحاضة أو النفاس أو
بمغيب الحشفة في الفرج
وإن لم ينزل. ومغيب الحشفة
في الفرج يوجب الغسل
ويوجب الحد ويوجب
الصداق ويحصن الزوجين
ويحل المطلقة ثلاثاً للذي
طلقها ويفسد الحج ويفسد
الصوم.

Purification [by ghusl] is obligatory after the pleasurable flow of the thick liquid mentioned above, no matter if it happens in sleep or when awake, or to a man or a woman. It is also obligatory after the stopping of the bleeding of menstruation, menorrhagia or afterbirth, and after the penetration of the penis into the vagina, even if there is no ejaculation. Penetration of the penis into the vagina makes ghusl obligatory. It also makes obligatory the fixed punishment [for illicit intercourse], makes giving a dower [to the wife] obligatory, makes the spouses maritally restricted (*muḥṣan*),⁽⁵⁷⁾ makes a woman who was repudiated by three pronouncements legitimate to the one who repudiated her,⁽⁵⁸⁾ and invalidates a ḥajj pilgrimage or a fast.

وإذا رأت المرأة القصة
البيضاء تطهرت، وكذلك إذا
رأت الجفوف تطهرت
مكانها، رآته بعد يوم أو
يومين أو ساعة. ثم إن
عاودها دم أو رأت صفرة أو
كدرة تركت الصلاة. ثم إذا
انقطع عنها اغتسلت وصلت

When a woman sees the clear liquid [coming after menstruation], she is to purify herself [by ghusl]. Likewise, if she sees that the menstruation stops, she is to purify herself by ghusl at once, whether she sees this a day or two days or an hour later. If the bleeding returns, or she sees a yellow or dark liquid, she is to omit ṣalāt; but if this ceases, she is to do the ghusl and resume doing ṣalāt. But a bleeding which stopped and resumed is regarded as one menstruation period as far as the `idda and *istibrā'* are concerned,⁽⁵⁹⁾ so that only a bleeding after a break of eight or ten days is a new

ولكن ذلك كله كدم واحد في العدة والاستبراء حتى يبعد ما بين الدمين مثل ثمانية أيام أو عشرة، فيكون حيضاً مؤتلفاً. ومن تمادى بها الدم بلغت خمسة عشر يوماً، ثم هي مستحاضة تتطهر وتصوم وتصلي ويأتيها زوجها.

menstruation. A woman whose bleeding continues beyond fifteen days is menorrhagic; she is to purify herself [by ghusl], fast and do ṣalāt, and her husband can have relations with her.

وإذا اقطع دم النفساء وإن كان قرب الولادة اغتسلت وصلت وإن تمادى بها الدم جلست ستين ليلة ثم اغتسلت وكانت مستحاضة تصلي وتصوم وتوطأ.

If the bleeding of one who gave birth ceases, {12} even if this happens shortly after her delivery, she is to do the ghusl and do ṣalāt. If the bleeding continues, she is to compute sixty nights and then do the ghusl; thereafter she is considered menorrhagic, and may do ṣalāt, fast, and have intercourse.

باب 3 طهارة الماء والثوب والبقة وما يجزئ من اللباس فيا لاصلاة

CHAPTER 3 PURITY OF WATER, PLACE AND CLOTHING

3.01 طهارة الماء

3.01 Purity of water

والمصلي يناجي ربه، فعليه أن يتأهب لذلك بالوضوء أو بالطهر إن وجب عليه الطهر، ويكون ذلك بماء طاهر غير مشوب بنجاسة، ولا بماء قد تغير لونه لشيء خالطه من شيء نجس أو طاهر، إلا ما غيرت لونه الأرض التي هو بها من سبخة أو حمأة أو نحوهما. وماء السماء وماء العيون وماء الآبار وماء البحر طيب طاهر مطهر

Someone who is doing ṣalāt is communing with his Lord, and must prepare for this by doing Wuḍū', or ghusl if ghusl is obligatory for him.⁽⁶⁰⁾ He must do so with pure water unpolluted by filth (*najāsa*),⁽⁶¹⁾ and not with water whose colour is changed by salt, mire, or other substances which were in the ground from which the water was taken. The water of rain, springs, wells and the sea is good and pure, and purifying from filth as well.

للنجاسات.

وما غير لونه بشيء طاهر حل فيه، فذلك الماء طاهر غير مطهر في وضوء أو طهر أو زوال نجاسة. وما غيرته النجاسة فليس بطاهر ولا مطهر. وقليل الماء ينجسه قليل النجاسة وإن لم تغيره.

If the water's colour, [taste or smell] is affected by something pure settled in it, this water is pure, but not purifying for doing wuḍū' or ghusl or removing filth. Water whose colour is changed by filth is neither pure nor purifying; moreover a little water is made foul by a little filth even if the water is not changed.

3.02 كمية الماء

3.02 Amount of water

وقلة الماء مع إحكام الغسل سنة، والسرف منه غلو وبدعة. وقد توضحاً رسولاً الله صلى الله عليه وسلم وهو وزن رطل وثلاث، وتطهر بصاغ، وهو أربعة أمداد بمده عليه الصلاة والسلام.

A sparing use of water in ritual bathing is a sunna, while an over-use of water is extravagance and {13} an illicit innovation. The Messenger of God used to do the wuḍū' with one muddu this is the weight of one and one third *riṭl* and he did the ghusl with one *ṣā`*, which is the equivalent to four muddus of his standard. ⁽⁶²⁾

3.03 طهارة البقعة واللبس

3.03 Purity of place and clothes

وطهارة البقعة للصلاة واجبة وكذلك طهارة الثوب، فقل إن ذلك فيهما واجب وجوب الفرائض، وقيل وجوب السنن المؤكدة.

Purity of the place for ṣalāt is binding, likewise purity of one's clothes. One opinion is that this binds as an obligation, but another is that it only binds as an established sunna.

وينهى عن الصلاة في معادن الإبل، ومحجة الطريق، وظهر بيت الله الحرام، والحمام حيث لا يوقن منه بطهارة، والمزبلة، والمجزرة، ومقبرة المشركين وكنائسهم.

It is forbidden to do ṣalāt in the resting place of camels, in a right of way, on top of the sacred house of God, ⁽⁶³⁾ inside public baths the purity of which is not certain, on a garbage heap, in a slaughtering place, and in a cemetery of polytheists or in their places of worship.

3.04 وسع اللبس

3.04 Clothing required

وأقل ما يصلح فيه الرجل

The least amount of clothing a man should have on to do ṣalāt is a covering cloth such as a throw-over (*dir`*)

من اللباس ثوب ساتر من درع أو رداء. والدرع القميص. ويكره أن يصلى بثوب ليس على أكتافه منه شيء، فإن فعل لم يعد.

وأقل ما يجزئ المرأة من اللباس في الصلاة الدرع الحصيف السابغ الذي يستتر ظهور قدميها وخمار تتنقع به وتباشر بكفيها الأرض في السجود مثل الرجل.

باب 4 صفة الوضوء ومسنونه ومفروضه وذكر الاستنجاء والاستجمار

4.01 استنجاء

وليس الاستنجاء مما يجب أن يوصل به الوضوء، لا في سنن الوضوء ولا في فرائضه، وهو من باب إيجاب زوال النجاسة به أو بالاستجمار، لئلا يصلى بها في جسده. ويجزئ فعله بغير نية، وكذلك غسل الثوب النجس.

وصفة الاستنجاء أن يبدأ بعد غسل يده فيغسل مخرج البول، ثم يمسح ما في المخرج من الأذى بمدر أو غيره أو بيده، ثم يحكها بالأرض ويغسلها، ثم يستنجي بالماء ويواصل صبه ويسترخي قليلاً، ويجيد

or a wrapper (*ridā'*); a *dir`* is a kind of tunic. It is disapproved to do *ṣalāt* in clothing which does not cover the shoulders at all; if someone does so, however, he need not repeat his *ṣalāt*.

The least amount of clothing a woman should have on to do *ṣalāt* is a moderately thick and ample *dir`* which covers the top of her feet and a shawl which covers her.⁽⁶⁴⁾ But she places her hands directly on the ground in the prostration, just as a man.

{14}

CHAPTER 4 ISTINJĀ', ISTIJMĀR, AND WUḌŪ'

4.01 Istinjā'(washing private parts)

Istinjā' is not a necessary part of Wuḍū' nor one of its sunnas or obligations, but, like istijmār, is for the purpose of removing filth, so that it will not remain on a person's body while he does his *ṣalāt*. Istinjā' can be done without making an intention (*niyya*), as is true also for washing filth off clothes.

To do istinjā', a person begins by washing his hands, then he washes the opening for urine, wipes away the offensive matter with soil or other material or with his hand, rubs his hand on the ground, washes his hand, and then does the istinjā' washing [of his private parts] with water, which he pours continuously. After pressing wide his anal orifice, he rubs it until it is clean.

غرك ذلك بيده حتى ينتظف.

وليس عليه غسل ما بطن
من المخرجين، ولا يستجى
من ريح.

A person should not wash the inside of either of the openings, nor do *istinjā'* because of passing gas.

4.02 استجمار

4.02 Istijmār (wiping with stones)

ومن الستجمر بثلاثة أحجار
يخرج آخرهم نقياً أجزاءه.

To do *istijmār* a person wipes himself with three stones. If the last stone comes away clean, that is sufficient.

والماء أطهر وأطيب وأحب
إلى العلماء.

To use water, however [by *istinjā'*] is better for cleanliness and, in the opinion of scholars, preferable.

4.03 غسل اليدين قبل الوضوء

4.03 Washing hands before wuḍū'

ومن لم يخرج منه بول ولا
غائط وتوضأ لحدث أو نوم
أو لغير ذلك مما يوجب
الوضوء فلا بد من غسل
يديه قبل دخولهما في الإناء.

Someone who has not urinated or defecated, and is doing *Wuḍū'* only because of a minor defilement (*ḥadath*) or because of sleep or some other reason which necessitates washing, must wash his hands before dipping them into the jug.

4.04 سنن الوضوء وفرائضه

4.04 Sunnas and obligations of wuḍū' ⁽⁶⁵⁾

ومن سنة الوضوء غسل
اليدين قبل دخولهما في
الإناء والمضمضة
والاستنشاق والاستنثار.
ومسح الأذنين سنة وبقية
فريضة.

The sunnas of *wuḍū'* are: 1) washing {15} one's hands before dipping them into the jug, 2) rinsing one's mouth, 3) inhaling and exhaling water in the nose, and 4) wiping one's ears. The other observations are obligations.

4.05 كيفية التوضأ

4.05 How to do wuḍū'

فمن قام إلى وضوء من نوم
أو غيره فقد قال بعض
العلماء يبدأ فيسمي الله، ولم
يره بعضهم من الأمر
بالمعروف. وكون الإناء
على يمينه أمكن له في
تناوله.

If someone gets up from sleep or has any other reason to do *wuḍū'*, scholars say he should first call on the name of God but some think that this is not commanded. The jug should be on the person's right for easier access.

ويبدأ فيغسل يديه قبل أن يدخلهما في الإناء ثلاثاً. فإن كان قد بال أو تغوط غسل ذلك منه، ثم توضأ.

The person begins by washing his hands three times before putting them into the jug, and if he urinated or defecated he cleans the remains off before doing wuḍū'.

ثم يدخل يده في الإناء، فيأخذ الماء فيمضمض فاه ثلاثاً من غرفة واحدة إن شاء أو ثلاث غرفات. وإن استاك بأصبعه فحسن.

Next he puts his hand into the jug, takes water, and rinses his mouth three times, from one or three dips of water, as he wishes. If he brushes inside with his finger, this is good.

ثم يستشق بأنفه الماء ويستنثره ثلاثاً، يجعل يده على أنفه كامتخاطه.

Next he inhales and exhales water through his nose three times, placing his hand on his nose as when blowing it.

ويجزئه أقل من ثلاث في المضمضة والاستنشاق. وله جمع ذلك في غرفة واحدة. والنهية أحسن.

It is sufficient to rinse one's mouth and inhale water fewer than three times and to do both actions with one dip of water, but the full process is better.

ثم يأخذ الماء إن شاء بيديه جميعاً، وإن شاء بيده اليمنى، فجعله في يديه جميعاً. ثم ينقله إلى وجهه فيفرغه عليه غاسلاً له بيديه من أعلى جبهته، وحده منابت شعر رأسه إلى طرف ذقنه. ودور وجهه كله من حد عظمي لحييه إلى صدغيه. ويمر بيديه على ما غار من ظاهر أجفانه وأسارير جبهته وما تحت مارتته من ظاهر أنفه، يغسل وجهه هكذا ثلاثاً ينقل الماء إليه ومحرك لحيته في غسل وجهه بكفيه ليداخلها الماء لدفع الشعر لما يلاقيه من الماء، وليس عليه تخليلها في الوضوء في قول مالك.

Then the person takes water, with his two hands together if he wishes, or with just his right hand but then holding the water by both hands together. He raises the water and pours it on his face, washing it with both hands from the top of his forehead, that is, his hairline, to the bottom of his chin, and all around his face from the ends of his jawbone to his temples, {16} making sure to get into the crevices of his eyelids, the lines of his forehead, and under the soft outer part of his nose. He washes his face this way three times, taking water to do it and moving his beard with his palms as he washes, in order to get the water into it and have the hair inside get wet; but in the opinion of Mālik, one need not run his fingers through his beard in wuḍū', but only rub his hands over it to the tip.

ويجري عليها يديه إلى
آخرها.

ثم يغسل يده اليمنى ثلاثاً أو
اثنين يفيض عليها الماء
ومعركها بيده بايسرى
ويخلل أصابع يديه بعضها
ببعض. ثم يغسل اليسرى
كذلك، ويبلغ فيهما بالغسل
إلى المرفقين يدخلهما في
غسله. وقد قيل إليهما حد
الغسل، فليس بواجب
إدخالهما فيه، وإدخالهما فيه
أحوط لزوال تكلف التحديد.

ثم يأخذ الماء بيده اليمنى
فيفرغه على باطن يده
اليسرى. ثم يمسح بهما
رأسه، يبدأ من مقدمه من
أول منابت شعر رأسه، وقد
قرن أطراف أصابع يديه
بعضها ببعض على رأسه
وجعل إبهاميه على مدغيه.
ثم يذهب بيديه ماسحاً إلى
طرف شعر رأسه مما يلي
قفاه. ثم يردهما إلى حيث بدأ
ويأخذ بإبهاميه خلف أذنيه
إلى صدغيه. وكيفما مسح
أجزأه إذا أوعب رأسه
والأول أحسن. ولو أدخل
يديه في الإناء ثم رفعهما
مبلولتين ومسح بهما رأسه
أجزأه.

ثم يفرغ الماء على سبابتيه
وإبهاميه وإن شاء غمس ذلك
في الماء، ثم ميسح أذنيه
ظاهرهما وباطنهما.

Next the person washes his right hand two or three times, pouring water over it and rubbing the fingers of each hand between those of the other. Then he washes his left hand in the same way. He does up to and inclusive of the elbows although one opinion is that the inclusion of the elbows is not obligatory, but is only an extension to avoid being concerned with locating the exact limit.

Then he takes water with his right hand, pours it into his left palm, and with both hands wipes his head, beginning with the front at the hairline, with all the finger tips joined in a row but the thumbs on the temples. He proceeds wiping backwards with his hands until the end of the hair of his head bordering the nape of his neck, then returns forward to where he began, starting with his thumbs behind {17} his ears and moving back to the temples. But any way he wipes suffices, provided he does his whole head, although the way described here is best. Even if he only moistens his hands in the jug and wipes his head with them, that suffices.

Then he pours water on his index fingers and thumbs, or dips them into the water if he wishes, and rubs his ears outside and in.

وتمسح المرأة كما ذكرنا
وتسمح على دلاليتها ولا
تمسح على الوقاية وتدخل
يديها من تحت عقاص
شعرها في رجوع يديها في
المسح.

A woman wipes with water as we have described, rubbing over her locks, but not on her bows. She puts her hands under her braids in the return wiping movement.

ثم يغسل رجليه يصب الماء
بيده اليمنى على رجليه
اليمنى، ويعركها بيده
اليسرى قليلاً قليلاً يوعبها
بذلك ثلاثاً. وإن شاء خلل
أصابعه في ذلك، وإن ترك
فلا حرج، والتخليل أطيب
للنفس. ويعرط عقبيه
وعرقوبيه وما لا يكاد يداخله
الماء بسرعة من جساوة أو
شقوق. فليبالغ بالعرك مع
صب الماء بيده، فإنه جاء
الأثر «ويل للأعقاب من
النار»، وعقب الشيء طرفه
وأخره. ثم يفعل باليسرى
مثل ذلك.

Then the person washes his feet, pouring water with his right hand onto his right foot and rubbing it with his left hand little by little until he goes over it this way three times. If he wishes, he may go in between his toes; to omit this is not wrong, but to include it is better for him. He should rub his heels and back-tendons and any tough or split areas where the water has not quickly penetrated, rubbing hard while pouring the water, because of the ḥadīth: "Woe to the [unwashed parts of the] heels in the fire!"; the heel of something is its extremity and last part. Then he does the same with his left foot.

وليس تحديد غسل أعضائه
ثلاثاً ثلاثاً بأمر لا يجزئ
دونه، ولكنه أكثر ما يفعل
ومن كان يوعب بأقل من
ذلك أجواه إذا أحكم ذلك،
وليس كل الناس في إحكام
ذلك سواءً.

The setting of the number of washings as three for each part of the body is not a command, so that a lesser number would be insufficient, but it is the most that is done. If someone completes the job in fewer than {18} three times, that is sufficient, provided he has done it properly; not all men are equal in doing this.

وقد قال رسول الله صلص
«من توضع فأحسن الوضوء
ثم رفع طرفه إلى السماء
فقال: أشهد أن لا إله إلا الله
وحده لا شريك له، وأشهد
أن محمد عبده ورسوله،

The Messenger of God said: "If anyone does wuḍū' and does it well, then lifts up his eyes to heaven and says, 'I testify that there is no deity but God alone without associate, and I testify that Muḥammad is his servant and messenger,' the eight gates of paradise are opened to him, and he can enter by whichever one he wishes."

فتحت له أبواب الجنة
الثمانية، يدخل من أيها
شاء».

وقد استحب بعض العلماء
أن يقول بإثر الوضوء
«اللهم اجعلني من التوابين،
واجعلني من المتطهرين».

4. 06 نية الوضوء

ويجب عليه أن يعمل عمل
الوضوء احتساباً لله تعالى
لما أمره به، يرجو تقبله
وثوابه وتطهيره من الذنوب
به، ويشعر نفسه أن ذلك
تأهب وتنظف لمناجاة ربه
والوقوف بين يديه لأداء
فرائضه والخضوع له
بالركوع والسجود. فيعمل
على يقين بذلك وتحفظ فيه
فإن تمام كل عمل بحسن
النية فيه

باب 5 في الغسل

أما الطهر فهو من الجنابة
ومن الحيضة والنفاس
سواء. فإن اقتصر المتطهر
على الغسل دون الوضوء
أجزأه، وأفضل له أن يتوضأ
بعد أن يبدأ بغسل ما بفرجه
أو جسده من الأذى. ثم
يتوضأ وضوء الصلاة. فإن
شاء غسل رجليه وإن شاء
أخرهما إلى آخر غسله.

ثم يغمس يديه في الإناء

According to some learned men, it is good to say after doing wuḍū': "O God, make me one of the repentant; make me one of those who keep themselves clean."

4.06 Intended purpose of wuḍū'

In doing the wuḍū', a person is obliged to have the motive of gaining the favour of God, since He commanded him to do it, hoping at the same time that God will receive it, reward him, and purify him thereby from his sins. He should be aware that the wuḍū' he does is to prepare himself and make himself presentable to address his Lord, to stand before him carrying out his precepts, and to show him submission by bowing and prostrating. Therefore he should do wuḍū' with sureness and concern, since the perfection of any work is from the good intention in doing it.

CHAPTER 5 GHUSL (RITUAL BATHING)

(66)

The purification for a major sexual defilement (*janāba*),⁽⁶⁷⁾ for menstruation, and for after-birth is all the same. If someone purifies himself by ghusl alone and omits doing wuḍū', that suffices, but it is better {19} for him to do wuḍū'. After cleaning the offensive matter from his sexual part or his body, he does wuḍū' as it is done before ṣalāt. He can wash his feet then if he wishes, or leave them until the end of his ghusl.

The person then dips his hands into the jug, raises them

ويرفعهما غير قابض بهما
شيئاً فيخلل بهما أصول شعر
رأسه. ثم يغرف بهما الماء
على رأسه ثلاث غرفات
غاسلاً له بهن. وتفعل ذلك
المرأة وتضغث شعر
رأسها، وليس عليها حل
عقاصها.

without scooping any water with them, and runs them over his scalp. Next he pours three handfuls of water onto his head, washing his head with the water. A woman does likewise, and rubs her hair, but she need not undo her braids.

ثم يفيض الماء على شقه
الأيمن، ثم على شقه الأيسر،
ويتدلك بيديه باثر صب الماء
حتى يعم جسده. وما شك أن
يكون الماء أخذه من جسده
عاوده بالماء وذلكه بيده حتى
يوعب جميع جسده.

The person next pours water on the right side of his body, then on the left, rubbing with his hands after pouring the water, until he does his whole body. Wherever he is not sure the water has touched he pours more water on that spot and rubs with his hand, until he covers his whole body.

ويتابع عمق سرته وتحت
حلقة، ويخلل شعر لحيته
وتحت جناحيه وبين أليتيه
ورفغيه وتحت ركبتيه
وأسافل رجليه، ويخلل
أصابع يديه ويغسل رجليه
آخر ذلك، يجمع ذلك فيهما
لتمام غسله ولتمام وضوئه
إن كان آخر غسلهما.

After this he does the inside of his navel, between his chin and throat, inside the hair of his beard, his armpits, between his buttocks and upper thighs, behind his knees, and the lower parts of his feet. He washes between his fingers, and at the end washes his feet if he had postponed doing so, including them in his ghusl in order to complete both his ghusl and his wuḍū'.

ويجذر أن يمس ذكره في
تدلكه بباطن كفه فإن فعل
ذلك وقد أوعب طهره أعاد
الوضوء وإن مسه في ابتداء
غسله وبعد أن غسل مواضع
الوضوء منه فليمر بعد ذلك
بيديه على مواضع الوضوء
بالماء على ما ينبغي من ذلك
وينويه.

He should be careful not to rub his penis with his palm while he is scrubbing himself. If he does that after completing his ghusl he must repeat his wuḍū', but if he does so at the beginning of his ghusl and after {20} having washed the parts where wuḍū' is done, he should run water over these parts again with his hands in the manner required, together with making the intention.

باب 6 فيمن لم يجد الماء

CHAPTER 6 TAYAMMUM (SAND ABLUTION)

وصفة التيمم

6.01 وقته

التيمم (1) يجب لعدم الماء في السفر إذا يئس أن يجده في الوقت، (2) وقد يجب مع وجوده إذا لم يقدر على مسه في سفر أو حضر لمرض مانع (3) أو مريض يقدر على مسه ولا يجد من يناوله إياه، (4) وكذلك مسافر يقرب منه الماء ويمنعه منه خوف لصوص أو سباع. (5) وإذا أيقن المسافر بوجود الماء في الوقت آخر إلى آخره، وإن يئس منه تيمم في أوله. (6) وإن لم يكن عنده منه علم تيمم في وسطه، (8) وكذلك إن خاف أن لا يدرك الماء في الوقت ورجا أن يدركه فيه.

6.02 صحة الصلاة إذا

وجد الماء

ومن تيمم من هؤلاء ثم أصاب الماء في الوقت بعد أن صلى، (1) فأما المريض الذي لم يجد من يناوله إياه فليعد، (2) وكذلك الخائف من سباع ونحوها، (3) وكذلك المسافر الذي يخاف أن لا يدرك الماء في الوقت ويرجو أن يدركه فيه. ولا يعيد غير هؤلاء.

6.03 إعادة التيمم

6.01 When to do it

Tayammum is obligatory: 1) for someone who has no water while traveling and has no hope of finding any in time, 2) when there is water, if the person, whether traveling or not, cannot touch it because sickness prevents him, 3) if the sick person can touch water, but has no one to bring it to him, or 4) if a traveler comes near water but is kept back by fear of thieves or wild animals. 5) If a traveler is sure of finding water within the time of ṣalāt, he should postpone doing tayammum up to the limit of the time allowed, but (= 1) if he has no hope of finding it, he should do tayammum at the beginning of the time. 6) If he does not know if there is water, he should do tayammum at the middle of this time; 7) so also should someone who fears he will not reach water in time, although he hopes to reach it in time.

6.02 Validity after finding water

Any of these people who do tayammum and then find water in time, but after doing ṣalāt, [should repeat their ṣalāt]. This applies to 1) a sick person who had no one to bring him water, 2) the person who was afraid of wild animals or a similar danger, and 3) the traveler who feared he would not reach water in time, even though he hoped to reach it in time. No one besides these three should repeat his ṣalāt.

{21} 6.03 Frequency

ولا يصلى صلاتين بتيمم واحد من هؤلاء، إلا مريض لا يقدر على مس الماء لضرر بجسمه مقيم. وقد قيل يتيمم لكل صلاة. وقد روي عن مالك فيمن ذكر صلوات أن يصليها بتيمم واحد.

6.04 كيفية التيمم

والتيمم بالصعيد الطاهر، وهو ما ظهر على وجه الأرض منها من تراب أو رمل أو حجارة أو سبخة.

يضرب بيديه الأرض فإن تعلق بهما شيء نفضهما نفضاً خفيفاً، ثم يمسح بهما وجهه كله مسحاً، ثم يضرب بيديه الأرض فيمسح يمينه بيسراه، يجعل أصابع يده اليسرى على أطراف أصابع يديه اليمنى. ثم يمر أصابعه على ظاهر يده وذراعيه، وقد حنى عليه أصابعه حتى يبلغ المرفقين. ثم يجعل كفه على باطن ذراعه من طي مرفقة قابضاً عليه حتى يبلغ الكوع من يده اليمنى. ثم يجري باطن بهمه على ظاهر بهم يده اليمنى.

ثم يمسح اليسرى باليمنى هكذا. فإذا بلغ الكوع مسح كفه اليمنى بكفه اليسرى إلى آخر أطرافه. ولو مسح اليمنى باليسرى واليسرى باليمنى كيف شاء وتيسر عليه وأوعب المسح لأجزأه.

Neither should any of the former seven [of the first paragraph] do two ṣalāts with only one tayammum, except a sick person who cannot touch water because of a sore on his body. One opinion is that tayammum should be done before every ṣalāt. But it is reported from Mālik that someone who remembers several ṣalāts [that he missed] should do them with one tayammum.

6.04 How to do it

Tayammum should be done on a clean surface. This is soil, sand, rocks or salt deposits which protrude on the surface of the earth.

The person taps the earth with his hands; if anything sticks to them he shakes them lightly, then wipes his whole face well. He taps the earth again with both hands, and wipes his right hand with his left, putting the finger tips of his left hand against those of his right hand, and running his fingers over the surface of his [right] hand and arm, with his fingers bent until he reaches the elbows. Then he puts the palm of his left hand on the inside of his [right] arm at the bend of his elbow, pressing against it until he reaches the wrist of his right hand. Then he runs the inside of this [left] thumb against the outside of his right thumb.

Next he wipes his left hand and arm with his right in the same way. When he reaches the wrist, he wipes his right hand with his left until the end of his finger tips. If he wipes his right hand with his left and his left hand with his right in any way he wishes that is easy for him and is complete, {22} that suffices.

6.05 بعد جنابة

6.05 After a major defilement

وإذا لم يجد الجنب أو الحائض الماء للطهر تيمماً وصلياً. فإذا وجدا الماء تطهرا ولم يعيدا ما صلوا.

Those who have had a major sexual defilement (*janāba*) or menstruation and cannot find water to purify themselves with any do tayammum and then do their ṣalāt. If they find water they should do the ghusl, but not repeat their ṣalāt.

ولا يطأ الرجل امرأته التي انقطع عنها دم حيض أو نفاس بالتطهر بالتيمم حتى يجد من الماء من تنطهر به المرأة، ثم ما يتطهران به جميعاً.

If a woman's menstruation or afterbirth bleeding has stopped and she has purified herself by tayammum, her husband is not to have intercourse with her until he finds water for his wife to bathe with, moreover enough for them both to bathe with.

وفي باب جامع الصلاة شيء من مسائل التيمم.

There are some other questions on tayammum in the chapter "Miscellaneous questions on ṣalāt".⁽⁶⁸⁾

باب 7

في المسح على الخفين

CHAPTER 7 WIPING BOOTS

وله أن يمسخ على الخفين في الحضر والسفر ما لم ينزعهما، وذلك إذا أدخل فيهما رجليه بعد أن غسلهما في وضوء تحل به الصلاة. فهذا الذي إذا أحدث وتوضأ مسح عليهما، وإلا فلا.

A person may wipe his boots [instead of his feet in Wuḍū'], whether traveling or not, as long as he does not take them off and put them on again after having washed his feet in a Wuḍū' permitting ṣalāt. Only such a person, and no one else, may wipe his boots while doing Wuḍū' for a minor defilement.

وصفة المسح أن يجعل يده اليمنى من فوق الخف من طرف الأصابع ويده اليسرى من تحت ذلك. ثم يذهب بيده إلى حد الكعبين، وكذلك يفعل باليسرى، ويجعل يده اليسرى من فوقها واليمنى من أسفلها. ولا يمسخ على طين في أسفل خفه أو روث دابة حتى يزيله بمسح أو غسل.

To wipe his boots, a person puts his right hand over [his right] boot at the end of the toes, and his left hand on the underside. Then he runs his hands to the end of his ankles. He does the same for his left foot, except for putting his left hand above and his right hand below. He is not to wipe his hands over mud or animal dung on the bottom of his boot until he had scraped or washed it off.

وقيل يبدأ في مسح أسفله من الكعبين إلى أطراف الأصابع لئلا يصل إلى عقب خفة شيء من رطوبة ما سمح من خفيه من القشب. وإن كان في أسفله طين فلا يمسح عليه حتى يزيله.

According to another opinion, one begins by wiping the bottom from the ankles to the ends of the toes, {23} to prevent the moisture of any filth that he wiped from his shoes from reaching the heel of his boot. If there is any mud on the bottom of the boot, he should not wipe his boot until he has removed the mud.

CHAPTER 8⁽⁶⁹⁾ TIMES OF DAILY ṢALĀT

باب 8 في أوقات الصلاة وأسمائها

8.01 الصبح

8.01 Ṣubḥ (morning ṣalāt)

أما صلاة الصبح فهي الصلاة الوسطى عند أهل المدينة، وهي صلاة الفجر. فأول وقتها انصداع الفجر المعترض بالضياء في أقصى المشرق، ذاهباً من القبلة إلى دبر القبلة، حتى يرتفع فيعم الأفق.

The ṣalāt of ṣubḥ {the "middle ṣalāt according to the people of Medina} is the ṣalāt of dawn (*fajr*). Its time starts from the break of dawn, when light is spread from the extreme east at the qibla⁽⁷⁰⁾ to the opposite end of the horizon, thus covering the whole sky.

وأخر الوقت الإسفار البين الذي إذا سلم منها بدا حاجب الشمس. وما بين هذين وقت واسع وأفضل ذلك أوله.

The end of the time is the bright radiance (*isfār*) which gives way directly to the appearance of the aureole of the sun. The time between these terms is long, but the preferred time is as the beginning.

8.02 الظهر

8.02 Ṣuhr (early afternoon ṣalāt)

ووقت الظهر إذا زالت الشمس عن كبد السماء، وأخذ الظل في الزيادة. ويستحب أن تؤخر في الصيف إلى أن يزيد ظل كل شيء رבעه بعد الظل الذي زالت عليه الشمس. وقيل إنما يستحب ذلك في المساجد ليدرك الناس

The time of zuhr begins when the sun declines from the zenith of the sky and a shadow begins to grow. It is desirable in the summer to wait until the shadow of a thing reaches a quarter of its length, exclusive of the [north-south] shadow which existed when the sun began to decline. One opinion is that this delay is desirable only for mosques, so that people can get there on time for the ṣalāt; but for a man by himself the beginning of the time is preferable. Another opinion is that in the intensity of the heat it is preferable to do the ṣalāt when it is cooler, even if one is {24} alone, because the Prophet said: "Do your ṣalāt when it is cool, because the intensity of heat is from the flames of

Hell." الصلاة. وأما الرجل في خاصة نفسه فأول الوقت أفضل له. وقيل أما في شدة الحر فالأفضل له أن يبرد بها. وإن كان وحده، لقول النبي صلس «أبردوا بالصلاة، فإن شدة الحر من فيح جهنم».

The end of the time is when everything's shadow becomes as long as itself, exclusive of the [north-south] shadow of midday.

وآخر الوقت أن يصير ظل كل شيء مثله بعد ظل نصف النهار.

8.03 العصر

8.03 `Aṣr (late afternoon ṣalāt)

The time of `aṣr begins with the end of the time of zuhr.

وأول وقت العصر آخر وقت الظهر.

The end of `aṣr is when everything's shadow is twice as long as itself, exclusive of the [north-south] shadow of midday.⁽⁷¹⁾ v

وآخره أن يصير ظل كل شيء مثليه بعد ظل نصف النهار.

One opinion is that if you turn your face towards the sun, standing straight without tilting or bending your head, and you see the sun with your eyes, then the time [of `aṣr] has begun; if you do not see the sun with your eyes, the time has not yet begun; if it has gone down from your sight, the time certainly has come.⁽⁷²⁾ The description of Mālik is that the time for this ṣalāt is as long as the sun has not begun to turn yellow.

وقيل إذا استقبلت الشمس بوجهك، وأنت قائم غير منكس رأسك، ولا مطأطئ له، فإن نظرت إلى الشمس ببصرك، فقد دخل الوقت. وإن لم ترها ببصرك فلم يدخل الوقت. وإن نزلت عن بصرك فقد تمكن دخول الوقت. والذي وصف مالك رحمه الله أن الوقت فيها ما لم تصفر الشمس.

8.04 المغرب

8.04 Maghrib (early evening ṣalāt)

The time for [the ṣalāt of] maghrib {also called the ṣalāt of one who is present⁽⁷³⁾ or stationary, because a traveler does not shorten this ṣalāt on a journey, but does it like one who is stationary} begins with the setting of the sun. When it disappears over the horizon, ṣalāt is obligatory and is not to be postponed. This ṣalāt

ووقت المغرب—وهي صلاة الشاهد، يعني الحاضر، يعني أن المسافر لا يقصرها ويصليها كصلاة الحاضر—فوقتها غروب

الشمس. فإذا توارت
بالحجاب وجبت الصلاة، لا
تؤخر. وليس لها إلا وقت
واحد، لا تؤخر عنه.

8.05 العشاء

ووقت صلاة العتمة—وهو
صلاة العشاء، وهذا الاسم
أولى بها-غيبوبة الشفق.
والشفق الحمرة الباقية في
المغرب من بقايا شعاع
الشمس. فإذا لم يبق في
المغرب صفرة ولا حمرة
فقد وجب الوقت، ولا ينظر
إلى البياض في المغرب.

فذلك لها وقت إلى ثلث الليل
ممن يريد تأخيرها لشغل أو
عذر. والمبادرة بها أولى.
ولا بأس أن يؤخرها أهل
المساجد قليلاً لاجتماع
الناس.

ويكره النوم قبلها، والحديث
لغير شغل بعدها.

باب 9 في الأذان والإقامة

9.01 الأذان

والأذان واجب في المساجد
والجماعات الراقية. فأما
الرجل في خاصة نفسه، فإن
أذن فحسن، ولا بد له من
الإقامة. وأما المرأة فإن
أقامت فحسن، وإلا فلا
حرج.

has only one time, and is not to be postponed.

8.05 `Ishā' (late evening ṣalāt)

The time for the ṣalāt of `atama,⁽⁷⁴⁾ which is the ṣalāt of `ishā'-the more proper name-begins with the vanishing of twilight. Twilight is the redness remaining in the evening [sky] from the remaining rays of the sun. If no yellowness or redness remains in the {25} evening [sky], the time of obligation has begun. The whiteness of the sky in the evening is not considered.

The time lasts for the first third of the night, for those who wish to postpone the ṣalāt because of some work or other excuse. But to do the ṣalāt right away is better. There is no harm for those responsible for mosques to postpone it a little so that the people can gather.

Sleeping before this ṣalāt is disapproved; so also is talking after it for no utility.

CHAPTER 9 ADHĀN (CALL FOR ṢALĀT) AND IQĀMA (CALL TO BEGIN ṢALĀT)

9.01 Adhān

Adhān is obligatory in mosques and constituted assemblies. If a man is by himself and does the adhān, that is good, but he must not omit the iqāma. If a woman does the iqāma, that is good, but if she does not, there is no harm done.

ولا يؤذن لصلاة قبل وقتها
إلا الصبح. فلا بأس أن يؤذن
لها في السدس الأخير من
الليل.

The adhān should not be called before time, except for the ṣalāt of ṣubḥ. For this there is no harm in calling the adhān in the last sixth of the night.

والأذان «الله أكبر، الله أكبر.
أشهد أن لا إله إلا الله، أشهد
أن لا إله إلا الله. أشهد أن
محمداً رسول الله، أشهد أن
محمداً رسول الله».

The adhān is: "God is most great; God is the most great! I testify that there is no deity but God; I testify that there is no deity but God. I testify that Muḥammad is the Messenger of God; I testify that Muḥammad is the Messenger of God."

ثم ترجع بأرفع من صوتك
أول مرة، فتكرر التشهد،
فتقول «أشهد أن لا إله إلا
الله، أشهد أن لا إله إلا الله.
أشهد أن محمداً رسول الله،
أشهد أن ممداً رسول الله.
حي على الصلاة، حي على
الصلاة. حي على الفلاح،
حي على الفلاح».

Then you repeat the credal statements in a louder voice than the first time, saying: "I testify that there is no deity but God; I testify that there is no deity but God. I testify that Muḥammad is the Messenger of God; I testify {26} that Muḥammad is the Messenger of God. Come to do ṣalāt; come to do ṣalāt. Come to prosper; come to prosper."

فإن كنت في نداء الصبح
زدت ههنا «الصلاة خير من
النوم، الصلاة خير من
النوم». لا تقل ذلك في غير
نداء الصبح.

If you are calling the ṣalāt of ṣubḥ, you should add here: "Doing ṣalāt is better than sleeping; doing ṣalāt is better than sleeping;" but this is not said only for the ṣalāt of ṣubḥ.

«الله أكبر الله، أكبر. لا إله
إلا الله» مرة واحدة.

Finally you say: "God is most great; God is most great! There is no deity but God." The last sentence is said only once.

9.02 الإقامة

9.02 Iqāma

والإقامة وتر «الله أكبر، الله
أكبر. أشهد أن لا إله إلا الله.
أشهد أن محمداً رسول الله.
حي على الصلاة، حي على
الفلاح. قد قامت الصلاة. الله
أكبر، الله أكبر. لا إله إلا
الله».

The iqāma is a formula without repetitions:⁽⁷⁵⁾ "God is most great; God is most Great! I testify that there is no deity but God. I testify that Muḥammad is the Messenger of God. Come to do ṣalāt. come to prosper. It is time for ṣalāt. God is most great; God is most great! There is no deity but God." The last sentence is said only once.

CHAPTER 10 HOW TO DO ṢALĀT

باب 10 صفة العمل في الصلوات المفروضة وما يتصل بها من النوافل والسنن

10.01 لكل الصلاة وخاصة الصبح

10.01 For each ṣalāt, especially ṣubḥ ⁽⁷⁶⁾

والإحرام في الصلاة أن تقول «الله أكبر». لا يجزئ غير هذه الكلمة. وترفع يديك حذو منكبيك أو دون ذلك.

To place yourself in the consecrated state (*iḥrām*) of ṣalāt, you say "*Allāhu akbar*" (God is most great) no other formula suffices while you raise your hands in front of your shoulders or lower.

ثم تقرأ. فإن كنت في الصبح قرأت جهراً بأم القرآن، لا تستفتح «بسم الله الرحمن الرحيم» في أم القرآن ولا في السورة التي بعدها. فإذا قلت «ولا الضالين» فقل «أمين» إن كنت وحدك أو خلف إمام، وتخفيها. ولا يقولها الإمام فيما جهر فيه، ويقولها فيما أسر فيه. وفي قوله إياها في الجهر اختلاف.

Next you recite aloud, if you are doing the ṣalāt of ṣubḥ the opening sūra of the Qur'ān, but you do not begin this sūra or the sūra you recite afterwards with "*Bi-smi llāh r-raḥmāni r-raḥīm*" (In the name of God the merciful and kind). After you say the final words "*wa-lā d-ḍāllīn*", you say "*āmīn*", whether you are alone or following an imām. You say the "*āmīn*" quietly; the imām does not say it when he is reciting aloud, but does if he is reciting quietly, although according to a different opinion he says it even when reciting aloud.

ثم تقرأ سورة من طوال المفصل، وإن كانت أطول من ذلك فحسن بقدر التغليس. وتجهر بقراءتها.

Next you recite one of the longer sūras of the *Mufaṣṣal* (separate section) of the Qur'ān. ⁽⁷⁷⁾ If you recite a longer sūra than one of these, that is good, depending upon the length of time before sunrise. This sūra is to be recited aloud.

فإذا تمت السورة كبرت في انحطاطك للركوع. فتمكن يديك من ركبتيك، وتسوي ظهرك مستوياً، ولا ترفع رأسك ولا تطأئنه، وتجاغي بضبعيك عن جنبيك. وتعتقد الخضوع بذلك بركوعك

When you finish reciting this sūra, you say "*Allāhu akbar*" while bending down for the bow (*rukū'*). To do the bow, you hold your hands on your knees and make your back level, neither lifting nor bowing your head, and keep your upper arms away from your sides. You should have a conviction of submission in your bowing and prostrating, but while bowing you do not make any request; only say, if you wish: "With honour and praise to my great Lord." There is no fixed number of times

وسجودك. ولا تدعو في ركوعك، وقل إن شئت «سبحان ربي العظيم» و«بحمده». وليس في ذلك توقيت قول ولا حد في اللبث.

to say this, nor any fixed time to be spent [bowed down].

ثم ترفع رأسك وأنت قائل «سمع الله لمن حمده». ثم تقول «اللهم ربنا ولك الحمد» إن كنت وحدك، ولا يقولها الإمام. ولا يقول المأموم «سمع الله لمن حمده»، ويقول «الله برنا ولك الحمد».

Then you lift your head, saying: "God hears the one who praises him," and "God, our Lord, praise is yours." You say both of these if you are alone, but an imām does not say the second expression. Someone following him does not say "God hears the one who praises him," but only answers "God, our Lord, praise is yours."

وتستوي قائماً مطمئناً مترسلاً. ثم تهوي ساجداً، لا تجلس. ثم تسجد وتكبر في انحطاطك للسجود فتمكن جبهتك وأنفك من الأرض، وتباشر بكفيك الأرض باسماً يديك مستويتين إلى القبلة، تجعلهما حذو أذنيك أو دون ذلك. وكل ذلك واسع، غير أنك لا تفترش ذراعيك في الأرض، ولا تضم عضديك إلى جنبيك، ولكن تجنح بهما تجنحاً وسطاً. وتكون رجلاك في سجودك قائمتين، وبطنون إبهاميهما إلى الأرض. وتقول إن شئت في سجودك «سبحانك ربي، ظلمت نفسي وعملت سوءاً، فاغفر لي»، أو غير ذلك إن شئت. وتدعو في السجود إن شئت، وليس لطول ذلك وقت،

Then you stand up straight, calmly and leisurely, and drop for the prostration (*sujūd*) without sitting. While lowering yourself for the prostration, you say "*Allāhu akbar*". To prostrate you put your forehead and nose against the ground, likewise the palms of your hands, {28} flattening your hands level towards the qibla and placing them opposite your ears or lower. This can be done in any number of ways, but do not spread your arms on the ground or place your upper arms against your sides, but hold them out a little. During the prostration keep your feet up, with the under part of your toes against the ground. If you wish, while prostrating you can say: "Glory be to you, my Lord; I have wronged myself and done evil; forgive me," or some other prayer. You can make requests (*du`ā'*) during your prostration if you wish, and there is no time set for the length of that. The least required is for your joints to pause and hold still.

وأقله أن تطمئن مفاصلك
متمكناً.

ثم ترفع رأسك بالتكبير،
فتجلس، فتثني رجلك اليمسى
في جلوسك بين السجدين،
وتنصب اليمنى ويطون
أصابعها إلى الأرض.
وترفع يديك عن الأرض
على ركبتيك.

Next you lift your head while saying "*Allāhu akbar*", and sit (*julūs*). While sitting between the two prostrations, bend your left foot down, but keep your right foot up, with the bottoms of its toes against the ground. Take your hands off the ground and put them on your knees.

ثم تسجد الثانية كما فعلت
أولاً.

Then you do a second prostration just as you did the first.

ثم تقوم من الأرض كما أنت
معتمداً على يديك لا ترجع
جالساً لتقوم من جلوس،
ولكن كما ذكرت لك. وتكبر
في حال قيامك، ثم تقرأ كما
قرأت في الأولى أو دون
ذلك، وتفعل مثل ذلك سواء
غير أنك تقنت بعد الركوع.
وإن شئت قنت قبل الركوع
بعد تمام القراءة.

Next, bracing yourself with your hands, you stand up. Do not first return to a sitting position and then stand up, but directly, the way you came down. While standing, you say "*Allāhu akbar*", and then recite [from the Qur'ān the opening sūra and another] of the same length as before or shorter. You do everything as before, {29} except that you say the qunūt after bowing or, if you wish, before bowing, after reciting from the Qur'ān. (78)

10.02 القنوت

10.02 The qunūt

والقنوت «اللهم إنا نستعينك
ونستغفرك ونؤمن بك
ونتوكل عليك ونخضع لك
ونخضع ونترك من يكفرك.
اللهم إياك نعبد ولك نصلي
ونسجد، وإياك نسعى ونحسد
نرجو رحمتك، ونخاف
عذابك الجذ، إن عذابك
بالكافرين ملحق».

The qunūt is: "O God, we seek your help and your forgiveness. We believe in you and trust in you. We submit ourselves to you and cast off and leave whoever disbelieves in you. O God, only you do we worship, we do ṣalāt and prostrate before you, we come eagerly to serve you, we hope for your mercy and fear your severe punishment; for your punishment certainly lays hold of unbelievers."

ثم تفعل في السجود
والجلوس كما تقدم من
الوصف.

Then you do the prostrations and sit as has already been described.

10.03 الجلوس الأخير والتشهد والتسليم

10.03 The final sitting (julūs), tashahhud, and "as-salāmu `alaykum"⁽⁷⁹⁾

فإذا جلست بعد السجدين
نصبت رجلك اليمنى وبتون
أصابعها إلى الأرض وثنيت
اليمنى وأفضيت بأليتك إلى
الأرض، ولا تقعد على
رجلك اليسرى. وإن شئت
حنيت اليمنى في انتصابها،
فجعلت جنب بهما إلى
الأرض، فواسع.

When you sit after these two prostrations, straighten your right foot up with the bottoms of its toes on the ground. Bend your left foot, and put your left thigh on the ground without sitting on your left foot. If you wish, you can let your right foot bend as it stands, placing the side of its toe towards the ground. But this can be done in any number of ways.

ثم تتشهد. والتشهد:

In this position you say the tashahhud, which is:

«التحيات لله، الزاكيات لله،
الطيبات الصلوات لله.
السلام عليك أيها النبي،
ورحمة الله وبركاته. السلام
علينا وعلى عباد الله
الصالحين. أشهد أن لا إله
إلا الله وحده لا شريك له،
وأشهد أن محمد عبده
ورسوله».

Salutations to God, pure works to God, good works to God, performances of ṣalāt to God! Peace and the kindness and blessings of God be upon you, O Prophet; peace be upon us and on the righteous servants of God. I testify that there is no deity but God, him alone without associate. I testify that Muḥammad is his servant and Messenger.

فإن سلمت بعد هذا أجزأك،
ومما تزيده إن شئت:

If you say "as-salāmu `alaykum" immediately after this, that suffices, but you may first add if you wish:

«وأشهد أن الذي جاء به
محمد حق، وأن الجنة حق
وأن النار حق وأن الساعة
آتية لا ريب فيها وأن الله
يبعث من في القبور. اللهم
صل على محمد وعلى آل
محمد، وارحم محمداً وآل
محمد، وبارك على محمد
وعلى آل محمد، كما صليت
ورحمت وباركت على
إبراهيم وعلى آل إبراهيم في

I testify that what Muḥammad communicated is real, {30} that Paradise is real, that the Fire is real, that the hour is coming without any doubt, that God will raise those who are in the graves. O God, bless Muḥammad and his family; show kindness to Muḥammad and his family; prosper Muḥammad and his family: just as you blessed, showed kindness to and prospered Abraham and his family throughout the world; for you are praiseworthy and majestic. O God, bless your angels, saints, prophets, messengers and all those who obey you. O God, forgive decisively myself, my parents, our imāms and believers who lived before us. O God, I ask you for all the good that your prophet Muḥammad asked of you, and I seek your protection from all the evil that your prophet Muḥammad asked

العالمين، إنك حميد مجيد. اللهم صل على ملائكتك والمقربين، وعلى أنبيائك والمرسلين، وعلى أهل طاعتك أجمعين. اللهم اغفر لي ولوالدي، ولأئمتنا ولمن سبقنا بالإيمان مغفرة عزماً. اللهم إني أسألك من كل خير سألك منه محمد نبيك، وأعوذ بك من كل شر استعاذك منه محمد نبيك. اللهم اغفر لنا ما قدمنا وما أخرنا، وما أسررنا وما أعلنا، وما أنت أعلم به منا. ربنا آتينا في الدنيا حسنة وفي الآخرة حسنة، وقنا عذاب النار. وأعوذ بك من فتنة المحيا والممات، ومن فتنة القبر، ومن فتنة المسيح الدجال، ومن عذاب النار وسوء المصير. السلام عليك أيها النبي ورحمة الله وبركاته. السلام علينا وعلى عباد الله الصالحين».

ثم تقول «السلام عليكم» تسليمة واحدة عن يمينك، تقصد بها قبالة وجهك وتتيامن برأسك قليلاً، هكذا يفعل الإمام والرجل وحده. وأما المأموم فيسلم واحدة يتيامن بها قليلاً ويرد أخرى على الإمام قبالته يشير بها إليه، ويرد على من كان سلم عليه على يساره. فإن لم يكن سلم عليه أحد لم يرد على يساره شيئاً.

your protection from. O God, forgive us our sins, both past and future, secret and public, and those which you are more aware of than we. O our Lord, give us good in this world and good in the next; protect us from the torment of the Fire. I seek your protection from the trials of life and death, from the trials of the grave, from the trials of the anti-Christ, from the torment of the Fire and an evil end. Peace and kindness and blessings of God be upon you, O Prophet; peace be upon us and the righteous servants of God.

Next you say "*as-salāmu `alaykum*" once to {31} your right; that is, you begin by looking ahead and then turn your head a little to the right. An imām and someone by himself do it this way. But someone following an imām says "*as-salāmu `alaykum*" once while turning a little to the right, says it again facing the imām in front of him in answer to his *salām*, and says it a third time in answer to the person on his left who had wished him *salām*. But if no one had wished him *salām* [from his left], he says nothing in return.

ويجعل يديه في تشهده على
فخذه ويقبض أصابع يده
اليمنى، ويبسط السبابة يشير
بها، وقد نصب حرفها إلى
وجهه. واختلف في
تحريكها، فقليل يعتقد
بالإشارة بها أن الله إله واحد.
ويتأول من يحركها أنها
مقمة للشيطان. وأحسب
تأويل ذلك أن يذكر بذلك من
أمر الصلاة ما يمنعه إن شاء
الله عن السهو فيها والشغل
عنها. ويبسط يده اليسرى
على فخذ الأيسر ولا
يحركها ولا يشير بها.

During the tsahahhud the person places his hands on his thighs and clenches all the fingers of his right hand but his index finger, which he sticks out and points with, lifting the side of the finger towards his face. There is a difference of opinion on whether to wave the finger. One opinion is that [merely] pointing with it indicates belief that God is one deity. Those who wave the finger interpret this as a way of suppressing Satan. I interpret waving the finger as a reminder to the person of this ṣalāt, in order to prevent him God willing from mistakes and distractions. The person should keep his left hand flattened on his left thigh without waving or pointing with it.

10.04 النوافل

10.04 Supererogatory prayer and ṣalāt

ويستحب الذكر بائر
الصلوات يسبح الله ثلاثاً
وثلاثين ويحمد الله ثلاثاً
وثلاثين ويكبر الله ثلاثاً
وثلاثين، ويختم المائة ب«لا
إله إلا الله وحده، لا شريك
له، له الملك وله الحمد، وهو
على كل شيء قدير».

After ṣalāt, dhikr⁽⁸⁰⁾ is recommended; that is to say "Subhān Allāh" (Glory be to God) thirty-three times, "Al-ḥamdu li-llāhi" thirty-three times, "Allāhu akbar" thirty-three times, and to round off the number to one hundred by saying: "Lā ilāha illā llāh, waḥda-hu, lā sharīka la-hu, la-hu l-mulk, wa-la-hu l-ḥamd, wa-huwa `alā kulli shay'in qadūr" (There is no deity but God, him alone without associate; his is the kingdom and the praise, and he is all powerful).⁽⁸¹⁾

ويستحب بائر صلاة الصبح
التمادي في الذكر
والاستغفار والتسبيح
والدعاء إلى طلوع الشمس
أو قرب طلوعها، وليس
بواجب.

After the ṣalāt of ṣubḥ it is desirable to prolong {32} the dhikr, asking for pardon, praising and petitioning until sunrise or near to it; but this is not obligatory.

ويركع ركعتي الفجر قبل
صلاة الصبح بعد الفجر،
يقرأ في كل ركعة بأم
القرآن، يسرها.

Also recommended is to make two dawn rak`as before the ṣalāt of ṣubḥ but just after dawn.⁽⁸²⁾ In each rak`a is recited quietly the opening sūra of the Qur`ān.

10.05 الظهر

10.05 Zuhr

والقراءة في الظهر بنو
القراءة في الصبح من
الطوال أو دون ذلك قليلاً.
ولا يجهر فيها بشء من
القراءة، ويقرأ في الأولى
والثانية في كل ركعة بأم
القرآن وسورة سرّاً، وفي
الأخيرتين بأم القرآن وحدها
سرّاً.

The recitation for zuhr, like that of ṣubḥ, consists of one of the longer sūras or one slightly shorter, but is not done aloud. In the first and second rak`as the opening sūra of the Qur`ān and one other are recited quietly; in the last two rak`as only the opening sūra of the Qur`ān is recited, and that quietly.

ويتشهد في الجلسة الأولى
إلى قوله «وأشهد أن محمداً
عبده ورسوله». ثم يقوم فلا
يكبر حتى يستوي قائماً.
هكذا يفعل الإمام والرجل
وحده، وأما المأموم فبعد أن
يكبر الإمام يقوم المأموم
أيضاً، فإذا استوى قائماً كبر.

In the first sitting, [after the first two rak`as], the tashahhud is said as far as "I testify that Muḥammad is his servant and messenger." Then the person stands, but does not say "*Allāhu akbar*" until he is completely upright. An imām and a person by himself do this, but someone following an imām stands after the imām says "*Allāhu akbar*", and when he is standing upright repeats "*Allāhu akbar*".

ويفعل في بقية الصلاة من
صفة الركوع والسجود
والجلوس نحو ما تقدم ذكره
في الصبح.

As for the remaining actions of this ṣalāt, such as bowing, prostrating and sitting, he does exactly as was described for the ṣalāt of ṣubḥ.

ويتنفل بعدها. ويستحب له
أن يتنفل بأربع ركعات يسلم
من كل ركعتين.

It is desirable also to do four supererogatory rak`as after the ṣalāt of zuhr, saying "*as-salāmu `alaykum*" after every second rak`a.

10.06 العصر

10.06 `Aṣr

ويستحب له مثل ذلك قبل
صلاة العصر.

Four supererogatory rak`as are likewise desirable before the ṣalāt of `aṣr.

ويفعل في العصر كما
وصفنا في ظهر سواء، إلا
أنه يقرأ في الركعتين
الأولتين مع أم القرآن
بالقصار من السور، مثل
«والضحى» و«إنا أنزلناه»

The ṣalāt of `aṣr is done as that of zuhr; only in the first two rak`as {33} the opening sūra of the Qur`ān is recited together with one of the shorter sūras, such as *Wa-d-ḍuḥā* (93) or *Innā anzalnā-hu*(97).

ونحوهما.

07.10

وأما المغرب فيجهر بالقراءة في الركعتين الأولتين منها. ويقرأ في كل ركعة منهما بأمر القرآن وسورة من السور القصار، وفي الثالثة بأمر القرآن فقط. ويتشهد ويسلم.

ويستحب أن يتنفل بعدها براكعتين، وما زاد فهو خير. وإن تنفل بست ركعات فحسن. والتنفل بين المغرب والعشاء مرغوب فيه.

وأما غير ذلك من شأنها فكما تقدم ذكره في غيرها.

08.10 العشاء

وأما العشاء الأخيرة وهي العنمة-واسم العشاء أخص بها وأولى-فيجهر في الأولتين بأمر القرآن وسورة في كل ركعة، وقراءتها أطول قليلاً من قراءة العصر. وفي الأخيرتين بأمر القرآن في كل ركعة سراً.

ثم يفعل في سائرهما كما تقدم من الوصف. ويكره النوم قبلها، والحديث بعدها لغير ضرورة.

09.10 الجهر والسمر،

وصلاة المرأة

والقراءة التي يسر بها في الصلاة كلها هي بتحريرك اللسان بالتكلم بالقرآن. وأما

10.07 Maghrib

For the ṣalāt of maghrib the recitations of the first two rak`as are aloud and, in each rak`a, consist of the opening sūra of the Qur`ān and one of the shorter sūras. But in the third rak`a only the opening sūra of the Qur`ān is recited. The tashahhud and "*as-salāmu `alaykum*" are said.

It is desirable to make two supererogatory rak`as afterwards, and better to do even more; six extra rak`as is a good number. [In a word,] supererogatory ṣalāt between the ṣalāts of maghrib and `ishā' is desirable.

Besides these directions, the ṣalāt of maghrib is performed just as the other ṣalāts.

10.08 `Ishā'

`Ishā' is the last ṣalāt, and is the same as `atama, but the name `ishā' is more proper and better. The recitations of the first two rak`as are said aloud, and consist of the opening sūra of the Qur`ān and another sūra which is a little longer than such as was recited as `aṣr. In the last two rak`as only the opening sūra of the Qur`ān is recited, and that quietly.

Other directions for the performance of this ṣalāt are as described for the other ṣalāts. Sleeping before it and talking after it for no necessity are disapproved.

10.09 Volume of recitation and rules for women

All the recitations of the Qur`ān during ṣalāt which are to be done quietly include movement of the tongue. To recite aloud means to let oneself and the person next to him hear, even if one is alone. When a woman recites

الجهر فأن يسمع نفسه ومن يليه إن كان وحده.

والمرأة دون الرجل في الجهر، وهو في هيئة الصلاة مثله، غير أنها تنضم ولا تفرج فخذيتها ولا عضديها. وتكون منصمة منزوية في جلوسها وسجودها وأمرها كله.

aloud she speaks a little softer than a man.

A woman {34} follows the same order of ṣalāt as a man, except that she keeps her limbs joined and does not open her thighs or upper arms; she keeps her limbs huddled close while she sits, prostrates, or takes any other position.

10.10 النوافل في الليل

10.10 Supererogatory ṣalāt in the night

ثم يصلي الشفع والوتر جهراً. وكذلك يستحب في نوافل الليل الإجهار، وفي نوافل النهار الإسرار. وإن جهر في النهار في تنفله فذلك واسع.

After `ishā' one does the ṣalāts of shaf` and of witr.⁽⁸³⁾ [The recitations in these are] aloud. Thus it is desirable to recite aloud in the supererogatory rak`as of night, but quietly in those of the daytime. But if someone recites aloud in his daytime supererogatory rak`as, this is allowed.

وأقل الشفع ركعتان. ويستحب أن يقرأ في الأولى بأمر القرآن و«سبح اسم ربك الأعلى»، وفي الثانية بأمر القرآن و«قل يا أيها الكافرون». ويتشهد ويسلم.

The minimum number of rak`as for the ṣalāt of shaf` is two. It is desirable to recite in the first rak`a the opening sūra of the Qur`ān and *Sabbih ism rabbi-ka l-a`lā* (87), and in the second rak`a the opening sūra of the Qur`ān and *Qul yā ayyuhā l-kāfirūn* (109). The person then says the tashahhud and "*as-salāmu `alaykum*", and continues with the witr.

ثم يصلي الوتر ركعة يقرأ فيها بأمر القرآن و«قل هو الله أحد» والمعوذتين.

The witr is one rak`a, in which are recited the opening sūra of the Qur`ān and *Qul huwa llāhu aḥad*(112) and the *Mu`awwidhatān* (113 & 114).

وإن زاد من الأشفاع جعل آخر ذلك الوتر. وكان رسول الله صلّس يصلي من الليل اثنتي عشرة ركعة، ثم يوتر بواحدة، وقيل عشر ركعات ثم يوتر بواحدة.

If the shaf` rak`as are multiplied, the witr is placed at the end of them. The Messenger of God used to do 12 rak`as in the night and then the witr of one rak`a; but some say he did only ten rak`as before the witr of one rak`a.

وأفضل الليل آخره في القيام. فمن أخر تنفله ووتره إلى آخره فذلك أفضل، إلا من

The best part of the night is its end, at rising time. It is better to defer the supererogatory rak`as and the witr until the end of the night, except for someone who is likely to forget; he should do the witr and any other

الغالب عليه أن لا ينتبه
فليقدم وتره مع ما يريد من
النوافل أول الليل. ثم إن شاء
إذا استيقظ في آخره تنفل ما
شاء منها مثنى مثنى، ولا
يعيد الوتر.

supererogatory rak`as he wishes at the beginning of the night. Then if he rises towards the end of the night he can do any other supererogatory rak`as he wishes, two at a time, without repeating the witr.

ومن غلبته عيناه عن حربه
فله أن يصلية ما بينه وبين
طلوع الفجر وأول الإسفار.
ثم يوتر ويصلي الصبح، ولا
يقضي الوتر من ذكره بعد
أن صلى الصبح.

Someone who oversleeps and misses doing {35} this ṣalāt during the night can do it between the time he wakes up and the break of dawn or even the beginning of the sun's radiance (*isfār*). Then he does the witr and the ṣalāt of ṣubḥ. The witr is not to be made up if one remembers it after doing the ṣalāt of ṣubḥ.

10.11 في دخول المسجد

10.11 On entering a mosque

ومن دخل المسجد على
وضوء فلا يجلس حتى
يصل ركعتين إن كان وقت
يجوز فيه الركوع. ومن
دخل المسجد ولم يركع
الفجر أجزاءً لذلك ركعتنا
الفجر. وإن ركع الفجر في
بيته ثم أتى المسجد فاختلف
فيه: فقليل يركع، وقيل لا
يركع ولا صلاة نافلة بعد
الفجر إلا ركعتنا الفجر إلى
طلوع الشمس.

If someone enters a mosque and has done wuḍū', he should not sit down before doing a ṣalāt of two rak`as if there is time for this. If he has not done the two supererogatory rak`as of dawn before entering, he may do them when he enters, and they count for the two which are done before sitting. But if he already did the dawn rak`as at home before coming to the mosque, there is a difference of opinion: One opinion is that he should do two rak`as before sitting; the other is that he should not do them, since no supererogatory ṣalāt should be done between dawn and sunrise but the two rak`as of dawn.⁽⁸⁴⁾

باب 11 في الإمامة وحكم الإمام والمأموم

CHAPTER 11⁽⁸⁵⁾ THE FUNCTION OF AN IMĀM

11.01 وظيفة الإمام

11.01 The office of imām

ويؤم الناس أفضلهم وأفقههم.
ولا تؤم المرأة في فريضة
ولا نافلة، لا رجالاً ولا
نساء.

The most virtuous and learned of men should be their imām. A woman cannot be an imām, whether for obligatory or supererogatory ṣalāt, and whether before men or women.

ويقرأ مع الإمام فيما يسر فيه، ولا يقرأ معه فيما يجهر فيه.

A person recites with the imām whatever he says quietly, but does not recite with him what he says aloud.

11.02 02.11 قضاء الصلاة

11.02 Late-comer's making up missed ṣalāt

ومن أدرك ركعة فأكثر فقد أدرك الجماعة، فليقض بعد سلام الإمام ما فاتته على نحو ما فعل الإمام في القراءة. وأما في القيام والجلوس، ففعله كفعل الباني المصلي وحده.

Whoever arrives in time for one rak`a or more has a part in the common ṣalāt, and should make up after the "as-salāmu `alaykum" of the imām whatever he missed. In doing so, he follows the order of the imām regarding the recitations,⁽⁸⁶⁾ but as for standing and sitting he does his ṣalāt by himself, building upon what he did with the imām.⁽⁸⁷⁾

11.03 03.11 إعادة الصلاة

11.03 Repeating privately done ṣalāt in community

ومن صلى وحده فله أن يعيد في الجماعة للفضل في ذلك، إلا المغرب وحدها.

Someone who has done ṣalāt by himself may repeat it in community (*jamā`a*) if he has the occasion,{36} because ṣalāt done in community has a special excellence,⁽⁸⁸⁾ the one exception is the ṣalāt of maghrib, which he should not repeat.

ومن أدرك ركعة فأكثر من صلاة الجماعة فلا يعيدها في جماعة. ومن لم يدرك إلا التشهد أو السجود فله أن يعيد في جماعة.

Someone who has arrived in time for one or more rak`as of a ṣalāt done in community should not repeat this ṣalāt in [another] community. But if he arrived only for the tashahhud or sitting [in the first community], he may repeat the ṣalāt in [another] community.

11.04 04.11 الموقف مع الإمام

11.04 Positions behind an imām

والرجل الواحد مع الإمام يقوم عن يمينه، ويقوم الرجلان فأكثر خلفه. فإن كانت امرأة معها قامت خلفهما. وإن كان معها رجل صلى عن يمين الإمام، والمرأة خلفهما. ومن صلى بزوجه قامت خلفه. والسبي إن صلى مع رجل واحد خلف الإمام قما خلفه إن كان الصبي يعقل لا يذهب ويدع من يقف معه.

One man with an imām should stand on his right, but two more men should stand behind him. If a woman is present, she stands behind the men. If a man and a woman are present with the imām, the man stands on the right of the imām and the woman behind them. If a man does ṣalāt with his wife, she stands behind him. If a minor boy is doing ṣalāt with one man behind an imām, the man and the boy stand behind the imām if the boy has enough sense not to go away and leave the man he is standing with.

11.05 05 .11 اتباع الإمام

11.05 An imām's single ṣalāt in community

والإمام الراجب إن صلى وحده قام مقام الجماعة.

If a constituted (*rātib*) imām does ṣalāt by himself, he has the status of doing it in community.

ويكره في كل مسجد له إمام راتب أن تجمع فيه الصلاة مرتين.

In any mosque which has a constituted imām it is disapproved to have the same ṣalāt done in community twice.

ومن صلى صلاة فلا يؤم فيها أحداً.

Anyone who has already done his ṣalāt should not repeat it acting as an imām.

11.06 06 .11 كيفية اقتداء الإمام

11.06 How to follow an imām

وإذا سها الإمام وسجد لسهوه فليتبعه من لم يسه معه ممن خلفه.

If the imām makes a mistake and prostrates for it, ⁽⁸⁹⁾ those behind him should follow him in prostrating, even if they did not make the mistake with him.

ولا يرفع أحد رأسه قبل الإمام، ولا يفعل إلا بعد فعله. ويفتتح بعده، ويقوم من اثنتين بعد قيامه، ويسلم بعد سلامه. وما سوى ذلك فواسع أن يفعله معه، وبعده أحسن.

No one should lift his head before the imām does, nor do anything until after he does it. The follower should open the ṣalāt [with "*Allāhu akbar*"] after him, rise from the two rak`as after he rises, and say "*as-salāmu `alaykum*" after he says it. It is allowed to do anything besides these things simultaneously with the imām, but afterwards is better.

وكل سهو سهاه المأموم فالإمام يحمله عنه، إلا ركعة أو سجدة أو تكبيرة الإحرام أو السلام أو اعتقاد نية الفريضة.

Responsibility for any mistake made by someone following an imām is taken by the imām, {37} except for [missing] a rak`a, a sitting, the ["*Allāhu akbar*"] of iḥrām, or the intention to fulfill an obligation.

وإذا سلم الإمام فلا يثبت بعد سلامه والينصرف، إلا أن يكون في محله، فذلك واسع.

Once the imām has said "*as-salāmu `alaykum*", he should not remain in his place, but move away, unless he happens to be at home, where this rule need not be followed.

باب 12 جامع في الصلاة

CHAPTER 12 MISCELLANEOUS QUESTIONS ON ṢALĀT

12.01 01 .12 اللباس

12.01 Clothing

وأقل ما يجزئ المرأة من اللباس في الصلاة الدرع الحصيف السابغ الذي يستر ظهور قدميها، وهو القميص والخمار الحصيف.

The least a woman may wear during ṣalāt is a moderately thick and ample *dir`*, or tunic, which covers the top of her feet, and a moderately thick veil.

ويجزئ الرجل في الصلاة ثوب واحد، ولا يغطي أنفه أو وجهه في الصلاة، أو يضم ثيابه أو يكفت شعره.

For a man doing ṣalāt one garment is enough. He should not cover his nose or face during ṣalāt, nor bind up his clothes or fasten his hair.

12.02 سجود للسهو

12.02 Prostration for a mistake and repairing it

وكل سهو في الصلاة بزيادة فليسجد له بعد السلام، يتشهد لهما ويسلم منهما.

Someone who mistakenly adds something in his ṣalāt should make up for it by doing two prostrations after the "*as-salāmu `alaykum*". Each prostration includes a tashahhud and the greeting "*as-salāmu `alaykum*".

وكل سهو بنقص فليسجد له قبل السلام إذا تم تشهده. ثم يتشهد ويسلم. وقيل لا يعيد التشهد، ومن نقص وزاد سجد قبل السلام.

Someone who mistakenly omits something should make up for it by doing two prostrations, but before the "*as-salāmu `alaykum*" if he has finished the tashahhud; afterwards he repeats the tashahhud and says "*as-salāmu `alaykum*". Another opinion is that the tashahhud should not be repeated, and that the prostrations should be made before saying "*as-salāmu `alaykum`*" when the mistake was by both omission and addition [in the same ṣalāt].

ومن نسي أن يسجد بعد السلام فليسجد متى ما ذكره، وإن طال ذلك. وإن كان قبل السلام، سجد إن كان قريباً. وإن بعد ابتداء صلاته، إلا أن يكون ذلك من نقص شيء خفيف كالسورة مع أم القرآن أو تكبيرتين أو التشهدين وشبه ذلك. فلا شيء عليه.

If someone forgets to prostrate after saying "*as-salāmu `alaykum*", he should prostrate when he remembers, even if this is a long time later. If someone forgets a prostration that was to have been done before saying "*as-salāmu `alaykum*", he should prostrate if he remembers close at hand, but if he remembers some time afterwards he should do his ṣalāt over from the beginning, unless his mistake was only a small omission, such as not saying another sūra after the {38} opening sūra of the Qur'ān, or omitting the "*Allāhu akbar*" twice,⁽⁹⁰⁾ or the two tashahhuds, or similar things; such small omissions do not require repeating one's ṣalāt.

ولا يجزئ سجود السهو لنقص ركعة ولا سجدة ولا لترك القراءة في الصلاة كلها أو في ركعتين منها، وكذلك في ترك القراءة في

The prostration for a mistake, however, does not supply for the omission of a rak`a or a prostration, or for reciting nothing from the Qur'ān in two rak`as of a ṣalāt, or not reciting anything in one of the rak`as of the ṣalāt of ṣubḥ. There is a difference of opinion concerning the omission of all recitation in one rak`a

ركعة من الصبح. واختلف في السهو عن القراءة في ركعة من غيرها. فقليل يجزئ فيه سجود السهو قبل السلام. وقيل يلغيها، ويأتي بركعة. وقيل يسجد قبل السلام، ولا يأتي بركعة، ويعيد الصلاة احتياطاً. وهذا أحسن ذلك إن شاء الله تعالى.

ومن سها عن تكبيرة أو عن «سمع الله لمن حمده» مرة أو القنوت فلا سجود عليه.

ومن انصرف من الصلاة ثم ذكر أنه بقي عليه شيء منها فليرجع إن كان بقرب ذلك، فيكبر تكبيرة يحرم بها، ثم يصلي ما بقي عليه. وإن تباعد ذلك أو خرج من المسجد ابتداءً صلاته. وكذلك من نسي السلام ومن لم يدر ما صلى أثلاث ركعات أم أربعاً بنى على اليقين وصلى ما شك فيه، وأتى برابعة، وسجد بعد سلامه. ومن تكلم ساهياً سجد بعد السلام. ومن لم يدر أسلم أم لم يسلم سلم، ولا سجود عليه.

ومن استنكحه الشك في السهو فليبه عنه، ولا إصلاح عليه، ولكن عليه أن يسجد بعد السلام. وهو الذي يكثر ذلك منه يشك كثيراً أن يكون سها زاد أو نقص ولا يوقن، فليسجد بعد السلام فقط. وإذا

of one of the other ṣalāts: One opinion is that the prostration for a mistake before saying "*as-salāmu `alaykum*" suffices; another opinion is that such an omission voids the rak`a, which must be repeated; a further opinion is that one should prostrate before saying "*as-salāmu `alaykum*", and repeat not the rak`a but the whole ṣalāt, to be safe. The latter is the best opinion, God willing.

If someone omits saying one "*Allāhu akbar*" or "God hears the one who praises him" or the qunūt, he does not have to make a prostration for this.

If someone breaks off his ṣalāt and then remembers that he did not finish, he should do the part he did not finish if he remembers shortly afterwards. He should first say "*Allāhu akbar*" once to enter the state of consecration (*ihrām*), then do the part of the ṣalāt that remained to be done. If considerable time has elapsed, or he has gone out of the mosque, he should begin his ṣalāt over. Likewise, someone who forgot to say "*as-salāmu `alaykum*" [should repeat his sitting with the tashahhud and "*as-salāmu `alaykum*".] Someone who does not know whether he did three or four rak`as of his ṣalāt should build upon what he knows for certain, and do the ṣalāt of which he is in doubt, in this case the fourth rak`a, adding a prostration after saying "*as-salāmu `alaykum*". Someone who talks out of distraction should prostrate after the "*as-salāmu `alaykum*". Someone who does not know {39} whether he said "*as-salāmu `alaykum*" or not should say it, without doing a prostration for this.

Someone who is obsessively doubtful about whether he made a mistake should shake off the doubt. No reparation obliges him, but he should only do a prostration after the "*as-salāmu `alaykum*". Such a person who has excessive doubts and is not sure whether he mistakenly added or omitted something should only prostrate after the "*as-salāmu `alaykum*". Someone who is sure of having made a mistake should prostrate after repairing his ṣalāt. But if his mistakes are many and they disturb him much, he should amend

أيقن بالسهو سجد بعد
إصلاح صلاته. فإن كثر
ذلك منه فهو يعتريه كثيراً
أصلح صلاته ولم يسجد
لسهوه.

his ṣalāt without prostrating for his mistakes.

ومن قام من اثنتين رجع، ما
لم يفارق الأرض بيديه
وركبتيه. فإذا فارقتها تمادى
ولم يرجع وسجد قبل السلام.

Someone who is getting up from a second rak`a [and realizes he has not sat for the tashahhud] should return [and sit] as long as his hands and knees have not left the ground. But if they have left the ground, he should continue without returning, and prostrate before the "as-salāmu `alaykum".

12. 03 قضاء الصلاة التي فاتت

12.03 Making up missed ṣalāt

ومن ذكر صلاة صلاها متى
ما ذكرها على نحو ما فاتته،
ثم أعاد ما كان في وقته مما
صلى بعدها.

If someone remembers having missed a ṣalāt, he should do it when he remembers it according to the way it was to have been done;⁽⁹¹⁾ then, if he has already done the ṣalāt for the time at hand, he should repeat it.

ومن عليه صلوات كثيرة
صلاها في كل وقت من ليل
أو نهار، وعند طلوع
الشمس وعند غروبها،
وكيفما تيسر له. وإن كانت
يسيرة أقل من صلاة يوم
وليلة بدأ بهن، وإن فات
وقت ما هو في وقته. وإن
كثرت بدأ بما يخاف فوات
وقته.

If someone has many ṣalāts to make up, he should do them at any time of the night or day, even during the rising or setting of the sun, whatever way is easy for him. If he has few ṣalāts to make up, less than those of a day and a night, he should begin with these, even if he misses doing on time the ṣalāt prescribed from the time at hand. But if the ṣalāts to be made up are many, he should begin with the ṣalāt for the time at hand if he would otherwise miss doing it on time.

ومن ذكر صلاة في صلاة
فسدت هذه عليه. ومن
ضحك في الصلاة أعادها،
ولم يعد الوضوء. وإن كان
مع إمام تمادى وأعاد. ولا
شيء عليه في التبسم. والنفخ
في الصلاة كالكلام، والعامد
لذلك مفسد لصلاته.

If someone is in the middle of doing a ṣalāt and remembers another ṣalāt he missed, the one he is doing is void. Someone who laughs during ṣalāt should repeat his ṣalāt, but not the wuḍū'. {40} If he is with an imām he should continue to the end and then repeat his ṣalāt. But if a person merely smiles he does not have to do anything for it. Blowing during ṣalāt is like talking; doing it deliberately voids the ṣalāt.

ومن أخطأ القبلة أعاد في

Someone who was mistaken regarding the direction of

الوقت. وكذلك من صلى
بثوب نجس، أو على مكان
نجس. وكذلك من توضأ
بماء نجس مختلف في
نجاسته. وأما من توضأ بماء
قد تغير لونه أو طعمه أو
ريحه أعاد صلاته أبدأً
ووضوءه.

12.04 جمع الصلاة

ورخص في الجمع بين
المغرب والعشاء ليلة
المطر، وكلك في طين
وظلمة. ويؤذن للمغرب أول
الوقت خارج المسجد، ثم
يؤخر قليلاً في قول مالك، ثم
يقيم في داخل المسجد
ويصليها. ثم يؤذن للعشاء
في داخل المسجد ويقيم، ثم
يصليها، ثم ينصرفون،
وعليهم إسفار قبل مغيب
الشفق.

والجمع بعرفة بين الظهر
والعصر عند الزوال سنة
واجبة، بأذان وإمامة لكل
صلاة. وكذلك في جمع
المغرب والعشاء بالمزدلفة
إذا وصل إليها.

وإذا جد السير بالمسافر فله
أن يجمع بين الصلاتين في
آخر وقت الظهر وأول وقت
العصر، وكذلك المغرب
والعشاء. وإذا ارتحل في
أول وقت الصلاة الأولى
جمع حينئذ.

the qibla should repeat his ṣalāt if its time has not passed. The same applies to someone who has done ṣalāt with filthy clothes or on a filthy place, or has done his wuḍū' with water which in the opinion of some is filthy.⁽⁹²⁾ But someone who has done his wuḍū' with water which has changed colour, taste or smell must always repeat his ṣalāt and wuḍū'.

12.04 Joining ṣalāts⁽⁹³⁾

There is a privilege permitting the joining of the ṣalāts of maghrib and `ishā' on a rainy night or when there is slush and an overcast sky. In such a case the adhān is called outside the mosque at the beginning of the time for maghrib; then, according to Mālik, after a short wait one says the iqāma and does the ṣalāt of maghrib inside the mosque. Next the adhān for `ishā' is called inside the mosque, one says the iqāma and does the ṣalāt of `ishā' and all go away while there is still the brightness of twilight.

To join the ṣalāts of zuhr and `aṣr in the afternoon at `Arafa⁽⁹⁴⁾ is an established sunna; the adhān and iqāma are said before each ṣalāt. The same applies to joining the ṣalāts of maghrib and `ishā' at al-Muzdalifa,⁽⁹⁵⁾ if one arrives on time.

Likewise a traveler on a urgent journey may join the ṣalāts of zuhr and `aṣr at the end of the time for zuhr and the beginning of the time for `aṣr, and join in the same way the ṣalāts of maghrib and `ishā'. But if {41} he is traveling at the beginning of the time for zuhr or maghrib, he should join zuhr with `aṣr or maghrib with `ishā' at this time.

وللمريض أن يجمع إذا خاف أن يغلب على عقله عند الزوال وعند الغروب. وإن كان الجمع أرفق به لبطن ونحوه جمع وسط وقت الظهر، وعند غيبوبة الشفق.

12.05 عائق الصلاة

والمغمى عليه لا يقضي ما خرج وقته في إغمائه، ويقض ما أفاق في وقته مما يدرك منه ركعة فأكثر من الصلوات.

وكذلك الحائض تطهر. فإذا بقي من النهار بعد ظهرها بغير توان خمس ركعات صلت الظهر والعصر. وإن كان الباقي من الليل أربع ركعات صلت المغرب والعشاء. وإن كان من النهار أو من الليل أقل من ذلك صلت الصلاة الأخيرة.

وإن حاضت لهذا التقدير لم تقض ما حاضت في وقته. وإن حاضت لأربع ركعات من النهار فأقل إلى ركعة أو ثلاث ركعات من الليل إلى ركعة قضت الصلاة الأولى فقط. واختلف في حيضها لأربع ركعات من الليل. فقليل مثل ذلك. وقيل إنها حاضت في وقتها فلا تقضيها.

12.06 الوضوء المفسد

Likewise a sick person who is afraid that he will lose consciousness later on should join the ṣalāts of zuhr with `aṣr at the beginning of the afternoon, and those of maghrib with `ishā' at sunset. But if joining these ṣalāts is merely for greater ease on his stomach or for a similar reason he should do together the ṣalāts of zuhr and `aṣr in the midst of the time for zuhr, [just before the time for `aṣr,] and those of maghrib and `ishā' just as twilight is disappearing.

12.05 Ṣalāt missed because of an impediment

Someone who has fainted should not make up the ṣalāt whose time elapsed while he was unconscious, but he makes up the ṣalāt if he wakes up and there is still time to do a rak`a or more of this ṣalāt.⁽⁹⁶⁾

The same holds for a woman who bathes after menstruation: If the amount of daytime left after she purifies herself without dallying permits five rak`as, she should do the ṣalāts of zuhr and `aṣr.⁽⁹⁷⁾ If the time left of the night permits four rak`as, she should do the ṣalāts of maghrib and `ishā'. But if the time left of the day or night is less than that, she should do the last ṣalāt only.

By the same supposition, if the woman begins to menstruate she should not make up the ṣalāt of the time when she began to menstruate. If she begins to menstruate when there is enough daytime left [before sunset] for four rak`as or even one, or enough time in the night [before daybreak] for three rak`as or even one, she should make up only the first of the [remaining] two ṣalāts of the daytime or of the night, [i.e. zuhr with its four rak`as or maghrib with its three.] There is a difference of opinion as to what she should do if she has time for four rak`as in the night: One opinion is that she does just as above when she had time for only three rak`as; another opinion is that since she began to menstruate in the time for both maghrib and `ishā' she should not make up either one.⁽⁹⁸⁾

12.06 Defects in wuḍū'

ومن أيقن بالوضوء وشك في الحدث ابتداءً بالوضوء.

Someone who is sure of having done wuḍū', but is in doubt about whether he has since had a minor defilement, should repeat his wuḍū'.

ومن ذكر من وضوئه شيئاً مما هو فريضة منه؛ فإن كان بالقرب أعاد ذلك وما يليه، وإن تطاول ذلك أعاد فقط. وإن تعمد ذلك ابتداءً بالوضوء إن طال ذلك.

{42} Someone who forgets an obligatory part of his wuḍū' and remembers shortly afterwards should repeat that part and what follows. If much time has elapsed he should repeat the part he missed only. But if he omitted that part deliberately he should begin his wuḍū' over again, even if much time has lapsed.

وإن كان قد صلى في جميع ذلك أعاد صلاته ابتداءً ووضوءه. وإن ذكر مثل المضمضة والاستنشاق ومسح الأذنين، فإن كان قريباً فعل ذلك ولم يعد ما بعده، وإن تطاول فعل ذلك لم يستقبل ولم يعد ما صلى قبل أن يفعل ذلك.

If someone has done ṣalāt after omitting an [obligatory] part of his wuḍū' by forgetfulness or deliberately he must always repeat his ṣalāt and his wuḍū'. But if he only remembers having missed something like rinsing his mouth, inhaling water into his nose, or wiping his ears, and not much time has passed, he should do what he missed and not repeat [the rest of the wuḍū' and the ṣalāt] which follow. If much time has passed, he should do the [non-obligatory parts of the wuḍū'] he omitted for the sake of the ṣalāt he is about to do,⁽⁹⁹⁾ and not repeat the ṣalāt he has already done.

ومن صلى على موضع طاهر من حصير وبموضع آخر منه نجاسة فلا شيء عليه. والمريض، إذا كان على فراش نجس، فلا بأس أن يبسط عليه ثوباً طاهراً كثيفاً ويصلي عليه.

Someone who does ṣalāt on the clean part of a mat which has some filth on another part is not obliged to do anything about it. If a sick person is on a filthy bed it is all right for him to spread a clean thick cloth over it and do his ṣalāt upon it.

12.07 صلاة المريض

12.07 Ṣalāt done by the sick

وصلاة المريض إن لم يقدر على القيام صلى جالساً، إن قدر على التربع، وإلا فبقدر طاقته. وإن لم يقدر على السجود فليومئ بالركوع والسجود، ويكون سجوده أخفض من ركوعه. وإن لم يقدر صلى على جنبه الأيمن إيماء، وإن لم يقدر إلا على

A sick person who is unable to stand up should do his ṣalāt sitting with his legs crossed if he can. If he cannot he should sit any way he can. If he cannot prostrate he should indicate the bowing and prostrating with a nod, nodding more deeply for a prostration than for a bow. If the person cannot sit at all, he should do his ṣalāt on his right side, nodding [for the bows and prostrations]. If he can do the ṣalāt only on his back he should do so.

ظهره فعل ذلك.

ولا يؤخر الصلاة إذا كان في عقله، وليصلها بقدر ما يطيق. وإن لم يقدر على مس الماء لضرر به، أو لأنه لا يجد من يناوله إياه، تيمم. فإن لم يجد من يناوله تراباً تيمم بالحائط إلى جانبه إن كان طيناً أو عليه طين. فإن كان عليه جص أو جير فلا يتيمم به.

12.08 الصلاة على دابة

والمسافر يأخذه الوقت في طين خضخض لا يجد أين يصلي، فلينزل عن دابته ويصلي فيه قائماً، يومئ بالسجود أخفض من الركوع. فإن لم يقدر أن ينزل فيه صلى على دابته إلى القبلة.

وللمسافر أن ينتفل على دابته في سفره حيثما توجهت به، إن كان سفره تقصر فيه الصلاة. وليوتر على دابته إن شاء. ولا يصلي الفريضة، وإن كان مريضاً، إلا بالأرض، إلا أن يكون إن نزل صلى جالساً إيماء لمرضه، فليصل على الدابة بعد أن توقف له ويستقبل بها القبلة.

12.09 عائق الرعف والحدث

ومن رعف مع الإمام، خرج

A sick person should not postpone his ṣalāt if he is in his senses, and should do it in the way he is able. If he cannot touch {43} water because it would hurt him or because he has no one to bring it to him, he should do tayammum. If he has no one to bring him sand he should do tayammum using the wall at his side if it is made of [dry] mud or has mud on it, but not if it is of plaster or lime.

12.08 Ṣalāt on a beast

If a traveler has no place to do his ṣalāt because he finds himself in an area of slushy mud at the time of ṣalāt, he should get off his beast and do the ṣalāt standing in the place and nodding deeper for a prostration than for a bow. If he cannot get off in the place he should do ṣalāt on his beast, facing the qibla.

A traveler may do supererogatory ṣalāt on his beast while moving along, whichever way he is facing, if his trip is one in which ṣalāt should be shortened. He may do the witr on his beast if he wishes. But everyone, even a sick person, should do an obligatory ṣalāt only on the ground. Yet if a sick person could only do his ṣalāt sitting and nodding were he to get off, he may do his ṣalāt on the beast after it is stopped for him and turned towards the qibla.

12.09 Impediments of nosebleed and a minor defilement

Someone who has a nosebleed while doing ṣalāt with an imām should go out and wash away the blood, then

فغسل الدم، ثم بنى ما لم يتكلم أو يمش على نجاسة. ولا يبني على ركعة لم تتم بسجديتها، وليغها. ولا ينصرف لدم خفيف، وليفته بأصابعه، إلا أن يسيل أو يقطر.

build upon the ṣalāt he did, as long as he has not talked or walked on some filth while away. He should not build upon a rak'a if he has not completed its two prostrations, but should cancel it in that case. He should not leave his place because of a little bit of blood, but should wipe it off with his fingers, unless it is flowing or dripping.

ولا يبني في فيء ولا حدث. ومن رجع بعد سلام الإمام سلم وانصرف. وإن رجع قبل سلامه انصرف وغسل الدم، ثم رجع فجلس وسلم. وللراغب أن يبني في منزله إذا ينس أن يدرك بقية صلاة الإمام، إلا في الجمعة، فلا يبني إلا في الجامع.

One should not build upon an unfinished ṣalāt after vomiting or having a minor defilement. Someone who has a nosebleed after the imām says "*as-salāmu `alaykum*" should return the greeting and go away. {44} If he has the nosebleed before the imām says "*as-salāmu `alaykum*", he should go away, wash off the blood, return, sit and then say "*as-salāmu `alaykum*". Someone suffering from a nosebleed should complete his ṣalāt at home if he has no hope of getting back in time for the rest of the ṣalāt with the imām, except for the Friday afternoon (*jumu`a*) ṣalāt, when he should complete his ṣalāt only in the central mosque.

ويغسل قليل الدم من الثوب ولا تعاد الصلاة إلا من كثيرة. وقليل كل نجاسة غيره وكثيرها سواء. ودم البراغيث ليس عليه غسله إلا أن يتفاحش.

If a little blood has fallen on the person's clothing he should wash it away, and not repeat his ṣalāt unless the blood was much. but a spot of filth other than blood, whether large or small [must be washed off]. A person is not obliged to wash away the blood of lice unless it is excessively repulsive.

باب 13 في سجود القرآن

CHAPTER 13 PROSTRATIONS DURING RECITATION OF THE QUR'ĀN

13.01 آيات السجود

13.01 Verses where prostration is made

وسجود القرآن إحدى عشرة سجدة، وهي العزائم، ليس في المفصل. منها شيء:

There are eleven places in the Qur'ān where a prostration is indicated. These indispensably require a prostration, and none of them are in the *Mufaṣṣal* of the Qur'ān. (100) The passages are:

1. في ألمص، عند قوله: وَيُسَبِّحُونَهُ وَلَهُ يَسْجُدُونَ، وهو آخرها. فما كان في صلاة فإذا سجدها قام وقرأ من الأنفال أو من غيرها ما

1. at the end of sūra *Alif lām mīm ṣād* [= *al-A`rāf*], where God says, "They celebrate his glory and prostrate" (7:206). When someone prostrates at the recitation of this while doing ṣalāt, he should then rise and recite from sūra *al-Anfāl* (8) or another one which is convenient for him. Then he does the bowing and

- prostration [of the ṣalāt].
- تيسر عليه، ثم ركع وسجد.
2. in sūra *ar-Ra`d*, where God says, "their shadows too, in the morning and evening" (13:15).
2. وفي الرعد، عند قوله:
وِظِلَّالَهُمْ بِالْغُدُوِّ وَالْآصَالِ
3. in sūra *an-Nahl*: "They fear their Lord who is above them and do what they are commanded" (16:50).
3. وفي النحل: يَخَافُونَ رَبَّهُمْ مِنْ فَوْقِهِمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ
4. in sūra *Banū-Isrā'īl* [= *al-Isrā'*]: "And they fall down on their faces weeping, and this adds to their humility" (17:109).
4. وفي بني إسرائيل:
وَيَخْرُونَ لِلأَذْقَانِ يَبْكُونَ وَيَزِيدُهُمْ خُشُوعًا
5. in sūra *Maryam*: "They fell down prostrating and weeping" (19:58).
5. وفي مريم: إِذَا تُتْلَى عَلَيْهِمْ آيَاتُ الرَّحْمَنِ خَرُوا سُجَّدًا وَبُكِيًّا
6. at the beginning of sūra *al-Hajj*: {45} "Someone God abases, none can give him honour. For God does what he wishes" (22:18).
6. وفي الحج، أولها: وَمَنْ يُهِنِ اللَّهُ فَمَا لَهُ مِنْ مُكْرِمٍ إِنَّ اللَّهَ يَفْعَلُ مَا يَشَاءُ
7. in sūra *al-Furqān*: "Shall we prostrate to what you command us *And it adds to their aversion*(25:60).
7. وفي الفرقان: أَسْجُدْ لِمَا تَأْمُرُنَا وَزَادَهُمْ نُفُورًا
8. in sūra *al-Hud'hud* [= *an-Naml*]: "God, there is no deity but he, the Lord of the mighty throne" (27:26).
8. وفي الهدد: اللَّهُ لَا إِلَهَ إِلَّا هُوَ رَبُّ الْعَرْشِ الْعَظِيمِ
9. in sūra *Alif lām mīm tanzīl* [= *as-Sajda*]: "They celebrate the praise of their Lord, and they are not proud" (32:15).
9. وفي ألم تنزيل [=السجدة]: وَسَبَّحُوا بِحَمْدِ رَبِّهِمْ وَهُمْ لَا يَسْتَكْبِرُونَ
10. in sūra *Ṣād*: "Therefore he sought the forgiveness of his Lord, and fell down bowing, and repented" (38:24). Another opinion is that the prostration comes at the words, "a near place and an excellent resort" (38:25).
10. وفي ص: فَاسْتَغْفَرَ رَبَّهُ وَخَرَّ رَاكِعًا وَأَنَابَ وَقِيلَ عِنْدَ قَوْلِهِ لِرُفْقَىٰ وَحُسْنِ مَآبٍ
11. in sūra *Hā mīm tanzīl* [= *Fuṣṣilat*]: "Prostrate before God who created them, if you are servants of his" (41:37).
11. وفي حم تنزيل [=فصلات]: وَالسُّجُودَ لِلَّهِ الَّذِي خَلَقَهُنَّ إِن كُنتُمْ إِيَّاهُ تَعْبُدُونَ

ولا يسجد السجدة في التلاوة
إلا على وضوء ويكبر لها،
ولا يسلم منها. وفي التكبير
في الرفع منها سعة. وإن
كبر فهو أحب إلينا.

The prostration during recitation should be made only when one has done wuḍū'. "Allāhu akbar" is to be said [going down and coming up]. "As-salāmu `alaykum" is not said afterwards. One may omit the "Allāhu akbar" while getting up, but in our opinion to say it is better.

13.03 فعل السجود وتركه

13.03 When to do or omit the prostration

ويسجدها من قرأها في
الفريضة والنافلة، ويسجدها
من قرأها بعد الصبح ما لم
يسفر، وبعد العصر ما لم
يصفر الشمس.

Someone who recites these verses should make the prostration whether he is doing an obligatory or a supererogatory ṣalāt. When reciting the verses after doing the ṣalāt of ṣubḥ, a person should prostrate as long as the sun has not yet taken on a yellow glow.

باب 14 في صلاة السفر

CHAPTER 14 ṢALĀT WHILE TRAVELING

14.01 السفر الذي يقتضي تقصير الصلاة

14.01 Travel which requires shortening ṣalāt

ومن سافر مسافة أربعة
برد-وهي ثمانية وأربعون
ميلاً-فعليه أن يقصر
الصلاة. فيصلّيها ركعتين،
إلا المغرب فلا يقصرها.
ولا يقصر حتى يجاوز بيوت
المصر وتصير خلفه ليس
بين يديه ولا بحذائه منها
شيء. ثم لا يتم حتى يرجع
إليها أو يقاربها بأقل من
الميل.

Someone who travels a distance of four barīds, which is equivalent to forty-eight miles,⁽¹⁰¹⁾ should shorten his ṣalāt to two rak`as, except that of maghrib which he should not shorten. Also he should not shorten his ṣalāt until he has passed beyond the houses of the city and they are behind him, with no houses before him or beside him. He should not begin to do the full ṣalāt until he comes back again {46} to habitation, or is nearer than a mile away.

وإن نوى المسافر إقامة
أربعة أيام بموضع، أو ما
يصلّي فيه عشرين صلاة،
أتم الصلاة حتى يظعن من
مكانه ذلك.

If a traveler intends to stay in a place four days or where he would do twenty ṣalāts, he should do complete ṣalāts until he moves from that place.

14.02 الانتقال أو الوصول في آخر الوقت

14.02 Leaving and arriving towards the end of the ḍarūrī time of ṣuhr and `aṣr

الضروري للظهر أو للعصر

ومن خرج ولم يصل الظهر والعصر، وقد بقي من النهار قدر ثلاث ركعات، صلاهما سفريتين. فإن بقي قدر ما يصلي في ركعتين أو ركعة، صلى الظهر حضرية والعصر سفرية.

ولو دخل لخمس ركعات ناسياً لهما صلاهما حضريتين. فإن كان بقدر أربع ركعات فأقل إلى ركعة، صلى الظهر سفرية والعصر حضرية.

14.03 الانتقال أو الوصول في آخر الوقت الضروري للمغرب أو العشاء

وإن قدم في ليل وقد بقي للفجر ركعة فأكثر، ولم يكن صلى المغرب والعشاء، صلى المغرب ثلاثاً والعشاء حضرية.

ولو خرج وقد بقي من الليل ركعة فأكثر، صلى المغرب، ثم صلى العشاء سفرية.

باب 15 في صلاة الجمعة

والسعي إلى الجمعة فريضة، وذلك عند جلوس الإمام على المنبر. وأخذ المؤذنون في الأذان. والسنة المتقدمة أن يصعدوا حينئذ

If someone leaves and has not done the ṣalāts of zuhr and `aṣr, and there remains enough daytime to do three rak`as, he should do them in the shortened way of a traveler.⁽¹⁰²⁾ But if there remains only time enough to do one or two rak`as, he should do zuhr in the full way of a non-traveler and `aṣr in the shortened way of a traveler.⁽¹⁰³⁾

If the person returns from travel having forgotten to do the ṣalāts of zuhr and `aṣr, and there is daytime enough to do five rak`as, he should do them both in the full way of a non-traveler.⁽¹⁰⁴⁾ But if there is only enough daytime to do one to four rak`as, he should do zuhr in the shortened way of a traveler and `aṣr in the full way of a non-traveler.

14.03 Leaving and arriving towards the end of the ḍarūrī time of maghrib and `ishā'

If a traveler arrives at night and there is time for one or more rak`as before dawn, and he has not yet done the ṣalāts of maghrib and `ishā', he should do the three rak`as of maghrib and `ishā' in the full way of a non-traveler.

If the person goes out, and enough nighttime remains to do one or more rak`as, he should do maghrib and then `ishā' in the shortened way of a traveler.

CHAPTER 15 THE ṢALĀT OF FRIDAY AFTERNOON (JUMU`A)

To hurry to the jumu`a ṣalāt is obligatory from the time the imām takes his seat on the minbar and the mu'adhhdhins begin the adhān. It is an ancient sunna for them to go to the top of the minaret at this time to call the adhān. From this time selling is forbidden as well {47} as doing anything that prevents attending the jumu`a ṣalāt. This second adhān was introduced by the

على المنار فيؤذنون. ويحرم
حينئذ البيع وكل ما يشغل
عن السعي إليها. وهذا
الأذان الثاني أحدثه بنو أمية.

Umayyads.⁽¹⁰⁵⁾

والجمعة تجب بالمصر
والجماعة. والخطبة فيها
واجبة قبل الصلاة. ويتوكأ
الإمام على قوس أو عصا
ويجلس في أولها وفي
وسطها. وتقام الصلاة عند
فراغها. ويصلي الإمام
ركعتين، يجهر فيهما
بالقراءة. يقرأ في الأولى
بالجمعة ونحوها وفي الثانية
ب«هل أتاك حديث الغاشية»
ونحوها.

The jumu`a ṣalāt is obligatory in cities and where there is a crowd. It is also obligatory to have a sermon (*khuṭba*) before the ṣalāt. During it the imām leans on a bow or a staff, and sits at the beginning during the adhān and during [the pause at] the middle. When he has finished, ṣalāt is begun. The imām does two rak`as, reciting the Qur`ān passages aloud. In the first rak`a he reads sūra *al-Jumu`a* (62) or a similar one; in the second he reads sūra *al-Ghāshiya* (88) or a similar one.

ويجب السعي إليها على من
في المصر ومن على ثلاثة
أميال منه فأقل. ولا تجب
على مسافر، ولا على أهل
منى، ولا على عبد ولا
امرأة ولا صبي. وإن
حضرها عبد أو امرأة
فليصلها، وتكون النساء
خلف صفوف الرجال. ولا
تخرج إليها الشابة.

Those who are in the city or within three miles of it are obliged to come to the jumu`a ṣalāt, but travelers, those who are in Minā [throwing pebbles during the ḥajj pilgrimage], slaves, women and minors are not obliged. But if slaves or women are present, they are to do this ṣalāt, the women standing behind the rows of men. A girl is not to go out [of her house] in order to attend the jumu`a ṣalāt.⁽¹⁰⁶⁾

وينصب للإمام في خطبته
ويقبله الناس والغسل لها
واجب والتهجير حسن وليس
ذلك في أول النهار وليتطيب
لها ويلبس أحسن ثيابه
وأحب إلينا أن ينصرف بعد
فراغها ول يتنفل في المسجد
وليتنفل إن شاء قبلها ولا
يفعل ذلك الإمام وليرق

While the imām gives his khuṭba, the people should listen to and face him. Ritual bathing (*ghusl*) is obligatory for the jumu`a ṣalāt. It is good to come early for the ṣalāt, but not at the beginning of the day. A person should perfume himself for it and put on his best clothes. It is preferable, in our opinion, to depart after it is over, and not stay to do supererogatory ṣalāt in the mosque. If the person wishes, he may do supererogatory ṣalāt before the jumu`a ṣalāt, but the imām should not do so; he should mount the minbar as soon as he enters. {48}

المنبر كما يدخل.

باب 16 في صلاة الخوف

وصلاة الخوف في السفر، إذا خافوا العدو، أن يتقدم الإمام بطائفة ويدع طائفة مواجهة العدو، فيصلي الإمام بطائفة ركعة. ثم يثبت قائماً ويصلون لأنفسهم ركعة، ثم يسلمون، فيقفون مكان أصحابهم. ثم يأتي أصحابهم فيحرمون خلف الإمام فيصلي بهم الركعة الثانية، ثم يتشهد ويسلم، ثم يقضون الركعة التي فاتتهم، وينصرفون.

هكذا يفعل في صلاة الفرائض كلها إلا المغرب، فإنه يصلي بالطائفة الأولى ركعتين، وبالثانية ركعة.

وإن صلى بهم في الحضر لشدة خوف، صلى في الظهر والعصر والعشاء بكل طائفة ركعتين.

ولكل صلاة أذان وإقامة. وإذا اشتد الخوف عن ذلك صلوا وحداناً بقدر طاقتهم، مشاة أو ركباناً، ماشين أو ساعين، مستقبلي القبلة وغير مستقبليها.

باب 17 في صلاة العيدين والتكبير أيام منى

CHAPTER 16⁽¹⁰⁷⁾ ṢALĀT DURING FEAR OF AN ENEMY

During a journey when an enemy is feared, the imām begins the ṣalāt, as done in time of fear, with one group, leaving the other group to face the enemy. The imām with his group does one rak`a; then he stands while the group does another rak`a by themselves, says "*as-salāmu `alaykum*", and takes the place of their comrades. Their comrades then come and say the "*Allāhu akbar*" of iḥrām after the imām. When the imām has done his second rak`a with them and said the tashahhud and "*as-salāmu `alaykum*", they make up the rak`a which they missed and go away.

The same pattern applies to all the obligatory ṣalāts but maghrib. For this the imām does two rak`as with the first group and one with the second.

When people are not traveling, but in extreme fear, the imām does two rak`as of zuhr, `aṣr and `ishā' with each group.

Each ṣalāt has an adhān and an iqāma. If the fear is very great, they can do their ṣalāt individually, according as they are able, on foot or riding, walking or running, facing the qibla or not.

CHAPTER 17 THE ṢALĀT OF THE TWO `IDS (FEAST DAYS)

17.01 كيفية الصلاة

والصلاة العيدين سنة واجبة. يخرج لها الإمام والناس ضحوة بقدر ما إذا وصل حانت الصلاة.

وليس فيها أذان ولا إقامة، فيصلي بهم ركعتين، يقرأ فيهما جهراً بأمر القرآن، وسبح اسم ربك العلى، والشمس وضحاها، ونحوهما. ويكبر في الأولى سبعاً قبل القراءة، يعد فيها تكبيرة الإحرام. وفي الثانية خمس تكبيرات، لا يعد فيها تكبيرة القيام. وفي كل ركعة سجدتان، ثم يتشهد ويسلم.

ثم يرقى المنبر ويخطب، ويجلس في أول خطبته ووسطها، ثم ينصرف. ويستحب أن يرجع من طريق غير الطريق التي أتى منها، والناس كذلك.

17.02 في عيد الأضحى

وإن كان في الأضحى خرج بأضحية إلى المصلى فذبحها أو نحرها، ليعلم ذلك الناس، فيذبحون بعده.

17.03 الذكر في الطريق

وليذكر الله في خروجه من بيته في الفطر والأضحى جهراً، حتى يأتي المصلى الإمام، والناس كذلك. فإذا دخل الإمام للصلاة قطعوا

17.01 How to do the ṣalāt

The ṣalāt of the two feast days is an established sunna. The imām and the people go out to do it{49} at ḍaḥwa (just after sunrise), so that they can arrive at the ṣalāt grounds in time for the ṣalāt.

There is no adhān or iqāma. The imām does two rak`as with the people, in each reciting aloud the opening sūra of the Qur`ān and [in the first rak`a the sūra] *Sabbiḥ isma Rabbi-ka l-a`lā* (87) or a similar one, and [in the second rak`a the sūra] *Wa-sh-shams wa-ḍuḥā-hā* (91) or a similar one. In the first rak`a he says "*Allāhu akbar*" seven times, including the "*Allāhu akbar*" of iḥrām, before the recitation. In the second rak`a he says "*Allāhu akbar*" five times, not counting the "*Allāhu akbar*" of rising [to begin the rak`a]. He does two prostrations in each rak`a, and then says the tashahhud and the "*as-salāmu `alaykum*".

Next the imām mounts the minbar and addresses the people, sitting at the beginning and at [the pause in] the middle of his khuṭba, and then departs. It is desirable for him, as well as for the people, to return by a different road than that by which they came.

17.02 On `Īd al-aḍḥā

On `Īd al-aḍḥā (festival of immolation) [10 Dhū-l-ḥijja] the imām should go out to the ṣalāt grounds (muṣallā) bringing his animal of sacrifice, and slaughter it or [in the case of a camel] pierce its throat, so that the people will know that he has done so. Then they slaughter their sacrifice animals after him. [\(108\)](#)

17.03 Dhikr on way to ṣalāt grounds

On `Īd al-fiṭr (festival of breaking fast) and `Īd al-aḍḥā the people should recall God aloud from the time they leave their houses until they reach the ṣalāt grounds. When the imām enters to do the ṣalāt they should break off the dhikr. They should answer "*Allāhu akbar*" when the imām says it during his khuṭba, and otherwise listen to him.

ذلك. ويكبرون بتكبير الإمام
في خطبته، وينصتون له
فيما سوى ذلك.

17.04 التكبير في أيام منى

فإن كانت أيام النحر فليكبر
الناس دبر الصلوات، من
صلاة الظهر من يوم النحر
إلى صلاة الصبح من اليوم
الرابع منه، وهو آخر أيام
منى. يكبر إذا صلى الصبح
ثم يقطع.

والتكبير دبر الصلوات «الله
أكبر، الله أكبر، الله أكبر». وإن
جمع مع التكبير تهليلاً
وتحميداً فحسن. يقول إن
شاء ذلك «الله أكبر، الله
أكبر، لا إله إلا الله، والله
أكبر، الله أكبر، والله الحمد». وقد
روي عن مالك هذا
والأول، والكل واسع.

والأيام المعلومات أيام النحر
الثلاثة. والأيام المعدودات
أيام منى، وهي ثلاثة أيام بعد
يوم

17.05 الاستعداد للصلاة

والغسل للعيدين حسن،
وليس بلازم. ويستحب فيهما
الطيب والحسن من الثياب.

باب 18 في صلاة الخسوف

18.01 في خسوف

17.04 Saying "Allāhu akbar" on the days of Minā⁽¹⁰⁹⁾

On the days of immolation the people should say
"Allāhu akbar" after their ṣalāts, beginning with zuhr
of the [first] day of sacrifice, and ending with ṣubḥ on
the fourth day, {50} which is the last of the days of
Minā. On that day they say "Allāhu akbar" after the
ṣalāt of ṣubḥ, and then stop doing so.

"Allāhu akbar" is said three times after these ṣalāts. It
is good to add to the "Allāhu akbar" (*takbīr*) a
declaration of God's unity (*tahlīl*) and a declaration of
his praise (*taḥmīd*), saying "Allāhu akbar, Allāhu
akbar; lā ilāha illā llāh; Allāhu akbar, Allāhu akbar;
wa-li-llāhi l-ḥamd". Both this formula and the first
[shorter] formula are related from Mālik; either way is
acceptable.

The "known days"⁽¹¹⁰⁾ are the three days of
slaughtering (*naḥr*); the "numbered days"⁽¹¹¹⁾ are the
three days of Minā, namely the three days after the
[first] day of sacrifice.

17.05 Preparing for the ṣalāt

It is good, but not obligatory, to do ghusl for the two
feasts. It is also desirable to put on perfume and good
clothes and, on ʿĪd al-fiṭr, to eat before the morning
[gathering at the ṣalāt grounds].

CHAPTER 18 ṢALĀT ON AN ECLIPSE (KHUSŪF)

18.01 On an eclipse of the sun

الشمس

وصلاة الخسوف سنة واجبة. إذا خسفت الشمس خرج الإمام إلى المسجد، فاقتتح الصلاة بالناس بغير أذان ولا إقامة. ثم قرأ قراءة طويلة سراً بنحو سورة البقرة. ثم يركع ركوعاً طويلاً نحو ذلك. ثم يرفع رأسه يقول «سمع الله لمن حمده». ثم يقرأ دون قراءته الأولى. ثم يركع نحو قراءته الثانية. ثم يرفع رأسه يقول «سمع الله لمن حمده» ثم يسجد سجدتين تامتين.

The ṣalāt of an eclipse is an undisputed sunna. When the sun is eclipsed the imām goes to the mosque and begins the ṣalāt with the people without an adhān or iqāma. He recites a long passage quietly, such as sūra *al-Baqara* (2), then makes a long bow taking nearly as long, and lifts his head to say "God hears the one who praises him". Next he recites a passage shorter than the first one, bows for near the length of time of his second recitation, {51} lifts his head to say "God hears the one who praises him", and then makes two complete prostrations.

ثم يقوم فيقرأ دون قراءته التي تلى ذلك. ثم يركع نحو قراءته. ثم يرفع كما ذكرنا. ثم يقرأ دون قراءته هذه. ثم يركع نحو ذلك. ثم يرفع رأسه كما ذكرنا. ثم يسجد كما ذكرنا. ثم يتشهد ويسلم.

Then he stands up, recites a passage shorter than the previous one, bows for about the length of time he took for the recitation, lifts his head as before, then recites a yet shorter passage, bows for a similar length of time, lifts his head again, and makes two prostrations as before. Then he says the tashahhud and "*as-salāmu `alaykum*".

ولمن شاء أن يصلي في بيته مثل ذلك أن يفعل.

Anyone who wishes to do this ṣalāt in his house in the same way may do so.

18.02 في خسوف القمر

18.02 On an eclipse of the moon

وليس في صلاة خسوف القمر جماعة، وليصل الناس عند ذلك أفضاً. والقراءة فيها جراً كسائر ركوع النوافق.

For the eclipse of the moon there is no ṣalāt in community, but people should do their ṣalāt individually on such an occasion. The recitations during it are aloud, as are any other supererogatory rak`as.

18.03 الوعظ في الخسوف

18.03 Preaching after the ṣalāt on an eclipse of the sun

وليس في إثر صلاة خسوف الشمس خطبة مرتبة، ولا بأس أن يعظ الناس

At the end of the ṣalāt at the eclipse of the sun there is no determined sort of khuṭba, but it is not bad for the imām to preach to and admonish the people.

ويذكرهم.

باب 19 في صلاة الاستسقاء

وصلاة الاستسقاء سنة تقام. يخرج لها الإمام كما يخرج للعيدين ضحوة، فيصلي بالناس ركعتين، يجهر فيهما بالقراءة. يقرأ بسبح اسم ربك الأعلى والشمس وضحاها. وفي كل ركعة سجدة واحدة، ويتشهد ويسلم، ثم يستقبل الناس بوجهه، فيجلس جلسة. فإذا أطمأن الناس قام متوكئاً على قوس أو عصاً فخطب. ثم جلس، ثم قام فخطب.

فإذا فرغ استقبال القبلة فحول رداءه، يجعل ما على منكبه الأيمن على الأيسر، وما على الأيسر على الأيمن، ولا يقلب ذلك. وليفعل الناس مثله، وهو قائم وهم قعود. ثم يدعوا كذلك، ثم ينصرفون.

ولا يكبر فيها ولا في الخسوف غير تكبيرة الإحرام والخفض والرفع. ولا أذان فيها ولا إقامة.

باب 20 ما يفعل بالمحتضر وفي غسل الميت وكفنه وتحنيطه وحمله ودفنه

20.01 ما يفعل في الموت

CHAPTER 19 ṢALĀT IN REQUEST OF RAIN (ISTISQĀ')

Ṣalāt to pray for rain is a practiced sunna. An imām goes out to do it at ḍ aḥwa (just after sunrise), as he does for the two feasts. He does two rak`as with the people, reciting aloud [in the first rak`a the sūra] *Sabbih ism Rabbi-ka l-a`lā* (87) and [in the second rak`a the sūra] *Wa-sh-shams wa-ḍuhā-hā* (91). He makes one bow and two prostrations in each rak`a, then says the tashahhud and "*as-salāmu `alaykum*", faces the people, and sits down. When the people are settled, he stands, leaning upon a bow or a staff, and addresses them. He sits down [in the middle] and then rises to finish his khuṭba.

When the imām has finished the khuṭba, he faces the qibla and rearranges his wrapper, placing what was on his right shoulder on his left and vice-versa, but not turning it upside down. The people should do as he does, except he stands while they sit. Then he prays in this position, and when he goes away the people go away.

The "*Allāhu akbar*" is not said in this ṣalāt or in that for an eclipse, except the "*Allāhu akbar*" of iḥrām, and for going down and rising up. Neither is there an adhān or an iqāma in this ṣalāt.

CHAPTER 20 CARE AND BURIAL OF THE DEAD

(112)

20.01 Attendance at death

ويستحب استقبال القبلة بالمحتضر وإغماضه إذا قضى. ويلقن «لا إله إلا الله» عيد الموت. وإن قدر على أن يكون طاهراً وما عليه طاهر فهو أحسن. ويستحب أن لا يقربه حائض ولا جنب.

It is desirable to turn the dead person to the qibla⁽¹¹³⁾ and to close his eyes once he has expired. There should be recited at death "There is no deity but God." It is better, if possible, for the person as well as his clothing to be clean. It is desirable that no menstruating woman or someone with a major sexual defilement should come near him.

وأرخص بعض العلماء في القراءة عند رأسه بسورة يس، ولم يكن ذلك عند مالك أمراً معمولاً به.

Some scholars permit the recitation of sūra *Yā sīn* (36) at the head of the person, but according to Mālik this should not be done.

ولا بأس بالبكاء بالدموع حينئذ، وحسن التعزي والتصبر أجمل لمن استطاع. وينهى عن الصراخ والنياحة.

There is no harm in weeping and shedding tears at this time, but to maintain well one's composure and endurance is better for those who can do so. It is forbidden, however, to shriek and lament.

20.02 الغسل

20.02 The ghusl bathing

وليس في غسل الميت حد، ولكن ينقي ويغسل وترأ بماء وسدر، ويجعل في الأخيرة كافور. وتستر عورته. ولا تقلم أظفاره، ولا يحلق شعره. ويعصر بطنه عصرًا رقيقاً.

There is no set number of times to do the ghusl {53} for the deceased; it only matters that he be clean. The ghusl, however, should be done an uneven number of times with water and lotus leaves (*sidr*), while camphor is used the last time. His private parts should be covered. His nails are not to be manicured, nor his hair cut. But his stomach should be pressed lightly.

وإن وضيئ وضوء الصلاة فحسن، وليس بواجب. ويقلب لجنبه في الغسل أحسن، وإن أجلس فذلك واسع.

It is good, but not obligatory, to wash the dead person according to the Wuḍū' of ṣalāt. It is better to place him on his side while the ghusl is being done, but to sit him up is permitted.

ولا بأس بغسل أحد الزوجين صاحبه من غير ضرورة. والمرأة تموت في السفر، لا نساء معها ولا محرم من

It is not bad for a person to do the ghusl for his dead spouse, although this is not necessary. If a woman dies on a journey and there are with her no women and no man of an unmarriageable relationship to her,⁽¹¹⁴⁾ another man should wipe her face and hands as in tayammum. If the dead person is a man, and there

الرجال، فليتييم رجل وجهها وكفيها. ولو كان الميت رجلاً ييم النساء وجهه ويديه إلى المرفقين، إن لم يكن معهن رجل يغسله ولا امرأة من محارمه. فإن كانت امرأة من محارمه غسلته، وسترت عورته. وإن كان مع الميتة ذو محرم غسلها من فوق ثوب يستتر جميع جصدها.

20.03 التكفين

ويستحب أن يكفن الميت في وتر ثلاثة أثواب أو حمسة أو سبعة. وما جعل له من أزرة وقميص وعمامة فذلك محسوب في عدد الأثواب الوتر. وقد كفن النبي صلس في ثلاثة أثواب بيض سحولية، أدرج فيها إزراجاً صلس. ولا بأس أن يقمص الميت ويعمم.

وينبغي أن يحنط. ويجعل الحنوط بين أكفانه وفي جسده ومواضع السجود منه.

20.04 الشهداء والقتلى

ولا يغسل الشهيد في المعترك، ولا يصلى عليه، ويدفن بثيابه.

ويصلى على قاتل نفسه. ويصلى على من قتله الإمام في حد أو قود، ولا يصلى عليه الإمام.

20.05 حمل الميت إلى

are no men around to wash him and no women of an unmarriageable relationship to him, the women should wipe his face and arms up to the elbows as in tayammum. If there is a woman of an unmarriageable relationship to him she should do the ghusl for him with his private parts covered. But if a man is of an unmarriageable relationship to a dead woman he should do the ghusl for her over a cloth covering her entire body.

20.03 Shrouding

It is desirable for the dead person to be shrouded in an uneven number of cloths: three, five or seven. The wrapping, tunic and turban which are put on him are counted as an uneven number of cloths. The Prophet was shrouded in three white *suhūl*⁽¹¹⁵⁾ cloths. Yet there is no harm in putting a tunic and a turban on the dead person.

The person must {54} be treated with balm. It should be placed between the winding sheets, in his body [apertures], and on the points of [his body which touched the ground during] prostration [in ṣalāt].

20.04 Martyrs, suicides, and executed criminals

For a martyr killed in battle the ghusl is not to be done. No ṣalāt is to be made for him, and he is to be buried in his own clothes.⁽¹¹⁶⁾

Ṣalāt is to be made for someone who has killed himself, and also for one whom the imām has executed by way of a fixed penalty (*hadd*) or a retaliatory measure (*qawad*), but the imām himself should not do the ṣalāt for him.

20.05 Bringing to the grave

القبر

ولا يتبع الميت بمجمر؟
والمشي أمام الجنازة أفضل.

The dead person is not to be followed with a censor. It is better to walk in front of the bier in procession.

ويجعل الميت في قبره على
شقة الأيمن، وينصب عليه
اللبن، ويقول حينئذ:

The person should be placed in the grave on his right side. Olibanum is poured on him, and the following prayer is said:

«اللهم إن صاحبنا قد نزل
بك، وخلف الدنيا وراء
ظهره، وافقر إلى ما عندك.
اللهم ثبت عند المسألة
منطقه، ولا تبتله في قبره بما
لا طاقة له به، وألحقه بنبيه
محمد صلس».

"O God, our companion has taken his dwelling with you; he has left the world behind him and heeds what you have for him. O God, steady his speech when he answers the question [of the two angels], and do not afflict him in the grave with what he cannot bear. Let him join his prophet Muḥammad."

20.06 البناء على القبر

20.06 Monuments

ويكره البناء على القبور،
وتجسيصها.

Building [monuments] or plastering over graves is disapproved.

20.07 مواراة أب كافر

20.07 Burying an unbelieving father

ولا يغسل المسلم أباه الكافر
ولا يدخله قبره، إلا أن
يخاف أن يضيع فليواره.

If the father of a Muslim is an unbeliever, the son should not ritually bathe him or put him into the grave unless he fears the body would be lost. In that case he should inter him. ⁽¹¹⁷⁾

20.08 اللحد في القبر

20.08 Niche in grave

واللحد أحب إلى أهل العلم
من الشق. وهو أن يحفر
للميت تحت الجرف في
حائط قبلة القبر، وذلك إذا
كانت تربة صلبة، لا تتهيل
ولا تتقطع. وكذلك فعل
برسول الله صلس.

Scholars prefer digging a side niche to digging a crevice at the bottom for the body. A niche means digging out a space for the body under the rim of the grave in the qibla side wall of the trench. This should be done if the ground is hard and does not pour or cave in. This is the way the Messenger of God was buried. {55}

باب 21
في افصلاة على الجنائز
والدعاء للميت

CHAPTER 21 ṢALĀT OVER THE BIER (JANĀZA)

21.1 كيف يصلى على الجنائز

والتكبير على الجنائز أربع تكبيرات، يرفع يديه في أولاهن، وإن رفع في كل تكبيرة فلا بأس. وإن شاء دعا بعد الأربع، ثم يسلم. وإن شاء سلم بعد الرابعة مكانه.

ويقف الإمام في الرجل عند وسطه وفي المرأة عند منكبيها.

والسلام من الصلاة على الجنائز تسليمة واحدة خفية للإمام والمأموم.

21.02 02 ثواب الصلاة

وفي الصلاة على الميت قيراط من الأجر، وقيراط في حضور دفنه، وذلك في التمثيل مثل جبل أحد ثواباً.

21.03 03 الأدعية الثلاث الأولى

ويقال في الدعاء على الميت غير شيء محدود، وذلك كله واسع. ومن مستحسن ما قيل في ذلك أن يكبر. ثم يقول:

«الحمد لله الذي أمات وأحيا،
والحمد لله الذي يحيي
الموتى، له العظمة والكبرياء
والملك والقدرة والسناء،
وهو على كل شيء قدير.

اللهم صل على محمد وعلى آل محمد كما صليت

21.01 How to do the ṣalāt

The "*Allāhu akbar*" is said four times over the bier. ⁽¹¹⁸⁾ [All] lift their hands for the first, and it is not bad if they do so each time. If they wish, they may make intercessions after each of the four "*Allāhu akbar*"s and then say "*as-salāmu `alaykum*". Or, if they wish, they may say "*as-salāmu `alaykum*" right after the fourth "*Allāhu akbar*" in place of the intercession.

The imām stands by the mid-section of a dead man, and by the shoulders of a dead woman. ⁽¹¹⁹⁾

The single "*as-salāmu `alaykum*" after the ṣalāt over the bier is said softly by the imām and those following him.

21.02 Reward for the ṣalāt and attendance

There is one measure of reward for doing ṣalāt for the dead, and another measure for being present at his burial. The greatness of this reward can be compared to the hill of Uḥud. ⁽¹²⁰⁾

21.03 The first three prayers (du`ā')

There are no fixed intercessions for the dead, and any variety of prayers may be said. One recommended prayer is to say: "*Allāhu akbar*", and then:

Praise be to God who causes death and brings to life; praise be to God who brings the dead to life. To him be greatness, might, rule, power and praise, for he is all powerful.

O God, bless Muḥammad and his family as you gave blessing, mercy and favours to Abraham and his

ورحمت وباركت على
إبراهيم وعلى آل إبراهيم في
العالمين، إنك حميد مجيد.

family; for you deserve praise and honour.

اللهم إنه عبدك وابن عبدك
وابن أمتك. أنت خلقتَه
ورزقته، وأنت أمتَه وأنت
تحبيه، وأنت أعلم بسرَه
وعلانِيته. جئناك شفعا له،
فشفعنا فيه.

O God, this person is your servant and a son of your servant and handmaid. You created him and endowed him; {56} you caused him to die and will bring him again to life. You know best what he did in secret and openly. We have come to you to intercede for him; accept our intercession.

اللهم إنا نستجير بحبل
جوارك له. إنك ذو وفاء
وذمة.

O God, we ask you to hold him close in your protection; for you keep your promises and give protection.

اللهم قه من فتنة القبر ومن
عذاب جهنم.

O God, protect him from the ordeal in the grave and from the torment of Hell.

اللهم اغفر له وارحمه،
واعف عنه وعافه، وأكرم
نزله ووسع مدخله، واغسله
بماء وتلج وبرد، ونقه من
الخطايا كما ينقى الثوب
الأبيض من الدنس. وأبدله
داراً خيراً من داره، وأهلاً
خيراً من أهله، وزوجاً خيراً
من زوجته.

O God, forgive him, show him mercy, wipe away his offenses, and give him well-being; give him an honourable place to live; make the chamber he enters wide, wash him with water, snow and hail; purify him from sins and offenses as a white cloth is purified of stains; give him a better home in exchange for his [former] home, a good family in exchange for his [former] family, and a better wife in exchange for his [former] wife.

اللهم إن كان محسناً فزد في
إحسانه، وإن كان مسيئاً
فتجاوز عنه.

O God, if he has done good, increase his [credit for] doing good. If he has done evil, pass over it.

اللهم إنه قد نزل بك-وأنت
خير منزل به-فقير إلى
رحمتك، وأنت غني عن
عذابه.

O God, he has taken his dwelling with you and you are the best one to dwell with; he has come in need of your mercy, and you have no need of punishing him.

اللهم ثبت عند المسألة
منطقه، ولا تبتله في قبره بما
لا طاقة له به.

O God, steady his speech when he answers the question [of the angels], and do not afflict him in the grave with what he cannot bear.

اللهم لا تحرمنا أجره، ولا تفتنا بعده.» O God, do not deprive us of the reward [of ṣalāt and sorrow] for him, and do not put us to trouble after him.

تقول هذا باثر كل تكبيرة. The same prayer is said after the second and third "Allāhu akbar".

21.04 الدعاء الرابع

21.04 The fourth prayer

وتقول بعد الرابعة: After the fourth "Allāhu akbar" there is said:

«اللهم اغفر لحينا وميتنا، وحاضرنا وغائبنا، وصغيرنا وكبيرنا، وذكرنا وأثنا—إنك تعلم مقالبنا ومثوانا» O God, forgive those of us who are living and those of us who are dead, those of us who are present and those of us who are absent, those of us who are young and those of us who are old, those of us who are male and those of us who are female; for you know what transpires in our hearts.

ولوالدينا وللمسلمين والمؤمنين والمؤمنات، والحياء منهم والأموال. Forgive also our parents and those who have gone before us with faith, Muslim believers both men and women, whether living or dead.

اللهم من أحبيته منا فأحيه على الإيمان، ومن توفيته منا فتنوفه على الإسلام، وأسعدنا بلقائك. وطيبنا للموت، وطيبه لنا. واجعل فيه راحتنا وسرتنا.» O God, make the new lives you create {57} among us live in faith, and make those you cause to die die in Islam; give us also the happiness of being joined to them. Prepare us to meet death well, and prepare death to meet us well; make us peaceful and joyful at it.

ثم تسلم. Then you say "as-salāmu `alaykum".

21.05 الدعاء لامرأة

21.05 Prayer for a woman

وإن كانت امرأة قلت: «اللهم إنها أمتك»، ثم تتماذي بذكرها على التأنيث، If the dead person is a woman, you say in the prayer, "O God, she is your handmaid..." and continue to refer to her in the feminine.

غير أنك لا تقول «وأبدلها زوجاً خيراً من زوجها»، لأنها قد تكون زوجاً في الجنة لزوجها في الدنيا، ونساء الجنة مقصورات على أزواجهن، لا يبيغن بهم You do not say "Give her a better husband in exchange for her husband," since in Paradise she may be the wife of the husband she had in this world. For the women of Paradise are restricted to their husbands and do not desire an exchange. A man in Paradise may have many wives, but a woman will not have many husbands.

بدلاً. والرجل قد يكون له
زوجات كثيرة في الجنة،
ولا يكون للمرأة أزواج.

21.06 جمع الجنائز

ولا بأس أن تجمع الجنائز
في صلاة واحدة. ويلى
الإمام الرجال إن كان فيهم
نساء. وإن كانوا رجالاً جعل
أفضلهم مما يلي الإمام،
وجعل من دونه النساء
والصبيان من وراء ذلك إلى
القبلة. ولا بأس أن يجعلوا
صفاً واحداً، ويقرب إلى
الإمام أفضلهم.

وأما دفن الجماعة في قبر
واحد فيجعل أفضلهم مما
يلي القبلة.

21.07 قضاء لصلاة الجنائز

ومن دفن ولم يصل عليه
وووري، فإنه يصل على
قبره.

ومن دفن ولم يصل عليه
وووري، فإنه يصل على
قبره.

ويصل على أكثر الجسد.
واختلف في الصلاة على
مثل اليد والرجل.

باب 22 في الدعاء للطفل والصلاة عليه وغسله

22.01 لأدعية الثلاث

21.06 Ṣalāt over several dead at once

It is not wrong to do one ṣalāt over several dead together. If there are women among the dead they are placed after the men in relation to where the imām stands. Among the men the most distinguished should be placed nearest to the imām. After the men come the women, but boys first after the men; all face the qibla. There is no harm in laying all in a single line [from east to west] with the most distinguished nearest to the imām.

If many are to be buried in one grave, the most distinguished are placed on the qibla side.

21.07 Making up omitted ṣalāt

If someone is buried without ṣalāt being made for him, but was simply put in the ground, ṣalāt should be made at his grave.

If ṣalāt was already done for a dead person it should not be repeated.

Ṣalāt should be made over a body if most of it is at hand. There is a difference of opinion whether to do ṣalāt over something as little as a hand or a foot. {58}

CHAPTER 22 BURIAL OF A CHILD

22.01 The first three prayers

الأولى

تثني على الله تبارك وتعالى،
وتصلي على نبيه محمد
صلى الله عليه وسلم. ثم
تقول:

After praising God and blessing his prophet
Muḥammad, you say:

«اللهم إنه عبدك وابن عبدك
وابن أمتك. أنت خلقته
ورزقته، وأنت أمته وانت
تحبيه.

O God, [this child] is your servant and the son of your
servant and handmaid. You created him and endowed
him; you caused him to die and will bring him again to
life.

اللهم فاجعله لوالديه سلفاً
وذخراً وفرطاً وأجرأ، ولا
تفتنا وإياهم بعده.

So for his parents, O God, make him like money
placed on loan, a treasure, an earning held in reserve,
and a remuneration. Make the scales of their [good
deeds] heavy because of him; make their reward great
because of him; do not deprive them or us of the
reward [of ṣalāt and sorrow] for him, and do not put
them or us to trouble after him.

اللهم ألحقه بصالح سلف
المؤمنين في كفالة إبراهيم.
وأبدله داراً خيراً من داره،
وأهلاً خيراً من أهله. وعافه
من فتنة القبر، ومن عذاب
جهنم».

O God, put him in the company of his holy believing
forebears under the guardianship of Abraham. Give
him a better home in exchange for his [former] home, a
better family in exchange for his [former] family.
Protect him from the ordeal in the grave and from the
torment of Hell.

تقول ذلك في كل تكبيرة.

This you say after the first three "*Allāhu akbar*"s.

22.02 الدعاء الرابع

22.02 The fourth intercession

وتقول بعد الرابعة:

After the fourth "*Allāhu akbar*" you say:

«اللهم اغفر لأسلافنا
وأفراطنا ولمن سبقنا
بالإيمان. اللهم من أحببته منا
فأحبه على الأيمان، ومن
توفيته منا فتوفه على
الإسلام. واغفر للمسلمين
والمسلّمات، والمؤمنين
والمؤمنات، الأحياء منهم
والموات».

O God, forgive our ancestors, forebears and those who
have gone before us with faith. O God, make the new
lives you create among us live in faith, and make those
you cause to die among us die in Islam. Forgive
Muslim believers both men and women, whether living
or dead.

ثم تسلم. Then you say "*as-salāmu `alaykum*".

22.03 Still-borns

ولا تصلى على من لم يسهل
صارخاً. ولا يرث ولا
يورث.

Ṣalāt should not be made for a baby that did not cry out loud. He neither inherits nor gives in inheritance.

ويكره أن يدفن السقط في
الدور.

It is disapproved to bury a miscarriage at home.

22.04 Who should do the ghusl

ولا بأس أن يغسل النساء
الصبي الصغير ابن ست
سنين أو سبع.

There is no harm for a woman to do the ghusl for a small boy {59} six or seven years old.

ولا يغسل الرجال الصبية.
واختلف فيها إن كانت لم
تبلغ أن تشتهي، والأول
أحب إلينا.

Men should not do so for a small girl. But there is a difference of opinion [whether men may do so] for a girl who has not reached the age of sexual attractiveness. We prefer the first opinion, [that men should not do the ghusl for her].

باب 23 في الصيام

CHAPTER 23 (121) FASTING (ṢIYĀM)

23.01 Time and days fasting is obligatory

23.01 وقت وجوبه
وصوم شهر رمضان
فريضة.

Fasting during the month of Ramaḍān is obligatory.

يصام لرؤية الهلال، ويفطر
لرؤيته، كان ثلاثين يوماً أو
تسعة وعشرين يوماً. فإن غم
الهلال فيعد ثلاثين يوماً من
غرة الشهر الذي قبله، ثم
يصام. وكذلك في الفطر.

The fasting begins with the sighting of the crescent, and normal eating resumes with the sighting of the next crescent, whether this takes twenty-nine or thirty days. If the crescent of Ramaḍān is not visible, a person should count thirty days for the previous month, and then fast. The same holds for resuming normal eating.

ويبيت الصيام في أوله،
وليس عليه البيات في بقيته.

A person must form an intention of fasting at the beginning of the fast, and does not need to repeat the intention during the rest of the month.

ويتم الصيام إلى الليل. ومن
السنة تعجيل الفطر وتأخير

A person should continue fasting until nighttime. It is a sunna practice to break one's fast immediately [after sunset] and to eat the pre-dawn meal (*suhūr*) late. But

السحور. وإن شك في الفجر فلا يأكل. if there is a doubt whether dawn has come, a person should not eat.

ولا يصام يوم الشك ليحتاط به من رمضان. ومن صامه كذلك لم يجزئه، وإن وافقه من رمضان. ولمن شاء صومه تطوعاً أن يفعل. ومن أصبح فلم يأكل ولم يشرب، ثم تبين له أن ذلك اليوم من رمضان، لم يجزئه، وليمسك عن الأكل في بقيته، ويقضيه. A person should not fast on the day of doubt (30 Sha`bān/ 1 Ramaḍān) and count it as [the beginning of] Ramaḍān.⁽¹²²⁾ If someone fasts on such a day, his fasting does not count [as fulfilling the Ramaḍān obligation], even if the day really happens to be [the beginning of] Ramaḍān. Yet he may fast voluntarily, [not as part of Ramaḍān], on this day if he wishes. If someone starts the morning without eating or drinking and then finds out that this day is in Ramaḍān, his fast does not count,⁽¹²³⁾ but he should abstain from food the rest of the day and make up [the day's] fast.

وإذا قدم المسافر مفطراً، أو طهرت الحائض نهراً، فلهما الأكل في بقية يومهما. Both a traveler who comes in from a journey on a fast day in which he was eating and a woman who stops menstruating during a fast day may eat during the rest of the day.

ومن أفطر في تطوعه عامداً، أو سافراً فيه فأفطر لسفره، فعليه القضاء. وإن أفطر ساهياً فلا قضاء عليه، بخلاف الفريضة. Someone who undertakes an optional fast and breaks it either deliberately {60} or because of travel must make it up. But if he eats from forgetfulness he is not obliged to make it up; yet if the fast is obligatory he is obliged to make it up.

23.02 ما يفسد أو لا يفسد الصيام

23.02 Things voiding or not voiding a fast

ولا بأس بالسواك للصائم في جميع نهاره. There is no harm for a person who is fasting to brush his teeth at any time of the day.

ولا تكره له الحجامة، إلا خيفة التغيرير. To have one's blood drawn is not disapproved unless it might cause danger.

ومن ذرعه القيء في رمضان فلا قضاء عليه. وإن استقاء فقاء فعليه القضاء. If someone vomits during the Ramaḍān fast, he is not obliged to make up the fast, but if he makes an effort to vomit and vomits he must make up the fast.

23.03 الحامل والمرضع

23.03 Pregnant and nursing women

وإذا خافت الحامل على ما في بطنها أفطرت، ولم If a pregnant woman fears for the fetus she is carrying, she should eat and not give a food alms [in atonement],

تطعم، وقد قيل تطعم. although according to another opinion she should give a food alms.

وللمرضع إن خافت على ولدها، ولم تجد من تستأجر له، أو لم يقبل غيرها، أن تفرط، وتطعم. If a nursing mother fears for her child and cannot find anyone to hire to nurse the child, or if the child does not accept anyone but her, she should eat and give a food alms. ⁽¹²⁴⁾

23.04 The old

وتستحب للشيخ الكبير إذا أفطر أن يطعم. It is desirable for an elderly man who eats to give a food alms.

23.05 The minor atonement of food alms

والإطعام في هذا كله مد عن كل يوم يقضيه. A food alms in all these cases is a muddu for each fast day which must be made up.

كذلك يطعم من فرط في قضاء رمضان حتى دخل عليه رمضان آخر. A person must give a similar food alms if another Ramaḍān comes and he has not yet made up the fasting he missed in the previous Ramaḍān.

23.06 The young

ولا صيام على الصبيان حتى يحتلم الغلام، وتحيض الجارية. وبالبلوغ لزمهم أعمال الأبدان فريضة. قال الله سبحانه: وإذا بلغ الأطفال منكم الحلم فليستأذنوا. Children are not obliged to fast. The obligation begins for a boy when he has wet dreams and for a girl when she menstruates. With puberty [religious] exercises of the body become obligatory for them, for God said: "When your children reach the age of puberty they should ask permission to enter" (Qur'ān 24:59).

23.07 Defilements

ومن أصبح جنباً ولم يتطهر، أو امرأة حائض طهرت، قبل الفجر فلم يغتسلا إلا بعد الفجر أجزأهما صوم ذلك اليوم. If a man has a major sexual defilement and has not purified himself by the time morning comes, or if a woman has stopped menstruating before dawn, and either of them has not ritually bathed until after dawn, their fasting on that day counts.

{61} 23.08 On feast days

ولا يجوز صيام يوم الفطر، ولا يوم النحر. ولا يصوم اليومين الذين بعد يوم Fasting is not permitted on `Īd al-fiṭr of `Īd aḍ-ḍuḥā, nor may one fast on the two days following `Īd aḍ-ḍuḥā, except someone who is combining the `umra and hajj pilgrimages by tamattu` and cannot find an animal

النحر، إلا المتمتع الذي لا يجد هدياً. واليوم الرابع لا يصومه متطوع، ويصومه من نذره أو من كان في صيام متابع قبل ذلك.

23.09 قضاء الصوم

ومن أفطر في نهار رمضان ناساً فعليهِ القضاء فقط. وكذلك من أفطر فيه لضرورة من مرض.

23.10 المسافر

ومن سافر سفرأ تقصر فيه الصلاة فله أن يفطر، وإن لم تتله ضرورة. وعليه القضاء، والصوم أحب إلينا.

ون سافر أقل من أربعة برد، فظن أن الفطر مباح له فأفطر، فلا كفارة عليه، وعليه القضاء. وكل من أفطر متأولاً فلا كفارة عليه.

23.11 الكفارة

وإنما الكفارة على من أفطر متعمداً بأكل أو شرب أو جماع مع القضاء.

والكفارة في ذلك إطعام ستين مسكيناً، لكل مسكين مد بمد النبي صلى الله عليه وسلم. فذلك أحب إلينا، وله أن يكفر بعنق رقبة، أو صيام شهرين متتابعين.

وليس على من أفطر في قضاء رمضان متعمداً كفارة.

for a gift sacrifice (hady).⁽¹²⁵⁾ On the fourth day no one should make an optional fast, but someone may fast to fulfil a vow or to resume a fast that was begun before.

23.09 Making up a fast

Someone who forgetfully eats during a day of Ramaḍān must make up the fast only. The same holds for someone who eats because sickness makes it necessary.

23.10 A traveler

Someone who makes a journey wherein his ṣalāt is shortened has a right to eat, even if there is no necessity to do so. He must merely make up the fast, but in our opinion it is preferable for him to keep the fast instead.

If someone travels less than four barīds (48 miles, 77 kilometers) and thinks that he is allowed to eat and does eat, he need not make atonement, but must merely make up the fast. In fact, anyone who eats because of a [wrong] interpretation does not need to make atonement.

23.11 The greater atonement⁽¹²⁶⁾

Someone must make atonement (*kaffāra*) as well as make up his fast only if he deliberately eats, drinks or has sexual intercourse.

Atonement for this is to give a food alms to sixty destitute people, a muddu at the standard of the Prophet to each person.⁽¹²⁷⁾ This atonement is preferable in our opinion, but the person may alternatively make atonement by freeing a slave or by fasting two consecutive months.

Someone who deliberately eats while making up the fast of Ramaḍān need not make an atonement.

23.12 الإغماء

ومن أغمي عليه ليلاً فأفاق بعد طلوع الفجر فعليه قضاء الصوم. ولا يقضي من الصلوات إلا ما أفاق في وقته.

23.13 محارم أخرى

وينبغي للصائم أن يحفظ لسانه وجوارحه، ويعظم من شهر رمضان ما عظم الله سبحانه.

ولا يقرب الصائم النساء بوطء ولا مباشرة ولا قبلة للذة في نهار رمضان. ولا يحرم ذلك عليه في ليلة. ولا بأس أن يصبح جنباً من الوطء. ومن التذ في نهار رمضان بمباشرة أو قبلة فأمدى لذلك، فعليه القضاء. وإن تعذ ذلك حتى أمني فعليه الكفارة.

23.14 التراويح

ومن قام رمضان إيماناً واحتساباً غفر له ما تقدم من ذنبه. وإن قمت فيه بما تيسر، فذلك مرجو فضله وتكفير الذنوب به.

والقيام فيه في مساجد الجماعات بإمام. ومن شاء قام في بيته، وهو أحسن لمن قويت نيته وحده. وكان السلف الصالح يقومون فيه في المساجد بعشرين ركعة، ثم يوترون بثلاث،

23.12 Unconsciousness at the beginning of day

If someone faints during the night and regains consciousness after sunrise, he must make up the fast [of that day], {62} but as far as ṣalāt is concerned, he makes up only what was due when he regained consciousness.

23.13 Other prohibitions during a fast

Someone who is fasting should guard his tongue and bodily organs, and respect what God gave respect to in Ramaḍān.⁽¹²⁸⁾

A fasting person should not approach women by way of intercourse, embracing or kissing for the sake of pleasure during the day in Ramaḍān, but at night these things are not forbidden to him. There is no harm when morning comes for someone to be in a state of major sexual defilement because of intercourse, but if someone seeks pleasure during the day from embracing or kissing, and had distillation because of it, he must make up the fast. Moreover, if he does these things deliberately and ejaculates as a result, he must make atonement.

23.14 The tarāwīḥ ṣalāt⁽¹²⁹⁾

Whoever rises for [the tarāwīḥ ṣalāt on the nights of] Ramaḍān with faith and in view of God's favour has all the sins he has committed forgiven. Moreover, someone who does only as much of this ṣalāt as is convenient for him can hope for God's favour and the atonement of his sins thereby.

This ṣalāt may be done in the mosque with an imām or, if one wishes, at home. To do it at home is better for someone whose intention is stronger when he is alone. The righteous early Muslims used to do it in the mosques, making twenty rak`as, then three rak`as [for the shaf` and witr], saying "*as-salāmu `alaykum*" after the [two] shaf` rak`as and before the [last] witr rak`a. Later on their custom was to do thirty-three rak`as besides the shaf` and witr rak`as, but any number one

ويفصلون بين الشفع والوتر
بسلام. ثم صلوا بعد ذلك ستاً
وثلاثين ركعة، غير الشفع
والوتر، وكل ذلك واسع،
ويسلم من كل ركعتين.

وقالت عائشة رضي الله
عنها ما زاد رسول الله
صلس في رمضان ولا في
غيره على اثنتي عشرة
ركعة بعدها الوتر.

باب 24 في الاعتكاف

والاعتكاف من نوافل الخير،
والعكوف الملازمة. ولا
اعتكاف إلا بصيام. ولا
يكون إلا متتابعاً. ولا يكون
إلا في لمساجد، كما قال الله
سبحانه «وأنتم عاكفون في
المساجد». فإن كان بلد فيه
الجمعة فلا يكون إلا في
الجامع، إلا أن ينذر أياماً لا
تأخذه فيها الجمعة.

وأقل ما هو أحب إلينا من
الاعتكاف عشرة أيام. ومن
نذر اعتكاف يوم فأكثر
لزمه. وإن نذر ليلة لزمه يوم
وليلة.

ومن أفطر فيه متعمداً
فليبتدئ اعتكافه. وكذلك من
جامع فيه ليلاً أو نهاراً ناسياً
أو متعمداً.

وإن مرض خرج إلى بيته.
فإذا صح بنى على ما تقدم.
وكذلك إن حاضت المعتكفة.

chooses to do is permitted. Only the "*as-salāmu`alaykum*" is said after every second rak`a.

`A'isha said: "In Ramaḍān or at any other time the Messenger of God {63} did not do more than twelve rak`as followed by a witr.

CHAPTER 24 RETREAT IN THE MOSQUE (I'TIKĀF)

Retreat, with the withdrawal it entails, is a supererogatory good work. A retreat does not count without fasting; it must be consecutive and done in a mosque, as God said: "...while you are in retreat in the mosques" (Qur'ān 1:187). If the person is to make a retreat in a town over a Friday he should make it only in the central mosque. But he may make it in another mosque if he has vowed days which do not include a Friday.

A retreat should preferably last at least ten days, in our opinion.⁽¹³⁰⁾ But if someone vows one or more days, this binds him. If he vows a night he is bound to observe a day and a night.

If someone deliberately breaks the fast during a retreat he must begin it over. So also must one who has sexual intercourse during it, whether at night or in the daytime and whether from forgetfulness or deliberately.

If the person gets sick he should go home, and when he gets well he should take up where he left off. The same holds for a woman who menstruates while she is on retreat. The sacredness (*hurma*) of being on retreat

وحرمة الاعتكاف عليهما
في المرض وعلى الحائض
في الحيض. فإذا طهرت
الحائض أو أفاق المريض
في ليل أو نهار رجعا
ساعتئذ إلى المسجد.

remains with the sick or menstruating person, and whatever hour of the night or day the menstruating woman is purified or the sick person gets well he or she should return to the mosque. ⁽¹³¹⁾

ولا يخرج المعتكف من
معتكفه إلا لحاجة الإنسان.

Someone on retreat should not leave the mosque except to take care of nature.

وليدخل معتكفه قبل غروب
الشمس من الليلة التي يريد
أن يبندئ فيها اعتكافه. ولا
يعود مريضاً، ولا يصلي
على جنازة، ولا يخرج
لتجارة.

{64} A person should enter his place of retreat before sunset of the night he wishes to begin his retreat. [During the retreat] he should not go out to visit the sick, to do ṣalāt over the dead, or to trade.

ولا شرط في الاعتكاف. ولا
بأس أن يكون إمام المسجد،
وله أن يتزوج أو يعقد نكاح
غيره.

No conditions can be made on the fulfillment of a retreat one is about to undertake. There is no harm in a retreatant's being the imām of the mosque. A retreatant may marry and conclude a marriage contract for someone else.

ومن اعتكف أول اشهر أو
وسطه خرج من اعتكافه بعد
غروب الشمس من آخره.
وإن اعتكف بما يتصل فيه
اعتكافه بيوم الفطر فليبيت
ليلة الفطر في المسجد حتى
يغدو منه إلى المصلى.

Someone who goes on retreat at the beginning or middle of the month may go off his retreat after sunset on the last day of his retreat. But if someone makes a retreat for a time which lasts up to `Īd al-fiṭr, he should spend the night before the `īd in the mosque until he leaves it in the morning for the ṣalāt grounds. {65}

باب 25

في زكاة العين والحرث
والماشية وما يخرج
من المعدن
وذكر الجزية وما يؤخذ
من تجار أهلا ذمة
والحربيين

CHAPTER 25 ⁽¹³²⁾ ZAKĀT (RELIGIOUS TAX)

25.01 وقت وجوبها

25.01 Time of obligation

وزكاة العين والحرث
والماشية فريضة. فأما زكاة
الحرث في يوم حصاده، والعين
والماشية ففي كل حول مرة.

25.02 في نتائج الحرث

ولا زكاة من الحب والتمر
في أقل من خمسة أوسق،
وذلك ستة أقفزة وربع قفيز،
والوسق ستون ضاعاً بضاع
النبي صلس، وهو أربعة
أمداد بمداه عليه الصلاة
والسلام.

ويجمع القمح والشعير
والسلت في الزكاة. فإذا
اجتمع من جميعها خمسة
أوسق فليزك ذلك. وكذلك
تجمع أصناف القطنية،
وكذلك تجمع أصناف التمر،
وكذلك أصناف الزبيب.
والأرز والدخن والذرة، كل
واحد منها صنف لا يضم
إلى الآخر في الزكاة. وإذا
كان في الحائط أصناف من
التمر أدى الزكاة عن الجميع
من وسطه.

ويزكي الزيتون إذا بلغ حبه
خمسة أوسق، أخرج من
زيته. ويخرج من الجبلان
وحب الفجل منزيته.

فإن باع ذلك أجزاءه أن يخرج
من ثمنه إن شاء الله.

ولا زكاة في الفواكه
والخضر.

25.03 في العقود

The zakāt on money, farm produce and livestock is obligatory. The zakāt on farm produce is due at harvest time, that on money and on livestock at the expiration of each year.

25.02 On farm produce

There is no zakāt on grain and dates less than five wasqs, which is equivalent to six and one fourth qafizes. A wasq is sixty sā's of the standard of the Prophet, and a sā` is four muddus of his standard. (133)

Wheat, barley, and sult barley are taken together for zakāt purposes. If their combined volume is five wasqs, the owner must pay zakāt on them. Similarly taken together are different kinds of dates, different kinds of beans, and different kinds of raisins. But rice, millet and sorghum are each taken separately and not together. If different kinds of dates are growing in a garden, zakāt should be paid for them all together, and should be taken from those of average quality.

Zakāt is paid for olives when their volume reaches five wasqs; it is given in the form of oil [from the olives due]. Likewise tax is paid from the oil of sesame {66} and radish seed.

If the owner has sold the produce he may pay the zakāt from its price God willing.

Apples and vegetables are not subject to zakāt.

25.03 On money

ولا زكاة من الذهب في أقل من عشرين ديناراً. فإذا بلغت عشرين ديناراً ففيها نصف دينار، ربع العشر. فما زاد فبحساب ذلك، وإن قل.

Less than twenty dīnārs⁽¹³⁴⁾ of gold is not subject to zakāt. But if there are twenty dīnārs, the zakāt is one half dīnār, that is, 2.5 percent. What is over twenty dīnārs is taxed at the same rate, even if the additional tax is less than one half dīnār.

ولا زكاة من الفضة في أقل من مائتي درهم، وذلك خمس أواق. والأوقية أربعون درهماً من وزن سبعة، أعني أن السبعة دنانير وزنها عشرة دراهم. فإذا بلغت هذه الدراهم مائتي درهم ففيها ربع عشرها، خمسة دراهم. فما زاد فبحساب ذلك.

Silver is not subject to zakāt if it is less than two hundred dirhams,⁽¹³⁵⁾ that is, five ūqiyyas; an ūqiyya is forty dirhams when ten dirhams weigh the same as seven dīnārs. But if the dirhams total two hundred, then there is a zakāt of 2.5 percent, that is, five dirhams. The same percentage applies to sums in excess of two hundred.

ويجمع الذهب والفضة في الزكاة. فمن كان له مائة درهم وعشرة دنانير فليخرج من كل مال ربع عشره.

Gold and silver are combined for zakāt purposes. Someone who owns one hundred dirhams and ten dīnārs must pay 2.5 percent of each.

25.04 في العروض

25.04 On merchandise

ولا زكاة في العروض حتى تكون للتجارة. فإذا بعته بعد حول فأكثر من يوم أخذت ثمنها أو زكيتها، ففي ثمنها الزكاة لحول واحد، أقامت قبل البيع حولاً أو أكثر،

There is no zakāt on merchandise (*urūd*) unless it is for trading. If you sell goods a year or more after the day you got the money to pay for them or the day you paid zakāt on this money you must pay the zakāt of one year on the sale income, whether the goods were with you a year or over a year before the sale.

إلا أن تكون مديراً لا يستقر بيدك عين ولا عرض، فإنك تقوم عروضك كل عام وتزكي ذلك مع ما بيدك من العين.

But if someone is engaged in transactional trade and doesn't hold onto the goods [for speculative profit],⁽¹³⁶⁾ he should estimate the value of his merchandise each year and pay zakāt on that together with the money he possesses.

وحول ربح المال حول أصله. وكذلك حول نسل

A year is reckoned to elapse for profit gained on capital the same time a year elapses for possessing the original wealth. {67} In the same way a year is

الأنعام حول الأمهات. reckoned to elapse for the offspring of livestock the same time a year elapses for possessing their mothers. (137)

25.05 من عليه دين

25.05 If one owes a debt

ومن له مال تجب فيه الزكاة وعليه دين مثله أو ينقصه عن مقدار مال الزكاة، فلا زكاة عليه، إلا أن يكون عنده مما لا يزكى من عروض مقتناة أو رقيق أو حيوان مقتناة أو عقار أو بيع ما فيه وفاء لدينه، فليزك ما بيده من المال. فإن لم تف عروضه بدينه، حسب بقية دينه فيما بيده. فإن بقي بعد ذلك ما فيه الزكاة زكاه.

If someone has possessions for which zakāt is due and also owes a debt either equivalent to these possessions or which would reduce his estate below the level subject to zakāt, he need not pay zakāt, unless he has besides some property not subject to zakāt, such as merchandise for his own use, a slave, animals for his own use, real estate, or some income which he could use to pay his debt. In that case he must pay zakāt on his possessions [which are subject to zakāt]. But if his personal effects are not enough to pay his debt, he should subtract the amount of his debt that remains from what he owns, and if the remainder is an amount subject to zakāt he should pay zakāt on it.

ولا يسقط الدين زكاة حب ولا تمر ولا ماشية.

A debt, however, does not except a person from paying zakāt on his grain, dates or livestock.

25.06 من إليه دين

25.06 If one has claim to a debt

ولا زكاة عليه في دين حتى يقبضه. وإن أقام أعواماً فإنما يزكاه لعام واحد بعد قبضه.

Someone to whom a debt is owed need not pay zakāt on this amount until he receives payment, even if it was owed for many years. [The year] after he receives payment, he pays zakāt only for one year.

وكذلك العرض حتى يبيعه. وإن كان الدين أو العرض من ميراث فليستقبل حوالاً بما يقبض منه.

The same holds for merchandise; [it is not subject to zakāt] until it is sold. If a person inherits merchandise or a claim to a debt, he should wait a year after collection [before paying zakāt on it].

25.07 الأصغر والعبيد

25.07 Minors and slaves

وعلى الأصغر الزكاة في أموالهم في العين والحرث والماشية وزكاة الفطر.

Minors must pay tax for the money, farm produce and livestock they own, and also the zakāt of `Īd al-ḥajj.

ولا زكاة على عبد، ولا على من فيه بقية رق، في ذلك

Slaves and those who are not yet fully freed do not pay any of these forms of zakāt. A slave who is freed should mark a year from the day he was freed to pay

كله. فإذا أعتق فليأتنف حولاً
من يومئذ بما يملك من ماله.

zakāt on what he owns.

25.08 ملك لا زكاة عليه

25.08 Property for personal use

ولا زكاة على أحد في عبده
وخادمه وفلرسه وداره ولا
ما يتخذ للقنية من الرباع
والعروض ولا فيما يتخذ
لللباس من الحلبي.

A person pays no zakāt on his slave, servant, horse or house, nor on buildings or merchandise for his own use, or jewelry used for wearing.

ومن ورث عرضاً أو وهب
له أو رفع من أرضه زرعاً
فزكاه فلا زكاة عليه في
شيء من ذلك حتى يباع
ويستقبل به حولاً من يوم
يقبض ثمنه.

{68} If someone inherits or is given any merchandise, or raises crops on his land, and has paid zakāt on them, no more zakāt is due until it is sold and a year has elapsed after collecting the price for it.

25.09 المعادن

25.09 Mines

وفيما يخرج من المعدن من
ذهب أو فضة الزكاة، إذا بلغ
وزن عشرين ديناراً أو
خمس أواق فضة. ففي ذلك
ربع العشر يوم خروجه.
وكذلك فيما يخرج بعد ذلك
متصلاً به، وإن قل. فإن
انقطع نبيله بيده وابتدأ غيره،
لم يخرج شيئاً حتى يبلغ ما
فيه الزكاة.

Zakāt is due on gold and silver which has been mined if it amounts to twenty dīnārs [of gold] or five ūqiyyas of silver; the tax is 2.5 percent, due the day it is mined. The same rate holds for what is mined from the same mine afterwards, even if it is less. But if the mine is abandoned and another opened, no tax is to be paid until the amount extracted [from the second mine] reaches a level subject to zakāt.

25.10 الجزية

25.10 Levies on non-Muslims

وتؤخذ الجزية من رجال
أهل الذمة الأحرار البالغين
، ولا تؤخذ من نسائهم
وصبيانهم وعبيدهم. وتؤخذ
من المجوس ومن نصارى
العرب. والجزية على أهل
الذهب أربعة دنانير، وعلى
أهل الورق أربعون درهماً.

The jizya tax is collected from free adult men of the tolerated classes. It is not collected from their women, children or slaves. It is collected from the Magi⁽¹³⁸⁾ and from Christian Arabs. The jizya from the tolerated classes is four dīnārs [of gold] or, from those who have silver, forty dirhams. For the poor this amount should be reduced, while their traders who go from one province to another should be charged 10 percent of their sales proceeds, even if they make several trading trips in one year. But if they bring food

ويخفف عن الفقير. ويؤخذ ممن تجر منهم من أفق إلى أفق عشر ثمن ما يبيعونه، وإن اختلفوا في السنة مراراً. وإن حملوا الطعام خاصة إلى مكة والمدينة خاصة أخذ منهم نصف العشر من ثمنه.

specifically to Mecca or Medina, they are to be charged only 5 percent of their sales proceeds.

ويؤخذ من تجار الحربيين العشر، إلا أن ينزلوا على أكثر من ذلك.

Traders from non-Muslim lands should be charged 10 percent unless they cede something of greater value.

وفي الركاز وهو دفن الجاهلية الخمس على من أصابه.

Someone who finds bars [of precious metal] {69} buried by people of the Jāhiliyya times must pay 20 percent.

باب 26 في زكاة الماشية

CHAPTER 26 ZAKĀT ON LIVESTOCK

26.01 الإبل

26.01 Camels

وزكاة الإبل والبقر والغنم فريضة. ولا زكاة من الإبل في أقل من خمس ذود، وهي خمس من الإبل-ففيها شاة جذعة أو ثنية من جل غنم أهل ذلك البلد من ضأن أو معز-إلى تسع.

Zakāt on camels, cattle, and sheep or goats is obligatory. There is no zakāt on camels fewer than five dhawds, that is, five camels.⁽¹³⁹⁾ If there are from five to nine dhawds of camels, the zakāt is one young sheep or goat whichever is the most common in the locale in its second year.⁽¹⁴⁰⁾

ثم في العشر شاتان إلى أربعة عشرة.

If there are ten to fourteen dhawds, the zakāt is two sheep or goats.

ثم في خمسة عشر ثلاث شياه إلى تسعة عشر.

If there are fifteen to nineteen dhawds, the zakāt is three sheep or goats.

فإذا كانت عشرين فأربعة شياه إلى أربعة وعشرين.

If there are twenty to twenty-four dhawds, the zakāt is four sheep or goats.

ثم في خمس وعشرين بنت مخاض، وهي بنت سنتين. فإن لم تكن فيها فابن لبون

If there are twenty-five to thirty-five dhawds, the zakāt is a female camel whose mother is pregnant, that is, a female in its second year. If there is no such young camel in the herd, then a male camel whose mother is

ذكر إلى خمس وثلاثين. giving milk [that is, a male in its third year] should be selected.

ثم في ست وثلاثين-بنت لبون، وهي بنت ثلاث سنين-إلى خمس وأربعين. If there are thirty-six to forty-five dhawds, the tax is one female camel whose mother is giving milk.

ثم في ست وأربعين حقة، وهي التي يصلح على ظهرها الحمل، ويطرقها الفحل، وهي بنت أربع سنين إلى ستين. If there are forty-six to sixty dhawds, the tax is a ḥiqqa, that is, a female camel which can carry a burden on its back and can copulate with a male, in other words, one in its fourth year.

ثم في إحدى وستين جذعة وهي بنت خمس سنين إلى خمس وسبعين. If there are sixty-one to seventy-five dhawds, the zakāt is a young female, that is, one in its fifth year.

ثم في ست وسبعين بنتاً لبون إلى تسعين. If there are seventy-six to ninety dhawds, the zakāt is two female camels whose mothers are giving milk.

ثم في إحدى وتسعين حقتان إلى عشرين ومائة. فما زاد على ذلك ففي كل خمسين حقة، وفي كل أربعين بنت لبون. If there are ninety-one to one hundred and twenty dhawds, the zakāt is two ḥiqqas. For any number of dhawds over {70} this a ḥiqqa is paid for every fifty; or for every forty a female camel whose mother is giving milk.

26.02 البقر

26.02 Cattle

ولا زكاة من البقر في أقل من ثلاثين. فإذا بلغت فيها تبيع، عجل جذع قد أوفى سنتين. There is no zakāt on fewer than thirty cattle. If there are thirty to thirty-nine cattle, the zakāt is a tabī`, that is, a young calf over two years old.

ثم كذلك حتى تبلغ أربعين، فيكون فيها مسنة. ولا تؤخذ إلا أنثى، وهي بنت أربع سنين، وهي ثنية. If there are forty cattle, the zakāt is a female, and only a female, with its second teeth, that is, in its fourth year.

فما زاد ففي كل أربعين مسنة، وفي كل ثلاثين تبيع. For any larger number of cattle the zakāt is a female in its fourth year for every forty cattle, or for every thirty a tabī`.

26.03 الغنم

26.03 Sheep and goats

زكاة في الغنم حتى تبلغ أربعين شاة. فإذا بلغت ففيها شاة حذقة أو ثنية، إلى عشرين ومائة.

There is no zakāt on fewer than forty sheep and goats. If there are from forty to one hundred and twenty, the zakāt is one young sheep or goat in its second year.

فإذا بلغت إحدى وعشرين ومائة ففيها شاتان، إلى مائتي شاة.

If there are one hundred and twenty-one to two hundred animals, the zakāt is two sheep or goats.

فإذا زادت واحدة ففيها ثلاث شياه إلى ثلاثمائة.

From one hundred and twenty-two to three hundred, the zakāt is three sheep or goats.

فما زاد ففي كل مائة شاة.

For any larger number one sheep or goat is paid for each hundred.

26.04 اجتمع الأنعام وافتراقها

26.04 computation of animals subject to zakāt

ولا زكاة في الأوقاص، وهي ما بين الفريضتين من كل الأنعام. ويجمع الضأن والمعز في الزكاة، والجواميس والبقر، والبخت والعراب.

There is no zakāt for numbers of animals that are between two quotas (*wagaṣ*). For zakāt purposes sheep and goats are taken together; buffalo are taken with cattle; and camels with two humps are taken with dromedaries.

وكل خليطين فإنهما يترادان بينهما بالسوية. ولا زكاة على من لم تبلغ حصته عدد الزكاة.

Two owners of herds which are mixed together pay zakāt jointly, and settle between themselves the share each must pay. But if the herd of one of them does not contain a number of animals subject to zakāt, he is not obliged to pay any zakāt.

ولا يفرق بين مجتمع، ولا تجمع بين مفترق خشية الصدقة، وذلك إذا قرب الحول. فإذا كان ينقص أداؤهما بافتراقهما أو باجتماعهما أخذ بما كانا عليه قبل ذلك.

When the yearly zakāt is nearly due, animals which were mixed together are not to be separated, nor are those which were separate to be mixed, in order to escape paying the [full] zakāt. If the zakāt paid is less {71} because two herds were separated or mixed, the herds should be restored to their prior condition.

26.05 ما لا يؤخذ

26.05 Prohibited forms of payment

ولا تؤخذ في الصدقة السخلة، وتعد على رب

A baby sheep or goat is not to be taken to pay zakāt; nevertheless it is counted in numbering the owner's herd. Baby calves or camels may not be taken,

الغنم. ولا تؤخذ العجائيل في البقر ولا الفصلان في الإبل، وتعد عليهم. ولا تؤخذ تيس ولا هرمة ولا الماخض ولا فحل الغنم ولا شاة العلف ولا التي تربي ولدها ولا خيار أموال الناس.

although they are counted in numbering the herd. Also exempt from being taken as zakāt are a billy goat, a skinny old female, a pregnant female, a stud male sheep or goat, a sheep or goat being fattened for slaughter, a mother nursing its offspring, or the best things a man owns.

ولا يؤخذ في ذلك عرض ولا ثمن. فإن أجبره المصدق على أخذ الثمن في الأنعام وغيرها أجزاءه إن شاء الله.

For zakāt on animals, one may not collect merchandise or the price of the animal in place of the animal. But if the collector forces the owner into having the price of the animal instead, that suffices for the owner's zakāt God willing.

26.06 في حال الدين

26.06 If a debt is owed

ولا يسقط الدين زكاة حب ولا تمر ولا ماشية.

A debt does not exempt one from paying zakāt on grain, dates or animals.

باب 27 في زكاة الفطر

CHAPTER 27 HEAD ZAKĀT ON `ĪD AL-FIṬR

وزكاة الفطر سنة واجبة، فرضها رسول الله صلى على كل كبير أو صغير، ذكر أو أنثى، حر أو عبد من المسلمين، صاعاً عن كل نفس بصاع النبي صلى. وتؤدى من جل عيش أهل ذلك البلد من بر أو شعير أو سلت أو تمر أو أقط أو زبيب أو دخن أو ذرة أو أرز. وقيل إن كان العلس قوت قوم أخرجت منه، وهو حب صغير يقرب من خلقه البر.

Paying zakāt on `Īd al-fiṭr (the feast of Breaking Fast) is an established sunna, prescribed by the Messenger of God for every Muslim, young or old, male or female, free or slave. Each person must give a sā`⁽¹⁴¹⁾ at the standard of the Prophet, of the most common staple of the people of his locale, whether wheat, barley, sult, dates, cottage cheese, raisins, millet, sorghum or rice. One opinion is that `alas must be chosen if it is the food of the people; it is a small grain similar {72} to wheat.

ويخرج عن العبد سيده. والصغير لا مال له يخرج عنه والده. ويخرج الرجل زكاة الفطر عن كل مسلم

A master pays the tax for his slave, and if a minor does not have enough wealth his father pays for him. A man pays the zakāt on `Īd al-fiṭr for all his dependents and for any slave whom he has given a writ permitting him to pay for his freedom (*mukātab*), even if he is not a dependent, since he is still his slave.

تلزمه نفقته، وعن مكاتبه،
وإن كان لا ينفق عليه لأنه
عبد له بعد.

ويستحب إخراجها إذا طلع
الفجر من يوم الفطر.

ويستحب الفطر فيه قبل
الغدو إلى المصلى، وليس
ذلك في الأضحى. ويستحب
في العيدين أن يمضي من
طريق ويرجع من أخرى.

The preferred time to pay this zakāt is at sunrise of `Īd al-fiṭr.

To take breakfast before going to the ṣalāt grounds is preferred on this day, but not on `Īd aḍ-ḍuḥā. On both feasts it is preferable to go to the ṣalāt grounds by one way and return by another.

باب 28 في الحج والعمرة 28.01 وجوب الحج

وحج بيت الله الحرام الذي
ببكة فريضة على كل من
استطاع إلى ذلك سبيلاً من
المسلمين الأحرار البالغين
مرة لفي عمره. والسبيل
الطريق السابطة، والزاد
المبلغ إلى مكة، والقوة على
الوصول إلى مكة إما ركباً
أو راجلاً، مع صحة البدن.

28.02 الإحرام

وإنما يؤمر أن يحرم من
الميقات. وميقات أهل الشام
ومصر والمغرب الجحفة،
فإن مروا بالمدينة فالأفضل
لهم أن يحرموا من ميقات
أهلها من ذي الحليفة.
وميقات أهل العراق ذات
عرق، وأهل اليمن يلملم،
وأهل نجد من قرن. ومن مر
من هؤلاء بالمدينة فواجب

CHAPTER 28⁽¹⁴²⁾ PILGRIMAGE

28.01 Obligation of the ḥajj pilgrimage

To make the ḥajj to the sacred house of God in Mecca once in one's lifetime is an obligation binding every free adult Muslim who is able to get there. Being able to get there includes having a route open, provisions to reach Mecca, the power to arrive there, whether riding or on foot, and bodily health.

28.02 The iḥrām⁽¹⁴³⁾

Pilgrims must put themselves in a state of consecration (*iḥrām*) only at set points (*mīqāt*).⁽¹⁴⁴⁾ For the people of Syria, Egypt, and Northwest Africa, this is [when they reach] al-Juḥfa.⁽¹⁴⁵⁾ If they pass through Medina, it is better for them to put themselves in a state of consecration where the Medinan people do, at Dhū-l-Ḥulyafa.⁽¹⁴⁶⁾ For the people of {73} `Irāq the set point is when they reach Dhāt-`Irq. For the people of Yemen it is Yalamlam. For the people of Najd it is Qarn. But if anyone of these people passes first through Medina, he must put himself in a state of consecration at Dhū-l-Ḥulyafa, since beyond it he will not meet another point where he may put himself in a state of consecration.

عليه أن يحرم من ذبي
الحليفة، إذ لا يتعداه إلى
ميقات له.

ويحرم الحاج أو المعتمر
بإثر صلاة فريضة أو نافلة،
يقول:

لبيك اللهم لبيك لبيك ، لا
شريك لك ، لبيك. إن الحمد
والنعمة لك والملك. لا
شريك لك.

وينوي ما أراد من حج أو
عمرة.

ويؤمر أن يغتسل عند
الإحرام قبل أن يحرم.
ويتجرد من مخيط الثياب.
ويستحب له أن يغتسل
لدخول مكة. ولا يزال يلبي
دبر الصلوات وعند كل
شرف وعند ملاقة الرفاق،
وليس عليه كثرة الإلحاح
بذلك. فإذا دخل مكة أمسك
عن التلبية حتى يطوف
ويسعى، ثم يعاودها حتى
تزول الشمس من يوم عرفة،
ويروح إلى مصلاها.

28.03 دخول مكة

ويستحب أن يدخل مكة من
كداء الثنية التي بأعلى مكة.
وإذا خرج خرج من كدى.
وإن لم يفعل في الوجهين فلا
حرج.

قال فإذا دخل مكة فليدخل
المسجد الحرام. ومستحسن
أن يدخل من باب بني شيبه.

Someone puts himself in a state of consecration for the ḥajj or `umra pilgrimage after doing his prescribed or supererogatory ṣalāt. He says:

At your service (*labbayka*), O God, at your service. At your service; you have no associate; at your service. Praise, granting favours, and authority belong to you; you have no associate.

While saying this he makes the intention of doing the ḥajj or the `umra pilgrimage.

Before putting himself in the state of consecration, the person is required to do the ghusl and change his clothes, putting away clothes that are sewed in seams. It is desirable for him to do the ghusl again before entering Mecca.⁽¹⁴⁷⁾ He should continue to say the talbiya⁽¹⁴⁸⁾ after doing ṣalāt, when [coming over] any hill, and when meeting other companies. But he need not be importunate in saying it. When he enters Mecca he should stop saying the talbiya until he makes the circumambulation [around the Ka`ba] and the jog [between aṣ-Ṣafā and al-Marwa]. Then he should resume the talbiya until sunset of the day of `Arafāt, when he goes to the ṣalāt grounds of `Arafāt.

28.03 Entering Mecca

It is desirable to enter Mecca by way of Kadā', the pass above the city, and to go out by way of Kudā.⁽¹⁴⁹⁾ But no harm is done if a person does not go by these two directions.

[Mālik] said: "When [a pilgrim] enters Mecca, he should enter the Sacred Mosque." It is preferable to enter it through the gate of Banū-Shayba.

28.04 الطواف

{74} 28.04 The ṭawāf

فيستلم الحجر الأسود بفيه إن قدر، وإلا وضع يده عليه. ثم وضعها على فيه من غير تقبيل.

The pilgrim then kisses the black stone with his mouth if he can; if he cannot, he touches it with his hand and puts his hand to his mouth without kissing it.

ثم يطوف والبيت على يساره سبعة أطواف، ثلاثة خبياً، ثم أربعة مشياً. ويستلم الركن كلما مر به كما ذكرنا، ويكبر. ولا يستلم الركن اليماني بفيه، ولكن بيده ثم يضعها على فيه من غير تقبيل.

Then, with the [Sacred] House on his left, he circumambulates (*ṭawāf*) seven times, three times jogging and four times walking. He kisses the black stone each time he passes around it, in the way described above, or else says "*Allāhu akbar*".⁽¹⁵⁰⁾ As for the Yamānī corner,⁽¹⁵¹⁾ he does not kiss it with his mouth, but only touches it with his hand and puts his hand to his mouth without kissing it.

فإذا تم طوافه ركع عند المقام ركعتين. ثم استلم الحجر إن قدر.

When the pilgrim has finished doing the circumambulation, he makes two rak`as at the station [of Abraham],⁽¹⁵²⁾ and kisses the [black] stone again if he can.

28.05 في الصفا والمروة

28.05 At aṣ-Ṣafā and al-Marwa⁽¹⁵³⁾

ثم يخرج إلى الصفا فيقف عليه للدعاء. ثم يسعى إلى المروة، ويخب في بطن المسيل. فإذا أتى المروة وقف عليها للدعاء. ثم يسعى إلى الصفا يفعل ذلك سبع مرات، فيقف بذلك أربع وقفات على الصفا، وأربعاً على المروة.

Next he goes out to [the mound] aṣ-Ṣafā and stands on top of it to make prayers of request (*du`ā'*). Then he goes to al-Marwa, jogging in mid-course. When he comes to [the mound] al-Marwa, he stands on top of it to make prayers of request. Then he goes back to aṣ-Ṣafā, making the course seven times, thus stopping four times on top of aṣ-Ṣafā and four times on top of al-Marwa.

28.06 في منى

28.06 At Minā, 8 Dhū-l-ḥijja⁽¹⁵⁴⁾

ثم يخرج يوم التروية إلى منى، فيصلي بها الظهر والعصر والمغرب والعشاء والصبح.

Then, on the day of drawing water (*tarwiya*), the pilgrim goes to Minā, where he does the ṣalāts of zuhr, `aṣr, maghrib, `ishā' and ṣubḥ.

28.07 في عرفات

29.07 At `Arafāt, 9 Dhū-l-ḥijja

ثم يمضي إلى عرفات، ولا

Then the pilgrim goes to `Arafāt,⁽¹⁵⁵⁾ saying the talbiya

يدع التلبية في هذا كله حتى
تزل الشمس من يوم عرفة
ويروح إلى مصلاها.
وليتطهر قبل رواحه، فيجمع
بين الظهر والعصر مع
الإمام.

continuously until sunset of the day of `Arafāt, when he enters the `Arafāt mosque. He should purify himself [by ghusl] before entering, and combine the ṣalāt of zuhr and `aṣr there with the imām.

ثم يروح معه إلى موقف
عرفة، فيقف معه إلى
غروب الشمس.

Then he goes with the imām to the spot [Jabal ar-Raḥma] where [Muḥammad] stopped in `Arafāt, and stays there with the imām until sunset.

28.08 في المزدلفة

{75} 28.08 At al-Muzdalifa⁽¹⁵⁶⁾

ثم يدفع بدفعه إلى المزدلفة
فيصلي معه بالمزدلفة
المغرب والعشاء والصبح.

The pilgrim then pushes on with the imām to al-Muzdalifa, where he does the ṣalāts of maghrib, `ishā and ṣubḥ with him.

ثم يقف معه بالمشعر الحرام
يومئذ بها.

That morning [after ṣubḥ] he stops with the imām at al-Mash`ar al-ḥarām in al-Muzdalifa.

28.09 رجوع إلى منى

28.09 Back to Minā, 10 Dhū-l-ḥijja

ثم بدفع بقرب طلوع الشمس
إلى منى، ويحرك دابته
ببطن محسر. فإذا وصل إلى
منى رمى جمرة العقبة بسبع
حصيات مثل حصى
الخذف، ويكبر مع كل
حصاة.

Near sunrise the pilgrim moves back to Minā, hurrying his beast through Baṭn-Muḥassir. When reaching Minā, he throws seven pebbles like those shot with the fingers at the rock Jamrat al-`Aqaba, saying "*Allāhu akbar*" each time he hurls a pebble.

ثم ينحر إن كان معه هذي.
ثم يحلق.

Then, if he has an animal, he slaughters it as a gift-immolation (*hady*), and shaves his head.⁽¹⁵⁷⁾

28.10 رجوع إلى مكة

28.10 Back to Mecca

ثم يأتي البيت فيفيض
ويطوف سبعاً ويركع.

The pilgrim then presses on to the Sacred House, where he circumambulates seven times⁽¹⁵⁸⁾ and does [two] rak`as.

28.11 إلى منى مرة ثانية

28.11 To Minā again, 11-13 Dhū-l-ḥijja

ثم يقيم بمنى ثلاثة أيام. فإذا
زالت الشمس من كل يوم

Next the pilgrim stays three days in Minā, and in the afternoon of each day throws seven pebbles at the Jamra pillar which is nearest to Minā,⁽¹⁵⁹⁾ saying

منها رمى الجمرة التي تلي
منى بسبع حصيات، يكبر
مع كل حصاة. ثم يرمي
الجمرتين، كل جمرة بمثل
ذلك، ويكبر مع كل حصاة.

"*Allāhu akbar*" each time he hurls a pebble. Then he throws pebbles at the other two Jamra pillars⁽¹⁶⁰⁾ in the same way, saying "*Allāhu akbar*" each time he hurls a pebble.

ويقف للدعاء بإثر الرمي في
الجمرة الأولى والثانية. ولا
يقف عند جمرة العقبة
لينصرف. فإذا رمى في
اليوم لثالث، وهو رابع يوم
النحر، انصرف إلى مكة،
وقد تم حجه. وإن شاء تعجل
في يومين من أيام منى،
فرمى وانصرف.

After throwing pebbles at the first and second Jamra pillars, he stops to make prayers of supplication. He does not do this at Jamrat al-`Aqaba, but departs right away. Thus after throwing pebbles on the third day, which is the fourth day of the time of sacrifice, he departs for Mecca, and his ḥajj is completed. But if he wishes he may shorten the days he spends at Minā to two, and leave after throwing pebbles [on the second day].

28.12 Leaving Mecca

28.12 Leaving Mecca

فإذا خرج من مكة طاف
للوداع وركع وانصرف.

When leaving Mecca, the pilgrim should do the circumambulation of taking leave (*ṭawāf al-wadā`*) and [two] rak`as, and then depart.

28.13 The `umra pilgrimage

28.13 The `umra pilgrimage

والعمرة يفعل فيها كما ذكرنا
أولاً إلى تمام المسعى بين
الصفا والمروة. ثم يحلق
رأسه وقد تمت عمرته.

For the pilgrimage of `umra a person does as described above, up {76} to and including the jogging between aṣ-Ṣafā and al-Marwa. Then he shaves his head, and his `umra is completed.

28.14 Hair cutting to terminate the iḥrām

28.14 Hair cutting to terminate the iḥrām

28.14 الحلاق المتم
الحرام
والحلاق أفضل في الحج
والعمرة، والتقصير يجزئ.
وليقتصر من جميع شعره.

To shave one's head is better [after] both the ḥajj and the `umra pilgrimages, but a short haircut is sufficient. Yet a short haircut must include the whole head of hair.

وسنة المرأة التقصير
يجزئ، وليقتصر من جميع
شعره، وسنة المرأة
التقصير.

For a woman it is a sunna to shorten her hair; she may not shave her head. she should cut a finger width's length from the end of all her hair, both where it is long and where it is short. A man, however, cuts his hair short measuring from the roots.

28.15 Requirements of iḥrām⁽¹⁶¹⁾

28.15 Requirements of iḥrām⁽¹⁶¹⁾

28.15 شروط الإحرام

ولا بأس أن يقتل المحرم
الفأرة والحية والعقرب
وشبهها، والكلب العقور وما
يعدو من الذئب والسباع
ونحوها. ويقتل من الطير ما
يتقي أذاه من الغربان
والأحذية فقط.

It is not wrong for a person in the state of consecration to kill a mouse, a snake, a scorpion, or the like. He may also kill a mad dog and dangerous animals like wolves or lions. But he may kill only those birds which may cause damage, such as crows and kites. [\(162\)](#)

ويجتنب في حجه وعمرته
النساء والطيب ومخيط
الثياب والصيد وقتل الدواب
وإلقاء التفت.

While making a ḥajj or an `umra pilgrimage, a man must avoid [sexual contact with] women, perfume, seamed garments, hunting, killing animals, and removing a blemish [from himself].

ولا يغطي رأسه في
الإحرام، ولا يحلقه إلا من
ضرورة. ثم يفتدي بصيام
ثلاثة أيام أو إطعام ستة
مساكين، مدين لكل مسكين
بمد النبي صلس، أو ينسك
بشاة يذبحها حيث شاء من
البلاد.

During the state of consecration the person should not cover his head or shave it unless for a necessity. In that case he should redeem what he did by fasting three days, or by feeding six destitute people two muddus each at the muddu standard of the Prophet or by slaughtering a sheep in reparation in any land he wishes.

وتلبس المرأة الخفين والثياب
في إحرامها، وتجتنب ما
سوى ذلك مما يجتنبه
الرجل. وإحرام المرأة في
وجهها وكفيها، وإحرام
الرجل في وجهه ورأسه.

A woman in the state of consecration should wear shoes and her [ordinary] clothes; otherwise she avoids such things a man avoids. The state of consecration for a woman shows in her face and hands, while that of a man shows in his face and head.

ولا يلبس الرجل الخفين في
الإحرام إلا أن لا يجد نعلين،
فليقطعهما أسفل من الكعبين.

A man does not wear shoes while he is in the state of consecration unless he can find no sandals. [If he must wear shoes], he should cut them short below the ankles.

28.16 التمتع والقران

28.16 Combining the ḥajj and the `umra pilgrimages

واففراد بالحج أفضل عندنا
من التمتع ومن القران.

To make the ḥajj by itself is better, in our view, than [joining it with the `umra by] tamattu` or qirān.

فمن قرن أو تمتع من غير
أهل مكة فعليه هدي يذبحه

{77} If someone other than an inhabitant of Mecca follows either of the latter practices he must make a gift offering (*hady*) at Minā by slaughtering it (*dhabḥ*) or

أو ينحره بمنى، إن أوقفه بعرفة. وإن لم يوقفه بعرفة، فلينحر بمكة بالمرؤة بعد أن يدخل به من الحل.

[in the case of a camel] piercing its throat (*nahr*); this is if he had stopped with it in `Arafāt. But if he did not stop with it there he should slaughter it in Mecca, [or better], at al-Marwa, after bringing it in from outside the sacred territory.

فإن لم يجد هدياً فصيام ثلاثة أيام في الحج، يعني من وقت يحرم إلى يوم عرفة. فإن فاتته ذلك صام أيام منى وسبعة إذا رجع.

If the pilgrim cannot find any sacrificial animal, he should fast three days during the ḥajj, that is, from the time he puts himself in the state of consecration until the day of `Arafāt. but if he misses fasting three days during this time, he should fast during the [three] days of Minā. The pilgrim should add seven more days of fasting when he returns [home].⁽¹⁶³⁾

28.17 By tamattu`

28.17 By tamattu`

وصفة التمتع أن يحرم بعمره. ثم يحل منها في أشهر الحج. ثم يحج من عامه قبل الرجوع إلى أفقه أو إلى مثل أفقه في البعد. ولهذا أن يحرم من مكة إن كان بها، ولا يحرم منها من أراد أن يعتمر حتى يخرج إلى الحل.

The way to [combine the `umra with the ḥajj by] tamattu` is first to put oneself in the state of consecration for the `umra, then to come out of the `umra state of consecration during the months of the ḥajj, and to make the ḥajj that same year before returning to one's country or any other distant country. Such a person may put himself in the state of consecration [for the ḥajj] starting in Mecca if he is there.⁽¹⁶⁴⁾ but someone who wishes to make the `umra and then go outside the sacred territory may not begin his state of consecration in Mecca.

28.18 By qirān

28.18 By qirān

وصفة القران أن يحرم بحجة وعمره معاً، ويبدأ بالعمره في نيته. وإذا أردف الحج على العمره قبل أن يطوف ويركع فهو قارن.

The way to [combine the `umra with the ḥajj by] qirān is to put oneself in the state of consecration for the ḥajj and the `umra together, beginning with the `umra when making the intention. If someone [puts himself in the state of consecration for] the ḥajj after [having done so for] the `umra and before making the circumambulation and the rak`as, that suffices for practicing qirān.

28.19 Particulars on tamattu` and qirān

28.19 Particulars on tamattu` and qirān

وليس على أهل مكة هدي في تمتع ولا قران.

The people of Mecca do not have to sacrifice an animal for the tamattu` or the qirān.

ومن حل من عمرته قبل أشهر الحج، ثم حج من عامه، فليس بمتمتع.

Someone who finishes the `umra before the months of the ḥajj and then does the wajj in the same year is not practicing tamattu`.

28. 20 كفارة الصيد في الإحرام

28.20 Atonement for hunting while in iḥrām⁽¹⁶⁵⁾

ومن أصاب صيداً فعليه جزاء مثل ما قتل من الغنم، يحكم به ذوا عدل من فقهاء المسلمين. ومحلّه منى إذ وقف به بعرفة، وإلا فمكة، ويدخل به من الحل.

Someone who hunts and shoots an animal [while in the state of consecration] must make reparation in the form of livestock equivalent to what he killed, as two Muslim lawyers of good character shall determine.⁽¹⁶⁶⁾ The place to make the reparation is Minā if {78} the person stopped with the animals in `Arafāt; otherwise he makes it in Mecca, bringing the animal from outside the sacred territory.

وله أن يختار ذلك أو كفارة طعام مساكين أن ينظر إلى قيمة الصيد طعاماً فيتصدق به،

The person is free to choose doing this or to make the atonement of feeding the destitute. If he chooses the latter, he takes food equivalent in value to what he shot and distributes it in alms.

أو عدل ذلك صياماً أن يصوم عن كل مد يوماً، ولكسر المد يوماً كاملاً.

Another choice is for him to make atonement equivalent to the food in fasting, that is, by fasting one day for each muddu he was to distribute and a whole day for any remaining portion of a muddu.

28. 21 في الانصراف من مكة

28.21 Going home

والعمرة سنة مؤكدة مرة في العمر.

To make the `umra pilgrimage once in one's lifetime is an established sunna.

ويستحب لمن انصرف من مكة من حج أو عمرة أن يقول:

When departing from Mecca after making a ḥajj or an `umra pilgrimage it is desirable to say:

آييون تائبون عابدون لربنا حامدون، صدق الله وعده، ونصر عبده، وهزم الأحزاب وحده.

[We are] returning [to God in death], repentant, serving our Lord and praising Him. God was true to His promise, gave victory to his servant, and defeated the confederate enemies Himself alone.

باب 29 في الضحايا والذبائح والعقيقة والصيد والختان وما يحرم من الأطعمة والأشربة

CHAPTER 29 IMMOLATION AND RITUAL SLAUGHTERING, `AQĪQA IMMOLATION, HUNTING & CIRCUMCISION

29. 01 ما يجزئ من

29.01 Animals for feast day and pilgrimage gift

الدواب في الأضحية والهدايا

immolations

والأضحية سنة واحدة على
من استطاعها.

To make a feast day immolation⁽¹⁶⁷⁾ is an established sunna, binding anyone who can do so.

وأقل ما يجزئ فيها من
الأسنان الجذع من الضأن،
وهو ابن سنة، وقيل ابن
ثمانية أشهر، وقيل ابن
عشرة أشهر. والثني من
المعز، وهو ما أوفى سنة
ودخل في الثانية. ولا يجزئ
في الضحايا من المعز
والبقر والإبل إلا الثني.
والثني من البقر ما دخل في
السنة الرابعة، والثني من
الإبل ابن ست سنين.

A sheep for immolation must be at least a year old, although another opinion holds for eight months, and another for ten months. A goat must have its second teeth, that is, it must have completed its first year and begun its second. Goats, cattle and camels must at least have their second teeth. For cattle this means one which has {79} begun its fourth year, and for camels one which has begun its sixth year.

وفحول الضأن في الضحايا
أفضل من خصيانها،
وخصيانها أفضل من إناثها،
وإناثها أفضل من ذكور
المعز ومن إناثها. وفحول
المعز أفضل من إناثها،
وإناث المعز أفضل من
الإبل والبقر في الضحايا.
وأما في الهدايا فالإبل
أفضل، ثم البقر، ثم الضأن،
ثم المعز.

For the feast day immolation of a sheep a breeding ram is preferred to a castrated one, while a castrated ram is preferred to a female, and a female to a male or female goat. Similarly a breeding male goat is preferred to a female, and a female goat to a camel or a bull. Yet for a gift immolation (*hady*),⁽¹⁶⁸⁾ a camel is preferred, then a bull, then a sheep, then a goat.

ولا يجوز في شيء من ذلك
عوراء، ولا مريضة، ولا
العرجاء البين ضلعها، ولا
العجفاء التي لا شحم فيها
ويتقى فيها العيب كله، ولا
المشقوق الأذن إلا أن يكون
يسيراً. وكذلك القطع
ومكسورة القرن إن كان

In any case, it is not permitted to select a one-eyed or a sick animal, nor a lame one whose ribs show, nor an emaciated one with no fat, nor one with any kind of defect. Neither is it permitted to select one with a slit ear, unless it is only slit a little; the same holds for one with part of its ear cut off. An animal with a broken horn is not permitted if it is bleeding, but if it is not bleeding it is permitted.

يدي، فلا يجوز، وإن لم يدم
فذلك جائز.

29.02 وقت الذبح

وليل الرجل ذبح أضحيته
بيده بعد ذبح الإمام أو نحره
يوم النحر ضحوة. ومن ذبح
قبل أن يذبح الإمام أو ينحر
أعاد أضحيته. ومن لا إمام
لهم فليتحروا صلاة أقرب
الأئمة إليهم وذبحه.

ومن ضحى بليل أو أهدى لم
يجزه.

وأيام النحر ثلاثة يذبح فيها
أو ينحر إلى غروب الشمس
من آخرها. وأفضل أيام
النحر أولها. ومن فاتته الذبح
في اليوم الأول إلى الزوال
فقد قال بعض أهل العلم
يتسحب له أن يصبر إلى
ضحى اليوم الثاني.

ولا يباع شيء من الأضحية
جلد ولا غيره.

29.03 كيفية الذبح

وتوجه الذبيحة عند الذبح
إلى القبلة وليقل الذابح «بسم
الله» و«الله أكبر» وإن زاد
في الأضحية «ربنا تقبل
منا»، فلا بأس بذلك. ومن
نسي التسمية في ذبح أضحية
أو غيرها فإنها تؤكل. وإن
تعمد ترك التسمية لم تؤكل.
وكذلك عند إرسال الجوارح
على الصيد.

29.02 time of immolation

Using his own hand, a man should cut the throat of his animal for immolation after the imām has cut or pierced the throat of his animal on the morning of ʿĪd al-aḍḥā. Anyone who slaughters his animal before the imām does must immolate another animal. People who do not have an imām should gauge themselves by the ṣalāt and slaughtering carried out by the imām nearest to them.

If someone makes a feast day or a gift immolation at night, it does not count.

There are three days for immolation, and the animal's throat may be cut or [for a camel] pierced up to sunset of the last day. But the first day is preferred. {80} If someone misses doing it before sunset of the first day, the opinion of some scholars is that he should preferably wait until mid-morning (*duḥā*) of the second day.

No part of the immolated animal is to be sold, neither the skin nor anything else.

29.03 Ritual of sacrifice

During the slaughtering the animal should be faced towards the qibla. The one slaughtering should say "*Bi-smi llāhi wa-llāhu akbar*". It is not bad if he also says, with reference to the immolation, "Lord, receive [this] from us" (*Rabba-nā taqabbal min-nā*). If someone forgets to say "*Bi-smi llāhi*" when slaughtering an animal as a feast day immolation or for any other purpose, it may be eaten. But if he deliberately omits the "*Bi-smi llāhi*", the animal should not be eaten. The same holds for sending out predatory animals to hunt.

29.04 الذكاة

29.04 Use of animals for various kinds of sacrifice

ولا يباع من الأضحية
والعقيقة والنسك لحم، ولا
جلد، ولا ودك، ولا عصب،
ولا غير ذلك. ولا يباع من
الأضحية والعقيقة والنسك
لحم، ولا جلد، ولا ودك، ولا
عصب، ولا غير ذلك.

Meat from an animal immolated for a feast, or in honour of a child of eight days (*`aqīqa*), or for expiation should not be sold. Neither should the skin, the fat, the sinews or anything else.

ويأكل الرجل من أضحيته،
ويتصدق منها أفضل له،
وليس بواجب عليه.

A man may eat of his feast day immolation, but to give the meat out in alms is preferred, although not obligatory.

ولا يأكل من فدية الأذى،
وجزاء الصيد، ونذر
المساكين، وما عطب من
هذي التطوع قبل محله.
ويأكل مما سوى ذلك إن
شاء.

A man may not eat any part of an animal he slaughtered to expiate a wrong, or to make reparation for hunting [while in the state of consecration for *ḥajj*], or to fulfil a vow in favour of the destitute, nor any part of an animal slaughtered as a voluntary gift immolation if it was injured before the time of carrying out the slaughtering. Anything else he may eat if he wishes.

29.05 الذكاة

29.05 Ritual slaughtering (dhakāt)

والذكاة قطع الحلقوم
والأوداج، ولا يجزئ أقل
من ذلك.

Ritual slaughtering is cutting the larynx and the jugular veins. Any incision less than this does not suffice.

وإن رفع يده بعد قطع بعض
ذلك، ثم أعاد يده فأجهز فلا
تؤكل.

If someone takes his hand away after cutting part way and then puts his hand back and finishes off the animal, it should not be eaten.

وإن تمادى حتى قطع الرأس
أساء ولتؤكل.

If someone continues cutting until he removes the head, he does wrong, but the animal may be eaten.

ومن ذبح من القفال لم تؤكل.

{81} If someone slaughters an animal by cutting from the back of its neck, it should not be eaten.

والبقر تذبح، فإن نحررت
أكلت.

Cattle should be slaughtered by cutting their throats, but if their throat is pierced they may be eaten.

والإبل تنحر، فإن ذبحت لم
تؤكل، وقد اختلف في أكلها.

Camels should be slaughtered by piercing their throats; if their throat is cut they may not be eaten, although according to another opinion they may.

والغنم تذبح، فإن تحرت لم تؤكل، وقد اختلف أيضاً في ذلك.

Sheep and goats should be slaughtered by cutting their throats, and should not be eaten if their throats are pierced, but there is a difference of opinion regarding this also.

وذكاة ما في البطن ذكاة أمه إذا تم خلقه ونبت شعره.

The ritual slaughtering of an embryo is accomplished by the ritual slaughtering of its mother if its formation is complete and it has hair. (169)

05.29 ما يمنع أكله

29.06 Forbidden foods and animal by-products (170)

والمخنقة بحبل ونحوه، والموقوذة بعصا وشبهها، والمتردية، والتطيحة، وأكيلة السبع. إن بلغ ذلك مها في هذه الوجوه مبلغاً لا تعيش معه لم تؤكل بذكاة.

If an animal dies by being strangled with a rope or other material, by being hit by a club or by anything else, by falling, by being gored, or by being eaten by predatory animals, it may not be eaten. Neither may it be eaten if it is mortally wounded by any of these ways, even if it is ritually killed.

ولا بأس للمضطر أن يأكل الميتة ويشبع ويتزود، فإن استغنى عنها طرحها. ولا بأس بالانتفاع بجلدها إذا دبغ، ولا يصلى عليه ولا يباع.

Yet it is not wrong for someone in necessity to eat a dead animal not ritually slaughtered. He may even eat to his fill and store up the meat. But if he no longer needs it he should throw it away. Neither is it wrong for him to make use of the skin of the animal if it is tanned. But he should not do ṣalāt on it or sell it.

ولا بأس بالصلاة على جلود السبع إذا ذكيت وبيعها.

It is not wrong to do ṣalāt on the skins of predatory animals or to sell them, if the animals were ritually slaughtered.

وينتفع بصوف الميتة وشعرها وما ينزع منها في حال الحياة. وأحب إلينا أن يغسل ولا ينتفع بريشها، ولا بقرنها وأظلافها وأنيابها.

It is not wrong to make use of the wool or hair of a dead animal, and what could have been taken from it while alive. But in our opinion it is better to wash it, and not make use of its feathers, or horns, or hoofs or tusks.

وكره الانتفاع بأنياب الفيل، وقد اختلف في ذلك.

It is disapproved to make use of the tusks of an elephant, but there is a difference of opinion concerning this.

وما ماتت فيه فأرة من سمن أوزيت أو عسل ذائب طرح ولم يؤكل. ولا بأس أن يستصبح بالزيت وشبهه في غير المساجد وليتحفظ منه.

Melted fat, oil or honey in which a mouse dies should be thrown out and not eaten. It is not wrong to burn {82} this oil or other [spoiled material] in lamps other than in mosques. Yet one should be on guard against [touching] it. (171) If the fat or oil is hard, the dead mouse and surrounding fat or oil should be thrown out, while the rest may be eaten. Saḥnūn added:

وإن كان جامداً طرحت وما
جولها وأكل ما بقي. قال
سحنون: إلا أن يطول مقامها
فيه فإنه يطرح كله.

"unless the dead mouse was in it a long time; in that case all the fat or oil should be thrown out".

ولا بأس بطعام أهل الكتاب
وذبائحهم. وكره أكل شحوم
اليهود منهم من غير تحريم.
ولا يؤكل ما ذكاه المجوسي،
وما كان مما ليس فيه ذكاة
من طعامهم فليس بحرام.

It is not wrong to eat food [prepared by] Jews or Christians or meat slaughtered by them,⁽¹⁷²⁾ but to eat fats [of animals slaughtered] by Jews is disapproved without being forbidden. Animals ritually slaughtered by the Magi should not be eaten, but meatless food prepared by them is not forbidden.

29.06 الصيد

29.07 Hunting

والصيد للهو مكروه.
والصيد لغير اللهو مباح.
وكل ما قتله كلبك المعلم أو
بازك المعلم فجانز أكله إذ
أرسلته عليه. وكذلك ما
أنفذت الجوارح مقاتله قبل
قدرتك على ذكاته. وما
أدركته قبل إنفاذها لمقاتله لم
يؤكل إلا بذكاة.

Hunting for sport is disapproved, but if it is not for sport it is allowed. Any animal a trained dog or falcon is sent after to kill may be eaten. The same holds for an animal wounded in its vital parts by predatory animals before you could ritually slaughter it. Yet if you get to the animal before it is wounded in a vital part, it must be ritually slaughtered to be eaten.

وكل ما صدته بسهمك أو
رحمك فكله. فإن أدركت
ذكاته فذكه، وإن فات بنفسه
فكله إذا قتله سهمك ما لم
يبت عنك.

Any animal you shoot with an arrow or a spear you may eat; but if you reach it and can ritually slaughter it, do so. If it dies by itself, eat it, as long as your arrow killed it and a night has not passed before you find it.

وقيل إنما ذلك فيما بات عنك
مما قتلته الجوارح، وأما
السهم يوجد في مقاتله فلا
بأس بأكله.

Another opinion is that prey killed by predatory animals and found only after a whole night may not be eaten, but an animal killed by an arrow found in its vital parts [after a whole night] may be eaten.

ولا تؤكل الإنسية بما يؤكل
به الصيد.

The conditions which permit the eating of a hunted animal do not apply to domestic animals.

29.07 العقيقة

29.08 `Aqīqa immolations

والعقيقة سنة مستحبة. ويعق

The `aqīqa immolation of a sheep⁽¹⁷³⁾ made {83} for a new born child on its seventh day is a desirable sunna.

عن المولود يوم سابعه بشاة
بمثل ما ذكرنا من سن
الأضحية وصفتها. ولا
يحسب في السبعة الأيام
اليوم الذي ولد فيه. وتذبح
ضحوة. ولا يمس الصبي
بشيء من دمها. ويؤكل منها
ويتصدق. وتكسر عظامها.

The sheep must be of the same age and be slaughtered in the same manner as is required for a feast day immolation, as described above. The day the child was born is not counted among the seven. The animal should be slaughtered at mid-morning (*d ahwa*). The child should not be rubbed with any of its blood. Part of the animal is eaten and part is given in alms. Its bones are broken.

وإن حلق شعر رأس المولود
وتصدق بوزنه من ذهب أو
فضة فذلك مستحب حسن.

It is desirable and good to shave the hair of the child's head and give in alms the weight of the hair in gold or silver.

وإن خلق رأسه بخلوق بدلاً
من الدم الذي كانت تفعله
الجاهلية فلا بأس بذلك.

It is not bad for the child's head to be rubbed with perfume, instead of blood as the people of the Jāhiliyya used to do.

29.08 الختان

29.09 Circumcision (khiṭān)⁽¹⁷⁴⁾

والختان سنة في الذكور
واجبة. والخفاض في النساء
مكرمة.

Circumcision is an established sunna for males, and cliterectomy is respectable for women.

باب 30 في الجهاد

CHAPTER 30⁽¹⁷⁵⁾ JIHĀD (HOLY WAR)

30.01 وجوبه

30.01 How and when obligatory

والجهاد فريضة يحمله
بعض الناس عن بعض.

Jihād is an obligation which some people fulfil in place of others.

وأحب إلينا أن لا يقاتل العدو
حتى يدعوا إلى دين الله، إلا
أن يعاجلونا. فإما أن يسلموا
أو يؤدوا الجزية، وإلا
قوتلوا. وإنما تقبل منهم
الجزية إذا كانوا حيث تنالهم
أحكامنا. فأما إن بعدوا منا
فلا تقبل منهم الجزية إلا أن
يرتحلوا إلى بلادنا، وإلا
قوتلوا.

In our opinion, it is preferable not to fight the enemy until they are called to the religion of God, unless they precipitate [hostilities] towards us. When [they are called to the religion of God, they have the choice of] becoming Muslims or of paying the jizya;⁽¹⁷⁶⁾ otherwise war should be made on them. The jizya should be collected from them only if they live where our administration governs them. If they are far from us, no jizya should be collected from them unless they travel to our lands but war should be made on them.

والفرار من العدو من الكبائر إذا كانوا مثلي عدد المسلمين فأقل. فإن كانوا أكثر من ذلك فلا بأس بذلك.

Fleeing from the enemy is a major sin if they are twice the number of the Muslims or less. But if they are more than twice the number {84} of the Muslims it is not wrong to flee.

ويقاتل العدو مع كل بر وفاجر من الولاة.

All governors, whether of good or evil character, should be followed in fighting the enemy.

ولا بأس بقتل من أسر من الأعداء. ولا يقتل أحد بعد أمان، ولا يخفر لهم بعهد. ولا يقتل النساء ولا صبيان. ويجتنب قتل الرهبان والأخبار، إلا أن يقاتلوا. وكذلك المرأة تقتل إذا قاتلت.

It is not wrong to kill a non-Arab unbelieving prisoner, but no one is to be killed after being given a guarantee of safety (*amān*), and treaties with the enemy are not to be violated. Women and children are not to be killed; neither are monks or clergy unless they take part in the fighting. Likewise a woman may be killed if she takes part in the fighting.

ويجوز أمان أدنى المسلمين على بقيتهم، وكذلك المرأة والصبي إذا عقل الأمان. وقيل إن أجاز ذلك الإمام جاز.

The least [prominent] Muslim may give a guarantee of safety [binding] all other Muslims. So may a woman or a child, if she or he understands what a guarantee of safety is. Another opinion is that women and children may give a guarantee of safety only if the imām permits them.

30.02 الغنيمة

30.02 Booty (ghanīma)⁽¹⁷⁷⁾

وما غنم المسلمون بإيجاف فليأخذ الإمام خمسه ويقسم الأربعة الأقسام بين أهل الجيش. وقسم ذلك ببلد الحرب أولى. وإنما يخمس ويقسم ما أوجف عليه بالخيل والركاب وما غنم بقتال.

Of the booty Muslims take in the fray of battle the imām should take one fifth and divide the other four fifths among the members of the army. It is better to make this division on the site of the battle. The apportionment of a fifth and the division of spoils applies only to what was looted in the actual fighting of a battle in which horses and riding camels were used.⁽¹⁷⁸⁾

ولا بأس أن يؤكل من الغنيمة قبل أن يقسم الطعام، والعلف لمن احتاج إلى ذلك.

It is not wrong to eat some of the food taken as booty before it is divided, while fodder belongs to whoever needs it.

وإنما يسهم لمن حضر القتال أو تخلف عن القتال في شغل المسلمين من أمر جهادهم.

Booty is divided only among those who were present in the fighting or were absent because of service to the Muslims in the war effort.

ويسهم للمريض وللفرس

Shares are allotted to one who is sick and to a horse with a foot wound. Two shares are counted for the

الرهيص. ويسهم للفارس
سهمان، وسهم لراكبه. ولا
يسهم لعبد ولا لامرأة ولا
لصبي، إلا أن يطبق الصبي
الذي لم يحتلم القتال ويجيزه
الإمام ويقا، فيسهم له. ولا
يسهم للأجير إلا أن يقا.

horse and one for its rider. No share goes to a slave, a woman, or a minor, {85} except to a minor under the age of puberty who is capable of fighting, has the permission of the imām, and actually enters the battle. In that case he receives a share. A mercenary receives no share unless he takes part in the battle.

ومن أسلم من العدو على
شيء في يده من أموال
المسلمين فهو له حلال. ومن
اشترى شيئاً منها من مال
العدو لم يأخذه ربه إلا
بالثمن. وما وقع في المقاسم
منها فربه أحق به بالثمن.
وما لم يقع في المقاسم فربه
أحق به بلا ثمن.

If an enemy becomes Muslim and has in his possession something he had looted from Muslims, he may keep it. If someone buys from the enemy anything [looted from Muslims], the [rightful] owner may claim it only by paying its price. If anything which had been looted from Muslims [mistakenly] fell among the shares which were distributed, the owner has a right to claim the item by paying its price, but if the item is not yet distributed, the owner may claim it without paying anything.

ولا نفل إلا من الخمس على
الاجتهاد من الإمام، ولا
يكون ذكك قبل القسم.
والسلب من النفل.

No bonus (*nafal*)⁽¹⁷⁹⁾ should be given to anyone except what the imām might award for valor from his own fifth part. It is not to be given before the loot has been secured. Personal effects despoiled from the enemy (*salb*) are included among bonus items.

30.03 الرباط

30.03 Forts⁽¹⁸⁰⁾

والرباط فيه فضل كبير،
وذلك بقدر كثرة خوف أهل
ذلك الثغر وكثرة تحرزهم
من عدوهم.

Forts (*ribāt*) at landing places are very advantageous, the more so as the local people are in greater fear and are taking more precautions against the enemy.

30.04 الغزو

30.04 Raids

يغزى بغير إذن الأبوين، إلا
أن يفجأ العدو مدينة قوم
ويغيرون عليهم ففرض
عليهم دفعهم، ولا يستأذن
الأبوان في مثل هذا.

No one should go on a raid (*ghazw*) without permission from his parents. But if the enemy surprises a city and attacks its people, [all] are obliged to fight off the enemy, and permission from one's parents is not required.

باب 31 في الأيمان والنذور

CHAPTER 31⁽¹⁸¹⁾ OATHS AND VOWS

31.01 صفة اليمين

31.01 Form of an oath (yamīn)

ومن كان حالفاً فليحلف بالله أو ليصمت.

Someone who swears should swear by [the name of] God or keep silent.

ويؤدب من حلف بطلاق أو عتاق، ويلزمه، ولا ثنيا ولا كفارة إلا باليمين بالله عز وجل أو بشيء من أسمائه وصفاته.

Anyone who swears that if he does not keep his word he will dismiss his wife or free his slave should be punished, but this oath binds him. No escape clause⁽¹⁸²⁾ [in this oath] holds, and no atonement may be accepted [in place of fulfilling the oath], unless {86} the oath is made in [the name of] God or one of his names or attributes.

ومن استثنى فلا كفارة عليه، إذا قصد الاستثناء، وقال "إن شاء الله"، ووصلها بيمينه قبل أن يصمت. وإلا لم ينفعه ذلك.

If someone adds an escape clause, he need make no atonement [for not fulfilling his oath] if: 1) he intended to make an escape clause, 2) he said "God willing" (*in shā' Allāh*), and 3) he said this in continuation to his oath with no interval of silence otherwise the escape clause does not hold.

31.02 أنواع الأيمان

31.02 Kinds of oaths

والأيمان بالله أربعة. فيمينان تكفران، وهو (1) أن يحلف بالله إن فعلت أو (2) يحلف ليفعلن، ويمينان لا تكفران، (3) إحداهما لغو اليمين، وهو أن يحلف على شيء يظنه كذلك في يقينه، ثم يتبين له خلافه، فلا كفارة عليه ولا إثم، (4) والأخرى الحالف متعمداً للكذب أو شاكاً، فهو آثم، ولا تكفر ذلك الكفارة، وليتب من ذلك إلى الله سبحانه وتعالى.

Oaths made in [the name of] God are of four kinds. Two require atonement [for not fulfilling them]; these are to swear: 1) "By God, I will not do it",⁽¹⁸³⁾ or 2) [By God], certainly I will do it".⁽¹⁸⁴⁾ Two others do not require atonement: 3) One of these is a mistake (*laghw*) in the oath, that is, to swear to something thinking it is certainly so, and then find out that it is not so; no atonement is due for this, nor has any crime been committed. 4) The other is to swear to a statement while knowing that it is false, or while being in doubt of its truth. This is a crime, and is not atonable, but the person must repent of it to God.

31.03 الكفارة

31.03 Atonement (kaffāra)

والكفارة:

To atone [for not fulfilling an oath] one may:⁽¹⁸⁵⁾

1. إطعام عشرة مساكين من المسلمين الأحرار مداً لكل مسكين بمد النبي صلس. وأحب إلينا أن لو زاد على

1. feed ten free Muslim destitutes a muddu each at the muddu standard of the Prophet. In our opinion it is preferable to add another third or half to each muddu, as the fluctuating market price of the average food staple⁽¹⁸⁶⁾ permits. Even so, to give one muddu each

المد مثل ثلث مد أو نصف suffices.
مد، وذلك بقدر ما يكون من
وسط عيشهم في غلاء أو
رخص. ومن أخرج مداً
على كل حال أجزاءه.

2. clothe ten free Muslim destitutes. To do so, the atoner should give a tunic to each man, and a tunic and a veil to each woman.
2. وإن كساهم كساهم للرجل قميص، وللمرأة قميص وخمار.

3. free a slave who is a believer.
3. أو عتق رقبة مؤمنة.

4. If the atoner cannot do any of the previous things, he should fast three {87} consecutive days, yet his fast counts if the days are not consecutive.
4. فإن لم يجد ذلك ولا إطعاماً فليصم ثلاثة أيام يتابعهن، فإن فرقهن أجزاءه.

A person may make atonement before or after breaking his oath, but in our opinion it is preferable to make atonement afterwards. [\(187\)](#)
وله أن يكفر قبل الحنث أو بعده، وبعد الحنث أحب إلينا.

31.04 النذر

31.04 Vows (nadhr)

ومن نذر أن يطيع الله فليطعه. ومن نذر أن يعصي الله فلا يعصه، ولا شيء عليه. ومن نذر صدقة مال غيره أو عتق عبد غيره لم يلزمه شيء.

Someone who vows to do something which God commanded must do it, but someone who vows to do something which God forbade must not do it, and is not held to make an atonement. If someone vows to give something belonging to another in alms or to free someone else's slave, he is not held to do so.

ومن قال إن فعلت كذا فعلي نذر كذا وكذا لشيء يذكره من فعل البر من صلاة أو صوم أو حج وعمرة أو صدقة شيء سماه، فذلك يلزمه إن حنث، كما يلزمه لو نذره مجرداً من غير يمين. وإن لم يسم لنذره مخرجاً من الأعمال فعليته كفارة يمين.

If someone [making an oath] says: "If I do such and such, then I am under vow to do such and such", specifying a good deed like ṣalāt, fasting, the ḥajj or `umra pilgrimage, or a stated alms, he is bound to do the good deed if he breaks his oath, just as he would be bound to do the good deed if he had simply vowed to do it without making it part of an oath. If the person does not specify the work he is under vow to do if he breaks his oath, he must make an atonement for breaking the oath.

31.05 نذر معصية

31.05 Oaths and vows to do wrong

والحلفها

ومن نذر معصية من قتل
نفس أو شرب خمر أو شبهه
أو ما ليس بطاعة ولا
معصية فلا شيء عليه،
وليستغفر الله.

If someone vows to do something forbidden, such as killing a person or drinking wine, or something which God neither said to do nor forbade, he is not held to do it or to make atonement, but should ask God's forgiveness.

وإن حلف بالله ليفعلن
معصية، فليكفر عن يمينه،
ولا يفعل ذلك. وإن تجرأ
وفعله، أثم ولا كفارة عليه
ليمينه.

If someone, however, swears an oath by God to do something forbidden, he must make atonement for this oath, and not do what he swore to do. If he nevertheless goes ahead and does it he has committed a crime, but does not have to make atonement on account of his oath [to commit a crime].

31.06 ما يُفعل ببعض النذور والأحلاف

31.06 Fulfillment or atonement for various oaths and vows

ومن قال علي عهد الله
وميثاقه في يمين فحنت،
فعلية كفارتان. وليس على
من وكد اليمين فكررها في
شيء واحد غير كفارة
واحدة.

If someone says, while swearing an oath, "I am bound by the pact (*`ahd*) and the covenant (*mīthāq*) of God [if I do something], and breaks his oath, he must do two atonements. But if someone reinforces his oath and repeats it, yet swears only by one thing, he must do only one atonement.

ومن قال أشركت بالله أو هو
يهودي أو نصراني إن فعل
كذا فلا شيء عليه ولا يلزمه
غير الاستغفار.

If someone swears that if he does a certain thing he has taken other deities besides God or that he is a Jew or a Christian, {88} his oath does not hold, and he is bound only to ask pardon from God.

ومن حرم على نفسه شيئاً
مما أحل الله له فلا شيء
عليه، إلا في زوجته فإنها
تحرم عليه إلا بعد زوج.

If someone [swears to] forbid himself something which God has permitted, his oath does not hold, except if he does so with reference to his wife. She thereby becomes [divorced and] forbidden to him until after she is married [to and divorced from someone else].

ومن جعل ماله صدقة أو
هدياً أجزاءً ثلثه.

If someone [by oath or vow] promises to spend [all] his possessions in alms or gift sacrifices [to be made in Mecca], it suffices for him to pay a third.

ومن حلف بنحر ولده، فإن
ذكر مقام إبراهيم أهدى هدياً
يذبح بمكة، وتجزئه شاة.
وإن لم يذكر المقام فلا شيء
عليه.

If someone swears [or vows] to immolate his son at the station of Abraham,⁽¹⁸⁸⁾ he should slaughter an animal in Mecca as a gift immolation; a sheep suffices. But if [in his oath or vow] he did not mention the station of Abraham, he is not bound to do anything.

31.07 An oath or vow to go to Mecca⁽¹⁸⁹⁾

31.07 حلف بالمشي إلى مكة

ومن حلف بالمشي إلى مكة فحنت فعليه المشي من موضع حلفه. فليمش إن شاء في حج أو عمرة. فإن عجز عن المشي ركب، ثم يرجع ثانية إن قدر فيمشي أماكن ركوبه. فإن علم أنه لا يقدر، قعد وأهدى. وقال عطاء: لا يرجع ثانية، وإن قدر ويجزئه الهدى.

If someone swears to walk to Mecca [if he does or omits something], and breaks his oath, he is held to go walking on a ḥajj or an `umra pilgrimage, as he chooses, starting from the place where he made the oath. If he is unable to walk he should ride. Then he should return on a second pilgrimage if he can, walking the stretches he had ridden before.⁽¹⁹⁰⁾ But if he knows that he cannot return, he should make a gift immolation instead, and stay home. `Atā' [ibn-abī-Rabāh]⁽¹⁹¹⁾ said that even if the person is able, he does not have to return for a second pilgrimage, but may make a gift sacrifice instead.

وإذا كان ضرورة جعل ذلك في عمرة. فإذا طاف وسعى وقصر، أحرم من مكة بفريضة، وكان متمتعاً. والحلاق في غير هذا أفضل، وإنما يستحب له التقصير في هذا استبقاء للشعث في الحج.

If the person who swore to walk to Mecca is going for the first time, he should make this visit an `umra pilgrimage. When he has made the circumambulation and the jogging [between aṣ-Ṣafā and l-Marwa] and has shortened his hair, he must then, at Mecca, put himself in the state of consecration to fulfil the obligation of the ḥajj pilgrimage, thus joining the two pilgrimages by way of tamattu`. Ordinarily it is better to shave one's head [after a pilgrimage], but, in our opinion, one who swore to walk to Mecca should preferably shorten his hair only, in order to leave some hair for the ḥajj pilgrimage.

ومن نذر مشياً إلى المدينة أو إلى بيت المقدس، أتاها راكبياً إن نوى الصلاة بمسجديها، وإلا فلا شيء عليه.

Someone who vowed to walk to Medina or Jerusalem may ride to these places if he intended to do ṣalāt in their mosques. but if he did not make such an intention, he is not held to do anything.

وأما غير هذه الثلاثة مساجد فلا يأتيها ماشياً ولا راكبياً لصلاة نذرهن وليصل بموضعه.

If someone vows to go and do ṣalāt in any other mosque than these three, {89} he is not held to go, whether by walking or riding, but should do the ṣalāt where he is.⁽¹⁹²⁾

31.09 نذر الرباط

31.08 Vow to service a fort⁽¹⁹³⁾

ومن نذر رباطاً بموضع من الثغور فذلك عليه أن يأتيه.

If someone vows to service a fort at some landing place, his vow binds him.

CHAPTER 32 MARRIAGE AND FORMS OF DIVORCE

باب 32 في النكاح والطلاق والرجعة والظهار والإيلاء واللعان والخلع والرضاع

32.01 شروط النكاح

ولا نكاح إلا بولي وصدّق وشاهدي عدل. فإن لم يشهد في العقد فلا يبني بها حتى يشهدا.

وأقل الصداق ربع دينار.

32.01 Constituents of marriage (nikāḥ)

No marriage is valid without a matrimonial guardian (*walī*),⁽¹⁹⁴⁾ a dower (*ṣadāq*),⁽¹⁹⁵⁾ and two witnesses of good character. If the witnesses were missing, the marriage may not be consummated until they witness the contract.

The minimum amount a dower can be is one quarter of a *dīnār*.

32.02 حق الوالي

وللأب إنكاح ابنته البكر بغير إذنها، وإن بلغت، وإن شاء شاورها. وأما غير الأب في البكر وصي أو غيره فلا يزوجه حتى تبلغ وتأذن. وإذنها صماتها.

ولا يزوج الثيب أب ولا غيره إلا برضاها، وتأذن بالقول.

ولا تنكح المرأة إلا بإذن وليها أو ذي الرأي من أهلها كالرجل من عشيرتها أو السلطان. وقد اختلف في الدنية أن تولي أجنبياً.

والابن أولى من الأب، والأب أولى من الأخ، ومن قرب من العصابة أحق. وإن زوجها البعيد مضى ذلك.

وللوصي أن يزوج الطفل

32.02 Power of matrimonial guardian

A father may give his unmarried daughter (*bikr*)⁽¹⁹⁶⁾ in marriage without her consent, even if she has reached puberty. But if he wishes, he may consult her. Someone other than her father, like a testamentary guardian (*waṣī*), may not give her in marriage until she has reached puberty and has given her consent. Her silence is taken as giving consent.

Neither a father nor anyone else may give in marriage a daughter of his who was married before (*thayyib*)⁽¹⁹⁷⁾ against her will; she must give her consent orally.

A lady may not be married without the permission of 1) her matrimonial guardian, or 2) a judicious person among her people, such as a man of her tribe, or 3) the sultan. There is a difference of opinion as to whether a woman of lower class may authorize a stranger to act as her matrimonial guardian.⁽¹⁹⁸⁾

[As for precedence among matrimonial guardians of a previously married woman], her son comes before her father, and her father before her brother; thereafter whoever is nearest among her agnate relations has greater right. But if someone further removed gives her in marriage, the marriage is valid.

A testamentary guardian may give in marriage a minor

في ولايته. ولا يزوج
الصغيرة إلا أن يأمره الأب
بانكاحها.

boy in his charge, but not a minor girl, unless her
father authorized him to do so.

وليس ذوو الارحام من
الاولياء، والاولياء من
العصبة.

{90} Only agnates, and not cognates, can be
matrimonial guardians.

32.03 المنافسة

32.03 Competition among suitors

ولا يخطب أحد على خطبة
أخيه، ولا يسوم على سومه،
وذلك إذا ركنا وتقاربا.

A man may not seek in marriage a girl already
betrothed to another, just as he may not outbid another
when the bargaining partners are satisfied and near
agreement on a sale. ⁽¹⁹⁹⁾

32.04 من يمنع أن يتزوج

32.04 Forbidden types of marriage

ولا يجوز نكاح الشغار وهو
البضع بالبيع، ولا نكاح
بغير صداق، ولا نكاح
المتعة وهو النكاح إلى أجل،
ولا النكاح في العدة، ولا ما
جر إلى غرر في عقد أو
صداق، ولا بما لا يجوز
بيعه.

Forbidden are: 1) a shighār marriage, that is, one in
which a girl [in one man's charge] is given in exchange
for a girl [in another man's charge without a dower], 2)
a marriage without a dower, 3) a mut`a marriage, that
is, one for a limited time, ⁽²⁰⁰⁾ and 6) a dower
consisting of something which may not be sold.

وما فسد من النكاح لصدائه
فسخ قبل البناء، فإن دخل بها
مضى وكان فيه صداق
المثل.

A marriage which is invalid (*fāsid*) by reason of the
dower is to be dissolved if the marriage has not been
consummated. If it has been consummated, the
marriage holds, but the man must pay a fitting dower.

وما فسد من النكاح لعقده
وفسخ بعد البناء ففيه
المسمى، وتقع به الحرمة
كما تقع بالنكاح الصحيح،
ولكن لا تحل به المطلقة
ثلاثا، ولا يحصن به
الزوجان.

If a marriage is invalid by reason of the contract and is
dissolved after consummation, the woman must be
paid the dower which had been fixed. Moreover, as a
result forbidden relationships are established [with her
relatives], just as is the case after the dissolution of a
valid marriage; only this invalid marriage does not
make a woman free to remarry a previous husband
who had divorced her by three declarations, nor does it
make the parties maritally restricted (*muḥṣan*). ⁽²⁰¹⁾

32.05 من حرم من

32.05 Forbidden degrees

النساء

وحرّم الله سبحانه من النساء

God has forbidden marriage with seven classes of

سبعا بالقرابة وسبعا بالرضاع والصحير، فقال عزوجل: "حرمت عليكم أمهاتكم وبناتكم وأخواتكم وعماتكم وخالاتكم وبنات الاخ وبنات الاخت" (النساء: 23)، فهؤلاء من القرابة واللواتي من الرضاع والصحير.

قوله تعالى: "وأمهاتكم اللاتي أرضعنكم وأخواتكم من الرضاعة وأمهات نسائك وربائبكم اللاتي في حجوركم من نسائك اللاتي دخلتم بهن فإن لم تكونوا دخلتم بهن فلا جناح عليكم وحلائل أبنائكم الذين من أصلابكم، وأن تجمعوا بين الاختين إلا ما قد سلف" وقال تعالى: "ولا تنكحوا ما نكح آباؤكم من النساء" (النساء 22).

وحرم النبي (ص) بالرضاع ما يحرم من النسب، ونهى أن تنكح المرأة على عمتها أو خالتها.

فمن نكح امرأة حرمت بالعقد دون أن تمس على آباءه وأبنائه، وحرمت عليه أمهاتها، ولا تحرم عليه بناتها حتى يدخل بالام أو يتلذذ بها بنكاح أو ملك يمين أو بشبهة من نكاح أو ملك.

ولا يحرم بالزنى حلال.

women because of blood relationship (*qarāba*), and seven more because of wet-nursing or marriage relationships. God said: "Forbidden to you are 1) your mothers, 2) your daughters, 3) your sisters, 4) your paternal aunts, 5) your maternal aunts, 6) your brother's daughters, and 7) your sister's daughters" (Qur'ān 4:23); these are blood relatives.

As for those related by wet-nursing or marriage, God added: "1) your mothers by wet-nursing, 2) your sisters by having had the same wet-nurse, {91} 3) your mothers-in-law, 4) your stepdaughters (*rabība*) living in your house with whose mothers you have had sexual relations; but if you have not had relations with their mothers, the daughters are not forbidden to you. Also forbidden are 5) your daughters-in-law (*ḥalīla*), that is, wives of your physical [not adopted] sons, and 6) your wife's sister, unless you married her before [you became a Muslim]" (Qur'ān 4:23).

The Prophet, moreover, forbade marriage with women of any blood relationship (*nasab*) to one's wet-nurse which would be forbidden if the wet-nurse were the person's real mother. he also forbade marriage with a woman together with her paternal or maternal aunt.

If a man has married a woman, even if he never touched her, it is forbidden by the very contract for his male ascendants or descendants ever to marry her. For the man's part, he may never marry her female ascendants, but her daughters [from a previous husband] are not forbidden to him until he has had intercourse or other sexual pleasure with her by right of marriage or ownership, even a putative marriage or ownership.

A woman a man may legitimately marry does not become forbidden because of his illicit intercourse (*zinā'*) [with her mother or daughter].

32.06 من ليست بمسلمة 06

وحرّم الله سبحانه وطئ الكوافر ممن ليس من أهل الكتاب بملك أو نكاح، ويحل وطئ الكتابيات بالملك، ويحل وطئ حرائرهن بالنكاح، ولا يحل وطئ إمائهن بالنكاح لحر ولا لعبد.

32.07 مع عبد أو أمة 07

ولا تتزوج المرأة عبدها ولا عبد ولدها، ولا الرجل أمة ولا أمة ولدته، وله أن يتزوج أمة والده وأمة أمه.

وله أن يتزوج بنت امرأة أبيه من رجل غيره، وتتزوج المرأة ابن زوجة أبيها من رجل غيره.

32.08 عدد النساء 08

ويجوز للحر والعبد نكاح أربع حرائر مسلمات أو كتابيات، وللعبد نكاح أربع إماء مسلمات، وللحر ذلك إن خشي العنت ولم يجد للحرائر طولاً.

32.09 حقوق المرأة 09

وليعدل بين نسائه، وعليه النفقة والسكنى بقدر وجده،

ولا قسم في المبيت لامته ولا لام ولده،

ولا نفقة للزوجة حتى يدخل بها أو يدعى إلى الدخول،

32.06 Intercourse with non-Muslim women

God forbade sexual intercourse with unbelieving women whether by right of ownership or of marriage, except if they are Jews or Christians (*ahl al-kitāb*).⁽²⁰³⁾ Intercourse is permitted with Jewish or Christian women by owning them as slaves or by marrying them if they are free. But neither a free nor a slave Muslim man may marry and thereby have intercourse with a Jewish or Christian slave woman.⁽²⁰⁴⁾

32.07 Marriage to slaves and stepmother's children

A woman is not allowed to marry her slave nor the slave of her son or daughter. Neither is a man permitted to marry his slave woman or his son's or daughter's slave woman. But he may marry a slave woman belonging to his father or mother.

A man may marry the daughter to one of his father's other wives by {92} a different husband than his father. [Thus also] a woman may marry the son to one of her father's other wives by a different husband.

32.08 Number and condition of wives

A free man or a slave may marry four free women, whether Muslim Jewish or Christian. A slave may marry four Muslim slave women; a free man may do so also if he fears committing illicit intercourse (*`anat*) and cannot raise the dower to marry a free woman.⁽²⁰⁵⁾

32.09 A man's duties towards his wives

A man must practice equality with his wives, and give them maintenance (*nafaqa*) and lodging according to his ability.

A slave woman, even if she has borne her master a child, has no right to a regular turn at spending the night with him.

Support is not due until the man has had intercourse with his wife, or has been invited to do so and she is

capable of intercourse. وهي ممن يوطأ مثلها.

32.10 نكاح التفويض

ونكاح التفويض جائز وهو أن يعقداه ولا يذكران صداقا، ثم لا يدخل بها حتى يفرض لها فإن فرض لها صداق المثل لزمها.

وإن كان أقل فهي مخيرة، فإن كرهته فرق بينهما إلا أن يرضيها أو يفرض لها صداق مثلها فيلزمها.

32.11 تبديل الدين

وإذا ارتد أحد الزوجين انفسخ النكاح بطلاق، وقد قيل بغير طلاق.

وإذا أسلم الكافران ثبتا على نكاحهما، وإن أسلم أحدهما فذلك فسخ بغير طلاق.

فإن أسلمت هي كان أحق بها إن أسلم في العدة.

وإن أسلم هو وكانت كتابية ثبت عليها، فإن كانت مجوسية فأسلمت بعده مكانها كانا زوجين، وإن تأخر ذلك فقد باننت منه.

وإذا أسلم مشرك وعنده أكثر من أربع فليختر أربعاً ويفارق باقيهن.

32.12 بعض العوائق

ومن لاعن زوجته لم تحل له أبداً، وكذلك الذي يتزوج

32.10 A tafwīḍ marriage

A tafwīḍ marriage⁽²⁰⁶⁾ is permitted. It is one which the parties contract without mentioning the dower. But the man may not have intercourse with the woman until he gives it to her.

If the man gives her a fitting dower (*ṣadāq al-mithl*) she must take it, but if the dower is less she has the choice of accepting it or not. If she refuses it the two are to be separated, unless he persuades her to agree or decides to give her a fitting dower. If he does so, she must accept it.

32.11 Effects of change of religion

If one party to a marriage abandons Islam, the marriage is dissolved by repudiation (*ṭalāq*), although, according to another opinion, repudiation is not required for dissolution.

If two unbelieving parties to a marriage become Muslim, they should continue in their marriage. If only one of them becomes a Muslim the marriage is dissolved automatically, without repudiation.⁽²⁰⁷⁾

If a woman becomes a Muslim and her husband subsequently becomes Muslim during her `idda period, he has first claim to have her in marriage.

If a man becomes a Muslim and his wife is a Jew or a Christian, he should keep her. If she was a Magi and became a Muslim {93} right after her husband, they remain married, but if she delays⁽²⁰⁸⁾ in becoming Muslim she must be separated from him.

If a polytheist becomes a Muslim and has more than four wives, he must choose four and dismiss the rest.

32.12 Various impediments

Someone who curses his wife for adultery shall never marry her again. The same holds for someone who marries and has intercourse with a woman during her

المرأة في عدتها ويطؤها في عدتها.
`idda period.

ولا نكاح لعبد ولا لأمة إلا أن يأذن السيد.
A slave man or woman may not marry without the permission of his or her master.

ولا تعقد امرأة ولا عبد ولا من على غير دين الاسلام نكاح امرأة.
No woman, or slave, or non-Muslim shall contract marriage for a woman.

ولا يجوز أن يتزوج الرجل امرأة ليحلها لمن طلقها ثلاثا ولا يحلها ذلك.
A man is not permitted to marry a woman in order to make it legitimate for her former husband to remarry her after having repudiated her by three declarations, nor does such a marriage in fact make it legitimate for the former husband to marry her.

ولا يجوز نكاح المحرم لنفسه ولا يعقد نكاحا لغيره.
Someone in the state of consecration for pilgrimage shall not himself marry, nor shall he contract a marriage on behalf of someone else.

32.13 المرض

32.13 Sickness

ولا يجوز نكاح المريض ويفسخ وإن بنى بها فلها الصداق في الثلث مبدأ، ولا ميراث لها.
A man who has a terminal illness may not marry. If he does so, the marriage should be dissolved. Yet if he has consummated it [and dies], his wife has a right to the dower for the disposable third of his estate in preference to his legatees, but she has no right of inheritance.⁽²⁰⁹⁾

ولو طلق المريض امرأته لزمه ذلك وكان لها الميراث منه إن مات في مرضه ذلك.
If a [terminally] sick man divorces his wife he is bound by this action, but she retains the right of inheriting from him if he dies during this illness.

32.14 الطلاق والرجعة

32.14 Repudiation (ṭalāq) and its revocation (raj`a)⁽²¹⁰⁾

ومن طلق امرأته ثلاثا لم تحل له بملك، ولا نكاح حتى تنكح زوجا غيره.
If someone repudiates his wife by three declarations, he is forbidden to have relations with her again by right of ownership or of marriage, except after she has been married to [and divorced from] someone else.

وطلاق الثلاث في كلمة واحدة بدعة ويلزمه إن وقع.
To repudiate a wife by three declarations made at one time is an unwarranted innovation (*bid`a*), but holds if it is done.

وطلاق السنة مباح. وهو أن يطلقها في طهر، لم يقربها فيه طلقة، ثم يتبعها طلاقا
To repudiate one's wife in accord with sunna practice is allowed (*mubāḥ*).⁽²¹¹⁾ This means that the husband repudiates her 1) while she is in a state of purity [from menstruation] and 2) he has not approached her sexually during this period. 3) The declaration should

حتى تنقضي العدة.

وله الرجعة في التي تحيض ما لم تدخل في الحيضة الثالثة في الحرة أو الثانية في الأمة.

فإن كانت ممن لم تحض أو ممن قد بيئت من المحيض طلقها متى شاء، وكذلك الحامل.

وترجع الحامل ما لم تضع، والمعتدة بالشهور ما لم تنقض العدة والاقراء هي الاطهار.

وينهى أن يطلق في الحيض فإن طلق لزمه، ويجبر على الرجعة ما لم تنقض العدة.

والتي لم يدخل بها يطلقها متى شاء.

والواحدة تبينها. والثلاث تحرمها إلا بعد زوج.

ومن قال لزوجته أنت طالق فهي واحدة حتى ينوي أكثر من ذلك.

32.15 الخلع

والخلع طلقة لا رجعة فيها وإن لم يسم طلاقا إذا أعطته شيئا فخلعها به من نفسه.

32.16 أنواع الطلاق

ومن قال لزوجته: أنت طالق

be a single one, and 4) he should not make a second declaration of repudiation until her `idda period [following the first declaration] has transpired.

{94} If a woman has menstruations, her husband may revoke his epudiation of her⁽²¹²⁾ as long as she has not begun her third menstruation, in the case of a free woman, or her second, in the case of a slave woman.

If a woman is not menstruating for the time being, or has ceased altogether, her husband may repudiate her whenever he wishes. The same is true of a pregnant woman.

The repudiation of a pregnant woman may be revoked any time before she delivers. So may that of a woman who is observing an `idda period by months [rather than by menstruations], until the end of her `idda period. The word "qur" (Qur'ān 2:228)⁽²¹³⁾ means the state of purity [between menstruations].

A man is forbidden to repudiate his wife while she is menstruating. If he does so he is bound by his act, but he should be compelled to revoke his repudiation as long as her `idda period has not transpired.

If a man has not had intercourse with his wife, he may repudiate her whenever he wishes.

One declaration suffices to put her away, while three make it forbidden for him to remarry her unless she is subsequently been married to someone else.

If a man says to his wife "you are repudiated" (*anti tāliq*), this is counted as one declaration unless he intended more than that.

32.15 Release (khul')⁽²¹⁴⁾

Release does not admit of revocation. It takes place even if the man does not mention the word repudiation, by the fact that his wife gives him something on the basis of which he releases her from [marriage to] himself.

32.16 Formulas of repudiation

If someone says to his wife "You are repudiated once

البتة فهي ثلاث دخل بها أو لم يدخل.

and for all" (*anti tāliq al-batta*), this is taken as three declarations, whether he had intercourse with her or not.

وإن قال برية أو خلية أو حرام أو حبلك على غارك فهي ثلاث في التي دخل بها وينوى في التي لم يدخل بها.

If he says "You are free" or "set loose" or "forbidden [to me]" or "You have free rein", this is taken as three declarations if he has had intercourse with her, but if he has not, [in order for his statement to be equivalent to three declarations], he must declare his having intended it to be so.

32.17 حقوق المطلقة

32.17 Rights of repudiated wives

والمطلقة قبل البناء لها نصف الصداق إلا أن تعفو عنه هي إن كانت ثيبا، وإن كانت بكرا فذلك إلى أبيها، وكذلك السيد في أمته.

A woman who is repudiated before her husband consummated the marriage has a right to half the dower, unless, having been married before (*thayyib*), she chooses to renounce it. If she was not married before (*bikr*), the choice of renouncing half the dower belongs to her father, or to her master if she is a {95} slave.

ومن طلق فينبغي له أن يمتع ولا يجبر، والتي لم يدخل بها وقد فرض لها فلا متعة لها ولا للمختلعة.

Someone who divorces his wife must give her a severance award (*mut`a*),⁽²¹⁵⁾ but is not to be forced to do so. If he has not had intercourse with her and has given her [half] the dower, he need not give her a severance award. Neither must he give a severance award to a woman who obtained a release (*khul`*) from him.

32.18 حقوق أرملة التي لم يفرض لها

32.18 Rights of wives on death of husband in a tafwīḍ marriage

وإن مات عن التي لم يفرض لها ولم يبين بها فلها الميراث ولا صداق لها، ولو دخل بها كان لها صداق المثل إن لم تكن رضيت بشئ معلوم.

If a man dies leaving a wife for whom he has not paid the dower nor had intercourse with, she has a right to [a wife's portion of] the inheritance, but not to a dower. If he had intercourse with her, she receives a fitting dower (*ṣadāq al-mithl*), unless she had settled for another definite payment [which is lower].

32.19 إلغاء الزواج على نقص بدني

32.19 Physical grounds for dissolution

وترد المرأة من الجنون والجذام والبرص وداء الفرج، فإن دخل بها ولم يعلم ودى صداقها ورجع به على أبيها، وكذلك إن زوجها أخوها، وإن زوجها ولي

A woman who is found to be demented, leprous with mutilation (*judhām*) or whiteness (*baraṣ*), or having a genital ailment may be returned. If the man had intercourse with her not knowing her condition, he must pay her the dower, but may recover it from her father or her brother, if her brother gave her in marriage. But if a guardian not closely related to her gave her in marriage, the husband may not claim

ليس بقريب القرابة فلا شيء عليه، ولا يكون لها إلا ربع دينار.

anything from him, and the woman is entitled only to one quarter of a dīnār.

ويؤخر المعترض سنة فإن وطئ وإلا فرق بينهما إن شاءت.

If a man is impotent he should be given a year [to see if he gets better]. If he succeeds in having intercourse with his wife, [she must remain with him]; otherwise she may have a divorce if she wishes.

32.20 A missing husband

والمفقود يضرب له أجل أربع سنين من يوم ترفع ذلك وينتهي الكشف عنه، ثم تعتد كعدة الميت ثم تتزوج إن شاءت ولا يورث ماله حتى يأتي عليه من الزمان ما لا يعيش إلى مثله.

A missing husband (*mafqūd*) should be given four years [to reappear], beginning after his wife reports the matter and the search for him ends. Then she enters an `idda period the same as for a dead husband, and afterwards may marry if she wishes. But his estate is not given in inheritance until his presumed life-span has elapsed. ⁽²¹⁶⁾

32.21 During `idda period

ولا تخطب المرأة في عدتها ولا بأس بالتعريض بالقول المعروف.

A woman may not be betrothed during her `idda period. But it is not wrong for her to be courted with respectable language.

32.22 Newly weds

ومن نكح بكرا فله أن يقيم عندها سبعا دون سائر نسائه وفي الثيب ثلاثة أيام.

Someone who marries a previously unmarried woman (*bikr*) may spend seven nights with her to the exclusion of his other wives. If she was married before (*thayyib*), he may spend three nights with her.

32.23 Forbidden degrees among slave women ⁽²¹⁷⁾

ولا يجمع بين الاختين في ملك اليمين في الوطئ، فإن شاء وطئ الأخرى فليحرم عليه فرج الأولى ببيع أو كتابة أو عتق وشبهه مما تحرم به.

A man may not have intercourse with two sisters whom he owns. If he wishes to have intercourse with the second one, he must put the first one in a forbidden relationship to himself by selling her, giving her a writ allowing her to purchase her freedom (*kitāba*), freeing her outright, or giving her any like status in which she is forbidden to him.

ومن وطئ أمة بملك لم تحل له أمها ولا ابنتها وتحرم على أبائه وأبنائه كتحریم

Someone who has had intercourse with a slave woman is forbidden to do so with her mother or her daughter. The woman is also forbidden to his male ascendants and descendants, in the same way as if he had married

النكاح. her.

32.24 Repudiation by a slave, a minor, or a wife

والطلاق بيد العبد دون السيد. A slave may repudiate his wife without his master's say.

ولا طلاق لصبي. A minor boy may not repudiate at all.

والمملكة والمخيرة لهما أن يقضيا ما دامتا في المجلس. A woman whom her husband has given the authority (*tamlīk*) or the option (*takhyīr*) [to declare a repudiation] may do so as long as the two are in the same session. [\(218\)](#)

وله أن يناكر المملكة خاصة فيما فوق الواحدة. The man may renege on having given her authority to do so, especially to make more than one declaration of repudiation.

وليس لها في التخيير أن تقضي إلا بالثلاث، ثم لا نكرة له فيها. If he gave her the option of declaring a repudiation, she may effect a divorce only by three declarations; after that he may not renege on the option he gave her.

32.25 An oath of abstinence (ilā')

32.25 An oath of abstinence (ilā') [\(219\)](#)

وكل حالف على ترك الوطئ أكثر من أربعة أشهر فهو مول، ولا يقع عليه الطلاق إلا بعد أجل الإيلاء، وهو أربعة أشهر للحر وشهران للعبد حتى يوقفه السلطان. Any husband who swears to leave off having intercourse for more than four months is an abstainer. He is subject to repudiation only after a determined period of abstinence has transpired. This is four months if the man is free, and two months if he is a slave. The sultan should then give him an ultimatum to resume having intercourse [or be divorced]. [\(220\)](#)

32.26 Declaring a wife forbidden (izhār)

32.26 Declaring a wife forbidden (izhār)

ومن تظاهر من امرأته فلا يطؤها حتى يكفر بعق رقبة مؤمنة سليمة من العيوب ليس فيها شرك ولا طرف من حرية، فإن لم يجد صام شهرين متتابعين، فإن لم يستطع أطعم ستين مسكينا مدين لكل مسكين. Anyone who declares his wife forbidden [\(221\)](#) may not have intercourse with her until he atones for this by freeing a believing slave girl who has no physical defect, is not partly owned by others, nor is in the process of being freed. If he cannot do this, he should fast two consecutive months. If he cannot fast, he should free sixty destitute people a muddu each.

ولا يطؤها في ليل أو نهار. The man may not have intercourse with her night or day until his atonement is completed. {97} If he does

حتى تنقضي الكفارة، فإن فعل ذلك فليتب إلى الله عزوجل، فإن كان وطؤه بعد أن فعل بعض الكفارة بإطعام أو صوم فليبتدئها.

ولا بأس بعق الاور في الظهار وولد الزنى ويجزئ الصغير ومن صلى وصام أحب إلينا.

have intercourse with her before time, he must repent to God. If he has intercourse with her after doing part of his quota of feeding the destitute or fasting, he should start his atonement over again.

To atone for declaring one's wife forbidden there is no harm in freeing a one-eyed slave or a bastard. To free a minor also suffices, but in our opinion it is preferable to free one who does ṣalāt and fasts.

32. 27 اللعان

32.27 Cursing for adultery (li`ān)⁽²²²⁾

واللعان بين كل زوجين في نفي حمل يدعى قبله الاستبراء أو رؤية الزنى كالمروود في المكحلة، واختلف في اللعان في القذف.

A cursing for adultery shall take place between the spouses 1) when the man denies paternity for his wife's pregnancy, provided he claims separation from the time of ascertaining her menstruation (*istibrā'*) until her pregnancy, or 2) when the man sees his wife in the act of adultery [with her lover's penis in her vagina] as a kohl dying stick in its case. There is a difference of opinion on whether cursing for adultery on the basis of an accusation without evidence (*qadhf*) is allowed.⁽²²³⁾

وإذا افترقا باللعان لم يتناكحا أبدا

If the couple is separated as a result of cursing for adultery they shall never marry each other again.

ويبدأ الزوج فيلتعن أربع شهادات بالله، ثم يخمس باللعنة، ثم تلتعن هي أربعاً أيضاً، وتخمس بالغضب كما ذكر الله سبحانه وتعالى.

In cursing for adultery, the husband begins by testifying in the name of God against his wife four times; the fifth time he curses [himself if he does not speak the truth]. Then the wife curses by testifying to the contrary four times; the fifth time she invokes the anger of God [against herself if the accusation is true], as God instructed [in Qur'ān 24:6-9].

وإن نكلت هي رجمت إن كانت حرة محصنة بوطئ تقدم من هذا الزوج أو زوج غيره، وإلا جلدت مائة جلدة.

If the wife refuses to testify, she should be stoned provided she is free and maritally restricted (*muḥṣan*) by having had intercourse with this husband or a previous husband; if she is not maritally restricted, she should be given one hundred lashes.

وإن نكل الزوج جلد حد القذف ثمانين، ولحق به الولد.

If the man refuses to testify [after accusing his wife of adultery], he should be given eighty lashes, the number fixed for an accusation without evidence (*qadhf*) and the child is considered his.

32. 28 الخلع

32.28 Release (khul')⁽²²⁴⁾

وللمرأة أن تفتدي من زوجها

A woman may redeem herself from her husband by

بصداقها أو أقل أو أكثر إذا لم يكن عن ضرر بها، فإن كان عن ضرر بها رجعت بما أعطته ولزمه الخلع.

giving back her dower or a sum more or less than it, ⁽²²⁵⁾ unless her leaving is because of some harm done to her. In that case she may reclaim what she had given her husband, and he must still release her.

والخلع طلقة لا رجعة فيها إلا بِنكاح جديد برضاها.

Release is a repudiation which does not admit of revocation, except after a new marriage which the woman has contracted of her own accord. ⁽²²⁶⁾

32. 29 الطلاق في العبيد

32.29 Divorce of slaves

والمعتقة تحت العبد لها الخيار أن تقيم معه أو تفارقه.

If a woman is freed from slavery and has had a slave husband, she has the {98} choice of remaining with him or separating from him.

ومن اشترى زوجته انفسخ نكاحه.

If someone buys his slave wife, his marriage to her is automatically voided. ⁽²²⁷⁾

وطلاق العبد طلقتان وعدة الامة حيضتان.

A slave repudiates his wife [definitively] by [only] two declarations, while the `idda period of a slave woman is only two menstruations.

وكفارات العبد كالحر بخلاف معاني الحدود والطلاق.

The atonements a slave must do are the same as those for a free man. But the fixed punishments for crime and the number of declarations required for a [definitive] divorce are not the same. ⁽²²⁸⁾

32. 30 الرضء

32.30 Wet-nursing relationship (riḍā`)

وكل ما وصل إلى جوف الرضيع في الحولين من اللبن، فإنه يحرم وإن مصة واحدة، ولا يحرم ما أرضع بعد الحولين إلا ما قرب منهما كالشهر ونحوه. وقيل والشهرين، ولو فصل قبل الحولين فصلا استغنى فيه بالطعام لم يحرم ما أرضع بعد ذلك.

Any milk which reaches the stomach of a child during its two year nursing span makes marriage forbidden between the child and children nursed by the same woman during the same period, even if they were given only one suck. But marriage is not forbidden between him and children nursed after the two year period unless they were nursed closely after the two years, say by a month; another opinion holds for two months. If the child is weaned before two years, so that he eats food instead of being nursed, any milk he happens to suck thereafter does not cause an unmarriageable relationship [to other children the woman is nursing].

ويحرم بالوجور والسعوط.

Nursing by pouring the milk into the child's mouth or nose effects the same prohibitions of marriage as normal nursing.

ومن أرضعت صبيا فبنات

If a woman nurses a boy, her daughters and her [present] husband's daughters [by other wives],

تلك المرأة وبنات فعلها ما تقدم أو تأخر إخوة له ولاخيه نكاح بناتها.

whether born before or after the boy, are his sisters, but his blood brother may marry them.

باب 33
في العدة والنفقة
والاستبراء

CHAPTER 33 'IDDA AND ISTIBRĀ' PERIODS, AND SUPPORT

33.01 عدة المطلقة

33.01 `Idda for divorcees

وعدة الحرة المطلقة ثلاثة قروء كانت مسلمة أو كتابية، والامة ومن فيها بقية رفق قرءان كان الزوج في جميعهن حرا أو عبدا، والاقراء هي الاطهار التي بين الدمين.

The `idda period for a free woman, whether Muslim or Jewish or Christian, is three qur' periods.⁽²²⁹⁾ For a slave woman or one in the process of being freed it is two qur' periods. The fact that the husband is free or a slave makes no difference. A qur' is the clean period between menstruations.

فإن كانت ممن لم تحض أو ممن قد بيئت من المحيض فثلاثة أشهر في الحرة والامة.

If the woman is not menstruating for the time being or has ceased altogether, {99} three months should be counted, whether she is free or a slave.

وعدة الحرة المستحاضة أو الامة في الطلاق سنة.

The `idda period after repudiation for a free or slave woman who is menorrhagic (*mustahāda*) is one year.

وعدة الحامل في وفاة أطلاق وضع حملها كانت حرة أو أمة أو كتابية.

The `idda period for a pregnant woman after her husband's death or after repudiation ends with her delivery, whether she is free or a slave, or Jewish or Christian.

والمطلقة التي لم يدخل بها لا عدة عليها.

A repudiated woman with whom her husband has not had intercourse is not held to an `idda period.⁽²³⁰⁾

33.02 عدة الأرملة

33.02 `Idda for widows

وعدة الحرة من الوفاة أربعة أشهر وعشر كانت صغيرة أو كبيرة دخل بها أو لم يدخل مسلمة كانت أو كتابية.

The `idda period for a free woman after the death of her husband is four months and ten nights, no matter whether she is a minor or an adult, or whether her husband had intercourse with her or not, or whether she is Muslim, Jewish or Christian.⁽²³¹⁾

وفي الامة ومن فيها بقية رفق شهران وخمس ليال ملم

For a slave woman or one in the process of being freed the period is two months and five nights, except for an older woman who wonders if her menstruation is

ترتب الكبيرة ذات الحيض بتأخيره عن وقته فتتعد حتى تذهب الرية، وأما التي لا تحيض لصغر أو كبر وقد بنى بها فلا تنكح في الوفاة إلا بعد ثلاثة أشهر.

33.03 الإحداد

والإحداد أن لا تقرب المعتدة من الوفاة شيئاً من الزينة بحلي أو كحل أو غيره، وتجتنب الصباغ كله إلا الأسود، وتجتنب الطيب كله ولا تختضب بحناء ولا تقرب دهناً مطيباً ولا تمتشط بما يختمر في رأسها.

وعلى الأمة والحررة الصغيرة والكبيرة الإحداد، واختلف في الكتابية.

وليس على المطلقة إحداد.

33.04 عدة الكتابية

وتجبر الحررة الكتابية على العدة من المسلم في الوفاة والطلاق.

33.05 عدة أم الولد

وعدة أم الولد من وفاة سيدها حيضة، وكذلك إذا أعتقها فإن قعدت عن الحيض فثلاثة أشهر.

33.06 الاستبراء

واستبراء الأمة في انتقال الملك حيضة انتقال الملك ببيع أو هبة أو سبي أو غير

delayed; in that case she should wait until she is sure of her condition. But if she does not menstruate because she is too young or too old, and her husband has had intercourse with her, she should not remarry until three months after her husband's death.

33.03 Mourning (iḥdād)

Mourning done by a woman during her `idda period after the death of her husband means that she should not wear any decoration, such as jewelry, kohl etc. She must avoid all colours in her clothing but black, and all perfume. She may not dye herself with henna, or put on perfumed cream, nor may she comb into her hair substances that will exude fragrance.

Mourning is obligatory for both slave and free, minors and adults. There is a difference of opinion as to whether it is obligatory for Jewish or Christian widows.

Mourning does not oblige a woman who was repudiated.

33.04 `Idda for a Jewish or Christian wife

A free Jewish or Christian woman whose Muslim husband died or repudiated her should be compelled to observe the `idda period.

{100} 33.05 `Idda for an umm walad

The `idda period for a slave woman who has borne her master a child (*umm walad*) is one menstruation after his death or his setting her free. If she no longer menstruates, her `idda period is three months.

33.06 Istibrā' ⁽²³²⁾

The istibrā' period for a slave concubine who changes ownership is one menstruation. Ownership may change by selling, giving away, capture, or any other way. If the woman menstruates after being taken possession of

ذلك. ومن هي في حيازته
قدحاضت عنده ثم إنه
اشتراها فلا استبراء عليها
إن لم تكن تخرج.

in advance by her new master, and then he buys her, she does not have to go through a period of *istibrā'*, provided she has not gone out in the meantime.

واستبراء الصغيرة في البيع
إن كانت توطأ ثلاثة أشهر،
واليايسة من المحيض ثلاثة
أشهر والتي لا توطأ فلا
استبراء فيها.

The *istibrā'* period for a minor with whom her master has had intercourse in the preceding three months, and for a woman who no longer menstruates, is three months [after her sale]. There is no *istibrā'* [for a minor] who has not yet had intercourse.

ومن ابتاع حاملا من غيره
أو ملكها بغير البيع فلا
يقربها ولا يتلذذ منها بشئ
حتى تضع.

Someone who buys or otherwise gains possession of a woman who is pregnant by another man may not have intercourse with her or take any form of sexual pleasure with her until she delivers.

33.07 سكنى المطلقة ونفقتها

33.07 Lodging (*suknā*) and maintenance (*nafaqa*) of ex-wives

والسكنى لكل مطلقة مدخول
بها، ولا نفقة إلا للتي طلقت
دون الثلاث، وللحامل كانت
مطلقة واحدة أو ثلاثا.

A repudiated woman with whom her husband has had intercourse has a right to lodging, but not to maintenance, unless she was repudiated by fewer than three declarations or she is pregnant. If she is pregnant she has a right to maintenance no matter whether she was repudiated by one or three declarations.

ولا نفقة للمختلعة إلا في
الحمل، ولا نفقة للملاعنة
وإن كانت حاملا.

A woman who departs by obtaining release (*khul'*) from her husband has no right to maintenance unless she is pregnant.

ولا نفقة لكل معتدة من وفاة،
ولها السكنى إن كانت الدار
للميت أو قد نقد كراءها.

During her *`idda* period after her husband's death, a woman has no right to maintenance, but she has a right to lodging if the house belonged to the deceased or if he had paid the rent for it.

33.08 عدم الخروج في العدة

33.08 Confinement during *`idda*

ولا تخرج من بيتها في
طلاق أو وفاة حتى تتم العدة
إلا أن يخرجها رب الدار
ولم يقبل من الكراء ما يشبه
كراء المثل فلتخرج وتقيم
بالموضع الذي تنتقل إليه

A woman who is repudiated or whose husband dies should not go out of her quarters (*bayt*) until she finishes her *`idda* period, unless the owner of the house puts her out because she would not pay more than {101} the usual rent. In that case she should go out and stay in the place she moves to until her *`idda* period has expired.

حتى تنقضي العدة.

33.09 الرضاع والحضانة

والمرأة ترضع ولدها في العصمة إلا أن يكون مثلها لا يرضع، وللمطلقة رضاع ولدها على أبيه ولها أن تأخذ أجره رضاعها إن شاءت.

والحضانة للام بعد الطلاق إلى احتلام الذكر ونكاح الانثى ودخول بها، وذلك بعد الام إن ماتت أو نكحت للجدة ثم للخالة، فإن لم يكن من ذوي رحم الام أحد فالاخوات والعمات، فإن لم يكونوا فالعصبة.

33.10 من لهم حق النفقة

ولا يلزم الرجل النفقة إلا على زوجته كانت غنية أو فقيرة، وعلى أبويه الفقيرين، وعلى صغار ولده الذين لا مال لهم على الذكور حتى يحتلموا، ولا زمانة بهم، وعلى الاناث حتى ينكحن ويدخل بهن أزواجهن، ولا نفقة لمن سوى هؤلاء من الاقارب.

وإن اتسع فعليه إخدام زوجته.

33.11 الكفن

وعليه أن ينفق على عبيده ويكفنه إذا ماتوا.

واختلف في كفن الزوجة

33.09 Nursing (raḍā`) and custody (ḥaḍāna) of children

A woman who is attached to her husband by marriage⁽²³³⁾ should nurse her child, unless women of her position do not do so.⁽²³⁴⁾ A repudiated woman has the right to nurse her child for its father, and to take pay for nursing it if she wishes.

A repudiated woman has the right to custody of her sons until they reach puberty, and her daughters until they are married and their marriage is consummated. If the repudiated mother dies or remarries, the custody of her children falls first to their [maternal] grandmother and, that failing, to their maternal aunt. If there are no relatives on their mother's side, then the custody of the children devolves upon their [older] sisters and their paternal aunts. If there are none of these, then the agnate relatives take over.

33.10 Recipients of maintenance

A man owes maintenance only to his wife, whether she is rich or poor, to his parents if they are poor, and to his minor children if they have no wealth. His obligation to his sons lasts until they reach puberty, if they have no perduring disability, and to his daughters until they marry and their marriage is consummated. He does not owe maintenance to any relatives besides these.

If a man has the means, he should provide his wife with domestic help. He must also maintain his slaves.

33.11 Burial

If his slave dies, a man must provide for his burial.

There is a difference of opinion as to whether a man must provide for the burial of his wife. Ibn-al-Qāsim

فقال ابن القاسم: في مالها، وقال العبد الملك في مال الزوج، وقال سحنون: إن كانت ملية ففي مالها وإن كانت فقيرة ففي مال الزوج.

باب 34 في البيوع وما شاكل البيوع

34.01 تبادل النقود

"وأحل الله البيع وحرم الربا".

وكان ربا الجاهلية في الديون إما أن يقضيه وإما أن يربي له فيه.

ومن الربا في غير النسبية بيع الفضة بالفضة يدا بيد متفاضلا، وكذلك الذهب بالذهب، ولا يجوز فضة بفضة ولا ذهب بذهب إلا مثلا بمثل يدا بيد، والفضة بالذهب ربا إلا يدا بيد.

34.02 تبادل الأطعمة

والطعام من الحبوب والقطنية وشبهها مما يدخر من قوت أو إدام لا يجوز الجنس منه بجنسه إلا مثلا بمثل يدا بيد، ولا يجوز فيه تأخير، ولا يجوز طعام بطعام إلى أجل كان من جنسه أو من خلافه كان مما يدخر أو لا يدخر.

said she should be buried by her own money; `Abdalmalik said she should be buried by her husband's money; Saḥnūn said she should be buried by her own money if she is rich, {102} but by her husband's money if she is poor.

CHAPTER 34 SELLING AND OTHER BUSINESS TRANSACTIONS

34.01 Exchange of money

God declared selling (*bay`*) legitimate, but usury (*ribā*) forbidden. (235)

Usury in the Jāhiliyya period concerned debts which were either paid [when due] or [postponed for] the payment of usury.

Besides usury for time loans (*nasī'a*), it is usury to sell silver for silver or gold for gold, in unequal amounts by direct transfer. It is not permitted to exchange gold for gold or silver for silver unless for equal sums by a direct transfer. To exchange gold for silver is usury except in direct transfers [of equal value].

34.02 Exchange of foodstuffs

It is not permitted to exchange grain, beans, or similar staples or condiments that can be stored for commodities of the same kind, unless for an equal measure by a direct exchange, nor is a postponement of payment permitted. Food may not be exchanged for food to be paid after a certain time, whether of the same kind or another kind, and whether it can be stored or is perishable.

ولا بأس بالفواكه والبقول وما لا يدخر متفاضلا وإن كان من جنس واحد يدا بيد، ولا يجوز التفاضل في الجنس الواحد فيما يدخر من الفواكه اليابسة وسائر الأدام والطعام والشراب إلا الماء وحده. ولا يجوز التفاضل في الجنس الواحد منه إلا في الخضر والفواكه.

It is not wrong to exchange apples, vegetables and other perishables for other food, even of the same kind, in unequal amounts, provided the exchange is made directly. But it is not permitted to exchange unequal amounts of dried apples and other condiments, foods and drinks which can be stored, except water only.

وما اختلفت أجناسه من ذلك ومن سائر الحبوب والثمار والطعام فلا بأس بالتفاضل فيه يدا بيد،

It is not wrong to exchange directly assortments of the preceding items {103} or of other grains, fruits and food in unequal amounts, but it is not permitted to do so with one kind of food by itself, except greens and apples.

والقمح والشعير والسلت كجنس واحد فيما يحل منه ويحرم، والزبيب كله صنف والتمر كله صنف والقطنية أصناف في البيوع، واختلف فيها قول مالك، ولم يختلف قوله في الزكاة أنها صنف واحد. ولحوم ذوات الأربع من الأنعام والوحش صنف، ولحوم الطير كله صنف، ولحوم دواب الماء كلها صنف، وما تولد من لحوم الجنس الواحد من شحم فهو ك لحمه، وألبان ذلك الصنف وجبته وسمنه صنف.

Wheat, barley and sult barley are taken as one kind, as far as what is permitted or forbidden regarding them. All varieties of raisins are taken as one kind, as are all varieties of dates. The varieties of beans are taken as distinct kinds for purposes of selling, although Mālik had different opinions about this. Nevertheless his opinion is clear that for zakāt purposes beans of all varieties are taken as one kind. The meat of quadrupeds, whether domestic or wild, is taken as one kind; so are all fowl, and all aquatic animals or fish. Fat products from one kind of meat are classed with that kind of meat. yoghurt, cheese and butter are classed with the animals they are products of.

34. 03 بيع ما لم يُستوف

34.03 Selling goods not yet possessed

ومن ابتاع طعاما فلا يجوز بيعه قبل أن يستوفيه إذا كان شراؤه ذلك على وزن أو كيل أو عدد بخلاف الجزاف، وكذلك كل طعام

Someone who bought food may not sell it before taking possession of it, provided he bought it by weight, volume, or number, rather than in an undetermined quantity (*juzāf*). This holds for all foods, condiments and drinks except water alone.

أو إدام أو شراب إلا الماء
وحده.

وما يكون من الادوية
والزراريع التي لا يعتصر
منها زيت فلا يدخل ذلك فيما
يحرم من بيع الطعام قبل
قبضه أو التفاضل في الجنس
الواحد منه.

ولا بأس ببيع الطعام القرض
قبل أن يستوفيه، ولا بأس
بالشركة والتولية والاقالة في
الطعام المكيل قبل قبضه.

34.04 بيع الغرر

وكل عقد بيع أو إجارة أو
كراء بخطر أو غرر في
ثمن أو مثمون أو أجل فلا
يجوز، ولا يجوز بيع الغرر
ولا بيع شئ مجهول ولا إلى
أجل مجهول.

34.05 التبليس في البيع

ولا يجوز في البيوع التدليس
ولا العش ولا الخلابة ولا
الخدیعة ولا كتمان العيوب
ولا خلط دنئ بجيد، ولا أن
يكتم من أمر سلعته ما إذا
ذكره كرهه المبتاع أو كان
ذكره أبخس له في الثمن.

ومن ابتاع عبدا فوجد به
عيبا فله أن يحبسه ولا شئ
له أو يردده ويأخذ ثمنه إلا أن
يدخله عنده عيب مفسد، فله
أن يرجع بقيمة العيب القديم
من الثمن أو يردده ويرد ما
نقصه العيب عنده. وإن رد

Any medicament or crop from which oil cannot be extracted is not included among foods which are forbidden to be sold before taking possession of them or to be exchanged in unequal amounts if they are of one kind. Nor is it wrong to sell {104} borrowed food before taking possession of it.

There is nothing wrong with partnership buying (*sharika*), cost resale (*tawliya*) or reversal of sale (*iqāla*) before taking possession, in the case of food measured by volume.

34.04 Selling at a risk⁽²³⁶⁾

No contract of sale, hiring or renting is permitted if it concerns the exchange of something uncertain (*khaḍar*) or risky (*gharar*) either in the price or in the thing exchanged or in the time it is to be delivered. Thus it is not permitted to sell something risky or undetermined (*majhūl*) or to be paid at an undetermined date.

34.05 Selling goods with hidden defects⁽²³⁷⁾

In selling it is not permitted to falsify or adulterate the commodity, to overrate or misrepresent it by smooth talk, to hide its defects, mix good things with bad, or conceal something about it which if known would make the buyer refuse the commodity or take it only at a lower price.

If someone buys a slave and finds a defect in him, he may keep him without compensation, or return him and receive his money back, unless the slave acquired another major defect while with his new owner. In that case the new owner may either [keep the slave and] claim the difference the previous defect would have made in the price he paid, or he may return the slave [and receive his money back] minus the depreciation caused by the new defect.

عبدا بعيب وقد استغله فله
غلته.

34.06 06 البيع على الخيار

والبيع على الخيار جائز إذا
ضربا لذلك أجلا قريبا إلى
ما تختبر فيه تلك السلعة أو
ما تكون فيه المشورة، ولا
يجوز النقد في الخيار ولا
في عهدة الثلاث ولا في
المواضعة بشرط.

والنفقة في ذلك والضمان
على البائع.

وإنما يتواضع للاستبراء
الجارية التي للفراش في
الأغلب أو التي أقر البائع
بوطئها وإن كانت وخشا،
ولا تجوز البراءة من الحمل
إلا حملا ظاهرا.

والبراءة في الرقيق جائزة
مما لم يعلم البائع.

ولا يفرق بين الام وولدها
في البيع حتى يثغر.

34.07 07 ضمان المبتاع الفاسد

وكل بيع فاسد فضمانه من
البائع، فإن قبضه المبتاع
فضمانه من المبتاع من يوم
قبضه

فإن حال سوقه أو تغير في
بدنه فعليه قيمته يوم قبضه
ولا يردده، وإن كان مما

34.06 Selling merchandise on trial (khiyār), a slave with a guarantee (‘uhda) or a slave woman in seclusion (muwāḍa`a)

Selling on trial is permitted if the two parties fix a short period to test the commodity or to get advice. To stipulate immediate payment is not permitted when the sale contract concerns: 1) an item bought on trial, 2) [a slave] with a three-day guarantee, 3) a slave woman in seclusion [to see if she is pregnant].

The maintenance of and responsibility for merchandise or slaves sold in any of these ways belong to the seller.

{105} Usually the only time a slave woman should be secluded for a period in order to see if she is pregnant (*istibrā`*) is when she is bought as a bed companion or when the seller acknowledges having had intercourse with her, even if she is of low class. The buyer may not exempt the seller from responsibility for her possible pregnancy, although he may exempt him from responsibility if she is obviously pregnant.

The buyer may exempt the seller of a slave from responsibility for any defects the seller does not know the slave to have at the time of sale.

The owner of a slave woman may not sell her separately from her child until the child grows its second teeth.⁽²³⁸⁾

34.07 Responsibility (ḍamān) in an invalid sale

In an invalid (*fāsid*) sale the seller is responsible for the commodity, but if the buyer has taken possession of it he is responsible for it from the time he took possession.

Therefore, if the market price changes or the commodity is altered, the buyer may not return the commodity but must [validate the sale], paying the full price the commodity had the day he took possession.

يوزن أو يكال فليرد مثله ولا يفيت الرباع حوالة الاسواق.

Yet if the commodity is measured by weight or volume, he should [nullify the sale] by returning an equal amount. Real estate too suffers nothing by the fluctuations there are of its market value, [and should be returned].

37. 08 السلف

34.08 Capital loans for borrower's profit (salaf)⁽²³⁹⁾

ولا يجوز سلف يجر منفعة، ولا يجوز بيع وسلف، وكذلك ما قارن السلف من إجارة أو كراء.

It is not permitted to make a loan in return for some advantage, or to make receiving a loan a condition of selling some thing or some service (*ijāra*) or the use of property (*kirā'*).

والسلف جائز في كل شيء إلا في الجواري، وكذلك تراب الفضة.

Any possession may be loaned except a slave girl or silver ore.

37. 09 تسليم المعار أو المباع

34.09 Surrendering borrowed or sold property

ولا تجوز الوضعية من الدين على تعجيله ولا التأخير به على الزيادة فيه، ولا تعجيل عرض على الزيادة فيه إذا كان من بيع.

The amount of a debt may not be reduced in order to collect it before it is due, nor may the time it is due be postponed for an increase of the amount to be collected.

ولا بأس بتعجيله ذلك من قرض إذا كانت الزيادة في الصفة.

A buyer may not be given a bonus to take advance possession of merchandise he has bought.⁽²⁴⁰⁾

ومن رد في القرض أكثر عددا في مجلس القضاء فقد اختلف في ذلك إذا لم يكن فيه شرط ولا وأي ولا عادة، فأجازته أشهب وكرهه ابن القاسم ولم يجزه.

There is nothing wrong with returning borrowed goods to the lender before they are due with an addition that is only qualitative. But there is a difference of opinion as to whether someone may return a trade loan (*qard*) with an additional amount after the term has expired, {106} if there was no condition, promise or custom to do so. Ashhab⁽²⁴¹⁾ allowed it, but Ibn-al-Qāsim disapproved, and would not allow it.

ومن عليه دنانير أو دراهم من بيع أو قرض مؤجل فله أن يعجله قبل أجله، وكذلك له أن يعجل العروض والطعام من قرض لا من

Anyone who, because of a sale or a trade loan, owes [gold] *dīnārs* or [silver] *dirhams* to be paid at a certain time may pay back before that time. Likewise he may pay back borrowed goods or food before they are due, but someone who is selling goods or food may not deliver them before they are due.

بيع.

37. 10 ما لا يجوز بيعه لغرره

ولا يجوز بيع ثمر أو حب لم يبد صلاحه، ويجوز بيعه إذا بدا صلاح بعضه وإن نخلة من نخيل كثيرة.

ولا يجوز بيع ما في الانهار والبرك من الحيتان، ولا بيع الجنين في بطن أمه، ولا بيع ما في بطون سائر الحيوانات، ولا بيع نتاج ما تنتج الناقة، ولا بيع ما في ظهور الابل، ولا بيع الأبق والبعير الشارد.

34. 11 الكلاب

ونهي عن بيع الكلاب، واختلف في بيع ما أذن في اتخاذه منها، وأما من قتله فعليه قيمته.

34. 12 المزابنة

ولا يجوز بيع اللحم بالحيوان من جنسه.

ولا بيعتان في بيعة، وذلك أن يشتري سلعة إما بخمسة نقداً أو عشرة إلى أجل قد لزمته بأحد الثمنين.

ولا يجوز بيع التمر بالرطب، ولا الزبيب بالعنب، لا متفاضلاً ولا مثلاً بمثل، ولا رطب بياض من جنسه من سائر الثمار

34.10 Some risky things which may not be sold⁽²⁴²⁾

Fruit or grain may not be sold before it ripens, but it may be sold if only some of it is ripe, even the fruit of one palm tree among many.

Fish in rivers and lakes may not be sold, neither may a fetus in its [slave] mother's womb, nor fetuses in the wombs of other animals much less the offspring of future camel offspring nor the use of a male camel for breeding, nor a runaway slave, nor a stray camel.

34.11 Dogs

[Muhammad] forbade selling dogs, but there is a difference of opinion regarding the legitimacy of selling dogs which are permitted to be kept.⁽²⁴³⁾ At any rate, someone who kills a legitimately kept dog must compensate the owner for its value.

34.12 Muzābana⁽²⁴⁴⁾ exchange of the same kind of foodstuff, and usurious payment

It is not permitted to sell meat for an animal of the same kind.

Nor is it permitted to offer two sale options in one, that is, to oblige the buyer of an article to choose between paying five [dirhams] in a cash sale or ten after a certain period.

Selling dried dates (*tamar*) for ripe ones (*ruṭab*) is not permitted, nor raisins for grapes, whether for a greater or an equal amount, nor any kind of fresh fruit or apples for dried fruit of {107} the same kind, since this is muzābana selling, which is forbidden.

والفواكه، وهو مما نهي عنه
من المزابنة.

ولا يباع جزاف بمكيل من
صنفه، ولا جزاف بجزاف
من صنفه إلا أن يتبين
الفضل بينهما إن كان مما
يجوز التفاضل في الجنس
الواحد منه.

34. 13 بيع الغائب

ولا بأس ببيع الشيء الغائب
على الصفة، ولا ينقد فيه
بشروط إلا أن يقرب مكانه أو
يكون مما يؤمن تغييره من
دار أو أرض أو شجر
فيجوز النقد فيه.

34. 14 العهدة في بيع العبد

والعهدة جائزة في الرقيق إن
اشتترطت أو كانت جارية
بالبلد.

فعهدة الثلاث الضمان فيها
من البائع من كل شيء وعهدة
السنة من الجنون والجدام
والبرص.

34. 15 البيع بالسلم

ولا بأس بالسلم في العروض
والرقيق والحيوان والطعام
والأدام بصفة معلومة وأجل
معلوم، ويعجل رأس المال
أو يؤخره إلى مثل يومين أو
ثلاثة وإن كان بشرط.

وأجل السلم أحب إلينا أن
يكون خمسة عشر يوماً أو

Thus also an undetermined quantity (*juzāf*) of one item may not be sold for a measured amount of the same item, nor may an undetermined quantity of the item be sold for another undetermined quantity of it, unless the difference in value between the two is clear and the item is of a kind which may be exchanged for something of the same kind at a profit.

34.13 Selling absent goods

There is nothing wrong with selling an absent article on description. Yet prepayment may not be stipulated unless it is located nearby or is non-movable, like a house, a plot of land, or a tree; prepayment may be made for these.

34.14 A guarantee (*uhda*) in selling a slave

A guarantee may be made when selling a slave if the buyer demands it as a condition or if it is a local custom to make such a guarantee.

In a three-day guarantee the seller holds entire responsibility for the slave, but in a year's guarantee he holds responsibility only for madness and the mutilation or whitening of leprosy.

34.15 Sale with advance payment (*salam*)

There is nothing wrong with paying in advance to buy merchandise, slaves, animals, food and condiments when delivery is to be made later, provided the sale is made on the basis of: 1) a definite description of the item, 2) a set time of delivery, and 3) payment of the capital price (*ra's al-māl*)⁽²⁴⁵⁾ at the time of the contract or within two or three days; this delay in payment may even be made a condition of the contract.⁽²⁴⁶⁾

In our opinion, it is preferable to set the delivery date fifteen days [after the contract], or when the buyer

على أن يقبض ببلد آخر وإن كانت مسافته يومين أو ثلاثة. ومن أسلم إلى ثلاثة أيام يقبضه ببلد أسلم فيه فقد أجازته غير واحد من العلماء وكرهه آخرون.

collects the goods in another town, even two or three days away. According to more than one scholar, it is permitted to buy something and collect it after three days in the very town where the sale contract was made, but others disapprove of this.

ولا يجوز أن يكون رأس المال من جنس ما أسلم فيه، ولا يسلم شيء في جنسه أو فيما يقرب منه إلا أن يقرضه شيئاً في مثله صفة ومقداراً والنفع للمتسلف.

{108} Something may not be paid for in advance if the capital price consists of the same kind of goods as are being sold. Advance payment may not be made in the same or a similar kind of goods as are bought, but to loan something to be repaid with something of the same quality and quantity, with the borrower having the [exclusive] profit from what he borrows, is permitted.

34.16 تبادل الديون

34.16 Exchange of claims

ولا يجوز دين بدين.

To sell one claim (*dayn*) for another is not permitted.

وتأخير رأس المال بشرط إلى محل السلم أو ما بعد من العقدة من ذلك.

An equivalent forbidden practice is to delay payment for goods sold for advance capital, making delivery a condition of payment, or even delaying payment [over three days] after the contract.

ولا يجوز فسخ دين في دين وهو أن يكون لك شيء في ذمته فتفسخه في شيء آخر لا تتعجله.

Neither is it permitted to void one claim by substituting another, such as if someone owes you something and you void his debt by letting him pay you something else at a later date.

34.17 ما ليس عند البائع

34.17 Sale of goods not yet had

ولا يجوز بيع ما ليس عندك على أن يكون عليك حالاً.

To sell something you do not have on condition that you make immediate delivery is forbidden. ⁽²⁴⁷⁾

34.18 اشتراء المبيع الوجل

34.18 Reversal of sale on time

وإذا بعت سلعة بثمن مؤجل فتشترها بأقل منه نقداً أو إلى أجل دون الأجل الأول ولا بأكثر منه إلى أبعد من أجله، وأما إلى الأجل نفسه، فذلك كله جائز وتكون مقاصة.

If you sell something which is to be paid for later, you may not buy it back paying less than you sold it for or taking a shorter time to pay for it than the original buyer was given. Likewise you may not pay more for it than you sold it for or take a longer time to pay for it than the original buyer was given. But to pay after the same length of time is permitted, since this is a fair exchange. ⁽²⁴⁸⁾

34.19 شراء الجراف

34.19 Buying in undetermined quantities (juzāf)

ولا بأس بشراء الجراف فيما يكال أو يوزن سوى الدينار والدراهم ما كان مسكوكا، وأما نقر الذهب والفضة فذلك فيهما جائز.

There is nothing wrong with buying in undetermined quantities things which can be weighed or measured, except for minted [gold] dīnārs or [silver] dirhams. Unminted gold or silver, however, may be bought in undetermined quantities.

ولا يجوز شراء الرقيق والثياب جزافا، ولا ما يمكن عده بمشقة جزافا.

Slaves, clothing, and things which can be counted without difficulty may not be bought in undetermined quantities.

34.20 حق لما يليق المباع

34.20 Right to accessories of item sold

ومن باع نخلا قد أبرت فثمرها للبائع إلا أن يشترطه المبتاع، وكذلك غيرها من الثمار والابار التذكير.

If a date palm is already pollinated when it is sold, its fruit belongs to the seller, unless the buyer bought the tree on condition of getting the fruit as well. The same holds for other kinds of fruit.

والإبار التذكير، وإبار الزرع خروجه من الارض.

{109} Pollinating (*ibār*) [for date palms and other fruit trees] is fertilizing [by tying pollen branches from the male tree onto the flower branches of the female tree. As far as the sale of land is concerned], pollination of crops is taken as their sprouting above the soil.

ومن باع عبدا وله مال فماله للبائع إلا أن يشترطه المبتاع.

If someone sells a slave who has some possessions, these belong to the seller, unless the buyer stipulates otherwise.

34.21 تأمل ما يقاع

34.21 Examining items

ولا بأس بشراء ما في العدل على البرنامج بصفة معلومة.

There is nothing wrong with buying commodities in sacks [without seeing the contents], on the basis of an exact written description.

ولا يجوز شراء ثوب لا ينشر ولا يوصف أو في ليل مظلم لا يتأملانه ولا يعرفان ما فيه، وكذلك الدابة في ليل مظلم.

It is not permitted, however, to buy cloth which is neither spread open nor described, or if it is a dark night when neither the buyer nor the seller can see the article or know what it is like. The same holds for buying an animal on a dark night.

34.22 السوم

34.22 Bidding (sawm)

ولا يسوم أحد على سوم أخيه وذلك إذا ركنا وتقاربا لا في أول التساوم.

No one should outbid another when the bargaining parties are satisfied and near clinching the sale.⁽²⁴⁹⁾ But competitive bidding early in the bargaining is allowed.

والبيع ينعقد بالكلام وإن لم يفترق المتبايعان.

A sale is contracted by word, [and binds] even if the parties have not parted.

34. 23 الإجار والجعل والكرء

34.23 Selling services by time (ijāra) or by job (ju`l), and selling the use of property (kirā')⁽²⁵⁰⁾

والاجارة جائزة إذا ضربا لها أجلا وسميا الثمن.

Selling services by time is permitted if the two parties fix the length of time and the price.

ولا يضرب في الجعل أجل في رد أبق أو بغير شارد أو حفر بئر أو بيع ثوب ونحوه، ولا شئ له إلا بتمام العمل.

Yet no time should be fixed in a job contract (*ju`l*) to catch a runaway slave or a lost camel, to dig a well, sell a garment, or do a similar job [which is uncertain to succeed]. In a job contract the employee is paid only upon completing the job.

والاجير على البيع إذا تم الاجل ولم يبيع وجب له جميع الاجر، وإن باع في نصف الاجل فله نصف الاجارة.

If someone is hired by time to sell something by a certain date and has not sold it when the time expires, he must be paid his entire wage. But if he sells the item when the time is only half expired, he has a right to only half the wage.

والكرء كالبيع فيما يحل ويحرم. ومن اكرى دابة بعينها إلى بلد فماتت انفسخ الكراء فيما بقي، وكذلك الاجير يموت والدار تنهدم قبل تمام مدة الكراء.

Selling the use of property is like selling things, as far as what is permitted or forbidden is concerned. If someone rents a mount for a certain sum to go to a certain place, and the animal dies on the way, the rent for the rest of the journey is canceled. The same holds for a man employed by time who dies, or a house which collapses before the lease is up.

ولا بأس بتعليم المتعلم القرآن على الحذاق ومشاركة الطبيب على البرء.

It is not wrong for a teacher of the Qur'ān [to agree to be paid when his student] has memorized it. Likewise it is permitted to {110} contract a physician's services with the condition that he will be paid only if he cures the patient.

ولا ينتقض الكراء بموت الراكب أو الساكن ولا بموت غنم الرعاية وليأت بمثلها.

The lease of an animal or a house does not end because of the death of the lessee, [and the heirs must pay the remaining rent]. Neither does the hiring of a shepherd end because the animals die, and the owner must [pay him in full or] give him other animals [to shepherd for the remainder of the time].

ومن اكرتري كراء مضمونا
فماتت الدابة فليات بغيرها،
وان مات الراكب لم يفسخ
الكراء وليكتروا مكانه غيره.

If someone rents a [definite kind of] mount to be assured by the owner, and the animal dies, the owner must provide another. If the rider dies, the lease is not voided, and his heirs must hire another rider in his place.

ومن اكرتري ماعونا أو غيره
فلا ضمان عليه في هلاكه
بيده وهو مصدق إلا أن
يتبين كذبه.

If someone rents a utensil or some other thing, he is not responsible for it if it perishes in his possession. He should be presumed to be giving a true story unless it is evident he is lying.

والصناع ضامنون لما غابوا
عليه عملوه بأجر أو بغير
أجر.

Artisans are responsible for things they lose, whether they are working for a salary or not.

ولا ضمان على صاحب
الحمام، ولا ضمان على
صاحب السفينة، ولا كراء
له إلا على البلاغ.

The owner of a public bath (*hammām*) is not responsible [for belongings lost there by his clients], nor is a shipowner [for cargo lost from or with the ship]. A shipowner has no right to his shipping charges until he delivers the cargo.

34.24 الشراكة

34.24 Partnership (*sharika*) of labour and capital

ولا بأس بالشراكة بالابدان
إذا عملا فموضع واحد عملا
واحدا أو متقاربا.

There is nothing wrong with a partnership in bodily labour if the two partners work in one place at one job, or different but related jobs.

وتجوز الشراكة بالاموال
على أن يكون الربح بينهما
بقدر ما أخرج كل واحد
منهما، والعمل عليهما بقدر
ما شرطا من الربح لكل
واحد، ولا يجوز أن يختلف
رأس المال ويستويا في
الربح.

A partnership in capital is permitted provided each partner receives the percentage of profit proportionate to the capital he invested and each partner works in proportion to the profit it was stipulated he should get. If the capital each partner has invested is different, it is not permitted to share the profit equally.

34.25 القرض

34.25 Trade loans (*qard*)⁽²⁵¹⁾

والقراض جائز بالدنانير
والدراهم، وقد أرخص فيه
بنقار الذهب والفضة.

The lending of *dīnārs* and *dirhams* is permitted; this permission extends to unminted gold and silver as well.

ولا يجوز بالعروض ويكون
إن نزل أجيرا في بيعها

Trade loans of merchandise are not permitted. [For merchandise], the borrower is the equivalent of an

و على قراض مثله في الثمن.

employee [and must be paid a commission] for selling the merchandise. [If he trades] with the price of the sale, this money is considered a trade loan, [and the profit should be shared proportionally].⁽²⁵²⁾

وللعامل كسوته وطعامه إذا
سافر في المال الذي له بال
وإنما يكتسي في السفر
البعيد.

{111} The borrower of a trade loan has a right to clothing and food while traveling with the money entrusted to him; yet clothing is to be provided only for a long trip.

ولا يقترسان الربح حتى
ينض رأس المال.

The profit should not be divided [between the lender and the borrowing trader] until the capital is at hand in cash.

34. 26 المساقاة

34.26 Leasing an orchard (musāqāt)

والمساقاة جائزة في الاصول
على ما تراضيا عليه من
الاجزاء.

The leasing of fruit trees is permitted, provided the parties agree on what proportion of the harvest goes to each.

والعمل كله على المساقى،
ولا يشترط عليه عملا غير
عمل المساقاة ولا عمل شئ
ينشئه في الحائط إلا ما لا
بال له من شد الحظيرة
وإصلاح الضفيرة، وهي
مجتمع الماء من غير أن
ينشئ بناءها والتذكير على
العامل وتنقية مناخ الشجر
وإصلاح مسقط الماء من
الغرب وتنقية العين وشبه
ذلك جائز أن يشترط على
العامل.

All the labour must be done by the lessee. Besides caring for the trees,⁽²⁵³⁾ no other work may be demanded of him, such as starting new projects in the orchard, unless the work is inconsequential, like sealing off the fence and repairing the reservoir but he is not to build them. Pollinating the trees is part of the lessee's work. In addition, the contract may stipulate that he should keep the irrigation apparatus in repair, clean the soaking area around the trees, clean the water source, and perform similar tasks.

ولا تجوز المساقاة على
إخراج ما في الحائط من
الدواب وما مات منها فعلى
ربه. خلفه ونفقة الدواب
والاجراء على العامل.

A lease may not be contracted allowing the owner to remove the work animals that were in the orchard. If any of these die, the owner must replace them. But the lessee must maintain the work animals and employees.

وعليه زريعة البياض
اليسير. ولا بأس أن يلغى

The lessee must farm the arable portion of the orchard if it is small.⁽²⁵⁴⁾ There is no harm in ceding to him the right to this portion; in fact, this is the more lawful

ذلك للعامل وهو أحله، وإن كان البياض كثيرا لم يجز أن يدخل في مساقاة النخل إلا أن يكون قدر الثلث من الجميع فأقل.

34. 27 الشركة في الزرع

والشركة في الزرع جائزة إذا كانت الزريعة منهما جميعا والربح بينهما.

وإذا كانت الأرض لأحدهما والعمل على الآخر أو العمل بينهما واكتريا الأرض أو كانت بينهما أما إن كان البذر من عند أحدهما ومن عند الآخر الأرض والعمل عليه أو عليهما والربح بينهما لم يجز.

ولو كانا اكتريا الأرض والبذر من عند واحد وعلى الآخر العمل جاز إذا تقاربت قيمة ذلك.

ولا ينقد في كراء أرض غير مأمونة قبل أن تروى.

34. 28 ضمن النتاجه المباعه ولا مأخوذة

ومن ابتاع ثمرة في رؤوس الشجر فأجيج ببرد أو جراد أو جليد أو غيره، فإن أجيج قدر الثلث فأكثر وضع عن المشتري قدر ذلك من الثمن، وما نقص عن الثلث فمن المبتاع.

ولا جائحة في الزرع ولا

course. If the arable land is very much it shall not be included in the lease of the orchard; to be included it must be a third or less of the total area.

34.27 Farming partnership

A farming partnership is permitted if both parties share in the profit and both provide the seed, {112}whether one owns the land and the other does the labour, or they share the labour and rent or own the land together.

A partnership in which both share in the profit is not permitted if one partner provides the seed and the other provides the land, whether the latter does the labour alone or both share the labour.

On the other hand, a partnership is permitted if the parties rent the land together and one provides the seed while the other provides the labour, if the value of the seed and labour are nearly equal.

Until it is actually irrigated, no payment may be made towards the rent of land which is not sure to receive irrigation water.

34.28 Liability for damage to crops sold and not yet claimed

If someone buys fruit still on the trees, and one third or more of it is destroyed by hail, locusts or frost, or in some other way, the value of it is to be reduced from the price the buyer pays. If less than a third is destroyed, the buyer takes the loss.

Nothing is to be reduced from the price the buyer pays

فيما اشترى بعد أن يبس من الثمار.

in the case of unpreventable destruction of grain or of fruit bought after it is dried.⁽²⁵⁵⁾

وتوضع جائحة البقول وإن قلت. وقيل: لا يوضع إلا قدر الثلث.

If there is even a slight unpreventable destruction of vegetables the price should be reduced, although another opinion is that the price is reduced only if a third is destroyed.

34. 29 العرية

34.29 Gift of fruit which can be dried (ʿariyya)⁽²⁵⁶⁾

ومن أعرى ثمر نخلات لرجل من جنانه فلا بأس أن يشتريها إذا أزهدت بخرصها تمرا يعطيه ذلك عند الجذاذ إن كان فيها خمسة أوسق فأقل، ولا يجوز شراء أكثر من خمسة أوسق إلا بالعين والعرض.

If someone gives a man the fruit of the palm trees of his garden, it is not wrong for him to buy back the [new] dates when they ripen with their measure [in dried dates]. When the bunches of the fruit are cut, [the donor] may exchange up to five wasqs. He may buy more than five wasqs only with money or merchandise. {113}

باب 35

CHAPTER 35

BEQUESTS AND FREEING OF SLAVES

في الوصايا والمدبر
والمكاتب والمعتك وأم
الولد والولاء

35. 01 الوصايا

35.01 Bequests (waṣiyya, pl. waṣāyā)

ويحق على من له ما يوصي فيه أن يعد وصيته ولا وصية لوارث، والوصايا خارجة من الثلث ويرد ما زاد عليه إلا أن يجيزه الورثة.

A man who has possessions to bequeath has the right to prepare a will.⁽²⁵⁷⁾ No bequest may be made in favour of an heir. Bequests are to be made out of the disposable third of the estate. Any amount bequeathed in excess of the third is void unless the heirs approve it.

والعتق بعينه مبدأ عليها والمدبر في الصحة مبدأ على ما في المرض من عتق وغيره، وعلى ما فرط فيه من الزكاة فأوصى به فإن ذلك في ثلثه مبدأ على الوصايا ومدبر الصحة مبدأ عليه.

In disposing of the third, a bequest to free outright (ʿitq) a definite slave shall take precedence over other bequests.⁽²⁵⁸⁾ A declaration a man made in full health that when he dies his slave shall be free (tadbīr) takes precedence over a bequest made during his final illness to free a slave or to provide for any other purpose, including the payment of outstanding zakāt. A bequest to pay outstanding zakāt is to be taken from the disposable third before ordinary bequests, but a declaration made in full health to grant a slave freedom at the owner's death takes precedence over it.

وإذا ضاق الثلث تحاص أهل
الوصايا التي لا تبدئة فيها.

If the disposable third is not enough for all the bequests, those which do not have preference are to receive a proportionate settlement of what remains of the third.

وللرجل الرجوع عن وصيته
من عتق وغيره.

A man may revoke a bequest he made to free a slave outright and any other bequest as well.

35.02 التدبير

35.02 Freeing a slave at death (tadbīr) or at a certain date (ilā ajal)

والتدبير أن يقول الرجل
لعبده أنت مدبر أو أنت حر
عن دبر مني، ثم لا يجوز له
بيعه وله خدمته وله انتزاع
ماله ما لم يمرض وله
وطؤها إن كانت أمة.

A declaration to grant a slave freedom at the owner's death is made by saying to the slave "You are free at my death".⁽²⁵⁹⁾ Thereafter the owner has no right to sell the slave or give him away, but he has the right to his service until he dies, when the slave is freed. As long as the owner is not ill he may confiscate the possessions of such a slave, and if the slave is a woman he may have intercourse with her.

ولا يطاء المعتقة إلى أجل ولا
يبيعها وله أن يستخدمها وله
أن ينتزع مالها ما لم يقرب
الأجل.

The owner, however, may not have intercourse with a slave woman whom he has promised freedom at a certain date, nor may he sell her, although he has a right to ask her service and to confiscate her possessions, as long as the date of her manumission is not near.

وإذا مات فالمدبر من ثلثه
والمعتق إلى أجل من رأس
ماله.

If a slave owner dies, a slave he promised freedom on his death is freed as part of the disposable third of the man's property, but a slave who was promised freedom on a certain date is freed as part of the total estate.⁽²⁶⁰⁾

35.03 الكتابة

35.03 Freeing a slave after installment payments (kitāba)

والمكاتب عبد ما بقي عليه
شئ والكتابة جائزة على ما
رضيه العبد، والسيد من
المال منجما قلت النجوم أو
كثرت،

A slave with a writ permitting him to purchase his freedom {114} (*mukātab*) is one who still owes something [before being freed]. A writ to purchase freedom *kitāba* is permitted when made on the basis of a certain sum agreed upon by the master and the slave which the slave should pay to the master over a period of time, whether in many or few installments.⁽²⁶¹⁾

فإن عجز رجع رقيقا وحل
له ما أخذ منه، ولا يعجزه
إلا السلطان بعد التلوم إذا
امتنع من التعجيز.

If the slave is unable to make the payments he returns to full slave status, and the master may keep the payments he had already received. If the slave defaults in making payments and does not accept his master's declaration that he is insolvent, only the sultan may declare him insolvent.

35.04 أولاد العبد وماله

35.04 Children and property of slaves

وكل ذات رحم فولدها بمنزلتها من مكاتبه أو مدبرة أو معتقة إلى أجل أو مرهونة وولد أم الولد من غير السيد بمنزلتها.

If a slave mother has a writ to purchase her freedom, or is to be freed at her master's death or after a certain time, or is pledged as a security, any child she bears [thereafter] shares her status. If a slave woman has had a child by her master, likewise any children she may have [thereafter] by another man are included in her status. (262)

ومال العبد له إلا أن ينتزعه السيد فإن أعتقه أو كاتبه ولم يستثن ماله فليس له أن ينتزعه.

A slave's possessions are his unless his master confiscates them. If the master frees him or gives him a writ allowing him to purchase his freedom and does not at the same time exclude the slaves possessions, he may not confiscate them.

وليس له وطئ مكاتبته.

If a slave woman has obtained from her master a writ to purchase her freedom, he may not have intercourse with her.

وما حدث للمكاتب والمكاتب من ولد دخل معهما في الكتابة وعتق بعتقهما.

Any children a man or woman slave happens to have after obtaining a writ to purchase his or her freedom are included in the contract and are freed along with their parent.

35.05 كتابة الجماعة

35.05 Freeing a group by kitāba

وتجوز كتابة الجماعة ولا يعتقون إلا بأداء الجميع.

Several slaves collectively may be given a writ to purchase their freedom, but they do not become free until the total sum is paid.

35.06 ما لا يجوز للمكاتب

35.06 Restrictions on a mukātab

وليس للمكاتب عتق ولا إتلاف ماله حتى يعتق، ولا يتزوج ولا يسافر السفر البعيد بغير إذن سيده.

A slave who has a writ to purchase his freedom may not free his own slaves or dispose of his possessions until he is set free. Neither may he marry or make a long journey without permission of his master.

35.07 أولاد المكاتب الذي مات

35.07 Children of a deceased mukātab

وإذا مات وله ولد قام مقامه وودى من ماله ما بقي عليه حالا، وورث من معه من ولده ما بقي.

If a slave who has a writ to purchase his freedom dies leaving children, they take his place and are to pay from his estate the remaining amount, which becomes due [in its entirety at their father's death]. These children, who were to be freed with their father, inherit the remainder of the estate.

وإن لم يكن في المال وفاء فإن ولده يسعون فيه ويؤدون نجوما إن كانوا كبارا وإن

If there is not enough in the estate to pay the entire amount required for being set free, the children, if they are adults, should trade with what there is, and pay what is due in installments. If the children are

كانوا صغار وليس في المال قدر النجوم إلى بلوغهم السعي رقوا.

minors {115} and the estate is not large enough to cover the installments until they are old enough to trade with the remainder, they should be put straight into full slavery.

وإن لم يكن له ولد معه في كتابته ورثه سيده.

If the deceased had no children to be freed with him, the master inherits the deceased's estate.

35.08 أم ولد

35.08 A slave mother of her master's child (umm walad)

ومن أولد أمة فله أن يستمتع منها في حياته وتعتق من رأس ماله بعد مماته، ولا يجوز بيعها ولا له عليها خدمة ولا غلة وله ذلك في ولدها من غيره وهو بمنزلة أمه في العتق يعتق بعقها، وكل ما أسقطته مما يعلم أنه ولد فهبه أم ولد، ولا ينفعه العزل

If a man has a child by a slave concubine, he may continue to have relations with her as long as he lives, but when he dies she is to be set free out of his undivided estate. He may not sell her or demand her service for himself or others.⁽²⁶³⁾ But he may demand such service from a child she has by another man.⁽²⁶⁴⁾ Such a child has the same status as its mother, and is set free when she is set free.

إذا أنكر ولدها وأقر بالوطئ فإن ادعى استبراء لم يطأ بعده لم يلحق به ما جاء من ولد.

Any certified miscarriage had by a slave concubine makes her a mother of her master's child (*umm walad*). If the master admits having had intercourse with her, he cannot claim to have withdrawn [his penis before ejaculation] in order to deny paternity. But if he claims to have maintained a period of abstinence to test her pregnancy (*istibrā'*) and thereafter to have had no intercourse with her, he is not held to have fathered what she delivers.

35.09 العبد الذي عليه الدين

35.09 Obstacle of slave's debts

ولا يجوز عتق من أحاط الدين بماله.

It is not permitted to free a slave who owes debts.

35.10 لعنتك بالسراية

35.10 Freeing part of a slave (bi-s-sirāya)⁽²⁶⁵⁾

ومن أعتق بعض عبده استتم عليه.

If someone sets free part of his slave's [body], it is understood that he frees him entirely.

وإن كان لغيره معه فيه شركة قوم عليه نصيب

If someone else shares in the ownership of the slave, the value of his share should be charged to the party who is freeing the slave on the day the manumission is

شريكة بقيمته يوم يقام عليه
وعتق. فإن لم يوجد مال بقي
سهم الشريك رقيقا.

35.11 العتق بمثلة

ومن مثل بعبده مثلة بينة من
قطع جارحة ونحوه عتق
عليه.

35.12 العتق بالقرابة

ومن ملك أبويه أو أحدا من
ولده أو ولد ولده أو ولد بناته
أو جده أو جدته أو أخاه لام
أو لآب أو لهما جميعا عتق
عليه.

35.13 العتق بالتبعية

ومن أعتق حاملا كان جنينها
حرا معها.

35.14 العتق الواجب

ولا يعتق في الرقاب الواجبة
من فيه معنى من عتق
بتدبير أو كتابة أو غيرهما
ولا أعمى ولا أقطع اليد
وشبهه ولا من على غير
الاسلام. ولا يجوز عتق
الصبي ولا المولى عليه.

35.15 الولاء

والولاء لمن أعتق، ولا
يجوز بيعه ولا هبته.

ومن أعتق عبدا عن رجل
فالولاء للرجل.

ولا يكون الولاء لمن أسلم
على يديه، وهو للمسلمين.

settled. The slave then goes free. But if the one who is
freeing the slave does not have the money to pay his
partner, the share of the other partner remains
enslaved.

35.11 Freeing because of mutilation (muthla)

If someone mutilates his slave in an obvious way, such
as by cutting off a limb, the slave goes free. ⁽²⁶⁶⁾

35.12 Freeing because of relationship (qarāba)

If someone gains possession of his parents, a son or a
grandson, a grandfather or grandmother, or a uterine,
consanguine or full brother of his, such a slave goes
free [automatically] at the owner's loss.

35.13 Freeing by concomitance (tab`iyya)

If someone frees a pregnant woman, the child she is
carrying is freed with her.

{116} 35.14 Freeing because of an obligation

In freeing a slave to satisfy an obligation, ⁽²⁶⁷⁾ one may
not free a slave who is already in the process of being
freed, such as one who was promised freedom at the
death of his master or who was given a writ to
purchase his freedom. Neither may one choose a blind
slave, one whose hand is cut off or is maimed in some
such way, a non-Muslim, a young boy, or someone
who is under guardianship [because of insanity].

35.15 Patronship (walā') ⁽²⁶⁸⁾

Patronship is a relationship to a former slave held by
the one who set him free. Patronship cannot be sold or
given away.

If someone frees a slave on behalf of another man, this
man becomes the former slave's patron.

If someone receives another person's conversion to
Islam he does not become the person's patron, but the
Muslim community does. ⁽²⁶⁹⁾

وولاء ما أعتقت المرأة لها
وولاء من يجز من ولد أو
عبد أعتقته ولا ترث ما
أعتق غيرها من أب أو ابن
أو زوج أو غيره.

A woman retains patronship over a slave she has freed as well as over the slave's children and slaves whom she freed concomitantly. Yet she may not inherit the patronship of a slave freed by her father, her son, her husband, or anyone else.

وميراث السائبة لجماعة
المسلمين.

The estate left by a slave who was set free without a patron⁽²⁷⁰⁾ is inherited by the Muslim community.

والولاء للاقعد من عصابة
الميت الاول، فإن ترك ابنين
فورثا ولاء مولى لابيها ثم
ما ت أحدهما وترك بنين
رجع الولاء إلى أخيه دون
بنيه، وإن مات واحد وترك
ولدا ومات أخوه وترك
ولدين فالولاء بين الثلاثة
أثلاثا.

Patronship over a slave is inherited by the nearest agnatic heir (*ʿaṣaba*) of the deceased patron. If the deceased left two sons, they inherit the patronship of their father's client together. Then if one of the two dies, even leaving sons, the patronship reverts [in full] to his brother to the exclusion of his sons. If one of the brothers dies leaving one son, and the other dies leaving two sons, a third of the patronship goes to each of the three survivors.

باب 36

في الشفعة والهبة والصدقة
والحبس والرهن والعارية
والوديعة واللقطة والغصب

CHAPTER 36 PROPERTY RIGHTS

36.01 الشفعة

36.01 Pre-emption (shuf'a)⁽²⁷¹⁾

وإنما الشفعة في المشاع ولا
شفعة فيما قد قسم ولا لجار
ولا في طريق ولا عرصه
دار قد قسمت بيوتها ولا في
فحل نخل أو بئر إذا قسمت
النخل أو الارض ولا شفعة
إلا في الارض وما يتصل
بها من البناء والشجر.

The right of pre-emption concerns only what is owned in common. {117} Thus there is no right of pre-emption to property which is divided into separately owned portions, or to a neighbour's property, to a roadway [into subdivided property], to the yard of a house divided into separately owned apartments, to [a co-owner's share in] a male palm tree if the female palm trees it serves are separately owned, or to [a co-owner's share in] a well if the land [it serves] is owned in separate portions. The right of pre-emption applies only to land and the constructions and trees on it.

ولا شفعة للحاضر بعد السنة
والغائب على شفيعته وإن
طالت غيبته، وعهدة الشفيع
على المشتري، ويوقف

The holder of the right of pre-emption loses it after one year [from the sale of the co-owner's share] if he was present [at the sale]. If he was absent he keeps his right, even if he is away a long time.⁽²⁷²⁾ If someone else buys the property, he must guarantee (*ʿuhda*) the property [against any defects] should the pre-emptor

الشفيع فإما أخذ أو ترك.

decide to buy it. The pre-emptor may be forced [in court] to decide between buying the property or giving up his right of pre-emption [before the year is up].

ولا توهب الشفعة ولا تباع
وتقسم بين الشركاء بقدر
الأنصبا.

The right of pre-emption may not be given away or sold. If there are several co-owners, they share in the right of pre-emption [to any share of the property that is for sale] in proportion to the size of their own shares of the property.

36.02 الهبة والصدقة والحبس

36.02 Donations (hiba), alms (ṣadaqa), and foundations (ḥubus) in general

ولا تتم هبة ولا صدقة ولا
حبس إلا بالحيازة، فإن مات
قبل أن تحاز عنه فهي
ميراث إلا أن يكون ذلك في
المرض فذلك نافذ من الثلث
إن كان لغير وارث.

A donation, alms, or ḥubus takes full effect only upon possession.⁽²⁷³⁾ If the donor dies before the recipients take possession of any of these, the property reverts to his estate, unless the grant was made during the deceased's final illness; in this case it is paid out of the disposable third,⁽²⁷⁴⁾ provided it is not in favour of an heir.

36.03 الهبة والصدقة

36.03 Donations and alms⁽²⁷⁵⁾

والهبة لصلة الرحم أو لفقير
كالصدقة لا رجوع فيها.
ومن تصدق على ولده فلا
رجوع له وله أن يعتصر ما
وهب لولده الصغير أو
الكبير ما لم ينكح لذلك أو
يدين أو يحدث في الهبة
حدثا.

A donation to someone related within a degree prohibiting marriage or to a poor person is like an alms in that it may not be taken back.⁽²⁷⁶⁾ Thus a father who gives something in alms to a minor child of his may not take it back. Nevertheless he may take back something he gave a minor son or even an adult son as a donation, as long as the son did not use the donation to get married with or to give out a loan, and nothing happened to the donation to change its value.

والام تعتصر ما دام الاب
حيا، فإذا مات لم تعتصر،
ولا يعتصر من يتيم واليتم
من قبل الاب.

A mother may take back a donation to her child as long as its father is alive, but she may not do so if he dies, since she may not take back a donation to an orphan, that is, a child who has lost its father.⁽²⁷⁷⁾

وما وهبه لابنه الصغير
فحيازته له جائزة إذا لم
يسكن ذلك أو يلبسه إن كان
ثوبا، وإنما يجوز له ما
يعرف بعينه، وأما الكبير فلا
تجوز حيازته له.

A father may retain possession of a donation he made to a minor son {118} of his, provided that he does not occupy [the building] or wear the garment he gave. Moreover, he may retain possession for his son only if the donation is a definitely identifiable article and the son is not yet an adult.

ولا يرجع الرجل في صدقته
ولا ترجع إليه إلا بالميراث.
ولا بأس أن يشرب من لبن
ما تصدق به. ولا يشتري ما
تصدق به.

A man should not take back something he gave in alms; he can recover it only by inheriting it. It is not wrong for a man to [accept an offer to] drink the milk of an animal he gave in alms. Yet he may not buy back anything he gave in alms.

والموهوب للعوض إما أثاب
القيمة أو رد الهبة فإن فاتت
فعليه قيمتها، وذلك إذا كان
يرى أنه أراد الثواب من
الموهوب له.

Someone who was given a donation for a counter-value expected in exchange must either recompense the donor with the value of the donation or return the donation. If the recipient no longer has the donation, he must return its value if he realizes that the donor was looking for a recompense from him.

ويكره أن يهب لبعض ولده
ماله كله، وأما الشيء منه
فذلك سائغ. ولا بأس أن
يتصدق على الفقراء بماله
كله لله.

It is disapproved for someone to give all his possessions as a donation to one of his children,⁽²⁷⁸⁾ but to give one of them part of his possessions is allowed. On the other hand, it is not wrong for a man to give all his possessions in alms to the poor for the sake of God.

ومن وهب هبة فلم يحزها
الموهوب له حتى مرض
الواهب أو أفلس فليس له
حينئذ قبضها، ولو مات
الموهوب له كان لورثته
القيام فيها على الواهب
الصحيح.

If a donee fails to take possession of a donation made to him until the donor falls ill or is bankrupt, he is then not entitled to take possession of it. If the donee dies [without having taken possession of the donation], his heirs may claim it, as long as the donor is in good health.

36.04 الحبس

36.04 Ḥubus⁽²⁷⁹⁾

ومن حبس دارا فهي على ما
جعلها عليه إن حيزت قبل
موته ولو كانت حبسا على
ولده الصغير جازت حيازته
له إلى أن يبلغ وليكرها له
ولا يسكنها، فإن لم يدع
سكنها حتى مات بطلت.

When someone puts his house in ḥubus, it may not be put to any other purpose if the beneficiary takes possession of it before the owner's death. If the ḥubus is established in favour of a minor son of his, the owner may hold the property for him until he reaches maturity. In this case he should rent it out and not occupy it himself. If he never moves out of the house before he dies, the ḥubus is void.

وإن انقرض من حبست
عليه رجعت حبسا على
أقرب الناس بالمحبس يوم
المرجع.

{119} If the beneficiaries of the ḥubus die off,⁽²⁸⁰⁾ the nearest [poor] relatives of the founder of the ḥubus become its beneficiaries the day it reverts from the former beneficiaries.⁽²⁸¹⁾

36.05 العمرة 05

ومن أ عمر رجلا حياته دارا رجعت بعد موت الساكن ملكا لربها، وكذلك إن أ عمر عقبه فانقرضوا بخلاف الحبس.

فإن مات المعمر يومئذ كانت لورثته يوم موته ملكا.

36.06 الزيادة في الحبس 06

ومن مات من أهل الحبس فنصيبه على من بقي.

ويؤثر في الحبس أهل الحاجة بالسكنى والغلة، ومن سكن فلا يخرج لغيره إلا أن يكون في أصل الحبس شرط فيمضي.

ولا يباع الحبس وإن خرب ويباع الفرس الحبس يكلب ويجعل ثمنه في مثله أو يعان به فيه.

واختلف في المعاوضة بالربع الخرب بربع غير خرب.

36.07 الرهن 07

والرهن جائز ولا يتم إلا بالحيازة ولا تنفع الشهادة في حيازته إلا بمعاينة البينة.

وضمن الرهن من المرتهن فيما يغاب عليه ولا يضمن ما لا يغاب عليه. وثمره

36.05 Life grants (umra) (282)

If someone gives a person the use of a house for as long as the donee lives, the house returns to its owner once the beneficiary who occupies it dies. It likewise returns to the owner if he gave the use of the house to the deceased recipient's children and they die off. This rule of return is in contrast to what holds for a ḥubus.

If the one who gave the use of a house dies on the same day as the beneficiary, the ownership of the house goes to the deceased owner's heirs the day he dies.

36.06 More on ḥubus

If one of several beneficiaries of a ḥubus dies, his share goes to the remaining beneficiaries.

People in need of lodging or revenue are to be preferred as beneficiaries of a ḥubus. But if someone is living [in a building as the beneficiary of a ḥubus], he should not be put out for someone else [who is poor], unless there is a stipulation to that effect in the ḥubus charter; this must be carried out.

A building put in ḥubus may not be sold, even if it is dilapidated. But if a horse put in ḥubus becomes mad and useless, it should be sold and the money used to found another ḥubus or to help someone thereby.

There is a difference of opinion concerning whether one may substitute a building in good condition for one that is [in ḥubus] and is dilapidated.

36.07 Pledges (rahn) (283)

Giving something in pledge is permitted. The transaction is not accomplished until [the lender] takes possession of it. The witnessing of taking possession is valid only if the witness (284) has seen the transaction.

Responsibility for the pledged property lies with the party who takes it in pledge (*al-murtahin*) if it is an object which can be hidden. If the object cannot be hidden, he does not bear the responsibility for it. Thus

النخل الرهن للراهن، وكذلك غلة الدور.

responsibility for the pledged fruit of a palm tree belongs to the party who put it in pledge (*ar-rāhin*). The same is true of housing rents pledged as a security.

والولد رهن مع الامة الرهن تلده بعد الرهن، ولا يكون مال العبد رهنا إلا بشرط.

If a slave woman bears a child after being given in pledge, her child is kept in pledge with her. The possessions of a [pledged] slave do not go into pledge with him unless they are so stipulated.

وما هلك بيد أمين فهو من الراهن.

If the pledged property perishes while in the custody of {120} an agent [of the owner], the responsibility for it remains with the owner.

36.08 العارية

36.08 Loan for temporary use (*ʿāriyya*)⁽²⁸⁵⁾

والعارية مؤداة يضمن ما يغاب عليه ولا يضمن ما لا يغاب عليه من عبد أو دابة إلا أن يتعدى.

A loan for temporary use is something given to be returned. The borrower is responsible for it if it is something which can be hidden, but not if it cannot be hidden, such as a slave or a mount, unless he abuses it.

36.09 الوديعة

36.09 Deposits (*wadīʿa*)⁽²⁸⁶⁾

والمودع إن قال: رددت الوديعة إليك صدق إلا أن يكون قبضها بإشهاد، وإن قال: ذهبت فهو مصدق بكل حال، والعارية لا يصدق في هلاكها فيما يغاب عليه.

If someone who was given an object to guard says "I have returned what you gave me to guard", he is to be believed, unless he had taken possession of the object before witnesses; [then he must return it the same way]. If he says "It vanished",⁽²⁸⁷⁾ he is to be believed no matter what [he accepted to guard and how he accepted it]. This is in contrast to someone who borrows the usufruct of an object (*ʿāriyya*) which can be hidden; he is not to be believed when he says he lost it.

ومن تعدى على وديعة ضمنها وإن كانت دنائير فردها في صرتها ثم هلكت فقد اختلف في تضمينه.

If someone abuses an object he was given to guard he bears responsibility [for the damage]. If the object consisted of *dīnārs* which were lost after he returned them in their purse, there is a difference of opinion whether the person who guarded them is responsible or not.⁽²⁸⁸⁾

ومن اتجر بوديعة فذلك مكروه والربح له إن كانت عينا، وإن باع الوديعة وهي عرض فربها مخير في الثمن أو القيمة يوم التعدي.

It is disapproved for someone to trade with something placed in his safekeeping. But [if he does so] with a money deposit, the profit belongs to him. If the deposit sold was merchandise, the owner has the choice of taking either [the price for which it was sold] or the real value the merchandise had on the day of the infringement [of selling it] was committed.

36.10 اللقطة

36.10 Found property (*luqaṭa*)⁽²⁸⁹⁾

ومن وجد لقطة فليعرفها سنة
بموضع يرجو التعريف بها،
فإن تمت سنة ولم يأت لها
أحد فإن شاء حبسها وإن
شاء تصدق بها وضمنها
لربها إن جاء.

وإن انتفع بها ضمنها، وإن
هلكت قبل السنة أو بعدها
بغير تحريك لم يضمنها.

وإذا عرف طالبها العفاص
والوكاء أخذها، ولا يأخذ
الرجل ضالة الأبل من
الصحراء وله أخذ الشاة
وأكلها إن كانت بفياء لا
عمارة فيها.

36.11 إداء قيمة المستهلك

ومن استهلك عرضا فعليه
قيمته، وكل ما يوزن أو
يكال فعليه مثله.

36.12 الغصب

والغاصب ضامن لما
غصب، فإن رد ذلك بحاله
فلا شئ عليه، وإن تغير في
يده فربه مخير بين أخذه
بنقصه أو تضمينه القيمة.

ولو كان النقص بتعديه خير
أيضا في أخذه وأخذ ما
نقصه، وقد اختلف في ذلك.

ولا غلة للغاصب ويرد ما
أكل من غلة أو انتفع، وعليه
الحد إن وطئ وولده رقيق

If someone finds a lost article [of value] he must announce it for one year in a place where such announcements are expected.⁽²⁹⁰⁾ If the year expires and no one comes to claim it, the finder may put it in ḥubus for someone or give it away as alms. In the latter case, he is responsible for the [consumed] article to its owner if he comes.

If the finder makes use of the article he is responsible for it. If the article perishes before or after the year is up without his having mishandled it, he is not responsible for it.

If the claimant recognizes the pouch [containing money] and the string tying it, he may take it. A man may not claim a lost camel in the desert, but he may claim and eat a sheep or goat he finds in uninhabited wasteland.

36.11 Compensation for consumption of another's property

If someone {131} consumes merchandise [belonging to someone else], he must pay its value. But if the goods are valued by weight or measure, he must pay back an equivalent amount.

36.12 Usurpation (ghaṣb)⁽²⁹¹⁾

A usurper is responsible for the loot he takes. If he returns it in the state in which he took it he is free from further obligation [to the owner]. But if it deteriorated by itself while in his possession, the owner has the choice of taking it back as it is or requiring the usurper to pay its original value.

If the usurper himself damaged the article, the owner has the choice of taking the article back with compensation for the damage [or requiring the usurper to pay its original value] although there is a difference of opinion concerning the legitimacy of [the first alternative].

The usurper has no right to the increment of what he took, and must return the increment accrued to him or [its value if] he consumed it. If he abducted a slave woman and had intercourse with her he must suffer the

لرب الامة. fixed punishment (*hadd*),⁽²⁹²⁾ and if she bears him a son, the son becomes a slave of the owner of the woman.

ولا يطيب لغاصب المال ربحه حتى يرد رأس المال على ربه، ولو تصدق بالربح كان أحب إلى بعض أصحاب مالك، وفي باب الاقضية شئ من هذا المعنى.

It is not proper to let a usurper have the profit he made on the capital he appropriated before returning it to its owner. But according to some companions of Mālik it is preferable for the usurper to give the profit away in alms. More is said on this question in the chapter on judgements.⁽²⁹³⁾

باب 37 في أحكام الدماء والحدود

CHAPTER 37 CRIMES, CONVICTION AND PUNISHMENTS

37.01 قتل نفس بنفس

37.01 Conviction for homicide

ولا تقتل نفس بنفس إلا ببينة عادلة أو باعتراف أو بالقسامة إذا وجبت، يقسم الولاة خمسين يمينا ويستحقون الدم ولا يحلف في العمد أقل من رجلين، ولا يقتل بالقسامة أكثر من رجل واحد.

No one may be put to death for homicide unless he is convicted by 1) adequate testimony (*bayyina*), or 2) his own admission, or 3) a sworn indictment (*qasāma*) if that is necessary.⁽²⁹⁴⁾ In the latter case, the representatives (*walī*, p. *wulāt*) of the victim must swear [to the guilt of the accused] fifty times before they have a right to his blood. If the homicide was premeditated, at least two men must take part in the swearing. No more than one man may be put to death in consequence of a sworn indictment.

وإنما تجب القسامة بقول الميت: دمي عند فلان أو بشاهد على القتل أو بشاهدين على الجرح ثم يعيش بعد ذلك ويأكل ويشرب.

A sworn indictment is obligatory only if there exists: 1) a statement by the dying person that "Such and such shed my blood", or 2) a witness of the killing, or 3) two witnesses of the wounding, {122} if the wounded person lives long enough after being wounded to eat and drink.

وإذا نكل مدعو الدم حلف المدعى عليهم خمسين يمينا، فإن لم يجد من يحلف من ولاته معه غير المدعى عليه وحده حلف الخمسين.

If the claimants of the blood of one accused [of premeditated murder] refuse to swear, the representatives of the accused must swear [to his innocence] fifty times. If the accused cannot get any of his representatives to swear with him he should swear fifty times by himself. If a group of persons is accused of [premeditated] murder, each of them must swear [to his innocence] fifty times.

ولو ادعي القتل على جماعة

In demanding the blood of one accused [of

حلف كل واحد خمسين
يميناً، ويحلف من الولاية في
طلب الدم خمسون رجلاً
خمسين يمينا وإن كانوا أقل
قسمت عليهم الايمان، ولا
تحلف امرأة في العمد.

premeditated murder], fifty representatives of the victim should swear a total of fifty oaths, [each one swearing once]. If they are fewer, they should each swear so many oaths as to total fifty oaths. A woman may not swear in the case of a premeditated murder.

وتحلف الورثة في الخطأ
بقدر ما يرثون من الدية من
رجل أو امرأة، وإن
انكسرت يمين عليهم حلفها
أكثرهم نصيباً منها، وإذا
حضر بعض ورثة دية
الخطأ لم يكن له بد أيحلف
جميع الايمان ثم يحلف من
يأتي بعده بقدر نصيبه من
الميراث.

For an accidental homicide, each male or female heir should swear [to the guilt of the accused] that fraction of the fifty oaths which is proportionate to his or her share in the blood rate (*diya*). If the number of oaths divides unevenly, the heir to whom the greater fraction falls swears the remainder. If only some of the heirs are present to swear in order to gain the blood rate for an accidental homicide, they may swear all fifty oaths, and if others come later these should each swear the number of times which is proportionate to his share in the inheritance.

ويحلفون في القسامة قياماً
ويجلب إلى مكة والمدينة
وبيت المقدس أهل أعمالها
للقسامة، ولا يجلب في
غيرها إلا من الاميال
اليسيرة.

The swearing should be done standing. People of the provinces of Mecca, Medina or Jerusalem should be summoned to their respective capital to swear the indictment. People of other provinces are not to be summoned [to a central mosque or similar place] unless they are within just a few miles of it.

ولا قسامة في جرح ولا في
عبد ولا بين أهل الكتاب ولا
في قتل بين الصفيين، أو
وجد في محلة قوم.

A sworn indictment is not to be made when the victim was only wounded, or if the homicide victim was a slave or a Jew or a Christian, or if the [body of the] victim was found between the lines [of two contending Muslim forces] or in a place frequented by many people.

37.02 العفو

37.02 Clemency (afw)

وقتل الغيلة لا عفو فيه،
وللرجل العفو عن دمه العمد
إن لم يكن قتل غيلة وعفوه
عن الخطأ في ثلثه.

No clemency may be accorded to someone who murdered for money.⁽²⁹⁵⁾ {123} In other cases of premeditated homicide the [mortally wounded] victim may spare the blood of his assailant. For an accidental homicide he may spare his assailant [payment of the blood rate] from the disposable third of his estate.⁽²⁹⁶⁾

وإن عفا أحد البنين فلا قتل
ولمن بقي نصيبهم من الدية

If one of the sons of the murder victim spares the assailant, the latter shall not be put to death. But the other heirs have a right to their share of the blood rate.

ولا عفو للبنات مع البنين.

When there are sons, the daughters have no right to accord clemency.

ومن عفي عنه في العمد
ضرب مائة وحبس عاما.

Someone who is spared [being put to death] for a premeditated homicide should be lashed one hundred times and incarcerated for one year.

37.03 الدية لرجال مسلمين

37.03 Blood rate (diya)⁽²⁹⁷⁾

والدية على أهل الإبل مائة
من الإبل، وعلى أهل الذهب
ألف دينار، وعلى أهل
الورق اثنا عشر ألف درهم.

The blood rate for an accidental homicide is, for owners of camels, one hundred camels. For owners of gold it is one thousand dīnārs, and for owners of silver twelve thousand dirhams.

ودية العمد إذا قبلت خمس
وعشرون حقة وخمس
وعشرون جذعة وخمس
وعشرون بنت لبون وخمس
وعشرون بنت مخاض.

The blood rate for a premeditated murder, if accepted, consists, in camels, of 1) twenty-five ḥiqqas (females in their fourth year), 2) twenty-five jadha`as (females in their fifth year), 3) twenty-five females whose mothers are with milk (females in their third year), and 4) twenty-five menstruating females (in their second year).

ودية الخطأ خمسة عشرون
من كل ما ذكرنا وعشرون
بنو لبون ذكورا.

The blood rate for an accidental homicide consists of five grades of camels, twenty of each of the four aforementioned ones, and twenty males whose mothers are with milk.

وإنما تغلظ الدية في الأب
يرمي ابنه بحديدة فيقتله فلا
يقتل به ويكون عليه ثلاثون
جذعة وثلاثون حقة
وأربعون خلفه في بطونها
أولادها، وقيل ذلك على
عاقلته، وقيل ذلك في ماله.

A heavier form of blood rate is to be exacted only in the case of a father who kills his son by throwing a piece of iron at him.⁽²⁹⁸⁾ He is not to be put to death, but must pay in camels thirty jadha`as, thirty ḥiqqas, and forty khalifas, that is, pregnant camels. One opinion is that this is to be paid by his clan (*`āqila*); another that it is to be paid from his own possession.

37.04 الدية لغيرهم

37.04 Blood rate to other than Muslim men

ودية المرأة على النصف من
دية الرجل، وكذلك دية
الكتابيين، ونساؤهم على
النصف من ذلك.

The blood rate due to a woman is half that due to a man. A Jewish or a Christian man likewise receives half what would be paid to a Muslim man. A Jewish or a Christian woman, moreover, receives only half what her male counterpart would be paid.

والمجوسي ديته ثمانمائة
درهم ونساؤهم على النصف
من ذلك، ودية جراحهم

A Magi man is paid eight hundred dirhams, and a Magi woman half of {124} that. The same proportions apply to indemnifications made to these women because of wounds inflicted on them.⁽²⁹⁹⁾

كذلك.

37.05 الدية للمثلة

37.05 Blood rate for mutilation

وفي اليدين الدية وكذلك في الرجلين أو العينين وفي كل واحدة منهما نصفها.

The [full] blood rate is to be paid for [amputating] someone's hands or feet or [destroying] his eyes. Half the blood rate is due if only one of these parts are affected.

وفي الانف يقطع مارنه الدية، وفي السمع الدية، وفي العقل الدية، وفي الصلب ينكسر الدية، وفي الانثيين الدية، وفي الحشفة الدية، وفي اللسان الدية، وفيما منع منه الكلام الدية، وفي ثديي المرأة الدية، وفي عين الاعور الدية.

The [full] blood rate is due also for cutting off the flexible part of a person's nose, [destroying] his hearing or his sanity, breaking his back, [cutting off or crushing] his testicles, [cutting off] his penis, [cutting off] his tongue or even damaging it so that he cannot speak, for cutting off the breasts of a woman, and for [destroying] the eye of someone who had lost his other eye.

37.06 ما يُدفع عن الموضحة والمنقلة

37.06 Indemnification for lesser wounds

وفي الموضحة خمس من الابل، وفي السن خمس، وفي كل إصبع عشر، وفي الانملة ثلاث وثلاث، وفي كل أنملة من الابهامين خمس من الابل.

For [deliberately] inflicting a *mūḍiḥa* (open) wound, five camels are to be paid; the same is to be paid for [damaging] a tooth. Ten camels are to be paid for each finger or toe [cut off], three and one third for each finger or toe tip, and five camels for the tip of each thumb [or big toe].

وفي المنقلة عشر ونصف عشر، والموضحة ما أوضح العظم والمنقلة ما طار فراشها من العظم ولم تصل إلى الدماغ وما وصل إليه فهي المأمومة ففيها ثلث الدية، وكذلك الجائفة

Fifteen percent of the blood rate is to be paid for a *munaqqila* wound. A *mūḍiḥa* wound is one in which the bone is exposed; a *munaqqila* wound is one in which the bone [of the upper nose] is fractured and dislocated, but the fracture does not reach to the brain. If the fracture does reach to the brain, being a fracture of the fossa anterior of the skull (*ma'mūna*), one third of the blood rate must be paid. The same penalty holds for a visceral puncture (*jā'ifa*).

وليس فيما دون الموضحة إلا الاجتهاد وكذلك في جراح الجسد. ولا يعقل جرح إلا بعد البرء وما برئ على غير شين مما دون

For any wound lighter than a *mūḍiḥa*, and for other bodily wounds, there is no fixed penalty, but only what the judge decides. The indemnity for any wound is not to be paid until after it is healed. If a wound lighter than a *mūḍiḥa* heals without a scar, nothing is to be paid.

الموضحة فلا شئ فيه.

37.07 القصاص

37.07 Talion (qiṣās)⁽³⁰⁰⁾

وفي الجراح القصاص في العمد إلا في المتالف مثل المأمومة والجائفة والمنقلة والفخذ والانشيين والصلب ونحوه، ففي كل ذلك الدية.

Talion is to be exacted for a deliberately inflicted wound, unless the wound can be fatal, such as a frontal skull fracture, a visceral puncture, a munaqqila wound, {125} [breaking] a thigh, [crushing] the testicles, [breaking] a back, etc. In all these cases the blood rate is to be paid.

37.08 ما على العاقلة من الدية

37.08 Clan's obligation regarding blood rate

ولا تحمل العاقلة قتل عمد ولا اعترافا به وتحمل من جراح الخطأ ما كان قدر الثلث فأكثر وما كان دون الثلث ففي مال الجاني.

The clan (*`āqila*) is not responsible for paying the blood rate for a premeditated murder [by one of its members], even if he admits his guilt. But it may take upon itself the payment due for an accidental wounding if the amount is a third or more of the blood rate. If it is less than a third, the inflictor of the injury must pay it out of his own possessions.

وأما المأمومة والجائفة عمدا فقال مالك: ذلك على العاقلة، وقال أيضا: إن ذلك في ماله إلا أن يكون عديما فتحمله العاقلة لانهما لا يقاد من عمدهما، وكذلك ما بلغ ثلث الدية مما لا يقاد منه لانه متلف.

In the case of a frontal skull fracture or a visceral puncture deliberately inflicted, Mālik [on one occasion] said that the clan must pay [the third of the blood rate]. Elsewhere he said that the inflictor of the injury must pay it from his own possessions, unless he is without money, in which case the clan takes responsibility for the payment.⁽³⁰¹⁾ The same [question of responsibility] applies to indemnifications equaling a third of the blood rate for other injuries for which no talion is exacted because they may be fatal.

ولا تعقل العاقلة من قتل نفسه عمدا أو خطأ.

The clan does not pay any blood rate for someone who kills himself deliberately or accidentally.⁽³⁰²⁾

37.09 عقل المرأة

37.09 Indemnification to a woman

وتعاقل المرأة الرجل إلى ثلث دية الرجل فإذا بلغت رجعت إلى عقلها.

A woman is paid the same indemnification as a man as far as one third of the full blood rate a man would receive. Thereafter she receives the portion of a woman, [which is half that of a man].

37.10 قضايا بين جانبين غير متساويين

37.10 Cases where the parties are unequal

والنفر يقتلون رجلا فإنهم يقتلون به.

If a group of people murder one person, all of them are to be put to death for this.

والسكران إن قتل قتل.	If a drunken man kills someone, he is to be put to death.
وإن قتل مجنون رجلا فالدية على عاقلته.	If an insane man kills someone, his clan must pay the blood rate.
وعمد الصبي كالخطأ وذلك على عاقلته إن كان ثلث الدية فأكثر وإلا ففي ماله.	If a minor commits a crime, indemnity is to be paid as if it were an accident. His clan pays it if it amounts to one third of the blood rate or more; if it is less, it is taken from his own possessions.
وتقتل المرأة بالرجل والرجل بها، ويقتص لبعضهم من بعض في الجراح.	A woman is to be put to death for murdering a man, and vice versa. Likewise talion is to be exacted if either one injures the other.
ولا يقتل حر بعبد، ويقتل به العبد.	A free man should not be put to death for murdering a slave, although a slave should be put to death for murdering a free man.
ولا يقتل مسلم بكافر، ويقتل به الكافر.	A Muslim should not be put to death for murdering an unbeliever, although an unbeliever should be put to death for murdering a believer. ⁽³⁰³⁾
ولا قصاص بين حر وعبد في جرح ولا بين مسلم وكافر.	No talion should be exacted for a wound inflicted by a free man on a slave or vice versa, {126} or by a Muslim on an unbeliever or vice versa. ⁽³⁰⁴⁾

37.11 الهدر

37.11 Cases of no responsibility (hadar)

والسائق والقائد والراكب ضامنون لما وطئت الدابة، وما كان منها من غير فعلهم أو وهي واقفة لغير شئ فعل بها فذلك هدر.	The man who is driving, leading or riding a beast is responsible for anything the beast tramples. But if the beast causes some damage without any of the man's doing, or while it is stopped and not incited, the damage is no one's responsibility.
وما مات في بئر أو معدن من غير فعل أحد فهو هدر.	If someone dies in a well or in a mine not as a result of anyone's doing, this is no one's responsibility.

37.12 12 كيفية دفع الدية

37.12 When and to whom indemnities are due

وتنجم الدية على العاقلة في ثلاث سنين، وثلاثها في سنة ونصفها في سنتين.	The clan must pay the blood rate in installments over three years. If the indemnity owed is a third of the blood rate, it is to be paid within one year; if it is half it is to be paid within two years.
والدية موروثه على	The payments due to a deceased person are due to his heirs according to their share in the inheritance.

الفرائض.

37. 13 غرة الجنين

37.13 Ghurra indemnification for causing miscarriage

وفي جنين الحرة غرة عبد أو وليدة تقوم بخمسين دينارا أو ستمائة درهم، وتورث على كتاب الله.

For causing a free woman to have a miscarriage the indemnification is a ghurra,⁽³⁰⁵⁾ that is, a slave boy or girl valued at fifty dīnārs or six hundred dirhams. The ghurra indemnification is inherited by the heirs of the unborn child according to the proportions laid down in the Qur'ān.⁽³⁰⁶⁾

37. 14 الورث عن المقتول

37.14 Killing a relative

ولا يرث قاتل العمد من مال ولا دية، وقاتل الخطأ يرث من المال دون الدية.

Someone who deliberately murders a relative may not inherit his possessions or the blood rate. Someone who kills a relative by accident inherits his possessions, but not the blood rate.

37. 15 الغرة للأمة

37.15 Ghurra indemnification in case of a slave woman

وفي جنين الامة من سيدها ما في جنين الحرة، وإن كان من غير ففيه عشر قيمتها.

For causing a slave woman who is pregnant by her master to have a miscarriage the indemnification is the same as for a free woman. If she was pregnant by another man, the indemnification is ten percent of the value of the mother.

37. 16 قتل العبد

37.16 Killing a slave

ومن قتل عبدا فعليه قيمته.

If someone kills a slave he must pay the value of the slave.

37. 16 جزاء الجماعة

37.17 Collective killing

وتقتل الجماعة بالواحد في الحرابة والغيلة وإن ولي القتل بعضهم.

If a group of persons kills someone in banditry (*ḥirāba*) or for money (*ghīla*), they should all be put to death, even if only one of them did the killing for the rest.

37. 18 كفارة القتل في الخطأ

37.18 Atonement for homicide

وكفارة القتل في الخطأ واجبة عتق رقبة مؤمنة فإن لم يجد فصيام شهرين متتابعين.

For killing someone accidentally atonement must be made by freeing a believing slave woman, or if this is impossible, by fasting two consecutive months.

ويؤمر بذلك إن عفي عنه في العمد فهو خير له.

If someone is spared being put to death for premeditated murder, he should make the same atonement; this is best for him.

37. 19 الاحتراف عن الإسلام

37.19 Crimes against Islām

ويقتل الزنديق، ولا تقبل توبته وهو الذي يسر الكفر ويظهر الاسلام.

A *zindīq* should be put to death as a matter of fixed penalty (*ḥadd*), and his repentance is not to be accepted. A *zindīq* is one who conceals his disbelief {127} and professes faith.⁽³⁰⁷⁾

وكذلك الساحر ولا تقبل توبته.

Likewise a sorcerer (*sāḥir*) should be put to death without accepting his repentance.

ويقتل من ارتد إلا أن يتوب ويؤخر للتوبة ثلاثا، وكذلك المرأة.

An apostate (*murtadd*) should be put to death, unless he repents.⁽³⁰⁸⁾ He should be given three days to repent. A woman apostate is treated the same as a man.

ومن لم يرتد وأقر بالصلاة وقال: لا أصلي آخر حتى يمضي وقت صلاة واحدة، فإن لم يصلها قتل.

If someone does not apostatize, but recognizing [the obligation of] *ṣalāt*, says "I will not do *ṣalāt*", he should be given respite until the time for the next *ṣalāt* has expired, and then should be put to death as a matter of fixed penalty.

ومن امتنع من الزكاة أخذت منه كرها.

If someone refuses to pay his *zakāt*, it should be collected from him by force.

ومن ترك الحج فالله حسبه.

If someone [is able and] omits going on the *ḥajj* pilgrimage, God is his judge.

ومن ترك الصلاة جحدا لها فهو كالمرتد يستتاب ثلاثا، فإن لم يتب قتل.

Someone who omits doing *ṣalāt* out of spite for it (*jaḥdan*) is like an apostate, and should be given three days to repent. If he doesn't repent he should be put to death.

ومن سب رسول الله (ص) قتل ولا تقبل توبته، ومن سبه من أهل الذمة بغير ما به كفر، أو سب الله عز وجل بغير ما به كفر وقتل إلا أن يسلم.

If someone speaks disrespectfully of the Messenger of God (*sabb an-nabī*), he should be put to death without accepting his repentance. If someone from a tolerated class⁽³⁰⁹⁾ speaks disrespectfully of him, aside from simply expressing his disbelief, or speaks disrespectfully of God, aside from simply expressing his disbelief, he should be put to death,⁽³¹⁰⁾ unless he becomes a Muslim.

وميراث المرتد لجماعة المسلمين.

The estate of an executed apostate goes to the Muslim community.

37. 20 الحرابة

37.20 Banditry (*ḥirāba*)⁽³¹¹⁾

والمحارب لا عفو فيه إذا ظفر به، فإن قتل أحدا فلا بد

A bandit may not be accorded clemency if he is caught. If he has murdered someone he must be put to death. If he has not murdered anyone, the imām should

من قتله وإن لم يقتل فيسع
الإمام فيه اجتهاده بقدر
جرمه وكثرة مقامه في
فساده فإما قتله أو صلبه ثم
قتله، أو يقطعه من خلاف أو
ينفيه إلى بلد يسجن بها حتى
يتوب،

decide upon a punishment which fits the crime and the length of time the man spent in banditry. He may put him to death, or crucify him first and then put him to death, or cut off his hand and his foot on opposite sides, or ban him to another town to be imprisoned there until he dies. (312)

فإن لم يقدر عليه حتى جاء
تائباً وضع عنه كل حق هو
لله من ذلك، وأخذ بحقوق
الناس من مال أو دم.

If the bandit could not be caught, and turns himself in repentant, none of these penalties, which are God's right, may be exacted. (313) But the rights of men to his blood or possessions remain enforceable.

وكل واحد من اللصوص
ضامن لجميع ما سلبوه من
الاموال، وتقتل الجماعة
بالواحد في الحرابة والغيلة،
وإن ولي القتل واحد منهم.

{128} Each bandit is singly responsible for the whole of what a gang of them robbed together. The whole gang, moreover, is to be put to death for murdering one person in banditry or for money, even if only one of the gang did the actual killing.

ويقتل المسلم بقتل الذمي قتل
غيلة أو حرابة.

A Muslim is to be put to death for killing a person of a tolerated class in banditry or for money.

37.21 زنا المحصن

37.21 Illicit intercourse (zinā') (314) by the maritally restricted

ومن زنى من حر محصن
رجم حتى يموت.

A free person restricted by marriage (*muḥṣan*) who has illicit intercourse should be stoned until he dies. (315)

والاحصان أن يتزوج امرأة
نكاحاً حرابة صحيحاً
ويطأها وطأ صحيحاً.

A man becomes maritally restricted by marrying a woman validly and having valid intercourse with her. (316)

37.22 زنا غير المحصن

37.22 Illicit intercourse by the non-maritally restricted

فإن لم يحصن جلد مائة جلدة
وغربه الإمام إلى بلد آخر
وحبس فيه عاماً وعلى العبد
في الزنى خمسون جلدة

If the person was not maritally restricted he should be lashed one hundred times and banned to another town to be imprisoned there for one year.

وكذلك الامة وإن كانا
متزوجين، ولا تغريب
عليهما ولا على امرأة.

A slave man or woman should be lashed fifty times for illicit intercourse even if the man or woman is married; and they are not to be banned. Neither is a [free] woman to be banned.

37.23 إدانة الزاني

37.23 Conviction for illicit intercourse

ولا يحد الزاني إلا باعتراف أو بحمل يظهر أو بشهادة أربعة رجال أحرار بالغين عدول يرونه كالمروء في المكحلة، ويشهدون في وقت واحد. وإن لم يتم أحدهم الصفة حد الثلاثة الذين أتموها.

The fixed punishment for illicit intercourse is to be applied only if the accused person admits it, or is obviously pregnant, or if four free adult men of good character simultaneously see the [penis of the man in the vagina of the woman] as a kohl stick in its case.⁽³¹⁷⁾ If the testimony of one of the four does not match this description, the three others who gave testimony which did are to be given the fixed punishment [for slander].

37.24 الصبي

37.24 Convicted minors

ولا حد على من لم يحتلم.

The fixed punishment is not to be given to a minor.

37.25 الزنا مع أمة

37.25 Illicit intercourse with a slave woman

ويحد واطئ أمة والده ولا يحد واطئ أمة ولده وتقوم عليه وإن لتحمل.

A son is to be given the fixed punishment for having intercourse with a slave concubine of his father's, but not a father for having intercourse with a slave concubine of his son's. Yet he is to pay his son the amount of her value, even if she does not conceive.

ويؤدب الشريك في الإمة يطؤها ويضمن قيمتها إن كان له مال فإن لم تحمل فالشريك بالخيار بين أن يتماسك أو تقوم عليه.

One of two partners who own a slave woman is to receive a punishment decided upon by the judge (*ta'dīb*) if he has intercourse with her. If [she conceives and] he has the money, he is also held to buy at value his partner's share. But if she does not conceive, the wronged partner has the choice of {129} keeping his share or requiring the guilty partner to buy it at value.

37.26 الحاملة المستكرهة

37.26 Raped woman's proof of innocence

وإن قالت امرأة بها حمل استكرهت لم تصدق وحدت إلا أن تعرف بينة أنها احتملت حتى غاب عليها أو جاءت مستغيثة عند النازلة أو جاءت تدمي.

A pregnant woman who says she was raped is not to be believed, and must be given the fixed punishment, unless there is a witness that intercourse was forced on her all the while the rapist was with her, or if she screamed for help while being raped, or came away bleeding.

37.27 زنا النصراني مع مسلمة

37.27 A Christian rapist

والنصراني إذا غصب المسلمة في الزنى قتل.

A Christian who abducts and rapes a Muslim woman should be put to death.⁽³¹⁸⁾

37.28 Voiding conviction based on admission
37.28 رجعة عن الاعتراف

وإن رجع المقر بالزنى أقيل وترك.

If a man retracts an admission of illicit intercourse, he is to be let go.

37.29 Executor of the fixed penalty on slaves
37.29 مقيم الحد على العبيد

ويقيم الرجل على عبده وأمته حد الزنى إذا ظهر حمل أو قامت بينة غيره أربعة شهداء أو كان إقرار، ولكن إن كان للامة زوج حر أعبد لغيره فلا يقيم الحد عليها إلا السلطان.

A master should impose the fixed penalty for illicit intercourse on his slave man or woman if the slave woman becomes obviously pregnant, or if there is other proof, namely, four witnesses, or if the slave admits having committed the act. But if the slave woman has a husband who is free or the slave of someone else, [or the slave man is married to the slave woman of someone else], only the sultan may carry out the fixed penalty.

37.30 Homosexuality (liwāt)
37.30 اللواط

ومن عمل عمل قوم لوط بذكر بالغ أطاعه رجما أحصنا أو لم يحصنا.

If a man commits an act of homosexuality⁽³¹⁹⁾ with a consenting adult male, the two should be stoned to death, whether they are restricted by marriage or not.⁽³²⁰⁾

37.31 Slander (qadhf)⁽³²¹⁾
37.31 القذف

وعلى القاذف الحر الحد ثمانون وعلى العبد أربعون في القذف وخمسون في الزنى والكافر يحد في القذف ثمانين.

A free person guilty of slander should be given eighty lashes.⁽³²²⁾ A slave should be given forty lashes for slander and fifty for illicit intercourse. An unbeliever guilty of slander should be given the fixed penalty of eighty lashes.

ولا حد على قاذف عبد أو كافر ويحد قاذف الصبية بالزنى إن كان مثلها يوطأ ولا يحد قاذف الصبي ولا حد على من لم يبلغ في قذف ولا وطئ.

The fixed penalty does not apply to someone who slanders a slave or an unbeliever. It does apply to someone who slanderously accuses a minor girl of illicit intercourse, if she is such as can have intercourse, but not to someone who slanders a minor boy, [accusing him of the same thing], nor to a minor who is guilty of slander or of illicit intercourse.

ومن نفي رجلا من نسبه فعليه الحد وفي التعريض الحومن قال لرجل: يا لوطي حد.

The fixed penalty does apply to someone who denies a man's parentage or who says something implying the same thing. It also applies to someone who calls a man a homosexual.

37.32 جمع الحدود

ومن قذف جماعة فحد واحد
يلزمه لمن قام به منهم ثلثا
شيء عليه.

ومن كرر شرب الخمر أو
الزنى فحد واحد في ذلك
كله.

وكذلك من قذف جماعة ومن
لزمته حدود وقتل فالقتل
يجزئ عن ذلك إلا في
القذف فليحد قبل أن يقتل.

37.33 شرب مسكر

ومن شرب خمرا أو نبيذا
مسكرا حد ثمانين، سكر أو
لم يسكر، ولا سجن عليه.

37.34 كيفية إداء الحد

ويجرد المحدود، ولا تجرد
المرأة إلا مما يقيها الضرب
ويجلدان قاعدين.

ولا تحد حامل حتى تضع،
ولا مريض مثقل حتى يبرأ.

37.35 وطأ البهيمة

ولا يقتل واطئ البهيمة
وليُعاقب.

37.36 السرقة

ومن سرق ربع دينار ذهباً
أو ما قيمته يوم السرقة ثلاثة
دراهم من العروض أو وزن
ثلاثة دراهم فضة قطع إذا
سرق من حرز، ولا قطع في
الجلسة.

37.32 Multiplication of penalties

If someone slanders a group of people, a representative of the {130} group may exact the fixed penalty once. The rest may then exact nothing further from the guilty person.

If someone repeatedly drinks wine (*khamr*)⁽³²³⁾ or has illicit intercourse, only one fixed penalty may be exacted for all these crimes.⁽³²⁴⁾

Likewise, if someone slanders a group of people and has other penalties, including the death penalty coming to him [for other crimes], the death penalty takes the place of all the penalties except that for slandering, which should be exacted before he is put to death.

37.33 Drinking intoxicants

Someone who drinks wine or an intoxicating liquor made from dried dates or raisins (*nabīdh*)⁽³²⁵⁾ must undergo the fixed penalty of eighty lashes, whether he gets drunk or not, but he is not to be put in prison.

37.34 Administration of the fixed penalty

Someone who is to be lashed should be stripped, but a woman should be stripped only of what would shield her from the blows. The person is to be lashed sitting down.

A pregnant woman should not be given the fixed penalty until she delivers, nor may someone who is seriously ill until he gets well.

37.35 Bestiality

Someone should not be put to death for copulating with a beast, but he is to be punished.

37.36 The fixed penalty for stealing (*sariqa*)

If someone steals⁽³²⁶⁾ from a place of custody (*hirz*) one quarter of a *dīnār* in gold, or goods worth three dirhams on the day they were stolen, or the weight of three dirhams in silver, [his right hand] is to be cut off.⁽³²⁷⁾ But this penalty does not apply if the person took the goods out openly (*khulsa*).⁽³²⁸⁾

ويقطع في ذلك يد الرجل والمرأة والعبد، ثم إن سرق قطعت رجله من خلاف، ثم إن سرق فيده، ثم إن سرق فرجله، ثم إن سرق جلد وسجن.

37.37 الرجعة عن اعتراف السرقة

ومن أقر بسرقة قطع، وإن رجع أقيّل.

37.38 غرم المسروق

وغرم السرقة إن كانت معه وإلا اتبع بها.

37.39 إخفاف التأديب

ومن أخذ في الحرز لم يقطع حتى يخرج السرقة من الحرز وكذلك الكفن من القبر.

ومن سرق من بيت أذن له في دخوله لم يقطع.

ولا يقطع المختلس.

وإقرار العبد فيما يلزمه في بدنه من حد أو قطع يلزمه وما كان في رقبته فلا إقرار له.

ولا قطع في ثمر معلق ولا في الجمار في النخل ولا في الغنم الراعية حتى تسرق من مرايحها وكذلك التمر من الأندر.

The penalty of cutting off [the right hand] applies to men, women and slaves. If the person steals a second time, his left foot is to be cut off. If he steals a third time, his left hand is to be cut off. If he steals a fourth time, his right foot is to be cut off. If he steals after that, he is to be flogged and imprisoned.

37.37 Voiding conviction based on admission

If someone admits to stealing, his hand should be cut off, but if he revokes his admission he should be let go.

37.38 Return of stolen goods

A thief must pay back what he stole if the goods are in his possession. If they are not, he is to be prosecuted for them.⁽³²⁹⁾

37.39 Mitigating factors

Someone who lifts something in custody may not be penalized with having his hand cut off unless he takes what he stole out of {131} the place of custody. The same holds for stealing something from a grave and going out of the mausoleum with it.

If someone steals something from a house he was given permission to enter, his hand should not be cut off.

Neither should someone's hand be cut off if he lifts something and goes out with it openly.

If a slave admits having committed a crime for which there is a penalty affecting his body, such as a fixed [number of lashes] or cutting off his hand, his admission holds good. But no admission of his is to be accepted if it concerns a crime for which his person which belongs to his master (*raqaba*) is jeopardized.

No one may have his hand cut off for stealing fruit hanging on a tree, for stealing a palm pith, or for stealing sheep or goats while they are grazing unless he stole them from their corral. Neither should anyone's hand be cut off for stealing fruit from a barn.

37.40 الإبرار

37.40 Intercession (shafā`a)

ولا يشفع لمن بلغ الامام في السرقة والزنى.

No intercession [for the wronged party to reduce the penalty] is of any use once a case of stealing or illicit intercourse has been reported to the imām.

واختلف في ذلك في القذف.

There is a difference of opinion concerning the possibility of intercession at that stage if the crime was one of slander.

37.41 41 السرقة من الكم ومن بيت المال

37.41 Pickpocketing and stealing public property

ومن سرق من الكم قطع، ومن سرق من الهري وبيت المال والمغرم فليقطع، وقيل إن سرق فوق حقه من المغرم بثلاثة دراهم قطع.

Someone's hand should be cut off for pickpocketing, also for stealing from the public granary, treasury, or collection of war loot. Regarding the collection of war loot, another opinion is that the thief's hand should be cut off only if he steals three dirhams more than his share.

37.42 42 اتباع المسروق

37.42 Prosecution for stolen goods⁽³³⁰⁾

ويتبع السارق إذا قطع بقيمة ما فات من السرقة في ملائه، ولا يتبع في عدمه ويتبع في عدمه بما لا يقطع فيه من السرقة.

If a thief's hand has been cut off, he is to be prosecuted to have him return the value of the missing stolen goods, provided he is solvent. If he is not solvent he is to be prosecuted for an amount that does not warrant cutting off his hand.

باب 38 في الاقضية والشهادات

CHAPTER 38 JUDGEMENTS: PROCEDURE AND CASES

38.01 01 إجراء المحاكم

38.01 Court procedure

والبينة على المدعي واليمين على من أنكر، ولا يمين حتى تثبت الخطة أو الظنة، كذلك قضى حكام أهل المدينة، وقد قال عمر بن عبد العزيز: تحدث للناس أقضية بقدر ما أحدثوا من الفجور.

It is up to the plaintiff or claimant (*mudda`ī*) to produce testimony⁽³³¹⁾ for prosecution, while it is up to the defendant to deny the charge under oath (*yamīn*). but no oath is to be required unless it is sure the parties have done business with each other or if the charge is plausible. This is the practice of the judges of Medina. Besides, `Umar ibn-`Abdal`azīz⁽³³²⁾ said: "New judgements are made for{132} men to the extent that the commit new crimes."⁽³³³⁾

وإذا نكل المدعى عليه لم يقض للطالب حتى يحلف

If the defendant refuses to take the oath, judgement is not given in favour of the claimant until the latter swears concerning what he alleged to know.

فيما يدعي فيه معرفة.

واليمين بالله الذي لا إله إلا هو، ويحلف قائماً وعند منبر الرسول (ص) في ربع دينار فأكثر وفي غير المدينة يحلف في ذلك في الجامع وموضع يعظم منه، ويحلف الكافر بالله حيث يعظم.

وإذا وجد الطالب بينة بعد يمين المطلوب لم يكن علم بها قضي له بها، وإن كان علم بها فلا تقبل منه وقد قيل تقبل منه.

ويقضى بشاهد ويمين في الاموال ولا يقضى بذلك في نكاح أو طلاق أو حد ولا في دم عمد أو نفس إلا مع القسامة في النفس، وقد قيل يقضى بذلك في الجراح.

38.02 شهادة النساء

ولا تجوز شهادة النساء إلا في الاموال ومائة امرأة كمرأتين وذلك كرجل واحد يقضى بذلك مع رجل أو مع اليمين فيما يجوز فيه شاهد ويمين.

وشهادة امرأتين فقط فيما لا يطلع عليه الرجال من الولادة والاستهلال وشبهه جائزة

38.03 رد شهادة من اتهم به

ولا تجوز شهادة خصم ولا

The oath is "By God, besides whom there is no other deity". The defendant swears it standing by the minbar of the Messenger [if in Medina and] if the case concerns [the value of] a quarter of a dīnār or more. Outside Medina the defendant swears his oath in the central mosque, at the most sacred spot in it.⁽³³⁴⁾ An unbeliever should swear "By God" in a place sacred to him.⁽³³⁵⁾

If, after the defendant has sworn, the claimant finds he can provide additional testimony which he did not know of before, judgement may be given in his favour on the basis of it. But if he knew of its existence beforehand, this testimony is inadmissible although according to another opinion it may be accepted.

In cases of property ownership, judgement may be given on the basis of one witness (*shāhid*) and an oath. But this is not sufficient in cases of marriage, divorce, fixed penalties, premeditated wounding, or of homicide. A homicide case may be judged only on the basis of swearing the [fifty] *qasāma* indictments. There is another opinion that one witness and one oath suffice for a [premeditated] wounding.

38.02 Testimony of women

Women are permitted to testify only in cases of property ownership. A hundred women count no more than two women, and two women count as one man.⁽³³⁶⁾ Judgement may be given on the basis of [the testimony of] the two women and of one man [without an oath by the claimant], or on the basis of the two women along together with an oath [by the claimant] in cases where one witness and an oath are permitted.

The testimony of two women alone is permitted for matters men do not observe, such as childbirth or whether a new born child cried [before dying].⁽³³⁷⁾

38.03 Rejection of witness because of character or relationship

The testimony of an opponent or of someone whose testimony is suspect is inadmissible. {133} Only the

ظنين ولا يقبل إلا العدل، ولا تجوز شهادة المحدود ولا شهادة عبد ولا صبي ولا كافر، وإذا تاب المحدود في الزنى قبلت شهادته إلا في الزنى.

testimony of persons of good character may be accepted. The testimony of someone who has been given a fixed punishment, or of a slave, a minor or an unbeliever is inadmissible. Yet if someone who was given the fixed punishment for illicit intercourse repents, his testimony may be accepted in cases other than those of illicit intercourse.

ولا تجوز شهادة الابن للابوين ولا هما له ولا الزوج للزوجة ولا هي له، وتجاوز شهادة الاخ العدل لاختيه.

The testimony of a son in favour of his parents, or vice versa, is not admissible; neither is that of a husband in favour of his wife, or vice versa. But that of a man of good character in favour of his brother is.

ولا تجوز شهادة مجرب في كذب أو مظهر لكبيرة، ولا جار لنفسه نفعا ولا دافع عنها ضررا ولا وصي لبيته، وتجاوز شهادته عليه.

Also inadmissible is the testimony of a habitual liar, someone who openly committed a major offense, someone who is seeking or protecting his self interest in offering testimony, or a testamentary guardian in favour of orphans in his charge. But a testamentary guardian may give testimony against his ward.

38.04 تعديل الشاهد

38.04 Testifying to the character of a witness

ولا يجوز تعديل النساء ولا تجريحهن.

It is not permitted for women to testify to the god or bad character [of a witness].

ولا يقبل في التزكية إلا من يقول عدل رضا، ولا يقبل في ذلك ولا في التجريح واحد.

The only acceptable form of testifying to the unimputability of a witness is to say "He is of good character and acceptable". A single witness to a person's good or bad character is not sufficient.

38.05 شهادة الصبي

38.05 Testimony of minors

وتقبل شهادة الصبيان في الجراح قبل أن يفترقوا أو يدخل بينهم كبير.

The testimony of minors may be accepted in charges of wounding if they have not yet dispersed [from the scene of the wounding] and no adult has entered their company.

38.06 خصم المتبايع

38.06 Sale disputes

وإذا اختلف المتبايعان استحلف البائع، ثم يأخذ المبتاع أو يحلف ويبرأ.

If the two parties of a business contract have a dispute, the seller should be asked to swear an oath [to what he maintains is right]; then the buyer may either accept [the terms of the seller] or swear to the contrary and be acquitted [of having to go through with the contract].

38.07 Ownership disputes

38.07 07 خصم الملك
وإذا اختلف المتداعيان في شئ بأيديهما حلفا وقسم بينهما. وإن أقاما بينتين قضي بأعدلهما، فإن استويا حلفا وكان بينهما.

If two parties contend the ownership of something they possess in common, each should swear [on behalf of his claim], and the property should then be divided between them. But if the two present the testimony [of witnesses], judgement should be given in favour of the party supported by the witnesses of better character. If the witnesses are of equally good character, the parties should swear [regarding their claims], and the property should then be divided between them.

38.08 Revoked testimony

38.08 08 رجعة الشهادة
وإذا رجع الشاهد بعد الحكم أغرم ما أئلف بشهادته إن اعترف أنه شهد بزور قاله أصحاب مالك.

If a witness goes back on his word after judgement has been delivered, acknowledging that he committed perjury, ⁽³³⁸⁾ he must sustain the loss caused by his [false] testimony. This is the opinion of the companions of Mālik.

38.09 Word of a deputy (wakīl)

38.09 09 كلمة الوكيل
ومن قال: رددت إليك ما وكلتني عليه أو على بيعه أو دفعت إليك ثمنه أو وديعتك أو قراضك فالقول قوله، ومن قال: دفعت إلى فلان كما أمرتني فأنكر فلان فعلى الدافع البينة وإلا ضمن.

If a deputy says "I have returned {134} to you what you deputized me [to pay]" or "to sell", [having been unable to deliver or sell it], or "I have paid you its price", or "have returned what you gave me to put in deposit" or "your loan", his statement is presumed to be true. But if someone says "I have delivered something to a certain person as you told me", and the person denies [having received it], the burden of proof is on the person who was to have delivered the thing; if he cannot prove having done so, he is responsible for the article.

38.10 Word of a guardian (walī)

38.10 10 كلمة الوكيل
وكذلك على ولي الايتام البينة أنه أنفق عليهم أو دفع إليهم، وإن كانوا في حضانتهم صدق في النفقة فيما يشبهه.

Likewise, a guardian must be able to prove that he provided maintenance for his orphan wards, or handed over [their property] to them [upon their reaching maturity]. If the orphans are in his custody, he is to be believed when he says he made expenditures for their maintenance, provided appearances confirm this.

38.11 Amicable settlements (ṣulḥ)

38.11 11 الصلح
والصلح جائز إلا ما جر إلى حرام، ويجوز على الاقرار والانكار.

The amicable settlement of a claim is permitted, provided it does not involve doing something prohibited. It may concern a claim which is affirmed or an obligation which is denied.

38.12 Slave woman marrying on impression she is

38.12 12 زواج الأمة المزور

free

والامة الغارة تتزوج على
أنها حرة فليسيتها أخذها
وأخذ قيمة الولد يوم الحكم
له.

If a slave woman marries, deceitfully giving the impression that she is free, her master may take her back and claim [from the father in exchange for the freedom of any child she had in the marriage] the value of the child on the day judgement is awarded in his favour. (339)

38.13 13 مستحق الأمة

38.13 Vindicating ownership of a slave woman

ومن استحق أمة قد ولدت
فله قيمتها وقيمة الولد يوم
الحكم، وقيل يأخذها وقيمة
الولد، وقيل له قيمتها فقط إلا
أن يختار الثمن فيأخذه من
الغاصب الذي باعها ولو
كانت بيد غاصب فعليه الحد
وولده رقيق معها لربها.

Anyone who vindicates ownership (*mustahiqq*) of a slave woman who has borne [her putative master] a child has a right to the amount she and her child are worth on the day judgement is awarded. Another opinion is that the rightful owner may take her back together with the amount her child is worth. A third opinion is that he has the choice of taking either the amount she alone is worth [from her possessor] or the price she was sold for from the party who abducted and sold her. (340) But if she is still in the possession of the kidnapper, the latter is to suffer the fixed penalty, and the child becomes a slave with its mother to her [rightful] master.

38.14 14 مستحق الأرض

38.14 Vindicating ownership of land

ومستحق الارض بعد أن
عمرت يدفع قيمة العمارة
قائماً فإن أبى دفع إليه
المشتري قيمة البقعة براحا
فإن أبى كانا شريكين بقيمة
ما لكل واحد.

If someone vindicates ownership of land which has been built on, he should either compensate [the builder] for the value of the building as it stands, or if he does not wish to do this the builder may buy the land, paying him the value of the empty plot. If [the would-be buyer] does not wish to do this, then the two hold the property in partnership in proportion to the share each has in it.

والغاصب يؤمر بقلع بنائه
وزرعه وشجره وإن شاء
أعطاه ربها قيمة ذلك النقص
والشجر ملقى بعد قيمة أجر
من يقلع ذلك ولا شئ عليه
فيما لا قيمة له بعد القلع
والهدم.

A usurper (*ghāṣib*) of land is to be ordered to remove his constructions, crops and trees. But if the owner of the land wishes, he may compensate the {135} usurping party for foregoing the building debris and cut trees, while deducting he cost of hiring someone to clear the land. Yet the owner of the land need not pay anything for what has no value after it is removed or torn down.

38.15 15 غلة المغصوب

38.15 Increment of usurped goods (341)

ويرد الغاصب الغلة ولا
يردها غير الغاصب. والولد

A usurper must return the increment of the goods he appropriated [together with the goods]. But no one but the usurper himself is obliged to return the

في الحيوان وفي الامة إذا كان الولد من غير السيد يأخذه المستحق للامهات من يد مبتاع أو غيره، ومن غصب أمة ثم وطئها فولده رقيق وعليه الحد.

38.16 شروط البناء

وإصلاح السفل على صاحب السفل والخشب للسقف عليه وتعليق الغرف عليه إذا وهى السفل وهدم حتى يصلح ويجبر على أن يصلح أو يبيع ممن يصلح.

ولا ضرر ولا ضرار فلا يفعل ما يضر بجاره من فتح كوة قريبة يكشف جاره منها أو فتح باب قبالة بابه أو حفر ما يضر بجاره في حفره، وإن كان في ملكه.

ويقضى بالحائط لمن إليه القمط والعقود.

38.17 حق للماء

ولا يمنع فضل الماء ليمنع به الكأ، وأهل آبار الماشية أحق بها حتى يسقوا ثم الناس فيها سواء.

ومن كان في أرضه عين أو بئر فله منعها إلا أن تتهدم بئر جاره وله زرع يخاف عليه فلا يمنعه فضله، واختلف هل عليه في ذلك ثمن أم لا.

increment,⁽³⁴²⁾ except in the case of the offspring of an animal or of a slave woman unless the child is the son of her [unrightful] master: The party who vindicates ownership of the mother may take the offspring from the party who bought her or otherwise [wrongfully] possesses her. If someone wrongfully takes possession of a slave woman and has intercourse with her, the child is a slave, and the usurper must suffer the fixed penalty.

38.16 Building regulations

The owner of a ground-floor flat is held to repair it if it is weak or collapsing, and to provide the ceiling wood and support joints for the rooms of the flat above as well, so that the whole building is made solid. He should be compelled to make these repairs or sell his flat to someone who will repair it.

An owner should not alter his building in a way that will annoy his neighbour, for example, by putting in a window adjacent to his neighbour's house from which he can peep at him, or by putting in a doorway directly in front of his neighbour's door, or by digging anything that will bother his neighbour, even if it is on his own property.

Judgement on the ownership of a wall between two houses is given in favour of the party whose house has wooden or masonry joints into the wall.

38.17 Water supplies

Excess water of someone's supply may not be denied to others in order to prevent their grazing their animals in the grass land round about. People who own wells for their livestock have the right to use these wells first. When their animals are watered, then anyone has as much right as anyone else to draw water.

Someone who has a spring or a well on his land may prevent others from using it, unless his neighbour's well has caved in, and he has crops which he is likely to lose; in that case he may not{136} deny his neighbour his excess water. There is a difference of opinion as to whether he may charge his neighbour the price of the water.

38.18 شرط آخر للبناء

وينبغي أن لا يمنع الرجل جاره أن يغرز خشبه في جداره ولا يقضى عليه.

38.19 الضرر من المواشي

وما أفسدت الماشية من الزرع والحوائط بالليل فذلك على أرباب الماشية، ولا شئ عليهم في فساد النهار.

38.20 التفليس

ومن وجد سلعته في التفليس فإما حاصص وإلا أخذ سلعته إن كانت تعرف بعينها وهو في الموت أسوة الغرماء.

38.21 ضمن الدين

والضامن غارم، وحميل الوجه إن لم يأت به غرم حتى يشترط أن لا يغرّم.

38.22 الحوالة

ومن أحيل بدين فرضي فلا رجوع له على الاول وإن أفلس هذا إلا أن يغرّه منه.

وإنما الحوالة على أصل دين وإلا فهي حمالة.

38.18 Another building regulation

A man should not forbid his neighbour to attach beams to the wall of his house; nor should his neighbour be charged for this.

38.19 Damage by animals

If livestock ruin crops or gardens in the night, the owners of the animals must pay for the damage. But they need not pay anything for damage done in the daytime.⁽³⁴³⁾

38.20 Bankruptcy claims

[If someone sold a commodity on credit and] the buyer is declared bankrupt before paying for it, the seller may either [recover its price by] sharing [in the man's assets with the other creditors], or take back the commodity if it can be precisely identified. But the commodity must be shared with all the creditors if the bankrupt possessor has died.

38.21 Guarantee of debts

Someone who guarantees (*dāmin*) [another's debt] must sustain the loss [in case of default]. Someone who guarantees the appearance of the debtor (*ḥāmil al-wajh*) must also sustain the loss if he does not bring the debtor [when required], unless he had stipulated that he would not have to sustain the loss.

38.22 Transfer of debts (*ḥawāla*)⁽³⁴⁴⁾

If a creditor (*al-muḥāl*) agrees to having a debt owned by him by one person (*al-muḥīl*) transferred to another person (*al-muḥāl `alay-hi*) who owes the former (*al-muḥīl*) a similar debt, he may not go back and claim the debt from the first debtor (*al-muḥīl*), even if the second debtor (*al-muḥāl `alay-hi*) is bankrupt, unless the first debtor deceived the creditor by concealing the second debtor's bankruptcy.

A debt is transferred only if the first debtor (*al-muḥīl*) had a claim against the second debtor (*al-muḥāl `alay-hi*) to begin with. Otherwise the undertaking of the debt by the latter is a guarantee (*ḥamāla*) [for the payment of the first debtor's debt].

38.23 23 زيادة في الديون والتفليس

ولا يغرم الحميل إلا في عدم الغريم أو غيبته.

ويحل بموت المطلوب أو تفليسه كل دين عليه ولا يحل ما كان له على غيره.

ولا تباع رقبة المأذون فيما عليه ولا يتبع به سيده.

ويحبس المديان ليستبرأ ولا حبس على معدم.

38.24 24 قسمة الملك المشترك

وما انقسم بلا ضرر قسم من ربع وعقار، وما لم ينقسم بغير ضرر فمن دعا إلى البيع أجبر عليه من أباه.

وقسم القرعة لا يكون إلا في صنف واحد ولا يؤدي أحد الشركاء ثمناً، وإن كان في ذلك تراجع لم يجز القسم إلا بتراض.

38.25 25 وظيفة الوصي

ووصي الوصي كالوصي وللوصي أن يتجر بأموال اليتامى ويزوج إماءهم، ومن أوصى إلى غير مأمون فإنه يعزل.

ويبدأ بالكفن ثم الدين ثم الوصية ثم الميراث.

38.23 More on guarantee of debts and bankruptcy

A guarantor (*hāmīl*) pays the debt only if the debtor is bankrupt or absent.

Death or bankruptcy makes all the person's debts immediately due, but not the debts which other people owed to him. ⁽³⁴⁵⁾

A slave who was permitted [to engage in commerce] may not be sold because of debts he thereby incurred, nor may his master be prosecuted for these debts.

A debtor [whose insolvency is unknown] may be detained until this is known, but he may not be detained if he is known to be bankrupt.

38.24 Apportionment (qisma) of jointly owned property

Buildings and lands which can be divided without harm may be divided [among those who have joint ownership of them]. But if a commodity cannot be divided without damage and one party wishes to sell it, the other party should be compelled to sell along with him.

Division by lot (*qur`a*) {137} should be done only with possessions of one kind. Neither partner may [promise to] pay a price to equalize the lots. The shares may be equalized by compensation only if the division is made by mutual agreement (*tarād*) [and not by drawing lots].

38.25 Function of a testamentary guardian-executor (waṣī)

A testamentary guardian appointed by a testamentary guardian is equivalent to the [original] testamentary guardian. A testamentary guardian may trade with the possessions of his orphan wards and give their women slaves in marriage. If someone appoints an untrustworthy guardian, the guardian may be removed from his appointment.

[In disposing of an estate} first consideration should be given to burial expenses, then to debts of the deceased, then to his bequests, and then to what is due to their

heirs.

38.36 حياز الدار

ومن حاز دارا على حاضر
عشر سنين تنسب إليه
وصاحبها حاضر عالم لا
يدعي شيئا فلا قيام له ولا
حيازة بين الاقارب
والاصهار في مثل هذه
المدة.

If someone occupies for ten years a house belonging to someone else, the house becomes his if the owner was present during this time, knew that the person was occupying it, and claimed nothing from him; the first owner then has no case. But occupying the house of a relative or an in-law for this length of time does not transfer ownership.

38.37 الوصايا

ولا يجوز إقرار المريض
لوارثه بدين أو بقبضه.

An acknowledgement by a [terminally] sick man to an heir that he owes him something or that he has received from the heir what the heir owed him is invalid.

ومن أوصى بحج أنفذ
والوصية بالصدقة أحب
إلينا.

A bequest to enable someone to make the ḥajj pilgrimage [on his behalf] is to be carried out, but in our opinion it would be better if he had made a bequest to give that amount in alms.

وإذا مات أجير الحج قبل أن
يصل فله بحساب ما سار
ويرد ما بقي وما هلك بيده
فهو منه إلا أن يأخذ المال
على أن ينفق على البلاغ،
فالضمان من الذين واجروه
ويرد ما فضل إن فضل شيء.

If the person who was hired to do the ḥajj pilgrimage dies before completing it, the cost of the distance he traveled is allotted to him, and the rest of the money returned. If he wasted any money, this is taken from his [estate], unless he took the money with the provision that he should spend it all by the time he completed the pilgrimage. In that case those who hired him hold responsibility for the money; yet the pilgrim should return what is left over if there is any left over.

باب 39 في الفرائض

39.01 من يرث

ولا يرث من الرجال إلا
عشرة: الابن وابن الابن وإن
سفل، والاب والجد للاب
وإن علا، والاخ وابن الاخ
وإن بعد، والعم وابن العم
وإن بعد، والزوج ومولى

Male heirs are only of ten kinds: 1) a son, 2) a grandson or {138} his descendant, 3) the father, 4) the paternal grandfather or his ascendant, 5) a brother, 6) a [full or paternal] brother's son or his descendant, 7) a paternal uncle [by the same grandfather], 8) a paternal uncle's son or his descendant, 9) the husband, and 10) the patron [who set the person free].

38.26 Squatters' rights

38.27 Bequests ⁽³⁴⁶⁾

CHAPTER 39 ⁽³⁴⁷⁾

INHERITANCE PORTIONS (FARĀ'ID)

39.01 List of heirs

النعمة.

ولا يرث من النساء غير سبع، البنت وبنت الابن والام والجدة والاخت والزوجة ومولاة النعمة.

39.02 ميراث الزوج

فميراث الزوج من الزوجة إن لم تترك ولدا ولا ولد ابن النصف، فإن تركت ولدا أو ولد ابن منه أو من غيره فله الربع.

39.03 الأرملة

وترث هي منه الربع إن لم يكن له ولد ولا ولد ابن، فإن كان له ولد أو ولد ابن منها أو من غيرها فلها الثمن.

39.04 الأم

وميراث الام من ابنها الثلث إن لم يترك ولدا أو ولد ابن أو اثنين من الاخوة ما كانوا فصاعدا إلا في فريضتين في زوجة وأبوين فللزوجة الربع وللام ثلث ما بقي وما بقي للاب، وفي زوج وأبوين فللزوج النصف وللام ثلث ما بقي وما بقي للاب ولها في غير ذلك الثلث إلا ما نقصها العول،

إلا أن يكون للميت ولد أو ولد ابن أو اثنان من الاخوة ما كانا فلها السدس حينئذ.

39.05 الأب

Female heirs are only of seven kinds: 1) a daughter, 2) a son's daughter, 3) the mother, 4) [either] grandmother, 5) a sister [of any kind], 6) the wife, and 7) the patroness [who set the person free].

39.02 Husband

The husband inherits one half of his wife's estate if she leaves no children or grandchildren through her son. But if she leaves a son or daughter or a grandson or a granddaughter through a son she had by her present or a previous husband, the husband's share is one fourth.

39.03 Wife

The wife inherits one fourth of her husband's estate if he leaves no children or grandchildren through his son.⁽³⁴⁸⁾ If he leaves a son or daughter or a grandson or granddaughter through a son of his by his present or a previous wife, the wife's share is one eighth.

39.04 Mother

The mother inherits one third of her son's or daughter's estate if he or she leaves no children or grandchildren through his or her son, or two or more brothers of whatever kind, except in two cases: 1) If the deceased son leaves a wife and both parents, the wife receives a fourth of the estate, and the mother a third of what is left. The remainder thereafter belongs to the father. 2) If the deceased daughter leaves a husband and both parents, the husband receives a half of the estate, and the mother a third of what is left. The remainder thereafter belongs to the father. In other than these two cases the mother receives one third of the estate, unless her ratio is reduced to accommodate other sharers.

But if the deceased leaves a son or daughter, or a grandson or granddaughter through his son, or two [or more] brothers of any sort, the mother receives a sixth.

39.05 Father

وميراث الاب من ولد إذا
انفرد ورث المال كله
ويفرض له مع الولد الذكر
أو ولد الابن السدس فإن لم
يكن له ولد ولا ولد ابن
فرض للاب السدس وأعطي
من شركه من أهل السهام
سهامهم ثم كان له ما بقي.

39.06 ميراث الولد

وميراث الولد الذكر جميع
المال إن كان وحده أو يأخذ
ما بقي بعد سهام من معه من
زوجة وأبوين أو جد أو جدة.
وابن الابن بمنزلة الابن إذا
لم يكن ابن.

فإن كان ابن وابنة فللذكر
مثل حظ الانثيين، وكذلك في
كثرة البنين والبنات وقتلهم
يرثون، كذلك جميع المال أو
ما فضل منه بعد من شركهم
من أهل السهام.

وابن الابن كالابن في عدمه
فيما يرث ويحجب.

39.07 البنت

وميراث البنت الواحدة
النصف والاثنتين الثلثان فإن
كثرن لم يزدن على الثلثين
شيئاً.

39.08 ابنة الابن

وابنة الابن كالابنت إذا لم
تكن بنت، وكذلك بناته
كالبنات في عدم البنات.

If the father is the only heir, he inherits the whole of his son's estate. {139} If the deceased leaves a son or a grandson through his son, the father receives one sixth. If the deceased leaves no son or grandson through his son, but others entitled to a fixed share (*sihām*), the father receives a sixth and whatever is left after these have been given their shares. [\(349\)](#)

39.06 Son

If a son is the only heir, he inherits the whole estate. If there are heirs entitled to a fixed share, such as a wife, parents, a grandfather or a grandmother, he receives what is left after they have had their shares. A grandson through a son is equivalent to a son if the son is missing.

If there are a son and a daughter, the son receives twice the share of the daughter. Whether there are many or few sons and daughters, they share at this ratio either the entire estate or what is left after those entitled to fixed shares have had their shares.

If the son is missing, his son is his equivalent with respect to what he would inherit or exclude [others] from. [\(350\)](#)

39.07 Daughters

An only daughter inherits half the estate. If there are two daughters, each receives a third. If there are more than two, their combined portions do not exceed two thirds.

39.08 Son's daughters

A son's daughter is equivalent to a daughter if the deceased leaves no daughter. Likewise several daughters of his are equivalent to several daughters of the deceased if he does not leave any.

فإن كانت ابنة وابنة ابن
فلابنة النصف ولابنة الابن
السدس تمام الثلثين، وإن
كثرت بنات الابن لم يزدن
على ذلك السدس شيئاً إن لم
يكن معهن ذكر وما بقي
للعصبة.

If the deceased left a daughter and a son's daughter, the daughter receives one half the estate and the son's daughter one sixth, thus completing two thirds. If the son has several daughters [to share with the deceased's daughter], the combined share of the son's daughters does not exceed one sixth as long as they have no brother to inherit with them and what remains goes {140} to the agnates (*`aṣaba*) of the deceased.

وإن كانت البنات اثنتين لم
يكن لبنات الابن شئ إلا أن
يكون معهن أخ فيكون ما
بقي بينهما وبينه للذكر مثل
حظ الانثيين.

If the deceased left two daughters, nothing goes to the daughters of his son, unless they have a brother; in that case the residue of the estate is divided among them, with the brother receiving twice the amount one of his sisters receives.

وكذلك إذا كان ذلك الذكر
تحتهن كان ذلك بينه وبينهن
كذلك.

Similarly, a male heir a generation below the son's daughters inherits with them according to the same ratio.

وكذلك لو ورث بنات الابن
مع الابنة السدس وتحتهن
بنات ابن معهن أو تحتهن
ذكر كان ذلك بينه وبين
أخواته أو من فوقه من
عماته.

So too, if a son's daughters, inheriting with a daughter of the deceased, receive once sixth of the estate, and below them there are a [grand]son's daughters who have a brother or a nephew, the residue is divided among him and his sisters or paternal aunts in the same way.

ولا يدخل في ذلك من دخل
في الثلثين من بنات الابن.

Son's daughters who have a share in the two thirds of the estate have no share in this division of the residue.

39.09 الأخت

39.09 Full and consanguine sisters

وميرات الاخوت الشقيقة
النصف والاثنتين فصاعدا
الثلثان، فإن كانوا إخوة
وأخوات شقائق أو لآب
فالمال بينهم للذكر مثل حظ
الانثيين قلوباً أو أكثر.

A sole full (*shaqīqa*) sister inherits one half the estate. Two or more full sisters share in two thirds of the estate. If there are full or consanguine brothers and sisters, of whatever number, each brother receives twice the amount one of his sisters receives.

والاخوات مع البنات
كالعصبة لهن يرثن ما فضل
عنهن ولا يربى لهن معهن.

If there are daughters to receive a share of the inheritance, the sisters are like residuary agnates to them: They inherit what is left over after the daughters have had their shares, and are not to be enriched at the daughters' expense.

ولا ميراث للاخوة والاخوات مع الاب ولا مع الولد الذكر، أو مع ولد الولد.

Brothers and sisters inherit nothing if the deceased leaves a father or a son or a grandson through his son.

والاخوة للاب في عدم الشقائق كالشقائق ذكورهم وإناثهم.

Consanguine brothers and sisters are equivalent to full brothers and sisters if there are not full brothers or sisters.

فإن كانت أخت شقيقة وأخت أو أخوات لاب فالنصف للشقيقة وللمن بقي من الاخوات للاب السدس، ولو كانتا شقيقتين لم يكن للاخوات للاب شيء إلا أن يكون معهن ذكر فيأخذون ما بقي للذكر مثل حظ الانثيين.

If there is a full sister and one or more consanguine sisters, the full sister receives half the estate, and the remaining {141} consanguine sisters share in one sixth. But if there are two full sisters, the consanguine sisters receive nothing, unless they have a [consanguine] brother; in that case they inherit the remaining [third] with him, although he receives twice what one of them receives.

39.10 10 الأخت للأم والأخ للأم

39.10 Uterine brothers and sisters

وميراث الاخت للام والاخ للام سواء السدس لكل واحد وإن كثروا فالتثلث بينهم الذكر والانثى فيه سواء، ويحجبهم عن الميراث الولد وبنوه والاب والجد للاب.

A uterine brother or sister receives one sixth, the same for either. If they are two or more, all share equally in one third of the estate. They are excluded from the inheritance if there is a son or daughter, a grandson or granddaughter through a son, a father, or a paternal grandfather.

39.11 11 الأخ

39.11 Full and consanguine brothers

والاخ يرث المال إذا انفرد كان شقيقاً أو لاب والشقيق يحجب الاخ للاب وإن كان أخ وأخت فأكثر شقائق أو لاب فالمال بينهم للذكر مثل حظ الانثيين.

A brother, whether full or consanguine, inherits the whole estate if he is the sole heir. but a full brother excludes a consanguine brother. If there are one or more brothers and sisters together, either full or consanguine, the estate is divided among them, but a brother receives twice the share of one sister.

وإن كان مع الاخ نو سهم بدئ بأهل السهام وكان له ما بقي، وكذلك يكون ما بقي للاخوة والاخوات للذكر مثل حظ الانثيين.

If along with a brother there are heirs entitled to fixed shares, these receive their shares first, and the brother receives the residue. But if there are several brothers and sisters, the residue is divided among them, with each brother receiving twice the share of one sister.

فإن لم يبق شئ فلا شئ لهم
إلا أن يكون في أهل السهام
إخوة لام قد ورثوا الثلث وقد
بقي أخ شقيق أو إخوة ذكور
أذكور وإناث شقائق معهم
فيشاركون كلهم الاخوة للام
في ثلثهم، فيكون بينهم
بالسواء وهي الفريضة التي
تسمى المشتركة. ولو كان
من بقي إخوة لاب لم
يشاركوا الاخوة للام
لخروجهم عن ولادة الام.

If nothing is left [after the other heirs receive their fixed shares], the [full or consanguine] brothers and sisters receive nothing. An exception occurs when among those entitled to fixed shares there are uterine brothers, whose share is a third. Then any one or more full brothers, or full brothers and sisters, all participate equally with the uterine brothers in their third. This inheritance rule is called "participation" (*mushtarika*). {142} But consanguine brothers do not participate in the uterine brothers' portion, because they were not born of the same mother.

وإن كان من بقي أختا أو
أخوات لابوين أو لاب أعيل
لهن.

If one or more full or consanguine sisters remain [when the fixed shares of the other heirs total the whole estate], accommodation is made for them by reducing the ratio of all. (351)

وإن كان من قبل الام أخ
واحد أو أخت لم تكن
مشتركة وكان ما بقي
للاخوة إن كانوا ذكورا أو
ذكورا وإناثا، وإن كن إناثا
لابوين أو لاب أعيل لهن.

If there is only one uterine brother or sister, no one participates in his or her share [of one sixth]. The residue [of one sixth] in such a case goes to the full brothers and sisters. If there are only full or consanguine sisters, accommodation is made for them.

والاخ للاب كالشقيق في
عدم الشقيق إلا في
المشتركة.

A consanguine brother is equivalent to a full brother if the full brother is missing, except with regard to "participation".

39.12 ابن الأخ

39.12 Nephews

وابن الاخ كالاخ في عدم
الاخ كان شقيقا أو لاب، ولا
يرث ابن الاخ للام.

The son of a full or consanguine brother is equivalent to the brother if the latter is missing, but the son of a uterine brother is never an heir.

39.13 حجب عن الميراث

39.13 Exclusion of heirs

والاخ للابوين يحجب الاخ
للأب، والاخ للاب أولى من
ابن أخ شقيق وابن أخ شقيق
أولى من ابن أخ لاب، وابن
أخ لاب يحجب عما لابوين،

A full brother excludes a consanguine brother, (352) but a consanguine brother has preference over the son of a full brother, (353) and the son of a full brother has preference over the son of a consanguine brother. The son of a consanguine brother excludes a full paternal uncle. (354) A full paternal uncle excludes a

وعم لابوين يحجب عما
لاب، وعم لاب يحجب ابن
عم لابوين، وابن عم لابوين
يحجب ابن عم لاب. وهكذا
يكون الاقرب أولى.

consanguine paternal uncle.⁽³⁵⁵⁾ A consanguine
paternal uncle excludes the son of a full paternal uncle.
The son of a full paternal uncle excludes the son of a
consanguine paternal uncle. Thus the nearer relative is
preferred.

39.14 من لا يرث تماماً

39.14 Non-heirs

ولا يرث بنو الاخوات ما
كن ولا بنو البنات ولا بنات
الاخ ما كان ولا بنات العم
ولا جد لام ولا عم أخو أبيك
لامه.

Those who are never heirs include the sons of sisters of
whatever sort, the sons of daughters, the daughters of a
brother of whatever sort, the daughters of a paternal
uncle, the maternal grandfather, and a uterine paternal
uncle.⁽³⁵⁶⁾

ولا يرث عبد ولا من فيه
بقية رق.

A slave does not inherit, nor does a slave in the process
of being freed.

ولا يرث المسلم الكافر ولا
الكافر المسلم.

{143} A Muslim does not inherit from an unbeliever,
nor an unbeliever from a Muslim.

ولا ابن أخ لام ولا جد لام
ولا أم أبي الام.

Others who do not inherit are the son of a uterine
brother, the maternal grandfather, and the mother of
the maternal grandfather.⁽³⁵⁷⁾

39.15 زيادة من يحجب

39.15 More excluded heirs

ولا ترث أم أبي الاب مع
ولدها أبي الميت.

The mother of the paternal grandfather may not inherit
together with her son, the grandfather of the
deceased.⁽³⁵⁸⁾

ولا ترث إخوة لام مع الجد
للأب ولا مع الولد وولد
الولد ذكراً كان الولد أو
أنثى، ولا ميراث للاخوة مع
الاب ما كانوا.

Uterine brothers may not inherit together with the
paternal grandfather, or with the sons or daughters or
grandchildren through a son. Brothers of whatever sort
may not inherit together with the father.⁽³⁵⁹⁾

ولا يرث عم مع الجد، ولا
ابن أخ مع الجد.

A paternal uncle may not inherit together with the
paternal grandfather, nor a brother's son with the
paternal grandfather.⁽³⁶⁰⁾

39.16 القاتل 16

39.16 Impediment of crime

ولا يرث قاتل العمد من مال
ولا دية، ولا يرث قاتل
الخطأ من الدية ويرث من

An heir who deliberately murdered the deceased
inherits neither his estate nor the blood rate. An heir
who accidentally killed the deceased inherits his estate
but not the blood rate.

المال.

39.17 Effect of exclusion

وكل من لا يرث بحال فلا يحجب وارثا.

Someone who does not inherit in a particular case [because he is excluded by another heir] cannot himself exclude another heir. (361)

39.18 Inheritance by spouse divorced or married in last illness

والمطلقة ثلاثا في المرض تترث زوجها إن مات من مرضه ذلك ويرثها، وكذلك إن كان الطلاق واحدة وقد مات من مرضه ذلك بعد العدة.

A woman repudiated by three pronouncements during the illness from which the deceased died inherits from her husband, but [if she dies first] he does not inherit from her. The same holds if he made only one pronouncement of repudiation, then died from the illness after her `idda period.

وإن طلق الصحيح امرأته طلقة واحدة فإنهما يتوارثان ما كانت في العدة فإن انقضت فلا ميراث بينهما بعدها.

If a man in good health makes one pronouncement of repudiation against his wife, they may inherit from one another as long as she is still in her `idda period. If the `idda period has expired, they cannot inherit from one another.

ومن تزوج امرأة في مرضه لم ترثه ولا يرثها.

If a man marries during his last illness, his wife does not inherit from him, nor he from her.

39.19 Grandmothers

وترث الجدة للام السدس وكذلك التي للاب فإن اجتمعا فالسدس بينهما إلا أن تكون التي للام أقرب بدرجة فتكون أولى به لأنها التي فيها النص، وإن كانت التي للاب أقربهما فالسدس بينهما نصفين.

A maternal or a paternal grandmother inherits one sixth. If both of them are to inherit, they divide the sixth between them, unless the combination is of a maternal grandmother and a paternal great-grandmother; in that case the maternal grandmother has prior claim to the sixth, because of a tradition in her favour. If {144} the combination is of a paternal grandmother and a maternal great-grandmother, they each receive one half of the sixth.

ولا يرث عند مالك أكثر من جدتين أم الاب وأم الام وأمهاتهما. ويذكر عن زيد بن ثابت أنه ورث ثلاث

According to Mālik, only two grandmothers may inherit, the father's mother, the mother's mother, or [to take their place] the mothers of either. But Zayd ibn-Thābit (362) is reported to have allowed three grandmothers to inherit: one on the mother's side, and two on the father's side, that is, the father's mother and

جدات واحدة من قبل الام
واثنتين من قبل الاب أم
الاب وأم أبي الاب. ولم
يحفظ عن الخلفاء توريث
أكثر من جدتين.

39.20 الجد

وميراث الجد إذا انفرد فله
المال وله مع الولد الذكر أو
مع ولد الولد الذكر السدس،
فإن شركه أحد من أهل
السهم غير الاخوة
والاخوات فليقض له
بالسدس، فإن بقي شئ من
المال كان له.

فإن كان مع أهل السهم
إخوة فالجد مخير في ثلاثة
أوجه يأخذ أي ذلك أفضل له
إما مقاسمة الاخوة أو
السدس من رأس المال أو
ثلث ما بقي.

فإن لم يكن معه غير الاخوة
فهو يقاسم أخا وأخوين أو
عدلهما أربع أخوات فإن
زادوا فله الثلث فهو يرث
الثلث مع الاخوة إلا أن
تكون المقاسمة أفضل له.

والاخوة للاب معه في عدم
الشقائق كالشقائق، فإن
اجتمعوا عاده الشقائق بالذين
للاب فمنعوه بهم كثرة
الميراث، ثم كانوا أحق منهم
بذلك،

إلا أن يكون مع الجد أخت
شقيقة ولها أخ لآب أو أخت

paternal grandmother. But none of the orthodox caliphs are reported to have allowed more than two grandmothers to inherit.

39.20 Paternal grandfather

If the paternal grandfather is the sole heir, he inherits the entire estate. If he inherits together with a son or a son's child, his share is one sixth. If there are no brothers and sisters, but other heirs entitled to a fixed share, he is to be assigned a sixth and any residue that there happens to be.

If there are brothers together with heirs entitled to fixed shares, the grandfather has three choices, of which he may pick the most advantageous: 1) an equal share with the brothers, 2) a sixth of the whole estate, or 3) a third of the residue.

If there are brothers alone inheriting with him, the grandfather divides the estate with them, provided they are only one or two, or, what is their equivalent, four sisters. If there are more than two brothers, he has a right to a third. Thus, when inheriting with brothers, he takes a third, or he divides the estate with them if this is more advantageous to him.

Consanguine brothers inherit with the grandfather the same as full brothers if there are no full brothers. If there are both full and consanguine brothers, the full brothers may count the consanguine {145} brothers in their number to offset the share of the grandfather; then they may claim the share computed for the consanguine brothers.

An exception [to this exclusion of consanguine brothers] occurs when there is besides the grandfather a full sister who has a consanguine brother or sister or

لاب، أو أخ وأخت لاب
فتأخذ نصفها مما حص
وتسلم ما بقي إليهم، ولا
يربى للاخوات مع الجد إلا
في الغراء وحدها وسنذكرها
بعد هذا.

both. She takes her half of the estate and surrenders the residue to her consanguine brothers or sisters [after the grandfather has had his share]. Sisters are not to be enriched at the grandfather's expense, except in the case of al-Gharrā', to be spoken of presently.

39.21 Patron (mawlā)

ويرث المولى الاعلى إذا
انفرد جميع المال كان رجلا
أو امرأة فإن كان معه أهل
سهم كان للمولى ما بقي بعد
أهل السهام.

The patron, whether man or woman, inherits the whole estate if he or she is the sole heir. If there are heirs entitled to fixed shares, he or she receives the residue after they have had their share.

ولا يرث المولى مع العصبية
وهو أحق من ذوي الارحام
الذين لا سهم لهم في كتاب
الله عز وجل، ولا يرث من
ذوي الارحام إلا من له سهم
في كتاب الله.

A patron inherits nothing when there are agnate relatives, but he has a greater right than the cognate relatives to whom the Book of God most High (the Qur'ān) assigns no share. Only those cognate relatives to whom the Qur'ān assigns a share may inherit.⁽³⁶³⁾

ولا يرث النساء من الولاء
إلا ما أعتقن أو جره من
أعتقن إليهن بولادة أو عتق.

A patroness may inherit only from someone she herself has freed, from a child of such a person, or from someone such a person freed in turn.⁽³⁶⁴⁾

39.22 Accommodation by reduction (ʿawl)

وإذا اجتمع من له سهم
معلوم في كتاب الله وكان
ذلك أكثر من المال أدخل
عليهم كلهم الضرر وقسمت
الفريضة على مبلغ سهامهم.

If the combined shares of all those assigned a definite share in the Qur'ān exceed the entire estate, each one's share is diminished by making the total shares of all, as based on a common denominator, the new common denominator of their shares.⁽³⁶⁵⁾

ولا يعال للاخت مع الجد إلا
في الغراء وحدها، وهي
امرأة تركت زوجها وأمها
وأختها لابوين أو لاب
وجدها فلزوج النصف
وللام الثلث وللجد السدس،
فلما فرغ المال أعيل للاخت

No accommodation is made for a sister when there is also a grandfather inheriting, except in the case of al-Gharrā'. This is when a woman dies leaving a husband, a mother, a full or consanguine sister, and a paternal grandfather. The husband would receive {146} a half, the mother a third, and the grandfather a sixth. Since the estate would thus be exhausted, accommodation is made for the sister's share of one half, that is three [sixths, becoming three ninths]. Then her share is

بالنصف ثلاثة ثم جمع إليها سهم الجد فيقسم جميع ذلك بينهما على الثلث لها والثلثين له، فتبلغ سبعة وعشرين سهماً.

باب 40 جمل من الفرائض والسنن الواجبة والرغائب

40.01 الوضوء

الوضوء للصلاة فريضة، وهو مشتق من الوضأة إلا المضمضة والاستنشاق ومسح الأذنين منه فإن ذلك سنة، والسواك مستحب مرغّب فيه، والمسح على الخفين رخصة وتخفيف.

40.02 الغسل

والغسل من الجنابة ودم الحيض والنفاس فريضة، وغسل الجمعة سنة، وغسل العيدين مستحب، والغسل على من أسلم فريضة لأنه جنب، وغسل الميت سنة.

40.03 الصلوات الخمس

والصلوات الخمس فريضة، وتكبيرة الاحرام فريضة، وباقي التكبير سنة، والدخول في الصلاة بنية الفرض فريضة، ورفع اليدين سنة، والقراءة بأمر القرآن في الصلاة فريضة، وما زاد عليها سنة واجبة، والقيام

combined with that of the grandfather, [making four ninths], and this amount is divided between them, with a third of it going to her and two thirds going to him. A common denominator of twenty-seven is necessary to assign even shares to all concerned.

CHAPTER 40⁽³⁶⁶⁾ LEGAL STATUS OF MISCELLANEOUS PRACTICES

40.01 Wuḍū'⁽³⁶⁷⁾

The wuḍū' before ṣalāt is obligatory. The word wuḍū' (ablution) is derived from waḍā'a (cleanliness). Not obligatory, but a matter of sunna, are rinsing one's mouth, inhaling water through the nose, and rubbing one's ears. Brushing one's teeth with a chewing stick is a desirable, even very desirable practice. Wiping one's boots [instead of washing the feet] is a privilege and mitigation.⁽³⁶⁸⁾

40.02 Ghusl⁽³⁶⁹⁾

Ghusl (ritual bathing) is obligatory after a major sexual defilement, and [the end of] the bleeding of menstruation or childbirth. The ghusl on Friday is a sunna. The ghusl on the two feasts is desirable. Ghusl is obligatory for someone who becomes a Muslim, because he is in a state of major sexual defilement.⁽³⁷⁰⁾ The ghusl bathing of a dead person is a sunna.

40.03 The five ṣalāts⁽³⁷¹⁾

The five ṣalāts are obligatory; so is saying "*Allāhu akbar*" to put oneself in a state of consecration [for ṣalāt]. But the rest of the "*Allāhu akbar*"s are sunnas. To begin ṣalāt with the intention of fulfilling its obligation is obligatory. Lifting one's hands is a sunna. Reciting the opening sūra of the Qur'ān is obligatory, while reciting an additional portion of the Qur'ān is an undisputed sunna. Standing, bowing, and prostrating are obligatory. The first sitting {147} is a sunna, while the second one is obligatory. Saying "*as-salāmu `alaykum*" is obligatory, while turning the head a little

والركوع والسجود فريضة،
والجلسة الاولى سنة والثانية
فريضة، والسلام فريضة
والتيامن به قليلا سنة، وترك
الكلام في الصلاة فريضة،
والتشهدان سنة، والقنوت في
الصبح حسن وليس بسنة،
واستقبال القبلة فريضة.

40.04 صلوات أخرى

وصلاة الجمعة والسعي إليها
فريضة، والوتر سنة واجبة،
وكذلك صلاة العيدين
والخسوف والاستسقاء
وصلاة الخوف واجبة أمر
الله سبحانه وتعالى بها وهو
فعل يستدركون به فضل
الجماعة.

40.05 الغسل لدخول مكة

والغسل لدخول مكة
مستحب.

40.06 جمع الصلوات

والجمع ليلة المطر تخفيف
وقد فعله الخلفاء الراشدون،
والجمع بعرفة والمزدلفة
سنة واجبة وجمع المسافرين
في جد السير رخصة،
وجمع المريض يخاف أن
يغلب على عقله تخفيف
وكذلك جمعه لعله به فيكون
ذلك أرفق به.

40.07 الفطر والصلاة في السفر

والفطر في السفر رخصة،

to the right during it is a sunna. Avoiding conversation during ṣalāt is obligatory. The two tashahhuds are a sunna. The qunūt prayer in the ṣalāt of ṣubḥ is good, but not a sunna. Facing the qibla is obligatory.

40.04 Other ṣalāts⁽³⁷²⁾

The Friday afternoon ṣalāt and attendance at it are obligatory. The witr ṣalāt,⁽³⁷³⁾ the ṣalāt of the two feasts, the ṣalāt on an eclipse⁽³⁷⁴⁾ or in request of rain,⁽³⁷⁵⁾ and the [special common] ṣalāt during fear of an enemy⁽³⁷⁶⁾ are undisputed sunnas. God commanded the latter,⁽³⁷⁷⁾ and it is an act by which the merit of communal ṣalāt is achieved.

40.05 Ghisl before entering Mecca⁽³⁷⁸⁾

To do the ghisl before entering Mecca is a desirable practice.

40.06 Joining ṣalāts⁽³⁷⁹⁾

Joining ṣalāts on a rainy evening is a mitigation, but practiced by the orthodox caliphs. The joining of ṣalāts at `Arafāt and al-Muzdalifa is an undisputed sunna. The joining of ṣalāts by a traveler on an urgent journey is a privilege. For a sick person to join two ṣalāts for fear of losing consciousness [at the time of the second] or simply because it is easier for him is a mitigation.

40.07 Fast and ṣalāt on a journey

Not fasting while traveling [during Ramaḍān] is a privilege.⁽³⁸⁰⁾ The shortening of ṣalāt during a journey

والاقصار فيه واجب. [\(381\)](#) is an undisputed sunna.

40.08 النوافل 08

40.08 Supererogatory ṣalāts

وركعتا الفجر من الرغائب،
وقيل من السنن.

The two [supererogatory] rak`as of dawn [\(382\)](#) are very desirable, but according to another opinion they are sunnas.

وصلاة الضحى نافلة.

The ṣalāt of mid-morning (*ḍuḥā*) is supererogatory.

وكذلك قيام رمضان نافلة
وفيه فضل كبير، ومن قامه
إيماناً واحتساباً غفر له ما
تقدم من ذنبه، والقيام من
الليل في رمضان وغيره من
النوافل المرغوب فيها.

Supererogatory also is the tarāwīḥ ṣalāt during Ramaḍān, [\(383\)](#) which has great merit. Someone who rises for it with faith and the intention of being rewarded by God has all his past sins forgiven. Doing ṣalāt during the nights of Ramaḍān and of other months {148} is a supererogatory, even very desirable practice.

40.09 الصلاة على

40.09 Burial [\(384\)](#)

الموتى

والصلاة على موتى
المسلمين فريضة يحملها من
قام بها وكذلك مواراتهم
بالدفن وغسلهم سنة واجبة.

Doing ṣalāt over Muslim dead is an obligation [on the community], satisfied by the person who performs it. The same is true of bringing them to burial. Washing them is an undisputed sunna.

40.10 طلب العلم 10

40.10 Knowledge [\(385\)](#)

وكذلك طلب العلم فريضة
عامة يحملها من قام بها إلا
ما يلزم الرجل في خاصة
نفسه.

Seeking knowledge is also a community obligation, satisfied by the persons who actually devote themselves to it, except for knowledge that pertains to a man individually; [this is a personal obligation].

40.11 الجهاد والروابط 11

40.11 Jihād and forts [\(386\)](#)

وفريضة الجهاد عامة
يحملها من قام بها، إلا أن
يغشى العدو محلة قوم فيجب
فرضا عليهم قتالهم إذا كانوا
مثلي عددهم.

The obligation of jihād (holy war) binds the community, and is satisfied by those who carry it out, except when the enemy is at the gates; then all the people are obliged to take part in the fighting, provided the enemy are [not more than] twice their number.

والرباط في ثغور المسلمين
وسدها وحياطتها واجب
يحملة من قام به.

[Building] forts at landing places of Muslim territory, fortifying and defending them are obligations of the community, satisfied by those who engage in this.

40.12 Fasting⁽³⁸⁷⁾

40.12 الصوم

وصوم شهر رمضان
فريضة والاعتكاف نافلة
والتنفل بالصوم مرغّب فيه،
وكذلك صوم يوم عاشوراء
ورجب وشعبان ويوم عرفة
والتروية، وصوم يوم عرفة
لغير الحاج أفضل منه
للحاج.

Fasting during the month of Ramaḍān is obligatory. Making a retreat [in the mosque] is supererogatory.⁽³⁸⁸⁾ To do supererogatory fasts is desirable; likewise to fast on the day of `Āshūrā' (10 Muḥarram), during the months of Rajab and Sha`bān, on the day of `Arafāt (9 Dhū-l-ḥijja), and the day of tarwiya (8 Dhū-l-ḥijja).⁽³⁸⁹⁾ Yet fasting on the day of `Arafāt is better for someone not making the pilgrimage than for a pilgrim.

40.13 Zakāt⁽³⁹⁰⁾

40.13 الزكاة

وزكاة العين والحرث
والماشية فريضة، وزكاة
الفطر سنة فرضها رسول
الله (ص).

The zakāt on money, farm produce, and livestock is obligatory. The zakāt on `Īd al-fiṭr is a sunna laid down by the Messenger of God.

40.14 Pilgrimage⁽³⁹¹⁾

40.14 الحج

وحج البيت فريضة،
والعمرة سنة واجبة، والتلبية
سنة واجبة، والنية بالحج
فريضة، والطواف للافاضة
فريضة.

Making the ḥajj pilgrimage to the house [of God] is obligatory, while making the `umra pilgrimage is an undisputed sunna. Saying the talbiya is an undisputed sunna. To make the intention before performing the ḥajj is obligatory.

والسعي بين الصفا والمروة
فريضة. والطواف المتصل
به واجب، وطواف الافاضة
أكد منه والطواف للوداع
سنة.

The circumambulation after pressing on [from `Arafāt] (*tawāf al-ifāda*) is obligatory. The walk between aṣ-Ṣafā and al-Marwa is obligatory. The [first] circumambulation (*tawāf al-quḍūm*) which comes immediately before this walk is an undisputed sunna, but the circumambulation after pressing on [from `Arafāt] is a more insistent {149} obligation. The circumambulation of taking leave (*tawāf al-wadā`*) is a sunna.

والمبيت بمنى ليلة يوم عرفة
سنة، والجمع بعرفة واجب،
والوقوف بعرفة فريضة،
ومبيت المزدلفة سنة واجبة،
ووقوف المشعر الحرام
مأمور به، ورمي الجمار
سنة واجبة.

Spending the night at Minā before the day of `Arafāt is a sunna. Joining [the ṣalāts of zuhr and `aṣr] at `Arafāt is an undisputed sunna. Stopping at `Arafāt is obligatory. Spending the night at al-Muzdalifa is an undisputed sunna. Stopping at al-Mash`ar al-ḥarām is an order.⁽³⁹²⁾ The throwing of pebbles is an undisputed sunna.

وكذلك الحلاق وتقبيل الركن
سنة واجبة.

Shaving one's head is likewise an undisputed sunna, as is kissing the black stone.

والغسل للاحرام سنة،
والركوع عند الاحرام سنة،
وغسل عرفة سنة، والغسل
لدخول مكة مستحب.

The ghusl before putting oneself in a state of consecration [for the ḥajj] is a sunna, as are the [two] rak`as done at that time. The ghusl at `Arafāt is a sunna, while that before entering Mecca is a desirable practice.

40.15 الصلاة في الجماعة

40.15 Ṣalāt in common⁽³⁹³⁾

والصلاة في الجماعة أفضل
من صلاة الفرد بسبع
وعشرين درجة.

Doing ṣalāt in common is twenty-seven times better than doing it alone.

والصلاة في المسجد الحرام
ومسجد الرسول (ص) فذا
أفضل من الصلاة في سائر
المساجد، واختلف في مقدار
التضعيف بذلك بين المسجد
الحرام ومسجد الرسول عليه
الصلاة والسلام، ولم يختلف
أن الصلاة في مسجد
الرسول (ص) أفضل من
ألف صلاة فيما سواه وسوى
المسجد الحرام من المساجد،
وأهل المدينة يقولون: إن
الصلاة فيه أفضل من
الصلاة في المسجد الحرام
بدون الالف، وهذا كله في
الفرائض.
وأما النوافل ففي البيوت
أفضل.

Doing ṣalāt by oneself in the Sacred Mosque [of Mecca] or the Mosque of the Messenger [in Medina] is better than doing ṣalāt in other mosques.⁽³⁹⁴⁾ There are differences of opinion as to how much better the Sacred Mosque is than the Mosque of the Messenger, although there is no difference of opinion that to do on ṣalāt in the Mosque of the Messenger is better than doing a thousand ṣalāts in any other mosque aside from the Sacred Mosque. The proponents of Medina⁽³⁹⁵⁾ say that to do ṣalāt in the Mosque of the Messenger (On him be peace!) is better than doing so in the Sacred Mosque, but not up to a thousand times better. What has been said concerns obligatory ṣalāt, but it is better to do supererogatory ṣalāt at home.

والتنفل بالركوع لاهل مكة
أحب إلينا من الطواف
والطواف للغرباء أحب إلينا
من الركوع لقلّة وجود ذلك
لهم.

{150} It is better, in our opinion, for the inhabitants of Mecca to do supererogatory worship by doing ṣalāt than by making the circumambulation, but for strangers the opposite is true because of the little opportunity they have to make the circumambulation.

40.16 النظر إلى النساء

40.16 Looking at women⁽³⁹⁶⁾

ومن الفرائض غض البصر
عن المحارم وليس في
النظرة الأولى بغير تعمد
حرج، ولا في النظر إلى
المتجالة، ولا في النظر إلى
الشابة لعذر من شهادة عليها
وشبهه، وقد أرخص في ذلك
للخاطب.

To take one's eyes off forbidden women is obligatory, but there is no wrong committed in the first non-deliberate glance, nor in looking at an elderly lady, nor in looking at a young woman for a good reason, such as to identify her. Also a fiancé (*khātib*) has the privilege of looking at the young woman.⁽³⁹⁷⁾

40.17 صون اللسان

40.17 Unjust speech

ومن الفرائض صون اللسان
عن الكذب والزور والفحشاء
والغيبة والنميمة والباطل
كله. قال الرسول عليه
الصلاة والسلام: من كان
يؤمن بالله واليوم الآخر
فليقل خيرا أو ليصمت وقال
عليه السلام: من حسن إسلام
المرء تركه مالا يعنيه.

To guard one's tongue from lying, false witness, obscene language, backbiting, gossiping, and every wrong is obligatory. The Messenger said, "If someone believes in God and the Last Day, let him speak what is good or be silent." He also said, "It is a good mark of the Islām of a man for him to keep out of what does not concern him."

40.18 حرمة الدم والمال

40.18 Taking a Muslim's life or property

وحرّم الله سبحانه دماء
المسلمين وأموالهم
وأعراضهم إلا بحقها ولا
يحل دام مرئ مسلم إلا أن
يكفر بعد إيمانه أو يزني بعد
إحصانه أو يقتل نفسا بغير
نفس أو فساد في الارض أو
يمرق من الدين.

God has declared sacred and forbidden the blood, possessions and reputation of Muslims, except when one has a right to take them. It is not legitimate to kill a Muslim unless he apostatizes after having been a believer, or has illicit sexual intercourse after being maritally restricted, or kills someone apart from a case of talion, or engages in banditry, or is guilty of heresy.⁽³⁹⁸⁾

40.19 حرمة أشياء أخرى

40.19 Sexual and related restrictions

ولتكف يدك عما لا يحل لك
من مال أو جسد أو دم، ولا
تسع بقدميك فيما لا يحل لك،
ولا تباشر بفرجك أو بشئ
من جسديك ما لا يحل لك قال

Keep your hand away from such wealth, sexual contact, and shedding blood which are not licit for you. Nor let your feet bring you to things not licit for you. Do not permit your sexual parts or any part of your body to touch what is not licit {151} for you. For God said, "Those who guard their private parts [except from

الله سبحانه: "والذين هم لفروجهم حافظون" إلى قوله: "فأولئك هم العادون" (المؤمنون: 5). وحرّم الله سبحانه الفواحش ما ظهر منها وما بطن، وأن يقرب النساء في دم حيضهن أو نفاسهن، وحرّم من النساء ما تقدم ذكرنا إياه.

their wives or slave women are not blameworthy. But those who seek what is beyond that] are transgressors" (Qur'ān 23:5-7). God has also forbidden any obscenity, whether openly or in secret, and approaching women sexually when they are bleeding from menstruation or afterbirth. And he has forbidden [marriage to] the classes of women we mentioned above. [\(399\)](#)

40. 20 ما يؤمر به ويشتهى به

40.20 Doing licit and avoiding doubtful things

وأمر بأكل الطيب وهو الحلال فلا يحل لك أن تأكل إلا طيبا ولا تلبس إلا طيبا ولا تركب إلا طيبا ولا تسكن إلا طيبا وتستعمل سائر ما تنتفع به طيبا.

God has commanded you to eat what is good, that is, what is licit. It is not licit for you to eat anything but what is good, or to put on anything but what is good, or to ride anything but what is good, or to live in any place but what is good; everything else you make use of must be good. [\(400\)](#)

ومن وراء ذلك مشتبهات من تركها سلم ومن أخذها كان كالراتع حول الحمى يوشك أن يقع فيه.

Besides good things there are doubtful things. To omit them is to be safe, and to make use of them is like grazing next to the border and to be on the verge of entering the domain of the forbidden.

40. 21 أنواع الباطل

40.21 Injury to property rights

وحرّم الله سبحانه أكل المال بالباطل، ومن الباطل الغصب والتعدي والخيانة والربا والسحت والقمار والغرر والغش والخديعة والخلابة.

God has forbidden taking possessions wrongly. This includes usurpation, encroachment, betrayal [of the privilege of access], usury, bribe taking, enrichment by gambling, selling something risky, adulterating a commodity, and overrating or misrepresenting it by smooth talk. [\(401\)](#)

40. 22 أنواع اللحم المحروم

40.22 Forbidden meat [\(402\)](#)

وحرّم الله سبحانه أكل الميتة والدم ولحم الخنزير وما أهل لغير الله به وما ذبح لغير الله وما أعان على موته ترد من جبل أو وقدة بعصا أو

God has forbidden animals not ritually slaughtered, blood, pork, what is sacrificed to the honour of something other than God, animals which died by falling from a cliff or being hit with a club or something else, and animals strangled with a rope or other material.

غيرها والمنخقة بحبل أو غيره،

إلا أن يضطر إلى ذلك كالميتة، وذلك إذا صارت بذلك إلى حال لا حياة بعده فلا ذكاة فيها، ولا بأس للمضطر أن يأكل الميتة ويشبع ويتزود فإن استغنى عنها طرحها.

But in case of necessity animals thus mortally injured need not be ritually slaughtered, {152} but the dead animal may be eaten by the person in need. He may go so far as to completely satisfy his hunger and store up the rest, but if he has no further need for the meat he should throw it away.

ولا بأس بالانتفاع بجلدها إذا دبغ، ولا يصلى عليه ولا يباع، ولا بأس بالصلاة على جلود السباع إذا ذكيت وبيعها وينتفع بصوف الميتة وشعرها وما ينزع منها في الحياة، وأحب إلينا أن يغسل ولا ينتفع بريشها ولا بقرنها وأظلافها وأنيابها، وكره الانتفاع بأنياب الفيل. وكل شئ من الخنزير حرام، وقد أُرخص في الانتفاع بشعره.

It is not wrong for a person to make use of the tanned skin of an animal not ritually slaughtered, but he should not do ṣalāt on it or sell it. He may, however, sell or do ṣalāt on the skins of predatory animals, provided they have been ritually slaughtered. One may also make use of the wool or hair of an animal which died without being ritually slaughtered and whatever was taken from the animal while it was alive, but in our opinion it is preferable to wash these things first. No use should be made of the feathers, horns, hoofs or teeth of an animal not ritually slaughtered. It is disapproved to make use of the tusks of an elephant. Any part of a pig is forbidden, but by way of privilege its hair may be used.

40. 23 حرمة شرب الخمر

40.23 forbidden drink

وحرم الله سبحانه شرب الخمر قليلاً وكثيراً وشراب العرب يومئذ فضيخ التمر، وبين الرسول عليه السلام أن كل ما أسكر كثيره من الأشربة فقليله حرام، وكل ما خامر العقل فأسكره من كل شراب فهو خمر. وقال الرسول عليه السلام: إن الذي حرم شربها حرم بيعها.

God has forbidden the drinking of wine, whether a small or a large amount. The drink of the Arabs at that time was date wine, but the Messenger (On him be peace!) explained that any intoxicating drink, whether in a small or a large amount, is forbidden. Any drink which overcomes the mind and intoxicates it fits the definition of wine (*khamr*). The Messenger (On him be peace!) also said, "[God] who forbade drinking it also forbade selling it."

ونهى عن الخليطين من

[The Messenger] also forbade mixed drinks, whether they are mixed when they are first put in vats or at the

الاشربة وذلك أن يخلطاً عند
الانتباز وعند الشرب، ونهى
عن الانتباز في الدباء
والمزفت.

40. 24 لحوم أخرى محرومة

ونهى عليه السلام عن أكل
كل ذي ناب من السباع،
وعن أكل لحوم الحمر
الاهلية ودخل مدخلها لحوم
الخيال والبغال لقول الله
تبارك وتعالى: "لتركبوها
وزينة" (النحل: 8) ولا ذكاة
في شئ منها إلا في الحمر
الوحشية.

ولا بأس بأكل سباع الطير
وكل ذي مخلب منها.

40. 25 بر الوالدين

ومن الفرائض بر الوالدين
وإن كانا فاسقين وإن كانا
مشركين فليقل لهما قولا ليينا
وليعاشرهما بالمعروف ولا
يطعهما في معصية كما قال
الله سبحانه وتعالى.

40. 26 معاملات المسلمين

وعلى المؤمن أن يستغفر
لابويه المؤمنين وعليه
موالاة المؤمنين والنصيحة
لهم، ولا يبلغ أحد حقيقة
الإيمان حتى يحب لآخيه
المؤمن ما يحب لنفسه،
كذلك روي عن رسول الله
(ص) وعليه أن يصل
رحمه.

time of drinking.⁽⁴⁰³⁾ And he forbade storing juices in
hollowed gourds or in pitch lined containers.⁽⁴⁰⁴⁾

40.24 Other forbidden meat

[The Messenger] forbade eating predatory animals
with fangs and the {153} meat of domestic donkeys.
Included with the latter is the meat of horses and
mules, since God said, "[He made them] for you to ride
on and for ornament" (Qur'ān 16:8). These may not be
ritually slaughtered, but only wild donkeys.

It is not wrong to eat predatory birds or those with
talons.

40.25 Treatment of parents

It is an obligation to respect one's parents, even if they
are evildoers or unbelievers. A person should speak
kindly to them and live with them showing proper
deference. But he should not obey them to do
something forbidden, as God has said.⁽⁴⁰⁵⁾ A believer
must also ask God's forgiveness for his parents if they
are unbelievers.

40.26 Treatment of fellow Muslims

A believer, moreover, must show care for Muslims and
give them good advice. No one reaches the true stature
of faith until he loves for his brother believer what he
loves for himself; thus it is related from the Messenger
of God. [A believer] must also keep up contact with his
blood relatives.

ومن حق المؤمن على
المؤمن أن يسلم عليه إذا
لقيه، ويعوده إذا مرض،
ويشتمه إذا عطس، ويشهد
جنازته إذا مات ويحفظه إذا
غاب في السر والعلانية.

A believer, moreover, must greet another believer when he meets him, visit him when he is sick, wish him well when he sneezes, assist at his burial when he dies, and defend both his private and public interests while he is absent.

ولا يهجر أخاه فوق ثلاث
ليالٍ والسلام يخرج من
الهجران، ولا ينبغي لا أن
يترك كلامه بعد السلام.

A believer shall not socially boycott his brother for over three nights. A greeting (*as-salāmu `alaykum*) suffices to break the boycott, but he must not neglect speaking to him after greeting him.

والهجران الجائر هجران
ذي البدعة أو متجاهر
بالكبائر لا يصل إلى
عقوبته،

A boycott (*hijrān*) is permitted of someone guilty of an unwarranted innovation (*bid'a*) or who was so bold as openly to commit one of the bigger sins, provided one cannot punish {154} or admonish the person, or the person does not accept the admonishment.

ولا يقدر على موعظته أو لا
يقبلها.

It is not defamation to speak about the character of someone guilty of unwarranted innovation or of a major sin, nor, when requested, to give a character reference about someone who is about to marry or join some enterprise or do something similar, nor to testify to the bad character of a witness, nor to speak about the person for some other good reason.

ولا غيبة في هذين في ذكر
حالهما ولا فيما يشاور فيه
لنكاح أو مخالطة ونحوه ولا
في تجريح شاهد ونحوه.

It is a noble virtue for you to forgive someone who did you wrong, to give to someone who refused you something, and to show kindness to someone who cut you off.

ومن مكارم الاخلاق أن تعفو
عن ظلمك وتعطي من
حرمك وتصل من قطعك.
وجماع آداب الخير وأزمته
تتفرع عن أربعة أحاديث:
قول النبي عليه السلام: من
كان يؤمن بالله واليوم الآخر
فليقل خيرا أو ليصمت،
وقوله عليه السلام: من حسن
إسلام المرء تركه ما لا
يعنيه، وقوله عليه السلام

All good manners and good guidance derive from four ḥadīths related from the Prophet: 1) "If someone believes in God and the Last Day he should speak what is good or be silent." 2) "It is a good mark of the Islām of a man for him to keep our of what does not concern him." 3) The Prophet (On him be peace!) made a brief testament for someone: "Do not be angry," and 4) "A believer loves for a brother believer what he loves for himself."

للذي اختصر له في الوصية:
لا تغضب. وقوله عليه
السلام: المؤمن يحب لآخيه
المؤمن ما يحب لنفسه.

40.27 ما لا يحل أن يُسمع

ولا يحل لك أن تتعمد سماع
الباطل كله، ولا أن تتلذذ
بسماع كلام امرأة لا تحل
لك، ولا سماع شئ من
الملاهي والغناء، ولا قراءة
القرآن باللحون المرجعة
كترجيع الغناء.

40.28 تلاوة القرآن

وليحل كتاب الله العزيز أن
يتلى إلا بسكينة ووقار، وما
يوقن أن الله يرضى به
ويقرب منه مع إحضار الفهم
لذلك.

40.29 الأمر بالمعروف والنهي عن المنكر

ومن الفرائض الأمر
بالمعروف والنهي عن
المنكر على كل من بسطت
يده في الأرض وعلى كل
من تصل يده إلى ذلك فإن لم
يقدر فبلسانه، فإن لم يقدر
فبقلبه.

40.30 النية

وفرض على كل مؤمن أن
يريد بكل قول وعمل من
البر وجه الله الكريم، ومن
أراد بذلك غير الله لم يقبل
عمله، والرياء الشرك

40.27 Things not to listen to

It is illicit for you to deliberately hear out a malicious story, or to take pleasure in listening to the speech of a woman who is not licit for you, or to listen to players of musical instruments or singers.⁽⁴⁰⁶⁾

40.28 Qur'ān recitation

It is not permitted to recite the Qur'ān with distorting melodies as in the quavering of songs. but the venerable Book of God must be honoured by reciting it with calmness and decorum, in a way certain to please God and draw near to Him, and with attention to the meaning of what is recited.

40.29 Commanding the acceptable⁽⁴⁰⁷⁾

To command the acceptable and forbid the objectionable is an obligation on {155} anyone who has the public or private power to do so. If he cannot do so by deed, he should do so by word. If he cannot do so by word, he should do so by his heart.

40.30 Right intention

It is an obligation on every believer to desire the beneficent face of God in every good word and deed. If someone desires something other than God in his good words and deeds, his work is not accepted. This hypocrisy is the smallest form of polytheism.

الاصغر.

40.31 التوبة

والتوبة فريضة من كل ذنب من غير إصرار والاصرار المقام على الذنب واعتقاد العود إليه، ومن التوبة رد المظالم واجتناب المحارم والنية أن لا يعود.

وليستغفر ربه ويرجو رحمته ويخاف عذابه ويتذكر نعمته لديه ويشكر فضله عليه بالأعمال بفرائضه وترك ما يكره فعله، ويتقرب إليه بما تيسر له من نوافل الخير.

وكل ما ضيع من فرائضه فليفعله الآن، وليرغب إلى الله في تقبله ويتوب إليه من تضييعه.

وليلجأ إلى الله فيما عسر عليه من قياد نفسه ومحاولة أمره موقناً أنه المالك لصلاح شأنه وتوفيقه وتسديده، لا يفارق ذلك على ما فيه من حسن أو قبيح ولا ييأس من رحمة الله.

40.32 الفكر في الله والأجل

والفكرة في أمر الله مفتاح العبادة، فاستعن بذكر الموت والفكرة فيما بعده وفي نعمة ربك عليك وإمهاله لك وأخذه لغيرك بذنبه، وفي سالف ذنبك وعاقبة أمرك

40.31 Repentance (tawba)

Repentance from every sin and desisting from it is an obligation. Persisting in sin is to remain fixed on it and to intend to repeat it. Part of repentance is to return what was wrongly taken, to avoid forbidden things, and to have the intention of not turning back to the sin.

The penitent should ask forgiveness from his Lord, hoping in His mercy, fearing His punishment, and recalling His favours to him. He should also thank God for His favour to him by deeds, namely, by doing what is obligatory and omitting what is disapproved. And he should come close to God by doing the supererogatory good works which he can do without difficulty.

As for obligatory acts which he had missed, the penitent should do them all immediately, begging God to accept them, and turning to Him in repentance for having missed them.

The penitent should ask God's help when it is difficult for him to control himself or he is confused as to what he may do. He should be certain that God is in a position to reform his condition, give him success, and fortify him. He should not abandon his confidence in God because of the good or evil which is in him, nor despair of the mercy of God.

40.32 Meditation

Thinking about the acts of God is the key to worship. {156} Therefore have recourse to meditation on death and what comes after it, on the kindness of your Lord to you, on his sparing your life, and on his taking the life of others because of their sins. Meditate also on your own past sins, on the outcome of your life, and on how suddenly and very soon you may die.

ومبادرة ما عسى أن يكون
قد اقترب من أجلك.

باب 41 في الفطرة والختان وحلق الشعر واللباس وستر العورة وما يتصل بذلك

41.01 الفطرة

*** ومن الفطرة خمس:
قص الشارب وهو الاطار
وهو طرف الشعر المستدير
على الشفة لا إحقاؤه والله
أعلم، وقص الاظفار، وتنف
الجناحين، وحلق العانة ولا
بأس بحلاق غيرها من شعر
الجسد، والختان للرجال
سنة، والخفاض للنساء
مكرمة.

41.02 اللحية

وأمر النبي (ص) أن تعفى
اللحية وتوفر ولا تقص. قال
مالك: ولا بأس بالآخذ من
طولها إذا طالت كثيرا وقاله
غير واحد من الصحابة
والتابعين.

41.03 صباغ الشعر

ويكره صباغ الشعر بالسواد
من غير تحريم، ولا بأس به
بالحناء والكتم.

41.04 الحرير والنفيسات

ونهى الرسول عليه السلام
الذكور عن لباس الحرير

CHAPTER 41 POINTS OF DECORUM

41.01 Personal upkeep (fiṭra)⁽⁴⁰⁸⁾

Personal upkeep includes five things: 1) trimming the mustache, that is, the handlebars which curl around the lips, without shaving off the mustache altogether but God knows best, 2) trimming the nails, 3) plucking out the hair of the armpits,⁽⁴⁰⁹⁾ 4) shaving the hair of the pubic and lumber regions and there is no harm in shaving the hair off the rest of the body,⁽⁴¹⁰⁾ 5) circumcision, which is a sunna for men,⁽⁴¹¹⁾ and cliterectomy, which is respectable for women.

41.02 Beards

The Prophet commanded that the beard be spared and let grow thick without being cut off. Mālik said that it is not wrong to shorten it if it is too long; many Companions and Followers of the Companions said the same thing.

41.03 Dying hair

To dye one's hair black is disapproved, but not forbidden. But it is not wrong to redden it with henna or make it yellow with the dye of the katam tree.

41.04 Use of silk and gold

The Messenger (On him be peace!) forbade men to wear silk, and gold or {157} iron rings. It is not wrong

وتختم الذهب وعن التختم بالحديد، ولا بأس بالفضة في حلية الخاتم والسيف والمصحف ولا يجعل ذلك في لجام ولا سرج ولا سكين ولا في غير ذلك، ويتختم النساء بالذهب، ونهي عن التختم بالحديد، والاختيار مما روي في التختم التختم في اليسار لأن تناول الشيء باليمين فهو يأخذه بيمينه ويجعله في يساره.

واختلف في لباس الخز فأجيز وكره.

to use silver to decorate a ring⁽⁴¹²⁾ or a sword or a copy of the Qur'ān, but silver should not be put in a bridle or a saddle or a knife or other such things. Women may wear gold rings, but [the Messenger] forbade them iron rings. The common choice from what is related concerning wearing rings is to wear it on the left hand, since the right hand is used for taking things: A man takes something with his right hand, then puts it in his left.

There is a difference of opinion concerning the use of clothes with some silk woven in (*khazz*).⁽⁴¹³⁾ Some say it is permitted; others say it is disapproved. The same is true about silk badges on clothes, unless a thin piece is used.

41.05 اللباس

41.05 Excess and defect in clothing

وكذلك العلم في الثوب من الحرير إلا الخط الرقيق.

When women go out, they should not wear thin clothing which allows their shape to be seen.⁽⁴¹⁴⁾

ولا يلبس النساء من الرقيق ما يصفهن إذا خرجن، ولا يجر الرجل إزاره بطرا ولا ثوبه من الخيلاء، وليكن إلى الكعبيين فهو أنظف لثوبه وأتقى لربه.

A man should not drag his wrapper vauntingly or his garment ostentatiously. His garment should go only to his ankles, since this will keep it cleaner and show more reverence to his Lord.

وينهى عن اشتمال الصماء وهي على غير ثوب يرفع ذلك من جهة واحدة ويسدل الأخرى، وذلك إذا لم يكن تحت اشتمالك ثوب. واختلف فيه على ثوب.

It is forbidden to wear a *ṣammā'* cloth over no other garment; this is a cloth which [goes over both shoulders and] is lifted up [by the arm] on one side, while hanging down on the other. Such a garment is forbidden if one is not wearing an undergarment, but if one is, there is a difference of opinion whether it is forbidden.

41.06 ستر العورة

41.06 Covering private parts

ويؤمر بستر العورة وإزرة المؤمن إلى أنصاف ساقيه،

To cover one's private parts is a command. The lower covering of a believer should go halfway down his calves. The thigh is considered a private part, but not

والفخذ عورة وليس كالعورة
نفسها. in the same way as the private parts themselves.

ولا يدخل الرجل الحمام إلا
بمئزر، ولا تدخله المرأة إلا
من علة. A man should not enter the baths without a loincloth.
A woman should go to the baths only for a reason.⁽⁴¹⁵⁾

ولا يتلاصق رجلان ولا
امرأتان في لحاف واحد. Two men or two women should not come into physical
contact {158} under a single cover.

41.07 خروج المرأة

41.07 Women going out, and music

ولا تخرج امرأة إلا مستترة
فيما لا بد لها منه من شهود
موت أبويها أو ذي قرابتها
أو نحو ذلك مما يباح لها. A woman should not go out unless she is covered, and
only when she must go out, such as to assist at the
death of her parents or relatives, or for some other
legitimate purpose.⁽⁴¹⁶⁾

ولا تحضر من ذلك ما فيه
نوح نائحة أو لهو من مزمارة
أو عود أو شبهه من الملاهي
الملهية إلا الدف في النكاح،
وقد اختلف في الكبر. She may not be present at a gathering where there is a
woman wailer or the playing of mizmār flutes or of
lutes or similar [wind or stringed] instruments.
Tambourines are permitted at a wedding, but there is a
difference of opinion concerning kabar drums.⁽⁴¹⁷⁾

41.08 زيارة المرأة

41.08 Seeing women⁽⁴¹⁸⁾

ولا يخلو رجل بامرأة ليست
منه بمحرم، ولا بأس أن
يراها لعذر من شهادة عليها
أو نحو ذلك أو إذ خطبها،
وأما المتجالة فله أن يرى
وجهها على كل حال. A man should not be alone with a woman who is of
marriageable relationship to him. Yet it is not wrong
for him to see her for some reason like identifying her,
or if he has betrothed her. He may look at the face of
an elderly lady at any time.

41.09 شعر المرأة

41.09 False hair and tattoos

والوشم

وينهى النساء عن وصل
الشعر، وعن الوشم. Women are forbidden to attach [false] hair⁽⁴¹⁹⁾ or to
have tattoos.⁽⁴²⁰⁾

41.10 لبس خفا

41.10 Putting on footwear

ومن لبس خفا أو نعلا بدأ
بيمينه وإذا نزع بدأ بشماله،
ولا بأس بالانتعال قائما
To put on a shoe or a sandal, one should start with the
right foot. In taking them off one starts with the left.
There is nothing wrong with putting on sandals while
standing. It is disapproved to walk with only one

ويكره المشي في نعل واحد.
واحدة.

11.41 التماثيل

وتكره التماثيل في الاسرة والقباب والجدران والخاتم، وليس الرقم في الثوب من ذلك وتركه أحسن.

sandal on.

41.11 Images

To make images [of animals or people] on silks, tents, walls, or rings is disapproved. To design images on clothing⁽⁴²¹⁾ is not disapproved, but it is better not to do so.⁽⁴²²⁾

باب 42

في الطعام والشراب

01.42 الدعاء قبلها

وبعدها

وإذا أكلت أو شربت فواجب عليك أن تقول بسم الله وتتناول بيمينك، فإذا فرغت فلتقل الحمد لله.

42.01 Prayer before and after

If you eat or drink, you must [begin by] saying "*Bi-smi llāhi*" (In the name of God). You should take your food with your right hand, and when you are finished you should say "*Al-ḥamdu li-llāhi*" (Praise to God).

02.42 كيفيات الأكل

وحسن أن تلعق يدك قبل مسحها.

ومن آداب الأكل أن تجعل بطنك ثلثا للطعام وثلثا للشراب وثلثا للنفس.

وإذا أكلت مع غيرك أكلت مما يليك.

ولا تأخذ لقمة حتى تفرغ الأخرى.

ولا تتنفس في الإناء عند شربك ولتبين القدر عن فيك ثم تعاوده إن شئت. ولا تعب الماء عبا ولتمصه مصا.

وتلوك طعامك وتنعمه مضغا قبل بلعه.

{159} 42.02 Various details during the meal

It is good for you to lick your hand before wiping it off.

Eating manners include leaving a third of your stomach for food, a third for drink, and a third for breath.

If you are eating with someone else, eat only what is in front of you.

Do not take another bite until you have finished swallowing the previous one.

Do not breathe inside the vessel while you are drinking, but take the cup away from your mouth and then resume drinking if you wish. Do not take your drink down in large gulps, but sip it.

Chew your food until it is completely masticated before swallowing it.

وتنظف فاك بعد طعامك، وإن غسلت يديك من الغمر واللبن فحسن وتخلل ما تعلق بأسنانك من الطعام.

Clean your mouth out after eating. To wash your hand from sauce smear and from milk is good. Pick out any food that is stuck in your teeth.

ونهى الرسول عليه السلام عن الاكل والشرب بالشمال.

The Messenger (On him be peace!) forbade eating or drinking with the left hand.

وتناول إذا شربت من على يمينك.

When your are drinking, you should serve [first] the person on your right.

وينهى عن النفخ في الطعام والشراب والكتاب وعن الشرب في آنية الذهب والفضة.

It is forbidden to blow on food or drink or on a book, or to drink from a gold or silver vessel.

ولا بأس بالشرب قائما.

It is not wrong to drink standing.

ولا ينبغي لمن أكل الكراث أو الثوم أو البصل نيئا أن يدخل المسجد.

It is not permitted for someone who has eaten raw leek, garlic, or onions to enter a mosque.

ويكره أن يأكل متكئا.

It is disapproved to eat reclining.

ويكره الاكل من رأس الثريد.

It is disapproved to start eating at the top centre of a bowl of food.⁽⁴²³⁾

ونهي عن القران في التمر، وقيل إن ذلك مع الاصحاب الشركاء فيه، ولا بأس بذلك مع أهلك أو مع قوم تكون أنت أطعمتهم، ولا بأس في التمر وشبهه أن تجول يدك في الاناء لتأكل ما تريد منه.

It is forbidden to eat two dates at once; but it is said that this prohibition applies only to co-owners of the dates they are eating. It is not wrong {160} to do so with your own family or with people you are feeding. When eating dates served with similar fruits, it is not wrong to reach and pick from the dish what you wish to eat.

42. 03 غسل اليد قبل الطعام

42.03 Washing after eating

وليس غسل اليد قبل الطعام من السنة إلا أن يكون بها أذى وليغسل يده وفاه بعد الطعام من الغمر،

Washing one's hands before eating is not a sunna, unless they are dirty. After eating, a person should wash his hands and his mouth from any sauce stain, and rinse the milk from his mouth. It is disapproved to wash one's hands with food or bean flour or even the straining of grain; but there is a difference of opinion

concerning this.
وليمضض فاه من اللين،
وكره غسل اليد بالطعام أو
بشيء من القطني وكذلك
بالنخالة، وقد اختلف في ذلك

42.04 الذهاب إلى وليمة

42.04 Going to a wedding feast

ولتجب إذا دعيت إلى وليمة
المعرس إن لم يكن هناك
لهو مشهور ولا منكر بين
وأنت في الاكل بالخيار، وقد
أرخص مالك في التخلف
لكثرة زحام الناس فيها.

If you are invited to a wedding feast, go, unless there is infamous entertainment or obviously objectionable conduct going on there. It is up to your choice whether to eat at the feast. Mālik stated the privilege of not attending the feast if it is too crowded.

باب 43

CHAPTER 43

في السلام والاستئذان
والتناجي والقراءة والدعاء
وذكر الله والقول في السفر

NORMS OF SPEECH, PRAYER, TRAVEL

43.01 التسليم

43.01 Greeting

ورد السلام واجب والابتداء
به سنة مرغّب فيها، والسلام
أن يقول الرجل السلام
عليكم، ويقول الراد وعليكم
السلام أو يقول سلام عليكم
كما قيل له، وأكثر ما ينتهي
السلام إلى البركة أن تقول
في ردك وعليكم السلام
ورحمة الله وبركاته، ولا تقل
في ردك سلام الله عليك.

Returning a greeting is obligatory; initiating it is a desirable sunna.⁽⁴²⁴⁾ A greeting consists in saying "as-salāmu `alaykum" (Peace be with you). The answer is "wa-`alaykum as-salām" (And with you be peace), or "salāmun `alaykum", corresponding with the initial greeting. A fuller answer, ending with a blessing is, {161} "wa-`alaykum as-salāmu wa-rahmat Allāhi wa-barakātu-h" (And with you be peace and the mercy and blessings of God). Do not say as your answer "salāmu llāhi `alaykum" (The peace of God be with you).⁽⁴²⁵⁾

وإذا سلم واحد من الجماعة
أجزأ عنهم. وكذلك إن رد
واحد منهم.

If one member of a group makes a greeting, that suffices for them all. The same holds if one of them returns a greeting.

وليسلم الراكب على الماشي،
والماشي على الجالس.

Someone riding should initiate greeting someone walking, and someone walking should initiate greeting someone sitting.⁽⁴²⁶⁾

والمصافحة حسنة. وكره
مالك المعانقة وأجازها ابن

Hand clasping⁽⁴²⁷⁾ is good. Mālik disapproved of embracing, but Ibn-`Uyayna⁽⁴²⁸⁾ permitted it. Mālik also disapproved of kissing another's hand, and

عبينة، وكره مالك تقبيل اليد
وأنكر ما روي فيه. contested the traditions related in support of it.

ولا تبدأ اليهود والنصارى
بالسلام. فمن سلم على نبي
فلا يستقبله. وإن سلم عليه
اليهودي أو النصراني فليقل:
عليك، ومن قال: عليك
السلام بكسر السين وهي
الحجارة، فقد قيل ذلك.

One should not initiate greeting a Jew or a Christian. If someone [forgetfully] greets a member of the tolerated classes, he should not wait for an answer. If a Jew or a Christian first greets a Muslim, the Muslim should answer "*`alayka*" ("upon you"). It is also said that one may answer "*wa-`alayka s-silām*", with an "i", meaning "Upon you be a stone."⁽⁴²⁹⁾

43.02 Asking permission to enter; visiting the sick 02.43 الاستئذان وعبادة لمرضى

والاستئذان واجب. فلا تدخل
بيتا فيه أحد حتى تستأذن
ثلاثا، فإن أذن لك وإلا
رجعت.

Asking permission is obligatory; do not enter a house with someone in it without asking his permission, up to three times [if need be]. If you are granted permission you may enter, but if not you should go away.

ويرغب في عبادة المرضى. It is desirable for you to visit the sick.

43.03 Whispering in another's company 03.43 التناجي

ولا يتناجى اثنان دون واحد
وكذلك جماعة إذا أبقوا
واحدا منهم وقد قيل: لا
ينبغي ذلك إلا بإذنه.

Two people should not whisper together while excluding a third [who is with them]. Neither may a larger group whisper together while excluding one of their members. Another opinion is that they may not whisper together without him except by his permission.

وذكر الهجرة قد تقدم في
باب قبل هذا.

Socially boycotting someone has already been discussed in a previous chapter.⁽⁴³⁰⁾

43.04 Dhikr (recollection of God) 04.43 الذكر

قال معاذ بن جبل: ما عمل
أدمي عملا أنجى له من
عذاب الله من ذكر الله. وقال
عمر: أفضل من ذكر الله
باللسان ذكر الله عند أمره
ونهيته.

Mu`ādh ibn-Jabal⁽⁴³¹⁾ said: "No work will more surely save a man from the punishment of God than the recollection of God." And `Umar [ibn-al-Khaṭṭāb] said: "Better than the recollection of God with the tongue is the recollection of him by observing his commands {162} and prohibitions."

43.05 Morning and evening prayers 05.43 أدعية الصباح والمساء

ومن دعاء رسول الله (ص)
كلما أصبح وأمسى اللهم بك
نصبح وبك نمسي وبك نحيا
وبك نموت.

One of the prayers the Messenger of God said every morning and evening was: "O God, by You we reach morning, by You we reach night, by You we live, and by You we die."

ويقول في الصباح: وإليك
النشور وفي المساء: وإليك
المصير.

In addition, he used to say in the morning: "To You is the rising" [as from death], and in the evening: "To You is the return" [by death].

وروي مع ذلك اللهم اجعلني
من أعظم عبادك عندك حظا
ونصيبا في كل خير تقسمه
في هذا اليوم وفيما بعده من
نور تهدي به أو رحمة
تنشرها أو رزق تبسطه أو
ضر تكشفه أو ذنب تغفره أو
شدة تدفعها أو فتنة تصرفها
أو معافاة تمن بها برحمتك
إنك على كل شيء قدير.

Also related from him is the prayer: "O God, make me Your most fortunate servant in my share in every good You distribute this day and afterwards: in the light You give for guidance, the mercy You spread wide, the blessings You extend, the harm You remove, the sins You forgive, the difficulties You repel, the trials You avert, and the health You give through Your mercy. For You are all powerful."

43.06 دعاء قبل النوم

43.06 Prayer before sleep

ومن دعائه عليه السلام عند
النوم أنه كان يضع يده
اليمنى تحت خده الايمن
واليسرى على فخذ الايسر
ثم يقول:

When the Messenger (On him be peace!) went to sleep, he used to put his right hand under his right cheek, and his left hand on his left thigh, and say:

اللهم باسمك وضعت جنبي
وباسمك أرفعه، اللهم إن
أمسكت نفسي فاغفر لها وإن
أرسلتها فاحفظها بما تحفظ
به الصالحين من عبادك،
اللهم إني أسلمت نفسي إليك،
وألجأت ظهري إليك،
وفوضت أمري إليك
ووجهت وجهي إليك، رهبة
منك ورغبة إليك، لا منجى
ولا ملجأ منك إلا إليك،

O God, in Your name I lie down, and in Your name I get up again. O God, if You take my soul, give in forgiveness; if You send it [out and back to me],⁽⁴³²⁾ guard it as You guard Your righteous servants. O God, I submit myself to You, I commend myself to You, I entrust my being to You, I turn my face to You fearing You and desiring You. There is no place of safety or refuge from You but in You. I ask Your forgiveness, {163} and turn to You in repentance. I believe in Your Book which You sent down, and in the Messenger whom You sent. Therefore forgive me my past and future sins, both those I committed in secret and those I committed in public. For You are my God; besides You there is no deity. My Lord, protect me from Your punishment on the day you raise up

أستغفرك وأتوب إليك، أمنت
بكتابك الذي أنزلت، وبنبيك
الذي أرسلت، فاغفر لي ما
قدمت وما أخرت، وما
أسررت وما أعلنت، أنت
إلهي لا إله إلا أنت، رب
قني عذابك يوم تبعث
عبادك.

Your servants.⁽⁴³³⁾

34. 07 دعاء عند الخروج

43.07 A prayer when going out

ومما روي في الدعاء عند
الخروج من المنزل:

A prayer he used to say when going out of the house was:

اللهم إني أعوذ بك أن أضل
أو أضل، أو أزل أو أزل، أو
أظلم أو أظلم، أو أجهل أو
يجهل علي.

O God, I seek Your protection from leading anyone astray or being led astray, from tripping anyone or being tripped, from wronging anyone or being wronged, from treating anyone ignorantly or being treated ignorantly.

43. 08 دعاء بعد الصلاة

43.08 A prayer after ṣalāt⁽⁴³⁴⁾

وروي في دبر كل صلاة،
أن يسبح الله ثلاثا وثلاثين،
ويكبر الله ثلاثا وثلاثين،
ويحمد الله ثلاثا وثلاثين،
ويختم المائة بلا إله إلا الله
وحده لا شريك له له الملك
وله الحمد وهو على كل شيء
قدير.

It is related from him that after every ṣalāt you should say "Subhāna llāh" (Glory be to God!) thirty-three times, "Allāhu akbar" (God is most great!) thirty-three times, "Al-ḥamdu li-llāhi" (Praise be to God!) thirty-three times, and for the hundredth invocation: "Lā ilāha illā llāh, waḥda-hu, lā sharīka la-hu, la-hu l-mulk, wa-la-hu l-ḥamd, wa-huwa `alā kulli shay'in qadīr" (There is no deity but God, him alone without associate; his is the kingdom and the praise, and he is all powerful!).

43. 09 دعاء عند الخلاء

43.09 A prayer after going to the toilet

وعند الخلاء تقول: الحمد لله
الذي رزقني لذته وأخرج
عني مشقته وأبقى في
جسمي قوته.

After going to the toilet you should say: "Praise be to God who has blessed me with the pleasure of food, taken away from me its discomfort, and caused its energy to remain in my body."

43. 10 دعاء التعوذ

43.10 Prayers against danger

وتتعوذ من كل شيء تخافه
وعندما تحل بموضع أو
تجلس بمكان أو تنام فيه

You should seek protection from any danger you fear [while traveling] and whenever you settle in a place or sit or sleep somewhere, saying: "I seek protection in the perfect words of God from the evil he created." Or

تقول: أعوذ بكلمات الله
التامات من شر ما خلق.
ومن التعوذ أن تقول:

أعوذ بوجه الله الكريم
وبكلمات الله التامات التي لا
يجاوزهن بر ولا فاجر،
وبأسماء الله الحسنى كلها ما
علمت منها وما لم أعلم من
شر ما خلق وذكراً وبراً، ومن
شر ما ينزل من السماء،
ومن شر ما يعرج فيها، ومن
شر ما نزل في الأرض،
ومن شر ما يخرج منها،
ومن فتنة الليل والنهار، ومن
طوارق الليل والنهار إلا
طارقا يطرق بخير يا
رحمن.

ويقال في ذلك أيضاً: ومن
شر كل دابة ربي أخذ
بناصيتها إن ربي على
صراط مستقيم.

43. 11 دعاء عند دخول المنزل

ويستحب لمن دخل منزله أن
يقول: ما شاء الله لا قوة إلا
بالله.

43. 12 أفعال مكروهة في المسجد

ويكره العمل في المساجد
من خياطة ونحوها، ولا
يغسل يديه فيه ولا يأكل فيه
إلا مثل الشئ الخفيف
كالسويق ونحو ولا يقص فيه
شاربه ولا يقلم فيه أظفاره،

you may say:

I seek protection in the eminent face of God, in the perfect words of God which neither a just man nor a sinner can disregard, and in all the beautiful names of God, those which I know and those which I do not {164} know, from the evil which he created, disseminated and multiplied, from the evil which comes down from the sky, from the evil which rises into the sky, from the evil which he scattered on the earth, from the evil which comes out of the earth, from trials in the night and during the day, and from things coming by surprise at night or during the day, except for good that comes by surprise, O Merciful One.

There may be added the phrase "and from the evil of every animal, for my Lord takes hold of them by their forelock; my Lord is indeed on the right path."

43.11 On entering a house

When someone enters his house, it is desirable for him to say: "May whatever God wills [shall happen]. There is no power [to prevent it] but God.

43.12 Disapproved activities in mosques

In mosques it is disapproved to do work [unconnected with worship] like sewing. A person should not wash his hands or eat there, unless something light, like a sweet. He should not trim his mustache or nails there, even if he gathers up the clippings in his clothes. He should not kill lice or bedbugs there.

وإن قص أو قلم أخذه في
ثوبه، ولا يقتل فيه قملة ولا
برغوثة.

وأرخص في مبيت الغرباء
في مساجد البادية.

[Mālik] stated the privilege of strangers spending the night in mosques in the countryside.

43.13 قراءة القرآن

43.13 Reciting the Qur'ān

ولا ينبغي أن يقرأ في الحمام
إلا الآيات اليسيرة ولا يكثر،
ويقرأ الراكب والمضطجع
والماشي من قرية إلى قرية،
ويكره ذلك للماشي إلى
السوق، وقد قيل إن ذلك
للمتعلم واسع.

In the baths someone should not recite more than a few verses of the Qur'ān. One may recite from the Qur'ān while riding or lying down or walking from one town to another, but to do so while walking to the market is disapproved, although some say that a learner may do this.

ومن قرأ القرآن في سبع
فذلك حسن والتفهم مع قلة
القراءة أفضل. وروي أن
النبي عليه السلام لم يقرأه
في أقل من ثلاث.

For someone to recite the [whole] Qur'ān in seven nights is good, but to recite less and understand it{165} is better. It is related that the Prophet did not recite it in less than three nights.

43.14 دعاء قبل سفر

43.14 A prayer at the beginning of a journey

ويستحب للمسافر أن يقول
عند ركوبه:

When a traveler is getting on his mount, it is desirable for him to say:

بسم الله، اللهم أنت صاحب
في السفر والخليفة في
الاهل، اللهم إني أعوذ بك
من وعناء السفر وكآبة
المنقلب وسوء المنظر في
الاهل والمال.

In the name of God. O God, You are my companion on this journey and my substitute in my family. O God, I seek refuge in You from the troubles of this journey, from returning disappointed, and from finding my family and possessions in a sorry state.

43.15 دعاء بعد الركوب

43.15 A prayer after mounting an animal

ويقول الراكب إذا استوى
على الدابة: سبحان الذي
سخر لنا هذا وما كنا له
مقرنين وإنا إلى ربنا
لمنقلبون.

When the traveler has got on his mount, he should say: "Glory be to the One who has made this [animal] subservient to us. [But for Him] we could not do it.⁽⁴³⁵⁾ We shall be brought back to him."

43.16 Foreign trade

43.16 التجارة في خارج دار الإسلام

وتكره التجارة إلى أرض
العدو وبلد السودان. وقال
النبي عليه السلام: السفر
قطعة من العذاب.

Trading in hostile countries or in the land of the Blacks is disapproved.⁽⁴³⁶⁾ The Prophet (On him be peace!) said: "Traveling is a piece of punishment."

ولا ينبغي أن تسافر المرأة
مع غير ذي محرم منها
سفيوم وليلة فأكثر إلا في
حج الفريضة خاصة في قول
مالك في رفقة مأمونة، وإن
لم يكن معها ذو محرم فذلك
لها.

A woman should not travel a day and a night or more in the company of someone she is marriageable to. A special exception, according to Mālik, is the obligatory hajj pilgrimage: A woman may travel for this in safe company, including men she is marriageable to.

باب 44 في التعالج وذكر الرقى والطيرة والنجوم والخصاء والوسم والكلاب والرفق بالمملوك

CHAPTER 44 TREATING AND AVOIDING HARM TO MEN AND ANIMALS/FONT>

44.01 الرقية

44.01 Charms and medical treatment

ولا بأس بالاسترقاء من
العين وغيرها، والتعوذ،
والتعالج، وشرب الدواء،
والفصد، والكي، والحجامة
حسنة، والكحل للتداوي
للرجال جائز وهو من زينة
النساء، ولا يتعالج بالخمير
ولا بالنجاسة ولا بما فيه
ميتة ولا بشئ مما حرم الله
سبحانه وتعالى.

It is not wrong to make charms (*ruqya*) against the evil eye and other evils,⁽⁴³⁷⁾ nor in using the prayer of seeking refuge in God, taking medical treatment, drinking medicine, blood letting, and cauterizing. Cupping [to draw blood] is good. For men to use kohl {166} as a medicine is legitimate; it is a cosmetic for women. Treatment should not be taken which makes use of wine, impurities, concoctions containing something from an animal not ritually slaughtered, or anything which God has forbidden.

ولا بأس بالاكْتواء والرقى
بكتاب الله وبالكلام الطيب،
ولا بأس بالمعاذة تعلق وفيها

It is not wrong to cauterize [a wound], or to use charms containing verses of the Qur'ān or some other good words, or to wear amulets (*ma`ādha*) containing verses of the Qur'ān.⁽⁴³⁸⁾

القرآن.

وإذا وقع الوباء بأرض قوم
فلا يقدم عليه، ومن كان بها
فلا يخرج فرارا منه.

If a plague breaks out in an area, no one should enter it, and those who are in it should not flee out of it.

44.02 الشؤم والفأل

44.02 Portents

وقال الرسول عليه السلام
في الشؤم إن كان ففي
المسكن والمرأة والفرس،
وكان عليه السلام يكره سيئ
الاسماء ويحب الفأل الحسن.

The Messenger (On him be peace!) said about evil omens (*shu'm*) that if there are any they are in houses and women and horses. He also disapproved of bad proper names, and loved good appellations (*fa'l*).

44.03 العين المصيبة

44.03 Curing effect of evil eye

والغسل للعين أن يغسل
العائن وجهه ويديه ومرفقيه
وركبتيه وأطراف رجليه
وداخله إزاره في قدح، ثم
يصب على المعين.

To wash away the effect of an evil eye, the person with the evil eye must wash in a basin his face and hands, his elbows and knees, the extremities of his feet, and under his loincloth. Then he should pour the water over the person affected by his evil eye.

44.04 النجوم

44.04 Stars

ولا ينظر في النجوم إلا ما
يستدل به على القبلة وأجزاء
الليل، ويترك ما سوى ذلك.

A person should look at the stars only to find the direction of the qibla or to find out what time of the night it is, and should not look at them otherwise.

44.05 الكلاب

44.05 Dogs

ولا يتخذ كلب في الدور في
الحضر ولا في دور البادية
إلا لزرع أو ماشية يصحبها
في الصحراء ثم يروح معها
أو لصيد يصطاده لعيشه لا
للهو.

Dogs should not be kept in city or country houses, unless [to protect] crops or livestock, which the dog accompanies into the desert and brings back in the evening. They may also be kept for hunting for one's livelihood, but not for sport.

44.06 خصاء البهائم

44.06 Castration

ولا بأس بخصاء الغنم لما
فيه من صلاح لحومها،
ونهي عن خصاء الخيل.

It is not wrong to castrate livestock in order to improve their meat. But it is forbidden to castrate a horse.⁽⁴³⁹⁾

44.07 Wasm al-bihām

ويكره الوسم في الوجه، ولا بأس به في غير ذلك.

ترفق بالمملوك

ويترفق بالمملوك ولا يكلف من العمل إلا ما يطيق.

باب 45

في الرؤيا والتأوب
والعطاس واللعب بالنرد
وغيرها والسبق بالخيل
والرمي وغير ذلك

45.01 الرؤيا

قال رسول الله (ص): الرؤيا الحسنة من الرجل الصالح جزء من ستة وأربعين جزءا من النبوة، ومن رأى منكم ما يكره في منامه، فإذا استيقظ فليقل عن يساره ثلاثا وليقل: اللهم إني أعوذ بك من شر ما رأيت في منامي أن يضرني في ديني ودنياي.

45.02 التثاءب والعطس

ومن تثاءب فليضع يده على فيه.

ومن عطس فليقل الحمد لله، وعلى من سمعه يحمد الله أن يقول له يرحمك الله، ويرد العاطس عليه يغفر الله لنا ولكم، أو يقول يهديكم الله ويصلح بالكم.

44.07 Tattooing animals

To make tattoos on the faces [of animals] is disapproved, {167} but it is not wrong to make them elsewhere on their bodies.⁽⁴⁴⁰⁾

44.08 Kindness to slaves

Kindness should be shown to slaves, and they should not be given work they are not strong enough to do.

CHAPTER 45 DREAMS AND LEISURE

45.01 Dreams (ru'ya)

The Messenger of God said: "A good dream which a worthy man has is one forty-sixth part of prophecy. If any of you has a bad dream, when he wakes up he should spit⁽⁴⁴¹⁾ three times to his left, and say 'O God, I seek your protection from the evil I have seen in my dream, lest it harm me in my religious or worldly affairs.'"

45.02 Yawning and sneezing

If someone yawns, he should put his hand over his mouth.

If someone sneezes, he should say "*Al-ḥamdu li-l-llāhi*" (Praise be to God). Anyone who heard him should say: "*Yarḥamu-ka llāh*" (May God have mercy on you). The one who sneezed should answer "*Yaghfiru llāhu la-nā wa-la-kum*" (May God forgive us and you), or "*Yahdī-kum llāhu wa-yuṣliḥu bāla-kum*" (May God guide you and improve your condition).

45.03 Games and betting

45.03 الألعاب والسبق

بسهم

ولا يجوز اللعب بالنرد ولا بالشطرنج، ولا بأس أن يسلم على من يلعب بها، ويكره الجلوس إلى من يلعب بها والنظر إليهم.

Playing backgammon (*nard*) or chess is not allowed. It is not wrong to greet people playing one of these games, but to sit by them and watch is disapproved.

ولا بأس بالسبق بالخيل وبالابل وبالسهم بالرمي. وإن أخرجاً شيئاً جعلاً بينهما محلاً يأخذ ذلك المحلل إن سبق هو وإن سبق غيره لم يكن عليه شيء. هذا قول ابن المسيب.

There is nothing wrong in horse or camel racing or in archery. If the two contestants bet anything, {168} they should place a legitimizing contestant between them. If the legitimizing contestant wins, he takes the stake, but if one of the others wins, the legitimizing contestant has no obligation. This is the opinion of Ibn-al-Musayyib.⁽⁴⁴²⁾

وقال مالك: إنما يجوز أن يخرج الرجل سبقاً فإن سبق غيره أخذه وإن سبق هو كان للذي يليه من المتسابقين، وإن لم يكن غير جاعل السبق وآخر فسبق جاعل السبق أكله من حضر ذلك.

But according to Mālik, [a competition with betting] is allowed only if a contestant puts down a stake to go to someone else who wins, or to the one who came in second if the placer of the bet himself wins. But if only the placer of the bet and one other are contesting, and the placer of the bet wins, the stake goes to the spectators.

45.04 قتل الحيات إلى

آخرها

وجاء فيما ظهر من الحيات بالمدينة أن تؤذن ثلاثاً وإن فعل ذلك في غيرها فهو حسن ولا تؤذن في الصحراء ويقتل ما ظهر منها.

45.04 Killing snakes and other animals

It is related [from the Messenger] that when snakes appear in Medina they are to be admonished for three days [to go away].⁽⁴⁴³⁾ To do this in other settled areas is good, but they are not to be admonished in the desert, but killed when they appear.

ويكره قتل القمل والبراغيث بالناء، ولا بأس إن شاء الله بقتل النمل إذا آذت ولم يقدر على تركها ولو لم تقتل كان أحب إلينا، ويقتل الوزغ

Killing lice and fleas by fire is disapproved. it is not wrong God willing to kill ants when they cause harm and cannot be neglected. But in our opinion it is better not to kill them. Gecko lizards (*wazagh*)⁽⁴⁴⁴⁾ may be killed. Killing frogs is disapproved.⁽⁴⁴⁵⁾

ويكره قتل الضفادع.

45.05 الفخر بالأبَاء

45.05 Against pride in ancestors

وقال النبي عليه السلام: إن الله أذهب عنكم غيبة الجاهلية وفخرها بالأبَاء مؤمن تقي أو فاجر شقي أنتم بنو آدم وأدم من تراب.

The Prophet (On him be peace!) said: "God has taken away from you the ignorance of the Jāhiliyya and their boasting of their ancestors. Whether you are believers and pious or immoral and wicked, you are sons of Adam, and Adam is from the dust."

وقال النبي عليه السلام في رجل تعلم أنساب الناس: علم لا ينفع وجهالة لا تضر.

He also said about a man who learned the genealogies of people: "[It is] a useless science and ignorance [of it] does not hurt."

وقال عمر: تعلموا من أنسابكم ما تصلون به أرحامكم.

Umar [ibn-al-Khaṭṭāb] said: "Learn about your genealogies enough to ascertain the blood relationships among you."

وقال مالك: وأكره أن يرفع في النسبة فيما قبل الإسلام من الأباء.

Mālik said: "I disapprove of carrying genealogies back to our {169} pre-Islamic ancestors."

45.06 الرؤيا

45.06 Dreams

والرؤيا الصالحة جزء من ستة وأربعين جزءا من النبوة، ومن رأى في منامه ما يكره فليتنقل عن يساره ثلاثا وليتعوذ من شر ما رأى.

A good dream is one forty-sixth part of prophecy. If someone has a bad dream he should spit⁽⁴⁴⁶⁾ three times to his left, and seek the protection of God from the evil he has seen [in the dream].

ولا ينبغي أن يفسر الرؤيا من لا علم له بها ولا يعبرها على الخير وهي عنده على المكروه.

Someone who does not know the science of dreams should not interpret them. Nor should anyone interpret a dream as indicative of something good when he knows it is indicative of something bad.

45.07 الشعر

45.07 Poetry

ولا بأس بإنشاد الشعر وما خف من الشعر أحسن، ولا ينبغي أن يكثر منه ومن الشغل به.

It is not wrong to chant poetry, but in a short amount is better. One should not spend much time chanting it or composing it.

وأولى العلوم وأفضلها وأقربها إلى الله علم دينه وشرائعه مما أمر به ونهى عنه ودعا إليه وحض عليه، في كتابه وعلى لسان نبيه، والفقه في ذلك والفهم فيه والتهمم برعايته والعمل به.

The best and most preferable science, and the one closest to God, is knowledge of his religion and his revealed laws regarding what he commanded, forbade, called for, and encouraged in his Book and by the tongue of his Prophet. [One must] understand and grasp these things, be concerned for their observance, and actually practice them.

والعلم أفضل الاعمال وأقرب العلماء إلى الله تعالى وأولاهم به أكثرهم له خشية وفيما عنده رغبة والعلم دليل إلى الخيرات وقائد إليها.

[Dedication to] knowledge is the best of works. The scholars closest to God and best before him are those who fear him most and desire most the things of God. Knowledge shows the way to all that is best and leads to it.

واللجأ إلى كتاب الله عز وجل وسنة نبيه واتباع سبيل المؤمنين، وخير القرون من خير أمة أخرجت للناس نجاة، ففي المفرز إلى ذلك العصمة، وفي اتباع السلف الصالح النجاة وهم القدوة في تأويل ما تأولوه واستخراج ما استنبطوه، وإذا اختلفوا في الفروع والحوادث لم يخرج عن جماعتهم.

Salvation (*an-najāt*) is [achieved by] recourse to the Book of God and the Sunna of his Prophet, and by following the way of the Faithful and of men of the [first and] best century of "the best people that has ever been brought forth for [the good of] mankind".⁽⁴⁴⁷⁾ Immunity [from sin and error] consists in relying on these [sources]. Salvation [likewise] lies in following the righteous Predecessors.⁽⁴⁴⁸⁾ For they are an example to follow with regard to the interpretations they made and the conclusions they drew. {170} Although they had different opinions about legal details (*furū`*) and cases, one should not depart from their company.

خاتمة

EPILOGUE

والحمد لله الذي هدانا لهذا وما كنا لنهتدي لولا أن هدانا الله.

"Praise be to God who guided us unto this; for we would certainly not have the right path unless God had guided us."⁽⁴⁴⁹⁾

قال أبو محمد عبد الله بن أبي زيد: قد أتينا على ما شرطنا أن نأتي به في كتابنا هذا مما ينتفع به إن شاء الله من رغب في تعليم ذلك من الصغار، ومن احتاج إليه

Abū-Muḥammad `Abdallāh ibn-abī-Zayd [al-Qayrawānī] says: We have now finished what we promised to do in this book of ours. God the Most High willing, it will be of benefit to children who want it taught to them, and adults who have need of it. Its contents will give the ignorant knowledge of their religion, both the things they must believe and the obligations they must carry out. And it will help them

من الكبار، وفيه ما يؤدي
الجاهل إلى علم ما يعتقده
من دينه ويعمل به من
فرائضه ويفهم كثيرا من
أصول الفقه وفنونه ومن
السنن والرغائب والآداب.

understand much about law (*fiqh*) in its principles and branches, and about sunnas, desirable practices, and good manners.

وأنا أسأل الله عزوجل أن
ينفعنا وإياك بما علمنا
ويعيننا وإياك على القيام
بحقه فيما كلفنا، ولا حول
وقوة إلا بالله العلي العظيم،
وصلى الله على سيدنا محمد
نبيه وعلى آله وصحبه وسلم
تسليما كثيرا.

I ask God, the Mighty and Majestic, to let us all benefit from what we know, and to help us all to carry out the duties with which he encharged us. There is no wisdom or power but in God the Exalted and Mighty. May God do his *ṣalāt* for our Master, his Prophet Muḥammad, together with his family and Companions, and give them abundant peace.



APPENDIX: LEGAL CATEGORIES

Any act belongs to one of five legal statuses: 1) obligatory according to the Qur'ān (*far*), 2) forbidden according to the Qur'ān (*aram*), 3) recommended (*mandūb*), the omission of which entails no punishment, 4) disapproved (*makrūh*), the doing of which entails no punishment, and 5) simply allowed (*mubā*).

The further categories are subdivisions of what is recommended: A sunna, as distinguished from an obligation revealed in the Qur'ān, is a norm set by the practice of Muammad. Mālikī jurists, in contrast to Shāfi'ites, admit gradations of sunnas: 1) In the first place there is an undisputed sunna (*sunna mu'akkada*) or binding sunna (*sunna wājiba*), which is the public and habitual practice of Muammad. 2) Less than this is a very desirable practice (*raghība*), which is the habitual and determined but non-public practice of Muammad. 3) Finally, there is a supererogatory practice (*nāfila*), which is also a non-public practice of Muammad, but besides is either non-habitual or non-determined.

The definition of *nāfila* is further refined in the question of the four additional rak'as done before and after the *alāt* of uhr and before that of `ar. Although these were habitual and determined practices of

Muammad, they are considered nāfila, not raghība. One answer is that the four rak`as are determined only as a minimum, not as a maximum number. Another answer adds to the definition of a raghība Muammad's having strongly urged its practice, in contrast to a simple nāfila. Cf. an-Nafrāwī, I, p. 25, and al-Fiqh `alā l-madhāhib al-arba`a, pp. 419-421.

Another term frequently used is mustaabba, a simply desirable practice. An-Nafrāwī, II, p. 352, lists three grades of recommended practices: 1) The highest is an undisputed sunna; 2) the second is a raghība; 3) the lowest is a mustaabba. Thus, I conclude, mustaabba and nāfila may be taken as equivalent terms.

I have adhered to the translations given here throughout the text, even though at times it is evident that al-Qayrawānī uses the terms loosely, such as the expression "nāfila" or "mustaabba" qualified by "muraghghab fī-hā"; cf. especially chapter 10. - On the early development of some of these terms, cf. A. Hasan, "The sources of Islamic law", Islamic Studies, 7:2 (1968), pp. 165-169.

INDEX OF ARABIC TECHNICAL TERMS

This index is not exhaustive, but gives the principal terms and the principal references, even where the translation does not transcribe the Arabic term. Notes are indicated by "n" and the number.

أذان	adhān	call for ṣalāt 9.01, 12.01, 15.n1, 16, 17.10, 18.01, 19
أضحى	aḍḥā (& ḍaḥīyya, uḍḥīyya)	immolation, animal for immolation 17.01, 29.n1
أضحية	uḍḥīyya	immolation, animal for immolation 29.n1; see aḍ ḥā
أم ولد	umm walad	slave mother of master's child 33.05, 35.08
أمان	amān	guarantee of safety 30.01
أهل الكتاب	ahl al-kitāb	"people of the book" = Jews or Christians 32.06
أوقية	ūqiyya	a measure of silver 25.03.09
إجارة	ijāra	selling thing or service by time 34.08.23.n16
إحداد	iḥḍād	widow's mourning 33.03

إحرام	iḥrām	entering state of consecration 10.01, 12.n1, 16, 17.01, 19, 28.02.14.15.20.n3
إدارة	idāra	transactional trade 25.n6
إقالة	iqāla	reversal of sale 34.03
إقامة	iqāma	a formula somewhat repeating the adhān 9.01.02, 12.04, 16, 17.01, 18.01, 19
إمام	imām	leader 11.10.n1, 12.09, 15, 16.1, 17.01, 18.01.03, 19, 20.04, 21.01
إيلاء	ilā'	oath of abstinence 32.25
إيمان	īmān	faith 1.08
احتكار	iḥtikār	speculative trade 25.n6
اختياري	ikhtiyārī	preferable 8.n3
استبراء	istibrā'	slave woman's seclusion to test pregnancy 2.02, 32.27, 33.06 34.06, 35.08
استجمار	istijmār	wiping anus with stones 4.02
استحاضة	istahāḍa	menorrhagia 2.02, 33.01
استسقاء	istisqā'	prayer for rain 19, 40.04
استنجاء	istinjā'	washing private parts 4.01.02
اسفار	isfār	radiance before dawn 8.02, 10.10
اعتكاف	i`tikāf	retreat in the mosque 24, 40.12
بدعة	bid`a	reprehensible innovation 40.26
بريد	barīd	12 miles 14.01.n1, 23.10
بغي	baghy	revolt against the imām 37.n18
بكر	bikr	unmarried girl 32.02.17.22

بيع	bay`	selling 34.01
بينة	bayyina	evidence, witness 36.07.n14, 37.01, 38.01.n1
تأديب	ta'dīb	discretionary punishment 37.25.n27
تبعية	tab`iyya	concomitance in freeing slave 35.13
تحميد	taḥmīd	" <i>Al-ḥamdu li-llāhi</i> " 10.04, 17.02, 42.01, 43.08, 45.02
تدبير	tadbīr	master's declaration that at his death his slave will be free 35.01.02.n2
تراض	tarāḍ	mutual agreement 38.24
تراويح	tarāwīḥ	Ramaḍān night devotions 23.14, 40.08
تروية	tarwiya	drawing water on 8 Dhū-l-ḥijja 40.12
تسييح	tasbīḥ	" <i>Subḥān Allāh</i> " 10.04, 43.08
تسليم	taslīm	" <i>As-salāmu `alaykum</i> " 10.03, 11.06, 12.02.09, 13.02, 17.01, 18.01, 21.01.04, 22.02, 40.03, 43.01
تشهد	tashahhud	a prayer in ṣalāt 10.03.n2, 11.03.n3, 12.02, 26, 17.01, 18.01, 19, 40.03
تفويض	tafwīḍ	marriage of delegation 32.10.18
تكبير	takbīr	" <i>Allāhu akbar</i> " 9.01.02.n1, 10.10, 11.06, 12.02.n1, 13.02, 16, 17.01.02, 19, 21.01.04, 22.01.02, 28.09, 40.03, 43.08
تلبية	talbiya	" <i>Labbayka</i> " prayer 28.02.07, 40.14
تمتع	tamattu`	combining ḥajj and `umra by separate consecrations 23.08, 28.16.17.19, 31.07
تهليل	tahlīl	" <i>Lā ilāh illā llāh</i> " 43.08
توبة	tawba	repentance 40.31

تولية	tawliya	cost resale 34.03
تيمم	tayammum	ablution with sand 6, 12.07, 20.01
ثيب	thayyib	woman married before 32.02.17.22
جزاف	juzāf	in undetermined quantity 34.05.12.19.n10
جزية	jizya	tax on tolerated non-Muslims 25.10, 30.01
جعل	ju`l	selling service by job 35.23
جلوس	julūs	sitting 10.01.02, 40.03
جنابة	janāba	major sexual defilement 5.n2, 6.05
جنازة	janāza	funeral 21.01-07
جهاد	jihād	holy war 30, 40.11
حامل الوجه	ḥāmil al-wajh	debtor 38.21
حامل	ḥāmil	guarantor 38.23
حبس	ḥubus	foundation, trust 36.02.04.05.10.n9.n10.n11
حد	ḥadd	fixed Qur'ānic penalty 2.02, 20.04, 37.19.23-26,29.31-34.36, 37.19
حرابة	ḥirāba	banditry 37.17.20.n18
حرام	ḥarām	forbidden: Prologue.n1
حرمة	ḥurma	sacredness 24
حضانة	ḥaḍāna	custody of children 33.09
حلال	ḥalāl	permitted 40.20
حمعة	jumu`a	Friday assembly prayer 12.09, 15, 40.04

حوالة	ḥawāla	transfer of debt 38.22
خسوف	khusūf	eclipse 18, 40.04
خطان	khiṭān	circumcision 29.09
خطبة	khuṭba	Friday sermon 15, 17.01, 18.03, 19
خيار	khiyār	selling on trial 34.06
دعاء	du`ā'	prayer, petition, supplication 16.01, 21.03, 43
دية	diya	blood rate 37.01.03-06.08.10.12.14.n4.n6
دين	dayn	claim 34.16
ذبح	dhabḥ	slaughter by cutting throat 28.16
ذكاة	dhakāt	ritual slaughtering 29.05, 40.22.24
ذكر	dhikr	recollection 10.04, 40.30, 43.04
ذوو الأرحام	dhawū l-arḥām	cognate relatives 39.21
رؤية	ru'ya	dream, vision 45.01.06
راهن	rāhin	giver in pledge 36.07
رباط	ribāṭ	fort 30.03, 31.08, 40.11
ربا	ribā	usury 34.01
رجعة	raj`a	revocation of repudiation 32.14.28
رضاء	radā'	wrapper 3.04
رضاء	riḍā`	(& <i>radā`</i>) nursing of child 32.30, 33.09
رطل	riṭl	a measure for water 3.02
رغبية	raghība	desirable practice: Prologue.n1

رقية	ruqya	charm 44.01.n1
ركعة	rak`a	unit of ṣalāt action 10.05-08.10-11.n1.n3, 11.02.06.n3, 12.02.05.09.n7.n8, 14.01-03.n3.n4, 14,
ركوع	rukū`	bow 10.01, 40.03
رهن	rahn	pledge 36.07.n13
زكاة	zakāt	religious tax 25.n1, 26, 27, 40.13
زنا	zinā'	illicit intercourse 32.05, 37.21-29.31.32.n21, 40.18
زندیق	zindīq	heretic, hypocrite 37.19.n14
ساحر	sā ḥīr	sorcerer 37.19
سب النبي	sabb an-nabī	insulting the Prophet 37.19
سجود	sujūd	prostration 10.01, 40.03
سرقة	sariqa	stealing 37.36
سكنى	suknā	lodging 33.07
سلام	salam	sale with advance payment 34.15
سلب	salb	personal effects taken during jihād 30.02
سلف	salaf	early men of Islam 1.10, 45.08; capital loan for borrower's profit 34.08
سنة	sunna	tradition: Prologue.n1, 1.08.n18
سهام	sihām	fixed share 39.05.11.20.n17
سوم	sawm	bid 34.22
شؤم	shu'm	evil omen 44.02
شاهد	shāhid	(& shahāda) witness 8.04.n5, 38.01-07.n1

شبع	shaf`	a supererogatory ṣalāt 10.10.n8, 23.14
شركة	sharika	partnership 34.03.24.27
شغار	shighār	exchange marriage without dower 32.04
شفاعة	shafā`a	intercession 37.40
شفعة	shuf`a	preemption 36.01.n1
شقيق	shaqīq(a)	full brother (sister) 39.09
صاع	ṣā`	a measure for grain 3.02, 25.02, 27
صبح	ṣubḥ	morning prayer 8.10, 9.02, 10.01.10.n2.n4, 12.02, 13.03, 17.02, 28.08, 40.03
صداق	ṣadāq	dower 32.01.04.10.18
صدقة	ṣadaqa	alms 36.02.03.n5
صغام	ṣiyām	fasting 23.01-14, 40.07.12
صلاة	ṣalāt	ritual prayer 2-22, 40.03-09.14.15.22
صلح	ṣulḥ	amicable settlement 38.11
ضامن	ḍāmin	guarantor 38.21
ضحى	ḍuḥā	(& ḍaḥwa) mid-morning 17.01, 19, 27, 29.08, 40.08
ضحية	ḍaḥiyya	(= aḍḥā), immolation, animal for immolation 29.n1
ضروري	ḍarūrī	necessary 8.n3, 12.n7, 14.02.n2.n3
ضمان	ḍamān	responsibility in sale 34.07
طلاق	ṭalāq	repudiation 32.11.14.16.24
طواف	ṭawāf	circumambulation 28.04.12.n2.n17, 40.14
ظهار	ẓihār	declaring wife forbidden 32.26

ظهر	zuhr	early afternoon prayer 8.02, 10.06.n2.n4, 12.04.05.n7, 14.02.n2.n3.n4, 16, 17.02, 28.06.07, 40.14
عارية	`ariyya	loan for temporary use 34.n4, 36.08.09.n15
عاشوراء	`Āshūrā'	a fast day, originally Jewish 40.12
عاصب	`āṣib	(pl. `āṣaba) agnate 35.15, 39.08.21.n3.n4.n17
عاقلة	`āqila	clan 37.03.08
عبد	`abd (& raqīq, mamlūk, raqaba)	male slave 32.06.12.24.29, 33.11, 34.05, 37.16, 39.14, 44:08.n3
عتق	`itq	outright freeing of a slave 35.01.10
عتمة	`atama	(= `ishā') 8.05.n3, 10.08
عدة	`idda	woman's seclusion to test pregnancy 2.02, 32.04.11.12.14.20.21.29, 33, 39.18
عرض	`arḍ	(pl. `urūḍ) merchandise 25.04
عريّة	`ariyya	advance gift of dryable fruit 34.29.n22
عشاء	`ishā'	late evening prayer 8.05, 10.08.n2.n4, 12.03.05, 14.03, 16, 28.06.08
عصر	`aṣr	mid-afternoon prayer 8.03, 10.06.n3, 12.04.05.n8, 13.05, 14.02.n2.n4, 16, 28.06.07, 40.14
عفو	`afw	clemency 37.02
عقيقة	`aqīqa	sacrifice for child on eighth day 29.04.08
عمرة	`umra	a supererogatory pilgrimage 23.08, 28.13.16-19, 31.04.07; a life grant 36.05.n12
عنّت	`anat	illicit intercourse 32.08
عهدة	`uhda	selling with guarantee 34.06.14, 36.01

عهد	`ahd	pact 31.06
عول	`awl	accommodation by reducing inheritance portions 39.22
عيد	`īd	major feast 17, 40.04
غزو	ghazw	raid 30.04
غسل	ghusl	ritual bathing 2.02, 3.01, 5, 20.01.04, 22.04, 28.07, 40.02.05.09.14
غصب	ghaṣb	usurpation 36.12.n21, 38.14-15, 40.21
غنيمة	ghanīma	booty 30.02
غيلة	ghīla	paid murder 37.17.n2.n18
فأل	fa'l	good omen 44.02
فجر	fajr	dawn 8.01
فرض	fard	obligation: Prologue.n1; inheritance share: 39
فريضة	farīḍa	inheritance portion 39.01-22.n17
فطرة	fiṭra	personal upkeep, natural state 41.01
فطر	fiṭr	breaking fast 17.01, 27
فيء	fay'	abandoned property 30.n4
قبلة	qibla	direction of Mecca 1.08.n19, 8.01, 10.01, 12.03.08, 16, 19, 20.01.08, 21.06.n2, 29.03, 40.03, 44.04
قدر	qadar	destiny 1.03
قذب	qadhf	slander 32.27, 27.31
قرآن	Qur'ān	1.02, 13, 40.28, 43.13, 44.01
قراءة	qur`a	lot 38.24

قرأ	qur'	period between menstrations 33.01
قراية	qarāba	blood relationship 32.05.12
قران	qirān	combining ḥajj and `umra by one consecration 28.16.18.19
قرض	qarḍ	capital loan for mutual profit 34.09.25
قسامة	qasāma	sworn indictment 37.01.n1, 38.01
قسم	qasam	simple oath 31.n1
قصاص	qiṣāṣ	talion 37.07.10
قطاعة	qiṭā`a	full payment for freedom 35.n5
قفيز	qafiz	a grain measure 25.02
قنوت	qunūt	a prayer in ṣalāt 10.02, 12.02, 40.03
قود	qawad	retaliatory measure 20.04
قيام	qiyām	standing 10.01, 40.03
كتابة	kitāba	writ permitting slave to purchase freedom 32.23, 35.03.05.n5; see mukātab
كتابي	kitābī	Jewish or Christian 32.06.11, 33.03.04; see ahl al-kitāb
كراء	kirā'	renting 34.08.23.n16
كفارة	kaffāra	atonement 23.11, 31.01-06, 32.29
لعان	li`ān	cursing for adultery 32.27, 33.07
لقطة	luqaṭa	found property 36.10.n19
لواط	liwāṭ	homosexual act 37.30.31
مباح	mubāḥ	permitted: Prologue.n1
متعة	mut`a	temporary marriage 32.04; severance

		award 32.17.n22
مثلة	muthla	mutilation 35.11
مجوسي	majūsī	Magi 37.04
محال	muḥāl	creditor 38.22
محسن	muḥsan	maritally restricted 2.02, 32.04.27, 37.21.30.n23, 40.18
محيل	muḥīl	debtor 38.22
مختص	mukhtaṣṣ	goods privately taken from enemy outside battle 30.n4
مدعي	mudda`ī	plaintiff, claimant 38.01.02
مد	muddu	a grain measure 3.02.n3, 31.03
مذي	madhy	distillation 2.01
مرتد	murtadd	apostate 37.19
مرتهن	murtahin	one who takes in pledge 36.07
مزابنة	muzābana	exchange of indefinite quantities of same item 34.12
مساواة	musāqāt	leasing an orchard 34.26.n19
مستحبة	mustaḥabba	desirable practice: Prologue.n1
مستشبه	mustashabbih	doubtful 40.20
مصلی	muṣallā	place for ṣalāt 17.01
معاذة	ma`ādha	amulet 44.01
مغرب	maghrib	evening prayer 8.04, 10.07.n2.n4, 11.03, 12.03.05, 14.01, 16, 28.06.08
مفقود	mafqud	missing husband 32.20

مكاتب	mukātab	slave permitted to purchase freedom 27, 35.03.06.07; see kitāba
مكروه	makrūh	disapproved: Prologue.n1
مندوب	mandūb	recommended: Prologue.n1
مني	manī	semen or leucorrhoea 2.01.n2
مواضعة	muwāḍa`a	selling a slave woman in seclusion 34.06
مولى	mawlā	patron 39.21
ميثاق	mīthāq	covenant 31.06
ميقات	mīqāt	limits of <i>ḥaram</i> around Mecca 23.02
نافلة	nāfila	supererogatory practice: Prologue.n1
نجاسة	najāsa	filth 3.01.n2
نحر	naḥr	piercing throat of animal 17.02, 28.06
نذر	nadhr	vow 31.04
نسيئة	nasī'a	timed loan 34.01
نصراني	naṣrānī	(pl. naṣārā), Christian 31.06, 37.27
نفاس	nifās	bleeding after childbirth 40.02
نفقة	nafaqa	maintenance payment to wife 33.07.10
نفل	nafal	bounty 30.02
نكاح	nikāḥ	marriage 32
هبة	hiba	donation 36.02.03.n5
هجران	hijrān	boycott 40.26
هدر	hadar	case of no responsibility 37.11

هدي	hady	gift immolation 23.08, 28.09.16, 29.01, 31.06.07
واجب	wājib	obligatory: Prologue.n1
وتر	witr	a supererogatory ṣalāt 9.n1, 10.10.n8, 12.08, 23.14, 40.04
وديعة	wadī`a	deposit 36.09.n16
ودي	wady	a male sexual fluid 2.01
وسق	wasq	a grain measure 25.02
وصية	waṣiyya	bequest 35.01, 38.27
وصي	waṣī	testamentary guardian, executor 32.03, 38.25
وضوء	wuḍū'	ablution 2.01, 3.01, 4.03-06, 12.03.06.n10, 13.02, 20.01, 40.01
وكيل	wakīl	deputy 38.09
ولاء	walā'	patronship 35.15; see mawlā
ولي	walī	guardian 32.01, 37.01, 38.10
يرع	dir`	throw-over cloth 3.04, 12.01
يمين	yamīn	oath 31.01, 38.01
يهودي	yahūdī	Jewish 31.06 16, 17.01, 18.02, 19, 23.14, 28.04.10.12, 40.08

NOTES

1. The exact literal meaning is debated. See Fazlur Rahman, *Islam* (New York: Anchor, 1968), p. 58, his *Islamic methodology in history* (Karachi, 1965), pp. 3-4, and M.Y. Guraya, "The concept of Sunna, a historical study", *Islamic Studies*, 11:1 (1972), 13-44.

2. On the early schools see J. Schacht, *An introduction to Islamic law* (Oxford: Clarendon, 1964), ch. 6, F. Rahman, *Islam*, pp. 48-49, N. Coulson, *A history of Islamic law* (Edinburgh U.P., 1964), chs. 2 & 3, his *Conflicts and tensions in Islamic jurisprudence* (U. of Chicago P., 1969), chs. 1 & 2, and A. Hasan,

"Origins of the early schools of law", *Islamic Studies*, 9:3 (1970), 255-269. On the role of *ijmā`* in the early schools cf. A. Hasan, "*ijmā`* in the early schools", *Islamic Studies*, 6:2 (1967), pp. 121-139, and "*ijmā`*, an integrating force in the Muslim community", *Islamic Studies*, 6:4 (1967), pp. 389-406.

3. Cf. M.Y. Guraya, "Historical background of the compilation of the *Muwaṭṭa`*' of Mālik b. Anas", *Islamic Studies*, 7:4 (1968), pp. 379-392.

4. *The origins of Muhammadan jurisprudence* (Oxford: Clarendon, 1950), esp. ch. 6.

5. *A history of Islamic law*, pp. 3,64-65.

6. *Islam*, ch. 3.

7. Cf. N. Coulson, *A history of Islamic law*, p. 56, and A. Hasan, "The sources of Islamic law", *Islamic Studies*, 7:2 (1968), pp. 165-184.

8. Cf. N. Coulson, *Conflicts and tensions in Islam*, p. 7, and J. Schacht, *Introduction*, pp. 60-61. On early use of *istiḥsān* cf. A. Hasan, "Early modes of *ijtihād*: *ra'y*, *qiyās* and *istiḥsān*", *Islamic Studies*, 6:1 (1967), pp. 47-79.

9. In the Ḥanafite document *Al-fiqh al-akbar I*, n. 7; cf. A.J. Wensinck, *The Muslim creed* (London: Cass, 1932), p. 102ff., and W.M. Watt, *The formative period of Islamic thought* (Edinburgh U.P., 1973), pp. 132, 267.

10. Cf. N. Coulson, *History*, pp. 76-80, *Conflicts*, p. 23.

11. Cf. H.R. Idris, *La Berbérie orientale sous les Zirides, Xe-XIe siècles* (Paris: A.-Maisonnette, 1962), pp. 687-688.

12. *Ibid.*, pp. 698-701.

13. *Ibid.*, pp. 708-709.

14. *Ibid.*, pp. 644-655; W.M. Watt, *The formative period*, p. 317.

15. Idris, *op. cit.*, p. 705.

16. *Ibid.*, pp. 700-701.

17. *Ibid.*, p. 719.

18. *Ibid.*, p. 697.

19. *Ibid.*, p. 101.

20. I, p. 177, SI, p. 301.

21. In R. Palmer, *The Bornu, Sahara and Sudan* (London, 1936), p. 14.
22. *Nayl al-ibtihāj bi-taṭrīz ad-Dībāj*, printed in the margin of *ad-Dībāj al-mudhahhab fī ma'rifa a'yān 'ulamā' al-madhhab* (Cairo, 1932).
23. Ed. O. Houdas (Paris: Adrien-Maisonneuve, 1913 & 1964).
24. Ed. O. Houdas (Paris, Adrien-Maisonneuve, 1913 & 1964); on the authorship of this work cf. N. Levtzion, "A seventeenth-century chronicle by Ibn-al-Mukhtār: a critical study of *Ta'rikh al-Fattāsh*", *B.S.O.A.S.*, 34 (1971), pp. 571-593.
25. Cf. J.O. Hunwick, "A new source for the biography of A ḥmad Bābā al-Tinbukṭī (1556-1627)", *B.S.O.A.S.*, 27 (1967), pp. 568-593, and the index to this work appearing in *Centre of Arabic Documentation, Research Bulletin*, 1:1 (1964), the last 17 pages.
26. Ed. M. Hiskett, "Material relating to the state of learning among the Fulani before their jihād", *B.S.O.A.S.*, 19 (1959), pp. 550-578.
27. Edited by F.H. El-Masri, *A critical edition of Dan Fodio's Bayān wujūb al-hijra 'alā l-'ibād, with introduction, English translation and commentary*, University of Ibadan Ph.D. thesis, June 1968. It was later printed by Oxford U.P.
28. Published in Cairo, 1959; cf. also University of Ibadan library ms. n. 82/54.
29. Kano: `Abdallāh al-Yassār, 1962 (printed in Cairo). There is also the edition of I.A.B. Balogun, *A critical edition of Iḥyā' al-sunna wa-ikhmād al-bid'a*, University of London Ph.D. thesis, 1967.
30. Cf. Appendix: Legal categories.
31. These and the following ḥadīths are not in the standard collections of Ḥadīth. An-Nafrāwī, I, p. 34, says that they go back to Muḥammad himself, according to one opinion, or only to `Alī, according to another opinion.
32. Cf. 41.06.
33. Cf. 40.10.
34. The historical context of the various dogmas expressed in this chapter can be found in W.M. Watt, *The formative period of Islamic thought* (Edinburgh U.P., 1973). A detailed theological explanation of the same dogmas can be found in my Ph.D. thesis (Edinburgh, 1970), *Muslim theology as presented by Muḥammad ibn-Yūsuf as-Sanūsī, especially in his al-'Aqīda al-wuṣṭā*.
35. Cf. Qur'ān 112; 17:111.
36. Cf. Qur'ān 2:255.

37. Cf. Qur'ān 50:16. This explanation of "mounting the throne" is the Ash`arite mean between Mu`tazilite demythologization and Ḥanbalite fundamentalism.
38. Cf. Qur'ān 6:59.
39. Cf. Qur'ān 10:13 etc.
40. Cf. Qur'ān 7:180 etc.
41. I.e. Mount Sinai; cf. Qur'ān 7:143.
42. An anti-Mu`tazilite point; cf. Watt, *op. cit.*, pp. 178-179, 242-245, 281-285 etc.
43. Cf. Qur'ān 14:4; 3:160 etc.
44. Qur'ān 40:59 etc.
45. Cf. Qur'ān 75:23.
46. Cf. Qur'ān 21:47; 101:6.
47. Cf. Qur'ān 84:7-13.
48. Cf. Qur'ān 3:142; 37:23.
49. The "basin" is not mentioned in the Qur'ān, but in the Traditions; cf. *EP*, "Ḥawḍ". It is founded on the Qur'ānic mention of Kawthar (108:1), interpreted as a river in Paradise.
50. This teaching is strict Ash`arism, but Sunnite theology on this point generally follows al-Māturīdī; in maintaining that faith does not include works and is equal in all believers. Cf. Watt, *op. cit.*, pp. 314-315.
51. The Sunna, here capitalized, includes the whole law revealed to Muḥammad, and is not distinguished from the Qur'ān, as sunna ordinarily is; cf. an-Nafrāwī, I, p. 109.
52. I.e. Muslims. The point is directed against the Khārijites.
53. Cf. Qur'ān 3:169.
54. This point is against the Shī'ites (and Fāṭimids) who exalted `Alī and condemned the previous caliphs.
55. For chapters 2-7, cf. Qur'ān 5:6, 4:43.
56. Semen for a man, leucorrhoea for a woman.

57. Cf. 33.06.

58. That is, he may remarry her after a consummated marriage with and divorce from another man; cf. 32.14.

59. Cf. 33.06.

60. An-Nafrāwī, I, p. 142, notes that first and foremost internal purity from envy, pride, hatred etc. is required.

61. *Najāsa* includes non-ritually slaughtered animals, their blood and once living by-products (exclusive of hair), puss, the urine and excrement of men and animals which should not be eaten, any sexual liquid, vomited food if it is altered, a rotten egg (Fertilization does not make it foul) etc. Cf. *al-Fiqh `alā l-madhāhib al-arba`a*, pp. 16-20.

62. A muddu is a common market word in English and other languages of West Africa; it is a variable measure of roughly three cups. An-Nafrāwī, I, p. 366, defines it as "the heaping amount both hands held together can hold". W. Hinz, *Islamische Masse und Gewichte* (Leiden, 1970), defines the legal muddu as 1.053 liters (p. 45-6).

63. I.e. the Ka`ba in Mecca.

64. She must be completely covered except for her face and hands; cf. an-Nafrāwī, I, p. 151.

65. Cf. 40.01.

66. Cf. also 40.02.

67. A major sexual defilement is the penetration of the penis into the vagina, even without ejaculation, or any ejaculation of semen or emission of leucorrhea.

68. 12.07.

69. Qur`ān 30:17-18 mentions ṣalāt at evening (*masā`*), morning (*ṣubḥ*), late evening (*`ashiyy*), and noon (*zuhr*). A night prayer (11:114; 17:78-9; 20:130; 50:39-40) was abrogated by 73:20. Al-Qayrawānī interprets the "middle ṣalāt" (2:238) as ṣubḥ; others interpret as `aṣr.

70. Al-Qayrawānī speaks for people west of Mecca.

71. Al-Qayrawānī does not explain here, but in chapters 13 and 14 presupposes a distinction between the normal time (*ikhtiyārī*) of a ṣalāt and the prolongation of this time because of necessity (*ḍarūrī*). During both times ṣalāt may be fulfilled (*adā`*), as opposed to being made up (*qaḍā`*) when the time has elapsed. The ḍarūrī time of zuhr and `aṣr terminates at sunset, and that of maghrib and `ishā' at dawn. Cf. *al-Fiqh `alā l-madhāhib al-arba`a*, pp. 93-97.

72. An-Nafrāwī, I, p. 196, says that this is a stupid illustration.

73. EM>Shāhid, the opposite of *ghā'ib*, "absent".

74. The first third of the night.

75. Except for the two "*Allāhu akbar*"s (God is most great). Such an act of devotion performed a single or an odd number of times is called a *witr*, a term principally applied to a supererogatory ṣalāt after 'ishā'. Cf. 10.04.

76. Each ṣalāt consists of a series of rak`as. This section describes the actions from the beginning of one rak`a to the beginning of the next.

77. Sūra 49 is usually given as the beginning of the *Mufaṣṣal*. Sūras 49-79 are considered the longer sūras of this part, and are recited at ṣubḥ and zuhr. The shorter sūras, 92-114, are recited at `aṣr and maghrib. For 'ishā' the sūras of medium length, 80-92, particularly *Sabbih ism rabbi-ka l-a`lā* (87) and *Wa-sh-shams* (91), are recited. Cf. an-Nafrāwī, I, pp. 206 and 230.

78. The qunūt is said only in the second rak`a of the ṣalāt of ṣubḥ.

79. Note that the ṣalāt of ṣubḥ has two rak`as (the series of actions and words beginning with "*Allāhu akbar*" and ending with the second prostration), while zuhr and `aṣr have four, maghrib has three, and 'ishā' four. The final sitting, tashahhud and "*as-salāmu `alaykum*" are performed after the last rak`a of each ṣalāt. After the second rak`a of zuhr, `aṣr, maghrib and 'ishā' there is another sitting in which the shorter form of the tashahhud is recited without the "*as-salāmu `alaykum*".

80. Literally, "remembering", "calling to mind", "recollection", it is applied to the recitation of certain praise formulas which aid the mind to be free from other matters and concentrate on God. The ṣūfis have elaborate theories about dhikr.

81. Cf. 43.08.

82. Cf. 40.08.

83. *Shaf`* means "double" or "an even number", i.e. two supererogatory rak`as; *witr* means "single" or "an odd number", i.e. the single rak`a following the shaf` rak`as.

84. Allowed in this time, however, are the shaf` and the *witr* for someone who oversleeps, as mentioned in the previous paragraph; cf. an-Nafrāwī, I, p. 237.

85. The term *imām*, meaning "leader", is used for the holder of supreme power in Islam, i.e. the caliph, for local authorities (cf. 1.10 & 37.20), and more commonly for the leader of prayer, who may be any Muslim man, but for Friday mosques is officially appointed.

86. I.e. starting from the beginning.

87. E.g. counting the one rak`a he did with the *imām* as the first, the first rak`a done by himself as the second, and then sitting for a tashahhud.

88. Cf. 40.15.

89. Cf. 12.02.

90. Aside from the "*Allāhu akbar*" of iḥrām, which is obligatory.

91. I.e. with the correct number of rak`as, shortened or normal, the correct selection of readings, recited aloud or quietly; cf. an-Nafrāwī, I, p. 265.

92. Cf. 3, note 2.

93. Cf. 40.06.

94. On 9 Dhū-l- ḥijja, during the ḥajj pilgrimage; cf. 29.07.

95. On the same day; cf. 29.08.

96. This applies to the ḍ arūrī time, e.g. if he wakes up and there is time for one rak`a before sunset he must make up zuhr and `aṣr; cf. an-Nafrāwī, I, p. 276.

97. Since the first rak`a of `aṣr may be done within the ḍ arūrī time, and this makes the whole ṣalāt of `aṣr count as being fulfilled; cf. 8, note 3.

98. An-Nafrāwī, I, p. 278, favours the latter opinion; see also 14, note 3.

99. Presuming he is still pure and not in need of another wuḍū'.

100. From sūra *al-Ḥajarāt* (49) to the end of the Qur'ān; cf. 10, note 1.

101. A Hāshimite mile, according to an-Nafrāwī, I, p. 297, equals 3,500 arm lengths, from elbow to fingertips. At one and one half feet per arm-length, this equals 5,250 feet, nearly the standard English mile. According to *al-Fiqh `alā l-madhāhib al-arba`a*, p. 250, one mile equals 6,000 arm lengths and 48 of these miles equal 80 kilometers (= 49.7 miles), which is close to the same.

102. Two rak`as complete the ṣalāt of zuhr, and one begins that of `aṣr within the ḍ arūrī time.

103. The principle at work here is the same for when a woman begins to menstruate. If enough time is left to finish one ṣalāt (even shortened for a traveler) and part of the next, both ṣalāts come under the rule of being shortened (for a traveler) or omitted (by a menstruating woman, according to the second opinion in ch. 12.05). But if there is time only to finish one ṣalāt or part of one, the first of the two ṣalāts to be done is not included under the rule of being shortened or omitted. Note that when the ṣalāt of zuhr is done in the way of a non-traveler because there is time for only two rak`as, it must still be done to make up for, and not fulfill, the obligation, since its ḍ arūrī time has past.

104. Four rak`as complete the ṣalāt of zuhr, and one begins that of `aṣr.

105. According to an-Nafrāwī, I, pp. 303-4, the adhān was originally called from the minaret only. Then `Uthmān ibn-`Affān ordered another adhān to be called earlier in the market. Then Hishām ibn-`Abdalmalik, while governor of Medina, transferred the adhān of the minaret to the interior of the mosque, and that of the market to the minaret.

106. Cf. 41, note 8.

107. Cf. Qur'ān 4:101-3.

108. Cf. 29.02.

109. Cf. 28.06.

110. "*Al-ayyām al-ma`lūmāt*", Qur'ān 22:28.

111. "*Al-ayyām al-ma`dūdāt*", Qur'ān 2:203.

112. Cf. 40.09.

113. An-Nafrāwī, I, p. 329, adds that the person should be laid on his right side.

114. "*Dhū-maḥram*": this is a family member by either consanguinity or affinity; cf. an-Nafrāwī, I, p. 335.

115. Variouslly interpreted as :1) cloth from Sa ḥūl, a town in Yemen, or 2) a cloth of a certain weave called *suḥūl*; cf. an-Nafrāwī, I, p. 337.

116. He should be left with the evidence and glory of his shed blood.

117. Likewise inheritance is excluded between a believer and a non-believer (39.14). Otherwise unbelieving parents are to be honoured (40.25).

118. The opening sūra of the Qur'ān (*al-Fātiḥa*) is not said. According to Mālik, the deceased does not benefit from this or from reciting the Qur'ān over the grave; cf. an-Nafrāwī, II, p. 333.

119. The imām faces the qibla, and the dead person is before him.

120. I.e. the weight of the hill in gold or silver, according to an-Nafrāwī, I, p. 343.

121. Cf. Qur'ān 2:183-7.

122. If news of sighting the moon has not arrived, he may not begin the Rama ḍ ān fast in doubt.

123. Because he did not form an intention; cf. an-Nafrāwī, I, p. 356.

124. An-Nafrāwī, I, p. 359, makes a similar case for a harvester who is fatigued from work and needs to save his crop.

125. Cf. 28.16.

126. As opposed to the lesser atonement described above, 23.05; cf. an-Nafrāwī, I, p. 360.

127. Cf. 3, note 3.

128. E.g. the Qur'ān, which was first revealed then; cf. an-Nafrāwī, I, p. 368.

129. Cf. 40.08.

130. This practice is particularly recommended during the last ten days of Ramaḍān; cf. *al-Fiqh 'alā l-madhāhib al-arba'a*, pp. 319-320.

131. And make up the days missed.

132. Zakāt originally was interchangeable with alms (*sadaqa*), but in Muḥammad's time it developed into the fiscal system of the Muslim community for providing all the needs listed in Qur'ān 9:60. Sometimes zakāt was paid directly to these beneficiaries; sometimes it was collected and administered by the government. Later governments introduced other imposts and taxes, relegating zakāt to a secondary, religious obligation - thus the translation "legal alms", as the obligation is interpreted today. But classical jurists, such as al-Qayrawānī, still viewed zakāt as the only tax which could justly be levied on Muslims, even though it was not necessarily administered by the government in its entirety. Cf. J. Schacht, "Zakāt", *Shorter Encyclopaedia of Islam*.

133. According to W. Hinz, one "Prophet's wasq" equals 252.3456 liters, and one "Prophet's sā'" equals 4.2125 liters (*op. cit.*, pp. 53 and 51). An-Nafrāwī, I, p. 380, notes that the zakāt rate for a taxable amount of farm produce is 10%, unless the land is irrigated, in which case it is 5%. On this tax and kharāj see A. Grohmann, "'Ushr", *Shorter Encyclopaedia of Islam*.

134. A standard dīnār equals 4.233 grams of gold, according to W. Hinz, *op. cit.*, p. 11.

135. A standard dirham equals 3.1215 grams of silver, according to W. Hinz, *ibid.*, p. 3.

136. Transactional trade (*idāra*) is buying goods for quick resale, even at a loss. Speculative trade (*iḥtikār*) is buying goods to sell when the market price rises.

137. The conclusion is that if someone in the course of the year enters the minimum or a higher zakāt bracket by one of these processes, he must pay the zakāt of this bracket for the whole year.

138. I.e. the followers of Zoroastrianism, the traditional religion of Persia.

139. This interpretation, which takes "*dhawd*" as a *ḥāl* of "five", is common in Nigeria, but is given in the second place by an-Nafrāwī, I, p. 397. His first interpretation is that "*dhawd*" is *muḍāf* to "five"; the reading would then be: "There is no zakāt on fewer than five dhawds; a dhawd consists of five camels."

140. An-Nafrāwī, I, p. 397, notes that it makes no difference whether the animal is male or female.

141. Cf. 25, note 2.

142. Cf. also 31.17 & 40.14. On general rules for the ḥajj cf. Qur'ān 2:196-203; 22:27-32.

143. The four indispensable elements (*rukn*) of the ḥajj pilgrimage are: 1) the i ḥrām, 2) jogging between aṣ-Ṣafā and al-Marwa, 3) stopping at `Arafāt during the night of 9-10 Dhū-l- ḥijja, and 4) the ṭawāf al-ifāḍa; cf. Abū-l-Ḥasan al-Mālikī ash-Shādhilī, *al-Muqaddima al-`izziyya* (Cairo: Maktabat al-Mashhad al-Ḥusayniyya, n.d.), pp. 137-147.

144. Al-Qayrawānī explains the set points of place, but not those of time. According to an-Nafrāwī, I, p. 409, one may put oneself in a state of consecration for the ḥajj pilgrimage any time from the beginning of Shawwāl through Dhū-l-qa`da until dawn of the day of immolation.

145. A town between Medina and Mecca.

146. This town is before al-Juḥfa.

147. Cf. 40.05.

148. The prayer beginning "*Labbayka*", given above.

149. A pass on the lower side of the city.

150. He says "*Allāhu akbar*" only if he cannot kiss or touch the stone; cf. an-Nafrāwī, I, p. 417.

151. The southwest corner. The black stone is in the southeast corner.

152. The stone where Abraham is supposed to have stood when he built the Sacred House; cf. an-Nafrāwī, I, p. 417. For maps of the Ka`ba area in the vicinity of Mecca, cf. A.J. Wensinck, "Hadjdj", *Shorter Encyclopaedia of Islam*.

153. Cf. Qur'ān 2:158.

154. See also 17.04 & 40.05.

155. The singular "'Arafa" occurs nearly as frequently as the plural "'Arafāt", uniformly used in this translation. An-Nafrāwī, I, p. 420, thinks that the plural represents the general area.

156. Halfway between `Arafāt and Minā.

157. Marking coming out of the state of consecration.

158. 17. This is called the *ṭawāf al-ifāḍa* (cf. Qur'ān 2:198), as distinguished from the first *ṭawāf al-quḍūm* and the final *ṭawāf al-wadā'*.

159. The smallest of three rocks, on the east end.

160. The middle one in the market, and Jamrat al-`Aqaba.

161. The state of consecration also makes it forbidden for a man to marry or to contract a marriage for another; cf. 32.12. This is in contrast to what holds for the sacredness of a retreat; cf. ch. 24.

162. On the prohibition of hunting, cf. Qur'ān 5:1-2,94-6.

163. Cf. Qur'ān 2:196.

164. Usually on 8 Dhū-l- ḥijja.

165. Cf. Qur'ān 5:95.

166. Cf. Qur'ān 5:95.

167. The terms *udḥiyya* (pl. *aḍāḥī*), *ḍahiyya* (pl. *ḍahāyā*) and *aḍḥā'* (pl. *aḍḥā*) are used interchangeably for a festal immolation and the animal for immolation.

168. Cf. 28.09 & 28.16.

169. An-Nafrāwī, I, p. 400, adds that only if the embryo dies by the slaughtering of its mother does it not need to be separately slaughtered. If it is still alive, it must be separately slaughtered.

170. On forbidden foods, cf. Qur'ān 2:173; 5:3; 6:121, 145; 16:115. See also 40.22 & 24.

171. Some editions add the words "because it is defiled".

172. Cf. Qur'ān 5:5.

173. An-Nafrāwī, I, p. 460, allows other animals to be used as well.

174. Cf. 41.01.

175. Cf. 40.11. The Qur'ān encourages and regulates fighting unbelievers: 2:190,244-6; 3:154-6; 4:74-7,84,89ff.; 5:35; 8:38-9; 9:13,29; 22:29-40; 47:4,35; 8:45; 61:10ff.

176. Cf. Qur'ān 9:29 and above, 25.10.

177. Cf. Qur'ān 8:41.

178. Other portions mentioned by an-Nafrāwī, I, p. 470, are the *ḥay'* (abandoned property), which goes to the public treasury, and the *mukhtaṣṣ* (gain from private robbery of the enemy outside battle), which goes to the party who robbed it, except for a fifth which goes to the imām.

179. EM>Nafal is an amount of wealth which the imām keeps track of; cf. an-Nafrāwī, I, p. 475.

180. The term comes from a Qur'ānic passage urging fighting in close ranks, 8:60; cf. also 61:4 & 3:200.

181. An-Nafrāwī, II, p. 2, quotes Ibn-`Arafa to explain three kinds of oaths. The first, called qasam, simply consists in saying "By God, I will" or "will not do such and such". The second is to bind oneself to do a certain recommended act (iltizām al-mandūb) should one do or fail to do something; the aim of this kind of oath is to restrain a person from breaking his word. The third kind of oath is to determine a certain legal effect to take place automatically if one breaks his word, for instance, "If I talk to Zayd, my wife is divorced" or "my slave is freed".

A vow is to bind oneself to do something in accord with God's laws for the sake of drawing near to him. It is not for the purpose of restraining the person from doing or omitting something else, for that would be an oath of the second kind, for example, "If I talk to Zayd, I will free my slave".

Authors differ on whether the form "If I talk to Zayd, for God's sake (li-llāh) I must free my slave" is an oath or a vow. Ibn-`Arafa makes it an oath, since it is to restrain the person from talking to Zayd. But Ibn-Rushd and al-Ajhūrī make it a vow, since the words "for God's sake" are in the typical language of a vow. In the translator's opinion, in the light of 31.02 & 04 it would be more in accord with the thought of al-Qayrawānī to class this example with oaths of the second kind, as far as the conditional clause (shart) is concerned, and to interpret the principal clause (jawāb) of this example and of all oaths of the second kind as vows. Thus if a person breaks his oath to do or not to do something, he comes under a vow to do such and such.

182. *Thunyā* or *istiṭhnā'*, that is, to say "God willing" (*in shā' Allāh*).

183. Literally, "If I do it". An-Nafrāwī, II, p. 7, calls this an oath of innocence (*birr*), because the person is innocent until he breaks the oath.

184. An-Nafrāwī, *loc. cit.*, calls this an oath of perjury (*ḥinth*), because the person is automatically guilty of perjury by omitting what he committed himself to do.

185. According to Qur'ān 5:89.

186. Various staples are mentioned in ch. 27.

187. When the oath is contrary to a good, it may be obligatory, recommended or permissible to break the oath. Even so, atonement is obligatory for breaking it, and not obligatory for fulfilling it. Cf. an-Nafrāwī, II, p. 10, and below, 31.05.

188. Cf. 28.04.

189. According to an-Nafrāwī, II, p. 17, a vow to go to Mecca has the same effect as an oath to go there.

190. An-Nafrāwī, II, p. 19, applies this obligation only to those who live close enough to return to Mecca, as in Egypt.

191. A jurist of Mecca who died in 114 or 115 H. (732/3); cf. J. Schacht, "'Atā' b. Abī Rabā ḥ", *EP*.

192. On the value of ṣalāt in these shrines, cf. 40.15.

193. Cf. 30.03 and 40.11.

194. Defined by Ibn-'Arafa in descending order of precedence as "someone who has authority over the woman by reason of ownership, paternity, agnate relationship (*ta`shīb*), testamentary guardianship (*iṣā*), suretyship (*kilāfa*), or Islām"; cf. an-Nafrāwī, II, p. 22.

195. Cf. Qur'ān 4:4; other jurists use the term *mahr*.

196. This includes both unmarried girls and girls who married but were divorced before a full year of marriage. If she was divorced after a year she may not be forced into another marriage. Cf. an-Nafrāwī, II, p. 25.

197. Exactly the opposite of *bikr*, in the preceding paragraph. Thus a marriage for less than a year, and illicit relations do not make a woman a *thayyib*.

198. When she has a special guardian who has no right of constraint; cf. an-Nafrāwī, II, p. 28.

199. Cf. 34.22.

200. The term *mut'a* is derived from a verb used in Qur'ān 4:24, sometimes cited to support the practice.

201. Cf. 37.21.

202. This prohibition includes only simultaneous marriage to two sisters.

203. Cf. Qur'ān 5:5; 2:221; 24:3.

204. Because the Muslim child of the marriage would be the slave of the mother's Jewish or Christian master; cf. an-Nafrāwī, II, p. 43. This reason, of course, does not envisage the case when the woman's master is a Muslim.

205. But the slave woman must remain in the ownership of someone else; cf. below, 32.29.

206. That is, neither mentioning the dower, nor denying it, nor leaving it to a third party to settle; cf. an-Nafrāwī, II, p. 48, and Qur'ān 2:236.

207. But only if there is an impediment to the marriage of the parties in Islamic law; cf. an-Nafrāwī, II, p. 51.

208. By one month, according to an-Nafrāwī, II, p. 51.
209. But if he gets well, the marriage holds; cf. an-Nafrāwī, II, p. 56.
210. Cf. Qur'ān 65 (aṭ-Ṭalāq); 2:226-242.
211. Yet note the ḥādīth quoted by an-Nafrāwī, II, p. 57: "Of things allowed, the most detestable (*abghaḍ*) before God is repudiation."
212. Revocation (*raj'a*) is defined by Ibn-'Arafa as "the lifting, by the husband or judge, of the ban forbidding the husband to have intercourse with his wife because of having repudiated her". It is distinguished from remarriage (*murāja'a*), which is another contract after an effected (*bā'in*) divorce. Cf. an-Nafrāwī, II, p. 58.
213. Cf. 33.01.
214. For more on *khul'*, see section.28 of this chapter.
215. To be distinguished from the temporary marriage (*mut'a*) forbidden in 32.04.
216. Until he would be seventy, according to the more common opinion; cf. an-Nafrāwī, II, p. 72.
217. On slave concubines, cf. Qur'ān 4:25-28; 70:29-31; no limit is set to their number.
218. These are the two forms of repudiation by delegation (*niyāba*); cf. an-Nafrāwī, II, p. 75.
219. Cf. Qur'ān 2:226.
220. Some texts add: "If he resumes relations, he is no longer qualified as an abstainer."
221. As by saying "You are to me like my mother's back"; cf. Qur'ān 33:4 & 58:2-4.
222. Cf. Qur'ān 24:4-9,23. It is defined by Ibn-'Arafa as "a husband's swearing that his wife has committed adultery or that he has not sired her pregnancy, and the wife's counter-swearing that he speaks falsely. If she refuses to counter-swear, the qāḍī is to impose the fixed punishment on her;" cf. an-Nafrāwī, II, p. 82.
223. Ibn-Qāsim says that in this case the couple should proceed to cursing for adultery, but the majority opinion is that the husband should be given the fixed penalty for an accusation without evidence; cf. an-Nafrāwī, II, p. 84, and Qur'ān 4:2-9.
224. See above, 32.15. The Qur'ān does not use the word but it is implied in 2:229; 4:4,128.
225. For giving back part of the dower, an-Nafrāwī, II, p. 86, cites Qur'ān 4:4.
226. If the new marriage ends in divorce or widowhood she may remarry her former husband.

227. Because ownership of the woman as a slave is incompatible with marriage to her; cf. an-Nafrāwī, II, p. 87.
228. A slave is given half the number of lashes as a free man; cf. 37.22 & 37.31.
229. Cf. 32.14 and Qur'ān 2:228.
230. Cf. Qur'ān 33:49.
231. Cf. Qur'ān 2:234.
232. A period of abstinence, equivalent to `idda, to test the pregnancy of a slave concubine after a transfer of ownership.
233. This includes one not definitively repudiated by three declarations; cf. an-Nafrāwī, II, p. 100.
234. Because of high social class or sickness; cf. an-Nafrāwī, *ibid*.
235. Cf. Qur'ān 2:275-281; 3:130; 30:39.
236. Cf. below, 34.10.
237. Cf. 40.21.
238. When the child is seven, according to an-Nafrāwī, II, p. 129.
239. Ibn-`Arafa defines *salaf* as "the consignment of productive capital (*mutamawwal*) to be repaid in the same kind but not right away; the capital is for the profit of the borrower; it may not be a device to permit an unlawful *`āriyya* loan, and it is held at the borrower's liability;" cf. an-Nafrāwī, II, p. 133.
240. To rid the seller of responsibility for it.
241. Abū-`Amr Ashhab al-Qaysī, d. 204/819, a Mālikite jurist of Egypt.
242. See above, 34.04.
243. Cf. 44.05.
244. An exchange of one amount for another of the same kind, when one or both amounts are indefinite. The indefiniteness includes the relative value of old to new foodstuffs, and undetermined quantities (*juzāf*) of an item. Cf. an-Nafrāwī, II, p. 140.
245. The term "capital" is used because the purpose of the transaction is the financing of a trader by his clients; cf. J. Schacht, *Introduction*, p. 153.
246. Because payment within three days is equivalent to immediate payment; cf. an-Nafrāwī, II, p. 144.

247. That is, the seller takes the money to go out and buy the article. This is prohibited because it is selling something risky and uncertain.

248. Even if the price is greater or lesser; cf. an-Nafrāwī, II, p. 149.

249. This prohibition applies primarily to outbidding the buyer by offering a higher price, but also to outbidding the seller by offering an article which is better or costs less; cf. an-Nafrāwī, II, p. 149.

250. An-Nafrāwī quotes Ibn-`Arafa to distinguish *ijāra* from *kirā'*. *Ijāra* is "selling the service of mobile property other than a ship or an animal, to be paid for with something other than what is produced by the property" (II, p. 172). But an-Nafrāwī, *ibid.*, notes that *ijāra* and *kirā'* are in fact used interchangeably by al-Qayrawānī with regard to men and animals.

251. Defined by Ibn-`Arafa as "placing capital at the disposal of another for him to trade with and receive part of the profit, but no wage"; cf. an-Nafrāwī, II, p. 175.

252. If there is any profit. But if the man is **hired** to trade with the sale price, he has the right to a commission even if there is no profit. Cf. an-Nafrāwī, II, p. 176.

253. Especially watering them the basic meaning of *musāqāt*.

254. The lessee must provide the see; cf. an-Nafrāwī, II, p. 183.

255. Because any delay in collecting these is the buyer's negligence; cf. an-Nafrāwī, II, p. 185.

256. Cf. an-Nafrāwī, II, p. 186. Not the difference between *'ariyya*, a noun derived from the root *'-r-y* and *'āriyya* (with alif of prolongation), which is derived from the root *'-w-r*. Cf. 36.08 and an-Nafrāwī, II, pp. 216-217.

257. Cf. Qur'ān 2:180-182; 5:106-108.

258. Khalīl ibn-Ishāq gives many other bequests precedence over freeing a definite slave. Cf. an-Nafrāwī, II, p. 191.

259. EM>Tadbīr literally means to "turn one's back to" or "leave behind".

260. Thus reducing the share of the normal heirs described in chapter 39.

261. Thus a *kitāba* is distinguished from a *qīṭā'a*, which is a contract to buy freedom by paying the total sum all at once; cf. an-Nafrāwī, II, p. 195.

262. A child by another man is freed with its mother only if it is born after the master's child or after the mother is given an opportunity to gain freedom; a child born before she conceived from her owner or before she is given a chance of freedom is not freed. The master's child is automatically free from the moment of birth. Cf. an-Nafrāwī, II, p. 197, and below, 35.08.

263. She is to have less work and an ordinary slave and more than a wife; cf. an-Nafrāwī, II, p. 201.
264. If this child is born after the master's child; cf. an-Nafrāwī, II, p. 202.
265. That is, freeing the whole by reason of an important integral part or part title; cf. an-Nafrāwī, II, p. 204.
266. At the ruling of a judge; cf. an-Nafrāwī, II, p. 205.
267. E.g. as atonement or in consequence of an oath.
268. Ibn-ʿArafa defines it as "a legal quality giving an agnate relationship (*ʿuṣūba*) [to the former slave] if he had none; it may be held by a man or a woman, and by reason of having freed the slave oneself or by his being freed on one's behalf"; cf. an-Nafrāwī, II, p. 208.
269. On the status of early non-Arab converts to Islam, cf. the article "Mawlā", *ET*.
270. By the master's declaring his slave like a *sāʾiba*, a female camel left to wander free.
271. Defined by Ibn-ʿArafa as "the right of a co-owner to buy the share his partner is selling"; cf. an-Nafrāwī, II, p. 211.
272. But on his return he is given a year to exercise his right or not; cf. an-Nafrāwī II, p. 214.
273. But it binds the giver irrevocably once he gives his word; cf. an-Nafrāwī, II, p. 216.
274. The maximum proportion which can be willed. The remaining two thirds are reserved for the legal heirs; cf. ch. 39.
275. A donation (*hiba*) is a gift of the substance and usufruct of a thing, either for a recompense or simply for the sake of the donee. An alms (*ṣadaqa*), too, is a gift of the substance and the usufruct of a thing, but for the sake of a reward from God in the next life. Cf. an-Nafrāwī, II, p. 212.
276. An-Nafrāwī, II, p. 218, adds that a donation made to a rich person not related to the giver also may not be taken back.
277. As long as the child is still a minor; cf. an-Nafrāwī, II, p. 218.
278. In such a way as to prejudice the others, male or female, from receiving their normal share; cf. an-Nafrāwī, II, pp. 222-3.
279. Defined by Ibn-ʿArafa as "a gift of the usufruct of a thing for as long as it exists, while the donor retains ownership of the substance, even if putative ownership"; cf. an-Nafrāwī, II, p. 211. On p. 227 an-Nafrāwī says that a ḥubus may also be for a limited duration.
280. Or his descendants if the ḥubus was left to be inherited without determination of time.

281. Even if the founder of the ḥubus is still alive; cf. an-Nafrāwī, p. 227.
282. Defined by Ibn-`Arafa as "the factual gift of the ownership of the usufruct of a thing to someone for as long as he lives, without a counter-value in return"; cf. an-Nafrāwī, II, p. 227.
283. Defined by Ibn-`Arafa as "property taken possession of in guarantee of a claim" cf. an-Nafrāwī, II, p. 231.
284. *Bayyina*, literally "evidence"; cf. ch. 38, note 1.
285. Defined by Ibn-`Arafa as a "consignment of the temporary usufruct of a thing without recompense" cf. an-Nafrāwī, II, p. 234.
286. Defined by Ibn-`Arafa as "the transfer of only the guardianship of movable property"; cf. an-Nafrāwī, II, p. 236.
287. I.e. "without negligence on my part in looking after it"; cf. an-Nafrāwī, II, p. 237.
288. An-Nafrāwī, II, p. 238, says that the general opinion is that he is not responsible.
289. Defined by Ibn-`Arafa as "a valuable found outside an inviolable place of custody, exclusive of an adult slave or livestock"; cf. an-Nafrāwī, II, p. 240.
290. The description of the article should be vague, to prevent wrong claims; cf. an-Nafrāwī, II, 240.
291. Defined by Ibn-`Arafa as "forcible taking of the substance of another's property, not in circumstances of battle" cf. an-Nafrāwī, II, p. 212. This includes unjust usurpation by rulers. On restitution of usurped property cf. 38.15. On legitimate war booty cf. 30.02.
292. Cf. 37.22.
293. In 38.15.
294. Cf. J. Schacht, *Introduction*, pp. 184-5. An example of the formula of the oath is "By God, the only deity, such and such killed him"; cf. an-Nafrāwī, II, p. 248. The same term, *qasāma*, is also used for the denial of the indictment, or compurgation, by the accused party.
295. EM>Ghīla includes paid assassination and killing to rob; cf. below, 37.20 and note 16.
296. The estate includes the blood rate. If the victim has no other estate but the blood rate, one third of it is affected by the waiver of clemency; cf. an-Nafrāwī, II, pp. 255-6. On bequests, cf. 35.01.
297. The term *diyya*, with different provisions, is used in Qur'ān 4:92.
298. Not intending to kill him.

299. But a woman is paid equal to a man up to one third of the blood rate, as is said below, 37.09.
300. Cf. Qur'ān 2:178-9,194; 5:45; 16:126; 42:40. Compare also 22:39,60.
301. An-Nafrāwī, II, pp. 264-5, says that the first is Mālik's definitive opinion.
302. The clan pays only on five conditions: 1) that the injured party is free, 2) that the injury is accidental or is treated as such, 3) the establishment of guilt by witnesses or by a sworn indictment, 4) that the amount reaches one third of the blood rate, and 5) that the wound is not self inflicted. Cf. an-Nafrāwī, II, p. 265.
303. Except in the case of killing an unbeliever for money; see below, 37.20.
304. But only indemnification is paid; cf. an-Nafrāwī, II, p. 267.
305. Cf. J. Schacht, *Introduction*, pp. 124 and 186. The source is a ḥadīth; cf. Bukhārî, the chapter *al-l`tiṣām*.
306. This is an exception to the general rule that a baby which dies without ever crying cannot receive or leave an inheritance; cf. 22.03.
307. According to an-Nafrāwī, II, pp. 273-4, a *zindīq* is the same as a *munāfiq*, the latter was left to the judgement of God in Muḥammad's time, but later practice was to put such persons to death. On the original and other meanings of *zindīq*, cf. L. Massignon, "Zindīk", in the *Shorter Encyclopaedia of Islam*, and W.M. Watt, *The formative period of Islamic thought*, pp. 171-2.
308. Cf. 40.18. See, however, Muhammad Talbi, "Religious liberty: a Muslim perspective", in *Islamochristiana*, 11 (1985), pp. 99-113, where it is maintained that the Qur'ān provides no ḥadd for apostasy, and that the ḥadīths which support it are not authentic.
309. Such as a Jew or a Christian.
310. Something which directly indicates unbelief, such as saying Muḥammad was only a sorcerer and not a prophet, or that Jesus is the Son of God, may be said with impunity; cf. an-Nafrāwī, II, p. 277.
311. Banditry (*ḥirāba*) is setting up a road block to prevent passage or to rob or kill an inviolable person; killing for money (*ghīla*) is a kind of banditry; cf. an-Nafrāwī, II, p. 272. Banditry is distinguished from killing an enemy for revenge, and from revolution against the imām (*baghy*); cf. an-Nafrāwī, II, p. 255.
312. Cf. Qur'ān 5:33.
313. Cf. Qur'ān 5:34.
314. *Zinā'* includes adultery, fornication and homosexuality. See the explanation of an-Nafrāwī, II, p. 280.

315. The Qur'ān merely provides flagellation (24:2,4).

316. The same holds for a woman. Islam and freedom are also required for marital restriction, and the husband can be restricted without his wife, if she is a slave or Jewish or Christian; cf. an-Nafrāwī, II, p. 281, and J. Schacht, *Introduction*, pp. 125 & 178-9. The qualification of marital restriction remains even after the dissolution of the marriage.

317. Cf. Qur'ān 4:15; 24:13.

318. If four witnesses see him in the act, as was said above; cf. an-Nafrāwī, II, p. 284.

319. Literally, "does what the people of Lot did". Cf. Qur'ān 11:77-83; 15:61-75; 26:160-175; 27:54-58; 29:28-35.

320. An-Nafrāwī, II, p. 286, adds that a simple chastisement (*ta'dīb*) is due for a man's penetration of his wife's or concubine's anus, for copulating with an animal, and for lesbianism. He adds, II, p. 291, that a chastisement is also due for masturbation by a man or a woman, except when a man has no alternative for his drive (*yudṭarr*); in that case it is licit. An-Nafrāwī is apparently arguing from analogy to the exception allowing the eating of forbidden meat when there is no other food (*yudṭarr*); cf. 29.05 and 40.05.

321. An unproven accusation of illicit intercourse or of being a bastard; cf. an-Nafrāwī, II, p. 286.

322. Qur'ān 24:4.

323. An-Nafrāwī, II, p. 289, explains that this is an alcoholic drink made from grapes. But, as seen in 37.33 and 40.23, the prohibition extends to all intoxicating drinks.

324. I.e. eighty lashes for a free man.

325. Or from any other fruit, according to an-Nafrāwī, II, p. 189.

326. By going in and coming out secretly; cf. an-Nafrāwī, II, p. 291.

327. Cf. Qur'ān 5:38.

328. As in shoplifting.

329. See below, 37.42.

330. On returning the increment of stolen goods, see 38.15; see also 36.12 on robbery.

331. Testimony (*bayyina*) is a statement (*qaw*) upon which the judge is obliged to act if the person who made the statement is shown to be of good character. The term is used of the testimony (*shahāda*) of witnesses and also for the witnesses themselves. Cf. an-Nafrāwī, II, p. 297, and J. Schacht, *Introduction*, p. 192.

332. The Umayyad caliph from 717 to 720. On his legal opinions cf. J. Schacht, *Introduction*, p. 53.
333. Meaning that judges may set up procedures to handle problems which did not exist during the time of Muḥammad and his companions. In this case they determined that the fact of the parties' having done business with each other or the plausibility of the charge is a condition for an oath to be required. Cf. an-Nafrāwī, II, p. 299.
334. At the mi ḥrāb, according to an-Nafrāwī, II, p. 302.
335. I.e. a church, a synagogue, or a fire temple for Magi; cf. an-Nafrāwī, II, p. 302.
336. Cf. Qur'ān 2:282.
337. Cf. 22.03.
338. Or even if he says he was merely mistaken; cf. an-Nafrāwī, II, p. 302.
339. The free child then remains with its mother; cf. an-Nafrāwī, II, p. 309.
340. According to an-Nafrāwī, II, p. 314, the first is the definitive opinion of Mālik.
341. Cf. 36.12.
342. Someone who obtained produce from a robber not knowing that the productive source was stolen is not held to return the produce.
343. Provided the animals were grazing without a shepherd outside the farming season; cf. an-Nafrāwī, II, p. 322.
344. Cf. J. Schacht, *Introduction*, pp. 148 ff.
345. These may be claimed in due time by the deceased's heirs.
346. Cf. 35.01.
347. Most of these provisions are contained in Qur'ān 4:7-12,19, 176. See also N.J. Coulson, *Succession in the Muslim family* (Cambridge U.P., 1971).
348. If there are several wives, they divide the share of one wife; cf. an-Nafrāwī, II, p. 336.
349. The father inherits both a fixed share and, because he is an agnate (`āṣib), the residue.
350. A son is only an agnate, and does not receive a fixed share.
351. For example, the share of:
a husband, $1/2 = 3/6$, is reduced to $3/10$

a mother, $1/6$, is reduced to $1/10$
uterine brothers and sisters, $1/3 = 2/6$, is reduced to $2/10$
full or consanguine sisters, $2/3 = 4/6$, is reduced to $4/10$
The totals are: $10/6 = 10/10$.
- cf. an-Nafrāwī, II, pp. 341-2; also below, 39.22.

352. Because of the strength of his blood tie.

353. Because of a closer degree of relationship.

354. Because the brother is related to the deceased through his father, which is a closer degree than the grandfather, through whom the full uncle is related to the deceased.

355. I.e. one whose mother is not a grandmother to the deceased.

356. Because all these are cognates with no assigned shares.

357. These also are cognates with no assigned shares.

358. Because anyone related to the deceased through an agnate is excluded by that agnate from a share in the residue.

359. For the same reason as in note 12.

360. Because the grandfather is two degrees removed from the deceased, while the brother's son is three degrees removed.

361. An-Nafrāwī, II, p. 344, gives several cases. While such a person may not exclude another heir, he may cause his portion to be reduced. For example, if the heirs are the mother, a paternal grandfather, and two uterine brothers, the uterine brothers are excluded by the grandfather, yet they cause the mother's share to be reduced from one third to one sixth.

362. A companion of Muḥammad, who was later responsible for compiling the Qur'ān; he died in 45/665.

363. E.g. uterine brothers. By way of summary, heirs include: 1) those entitled to a fixed share (*ahl as-sihām = ahl al-farḍ*): the father, the paternal grandfather and paternal ascendants, uterine brothers, the widower, daughters, son's daughters, a son's son's daughter, the mother, a grandmother on either side, a sister of any kind, and a widow; 2) agnates (*`āṣib*, pl. *`aṣaba*), who share in the residue; these are: a) proper agnates (*`āṣib bi-nafsi-hi*), who are all the male relations in a male line and, by extension, the patron; the more proximate in any one line excludes the more remote from a share in the residue; b) those who became agnates through another agnate (*`āṣib bi-ghayri-hi*), that is, females who, when in competition with a proper agnate of the same class and degree, lose their fixed share and inherit as an agnate a part of the residue; these agnatized females are: a daughter in competition with a son, a son's daughter in competition with a son's son, and a full or consanguine sister in competition with a brother;

c) those who become agnates when in competition with another who has a fixed share (*'āṣib ma`a ghayri-hi*); these are full or consanguine sisters in competition with daughters or son's daughters; 3) those who have both a fixed share and a share in the residue as an agnate; these are the father when inheriting with a daughter or a son's daughter, the grandfather when taking the place of the father in such a case, and a uterine brother whose father is a paternal uncle to the deceased.

364. She may not hold an inherited patronship or, presumably, a patronship by someone else's freeing a slave on her behalf; cf. 35.15.

365. Cf. note 5 of this chapter.

366. On the various legal statuses of acts cf. the Introduction, note 1.

367. Cf. ch. 4.

368. Cf. ch. 7.

369. Cf. ch. 5.

370. According to an-Nafrāwī, II, p. 353, if he is not in a state of major sexual defilement, bathing is not obligatory but only recommended.

371. Cf. chs. 8 & 10.

372. Cf. chs. 15-19.

373. Cf. 10.10.

374. Cf. ch. 18.

375. Cf. ch. 19.

376. Cf. ch. 16.

377. Qur'ān 4:101-3.

378. Cf. 28.02.

379. Cf. 12.04.

380. Cf. 23.10.

381. Cf. ch. 14.

382. Cf. 10.04.

383. Cf. 23.14.

384. Cf. chs. 20 & 21.

385. Cf. the Introduction and 45.08.

386. Cf. ch. 30.

387. Cf. chs. 23.

388. Cf. ch. 24.

389. Cf. 28.06 & 28.07.

390. Cf. chs. 25-26.

391. Cf. ch. 28.

392. Cf. Qur'ān 2:198.

393. Cf. ch. 11.

394. An-Nafrāwī, II, pp. 364-5, adds to these two the mosque of Elijah, i.e. al-Aqṣā, in Jerusalem.

395. Especially Mālik.

396. Cf. 41.07-08 & note 8.

397. An-Nafrāwī, II, p. 367, restricts this to looking at her face and hands to know her features.

398. Cf. 37.19-21. An-Nafrāwī, II, p. 373, explains that heresy is holding any tenet that is equivalent to unbelief.

399. 32.05.

400. Cf. Qur'ān 23:51 etc. An-Nafrāwī, II, p. 374, notes that the liceity of a thing depends also on its source, i.e. the means of getting possession of it.

401. Cf. 36.12 on robbery, and ch. 34 on the various forms of usury.

402. Cf. 29.06.

403. According to an-Nafrāwī, II, p. 381, the seriousness of the prohibition depends on the chance the mixture has of being alcoholic.

404. Because the juices are likely to ferment in them.

405. Cf. Qur'ān 29:8.

406. Cf. 41.07.

407. *Al-amr bi-l-ma'rūf wa-n-nahy 'an al-munkar*, cf. Qur'ān 3:104,110,114; 7:157;. 9:71; 22:41; 31:17.

408. A word from Qur'ān 30:30, meaning the natural state of man as God made him and meant him to be.

409. An-Nafrāwī, II, p. 401, says the plucking is better than shaving or using lime.

410. Except that shaving the head is disapproved outside the time of completing the ḥajj pilgrimage. Others allow shaving the head when a turban is worn, and some say that even if a turban is not worn, to shave the head is preferred, and not to do so is a mark of bad character. Cf. an-Nafrāwī, II, p. 401.

411. Cf. 29.09. An-Nafrāwī, II, p. 401, notes that for circumcision a party may be called and people invited.

412. Of wood, for example.

413. Cloth with the warp of some ordinary thread and the woof of silk; cf. an-Nafrāwī, II, p. 405.

414. I.e. the parts of the body which must be hidden before strangers.

415. E.g. to purify herself from menstruation, bleeding after delivery, a major sexual defilement, or because of sickness; cf. an-Nafrāwī, II, p. 408.

416. An-Nafrāwī, II, p. 409, distinguishes between: 1) an elderly woman, who may go out for any legitimate occasion, 2) a young woman who is not pretty, who may go out for public ṣalāt, and 3) a young woman who is pretty; she may not go out for any such occasion. If she does go out, she should go when and where she will not meet men. She should not put on perfume or fancy cloth. Her hands and face may show, unless she is very beautiful or bad morals prevail in the place. Cf. also I, p. 309, with reference to ch. 15, which says it is "disapproved" for any girl to go out for the jumu'a ṣalāt.

417. Cf. 40.27 & 42.04.

418. Cf. 40.16.

419. An-Nafrāwī, II, p. 410, allows false hair to be "put on" without being attached.

420. An-Nafrāwī, II, p. 411, applies this to men and women.

421. An-Nafrāwī, II, p. 413, adds "or carpets".

422. An-Nafrāwī, II, p. 413, remarks that statues are completely forbidden - except for dolls for children, which are permitted - while pictorial representations on surfaces are disapproved, unless they are destined for menial use.

423. *Tharīd*, a dish whose chief component is sopped bread; cf. an-Nafrāwī, II, p. 418.

424. Cf. Qur'ān 4:86.

425. Since there is no tradition supporting this expression.

426. For the former in each case to avoid colliding with the latter or to reassure him; but in ordinary circumstances the lesser person should greet the greater first; cf. an-Nafrāwī, II, p. 424.

427. *Muṣāfaḥa*, putting the palm of one's hand on the palm of the other for the duration of the greeting; cf. an-Nafrāwī, II, p. 425.

428. A relator of Ḥadīth, d. 198/814.

429. An-Nafrāwī, II, p. 426, explains that the Christian or Jew may have used the word *as-samm* (poison) or *silām* (rock) in place of *salām*. If the Muslim is not sure what he heard, " *'alayka*" will return the statement as it was meant. But if the Muslim is sure he heard "*salām*" he must return the greeting. If he is sure he heard "*sām*" or "*silām*" he may answer with the word "*silām*", referring to the legal penalty of stoning for adultery. On the presence of Christians and Jews in Tunisia at the time of al-Qayrawānī, cf. Hady R. Idris, *La Berbérie orientale sous les Zirīdes, Xe-XIe siècles* (Paris, 1962), II, pp. 757 ff.

430. 40.26.

431. A Companion of Muḥammad, d. 18/639.

432. An-Nafrāwī, II, p. 431, comments that the spirit goes out of man during sleep; some hold that there are two spirits, a spirit of life which remains until death, and a spirit of consciousness, which goes out during sleep.

433. According to an-Nafrāwī, II, p. 432, this prayer is only what Muḥammad taught his people to say, since he himself committed no sin.

434. Cf. 10.04 for the same prayer with a variant order.

435. Qur'ān 43:13.

436. . An-Nafrāwī, II, p. 438, explains that [in al-Qayrawānī's time] the Blacks were unbelievers (*kuffār*); but even if they are believers, the journey across the Sahara is full of dangers to the trader's life and property.

437. An-Nafrāwī, II, p. 440, notes a ḥadīth that it is better not to make use of charms, but he explains it as referring to those composed by unbelievers or with foreign words. On belief in the "evil eye" see my *Muslim theology as presented by Muḥammad ibn-Yūsuf as-Sanūsī, especially in his al-'Aqīda al-wuṣṭā* (Ph.D. thesis, University of Edinburgh, 1970), p. 254.

438. An-Nafrāwī, II, p. 442, notes that if the amulet is covered it may be worn by menstruous women and touched by non-Muslims or animals.

439. An-Nafrāwī, II, p. 448, notes that castrating humans, even slaves, is forbidden.

440. An-Nafrāwī, II, p. 448, says that according to one opinion tattooing the face without branding with fire is not forbidden, even for men.

441. Going through the motions of spitting, without making noise [or actually expectorating]; cf. an-Nafrāwī, II, p. 449.

442. One of the seven great jurists of Medina, d. 94/713.

443. With the idea that they are jinn. If they remain they are presumed to be devils. Cf. an-Nafrāwī, II, p. 454.

444. Commonly thought to be poisonous, but really not.

445. But they may be eaten if ritually slaughtered, according to an-Nafrāwī, II, p. 456.

446. See note 1.

447. Qur'ān 3:110. The sentence refers to some sources of religious science: the Qur'ān, Ḥadīth, consensus of believers (*ijmā'*), and the authority of the Companions of Muḥammad.

448. Learned men of the first three centuries of Islam; cf. an-Nafrāwī, II, p. 460.

449. Qur'ān 7:43.