‘*Umdat al-Fiqh* Explained

A Commentary on Ibn Qudâmah’s

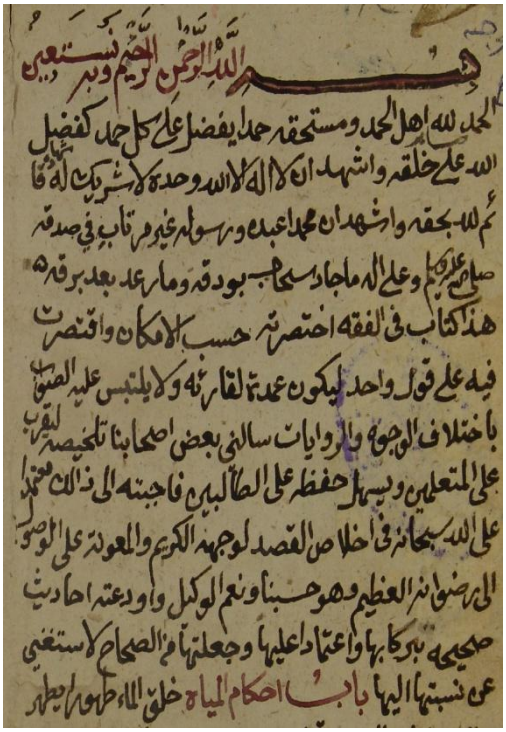
The Reliable Manual of Fiqh

شَرْحُ عُمْدَةِ الفِقْهِ

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All Praise Be to Allah (*Subḥânahu wa Ta‘âlâ* – Glorified and Exalted is He)
and
Blessings and Peace Be on His Messenger (*ṣalla Allâhu ‘alayhi wa sallam* – blessings and peace be upon him)


بسم الله الرحمن الرحيم ونستعين
الحمد لله اهل الحمد ومستحقه حمدا يفضل على كل حمد كفضل
الله على خلقه واشهد ان لا اله الا الله وحده لا شريك له قا
ئم لله بحقه واشهد ان محمدا عبده ورسوله خير مرتاب في صدقه
صلى الله عليه وسلم وعلى اله ما جاد سحاب بوده وما رعد بعد برقه ٥
هذا كتاب في الفقه اختصرته حسب الامكان واقتصرت
فيه على قول واحد ليكون عمدة لقارئه ولا يلتبس عليه الصواب
باختلاف الوجوه والروايات سالني بعض اصحابنا تلخيصه ليقرب
على المتعلمين ويسهل حفظه على الطالبين فاجبته الى ذلك معتمدا
على الله سبحانه في اخلاص القصد لوجهه الكريم والمعونة على الوصول
الى رضوانه العظيم وهو حسبنا ونعم الوكيل واودعته احاديث
صحيحه تبركا بها واعتمادا عليها وجعلتها امام الصحاح لاستغني
عن نسبتها اليها باب احكام المياه خلق الماء طهورا يطهر

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Preface

The word *fiqh* literally means 'understanding'. In the terminology of Prophet Muhammad (SA) and his Companions (*raḍiya Allâhu 'anhum* – may Allah be pleased with all of them), it meant a good understanding of the entire religion. Later, it came to be used more specifically for Islamic law, which addresses the divine injunctions pertaining to worship, personal conduct, and interpersonal dealings. The *fuqahâ'* (jurists) study these rulings and the evidence used to derive them.[1]

The science of fiqh is thus defined as the recognition of the religious rulings derived from detailed proofs. The indisputable sources of proofs are the Book of Allah (the Qur'an), the Sunnah (the practice and collected sayings, also called Hadith) of His Messenger (SA), and *ijmâ'* (the consensus of the entire global community of Muslim scholars). When it is clear, *qiyâs* (analogy) comes close to the strength of those sources. There are other sources of proofs, with some controversy regarding their status, strength, applications and scope. These issues are discussed in detail in the books of *uṣool al-fiqh* (principles of jurisprudence).

Fiqh is usually divided into two large categories: the fiqh of worship (*Fiqh al-'Ibâdât*)[2] and the fiqh of interpersonal dealings and personal conduct (*Fiqh al-Mu'âmalât wal-Âdâb ash-Shar'iyah*).

Under the fiqh of interpersonal dealings, there are three main categories:

Fiqh al-Mu'âmalât al-Mâliyah (Financial Transactions)
Fiqh al-Aḥwâl ash-Shakhṣiyah (Family Laws)

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1 Wherever possible, Arabic terms have been translated into English. In cases where we have chosen to retain the Arabic, the transliterated word or phrase is shown in italics the first time it appears in the text; the term is also defined in the Glossary found at the end of this book. (Editor)

2 Under the fiqh of worship, the following topics are usually tackled: purification, prayers, funerals, zakat (obligatory charity), fasting, and pilgrimage.

Fiqh al-Qaḍâ' wal-Ḥudood (Judiciary and Penalties)

In Islam, all actions have rulings, which belong to one of the following five categories or legal values:[3]

1. Mandatory (*wâjib* = وَاجِب),
2. Preferable (*mustaḥabb* = مُسْتَحَبّ),
3. Permissible (*mubâḥ* = مُبَاح),
4. Disliked (*makrooh* = مَكروه),
5. Forbidden (*ḥaram* = حَرام).

The jurist's work is to deduce from the proofs a ruling for every action. This requires extensive knowledge of the Qur'an, the Sunnah, scholarly opinions, the Arabic language, and many other disciplines.

There are five legal maxims that serve as the thread connecting the pearls of fiqh, and they apply in all its chapters. These maxims, listed below, are used frequently throughout the book.

الأعْمَالُ بالنِّيّاتِ.

Deeds are judged according to intentions.

اليَقِينُ لا يَزُولُ بالشَّكِّ.

Certainty is not negated by doubt.

المَشَقَّةُ تَجْلِبُ التَّيسِيرَ.

Hardships warrant concessions.

لا ضَرَرَ وَلَا ضِرَارَ.

There should be no harm or reciprocation of harm.

العَادَةُ مُحَكَّمَةٌ.

Customs are given consideration.

The Different Approaches to the Study of *Fiqh*

Fiqh is studied either according to one *madh-hab* (school of juristic thought), or as comparative fiqh (according to the various schools of fiqh recognized by the Ummah, as well as the opinions of independent mujtahid scholars). Both methods have their merits, but

[3] The Ḥanafis divide the *wâjib* into *farḍ* and wâjib, and they divide the haram into haram and *makrooh taḥreemi*.

for the beginner in search of serious knowledge, most scholars recommend starting with one madh-hab. This is more conducive to simplicity and clarity, as well as methodological consistency since each madh-hab has its own principles (uṣool) and legal maxims (*qawâ'id*) and regulators (*ḍawâbiṭ*).

This work follows this advice by focusing on a classical text of one madh-hab, namely the Ḥanbali School. Commentary notes are added to explain the positions of the three other imams on the major issues, and sometimes the positions of other mujtahids, particularly those that have gained widespread acceptance or become mainstream through collective ijtihâd by fatwa bodies, fiqh assemblies, or Muslim legislatures. This taste of comparative fiqh provides some of the benefits of that method. Those benefits are particularly pertinent nowadays to cultivate the flexibility and vastness of our *fiqhi* legacy in order to address modern challenges and ensure the vitality of Islamic law and its ability to respond to the enormous changes that have taken place in our world. There is also a need to develop the fiqhi faculties in the student of knowledge, and this requires impartial discussions of opposing views so as to foster respect for the evidence and appreciation of the source and wisdom of the rulings. Most of the contemporary *fuqahâ'* realize that people nowadays need to imbibe the spirit and principles of the law more than they need to memorize detailed rulings. It is also important in our times to promote respect for all the scholars and tolerance of variant positions. Regarding the last two points, Imam Abu Is-ḥâq ash-Shâṭibi said:

> Supporting the positions of one madh-hab only may make the student of knowledge averse to, and intolerant of, every other madh-hab whose proofs he or she has not come across. In turn, this will prevent the student from recognizing the virtue of Imams whose good qualities are agreed upon by the people, in addition to their religiosity and their expertise in

the objectives of the Sharia and the understanding of its aims.[4]

As for the reservations against a relatively early exposure to comparative fiqh, one may say that the principles of the madh-habs of *Ahl us-Sunnah* are not so different as to make the study of comparative fiqh impossible or counterproductive. They largely agree on the first and most important two sources. Their disagreement over the other principles is sometimes related to form, not substance, and while one madh-hab may in theory reject *istiḥsân* (juristic preference), they will use it in practice. Even within the same madh-hab, the detailed rulings have not always been consistent with the principles, so such inconsistencies, although rare, must be pointed out to the student. As for the assumption that students may become confused if exposed to other madh-habs and their principles, it is not without merit, but this can largely be avoided by the astute student and by good instruction; it is also outweighed by the benefits of that exposure. There is also an exaggeration when it comes to the perceived danger of mixing between the madh-habs. The scholars of the past have allowed, with certain conditions, transfer (*tanaqqul*), even for the public, from one madh-hab to another, and *takhayyur* (expert selection) or patching positions (*talfeeq*) from the different madh-habs – something that is frequently done in contemporary fiqh assemblies by scholars who are otherwise wholly committed to their own madh-habs. The idea of complete immersion in one madh-hab is sometimes driven by egotistic pursuits such as wanting to be known as one of the most erudite scholars of that madh-hab. While that aspiration is not always condemnable, it must not be the main motive for studying this noble knowledge and teaching it.

Being grounded in one madh-hab, with a healthy exposure to others, should be the goal of every student of fiqh. Unlike in the past, people will not be finishing many levels of learning; therefore it would be reasonable, in my assessment, to start learning comparative fiqh at college level, along with a continued emphasis on one madh-hab.

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[4] *al-Muwâfaqât*, ash-Shâṭibi, 3:131 (Mash-hoor edition).

About the Ḥanbali Madh-hab

Imam Aḥmad ibn Ḥanbal ash-Shaybâni (may Allah bestow mercy upon him) was the last of the imams who founded the four most authoritative schools of law (madh-habs) in Islam.[5] Imam Aḥmad was born in Baghdad in the month of Rabee‘ I, 164 AH/ 780 CE. His father died when he was only three years old, so he grew up under the care of his mother. He died on Friday, 12 Rabee‘ I, 241 AH/ 855 CE.[6]

Imam Aḥmad had an esteemed status amongst the scholars of *Ahl us-Sunnah wal-Jamâ‘ah*, who represent mainstream Islam.[7] Imam ash-Shâfi‘i (d. 204 AH/ 820 CE), a teacher of Imam Aḥmad, said, “I departed from Iraq leaving behind no man better, more pious, or more learned than Aḥmad ibn Ḥanbal.”[8]

The Ḥanbali School thrived first in Iraq, then in ash-Shâm (the Levant), and to a lesser extent, thereafter, in Egypt. From the middle of the tenth century AH, the madh-hab started to gain a strong presence in Najd and subsequently the entire Arabian Peninsula.

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5 The four Imams who founded the four most authoritative Sunni schools of law were Abu Ḥaneefah (d. 150 AH/ 767 CE), Mâlik (d. 179 AH/ 795 CE), ash-Shâfi‘i (d. 204 AH/ 820 CE), and Aḥmad ibn Ḥanbal (d. 241 AH/ 855 CE).

6 *al-Bidâyah wan-Nihâyah*, Ibn Katheer.

7 The term *Ahl us-Sunnah wal-Jamâ‘ah* refers to the ‘people of the Sunnah and the main community’, known as Sunnis, the orthodox majority of Muslims.

8 *al-Ikmâl fee Asmâ’ ar-Rijâl*, at-Tabreezi (d. 741 AH/ 1341 CE).

The Sources of Proofs Imam Aḥmad Relied on[9]

The First Two Sources That Imam Aḥmad Relied Upon

When making a ruling, Imam Aḥmad relied first on the two texts of divine revelation, the Qur'an and Sunnah. When a relevant text was found, Imam Aḥmad would give it precedence over anything else, be it qiyâs, the actions of the people of Madinah, or any other authority. He would also give preference to a clear text (hadith) traceable to the Prophet (SA) over any statement or position of any Companion, regardless of his or her status.

The Third Source

After these two main sources, he acted upon *ijmâ'* (consensus), particularly that of the Companions (RAHUM). When he found an opinion by a Companion that was not known to be opposed or refuted by another Companion, Imam Aḥmad considered it to be the only acceptable view. Still, he would state only that he knew of no opposition to that view; he would not call it a 'consensus' because he was very conservative in making that claim. When the Companions differed, he adopted from their views the one he felt to be closest to the Qur'an and Sunnah, but he would limit himself to their views. He would even give precedence to an authentic report from a Companion over a weak hadith. If he could not discern which of their views was the strongest, he would mention them all, without choosing one. This is one of the reasons why the Ḥanbali madh-hab had variant positions regarding many matters.

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[9] *I'lâm al-Muwaqqi'een*, Ibn al-Qayyim (d. 751 AH/ 1350 CE). The information given about the principles of the Ḥanbali madh-hab is mostly from this work.

The Fourth Source

Another notable approach of the Ḥanbali madh-hab is acting upon weak and *mursal* hadiths[10] if there was nothing more authentic to judge by. However, it must be noted that the weak hadiths which Aḥmad accepted were not necessarily *matrook* (rejected). Some of the scholars, including Shaykh al-Islam Ibn Taymiyah (d. 728 AH/ 1328 CE, may Allah bestow mercy on him), went as far as saying that these were all *ḥasan* (reliable)[11] hadith(s).[12] Before the time of Imam at-Tirmidhi (d. 279 AH/ 892 CE), hadiths were either graded sound (*ṣaḥeeḥ*) or weak, and the weak included acceptable and *matrook* (rejected) hadiths. The category of ḥasan, as we know it, was introduced by Imam at-Tirmidhi and later adopted by the scholars of Hadith.

The Fifth Source

Finally, when Imam Aḥmad could find no text, Companion's opinion, weak or mursal report to use for a certain ruling, he resorted to the fifth principle: qiyâs. He only used it when necessary, and he reported this approach from ash-Shâfi'i, as narrated by al-Khallâl in his compendium *al-Jâmi'*.[13]

These are the five main sources of proof in the madh-hab, as listed by Imam Ibn al-Qayyim (may Allah bestow mercy upon him) in *I'lâm al-Muwaqqi'een*. However, Imam Ibn Taymiyah and others maintained that the Imam's fiqh was also based, after these five

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10 A mursal hadith is one in which the one who narrated it from the Prophet (SA) is a *tâbi'i* (a successor; one who knew or met any of the Companions and transmitted hadiths from them) and not a Companion.

11 A ḥasan (reliable) hadith is that which fulfills the conditions of a ṣaḥeeḥ (sound) hadith, except that its narrator(s) may be slightly less reliable than those of a sound chain.

12 *Minhâj as-Sunnat an-Nabawiyah*, Ibn Taymiyah, 4:341–342.

13 Abu Bakr al-Khallâl (d. 311 AH/ 923 CE) was a student of some of Aḥmad's direct students. His collection of Aḥmad's rulings helped to document and preserve the Ḥanbali madh-hab.

principles, on *istiṣḥâb* (presumption of continuity), *al-maṣâliḥ al-mursalah* (consideration of public interest), and *sadd adh-dharâ'i'* (blocking the means [to evil]).[14]

Compiling the *Madh-hab* of Imam Aḥmad

Imam Aḥmad avoided recording his juristic opinions because he feared they would be taken blindly by some Muslims in place of the ever more important revealed texts, the Qur'an and Sunnah. He invested his entire life in collecting the Sunnah and the views of the Companions, and he did not author a single book on fiqh, apart from a few treatises.

Most of the Imam's disciples acted upon his wish not to record all his positions in one book. However, they did record some of his views and responses to questions in books named *Masâ'il al-Imâm Aḥmad* [The Answers of Imam Aḥmad]. Of those, al-Marroudhi; al-Athram; Abu Ṭâlib; al-Maymooni; Ibrâheem al-Ḥarbi; Ḥarb al-Karmâni; the Imam's two sons, 'Abdullâh and Ṣâliḥ; and his cousin Ḥanbal are called *al-Jamâ'ah* (the Group) by some of the later Ḥanbali scholars. Abu Dâwood, the famous compiler of the Hadith collection *as-Sunan*, also narrated from him a number of juristic matters, which came to be called *Masâ'il al-Imâm Aḥmad* by Abu Dâwood. Bukhâri and Muslim, the famous compilers of the soundest Hadith collections, were also among the Imam's students; however, they narrated only hadiths from him (and not juristic opinions).

After that came Aḥmad ibn Muhammad ibn Hâroon, better known as Abu Bakr al-Khallâl (d. 311 AH/ 923 CE). He dedicated himself to collecting the positions and heritage of Imam Aḥmad. He journeyed through what is today Syria, Iraq, and Iran to interview the Imam's companions and document what they narrated to him from the Imam. He compiled the book *al-Jâmi'*, which exceeds twenty volumes, and it is regarded as the primary source of the Ḥanbali madh-hab.

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[14] *al-Musawwadah fee Uṣool al-Fiqh*, Āl Taymiyah.

Later, Abul-Qâsim ‘Umar ibn Abi ‘Ali al-Ḥusayn al-Khiraqi (d. 334 AH/ 945 CE) wrote a concise book on the madh-hab of Aḥmad, titled *Mukhtaṣar al-Khiraqi*. This book was the more popular of two abridgements of *al-Jâmi‘*, the second being an abridgement by al-Khallâl’s student Abu Bakr ‘Abdul-‘Azeez (d. 363 AH/ 974 CE), known as *Ghulâm al-Khallâl* (al-Khallâl’s boy).

Mukhtaṣar al-Khiraqi became so popular with the Ḥanbalis that they wrote three hundred different explanations for it. The most notable of these is the great compendium of comparative fiqh (with a Ḥanbali leaning, of course) named *al-Mughni*, by Imam Ibn Qudâmah, the author of this text, *al-‘Umdah*.

Some Terms Used in Ḥanbali *Fiqh*

- *Riwâyah* (report): refers to the positions traced to Imam Aḥmad himself.
- *Wajh* (view): refers to the variant positions of the main Ḥanbali scholars.
- *Qawl* (position; *literally*: statement): refers to positions deduced from the speech of the Imam but not explicitly stated by him (*takhreej*). It may also refer to any of the previous meanings when the reporter is unsure.

If you wish to learn more about the Ḥanbali school of fiqh (madh-hab), refer to *al-Madkhal ilâ Madh-hab al-Imâm Aḥmad* by Ibn Badrân.

About the Author, Ibn Qudâmah

Abu Muhammad, ‘Abdullâh ibn Aḥmad ibn Qudâmah al-Maqdisi (d. 620 AH/ 1223 CE)

Imam Ibn Qudâmah was the most distinguished author of Ḥanbali fiqh and the most verifying scholar of the madh-hab. Among many others, he learned under ‘Abdul-Qâdir al-Geelâni (d. 561 AH) and Ibn al-Jawzi (d. 597 AH). ‘Abdul-Qâdir al-Geelâni learned under Abul-Khaṭṭâb (d. 510 AH) and Ibn ‘Aqeel (d. 513 AH), who both

learned under Abu Ya‘lâ (d. 458 AH), who learned under Ibn Ḥâmid (d. 403 AH), who learned under Ghulâm al-Khallâl (d. 363 AH), who learned under al-Khallâl (d. 311 AH), who learned under Abu Bakr al-Marroudhi and other disciples of Imam Aḥmad. One of the main students of Imam Ibn Qudâmah was his nephew Ibn Abi ‘Umar al-Maqdisi (d. 682 AH), who was one of the main shaykhs of Imam Taqi ad-Deen Aḥmad ibn Taymiyah (d. 728 AH).

Whenever Imam Ibn Qudâmah and Imam Majd ud-Deen ‘Abdus-Salâm ibn Taymiyah (d. 653 AH; the grandfather of Taqi ad-Deen ibn Taymiyah) agreed on a matter, the later Ḥanbalis accepted their agreement as most indicative of the correct position in the madh-hab.

He wrote four books on the fiqh of the Ḥanbali madh-hab; they are listed here from the shortest to the longest:

- *‘Umdat al-Fiqh*: a *matn* (manual) for beginners, in which he mentions only one position/opinion for each issue. (This is the manual being explained in this book.)
- *Al-Muqni‘*: for the second-level student; he mentions more than one position/opinion and sometimes indicates his preferred one.
- *Al-Kâfi fee Fiqh al-Imâm al-Mubajjal Aḥmad ibn Ḥanbal*: for the third level; he mentions one or two positions, and he also cites the proofs/evidence.
- *Al-Mughni fee Fiqh al-Imâm Aḥmad ibn Ḥanbal ash-Shaybâni*: considered by many to be the greatest compendium of fiqh written in Islam; he mentions the positions both within and outside the madh-hab, citing the various textual and rational proofs.

About *‘Umdat al-Fiqh*

‘Umdat al-Fiqh is an abridged fiqh book, a type of work traditionally called a matn (text/manual). Such works were usually supplemented by commentaries (*shurooḥ*), as well as footnotes and notes written in the margins (*ḥawâshi*). These abridged books were

meant to be decisive and easy to memorize by students of knowledge; they served as a code. *'Umdat al-Fiqh* is highly esteemed within the Ḥanbali madh-hab.

My Work

The reason I chose to write a commentary on this book, rather than translating one of the older – and certainly more authoritative – commentaries on this book or another manual, such as *al-'Uddah Sharḥ al-'Umdah* by Bahâ' ud-Deen al-Maqdisi (d. 624 AH), is to emphasize issues that face contemporary Muslims. In addition, Muslims who live as minorities in English-speaking countries have different needs, some of which I have addressed in this book. Also, fiqh is dynamic, and the matters addressed by it are ever-changing. While the area of financial transactions may be the best example of this, it is not the only one. There are contemporary issues that need to be addressed in all spheres of fiqh. There is a need, for instance, to address matters such as conducting marriage ceremonies through video-conferencing or divorce via texting, or establishment of paternity through DNA testing, or the admissibility of tangible proofs and forensic investigations in Islamic courts, and so on. Even in the fiqh of worship, there are contemporary matters that need to be addressed, such as dry cleaning, the nullification of fasting by contemporary medical treatments and procedures, and so on. I have also added some non-Ḥanbali views, for the sake of comparison. This is particularly important because many contemporary students may study, after an introductory book, only one other book, and they should experience the diversity of opinions. Finally, some rulings require contextualization and discussion of their possible modern application.

I have followed the order of the original text. For ease of reference, the books in this edition are identified by Roman numerals and their chapters by Arabic numerals. This numbering provides a consistent way to locate passages and commentary throughout the work.

Ibn Qudâmah's Arabic text and its English translation appear together in boxed sections, followed by the commentary. Commentary notes are identified by bracketed codes in the form [Book.Chapter.Comment]. The Roman numeral identifies the book, the middle number identifies the chapter, and the final number identifies the commentary note. For example, [II.3.5] refers to the fifth commentary note in the third chapter of Book II. A zero in the chapter position indicates commentary on the opening portion of a book before its first numbered chapter, or on a book with no numbered chapters. Thus, [II.0.1] identifies the first introductory commentary note in Book II. These codes also serve as cross-references to discussions elsewhere in the commentary.

I have generally avoided adding to the original text (matn), except where a title or explanation seemed necessary or helpful. Added words or titles appear in square brackets, while explanations integral to the translation appear in parentheses. Bracketed commentary codes serve only as references and are not part of the original text.

The translations of the meanings of the verses of the Qur'an in this book (unless otherwise stated) are taken (with some changes to the text) from *The Qur'an: Arabic Text with Corresponding English Meanings*, Saheeh International. (Editor)

When the position mentioned by Ibn Qudâmah in the matn of *al-'Umdah* is not the authorized position in the Ḥanbali madh-hab, according to the later generations, I cited the authorized position from these books: *Muntahâ al-Irâdât*, *al-Iqnâ'*, *at-Tanqeeḥ*, and *al-Inṣâf*, which they considered most authoritative. For the positions of *Muntahâ al-Irâdât*, I consulted the commentary on *al-Muntahâ*, called *Sharḥ al-Muntahâ* (SM). (A/SM) means the authorized position in the Ḥanbali madh-hab according to *Sharḥ al-Muntahâ* (SM). (Furoo') refers to *al-Furoo'* by Ibn Mufliḥ, one of the most authoritative books on citing the various reports within the Ḥanbali madh-hab. It was my main source for the non-authorized or less popular positions in the madh-hab, which I referred to as: (a).

In this book, I intentionally avoided the translation of all independent passages pertaining exclusively to slavery because this information is – *alḥamdulillâh* – not relevant anymore. I included in the appendices a full discussion of slavery in Islam.

The images and diagrams in this book are all the work of my students, with the exception of the photo image on the first page of the *Muqaddimah* (Introduction) from an antique Arabic edition of Ibn Qudâmah's *'Umdat al-Fiqh*. I have tried to discover whose image this is, but despite diligent searching, I have been unable to locate the copyright owner of the image. I hope that I am excused for making use of the image in my book.

In the commentary, H, M, S, and A refer to the Ḥanafi, Mâliki, Shâfi'i, and Ḥanbali madh-habs, respectively. They do not mean that this is the only opinion within the madh-hab, nor do they always mean that it is the opinion of the founder, as sometimes an opinion contrary to the founder's becomes the more popular one. This is because our great jurists, particularly the earlier ones, were seekers of the truth, not zealots.

Within this book, the use of the word 'should' before a recommendation indicates that it may be 'preferable' or 'mandatory'. The use of 'should not' does not necessarily mean it is forbidden; it may be either 'disliked' or 'forbidden'. When 'must' and 'must not' are used, they indicate an obligation and a prohibition, respectively.

I consulted *Irwâ' al-Ghaleel* by Shaykh al-Albâni (may Allah have mercy on him) for the grading of the hadiths used by the Ḥanbalis for validation of the positions of the madh-hab, since the book specifically addressed those hadiths quoted in another Ḥanbali book, *Manâr as-Sabeel*. When I found grading by earlier scholars, I used it; otherwise, I used the grading of Shaykh al-Albâni or other contemporary scholars.

I added some appendices at the end of the book to further elucidate certain concepts or to provide a modern context for certain rulings. These appendices drew on our vast legal heritage and may not be attributed to the Ḥanbali madh-hab. Some of them addressed

controversial issues. Whatever therein is correct, it is from Allah's favors, and whatever is not, it is my fault.

Since symbols are frequently used in this book, it is vital to become familiar with the following key to abbreviations. You may want to make a copy to have easy access to it.

Key to Abbreviations

Reports

Ag	Agreed upon (reported by both Bukhâri and Muslim)
B	Bukhâri (*Ṣaḥeeḥ*)
M	Muslim (*Ṣaḥeeḥ*)
A	Aḥmad (*Musnad*)
D	Abu Dâwood (*Sunan*)
T	at-Tirmidhi (*Sunan*)
N	an-Nasâ'i (*Sunan*)
Ma	Ibn Mâjah (*Sunan*)
G	The group: reported by all the above
H	al-Ḥâkim (*al-Mustadrak*)
Kh	Ibn Khuzaymah (*Ṣaḥeeḥ*)
Ḥib	Ibn Ḥibbân (*Ṣaḥeeḥ*)
Ba	al-Bayhaqi (*Sunan*)
Ṭab.K	aṭ-Ṭabarâni in *al-Mu'jam al-Kabeer*
Ṭab.A	aṭ-Ṭabarâni in *al-Mu'jam al-Awsaṭ*
Ṭab.Ṣ	aṭ-Ṭabarâni in *al-Mu'jam aṣ-Ṣagheer*
S	Sound (ṣaḥeeḥ)
R	Reliable (ḥasan)
W	Weak

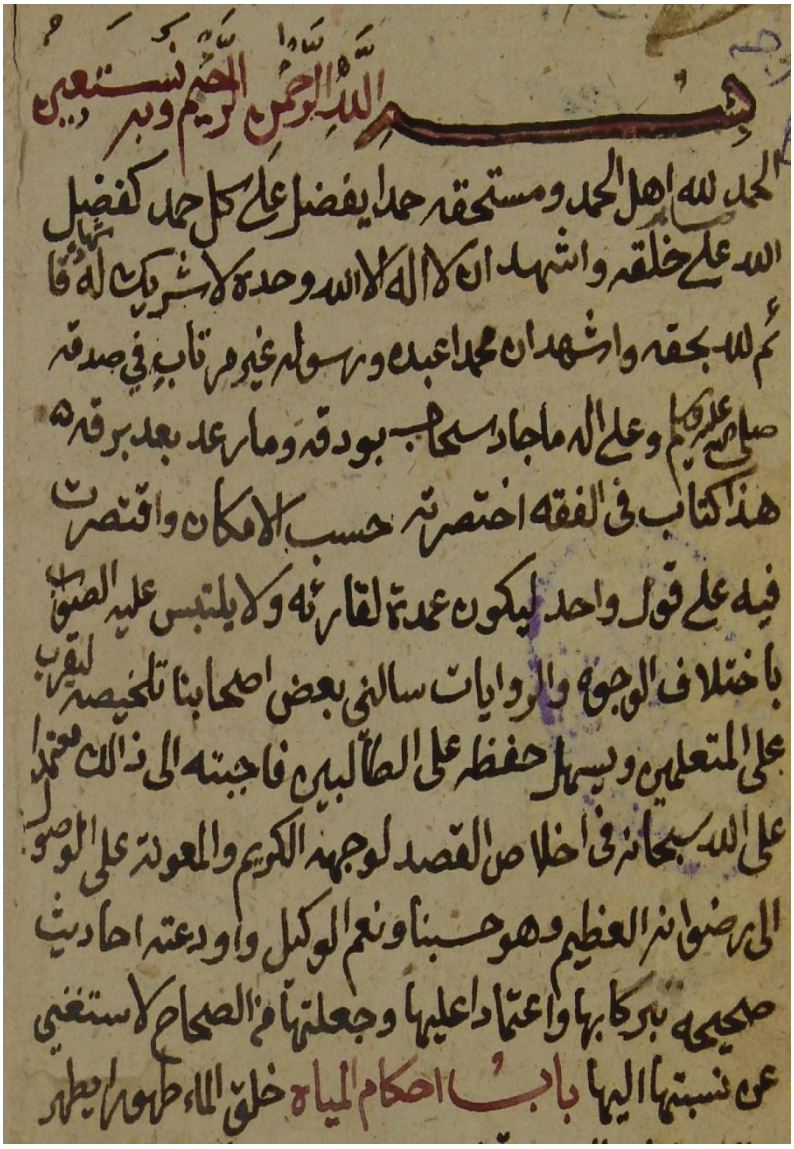
Fiqh

A	Ḥanbali (Aḥmad ibn Ḥanbal)
a	The less popular opinion in the Ḥanbali madh-hab
H	Ḥanafi
h	The less popular opinion in the Ḥanafi madh-hab
M	Mâliki
m	The less popular opinion in the Mâliki madh-hab

S	Shâfi‘i
s	The less popular opinion in the Shâfi‘i madh-hab
H2, M2, S2, A2	Another equally strong opinion in this madh-hab
Z	Dhâhiris (as indicated by Imam Ibn Ḥazm)
t	Ibn Taymiyah’s choices
(SM)	*Sharḥ al-Muntahâ*
🕒	Contemporary issues
🕮	Textual evidence
	Legal maxims and principles of jurisprudence

Ibn Qudâmah's Introduction to *'Umdat al-Fiqh*

المقدمة


بسم الله الرحمن الرحيم وبه نستعين
الحمد لله اهل الحمد ومستحقه حمدا يفضل على كل حمد كفضل
الله على خلقه واشهد ان لا اله الا الله وحده لا شريك له قا
ئم لله بحقه واشهد ان محمدا عبده ورسوله غير مرتاب في صدقه
صلى الله عليه وسلم وعلى اله ما جاد سحاب بودقه وما رعد بعد برقه
هذا كتاب في الفقه اختصرته حسب الامكان واقتصرت
فيه على قول واحد ليكون عمدة لقارئه ولا يلتبس عليه الصواب
باختلاف الوجوه والروايات سالني بعض اصحابنا تلخيصه ليقرب
على المتعلمين ويسهل حفظه على الطالبين فاجبته الى ذلك معتمدا
على الله سبحانه في اخلاص القصد لوجهه الكريم والمعونة على الوصول
الى رضوانه العظيم وهو حسبنا ونعم الوكيل واودعته احاديث
صحيحة تبركا بها واعتمادا عليها وجعلتها في الصحاح لاستغني
عن نسبتها اليها باب احكام المياه خلق الماء طهورا يطهر

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
In the name of Allah, the All-Merciful, the Ever-Merciful

All forms of thanks and praise are due to Allah, the worthiest of thanks and praise, a praise superior to all other types of praise, like the superiority of Allah over all of His creation. I bear witness that nothing deserves to be worshiped or adored except for Allah; He is One without partners -- my witness being that of one who recognizes and establishes His [Allah's] right. I bear witness that Muhammad is His slave and Messenger, without being doubtful about his truthfulness. May Allah bestow blessings on him, his family and his Companions – as long as clouds bring about rain and thunder comes after lightning.	الحمدُ للهِ أهلِ الحمدِ ومستحِقِّهِ، حمداً يفضُلُ على كلِّ حمدٍ، كَفَضلِ اللهِ على خلقِهِ. وأشهدُ أنْ لا إلهَ إلا اللهُ وحدَهُ لاشَريكَ لَهُ، شَهادةَ قائمٍ للهِ بحقِّهِ، وأشهدُ أنَّ محمّداً عَبدُه ورسُوله، غيرَ مُرتابٍ في صدقهِ، صلَّى اللهُ وسَلَّمَ عليهِ، وعلى آلهِ وصحبِه، ما جَادَ سَحابٌ بوَدقِهِ، وما رَعدَ بعد بَرقِهِ.
This is a book on jurisprudence, which I have summarized as much as possible. I have limited myself in it to one opinion in order that it becomes a reliable source of information for its readers, and so that the correct opinion would not be confused because of differences between the opinions narrated by the scholars after Imam Aḥmad and those transmitted directly from him.	أما بعد: فهذا كتابُ أحكامٍ في الفِقه، اختَصرتُه حَسَبَ الإمْكَان، واقتصَرتُ فيه على قولٍ واحدٍ ليكونَ عُمدةً لقارئِه، ولا يَلتبِسَ عليه الصَّوابُ باختلاف الوُجوهِ والرِّواياتِ.
Some of my brothers asked me to summarize it to make it more accessible to those who wish to learn and easier to memorize for knowledge seekers. Therefore, I answered this request relying	سألَني بعضُ أصحابنا تلخيصَهُ؛ ليقرُبَ على المتعلِّمين، ويسهُلَ حِفظُه على الطَّالبين؛ فأجبتُهُ إلى ذلك، مُعْتمِداً عَلَى اللهِ سُبحَانَهُ في

on Allah (ST) to make my intention sincere and only for His Face (in other words, solely seeking to please Him), and to help me to attain His great pleasure. He is Sufficient for us and the best Disposer of affairs.	إخلاصِ القَصدِ لِوجهِهِ الكَريم، والمعُونةِ على الوصول إلى رِضوانِهِ العظيم، وهو حَسبُنَا ونعم الوكيلُ.
I included in it authentic narrations for their blessings and authority. I chose them from the authentic collections in order to avoid the need to reference them.	وأودعتُهُ أحاديثَ صحيحةً؛ تَبرُّكاً بها، واعتِمادًا عليها، وجعلتها من الصِّحَاح لأَستغني عن نسبتها إليها.

[I] The Book of Purification
كِتَابُ الطَّهَارَةِ

[I.1] Chapter on the Rulings on the Types of Water

بَابُ أَحْكَامِ الْمِيَاهِ

[General Rulings Concerning Water for Purification]

Water was created pure and purifying. [I.1.1] It purifies from ritual impurities and physical impurities. [I.1.2] Therefore, purity cannot be attained by any liquid other than it. [I.1.3]	خُلِقَ الْمَاءُ طَهُوْرًا، يُطَهِّرُ مِنَ الأَحْدَاثِ وَالنَّجَاسَاتِ، فَلَا تَحْصُلُ الطَّهَارَةُ بِمَائِعٍ غَيْرِهِ.

Islam is a religion of purification. It purifies the body from filth; it purifies the mind from misconceptions, confusion, and all falsehood; and, most importantly, it purifies the soul from its evil inclinations. It does this while mercifully acknowledging humankind's inherent weaknesses and susceptibility to error. Besides, Islam is about balance and moderation. While recognizing the primacy of the spirit, it does not aim to elevate any one of the elements of which man was created at the expense of another of those elements. It seeks to unite one's exterior and interior in complete harmony. It asserts that the relationship between them is one of mutuality, and that it is not possible for one to be corrupt while the other continues to be virtuous and correct.

There are three types of purification:

Physical purification: cleansing the body (as well as one's garment and place of prayer) from all physical filth.

Ritual purification: attaining, through certain acts, a special state of purity that allows one to perform certain acts of worship, most notably the prayer.

Spiritual purification: cleansing the soul and mind from the diseases that afflict them, and instilling in them good qualities; its ultimate objective is sincere devotion to Allah (ST).

The first and second types are addressed in this chapter; the third type, which is by no means less important, is usually addressed in special books about the 'heart softeners' and manners (*akhlâq*), traditionally included under the discipline of *sulook/taṣawwuf/tazkiyah*.

[I.1.1] Types of Water

Water, according to Sharia, is divided into four types:

1. Plain water, which includes that of seas, rivers, rain, snow, hail, and wells.

2. Used water (that is, water used to remove ritual impurity – assuming it was collected after dripping from someone who was performing ritual ablution).

3. Water mixed with pure substances.

4. Water mixed with impure substances.

Types of Water in Reference to Purity

What is pure is not necessarily purifying. For example, tea and ink are considered pure but, by consensus, you cannot use them to perform ablution and attain ritual purity. This applies to substances in general, but what about water?

Most scholars divide water into three categories:

1. Pure and purifying

2. Pure but not purifying

3. Impure

Some scholars, including (t), argue that as long as you call it water, without qualifying it, it is either 1) pure and purifying or 3) impure. If its characteristics were overwhelmed by a pure substance, then it would not be called water anymore but instead would be called tea or ink, for example.

Keep in mind throughout this chapter that impure/filthy does not refer to simply being unclean. Mud and tar, and even spittle and mucus, may be called 'unclean,' but, by consensus, they are not impure. On the other hand, pig flesh and human urine, feces, and menstrual blood are all impure by consensus.

[I.1.2] Ritual Impurities

Ritual impurities nullify the state of ritual purity. To regain that state, wuḍoo' (ablution) or ghusl (a ritual bath) may be required.

[I.1.3] "Purity cannot be attained by any liquid other than it" because Allah (ST) said:

﴿ ... وَإِن كُنتُم مَّرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِّنكُم مِّنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا ...﴾

{...And if you are ill, or on a journey, or one of you comes after answering the call of nature, or you have been in contact with women (having sexual relations), and you find no water, perform tayammum (dry ablution) with clean earth...} (an-Nisâ' 4:43)

Notice that Allah (ST) did not mention any other liquid before mentioning ablution with soil. This indicates that when it comes to ritual purity, there is no replacement for water except by tayammum. The report about making ablution with *nabeedh* (which means here water sweetened with raisins and the like) is weak.
There is a consensus that only water, when present and possible to use it without harm, will remove ritual impurities.
(A) + (M, S): only water removes physical filth (*najâsah*) from the body, garments and the like.
(a) + (H, t): if the filth is effectively removed by anything, it is sufficient.
You may find this information pertinent to modern applications when confronted by the issue of dry cleaning.

[Water Mixed with Impure Substances: Flowing versus Stagnant - Large versus Small Amount]

When the water amounts to *qullatayn* (two large containers) or is flowing, then nothing can render it impure except something that changes its color, taste, or odor. [Water] less	فَإِذا بَلَغَ الْمَاءُ قُلَّتَيْنِ أَوْ كَانَ جَارِيًا، لَمْ يُنَجِّسْهُ شَيْءٌ، إِلَّا مَا غَيَّرَ لَوْنَهُ، أَوْ طَعْمَهُ، أَوْ رِيحَهُ،

than that would be rendered impure by any mixing with impurities. [I.1.4] [The weight of] qullatayn is approximately 108 Damascene pounds.	وَمَا سِوَى ذٰلِكَ يَنْجُسُ بِمُخَالَطَةِ النَّجَاسَةِ. والقُلَّتانِ ما قَارَبَ مائة وثَمَانِيَة أرْطالٍ بِالدِمَشْقِي.

[I.1.4] When Does Water Become Impure?

The *Qullatayn:* two containers hold approximately 190 liters, or about 50 gallons.

The above position is the position of the madh-hab: (A) + (H, S). The Ḥanbali and Shâfi'i schools use the qullatayn distinction. The Ḥanafi school likewise distinguishes small from large stagnant water, but uses different criteria to determine what counts as a large quantity.

Our position is based on the *mafhoom al-mukhâlafah* (divergent implication) in the statement of the Prophet (SA):

«إذا كان الْمَاءُ قُلَّتَيْنِ لم يَحْمِلْ الْخَبَثَ.»

> *"When the water is an amount that fills qullatayn, it will not be rendered impure." (D, T, N, Ma, Ḥib – from Ibn 'Umar; Ḥib: S)*

Many scholars, including (a) + (M, s, t) maintain that all water – small or large in amount – is rendered impure only if its taste, color, or odor changes with the impurity.

The hadith of the qullatayn, for those who consider it sound, would then imply more caution in examining a smaller quantity of water. Their proof is the Prophet's statement:

«إِنَّ الْمَاءَ طَهُورٌ لَا يُنَجِّسُهُ شَيْءٌ.»

> *"Verily water is pure and purifying, and nothing may render it impure." (D, T, N – from Abu Sa'eed; A: S)*

There is a consensus that any amount of water is rendered impure if the impurity changes its color, taste, or smell. This was reported as an addition

to this hadith, but the addition is weak. However, the consensus itself is sufficient to qualify the absoluteness of the Prophet's statement above.

(A/SM): the flowing water is like the stagnant; if it is less than qullatayn, it becomes impure upon mixing with impurity, even without a change in its color, taste, or odor.

[Water Mixed with Pure Substances and Used Water]

If something that is pure, but not purifying, was cooked in the water or mixed with the water, and it changed its name (characteristics) [I.1.5] - or if it was used in removing a ritual impurity, then it would be stripped of its attribute of being a purifier. [I.1.6]	وإن طُبِخَ في الماء ما ليس بطَهُورٍ، وكذلك ما خَالَطَهُ فَغَلَبَ عَلى اسْمِهِ – أَوْ اسْتُعْمِلَ فِيْ رَفْعِ حَدَثٍ سَلَبَ طَهُوْرِيَّتَهُ.

[I.1.5] Water Mixed with a Pure Substance

There is no question that the water that was mixed with a pure substance will remain pure. However, the question is whether it continues to be purifying (usable for ritual purification).

According to (A) + (+H), mixing (H: without cooking; A: even with cooking) which results only in a minor change in the water's characteristics (but you would still call it water) does not render it non-purifying, since:

«أَنَّ النبي ﷺ اغْتَسَلَ وَمَيْمُونَةَ من إِنَاءٍ وَاحِدٍ في قَصْعَةٍ فيها أَثَرُ الْعَجِينِ.»

"The Messenger of Allah (SA) and Maymoonah (his wife) both had a ritual bath from one (water) container that had a trace of dough in it." (N – from Umm Hâni')

And: The Messenger of Allah (SA) also advised the people to use camphor, as well as the dried crushed leaves of the sidr tree (zizyphus Spina Christi, also known as the lote tree), which they used as soap, in the post-mortem washing of his daughter Zaynab

(raḍiya Allâhu ʻanhâ – may Allah be pleased with her). (Ag – from Umm ʻAṭiyah)

«اغْسِلْنَهَا ثَلَاثًا أَوْ خَمْسًا أَوْ أَكْثَرَ مِنْ ذَلِكَ إِنْ رَأَيْتُنَّ ذَلِكَ بِمَاءٍ وَسِدْرٍ وَاجْعَلْنَ فِي الْآخِرَةِ كَافُورًا أَوْ شَيْئًا مِنْ كَافُورٍ.»

(a) + (M): the mixing or cooking of a pure substance that causes any change in the water will render it non-purifying. The Shâfiʻi school permits a slight change caused by a pure admixture, provided the result can still be called water without qualification.

By agreement, mixing that is expected to occur naturally (with mud, algae, etc.) does not change the original ruling regarding water, which is that it is pure and purifying.

[I.1.6] Water Used for Purification: Can It Be Collected and Reused?

(A) + (+H, +S): used water is pure, not purifying.

(a) + (M, s, Z, t): used water is pure and purifying.

Summary of the rulings regarding water:

	Plain Water	**Used Water**	**Mixed with Pure Substance**			**Mixed with Impure Substance**		
			A*	**B***	**C***	**D***	**E***	**F***
Pure and Purifying	**All**	a,M,s, Z,t	**A**,H, S,t	**A**,S,t		All	a,M, t	
Pure, not Purifying		**A**,H,S	a,M	a,H, M	**A**,H, M,S			
Impure		a,h					**A**,H,S	**All**

KEY
A* — mixed slight amount; uncooked
B* — mixed slight amount; cooked
C*— mixed substance prevails over water's characteristics
D* — more than qullatayn; color, taste and odor not changed
E* — less than qullatayn; color, taste and odor not changed
F* — color, taste and/or odor changed

[Doubts Regarding Purity]

If you have doubts regarding the purity of the water or something else, or its impurity, you should base your actions on certainty. [I.1.7]	وَإِذَا شَكَّ فِيْ طَهَارَةِ الْمَاءِ، أَوْ غَيْرِهِ، أَوْ نَجَاسَتِهِ، بَنَى عَلَى الْيَقِيْنِ.

[I.1.7] Doubts

The above position means that if you are sure that it was pure, and you only suspect that it has become impure, you should assume it is pure; in contrast, if you are sure that it became impure, and you doubt whether it was purified after that (such as by adding a larger amount of water or by evaporation of the impure substance), you should assume that it is still impure. In other words, maintain the status quo until you are certain it has changed.

This means: cast the doubt away.

The second agreed-upon major universal legal maxim is:

«اليَقِين لا يَزول بالشَّك»

"Certainty is not negated by doubt."

Many people suffer from obsessions regarding their purity that can be devastating. The righteous predecessors were simple and not obsessive. In a narration deemed reliable by Ibn Taymiyah, 'Umar (*radiya Allâhu 'anhu* – may Allah be pleased with him) once passed by a gutter and got wet. His companion asked the owner of the property if the water was pure or not, whereupon 'Umar told the owner not to answer the question, and he went on his way.

If the filthy spot on your garment or otherwise was indiscernible, you should wash the part of your garment [or whatever else] that would be sufficient to make you certain that you have washed off the impurity. [I.1.8]	وَإِنْ خَفِيَ مَوْضِعُ النَّجَاسَةِ مِنَ الثَّوْبِ أَوْ غَيْرِهِ، غَسَلَ مَا يَتَيَقَّنُ بِهِ غَسْلَهَا.

[I.1.8] This is based on the foundational (uṣooli) maxim:

«ما لا يَتِمُّ الواجِبُ إلا به فهو واجِب.»

"The act necessary to fulfill an obligation is obligatory."

If pure water was indistinguishable from impure water, and you did not find any other water, you should make tayammum and avoid both [meaning the pure and the impure water]. [I.1.9]	وَإِنِ اشْتَبَهَ مَاءٌ طَاهِرٌ بِنَجِسٍ، وَلَمْ يَجِدْ غَيْرَهُمَا تَيَمَّمَ وَتَرَكَهُمَا.

[I.1.9] Based on (t): This confusion could only happen if, for example, someone lost his or her senses, or in the dark, because the water is rendered impure only if it is observed that it has changed due to an impurity.

If purifying water is confused with pure water that is not purifying [for example, water previously used to remove impurity], then you should make wuḍoo' out of each one of them. [I.1.10]	وَإِنِ اشْتَبَهَ طَهُوْرٌ بِطَاهِرٍ تَوَضَّأَ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا.

[I.1.10] This is because in this case, you would be sure that you made wuḍoo' with purifying water. Even if your second wuḍoo' was done with water that was pure but not purifying, you would still be ready for the prayer. This is unlike the previous example where if the second wuḍoo' was performed using impure water, then you would have impurity on your body and could not pray in this condition.

(A) Muntahâ: "He performs ablution once using a scoop from this and a scoop from that, and he prays a single prayer."

If there are both clean and unclean garments, then you should pray a certain number of times, that number being equal to the number of unclean garments plus one. You should make each prayer in a different garment. [I.1.11]	وَإِنِ اشْتَبَهَتْ ثِيَابٌ طَاهِرَةٌ بِنَجِسَةٍ، صَلَّى فِيْ كُلِّ ثَوْبٍ صَلَاةً بِعَدَدِ النَّجِسِ، وَزَادَ صَلَاةً.

[I.1.11] For example, if you are certain that you have three unclean garments, you pray that prayer four times, each time in a different garment. This way, you will be certain that at least one of the prayers was done in a clean garment. (And if you were to have five unclean garments, you would pray six times, each time in a different garment.)

(a) + (H, S, t): You should do your best to identify the unclean garment and then pray in the garment(s) you thought to be clean.

[Removing Various Impurities]

Impurity from the dog and the pig should be washed seven times, including one time with soil. [I.1.12]	وتُغْسَلُ نَجَاسَةُ الْكَلْبِ وَالْخِنْزِيْرِ سَبْعًا، إِحْدَاهُنَّ بِالتُّرَابِ.

One is required to remove the najâsah (impurities) on their body, garment, and place of prostration in ṣalâh.

[I.1.12] Impurity from Dogs and Pigs

Impurity from Dogs

The position above is because the Messenger of Allah (SA) said:

«طَهُورُ إِنَاءِ أَحَدِكُمْ إذا وَلَغَ فيه الْكَلْبُ أَنْ يَغْسِلَهُ سَبْعَ مَرَّاتٍ أُولَاهُنَّ بِالتُّرَابِ.»

"The purification of a utensil belonging to any of you, after it is licked by a dog, lies in washing it seven times, using soil for the first time." (M – from Abu Hurayrah) In a different report in (M), he added also throwing away whatever is in the vessel.

This applies to utensils, but (H) requires one wash and recommends three, while (M) considers the seven washes only recommended.

(A): Soap would suffice instead of soil.

Clothes licked by a dog

(A) + (+S): Must be washed seven times, including once with soil (or soap, according to A).

(H): Washing them once is sufficient, and three times is recommended.

(M): There is no need to wash them because the Prophet (SA) did not mention clothes, and likening clothes to utensils is not a perfect analogy.

Touching the body of the dog

(A) + (+S): All of the dog is impure, so if the body of the dog is wet, or it touches a wet surface, the najâsah will be transmitted to that surface.

(a) + (H): Only the saliva of the dog is impure; the body is pure.

(M): All of the dog, including the saliva, is pure.

Dog excrement is impure according to all of them.

(H, M): The najâsah is removed by one wash.

(A) + (+S): It is like his saliva.

Impurity from Pigs

"Impurity from the dog and the pig should be washed seven times, including one time with soil."

The other view (a) + (H, M) is that the pig's impurity need only be washed once. This position is considered stronger by contemporary Ḥanbalis like Ibn 'Uthaymeen (may Allah bestow mercy on him) in his book *ash-Sharḥ al-Mumti'*. They argue that the analogy is imperfect because dogs and pigs are not similar. Also, pigs existed during the time of the Messenger (SA),

and he did not make any specific regulations regarding the removal of their impurity.

(A): All living animals that are the size of a cat or smaller are pure, so is their sweat and saliva. All animals and birds bigger in size than a cat and are impermissible to eat are impure and so is their sweat and saliva. This includes eagles, owls, donkeys, mules, monkeys, etc. (a): birds, donkeys and mules are pure. (a): the sweat is pure.

(M): All living animals, including pigs and dogs, are pure while alive, and their tears, sweat, and even saliva are all pure. (*Minaḥ al-Jaleel*) To them, the command concerning the dog's licking of the utensils is devotional, not understandable. Once they are dead, they generally become impure; exceptions include properly slaughtered livestock, aquatic animals, and creatures without flowing blood.

It is sufficient for all other impurities to be washed three times until purified. [I.1.13]	ويُجزِئُ في سَائِرِ النَّجَاسَاتِ ثَلاثٌ مُنْقِيَةٌ.

[I.1.13] (A/SM): All impurities must be washed 7 times.

(a/Furoo') + (H, M, S): One time that effectively removes the najâsah is sufficient. Their best proof is the lack of proof that any specific number was demanded. The hadith that is used to justify seven washes was deemed weak by many scholars, including Ibn 'Abdul-Hâdi al-Ḥanbali. Also, they argued that the analogy between the impurities of dogs and all others is not justified.

If the impurity is on the ground, then pouring water over it will remove it on account of the saying of the Messenger (SA), "So pour upon the urine of the Bedouin one bucketful of water." [I.1.14]	وإن كانت النَّجَاسَةُ على الأرضِ فَصَبَّةٌ واحِدةٌ تَذهَبُ بِعَينِها لقوله ﷺ: «صُبُّوا على بَولِ الأعْرَابِي ذنوبًا من ماء.»

[I.1.14] (Ag – from Anas) The word 'Bedouin' was not mentioned by the Prophet (SA) himself.

To remove the impurity of urine from a male infant who has not yet started eating regular/solid food, it is sufficient to wet the area affected without requiring the water to run off. [I.1.15]	ويُجزئ في بَوْلِ الغُلامِ الذي لم يَأكُل الطَّعَامَ النَّضْحُ.

[I.1.15] The Difference between the Urine of Male and Female Infants

Some scholars suggested that the reason for the distinction between the male and female is that the male's urine splatters around and would cause hardship if it all had to be washed off. It may also be because men used to take their male infants out in public more often, and the hardship of having to wash their urine was eased by this ruling.

There is a consensus (-Z) that the urine of the male infant is still najâsah.

The same ruling for the male infant's urine applies to *madhy* (pre-ejaculatory fluid). [I.1.16] A trivial amount of it [madhy] is excused. [I.1.17] Likewise, trivial amounts of blood [I.1.18] and its byproducts such as pus, other purulent matter, and similar things are all exempt. The trivial amount is that which is not repugnant.	وكذلك المَذْيُ، ويُعْفَى عَن يَسيرِه ويَسيرِ الدَّمِ وما تَوَلَّدَ مِنه مِنَ القَيْحِ والصَّديدِ ونَحْوِه، وحَدُّ اليَسيرِ هو ما لا يَفْحُشُ في النَّفسِ.

[I.1.16] Madhy

Madhy is the thin fluid excreted by one when thinking of sex or during foreplay.
(A/SM): As with other impurities, whatever is soiled by madhy must be washed seven times. The one wash applies only to the penis and testicles (scrotum), for the Prophet (SA) said:

«تَوَضَّأْ وَاغْسِلْ مَذاكِيرَك.»

“Make ablution and wash your penis and testicles (scrotum).” (B – from ‘Ali from al-Miqdâd)

(a) + (t): Madhy is considered to be a light impurity. In addition to washing the penis and scrotum, one may remove it from any other soiled surface by wetting it with water. This is because the Prophet (SA) said:

«يَكْفِيكَ أَنْ تَأْخُذَ كَفًّا من مَاءٍ فَتَنْضَحَ بِهِ ثَوْبَكَ.»

“It is sufficient for you to take a handful of water and sprinkle it over [the stained spot on] your garment.” (D, T – from Sahl ibn Ḥunayf; T: R)

[I.1.17] (A/Iqnâ‘): A trivial amount of madhy is not excused.

[I.1.18] The similarity is in the exemption of trivial amounts only, but he did not mean that blood may be cleaned off by simple sprinkling, for according to (A), blood is generally impure. However, there is a view (a) that human blood—excluding menstrual blood—is pure.

Exemption of Trivial Amounts of Filth

(A): Only blood, pus, and serosanguinous discharges (which contain both blood and serum). All four madh-habs agree on the exemption of trivial amounts of these.

(a) + (H, t): All types of najâsah are exempt in trivial amounts.

[Human Semen and Urine of Livestock are Pure]

The semen of a human and the urine of the animals whose flesh can be eaten are all pure. [I.1.19]	وَمَنِيُّ الآدَمِيِّ، وبَوْلُ ما يُؤكَلُ لَحمُهُ طاهِرٌ.

[I.1.19] This is the position of the majority on both issues. In fact, all excrement of animals whose flesh can be eaten is pure. (A) + (+h, +M, +s)

Summary of the madh-hab from (SM):

In addition to humans, all living animals of a size equal to or smaller than a cat are pure, and all animals permissible to eat are pure as well. The rest of the animals are impure, meaning that their sweat and saliva are also impure.

All dead animals are impure except: humans, fish, locusts, and those that are bloodless.

Given the above, if a mouse falls in some oil and comes out alive, the oil remains pure. If the mouse dies, it renders the oil impure.

All urine and feces are impure except those of animals that can be eaten.

Blood is generally impure, and pus and serosanguinous discharges have the same ruling.

Khamr (an alcoholic beverage) is impure.

Any najâsah that is transformed into some other substance continues to be impure, except for 1) wine that turns into vinegar by itself, and 2) a clot that turns into a pure animal inside the womb.

All impurities must be washed seven times (and if it is an impurity from a dog or a pig, one of those washings must be with soil or soap). There are two exceptions:

1. For the land and what is connected to it, such as walls and big basins, the filth can be removed by pouring abundant water once.

2. The urine of a male infant who did not desirously eat food.

The taste of the impurity must be eliminated. A trace of its color and/or smell that remains after adequate washing is exempt.

These impurities are exempt:

1. The residual trace left at the outlet after proper cleansing by wiping is excused. A small amount of urine caused by incontinence is also excused when adequate precautions have been taken to contain it. [Similar exemptions are recognized by (M) and (S), with differences in their conditions and scope. For (H): Trivial amounts of any impurities are always exempt.]

2. Small non-repugnant amounts of blood, pus, and serosanguinous discharges (from humans and pure animals). “In things other than a liquid or food, a small amount of blood that does not invalidate wuḍoo’ is excused—even menstrual, postpartum, and istiḥâḍah blood—as well as pus and purulent discharge, even if it came from someone other than the one praying; not [excused] if it is from a ritually impure animal or from one of the private passages.”

[I.2] Chapter on Vessels and Utensils

بَابُ الآنِيَــةِ

[Forbidden Utensils]

It is not lawful to use gold and silver vessels [I.2.1] for purification or otherwise. [I.2.2] This is based on the statement of the Messenger of Allah (SA), "Do not drink from gold or silver vessels, and do not eat from dishes made of them, for they are for them [the unbelievers] in this life and for you in the hereafter." [Ag.]	لَا يَجُوْزُ اسْتِعْمَالُ آنِيَةِ الذَّهَبِ وَالْفِضَّةِ، فِيْ طَهَارَةٍ وَلَا غَيْرِهَا ، لما رَوَى حُذَيْفَةُ أن النبي ﷺقال: «لَا تَشْرَبُوا فِي آنِيَةِ الذَّهَبِ وَالْفِضَّةِ، وَلَا تَأْكُلُوا فِي صِحَافِهَا فَإِنَّهَا لَهُمْ فِي الدُّنْيَا وَلَكُمْ فِي الْآخِرَةِ.»

[I.2.1] Other Uses of Gold and Silver Utensils

Their use as utensils for eating or drinking is prohibited by consensus.

(Z) allowed other uses.

(A) and the vast majority prevented all uses, and their position is stronger. Any use would still break the hearts of the poor, and it could cause a shortage of the precious metals they use as currency.

(A/SM): Their mere possession is forbidden. The principle here is that if something is impermissible to use, it is impermissible to have in that impermissible form, such as musical instruments.

Other Tools of Gold and Silver

(A/SM): It is impermissible to use other tools and items of gold and silver, such as ink pots, combs, chairs, etc.

[I.2.2] For example, for eating or storing makeup.

The ruling of vessels soldered [I.2.3] with them [gold or silver] is the same, unless it is with a small amount of silver solder.	وَحُكْمُ الْمُضَبَّبِ بِهِمَا حُكْمُهُمَا، إِلَّا أَنْ تَكُوْنَ الضَّبَّةُ يَسِيْرَةً مِنَ الْفِضَّةِ.

[I.2.3] Gold and Silver Plating

The relied-upon Ḥanbali position also prohibits gold or silver plating. An alternative view permits an insubstantial coating from which no amount of the metal would be recovered by scraping.

(t): Gold or silver plating of ceilings is impermissible.

[Permissible Vessels and Those of the People of the Book]

It is permissible to use all [other] pure vessels and to possess them, [I.2.4] and to use the vessels [and utensils] of the People of the Book and their clothes, unless they are known to be impure. [I.2.5]	وَيَجُوْزُ اسْتِعْمَالُ سَائِرِ الآنِيَةِ الطَّاهِرَةِ وَاتِّخَاذُهَا، وَاسْتِعْمَالُ أَوَانِي أَهْلِ الْكِتَابِ وَثِيَابِهِمْ مَا لَمْ تُعْلَمْ نَجَاسَتُهَا.

[I.2.4] Even if they are more expensive than silver and gold.

[I.2.5] Utensils of the People of the Book

((A/SM): The ruling applies to all non-Muslims.)

If the utensils are new, or you are certain of their purity, you may use them, by agreement.

If you are certain of their impurity, you may not use them before washing, by agreement.

If you are unsure,

(A) + (H, M, s): You assume their purity, and you do not need to investigate it or wash the utensils before using them.

📖 The Messenger of Allah (SA) ate the food of the People of the Book without asking them about the status of their utensils. His Companions also drank from the water-skin of a pagan woman after he made its water abundant for them. (B)

As for the saying of the Messenger of Allah (SA) regarding them:

«فَلَا تَأْكُلُوا فِي آنِيَتِهِمْ إِلَّا أَنْ لَا تَجِدُوا بُدًّا، فَإِنْ لَمْ تَجِدُوا بُدًّا فَاغْسِلُوهَا وَكُلُوا.»

"Do not eat from them unless you do not find others, then wash them and eat from them." (Ag – from Abu Tha'labah al-Khushani)

The command to wash them is for preference or in the case where one becomes certain there was najâsah in them. What supports the second possibility is that in some of the narrations of the hadith, the Zoroastrians were mentioned with the People of the Book. Also, in the narration of Abu Dâwood, Abu Tha'labah told the Prophet (SA) that the People of the Book cooked pork in their pots and put wine in their vessels.

(a) + (S): Using them before washing is disliked, unless he is certain of their impurity.

[Pure and Impure Parts of Dead Animals]

The wool and hair of dead animals [I.2.6] is pure. [I.2.7]	وَصُوْفُ الْمَيْتَةِ وَشَعَرُهَا طَاهِرٌ.

[I.2.6] This refers to animals that have not been slaughtered or to those that are impermissible to eat, even if they have been slaughtered.

All parts of slaughtered animals that are permissible to eat are pure.

(A/SM): The wool and hair of dead animals is pure if they were pure while alive, i.e., the animals permissible to eat as well as those the size of a cat or smaller.

[I.2.7] Pigs' Hair

The majority (A) + (+H, +S) considered the hair of pigs to be impure but allowed its use in making thread. (A/SM: Only to be used when dry, and this would still be disliked.)

(a) + (-M, -t): Pure. (The feathers of all birds are also pure, like hair.)

The skin of any non-slaughtered dead animal, whether it has been tanned or not, is impure [najâsah], [I.2.8] and so are their bones. [I.2.9]	وَكُلُّ جِلْدِ مَيْتَةٍ دُبِغَ أَوْ لَمْ يُدْبَغْ فَهُوَ نَجِسٌ، وَكَذٰلِكَ عِظَامُهَا.

[I.2.8] Skin

(A/SM): Only for those animals that are permissible to eat (if they died) and those the size of a cat or smaller, their skin becomes permissible to use upon tanning. It does not become pure, though, so they would allow its use in dry, not wet uses.

The majority of scholars (a) + (-H, -S, -Z) consider the skin pure after tanning:

(-H): Except for pigs.

(-S): Except for dogs and pigs.

(-Z): Including dogs and pigs.

Pigskin

Even though the consensus has been reported on the filthiness of pigs in their entirety, some of the scholars deem the skin pure after tanning; they include Ibn Ḥazm, (Z), Muhammad ibn al-Ḥakam and Abu Yoosuf. It is certainly the opinion of the majority that it is impure, and it is safer for one's religious commitment to completely avoid it.

In the case of necessity, such as the need to have a heart valve replacement using a part of a pig, it is agreed that there is no harm, particularly when there are no alternatives.

[I.2.9] Bones of Dead Animals

The scholars are split regarding the purity of these **bones**.

(A) + (+M, +S): Impure.

(A/SM): in addition to the bones, also milk, secretions, enzymes, teeth, horns, nails, etc. All parts of dead animals are impure except wool, hair, and feathers of those permissible to eat (if they died) or those in the size of a cat or smaller.

(a) + (-H, -t): Pure. They argued that many of the righteous predecessors used ivory and allowed its trade. Ivory comes from the tusks, or upper incisors, of elephants. Teeth and bones should take the same ruling, and the same would apply to horns and claws.

Enzymes of Dead Animals and Pigs

(a) + (-H, -t): The enzymes of dead animals are pure.

(t), "As for the cheese that is made with their [the heretic baṭiniyah's] enzymes, there are two famous positions of the scholars regarding it, like the rest of the enzymes of dead animals and of the animals slaughtered by the Zoroastrians and those slaughtered by the Franks about whom it was said that they do not slaughter their livestock: The madh-hab of Abu Ḥaneefah and Aḥmad (in one report) is that this cheese is permissible; according to this position, the enzymes are pure because they do not die with the death of the cattle [being just a liquid, not flesh], and their touching of the impure vessel [the organ containing them] does not render them impure. The madh-hab of Mâlik, ash-Shâfi'i and Aḥmad (in a different report) is that this cheese is impure because they consider the milk and enzymes of all dead animals impure. As for those whose slaughtering is invalid, their slaughtered animals are considered dead. Each of the two groups cited reports from the Companions; those holding the first opinion cited reports that the Companions ate from the cheese of the Zoroastrians, while those holding the second opinion cited that they ate what they thought to be the cheese of the Christians. This is a matter of (excusable) juristic reasoning (ijtihâd); it is for the muqallid (follower) to follow whoever upholds either one of the two positions." (*Majmoo' al-Fatâwâ*, 35:154).

(t) supported the first position, in *Majmoo' al-Fatâwâ,* 21:102.

The following legal maxim may also be added to the argument of permitting the consumption of cheese regardless of the origin of enzymes:

«***اليَسيرُ يُعْفَى عَنْهُ***»

Trivial things are exempt

Although the enzymes of dead pigs are forbidden in the four madh-habs, there are statements from the scholars indicating that in the case of uncertainty, one does not need to investigate; he or she should cast the doubt away and presume the permissibility of non-meat items such as cheese and ghee by default. The Messenger of Allah (SA) was asked about the cheese, ghee, and he said:

« الْحَلَالُ مَا أَحَلَّ اللَّهُ فِي كِتَابِهِ وَالْحَرَامُ مَا حَرَّمَ اللَّهُ فِي كِتَابِهِ وَمَا سَكَتَ عَنْهُ فَهُوَ مِمَّا عَفَا عَنْهُ »

"What is lawful is that which Allah has permitted in His Book, and what is unlawful is that which Allah has forbidden in His Book. What He was silent about is what is pardoned."

(Ibn Mâjah from Salmân) Some muḥaddithoon trace it reliably to the Prophet (SA), while others say it can only be reliably traced to Salmân. Nonetheless, it is at least the statement of a Companion. The question was certainly not about the cheese of Muslims; in fact, we know that Salmân's report refers to that of the Zoroastrians.

The point here is that, unlike in the case of meat, where the majority required verification, doubt concerning those non-meat items is to be cast away. 'Umar (RA) was also asked about the cheese made with enzymes from dead animals, and he said:

«سَمُّوا عَلَيه وكُلُوه»

"Say bismillâh and eat it."

This was reported authentically by Ibn Abi Shaybah from 'Amr ibn Shuraḥbeel. Notice that he did not ask about the nature of those dead animals, even though it was not uncommon to extract enzymes from pigs, and the Zoroastrians did not believe in the prohibition of pork. When Imam

Aḥmad was asked about the cheese of the Zoroastrians, he said, “I do not know,” and quoted the above statement of ‘Umar as the most authentic report in this regard. This is why the permissibility of eating all cheeses made by the Zoroastrians and all non-Muslims is clearly stated in *al-Iqnâ‘* and *Ghâyat al-Muntahâ* (A). In *al-Mabsooṭ*, by as-Sarakhsi al-Ḥanafi, it is said that the cheese of the Zoroastrians is permissible to eat.

Mâlik was asked specifically about the enzymes of pork and said:

«قد قيل: إنَّهم يَجعَلون فيه أنفحة الخِنزير وهم نَصارَى، ومَا أُحِب أن أحَرِّم حَلالًا، وأما أن يَتَّقِيَه رَجُلٌ في خَاصَّة نَفسِه فلا أرى بذلك بأسًا.»

“…I heard that they make it with the enzymes of pigs, and they are Christians, and I don’t like to make prohibited that which is halal; as for some man avoiding it of his own choosing, I see no harm in that.” [*al-Bayân* and *at-Taḥṣeel* by Ibn Rushd (the grandfather)]

Ibn Ḥajar al-Haytami ash-Shâfi‘i said in *Tuḥfat al-Muḥtâj*:

«وَكَذَا يُقَالُ فِي نَظَائِرِ ذَلِكَ كَالْجُبْنِ الشَّامِيِّ الْمُشْتَهِرِ عَمَلُهُ بِإِنْفَحَةِ الْخِنْزِيرِ، وَقَدْ جَاءَهُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ جُبْنَةٌ مِنْ عِنْدِهِمْ فَأَكَلَ مِنْهَا وَلَمْ يَسْأَلْ عَنْ ذَلِكَ»

“Likewise, it would be said about the Levantine cheese known to be made of the enzymes of pigs, and cheese was brought to him (SA) and he ate it and did not inquire about that.” Even though we cannot trace this hadith back to the Prophet (SA), the point here is the statement of this eminent Shâfi‘i scholar to corroborate what is transmitted from Mâlik above.

Based on those reports from the different madh-habs, one may eat cheese and other non-meat items without investigating the source of the enzymes used.

Every dead body is filthy except that of a human and an aquatic creature that lives only in water, due to the statement of the Messenger of Allah (SA) regarding the sea, “Its water is pure, and its dead [animals] are permissible (to eat),” [T,D,N,Ma,A. A:S] and creatures without flowing blood, as	وَكُلُّ مَيْتَةٍ نَجِسَةٌ إِلَّا الآدَمِيَّ وَحَيَوَانَ الْمَاءِ الذي لا يَعِيشُ إلا فيه، لقول رسول الله ﷺ في البَحْرِ:«هُوَ الطَّهُورُ مَاؤُهُ الْحِلُّ مَيْتَتُهُ.» وَمَا لَا نَفْسَ لَهُ سَائِلَةً إِذَا لَمْ

long as it did not emanate from impurities. **[I.2.10]**	يَكُنْ مُتَوَلِّدًا مِنَ النَّجَاسَاتِ.

[I.2.10] Such as worms emanating from dead creatures or feces.

[I.3] Chapter on Using the Lavatory

بَابُ قَضَاءِ الْحَاجَةِ

[What to Say and Do When Entering the Lavatory]

It is recommended for the one who enters the lavatory to say, “In the name of Allah[I.3.1] — I seek refuge with Allah from malice and all that is malicious (or the male and female demons), [Ag] --- and from the cursed, filthy Satan.” [I.3.2]	يُسْتَحَبُّ لِمَنْ أَرَادَ دُخُوْلَ الْخَلَاءِ أَنْ يَقُوْلَ: «بسم الله، أَعُوذُ بِاللَّهِ مِنَ الْخُبُثِ وَالْخَبَائِثِ، ومِن الرِّجْسِ النَّجِسِ الشَّيْطَانِ الرَّجِيمِ.»

[I.3.1] (Ma; al-Albâni: S)

[I.3.2] (Ma; Nawawi in al-Khulâṣah: W) A similar hadith with different wording was deemed reliable by Ibn Ḥajar in Natâ’ij al-Afkâr.

When he exits, he should say, “Ghufrânak (I seek your forgiveness). All praise be to Allah, Who has rid me of harm and given me health.” [I.3.3]	وَإِذَا خَرَجَ قَالَ: «غُفْرَانَكَ، الْحَمْدُ لِلَّهِ الَّذِي أَذْهَبَ عَنِّي الْأَذَى وَعَافَانِي.»

[I.3.3] “Ghufrânak (O Allah, I seek your forgiveness).” is reported by (D, T, Ma). The rest: (Ma; al-Albâni: W).

He should enter with the left foot and exit with the right foot.	وَيُقَدِّمُ رِجْلَهُ الْيُسْرَى فِيْ الدُّخُوْلِ وَالْيُمْنَى فِي الْخُرُوْجِ.

He should not enter with anything bearing the mention of Allah unless there is a need. [I.3.4]	وَلَا يَدْخُلُهُ بِشَيْءٍ فِيْهِ اسْمُ اللهِ تَعَالَى إِلَّا مِنْ حَاجَةٍ.

[I.3.4] Entering the Lavatory with Inscriptions of Allah’s Names

(A/SM: makrooh; as for the *muṣ-ḥaf* [copy of the Arabic text of the Qur'an that is neither accompanied by commentary nor translated], some said it was haram.)

Although there is no specific authentic evidence, this falls under the general meaning of:

...{ وَمَن يُعَظِّمْ شَعَائِرَ اللَّهِ فَإِنَّهَا مِن تَقْوَى الْقُلُوبِ}

{...And whosoever honors the sacraments of Allah (rituals of His religion), then it is truly from the piety of the hearts.} (al-Ḥajj 22:32)

Exception for Need

The phrase *"unless there is a need"* indicates an exception: when avoiding this is difficult or impractical, such as when a person is in public spaces and must keep their belongings with them, it becomes permissible to enter while carrying such items as long as proper protection is taken, like placing them inside a bag, pocket, or cover.

Speaking in the Lavatory and Mentioning the Name of Allah

(A/SM; all speech is makrooh, and so is *dhikr*, except what is mentioned upon entering/removing the clothes; some considered the recitation of the Quran haram.)
It was reported that the Messenger of Allah (SA) said:

«لا يخرُجِ الرَّجلانِ يضربانِ الغائطَ كاشفَينِ عن عورتِهما يتحدَّثانِ فإنَّ اللَّهَ يمقتُ على ذلِك.»

"Two men should not go out to relieve themselves, showing their nakedness, and speaking to one another, for Allah hates that." (D – from Abu Sa'eed al-Khudri with controversial chain; Ibn al-Mulaqqin and al-Albâni: Auth)

If the hadith is authentic, its implication may not be totally clear because of the mention of uncovering the nakedness, which may be the cause of Allah's wrath.

📖 Ibn 'Umar (*raḍiya Allâhu 'anhumâ* – may Allah be pleased with both of them) said, "A man passed by the Prophet (SA) and greeted him while he was urinating. The Prophet (SA) did not return his greeting." (M) and al-Muhâjir ibn Qunfudh (RA) said that he went to the Prophet (SA) while he was urinating and greeted him with *salâm*. The Prophet (SA) did not return the greeting until he had performed ablution; then he said:

«كَرِهْتُ أن أذكُرَ الله إلا على طَهَارَة.»

📖 *"I did not like to mention the name of Allah except in a state of purity." (D, N, Ma; Ma: S)*

However, 'Â'ishah said:

«كان النبي ﷺ يَذْكُرُ اللَّهَ على كل أَحْيَانِهِ»

"The Prophet (SA) used to mention Allah at all times." (M – from 'Â'ishah)

According to the majority, the hadith of 'Â'ishah (RAH) means to remember Allah (ST) in one's heart while in such a state where mentioning His name out loud would be disliked; this is sanctioned by consensus, for the heart should never forget Him.

It is permissible, however, to speak if there is a need, such as alerting a blind man to prevent him from tripping or warning someone of danger (A/SM) – comforting a child who is looking for his or her parent, etc.

[Etiquette of Defecation and Urination]

When one squats, he should put more of his weight on his left leg. [I.3.5]	وَيَعْتَمِدُ فِيْ جُلُوْسِهِ عَلَى رِجْلِهِ الْيُسْرَى.

[I.3.5] There is no evidence to support this practice, except a weak hadith reported in (Ṭab.K). The medical benefits mentioned by the scholars (may Allah bestow mercy on them) may or may not be accurate, since they depended on the information available to them. If this position is medically proven to be superior, then it is recommended, since the Sharia is about attainment of benefits and avoidance of harm.

If he is outdoors, he should go far and screen himself. [I.3.6]	وَإِنْ كَانَ فِي الْفَضَاءِ، أَبْعَدَ وَاسْتَتَرَ.

[I.3.6] 🕮 Al-Mugheerah ibn Shu'bah (RA) said, "I was with the Messenger of Allah (SA), and when he wanted to use the latrine, he went far away and screened himself from me." (M)

He should seek a soft spot to urinate on [so that the urine does not spatter back on him]. [I.3.7]	وَيَرتَادُ لِبَولِهِ مَوْضِعًا رَخْوًا.

[I.3.7] 🕮 Ḥudhayfah ibn al-Yamân said, "The Prophet (SA) walked to the garbage dump of a people and urinated while standing." (Ag)

The garbage dump will be soft enough to not cause the urine to spatter back. The other benefit in this report is the permissibility of urinating while standing, if one does not fear spattering or exposure of his nakedness. (A/SM)

However, 'Â'ishah reported that she had never seen the Prophet (SA) urinate while standing. (T; al-Albâni:S)

This indicates that his predominant practice was to urinate while sitting.

In our times, sitting is generally preferable in most settings to better ensure cleanliness and prevent soiling. Nonetheless, urinating while standing remains permissible when warranted for reasons of cleanliness, such as in some public lavatories.

He must not urinate in a hole, groove, --- path, beneficial shade or under a fruit-bearing tree. [I.3.8]	وَلَا يَبُوْلُ فِيْ ثُقْبٍ وَلَا شَقٍّ، وَلَا طَرِيْقٍ وَلَا ظِلٍّ نَافِعٍ، وَلَا تَحْتَ شَجَرَةٍ مُثْمِرَةٍ.

[I.3.8] The Messenger of Allah (SA) said:

«اتَّقُوا الْمَلَاعِنَ الثلاث الْبَرَازَ في الْمَوَارِدِ وَقَارِعَةِ الطَّرِيقِ وَالظِّلِّ.»

"Avoid the three causes of curse: defecating in water sources, on the paths and in the shade." (D – from Mu'âdh; al-Albâni: R)

The prohibition of urinating in a hole or groove was reported by (D) from Qatâdah, but there is controversy over its authenticity. The scholars also mentioned the possibility of animals or insects being in those holes and grooves.

The prohibitive wording here encompasses both disliked and forbidden acts. In the relied-upon Ḥanbali position, urinating in a hole or fissure is disliked, whereas urinating on used paths, in beneficial shade, or under a tree currently bearing fruit that people benefit from is forbidden. (Kash-shâf al-Qinâ')

He should not face the sun or moon, [I.3.9] and he must not face or turn his back towards the *qibla* (the direction of the Kaaba) because the Messenger of Allah (SA) said, "Do not face the qibla while defecating or urinating, and do not turn your backs to it." [I.3.10] That would be permissible indoors. [I.3.11]	ولا يستقبل شمساً ولا قمراً، ولا يستقبل القبلة، ولا يستدبرها لقول رسول الله ﷺ:«لَا تَسْتَقْبِلُوا الْقِبْلَةَ بِغَائِطٍ وَلَا بَوْلٍ وَلَا تَسْتَدْبِرُوهَا.» ويجوز ذلك في البنيان.

[I.3.9] There is no evidence to support this practice except a very weak hadith.

[I.3.10] (Ag – from Abu Ayyoob)

[I.3.11] As indicated by 'Abdullâh ibn 'Umar (RAHUMA). (D; al-Albâni: R)

This is still a controversial matter within the madh-hab and among the madh-habs, so if there is a choice at the time of building, it is preferable to design the lavatories in a way that would not make one either face or turn their back to the qibla.

[Etiquette of Cleaning Oneself]

When the urine stops, he should 'milk' his penis from its root to the tip, and then shake it off three times. [I.3.12]	فَإِذَا انْقَطَعَ الْبَوْلُ مَسَحَ مِنْ أَصْلِ ذَكَرِهِ إِلَى رَأْسِهِ، ثُمَّ يَنْثُرُهُ ثَلَاثًا.

[I.3.12] There is no proof supporting either practice except a very weak hadith about the shaking of the penis. (t) argued that these practices may cause the urine to continue to dribble.

It may be acceptable for certain people who usually have remains of urine in the urethra, but not for all people. It is still incumbent on those people to avoid obsessiveness.

He should not touch his penis with the right hand, [I.3.13] --- or use it [his right hand] to wipe himself. [I.3.14]	وَلَا يَمَسُّ ذَكَرَهُ بِيَمِيْنِهِ، وَلَا يَتَمَسَّحُ بِهَا.

[I.3.13] That is because the Messenger of Allah (SA) said:

«لَا يُمْسِكَنَّ أحدكم ذَكَرَهُ بِيَمِينِهِ و هو يَبُولُ.»

"Let none of you touch his penis with the right hand while urinating." (Ag – from Abu Qatâdah)

[I.3.14] (A/SM: While wiping, he should not use his right hand to hold his penis or wipe, unless there is a need, in which case he may hold it with it while wiping with the left hand.)

He should wipe himself an odd number of times, [I.3.15] and wash himself with water after that. [I.3.16] If he chooses to only wipe, then it would suffice him. [I.3.17]	ثُمَّ يَسْتَجْمِرُ وِتْرًا، ثُمَّ يَسْتَنْجِيْ بِالْمَاءِ، فَإِنِ اقْتَصَرَ عَلَى الإِسْتِجْمَارِ أَجْزَأَهُ.

[I.3.15] Wiping an odd number of times is recommended but not mandatory, as long as one wipes at least three times and removes the filth. (A/SM) This is because Allah's Messenger (SA) said:

«إذا اسْتَجْمَرَ أحدكم فَلْيُوتِرْ --- مَن فعَلَ فقد أحسنَ، ومَن لا فلا حرجٌ»

"When anyone wipes himself with pebbles (after answering the call of nature), he should do it an odd number of times. (M – from Abu Hurayrah) --- Whoever does that has done well, and whoever does not, there is no harm in it." (A, D)

The latter part, which was not reported by Muslim, is controversial, prompting some scholars to consider the odd number of wipes mandatory.

[I.3.16] The Prophet (SA) used to wash with water. (T, A, N – from 'Â'ishah; T: S)

[I.3.17] That is because of the hadith of Salmân (RA) mentioned below.

Wiping would suffice only if the filth that exited did not go beyond the area that it usually touches. [I.3.18]	وَإِنَّمَا يُجْزِئُ الإِسْتِجْمَارُ إِذَا لَمْ تَتَعَدَّ النَّجَاسَةُ مَوْضِعَ الْحَاجَةِ.

[I.3.18] If it did, he or she would need to remove the filth with water.

Fewer than three wipes that remove all of the filth will not be sufficient. [I.3.19]	وَلَا يُجْزِئُ أَقَلُّ مِنْ ثَلَاثِ مَسَحَاتٍ مُنَقِّيَةٍ.

[I.3.19] Because Allah's Messenger (SA) said:

«لَا يَسْتَنْجِي أَحَدُكُم بِدُونِ ثَلَاثَةِ أَحْجَارٍ.»

"Let none of you purify himself with fewer than three stones." (M – from Salmân)

Any pure substance that could remove the filth may be used for wiping, --- except for the excrement of animals, bones and sacred or respected material. [I.3.20]	وَيَجُوْزُ الإِسْتِجْمَارُ بِكُلِّ طَاهِرٍ يُنْقِي الْمَحَلَّ، إِلَّا الرَّوْثَ وَالْعِظَامَ، وَمَا لَهُ حُرْمَةٌ.

[I.3.20] Such as food, or papers that mention the name of Allah and/or verses of the Qur'an. 🕮 This is because Salmân (RA) reported that it was said to him, "Your Messenger (SA) teaches you about everything, even about

excreting?" He replied, "Yes, **he has forbidden us to face the qibla at the time of excretion or urination, or to cleanse with the right hand, or with fewer than three pebbles, or with dung or bone."** (M)

What matters is the effective removal of the filth with at least three wipes, or more if needed, with a pure substance that is not forbidden to use for this purpose. (A/SM)

🕒 Hence, the use of tissues with or without water is acceptable. The use of water after wiping is best, then the use of water alone, and finally wiping alone. (A/SM)

[I.4] Chapter on *Wuḍoo'* (Minor Ablution)

بَابُ الْوُضُوْءِ

[Necessity of Intention]

Wuḍoo'[I.4.1] and other acts of worship are not valid unless one makes the intention, because the Messenger of Allah (SA) said, "Verily, deeds are judged by the intentions [behind them], and verily every person will have [the reward of] what he intended." [Ag]	لَا يَصِحُّ الْوُضُوْءُ، وَلَا غَيْرُهُ مِنَ الْعِبَادَاتِ، إِلَّا أَنْ يَنْوِيَهُ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «إِنَّمَا الأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى.»

[I.4.1] The Definition of Wuḍoo' and the Reward for It

It is the prescribed washing and wiping of certain parts of the body to achieve ritual purity. Linguistically, it means radiance and beauty, for it causes the one who performs it to have spiritual beauty in this life, and both spiritual and physical beauty in the hereafter. The reward for wuḍoo' is great. Allah's Messenger (SA) said:

«إِذَا تَوَضَّأَ الْعَبْدُ الْمُسلِمِ فَتَمَضْمَضَ ، خَرَجَتِ الْخَطَايَا مِنْ فِيهِ ، فَإِذَا اسْتَنْثَرَ خَرَجَتِ الْخَطَايَا مِنْ أَنْفِهِ ، فَإِذَا غَسَلَ وَجْهَهُ خَرَجَتِ الْخَطَايَا مِنْ وَجْهِهِ ، حَتَّى تَخْرُجَ مِنْ تَحْتِ أَشْفَارِ عَيْنَيْهِ ، فَإِذَا غَسَلَ يَدَيْهِ خَرَجَتِ الْخَطَايَا مِنْ يَدَيْهِ ، حَتَّى تَخْرُجَ مِنْ تَحْتِ أَظافِره ، فَإِذَا مَسَحَ رَأْسَهُ خَرَجَتِ الْخَطَايَا مِنْ رَأْسِهِ حَتَّى تَخْرُجَ مِنْ أُذُنَيْهِ ، فَإِذَا غَسَلَ رِجْلَيْهِ خَرَجَتِ الْخَطَايَا مِنْ رِجْلَيْهِ ، حَتَّى تَخْرُجَ مِنْ تَحْتِ أَظْفَار رِجْلَيْهِ ، ثُمَّ كَانَ مَشْيُهُ إِلَى الْمَسْجِدِ وَصَلَاتُهُ نَافِلَةً لَهُ .»

"When a Muslim servant of God makes ablution and rinses his mouth, his wrong deeds [committed by the mouth] fall from it. As he rinses his nose, his wrong deeds fall from it. When he washes his face, his wrong deeds fall from it until they fall from beneath his eyelashes. When he washes his hands, his wrong deeds fall from them until they fall from beneath his fingernails. When he wipes his head, his wrong deeds fall from it until they fall from beneath his ears. When he washes his feet, his wrong deeds fall

from them until they fall from beneath his toenails. Then his walking to the mosque and his prayer will earn him extra rewards." (Ma – from aṣ-Ṣunâbiḥi; al-Albâni: S)

When is Wuḍoo' Required?

(A/SM): Wuḍoo' is required before one can pray (including the funeral prayer and the prostrations of recitation and gratitude), make ṭawâf, or touch the muṣ-ḥaf with one's bare hands.

[Description of *Wuḍoo'*]

Then he says *Bismillâh* (In the name of Allah)	ثُمَّ يَقُوْلُ: بِسْمِ اللهِ

and washes his hands three times. [I.4.2]	وَيَغْسِلُ كَفَّيْهِ ثَلَاثًا

[I.4.2] The most comprehensive hadith on the acts of wuḍoo' is a report in which 'Uthmân ibn 'Affân (RA) demonstrated the wuḍoo' of the Prophet (SA). He washed his hands three times, rinsed his mouth and nostrils, and then washed his face three times. Then he washed his right forearm up to the elbow three times and then the left likewise, and then wiped his head and washed his right foot to the ankle three times and then the left likewise. He then said, "I have seen the Messenger of Allah (SA) make wuḍoo' in a manner similar to mine." (Ag – from 'Uthmân ibn 'Affân)

Then he rinses his mouth and nostrils [I.4.3] three times, combining [I.4.4] both with one handful of water or three.	ثُمَّ يَتَمَضْمَضُ وَيَسْتَنْشِقُ ثَلَاثًا يَجْمَعُ بَيْنَهُمَا بِغَرْفَةٍ أَوْ ثَلَاثٍ.

[I.4.3] Frequent rinsing of the mouth provides known health benefits for the teeth and oral hygiene. As for the nose, one of the scientific studies proving the benefit of nasal irrigation concluded, "It has an enormous potential of improving the quality of life of millions of patients in a very cost-effective way." L. Tomooka et al., "Clinical Study and Literature Review of Nasal Irrigation," *The Laryngoscope* (2000).

The benefits are also described in M. Taccariello, A. Parikh, Y. Darby, G. Scadding, "Nasal Douching as a Valuable Adjunct in the Management of Chronic Rhinosinusitis", *Rhinology*, 1999 Mar; 37(1): 29-32.

[I.4.4] Rinsing both parts one after the other, from one handful of water; this appears to be the way the Prophet (SA) rinsed his mouth and nostrils, based on the following hadith:

> *'Ali (RA) once called for water for ablution, rinsed his mouth, sniffed up water into his nostrils, and blew it out with his left hand. He did that three times and then said, "That is how the Prophet (SA) would purify himself." (A; A: S)*

You use your right hand to bring the water to your mouth and nostrils, and then the left hand as you expel the water.

Of note here is that, by agreement, it is acceptable to separate the rinsing of the mouth from the rinsing of the nose, particularly for those who cannot master combining them.

Then he washes his face three times from the hairline down to the bottom of the jaws and chin, and from one ear across to the other ear; and he runs his wet fingers through his beard if it is abundant, [I.4.5] but if it is showing the skin underneath, he should wash it.	ثُمَّ يَغْسِلُ وَجْهَهُ ثَلَاثًا، مِنْ مَنَابِتِ شَعَرِ الرَّأْسِ إِلَى مَا انْحَدَرَ مِنَ اللَّحْيَيْنِ وَالذَّقَنِ طولاً، ومن الأذن إلى الأذن عرضاً، وَيُخَلِّلُ لِحْيَتَهُ إِنْ كَانَتْ كَثِيْفَةً، وَإِنْ كَانَتْ تَصِفُ الْبَشَرَةَ لَزِمَهُ غَسْلُهَا.

[I.4.5] He must also wash the exterior of his beard, including what extends beyond the face, along with the rest of his face, and that is by running water over it while he is washing his face. (A)

Then he washes his hands (and forearms) up to the elbows three times, including the elbows in the washing.	ثُمَّ يَغْسِلُ يَدَيْهِ إِلَى الْمِرْفَقَيْنِ ثَلَاثًا، وَيُدْخِلُهُمَا فِي الْغَسْلِ.

Then he wipes his head, including the ears, starting with his hands at the forelock and wiping to the nape of the neck and back to the forelock.	ثُمَّ يَمْسَحُ رَأْسَهُ مَعَ الأُذُنَيْنِ، يَبْدَأُ بِيَدَيْهِ مِنْ مُقَدَّمِهِ، ثُمَّ يُمِرُّهُمَا إِلَى قَفَاهُ، ثُمَّ يَرُدُّهُمَا إِلَى مُقَدَّمِهِ.

Then he washes his feet to the ankles three times, including the ankles in washing, and he washes the inner parts of his toes.	ثُمَّ يَغْسِلُ رِجْلَيْهِ إِلَى الْكَعْبَيْنِ ثَلَاثًا، وَيُدْخِلُهُمَا فِيْ الْغَسْلِ، وَيُخَلِّلُ أَصَابِعَهُمَا.

Then he looks to the heavens [I.4.6] and says: *Ash-hadu al-lâ ilâha illâ Allâhu waḥdahu lâ shareeka lahu wa ash-hadu anna Muḥammadan ‘abduhu wa rasooluh* (I bear witness that there is none worthy of worship other than Allah, One without partner, and I bear witness that Muhammad is His servant and Messenger). [I.4.7]	ثُمَّ يَرْفَعُ نَظَرَهُ إِلَى السَّمَاءِ، فَيَقُوْلُ: «أَشْهَدُ أَنْ لَا إِلٰهَ إِلَّا اللهُ وَحْدَهُ لَا شَرِيْكَ لَهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُوْلُهُ.»

[I.4.6] Raising one’s sight to the heavens has not been authentically reported from the Prophet (SA), but saying the shahâdah (Islamic testimony of faith) was.

[I.4.7] The Prophet (SA) gave glad tidings to those who perfect their wuḍoo’ and then make this statement. He said that they will have the eight gates of paradise opened for them, to enter through whichever one they please. (M)

[Mandatory Actions]

Among these acts, the mandatory ones [I.4.8] are:	وَالْوَاجِبُ مِنْ ذٰلِكَ:

[I.4.8] There is usually no distinction between farḍ and wâjib in the three madh-habs (M, S, A). In (A), farḍ is another word for rukn (pillar) in certain acts of worship (ṣalât, Hajj, and wuḍoo'). The acts mentioned here are called farḍ فَرْض by most books of the madh-hab, so as to distinguish between them and the mandatory acts that are waived (or dropped) if anyone forgets to do them.

Of the acts in this list, the only one not considered farḍ is the intention, which is considered a condition of validity شَرْطُ صِحَّة (A/SM); since it precedes the act of wuḍoo', it is not considered to be part of it. The other conditions of validity include Islam, discretion, *istinjâ'* (cleaning oneself after using the lavatory), removal of barriers such as (t: significant amount of) blood or dough on the wuḍoo' organs, and using pure water that is wholesomely acquired.

Leaving out any act in this list invalidates the wuḍoo', because the conditions of validity and the pillars are required for the validity of an act of worship.

According to (A), the only required acts of wuḍoo' that may be called wâjib (because they are waived if anyone forgets to do them) are: saying bismillâh and wiping the ears. Note that these two are mandatory according to the authorized position of the madh-hab (A/SM), even though they are not on this list because in this book, Imam Ibn Qudâmah (may Allah have mercy on him) counts them among the sunan (recommended acts), which will be listed below.

1. The intention 2. Washing each part once,[I.4.9] except for the hands. [I.4.10]	1. النِّيَّةُ 2. وَالْغَسْلُ مَرَّةً مَرَّةً، مَا خَلَا الْكَفَّيْنِ

[I.4.9] Rinsing the Mouth and Nostrils

(a/Furoo‘) + (-H, -M, -S): The rinsing of the mouth and nostrils is preferable but not mandatory.
(A): It is mandatory because the Prophet (SA) said:

«إِذَا تَوَضَّأْتَ فَمَضْمِضْ .»

“When you perform ablution, rinse your mouth.” (D – from Laqeeṭ ibn Ṣabirah; al-Albâni: S)
The Prophet (SA) also said:

«مَنْ تَوَضَّأَ فَلْيَسْتَنْثِرْ .»

“When one of you performs ablution, he should sniff water up his nostrils and then blow it out.” (Ag – from Abu Hurayrah)

The Ḥanbalis then differed over the validity of the wuḍoo’ of one who intentionally (or even absent-mindedly) does not rinse the mouth and nostrils. Some (A) said that it is invalid, while others (a) said that it is valid, but that the person commits a sin.

[I.4.10] This exception concerns washing the hands at the beginning of wuḍoo’, which is ordinarily recommended. The hands must still be washed with the forearms after the face. Washing the hands three times becomes obligatory upon rising from nighttime sleep that nullifies wuḍoo’ (A/SM).

3. Wiping over the entire head once [I.4.11]	3. وَمَسْحُ الرَّأْسِ كُلِّهِ

[I.4.11] Wiping over the Entire Head

Imam Ibn Qudâmah (may Allah have mercy on him) emphasized wiping the entirety of the head because in other schools of fiqh, wiping over part of the head is sufficient.

The sunnah is to wipe in both directions, first from the front to the back and then from the back to the front. (G – from ‘Abdullâh ibn Zayd).

One may fix his or her hair afterwards if it has become messy.

4. Doing all this in the sequence we mentioned [I.4.12]	4. وَتَرْتِيْبُ الْوُضُوْءِ عَلَى مَا ذَكَرْنَا

[I.4.12] Respecting the Order

This is because of the following verse of the Qur'an:

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ}

{O you who believe! When you intend to offer ṣalâh (the prayer), wash your faces and your hands (forearms) up to the elbows, and rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles…} (al-Mâ'idah 5:6)

Allah (ST) decreed the obligations in a specific order. He separated the legs from the hands, though both have to be washed, by mentioning the wiping on the head between them. That must have been for some benefit, and that is to indicate the importance of the order. Of note here also is that the Prophet (SA) never violated the sequence of those four pillars of wuḍoo' mentioned in Soorat (Chapter) al-Mâ'idah.

5. He should not delay the washing of any part such that the part prior to it becomes dry	5. ولا يُؤَخِّرَ غَسْلَ عُضْوٍ حَتَّى يَنْشَفَ الَّذِيْ قَبْلَهُ

[Recommended (*Sunnah*) Acts]

The *sunnah* (preferable) acts are: 1. Mentioning the name of Allah [I.4.13]	وَالْمَسْنُوْنُ: . التَّسْمِيَةُ.

[I.4.13] Basmalah at the Beginning

(A/SM): Mandatory, because of the Prophet's statement:

«لَا وُضُوءَ لِمَنْ لم يذكر اسْمَ اللَّهِ عليه.»

"There is no (valid/perfect) wuḍoo' for the one who did not mention the name of Allah for it." (T – from Abu Hurayrah) and others, with controversy over its authenticity.

If one forgets to say bismillâh and remembers in the middle of their wuḍoo', they need to start anew (A/SM). According to (a/SM), they may make basmalah in the middle of their wuḍoo'.

If one forgets to say bismillâh until the end of the wuḍoo', they are forgiven.

(a) + (-H, -M, -S): Basmalah at the beginning of the wuḍoo' is recommended.

Whenever the Prophet (SA) negates something, it is either invalid or imperfect. Invalidity is assumed first until proven otherwise. In this case, those of the majority who believed in the soundness of the hadith cited by (A) claimed that the Prophet (SA) meant, "There is no (perfect) vs. (valid) wuḍoo'." Their proof is the following verse describing the wuḍoo':

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ}

{O you who believe! When you intend to offer ṣalâh [the prayer], wash your faces…} (al-Mâ'idah 5:6)

The Qur'an did not mention saying the name of Allah (ST), and none of the reports describing the wuḍoo' of the Prophet (SA) mentioned that he started by saying *Bismillâh*.

2. Washing the two hands [I.4.14]	وَ غَسْلُ الْكَفَّيْنِ. .

[I.4.14] This becomes mandatory when one rises from nighttime sleep that nullifies wuḍoo' (A/SM), since it was reported that the Prophet (SA) said:

«إذا اسْتَيْقَظَ أحدكم من مَنَامِهِ فَلَا يَغْمِسْ يَدَهُ في الإِنَاءِ حتى يَغْسِلَهَا ثَلَاثاً فإنه لَا يدري أَيْنَ بَاتَتْ يَدُهُ.»

"When one of you rises from his sleep, he should not put his hand into a pot until he has washed it (his hand) three times, for he does not know where his hand was (while he slept)." (G – from Abu Hurayrah)

3. Perfecting the rinsing of the mouth and nostrils by letting the water reach as far around and back as possible, unless one is fasting	. وَالْمُبَالَغَةُ فِي الْمَضْمَضَةِ وَالاِسْتِنْشَاقِ، إِلَّا أَنْ يَكُوْنَ صَائِمًا.

4. Running the wet fingers through the beard [I.4.15] and the inner parts of the fingers and toes [I.4.16]	. وَتَخْلِيْلُ اللِّحْيَةِ وَالأَصَابِعِ.

[I.4.15] The Messenger of Allah (SA) would run his fingers through his beard. (T – from 'Uthmân; T: S)

[I.4.16] As recommended by the Prophet (SA). (T; T: R)

5. Wiping the ears [I.4.17]	. وَمَسْحُ الأُذُنَيْنِ.

[I.4.17] Wiping the Ears

(A/SM): Mandatory, because the Prophet (SA) said:

«الأُذُنَانِ مِنَ الرَّأْسِ.»

"The ears are part of the head." (D and others – from Abu Umâmah)

However, they may be wiped with the rest of the head with the same water. (A/SM): It is recommended to wipe them with new water because it was mentioned that the Prophet (SA) did in a hadith reported and authenticated by al-Bayhaqi.

Despite being wâjib, failing to wipe the ears absentmindedly, or even intentionally, does not invalidate the wuḍoo', as reported from Imam

Aḥmad himself through al-Khallâl, and quoted in *al-Mughni* and other books of the madh-hab.

(a) + (-H, -M, -S): wiping the ears is only recommended.

Wiping the ears is prescribed, according to all.

6. Beginning with the right parts before the left [I.4.18]	. وَغَسْلُ الْمَيَامِنِ قَبْلَ الْمَيَاسِرِ.

[I.4.18] "The Messenger of Allah (SA) used to like starting with the right side when he put on his sandals and combed his hair, and when he performed ritual ablution [minor and major]." (Ag – from 'Â'ishah)

7. Washing three times;[I.4.19] more than that is disliked, and so is the waste of water. [I.4.20]	. وَالْغَسْلُ ثَلَاثًا ثَلَاثًا. وَتُكْرَهُ الزِّيَادَةُ عَلَيْهَا، وَالإِسْرَافُ فِي الْمَاءِ.

[I.4.19] Refer to the hadith of 'Uthmân (RA) regarding the description of the Prophet's wuḍoo'. However, he washed once at times and twice at other times, indicating that more than once is preferable.

[I.4.20] "The Prophet (SA) used to make ghusl (ritual bathing) with a ṣâ' [about 2 liters] of water and make wuḍoo' with one mudd [about one-half liter] of water." (Ag – from Anas)

Islam is a religion of moderation, and it protects the environment by forbidding excessiveness and extravagance, while at the same time allowing us to enjoy Allah's provisions. It should be noted, however, that perfecting the wuḍoo' is important, so if you need more water to do that, then you should use more, without being excessive.

[*Siwâk* - Oral Hygiene]

It is recommended to clean the teeth [I.4.21] when [the taste or odor of] the mouth has	وَيُسَنُّ السِّوَاكُ عِنْدَ تَغَيُّرِ الْفَمِ ، وَعِنْدَ الْقِيَامِ مِنَ النَّوْمِ،

changed, upon rising from sleep, and before prayers, because the Messenger of Allah (SA) said, “Had it not been too burdensome for my nation, I would have commanded them to clean their teeth before every prayer.” [Ag]	وَعِنْدَ الصَّلَاةِ ؛ لِقَوْلِ رَسُولِ اللهِ ﷺ: «لَوْلَا أَنْ أَشُقَّ عَلَى أُمَّتِي لأَمَرْتُهُمْ بِالسِّوَاكِ عِنْدَ كُلِّ صَلَاةٍ.»

[I.4.21] The *siwâk* that is recommended merely represents the act of cleaning the teeth, so the reward would be attained by using any soft stick that cleans the teeth without damaging them (A/SM) – like a toothbrush. The particular twig of the *arâk* tree, obtained from certain desert shrubs in Arabia, is not necessary, but it is what the Prophet (SA) used, and there are some reports of its medical benefits. Reasoned imitation of the Prophet (SA) in all acts, including his appearance and natural inclinations, shows one’s love for him. This love-inspired behavior is worthy of reward, even when it is not religiously prescribed.

It is recommended at all other times except for the fasting person after the sun has passed its zenith. [I.4.22]	وَيُسْتَحَبُّ فِيْ سَائِرِ الأَوْقَاتِ إِلَّا لِلصَّائِمِ بَعْدَ الزَّوَالِ.

[I.4.22] Although this is the authorized position of the madh-hab, there is no clear proof of it being disliked after this time, except for a report that was deemed weak by the vast majority of scholars.

Some fuqahâ’ (A) + (+S) still felt that siwâk is disliked after noon for the fasting person, for it is best to leave the mouth’s odor, which usually occurs then, because the Prophet (SA) said:

«وَلَخُلُوفُ فَمِ الصَّائِمِ أَطْيَبُ عِنْدَ اللَّهِ مِنْ رِيحِ الْمِسْكِ.»

> *“... and the smell of the mouth of a fasting person is better to Allah than the smell of musk.” (B – from Abu Hurayrah)*

Others (a) + (-H, -M, -s, -t) held that it is permissible or recommended. They argued that the odor comes from the stomach, not the mouth, so cleaning the teeth will not reduce it.

[I.5] Chapter on Wiping over (Leather) Socks

بَابُ الْمَسْحِ عَلَى الْخُفَّيْنِ

[Ruling, and What to Wipe over]

يَجُوْزُ الْمَسْحُ عَلَى الْخُفَّيْنِ، وَمَا أَشْبَهَهُمَا مِنَ الْجَوَارِبِ الصَّفِيْقَةِ الَّتِيْ تَثْبُتُ فِي الْقَدَمَيْنِ، وَالْجَرَامِيْقِ الَّتِيْ تُجَاوِزُ الْكَعْبَيْنِ فِي الطَّهَارَةِ الصُّغْرَى.	It is permissible to wipe over leather socks and whatever resembles them, like thick socks that stay on the feet and shoes that reach above the anklebones. This is all in the case of the minor ablution. [I.5.1]

[I.5.1] Description of Wiping

Wiping is done over the top of the footwear, not the bottom.

«رأيت رَسُولَ اللَّهِ ﷺ يَمْسَحُ على ظَاهِرِ خُفَّيْهِ.»

"I saw the Messenger of Allah (SA) wipe over the top of his socks." (T – from al-Mugheerah; T: R)

That is why 'Ali (RA) said:

«لو كان الدِّينُ بِالرَّأْيِ لَكَانَ أَسْفَلُ الْخُفِّ أَوْلَى بِالْمَسْحِ من أَعْلَاهُ.»

"If the religion was based on opinion, the bottom of the sock would have taken precedence over the top in wiping." (D)

Wiping over Socks

(A/SM): Socks likely refer to any footwear that looks like the khuff (leather socks), without being made of leather.

There are many proofs on the permissibility of wiping over socks. Abu Dâwood reported from al-Mugheerah (RA) that:

«أَنَّ رَسُولَ اللَّهِ ﷺ تَوَضَّأَ وَمَسَحَ على الْجَوْرَبَيْنِ وَالنَّعْلَيْنِ.»

"The Messenger of Allah (SA) wiped over the socks and sandals."

Due to disagreements over the transmission of certain words in the hadith and its implications, the most formidable proof is the practice of the Companions. Ibn al-Mundhir said, "The permissibility of wiping over the socks was narrated from nine of the Companions of the Messenger of Allah (SA): 'Ali ibn Abi Ṭâlib, 'Ammâr ibn Yâsir, Abu Mas'ood, Anas ibn Mâlik, Ibn 'Umar, al-Barâ' ibn 'Âzib, Bilâl, Abu Umâmah and Sahl ibn Sa'd." [*al-Awsaṭ*]

Additionally, some scholars maintained that there is no difference between socks and khuffs. (t) pointed out that the type of material should be inconsequential to the ruling in this case.

The Thickness of Socks

(A/SM): The socks do not have to have leather bottoms, but they should be thick. There are two descriptions of thick socks: they stay on the foot while walking in them, and they do not show the complexion underneath them, even if the water seeps through them and wets the foot. According to this, most of the socks in our times meet those conditions.

Some reported the consensus on the requirement of the socks being thick. Although this is the position of the vast majority, including (A) + (+H, +M (leathered socks), +S), however, the consensus is contested. For example, Imam an-Nawawi said, "Our companions narrated from 'Umar (RA) and 'Ali (RA) that it is permissible to wipe over the socks, even if they are thin. They also narrated that from Abu Yoosuf, Muhammad, Is-ḥâq and Dâwood." [*Al-Majmoo'*] This was also the position of (Z). The majority who required the socks to be thick also disagreed over the criteria of thick socks, so while al-Kâsâni al-Ḥanafi (may Allah have mercy on him) said in *Badâ'i' aṣ-Ṣanâ'i'*, "If (the socks) are thin and let water through, then it is not permissible to wipe over them, according to scholarly consensus," the authorized position in the Ḥanbali madh-hab is that the seeping of water through the socks does not disqualify them from wiping. (A/SM)

Some of the contemporary Ḥanbalis, like Ibn 'Uthaymeen (may Allah have mercy on him), argued that thin socks should have the same ruling as thick ones.

Wiping over socks and over shoes with socks underneath them, as well as over the headscarf for women, are legitimate concessions, based in the

revelation, and they facilitate praying for many people. It is, therefore, essential that we propagate these Sunnah acts and show flexibility with some of their technicalities that are subject to juristic opinions and about which the revelation is silent.

[Duration of the Wiping Period]

One day and one night for the resident, and three for the traveler, from the time of breaking one's ritual purity until the corresponding time [one or three days later]. This is based on the statement of the Messenger of Allah (SA), "The traveler wipes for three days, and the resident for one." [I.5.2]	يَوْمًا وَلَيْلَةً لِلْمُقِيْمِ وَثَلَاثًا لِلْمُسَافِرِ، مِنَ الْحَدَثِ إِلَى مِثْلِهِ. لِقَوْلِ رَسُوْلِ اللهِ ﷺ:«يَمْسَحُ الْمُسَافِرُ ثَلَاثَةَ أَيَّامٍ وَلَيَالِيهِنَّ ، وَالْمُقِيمُ يَوْمًا وَلَيْلَةً.»

[I.5.2] The Period of Wiping

Shurayḥ ibn Hâni' (may Allah have mercy on him) said, "I came to 'Â'ishah (RAH) to ask her about wiping over the socks. She said, 'You should ask 'Ali (RA), son of Abu Ṭâlib, for he used to travel with Allah's Messenger (SA).' We asked him, and he said:

«جَعَلَ رسول اللَّهِ ﷺ ثَلَاثَةَ أَيَّامٍ وَلَيَالِيَهُنَّ لِلْمُسَافِرِ وَيَوْمًا وَلَيْلَةً لِلْمُقِيمِ.»

'The Messenger of Allah (SA) stipulated (the upper limit) of three days and three nights for a traveler and one day and one night for the resident.'" (M)

[Expiry of the Wiping Period, or the Removal of Socks]

Whenever he wipes, and the period ends, or he takes the footwear off before it is over, his purity becomes invalid. [I.5.3]	وَمَتَى مَسَحَ ثُمَّ انْقَضَتِ الْمُدَّةُ، أَوْ خَلَعَ قَبْلَهَا، بَطَلَتْ طَهَارَتُهُ.

[I.5.3] Taking the Socks off

(A) + (+s): Nullifies the wuḍoo' and one must repeat it, because the reason for the concession is no more present.

(a) + (-H, -M, S): One only needs to wash his feet after taking them off (M): if he failed to wash them promptly, then he must redo his wuḍoo'.

(-Z, -t): Taking the socks off does not nullify the wuḍoo', and there is no need to wash the feet. They argued that there is no clear proof that the purity becomes invalidated with the removal of the socks or turban. Besides, it was reported by al-Bayhaqi from Abi Dhabyân that 'Ali (RA) urinated, then made wuḍoo', in which he wiped on his sandals, and then when the *mu'adh-dhin* called the iqâmah, he removed them and proceeded to lead the people in prayer. Bukhâri reported the following statement of al-Ḥasan al-Baṣri, "If one cuts his hair, clips his nails, or takes off his leather socks, there is no wuḍoo' due on him."

[Traveler Becoming Resident and Vice Versa]

Whoever wipes while traveling and then reaches his place of residence – or while resident and then travels – should wipe for one day only, like a resident.	وَمَنْ مَسَحَ مُسَافِرًا ثُمَّ أَقَامَ، أَوْ مُقِيْمًا ثُمَّ سَافَرَ، أَتَمَّ مَسْحَ مُقِيْمٍ.

[Wiping over Turbans]

It is permissible to wipe over the turban if it has a 'tail' and covers the entire head except that which is usually uncovered [while wearing a turban]. [I.5.4]	وَيَجُوْزُ الْمَسْحُ عَلَى الْعِمَامَةِ إِذَا كَانَتْ ذَاتَ ذُؤَابَةٍ، سَاتِرَةً لِجَمِيْعِ الرَّأْسِ إِلَّا مَا جَرَتِ الْعَادَةُ بِكَشْفِهِ.

[I.5.4] Wiping Over Turbans and Khimars (Scarves)

«مَسَحَ على الْخُفَّيْنِ وَمُقَدَّمِ رَأْسِهِ وَعَلَى عِمَامَتِهِ.»

"The Messenger of Allah (SA) wiped over his leather socks and over his forelock and turban." (M – from Ibn al-Mugheerah from his father)

(A/SM): The turban must have either a tail or be wrapped around the lower jaw (مُحَنَّكَة).

Although there is no authentic, clear proof that the turban must have a 'tail', the honorable jurists disliked wearing a turban without a tail because this used to be the style of turban worn by the People of the Book and some deviant sects. (t): Aḥmad's dislike of the turbans without tails means that it is makrooh, not haram, so it would not invalidate the wiping on such turbans.

A Muslim should not imitate non-Muslims in their dress code unless it is a universal one, like men's business suits in our time; wearing them would not indicate your religion.

[Must Have Been Put On while Having Complete *Wuḍoo'*]

A condition of the validity of wiping over all such things is to have put them on (that part of the body which will be wiped over) while in a state of complete purity. [I.5.5]	وَمِنْ شَرْطِ الْمَسْحِ عَلَى جَمِيْعِ ذٰلِكَ، أَنْ يَلْبَسَهُ عَلَى طَهَارَةٍ كَامِلَةٍ.

[I.5.5] This is because the Prophet (SA) said to al-Mugheerah (RA), when he attempted to take off the Prophet's leather socks:

«دَعْهُمَا فَإِنِّي أَدْخَلْتُهُمَا طَاهِرَتَيْنِ وَمَسَحَ عَلَيْهِمَا.»

"Leave them, for I put them on while in a state of purity" --- and he wiped over them. (M)

[Wiping over Bandages]

It is permissible to wipe over a bandage if he did not, when putting it on, exceed the part that needs to be wrapped. He can do this (wipe over it) until he removes it. [I.5.6]	وَيَجُوْزُ الْمَسْحُ عَلَى الْجَبِيْرَةِ، إِذَا لَمْ يَتَعَدَّ بِشَدِّهَا مَوْضِعَ الْحَاجَةِ إِلَى أَنْ يَحُلَّهَا.

[I.5.6] This includes adhesive bandage strips like Band-Aids.

[For Women]

The man and woman are equal in that regard except that the woman may not wipe over the turban. [I.5.7]	وَالرَّجُلُ وَالْمَرْأَةُ فِيْ ذٰلِكَ سَوَاءٌ، إِلَّا أَنَّ الْمَرْأَةَ لَا تَمْسَحُ عَلَى الْعِمَامَةِ.

[I.5.7] The woman may, however, wipe over the khimâr (headscarf that is wrapped around the lower jaw). (A/SM)

> *"…[Umm Salamah (RAH)] used to wipe over the head-covering."*
> *(Ibn Abi Shaybah – from Umm Salamah)*

The woman cannot wipe over the turban because it is forbidden for her to wear one.

[I.6] Chapter on the Nullifiers of *Wuḍoo'*

بَابُ نَوَاقِضِ الْوُضُوْءِ

They are seven: [I.6.1]	وَهِيَ سَبْعَةٌ:

[I.6.1] (A/SM): Washing the dead is a nullifier, making eight nullifiers, according to (A).

1. Anything that exits from the private parts. [I.6.2]	(-1) الْخَارِجُ مِنَ السَّبِيْلَيْنِ عَلَى كُلِّ حَالٍ.

[I.6.2] Nature of what comes out of the private parts:

(A) + (+H, +S): Includes worms and stones, for the majority.

(-M, -Z): Excludes them.

'Aṭâ' said, "One who has worms come out of his anus should repeat the wuḍoo'." (B) Besides, physical impurities (urine or feces) would usually come out with them.

All consider the exiting of stool or wind from the anus, as well as urine, madhy, *wady* (a thick, white, cloudy fluid that is sometimes discharged after urination), semen, and menstrual/postpartum blood from the respective organs, to invalidate the wuḍoo'. The complete loss of consciousness or sanity also invalidates the wuḍoo'.

2. Impure discharges from elsewhere in the body if they are excessive enough to be repulsive. [I.6.3]	(-2) وَالْخَارِجُ النَّجِسُ مِنْ غَيْرِهِمَا، إِذَا فَحُشَ.

[I.6.3] Bleeding and discharge from a wound such as blood, pus and serosanguinous discharge.

(A) + (+H): nullifies the wuḍoo’ if it is substantial, according to (A). (H): if it flows beyond its point of emergence to a place subject to purification, even if the quantity is small.

Of their proofs is the saying of the Prophet (SA) to Fâṭimah bint Abi Ḥubaysh, who was suffering from istiḥâḍah (non-menstrual vaginal bleeding):

«إِنَّمَا ذَلِكِ عِرْقٌ، فتَوَضَّئِي لِكُلِّ صَلاةٍ»

“That is from a vein, so do wuḍoo’ for every prayer.” (D – from ‘Â’ishah; al-Albâni: Auth)

They argued that all blood comes from veins, so this would warrant the making of wuḍoo’. The challengers of this argument pointed out that the blood in this case is coming out of the genitalia, unlike the case in bleeding from other parts of the body.

(-M, -S, -t): That would not nullify the wuḍoo’. Bukhâri said:

«بَاب من لم يَرَ الْوُضُوءَ إلا من الْمَخْرَجَيْنِ من الْقُبُلِ وَالدُّبُرِ ... وقال أبو هُرَيْرَةَ لَا وُضُوءَ إلا من حَدَثٍ وَيُذْكَرُ عن جَابِرٍ أَنَّ النبي ﷺ كان في غَزْوَةِ ذَاتِ الرِّقَاعِ فَرُمِيَ رَجُلٌ بِسَهْمٍ فَنَزَفَهُ الدَّمُ فَرَكَعَ وَسَجَدَ وَمَضَى في صَلَاتِهِ. وقال الْحَسَنُ ما زَالَ الْمُسْلِمُونَ يُصَلُّونَ في جِرَاحَاتِهِمْ وقال طَاوُسٌ وَمُحَمَّدُ بن عَلِيٍّ وَعَطَاءٌ وَأَهْلُ الْحِجَازِ ليس في الدَّمِ وُضُوءٌ، وَعَصَرَ بن عُمَرَ بَثْرَةً فَخَرَجَ منها الدَّمُ ولم يَتَوَضَّأْ وَبَزَقَ بن أبي أَوْفَى دَمًا فَمَضَى في صَلَاتِهِ، وقال بن عُمَرَ وَالْحَسَنُ فِيمَنْ يَحْتَجِمُ ليس عليه إلا غَسْلُ مَحَاجِمِهِ.»

“The chapter concerning those who did not think wuḍoo’ is due except upon [the exiting of things from] the two orifices in the front and back… Abu Hurayrah (RA) said, ‘Wuḍoo’ is not mandatory except after ritual impurity [the exiting of things from the front and back orifices].’ It was reported from Jâbir (RA) that the Prophet (SA) was in the battle of Dhât ar-Riqâ’, and a man was hit by an arrow and bled, but he continued his prayer and bowed and prostrated. Al-Ḥasan [al-Baṣri] said, ‘The Muslims have always prayed while wounded.’ In addition, Ṭâwoos, Muhammad ibn ‘Ali, and ‘Aṭâ’, as well as the people of the Ḥijâz (the Western region of the Arabian Peninsula that includes Makkah and Madinah), said that wuḍoo’ is not mandatory because of bleeding. Ibn ‘Umar squeezed a pimple/abscess, and blood came out of it, and he did not make wuḍoo’. (B) [Reported with a strong and

connected chain by Ibn Abi Shaybah]. Ibn Abi Awfâ spat out blood and continued his prayer. [Reported with a strong and connected chain by Sufyân ath-Thawri]. Ibn ‘Umar (RAHUMA) and al-Ḥasan [al-Baṣri] said that one who has ḥijâmah (cupping with bloodletting) done only needs to wash the blood off.” (B)

3. Loss of intellect, [I.6.4] except for light sleep while sitting or standing. [I.6.5]	(-3) وَزَوَالُ الْعَقْلِ إِلَّا النَّوْمَ الْيَسِيْرَ جَالِسًا أَوْ قَائِمًا.

[I.6.4] This includes sleep, coma, insanity or intoxication. Sleep nullifies the wuḍoo’, for the Prophet (SA) said:

«وِكَاءُ السَّهِ الْعَيْنَانِ فَمَنْ نَامَ فَلْيَتَوَضَّأْ.»

“The eyes are the tie of the anus, so let him who sleeps make wuḍoo’.” (D – from ‘Ali; al-Albâni: R)

A coma, intoxication, and insanity are stronger than sleep in making one unaware of oneself; thus, they are included in the nullifiers by analogy.

[I.6.5] This is because:

«كانوا يَنْتَظِرُون العِشَاء على عَهْد رسُولِ الله ﷺ حتّى تَخْفِقَ رُؤوسُهم ثُم يُصَلُّون ولا يَتَوَضَّؤون.»

“They used to wait for ‘ishâ’ (night) prayer during the time of the Messenger of Allah (SA) until their heads dropped, and then they prayed without making wuḍoo’.” (M – from Anas)

In another report, it is even mentioned that they lay on their sides. (D, al-Bazzâr)

Based on these reports and the one above, (M, a, t) chose the view that only deep sleep invalidates the wuḍoo’. Light sleep, regardless of the position, does not. It is defined as the kind of sleep during which the person would still recognize or feel if he passed wind.

4. Touching the penis [I.6.6] with his hands. [I.6.7]	(-4) وَلَمْسُ الذَّكَرِ بِيَدِهِ.

[I.6.6] That also includes, besides the penis, the female external sexual organs, whether one's own or another's, including touching these parts in children, as would happen when bathing or washing them, for example. (A/SM) + (+S): This applies to the anus as well.

[I.6.7] Touching One's Privates

(A) + (+S): Nullifies the wuḍoo' whether or not there is lust.

(+M): His direct touching of his own penis with the inner surface or side of the hand or fingers nullifies wuḍoo', whether intentional or accidental.

(-H): Touching the private parts does not nullify the wuḍoo'.

(-m, -t): Only nullifies the wuḍoo' if done with lust.

There are two reports from the Prophet (SA) regarding this issue:

1- It was reported that the Prophet (SA) said:

«من مَسَّ ذَكَرَهُ فَلْيَتَوَضَّأْ.»

"One who touches his sexual organ may not pray until he makes wuḍoo'." (A, D, T, N, Ma – from Busrah bint Ṣafwân; Ma: S)

2- A man asked the Prophet (SA) if a man who touches his penis must perform ablution. The Prophet (SA) replied:

«هَلْ هو إِلَّا بَضْعَةٌ أو مُضْغَةٌ مِنْك.»

"It is not but a part of you." (A, D, T, N, Ma – from Ṭalq ibn 'Ali; Ma: S)

(H) did not accept the hadith of Busrah (and a similar one from Abu Hurayrah), because both have controversial authenticity. (S, A) favored the hadith of Busrah considering her report later than Ṭalq's and thus abrogating

it. (m, t): The best way to reconcile the reports is to make the distinction between touching with and without lust.

5. If his skin touches the skin of a woman with lustful desire. [I.6.8]	(-5) وأنْ تَمَسَّ بَشَرَتُهُ بَشَرَةَ أُنْثَى لِشَهْوَةٍ.

[I.6.8] Touching the Opposite Sex

(A) + (+M): Only lustful touching invalidates the wuḍoo'.

(a) + (-H, -t): Touching does not invalidate the wuḍoo'.

(-S): Direct skin contact with a person of the opposite sex who is not a maḥram invalidates wuḍoo', even without desire, provided neither is a small child not ordinarily desired. This includes spouses.

«فَقَدْتُ رَسُولَ اللَّهِ ﷺ لَيْلَةً من الْفِرَاشِ فَالْتَمَسْتُهُ فَوَقَعَتْ يَدِي على بَطْنِ قَدَمَيْهِ وهو في الْمَسْجِدِ وَهُمَا مَنْصُوبَتَانِ وهو يقول اللهم أَعُوذُ بِرِضَاكَ من سَخَطِكَ وَبِمُعَافَاتِكَ من عُقُوبَتِكَ وَأَعُوذُ بِكَ مِنْكَ لَا أُحْصِي ثَنَاءً عَلَيْكَ أنت كما أَثْنَيْتَ على نَفْسِكَ.»

'Â'ishah said, "One night, I missed the Messenger of Allah (SA) in my bed, and so I went to look for him. I put my hand on the sole of his feet while he was praying and saying, 'O Allah, I seek refuge in Your pleasure from Your anger, in Your forgiveness from Your punishment, in You from You. I cannot praise you as You have praised Yourself.'" (M – from 'Â'ishah)

There is proof in this hadith for the position that the mere touching of a person of the opposite sex does not nullify the wuḍoo'. Moreover:

«كان ﷺ يُقَبِّلُ بَعْضَ أَزْوَاجِهِ ثُمَّ يُصَلِّي ولا يَتَوَضَّأُ»

"The Prophet (SA) would kiss one of his wives and then pray without making wuḍoo'." (D, T – from 'Â'ishah; al-Albâni: S)

Based on this hadith and others from 'Â'ishah (RAH), some scholars argued that touching a woman, without having intercourse and without any discharge exiting from the penis, does not nullify wuḍoo'. The same applies to women touching men. They would still prefer for the person (whether male or female, according to one opinion) who touched a spouse with lust to make wuḍoo'.

The position of the madh-hab is that lustful touching invalidates the wuḍoo'. It is to take in consideration all the reports, including a fatwa reported in *al-Muwaṭṭa'* from Ibn 'Umar, in which he indicated the invalidation of the wuḍoo' of one who touched or kissed his wife.

6. Apostasy from Islam. [I.6.9]	(-6) وَالرِّدَّةُ عَنِ الإِسْلَامِ.

[I.6.9] For Allah (ST) said:

{لَئِنْ أَشْرَكْتَ لَيَحْبَطَنَّ عَمَلُكَ وَلَتَكُونَنَّ مِنَ الْخَاسِرِينَ}

{...If you join others in worship with Allah, surely (all) your deeds will be in vain.} (az-Zumar 39:65)

Note that some scholars felt this does not need to be mentioned here because it is a *ḥadathun akbar* (major nullifier), requiring a ritual bath upon reaccepting Islam. All of the major nullifiers are also nullifiers of wuḍoo', such as intercourse, ejaculation (or the descent of semen), menstrual and postpartum bleeding, and apostasy.

7. Eating camel's meat, since a report from the Prophet (SA) states, "He was asked: Should we make wuḍoo' after eating camel's meat? He said: Yes, make wuḍoo' after eating their meat. He was then asked: Should we make wuḍoo' after eating lamb? He said: If you want, then you can make wuḍoo', and if you do not want to make wuḍoo', then do not." [I.6.10]	(-7) وَأَكْلُ لَحْمِ الْجَزُوْرِ؛ لِمَا رُوِيَ عَنِ النَّبِيِّ ﷺ، قِيْلَ لَهُ: أَنَتَوَضَّأُ مِنْ لُحُوْمِ الإِبِلِ؟ قَالَ: «نَعَمْ، تَوَضَّؤُوْا مِنْهَا»، قِيْلَ: أَفَنَتَوَضَّأُ مِنْ لُحُوْمِ الْغَنَمِ؟ قَالَ: «إِنْ شِئْتَ فَتَوَضَّأْ، وَإِنْ شِئْتَ فَلَا تَتَوَضَّأْ.»

[I.6.10] This is one of the distinctive positions (mufradât) of (A), meaning that it is contrary to the position of the other three imams.

(-H, -M, -S): It does not nullify the wuḍoo'.

[Cases of Doubt]

One who is certain of having had ritual purity but in doubt as to whether he had a cause for ritual impurity afterwards, and one who is certain of having had a reason for ritual impurity but in doubt as to whether he made ablution afterwards, must follow what he is certain of. [I.6.11]	وَمَنْ تَيَقَّنَ الطَّهَارَةَ، وَشَكَّ فِي الْحَدَثِ، أَوْ تَيَقَّنَ الْحَدَثَ، وَشَكَّ فِي الطَّهَارَةِ، فَهُوَ عَلَى مَا تَيَقَّنَ مِنْهُمَا.

[I.6.11] For the Prophet (SA) said:

«إذا وَجَدَ أحدكم في بَطْنِهِ شيئا فَأَشْكَلَ عليه أَخَرَجَ منه شَيْءٌ أَمْ لَا فلا يَخْرُجَنَّ من الْمَسْجِدِ حتى يَسْمَعَ صَوْتًا أو يَجِدَ رِيحًا.»

"If any of you feels something (gurgling) in his stomach and is not sure whether anything came out of him, he should not leave the mosque (for wuḍoo') unless he hears a sound or smells an odor."
(M – from Abu Hurayrah)

Hence, if he is certain he made wuḍoo' at some point, and he doubts whether he broke it thereafter, then he should consider himself as having wuḍoo'; likewise, if he knows that he broke his wuḍoo' at some point, but he doubts whether he made it thereafter, then he should consider himself as not having wuḍoo'. In other words, cast the doubt away.

The second agreed-upon major universal legal maxim is:

اليَقِينُ لا يَزُولُ بالشَّكِّ.

Certainty is not negated by doubt.

[I.7] Chapter on Major Ablution (*Ghusl*) for Major Sexual Ritual Impurity

بَابُ الْغُسْلِ مِنَ الْجَنَابَةِ

What Makes It Required [I.7.1]	وَالْمُوْجِبُ لَهُ:

[I.7.1]What Makes It Required

Imam Ibn Qudâmah did not mention menstrual and postpartum bleeding, since he was only addressing the ritual bath after sexual impurity, but both types of bleeding require a ritual bath once the bleeding stops. Additionally, according to (A/SM), the following also require a ritual bath: acceptance (or reacceptance) of Islam and death (which requires the community to provide the deceased with a ritual bath).

What Is Forbidden for One with *Janâbah* (Sexual Impurity)?

Praying.

Ṭawâf: purity is also a condition of its validity according to (A) + (+M, +S); while it is not a condition of validity according to (a) + (-H, -t).

(A) + (+H): Reciting one or more verses of the Qur'an aloud. Merely reading inwardly without articulating the words is not included. According to (S), the prohibition includes even part of a verse intended as Qur'anic recitation. (-Z) allowed reciting.

(A) + (+H, +M, +S): Touching the muṣ-ḥaf with the bare hands. (This does not apply to electronic applications.)

(A) + (+H, +M, +S): Staying in the *masjid* (mosque). According to (A), however, this becomes permissible after wuḍoo'.

1- The ejaculation of semen, which is the gushing water. [I.7.2]	1- خُرُوْجُ الْمَنِيِّ، وَهُوَ: الْمَاءُ الدَّافِقُ.

[I.7.2] Ejaculation without Intercourse

This is because the Prophet (SA) said:

«إنما الْمَاءُ من الْمَاءِ.»

"The ritual bath becomes mandatory upon the ejaculation of semen." (M – from Abu Sa'eed)

It is "gushing" when it comes out due to lust, as with sexual intimacy or nocturnal emissions (wet dreams). If it flows out due to a cause other than lust, as a result of some sickness, then it does not make ghusl mandatory.

(A/SM): The mere 'descent' of semen, even without external excretion, makes ghusl binding. This is when one feels it moved inside him.

2- And the meeting of 'the two circumcised' parts. [I.7.3]	2- وَالْتِقَاءُ الْخِتَانَيْنِ.

[I.7.3] Intercourse without Ejaculation

This is the case whether or not he ejaculated, for the Prophet (SA) said:

«إذا جَاوَزَ الْخِتَانُ الْخِتَانَ فَقَدْ وَجَبَ الْغُسْلُ [أنزل أو لم ينزل في رواية أبي داود]»

"If one circumcised part passes the other, ritual bath becomes mandatory [D: whether or not he ejaculates]." (D, T – from 'Â'ishah; T: RS)

Note that the two previous rules apply to both men and women.

For women, semen refers to the discharge that comes out with a sexual climax. When a woman asked whether wet dreams make ghusl required for women, the Prophet (SA) replied:

«نعم إذا رَأَتْ الْمَاءَ»

"Yes, if she saw the water (vaginal discharge accompanying a climax)." (B – from Umm Salamah)

[Mandatory Actions]

Mandatory Acts:	وَالْوَاجِبُ فِيْهِ:
The intention,	النِّيَّةُ،

washing the entire body, [I.7.4]	وَتَعْمِيْمُ بَدَنِهِ بِالْغَسْلِ،

[I.7.4] For Allah (ST) says:

{ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنتُمْ سُكَارَىٰ حَتَّىٰ تَعْلَمُوا مَا تَقُولُونَ وَلَا جُنُبًا إِلَّا عَابِرِي سَبِيلٍ حَتَّىٰ تَغْتَسِلُوا}

{O you who believe! Approach not the prayer when you are in a drunken state until you know (the meaning) of what you utter, nor when you are in a state of janâbah (ritual impurity due to sexual activity or emission), except when traveling on the road (without enough water, or just passing through a mosque), until you wash your whole body…} (an-Nisâ' 4:43)

rinsing the mouth and the nostrils. [I.7.5]	مَعَ الْمَضْمَضَةِ وَالْإِسْتِنْشَاقِ.

[I.7.5] Rinsing the Mouth and the Nostrils

(A) + (+H): These acts are mandatory.

(-M, -S): These acts are preferred.

<u>The popular opinion in the madh-hab is that they are mandatory in both ghusl and wudoo' because they are part of the face that we are commanded to wash. (A/SM): This is also based on some other reports that have been mentioned in the chapter of wudoo'. The description of the Prophet's ghusl included them both.</u>

[Recommended (*Sunnah*) Acts]

Recommended Acts:	وَتُسَنُّ:
Saying *Bismillâh, [I.7.6]*	التَّسْمِيَةُ،

[I.7.6] For it is recommended in wuḍoo', and ghusl is the greater ablution.

(A/SM): It is mandatory in both.

rubbing the body with the hand, [I.7.7]	وَأَنْ يَدْلُكَ بَدَنَهُ بِيَدِهِ.

[I.7.7] Rubbing the Body

(A) + (+H, +S): Preferable.

(-M): Mandatory.

The proof for the majority is the Prophet's response when Umm Salamah (RAH) asked if she had to unbraid her hair for ghusl:

«إنما يَكْفِيكِ أَنْ تَحْثِيَ على رَأْسِكِ ثَلَاثَ حَثَيَاتٍ ثُمَّ تُفِيضِينَ عَلَيْكِ الْمَاءَ فَتَطْهُرِينَ.»

"It would suffice you to pour three handfuls of water on your head and then pour water on your body, and you then become purified." (M)

Note that (-M, -S) may have some proof in this hadith that rinsing the mouth and nostrils is not mandatory.

doing as reported by Maymoonah (RAH), who said, "I covered the Prophet (SA), and he made major ablution to remove major ritual impurity. He started by washing his hands, then he poured water with his right hand onto the left and washed his private organ and whatever [may have been] smeared [by semen from] it. Then he struck his hand against the [earthen] wall or floor [to scrub off any residue], performed the usual wuḍoo' for prayers, and then poured water over his body. Then he moved away	وَيَفْعَلَ كَمَا رَوَتْ مَيْمُوْنَةُ، قَالَتْ: «سَتَرْتُ النَّبِيَّ ﷺ، فَاغْتَسَلَ مِنَ الْجَنَابَةِ، فَبَدَأَ فَغَسَلَ يَدَيْهِ، ثُمَّ صَبَّ بِيَمِيْنِهِ عَلَى شِمَالِهِ، فَغَسَلَ فَرْجَهُ وَمَا أَصَابَهُ، ثُمَّ ضَرَبَ بِيَدِهِ عَلَى الْحَائِطِ أَوِ الأَرْضِ، ثُمَّ تَوَضَّأَ وُضُوْءَهُ لِلصَّلَاةِ، ثُمَّ أَفَاضَ الْمَاءَ عَلَى بَدَنِهِ، ثُمَّ تَنَحَّى فَغَسَلَ رِجْلَيْهِ.»

slightly [to a clean part of the ground] and washed his feet." [Ag]	

[Unbraiding the Hair]

It is not mandatory to unbraid the hair for the major ablution required due to major ritual impurity, as long as the roots are saturated with water. [I.7.8]	وَلَا يَجِبُ نَقْضُ الشَّعَرِ فِيْ غُسْلِ الْجَنَابَةِ إِذَا رُوِّيَ أُصُوْلُهُ.

[I.7.8] For the Prophet (SA) told Umm Salamah (RAH), when she asked if she had to unbraid her hair for ghusl:

«إنما يَكْفِيكِ أَنْ تَحْثِيَ على رَأْسِكِ ثَلَاثَ حَثَيَاتٍ ثُمَّ تُفِيضِينَ عَلَيْكِ الْمَاءَ فَتَطْهُرِينَ.»

"It would suffice you to pour three handfuls of water on your head and then pour water on your body, and you then become purified." (M)

(A/SM): For ghusl after menstruation and postpartum bleeding, though, the hair must be unbraided.

[Matters of Intention]

If one intended by his ghusl both types of purification [ghusl and wuḍoo'], it would suffice for both. Likewise, if one made tayammum for the two types of ritual impurity (major and minor) as well as the filth on his body, it would suffice for all. If he intended some of them, then he only gets what he intended. [I.7.9]	وَإِذَا نَوَى بِغُسْلِهِ الطَّهَارَتَيْنِ، أَجْزَأَ عَنْهُمَا. وَكَذٰلِكَ لَوْ تَيَمَّمَ لِلْحَدَثَيْنِ وَالنَّجَاسَةِ عَلَى بَدَنِهِ أَجْزَأَ عَنْ جَمِيْعِهَا. وَإِنْ نَوَى بَعْضَهَا فَلَيْسَ لَهُ إِلَّا مَا نَوَى.

[I.7.9] (A/SM): If someone makes ghusl with the intention of being able to stay in the masjid (an act which does not require wuḍoo'), they will still need to make wuḍoo' before embarking on any acts that require it.

(A/SM): If someone makes ghusl with the intention of removing ritual impurity, without specifying major or minor impurity, the ghusl will remove all impurity, and they will not need to make *wuḍoo'*.

When is Ghusl Recommended?

(A/SM):

1- Jumu'ah prayer, based on explicit statements of the Prophet (SA),

2- Eid prayer, based on reports from the Companions (RAHUM),

3- Khusoof (eclipse) prayer,

4- Istisqâ' prayer (for rain),

5- Going into *iḥrâm* (the state of consecration for Hajj or for *'umrah*, the minor pilgrimage),

6- Entering Makkah,

7- Entering al-Masjid al-Ḥarâm,

8- Standing at 'Arafah,

9- Overnight stay in Muzdalifah,

10- Pelting the jamarât,

11- Ṭawâf al-ifâḍah,

12- Ṭawâf al-wadâ',

13- After transient insanity,

14- After a coma,

15- Before every prayer, for a woman with prolonged bleeding (istiḥâḍah), and

16- After washing the dead.

Wuḍoo’ if Ghusl Is Deferred

(A/SM): Wuḍoo’ is recommended for the one with *janâbah* (sexual impurity) if they wish to do one of the following acts before making ghusl: going to sleep, having intimacy, eating or drinking. This also applies to a woman whose bleeding has stopped, if she wants to sleep, eat, or drink before she makes ghusl. For either to stay in the masjid before ghusl, wuḍoo’ is required.

[I.8] Chapter on *Tayammum* (Dry Ablution)

بَابُ التَّيَمُّمِ

[Description]

The description of it [tayammum] is: To strike the wholesome *ṣa'eed [I.8.1]* once with his two hands, and then wipe his face and hands with them. [I.8.2] This is based on the saying of the Prophet (SA) to 'Ammâr (RA): "It would have been enough for you to do like this," and he struck the earth with his hands and wiped his face and hands with them. [I.8.3]	وَصِفَتُهُ: أَنْ يَضْرِبَ بِيَدَيْهِ عَلَى الصَّعِيْدِ الطَّيِّبِ ضَرْبَةً وَاحِدَةً، فَيَمْسَحَ بِهِمَا وَجْهَهُ وَكَفَّيْهِ؛ لِقَوْلِ النَّبِيِّ ﷺ لِعَمَّارٍ: «إِنَّمَا كَانَ يَكْفِيكَ هَكَذَا وضَرَبَ بِيَدَيْهِ الْأَرْضَ فمَسَحَ بِهِمَا وَجْهَهُ وَكَفَّيْهِ.»

[I.8.1] Tayammum means:

Linguistically, to head towards; in this case, it would be heading for, or seeking, the clean surface of the earth.

What Is Ṣa'eed

(A) + (+S): Ṣa'eed must be soil.

(a) + (-H, -M, -t): It means the surface of the earth. They cited the following hadith:

...«وَجُعِلَتْ لي الْأَرْضُ مَسْجِدًا وَطَهُورًا فَأَيُّمَا رَجُلٍ من أُمَّتِي أَدْرَكَتْهُ الصَّلَاةُ فَلْيُصَلِّ (و في حديث أبي أمامة عند أحمد والطبراني، فعنده مسجده و عنده طهوره) ...»

"...The earth was made a place of prayer for me and a source of purification, so when the time of prayer comes for anyone among my Ummah, let him pray [in a report by (A, aṭ-Ṭabarâni), he will have by him his masjid (a place of prostration, usually referring to a mosque) and means of purification]..." (Ag – from Jâbir)

(-M): This applies to any surface of the earth, including the ice in the Arctic if there is no water. According to (A), one who has ice cannot make

tayammum, but they should use the ice to wipe their wuḍoo' parts. If this melts the ice, it will count as sufficient wuḍoo', and they will not have to repeat the prayer afterwards. If the ice does not melt, they should complete wiping their wuḍoo' parts and then pray, but they must repeat the prayer when they find water. (A/SM)

[I.8.2] The hands are wiped up to

the wrists. (Ag – from 'Ammâr)

(-S): Up to the elbows; this is based on a different hadith that is not sound, according to the vast majority of Hadith scholars.

[I.8.3] The word used in the hadith, *kaff*, means the hands up to the wrists.

If he made tayammum with more than one strike or wiped more [beyond the wrists], it would be permissible. [I.8.4]	وَإِنْ تَيَمَّمَ بِأَكْثَرَ مِنْ ضَرْبَةٍ، أَوْ مَسَحَ أَكْثَرَ، جَازَ.

[I.8.4] Imam Ibn Qudâmah (may Allah have mercy on him) mentioned the description only, and then he addressed the conditions. According to (A/SM), the farḍs of tayammum include:

- wiping the face
- wiping the hands
- the specific intention (which Imam Ibn Qudâmah mentioned under the conditions below)
- if the tayammum is in place of wuḍoo', it would also be farḍ to follow the sequence in the hadith and not pause for a long time between wiping the face and wiping the hands.

Saying bismillâh is wâjib in all types of tayammum.

[Conditions]

It has four conditions:	وَلَهُ شُرُوْطٌ أَرْبَعَةٌ:

First: Inability to Use Water	أَحَدُهَا: الْعَجْزُ عَنِ اسْتِعْمَالِ الْمَاءِ.
- because of - its shortage,	-إما لِعَدَمِهِ،
- or for fear of harm if one uses it, due to sickness or severe cold,	- أَوْ خَوْفِ الضَّرَرِ بِاسْتِعْمَالِهِ؛ لِمَرَضٍ، أَوْ بَرْدٍ شَدِيْدٍ،
- or for fear that he, his companion, or his beast may suffer from thirst,	- أَوْ خَوْفِ الْعَطَشِ عَلَى نَفْسِهِ، أَوْ مَالِهِ أَوْ رَفِيْقِهِ أو بهيمته،
- or if he worries about himself or his property if he sought it,	- أَوْ خَوْفٍ عَلَى نَفْسِهِ، أَوْ مَالِهِ فِيْ طَلَبِهِ،
- or if he cannot obtain it except at an expensive price.	-أو تَعَذَّرَ إِلَّا بِثَمَنٍ كَثِيْرٍ.
If he could use it on part of his body, or he found some water but it is insufficient for his purification, then he should use it and make tayammum for the rest.	فَإِنْ أَمْكَنَهُ اسْتِعْمَالُهُ فِيْ بَعْضِ بَدَنِهِ، أَوْ وَجَدَ مَاءً لَا يَكْفِيْهِ لِطَهَارَتِهِ، اسْتَعْمَلَهُ، وَتَيَمَّمَ لِلْبَاقِيْ.

Second: Commencement of the Prayer Time [I.8.5] One should not make tayammum for a mandatory prayer before its time, or for a recommended prayer during the time of its prohibition.	الثَّانِيْ: الْوَقْتُ فَلَا يَتَيَمَّمُ لِفَرِيْضَةٍ قَبْلَ وَقْتِهَا، وَلَا لِنَافِلَةٍ فِيْ وَقْتِ النَّهْيِ عَنْهَا.

[I.8.5] Commencement of the Prayer Time

(A) + (+M, +S): This is a condition.

(a) + (-H, -Z): It is not a condition; tayammum removes the impurity.

If we believe that tayammum removes the impurity like water does, then one may make tayammum before the time begins, and it does not have to be intended for a particular act of worship. It may be used for any act that requires ritual purity, and it will not expire upon the end of the time of the obligatory prayer; it will only expire upon the occurrence of a nullifier of ritual purity or upon finding water.

Third: Intention If one made tayammum for a recommended prayer, he must not pray a mandatory prayer with it. If he made tayammum for a mandatory prayer, he can perform it and other mandatory and recommended ones until its time is out. [I.8.6]	الثَّالِثُ: النِّيَّةُ فَإِنْ تَيَمَّمَ لِنَافِلَةٍ، لَمْ يُصَلِّ بِهِ فَرِيْضَةً، وَإِنْ تَيَمَّمَ لِفَرِيْضَةٍ، فَلَهُ فِعْلُهَا، وَفِعْلُ مَا شَاءَ مِنَ الْفَرَائِضِ وَالنَّوَافِلِ، حَتَّى يَخْرُجَ وَقْتُهَا.

[I.8.6] If you believe that tayammum does remove the impurity, then you will intend to make it for the removal of impurity, and use it to pray any number of prayers until you find water or break your tayammum.

Fourth: Soil One may not use other than wholesome soil that has particles of dust. [I.8.7]	الرَّابِعُ: التُّرَابُ فَلَا يَتَيَمَّمُ إِلَّا بِتُرَابٍ طَاهِرٍ، لَهُ غُبَار.

[I.8.7] If we accept the position of (a) + (-H, -M) that the surface of the earth in general is ṣa'eed, one will always be able to make tayammum except in very extraordinary conditions.

If there is no water and one cannot make tayammum, they will simply pray without purity, according to the vast majority, and will not need to repeat that prayer thereafter, according to the stronger opinion. (A/SM)

[What Invalidates *Tayammum*]

What invalidates tayammum: 1- Whatever invalidates wet ablution	وَيُبْطِلُ التَّيَمُّمَ: 1- مَا يُبْطِلُ طَهَارَةَ الْمَاءِ

2- the ending of the prayer time [I.8.8]	2- وَخُرُوْجُ الْوَقْتِ

[I.8.8] (a) + (-H): The ending of the prayer time does not invalidate the tayammum. See the discussion above about the commencement of time.

3- and the ability to use water, even if he was in prayer. [I.8.9]	3- وَالْقُدْرَةُ عَلَى اسْتِعْمَالِ الْمَاءِ، وَإِنْ كَانَ فِيْ الصَّلَاةِ.

[I.8.9] (a) + (-M): He should not interrupt his prayer.

[I.9] Chapter on Menstruation

بَابُ الْحَيْضِ

[What Menstruation Makes Unlawful]

It prevents ten things: 1. The act of praying, [I.9.1]	وَيَمْنَعُ عَشَرَةَ أَشْيَاءَ: 1. فِعْلَ الصَّلَاةِ

[I.9.1] The Prophet (SA) said to Fâṭimah bint Abi Ḥubaysh:

«... فإذا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ ...»

"...When the period starts, stop praying..." (Ag – from 'Â'ishah)

2. The obligation of prayer, [I.9.2]	2. وَوُجُوْبَهَا

[I.9.2] When asked why women make up for the fasting but not the prayers, 'Â'ishah (RAH) said:

«كان يُصِيبُنَا ذلك (خ: نحيض على عهد رسول الله) فَنُؤْمَرُ بِقَضَاءِ الصَّوْمِ ولا نُؤْمَرُ بِقَضَاءِ الصَّلَاةِ.»

"This (menstruation) used to happen to us [B: during the time of the Messenger of Allah (SA)], and we were commanded to make up the fasting, but we were not commanded to make up the prayers." (Ag – from 'Â'ishah)

3. Fasting, [I.9.3]	3. وَفِعْلَ الصِّيَامِ

[I.9.3] The Prophet (SA) said:

«... أَلَيْسَ إذا حَاضَتْ لم تُصَلِّ ولم تَصُمْ؟»

"...Isn't it true that when she gets her period, she stops praying and fasting?" (Ag – from Abu Sa'eed al-Khudri)

She makes up the days of Ramadan that she did not fast. (See the hadith of 'Â'ishah above.)

4. *Ṭawâf* (circumambulation of the Kaaba), **[I.9.4]**	4. وَالطَّوَافَ

[I.9.4] Ṭawâf by Menstruating Women

In normal circumstances, this is forbidden by all of the madh-habs.

(A) + (+M, +S): Because purity is a condition in ṭawâf.

(a) + (-H): Purity is not a condition, but she cannot make ṭawâf because she cannot enter the masjid. If she does it, it is valid, but she must expiate for it.

If she has not made the ṭawâf that is a pillar, and she must leave Makkah:

(t) does not regard purity as a condition of validity, although he prohibits a menstruating woman from performing ṭawâf when she can wait until she becomes pure. He said: "If she deliberately performs ṭawâf while menstruating, the view requiring a sacrificial penalty has a basis. In the case of inability, the most that can be said is that she owes a sacrificial penalty; the more fitting view is that none is required, because this is an obligation demanded when one is capable, not when incapable."

5. Recitation of the Qur'an, [I.9.5]	5. وَقِرَاءَةَ الْقُرْآنِ

[I.9.5] Recitation of Qur'an by the Menstruating Woman

(A) + (+H, +S): Not allowed. (A/SM: One with janâbah may read Qur'an and even move his or her lips, as long as no letters become discernible.)

(M, t): Allowed.

The majority uses, among other arguments, the following hadith:

«لَا تَقْرَأُ الْحَائِضُ ولا الْجُنُبُ شيئا من الْقُرْآنِ.»

> *"The menstruating woman and the one with major sexual impurity may not read any part of the Qur'an." (T, Ma – from Ibn 'Umar; T: W)*

However, the hadith was deemed weak by the scholars of Hadith, including (A).

They also used analogy, likening the menstruating woman to one with janâbah. However, that analogy was considered inaccurate by those who disagreed because, unlike the menstruating woman, the one with janâbah can easily end his or her impurity by making ghusl.

6. Touching the muṣ-ḥaf, [I.9.6]	6. وَمَسَّ الْمُصْحَفِ

[I.9.6] Touching the Muṣ-ḥaf by the Menstruating Woman

(A) + (+h): It is permissible for her to touch it with her hands covered (for example, wearing gloves).

Ibn Ḥazm and ash-Shawkâni argued that it is permissible even without a barrier, due to a lack of evidence to the contrary. They interpreted Allah's saying:

{لَّا يَمَسُّهُ إِلَّا الْمُطَهَّرُونَ}

{None touch it but the pure.} (al-Wâqi'ah 56:79)

as referring to the 'Preserved Tablet' in paradise, on which Allah's words and decrees are written. They also interpreted the statement of the Prophet (SA):

«لَا يَمَسَّ الْقُرْآنَ إِلَّا طَاهِرٌ.»

"No one may touch the Qur'an but one who is pure." (Mâlik, Ba, Ḥib)

to mean one who is Muslim, since the Prophet (SA) said:

«إِنَّ الْمُؤْمِنَ لَا يَنْجُسُ.»

"The believer never becomes impure." (A – from Abu Hurayrah)

It is safer to touch it with a barrier, since this has been the practice of the righteous predecessors, and the vast majority of the Ummah do not allow touching it without a barrier. Regarding the authenticity of the hadith, "No one may touch the Qur'an but one who is pure," al-Albâni wrote, in *Irwâ' al-Ghaleel*, that all known narrations of this hadith have some degree of weakness in them. He stated (in his discussion of this hadith) that when there are many weak narrations of a particular hadith, "…they strengthen one another if they do not include individuals who have been accused [of lying]… Thus, I would consider this [hadith] to be sound." While valuable, the statement of al-Albâni (may Allah have mercy on him) does not end the controversy.

7. Staying in the masjid, [I.9.7]	7. وَاللُّبْثَ فِي الْمَسْجِدِ

[I.9.7] Staying in the Masjid for the Menstruating Woman

(A) + (+H, +M, +S): Not allowed.

(a) + (al-Muzani): She may stay in the masjid (a: after making wuḍoo'). This is because the hadith forbidding her stay is weak.

Note that according to (A), a woman whose menstrual bleeding has stopped may stay in the masjid after making wuḍoo' and before performing ghusl, just as someone in a state of janâbah may. While it is commendable for Muslims to be wary of positions that conflict with the agreement of the four imams, this aversion should not completely rule out the possibility that the truth may be different; it should merely serve as a warning for mujtahideen to proceed with caution and for non-mujtahideen to stop. The legally consequential consensus is that of all the mujtahideen. (See the appendix on the agreement of the four madh-habs.) Additionally, one cannot deny the strength of the second opinion. Finally, barring the menstruating women from the mosques, where they can learn and benefit themselves as well as accompanying their children, needs to be based on definitive evidence, which is lacking in this case.

◷ It is also important to note that the typical Islamic center in the West consists not only of a masjid; it includes the masjid, meaning the prayer hall and other utility rooms, but it is more than that. Apart from the prayer hall, it may have stores and advertisements on bulletin boards, which are

forbidden in the masjid, so it is the agreed-upon custom that these areas are not considered part of the masjid itself. By staying in areas outside the prayer hall, menstruating women who follow the position of the majority may still be able to attend lectures or accompany their husbands and children.

8. Intercourse, [I.9.8]	8. وَالْوَطْءَ فِي الْفَرْجِ

[I.9.8] This is a consensus, due to the saying of Allah (ST):

{وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ}.

{They ask you concerning menstruation. Say: that is an adhâ (a harmful thing), therefore keep away from women during menses and go not unto them until they have purified (from menses and have taken a bath)…} (al-Baqarah 2:222)

When the verse was revealed, the Prophet (SA) said:

«اصْنَعُوا كُلَّ شَيْءٍ إلا النِّكَاحَ»

"Do everything except intercourse." (M – from Anas)

9. The sunnah divorce, [I.9.9] and	9. وَسُنَّةَ الطَّلَاقِ

[I.9.9] In other words, the lawful prescribed divorce, which is to divorce in the interval between the periods in which no intercourse had taken place.

Divorcing a woman during her menstrual period, or during the interval between two menstrual periods (during the waiting period) in which they had intercourse, is unlawful and called a bid‘ah *divorce* (a form of heresy). It was reported that when Ibn ‘Umar (RAHUMA) divorced his menstruating wife, the Prophet (SA) commanded him to take her back until she became pure, then got her next menstrual period and completed it; then he could divorce her before having intercourse, if he so wished. (Ag) Whether it counts as a divorce or not is a different issue. The majority counts it, but (t) does not.

(A/SM): This prohibition does not apply to khul‘ (termination of marriage initiated by the wife).

10. Counting the waiting period according to the calendar. [I.9.10]	10. وَالإِعْتِدَادَ بِالأَشْهُرِ

[I.9.10] By consensus, a menstruating woman will count the waiting period after divorce by her menstrual periods, not by the calendar. By agreement, this does not apply to widows; their waiting period, if they are not pregnant, is still four months and ten days.

[What is Due upon its Occurrence]

It necessitates/ushers: 1. Major ablution, [I.9.11]	وَيُوْجِبُ: 1. الْغُسْلَ

[I.9.11] For the Prophet (SA) said to Umm Ḥabeebah:

«امْكُثِي قَدْرَ ما كانت تَحْبِسُكِ حَيْضَتُكِ ثُمَّ اغْتَسِلِي وَصَلِّي»

"Remain away (from prayer) equal (to the length of time) that your menstruation holds you back. After this, bathe yourself and pray." (Ag – from ‘Â’ishah)

2. Puberty [meaning it indicates its onset], [I.9.12] and	2. وَالْبُلُوْغَ

[I.9.12] Menstruation is a sure sign of puberty if it takes place after the age of nine, according to the vast majority, or the age of ten according to (a). The latter position finds support in the hadith of the Prophet (SA), in which he commanded the spanking of children at the age of ten if they do not pray. It infers that it is the youngest age at which puberty and the attainment of adulthood may normally take place. According to this position, anything before that would be premature and would not cause the girl to be held accountable as an adult.

3. Counting the waiting period according to it. [I.9.13]	3. وَالإِعْتِدَادَ بِهِ

[I.9.13] In contrast, the waiting period is counted by lunar months for women who do not menstruate.

[When to Resume Premenstrual Functions]

Once the blood stops, fasting and divorce become permissible, — but the rest (of the acts forbidden for a menstruating woman) do not become permissible until she performs major ablution.	فَإِذَا انْقَطَعَ الدَّمُ، أُبِيْحَ فِعْلُ الصَّوْمِ، وَالطَّلَاقُ، — وَلَمْ يُبَحْ سَائِرُهَا حَتَّى تَغْتَسِلَ.

It is permissible to enjoy all forms of sex with the menstruating woman except intercourse, because the Messenger of Allah (SA) said, “Do everything except intercourse.” [M]	وَيَجُوْزُ الِاسْتِمْتَاعُ مِنَ الْحَائِضِ، بِمَا دُوْنَ الْفَرْجِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «اصْنَعُوا كُلَّ شَيْءٍ غَيرَ النِّكَاحِ.»

[Duration, Beginning, and End of Menstruation]

The shortest duration of menstruation is one day and one night, [I.9.14]	وَأَقَلُّ الْحَيْضِ يَوْمٌ وَلَيْلَةٌ،

[I.9.14] This is the position of (A) + (+S)

(-H): three days.

(-M, -t): there is no minimum period. Their opinion is supported by modern medical knowledge. According to (-M), one gush of blood would be considered menstruation, as far as the acts of worship are concerned, not the waiting period.

Although the Mâlikis consider one drop to be ḥayḍ, knowing the nature of this phenomenon, the use of one gush of blood seems more appropriate. One of the contemporary Ḥanbalis, Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him), was asked about a woman who sees one or two drops of blood here and there, and he replied, “this would not be considered ḥayḍ.”

and the longest is fifteen days. [I.9.15]	وَأَكْثَرُهُ خَمْسَةَ عَشَرَ يَوْمًا.

[I.9.15] This is the position of (A) + (+M, +S).

(-H): The longest is 10 days. This seems to be supported by modern medical knowledge, which would consider anything past that abnormal.

The shortest interval between two menstrual periods is thirteen days, [I.9.16]	وَأَقَلُّ الطُّهْرِ بَيْنَ الْحَيْضَتَيْنِ ثَلَاثَةَ عَشَرَ يَوْمًا،

[I.9.16] This is the position of (A).

(a) + (-H, -M, -S): 15 days.

and there is no limit for the longest. [I.9.17]	وَلَا حَدَّ لِأَكْثَرِهِ.

[I.9.17] By consensus.

The youngest age at which a woman can menstruate is nine years, [I.9.18]	وَأَقَلُّ سِنٍّ تَحِيْضُ لَهُ الْمَرْأَةُ تِسْعُ سِنِيْنَ،

[I.9.18] See above: "Menstruation is a sure sign of puberty if…"

and the latest is sixty years. [I.9.19]	وَأَكْثَرُهُ سِتُّوْنَ.

[I.9.19] (A/SM): 50 years.

(-The earlier Ḥanafis, -S, -Z, -t): No limit.

(-M): Ḥayḍ does not happen beyond 70 years of age. From 50-70 years, female experts should be asked for their opinion.

🕒 In our times, if a woman has her period after the age of 50, she must see a physician when available; if she is told it is menstruation, then it is.

[Cases of Confusion]

[The Beginner]

If the woman who has just started menstruating [the beginner] sees the blood at an age that is customary for menstruation, [I.9.20] then she must abstain [from the acts forbidden during menstruation].	وَالْمُبْتَدَأَةُ إِذَا رَأَتِ الدَّمَ لِوَقْتٍ تَحِيْضُ فِيْ مِثْلِهِ، جَلَسَتْ.

[I.9.20] (A): Between the ages of 9 and 50.

If it stops short of a day and a night, it is not menstruation. [I.9.21]	فَإِنِ انْقَطَعَ لأَقَلَّ مِنْ يَوْمٍ وَلَيْلَةٍ، فَلَيْسَ بِحَيْضٍ.

[I.9.21] Based on his chosen opinion, as mentioned previously, that the minimum duration for menstruation is 1 day and 1 night.

As for those who support the position of it being 1 gush of blood, they will say that she should abstain as long as she is bleeding and resume the prayers when she stops bleeding.

If it exceeds this but does not exceed the longest period of menstruation, [I.9.22] then it is menstruation. [I.9.23]	وَإِنْ جَاوَزَ ذٰلِكَ وَلَمْ يَعْبُرْ أَكْثَرَ الْحَيْضِ، فَهُوَ حَيْضٌ.

[I.9.22] Meaning 15 days.

[I.9.23] This is the position of (a) and the majority. She will consider all this duration her period and refrain from praying and fasting, etc.

(A/SM): In her first 3 cycles, she refrains from praying and fasting only for the first day of bleeding, and then she makes ghusl and prays and fasts. Once her cycle is established, she retrospectively determines that her ḥayḍ in those first three months was 4 or 5 days, or less or more (depending on her established habit). If she fasted any days of Ramadan during that time, they must be redone because now she knows that she fasted them during her ḥayḍ. The position of the majority above may be easier for fatwas and education of the public.

If it recurs with the same form and duration for three months, it becomes an established cycle. [I.9.24]	فَإِذَا تَكَرَّرَ ثَلَاثَةَ أَشْهُرٍ بِمَعْنًى وَاحِدٍ، صَارَ عَادَةً.

[I.9.24] This is the position of (A). For the majority, the habit is established after 1 period.

If it exceeds the longest duration for menstruation, then whatever is beyond it is non-menstrual vaginal bleeding (istiḥâḍah). In this case, she must have major ablution at the end of the menstruation, and wash her genitals and wrap them. [I.9.25] Then she must perform wuḍoo' for every prayer time and pray. [I.9.26]	وَإِنْ عَبَرَ أَكْثَرَ الْحَيْضِ فَالزَّائِدُ اسْتِحَاضَةٌ. وَعَلَيْهَا أَنْ تَغْتَسِلَ عِنْدَ آخِرِ الْحَيْضِ، وَتَغْسِلَ فَرْجَهَا وَتَعْصِبَهُ، ثُمَّ تَتَوَضَّأَ لِوَقْتِ كُلِّ صَلَاةٍ، وَتُصَلِّيْ.

[I.9.25] Now women may use the convenient sanitary napkins or any other means to ensure that blood will not leak.

[I.9.26] The Prophet (SA) said to Fâṭimah bint Abi Ḥubaysh:

«ثُمَّ تَوَضَّئِي لِكُلِّ صَلَاةٍ»

"Then make wuḍoo' for each prayer." (B – from 'Â'ishah)

Ibn Ḥajar asserted that this was stated by the Prophet (SA), not by the narrator, 'Urwah.

She renews her wuḍoo' after the prayer time begins if the discharge has continued. Within that time, she may offer obligatory and voluntary prayers, including two obligatory prayers combined lawfully, unless another nullifier occurs.

(A/SM): It is impermissible to have intercourse during the time of istiḥâḍah, unless there is fear of undue hardship for either spouse.

The majority allowed it for all.

وَكَذَا حُكْمُ مَنْ بِهِ سَلَسُ الْبَوْلِ، وَمَنْ فِيْ مَعْنَاهُ.	Likewise is the ruling for one with urinary incontinence and the like. [I.9.27]

[I.9.27] This person has to make wuḍoo' for every prayer time if there has been further discharge.

[Prolonged Bleeding for Non-Beginners]

فَإِذَا اسْتَمَرَّ بِهَا الدَّمُ فِيْ الشَّهْرِ الآخَرِ: فَإِنْ كَانَتْ مُعْتَادَةً، فَحَيْضُهَا أَيَّامُ عَادَتِهَا.	When the bleeding continues [longer than the maximum period of 15 days] in the other months: If she has a normal cycle, then her menstruation is during the days of her normal cycle. [I.9.28]

[I.9.28] For the Prophet (SA) said to Umm Ḥabeebah bint Jaḥsh (RAH):

«امْكُثِي قَدْرَ ما كانت تَحْبِسُكِ حَيْضَتُكِ ثُمَّ اغْتَسِلِي وَصَلِّي»

"Remain away (from prayer) equal (to the length of time) that your menstruation holds you back. After this, bathe yourself and pray." (Ag – from 'Â'ishah)

وَإِنْ لَمْ تَكُنْ مُعْتَادَةً وَكَانَ لَهَا تَمْيِيْزٌ - وَهُوَ أَنْ يَكُوْنَ بَعْضُ دَمِهَا أَسْوَدَ ثَخِيْنًا، وَبَعْضُهُ أَحْمَرَ رَقِيْقًا - فَحَيْضُهَا زَمَنُ الأَسْوَدِ الثَّخِيْنِ.	If she does not have a normal cycle, but she has the ability to distinguish – meaning that some of her blood is black and thick [menstrual], while some is red and thin [non-menstrual] – then her menstruation is the duration of the flow of that which is black and thick. [I.9.29]

[I.9.29] For the Prophet (SA) said to Fâṭimah bint Abi Ḥubaysh (RAH):

«إذا كان دَمُ الْحَيْضِ فإنه دَمٌ أَسْوَدُ يُعْرَفُ فإذا كان ذلك فَأَمْسِكِي عن الصَّلَاةِ فإذا كان الْآخَرُ فَتَوَضَّئِي وَصَلِّي ...»

"When the blood of the menses comes, it is black blood which can be recognized, so when that comes, refrain from prayer; but when a different type of blood comes, perform ablution and pray…" (D, N – from 'Â'ishah; al-Albâni: S)

Note that (a) + (-S) gave precedence to the discernment of the different types of blood over the habit (number of days a woman is used to be bleeding). So if a woman has a recurring habit, and she is also discerning, (A) will require her to act according to her established habit, and (S) upon her discernment.

If she is a beginner [I.9.30] or has forgotten her normal cycle and has no ability to distinguish, then her menstruation is six or seven days out of each month, since that is the customary period for most women. [I.9.31]	وَإِنْ كَانَتْ مُبْتَدَأَةً، أَوْ نَاسِيَةً لِعَادَتِهَا، وَلَا تَمْيِيْزَ لَهَا، فَحَيْضُهَا مِنْ كُلِّ شَهْرٍ سِتَّةُ أَيَّامٍ، أَوْ سَبْعَةٌ؛ لأَنَّهُ غَالِبُ عَادَاتِ النِّسَاءِ.

[I.9.30] (A/SM): The beginner in the first three months, whether she has bleeding for a normal or prolonged period, will only refrain from praying and fasting for 1 day. See the discussion above under the beginner. If she does not have a pattern, then she will follow the advice hereabove.

[I.9.31] For the Prophet (SA) said:

«...إنما هذه رَكْضَةٌ من رَكَضَاتِ الشَّيْطَانِ فَتَحَيَّضِي سِتَّةَ أَيَّامٍ أو سَبْعَةَ أَيَّامٍ في عِلْمِ اللَّهِ ثُمَّ اغْتَسِلِي حتى إذا رَأَيْتِ أَنَّكِ قد طَهُرْتِ وَاسْتَنْقَأْتِ فَصَلِّي ثَلَاثًا وَعِشْرِينَ لَيْلَةً أو أَرْبَعًا وَعِشْرِينَ لَيْلَةً وَأَيَّامَهَا وَصُومِي فإن ذلك يَجْزِيكِ وَكَذَلِكَ فَافْعَلِي في كل شَهْرٍ كما تَحِيضُ النِّسَاءُ وَكَمَا يَطْهُرْنَ مِيقَاتَ حَيْضِهِنَّ وَطُهْرِهِنَّ ...»

"…This is a stroke of the devil, so observe your menses for 6 or 7 days, Allah alone knows which it should be, then wash. When you see that you are purified and quite clean, pray during 23 or 24 days and nights, and fast, for that will be enough for you, and do so every month, just as women menstruate and are purified at the

time of their menstruation and their purification...” (A – from Ḥamnah bint Jaḥsh; A: R)

It seems that Ḥamnah (RAH) was unable to distinguish between the 2 types of blood, or they were indiscernible, and Umm Ḥabeebah (RAH) had an established cycle, while Fâṭimah bint Abi Ḥubaysh (RAH) was able to distinguish between the 2 types of blood, so the Prophet (SA) gave each of them the answer most suitable for her.

The pregnant woman does not menstruate [I.9.32] unless she sees blood one to three days before her delivery; then it is postpartum bleeding. [I.9.33]	وَالْحَامِلُ لَا تَحِيْضُ، إِلَّا أَنْ تَرَى الدَّمَ قَبْلَ وِلَادَتِهَا بِيَوْمَيْنِ، أَوْ ثَلَاثَةٍ، فَيَكُوْنُ دَمَ نِفَاسٍ.

[I.9.32] This is the position of (A) + (+H).

(-M, -S): She may menstruate.

This applies only to the sphere of acts of worship. They all agree that her menstruation is inconsequential to her waiting period, which ends only upon delivery of the last fetus in her womb.

[I.9.33] It seems to be postpartum bleeding from the time she starts the labor pains, as indicated by Ibn Qudâmah in *al-Mughni*.

Additional Benefits from (SM)

A woman never acts on the discernment of the different types of blood unless her bleeding exceeds the maximum period of ḥayḍ. Also, if her habit changes, she acts on the new habit after it recurs three times according to (A), or from its first occurrence according to (a, t), as long as it does not exceed the longest period of ḥayḍ.

When the bleeding stops even for a short while (down to 1 hour), the woman must make ghusl and resume her worship. If it recurs within the time of ḥayḍ, she refrains again, and so on. According to (a), preferred by Ibn Qudâmah, an interruption shorter than one day is disregarded unless there is

an indication of purity, such as the white discharge or cessation at the end of her usual period. This may be easier to follow.

If the bleeding takes place on some days and skips others, she will consider herself pure in the intervening days without bleeding. In these days, all worship is permissible, and so is intercourse.

If a beginner without valid discernment of the blood bleeds on alternate days over eighteen days, (A/SM) treats her as experiencing istiḥâḍah. In the first three months, she observes the minimum duration of menstruation, one day and one night each month, then performs ghusl and resumes prayer and fasting; thereafter she follows the rules for its usual duration. According to Ibn Qâ'id's explanation, she must repeat any obligatory fasts performed during the first three months on bleeding days subsequently classified as menstruation (*Ḥâshiyah 'alâ Muntahâ al-Irâdât*). The intervening clean days remain days of purity, and fasts performed during them remain valid.

If she is not a beginner, then her ḥayḍ will be the days of bleeding within her customary ḥayḍ period; if she has not established a habit, then the days of the dark odorous blood; and if she is not discerning, then the days of bleeding within the first 7 days, so if she was bleeding every other day, then her ḥayḍ will be days 1, 3, 5, and 7 only, according to the stronger position. Days 9, 11, 13, 15, and 17 will be all considered istiḥâḍah (non-menstrual vaginal bleeding).

The shortest period of purity is 13 days. If a woman's cycle occurs every 20 days, and she is not discerning, nor did she have a habit from before, then she will consider the first 7 days her ḥayḍ and the following 13 days to be pure (istiḥâḍah, or non-menstrual bleeding). If the cycle is repeated more frequently than this, she will keep the days of purity fixed at 13; so in an 18-day cycle, she will consider only the first 5 days as her ḥayḍ.

[I.10] Chapter on Postpartum Bleeding

بَابُ النِّفَاسِ

وَهُوَ: الدَّمُ الْخَارِجُ بِسَبَبِ الْوِلَادَةِ.	This is the blood that flows out because of childbirth. [I.10.1]

[I.10.1] Note that he said 'because of', not 'after'. This is because in (A), the bleeding that precedes delivery by 1 to 3 days, and is associated with signs of impending delivery, is considered postpartum bleeding.

وَحُكْمُهُ حُكْمُ الْحَيْضِ فِيْمَا يَحِلُّ وَيَحْرُمُ وَيَجِبُ وَيَسْقُطُ بِهِ.	Its ruling is like that of menstruation concerning the things that become permissible and those that become forbidden, and concerning the things that become required and those that are dropped because of it.

وَأَكْثَرُهُ أَرْبَعُوْنَ يَوْمًا، وَلَا حَدَّ لِأَقَلِّهِ.	Its longest duration is forty days, [I.10.2] and there is no limit for the shortest.

[I.10.2] 🕮 "During the lifetime of the Prophet (SA), the woman with postnatal bleeding would wait around (until the end of her postnatal bleeding) for 40 days." (D, T, Ma, A – from Umm Salamah; A: Auth) In one report, she said "the women of the Prophet (SA)". Also, the implications of the hadith are not conclusive because she may have reported an occurrence as opposed to a ruling. Because of that, there is still a disagreement in this regard. According to (-S), the longest duration is 60 days.

وَمَتَى رَأَتِ الطُّهْرَ، اغْتَسَلَتْ، وَهِيَ طَاهِرَةٌ. فَإِنْ عَادَ فِيْ مُدَّةِ الأَرْبَعِيْنَ، فَهُوَ نِفَاسٌ أَيْضًا.	Once she sees the purity (cessation of bleeding), she must perform major ablution, and she becomes pure. If it returns within the period of forty days, it is still considered postpartum bleeding. [I.10.3]

[I.10.3] (A/SM): The blood seen during that duration after a period of purity is doubtful, so she should fast, pray, and avoid intercourse. She must repeat the fast, though, just in case the blood was in fact part of her post-partum bleeding.

[II] The Book of Prayer
كِتَابُ الصَّلَاةِ

[Importance of the Prayer and the Ruling on One Who Abandons It]

‘Ubâdah ibn aṣ-Ṣâmit (RA) reported that he heard the Prophet (SA) say, “There are five prayers that Allah has required of his slaves every day and night. He who diligently observes them will have a covenant with Allah that He will admit him into paradise, and he who does not diligently observe them will have no covenant with Allah. If He wills, He will torment him, and if He wills, He will forgive him.” [II.0.1]	رَوَى عُبَادَةُ بْنُ الصَّامِتِ رضي الله عنه قَالَ: سَمِعْتُ رَسُولَ اللهِ ﷺ يَقُوْلُ: «خَمْسُ صَلَوَاتٍ كَتَبَهُنَّ اللَّهُ عَلَى الْعِبَادِ فِي الْيَوْمِ وَاللَّيْلَةِ، فَمَنْ حَافَظَ عَلَيْهِنَّ كَانَ لَهُ عِنْدَ اللَّهِ عَهْدٌ أَنْ يُدْخِلَهُ الْجَنَّةَ، ومَنْ لَمْ يُحَافِظْ عليهن لم يَكُنْ لَهُ عِنْدَ اللَّهِ عَهْدٌ، إِنْ شَاءَ عَذَّبَهُ وإِنْ شَاءَ غَفَرَ لَه.»

[II.0.1] (D – ‘Ubâdah ibn aṣ-Ṣâmit; Nawawi, al-Mundhiri: S)

The prayer is the second pillar of Islam after the testimony of faith. Linguistically, ṣalâh means supplication. Some scholars have also linked its name to ṣilah (connection), reflecting the bond it renews between the servant and the Creator. It is a chance for the servants to pull themselves out of the spinning machine of this life to reinforce their relationship with their Creator, to water the tree of their faith and to moisten their souls, which would otherwise be drying out and cracking in the desert of this never-ending pursuit of abundance and carnal pleasures. For the soul, praying is like turning to the shade of a tree in the middle of work on a hot day. It is a chance to rejuvenate spiritually; a reminder of our origin, our Creator, and the cause of our existence. If it is done with devotion, it will be our greatest deterrent from wrongdoing and aggression.

Therefore, the five prayers are mandatory upon every adult, sane Muslim, except for	فَالصَّلَوَاتُ الْخَمْسُ وَاجِبَةٌ عَلَى كُلِّ مُسْلِمٍ،

the menstruating woman or the woman having postpartum bleeding.	عَاقِلٍ، بَالِغٍ، إِلَّا الْحَائِضَ، وَالنُّفَسَاءَ.

Whoever rejects its obligation out of ignorance should be educated about it. If he rejects it out of stubbornness, he becomes a disbeliever. [II.0.2]	فَمَنْ جَحَدَ وُجُوْبَهَا لِجَهْلِهِ، عُرِّفَ ذٰلِكَ، وَإِنْ جَحَدَهَا عِنَادًا، كَفَرَ.

[II.0.2] By consensus.

As for one who abandons it out of laziness, they differed.

(A): The person becomes a disbeliever only after being invited by the Imam (head of Muslim state) or his agent to pray (and preferring death to praying).

The majority: the person is a sinner; his or her disbelief is of the minor type, which is still worse than the major sins.

It should be enough of a deterrent to know that there is a question about whether or not one is Muslim in this situation.

It is not permissible to defer it beyond its mandated time except for one who intends to combine it [II.0.3] or one who is busy fulfilling its conditions.	وَلَا يَحِلُّ تَأْخِيْرُهَا عَنْ وَقْتِ وُجُوْبِهَا إِلَّا لِنَاوٍ جَمْعَهَا، أَوْ مُشْتَغِلٍ بِشَرْطِهَا.

[II.0.3] With the next prayer, as long as he has a legitimate excuse.

If one abandons it out of carelessness, he must be asked for three days to repent; if he does not, he must be killed. [II.0.4]	فَإِنْ تَرَكَهَا تَهَاوُنًا، اسْتُتِيْبَ ثَلَاثًا، فَإِنْ تَابَ، وَإِلَّا قُتِلَ.

[II.0.4] According to (A) + (+M, +S).

(A/SM): If the person says, “I will pray at home,” he or she should be trusted to do that and released.

It seems that the aim here is to deter people from publicly rebelling against the obligation of prayer or showing disregard for its importance.

(-H): He should be locked up until he repents.

See the appendix on ḥudood.

[II.1] Chapter on *Adhân* and *Iqâmah*

بَابُ الأَذَانِ وَالإِقَامَةِ

The two [the *adhân* (first call to prayer) and the *iqâmah* (the call to rise for prayer, given when the prayer is about to begin)] are prescribed for the five prayers only, and for men only. [II.1.1]	وَهُمَا مَشْرُوْعَانِ لِلصَّلَوَاتِ الْخَمْسِ دُوْنَ غَيْرِهَا، لِلرِّجَالِ دُوْنَ النِّسَاءِ.

[II.1.1] The Beauty and Ruling of the Adhân

In *Fiqh as-Sunnah,* Sayyid Sabiq (may Allah bestow mercy on him) quotes the following from al-Qurṭubi (may Allah bestow mercy on him) and others:

Al-Qurṭubi and others have said that the adhân, though it has very few words, covers all essentials of the faith. It begins by proclaiming the greatness of Allah, and that includes His existence and perfection. It mentions second to that His Oneness and then the denial of polytheism, and it confirms the prophethood of Muhammad (SA), and then it invites to specific acts of obedience after testifying to Muhammad's (SA) prophethood, for they [those deeds] are not known except through the Messenger (SA). Then it calls to prosperity, which is eternity in paradise, and it points to the return to Allah. Then, for emphasis, some repetitions are made. (See below for the words of the adhân.)

The Ruling of *Adhân* and *Iqâmah*

They are farḍ kifâyah (meaning that they are obligations on everyone in the community, which are satisfied if fulfilled by even one person). The Prophet (SA) said:

«ما من ثَلَاثَةٍ في قَرْيَةٍ ولا بَدْوٍ [مسند أحمد: لَا يُؤَذَّنُ] لَا تُقَامُ فِيهِمْ الصَّلَاةُ إلا قد اسْتَحْوَذَ عليهم الشَّيْطَانُ فَعَلَيْكَ بِالْجَمَاعَةِ فَإِنَّمَا يَأْكُلُ الذِّئْبُ الْقَاصِيَةَ.»

"Whenever 3 people, whether in a town or desert, do not make the adhân and establish the prayer among themselves, Satan will

overtake them. So be with the group, for the wolf only devours the lone sheep." (A, D – from Abu ad-Dardâ'; Kh: S)

There is a great reward for the one who calls the adhân. The Prophet (SA) said:

«إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ على الصَّفِّ الْمُقَدَّمِ وَالْمُؤَذِّنُ يُغْفَرُ له بِمَدِّ صَوْتِهِ وَيُصَدِّقُهُ من سَمِعَهُ من رَطْبٍ وَيَابِسٍ وَلَهُ مِثْلُ أَجْرِ من صَلَّى مَعَه.»

"Allah and His angels pray upon those in the first rows, and the caller to prayer is forgiven, for as far as his voice reaches and whatever hears him will confirm what he says. He will get a reward similar to all of those who pray with him." (A, N – from al-Barâ' ibn 'Âzib; al-Albâni: S)

That is why the Prophet (SA) said that if people knew the reward for calling the adhân, they would compete and draw lots to do it. (B) He also said that the mu'adh-dhins (those who make the call to prayer) will have the tallest necks on the Day of Judgment. (M)

Adhân for Women

(A/SM): The adhân is makrooh for women, even if it is done in the presence of women only.

(+M, +S): It would be forbidden and invalid if done for men.

(-H): It would be makrooh, but valid.

Ibn 'Umar (RAHUMA) was reported to have said, "There is no adhân or iqâmah required of women." (Ba: controversial authenticity). However, 'Â'ishah (RAH) used to make the adhân and iqâmah and lead the women in prayer, standing in the middle of the row. (Ba) This report shows the permissibility of a group of women calling the adhân and the iqâmah among themselves. Ash-Shâfi'i and Aḥmad were both reported to have allowed this.

The adhân contains fifteen phrases (without repetition [first saying the testimonies quietly and then repeating them aloud]), [II.1.2]	وَالأَذَانُ خَمْسَ عَشْرَةَ كَلِمَةً، لَا تَرْجِيْعَ فِيْهِ،

[II.1.2] The Adhân

Allâhu akbar = Allah is the Greatest. (said 4 times)

Ash-hadu an lâ ilâha illâ Allâh = I bear witness that there is no god worthy of worship except (the One God) Allah. (said twice)

Ash-hadu anna Muḥammadan rasool Ullâh = I bear witness that Muhammad is the Messenger of Allah. (said twice)

Ḥayya ʻalaṣ-ṣalâh = Hurry (or rise up) to the prayer. (said twice)

Ḥayya ʻalal-falâḥ = Hurry to success (or rise up for salvation). (said twice)

Allâhu akbar = Allah is the Greatest. (said twice)

Lâ ilâha illâ Allâh = There is none worthy of worship except (the One God) Allah. (said once)

For the dawn (*fajr*) prayer, the following phrase is inserted after the fifth part above:

Aṣ-ṣalâtu khayrum-minan-nawm = Prayer is better than sleep. (said twice)

Disagreement of Diversity

There are a variety of forms for the adhân and iqâmah that were reported from the Prophet (SA), and each madh-hab selected their preferred form, but this matter is an example of difference based on diversity, not conflict. However, all these differences in adhân are concerning the number of times certain phrases of the adhân and iqâmah, mentioned above, are repeated.

Any other addition to the words of adhân before, during, or after it is an innovation, and every innovation in matters of worship is misguidance that

must be condemned in order to maintain the purity, authenticity, and unity of our religious practices. The Prophet (SA) said:

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذا مَا لَيْس مِنْه فَهُوَ رَدٌّ.»

"Whoever introduces something to this affair of ours will have it rejected." (Ag – from 'Â'ishah)

[Iqâmah]

and the iqâmah contains eleven phrases. [II.1.3]	وَالإِقَامَةُ إِحْدَى عَشْرَةَ كَلِمَةً.

[II.1.3] The Iqâmah

Allâhu akbar = Allah is the Greatest. (said twice)

Ash-hadu an lâ ilâha illâ Allâh = I bear witness that there is none worthy of worship except (the One God) Allah. (said once)

Ash-hadu anna Muḥammadan rasool Ullâh = I bear witness that Muhammad is the Messenger of Allah. (said once)

Ḥayya 'alaṣ-ṣalâh = Hurry to (or rise up for) the prayer. (said once)

Ḥayya 'alal-falâḥ = Hurry to success (or rise up for salvation). (said once)

Qad qâmat aṣ-Ṣalâh= Prayer will begin immediately. (said twice)

Allâhu akbar = Allah is the Greatest. (said twice)

Lâ ilâha illâ Allâh = There is none worthy of worship except (the One God) Allah. (said once)

The mu'adh-dhin should be honest, with a good and loud voice, and should be knowledgeable about the times [of prayers].	وَيَنْبَغِيْ أَنْ يَكُوْنَ الْمُؤَذِّنُ أَمِيْنًا، صَيِّتًا، عَالِمًا بِالأَوْقَاتِ.

It is recommended that he makes the adhân while standing, in a state of wuḍoo', and on a high place, facing the qibla.	وَيُسْتَحَبُّ أَنْ يُؤَذِّنَ قَائِمًا، وَمُتَطَهِّرًا، عَلَى مَوْضِعٍ عَالٍ، مُسْتَقْبِلَ الْقِبْلَةِ.

When he reaches the *ḥay'alah* (each one of the following phrases, "Hurry to the prayer" and "Hurry to success"), he should lean [twist slightly] to the right and left without moving his feet. [II.1.4]	فَإِذَا بَلَغَ الْحَيْعَلَةَ، الْتَفَتَ يَمِيْنًا وَشِمَالاً، وَلَا يُزِيْلُ قَدَمَيْهِ.

[II.1.4] Bilâl (RA) would turn his mouth to the right and left with the ḥayya 'alaṣ. (Ag – from Abu Juhayfah)

He should put his [index] fingers in his ears, [II.1.5]	وَيَجْعَلُ إِصْبَعَيْهِ فِيْ أُذُنَيْهِ،

[II.1.5] (D, T) reported that Bilâl (RA) did so, albeit with controversial authenticity, but the report was deemed reliable by Ibn Ḥajar (may Allah bestow mercy on him) in Natâ'ij al-Afkâr. Also, (T) said after it that this is what the people of knowledge recommend.

reciting the adhân slowly and the iqâmah quickly.	وَيَتَرَسَّلَ فِي الأَذَانِ، وَيَحْدُرُ الإِقَامَةَ.

He should say in the adhân of the morning [dawn] prayer, after the *ḥay'alah*: *Aṣ-Ṣalâtu khayrum-minan-nawm* (The prayer is better than sleep). He should repeat it twice. [II.1.6]	وَيَقُوْلُ فِيْ أَذَانِ الصُّبْحِ: «الصَّلَاةُ خَيْرٌ مِنَ النَّوْمِ» مَرَّتَيْنِ بَعْدَ الْحَيْعَلَةِ.

[II.1.6] The Prophet (SA) taught that. (D – from Abu Maḥdhoorah; D: Auth)

He may not make the adhân before the prescribed time except for the morning [dawn] prayer, for the Messenger of Allah (SA) said, "Verily Bilâl (RA) makes adhân at night, so continue to eat and drink until Ibn Umm Maktoom (RAHUMA) makes adhân." [Ag]	وَلَا يُؤَذِّنُ قَبْلَ الْوَقْتِ إِلَّا لَهَا؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «إِنَّ بِلَالًا يُؤَذِّنُ بِلَيْلٍ فَكُلُوا وَاشْرَبُوا حَتَّى يُؤَذِّنَ ابْنُ أُمِّ مَكْتُومٍ.»

It is recommended for those who hear the mu'adh-dhin to repeat what he says, for the Messenger of Allah (SA) said, "If you hear the call [to prayer], say what he says." [II.1.7]	وَيُسْتَحَبُّ لِمَنْ سَمِعَ الْمُؤَذِّنَ، أَنْ يَقُوْلَ كَمَا يَقُوْلُ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «إذا سَمِعْتُمْ النِّداءَ فَقُولُوا مِثْلَ ما يَقول.»

[II.1.7] That is so for everything except for the ḥay'alah, after which it is the sunnah to say: *Lâ ḥawla wa lâ quwwata illâ billâh* (There is no power or might except with Allah). (M – from 'Umar)

After the end of the adhân, we should pray for the Prophet (SA) because the Prophet (SA) said:

«إذا سَمِعْتُمْ الْمُؤَذِّنَ فَقُولُوا مِثْلَ ما يقول ثُمَّ صَلُّوا عَلَيَّ فإنه من صلى عَلَيَّ صَلَاةً صلى الله عليه بها عَشْرًا ثُمَّ سَلُوا اللَّهَ لي الْوَسِيلَةَ فَإِنَّهَا مَنْزِلَةٌ في الْجَنَّةِ لَا تَنْبَغِي إلا لِعَبْدٍ من عِبَادِ اللَّهِ وَأَرْجُو أَنْ أَكُونَ أنا هو فَمَنْ سَأَلَ لي الْوَسِيلَةَ حَلَّتْ له الشَّفَاعَةُ.»

"If you hear the call to prayer, repeat after it. Then supplicate for me, for whoever makes one supplication for me, Allah bestows ten blessings on him. Then ask Allah to grant me the highest status in paradise. It is a status in paradise reserved for one of the slaves of Allah. I hope to be him, and whoever asks Allah to grant me the

highest status in paradise becomes deserving of my intercession." (M – from Ibn 'Amr)

This is how we should pray for him:

«اللهم رَبَّ هذه الدَّعْوَةِ التَّامَّةِ وَالصَّلَاةِ الْقَائِمَةِ آتِ مُحَمَّدًا الْوَسِيلَةَ وَالْفَضِيلَةَ وَابْعَثْهُ مَقَامًا مَحْمُودًا الذي وَعَدْتَه.»

"O Allah, Lord of this complete call and of the established prayers, grant Muhammad the highest status in paradise, the most virtuous place, and resurrect him to the praiseworthy position that you have promised him." (B – from Jâbir)

It is important to note here that the mu'adh-dhin and those hearing him should pray for the Prophet (SA) quietly after the adhân. Making this a regular public recitation appended to the adhân has no basis in the Sunnah. Ibn Ḥajar al-Haytami (may Allah bestow mercy on him), in *al-Fatâwâ al-Kubrâ*, distinguished between praying for the Prophet (SA), which is prescribed, and the customary manner in which the mu'adh-dhin recites it aloud, describing the underlying act as Sunnah and the manner of performing it as an innovation. Some later scholars permitted this public recitation and regarded it as a good innovation. Nevertheless, the stronger view is that this practice should be abandoned: the prescription to pray for the Prophet (SA) does not by itself justify making it a regular public addition to the adhân. Then one makes supplication for himself, for the Prophet (SA) said:

«الدُّعَاءُ لَا يُرَدُّ بين الْأَذَانِ وَالْإِقَامَةِ.»

"A supplication between the adhân and iqâmah shall not be rejected." (T – from Anas; T: S)

After the iqâmah, the prayer should start shortly, but if there is a reason for some delay, there is no problem and no need to repeat the iqâmah.

📖 "The iqâmah was made while the Messenger of Allah (SA) was talking to a man in the corner of the mosque. He did not come to the prayer until the people had fallen asleep." (B – from Anas ibn Mâlik)

[II.2] Chapter on Conditions of Prayer

بَابُ شَرَائِطِ الصَّلَاةِ

[1: Ritual Purity]

They are six: First: Ritual purity, based on the statement of the Messenger of Allah (SA), "No prayer is valid for the one who has ritual impurity, until he makes wuḍoo'." [II.2.1]	وَهِيَ سِتَّةٌ: أَحَدُهَا: الطَّهَارَةُ مِنَ الْحَدَثِ؛ لِقَوْلِ رَسُولِ اللهِ ﷺ:«لَا صَلَاةَ لمن أَحْدَثَ حَتَّى يَتَوَضَّأَ.»

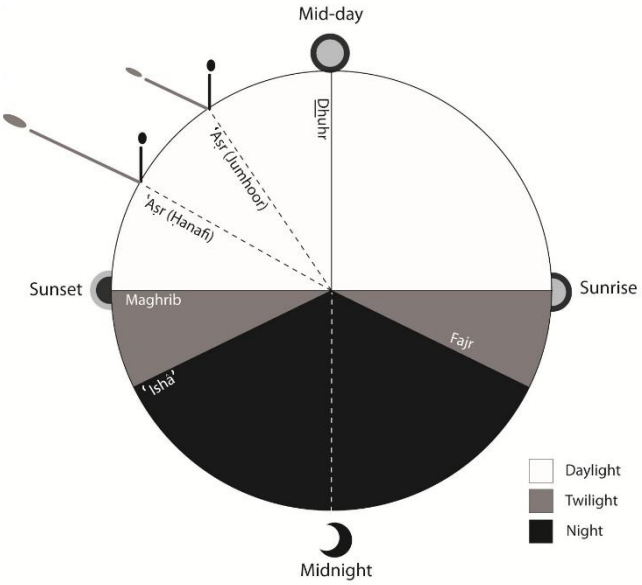
[II.2.1] The Prophet (SA) said:

«لَا يَقْبَلُ اللهُ صَلَاةَ أَحَدِكُمْ إِذَا أَحْدَثَ حَتَّى يَتَوَضَّأَ.»

"Allah will not accept the prayer of one of you who has ritual impurity, until he makes wuḍoo'." (M – from Abu Hurayrah)

[2: The Commencement of the Time]

Second: The commencement of the time [II.2.2]	الثَّانِيْ: الْوَقْتُ.



[II.2.2] The times are mainly based on the following hadith of Jibreel (the angel Gabriel).

The Prophet said,

«أَمَّنِي جِبْرِيلُ عَلَيْهِ السَّلَام عِنْدَ الْبَيْتِ مَرَّتَيْنِ فَصَلَّى الظُّهْرَ فِي الْأُولَى مِنْهُمَا حِينَ كَانَ الْفَيْءُ مِثْلَ الشِّرَاكِ ثُمَّ صَلَّى الْعَصْرَ حِينَ كَانَ كُلُّ شَيْءٍ مِثْلَ ظِلِّهِ ثُمَّ صَلَّى الْمَغْرِبَ حِينَ وَجَبَتْ الشَّمْسُ وَأَفْطَرَ الصَّائِمُ ثُمَّ صَلَّى الْعِشَاءَ حِينَ غَابَ الشَّفَقُ ثُمَّ صَلَّى الْفَجْرَ حِينَ بَرَقَ الْفَجْرُ وَحَرُمَ الطَّعَامُ عَلَى الصَّائِمِ وَصَلَّى الْمَرَّةَ الثَّانِيَةَ الظُّهْرَ حِينَ كَانَ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ لِوَقْتِ الْعَصْرِ بِالْأَمْسِ ثُمَّ صَلَّى الْعَصْرَ حِينَ كَانَ ظِلُّ كُلِّ شَيْءٍ مِثْلَيْهِ ثُمَّ صَلَّى الْمَغْرِبَ لِوَقْتِهِ الْأَوَّلِ ثُمَّ صَلَّى الْعِشَاءَ الْآخِرَةَ حِينَ ذَهَبَ ثُلُثُ اللَّيْلِ ثُمَّ صَلَّى الصُّبْحَ حِينَ أَسْفَرَتْ الْأَرْضُ ثُمَّ الْتَفَتَ إِلَيَّ جِبْرِيلُ فَقَالَ يَا مُحَمَّدُ هَذَا وَقْتُ الْأَنْبِيَاءِ مِنْ قَبْلِكَ وَالْوَقْتُ فِيمَا بَيْنَ هَذَيْنِ الْوَقْتَيْنِ.»

"Jibreel ('alayhi as-salâm – peace be upon him) led me (in ṣalât) twice at the House. So he prayed dhuhr the first time when the shadow was equal to the length of the sandal's strap. Then he prayed 'aṣr when everything was equal to the length of its shadow. Then he prayed maghrib when the sun had set and the fasting person [was permitted to] break his fast. Then he prayed 'ishâ'

when the twilight had vanished. Then he prayed fajr when fajr (dawn) appeared, and when eating became prohibited for the fasting person. The second time he prayed dhuhr when the shadow of everything was equal to its length, at the time of 'aṣr the day before. Then he prayed 'aṣr when the shadow of everything was about twice its length. Then he prayed maghrib at the same time as he did the first time. Then he prayed 'ishâ', the later one, when one third of the night had gone. Then he prayed ṣubḥ when it became bright. Then Jibreel turned towards me and said, 'O Muhammad! These are the times of the Prophets before you, and the time (of the prayers) is what is between these two times.'" (A, N, T – from Ibn 'Abbâs; T: RS)

There are other reports from the Prophet (SA) concerning the times that are cited below.

The time of the noon *(dhuhr)* prayer is from the time the sun passes its zenith until the time when the length of an object's shadow becomes equal to the length of the object itself. [II.2.3]	وَوَقْتُ الظُّهْرِ مِنَ زَوَالِ الشَّمْسِ إِلَى أَنْ يَصِيْرَ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ.

[II.2.3] Equal to the length of the object itself plus the length of its shadow at the time of dhuhr, for the shadow does not completely vanish at dhuhr except when the sun is directly overhead.

Second: The commencement of the time The time of the afternoon prayer *('aṣr)* – which is the middle prayer – is from the end of the time of dhuhr [II.2.4] until the sun turns yellow. [II.2.5] --- Then the time of preference ends, and the time of necessity lasts until sunset.	وَوَقْتُ الْعَصْرِ - وَهِيَ الْوُسْطَى - مِنْ آخِرِ وَقْتِ الظُّهْرِ إِلَى أَنْ تَصْفَرَّ الشَّمْسُ، ثُمَّ يَذْهَبُ وَقْتُ الاِخْتِيَارِ، وَيَبْقَى وَقْتُ الضَّرُوْرَةِ إِلَى غُرُوْبِ الشَّمْسِ.

[II.2.4] Is the Beginning of ‘Aṣr and the End of Dhuhr the Same?

For (A) + (+M, +S, and the two disciples of Abu Ḥaneefah), the end of dhuhr time is when the length of an object’s shadow becomes equal to the length of the object itself. For (-H), it is the same as the beginning of ‘aṣr in the Ḥanafi position, which is when the length of an object’s shadow becomes twice the length of the object itself.

[II.2.5] (A): The time of choice ends when an object’s shadow reaches twice its length, excluding its shadow at noon. According to (a), followed by Ibn Qudâmah here, it ends when the sun turns yellow. Under either view, delaying into the ensuing time of necessity without an excuse is forbidden, although the prayer’s time continues until sunset.

The time of the sunset prayer *(maghrib)* is until the red color of sunset disappears.	وَوَقْتُ الْمَغْرِبِ: مِنَ الْغُرُوْبِ إِلَى أَنْ يَغِيْبَ الشَّفَقُ الأَحْمَرُ.

The time of the night prayer *(‘ishâ’)* is from that time [the red color of sunset disappears] until the middle of the night, [II.2.6] and then the time of necessity is until the rising of the second dawn (fajr). [II.2.7]	وَوَقْتُ الْعِشَاءِ: مِنْ ذٰلِكَ إِلَى نِصْفِ اللَّيْلِ، وَيَبْقَى وَقْتُ الضَّرُوْرَةِ إِلَى طُلُوْعِ الْفَجْرِ الثَّانِي.

[II.2.6] Midway between maghrib and fajr.

[II.2.7] ‘Ishâ’ Time

It is not permitted to delay the ‘ishâ’ prayer beyond the first third of the night without an excuse. According to (a), followed by Ibn Qudâmah here, the limit is the middle of the night, halfway between maghrib and fajr.

Other scholars permit delaying it beyond the middle of the night, with differing details concerning dislike. Their position is based on a hadith in which the Prophet (SA) said:

«أَمَا إِنَّهُ لَيْسَ فِي النَّوْمِ تَفْرِيطٌ إنما التَّفْرِيطُ على من لم يُصَلِّ الصَّلَاةَ حتى يَجِيءَ وَقْتُ الصَّلَاةِ الْأُخْرَى.»

"There is no negligence in sleeping, but [there is negligence] in not praying a prayer until the time of the next one comes." (M – from Abu Qatâdah)

The morning prayer is an exception to this by consensus.

The half-night limit is based on the following statement of the Prophet (SA):

«وَوَقْتُ صَلَاةِ الْعِشَاءِ إلى نِصْفِ اللَّيْلِ الْأَوْسَطِ.»

"The time of 'ishâ' is until the middle of the night." (M – from Ibn 'Amr)

The holders of both positions accept both reports but have different ways of reconciling them.

The time of fajr is from then [rising of the second dawn] [II.2.8] until sunrise.	وَوَقْتُ الْفَجْرِ: مِنْ ذٰلِكَ إِلَى طُلُوْعِ الشَّمْسِ.

[II.2.8] This is the true dawn, when a horizontal line of light is seen across the horizon. The deceptive dawn that precedes it is vertical.

He who makes *takbeer* (saying the opening *Allâhu akbar*) for the prayer before its time ends will have caught it. Praying at the beginning of the time is better, except for the last night prayer ('ishâ') and dhuhr; when it is excessively hot.	وَمَنْ كَبَّرَ لِلصَّلَاةِ قَبْلَ خُرُوْجِ وَقْتِهَا، فَقَدْ أَدْرَكَهَا. وَالصَّلَاةُ فِيْ أَوَّلِ الْوَقْتِ أَفْضَلُ إِلَّا الْعِشَاءَ الآخِرَةَ، وَفِيْ شِدَّةِ الْحَرِّ فِي الظُّهْرِ.

[3: Covering the ‘Awrah]

Third: Covering the ‘awrah (the part of a person’s body that must be screened from public view) with that which does not show the complexion. [II.2.9]	الشَّرْطُ الثَّالِثُ: سِتْرُ الْعَوْرَةِ بِمَا لَا يَصِفُ الْبَشَرَةَ.

[II.2.9] It has been reported that the Messenger of Allah (SA) said:

«لَا يَقْبَلُ الله صَلَاةَ حَائِضٍ إلا بِخِمَارٍ.»

“Allah will not accept the prayer of a woman who has attained puberty except with a head-covering.” (D – from ‘Â’ishah; D: S)

Some argued that this is a statement from the Mother of the Believers, ‘Â’ishah (RAH), not from the Prophet (SA).

The ‘awrah of the man is between the navel and the knees. [II.2.10]	وَعَوْرَةُ الرَّجُلِ وَالأَمَةِ، مَا بَيْنَ السُّرَّةِ وَالرُّكْبَةِ.

[II.2.10] ‘Awrah of a Man

(A) + (+M, +S): From the navel to the knees, excluding the navel and knees. The Ḥanafi position includes the knees, as stated below.

(a): The private parts only.

There are various reports that are seemingly conflicting in this regard:

1- ‘Â’ishah (RAH) said, "The Prophet (SA) was sitting with his thigh uncovered. Abu Bakr (RA) asked for and received permission to enter, and the same thing happened with ‘Umar (RA). However, when ‘Uthmân (RA) asked for permission to enter, the Prophet (SA) covered himself with his clothes. When they left, I said: O Messenger of Allah, you permitted Abu Bakr and ‘Umar to enter while your thigh was uncovered, but when ‘Uthmân asked permission to enter, you covered yourself! He said:

«ألا أَسْتَحِي من رَجُلٍ تَسْتَحِي منه الْمَلَائِكَةُ»

'Should I not be shy of a man whom even the angels are shy of?'" (A – from 'Â'ishah)

2- The Messenger of Allah (SA) passed by Ma'mar, whose thighs were uncovered, and said to him:

«يا مَعْمَرُ غَطِّ فَخِذَيْكَ فإن الْفَخِذَ عَوْرَةٌ.»

"O Ma'mar, cover your thighs, for the thighs are 'awrah." (H. B has a similar hadith – from Muhammad ibn Jaḥsh)

It seems that to reconcile these reports, one should say that there is more flexibility with uncovering the thighs in front of men, particularly trustworthy ones. However, one should be careful with one's prayers and err on the side of safety.

One should also beautify oneself for the prayer. Allah (ST) said:

{يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِندَ كُلِّ مَسْجِدٍ}

{O children of Adam! Take your adornment (by wearing your clean clothes) while praying and going around (the ṭawâf of) the Kaaba…} (al-A'râf 7:31)

The righteous predecessors wore their best clothes for the prayers.

Some argue that wearing a head cover is part of this adornment, and it may be in certain cultures. There is no proof, however, that it is mandatory.

Concerning wearing trousers for men, there is a report by 'Abdur-Razzâq from Ubayy (RA) that 'Umar (RA) said it was permissible. 'Umar allowed praying in trousers and a ridâ' (the upper garment worn in Hajj and 'umrah). (B – from Abu Hurayrah)

It is not appropriate to wear very tight trousers, since modesty is one of the characteristics of our Sharia. This is not to say that it is prohibited, for there is no proof of its being impermissible, and the scholars – including Ibn Qudâmah in *al-Mughni* and an-Nawawi in al-Majmoo' – argue that tight trousers are sufficient to fulfill the obligation of covering one's 'awrah.

The entire body of the free woman is ‘awrah except for the face and hands. [II.2.11]	وَالْحُرَّةُ كُلُّهَا عَوْرَةٌ، إِلَّا وَجْهَهَا وَكَفَّيْهَا.

[II.2.11] ‘Awrah of a Woman

In the prayer, there is an agreement that she should not cover her face in the absence of foreign men. There are two different reports in the madh-hab concerning the hands; the stronger one demands that they be covered, which is a peculiarity of the madh-hab.

Outside the prayer, they disagreed on the ‘awrah a woman should cover.

(A2) + (H, +M, +S): She must cover the entire body except for the face (and hands, according to the majority and one report in the Ḥanbali madh-hab).

(A): She must cover the entire body including the face and hands.

(H2): She must cover the entire body except for the face, hands, and feet.

Many of the later scholars of the four madh-habs deemed it obligatory to cover the face and hands as well, not because they are ‘awrah in themselves, but to block the means to evil and because of the spread of corruption in their times.

Keep in mind that the scholars disagreed over the permissibility of looking at the face and hands by foreign men. This is a separate discussion. The fact that it is haram for men to look at the face and hands does not necessarily mean that it is wâjib for women to cover them.

All madh-habs agreed that it is forbidden for a man to look at the ‘awrah of a non-maḥram woman without a valid reason (such as medical care, including nursing and helping people with disabilities, etc.).

They also all agreed that it would be impermissible to look at her face lustfully.

If there is no lust or fear of *fitnah* (temptation, misguidance), they disagreed about the permissibility of looking at her face without a valid reason. (Valid reasons include the confirmation of identity in business transactions, for testimony, and by the authorities.)

(A) + (+S): It is not permissible.

(a) + (+H, +M, +S2): It is permissible. Al-Mardâwi al-Ḥanbali said in *al-Inṣâf*, "This is the only opinion that suits the people, particularly with their neighbors and family members."

	وَأُمُّ الْوَلَدِ وَالْمُعْتَقُ بَعْضُهَا كَالأَمَةِ.

Whoever prays in a garment or a house that is wrongfully seized, his prayer will be invalid. [II.2.12]	وَمَنْ صَلَّى فِيْ ثَوْبٍ مَغْصُوْبٍ، أَوْ دَارٍ مَغْصُوْبَةٍ، لَمْ تَصِحَّ صَلَاتُهُ.

[II.2.12] Fulfiling a Prerequisite with a Forbidden Action

(A): If one covers his or her 'awrah in prayer with a wrongfully seized garment, or a man covers it with silk garment, the prayer is invalid. This also applies to praying in a wrongfully seized house. (This does not apply to turbans or socks, since they are not used to cover the 'awrah.)

(-H, -M, -S): The person is sinful, but the prayer is valid.

The majority posited that there is no interdependency, while the Ḥanbalis claimed that the interdependency (*ittiḥâd aljihah*) is obvious since he is fulfilling a prerequisite with something that is forbidden.

Wearing gold or silk is permissible for women but not for men, unless there is a need, based on the statement of the Messenger of Allah (SA) regarding gold and silk, "These two are forbidden for the men of my nation and lawful for the women." [Ma – from 'Ali]	وَلُبْسُ الْحَرِيْرِ وَالذَّهَبِ، مُبَاحٌ لِلنِّسَاءِ دُوْنَ الرِّجَالِ، إِلَّا عِنْدَ الْحَاجَةِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ فِي الْحَرِيْرِ وَالذَّهَبِ: «هذان حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حِلٌّ لِإِنَاثِهِمْ.»

If a man prays in one garment, with part of it on his shoulders, then this will suffice him. [II.2.13]	وَمَنْ صَلَّى مِنَ الرِّجَالِ فِيْ ثَوْبٍ وَاحِدٍ، بَعْضُهُ عَلَى عَاتِقِهِ، أَجْزَأَهُ ذٰلِكَ.

[II.2.13] The Prophet (SA) said:

«لَا يُصَلِّي أَحَدُكُمْ فِي الثَّوْبِ الْوَاحِدِ لَيْسَ عَلَى عَاتِقَيْهِ شَيْءٌ»

"None of you should pray in a single garment with nothing on his shoulders." (Ag – from Abu Hurayrah)

(A): In an obligatory prayer, an able man must cover all of at least one shoulder with clothing for the prayer to be valid.

(-H, -M, -S): It is a recommendation, not an obligation.

If he only finds enough to cover his 'awrah, he should cover it; and if not enough to cover all of it, he should cover the two private parts [the genitals and the anus]; and if not enough for that, he must cover one of them; and if he has nothing to cover with, he should pray sitting and must nod for his bowing and prostration. If he prays standing, it is permissible.	فَإِنْ لَمْ يَجِدْ إِلَّا مَا يَسْتُرُ عَوْرَتَهُ، سَتَرَهَا، فَإِنْ لَمْ يَكْفِ جَمِيْعَهَا، سَتَرَ الْفَرْجَيْنِ، فَإِنْ لَمْ يَكْفِهِمَا، سَتَرَ أَحَدَهُمَا، فَإِنْ عَدِمَ السِّتْرَ بِكُلِّ حَالٍ، صَلَّى جَالِسًا يُوْمِئُ بِالرُّكُوْعِ وَالسُّجُوْدِ، وَإِنْ صَلَّى قَائِمًا، جَازَ.

One who can only find an impure garment or an impure place may pray in it, and he does not need to make up the prayers later. [II.2.14]	وَمَنْ لَمْ يَجِدْ إِلَّا ثَوْبًا نَجِسًا، أَوْ مَكَانًا نَجِسًا، صَلَّى فِيْهِمَا، وَلَا إِعَادَةَ عَلَيْهِ.

[II.2.14] Covering the 'awrah and removing all impurity from the garment and place of prayer are both conditions of validity, but covering the 'awrah is more important than removing the impurity.

[4: Physical Purity]

Fourth: Physical purity of the body, garment, and place of prayer, [II.2.15] except for the impurity that is	الشَّرْطُ الرَّابِعُ: الطَّهَارَةُ مِنَ النَّجَاسَةِ فِيْ بَدَنِهِ، وَثَوْبِهِ، وَمَوْضِعِ صَلَاتِهِ، إِلَّا النَّجَاسَةَ

exempted, such as a little blood or the like. [II.2.16]	الْمَعْفُوَّ عَنْهَا، كَيَسِيْرِ الدَّمِ وَنَحْوِهِ.

[II.2.15] Physical Purity

It was reported with a sound chain that the Prophet (SA) removed his sandals during prayer, and the Companions behind him did likewise. Upon finishing the prayer, he asked them, "Why did you remove your sandals?" They replied, "We saw you remove yours." He said:

«إِنَّ جِبْرِيلَ أتاني فأخبرني أن بِهِمَا خَبَثاً فإذا جاء أَحَدُكُمُ الْمَسْجِدَ فَلْيَقْلِبْ نعله فَلْيَنْظُرْ فيها فإن رَأَى بها خَبَثاً فليمسه بِالأَرْضِ ثُمَّ لِيُصَلِّ فِيهِمَا.»

"Jibreel (as) came to me and informed me that there was some filth on them. Thus, when one of you comes to the mosque, he should turn his sandals over and examine them. If one finds any filth on them, he should rub them against the ground and pray with them on." (Kh – from Abu Sa'eed al-Khudri)

This hadith, along with other proofs (such as his command to pour water on the urine of the Bedouin man and his command to a woman to wash the menstrual blood off her garment), indicated to the vast majority the necessity of physical purity during the prayer. According to (A), one who cannot remove the impurity must still pray within the time. Repetition is required if he had to pray in an impure garment, but not if he was confined to an impure place or performed tayammum for bodily impurity that he could not remove.

Some scholars consider physical purity to be obligatory but not a condition of validity. According to them, one who prays with impurities on their body, garment, or place of prayer will earn a sin, but the prayer is valid. This opinion was chosen by Imam ash-Shawkâni in his *Nayl al-Awṭâr*, and he stated that it is the older opinion of ash-Shâfi'i and one of the two opinions of (M). According to the verifying Mâlikis, one who knowingly prays with impurity on him must repeat the prayer. Some Mâlikis, like al-Ajhouri (d. 1066), argued that the removal of the impurity is only recommended. Ibn Rushd in Bidâyat al-Mujtahid reported this as one of two opinions in the Mâliki school. Many of the latter Mâlikis reject this position and deny that it is a valid position in their madh-hab.

[II.2.16] (A): Urine and feces are not exempt in any amount. The trivial amounts of blood and pus are exempt.

(H): A limited amount of impurity does not invalidate the prayer. For heavy liquid impurity, the limit is the area of the hollow of the palm; solid impurity is assessed by weight, and light impurity has a different threshold. This position is valuable for people who suffer from obsessive-compulsive disorder (OCD).

If he prays with impurity on him that he is unaware of, or that he knew of but then forgot, then his prayer is valid. [II.2.17]	وَإِنْ صَلَّى وَعَلَيْهِ نَجَاسَةٌ لَمْ يَكُنْ عَلِمَ بِهَا، أَوْ عَلِمَ بِهَا، ثُمَّ نَسِيَهَا، فَصَلَاتُهُ صَحِيْحَةٌ.

[II.2.17] (A/SM) (+H, +S): His prayer is invalid, and he must repeat it.

The position chosen by Imam Ibn Qudâmah above is the position of (A2) + (-M, -s, -t). This position is valuable for people who suffer from OCD.

If he knows of it while in the prayer, he must remove it and carry on with his prayer. [II.2.18]	وَإِنْ عَلِمَ بِهَا فِي الصَّلَاةِ، أَزَالَهَا، وَبَنَى عَلَى صَلَاتِهِ.

[II.2.18] As the Prophet (SA) did in the previous hadith (in which Jibreel informed him that he had some filth on him).

[The Places Where Ṣalât Is Invalid]

The entire earth is a place of prayer in which prayer is valid, except the graveyard, bath house, lavatory, camel's stables and middle of the road. [II.2.19]	وَالأَرْضُ كُلُّهَا مَسْجِدٌ تَصِحُّ الصَّلَاةُ فِيْهَا، إِلَّا الْمَقْبَرَةَ، وَالْحَمَّامَ، والْحُشَّ، وَأَعْطَانَ الإِبِلِ، وقَارِعَةَ الطَّرِيقِ.

[II.2.19] We Can Pray Everywhere Except

The Prophet (SA) said:

«أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ مِنْ الأَنْبِيَاءِ قَبْلِي نُصِرْتُ بِالرُّعْبِ مَسِيرَةَ شَهْرٍ وَجُعِلَتْ لِي الأَرْضُ مَسْجِدًا وَطَهُورًا وَأَيُّمَا رَجُلٍ مِنْ أُمَّتِي أَدْرَكَتْهُ الصَّلاةُ فَلْيُصَلِّ وَأُحِلَّتْ لِي الْغَنَائِمُ وَكَانَ النَّبِيُّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إِلَى النَّاسِ كَافَّةً وَأُعْطِيتُ الشَّفَاعَةَ.»

"I have been given 5 things that were not given to any of the Prophets before me. I have been given victory by means of awe [by Allah frightening my enemies] for a distance traveled in one month; the earth has been made a masjid (place of prostration) for me and a means of purification – therefore, anyone of my Ummah can pray whenever the time for prayer is due for him; the spoils of war have been made permissible for me; each Prophet was sent only to his own people, but I have been sent to all of humankind; and I have been given (the right of) intercession." (Ag – from Jâbir)

Graveyard and the Bathroom

He (SA) also said:

«الْأَرْضُ كُلُّهَا مَسْجِدٌ إلا الْمَقْبَرَةَ وَالْحَمَّامَ.»

"All of the earth is a place of prayer except for the graveyard and the bathroom." (T – from Abu Sa'eed al-Khudri. Controversial authenticity)

That does not apply to the funeral prayer, which may be prayed in the graveyard, as the Prophet (SA) did when he missed the funeral prayer of the black woman who used to clean the masjid.

Lavatory

The following weak hadith was reported from the Prophet (SA).

Ibn 'Umar narrated,

«أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى أَنْ يُصَلَّى فِي سَبْعَةِ مَوَاطِنَ فِي الْمَزْبَلَةِ وَالْمَجْزَرَةِ وَالْمَقْبُرَةِ وَقَارِعَةِ الطَّرِيقِ وَفِي الْحَمَّامِ وَفِي مَعَاطِنِ الإِبِلِ وَفَوْقَ ظَهْرِ بَيْتِ اللَّهِ. .»

"The Prophet prohibited the performance of prayer in 7 places: landfills, slaughterhouses, graveyards, the middle of the road, bath houses, camels' stables, and above the House of Allah (Kaaba)." (T, who said its chain is not strong.)

The hadith is acted upon in the madh-hab, but there are other reports for the prohibition of praying in graveyards, bathrooms, and the stables of camels. There are also rational reasons for the prohibition of the rest. For example, the outhouses are filthier than the bath houses and the camel's stables. Imam Ibn Taymiyah said that the prohibition of praying in them was too clear to the Muslims to need proof.

In our times, there could be places (or rooms) in slaughterhouses that are completely clean. It is hoped that praying in such areas would be acceptable.

Camels' Stables

Someone asked the Prophet (SA) whether he could pray in the camels' stables, and the Prophet (SA) said no. (M – from Jâbir ibn Samurah)

The Middle of the Road

See above the weak hadith concerning this. The rational proof on the prohibition is that it would inconvenience the passersby or cause the person praying too much distraction.

[5: Facing the Qibla]

Fifth: Facing the qibla [II.2.20] except in the supererogatory prayers, while riding, the traveler prays in whichever direction he is facing. [II.2.21]	الشَّرْطُ الْخَامِسُ: اسْتِقْبَالُ الْقِبْلَةِ. إِلَّا فِي النَّافِلَةِ عَلَى الرَّاحِلَةِ لِلْمُسَافِرِ، فَإِنَّهُ يُصَلِّيْ حَيْثُ كَانَ وَجْهُهُ.

[II.2.20] For Allah (ST) said:

{فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ ۚ وَحَيْثُ مَا كُنتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ}

{…Direct your face to al-Masjid al-Ḥarâm (the Sacred Mosque in Makkah) and wherever you may be, turn your faces to it…} (al-Baqarah 2:144)

[II.2.21] Supererogatory Prayers, While Riding

'Âmir ibn Rabee'ah: "I saw the Messenger of Allah (SA) pray while riding, and he faced the direction in which he was going." (Ag)

One who is incapable of facing the qibla, out of fear or for some other reason, may pray in whichever direction he can. [II.2.22] For all others, their prayer is invalid unless they are facing the Kaaba.	وَالْعَاجِزُ عَنِ الِاسْتِقْبَالِ؛ لِخَوْفٍ، أَوْ غَيْرِهِ، فَيُصَلِّي كَيْفَمَا أَمْكَنَهُ. وَمَا عَدَاهُمَا، لَا تَصِحُّ صَلَاتُهُ إِلَّا مُسْتَقْبِلَ الْكَعْبَةِ.

[II.2.22] Allah (ST) said:

{فَإِنْ خِفْتُمْ فَرِجَالًا أَوْ رُكْبَانًا}

{And if you fear (an enemy), perform the prayer on foot or riding…} (al-Baqarah 2:239)

"Facing the qibla or not." (B – from Ibn 'Umar)

If he is near it, he must pray exactly towards it. If he is far, then towards its direction. [II.2.23]	فَإِنْ كَانَ قَرِيبًا مِنْهَا، لَزِمَتْهُ الصَّلَاةُ إِلَى عَيْنِهَا، وَإِنْ كَانَ بَعِيدًا، فَإِلَى جِهَتِهَا.

[II.2.23] Ibn Qudâmah, the author (may Allah bestow mercy on him), said in his other book, *al-Mughni*, "The one who is far away from Makkah must seek the direction of the Kaaba, without having to face it head on." This is also the view of (+H, +M, +s).

Imam Aḥmad said, "Whatever is between the east and the west is qibla… but I like for him to pray towards the middle, between the east and west…

However, his prayer will be complete as long as he prays between these two directions and he does not deviate beyond them." (Ibn Rajab, *Fatḥ al-Bâri*)

It was reported that the Messenger of Allah (SA) said:

«مَا بَيْنَ الْمَشْرِقِ وَالْمَغْرِبِ قِبْلَةٌ»

"Whatever is between the east and the west is qibla." (T – from Abu Hurayrah. Controversial chain, but established as a statement from several Companions)

Since Madinah was north of Makkah, the meaning of this report is that as long as they face south, not east or west, they would be praying to the direction of the qibla. If each one of the cardinal directions occupies 90 degrees out of 360, then a deviation of up to 45 degrees to the left or right of the exact qibla may still be forgiven.

The vast majority of Muslims in North America pray towards the northeast because they consider the shortest distance to Makkah on the globe, not the flat map. Based on the position above, the prayer of those who pray towards the east with a slight tilt to the north and those who pray with a slight tilt to the south is still valid. Still, the matter needs to be resolved at the institutional level and among the scholars, to spare the public from debates that could get contentious.

[Cases of Confusion]

If the qibla is unknown to him while in a town, he must ask, and he may take for a clue the direction of the *miḥrâbs* (prayer niches in the mosques) of the Muslims. If he errs, then he must make up for it. [II.2.24] If it is unknown to him while traveling, he should do his best to figure it out and pray, and he does not have to make up for it [if he erred]. [II.2.25]	وَإِنْ خَفِيَتْ عَلَيْهِ الْقِبْلَةُ فِي الْحَضَرِ، سَأَلَ وَاسْتَدَلَّ بِمَحَارِيْبِ الْمُسْلِمِيْنَ، فَإِنْ أَخْطَأَ، فَعَلَيْهِ الإِعَادَةُ. وَإِنْ خَفِيَتْ فِي السَّفَرِ، اجْتَهَدَ، وَصَلَّى، وَلَا إِعَادَةَ عَلَيْهِ.

[II.2.24] The assumption here is that a mistake is not acceptable in a Muslim town because he could surely find prayer niches to go by.

Based on this, in towns where these Muslim miḥrâbs are not readily available, one should try their best to determine the direction of the qibla. However, if they err, they do not have to repeat the prayer, like the traveler who errs.

[II.2.25] ‘Âmir ibn Rabee‘ah:

كنا مع النبي ﷺفي سفر في ليلة مظلمة فلم ندر أين القبلة فصلى كل رجل منا على حياله فلما أصبحنا ذكرنا ذلك للنبي ﷺ فنزلت {فأينما تولوا فثم وجه الله}

“We were with the Prophet (SA) during a journey on a dark night. We were unable to determine the direction of the qibla, so each one prayed in a direction (that he thought was the qibla). In the morning, we mentioned this to the Messenger of Allah (SA), and then this verse was revealed: {…So wherever you turn, there is the Face of Allah…} (al-Baqarah 2:115)” (T, Ma; al-Albâni, Aḥmad Shâkir: R)

[Disagreement over the Qibla]

If two individuals capable of reasoning disagree, they must not follow each other. A blind individual or layperson must follow the more trustworthy in his thinking.	وَإِنِ اخْتَلَفَ مُجْتَهِدَانِ، لَمْ يَتْبَعْ أَحَدُهُمَا صَاحِبَهُ. وَيَتْبَعُ الأَعْمَى وَالْعَامِيُّ أَوْثَقَهُمَا فِيْ نَفْسِهِ.

[6: Intention]

Sixth: The intention to perform the particular prayer. [II.2.26] It may be made shortly before the takbeer as long as he has not annulled it. [II.2.27]	الشَّرْطُ السَّادِسُ: النِّيَّةُ لِلصَّلَاةِ بِعَيْنِهَا، وَيَجُوْزُ تَقْدِيْمُهَا عَلَى التَّكْبِيْرِ بِالزَّمَنِ الْيَسِيْرِ، إِذَا لَمْ يَفْسَخْهَا.

[II.2.26] (A): It is preferred for the intention to be spoken to oneself (*sirran*).

(a, -t): The intention is an action of the heart and need not be uttered aloud; they considered that an innovation, arguing that there is no proof the Prophet (SA) ever did so or advised others to do so.

[II.2.27] Some have obsessions when it comes to the intention. As long as one does not annul it, it is valid. If you make wuḍoo' to pray a certain prayer, you start the prayer, and then you begin to have doubts about whether you had the right intention for the right prayer, you should cast away the doubt and presume that you did.

[II.3] Chapter on the Etiquette of Walking to the Prayer

بَابُ آدَابِ الْمَشْيِ إِلَى الصَّلَاةِ

يُسْتَحَبُّ - الْمَشْيُ إِلَى الصَّلَاةِ بِسَكِيْنَةٍ وَوَقَارٍ، - وَيُقَارِبُ بَيْنَ خُطَاهُ، - وَلَا يُشَبِّكُ أَصَابِعَهُ.	It is recommended: - to walk to the prayer with tranquility and grace, [II.3.1] - to take short steps, - not to interlace one's fingers, [II.3.2]

[II.3.1] The Prophet (SA) said:

«إذا أُقِيمَتْ الصَّلَاةُ فلا تَأْتُوهَا تَسْعَوْنَ وَأْتُوهَا تَمْشُونَ وَعَلَيْكُمْ السَّكِينَةُ والوَقَارُ فما أَدْرَكْتُمْ فَصَلُّوا وما فَاتَكُمْ فَأَتِمُّوا.»

"When the iqâmah is called, do not run to the prayer, but proceed to it with tranquility and grace. Pray what you catch [with the congregation], and make up what you miss." (Ag – from Abu Hurayrah)

[II.3.2] The Messenger of Allah (SA) said:

«إذا تَوَضَّأَ أَحَدُكم ثم خَرَجَ إلى المَسْجِدِ فَلا يُشَبِّكْ بين أصَابِعِه فإنَّه فِي صَلاة.»

"When one of you makes wuḍoo' and then heads towards the mosque, he should not interlace his fingers, for he is (as if) in prayer." (A, D, T – from Ka'b ibn 'Ujrah; T: S)

-ويقول:«بِسْمِ اللَّهِ: الَّذِي خَلَقَنِي فَهُوَ يَهْدِينِ - الآيات إلى قوله: إِلَّا مَنْ أَتَى اللَّهَ بِقَلْبٍ سَلِيمٍ.»	- to say *Bismillâh*, then recite from {Who created me, and He [it is] Who guides me;} to {…but only one who comes to Allah with a sound heart.} *(ash-Shu'arâ' 26:78–89) [II.3.3]*

[II.3.3] I could find no proof for this supplication, but one of the authentic supplications that has been reported was that the Prophet (SA) went out of his home to the mosque and said:

«اللهم اجْعَلْ لي في قَلْبِي نُورًا وفي لِسَانِي نُورًا وفي سَمْعِي نُورًا وفي بَصَرِي نُورًا وَمِنْ فَوْقِي نُورًا وَمِنْ تَحْتِي نُورًا وَعَنْ يَمِينِي نُورًا وَعَنْ شِمَالِي نُورًا وَمِنْ بَيْنِ يَدَيَّ نُورًا وَمِنْ خَلْفِي نُورًا وَاجْعَلْ في نَفْسِي نُورًا وَأَعْظِمْ لي نُورًا.»

"O Allah, make light in my heart and light on my tongue, and make light in my hearing and light in my sight, and make light above me and light below me, and make light on my right and make light on my left, and make light in front of me and make light behind me, and make light in my soul and make greater my light." (Ag – from Ibn 'Abbâs)

To say, "O Allah, I ask You by the right of the petitioners on You, and the right of this walk of mine, for I did not come out of boasting, arrogance, showing off or seeking fame; I came out of fear from Your anger and to seek Your pleasure. I ask you to save me from the fire and forgive my sins, for no one but You forgives sins." [II.3.4]	ويقول: «اللَّهُمَّ إِنِّي أَسْأَلُكَ بِحَقِّ السَّائِلِينَ عَلَيْكَ، وَبِحَقِّ مَمْشَايَ هذا، فَإِنِّي لَمْ أَخْرُجْ أَشَرًا، وَلا بَطَرًا، وَلا رِيَاءً، وَلا سُمْعَةً خَرَجْتُ اتِّقَاءَ سَخَطِكَ، وَابْتِغَاءَ مَرْضَاتِكَ، أَسْأَلُكَ أَنْ تُنْقِذَنِيَ مِنَ النَّارِ، وَأَنْ تَغْفِرَ لِي ذُنُوبِي، إِنَّهُ لا يَغْفِرُ الذُّنُوبَ إِلا أَنْتَ.»

[II.3.4] This hadith has a controversial chain of narrators, but assuming that it is sound, it does not mean, as indicated by (t), that you ask Allah (ST) by the right of any particular person, but rather by Allah's attributes. Among His attributes are: responding to the petitioner and rewarding the one walking to obedience. (A): allowed asking Allah (tawassul) by His Messenger (SA). This matter is a controversial one. The position of (t), which he reported from Abu Ḥaneefah as well, is safer.

If he hears the iqâmah, he should not walk hurriedly to it because of the statement of the Messenger of Allah (SA), "When the iqâmah is called, do not come to it [the	فَإِذَا سَمِعَ الإِقَامَةَ، لَمْ يَسْعَ إِلَيْهَا؛ لِقَوْلِ رَسُولِ اللهِ ﷺ: «إذا أُقِيمَتْ الصَّلَاةُ فلا تَأْتُوهَا وأنتم

prayer] hurriedly; come to it with tranquility. Whatever you can catch [with the congregation], pray it, and whatever you miss, complete it [after finishing with them]." When the iqâmah is called, there should be no prayer except the obligatory one. [II.3.5]	تَسْعَوْنَ وَأْتُوهَا وأنتُم عَلَيْكُمُ السَّكِينَةُ فما أَدْرَكْتُمْ فَصَلُّوا وما فَاتَكُمْ فَأَتِمُّوا.» وَإِذَا أُقِيْمَتِ الصَّلَاةُ، فَلَا صَلَاةَ إِلَّا الْمَكْتُوْبَةُ.

[II.3.5] This is the exact phrasing of a hadith reported by (M) from the Prophet (SA). However, the people of knowledge indicate that if one can quickly finish a supererogatory prayer and then join the congregation from the beginning of their obligatory prayer, he may do so.

When he arrives at the masjid, he should enter with his right foot first and say: *Bismillâh waṣ-ṣalâtu was-salâmu ʻalâ Rasoolillâh. Allâhumma ighfir li dhunoobi, waftaḥ li abwâba raḥmatik.* (In the name of Allah, and peace and blessings be on the Messenger of Allah. O Allah, forgive my sins and open for me the gates of Your mercy). [M, in part] When he leaves, he should step out with his left foot first, and say the same, except that he should say: …*waftaḥ li abwâba faḍlik* (…and open for me the gates of Your graciousness).	وَإِذَا أَتَى الْمَسْجِدَ، قَدَّمَ رِجْلَهُ الْيُمْنَى فِي الدُّخُوْلِ وقال: «بِسْمِ اللَّهِ، والصَّلَاةُ وَالسَّلَامُ عَلَى رَسُولِ اللَّهِ، اللَّهُمَّ اغْفِرْ لِي ذُنُوبِي، وَافْتَحْ لِي أَبْوَابَ رَحْمَتِكَ» وَإِذَا خَرَجَ قَدَّمَ رِجْلَهُ الْيُسْرى وَقَالَ مِثْلَ ذٰلِكَ، إِلَّا أَنَّهُ يَقُوْلُ: «وَافْتَحْ لِي أَبْوَابَ فَضْلِكَ.»

[II.4] Chapter on the Description of the Prayer

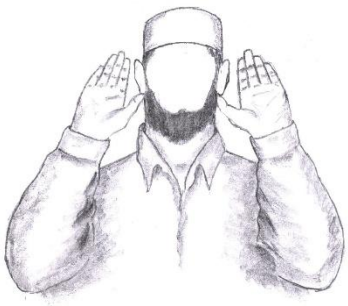
بَابُ صِفَةِ الصَّلَاةِ

[Takbeer]

When he stands for the prayer, he should say: *Allâhu akbar* (Allah is the Greatest). The imam says it aloud. [II.4.1] Likewise, the other takbeers [should be said aloud] so that those behind him can hear them. Everyone else says them to himself.	وَإِذَا قَامَ إِلَى الصَّلَاةِ، قَالَ: اللهُ أَكْبَرُ، يَجْهَرُ بِهَا الإِمَامُ وَبِسَائِرِ التَّكْبِيْرِ، لِيُسْمِعَ مَنْ خَلْفَهُ، وَيُخْفِيْهِ غَيْرُهُ.

[II.4.1] ‘Aloud’ means that the people around you can hear you, while ‘to oneself’ means that you can hear yourself, but those next to you cannot.

When he begins saying the takbeer, he should raise his hands to the level of his shoulders or the tops of his ears, [II.4.2]	وَيَرْفَعُ يَدَيْهِ عِنْدَ ابْتِدَاءِ التَّكْبِيْرِ إِلَى حَذْوِ مَنْكِبَيْهِ أو إلى فُروعِ أُذُنَيْهِ.



[II.4.2] (A): The fingers should be extended and together.

Ibn al-Mundhir reported the consensus of the scholars on the legitimacy of the sunnah of raising the hands.

Al-Albâni said in *The Prophet's Prayer*: "… And he (pbuh) would put them level with his shoulders" (B), although occasionally "he would raise them until they were level with [the tops of] his ears." (M)

[Qiyâm]

and then put them underneath his navel. [II.4.3]	وَيَجْعَلُهُمَا تَحْتَ سُرَّتِهِ.

[II.4.3] Where to Place Your Hands

📖 There is clear evidence that the sunnah is to put the right hand on the left, for the Prophet (SA) used to do that (M), and he commanded the Companions to do it (B). He also said:

«إنا معاشر الأنبياء أمرنا أن نؤخر السحور ونعجل الإفطار وأن نمسك بأيماننا على شمائلنا.»

"We, the company of prophets, have been commanded to delay the pre-dawn meal, to hasten the breaking of the fast, and to place our right hand over the left." (Ḥib – from Ibn 'Abbâs; Ḥib: S)

It is, however, not as clear where he put his hands:

(A) + (+H): Below the navel.

(a) + (-S): Above the navel.

Some other Hadith scholars: On the chest.

There are conflicting and controversial reports in this regard. (a, Ibn al-Mundhir, and t): One may choose between the first two positions.

He should look at the site of his prostration [where his forehead touches the ground]. [II.4.4]	وَيَجْعَلُ نَظَرَهُ إِلَى مَوْضِعِ سُجُوْدِهِ.

[II.4.4] 📖 The Prophet (SA) would lower his head and look at the ground when he prayed. (H, Ba – from Anas; al-Albâni: S)

(A) + (+S): The only time during the prayer when the person is to look elsewhere is during the *tashahhud* (when one states the testimony of faith), for the Prophet (SA) used to look at his index finger then. (N – from ‘Abdullâh ibn az-Zubayr; al-Albâni: S)

Then one says: *Subḥânaka Allâhumma wa biḥamdika wa tabâraka-smuka wa ta‘âlâ jadduka wa lâ ilâha ghayruk* (O Allah, Exalted are You; and [all] praise is due to You; Your name is the most blessed, and Your power is the most supreme; and there is none worthy of worship but You). [II.4.5]	ثم يقول:«سُبْحَانَكَ اللَّهُمَّ وَبِحَمْدِكَ وَتَبَارَكَ اسْمُكَ وَتَعَالَى جَدُّكَ وَلَا إِلَهَ غَيْرُكَ.»

[II.4.5] (D, T, Ma – from ‘Â’ishah. Controversial chain) Another narration of it is traceable to ‘Umar (RA).

There are several opening supplications reported from the Prophet (SA); this is the one chosen by (A).

Then one says: *A‘oodhu billâhi min ash-shayṭânir-rajeem* (I seek refuge in Allah from the accursed devil). [II.4.6] Then he should say: *Bismillâhir-raḥmân-ir-raḥeem* (In the name of Allah, the All-Merciful, the Ever-Merciful).	ثم يقول: «أَعُوذُ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ.» ثم يقول: «بِسْمِ اللهِ الرَّحْمَنِ الرَّحِيْمِ.»

[II.4.6] Seeking refuge with Allah from Satan

The Prophet (SA) used to seek refuge with Allah before reciting Soorat al-Fâtiḥah. (D; al-Albâni: S)

The scholars (may Allah bestow His mercy on all of them) disagreed on whether it is mandatory or not.

Some, including (a), ath-Thawri, al-Awzâ‘i, and Ibn Ḥazm, argued that it was mandatory because of the saying of Allah (ST):

{فَإِذَا قَرَأْتَ الْقُرْآنَ فَاسْتَعِذْ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ}

{So when you want to recite the Qur'an, seek refuge with Allah from Satan, the outcast (the accursed one).} (an-Naḥl 16:98)

The majority (A) + (+H, +S) said it is a sunnah.

They quoted the hadith about the man whose prayer was defective. The Prophet (SA) taught him how to pray and said, "When you go to pray, say takbeer, then recite whatever you can of the Qur'an. Then bow…" (Ag) They say that he did not tell him to seek refuge in Allah.

It is to be recited in the first rak'ah only, for the whole prayer is one supplication to Allah. (A) Others argued that it should be recited in every rak'ah before the recitation of Soorat al-Fâtiḥah. (-S, -t)

Then he should say: *Bismillâhir-raḥmân-ir-raḥeem* (In the name of Allah, the All-Merciful, the Ever-Merciful). He should not say any of this aloud, based on the statement of Anas (RA), "I prayed behind the Prophet (SA), Abi Bakr, 'Umar and 'Uthmân, and I never heard any one of them say aloud: *Bismillâhir-raḥmânir-raḥeem* (In the name of Allah, the All-Merciful, the Ever-Merciful)." [II.4.7]	ثم يقول: «بِسْمِ اللهِ الرَّحْمَنِ الرَّحِيْمِ.» وَلَا يَجْهَرُ بِشَيْءٍ مِنْ ذٰلِكَ؛ لِقَوْلِ أَنَسٍ رضي الله عنه: «صَلَّيْتُ خَلْفَ النَّبِيِّ ﷺ وَأَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ فَلَمْ أَسْمَعْ أَحَدًا مِنْهُمْ يجْهَرُ بِبِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ.»

[II.4.7] Basmalah: To Oneself or Aloud?

There is controversy regarding the recitation of the basmalah:

(S) maintains that the sunnah is to recite it aloud,

Whereas (A) and (H) prescribe reciting it quietly.

📖 Besides the hadith mentioned by the author, there is another from Abu Hurayrah (RA) in which he prayed, recited the basmalah aloud and said, "By the One in whose Hand is my soul, I have done what resembles how we prayed with the Messenger of Allah (sa)." (Ba – from Abu Hurayrah; sound chain)

Ibn al-Qayyim tried to reconcile this hadith with the one from Anas (RA), mentioned by the author in the text above, by saying, “Sometimes the Prophet (SA) would recite it aloud, but most of the time he would say it quietly and not aloud.”

It is also fair to reconcile them by saying that he recited it aloud but more quietly than the rest of the recitation, so some heard it and others did not.

Then he should recite *al-Fâtiḥah*. There is no prayer for one who does not recite it, except for the *ma’moom* (the one led in prayer by an imam), for the recitation of the imam counts for him. It is recommended that he [the ma’moom] recites during the pauses of the imam and whenever he (the imam) does not recite (the Qur’an) aloud. [II.4.8]	ثُمَّ يَقْرَأُ الْفَاتِحَةَ، وَلَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِهَا، إِلَّا الْمَأْمُوْمُ فَإِنَّ قِرَاءَةَ الإِمَامِ لَهُ قِرَاءَةٌ. وَيُسْتَحَبُّ أَنْ يَقْرَأَ فِيْ سَكَتَاتِ الإِمَامِ، وَمَا لَا يَجْهَرُ فِيْهِ.

[II.4.8] (S, Bukhâri): It is mandatory to recite al-Fâtiḥah, even for the ma’moom. Their position is safer.

Then he recites a soorah, [II.4.9] which is (preferably) from the long chapters of *al-Mufaṣṣal [II.4.10]* in the morning [fajr] prayer, and from the shorter ones in the maghrib prayer, and from the medium ones in the rest of the prayers.	ثُمَّ يَقْرَأُ سُوْرَةً تَكُوْنُ فِيْ الصُّبْحِ مِنْ طِوَالِ الْمُفَصَّلِ، وَفِي الْمَغْرِبِ مِنْ قِصَارِهِ، وَفِيْ سَائِرِ الصَّلَوَاتِ مِنْ أَوْسَاطِهِ.

[II.4.9] It is recommended to recite a whole soorah, but reciting part of a soorah is certainly permissible.

[II.4.10] According to (A), al-Mufaṣṣal begins with Soorat Qâf (50). The long soorahs go from Soorat Qâf up to Soorat an-Naba’ (78), the medium soorahs go from Soorat an-Naba’ up to Soorat aḍ-Ḍuḥâ (93), and the short soorahs go from Soorat aḍ-Ḍuḥâ to the end.

The imam should recite aloud in the two rak‘ahs of the morning (fajr) prayer and the first two rak‘ahs of the maghrib and ‘ishâ’ prayers, and recite to himself in the rest. [II.4.11]	وَيَجْهَرُ الإِمَامُ بِالْقِرَاءَةِ فِيْ الصُّبْحِ وَالأُوْلَيَيْنِ مِنَ الْمَغْرِبِ وَالْعِشَاءِ، وَيُسِرُّ فِيْمَا عَدَا ذٰلِكَ.

[II.4.11] According to (A), this is recommended, and inadvertently reversing the prescribed volume does not require prostration of forgetfulness.

[Rukoo‘]

Then he should say *Allâhu akbar*, bow	ثُمَّ يُكَبِّرُ وَيَرْكَعُ،
… and raise his hands [II.4.12] as he did the first time. ---	وَيَرْفَعُ يَدَيْهِ كَرَفْعِهِ الأَوَّلِ،

[II.4.12] Raising the hands here is reported by Bukhâri, Muslim and others from several Companions. Al-Albâni said, “This raising of the hands [before bowing] is reported as *mutawâtir* [reported by so many narrators in every layer of the chain] from him (SA), as is the raising of the hands on straightening up after bowing. It is the madh-hab of the three Imams Mâlik, ash-Shâfi‘i and Aḥmad, and of the majority of scholars of Hadith and fiqh… Some of the Ḥanafis [may Allah bestow mercy on them] chose to do it, among them ‘Iṣâm ibn Yoosuf al-Balkhi (d. 210), a student of Imam Abu Yoosuf.”

--- Then he should place his hands on his knees, [II.4.13] spreading his fingers, [II.4.14] stretching his back [II.4.15] and making his head level with it, [II.4.16]	ثُمَّ يَضَعُ يَدَيْهِ عَلَى رُكْبَتَيْهِ وَيُفَرِّجُ أَصَابِعَهُ، وَيَمُدُّ ظَهْرَهُ، وَيَجْعَلُ رَأْسَهُ حِيَالَهُ،



[II.4.13] (B – from Abi Ḥumayd as-Sâ‘idi)

[II.4.14] (H – from Wâ’il ibn Ḥujr; al-Albâni: S) Wâ’il also said that he held his knees firmly with his hands.

[II.4.15] (T; T: S) In it, it was also reported that he would keep his elbows away from his sides.

[II.4.16] (M, D – from ‘Â’ishah)

and say: *Subḥâna Rabbiyal-‘Adheem* (Glorified is my Lord, the Great) three times. [II.4.17]	ثُمَّ يَقُوْلُ: «سُبْحَانَ رَبِّيَ الْعَظِيْمِ» ثَلَاثًا.

[II.4.17] (A, D, Ma; al-Albâni: S)

Then he should raise his head, while saying, *Sami‘ Allâhu liman ḥamidah* (Allah hears those who praise him), [Ag] and raise his hands like the first time. ---When he stands up erect, he should say: *Rabbanâ wa laka alḥamdu mil’a as-samawâti wa mil’a al-arḍi wa mil’a mâ shi’ta min shay’in ba‘d* (Our Lord, all praise be to You, praise that fills the heavens and the earth and anything that You will beyond them).	ثُمَّ يَرْفَعُ رَأْسَهُ قَائِلاً: «سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ» وَيَرْفَعُ يَدَيْهِ كَرَفْعِهِ الأَوَّلِ، فَإِذَا اعْتَدَلَ قَائِمًا، قَالَ: «رَبَّنَا ولَكَ الْحَمْدُ مِلْءَ السَّمَاوَاتِ وَمِلْءَ الْأَرْضِ وَمِلْءَ مَا شِئْتَ مِنْ شَيْءٍ بَعْدُ.» وَيَقْتَصِرُ الْمَأْمُوْمُ عَلَى قَوْلِ: «رَبَّنَا وَلَكَ الْحَمْدُ.»

[II.4.18] The ma'moom should only say: *Rabbanâ wa laka alḥamd* (Our Lord, all praise be to You). [II.4.19]	

[II.4.18] (M – from 'Ali)

[II.4.19] The ma'moom does not say the long supplication; nor does he say *Sami' Allâhu liman ḥamidah*. In *Sharḥ az-Zarkashi*, it is said that Abu al-Barakat al-Majd Ibn Taymiyah, the grandfather of Shaykh al-Islam Ibn Taymiyah (may Allah bestow mercy on them), chose the view that the ma'moom says like the imam, since all are recommended to follow the example of the Prophet (SA). The vast majority indicated that the ma'moom does not say *Sami' Allâhu liman ḥamidah*, for he is told to say *Rabbanâ laka alḥamd* when he hears the imam say *Sami' Allâhu liman ḥamidah*.

[Sujood]

Then he should fall down in prostration while saying the takbeer, and he should not raise his hands. [II.4.20] The first part to touch the ground should be his knees, [II.4.21] then his palms, then his forehead and nose.	ثُمَّ يَخِرُّ سَاجِدًا مُكَبِّرًا وَلَا يَرْفَعُ يَدَيْهِ، وَيَكُوْنُ أَوَّلَ مَا يَقَعُ مِنْهُ عَلَى الأَرْضِ رُكْبَتَاهُ، ثُمَّ كَفَّاهُ، ثُمَّ جَبْهَتُهُ وَأَنْفُهُ.

[II.4.20] (A): After the opening takbeer, one raises the hands only before and after bowing.

It was reported that the Prophet (SA) would raise his hands with every takbeer. (A – from Wâ'il ibn Ḥujr; A: sound chain) However, he usually did not do so when going down to prostrate. (B – from Ibn 'Umar)

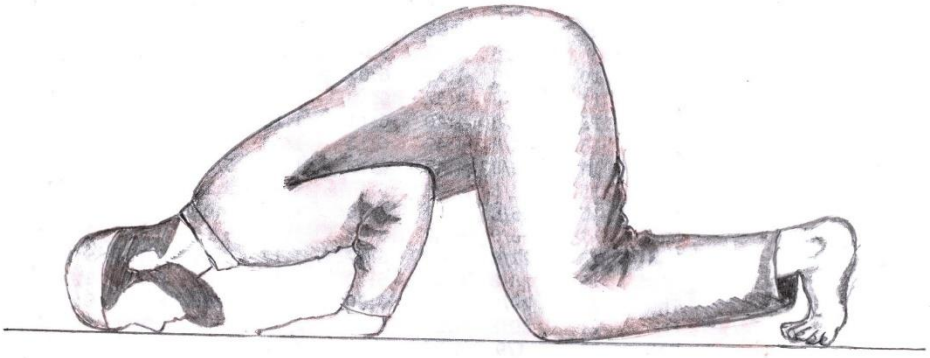
[II.4.21] This is the authorized position in the madh-hab. (A) + (+H, +S, +t)

(a) + (-M): The hands touch the ground first.

There is much disagreement over this issue; the reports are somewhat ambiguous and conflicting. (t) said in *Majmoo' al-Fatâwâ* that the scholars agreed that either form is sufficient, so the whole disagreement is only about what is preferable. Some scholars posited that it would be acceptable to

touch the ground with either the knees or hands first, as long as there is no exaggeration and one goes down to prostrate calmly and with grace, avoiding the manner in which a camel kneels, which is disliked by agreement.

He should separate his arms from his sides [II.4.22] and his abdomen from his thighs, [II.4.23] and should make his hands parallel to his shoulders. [II.4.24] He should be on the tips of his feet. [II.4.25]	وَيُجَافِيْ عَضُدَيْهِ عَنْ جَنْبَيْهِ، وَبَطْنَهُ عَنْ فَخِذَيْهِ، وَيَجْعَلُ يَدَيْهِ حَذْوَ مَنْكِبَيْهِ، وَيَكُوْنُ عَلَى أَطْرَافِ قَدَمَيْهِ.



[II.4.22] (Ag – from ʻAbdullâh ibn Mâlik ibn Buḥaynah)

[II.4.23] (D – from Abu Ḥumayd as-Sâʻidi; Ibn Ḥajar: R) Abu Ḥumayd said that the Prophet (SA) did not have any of his abdomen touching his thighs. In the same report, it was also reported that he separated his thighs from each other.

[II.4.24] (D, T; T: S) And align his fingers together (M), pointing to the qibla (Ba; Ba: sound chain)

[II.4.25] Position of the Feet and Hands in Prostration

(Ba) and in (B – from Abu Ḥumayd), pointing the toes towards the qibla – in a different narration, the toes and fingers.

As for the toes, he separated them while in prostration. (D – from Abu Ḥumayd; D: S)

As for the fingers, he had them together. (Kh, Ḥib – from Wâ'il ibn Ḥujr; Haythami: R)

As for the position of his feet in relation to each other, the reports are not clear.

(A) + (+S): The feet should be apart from each other, like the thighs.

Ibn Tameem al-Ḥanbali and some contemporary scholars, citing a controversial addition in a report by (Kh, Ḥib), held that they should be together. There is also a report from 'Â'ishah (RAH) that she was looking for the Prophet (SA) at night, and her hand touched both of his feet, which were flexed. (M) To these scholars, it seems unlikely that she would touch both feet with one hand unless they were together, but to others, it does not seem unlikely because you might touch one foot with the tips of the fingers and the other with the proximal end of the palm. It is also not clear that she touched them simultaneously.

Then he says: *Subḥâna Rabbiya al-a'lâ* (Glorified is my Lord, the Most High) three times. [II.4.26]	ثُمَّ يَقُوْلُ: «سُبْحَانَ رَبِّيَ الأَعْلَى» ثَلَاثًا.

[II.4.26] (A, D, Ma; al-Albâni: S)

While in prostration, it is also prescribed to make abundant supplication, invoking Allah for all your needs. The Prophet (SA) said:

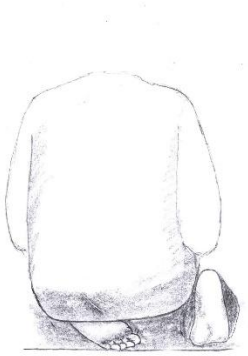
«أَقْرَبُ ما يَكُونُ الْعَبْدُ من رَبِّهِ وهو سَاجِدٌ فَأَكْثِرُوا الدُّعَاءَ.»

"The closest the servant is to his Lord is during prostration, so make abundant supplication in it." (M – from Abu Hurayrah)

[Juloos]

Then he should raise his head while making takbeer and should sit in *iftirâsh,* which means to lay the left foot on its side	ثم يرفع رأسه مكبراً، وَيَجْلِسُ مُفْتَرِشًا، فَيَفْرِشُ رِجْلَهُ الْيُسْرَى

and sit on it, while making the right foot flexed[II.4.27] and bending its toes, making their tips face the qibla. *[II.4.28]* Then he says: *Rabbighfir-li* (My Lord, forgive me) [II.4.29] three times, and prostrates a second time like the first.	وَيَجْلِسُ عَلَيْهَا، وَينْصِبُ الْيُمْنَى وَيَثْنِيْ أَصَابِعَهَا نَحْوَ الْقِبْلَةِ، وَيَقُوْلُ: «رَبِّ اغْفِرْ لِيْ» ثَلَاثًا، ثُمَّ يَسْجُدُ الثَّانِيَةَ كَالأُوْلَى.



[II.4.27] (M – from ‘Â’ishah)

[II.4.28] (N – from Ibn ‘Umar; al-Albâni: S)

[II.4.29] (D – from Ḥudhayfah; al-Albâni: S)

Then he should raise his head while saying takbeer, and stand up to pray the second one [rak‘ah] like the first.	ثُمَّ يَرْفَعُ رَأْسَهُ مُكَبِّرًا، وَيَنْهَضُ قَائِمًا فَيُصَلِّي الثَّانِيَةَ كَالأُوْلى.

When he is done with both [rak‘ahs], he should sit down in iftirâsh for the tashahhud. He should put his left hand on the left thigh and his right hand on the right thigh. [II.4.30] With the right hand, he should fold down the little finger and	فَإِذَا فَرَغَ مِنْهُمَا جَلَسَ لِلتَّشَهُّدِ مُفْتَرِشًا، فَيَبْسُطُ يَدَهُ الْيُسْرَى عَلَى فَخِذِهِ الْيُسْرَى، وَيَدَهُ الْيُمْنَى عَلَى فَخِذِهِ اليُمْنَى، يَقْبِضُ مِنْهَا الْخِنْصِرَ

the ring finger, make a circle with the middle finger and the thumb, and point with the index finger [II.4.31] several times during the tashahhud.	وَالْبِنْصِرَ، وَيُحَلِّقُ الإِبْهَامَ مَعَ الْوُسْطَى وَيُشِيْرُ بِالسَّبَابَة في تَشَهُّدِه مِراراً.

[II.4.30] (M – from ‘Abdullâh ibn az-Zubayr)

[II.4.31] (D – from ‘Abdullâh ibn az-Zubayr; D: Auth)

He should say: *At-Taḥiyâtu lillâhi waṣ-ṣalawâtu wat-ṭayyibât. As-salâmu ‘alayka ayyuhan-nabiyu wa raḥmatullâhi wa barakâtuhu. As-salâmu ‘alaynâ wa ‘alâ ‘ibâdillâhis-ṣâliḥeen. Ash-hadu an lâ ilâha illallâhu, wa ash-hadu anna Muḥammadan ‘abduhu wa rasooluh*. (All reverence, prayers and good things are due to Allah. Peace be upon you O Prophet, and the mercy of Allah and His blessings. Peace be upon us and the righteous servants of Allah. I testify that there is none worthy of worship except Allah, and I testify that Muhammad is His servant and His Messenger). [II.4.32] This is the most authentic report from the Prophet (SA) concerning the tashahhud.	ويقول: «التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ. السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ. السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ. أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ» فَهَذَا أَصَحُّ مَا رُوِيَ عَنِ النَّبِيِّ ﷺ فِيْ التَّشَهُّدِ.

[II.4.32] (Ag – from Ibn Mas‘ood) Other forms have slight variations.

Then he should say: *Allâhumma ṣalli ‘alâ Muḥammadin wa ‘alâ âli Muḥammadin, kamâ ṣallayta ‘alâ âli Ibrâheem; innaka Ḥameedun Majeed. Wa bârik ‘alâ Muḥammadin wa ‘alâ âli Muḥammadin,*	ثُمَّ يَقُوْلُ:«اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ كَمَا صَلَّيْت عَلَى آلِ إبْرَاهِيمَ إنَّك حَمِيدٌ مَجِيدٌ. وَبَارِكْ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ

kamâ bârakta ‘alâ âli Ibrâheem; innaka Ḥameedun Majeed. (O Allah! Shower Your mercy on Muhammad and on the kinsfolk of Muhammad, as You showered Your mercy on the kinsfolk of Ibrâheem. You are the Praiseworthy and the Glorious. Bless Muhammad and the kinsfolk of Muhammad, as You blessed the kinsfolk of Ibrâheem. You are the Praiseworthy and the Glorious.) [II.4.33]	كَمَا بَارَكْت عَلَى آلِ إبْرَاهِيمَ إنَّك حَمِيدٌ مَجِيدٌ.»

[II.4.33] (B – from Ka‘b ibn ‘Ujrah) Other forms have slight variations.

It is recommended to seek refuge [with Allah] from the torment of the grave, the torment of the hellfire, the tribulations of life and death, and the tribulations of the false Messiah (Antichrist). [II.4.34]	وَيُسْتَحَبُّ أَنْ يَتَعَوَّذَ مِنْ عَذَابِ جَهَنَّمَ، وَمِنْ عَذَابِ الْقَبْرِ، وَمِنْ فِتْنَةِ الْمَحْيَا وَالْمَمَاتِ، وَمِنْ فِتْنَةِ الْمَسِيْحِ الدَّجَّالِ.

[II.4.34] The Prophet (SA) said:

«إذا تَشَهَّدَ أحدكم فَلْيَسْتَعِذْ بِاللَّهِ من أَرْبَعٍ يقول اللهم إني أَعُوذُ بِكَ من عَذَابِ جَهَنَّمَ وَمِنْ عَذَابِ الْقَبْرِ وَمِنْ فِتْنَةِ الْمَحْيَا وَالْمَمَاتِ وَمِنْ شَرّ فِتْنَةِ الْمَسِيحِ الدَّجَّالِ.»

> *“When one of you is done with his tashahhud, he should seek refuge in Allah from four things. He should say, ‘O Allah! I seek refuge with You from the punishment of the hellfire, from the punishment of the grave, from the tribulations of life and death, and from the evil [sedition] of the false Messiah (Antichrist).’” (Ag – from Abu Hurayrah)*

In some reports from Ibn Mas‘ood, “…then he should supplicate for himself with whatever supplication he desires.” Hence, a person may ask Allah (ST) for any of his needs, according to (a) + (-M, -S). This position was chosen by Ibn Qudâmah because it is consistent with the apparent implication of

the hadith above and others. (A): One may use transmitted supplications or other supplications concerning obedience and the hereafter, such as asking for lawful provision. (H): Nontransmitted supplications are also permitted when they ask for something that cannot be sought from human beings, such as forgiveness.

While supplication can be in any language outside of the prayer, they disagreed about it within the prayer. One who masters Arabic should avoid it, since it is either forbidden or at least disliked for him. As for one who has not mastered Arabic:

(a) + (-M): Permitted it, citing reason and the lack of evidence for its prohibition.

(a) + (-S): Allowed the translation of transmitted supplications only.

(-H): Disliked.

(A): Forbade it.

(-M): Allowed any supplication in any language.

[Tasleem]

Then he makes *tasleem* by saying: *As-salâmu ʻalaykum wa raḥmatullâh* (peace be upon you and Allah's mercy) while looking to the right side, and then doing the same to the left. [II.4.35]	ثُمَّ يُسَلِّمُ عَنْ يَمِيْنِهِ: «السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللهِ» وَعَنْ يَسَارِهِ كَذٰلِكَ.

[II.4.35] 🕮 The Messenger of Allah (SA) would look to the right and left all the way until the white of his face was seen by the people behind him. (M – from Sa'd ibn Abi Waqqâṣ)

If the prayer is more than two rak'ahs, he should stand up after the first tashahhud as he did when he stood up from prostration, and then pray two rak'ahs in	وَإِنْ كَانَتِ الصَّلَاةُ أَكْثَرَ مِنْ رَكْعَتَيْنِ، نَهَضَ بَعْدَ التَّشَهُّدِ الأَوَّلِ كَنُهُوْضِهِ مِنَ السُّجُوْدِ، ثُمَّ يُصَلِّيْ

which he does not recite anything after *al-Fâtiḥah*.	رَكْعَتَيْنِ لَا يَقْرَأُ فِيهِمَا بَعْدَ الْفَاتِحَةِ شَيْئًا.

When he sits for the last tashahhud, he should sit in *tawarruk*, so he flexes his right foot, and lays the left on its side and makes it come out from underneath the right [leg].	فَإِذَا جَلَسَ لِلتَّشَهُّدِ الأَخِيرِ، تَوَرَّكَ؛ فَنَصَبَ رِجْلَهُ الْيُمْنَى وَفَرَشَ الْيُسْرَى، وَأَخْرَجَهَا عَنْ يَمِينِهِ.



He should only make tawarruk in a prayer that has two tashahhuds, and he does so in the second of them. [II.4.36]	وَلَا يَتَوَرَّكُ إِلَّا فِيْ صَلَاةٍ فِيْهَا تَشَهُّدَانِ، فِي الأَخِيْرِ مِنْهُمَا.

[II.4.36] Unlike (S), where tawarruk is prescribed in all final tashahhuds.

When he makes tasleem, he should say: *Astaghfirullâh* (I seek Allah's forgiveness) three times. [M] And: *Allâhumma anta as-salâmu wa minka as-salâmu tabârakta ya Dhal-Jalâli wal-Ikrâm*. (O Allah, you are *as-*	فَإِذَا سَلَّمَ اسْتَغْفَرَ ثَلَاثًا، وَقَالَ: «اللَّهُمَّ أَنْتَ السَّلَامُ وَمِنْكَ السَّلَامُ تَبَارَكْتَ يَا ذَا الْجَلَالِ وَالْإِكْرَامِ.»

Salâm – the One above all deficiencies, or the Giver of peace – and from You comes peace. Blessed are You, O Lord of Majesty and Generosity). [M]	

[II.5] Chapter on the Pillars and Mandatory Actions of the Prayer

بَابُ أَرْكَانِ الصَّلَاةِ وَوَاجِبَاتِهَا

[Pillars]

Its pillars are twelve: [II.5.1] 1. Standing if capable	أَرْكَانُهَا اثْنَا عَشَرَ. (-1) الْقِيَامُ مع الْقُدْرَةِ.

[II.5.1] The main – but not only – hadith used by the scholars to derive the pillars is what was narrated regarding 'the one whose prayer was improper':

A man entered the mosque and prayed. The Messenger of Allah (SA) was sitting in a corner of the mosque, and the man came and greeted him with salâm. The Prophet (SA) answered, "And also upon you. Go back and pray, because you have not prayed." He went back and prayed, and then he came and greeted the Prophet (SA) with salâm. The Prophet (SA) answered, "And also upon you. Go back and pray, for you have not prayed yet." When this happened for the third time, the man said, "Teach me, O Messenger of Allah." He said:

«إذا قُمْتَ إلى الصَّلَاةِ فَكَبِّرْ ثُمَّ اقْرَأْ ما تَيَسَّرَ مَعَكَ من الْقُرْآنِ ثُمَّ ارْكَعْ حتى تَطْمَئِنَّ رَاكِعًا ثُمَّ ارْفَعْ حتى تَعْتَدِلَ قَائِمًا ثُمَّ اسْجُدْ حتى تَطْمَئِنَّ سَاجِدًا ثُمَّ ارْفَعْ حتى تَطْمَئِنَّ جَالِسًا ثُمَّ افْعَلْ ذلك في صَلَاتِكَ كُلِّهَا.»

"When you stand up to pray, say Allâhu akbar, and then recite whatever you can of the Qur'an. Bow with tranquility (fully, without haste) in bowing, and then stand up until you are standing straight. Prostrate with tranquility in prostration, and then sit up with tranquility in sitting. Do that throughout all your prayer."
(Ag – from Abu Hurayrah)

2. The opening takbeer [II.5.2]	(-2) وَتَكْبِيْرَةُ الإِحْرَامِ.

[II.5.2] As for One Who Does Not Speak Arabic

Saying *Allâhu akbar* (Allah is the Greatest) is called the opening takbeer.

(A) + (+M, +S): A non-Arab who can speak Arabic should not recite the takbeer in any other language. The evidence for this is that the texts teach this particular wording, which is in Arabic, and that the Prophet (SA) did not do it any other way.

(A) + (+S): If someone cannot speak Arabic and is unable to pronounce it, it is permissible to say the takbeer in one's own language after it has been translated from Arabic.

This applies to all the takbeers, but the other takbeers are not among the pillars.

(M): The takbeer may not be done in any other language. If someone absolutely cannot say it in Arabic, it is not mandatory for him to make takbeer.

(H): Saying the takbeer in a different language is allowed, even for one who is able to say it in Arabic.

Making concessions for one who is new is consistent with the objectives of Sharia, but having the essential parts of the prayer recited in one language is a means of uniting us as Muslims. Wherever we go, we can walk into any masjid and perform the prayer with the congregation, regardless of our language or national background. That unity is an Islamic duty and an Islamic beauty.

3. Recitation of Soorat *al-Fâtiḥah* [II.5.3]	(-3) وَقِرَاءَةُ الْفَاتِحَةِ.

[II.5.3] As for One Who Does Not Speak Arabic

(A/SM): One must learn al-Fâtiḥah in Arabic. If they cannot learn it before the time for the prayer ends, they may recite a part of the Qur'an of equal length. If they cannot, they may repeat one verse of al-Fâtiḥah or another soorah a number of times that is equal to the length of al-Fâtiḥah. If they cannot, they may say Subḥân Allâhi wal-ḥamdulillâh wa lâ ilâha illâ Allâh wa Allâhu akbar. If they cannot do that, they stay silent, standing, for as long as it would take to recite al-Fâtiḥah.

Al-Fâtiḥah must be said in Arabic, and there is no controversy currently regarding this. The recitation of the Qur'an may not be in any language other than Arabic. There is plenty of evidence for this, including this verse:

«إِنَّا أَنزَلْنَاهُ قُرْآنًا عَرَبِيًّا»

{Verily, We have sent it down as an Arabic Qur'an…} (Yoosuf 12:2)

The Qur'an is a miracle in its wording and its meaning. When it is translated, this is no longer the case; it is no longer the Qur'an but an interpretation of it.

In the following version of the hadith about 'the one whose prayer was improper', our most beloved, the final Messenger, Prophet Muhammad (SA), tells us what to do until we learn al-Fâtiḥah:

«فَإِنْ كان مَعَكَ قُرْآنٌ فَاقْرَأْ بِهِ وَإِلَّا فَاحْمَدْ اللَّهَ وَكَبِّرْهُ وَهَلِّلْهُ.»

"When you get up to pray, if you know some Qur'an, recite it; otherwise, praise Allah (say alḥamdulillâh), glorify Him (say Allâhu akbar), and say Lâ ilâha illâ Allâh." (T – from Rifâ'ah ibn Râfi'; T: R)

In another incident, a man came to the Prophet (SA) and said, "I cannot learn anything of the Qur'an. Teach me something that will suffice me." The Prophet (SA) said:

«قُلْ سُبْحَانَ اللَّهِ وَالْحَمْدُ لِلَّهِ ولا إِلَه إلا الله وَاللَّهُ أَكْبَرُ ولا حَوْلَ ولا قُوَّةَ إلا بِاللَّهِ.»

"Say Subḥân Allâhi, al-ḥamdulillâh, lâ ilâha illâ Allâh, Allâhu akbar, and lâ ḥawla wa lâ quwwata illâ billâh." (Glory be to Allah, all praise is for Allah, there is none worthy of worship other than Allah, Allah is the Greatest, and there is no strength and no power except with Allah)." (Ḥib – from 'Abdullâh ibn Abi Awfâ; Ḥib: S)

One may choose one phrase of dhikr if they cannot remember all of these. If they only know how to say Allâhu akbar, they can say it for the opening takbeer and repeat it in place of al-Fâtiḥah until they learn al-Fâtiḥah.

It would also be acceptable for one to read al-Fâtiḥah from a paper – preferably without holding it.

Other Phrases of Dhikr

(A/SM): One must learn how to say: Sami‘ Allâhu liman ḥamidah, Rabbanâ laka alḥamd, Rabbighfir-li, the takbeer, and the tashahhud in Arabic. If they cannot, these may be translated for them. Supplications that are not mandatory may not be translated. See the discussion about this in the previous chapter.

4. Bowing 5. Rising from it	(-4) وَالرُّكُوْعُ. (-5) وَالرَّفْعُ مِنْهُ.

6. Prostration on seven body parts 7. Sitting after it	(-6) وَالسُّجُوْدُ عَلَى سَبْعَةِ أَعْضَاءٍ. (-7) وَالْجُلُوْسُ عَنْهُ.

8. Tranquility in all of these pillars [II.5.4]	(-8) وَالطُّمَأْنِيْنَةُ فِيْ هَذِهِ الأَرْكَانِ.

[II.5.4] 🕮 The Prophet (SA) said to ‘the one whose prayer was improper’: "Then bow with tranquility (fully, without haste)…" and repeated the command ‘to be at ease’ with the rest of the pillars. (Ag – from Abu Hurayrah)

9. The last tashahhud 10. Sitting during it	(-9) وَالتَّشَهُّدُ الأَخِيْرُ. (-10) وَالْجُلُوْسُ لَهُ.

11. The first tasleem [II.5.5]	(-11) وَالتَّسْلِيْمَةُ الأُوْلَى.

[II.5.5] (A/SM): Both tasleems are pillars.

12. Following the order as we mentioned it. [II.5.6]	(-12) وَتَرْتِيْبُهَا عَلَى مَا ذَكَرْنَاهُ.

[II.5.6] The Prophet (SA) said:

«صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي.»

"Pray as you saw me praying." (B – from Mâlik ibn al-Ḥuwayrith)

This hadith, in addition to the hadith of 'the one whose prayer was improper', constitutes a foundation for understanding of the acts of the prayer; therefore, we should do our best to pray exactly as the Prophet (SA) did.

Without these pillars, the prayer will not be fulfilled.	فَهَذِهِ الأَرْكَانُ لَا تَتِمُّ الصَّلَاةُ إِلَّا بِهَا.

[Mandatory Acts]

Its mandatory actions are seven: [II.5.7]	وَوَاجِبَاتُهَا سَبْعَةٌ:
1. Takbeers other than the opening takbeer	(-1) التَّكْبِيْرُ غَيْرَ تَكْبِيْرَةِ الإِحْرَامِ.
2. Exaltation [of Allah] in the bowing and prostration; once in each	(-2) وَالتَّسْبِيْحُ فِي الرُّكُوْعِ وَالسُّجُوْدِ مَرَّةً مَرَّةً.
3. Saying *Sami' Allâhu liman ḥamidah* (Allah hears those who praise Him) and *Rabbanâ laka alḥamd* (Our Lord, all praise be to You), both while rising from bowing	(-3) وَالتَّسْمِيْعُ وَالتَّحْمِيْدُ فِي الرَّفْعِ مِنَ الرُّكُوْعِ.

4. Saying *Rabbighfir-li* (My Lord, forgive me) between the two prostrations	(-4) وَقَوْلُ: «رَبِّ اغْفِرْ لِيْ» بَيْنَ السَّجْدَتَيْنِ.
5. The first tashahhud 6. Sitting for it 7. Sending prayers unto the Prophet (SA) in the last tashahhud.	(-5) وَالتَّشَهُّدُ الأَوَّلُ. (-6) وَالْجُلُوْسُ لَهُ. (-7) وَالصَّلَاةُ عَلَى النَّبِيِّ ﷺ فِي التَّشَهُّدِ الأَخِيْرِ.

[II.5.7] The matn follows a narration treating these acts as mandatory. In the relied-upon position (A), however, sending prayers upon the Prophet (SA) in the final tashahhud is a pillar, as it is according to (S).

The majority: They are not all mandatory because the Prophet (SA) did not teach them to 'the one whose prayer was improper'. The schools differ over the different acts; (H), for example, regards the first tashahhud and sitting for it as mandatory.

If these acts are left out intentionally, the prayer is invalidated. [II.5.8] If left out of forgetfulness, the praying person should pray the prostration of forgetfulness for it.	فَهَذِهِ إِنْ تَرَكَهَا عَمْدًا، بَطَلَتْ صَلَاتُهُ، وَإِنْ تَرَكَهَا سَهْوًا، سَجَدَ لَهَا.

[II.5.8] This rule concerns mandatory acts; a forgotten pillar is not repaired by the prostration of forgetfulness alone. See the qualification in [II.5.7].

Another narration within the madh-hab considers the listed acts recommended (a). In teaching a new Muslim, priority is given to facilitation and simplification, albeit without compromise.

[Recommended Acts]

Apart from these, the rest are preferable acts. The prayer is not invalidated by intentionally leaving them out, and the prostration of	وَمَا عَدَا هَذَا، فَسُنَنٌ، لَا تَبْطُلُ الصَّلَاةُ بِتَرْكِهَا،

forgetfulness is not mandatory in the case of forgetting them. [II.5.9]	وَلَا يَجِبُ السُّجُوْدُ لِسَهْوِهَا.

[II.5.9] (A/SM): The sunnah acts are divided into verbal and physical acts. If someone absentmindedly recited a prescribed dhikr in the wrong movement, the prostration of forgetfulness is recommended. If verbal or physical sunnah acts are forgotten, the prostration of forgetfulness is only permissible.

[II.6] Chapter on the Two Prostrations of Forgetfulness

بَابُ سَجْدَتَيْ السَّهْوِ

[Types of Forgetfulness]

Forgetfulness is one of three types:	وَالسَّهْوُ عَلَى ثَلَاثَةِ أَضْرُبٍ:
The First Type: Addition This involves the addition of an action that is similar to the actions of the prayer; such as adding an additional rak'ah or pillar. The prayer is invalidated if that was done intentionally; if done absentmindedly, the prostration for forgetfulness must be done for it. If one remembers while he is performing an additional rak'ah, he must sit down immediately. [II.6.1] If he makes tasleem while having missed a part of the prayer, he must perform that which he left out of it, and then prostrate. [II.6.2]	أَحَدُهَا: زِيَادَةُ فِعْلٍ مِنْ جِنْسِهَا، كَرَكْعَةٍ، أَوْ رُكْنٍ، فَتَبْطُلُ الصَّلَاةُ بِعَمْدِهِ، وَيَسْجُدُ لِسَهْوِهِ. وَإِنْ ذَكَرَ وَهُوَ فِي الرَّكْعَةِ الزَّائِدَةِ، جَلَسَ فِي الْحَالِ. وَإِنْ سَلَّمَ عَنْ نَقْصٍ فِيْ صَلَاتِهِ، أَتَى بِمَا بَقِيَ عَلَيْهِ مِنْهَا، ثُمَّ سَجَدَ.

[II.6.1] For example, being in the fourth rak'ah in the maghrib prayer or in the fifth rak'ah in the 'aṣr prayer. If one knowingly continues this additional rak'ah, the prayer becomes invalid. (If the person made tashahhud before standing up, he only needs to sit down and make tasleem; if not, he must do the tashahhud and then the tasleem.)

[II.6.2] If the omitted pillar was from other than the last rak'ah, one must redo an entire rak'ah. If it was the last tashahhud or tasleem, one should do them and prostrate. If it was another pillar of the last rak'ah, there are two opinions in the madh-hab:

(A/SM): One should do an entire rak'ah.

(al-Mardâwi in *al-Inṣâf*): One should do just the omitted part and what comes after it.

This was put under the category of addition, not omission, because the net actions of the prayer after he makes up for what he missed would be more, for they will include an added tashahhud and tasleem at least.

[Addition of an Action Foreign to the Prayer]

If he does an action that is not similar to the actions of the prayer, then it is all the same whether he did it intentionally or absentmindedly. If that action is not trivial, it invalidates it, and if it is trivial – like the action of the Prophet (SA) in his carrying of Umâmah (RAH) and opening the door for ‘Â’ishah (RAH) – then there is no harm.	وَلَوْ فَعَلَ مَا لَيْسَ مِنْ جِنْسِ الصَّلَاةِ، لَاسْتَوَى عَمْدُهُ وَسَهْوُهُ، فَإِنْ كَانَ كَثِيْرًا، أَبْطَلَهَا، وَإِنْ كَانَ يَسِيْرًا، كَفِعْلِ النَّبِيِّ ﷺ فِيْ حَمْلِهِ أُمَامَةَ، وَفَتْحِ الْبَابِ لِعَائِشَةَ، فَلَا بَأْسَ بِهِ.

The Second Type: Omission Such as forgetting a mandatory action. [II.6.3] If he stands up before [performing] the first tashahhud and remembers before he is fully erect, then he should go back and perform it. However, if he remembers after he becomes fully erect, he should not go back. [II.6.4] If he forgets a pillar and remembers it before he begins the recitation in another [next] rak‘ah, he must go back and perform it and whatever is after it. If he remembers it after that [the recitation of the next rak‘ah], then the rak‘ah in which he missed the pillar is invalidated. [II.6.5]	الضَّرْبُ الثَّانِيْ: النَّقْصُ. كَنِسْيَانِ وَاجِبٍ. فَإِنْ قَامَ عَنِ التَّشَهُّدِ الْأَوَّلِ، فَذَكَرَ قَبْلَ أَنْ يَسْتَتِمَّ قَائِمًا، رَجَعَ، فَأَتَى بِهِ. وَإِنِ اسْتَتَمَّ قَائِمًا، لَمْ يَرْجِعْ. وَإِنْ نَسِيَ رُكْنًا، فَذَكَرَهُ قَبْلَ شُرُوْعِهِ فِيْ قِرَاءَةِ رَكْعَةٍ أُخْرَى، رَجَعَ، فَأَتَى بِهِ وَبِمَا بَعْدَهُ، وَإِنْ ذَكَرَهُ بَعْدَ ذٰلِكَ، بَطَلَتِ الرَّكْعَةُ الَّتِيْ تَرَكَهُ مِنْهَا. وَإِنْ نَسِيَ أَرْبَعَ سَجَدَاتٍ مِنْ أَرْبَعِ

If he forgets four prostrations out of four rak‘ahs, [II.6.6] and remembers while he is in the tashahhud, he should prostrate immediately, thus validating one rak‘ah, and then he must perform three rak‘ahs.	رَكَعَاتٍ، فَذَكَرَ فِي التَّشَهُّدِ، سَجَدَ فِي الْحَالِ، فَصَحَّتْ لَهُ رَكْعَةٌ، ثُمَّ يَأْتِيْ بِثَلَاثِ رَكَعَاتٍ.

[II.6.3] This refers to the omission of a mandatory action, since that is the only omission that requires the prostration of forgetfulness (unlike the preferable actions) and does not require being made up for (unlike the pillars). As a result, the net actions of the prayer will end up being fewer than what is prescribed.

The omission of a sunnah act still makes the net actions of the prayer fewer, but it does not call for the prostration of forgetfulness. (See the previous chapter regarding the sunnah acts and the prostration of forgetfulness.)

[II.6.4] (A/SM): Going back after standing fully erect is disliked, and it is forbidden after beginning the recitation. If one goes back to the first tashahhud, knowing that it is forbidden, their prayer becomes invalid.

[II.6.5] So if the person was in the third rak‘ah, he or she should consider himself or herself to be in the second rak‘ah.

[II.6.6] This is an example used to clarify what is to be done when you remember skipping pillars of previous and current rak‘ahs. In this case, the person made one prostration in every rak‘ah, thus invalidating the first three rak‘ahs, since he or she is now well into the fourth. There is still a way to salvage the fourth rak‘ah: by first going back and prostrating to make up for the one missed, and then rising to redo the first three rak‘ahs.

The Third Type: Doubt As regards one who doubts [II.6.7] whether he has missed a pillar, it is as if he missed it. Whoever doubts the number of rak‘ahs [he prayed] must proceed on the basis of certainty, [II.6.8] except for the imam,	الضَّرْبُ الثَّالِثُ: الشَّكُّ. فَمَتَى شَكَّ فِيْ تَرْكِ رُكْنٍ، فَهُوَ كَتَرْكِهِ، وَإِنْ شَكَّ فِيْ عَدَدِ الرَّكَعَاتِ، بَنَى عَلَى الْيَقِيْنِ، إِلَّا الإِمَامَ خَاصَّةً، فَإِنَّهُ يَبْنِيْ عَلَى غَالِبِ ظَنِّهِ.

who proceeds on the basis of what is more probable. [II.6.9]	

[II.6.7] The doubt meant here is significant doubt, not the whisperings of Satan that affect some people, making them repeat acts of worship compulsively because they fear that they missed something.

[II.6.8] Doubts about the Number of Rak‘ahs

There are two main reports pertaining to this issue. The Messenger of Allah (SA) said:

«وإذا شَكَّ أحدكم في صَلَاتِهِ فَلْيَتَحَرَّ الصَّوَابَ [أَقْرَبَ ذَلِكَ إِلَى الصَّوَابِ (م)] فَلْيُتِمَّ عليه، [ثُمَّ يُسَلِّمْ، ثُمَّ يَسْجُدْ سَجْدَتَيْنِ. (بخ)]»

“When one of you has doubts about his prayer, let him seek what is correct [or ‘closer to correctness’, as in a different report by (M)] and proceed accordingly, [make tasleem, then perform two prostrations (of forgetfulness) (B)].” (Ag – from Ibn Mas‘ood)

The Messenger of Allah (SA) also said:

«إذا شَكَّ أحدكم في صَلَاتِهِ فلم يَدْرِ كَمْ صلى ثَلَاثًا أَمْ أَرْبَعًا فَلْيَطْرَحْ الشَّكَّ وَلْيَبْنِ على ما اسْتَيْقَنَ، ثُمَّ يَسْجُدُ سَجْدَتَيْنِ قَبْلَ أَنْ يُسَلِّمَ.»

“If one of you has doubts about his prayer, let him cast the doubt away and proceed on the basis of certainty, then perform two prostrations before the tasleem.” (M – from Abu Sa‘eed al-Khudri)

Based on these reports and others, the scholars disagreed about what should be done when you have doubts:

(A) + (+M, +S): If you doubt the number of rak‘ahs, you should base your actions on the lesser number. If you doubt whether or not you performed a pillar, you should presume that you did not.

(-H and al-Layth): If the doubt is recurrent, you may try to determine the correct number; if you cannot, then you should proceed based on certainty, by taking the lesser number.

Ath-Thawri and al-Awzâ‘i: You should try to determine the correct number and proceed on the basis of propensity (what is more likely).

(a) + (-t): Doubt is divided into types:

1. When you cannot discern which possibility is more probable, you must proceed on the basis of certainty, in compliance with the hadith of Abu Sa‘eed (RA).

2. When you can discern which possibility is more probable, you should follow that, in compliance with the hadith of Ibn Mas‘ood (RA).

[II.6.9] According to (A2), this would be another way to reconcile the reports. Allowing the imam to base his actions on propensity, since the congregation behind him would alert him if he erred.

[When to Make the Prostration of Forgetfulness]

Prescribed for every forgetfulness are two prostrations before the tasleem, [II.6.10] except for: 1) One who makes tasleem [too early,] prior to actually completing his prayer; 2) The imam, if he proceeded on the basis of the more probable; and 3) One who forgets to prostrate before the tasleem. [In these three cases,] they should make two prostrations after the tasleem, and then make tashahhud and tasleem. *[II.6.11]*	وَلِكُلِّ سَهْوٍ سَجْدَتَانِ قَبْلَ السَّلَامِ إِلَّا: (1-) مَنْ سَلَّمَ عَنْ نَقْصٍ فِيْ صَلَاتِهِ. (2-) وَالإِمَامُ إِذَا بَنَى عَلَى غَالِبِ ظَنِّهِ. (3-) وَالنَّاسِيْ لِلسُّجُوْدِ قَبْلَ السَّلَامِ. فَإِنَّهُ يَسْجُدُ سَجْدَتَيْنِ بَعْدَ سَلَامِهِ، ثُمَّ يَتَشَهَّدُ وَيُسَلِّمُ.

[II.6.10] (A/SM): It would be acceptable to make all prostrations of forgetfulness before or after the tasleem. When in doubt, it is preferable to prostrate before the tasleem.

[II.6.11] (a) + (Ibn Seereen, Ibn al-Mundhir, -t): One should make the tasleem without tashahhud. They deemed the reports on tashahhud after the prostration of forgetfulness weak.

[About the *Ma'moom*]

The prostration of forgetfulness is not mandatory upon one who is led in the prayer, except when his imam forgets, then he prostrates with him. [II.6.12] For one whose imam forgets, or who is concerned about something during his prayer, saying *Subḥân Allah* (Glory be to Allah) [is prescribed] for men, and clapping for women. [II.6.13]	وَلَيْسَ عَلَى الْمَأْمُوْمِ سُجُوْدُ سَهْوٍ، إِلَّا أَنْ يَسْهُوَ إِمَامُهُ، فَيَسْجُدُ مَعَهُ. وَمَنْ سَهَا إِمَامُهُ، أَوْ نَابَهُ أَمْرٌ فِيْ صَلَاتِهِ، فَالتَّسْبِيْحُ لِلرِّجَالِ، وَالتَّصْفِيْقُ لِلنِّسَاءِ.

[II.6.12] (A/SM): If the imam failed to perform the obligatory prostrations before and after the tasleem, the ma'moom should perform them themselves. Also, the ma'moom will be responsible for any forgetfulness in the part of the prayer they performed while not being led by the imam, such as when they join the imam late in the prayer.

[II.6.13] The Messenger of Allah (SA) said,

«من نَابَهُ شَيْءٌ في صَلَاتِهِ فَلْيُسَبِّحْ فإنه إذا سَبَّحَ الْتُفِتَ إليه. إنما التصفيق للنساء»

> *"...He who is concerned about something during his prayer should say Subḥân Allâh, for if he says Subḥân Allâh, he will be noticed; clapping is only for women." (Ag – from Sahl ibn Sa'd)*

Doubts after finishing the prayer are inconsequential. Ibn Rajab al-Ḥanbali said in Taqreer al-Qawâ'id:

«وإذا شَكَّ بَعْدَ الفَرَاغِ مِنَ الصَّلاةِ أو غَيرِها مِنَ العِباداتِ فِي تَركِ رُكنٍ مِنها فإنَّهُ لا يَلتَفِت إلى الشَّك.»

“If, after finishing the ṣalât or other acts of worship, he had doubts about missing a pillar, he should overlook that doubt.”

[II.7] Chapter on Supererogatory Prayers

بَابُ صَلَاةِ التَّطَوُّعِ

There are five types:

First: Routine Sunnah Prayers

These are the ones regarding which Ibn ‘Umar (rahuma) said:
“Ten rak‘ahs I remembered from the Messenger of Allah (SA):

a. Two before dhuhr and two after it [1-4]
b. Two after maghrib, at home [5-6]
c. Two after ‘ishâ’, at home [7-8]
d. Two before fajr. [9-10]

Ḥafṣah (RAH) [II.7.1] told me that the Messenger of Allah (SA) used to pray two rak‘ahs whenever fajr time came and the mu’adh-dhin called the adhân.” [Ag]

These [two rak‘ahs before fajr] are the most stressed of all of them. [M – from ‘Â’ishah] It is preferred to make them short, [II.7.2] and praying them at home is better. [II.7.3] This applies to the two rak‘ahs of maghrib as well.

وَهِيَ عَلَى خَمْسَةِ أَضْرُبٍ:
أحدها: السنن الرواتب
وَهِيَ الَّتِيْ قَالَ ابْنُ عُمَرَ:
«عَشْرُ رَكَعَاتٍ، حَفِظْتُهُنَّ مِنْ رَسُوْلِ اللهِ ﷺ:
أ) رَكْعَتَانِ قَبْلَ الظُّهْرِ، وَرَكْعَتَانِ بَعْدَهَا.
ب) وَرَكْعَتَانِ بَعْدَ الْمَغْرِبِ فِيْ بَيْتِهِ.
ت) وَرَكْعَتَانِ بَعْدَ الْعِشَاءِ فِيْ بَيْتِهِ.
ث) وَرَكْعَتَانِ قَبْلَ الْفَجْرِ.
وحَدَّثَتْنِيْ حَفْصَةُ أَنَّ رَسُوْلَ اللهِ ﷺ كَانَ إِذَا طَلَعَ الْفَجْرُ وَأَذَّنَ الْمُؤَذِّنُ، صَلَّى رَكْعَتَيْنِ.»
وَهُمَا آكَدُهَا، وَيَسْتَحَبُّ تَخْفِيْفُهُمَا، وَفِعْلُهُمَا فِي الْبَيْتِ أَفْضَلُ وَكَذٰلِكَ رَكْعَتَا الْمَغْرِبِ.

[II.7.1] One of the Mothers of the Believers (RAH); she was the wife of the Prophet (SA), the daughter of ‘Umar ibn al-Khaṭṭâb (RA), and the sister of Ibn ‘Umar (RAHUMA).

[II.7.2] Evidence:

> *"I used to wonder whether or not he finished reciting the Mother of the Qur'an (Soorat al-Fâtiḥah)." (B – from 'Â'ishah)*
>
> *The Prophet (SA) used to recite Soorat al-Kâfiroon (109) in the first rak'ah and Soorat al-Ikhlâṣ (112) in the second. (A – from Ibn 'Umar; A: S)*

[II.7.3] (A/SM & Iqnâ'): It is better to perform all the routine sunnah prayers at home.

Second: *Witr* (Odd-numbered Night Prayer) [II.7.4] Its time is between the 'ishâ' prayer and dawn. The minimum is one rak'ah, and the maximum is eleven. The minimum that is considered perfect is three, with [divided by] two tasleems. [II.7.5] He makes *qunoot* [II.7.6] after the bowing of the third rak'ah.	الثَّانِيْ: الْوِتْرُ. وَوَقْتُهُ: مَا بَيْنَ الْعِشَاءِ وَالْفَجْرِ. وَأَقَلُّهُ رَكْعَةٌ وَأَكْثَرُهُ إِحْدَى عَشْرَةَ. وَأَدْنَى الكَمَالِ: ثَلَاثٌ بِتَسْلِيْمَتَيْنِ. وَيَقْنُتُ فِي الثَّالِثَةِ بَعْدَ الرُّكُوْعِ.

[II.7.4] That is the final night prayer.

[II.7.5] How to Pray Witr

According to (A):

One prays two rak'ahs and makes tasleem, and then prays one and makes tasleem, for:

> *Ibn 'Umar (RAHUMA) used to separate the two rak'ahs from the single rak'ah with a tasleem, and he said that the Prophet (SA) used to do that. (Ḥib: S)*

If you decide to pray the three rak‘ahs together, you make one tashahhud, because it was reported:

> *“He (SA) used to pray witr with three rak‘ahs, and he sat in the last of them only.” (N; al-Albâni:S) This avoids making the witr like the maghrib prayer.*

What if a Ḥanafi congregation asks their Ḥanbali imam to pray witr the Ḥanafi way (with two tashahhuds)? Imam Ibn Taymiyah said in *al-Fatâwâ al-Kubrâ* that to bring about harmony, it would be better for him to agree. As proof, he cited the Prophet’s refraining from razing the Kaaba and rebuilding it, for the sake of harmony.

[II.7.6] Qunoot

Qunoot is the name of a supplication offered during the prayer, while standing after bowing. Qunoot before bowing, as prescribed by (-H), is permissible according to (A/SM), since it was established from some of the Companions.

As for the prayers and occasions when it is prescribed:

In the witr prayer, regularly or randomly.

On particular occasions of calamity befalling the Ummah: according to (A/SM), it is recommended for the leader of the believers to perform it in the obligatory prayers other than Jumu‘ah. The Prophet (SA) did this when he prayed against the tribes of Ri‘l, Dhakwân, and ‘Usayyah after they killed the Qur’an teachers that he had sent, at their request, to educate them.

It is not prescribed to specify this supplication for the fajr prayer, or for any other prayer except the witr.

🕮 Abu Mâlik al-Ashja‘i said, “I said to my father, ‘O my father, you prayed behind the Messenger of Allah (SA), Abu Bakr, ‘Umar, ‘Uthmân and ‘Ali (RAHUM). Did they used to say the qunoot in fajr?’ He said, ‘O my son, this is an innovation.’” (T, N, Ma; Irwâ’ al-Ghaleel, al-Albâni, no. 435: S)

Imam Ibn Taymiyah said in *al-Fatâwâ al-Kubrâ* that if one prays behind a Shâfi'i imam who makes qunoot in the fajr prayer, he should pray qunoot with him.

The following narration from the Prophet (SA) is one of the forms of the qunoot in the witr prayer:

«اللهم اهْدِنِي فِيمَنْ هَدَيْتَ وَعَافِنِي فِيمَنْ عَافَيْتَ وَتَوَلَّنِي فِيمَنْ تَوَلَّيْتَ وَبَارِكْ لِي فِيمَا أَعْطَيْتَ وَقِنِي شَرَّ ما قَضَيْتَ إِنَّكَ تَقْضِي ولا يُقْضَى عَلَيْكَ وَإِنَّهُ لَا يَذِلُّ من وَالَيْتَ تَبَارَكْتَ رَبَّنَا وَتَعَالَيْتَ.»

Allâhummahdini feeman hadayta wa 'âfini feeman 'âfayta wa tawallani feeman tawallayta wa bârik li feemâ a'ṭayta, wa qini sharra mâ qaḍayta, innaka taqḍi wa lâ yuqḍâ 'alayka, wa innahu lâ yadhillu man walayta, tabârakta Rabbanâ wa ta'âlayta.

(O Allah, guide me among those whom You have guided, give me safety from all evil among those You spared from all evil, befriend me among those whom You have taken as friends, bless that which You have given me, and spare me the evil which You have decreed. For verily, You decree, and none can decree against You, and he whom You befriend is never humiliated. Blessed are You, O our Lord, and Exalted.) (D, N; Irwâ' al-Ghaleel, al-Albâni, no. 429: S – from al-Ḥasan ibn 'Ali)

You may make whichever supplication you desire. After the supplication, it was reported from some Companions that they made prayers for the Messenger of Allah (SA). This practice is generally prescribed after all supplications.

Third: The General Supererogatory Prayers The supererogatory prayer at night is better than that of the day, and the	الثَّالِثُ: التَّطَوُّعُ الْمُطْلَقُ. وَتَطَوُّعُ اللَّيْلِ أَفْضَلُ مِنْ تَطَوُّعِ النَّهَارِ، وَالنِّصْفُ الأَخِيْرُ أَفْضَلُ مِنَ الأَوَّلِ. وَصَلَاةُ اللَّيْلِ مَثْنَى مَثْنَى. وَصَلَاةُ الْقَاعِدِ عَلَى النِّصْفِ مِنْ صَلَاةِ الْقَائِمِ.

latter half (of the night) is better for it than the first half. Praying at night is two by two (in pairs of rak'ahs). [II.7.7] The prayer of one sitting is half (in reward) of that of the one standing. [II.7.8]	

[II.7.7] As indicated in the following hadith:

«صَلَاةُ اللَّيْلِ مَثْنَى مَثْنَى فإذا خِفْتَ الصُّبْحَ فَأَوْتِرْ بِوَاحِدَةٍ.»

"The night prayers are two by two, and if you fear (the coming of) the morning, make it witr (odd-numbered) with even one rak'ah." (Ag – from Ibn 'Umar)

[II.7.8] This was said by the Prophet (SA) [Ag].

This is concerning someone who is capable of standing. For those with excuses, Allah's mercy is vast, and they will get the full reward. The Messenger of Allah (SA) said:

«إذا مَرِضَ الْعَبْدُ أو سَافَرَ كُتِبَ له مِثْلُ ما كان يَعْمَلُ مُقِيمًا صَحِيحًا.»

"If the servant [of Allah] falls ill or travels, he will have the same reward of the deeds he performed when he was healthy and at home." (B – from Abu Moosâ al-Ash'ari)

Fourth: What is Prescribed to Be Prayed in Congregation These are three types:	الرَّابِعُ: مَا تُسَنُّ لَهُ الْجَمَاعَةُ. وَهُوَ ثَلَاثَةُ أَنْوَاعٍ:

I. Tarâweeḥ These are twenty rak‘ahs [II.7.9] after the ‘ishâ’ prayer, [II.7.10] in Ramadan. [II.7.11]	أَحَدُهَا: التَّرَاوِيْحُ. وَهِيَ: عِشْرُوْنَ رَكْعَةً بَعْدَ الْعِشَاءِ فِيْ رَمَضَانَ.

[II.7.9] Eleven or twenty-three rak‘ahs?

Twenty rak‘ahs is the position of (A) + (+H, +m, +S)

None of the reports from the Prophet (SA) mention more than eleven, with two prior to them (even-numbered). These were narrated in sound reports by Muslim and from the Mother of the Believers ‘Â’ishah (RAH). However, there are some other reports, albeit with controversial authenticity, saying that during the time of ‘Umar (RA), the Muslims prayed twenty rak‘ahs. These reports gained authority because they were widely accepted by the jurists.

Praying twenty rak‘ahs is supported by widely accepted reports from the Companions. Additionally, the number is not fixed. The Prophet (SA) said:

«صَلَاةُ اللَّيْلِ مَثْنَى مَثْنَى فإذا خِفْتَ الصُّبْحَ فَأَوْتِرْ بِوَاحِدَةٍ.»

> *“The night prayers are two by two, and if you fear (the coming of) the morning, make it witr (odd-numbered) with even one rak‘ah.” (Ag – from Ibn ‘Umar)*

Notice that he did not put an upper limit on the number.

Imam as-Suyooṭi said in *al-Maṣâbeeḥ fee Ṣalât at-Tarâweeḥ* that what is reported in the sound and reliable hadiths is the command to observe tarâweeḥ during Ramadan, without specifying a particular number. Imam Ibn Ḥajar al-Haytami said that there is no authentic report that the Prophet (SA) prayed twenty rak‘ahs of tarâweeḥ. Imam Ibn al-Humâm al-Ḥanafi also corroborated that the Prophet himself used to pray eleven rak‘ahs, but the additional rak‘ahs were added by the Rightly-Guided Caliphs after him, making eleven the sunnah of the Prophet (SA) and the additional rak‘ahs mustaḥabb (recommended). [Al-Mawsoo‘at al-Fiqhiyah] In al-Ikhtiyârât, it

was reported that Imam Ibn Taymiyah said that if someone prays twenty rak'ahs, according to the madh-habs of Abu Ḥaneefah, ash-Shâfi'i and Aḥmad; or thirty-six, according to the madh-hab of Mâlik; or thirteen or eleven rak'ahs [as in some reports from Mâlik]; they would have all done well, as Imam Aḥmad himself stated.

This is a prime example of how Muslims should show flexibility to maintain their unity and harmony. If anyone believes one way or the other, that should not prevent them from following the congregation of the masjid and praying with them, whether they pray eight plus three or twenty plus three. In extremely northern or southern lands during the summer, when the time for 'ishâ' starts very late, consideration should be given to the people's circumstances. There should also be more time for reflection in the local language over the meanings of what is being recited. Finally, there should be some time left for socializing and creating a bond between the 'Ramadan-only' congregants and their local masjid.

[II.7.10] (A/SM & Iqnâ'): After the sunnah of the 'ishâ' prayer.

[II.7.11] The night prayers in general are recommended all year round, but moreso in Ramadan. The term tarâweeḥ is used in reference to the night prayers in Ramadan, but the term was not coined by the Prophet (SA), nor is the tarâweeḥ any different from the night prayers in general.

It remains to be said that non-Arabic speakers may hold a translation of the Qur'an and look at it while praying voluntary (sunnah) prayers, particularly tarâweeḥ, when the recitation is long and it may be hard for them to stay connected without understanding the meaning. An-Nawawi said, "…If he looks at any script that is not the Qur'an and repeats it in his mind, it does not invalidate the prayer, even if done for a long time; however, it is a disliked act. Ash-Shâfi'i clearly stipulated it in *al-Imlâ'*." This is the position of the madh-hab as well (A/SM). If it is a disliked act when one has no good reason for doing it, I hope that it is not disliked when one does so with the good intention of staying focused and connected to the Qur'an being recited.

For all people, holding the muṣ-ḥaf and reciting from it (in Arabic) is permissible according to (A) + (+S) in the sunnah prayers, and according to (A2) + (S), in the farḍ as well.

II. Prayer for Lunar or Solar Eclipse If the sun or the moon is eclipsed, people should anxiously rush to the prayer. If they wish, they can pray in congregation; and if they wish, they can pray individually. [II.7.12] One must say *Allâhu akbar*, then recite Soorat *al-Fâtiḥah* and a long soorah. Then one bows a lengthy bow. Then one rises and recites *al-Fâtiḥah* and a soorah that is long but shorter than the one before it. Then one bows and lengthens the bowing, but (makes it) shorter than the previous one. Then one rises and prostrates two lengthy prostrations. Then one rises and does as he did (in the first rak'ah), making a total of four bowings and four prostrations. [II.7.13]	وَالثَّانِيْ: صَلَاةُ الْكُسُوْفِ فَإِذَا كُسِفَتِ الشَّمْسُ، أَوِ الْقَمَرُ، فَزِعَ النَّاسُ إِلَى الصَّلَاةِ. إِنْ أَحَبُّوْا جَمَاعَةً، وَإِنْ أَحَبُّوْا فُرَادَى. فَيُكَبِّرُ، وَيَقْرَأُ الْفَاتِحَةَ وَسُوْرَةً طَوِيْلَةً. ثُمَّ يَرْكَعُ رُكُوْعًا طَوِيْلاً. ثُمَّ يَرْفَعُ وَيَقْرَأُ الْفَاتِحَةَ وَسُوْرَةً طَوِيْلَةً دُوْنَ الَّتِيْ قَبْلَهَا. ثُمَّ يَرْكَعُ فَيُطِيْلُ دُوْنَ الَّذِيْ قَبْلَهُ. يَرْفَعُ، ثُمَّ يَسْجُدُ سَجْدَتَيْنِ طَوِيْلَتَيْنِ. ثُمَّ يَقُوْمُ فَيَفْعَلُ مِثْلَ ذٰلِكَ، فَيَكُوْنُ أَرْبَعَ رُكُوْعَاتٍ وَأَرْبَعَ سُجُوْدَاتٍ.

[II.7.12] While one may pray at home, praying in the masjid with the congregation is better. (A/SM)

This consensus is regarding the solar eclipse (kusoof). As for the lunar eclipse (called khusoof by some), (-H, -M) do not prescribe it in congregation. Note that in the Ḥanbali madh-hab, kusoof and khusoof are the same and used interchangeably for both solar and lunar eclipses.

[II.7.13] The Eclipse Prayer

The eclipse prayer is a stressed sunnah.

“There was a solar eclipse during the time of the Prophet (SA). The Prophet (SA) went to the mosque, and he stood and made the takbeer, lined the people in rows behind him, and made a lengthy Qur’an recitation during the prayer. Next, he made the takbeer and made a long bow, but it was not as long as the recitation. Following that, he raised his head, saying Sami‘ Allâhu liman ḥamidah (Allah hears those who praise Him) and Rabbanâ laka alḥamd (Our Lord, all praise be to You). Afterwards, he stood and made another long recitation, but it was shorter than the first one. Again, he made the takbeer and made a bow that was shorter than the first one. Then he said again Sami‘ Allâhu liman ḥamidah (Allah hears those who praise Him) and Rabbanâ laka alḥamd (Our Lord, all praise be to You). After this, he prostrated. He did the same in the next rak‘ah and finished four bows and four prostrations. The sun appeared again before he finished. Finally, he stood and addressed the people, praised Allah as He deserves, and then said:

«إِنَّ الشَّمْسَ وَالْقَمَرَ آيَتَانِ من آيَاتِ اللَّهِ لَا يَخْسِفَانِ لِمَوْتِ أَحَدٍ ولا لِحَيَاتِهِ فإذا رَأَيْتُمُوهَا فَافْزَعُوا لِلصَّلَاةِ وقال أَيْضًا فَصَلُّوا حتى يُفَرِّجَ الله عَنْكُمْ.»

‘The sun and the moon are two signs from among the signs of Allah, and there is no eclipse due to someone's death or life. If you see it occurring, hurry to pray.’” He also said as in (M): "Pray until Allah relieves you." (Ag – from ‘Â’ishah)

The people thought the sun had eclipsed because of the death of the Prophet's son Ibrâheem. If the Prophet (SA) had been an imposter, he would have taken advantage of this misunderstanding instead of refuting it. The character and honesty of our Prophet (SA) are among the greatest proofs of the truthfulness of his prophethood.

(A/SM): It is also mustaḥabb to pray during earthquakes. It was narrated that when an earthquake struck Baṣra, Ibn ‘Abbâs offered a prayer similar to the eclipse prayer. (Ba; Ba: this is established from Ibn ‘Abbâs)

In the other madh-habs, they also pray when there are violent storms, winds, and floods. (a) + (-H, -M, -S/individually, -t) They cite the same hadith from Ibn ‘Abbâs, in which he also said, “This is how prayers should be offered at the time of these signs.”

III. Prayer for Rain If the land becomes desolate and the rain ceases to fall, the people should go out with the imam (leader) while showing humbleness, destituteness and humility and imploring (Allah). The imam should lead them in praying two rak'ahs like those of the *Eid* prayer, [II.7.14] and then give a single sermon. He is to ask for forgiveness repeatedly and earnestly, and recite the verses that beseech it. The people are to switch their [outer] garments around. [II.7.15]	الثَّالِثُ: صَلَاةُ الإِسْتِسْقَاءِ إِذَا أَجْدَبَتِ الأَرْضُ، وَاحْتَبَسَ الْقَطْرُ، خَرَجُوْا مَعَ الإِمَامِ مُتَخَشِّعِيْنَ مُتَبَذِّلِيْنَ، مُتَذَلِّلِيْنَ، مُتَضَرِّعِيْنَ. فَيُصَلِّيْ بِهِمْ رَكْعَتَيْنِ، كَصَلَاةِ الْعِيْدِ، ثُمَّ يَخْطُبُ بِهِمْ خُطْبَةً وَاحِدَةً. وَيُكْثِرُ فِيْهَا مِنَ الإِسْتِغْفَارِ وَتِلَاوَةِ الآيَاتِ الَّتِيْ فِيْهَا الأَمْرُ بِهِ، وَيُحَوِّلُ النَّاسُ أَرْدِيَتَهُمْ.
If the people of the covenant (*dhimmis*) [II.7.16] go out with them, they should not be prevented, and they should be ordered to be separate from the Muslims. [II.7.17]	وَإِنْ خَرَجَ مَعَهُمْ أَهْلُ الذِّمَّةِ لَمْ يُمْنَعُوْا وَأُمِرُوْا أَنْ يَنْفَرِدُوْا عَنِ الْمُسْلِمِيْنَ.

[II.7.14] The form of this prayer is like the Eid prayer, including the number of takbeers. However, there is only one khuṭbah (sermon) after this prayer, whereas the Eid prayer has two.

[II.7.15] As the Prophet (SA) did, when he took his cloak and turned it so that the left side was placed on his right shoulder and vice versa. (B) This is to show humility and/or hope for a positive outcome (change of conditions).

[II.7.16] The word dhimmis refers to the non-Muslims who were given a covenant by the Muslims, to be protected and left to practice their own religion in the Muslim lands in exchange for their acceptance of the Muslim government.

[II.7.17] It is natural that the rows of Muslims lined up for prayer should not be interrupted by others who are not offering the same prayer. Peaceful coexistence and compassionate treatment of all people do not mean blurring the differences among the various religions. Each religious group may practice according to their own doctrines, but attempting to gloss over

important differences in order to bring the religions closer to each other is a concept rejected by Islam. Muslims believe that it was Allah who revealed this final testament from the heavens, and it is to be adhered to in its entirety, so no one has the right to change any of its teachings or compromise any part of its creed. In a discussion with a perennialist (one who believes that all religions are valid and all lead to the same destination), I asked him if he would call a "Muslim" who rejects 'Eesâ (Jesus) a believer; he replied that no, he would not. I said, "Then if someone rejects Moosâ or 'Eesâ (peace be upon them), he is not a believer, but he may reject Muhammad (SA) and still be a believer?"

Fifth: Prostration of Recitation [II.7.18] These are fourteen prostrations, two of which are in Soorat *al-Ḥajj* (The Pilgrimage). [II.7.19] Prostration is prescribed for both the one reciting and the one listening, but not for the one merely hearing. He is to make [II.7.20] takbeer when he prostrates and when he raises his head, and then he makes tasleem. [II.7.21]	الضَّرْبُ الْخَامِسُ: سُجُوْدُ التِّلَاوَةِ. وَهُوَ أَرْبَعَ عَشْرَةَ سَجْدَةً، فِي الْحَجِّ مِنْهَا اثْنَتَانِ. وَيُسَنُّ السُّجُوْدُ لِلتَّالِيْ وَالْمُسْتَمِعِ دُوْنَ السَّامِعِ. وَيُكَبِّرُ إِذَا سَجَدَ، وَإِذَا رَفَعَ، ثُمَّ يُسَلِّمُ.

[II.7.18] The prostration of recitation is a preferable act according to the majority, for the Prophet (SA) did not always do it. (Ag – from Zayd ibn Thâbit), Usually, though, when he came to a place in the Qur'an where prostration was indicated, he prostrated, and the others prostrated with him. (B – from Ibn 'Umar)

[II.7.19] These are the places of prostration in the Qur'an:

(al-A'râf 7:206); (ar-Ra'd 13:15); (an-Naḥl 16:49–50); (al-Isrâ' 17:107–109); (Maryam 19:58); (al-Ḥajj 22:18); (al-Ḥajj 22:77); (al-Furqân 25:60); (an-Naml 27:25–26); (as-Sajdah 32:15); (Ḥâ-Meem or Fuṣṣilât 41:37–38); (an-Najm 53:62); (al-Inshiqâq 84:21); (al-'Alaq 96:19).

The prostration of (Ṣâd 38:24) is not stressed but was done by the Prophet (SA) when he saw that the Companions had gotten ready to prostrate.

(A) + (+S): It is considered a prostration of gratefulness, not of recitation, because the Prophet (SA) said, "Dâwood did it to show repentance, and we do it to show gratefulness." (N, with a controversial chain) Therefore, if it is performed inside the prayer, the prayer becomes invalid.

(a) + (-H, -M, -s): The prayer is not invalidated.

[II.7.20] What is Required for the Prostration of Recitation?

Most scholars (A) + (+H, +M, +S) consider the prostration of recitation a type of ṣalâh, which thus requires the fulfillment of the conditions for validity of ṣalâh in general. Others, including Imam ash-Shawkâni in his *Nayl al-Awṭâr*, argued that there is no evidence that wuḍoo' is required. He quoted a report that Ibn 'Umar performed it without wuḍoo'. (B) This is also the position of (t).

When prostrating, one may say what they say in the sujood of prayer, and one may also say what the Prophet (SA) said in prostration:

«سَجَدَ وَجْهِي لِلَّذِي خَلَقَهُ وَصَوَّرَهُ وَشَقَّ سَمْعَهُ وَبَصَرَهُ تَبَارَكَ الله أَحْسَنُ الْخَالِقِينَ.»

"I have prostrated my face to the One Who created and fashioned it and [Who] brought forth its hearing and vision. Blessed is Allah, the best of Creators." (M – from 'Ali)

Additional benefits, as mentioned in (SM):

The following prayers are also recommended (A):

1. The ḍuḥâ' prayer (2 to 8 rak'ahs). Its time begins about fifteen minutes after sunrise and ends at the time of zawâl (the sun reaching the zenith), which is immediately before dhuhr. It is best to pray it in the intensity of heat, because the Prophet (SA) said, "[the time of] ṣalât al-awwâbeen (the prayer of the penitent) is when the young camels feel the intensity of the heat." (M) Note that ishrâq prayer is the same as ḍuḥâ', but some scholars use 'ishrâq' to refer specifically to the two rak'ahs offered by

those who pray fajr in the masjid, then sit there remembering Allah until they pray this prayer.

2. The prayer of istikhârah

3. The prayer of ḥâjah (need)

4. The prayer of tawbah (repentance)

5. The prayer after wuḍoo'

The last four of these prayers consist of 2 rak'ahs each.

Imam Aḥmad disliked ṣalât at-tasâbeeḥ, since its hadith is not established.

The prayer of Raghâ'ib in the month of Rajab is innovated [and called a reprehensible innovation by many scholars, including an-Nawawi, Ibn 'Âbideen, Ibn Ḥajar al-Haytami and others]. Also, al-alfiyah in the middle of the month of Sha'bân is an innovation.

[II.7.21] Prostration of Gratefulness

Also recommended is the sujood of shukr (gratefulness), which is like that of recitation, except that it is not offered inside the prayer. (A) + (+S)

> *When the Messenger of Allah (SA) received something that pleased him, or some glad tidings, he would make a prostration in thanks to Allah. (D, Ma, T – from Abu Bakrah; T: R)*

The majority considers it to be ṣalâh, requiring the same conditions of validity as the ṣalâh. Some, including Imam ash-Shawkâni, argued that it does not, since the need for it arises suddenly, and there is no evidence on such requirements, and nothing that is less than one rak'ah, aside from janâzah, may be called ṣalâh. This is also the position of (-Z, aṭ-Ṭabari, -t).

Note that this sujood is disliked according to (-M)

[II.8] Chapter on the Times When *Ṣalâh* Is Prohibited

بَابُ السَّاعَاتِ الَّتِيْ نُهِيَ عَنِ الصَّلَاةِ فِيْهَا

These are five: [II.8.1] a) After fajr [dawn] until sunrise, and after the sun rises until it is one spear-length above the horizon. [prohibited periods 1 & 2]	وَهِيَ خَمْس: أ) بَعْدَ الْفَجْرِ حَتَّى تَطْلُعَ الشَّمْسُ ، وَبَعْدَ طُلُوْعِهَا حَتَّى تَرْتَفِعَ قِيْدَ رُمْحٍ.

[II.8.1] The connection between the individual and his or her Lord must be nurtured all the time. The prayers were prohibited at these times for various reasons, including distinguishing oneself from the disbelievers who prostrated to the sun and/or their 'gods' during them. However, the connection with Allah (ST) remains, and dhikr is particularly prescribed before sunrise and sunset, which could be said to compensate for the lack of formal prayer at those times. The two sunnah rak'ahs of fajr before the obligatory prayer are excepted.

b) From the time the sun is at its zenith until it moves (to the west). [3] [II.8.2]	ب) وَعِنْدَ قِيَامِهَا حَتَّى تَزُوْلَ.

[II.8.2] (A/SM): An exception is on Jumu'ah when someone walks into the masjid at that time, while the imam is delivering the khuṭbah; they should still perform the salutation of the masjid. This is because of a controversial hadith reported by Abu Dâwood and others, from Abu Qatâdah, which reported that the Prophet (SA) disliked (or forbade) the prayer at midday except on Jumu'ah.

c) After 'aṣr (prayer) until the sun is close to setting, and from that time until it actually sets. [4 & 5] [II.8.3]	ت) وَبَعْدَ الْعَصْرِ حَتَّى تَتَضَيَّفَ الشَّمْسُ لِلْغُرُوْبِ، وَإِذَا تَضَيَّفَتْ حَتَّى تَغْرُبَ.

[II.8.3] There are certain reports that are essential on this topic: first, the hadith of ‘Amr ibn ‘Abasah (RA), who said, “O Prophet of Allah, inform me about the prayers.” The Prophet (SA) said:

«صَلِّ صَلَاةَ الصُّبْحِ ثُمَّ أَقْصِرْ عن الصَّلَاةِ حتى تَطْلُعَ الشَّمْسُ حتى تَرْتَفِعَ فَإِنَّهَا تَطْلُعُ حين تَطْلُعُ بين قَرْنَيْ شَيْطَانٍ وَحِينَئِذٍ يَسْجُدُ لها الْكُفَّارُ ثُمَّ صَلِّ فإن الصَّلَاةَ مَشْهُودَةٌ مَحْضُورَةٌ حتى يَسْتَقِلَّ الظِّلُّ بِالرُّمْحِ ثُمَّ أَقْصِرْ عن الصَّلَاةِ فإن حِينَئِذٍ تُسْجَرُ جَهَنَّمُ فإذا أَقْبَلَ الْفَيْءُ فَصَلِّ فإن الصَّلَاةَ مَشْهُودَةٌ مَحْضُورَةٌ حتى تُصَلِّيَ الْعَصْرَ ثُمَّ أَقْصِرْ عن الصَّلَاةِ حتى تَغْرُبَ الشَّمْسُ فَإِنَّهَا تَغْرُبُ بين قَرْنَيْ شَيْطَانٍ وَحِينَئِذٍ يَسْجُدُ لها الْكُفَّارُ.»

"Pray the morning prayer and then abstain from praying until the sun rises and moves up [away from the horizon], for it rises between the horns of a devil, and that is when the unbelievers prostrate to it. Then pray, as your prayer will be witnessed and attended [by the angels] until the shadow of the spear does not exist to the east or west from it [the shadow is then at its shortest, when the sun is reaching its zenith]. At that time, stop praying, for at that time, hellfire gets fueled. When the sun passes its zenith, you may pray, for your prayer will be witnessed and attended until you pray the ‘aṣr prayer. Then abstain from praying until the sun sets, for it sets between the horns of a devil, and that is when the unbelievers prostrate to it." (M – from ‘Amr ibn ‘Abasah)

This hadith mentions the five times mentioned in the text, and the following one mentions the three (out of these five) when the prohibition is stressed to the point where it is not even permissible to bury the dead then.

“Three times during which the Prophet prohibited us from praying or burying our dead: when the sun rises and is just above the horizon, when it is at its zenith, and when it is setting until it has completely set.” (M – from ‘Uqbah ibn ‘Âmir)

These are the times when voluntary prayers should not be performed except:	فَهذِهِ السَّاعَاتُ لَا يُصَلَّى فِيْهَا تَطَوُّعًا إِلَّا: أ) إِعَادَةَ الْجَمَاعَةِ إِذَا أُقِيْمَتْ وَهُوَ فِي الْمَسْجِدِ.

a. repeating a congregational prayer if it is called for while one is at the masjid; [II.8.4] b. the two rak‘ahs after ṭawâf; [II.8.5] c. the funeral prayer; d. making up for the missed routine voluntary prayers. [II.8.6] (He can make up these routine voluntary prayers) during two of these (prohibited) times which are after fajr and ‘aṣr. *[II.8.7]*	ب) وَرَكْعَتَيْ الطَّوَافِ بَعْدَهُ. ت) وَالصَّلَاةَ عَلَى الْجَنَازَةِ. وَقَضَاءَ السُّنَنِ الرَّوَاتِبِ فِيْ وَقْتَيْنِ مِنْهَا، وَهُمَا: بَعْدَ الْفَجْرِ، وَبَعْدَ الْعَصْرِ.

[II.8.4] For example, if someone has already prayed, whether alone or in congregation, then enters another masjid, and the iqâmah is called while he is inside. In this case, it is recommended that he pray with them, as instructed by the Messenger of Allah (SA) who said:

«... فَلَا تَفْعَلَا إِذَا صَلَّيْتُمَا فِي رِحَالِكُمَا ثُمَّ أَتَيْتُمَا مَسْجِدَ جَمَاعَةٍ فَصَلِّيَا مَعَهُمْ فَإِنَّهَا لَكُمَا نَافِلَةٌ»

"... Do not do that [sit while the main congregation is praying]; when you pray in your dwellings and then come to a masjid with a congregation, pray with them. That will count as a voluntary prayer for you." (T – from Yazeed al-'Âmiri; T: R)

[II.8.5] The Prophet (SA) said:

« يَا بَنِي عَبْدِ مَنَافٍ لَا تَمْنَعُوا أَحَدًا طَافَ بِهَذَا الْبَيْتِ وَصَلَّى أَيَّةَ سَاعَةٍ شَاءَ مِنْ لَيْلٍ أَوْ نَهَارٍ »

"O Banu Abd Manâf, do not prevent anyone who made ṭawâf around this House, and prayed, whichever hour it is of the night or day." (D, T – from Jubayr ibn Muṭ'im; T: R)

[II.8.6] For example, if someone is used to praying the sunnah prayer after dhuhr and did not pray it one day, they would make it up after ‘aṣr, as was done by the Messenger of Allah (SA). (Ag) (A/SM): Making up this routine

sunnah prayer after ‘aṣr is only allowed if the ‘aṣr prayer was combined with dhuhr (whether at the time of dhuhr or ‘aṣr).

[II.8.7] Making up the routine sunnah prayers is restricted to these two times: after fajr until sunrise, and after ‘aṣr until shortly before sunset. All prayers other than the mandatory ones, the two rak‘ahs after ṭawâf, repeating a congregation under the condition stated above (and janâzah in the case of fear for the body of the deceased) should be avoided during the three times when the prohibition is stressed: when the sun rises until it is above the horizon by a spear-length, when the sun is at its zenith until it moves away from it, and right before sunset.

(A/SM): The general permission above to make up routine sunnah prayers reflects the position of this matn, but differs from the later relied-upon position. According to the latter, these prayers, including a missed fajr sunnah after the obligatory fajr prayer, are not made up during the prohibited times, except for the dhuhr sunnah after ‘aṣr when the two obligatory prayers have been combined, as explained above. Prayers made obligatory by a vow are permitted in all five periods, even if the vow specified that time. The permission for funeral prayer during the two longer periods does not extend to prayer at a grave or for an absent deceased.

The obligatory prayers can be made up at all times. [II.8.8]	وَيَجُوْزُ قَضَاءُ الْمَفْرُوْضَاتِ فِيْ جَمِيْعِ الأَوْقَاتِ.

[II.8.8] According to (A) + (+M, +S), because the Messenger of Allah (SA) said:

«مَنْ نَسِيَ صَلَاةً فَلْيُصَلِّهَا إِذَا ذَكَرَهَا»

“Whoever forgets a [mandatory] prayer; let him pray it once he remembers it.” (Ag – Anas ibn Mâlik)

There is wide disagreement over the exceptions among the madh-habs:

(-H, -M) gave precedence to the prohibition in the face of all other reports or considerations, and generally speaking, they forbade voluntary prayers during the times of prohibition.

(A) gave precedence to the prohibition, except when there was a text explicitly indicating that the Prophet (SA) ordered a certain prayer or did it during those times.

(-S) added by analogy other prayers that have a particular reason during those times. For example, the salutation of the mosque, the sunnah after wuḍoo', and the like. As for the salutation of the mosque, the Messenger of Allah (SA) said:

«إذا دخل أحدكم الْمَسْجِدَ فلا يَجْلِسْ حتى يُصَلِّيَ رَكْعَتَيْنِ.»

"When one of you enters the masjid, let him not sit until he prays two rak'ahs." (Ag – from Abi Qatâdah)

(S) used this hadith to exclude them (prayers that have a specific reason) from the general prohibition during those times. The rest gave precedence to the prohibition over this command.

[II.9] Chapter on Imamate (Leading the Prayer)

بَابُ الإِمَـــامَـــةِ

[Who Leads the Prayer]

Narrated Abu Mas‘ood al-Badri (RA) that the Messenger of Allah (SA) said, “The one who should lead the people is the best reciter of the Book of Allah among them; if they are equal in recitation, then the one most knowledgeable in the Sunnah; if they are equal in [their knowledge of] the Sunnah, then the one whose migration was earlier; and if they are equal in migration, then the one who embraced Islam earlier. A man should not lead another man at his [the second man’s] home or at a place under his authority, and he should not sit in his favorite seat except with his permission.” [M] He (SA) said to Mâlik ibn al-Ḥuwayrith and his companion, “When it is time for ṣalâh, let one of you call the adhân, and let the older of you lead the prayer.”[Ag] They were close in their [mastery of] recitation. [II.9.1]	رَوَى أَبُوْ مَسْعُوْدٍ الْبَدْرِيُّ، أَنَّ رَسُوْلَ اللهِ ﷺ قَالَ: «يَؤُمُّ الْقَوْمَ أَقْرَؤُهُمْ لِكِتَابِ اللهِ، فَإِنْ كَانُوْا فِي الْقِرَاءَةِ سَوَاءً، فَأَعْلَمُهُمْ بِالسُّنَّةِ، فَإِنْ كَانُوْا فِي السُّنَّةِ سَوَاءً، فَأَقْدَمُهُمْ هِجْرَةً، فَإِنْ كَانُوْا فِي الْهِجْرَةِ سَوَاءً، فَأَقْدَمُهُمْ سِلْمًا، وَلَا يَؤُمَّنَّ الرَّجُلُ الرَّجُلَ فِيْ بَيْتِهِ، ولا في سُلطانِهِ، وَلَا يُجْلَسُ عَلَى تَكْرِمَتِهِ إِلَّا بِإِذْنِه.» وَقَالَ لِمَالِكِ بْنِ الْحُوَيْرِثِ وَصَاحِبِهِ: «إِذَا حَضَرَتِ الصَّلَاةُ، فَلْيُؤَذِّنْ أَحَدُكُمَا، وَلْيَؤُمَّكُمَا أَكْبَرُكُمَا». وَكَانَتْ قِرَاءَتُهُمَا مُتَقَارِبَةً.

[II.9.1] In this chapter, Imam Ibn Qudâmah addresses the proper order in the selection of imams, the invalid imamate, the lining up for the prayer, and some rulings concerning the late-comers. However, he does not address the ruling of the congregational prayer itself here or elsewhere in this book. According to (A), it is obligatory on men, but they may perform it at home or in the market, etc., though it will be inferior to one performed in the masjid.

According to (M), it is a stressed sunnah; according to (S), it is a communal obligation; and the relied-upon Ḥanafi position treats it as mandatory, or as a stressed sunnah carrying the force of an obligation.

The enormous reward of jamâ‘ah is established in the Sunnah and agreed upon among the scholars.

The Messenger of Allah (SA) said:

«صَلَاةُ الْجَمَاعَةِ أَفْضَلُ مِنْ صَلَاةِ الْفَذِّ بِسَبْعٍ وَعِشْرِينَ دَرَجَةً»

"Prayer in a congregation is twenty-seven times superior to prayer performed alone."

It should suffice the caretakers of the masjids that Allah praised them with this description:

«إِنَّمَا يَعْمُرُ مَسَاجِدَ اللَّهِ مَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ وَلَمْ يَخْشَ إِلَّا اللَّهَ فَعَسَى أُولَئِكَ أَنْ يَكُونُوا مِنَ الْمُهْتَدِينَ»

{The mosques of Allah are only to be maintained by those who believe in Allah and the Last Day and establish prayer and give zakat and do not fear except Allah, for it is expected that those will be of the [rightly] guided.} (at-Tawbah 9:18)

It was not a coincidence that the Messenger of Allah (SA) started his mission in Madinah by building the masjid, which he made in its center. Whatever can be said about the importance of the masjid for Muslim communities throughout the world is even more magnified when we talk about the Muslim minorities, to whom the masjid is truly the ark of Noah. In America, for example, Muslims are a small minority scattered throughout a large continent. For some of them, weeks or months may pass by without getting a chance to see another Muslim except in the masjid. The masjid, therefore, constitutes the link between them and their deen (religion). In it, they develop that emotional bond with their community, which is vital to the wellbeing of their allegiance to the Ummah and faith in Allah. Many youth may find in the masjid the role models they lack at home. In addition to this, the Muslims seeing a masjid – and especially the younger one who did not

grow up in Muslim countries – is vital because it's the most evident symbol of Islam in their tangible world.

Who Should Lead the Prayer?

All of them agreed on giving precedence to the (sultan) governor, then the appointed imam (imâm râtib). They also agreed that the mastery of recitation and knowledge take precedence over piety. Otherwise, they disagreed on the order to be observed.

(A/SM): The one with better recitation, then the one who has more Qur'an memorized, then the one who is more knowledgeable in fiqh, then the one who is older.

The majority (-H, -M, -S) said that the one with more knowledge takes precedence over the best reciter, since you need a limited amount of Qur'an during the prayer, but you need a great deal of knowledge to perfect it and to know what to do in case of error or confusion. They also argued that the Messenger of Allah (SA) assigned Abu Bakr (RA) to lead the congregation despite the presence of people who had better recitation.

(A) argued that the hadith mentioned in the text is clear in giving precedence to the one who has better recitation, so if all candidates have mastered the knowledge pertaining to leading the prayer, then the best reciter out of them should lead. Abu Bakr (RA) was chosen by the Prophet (SA) as a hint to his upcoming role as Caliph, and the Caliph, or one in authority, leads within his realm of authority.

[Invalid Imamate]

The prayer is not valid behind one whose prayer is invalid, except when one did not know about his ritual impurity, [II.9.2] nor did the one being led in the prayer know about it before he made tasleem. In this case, he [the imam] repeats [his prayer] alone. [II.9.3]	وَلَا تَصِحُّ الصَّلَاةُ خَلْفَ مَنْ صَلَاتُهُ فَاسِدَةٌ، إِلَّا مَنْ لَمْ يَعْلَمْ حَدَثَ نَفْسِهِ، وَلَمْ يَعْلَمْهُ الْمَأْمُوْمُ حَتَّى سَلَّمَ، فَإِنَّهُ يُعِيْدُ وَحْدَهُ

[II.9.2] Notice the difference between ritual impurity, such as having no wuḍoo', and physical impurity. In the first case, there is agreement that the imam must repeat the prayer once he realizes that he prayed without wuḍoo'. In the case of having physical impurity on him, there is a disagreement in the madh-hab.

(A2) + (-M, -s, -t) and the position of this book: If he finishes the prayer before remembering that he has a physical impurity, he does not have to repeat the prayer. This is because the Prophet (SA) took off his sandals while praying, because they had filth on them, and he did not repeat what he had already prayed. (Ba – from Abi Sa'eed al-Khudri; Ba: sound chain) (A/SM): The imam must repeat the prayer if he later comes to know that he had physical impurity on him that he was unaware of or had forgotten. According to (A/SM), the followers are excused from repeating only if both they and the imam remained unaware of the impurity until the prayer ended.

[II.9.3] This is based on the hadith in which the Prophet (SA) said:

«يُصَلُّونَ لَكُمْ فَإِنْ أَصَابُوا فَلَكُمْ [وَلهم] و إِنْ أخطأوا فَلَكُمْ وَعَلَيْهِمْ.»

"They [the imams] lead you in prayer, so if they do well, it [the reward] is for you [and them], and if they err, then it [the reward] is for you and [the liability is] on them." (B – from Abu Hurayrah)

Certainly this does not apply to one who knows that his imam does not have purity and decides to pray behind him anyway.

It is invalid behind one who omits a major pillar of the prayer, except for the imam of the neighborhood if he prays while sitting because of sickness that is hoped to be cured. In this case, they pray behind him sitting, unless he began the prayer standing and became ill and sat down; then they would pray behind him standing. [II.9.4]	وَلَا تَصِحُّ خَلْفَ تَارِكِ رُكْنٍ، إِلَّا إِمَامَ الْحَيِّ، إِذَا صَلَّى جَالِسًا، لِمَرَضٍ يُرْجَى بُرْؤُهُ، فَإِنَّهُمْ يُصَلُّوْنَ وَرَاءَهُ جُلُوْسًا، إِلَّا أَنْ يَبْتَدِئَهَا قَائِمًا، ثُمَّ يَعْتَلَّ فَيَجْلِسُ، فَإِنَّهُمْ يُتِمُّوْنَ مَعَهُ قِيَامًا.

[II.9.4] If the Imam Sits

All prefer for the imam who cannot stand to ask someone else to lead, due to the importance of standing and the disagreement over whether he is permitted to lead people who can stand.

(-M): It is not allowed.

(A): It is allowed for the appointed imam of the masjid, if he falls ill with a temporary illness. See the details above in the matn.

(-H, -S): One who is sitting is allowed to lead those who are standing, and they are required to pray standing in all cases.

Here is why they disagreed:

"The Messenger of Allah (SA) prayed at home when he was sick. He prayed sitting down, and some people praying behind him were standing up, but he gestured to them that they should sit. When he finished the prayer, he said:

«إِنَّمَا جُعِلَ الإِمَامُ لِيُؤْتَمَّ بِهِ فَإِذَا رَكَعَ فَارْكَعُوا وَإِذَا رَفَعَ فَارْفَعُوا وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا»

'The imam has been appointed to be followed. When he bows, bow; when he rises, rise; and if he prays sitting, then pray sitting.'" (B – from 'Â'ishah)

However, in the sickness prior to his death, he led the people in prayer (after Abu Bakr started it) sitting down, and Abu Bakr was following him and the people behind were following Abu Bakr. (B – from 'Â'ishah)

The majority (-H, -S) said that the hadith in which the Messenger of Allah (SA) prayed sitting while the Companions prayed standing, at the end of his life, abrogates the prohibition of standing while the imam is sitting. According to them, the earlier prohibition (as the Prophet [SA] pointed out in some reports) was meant to stop the Companions from treating their leaders as the Persians and Romans did; they used to stand while their monarchs were seated, as a sign of their extreme reverence. When the Prophet (SA) was comfortable that they understood the lesson, he allowed them to pray standing in that situation.

According to (A), the best way to reconcile between the reports is to differentiate between two cases: 1) when the imam begins the ṣalât sitting, and 2) when he begins it standing and then sits later.

It is invalid for a woman to lead men. [II.9.5]	وَلَا تَصِحُّ إِمَامَةُ الْمَرْأَةِ بِالرِّجالِ.

[II.9.5] Can a Woman Lead Men in Prayer?

A consensus has been reported that it is prohibited for obligatory prayers. Ibn Ḥazm said in *Marâtib al-Ijmâ'*, "They [the jurists] are unanimously agreed that a woman should not lead men in prayer when they know that she is a woman. If they do this, their prayer is invalid according to the scholarly consensus." It also says in *al-Mawsoo'at al-Fiqhiyat al-Kuwaytiyah* (a contemporary encyclopedia of Islamic law compiling the positions of all schools) (6:205), "In order to lead men in prayer, it is essential that the imam be a male; it is not valid for a woman to lead men in prayers. The jurists are unanimously agreed on this matter."

The Messenger of Allah (SA) taught women that if they needed to correct the imam or alert him to a mistake, they should do so by clapping, not by speaking. (Ag – from Sahl ibn Sa'd as-Sâ'idi) Ibn Ḥajar said, in commenting on this hadith, "It is as if women are not allowed to say *Subḥân Allâh* because they are enjoined to keep their voices low in prayer at all times due to the fear of temptation." If this is the case, then how could she lead them and stand in front of their rows and bow and prostrate in front of them – especially given that the people who might condone this would probably not consider the hijab a requirement, thus violating another consensus? Additionally, if this were permissible, why is it that the greatest of all women in this nation, such as Fâṭimah and 'Â'ishah (RAHUMA), did not lead any men in prayers? In fact, 'Â'ishah's servant Dhakwân used to lead her in tarâweeḥ and read from the muṣ-ḥaf.

As for the *nafl* (supererogatory) prayers, the majority (A) + (+H, +M, +S) still considered it impermissible for a woman to lead men. However, (A2, including most earlier Ḥanbalis) allowed a woman who is a good reciter to lead men in tarâweeḥ prayers if those men are unable to recite al-Fâtiḥah well. This is because of a hadith reported by (D), stating that the Prophet (SA) permitted Umm Waraqah (RAH) to lead prayers for her household – although the hadith does not clearly state whether there were

adult males praying behind her. Some of the Ḥanbalis who supported this position restricted it to older women, and some to women leading maḥram (non-marriageable) men only.

Can a Woman Lead Women in Prayer?

(A) + (+h, +m, +S): Permissible.

(-H): Disliked.

(-M): Forbidden because she is not allowed to raise her voice with the adhân, so here likewise.

The position of the majority is supported by the hadith of Umm Waraqah above and by other reports that both ‘Â’ishah and Umm Salamah led women in prayer and stood in the middle of the line.

As is the case for one who has urinary incontinence, [II.9.6]	وَلَا مَنْ بِهِ سَلَسُ الْبَوْلِ.

[II.9.6] Can One with Incontinence Lead Healthy Individuals?

(A) + (+H, +s): No, because their ṭahârah is deficient, despite being sufficient for them.

(a) + (-M, -S): Yes, because the prayer of that person is valid for him, so his leadership in the prayer should be valid as well.

- and the illiterate who does not recite Soorat *al-Fâtiḥah* properly or compromises a letter therein, [II.9.7] except when they lead someone like them. [II.9.8]	وَالأُمِّيِّ الَّذِيْ لَا يُحْسِنُ الْفَاتِحَةَ، أَوْ يُخِلُّ بِحَرْفٍ مِنْهَا، إِلَّا بِمِثْلِهِمْ.

[II.9.7] Difficulty in Reciting al-Fâtiḥah

They agree about the *ummi* (illiterate one, meaning here the one who cannot recite al-Fâtiḥah properly) who neglects to learn its proper recitation despite being capable of doing so. His imamate is invalid.

As for one who tries his best but is still unable to correct the recitation, they disagreed about the validity of their imamate.

(A): The following individuals cannot lead anyone except those who are like them:

- one who substitutes one consonant for another (aside from changing the ض into ظ)
- one who changes the vowels (makes laḥn) in a way that would change the meaning
- one who drops certain letters or merges them into others

(S): Very close to (A).

(M) in the authorized view: They are allowed to lead if they change one letter to another, or if they change the vowels unintentionally, even if it may change the meaning. This is all about the permissibility of their imamate, not the preferred order.

(H): Their earlier scholars were more like (S+A), but their latter scholars allowed it for the one who is unable to pronounce certain consonants or replaces them with others. They justified the change in the madh-hab by *'umoom al-balwâ* (an unfavorable widespread situation).

(Z): They allowed the imamate of those who have any difficulties with recitation, due to their inability to improve it. They argued that Allah does not burden a soul beyond its capacity.

All people must try their best to learn al-Fâtiḥah, but if they still cannot master its recitation, then it is hoped that they are not deprived of the opportunity to lead their congregations, particularly when they are the true leaders of those congregations. It is, however, closer to piety for those people to willingly assign good reciters to lead the prayers, while they continue to lead their congregations in teaching, judging, and all other aspects of leadership. After all, there are many great scholars in the vast Muslim world who pray behind their students.

[II.9.8] Like one with improper recitation or one with urinary incontinence leading others with the same condition.

It is permissible for: 1. one who has wuḍoo' to pray behind one who has tayammum; [II.9.9] 2. one who is praying an obligatory prayer to pray behind someone who is praying a supererogatory prayer. [II.9.10]	وَيَجُوْزُ: أ) ائْتِمَامُ الْمُتَوَضِّئِ بِالْمُتَيَمِّمِ. ب) وَالْمُفْتَرِضِ بِالْمُتَنَفِّلِ.

[II.9.9] But it is preferable for the one with wuḍoo' to lead.

[II.9.10] Praying Farḍ Behind One Praying Nafl (or a Different Farḍ with a Similar Number of Rak'ahs)

The position in the matn is that of (a) + (-S, -t). It is proven that Mu'âdh ibn Jabal (RA) used to pray 'ishâ' with the Prophet (SA) and then go back to his people and lead them in praying 'ishâ', (Ag) so his second prayer was nafl for him and farḍ for them. They argued that the hadith forbidding being at variance with the imam is about his actions, not his intention.

(A) + (+H, +M): It is invalid, because the Prophet (SA) said:

«إِنَّمَا الإِمَامُ لِيُؤْتَمَّ بِهِ فَلَا تَخْتَلِفُوا عَلَيْهِ فَإِذَا كَبَّرَ فَكَبِّرُوا وَإِذَا رَكَعَ فَارْكَعُوا وَإِذَا قَالَ سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ. فَقُولُوا اللَّهُمَّ رَبَّنَا لَكَ الْحَمْدُ. وَإِذَا سَجَدَ فَاسْجُدُوا وَإِذَا صَلَّى جَالِسًا فَصَلُّوا جُلُوسًا أَجْمَعُونَ»

"The Imam is appointed to be followed, so do not be at variance with him. When he makes takbeer, make takbeer; when he bows down, bow; when he says Sami' Allâhu liman ḥamidah (Allah hears those who praise him), say Rabbanâ laka alḥamdu (Our Lord, all praise be to You); when he prostrates, prostrate; and when he prays sitting, pray sitting, all of you." (Ag – from Abu Hurayrah)

They argued that the hadith of Mu'âdh is a personal incident that may have variant implications, including the possibility that he was praying nafl behind the Prophet (SA) and then farḍ with his people.

There is agreement in the madh-hab + (+H, +M, +S) that the opposite (praying nafl behind one praying farḍ) is valid because the Messenger of Allah (SA) saw a person praying alone and said:

«أَلَا رَجُلٌ يَتَصَدَّقُ عَلَى هَذَا فَيُصَلِّيَ مَعَهُ»

"Is there any man who may do good with this (man) and pray along with him?" (D – from Abu Sa'eed al-Khudri; al-Albâni: S)

[Position of the *Ma'moom*]

If there is only one being led in the prayer, he should stand on the right side of the imam. If he stands to his left, or in front of him, or alone, it [the prayer] is not valid [II.9.11] – unless it is a woman; then she should stand alone behind him. If they are a group, they should stand behind him. If they stand to his right, or on both sides, it is valid. However, if they stand in front of him [II.9.12] or to his left, [II.9.13] it is invalid.	وَإِذَا كَانَ الْمَأْمُوْمُ وَاحِدًا، وَقَفَ عَنْ يَمِيْنِ الإِمَامِ، فَإِنْ وَقَفَ عَنْ يَسَارِهِ، أَوْ قُدَّامَهُ أَوْ وَحْدَهُ، لَمْ تَصِحَّ صَلَاتُهُ. إِلَّا أَنْ تَكُوْنَ امْرَأَةً، فَتَقِفُ وَحْدَهَا خَلْفَهُ. وَإِنْ كَانُوْا جَمَاعَةً، وَقَفُوْا خَلْفَهُ، فَإِنْ وَقَفُوْا عَنْ يَمِيْنِهِ، أَوْ عَنْ جَانِبَيْهِ، صَحَّ، فَإِنْ وَقَفُوْا قُدَّامَهُ، أَوْ عَنْ يَسَارِهِ، لَمْ تَصِحَّ.

[II.9.11] Is the Prayer of One Who Prays Alone (Behind a Row) Valid?

(A/SM): No. If there is no room in the last row, he must pray beside the imam, on his right side, or ask (verbally or by any signal) that someone in the last row step back and make a row with him, but it is disliked to pull anyone back. The one who is asked should do so. This is because when a man prayed alone behind the rows, the Prophet (SA) ordered him to repeat the prayer. (A, T – from Wâbiṣah ibn Ma'bad; A: R)

(a) + (-H, -M, -S): It is valid but disliked, according to (a) + (-H, -S). It is prescribed for him to (gently) pull someone from the last row to pray with him, according to (-H, -S), but only if he does not fear that this may lead to disruption or disputation. Otherwise, he should pray behind the rows,

and it is not disliked in this case. According to (M), he should not demand anyone to step back, and he should pray behind the last row. They cited as evidence that when Abu Bakrah bowed behind the row before joining it, the Prophet (SA) did not tell him to repeat his prayer. (B) However, (A) argued that Abu Bakrah prayed alone less than one rak'ah (before he joined the row), and this does not invalidate the prayer.

While the position of the madh-hab has obvious strength for one who finds room in the last row, the position of the majority may be stronger for one who does not.

[II.9.12] If They Pray in Front of the Imam

(A) + (+H, +S): The prayer is invalid.

(a) + (-m, -t): It is valid only if there was a need, such as crowdedness.

(-M, -s-old): It is valid in all cases but disliked if there was no need.

[II.9.13] If They Pray to the Left of the Imam

(A): Invalid, because Jâbir said that the Prophet (SA) stood up to pray, and Jâbir made wuḍoo' and then went and stood to the left of him. The Prophet (SA) took Jâbir by the hand and moved him to his right. Then Jabbâr came and stood to his left, so the Prophet (SA) took both of them by the hand and made them stand behind him. (D)

(a) + (-H, -M, -S): Valid but counter to the Sunnah, because the Prophet (SA) did not ask Jâbir (or Ibn 'Abbâs in a different hadith) to repeat the prayer after they started it on his left side.

If a woman leads other women, she should stand between them in the same row. Likewise, the imam of men who are not properly covered should stand amidst them.	وَإِنْ صَلَّتْ امْرَأَةٌ بِالنِّسَاءِ، قَامَتْ مَعَهُنَّ فِي الصَّفِّ وَسَطَهُنَّ. وَكَذَلِكَ إِمَامُ الرِّجَالِ الْعُرَاةِ يَقُوْمُ وَسْطَهُمْ. وَإِنِ اجْتَمَعَ رِجَالٌ وَصِبْيَانٌ، وَخُنَاثَى وَنِسَاءٌ، تَقَدَّمَ

If there are men, boys, intersex persons [II.9.14] and women, the men are placed in the front, then the boys, [II.9.15] then the intersex persons, and then the women.	الرِّجَالُ، ثُمَّ الصِّبْيَانُ، ثُمَّ الْخُنَاثَى، ثُمَّ النِّسَاءُ.

[II.9.14] The word khunthâ was used to refer to people with ambiguous genitalia.

[II.9.15] Where the Boys Stand

Al-Mardâwi said in *al-Inṣâf*, "Al-Majd ibn Taymiyah preferred the view that the boy should not be sent back from his place if he got there first." Al-Mardâwi added, "This is the correct view."

This is because there is no definitive proof that the boys are to be placed behind the men except for a report in (D) from Abi Mâlik al-Ash'ari, but it has been deemed weak by Hadith scholars because of the presence of Shahr ibn Ḥawshab in the chain. Additionally, the Prophet's command to have adults of knowledge and understanding pray behind him (M – from Abi Mas'ood) refers only to that part of the first row that was behind him (SA). Some scholars understood it to be an encouragement for the knowledgeable adults to be behind him, not a prohibition for others. The sound report from Ubayy ibn Ka'b (RA), in which he grabbed a young man from the first row and stood in his place, is about the first row and probably the middle part of it. Moreover, 'Amr ibn Salamah led his people in prayer, during the time of the Prophet (SA), at the age of six or seven. (B) Besides, sending the boys to the back could be discouraging and disheartening to them, particularly if done with harshness. It could also lead to more noise from their rows during the prayer, which could be avoided if they were allowed to pray amongst the adults. In addition, many parents feel uncomfortable leaving their three or four-year-olds alone unsupervised while they are praying.

Flexibility must be shown in this regard. The children must be taught the etiquettes of the masjid by their parents, yet tolerance must also be shown to them. It is imperative in the West that we make our mosques inviting to all, particularly to children and younger individuals.

[Catching the Reward of the Congregation and Catching the *Rak'ah*]

He who makes takbeer before the tasleem of the imam, has caught up with the congregation. [II.9.16]	وَمَنْ كَبَّرَ قَبْلَ سَلَامِ الإِمَامِ، فَقَدْ أَدْرَكَ الْجَمَاعَةَ.

[II.9.16] This is the madh-hab (A) + (+H, +S) if he makes takbeer before the imam makes the first tasleem.

(a) + (-M, -t): He must catch one rak‘ah, which is attainable by catching the bowing, because the Prophet (SA) said:

«من أَدْرَكَ رَكْعَةً من الصَّلَاةِ فَقَدْ أَدْرَكَ الصَّلَاةَ.»

"He who catches up with one rak‘ah has caught up with the prayer." (Ag – from Abu Hurayrah)

This hadith would certainly apply according to the madh-hab and majority (A) + (+M, +S) to the Jumu‘ah prayer, in which case he only needs to pray a second rak‘ah to complete the prayer. If he does not catch the second bowing with the imam, then he must pray four rak‘ahs to make the dhuhr prayer, instead of two for Jumu‘ah.

According to (A) + (+H, +S), a traveler praying behind a resident completes the full prayer even if he joins just before the tasleem. According to (M), if he intended to shorten and caught less than one rak‘ah, he shortens; if he caught a rak‘ah, he completes.

As for the reward for praying with the congregation, it is hoped that Allah (ST) will grant it to anyone who catches up with any part of it. The Prophet (SA) said:

«فما أَدْرَكْتُمْ فَصَلُّوا وما فَاتَكُمْ فَأَتِمُّوا.»

“Pray what you catch [with the congregation] and make up what you miss.” (Ag – from Abu Hurayrah)

If he were not going to get the reward of the congregation, he would have been advised to wait for a second congregation instead of joining the first one that is about to finish.

He who catches the bowing has caught the rak‘ah. Otherwise, he has not. [II.9.17]	وَمَنْ أَدْرَكَ الرُّكُوْعَ، فَقَدْ أَدْرَكَ الرَّكْعَةَ، وَإِلَّا فَلَا.

[II.9.17] For the Messenger of Allah (SA) said:

«مَنْ أَدْرَكَ الرُّكُوعَ أدرَكَ الرَّكْعَةَ.»

"He who catches up with the bowing has caught up with the rak'ah." (D, Ba – from Abu Hurayrah; al-Albâni: S)

[II.10] Chapter on the Prayer of the Sick Person

بَابُ صَلَاةِ الْمَرِيْضِ

[Positions of Prayer when One is Sick]

About the sick: If standing increases his sickness, he should pray sitting; if he cannot, then on his side, because the Messenger of Allah (SA) said to 'Imrân ibn Ḥuṣayn (RA), "Pray standing, and if you cannot, then sitting, and if you cannot, then on your side."[B] If this is still hard, he may pray on his back, and if he cannot bow or prostrate, he should use gestures (making the movements as much as possible). [II.10.1]	وَالْمَرِيْضُ إِذَا كَانَ الْقِيَامُ يَزِيْدُ فِيْ مَرَضِهِ، صَلَّى جَالِسًا، فَإِنْ لَمْ يُطِقْ، فَعَلَى جَنْبِهِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ لِعِمْرَانَ بْنِ حُصَيْنٍ: «صَلِّ قَائِمًا، فَإِنْ لَمْ تَسْتَطِعْ، فَقَاعِدًا، فَإِنْ لَمْ تَسْتَطِعْ، فَعَلَى جَنْبٍ.» فَإِنْ شَقَّ عَلَيْهِ، فَعَلَى ظَهْرِهِ، وَإِنْ عَجَزَ عَنِ الرُّكُوْعِ وَالسُّجُوْدِ، أَوْمَأَ بِهِمَا.

[II.10.1]For Allah (ST) says:

{لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا}

{On no soul does Allah place a burden greater than it can bear…} (al-Baqarah 2:286)

And the Prophet (SA) said:

«فإذا أَمَرْتُكُمْ بِشَيْءٍ فَأْتُوا منه ما اسْتَطَعْتُمْ وإذا نَهَيْتُكُمْ عن شَيْءٍ فَدَعُوهُ.»

"When I command you to do something, do of it as much as you can, and if I make something prohibited for you, leave it." (Ag – from Abu Hurayrah)

[Make Up After Coma]

He must make up for the prayers missed during his coma. [II.10.2]	وَعَلَيْهِ قَضَاءُ مَا فَاتَهُ مِنَ الصَّلَوَاتِ فِيْ إِغْمَائِهِ.

[II.10.2] Missed Prayers for One Who Recovers from a Coma

(A): They must make up all the prayers, regardless of the duration of the coma.

(a) + (-M, -S): They are not required to make up any prayers unless they recover from the coma before the time of the prayer is over. (This does not apply to someone who went into a coma upon abuse of haram substances or intoxication.)

(-H): If the coma lasted more than five prayers, they do not need to make up the prayers.

They all cited different reports in *Muṣannaf* of Ibn Abi Shaybah from the Companions about missed prayers during comas, including reports of comas lasting several days. Ad-Dâraquṭni reported from the Prophet (SA) the exemption of one in a coma, but a narrator in the chain was considered weak by Imam Aḥmad. None of the reports were definitive. They used rational evidence as well. The majority likened the coma to insanity, and (A) likened it to sleep.

This position of (a) + (-M, -S) is strong, for it is consistent with the fiqh principles. The one in a coma has effectively lost their intellect. Besides, nowadays people may be in a coma for months and survive only because of life support. The position of (-H) is also strong because people normally do not sleep more than a day, so a coma longer than that cannot be treated like sleep.

[Combining the Prayers due to Sickness]

If it is hard for him to pray each prayer during its prescribed time, it is permissible to combine the dhuhr with the ‘aṣr prayer and the maghrib with the ‘ishâ’ prayer, during the time of either one [the earlier or the latter] [II.10.3]	وَإِنْ شَقَّ عَلَيْهِ فِعْلُ كُلِّ صَلَاةٍ فِيْ وَقْتِهَا، فَلَهُ الْجَمْعُ بَيْنَ الظُّهْرِ وَالْعَصْرِ، وَبَيْنَ الْعِشَاءَيْنِ فِيْ وَقْتِ إِحْدَاهُمَا.

[II.10.3] Ḥamnah bint Jaḥsh (RAH) had excessive non-menstrual vaginal bleeding, and the Messenger of Allah (SA) allowed her to combine the prayers. (A; al-Albâni: R) Combining for the sick is the position of (A) + (+M, +s). Imam Ibn Taymiyah said in *Majmoo‘ al-Fatâwâ*:

The reason for shortening the prayers is travel only, so it is not otherwise permitted. As for combining them for an excuse or a need, he may do that while traveling, whether it is short or long travel, and he may combine them for rain, or sickness, or other reasons. The objective of this concession is sparing the Ummah from hardship.

If he combines these during the time of the earlier prayer, he should make the intention (to combine them) prior to doing it [praying the first of the two combined prayers]. [II.10.4] The excuse for combining the two must continue until he starts praying the second. He should not separate them except for the time to make wuḍoo’. [II.10.5]	فَإِنْ جَمَعَ فِيْ وَقْتِ الأُوْلَى، اشْتُرِطَ نِيَّةُ الْجَمْعِ عِنْدَ فِعْلِهَا. وَاسْتِمْرَارُ الْعُذْرِ حَتَّى يَشْرَعَ فِيْ الثَّانِيَةِ مِنْهُمَا. وَأَنْ لَا يُفَرِّقَ بَيْنَهُمَا، إِلَّا بِقَدْرِ الْوُضُوْءِ.

[II.10.4] That is the position of the majority.

(-s, -t): It is not a condition. Their position is strong since there is no proof to the contrary. They also noted that on the day of ‘Arafah, the Prophet (SA) did not tell the Companions before they started the dhuhr prayer that he was going to combine it with the ‘aṣr prayer. It is safer to follow the

authorized view of the four madh-habs, but one may take the concession in the views of other mujtahids under certain conditions, including the presence of a need for it. If someone forgets to make the intention for combining, and he prays dhuhr, and now he is about to have surgery or another medical procedure, he may pray ʻaṣr in the time of dhuhr, making a belated intention to combine. See the appendix on the agreement of the four madh-habs.

[II.10.5] That is the position of the majority.

(-s, -t): It is not a condition. Their position is strong since there is no proof to the contrary. See above.

If he defers [praying the two prayers until the time of the second prayer], the excuse of combining must last until the time of the second has come in. He must make his intention (to combine them) during the time of the first prayer, before it is too late to pray it on time.	وَإِنْ أَخَّرَ، اعْتُبِرَ اسْتِمْرَارُ الْعُذْرِ إِلَى دُخُوْلِ وَقْتِ الثَّانِيَةِ مِنْهُمَا، وَأَنْ يَنْوِيَ الْجَمْعَ فِيْ وَقْتِ الأُوْلَى، قَبْلَ أَنْ يَضِيْقَ عَنْ فِعْلِهَا.

[Other Times When Combining Prayers Is Permissible]

Combining is permissible for the traveler for whom shortening the prayers is permissible. [II.10.6]	وَيَجُوْزُ الْجَمْعُ لِلْمُسَافِرِ الَّذِيْ لَهُ الْقَصْرُ.

[II.10.6] Different Causes that Justify Combining the Prayers

(A) + (+M, +s): Fear is also a reason for combining the prayers, so there are four causes:

1) Traveling (A) + (+M, +S).

2) Sickness (A) + (+M, +s).

3) Fear for life, honor, or property. (A) + (+M, +s).

4) Rain (A) + (+M, +S) and according to (A), severe wind and cold. Muddy streets take the same ruling, even without rain, according to (A) + (+M).

Does it apply to people praying at the mosque only?

(a) + (-M, -S): Yes

(A): No

According to (A/SM), combining the prayers may also be permissible in the following cases:

- Women with prolonged bleeding, people with urinary incontinence, and the like.

- Those unable to make ritual purification with water or tayammum for every prayer.

- Those unable to identify the direction of qibla for every prayer, such as a blind person or a prisoner.

- Those who fear harm to their livelihood if they leave for prayer, such as bakers fearing that their dough may be spoiled or their bread may be burnt.

According to (Ibn Seereen, Rabee‘ah, Ashhab, Ibn al-Mundhir, al-Qaffâl, Z, and t), it is permissible to combine the prayers if praying on time will cause hardship, given that it does not become a habit. Their proof is a report that the Messenger of Allah (SA) combined prayers in Madinah without fear or rain. “He did not want to place his Ummah in hardship,” Ibn ‘Abbâs (rahuma) explained. (Ag – from Ibn ‘Abbâs)

The majority argued that this combining was not a true one, and that the Messenger of Allah (SA) only deferred the dhuhr until right before ‘aṣr, for Allah (ST) says:

{إِنَّ الصَّلَاةَ كَانَتْ عَلَى الْمُؤْمِنِينَ كِتَابًا مَّوْقُوتًا}

{…For such prayers are enjoined on believers at stated times.} (an-Nisâ' 4:103)

The position of the minority is strong because Ibn 'Abbâs (RAHUMA) clearly stated that the Prophet (SA) did it so that his Ummah would not be placed in hardship. Had it not been a true combining, he would not have needed to justify it, and the narrator would have explained what was meant by 'combining' so that people would not think it was true combining. The scholars who took this position indicated that it would be for a legitimate need and on a random basis.

This may apply to a physician in the middle of a procedure, a student in the middle of an important lecture or exam, a person who is caught in traffic, or the like.

Of note here is that (-H) allows combining during Hajj only.

It is permissible to combine the maghrib prayer with 'ishâ' prayer in the case of rain. [II.10.7]	وَيَجُوْزُ الْجَمْعُ فِي الْمَطَرِ بَيْنَ الْعِشَاءَيْنِ خَاصَّةً.

[II.10.7] That is the position of (A) + (+M).

(-S): Allowed combining dhuhr and 'aṣr due to rain.

[II.11] Chapter on the Prayer of the Traveler

بَابُ صَلَاةِ الْمُسَافِرِ

If the distance of traveling is sixteen *farsakhs [II.11.1]* (which is the distance covered in two days [II.11.2] at a moderate speed) and the travel is permissible, then one is entitled to shorten the four-rak'ah prayers particularly. [II.11.3] Unless: - he prays behind a resident; - he does not intend to shorten [the prayer]; [II.11.4] - he forgets a prayer that became due on him while a resident and remembers it while traveling; - [he forgets] a prayer that became due while traveling, and he remembers it while a resident. In these cases, he needs to complete [the prayer].	وَإِذَا كَانَتْ مَسَافَةُ سَفَرِهِ سِتَّةَ عَشَرَ فَرْسَخًا، وَهِيَ مَسِيْرَةُ يَوْمَيْنِ قَاصِدَيْنِ، وَكَانَ مُبَاحًا، فَلَهُ قَصْرُ الرُّبَاعِيَّةِ خَاصَّةً. إِلَّا أَنْ: - يَأْتَمَّ بِمُقِيْمٍ، - أَوْ لم يَنْوِ الْقَصْرَ، - أَوْ يَنْسَى صَلَاةَ حَضَرٍ، فَيَذْكُرَهَا فِي السَّفَرِ، - أَوْ صَلَاةَ سَفَرٍ، فَيَذْكُرَهَا فِي الْحَضَرِ، فَعَلَيْهِ الإِتْمَامُ.

[II.11.1] Shortest Distance that Justifies Shortening the Prayers

Fixed

(A) + (+M, +S): Four bareeds, which is equal to 16 farsakhs. Each farsakh is equal to 3 Hashemite meels. (A/SM)

They argued that the most authentic reports from Ibn 'Abbâs and Ibn 'Umar set the distance at 4 bareeds. These were reported with a sound chain by al-Bayhaqi.

There is a lot of controversy over the meel that is meant here. According to Sayyid Sabiq, one farsakh is equivalent to 5,541 meters. On this estimate, the distance mentioned here (sixteen farsakhs) is 88.7 kilometers or 55.1 modern miles. However, there are about twenty different opinions on determining this distance. Since certainty is unattainable here, it is easier to assume that one Hashemite meel is equal to one mile, in which case, the distance is approximately 48 miles.

(-H): The distance covered in three days (not two), which was said by some Ḥanafis to be 24 farsakhs; however, most of them did not acknowledge the physical distance but rather the duration of three days of travel.

Unfixed

Al-Awzâʻi, a, al-Khiraqi, t, and the author Ibn Qudâmah in his other book *al-Mughni*, as well as many of the righteous predecessors, argued that there is no minimum distance that allows travelers to shorten and combine the prayers and to break the fast in Ramadan, as long as it is considered traveling by the customs of people. This is because the determination of 16 farsakhs is based on conflicting reports from the Companions Ibn ʻAbbâs and Ibn ʻUmar (RAHUM), and the verse in the Qur'an that permits shortening prayers in travel uses general wording that covers all that is called travel. They also argued that when Anas ibn Mâlik was asked about shortening the prayer, he said, "The Messenger of Allah (SA) would pray two rakʻahs if he had traveled a distance of three miles or farsakhs." (M – from Yaḥyâ ibn Yazeed) Ibn Ḥajar called this report the most sound on the issue. The confusion in this hadith between miles and farsakhs is clarified by Abu Saʻeed al-Khudri's statement, "If the Prophet (SA) traveled a distance of one farsakh, he would shorten his prayer." (*Sunan Saʻeed ibn Manṣoor*); Ibn Ḥajar did not comment on it in at-Talkheeṣ, indicating his acceptance of it. It is known that one farsakh is about 3 miles. The majority argued that this hadith meant that this is when the Prophet (SA) started to shorten if he was traveling the qualifying distance of 4 bareeds.

While the second position has its own merits, the first is safer and is the position of the majority. At the least, it is what the most notable imams suggested as the distance qualifying the travel to be legally consequential. The second position may result in confusion, and it may allow room for

eccentric fatwas and practices that were not intended by the proponents of that position.

[II.11.2] Assuming that one does not travel at night. This would be equal to the distance covered in one day and one night.

[II.11.3] "The ṣalâh was prescribed in Makkah in sets of two rak'ahs. When the Prophet (SA) came to Madinah, two rak'ahs were added to each ṣalâh except the maghrib ṣalâh, because it is the witr of the daytime, and the dawn prayer due to its lengthy Qur'an recitation. However, if one travels, he performs the original prayer." (A – from 'Â'ishah. Ibn Taymiyah: S chain)

[II.11.4] (a, -t): It is not necessary to have the intention to shorten the prayer before the beginning of the prayer, so if a traveler makes takbeer for 'ishâ', without having intended before it to shorten it, he may still shorten it.

It is permissible for the traveler to [pray the] complete [prayer], but shortening it is preferable. [II.11.5]	وَلِلْمُسَافِرِ أَنْ يُتِمَّ، وَالْقَصْرُ أَفْضَلُ.

[II.11.5] The Ruling on Shortening the Prayers for the Traveler

Allah (ST) said:

{وَإِذَا ضَرَبْتُمْ فِي الْأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَن تَقْصُرُوا مِنَ الصَّلَاةِ إِنْ خِفْتُمْ أَن يَفْتِنَكُمُ الَّذِينَ كَفَرُوا}

{And when you go forth in the land, there is no sin upon you if you shorten your prayer when you fear the disbelievers may attack you…} (an-Nisâ' 4:101)

Ya'lâ ibn Umayyah said that he said to 'Umar ibn al-Khaṭṭâb, "Explain to me why the people shorten the ṣalâh when Allah says, 'And when you go forth...' [the preceding verse], and those days are gone now!" 'Umar said, "I wondered about that, too. I mentioned it to the Prophet (SA), and he said:

«صَدَقَةٌ تَصَدَّقَ الله بها عَلَيْكُمْ فَاقْبَلُوا صَدَقَتَهُ.»

'This is a charity that Allah (ST) has bestowed upon you, so accept his charity.'" (M – from Ya'lâ ibn Umayyah)

Based on these and other reports, and the fact that the Prophet (SA), by agreement, never prayed 4 rak'ahs while traveling, the scholars differed over the ruling of shortening the prayer.

(A) + (+S): Preferable.

(-M): Stressed sunnah, which takes precedence over the congregational prayer.

(-H): Obligatory.

He who has the intention to stay more than [the period of] twenty-one prayers [meaning four full days plus one more prayer] must complete [his prayers]. If he does not have this intention, he continues to shorten [his prayers] forever. **[II.11.6]**	وَمَنْ نَوَى الإِقَامَةَ أَكْثَرَ مِنْ إِحْدَى وَعِشْرِيْنَ صَلَاةً، أَتَمَّ، وَإِنْ لَمْ يُجْمِعْ عَلَى ذٰلِكَ، قَصَرَ أَبَدًا.

[II.11.6] The Longest Period One May Shorten the Prayers

There is an agreement that if one does not intend to stay and continues to tell himself, "I will go back home tomorrow," but for some reason does not, such a person may shorten the prayer forever. (Consensus reported by Ibn al-Mundhir.) Only (-S) disagreed and stipulated a limit of eighteen days.

When the person intends to stay for some time, there are many opinions regarding the period during which it is allowed to shorten the prayer:

(A/SM): 20 prayers.

(a): An intended stay of 4 days requires completing the prayers. (-S): An intended stay of 4 full days, excluding the days of arrival and departure, requires completing the prayers. (-M): An intended stay of 4 full days requires completing the prayers if 20 obligatory prayers also fall due during the stay.

(M, S, A) cited that the Prophet (SA) spent four days in Makkah during his Hajj, from the 4th to the 8th of Dhul-Ḥijjah, and he was shortening the prayers. They also argued that the Prophet (SA) and his Companions were not allowed to return as residents to Makkah after they left it for the sake of Allah, but he allowed them three days of stay. (M) This means that if they stayed 3 days or fewer, they would not be considered residents.

(-H): fewer than 15 days; this was also reported from ath-Thawri, al-Layth and others and related from Companions including ‘Umar, his son ‘Abdullâh, and Ibn ‘Abbâs (RAHUM).

(t) and many scholars: There is no limit unless one intends to stay and work, marry, or have other signs of residence. They cited the following:

The Prophet (SA) prayed shortened prayers for 18 days in Makkah. (D – from ‘Imrân; D: Auth) In a mursal hadith, it was reported that the Prophet (SA) shortened prayers for 20 days in Tabook. (D – from Jâbir) To say that he did not, at any point, intend to stay more than 4 days is implausible, particularly since he needed to establish Makkah as an abode of Islam after its conquest, which would take more than 4 days, as pointed out by Ibn al-Qayyim (may Allah bestow mercy on him).

The Messenger of Allah (SA) never clearly stated that if someone resides for more than a certain period, he must pray the full prayers.

The Companions shortened the prayers for months and even years. Al-Miswar ibn Makhramah said, “We stayed with Sa‘d in some of the cities of ash-Shâm [Syria] for 40 days, and Sa‘d would shorten the prayers, while we would offer the whole ṣalâh.” (A) Nâfi‘: “Ibn ‘Umar was in Azerbaijan for 6 months, as there was snow blocking the pass, and he would pray 2 rak‘ahs.” Ḥafṣ ibn ‘Ubaydullâh said, “Anas ibn Mâlik stayed in ash-Shâm for 2 years, and he prayed the ṣalâh of a traveler.” Anas said, “The Companions of the Prophet stayed in Ram Hurmuz for 7 months, and they shortened their ṣalâh.” Al-Ḥasan said, “I stayed with ‘Abdur-Raḥmân ibn Samurah for 2 years in Kabul, and he shortened his ṣalâh, but he did not combine the ṣalâh.” Ibrâheem said, “They resided in Rayy for a year or more and in Sijistan for 2 years.”

They argued that it is implausible to assume that they never, at any point, intended to stay more than 4 days. They concluded that as long as one does not intend to take a place as a residence, such as having or intending to have a home there or to work or marry there, then they may shorten the prayers.

While the last position has its own merits and obvious strength, those who wish to stay within the safety of the authorized positions of the 4 madhhabs may do so by taking the most lenient of them, which is the Ḥanafi allowance for an intended stay of fewer than 15 days.

[II.12] Chapter on the Prayer of Fear

بَابُ صَلَاةِ الْخَوْفِ

The prayer of fear is permissible in any form in which it was conducted by the Messenger of Allah (SA). [II.12.1]	وَتَجُوْزُ صَلَاةُ الْخَوْفِ عَلَى كُلِّ صِفَةٍ صَلَّاهَا رَسُوْلُ اللهِ ﷺ.

[II.12.1] The Ruling of the Prayer of Fear

It is permissible by agreement due to the proofs in the Qur'an and Sunnah. Allah (ST) says:

{وَإِذَا كُنتَ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلَاةَ فَلْتَقُمْ طَائِفَةٌ مِّنْهُم مَّعَكَ وَلْيَأْخُذُوا أَسْلِحَتَهُمْ فَإِذَا سَجَدُوا فَلْيَكُونُوا مِن وَرَائِكُمْ وَلْتَأْتِ طَائِفَةٌ أُخْرَىٰ لَمْ يُصَلُّوا فَلْيُصَلُّوا مَعَكَ وَلْيَأْخُذُوا حِذْرَهُمْ وَأَسْلِحَتَهُمْ ۗ وَدَّ الَّذِينَ كَفَرُوا لَوْ تَغْفُلُونَ عَنْ أَسْلِحَتِكُمْ وَأَمْتِعَتِكُمْ فَيَمِيلُونَ عَلَيْكُم مَّيْلَةً وَاحِدَةً ۚ وَلَا جُنَاحَ عَلَيْكُمْ إِن كَانَ بِكُمْ أَذًى مِّن مَّطَرٍ أَوْ كُنتُم مَّرْضَىٰ أَن تَضَعُوا أَسْلِحَتَكُمْ ۖ وَخُذُوا حِذْرَكُمْ ۗ إِنَّ اللَّهَ أَعَدَّ لِلْكَافِرِينَ عَذَابًا مُّهِينًا}

{When you (O Messenger Muhammad) are among them and lead them in the prayer, let one party of them stand up [in prayer] with you, taking their arms with them. When they finish their prostrations, let them take their positions in the rear and let the other party, which has not yet prayed, come up, and let them pray with you, taking all the precautions and bearing arms. The disbelievers wish that you should be heedless of your weapons and your baggage so that they may descend upon you all at once, but there is no sin on you if you put away your arms because of the inconvenience of rain or because you are ill, but take every precaution for yourselves. Verily, Allah has prepared a humiliating torment for the disbelievers.} (an-Nisâ' 4:102)

Imam Aḥmad said that there are 7 sound reports about the prayer of fear or peril; following any one of them is permissible.

This shows us the flexibility and practicality of our religion. The leader may thus choose the form that is most suitable; if the fear intensifies, then they can pray individually, walking or riding as in the verse, facing the qibla or not.

We also learn the importance that Islam gives not only to the prayers but also to prayers in congregation, to the point of praying while in the midst of war and even when there is intense fear and peril. Is it then justifiable for someone to delay the prayers and make them all up at the end of the day?

Finally, if anyone is more deserving of divine assistance and protection, it is those who sacrifice their lives for Allah's cause, while they are sick and when they are in prayer. Allah still tells them, "But take every precaution for yourselves." This shows that we must respect His universal order. If we were guaranteed victory and physical protection in this life, the test of life would be void, and all people would be believers.

The preferred way is for the imam to divide them [the army] into two groups. One group guards while the other prays one rak'ah with him; when he rises for the second, that group should intend to stop following his leadership, and they complete their prayer then go to guard. Then the other group comes and prays the second rak'ah with him [having waited for them]; when he sits down for the tashahhud, they rise to perform the other rak'ah. He waits until they finish their tashahhud, then makes tasleem with them.	وَالْمُخْتَارُ مِنْهَا: أَنْ يَجْعَلَهُمُ الإِمَامُ طَائِفَتَيْنِ، طَائِفَةً تَحْرُسُ، وَالأُخْرَى تُصَلِّي مَعَهُ رَكْعَةً، فَإِذَا قَامَ إِلَى الثَّانِيَةِ، نَوَتْ مُفَارَقَتَهُ وَأَتَمَّتْ صَلَاتَهَا، وَذَهَبَتْ تَحْرُسُ، وَجَاءَتِ الأُخْرَى، فَصَلَّتْ مَعَهُ الرَّكْعَةَ الثَّانِيَةَ، فَإِذَا جَلَسَ لِلتَّشَهُّدِ، قَامَتْ فَأَتَتْ بِرَكْعَةٍ أُخْرَى، وَيَنْتَظِرُهَا حَتَّى تَتَشَهَّدَ، ثُمَّ يُسَلِّمُ بِهَا.

If the fear escalates considerably, they pray walking or riding, facing	وَإِنِ اشْتَدَّ الْخَوْفُ صَلَّوْا رِجَالاً وَرُكْبَانًا إِلَى الْقِبْلَةِ،

the qibla or not. They nod for the bowing and the prostration. Likewise, anyone who fears for himself may pray as his condition permits and may do what he needs to do in terms of escaping and other acts. [II.12.2]	وَإِلَى غَيْرِهَا، يُوْمِئُوْنَ بِالرُّكُوْعِ وَالسُّجُوْدِ. وَكَذٰلِكَ كُلُّ خَائِفٍ عَلَى نَفْسِهِ، يُصَلِّيْ عَلَى حَسَبِ حَالِهِ، وَيَفْعَلُ كُلَّ مَا يَحْتَاجُ إِلَى فِعْلِهِ، مِنْ هَرَبٍ، أَوْ غَيْرِهِ.

[II.12.2] This is to clarify that this applies not only in times of war. It could apply to anyone who is experiencing fear for his own safety, family, or property.

[II.13] Chapter on *Jumu'ah* (Friday Congregational Prayer)

بَابُ صَلَاةِ الْجُمُعَةِ

[Who Must Pray It]

Everyone who is obliged to pray the mandatory prayers is obliged to pray the Jumu'ah [II.13.1] if he is a resident in a permanent dwelling [as opposed to tents, for example], and if the distance between him and the masjid is one farsakh (three miles) or less. [II.13.2] Exempted are …	كُلُّ مَنْ لَزِمَتْهُ الْمَكْتُوْبَةُ لَزِمَتْهُ الْجُمُعَةُ، إِذَا كَانَ مُسْتَوْطِنًا بِبِنَاءٍ، وبَيْنَهُ وَبَيْنَهَا فَرْسَخٌ فَمَا دُوْنَ. إِلَّا ...

[II.13.1] Virtues of Jumu'ah

The day of Jumu'ah has a special position, for the Messenger of Allah (SA) said:

{خَيْرُ يَوْمٍ طَلَعَتْ عليه الشَّمْسُ يَوْمُ الْجُمُعَةِ فيه خُلِقَ آدَمُ وَفِيهِ أُدْخِلَ الْجَنَّةَ وَفِيهِ أُخْرِجَ منها ولا تَقُومُ السَّاعَةُ إلا في يَوْمِ الْجُمُعَةِ.}

"The best day upon which the sun has risen is Jumu'ah. On it, Adam was created, and on that day he entered paradise, and on that day he was expelled from paradise, and the Hour will come on Jumu'ah." (M – from Abu Hurayrah)

It is imperative that we Muslims make this day a special day for us, particularly those living as minorities where the day is a normal weekday.

[II.13.2] The Distance from the Masjid

Ibn Qudâmah explained in *al-Mughni* that the distance of one farsakh applies to people who live outside of town. All the people in town must go to the masjid, regardless of the distance. He justified this with several points, one of which is that it is rare for a town to be wider than one farsakh. (Note

that it would take about 45 to 60 minutes to walk the distance of one farsakh [3 miles] at a moderate pace.)

In our times, the accessibility of a masjid is what matters. People must pray Jumu‘ah if the masjid of their town is within a reasonable commute. It is vital for Muslim minorities to live near masjids or to establish masjids where they live.

Exempted are the woman, the slave, the traveler, --- and one who is excused because of sickness, rain, [II.13.3] or fear. [II.13.4] If one of the first three groups [a woman, a slave, or a traveler] attends, it will count for them, but it does not become valid by their presence. As for the one who is excused [because of sickness, rain, or fear], if he attends, then it becomes obligatory on him and also valid by his presence.	إِلَّا الْمَرْأَةَ، وَالْعَبْدَ، وَالْمُسَافِرَ، وَالْمَعْذُوْرَ بِمَرَضٍ، أَوْ مَطَرٍ، أَوْ خَوْفٍ، وَإِنْ حَضَرُوْهَا أَجْزَأَتْهُمْ، وَلَمْ تَنْعَقِدْ بِهِمْ، إِلَّا الْمَعْذُوْرَ إِذَا حَضَرَهَا، وَجَبَتْ عَلَيْهِ، وَانْعَقَدَتْ بِهِ.

[II.13.3] (Kash-shâf al-Qinâ‘): This includes severe cold, severe wind, snow, and hail as well. Bukhâri and Muslim reported that ‘Abdullâh ibn ‘Abbâs said to the mu’adh-dhin on a rainy day:

«إِذَا قُلْتَ أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ فَلَا تَقُلْ حَيَّ عَلَى الصَّلَاةِ قُلْ صَلُّوا فِي بُيُوتِكُمْ»

“When you have announced, ‘I testify that there is no god but Allah; I testify that Muhammad is the Messenger of Allah,’ do not say, ‘Come to the prayer,’ but say instead, ‘Pray in your houses.’”

He (the narrator) said that it looked like the people disapproved of that. Ibn ‘Abbâs said:

«أَتَعْجَبُونَ مِنْ ذَا قَدْ فَعَلَ ذَا مَنْ هُوَ خَيْرٌ مِنِّي إِنَّ الْجُمُعَةَ عَزْمَةٌ وَإِنِّي كَرِهْتُ أَنْ أُحْرِجَكُمْ فَتَمْشُوا فِي الطِّينِ وَالدَّحْضِ.»

“Are you surprised by that? Someone (referring to the Prophet [SA]) better than I did it. Jumu‘ah prayer is certainly compulsory, but I did not

want to cause you hardship by asking you to come out and walk in mud and on slippery ground."

[II.13.4] Included as an excuse also is fear of harm to one's property or livelihood. Examples mentioned on this include: a baker who fears that his bread will burn, someone who fears that his property will be stolen, etc. (*al-Mughni* and Kash-shâf al-Qinâ')

In our times, this would include employees in jobs that do not allow them to leave the workplace, such as on-call physicians, guards, train and bus drivers, and other on-duty workers. For those in more flexible jobs who are still not allowed to leave for Jumu'ah, it is recommended that they look for other, comparable jobs that would allow them to leave. In the meantime, if they fear the loss of their livelihood, they are exempt from Jumu'ah.

[Conditions of Its Validity]

The conditions of its validity include: - doing it on time, - in a village, - being attended by forty of the residents therein [in the village] who are obliged to pray it, - being preceded by two sermons; in each of which there is the praise of Allah (ST), sending blessings on His Messenger (SA), and the recitation of a verse from the Qur'an and exhortation (advice).	وَمِنْ شَرْطِ صِحَّتِهَا: - فِعْلُهَا فِيْ وَقْتِهَا. - فِيْ قَرْيَةٍ. - وَأَنْ يَحْضُرَهَا مِنَ الْمُسْتَوْطِنِيْنَ بِهَا أَرْبَعُوْنَ مِنْ أَهْلِ وُجُوْبِهَا. - وَأَنْ يَتَقَدَّمَهَا خُطْبَتَانِ، فِيْ كُلِّ خُطْبَةٍ حَمْدُ اللهِ تَعَالَى، وَالصَّلَاةُ عَلَى رَسُوْلِ اللهِ ﷺ، وَقِرَاءَةُ آيَةٍ، وَالْمَوْعِظَةُ.

The conditions of its validity include: - doing it on time, [II.13.5]	وَمِنْ شَرْطِ صِحَّتِهَا: - فِعْلُهَا فِيْ وَقْتِهَا.

[II.13.5] Time of Jumu'ah

(A): The valid time begins at the same time as that of the Eid prayer or ḍuḥâ' (the optional prayer in the mid to late morning), and it lasts until 'aṣr, because:

"The Prophet (SA) would pray Jumu'ah, and then we would take our camels to rest when the sun passed its zenith." (M – from Jâbir ibn 'Abdullâh)

The majority: The time is like that of dhuhr prayer. They interpret the hadith of Jâbir (RA) and other reports from the Companions as encouraging people to pray Jumu'ah early, immediately after noon.

- in a village, [II.13.6]	- فِيْ قَرْيَةٍ.

[II.13.6] Permanent dwellings, as opposed to tents and the like.

- being attended by forty of the residents therein [in the village] who are obliged to pray it, [II.13.7]	- وَأَنْ يَحْضُرَهَا مِنَ الْمُسْتَوْطِنِيْنَ بِهَا أَرْبَعُوْنَ مِنْ أَهْلِ وُجُوْبِهَا.

[II.13.7] Quorum for Jumu'ah

(A) + (+S): 40 people, because 'Abdur-Raḥmân ibn Ka'b ibn Mâlik said to his father, "O my father! I see you supplicating for As'ad ibn Zurârah every time you hear the call for Jumu'ah; why is that?" He replied, "O my son, he was the first one to lead us for the Jumu'ah prayer before the Messenger of Allah (SA) came from Makkah, in Naqi' al-Khadimât, in the plain of Ḥarrat Banu Bayâḍah." He was asked, "How many of you were there at that time?" He said, "Forty men." (Ma)

(-M): 12 in addition to the imam.

(-H): 3 in addition to the imam.

(a) + (-t): 3.

An-Nakha'i, aṭ-Ṭabari, Ibn Ḥazm, ash-Shawkâni and several contemporary scholars: Ṣalât ul-Jumu'ah is valid if there are two or more people present, since the Prophet (SA) is reported to have said, "Two or more constitute a congregation." (Ma; its chain is weak) He said to Mâlik ibn Ḥuwayrith:

«إذا حَضَرَتْ الصَّلَاةُ فَأَذِّنَا وَأَقِيمَا ثُمَّ لِيَؤُمَّكُمَا أَكْبَرُكُمَا.»

"If it is the time for the prayer, let one of the two of you make adhân and the eldest of the two of you lead the prayer." (B)

This hadith indicates that two are enough for the congregational prayer. They argued that the other reports about other numbers relating specifically to Jumu'ah are weak, unclear, or coincidental, as explained by many scholars. As-Suyooṭi holds, "There is no confirmed hadith which states a particular number [for the Jumu'ah ṣalâh]."

I have presented this matter in some detail since many Muslims in Western countries will not be able to gather 40 individuals for the prayer, particularly if they pray at their place of work or school. For many of them, the alternative would be to not pray Jumu'ah for years.

- being preceded by two sermons; [II.13.8] in each of which there is the praise of Allah (ST), [II.13.9] sending blessings on His Messenger [II.13.10] (SA), and the recitation of a verse from the Qur'an and exhortation (advice). [II.13.11]	- وَأَنْ يَتَقَدَّمَهَا خُطْبَتَانِ، فِيْ كُلِّ خُطْبَةٍ حَمْدُ اللهِ تَعَالَى، وَالصَّلَاةُ عَلَى رَسُوْلِ اللهِ ﷺ، وَقِرَاءَةُ آيَةٍ، وَالْمَوْعِظَةُ.

[II.13.8] Number of Sermons in the Jumu'ah Prayer

(A) + (+M, +S): Two sermons are a condition of validity. They argued that the Prophet (SA) never prayed it without two sermons, and he said:

«صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي.»

"Pray as you see me pray." (B – from Mâlik ibn al-Ḥuwayrith)

(-H): One suffices for the validity.

Ibn Ḥazm: No sermon is required for the validity.

[II.13.9] For this is the way of the Prophet (SA), who also said:

«كُلُّ كَلَامٍ لَا يُبْدَأُ فيه بِالْحَمْدُ لِلَّهِ فَهُوَ أَجْذَمُ.»

"Every affair (or speech) that is not started by the praise of Allah is cut off (ajdam, which also means 'leper')." (D – from Abu Hurayrah; Nawawi: R)

[II.13.10] Sending Blessings on the Prophet (SA)

It is prescribed in general on Friday to send many blessings upon our most beloved, our guide to the light of Islam, and the one who sacrificed and endured all kinds of hardship to bring us out of the darkness of ignorance by the grace of Allah (ST). Revering the Messenger (SA) is part of revering the message and the One Who sent that message. Anas reported that the Prophet (SA) said:

📖 «أَكثِرُوا الصَّلاةَ عَلَيَّ يَومَ الجُمُعَة ولَيْلَة الجُمُعَة.» "Send frequent blessings upon me on the day and night of Jumu'ah." Reported by ash-Shâfi'i in his Musnad.

Note that the night of Jumu'ah starts at the time of the maghrib prayer on Thursday.

[II.13.11] Length of the Sermon

This (the recitation of a verse from the Qur'an and exhortation) is the minimum required to have a valid sermon, and almost all Muslims can do this, by the grace of Allah (ST). The Prophet (SA) also said:

«إِنَّ طُولَ صَلَاةِ الرَّجُلِ وَقِصَرَ خُطْبَتِهِ مَئِنَّةٌ من فِقْهِهِ، فَأَطِيلُوا الصَّلَاةَ وَاقْصُرُوا الْخُطْبَةَ وَإِنَّ من الْبَيَانِ لَسِحْرًا.»

"A long prayer and a short sermon are indications of a man's good understanding of the religion, so lengthen the prayer and shorten the sermon. Certainly, some eloquent speech is like magic." (M – from 'Ammâr)

This hadith is neglected by some and overstated by others who want the sermon to be only a few minutes.

We know that the Prophet (SA) used to divide the sermon into two parts and rest in the middle; had it been only a few minutes, he would not have needed to do so.

Ibn ‘Abbâs (RAHUMA) once addressed people after ‘aṣr until sunset and cited the Sunnah of combining prayers when questioned. (M) This was an address after ‘aṣr, not the Jumu‘ah khuṭbah; Ibn Taymiyah explains that its continuation served an important need. It remains to be said that every imam must take into consideration the conditions of his congregation.

[Description]

It is preferable to give the sermon from a *minbar* (raised pulpit). [II.13.12]	وَيُسْتَحَبُّ أَنْ يَخْطُبَ عَلَى مِنْبَرٍ.

[II.13.12] This is what the Messenger of Allah (SA) did. At first, he used the trunk of a palm tree; later, the people made for him a pulpit that had three steps.

When he ascends [the minbar], he faces the people and says *As-salâmu ‘alaykum* to them. Then he sits down until the end of the adhân, then stands and delivers the sermon, then sits down, and then [stands and] delivers the second sermon. Then the iqâmah is called, and he descends and leads the congregation in a prayer of two rak‘ahs, during which he recites aloud. [II.13.13]	فَإِذَا صَعِدَ، أَقْبَلَ عَلَى النَّاسِ، فَسَلَّمَ عَلَيْهِمْ، ثُمَّ يَجْلِسُ إِلَى فَرَاغِ الأَذَانِ، ثُمَّ يَقُوْمُ الإِمَامُ، فَيَخْطُبُ، ثُمَّ يَجْلِسُ، ثُمَّ يَقُوْمُ فَيَخْطُبُ الْخُطْبَةَ الثَّانِيَةَ، ثُمَّ تُقَامُ الصَّلَاةُ، فَيَنْزِلُ، فَيُصَلِّيْ بِهِمْ رَكْعَتَيْنِ، يَجْهَرُ فِيْهِمَا بِالْقِرَاءَةِ.

[II.13.13]All of this was reported from the Messenger of Allah (SA). (M)

[Whether to Finish the Prayer as *Jumu‘ah* or as *Dhuhr*]

Whoever catches one rak‘ah with him [the imam] may finish it as Jumu‘ah; otherwise, he should finish it as dhuhr. [II.13.14]	فَمَنْ أَدْرَكَ مَعَهُ مِنْهَا رَكْعَةً، أَتَمَّهَا جُمُعَةً، وَإِلَّا أَتَمَّهَا ظُهْرًا.

[II.13.14] The Prophet (SA) said:

«من أَدْرَكَ رَكْعَةً من الصَّلَاةِ فَقَدْ أَدْرَكَ الصَّلَاةَ.»

"He who catches up with one rak'ah has caught up with the prayer." (Ag – from Abu Hurayrah)

This is the position of (A) + (+M, +S).

(-H): One who catches the tashahhud with the imam catches the Jumu'ah.

In the same way, if the number [of attendees] decreases [below the minimum required] [II.13.15] or the prayer's time passes [then there are two different cases]: if they have already prayed one rak'ah, they should finish it as Jumu'ah; otherwise they should finish it as dhuhr. [II.13.16]	وَكَذٰلِكَ إِذَا نَقَصَ الْعَدَدُ، أَوْ خَرَجَ الْوَقْتُ وَقَدْ صَلَّوْا رَكْعَةً، أَتَمُّوْهَا جُمُعَةً، وَإِلَّا أَتَمُّوْهَا ظُهْرًا.

[II.13.15] If we followed the opinion that only two are needed for a quorum, and only one person remained, this would still be applicable.

[II.13.16] (A/SM): If the entire congregation has made the first takbeer before the time ends, they pray it as Jumu'ah.

However, (a) + (-H, -S) require for the validity of Jumu'ah the completion of the entire ṣalât before the time of 'aṣr.

[More Rulings]

It is not permissible to conduct more than one Jumu'ah prayer in a town unless there is a need for more than one. [II.13.17]	وَلَا يَجُوْزُ أَنْ يُصَلَّى فِي الْمِصْرِ أَكْثَرُ مِنْ جُمُعَةٍ، إِلَّا أَنْ تَدْعُوَ الْحَاجَةُ إِلَى أَكْثَرَ مِنْهَا.

[II.13.17] Two Jumu'ahs in One Town

(A): This is forbidden unless there is a legitimate need for another Jumu‘ah. (-H): The relied-upon position permits multiple Jumu‘ahs in one town without requiring such a need. Abu Yoosuf issued a fatwa to have two Jumu‘ahs in Baghdad.

In contemporary times, the capacity of the mosque may be a legitimate excuse. For this reason, several scholars permitted holding a second Jumu‘ah within the same mosque. If there are two halls, the second Jumu‘ah should be in the ancillary hall, with the overflow from it accommodated in the main hall as long as that is possible, until it too is full.

It is recommended for one who attends the Jumu‘ah to perform major ablution (ghusl), wear two clean garments, wear perfume, and come to the prayer early. [II.13.18]	وَيُسْتَحَبُّ لِمَنْ أَتَى الْجُمُعَةَ أَنْ يَغْتَسِلَ، وَيَلْبَسَ ثَوْبَيْنِ نَظِيْفَيْنِ، وَيَتَطَيَّبَ، وَيُبَكِّرَ إِلَيْهَا.

[II.13.18] Ritual Bath for Jumu‘ah

The Messenger of Allah (SA) said:

«مَن غسَّلَ يومَ الجمعةِ، واغتسلَ، وبكَّرَ وابتكرَ، ومشَى ولَم يركبْ، ودَنا مِن الإمامِ فاستمعَ، ولَم يَلْغُ، كان لهُ بكلِّ خُطوةٍ عملُ سنةٍ، أجرُ صيامِها، وقيامِها»

“Whoever makes ghusl of his head and body on Friday; goes out early walking, not riding; comes close to the imam; and listens without interrupting will have, for each step he takes, a reward equal to that of fasting and praying at night for one year.” (A – from ‘Abdullâh ibn ‘Amr; T – from Aws ibn Aws; al-Albâni: S)

Moreover, the Prophet (SA) said:

«الْغُسْلُ يوم الْجُمُعَةِ وَاجِبٌ على كل مُحْتَلِمٍ وَأَنْ يَسْتَنَّ وَأَنْ يَمَسَّ طِيبًا.»

“Ghusl on Friday is an obligation on every adult Muslim, as well as brushing his teeth (using siwâk) and wearing perfume [if he has some].” (Ag – from Abu Sa‘eed al-Khudri) Many reports add, “And wearing his best clothes…” (D, A, H, Ḥib: S)

Notice in the hadith that the Prophet (SA) included cleaning the teeth and wearing perfume, which are preferable acts but not obligatory. This weakens the use of this hadith to prove the obligation of the ritual bath. The full ablution (ghusl) is a sunnah according to the majority, and mandatory according to some. The position of the majority is supported by a report in which the Prophet (SA) mentioned wuḍoo' but not ghusl for the Jumu'ah. (M – from Abu Hurayrah) Also, in a hadith traced to the Prophet (SA):

«من تَوَضَّأَ يوم الْجُمُعَةِ فَبِهَا وَنِعْمَتْ وَمَنْ اغْتَسَلَ فَهُوَ أَفْضَلُ.»

"He who makes wuḍoo' for Jumu'ah, it is good and sufficient, and he who makes ghusl, verily ghusl is better." (D – from Samurah; D: Auth)

The rest of the acts, such as wearing one's best clothes, using perfume, and cleaning the teeth, are preferable. (The recommendation to wear perfume is meant for men, as women should not wear perfume when out in public, of course.)

If he comes while the imam is delivering the sermon, he does not sit until he prays two brief rak'ahs. [II.13.19]	فَإِنْ جَاءَ، وَالإِمَامُ يَخْطُبُ، لَمْ يَجْلِسْ، حَتَّى يُصَلِّيَ رَكْعَتَيْنِ يُوْجِزُ فِيْهِمَا.

[II.13.19] A man came while the Prophet (SA) was addressing the people on the day of Jumu'ah.

The Prophet (SA) asked,

«أَصَلَّيْتَ قال لَا قال قُمْ فَصَلِّ رَكْعَتَيْنِ.»

"Have you prayed?" The man said no, so the Prophet (SA) said, "Stand up and pray two rak'ahs." (Ag – from Jâbir ibn 'Abdullâh)

(A) + (+H, +M, +S): Taḥiyat al-masjid (greeting the mosque by praying two rak'ahs) is not mandatory at any time; the vast majority considered it sunnah. An-Nawawi reported the consensus on it, and Ibn Ḥajar said it was the agreement of the imams of fatwa. They argued that there are many reports indicating that it is not mandatory; in one, the Prophet

(SA) ordered a man who was stepping over the people's shoulders during the khuṭbah:

«اجْلِسْ فَقَدْ آذَيْتَ وَآنَيْتَ.»

"Sit down, for you have annoyed (people) and you are late." (Ma – from Jâbir)

(-M): Taḥiyat al-masjid during the khuṭbah is forbidden.

Speaking while the imam is delivering his sermon is not permitted, [II.13.20] except for the imam or one to whom the imam speaks. [II.13.21]	وَلَا يَجُوْزُ الكَلَامُ وَالإِمَامُ يَخْطُبُ، إِلَّا لِلإِمَامِ أَوْ مَنْ كَلَّمَهُ.

[II.13.20] Speaking During the Sermon

The Messenger of Allah (SA) said:

«إذا قُلْتَ لِصَاحِبِكَ يوم الْجُمُعَةِ أَنْصِتْ وَالْإِمَامُ يَخْطُبُ فَقَدْ لَغَوْتَ.»

"If you say to your companion, 'Listen,' while the imam is preaching on Friday, you have committed laghw (frivolity)." (Ag – from Abu Hurayrah)

This report shows how grave it is to speak while the imam is giving the sermon, even if that speech is enjoining good – in this case, urging others to listen. If one wants to encourage his neighbor to be quiet, he may do so with a gesture. (A/SM)

According to (A/SM), the exceptions from this are:

Speaking to the imam for a need.

Speaking during the middle break and for people who cannot hear the imam, although they are encouraged to make dhikr.

Saying Yarḥamuka Allâh (may Allah bestow mercy on you) to someone who sneezes. (A) + (+S)

Note that according (a) + (-s), it is forbidden.

Greeting the attendees during the khuṭbah is forbidden. If someone does it anyway:

(A) + (+S): One can return the greeting of salâm.

(a) + (-H, -M, -s): One should not return the greeting of salâm.

[II.13.21] Speaking with the Imam for a Need is Permissible

"A man entered the mosque on the day of Jumu'ah, from the direction of the courtyard, while the Messenger of Allah (SA) was

standing and conducting the sermon. He turned to the Messenger of Allah (SA) and said, 'O Messenger of Allah, our wealth (livestock) has been destroyed, and our means of transportation (camels) have been cut off. Pray to Allah to help us.' So the Messenger of Allah (SA) raised his hands…" (Ag – from Anas ibn Mâlik)

It is obvious, however, that this was not a trivial matter. Likewise, one may speak to the imam about important matters concerning the masjid, the safety of the congregation, etc.

If the khaṭeeb (the person giving the khuṭbah) makes a major mistake concerning a verse (which changes its meaning) or a ruling that is agreed upon, he may be corrected by one who is certain of the correction, as long as that will not lead to greater harm.

[II.14] Chapter on the Prayer of the Two Eids

بَابُ صَلَاةِ الْعِيْدَيْنِ

It [II.14.1] is a communal obligation. [II.14.2] If [at least] forty of the residents [II.14.3] of a town attend, then it is not obligatory for the rest of them.	وَهِيَ فَرْضٌ عَلَى الْكِفَايَةِ، إِذَا قَامَ بِهَا أَرْبَعُوْنَ مِنْ أَهْلِ الْمِصْرِ، سَقَطَتْ عَنْ سَائِرِهِمْ.

[II.14.1] We Only Have Two Annual Religious Feasts (Eids)

The Eid (feast) was called by this name because it recurs. The root word 'ada in the past tense means 'returned'. There is so much beauty in these two Eids. Eid al-Fiṭr marks the end of Ramadan, a time when we rejoice for the favors and mercy of Allah (ST) that enabled us to fast and to pray the night prayers during this blessed month. Eid al-Aḍḥâ commemorates Prophet Ibrâheem's submission, a quality that is the essence of Islam. When the Messenger of Allah (SA) came to Madinah and found the people celebrating two days, he told them:

«إِنَّ اللَّهَ قد أَبْدَلَكُمْ بِهِمَا خَيْرًا مِنْهُمَا يوم الْأَضْحَى وَيَوْمَ الْفِطْرِ.»

"Verily, Allah has replaced them for you with two better days, Eid al-Fiṭr and Eid al-Aḍḥâ." (D – from Anas. Auth)

Note that it may be understood from the apparent implication of the hadith that the Prophet (SA) said this immediately after his arrival in Madinah, but this is not the case because the two Eids were prescribed in the second year of Hijrah. This would still have been shortly after his arrival and while he was getting to know the customs of the people of Madinah.

[II.14.2] The Ruling of the Eid Prayer

This is the position of (A) concerning the ruling of the Eid prayer. Hence, for the individual who knows that others will fulfill the obligation, it is a stressed sunnah.

(a) + (-H, -t): Obligatory.

(a) + (-M, -S): Stressed sunnah.

Its being a collective obligation is supported by the fact that this prayer is of the characteristic rituals of Islam, so it would not be acceptable for an entire community to neglect it. The least to be said concerning the individual is that it is a stressed sunnah, because even menstruating women are encouraged to go out to it. Umm ʻAṭiyah said:

📖 "We were ordered to go out with the virgins and menstruating women to the two Eids, in order to witness and take part in the good and the supplications of the Muslims. The menstruating women would be separated from the others." (Ag)

[II.14.3] Quorum

Refer to the previous chapter about the Jumuʻah for a discussion of the differing opinions on the minimum number.

(a) + (-M, -S): Travelers may pray it.

Its time is from when the sun has risen [a spear's height above the horizon] until zawâl (the sun reaching its zenith or meridian).	وَوَقْتُهَا: مِنِ ارْتِفَاعِ الشَّمْسِ إِلَى الزَّوَالِ.

The sunnah is to: 1. Perform it in the *muṣallâ* (open space prepared for the prayer). [II.14.4] 2. Have the Eid al-Aḍḥâ [prayer] early and the Eid al-Fiṭr [prayer] late, and to eat breakfast before the prayer on Eid al-Fiṭr only. [II.14.5] 3. And it is recommended to have ghusl [II.14.6] and clean oneself and wear perfume [men only]. [II.14.7]	وَالسُّنَّةُ: 1. فِعْلُهَا فِي الْمُصَلَّى. 2. وَتَعْجِيْلُ الأَضْحَى، وَتَأْخِيْرُ الْفِطْرِ، وَالإِفْطَارُ فِي الْفِطْرِ خَاصَّةً، قَبْلَ الصَّلَاةِ. 3. وَيُسَنُّ أَنْ يَغْتَسِلَ، وَيَتَنَظَّفَ وَيَتَطَيَّبَ.

[II.14.4] Praying in an Open Space

This is preferred, since:

> *"The Prophet (SA) used to pray Eid al-Fiṭr and Eid al-Aḍḥâ in the muṣallâ." (Ag – from Abu Sa'eed)*

In fact, there are no confirmed reports that he ever did it in the masjid. However, it is to be done in the masjid in the event of rain or other difficulties.

This ruling did not apply to the Makkans, who always did it in al-Masjid al-Ḥarâm.

[II.14.5] When to Eat

"The Messenger of Allah (SA) did not go out on the morning of Eid ul-Fiṭr until he had eaten some dates, and he would eat an odd number." (B – from Anas)

The Messenger of Allah (SA) used to eat before going out on the day of Eid al-Fiṭr, but on the day of Eid al-Aḍḥâ, he did not eat until after he prayed. (Ḥib – from Buraydah; Ḥib: S)

[II.14.6] The reports saying that the Prophet (SA) used to make ghusl for both Eids are weak, according to the scholars of Hadith. However, it is proven that Ibn 'Umar (RAHUMA) used to do so, and no one was keener to follow the Sunnah than he was.

[II.14.7] The Messenger of Allah (SA) also used to have a special cloak that he wore on the days of the two Eids and Jumu'ah. (Kh – from Jâbir; Kh: S)

[Description]

Hence, when the time of the prayer comes, the imam moves forward and leads them in praying two rak'ahs, without an adhân or iqâmah. [II.14.8]	فَإِذَا حَلَّتِ الصَّلَاةُ، تَقَدَّمَ الإِمَامُ، فَصَلَّى بِهِمْ رَكْعَتَيْنِ بِلَا أَذَانٍ وَلَا إِقَامَةٍ.
He says *Allâhu akbar* in the first rak'ah seven times, including the opening takbeer, and in the second rak'ah five times, not including the takbeer of rising [from prostration]. [II.14.9]	يُكَبِّرُ فِي الأُوْلَى سَبْعًا بِتَكْبِيْرَةِ الإِحْرَامِ، وَفِي الثَّانِيَةِ خَمْسًا سِوَى تَكْبِيْرَةِ الْقِيَامِ.
He raises his hands with every takbeer, [II.14.10]	وَيَرْفَعُ يَدَيْهِ مَعَ كُلِّ تَكْبِيْرَةٍ.
and he praises Allah and sends blessings on the Prophet (SA) between each two takbeers. [II.14.11]	وَيَحْمَدُ اللهَ تَعَالَى، وَيُصَلِّيْ عَلَى النَّبِيِّ ﷺ بَيْنَ كُلِّ تَكْبِيْرَتَيْنِ.
He then recites aloud Soorat *al-Fâtiḥah* and another soorah. *[II.14.12]*	ثُمَّ يَقْرَأُ الْفَاتِحَةَ وَسُوْرَةً، يَجْهَرُ فِيْهِمَا بِالْقِرَاءَةِ.

[II.14.8] Jâbir said that he prayed the Eid prayer several times with the Prophet (SA) and that he started with the prayer (before the sermon) and without an adhân or iqâmah. (Ag – from Jâbir)

[II.14.9] This is the position of (A) + (+M, +S), except that (-S) does not count the opening takbeer as one of the seven in the first rak‘ah.

Katheer ibn ‘Abdullâh ibn ‘Amr ibn ‘Awf narrated from his father, from his grandfather, that the Messenger of Allah (SA) did this. (T; B: Auth, but many others: W) Abu Dâwood reported from ‘Â’ishah a similar hadith, which is still controversial in transmission.

This was also the position of ‘Umar, ‘Ali, and other Companions, as well as the 7 fuqahâ’ of Madinah, ‘Umar ibn ‘Abdul-‘Azeez, az-Zuhri, and al-Muzani.

(a) + (-H): There are 6 additional takbeers, 3 in the first rak‘ah (4 if we count the opening takbeer) and 3 in the second (4 if we count the takbeer of rising from prostration). This was the view of Ibn Mas‘ood, Abu Moosâ al-Ash‘ari, Ḥudhayfah ibn al-Yamân, and many others.

The form chosen by (A) is the most sound; however, this disagreement should not cause disunity. The additional takbeers are sunnah according to the majority; according to (H), they are obligatory (wâjib), though not conditions of validity. Imam Aḥmad, in conformity with his principle of accepting all of the positions of the Companions, said, “The Companions disagreed on the number of takbeers, and it is all permissible.” (*al-Furoo‘*)

[II.14.10] This is not reported directly from the Prophet (SA). However, Ibn ‘Umar (RAHUMA) used to do this, and he was very keen on following the sunnah.

[II.14.11] (Ba – from Ibn Mas‘ood) There is no sound report from the Prophet (SA), but one of the most honorable Companions did it, and he may have learned it from the Prophet (SA).

[II.14.12] 🕮 The Messenger of Allah (SA) used to recite Soorat Qâf in the first rak‘ah and Soorat al-Qamar in the other (M), or Soorat al-A‘lâ and Soorat al-Ghâshiyah. (M)

[Sermon after the Prayer]

After he makes tasleem, he gives a sermon in two parts. [II.14.13] If it is Eid al-Fiṭr, he should encourage them to give charity and explain its rulings to them; if it is Eid al-Aḍḥâ, he explains to them the rulings on sacrificing [an animal].	فَإِذَا سَلَّمَ خَطَبَ بِهِمْ خُطْبَتَيْنِ، فَإِنْ كَانَ فِطْرًا، حَضَّهُمْ عَلَى الصَّدَقَةِ، وَبَيَّنَ لَهُمْ حُكْمَهَا، وَإِنْ كَانَ أَضْحَى، بَيَّنَ لَهُمْ حُكْمَ الأُضْحِيَّةِ.

[II.14.13] Ibn ‘Umar: “I have prayed behind the Messenger of Allah (SA), Abu Bakr, ‘Umar and ‘Uthmân; they all prayed before the sermon.” (Ag)

The additional takbeers and the two sermons are all sunnah.	وَالتَّكْبِيْرَاتُ الزَّوَائِدُ، وَالْخُطْبَتَانِ سُنَّةٌ.
He does not pray any sunnah prayers, before or after the Eid prayer, in the place for it [the muṣallâ]. [II.14.14]	وَلَا يَتَنَفَّلُ قَبْلَ صَلَاةِ الْعِيْدِ، وَلَا بَعْدَهَا فِيْ مَوْضِعِهَا.

[II.14.14] The Messenger of Allah (SA) prayed two rak‘ahs on the day of Eid al-Fiṭr, without any other prayers before or after them. (Ag – from Ibn ‘Abbâs)

[Latecomers]

He who joins the imam before he makes tasleem finishes it in its prescribed form. He who misses it is not obliged to make up, but if he wants to pray it, he may pray it as a supererogatory prayer. If he wishes, he may pray either two or four rak‘ahs, and he may pray it in the form prescribed for it [meaning with the additional takbeers]. [II.14.15]	وَمَنْ أَدْرَكَ الإِمَامَ قَبْلَ سَلَامِهِ، أَتَمَّهَا عَلَى صِفَتِهَا، وَمَنْ فَاتَتْهُ فَلَا قَضَاءَ عَلَيْهِ، فَإِنْ أَحَبَّ، صَلَّاهَا تَطَوُّعًا، إِنْ شَاءَ رَكْعَتَيْنِ، وَإِنْ شَاءَ أَرْبَعًا، وَإِنْ شَاءَ صَلَّاهَا عَلَى صِفَتِهَا.

[II.14.15] From the general meaning of the popular hadith, "Pray what you catch [with the congregation], and make up what you miss." (Ag)

[Rulings of the *Takbeer*]

It is recommended to make takbeer [II.14.16] during the nights before the two Eids, and in al-Aḍḥâ, after the obligatory prayers in congregation, from fajr on the day of *'Arafah [II.14.17]* until 'aṣr on the last day of *tashreeq*. [II.14.18] Except for the one in iḥrâm, he makes takbeer from the dhuhr prayer of the day of naḥr (Eid) until 'aṣr on the last day of *tashreeq*.	وَيُسْتَحَبُّ التَّكْبِيْرُ فِيْ لَيْلَتَيِ الْعِيْدَيْنِ، وَيُكَبِّرُ فِيْ الأَضْحَى عُقَيْبَ الْفَرَائِضِ فِيْ الْجَمَاعَةِ، مِنْ صَلَاةِ الْفَجْرِ يَوْمَ عَرَفَةَ إِلَى الْعَصْرِ مِنْ آخِرِ أَيَّامِ التَّشْرِيْقِ. إِلَّا الْمُحْرِمَ فَإِنَّهُ يُكَبِّرُ مِنْ صَلَاةِ الظُّهْرِ يَوْمَ النَّحْرِ إِلَى الْعَصْرِ مِنْ آخِرِ أَيَّامِ التَّشْرِيْقِ.

[II.14.16] For Allah (ST) says:

{وَلِتُكْمِلُوا الْعِدَّةَ وَلِتُكَبِّرُوا اللَّهَ عَلَىٰ مَا هَدَاكُمْ وَلَعَلَّكُمْ تَشْكُرُونَ}

{(He wants that you) must complete the same number (of days), and that you must magnify Allah [by saying takbeer] for having guided you so that you may be grateful to Him.} (al-Baqarah 2:185)

[II.14.17] The plain outside of Makkah where pilgrims gather on the 9th day of the Islamic month of Dhul-Ḥijjah for the climax of the Hajj. It is also called 'Arafât.

[II.14.18] (B) The days of tashreeq are the three holy days following the 10th of Dhul-Ḥijjah; they are part of Eid al-Aḍḥâ.

This is also the position of the two disciples of Abu Ḥaneefah and the authorized position in (+H).

(-M): From dhuhr on the day of naḥr until fajr on the last day of tashreeq. (-S): For non-pilgrims, from fajr on the day of ‘Arafah until ‘aṣr on the last day of tashreeq; for pilgrims, from dhuhr on the day of naḥr until fajr on the last day of tashreeq.

The form of takbeer is in pairs: *Allâhu akbar, Allâhu akbar; lâ ilâha illâ Allâh. Wa Allâhu akbar, Allâhu akbar, wa lillâhil-ḥamd.* (Allah is the Greatest, Allah is the Greatest; there is none worthy of worship except Allah. And Allah is the Greatest, Allah is the Greatest, and to Allah is due all praise). [II.14.19]	وَصِفَةُ التَّكْبِيْرِ شَفْعًا: اللهُ أَكْبَرُ اللهُ أَكْبَرُ، لَا إِلٰهَ إِلَّا اللهُ، وَاللهُ أَكْبَرُ اللهُ أَكْبَرُ، وَللهِ الْحَمْدُ.

[II.14.19] This is the position of (A) + (+H).

There is no report traceable authentically to the Prophet (SA), but they cite the practice of several Companions, including ‘Umar and ‘Ali, as the author mentioned in *al-Mughni*.

(-M): The preferred form is “Allâhu akbar” three times without further additions. (-S): Three takbeers at the beginning, followed by “Lâ ilâha illâ Allâh; wa Allâhu akbar, Allâhu akbar; wa lillâhil-ḥamd.”

One may follow the practice of the imam and the congregation of his masjid.

[III] The Book of Funerals

كِتَابُ الْجَنَائِزِ

If his death is ascertained, [III.0.1] his eyes should be closed, [III.0.2] his jaw should be tied, [III.0.3] and a mirror [III.0.4] or another (heavy) thing, such as a piece of iron, should be placed on his abdomen. [III.0.5]	وإذا تُيُقِّنَ مَوْتُهُ، غُمِّضَتْ عَيْنَاهُ، وَشُدَّ لَحْيَاهُ، وَجُعِلَ عَلَى بَطْنِهِ مِرْآةٌ أَوْ غَيْرُهَا كَحَدِيدَةٍ.

[III.0.1] What Should Be Done Prior to Death?

The Messenger of Allah (SA) said:

«لَقِّنُوا مَوْتَاكُمْ لَا إِلَهَ إلا الله.»

“Instruct your dying ones to say: Lâ ilâha illâ Allâh (There is none worthy of worship except Allah).” (M – from Abu Hurayrah)

This must be done gently; for example, you may simply say it in front of the dying person.

(A/SM): It is also recommended to remind them of writing or indicating their will and to make them face the qibla while lying on the right side, but if there is no room, to position their feet towards the qibla while lifting their head up a little to make them face it with their faces. It is also recommended to give them sips of water or any other drink, as needed, and to moisten their lips with water.

[III.0.2] This is what the Prophet (SA) did to Abu Salamah (RA) when he died. (M)

[III.0.3] Wrapping a bandage around his head to keep his mouth closed.

[III.0.4] This is to prevent the swelling of the abdomen by placing on it something heavy, whether it is a mirror or something else. All the above measures are to honor the deceased and ensure the body will not look disfigured.

[III.0.5] What Should Be Done to the Body

They should also cover the entire body (except the head of a man or the face of a woman who died in iḥrâm, the state of consecration for Hajj or ‘umrah) since that was done to the Prophet (SA) when he died. (Ag)

If relatives or friends want to uncover the head and even to kiss the deceased, they may do this, for Abu Bakr (RA) did so to the Prophet (SA) after he died. (B)

They should start the process of washing and burial promptly, because the Prophet (SA) said:

«أسْرِعُوا بالجَنَازَة.»

“Hasten with the funeral (quickly get the body to the grave).” (Ag – from Abu Hurayrah)

This means that it is preferable to bury the deceased where they die and not to move the body to a different town or country, unless this was part of the person’s will. In that case, his or her wishes should be respected, as long as there will be no undue hardship incurred and they left enough to cover those expenses.

It is also important to pay off his or her debts as soon as possible. The Prophet (SA) commanded this in many reports, including one in which he refused to pray over someone who had died with debts. (B)

[Washing]

When they start to wash [III.0.6] him, his ‘awrah should be covered;	فَإِذَا أَخَذَ فِيْ غَسْلِهِ سُتِرَت عَوْرَتُهُ.

[III.0.6] Washing, shrouding and praying over the dead are all communal obligations. This type of obligation takes precedence over all supererogatory deeds. Some, including the Imam of the two Holy Mosques, considered it even more worthy of reward than are individual obligations.

Then his abdomen should be squeezed gently. The one doing the washing should wrap his hand with a cloth and wash the private parts.	ثُمَّ يَعْصُرُ بَطْنَهُ عَصْرًا رَفِيْقًا، ثُمَّ يَلُفُّ عَلَى يَدِهِ خِرْقَةً فَيُنَجِّيْهِ.

Then he should make wuḍoo’ for him. [III.0.7]	ثُمَّ يُوَضِّئُهُ.

[III.0.7] The Messenger of Allah (SA) instructed the women who washed his daughter Zaynab (RAH):

«ابْدَأْنَ بِمَيَامِنِهَا وَمَوَاضِعِ الْوُضُوءِ منها.»

“Start with her right parts and the parts washed in wuḍoo’.” (Ag – from Umm ‘Aṭiyah, Nusaybah bint Ka‘b)

Then he should wash his head and beard with water and the ground leaves of the sidr (lote) tree. [III.0.8] Then he should wash his right side, and then the left, [III.0.9] and then the entire body. This should be repeated a second and then a third time.	ثُمَّ يَغْسِلُ رَأْسَهُ وَلِحْيَتَهُ بِمَاءٍ وَسِدْرٍ، ثُمَّ شِقَّهُ الأَيْمَنَ، ثُمَّ الأَيْسَرَ، ثُمَّ يَغْسِلُهُ كَذٰلِكَ مَرَّةً ثَانِيَةً، وَثَالِثَةً.

[III.0.8] Soap may be used if needed to remove dirt; otherwise, it is disliked. (A/SM)

[III.0.9] As noted previously, the Messenger of Allah (SA) instructed the women who washed his daughter Zaynab (RAH) to do that.

Each time, he should press the stomach with his hand, and if something comes out of [the anus], he should wash it [the filth] off. He should then block the anus with a piece of cotton. [III.0.10] If the discharge	يُمِرُّ فِيْ كُلِّ مَرَّةٍ يَدَهُ، فَإِنْ خَرَجَ مِنْهُ شَيْءٌ، غَسَلَهُ، وَسَدَّهُ بِقُطْنٍ، فَإِنْ لَمْ يَسْتَمْسِكْ، فَبِخِرْقَةٍ، وَيُعِيْدُ وُضُوْءَهُ.

does not stop, then with clay. Then he should repeat his wuḍoo' (minor ablution). If washing three times does not suffice in cleaning, he should increase it to five or seven times. [III.0.11]	فَإِنْ لَمْ يَنْقَ بِثَلَاثٍ، زَادَ إِلَى خَمْسٍ أَوْ إِلَى سَبْعٍ.

[III.0.10] Preferably scented with hunoot, which is a mixture of camphor and sandalwood.

[III.0.11] The Prophet (SA) instructed the women who washed his daughter Zaynab (RAH) to do so 3, 5, or 7 times, or even more if necessary. (Ag)

If anything comes out of his anus after the seventh wash, he will not need to wash him anymore; he will only wash the area that was soiled, block the anus with cotton or clay, repeat the wuḍoo' only (not the ghusl), and then do the shrouding. Once the shrouding is finished, the ghusl does not have to be redone even if something comes out. (A/SM)

Then he should dry him with a cloth. Then perfume should be applied to the folds of his skin and the body parts that touch the ground during prostration. If he applies perfume to his entire body, it would be good. [III.0.12] He should scent his shrouds with incense. [III.0.13]	ثُمَّ يُنَشِّفُهُ بِثَوْبٍ. وَيَجْعَلُ الطِّيْبَ فِيْ مَغَابِنِهِ وَمَوَاضِعِ سُجُوْدِهِ، وَإِنْ طَيَّبَهُ كُلَّهُ، كَانَ حَسَنًا، وَيُجَمِّرُ أَكْفَانَهُ.

[III.0.12] The Prophet (SA) instructed the women who washed Zaynab (RAH) to use camphor. (Ag)

[III.0.13] This applies to the body as well as the shrouds, because the Messenger of Allah (SA) said:

«إِذَا جَمَّرْتُمُ الْمَيِّتَ فَجَمِّرُوهُ ثَلَاثًا.»

"If you perfume a dead body, do it 3 times." (A – from Jâbir; Nawawi: S chain)

The Companions used aloes wood.

If his moustache or nails are long, he should trim them. He should not comb his hair. [III.0.14] A woman should have her hair braided into three braids [III.0.15] and placed behind her.	وَإِنْ كَانَ شَارِبُهُ أَوْ أَظْفَارُهُ طَوِيْلَةً أَخَذَ مِنْهُ، وَلَا يُسَرِّحُ شَعْرَهُ. وَالْمَرْأَةُ يُضْفَرُ شَعْرُهَا ثَلَاثَةَ قُرُوْنٍ، وَيُسْدَلُ مِنْ وَرَائِهَا.

[III.0.14] So as not to risk causing the hair to fall out.

[III.0.15] Umm ʻAṭiyah (RAH) said that she did that to the Prophet's daughter. (Ag)

[Shrouding]

[For a man] Then he should be shrouded in three [III.0.16] white [III.0.17] garments, [III.0.18] of which none is a long shirt (meaning down to the middle of the leg or longer) or a turban. He should be wrapped with those sheets. If he is shrouded in a long shirt, *izâr* (the bottom piece that gets wrapped around the lower half) and a shroud, there is no harm.	ثُمَّ يُكَفَّنُ فِيْ ثَلَاثَةِ أَثْوَابٍ بِيْضٍ، لَيْسَ فِيْهَا قَمِيْصٌ وَلَا عِمَامَةٌ، يُدْرَجُ فِيْهَا إِدْرَاجًا، وَإِنْ كُفِّنَ فِيْ قَمِيْصٍ وَإِزَارٍ وَلِفَافَةٍ، فَلَا بَأْسَ.

[III.0.16]

«كُفِّنَ رسول اللَّهِ ﷺ في ثَلَاثَةِ أَثْوَابٍ بِيضٍ سَحُولِيَّةٍ من كُرْسُفٍ ليس فيها قَمِيصٌ ولا عِمَامَةٌ.»

"The Messenger of Allah (SA) was shrouded in three pieces of new white sheets of cloth (cotton) from a town in Yemen, without a long shirt or a turban." (Ag – from 'Â'ishah)

[III.0.17] White is preferable. The Prophet (SA) said:

«الْبَسُوا من ثِيَابِكُمْ الْبَيَاضَ فَإِنَّهَا من خَيْر ثِيَابِكُمْ وَكَفِّنُوا فيها مَوْتَاكُمْ.»

"Wear white clothes, for these are your best clothes, and enshroud your dead in them." (A, D, T – from Ibn 'Abbâs; T: R)

[III.0.18] The Messenger of Allah (SA) said:

«إذا كَفَّنَ أحدكم أَخَاهُ فَلْيُحَسِّنْ كَفَنَهُ.»

"If one enshrouds his dead brother, let him make good his shrouds." (M – from Jâbir)

He also called for moderation, saying:

«لا تُغَالوا في الكَفن فإنه يُسْلَب سَلْبا سَريعًا.»

"Do not exaggerate regarding the shrouds, for they are taken away (worn out) soon." (D – from 'Ali; D: Auth)

وَتُكَفَّنُ الْمَرْأَةُ فِيْ خَمْسَةِ أَثْوَابٍ: فِيْ دِرْعٍ وَمِقْنَعَةٍ وَإِزَارٍ وَلِفَافَتَيْنِ.	[For a Woman] The woman is shrouded with five cloths: a dress, a headcover (bigger than the normal headcover), an izâr, and two shrouds. [III.0.19]

[III.0.19] That is what the Prophet (SA) gave them to shroud his daughter, Umm Kulthoom (RAH). (D; D: Auth)

[Who Should Wash, Pray and Bury]

وَأَحَقُّ النَّاسِ بِغَسْلِهِ وَالصَّلَاةِ عَلَيْهِ وَدَفْنِهِ، وَصِيُّهُ فِيْ ذٰلِكَ، ثُمَّ الأَبُ، ثُمَّ الْجَدُّ، ثُمَّ الأَقْرَبُ فَالأَقْرَبُ، مِنَ الْعَصَبَاتِ.	a. [For a man] The one most entitled to wash, pray for and bury him is the one whom he appointed in his will to do so (designee); then the father, and the grandfather, then the closest of kin (from the paternal side), and so on.
وَأَوْلَى النَّاسِ بِغَسْلِ الْمَرْأَةِ: الأُمُّ، ثُمَّ	b. [For a woman] The one most entitled to wash her is the mother, then

the grandmother, and then the closest of kin of the related women. c. However, the governor is given precedence in prayer over the father and those after him. [III.0.20]	الْجَدَّةُ، ثُمَّ الأَقْرَبُ فَالأَقْرَبُ مِنْ نِسَائِهَا. ج) إِلَّا أَنَّ الأَمِيْرَ يُقَدَّمُ فِي الصَّلَاةِ عَلَى الأَبِ وَمَنْ بَعْدَهُ.

[III.0.20] (A) + (+M): The order is: the designee (waṣiy), the governor (wâli), the closest kin (wali).

(-H): The governor, imam, closest kin, designee.

(-S): The closest kin, the governor.

[Funeral Prayer]

[Description]

The form of the prayer for the deceased is as follows: [III.0.21] He makes takbeer [III.0.22] and recites Soorat *al-Fâtiḥah*. [III.0.23]	وَالصَّلَاةُ عَلَيْهِ: يُكَبِّرُ ثُمَّ يَقْرَأُ الْفَاتِحَةَ،
Then he makes a second takbeer and sends blessings upon the Prophet (SA).	ثُمَّ يُكَبِّرُ وَيُصَلِّيْ عَلَى النَّبِيِّ ﷺ.

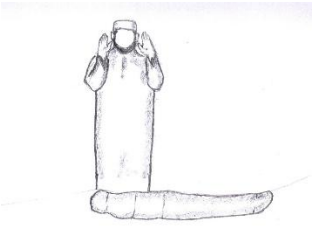
[III.0.21] The funeral prayer is a communal obligation, and its reward is enormous; the Prophet (SA) said:

«مَنْ صَلَّى عَلَى جَنَازَةٍ ولم يَتْبَعْهَا فَلَهُ قِيرَاطٌ فَإِنْ تَبِعَهَا فَلَهُ قِيرَاطَانِ قِيلَ وما الْقِيرَاطَانِ قال أَصْغَرُهُمَا مِثْلُ أُحُدٍ.»

"Whoever follows a funeral procession and offers the prayer for the deceased will get one qeerâṭ (a measurement of gold) of reward; and whoever follows it and remains with it until the body is buried will get two qeerâṭs of reward, the least of which is equal in weight to Mount Uḥud." (Ag – from Abu Hurayrah)

[III.0.22] If the deceased is a man, the imam stands by his chest according to (A), and by his head according to (S). Some contemporary Ḥanbalis

agreed with (S) because Imam Aḥmad narrated that Anas offered the funeral prayer for a man, standing in line with his head, and then offered it for a woman, standing in line with her middle. He then said that this is how the Messenger of Allah (SA) used to stand.



If the deceased is a woman, he stands by the middle of her body, with the head of the deceased always to his right.



[III.0.23] Always recited to oneself, whether the prayer is during the day or at night.

Then he makes takbeer and says, “O Allah, forgive the living amongst us and the dead, the present and the absent, the young and the old, the male and female, for verily You know our return and abode, and You are the Most Capable over all things. O Allah, as regards whomever of us whose life You extend, make him live by Islam and the Sunnah; and he whom You cause to die, let him die on them. [III.0.24] --- O Allah,	ثُمَّ يُكَبِّرُ وَيَقُوْلُ: اللّٰهُمَّ اغْفِرْ لِحَيِّنَا وَمَيِّتِنَا، وَشَاهِدِنَا وَغَائِبِنَا، وَصَغِيْرِنَا وَكَبِيْرِنَا، وَذَكَرِنَا وَأُنْثَانَا، إِنَّكَ تَعْلَمُ مُنْقَلَبَنَا وَمَثْوَانَا، وَأَنْتَ عَلَى كُلِّ شَيْءٍ قَدِيْرٌ. اللّٰهُمَّ مَنْ أَحْيَيْتَهُ مِنَّا، فَأَحْيِهِ عَلَى الإِسْلَامِ وَالسُّنَّةِ، وَمَنْ

forgive him; and bestow mercy on him; and spare him all punishment; and pardon him; and make honorable his dwelling; and make spacious his entrance; and wash him with water, snow, and hail; and purify him from his sins as you purify the white garment from filth; and give him instead of his house a house better than it, and instead of his company one that is better than it, and a wife better than his; and admit him into paradise and protect him from the torment of the grave and that of the hellfire; and make spacious his grave, and make light therein."	تَوَفَّيْتَهُ مِنَّا، فَتَوَفَّهُ عَلَيْهِمَا. اللَّهُمَّ اغْفِرْ لَهُ وَارْحَمْهُ، وَعَافِهِ وَاعْفُ عَنْهُ، وَأَكْرِمْ نُزُلَهُ، وَأَوْسِعْ مَدْخَلَهُ، وَاغْسِلْهُ بِالْمَاءِ وَالثَّلْجِ وَالْبَرَدِ، وَنَقِّهِ مِنَ الْخَطَايَا كَمَا يُنَقَّى الثَّوْبُ الأَبْيَضُ مِنَ الدَّنَسِ، وَأَبْدِلْهُ دَارًا خَيْرًا مِنْ دَارِهِ، وَجِوَارًا خَيْرًا مِنْ جِوَارِهِ، وَزَوْجًا خَيْرًا مِنْ زَوْجِهِ، وَأَدْخِلْهُ الْجَنَّةَ، وَأَعِذْهُ مِنْ عَذَابِ الْقَبْرِ، وَأَعِذْهُ مِنْ عَذَابِ النَّارِ، وَافْسَحْ لَهُ فِيْ قَبْرِهِ، وَنَوِّرْ لَهُ فِيْهِ.

[III.0.24] The core of this first part was reported by (D, T, N, Ma) and graded as sound by Ibn Ḥazm, Ibn Daqeeq al-'Eed, al-Albâni and others, although some, including Ibn Ḥajar, classified the reports as not sound. Much of the second part is reported by (M). The core supplications are reported in the funeral prayer; they may also be said outside it.

Then he should make takbeer and make one tasleem to the right side. [III.0.25]	ثُمَّ يُكَبِّرُ وَيُسَلِّمُ تَسْلِيْمَةً وَاحِدَةً عَنْ يَمِيْنِهِ.
He should raise his hands with every takbeer. [III.0.26]	وَيَرْفَعُ يَدَيْهِ مَعَ كُلِّ تَكْبِيْرَةٍ.

[III.0.25] This is the position of (A) + (+M). Aḥmad said that it was reported from 6 Companions. He also added that there was no traceable report to the Companions that they made 2 tasleems.

(-H, -S): Two tasleems are prescribed, as in all prayers. They also cited a report from Ibn Mas'ood that one of the things the people abandoned after the Prophet (SA) was making tasleem in janâzah like that in the rest of

the prayers. This, however, could also mean making the full statement, including *wa raḥmatullâh*.

Note that according to (A), the second tasleem is permissible (A/SM), so if the imam makes two tasleems, the followers should do two as well, according to Ibn Mufliḥ (in *Furoo'*) and the majority. They likened this to following the imam in qunoot. Al-Mardâwi disagreed because according to all, the prayer ends after the first tasleem, so one does not need to follow the imam in making the second tasleem.

[III.0.26] This is the position of (A) + (+S) in all four takbeers because it is proven that Ibn 'Umar used to raise his hands. (B) Ad-Dâraquṭni narrated from Ibn 'Umar that the Prophet (SA) did that, but the report is controversial.

(-H, -M): The hands are raised in the first takbeer only.

[Obligatory Parts]

The mandatory parts are: [III.0.27] 1) The takbeers [III.0.28] 2) The recitation [of Soorat *al-Fâtiḥah*] [III.0.29] 3) Sending blessings upon the Prophet (SA) [III.0.30] 4) The least supplication for the deceased [III.0.31] 5) The tasleem	وَالْوَاجِبُ مِنْ ذٰلِكَ. 1) التَّكْبِيْرَاتُ. 2) وَالْقِرَاءَةُ. 3) وَالصَّلَاةُ عَلَى النَّبِيِّ ﷺ. 4) وَأَدْنَى دُعَاءٍ لِلْمَيِّتِ. 5) وَالسَّلَامُ.

[III.0.27] A sixth obligation not mentioned here is to pray it standing if it is the first janâzah prayer for the deceased. If prayed subsequently for the same individual, it may be done sitting, like any sunnah prayer, although standing is preferable.

[III.0.28] "Allah's Messenger (SA) offered the funeral prayers for the Najâshi (Negus) and made four takbeers." (Ag – from Jâbir) Also, when Anas was reminded that he had made three takbeers, he faced the qibla and made a fourth one, and then he made another tasleem. (B – from Ḥumayd aṭ-Ṭaweel)

[III.0.29] This is the position of (A) + (+S) because it is a prayer and because Ṭalḥah ibn ‘Abdullâh ibn ‘Awf said, “I offered the funeral prayer behind Ibn ‘Abbâs. He recited al-Fâtiḥah and said, ‘For them to know that it is Sunnah (the way of the Prophet [SA]).’” (B)

However, Imam Mâlik narrated in *al-Muwaṭṭa’* from Nâfi‘ that Ibn ‘Umar did not recite in the funeral prayer, so (-H, -M) do not recite al-Fâtiḥah.

Imam Ibn Taymiyah said in *al-Fatâwâ al-Kubrâ*, “The scholars differed concerning the recitation of Qur’an in the funeral prayer. There are three views. It was said that it was not mustaḥabb at all; this is the view of Abu Ḥaneefah and Mâlik. It was also said that it is obligatory to recite al-Fâtiḥah; this is the view of the followers of ash-Shâfi‘i and Aḥmad. And it was said that reciting it is sunnah, but saying du‘â’ without reciting is permissible, and this is the correct view.”

[III.0.30] Ash-Shâfi‘i reported in his *Musnad*, from Abi Umâmah ibn Sahl ibn Ḥaneef, from one of the Companions, that the sunnah in the funeral prayer is that the imam makes takbeer; then recites al-Fâtiḥah to himself after the first takbeer; then sends blessings upon the Prophet (SA); prays for the deceased, with devotion, between the takbeers, without reciting [anything else] between them; then makes tasleem to himself. Hadith scholars differed on the authenticity of this report.

[III.0.31] According to (A/SM), it is:

اللَّهُمَّ اغْفِرْ لَهُ وَارْحَمْهُ

O Allah, forgive him; and bestow mercy on him.

This is because of the hadith above and the fact that this is what the prayer is about.

[More Rulings for the Prayer]

He who misses the prayer for the deceased may pray at his grave --- for up to one month. [III.0.32]	وَمَنْ فَاتَتْهُ الصَّلَاةُ عَلَيْهِ، صَلَّى عَلَى الْقَبْرِ إِلَى شَهْرٍ.

If the deceased is absent from the town, he should pray for him with the intention (as if he is in front of him). [III.0.33]	وَإِنْ كَانَ الْمَيِّتُ غَائِبًا عَنِ الْبَلَدِ، صُلِّيَ عَلَيْهِ بِالنِّيَّةِ.

[III.0.32] It was posited that the body would have decayed after one month had passed. Imam Aḥmad also said that there was no report indicating that the Prophet (SA) prayed it after the one month.

The Prophet (SA) prayed by the graves of people whose funeral prayers he had missed. (N, A, Ḥib: S) (One of them was the black woman who used to sweep the mosque.)

The funeral prayer is the only one that can be prayed in front of a grave, for the Messenger (SA) said:

«لا تَجْلِسُوا على الْقُبُورِ ولا تُصَلُّوا إِلَيْهَا.»

"Do not sit on the graves, and do not pray towards them." (M – from Abu Marthad)

[III.0.33] 🕮 When the Najâshi (Negus) died in Abyssinia, the Prophet (SA) prayed for him, and the Companions prayed behind him. (Ag) It has not been proven that the Prophet prayed for *al-ghâ'ib* (the absent) except in that case.

(A) + (+S): Praying for al-ghâ'ib is permissible for any Muslim.

(a) + (-H, -M): Praying for al-ghâ'ib was a special case for the Prophet (SA) and is not prescribed after him.

(a) + (-t): Praying for al-ghâ'ib is only prescribed if no funeral prayer was offered for the deceased where he died.

Some contemporary scholars suggest that it may be indicated for someone who made great contributions to the religion or Ummah, like the Najâshi (Negus).

[Special Cases]

[Washing Impossible] If washing him is not possible due to lack of water or fear of maceration of his body – as in the case of one who was afflicted by smallpox or one who was burned – or when it is a woman amongst men or a man amongst women, then he is to be given dry ablution (tayammum). However, it is permissible for each one of the spouses to wash his companion; likewise for an *umm al-walad [III.0.34]* with her master.	وَمَنْ تَعَذَّرَ غَسْلُهُ لِعَدَمِ الْمَاءِ، أَوْ لِلْخَوْفِ عَلَيْهِ مِنَ التَّقَطُّعِ، كَالْمَجْدُوْرِ وَالْمُحْتَرِقِ، أَوْ لِكَوْنِ الْمَرْأَةِ بَيْنَ رِجَالٍ، أَوِ الرَّجُلِ بَيْنَ نِسَاءٍ، فَإِنَّهُ يُيَمَّمُ. إِلَّا أَنَّ لِكُلِّ وَاحِدٍ مِنَ الزَّوْجَيْنِ غَسْلَ صَاحِبِهِ، وَكَذٰلِكَ أُمُّ الْوَلَدِ مَعَ سَيِّدِهَا.

[III.0.34] Umm al-walad (*lit.* 'mother of the child') is a slave woman who gives birth to her master's child. She cannot be sold or passed on as inheritance, and she becomes free upon the death of her master.

The martyr: When he dies in battle, [III.0.35] he is not washed, nor is a prayer offered for him. [III.0.36] The iron (metal) and leather must be taken off him, and he should be wrapped in his clothes. If he is shrouded with other cloths, there is no harm.	وَالشَّهِيْدُ إِذَا مَاتَ فِي الْمَعْرَكَةِ، لَمْ يُغَسَّلْ، وَلَمْ يُصَلَّ عَلَيْهِ، وَيُنَحَّى عَنْهُ الْحَدِيْدُ وَالْجُلُوْدُ، ثُمَّ يُزَمَّلُ فِيْ ثِيَابِهِ، وَإِنْ كُفِّنَ فِيْ غَيْرِهَا، فَلَا بَأْسَ.

[III.0.35] (A): Or if one was unjustly murdered.

(a) + (-M, -S): Only if he was martyred on the battlefield. They cite that 'Umar and 'Uthmân had the funeral prayer offered for them. According to (H), certain cases of wrongful killing outside the battlefield also exempt the deceased from washing, subject to the school's conditions; the funeral prayer is still offered.

[III.0.36] They all agreed that martyrs are not washed.

(A) + (+M, +S): There is no janâzah prayer for them. Their proof is that the Prophet (SA) instructed the people to bury the martyrs of the Battle of Uḥud without washing them or praying for them. (B – from Jâbir)

(a) + (-H): There is a janâzah prayer for them. They cited, among other proofs, that on the day of Uḥud, the Messenger of Allah (SA) ordered that Ḥamzah be wrapped in his cloak, and then he offered the funeral prayer for him. He said takbeer nine times; then the slain were brought and laid in rows, and he offered the prayer for them. (aṭ-Ṭaḥâwi in *Ma'âni al-Âthâr*, from 'Abdullâh ibn az-Zubayr. The authenticity of this report is controversial.)

This, by consensus, is not applicable to other types of martyrs who die outside of the battlefield, such as the ones listed by the Prophet (SA), "The one who dies of plague, drowns, dies of pleurisy, dies of a stomach disease, is burned to death, or dies underneath rubble, and the woman who dies in pregnancy or labor." (D – from Jâbir ibn 'Ateek; D: S) For these and others whose form of death is established by the texts as martyrdom, Allah will grant them the reward of the martyr in the hereafter, but the rules of martyrs are not applied to them in the dunyâ.

The one who died in a state of iḥrâm [III.0.37] is washed with water and the crushed dry leaves of the sidr (lote) tree. He must not be dressed in stitched [or form-fitting] clothes or have perfume applied; his head must not be covered, and his hair must not be cut nor his nails clipped. [III.0.38]	وَالْمُحْرِمُ يُغَسَّلُ بِمَاءٍ وَسِدْرٍ، وَلَا يُلْبَسُ مَخِيْطًا، وَلَا يُقَرَّبُ طِيْبًا، وَلَا يُغَطَّى رَأْسُهُ، وَلَا يُقْطَعُ شَعْرُهُ وَلَا ظُفُرُهُ.

[III.0.37] Iḥrâm is the intention to perform the Hajj or ‘umrah. It includes abstaining from certain worldly practices, as prescribed.

[III.0.38] During the farewell Hajj, a man was standing at ‘Arafah with the Messenger of Allah (SA) when he fell off his mount (camel), and it kicked him and killed him. This was mentioned to the Prophet (SA), who said:

«اغْسِلُوهُ بِمَاءٍ وَسِدْرٍ وَكَفِّنُوهُ فِي ثَوْبَيْهِ ولا تُخَمِّرُوا رَأْسَهُ ولا وَجْهَهُ فإنه يُبْعَثُ يوم الْقِيَامَةِ مُلَبِّيًا.»

“Wash him with water and sidr (crushed lote tree leaves) and wrap him in his two sheets. Do not scent his body or cover his head or his face, for he will be raised on the Day of Judgment making talbiyah (the phrase repeated by pilgrims throughout the rites of Hajj and ‘umrah, which begins ‘Here I am, O Allah, here I am (responding to your call)’.” (Ag – from Ibn ‘Abbâs)

[Burial]

It is preferable to bury the dead in a *laḥd* (an ‘L’-shaped grave with a recess at the bottom, facing the qibla), [III.0.39] and build a partition of unbaked bricks [sealing the recess] as was done for the Messenger of Allah (SA).	وَيُسْتَحَبُّ دَفْنُ الْمَيِّتِ فِيْ لَحْدٍ، وَيُنْصَبُ عَلَيْهِ اللَّبِنُ نَصْبًا، كَمَا فُعِلَ بِرَسُوْلِ اللهِ ﷺ.

[III.0.39] Burying the dead is a communal obligation by consensus.

Laḥd Is Preferable

The Prophet (SA) said:

«اللحد لنا والشق لغيرنا.»

“Laḥd is for us, and shaqq (a pit or a regular grave) is for others.” (D, T, N – from Ibn ‘Abbâs)

The shaqq is a regular grave with a trench, the size of the deceased, dug in the middle of it and enforced with bricks. The deceased is placed on their right side facing the qibla, then the top of that groove is covered with unfired clay bricks or stones, and finally the dirt is filled in. The laḥd is a grave where a recess is dug at the bottom, on the side closest to the qibla, in which the deceased is placed on their right side facing the qibla; then unfired clay bricks are placed behind the deceased, and finally the dirt is filled in.

While the shaqq is disliked according to (A), it is acceptable if necessary, such as when the nature of the land is unsuitable for the laḥd. It was reported that the Companions (RAHUM) wondered which method to use for the Prophet's grave, and that means that the shaqq was also used during his time.

He should not allow into the grave baked clay, wood, [III.0.40] or anything that has been touched by fire. [III.0.41]	وَلَا يُدْخِلُ الْقَبْرَ آجُرًّا وَلَا خَشَبًا، وَلَا شَيْئًا مَسَّتْهُ النَّارُ.

[III.0.40] Thus, burying the dead in caskets is disliked unless the land is too soft or wet, in which case it becomes acceptable. There is also no harm in doing this if mandated by the law of the land.

In addition, coating the grave with plaster is disliked (A/SM) because:

«نَهَى رسول اللَّهِ ﷺ أَنْ يُجَصَّصَ الْقَبْرُ وَأَنْ يُقْعَدَ عليه وَأَنْ يُبْنَى عليه.»

"The Messenger of Allah forbade using plaster to coat a grave, sitting on it, or erecting any structure on it." (M – from Jâbir)

In another report, "…writing on them, building on them, or stepping on them." (T – from Jâbir; al-Albâni: S)

The grave should not be covered with anything permanent.

(A) + (+M, +S) maintained that it is makrooh to write on the grave in any case, because of the hadith of Jâbir above.

(-H, -as-Subki) permitted writing on it if there is a need to mark its location or to prevent its being treated with disrespect. This is because the

Messenger of Allah (SA) carried a rock and placed it by the head of the grave of ‘Uthmân ibn Madh‘oon (RA), saying:

«أَتَعَلَّمُ بها قَبْرَ أَخِي وَأَدْفِنُ إليه من مَاتَ من أَهْلِي.»

“I want to mark my brother's grave and then bury beside it whoever else of my family dies.” (D; D: Auth)

In all cases, writing should be limited to the purpose of identifying the grave.

[III.0.41] (A): He must be laid facing the qibla with his chest; placing him on his right side is recommended.

(+H, +M, +S): After placing him in the grave, three handfuls of soil may be thrown in succession over his head, as it was reported, with controversial transmission, that the Prophet (SA) did this. (Ma – from Abu Hurayrah)

Raising the Graves

Of the rulings related to graves is the prohibition of raising them. ‘Ali ibn Abi Ṭâlib said:

«ألا أَبْعَثُكَ على ما بَعَثَنِي عليه رسول اللَّهِ ﷺ أَنْ لَا تَدَعَ تِمْثَالًا إلا طَمَسْتَهُ ولا قَبْرًا مُشْرِفًا إلا سَوَّيْتَه.»

“Should I not instruct you to do as the Messenger of Allah (SA) instructed me? Do not leave a statue erect without obliterating it, and do not leave a raised grave without leveling it.” (M – from ‘Ali)

(A): The sunnah is to raise them one shibr (about the distance between the extremity of the thumb and that of the little finger when extended apart, which is estimated to be about 23 cm). Raising them more than that is disliked. (A): Building masjids on graves is forbidden.

Ibn Ḥajar al-Haytami considered it a kabeerah (a major sin) and said in az-Zawâjir, “Masjids and domes built on top of the graves must be swiftly razed.”

Sayyid Sabiq said in Fiqh us-Sunnah:

Included in general ahadith tackling raising the graves are dome buildings and shrines built on graves, for they all constitute the graves as masjids. The Prophet (SA) cursed those who did that. The practice of erecting buildings around graves and beautifying them causes corruption, which Islam suffers from. Part of such corruption is some people's belief in them, which is similar to the belief of the disbelievers in their idols and their glorifying of them. Hence, they thought that they may benefit and harm them, similar to the superstitious belief of the ignorant. Thus, they travel to these graves for fulfillment of their needs or achievement of their goals. They ask those in the graves what believers should ask only of their Lord. They ride horses to them, touch them, and seek their aid.

[Consoling the Relatives]

Consoling the relatives of the deceased is recommended. [III.0.42]	وَيُسْتَحَبُّ تَعْزِيَةُ أَهْلِ الْمَيِّتِ.

[III.0.42] Some of the scholars of Hadith described as reliable the hadith in which the Messenger of Allah (SA) said:

«ما من مُؤْمِنٍ يُعَزِّي أَخَاهُ بِمُصِيبَةٍ إلا كَسَاهُ الله سُبْحَانَهُ من حُلَلِ الْكَرَامَةِ يوم الْقِيَامَةِ.»

“No believer gives condolences to his brother except that Allah will dress him in a suit of the suits of honor on the Day of Judgment.” (Ma, Ba – from ‘Amr ibn Ḥazm)

The Prophet (SA) sent a messenger to his daughter as her son was dying, saying:

«إِنَّ لِلَّهِ ما أَخَذَ وَلَهُ ما أَعْطَى وَكُلٌّ عِنْدَهُ بِأَجَلٍ مُسَمًّى فَلْتَصْبِرْ وَلْتَحْتَسِبْ.»

"Verily to Allah belongs what He took, and to Him belongs what He gave, and everything has an appointed term with Him, so let her be patient and seek the reward." (B – from Usâmah ibn Zayd)

Crying over him is not disliked [III.0.43] as long as it is not associated with *nadb* (eulogizing) [III.0.44] or wailing. [III.0.45]	وَالْبُكَاءُ غَيْرُ مَكْرُوْهٍ، إِذَا لَمْ يَكُنْ مَعَهُ نَدْبٌ وَلَا نِيَاحَةٌ.

[III.0.43] The Messenger of Allah (SA) himself cried when his son Ibrâheem died, and he said:

«إِنَّ الْعَيْنَ تَدْمَعُ وَالْقَلْبَ يَحْزَنُ ولا نَقُولُ إلا ما يَرْضَى رَبُّنَا وَإِنَّا بِفِرَاقِكَ يا إِبْرَاهِيمُ لَمَحْزُونُونَ.»

"Verily the eyes shed tears and the heart feels sad, but we say not except what pleases our Lord, and most certainly we are saddened by your departure [separation], O Ibrâheem." (Ag – from Anas)

Many of the righteous predecessors did not show any sadness upon the death of their loved ones, due to contentment with Allah's decree. The Prophet (SA), however, combined that quality – demonstrating it by not saying anything displeasing to Allah – with that of mercy, indicated by his weeping. That is more perfect than demonstrating either one of them alone.

[III.0.44] Eulogy

The nadb that is forbidden is a form of eulogy where the deceased is called aloud by his good traits, as in, "O brave soul," "O generous husband," etc. The truthful mention of the deceased's good deeds is sanctioned and was done by the Prophet (SA).

He also warned against cursing the dead or mocking them, saying:

«لَا تَسُبُّوا الْأَمْوَاتَ فَإِنَّهُمْ قد أَفْضَوْا إلى ما قَدَّمُوا.»

"Do not insult the dead, for they have already faced the consequences of their doings." (B – from 'Â'ishah)

There is an exception made for public tyrants and sinners who spread corruption, so that people may be deterred from following in their footsteps. The evidence for this is that the Companions praised a dead person and criticized another in funerals. The Prophet (SA) said about the praised one, "Paradise is his confirmed destiny," and about the dispraised one, "Hellfire is his confirmed destiny." He also said to his Companions (RAHUM):

«من أَثْنَيْتُمْ عليه خَيْرًا وَجَبَتْ له الْجَنَّةُ وَمَنْ أَثْنَيْتُمْ عليه شَرًّا وَجَبَتْ له النَّارُ أَنْتُمْ شُهَدَاءُ اللَّهِ في الأرض أَنْتُمْ شُهَدَاءُ اللَّهِ في الأرض أَنْتُمْ شُهَدَاءُ اللَّهِ في الأرض.»

"Whomever you praised, paradise will be his due destiny; whomever you criticized, hellfire will be his due destiny. You are Allah's witnesses on Earth." (Ag – from Anas)

[III.0.45] Gathering to Console the Family of the Deceased

All scholars recommended consoling the family of the deceased, for those who come across them at the mosque, the market, or any other place. As for gathering at a certain place to extend condolences to them, the scholars differed.

(A) + (+h, +M, +S): It is makrooh; some went as far as saying it is haram.

This is because Jareer ibn 'Abdullâh al-Bajali (RA) said:

«كُنَّا نَعُدُّ الِاجْتِمَاعَ إِلَى أَهْلِ الْمَيِّتِ وَصَنِيعَةَ الطَّعَامِ بَعْدَ دَفْنِهِ مِنْ النِّيَاحَةِ.»

"We used to consider gathering with the family of the deceased and making of food after the burial as [part of] wailing." (A – from Jareer ibn 'Abdullâh al-Bajali)

This hadith was authenticated by many scholars but criticized by some others.

They also argued that there are no reports that the Prophet (SA), the Companions, or the righteous predecessors held such gatherings.

(a) + (-H, -m): It is allowed to sit in a certain place to receive condolences for three days.

Many contemporary Ḥanbalis and others support this as long as there are no other abominations or innovated practices involved. They cited a hadith saying that when a member of ‘Â’ishah’s family died, the women would gather for some time and then leave, except her own kin and friends. (Ag) They also argued that in our times, it is much harder to encounter the family members and console them unless special arrangements are made for this. Finally, they argued that makrooh acts become permissible if there is an overriding benefit.

It is important to note that this discussion merely concerns the act of gathering. Sometimes the gathering is mixed with other disliked or forbidden acts. For example, it is disliked for the family of the deceased to make food for the visitors (unless there is a need, according to Ibn Qudâmah). In fact, people should make food for the family, as the Prophet (SA) said:

«اصْنَعُوا لِآلِ جَعْفَرٍ طَعَامًا فإنه قد أَتَاهُمْ أَمْرٌ شَغَلَهُمْ.»

“Prepare food for the family of Ja‘far, for they were afflicted by what would make them distraught.” (D, T – from ‘Abdullâh ibn Ja‘far; T: S)

Additionally, it is disliked to incur a lot of expenses out of arrogance and a desire to show off. There is also no basis for gathering on the fortieth day after death or on the first anniversary.

[Visiting the Graves]

There is no harm in men visiting the graves. [III.0.46]	وَلَا بَأْسَ بِزِيَارَةِ الْقُبُوْرِ لِلرِّجَالِ.
One should say when passing by them or visiting them, “Peace be upon you, dwellers of an abode of believing folk. Inshallah we shall follow you. [III.0.47] [//] O Allah, do not deprive us of their reward or misguide us through trials after	وَيَقُوْلُ إِذَا مَرَّ بِهَا أَوْ زَارَهَا: سَلَامٌ عَلَيْكُمْ دَارَ قَوْمٍ مُؤْمِنِيْنَ، وَإِنَّا إِنْ شَاءَ اللهُ بِكُمْ لَاحِقُوْنَ، [//] اللّٰهُمَّ لَا تَحْرِمْنَا أَجْرَهُمْ، وَلَا تَفْتِنَّا بَعْدَهُمْ،

them, and forgive us and them. We ask Allah for safety for us and for you."	وَاغْفِرْ لَنَا وَلَهُمْ، نَسْأَلُ اللهَ لَنَا وَلَكُمُ الْعَافِيَةَ.

[III.0.46] [Visiting the Graves]

The Prophet (SA) said:

«نَهَيْتُكُم عن زِيَارَة القُبُور فَزُورُوها، فإنَّها تُذَكِّرُكُم المَوْت.»

"I used to forbid you from visiting the graves, but now visit them//for they remind you of death." From two different reports (M – from Buraydah)

Can Women Visit the Graves?

(A) + (+m, +S): Disliked.

(a) + (-H): Permissible (-M: for older women). It was reported that 'Â'ishah (RAH) visited the grave of her brother 'Abdur-Raḥmân (RA). (H, Ba) But women may not do this frequently or if there is fear for her security or of fitnah, for the Prophet (SA) said:

«لَعَنَ الله زَوَّارات القُبُور.»

"May Allah curse those women who frequently visit the graves." (T – from Abu Hurayrah; T: S)

[III.0.47] This part has been reported by (M). The rest (after the [//]) has been reported with a weak chain by (Ma).

[Good Deeds Done on Behalf of the Deceased]

Any good deeds he [the living person] does while intending the reward for the deceased Muslim will benefit him [the deceased]. [III.0.48]	وَأَيُّ قُرْبَةٍ فَعَلَهَا، وَجَعَلَ ثَوَابَهَا لِلْمَيِّتِ الْمُسْلِمِ، نَفَعَهُ ذٰلِكَ.

[III.0.48] This matter is controversial; the best argument for the above position is what Imam Ibn al-Qayyim (may Allah bestow mercy on him) said:

Worship is of two types: financial and bodily. When the Legislator informed us that the reward for charity reaches the dead, He indicated that the reward for financial acts of worship reaches them, and when he informed us that the reward for fasting reaches the dead, He indicated that the reward of bodily acts of worship reaches them. He also informed us of the reaching of the reward of Hajj, which is both a financial and bodily act of worship. Thus, these three types [of acts done by the living for the benefit of the dead] are supported by both the revealed texts and reason.

This includes the reading of Qur'an. This is the position of (A) + (+H, +m, +s, +t). As for gathering to recite the Qur'an and grant the reward to the deceased, this particular form has not been reported from the Prophet (SA) and his Companions, but Imam Ibn Qudâmah said in *al-Mughni* that "Muslims throughout the different lands and ages used to gather and recite the Qur'an for the deceased without condemnation." Therefore, those who regard the act as innovated may abstain from it, but they should not condemn those who regard it permissible, because there is a scholarly disagreement.

The deceased's missed obligatory daily prayers cannot be discharged by someone else praying them. This differs from gifting the reward of one's own prayer: according to (A), this is permissible even when that prayer is obligatory.

Finally, the things that reach the deceased, by agreement, are supplications and charity, so these are the most encouraged.

[IV] The Book of Zakat

كِتَابُ الزَّكَاةِ

Zakat [IV.0.1] must be paid by every free Muslim [IV.0.2] who has complete ownership [IV.0.3] of the *niṣâb. [IV.0.4]*	وَهِيَ وَاجِبَةٌ عَلَى كُلِّ مُسْلِمٍ حُرٍّ، مَلَكَ نِصَابًا، مِلْكًا تَامًّا.

[IV.0.1] Meaning and Wisdom of Zakat

There is no one word that is an adequate translation of the word zakat. The words ‘alms’, ‘donations’, ‘charity’, and so on do not fully convey the meanings embodied in the word zakat, which include:

- Purification: It purifies one's money from suspicious earnings, and it purifies one's heart from stinginess and miserliness.
- Increase: It increases the wealth of the recipients and also that of the donors, by the blessings that will be bestowed on their money, selves and families, and also through the supplications of the recipients.
- Praise: It will cause the donors to be praised on the Day of Judgment. In addition, the donors will be praised by the recipients, who would otherwise have envied and hated the wealthy people who withhold their money and share no part of it.

The words ‘zakat’ and ‘ṣadaqah’ are used interchangeably in the revelation. Ṣadaqah was called so because it is a proof of the *ṣidq* (trueness) of one’s faith. Ṣadaqah has been more commonly used by Muslims to refer to the non-obligatory charity.

[IV.0.2] Who Is Required to Pay Zakat?

Notice that he did not mention ‘sane’ or ‘adult’. This is because zakat becomes binding on the zakatable assets themselves, and children and insane individuals who possess those assets will have the zakat paid from them by their custodians. (A) + (+M, +S)

(-H): Zakat (aside from that of crops) is not binding on children and insane individuals. They argued that they are not liable or addressed by the ordainments of Sharia. The exclusion of crops is because zakat is binding on the same crops.

The majority argued that the Prophet (SA) said:

«اتَّجِرُوا فِي أَمْوَالِ الْيَتَامَى؛ لَا تَأْكُلُهَا الزَّكَاةُ»

"Trade with the property of orphans and then it will not be eaten away by zakat." (Ṭab.A – from Anas)

This hadith has several narrations, but they are all weak. Some deemed it acceptable due to corroborations, but the majority considered it weak. The same statement, however, has been traced to 'Umar (RA). They also argued that the zakat is binding on the zakatable assets themselves that are owned by those individuals.

State/Public/Endowment Funds

Organisation of Islamic Cooperation (OIC) - International Islamic Fiqh Academy (IIFA) 28 (3/4): Zakat is not obligatory on public money, so states do not need to pay it. Zakat is also not required on endowments for Allah's cause or for money owned by non-profit charitable organizations.

If the beneficiary of an endowment is a particular person, zakat may be due on its livestock or agricultural produce. Zakat on the endowed livestock must be paid from other wealth; zakat on the produce may be paid from the produce itself. (A)

[IV.0.3] Incomplete Ownership

If you own some assets but do not have full ownership and possession of it, you do not pay zakat on it. The point here is that zakat is binding on assets over which you have control and that you can invest or use.

There are certain special cases in the madh-hab, though; for example, they made zakat binding on money you are owed, property that you lost, and money that was wrongfully seized from you –and upon getting

the money back, you are required to pay zakat for all the time it was not in your possession. The same applies to a defined dowry that has not been collected. (See the details in the chapter of Zakat of Debts.) You also pay the zakat on money collected in advance for rent, even though you may have to return some of it to the tenant in certain cases, and for money received in exchange for a product that has not been yet delivered in a *salam* (advance payment) contract. The zakat of the product itself is binding on the buyer only if it is merchandise that they purchased for trade, or gold or silver (which may be deferred in a contract if their price was not currency, gold, or silver). (A)

(a) + (-H, -s, t): Lost or wrongfully seized assets are not zakatable.

(M): If money is retrieved after being wrongfully seized for two years or more, zakat is due for the last one year only.

(-M, -S): You do not pay zakat on money collected in advance for rent or wages until the service or usufruct has been delivered.

Retirement Plans and Locked-in Investment Funds Money voluntarily placed in retirement savings or investment accounts remains subject to zakat even if withdrawals are prohibited for several years. An agreed restriction on access does not itself remove ownership or cancel the annual obligation. IIFA 143 (1/16), section I(a), expressly applies this rule to long-term investment accounts. The amount due depends on the account's zakatable assets; the time of payment may be deferred where there is a valid excuse. For the calculation, the treatment of employment benefits, and payment of accumulated zakat, see [IV.7.1].

[IV.0.4] For each type of wealth, there is a minimum level below which one does not need to pay zakat (see below). This 'niṣâb' may be translated as the zakatable minimum or the zakat threshold.

[Passing of a *Ḥawl*]

There is no zakat on property until an entire *ḥawl* (Islamic/lunar year) has passed, except for that which comes from the land. [IV.0.5]	وَلَا زَكَاةَ فِيْ مَالٍ حَتَّى يَحُوْلَ عَلَيْهِ الْحَوْلُ إِلَّا الْخَارِجَ مِنَ الأَرْضِ.

The growth emanating from capital through birth [as with livestock] or profit. The ḥawl of these is that of their origin. [IV.0.6]	وَنَمَاءَ النِّصَابِ مِنَ النِّتَاجِ وَالرِّبْحِ، فَإِنَّ حَوْلَهُمَا حَوْلُ أَصْلِهِمَا.

[IV.0.5] This includes crops, mined metals, and treasure troves.

[IV.0.6] How to Calculate Zakat on Earnings during the Year

If someone has 30 cows at the beginning of the year, and those cows give birth to 10 more during the year, zakat is due on all 40. Thus, zakat is paid for those 10 before having them for a full year because they emanated from the 30, so their ḥawl began with that of the 30. The same applies to profit on money invested.

If the money was earned during the year (such as payment for a job) but not as a profit from the original capital, then one may start a ḥawl for this increment of money. (A) + (+S)

(-H): If he has multiple assets of the same category (for example: cash and cash, or cows and cows), he should add the increments to the total and pay zakat on all of it at the end of the ḥawl.

(-M): Agreed with (-H) on the free-grazing livestock and with (S, A) on the rest.

The position of (H) is easier for most people to follow since the majority opinion leads to having many due dates for zakat during the year.

They agreed on the following:

The passing of the ḥawl is a condition of obligation for zakat on livestock, gold and silver, and merchandise.

If the money emanated from assets he had, its ḥawl is that of the original assets.

If it is of a different kind (for example: one had cows and then earned cash), it will not be zakatable until a ḥawl passes since its acquisition.

If it is of the same kind, but did not emanate from the original, they disagreed as described above**.**

[Zakatable Wealth]

Zakat is only obligatory on four types [of property]: 1. Free-grazing,[IV.0.7] domesticated livestock 2. What is produced or extracted from the land 3. Silver and gold 4. Merchandise prepared for sale.	وَلَا تَجِبُ الزَّكَاةُ إِلَّا فِيْ أَرْبَعَةِ أَنْوَاعٍ: 1. السَّائِمَةِ مِنْ بَهِيْمَةِ الأَنْعَامِ. 2. وَالْخَارِجِ مِنَ الأَرْضِ. 3. وَالأَثْمَانِ. 4. وَعُرُوْضِ التِّجَارَةِ.

[IV.0.7] They agreed that zakat is due on the free-grazing livestock grazing on public pasturage.

(-M): Livestock is zakatable, whether or not it feeds off public pasturage.

(A) + (+H, +S): Only free-grazing livestock (camels, cows, sheep, and goats) are zakatable. Note that buffalos are treated like cows.

[Zakat Threshold]

There is no zakat on any of this until it reaches the niṣâb. If the value reaches or exceeds the niṣâb, then zakat is obligatory on the full amount – except for free-grazing and domesticated livestock, for which there is nothing obligatory on that which falls between two brackets. [IV.0.8]	وَلَا زَكَاةَ فِيْ شَيْءٍ مِنْ ذٰلِكَ حَتَّى يَبْلُغَ نِصَابًا. وَتَجِبُ فِيْمَا زَادَ عَلَى النِّصَابِ بِحِسَابِهِ إِلَّا السَّائِمَةَ، فَلَا شَيْءَ فِيْ أَوْقَاصِهَا.

[IV.0.8] For example, for 30 cows, the zakat due is a single one-year-old male calf. For 40 cows, you must give a two-year-old female calf. If you have 35 cows, you will give the same as one who has 30.

Zakatable Wealth	Zakatable Minimum (Niṣâb)	Rate of Zakat
Gold, silver	Gold: 85 grams (20 *mithqâls*/dinars) Silver: 595 grams (200 dirhams)	2.5% of the value
Cash Savings	The value of 85 grams of gold (or 595 grams of silver, according to A)	2.5% of the amount
Trade Goods	The value of 85 grams of gold (or 595 grams of silver, according to A)	2.5% of the wholesale value of goods
Mined Minerals (other than gold and silver)	The value of 85 grams of gold (or 595 grams of silver, according to A)	2.5% of the value
Treasure Troves	Any amount (there is no minimum)	20% of the value
Crops	5 *awsuq* (300 ṣâ‘; approximately 653 kg of wheat) per harvest	If its irrigation required labor: 5% of produce No labor: 10% of produce

[IV.1] Chapter on the Zakat on Free-grazing Livestock

بَابُ زَكَاةِ السَّائِمَةِ

وَهِيَ الرَّاعِيَةُ، وَهِيَ ثَلَاثَةُ أَنْوَاعٍ:	This refers to the free-grazing, domesticated livestock which is taken to pasture, and it is of three kinds:

أَحَدُهَا الإِبِلُ:

) وَلَا شَيْءَ فِيْهَا حَتَّى تَبْلُغَ خَمْسًا، فَيَجِبُ فِيْهَا شَاةٌ.

) وَفِي الْعَشْرِ شَاتَانِ، وَفِي خَمْسَ عَشْرَةَ ثَلَاثُ شِيَاهٍ.

) وَفِي الْعِشْرِيْنَ أَرْبَعُ شِيَاهٍ ، إِلَى خَمْسٍ وَعِشْرِيْنَ، فَفِيْهَا بِنْتُ مَخَاضٍ وَهِيَ بِنْتُ سَنَةٍ، فَإِنْ لَمْ تَكُنْ عِنْدَهُ، فَابْنُ لَبُوْنٍ، وَهُوَ ابْنُ سَنَتَيْنِ.

) إِلَى سِتٍّ وَثَلَاثِيْنَ، فَيَجِبُ فِيْهَا ابْنَةُ لَبُوْنٍ، إِلَى سِتٍّ وَأَرْبَعِيْنَ، فَيَجِبُ

First: Camels

1) There is no zakat on them until they reach five [in number], for which it is obligatory [to pay] one sheep.
2) Then for ten camels, two sheep [to be given as zakat]; for fifteen camels, three sheep.
3) For twenty camels, four sheep [are to be given in zakat] until [their number reaches] 25. After this, [the zakat] on them would be a *bint makhâḍ*, [IV.1.1] which is a one-year-old female camel, but if he does not have one, [he may substitute] an *ibn laboon*, [IV.1.2] which is a two-year-old male camel.
4) This is applicable until the number reaches 36, then [from 36-45, the zakat] obligatory on them would be *a bint laboon* (a two-year-old female camel), up to 46. Then [from 46-60, the zakat] obligatory on them would be a *ḥiqqah*, [IV.1.3] which is a three-year-old female camel.

5) This is applicable up to 61, then [from 61-75, the zakat] obligatory on them would be a *jadha'ah*, which is a four-year-old female camel. This is applicable up to 76, then [from 76-90, the zakat] obligatory on them would be two bint laboons (two-year-old female camels). 6) This is applicable up to 91 camels, then [from 91-120, the zakat] obligatory on them is two ḥiqqahs (three-year-old female camels). This is applicable up to 120 camels. Then if they increase by just one camel, [the zakat] on them would be three bint laboons (two-year-old female camels). 7) Then for every 50 [camels], a ḥiqqah [must be paid], and for every 40, a bint laboon [must be paid] until [they reach] 200, which combines two options: One may either pay four ḥiqqahs (three-year-old female camels) or five bint laboons (two-year-old female camels).	فِيْهَا حِقَّةٌ لَهَا ثَلَاثُ سِنِيْنَ.) إِلَى إِحْدَى وَسِتِّيْنَ، فَيَجِبُ فِيْهَا جَذَعَةٌ، وَلَهَا أَرْبَعُ سِنِيْنَ، إِلَى سِتٍّ وَسَبْعِيْنَ، فَفِيْهَا ابْنَتَا لَبُوْنٍ.) إِلَى إِحْدَى وَتِسْعِيْنَ، فَفِيْهَا حِقَّتَانِ، إِلَى عِشْرِيْنَ وَمِائَةٍ، فَإِذَا زَادَتْ وَاحِدَةً، فَفِيْهَا ثَلَاثُ بَنَاتِ لَبُوْنٍ.) ثُمَّ فِيْ كُلِّ خَمْسِيْنَ حِقَّةٌ، وَفِيْ كُلِّ أَرْبَعِيْنَ بِنْتُ لَبُوْنٍ إِلَى مِئَتَيْنِ، فَيَجْتَمِعُ الْفَرْضَانِ، فَإِنْ شَاءَ أَخْرَجَ أَرْبَعَ حِقَاقٍ، وَإِنْ شَاءَ خَمْسَ بَنَاتِ لَبُوْنٍ.
If one owes [a camel of] a certain age but cannot find it, he should pay one [age level] less than it, plus two sheep or 20 dirhams; or if he prefers, he may pay one [age level] higher than it, and take two sheep or 20 dirhams.	وَمَنْ وَجَبَتْ عَلَيْهِ سِنٌّ فَلَمْ يَجِدْهَا، أَخْرَجَ أَدْنَى مِنْهَا وَمَعَهَا شَاتَانِ، أَوْ عِشْرُوْنَ دِرْهَمًا، وَإِنْ شَاءَ أَخْرَجَ أَعْلَى مِنْهَا وَأَخَذَ

	شَاتَيْنِ أَوْ عِشْرِيْنَ دِرْهَمًا.

[IV.1.1] Bint makhâḍ literally means that her mother is pregnant, so the bint makhâḍ would be one year old.

[IV.1.2] Ibn laboon literally means that his mother is breastfeeding, so the ibn laboon would be two years old.

[IV.1.3] Called ḥiqqah because it is ready to be ridden.

Second: Cows There is no [zakat] on them until they reach 30 [in number], then [the zakat] that is obligatory on them is a *tabi‘* or *tabi‘ah*, which is a one-year-old male or female cow. This is applicable up to 40, then [from 40-59, the zakat] on them would be a *musinnah*, which is a two-year-old female cow. This is applicable up to 60, then [from 60-69, the zakat] on them would be two tabi‘ (one-year-old cows). This is applicable up to 70, then [from 70, the zakat] would be a tabi‘ (a one-year-old cow) and a musinnah (a two-year-old female cow). Then, for every 30 [cows], a tabi‘ (a one-year-old cow), and for every 40 [cows], a musinnah (a two – year-old female cow).	النَّوْعُ الثَّانِيْ الْبَقَرُ: وَلَا شَيْءَ فِيْهَا حَتَّى تَبْلُغَ ثَلَاثِيْنَ، فَيَجِبُ فِيْهَا تَبِيْعٌ، أَوْ تَبِيْعَةٌ، لَهَا سَنَةٌ، إِلَى أَرْبَعِيْنَ، فَفِيْهَا مُسِنَّةٌ، لَهَا سَنَتَانِ، إِلَى سِتِّيْنَ، فَفِيْهَا تَبِيْعَانِ، إِلَى سَبْعِيْنَ فَفِيْهَا تَبِيْعٌ وَمُسِنَّةٌ، ثُمَّ فِيْ كُلِّ ثَلَاثِيْنَ تَبِيْعٌ، وَفِيْ كُلِّ أَرْبَعِيْنَ مُسِنَّةٌ.

Third: Sheep There is no obligation on them until they reach 40 [in number]. Then, up to 120, [the zakat] on them is one sheep. If [their number] increases by one [to 121], up to 200, [the zakat] on them is two sheep. Then, if [their number] increases by one [to 201], [the zakat] on them [201-399] would be three sheep. Then [the zakat] for every 100 is one sheep.	النَّوْعُ الثَّالِثُ الْغَنَمُ: وَلَا شَيْءَ فِيْهَا حَتَّى تَبْلُغَ أَرْبَعِيْنَ، فَفِيْهَا شَاةٌ، إِلَى عِشْرِيْنَ وَمِائَةٍ، فَإِذَا زَادَتْ وَاحِدَةً، فَفِيْهَا شَاتَانِ، إِلَى مِئَتَيْنِ، فَإِذَا زَادَتْ وَاحِدَةً، فَفِيْهَا ثَلَاثُ شِيَاهٍ، ثُمَّ فِيْ كُلِّ مِائَةٍ شَاةٌ.

[What One May Give of His Flock]

A male goat may not be taken as zakat, nor an animal with a disqualifying defect, a very old one, a mother that has just given birth and is nursing her offspring, a pregnant animal, or a fattened beast that has been singled out to be slaughtered. Neither the worst nor the best kind of property is to be taken as zakat except when the owners of the property donate it. He must only give [as zakat] healthy, female animals except for the 30 cows and the two-year-old male camel (ibn laboon) instead of the one-year-old female camel (bint makhâḍ) if he cannot find one. However, if all his livestock are male or sick, it would be acceptable [to pay] just one of them. He is only obliged to pay a six-month-old (*jadha'ah*) from the sheep, or a one-year-old female (*thaniyah*) from the goats, and the prescribed age level [of	وَلَا يُؤْخَذُ فِي الصَّدَقَةِ تَيْسٌ، وَلَا ذَاتَ عَوَارٍ، وَلَا هَرِمَةٌ، وَلَا الرُّبَّى، وَلَا الْمَاخِضُ، وَلَا الأَكُوْلَةُ. وَلَا يُؤْخَذُ شِرَارُ الْمَالِ، وَلَا كَرَائِمُهُ، إِلَّا أَنْ يَتَبَرَّعُوْا بِهِ. وَلَا يُخْرِجُ إِلَّا أُنْثَى صَحِيْحَةً إِلَّا فِيْ ثَلَاثِيْنَ مِنَ الْبَقَرِ، وَابْنَ لَبُوْنٍ مَكَانَ بِنْتِ مَخَاضٍ إِذَا عَدِمَهَا، إِلَّا أَنْ تَكُوْنَ مَاشِيَتُهُ كُلُّهَا ذُكُوْرًا أَوْ مِرَاضًا، فَيُجْزِئُ وَاحِدٌ مِنْهَا، وَلَا يُخْرِجُ إِلَّا جَذَعَةً مِنَ الضَّأْنِ، أَوْ ثَنِيَّةً مِنَ الْمَعْزِ، أَوِ السِّنَّ الْمَنْصُوْصَ عَلَيْهَا، إِلَّا أَنْ يَخْتَارَ رَبُّ الْمَالِ إِخْرَاجَ سِنٍّ أَعْلَى مِنَ

other kinds] unless the owner of the property chooses to pay an age level that is higher than what is obligatory. If they are all young, it is permissible to pay one that is young. If they are a mixture of healthy and sick, male and female, and young and old, he must pay a healthy, mature female; its value should be proportionate to the values of both groups. If it is a mixture of Bactrian and Arabian camels, cows and buffalos, goats and sheep, good and bad, fat and thin, he should pay one of average value. [IV.1.4]	الْوَاجِبِ، أَوْ تَكُوْنَ كُلُّهَا صِغَارًا، فَيُخْرِجُ صَغِيْرَةً، وَإِنْ كَانَ فِيْهَا صِحَاحٌ وَمِرَاضٌ، وَذُكُوْرٌ وَإِنَاثٌ، وَصِغَارٌ وَكِبَارٌ، أَخْرَجَ صَحِيْحَةً كَبِيْرَةً، قِيْمَتُهَا عَلَى قَدْرِ قِيْمَةِ الْمَالَيْنِ. وَإِنْ كَانَ فِيْهَا بَخَاتِيُّ وَعِرَابٌ، وَبَقَرٌ وَجَوَامِيْسُ، وَمَعْزٌ وَضَأْنٌ، وَكِرَامٌ وَلِئَامٌ، وَسِمَانٌ وَمَهَازِيْلُ، أُخِذَ مِنْ أَحَدِهِمَا بِقَدْرِ قِيْمَةِ الْمَالَيْنِ.

[IV.1.4] The value of the animal given is based on the value of the zakat animal due from each type, weighted by that type's proportion of the herd. For example, with equal numbers of two types whose zakat animals are worth 12 and 15, respectively, one gives an eligible animal worth 13.5.

Zakatable Wealth	Niṣâb	Rate of Zakat
Cows & Buffalos	30	For every 30, 1 one-year-old; For every 40, 1 two-year-old. So, 30-39: 1 one-year-old 40-59: 1 two-year old 60-69: 2 one-year-old 70-79: 1 one-year-old and 1 two-year old 80-89: 2 two-year old
Goats & Sheep	40	40-120: 1 121-200: 2 201-300: 3 More than 300: One for every 100. So, 399 will still be 3. 400-499: 4.

Camels	5	5-24: one sheep per five camels; 25-35: 1 one-year-old she-camel; 36-45: 1 two-year-old she-camel; 46-60: 1 three-year-old she-camel; 61-75: 1 four-year-old she-camel; 76-90: 2 two-year-old she-camels; 91-120: 2 three-year-old she-camels; More than 120: one 2-year-old she-camel /40 or one 3-year-old she-camel / 50

[Joint Ownership]

If a group of people share [joint ownership of] the same niṣâb (zakat threshold) of free-grazing, domesticated livestock for an entire ḥawl, and their fields for pasture, stud animals, barns, milking sheds and watering holes are the same, then the ruling on their zakat is as if they were one person. If one of them pays the obligation from his property, the others should reimburse him according to their share. Joint property has no effect except on free-grazing, domesticated livestock. [IV.1.5]	وَإِنِ اخْتَلَطَ جَمَاعَةٌ فِيْ نِصَابٍ مِنَ السَّائِمَةِ حَوْلاً كَامِلاً، وَكَانَ مَرْعَاهُمْ وَفَحْلُهُمْ، وَمَبِيْتُهُمْ وَمَحْلَبُهُمْ، وَمَشْرَبُهُمْ وَاحِدًا، فَحُكْمُ زَكَاتِهِمْ حُكْمُ زَكَاةِ الْوَاحِدِ. وَإِذَا أُخْرِجَ الْفَرْضُ مِنْ مَالِ أَحَدِهِمْ، رَجَعَ عَلَى خُلَطَائِهِ بِحِصَصِهِمْ مِنْهُ. وَلَا تُؤَثِّرُ الْخِلْطَةُ فِيْ غَيْرِ السَّائِمَةِ.

[IV.1.5] Joint Ownership

(A) + (+M): Joint ownership only affects the zakat of livestock. However, for (-M), joint ownership is consequential only if each partner owned a niṣâb.

(a) + (-S): It also affects the zakat of merchandise, gold and silver, and crops.

Hence, corporations of any sort will be treated like one entity.

(-H): It does not affect the zakat of anything.

[IV.2] Chapter on the Zakat on That Which Comes Out of the Earth

بَابُ زَكَاةِ الْخَارِجِ مِنَ الأَرْضِ

[Types of Materials that Come out of the Earth]

There are two types:	وَهُوَ نَوْعَانِ:
First: Plants	**أَحَدُهُمَا النَّبَاتُ:**
Zakat is obligatory on plants, for all grain and fruit that can be measured (by volume) and stored, [IV.2.1] if it is produced from the land and reaches five *awsuq* [pl. of 'wasq', a measure]. This is based on the narration of the Prophet (SA), "There is no charity [meaning obligatory zakat in this context] on grain or fruit [IV.2.2] until it reaches five awsuq." (Ag)	فَتَجِبُ الزَّكَاةُ مِنْهُ فِيْ كُلِّ حَبٍّ وَثَمَرٍ، يُكَالُ وَيُدَّخَرُ إِذَا خَرَجَ مِنْ أَرْضِه وَبَلَغَ خَمْسَةَ أَوْسُقٍ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَيْسَ فِيْ حَبٍّ وَلَا ثَمَرٍ صَدَقَةٌ حَتَّى يَبْلُغَ خَمْسَةَ أَوْسُقٍ.»

[IV.2.1] Which Plants Are Zakatable?

Wheat, barley, corn, dates (and raisins - with few objections) are zakatable by agreement.

As for other plants:

(A): These five, plus all plants that are measured by volume (not by weight or sold by number) and stored. This includes beans, lentils, caraway seeds, safflower, sesame seeds, hazelnuts and almonds, among others, but excludes fresh non-storable fruits and vegetables such as apples, pears, peaches, eggplants, turnips, and carrots, among others. It also excludes those measured by count, not volume. (+M +S agreed on the exclusion of perishable fruits and vegetables.)

(H): All agricultural products planted by humans for their benefits are zakatable. Their position is supported by the general statement of the Prophet (SA):

«فيما سَقَت السَّماء العُشْر.»

> *"From what the heavens irrigate, one-tenth [is due]." (B – from Ibn 'Umar)*

The position of the majority is supported by the following report:

> *Narrated from Abu Moosâ and Mu'âdh ibn Jabal that when the Messenger of Allah (SA) sent them to Yemen to teach people their religion, he commanded them to take charity (in this case referring to zakat) only on these four things: barley, wheat, raisins, and dates. (ad-Dâraquṭni, H, Ba. Ibn al-Mulaqqin, al-Albâni:S)*

«لا تأخُذُوا الصَّدَقَة إلا مِن هَذِه الأرْبَعَة: الشَّعير والحِنْطَة والزَّبيب والتَّمر.»

There are also other reports from the Companions with the same meaning, and they did not levy zakat on fruits and vegetables. (M) upholds this position because it was the practice of the people of Madinah.

Part of the reason why these plants (perishable fruits and vegetables) were exempted is the cost of their planting and the fact that they cannot be stored and must be consumed quickly, which makes it burdensome to grow them. Some contemporary scholars suggested that since the conditions of storage and distribution may change, the position of Imam Abu Ḥaneefah may be more conducive to equity and the attainment of the objectives of Sharia.

[IV.2.2] 'Dates' is the word used in all narrations except that of 'Abdur-Razzâq.

One *wasq* is equal to sixty *ṣâ'*.[IV.2.3] One ṣâ' is equal to one Damascene *raṭl* and 1 and 5/7 uqiyahs. Thus, the niṣâb is about 342 and 6/7 raṭls.	وَالْوَسْقُ سِتُّوْنَ صَاعًا، وَالصَّاعُ رِطْلٌ بِالدِّمَشْقِيِّ وَأُوْقِيَّةٌ وَخَمْسَةُ أَسْبَاعِ أُوْقِيَّةٍ. فَجَمِيْعُ النِّصَابِ مَا

	قَارَبَ ثَلَاثَمِائَةٍ وَاثْنَيْنِ وَأَرْبَعِيْنَ رِطْلاً وَسِتَّةَ أَسْبَاعِ رِطْلٍ.

[IV.2.3] Ibn Qudâmah goes on to describe these measurements in terms of Damascene pounds. Using an approximate conversion for wheat, 1 ṣâ‘ is about 2.176 kg; thus, 1 wasq = 2.176 x 60 = 130.56 kg, and the niṣâb = 5 x 130.56 = 652.8 kg, approximately 653 kg. This is measured after the plants have been threshed and have no husks or chaff.

The zakat that must be paid is ten percent [of the entire crop] for what has been watered by rain or water sources [that flow to the land without effort from the grower], and five percent for what has been irrigated with effort, such as bringing water by irrigation equipment or on the backs of camels [or any other beast of burden]. [IV.2.4]	وَيَجِبُ الْعُشْرُ فِيْمَا سُقِيَ مِنَ السَّمَاءِ وَالسُّيُوْحِ، وَنِصْفُ الْعُشْرِ فِيْمَا سُقِيَ بِكُلْفَةٍ، كَالدَّوَالِيْ وَالنَّوَاضِحِ.

[IV.2.4] The Prophet (SA) said:

«فيما سَقَت السَّماء والعُيُون أو كان عَثْريا العُشْر وما سُقِي بالنَّضْح نِصْف العُشْر.»

“On that which is irrigated by rain or springs, or through the roots, 10% is due; and on that which is irrigated by sprinkling [using equipment and/or beasts of burden], 5% is due.” (B – from Ibn ‘Umar)

[When and How to Give Zakat of Crops]

Zakat becomes obligatory [IV.2.5] when the fruit appears ripe [IV.2.6] and the grain has matured [is firm]. [IV.2.7]	وَإِذَا بَدَا الصَّلَاحُ فِيْ الثَّمَرِ، وَاشْتَدَّ الْحَبُّ، وَجَبَتِ الزَّكَاةُ.

[IV.2.5] This means that if the crops are destroyed for any reason before they are ripe and mature, zakat is not obligatory. Likewise, if the person sells

the land together with the standing crop before that time, zakat will not be due on the seller for any crops on that land.

[IV.2.6] This depends on the type of fruit; in some, the color is the distinguishing factor, while in others, it is the taste.

[IV.2.7] This means that the zakat will be binding on them. Unless a calamity beyond their control befalls the produce, they will have to pay the zakat, even if they suffer a loss caused by their own negligence.

This obligation becomes finally established once the produce has been taken to the threshing or drying ground. After that, even if a calamity beyond their control befalls the produce, the zakat must still be paid. (A)

One does not set the grain aside [as payment] until it has been threshed, and likewise for the fruit until it has been dried. [IV.2.8]	وَلَا يُخْرَجُ الْحَبُّ إِلَّا مُصَفًّى، وَلَا الثَّمَرُ إِلَّا يَابِسًا.

[IV.2.8] If the fresh dates or grapes will be eaten before being dried, zakat may not be given from them, but the equivalent of what is binding must be given in the form of dried dates and raisins, according to (A). There is a disagreement in the madh-hab concerning grapes that do not turn into raisins. (A): Must still give out raisins. (a) + (-t): May give out grapes. Also, if they sold the produce before it was picked, they should still give out raisins according to (A), but according to (a) + (-t), they may give (10% or 5%) of the price.

There is no zakat on what one collects of the permissible (for public use) grains, fruit that grows in the wild [without cultivation], [IV.2.9] gleanings left after harvesting, [IV.2.10] or wages for harvesting.	وَلَا زَكَاةَ فِيْمَا يَكْسِبُهُ مِنْ مُبَاحِ الْحَبِّ وَالثَّمَرِ، وَلَا فِيْ اللَّقَاطِ، وَلَا مَا يَأْخُذُهُ أُجْرَةً لِحَصَادِهِ.

[IV.2.9] Even if they grow on one’s land (without being planted).

[IV.2.10] Even if the quantity picked up is equal to or more than the niṣâb, because the zakat is binding on the owner of the crops at the time of obligation as discussed above.

One kind of grain or fruit is not added to another to complete a niṣâb (zakat threshold). However, if there is one kind that has different varieties, like the various sorts of dates, there would be zakat on it [if all the varieties put together meet the niṣâb of five awsuq].	وَلَا يُضَمُّ صِنْفٌ مِنَ الْحَبِّ وَالثَّمَرِ إِلَى غَيْرِهِ فِيْ تَكْمِيْلِ النِّصَابِ. فَإِنْ كَانَ صِنْفًا وَاحِدًا، مُخْتَلِفَ الأَنْوَاعِ، كَالتُّمُوْرِ، فَفِيْهِ الزَّكَاةُ.

One must pay zakat from each kind. If one pays a good kind as zakat for a bad kind, it is permissible [but not vice versa], and one would deserve a reward [from Allah the Almighty].	وَيُخْرِجُ مِنْ كُلِّ نَوْعٍ زَكَاتَهُ، وَإِنْ أَخْرَجَ جَيِّدًا عَنِ الرَّدِيْءِ، جَازَ، وَلَهُ أَجْرُهُ.

Second: Minerals Whoever extracts from a mine a niṣâb of gold or silver, or the equivalent value [IV.2.11] in gemstones, kohl, copper, iron, or other minerals, must pay zakat on it. [IV.2.12]	النَّوْعُ الثَّانِيْ الْمَعْدِنُ: فَمَنِ اسْتَخْرَجَ مِنْ مَعْدِنٍ نِصَابًا مِنَ الذَّهَبِ أَوِ الْفِضَّةِ، أَوْ مَا قِيْمَتُهُ ذٰلِكَ مِنَ الْجَوَاهِرِ أَوِ الْكُحْلِ أَوِ الصُّفْرِ، أَوِ الْحَدِيْدِ، أَوْ غَيْرِهِ فَعَلَيْهِ الزَّكَاةُ.

[IV.2.11] If the value of extracted minerals reaches the niṣâb of silver or gold.

[IV.2.12] Which Minerals Are Zakatable?

(A): All substances extracted from the earth that are not from its own substance are zakatable, including liquids like oil.

(-M, -S): Only gold and silver.

(-H): Only impressionable metals such as copper, lead, and iron.

By agreement, zakat is due on gold and silver extracted from the ground.

[Its zakat] is not to be paid until after it has been cast and refined. [IV.2.13]	وَلَا يُخْرَجُ إِلَّا بَعْدَ السَّبْكِ وَالتَّصْفِيَةِ.

[IV.2.13] When Is Zakat Due on Extracted Minerals, and How Much?

(A): One does not wait for the passing of one lunar year but gives the zakat after it is extracted and cast. The amount to be given is 2.5%, like the zakat of gold and silver.

(H): It is treated like buried treasure, which means 20%, not 2.5%.

There is no zakat on pearls, coral, ambergris, or fish, or on what is hunted on the land or fished from the sea.	وَلَا شَيْءَ فِيْ اللُّؤْلُؤِ وَالْمَرْجَانِ، وَالْعَنْبَرِ وَالسَّمَكِ، وَلَا فِيْ شَيْءٍ مِنْ صَيْدِ الْبَرِّ وَالْبَحْرِ.

The zakat on buried treasure dating from the pre-Islamic period of ignorance is one-fifth [of what is found], regardless of what kind of property it is, whether it is a small or large amount. [IV.2.14] [IV.2.15]	وَفِي الرِّكَازِ الْخُمُسُ أَيَّ نَوْعٍ كَانَ مِنَ الْمَالِ، قَلَّ أَوْ كَثُرَ.

[IV.2.14] This is because the Messenger of Allah (SA) said to a man who found treasure on a piece of deserted land:

«إن وَجَدته في قَرْيَة مَسْكونة فَعَرِّفْه، وإن وَجَدته في قرية غَير مسكونة ففيه وفي الرّكاز الخُمُس.»

"If you find it in an inhabited village, announce [that you found it], and if you find it in a deserted village, then 1/5 is due on it and on [any] buried treasure from the pre-Islamic period of

ignorance." (H, Ba – from Ibn 'Amr; Ibn Ḥajar in Buloogh al-Marâm: R)

Thus, if the treasure is from the pre-Islamic era, with signs indicating this, and you find it in a deserted place, you may take it after paying 1/5 (20%) in charity, as mentioned above.

If the treasure is from the Islamic period, then you must announce that you found it, by advertising at the doors of mosques, in the markets, or by any modern way to advertise items that have been lost and found. (See the chapter on Lost and Found Property (Luqaṭah).)

[IV.2.15] There is no niṣâb. The 1/5 is paid upon finding the buried treasure, and the rest goes to the finder.

Its recipients are the same as the recipients of the *fay'* (war booty gained without fighting), [IV.2.16] and the rest belongs to the one who finds it. [IV.2.17]	وَمَصْرِفُه مَصْرِفُ الْفَيْءِ، وَبَاقِيْهِ لِوَاجِدِهِ.

[IV.2.16] Allah the Almighty says:

{مَّا أَفَاءَ اللَّهُ عَلَىٰ رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ}

{What Allah gave as booty to His Messenger from the people of the townships, it is for Allah, His Messenger, the kindred (of the Messenger), the orphans, the poor, and the wayfarer...} (al-Ḥashr 59:7)

Fay' may also be spent in any cause that is beneficial to the community.

The position chosen here is that of (A) + (+H, +M).

(a) + (-S): The recipients are the same as the recipients of zakat.

[IV.2.17] Unless he finds it on land that is owned by someone, and the owner claims ownership of the treasure.

[IV.3] Chapter on the Zakat of Currency

بَابُ زَكَاةِ الأَثْمَانِ

There are two kinds of currency: gold and silver. There is no zakat on silver until it reaches two hundred dirhams [about 595 g of pure silver], and its zakat is five dirhams [2.5%]. There is no zakat on gold until it reaches twenty mithqâl [about 85 g of pure gold], and its zakat is half a mithqâl [2.5%]. [IV.3.1] [IV.3.2]	وَهِيَ نَوْعَانِ: ذَهَبٌ وَفِضَّةٌ، وَلَا زَكَاةَ فِي الْفِضَّةِ حَتَّى تَبْلُغَ مِائَتَيْ دِرْهَمٍ، فَيَجِبُ فِيْهَا خَمْسَةُ دَرَاهِمَ، وَلَا فِيْ الذَّهَبِ حَتَّى يَبْلُغَ عِشْرِيْنَ مِثْقَالاً، فَيَجِبُ فِيْهِ نِصْفُ مِثْقَالٍ.

[IV.3.1] Cash Is a Substitute for Gold and Silver

Cash takes the same ruling as gold and silver, here and in the chapter on usury, since cash is used by people nowadays as currency, and it was instituted as a replacement for gold and silver, even if it is no longer tied to a gold reserve.

[IV.3.2] Should gold and silver be added together if each one is less than the niṣâb?

(A): Yes. If you have 3/4 of the niṣâb of gold and 1/4 of the niṣâb of silver, you should pay the zakat. Since cash is treated like another currency, it should also be added to them.

(a) + (-S): No.

If the silver or gold is impure, there is no zakat until the weight of the pure amount of gold or silver reaches the niṣâb. If there is any doubt about its purity, there are two options: to pay the zakat [on the amount as it is] or to first purify it by casting it, in order to determine the actual amount.	فَإِنْ كَانَ فِيْهِمَا غِشٌّ، فَلَا زَكَاةَ فِيْهِمَا حَتَّى يَبْلُغَ قَدْرُ الذَّهَبِ وَالْفِضَّةِ نِصَابًا، فَإِنْ شَكَّ فِيْ ذٰلِكَ، خُيِّرَ بَيْنَ الإِخْرَاجِ وَبَيْنَ سَبْكِهِمَا؛ لِيَعْلَمَ قَدْرَ ذٰلِكَ.

[Zakat of Permissible Jewelry]

There is no zakat on permissible jewelry that is prepared for personal use or lending. [IV.3.3]	وَلَا زَكَاةَ فِي الْحُلِيِّ الْمُبَاحِ، الْمُعَدِّ لِلِاسْتِعْمَالِ، وَالْعَارِيَةِ.

[IV.3.3] Gold and Silver Jewelry

(A) + (+M, +S): Zakat is not mandatory on such jewelry.

(-H, -Z): Zakat is mandatory on it. They argued that ‘Â’ishah (RAH) said:

«دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ فَرَأَى فِي يَدَيَّ فَتَخَاتٍ مِنْ وَرِقٍ، فَقَالَ: مَا هَذَا يَا عَائِشَةُ؟ فَقُلْتُ: صَنَعْتُهُنَّ أَتَزَيَّنُ لَكَ يَا رَسُولَ اللَّهِ. قَالَ: أَتُؤَدِّينَ زَكَاتَهُنَّ؟ قُلْتُ: لا. قَالَ: هُوَ حَسْبُكِ مِنْ النَّارِ.»

The Messenger of Allah (SA) came to me, and I was wearing ‘big’ rings of silver on my hand. He asked, “What is this, ‘Â’ishah?” I said, “I made them to adorn myself for you, O Messenger of Allah.” He asked, “Have you given zakat on them?” I said no. He said, “They are sufficient to make you deserve the punishment of fire.” (D; al-Albâni: S)

There are other hadiths with the same meaning, but they are all controversial. At-Tirmidhi said nothing is authentically traceable to the Prophet (SA) in this regard. Some consider them established, particularly because they corroborate one another. (-H, -Z) also used the generalities that establish zakat in gold and silver.

The majority argued that ‘Â’ishah herself and Ibn ‘Umar did not pay zakat on the jewelry of their dependents. In fact, Imam Aḥmad said that Anas, Jâbir, ‘Â’ishah, Ibn ‘Umar, and Asmâ’ (RAHUM) all denied that zakat is binding on jewelry. They also said that the ongoing principle is that all property for personal use is not zakatable. Finally, they raised concerns about the transmission of the reports used by (-H, -Z), arguing that, if established, they may have meant that the Prophet (SA) wanted to discourage extravagance because the reports mention ‘big’ rings and ‘fat’ bracelets.

This is a controversial issue, with proofs almost equally strong on both sides. If a woman buys a large amount of gold with the intention of saving it, and she wears it infrequently, then it is closer to piety for her to pay zakat on this gold.

All kinds of gold and silver that are customarily worn by women are permissible for them, and the permissible silver items for men are: rings, ornamentation of swords, belts, and so on. There is zakat on what [gold and silver] is prepared for renting and savings, as well as on the prohibited kinds. [IV.3.4]	وَيُبَاحُ لِلنِّسَاءِ كُلُّ مَا جَرَتْ عَادَتُهُنَّ بِلُبْسِهِ مِنَ الذَّهَبِ وَالْفِضَّةِ. وَيُبَاحُ لِلرِّجَالِ مِنَ الْفِضَّةِ: الْخَاتَمُ، وَحِلْيَةُ السَّيْفِ، وَالْمِنْطَقَةُ، وَنَحْوُهَا. فَأَمَّا الْمُعَدُّ لِلْكِرَاءِ وَالإِدِّخَارِ، أَوِ الْمُحَرَّمُ، فَفِيْهِ الزَّكَاةُ.

[IV.3.4] For example: gold and silver utensils, or gold jewelry for men.

[IV.4] Chapter on the Rulings of the Zakat of Debt

بَابُ حُكْمِ الدَّيْنِ

[For Creditors]

Whoever is owed a debt by a debtor who is capable of paying; has money he is capable of collecting, as when someone denies having borrowed it but he has proof; or has had something taken by force from him, yet he is capable of taking it back; he must pay zakat for it when he finally takes possession of it. He should do so for all the years that have passed. [IV.4.1]	وَمَنْ كَانَ لَهُ دَيْنٌ عَلَى مَلِيْءٍ، أَوْ مَالٌ يُمْكِنُ خَلَاصُهُ، كَالْمَجْحُوْدِ الَّذِيْ لَهُ بِهِ بَيِّنَةٌ، وَالْمَغْصُوْبِ الَّذِيْ يَتَمَكَّنُ مِنْ أَخْذِهِ، فَعَلَيْهِ زَكَاتُه إِذَا قَبَضَهُ، لِمَا مَضَى.

[IV.4.1] Zakat on Money Lent

Recoverable Debt

(A) + (+H): The position above is the authorized position of the madh-hab.

(a) + (-M): When the money is returned to him, he should pay the zakat for 1 year.

In a different opinion by (a), which is reported from Ibn ‘Umar, ‘Â’ishah, and ‘Ikrimah, the lender does not have to pay zakat on this money until it is paid back and then one full lunar year has passed. This is because the individual does not have complete ownership of the money and cannot invest or spend it, so it is not prone to growth.

(S): Zakat for it must be paid yearly.

If someone owns money that is impossible to retrieve because, for instance, [the debtor] has gone bankrupt or he denies the debt and there is no proof of it; or	وَإِنْ كَانَ مُتَعَذِّرًا كَالدَّيْنِ عَلَى الْمُفْلِسِ، أَوْ عَلَى جَاحِدٍ، وَلَا بَيِّنَةَ لَهُ بِهِ، وَالْمَغْصُوْبِ، وَالضَّالِّ

someone has had something taken from him by force or has lost something, and there is no hope of finding it; then there is no zakat due on it. [IV.4.2]	الَّذِيْ لَا يُرْجَى وُجُوْدُهُ، فَلَا زَكَاةَ فِيْهِ.

[IV.4.2] Bad Debt

(a) + (-s): The position chosen here by Imam Ibn Qudâmah concerning bad debts is the weaker position in the madh-hab. (H) distinguishes these cases: an acknowledged loan does not become exempt merely because the borrower is insolvent; its zakat for past years is payable upon recovery.

(A) + (+S): If he finally takes possession of it, he must pay zakat on it for all the years that have passed.

(a) + (-M): If he finally takes possession of it, he should pay zakat on it for 1 year.

The ruling of the *ṣadâq* is the same as that of debt. [IV.4.3] [IV.4.4]	وَحُكْمُ الصَّدَاقِ حُكْمُ الدَّيْنِ.

[IV.4.3] The obligatory bridal gift given by the husband to his wife at the time of marriage.

[IV.4.4] Zakat on the Bridal Gift

The bridal gift is either: deferred, paid, or due but not paid yet.

1- Any deferred amount:

(A): When she finally takes possession of it, she must pay zakat on it for all the years that have passed. However, there are two other positions in the madh-hab. (t) was asked about the bridal gift of a woman who had been married for many years but was not able to ask her husband for it lest they separate. After many years, she was compensated for her bridal gift (by being given some real estate or the bridal gift). Does she have to pay zakat for the past years, or must she do so only after 1 year has elapsed since she took possession of it? He replied:

Praise be to Allah, there are many opinions concerning this matter among the scholars. The most correct opinion is the view of those who say that no zakat is due at all until one year has passed or zakat is due (for one year) once she takes possession of it. There is evidence for both views. The former is the view of Abu Ḥaneefah, and the latter is the view of Mâlik, and both are mentioned in the madh-hab of Aḥmad. Allah knows best.

🕒 The opinion of (H) –that no zakat is due until 1 year has passed after she takes possession of it –is applicable to our times, since it is the custom among most people that women do not ask for the deferred part of the bridal gift except when separating from the husband or upon his death.

2- Any amount that is paid to her: She pays zakat on it, even before the consummation of marriage.

3- Any part that is due but has not yet been paid: It is treated like a debt. (See above for the rulings on debts.)

[For Debtors]

Whoever has a debt equal to [or greater than] the niṣâb he owns, or it [the debt] makes it [the money he owns] less [than the niṣâb], there is no zakat on it [the money he possesses]. [IV.4.5]	وَمَنْ كَانَ عَلَيْهِ دَيْنٌ يَسْتَغْرِقُ النِّصَابَ الَّذِيْ مَعَهُ، أَوْ يَنْقُصُهُ، فَلَا زَكَاةَ عَلَيْهِ فِيْهِ.

[IV.4.5] Zakat on Money Borrowed

After discussing the rulings of debts that pertain to creditors, Ibn Qudâmah (may Allah have mercy on him) mentioned the rulings that pertain to debtors. The debtors simply subtract their debts from their assets; if what remains is at least the niṣâb, then zakat must be paid on that remaining amount, but if what remains (after subtracting the debt) does not reach the niṣâb, then no zakat is due.

(A, H, M) allow debts to be deducted from non-manifest wealth, with differences in their conditions. According to (S), debts do not reduce the zakatable amount, whether the wealth is manifest or non-manifest. (Manifest wealth is that which is normally evident to the public, like

livestock and crops.) As for manifest wealth, there is a disagreement. (A): Debts are subtracted except in the case of the zakat of treasure troves, from which debts are not subtracted.

Debts incurred to buy factory equipment or to purchase property that exists, as with home mortgages, will not be subtracted entirely as long as the value of the property is more than the amount of the debt. In this case, the part to be subtracted from the assets is the installment due during the current year. (This is the recommendation of the First Zakat Convention.)

[IV.5] Chapter on the Zakat of Merchandise

بَابُ زَكَاةِ الْعُرُوْضِ

There is no zakat on merchandise until the person intends to trade with it, and it [has been at] the niṣâb for an entire year (ḥawl). [IV.5.1] Then he should assess it, [IV.5.2] and if it has reached [an amount equal to] the niṣâb of gold or silver, whichever is less [at that time], he must pay zakat on its [full] value. [IV.5.3]	وَلَا زَكَاةَ فِيْهَا حَتَّى يَنْوِيَ بِهَا التِّجَارَةَ، وَهِيَ نِصَابٌ حَوْلاً كَامِلاً، ثُمَّ يُقَوِّمُهَا، فَإِذَا بَلَغَتْ أَقَلَّ نِصَابٍ مِنَ الذَّهَبِ أَوِ الْفِضَّةِ، أَخْرَجَ الزَّكَاةَ مِنْ قِيْمَتِهَا.

[IV.5.1] What Is a Ḥawl?

The ḥawl for the payment of zakat is a lunar year, and the zakat must be paid at the end of it.

Paying every solar year is not acceptable. We must familiarize ourselves with the lunar year, since all our acts of worship are based on it. Those who cannot take inventory on their stores every lunar year can do it every solar year and then correct for the difference by paying 3.1% more than the zakat which should have been paid at the end of the lunar year (i.e., by paying 2.577% instead of 2.5%).

[IV.5.2] Based on the market value on the zakat due date.

[IV.5.3] The zakat is usually taken out of the same type of property on which it is due, but in the case of merchandise, its value is paid in currency. This is for the benefit of the poor, who may not know what to do with the merchandise.

Some scholars argued that if the interest of the poor is served by receiving the merchandise, it may be given to them. This is part of a larger question, which is whether the value of the binding zakat can be paid instead of that which is binding by the Prophet's designation. For example, if someone must give 1 sheep, can they instead give the value of that in

currency? Also, if someone is required to pay 60 dirhams, can they instead give dates of equal value?

(A) + (+M, +S): No.

(a) + (-H): Yes. (For H only, this also applies to zakat al-fiṭr.)

Imam Ibn Taymiyah (may Allah bestow mercy on him) supported a middle position, saying:

As for paying the value of zakat, the popular view of Mâlik and ash-Shâfi'i is that it is not permissible. However, according to Abu Ḥaneefah, it is permissible. Aḥmad (may Allah bestow mercy on him) prevented it in some conditions and permitted it in others. The stronger view concerning this is that giving the value out without a need or a greater benefit is not allowed. (*Majmoo' al-Fatâwâ*)

The Zakat on Stocks and Shares

If they are used for trading (as in day trading), then they are treated like merchandise.

If they are used as long-term investments, then zakat is paid on the zakatable portion of the assets. For instance, in general, cash surplus and trade goods are zakatable, while factories and stores are not, so shares in companies that own retail stores will be mostly zakatable, whereas companies that mainly invest in manufacturing will have only small portions of their assets that are zakatable. Individuals may review the companies' annual reports to determine what is zakatable; if this is not possible, they should ask experts about each particular company or mutual fund, to get an approximate estimate.

This position is in agreement with OIC – International Islamic Fiqh Academy (IIFA) resolutions 28 (3/4) and 121 (3/13).

[Currency and Merchandise Are One Type]

If the person [also] owns gold or silver, he must add it to the value of his merchandise	وَإِنْ كَانَ عِنْدَهُ ذَهَبٌ أَوْ فِضَّةٌ، ضَمَّهُمَا إِلَى

[that is prepared for trading] to complete the niṣâb.	قِيْمَةِ الْعُرُوْضِ فِيْ تَكْمِيْلِ النِّصَابِ.

If a person intends for this merchandise to be private property (for personal use), there is no zakat on it. If, afterwards, he intends to prepare it [again] for trade, he should begin [counting] a new ḥawl for it. [IV.5.4]	وَإِذَا نَوَى بِعَرْضِ التِّجَارَةِ الْقُنْيَةَ، فَلَا زَكَاةَ فِيْهِ، ثُمَّ إِنْ نَوَى بِهِ بَعْدَ ذٰلِكَ التِّجَارَةَ، اسْتَأْنَفَ لَهُ حَوْلاً.

[IV.5.4] This is the position of (a) + (Is-ḥâq, Abu Thawr, al-Karâbeesi).

(A) + (+H, +M, +S): If it was not originally acquired with the intention of selling it, adopting that intention later does not make it zakatable. Also, if it was acquired through inheritance, it is not zakatable.

(A): To be zakatable, the property must be acquired through one's own action, even if that was simply the acceptance of a bequest or a gift.

(a) + (Is-ḥâq): How it was acquired is of no consequence, so if one inherits a property but intends to sell it, it becomes zakatable from the time that intention is made (whether that is at the time of the inheritance or later).

[IV.6] Chapter on Zakat *al-Fiṭr*

بَابُ زَكَاةِ الْفِطْرِ

Zakat al-Fiṭr (charity given at the end of the fast of Ramadan) is obligatory on every Muslim who owns more than the essential food he needs for himself and his dependents [IV.6.1] for the eve and the day of the Eid.	وَهِيَ وَاجِبَةٌ عَلَى كُلِّ مُسْلِمٍ مَلَكَ فَضْلاً عَنْ قُوْتِهِ وَقُوْتِ عِيَالِهِ لَيْلَةَ الْعِيْدِ وَيَوْمَهُ.

[IV.6.1] For the Prophet (SA) said,

«ابدأ بنَفسِك» و «ابدأ بمن تَعُول.»

"Start with yourself," (M – from Jâbir) and, "Start with those under your care." (Ag – from Abu Hurayrah)

The amount of zakat al-fiṭr is one ṣâ‘ of [whole] wheat or barley, or their flour. It can also be paid as flour made from their roasted grain, or in dates or raisins. However, if he cannot find those, he should give any kind of food staples that he eats that would [measure] one ṣâ‘. [IV.6.2]	وَقَدْرُ الْفِطْرَةِ: صَاعٌ مِنَ الْبُرِّ أَوِ الشَّعِيْرِ، أَوْ دَقِيْقِهِمَا أَوْ سَوِيْقِهِمَا، أَوْ مِنَ التَّمْرِ أَوِ الزَّبِيْبِ، فَإِنْ لَمْ يَجِدْهُ، أَخْرَجَ مِنْ قُوْتِهِ أَيَّ شَيْءٍ كَانَ، صَاعًا.

[IV.6.2] Type and Amount

«فَرَضَ رَسُولُ اللَّهِ ﷺ زَكَاةَ الْفِطْرِ صَاعًا مِنْ تَمْرٍ أَوْ صَاعًا مِنْ شَعِيرٍ عَلَى الْعَبْدِ وَالْحُرِّ وَالذَّكَرِ وَالْأُنْثَى وَالصَّغِيرِ وَالْكَبِيرِ مِنْ الْمُسْلِمِينَ وَأَمَرَ بِهَا أَنْ تُؤَدَّى قَبْلَ خُرُوجِ النَّاسِ إِلَى الصَّلَاةِ.»

"The Prophet (SA) enjoined the payment of one ṣâ‘ of dates or one ṣâ‘ of barley as zakat al-fiṭr on every Muslim: free and slave, male and female, young and old. He commanded that it be given out before the people go to the (Eid) prayer." (Ag – from Ibn ‘Umar)

(A) + (+M, +S): It must be of the food staples. (A/SM): The food given should be one of the four types mentioned here, or aqiṭ (dried-milk cheese). Other food staples may be given only if none of those items can be found.

(-H): Cash amounting to the equivalent of one ṣâʿ of food may be given.

(t): Cash may be given only if there is a clear benefit in that.

(See the discussion in the previous chapter on paying the value of the binding zakat.)

Whoever must pay zakat al-fiṭr for himself must also pay it for all his dependents [IV.6.3] if he owns enough on the eve of Eid to pay for them.	وَمَنْ لَزِمَتْهُ فِطْرَةُ نَفْسِهِ، لَزِمَتْهُ فِطْرَةُ مَنْ تَلْزَمُهُ مُؤْنَتُهُ لَيْلَةَ الْعِيْدِ، إِذَا مَلَكَ مَا يُؤَدِّيْ عَنْهُ.

[IV.6.3] See the chapter on the Maintenance of the Relatives and Slaves in Volume 2.

If someone's provision is the responsibility of a group of people, as with a shared slave or someone in financial difficulty who is a relative of a group of people, his zakat al-fiṭr is obligatory on them all, in accordance with [their share of responsibility for] his provision. If [a slave] is partially free, his zakat al-fiṭr is obligatory on [both] him and his master.	فَإِنْ كَانَتْ مُؤْنَتُهُ تَلْزَمُ جَمَاعَةً، كَالْعَبْدِ الْمُشْتَرَكِ، وَالْمُعْسِرِ الْقَرِيْبِ لِجَمَاعَةٍ، فَفِطْرَتُهُ عَلَيْهِمْ عَلَى حَسَبِ مُؤْنَتِهِ. فَإِنْ كَانَ بَعْضُهُ حُرًّا، فَفِطْرَتُهُ عَلَيْهِ وَعَلَى سَيِّدِهِ.

It is preferable to pay zakat al-fiṭr on the day of Eid, before the prayer. It is not permissible to delay it until after the day of Eid, but it is permissible to pay it two	وَيُسْتَحَبُّ إِخْرَاجُ الْفِطْرَةِ يَوْمَ الْعِيْدِ قَبْلَ صَلَاةِ الْعِيْدِ، وَلَا يَجُوْزُ تَأْخِيْرُهَا عَنْ يَوْمِ الْعِيْدِ،

or three days in advance. [IV.6.4] [IV.6.5] [IV.6.6]	وَيَجُوْزُ تَقْدِيْمُهَا عَلَيْهِ بِيَوْمَيْنِ أَوْ ثَلَاثَةٍ.

[IV.6.4] The Prophet (SA) said:

«مَنْ أَدَّاهَا قَبْلَ الصَّلَاةِ فَهِيَ زَكَاةٌ مَقْبُولَةٌ، وَمَنْ أَدَّاهَا بَعْدَ الصَّلَاةِ فَهِيَ صَدَقَةٌ مِنْ الصَّدَقَاتِ»

"Whoever pays it before the prayer, it is accepted zakat, and whoever pays it after the prayer, it is (unspecified) charity." (D – from Ibn 'Abbâs; D: Auth)

[IV.6.5] There is a difference of opinion as to whether zakat al-fiṭr can still be paid after the prayer. The majority said that although it is detested to defer it until after the prayer, it is still acceptable until the end of the Eid day. They cited weak reports that the Prophet (SA) used to distribute it after Eid and that he said, "Spare them from asking for assistance on that day." They argued that giving it any time before sunset on the day of Eid fulfills that wisdom.

(A): Delaying it beyond the day of Eid without an excuse is sinful, but it remains due and must be paid as qaḍâ' (a make-up payment).

[IV.6.6] When to Pay Zakat al-Fiṭr?

"They used to pay it 1 or 2 days before the end of Ramadan." (B – from Ibn 'Umar)

That is the position of (A) + (+M), who argued that this zakat is meant to assist the poor during the time of Eid.

(-S): It may be given from the beginning of Ramadan. They argued that Ramadan is one of the two causes of it being binding, so it may be given out upon the beginning of the first cause.

(-H): It may be given even before the beginning of Ramadan. They argued that it may be given in advance, like the other forms of zakat.

If there is a legitimate need to give it earlier, then it is hoped that it will be permissible.

If you pay it to your agent earlier, and your agent gives it to the deserving party at the right time, it is acceptable. If you give it to the agent of the poor (charitable organization) before the prayer, and they give it to them after it, that is acceptable.

It is permissible to give to one person [the zakat] that is obligatory on a group, and [to give] to a group [the zakat] that is obligatory on one person. [IV.6.7]	وَيَجُوْزُ أَنْ يُعْطِيَ الْوَاحِدَ مَا يَلْزَمُ الْجَمَاعَةَ، وَالْجَمَاعَةَ مَا يَلْزَمُ الْوَاحِدَ.

[IV.6.7] It must be given to a Muslim in the region where the donor resides.

(A) + (+S): It may be given to any of the 8 categories of recipients that are mentioned in the verse. (S: It must be divided among them all.)

(a) + (-M): It may be only given to the poor and needy, because:

“The Messenger of Allah (SA) enjoined zakat al-fiṭr on the one who fasted, to purify him from any frivolity or indecency and for the purpose of feeding the needy.” (D – from Ibn ‘Abbâs; Ibn al-Mulaqqin: S)

«فَرَضَ رَسُولُ اَللَّهِ ﷺ زَكَاةَ اَلْفِطْرِ; طُهْرَةً لِلصَّائِمِ مِنَ اَللَّغْوِ, وَالرَّفَثِ, وَطُعْمَةً لِلْمَسَاكِينِ...»

[IV.7] Chapter on How to Pay Zakat

بَابُ إِخْرَاجِ الزَّكَاةِ

لَا يَجُوْزُ تَأْخِيْرُ الزَّكَاةِ عَنْ وَقْتِ وُجُوْبِهَا، إِذَا أَمْكَنَ إِخْرَاجُهَا، فَإِنْ فَعَلَ فَتَلِفَ الْمَالُ، لَمْ تَسْقُطْ عَنْهُ الزَّكَاةُ، وَإِنْ تَلِفَ قَبْلَهُ، سَقَطَتْ.	It is not permissible to delay it [paying the zakat] until after it has become obligatory, if one is capable of paying it. If one does [delay it], and the property is ruined, the [responsibility of paying] zakat will not be revoked; however, if it is ruined before [the time of obligation], it will be revoked. [IV.7.1]

[IV.7.1] (A/SM): If one is unable to pay it, or has a legitimate need for that money, he may defer paying it. Also, if the zakatable property is loaned, missing, stolen, or unrightfully seized, zakat does not have to be paid on it (even if the person has other assets) until it is collected, at which point zakat must be paid for all past years, according to the madh-hab. Al-Buhooti explains: «فإمكان الأداء شرط لوجوب الإخراج لا لوجوب الزكاة» ("Ability to pay is a condition for the duty to disburse, not for zakat liability"). *Kash-shâf al-Qinâ'*. (See the section on the zakat of debts for a discussion of other positions.)

There are different types of retirement plans. When people contribute willingly to those plans, zakat is due annually on their zakatable funds, whether or not they can withdraw from them. Restrictions on withdrawal do not themselves remove this obligation. For restricted investment accounts, see IIFA 143 (1/16), section I(a); its section VI(d) treats employment savings separately, requiring account control and choice of investment for annual zakat. Employer contributions are included to the extent that they have vested and become the employee's property, even if withdrawal is postponed until employment ends. This concerns an owned account balance, rather than merely a promise of future pension payments. Unvested contributions are not zakatable, and no zakat is owed for the period before they vest. The usual conditions of niṣâb and ḥawl apply, while payment may be deferred for a valid excuse.

For retirement plans that charge penalties for early withdrawal: To calculate the zakat annually, find the amount that can be withdrawn, subtract all the penalties, and then estimate the zakat on this amount as is done for zakat of stocks. (See the Chapter on the Zakat of Merchandise.) If the zakat cannot be paid, it remains a debt and must be paid for all previous years when payment becomes possible.

For retirement plans that do not allow any withdrawal: When the money can be withdrawn, zakat must be paid for all past years on the voluntarily contributed funds and their zakatable returns. Each year's zakat is calculated separately on that year's zakatable amount.

Are zakat organizations allowed to invest some of the zakat funds for the benefit of deserving recipients?

This is a very controversial issue. The International Islamic Fiqh Academy (IIFA) allowed it after securing the immediate needs of the deserving recipients. The Islamic Fiqh Council of the Muslim World League prevented its investment and maintained the principle of transferring ownership to the deserving recipients as soon as logistically possible. The Second Symposium on Contemporary Issues of Zakat held in Kuwait, 11-1413, allowed it if done by a legitimate administration designated by the authorities, as long as stringent criteria are applied to ensure the wholesomeness and safety of the investments, and only after securing the immediate needs of the deserving recipients −but whenever further needs arise, assets must be liquidated to fulfill them.

It is permissible to pay [the zakat] early if the niṣâb is reached, but it is not permissible before that. [IV.7.2]	وَيَجُوْزُ تَعْجِيْلُهَا إِذَا كَمُلَ النِّصَابُ، وَلَا يَجُوْزُ قَبْلَ ذٰلِكَ.

[IV.7.2] They may give it up to two years in advance. (A/SM)

One who would like to give their zakat in the form of monthly installments to the poor may give them from advanced zakat.

Charity that was given during the previous 1-2 years may be considered zakat (and the amount can be subtracted from the zakat due) if it was given with the intention of advanced zakat.

If one pays it earlier than the due date to someone who is not eligible for it, it will not count, even if [that person] becomes a worthy recipient [of zakat] on the due date. If one pays it [early] to someone who deserves it, and then [that person] dies, no longer needs it, or becomes an apostate, it will count for him. However, if his property is ruined [after he paid the zakat], he cannot ask for it back from the person who received it.	وَإِنْ عَجَّلَهَا إِلَى غَيْرِ مُسْتَحِقِّهَا، لَمْ تُجْزِئْهُ، وَإِنْ صَارَ عِنْدَ الْوُجُوْبِ مِنْ أَهْلِهَا. وَإِنْ دَفَعَهَا إِلَى مُسْتَحِقِّهَا، فَمَاتَ أَوِ اسْتَغْنَى أَوِ ارْتَدَّ، أَجْزَأَتْ، وَإِنْ تَلِفَ الْمَالُ، لَمْ يَرْجِعْ عَلَى الآخِذِ.

It is not allowed to transport charity [zakat in this context] to a faraway place, where it becomes permissible to shorten the prayer, unless one does not find anyone [who deserves it] in his own area to take it. [IV.7.3]	وَلَا تُنْقَلُ الصَّدَقَةُ إِلَى بَلَدٍ تُقْصَرُ إِلَيْهِ الصَّلَاةُ إِلَّا أَنْ لَا يَجِدَ مَنْ يَأْخُذُهَا فِيْ بَلَدِهَا.

[IV.7.3] Because the Prophet (SA) said to Mu'âdh ibn Jabal (RA) when he sent him to Yemen:

«أعلِمهم أن الله افتَرَض عليهِم صَدَقة في أموالِهِم تُؤخَذُ مِن أغْنِيائِهِم فَتُرَدُّ على فُقَرائِهِم.»

"Inform them that Allah has enjoined upon them zakat on their wealth, to be taken from their rich and given to their poor." (Ag)

Those who disagree with this position may say that 'their' in the hadith refers to Muslims.

(A) + (+S): Sending zakat to a distant area is not permissible. It is also invalid according to (S) and according to 1 of the 2 reports in the madh-hab. (M): The general prohibition has an exception for greater need elsewhere, in which case most of the zakat may be transferred there.

(-H): It is disliked unless it is transferred to relatives or people with greater need (or greater benefit for the Ummah, like students of knowledge), in which case it is permissible. (-t) agreed with transferring it to relatives and people with greater needs.

All agreed that if the needs of one's locale are all met, it may be transferred, because Muslims are one Ummah, but all agreed on the priority of the local community. This is unlike imperial regimes that were always keen to collect money from the peripheries and transfer it to the center.

(A) + (+H, +S): The zakat is due in the region where the zakatable property is, regardless of the owner's place of residence. This is other than zakat al-fiṭr, which is binding in one's place of residence.

[IV.8] Chapter on Who May Receive Zakat

بَابُ مَنْ يَجُوْزُ دَفْعُ الزَّكَاةِ إِلَيْهِ

وَهُمْ ثَمَانِيَةُ أَصْنَافٍ:	They are eight (categories of people): [IV.8.1]

[IV.8.1] Allah (ST) says:

{إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ ۖ فَرِيضَةً مِّنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ حَكِيمٌ}

{Charity (here, meaning zakat) is only for the poor, and the needy, and those employed to collect (the funds), and to attract the hearts of those who have been inclined (towards Islam), and to free the captives, and for those in debt, and for Allah's cause (such as those fighting in the way of Allah), and for the wayfarer (a traveler who is cut off from everything); a duty imposed by Allah, and Allah is All-Knower, All-Wise.} (at-Tawbah 9:60)

الأَوَّلُ: الْفُقَرَاءُ، وَهُمُ: الَّذِيْنَ لَا يَجِدُوْنَ مَا يَقَعُ	The first type is the poor people. They are those who cannot afford even a substantial

part of what they need [whether] through earning or otherwise. The second type is the needy. They are those who can afford a substantial part of their needs but not all. [IV.8.2]	مَوْقِعًا مِنْ كِفَايَتِهِمْ بِكَسْبٍ وَلَا غَيْرِهِ. وَالثَّانِيْ: الْمَسَاكِيْنُ، وَهُمُ: الَّذِيْنَ يَجِدُوْنَ ذٰلِكَ، وَلَا يَجِدُوْنَ تَمَامَ الْكِفَايَةِ.

[IV.8.2] According to the majority, one may own more than the niṣâb of zakat and still be deserving of it. (A) + (+M, +S)

The third type is the zakat collectors. They are the people who collect it and those who are needed for that (in other words, all workers hired by the zakat administration). [IV.8.3]	الثَّالِثُ الْعَامِلُوْنَ عَلَيْهَا، وَهُمُ: السُّعَاةُ عَلَيْهَا، وَمَنْ يُحْتَاجُ إِلَيْهِ فِيْهَا.

[IV.8.3] Note: This includes the expenses of charitable organizations that collect the zakat.

The fourth type consists of those whose hearts may be reconciled. They are the authorities within their tribes, whose [conversion to] Islam is hoped for, and those whose evil may be evaded or faith may be strengthened by giving them zakat, or it is hoped that they will defend Muslims, or who may help them [Muslims] collect zakat from those who are withholding it. [IV.8.4]	وَالرَّابِعُ: الْمُؤَلَّفَةُ قُلُوْبُهُمْ، وَهُمُ: السَّادَةُ الْمُطَاعُوْنَ فِيْ عَشَائِرِهِمْ، الَّذِيْنَ يُرْجَى بِعَطِيَّتِهِمْ إِسْلَامُهُمْ، أَوْ دَفْعُ شَرِّهِمْ، أَوْ قُوَّةُ إِيْمَانِهِمْ، أَوْ دَفْعُهُمْ عَنِ الْمُسْلِمِيْنَ، أَوْ مَعُوْنَتُهُمْ عَلَى أَخْذِ الزَّكَاةِ مِمَّنْ يَمْتَنِعُ مِنْ دَفْعِهَا.

[IV.8.4] Note: This would include giving zakat money to political campaigns and campaigners if this is in the best interest of Muslims. It is essential that this is done by people who are trustworthy and well-informed in this arena, that it is done in moderation, and that the main and most important recipients of zakat – the poor and the needy – are not neglected. The decision to give to this category was left to the imam. Now, where

Muslims live as minorities, it may be delegated to the trustworthy organizations.

The fifth category is for freeing slaves: those contracted to purchase their freedom, and the purchase and emancipation of slaves.	الْخَامِسُ: الرِّقَابُ، وَهُمُ: الْمُكَاتَبُوْنَ، وَإِعْتَاقُ الرَّقِيْقِ.

The sixth type includes those in debt. They are the debtors who borrowed money for themselves to pay for permissible things, or to reconcile two Muslim parties.	السَّادِسُ: الْغَارِمُوْنَ، وَهُمُ: الْمَدِيْنُوْنَ لِإِصْلَاحِ نُفُوْسِهِمْ فِيْ مُبَاحٍ، أَوْ لِإِصْلَاحٍ بَيْنَ طَائِفَتَيْنِ مِنَ الْمُسْلِمِيْنَ.

The seventh type is in the cause of Allah (ST), and they are the fighters who have no allotted stipend from the public treasury. [IV.8.5]	السَّابِعُ: فِيْ سَبِيْلِ اللهِ، وَهُمُ: الْغُزَاةُ الَّذِيْنَ لَا دِيْوَانَ لَهُمْ.

[IV.8.5] Note: Many contemporary scholars argue that this would now include all means of da‘wah. This was the position of the Islamic Fiqh Council of the Muslim World League in its eighth conference, Makkah, 1405. Some scholars, such as Ibn Jibreen and Yoosuf al-Qaraḍâwi, go as far as allowing the building of masjids from the zakat money if there are not sufficient funds for this cause.

They agree that it is acceptable to give it to students of knowledge, to enable them to finish their pursuit of Islamic knowledge.

The eighth is the wayfarer. He is the traveler who lacks the means to return home, even if he was well-off in his homeland.	الثَّامِنُ: ابْنُ السَّبِيْلِ، وَهُوَ: الْمُسَافِرُ الْمُنْقَطِعُ بِهِ، وَإِنْ كَانَ ذَا يَسَارٍ فِيْ بَلَدِهِ.

Such are those who deserve to receive zakat, and it is not permissible to give it to others.	فَهَؤُلَاءِ هُم أَهْلُ الزَّكَاةِ، لا يَجُوزُ دَفْعُهَا إِلَى غَيْرِهِم.

It is permissible to pay it to only one of them, since the Prophet (SA) instructed Bani Zurayq to pay it to Salamah ibn Ṣakhr, and he said to Qabeeṣah, “Stay here, Qabeeṣah, until the charity (meaning zakat) comes to us, and then we will give it to you.” [IV.8.6]	وَيَجُوْزُ دَفْعُهَا إِلَى وَاحِدٍ مِنْهُم، لأَنَّ النَّبِيَّ ﷺ أَمَرَ بَنِيْ زُرَيْقٍ بِدَفْعِ صَدَقَتِهِمْ إِلَى سَلَمَةَ بْنِ صَخْرٍ، وَقَالَ لِقَبِيْصَةَ: «أَقِمْ يَا قَبِيْصَةُ حَتَّى تَأْتِيَنَا الصَّدَقَةُ، فَنَأْمُرَ لَكَ بِهَا.»

[IV.8.6] (D: Auth)

It is still preferable in the madh-hab to give to all categories or as many as possible. (A/SM)

Only (-S) considered it mandatory to divide it among the 8 categories when they are present.

The poor and needy are to be given what is sufficient for their needs, [IV.8.7] and the worker is to be given fair recompense for his work, and the one whose heart is to be reconciled is to be given what will reconcile him, and the contracted slave and the debtor are to be given what they need to pay off what is due on them, and the fighter is to be given what he needs for fighting, and the wayfarer is to be given enough to enable him to return to his homeland. None of them may be given more than that. [IV.8.8]	وَيُدْفَعُ إِلَى الْفَقِيْرِ، وَالْمِسْكِيْنِ مَا تَتِمُّ بِهِ كِفَايَتُهُ، وَإِلَى الْعَامِلِ قَدْرُ عُمَالَتِهِ، وَإِلَى الْمُؤَلَّفِ مَا يَحْصُلُ بِهِ تَأْلِيْفُهُ، وَإِلَى الْمُكَاتَبِ وَالْغَارِمِ مَا يَقْضِيْ بِهِ دَيْنَهُ، وَإِلَى الْغَازِيْ مَا يَحْتَاجُ إِلَيْهِ لِغَزْوِهِ، وَإِلَى ابْنِ سَبِيْلٍ مَا يُوْصِلُهُ إِلَى بَلَدِهِ، وَلَا يُزَادُ أَحَدٌ مِنْهُمْ عَلَى ذٰلِكَ.

[IV.8.7] (A) + (+M): Their needs for up to one year.

(-S): Their needs for life.

(-H): It is disliked to give enough to bring the recipient's surplus wealth to the niṣâb, unless debts or dependents justify the amount; the payment nevertheless counts.

[IV.8.8] (A/SM): The poor, the needy, those employed to collect (the funds), and those whose hearts are to be reconciled may keep any surplus after their needs are met. The other four types may only use the zakat for the purpose that made them eligible, such as earning their freedom, paying off their debt, supporting their military expedition, or covering their travel expenses until their return to their homeland. This is because it is understood, from the language of the verse that mentioned the eight types, that the money is transferred to the ownership of the first 4, while it is spent to support a particular cause for the second 4.

Five [types] of them do not take anything except in the case of need. They are: the poor, the needy, the contracted slave, the debtor (for himself), and the wayfarer. [IV.8.9] For four [types] of them, it is permissible to give them from the zakat even if they are well-off. They are the zakat collector, the one to be reconciled, the fighter, and the debtor who incurred debt to reconcile disputants.	وَخَمْسَةٌ مِنْهُمْ لَا يَأْخُذُوْنَ إِلَّا مَعَ الْحَاجَةِ، وَهُمُ: الْفَقِيْرُ، وَالْمِسْكِيْنُ، وَالْمُكَاتَبُ، وَالْغَارِمُ لِنَفْسِهِ، وَابْنُ سَبِيْلٍ. وَأَرْبَعَةٌ يَجُوْزُ الدَّفْعُ إِلَيْهِمْ مَعَ الْغِنَى، وَهُمُ: الْعَامِلُ، وَالْمُؤَلَّفُ، وَالْغَازِيْ، وَالْغَارِمُ لِإِصْلَاحِ ذَاتِ الْبَيْنِ.

[IV.8.9] This depends on whether they have money accessible to them; they are still deserving if they have assets in their homeland that they cannot access. This scenario used to be more common in the past.

[IV.9] Chapter on Those Who May Not Be Given Zakat

بَابُ مَنْ لَا يَجُوْزُ دَفْعُ الزَّكَاةِ إِلَيْهِ

لَا تَحِلُّ الصَّدَقَةُ لِغَنِيٍّ، وَلَا لِقَوِيٍّ مُكْتَسِبٍ.	It is not permissible for charity (here, meaning zakat) to be given to someone who is wealthy, or strong and capable of earning. [IV.9.1]

[IV.9.1] Because of what was reported in the following hadith:

عن عبيد الله بن عدي قال: أخبرني رجلان أنهما أتيا النبي ﷺ في حجة الوداع وهو يقسم الصدقة فسألاه منها فرفع فيهما البصر وخفضه فرآنا جلدين فقال: «إن شِئتُما أعطَيتُكُما ولا حَظَّ فيها لغَنِيٍّ ولا لِقَوِيٍّ مُكتَسِب.»

Two men told me that they went to the Prophet (SA) during the Farewell Pilgrimage, while he was distributing the zakat, and they asked him for some of it. He looked them up and down and saw that they were strong and able-bodied. He said to them, "If you wish, I will give you some, but those who are rich, or strong and able to earn, have no share in it." (D – from 'Ubaydullâh ibn 'Adiy; Nawawi: S)

(A/SM): If someone claims to be poor and was not previously known to be rich, they should be given zakat even if they are strong and capable, because it is possible that they could not secure a job. They must first be reminded of the ruling, as the Prophet (SA) did. If they were previously known to be rich, they must prove their poverty. The Prophet (SA) also said:

"… He who takes it without it being his right is like one who eats but does not get satiated, and it will stand witness against him on the Day of Judgment." (Ag – from Abu Sa'eed al-Khudri)

«... وَإِنَّهُ مَنْ يَأْخُذُهُ بِغَيْرِ حَقِّهِ كَانَ كَالَّذِي يَأْكُلُ وَلَا يَشْبَعُ وَيَكُونُ عَلَيْهِ شَهِيدًا يَوْمَ الْقِيَامَةِ »

This would apply to people who lie to the authorities about their financial status to obtain benefits they are not entitled to.

It is also not permissible for the household of Muhammad (SA), which is Banu Hâshim and their freed slaves. [IV.9.2]	وَلَا تَحِلُّ لآلِ مُحَمَّدٍ ﷺ، وَهُمْ: بَنُوْ هَاشِمٍ وَمَوَالِيْهِمْ.

[IV.9.2] The Prophet (SA) said:

«إِنَّ الصَّدَقَةَ لَا تَحِلُّ لَنَا، وَإِنَّ مَوْلَى الْقَوْمِ مِنْهُم.»

"Charity is not permissible for us, and the freed slave of a people is one of them." (T – from Abu Râfi'; T: S)

It is not permissible to pay it to one's parents and their forebears, one's children and their progeny, or those whom one is required to support. [IV.9.3]	وَلَا يَجُوْزُ دَفْعُهَا إِلَى الْوَالِدَيْنِ، وَإِنْ عَلَوْا، وَلَا إِلَى الْوَلَدِ وَإِنْ سَفَلَ، وَلَا مَنْ تَلْزَمُهُ مُؤْنَتُهُ.

[IV.9.3] If he is required to spend on them, then giving them from his zakat for their poverty is generally unacceptable, according to (A). See the chapter on the Maintenance of the Relatives and Slaves in Volume 2.

And it is not permissible to the unbelievers. [IV.9.4]	وَلَا إِلَى كَافِرٍ.

[IV.9.4] This is true unless they are in the category of those whose hearts are to be reconciled.

That is the correct position in the madh-hab (+M).

(-H): This category of people (those whose hearts are to be reconciled) does not exist anymore.

(-S): It is only given to Muslims.

As for other unbelievers, the consensus was reported that they are not eligible for zakat. While warring unbelievers should certainly not be given of the zakat, that consensus was contested. It is still the position of the

vast majority, including the four schools. The wisdom in this is that while voluntary charity may be given to them, the obligatory zakat was meant to be an internal system of support among the believers; those who are required to give it when they are rich are the ones entitled to take it when they are poor.

Voluntary charity may be given to such people and to others. [IV.9.5]	فَأَمَّا صَدَقَةُ التَّطَوُّعِ، فَيَجُوْزُ دَفْعُهَا إِلَى هَؤُلَاءِ، وَإِلَى غَيْرِهِمْ.

[IV.9.5] When the Prophet (SA) was asked if there is a reward for serving animals, he said:

«فِي كُلِّ كَبِدٍ رَطْبَةٍ أَجْرٌ»

"Yes, there is a reward for service to every living creature." (Ag – from Abu Hurayrah)

It is only permissible to pay zakat with an intention, unless the (imam) ruler takes it by force. [IV.9.6]	وَلَا يَجُوْزُ دَفْعُ الزَّكَاةِ إِلَّا بِنِيَّةٍ، إِلَّا أَنْ يَأْخُذَهَا الإِمَامُ مِنْهُ قَهْرًا.

[IV.9.6] Therefore, what one gives as random charity may not be later deducted from the zakat unless it was intended to be of the advanced zakat.

If he pays the zakat to someone who does not deserve it, it is not valid except in the case that it was paid to someone who was well-off, but whom he [the donor] thought was poor. [IV.9.7]	وَإِذَا دَفَعَ الزَّكَاةَ إِلَى غَيْرِ مُسْتَحِقِّهَا، لَمْ تُجْزِهِ، إِلَّا الْغَنِيَّ إِذَا ظَنَّهُ فَقِيْرًا.

[IV.9.7] Because it is very possible to be mistaken about someone's financial status, unlike their pedigree or faith.

[V] The Book of Fasting

كِتَابُ الصِّيَامِ

يَجِبُ صِيَامُ رَمَضَانَ عَلَى كُلِّ مُسْلِمٍ بَالِغٍ عَاقِلٍ قَادِرٍ عَلَى الصَّوْمِ.	Fasting in Ramadan [V.0.1] is mandatory for every sane adult Muslim who is capable of fasting. [V.0.2]

[V.0.1] The Wisdom behind Fasting

Entire books can be written about the wisdom of fasting, but some of the most important points include:

- Demonstration of submission to the will of Allah (ST), and an exercise in devotion, where the servant reinforces in his heart that Allah (ST) comes first and that His pleasure should be the ultimate objective before any desire. This is the greatest wisdom behind all acts of worship.

- Allowing oneself to bring into balance the physical and spiritual sides since, during most of the year, most people are too busy satisfying their carnal desires. Through fasting, they can allow their souls to rise to greater heights of piety, devotion, self-denial, perseverance and asceticism.

- Fasting is a great exercise of self-restraint and perseverance, qualities that are essential for the spiritual and moral development of the believers and the refinement of their character.

- Fasting allows the affluent to experience hunger and thirst, and consequently to sympathize with those who are forced, on most days, to live that experience.

Fasting may have health benefits and help some people lose excess weight.

[V.0.2] Allah (ST) says:

{شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ وَالْفُرْقَانِ ۚ فَمَن شَهِدَ مِنكُمُ الشَّهْرَ فَلْيَصُمْهُ ۖ وَمَن كَانَ مَرِيضًا أَوْ عَلَىٰ سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ}

{The month of Ramadan is that in which the Qur'an was revealed, a guidance for the people and clear proofs of guidance and criterion. So whoever sights [the new moon of] the month, let him fast it; and whoever is sick or on a journey, then (he shall fast) a (like) number of other days…} (al-Baqarah 2:185)

The Prophet (SA) counted fasting Ramadan as one of the five pillars in the famous hadith of Jibreel (AS).

A child should be ordered to fast when he can tolerate it. [V.0.3]	وَيُؤْمَرُ بِهِ الصَّبِيُّ إِذَا أَطَاقَهُ.

[V.0.3] Fasting for Children

It is not mandatory for them. The Prophet (SA) said:

«رُفِعَ القَلَمُ عَنْ ثَلَاثَةٍ: عَنِ المَجْنُونِ المَغْلُوبِ عَلَى عَقْلِهِ حَتَّى يُفِيقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقَظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ.»

"The pen has been lifted for three (they are not held accountable): one who has lost his mind, until he regains his sanity; one who is asleep, until he wakes up; and a child, until he reaches puberty." (D – from 'Ali; Nawawi: S)

However, it is important to get them used to fasting so that it will not be hard on them when they must fast. Ar-Rubayi' bint Mu'awwidh said:

«فَكُنَّا نَصُومُهُ بَعْدُ وَنُصَوِّمُ صِبْيَانَنَا وَنَجْعَلُ لَهُمُ اللُّعْبَةَ مِنَ الْعِهْنِ فَإِذَا بَكَى أَحَدُهُمْ عَلَى الطَّعَامِ أَعْطَيْنَاهُ ذَاكَ حَتَّى يَكُونَ عِنْدَ الْإِفْطَارِ.»

"…So we would fast it afterwards and make our children fast and make stuffed toys of wool for them, so if they cried we would give the toys to them until it was time to break the fast." (B)

[Determining the Beginning of Ramadan]

Fasting becomes mandatory when one of these three things occurs: the completion of thirty days of [the Islamic month of] Sha‘bân, the sighting of the crescent moon of Ramadan, or the presence of clouds on the night of the thirtieth of Sha‘bân that prevents its sighting. [V.0.4]	وَيَجِبُ بِأَحَدِ ثَلَاثَةِ أَشْيَاءَ: كَمَالِ شَعْبَانَ، وَرُؤْيَةِ هِلَالِ رَمَضَانَ، وَوُجُوْدِ غَيْمٍ أَوْ قَتَرٍ لَيْلَةَ الثَّلَاثِيْنَ يَحُوْلُ دُوْنَهُ.

[V.0.4] The Day of Doubt

(a) + (-H, -M, -S): One should not fast as Ramadan on the day of doubt when the sky is cloudy on the eve of the 30th of Sha‘bân (meaning the night of the 29th, after maghrib). This is due to the statement of ‘Ammâr ibn Yâsir:

«مَن صَام اليوم الذي شَكَّ فيه فقد عَصَى أبا القاسِم.»

“He who fasts the day of doubt has disobeyed Abul-Qâsim [‘the father of al-Qâsim’, meaning the Prophet (SA)].” (T; T: S)

The majority’s position was chosen by many contemporary Ḥanbalis because of the hadith above. The reason Imam Aḥmad chose to fast that day was to respect the sanctity of Ramadan. There are also reports from some Companions who favored fasting it, while others disliked it. There is also a hadith in which the Prophet (SA) said:

«فإن غُمَّ عليكم فاقدُرُوا لَه.»

“If there are clouds obstructing your view, (uqduroo) for it.” (B – from Ibn ‘Umar)

The word uqduroo can mean ‘estimate,’ which is the meaning used by the advocates of calculations to determine when Ramadan begins and ends. It can also mean ‘limit it,’ which would mean limiting Sha‘bân to 29 days in favor of Ramadan (in other words, not losing any of its days) which Imam Aḥmad argued was the understanding of Ibn ‘Umar himself, the

narrator of the hadith, who used to fast the day of doubt. The correct understanding of the word, according to the majority, was mentioned by the Prophet (SA) himself when he said:

«فاقدُرُوا لَه ثلاثين.»

"Consider Sha'bân to be 30 days." (M)

If one Muslim alone sees the crescent, he should fast. [V.0.5]	وَإِذَا رَأَى الْهِلَالَ وَحْدَهُ، صَامَ.

[V.0.5] One Who Is Alone in Seeing the Crescent Moon, and Is Not Followed by the Rest

There are 3 different opinions regarding what happens when only 1 person reports seeing the crescent moon and his testimony is not accepted by the rest:

(A) + (+H, +M): He should fast (marking the beginning of Ramadan) upon his sighting, but to be on the safe side, he may not break the fast (marking the end of Ramadan) on his lone sighting.

(-S): He should fast and (privately) break his fast (at the end of Ramadan) based on his sighting.

(a, -t): He may not do either; he should fast with the group because the Prophet (SA) said:

«صَومُكم يَومَ تَصُومُون، وفِطرُكم يَومَ تُفطِرون، وأضحاكم يَومَ تُضَحُّون.»

"Your fasting is when you all fast, and the day of breaking your fast is when you all break it, and Eid al-Aḍḥâ is when you all celebrate Eid al-Aḍḥâ." (T – from Abu Hurayrah; T: R)

If he is trustworthy, people [V.0.6] should fast based on his statement. [V.0.7]	فَإِنْ كَانَ عَدْلاً، صَامَ النَّاسُ بِقَوْلِهِ.

[V.0.6] Multiplicity of Sighting Zones

While all scholars recognize the astronomical multiplicity of sighting zones, they differed on the legal consequentiality of that.

The position in the madh-hab (A) + (+H, +m, +s) is to disregard the multiplicity of sighting zones and accept the testimony of Muslims from any locality. 'People' in the matn above, then, means all Muslims who come to know of the sighting. They argued that the Prophet (SA) addressed all Muslims when he said, "Fast when you sight the crescent."

(a) + (-h, -S): Every locality has its own sighting. They argued that Muslim reported from Kurayb that he said: …I was in Syria when the month of Ramadan started. I saw the new crescent (of Ramadan) on the night of Friday. When I came back to Madinah at the end of the month, 'Abdullâh ibn 'Abbâs (RAHUMA) asked me (about the new crescent) and said, "When did you see it?" I said, "We saw it on the night of Friday." He said, "You saw it yourself?" I said, "Yes, and the people also saw it, and they and Mu'âwiyah fasted." He said, "But we saw it on Saturday night, so we will continue to fast until we complete 30 (days of fasting) or we see it (the new crescent of Shawwâl)." I asked, "Is the sighting of the moon by Mu'âwiyah not sufficient for you?" He said, "No; thus commanded us the Messenger of Allah (SA).

This report may, however, be understood to apply to people who were not able to hear of the sighting at the other locality at the beginning of the month.

(-M): A multiplicity of sightings is only consequential when the localities are extremely far from each other.

This matter requires collective ijtihâd. Meanwhile, people in every masjid/community should follow those in charge in their masjid.

[V.0.7] How Many Witnesses Establish the Beginning of Ramadan?

(A) + (+S): One is sufficient. (A): For the beginning of Ramadan, one woman is sufficient. (+H): One is sufficient when it is cloudy; otherwise, (-H) requires the sighting by *al-jamm al-ghafeer* (a large group whose report establishes strong probability).

(-M): The testimony of two is required.

(A) argued that the Prophet (SA) accepted the testimony of 'Abdullâh ibn 'Umar (RAHUMA) when he alone reported seeing the

crescent moon at the beginning of Ramadan. (D; Nawawi: S) He also accepted that from a single Bedouin man. (D, T; with a controversial chain)

(A/SM): This ruling applies to the beginning of Ramadan only. For the end of Ramadan, or the beginning of any other month, the testimony of two men is required.

They should not break the fast [at the end of Ramadan] unless it is based on the testimony of two trustworthy individuals. [V.0.8] He should not break the fast based on sighting it [the crescent] by himself.	وَلَا يُفْطِرُ إِلَّا بِشَهَادَةِ عَدْلَيْنِ، وَلَا يُفْطِرُ إِذَا رَآهُ وَحْدَهُ.

[V.0.8] How Many Witnesses Establish the Ending of Ramadan?

For the end of Ramadan, (A) + (+H, +M, +S) accepted the testimony of two witnesses. (H) accepted it only if there are clouds, requiring the testimony of al-jamm al-ghafeer if there are no clouds. (M) allowed either the testimony of two trustworthy witnesses or al-jamm al-ghafeer, without verifying the status of each witness.

The requirement of two witnesses here is because the Prophet (SA) said:

«فإن شَهِد شاهدان فَصُوموا وأفطِروا.»

"...And if two witnesses testify [to seeing the crescent], then fast and break your fast." (N; al-Albâni: S)

That would apply to both the beginning and end of Ramadan, except that the above hadiths indicate that one witness is sufficient for the beginning.

If they fasted [started the month of Ramadan] – based on the testimony of two – for thirty days, then they should break their	وَإِنْ صَامُوْا بِشَهَادَةِ اثْنَيْنِ ثَلَاثِيْنَ يَوْمًا، أَفْطَرُوْا، وَإِنْ كَانَ

fast. If they did [started the month of Ramadan] in the presence of the fogging by clouds or based on the statement of one individual, then they should not break their fast until they either see it or complete the [full] period. [V.0.9]	بِغَيْمٍ، أَوْ قَوْلِ وَاحِدٍ، لَمْ يُفْطِرُوْا، إِلَّا أَنْ يَرَوْهُ، أَوْ يُكْمِلُوْا الْعِدَّةَ.

[V.0.9] Can Ramadan Be 31 days?

What Imam Ibn Qudâmah means here is that if they started the month based on the testimony of two people, then they should break their fast after 30 days of Ramadan, whether or not they see the crescent of Shawwâl. However, if they based the beginning of Ramadan on the testimony of only 1 individual, or if they fasted on the day of doubt (because of clouds), then they should continue to fast until they see the crescent or until they complete 60 days from the beginning of Sha‘bân.

Ibn Qudâmah indicated in *al-Mughni* that there is another opinion in the Ḥanbali madh-hab, which supports breaking the fast after 30 days of fasting, even without seeing the crescent, if they started the month based on the testimony of a single witness – but certainly not if they started on the day of doubt. (a) + (-H, -S)

If a captive is confused regarding the months, he should do his best to figure it out and fast. If his fasting coincided with Ramadan or a period after it, it would count; if it coincided with a period before Ramadan, it would not. [V.0.10]	وَإِذَا اشْتَبَهَتِ الأَشْهُرُ عَلَى الأَسِيْرِ، تَحَرَّى، وَصَامَ، فَإِنْ وَافَقَ الشَّهْرَ أَوْ مَا بَعْدَهُ، أَجْزَأَهُ، وَإِنْ وَافَقَ مَا قَبْلَهُ، لَمْ يُجْزِهِ.

[V.0.10] If only part of his fasting coincides with Ramadan, the days that fall within Ramadan, or on later days when such fasting is valid, count; those before Ramadan do not. While this is the position of the vast majority, Imam Ibn Qudâmah (may Allah bestow mercy on him) indicated in *al-Mughni* that some Shâfi‘is consider fasting before the month began as valid, as long as the person does his best to seek the month of Ramadan.

[V.1] Chapter on the Rulings on Those Exempt from Fasting

بَابُ أَحْكَامِ الْمُفْطِرِيْنَ فِيْ رَمَضَانَ

Breaking the fast in Ramadan is permissible for four types of people:	وَيُبَاحُ الْفِطْرُ فِيْ رَمَضَانَ لِأَرْبَعَةِ أَقْسَامٍ:
1) An **ill person** who would be harmed by fasting and the **traveler** who is permitted to shorten the prayer. For them, breaking the fast is preferable, and they should make up [for the number of days they did not fast], but if they fast, it will be valid. [V.1.1]	أَحَدُهَا: الْمَرِيْضُ الَّذِيْ يَتَضَرَّرُ بِهِ، وَالْمُسَافِرُ الَّذِيْ لَهُ الْقَصْرُ، فَالْفِطْرُ لَهُمَا أَفْضَلُ، وَعَلَيْهِمَا الْقَضَاءُ، وَإِنْ صَامَا، أَجْزَأَهُمَا.

[V.1.1] Ill and Traveler

(A): Fasting is makrooh for the sick because of the potential harm, and for the traveler because the Prophet (SA) said:

» لَيْسَ مِنَ الْبِرِّ الصَّوْمُ فِي السَّفَرِ«

"It is not righteousness that you fast while traveling."

He (SA) said that upon seeing a crowd of people who were providing shade to a man because he was fasting. (B – from Jâbir)

(a/Furoo'): It is not disliked for those who are not harmed by fasting while traveling.

The latter position is supported by this hadith:

«كنا نَغْزُو مع رسول اللَّهِ ﷺ في رَمَضَانَ فَمِنَّا الصَّائِمُ وَمِنَّا الْمُفْطِرُ فلا يَجِدُ الصَّائِمُ على الْمُفْطِرِ ولا الْمُفْطِرُ على الصَّائِمِ. يَرَوْنَ أَنَّ من وَجَدَ قُوَّةً فَصَامَ فإن ذلك حَسَنٌ وَيَرَوْنَ أَنَّ من وَجَدَ ضَعْفًا فَأَفْطَرَ فإن ذلك حَسَنٌ» .

"We used to go to battles with the Messenger of Allah (SA) during Ramadan, and some of us would be fasting and some would not. The ones who fasted and the ones who broke their fast did not condemn one another. They [the Companions] used to think it was better for one who finds sufficient strength in himself to fast, and it was better for one who feels weak to break the fast." (M – from Abu Sa'eed al-Khudri)

This may be even more relevant in our times when traveling is much easier.

2) A **menstruating woman** and one having postpartum bleeding. They break their fast and make up for [those days], and if they fast, it will not be valid. [V.1.2]	الثَّانِيْ: الْحَائِضُ وَالنُّفَسَاءُ، تُفْطِرَانِ وَتَقْضِيَانِ، وَإِنْ صامتا لم يُجْزِئْهُمَا.

[V.1.2] This is all by consensus.

3) A **pregnant woman** and one who is **breastfeeding**. If they fear for themselves, they break their fast and make up for it. If they fear for their children, they break their fast, [V.1.3] make up for it, and feed one poor individual per day. If they fast, it will be valid. [V.1.4] [V.1.5]	الثَّالِثُ: الْحَامِلُ وَالْمُرْضِعُ، إِذَا خَافَتَا عَلَى أَنْفُسِهِمَا، أَفْطَرَتَا، وَقَضَتَا، وَإِنْ خَافَتَا عَلَى وَلَدَيْهِمَا، أَفْطَرَتَا وَقَضَتَا، وَأَطْعَمَتَا عَنِ كُلِّ يَوْمٍ مِسْكِيْنًا. وَإِنْ صَامَتَا، أَجْزَأَهُمَا.

[V.1.3] Their fasting would be makrooh (disliked) according to (A/SM).

[V.1.4] The expiation is binding on the father of the child or the one responsible for the child's maintenance. (A/SM) It is one mudd of wheat, which is the fill of two hands or 1/4 of a ṣâ' (slightly more than 500g) or 1/2 of a ṣâ' (slightly more than 1000g) of any other food, such as dates or barley. (A/SM)

(a/Furoo‘): Feeding the poor a meal that would be equal to or more than that would be sufficient.

[V.1.5] Pregnant and Nursing Women: Do They Need to Make up Missed Fasts?

(A) + (+H, +M, +S): If she breaks her fast out of fear for herself, she makes up for it only.

(A) + (+S): If she breaks her fast out of fear for her child only, she makes up for it and also feeds one poor individual for each day she did not fast.

(-H): Making up the fast is required, but feeding a poor person is only recommended.

(-M): Making up the fast is required, but feeding a poor person is only demanded from the breastfeeding woman.

According to Ibn ‘Abbâs (RAHUMA), in all cases, the pregnant or nursing woman only needs to feed one person for each day of Ramadan that she did not fast, and she does not have to make up for those days. (al-Bazzâr – from Ibn ‘Abbâs. ad-Dâraquṭni: S)

«وكان ابن عباس يقول لأم ولد له حُبلى أنت بمَنزِلة الذي لا يُطيقه فعليك الفِداء ولا قَضاء عليك.»

This is also the position of Ibn ‘Umar, as ad-Dâraquṭni authentically reported from him.

This latter position is kinder to women who may be nursing or pregnant for many consecutive years, making it difficult for them to make up the fasts. (Refer to the appendix on the agreement of the four madh-habs.)

The fourth type is the person who is incapable of fasting because of **old age** or an **incurable disease**. In this case, he should feed one poor individual per day. [V.1.6]	الرَّابِعُ: الْعَاجِزُ عَنِ الصَّوْمِ، لِكِبَرٍ، أَوْ مَرَضٍ لَا يُرْجَى بُرْؤُهُ، فَإِنَّهُ يُطْعِمُ لِكُلِّ يَوْمٍ مِسْكِيْنًا.

[V.1.6] Old Age and Incurable Disease

Ibn ‘Abbâs (RAHUMA) recited the following verse:

{وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامُ مِسْكِينٍ}

{…And for those who can fast [but do not], there is a ransom: the feeding of a person in need.} (al-Baqarah 2:184)

Then he said, “It has not been abrogated. This ruling applies to elderly men and women who are not able to fast. Instead, they must feed one poor person for each day they do not fast.” (B)

This ruling applied to everyone in the beginning, but was then retained for those unable to fast because of old age or an illness with no expected recovery. Those who break their fast out of necessity because of strenuous work must make up the missed days. (A/SM)

[Make Up and Expiation]

As for the rest of those who break their fast, they should only make up [those days], [V.1.7] except for someone who breaks his fast by having intercourse. In this case, he must make it up and free a slave. If he cannot do that, he should fast two consecutive months; if he cannot, he should feed sixty poor individuals; and if he cannot, then the burden is lifted from him. [V.1.8]	وَعَلَى سَائِرِ مَنْ أَفْطَرَ الْقَضَاءُ لَا غَيْرُ إِلَّا مَنْ أَفْطَرَ بِجِمَاعٍ فِي الْفَرْجِ، فَإِنَّهُ يَقْضِيْ، وَيُعْتِقُ رَقَبَةً، فَإِنْ لَمْ يَجِدْ، فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، فَإِنْ لَمْ يَسْتَطِعْ، فَإِطْعَامُ سِتِّيْنَ مِسْكِيْنًا، فَإِنْ لَمْ يَجِدْ، سَقَطَتْ عَنْهُ.

[V.1.7] This is in general. In some cases, as he will explain, (A) requires expiation in addition to making up for it.

[V.1.8] These alternatives are to be taken in the order shown, based on the following report:

عن أبي هُرَيْرَةَ رضي الله عنه قال: أتى النبي ﷺ رَجُلٌ فقال هَلَكْتُ. قال: «وَلِمَ؟» قال: وَقَعْتُ على أَهْلِي في رَمَضَانَ. قال: «فَأَعْتِقْ رَقَبَةً.» قال: ليس عِنْدِي. قال: «فَصُمْ شَهْرَيْنِ مُتَتَابِعَيْنِ.»قال: لَا أَسْتَطِيعُ. قال: «فَأَطْعِمْ سِتِّينَ مِسْكِينًا.» قال: لَا أَجِدُ. فَأُتِيَ النبي ﷺ بِعَرَقٍ فيه تَمْرٌ، فقال:«أَيْنَ السَّائِلُ؟»قال: هَا أنا ذَا. قال: «تَصَدَّقْ بهذا.» قال: على أَحْوَجَ مِنَّا يا رَسُولَ اللَّهِ! فَوَالَّذِي بَعَثَكَ بِالْحَقِّ ما بين لَابَتَيْهَا أَهْلُ بَيْتٍ أَحْوَجُ مِنَّا. فَضَحِكَ النبي ﷺ حتى بَدَتْ أَنْيَابُهُ، قال:«فَأَنْتُمْ إِذًا.»

"A man came to the Prophet (SA) and said, 'I am doomed.' The Prophet (SA) asked why. He said, 'I had intercourse with my wife in Ramadan.' The Prophet (SA) said, 'Free a slave.' He said, 'I cannot afford it.' The Prophet (SA) then said, 'Fast for two consecutive months.' He said, 'I cannot.' The Prophet (SA) said, 'Feed sixty poor persons.' He said, 'I cannot afford it.' Then a large container of dates was brought to the Prophet (SA), and he said, 'Where is the one who was asking?' He answered, 'Here I am.' The Prophet (SA) said, 'Take these and give them in charity.' The man said, 'Is there anyone needier than us, O Messenger of Allah? I swear by Him Who sent you with the truth, there is no household between the two lava hills (in Madinah) that is needier than my household.' The Messenger of Allah (SA) smiled until his canine teeth were visible, and then he said, 'Then it is for you.'" (Ag – from Abu Hurayrah)

May Allah's (ST) blessings be on the Prophet of mercy (SA).

If he had intercourse and did not expiate it before he had intercourse again, then only one expiation is due on him. [V.1.9] If he expiated it and had intercourse a second time, then a second expiation is mandatory on him.	فَإِنْ جَامَعَ وَلَمْ يُكَفِّرْ حَتَّى جَامَعَ ثَانِيَةً، فَكَفَّارَةٌ وَاحِدَةٌ. وَإِنْ كَفَّرَ، ثُمَّ جَامَعَ، فَكَفَّارَةٌ ثَانِيَةٌ.

Anyone who is required to abstain [from the nullifiers of fasting] in Ramadan, [V.1.10] and has intercourse, should expiate.	وَكُلُّ مَنْ لَزِمَهُ الإِمْسَاكُ فِيْ رَمَضَانَ، فَجَامَعَ، فَعَلَيْهِ كَفَّارَةٌ.

[V.1.9] This is only if he has intercourse twice in the same day. If he has intercourse on two different days, he is liable for two expiations, whether or not he has expiated for the first day. (A/SM)

[V.1.10] Even if the day will not count, as for those who are traveling and arrive home before maghrib, a sick person who gets better, or menstruating women whose period ends during the day, they should still abstain from the nullifiers of fasting −eating, drinking, and sex −out of respect. This is the correct position for (A) + (+H), yet there is another strong position (a) + (-M, -S) that they do not have to abstain from the nullifiers, but that if they do eat or drink, they should refrain from doing so in public, in order to show respect for Ramadan. This also applies to a child who reaches puberty during the day, a person who accepts Islam, and an insane person who recovers.

If one delays making up the days until the next Ramadan comes, and he has an excuse, then nothing is required of him except making them up. If he procrastinated without an excuse, then he should make up the missed days and feed one poor individual for each day. [V.1.11]	وَمَنْ أَخَّرَ الْقَضَاءَ؛ لِعُذْرٍ حَتَّى أَدْرَكَهُ رَمَضَانُ آخَرُ، فَلَيْسَ عَلَيْهِ غَيْرُهُ، وَإِنْ فَرَّطَ، أَطْعَمَ مَعَ الْقَضَاءِ لِكُلِّ يَوْمٍ مِسْكِيْنًا.

[V.1.11] This is the fatwa of Ibn ‘Abbâs, Abu Hurayrah, and Ibn ‘Umar (RAHUM), as reported by ad-Dâraquṭni and ‘Abdur-Razzâq. It is the position of (A) + (+M, +S).

(a) + (-H): He only needs to make up for the missed days.

If he deferred making it up **(for a valid excuse)** until he died, then there is nothing required of him. [V.1.12] If it was without an excuse, then one poor individual should be fed per day on his behalf – unless the obligatory fasting was because of a vow, in which case someone should fast on his behalf. Likewise is the ruling for [making up on someone's behalf] every vow to do a righteous deed. [V.1.13]	وَإِنْ تَرَكَ الْقَضَاءَ حَتَّى مَاتَ لِعُذْرٍ، فَلَا شَيْءَ عَلَيْهِ. وَإِنْ كَانَ لِغَيْرِ عُذْرٍ، أُطْعِمَ عَنْهُ لِكُلِّ يَوْمٍ مِسْكِيْنٌ، إِلَّا أَنْ يَكُوْنَ الصَّوْمُ مَنْذُوْرًا، فَإِنَّهُ يُصَامُ عَنْهُ، وَكَذٰلِكَ كُلُّ نَذْرِ طَاعَةٍ.

[V.1.12] This is the position of (A) + (+H, +M, +S).

[V.1.13] Fasting on Behalf of the Deceased

(A) + (+H, +M, +s): The obligatory fasting of Ramadan is like the obligatory prayer; it cannot be done on behalf of someone else. This is because of reports from Ibn ‘Umar and Ibn ‘Abbâs in which they said, “No one may pray on behalf of someone else, and no one may fast on behalf of someone else.”

(S, Abu Thawr, and some contemporary scholars) argue that it is recommended (Z: wâjib) for the responsible heir of the deceased to fast on his or her behalf, whether it is the fast of Ramadan or a vowed fast, because it is owed to Allah the Almighty, and because of the generality of the following hadith:

«من مَاتَ وعلَيهِ صِيَام صَامَ عَنهُ وَليُّه.»

“Whoever dies while owing some fasting (to Allah), let his responsible heir fast on his behalf.” (Ag – from ‘Â’ishah)

(A): It is recommended for the responsible heir(s) to make up only the vowed fasts on behalf of the deceased. To reconcile the reports, they qualified the general reports with those in which the Prophet (SA) permitted the make-up of vowed fasts. As for voluntary fasting on behalf of the deceased, this is prescribed according to (A).

[V.2] Chapter on the Things That Invalidate Fasting

بَابُ مَا يُفْسِدُ الصَّوْمَ

Whoever: 1. Eats or drinks, 2. Takes anything into his throat through his nostrils, 3. Takes anything into his bodily cavity through any other route, 4. Intentionally vomits, 5. Masturbates, 6. Kisses or touches [the opposite sex] and subsequently ejaculates semen or has madhy, 7. Repeatedly looks until he ejaculates, 8. Has ḥijâmah (cupping with bloodletting) or does it to someone else, intentionally and while remembering [that he is fasting]. [For all the above,] the fast is nullified.	وَمَنْ: 1. أَكَلَ أَوْ شَرِبَ 2. أَوْ اسْتَعَطَ 3. أو أوصَلَ إلى جَوفِهِ شيئًا مِن أي مَوضِعٍ كان 4. أَوِ اسْتَقَاءَ 5. أَوِ اسْتَمْنَى 6. أَوْ قَبَّلَ، أَوْ لَمَسَ فَأَمْنَى أَوْ أَمْذَى 7. أَوْ كَرَّرَ النَّظَرَ حَتَّى أَنْزَلَ 8. أَوْ حَجَمَ أَوِ احْتَجَمَ عَامِدًا، ذَاكِرًا لِصَوْمِهِ، فَسَدَ صَوْمُهُ.

Whoever: 1. Eats or drinks, [V.2.1] 2. Takes anything into his throat through his nostrils, [V.2.2] 3. Takes anything into his bodily cavity through any other route, [V.2.3]	وَمَنْ: 1. أَكَلَ أَوْ شَرِبَ 2. أَوْ اسْتَعَطَ 3. أو أوصَلَ إلى جَوفِهِ شيئًا مِن أي مَوضِعٍ كان

[V.2.1] Both these and sexual intercourse break one's fast by consensus, for Allah (ST) says:

{فَالْآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ ۚ وَكُلُوا وَاشْرَبُوا حَتَّىٰ يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ مِنَ الْفَجْرِ ۖ ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ}

{…So now have relations with them [your wives] and seek what Allah has ordained for you, and eat and drink until the whiteness of the day becomes distinct from the blackness of the night at dawn, then complete the fast until the night…} (al-Baqarah 2:187)

(A) + (+H, +M, +S): Eating non-food items (by mouth) invalidates fasting.

[V.2.2] (A) + (+H, +M, +S), for the Prophet (SA) said:

«بَالِغْ في الِاسْتِنْشَاقِ إلا أَنْ تَكُونَ صَائِمًا.»

"Sniff water far into your nostrils unless you are fasting." (D – from Laqeeṭ ibn Ṣabirah; al-Albâni: S)

[V.2.3] Medical Care and Fasting

In the madh-hab, anything that reaches the *jawf* (*lit*. cavity; here it refers to the abdominal and cranial cavities) through any orifice, including the eyes (if he finds its taste in his throat), ears (they said: if the fluid goes into the cranial cavity), anus, vagina (if it is liquid), or even a penetrating wound, would nullify the fast. Also, if he allows someone to cause a penetrating wound into his abdomen and the instrument reaches its cavity, his fast would be invalid; this means that, in addition to endoscopy and colonoscopy, any laparoscopic surgery would nullify the fast. The only orifice excepted from the above is the male urethra. Also, the vagina is an exception, if non-disintegrable items were introduced into it and didn't reach beyond it. The other madh-habs generally agree with these views except that there is some disagreement over the jawf and the orifices leading to it. (H) excludes the male urethra and the eye, and they have some disagreement about the ear. (M) excludes the male urethra and penetrating wounds; they also exclude non-liquids in the anus. (S) excludes only the eye. (Z) excludes all orifices, including the nostrils. (ṭ) excludes all orifices except the nostrils, and his position seems to be adopted by many contemporary scholars, as you may notice in the following segment.

Note: The following discussion is not restricted to the madh-hab and relies mainly on the positions of the International Islamic Fiqh Academy (IIFA) of the OIC (Organisation of Islamic Cooperation).

Injections (other than nutritious ones): They do not invalidate the fast, according to IIFA.

Nutritious Injections: They invalidate the fast, according to IIFA.

Enemas: Controversial. IIFA initially deferred a ruling, but in 2018 ruled that rectal treatments, including enemas, suppositories and scopes, do not invalidate fasting, except for nutritive enemas.

Vaginal Suppositories and douches: They do not break the fast, according to IIFA.

Urinary Catheterization (Including the Placement of Dyes): This does not break the fast, according to IIFA.

Sublingual Tablets: IIFA maintains that as long as the patient avoids swallowing them, there should be no harm because they are completely absorbed by the mucous membranes of the mouth and do not reach the hollow interior of the body.

Inhalers and Nasal Sprays: The Permanent Fatwa Committee in Saudi Arabia ruled that they do not invalidate the fast. IIFA ruled in 2018 that asthma sprays do not invalidate fasting, but classified nebulizers and dry-powder capsule inhalers as invalidators. Nasal sprays do not invalidate fasting provided that one avoids swallowing what reaches the throat.

Nasal Drops: Controversial; the scholars who say that they invalidate the fast support their view with the previous hadith about sniffing water into the nostrils. The scholars who argue that they do not break the fast maintain that even if a small amount made it to the stomach, it would still be negligible. IIFA maintains that as long as the patient avoids swallowing them, there should be no harm.

Eye Drops and Eardrops: IIFA permits them provided that one avoids swallowing what reaches the throat. Many scholars also hold that they do not invalidate fasting – particularly eardrops, because there is no connection between the external ear and the interior of the body, except in

the case of perforation of the eardrum, and then what might reach the hollow interior of the body would be extremely negligible.

Endoscopes: IIFA permits gastroscopy during fasting provided that no liquids or other substances are introduced with the instrument. The majority of the earlier scholars would consider them invalidators because they enter the hollow interior of the body.

Skin Preparations That Are Absorbed into the Body: They do not invalidate the fast, according to IIFA and the vast majority of contemporary scholars.

Dental Procedures: They do not break the fast, according to IIFA, provided that one avoids swallowing what reaches the throat. It would certainly be preferable to defer elective procedures after Ramadan.

Laparoscopic Surgeries: They do not break the fast, according to IIFA.

Blood Donation: This does not invalidate the fast, according to the vast majority of contemporary scholars.

4. Intentionally vomits, [V.2.4]	4. أَوِ اسْتَقَاءَ

[V.2.4] The Prophet (SA) said:

«من ذَرَعَهُ الْقَيْءُ فَلَيْسَ عليه قَضَاءٌ وَمَنْ اسْتَقَاءَ عَمْدًا فَلْيَقْضِ.»

"He who is overwhelmed by vomiting does not have to make up, but he who intentionally vomits must make up." (T – from Abu Hurayrah; Kh, Ḥib and others: S)

Intentional vomiting is when one does something to bring it on, not vomiting because one feels very nauseous.

5. Masturbates, [V.2.5] 6. Kisses or touches [the opposite sex] and subsequently ejaculates semen or has madhy, [V.2.6]	5. أَوِ اسْتَمْنَى 6. أَوْ قَبَّلَ، أَوْ لَمَسَ فَأَمْنَى أَوْ أَمْذَى

7. Repeatedly looks until he ejaculates,	7. أَوْ كَرَّرَ النَّظَرَ حَتَّى أَنْزَلَ

[V.2.5] (A): Masturbation invalidates the fast if it results in the discharge of semen or madhy; without either discharge, it does not. The four schools agree regarding ejaculation of semen. In the divine hadith, Allah the Almighty says about the fasting person:

{...يَدَعُ شَهْوَتَهُ وَأَكْلَهُ وَشُرْبَهُ من أَجْلِي ...}

"...He gives up his (sexual) desire, food and drink for Me..." (Ag – from Abu Hurayrah)

The one who masturbates does not give up his sexual desire.

[V.2.6] Kissing One's Spouse, with Subsequent Discharge

In the case of the ejaculation of semen, the four schools of fiqh agree, but in the case of madhy, it is controversial.

(A): The fast becomes invalid.

(a) + (-S): It does not break the fast, since the Prophet (SA) allowed touching and kissing, and this is not infrequently associated with madhy.

(A/SM): Also, if he looks at a woman more than once and consequently ejaculates semen (not madhy), his fasting is invalidated.

Note that he did not mention intercourse here with the nullifiers. He addressed it separately, in the previous chapter, because unlike the rest of the nullifiers, *kaffârah* (expiation) is required for it.

8. Has ḥijâmah (cupping with bloodletting) or does it to someone else, [V.2.7] intentionally and while remembering [that he is fasting]. [For all the above,] the fast is nullified.	8. أَوْ حَجَمَ أَوِ احْتَجَمَ عَامِدًا، ذَاكِرًا لِصَوْمِهِ، فَسَدَ صَوْمُهُ.

[V.2.7] Bloodletting, Blood Donation, and Blood Tests

That is the position of (A). The majority (-H, -M, -S) do not consider ḥijâmah to break one's fast.

The disagreement is because the Prophet (SA) said:

«أفطَرَ الحاجِم والمَحْجُوم.»

"Both the one doing bloodletting and the one having it done to him break their fast." (D – from Thawbân; al-Albâni: S)

However, many of the Companions considered this to be abrogated, so they allowed ḥijâmah while fasting. They include Anas ibn Mâlik (RA), who said they disliked it only out of fear of weakness. (B) It was also reported that:

«احْتَجم فيما بين مَكة والمدينة وهُو مُحرِم صَائم.»

"The Prophet had ḥijâmah done to him while he was between Makkah and Madinah, while he was fasting and in the state of iḥrâm." (B and T – from Ibn 'Abbâs; this wording is from T)

A middle position is to consider ḥijâmah while fasting to be disliked if it weakens the person. This reconciliation was reported from Anas and Mâlik.

Bloodletting without ḥijâmah is controversial in the madh-hab.

Of those who believe that ḥijâmah breaks the fast, some of them would prevent blood donation, but most of them allow blood tests since only a small amount of blood is taken.

[Ruling on Forgetfulness or Compulsion]

If one does it absentmindedly or is forced, his fast is not nullified. [V.2.8]	وَإِنْ فَعَلَهُ نَاسِيًا أَوْ مُكْرَهًا، لَمْ يَفْسُدْ صَوْمُهُ.

[V.2.8] For the Prophet (SA) said:

«من نَسِي و هو صَائم، فأكَلَ أو شَرِب، فليُتِمَّ صَومَه، فإنَّما أطعَمَه الله و سَقَاه.»

"He who forgets while fasting and eats or drinks, let him finish his fasting, for it is Allah the Almighty Who fed him and gave him drink." (Ag – from Abu Hurayrah)

The same would apply to one under compulsion, since he did not intentionally break his fast.

According to the madh-hab, this does not apply to one who has intercourse without remembering that it is a day of Ramadan. The majority would still consider the same rule applicable to intercourse.

[Acts That Do Not Invalidate the Fast]

If flies or dust fly into one's throat, or one rinses the mouth or sniffs water into the nostrils and water reaches his pharynx, [V.2.9] or if one thinks [about sex] and ejaculates, [V.2.10] or injects liquid into his urethra, [V.2.11] or has a wet dream, or is overwhelmed by vomiting, his fast is not nullified.	وَإِنْ طَارَ إِلَى حَلْقِهِ ذُبَابٌ أَوْ غُبَارٌ، أَوْ تَمَضْمَضَ أَوِ اسْتَنْشَقَ، فَوَصَلَ إِلَى حَلْقِهِ مَاءٌ ، أَوْ فَكَّرَ فَأَنْزَلَ، أَوْ قَطَّرَ فِيْ إِحْلِيْلِهِ، أَوِ احْتَلَمَ، أَوْ ذَرَعَهُ الْقَيْءُ لَمْ يَفْسُدْ صَوْمُهُ.

[V.2.9] None of these breaks the fast because he did not intend to break his fast, he did not do anything wrong, and he did not do anything that would probably result in the invalidation of his fast.

[V.2.10] The Prophet (SA) said:

«إنَّ الله تَعالى وَضَعَ عَن أمَّتِي الخَطَأ، والنِّسيان، وما استُكرِهوا عَلَيه.»

"Allah exempted my nation from what they do by mistake, absentmindedly, or under compulsion." (Ma – from Ibn 'Abbâs; Ḥib, H, al-Albâni: S)

[V.2.11] This is the position of the majority, and it is correct due to the lack of connection between the urinary and gastrointestinal tracts.

[Mistakes]

• If one eats while thinking that it is night, and it turns out to be day, he must make up that day. [V.2.12] • If he eats because of doubt that the time of fajr has arrived, his fasting is not nullified. [V.2.13] • If he eats while doubtful whether the sun has set, he must make up that day. [V.2.14]	• وَمَنْ أَكَلَ يَظُنُّهُ لَيْلاً، فَبَانَ نَهَارًا، فَعَلَيْهِ القَضَاءُ. • وَمَنْ أَكَلَ شَاكًّا فِيْ طُلُوْعِ الْفَجْرِ، لَمْ يَفْسُدْ صَوْمُهُ. • وَإِنْ أَكَلَ شَاكًّا فِيْ غُرُوْبِ الشَّمْسِ، فَعَلَيْهِ القَضَاءُ.

[V.2.12] Ate Thinking It Was Nighttime (Whether at the Beginning or End of the Day), Then Came to Know It Was Daytime

The position here is the opinion of the majority. (A) + (+H, +M, +S)

Some scholars (a) + (-Is-ḥâq -t) argued that his fasting would not be nullified if he did not act on mere conjecture. This position is the sounder of two reports from 'Umar (RA). Another reason for their disagreement is an incident during the time of the Prophet (SA), which was reported by (B, D) from Asmâ' (RAH). The sky became cloudy, so the people broke their fast, thinking the sun had set, but then the sun came out again. There are conflicting reports as to whether or not they made up that day.

The opinion of the majority is safer.

[V.2.13] Unlike the previous scenario, here and in the following scenario, he did not come to know that he ate after fajr or before maghrib; he continued to be unsure.

The principle governing this issue is the presumption of continuity of the night until one knows that the day has begun. Therefore, his fast is not invalidated here.

[V.2.14] (A) + (+H, +M, +S): The principle here is the presumption of continuity of the day. If he continues to have doubt that he ate before maghrib, his fast is invalidated.

Note that doubt (*shak*) means that the chances are 50/50. However, he is allowed to break the fast on the basis of propensity (*ghalbat adh-dhan*), and if he does, and then has doubts afterwards, his fast is still valid. If he breaks the fast based on propensity, and then becomes sure that he ate before maghrib, then the discussion above about the one who became sure he ate during the day applies to him.

[V.3] Chapter on Voluntary Fasting

بَابُ صِيَامِ التَّطَوُّعِ

The best fasting is that of [Prophet] Dâwood (AS); he used to fast every other day. [V.3.1]	أَفْضَلُ الصِّيَامِ صِيَامُ دَاوُدَ عليه السلام، كَانَ يَصُوْمُ يَوْمًا وَيُفْطِرُ يَوْمًا.

[V.3.1] This is the wording of the Prophet (SA). (Ag – from Ibn ‘Amr)

The best fasting after the month of Ramadan is the month of Allah they call Muḥarram. [V.3.2]	وَأَفْضَلُ الصِّيَامِ بَعْدَ شَهْرِ رَمَضَانَ، شَهْرُ اللهِ الَّذِيْ يَدْعُوْنَهُ الْمُحَرَّمَ.

[V.3.2] This is the wording of the Prophet (SA). (M – from Abu Hurayrah)

There are no days on which righteous deeds are more beloved to Allah than the first ten days of Dhul-Ḥijjah. [V.3.3]	وَمَا مِنْ أَيَّامٍ الْعَمَلُ الصَّالِحُ فِيْهِنَّ أَحَبُّ إِلَى اللهِ مِنْ عَشْرِ ذِي الْحِجَّةِ.

[V.3.3] This is the wording of the Prophet (SA). (B – from Ibn ‘Abbâs)

Whoever fasts the month of Ramadan and follows it by fasting six days of [the Islamic month of] Shawwâl, it is [counted] as if he fasted his entire life. [V.3.4]	وَمَنْ صَامَ رَمَضَانَ وَأَتْبَعَهُ بِسِتٍّ مِنْ شَوَّالٍ، فَكَأَنَّمَا صَامَ الدَّهْرَ كُلَّهُ.

[V.3.4] This is the wording of the Prophet (SA). (M – from Abu Ayyoob)

If you do this in one year, it is as if you fasted the entire year, because the reward of each day fasted is multiplied ten times. If you do it every year, it is as if you fasted your entire life.

Fasting on the day of *‘Âshoorâ’* [the tenth day of Muḥarram] is an expiation [of the sins] of one year; and fasting on the day of	وَصِيَامُ يَوْمِ عَاشُوْرَاءَ كَفَّارَةُ سَنَةٍ، وَصِيَامُ يَوْمِ

‘Arafah is an expiation [of the sins] of two years. [V.3.5] For the one who is at ‘Arafah (on Hajj), it is not recommended to fast this day.	عَرَفَةَ كَفَّارَةُ سَنَتَيْنِ، وَلَا يُسْتَحَبُّ لِمَنْ كَانَ بِعَرَفَةَ أَنْ يَصُوْمَهُ.

[V.3.5] The Messenger of Allah (SA) said:

«صِيَامُ يَوْمِ عَرَفَةَ أَحْتَسِبُ عَلَى اللَّهِ أَنْ يُكَفِّرَ السَّنَةَ الَّتِي قَبْلَهُ وَالسَّنَةَ الَّتِي بَعْدَهُ وَصِيَامُ يَوْمِ عَاشُورَاءَ أَحْتَسِبُ عَلَى اللَّهِ أَنْ يُكَفِّرَ السَّنَةَ الَّتِي قَبْلَهُ»

“Fasting the day of ‘Arafah, I hope Allah will expiate thereby for the year before it and the year after it, and fasting the day of ‘Âshoorâ’, I hope Allah will expiate thereby for the year before it.” (M – from Abu Qatâdah)

It is recommended to fast the ‘white days’, [V.3.6] as well as Mondays and Thursdays. [V.3.7]	وَيُسْتَحَبُّ صِيَامُ أَيَّامِ الْبِيْضِ، وَالِاثْنَيْنِ وَالْخَمِيْسِ.

[V.3.6] The 13th, 14th and 15th of every Islamic month, so called because the nights are well-lit by the full moon.

«أَمَرَنَا رَسُولُ اَللَّهِ ﷺ أَنْ نَصُومَ مِنْ اَلشَّهْرِ ثَلَاثَةَ أَيَّامٍ: ثَلَاثَ عَشْرَةَ وَأَرْبَعَ عَشْرَةَ وَخَمْسَ عَشْرَةَ.»

“The Messenger of Allah (SA) commanded us to fast three days of every (lunar) month: the 13th, 14th, and 15th.” (T – from Abu Dharr; T: R)

[V.3.7] The Messenger of Allah (SA) said:

«تُعْرَضُ الْأَعْمَالُ يَوْمَ الِاثْنَيْنِ وَالْخَمِيسِ فَأُحِبُّ أَنْ يُعْرَضَ عَمَلِي وَأَنَا صَائِمٌ»

“The deeds of people are presented (to Allah) on Mondays and Thursdays, so I like for my deeds to be presented while I am fasting.” (T – from Abu Hurayrah; T: R)

The person performing a voluntary fast is in charge of himself. If he wants, he may fast; if he wants, he may break the	وَالصَّائِمُ الْمُتَطَوِّعُ أَمِيْرُ نَفْسِهِ، إِنْ شَاءَ صَامَ، وَإِنْ

fast, in which case he is not required to make it up. [V.3.8]	شَاءَ أَفْطَرَ، وَلَا قَضَاءَ عَلَيْهِ.
Likewise are all voluntary acts except for Hajj and ‘umrah. These two must be completed, and when invalidated, it is mandatory to make them up.	وكذلِكَ سائرُ التَّطَوُّعِ إِلَّا الْحَجَّ وَالْعُمْرَةَ، فَإِنَّهُ يَجِبُ إِتْمَامُهُمَا، وَقَضَاءُ مَا أَفْسَدَ مِنْهُمَا.

[V.3.8] This is the position of (A) + (+S).

(-H, -M): They are required to finish the voluntary act that they started.

The Messenger of Allah (SA) forbade fasting on two days: the day of Eid al-Fiṭr and the day of Eid al-Aḍḥâ. In addition, he forbade fasting on the days of tashreeq, except for the person who is doing *tamattu*‘ [V.3.9] and cannot afford a sacrificial animal. [V.3.10]	وَنَهَى النَّبِيُّ ﷺ عَنْ صَوْمِ يَوْمَيْنِ: يَوْمِ الْفِطْرِ، وَيَوْمِ الأَضْحَى، وَنَهَى عَنْ صَوْمِ أَيَّامِ التَّشْرِيْقِ، إِلَّا أَنَّهُ أَرْخَصَ فِيْ صَوْمِهَا لِلْمُتَمَتِّعِ، إِذَا لَمْ يَجِدِ الْهَدْيَ.

[V.3.9] *Tamattu*‘ is ‘umrah-before-Hajj, with an interruption of the state of iḥrâm between them. The same applies to the one making qirân, which is ‘umrah-with-Hajj, with no interruption of the state of iḥrâm between them.

[V.3.10]

«لَمْ يُرَخَّصْ فِي أَيَّامِ التَّشْرِيقِ أَنْ يُصَمْنَ إِلا لِمَنْ لَمْ يَجِدْ الْهَدْيَ.»

“Fasting was not permitted on the days of tashreeq except for the person who did not find a sacrificial offering (hady).” (B – from ‘Â’ishah and Ibn ‘Umar)

When a Companion says that something was made lawful or unlawful, the assumption is that he must be reporting from the Prophet (SA).

The night of decree (*Laylat ul-Qadr*) is one of the odd nights in the last ten days of Ramadan. [V.3.11]	وليلة القدر في الوتر من العشر الأواخر من رمضان.

[V.3.11] (A/SM): Most likely on the 27th night of Ramadan.

[V.4] Chapter on Devotional Retreat (*I'tikâf)*

بَابُ الإِعْتِكَافِ

This means abiding (staying) in the masjid for the worship of Allah Most High. [V.4.1]	وهُو لُزُوْمُ الْمَسْجِدِ، لِطَاعَةِ اللهِ تَعَالَى فِيْهِ.

[V.4.1] (A) + (+H): For voluntary i'tikâf, even a brief stay with the intention of i'tikâf suffices.

(M): The minimum is a day and a night according to the relied-upon position.

(S): A brief stay exceeding the minimum stillness required in prayer suffices.

It is a sunnah unless it is vowed; in that case, the vow must be fulfilled. [V.4.2]	وَهُوَ سُنَّةٌ، إِلَّا أَنْ يَكُوْنَ نَذْرًا، فَيَلْزَمُ الْوَفَاءُ بِهِ.

[V.4.2] This is the position of (A) + (+H, +M, +S) throughout the year, and it becomes more stressed in the last ten days of Ramadan. According to (H), a community that deserts it in the last ten days of Ramadan is liable.

For a woman, it is valid in every masjid aside from the masjid of her own home. [V.4.3]	وَيَصِحُّ مِنَ الْمَرْأَةِ فِيْ كُلِّ مَسْجِدٍ، غَيْرِ مَسْجِدِ بَيْتِها.

[V.4.3] (A) + (+M, +S): I'tikâf is prescribed for women in any masjid except their prayer quarters at home (which were allegorically called 'home masjids'). This is assuming that the place is secure, that fitnah is avoided, and that married women have the permission of their husbands. They cited the i'tikâf of the Mothers of the Believers in the Prophet's masjid.

(H): It is disliked in any masjid except the masjid of her home.

For a man, it is only valid in a masjid where the congregational prayer is	ولا يَصِحُّ مِنَ الرَّجُلِ إلا في مَسجِدٍ تُقامُ فيهِ

performed, [V.4.4] and it is better to make i‘tikâf in a masjid where the Jumu‘ah prayer is also offered. [V.4.5]	الجَمَاعَةُ، واعتِكافُهُ في مَسجِدٍ تُقامُ فيهِ الجُمعَةُ أفضَلُ.

[V.4.4] This is because, in the madh-hab, the congregational prayers are mandatory.

(A): For a man obligated to attend congregation, i‘tikâf is allowed only in a masjid where the prayers due during his stay, if any, are established.

(H): The establishment of the five prayers is not demanded, but the masjid must have an imam and a mu’adh-dhin.

(-M, -S): I‘tikâf is allowed in any masjid.

[V.4.5] This means that it is allowed to make i‘tikâf in a masjid that has no Jumu‘ah prayer; in this case, a man must go out to pray Jumu‘ah and then return to his i‘tikâf.

He who vows to make i‘tikâf or prayer in a particular masjid may do so in a different masjid unless he vows to do it in one of the three masjids [mentioned below]. If he vows to do this in al-Masjid al-Ḥarâm, then he must do it there. However, if he vows to make i‘tikâf in the Prophet’s Mosque, he may do so in al-Masjid al-Ḥarâm; and if he vows to make i‘tikâf in *al-Masjid al-Aqṣâ* (the ‘Farthest Mosque’ in Jerusalem), he may do so in whichever one of the two [al-Masjid al-Ḥarâm or the Prophet’s Mosque] he pleases. [V.4.6]	وَمَنْ نَذَرَ الإِعْتِكَافَ، أَوِ الصَّلَاةَ فِيْ مَسْجِدٍ، فَلَهُ فِعْلُ ذٰلِكَ فِيْ غَيْرِهِ، إِلَّا الْمَسَاجِدَ الثَّلَاثَةَ. فَإِذَا نَذَرَ ذٰلِكَ فِي الْمَسْجِدِ الْحَرَامِ، لَزِمَهُ، وَإِنْ نَذَرَ الإِعْتِكَافَ فِيْ مَسْجِدِ رَسُوْلِ اللهِ ﷺ، جَازَ لَهُ أَنْ يَعْتَكِفَ فِي الْمَسْجِدِ الْحَرَامِ، وَإِنْ نَذَرَهُ فِي الْمَسْجِدِ الأَقْصَى، فَلَهُ فِعْلُهُ فِيْ أَيِّهِمَا أَحَبَّ.

[V.4.6] Changing the Masjid

This is because all masjids are equal except for those three. The best of them is al-Masjid al-Ḥarâm, then the Prophet's Mosque, and then al-Masjid al-Aqṣâ. As for making a vow to pray or to make i'tikâf in one of the three masjids, and then replacing it with a better one, there is the following report:

عن جَابِرِ بن عبد اللَّهِ أَنَّ رَجُلًا قام يوم الْفَتْحِ فقال: «يا رَسُولَ اللَّهِ إني نَذَرْتُ لِلَّهِ إن فَتَحَ الله عَلَيْكَ مَكَّةَ أَنْ أُصَلِّيَ في بَيْتِ الْمَقْدِسِ رَكْعَتَيْنِ.» قال: «صَلِّ ها هنا» ثُمَّ أَعَادَ عليه فقال: «صَلِّ ها هنا» ثُمَّ أَعَادَ عليه فقال: «شَأْنُكَ إِذَنْ.»

"A man stood up on the day of the conquest of Makkah and said, 'O Messenger of Allah, I have vowed to Allah to pray two rak'ahs in Jerusalem (al-Masjid al-Aqṣâ) if He gives you victory over Makkah.' The Prophet (SA) said, 'Pray here.' He repeated what he said, and the Prophet (SA) said, 'Pray here.' He repeated what he said again, whereupon the Prophet (SA) said, 'Then it is up to you.'" (D – from Jâbir. Ibn Daqeeq al-'Eed, al-Albâni: S)

It is preferable for the person doing i'tikâf to keep himself busy with acts that bring him closer to Allah and to avoid words and actions that are none of his concern. I'tikâf is not invalidated with any of this [though]. [V.4.7]	وَيُسْتَحَبُّ لِلْمُعْتَكِفِ الِاشْتِغَالُ بِالقُرَبِ، وَاجْتِنَابُ مَا لَا يَعْنِيْهِ مِنْ قَوْلٍ وَفِعْلٍ، وَلَا يَبْطُلُ الِاعْتِكَافُ بِشَيْءٍ مِنْ ذٰلِكَ.

[V.4.7] (A): One in i'tikâf is not allowed to practice a trade such as tailoring in the masjid for earnings; minor personal repairs and scholarly writing are excepted. (S): It is allowed as long as it does not occupy much of their time.

He should not leave the masjid except for a necessity or need [V.4.8] unless he makes a condition. He must not touch a woman (with desire). [V.4.9]	وَلَا يَخْرُجُ مِنَ الْمَسْجِدِ، إِلَّا لِمَا لَابُدَّ لَهُ مِنْهُ، إِلَّا أَنْ يَشْتَرِطَ، وَلَا يُبَاشِرُ امْرَأَةً.

[V.4.8] This includes getting food if food cannot be brought to them. It also includes using the lavatory and making wuḍoo' or mandatory ghusl. Note: Even the lavatories attached to the masjids are considered outside them.

[V.4.9] For Allah the Almighty says:

{وَلَا تُبَاشِرُوهُنَّ وَأَنتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ}

{...And do not have sexual relations with them (your wives) during i'tikâf at masjids.} (al-Baqarah 2:187)

If he asks on his way about a patient or someone else, without changing his route to visit him, it is permissible. [V.4.10]	وَإِنْ سَأَلَ عَنِ الْمَرِيْضِ أَوْ غَيْرِهِ فِيْ طَرِيْقِهِ، وَلَمْ يُعَرِّجْ إِلَيْهِ، جَازَ.

[V.4.10] This is in case he needs to go out for a need such as buying food. On the way, he may ask about someone sick, without changing his route.

[VI] The Book of Hajj and *‘Umrah*

كِتَابُ الْحَجِّ وَالعُمْرَةِ

[Conditions of Obligation]

يَجِبُ الْحَجُّ وَالعُمْرَةُ مَرَّةً فِي الْعُمُرِ، عَلَى الْمُسْلِمِ، الْعَاقِلِ، الْبَالِغِ، الْحُرِّ، إِذَا اسْتَطَاعَ إِلَيْهِ سَبِيْلاً.	Hajj [VI.0.1] and ‘umrah [VI.0.2] are mandatory for the free, sane, adult Muslim once in a lifetime if he can afford the means to do it.

[VI.0.1] Wisdoms of Hajj

The worship of Allah (ST) and complete submission to His commandments: those that we comprehend and those that we may not.

The remembrance of Allah (ST), which provides immense spiritual energy and rejuvenation, particularly after a period of complete immersion.

The remembrance of the hereafter and of the day when we will be resurrected from the graves naked, without any of the worldly possessions that we left behind.

Training in endurance for the sake of Allah the Almighty, by leaving one’s homeland, family, wealth, and so on.

The gathering of the Muslims has many benefits, including:

- Strengthening the bonds of brotherhood across the various nationalities, races, tongues, and geographic locations.

- Learning about the conditions of the Muslims elsewhere, especially in the past, when there were limited means of communication.

- The spread of knowledge, whether religious or otherwise, throughout Muslim lands.

The obligation of Hajj is a matter of consensus. Allah (ST) says:

{وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا}

{…Pilgrimage to the House is a duty men owe to Allah; those who can afford the journey…} (Âl ‘Imrân 3:97)

[VI.0.2] Obligation of ‘Umrah

(A) + (+S): Mandatory.

(-H, -M, -t): Recommended.

The Prophet (SA) said:

«الْعُمْرَةُ إلى الْعُمْرَةِ كَفَّارَةٌ لِمَا بَيْنَهُمَا وَالْحَجُّ الْمَبْرُورُ ليس له جَزَاءٌ إلا الْجَنَّةُ.»

“There is atonement for sins committed in the span of time between one ‘umrah and the next, and the reward for an accepted Hajj is none other than paradise.” (Ag – from Abu Hurayrah)

Hence, the reward of ‘umrah is great, and it would be a great loss not to gain it. However, there is considerable disagreement over its obligation.

The proof for its obligation is that Allah (ST) said:

«وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ»

{And complete the Hajj and ‘umrah for the sake of Allah.} (al-Baqarah 2:196)

When the Prophet (SA) was asked if jihad (struggle or striving in the cause of Allah) was mandatory for women, he replied:

«نعم عَلَيْهِنَّ جِهَادٌ لَا قِتَالَ فيه الْحَجُّ وَالْعُمْرَةُ.»

“Yes, there is a type of non-combative jihad for them: Hajj and ‘umrah.” (A – from ‘Â’ishah. al-Mundhiri: Auth)

(-H, -M) argued that the verse is about the obligation of continuing the rituals once started. They also argued that the hadith is not decisive in its implication.

The evidence that ‘umrah is not mandatory is the following hadith in which a man asked the Prophet (SA) whether ‘umrah was mandatory. The Messenger of Allah (SA) replied:

«لَا وَأَنْ تَعْتَمِرَ خَيْرٌ لَكَ .»

“No, but if you make ‘umrah, it is better for you.” (T – from Jâbir)

The hadith would have been decisive in settling the disagreement if it met two conditions: being sound and not abrogated. It is weak, though, according to most scholars, including az-Zayla‘i al-Ḥanafi (may Allah have mercy on all of them).

Affording it means that he has sustenance, a mount, and what is necessary for them [VI.0.3] that would suit someone like him. This is in addition to what he needs to pay off his debts [VI.0.4] and to pay for sustenance for himself and his dependents on an ongoing basis. [VI.0.5]	وَالِاسْتِطَاعَةُ أَنْ يَجِدَ زَادًا، وَرَاحِلَةً بِآلَتِهِمَا، مِمَّا يَصْلُحُ لِمِثْلِهِ، فَاضِلاً عَمَّا يَحْتَاجُ إِلَيْهِ لِقَضَاءِ دَيْنِهِ، وَمُؤْنَةِ نَفْسِهِ، وَعِيَالِهِ عَلَى الدَّوَامِ.

[VI.0.3] What is necessary for the mount is a saddle and so on, and what is necessary for food is the utensils for cooking and so on. The scholars also added physical capacity and safety on the road.

[VI.0.4] Debts and Hajj

Any debts should be paid off before embarking on Hajj. If one has debts that are due, he cannot pay them off and also make Hajj, and he cannot get permission from the lender to make Hajj before paying off the debt, then he is prevented from performing Hajj. If the journey will not last past the due date, the creditor cannot prevent the debtor from traveling. This is the stronger of the two positions within the Ḥanbali madh-hab. The other position may be stronger if the travel is risky; in such a case, the creditor may have the right to ask for a security (rahn) or a solvent guarantor of payment (kafeel) before the debtor departs.

[VI.0.5] Ability

The phrase used in Arabic is ‘alâ ad-dawâm, which means forever. In this context, it does not mean that the individual must sell his or her house or business to go to Hajj, because he will always need them. He also has to leave enough for his family’s sustenance until he returns.

Physical ability and safety of the road were not mentioned here, but they are also considered. (A) + (+S): Those who have the financial means to make Hajj but cannot perform it themselves because of old age or an incapacity not expected to end must send someone on their behalf.

(-H, -M): They are not required to do so because they are not addressed by the obligation of Hajj to begin with. For (H), this exemption applies if Hajj had not already become obligatory before the incapacity.

[Condition of a *Maḥram* for Women]

For a woman to be considered able to go, she must have a *maḥram* with her. [VI.0.6] This is her husband or one of the men whom she is permanently [VI.0.7] not allowed to marry because of relationships by birth or some permissible reason. [VI.0.8]	وَيُعْتَبَرُ لِلْمَرْأَةِ وُجُوْدُ مَحْرَمِهَا، وَهُوَ زَوْجُهَا وَمَنْ تَحْرُمُ عَلَيْهِ عَلَى التَّأْبِيْدِ بِنَسَبٍ أَوْ سَبَبٍ مُبَاحٍ.

[VI.0.6] The Requirement of the Maḥram in Hajj for Women

This is the opinion of (A) + (+H).

(-M, -S): It is not required. It is important to stress that the scholars who require the maḥram maintain that if the woman does not find someone after intending to perform Hajj, she will be given the full reward of the worship due to her intention, and the duty of Hajj is removed from her.

«إنَّ بالمَدينَة أقوامًا، ما سِرتم مسِيرًا، ولا قَطَعتُم وادِيًا إلا كانوا معكم. قالوا: يا رسول الله، وهم بالمَدِينَة؟ قال: وهم بالمَدينَة، حَبَسَهم العُذر.»

The Prophet (SA) said about the Companions who stayed back in Madinah and did not go out to Tabook, "In Madinah, there are some people who shared the reward with you whenever you marched or traversed a valley." The Companions said, "O Messenger of Allah, but they were in Madinah." He said, "They were in Madinah because some excuse kept them back." (B – from Anas)

The reason behind the requirement for a maḥram is the following report:

عن ابن عباس رضي الله عنه أنه سمع النبي ﷺ يقول: «لَا يخْلُوَنَّ رَجُلٌ بِامْرَأةٍ إِلَّا وَمَعَهَا ذُو مَحْرَمٍ، وَلَا تُسَافِر امْرَأَةٌ إِلَّا مَعَ ذِي مَحْرَمٍ»، فقام رجل فقال: يا رسول الله إن امرأتي خرجت حاجة، وإني اكتتبت في غزوة كذا وكذا، قال: «انْطَلِقْ فَحُجَّ مَعَ امْرَأَتِكْ».

The Prophet (SA) said, "No man should be alone with a woman unless her maḥram is present, and no woman should travel unless she has a maḥram with her." A man stood up and said, "O Messenger of Allah, my wife has gone out for Hajj, and I have enlisted for such and such a campaign." The Prophet (SA) said, "Go and perform Hajj with your wife." (B – from Ibn 'Abbâs)

The scholars who allowed going to Hajj without a maḥram said that the Prophet (SA) told him to go with her, but he did not blame her. They argue that in another hadith, he informed them about the level of security that will prevail in the Arabian Peninsula, saying:

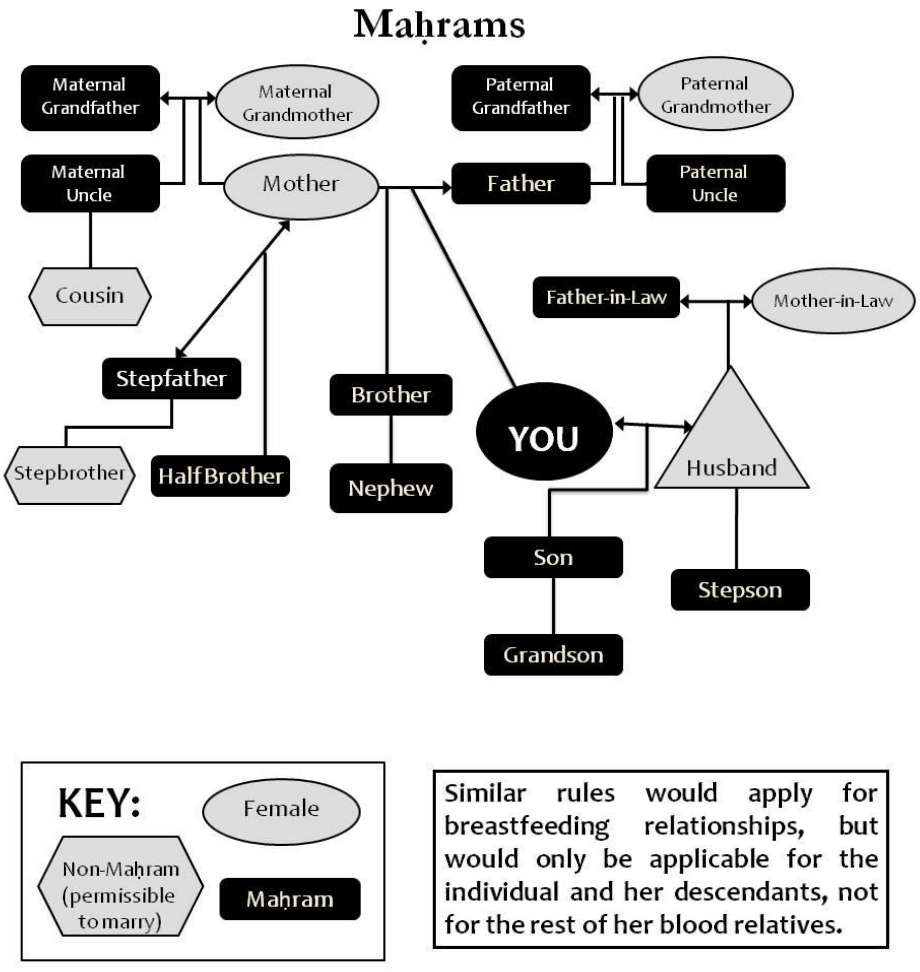
«فَإِنْ طَالَتْ بِكَ الحَيَاةُ، لَتَرَيَنَّ الظَّعِينَةَ تَرْتَحِلُ مِنَ الحِيرَةِ، حَتَّى تَطُوفَ بِالكَعْبَةِ لَا تَخَافُ أَحَداً إِلَّا الله».

"If you live long enough, you will see a lone woman traveler leaving from al-Ḥeerah until she reaches the Kaaba, fearing none but Allah." (B – from 'Adiy ibn Ḥâtim)

Thus, they say that if security is assured, she may go in the company of trustworthy persons.

[VI.0.7] This is to exclude the temporarily non-marriageable men, such as the husbands of her sisters or aunts.

[VI.0.8] Besides kinship, the permissible reasons include breastfeeding and marriage. For example, a man's mother-in-law is his maḥram, even though she is not from his kin. Also, after public imprecation (when a man swears, invoking the curse of Allah if he is lying, that his wife's child is not his), the wife becomes impermissible for him to remarry, forever, but the accusing husband does not have the status of a maḥram.



As for one who neglects it until he dies, enough money to perform one Hajj and one ‘umrah [to be done on his behalf] should be taken out of his estate. [VI.0.9]	فَمَنْ فَرَّطَ حَتَّى مَاتَ، أُخْرِجَ عَنْهُ مِنْ مَالِهِ، حَجَّةٌ وَعُمْرَةٌ.

[VI.0.9] This is the position of (A) + (+S), for it is a debt that is owed by the deceased to Allah the Almighty, as noted in the following hadith:

«جاءت امرأةٌ إلى رسول الله فقالت: يا رسول الله إن أمي نَذَرَت أن تَحُجَّ فلم تحج حتى ماتت أفَأَحُجُّ عنها؟ قال رسول الله: نعم حُجِّي عن أمك، أريتِ لو كان على أُمك دين أكنتِ قَاضِيَتَه؟ قالت: نعم، فقال: فاقْضُوا الله فالله أحق بالوفاء.»

“A woman came to the Messenger of Allah (SA) and said, ‘O Messenger of Allah, my mother vowed to perform Hajj but did not, and then she died. Should I perform Hajj on her behalf?’ The Messenger of Allah said, ‘Yes, perform Hajj on behalf of your mother. What would you think if your mother had owed a debt? Would you have paid it off?’ She said yes. He said, ‘So pay Allah off, for He is more worthy of having commitments to Him fulfilled.’” (B – from Ibn ‘Abbâs)

(-H, -M): It would not be binding to take out money from his estate to send someone to Hajj on his behalf. They argued that it is a bodily act of worship, like the prayers, so would drop upon death.

[Conditions of Validity]

Hajj is not valid from a disbeliever or an insane person. [VI.0.10] It is valid from a child and a slave, but this does not exempt either of them from their obligation to perform it later. [VI.0.11] It is valid for the one who cannot afford it and the woman who does not have a maḥram. [VI.0.12]	وَلَا يَصِحُّ الْحَجُّ مِنْ كَافِرٍ، وَلَا مَجْنُوْنٍ، وَيَصِحُّ مِنَ الصَّبِيِّ، وَالْعَبْدِ، وَلَا يُجْزِئُهُمَا. وَيَصِحُّ مِنْ غَيْرِ الْمُسْتَطِيْعِ وَالْمَرْأَةِ بِغَيْرِ مَحْرَمٍ.

[VI.0.10] The Insane and the Disbeliever

Hajj is neither mandatory on, nor accepted from, the insane. This is the case with the disbeliever as well, with some disagreement over whether the detailed injunctions of Islam apply to disbelievers. What is not controversial, though, is that we do not force disbelievers to abide by them.

[VI.0.11] The Slave and the Child

It is agreed that Hajj is not mandatory for a slave or a child, but according to (A) + (+h, +M, +S), it is accepted from them. However, this still does not exempt them from the mandatory Hajj of Islam, based on the statement of the Prophet (SA):

«أيما صَبِيٍّ حَجَّ ثم بَلَغَ الحِنْث فعليه أن يَحُجَّ حَجَّةً أُخرى، وأيما عبدٍ حج ثم أُعْتِقَ فعليه أن يَحُجَّ حَجَّةً أُخْرَى.»

> *"Any child who performs Hajj and then reaches puberty must perform another Hajj, and any slave who performs Hajj and is then freed has to perform another Hajj." (Ba, Ṭab – from Ibn 'Abbâs; Ibn al-Mulaqqin, al-Albâni: S) Al-Bayhaqi graded as sound the report that stops at Ibn 'Abbâs.*

[VI.0.12] Valid here means not only that it is accepted, as in the case of the child, but also that it counts as the mandatory Hajj. This is despite it being a sin, according to (A), for the woman to travel to Hajj without a maḥram.

As for someone who performs Hajj on behalf of someone else when he has not yet performed it for himself, or performs Hajj to fulfill a vow, or performs a voluntary Hajj before performing the mandatory Hajj of Islam, this will count as the mandatory Hajj [that he is obliged to do himself] and will not count for anyone else. [VI.0.13]	وَمَنْ حَجَّ عَنْ غَيْرِهِ، وَلَمْ يَكُنْ حَجَّ عَنْ نَفْسِهِ، أَوْ عَنْ نَذْرِهِ أَوْ نَفْلِهِ، وَفَعَلَهُ قَبْلَ حَجَّةِ الإِسْلَامِ، وَقَعَ حَجُّهُ عَنْ فَرْضِ نَفْسِهِ، دُوْنَ غَيْرِهِ.

[VI.0.13] That is the position of (A) + (+S), and it is based on the following report:

«سمع رسول الله رجلاً يقول: لبيك عن شبرمة فقال رسول الله: ومن شبرمة؟ قال: أخٌ أو قريبٌ لي، قال: هل حججت عن نفسك؟ قال: لا، قال: حج عن نفسك ثم حج عن شبرمة.»

"The Messenger of Allah (SA) heard a man saying, 'Here I am [intending Hajj, O Lord] on behalf of Shubrumah.' The Prophet (SA) asked, 'Who is Shubrumah?' The man said, 'A brother – or relative – of mine.' The Prophet (SA) asked, 'Have you performed Hajj for yourself?' The man answered, 'No.' The Prophet (SA) said, 'Perform Hajj for yourself first, and then for Shubrumah.'" (D – from Ibn 'Abbâs; D: Auth)

The hadith makes it clear to (A) + (+S) that a person must do his or her own Hajj first, but it is not clear if this becomes the mandatory Hajj by default, even if that is not what was intended. In some reports, however, the Prophet (SA) said:

«هَذِهِ عَنْكَ ثُمَّ حُجَّ عَنْ شُبْرُمَةَ.»

"This will count for you, and you should then make Hajj on behalf of Shubrumah." (Ba; Ba: S chain)

(a) + (-H, -M): One who has not made the mandatory Hajj may still make Hajj on behalf of someone else.

Sufyân ath-Thawri said that one who cannot afford to make Hajj may be commissioned by someone else to make Hajj on behalf of that person. This middle position makes it possible for poor people to visit the holy places.

[VI.1] Chapter on the Sites of *Iḥrâm*

بَابُ الْمَوَاقِيْتِ

The *meeqât* (iḥrâm site) [VI.1.1] of the people of Madinah is Dhul-Ḥulayfah; for the people of *Shâm*, [VI.1.2] the *Maghreb [VI.1.3]* and Egypt, it is al-Juḥfah; for Yemen, it is Yalamlam; for Najd, it is Qarn; and for the *Mashriq*, [VI.1.4] it is Dhât-'Irq.	وَمِيْقَاتُ أَهْلِ الْمَدِيْنَةِ: ذُو الْحُلَيْفَةِ، وَالشَّامِ وَمِصْرَ وَالْمَغْرِبِ: الْجُحْفَةُ، وَالْيَمَنِ: يَلَمْلَمُ، وَلِنَجْدٍ: قَرْنٌ، وَلِلْمَشْرِقِ: ذَاتُ عِرْقٍ.

[VI.1.1] The point at which the pilgrim must enter the state of iḥrâm. The word 'meeqât' (pl. *mawâqeet*) is used to refer not only to particular places but also to times, as in *mawâqeet aṣ-ṣalâh* (fixed times of the prayers).

[VI.1.2] Shâm is greater Syria. This area includes the current states of Syria, Lebanon, Jordan and Palestine (may Allah liberate it).

[VI.1.3] Maghreb is the area of North Africa that includes the current states of Morocco, Algeria, Tunisia and Libya.

[VI.1.4] Al-Mashriq means 'the East'; this is Iraq and all the Muslim lands east of it. There is controversy over whether this meeqât was assigned by the Messenger of Allah (SA) or by 'Umar (RA). It could have been assigned by the Prophet (SA) and again by 'Umar (RA), who did not know that the Prophet (SA) had assigned it for al-Mashriq. In this way, we can reconcile the various reports.

Those are the *mawâqeet* (pl. of meeqât) for the people who live there and for those who cross through or by them. For someone whose house is closer [to Makkah] than the meeqât, including the people of Makkah, his meeqât is from his own home. [VI.1.5] However, the people of Makkah enter into iḥrâm for 'umrah from	فَهَذِهِ الْمَوَاقِيْتُ لِأَهْلِهَا وَلِكُلِّ مَنْ مَرَّ عَلَيْهَا. وَمَنْ مَنْزِلُهُ دُوْنَ الْمِيْقَاتِ، فَمِيْقَاتُهُ مِنْ مَوْضِعِهِ حَتَّى أَهْلُ مَكَّةَ يُهِلُّوْنَ مِنْهَا لِحَجِّهِمْ، وَيُهِلُّوْنَ لِلْعُمْرَةِ مِن أَدْنَى الْحِلِّ.

the closest place outside the sacred area (the Ḥaram). [VI.1.6]	

[VI.1.5] People of Makkah

The position above is that of the majority (A) + (+H, +M, +S).

Some scholars said that the people of Makkah may enter into iḥrâm for ‘umrah from Makkah itself because of the general meaning of the aforementioned hadith of Ibn ‘Abbâs (RAHUMA). However, when the Prophet (SA) allowed ‘Â’ishah to perform ‘umrah during the Farewell Pilgrimage, he commanded her brother ‘Abdur-Raḥmân (RA) to take her to at-Tan‘eem, which is the closest area to the Kaaba that is outside the Ḥaram. (Ag)

Based on this, the vast majority of scholars maintain that the people of Makkah need to go out of the Ḥaram to enter iḥrâm for ‘umrah. The reason why they do not go out for iḥrâm of Hajj is that during the rituals of Hajj, they will go out of the sacred land. Thus, in both Hajj and ‘umrah, for the people of Makkah and others, they will be both in and outside the sacred land during their state of iḥrâm.

[VI.1.6] All of the above is based on agreed-upon reports, such as the following:

«وَقَّتَ رسول اللَّهِ ﷺ لِأَهْلِ الْمَدِينَةِ ذَا الْحُلَيْفَةِ وَلِأَهْلِ الشَّامِ الْجُحْفَةَ وَلِأَهْلِ نَجْدٍ قَرْنَ الْمَنَازِلِ وَلِأَهْلِ الْيَمَنِ يَلَمْلَمَ قال فَهُنَّ لَهُنَّ وَلِمَنْ أتى عَلَيْهِنَّ من غَيْرِ أَهْلِهِنَّ مِمَّنْ أَرَادَ الْحَجَّ وَالْعُمْرَةَ فَمَنْ كان دُونَهُنَّ فَمِنْ أَهْلِهِ وَكَذَا فَكَذَلِكَ حتى أَهْلُ مَكَّةَ يُهِلُّونَ منها.»

The Prophet (SA) assigned Dhul-Ḥulayfah as the meeqât for the people of Madinah, al-Juḥfah for the people of Shâm; Qarn al-Manâzil for the people of Najd; and Yalamlam for the people of Yemen. He said, “These mawâqeet are for the people who are residing in those places and for those who come through them wanting to perform Hajj or ‘umrah. Whoever lives closer to the Ḥaram than these places enters into iḥrâm from his place of residence --- even the people of Makkah; they would enter into iḥrâm from Makkah.” (Ag – from Ibn ‘Abbâs)

As for someone whose way does not pass by a meeqât, his meeqât would be parallel to the closest meeqât to him. [VI.1.7]	وَمَنْ لَمْ يَكُنْ طَرِيْقُهُ عَلَى مِيْقَاتٍ، فَمِيْقَاتُهُ حَذْوَ أَقْرَبِهَا إِلَيْهِ.

[VI.1.7] It means that their meeqât should be at the same distance from Makkah as the closest of the original mawâqeet to them.

This is based on what ‘Umar (RA) did when he assigned Dhât ‘Irq for the people of ‘Iraq. He said, “See what is parallel to Qarn from your side.” Dhât ‘Irq was chosen because it was the same distance from the Kaaba as Qarn, and it was from their side.

Those who travel by air or sea should enter iḥrâm while passing the meeqât. It was allowed in the madh-hab for the people of the Sudanese island of Sawâkin and those coming through it, who arrive in Jeddah by sea, to make iḥrâm from Jeddah. A few contemporary scholars allow pilgrims who fly into Jeddah to enter into the state of iḥrâm from Jeddah because the airport is about the same distance from Makkah (44 miles) as is Yalamlam (43 miles), which is the closest meeqât to Jeddah. However, most contemporary scholars do not allow this.

It is not permissible for one who wants to enter Makkah to pass the meeqât without entering into the state of iḥrâm, except in the case of permissible fighting or a recurring need, such as gathering firewood or similar cases. [VI.1.8]	وَلَا يَجُوْزُ لِمَنْ أَرَادَ دُخُوْلَ مَكَّةَ تَجَاوُزُ الْمِيْقَاتِ غَيْرَ مُحْرِمٍ، إِلَّا لِقِتَالٍ مُبَاحٍ، أَوْ حَاجَةٍ تَتَكَرَّرُ، كَالْحَطَّابِ وَنَحْوِهِ.

[VI.1.8] Passing by the Meeqât for Any Reason

By consensus, a pilgrim who intends to perform Hajj or ‘umrah needs to enter the state of iḥrâm at the meeqât, but if one is going to Jeddah, Badr, or some other place other than Makkah, he or she does not need to do so.

The middle case is when one passes through the meeqât intending to go to Makkah but not for Hajj or ‘umrah, and here there are two cases:

1) Frequent visitors like business people and delivery people do not need to get into the state of iḥrâm.

2) The disagreement within the madh-hab is about the one who visits Makkah infrequently for reasons other than Hajj and ‘umrah, such as visiting family or friends. Imam Ibn Qudâmah believes here that such a person must get into the state of iḥrâm (A) + (+M) + (H: unless his home is at the meeqât or closer to Makkah); the second opinion (a) + (-S) is that this is preferred but not required, because the Prophet (SA) said, as mentioned previously:

«فَهُنَّ لَهُنَّ وَلِمَنْ أتى عَلَيْهِنَّ من غَيْرِ أَهْلِهِنَّ مِمَّنْ أَرَادَ الْحَجَّ وَالْعُمْرَةَ.»

“These mawâqeet are for the people who are residing in those places and for those who come through them wanting to perform Hajj or ‘umrah.” (Ag – from Ibn ‘Abbâs)

If he intends the rites of Hajj and/or ‘umrah, he should enter the state of iḥrâm from his place. [VI.1.9] If he crosses it without iḥrâm, [VI.1.10] he should go back and enter the state of iḥrâm from the meeqât, and no animal sacrifice is required of him. However, if he enters the state of iḥrâm from a place closer [to the Ḥaram] than the meeqât, then an offering of an animal [VI.1.11] is due on him, whether or not he goes back to the iḥrâm site.	ثُمَّ إِذَا أَرَادَ النُّسُكَ، أَحْرَمَ مِنْ مَوْضِعِهِ. وَإِنْ جَاوَزَهُ غَيْرَ مُحْرِمٍ، رَجَعَ فَأَحْرَمَ مِنَ الْمِيْقَاتِ، وَلَا دَمَ عَلَيْهِ؛ لأَنَّهُ أَحْرَمَ مِنْ مِيْقَاتِهِ. فَإِنْ أَحْرَمَ مِنْ دُوْنِهِ، فَعَلَيْهِ دَمٌ، سَوَاءٌ رَجَعَ إِلَى الْمِيْقَاتِ، أَوْ لَمْ يَرْجِعْ.

[VI.1.9] If a person passes through the meeqât without iḥrâm, not intending to perform Hajj or ‘umrah, and later decides to perform Hajj or ‘umrah, he or she enters into the state of iḥrâm from wherever he or she is (outside the Ḥaram for ‘umrah), without having to go back to any meeqât.

[VI.1.10] This applies to someone who wants to perform Hajj or ‘umrah but crosses the meeqât without entering iḥrâm.

[VI.1.11] A sheep or a goat, or better still, a camel or a cow.

It is better not to enter into iḥrâm before the meeqât, [VI.1.12] but if one does, then he is in the state of iḥrâm. The months of Hajj are Shawwâl, Dhul-Qa‘dah and the first ten days of Dhul-Ḥijjah. [VI.1.13]	وَالأَفْضَلُ أَنْ لَا يُحْرِمَ قَبْلَ الْمِيْقَاتِ، فَإِنْ فَعَلَ فَهُوَ مُحْرِمٌ. وَأَشْهُرُ الْحَجِّ: شَوَّالٌ، وَذُو الْقَعْدَةِ، وَعَشْرٌ مِنْ ذِي الْحِجَّةِ.

[VI.1.12] Follow the Sunnah; You Will Never Precede the Prophet (SA) in Any Good

In this regard, read the following beautiful report about Imam Mâlik:

عن الإمام مالك رحمه الله، أنه أتاه رجل فقال: يا أبا عبد الله! من أين أحرم؟ قال: من ذي الحليفة، من حيث أحرم رسول الله ﷺ فقال: إني أريد أن أحرم من المسجد من عند القبر (يعني قبر النبي ﷺ) قال: «لا تفعل فإني أخشى عليك الفتنة». فقال: وأي فتنة في هذه؟! إنما هي أميال أزيدها. قال: وأي فتنة أعظم من أن ترى أنك سبقت إلى فضيلة قصر عنها رسول الله ﷺ؟ إني سمعت الله يقول: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} النور / 63 .

A man came to Imam Mâlik and said, “Abu ‘Abdullâh, where should I get into the state of iḥrâm?” He said, “From Dhul-Ḥulayfah, where the Messenger of Allah (SA) made it.” The man said, “I want to get into the state of iḥrâm from the masjid, from near the grave (of the Prophet [SA]).” He said, “Don’t do this, for I fear your falling into fitnah.” He asked, “What fitnah? I’m just adding a few miles.” Imam Mâlik said, “What fitnah is greater than your thinking that you have gone first to something good that the Messenger of Allah (SA) failed to do? I heard that Allah the Almighty says: {…So let those beware who dissent from his [the Prophet’s] order, lest fitnah strike them or a painful punishment.} (an-Noor 24:63).” (Ḥilyat al-Awliyâ’, Abu Nu‘aym; also reported by al-Khaṭeeb al-Baghdâdi)

[VI.1.13] This is the position of (A) + (+H). For (S), the period ends at dawn on the 10th.

(-M): All of Dhul-Ḥijjah is included in the months of Hajj. It is allowed to defer ṭawâf al-ifâḍah (also known as ṭawâf az-ziyârah; the main ṭawâf of Hajj) up to the end of Dhul-Ḥijjah, but if it is delayed beyond that, a goat or sheep must be slaughtered to expiate.

Note that (A) + (+S) do not require any expiation for deferring ṭawâf al-ifâḍah even after the end of Dhul-Ḥijjah, but the person cannot completely exit from the state of iḥrâm until it is done.

(-H): A compensatory sacrifice is due for delaying ṭawâf al-ifâḍah without a valid excuse beyond sunset on the 12th of Dhul-Ḥijjah, the last of the three days of naḥr, according to the relied-upon position.

[VI.2] Chapter on *Iḥrâm*

بَابُ الإِحْرَامِ

It is recommended that one who wants to enter the state of iḥrâm [VI.2.1] perform ghusl (major ablution), [VI.2.2] clean himself [VI.2.3] and apply perfume. [VI.2.4] He must abstain from [wearing] fitted, sewn clothes. [VI.2.5] He should wear an izâr (unsewn lower garment) and a *ridâ'* (unsewn upper garment),[VI.2.6] both of which are white [VI.2.7] and clean.	مَنْ أَرَادَ الإِحْرَامَ اسْتُحِبَّ لَهُ أَنْ يَغْتَسِلَ، وَيَتَنَظَّفَ، وَيَتَطَيَّبَ. وَيَتَجَرَّدَ عَنِ الْمَخِيْطِ فِيْ إِزَارٍ وَرِدَاءٍ أَبْيَضَيْنِ نَظِيْفَيْنِ.

[VI.2.1] Iḥrâm does not mean simply wearing the clothes of the state of iḥrâm; it refers to the intention to embark on the rites of Hajj and/or ‘umrah. If one does not dress in the proper clothes, the iḥrâm is still valid, but he or she must expiate for committing a forbidden act during iḥrâm.

[VI.2.2] This is because the Prophet (SA) performed ghusl prior to his iḥrâm. (T; T: R) Also, when Asmâ’ bint ‘Umays (RAH) gave birth to Muhammad ibn Abi Bakr, the Prophet (SA) ordered her to perform ghusl and go into iḥrâm. (D; al-Albâni: S)

[VI.2.3] The scholars recommended grooming oneself before iḥrâm by clipping the nails, shaving the pubic hair, and plucking the armpit hair. These acts are not allowed for one in a state of iḥrâm, and in the past, pilgrims spent a long time in iḥrâm.

[VI.2.4] This is because ‘Â’ishah (RAH) said:

«كنت أُطَيِّبُ رَسُولَ اللَّهِ ﷺ لِإِحْرَامِهِ قبل أَنْ يُحْرِمَ وَلِحِلِّهِ قبل أَنْ يَطُوفَ بِالْبَيْتِ.»

“I used to put perfume on the Messenger of Allah (SA) for his iḥrâm, before he entered it and when he removed it, before he circumambulated the House.” (Ag)

Therefore, applying perfume to the body is an act of the Sunnah. Before entering iḥrâm, this recommendation includes women, as stated in *Kash-shâf al-Qinâ'* and other sources, subject to the general restrictions on wearing perfume around unrelated men.

As for putting perfume on the garments of iḥrâm:

(A) + (+S): Allowed but disliked. They cite the hadith above and argue it abrogated another one in which the Prophet (SA) told a man who was wearing a cloak scented with perfume to remove it and wash off the remains of the scent.

(-H, -M): Forbidden. They use the hadith (quoted below) in which the Prophet (SA) prohibited clothes scented with saffron or turmeric. They argue that the hadith above did not abrogate the one in which the Prophet (SA) told a man who was wearing a cloak scented with perfume to remove it and wash off the remains of the scent. (Ag)

This is all before they start the iḥrâm. Once they do, they cannot apply any perfume to the body or garment, according to all. Additionally, if they take off the perfumed garment, they cannot put it back on until they wash off the scent.

[VI.2.5] What Is Forbidden for the One in Iḥrâm to Wear

The word makheeṭ (sewn), used by jurists, was not actually mentioned by the Prophet (SA) as being part of the prohibited clothing. It was deduced from the following hadith in which the Prophet (SA) explained what one could wear in the state of iḥrâm:

«لَا يَلْبَسُ الْمُحْرِمُ الْقَمِيصَ ولا الْعِمَامَةَ ولا الْبُرْنُسَ ولا السَّرَاوِيلَ ولا ثَوْبًا مَسَّهُ وَرْسٌ ولا زَعْفَرَانٌ ولا الْخُفَّيْنِ إلا أَنْ لَا يَجِدَ نَعْلَيْنِ فَلْيَقْطَعْهُمَا حتى يَكُونَا أَسْفَلَ من الْكَعْبَيْنِ.»

"The one in a state of iḥrâm should not wear a long shirt, a turban, a hooded robe, trousers, a garment scented by turmeric or saffron, or leather socks (khuff), except for one who does not have sandals. He may wear leather socks and cut them so they are below his ankles." (Ag – from Ibn 'Umar)

In a different report, he said that one who does not have an izâr may wear trousers. Based on these prohibitions, the scholars deduced that a man in iḥrâm may not wear fitted, sewn clothes. This does not mean that anything with stitches is forbidden, for it is permissible to wear a ridâ' with stitching, but it is not permissible to wear a shirt (a form-fitting garment), even if it has no stitches.

The question of whether or not a person may wear a belt is controversial, and some of the righteous predecessors were strictly opposed to it. It is only permissible in the madh-hab if it is necessary to keep the 'awrah covered. Otherwise, one may only wrap something over the izâr and tuck one side of it into the other without making a knot. Finally, wearing a waist pouch to protect money and belongings is allowed in the madh-hab and by the majority.

[VI.2.6] The Prophet (SA) said:

«وليُحْرِم أحدكم في إزار ورِدَاء ونَعْلَيْن.»

"Enter into the state of iḥrâm while wearing an izâr, a ridâ', and sandals." (A – from Ibn 'Umar; Aḥmad Shâkir: S)

[VI.2.7] That is recommended because the Prophet (SA) said:

«الْبَسُوا من ثِيَابِكُمْ الْبَيَاضَ فَإِنَّهَا خَيْرُ ثِيَابِكُمْ وَكَفِّنُوا فيها مَوْتَاكُمْ.»

"Wear of your clothes the white ones, for they are your best clothes, and shroud your dead in them." (D – from Ibn 'Abbâs; al-Albâni: S)

Then he should pray two rak'ahs [VI.2.8] and enter the state of iḥrâm immediately after them, by making the intention for the state of iḥrâm.	ثُمَّ يُصَلِّيَ رَكْعَتَيْنِ وَيُحْرِمَ عَقِيْبَهُمَا، وَهُوَ أَنْ يَنْوِيَ الإِحْرَامَ.

[VI.2.8] That is because the Prophet (SA) said, while in al-'Aqeeq:

«أَتَانِي اللَّيْلَةَ آتٍ من رَبِّي فقال صَلِّ في هذا الْوَادِي الْمُبَارَكِ وَقُلْ عُمْرَةً في حَجَّةٍ.»

"A messenger from my Lord came to me tonight and said, 'Pray in this blessed valley and say: (I intend) Hajj and 'umrah.'" (B – from 'Umar)

Praying two rak'ahs of sunnah prayers for iḥrâm is the opinion of the majority, but doing so is not mandatory.

It is recommended that he speaks of his intention for iḥrâm [VI.2.9] and makes a condition, saying, "O Allah! I intend this particular rite ('umrah and/or Hajj), so if something prevents me [from completing it], then the place of the termination of my iḥrâm is where You made me unable to proceed." [VI.2.10]	وَيُسْتَحَبُّ أَنْ يَنْطِقَ بِمَا أَحْرَمَ بِهِ. وَيَشْتَرِطَ، وَيَقُوْلُ: اللّٰهُمَّ إِنِّيْ أُرِيْدُ النُّسُكَ الْفُلَانِيَّ، فَإِنْ حَبَسَنِيْ حَابِسٌ، فَمَحِلِّيْ حَيْثُ حَبَسْتَنِيْ.

[VI.2.9] This is because of the hadith of 'Umar (RA) quoted in commentary note [VI.2.8].

[VI.2.10] This is because when the Prophet (SA) was told by his cousin Ḍubâ'ah bint az-Zubayr that she wanted to perform Hajj but feared that she would not be able to complete it because of her sickness, he told her:

«حُجِّي وَاشْتَرِطِي وَقُولِي اللهم مَحِلِّي حَيْثُ حَبَسْتَنِي.»

"Go and perform Hajj and make a condition, saying, 'O Allah, my place of exiting from iḥrâm is where You stop me from proceeding.'" (B)

Saying this is recommended to avoid the expiation of an unfulfilled Hajj, which will be discussed later.

[Forms of Hajj and *'Umrah*]

He is given the choice of tamattu', *ifrâd*, or *qirân* [which are described below].	وَهُوَ مُخَيَّرٌ بَيْنَ التَّمَتُّعِ، وَالإِفْرَادِ، وَالْقِرَانِ،

The best is tamattu‘, then ifrâd, and then qirân. [VI.2.11]	وَأَفْضَلُهَا التَّمَتُّعُ، ثُمَّ الإِفْرَادُ، ثُمَّ الْقِرَانُ.

[VI.2.11] This is because it was reported from Jâbir:

عن جابرٍ رضي الله عنهما أَنَّهُ حَجَّ مع رسول اللَّهِ ﷺ عَامَ سَاقَ الْهَدْيَ معه وقد أَهَلُّوا بِالْحَجِّ مُفْرَدًا فقال رسول اللَّه ﷺ: «أَحِلُّوا من إِحْرَامِكُمْ فَطُوفُوا بِالْبَيْتِ وَبَيْنَ الصَّفَا وَالْمَرْوَةِ وَقَصِّرُوا وَأَقِيمُوا حَلَالًا حتى إذا كان يَوْمُ التَّرْوِيَةِ فَأَهِلُّوا بِالْحَجِّ وَاجْعَلُوا التي قَدِمْتُمْ بها مُتْعَةً.» قالوا «كَيْفَ نَجْعَلُهَا مُتْعَةً وقد سَمَّيْنَا الْحَجَّ؟» قال: «افْعَلُوا ما آمُرُكُمْ بِهِ فَإِنِّي لَوْلَا أَنِّي سُقْتُ الْهَدْيَ لَفَعَلْتُ مِثْلَ الذي أَمَرْتُكُمْ بِهِ.»

that he performed Hajj with the Messenger of Allah (SA) during the year when he brought his hady with him. They made the intention to perform Hajj alone, and then the Messenger of Allah (SA) said, “Come out of your state of iḥrâm, circumambulate the House, and go between Ṣafâ and Marwah, shorten (your hair), and stay in Makkah without iḥrâm until the day of tarwiyah [the 8th of Dhul-Ḥijjah], then begin iḥrâm for Hajj, and make the one you came with a mut‘ah (enjoying what is forbidden during iḥrâm). [This means to make the iḥrâm for the Hajj you initially intended iḥrâm for ‘umrah, which allows you to enjoy the things that were forbidden in iḥrâm after you finish your ‘umrah and before you begin Hajj].” They said, “How do we make it mut‘ah when we intended Hajj?” He said, “Do what I command you, for had it not been that I brought the sacrifices with me, I would have done what I command you to do.” (Ag – from Jâbir)

The four Imams agree that any of the three forms of Hajj is acceptable, and that the command and obligation to make tamattu‘ were for the Companions only. This is based on other reports.

Tamattu‘ is to make iḥrâm for ‘umrah during the months of Hajj and finish it, and then get into the state of iḥrâm for Hajj during the same year. [VI.2.12]	وَالتَّمَتُّعُ: أَنْ يُحْرِمَ بِالْعُمْرَةِ فِيْ أَشْهُرِ الْحَجِّ، وَيَفْرُغَ مِنْهَا، ثُمَّ يُحْرِمَ بِالْحَجِّ فِيْ عَامِهِ.

[VI.2.12] It is called tamattu‘ (enjoyment) because between the end of ‘umrah and the beginning of Hajj, you may enjoy the acts that are forbidden for those in a state of iḥrâm.

Ifrâd is to make iḥrâm for Hajj alone. [VI.2.13]	وَالإِفْرَادُ: أَنْ يُحْرِمَ بِالْحَجِّ وَحْدَهُ.

[VI.2.13] Ifrâd means to single out because you will be making iḥrâm for a single rite (Hajj). This is the most preferred form according to (-M, -S).

Qirân is to make iḥrâm for both Hajj and ‘umrah, or to make it for ‘umrah and then add Hajj to it. [VI.2.14]	وَالْقِرَانُ: أَنْ يُحْرِمَ بِهِمَا، أَوْ يُحْرِمَ بِالْعُمْرَةِ ثُمَّ يُدْخِلَ عَلَيْهَا الْحَجَّ.

[VI.2.14] Qirân means simultaneously combining. This is the most preferred form according to (-H).



If one makes iḥrâm for Hajj and then adds ‘umrah to it, his iḥrâm does not become valid for the ‘umrah. [VI.2.15]	وَلَوْ أَحْرَمَ بِالْحَجِّ، ثُمَّ أَدْخَلَ عَلَيْهِ الْعُمْرَةَ، لَمْ يَنْعَقِدْ إِحْرَامُهُ بِالْعُمْرَةِ.

[VI.2.15] This is according to the popular opinion in (A).

[Talbiyah]

Once he is upon his mount, he should make talbiyah, saying: *Labbayka Allâhumma labbayk, labbayka lâ shareeka laka labbayk. Inna al-ḥamda wanni‘mata laka wal-mulk, lâ shareeka lak* (Here I am, O Allah, here I am [responding to Your call]. Here I am, responding to Your call. You have no partner. Here I am, responding to Your call. Verily, all praise and blessings are Yours, as well as all sovereignty. You have no partner). [VI.2.16]	فَإِذَا اسْتَوَى عَلَى رَاحِلَتِهِ لَبَّى، فَيَقُوْلُ: لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ، لَبَّيْكَ لَا شَرِيْكَ لَكَ لَبَّيْكَ إِنَّ الْحَمْدَ وَالنِّعْمَةَ لَكَ وَالْمُلْكَ، لَا شَرِيْكَ لَكَ.

[VI.2.16] Talbiyah Wording and Ruling

‘Abdullâh ibn ‘Umar (rAa) reported that the talbiyah of the Messenger of Allah ﷺ was:

«عن عبد اللَّهِ بن عُمَرَ رضي الله عنهما أَنَّ تَلْبِيَةَ رسول اللَّهِ ﷺ لَبَّيْكَ اللهم لَبَّيْكَ لَبَّيْكَ لَا شَرِيكَ لك لَبَّيْكَ إِنَّ الْحَمْدَ وَالنِّعْمَةَ لك وَالْمُلْكَ لَا شَرِيكَ لك.»

> *“Here I am, O Allah, here I am (responding to Your call). Here I am, responding to Your call. You have no partner. Here I am, responding to Your call. Verily, all praise and blessings are yours, as well as all sovereignty. You have no partner.” (Ag – from Ibn ‘Umar)*

Ruling:

(A) + (+S): Recommended.

(-M): Mandatory.

(-H): Mandatory or conditional to say talbiyah or any dhikr indicating the beginning of the ritual, but talbiyah is preferred.

It is recommended to do it (talbiyah) frequently, and to raise the voice while saying it - for men only. [VI.2.17]	وَيُسْتَحَبُّ الإِكْثَارُ مِنْهَا وَرَفْعُ الصَّوْتِ بِهَا لِغَيْرِ النِّسَاءِ.

[VI.2.17] This is because the Prophet (SA) said:

«أَتَانِي جِبْرِيلُ فَأَمَرَنِي أَنْ آمُرَ أَصْحَابِي وَمَنْ مَعِي أَنْ يَرْفَعُوا أَصْوَاتَهُمْ بِالْإِهْلَالِ وبِالتَّلْبِيَةِ.»

"Jibreel (AS) came to me and commanded me to order my Companions to raise their voices (saying, 'Here I intend for You, my Lord, a Hajj/'umrah') and with talbiyah." (D, H, Kh – from Khallâd ibn as-Sâ'ib; al-Albâni: S)

It is more stressed when: 1. They go up a hill, 2. Or down into a valley, 3. Or they hear someone saying it, 4. Or they do something, out of forgetfulness, that is unlawful during iḥrâm, 5. Or they meet a group on their mounts, 6. And at the time after the mandatory prayers, 7. And at the time before dawn, 8. And at the time of the approach of the night and day. [VI.2.18]	وَهِيَ آكَدُ فِيْمَا إِذَا: 1- عَلَا نَشَزًا 2- أَوْ هَبَطَ وَادِيًا 3- أَوْ سَمِعَ مُلَبِّيًا 4- أَوْ فَعَلَ مَحْظُوْرًا نَاسِيًا 5- أَوْ لَقِيَ رَاكِبًا 6- وَفِيْ أَدْبَارِ الصَّلَاةِ المَكْتُوبَةِ 7- وبِالأَسْحَارِ 8- وَإِقْبَالِ اللَّيْلِ وَالنَّهَارِ.

[VI.2.18] The Prophet (SA) said:

«كَأَنِّي أَنْظُرُ إليه إِذْ انْحَدَرَ في الْوَادِي يُلَبِّي.»

“It is as if I see him [Moosâ] coming down the hill making talbiyah.” (Ag – from Ibn ‘Abbâs)

There is also this report:

«أن رسول الله ﷺ كان يلبي إذا لقي راكباً أو علا أكمة أو هبط وادياً وفي أدبار الصلوات المكتوبة ومن آخر الليل.»

“The Messenger of Allah (SA) used to make talbiyah when he met a person who was riding, when he ascended a hill or walked down into a valley, after the mandatory prayers, and at the end of the night." (Ibn ‘Asâkir – from Jâbir. Ibn Ḥajar: W)

All these positions, in addition to riding your mount, are sanctioned based on some proofs that are mostly traceable to the Companions and the tâbi‘een.

[VI.3] Chapter on the Unlawful Acts during *Iḥrâm*

بَابُ مَحْظُوْرَاتِ الإِحْرَامِ

وَهِيَ تِسْعَةٌ: حَلْقُ الشَّعَرِ، وَقَلْمُ الظُّفُرِ. فَفِيْ ثَلَاثَةٍ مِنْهَا دَمٌ، وَفِيْ كُلِّ وَاحِدٍ مِمَّا دُوْنَهَا مُدُّ طَعَامٍ، وَهُوَ رُبُعُ الصَّاعِ. وَإِنْ خَرَجَ فِيْ عَيْنِهِ شَعَرٌ فَقَلَعَهُ، أَوْ نَزَلَ شَعَرُهُ فَغَطَّى عَيْنَيْهِ، أَوِ انْكَسَرَ ظُفْرُهُ فَقَصَّهُ، فَلَا شَيْءَ فِيْهِ.	There are nine: 1) Shaving the hair and 2) clipping the nails. If he does this to three [hairs or nails], then he must sacrifice an animal; if to less than three, then for each one a mudd of food is due from him; this is one-fourth of a ṣâ‘ (or slightly more than 500g). If hair grew in his eye and he removed it, or his hair grew down and covered his eyes, or his nail broke and he clipped it, then nothing is required of him. [VI.3.1]

[VI.3.1] For Allah (ST) says:

{وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحِلَّهُ}

{...And do not shave your heads until the hady reaches the place of sacrifice...} (al-Baqarah 2:196)

Clipping the nails was given the same ruling as shaving the hair because of the similarity between them and because of the interpretation of Ibn ‘Abbâs (rahuma) of this saying of Allah the Almighty:

{ثُمَّ لْيَقْضُوا تَفَثَهُمْ}

{Then let them put an end to their unkemptness…} (al-Ḥajj 22:29)

The word in this verse that is translated as {unkemptness} was interpreted by Ibn ‘Abbâs (RAHUMA) to mean long hair and nails that will be shaved and clipped respectively, among other things. (Tafseer aṭ-Ṭabari)

The four Imams considered the clipping of nails to be one of the forbidden acts of iḥrâm. (Z) did not.

3) Wearing fitted, sewn clothes unless he does not find a lower garment and hence wears trousers; or if he does not find sandals, so he wears leather socks. In these cases, there is no expiation due on him. [VI.3.2]	الثَّالِثُ: لُبْسُ الْمَخِيْطِ إِلَّا أَنْ لَا يَجِدَ إِزَارًا، فَيَلْبَسَ سَرَاوِيْلَ ، أَوْ لَا يَجِدَ نَعْلَيْنِ، فَيَلْبَسَ خُفَّيْنِ، وَلَا فِدْيَةَ عَلَيْهِ.

[VI.3.2] See the discussion of this matter in the previous chapter.

4) Covering the head, and the ears are part of it. [VI.3.3]	الرَّابِعُ: تَغْطِيَةُ الرَّأْسِ، وَالأُذُنَانِ مِنْهُ.

[VI.3.3] See the discussion of this matter in the previous chapter.

5) Applying perfume to his body or clothes.	الْخَامِسُ: الطِّيْبُ فِيْ بَدَنِهِ وَثِيَابِهِ.

6) Killing game animals of the land, which are the wild animals that are permissible (to eat). As for domestic animals, it is not forbidden [to kill them for food]. Regarding game from the sea, it is permissible. [VI.3.4]	السَّادِسُ: قَتْلُ صَيْدِ الْبَرِّ، وَهُوَ مَا كَانَ وَحْشِيًّا مُبَاحًا، فَأَمَّا الأَهْلِيُّ فَلا يَحْرُمُ، وصَيْدُ الْبَحْرِ مُبَاحٌ.

[VI.3.4] This is based on the following verse:

«أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَّكُمْ وَلِلسَّيَّارَةِ ۖ وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا ۗ وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ»

{Permitted to you is (the pursuit of) game of the sea and its food as a provision for you and for the wayfarers; but forbidden to you is the hunting of game on the land, as long as you are in a state of iḥrâm. And fear Allah, to whom you shall be gathered.} (al-Mâ'idah 5:96)

Those who are in iḥrâm may not even eat from the game if it was hunted for them. They may not eat from it either if it was hunted at their command or with their assistance, which is all forbidden for them. This is based on the following report:

«عن ابن أبي قَتَادَةَ - رضي الله عنه - قال خَرَجَ رسول اللَّهِ ﷺ حَاجًّا وَخَرَجْنَا معه قال فَصَرَفَ من أَصْحَابِهِ فِيهِمْ أبو قَتَادَةَ فقال خُذُوا سَاحِلَ الْبَحْرِ حتى تَلْقَوْنِي قال فَأَخَذُوا سَاحِلَ الْبَحْرِ فلما انْصَرَفُوا قِبَلَ رسول اللَّهِ ﷺ أَحْرَمُوا كلهم إلا أَبَا قَتَادَةَ فإنه لم يُحْرِمْ فَبَيْنَمَا هُمْ يَسِيرُونَ إِذْ رَأَوْا حُمُرَ وَحْشٍ فَحَمَلَ عليها أبو قَتَادَةَ فَعَقَرَ منها أَتَانًا فَنَزَلُوا فَأَكَلُوا من لَحْمِهَا قال فَقَالُوا أَكَلْنَا لَحْمًا وَنَحْنُ مُحْرِمُونَ قال فَحَمَلُوا ما بَقِيَ من لَحْمِ الْأَتَانِ فلما أَتَوْا رَسُولَ اللَّهِ ﷺ قالوا يا رَسُولَ اللَّهِ إِنَّا كنا أَحْرَمْنَا وكان أبو قَتَادَةَ لم يُحْرِمْ فَرَأَيْنَا حُمُرَ وَحْشٍ فَحَمَلَ عليها أبو قَتَادَةَ فَعَقَرَ منها أَتَانًا فَنَزَلْنَا فَأَكَلْنَا من لَحْمِهَا فَقُلْنَا نَأْكُلُ لَحْمَ صَيْدٍ وَنَحْنُ مُحْرِمُونَ فَحَمَلْنَا ما بَقِيَ من لَحْمِهَا فقال هل مِنْكُمْ أَحَدٌ أَمَرَهُ أو أَشَارَ إليه بِشَيْءٍ قال قالوا لَا قال فَكُلُوا ما بَقِيَ من لَحْمِهَا.»

“The Prophet (SA) went out to perform Hajj, and we went with him.” The Prophet (SA) then sent a group, including Abu Qatâdah, and told them, “Follow the seashore until we meet again.” All of them except Abu Qatâdah then got into the state of iḥrâm. On the way, they saw a herd of wild asses. Abu Qatâdah attacked them and killed a female wild ass. They all ate from its meat but said, “We ate meat [of land game] while in the state of iḥrâm!” Then they carried the rest of the meat to the Prophet (SA) and said to him, “O Messenger of Allah, we got into the state of iḥrâm, and Abu Qatâdah had not yet done so, and we saw a herd of wild asses…” The Prophet (SA) said to them, “Did any of you ask Abu Qatâdah to attack the herd or point it out to him?” They said, “No.” He said, “Then you may eat what is left of the meat.” (Ag – from the son of Abu Qatâdah, from his father)

Hunting game animals is forbidden in the Ḥaram, whether or not one is in iḥrâm, and it is forbidden for the one in iḥrâm, whether or not they are in the Ḥaram.

7) Marriage, which is forbidden, but there is no expiation due for it. [VI.3.5]	السَّابِعُ: عَقْدُ النِّكَاحِ حَرامٌ، وَلَا فِدْيَةَ فِيْهِ.

[VI.3.5] The Prophet (SA) said:

«لَا يَنْكِحُ الْمُحْرِمُ ولا يُنْكَحُ ولا يَخْطُبُ.»

"The one in a state of iḥrâm shall not marry, conduct the marriage contract on behalf of or for someone else, or propose marriage."
(M – from 'Uthmân ibn 'Affân)

8) Sexual intimacy short of intercourse. If one ejaculates (semen) as a result of that, he must offer a camel; if he does not ejaculate, then he must offer a sheep. [VI.3.6] His Hajj is valid.	الثَّامِنُ: الْمُبَاشَرَةُ لِشَهْوَةٍ فِيْمَا دُوْنَ الْفَرْجِ، فَإِنْ أَنْزَلَ بِهَا فَفِيْهَا بَدَنَةٌ، وَإِلَّا فَفِيْهَا شَاةٌ، وحَجُّهُ صَحِيحٌ.

[VI.3.6] Also, if only madhy comes out, or no discharge occurs, fidyat al-adhâ is due: slaughtering a sheep or goat, feeding six poor persons, or fasting three days. (A/SM)

9) Intercourse. If it is before the first *taḥallul* (getting out of the state of iḥrâm), his Hajj is invalid, but he still must complete it (even though it is invalid) and perform Hajj the following year. In addition, he must offer a camel. If it is after the first taḥallul, a sheep is due, and he must go into iḥrâm from at-Tan'eem so that he will be in iḥrâm to perform ṭawâf. [VI.3.7] If he has intercourse during 'umrah, he spoils it, and a sheep is due. Nothing other than it would spoil the rites (of Hajj/'umrah).	التَّاسِعُ: الْوَطْءُ فِي الْفَرْجِ فَإِنْ كَانَ قَبْلَ التَّحَلُّلِ الأَوَّلِ، فَسَدَ الْحَجُّ وَوَجَبَ الْمُضِيُّ فِيْ فَاسِدِهِ ، وَالْحَجُّ مِنْ قَابِلٍ، وَعَلَيْهِ بَدَنَةٌ. وَإِنْ كَانَ بَعْدَ التَّحَلُّلِ الأَوَّلِ، فَفِيْهِ شَاةٌ، وَيُحْرِمُ مِنَ التَّنْعِيْمِ؛ لِيَطُوْفَ مُحْرِمًا. وَإِنْ وَطِئَ فِي الْعُمْرَةِ، أَفْسَدَهَا وَعَلَيْهِ شَاةٌ، وَلَا يَفْسُدُ النُّسُكُ بِغَيْرِهِ.

[VI.3.7] Intercourse while in iḥrâm is forbidden. Deliberate intercourse before standing at 'Arafah invalidates Hajj by consensus. This is based on the saying of Allah the Almighty:

{الْحَجُّ أَشْهُرٌ مَّعْلُومَاتٌ ۚ فَمَن فَرَضَ فِيهِنَّ الْحَجَّ فَلَا رَفَثَ وَلَا فُسُوقَ وَلَا جِدَالَ فِي الْحَجِّ}

{The Hajj is (in) the well-known (lunar) months. Therefore, whoever intends to perform Hajj therein should not have sexual relations, commit sins, or dispute unjustly during the Hajj…} (al-Baqarah 2:197)

See the discussion in the following chapter about what is required of them. In ‘umrah, intercourse invalidates the rite only if it occurs before completion of sa‘iy. If it occurs after sa‘iy but before shaving or shortening the hair, the ‘umrah remains valid, but fidyat al-adhâ is due. (A/SM)

The ruling for the woman is like that of the man except that [what she wears in] her iḥrâm pertains only to her face, and she may wear sewn, fitted clothes. [VI.3.8]	وَالْمَرْأَةُ كَالرَّجُلِ، إِلَّا أَنَّ إِحْرَامَهَا فِيْ وَجْهِهَا، وَلَهَا لُبْسُ الْمَخِيْطِ.

[VI.3.8] Because the Messenger of Allah (SA):

«نَهَى النِّسَاءَ فِي إِحْرَامِهِنَّ عَنْ الْقُفَّازَيْنِ وَالنِّقَابِ وَمَا مَسَّ الْوَرْسُ وَالزَّعْفَرَانُ مِنْ الثِّيَابِ، وَلْتَلْبَسْ بَعْدَ ذَلِكَ مَا أَحَبَّتْ مِنْ أَلْوَانِ الثِّيَابِ مُعَصْفَرًا أَوْ خَزًّا أَوْ حُلِيًّا أَوْ سَرَاوِيلَ أَوْ قَمِيصًا أَوْ خُفًّا.»

“Prohibited women while in the state of iḥrâm from wearing gloves, face veils (niqab), and clothes dyed with turmeric or saffron. Otherwise, they can wear any kind of clothing they like, such as those dyed with yellow color or silk or jewelry or trousers or shirts or leather socks.” (D – from ‘Abdullâh ibn ‘Umar; Ibn Ḥajar: R)

If she desires, she may still cover her face, when needed, by pulling part of her head cover down. There are reports that some female Companions did that when men passed by.

[VI.4] Chapter on Expiation

بَابُ الْفِدْيَةِ

وَهِيَ عَلَى ضَرْبَيْنِ: أَحَدُهُمَا: عَلَى التَّخْيِيْرِ: وَهِيَ فِدْيَةُ الأَذَى وَاللُّبْسِ وَالطِّيْبِ، فَلَهُ الْخِيَارُ بَيْنَ صِيَامِ ثَلَاثَةِ أَيَّامٍ، أَوْ إِطْعَامِ ثَلَاثَةِ آصُعٍ مِنْ تَمْرٍ لِسِتَّةِ مَسَاكِيْنَ، أَوْ ذَبْحِ شَاةٍ.	Expiation is of two types: The first is where one is given a choice: This is the expiation for shaving the hair due to some necessity, wearing clothes that are sewn, or wearing perfume. The person has the choice to fast three days, feed three ṣâ‘s of dates to six poor individuals, or slaughter a sheep or goat. [VI.4.1]

[VI.4.1] This is because Allah the Almighty says:

{وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحِلَّهُ ۚ فَمَن كَانَ مِنكُم مَّرِيضًا أَوْ بِهِ أَذًى مِّن رَّأْسِهِ فَفِدْيَةٌ مِّن صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ}

{…And do not shave your heads until the hady reaches the place of sacrifice. And whosoever of you is ill or has an ailment in his scalp (necessitating shaving), he must pay a ransom of fasting [for three days] or giving charity [feeding six poor persons] or offering a sacrifice [one sheep].} (al-Baqarah 2:196)

In the following report, the expiation is further clarified:

«عن كَعْبِ بن عُجْرَةَ: حُمِلْتُ إلى رسول اللَّهِ ﷺ وَالْقَمْلُ يَتَنَاثَرُ على وَجْهِي فقال ما كنت أُرَى الْوَجَعَ بَلَغَ بِكَ ما أَرَى أو ما كنت أُرَى الْجَهْدَ بَلَغَ بِكَ ما أَرَى تَجِدُ شَاةً فقلت لَا فقال فَصُمْ ثَلَاثَةَ أَيَّامٍ أو أَطْعِمْ سِتَّةَ مَسَاكِينَ لِكُلِّ مِسْكِينٍ نِصْفَ صَاعٍ.»

Ka‘b ibn ‘Ujrah (RA) said: I was carried to the Messenger of Allah (SA) while lice were bouncing on my face. He said, “I did not think that you were in this much pain and under this much hardship. Do you have a sheep or a goat?” I said no. He said, “Then fast three days or feed six poor individuals; for each one half a ṣâ‘.” (Ag – from Ka‘b ibn ‘Ujrah)

According to (A), one mudd of wheat equals 1/2 ṣâ‘ of other foods, so if he donates dates, he donates 3 ṣâ‘s as in the hadith, but if he donates wheat, he donates 1.5 ṣâ‘s only.

The expiation for killing game animals is a domestic animal that is equal to the wild one killed, except for birds, as their value instead would be due – except for a pigeon, for which a sheep is due, and an ostrich, for which a camel is due. He is given the choice of sacrificing an equal domestic animal, or giving its value in food, feeding a mudd to every poor individual, or fasting a day in place of every mudd he had to give away. [VI.4.2]	وَجَزَاءُ الصَّيْدِ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ، إِلَّا الطَّائِرَ، فَإِنَّ فِيْهِ قِيْمَتَهُ، إِلَّا الْحَمَامَةَ، فَفِيْهَا شَاةٌ، وَالنَّعَامَةُ، فَفِيْهَا بَدَنَةٌ، وَيُخَيَّرُ بَيْنَ إِخْرَاجِ الْمِثْلِ أَوْ تَقْوِيْمِهِ بِطَعَامٍ، فَيُطْعِمُ لِكُلِّ مِسْكِيْنٍ مُدًّا، أَوْ يَصُوْمُ عَنْ كُلِّ مُدٍّ يَوْمًا.

[VI.4.2] This is based on the following verse:

{يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنتُمْ حُرُمٌ ۚ وَمَن قَتَلَهُ مِنكُم مُّتَعَمِّدًا فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِّنكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلُ ذَٰلِكَ صِيَامًا لِّيَذُوقَ وَبَالَ أَمْرِهِ}

{O you who believe! Do not kill game while you are in a state of iḥrâm. Whoever of you does so intentionally, the penalty is an offering brought to the Kaaba of an eatable animal (sheep, goat, cow, and so on) equivalent to the one killed, as judged by two just men among you; or an expiation: food for poor persons; or the equivalent of this in fasting, so that he may taste the evil consequence of his deed…} (al-Mâ'idah 5:95)

He donates one mudd of wheat or 1/2 ṣâ‘ of dates or other foods. He will fast one day in place of every meal he should have donated. (A/SM)

(One mudd is 2 handfuls for an average adult [with the two hands cupped together], which is approximately 0.51-0.75 liters; 4 mudds make one ṣâ‘.)

The second type is where the sequence (for the options of expiation) must be followed: This is for the person who is performing tamattu‘. He must sacrifice a sheep or a goat. If he does not have one, then he must fast three days while at Hajj and seven days when he returns (to his homeland). [VI.4.3]	الضَّرْبُ الثَّانِيْ عَلَى التَّرْتِيْبِ وَهُوَ المتَمَتِّعُ، يَلْزَمُهُ شَاةٌ، فَإِنْ لَمْ يَجِدْ، فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعَ.

[VI.4.3] This is based on the following verse:

{فَإِذَا أَمِنتُمْ فَمَن تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ ۚ فَمَن لَّمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ ۗ تِلْكَ عَشَرَةٌ كَامِلَةٌ ۗ ذَٰلِكَ لِمَن لَّمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ}

{…And whoever performs the ‘umrah in the months of Hajj, before (performing) the Hajj, (meaning Hajj at-tamattu‘ or al-qirân), he must slaughter a hady such as he can afford, but if he cannot afford it, he should observe fasting for three days during the Hajj and seven days after his return (to his home). Those are ten complete days. This is for him whose family is not present at al-Masjid al-Ḥarâm (meaning one who is not a resident of Makkah or nearby areas)…} (al-Baqarah 2:196)

The same rulings apply to the qirân, because the person who does that gets to enjoy the ease of making Hajj and ‘umrah in one trip.

The three days to be fasted at Hajj may be fasted during the iḥrâm of ‘umrah. He may fast the day of ‘Arafah as well, even though it is not preferred for other pilgrims. He may also fast during the days of tashreeq. (A/SM) It would be best for him to end his fasting by the day of ‘Arafah.

For the one who had intercourse, he must sacrifice a camel, [VI.4.4] and if he cannot afford it, he must fast like the one making tamattu‘. [VI.4.5]	وَفِدْيَةُ الْجِمَاعِ بَدَنَةٌ، فَإِنْ لَمْ يَجِدْ، فَصِيَامُ كَصِيَامِ المتَمَتِّعِ.

The ruling is the same for the sacrifice due for missing the Hajj. [VI.4.6]	وَكَذٰلِكَ الْحُكْمُ فِي دَمِ الْفَوَاتِ.

[VI.4.4] Whenever a camel is due, a cow will also suffice.

[VI.4.5] Intercourse before the First Taḥallul

The one who had intercourse before the first taḥallul is required to:

1- Finish the spoiled Hajj.

2- Perform another Hajj the following year. (The expense of the make-up Hajj for the spouse who was coerced will be on the other spouse. Otherwise, if it was consensual, each one will be responsible for their expenses.)

3- Slaughter a camel. (If they were both willing, each one should sacrifice.)

All three have been reported from Ibn ‘Abbâs and Ibn ‘Umar (rahum) and not contested by any Companions; thus it is their consensus.

If one had intercourse after the first taḥallul, he would have to:

1. Offer fidyat al-adhâ: slaughter a sheep or goat, feed six poor persons, or fast three days;

2. Go back to at-Tan‘eem for a new iḥrâm, in order to be able to continue the rites, since his iḥrâm is spoiled.

His Hajj is not spoiled, and he does not need to make it up.

[VI.4.6] By coming late to Hajj and not standing at ‘Arafah for any portion of the day or night. Note that the one who missed Hajj and had not made a condition of exemption in his iḥrâm will also have to make up for the missed Hajj the following year. This is based on ‘Umar’s fatwa to a man called Habbâr ibn al-Aswad. (Ba)

Note that the similarity in the ruling between missing the Hajj and the expiation for intercourse is related to the requirement of following the sequence (fasting only for those who cannot afford sacrificing). However,

unlike the expiation for intercourse, the required offering in missing the Hajj is a sheep/goat. The same ruling of missing the Hajj applies to those who miss an obligation.

The person who is prevented from proceeding must sacrifice an animal; if he cannot afford it, he must fast for ten days. [VI.4.7]	وَالْمُحْصَرُ يَلْزَمُهُ دَمٌ، فَإِنْ لَمْ يَجِدْ، فَصِيَامُ عَشَرَةِ أَيَّامٍ.

[VI.4.7] For Allah (ST) says:

{وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ ۚ فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ ۖ وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحِلَّهُ}

{And perform properly the Hajj and 'umrah for Allah. However, if you are prevented (from completing them), sacrifice a hady (animal, meaning a sheep, cow, camel and so on) such as you can afford, and do not shave your heads until the hady reaches the place of sacrifice...} (al-Baqarah 2:196)

Notice that there is no mention of fasting in the verse. However, (A) prescribed it by analogy with the case of the one making tamattu', for the person who cannot afford to slaughter.

Summary of the rulings of iḥṣâr:

- If one was prevented by an enemy or unjustifiable detention from the rituals of Hajj, but was able to make it to the Ḥaram, they will make 'umrah and then exit from their iḥrâm. Nothing else is required.

- If they were not able to make it to the Ḥaram, they will make an offering (sheep/goat) and exit from their iḥrâm. Neither shaving nor anything else is required. If they cannot afford the offering, they must fast ten days.

- If they were prevented from ṭawâf al-ifâḍah, after the first taḥallul, they stay in this state of partial iḥrâm (where intercourse, other lustful physical contact, and marriage contracts remain prohibited) until they

make ṭawâf al-ifâḍah. (S) allows them to make an offering, shave, and exit from their iḥrâm like any muḥṣar.

- According to (A) + (+M, +S), disease and lack of means to proceed do not constitute sufficient grounds for iḥṣâr and would not allow one to exit from the state of iḥrâm. According to (a) + (-H, -t), being prevented could be because of any reason that prevents one from proceeding, such as an enemy – by consensus, sickness, or simply not having the means to proceed.

- In the case of iḥṣâr, no make-up is required for a voluntary Hajj if one exits iḥrâm before Hajj is missed; any preexisting obligation to perform Hajj remains. This differs from fawât (missing Hajj), for which make-up is required.

- If one makes a condition at the time of iḥrâm that they will be released from liability if they are not able to proceed with their Hajj, he or she will be able to exit from the state of iḥrâm in all of the above scenarios without any further liability.

If a person does a forbidden act more than once, aside from killing game animals, then expiation is due once. But if he already compensated for the first forbidden act before committing the second, the ruling pertaining to the first becomes void. [The first one has been concluded, so he must expiate for the second].	وَمَنْ كَرَّرَ مَحْظُوْرًا مِنْ جِنْسٍ غَيْرِ قَتْلِ الصَّيْدِ، فَكَفَّارَةٌ وَاحِدَةٌ، فإن كَفّرَ عَنِ الأَوَّلِ قَبْلَ فِعْلِ الثَّانِي سَقَطَ حُكْمُ مَا كَفَّرَ عَنْهُ.
If he committed two or more forbidden acts of different types, then expiation is due for each one.	وَإِنْ فَعَلَ مَحْظُوْرًا مِنْ أَجْنَاسٍ، فَلِكُلِّ وَاحِدٍ كَفَّارَةٌ.

[Doing an *Iḥrâm* Prohibition Absentmindedly]

For shaving, clipping the nails, having intercourse and killing game animals, it is the	وَالْحَلْقُ وَالتَّقْلِيْمُ وَالْوَطْءُ وَقَتْلُ الصَّيْدِ

same whether they are done intentionally or absentmindedly. [VI.4.8]	يَسْتَوِيْ عَمْدُهُ وَسَهْوُهُ.

[VI.4.8] As for shaving the hair and clipping the nails, this is the popular position in (A), but there is another position (a) + (-s, -Z, -t) that forgetfulness is an excuse, and no expiation is required. They cited the general principle of exempting those who forget or err, when such errors pertain to the rights of Allah the Almighty.

As for intercourse, according to (-S, -t), when it is done absentmindedly, under coercion, or while unaware of the ruling (when plausible), it does not invalidate the Hajj at any time.

As for killing game animals, (A) + (+H, +M, +S) do not differentiate between intentional or unintentional killing when it comes to the obligation of expiation. They argued that it is a financial liability, so it would be like destroying the property of others mistakenly or absentmindedly. (-Z): Nothing is required of him because Allah said:

{وَمَن قَتَلَهُ مِنكُم مُّتَعَمِّدًا فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعَمِ}

"...And whoever of you kills it intentionally – the penalty is an equivalent from sacrificial animals to what he killed..." (al-Mâ'idah 5:95)

For the rest of the forbidden acts, there is nothing due in the case of forgetfulness.	وَسَائِرُ الْمَحْظُوْرَاتِ لَا شَيْءَ فِيْ سَهْوِهِ.

[Where One Should Expiate]

Every sacrifice or provision of food must be for the poor individuals of al-Ḥaram (the sacred precinct), except for the expiation for shaving or clipping of nails, which may be offered at the place where he shaved. [VI.4.9]	وَكُلُّ هَدْيٍ أَوْ إِطْعَامٍ، فَهُوَ لِمَسَاكِيْنِ الْحَرَمِ، إِلَّا فِدْيَةَ الأَذَى يُفَرِّقُهَا فِي الْمَوْضِعِ الَّذِيْ حَلَقَ فِيْهِ. وَهَدْيُ الْمُحْصَرِ يَنْحَرُهُ فِيْ مَوْضِعِهِ.

The sacrifice of al-muḥṣar (the one prevented from proceeding) must be slaughtered in the place where he is. As for fasting, it is valid anywhere.	وَأَمَّا الصِّيَامُ فَيُجْزِئُهُ بِكُلِّ مَكَانٍ.

[VI.4.9] (A/SM) or may be offered in al-Ḥaram (the sacred precinct).

[VI.5] Chapter on Entering Makkah

بَابُ دُخُوْلِ مَكَّةَ

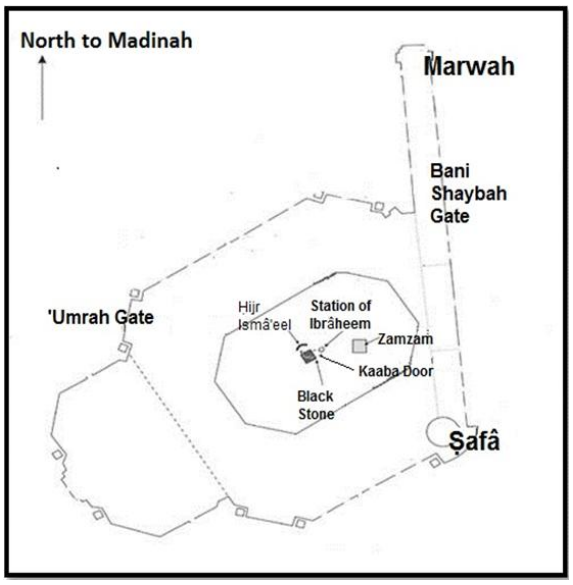
It is preferable to enter Makkah from the northern side, [VI.5.1]	يُسْتَحَبُّ أَنْ يَدْخُلَ مَكَّةَ مِنْ أَعْلَاهَا.

[VI.5.1] Because:

«أَنَّ رَسُولَ اللَّهِ ﷺ كان يَخْرُجُ من طَرِيقِ الشَّجَرَةِ وَيَدْخُلُ من طَرِيقِ الْمُعَرَّسِ وإذا دخل مَكَّةَ دخل من الثَّنِيَّةِ الْعُلْيَا وَيَخْرُجُ من الثَّنِيَّةِ السُّفْلَى.»

“The Messenger of Allah (SA) used to leave Madinah by the route of the tree and enter it from the route of the rest area. [Ibn Ḥajar said that both are about six miles from Madinah, with the second being closer]. When he entered Makkah, he did so by the route of the northern steep heights, and he would leave by the route of the southern steep heights.” (B – from Ibn ‘Umar)

- and to enter the masjid from the gate of Bani Shaybah, since the Prophet (SA) entered from there.	وَيَدْخُلَ الْمَسْجِدَ مِنْ بَابِ بَنِيْ شَيْبَةَ لأَنَّ النَّبِيَّ ﷺ دَخَلَ مِنْهُ.



Aerial View of the Ḥaram Showing the Gate of Bani Shaybah

Once he sees the House (Kaaba), he raises his hands and says: *Allâhu akbar,* praises Allah the Almighty and supplicates. [VI.5.2]	فَإِذَا رَأَى البَيْتَ، رَفَعَ يَدَيْهِ، وَكَبَّرَ اللهَ وَحَمِدَهُ، وَدَعَا.

[VI.5.2] Raising the hands is reported from Ibn ‘Abbâs (rahuma). It was also reported from the Prophet (SA) but cannot be traced authentically back to him.

Takbeer was reported by (Ba) from the Prophet (SA), albeit with a mursal hadith.

Supplicating is reported authentically from ‘Umar (RA):

«اللَّهُمَّ أَنْتَ السَّلَامُ وَمِنْكَ السَّلَامُ فَحَيِّنَا رَبَّنَا بِالسَّلَامِ».

“O Allah, you are peace, and from you comes peace, so make us live in peace.” (Muṣannaf Ibn Abi Shaybah. al-Albâni:established.)

The following supplication was reported from the Prophet (SA) but deemed weak by the scholars of Hadith:

«اللَّهُمَّ زِدْ فِي هَذَا الْبَيْتِ تَشْرِيفًا وَتَعْظِيمًا وَمَهَابَةً، وَزِدْ مَنْ حَجَّهُ أَوْ اعْتَمَرَهُ تَشْرِيفًا وَتَعْظِيمًا وَتَكْبِيرًا وَبِرًّا».

"O Allah, increase the honor, glory, and reverence of this House, and increase the honor, glory, status, and righteousness of those who come to it for Hajj or 'umrah."

Both supplications are prescribed in the madh-hab. The fuqahâ' were lenient in accepting supplications and dhikrs that are not authentically traceable to the Prophet (SA) as long as their meanings are sound. Whether they come through weak chains or they are recommended by the righteous predecessors and scholars, one may use them without attributing them to the Prophet (SA).

One should also remember, when entering the Ḥaram, to say, as well, the supplication prescribed upon entering any masjid, as advised by many contemporary Ḥanbalis.

[First *Ṭawâf*]

Then he starts with the ṭawâf of 'umrah if he is performing 'umrah, or the ṭawâf of arrival if he is performing ifrâd or qirân. [VI.5.3]	ثُمَّ يَبْتَدِئُ بِطَوَافِ الْعُمْرَةِ، إِنْ كَانَ مُعْتَمِرًا، أَوْ بِطَوَافِ الْقُدُوْمِ، إِنْ كَانَ مُفْرِدًا أَوْ قَارِنًا.

[VI.5.3] The conditions of the validity of any ṭawâf are:

1. Intention

2. Commencement of the time for ṭawâf al-ifâḍah in particular (the main ṭawâf that is a pillar of Hajj). According to (A), this is from the middle of the night on the eve of the 10th. There is no end to its time; one may always return to it, but deferring it until after the days of tashreeq will require expiation according to (a). According to (H), delaying it without an excuse beyond sunset on the 12th of Dhul-Ḥijjah requires expiation. (M): After Dhul-Ḥijjah. (A) + (+S): No expiation as long as he returns to it.

3. Direction: anti-clockwise, with the Kaaba on one's left side

4. Ritual purity

5. Physical purity

6. Covering the 'awrah

Making seven complete rounds (not taking a shortcut through ḥijr Ismâ'eel, the crescent-shaped area next to the Kaaba) counting from the Black Stone to the Black Stone, without long interruptions. (Interruptions for the prayers do not invalidate prior rounds.)

He repositions his upper garment to uncover the right shoulder, putting the middle of it underneath his right shoulder and the two ends over his left shoulder. [VI.5.4]	وَيَضْطَبِعُ بِرِدَائِهِ فَيَجْعَلُ وَسْطَهُ تَحْتَ عَاتِقِهِ الأَيْمَنِ وَطَرْفَيْهِ عَلَى عَاتِقِهِ الأَيْسَرِ.

[VI.5.4] Uncovering the Right Shoulder for Males

Reported by (A, D, T, N, Ma; T: S)

Brisk walking with short steps and the uncovering of the right shoulder are only prescribed in the first ṭawâf made when arriving in Makkah.

The Prophet (SA) did not walk briskly in any of the seven rounds of ṭawâf al-ifâḍah. (A, D, N, Ma – from Ibn 'Abbâs; Ibn Ḥajar: S)

An-Nawawi explains in al-Majmoo' that these two practices accompany one another in the ṭawâf for which they are prescribed, except that brisk walking is limited to the first three rounds, while the right shoulder remains uncovered throughout all seven.

The Prophet (SA) commanded his Companions (rahum) to do both in order to show their strength to the Quraysh because they were mocking the Companions and saying that they had been too

weakened by the atmosphere of Madinah to make ṭawâf. (B – from Ibn ʻAbbâs)

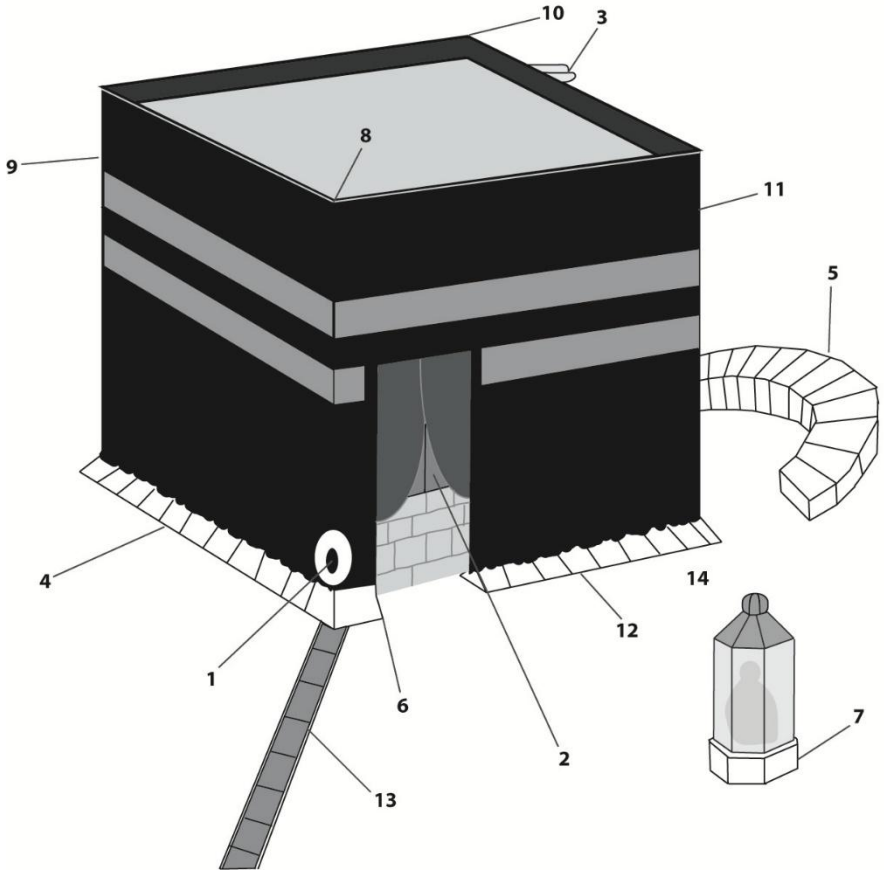
One starts at the Black Stone and places a hand on it, kissing it [VI.5.5] and saying: *Bismillâh [VI.5.6]* and *Allâhu akbar*; [VI.5.7] O Allah! Out of faith in You and to show belief in Your book, fulfill Your covenant, and follow the Sunnah of Your Prophet Muhammad (SA). [VI.5.8]	وَيَبْدَأُ بِالْحَجَرِ الأَسْوَدِ فَيَسْتَلِمُهُ وَيُقَبِّلُهُ وَيَقُوْلُ: بِسْمِ اللهِ، وَاللهُ أَكْبَرُ، اللّٰهُمَّ إِيْمَانًا بِكَ، وَتَصْدِيْقًا بِكِتَابِكَ، وَوَفَاءً بِعَهْدِكَ، وَاتِّبَاعًا لِسُنَّةِ نَبِيِّكَ مُحَمَّدٍ ﷺ.

[VI.5.5] In the long hadith of Jâbir that is quoted in the following chapter, the Prophet (SA) started with the Black Stone. (M – from Jâbir)

[VI.5.6] (Ba – from the action of Ibn ʻUmar; Ibn Ḥajar: S)

[VI.5.7] Reported from the Prophet (SA). (M – from Jâbir)

[VI.5.8] Aside from Bismillâh (from Ibn ʻUmar) and Allâhu akbar (from the Prophet [sa] himself), the remainder of the supplication is reported through a weak chain. The fuqahâ' were lenient in accepting supplications and dhikr that are not authentically traceable to the Prophet (SA) as long as their meanings are sound. Whether they come through weak chains or they are recommended by the righteous predecessors and scholars, one may use them without attributing them to the Prophet (SA).



1. The black stone
2. Kaaba door
3. Meezâb
4. Buttress
5. Ḥijr Ismâ'eel (al-Ḥaṭeem)
6. Al-Multazam
7. Station of Ibrâheem
8. Rukn al-ḥajar (Corner of the stone)
9. Ar-Rukn al-Yamâni (Yemeni Corner)
10. Ar-Rukn ash-Shami (Ash-Sham Corner)
11. Ar-Rukn al-Irâqi (Iraqi Corner)
12. Cover
13. Brown line on ground to indicate the beginning of ṭawâf (contemporary)

Then he moves to his right and keeps the House (Kaaba) on his left and circumambulates seven times, walking briskly, with short steps, in the first three rounds; each round starts and ends at the Black Stone. He walks [at a normal pace] in the last four rounds. [VI.5.9]	ثُمَّ يَأْخُذُ عَلَى يَمِيْنِهِ وَيَجْعَلُ الْبَيْتَ عَلَى يَسَارِهِ فَيَطُوْفُ سَبْعًا، يَرْمُلُ فِي الثَّلَاثَةِ الأُوَلِ مِنَ الْحَجَرِ إِلَى الْحَجَرِ، وَيَمْشِيْ فِيْ الأَرْبَعَةِ الأخرى.

[VI.5.9] From the long hadith of Jâbir that is quoted in the following chapter:

«حتى إذا أَتَيْنَا الْبَيْتَ معه اسْتَلَمَ الرُّكْنَ فَرَمَلَ ثَلَاثًا وَمَشَى أَرْبَعًا.»

When we came with him to the House, he touched the pillar [Black Stone] and (made seven rounds), hastening with brisk short steps in the first three, and walking in the last four. (M – from Jâbir)

Whenever he is in line with the Yemeni corner or the Black Stone, he places his hand on them and says *Allâhu akbar* and *Lâ ilâha illâ Allâh* (There is none worthy of worship other than Allah). [VI.5.10]	وَكُلَّمَا حَاذَى الرُّكْنَ الْيَمَانِيَّ وَالْحَجَرَ، اسْتَلَمَهُمَا، وَكَبَّرَ وَهَلَّلَ.

[VI.5.10] Touching the Two Yemeni (Southern) Corners Only

«عن سَالِمِ بن عبد اللَّهِ عن أبيه رضي الله عنهما قال لم أَرَ النبي ﷺ يَسْتَلِمُ من الْبَيْتِ إلا الرُّكْنَيْنِ الْيَمَانِيَيْنِ.»

"I have not seen the Prophet (SA) touch/place his hand on any part of the House (Kaaba) except the two Yemeni pillars." (B – from Sâlim ibn 'Abdullâh, from his father)

The corner of the Black Stone and the Yemeni Corner are both on the southern side, thus called Yemeni corners.

Kissing the Black Stone Only

There is no report that he kissed the Yemeni pillar, but he did kiss the Black Stone.

«سَأَلَ رَجُلٌ ابن عُمَرَ رضي الله عنهما عن اسْتِلَامِ الْحَجَرِ فقال رأيت رَسُولَ اللَّهِ ﷺ يَسْتَلِمُهُ وَيُقَبِّلُهُ».

A man asked Ibn 'Umar (rahuma) about touching the Black Stone, and he said: I saw the Messenger of Allah (SA) touch it and kiss it. (B)

There is a report that he touched it with a stick and kissed the stick. (M)

Pointing to the Two Yemeni (Southern) Corners

There are reports that when the Prophet (SA) was further away from the House, he pointed to the Black Stone, but there are no sound reports about pointing to the Yemeni Corner. Pointing to both is the authorized position in the madh-hab (A/SM).

«عن ابن عَبَّاسٍ رضي الله عنهما قال طَافَ النبي ﷺ بِالْبَيْتِ على بَعِيرٍ كُلَّمَا أتى الرُّكْنَ أَشَارَ إليه بِشَيْءٍ كان عِنْدَهُ وَكَبَّرَ.»

The Prophet (SA) circumambulated the House while riding a camel, and whenever he came across the pillar [meaning the Black Stone], he would point to it with something and make takbeer. (B – from Ibn 'Abbâs)

The Prophet (SA) rode his camel when the people crowded around him. He also wanted to be seen by all so that they would learn from him; otherwise, walking is better. (M – from Ibn 'Abbâs)

When one is between the two corners, he says, "Our Lord! Give us in this world that which is good and in the hereafter that which is good, and protect us from the punishment of the fire." *(al-Baqarah 2:201),* [VI.5.11] - and the rest of the time, he makes any supplications he pleases.	وَيَقُوْلُ بَيْنَ الرُّكْنَيْنِ: «رَبَّنَا آتِنَا فِي الدُّنْيَا حَسَنَةً وَفِي الآخِرَةِ حَسَنَةً وَقِنَا عَذَابَ النَّارِ» وَيَدْعُوْ فِيْ سَائِرِهِ بِمَا أَحَبَّ.

[VI.5.11] The Messenger of Allah (SA) was heard saying, between the Black Stone and the Yemeni Corner:

«عن عبد اللَّهِ بن السَّائِبِ قال سمعت رَسُولَ اللَّهِ ﷺ يقول ما بين الرُّكْنَيْنِ رَبَّنَا آتِنَا في الدُّنْيَا حَسَنَةً وفي الْآخِرَةِ حَسَنَةً وَقِنَا عَذَابَ النَّارِ»

"Our Lord! Give us in this world that which is good and in the hereafter that which is good, and protect us from the punishment of the fire." (D – from 'Abdullâh ibn as-Sâ'ib; Ibn Ḥajar: R)

Then one prays two rak'ahs behind the station (of Ibrâheem), and then he returns to the corner (of the Black Stone) and places his hand on it. [VI.5.12]	ثُمَّ يُصَلِّيْ رَكْعَتَيْنِ خَلْفَ الْمَقَامِ، وَيَعُوْدُ إِلَى الرُّكْنِ فَيَسْتَلِمُهُ.

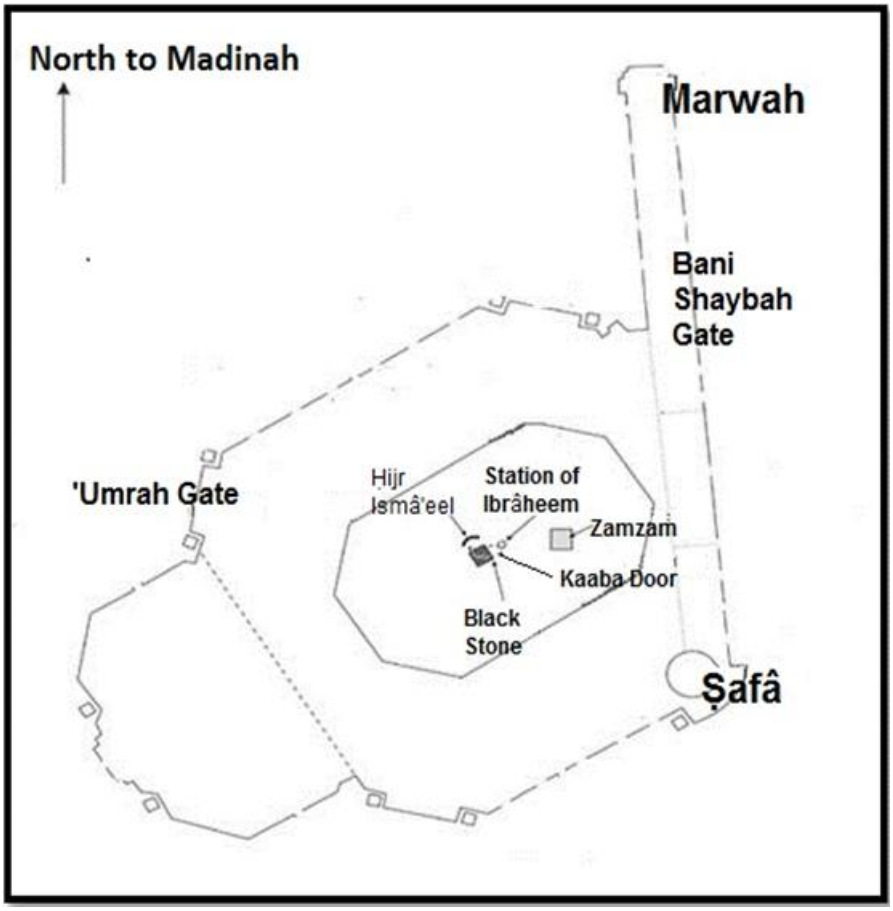
[VI.5.12] From the long hadith of Jâbir that is quoted in the following chapter:

«...ثُمَّ نَفَذَ إلى مَقَامِ إبراهيم عليه السَّلَام فَقَرَأَ وَاتَّخِذُوا من مَقَامِ إبراهيم مُصَلًّى فَجَعَلَ الْمَقَامَ بَيْنَهُ وَبَيْنَ الْبَيْتِ فَكَانَ أبي يقول ولا أَعْلَمُهُ ذَكَرَهُ إلا عن النبي ﷺ كان يَقْرَأُ في الرَّكْعَتَيْنِ قُلْ هو الله أَحَدٌ وَقُلْ يا أَيُّهَا الْكَافِرُونَ ثُمَّ رَجَعَ إلى الرُّكْنِ فَاسْتَلَمَهُ.»

...Then going to the station of Ibrâheem, he recited, "And take the station of Ibrâheem as a place of prayer," and he let this sanctuary be between him and the House. My father said (and I think he was talking about Allah's Messenger [SA]) that he recited in the two rak'ahs Soorat al-Ikhlâṣ and Soorat al-Kâfiroon. He then returned to the Black Stone and placed his hand on it. (M – from Jâbir)

[*Sa'iy* (Walking Seven Times between the Hills of Ṣafâ and Marwah)]

Then he departs to Ṣafâ from its gate and climbs it, says *Allâhu akbar* and *Lâ ilâha illâ Allâh*, and supplicates to Him (Allah).	ثُمَّ يَخْرُجُ إِلَى الصَّفَا مِنْ بَابِهِ فَيَرْقَى عَلَيْهِ وَيُكَبِّرُ اللهَ وَيُهَلِّلُهُ وَيَدْعُوْهُ.



Aerial View of the Ḥaram Showing the Gate of Bani Shaybah

Then he walks to the flag and walks briskly to the other flag. [VI.5.13] Then	ثُمَّ يَنْزِلُ فَيَمْشِيْ إِلَى الْعَلَمِ، ثُمَّ يَسْعَى إِلَى الْعَلَمِ الآخَرِ،

he walks until he reaches Marwah and does as he did at Ṣafâ.	ثُمَّ يَمْشِيْ إِلَى الْمَرْوَةِ فَيَفْعَلُ كَفِعْلِهِ عَلَى الصَّفَا.

[VI.5.13] Today there are green lights indicating the area where men should quicken their pace.

After that, he walks at a normal pace in the place for that, and walks briskly in the place for walking briskly, until he finishes seven rounds – counting going as one round and coming back as one round – starting with Ṣafâ and finishing with Marwah. [VI.5.14]	ثُمَّ يَنْزِلُ فَيَمْشِيْ فِيْ مَوْضِعِ مَشْيِهِ، وَيَسْعَى فِيْ مَوْضِعِ سَعْيِهِ حَتَّى يُكْمِلَ سَبْعَةَ أَشْوَاطٍ، يَحْتَسِبُ بِالذَّهَابِ سَعْيَةً، وبالرُّجُوعِ سَعْيَةً، يَفْتَتِحُ بِالصَّفَا وَيَخْتِمُ بِالْمَرْوَةِ.

[VI.5.14] From the long hadith of Jâbir that is quoted in the following chapter:

«ثُمَّ خَرَجَ من الْبَابِ إلى الصَّفَا، فلما دَنَا من الصَّفَا، قَرَأَ إِنَّ الصَّفَا والْمَرْوَةَ من شَعَائِرِ اللَّهِ أَبْدَأُ بِمَا بَدَأَ الله بِهِ، فَبَدَأَ بِالصَّفَا فَرَقِيَ عليه حتى رَأَى الْبَيْتَ فَاسْتَقْبَلَ الْقِبْلَةَ فَوَحَّدَ اللَّهَ وَكَبَّرَهُ وقال لَا إِلَهَ إلا الله وَحْدَهُ لَا شَرِيكَ له؛ له الْمُلْكُ وَلَهُ الْحَمْدُ وهو على كل شَيْءٍ قَدِيرٌ؛ لَا إِلَهَ إلا الله وَحْدَهُ أَنْجَزَ وَعْدَهُ وَنَصَرَ عَبْدَهُ وَهَزَمَ الْأَحْزَابَ وَحْدَهُ. ثُمَّ دَعَا بين ذلك قال مِثْلَ هذا ثَلَاثَ مَرَّاتٍ. ثُمَّ نَزَلَ إلى الْمَرْوَةِ حتى إذا انْصَبَّتْ قَدَمَاهُ في بَطْنِ الْوَادِي، سَعَى، حتى إذا صَعِدَتَا، مَشَى، حتى أتى الْمَرْوَةَ، فَفَعَلَ على الْمَرْوَةِ كما فَعَلَ على الصَّفَا، حتى إذا كان آخِرُ طَوَافِهِ على الْمَرْوَةِ.»

He then went out of the gate to Ṣafâ. As he came near it, he recited, "Ṣafâ and Marwah are among the rites appointed by Allah," adding, "I begin with what Allah began with." He first climbed Ṣafâ until he saw the House and, facing the qibla, he declared the Oneness of Allah, glorified Him, and said, "There is no god but Allah, One; there is no partner with Him. To Him is the Sovereignty. To Him all praises are due, and He is Powerful over everything. There is no god but Allah alone. He fulfilled His promise, helped His servant and defeated the confederates alone." He then made supplication in the course of saying such words three times. He then descended and walked towards Marwah;

when he reached the bottom of the valley, he walked briskly, and when he began to ascend, he walked until he reached Marwah. There he did as he had done at Ṣafâ. His last walk was to Marwah. (M – from Jâbir)

[Ending the *Iḥrâm* of *'Umrah*]

Then he shortens his hair if he was making 'umrah and gets out of his state of iḥrâm. This is not the case for the one making tamattu' if he has his offerings with him, or the one making qirân or ifrâd; none of them exit from the state of iḥrâm. [VI.5.15]	ثُمَّ يُقَصِّرُ مِنْ شَعَرِهِ، إِنْ كَانَ مُعْتَمِرًا وَقَدْ حَلَّ، إِلَّا الْمُتَمَتِّعَ إِنْ كَانَ مَعَهُ هَدْيٌ وَالْقَارِنَ وَالْمُفْرِدَ، فَإِنَّهُ لَا يَحِلُّ.

[VI.5.15] The Prophet (SA) said, in the long hadith of Jâbir that is quoted in the following chapter:

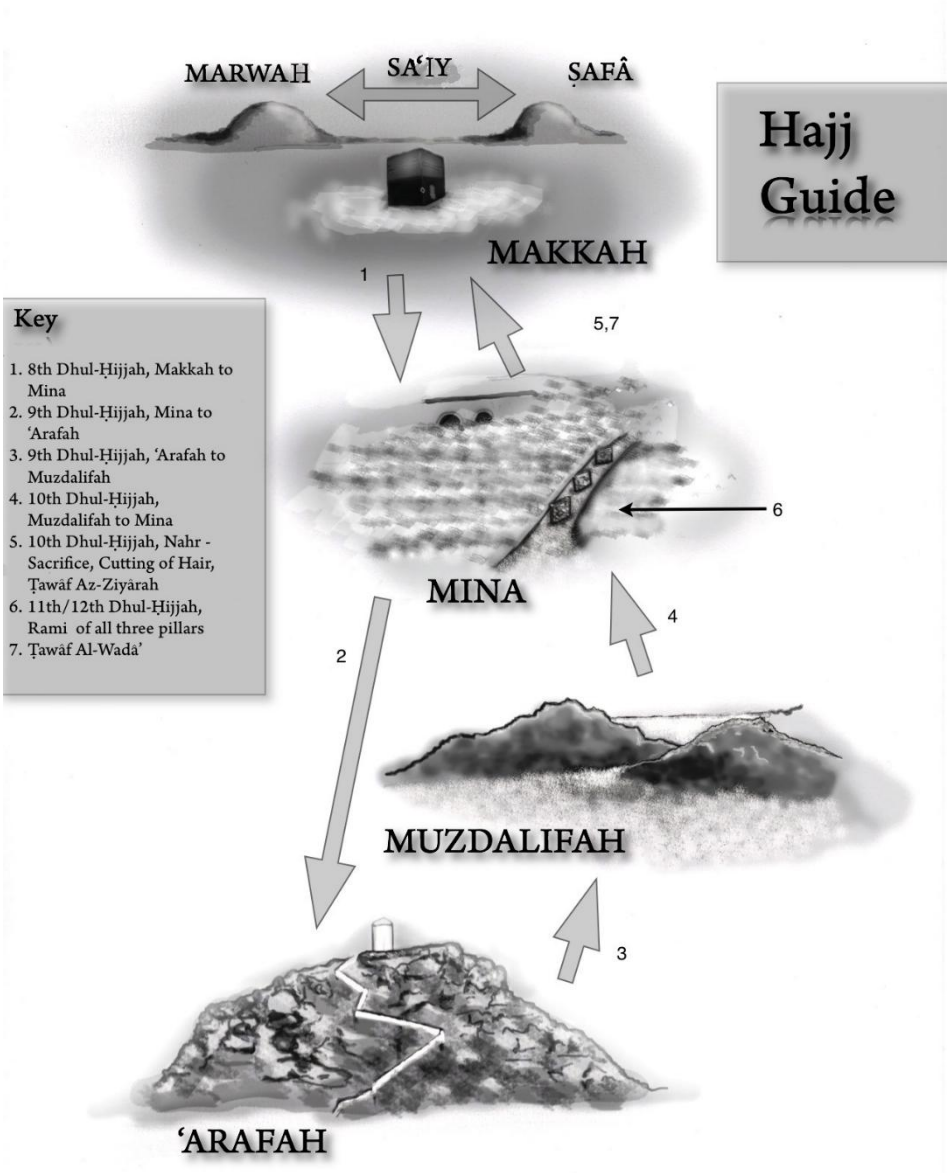
«لو أَنِّي اسْتَقْبَلْتُ من أَمْري ما اسْتَدْبَرْتُ لم أَسُقْ الْهَدْيَ وَجَعَلْتُهَا عُمْرَةً فَمَنْ كان مِنْكُمْ ليس معه هَدْيٌ فَلْيَحِلَّ وَلْيَجْعَلْهَا عُمْرَةً.»

"...If I had known beforehand what I have come to know afterwards, I would not have brought sacrificial animals and would have performed 'umrah. Therefore, he among you who has no sacrificial animals with him should remove iḥrâm and treat it as an 'umrah." (M – from Jâbir)

The woman is like the man (in all rulings) except that she does not walk briskly, with short steps, in ṭawâf or sa'iy.	وَالْمَرْأَةُ كَالرَّجُلِ، إِلَّا أَنَّهَا لَا تَرْمُلُ فِيْ طَوَافٍ وَلَا سَعْيٍ.

[VI.6] Chapter on the Description of Hajj

بَابُ صِفَةِ الْحَجِّ



The greatest and most comprehensive hadith on the description of the Hajj of the Prophet (SA) is reported from Jâbir ibn ‘Abdullâh (RA), who was in the company of the Prophet (SA) when he performed Hajj. The following is the abridged hadith from *Ṣaḥeeḥ Muslim*:

سأل مُحَمَّدُ بن علي بن الحسين جَابِرَ بن عبد اللَّهِ، أَخْبِرْنِي عن حَجَّةِ رسول اللَّهِ ﷺ. فقال بيده فَعَقَدَ تِسْعًا فقال إِنَّ رَسُولَ اللَّهِ ﷺ مَكَثَ تِسْعَ سِنِينَ لم يَحُجَّ ثُمَّ أَذَّنَ في الناس في الْعَاشِرَةِ أَنَّ رَسُولَ اللَّهِ ﷺ حَاجٌّ فَقَدِمَ الْمَدِينَةَ بَشَرٌ كَثِيرٌ كلهم يَلْتَمِسُ أَنْ يَأْتَمَّ بِرَسُولِ اللَّهِ ﷺ وَيَعْمَلَ مِثْلَ عَمَلِهِ.

Muhammad ibn ‘Ali ibn al-Ḥusayn asked Jâbir ibn ‘Abdullâh, “Tell me about the Hajj of Allah's Messenger (SA).” He pointed with his hand, folded his fingers indicating the number nine, and said: “The Messenger of Allah (SA) stayed (in Madinah) for nine years and did not perform Hajj; then he announced in the tenth year that he was going to perform Hajj. So many people came to Madinah, and they were all keen to follow the Messenger of Allah (SA) and do as he did.

فَخَرَجْنَا معه حتى أَتَيْنَا ذَا الْحُلَيْفَةِ فَوَلَدَتْ أَسْمَاءُ بِنْتُ عُمَيْسٍ مُحَمَّدَ بن أبي بَكْرٍ فَأَرْسَلَتْ إلى رسول اللَّهِ ﷺ كَيْفَ أَصْنَعُ قال اغْتَسِلِي وَاسْتَثْفِرِي بِثَوْبٍ وَأَحْرِمِي.

فَصَلَّى رسول اللَّهِ ﷺ في الْمَسْجِدِ ثُمَّ رَكِبَ الْقَصْوَاءَ حتى إذا اسْتَوَتْ بِهِ نَاقَتُهُ على الْبَيْدَاءِ نَظَرْتُ إلى مَدِّ بَصَرِي بين يَدَيْهِ من رَاكِبٍ وَمَاشٍ وَعَنْ يَمِينِهِ مِثْلَ ذلك وَعَنْ يَسَارِهِ مِثْلَ ذلك وَمِنْ خَلْفِهِ مِثْلَ ذلك وَرَسُولُ اللَّهِ ﷺ بين أَظْهُرِنَا وَعَلَيْهِ يَنْزِلُ الْقُرْآنُ وهو يَعْرِفُ تَأْوِيلَهُ وما عَمِلَ بِهِ من شَيْءٍ عَمِلْنَا بِهِ.

We set out with him until we reached Dhul-Ḥulayfah. Asmâ’ bint ‘Umays, gave birth to Muhammad ibn Abi Bakr. She sent a message to the Messenger of Allah (SA) asking him what she should do. He said: Take a bath, bandage your private parts and go into iḥrâm.

The Messenger of Allah (SA) prayed in the mosque, then he mounted al-Qaṣwâ' (his she-camel), and when it stood upright with him on its back in the middle of the desert, I looked around, and for as far as I could see in front of him, there were riders and pedestrians, and on his right and his left and behind him. The Messenger of Allah (SA) was among us, and the revelation was descending upon him, and it is he who knows its true meanings; whatever he did, we also did the same.

فَأَهَلَّ بِالتَّوْحِيدِ لَبَّيْكَ اللهم لَبَّيْكَ لَبَّيْكَ لَا شَرِيكَ لك لَبَّيْكَ إِنَّ الْحَمْدَ وَالنِّعْمَةَ لك وَالْمُلْكَ لَا شَرِيكَ لك وَأَهَلَّ الناس بهذا الذي يُهِلُّونَ بِهِ فلم يَرُدَّ رسول اللَّهِ ﷺ عليهم شيئا منه وَلَزِمَ رسول اللَّهِ ﷺ تَلْبِيَتَهُ قال جَابِرٌ رضي الله عنه لَسْنَا نَنْوِي إلا الْحَجَّ لَسْنَا نَعْرِفُ الْعُمْرَةَ.

حتى إذا أَتَيْنَا الْبَيْتَ معه اسْتَلَمَ الرُّكْنَ فَرَمَلَ ثَلَاثًا وَمَشَى أَرْبَعًا ثُمَّ نَفَذَ إلى مَقَامِ إبراهيم عليه السَّلَام فَقَرَأَ وَاتَّخِذُوا من مَقَامِ إبراهيم مُصَلًّى فَجَعَلَ الْمَقَامَ بَيْنَهُ وَبَيْنَ الْبَيْتِ فَكَانَ أبي يقول ولا أَعْلَمُهُ ذَكَرَهُ إلا عن النبي ﷺ كان يَقْرَأُ في الرَّكْعَتَيْنِ قُلْ هو الله أَحَدٌ وَقُلْ يا أَيُّهَا الْكَافِرُونَ ثُمَّ رَجَعَ إلى الرُّكْنِ فَاسْتَلَمَهُ.

He pronounced the oneness of Allah (saying): Here I am, O Allah, here I am (responding to Your call). Here I am, responding to Your call. You have no partner. Here I am, responding to Your call. Verily, all praise and blessings are Yours, as well as all sovereignty. You have no partner. The people pronounced this talbiyah, which they pronounce (today). The Messenger of Allah (SA) did not reject anything from this, but he adhered to his own talbiyah. We did not have any other intention but that of Hajj, being unaware of the 'umrah (in that season).

When we came with him to the House, he touched the pillar and (made seven rounds), walking briskly in three of them, and walking normally in four. Then, going to the station of Ibrâheem, he recited: And take the station of Ibrâheem as a place of prayer, and he let this station be between him and the House. My father said (and I think he was speaking about Allah's Messenger [sa]) that he recited in the two rak'ahs Soorat al-Ikhlâṣ and Soorat al-

Kâfiroon. He then returned to the Black Stone and placed his hand on it.

ثُمَّ خَرَجَ من الْبَابِ إلى الصَّفَا فلما دَنَا من الصَّفَا قَرَأَ إِنَّ الصَّفَا والْمَرْوَةَ من شَعَائِرِ اللَّهِ أَبْدَأُ بِمَا بَدَأَ الله بِهِ فَبَدَأَ بِالصَّفَا فَرَقِيَ عليه حتى رَأَى الْبَيْتَ فَاسْتَقْبَلَ الْقِبْلَةَ فَوَحَّدَ اللَّهَ وَكَبَّرَهُ وقال لَا إِلَهَ إلا الله وَحْدَهُ لَا شَرِيكَ له ،له الْمُلْكُ وَلَهُ الْحَمْدُ وهو على كل شَيْءٍ قَدِيرٌ ،لَا إِلَهَ إلا الله وَحْدَهُ أَنْجَزَ وَعْدَهُ وَنَصَرَ عَبْدَهُ وَهَزَمَ الْأَحْزَابَ وَحْدَهُ ثُمَّ دَعَا بين ذلك قال مِثْلَ هذا ثَلَاثَ مَرَّاتٍ.

ثُمَّ نَزَلَ إلى الْمَرْوَةِ حتى إذا انْصَبَّتْ قَدَمَاهُ في بَطْنِ الْوَادِي سَعَى حتى إذا صَعِدَتَا مَشَى حتى أتى الْمَرْوَةَ فَفَعَلَ على الْمَرْوَةِ كما فَعَلَ على الصَّفَا حتى إذا كان آخِرُ طَوَافِهِ على الْمَرْوَةِ فقال لو أَنِّي اسْتَقْبَلْتُ من أَمْرِي ما اسْتَدْبَرْتُ لم أَسُقْ الْهَدْيَ وَجَعَلْتُهَا عُمْرَةً فَمَنْ كان مِنْكُمْ ليس معه هَدْيٌ فَلْيَحِلَّ وَلْيَجْعَلْهَا عُمْرَةً فَقَامَ سُرَاقَةُ بن مَالِكِ بن جُعْشُمٍ فقال يا رَسُولَ اللَّهِ أَلِعَامِنَا هذا أَمْ لِأَبَدٍ؟ فَشَبَّكَ رسول اللَّهِ ﷺ أَصَابِعَهُ وَاحِدَةً في الْأُخْرَى وقال دَخَلَتْ الْعُمْرَةُ في الْحَجِّ مَرَّتَيْنِ لَا بَلْ لِأَبَدٍ أَبَدٍ.

After that, he went out of the gate to Ṣafâ. As he came near it, he recited: Ṣafâ and Marwah are among the rites appointed by Allah, adding: I begin with what Allah began with. He first climbed Ṣafâ until he saw the House; facing the qibla, he declared the oneness of Allah, glorified Him, and said: There is no god but Allah, One; there is no partner with Him. To Him is the sovereignty. To Him all praises are due, and He is Powerful over everything. There is no god but Allah alone. He fulfilled His promise, helped His servant and defeated the confederates alone. He then made supplication in the course of saying such words three times.

He then descended and walked towards Marwah. When he reached the bottom of the valley, he walked briskly, and when he began to ascend, he walked until he reached Marwah. There he did as he had done at Ṣafâ. When it was his last round at Marwah, he said: If I had known beforehand what I have come to know afterwards, I would not have brought sacrificial animals and would have performed an ‘umrah. Therefore, he among you who has no sacrificial animals with him should remove iḥrâm and treat it as

an ‘umrah. Surâqah ibn Mâlik ibn Ju‘shum got up and said: Messenger of Allah, does it apply to the present year, or does it apply forever? The Messenger of Allah (SA) intertwined the fingers of his hands and said twice: ‘Umrah has become incorporated in Hajj (adding): No, but forever and ever.

وَقَدِمَ عَلِيٌّ من الْيَمَنِ بِبُدْنِ النبي ﷺ فَوَجَدَ فَاطِمَةَ رضي الله عنها مِمَّنْ حَلَّ وَلَبِسَتْ ثِيَابًا صَبِيغًا وَاكْتَحَلَتْ فَأَنْكَر ذلك عليها فقالت إِنَّ أبي أَمَرَنِي بهذا. قال فَكَانَ عَلِيٌّ يقول بِالْعِرَاقِ فَذَهَبْتُ إلى رسول اللَّهِ ﷺ مُحَرِّشًا على فَاطِمَةَ لِلَّذِي صَنَعَتْ مُسْتَفْتِيًا لِرَسُولِ اللَّهِ ﷺ فِيمَا ذَكَرَتْ عنه فَأَخْبَرْتُهُ أَنِّي أَنْكَرْتُ ذلك عليها فقال صَدَقَتْ صَدَقَتْ مَاذَا قُلْتَ حين فَرَضْتَ الْحَجَّ قال قلت اللهم إني أُهِلُّ بِمَا أَهَلَّ بِهِ رَسُولُكَ قال فإن مَعِيَ الْهَدْيَ فلا تَحِلُّ قال فَكَانَ جَمَاعَةُ الْهَدْيِ الذي قَدِمَ بِهِ عَلِيٌّ من الْيَمَنِ وَالَّذِي أتى بِهِ النبي ﷺ مِائَةً قال فَحَلَّ الناس كلهم وَقَصَّرُوا إلا النبي ﷺ وَمَنْ كان معه هَدْيٌ.

‘Ali (RA) came from Yemen with sacrificial animals for the Prophet (SA) and found Fâṭimah (RAH) with those who had removed iḥrâm and was wearing dyed clothes and had applied some kohl (antimony). He showed his disapproval of this, and she said: My father has commanded me to do this. ‘Ali used to say in Iraq: I went to the Messenger of Allah (SA) to tell him on Fâṭimah for what she had done and asked the (verdict) of Allah’s Messenger (SA) regarding what she had narrated from him, and I told him that I disapproved of her action. At this, he said: She has told the truth; she has told the truth. (The Prophet [SA] then asked ‘Ali:) What did you pronounce when you set out to perform Hajj? (‘Ali) said that he had said: O Allah, I set out to perform the same type of Hajj Your Messenger set out to perform. He said: I have with me sacrificial animals, so do not remove the iḥrâm. The total number of sacrificial animals that were brought by ‘Ali from Yemen and brought by the Prophet (SA) was one hundred. Then all the people, except the Prophet (SA) and those who had with them sacrificial animals, removed iḥrâm and had their hair cut.

فلما كان يَوْمُ التَّرْوِيَةِ تَوَجَّهُوا إلى مِنًى فَأَهَلُّوا بِالْحَجِّ وَرَكِبَ رسول اللَّهِ ﷺ فَصَلَّى بها الظُّهْرَ وَالْعَصْرَ وَالْمَغْرِبَ وَالْعِشَاءَ وَالْفَجْرَ ثُمَّ مَكَثَ قَلِيلًا حتى طَلَعَتْ الشَّمْسُ وَأَمَرَ بِقُبَّةٍ من شَعَرٍ تُضْرَبُ له بِنَمِرَةَ فَسَارَ رسول اللَّهِ ﷺ ولا تَشُكُّ قُرَيْشٌ إلا أَنَّهُ وَاقِفٌ عِنْدَ الْمَشْعَرِ الْحَرَامِ كما كانت قُرَيْشٌ تَصْنَعُ في الْجَاهِلِيَّةِ فَأَجَاز رسول اللَّهِ ﷺ حتى أتى عَرَفَةَ.

On the day of tarwiyah (8th of Dhul-Ḥijjah), they put on the iḥrâm for Hajj, and went to Mina. The Messenger of Allah (SA) rode (to Mina) and prayed there the noon, afternoon, sunset, night, and dawn prayers. He then waited a little until the sun had risen and commanded that a tent of haircloth should be pitched at Namirah [adjacent to 'Arafah]. The Messenger of Allah (SA) then set out, and Quraysh did not doubt that he would stop at al-Mash'ar al-Ḥarâm (the sacred site) as Quraysh used to do in the pre-Islamic period. The Messenger of Allah (SA), however, continued until he got to 'Arafah.

فَوَجَدَ الْقُبَّةَ قد ضُرِبَتْ له بِنَمِرَةَ فَنَزَلَ بها حتى إذا زَاغَتْ الشَّمْسُ أَمَرَ بِالْقَصْوَاءِ فَرُحِلَتْ له فَأَتَى بَطْنَ الْوَادِي فَخَطَبَ الناس ... ثُمَّ أَذَّنَ ثُمَّ أَقَامَ فَصَلَّى الظُّهْرَ ثُمَّ أَقَامَ فَصَلَّى الْعَصْرَ ولم يُصَلِّ بَيْنَهُمَا شيئا ثُمَّ رَكِبَ رسول اللَّهِ ﷺ حتى أتى الْمَوْقِفَ فَجَعَلَ بَطْنَ نَاقَتِهِ الْقَصْوَاءِ إلى الصَّخَرَاتِ وَجَعَلَ حَبْلَ الْمُشَاةِ بين يَدَيْهِ وَاسْتَقْبَلَ الْقِبْلَةَ فلم يَزَلْ وَاقِفًا حتى غَرَبَتْ الشَّمْسُ وَذَهَبَتْ الصُّفْرَةُ قَلِيلًا حتى غَابَ الْقُرْصُ وَأَرْدَفَ أُسَامَةَ خَلْفَهُ وَدَفَعَ رسول اللَّهِ ﷺ وقد شَنَقَ لِلْقَصْوَاءِ الزِّمَامَ حتى إنَّ رَأْسَهَا لَيُصِيبُ مَوْرِكَ رَحْلِهِ وَيَقُولُ بيده اليمنى أَيُّهَا الناس السَّكِينَةَ السَّكِينَةَ كُلَّمَا أتى حَبْلًا من الْحِبَالِ أَرْخَى لها قَلِيلًا حتى تَصْعَدَ.

He found that the tent had been pitched for him at Namirah. There, he dismounted until the sun had passed the meridian, and he commanded that al-Qaṣwâ' be saddled and brought to him. Then he came to the bottom of the valley and addressed the people (with the farewell sermon) ... Then the adhân was pronounced, and later the iqâmah, and he led the noon prayer. (Bilâl) then made the iqâmah and he the Prophet (SA) led the afternoon prayer, and he observed no other prayer in between the two. The Messenger of Allah (SA) then mounted his camel and came to the place of standing, making al-Qaṣwâ' turn towards the side of the rocks;

having the path taken by the pedestrians in front of him, and facing the qibla. He continued standing there until the sun set, and the yellow light had somewhat disappeared, and the disc of the sun had completely disappeared. He made Usâmah sit behind him, and he pulled the nose string of al-Qaṣwâ' so forcefully that her head touched the saddle (to keep her under control), and he pointed to the people with his right hand to proceed with tranquility, and whenever he happened to pass over an elevated tract of sand, he slightly loosened the nose-string of his camel until she climbed up.

حتى أتى الْمُزْدَلِفَةَ فَصَلَّى بها الْمَغْرِبَ وَالْعِشَاءَ بِأَذَانٍ وَاحِدٍ وَإِقَامَتَيْنِ ولم يُسَبِّحْ بَيْنَهُمَا شيئا. ثُمَّ اضْطَجَعَ رسول اللَّهِ ﷺ حتى طَلَعَ الْفَجْرُ وَصَلَّى الْفَجْرَ حين تَبَيَّنَ له الصُّبْحُ بِأَذَانٍ وَإِقَامَةٍ ثُمَّ رَكِبَ الْقَصْوَاءَ حتى أتى الْمَشْعَرَ الْحَرَامَ فَاسْتَقْبَلَ الْقِبْلَةَ فَدَعَاهُ وَكَبَّرَهُ وَهَلَّلَهُ وَوَحَّدَهُ فلم يَزَلْ وَاقِفًا حتى أَسْفَرَ جِدًّا فَدَفَعَ قبل أَنْ تَطْلُعَ الشَّمْسُ وَأَرْدَفَ الْفَضْلَ بن عَبَّاسٍ ... حتى أتى بَطْنَ مُحَسِّرٍ فَحَرَّكَ قَلِيلًا ثُمَّ سَلَكَ الطَّرِيقَ الْوُسْطَى التي تَخْرُجُ على الْجَمْرَةِ الْكُبْرَى حتى أتى الْجَمْرَةَ التي عِنْدَ الشَّجَرَةِ فَرَمَاهَا بِسَبْعِ حَصَيَاتٍ يُكَبِّرُ مع كل حَصَاةٍ منها مِثْلِ حَصَى الْخَذْفِ رَمَى من بَطْنِ الْوَادِي ثُمَّ انْصَرَفَ إلى الْمَنْحَرِ فَنَحَرَ ثَلَاثًا وَسِتِّينَ بيده ثُمَّ أَعْطَى عَلِيًّا فَنَحَرَ ما غَبَرَ وَأَشْرَكَهُ في هَدْيِهِ ثُمَّ أَمَرَ من كل بَدَنَةٍ بِبَضْعَةٍ فَجُعِلَتْ في قِدْرٍ فَطُبِخَتْ فَأَكَلَا من لَحْمِهَا وَشَرِبَا من مَرَقِهَا.

ثُمَّ رَكِبَ رسول اللَّهِ ﷺ فَأَفَاضَ إلى الْبَيْتِ فَصَلَّى بِمَكَّةَ الظُّهْرَ فَأَتَى بَنِي عبد الْمُطَّلِبِ يَسْقُونَ على زَمْزَمَ فقال انْزِعُوا بَنِي عبد الْمُطَّلِبِ فَلَوْلَا أَنْ يَغْلِبَكُمْ الناس على سِقَايَتِكُمْ لَنَزَعْتُ مَعَكُمْ، فَنَاوَلُوهُ دَلْوًا فَشَرِبَ منه.

He continued like this until he reached Muzdalifah, and there he led the evening and night prayers, with one adhân and two iqâmahs, and he did not observe supererogatory rak'ahs between them. The Messenger of Allah (SA) then lay down until dawn and offered the dawn prayer, with an adhân and iqâmah, once the time was clearly in. He again mounted al-Qaṣwâ', and when he came to al-Mash'ar al-Ḥarâm, he faced the qibla, supplicated to Him, glorified Him, and pronounced His oneness, and continued standing until the daylight was very clear. He then proceeded before the sun rose. Seated behind him was al-Faḍl ibn 'Abbâs ...

When he came to the bottom of Muḥassir, he urged her (al-Qaṣwâ') on a little; then he followed the middle road which comes out at al-jamrat ul-kubrâ. He came to the jamrah, which is near the tree, and threw seven small pebbles, saying Allâhu akbar (they were like the pebbles thrown in games). He did this at the bottom of the valley, and then went to the place of sacrifice. He sacrificed sixty-three [camels] with his own hand. Then he gave the rest of them to 'Ali, who sacrificed them, and he shared in his sacrifice with him. He then commanded that a piece of meat from each animal that was sacrificed be put in a pot. When they were cooked, both of them ate some of the meat and drank some of the soup.

The Messenger of Allah (SA) again rode and proceeded to the House, and he offered the noon prayer at Makkah. He came to the clan of 'Abdul-Muṭṭalib, who were supplying water at Zamzam and said: Draw water, O Bani 'Abdul-Muṭṭalib. Were it not that people would usurp this right of supplying water from you, I would have drawn it along with you. Then, they handed him a bucket, and he drank from it." (M – from Jâbir)

End of the long hadith of Jâbir describing the Hajj of the Messenger of Allah (SA).

[8th Day of Dhul-Ḥijjah (Day of *Tarwiyah*)]

When it is the day of tarwiyah, [VI.6.1] everyone who is not already in a state of iḥrâm should enter into it from Makkah and then go to 'Arafât. [VI.6.2]	وَإِذَا كَانَ يَوْمُ التَّرْوِيَةِ، فَمَنْ كَانَ حَلَالاً، أَحْرَمَ مِنْ مَكَّةَ، وَخَرَجَ إِلَى عَرَفَاتٍ.

[VI.6.1] Tarwiyah means storing water; this was the day on which they would get water for 'Arafât and Mina. All praise to Allah; now there is running water in both places.

[VI.6.2] The Stay in Mina on the 8th

Imam Ibn Qudâmah did not mention here the stay in Mina on the way to ‘Arafât. It is agreed upon that the sunnah is to go to Mina first and sleep over in Mina until the following day (the 9th), and then proceed to ‘Arafât after sunrise, thus praying five mandatory prayers in Mina. The following is from the long hadith of Jâbir:

«فلما كان يَوْمُ التَّرْوِيَةِ تَوَجَّهُوا إلى مِنًى فَأَهَلُّوا بِالْحَجِّ وَرَكِبَ رسول اللَّهِ ﷺ فَصَلَّى بها الظُّهْرَ وَالْعَصْرَ وَالْمَغْرِبَ وَالْعِشَاءَ وَالْفَجْرَ ثُمَّ مَكَثَ قَلِيلًا حتى طَلَعَتْ الشَّمْسُ وَأَمَرَ بِقُبَّةٍ من شَعَرٍ تُضْرَبُ له بِنَمِرَةَ فَسَارَ رسول اللَّهِ ﷺ ولا تَشُكُّ قُرَيْشٌ إلا أَنَّهُ وَاقِفٌ عِنْدَ الْمَشْعَرِ الْحَرَامِ كما كانت قُرَيْشٌ تَصْنَعُ في الْجَاهِلِيَّةِ فَأَجَازَ رسول اللَّهِ ﷺ حتى أتى عَرَفَةَ.»

"On the day of tarwiyah (8th of Dhul-Ḥijjah), they put on the iḥrâm for Hajj, and went to Mina. The Messenger of Allah (SA) rode (to Mina) and prayed there the noon, afternoon, sunset, night, and dawn prayers. He then waited a little until the sun had risen and commanded that a tent of haircloth should be pitched at Namirah [adjacent to ‘Arafah]. The Messenger of Allah (SA) then set out, and Quraysh did not doubt that he would stop at al-Mash‘ar al-Ḥarâm (the sacred site) as Quraysh used to do in the pre-Islamic period. The Messenger of Allah (SA), however, continued until he got to ‘Arafah." (M – from Jâbir)

[9th Day of Dhul-Ḥijjah (Day of *‘Arafah*)]

When the sun had passed its zenith on the day of ‘Arafah, he prayed the dhuhr and ‘aṣr prayers combined, with one adhân and two iqâmahs. Then he went to the standing place [VI.6.3] – and all of ‘Arafât is a standing place, except for the middle and bottom of the valley of ‘Uranah.	فَإِذَا زَالَتِ الشَّمْسُ يَوْمَ عَرَفَةَ، صَلَّى الظُّهْرَ وَالْعَصْرَ يَجْمَعُ بَيْنَهُمَا بِأَذَانٍ وَإِقَامَتَيْنِ، ثُمَّ يَصِيْرُ إِلَى الْمَوْقِفِ، وَعَرَفَةُ كُلُّهَا مَوْقِفٌ، إِلَّا بَطْنَ عُرَنَةَ.

[VI.6.3] This is what is to be done in ‘Arafah after the prayer, according to the long hadith of Jâbir:

«حتى إذا زَاغَتْ الشَّمْسُ أَمَرَ بِالْقَصْوَاءِ فَرُحِلَتْ له فَأَتَى بَطْنَ الْوَادِي فَخَطَبَ الناس.»

"... until the sun had passed the meridian, he commanded that al-Qaṣwâ' (his she-camel) should be saddled and brought to him. Then he came to the bottom of the valley and gave a sermon to the people." (M – from Jâbir)

After that, he prayed and proceeded to stand at the standing station:

«ثُمَّ أَذَّنَ ثُمَّ أَقَامَ فَصَلَّى الظُّهْرَ ثُمَّ أَقَامَ فَصَلَّى الْعَصْرَ ولم يُصَلِّ بَيْنَهُمَا شيئا.»

"(Bilâl then) pronounced the adhân, and later on he pronounced the iqâmah and he (the Prophet [SA]) led the noon prayer. He (Bilâl) then made the iqâmah and the Prophet (SA) led the afternoon prayer, and he observed no other prayer in between the two." (M – from Jâbir)

وَيُسْتَحَبُّ أَنْ يَقِفَ فِيْ مَوْقِفِ النَّبِيِّ ﷺ، أَوْ قَرِيْبًا مِنْهُ عِنْدَ الْجَبَلِ قَرِيْبًا مِنَ الصَّخَرَاتِ، ويَجعَلُ حَبلَ المشَاةِ بَينَ يَدَيْهِ، وَيَستَقْبِلُ القِبْلَةَ وَيَكونُ رَاكِبًا.	It is preferable to stand at the site where the Prophet (SA) stood, or near it by the mountain, close to the rocks, having the pedestrians in front of him, and facing the qibla while riding. [VI.6.4]

[VI.6.4] From the long hadith of Jâbir:

«ثُمَّ رَكِبَ رسول اللَّهِ ﷺ حتى أتى الْمَوْقِفَ فَجَعَلَ بَطْنَ نَاقَتِهِ الْقَصْوَاءِ إلى الصَّخَرَاتِ وَجَعَلَ حَبْلَ الْمُشَاةِ بين يَدَيْهِ وَاسْتَقْبَلَ الْقِبْلَةَ.»

"The Messenger of Allah (SA) then mounted his camel and came to the place of standing, making his she-camel, al-Qaṣwâ', turn towards the side of the rocks; having the path of the pedestrians in front of him, and faced the qibla." (M – from Jâbir)

وَيُكْثِرُ مِنْ قَوْلِ: «لَا إِلَهَ إِلَّا اللهُ وَحْدَهُ لَا	He should say often, "There is no god but Allah, alone, without partners. To Him

belongs the dominion, and all praise is due to Him. In His Hands is all goodness, and He is All-Capable of all things." The pilgrim should excel in making supplication and seeking Almighty Allah [VI.6.5] until sunset. [VI.6.6]	شَرِيْكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ، بِيَدِهِ الْخَيْرُ، وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيْرٌ.»، وَيَجْتَهِدُ فِي الدُّعَاءِ وَالرَّغْبَةِ إِلَى اللهِ عز وجل، إِلَى غُرُوْبِ الشَّمْسِ.

[VI.6.5] For the Prophet (SA) said:

«أَفْضَلُ الدُّعَاءِ دُعَاءُ يَوْمِ عَرَفَةَ وَأَفْضَلُ ما قلت أنا وَالنَّبِيُّونَ من قَبْلِي لَا إِلَهَ إِلَّا الله وَحْدَهُ لَا شَرِيكَ له.»

"The best supplication is that on the day of 'Arafah, and the best words I – and the Prophets before me – have said is: There is none worthy of worship except Allah, alone, without partners." (Ba, Mâlik; al-Albâni: S)

[VI.6.6] From the long hadith of Jâbir:

«فلم يَزَلْ وَاقِفًا حتى غَرَبَتْ الشَّمْسُ وَذَهَبَتْ الصُّفْرَةُ قَلِيلًا حتى غَابَ الْقُرْصُ.»

"He continued standing there until the sun set, and the yellow light had somewhat disappeared, and the disc of the sun had completely disappeared." (M – from Jâbir)

He should then move with the imam to Muzdalifah, taking the route of al-Ma'zimayn.[VI.6.7] He should proceed with serenity and dignity, [VI.6.8] while making talbiyah and mentioning Almighty Allah.	ثُمَّ يَدْفَعُ مَعَ الإِمَامِ إِلَى مُزْدَلِفَةٍ عَلَى طَرِيْقِ الْمَأْزِمَيْنِ، وَعَلَيْهِ السَّكِيْنَةُ وَالْوَقَارُ. وَيَكُوْنُ مُلَبِّيًا ذَاكِرًا للهِ عز وجل.

[VI.6.7] A way between two mountains after 'Arafah, which is not the route (known as Ḍabb) that the Prophet (SA) took to 'Arafah.

[VI.6.8] From the long hadith of Jâbir:

«وَدَفَعَ رسول اللَّهِ ﷺ وقد شَنَقَ لِلْقَصْوَاءِ الزِّمَامَ حتى إِنَّ رَأْسَهَا لَيُصِيبُ مَوْرِكَ رَحْلِهِ وَيَقُولُ بيده اليمنى أَيُّهَا الناس السَّكِينَةَ السَّكِينَةَ.»

"And he pulled the nose string of al-Qaṣwâ' so forcefully that her head touched the saddle (to keep her under control), and he pointed to the people with his right hand to proceed with tranquility." (M – from Jâbir)

فَإِذَا وَصَلَ مُزْدَلِفَةَ صَلَّى الْمَغْرِبَ وَالْعِشَاءَ قَبْلَ حَطِّ الرِّحَالِ يَجْمَعُ بَيْنَهُمَا، ثُمَّ يَبِيْتُ بِهَا.	Once he has reached Muzdalifah, he should pray maghrib and 'ishâ' before he unloads his belongings. He should combine the prayers, and then sleep over in that place. [VI.6.9]

[VI.6.9] From the long hadith of Jâbir:

«حتى أتى الْمُزْدَلِفَةَ فَصَلَّى بها الْمَغْرِبَ وَالْعِشَاءَ بِأَذَانٍ وَاحِدٍ وَإِقَامَتَيْنِ ولم يُسَبِّحْ بَيْنَهُمَا شيئا ثُمَّ اضْطَجَعَ رسول اللَّهِ ﷺ حتى طَلَعَ الْفَجْرُ.»

"...Until he reached Muzdalifah, and there he led the maghrib and 'ishâ' prayers, with one adhân and two iqâmahs, and did not observe supererogatory rak'ahs between them. The Messenger of Allah (SA) then lay down until dawn." (M – from Jâbir)

[10th Day of Dhul-Ḥijjah (Day of Eid)]

ثُمَّ يُصَلِّي الْفَجْرَ بِغَلَسٍ وَيَأْتِي الْمَشْعَرَ الْحَرَامَ، فَيَقِفُ عِنْدَهُ، وَيَدْعُوْ.	After that, he should pray fajr while it is still dark and go to al-Mash'ar al-Ḥarâm and stand there and supplicate. [VI.6.10]

[VI.6.10] From the long hadith of Jâbir:

«وَصَلَّى الْفَجْرَ حين تَبَيَّنَ له الصُّبْحُ بِأَذَانٍ وَإِقَامَةٍ ثُمَّ رَكِبَ الْقَصْوَاءَ حتى أتى الْمَشْعَرَ الْحَرَامَ فَاسْتَقْبَلَ الْقِبْلَةَ فَدَعَاهُ وَكَبَّرَهُ وَهَلَّلَهُ وَوَحَّدَهُ فلم يَزَلْ وَاقِفًا حتى أَسْفَرَ جِدًّا فَدَفَعَ قبل أَنْ تَطْلُعَ الشَّمْسُ.»

"...And offered the dawn prayer with an adhân and iqâmah once the time was clearly in. He again mounted al-Qaṣwâ', and when he came to al-Mash'ar al-Ḥarâm, he faced towards the qibla, supplicated to Him, glorified Him, and pronounced His oneness, and continued standing until the daylight was very clear. He then proceeded before the sun rose." (M – from Jâbir)

It is preferable that he include the following in his supplication, "O Allah, as You enabled us to stand at it [al-Mash'ar al-Ḥarâm] and see it, enable us to mention You as You guided us, and forgive us and bestow mercy on us as You promised us in Your saying (and Your speech is all true): {But when you depart from 'Arafât, remember Allah at al-Mash'ar al-Ḥarâm. And remember Him, as He has guided you, for indeed, you were before that among those astray. Then depart from the place from where [all] the people depart and ask forgiveness of Allah. Indeed, Allah is Forgiving and Merciful.} *(al-Baqarah 2:198–199)."* [VI.6.11]	وَيَكُوْنُ مِنْ دُعَائِهِ: اللّٰهُمَّ كَمَا وَقَفْتَنَا فِيْهِ، وَأَرَيْتَنَا إِيَّاهُ، فَوَفِّقْنَا لِذِكْرِكَ، كَمَا هَدَيْتَنَا، وَاغْفِرْ لَنَا وَارْحَمْنَا، كَمَا وَعَدْتَنَا بِقَوْلِكَ، وَقَوْلُكَ الْحَقُّ: «فَإِذَا أَفَضْتُم مِّنْ عَرَفَاتٍ فَاذْكُرُوا اللَّهَ عِندَ الْمَشْعَرِ الْحَرَامِ وَاذْكُرُوهُ كَمَا هَدَاكُمْ وَإِن كُنتُم مِّن قَبْلِهِ لَمِنَ الضَّالِّينَ. ثُمَّ أَفِيضُوا مِنْ حَيْثُ أَفَاضَ النَّاسُ وَاسْتَغْفِرُوا اللَّهَ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ»

[VI.6.11] This supplication is not from the Prophet (SA). The fuqahâ' were lenient in accepting supplications and dhikrs that are not authentically traceable to the Prophet as long as their meanings are sound. Whether they come through weak chains or they are recommended by the righteous predecessors and scholars, one may use them without attributing them to the Prophet (SA).

He should stand until it is well lit, --- and then move before sunrise. [VI.6.12]	إِلَى أَنْ يُسْفِرَ، ثُمَّ يَدْفَعُ قَبْلَ طُلُوْعِ الشَّمْسِ.

[VI.6.12] From the long hadith of Jâbir:

«فلم يَزَلْ وَاقِفًا حتى أَسْفَرَ جِدًّا فَدَفَعَ قبل أَنْ تَطْلُعَ الشَّمْسُ.»

"...And continued standing until the daylight was very clear. He then proceeded before the sun rose." (M – from Jâbir)

[Symbolic Stoning of the Devil]

Once he reaches *Muḥassir*, he should hasten [VI.6.13] until he arrives at Mina (about the distance of a stone's throw).	فَإِذَا بَلَغَ مُحَسِّرًا أَسْرَعَ قَدْرَ رَمْيَةٍ بِحَجَرٍ حَتَّى يَأْتِيَ مِنًى.

[VI.6.13] Muḥassir literally means 'withholder'. The scholars indicated that it was called this because it is the place where Allah Almighty prevented the elephant of Abrahah from proceeding when Abrahah came to demolish the Kaaba. The Prophet (SA) did not like to stay a long time at a place where some of the previously destroyed nations existed and were tormented. He said to his Companions:

«لَا تَدْخُلُوا على هَؤُلَاءِ الْمُعَذَّبِينَ إلا أَنْ تَكُونُوا بَاكِينَ أَنْ يُصِيبَكُمْ مِثْلُ ما أَصَابَهُمْ.»

"Do not visit those who were tormented except while you are weeping, lest there befall you something like that which befell them." (Ag – from 'Abdullâh ibn 'Umar)

There is a lesson here for those who keep evil company. If the Prophet (SA) feared for his Companions from merely being in places where these kinds of people lived hundreds of years before, what would you think about taking them as intimate companions?

Then he should start with the *jamrat ul-'aqabah, [VI.6.14]* throwing seven pebbles at it that are like the pebbles for throwing. [VI.6.15]	فَيَبْدَأُ بِجَمْرَةِ الْعَقَبَةِ فَيَرْمِيْهَا بِسَبْعِ حَصَيَاتٍ كَحَصَى الْخَذْفِ.

[VI.6.14] Jamrah is a heap of stones. Jamrat ul-‘aqabah is also referred to as jamrat ul-kubrâ (the larger jamrah).

[VI.6.15] Like those thrown in games, smaller than a hazelnut but larger than a chickpea.

He should say *Allâhu akbar* with every pebble and raise his hand while throwing. He should also interrupt the talbiyah once he starts throwing. [VI.6.16] He should stand in the middle/bottom of the valley and face the qibla, [VI.6.17] and he should not stand by it. [VI.6.18]	يُكَبِّرُ مَعَ كُلِّ حَصَاةٍ، وَيَرْفَعُ يَدَهُ فِي الرَّمْيِ. وَيَقْطَعُ التَّلْبِيَةَ مَعَ ابْتِدَاءِ الرَّمْيِ، وَيَسْتَبْطِنُ الْوَادِيَ وَيَسْتَقْبِلُ الْقِبْلَةَ، وَلَا يَقِفُ عِنْدَهَا.

[VI.6.16] The Prophet (SA) continued the talbiyah until he threw at jamrat ul-‘aqabah. (B – from Ibn ‘Abbâs and Usâmah)

[VI.6.17] From the long hadith of Jâbir:

«حتى أتى الْجَمْرَةَ التي عِنْدَ الشَّجَرَةِ فَرَمَاهَا بِسَبْعِ حَصَيَاتٍ يُكَبِّرُ مع كل حَصَاةٍ منها مِثْلِ حَصَى الْخَذْفِ رَمَى من بَطْنِ الْوَادِي ثُمَّ انْصَرَفَ إلى الْمَنْحَرِ.»

“He came to the jamrah, which is near the tree, and he threw seven small pebbles at it, saying Allâhu akbar (and they were like the pebbles thrown in games). He did this at the bottom of the valley, and then went to the place of sacrifice.” (M – from Jâbir)

[VI.6.18] To supplicate, as he does with the other two jamarât.

[Slaughtering]

Then he should slaughter his sacrificial animal and shave his head or shorten his hair, and then everything is permissible [VI.6.19] for him except contact with women. [VI.6.20]	ثُمَّ يَنْحَرُ هَدْيَهُ، ثُمَّ يَحْلِقُ رَأْسَهُ أَوْ يُقَصِّرُهُ، ثُمَّ قَدْ حَلَّ لَهُ كُلُّ شَيْءٍ إِلَّا النِّسَاءَ.

[VI.6.19] First Taḥallul

1- (A) + (+S): After two of the following three: stoning, shaving, and ṭawâf. For (S), if ṭawâf is one of the two acts, it must be accompanied by sa'iy if the sa'iy of Hajj has not already been performed.

2- (a) + (-H, -m, -s): After stoning and shaving.

3- (-H2): After shaving only.

4- (a) + (-h, -M): After stoning only.

All agreed that it takes effect after stoning and shaving.

Each position has some merit, and the first two are safer, with the second being the safest. However, the last one may be more strongly supported by evidence, for there are several reports from 'Â'ishah and Ibn 'Abbâs (rahum) indicating that the first taḥallul is after the stoning. These reports are somewhat controversial, but they strengthen each other.

[VI.6.20] Meaning that any kind of lustful contact is forbidden, as well as being a party in the contract of marriage. (A/SM) Others said that only intercourse is forbidden, but the Prophet (SA) said "except women," not "except intercourse."

[Ṭawâf al-Ifâḍah]

Then he should proceed to Makkah and perform ṭawâf az-ziyârah, [VI.6.21] which is the mandatory ṭawâf, with which the Hajj becomes complete.	ثُمَّ يُفِيْضُ إِلَى مَكَّةَ، فَيَطُوْفُ لِلزِّيَارَةِ، وَهُوَ الطَّوَافُ الَّذِيْ بِهِ تَمَامُ الْحَجِّ.

[VI.6.21] Also called ṭawâf al-ifâḍah; it is a pillar in Hajj. In this ṭawâf, there is no brisk walking with short steps, and there is no uncovering of the right shoulder.

If he is performing tamattu', or if he did not perform sa'iy with the ṭawâf of arrival, then he should perform sa'iy. [VI.6.22]	ثُمَّ يَسْعَى بَيْنَ الصَّفَا وَالْمَرْوَةِ، إِنْ كَانَ مُتَمَتِّعًا، أَوْ مِمَّنْ لَمْ يَسْعَ مَعَ طَوَافِ الْقُدُوْمِ.

[VI.6.22] For sa‘iy, see the previous chapter.

[End of *Iḥrâm*]

After that, everything is permissible for him. [VI.6.23]	ثُمَّ قَدْ حَلَّ مِن كُلِّ شَيْءٍ.

[VI.6.23] Including lustful contact with women and sexual intercourse. This is the case after he has completed stoning, shaving or shortening the hair, and ṭawâf al-ifâḍah, and has completed the sa‘iy of Hajj.

It is recommended that he: 1. Drink from Zamzam with any intention that he wishes. [VI.6.24] 2. Drink his fill. 3. Then say, “O Allah, grant us with it knowledge that is beneficial, provision that is plentiful, quenching of thirst and satisfaction of hunger, and cure for all ailments. Wash with it my heart, fill it with awe of You, and fill it with Your wisdom.” [VI.6.25]	وَيُسْتَحَبُّ أَنْ 1. يَشْرَبَ مِنْ مَاءِ زَمْزَمَ لِمَا أحبَّ 2. وَيَتَضَلَّعَ مِنْهُ، 3. ثُمَّ يَقُوْلُ: «اللّٰهُمَّ اجْعَلْهُ لَنَا عِلْمًا نَافِعًا، وَرِزْقًا وَاسِعًا، وَرِيًّا وَشِبَعًا، وَشِفَاءً مِنْ كُلِّ دَاءٍ، وَاغْسِلْ بِهِ قَلْبِيْ، وَامْلأْهُ مِنْ خَشْيَتِكَ وحِكْمَتِكَ.»

[VI.6.24] The Prophet (SA) said:

«مَاءُ زَمْزَمَ لِمَا شُرِبَ له.»

"The water of Zamzam is for whatever intention (request) it was drunk for." (A, Ha, Ma – from Jâbir; Many: R)

[VI.6.25] Reported with a weak chain from Ibn ‘Abbâs (rahuma), yet you may use it or any other supplication. It was prescribed in the madh-hab because it is comprehensive and includes the good of this life and the hereafter. There is flexibility concerning supplications, and you may ask Allah Almighty for whatever you please.

[VI.7] Chapter on What to Do after Removing *Iḥrâm*

بَابُ مَا يَفْعَلُهُ بَعْدَ الْحِلِّ

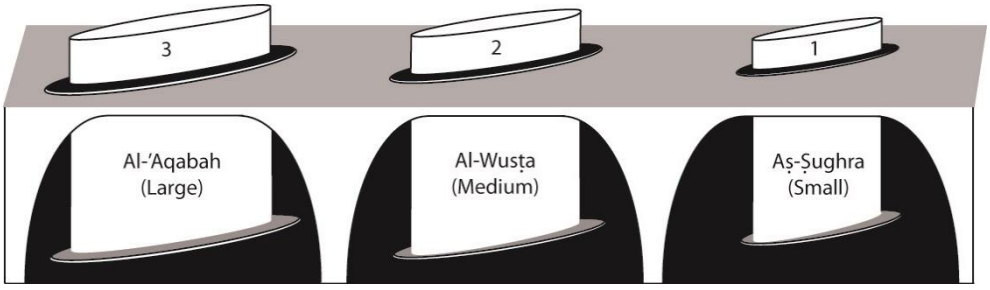
[Sleeping over in Mina]

Then he should go to Mina and should not stay anywhere but there during the nights of Mina. [VI.7.1]	ثُمَّ يَرْجِعُ إِلَى مِنَى وَلَا يَبِيْتُ لَيَالِيَهَا إِلَّا بِهَا.

[VI.7.1] For that is what the Prophet (SA) and his Companions did. He permitted al-'Abbâs (RA) to stay overnight outside Mina (Ag) because al-'Abbâs (RA) was in charge of the water supply and needed to be in Makkah.

[Completion of the Symbolic Stoning of the Devil]

Then he should stone the jamarât each day after the sun passes the meridian. [VI.7.2] --- Each jamrah is stoned with seven pebbles. [VI.7.3]	فَيَرْمِيْ بِهَا الْجَمَرَاتِ بَعْدَ الزَّوَالِ مِنْ أَيَّامِهَا، كُلَّ جَمْرَةٍ بِسَبْعِ حَصَيَاتٍ.



[VI.7.2] Time of Stoning

«رمى رَسُولُ اللَّهِ ﷺ الجَمْرَةَ يوم النَّحْرِ ضُحًى فَأَمَّا بَعْدَ ذلك فَبَعْدَ زَوَالِ الشَّمْسِ.»

"The Messenger of Allah stoned jamrat ul-'aqabah at forenoon on the day of sacrifice, and thereafter after zawâl (the sun passing the meridian)." (M – from Jâbir)

There is no disagreement that the best time for stoning on the 11th, 12th and the 13th is between noon and sunset. However, there is some disagreement regarding the permissible times:

(A): Stoning of the major jamrah on the 10th is preferably done between sunrise and sunset. It is permissible, however, anytime from the middle of the night (midway between maghrib and fajr on the eve of the 10th) to sunset on the 10th.

Stoning of the three jamarât on subsequent days is only permissible between noon and sunset.

Note that, in the madh-hab, if someone did not do any stoning until the last day of tashreeq, they may do all of them on that day in the prescribed order (major for the 10th; minor, middle, major for the 11th; minor, middle, major for the 12th; minor, middle, major for the 13th). They will not be liable for any expiation.

Beginning – other positions: (a) + (-h, Muhammad al-Bâqir, Ṭâwoos, 'Aṭâ'): It may be done before zawâl.

End – other positions: (-H, -S) It is allowed at night, which means that one may do the stoning of the 11th on the eve of the 12th. (-M) counts nighttime stoning as qaḍâ' and requires a compensatory sacrifice for the delay.

Note that many contemporary scholars allow it from fajr to fajr. They base their view on the positions of earlier scholars and the lack of clear proof to restrict the time of stoning. They also cite the clear objective of facilitation and sparing the lives of Muslims by preventing the crowdedness and the consequent stampedes that have taken many lives in previous years.

[VI.7.3] As stated in several hadiths, including the long one of Jâbir.

He starts with the first jamrah. [VI.7.4] He faces the qibla and stones it with	فَيَبْتَدِئُ بِالْجَمْرَةِ الأُوْلَى، فَيَسْتَقْبِلُ الْقِبْلَةَ، وَيَرْمِيْهَا

seven pebbles, as he did with jamrat ul-‘aqabah. Then he proceeds and stands to invoke Allah Almighty, and then goes to the middle jamrah and stones it as well. Then he stones jamrat ul-‘aqabah; but he does not stand by it. [VI.7.5] Then he should stone the same way on the second day.	بِسَبْعٍ كَمَا رَمَى جَمْرَةَ الْعَقَبَةِ، ثُمَّ يَتَقَدَّمُ، فَيَقِفُ يَدْعُو اللهَ تَعَالَى، ثُمَّ يَأْتِي الْوُسْطَى، فَيَرْمِيْهَا كَذٰلِكَ. ثُمَّ يَرْمِيْ جَمْرَةَ الْعَقَبَةِ ، وَلَا يَقِفُ عِنْدَهَا. ثُمَّ يَرْمِيْ فِي الْيَوْمِ الثَّانِيْ كَذٰلِكَ.

[VI.7.4] Stoning the jamarât in the proper sequence is a condition for the validity of stoning, according to the majority. That is because the Prophet (SA) followed that sequence, and he said:

«خُذوا عني مَناسِككم.»

"Take your rites from me." (Ba; Nawawi and Ibn Ḥajar: R. A variant wording was reported by M)

[VI.7.5] He stands to supplicate after the smaller and middle jamrats, but not after jamrat ul-‘aqabah. This is based on the following report:

«عن ابن عُمَرَ رضي الله عنهما أَنَّهُ كان يَرْمِي الْجَمْرَةَ الدُّنْيَا بِسَبْعِ حَصَيَاتٍ يُكَبِّرُ على إِثْرِ كل حَصَاةٍ ثُمَّ يَتَقَدَّمُ حتى يُسْهِلَ فَيَقُومَ مُسْتَقْبِلَ الْقِبْلَةِ فَيَقُومُ طَوِيلًا وَيَدْعُو وَيَرْفَعُ يَدَيْهِ ثُمَّ يَرْمِي الْوُسْطَى ثُمَّ يَأْخُذُ ذَاتَ الشِّمَالِ فيسهل وَيَقُومُ مُسْتَقْبِلَ الْقِبْلَةِ فَيَقُومُ طَوِيلًا وَيَدْعُو وَيَرْفَعُ يَدَيْهِ وَيَقُومُ طَوِيلًا ثُمَّ يَرْمِي جَمْرَةَ ذَاتِ الْعَقَبَةِ من بَطْنِ الْوَادِي ولا يَقِفُ عِنْدَهَا ثُمَّ يَنْصَرِفُ فيقول هَكَذَا رأيت النبي ﷺ يَفْعَلُهُ.»

‘Abdullâh ibn ‘Umar (rahuma) used to stone the closest jamrah with seven pebbles, saying Allâhu akbar after each throw. Then he would proceed until he reached level ground. After that, he would stand facing the qibla for a long time, making supplications and raising his hands. Then he would stone the middle jamrah in the same way. Then he would move to the left towards level ground, and stand facing the qibla for a long time, making supplications and raising his hands. After that, he would stone jamrat ul-‘aqabah in the bottom of the valley, and he would not stand by it

and would leave. He used to say: This is what I saw the Messenger of Allah (SA) do. (B)

If he desires to leave early, after two days, [VI.7.6] he should leave before sunset. [VI.7.7]	فَإِنْ أَحَبَّ أَنْ يَتَعَجَّلَ فِيْ يَوْمَيْنِ خَرَجَ قَبْلَ الْغُرُوْبِ.

[VI.7.6] Leaving on the 12th, after stoning and before sunset.

[VI.7.7] For Allah (ST) said:

{فَمَن تَعَجَّلَ فِي يَوْمَيْنِ فَلَا إِثْمَ عَلَيْهِ وَمَن تَأَخَّرَ فَلَا إِثْمَ عَلَيْهِ}

{…But whosoever hastens to leave in two days, there is no sin on him, and whosoever stays on, there is no sin on him…} (al-Baqarah 2:203)

If the sun sets while he is still in Mina, he must stay overnight and stone the jamarât on the following day. [VI.7.8]	فَإِنْ غَرَبَتِ الشَّمْسُ وَهُوَ بِمِنًى، لَزِمَهُ الْمَبِيْتُ بِهَا، وَالرَّمْيُ مِنْ غَدٍ.

[VI.7.8] No Leaving

«من غَرَبَت عليه الشَّمسُ وهُو بمِنَى من أوْسَط أيام التَّشريق فلا يَنْفِرَنَّ حتى يَرْمِي الجِمار مِن الغَدِ.»

"If the sun sets while he is still in Mina in the middle of the days of Tashreeq, he must not leave until he has stoned the jamarât the following day." (Ba – from 'Abdullâh ibn 'Umar)

This hadith has been reported from the Prophet (SA), albeit with a chain that was deemed weak by Ibn Ḥajar and others.

If he is making tamattu' or qirân, his Hajj and 'umrah are completed.	فَإِنْ كَانَ مُتَمَتِّعًا أَوْ قَارِنًا، فَقَدِ انْقَضَى حَجُّهُ وَعُمْرَتُهُ.

If he is making ifrâd, he goes out to at-Tan‘eem and enters into iḥrâm for ‘umrah from there; after that, he goes to Makkah and performs ṭawâf and sa‘iy and shaves or shortens his hair. [VI.7.9] If he has no hair, it is recommended that he pass a razor over his head, and his Hajj and ‘umrah will then be completed. [VI.7.10]	وَإِنْ كَانَ مُفْرِدًا خَرَجَ إِلَى التَّنْعِيْمِ، فَأَحْرَمَ بِالْعُمْرَةِ مِنْهُ، ثُمَّ يَأْتِيْ مَكَّةَ، فَيَطُوْفُ وَيَسْعَى، وَيَحْلِقُ أَوْ يُقَصِّرُ. فَإِنْ لَمْ يَكُنْ لَهُ شَعَرٌ، اسْتُحِبَّ أَنْ يُمِرَّ الْمُوْسَى عَلَى رَأْسِهِ، وَقَدْ تَمَّ حَجُّهُ وَعُمْرَتُهُ.

[VI.7.9] ‘Umrah after Hajj ul-Ifrâd

There is no evidence that the Prophet (SA) recommended that the one making ifrâd should make ‘umrah afterwards. However, they were recommended to do it according to the madh-hab, particularly if they are coming from a distant land and have not made ‘umrah before. It would have been better for them to make tamattu‘ or qirân, but some resort to this in order to avoid the hady (offering of an animal) and the alternative fasting.

[VI.7.10] This recommendation is not from the Prophet (SA) but from some of the scholars.

The one making qirân does not do more than the one making ifrâd. [VI.7.11] However, he and the one making tamattu‘ must sacrifice an animal [VI.7.12] based on Allah Almighty's words: {…whoever performs ‘umrah [during the Hajj months] followed by Hajj [offers] what can be obtained with ease of sacrificial animals. And whoever cannot find [or afford such an animal] – then a fast of three days during Hajj and of seven days when you have returned [home].} *(al-Baqarah 2:196)*	وَلَيْسَ فِيْ عَمَلِ الْقَارِنِ زِيَادَةٌ عَلَى عَمَلِ الْمُفْرِدِ، لَكِنْ عَلَيْهِ وَعَلَى الْمُتَمَتِّعِ دَمٌ، لِقَوْلِ اللهِ تَعَالَى: «فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ»

[VI.7.11] This is regarding the rites of Hajj, including ṭawâf and sa‘iy.

As for the person making tamattu‘, he does a sa‘iy for his ‘umrah and one for his Hajj, and he shaves or shortens his hair twice.

[VI.7.12] Hady for the One Making Qirân

This is the opinion of the four madh-habs, since the one making qirân performed both ‘umrah and Hajj in one trip. Thus, he should slaughter an animal like the one making tamattu‘, to show gratitude to Allah (ST), Who permitted him to do so.

[Farewell to the House]

When he wants to return [to his homeland], he should not leave until he bids farewell to the House by making ṭawâf. This should be done after he has completed all his affairs, so that the last place he departs Makkah from is the House. [VI.7.13]	وَإِذَا أَرَادَ الْقُفُوْلَ، لَمْ يَخْرُجْ حَتَّى يُوَدِّعَ الْبَيْتَ بِطَوَافٍ عِنْدَ فَرَاغِهِ مِنْ جَمِيْعِ أُمُوْرِهِ، حَتَّى يَكُوْنَ آخِرَ عَهْدِهِ بِالْبَيْتِ.

[VI.7.13] Farewell Ṭawâf

This ruling is from this report:

عن بن عَبَّاسٍ رضي الله عنهما قال «أُمِرَ الناس أَنْ يَكُونَ آخِرُ عَهْدِهِمْ بِالْبَيْتِ إلا أَنَّهُ خُفِّفَ عن الْحَائِضِ.»

“The people were commanded to make the House their last place (to visit) before departure, but a concession was made for menstruating women.” (Ag – from Ibn ‘Abbâs)

They agreed on the farewell ṭawâf being sunnah (recommended or mandatory), and that it is not a pillar.

If he engages in some business transactions after it [the ṭawâf], he must repeat it. [VI.7.14]	فَإِنِ اشْتَغَلَ بَعْدَهُ بِتِجَارَةٍ أَعَادَهُ.

[VI.7.14] Based on the report in commentary note [VI.7.13].

This, however, would not apply to a person who buys something on his way, or a person who is waiting for his travel companions.

It is recommended for him, if he makes ṭawâf, to stand at *al-multazam* (the place to be embraced), which is between the pillar (the Black Stone) and the door. He should embrace the House [VI.7.15] and say, "O Allah, this is Your House, and I am Your slave, son of Your male slave, son of Your female slave. You have carried me on a creature that You subdued to me. And You caused me to travel through Your lands until You caused me to reach Your House by Your grace. And You have enabled me to perform my rites (of pilgrimage). If You were pleased with me, then I beg You to be more pleased. Otherwise, be pleased with me now before my place of residence becomes away from Your House, for now I am about to depart, if You permit me, without forsaking You or Your House. O Allah, give me safety and good physical health and protect me in my faith. Let my affairs turn out well. (Let me find my family well and safe upon my return). Help me to obey You as long as You keep me alive, and give me the good of this world and the hereafter, for You are able to do all things." [VI.7.16]	وَيُسْتَحَبُّ لَهُ إِذَا طَافَ أَنْ يَقِفَ فِي الْمُلْتَزَمِ بَيْنَ الرُّكْنِ وَالْبَابِ ، فَيَلْتَزِمُ الْبَيْتَ وَيَقُوْلُ: «اللّٰهُمَّ هَذَا بَيْتُكَ، وَأَنَا عَبْدُكَ وَابْنُ عَبْدِكَ وَابْنُ أَمَتِكَ، حَمَلْتَنِيْ عَلَى مَا سَخَّرْتَ لِيْ مِنْ خَلْقِكَ، وَسَيَّرْتَنِيْ فِيْ بِلَادِكَ، حَتَّى بَلَّغْتَنِيْ بِنِعْمَتِكَ إِلَى بَيْتِكَ، وَأَعَنْتَنِيْ عَلَى أَدَاءِ نُسُكِيْ، فَإِنْ كُنْتَ رَضِيْتَ عَنِّيْ، فَازْدَدْ عَنِّيْ رِضًا، وَإِلَّا فَمُنَّ الآنَ قَبْلَ أَنْ تَنْأَى عَنْ بَيْتِكَ دَارِيْ، فَهَذَا أَوَانُ انْصِرَافِيْ إِنْ أَذِنْتَ لِيْ، غَيْرَ مُسْتَبْدِلٍ بِكَ، وَلَا بِبَيْتِكَ وَلَا رَاغِبٍ عَنْكَ، وَلَا عَنْ بَيْتِكَ. اللّٰهُمَّ فَأَصْحِبْنِي الْعَافِيَةَ فِيْ بَدَنِيْ، وَالصِّحَّةَ فِيْ جِسْمِيْ، وَالْعِصْمَةَ فِيْ دِيْنِيْ، وَأَحْسِنْ مُنْقَلَبِيْ، وَارْزُقْنِيْ طَاعَتَكَ أَبَدًا مَا أَبْقَيْتَنِيْ، وَاجْمَعْ لِيْ بَيْنَ خَيْرَيِ الدُّنْيَا وَالآخِرَةِ، إِنَّكَ عَلَى كُلِّ شَيْءٍ قَدِيْرٌ.» وَيَدْعُوْ بِمَا أَحَبَّ، ثُمَّ يُصَلِّيْ عَلَى النَّبِيِّ ﷺ.

Then he supplicates as he likes and sends peace and blessings on the Prophet (SA).	

[VI.7.15] For ‘Amr ibn Shu‘ayb (the great-grandson of ‘Abdullâh ibn ‘Amr ibn al-‘Âṣ) reported from his father that he said:

عن عَمْرِو بن شُعَيْبٍ عن أبيه قال طُفْتُ مع عبد اللَّهِ فلما جِئْنَا دُبُرَ الْكَعْبَةِ قلت ألا تَتَعَوَّذُ قال نَعُوذُ بِاللَّهِ من النَّارِ ثُمَّ مَضَى حتى اسْتَلَمَ الْحَجَرَ وَأَقَامَ بين الرُّكْنِ وَالْبَابِ فَوَضَعَ صَدْرَهُ وَوَجْهَهُ وَذِرَاعَيْهِ وَكَفَّيْهِ هَكَذَا وَبَسَطَهُمَا بَسْطًا ثُمَّ قال هَكَذَا رأيت رَسُولَ اللَّهِ ﷺ يَفْعَلُهُ.

“I made ṭawâf with ‘Abdullâh, and when we came behind the Kaaba, I said, ‘Should we not seek refuge with Allah?’ He said, 'We seek refuge with Allah from the fire.' Then he went and touched the Black Stone and stood between the pillar (the Black Stone) and the door, and he put his chest, face, arms, and hands like this, and he stretched them out and then said, ‘I saw the Messenger of Allah (SA) do that.’” (D; W)

This hadith itself is weak, but there are reports from Ibn ‘Abbâs (rahuma) in which he said, “The part to be embraced is between the pillar and the door.” (Ibn Abi Shaybah and others. Ibn Ḥajar:S)

[VI.7.16] This beautiful supplication is not from the Prophet (SA). The fuqahâ’ were lenient in accepting supplications and dhikrs that are not authentically traceable to the Prophet (SA) as long as their meanings are sound. Whether they come through weak chains or they are recommended by the righteous predecessors and scholars, one may use them without attributing them to the Prophet (SA).

If one leaves before the farewell ṭawâf, he returns to do it if he is close; if he is far, he sends a sacrifice [of a sheep or a goat]. [VI.7.17]	فَمَنْ خَرَجَ قَبْلَ الْوَدَاعِ، رَجَعَ إِنْ كَانَ قَرِيْبًا، وَإِنْ كَانَ بَعِيْدًا بَعَثَ بِدَمٍ.

[VI.7.17] For that is the ruling of leaving out a mandatory action of Hajj. This is based on the statement of Ibn ‘Abbâs (rahuma):

«من نَسِيَ من نُسُكِهِ شيئا أو تَرَكَهُ فَلْيُهْرِقْ دَمًا.»

“Whoever forgets one of the rites or leaves it out must slaughter an animal.” (Mâlik; Nawawi in al-Majmoo‘:S)

Note: this is not from the speech of the Prophet (SA), but it is the fatwa of a Companion and is uncontested by other Companions (rahum).

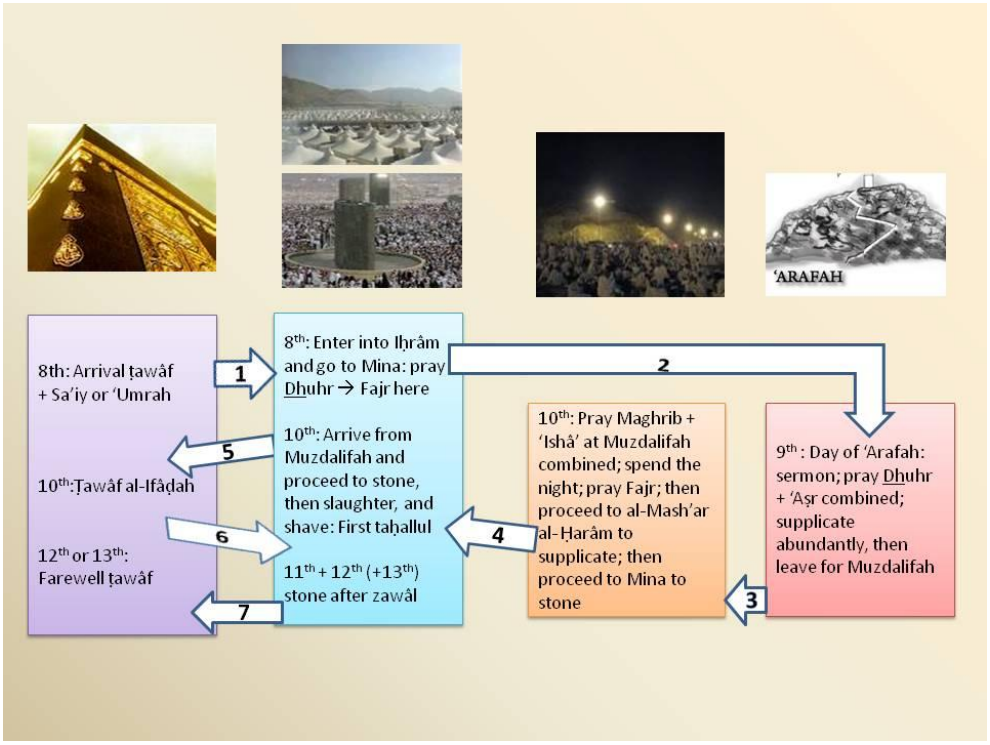
The exceptions are a menstruating woman and one with postpartum bleeding. They are not obliged to perform the farewell (ṭawâf). [VI.7.18] It is recommended for them to stand at the door of the masjid and supplicate. [VI.7.19]	إِلَّا الْحَائِضَ وَالنُّفَسَاءَ، فَلَا وَدَاعَ عَلَيْهِمَا، وَيُسْتَحَبُّ لَهُمَا الْوُقُوْفُ عِنْدَ بَابِ الْمَسْجِدِ، وَالدُّعَاءُ.

[VI.7.18] Based on the following report:

عن ابن عَبَّاسٍ رضي الله عنهما قال «أُمِرَ الناس أَنْ يَكُونَ آخِرُ عَهْدِهِمْ بِالْبَيْتِ إلا أَنَّهُ خُفِّفَ عن الْحَائِضِ.»

“The people were commanded to make the House their last place (to visit) before departure, but a concession was made for menstruating women.” (Ag – from Ibn ‘Abbâs)

[VI.7.19] There is no report from the Prophet (SA) concerning this, but it is for her own benefit to see the masjid and be close to it, and to supplicate before her departure.


'ARAFAH
8th: Arrival ṭawâf + Sa'iy or 'Umrah
1
8th: Enter into Iḥrâm and go to Mina: pray Dhuhr → Fajr here
2
9th : Day of 'Arafah: sermon; pray Dhuhr + 'Aṣr combined; supplicate abundantly, then leave for Muzdalifah
3
10th: Pray Maghrib + 'Ishâ' at Muzdalifah combined; spend the night; pray Fajr; then proceed to al-Mash'ar al-Ḥarâm to supplicate; then proceed to Mina to stone
4
10th: Arrive from Muzdalifah and proceed to stone, then slaughter, and shave: First taḥallul
11th + 12th (+13th) stone after zawâl
5
10th:Ṭawâf al-Ifâḍah
6
12th or 13th: Farewell ṭawâf
7

[VI.8] Chapter on the Pillars of Hajj and *‘Umrah*

بَابُ أَرْكَانِ الْحَجِّ وَالْعُمْرَةِ

[Pillars of Hajj]

The pillars [VI.8.1] of Hajj are: - Standing at ‘Arafah [VI.8.2] and - Ṭawâf az-ziyârah [VI.8.3]	أَرْكَانُ الْحَجِّ: • الْوُقُوْفُ بِعَرَفَةَ • وَطَوَافُ الزِّيَارَةِ.

[VI.8.1] The Pillars

The pillars are those acts without which worship is invalid. There is no expiation for leaving them out, and there is no difference between doing so intentionally or absentmindedly.

(A2) + (-H): The pillars of Hajj are the two mentioned here.

(A) + (+M): These two, plus iḥrâm and sa‘iy.

Iḥrâm (intention) is a must by agreement. Those who don’t consider it a pillar consider it a condition.

(-S) adds two more to these four; they are shaving or shortening the hair and doing the pillars in the prescribed sequence.

[VI.8.2] This is a pillar by consensus.

Based on the statement of the Prophet (SA):

«الْحَجُّ عَرَفَةُ من جاء لَيْلَةَ جَمْعٍ قبل طُلُوعِ الْفَجْرِ فَقَدْ أَدْرَكَ الْحَجَّ.»

> *"Hajj is (mainly about standing at) ‘Arafah, so whoever comes (to ‘Arafah) before fajr on the night of Jam‘ (Muzdalifah), then his Hajj is fulfilled." (D, Ma, T, A – from ‘Abdur-Raḥmân ibn Ya‘mur; Nawawi: S)*

According to (A), a separate intention is not a condition of validity for standing at ‘Arafah.

[VI.8.3] Ṭawâf az-Ziyârah (also called Ṭawâf al-Ifâḍah)

It is a pillar by consensus, based on the following report:

«عن عَائِشَةَ رضي الله عنها أَنَّ صَفِيَّةَ بِنْتَ حُيَيٍّ زَوْجَ النبي ﷺ حَاضَتْ فَذَكَرْتُ ذلك لِرَسُولِ اللَّهِ ﷺ فقال أَحَابِسَتُنَا هِيَ قالوا إِنَّهَا قد أَفَاضَتْ قال فلا إِذًا.»

Ṣafiyah bint Ḥuyay (the wife of the Prophet [SA]) got her period, and ‘Â’ishah told the Prophet (SA) about this. The Prophet (SA) said, “Is she keeping us (from leaving)?” They said, “She has already performed ṭawâf al-ifâḍah.” He said, “Then she will not keep us back.” (B – from ‘Â’ishah)

The words of the Prophet (SA), ‘Is she keeping us (from leaving)?’, indicate that a person may not leave before performing ṭawâf al-ifâḍah.

[Mandatory Acts of Hajj]

Its mandatory acts are: [VI.8.4] - Making iḥrâm from the meeqât - Standing at ‘Arafah until sunset - Staying until midnight in Muzdalifah - Sa‘iy - Staying overnight in Mina - Stoning - Shaving [or shortening] the hair - The farewell ṭawâf.	وَوَاجِبَاتُهُ: - الإِحْرَامُ مِنَ الْمِيْقَاتِ. - وَالْوُقُوْفُ بِعَرَفَةَ إِلَى اللَّيْلِ. - وَالْمَبِيْتُ بِمُزْدَلِفَةَ إِلَى نِصْفِ اللَّيْلِ. - وَالسَّعْيُ. - وَالْمَبِيْتُ بِمِنًى. - وَالرَّمْيُ. - وَالْحَلْقُ. - وَطَوَافُ الْوَدَاعِ.

[VI.8.4] Mandatory Acts

Mandatory acts must be performed. Leaving them out is a sin, but it does not invalidate the Hajj. The expiation for forgetting them or leaving them out is to slaughter an animal. This is based on the following fatwa of Ibn ‘Abbâs:

«من نَسِيَ من نُسُكِهِ شيئا أو تَرَكَهُ فَلْيُهْرِقْ دَمًا.»

"Whoever forgets or leaves out one of his rites must slaughter an animal." (Mâlik – from Ibn ʻAbbâs. Nawawi in al-Majmooʻ:S)

This is a fatwa of a Companion that is uncontested by other Companions.

- Making iḥrâm from the meeqât [VI.8.5]	- الإِحْرَامُ مِنَ الْمِيْقَاتِ.

[VI.8.5] Getting into the State of Iḥrâm

In general:

Is a pillar in the opinion of (A) + (+M, +S).

Is a condition for the validity of Hajj, not a pillar, for (-H).

(H)'s position is practically no different from the majority. The pillar and the condition are both essential, but the first is part of the act, while the second is external to it, in the same way that wuḍoo' is not part of the prayer but is a condition for its validity.

Getting into the state of iḥrâm at the meeqât:

Is mandatory; one who forgets to do it or does not do it will need to slaughter an animal.

Uttering the intention aloud is prescribed in Hajj, but it is not a condition. One's intention for iḥrâm is valid without verbalization. (A) + (+M, +S)

- Standing at ʻArafah until sunset [VI.8.6]	- وَالْوُقُوْفُ بِعَرَفَةَ إِلَى اللَّيْلِ.

[VI.8.6] Standing at ʻArafah Part of the Day and the Night

Standing at ʻArafah is a pillar without which one's Hajj is invalid, and this pillar is fulfilled according to (A) by standing there for any moment between fajr [-H, -S: zawâl; -M: maghrib] of the day of ʻArafah and fajr of the

following day. This is because the Prophet (SA) said to ‘Urwah ibn Mudarris:

«من أَدْرَكَ مَعَنَا هذه الصَّلَاةَ وَأَتَى عَرَفَاتَ قبل ذلك لَيْلًا أو نَهَارًا فَقَدْ تَمَّ حَجُّهُ وَقَضَى تَفَثَهُ.»

"Whoever attends this prayer [fajr in Muzdalifah] with us and had previously stood at ‘Arafât during the day or night, his Hajj is completed and his rite (or unkemptness) is finished." (A, D, T, N, Ma; T: S)

(A): One who stands at ‘Arafah during the day must also remain until sunset or return during the night. One whose first standing is at night owes no sacrifice for missing the daytime standing.

This is obligatory because this was what the Prophet (SA) did.

- Staying until midnight in Muzdalifah [VI.8.7]	- وَالْمَبِيْتُ بِمُزْدَلِفَةَ إِلَى نِصْفِ اللَّيْلِ.

[VI.8.7] Staying Overnight in Muzdalifah

(A): Staying in Muzdalifah until the middle of the night (midway between maghrib and fajr) is mandatory for one who arrives before then. One who leaves before then without a recognized exemption and does not return before fajr must expiate by slaughtering an animal. If a person leaves after the middle of the night, he has left a sunnah but not a wâjib act. (S): Presence for any part of the second half of the night suffices.

(H): It is mandatory to stay a while between fajr and sunrise on the 10th.

(M): It is mandatory to stay a short while during the eve of the 10th.

Spending time in Muzdalifah is not a pillar because the Prophet (SA) said:

«الْحَجُّ عَرَفَةُ من جاء لَيْلَةَ جَمْعٍ قبل طُلُوعِ الْفَجْرِ فَقَدْ أَدْرَكَ الْحَجَّ.»

"Hajj is (mainly about standing at) ‘Arafah, so whoever comes (to ‘Arafah) before the fajr on the night of Jam‘ (Muzdalifah), then his Hajj is fulfilled." (D, Ma, T, A – from ‘Abdur-Raḥmân ibn Ya‘mur; Nawawi: S)

If he reaches ‘Arafah immediately before fajr, he will not have stayed overnight in Muzdalifah, yet his Hajj is valid according to the previous hadith. However, the overnight stay is mandatory, not only a sunnah, because the Prophet (SA) did it, and he commanded that we follow him concerning the rites of Hajj. He permitted the weak to leave for Mina before fajr; (A) and (S) place this departure after midnight.

- Sa‘iy [VI.8.8]	- وَالسَّعْيُ.

[VI.8.8] Sa‘iy

There are two strong positions in (A):

(A) considers sa‘iy a pillar, and this is consistent with (+M, +S).

(A2) considers it wâjib (mandatory), and this is consistent with (+H).

The Prophet (SA) said:

«اسْعَوْا فإن اللَّهَ كَتَبَ عَلَيْكُمُ السَّعْيَ.»

"Make sa‘iy, for Allah ordained sa‘iy on you." (Kh, Ba, Ṭab.K; Nawawi, Ibn Ḥajar: R)

‘Â’ishah said:

«ما أَتَمَّ الله حَجَّ امْرِئٍ ولا عُمْرَتَهُ ما لم يَطُفْ بين الصَّفَا وَالْمَرْوَةِ.»

“Allah does not consider the Hajj and ‘umrah of a person complete unless he makes sa‘iy between Ṣafâ and Marwah.” (Ag – from ‘Â’ishah)

The command in the hadith means that it is mandatory but does not necessarily mean that it is a pillar. (By definition, if one misses a pillar, his

act of worship is invalid). ‘Â’ishah’s statement could also be interpreted to mean that his Hajj will be deficient, and he would have committed a sin, but his Hajj could still be valid. Those who support this position also use the hadith in which the Prophet (SA) indicates that Hajj is about ‘Arafah. They argue that there is other evidence establishing that ṭawâf and iḥrâm are pillars.

They add to that the implications of the following verse:

{إِنَّ الصَّفَا وَالْمَرْوَةَ مِن شَعَائِرِ اللَّهِ ۖ فَمَنْ حَجَّ الْبَيْتَ أَوِ اعْتَمَرَ فَلَا جُنَاحَ عَلَيْهِ أَن يَطَّوَّفَ بِهِمَا ۚ وَمَن تَطَوَّعَ خَيْرًا فَإِنَّ اللَّهَ شَاكِرٌ عَلِيمٌ}

{Truly Ṣafâ and Marwah are among the symbols of Allah, so whoever makes the pilgrimage to the House, or performs ‘umrah, he is not at fault if he circumambulates them; and whoever does good voluntarily, Allah is Grateful, Knowing.} (al-Baqarah 2:158)

This verse was revealed because the Companions felt uncomfortable walking between them, since they had done that during the pre-Islamic period of ignorance when there were many idols on them. It was made clear to them that walking between them was from the religion of Ibrâheem (AS) and that they were of the symbols of Allah (ST). The verse’s language, however, does not imply that this rite is an essential pillar. Nonetheless, it should not be used to deny their obligation, because ‘Urwah asked ‘Â’ishah (rahuma) whether it meant that it was not mandatory, and she assertively indicated that it did not.

Having ritual purity is not a condition of validity of sa‘iy by agreement.

- Staying overnight in Mina[VI.8.9]	- وَالْمَبِيْتُ بِمِنًى.

[VI.8.9] Staying Overnight in Mina

(A) + (+M, +S): Wâjib

(-H): Sunnah

Spending most of the night in Mina is sufficient for this obligation.

(A): Omitting one or more required nights in Mina without an exemption requires a compensatory sacrifice.

- Stoning [VI.8.10]	- وَالرَّمْيُ.

[VI.8.10] Rulings of Stoning the Devil

It is mandatory, by consensus.

The time of stoning

(A) + (+S): lasts until maghrib of the 13th. (See the previous chapter)

(H): For the 10th, 11th, and 12th, the daily period extends until fajr of the following day; for the 13th, it ends at sunset. Delaying until night without an excuse is disliked. (M): Each day's regular period ends at sunset.

The number that is sufficient to fulfill the rite of each jamrah is seven.

(A): If he or she misses one or two throws, he or she does not have to slaughter an animal, but he or she must give something away in charity, if that was done intentionally.

(M): if he or she misses a single pebble, he or she will have to slaughter an animal.

(H): gave more than half (4 out of 7 and 11 out of 21) the ruling of the whole number.

- Shaving [or shortening] the hair [VI.8.11]	- وَالْحَلْقُ.

[VI.8.11] Shaving/Shortening the Hair

(A) + (+H, +M): Wâjib

(S): A pillar.

(All four madh-habs except for s and a): a condition for removing iḥrâm. Thus, one who does not shave/shorten may not do anything that is not allowed before the second taḥallul; if he does, he must expiate.

- The farewell ṭawâf. [VI.8.12]	- وَطَوَافُ الْوَدَاعِ.

[VI.8.12] That is the position of (A) + (+H, +S), because Ibn ‘Abbâs said:

«أُمِرَ الناس أَنْ يَكُونَ آخِرُ عَهْدِهِمْ بِالْبَيْتِ إلا أَنَّهُ خُفِّفَ عن الْحَائِضِ.»

“The people were commanded to make the House their last place (to visit) before departure, but a concession was made for menstruating women.” (Ag – from Ibn ‘Abbâs)

(M): Sunnah, since a menstruating woman was exempted from it.

[Pillars of ‘*Umrah*]

The pillar of ‘umrah is: ṭawâf.	وَأَرْكَانُ الْعُمْرَةِ: الطَّوَافُ.

[Mandatory Acts of ‘*Umrah*]

Its mandatory acts are: 1. Iḥrâm, 2. Sa‘iy, 3. Shaving [or shortening] the hair.	وَوَاجِبَاتُها: 1. الإِحْرَامُ، 2. وَالسَّعْيُ، 3. وَالْحَلْقُ.

1. Iḥrâm, [VI.8.13]	1. الإِحْرَامُ،

[VI.8.13] Getting into the state of iḥrâm at the meeqât is mandatory; however, getting into it in general is a pillar according to (A) + (+M, +S) and a condition according to (-H).

2. Sa‘iy, [VI.8.14]	2. وَالسَّعْيُ،

[VI.8.14] (A/SM): A pillar. (+M, +S)

3. Shaving [or shortening] the hair. [VI.8.15]	3. وَالْحَلْقُ.

[VI.8.15] That is the majority opinion (A) + (+H, +M). (S): Pillar.

[Missing a Part of Hajj or *'Umrah*]

If one leaves out any pillar, his rite is not complete without it. [VI.8.16] Whoever leaves out any mandatory action must compensate for it by an offering (of a sheep or goat or better). [VI.8.17] There is nothing due from one who leaves out a sunnah (preferable) act. [VI.8.18]	فَمَنْ تَرَكَ رُكْنًا لَمْ يَتِمَّ نُسُكُهُ إِلَّا بِهِ. وَمَنْ تَرَكَ وَاجِبًا، جَبَرَهُ بِدَمٍ. وَمَنْ تَرَكَ سُنَّةً فَلَا شَيْءَ عَلَيْهِ.

[VI.8.16] They agree on this, but they disagree on what is a pillar.

There is a consensus that ṭawâf is a pillar in both Hajj and 'umrah, and that standing at 'Arafah is a pillar in Hajj.

[VI.8.17] Based on the following statement of Ibn 'Abbâs:

«من نَسِيَ من نُسُكِهِ شيئا أو تَرَكَهُ فَلْيُهْرِقْ دَمًا.»

"Whoever forgets one of his rites, or leaves it out, he must slaughter an animal." (Mâlik. Nawawi in al-Majmoo':S)

If he cannot afford to slaughter an animal, then the popular position in (A) is to fast ten days (3+7) as with tamattu'. This is also the majority position. They say that the person who is making tamattu' was instructed by Allah (ST) to fast if he could not afford to slaughter an animal, and this should be the case here. The less popular position (a) is the exemption from expiation because there is no evidence, in this particular case, for the obligation to fast.

[VI.8.18] One should not, however, neglect the Sunnah of our beloved Prophet (SA) except for a reason, particularly in Hajj, since there is much controversy, and the perceived sunnah may in fact be wâjib. Besides, the time of Hajj is one of the greatest seasons to draw closer to Allah (ST).

He who does not stand at ‘Arafah [for any moment] until the beginning of the dawn of the Day of Sacrifice misses the Hajj. He must remove his iḥrâm by performing ṭawâf and sa‘iy, and he must slaughter an offering (sheep or goat or better) if he has one with him, --- and he must make up (this Hajj). [VI.8.19] If the people [as a whole] err in counting and stand on a day other than the day of ‘Arafah, their Hajj is valid. If only a group of them does that, they miss the Hajj.	وَمَنْ لَمْ يَقِفْ بِعَرَفَةَ حَتَّى طَلَعَ الْفَجْرُ يَوْمَ النَّحْرِ، فَقَدْ فَاتَهُ الْحَجُّ، فَيَتَحَلَّلُ بِطَوَافٍ وَسَعْيٍ، وَيَنْحَرُ هَدْيًا إِنْ كَانَ مَعَهُ، وَعَلَيْهِ الْقَضَاءُ. وَإِنْ أَخْطَأَ النَّاسُ فَوَقَفُوْا فِيْ غَيْرِ يَوْمِ عَرَفَةَ، أَجْزَأَهُمْ ذٰلِكَ. وَإِنْ فَعَلَ ذٰلِكَ نَفَرٌ مِنْهُمْ، فَقَدْ فَاتَهُمُ الْحَجُّ.

[VI.8.19] Based on the fatwa of ‘Umar (RA) given to Habbâr ibn al-Aswad. (Ba) According to (A/SM), unless he made a valid stipulation when entering iḥrâm, he also owes an offering with the make-up Hajj; if unable to provide it, he fasts as in tamattu‘.

It is recommended for the person who performs Hajj to visit the grave of the Prophet (SA) and his two Companions (rahuma). [VI.8.20]	وَيُسْتَحَبُّ لِمَنْ حَجَّ زِيَارَةُ قَبْرِ النَّبِيِّ ﷺ وَقَبْرِ صَاحِبَيْهِ رَضِيَ اللهُ عَنْهُمَا.

[VI.8.20] Is the Visit to the Masjid or the Grave?

In the madh-hab, visiting the grave of the Prophet (SA) is recommended. According to (t), even if people will ultimately visit it, their intention when they set out for Madinah should be to visit the masjid. When they arrive at it, they start by walking to the Prophet’s grave and giving salâm to him and his two Companions (rahuma) as the Companions used to do. He argued that this is what is consistent with the Prophet’s statement:

«لَا تُشَدُّ الرِّحَالُ إلا إلى ثَلَاثَةِ مَسَاجِدَ مَسْجِدِي هذا وَمَسْجِدِ الْحَرَامِ وَمَسْجِدِ الْأَقْصَى.»

"Do not travel to visit any place but three mosques: this mosque of mine, al-Masjid al-Ḥarâm, and al-Masjid al-Aqṣâ." (Ag – from Abu Hurayrah)

Other scholars argued this hadith is specific to traveling to masjids for their inherent virtue and would not apply to other places.

Note that a visit to the Prophet's Mosque in Madinah, though generally recommended, is not one of the rites of Hajj or 'umrah. The only evidence that it is one of the rites is a hadith that was graded as fabricated by many, including adh-Dhahabi and ash-Shawkâni. Still, the scholars recommended it for the pilgrims because it is an opportunity for them to earn that blessing while in the vicinity of Madinah.

[VI.9] Chapter on *Hady* and *Uḍḥiyah*

بَابُ الْهَدْيِ وَالأُضْحِيَّة

The hady [VI.9.1] and the *uḍḥiyah* [VI.9.2] are sunnah and only become mandatory if one makes a vow. [VI.9.3] Sacrificing [an animal] is better than donating its value. [VI.9.4]	وَالْهَدْيُ وَالأُضْحِيَّةُ سُنَّةٌ لَا تَجِبُ إِلَّا بِالنَّذْرِ. وَالتَّضْحِيَةُ أَفْضَلُ مِنَ الصَّدَقَةِ بِثَمَنِهَا.

[VI.9.1] The word comes from *yuhdi*, which means 'gives a gift'. Hady is an offering by a pilgrim of an animal for sacrifice.

[VI.9.2] The word comes from *yudaḥḥi*, which means 'sacrifices'. *Uḍḥiyah* is an animal sacrificed as an act of worship during the day of Eid al-Aḍḥâ and the following two days according to (A) + (+H, +M), or three days, according to (a) + (-S).

[VI.9.3] This is the voluntary hady, not the hady for tamattu', qirân, iḥṣâr (being prevented from proceeding), or fawât (missing the Hajj).

[VI.9.4] We sacrifice these animals to share them with the needy and show gratitude to our Lord, Who permitted us to eat them. All meat-eaters have no moral ground to critique these rituals. For those who oppose eating animals, I would say that some creatures are carnivores, some are herbivores, and some are omnivores; this is simply a fact of life. God placed a nutritional value in animal meat that is important for carnivores and omnivores, including humans, according to ample research and numerous nutritional experts. God made them this way and inclined their nature to that which is of their benefit. When Benjamin Franklin opened a fish and saw another fish inside it, he reasoned, "If you eat one another, I don't see why we mayn't eat you." Additionally, how would an atheist, for example, who does not believe in ensoulment, differentiate between eating beef, oysters, fruits, and plants? At what level of sentience do we draw the line? Who guarantees to us that trees do not feel any form of pain when fruits get picked off them? If some people contest the inhumane treatment of animals in the meat industry, then we should acknowledge their valid points, but that still does not make the eating of meat unethical in principle.

The best of them are camels, then cows, followed by sheep and goats. It is recommended to select for it the best and the fattest.	وَالأَفْضَلُ فِيْهِمَا الإِبِلُ، ثُمَّ الْبَقَرُ ثُمَّ الْغَنَمُ. وَيُسْتَحَبُّ اسْتِحْسَانُهَا وَاسْتِسْمَانُهَا.

[Conditions of a Valid *Uḍḥiyah*]

Nothing less than a jadha‘ [VI.9.5] (six-month-old sheep) or a thaniyah [VI.9.6] [of other kinds of animals – see below] will suffice. [VI.9.7]	وَلَا يُجْزِئُ إِلَّا الْجَذَعُ مِنَ الضَّأْنِ وَالثَّنِيُّ مِمَّا سِوَاهُ.

[VI.9.5] Jadha‘ means young; the term is used for humans as well.

[VI.9.6] Thaniyah is the front tooth (incisor). The animal is called this when it reaches the age at which it loses this tooth.

[VI.9.7] What Is a Valid Uḍḥiyah/Hady?

(A) + (+H): 6-month-old sheep, 1-year-old goat, 2-year-old cow, 5-year-old camel. For (H), a sheep under one year must also be large enough to appear a year old when mixed with year-old sheep.

By consensus, only a thaniyah of goats, cows and camels will suffice. The ages mentioned here for the thaniyah are according to (A) + (+H).

A jadha‘ of the sheep would suffice according to (A) + (+H, +M, +S).

Note that, according to (M), a jadha‘ is a sheep that just turned one, and thaniyah is one that is well past one year of age. This is also true for the jadha‘ according to (S), but they allowed a six-month old sheep who lost the front teeth (ajdha‘a). To them, a thaniyah of goats or sheep is two years old.

The above position is supported by the Prophet’s statement:

«لَا تَذْبَحُوا إلا مُسِنَّةً إلا أَنْ يَعْسُرَ عَلَيْكُمْ فَتَذْبَحُوا جَذَعَة من الضَّأْنِ.»

"Do not slaughter except a musinnah [a thaniyah] (one-year-old sheep or goat, two-year-old cow, or five-year-old camel) except if you find it difficult to do so; then you may slaughter a jadha' (six-month-old) sheep." (M – from Jâbir)

This would have meant that it is only permissible to slaughter a six-month-old sheep if one is unable to slaughter a one-year-old, but there is another report from the Prophet (SA) saying:

«إن الْجَذَعَة تُجْزِئُ مِمَّا تُجْزِئُ منه الثَّنِيَّةُ.»

"Certainly, the six-month-old will suffice instead of the one-year-old." (A, N, H; al-Albâni: S)

It is safer, however to slaughter a one-year-old, particularly with all the disagreement between the four madh-habs concerning the ages.

The thaniyah of goats is one year of age; of camels, it is five years of age; and of cows and buffalos, it is two years of age.	وَثَنِيُّ الْمَعَزِ مَا لَهُ سَنَةٌ ، وَثَنِيُّ الإِبِلِ مَا كَمَلَ لَهُ خَمْسُ سِنِيْنَ، وَمِنَ الْبَقَرِ مَا لَهُ سَنَتَانِ.

One sheep or goat will suffice for one person, and a camel or a cow (or buffalo) will suffice for seven. [VI.9.8]	وَتُجْزِئُ الشَّاةُ عَنْ وَاحِدٍ، وَالْبَدَنَةُ وَالْبَقَرَةُ عَنْ سَبْعَةٍ.

[VI.9.8] Jâbir said:

«نَحَرْنَا مع رسول اللَّهِ ﷺ عَامَ الْحُدَيْبِيَةِ الْبَدَنَةَ عن سَبْعَةٍ وَالْبَقَرَةَ عن سَبْعَةٍ.»

"We slaughtered (by stabbing) the animal while we were with the Prophet (SA) in the year of Ḥudaybiyah, a camel for seven (people) and a cow for seven (people)." (M – from Jâbir)

The following will not suffice: [VI.9.9] 1. An obviously one-eyed animal. 2. An emaciated animal that has no bone marrow or fat. 3. An animal that is obviously lame. 4. An animal that is obviously sick. 5. An animal that has lost most of its horn or ear.	وَلَا تُجْزِئُ الْعَوْرَاءُ، الْبَيِّنُ عَوَرُهَا وَلَا الْعَجْفَاءُ الَّتِيْ لَا تُنْقِيْ، وَلَا الْعَرْجَاءُ، الْبَيِّنُ ظَلَعُهَا، وَلَا الْمَرِيْضَةُ، الْبَيِّنُ مَرَضُهَا، وَلَا الْعَضْبَاءُ الَّتِيْ ذَهَبَ أَكْثَرُ قَرْنِهَا أَوْ أُذُنِهَا.

[VI.9.9] The Prophet (SA) said:

«أَرْبَعٌ لَا تُجْزِئُ فِي الْأَضَاحِيِّ الْعَوْرَاءُ الْبَيِّنُ عَوَرُهَا وَالْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا وَالْعَرْجَاءُ الْبَيِّنُ ظَلْعُهَا وَالْكَسِيرَةُ [الْعَجْفَاء] الَّتِي لَا تُنْقِي.»

"Four will not suffice for udḥiyah: a one-eyed animal whose defect is obvious, a sick animal whose sickness is obvious, a lame animal which is obviously lame, and an emaciated animal that does not have any bone marrow or fat." (A, D, T, N, Ma – from al-Barâ' ibn 'Âzib; T, Ḥib: S)

The following, however, will suffice: 1. A [naturally] hornless animal. 2. An animal that has lost most or all of its ordinary tail [or no more than half of its fatty tail]. 3. An animal that has been castrated. 4. An animal whose ear has been slit or pierced, or has less than half of it cut off.	وَتُجْزِئُ: الْجَمَّاءُ والْبَتْرَاءُ وَالْخَصِيُّ وَمَا شُقَّتْ أُذُنُهَا أَوْ خُرِقَتْ أَوْ قُطِعَ أَقَلُّ مِنْ نِصْفِهَا.

[How to Slaughter]

It is the sunnah to slaughter a camel (by stabbing at the junction between the neck and the chest) while it is standing with its left foreleg tied, and to slaughter cows and sheep on their sides and to say *Bismillâh wa Allâhu akbar*; *Allâhumma hâdhâ minka wa lak* (In the name of Allah, and Allah is the greatest; O Allah, this is from you and to you). [VI.9.10]	وَالسُّنَّةُ نَحْرُ الإِبِلِ قَائِمَةً مَعْقُوْلَةً يَدُهَا الْيُسْرَى، وَذَبْحُ الْبَقَرِ وَالْغَنَمِ عَلَى صِفَاحِهَا، وَيَقُوْلُ عِنْدَ ذٰلِكَ: «بِسْمِ اللهِ وَاللهُ أَكْبَرُ، اللَّهُمَّ هَذَا مِنْكَ وَلَكَ.»

[VI.9.10] Based on the following report:

«عن أَنَسٍ قال ضَحَّى النبي ﷺ بِكَبْشَيْنِ أَمْلَحَيْنِ أَقْرَنَيْنِ ذَبَحَهُمَا بيده وَسَمَّى وَكَبَّرَ وَوَضَعَ رِجْلَهُ على صِفَاحِهِمَا.»

The Prophet (SA) sacrificed two horned rams that were white with black spots (or completely white). He slaughtered them with his hand, said Bismillâh and Allâhu akbar, and put his foot on their sides (or the sides of their necks). (Ag – from Anas) It was reported that they were castrated. (D) In addition, there are reports that they were fat. (Haythami: reliable chain)

This hadith indicates that it is recommended to:

- Choose the best animals for sacrifice
- Slaughter them yourself
- Lay the animal down on its side (M), and it is agreed upon that it should be the left side.
- Put your foot on its right side to keep it down, and slaughter with your right hand, while holding the head with your left hand.

🕮 As for camels, the Prophet (SA) and his Companions slaughtered them by stabbing while the animal was standing with its left foreleg tied. (D – from Jâbir; D: Auth)

The slaughtering should be in the most merciful way to the animal, for the Prophet (SA) said:

«إِنَّ اللَّهَ كَتَبَ الْإِحْسَانَ على كل شَيْءٍ فإذا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ وإذا ذَبَحْتُمْ فَأَحْسِنُوا الذِّبْحَ وَلْيُحِدَّ أحدكم شَفْرَتَهُ ولْيُرِحْ ذَبِيحَتَهُ.»

"Allah prescribed beneficence and kindness in all matters, so when you kill, be beneficent, and when you slaughter, be beneficent; let one of you sharpen his blade and make his animal comfortable." (M – from Shaddâd ibn Aws)

[Who Should Slaughter]

It is recommended that only a Muslim slaughter it. [VI.9.11] It is better if the person making the sacrifice slaughters it himself. [VI.9.12]	وَلَا يُسْتَحَبُّ أَنْ يَذْبَحَهَا إِلَّا مُسْلِمٌ. وَإِنْ ذَبَحَهَا صَاحِبُهَا فَهُوَ أَفْضَلُ.

[VI.9.11] Some scholars went as far as preventing non-Muslims from slaughtering, because it is a devotional act. However, it is likely only more desirable that a Muslim does the slaughtering, as indicated here, since it is permissible to eat the meat of the People of the Book. The intention of the Muslim authorizer (muwakkil) will be sufficient.

[VI.9.12] The Prophet (SA) used to do that (see above), but one may also let someone else slaughter on his behalf. The long hadith of Jâbir (RA) narrates that the Prophet (SA) slaughtered sixty-three camels and then let ʻAli (RA) slaughter the rest.

[When to Slaughter]

The time of slaughtering is from the day of Eid, after the Eid prayer, [VI.9.13] until the end of the second day of tashreeq. [VI.9.14]	وَوَقْتُ الذَّبْحِ يَوْمَ الْعِيْدِ بَعْدَ صَلَاةِ الْعِيْدِ إِلَى

	آخِرِ يَوْمَيْنِ مِنْ أَيَّامِ التَّشْرِيْقِ.

[VI.9.13] For the Prophet (SA) said:

«من كان ذَبَحَ أُضْحِيَّتَهُ قبل أَنْ يُصَلِّيَ أو نُصَلِّيَ فَلْيَذْبَحْ مَكَانَهَا أُخْرَى وَمَنْ كان لم يَذْبَحْ فَلْيَذْبَحْ بِاسْمِ اللَّهِ.»

"Whoever slaughtered his uḍḥiyah before the prayer, let him slaughter another one in its stead. Whoever did not slaughter yet, let him slaughter in Allah's name." (Ag – from Jundab ibn Sufyân)

[VI.9.14] Concerning the end of the time for slaughtering the uḍḥiyah:

(A) + (+H, +M): The end of the 2nd day of tashreeq.

(a) + (-S, -t): The end of the 3rd day of tashreeq.

Both positions have been reported from some Companions, and the second is also supported by a controversial hadith in which it was reported that the Prophet (SA) said:

«كُلُّ أَيَّامِ التَّشْرِيقِ ذَبْحٌ»

"All of the days of tashreeq are days of slaughtering." (Ḥib – from Jubayr ibn Muṭ'im, with a controversial chain that was deemed weak by many and reliable by Ibn al-Mulaqqin and Shawkâni)

The particular animal becomes a sacrificial animal [VI.9.15] from the time one says, "This is an uḍḥiyah (sacrificial animal)", and for the hady by saying, "This is hady" or by marking it as hady and garlanding it [VI.9.16] with that intention.	وتَتَعَيَّنُ الأُضْحِيَّةُ بِقَوْلِهِ: هَذِهِ أُضْحِيَّةٌ، وَالْهَدْيُ بِقَوْلِهِ: هَذَا هَدْيٌ، أَوْ إِشْعَارِهِ وَتَقْلِيْدِهِ مَعَ النِّيَّةِ.

[VI.9.15] Hence, it may not be sold or given away. After this, if it becomes defective without negligence on his part, he does not need to replace it.

[VI.9.16] Ish‘âr (marking) is done by stabbing the hump, and taqleed (garlanding) is putting a necklace around the neck.

The butcher should not be given any part of the animal [VI.9.17] for his payment. [VI.9.18]	وَلَا يُعْطَى الْجَازِرُ بِأُجْرَتِهِ شَيْئًا مِنْهَا.

[VI.9.17] ‘Ali (RA) said,

«أَمَرَنِي رسول اللَّهِ ﷺ أَنْ أَقُومَ على بُدْنِهِ وَأَنْ أَتَصَدَّقَ بِلَحْمِهَا وَجُلُودِهَا وَأَجِلَّتِهَا وَأَنْ لَا أعطى الْجَزَّارَ منها قال نَحْنُ نُعْطِيهِ من عِنْدِنَا.»

“The Messenger of Allah (SA) commanded me to be in charge of his sacrificial camels and to donate the meat, hides, and saddle clothes, and not to give the butcher any part of it.

He said, ‘We will give him from our own money.’” (Ag – from ‘Ali)

[VI.9.18] He may be given something from it as a gift as long as this is not part of his payment.

[How to Divide the Sacrifice]

The sunnah is to eat one-third of one’s sacrifice, to give away one-third as gifts [to friends, neighbors and relatives], and to give one-third in charity, and if he ate more, it is permissible. [VI.9.19] He may benefit from its hide but may not sell it or any part of it. [VI.9.20]	وَالسُّنَّةُ أَنْ يَأْكُلَ مِنْ أُضْحِيَّتِهِ ثُلُثَهَا، وَيُهْدِيَ ثُلُثَهَا، وَيَتَصَدَّقَ بِثُلُثِهَا، وَإِنْ أَكَلَ أَكْثَرَ جَازَ. وَلَهُ أَنْ يَنْتَفِعَ بِجِلْدِهَا وَلَا يَبِيْعُهُ، وَلَا شَيْئًا مِنْهَا.

[VI.9.19] For Allah (ST) says:

{وَالْبُدْنَ جَعَلْنَاهَا لَكُم مِّن شَعَائِرِ اللَّهِ لَكُمْ فِيهَا خَيْرٌ ۖ فَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافَّ ۖ فَإِذَا وَجَبَتْ جُنُوبُهَا فَكُلُوا مِنْهَا وَأَطْعِمُوا الْقَانِعَ وَالْمُعْتَرَّ}

{And the budn (cows, oxen, or camels) We have made for you as among the sacraments of Allah, therein you have much good. So mention the name of Allah over them when they are drawn lined up (for sacrifice). Then when they are down on their sides (after slaughter), eat thereof and feed the poor who do not ask (men) and the beggar.} (al-Ḥajj 22:36)

It would be permissible, but not preferable, to eat most of it. It would not be permissible to eat all of it without giving away some part of it in charity. He must at least give one uqiyah to the poor as ṣadaqah. (A/SM)

Note: Uqiyah is now translated as ounce, but the uqiyah during the time of the Prophet (SA) was equivalent to 40 dirhams (silver currencies), or about 120 g.

[VI.9.20] For it is slaughtered for Allah (ST), not for sale. In addition, if one should not even give the butcher part of it for his payment, then clearly one must not sell any part of it.

If the hady was voluntary, it is recommended to eat from it, for the Prophet (SA) commanded that a piece of each camel [he sacrificed] be cooked, and he ate from the meat and drank from its soup. [VI.9.21] He should not eat from a mandatory offering except for the offering of the tamattu‘ and qirân. [VI.9.22]	فَأَمَّا الْهَدْيُ فَإِنْ كَانَ تَطَوُّعًا، اسْتُحِبَّ لَهُ الأَكْلُ مِنْهُ، لأَنَّ النَّبِيَّ ﷺ أَمَرَ مِنْ كُلِّ جَزُوْرٍ بِبَضْعَةٍ فَطُبِخَتْ، وَأَكَلَ مِنْ لَحْمِهَا، وَحَسَا مِنْ مَرَقِهَا. وَلَا يَأْكُلُ مِنْ كُلِّ وَاجِبٍ إِلَّا مِنْ هَدْيِ الْمُتْعَةِ وَالْقِرَانِ.

[VI.9.21] As mentioned in the long hadith of Jâbir (RA).

[VI.9.22] ‘Â’ishah said:

«دُخِلَ عَلَيْنَا يوم النَّحْرِ بِلَحْمِ بَقَرٍ فقلت ما هذا فَقِيلَ ذَبَحَ رسول اللَّهِ ﷺ عن أَزْوَاجِهِ.»

Some beef was brought to us on the day of sacrifice, so I said, “What is this?” It was said that the Messenger of Allah (SA) slaughtered cows on behalf of his wives. (Ag – from ‘Â’ishah)

That was for their tamattu‘ and qirân.

The other types of hady (offering of animals) that are wâjib include:

- Vows.
- Expiation for leaving out mandatory actions or committing some of the prohibitions during iḥrâm.
- Missing the Hajj (fawât).
- Being prevented from proceeding with it (iḥṣâr).

The Prophet (SA) said, “Whoever wants to sacrifice should not remove any hair or skin from the beginning of the ten (the first ten days of Dhul-Ḥijjah) until he sacrifices.” [VI.9.23]	وَقَالَ النَّبِيُّ ﷺ: «مَنْ أَرَادَ أَنْ يُضَحِّيَ فَدَخَلَ الْعَشْرُ، فَلَا يَأْخُذْ مِنْ شَعَرِهِ وَلَا مِنْ بَشَرَتِهِ شَيْئًا حَتَّى يُضَحِّيَ.»

[VI.9.23]

(M)

This pertains to one intending to offer uḍḥiyah, including a pilgrim who also intends it. The haircut required for the pilgrimage rites is excepted. Merely offering hady does not impose this restriction before entering iḥrâm. It is forbidden according to (A), detested according to (-S, -M), and permissible according to (-H). To argue against the prohibition, they cited ‘Â’ishah’s statement:

«كُنْتُ أَفْتِلُ قَلَائِدَ هَدْيِ رَسُولِ اللَّهِ ﷺ بِيَدَيَّ هَاتَيْنِ ثُمَّ لَا يَعْتَزِلُ شَيْئًا وَلَا يَتْرُكُهُ.»

“I used to twist/weave garlands for the hady of Allah's Messenger (SA) with these hands of mine, but he neither avoided anything nor gave up anything (which a muḥrim should avoid or give up).” (Ag)

The Ḥanbalis argued that the second hadith is concerning hady, not uḍḥiyah, and it is general (applying to other acts forbidden for the muḥrim), whereas the one cited in the main text is specific, concerning the cutting of hair and clipping of nails.

[VI.10] Chapter on *'Aqeeqah* (Sacrifice for a Newborn)

بَابُ الْعَقِيْقَةِ

وَهِيَ سُنَّةٌ: عَنِ الْغُلَامِ شَاتَانِ مُكَافِئَتَانِ، وَعَنِ الْجَارِيَةِ شَاةٌ.	It is sunnah. [VI.10.1] For the boy, two sheep or goats that are equal, [VI.10.2] --- and for the girl, one. [VI.10.3]

[VI.10.1] Based on the saying of the Prophet (SA):

«مع الْغُلَامِ عَقِيقَةٌ فَأَهْرِيقُوا عنه دَمًا وَأَمِيطُوا عنه الْأَذَى.»

"With (the birth of) every boy, an 'aqeeqah is due, so offer a sacrifice for him and remove the filth from him." (B – from Salmân ibn 'Âmir)

(-H): Abrogated by uḍḥiyah, yet still permissible. (-h): Recommended.

[VI.10.2] Equal to each other in age, quality, and size.

[VI.10.3] Based on the following report:

«عن عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَهُمْ عن الْغُلَامِ شَاتَانِ مُكَافِئَتَانِ وَعَنْ الْجَارِيَةِ شَاةٌ.»

The Messenger of Allah (SA) commanded them (to slaughter) for a boy two sheep that are equal, and for a girl one sheep. (T – from 'Â'ishah; T: R)

تُذْبَحُ يَوْمَ سَابِعِهِ. وَيُحْلَقُ رَأْسُهُ وَيُتَصَدَّقُ بِوَزْنِهِ وَرِقًا. فَإِنْ فَاتَ، فَفِيْ أَرْبَعَ عَشْرَةَ، فَإِنْ فَاتَ، فَفِيْ أَحَدٍ وَعِشْرِيْنَ.	These should be slaughtered on the seventh day after the birth. [VI.10.4] In addition, his head should be shaved, and charity should be given that is equal to the value of the weight of the hair in silver. [VI.10.5]

If the seventh day passes, then on the fourteenth, and if that passes, then on the twenty-first. [VI.10.6]	

[VI.10.4] This is because the Prophet (SA) said:

«كُلُّ غُلَامٍ مُرْتَهَنٌ بِعَقِيقَتِهِ تُذْبَحُ عنه يوم السَّابِعِ وَيُحْلَقُ رَأْسُهُ وَيُسَمَّى.»

"Every child is held (from interceding for his parents) until his ‘aqeeqah is offered. It should be slaughtered on his behalf on the seventh day, and his hair should be shaved, and he should be given a name." (D, T, N, Ma – from Samurah; T: S)

Doing it before or after is acceptable. It is also the slaughtering that is recommended to be done on the seventh, so one may do that on the seventh but cook and serve the food on some other day if it is more convenient.

The party is not the ‘aqeeqah, although it is encouraged. The ‘aqeeqah could be fulfilled by sending money for an agent to slaughter and distribute the meat on one’s behalf.

[VI.10.5] Based on the following report, of controversial authenticity:

عن عَلِيّ بن أبي طَالِبٍ قال عَقَّ رسول اللَّهِ ﷺ عن الْحَسَنِ بِشَاةٍ وقال «يا فَاطِمَةُ احْلِقِي رَأْسَهُ وَتَصَدَّقِي بِزِنَةِ شَعْرِهِ فِضَّةً.»

It was reported that the Messenger of Allah (SA) made ‘aqeeqah for al-Ḥasan with one sheep or goat and said to Fâṭimah (RAH), "O Fâṭimah, shave his head and give away in charity silver that is equal to the weight of his hair." (T – from ‘Ali ibn Abi Ṭâlib; T: W; al-Albâni: R; it is widely accepted by the jurists.)

[VI.10.6] (H and others – from ‘Â’ishah. Controversial authenticity)

He should detach its limbs from the joints and not break the bones. [VI.10.7]	وَيَنْزِعُهَا أَعْضَاءً، وَلَا يَكْسِرُ لَهَا عَظْمًا.

It is like the uḍḥiyah concerning the rest of the rulings. [VI.10.8]	وَحُكْمُهَا حُكْمُ الأُضْحِيَّةِ فِيْمَا سِوَى ذٰلِكَ.

[VI.10.7] (H and others – from ‘Â’ishah. Controversial authenticity)

[VI.10.8] Similarities and Differences in Rulings of ‘Aqeeqah and Uḍḥiyah

It shares the same rulings with uḍḥiyah concerning the age of the animal and its conditions, and the distribution of the meat.

It differs from the uḍḥiyah in that a separate animal should be slaughtered for each newborn. For example, it would not be sufficient to slaughter one cow for seven females. The other difference is that one may sell the hide and the head of the ‘aqeeqah and give the price away in charity. (A/SM)

[VII] The Book of Selling and Commercial Transactions (*Buyoo'*)

كِتَابُ الْبَيْعِ

Allah (ST) said: {…Allah has permitted trade…} *(al-Baqarah 2:275)* [VII.0.1]	قَالَ اللهُ تَعَالَى: …{وأَحَلَّ اللهُ البَيْعَ.}..

[VII.0.1] Selling is permissible by consensus.

It is also important at the beginning of this section to point out the following:

• Islam encourages work, development and progress. The Messenger of Allah (SA) said:

«الْمُؤْمِنُ الْقَوِيُّ خَيْرٌ وَأَحَبُّ إلي اللَّهِ من الْمُؤْمِنِ الضَّعِيفِ وفي كُلٍّ خَيْرٌ احْرِصْ على ما يَنْفَعُكَ وَاسْتَعِنْ بِاللَّهِ ولا تَعْجِزْ وَإِنْ أَصَابَكَ شَيْءٌ فلا تَقُلْ لو أَنِّي فَعَلْتُ كان كَذَا وَكَذَا وَلَكِنْ قُلْ قَدَرُ اللَّهِ وما شَاءَ فَعَلَ فإن لو تَفْتَحُ عَمَلَ الشَّيْطَانِ.»

"The strong believer is better and more beloved to Allah than the weak one, and there is good in each. Be keen to do what benefits you; rely on Allah and do not act as though you are powerless. When you have a problem, do not say: 'If I had done such and such, the result would have been such and such'. Rather, you should say: 'This was decreed by Allah, and Allah does what He wills.' For saying 'If' opens the gate for Satan." (M – from Abu Hurayrah).

• We were divinely mandated to uphold the good stewardship and development of Earth. While Islam recognizes the brokenness of the heart before God to be a virtue, it does not condemn prosperity and does not condone poverty (as in lack of money). The Messenger of Allah (SA) said to 'Amr ibn al-'Âṣ:

«نِعِمَّا بِالْمَالِ الصَّالِحِ لِلرَّجُلِ الصَّالِحِ.»

"Good money is very good for a good person." (A, H; Ibn Ḥajar: S)

In this hadith, there is a reference to the two factors that determine whether or not money is a blessing for someone: how the person acquired it (good money) and how he or she spends it.

• Islam cautions that one must rely on Allah, for it is He Who decides who earns money and how much they will earn. A person who seeks money through haram (forbidden) means will not truly benefit from it by becoming content and feeling blessed. The Messenger of Allah (SA) said:

«إِنَّ رُوحَ القُدُسِ نَفَثَ في رُوعِي أنَّ نَفْسًا لا تَموت حتَّى تَستَكمِلَ رِزقَها، فاتَّقُوا الله وأجْمِلوا في الطَّلَبِ، ولا يَحمِلَنَّكُم استِبطاءُ الرِّزقِ أن تَطلبُوه بمعَاصِي الله، فإن الله لايُدرَكُ ما عِندَه إلا بِطاعَتِه.»

"The sanctified spirit (Jibreel – the archangel Gabriel) instilled in my breast that no soul shall die until it has earned all provisions meant for it. Fear Allah and seek provision in the most beautiful way. Do not let your feeling that provisions are coming slowly make you seek them through sinning, for it is only through obedience that you will obtain what is with Allah." (Abu Nu'aym in Ḥilyat al-Awliyâ' – from Abu Umâmah; al-Albâni: S)

Finally, wealth is condemnable if it distracts the heart from seeking the pleasure of its Lord, or if it causes one to be arrogant and insolent.

Selling is the substitution of property for property. [VII.0.2]	وَالْبَيْعُ: مُعَاوَضَةُ الْمَالِ بِالْمَالِ.

[VII.0.2] Any transaction of two items would involve:

1. A priced commodity/usufruct (mathmoon) for a price/currency (thaman); that is sale proper (bay').

2. A priced commodity/usufruct for a priced commodity/usufruct; that is called bartering (muqâyaḍah).

3. A currency for currency; that is called currency exchange (ṣarf). The rulings of ṣarf will be discussed in a separate chapter.

It is lawful to sell anything owned that has a permissible benefit. The only exception is a dog; it is prohibited to sell one, and a person is not fined for causing its impairment or loss. This is because the Prophet (SA) forbade charging a price for a dog. [VII.0.3] And he said, "If anyone keeps a dog for other than guarding livestock or hunting, (the reward for) his or her deeds will diminish daily by two *qeerâṭs*. [VII.0.4]" (M)	وَيَجُوْزُ بَيْعُ كُلِّ مَمْلُوْكٍ فِيْهِ نَفْعٌ مُبَاحٌ، إِلَّا الْكَلْبَ فَإِنَّهُ لَا يَجُوْزُ بَيْعُهُ وَلَا يَجِبُ غُرْمُهُ عَلَى مُتْلِفِهِ، لأَنَّ رَسُوْلَ اللهِ ﷺ نَهَى عَنْ ثَمَنِ الْكَلْبِ، وَقَالَ:«مَنِ اقْتَنَى كَلْبًا، إِلَّا كَلْبَ مَاشِيَةٍ أَوْ صَيْدٍ، نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطَانِ.»

[VII.0.3] Abu Mas'ood al-Anṣâri said:

«نَهَى عَنْ ثَمَنِ الْكَلْبِ وَمَهْرِ الْبَغِيِّ وَحُلْوَانِ الْكَاهِنِ.»

"The Prophet (SA) forbade the money paid for a dog, a payment to a prostitute, and a payment to a fortuneteller." (Ag)

(H): Allowed the sale of a dog that is permissible to use. They argued that the exception of selling dogs for permissible uses has been reported from some Companions. They also cited some reports traceable to the Prophet (SA), but those reports are controversial.

The Mâlikis consider living dogs pure, but disagree over selling those that may lawfully be kept: the relied-upon position prohibits their sale, while another position permits it.

(A) + (+S) forbid it.

The position of (S+A) is supported by the hadith. However, if one needs a dog for a permissible use, and cannot obtain one for free, one may buy it. The sin will be incurred by the sellers, who should have given away their extra dog(s).

[VII.0.4] qeerâṭ: a measure of weight, used sometimes to simply mean a large measure.

It is forbidden to sell: [VII.0.5]	وَلَا يَجُوْزُ بَيْعُ:

[VII.0.5] All the examples can be divided into three categories:

1) Sale impermissible because of the sale procedure:

Many scholars consider any sale procedure to be likely sound as long as it does not involve ribâ (usury) gharar (undue risk taking), or ghabn (unfairness and cheating).

a. (Please refer to the chapter on ribâ [usury] for a detailed discussion of the usurious sales.)

b. Gharar (undue risk taking): Gharar could be in the item sold (see section 2b below) or in the sale procedure. Gharar in the sale procedure includes sale by mere touching, mutual casting, or throwing stones. In these cases, people used to combine the sale with a gambling-like game. The sale would become binding if customers touched the sale item, tossed different sale items at one another, or threw a pebble at the merchandise and it fell on a particular item. (Note that Imam Ibn Taymiyah was of the view that all gharar is ultimately about the object of sale, not the process.)

c. Ghabn (inequity), such as transactions under duress, those that involve cheating, and those with unequitable conditions.

2) Sale impermissible because of the item sold:

a. Inherently impermissible:

i. Useless

ii. Has haram use only:

1. Najis: e.g., khamr (wine), carcasses

2. Not najis (e.g., idols)

b. Haram to sell due to other factors:

i. Gharar: non-existent, absent, unknown, unspecified, undeliverable items.

Imam an-Nawawi said in his commentary on *Ṣaḥeeḥ Muslim*:

"Countless types of sales are in this category [gharar in the item sold]. Examples of these would be: selling a runaway slave; selling items which are non-existent, unknown, undeliverable, or not fully owned by the seller; selling fish in a large body of water, milk in an udder, or a fetus in the womb; selling an undefined part of a heap of food or an undefined garment out of many… Some gharar may be tolerated for a need, as in the case of not being able to see the foundation of the building, or when one sells a goat with milk in its udder…, or the lining of a coat …"

ii. Not owned by the seller:

1. Wrongfully misappropriated, taken by force, stolen, and so on.

2. Owned by someone other than the seller, his or her authorizer, or someone whose property the seller has legal authority to administer.

iii. Leads to evil:

Like selling grapes to a wine factory or weapons to a warring enemy.

3) Sales impermissible because of a factor extraneous to the contract and item sold, and those include:

I. Sales that compromise our obligations towards the Creator, such as the sales conducted during the time of Jumu'ah (Friday congregational prayer).

II. Sales that compromise our obligations towards the creations, such as the socially irresponsible sales: a sale where, after the seller has already shown approval of the first buyer's bid, a second buyer outbids the first; interception of goods (before they reach the market); provocation (raising the bid without an intent to buy). These are examples of unethical sales that are socially irresponsible.

Another way of classification is to consider a sale valid if it fulfilled the pillars and conditions of a valid sale and was free of any hindrances to validity. Here is a list of these summarized from (A/SM):

Pillars: 1- two contracting parties, 2- the object of sale, and 3- the format of offer and acceptance, whether it was verbal or non-verbal.

Conditions: 1- the contracting parties' legal capacity, 2- their mutual agreement, 3- the object being sellable, 4- ownership or lawful authority to sell it, 5- ability to deliver it, and 6&7- knowledge of the object and price.

Hindrances: sale during a forbidden time like the time of Jumu'ah, or one that leads to evil or usury, or one that destroys the social fabric, like selling over another person's sale, as well as sale by a town resident on behalf of a nomad. Not every prohibited practice invalidates the contract: in (A/SM), a sale involving najsh (provocation), or concluded after prohibited outbidding, may remain valid; najsh may give the deceived buyer a right to rescind.

1- What one does not own, without the permission of its owner, unless one has legal authority over the owner's property. [VII.0.6]	مَا لَيْسَ بِمَمْلُوْكٍ لِبَائِعِهِ، إِلَّا بِإِذْنِ مَالِكِهِ، أَوْ وِلَايَةٍ عَلَيْهِ.

[VII.0.6] For the Prophet (SA) said to Ḥakeem ibn Ḥizâm:

«لَا تَبِعْ مَا لَيْسَ عِنْدَكَ».

"Do not sell what you do not possess." (D, T)

This principle guards against usurious financing tricks where the sale is not intended. For example, a financier sells property in the possession of X to Y before purchasing it from X, thereby avoiding any liability for the loss of the property, which will be the responsibility of X until Y acquires it. The financier in this case has traded money for money with a profit, without ever being the responsible owner of a commodity. [See the chapter on agency (wakâlah) for transactions of an unauthorized agent (taṣarruf al-fuḍooli).]

Also, of the benefits of this prohibition is the removal of undeserving intermediaries between the producer and consumer.

2- It is also impermissible to sell: Something useless such as insects. [VII.0.7]	وَلَا بَيْعُ: مَا لَا نَفْعَ فِيْهِ كَالْحَشَرَاتِ.

[VII.0.7] For Allah said:

{يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ...}

{O you who have believed, do not consume one another's wealth unjustly…} (an-Nisâ' 4:29)

The category of 'something useless' varies with time and place. The examples mentioned by the scholars in their books pertain to their circumstances.

Please note that it would not be expected in secular law to have a prohibition like this, because it would be left to the mutual agreement of the two parties. However, in Islamic law, all forms of evil are prohibited for the soundness of one's piety and the wellbeing of the society. The prohibition here is to deter people from exploiting the naivety of others.

3- Something of unlawful benefit, such as wine or carcasses. [VII.0.8]	وَلَا مَا نَفْعُهُ مُحَرَّمٌ، كَالْخَمْرِ وَالْمَيْتَةِ.

[VII.0.8] Jâbir ibn 'Abdullâh said,

قال رسول الله:«إِنَّ اللَّهَ وَرَسُولَهُ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ وَالْخِنْزِيرِ وَالْأَصْنَامِ فَقِيلَ يا رَسُولَ اللَّهِ أَرَأَيْتَ شُحُومَ الْمَيْتَةِ فإنه يُطْلَى بها السُّفُنُ وَيُدْهَنُ بها الْجُلُودُ وَيَسْتَصْبِحُ بها الناس فقال لَا هو حَرَامٌ ثُمَّ قال رسول اللَّهِ ﷺ عِنْدَ ذلك قَاتَلَ الله الْيَهُودَ إِنَّ اللَّهَ عز وجل لَمَّا حَرَّمَ عليهم شُحُومَهَا أَجْمَلُوهُ ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَهُ.»

"I heard the Messenger of Allah (SA), in the year of its conquest in Makkah, say: Allah and His Messenger have forbidden the sale of alcohol, carcasses, pork, and idols. He was asked: O Messenger of Allah, what about fat from carcasses, which is used in coating ships and greasing leather, and people use it as oil for their lamps? He replied: No, it is haram. Then the Messenger of Allah

(SA) said: May Allah punish the Jews, for when Allah made fat forbidden to them, they liquefied it and sold it, making a profit from it." (Ag)

The Messenger of Allah (SA) used to mention certain infractions of the law and inequities committed by the People of the Book (the Jews and Christians) to warn Muslims against doing the same with the commands of God. This does not mean that the good qualities of people of other religions are ignored. Note, for example, how Allah (ST) points out the quality of honesty:

{وَمِنْ أَهْلِ الْكِتَابِ مَنْ إِن تَأْمَنْهُ بِقِنطَارٍ يُؤَدِّهِ إِلَيْكَ وَمِنْهُم مَّنْ إِن تَأْمَنْهُ بِدِينَارٍ لَّا يُؤَدِّهِ إِلَيْكَ إِلَّا مَا دُمْتَ عَلَيْهِ قَائِمًا...}

{Among the People of the Book are some who, if entrusted with a hoard of gold, will [readily] pay it back; others who, if entrusted with a single silver coin, will not repay it unless thou constantly stoodest demanding...} (Âl 'Imrân 3:75) (The Meaning of the Holy Qur'an, Ali)

4- Something non-existent, such as the fetus one's female slave is expected to conceive, [VII.0.9] or the fruits one's tree will bear.	وَلَا بَيْعُ مَعْدُوْمٍ، كَالَّذِيْ تَحْمِلُ أَمَتُهُ أَوْ شَجَرَتُهُ.

[VII.0.9] Please see the appendix at the end of the book on the issue of slavery in Islam. In addition to the issues mentioned in that note, I would like to stress the following five points:

(1) Slavery in Islam was never a racist practice. Slave owners ranged from white to black in complexion, and slaves similarly ranged from white to black.

(2) Islam gave slaves a way out of bondage through mukâtabah (contractual agreement with the owner). Islam made the help of a mukâtib (a slave seeking freedom in this manner) the responsibility of the entire society. By this, Islam added to the many avenues it legislated for the freeing of the slaves.

(3) All sources of slavery were banned by Islam except the enslavement of prisoners of war, which was a common practice of the time, owing to the fear of their regrouping if they were released, as well as the inability of armies during those times to maintain a large body of prisoners. Their temporary enslavement was a means by which their lives were spared. Islam's position was within that context of reciprocation, which is a recognized principle in foreign relations.

(4) Muslim nations have recognized the banning of slavery in modern times, and the Ottoman caliphate signed a treaty suppressing the African slave trade. We are bound by our covenants as long as they are not breached by the other parties.

(5) The child of a female slave was also considered to be a slave unless the child's father was the slave's owner, in which case the child would be free. The slave woman could not be sold to anyone else, and she would be free upon her master's death.

What is referred to in Ibn Qudâmah's text here is the case in which the slave woman's child is not her master's. It is also important to mention here that the Messenger of Allah (SA) prohibited separating a mother from her slave child. Abu Moosâ reported that the Prophet (SA) said:

«لَعَنَ رسُولُ اللَّهِ ﷺ من فَرَّقَ بين الْوَالِدَةِ وَوَلَدِهَا وَبَيْنَ الْأَخِ وَبَيْنَ أَخِيهِ.»

"May the one who separates a mother from her child or a brother (or sister) from his sibling be cursed." (T, Ma, and classed as sound by al-Ḥâkim)

5- Something unknown, such as the fetus in the womb.	وَلَا مَجْهُوْلٍ، كَالْحَمْلِ.

6- Something absent that has not been described or previously inspected. [VII.0.10]	وَالْغَائِبِ الَّذِيْ لَمْ يُوْصَفْ، وَلَمْ تَتَقَدَّمْ رُؤْيَتُهُ.

[VII.0.10] As in selling an item without accurately describing it.

Sale of absent merchandise items:

If they were described, then it is a valid sale according to (A) + (+H, +M, +s). (A) limits it to those items that can be sold via a salam contract. (A/SM)

(-H) gives the buyer the right of return whether the description was accurate or not.

(A) + (+M) give the buyer the right of return only if the seller's description was inaccurate.

The basis for accepting such sales is the general permissibility of sales by default, and the report that 'Uthmân and Ṭalḥah exchanged two houses, one in Madinah and the other in Kufa. Ṭalḥah claimed an option because he had bought what he had not seen, and when they referred the dispute to Jubayr ibn Muṭ'im, he awarded the option to Ṭalḥah. The basis for rejecting these sales is that they contain gharar. The scholars who allow the sale of absent items when they are well described maintain that the description makes the gharar tolerable.

Online sales belong to this category. They are usually well described, so they would be valid, according to the majority.

7- Something undeliverable, such as a runaway slave, stray livestock, birds in the sky, or fish in the water. [VII.0.11]	وَلَا مَعْجُوْزٍ عَنْ تَسْلِيْمِهِ، كَالآبِقِ، وَالشَّارِدِ، وَالطَّيْرِ فِي الْهَوَاءِ، وَالسَّمَكِ فِي الْمَاءِ.

[VII.0.11] The prohibitions 4, 5, and 6 are due to the gharar involved in those transactions.

8- Something that has been unlawfully appropriated by force, except to the one who misappropriated it or to one capable of seizing it from him or her. [VII.0.12]	وَلَا بَيْعُ الْمَغْصُوبِ، إِلَّا لِغَاصِبِهِ، أَوْ مَنْ يَقْدِرُ عَلَى أَخْذِهِ مِنْهُ.

[VII.0.12] In other words, the rightful owner selling the misappropriated property to the one who misappropriated it or to one who can seize it from him or her. The permission here to sell to the one who wrongfully seized a property by force is not to acquit the offender of guilt; it is to help the rightful owner settle the matter in the least harmful way if he or she is unable to

retrieve the property from the one who seized it. Note also that the one who misappropriated the property may mistakenly consider himself or herself to be entitled to it. Islamic law favors conciliatory settlements over protracted, futile disputes.

9- Something not specifically designated, such as a slave or a sheep from one's herd, unless it is a property whose parts are similar, as in the case of a *qafeez* [a unit of measurement] from a heap (of produce).	وَلَا بَيْعُ غَيْرِ مُعَيَّنٍ، كَعَبْدٍ مِنْ عَبِيْدٍ، أَوْ شَاةٍ مِنْ قَطِيْعٍ إِلَّا فِيْمَا تَتَسَاوَى أَجْزَاؤُهُ، كَقَفِيْزٍ مِنْ صُبْرَةٍ.

The Prophet (SA) forbade: Sale by mere touching or mutual casting, as well as sale by throwing stones. Sale by mere touching means saying, "Any garment you touch is yours for such-and-such a price." Mutual casting means saying, "Any garment you throw to me, I will buy for such-and-such a price." Sale by throwing stones means saying, "Throw the pebble; whichever garment it lands on is yours for such-and-such a price," or, "I sell you as much of this land as this pebble reaches when you throw it, for such-and-such a price." [VII.0.13]	وَنَهَى رَسُوْلُ اللهِ ﷺ عَنِ: الْمُلَامَسَةِ، وَهِيَ أَنْ يَقُولَ: «أَيُّ ثَوْبٍ لَمَسْتَهُ فَهُوَ لَكَ بِكَذَا»، وعَنِ الْمُنَابَذَةِ، وَهِيَ أَنْ يَقُولَ: «أَيُّ ثَوْبٍ نَبَذْتَهُ إِلَيَّ فَهُوَ عَلَيَّ بِكَذَا»، وَعَنِ بَيْعِ الْحَصَاةِ، وَهُوَ أَنْ يَقُولَ: «ارْمِ الْحَصَاةَ، فَأَيُّ ثَوْبٍ وَقَعَتْ عَلَيْهِ فَهُوَ لَكَ بِكَذَا»، أَوْ: «بِعْتُكَ مَا تَبْلُغُ هَذِهِ الْحَصَاةُ مِنْ هَذِهِ الْأَرْضِ إِذَا رَمَيْتَهَا بِكَذَا».

[VII.0.13] Because that is a type of gharar, as discussed earlier. There is also a clear prohibition of these sales by the Messenger of Allah (SA), as reported by Muslim from Abu Hurayrah.

Selling over one's brother's sale [VII.0.14]. [VII.0.15]	وَعَنْ بَيْعِ الرَّجُلِ عَلَى بَيْعِ أَخِيْهِ.

[VII.0.14] In the hadiths concerning the ethics of transactions, the use of the word ‘brother’ or even ‘Muslim’ is inconsequential, as indicated by the vast majority of scholars. The latter is often mentioned because that is the likely situation: a Muslim transacting with other Muslims. These terms could also have been used to make the act sound more repulsive. However, it is the consensus of all scholars that injustice is haram against Muslims and non-Muslims alike.

[See *al-Majmoo‘* by Imam an-Nawawi (d. 676 AH/ 1277 CE), al-Muneeriyah edition, 11:306, for a detailed discussion of this by Imam Taqi ad-Deen as-Subki (d. 756 AH/ 1355 CE, may Allah bestow mercy on him). Imam as-Subki wrote some sections in the book after Imam an-Nawawi passed away without completing it.]

Unless proven otherwise, the use of the term ‘brother’ also applies, by default, to females. This was true during the time of the Prophet (sa), and it is true today and at all other times, by consensus and by the common usage in Arabic.

[VII.0.15] For the Prophet (SA) said:

«لَا يَبِيعُ بَعْضُكُمْ على بَيْعِ بَعْضٍ ولا تَلَقَّوْا السِّلَعَ حتى يُهْبَطَ بها إلى السُّوقِ.»

> *“Do not sell over one another’s sales, and do not intercept goods before they reach the market.” (Ag – from Ibn ‘Umar)*

This includes offering a buyer a similar item for less in order to induce cancellation of an existing sale during the option period. Buying over another’s purchase is likewise prohibited. This does not refer to the outbidding that happens in an auction, which is permissible. What is forbidden is to outbid another buyer after the sale was finalized or even after the seller has simply shown approval of the bid. The vast majority, including the four Imams, considered sales at auctions valid. Their evidence is the lack of proof for their prohibition, for in auctions, the seller would have not accepted the bid of the previous bidder when the next bidder made a (higher) bid.

It was also reported from Anas ibn Mâlik that, “The Messenger of Allah (SA) sold a rug and a cup in an auction. He asked: Who will buy this rug and cup? A man replied: I will take them for a dirham. The Prophet (SA)

asked: Who will offer more than a dirham? Another man gave him two, and he took the goods." (T; T: S)

Note that transactions in Islam need to be equitable, transparent, accountable, and socially responsible; all of that within a framework of a teleological worldview that recognizes devotion to God as the ultimate good. The prohibition of outbidding is to minimize the potential for hostility in the marketplace; to stress that one should wish for one's brother what one wishes for oneself, which strengthens the social matrix of society; and to prevent greed from compromising the feelings of brotherhood among people.

Sale by a town resident on behalf of a nomad, by being a broker for him or her. [VII.0.16]	وَعَنْ بَيْعِ حَاضِرٍ لِبَادٍ، وَهُوَ أَنْ يَكُوْنَ لَهُ سِمْسَارًا.

[VII.0.16] One purpose of this prohibition is to protect local buyers from prices being raised through such brokerage. Bukhâri and Muslim reported from Ibn 'Umar, Abu Hurayrah and Ibn 'Abbâs that the Messenger of Allah (SA) forbade a sale made by a town resident on behalf of a nomad. Ibn 'Abbâs explained that this means acting as a broker for him or her. In the prohibition of intercepting goods, the town person buys from the outsider, but here, the town resident sells it for the outsider. The reason behind this prohibition was stated by the Prophet (SA):

«لا يَبِع حاضر لباد، دَعُوا النَّاسَ يَرزُق اللهُ بَعضَهم مِن بَعض.»

> *"A town resident should not sell on behalf of a nomad. Leave the people to seek their God-given profit from one another." (M – from Jâbir)*

When the outsider reaches the market, he or she may contentedly sell for a cheaper price, and this will benefit the consumers. The outsider will also not be misled by the broker into hasty selling. In this case, there is a benefit for both the sellers and buyers when the broker is removed from the middle.

The majority allowed free counsel to be given by a town person to a nomad. Their proof is the Prophet's saying:

«إِذَا اسْتَنْصَحَ أَحَدُكُم أَخَاهُ فَلْيَنْصَحْ لَه.»

"When one of you seeks the advice of your brother, the latter should offer advice." (A, and others – from Jâbir; Ibn Ḥajar: S in at-Talkheeṣ al-Ḥabeer)

Brokerage is permissible in general. According to al-Mardâwi in *al-Inṣâf*, the prohibition applies when the outsider brings the goods to sell at the current day's price, is unaware of the local price, is approached by a resident who knows it, and the townspeople need the goods.

Najsh [provocation]; which is raising the bid without intent to buy. [VII.0.17]	وَعَنِ النَّجْشِ، وَهُوَ أَنْ يَزِيْدَ فِي السِّلْعَةِ مَنْ لَا يُرِيْدُ شِرَاءَهَا.

[VII.0.17] Provocation is where a third party, who is not actually interested in buying, keeps outbidding a buyer to increase the price that the buyer will end up paying. It is another socially irresponsible practice. Ribâ was prohibited for the sake of equity. Gharar was prohibited for the sake of transparency. These practices, such as interception, provocation, and outbidding were prohibited for the sake of equity and societal wellbeing, and to prevent financial transactions from severing the bonds of brotherhood among people.

Two sales in one. This is when one says, "I will sell you this for ten fine pieces of currency or twenty defective pieces," [VII.0.18] or, "I will sell you this on the condition that you sell me that or buy this from me as well." [VII.0.19]	وَعَنْ بَيْعَتَيْنِ فِيْ بَيْعَةٍ، وَهُوَ أَنْ يَقُوْلَ: بِعْتُكَ هَذَا بِعَشَرَةٍ صِحَاحٍ، أَوْ عِشْرِيْنَ مُكَسَّرَةً، أَوْ يَقُوْلَ: بِعْتُكَ هَذَا عَلَى أَنْ تَبِيْعَنِيْ هَذَا، أَوْ تَشْتَرِيَ مِنِّيْ هَذَا.

[VII.0.18] Their metal currency used to become defective and bent, which reduced its value.

[VII.0.19] This is because of the Prophet's prohibition, "The Messenger of Allah (SA) forbade two transactions in one." (T – from Abu Hurayrah; al-Albâni: S)

Some reporters of the hadiths of this prohibition explained it to mean selling an item for two prices: one for immediate payment and another for a deferred payment. This caused some scholars to forbid all transactions with deferred payment if the deferred price is different (higher) than the immediate price. However, the vast majority, including the four Imams, allow such transactions. They forbid finalizing the sale without agreeing on one of the two prices, though.

The International Islamic Fiqh Academy (IIFA) of the Organization of Islamic Cooperation (formerly the Organization of Islamic Conference) states in Resolution no. 51 (2/6):

Increasing the price for deferred payment over the immediate payment is permissible. It is also permissible to state the price of the commodity for the immediate and deferred payments. However, the transaction is not valid unless the two parties of the contract agree on the form of the transaction: immediate or deferred.

The prohibition of 'two sales in one' is for the purposes of transparency and the removal of ambiguity and equivocation from the transactions.

The Prophet (SA) said, "Do not intercept goods before they are brought to the market." [VII.0.20]	وَقَالَ: «لَا تَلَقَّوْا السِّلَعَ حَتَّى يُهْبَطَ بِهَا الْأَسْوَاقَ.»

[VII.0.20] (Ag) See the prohibition of being a broker for nomads for the difference between the two prohibitions. The prohibition here is to allow the nomads or out-of-town sellers to arrive at the market and make informed decisions. It is also to allow the people of the town to benefit from the incoming goods.

> Equal opportunity is often violated in our modern day markets when powerful companies attempt to win bids before alternative proposals are even entertained.

Notice here, and also in the prohibition of being a broker for a nomad, the aim of reducing the intermediaries for the benefit of the original producers, sellers, and final consumers.

He also said, “If one buys foodstuff, one should not sell it before being in full possession of it all.” [VII.0.21]	وَقَالَ: «مَنِ اشْتَرَى طَعَامًا فَلَا يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ.»

[VII.0.21] (Ag – from Ibn ‘Umar and Ibn ‘Abbâs, who said, “I think it is the same for all sales.”)

Please note that while full possession of food might be defined as food being moved from the seller’s place to the buyer’s, different items have different criteria. For example, houses are considered to be in full possession of the buyer when the buyer is given full access to use them. The customs of people define the full possession of various items.

One of the reasons behind this prohibition and the prohibition of selling what one does not own is to ensure the accountability of capital, and to prevent investors from eliminating their own risk by shifting all the risk to others. Here, the buyer must possess the commodity and be responsible (liable) for it before profiting from it.

In cost-plus sales used for financing, it is essential that the commodity (e.g., house) becomes fully owned by the financier before it is sold to the final buyer.

The Messenger of Allah (SA) said:

«الخَرَاجُ بِالضَّمَانِ.»

“Profit follows liability.” (A, D, T, N, Ma – part of a hadith from ‘Â’ishah; authenticated by T.)

This was later considered by the scholars to be a legal maxim.

The presence of multiple layers of intermediaries who make profit without liability tends to inflate prices and shift risk to the original producers and final consumers. This irresponsible form of investment is one of the reasons behind the inequity and severe swings of contemporary markets. The poor usually suffer the most from these practices.

[VII.1] Chapter on Usury/Interest (*Ribâ*)

بَابُ الرِّبَا

‘Ubâdah ibn aṣ-Ṣâmit (RA) narrated that Allah’s Messenger (SA) said, “When gold is [paid for] by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt; [it should be] like for like and equal for equal. If these types differ, then sell as you wish if the exchange is made hand to hand (simultaneously).” (In the narration of Abu Sa‘eed al-Khudri, “The person who offers an increase, or asks for one, has in fact dealt in usury.”) [VII.1.1] [VII.1.2]	عَنْ عُبَادَةَ بن الصَّامِتِ قَالَ: قَالَ رَسُوْلُ اللهِ ﷺ: «الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالبُرُّ بِالْبُرِّ، وَالشَّعِيْرُ بِالشَّعِيْرِ، وَالتَّمْرُ بِالتَّمْرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلاً بِمِثْلٍ، سَوَاءً بِسَوَاءٍ، فَإِذَا اخْتَلَفَتْ هَذِهِ الأَصْنَافُ، فَبِيْعُوْا كَيْفَ شِئْتُمْ يَدًا بِيَدٍ، فَمَنْ زَادَ أَوِ ازْدَادَ فَقَدْ أَرْبَى.»

[VII.1.1] Ruling of ribâ (usury, interest):

Ribâ is forbidden by consensus. Ribâ (as it pertains to the ribâ of loans) means any amount of interest paid on a loan, even if the rate is not exorbitant. It also includes a benefit stipulated or agreed upon for the lender in return for the loan. Allah said:

{يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُم مُّؤْمِنِينَ * فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِن تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ.}

{O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal – [thus] you do no wrong, nor are you wronged.} (al-Baqarah 2:278–279)

Jâbir said,

«لَعَنَ رَسُولُ اللَّهِ ﷺ آكِلَ الرِّبَا وَمُوكِلَهُ وَكَاتِبَهُ وَشَاهِدَيْهِ وَقَالَ: هُمْ فِي الْإِثْمِ سَوَاءٌ.»

"The Messenger of Allah (SA) cursed the one who consumes usury, the one who feeds him or her [i.e., pays back with interest], the scribe and the two witnesses [involved in the interest-bearing transaction], and he said: They are the same." (M)

(M)

[VII.1.2] Definition and Types of Ribâ

Ribâ is given many definitions. Its original meaning in Arabic is 'increase'. Technically, it is an increase in one of the two items in a transaction, or deferment of payment in one of two cases:

1) In sales: exchange of unequal measures of the items mentioned in the hadith for something of the same kind, such as one measure of a better type of dates for two measures of a cheaper type of dates. This is called ribâ al-faḍl (the ribâ of 'increase'). If the items are of different kinds within the same group, (currencies being one group and foods being the other), they may be exchanged with a difference in measure, such as one measure of wheat for two measures of barley. However, they must be exchanged without deferment (hand to hand).

If receipt of either countervalue is postponed in an exchange requiring immediate mutual possession, the transaction involves ribâ of delay, called ribâ an-nasee'ah in the Ḥanbali classification.

2) In loans: increasing the payment in exchange for deferment. This is called ribâ an-nasee'ah (deferment). This is defined as:

"Every loan that results in benefit is ribâ."

This statement was reported from the Prophet (SA) with controversial authenticity, but it is an established fiqh maxim (قاعدة فقهية). This does not prohibit voluntary better repayment without prior agreement. Gifts to the lender while the loan remains outstanding are subject to additional restrictions.

It is unlawful to sell any foodstuff measured by volume or weight for another of its kind, except like for like. [VII.1.3]	وَلَا يَجُوْزُ بَيْعُ مَطْعُوْمٍ مَكِيْلٍ أَوْ مَوْزُوْنٍ بِجِنْسِهِ إِلَّا مِثْلاً بِمِثْلٍ.

[VII.1.3] The ʿIllah (Effective Cause) of the Prohibition of Exchange of Unequal Measures of Those Items

Some scholars indicated that the prohibition applies only to those six types mentioned in the hadith. The Dhâhiris are amongst those, because they do not employ qiyâs.

Most scholars maintained that any other item that shares the same ʿillah of the prohibition should be prohibited as well. They agreed that the ʿillah is different between gold and silver and the other four types (wheat, barley, dates, and salt); however, they disagreed over the ʿillah in all:

There are three variant reports from Aḥmad regarding the ʿillah of the prohibition:

1) The most popular: Regarding gold and silver: being of the same kind and measurable by weight. Regarding the four other types: being of the same kind and measurable by volume or weight. (+H)

2) The second report: Regarding gold and silver: being prices for other commodities. (+M, +S) Regarding the four other types: being foods of the same kind. (+S)

3) The third report: Regarding the four other types: being foods of the same kind measurable by volume or weight. (This is the position chosen in this book by Ibn Qudâmah).

Regarding gold and silver, the second report, though not the most popular amongst the earlier Ḥanbalis, is the choice of the majority of the contemporary Ḥanbalis as well as the vast majority of contemporary scholars in general.

- All kinds of currency take the ruling of gold and silver and thus are potentially usurious properties. The counter positions seem to miss,

in favor of legal technicalities, the objectives of the Legislator in prohibiting usury.

The Wisdom behind the Prohibition of Ribâ

I. The wisdom behind the rules governing ribâ in exchange transactions:

   1) Blocking the means to ribâ an-nasee'ah (deferment). If people get used to exchanging the same kind with a difference in immediate transactions, they may subsequently do the same in deferred transactions.

   2) Limiting bartering as a method of transactions. This increases the standardization of values through the use of currency, which benefits the market and the economy. Instead of trading two measures of a cheaper brand of dates for one measure of a better brand, the Prophet (SA) instructed his Companions to sell the cheaper dates for money and use that money to buy the better dates. Dates may be traded directly for dates of a different quality or value, provided they are equal in volume and exchanged hand to hand.

   3) Protecting foodstuff from being monopolized by people who can afford to get larger quantities of the food that is used by poor folk, in exchange for the better kinds that they possess.

II. As for ribâ an-nasee'ah, there are many reasons for its prohibition, including:

   1) If one dirham owned by the rich got them two via interest, there would be less incentive for them to work.

   2) This would also raise the value of capital in the face of labor. If there were no way for money to beget money except through real investment, not interest-bearing loans, capital would be dependent on labor for its growth.

   3) Interest would result in greater gaps between the economic strata of the society.

4) Interest might trap the poor in a vicious cycle of debt, leading to bankruptcy.

5) If charging interest on loans were allowed, it would make people less likely to do the good deed of offering interest-free loans.

Modern calls to lower the interest to a minimum, or even to zero, whenever the economy slows down show that it is best for the economy to have no interest. People are more likely to partake in true business ventures that involve some reasonable risk taking rather than extending interest-bearing loans.

It is also unlawful to sell any of those items [VII.1.4] which are [usually] measured [by volume] for another of its like by weight, or to sell an item [usually] measured by weight [for another of its like] by volume. [VII.1.5]	وَلَا يَجُوْزُ بَيْعُ مَكِيْلٍ مِنْ ذٰلِكَ بِجِنْسِهِ وَزْنًا، وَلَا مَوْزُوْنٍ كَيْلاً.

[VII.1.4] Meaning the items mentioned in the hadith as well as others that take their ruling via qiyâs.

[VII.1.5] Because equality must be established in the legally prescribed measure. Thus, dates exchanged for dates must be equal in volume: for example, two ṣâ‘s for two. In the Ḥanbali school, the relevant classifications follow the practice of Madinah for volume and Makkah for weight during the Prophet’s time; local custom is used where no such practice is established. A different method may be used if equality in the prescribed measure is known. (The ṣâ‘ is a measurement of volume roughly equivalent to 3 liters, that is equal to four mudds. One mudd is the fill of the two hands of an average adult, which is approximately 0.75 liters.) If you sell two kilos for two, the measure in volume may not be equal, since one type of dates may weigh more than the other.

If they are of different kinds, then it is permissible to sell as desired, hand to hand, but postponement is not	وَإِنِ اخْتَلَفَ الْجِنْسَانِ، جَازَ بَيْعُهُ كَيْفَ شَاءَ يَدًا بِيَدٍ وَلَمْ يَجُزِ النَّسَاءُ فِيْهِ، وَلَا التَّفَرُّقُ

permissible, [VII.1.6] nor is separating [that is, the two traders physically separating] before taking possession, except in the case of exchanging a price [meaning currency: gold, silver, or cash], with the priced commodity [sold for that fixed price]. [VII.1.7]	قَبْلَ الْقَبْضِ، إِلَّا فِي الثَّمَنِ بِالْمُثَمَّنِ.

[VII.1.6] That is because the Prophet (SA) said, “If these types differ, then sell as you wish if the payment is made hand to hand.” This means that you may exchange three (volume-based) measures of wheat for two measures of dates. However, the exchange must be completed at the same time.

[VII.1.7] For example, you may exchange gold for dates with a difference in measure, as well as deferment, because they do not share the same ‘illah of prohibition.

In summary, the usurious items, mentioned in the hadith above, and whatever is deemed like them must be traded with caution.

If it is the same kind, such as silver for silver or wheat for wheat, they must be traded hand to hand and equal for equal.

If they are of the same group (sharing the same ‘illah), but different kinds, such as wheat for barley or silver for gold, they must be traded hand to hand, but not necessarily equal for equal.

If they belong to different groups (not sharing the same ‘illah), such as silver for wheat, or if one of the two objects of sale is not usurious, such as camels for wheat, it is permissible to trade them with deferment of one item and increase.

(Even if we consider the ‘illah for gold and silver being usurious items that they are measured by weight, as currencies, they may always be used as payment for other usurious items measured by weight with deferment of the price in deferred payment sales or the commodity in advance payment sales.)

Exchange of Non-Usurious Items

As for items which are not considered to be potentially usurious, you may exchange them with a difference in measure and with deferment. One, for instance, may sell three laptops delivered now for a car received in two months. However, there is a disagreement regarding exchanging properties of the same kind with a difference (e.g., two camels for one) when part of the transaction is deferred.

(a) + (-H): not allowed. In addition to the rational proof, they cited a hadith with controversial authenticity from Samurah ibn Jundub, in which the Prophet (SA) was quoted to have prohibited selling an animal for an animal in a deferred transaction. (-M) also agreed with this position as long as the traded properties have the exact uses/benefits.

(A) + (+S) allowed this deferment with an increase, supported by reports that the Companions, including ʻAli, Ibn ʻUmar, and Ibn ʻAbbâs (RAHUM) were involved in transactions of this nature.

Any two things joined by a special name are of the same kind unless they are of different origins. [VII.1.8] That is because substances of various origins are treated as separate kinds even if they have similar names, such as the various kinds of flours and oils. [VII.1.9]	وَكُلُّ شَيْئَيْنِ جَمَعَهُمَا اسْمٌ خَاصٌّ، فَهُمَا جِنْسٌ وَاحِدٌ، إِلَّا أَنْ يَكُوْنَا مِنْ أَصْلَيْنِ مُخْتَلِفَيْنِ، فَإِنَّ فُرُوْعَ الأَجْنَاسِ أَجْنَاسٌ، وَإِنِ اتَّفَقَتْ أَسْمَاؤُهَا كَالأَدِقَّةِ وَالأَدْهَانِ.

[VII.1.8] Such as ʻajwa dates and noor dates; they are still dates.

[VII.1.9] Such as barley flour and wheat flour; they are both called flour, but they are treated as barley and wheat, so they do not have to be equal in exchange, but must be exchanged hand to hand.

It is forbidden to sell fresh items of these for dried ones of the same kind. Similarly, one should not sell an unmixed commodity for a mixed form	وَلَا يَجُوْزُ بَيْعُ رَطْبٍ مِنْهَا بِيَابِسٍ مِنْ جِنْسِهِ، وَلَا خَالِصِهِ بِمَشُوْبِهِ، وَلَا نِيْئِهِ بِمَطْبُوْخِهِ.

of the same kind, or its raw form for its cooked form. [VII.1.10]	

[VII.1.10] Because in such cases, equality cannot be guaranteed.

The Prophet (SA) forbade *muzâbanah*, meaning to exchange dates for dates still hanging on palm trees. However, he gave a concession concerning *'arâyâ* transactions, if less than five *awsuq* (900 litres). [VII.1.11] [In 'arâyâ transactions,] dry dates are exchanged for ripe dates still on the trees, estimated to yield the same volume after drying, which will be eaten fresh. [VII.1.12]	قَدْ نَهَى النَّبِيُّ ﷺ عَنِ الْمُزَابَنَةِ، وَهُوَ اشْتِرَاءُ التَّمْرِ بِالتَّمْرِ فِيْ رُؤُوْسِ النَّخْلِ، وَأَرْخَصَ فِيْ بَيْعِ الْعَرَايَا فِيْمَا دُوْنَ خَمْسَةِ أَوْسُقٍ أَنْ تُبَاعَ بِخَرْصِهَا، يَأْكُلُهَا أَهْلُهَا رُطَبًا.

[VII.1.11] One wasq is equivalent to 60 ṣâ's, which, as mentioned earlier, is a measure of volume that is equal to four mudds. One mudd is the fill of the two hands of an average adult: approximately 0.75 liters.

[VII.1.12] Selling fresh dates on the palm trees for their equivalent in dried dates is not permissible because:

1) Equality cannot be guaranteed between fresh and dried dates.

2) There is conjecture involved in measuring the fresh dates on the trees.

However, for people's needs, the Prophet (SA) made a concession in small amounts less than five awsuq, which is 300 ṣâ's (900 liters). In (A), the buyer must need the fresh dates and lack money to buy them, and both parties must take possession before separating.

[VII.2] Chapter on the Selling of Main Commodities (*Uṣool*) and Fruits/Things Associated with Them

بَابُ بَيْعِ الأُصُوْلِ وَالثِّمَارِ

It was reported that the Prophet (SA) said, "If someone sells date-palms after pollination, their fruit will be for the seller unless the buyer stipulates the contrary." [VII.2.1] [VII.2.2]	رُوِيَ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «مَنْ بَاعَ نَخْلًا بَعْدَ أَنْ تُؤَبَّرَ، فَثَمَرُهَا لِلْبَائِعِ، إِلا أَنْ يَشْتَرِطَها الْمُبْتَاعُ.»

[VII.2.1] The term uṣool (pl. of aṣl) means foundations, roots, or origins. In this context, it refers to the main commodity in the transaction, and includes buildings and all kinds of lands.

Unless there are stipulated conditions, the things attached to the building (such as doors, stairways, and windows) are considered part of it, and go, by default, to the buyer. The movables go to the seller.

As for land, the buildings and trees on it go to the buyer, by default. (A) + (+H, +M, +S)

[VII.2.2] (Ag – from Ibn 'Umar)

The four Imams acted upon this hadith. However, Imam Abu Ḥaneefah gives the fruit to the seller if the trees are sold before pollination as well. The reason is that for the Ḥanafis, the implication of divergence (*mafhoom al-mukhâlafah*) is inconsequential, so giving the fruit to the seller if the trees are sold after pollination does not mean that it goes to the buyer if sold before pollination. They also said that if it is given to the seller after pollination, then this indicates that it is the seller's as well before pollination by a stronger analogy (since the buyer would have not seen the mature dates at the time of purchase).

The same holds true when selling trees if they are obviously bearing fruit.	وَكَذٰلِكَ بَيْعُ الشَّجَرِ، إِذَا كَانَ ثَمَرُهُ بَادِيًا.

If land is sold with a crop that is harvested only once, [VII.2.3] the crop goes to the seller, unless the buyer stipulates its inclusion [in the sale]. [VII.2.4] If the crop is harvested more than once, the roots [VII.2.5] are for the buyer and the harvest apparent at the time of the transaction is for the seller.	فَإِنْ بَاعَ الأَرْضَ، وَفِيْهَا زَرْعٌ لَا يُحْصَدُ إِلَّا مَرَّةً، فَهُوَ لِلْبَائِعِ مَا لَمْ يَشْتَرِطْهُ الْمُبْتَاعُ. وَإِنْ كَانَ يُجَزُّ مَرَّةً بَعْدَ أُخْرَى، فَالأُصُوْلُ لِلْمُشْتَرِيْ، وَالْجِزَّةُ الظَّاهِرَةُ عِنْدَ الْبَيْعِ لِلْبَائِعِ.

[VII.2.3] A single harvest from the crop in question, such as barley or wheat.

[VII.2.4] When there is a certain stipulation in the contract, it must be honored because Allah said:

{يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ.}

{O you who have believed, fulfill [all] contracts...} (al-Mâ'idah 5:1)

The Prophet (SA) said:

«الصُّلْحُ جَائِزٌ بين الْمُسْلِمِينَ إلا صُلْحًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ على شُرُوطِهِمْ إلا شَرْطًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا.»

"Any settlement between Muslims is valid, except a settlement that will make haram what is halal or make halal what is haram. Muslims should abide by their conditions, except a condition that will make haram what is halal or make halal what is haram." (T – from 'Amr ibn 'Awf; T: ḥasan ṣaḥeeḥ)

[VII.2.5] In other words, the part of the plant that remains after the harvest.

Plants and fruits that can be harvested or picked several times a year include plants like clover and spearmint, and fruits like watermelons.

Subsection: The Prophet (SA) prohibited selling fruit until its maturity becomes apparent. [VII.2.6]	**فَصْلٌ:** نَهَى رَسُوْلُ اللهِ ﷺ عَنْ بَيْعِ الثَّمَرَةِ حَتَّى يَبْدُوَ صَلَاحُهَا.

[VII.2.6] (Ag – from Ibn ‘Umar)

The apparent wisdom behind this ruling is the gharar (undue risk taking) involved in this transaction, because the crops or fruits may be afflicted by calamity or something else while still in the field of the seller. However, if the sale of unripe fruits or crops includes a condition of immediate picking or harvesting, and the unripe or immature fruits and crops have known uses (such as being fodder for animals), it would be permissible because of the lack of gharar in this case.

It is also permissible to sell fruits before their maturity if they are sold with the trees. This is because the sale of the fruits here will be secondary to the main subject matter of the contract. In such cases, the jurists use the following fiqh maxim:

يُغْتَفَرُ فِي التَّابِعِ ما لا يُغْتَفَرُ فِي الأَصْلِ.

Secondary transactions are treated with more leniency than primary ones.

It is permissible to sell fruit [still on the tree] after it shows signs of ripeness, on condition that it be left [on the tree] until the [appropriate] time of picking. [VII.2.7]	وَلَوْ بَاعَ الثَّمَرَةَ بَعْدَ بُدُوِّ صَلَاحِهَا عَلَى التَّرْكِ إِلَى الْجُذَاذِ، جَازَ.

[VII.2.7] It would also be permissible to pick it right away. This condition gives the buyer the right to keep the fruit on the tree, but it may be picked sooner if he or she wishes.

If the fruits [VII.2.8] are ruined/damaged [due to a natural disaster], the loss is absorbed by the seller [VII.2.9] based on what the	فَإِنْ أَصَابَتْهَا جَائِحَةٌ رَجَعَ بِهَا عَلَى الْبَائِعِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ:«لَوْ بِعْتَ مِنْ أَخِيكَ ثَمَرًا، فَأَصَابَتْهُ جَائِحَةٌ، فَلَا

Prophet (SA) said, “If you were to sell fruits to someone and these were stricken with calamity, it is not permissible for you to get anything from him or her. How could you take your brother’s money without justification?” [VII.2.10]	يَحِلُّ لَكَ أَنْ تَأْخُذَ مِنْهُ شَيْئًا، بِمَ تَأْخُذُ مَالَ أَخِيكَ بِغَيْرِ حَقٍّ؟»

[VII.2.8] According to (A/SM), this applies to fruits only, not crops. (t) discussed the disagreement concerning the crops in the madh-hab and favored treating them like fruits.

[VII.2.9] This is the position of (A) + (+M). (M) generally requires loss of at least one-third of the fruit, except for loss caused by lack of water. (A) does not require a fixed fraction, but disregards insignificant customary loss.

For the position of (-H) and (-S), which makes the buyer liable, there is another hadith in which Muslim reported from Abu Sa‘eed that a man was afflicted with a major loss in the fruits he bought, and his debt became too large. The Prophet (SA) asked people to donate to him, so they did, but the donations still did not pay off his debt. The Prophet (SA) said [to the creditors], “Take what you find, and you are not entitled to more than that.” (H) and (S) said that he made the man, who is the buyer, liable. They also said that the Prophet (SA) commanded that fruits are not to be sold until they ripen, for the buyer’s sake. After they ripen, the buyer may not be further protected against calamities.

[VII.2.10] (M – from Jâbir)

This hadith is clearer than the hadith of Abu Sa‘eed. It is also not a report of a particular incident, which may have a special context, but a general statement from the Prophet (SA). The response of (M) and (A) regarding the previous hadith of Abu Sa‘eed is that the fruits could have been afflicted after picking them. The report does not establish that the loss occurred under the conditions requiring the seller to bear it. They maintain that the seller still has some duties towards the fruits because he or she is meant to water them until the time of picking. Thus, the seller remains responsible until the

fruits are picked, unless the buyer delays picking beyond the customary time despite being able to pick them.

The majority held that if the calamity was in the form of a drought, the seller (land owner) will bear liability.

The fruits of date palms are considered mature when they become red or yellow, grapes are deemed mature when their juice becomes sweet, and various fruits are considered mature when they become ripe and edible.	وَصَلَاحُ ثَمَرِ النَّخْلِ أَنْ يَحْمَرَّ أَوْ يَصْفَرّ، وَالْعِنَبِ أَنْ يَتَمَوَّهَ، وَسَائِرِ الثَّمَرِ أَنْ يَبْدُوَ فِيْهِ النُّضْجُ، وَيَطِيْبَ أَكْلُهُ.

[VII.3] Chapter on Cancellation Options (*Khiyâr*) in Transactions

بَابُ الْخِيَارِ

[The Option to Cancel before Physical Separation] [VII.3.1] The buyer and seller have the option of cancelling the deal unless they separate physically. [VII.3.2] If they separate and neither of them has abandoned the sale, then it becomes binding.	**[خيار المجلس]** الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا بِأَبْدَانِهِمَا، فَإِنْ تَفَرَّقَا، وَلَمْ يَتْرُكْ أَحَدُهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ.

[VII.3.1] This chapter addresses what we would today call the "return policy". As we will see, if one is stipulated, it overrides default procedures. If there is none stipulated, then there are default procedures that people may refer to for the settlement of disputes; these are described in this chapter.

The basic default procedure is that after the conclusion of the contract and the physical separation of the two parties, the sale becomes binding, with no recourse for either party unless otherwise stipulated or unless a defect is found in the merchandise, they dispute over the merchandise or the price, or, according to some, if there is a substantial inequity in the price.

We have six main kinds of options for cancellation:

1) After concluding the contract and before parting physically (khiyâr al-majlis)

2) If the contract included that as a condition (khiyâr ash-sharṭ)

3) Due to a defect in the merchandise (khiyâr al-'ayb)

4) Due to scams and cheating (khiyâr at-tadlees)

5) Due to inequity (khiyâr al-ghabn)

6) Due to disagreement over the price or the commodity (khiyâr al-ikhtilâf)

[VII.3.2] The Messenger of Allah (SA) said:

«الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا.»

"The two parties to a transaction have the option (of cancelling it) until they (physically) separate." (Ag – from Ḥakeem ibn Ḥizâm and Ibn 'Umar)

The option to cancel before physical separation is the position of (A) + (+S).

(-H, -M) did not approve of this. To them, the sale is binding once the contract is finalized. Physical separation is not necessary for the contract to become binding.

The hadith did not necessarily state, without doubt, that separation must be physical, but that is the implied meaning. It is also the understanding of the narrator of the hadith, 'Abdullâh ibn 'Umar, who used to walk away a few steps to make the contract binding, as reported by (B, M).

In online transactions, as well as other non-traditional transactions, separation is determined by people's customs and standards, for:

«مَا لَم يُحَدِّده الشَّرعُ يُرجَعُ فيهِ إلى العُرْفِ».

"Whatever is not expounded by the revealed law (shar') should be understood from the people's customs ('urf)."

[خيار الشرط]	[The Option to Cancel in Conditional Transactions]
إِلَّا أَنْ يَشْتَرِطَا الْخِيَارَ لَهُمَا، أَوْ لأَحَدِهِمَا مُدَّةً مَعْلُوْمَةً، فَيَكُوْنَانِ عَلَى شَرْطِهِمَا. وَإِنْ طَالَتِ الْمُدَّةُ، إِلَّا أَنْ يَقْطَعَاهُ.	This is unless it is stipulated that it is optional for both or one of them for a given period. [VII.3.3] Then they should abide by the stipulation, no matter how long the period of the

option, unless they agree to cancel it. [VII.3.4]	

[VII.3.3] The period must be known to both parties. It also must be specified and may not be unlimited. According to another position within the Ḥanbali madh-hab, agreeing to make the option indefinite is permissible.

The first position is the chosen position within the Ḥanbali madh-hab, and it is the position of the vast majority of other scholars and madh-habs.

[VII.3.4] When there is a certain stipulation in the contract, it must be honored, because Allah said:

{يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ.}

{O you who have believed, fulfill [all] contracts…} (al-Mâ'idah 5:1)

The Prophet (SA) said:

«...وَالْمُسْلِمُونَ على شُرُوطِهِمْ إلا شَرْطًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا.»

"…And Muslims [should] abide by the conditions [to which they have agreed], except a condition that will make haram what is halal or make halal what is haram." (T – from 'Amr ibn 'Awf; T: ḥasan ṣaḥeeḥ)

(-H, -S): the maximum period is three days. They indicated that the sale is binding from the conclusion of the contract by default; however, this option is an exception established by hadiths. In some of them, the number of days was specified to be three, as in the hadith in which the Prophet (SA) said to Munqidh, who used be deceived in transactions:

«إِذَا بَايَعْت فَقُلْ لَا خِلَابَةَ وَلِيَ الْخِيَارُ ثَلَاثَةَ أَيَّامٍ.»

"When you trade, say: No deception, and for three days I have the option (to cancel)." (Ma; al-Albâni: S)

However, there is no hadith that clearly prevents two parties from agreeing on a longer term. The default they mentioned of the sales being binding is countered by another default which is, “Muslims [should] abide by the conditions [to which they have agreed].”

The position of (A) gives flexibility to stating any period in the return policies.

[The Option to Cancel Due to a Defect]	[خيار العيب]
Anyone who discovers a defect in something purchased, which he or she was unaware of, has the right to return it or to take compensation for the defect. [VII.3.5]	وَإِنْ وَجَدَ أَحَدُهُمَا بِمَا اشْتَرَى عَيْبًا لَمْ يَكُنْ عَلِمَهُ، فَلَهُ رَدُّهُ، أَوْ أَخْذُ أَرْشِ الْعَيْبِ.

[VII.3.5] A purchaser has the right to return the merchandise or to take compensation for the defect, with the following conditions:

1) He or she was unaware of the defect at the time of purchase.

According to (a) + (-t), the seller did not clear himself or herself, at the time of contract, from all liabilities. This is similar to what we call ‘as-is’ sales. The position of (a) + (-t) is the validity of those sales and conditions if the defect was not known to the seller at the time of the sale. According to (A), the sale will be valid, but the condition will be void. The preferred Shâfi‘i view recognizes the disclaimer only for an existing hidden defect in an animal that the seller did not know about. For ordinary sellers, the relied-upon Mâliki position restricts this concession to slaves who had remained with their sellers long enough for defects normally to become apparent, provided the seller did not know of the defect. Broader permission is reported from Mâlik; another Shâfi‘i view invalidates the condition altogether.

Any revenue the commodity achieves, or any separate increment or growth in it [VII.3.6] before the buyer becomes aware of the defect, is the buyer’s,	وَمَا كَسَبَهُ الْمَبِيْعُ، أَوْ حَدَثَ فِيْهِ مِنْ نَمَاءٍ مُنْفَصِلٍ قَبْلَ عِلْمِهِ بِالْعَيْبِ، فَهُوَ لَهُ؛ لأَنَّ الْخَرَاجَ بِالضَّمَانِ.

because “profit follows liability.” [VII.3.7]	

[VII.3.6] As in the case of the milk of a sold cow. The buyer does not need to return it with the cow; at the time the cow was milked, it was in the buyer’s custody and was his or her liability.

[VII.3.7] Reported from the Prophet (SA) as part of a hadith; reported by “A, D, T, N, Ma” and authenticated by at-Tirmidhi and al-Ḥâkim, with whom adh-Dhahabi concurred.

It is also a fiqh maxim.

If the commodity is destroyed, or the slave is manumitted, or it becomes impossible to return the purchase, then the buyer can take compensation for the defect.[VII.3.8]	وَإِنْ تَلِفَتِ السِّلْعَةُ أَوْ أُعتِقَ الْعَبْدُ، أَوْ تَعَذَّرَ رَدُّهُ، فَلَهُ أَرْشُ الْعَيْبِ.

[VII.3.8] For example, a buyer unknowingly buys defective merchandise for $10, its value without the defect, and only later discovers a defect that makes the value of the merchandise $7 only. If it is lost or damaged before being returned to the seller, the buyer is still entitled to $3 from the seller if he or she is able to prove the defect.

[The Option to Cancel due to *Tadlees*] [VII.3.9] The Prophet (SA) said, “Do not tie the udders of camels and sheep. Whoever buys one may choose what to do, [even] after milking it; anyone who wishes to may keep it, and anyone wishes to may return it along with one *ṣâ‘* [VII.3.10] of dates.” [VII.3.11] Anyone who came to know about it	**[خيار التدليس]** وَقَالَ النَّبِيُّ ﷺ: «لَا تُصَرُّوْا الإِبِلَ وَالْغَنَمَ، فَمَنِ ابْتَاعَهَا بَعْدَ ذٰلِكَ، فَهُوَ بِخَيْرِ النَّظَرَيْنِ بَعْدَ أَنْ يَحْلُبَهَا، إِنْ رَضِيَهَا، أَمْسَكَهَا، وَإِنْ سَخِطَهَا، رَدَّهَا وَصَاعًا مِنْ تَمْرٍ.» فَأَمَّا إِنْ عَلِمَ تَصْرِيَتَهَا قَبْلَ حَلْبِهَا، رَدَّهَا، وَلَا شَيْءَ مَعَهَا.

being tied before milking it may return it without anything extra.	

[VII.3.9] Tadlees is any scam that results in the concealment of defects or ostensible enhancement of the merchandise. In the example given here, tying the udders makes it appear that the animal produces more milk than it actually does.

A Muslim may not hide a defect in merchandise that he or she sells to others. The Messenger of Allah (SA) said:

«الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا ، فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا ، وَإِنْ كَتَمَا وَكَذَبَا مُحِقَتْ بَرَكَةُ بَيْعِهِمَا.»

> *"The two parties to a transaction have the option (of cancelling it) until they (physically) separate. If they behave candidly and disclose (any defects), their deal will be blessed, but if they lied and concealed (the defects), the blessing will be obliterated." (Ag – from Ḥakeem ibn Ḥizâm)*

[VII.3.10] As mentioned earlier, a ṣâ' is a measure of volume that is equal to four mudds. One mudd is the fill of the two hands of an average adult; approximately 0.75 liters.

[VII.3.11] (Ag – from Abu Hurayrah)

This hadith caused a well-known fiqh disagreement.

The majority acted on the hadith. (A) + (+M, +S)

(-H): After milking it and discovering the deficiency, the buyer does not return it under this rule, but is entitled to compensation according to the preferred position. Another report does not treat the taṣriyah as a compensable defect. Ḥanafi jurists also considered returning a measure of dates to be counter to qiyâs, meaning here the established principle of compensation by the like or by equal value. (Abu Ḥaneefah's student Abu Yoosuf decreed that the buyer may return it with the value of milk taken.) Some later Ḥanafi legal theorists also argued that a report from a narrator not known as a faqeeh is not preferred over sound qiyâs when it conflicts

with all relevant analogies. Other major Ḥanafi authorities rejected this distinction and affirmed that Abu Hurayrah was a faqeeh.

The position of the majority seems stronger because the hadith is sound. The designation of the measure of dates (or, according to -M, -s, the main staple food of the people) is to guard against possible disputation over the amount of milk taken by the buyer.

It may be warranted here to explain the discussion in Ḥanafi uṣool works regarding singular (âḥâd) hadiths:

Âḥâd hadiths are narrations that have been transmitted by people whose number does not reach that of mutawâtir reports. Mutawâtir hadiths are narrations that have been transmitted by such a large number of people that they could not possibly have all agreed upon a lie.

Some Ḥanafi uṣool scholars stipulated the following conditions for accepting an âḥâd report (as opposed to mutawâtir and mash-hoor): Firstly: It should not be opposed by its narrator. Secondly: It should not pertain to a matter that is widespread and unavoidable (‘umoom al-balwâ). Thirdly: According to some Ḥanafi legal theorists, if its narrator is not known for jurisprudence, it should not conflict with all relevant sound analogies. An âḥâd hadith that opposes sound qiyâs is not accepted when this qiyâs is based on an ‘illah that is established though a stronger report than the âḥâd report, and also when this ‘illah is definitely present in the case addressed by the âḥâd report. [Information taken from the book *al-Fikr as-Sâmi fee Târeekh al-Fiqh al-Islâmi* by Muhammad ibn al-Ḥasan al-Ḥajwi.] When these conditions are fulfilled in an âḥâd hadith, it is accepted and preferred over qiyâs, even if its chain of narration is weak in the early usage of the term.

Regarding this, Ibn al-Qayyim states in his book *I‘lâm al-Muwaqqi‘een*: “The companions of Abu Ḥaneefah – may Allah bestow mercy upon him – unanimously agree that Abu Ḥaneefah’s madh-hab holds that a weak hadith is given preference over qiyâs.”

The majority gave precedence to the sound âḥâd report over qiyâs. Usually there is a way to reconcile between sound qiyâs and the implication of the hadith. This sometimes means reconsidering one’s interpretation of the hadith.

Similarly, every act of tadlees [VII.3.12] the buyer did not know of; they have the right to return the commodity. For instance, putting rouge on a bondmaid's face, or coloring her hair black or curling it. [VII.3.13] [Similar to this is] holding back water and then suddenly letting it flow to turn a watermill while exhibiting it to the buyer. [VII.3.14]	وَكَذٰلِكَ كُلُّ مُدَلِّسٍ لَمْ يَعْلَمْ تَدْلِيْسَهُ، لَهُ رَدُّهُ، كَجَارِيَةٍ حَمَّرَ وَجْهَهَا، أَوْ سَوَّدَ شَعَرَهَا، أَوْ جَعَّدَهُ، أَوْ رَحًى ضَمَّ الْمَاءَ وَأَرْسَلَهُ عَلَيْهَا عِنْدَ عَرْضِهَا عَلَى الْمُشْتَرِيْ.

[VII.3.12] Ibn Qudâmah mentions in his other book *al-Mughni*:

"The meaning of tadlees is to hide a defect from the purchaser by not telling him or her of the defect despite knowing of it, or by intentionally covering it [actively or passively]; both are acts of deception, which is haram."

Contemporary examples of tadlees:

- Changing the odometer of a car to show lower mileage.
- Sticking brand-name tags onto a generic commodity.

[VII.3.13] Because these were considered to be signs of beauty.

[VII.3.14] In other words, to cause the restrained water to gush forth and make the watermill's axis rotate faster than it would in real usage.

This applies also when one finds out that a [good] quality has been falsely attributed to the sold object to raise its price, such as attributing the ability to write or a craft to a slave, or fast and stable movement to a riding animal, or claiming that the leopard is a hunter or trained, or the bird is a singer, and so on.	وَكَذٰلِكَ لَوْ وَصَفَ الْمَبِيْعَ بِصِفَةٍ يَزِيْدُ بِهَا فِيْ ثَمَنِهِ، فَلَمْ يَجِدْهَا فِيْهِ، كَصِنَاعَةٍ فِي الْعَبْدِ أَوْ كِتَابَةٍ، أَوْ أَنَّ الدَّابَّةَ هِمْلَاجَةٌ، وَالْفَهْدَ صَيُوْدٌ أَوْ مُعَلَّمٌ، أَوْ أَنَّ الطَّيْرَ مُصَوِّتٌ وَنَحْوَ هَذَا.

[The Option to Cancel Due to Disagreement Over the Price] If the seller overstates the price originally paid for the sold object, [VII.3.15] the buyer can get back the extra payment in excess of the price and its percentage of the profit, if it was *murâbaḥah* [a sale with profit/cost-plus sale]. [VII.3.16] If it is proven that the seller has mistakenly undercharged for the commodity, [VII.3.17] the seller gives the buyer the choice of either returning the item or giving the additional amount.	وَلَوْ أَخْبَرَهُ بِثَمَنِ الْمَبِيْعِ، فَزَادَ عَلَيْهِ، رَجَعَ عَلَيْهِ بِالزِّيَادَةِ، وَحَظِّهَا مِنَ الرِّبْحِ، إِنْ كَانَ مُرَابَحَةً. وَإِنْ بَانَ أَنَّهُ غَلِطَ عَلَى نَفْسِهِ، خُيِّرَ الْمُشْتَرِيْ بَيْنَ رَدِّهِ أَوْ إِعْطَائِهِ مَا غَلِطَ بِهِ.

[VII.3.15] In murâbaḥah sales, the seller buys an item and then sells it to the buyer with a markup (a percentage based on the price the seller paid for the item). The buyer trusts the seller to correctly state the actual price that he or she paid. For example, if the buyer agrees to give the seller $1 on every $10 of the original price, and the original price was $70, then the buyer will get the merchandise for $77 ($70 + a profit of $7).

[VII.3.16] So in the previous example, if the seller actually bought the item for $60 (not $70), he or she should return (to the buyer) the extra $10 that was added to the price, as well as $1 more, which is the profit on that $10. (Because the buyer paid $77 instead of the $66 that he or she should have paid, so $11 should be returned.)

The option to cancel due to inequity (khiyâr al-ghabn) – خيار الغبن

If there was no lying involved, yet the seller charged the buyer an exorbitant price, such as a price much more than the commodity's worth, then this is a case of ghabn, or inequity, which is either:

1) Minor, and that is inconsequential by agreement, or:

2) Out of the ordinary.

According to the stronger position, the distinction between the two is judged by people's customs and standards.

Keep in mind that the Sunnah addresses particular forms of inequity, such as intercepting incoming traders and artificial bidding (najash). The option belongs to the party harmed: for example, the incoming seller who discovers substantial underpricing, or the buyer who was induced to overpay by artificial bidding.

The inequity discussed here is when no deception or cheating was involved, yet the seller overcharged the buyer. Does that give the buyer the option to cancel?

The answer is controversial, and the majority, including (H, +M, +S) indicated that it does not. They argued that the sale is final by default, and since it did not involve any form of cheating, it is the buyer's fault for hastily finalizing the transaction.

However, (A, +M2, +s) gave the cancellation option to the inexperienced or naïve (mustarsil) trader.

Finally, (h, -m) gave the cancellation option to all.

This is one example of the case where there is no clear textual evidence, and the jurists of the time have some liberty to select what is most suitable for the society.

[VII.3.17] The seller mistakenly told the buyer a lower price than he or she actually paid for the commodity. For example, the seller bought the commodity for $70 but mistakenly told the buyer that the purchase price was $50. They agreed on a 50% profit, so the buyer took it for $75 (50 + 25) instead of the $105 (70 + 35) that it should have been. If the seller proved that the purchase price was actually $70, then the buyer would have to either return the commodity or pay the seller $30 (105-75).

Notice that this is applicable to the murâbaḥah sales (cost-plus sales), where the price is determined by adding an agreed upon percentage to the original

price for which the seller bought the commodity. These sales are widely used in contemporary Islamic finance.

If the buyer finds out that the commodity was originally bought for a deferred payment, and he or she was not told that, then the buyer has the choice of either returning or keeping it. [VII.3.18]	وَإِنْ بَانَ أَنَّهُ مُؤَجَّلٌ وَلَمْ يُخْبِرْهُ بِتَأْجِيلِهِ فَلَهُ الْخِيَارُ بَيْنَ رَدِّهِ وَإِمْسَاكِهِ.

[VII.3.18] This is when someone buys an item for a deferred payment and then sells it to someone else as a murâbaḥah sale without explaining that it was bought via a deferred payment sale. Note that the buyer in murâbaḥah is usually inexperienced and asks the seller how much he or she originally bought the merchandise for; then they agree on a percentage of profit, which the buyer pays the seller on the original price. The buyer has the option to cancel in this case, since the deferred price is usually higher than the cash price.

If they [later] differ regarding the [agreed-upon] price, [VII.3.19] then each should take an oath, and each has the right to annul the transaction or accept the account of the other party.	وَإِنِ اخْتَلَفَ الْبَيِّعَانِ فِيْ قَدْرِ الثَّمَنِ، تَحَالَفَا وَلِكُلِّ وَاحِدٍ مِنْهُمَا الْفَسْخُ، إِلَّا أَنْ يَرْضَى بِمَا قَالَ صَاحِبُهُ.

[VII.3.19] As in deferred payment transactions, when the seller says that they agreed on $6, but the buyer insists that they agreed on $5. In this case, the commodity may still exist or may have perished.

1) If the commodity still exists and there is no proof resolving the dispute, the seller takes an oath first, denying the buyer's account and affirming his or her own; the buyer then does the same. If neither accepts the other's account, either may annul the sale. The Messenger of Allah (SA) said:

«إِذَا اخْتَلَفَ الْبَيِّعَانِ وَلَيْسَ بَيْنَهُمَا بَيِّنَةٌ وَالْبَيْعُ قَائِمٌ بِعَيْنِهِ، فَالْقَوْلُ مَا قَالَ الْبَائِعُ أَوْ يَتَرَادَّانِ الْبَيْعَ.»

"If the two parties in a sale dispute (as to what they had agreed on), and there is no proof, and the commodity is present, then either the statement of the seller will take precedence, or they may annul the transaction." (Ma – from Ibn Mas'ood)

2) If the commodity has perished, they likewise take reciprocal oaths. If neither accepts the other's account, either may annul the sale; the seller returns any price received, and the buyer pays the commodity's assessed value. In a further dispute over that value or the commodity's qualities, the buyer's sworn statement is generally accepted because he or she bears the liability. However, if the buyer alleges that it was defective, the seller's sworn denial is accepted, since soundness is presumed.

There is much disagreement in these matters, but here are some guiding principles:

- The proof is sought first.

- Corroborative evidence (less than decisive proof) is also admissible in these cases.

- If there is no proof, and the disagreement is over conditions in the sales contract, the default is the lack of conditions and lack of deferment, so precedence is given to the one who denies additional conditions.

If the disagreement is over the price, the breakdown above represents the chosen positions in the Ḥanbali madh-hab.

[VII.4] Chapter on Advance Payment Sales (*Salam* [or *Salaf*]) [VII.4.1]

بَابُ السَّلَمِ

Ibn ‘Abbâs narrated that when Allah’s Messenger (SA) came to Madinah, the people were paying for fruits one and two years in advance, so he said, “Those who pay in advance for anything must do so for a specified measure or weight and for a definite time.” [VII.4.2]	عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا قَالَ: قَدِمَ رَسُولُ اللهِ ﷺ الْمَدِيْنَةَ، وَهُمْ يُسْلِفُوْنَ فِي الثِّمَارِ السَّنَةَ وَالسَّنَتَيْنِ، فَقَالَ: «مَنْ أَسْلَفَ فِي ثَمَرٍ فَلْيُسْلِفْ فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ، وَإِلَى أَجَلٍ مَعْلُومٍ.»

[VII.4.1] The salam or salaf sale involves the exchange of two items; one is called the merchandise, and the other is called the price. If we add the factor of time (the time of delivery), then we have four possibilities:

1) Immediate delivery of both items, which is the usual sale that is permissible by consensus.

2) Deferred payment of the price, which is the deferred payment sale (bay‘ al-âjil) that is permissible, according to the vast majority, with some conditions.

3) Deferred delivery of the merchandise, which is the salam (or salaf) transaction addressed here.

4) Deferment of both items, which is called bay‘ al-kâli’ (الكالئ) according to some, and it is forbidden according to the vast majority.

[VII.4.2] (Ag)

Notice that the Messenger of Allah (SA) rectified the transaction and did not forbid it. This is very common in the area of transactions. The wisdom here is that most human transactions exist because of a need. Islam also recognizes the ability of the human mind to discern between right and wrong, as well as between benefit and harm. The mind, however, is not

capable of doing so in an unlimited manner, and the thoughts are often corrupted by human desires and biases. Therefore, the Sharia of the All-Wise approves of the correct human customs, repeals the corrupt ones, and rectifies those that are rectifiable.

The need for this transaction is obvious: it facilitates the investment of cash possessed by some people so that it can be used by others. A farmer may have the land and the skill to cultivate it, but he may lack the money to do so. Another person may have the money and need some crops in the future. Islam allows the owner of the cash to give it in advance to the producer of the product, for their mutual benefit and the benefit of the economy.

The Messenger of Allah (SA) in this hadith provided guidelines for the transaction, in order to protect it from the dangers of jahâlah (lack of knowledge about the details of the contract by one or both parties) and gharar (undue risk taking) resulting from the jahâlah.

Salam is permissible in commodities that have well-defined attributes on condition that: 1. Those attributes are delineated, [VII.4.3] 2. Its quantity is mentioned, in terms of the unit of measurement, whether volume, weight, cubit, or count; 3. The time frame is designated, and; 4. The price is paid before the separation of the buyer and the seller. [VII.4.4]	**وَيَصِحُّ السَّلَمُ فِيْ كُلِّ مَا يُضْبَطُ بِالصِّفَاتِ:** 1. إِذَا ضَبَطَهُ بِهَا 2. وَذَكَرَ قَدْرَهُ بِمَا يُقَدَّرُ بِهِ مِنْ كَيْلٍ، أَوْ وَزْنٍ أَوْ ذَرْعٍ أَوْ عَدٍّ، 3. وَجَعَلَ لَهُ أَجَلاً مَعْلُوْمًا 4. وَأَعْطَاهُ الثَّمَنَ قَبْلَ تَفَرُّقِهِمَا.

[VII.4.3] Salam is invalid if the subject matter of the deal is not standardized by description, since this would lead to jahâlah and gharar. For example, two tons of a specific brand of wheat or corn is standard. There is controversy over the permissibility of salam in livestock. The popular position in the Ḥanbali madh-hab is to allow it.

[VII.4.4] This is true according to the majority. (A) + (+H, +S)

However, according to (-M), a payment made within three days of the contract is still considered immediate. In modern transactions, there may be a pressing need for this position, which does not seem to be in direct conflict with any clear sound text.

Other Conditions of Validity for Salam Transactions

1) One may not sell a particular item, such as the produce of a particular farm, with salam because there is no guarantee that this particular item will be deliverable on the due date. However, an accurately described item, such as a certain quantity of a specific type of dates, can be found with some other merchant and can be delivered. Another example is that one may sell two tons of a certain type of wheat but not necessarily the harvest of a particular farm. In this case, if the farm did not produce enough, the farmer could still get the wheat from other sources and deliver it to the purchaser on the date agreed upon.

This is the difference between salam (the advance payment sale of a describable good) and the sale of what one does not possess, in which the commodity is a particular item which one may or may not be able to deliver.

The commodity in salam must be one that is not rare at the time and place of delivery, because deliverability is an important requisite in such transactions.

Salam sale is permissible in situations where the commodity is received as separate batches on predefined dates. [VII.4.5]	وَيَجُوْزُ السَّلَمُ فِيْ شَيْءٍ يَقْبِضُهُ أَجْزَاءً مُتَفَرِّقَةً فِيْ أَوْقَاتٍ مَعْلُوْمَةٍ.

[VII.4.5] This applies to the commodity; the price, in contrast, must be paid in full at the time of the transaction.

It is not permissible to pay one price for two commodities in advance unless	وَإِنْ أَسْلَمَ ثَمَنًا وَاحِدًا فِيْ شَيْئَيْنِ، لَمْ يَجُزْ حَتَّى يُبَيِّنَ ثَمَنَ كُلِّ جِنْسٍ مِنْهُمَا.

the price of each commodity is made clear. [VII.4.6]	

[VII.4.6] To avoid jahâlah and gharar, and the consequent disputation. Also, in case one commodity was undeliverable, the whole deal would become invalid due to the uncertainty about the price of each commodity separately.

Whoever buys something on the basis of salam should not change the deal to something else. [VII.4.7]	وَمَنْ أَسْلَفَ فِيْ شَيْءٍ، لَمْ يَصْرِفْهُ إِلَى غَيْرِهِ.

[VII.4.7] This statement has been reported by Abu Dâwood from the Prophet (SA), but with a chain deemed weak by the majority of scholars of Hadith. Still, this is the relied-upon Ḥanbali ruling. If one specified dates, for example, one may not take wheat instead.

It is not permissible to sell what one buys through a salam transaction before receiving it, or to use it in debt transfer. [VII.4.8]	وَلَمْ يَجُزْ لَهُ بَيْعُهُ قَبْلَ قَبْضِهِ، وَلَا الْحِوَالَةُ بِهِ.

[VII.4.8] The seller may not discharge the salam obligation by referring the buyer to someone who owes the seller matching goods. Nor may the buyer refer a creditor to collect the buyer's salam entitlement, even where that creditor is owed matching goods. Both are prohibited in the relied-upon Ḥanbali position, but for different reasons: transferring the seller's obligation is treated as disposing of the salam goods before possession, whereas directing a creditor to collect the salam entitlement is also barred because the debt from which collection is to be made is not settled. (t: both transactions are allowable because they are not sale of debts, but fulfillment of payments [istifâ'], freeing some parties from the burden of debt.)

However, cancellation [upon request from the other party] of the whole sale or part of it is permissible because it is a form of annulment. [VII.4.9]	وَتَجُوْزُ الإِقَالَةُ فِيْهِ، وَفِيْ بَعْضِهِ، لأَنَّهَا فَسْخٌ.

[VII.4.9] This means that it is not a modification of the existing contract, but a complete cancellation. This is completely true in the cancellation of the whole deal. As for the cancellation of part of it, such as changing it from 10 tons of rice for $1000 to 5 tons for $500, there is some controversy within the Ḥanbali madh-hab. The position mentioned here is the preferred one.

Contemporary Applications

Would salam contracts apply to apartments and houses sold before construction is completed?

According to the majority of contemporary scholars, this is considered to be a manufacturing contract (‘aqd al-istiṣnâ‘). This transaction is considered a type of salam by (A) + (+M, +S), which means all of the conditions of salam will apply to it, including the immediate payment of the whole price (A) + (+S) or within three days (-M). There is an agreement of the four madh-habs, however, that salam is not acceptable in buildings, because their site must be specified, and if it is, then it is a particular (non-substitutable) item, and salam is not applicable to those.

However, (-H) considers it a separate contract, since, unlike salam, it involves the making of the commodity. This position allows the buyer to pay the price in installments. Yet, according to (H), this contract will turn into salam if a deadline is set for the submittal of the commodity. The two disciples of Abu Ḥaneefah held a different position, and allowed setting a deadline in the manufacturing (istiṣnâ‘) contract.

The Fiqh Assembly of the OIC (Organization of the Islamic Conference) indicated that a deadline should be set, and its appointment should not change the contract from istiṣnâ‘ to salam. The assembly approved the sale of homes before their construction and also paying the price in installments, as long as there is an accurate description of the property being sold. – International Islamic Fiqh Academy, Resolution 50 (1/6), sixth session, 1410 AH/1990 CE (purchase of homes before construction); and Resolution 65 (3/7), seventh session, 1412 AH/1992 CE (general rules of istiṣnâ‘).

Would salam contracts apply to cars?

Yes, if they are new and accurately described in detail, including the make, model, year, options, and so on.

[VII.5] Chapter on Loans (*Qarḍ*) and Other Transactions [VII.5.1]

بَابُ القَرْضِ وَغَيْرِهِ

Abu Râfi‘ reported that Allah’s Messenger (SA) took from a man, as a loan, a young camel. [VII.5.2] Then camels of *ṣadaqah* were brought to him. He ordered Abu Râfi‘ to return to that person the young camel [as a return of the loan]. Abu Râfi‘ returned to the Messenger (SA) and said, “I only found better camels over six years old.” He replied, “Give him one, for the best people are those best in paying off debts.” [VII.5.3]	عَنْ أَبِيْ رَافِعٍ ، أَنَّ رَسُوْلَ اللهِ ﷺ اسْتَلَفَ مِنْ رَجُلٍ بَكْرًا، فَقَدِمَتْ عَلَيْهِ إِبِلُ الصَّدَقَةِ، فَأَمَرَ أَبَا رَافِعٍ أَنْ يَقْضِيَ الرَّجُلَ بَكْرَهُ، فَرَجَعَ إِلَيْهِ أَبُوْ رَافِعٍ، فَقَالَ: لَمْ أَجِدْ فِيْهَا، إِلَّا خِيَارًا رَبَاعِيًّا. فَقَالَ: «أَعْطُوْهُ إِيَّاهُ، فَإِنَّ خَيْرَ النَّاسِ أَحْسَنُهُمْ قَضَاءً.»

[VII.5.1] Ruling of Loaning

There is a great reward in lending money to those who need it. Allah said:

{مَّن ذَا الَّذِي يُقْرِضُ اللّهَ قَرْضاً حَسَناً فَيُضَاعِفَهُ لَهُ أَضْعَافاً كَثِيرَةً.}

{Who is it that would loan Allah a goodly loan so He may multiply it for him many times over?...} (al-Baqarah 2:245)

This verse refers to all forms of spending in the cause of Allah, including lending money. It also likens those acts of spending to giving a loan to Allah, indicating the great virtue of giving loans.

Also, the Messenger of Allah (SA) said:

«مَا مِن مُسْلِمٍ يُقْرِضُ مُسْلِمًا قَرْضًا مَرَّتَيْنِ إلا كان كَصَدَقَتِهَا مَرَّةً.»

"Whenever a Muslim gives a fellow Muslim a loan twice, it will be like giving charity once." (Ma – from Ibn Mas'ood; al-Mundhiri and al-Albâni: S)

The great reward for lending money is because:

- There is some risk entailed in this act of kindness.

- There are people who only borrow in times of hardship but will not accept charity. Relieving the distress of a believer is greatly appreciated by Allah, Who will, in turn, relieve the distress of the lender.

As with giving charity, lending to a non-believer is also praiseworthy.

The Ruling of Borrowing

Borrowing is permissible because the Messenger of Allah (SA) borrowed a camel, as reported in the hadith from Abu Râfi' mentioned here. It becomes disliked if there is no valid need, and it would be haram for one who has no necessity, and borrows money to squander it and not return it. The Messenger of Allah (SA) said:

«من أَخَذَ أَمْوَالَ الناس يُرِيدُ أَدَاءَهَا أَدَّى الله عنه وَمَنْ أَخَذَ يُرِيدُ إِتْلَافَهَا أَتْلَفَهُ الله.»

"If someone takes people's money intending to return it, Allah will pay it off for him or her (enable the person to pay back the loan); but if someone takes another person's money intending to squander it, Allah will destroy that person." (B – from Abu Hurayrah)

[VII.5.2] This hadith supports the position of (A) + (+M, +S) who allow loans of not only mithliyât (fungibles such as a certain measure of wheat), but also qeemiyât (non-fungibles, such as a camel, whose exact substitution may not be easy to have, though its valuation is easy). The condition, according to (-M, -S), is that the item loaned is one that can be traded in a salam transaction, but according to (A), anything that can be sold can be loaned except human beings.

Loan of usufructs:

(A) + (+H): usufructs cannot be loaned.

(-M, -S, -t): usufructs can be loaned.

[VII.5.3] (M).

Whoever borrows something should return its like. [VII.5.4] It is permissible, however, to: • Return what is better than it. • Borrow in installments and pay back all at once. [This is permissible] as long as it was not [stipulated as] a condition [in the contract]. [VII.5.5]	وَمَنِ اقْتَرَضَ شَيْئًا، فَعَلَيْهِ رَدُّ مِثْلِهِ. وَيَجُوْزُ أَنْ • يَرُدَّ خَيْرًا مِنْهُ • وَأَنْ يَقْتَرِضَ تَفَارِيْقَ وَيَرُدَّ جُمْلَةً إِذَا لَمْ يَكُنْ بِشَرْطٍ.

[VII.5.4] The like here (mithl) is the exact like, which is possible with mithliyât (fungibles such as things measured by volume or weight) which can be (fairly) substituted for each other.

For qeemiyât (non-fungibles, such as a piece of furniture or an animal and things measured by count or cubits), the value of the borrowed item is what should be returned. (For items that cannot be adequately specified for a salam transaction, such as jewels, valuation is done on the day the borrower receives them; for other non-fungibles, on the day of the loan.) In another opinion, one may return the like (even if not exact), as in the hadith of the camel here above.

[VII.5.5] Because to stipulate such conditions would be to the advantage of the lender. This applies to returning what is better. In other words, the borrower may pay back more than was borrowed only if this increase was not stipulated in the contract. As for returning all the debt at once when it was paid to the borrower in installments, it seems that it is permissible, even if it was demanded by the lender, as Ibn Qudâmah himself indicated in his book *al-Mughni*.

The reason it is lawful is that the creditor does have the right to claim all the money owed to him or her, particularly if the creditor did not set a deferred date for payment.

If the lender defers the due date, the debt is not in fact deferred. [VII.5.6]	وَإِنْ أَجَّلَهُ، لَمْ يَتَأَجَّلْ.

[VII.5.6] Because it is set from the time of borrowing, and deferring the due date is an act of kindness on the part of the lender. Thus, any deferment does not become incumbent upon the lender, which means the lender can still ask for his or her money immediately. (A) + (+H, +S)

(M, +al-Layth, +t): It becomes deferred because it is a promise that must be honored, and Muslims abide by their conditions. Also, Allah said:

{يَا أَيُّهَا الَّذِينَ آمَنُواْ إِذَا تَدَايَنتُم بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوه.}

{O you who have believed, when you contract a debt for a specified term, write it down…} (al-Baqarah 2:282)

It is not permissible to make a stipulation to give advantage to the lender. [VII.5.7] A [permitted] exception to this is when a security (*rahn*) [VII.5.8] or a guarantor (*kafeel*) [VII.5.9] is stipulated [for the assurance of the lender].	وَلَا يَجُوْزُ شَرْطُ شَيْءٍ يَنْتَفِعُ بِهِ الْمُقْرِضُ إِلَّا أَنْ يَشْتَرِطَ رَهْنًا، أَوْ كَفِيْلاً.

[VII.5.7] Al-Bayhaqi reported, in his *as-Sunan al-Kubrâ*', from Ubayy ibn Ka'b, Ibn Mas'ood, and Ibn 'Abbâs (RAHUM), that they forbade every loan that results in benefit [for the lender]. [al-Albâni: S] This concept is considered a fiqh maxim.

كُلُّ قَرْضٍ جَرَّ نَفْعًا فَهُوَ رِبًا.

Any loan that results in a benefit [for the lender] is usurious.

[VII.5.8] (B, M) reported from 'Â'ishah that the Messenger of Allah (SA) bought food from a Jewish man on deferred payment and pledged his iron

coat of mail as security (rahn). He died while his coat of mail remained pledged. The report establishes the permissibility of securing a debt with a pledge; the debt here arose from a sale.

[VII.5.9] Kafeel here means a guarantor and is not restricted to a guarantor of appearance. A financial guarantor may secure repayment of the loan. The distinct rules for guaranteeing a person's appearance are discussed later in the chapter on guarantor-ship. Those conditions are allowed, since they only guarantee for the lender the return of his or her capital. One of the forms of invalid conditions is to combine a loan and a sale into a single transaction, because the lender may accrue a benefit from the sale that would have not otherwise been possible to secure (without lending). The Messenger of Allah (SA) said:

«لَا يَحِلُّ سَلَفٌ وَبَيْعٌ ولا شَرْطَانِ في بَيْعٍ ولا ربْحُ ما لم تَضْمَنْ ولا بَيْعُ ما ليس عِنْدَكَ.»

"It is not permissible to combine a loan and a sale, or two conditions in one sale, or to make a profit from a commodity that is not in your liability. And do not sell what you do not possess."
(D, T – from 'Abdullâh ibn 'Amr; T: S)

The lender may not accept a gift from the debtor, unless it had been their habit to exchange gifts before the loan.	وَلَا تُقْبَلُ هَدِيَّةُ الْمُقْتَرِضِ، إِلَّا أَنْ يَكُوْنَ بَيْنَهُمَا عَادَةٌ بِهَا، قَبْلَ الْقَرْضِ.

[VII.6] Chapter on the Rulings on Debt (*Dayn*) [VII.6.1]

بَابُ أَحْكَامِ الدَّيْنِ

One who is liable for a debt with a deferred due date: **1.** Is not required to pay it off before its due date. [VII.6.2] **2.** Is not to be interdicted (*ḥajr*) [VII.6.3] for the sake of the debt, and; **3.** The debt does not become due if the debtor is declared bankrupt, nor will it be due if he or she dies, as long as the heirs guaranteed it with a security (rahn) or a guarantor of payment (kafeel). [VII.6.4] If the debtor embarks on a journey that will last past the due date, [VII.6.5] or volunteers for a military expedition, his creditor has the right to stop him (or her) unless the debtor guarantees the payment with that [security (rahn) or a guarantor of payment (kafeel)].	مَنْ لَزِمَهُ دَيْنٌ مُؤَجَّلٌ: **1.** لَمْ يُطَالَبْ بِهِ قَبْلَ أَجَلِهِ، **2.** وَلَمْ يُحْجَرْ عَلَيْهِ مِنْ أَجْلِهِ، **3.** وَلَمْ يَحِلَّ بِفَلَسِهِ، وَلَا بِمَوْتِهِ، إِذَا وَثَّقَهُ الْوَرَثَةُ بِرَهْنٍ، أَوْ كَفِيْلٍ. وَإِنْ أَرَادَ سَفَرًا يَحِلُّ الدَّيْنُ قَبْلَ مُدَّتِهِ، أَوِ الْغَزْوَ تَطَوُّعًا، فَلِغَرِيْمِهِ مَنْعُهُ، إِلَّا أَنْ يُوَثِّقَهُ بِذٰلِكَ.

[VII.6.1] This chapter addresses debts (liabilities) resulting from loans and all other transactions, such as deferred payment sales and deferred ṣadâq (dower/dowry, i.e., the gift or payment which the groom promises to give to

the bride). I will use the term ‘creditor’ rather than ‘lender’ when I refer to the one who is owed money.

[VII.6.2] This is in reference to any due liabilities other than the debts resulting from loans, such as a deferred ṣadâq or a price of a purchased commodity. (A) + (+H, +M, +S)

See the previous chapter for the controversy over deferment of the due date for debts resulting from loans.

[VII.6.3] Interdiction means to place the debtor’s property under legal seizure and prevent him or her from disposing of it.

[VII.6.4] There is another narration from Aḥmad stating that it would be due in the case of death because there will be harm to the deceased (in terms of the person’s afterlife) if the heirs and creditors defer it.

[VII.6.5] This means that if the journey does not last past the due date, the creditor may not prevent the debtor from travel. This is the weaker of the two positions within the Ḥanbali madh-hab. In the stronger position, the creditor has the right to ask for a security (rahn) or a solvent guarantor of payment (kafeel) before the departure of the debtor, particularly if the journey is long or risky.

In the case of insolvency at the time of payment, the debtor is granted a respite. [VII.6.6] If the debtor alleges insolvency, he or she is to make an oath and be released, [VII.6.7] unless it is known beforehand that the debtor has wealth, in which case the claim will not be accepted without evidence.	وَإِنْ كَانَ حَالًّا عَلَى مُعْسِرٍ، وَجَبَ إِنْظَارُهُ. وَإِنِ ادَّعَى الإِعْسَارَ، حُلِّفَ، وَخُلِّيَ سَبِيْلُهُ، إِلَّا أَنْ يُعْرَفَ لَهُ مَالٌ قَبْلَ ذٰلِكَ، فَلَا يُقْبَلُ قَوْلُهُ، إِلَّا بِبَيِّنَةٍ.

[VII.6.6] Allah said:

{وَإِن كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَن تَصَدَّقُوا خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ.}

{And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew.} (al-Baqarah 2:280)

[VII.6.7] If it is known that the debtor is insolvent, then there is no reason to imprison him or her, because imprisonment is warranted only when collecting a debt from a solvent person, or to confirm his or her insolvency. A solvent debtor is not likely to prefer imprisonment over paying back the creditors.

If the debtor is solvent, he or she has to make the due payment, but if the debtor refuses, he or she is to be jailed until full payment of the debt. [VII.6.8]	وَإِنْ كَانَ مُوْسِرًا، لَزِمَهُ وَفَاؤُهُ، فَإِنْ أَبَى، حُبِسَ حَتَّى يُوَفِّيَهُ.

[VII.6.8] The Messenger of Allah (SA) said:

«لَيُّ الْوَاجِدِ يُحِلُّ عِرْضَهُ وَعُقُوبَتَهُ.»

"The procrastination of the solvent makes their reputation violable (that is, one may complain against them) and warrants their punishment." (D – from 'Amr ibn ash-Shareed, from his father; Ibn Ḥajar: S)

If the debtor's wealth is not enough to pay the debt fully, and his or her creditors have asked the judge to interdict him or her, [VII.6.9] the judge has to consent to their request.	فَإِنْ كَانَ مَالُهُ لَا يَفِيْ بِدَيْنِهِ كُلِّهِ، فَسَأَلَ غُرَمَاؤُهُ الْحَاكِمَ الْحَجْرَ عَلَيْهِ، لَزِمَهُ إِجَابَتُهُمْ.

[VII.6.9] Place the debtor's property under legal seizure and prevent him or her from disposing of it.

In that case, the debtor is not permitted to dispose of his or her money, [VII.6.10] and his or her legal declarations regarding it [VII.6.11] are not accepted.	فَإِذَا حَجَرَ عَلَيْهِ، لَمْ يَجُزْ تَصَرُّفُهُ فِيْ مَالِهِ، وَلَمْ يُقْبَلْ إِقْرَارُهُ عَلَيْهِ.

[VII.6.10] Because this money will be used by the judge to pay the person's debts.

[VII.6.11] An acknowledgment after interdiction does not allow a new claimant to share in the assets reserved for the existing creditors. It may nevertheless establish a debt in the debtor's own liability, recoverable after the interdiction is lifted. This protects the existing creditors against collusive claims without extinguishing a genuine obligation.

The judge takes charge of paying the person's debts. • He starts by paying compensation for a crime committed by the debtor's slave; he would pay to the victim the least of two: either compensation or the value of the perpetrator. • Then the judge would pay the creditor who has a security (rahn) whichever is the least, either the debt or the proceeds from selling the pledged property. [VII.6.12] As for the rest of the debt, the creditor will be treated like the rest of the creditors. [VII.6.13] • When someone [who sold something to the now bankrupt debtor and never received payment] finds [with that debtor] his or her [1] very same property which he or she sold, [2] with no part of it lost or destroyed, and [3] it did not	وَيَتَوَلَّى الْحَاكِمُ قَضَاءَ دَيْنِهِ. • وَيَبْدَأُ بِمَنْ لَهُ أَرْشُ جِنَايَةٍ مِنْ رَقِيقِهِ فَيَدْفَعُ إِلَى الْمَجْنِيِّ عَلَيْهِ أَقَلَّ الأَمْرَيْنِ مِنْ أَرْشِهَا أَوْ قِيمَةِ الْجَانِي. • ثُمَّ بِمَنْ لَهُ رَهْنٌ، فَيَدْفَعُ إِلَيْهِ أَقَلَّ الأَمْرَيْنِ مِنْ دَيْنِهِ أَوْ ثَمَنِ رَهْنِهِ، وَلَهُ أُسْوَةُ الْغُرَمَاءِ فِي بَقِيَّةِ دَيْنِهِ. • ثُمَّ مَنْ وَجَدَ مَتَاعَهُ الَّذِي بَاعَهُ [-1] بِعَيْنِهِ [-2] لَمْ يَتْلَفْ بَعْضُهُ [-3] وَلَمْ يَزِدْ زِيَادَةً مُتَّصِلَةً [-4] وَلَمْ يَأْخُذْ مِنْ ثَمَنِهِ شَيْئًا، فَلَهُ أَخْذُهُ. لِقَوْلِ النبي ﷺ:«مَنْ أَدْرَكَ مَتَاعَهُ بِعَيْنِهِ عِنْدَ إِنْسَانٍ قَدْ أَفْلَسَ، فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ.» • وَيُقَسَّمُ الْبَاقِي بَيْنَ الْغُرَمَاءِ عَلَى قَدْرِ دُيُونِهِمْ.

appreciate in a way inseparable from the original capital, [VII.6.14] and [4] the creditor had not received any payment at all, it is the creditor's right to take it. [VII.6.15] The Prophet (SA) said, "If a creditor finds the exact property with a bankrupt [debtor], he or she has more right to it than anyone else." [VII.6.16] • The remainder is to be divided among the creditors in proportion to their debts. [VII.6.17]	

[VII.6.12] The pledged property is sold, and the secured creditor has priority in its proceeds up to the amount of the debt. Any surplus joins the funds for the other creditors; any unpaid balance of the secured debt shares with them proportionately.

[VII.6.13] If the security the creditor has is less than the loan, he or she will be treated like the rest of the creditors regarding the difference. So if the creditor is entitled to $100 and the security sells for $70, he or she receives the $70 and shares proportionately with the other creditors for the remaining $30. So if each one of the creditors gets 80% of their entitlements, this particular creditor will get $24 out of that $30.

[VII.6.14] That is like a cow gaining weight. The increase here cannot be separated from the capital.

[VII.6.15] (A) + (+M, +S) recognize the basic right to reclaim the goods, but their conditions differ: (M) permits returning the partial payment and reclaiming the goods, while (S) permits reclamation despite an inseparable increase.

In addition to the conditions mentioned here (for a creditor to be more entitled to his or her property that was found in the possession of the debtor), there is another condition according to (A/SM): the debtor must be alive, because the Prophet (SA) said:

«وَإِنْ مَاتَ الْمُشْتَرِي فَصَاحِبُ الْمَتَاعِ أُسْوَةُ الْغُرَمَاءِ.»

"If he or she (the debtor) has died, then the owner of the found property shall be treated like the rest of the creditors." (D – from Abu Hurayrah)

[VII.6.16] (Ag – from Abu Hurayrah)

[VII.6.17] They shall not be entitled to more than what they find in the debtor's possession at the time of his or her bankruptcy.

"A man incurred a huge loss in a deal of fruits he bought during the time of the Messenger of Allah (SA), so his debt became very large.

«أُصِيبَ رَجُلٌ في عَهْدِ رسول اللَّهِ ﷺ في ثِمَارٍ ابتاعها فَكَثُرَ دَيْنُهُ فقال رسول اللَّهِ ﷺ تَصَدَّقُوا عليه فَتَصَدَّقَ الناس عليه فلم يَبْلُغْ ذلك وَفَاءَ دَيْنِهِ فقال رسول اللَّهِ ﷺ خُذُوا ما وَجَدْتُمْ وَلَيْسَ لَكُمْ إلا ذلك.»

The Messenger of Allah (SA) ordered: Donate to him. The people did, but it still did not cover his debts, so the Messenger of Allah (SA) said [to his creditors]: Take what you find, and you are not entitled to anything else." (M – from Abu Sa'eed al-Khudri)

Note: if the debtor later acquired wealth, the creditors will be entitled to their rights. (A) + (+H, +M, +S)

The expenses of the bankrupt debtor and his or her dependents are to be paid from the debtor's money until distribution [of the debtor's money amongst the creditors] is over. [VII.6.18]	وَيُنْفَقُ عَلَى الْمُفْلِسِ وَعَلَى مَنْ تَلْزَمُهُ مُؤْنَتُهُ مِنْ مَالِهِ إِلَى أَنْ يُقْسَمَ.

[VII.6.18] This is when the debtor's earnings after the interdiction are not sufficient for the sustenance of his or her family. In this case, the deficit is covered from the seized money until it is distributed amongst the creditors. This is because the Messenger of Allah (SA) said, concerning spending:

«ابْدَأْ بِنَفْسِكَ.»

"Start with yourself." (M – from Jâbir)

He also said:

«وَابْدَأْ بِمَنْ تَعُولُ.»

"And start with those under your care." (Ag – from Ḥakeem ibn Ḥizâm)

If [the bankrupt debtor] was found, by the testimony of one witness, to be entitled to some property, and he or she refused to make an oath [to acquire it], his creditors are not allowed to make an oath. [VII.6.19]	وَإِنْ وَجَبَ لَهُ حَقٌّ بِشَاهِدٍ فَأَبَى أَنْ يَحْلِفَ، لَمْ يَكُنْ لِغُرَمَائِهِ أَنْ يَحْلِفُوْا.

[VII.6.19] If the debtor is entitled to some money, and there is only one witness to this, then he or she may take an oath, in addition to the one witness, and the money will be transferred to him or her. However, in this case, it will be also under legal seizure, and the creditors will be entitled to it. If the debtor refuses to take an oath, he or she cannot be forced to take it, and his or her creditors cannot take an oath that the money belongs to the debtor.

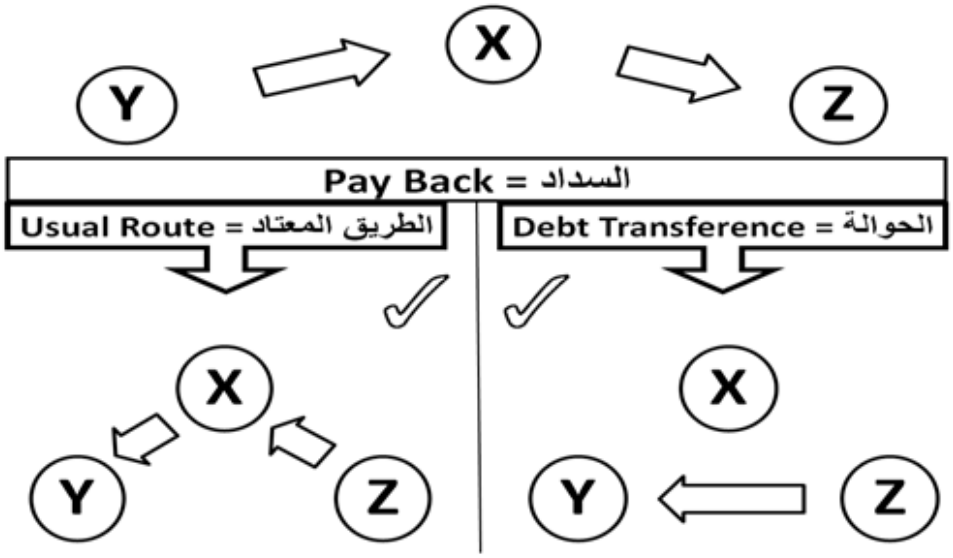
[VII.7] Chapter on Debt Transference (*Ḥawâlah*) and Guarantor-ship (*Ḍamân*)

بَابُ الْحَوَالَةِ وَالضَّمَانِ

When a creditor agrees to be referred (for collection) to someone who owes the debtor an equal sum, the debtor becomes exempt. [VII.7.1] If [a creditor] is referred to a solvent debtor, he or she must accept the transference. [VII.7.2] This is because the Prophet (SA) said, “If you are referred to a solvent person (for repayment), you should agree.” [VII.7.3]	وَمَنْ أُحِيْلَ بِدَيْنِهِ عَلَى مَنْ عَلَيْهِ مِثْلُهُ، فَرَضِيَ، فَقَدْ بَرِئَ الْمُحِيْلُ. وَمَنْ أُحِيْلَ عَلَى مَلِيْءٍ، لَزِمَهُ أَنْ يَحْتَالَ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «إِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيءٍ، فَلْيَتْبَعْ.»

[VII.7.1] Debt transference is permissible by consensus.

If X owes money to Y, and Z owes a similar amount or more to X, X may ask Y to collect his or her dues from Z. This way, X is relieved of the burden of collecting his or her dues and paying Y back.



(A): If Z is solvent and not delinquent, then Y must accept such transference of debt. However, for the debt transference to be valid, the two debts must match in currency or commodity, description, and maturity, and the debt that Z owes X must be a binding one that is not subject to annulment.

(-H, -M, -S): It is only recommended (not required) that Y accept the transference. The command in the hadith is a recommendation, because Y is entitled to a full payment back from X and cannot be forced to give up that right.

[VII.7.2] According to (A), the creditor's consent is not required for a valid transference to a solvent, non-delinquent debtor who can be brought before a judge. The original debtor is discharged by the valid transference itself. The creditor may still challenge whether these conditions have been met, and a judge will resolve that dispute. The majority require the creditor's consent and regard acceptance of transference to a solvent debtor as recommended.

[VII.7.3] (Ag – from Abu Hurayrah)

[Guarantee of Payment]	[الضمان]
If a guarantor of payment guarantees the debt of a debtor, the latter does not become exempt; [VII.7.4] both the debtor and the guarantor are indebted. The creditor has the right to ask either of them for the payment. [VII.7.5] • If the creditor takes the due payment in full from the warranted person [the debtor], or if the creditor acquits the debtor, the guarantor becomes clear of the liability. • If the creditor acquits the guarantor, the original debtor is not acquitted, and	وَإِنْ ضَمِنَهُ عَنْهُ ضَامِنٌ، لَمْ يَبْرَأْ، وَصَارَ الدَّيْنُ عَلَيْهِمَا. وَلِصَاحِبِهِ مُطَالَبَةُ مَنْ شَاءَ مِنْهُمَا. • فَإِنِ اسْتَوْفَى مِنَ الْمَضْمُوْنِ عَنْهُ، أَوْ أَبْرَأَهُ، بَرِئَ ضَامِنُهُ. • وَإِنْ أَبْرَأَ الضَّامِنَ، لَمْ يَبْرَأِ الأَصِيْلُ. • وَإِنِ اسْتَوْفَى مِنَ الضَّامِنِ، رَجَعَ عَلَيْهِ.

• If the creditor takes the due payment in full from the guarantor, the guarantor demands the money from the original debtor.	

[VII.7.4] Until the debt is actually paid off by one of them. The Messenger of Allah (SA) said:

«نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ».

"The soul of the believer is suspended (from entering paradise) because of his or her debt until it is paid off." (T – from Abu Hurayrah; T: S)

[VII.7.5] The guarantor is now indebted because he or she assumed that liability. The Messenger of Allah (SA) said:

«الزَّعِيمُ غَارِمٌ.»

"The guarantor shall be liable." (D, T – from Abu Umâmah; T: S)

The guarantor's right to recover from the debtor assumes that he paid with the intention of seeking reimbursement; a payment made as a donation is not recoverable. (A)

[Guarantee of Appearance]	[الكفالة]
If someone guarantees the appearance of the debtor, and the latter does not show, the guarantor of appearance becomes responsible for paying the debt. [VII.7.6] If the debtor dies, the guarantor of appearance becomes clear of liability. [VII.7.7]	وَمَنْ كَفَلَ بِإِحْضَارِ مَنْ عَلَيْهِ دَيْنٌ فَلَمْ يُحْضِرْهُ، لَزِمَهُ مَا عَلَيْهِ. فَإِنْ مَاتَ، بَرِئَ كَفِيْلُهُ.

[VII.7.6] In case the debtor does not show up on the due date.

[VII.7.7] Since the guarantor of appearance (kafeel) only assumed responsibility to ensure the presence of the debtor, not the payment of the debt.

[VII.8] Chapter on Mortgaging and Security (*Rahn*)

بَابُ الرَّهْنِ

What is permissible to sell is permissible to mortgage (use as security), and what is not [permissible to sell] is not [permissible to mortgage]. [VII.8.1]	وَكُلُّ مَا جَازَ بَيْعُهُ، جَازَ رَهْنُهُ، وَمَا لَا، فَلَا.

[VII.8.1] For example, one may not use wine or idols as security.

Mortgaging is binding only after the mortgage/security has been received: by transferring it if it is a movable property, and by allowing the mortgagee full control of it if it is an immovable one. [VII.8.2] If the mortgagee's trustee receives the mortgage/security, it is as if the mortgagee has received it himself or herself.	وَلَا يَلْزَمُ إِلَّا بِالْقَبْضِ، وَهُوَ نَقْلُهُ إِنْ كَانَ مَنْقُولاً، وَالتَّخْلِيَةُ فِيْمَا سِوَاهُ. وَقَبْضُ أَمِيْنِ الْمُرْتَهِنِ يَقُوْمُ مَقَامَ قَبْضِهِ.

[VII.8.2] This means that the mortgagee is not entitled to the mortgage/security, even after the mortgagor has agreed to mortgage it, until he or she actually receives it. (A) + (+H, +S). According to (-M), the pledge becomes binding by the contract, before delivery, and the mortgagor may be compelled to deliver the pledged property.

The mortgage/security is a trust with the mortgagee or with his or her trustee. The mortgagee or trustee is not held responsible for it unless he or she transgresses (*ta'addin)*. [VII.8.3]	وَالرَّهْنُ أَمَانَةٌ عِنْدَ الْمُرْتَهِنِ، أَوْ أَمِيْنِهِ لَا يَضْمَنُهُ إِلَّا أَنْ يَتَعَدَّى.

[VII.8.3] What is meant by 'transgression' (ta'addin) here is causing damage or loss, intentionally or due to carelessness.

The mortgagee should not make any benefit out of the property which has been	وَلَا يَنْتَفِعُ بِشَيْءٍ مِنْهُ، إِلَّا مَا كَانَ مَرْكُوْبًا أَوْ

used as security, except if it is a riding or milk animal; then he or she may ride it or milk it for [only] as much as the expense of forage. [VII.8.4]	مَحْلُوْبًا فَيُرْكَبُ وَيُحْلَبُ بِقَدْرِ الْعَلَفِ.

[VII.8.4] The mortgagee may not use the security without the mortgagor's permission, except that (A) permits riding or milking a pledged animal in return for its maintenance, limited to the value of that maintenance. This exception does not extend to every use of property merely because it requires maintenance. When the pledge secures a loan, permission does not make free use or use at a preferential rent permissible; a separate lease at the normal rent is permissible. This is one of the peculiar positions (mufradât) of the Ḥanbali madh-hab. Their proof is that the Messenger of Allah (SA) said:

«الرَّهْنُ يُرْكَبُ بِنَفَقَتِهِ إِذَا كَانَ مَرْهُونًا، وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهِ إِذَا كَانَ مَرْهُونًا، وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ النَّفَقَةُ.»

> *"A pledged riding animal may be ridden in return for its maintenance, and the milk of a pledged milch animal may be drunk in return for its maintenance. Whoever rides or drinks must bear the maintenance." (B – from Abu Hurayrah)*

The majority made the mortgagor responsible for the maintenance of the security, and did not allow the mortgagee to ride it or milk it in exchange for sustaining it. They had counter-arguments to this hadith, including the argument that the security is still owned by the mortgagor, by agreement, and the Prophet (SA) said:

«لَا يَحِلُّ مَالُ امْرِئٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ».

> *"It is not permissible to take a person's wealth unless he or she gives it willingly." (A; al-Albâni: S)*

The Ḥanbalis, however, found the hadith of Abu Hurayrah to be clear proof for their conclusion.

The mortgagor is entitled to the gain from the yield, earnings and growth of the security, [VII.8.5] but the gain remains as security with it. [VII.8.6] The mortgagor is to bear the expenses of the security, such as those of maintenance, storing, and shrouding in case of death [of a slave].	وَلِلرَّاهِنِ غُنْمُهُ مِنْ غَلَّتِهِ، وَكَسْبِهِ وَنَمَائِهِ لَكِنَّهُ يَكُوْنُ رَهْنًا مَعَهُ. وَعَلَيْهِ غُرْمُهُ مِنْ مُؤْنَتِهِ، وَمَخْزَنِهِ، وَكَفَنِهِ إِنْ مَاتَ.

[VII.8.5] (A) + (+H, +M, +S)

[VII.8.6] The appreciation of the security could be in the form of yield (like the crops of a farm), earnings (like the rent of a beast of mount or car), growth (like the increase in weight, or reproduction in the case of livestock). All forms of increase belong to the mortgagor, but they will remain with the original security in the possession of the mortgagee until the security is returned to the mortgagor. (A). (H) includes natural increases, such as offspring and fruit, but excludes earnings and rent. (M) includes offspring and palm offshoots, but generally excludes fruit, milk, and rent unless stipulated. According to (S), later separable increases do not form part of the security.

If the mortgagor destroys the security or removes it from the pledge, as in the case of manumission of a slave used as security or de-commodification through birth, [VII.8.7] then the mortgagor must provide its value as substitute security.	وَإِنْ أَتْلَفَهُ، أَوْ أَخْرَجَهُ مِنَ الرَّهْنِ بِعِتْقٍ أَوِ اسْتِيْلَادٍ، فَعَلَيْهِ قِيْمَتُهُ تَكُوْنُ رَهْنًا مَكَانَهُ.

[VII.8.7] That is, when a slave woman gave birth to the child of her master. As mentioned earlier, classical Islamic law was formulated when slavery was still practiced in Muslim (and non-Muslim) lands. It was permitted for a man to have sexual relations with this slave woman, though letting anyone else have sexual access to her was forbidden. When the master fathered a child with her, she became non-sellable. She would be called umm al-walad (mother of the child), and would stay with the master until his death, at which time she was freed – if the master had not already freed her. The

Messenger of Allah (SA) encouraged people to educate, free, and marry their slave women:

«ثَلَاثَةٌ يُؤْتَوْنَ أَجْرَهُمْ مَرَّتَيْنِ الرَّجُلُ تَكُونُ له الْأَمَةُ فَيُعَلِّمُهَا فَيُحْسِنُ تَعْلِيمَهَا وَيُؤَدِّبُهَا فَيُحْسِنُ أَدَبَهَا ثُمَّ يُعْتِقُهَا فَيَتَزَوَّجُهَا فَلَهُ أَجْرَانِ.»

"Three people will have their reward doubled. (One is) a man who owns a slave-girl whom he teaches well and instructs in manners/etiquette, and then he frees her and marries her. (Such a man) shall have two rewards…" (Ag – from Abu Moosâ)

If the damage is caused by someone else [other than the mortgagor], the mortgagor becomes the damager's opponent [in court], and what the mortgagor receives as compensation is then used as the mortgage. [VII.8.8] If the pledged [slave] commits an offense, the victim's claim against the slave takes precedence. If the mortgagor redeems the slave, the pledge remains as before.	وَإِنْ جَنَى عَلَيْهِ غَيْرُهُ فَهُوَ الْخَصْمُ فِيْهِ، وَمَا قَبَضَ بِسَبَبِهِ، فَهُوَ رَهْنٌ. وَإِنْ جَنَى الرَّهْنُ، فَالْمَجْنِيُّ عَلَيْهِ أَحَقُّ بِرَقَبَتِهِ، فَإِنْ فَدَاهُ، فَهُوَ رَهْنٌ بِحَالِهِ.

[VII.8.8] For example, if the security was a car, and someone other than the mortgagee and mortgagor damaged it, the mortgagor will be the one to pursue compensation. After the mortgagor receives it, the compensation will stay with the mortgagee as part of the security.

When the debt becomes due and the mortgagor does not pay it off, the security is sold to settle the debt from its price. The remainder of its price goes to the mortgagor.	وَإِذَا حَلَّ الدَّيْنُ فَلَمْ يُوَفِّهِ الرَّاهِنُ، بِيْعَ، وَوُفِّيَ الْحَقُّ مِنْ ثَمَنِهِ وَبَاقِيْهِ لِلرَّاهِنِ.

If a condition of sale is a security or a guarantor of payment, and the buyer refuses to hand over the security, or the	وَإِذَا شُرِطَ الرَّهْنُ أَوِ الضَّمِيْنُ فِيْ بَيْعٍ، فَأَبَى الرَّاهِنُ أَنْ يُسَلِّمَهُ، أَوْ

guarantor declines to guarantee the payment, then the seller is given the option either of annulling the sale or retaining it without a security or a guarantor of payment.	أَبَى الضَّمِيْنُ أَنْ يَضْمَنَ خُيِّرَ الْبَائِعُ بَيْنَ الْفَسْخِ أَوْ إِقَامَتِهِ بِلَا رَهْنٍ وَلَا ضَمِيْنٍ.

[VII.9] Chapter on Settlements (*Ṣulḥ*) [VII.9.1]

بَابُ الصُّلْحِ

It is permissible for someone [who is owed money] to cancel a portion of a debt or to donate to the opponent [the one who owes him or her money] some of the property in his or her hand, provided that the creditor does not make payment of the rest a condition for the donation or cancellation. [VII.9.2] Likewise, neither party may deny the other party his or her rights for refusing to grant them that acquittal/donation; [VII.9.3] also, the creditor may not cancel some of the delayed debt in return for the debtor paying the rest in advance. [VII.9.4]	وَمَنْ أَسْقَطَ بَعْضَ دَيْنِه أَوْ وَهَبَ غَرِيْمَهُ بَعْضَ الْعَيْنِ الَّتِيْ لَهُ فِيْ يَدِهِ، جَازَ مَا لَمْ يَجْعَلْ وَفَاءَ الْبَاقِيْ شَرْطًا فِي الْهِبَةِ وَالإِبْرَاءِ، أَوْ يَمْنَعْهُ حَقَّهُ إِلَّا بِذٰلِكَ، أَوْ يَضَعْ بَعْضَ الْمُؤَجَّلِ؛ لِيُعَجِّلَ لَهُ الْبَاقِيْ.

[VII.9.1] A settlement (ṣulḥ) is an agreement between two disputant parties that ends their dispute. Reconciliation through settlements is prescribed by the Book of Allah and the Sunnah of His Messenger (SA), as well as by the consensus of the Muslim scholars.

Allah said:

{لَّا خَيْرَ فِي كَثِيرٍ مِّن نَّجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ.}

{No good is there in much of their private conversation, except for those who enjoin charity or that which is right or conciliation [iṣlâḥ] between people…} (an-Nisâ' 4:114)

The Messenger of Allah (SA) said:

«الصُّلْحُ جَائِزٌ بين الْمُسْلِمِينَ إلا صُلْحًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ على شُرُوطِهِمْ إلا شَرْطًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا.»

"Settlements (ṣulḥ) between Muslims are valid, except a settlement that will make haram what is halal or make halal what is haram. Muslims abide by their conditions, except a condition that will make haram what is halal or make halal what is haram." (T – from 'Amr ibn 'Awf; T: ḥasan ṣaḥeeḥ)

In this chapter, the discussion focuses on settlements of financial disputes. Reconciliation is also addressed in the sections of jihad and family laws.

[VII.9.2] For example, if X owes Y $200, Y may clear X of 50% of that debt ($100), as long as Y does not do so on condition that X pays the remainder ($100) at that time or at a certain designated time. According to (a) + (-S), Y may stipulate such a condition.

[VII.9.3] For example, if Y claims that X owes him $200, X may not say, "I will admit to this only if you acquit me from half of it."

[VII.9.4] This is a subject of controversy, as in the previous scenario.

(A) + (+H, +M, +S): It is impermissible because it is the reverse of usury and resembles it in the commodification of time.

(a) + (-s, -t) : It is permissible, and it is not like usury because usury entails an increase in compensation in exchange for deferment, whereas here it is the opposite.

It is considered lawful to take gold in place of silver, and vice versa, if one takes it according to its price on that particular day [VII.9.5] and if the two parties finish the exchange in the same sitting.	وَيَجُوْزُ اقْتِضَاءُ الذَّهَبِ عَنِ الْوَرِقِ، وَالْوَرِقِ عَنِ الذَّهَبِ إِذَا أَخَذَهَا بِسِعْرِ يَوْمِهَا، وَتَقَابَضَا فِيْ الْمَجْلِسِ.

[VII.9.5] The day the payment is made, not the day of the initial transaction. What is due is the gold, so either it is returned or its value on the day of payment is given instead. This is based on the following hadith:

Ibn ‘Umar (RAHUMA) said: We used to sell camels in al-Baqee‘ for dirhams (silver coins) but accept dinars (gold coins) instead, and we would sell for dinars but accept dirhams instead. The Prophet (SA) said:

«لَا بَأْسَ أَنْ تَأْخُذَهَا بِسِعْرِ يَوْمِهَا مَا لَمْ تَفْتَرِقَا وَبَيْنَكُمَا شَيْءٌ.»

“There is nothing wrong with taking it based on the current price, so long as you do not separate with something still outstanding.” (A, D, N; Aḥmad Shâkir: S)

When someone becomes indebted to another, and the defendant does not know of [remember] it, they may [strive to] come to a settlement. [VII.9.6]	وَمَنْ كَانَ لَهُ عَلَى غَيْرِهِ دَيْنٌ لَا يَعْلَمُهُ الْمُدَّعَى عَلَيْهِ، فَصَالَحَهُ عَلَى شَيْءٍ، جَازَ.

[VII.9.6] Due to the virtue of reconciliation through settlements, the majority (H, +M, +A) allowed the so called *ṣulḥ ‘alâ inkâr*, which means reconciliation despite negation. In this case, one party will agree to a settlement without admitting to the claim of the other party.

In modern times, companies may agree to a settlement without admitting wrongdoing. Such a settlement may resolve the civil claims covered by the agreement; it does not, by itself, prevent criminal prosecution.

If one of them is intentionally lying, then the settlement is invalid for him or her. [VII.9.7]	فَإِنْ كَانَ أَحَدُهُمَا يَعْلَمُ كَذِبَ نَفْسِهِ، فَالصُّلْحُ بَاطِلٌ فِيْ حَقِّهِ.

[VII.9.7] So the money the person acquires (or avoids paying) will not be considered halal for him or her, and the person will be guilty of the sin of wronging someone.

If someone is owed something by another person, and neither knows its amount, they may [strive to] come to a settlement.	وَمَنْ كَانَ لَهُ حَقٌّ عَلَى رَجُلٍ لَا يَعْلَمَانِ قَدْرَهُ، فَاصْطَلَحَا عَلَيْهِ، جَازَ.

[VII.10] Chapter on Agency (*Wakâlah*)

بَابُ الْوَكَالَةِ

[Rules for Agency (*Wakâlah*)]	[حكم الوكالة]
Commissioning an agent (*tawkeel*) [VII.10.1] is permissible [VII.10.2] in all situations in which deputation (*niyâbah*) [VII.10.3] is permissible [VII.10.4] and whenever the authorizer and the agent are eligible for this. [VII.10.5]	وَهِيَ جَائِزَةٌ فِيْ كُلِّ مَا تَجُوْزُ النِّيَابَةُ فِيْهِ إِذَا كَانَ الْمُوَكِّلُ وَالْوَكِيْلُ مِمَّنْ يَصِحُّ ذٰلِكَ مِنْهُ.

[VII.10.1] The act of commissioning an agent (tawkeel) occurs when one party, X, authorizes (yuwakkil) another party, Y, to act on his or her behalf concerning certain matters where that is possible. X is the muwakkil (authorizer/principal), and Y is the wakeel (authorized agent). The whole transaction is called agency (wakâlah).

[VII.10.2] Proofs on the permissibility of commissioning an agent:

Allah said:

...{ فَابْعَثُوا أَحَدَكُم بِوَرِقِكُمْ هَٰذِهِ إِلَى الْمَدِينَةِ فَلْيَنظُرْ أَيُّهَا أَزْكَىٰ طَعَامًا فَلْيَأْتِكُم بِرِزْقٍ مِّنْهُ ...}

{...So send one of you with this silver coin of yours to the city and let him look to which is the best of food and bring you provision from it...} (al-Kahf 18:19)

Also,

«روى البخاري عَنْ عُرْوَةَ أَنَّ النَّبِيَّ ﷺ أَعْطَاهُ دِينَارًا يَشْتَرِي لَهُ بِهِ شَاةً فَاشْتَرَى لَهُ بِهِ شَاتَيْنِ فَبَاعَ إِحْدَاهُمَا بِدِينَارٍ وَجَاءَهُ بِدِينَارٍ وَشَاةٍ فَدَعَا لَهُ بِالْبَرَكَةِ فِي بَيْعِه».

"The Messenger of Allah (SA) gave 'Urwah ibn al-Ja'd al-Bâriqi (RA) one dinar to buy a sheep, so he bought two sheep for him

with the money. Then he sold one of the sheep for one dinar, and brought one dinar and a sheep to the Prophet (SA). On that, the Prophet (SA) invoked Allah to bless him in his deals." (B)

In this verse and this hadith, there is one person acting on behalf of another.

The Prophet (SA) also delegated to 'Ali the slaughtering of the rest of the camels he offered during his Hajj. This is an example of deputation in an act of worship.

Rationally, there is a pressing need for this type of contract, since human beings have limited capacity, and they need the assistance of others in conducting their affairs.

In *al-Mughni*, Ibn Qudâmah reported consensus on the permissibility of commissioning an agent.

[VII.10.3] Niyâbah is acting on behalf of someone else. Some considered wakâlah and niyâbah to be synonymous. However, there are some subtle differences. Niyâbah is wider in scope. A child, an insane person, or someone with no legal capacity will have someone designated to act on his or her behalf (*bi-n-niyâbah 'anhu*) even though the former cannot authorize this. Also, one may make Hajj on behalf of someone (bi-n-niyâbah 'anhu) without the latter asking for it or authorizing the former to do it.

[VII.10.4] Deputation is not permissible in certain acts of worship, such as in the entirely bodily acts of ablution (wuḍoo') and praying. In some acts, it is permissible, such as in distributing charity or slaughtering. A separate issue is gifting the reward of Qur'anic recitation to another person; this is allowed by (A) + (+H, +m, +s, +t).

[VII.10.5] In general, the authorizer and the agent need to be sane adults who are eligible to conduct the transaction themselves. Therefore, a woman cannot be given power of attorney (that is, be commissioned to be an agent) to act as a guardian (wali) of another woman in marriage, since she cannot be a guardian in the first place. Also, a man who is not the primary guardian (like a brother, when the father is available) may not make another an agent to act on his behalf concerning a matter over which he has no authority.

N.B.: In some exceptional cases, the agent may not be originally eligible to conduct the transaction. For instance, a woman may not divorce herself or other women; however, she may do so (divorce herself) if authorized by the husband.

There is consensus that a non-Muslim can be an agent of the Muslim in whatever they have the legal capacity to perform.

[Type of Contract]	[نوع العقد]
It is a non-binding legal contract [VII.10.6] that becomes invalid when either one of them [the authorizer or his agent] dies, [VII.10.7] annuls the contract, becomes insane, or is interdicted (*ḥajr*) [VII.10.8] because of foolishness/recklessness (*safah*). This is also the case in all [non-binding] contracts such as partnership, watering trees for part of the crop, sharecropping, per-job wages (*ja'âlah*) [VII.10.9] and contests. [VII.10.10]	وَهِيَ عَقْدٌ جَائِزٌ يَبْطُلُ بِمَوْتِ كُلِّ وَاحِدٍ مِنْهُمَا وَفَسْخِهِ لَهَا، وَجُنُوْنِهِ، وَالْحَجْرِ عَلَيْهِ لِسَفَهِهِ. وَكَذٰلِكَ الشَّرِكَةُ وَالْمُسَاقَاةُ وَالْمُزَارَعَةُ وَالْجَعَالَةُ وَالْمُسَابَقَةُ.

[VII.10.6] Contracts are of two types: Binding (wâjib), such as sale contracts after separation, and non-binding (jâ'iz), such as wakâlah, where each party has the right at any time to end it.

[VII.10.7] One may still commission another to execute one's bequests after one's death, collect one's properties, pay off one's debts, and look after one's children. This commissioned person will be called the waṣiy (executor of the bequests).

[VII.10.8] As mentioned earlier, interdiction (ḥajr) means having one's property under legal seizure and being prevented from disposing of it.

[VII.10.9] Ja'âlah is when a certain compensation is set for finishing a particular piece of work; it will be discussed further in a later chapter.

[VII.10.10] The contest contract is generally revocable. However, once one contestant gains a lead, the other may not cancel it; the contestant who is ahead may do so.

[Authority of the Agent]	[صلاحيات الوكيل]
The agent is authorized only in whatever is covered, verbally or by custom, by the permission (given to him or her in the contract). [VII.10.11] The agent is not to authorize someone else, [VII.10.12] or to buy from himself (or herself) or sell to himself (or herself) [VII.10.13] without the approval of his (or her) authorizer.	وَلَيْسَ لِلْوَكِيْلِ أَنْ يَفْعَلَ إِلَّا مَا تَنَاوَلَهُ الإِذْنُ لَفْظًا أَوْ عُرْفًا. وَلَيْسَ لَهُ تَوْكِيْلُ غَيْرِهِ وَلَا الشِّرَاءُ مِنْ نَفْسِهِ وَلَا الْبَيْعُ لَهَا، إِلَّا بِإِذْنٍ.

[VII.10.11] In the Ḥanbali madh-hab, people's customs (‘urf) have an important place in the fiqh of financial transactions. In *Majmoo‘ al-Fatâwâ*, Shaykh al-Islâm Ibn Taymiyah mentions:

◘ الإذن العرفي في الإباحة أو التمليك أو التصرف بطريق الوكالة كالإذن اللفظي.

“The customary [implied] permission for granting rights, ownership or control via proxy is equivalent to verbal permission.”

[VII.10.12] If the job is customarily known to be beneath the agent or beyond his or her capacity to handle alone, then he or she may authorize someone else. However, the agent may not do so if he or she was explicitly barred from doing so. Likewise, the agent may not do so if he or she is known to be capable of doing the job, and if it is not beneath him or her to carry it out himself or herself. This is the stronger position in the Ḥanbali madh-hab, although there is another opinion in the madh-hab that allows the agent to authorize others as long as he or she was not explicitly barred from doing so. (*al-Inṣâf* by al-Mardâwi)

[VII.10.13] That is, selling the property of the authorizer on the authorizer's behalf to himself or herself.

If he or she (the agent) buys something for another without the latter's approval, it becomes a valid transaction if the latter agrees to it. Otherwise, it is binding on the one who bought it. [VII.10.14]	وَإِنِ اشْتَرَى لِإِنْسَانٍ مَا لَمْ يَأْذَنْ لَهُ فِيْهِ، فَأَجَازَهُ، جَازَ، وَإِلَّا لَزِمَ مَنِ اشْتَرَاهُ.

[VII.10.14] For example, X knows that Y wants to buy a car and buys one on X's own contractual liability, without naming Y as the purchaser or making Y's specified property the contractual price. If Y subsequently approves, Y takes the car; otherwise, the purchase binds X. This limited case is accepted in (A), whereas disposing of another person's property without authorization is subject to the broader disagreement described below.

This type of transaction is called *taṣarruf al-fuḍooli* (transaction by an unauthorized agent). The hadith of 'Urwah above is a proof of its permissibility, since he was authorized to buy only, but not to sell what he bought. (Please recall that, in the hadith of 'Urwah, the Prophet [SA] gave him one dinar to buy a sheep, and he bought two sheep for him with the money. Then he sold one of the sheep for one dinar, and brought one dinar and a sheep to the Prophet [SA].)

In general, (A) + (+S) do not validate the transaction of an unauthorized agent, while (a) + (-H, -M, -t) do, contingent upon the approval of the person on whose behalf the transaction was conducted. (Note that there is disagreement within (H) whether this validation applies to selling only or both selling and buying.)

(A) argued that 'Urwah may already have been a general agent authorized to make that sale.

[Liability (*Ḍamân*) of the Agent] The agent is a trustee [VII.10.15] who bears no liability [VII.10.16] in case of damage as long as he or she does not transgress. The agent's word is legally trusted concerning refunding, [VII.10.17]	**[ضمان الوكيل]** وَالْوَكِيْلُ أَمِيْنٌ، لَا ضَمَانَ عَلَيْهِ فِيْمَا يَتْلَفُ، إِذَا لَمْ يَتَعَدَّ، وَالْقَوْلُ قَوْلُهُ فِيْ الرَّدِّ وَالتَّلَفِ وَنَفْيِ التَّعَدِّيْ.

damage, and denial of transgression. [VII.10.18]	

[VII.10.15] Whenever someone is considered a trustee, like here and in the case of the mortgagee, the person is not liable for the loss of or damage to the property he or she is entrusted with unless the person transgresses or acts recklessly.

[VII.10.16] The word *ḍamân* in this context means 'liability', whereas in earlier contexts it referred to a 'guarantee of payment'.

[VII.10.17] If the agent claims that he or she returned the property to its owner. (A/SM): a paid agent's claim of returning the property will not be accepted without proof.

[VII.10.18] If the principal disputes the agent's account of loss or damage or alleges transgression or negligence, the agent's statement is accepted with an oath unless contrary evidence is established. An unpaid agent's claim of returning the property to the principal is likewise accepted with an oath; the paid agent's claim of return is subject to the qualification in [VII.10.17].

If the agent pays a debt [VII.10.19] without evidence, he or she becomes liable [VII.10.20] unless the payment is made in the presence of the authorizer.	وَإِذَا قَضَى الدَّيْنَ بِغَيْرِ بَيِّنَةٍ، ضَمِنَ، إِلَّا أَنْ يَقْضِيَهُ بِحَضْرَةِ الْمُوَكِّلِ.

[VII.10.19] That the authorizer owed to someone.

[VII.10.20] If the creditor denies getting paid.

[Compensation for the Agent] It is lawful to give power of attorney (that is, to authorize an agent) with or without compensation. If the agent was told to sell something for ten and that any excess is	**[أجر الوكيل]** وَيَجُوْزُ التَّوْكِيْلُ بِجُعْلٍ وَبِغَيْرِهِ، وَلَوْ قَالَ: بِعْ هَذَا بِعَشَرَةٍ، فَمَا زَادَ، فَلَكَ، صَحَّ.

for the agent, it would be valid. [VII.10.21]	

[VII.10.21] (-H, -M, -S) do not allow this transaction due to the uncertainty of the compensation. Aḥmad considered it to be like muḍârabah (a permissible type of limited partnership, discussed below). The authorizer may also name a certain amount or a percentage of the profit.

(t): The agent may not make additional profit from his or her work over what is agreed upon. Also, if the agent commissioned another to do the work, the second agent is entitled to the entire compensation promised to the first.

[VII.11] Chapter on Partnerships and Companies (*Sharikât)*

بَابُ الشَّرِكَةِ

[Types of Partnerships/Companies] [VII.11.1]	[أنواع الشركات]
There are four types: [VII.11.2]	وَهِيَ عَلَى أَرْبَعَةِ أَضْرُبٍ:

[VII.11.1] Partnership and forming companies is generally permissible according to the Book of Allah, the Sunnah of His Messenger (SA), and the consensus of the Ummah (*al-Mughni*).

Here are some of the reasons and points of wisdom behind this permission:

- It may be that one person has capital while another has a skill, but each one of them lacks the other. By making a muḍârabah partnership (#3 below), the money may be invested in the skill.

- Many people may have small amounts of capital that cannot be used for larger ventures. By combining their capital, they are able to embark on such ventures together.

Partnerships among people will be blessed by Allah as long as they do not cheat or deceive one another. The Messenger of Allah (SA) reported that Allah said:

«أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنِهِمَا».

> *"I am the third of the two partners as long as none of them cheats his or her companion. If one cheats, I leave their partnership." (D, H – from Abu Hurayrah; as-Suyooṭi: S)*

[VII.11.2] There are two major types of partnership: those involving properties and those involving contracts. The four kinds of partnerships/companies discussed here are 'contract partnerships' (sharikat al-'aqd). A property partnership (sharikat al-milk) is when two or more

people co-own a property. In this partnership, each one is responsible for his or her share, and they do not act on behalf of one another. Property partnerships are not discussed in this book.

Ibn Qudâmah (may Allah bestow mercy on him) did not mention a fifth type of contract partnership called mufâwaḍah (sharing full authority) where each one of the partners allows his or her companion full authority to manage and share all the profits they make and liabilities they incur. It is not permissible according to (-S). (-H, -M) generally allow mufâwaḍah with some differences between them over its conditions. It is controversial in the Ḥanbali madh-hab. The authorized view among the latter generations is its validity as long as it does not include unusual profits, such as inheritance and finding treasures, and unusual liabilities, such as the indemnity of injuries.

1. *'Inân* (full rein) partnership: This is partnership with money and effort. [VII.11.3]	شَرِكَةُ الْعِنَانِ: وَهِيَ أَنْ يَشْتَرِكَا بِمَالَيْهِمَا وَبَدَنَيْهِمَا.

[VII.11.3] Called 'inân after the bridle of the horse, because the two parties contribute both assets and work, so they are equal – like the bridles of two horses running next to each other in a race. An example of this is when two tailors open a shop, buy the necessary tools, work together and divide the proceeds between themselves.

This type of partnership is generally permissible by consensus, as reported by Ibn Qudâmah in *al-Mughni*.

There are two conditions for the validity of this partnership:

- The assets contributed should be known and present at the inception of the partnership. They should be in the form of currency, not other properties, to avoid confusion at the time of dissolution of the partnership. According to (a) + (-M), the partners may contribute properties, which are evaluated at the inception of partnership.

The profit is divided between them on the basis of an agreed upon percentage of the total profit. The loss will be divided according to their shares in the capital at inception.

2. *Wujooh* (credit) partnership: Partners start the business using their standing (on credit). [VII.11.4]	وَشَرِكَةُ الْوُجُوْهِ: وَهِيَ أَنْ يَشْتَرِكَا فِيْمَا يَشْتَرِيَانِ بِجَاهِهِمَا.

[VII.11.4] In wujooh (credit) partnership, the partners put forth no capital, but they use their reputation with the merchants, buy merchandise on credit and sell it, and divide the profit and loss.

This partnership is permissible according to (A) + (+H) but forbidden according to (-M, -S). (-S) only permitted ʻinân and muḍârabah partnerships because, to them, the subject matter of the partnership must be money. (-M) permitted all partnerships except wujooh, because the subject matter of the partnership in wujooh is neither money nor work. (A) + (+H) allowed wujooh because it comprises agency (wakâlah) and guarantor-ship (*kafâlah*) between the two partners; they are both permissible alone, so they are permissible when combined.

(Note that ʻinân and muḍârabah partnerships are valid by agreement.)

The Division of Profit and Loss in Wujooh

They must agree on dividing the ownership of what they buy on credit into two halves or into percentages (for example, 60% and 40%), and the loss will be according to their shares. As for the profit (Ibn ʻAqeel of the Ḥanbalis, -H): it must also be according to their share. This is so that no one is making profit on what they do not own and are not liable for. (A): They can mutually agree on the division of the profit since one of them may be more credit-worthy than the other, and also because there is work involved in this partnership, not pure capital.

The rulings of ʻinân partnership will generally apply to wujooh partnership.

3. *Muḍârabah* (profit-sharing): *[VII.11.5]* One gives a sum of money for the other to trade with, and the two parties share its profit.	وَالْمُضَارَبَةُ: وَهِيَ أَنْ يَدْفَعَ أَحَدُهُمَا إِلَى الآخَرِ مَالاً يَتَّجِرُ فِيْهِ وَيَشْتَرِكَانِ فِيْ رِبْحِهِ.

[VII.11.5] *Muḍârabah* is usually translated as ‘profit-sharing’ or ‘investment financing’. This is a company where the capital is provided by one of the partners, and the work is provided by another. They mutually agree on the division of profit. In the case of loss, the loss shall be deducted from the profit. If the profit does not cover the losses, the laborer loses only his or her work. The loss of capital is the sole responsibility of the one who provided it, as long as the laborer was not found to have committed transgression or been negligent. If more than one individual provided capital, the loss will be divided among them according to their shares of the capital. By agreement, the loss is divided on this basis in all partnerships.

Partnership can be timed, so they could agree to go into partnership for one year, after which the partnership is automatically dissolved. (*al-Mughni*) Either one of them may end it earlier if there is no harm to the other partner in doing so.

4. *Abdân* (labor) partnership: Partners share profits in legally permitted work, such as crafts, gathering grass, fishing, and the like, in which they all participate. ‘Abdullâh ibn Mas‘ood narrates, “‘Ammâr, Sa‘d, and I became partners in what we would receive [in terms of war captives, who might be kept as slaves or ransomed for money or goods] on the day of [the battle of] Badr. Sa‘d then brought two prisoners, but ‘Ammâr and I did not bring anything.” [VII.11.6], [VII.11.7]	وَشَرِكَةُ الْأَبْدَانِ: وَهِيَ أَنْ يَشْتَرِكَا فِيْمَا يَكْتَسِبَانِ بِأَبْدَانِهِمَا مِنَ الْمُبَاحِ: إِمَّا بِصِنَاعَةٍ، أَوْ احْتِشَاشٍ، أَوِ اصْطِيَادٍ أَوْ نَحْوِهِ، كَمَا رُوِيَ عَنْ عَبْدِ اللهِ بْنِ مَسْعُوْدٍ رضي الله عنه أَنَّهُ قَالَ: «اشْتَرَكْتُ أَنَا وَعَمَّارٌ وَسَعْدٌ فِيمَا نُصِيبُ يَوْمَ بَدْرٍ قَالَ فَجَاءَ سَعْدٌ بِأَسِيرَيْنِ وَلَمْ أَجِئْ أَنَا وَعَمَّارٌ بِشَيْءٍ»

[VII.11.6] (D. ash-Shawkâni: interrupted chain; al-Albâni: W)

During those times it was common practice among many societies, both Muslim and non-Muslim, to consider war captives to be a sort of commodity rightfully taken by the victorious side. In the absence of large prison facilities, this was often their most practical way of dealing with war prisoners, who might still be hostile, and of sparing their lives. (See the appendix on slavery.)

[VII.11.7] Abdân (pl. of *badan*: body) is like ‘inân without contributing capital, so the parties contribute their work and share the income. If the two tailors in ‘inân above did not contribute any capital towards the venture, their partnership would be a company of labor (abdân).

This type of partnership is permissible according to (A) + (+M);

(-S) forbids it;

(-H) allows it in crafts, but not in acquisition of free-to-the-public commodities, such as logging.

The hadith of Ibn Mas‘ood supports the position of (A) + (+M).

If they have two different crafts, Abu Ya‘lâ (Ḥanbali scholar, d. 458 AH/ 1066 CE in Baghdad), allowed their partnership (A). Abul-Khaṭṭâb (Ḥanbali scholar and a student of Abu Ya‘lâ, d. 510 AH/ 1116 CE in Baghdad) and (a) + (-M) forbade it.

[Rulings on Sharing Profit and Loss]	[أحكام اقتسام الربح والخسارة]
The profit in all these types of partnership is divided according to the terms agreed upon, [VII.11.8] and the loss is sustained in proportion to the capital. [VII.11.9] It is not permissible to specify a defined sum of money as the profit of one of them, or to appoint to him or her the profit of a particular thing. [VII.11.10] The ruling regarding watering for part of the crop and regarding sharecropping is the same. [VII.11.11] The loss is first subtracted from the profit (before the profit is distributed).	وَالرِّبْحُ فِيْ جَمِيْعِ ذٰلِكَ عَلَى مَا شَرَطَاهُ وَالْوَضِيْعَةُ عَلَى قَدْرِ الْمَالِ، وَلَا يَجُوْزُ أَنْ يُجْعَلَ لِأَحَدِهِمَا دَرَاهِمُ مُعَيَّنَةٌ، وَلَا رِبْحُ شَيْءٍ مُعَيَّنٍ. وَالْحُكْمُ فِي الْمُسَاقَاةِ وَالْمُزَارَعَةِ، كَذٰلِكَ. وَتُجْبَرُ الْوَضِيْعَةُ مِنَ الرِّبْحِ.

[VII.11.8] In muḍârabah, all agree that the profit shall be divided according to the terms agreed upon. Each one is entitled to a certain percentage of the

profit. They can divide it as they please: 50% and 50%, or 90% and 10%, etc. In other companies where there is a mixture between capital and work, this would still be the position of (A), but (-M, -S) require that the profit be in proportion to the capital provided.

[VII.11.9] If more than one partner contributed capital, the loss is first deducted from the profit before the laborer gets his or her share. If the profit does not cover the loss, then the rest will be deducted from the capital in proportion. If X contributed 100 and Y contributed 50, and the loss from the capital was 15, then X loses 10 and Y loses 5.

[VII.11.10] For example, X gets the profit from the trousers, and Y shares the rest or gets the profit from the shirts. This is to equitably distribute the profit and risk/liability among the partners.

[VII.11.11] In other words, it is prohibited to designate a fixed part of the profit, like the fruits of particular trees or the crops of a particular piece of land. Again, this is to equitably distribute the profit and risk/liability among the partners.

A partner has no right to sell for a deferred payment, [VII.11.12] or to take any of the profit without the permission of the other.	وَلَيْسَ لأَحَدِهِمَا الْبَيْعُ نَسِيْئَةً، ولا أَخذُ شَيءٍ مِنَ الرِّبحِ إلا بِإذنِ الآخَرِ.

[VII.11.12] This follows one narration from Aḥmad, also reported from Mâlik and ash-Shâfiʿi. The relied-upon position among the later Ḥanbalis permits a partner to sell on credit as part of customary trade, unless the agreed authority excludes it. The partner must exercise due care in extending credit. Express permission to sell on credit is permissible by agreement.

[VII.12] Chapter on Watering (*Musâqâh*) in Exchange for a Share of the Produce, and Sharecropping (*Muzâra'ah*)

بَابُ الْمُسَاقَاةِ وَالْمُزَارَعَةِ

Watering (*musâqâh*) [VII.12.1] [in exchange for a share of the produce] is permissible with all trees that bear fruit. This is in return for a known percentage of the entire amount of fruits gathered. [VII.12.2] Sharecropping (*muzâra'ah*) on a piece of land is done in return for part of the crop, whether one or both of them contributed the seeds. [VII.12.3] 'Abdullâh ibn 'Umar narrated, "The Prophet (SA) concluded a contract with the people of Khaybar [that they would be permitted] to utilize the land on the condition that half of the produce of fruits or vegetation would be their share." Another narration adds that they [the people of Khaybar, should also] invest their money in farming it. [VII.12.4] The laborers must do all the work known by custom [to be essential for the job].	تَجُوْزُ الْمُسَاقَاةُ فِيْ كُلِّ شَجَرٍ لَهُ ثَمَرٌ بِجُزْءٍ مِنْ ثَمَرِهِ، مُشَاعًا مَعْلُوْمًا. وَالْمُزَارَعَةُ فِي الأَرْضِ بِجُزْءٍ مِنْ زَرْعِهَا، سَوَاءٌ كَانَ الْبَذْرُ مِنْهُمَا، أَوْ مِنْ أَحَدِهِمَا لِقَوْلِ ابْنِ عُمَرَ رَضِيَ اللهُ عَنْهُمَا: «عَامَلَ رَسُوْلُ اللهِ ﷺ أَهْلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ زَرْعٍ وَثَمَرٍ، وَفِيْ لَفْظٍ: عَلَى أَنْ يَعْتَمِلُوْهَا مِنْ أَمْوَالِهِمْ.» وَعَلَى الْعَامِلِ عَمَلُ مَا جَرَتِ الْعَادَةُ بِعَمَلِهِ.

[VII.12.1] 'Watering' (musâqâh) does not mean that the laborer will only water the trees. The transaction was called 'watering' because that is the main part of the required work.

[VII.12.2] The landlord may not ask the laborer for a fixed sum unless he or she is renting the land out to the laborer. In musâqâh, the owner and the worker receive agreed, undivided shares of the fruit, such as one-half or one-third. Likewise, the landlord may not ask for the fruits of certain trees. The

aim of all this is to distribute the profit and risk between the partners equitably. This is the essence of partnership in Islam.

[VII.12.3] Sharecropping is mostly the same as tree watering except that it pertains to crops rather than trees. There are also some other rulings in sharecropping, such as the controversy about who should contribute the seeds. It was left to mutual agreement here (A2); however, the authorized view among the latter Ḥanbalis is that they should be provided by the landlord.

[VII.12.4] (M).

By analogy, it is permissible for someone to hand over his or her riding animal to another to work with it and then divide the earnings between them. [VII.12.5]	وَلَوْ دَفَعَ إِلَى رَجُلٍ دَابَّةً يَعْمَلُ عَلَيْهَا، وَمَا حَصَلَ بَيْنَهُمَا، جَازَ عَلَى قِيَاسِ ذٰلِكَ.

[VII.12.5] The same applies to cars; the driver will agree with the owner on dividing the profit in whichever way they agree, 40/60, 50/50, or 10/90, and so on. Another permissible agreement is for a driver to lease a car from its owner for a fixed daily, weekly, or monthly sum. The same also applies to fabric given to a tailor to sew for an agreed upon portion of the price of the garment.

[VII.13] Chapter on Reviving Barren Land (*Iḥyâ' al-Mawât*)

بَابُ إِحْيَاءِ الْمَوَاتِ

This is about wasteland that has no known owner. Whoever revives it owns it, [VII.13.1] according to the hadith of the Prophet (SA), "Whoever revives barren land shall become the owner of the land." [VII.13.2] Revival of a land means preparing it for the desired activity such as enclosing it, [VII.13.3] conveying water to it in order to cultivate it, and/or removing trees and stones that prevent its cultivation.	وَهِيَ الأَرْضُ الدَّاثِرَةُ الَّتِيْ لَا يُعْرَفُ لَهَا مَالِكٌ، فَمَنْ أَحْيَاهَا مَلَكَهَا؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ أَحْيَا أَرْضاً مَيْتَةً فَهِيَ لَهُ.» وَإِحْيَاؤُهَا عِمَارَتُهَا بِمَا تَتَهَيَّأُ بِهِ لِمَا يُرَادُ مِنْهَا، كَالتَّحْوِيْطِ عَلَيْهَا، وَسَوْقِ الْمَاءِ إِلَيْهَا إِذَا أَرَادَهَا لِلزَّرْعِ، وَقَلْعِ أَشْجَارِهَا و أَحْجَارِهَا الْمَانِعَةِ مِنْ غَرْسِهَا وَزَرْعِهَا.

[VII.13.1] In general, this is a matter of consensus, although scholars disagreed on some details.

The wisdom behind this legislation is clear:

- It encourages people to spread out and revitalize the lands.
- It encourages entrepreneurship and economic growth.
- It rewards hard work.
- It creates opportunities for those who were not handed down wealth from their ancestors.

(A) + (+S): There is no need for the ruler's permission (idhn al-Imâm). (-M) agreed with them concerning land that is far from inhabited areas. (-H): The ruler's permission is needed. Although the hadith is absolute, most contemporary laws agree with Imam Abu Ḥaneefah's position, in consideration of public interest and to block the means of abusing the law.

The hadith should be understood as a command to rulers to grant lands to those who revive them, whenever possible.

[VII.13.2] (A, T; T: S)

[VII.13.3] Samurah narrated that the Prophet (SA) said:

«مَنْ أَحَاطَ حَائِطًا عَلَى أَرْضٍ فَهِيَ لَهُ».

"Whoever encloses land with a wall becomes the owner." (A, D; Ibn al-Jârood: S)

When someone digs out a well and reaches water, he or she becomes the owner of a distance of 50 cubits (*dhirâ'*'; one *dhirâ*' is about 48 centimeters) from all sides of the well if it is re-dug. [VII.13.4] As for a new well, the distance is 25 cubits if it is newly dug. [VII.13.5]	وَإِنْ حَفَرَ فِيْهَا بِئْرًا، فَوَصَلَ إِلَى الْمَاءِ، مَلَكَ حَرِيْمَهُ، وَهُوَ خَمْسُوْنَ ذِرَاعًا مِنْ كُلِّ جَانِبٍ، إِنْ كَانَتْ عَادِيَّةً، وَحَرِيْمُ الْبِئْرِ الْبَدِيْءِ خَمْسَةٌ وَعِشْرُوْنَ ذِرَاعًا.

[VII.13.4] The word used here in Arabic for 're-dug' is *'âdiyah*, which is in reference to the tribe of 'Âd. What is meant is an old well that needs to be re-dug.

[VII.13.5] This is reported by Abu Dâwood in his *al-Marâseel* from Ibn al-Musayyib. However, since it is mursal ('interrupted'; the Companion between Ibn al-Musayyib and the Prophet [SA] is not mentioned), it is considered weak (*ḍa'eef*) by most scholars of Hadith. There are a few other hadiths about this matter. One designates forty cubits around the well, and another designates the length of the draw rope. All of the hadiths are controversial in authenticity. The applicable ruling in our times is that the distance should be sufficient for the drawing of water from the well and its utilization.

[VII.14] Chapter on Per-Job Wages (*Ja‘âlah*)

بَابُ الْجَعَالَةِ

[An example of per-job wages (Ja‘âlah) is] [VII.14.1] when someone says, “I will pay such-and-such to whoever returns my lost item to me,” [VII.14.2] or, “I will pay such-and-such to whoever builds me this wall.” Anyone who accomplishes the task will be eligible for the wage. This is supported by what Abu Sa‘eed al-Khudri narrated about the chief of a tribe who was stung [or bitten, by a snake or scorpion]. (After refusing to host some Companions of the Prophet [SA] who were on a journey, these tribe members) asked the Companions, “Can any of you treat him with *ruqyah*?” [VII.14.3] The Companions replied, “Not unless you pay us.” [VII.14.4] So they agreed to pay them a flock of sheep. One of (the Companions) started reciting Soorat al-Fâtiḥah (the first chapter of the Qur’an) and gently blowing his saliva (onto the sting wound) until he (the patient) was cured. They took the sheep and went, and they asked the Prophet (SA) about that (whether taking payment was lawful). He responded, “How did you know it (al-Fâtiḥah) is in fact a ruqyah? Take (what you were given), and give me a share of it.” [VII.14.5]	وَهِيَ أَنْ يَقُوْلَ: مَنْ رَدَّ لُقَطَتِيْ، أَوْ ضَالَّتِيْ، أَوْ بَنَى لِيْ هَذَا الْحَائِطَ، فَلَهُ كَذَا، فَمَنْ فَعَلَ ذٰلِكَ، اسْتَحَقَّ الْجُعْلَ؛ لِمَا رَوَى أَبُوْ سَعِيْدٍ رضي الله عنه: «أَنَّ قَوْمًا لُدِغَ رَجُلٌ مِنْهُمْ، فَأَتَوْا أَصْحَابَ النَّبِيِّ ﷺ، فَقَالُوْا: هَلْ فِيْكُمْ مِنْ رَاقٍ، فَقَالُوْا: لَا، حَتَّى تَجْعَلُوْا لَنَا شَيْئًا، فَجَعَلُوْا لَهُمْ قَطِيْعًا مِنَ الْغَنَمِ. قَالَ: فَجَعَلَ رَجُلٌ مِنْهُمْ يَقْرَأُ بِفَاتِحَةِ الْكِتَابِ، وَيَرْقِيْ، وَيَتْفُلُ حَتَّى بَرَأَ، فَأَخَذُوْا الْغَنَمَ، وَسَأَلُوْا عَنْ ذٰلِكَ النَّبِيَّ ﷺ، فَقَالَ: وَمَا يُدْرِيْكُمْ أَنَّهَا رُقْيَةٌ؟ خُذُوْا وَاضْرِبُوْا لِيْ مَعَكُمْ بِسَهْمٍ.»

[VII.14.1] Ja‘âlah is a form of ijârah (conventional hiring), but with an unknown duration and an unknown amount of work needed to complete the

job. The worker is not necessarily specified. The worker does not deserve any compensation unless he or she finishes the required job.

The other major difference between ja‘âlah and ijârah is that ijârah is a binding (wâjib) contract, whereas ja‘âlah is a non-binding (jâ’iz) contract. In non-binding contracts, either party is allowed to withdraw from the contract without the agreement of the other.

If the worker withdraws, he or she deserves nothing. If the one who commissioned the job withdraws after the worker has already started the job, the worker is entitled to the ordinary compensation *(ajr al-mithl)* for the work already performed. If the contract is invalidated, the worker gets *ajr al-mithl* for any work that was finished. (*al-Mubdi‘* by Ibn Mufliḥ)

The fiqh maxim invoked here is:

◘ قَد يَجِبُ المُسَمَّى في صَحِيحِهِ، فَوَجَبَت أُجْرَةُ المِثلِ في فاسِدِهِ.

◘ **A contract that results in entitlement to a specified compensation when valid will result in entitlement to the ordinary compensation (*ajr al-mithl*) when invalid. (*al-Mubdi‘* by Ibn Mufliḥ)**

The wisdom behind the legislation of ja‘âlah:

Sometimes it is very difficult to determine what it takes to finish a certain job.

Also, it may be better for the employer to specify a compensation for the completed job; this will motivate the worker to complete the job and avoid procrastination.

All the madh-habs approve of ja‘âlah except the Ḥanafis, who consider it to involve excessive risk taking (gharar) because the amount of work needed to complete the job is unknown.

[VII.14.2] A certain fixed amount is what is mentioned here. (a) allowed a percentage of what is found or caught, as well.

Can he or she combine the job and a time period? For example, “If you make me a suit within a week, I will pay you 100 dollars.” (A): Yes. (-M, -S)

◷ The Ḥanbali position could be used to justify a penalty for delay.

Note that combining the job and time period would not be acceptable in ijârah.

[VII.14.3] Ruqyah is a method of spiritual-medical healing which uses the recitation of the Qur'an and/or *du'â'* (supplication; invocation).

[VII.14.4] Refusing to host wayfarers was considered very offensive in Arab culture. Thus, the Companions, who otherwise would likely have performed the ruqyah without compensation, asked for payment.

[VII.14.5] (Ag). The Prophet (SA) asked for a share to further confirm the wholesomeness of such provisions.

An example of a reward payment is also mentioned in the Qur'an:

{قَالُوا نَفْقِدُ صُوَاعَ الْمَلِكِ وَلِمَن جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ }.

> *{They said: We are missing the drinking cup of the king. And for he who produces it is [the reward of] a camel's load, and I am responsible for it.} (Yoosuf 12:72)*

This verse, which refers to Prophet Yoosuf (AS), mentions laws which were divinely legislated before the mission of the Prophet Muhammad (SA) and the specific legislations brought by Islam. Most scholars act upon such older legislations when they are conveyed to us by the Qur'an or Sunnah, as long as they have not been abrogated in Islam.

Anyone who happens to find the lost item before knowing of the wage (compensation) would not deserve it. [VII.14.6]	وَلَوْ الْتَقَطَ اللَّقَطَةَ قَبْلَ أَنْ يَبْلُغَهُ الْجُعْلُ، لَمْ يَسْتَحِقَّهُ.

[VII.14.6] Also, if there was no compensation announced in the first place. That is because no one shall be held liable for paying compensation that he or she did not agree to. The exceptions to that are:

If a worker who is known to do a certain job did that job for an individual with the individual's permission, then the worker will deserve the ordinary compensation for that job (ajr al-mithl).

If someone saved another person's possessions in an emergency, and that required some work on his or her part, then he or she also deserves the ordinary compensation for that job (ajr al-mithl), according to the stronger view of the Ḥanbali school, as stated by Imam Ibn Taymiyah in *al-Fatâwâ al-Kubrâ*.

[VII.15] Chapter on Lost and Found Property (*Luqaṭah*)

بَابُ اللُّقَطَةِ

There are three types: **First:** It is permissible to take something of insignificant value [VII.15.1] and benefit from it, without announcing it [so that the owner can reclaim it]. The proof for this is the statement of Jâbir, "The Prophet (SA) permitted us to pick up sticks, whips, ropes, and similar objects and to benefit from [use] them." [VII.15.2]	وَهِيَ عَلَى ثَلَاثَةِ أَضْرُبٍ: أَحَدُهَا: مَا تَقِلُّ قِيْمَتُهُ، فَيَجُوْزُ أَخْذُهُ وَالِانْتِفَاعُ بِهِ مِنْ غَيْرِ تَعْرِيْفٍ؛ لِقَوْلِ جَابِرٍ رضي الله عنه: «رَخَّصَ لَنَا رَسُولُ اللَّهِ ﷺ فِي الْعَصَا وَالسَّوْطِ وَالْحَبْلِ وَأَشْبَاهِهِ يَلْتَقِطُهُ الرَّجُلُ يَنْتَفِعُ بِهِ»

[VII.15.1] The determination that something is of insignificant value is based on the customs of the people. The scholars said that it is what an average person is not expected to search for after losing it.

[VII.15.2] (D). Most scholars of Hadith classed it as weak, but its meaning is generally accepted. Anas reported that the Messenger of Allah (SA) came across a date in the road, and he said:

«لَوْلَا أَنِّي أَخَافُ أَنْ تَكُونَ مِنَ الصَّدَقَةِ لَأَكَلْتُ».

"Had I not feared it may be part of [something given in] charity, I would have eaten it."

Second: An animal, such as a camel or a horse, capable of protecting itself from small predators. It is forbidden to take such animals. [VII.15.3] This is because the Prophet (SA) was once asked about stray camels and he said, "It (a camel) is none of your concern. It has its water	الثَّانِي: الْحَيَوَانُ الَّذِيْ يَمْتَنِعُ بِنَفْسِهِ مِنْ صِغَارِ السِّبَاعِ، كَالإِبِلِ وَالْخَيْلِ، وَنَحْوِهَا، فَلَا يَجُوْزُ أَخْذُهَا؛ لأَنَّ النَّبِيَّ ﷺ سُئِلَ عَنْ ضَالَّةِ الإِبِلِ، فَقَالَ: «مَا لَكَ وَلَهَا؟ دَعْهَا مَعَهَا

[reservoir] and its feet, and it will reach water and drink it and eat off the trees until its owner returns to it." [VII.15.4] Whoever takes such an animal does not own it and is held liable for it; [VII.15.5] the person would only be cleared [of liability] after surrendering it to the imam's deputy [meaning the proper governmental authority]. [VII.15.6]	حِذَاؤُهَا وَسِقَاؤُهَا تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ حتى يَأْتِيَهَا رَبُّها.» وَمَنْ أَخَذَ هَذَا لَمْ يَمْلِكْهُ، وَلَزِمَهُ ضَمَانُهُ، وَلَمْ يَبْرَأْ إِلَّا بِدَفْعِهِ إِلَى نَائِبِ الإِمَامِ.

[VII.15.3] (A): This is the default ruling, with an exception for taking an endangered animal for safekeeping. (S): Taking it for safekeeping is permissible. Taking it with a view to ownership is prohibited in a safe wilderness, but permitted in or near inhabited places or during plundering.

(-M): If the animal is found in a village, the finder should take it, but if it is found in the desert it should be left. This is because it is unlikely that a thief will find it in the desert before the owner reaches it.

(-H): The finder should take it in all cases and announce it. They said that the hadith about a stray camel pertains to the case where one knows that the animal's owner is nearby and will surely find it. 'Uthmân ibn 'Affân (RA) advised the same because people had become less trustworthy, so taking the stray camel and making an announcement regarding it would be in the best interest of its owners.

The goal here is to keep the camel for its rightful owner. All the positions are after that goal. The circumstances must therefore be considered, including the place and any actual danger to the animal. As noted above, (A) and (S) themselves recognize exceptions to the prohibition. [See the appendix on The Flexibilities in Islamic Legal Theory for the discussion on talfeeq (patching together positions).]

[VII.15.4] Agreed upon, from Zayd ibn Khâlid.

[VII.15.5] The finder remains liable for the animal. If it dies, he or she owes its value on the day of its death.

[VII.15.6] Since the imam or caliph is at the top of the hierarchy of the Muslim state, the imam's deputy, in the language of the fuqahâ', usually means the authority in charge.

Note that the authorities have the right to take any lost item and keep it for the owners or dispose of it and keep the value for them. (A/SM) Anyone who takes a lost item that is permissible to take and surrenders it to the authorities will be clear of liability. (A/SM)

Note that lost items of mu'âhids (non-Muslims who have a peace covenant with the Muslim state) are given the same rulings. The Prophet (SA) said:

«لا يَحِلُّ ذُو نَابٍ مِنَ السِّبَاعِ وَلَا اَلْحِمَارُ اَلْأَهْلِيُّ وَلَا اَللُّقَطَةُ مِنْ مَالِ مُعَاهَدٍ إِلَّا أَنْ يَسْتَغْنِيَ عَنْهَا».

"It is forbidden [to consume] predatory animals with canine teeth or domestic donkeys, and [it is forbidden to take] the lost item of a mu'âhid, unless he or she has (willingly) given it up." (D – from al-Miqdâm ibn Ma'dikarib; Ibn Ḥajar: S)

Third: Valuable items, significant sums of money, property, and animals that cannot protect themselves from small predators. It is permissible to take these things, but one must announce [having found something] for one year in public places such as the entrances of the markets and mosques. [VII.15.7] Whenever anyone comes seeking it and correctly describes it, then it should be given to the seeker without [requiring the] presentation of [further] evidence. [VII.15.8] If no one asks for it, then it becomes the finder's property. [VII.15.9] Before disposing of it, though, the finder has to note its features (such as its case, strap, and so on), so that when its seeker	**الثَّالِثُ: مَا تَكْثُرُ قِيْمَتُهُ مِنَ الأَثْمَانِ وَالْمَتَاعِ وَالْحَيَوَانِ الَّذِيْ لَا يَمْتَنِعُ مِنْ صِغَارِ السِّبَاعِ، فَيَجُوْزُ أَخْذُهُ، وَيَجِبُ تَعْرِيْفُهُ حَوْلاً، فِيْ مَجَامِعِ النَّاسِ، كَالأَسْوَاقِ وَأَبْوَابِ الْمَسَاجِدِ.** فَمَتَى جَاءَ طَالِبُهُ، فَوَصَفَهُ، دُفِعَ إِلَيْهِ بِغَيْرِ بَيِّنَةٍ، وَإِنْ لَمْ يُعْرَفْ، فَهُوَ كَسَائِرِ مَالِهِ. وَلَا يَتَصَرَّفُ فِيْهِ حَتَّى يَعْرِفَ وِعَاءَهُ، وَوِكَاءَهُ وَصِفَتَهُ، فَمَتَى جَاءَ طَالِبُهُ،

comes and describes it correctly, the finder returns it or its exact like, if it is lost or damaged.	فَوَصَفَهُ، دَفَعَهُ إِلَيْهِ أَوْ مِثْلَهُ إِنْ كَانَ قَدْ هَلَكَ.

[VII.15.7] Notice that he said at the entrances of the mosques, because it is *makrooh* to make announcements in the mosques themselves. (A/SM) The Prophet (SA) said:

«مَنْ سَمِعَ رَجُلًا يَنْشُدُ ضَالَّةً فِي الْمَسْجِدِ فَلْيَقُلْ: لَا رَدَّهَا اللَّهُ عَلَيْكَ ، فَإِنَّ الْمَسَاجِدَ لَمْ تُبْنَ لِهَذَا.»

> *"Whoever hears a person making an announcement about lost property in the mosque, let him say: 'May Allah never return it to you!' for the mosques were not built for such purposes." (M – from Abu Hurayrah)*

The hadith clearly addresses the case of seeking a lost item, but it does not address announcing an item that was found. Many of the scholars equate the two cases since they both entail raising the voice in the mosque for something other than worship. While the analogy may not be perfect (since in the first case, the person does it out of self-interest), the announcement by the finder still entails raising the voice and causing some distraction to other worshippers, so it is best to look for alternatives.

Imam Mâlik was asked about this, and he mentioned:

"I do not like raising the voice with such announcements, and I was told that 'Umar ibn al-Khaṭṭâb ordered that the announcement is to be made by the door of the mosque. If that person [the announcer] walked to people in the mosque and told them without raising his voice, then there would be no harm, in my view." (*Mawâhib al-Jaleel* by Ḥaṭṭâb ar-Ru'ayni)

- It is also possible to post the announcement in a lobby or attached room that is outside the mosque's legally designated area.

[VII.15.8] Since the seeker's ability to describe the item is treated like evidence.

[VII.15.9] The finder can dispose of it after one year but will be liable for the value whenever the rightful owner shows up to claim the property, even if more than one year has passed.

If the lost object is an animal that needs to be fed, or is a perishable item that may go bad, then the finder may first consume it or sell it, and then announce it. [VII.15.10] This is based on Zayd ibn Khâlid's narration which states, "When Allah's Messenger (SA) was asked about picking up lost gold or silver, he told them: Keep note of the string and the container, and then announce [VII.15.11] (your finding of) it for one year. If its seeker comes by at any time, [VII.15.12] give it to him or her. He asked him also about sheep, [VII.15.13] and he indicated: Take it; [VII.15.14] it is for you, or for your brother, or for the wolf." [VII.15.15]	وَإِنْ كَانَ حَيَوَانًا يَحْتَاجُ إِلَى مُؤنَةٍ، أَوْ شَيْئًا يَخْشَى تَلَفَهُ، فَلَهُ أَكْلُهُ قَبْلَ التَّعْرِيْفِ، أَوْ بَيْعُهُ، ثُمَّ يُعَرِّفُهُ؛ لِمَا رَوَى زَيْدُ بْنُ خَالِدٍ رضي الله عنه قَالَ: سُئِلَ رَسُوْلُ اللهِ ﷺ عَنْ لُقَطَةِ الذَّهَبِ وَالْوَرِقِ، فَقَالَ: «اعْرِفْ وِكَاءَهَا وَعِفَاصَهَا ثُمَّ عَرِّفْهَا سَنَةً، فَإِنْ جَاءَ طَالِبُهَا يَوْمًا مِنَ الدَّهْرِ فَادفَعْها إليه وَسَأَلَهُ عَنِ الشَّاةِ، فَقَالَ: خُذْهَا فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذِّئْبِ.»

[VII.15.10] In all cases, lost items of significant value will be returned to their rightful owners whenever they come for them and describe them accurately, even after one year. If the finder has already sold them or consumed them, he or she will return their value.

If the item is food that may rot, the finder should sell it or consume it, then give its value to the owner if the owner shows up.

If the found animal is lawful to eat, the finder must choose the course that best serves its owner: keep and feed it, sell it and preserve the sale proceeds, or consume it and owe its value. If these options are equally beneficial, the finder may choose among them. Necessary feeding expenses may be recovered when the finder intended reimbursement and was not transgressive in taking the animal.

[VII.15.11] The Prophet (SA) did not specify a method of announcement. This is part of the legislative miracle of Islam. Whenever a matter is subject to change, it is governed only by general guidelines. For example, announcing in our times could be done through the local authorities, who may have a database of all lost and found items.

[VII.15.12] This indicates that the rightful owner may claim his or her lost item even after the one year has passed.

[VII.15.13] Unlike camels, sheep cannot protect themselves.

[VII.15.14] This means the finder will take it and announce it.

[VII.15.15] (Ag). This is part of the hadith of Zayd ibn Khâlid about stray camels, which is mentioned above.

If the item is lost or damaged during the year of announcement, without transgression (ta‘addin) on the part of the one who picked it up, then the finder bears no liability for it. [VII.15.16]	وَإِنْ هَلَكَتِ اللُّقَطَةُ فِيْ حَوْلِ التَّعْرِيْفِ مِنْ غَيْرِ تَعَدٍّ، فَلَا ضَمَانَ فِيْهَا.

[VII.15.16] He is acting here like a trustee. A trustee is only liable in the case of transgression or negligence.

Subsection on Foundlings (*Laqeeṭ*)

فَصْلٌ فِي اللَّقِيْطِ

A *laqeeṭ* is an abandoned child or foundling. The legal ruling concerning the child is that he or she is free and is a Muslim. Any money found with the child belongs to him or her. [VII.15.17]	هُوَ الطِّفْلُ الْمَنْبُوْذُ، وَهُوَ مَحْكُوْمٌ بِحُرِّيَّتِهِ، وَإِسْلَامِهِ، وَمَا وُجِدَ عِنْدَهُ مِنَ الْمَالِ، فَهُوَ لَهُ.

[VII.15.17] Imam Ibn al-Mundhir indicates:

“The vast majority of the people of knowledge agreed on the freedom of the foundling. This was narrated to us from the Caliph ‘Umar ibn al-Khaṭṭâb and ‘Ali ibn Abi Ṭâlib [RAHUMA]. This position was also upheld by the Caliph ‘Umar ibn ‘Abdul-‘Azeez, and also by various scholars [ash-Sha‘bi, al-Ḥakam, Ḥammâd, Mâlik, ath-Thawri, ash-Shâfi‘i, Is-ḥâq], and the scholars of *ra’i* [‘opinion/logical thinking’; this term usually refers to Ḥanafi scholars], and those who followed them. An-Nakha‘i [d. 96 AH/ 715 CE; a teacher of Abu Ḥaneefah], however, mentioned: If the finder picked the child up for the sake of Allah [that is, as a good deed], the child is free. However, if the finder picked the child up to take as a slave, then the finder is entitled to do so. This is, however, a strange opinion which contradicts that of the caliphs and scholars. It is also invalid upon contemplation, for the default concerning the children of Adam is freedom, because Allah [Most High] created Adam and his progeny free. Slavery is an exceptional state, and if that exception is not established, then the foundling will be judged according to the default.” (*al-Mughni*)

The presumption of Islam applies if a foundling is discovered in a Muslim society.

The guardianship goes to the child’s finder if the finder is a trustworthy Muslim.	وَوِلَايَتُهُ لِمُلْتَقِطِهِ، إِذَا كَانَ مُسْلِمًا عَدْلاً.

The sustenance of the foundling is taken from the treasury of the Muslims if there was not sufficient money [left] with the	وَنَفَقَتُهُ مِنْ بَيْتِ الْمَالِ، إِنْ لَمْ يَكُنْ مَعَهُ مَا

child for sustenance. [VII.15.18] Any estate remaining after the prior claims upon it is taken by the Muslim treasury [only insofar as it does not pass to entitled heirs.] [VII.15.19]	يُنْفَقُ عَلَيْهِ، وَمَا خَلَّفَهُ فَهُوَ فَيْءٌ.

[VII.15.18] This is based on the statement of Caliph ‘Umar ibn al-Khaṭṭâb (RA) to a man who had taken in a lost child:

«اذْهَب، فَهُوَ حُرٌّ، ولك وَلاؤه، وعلينا نَفَقَتُه».

“Go. He is free, you are entitled to the child’s walâ’, and we will spend on him or her.” (Ba; al-Albâni in Irwâ’ al-Ghaleel: S)

(Walâ’ through emancipation can entitle the emancipator to inherit from the freed person; here it may mean guardianship.)

The Muslim treasury is ordinarily responsible for the foundling’s sustenance. Merely finding the child does not, according to the position discussed here, impose the continuing maintenance obligation of a parent; nevertheless, the finder must provide necessary support if the child would otherwise be left without care and no one else can do so.

If the Muslim treasury is incapable of supporting the child, the responsibility then falls on the Muslim society to provide the support. This communal obligation (farḍ kifâyah) can be satisfied by anyone from the community, including the finder, who should not, in any case, allow harm to befall the child.

In our times, and wherever Muslims live as minorities, the community should have major organizations devoted to the mission of looking after children who are orphans or otherwise deprived of parental care. Such organizations should be maintained by endowments donated by the Muslims.

[VII.15.19] The text says that the child’s inheritance will be treated as fay’, which refers to wealth that reaches the Muslims from non-Muslims without fighting. If the foundling dies without entitled heirs, the estate remaining after funeral expenses, debts, and valid bequests goes to the Muslim treasury.

Some scholars understood ‘Umar’s statement as granting the finder a right of inheritance, but the majority did not recognize this right. Ibn Qudâmah cites criticism of the reports and also explains that ‘Umar may have meant guardianship and care rather than inheritance. They argued that the Prophet (SA) said:

«إِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ».

“Al-walâ’ belongs only to the emancipator.” (Ag – from ‘Â’ishah)

The foundling is judged to be free, and the finder is not the emancipator. If the foundling dies without heirs, the inheritance shall go to the Muslim treasury. The wisdom behind this ruling is that the state treasury funded the foundling’s needs during his or her lifetime, so it should take the foundling’s inheritance after death.

Whoever claims paternity of the foundling will have the child attributed to him [VII.15.20] unless the former is a disbeliever, in which case the foundling will be attached to him in lineage without following his religion, and the child will not be handed over to him. [VII.15.21]	وَمَنِ ادَّعَى نَسَبَهُ، أُلْحِقَ بِهِ، إِلَّا أَنَّهُ إِنْ كَانَ كَافِرًا، أُلْحِقَ بِهِ نَسَبًا، لَا دِيْنًا، وَلَمْ يُسَلَّمْ إِلَيْهِ.

[VII.15.20] Istilḥâq (demand for attribution) is when a person claims the paternity (or maternity according to some) of a child without a known lineage. His claim is accepted if it is possible.

Though this is still controversial, the author of this commentary believes that DNA tests could help establish the veracity of such claims and could also help determine the lineage of foundlings, which would help the authorities identify their parents. This would help safeguard the rights of the child, enjoin the responsibilities upon the parents, and remove the burden of the child’s care from the shoulders of society – though the paternity itself would be established through the established Sharia proofs, such as being born to a married mother, the testimony of witnesses, or admission.

[VII.15.21] This is because the default for foundlings in a Muslim society is Islam and freedom. Keep in mind that this refers to when someone claims

a child without proof. If the non-Muslims claiming parenthood have proof, the child will be handed over to them to raise as they please. (Zâd al-Mustaqni‘ by Moosâ al-Ḥajjâwi).

[VII.16] Chapter on Prize Money (*Sabaq* [or *Ju'l*])

بَابُ السَّبَقِ

Competitions which do not involve prize money (*ju'l*) are permissible in all fields. [VII.16.1]	وَتَجُوْزُ الْمُسَابَقَةُ بِغَيْرِ جُعْلٍ فِي الأَشْيَاءِ كُلِّهَا.

[VII.16.1] Competitions in any permissible activities are all allowed if there are no prizes involved. This is because the Prophet (SA) raced with 'Â'ishah on foot, and Muslim reported that Salamah ibn al-Akwa' (RA) raced on foot with a man from the Anṣâr ('helpers': the Muslim citizens of Madinah who gave refuge to the Prophet [SA] and the other Muslim emigrants from Makkah) in the presence of the Prophet (SA).

Prize money (ju'l) is permissible only in horse racing, camel racing, and archery. [VII.16.2] The Prophet (SA) said, "There should be no prize money (*sabaq*) in competitions – except in camel racing, archery, and horse racing." [VII.16.3]	وَلَا تَجُوْزُ بِجُعْلٍ، إِلَّا فِيْ الْخَيْلِ وَالإِبِلِ وَالرَّمْيِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَا سَبَقَ إِلَّا فِي خُفٍّ, أَوْ نَصْلٍ, أَوْ حَافِرٍ»

[VII.16.2] Even if gambling is not involved, competing for a prize is only allowed in these three activities mentioned. (A) + (+M, +S)

Their common denominator is that they are all needed for preparation for jihad. Some of the scholars from those madh-habs added other activities that are similar to those, such as racing on elephants or shooting with spears.

(-H, -t) allowed prizes for competitions in Qur'an, Hadith, fiqh, etc. Their argument is that Islam prevails by the mastery of knowledge as well. Most of the contemporary scholars allow those competitions.

Would prizes in soccer tournaments, car races, boxing, and other sports be allowed?

First, you have to ask whether the activity itself is allowed. Boxing entails striking in the face and head, and great harm may ensue from that game. It

is not allowed to begin with, unlike wrestling, for instance, which is allowed. Car racing involves a high risk for the participants; therefore, it is controversial.

If the activity is permissible, competition in it is also permissible, given there are no prizes involved.

If prizes are involved, the question is whether or not the particular game may be likened to those accepted games mentioned in the hadith.

Some contemporary scholars widened the circle of permissibility to include all those activities thought to significantly promote the physical or mental health of individuals, preparing them to support the cause of Islam physically or intellectually.

[VII.16.3] (D; al-Albâni: S in *Ṣaḥeeḥ Sunan Abi Dâwood*)

The prize money (*ju'l*) is permissible if it is offered by somebody other than the racers; it goes to the one who wins the race.	فَإِنْ كَانَ الْجُعْلُ مِنْ غَيْرِ الْمُسْتَبِقَيْنِ، جَازَ، وَهُوَ لِلسَّابِقِ مِنْهُمَا.

If one of the racers offers [the prize money] and he or she wins, or if two reach the finishing line together, the one who offered the money is allowed to take the prize money (*sabaq*) and nothing more. If the other racer wins, the winner takes [the prize money].	وَإِنْ كَانَ مِنْ أَحَدِهِمَا، فَسَبَقَ الْمُخْرِجُ، أَوْ جَاءَا مَعًا، أَحْرَزَ سَبَقَهُ، وَلَا شَيْءَ لَهُ سِوَاهُ، وَإِنْ سَبَقَ الآخَرُ أَخَذَهُ.

It is not lawful for both of them to offer [prize money] unless a *muḥallil [VII.16.4]* whose horse, camel, or archery [ability] is equivalent to theirs enters the race. [VII.16.5] The basis of this ruling is the Prophet's hadith, "If one enters a horse with two	وَإِنْ أَخْرَجَا جَمِيْعًا، لَمْ يَجُزْ، إِلَّا أَنْ يُدْخِلَا بَيْنَهُمَا مُحَلِّلًا يُكَافِئُ فَرَسُهُ فَرَسَيْهِمَا، أَوْ بَعِيْرُهُ بَعِيْرَيْهِمَا، أَوْ رَمْيُهُ رَمْيَيْهِمَا؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ أَدْخَلَ فَرَسًا بَيْنَ

others without confidence that it will not win, it is not gambling; but when one enters a horse with two others with confidence it will not win, it is gambling." [VII.16.6] If the muḥallil beats them, he or she takes the contributions of the other two contestants (who offered the prize money). If one of the other two contestants wins, the winner takes his or her own contribution and also that of the other contributor.	فَرَسَيْنِ يَعْنِي وَهُوَ لَا يُؤْمَنُ أَنْ يَسْبِقَ فَلَيْسَ بِقِمَارٍ وَمَنْ أَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ وَقَدْ أُمِنَ أَنْ يَسْبِقَ فَهُوَ قِمَارٌ». فَإِنْ سَبَقَهُمَا، أَحْرَزَ سَبَقَيْهِمَا، وَإِنْ سَبَقَ أَحَدُهُمَا، أَحْرَزَ سَبَقَهُ، وَأَخَذَ سَبَقَ صَاحِبِهِ.

[VII.16.4] A muḥallil is someone whose participation in the race makes the prize money lawful and helps eliminate the element of gambling. If there is one additional competitor (the muḥallil) who is not contributing towards the prize money, then the transaction is not considered to be gambling.

[VII.16.5] The permissibility of the prize money (for horse racing, camel racing, and archery) depends on whether it is offered by some or all of the competitors or from someone not in the competition.

If the prize is from someone other than the participants in the race, then it is permissible. (A) + (H, +M, +S) If the prize is contributed by both or all of the competitors, then it is haram, since it would be a form of gambling. To make this permissible, there should be one additional competitor who has an equal chance of winning and who has not contributed towards the prize. (A) + (H, +S)

Example: X, Y, and Z race on horseback. X and Y contribute $50 each towards the prize. Any of the three who wins shall take the $100.

(-M): haram even if there is that muḥallil.

Keep in mind that the prizes in all of the above cases go to the actual participants in the competition. Betting by spectators on rodeo events, horse races, and so on is purely gambling. It is the same with any betting where the prizes go to non-participants.

Are prize draws held by companies permissible?

Some contemporary scholars, such as Shaykh Ibn Bâz (d. 1420 AH, may Allah bestow mercy on him), disallowed the determination of winners by drawing lots in any of those draws. The following treatment of the subject assumes its permissibility, which is the position of the majority.

Those draws either require a purchase or not.

If they do not require any purchase or action, then they are permissible.

If they do not require a purchase, but they require some action on the part of the participants, such as answering questions, and so on, then the rules of competitions above concerning the permissibility of prizes will apply.

If they require a purchase, then the matter becomes more controversial. Shaykh Ibn Jibreen (d. 1430 AH, may Allah bestow mercy on him) prohibited those draws. Shaykh Muṣṭafâ az-Zarqâ' (d. 1420 AH, may Allah bestow mercy on him) and Shaykh al-Qaraḍâwi allowed them in smaller prizes only, such as pens and watches, and other similar prizes. Shaykh Ibn 'Uthaymeen (d. 1421 AH, may Allah bestow mercy on him) and Shaykh Muhammad Shubayr allowed them in all prizes, on condition that the price of the commodity is not increased over the market value to pay for the prizes. Shaykh Ibn 'Uthaymeen added that the prize should not be the sole intent of the buyer, who may not need the merchandise itself and would otherwise not buy it.

Are discount cards permissible?

This depends on whether the customers or clients pay a fee or not.

Cards with fees are forbidden due to the impermissible risk taking (gharar fâḥish) involved, since the client paid a certain amount of money for unknown discounts. If the fee is small and only for administrative expenses, then it may be exempt.

Cards without fees are permissible since they belong to the category of benevolent contracts ('uqood at-tabarru'ât), not the exchange-of-benefit contracts ('uqood al-mu'âwaḍât). This applies also to airline and hotel loyalty programs.

Dr. Muhammad ‘Uthmân Shubayr provided a detailed treatment of the contemporary applications of this topic in his paper “Aḥkâm al-Musâbaqât al-Mu‘âṣirah fee Ḍaw’ al-Fiqh al-Islâmi”, presented to the Fiqh Academy of the Organization of Islamic Conference fourteenth session, January 2003.

[VII.16.6] (D). The majority of the Hadith scholars consider this hadith to be weak.

- ☞ Acting upon weak and mursal hadith(s), when there is not a stronger proof, is one of the principles of Imam Aḥmad. However, it must be noted that Aḥmad does not accept a weak hadith which is *matrook* (rejected), but he accepts one with a slight weakness or which is ḥasan. Imam Ibn Taymiyah argued in *Minhâj as-Sunnat an-Nabawiyah* that these were not matrook (rejected), but rather they were ḥasan (hadiths that fulfill the conditions of a sound hadith, except that the narrators are slightly less reliable). Some examples are the hadiths narrated by ‘Amr ibn Shu‘ayb from his father, from his grandfather, and other hadiths which at-Tirmidhi would deem ḥasan. As mentioned earlier, before the time of Imam at-Tirmidhi, a hadith was either graded sound or weak, and the weak were subdivided into acceptable and matrook. (Minhâj *as-Sunnat an-Nabawiyah,* 4:341–342) The discussion about the mursal hadiths (where the tâbi‘i does not mention the Companion he related from) is a lengthy one.

The position of Aḥmad is like that of ash-Shâfi‘i: they accept some but reject others. Abu Ḥaneefah and Mâlik are more likely to accept the mursal reports.

It is essential to define the distance of the race, the termination point, and [for archery] the required number and type of hits and the number of arrows to be shot. A shooting [archery] contest is all about hitting [the target], and is not a matter of distance.	وَلَا بُدَّ مِنْ تَحْدِيْدِ الْمَسَافَةِ، وَبَيَانِ الْغَايَةِ، وَقَدْرِ الْإِصَابَةِ، وَصِفَتِهَا، وَعَدَدِ الرِّشْقِ. وَإِنَّمَا تَكُوْنُ الْمُسَابَقَةُ فِي الرَّمْيِ عَلَى الإِصَابَةِ، لَا عَلَى الْبُعْدِ.

[VII.17] Chapter on the Deposits for Safekeeping (*Wadee'ah*)

بَابُ الْوَدِيْعَةِ

It (*wadee'ah*) [VII.17.1] is a trust, with no liability on the part of the trustee unless they transgress. [VII.17.2]	وَهِيَ أَمَانَةٌ، لَا ضَمَانَ فِيْهَا عَلَى الْمُوْدَعِ مَا لَمْ يَتَعَدَّ.

[VII.17.1] The money/property that is left in the custody of others is called wadee'ah, a term which comes from the verb wada'a which means to leave or deposit.

Keeping trusts for people is a meritorious act; preserving and returning them is an obligatory one. Allah said:

{إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا}

"Indeed, Allah commands you to render trusts to whom they are due." (an-Nisâ' 4:58)

The Messenger of Allah (SA) said:

«أَدِّ الأَمَانَةَ إِلَى مَنِ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ.»

"Return trusts to those who entrust you and betray not those who betray you." (D; al-Albâni: S)

[VII.17.2] Since keeping it is a charitable act, the keeper (trustee) will not be liable.

An ordinary checking account is a loan to the bank, which must repay its balance on demand even without negligence or transgression. A true wadee'ah is different: its custodian bears no liability unless negligent or transgressive.

If they did not preserve it in a *ḥirz* (safe place) befitting its like, [VII.17.3] or in a	وَإِنْ لَمْ يَحْفَظْهَا فِيْ حِرْزِ مِثْلِهَا، أَوْ مِثْلِ الْحِرْزِ الَّذِيْ

place at least as secure as the one the owner designated, or used it for their own interests, or coalesced it with another so that it became an inseparable part of a whole, or took it out to spend it and then returned it, or undid its seal, or denied (receiving) it, or resisted returning it upon being demanded despite their ability to do so, then he or she will become liable for it. [VII.17.4]	أُمِرَ بِإِحْرَازِهَا فِيْهِ، أَوْ تَصَرَّفَ فِيْهَا لِنَفْسِهِ، أَوْ خَلَطَهَا بِمَا لَا تَتَمَيَّزُ مِنْهُ، أَوْ أَخْرَجَهَا لِيُنْفِقَهَا ثُمَّ رَدَّهَا، أَوْ كَسَرَ خَتْمَ كِيْسِهَا، أَوْ جَحَدَهَا، أَوِ امْتَنَعَ مِنْ رَدِّهَا عِنْدَ طَلَبِهَا مَعَ إِمْكَانِهِ، ضَمِنَهَا.

[VII.17.3] Which is determined according to the customary norms, for:

مَا لَم يُحَدِّده الشَّرعُ يُرجَعُ فيهِ إلى العُرْفِ.

“Whatever is not expounded by the revealed law (shar‘) should be understood from the people’s customs (‘urf).”

[VII.17.4] All acts belong to one of two shortcomings on the part of the trustee: negligence (tafreet) and transgression (ta‘addi). They make him or her liable.

If he or she said, “You did not leave anything with me,” then they claimed its damage/loss or its return (to the depositor), their claim will not be accepted from them. [VII.17.5] If they said, “I owe you nothing,” and then claimed its return, damage/loss, it will be accepted. [VII.17.6]	وَإِنْ قَالَ: مَا أَوْدَعْتَنِيْ، ثُمَّ ادَّعَى تَلَفَهَا، أَوْ رَدَّهَا، لَمْ يُقْبَلْ مِنْهُ، وَإِنْ قَالَ: مَالَكَ عِنْدِيْ شَيْءٌ، ثُمَّ ادَّعَى رَدَّهَا، أَوْ تَلَفَهَا، قُبِلَ مِنْهُ.

[VII.17.5] Their claims will not be accepted because they are inconsistent.

[VII.17.6] The claims of the trustees will be accepted if they are consistent, since the default is the absence of liability, and it is presumed that they were trusted in the first place because of their good character.

A *ʿâriyah* (loan for use) [VII.17.7] will be guaranteed, even if the borrower did not transgress. [VII.17.8]	وَالْعَارِيَةُ مَضْمُوْنَةٌ، وَإِنْ لَمْ يَتَعَدَّ فِيْهَا الْمُسْتَعِيْرُ.

[VII.17.7] Loaning for use is when someone loans an item to another for the latter to enjoy its usufruct while the item is in their possession.

[VII.17.8] If X borrows Y's car, X will be responsible for the car until he returns it to Y, except for deterioration caused by customary, authorized use. The Prophet (SA) said:

«العاريةُ مؤدّاةٌ والزعيمُ غارِمٌ والدينُ مقضيٌّ»

"The borrowed is to be returned, and the guarantor is responsible, and the debt is to be repaid." (T; T: R)

[VII.18] The Book of Leasing and Hiring (*Ijârah*)

كِتَابُ الإِجَارَاتِ

Ijârah [VII.18.1] is a contract whose object is a benefit [service or utility]. [VII.18.2] It is mutually binding on both parties; neither of them holds the right to (unilaterally) annul it. [VII.18.3] The contract is not annulled by the death [VII.18.4] or insanity of either party. [VII.18.5]	وَهِيَ عَقْدٌ عَلَى الْمَنَافِعِ، لَازِمٌ مِنَ الطَّرَفَيْنِ، لَا يَمْلِكُ أَحَدُهُمَا فَسْخَهَا، وَلَا تَنْفَسِخُ بِمَوْتِهِ وَلَا جُنُوْنِهِ.

[VII.18.1] Ijârah is about leasing and hiring. The usufruct (right to use something that belongs to another) may be the use of a certain property or the service of a certain individual.

Ijârah is permissible by consensus and derives its legitimacy from the Qur'an, the Sunnah, and reasoning. Allah said:

{قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ. }

> *{One of the women said: O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy.} (al-Qaṣaṣ 28:26)*

The Prophet (SA) said:

«أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرَقُه»

> *"Give the hired worker (ajeer) his or her wages (ajr) before the sweat is dried." (Ma – from Ibn 'Umar; al-Albâni: S)*

Ijârah is also acceptable by reasoning, because it is a means for people to use properties they cannot purchase.

[VII.18.2] It is a purchase of this benefit, but unlike in a sale, the commodity outlasts the contract and returns to the owner, whose ownership is not

terminated by the contract of ijârah. One is not allowed to rent something that will perish or be consumed during the duration of the contract.

[VII.18.3] Unless the two parties agree on termination of the contract.

[VII.18.4] The rights and obligations of the contract are transferred to the heirs.

Also, the lessor may sell the leased asset to a third party. In this case, the rights and obligations of the lessor under the ijârah contract are transferred to the new owner.

[VII.18.5] This is clear in the case of renting, since the lessee or his or her heirs could still use the property and pay the rent to the lessor or to his or her heirs. As for hiring, the worker may have been hired to do a certain job either alone or by working with others. In this case, the contract is **not** annulled by the worker's death because someone could be hired by the worker's heirs to finish the required work. If the employer hired only that particular worker to do the job, then the contract will be annulled, since its prerequisite – the service of that particular individual – is no longer valid.

However, it is annulled when the property, or object of the contract, is destroyed or its contracted benefit is lost entirely. The lessee has the right to annul the contract for a defect, be it old [VII.18.6] or newly occurring. [VII.18.7]	وَتَنْفَسِخُ بِتَلَفِ الْعَيْنِ الْمَعْقُوْدِ عَلَيْهَا وَانْقِطَاعِ نَفْعِهَا، وَلِلْمُسْتَأْجِرِ فَسْخُهَا بِالْعَيْبِ قَدِيْمًا كَانَ أَوْ حَادِثًا.

[VII.18.6] This is because the usufruct is the subject matter of the contract. The lease terminates when that contracted benefit is lost entirely.

[VII.18.7] For example, damage that materially reduces the house's rental value gives the lessee the right to cancel the lease, unless promptly repaired without harm to the lessee. (If the damage was caused by the lessee, he must compensate for it.)

Leasing or hiring is only valid when the benefit [service/utility] is determinately known. This may be either by custom, as in	وَلَا تَصِحُّ إِلَّا عَلَى نَفْعٍ مَعْلُوْمٍ، إِمَّا بِالْعُرْفِ، كَسُكْنَى دَارٍ، وَإِمَّا

renting a house for dwelling, [VII.18.8] or by description, such as in [hiring someone to] sew a certain garment, build a wall, or haul something to a certain place. It is also only valid when the benefit is accurately described, [VII.18.9] and the compensation [wage or rent] is known. [VII.18.10] If the subject matter of the contract is a physical property, it must be determinately known. [VII.18.11]	بِالْوَصْفِ، كَخِيَاطَةِ ثَوْبٍ مُعَيَّنٍ، وَبِنَاءِ حَائِطٍ، وَحَمْلِ شَيْءٍ إِلَى مَوْضِعٍ مُعَيَّنٍ، وَضَبْطِ ذٰلِكَ بِصِفَاتِهِ، وَمَعْرِفَةِ أُجْرَتِهِ. وَإِنْ وَقَعَتْ عَلَى عَيْنٍ، فَلَا بُدَّ مِنْ مَعْرِفَتِهَا.

[VII.18.8] Here, the nature of the usage does not need to be described, because it is known by custom. When one rents a room in a hotel, it is also known by custom what one may and may not do.

[VII.18.9] Custom will have a role here as well since the description may not address all of the details of the job. Whatever is known to be customary may be omitted from the description. In case of a dispute, what is customary shall be determined by the experts in the respective craft.

[VII.18.10] It was reported through a weak chain that the Prophet (SA) said:

«مَنْ اسْتَأْجَرَ أَجِيرًا فَلْيُعْلِمْهُ أَجْرَهُ.»

"Whoever hires a worker must inform the person of his or her wages." (Ba – from Abu Hurayrah)

Even though the hadith's chain is weak, the meaning of the hadith is unanimously accepted by scholars.

[VII.18.11] You cannot rent one of two non-identical objects without specifying which one. You must specify the one being rented at the time of the contract.

Whoever rents something may substitute another person in his or her place to procure the benefit [service/utility] by	وَمَنِ اسْتَأْجَرَ شَيْئًا فَلَهُ أَنْ يُقِيْمَ مَقَامَهُ مَنْ يَسْتَوْفِيْهِ بِإِجَارَةٍ أَوْ

subleasing it or otherwise. That is only if he (or she) is ‘like him or less’. [VII.18.12]	غَيْرِهَا، إِذَا كَانَ مِثْلَهُ أَوْ دُوْنَهُ.

[VII.18.12] This is what we would in modern terms call ‘subleasing.’ The phrase ‘like him or less’ pertains to the rate of utilization. For instance, if the person rented a mule, and subleased it, the new beneficiary must be equal in weight to the renter or lighter.

If someone leases land for growing [a certain crop], he or she may [also] grow any [crop] that is less harmful [to the land]. However, if the person grows something that brings about more harm or a different type of harm, then he or she has to pay the fair rent [*ujrat al-mithl*, literally the ‘equivalent wage’]. [VII.18.13]	وَإِنِ اسْتَأْجَرَ أَرْضًا لِزَرْعٍ، فَلَهُ زَرْعُ مَا هُوَ أَقَلُّ مِنْهُ ضَرَرًا، فَإِنْ زَرَعَ مَا هُوَ أَكْبَرُ ضَرَرًا مِنْهُ، أَوْ يُخَالِفُ ضَرَرُهُ ضَرَرَهُ فَعَلَيْهِ أَجْرُ الْمِثْلِ.

[VII.18.13] The matn follows a recognized Ḥanbali position (a): the fair rent for the actual use replaces the agreed rent. According to (A), growing a more harmful crop requires payment of the agreed rent plus the difference between the fair rental values of the permitted and actual uses. For example, if the agreed rent is 80, while the fair rental values for the permitted and actual crops are 100 and 120, respectively, the amount due under (A) is 100: the agreed 80 plus the additional 20.

The same applies to the one who rents a beast of mount or [an individual] to carry something to a certain place. If the renter goes beyond [that place] or exceeds the carrying load, he or she has to pay the fair/equivalent wage for the excess, [VII.18.14] and also bears liability (ḍamân) for the loss of the rented asset if it perishes.	وَإِنِ اكْتَرَى إِلَى مَوْضِعٍ مُعَيَّنٍ فَجَاوَزَهُ أَوْ لِحَمْلِ شَيْءٍ فَزَادَ عَلَيْهِ، فَعَلَيْهِ أَجْرُ الْمِثْلِ لِلزَّائِدِ، وَضَمَانُ الْعَيْنِ إِنْ تَلِفَتْ. وَإِنْ تَلِفَتِ الْعَيْنُ مِنْ غَيْرِ تَعَدٍّ فَلَا ضَمَانَ عَلَيْهِ.

If the property is damaged without transgression, then there is no liability. [VII.18.15]	

[VII.18.14] For excess distance or load, the agreed rent or wage remains due for the original undertaking, with fair compensation added for the excess. This applies both to renting an animal or other asset and to hiring someone to transport goods. The additional compensation is determined by the fair market value of the extra use or work. The matn addresses exceeding what was authorized; if the parties agree to extend the service for a specified additional fee, their agreement governs. The accompanying liability for loss concerns the rented asset itself, such as the transport animal.

[VII.18.15] The leased asset is the responsibility of the lessor through the duration of the ijârah, unless the lessee commits transgression or is negligent.

A worker hired for a certain period bears no liability for damaging anything, as long as there is no negligence (*tafreeṭ*) on the part of the worker. Similarly, there is no liability on a cupper, [VII.18.16] a circumciser or a physician if the person is known for his or her skill [VII.18.17] and did not cause injury beyond the proper limits of the procedure (*jinâyah*). A shepherd also would not be liable if he (or she) did not transgress.	وَلَا ضَمَانَ عَلَى الأَجِيْرِ الَّذِيْ يُؤَجِّرُ نَفْسَهُ مُدَّةً بِعَيْنِهَا فِيْمَا يَتْلَفُ فِيْ يَدِهِ مِنْ غَيْرِ تَفْرِيْطٍ. وَلَا عَلَى حَجَّامٍ أَوْ خَتَّانٍ أَوْ طَبِيْبٍ إِذَا عُرِفَ مِنْهُمْ حِذْقُ الصَّنْعَةِ، وَلَمْ تَجْنِ أَيْدِيْهِمْ. وَلَا عَلَى الرَّاعِيْ إِذَا لَمْ يَتَعَدَّ.

[VII.18.16] A ḥajjâm, or blood-letter, is one who does cupping.

[VII.18.17] The Messenger of Allah (SA) said:

«مَنْ تَطَبَّبَ وَلَمْ يُعْلَمْ مِنْهُ طِبٌّ فَهُوَ ضَامِنٌ».

"Unqualified people who practice medicine shall be held liable."
(D – from 'Amr ibn Shu'ayb; al-Albâni: S)

However, a fuller, [VII.18.18] a tailor and others like them who work for (piece) wages, would be liable for the damage they cause by their own doing, [VII.18.19] but not for what is damaged while in their custody. [VII.18.20]	وَيَضْمَنُ الْقَصَّارُ وَالْخَيَّاطُ وَنَحْوُهُمَا مِمَّنْ يَتَقَبَّلُ الْعَمَلَ مَا تَلِفَ بِعَمَلِهِ، دُوْنَ مَا تَلِفَ مِنْ حِرْزِهِ.

[VII.18.18] A fuller is someone who cleans wool and other materials through the process of fulling.

The examples mentioned here are those of an ajeer mushtarak (literally, a 'shared worker'), a person paid on the basis of work done for different people who commission him or her, and who is paid a piece wage for each item (piece) produced. This is in contrast to an ajeer khâṣṣ, who is devoted to work for one employer during a certain time. The latter is held liable only if he or she commits transgression or negligence.

[VII.18.19] This is to deter craftsmen from mishandling the properties of people.

[VII.18.20] Because if the property was appropriately kept in their store, and, despite that, it perished, they shall be treated like trustees.

Lease-to-Own Contracts

The lease-to-own model may be used in modern Islamic financing. Among the many technicalities that should be observed, the two most important points are: ensuring the ownership of the lessor before he or she leases the property out, and abiding by the obligations and rights of the lease contract while the property is leased. This is to ensure that the contract is not simply a trick to guarantee the return of capital with a profit, without any risk-taking or liability for the investor/financier, as this would constitute usury (ribâ).

The two other commonly-used models of Islamic financing are: 'declining partnership' (sharâkah mutanâqiṣah) and 'cost-plus sale to the purchase orderer' (bay' al-murâbaḥah lil-âmir bish-shirâ'). In Islam, profit follows liability. Immunizing the capital of the investors against loss is the essence

of usury. Some of the safeguards against that include the complete possession of the property before its sale to the client in the cost-plus sales, and the shared responsibility of the partners in the declining partnership model.

Islamic financing encounters enormous hurdles when it operates within a framework that is negligent of its principles. Sincere efforts by the Islamic financing industry should be appreciated. Ongoing improvements must be undertaken to achieve compliance with the spirit and values of Sharia, not only its technicalities.

[VII.19] Chapter on Unlawful, Forceful Appropriation (*Ghaṣb*)

بَابُ الْغَصْبِ

Ghaṣb is the wrongful seizure of another person's property by force. [VII.19.1] [VII.19.2]	هُوَ اسْتِيْلَاءُ الإِنْسَانِ عَلَى مَالِ غَيْرِهِ بِغَيْرِ حَقٍّ.

[VII.19.1] While ghaṣb is the wrongful seizure of others' properties by force, similar rulings apply when it is taken by means of falsehood and deception.

[VII.19.2] Ghaṣb is forbidden by consensus. It is one of the major enormities. Allah said:

{وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ... }

{And do not consume one another's wealth unjustly…} (al-Baqarah 2:188)

The Prophet (SA) said:

«مَنِ اقْتَطَعَ شِبْرًا مِنَ الأَرْضِ ظُلْمًا طَوَّقَهُ اللَّهُ إِيَّاهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرَضِينَ…».

"If anyone seizes a handspan of land unlawfully, Allah will surround him or her with it to the depth of seven earths." (Ag – from Sa'eed ibn Zayd)

The Prophet (SA) also said:

«لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ».

"One is not permitted (to take, use, and so on) the property of a Muslim unless the owner is fully content with that." (Ba – from Ḥaneefah ar-Raqâshi; al-Albâni: S in Irwâ' al-Ghaleel)

This hadith forbids not only unlawful appropriation, but all forms of using another person's wealth which that person is not completely comfortable with.

As mentioned earlier, in the hadiths concerning the ethics of transactions, the mention of the word 'Muslim' is inconsequential, as indicated by the vast majority of scholars. It was mentioned because that is the likely situation – that a Muslim transacts with other Muslims. It could have also been to make the act sound more repulsive. However, it is the consensus of all scholars that injustice is haram against Muslims and non-Muslims alike. The lawful taking of war booty is governed by its own rules; it does not permit taking property protected by a covenant or safe-conduct. This is an exception to the ordinary requirement of the owner's consent.

Whoever unlawfully appropriates something has to return it and pay the market value of the rental of the like, for the period of its seizure, if it is worthy of rent or a wage. [VII.19.3] If the property decreased [in value, during its unlawful appropriation], the offender has to pay the compensation for the estimated decrease.	وَمَنْ غَصَبَ شَيْئًا، فَعَلَيْهِ رَدُّهُ، وَأَجْرُ مِثْلِهِ إِنْ كَانَ لَهُ أَجْرٌ، مُدَّةَ مَقَامِهِ فِيْ يَدَيْهِ. وَإِنْ نَقَصَ فَعَلَيْهِ أَرْشُ نَقْصِهِ.

[VII.19.3] If the offender seized an apartment, he or she will not only need to return it, but must also pay the rent (according to its market value) for the period it was in his or her possession. In addition to this, the offender will pay fair compensation for any damage that took place while it was in his or her possession. All of the above is the right of the one whose commodity was unlawfully appropriated. The judge may, in addition to the above, order an appropriate discretionary punishment (ta'zeer) for the wrongdoer. This compensation concerns deterioration of the property, not a fall in market prices alone when the property is returned unchanged.

وَإِنْ جَنَى فَأَرْشُ جِنَايَتِهِ عَلَيْهِ سَوَاءٌ جَنَى عَلَى سَيِّدِهِ أَوْ عَلَى أَجْنَبِيٍّ، وَإِنْ جَنَى عَلَيْهِ أَجْنَبِيٌّ فَلِسَيِّدِهِ تَضْمِيْنُ مَنْ شَاءَ مِنْهُمَا.

If the unlawfully appropriated property increases [in value or amount], it is to be returned with the increase, whether the increase was connected[VII.19.4] or separate. [VII.19.5]	وَإِنْ زَادَ الْمَغْصُوْبُ رَدَّهُ بِزِيَادَتِهِ، سَوَاءٌ كَانَتِ الزِّيَادَةُ مُتَّصِلَةً أَوْ مُنْفَصِلَةً.

[VII.19.4] As in the growth of livestock.

[VII.19.5] As in profit made from renting the unlawfully appropriated commodity.

This is a matter of consensus when the profit is of the same nature of the seized property, such as the offspring of livestock.

If the unlawfully appropriated property incurs both an increase and a decrease [in value/amount], then it is to be returned together with its increment [of increase], be it caused by the one who seized it or not, and the offender is held liable for any decrease [in value/amount]. For instance, when one illegitimately seizes wood and carpenters it into a door, [VII.19.6] or seizes iron and turns it into needles, one must return it with its increment, and one is fined for any reduction. The same applies when one misappropriates cotton and then spins it, or thread and then weaves it, or a garment and then fulls or bleaches it or tailors it. This holds true also for grains that become plants, seeds that become trees, and eggs that become hens. [VII.19.7]	وَإِنْ زَادَ وَنَقَصَ رَدَّهُ بِزِيَادَتِهِ وَضَمِنَ نَقْصَهُ، سَوَاءٌ زَادَ بِفِعْلِهِ أَوْ بِغَيْرِ فِعْلِهِ، فَلَوْ نَجَرَ الْخَشَبَةَ بَابًا أَوْ عَمِلَ الْحَدِيْدَ إِبْرًا رَدَّهُمَا بِزِيَادَتِهِمَا وَضَمِنَ نَقْصَهُمَا إِنْ نَقَصَا. وَلَوْ غَصَبَ قُطْنًا فَغَزَلَهُ أَوْ غَزْلاً فَنَسَجَهُ أَوْ ثَوْبًا فَقَصَرَهُ أَوْ فَصَّلَهُ وَخَاطَهُ، أَوْ حَبًّا فَصَارَ زَرْعًا، أَوْ نَوًى فَصَارَ شَجَرًا، أَوْ بَيْضًا فَصَارَ فِرَاخًا، فَكَذٰلِكَ.

[VII.19.6] In this case, if one turns wood into a door, one has likely increased the value, but decreased the amount (of wood).

[VII.19.7] In these cases, a reduction in value may occur if some of the grains, seeds, or eggs were lost or damaged before they could become plants, trees, or hens, respectively. The decrease in value shall not be deducted from the increase. Because of the transgression, the one who unlawfully appropriated them shall return the increase and be liable for any decrease.

وَإِنْ غَصَبَ عَبْدًا فَزَادَ فِيْ بَدَنِهِ أَوْ بِتَعْلِيْمِهِ ثُمَّ ذَهَبَتِ الزِّيَادَةُ، رَدَّهُ وَقِيْمَةَ الزِّيَادَةِ.

If the unlawfully appropriated property is destroyed, or it becomes impossible to return it, then the offender has to return its like, if it is a weighed or a measured property, or its value otherwise. [VII.19.8] If the offender thereafter is able to return the original appropriated property to its owner, he must do so, and may then retrieve the previously paid value.	وَإِنْ تَلِفَ الْمَغْصُوْبُ أَوْ تَعَذَّرَ رَدُّهُ، فَعَلَيْهِ مِثْلُهُ إِنْ كَانَ مَكِيْلاً أَوْ مَوْزُوْنًا، وَقِيْمَتُهُ إِنْ لَمْ يَكُنْ كَذٰلِكَ، ثُمَّ إِنْ قَدَرَ عَلَى رَدِّهِ، رَدَّهُ وَأَخَذَ الْقِيْمَةَ.

[VII.19.8] If it was something measurable by weight or volume, then it is possible to return its like, such as a ton of rice or wheat (nowadays measured by weight). If it is something that is not measurable in that way, such as a piece of furniture, then he or she will return its value as determined by experts.

If the wrongdoer mixes the misappropriated object with something of the same kind, he or she has to pay its like from that mix. [VII.19.9] However, if it has been mixed with something different, the offender has to pay the equivalent from wherever he or she wishes. [VII.19.10]	وَإِنْ خَلَطَ الْمَغْصُوْبَ بِمَا لَا يَتَمَيَّزُ مِنْهُ مِنْ جِنْسِهِ فَعَلَيْهِ مِثْلُهُ مِنْهُ. وَإِنْ خَلَطَهُ بِغَيْرِ جِنْسِهِ، فَعَلَيْهِ مِثْلُهُ مِنْ حَيْثُ شَاءَ.

[VII.19.9] Since the value of the mix is equal to that of what was taken, for instance, when he or she takes some olive oil and mixes it with the same grade olive oil.

[VII.19.10] Here, a different kind means a different legal genus, such as olive oil mixed inseparably with sesame oil. The matn requires replacement from elsewhere. According to the later relied-upon Ḥanbali position, if both mixed substances have value, their owners share the mixture in proportion to their values; it may be sold and the proceeds divided accordingly, with the usurper compensating for any loss in value caused by the mixing. If the property can be separated, the usurper must separate it and return it.

When one unlawfully seizes a plot of land and plants trees on it, one has to pull the trees out, [VII.19.11] give back the land, and pay a fine for any decrease [caused by the planting], together with its rent.	وَإِنْ غَصَبَ أَرْضًا، فَغَرَسَهَا، أُخِذَ بِقَلْعِ غَرْسِهِ وَرَدِّهَا وَأَرْشِ نَقْصِهَا وَأُجْرَتِهَا.

[VII.19.11] If requested by the rightful owner, for the Prophet (SA) said:

«لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ.»

“The unjust root (or root of the unjust) has no sacredness.” (T – from Sa‘eed ibn Zayd; al-Albâni: S)

The same rule applies to building on a misappropriated land.

If the extorter plants on it [VII.19.12] and takes the harvest, then he or she has to return the extorted land and pay its rent. If the owner regains control of his or her land before the plants have been harvested, the owner is given the choice of either leaving the harvest for the one who unlawfully planted it, [VII.19.13] or taking it and paying the extorter its value. [VII.19.14]	وَإِنْ زَرَعَهَا وَأَخَذَ الْغَاصِبُ الزَّرْعَ رَدَّهَا وَأُجْرَتَهَا. وَإِنْ أَدْرَكَ الزَّرْعَ قَبْلَ حَصَادِهِ خُيِّرَ بَيْنَ ذَلِكَ وَبَيْنَ أَخْذِ الزَّرْعِ بِقِيْمَتِهِ.

[VII.19.12] Unlike the previous example, in this case, crops, not trees were planted.

[VII.19.13] In this case, the owner will be entitled to the rent for the land.

[VII.19.14] The Prophet (SA) said:

«مَنْ زَرَعَ فِي أَرْضِ قَوْمٍ بِغَيْرِ إِذْنِهِمْ ، فَلَيْسَ لَهُ مِنَ الزَّرْعِ شَيْءٌ وَلَهُ نَفَقَتُهُ.»

"One who cultivates people's land without their permission is not entitled to any part of the crop, but shall be entitled to what he or she has spent on it." (D – from Râfi' ibn Khadeej; al-Albâni: S)

وَإِنْ غَصَبَ جَارِيَةً، فَوَطِئَهَا وَأَوْلَدَهَا، لَزِمَهُ الْحَدُّ، وَرَدُّهَا وَرَدُّ وَلَدِهَا، وَمَهْرُ مِثْلِهَا وَأَرْشُ نَقْصِهَا وَأُجْرَةُ مِثْلِهَا، وَإِنْ بَاعَهَا فَوَطِئَهَا الْمُشْتَرِيْ وَهُوَ لَا يَعْلَمُ فَعَلَيْهِ مَهْرُهَا وَقِيْمَةُ وَلَدِهَا إِنْ أَوْلَدَهَا، وَأُجْرَةُ مِثْلِهَا، وَيَرْجِعُ بِذٰلِكَ عَلَى الْغَاصِبِ.

[VII.20] Chapter on the Right of Pre-emption (*Shuf'ah*)

بَابُ الشُّفْعَةِ

وَهِيَ اسْتِحْقَاقُ الإِنْسَانِ انْتِزَاعَ حِصَّةِ شَرِيْكِهِ مِنْ يَدِ مُشْتَرِيْهَا.	It is one's right [due to one's status as a neighbor or co-owner of a property] to take possession of [by purchasing] the share of one's co-owner from someone who has bought it. [VII.20.1]

[VII.20.1] The right of pre-emption, or priority in purchasing something before others (because of one's status as a neighbor or co-owner of a property), is established in the Sunnah. The Messenger of Allah (SA) said:

«اَلْجَارُ أَحَقُّ بِصَقَبِه».

> *"The neighbor is more entitled to the (property) adjacent to him or her." (B – from Abu Râfi')*

Ibn al-Mundhir (d. 318 AH) reported the consensus on the concept of shuf'ah (pre-emption).

Reason supports the ruling of shuf'ah. If X and Y are neighbors or business partners, and Y sells his or her share of a property (that they own together) to a third party, X may encounter difficulties; therefore, X is given the right over others to buy it at the offered price.

وَلَا تَجِبُ إِلَّا بِشُرُوْطٍ سَبْعَةٍ: أَحَدُهَا: الْبَيْعُ، فَلَا تَجِبُ فِيْ مَوْهُوْبٍ، وَلَا مَوْقُوْفٍ وَلَا عِوَضِ خُلْعٍ، وَلَا صَدَاقٍ.	It is only binding when the following **seven conditions** are fulfilled: [It must be a case of] selling. [VII.20.2] Pre-emption is not binding in the case of gifts, donations, endowments, khul',[VII.20.3] and wedding gifts (ṣadâq).

[VII.20.2] The right of pre-emption is validated by consensus if the transfer of ownership (from Y to the third party) was done through sale. It is

inapplicable by consensus if it was through inheritance. In other words, if Y's portion of the property passes on to an heir, X does not have the right to claim it through shuf'ah.

Concerning other modes of transfer, there is disagreement. Some jurists allow pre-emption for the property's value. In the Shâfi'i school, however, a share transferred as a dower or as compensation for khul' is taken for the woman's customary equivalent dower (mahr al-mithl), which need not equal the property's value.

(A) + (+H, +S) do not validate shuf'ah in rental properties, where two parties may share the usufruct of some property. This means if one co-renter (Y) no longer wishes to rent his or her portion of the property, and wants to let another person rent it, the original co-renting partner (X) should not be allowed to block this.

[VII.20.3] Khul' means the termination of marriage when initiated by the wife in return for a payment. If Y is the wife, and she gives her portion of a property to her husband to grant her khul', then X (the co-owner of that property) will not be able to block that transaction. Likewise, if someone gives his or her share of property as a wedding gift or a donation, the co-owner will not be allowed to block that.

It should be real estate or the attached buildings or trees. [VII.20.4]	الثَّانِيْ: أَنْ يَكُوْنَ عَقَارًا، أَوْ مَا يَتَّصِلُ بِهِ مِنَ الْبِنَاءِ وَالْغِرَاسِ.

[VII.20.4] Because the hadiths of pre-emption, such as that of Jâbir (given in condition 3 of Ibn Qudâmah's text here), only mentioned land and real estate. Shuf'ah in real estate is approved unanimously.

It should be a common property, [VII.20.5] and **not** a divided one with well-defined borders, [VII.20.6] according to Jâbir's narration, "The Prophet (SA) has decreed that pre-emption is valid in all cases where the real estate concerned has not been divided, but if the boundaries are	الثَّالِثُ: أَنْ يَكُوْنَ شِقْصًا مُشَاعًا، فَأَمَّا الْمَقْسُوْمُ الْمَحْدُوْدُ، فَلَا شُفْعَةَ فِيْهِ لِقَوْلِ جَابِرٍ رضي الله عنه: «قَضَى رسول الله ﷺ بِالشُّفْعَةِ فِي كل ما لَمْ يُقْسَمْ. فَإِذَا وَقَعَتِ الْحُدُوْدُ

established and the roads are made, then there is no pre-emption." [VII.20.7]	وصُرِفَت الطُّرُقُ فَلَا شُفْعَةَ.»

[VII.20.5] 'Common property' here means that each owner has an undivided interest in the entire property.

[VII.20.6] (A) + (+M, +S): Once a property's boundaries are clearly demarcated, neighbors no longer have the right of pre-emption. They cite Jâbir's hadith and argue that granting the right of pre-emption to all neighbors will cause hardship to too many sellers and buyers. The hardship that will befall many buyers is that they will not be able to purchase the properties they desire because the sale will be pre-empted.

(-H): The neighbor who shares some border(s) with the seller will have the right of pre-emption, even if the lots were divided with well demarcated borders. He argued that avoiding the harm of getting a troublesome neighbor warrants giving him or her that right, and he cited the hadith of Abu Râfi' that was mentioned above. ("The neighbor is more entitled to the property adjacent to him or her.")

[VII.20.7] (Ag). This wording is Bukhâri's.

It should be divisible; pre-emption does not apply to what is indivisible. [VII.20.8]	الرَّابِعُ: أَنْ يَكُوْنَ مِمَّا يَنْقَسِمُ، فَأَمَّا مَا لَا يَنْقَسِمُ، فَلَا شُفْعَةَ فِيْهِ.

[VII.20.8] (A) + (+M, +S): Wells, small outdoor bathrooms, and narrow alleys that cannot be divided are excluded from the right of pre-emption. Validating the right of pre-emption in this case would harm the seller, who would not be able to divide the property with the original partner and take his or her own share. Also, potential buyers would hesitate to make offers because of the right of the pre-emptor.

(a) + (-H, -M2, -S2): The right of pre-emption applies here too, and the proof is the generality of the hadith of Jâbir. Also, the benefit of validating the right of pre-emption is stronger here, since the seller will get the (full) price of his or her share, and the seller's partner will get the ownership of the entire property. Co-ownership of an indivisible property may bring about more difficulty than co-ownership of a divisible property, so giving the co-

owners the right of pre-emption will enable them to acquire the whole property and have no partners in it.

[The one wishing to pre-empt] must take the whole property [being sold]. [VII.20.9] If he or she asks for only a part of it, the right of pre-emption becomes invalid. When there are two pre-emptors, their right of pre-emption is proportionate to their shares. [VII.20.10] If one person gives up his or her right, the other has to either take the whole property [being sold] or leave it [that is, give up any right to pre-emption].	الْخَامِسُ: أَنْ يَأْخُذَ الشِّقْصَ كُلَّهُ، فَإِنْ طَلَبَ أَخْذَ بَعْضِهِ، بَطَلَتْ شُفْعَتُهُ، وَلَوْ كَانَ لَهُ شَفِيْعَانِ، فَالشُّفْعَةُ بَيْنَهُمَا عَلَى قَدْرِ سِهَامِهِمَا، وَإِنْ تَرَكَ أَحَدُهُمَا شُفْعَتَهُ، لَمْ يَكُنْ لِلآخَرِ إِلَّا أَخْذُ الْكُلِّ، أَوِ التَّرْكُ.

[VII.20.9] That is, the pre-emptor must purchase the entire share which the partner/co-owner is selling. If the pre-emptor asks to buy only part of it, the partner may refuse because of the disadvantage of not being able to sell the whole share in one transaction.

[VII.20.10] If a land is owned by three partners, and one of them wishes to sell his or her share, then the two other partners will be entitled to the right of pre-emption in proportion to their original shares. If one of them owns twice as much land as the other, he or she is entitled to pre-emption concerning two-thirds of the share that is being sold (by the third partner to another party), while the other partner will be entitled to one-third.

The pre-emptor must be capable of paying the price; [VII.20.11] this right of pre-emption is dropped if he or she cannot pay the entire price. If the price is fungible, [VII.20.12] he or she has to pay the equivalent, but if it is not, then he or she has to pay its value. If they dispute over the price and none of them can provide	السَّادِسُ: إِمْكَانُ أَدَاءِ الثَّمَنِ، فَإِنْ عَجِزَ عَنْهُ، أَوْ عَنْ بَعْضِهِ، بَطَلَتْ شُفْعَتُهُ، وَإِذَا كَانَ الثَّمَنُ مِثْلِيًّا، فَعَلَيْهِ مِثْلُهُ، وَإِنْ لَمْ يَكُنْ مِثْلِيًّا، فَعَلَيْهِ قِيْمَتُهُ. وَإِنِ اخْتَلَفَا فِيْ قَدْرِهِ، وَلَا بَيِّنَةَ لَهُمَا، فَالْقَوْلُ قَوْلُ الْمُشْتَرِيْ مَعَ يَمِيْنِهِ.

evidence, then the final word is that of the buyer, who must take an oath.	

[VII.20.11] The judge will give the pre-emptor a reasonable period of time (A/SM: 3 days) to collect the money.

[VII.20.12] Such as when one's share in a property is sold for other than cash – for example, for a ton of rice, a car, or another similar commodity. A fungible property is one whose individual units are capable of mutual substitution. The equivalent here (mithl) is the exact like, which is possible in mithliyât (fungibles such as a certain measure of wheat), where it is possible to substitute the actual product with an equivalent measure of the same product. For non-fungibles (qeemiyât, such as a piece of furniture), the value is what is owed, since it is not easy to find the exact like.

The pre-emptor has to claim his or her right of pre-emption as soon as he or she is aware (of the sale of the property to someone else); otherwise, the pre-emption is void. An exception is when the pre-emptor is incapable of claiming this right due to traveling, imprisonment, [VII.20.13] illness, or young age. [VII.20.14] In these cases, the pre-emptor is entitled to the right to pre-emption once he or she is able to claim it. However, if the pre-emptor is able to call on someone to witness the request of pre-emption but does not, his or her pre-emption is annulled. Even if the pre-emptor is unaware of the selling until three or more sell it to one another in succession, he or she has the right to demand it from any one of them. If the pre-emptor requests it from the first, the second would then claim from the first what has been taken from him or her, and	السَّابِعُ: الْمُطَالَبَةُ بِهَا عَلَى الْفَوْرِ سَاعَةَ يَعْلَمُ، فَإِنْ أَخَّرَهَا، بَطَلَتْ شُفْعَتُهُ إِلَّا أَنْ يَكُوْنَ عَاجِزًا عَنْهَا؛ لِغَيْبَةٍ أَوْ حَبْسٍ، أَوْ مَرَضٍ، أَوْ صِغَرٍ، فَيَكُوْنُ عَلَى شُفْعَتِهِ مَتَى قَدَرَ عَلَيْهَا إِلَّا أَنَّهُ إِنْ أَمْكَنَهُ الإِشْهَادُ عَلَى الطَّلَبِ بِهَا، فَلَمْ يُشْهِدْ، بَطَلَتْ شُفْعَتُهُ. فَإِنْ لَمْ يَعْلَمْ حَتَّى تَبَايَعَ ذٰلِكَ ثَلَاثَةٌ أَوْ أَكْثَرُ، فَلَهُ مُطَالَبَةُ مَنْ شَاءَ مِنْهُمْ ، فَإِنْ أَخَذَ مِنَ الأَوَّلِ رَجَعَ عَلَيهِ الثَّانِيْ بِمَا أُخِذَ مِنْهُ، وَالثَّالِثُ عَلَى الثَّانِيْ.

similarly the third would claim from the second.	

[VII.20.13] These measures will make the co-owner and potential buyer reach out to the potential pre-emptor and inform him or her of the potential sale. If they want to pre-empt the sale, they will have to pay the full price offered by the potential buyer.

[VII.20.14] A child may own a property through inheritance or other means, such as when the guardian of his or her estate buys a property with the child's money. According to this position of (A), a child will retain the right of pre-emption until they reach the age of rushd (majority, full legal age). This is meant to protect the right of the child in case the guardian does not ask for pre-emption, but it may also cause some hardship to the co-owner. The co-owner may ask the guardian to divide the property, which will allow him or her to sell to anyone, or the co-owner may sell to the child if the guardian deems this in the interest of the child.

(a) + (-M, -S): If the child's guardian did not claim the right of pre-emption because it was not in the interest of the child, then the right to pre-emption is dropped, and it will not wait for the child to reach the age of rushd.

(-H): If the guardian drops it, it is dropped whether or not it was in the interest of the child.

If the pre-emptor claims the right, and there are trees or a building on it that belong to the buyer, then the pre-emptor has to compensate the buyer unless the buyer chooses to pull them (the trees) out without harm. [VII.20.15] If there are crops or fruit that are showing (signs of fruition), they are kept for the buyer until the time of harvest or picking.	وَمَتَى أَخَذَهُ، وَفِيْهِ غَرْسٌ، أَوْ بِنَاءٌ لِلْمُشْتَرِيْ، أَعْطَاهُ الشَّفِيْعُ قِيْمَتَهُ، إِلَّا أَنْ يَشَاءَ الْمُشْتَرِيْ قَلْعَهُ مِنْ غَيْرِ ضَرَرٍ فِيْهِ. وَإِنْ كَانَ فِيْهِ زَرْعٌ أَوْ ثَمَرٌ بَادٍ، فَهُوَ لِلْمُشْتَرِيْ مُبَقًّى إِلَى الْحَصَادِ أَوِ الْجِذَاذِ.

[VII.20.15] The harm here concerns damage to the land from removing the trees or buildings. According to the later relied-upon Ḥanbali position, the buyer may remove them even if this damages the land.

[When a third party] buys a share of land and a sword [or any other unconnected object or property] in one contract, the pre-emptor in this case has the right to take the land only, in accordance with its share [of the full price]. [VII.20.16]	وَإِنِ اشْتَرَى شِقْصًا وَسَيْفًا فِيْ عَقْدٍ وَاحِدٍ، فَلِلشَّفِيْعِ أَخْذُ الشِّقْصِ بِحِصَّتِهِ.

[VII.20.16] If the seller sells a sword and a piece of land in one transaction, the pre-emptor will have the right to the land. He or she will get it from the buyer for its share of the price (value), so if the value of the land is 80% of the total price and the sword 20%, the pre-emptor will get the land for 80% of the offered price in that transaction (and will not have to buy the sword).

[VII.21] The Book of Endowments (*Waqf*)

كِتَابُ الْوَقْفِ

وَهُوَ: تَحْبِيْسُ الأَصْلِ، وَتَسْبِيْلُ الثَّمَرَةِ.	Waqf means retaining a property in trust and donating its yield/usufruct. [VII.21.1]

[VII.21.1] Waqf is a recommended (mustaḥabb) act of worship.

The Prophet (SA) said:

«إِذَا مَاتَ ابْنُ آدَمَ انْقَطَعَ عَمَلُهُ إِلا مِنْ ثَلاثٍ: صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ مِن بَعدِه، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ».

"When a descendant of Adam dies, all his or her good deeds cease except three: perpetual charity (ṣadaqah jâriyah) [this is understood to refer to waqf], knowledge from which others may benefit after him or her, and a righteous child who will pray for him or her." (M – from Abu Hurayrah)

Jâbir narrates:

لَمْ يَكُنْ أَحَدٌ مِنْ أَصْحَابِ النَّبِيِّ ﷺ ذُو مَقْدِرَةٍ إِلَّا وَقَفَ.

"From the Messenger of Allah's Companions, every single person of (financial) means set up a waqf." (Reported by Abu Bakr al-Khassâf in Kitâb Aḥkâm al-Awqâf)

There is no report of any Companion contesting the ruling that waqf is mustaḥabb. That is why some of the verifying scholars cited the consensus of the Companions in support of the ruling of waqf.

Reason supports the concept of waqf. In addition to being an ongoing charity and a means of drawing closer to Allah, waqf is an essential instrument in supporting small and large ventures of public interest, like orphanages, dams, roads, schools, hospitals, universities, da'wah organizations, guesthouses (places where wayfarers may stay for free), and other similar venues. One may set up a waqf and make one's own descendants the only

beneficiaries of it. This will bar them from disposing of the property itself, while allowing them to benefit from its usufruct or yield. For example, if one fears that one's children would recklessly spend a certain property (were they to inherit it), one may lock it up in a waqf so that they cannot sell it, but they will still be able to benefit from its rent.

This will not be part of the inheritance. Waqf cannot be inherited. However, a person can name his or her descendants as sole beneficiaries of the usufruct of the property held in waqf.

This is permissible for any item whose sale is permissible, and that can bring continuous benefits without perishing [upon its usage]. It would not be valid otherwise, such as in coins, foodstuffs, and fragrant plants.	وَيَجُوْزُ فِي كُلِّ عَيْنٍ يَجُوْزُ بَيْعُهَا، وَيُنْتَفَعُ بِهَا دَائِمًا مَعَ بَقَائِهَا، وَلَا يَصِحُّ فِي غَيْرِ ذٰلِكَ، مِثْلُ الأَثْمَانِ وَالْمَطْعُوْمَاتِ وَالرَّيَاحِيْنَ.

It can only be [established] for good/righteous ends, [VII.21.2] as [indicated] in a report narrated on the authority of 'Umar (RA): 'Umar asked, "O Messenger of Allah! I acquired some property at Khaybar which is dearer to me than anything I possess, so what do you instruct me to do with it?" He responded, "If you wish, retain it and give (its crop yield) in charity, but (the endowed property) itself should not be sold, gifted, or inherited." So 'Umar donated it [for the crop yield to be divided] among the poor, relatives of his, slaves [to buy their freedom], those in the path of Allah [for jihad efforts], wayfarers, and guests. The individual responsible for it (waqf	وَلَا يَصِحُّ إِلَّا عَلَى بِرٍّ أَوْ مَعْرُوْفٍ، مِثْلُ مَا رُوِيَ عَنْ عُمَرَ رضي الله عنه أَنَّهُ قَالَ: يَا رَسُوْلَ اللهِ، إِنِّيْ أَصَبْتُ مَالاً بِخَيْبَرَ لَمْ أُصِبْ مَالاً قَطُّ هُوَ أَنْفَسُ عِنْدِيْ مِنْهُ، فَمَا تَأْمُرُنِيْ فِيهِ؟ قَالَ ﷺ: «إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا غير أنها لَا يُبَاعُ أَصْلُهَا، وَلَا يُوهَبُ، وَلَا يُورَثُ». قَالَ: فَتَصَدَّقَ بِهَا عُمَرُ فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ، وَفِي سَبِيْلِ اللهِ وَابْنِ السَّبِيْلِ وَالضَّيْفِ. لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ

manager) is not to be blamed for making use of a reasonable amount of it, and feeding a friend [from it], without hoarding. [VII.21.3]	يَأْكُلَ مِنْهَا أَوْ يُطْعِمَ صَدِيْقًا غَيْرَ مُتَمَوِّلٍ فِيهِ.

[VII.21.2] Conditions of waqf validity:

- The purpose must be pleasing to Allah.

- The donor has authority to dispose of his or her wealth.

- The property is not something that perishes by being used, and it will continue to exist while people benefit from it.

- The property is precisely designated. It is not valid to say, "I will put one of my houses in a trust."

- If it is for an individual, he or she must be one who can own the property. In other words, it may not be given to the dead (such as deceased awliyâ') or to animals.

- It is effective immediately and not conditional, except if contingent upon death, because 'Umar made a will that if anything were to happen to him, then the land he owned in Khaybar would be given in charity. (D). This should be no more than one-third of the value of the person's money to be inherited, because it must be within the limits of the waṣiyah (bequest).

[VII.21.3] (Ag – from Ibn 'Umar)

Waqf can be [effected] through a statement [VII.21.4] or an action that is indicative of it, [VII.21.5] such as building a mosque and allowing people to pray in it, or [building] restrooms (or water fountains) that are made accessible to the public.	وَيَصِحُّ الْوَقْفُ بِالْقَوْلِ وَالْفِعْلِ الدَّالِّ عَلَيْهِ، مِثْلُ أَنْ يَبْنِيَ مَسْجِدًا وَيَأْذَنَ لِلنَّاسِ بِالصَّلَاةِ فِيهِ، أَوْ سِقَايَةً وَيُشَرِّعَهَا لِلنَّاسِ.

[VII.21.4] While Imam Abu Ḥaneefah indicated that one could recant a statement of waqf, his two disciples Abu Yoosuf (d. 182 AH) and Muhammad ash-Shaybâni (d. 189 AH), as well as the three other major

imams, indicated that the statement is binding. Muhammad, however, also requires the prescribed delivery of the endowed property; the declaration alone does not complete it according to him.

[VII.21.5] (a, -S): The action is not sufficient to make the waqf binding without a confirmatory statement.

It is not permissible to sell it [the waqf] unless the benefit that it provides has ended altogether. In that case, it can be sold, and another should be bought to take its place. [VII.21.6]	وَلَا يَجُوْزُ بَيْعُهُ إِلَّا أَنْ تَتَعَطَّلَ مَنَافِعُهُ بِالْكُلِّيَّةِ، فَيُبَاعُ وَيُشْتَرَى بِهِ مَا يَقُوْمُ مَقَامَهُ.

[VII.21.6]If it is a mosque and can no longer be used, then the money should be spent on another mosque.

If a waqf set up to benefit a mosque produces a genuine surplus, the excess may be spent on another mosque in need or given to poor Muslims. However, funds must be retained when a later need is reasonably anticipated and no future income will cover it.

For instance, a warhorse that is retained [as a waqf] but is no longer fit for battle can be sold, and another horse that can serve that end is purchased in its place. [VII.21.7] Similarly, if a mosque is no longer of benefit in its current location, it can be sold and relocated to a place where it will be of benefit. [VII.21.8]	وَالْفَرَسُ الْحَبِيْسُ إِذَا لَمْ يَصْلُحْ لِلْغَزْوِ، بِيْعَ وَاشْتُرِيَ بِهِ مَا يَصْلُحُ لِلْغَزْوِ. وَالْمَسْجِدُ إِذَا لَمْ يَنْتَفِعْ بِهِ فِي مَكَانِهِ، بِيْعَ وَنُقِلَ إِلَى مَكَانٍ يَنْتَفِعُ بِهِ.

[VII.21.7] If the price of the old horse is not sufficient to buy a younger one fit for jihad, the money is used towards buying a share in a horse that will be used for that end.

[VII.21.8] After the treasury of Kufa was robbed during the time of ‘Umar ibn al-Khaṭṭâb, he ordered his agent there to move the mosque that was in the Tammâreen (the market of the date traders) to be next to the treasury. (*al-Mughni*) So, if a masjid became unsafe or too small for the congregation

and cannot be expanded, it should be sold, and the money should be used to build another one for the same congregation. This is only allowable in the Ḥanbali madh-hab. (A/SM) The same applies to other waqfs. The principle here is that waqf is infinitely binding, and it is not permissible to annul it or sell it unless its benefits cease. In this case, it should be sold, and the money should be spent on a similar purpose. If it is not possible to spend it on something exactly the same, then on something close in nature.

With regard to [the practical administration of] a waqf, [such as] its expenditures, its stipulations, how it is organized, what types of people are included or excluded as potential beneficiaries, its manager and expenditure on the endowment, the determining factors that must be referred back to are the stipulations made by the endower. [VII.21.9] [For example,] if a waqf is [stipulated to be] endowed to the "children" of a certain person, and then to the "needy", then there would be no differentiation made between the male and female [children of that person] unless some sort of preference [for one gender] had been [expressly] stipulated. Furthermore, only when none of the children of the specified person remained would any "needy" persons receive [assistance from the waqf].	وَيُرْجَعُ فِي الْوَقْفِ وَمَصْرِفِهِ وَشُرُوْطِهِ وَتَرْتِيْبِهِ، وَإِدْخَالِ مَنْ شَاءَ بِصِفَةٍ أَوْ إِخْرَاجِهِ بِهَا، وَكَذٰلِكَ النَّاظِرُ فِيهِ، وَالنَّفَقَةُ عَلَيْهِ، إِلَى لَفْظِ الْوَاقِفِ فَلَوْ وَقَفَ عَلَى وَلَدِ فُلَانٍ ثُمَّ عَلَى الْمَسَاكِيْنِ، كَانَ الذَّكَرُ وَالأُنْثَى بِالسَّوِيَّةِ إِلَّا أَنْ يُفَضِّلَ بَعْضَهُمْ عَلَى بَعْضٍ، فَإِذَا لَمْ يَبْقَ مِنْهُمْ أَحَدٌ رَجَعَ عَلَى الْمَسَاكِيْنِ.

[VII.21.9] It is obligatory to honor the conditions of the one who made the endowment, as long as it does not go against the Sharia, because the Prophet (SA) said:

«...وَالْمُسْلِمُونَ على شُرُوطِهِمْ إلا شَرْطًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا.»

"...and Muslims abide by their conditions, except a condition that will make haram what is halal or make halal what is haram." (T – from 'Amr ibn 'Awf; T: S)

Also, 'Umar stipulated certain conditions in his waqf, as in the report mentioned above.

If the waqf is allotted to a certain [group of] recipients who can all be individually identified and enumerated, then distributing an equal portion to each one of them is mandatory, unless some of them were [expressly] preferred [by the stipulations of the waqf]. If the beneficiaries cannot be exhaustively enumerated, [VII.21.10] then preferring some of them over others is permissible, as is allotting it to one of them in particular.	وَمَتَى كَانَ الْوَقْفُ عَلَى مَنْ يُمْكِنُ حَصْرُهُمْ، لَزِمَ اسْتِيْعَابُهُمْ بِهِ، وَالتَّسْوِيَّةُ بَيْنَهُمْ إِذَا لَمْ يُفَضِّلْ بَعْضَهُمْ. وَإِنْ لَمْ يُمْكِنْ حَصْرُهُمْ، جَازَ تَفْضِيْلُ بَعْضِهِمْ عَلَى بَعْضٍ، وَتَخْصِيْصُ وَاحِدٍ مِنْهُمْ بِهِ.

[VII.21.10] Such as setting up a waqf for the poor, because including all of them is impossible.

[VII.22] Chapter on Gifts (*Hibah*)

بَابُ الْهِبَةِ

It is the transfer of ownership during the life [of the giver], without compensation. [VII.22.1]	وَهِيَ تَمْلِيْكُ الْمَالِ فِي الْحَيَاةِ بِغَيْرِ عِوَضٍ.

[VII.22.1] Giving gifts is a recommended (mustaḥabb) act. The Messenger of Allah (SA) said:

«تَهَادَوا تَحَابُّوا».

> *"Exchange gifts, for this will make you love one another." (B in al-Adab al-Mufrad – from Abu Hurayrah; Ibn Ḥajar: R [ḥasan isnâd])*

Also, the exchange of gifts with non-Muslims is a great conduit to the conciliation of people's hearts. The Prophet (SA) accepted gifts from various non-Muslims: presents from al-Muqawqis (the Christian ruler of Egypt); a roast sheep from a Jewish woman (although the sheep turned out to be poisoned); and a white mule and a cloak from the Christian king of Aylah, as stated by Bukhâri in a chapter titled "Accepting gifts from the mushrikeen (polytheists, idolaters)." 'Umar (RA) gave a silk suit (ḥullah) to his mushrik (polytheist) brother, as is also narrated by Bukhâri.

Muslims may give gifts to non-Muslims on the days of Muslim religious feasts or any other days. However, it is clearly stated in the madh-hab (A/Iqnâ') that one should not give them gifts on the days of their religious feasts. The great Ḥanafi scholar az-Zayla'i (d. 743 AH, may Allah bestow mercy on him) indicates in Tabyeen al-Ḥaqâ'iq, "Giving gifts on the occasion of Nowruz and Mahrajaan [Persian/Zoroastrian holidays] is not permissible and is, in fact, an act of disbelief." His ensuing discussion ties disbelief to intending to venerate the festival; customary gift-giving without that intention is not disbelief, though he still says not to single out that day. (Note that there is a difference between calling it an act of disbelief and labeling the one who does it a disbeliever.)

Accepting gifts from them on their festival days is permissible, however. Imam Ibn Taymiyah, in his work Iqtiḍâ' aṣ-Ṣirâṭ al-Mustaqeem, stated that 'Ali (RA) accepted a gift from non-Muslims on the day of Nowruz, which is a feast celebrated by many ancient nations, including the Persians, Egyptians, Kurds, and others. 'Â'ishah (RAH) was also once asked about accepting a gift from the Zoroastrians on the day of their feast, and she allowed it, as long as it was not meat. This last report was narrated by Ibn Abi Shaybah (d. 235 AH/ 849 CE) in his *al-Muṣannaf*.

It is valid with an offering and acceptance or handing over, accompanied by an indication [that it is a gift].	وَتَصِحُّ بِالإِيْجَابِ وَالْقَبُوْلِ، وَالْعَطِيَّةِ الْمُقْتَرِنَةِ بِمَا يَدُلُّ عَلَيْهَا.

It becomes binding upon possession, [VII.22.2] and is not revocable, except by the father [VII.22.3] [taking it back from the child]. This is based on the statement of the Messenger of Allah (SA), "It is not permissible for one to give a gift and then take it back, except for the parent with his (or her) [VII.22.4] child." [VII.22.5]	وَتَلْزَمُ بِالْقَبْضِ، وَلَا يَجُوْزُ الرُّجُوْعُ فِيهَا إِلَّا لِلْوَالِدِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَا يَحِلُّ لِأَحَدٍ أَنْ يُعْطِيَ عَطِيَّةً، فَيَرْجِعَ فِيهَا إِلَّا الْوَالِدَ فِيمَا يُعْطِي وَلَدَهُ.»

[VII.22.2] (A): After possession, the gift becomes binding, subject to the parental exception discussed below. If the recipient has accepted but has not yet taken possession of the gift, the status is controversial. (A): not binding. (a): binding in that which does not require measuring by weight or volume.

[VII.22.3] This is based on the hadith quoted here, and by another hadith which indicates that that a person and what he or she owns belong to the father:

It was narrated by Jâbir ibn 'Abdullâh that a man said: O Messenger of Allah, I have wealth and a son, and my father wants to take all my wealth. He replied:

«أنتَ وَمالُكَ لِأبيك» (في رواية أبي داود: «لوالِدِك»).

"You and your wealth belong to your father (ab) [in Abu Dâwood's report: to your parent (wâlid)]" (Ma; al-Albâni: S)

This is the position of (A) + (+M, +S). According to (a) + (-H), even the father may not take his gift back.

Under the relied-upon Ḥanbali position, the father may reclaim the gift if the asset remains in the child's ownership and legally available for return, and has not acquired an inseparable increase that raises its value.

[VII.22.4] The word 'wâlid' in the hadith could be interpreted to mean either parent. However, the position of (A) is that the right to reclaim a gift is given only to the father, because of other reports where the Prophet (SA) said:

«إِنَّ أَطْيَبَ مَا أَكَلَ الرَّجُلُ مِنْ كَسْبِهِ، وَإِنَّ وَلَدَهُ مِنْ كَسْبِهِ».

"The most wholesome provisions to consume are those a man earns through his work, and his child is of his earnings." (D – S)

The Ḥanbalis also argued that the father has general wilâyah (guardianship) over the child's money.

(-M): the mother may reclaim the gift only if the child's father is alive. After the father's death, the child becomes an orphan, and she may not reclaim her gift to an orphan even if it is her child.

(a, -S): Both parents have the right to reclaim a gift. This position is more consistent with the apparent implication of the hadith that Ibn Qudâmah cited above. Also, as indicated above, the hadith indicating that a person and his (or her) wealth are the property of his (or her) father has another wording 'wâlid' (parent), rather than 'ab' (father), making the meaning inclusive of both parents. Finally, the hadith cited by the Ḥanbalis in support of the specification of the father has another wording:

«إِنَّ أَطْيَبَ ما أكلتُم من كَسبِكُم...»

"The most wholesome provisions to consume are those you earn through your work..." (T; T: ḥasan ṣaḥeeḥ)

This position is also in conformity with the established principle that a mother deserves one's good companionship the most.

[VII.22.5] (T – from Ibn 'Umar; al-Albâni: S)

What is prescribed when giving gifts to one's children is to be equitable with them, [VII.22.6] [and this means giving] on the basis of their shares of inheritance. [VII.22.7] This is based on the statement of the Messenger of Allah (SA), "Fear Allah and treat your children equitably." [VII.22.8]	وَالْمَشْرُوْعُ فِي عَطِيَّةِ الأَوْلَادِ التَّسْوِيَّةُ بَيْنَهُمْ عَلَى قَدْرِ مِيْرَاثِهِمْ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «اتَّقُوا اللَّهَ، وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ.»

[VII.22.6] (A): Equity is required in substantial gifts, according to the inheritance proportions explained below. Ordinary maintenance and clothing are based on each child's needs, and preferential giving is permissible with the valid consent of the other affected beneficiaries.

(A2) + (-t): if there is a legitimate reason to favor some of them, such as their needs or their dedication to pursuing knowledge, then it would be permissible, according to a report from Aḥmad favored by Ibn Qudâmah in *al-Mughni*.

[VII.22.7] In other words, a boy would receive twice as much as a girl. This pertains to significant gifts, not trivial ones. This is the view of the Ḥanbali school.

(-H, -M, -S) hold that boys and girls are to be given equal shares of gifts. This is because the command is general, and their needs are comparable. Inheritance is different because their responsibilities when they grow up are different, since Islam requires adult males to financially maintain their spouses, children, parents, and so on.

According to (A), dividing one's property among one's children during one's lifetime is likewise subject to their inheritance proportions.

(A/SM): it is recommended that males and females are treated equally in designating awqâf (trusts) for them to benefit from their yield.

This is because it is a form of ongoing sustenance, and there is no reason to favor males in that. (a): should still give the male twice as much as the female. Ibn Qudâmah argued, in *al-Mughni*, that males will still have greater needs since they will be required to spend on their families.

(A) also allowed designating a waqf for some of the children to the exclusion of others because of their need.

[VII.22.8] (Ag – from an-Nu‘mân ibn Basheer)

If one person says to another, “I give you my house for life,” or, “It is yours for life,” then it belongs to the recipient and his or her heirs. [VII.22.9] If the person says, “You may live in it for life,” then the benefactor may take it back whenever he or she pleases. [VII.22.10]	وَإِذَا قَالَ لِرَجُلٍ: أَعْمَرْتُكَ دَارِيْ، أَوْ: هِيَ لَكَ عُمُرَكَ، فَهِيَ لَهُ وَلِوَرَثَتِهِ مِنْ بَعْدِهِ، وَإِنْ قَالَ: سُكْنَاهَا لَكَ عُمُرَكَ، فَلَهُ أَخْذُهَا مَتَى شَاءَ.

[VII.22.9] The phrase ‘umraka (‘for [your] life’) found here comes from ‘umr (lifetime). They used to say, a‘amartuka such-and-such, meaning ‘I give such-and-such to you for life’.

There is much controversy over the legal consequences of that statement. There are three cases:

1) The benefactor clearly indicates that it permanently belongs to the recipient and to his or her offspring

2) The benefactor clearly indicates that this is for the lifetime of the recipient and indicates that it will return to him or her [the benefactor] afterwards.

3) The benefactor says, “I give it to you for life (‘umrâ)” and does not qualify this.

In the first case, it is a gift, and the ownership is completely transferred.

In the second case, it is temporary, according to (a) + (-M).

In the third case, it is also considered to be permanent, according to the stronger position, since the word ‘umrâ itself indicates that. Also, the Messenger of Allah (SA) said:

«أَمْسِكُوا عَلَيْكُمْ أَمْوَالَكُمْ وَلَا تُفْسِدُوهَا فَإِنَّهُ مَنْ أُعْمِرَ عُمْرَى فَهِيَ لِلَّذِي أُعْمِرَهَا حَيًّا وَمَيِّتًا وَلِعَقِبِهِ.»

“Hold on to your wealth, and do not waste it, for when one gives an ‘umrâ (gift for life), it shall then belong [permanently] to the recipient, (whether the latter is) alive or dead, and (then) to his or her offspring.” (M – from Jâbir ibn ‘Abdullâh)

In this hadith and in the one following, the Prophet (SA) uses the noun ‘umrâ, meaning a life-time gift. The other position taken by scholars on this issue is that unless one indicates that the ‘umrâ gift is for the recipient and his or her descendants, it shall go back to the giver after the death of the recipient. This is based on another hadith also reported by Jâbir ibn ‘Abdullâh:

«إِنَّمَا الْعُمْرَى الَّتِي أَجَازَهَا رَسُولُ اللَّهِ ﷺ، أَنْ يَقُولَ: هِيَ لَكَ وَلِعَقِبِكَ، فَأَمَّا إِذَا قَالَ: هِيَ لَكَ مَا عِشْتَ: فَإِنَّهَا تَرْجِعُ إِلَى صَاحِبِهِ».

“The ‘umrâ that the Messenger of Allah (SA) approved of is when one says: ‘This is for you and your offspring.’ However, if one says: ‘It is yours as long as you are alive,’ then it returns to the original owner (after the recipient’s death).” (M – from Jâbir ibn ‘Abdullâh)

The majority acted upon the generality of the first hadith, and they said that the second is Jâbir’s interpretation.

[VII.22.10] The difference is that in the third statement (“You may live in it for life”), the benefactor did not give away the property itself, but only the right of usage (usufruct). In this case, the donor may take his or her property back whenever he or she pleases.

[VII.23] Chapter on Gifts During a Life-Threatening Illness (*ʻAṭeeyat al-Mareeḍ*)

بَابُ عَطِيَّةِ الْمَرِيْضِ

There is a ruling on donations [or gifts] from someone during a life-threatening illness. [VII.23.1] The same applies to others with similar fears, like when standing between the two ranks when combat has begun, or en route to being executed, or in a storm at sea, or in a land infested by plague. Given that death actually follows, the ruling is that such a donation is to be treated as a *waṣiyah* (bequest) [VII.23.2] in six respects:	تَبَرُّعَاتُ الْمَرِيْضِ مَرَضَ الْمَوْتِ الْمَخُوْفِ، وَمَنْ هُوَ فِي الْخَوْفِ كَالْمَرِيْضِ، كَالْوَاقِفِ بَيْنَ الصَّفَّيْنِ عِنْدَ الْتِحَامِ الْقِتَالِ، وَمَنْ قُدِّمَ لِيُقْتَلَ، وَرَاكِبِ الْبَحْرِ حَالَ هَيَجَانِهِ، وَمَنْ وَقَعَ الطَّاعُوْنُ بِبَلَدِهِ إِذَا اتَّصَلَ بِهِمُ الْمَوْتُ، حُكْمُهَا حُكْمُ وَصِيَّتِهِ فِي سِتَّةِ أَحْكَامٍ:

[VII.23.1] This applies to an illness reasonably feared to cause death, when death follows without recovery; the illness need not have been diagnosed as incurable.

As mentioned earlier, gifts are recommended in general. However, when the giver is suffering from such an illness, the giving of gifts is considered to be more like a waṣiyah. The giver will be prevented from wasting his or her wealth on people other than the main heirs because they have rights to it.

[VII.23.2] A waṣiyah can be made with up to one-third of one's wealth, to people who do not receive a share of inheritance.

First: It is impermissible for an *ajnabi* (non- heir) [VII.23.3] to be gifted more than one-third, or for a *wârith* (an heir) to be gifted anything [in addition to his or her inheritance] without the permission of the [other] heirs. This is based on the report of a man who freed six slaves as he was	أَحَدُهَا: أَنَّهَا لَا تَجُوْزُ لِأَجْنَبِيٍّ؛ بِزِيَادَةٍ عَلَى الثُّلُثِ، وَلَا لِوَارِثٍ بِشَيْءٍ إِلَّا بِإِجَازَةِ الْوَرَثَةِ، لِمَا رُوِيَ أَنَّ رَجُلاً أَعْتَقَ سِتَّةَ مَمْلُوْكِيْنَ عِنْدَ مَوْتِهِ، لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، فَدَعَا

dying, and he possessed no wealth other than them. The Prophet (SA) summoned them and divided them into three groups; then he freed two and returned four to enslavement. [VII.23.4]	بِهِمُ النَّبِيُّ ﷺ فَجَزَّأَهُمْ أَثْلَاثاً، فَأَعْتَقَ اثْنَيْنِ، وَأَرَقَّ أَرْبَعَةً.

[VII.23.3] Ajnabi in this context refers to a person who does not take a share of inheritance (irth).

[VII.23.4] This was reported by (M). The hadith mentioned that the Messenger of Allah (SA) decided who was to be emancipated by casting lots. Hadiths like this do not contradict the strong general encouragement in Islam to free slaves, as mentioned in the appendix on slavery. It is just that, in cases like these, the rights of the inheritors take precedence.

Second: [When slaves are the property being freed by a person facing death,] freedom is granted to some slaves and not others, on the basis of *qur'ah* (casting lots) when one-third (of the dying person's estate) is not sufficient to account for them all – as explained in the [aforementioned] report. [VII.23.5]	الثَّانِيْ: أَنَّ الْحُرِّيَّةَ تُجْمَعُ فِي بَعْضِ الْعَبِيْدِ بِالْقُرْعَةِ، إِذَا لَمْ يَفِ الثُّلُثُ بِالْجَمِيْعِ؛ لِلْخَبَرِ.

[VII.23.5] This means that freedom could not be distributed among the slaves, so that each one was one-third free, for example. It would be fully allotted to some, based on casting lots.

Third: If an indeterminate slave is to be freed, or if one was specified but there is confusion [as to which one], the slave actually freed is selected via qur'ah. [VII.23.6]	الثَّالِثُ: أَنَّهُ إِذَا أَعْتَقَ عَبْدًا غَيْرَ مُعَيَّنٍ، أَوْ مُعَيَّنًا فَأَشْكَلَ، أُخْرِجَ بِالْقُرْعَةِ.

[VII.23.6] Based on the above hadith reported by Muslim.

Fourth: [A gift from a person facing death] must come out of the one-third [of the dying person's entire wealth] upon his or her death. The deceased may have freed or donated a slave and previously owned nothing else besides [that slave]. If the deceased later acquired [wealth equivalent to] double [the slave's] value and died possessing that, then the slave's manumission would be considered retrospectively effective from the time the slave was freed. [VII.23.7] Whatever [the slave] earned after that is his [the slave's]. On the other hand, if the deceased had incurred a debt equal to (or greater than) the [value of the] slave, then the slave would not be considered to be freed or donated at all. [VII.23.8] Also, if something is bequeathed to a person, but that person delays taking it, the bequest is calculated [in relation to the deceased's wealth] as of the time of death, not the time when it is [eventually] taken. [VII.23.9]	الرَّابِعُ: أَنَّهُ يُعْتَبَرُ خُرُوْجُهَا مِنَ الثُّلُثِ حَالَ الْمَوْتِ، فَلَوْ أَعْتَقَ عَبْدًا لَا مَالَ لَهُ سِوَاهُ، أَوْ تَبَرَّعَ بِهِ، ثُمَّ مَلَكَ عِنْدَ الْمَوْتِ ضِعْفَ قِيْمَتِهِ، تَبَيَّنَّا أَنَّهُ عَتَقَ كُلُّهُ حِيْنَ إِعْتَاقِهِ، وَكَانَ مَا كَسَبَهُ بَعْدَ ذٰلِكَ لَهُ، وَإِنْ صَارَ عَلَيْهِ دَيْنٌ يَسْتَغْرِقُهُ، لَمْ يَعْتِقْ مِنْهُ شَيْءٌ، وَلَمْ يَصِحَّ تَبَرُّعُهُ بِهِ، وَلَوْ وَصَّى بِشَيْءٍ، فَلَمْ يَأْخُذْهُ الْمُوْصَى لَهُ زَمَانًا، قُوِّمَ عَلَيْهِ وَقْتَ الْمَوْتِ لَا وَقْتَ الأَخْذِ.

[VII.23.7] This is because the slave's value ended up being equivalent to one-third of the deceased's wealth, since what was earned afterwards was also part of that wealth.

[VII.23.8] Because the gift or donation during a life-threatening illness is treated like a bequest, and by consensus, the payment of debts takes precedence over the distribution of bequests.

[VII.23.9] This means that if Y bequeathed a property to X, and X failed to claim it at the time of Y's death but later claimed it, it would be assessed according to its value at the time of Y's death.

If, when Y died, the bequeathed property value exceeded one-third of Y's total wealth, but at the time of possession by X, its value was less than one-

third, X would only be entitled to a portion equal to one-third of Y's total wealth at the time of death.

Yet supposing, when Y died, the property value had been within the one-third (of Y's total wealth), but then it subsequently appreciated (or the rest of Y's wealth depreciated). This means that even though, at the time of possession by X, its value was actually more than one-third, X would still be entitled to all of the bequeathed property, because what matters is the property value at the time of death.

Fifth: Whether or not [the one receiving a gift from a dying person] is considered to be an heir is determined [for both the gift and the bequest] at the time of the death [of the donor.] If [the one facing death] had no sons and made a bequest or gave a gift to his or her [consanguine] brother, but then had a son, then the bequest or gift would be valid. [VII.23.10] However, if the son died before the deceased parent, then it [the bequest to the deceased's brother] would become invalid. [VII.23.11]	الْخَامِسُ : أَنَّ كَوْنَهُ وَارِثًا يُعْتَبَرُ حَالَةَ الْمَوْتِ فِيهِمَا، فَلَوْ أَعْطَى أَخَاهُ أَوْ وَصَّى لَهُ وَلَا وَلَدَ لَهُ، فَوُلِدَ لَهُ ابْنٌ، صَحَّتِ الْعَطِيَّةُ وَالْوَصِيَّةُ، وَلَوْ كَانَ لَهُ ابْنٌ فَمَاتَ، بَطَلَتَا.

[VII.23.10] Because once the deceased has a son, the person's brother does not qualify as an heir (wârith, who receives a portion of inheritance); therefore, the brother is legally entitled to receive a bequest.

The time of death is what matters in determining who is qualified to be an heir (and thereby disqualified from receiving a bequest), not the time of making the bequest.

[VII.23.11] Had the deceased's son outlived him/her, then the deceased's brother would have been entitled to receive the bequest, since he would not then qualify as an official heir. Note that if the deceased has a son, then the deceased's own siblings are barred from sharing the inheritance (but in this case, the deceased's siblings will be entitled to receive the bequest).

Sixth: The approval or disapproval of the heirs [VII.23.12] is only given consideration after the actual death takes place.	السَّادِسُ: أَنَّهُ لَا يُعْتَبَرُ رَدُّ الْوَرَثَةِ وَإِجَازَتُهُمْ إِلَّا بَعْدَ الْمَوْتِ فِيهِمَا.

[VII.23.12] Regarding whether they allow bequests exceeding one-third of the inheritance or bequests made to one of them.

Gifts [from someone facing death] differ from bequests (waṣiyah) with respect to four rulings:	وَتُفَارِقُ الْوَصِيَّةُ الْعَطِيَّةَ فِي أَحْكَامٍ أَرْبَعَةٍ:

First: A gift is effective immediately. Were someone to **free** a slave or **donate** him or her to a person, the freed slave would be emancipated at once, and the donated [slave] would belong to the recipient, with [the slave's] earnings belonging to [the new master]. [VII.23.13] But if the person **bequeaths** a slave [in his or her waṣiyah] to a person or stipulates the slave's emancipation upon death, the slave is neither freed nor owned by the recipient until after the person's death. As for what the slave earns [up until the person's death], or any other growth of the gifted property that can be separated [from the principal gift], this belongs to the heirs.	**أحدها:** أَنَّ الْعَطِيَّةَ تَنْفُذُ مِنْ حِينِهَا، فَلَوْ أَعْتَقَ عَبْدًا أَوْ أَعْطَاهُ إِنْسَانًا، صَارَ الْمُعْتَقُ حُرًّا، وَمَلَكَهُ الْمُعْطَى وَكَسْبُهُ لَهُ، وَلَوْ وَصَّى بِهِ، أَوْ دَبَّرَهُ، لَمْ يَعْتِقْ، وَلَمْ يَمْلِكْهُ الْمُوصَى لَهُ إِلَّا بَعْدَ الْمَوْتِ وَمَا كَسَبَ أَوْ حَدَثَ فِيهِ مِنْ نَمَاءٍ مُنْفَصِلٍ، فَهُوَ لِلْوَرَثَةِ.

[VII.23.13] This is effective immediately, but the final validation will be pending the actual death (or recovery) of the patient. There is a difference between this case and bequeathing a factory to X. In the case of donating the factory during the person's life-threatening illness, the profit made between the time of donation and death will go to X. However, this is only if the factory was determined to be equal to or less than one-third of the total wealth at the time of death, and thus the gift is validated.

Second: The acceptance or rejection of a gift is taken into [legal] consideration at the time of the offer, just like the gift of a healthy person, whereas the acceptance or rejection of a bequest is only taken into [legal] consideration upon the death of the legator. [VII.23.14]	الثَّانِيْ: أَنَّ الْعَطِيَّةَ يُعْتَبَرُ قَبُوْلُهَا وَرَدُّهَا حِيْنَ وُجُوْدِهَا كَعَطِيَّةِ الصَّحِيْحِ، وَالْوَصِيَّةُ لَا يُعْتَبَرُ قَبُوْلُهَا وَلَا رَدُّهَا إِلَّا بَعْدَ مَوْتِ الْمُوْصِيْ.

[VII.23.14] The legator is the person who made a will or bequest.

Third: [A gift] is binding, and the gift-giver does not have the right to recant it, whereas a bequest can be recanted whenever the legator wishes [namely, as long as the legator is alive].	الثَّالِثُ: أَنَّهَا تَقَعُ لَازِمَةً، لَا يَمْلِكُ الْمُعْطِيْ الرُّجُوْعَ فِيهَا وَالْوَصِيَّةُ لَهُ الرُّجُوْعُ فِيهَا مَتَى شَاءَ.

Fourth: [Gifts are distributed] according to the order in which they were designated [by the giver], in cases where the one-third (of the dying person's wealth) does not suffice for all [the recipients]. [VII.23.15] Conversely, in the waṣiyah, earlier and later bequests have equal priority, and any deficit is shouldered by them all – in proportion to their share of the bequest – regardless of whether the manumission [of a slave] was involved or not. [VII.23.16] It is the same with gifts when they are allotted all at once.	الرَّابِعُ: أَنَّهُ يَبْدَأُ بِالأَوَّلِ فَالأَوَّلِ مِنْهَا إِذَا ضَاقَ الثُّلُثُ عَنْ جَمِيْعِهَا، وَالْوَصِيَّةُ يُسَوَّى بَيْنَ الأَوَّلِ وَالآخِرِ مِنْهُ، وَيَدْخُلُ النَّقْصُ عَلَى كُلِّ وَاحِدٍ بِقَدْرِ وَصِيَّتِهِ، سَوَاءٌ كَانَ فِيهَا عِتْقٌ أَوْ لَمْ يَكُنْ، وَكَذٰلِكَ الْحُكْمُ فِي الْعَطَايَا إِذَا وَقَعَتْ دُفْعَةً وَاحِدَةً.

[VII.23.15] Example: During his life-threatening illness, Y gave a gift of property (with a value of 20) to X, and then he gave another gift of property (also with a value of 20) to Z. When Y died, it was found that his total wealth was 99, so he could bequeath only 33 (one-third of it). Since the two gifts combined (20+20=40) would exceed that, the distribution would be as

follows: First, X would receive the full gift (20), and then Z would receive what was left of the 33, which would be 13. (33-20=13.)

[VII.23.16] If Y had bequeathed the two properties in the previous example, then when he died, X and Z would get equal shares of their bequests, so the 33 (one-third of Y's total wealth) would be divided in two: 33/2 = 16.5 each.

[VIII] The Book of Bequests

كِتابُ الوَصَايَا

It was reported from Sa‘d (ibn Abi Waqqâṣ) that he said, “O Messenger of Allah, my ailment reached the extent that you see, and I am a wealthy man, and I have one daughter only. Should I give away two-thirds of my wealth for charity?” He said no. I asked, “Half?” He said no. I asked, “One-third?” He said, “One-third (is fine), and one-third is still a lot. It would be better to leave your inheritors wealthy than to leave them poor, begging from others.” [VIII.0.1] [VIII.0.2]	رُوِيَ عَنْ سَعْدٍ قَالَ: «قُلتُ يا رسول الله قد بَلَغَ بِيَ الجَهْدُ ما تَرَى، وَأَنَا ذُو مَالٍ، وَلَا يَرِثُنِي إِلَّا ابْنَةٌ؛ أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي؟ قَالَ لَا. قُلْتُ فالشَّطْرِ قَالَ لَا قُلْتُ فالثُّلُثُ؟ قَالَ ’الثُّلُثُ؛ وَالثُّلُثُ كَثِيرٌ. إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ.‘»

[VIII.0.1] **Introduction**

Waṣiyah is a verbal noun used to refer both to the act of bequeathing and to the bequeathed property itself. The discussion of this topic is mainly about five issues: the waṣiyah (bequest/ testament/ will), the *mooṣi* (testator), the *mooṣâ lahu* (legatee), the *waṣiy/mooṣâ ilayhi* (executor of the bequest), and the *mooṣâ bihi* (bequeathed property).

The mooṣâ ilayhi (executor of bequest) will be addressed in the following chapter.

[VIII.0.2] (Ag) In the preface of the book, Imam Ibn Qudâmah (may Allah have mercy on him) said, “I included in it authentic narrations for their blessings and authority.” He did so in this very abridged book of Ḥanbali rulings to remind the student of knowledge that the spirit and foundation of this knowledge is the revelation (the Qur’an and Sunnah). The mere memorization of the rulings of different madh-habs does not make one a *faqeeh* (scholar of Islamic jurisprudence) until he or she knows their sources (proofs) and how they were deduced, and acts upon them with devotion.

[Ruling and Amount of Bequest]

It is preferred [VIII.0.3] for one who leaves wealth behind to bequeath one-fifth of his estate. [VIII.0.4]	وَيُسْتَحَبُّ لِمَنْ تَرَكَ خَيْرًا الْوَصِيَّةُ بِخُمُسِ مَالِهِ.

[VIII.0.3] Rulings of Bequest

(A) + (+H, +M, +S): It is wâjib (mandatory) for someone with liabilities not otherwise established to write a will detailing them. In addition to the rights of people, (A) adds the rights of Allah that have not been fulfilled, such as unpaid zakat, vows, and expiations, as well as Hajj if the deceased did not perform the mandatory Hajj.

(A) + (+H, +M, +S): Bequests are not recommended for those who have little or no money (and no liabilities). Those who have little wealth, and have heirs who are poor, should not bequeath any portion of their estate because the heirs have a superior claim to it.

(A) + (+H, +M, +S): If someone has a significant estate and no liabilities, bequeathing is mustaḥabb (recommended).

Some scholars, including az-Zuhri, held that it is wâjib on all people. They cited the Prophet's saying:

« مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ «

"It is unbefitting of a Muslim who has something concerning which he wants to write a will to spend two nights without having his will written down regarding it." (Ag – from Ibn 'Umar)

They also said that at first, it was agreed that the waṣiyah was obligatory, based on Allah's saying:

{كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ ۖ حَقًّا عَلَى الْمُتَّقِينَ}

{Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous.} (al-Baqarah 2:180)

They argued that the obligation that was abrogated only concerned bequeathing to heirs who were later given fixed shares by Allah, not to those relatives who do not inherit.

The majority argued that some of the Companions did not have a will, and the others did not blame them for this. The hadith of Ibn ‘Umar above may be understood to refer to someone who has liabilities, or as an encouragement to those who want to bequeath, to act upon their intent before death befalls them. Notice that the Prophet (SA) said, “concerning which he wants to write a will.”

Retracting a Bequest

The waṣiyah is a jâ’iz (non-binding/revocable) contract, which means the testator can retract it at any time before his or her death. The only exception to this is tadbeer (a binding promise of emancipation of a slave after the master’s death).

[VIII.0.4] The Amount of the Bequest

The hadith of Sa‘d (RA) above establishes the general limit of 1/3 of the estate. (A) permits someone with no heirs to bequeath the entire estate. Scholars disagreed over the best amount; 1/3, 1/4, and 1/5 were all mentioned. The chosen position in (A) is 1/5; this was reported in Sunan al-Bayhaqi to be the position of Abu Bakr and ‘Ali, albeit with a controversial transmission. Ibn Qudâmah added in *al-Mughni* that this was the position of most of the salaf (the earliest generations of the righteous followers of Islam).

[Testator]

A bequest is valid by anyone whose gifting is valid, and so is the tadbeer. It is also valid by the discerning child and the one interdicted for foolishness. [VIII.0.5]	وَتَصِحُّ الْوَصِيَّةُ وَالتَّدْبِيْرُ، مِنْ كُلِّ مَنْ تَصِحُّ هِبَتُهُ، وَمِنَ الصَّبِيِّ الْعَاقِلِ، وَالْمَحْجُوْرِ عَلَيْهِ لِسَفَهِهِ.

[VIII.0.5] The Eligible Testator

After addressing the ruling and amount of waṣiyah, Imam Ibn Qudâmah proceeds to address the testator (the person who has made a will or given a bequest). Certain people, such as the insane and the non-discerning child, are not eligible to conduct any transactions – but there is one difference between the waṣiyah and other financial transactions. The bequest is a transfer of part of one's estate after one's death, so it does not harm the testator during his or her life. Since it is limited to 1/3 of the estate, it will not deprive the heirs of their rights; also, it is usually benevolent and reward-worthy. For these reasons, even discerning children and those interdicted for foolishness were allowed to bequeath.

Note that the financial transactions of discerning children belong to one of three categories:

1) Purely in their interests, such as accepting gifts. (a, Ibn Qudâmah): Accepting a gift is valid without the guardian's permission. (A): The guardian's permission is required. (S): The guardian must accept on the child's behalf.

2) Purely against their interests, such as giving away property or lending money. These are invalid, even with the approval of their guardian.

(-H, -M): Ṭalâq (divorce) is in this category.

(A): A discerning boy's ṭalâq is valid if he understands its meaning; his guardian's approval is not required.

3) Having both potential harm and potential benefit.

(A) + (+H, +M): Valid with the guardian’s approval.

(a) + (-S): Invalid, even with the approval of the guardian.

[Legatee]

And (bequests are) valid for the benefit of anyone who is eligible to receive gifts, and for the fetus in the womb if it becomes known that he or she was present (in the womb) at the time the bequest was made in his or her name. [VIII.0.6]	وَلِكُلِّ مَنْ تَصِحُّ الْهِبَةُ لَهُ، وَلِلْحَمْلِ إِذَا عُلِمَ أَنَّهُ كَانَ مَوْجُوْدًا حِيْنَ الْوَصِيَّةِ لَهُ.

[VIII.0.6] The Legatee

This is the recipient of the bequeathed property or usufruct. The heirs have no share of the bequest because Allah gave them their due rights, so bequeathing to some of them would have the effect of favoring them over the others, and this might result in family disharmony and tension. The Prophet (SA) said:

«إِنَّ اَللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِوَارِثٍ»

"Allah has assigned to everyone their due rights; thus, there is no bequest for an heir." (A, D, T – from Abu Umâmah; A&T: R)

The majority, namely (A) + (+H, +M, +S), argued that some heirs may receive a bequest if the rest of the heirs agree. According to (A), this approval must be given after the testator's death by heirs legally competent to dispose of their property; each heir's approval affects only that heir's own share. This would be valid though still forbidden, according to (A). (a): disliked or permissible. There is an addendum to the hadith above, in which the Prophet (SA) added:

«إِلَّا أَنْ يَشَاءَ اَلْوَرَثَةُ»

"Unless the (other) heirs permit." (ad-Dâraquṭni – from Ibn 'Abbâs. Ibn Ḥajar:R)

Aside from the heirs, the recipient of a bequest may be Muslim, non-Muslim, or even an apostate or a ḥarbi (citizen of an enemy state). It was reported that the Prophet's wife Ṣafiyah bequeathed part of her estate to some of her Jewish relatives. A bequest may also be made to a fetus already

conceived when the bequest is made, provided the child is subsequently born alive.

Not Eligible to Receive Bequests

Someone who is not in existence at the time of the waṣiyah is not eligible; for example, the child a certain woman will bear or future grandchildren who have not yet been conceived. Also, animals are not eligible recipients per (A), although making a waṣiyah for certain animals that benefit humans is valid because the intent here is for the benefit attained by those humans.

Other scholars have been known to allow endowments for the support of aged animals, stray dogs and cats, etc. In his book *Civilization of Faith*, Shaykh Muṣṭafâ as-Sibâ‘i mentions several examples of endowments set up in Damascus for these types of animals.

Back when the discussion of waṣiyah to slaves was pertinent, it was agreed that they were eligible for tadbeer.

[Bequeathed Property/Usufruct]

1. It (a bequest) is valid [VIII.0.7] for anything that has a permissible usufruct, [VIII.0.8] such as the hunting dog or sheepdog, as well as impure substances with (permissible) uses.	1. وَتَصِحُّ بِكُلِّ مَا فِيهِ نَفْعٌ مُبَاحٌ، كَكَلْبِ الصَّيْدِ وَالْغَنَمِ، وَمَا فِيهِ نَفْعٌ مِنَ النَّجَاسَاتِ.

[VIII.0.7] Validity of Bequeathed Property

Notice that the examples here show that the rulings of the bequeathed properties are unlike those of sales. This is because waṣiyah belongs to the category of benevolent contracts (‘uqood at-tabarru‘ât), not exchange-of-benefit contracts (‘uqood al- mu‘âwaḍât). While it is not permissible to sell property that does not yet exist or that is not in one’s possession, not designated, or not deliverable, it is permissible to bequeath it. The legatee did not offer anything in exchange for them to justify requiring more definiteness and transparency in the transaction.

[VIII.0.8] The Bequeathing of a Usufruct

Usufruct: the right to use another's property as long as it is not destroyed or altered. In the discussion above, Imam Ibn Qudâmah is addressing the bequeathing of a corpus that has a permissible usufruct. There is another discussion, which is bequeathing a usufruct without a corpus, such as the use of a certain land or building without transferring ownership of the building to the legatee. In this case, the ownership of the corpus will be transferred to the heirs, but the legatee will have the right to use it. The vast majority (A) + (+H, +M, +S) allowed this.

2. It is valid for what does not yet exist, such as whatever one's female slave or tree will bear.	2. وَبِالْمَعْدُوْمِ، كَالَّذِيْ تَحْمِلُ أَمَتُهُ أَوْ شَجَرَتُهُ.

3. It is valid for what is not yet deliverable, such as birds in the sky or fish in the water.	3. وَبِمَا لَا يَقْدِرُ عَلَى تَسْلِيْمِهِ، كَالطَّيْرِ فِي الْهَوَاءِ وَالسَّمَكِ فِي الْمَاءِ.

4. It is valid for property that one does not yet own, such as 100 dirhams that one does not own (at the time of the bequest).	4. وَبِمَا لَا يَمْلِكُهُ، كَمِئَةِ دِرْهَمٍ لَا يَمْلِكُهَا.

5. It is valid for undesignated property, such as one of his or her slaves; in such a case, the heirs can give whichever one of them they please.	5. وَبِغَيْرِ مُعَيَّنٍ، كَعَبْدٍ مِنْ عَبِيْدِهِ، وَيُعْطِيْهِ الْوَرَثَةُ مِنْهُمْ مَا شَاؤُوْا.

6. It is also valid for the unknown, such as a portion of the estate; in such a case, the heirs may give whatever they please.	6. وَبِالْمَجْهُوْلِ كَحَظٍّ مِنْ مَالِهِ، أَوْ جُزْءٍ،

وَيُعْطِيْهِ الْوَرَثَةُ مَا شَاؤُوْا.	

[Arithmetic Resolutions]

1. If he (the testator) bequeaths to him (the legatee) an amount equal to the share of one of his heirs, [VIII.0.9] he (the legatee) will be entitled to the smallest share. This share will then be added to the rest of the designated shares (*furooḍ*). [VIII.0.10]	وَإِنْ وَصَّى لَهُ بِمِثْلِ نَصِيْبِ أَحَدِ وَرَثَتِهِ، فَلَهُ مِثْلُ أَقَلِّهِمْ نَصِيْبًا، يُزَادُ عَلَى الْفَرِيْضَةِ.

[VIII.0.9] In this case, there was no amount or a percentage specified – only, "Give him or her like one of my inheritors."

[VIII.0.10] If he leaves behind a son, a mother, and a wife, and bequeaths to an aunt the equivalent of one heir's share, she receives the equivalent of the wife's share, which is the smallest. Before the bequest, the heirs' shares are 17 for the son, 4 for the mother, and 3 for the wife, out of 24. Add 3 shares for the aunt, making 27 shares in all. The aunt receives 3/27, the wife 3/27, the mother 4/27, and the son 17/27.

2. So if he leaves behind three sons, and bequeaths (to a legatee) what is equal to one son's share, he (the legatee) will get one-fourth (of the estate). If there is (in addition to the three sons) also a mother (of the testator), then there will be 18 shares; [VIII.0.11] so you add to them the share of one son, and then the calculation will be based on 23 shares. [VIII.0.12]	فَلَو خَلَّفَ ثَلَاثَةَ بَنِيْنَ وَوَصَّى بِمِثْلِ نَصِيْبِ أَحَدِهِمْ، فَلَهُ الرُّبُعُ، فَإِنْ كَانَ مَعَهُمْ ذُوْ فَرْضٍ كَأُمٍّ، صَحَّحْتَ مَسْأَلَةَ الْوَرَثَةِ بِدُوْنِ الْوَصِيَّةِ مِنْ ثَمَانِيَةَ عَشَرَ، وَزِدْتَ عَلَيْهَا مِثْلَ نَصِيْبِ ابْنٍ، فَصَارَتْ مِنْ ثَلَاثَةٍ وَعِشْرِيْنَ.

[VIII.0.11] The mother has a designated share of 1/6, and the sons get the rest. However, you cannot keep 6 as the denominator because you cannot divide 5 (the numerator in 5/6) by 3 without producing fractions, so you

move to the next denominator that can be divided, which is 18. The mother's 1/6 = 3/18, and the 3 sons split the remaining 15/18, each getting 5/18.

[VIII.0.12] We add 5 shares (like those of a son) to the 18 shares in the original problem (for a total of 23 shares). Then mother gets 3/23, and each of the 3 sons, as well the legatee, gets 5/23.

3. If he bequeaths to two: to one he gives the equivalent of one son's share, and to the other, he bequeaths one-sixth of the rest of the estate, [VIII.0.13] you should give the one entitled to the one-sixth the same as one who is entitled to a designated share (*farḍ*), and then you solve the problem as you did the previous one. [VIII.0.14]	وَلَوْ وَصَّى بِمِثْلِ نَصِيْبِ أَحَدِهِمْ، وَلآخَرَ بِسُدُسِ بَاقِي الْمَالِ، جَعَلْتَ صَاحِبَ سُدُسِ الْبَاقِيْ كَذِيْ فَرْضٍ لَهُ السُّدُسُ، وَصَحَّحْتَهَا كَالَّتِيْ قَبْلَهَا.

[VIII.0.13] Meaning the rest of the estate after the first bequest is executed.

[VIII.0.14] This is a very unusual situation, but the wisdom here is to train young jurists in solving arithmetic problems. In this scenario, the deceased has 3 sons as well as 2 legatees: one legatee was given a share equal to a son, while the second legatee was given 1/6 of the remaining estate (after the first legatee gets his share). The way to resolve this is to assign an unknown share (naṣeeb) to the first legatee (X) and then to divide the estate over 6 shares in order to calculate 1/6 of the rest, for the second legatee. Then you will have 5 shares to be equally distributed among 3 sons, giving each son 1-2/3 shares. To eliminate the fractions, you multiply by 3, so the shares for the sons total 15/18 (the equivalent of 5/6), and the second legatee gets the remaining 3/18. Now you add the unknown share of the first legatee (X), which should be like one of the sons, so the problem will have to be resolved by making the denominator 23. Each one of the 3 sons gets 5/23, as does the first legatee, and the second legatee gets 3/23. The two bequests total 8/23, which exceeds one-third by 1/69. Without the required approval, their combined entitlement is restricted to one-third and reduced according to the rules for competing bequests.

4. In the previous scenario, if the bequest for the second legatee is one-sixth of the remainder of the one-third, you resolve it as we said above, but you then multiply it by three, so the denominator will be 69. Of this, the second legatee will get one share, and the rest will be divided by four, between the (three) sons and the other legatee.	فإن كَانَتْ وَصِيَّةُ الثَّانِيْ بِسُدُسِ بَاقِيْ الثُّلُثِ صَحَّحْتَهَا أَيْضًا كَمَا قُلْنَا سَوَاءً، ثُمَّ زِدْتَ عَلَيْهَا مِثْلَيْهَا، فَتَصِيْرُ تِسْعَةً وَسِتِّيْنَ، تُعْطِيْ صَاحِبَ السُّدُسِ سَهْمًا وَاحِدًا، وَالْبَاقِيْ بَيْنَ الْبَنِيْنَ وَالْوَصِيِّ الآخَرِ أَرْبَاعًا.

5. If there are more than three sons, you give an additional share (over whatever denominator is used to resolve the problem) to the legatee who is entitled to one-sixth of the remainder of the one-third for each additional son; so if they are four, he gets two shares, and if they are five, he gets three.	وَإِنْ زَادَ الْبَنُوْنَ عَلَى ثَلَاثَةٍ، زِدْتَ صَاحِبَ سُدُسِ الْبَاقِيْ بِقَدْرِ زِيَادَتِهِمْ، فَإِذَا كَانُوْا أَرْبَعَةً، أَعْطَيْتَهُ مِمَّا صَحَّتْ مِنْهُ الْمَسْأَلَةُ سَهْمَيْنِ، وَإِنْ كَانُوْا خَمْسَةً، فَلَهُ ثَلَاثَةٌ.

	وَإِنْ كَانَتِ الْوَصِيَّةُ بِثُلُثِ بَاقِيْ الرُّبُعِ وَالْبَنُوْنَ أَرْبَعَةً، فَلَهُ سَهْمٌ وَاحِدٌ، فَإِنْ زَادَ البنون عَلَى أَرْبَعَةٍ، زِدْتَهُ بِكُلِّ وَاحِدٍ سَهْمًا. [VIII.0.15]

[VIII.0.15] This is just another problem like the one above.

	وَإِنْ وَصَّى بِضِعْفِ نَصِيْبِ وَارِثٍ أَوْ ضِعْفَيْهِ، فَلَهُ مِثْلَا نَصِيْبِهِ وَثَلَاثَةُ أَضْعَافِهِ ثَلَاثَةُ أَمْثَالِهِ. [VIII.0.16]

[VIII.0.16] Here Ibn Qudâmah treats both ḍi‘f and ḍi‘fayn as twice the relevant share, and “three multiples” as three times that share. This is his preferred interpretation, not an undisputed linguistic or Ḥanbali rule. The later relied-upon Ḥanbali position gives twice the share for ḍi‘f, three times for ḍi‘fayn, and four times for “three multiples.”

If he bequeaths a fraction, like one-third or one-fourth, you take it out from their denominator, [VIII.0.17] and then you divide the rest (two-thirds or three-fourths) among the heirs.	وَإِنْ وَصَّى بِجُزْءٍ مُشَاعٍ، كَثُلُثٍ أَوْ رُبُعٍ، أَخَذْتَهُ مِنْ مَخْرَجِهِ، وَقَسَمْتَ الْبَاقِيْ عَلَى الْوَرَثَةِ.

[VIII.0.17] The denominator for the 1/3 is 3 (that is, 3 shares), and for the 1/4, it is 4.

If he bequeaths one-third (to one person) and one-fourth (to another), then you take them from their least common denominator, which is 12, [VIII.0.18] and the rest will be divided among the heirs. But if the heirs reject this, then you reduce the total shares of the bequest down to one-third of the entire estate, giving the heirs twice as much as the bequest.	فَإِنْ وَصَّى بِجُزْأَيْنِ كَثُلُثٍ وَرُبُعٍ، أَخَذْتَهُمَا مِنْ مَخْرَجِهِمَا، وَهُوَ اثْنَا عَشَرَ وَقَسَمْتَ الْبَاقِيْ عَلَى الْوَرَثَةِ، فَإِنْ رَدُّوْا، جَعَلْتَ سِهَامَ الْوَصِيَّةِ ثُلُثَ الْمَالِ، وَلِلْوَرَثَةِ ضِعْفُ ذٰلِكَ.

[VIII.0.18] Here the bequests will be 4/12 and 3/12, totaling 7/12. Since this is more than 1/3, it must be approved by the heirs; otherwise, it will be reduced to 1/3.

If he bequeaths a specified item whose value exceeds the available one-third of the estate, the legatee is entitled to only the fraction of that item corresponding to the one-third, unless the heirs validly approve the excess. [VIII.0.19]	وَإِنْ وَصَّى بِمُعَيَّنٍ مِنْ مَالِهِ، فَلَمْ يَخْرُجْ مِنَ الثُّلُثِ، فَلِلْمُوْصَى لَهُ قَدْرُ الثُّلُثِ إِلَّا أَنْ يُجِيْزَ الْوَرَثَةُ.

[VIII.0.19] Bequests of more than 1/3 of the estate are discussed under the subtitle: Legatee.

If the (amount of the) bequests exceeds the value of the entire estate, as with a man who bequeaths one-third of his estate to one particular person and the entire estate to another, then you combine the one-third with	وَإِنْ زَادَتِ الْوَصَايَا عَلَى الْمَالِ، كَرَجُلٍ أَوْصَى بِكُلِّ مَالِهِ لِرَجُلٍ، وَلآخَرَ بِثُلُثٍ، ضَمَمْتَ الثُّلُثَ إِلَى

the entire estate, making a denominator of four shares. Then you give one-fourth to the first person and three-fourths to the second person; if the heirs reject that, then you take the one-third to which they are entitled and divide it by four, giving the first person one-quarter of that one-third and the second person three-quarters of that one-third.	الْمَالِ، فَصَارَ أَرْبَعَةَ أَثْلَاثٍ وَقَسَمْتَ الْمَالَ بَيْنَهُمَا عَلَى أَرْبَعَةٍ إِنْ أُجِيْزَ لَهُمَا، وَالثُّلُثُ عَلَى أَرْبَعَة إِنْ رُدَّ عَلَيْهِمَا.

If he bequeaths a certain property to one person and then bequeaths the same property to another person, they share it. Likewise, if he designates one man as an executor of his will and then designates another, they are both executors.	وَلَوْ وَصَّى بِمُعَيَّنٍ لِرَجُلٍ، ثُمَّ أَوْصَى بِهِ لآخَرَ، أَوْ أَوْصَى بِهِ إِلَى رَجُلٍ ثُمَّ أَوْصَى إِلَى آخَرَ، فَهُوَ بَيْنَهُمَا.

However, if he says, "Whatever I bequeathed to the first is for the second," then the bequest for the first person is annulled. [VIII.0.20]	وَإِنْ قَالَ: مَا أَوْصَيْتُ بِهِ لِلأَوَّلِ، فَهُوَ لِلثَّانِيْ، بَطَلَتْ وَصِيَّةُ الأَوَّلِ.

[VIII.0.20] The testator's recanting of the bequest is valid by consensus.

[If the Bequest or Part of It Becomes Void]

Subsection: If the Bequest Becomes Annulled If the bequest (or part of it) becomes annulled, then it goes back to the heirs. So if he instructed that Zayd's slave be purchased for 100 and emancipated, but that slave dies (before the execution of the will) or his master refuses to sell him, then the 100 goes back to the heirs. If he instructed that 100 be spent on a horse (which was designated as *waqf*, an endowment), but the horse dies, then it will be for the heirs.	فَصْلٌ إِذا بَطَلَتِ الْوَصِيَّةُ إِذَا بَطَلَتِ الْوَصِيَّةُ أَوْ بَعْضُهَا، رَجَعَ إِلَى الْوَرَثَةِ، فَلَوْ وَصَّى أَنْ يُشْتَرَى عَبْدُ زَيْدٍ بِمِائَةٍ فَيُعْتَقُ، فَمَاتَ، أَوْ لَمْ يَبِعْهُ سَيِّدُهُ، فَالْمِئَةُ لِلْوَرَثَةِ، وَإِنْ وَصَّى بِمِئَةٍ تُنْفَقُ عَلَى فَرَسٍ حَبِيْسٍ،

	فَمَاتَ، فَهِيَ لِلْوَرَثَةِ.

If he instructs that Zayd make a pilgrimage on his behalf, with an allocated fund of 1000, but he (Zayd) does not do so, then it (the 1000) will be for the heirs. If the one designated for Hajj (Zayd) asks for the difference between the 1000 and the expenses that were actually necessary for Hajj, he should not be given anything. [VIII.0.21]	وَلَوْ وَصَّى أَنْ يَحُجَّ عَنْهُ زَيْدٌ بِأَلْفٍ فَلَمْ يَحُجَّ، فَهِيَ لِلْوَرَثَةِ، وَإِنْ قَالَ الْمُوْصَى لَهُ: أَعْطُوْنِيْ الزَّائِدَ عَلَى نَفَقَةِ الْحَجِّ، لَمْ يُعْطَ شَيْئاً.

[VIII.0.21] For example, he said, “Give Zayd 1000 to make Hajj on my behalf,” but Zayd did not go to Hajj, which actually costs 800. Zayd cannot ask for the 200 because the intention was to give him more since he was going to make Hajj on his behalf.

If the legatee dies before the testator, or if he declines to accept the bequest, it is given back to the heirs.	وَلَوْ مَاتَ الْمُوْصَى لَهُ قَبْلَ مَوْتِ الْمُوْصِيْ أَوْ رَدَّ الْوَصِيَّةَ، رُدَّ إِلَى الْوَرَثَةِ.

If he bequeaths (something) to both a living person and a dead person, the living person gets half of the bequest. If he bequeaths one-third of his estate to an heir and to a non-heir, the non- heir will get one-sixth, and the one-sixth for the heir will be pending the approval of the other heirs.	وَلَوْ وَصَّى لِحَيٍّ وَمَيِّتٍ، فَلِلْحَيِّ نِصْفُ الْوَصِيَّةِ. وَإِنْ وَصَّى لِوَارِثِهِ وَأَجْنَبِيٍّ بِثُلُثِ مَالِهِ، فَلِلأَجْنَبِيِّ السُّدُسُ، وَيَقِفُ سُدُسُ الْوَارِثِ عَلَى الإِجَازَةِ.

[VIII.1] Chapter on the Executor of the Bequest

بَابُ الْمُوْصَى إِلَيْهِ

تَجُوْزُ الْوَصِيَّةُ إِلَى كُلِّ مُسْلِمٍ، عَاقِلٍ، عَدْلٍ، مِنَ الذُّكُوْرِ وَالإِنَاثِ، بِمَا يَجُوْزُ لِلْمُوْصِيْ فِعْلُهُ، مِنْ قَضَاءِ دَيْنِهِ، وَتَفْرِيْقِ وَصِيَّتِهِ، وَالنَّظَرِ فِي أَمْرِ أَطْفَالِهِ.	It is valid to appoint any sane, trustworthy Muslim man or woman as an executor (of the bequest) to perform acts that are within the scope of legal capacity of the testator, such as: paying his debts, distributing his bequest, and looking after his children's interests.

وَمَتَى أَوْصَى إِلَيْهِ بِوِلَايَةِ أَطْفَالِهِ أَوْ مَجَانِيْنِهِ، ثَبَتَ لَهُ وِلَايَتُهُمْ، وَيَنْفُذُ تَصَرُّفُهُ لَهُمْ بِمَا لَهُمْ فِيهِ الْحَظُّ مِنَ الْبَيْعِ وَالشِّرَاءِ، وَقَبُوْلِ مَا يُوْهَبُ لَهُمْ، وَالإِنْفَاقِ عَلَيْهِمْ، وَعَلَى مَنْ تَلْزَمُهُمْ مَؤُوْنَتُهُ بِالْمَعْرُوْفِ، وَالتِّجَارَةِ لَهُمْ، وَدَفْعِ أَمْوَالِهِمْ مُضَارَبَةً بِجُزْءٍ مِنَ الرِّبْحِ.	Whenever he assigns to the executor the guardianship of his children or insane dependents, it becomes effective. The executor's dealings on their behalf will be valid in all transactions that are in their interest, such as: selling and buying, accepting gifts, spending on them and their dependents within reason, and conducting trade on their behalf, as well as investing their money in *muḍârabah* partnerships. [VIII.1.1]

[VIII.1.1] Muḍârabah: a type of partnership in which the investor provides capital to a laborer/entrepreneur to invest in a business initiative, with the objective of sharing the profit.

وَإِنِ اتَّجَرَ لَهُمْ، فَلَيْسَ لَهُ مِنَ الرِّبْحِ شَيْءٌ، وَلَهُ أَنْ يَأْكُلَ مِنْ مَالِهِمْ عِنْدَ حَاجَتِهِ بِقَدْرِ عَمَلِهِ وَلَا غُرْمَ عَلَيْهِ، وَلَا يَأْكُلُ إِذَا كَانَ غَنِيًّا؛ لِقَوْلِ اللهِ	If the executor conducts any commercial transaction for them by himself, he will not be entitled to any part of the profit; however, if he is in need, he may sustain himself from their money, taking compensation that is commensurate with his labor, and he will not have to repay what he lawfully takes. [VIII.1.2]

If he is well off, he should not take compensation, for Allah said: {…And whoever [when acting as guardian] is self-sufficient should refrain [from taking a fee]; and whoever is poor – let him take according to what is acceptable...} *(an-Nisâ' 4:6)*	تَعَالَى: «وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيْرًا فَلْيَأْكُلْ بِالْمَعْرُوْفِ».

[VIII.1.2] He may take only the lesser of what he needs for his maintenance and the customary compensation for his work. He need not repay this if he later becomes well off.

He (the executor) may not appoint, by will, a successor to perform what was entrusted to him, nor may he be a party in a sales transaction with them (his wards). [VIII.1.3] However, all of this is permissible for the father. [VIII.1.4] Thus, the custodian of the wealth of the children and the insane may only be the father, his appointed executor, or the ruler (authorities).	وَلَيْسَ لَهُ أَنْ يُوْصِيَ بِمَا أُوْصِيَ إِلَيْهِ بِهِ، وَلَا أَنْ يَبِيْعَ وَيَشْتَرِيَ مِنْ مَالِهِمْ لِنَفْسِهِ، وَيَجُوْزُ لِلأَبِ ذٰلِكَ، وَلَا يَلِيْ مَالَ الصَّبِيِّ وَالْمَجْنُوْنِ إِلَّا الأَبُ، أَوْ وَصِيُّهُ، أَوِ الْحَاكِمُ.

[VIII.1.3] Due to the obvious conflict of interest. The restriction on appointing a successor applies unless the original testator authorized it; it does not prevent appointing an agent for tasks he is unable to perform or which someone in his position would not ordinarily perform.

[VIII.1.4] Because of his bountiful compassion. He may appoint an eligible executor, and he may be the second party in a sales transaction with his children.

[End of Guardianship]

Subsection: The guardian may permit the discerning children to conduct business to test their	فَصْل: وَلِوَلِيِّهِمْ أَنْ يَأْذَنَ لِلْمُمَيِّزِ مِنَ الصِّبْيَانِ فِي

prudence (*rushd*); rushd here means competence in money (management). For those whom he feels to be competent, he should pass their money to them once they reach puberty. [VIII.1.5] He should have this (transfer of wealth) witnessed. This applies to males and females alike.	التَّصَرُّفِ؛ لِيَخْتَبِرَ رُشْدَهُ، وَالرُّشْدُ: الصَّلَاحُ فِي الْمَالِ. فَمَنْ آنَسَ رُشْدَهُ دَفَعَ إِلَيْهِ مَالَهُ إِذَا بَلَغَ، وَأَشْهَدَ عَلَيْهِ، ذَكَرًا كَانَ أَوْ أُنْثَى.

[VIII.1.5] See the appendix on 'buloogh' for a detailed discussion of the concept of puberty in Sharia.

Then, if they revert to financial imprudence and incompetence, interdiction will be re-imposed on them. No one will have control over their money this time except the ruler (authorities), and the interdiction will only be lifted by a legal decree. Their acknowledgment of financial liabilities will not be accepted, but it (their acknowledgment) will be accepted regarding *ḥudood* (designated penalties), retribution, and divorce. If he divorces (a wife) or emancipates (a slave), his divorce will count, but not his emancipation. [VIII.1.6]	فَإِنْ عَاوَدَ السَّفَهَ، أُعِيْدَ عَلَيْهِ الْحَجْرُ، وَلَا يَنْظُرُ فِي مَالِهِ إِلَّا الْحَاكِمُ، وَلَا يَنْفَكُّ الْحَجْرُ عَنْهُ إِلَّا بِحُكْمِهِ، وَلَا يُقْبَلُ إِقْرَارُهُ فِي الْمَالِ، وَيُقْبَلُ فِي الْحُدُوْدِ وَالْقِصَاصِ وَالطَّلَاقِ، وَإِنْ طَلَّقَ أَوْ أَعْتَقَ، نَفَذَ طَلَاقُهُ دُوْنَ إِعْتَاقِهِ.

[VIII.1.6] Because his control over his possessions is compromised by the interdiction.

	فَصْلٌ: وَإِذَا أَذِنَ السَّيِّدُ لِعَبْدِهِ فِي التِّجَارَةِ، صَحَّ بَيْعُهُ وَشِرَاؤُهُ وَإِقْرَارُهُ، وَلَا يَنْفُذُ تَصَرُّفُهُ إِلَّا فِيْ قَدْرِ مَا أَذِنَ لَهُ فِيهِ، وَإِنْ رَآهُ سَيِّدُهُ يَتَصَرَّفُ فَلَمْ يَنْهَهُ، لَمْ يَصِرْ بِهَذَا مَأْذُوْنًا لَهُ.

[IX.0] The Book of Inheritance

كِتَابُ الْفَرَائِضِ

This (section) pertains to the division of the estate. [IX.0.1]	وَهِيَ قِسْمَةُ الْمِيْرَاثِ.

[IX.0.1] Introduction

The subject matter of this knowledge (‘ilm al-farâ’iḍ or ‘ilm al-mawâreeth, meaning the science of inheritance) is the estate of the deceased. It is a division of fiqh (Islamic jurisprudence) that requires some understanding of mathematics as well. For this reason, it is usually mentioned as a separate discipline by itself. This is also so because of its importance and the fact that mastery of it is rare, even among scholars. It is a farḍ kifâyah (communal obligation) to learn it for the obvious objective of being able to distribute the estate of the deceased justly among the heirs, as prescribed by Allah.

If you attempt to understand the Islamic laws of inheritance in isolation from the entire philosophical foundation of the family in Islam and the distribution of rights and obligations, you will likely have a distorted understanding. For example, giving the daughters half of what the sons get may sound unfair. However, if you also consider that men are responsible to provide for women in the Muslim family, you will be able to appreciate the fairness of the system through this holistic examination.

Professor Almaric Rumsey (1825-1899) of King’s College, London, the author of many works on the subject of the Muslim law of inheritance, said “The Moohummudan law of inheritance comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilized world, and its beauty and symmetry are such that it is worthy to be studied, not only by lawyers with a view to its practical application, but for its own sake, and by those who have no other object in view than their intellectual culture and gratification.” (Rumsey, Almaric. Preface. Moohummudan Law of Inheritance and Rights and Relations Affecting It. 3rd ed. London: W.H. Allene, 1880. iii. Print.)

The deceased’s debts must be settled from the estate before its remainder is distributed to the heirs. The heirs do not become personally liable for those debts merely by inheriting, and they need not pay any shortfall from their

own property. Doing so voluntarily is recommended, because the Prophet (SA) said:

«نَفْسُ اَلْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ، حَتَّى يُقْضَى عَنْهُ»

"A believer's soul remains suspended (from joining his befitting station) by his debt until it is settled or paid off on his behalf." (A, T – from Abu Hurayrah; T: R)

[Categories of Heirs]

The heirs belong to one of three categories: [IX.0.2] 1. *Dhoo Farḍ* (heirs of designated shares) 2. *'Aṣabah* (residuary heirs) 3. *Dhoo raḥim* (other kin)	وَالْوَارِثُ ثَلَاثَةُ أَقْسَامٍ: 1. ذُوْ فَرْضٍ 2. وَعَصَبَةٌ 3. وَذُوْ رَحِمٍ

[IX.0.2] The Most Relevant Text of Revelation

There are three verses and one hadith that address the bulk of the issues of inheritance, designating the heirs, their shares, and the approach to dividing the estate.

The saying of Allah:

{يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۗ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةً مِّنَ اللَّهِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا}

{Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two-thirds of one's estate. And if there is only one, for her is one-half. And for one's parents, to each one of them is one-sixth of his estate if he left children. But if

he had no children and the parents [alone] inherit from him, then for his mother is one-third. And if he had brothers [or sisters], for his mother is one-sixth, after any bequest he [may have] made or debt. Your parents or your children – you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.} (an-Nisâ' 4:11)

And His saying:

{وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ ۚ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُم ۚ مِّن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۗ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوِ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِن كَانُوا أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ ۚ وَصِيَّةً مِّنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ حَلِيمٌ}

{And for you is half of what your wives leave if they have no child. But if they have a child, for you is one-fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one-fourth if you leave no child. But if you leave a child, then for them is one-eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither an inheriting descendant nor a father [or paternal grandfather] but has a brother or a sister, then for each one of them is one-sixth. But if they are two or more, they share one-third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing.} (an-Nisâ' 4:12)

And His saying:

{يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ ۚ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِن لَّمْ يَكُن لَّهَا وَلَدٌ ۚ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِن

كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۗ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا ۗ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ}

{They request from you a [legal] ruling. Say, "Allah gives you a ruling concerning one having neither descendants nor a father [as heirs]." If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two sisters [or more], they will have two-thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah is Knowing of all things.} (an-Nisâ' 4:176)

And the Prophet (SA) said:

«أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ »

Give the designated shares to those who are entitled to them, and what remains goes to the nearest male heir. (Ag – from Ibn 'Abbâs)

There is an additional verse concerning 'uloo al-arḥâm (see chapter on 'uloo al-arḥâm), but it is not explicit:

{وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ ۗ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ}

{…But those of [blood] relationship are more entitled [to inheritance] in the decree of Allah. Indeed, Allah is Knowing of all things.} (al-Anfâl 8:75)

[Heirs with Designated Shares]

Heirs with designated shares are ten:	فَذُوْ الْفَرْضِ عَشَرَةٌ:
[1&2] The spouses	الزَّوْجَانِ
[3&4] The parents	وَالأَبَوَانِ
[5] The grandfather [IX.0.3]	وَالْجَدُّ
[6] The grandmother	وَالْجَدَّةُ
[7] The daughters	وَالْبَنَاتُ
[8] The daughters of the sons	وَبَنَاتُ الإِبْنِ
[9] The sisters	وَالأَخَوَاتُ
[10] The maternal half siblings	وَالإِخوة مِنَ الأُمِّ

[IX.0.3] This refers to the paternal grandfather only; the maternal grandfather is of ‘uloo al-arḥâm.

[The Inheritance of the Husband and Wife]

For the husband: One-half of the estate if the deceased has no (inheriting) offspring; [IX.0.4] If she has (inheriting) offspring, he gets one-quarter. She (the wife) is entitled to: One-quarter (whether there was one wife or four), [IX.0.5] if he has no (inheriting) offspring; If he has (inheriting) offspring, they (the wives) are entitled to one-eighth.	فَلِلزَّوْجِ النِّصْفُ إِذَا لَمْ يَكُنْ لِلْمَيِّتِ وَلَدٌ، فَإِنْ كَانَ لَهَا وَلَدٌ، فَلَهُ الرُّبُعُ وَلِلْهَا الرُّبُعُ وَاحِدَةً كَانَتْ أَوْ أَرْبَعًا، إِذَا لَمْ يَكُنْ لَهُ وَلَدٌ، فَإِنْ كَانَ لَهُ وَلَدٌ، فَلَهُنَّ الثُّمُنُ.

[IX.0.4] The sons and daughters and the sons' sons and daughters, but not the daughters' children or any offspring connected to the deceased through a female; those are considered 'uloo al-arḥâm.

[IX.0.5] If there is more than one wife, they share the 1/4.

[The Inheritance of the Father]

Subsection: The father has three possible situations: If there are male inheriting descendants (of the deceased), he gets one-sixth;	فَصْلٌ: وَلِلأَبِ ثَلَاثَةُ أَحْوَالٍ، حَالٌ لَهُ السُّدُسُ، وَهِيَ مَعَ ذُكُوْرِ الْوَلَدِ.

He inherits as a residuary heir if there are no (inheriting) offspring;	وَحَالٌ يَكُوْنُ عَصَبَةً، وَهِيَ مَعَ عَدَمِ الْوَلَدِ.

He gets one-sixth and any remainder as a residuary heir [IX.0.6] if there is a female inheriting descendant and no male inheriting descendant.	وَحَالٌ لَهُ الأَمْرَانِ، وَهِيَ مَعَ إِنَاثِ الْوَلَدِ.

[IX.0.6] Only the father and the grandfather may combine the two types of inheritance due to one cause of inheritance. No one else can combine inheritance as a residuary heir with a designated-share heir unless they are related to the deceased in more than one way, such as a husband who is also a cousin who happens to be the closest male relative.

[The Inheritance of the Grandfather]

Subsection: The grandfather is like the father in all conditions, [IX.0.7] but there is a fourth condition that applies to him. When he inherits with (only) the (full or half paternal) male and female siblings, [IX.0.8] then he gets the greater of: 1. Sharing with them, like a brother, or 2. Taking one-third of the entire estate.	فَصْلٌ: وَالْجَدُّ كَالأَبِ فِيْ أَحْوَالِهِ، وَلَهُ حَالٌ رَابِعٌ، وَهِيَ مَعَ الإِخوة وَالأَخَوَاتِ لِلأَبَوَيْنِ أَوْ لِلأَبِ، فَلَهُ الأَحَظُّ مِنْ: 1. مُقَاسَمَتِهِمْ كَأَخٍ 2. أَوْ ثُلُثِ جَمِيْعِ الْمَالِ

[IX.0.7] Except that 1) he will be completely blocked from inheritance by the father, 2) he will not diminish the mother's share to 1/3 of the remainder like the father does in al-'Umariyah, and 3) he will only block the maternal half siblings, whereas the father blocks all siblings.

[IX.0.8] (A/SM) + (+M, +S): The (full and paternal half) siblings inherit in the presence of the (paternal) grandfather.

(a/ Inṣâf) + (-H): The grandfather blocks the siblings like the father.

This is one of the oldest and most complicated controversies, dating from the time of the Companions, who disagreed over this issue. Of those who upheld the (a) + (-H) position were: Abu Bakr, 'Uthmân, and Ibn 'Abbâs. Of those who upheld the (A) + (+M, +S) position were: 'Ali, Zayd ibn Thâbit, and Ibn Mas'ood.

According to the (a) + (-H) position, all of the following complicated problems regarding the grandfather's inheritance with the siblings will not be applicable.

If there are other heirs with designated shares, they will take their shares, and then the grandfather will be entitled to the greater of:	فَإِنْ كَانَ مَعَهُمْ ذُوْ فَرْضٍ، أَخَذَ فَرْضَهُ، ثُمَّ كَانَ لِلْجَدِّ الأَحَظُّ مِنَ 1. الْمُقَاسَمَةِ

1. Sharing (with the siblings, like a brother), 2. Taking one-third of the remaining estate (after the subtraction of the designated shares), or 3. Taking one-sixth of the entire estate.	2. أَوْ ثُلُثِ الْبَاقِيْ 3. أَوْ سُدُسِ جَمِيْعِ الْمَالِ

[*Al-Mu'âddah* – Counting the Paternal Half Siblings before Exclusion]

The full siblings in this regard are just like the paternal half siblings, if there is only one type of them. If there are more than one type, the full siblings will count the paternal half siblings against the grandfather, [IX.0.9] and then they will take their share. However, if the only full sibling is one sister, she takes half, and the paternal half siblings take the rest.	وَوَلَدُ الأَبِ كَوَلَدِ الأَبَوَيْنِ فِيْ هَذَا إِذَا انْفَرَدُوْا، فَإِنِ اجْتَمَعُوْا، عَادَّ وَلَدُ الأَبَوَيْنِ الْجَدَّ بِوَلَدِ الأَبِ، ثُمَّ أَخَذُوْا مَا حَصَلَ لَهُمْ، إِلَّا أَنْ يَكُوْنَ وَلَدُ الأَبَوَيْنِ أُخْتًا وَاحِدَةً فَتَأْخُذُ النِّصْفَ وَمَا فَضَلَ لِوَلَدِ الأَبِ.

[IX.0.9] The full siblings might do this to reduce the grandfather's share. If there is a grandfather, one full brother, and one paternal half brother, then the full sibling can count the half sibling as an heir, thus reducing the grandfather's share from 1/2 (his share if there is only him and the full sibling) to 1/3 (the least he gets in the absence of heirs with designated shares). Then the full sibling gets the other 2/3 for himself and blocks the half sibling.

[*Al-Akdariyah* – The Muddying Problem]

If there is nothing remaining after the designated shares are distributed except one-sixth, the grandfather will take it, and the siblings will be	وَإِنْ لَمْ يَفْضُلْ عَنِ الْفَرْضِ إِلَّا السُّدُسُ أَخَذَهُ الْجَدُّ وَسَقَطَ الإِخوة. إِلَّا فِيْ الأَكْدَرِيَّةِ، وَهِيَ: زَوْجٌ وَأُمٌّ وَأُخْتٌ وَجَدٌّ،

precluded, [IX.0.10] except in ***al-Akdariyah***, [IX.0.11] which consists of: husband, mother, sister, and grandfather. The husband gets one-half, the mother gets one-third, the grandfather gets one-sixth, and the sister gets one-half, then the sister's one-half and grandfather's one-sixth are divided between them over three shares, [IX.0.12] so the problem will be resolved (without fractions) by making 27 shares. None of the problems of the grandfather will be subject to *'awl* (proportionate reduction due to shortage) except this, and in no other circumstances will a sister get a designated share in the presence of a grandfather.	فَإِنَّ لِلزَّوْجِ النِّصْفَ، وَلِلأُمِّ الثُّلُثَ، وَلِلْجَدِّ السُّدُسَ، وَلِلأُخْتِ النِّصْفَ، ثُمَّ يُقْسَمُ نِصْفُ الأُخْتِ وَسُدُسُ الْجَدِّ بَيْنَهُمَا عَلَى ثَلَاثَةٍ، فَتَصِحُّ مِنْ سَبْعَةٍ وَعِشْرِيْنَ، وَلَا يَعُوْلُ مِنْ مَسَائِلِ الْجَدِّ سِوَاهَا، وَلَا يُفْرَضُ لأُخْتٍ مَعَ جَدٍّ فِيْ غَيْرِهَا.

[IX.0.10] Example: if the deceased was survived by a mother, two daughters, a grandfather, and one or more sisters or brothers:

Mother	1/6
Two daughters	2/3
Grandfather	1/6
One or more sisters or brothers	0

[IX.0.11] Called the muddying/confounding problem because it confounded the methodology of Zayd concerning the sister with the grandfather.

[IX.0.12] He gets two shares, and she gets one.

[Al-Kharqâ']

If there were no husband, the mother would have taken one-third, and the rest would have been divided over three between the sister and the grandfather. This problem is called ***al-***	وَلَوْ لَمْ يَكُنْ فِيْهَا زَوْجٌ، كَانَ لِلأُمِّ الثُّلُثُ، وَالْبَاقِيْ بَيْنَ الأُخْتِ وَالْجَدِّ عَلَى ثَلَاثَةٍ، وَتُسَمَّى: الْخَرْقَاءَ؛ لِكَثْرَةِ اخْتِلَافِ الصَّحَابَةِ فِيْهَا.

kharqâ', [IX.0.13] due to the many differing opinions of the Companions concerning it.	

[IX.0.13] The word kharqâ' comes from kharaqa (punctured); here, it refers to the many positions the Companions had concerning this problem.

[Mukhtaṣarat Zayd]

If there were also a paternal half brother and a paternal half sister, then the problem could be resolved (without fractions) by making 54 shares; this is called ***Mukhtaṣarat Zayd***. [IX.0.14]	وَلَو كان مَعَهُمْ أَخٌ وَأُخْتٌ لأَبٍ، لَصَحَّتْ مِنْ أَرْبَعَةٍ وَخَمْسِيْنَ، وَتُسَمَّى: مُخْتَصَرَةَ زَيْدٍ.

[IX.0.14] Mukhtaṣarat Zayd is made up of a grandfather, a mother, a full sister, a paternal half brother, and a paternal half sister.

Mother	1/6	3 out of 18 shares
Grandfather	1/3 of the remaining after the mother, because this is like sharing with the siblings as one of them.	5 out of 18 shares
Full sister	1/2 of the entire estate. She will count her half siblings against the grandfather, limiting him to 1/3 of the remaining after the mother takes her share, and then she will take the maximum she gets, which is 1/2 of the	9 out of 18 shares

	estate, and leave them the rest.	
Paternal half brother	Gets the remaining share with his sister, divided between them; for him 2/3, and for her 1/3.	2/3 of a share (out of 18 shares)
Paternal half sister	Gets the remaining share with her brother, divided between them; for him 2/3, and for her 1/3.	1/3 of one share (out of 18 shares)
To avoid fractions in the shares of the paternal half siblings, multiply the original denominator (which is 18) by 3, so the problem will be solved (without fractions) using 54. Solution: 9 shares for the mother, 15 for the grandfather, 27 for the full sister, 2 for the paternal half brother; 1 for the paternal half sister.		

If they had another paternal half brother, it would be resolved by making the shares 90; this is called ***Tis'eeniyat Zayd*** (Zayd's Ninety). [IX.0.15] There is no disagreement over blocking the maternal half siblings and the children of the siblings (by the grandfather).	فَإِنْ كَانَ مَعَهُمْ أَخٌ آخَرُ مِنْ أَبٍ، صَحَّتْ مِنْ تِسْعِيْنَ، وَتُسَمَّى: تِسْعِيْنِيَّةَ زَيْدٍ. وَلَا خِلَافَ فِيْ إِسْقَاطِ الإِخوة مِنَ الأُمِّ وَبَنِيْ الإِخوة.

[IX.0.15] In the previous example, if there are two paternal half brothers and one paternal half sister, they will all share the one share remaining from the original 18 shares of the problem. In this case, each brother will get 2/5 of that share, and the sister will get 1/5. To eliminate fractions, we will multiply the original number of shares 18 by 5, making the shares 90.

[The Inheritance of the Mother]

Subsection: The mother has four possible situations: She gets one-sixth in the presence of an (inheriting) offspring or two or more siblings, either male or female.	فَصْلٌ: وَلِلأُمِّ أَرْبَعَةُ أَحْوَالٍ، حَالٌ: لَهَا السُّدُسُ، وَهِيَ مَعَ الْوَلَدِ، أَوِ الإِثْنَيْنِ فَصَاعِدًا مِنَ الإخوة وَالأَخَوَاتِ.

She gets one-third of the remaining estate after subtracting the designated share of either spouse; that is in the presence of the father and one spouse. [IX.0.16]	وَحَالٌ: لَهَا ثُلُثُ الْبَاقِيْ بَعْدَ فَرْضِ أَحَدِ الزَّوْجَيْنِ، وَهِيَ مَعَ الأب وأحَدِ الزَّوْجَيْنِ.

[IX.0.16] Called al-‘Umariyah because it was ‘Umar who gave her 1/3 of the remaining, instead of 1/3 of the whole estate. If he gave her 1/3 of the whole estate, the father would have taken half of her share (1/6) when there is a husband (who takes 1/2). This would have been counter to the norm. This problem was also called al-Gharrâwiyah because of its being self-evident or well-known.

She gets one-third of the (entire) estate in the absence of the above.	وَحَالٌ: لَهَا ثُلُثُ الْمَالِ، وَهِيَ فِيْمَا عَدَا ذٰلِكَ.

The fourth condition is when her child has been denied paternity by *li‘ân [IX.0.17]* or was born of fornication, in which case she becomes the child’s residuary heir. If she is not (alive at the time of the child’s death), then her residuary heirs are her child’s residuary heirs. [IX.0.18]	وَحَالٌ رَابِعٌ: وَهِيَ إِذَا كَانَ وَلَدُهَا مَنْفِيًّا بِاللِّعَانِ أَوْ وَلَدَ زِنًا، فَتَكُوْنُ عَصَبَةً لَهُ، فَإِنْ لَمْ تَكُنْ، فَعَصَبَتُهَا عَصَبَةٌ.

[IX.0.17] li‘ân: mutual invocation of curses (upon oneself) as a prescribed legal procedure; see the Book of Li‘ân

[IX.0.18] (A): The other report from Aḥmad gives the mother her designated 1/3, with the rest going to her residuary heirs; so if the deceased is survived

by a mother and a maternal uncle, the mother gets 1/3, and the rest goes to her full/paternal half brother. (A/SM) (Note that these scenarios only apply if the deceased was not survived by male offspring. Otherwise, they would be the residuary heirs.)

[The Inheritance of the Grandmother]

Subsection: For the grandmother, [IX.0.19] in the absence of a mother, [IX.0.20] is one-sixth. This is whether there is one grandmother or more, as long as they are of the same generation – but if some of them are closer (to the deceased) than others, it (the one-sixth) will (all) be for them. [IX.0.21]	فَصْلٌ: وَلِلْجَدَّةِ إِذَا لَمْ تَكُنْ أُمٌّ السُّدُسُ، وَاحِدَةً كَانَتْ أَوْ أَكْثَرَ، إِذَا تَحَاذَيْنَ، فَإِنْ كَانَ بَعْضُهُنَّ أَقْرَبَ مِنْ بَعْضٍ، فَهُوَ لِأَقْرَبِهِنَّ.

[IX.0.19] Keep in mind that 'grandmother' here refers to grandmothers, great-grandmothers, etc.

[IX.0.20] The mother blocks all grandmothers from inheritance.

[IX.0.21] The father does not block his own mother (paternal grandmother) from inheritance; he only blocks his father. She will inherit as a mother in the absence of the actual mother. This is the position of (A) only; according to the majority, the father blocks his mother.

So if there is a father's mother and the mother of a mother's mother, the father's mother will get the entire 1/6 because she is one generation closer to the deceased.

A grandmother inherits even if her son is alive, but only three types of grandmothers inherit: the mother's mother, the father's mother and the (paternal) grandfather's mother – as well as their mothers, no matter how many generations up.	وَتَرِثُ الْجَدَّةُ وَابْنُهَا حَيٌّ، وَلَا يَرِثُ أَكْثَرُ مِنْ ثَلَاثِ جَدَّاتٍ، أُمُّ الْأُمِّ، وَأُمُّ الْأَبِ، وَأُمُّ الْجَدِّ، وَمَنْ كَانَ مِنْ أُمَّهَاتِهِنَّ وَإِنْ عَلَوْنَ.

A grandmother does not inherit if she is connected to the deceased through a	وَلَا تَرِثُ جَدَّةٌ تُدْلِي بِأَبٍ بَيْنَ أُمَّيْنِ، وَلَا

grandfather between two mothers or through a father higher than the grandfather. [IX.0.22] So if he is survived by his mother's two grandmothers and his father's two grandmothers, the mother of the maternal grandfather will not inherit, while the three other grandmothers will.	بِأَبٍ أَعْلَى مِنَ الْجَدِّ. فَإِنْ خَلَّفَ جَدَّتَيْ أُمِّهِ وَجَدَّتَيْ أَبِيْهِ، سَقَطَتْ أُمُّ أَبِيْ أُمِّهِ، وَالْمِيْرَاثُ لِلثَّلَاثِ الْبَاقِيَاتِ.

[IX.0.22] If there is a man between two women, his mother will not inherit. Also, the mother of the great-grandfather will not inherit. In contrast, if she is connected to him through mothers only, she will inherit, regardless of how many generations are between them.

[The Inheritance of the Daughter(s)]

Subsection: For the daughter is one-half, and for two or more daughters (a total of) two-thirds. [IX.0.23]	فَصْلٌ: وَلِلْبِنْتِ النِّصْفُ، وَلِلْبِنْتَيْنِ فَصَاعِدًا الثُّلُثَانِ.

[IX.0.23] While the Qur'an clearly determined the inheritance of one and three daughters, the Sunnah made the inheritance of two like the inheritance of three. The Qur'an also alluded to this when it gave two sisters 2/3 of the estate, as will be discussed. Jâbir ibn 'Abdullâh said:

The wife of Sa'd ibn ar-Rabee' came with her two daughters to the Messenger of Allah (SA) and said, "O Messenger of Allah, these two are daughters of Sa'd bin ar-Rabee', who fought along with you on the day of Uḥud and was martyred. Their uncle took their wealth without leaving any wealth for them, and they will not be married unless they have wealth." He replied, "Allah will decide on this matter." The verse about inheritance was revealed, so the Messenger of Allah (SA) sent (word) to their uncle, saying:

«أَعْطِ ابْنَتَىْ سَعْدٍ الثُّلُثَيْنِ وَأَعْطِ أُمَّهُمَا الثُّمُنَ وَمَا بَقِيَ فَهُوَ لَكَ»

"Give the two daughters of Sa'd 2/3, and give their mother 1/8; whatever remains is for you." (T; T: R)

The sons' daughters take their place in their absence, but when both daughters are present, the sons' daughters will be precluded unless they have a son's son of their generation or lower (however low), in which case he will make them co-residuary heirs. [IX.0.24]	وَبَنَاتُ الِابْنِ بِمَنْزِلَتِهِنَّ إِذَا عُدِمْنَ، فَإِنِ اجْتَمَعْنَ، سَقَطَ بَنَاتُ الِابْنِ، إِلَّا أَنْ يَكُوْنَ مَعَهُنَّ أَوْ أَنْزَلَ مِنْهُنَّ ذَكَرٌ، فَيُعَصِّبُهُنَّ فِيْمَا بَقِيَ.

[IX.0.24] So they get to inherit the remainder of the estate if there is anything left after the designated share heirs get their shares. In this case, the son takes twice as much as the daughter.

The sons' daughters will always be made co-residuary heirs by the sons' sons of their own generation. However, if the sons' sons are of a generation farther from the deceased, they will make the closer sons'

daughters co-residuary heirs only if the daughters need them. If she will inherit due to the absence of first generation daughters, or even in the presence of only one (as will be discussed in the following paragraph), then the more distant son's son(s) will not make her a co-residuary heir. The distant son's son(s) may inherit as residuary heirs themselves if any of the estate remains after the designated-share heirs take their shares.

If it is one daughter and there are sons' daughters, then the one daughter gets one-half, and the daughters of the sons (one or more) get one-sixth (to complete the two-thirds the daughters are entitled to), [IX.0.25] and that is true except if there is a male offspring (of their generation) who will make them co-residuary heirs.	وَإِنْ كَانَتْ بِنْتٌ وَاحِدَةٌ وَبَنَاتُ ابْنٍ، لِلْبِنْتِ النِّصْفُ، وَلِبَنَاتِ الِابْنِ، وَاحِدَةً كَانَتْ أَوْ أَكْثَرَ مِنْ ذَلِكَ، السُّدُسُ تَكْمِلَةَ الثُّلُثَيْنِ، إِلَّا أَنْ يَكُوْنَ مَعَهُنَّ ذَكَرٌ فَيُعَصِّبَهُنَّ.

[IX.0.25] Hudhayl ibn Shuraḥbeel narrated that Abu Moosâ was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, "The daughter will take 1/2, and the sister will take 1/2. If you go to Ibn Mas'ood, he will reiterate what I said." Ibn Mas'ood was asked and was told of Abu Moosâ's verdict. He said, "If I give the same verdict, I would stray and would not be of the rightly-guided. The verdict I give concerning it will be the same as the Prophet's: 1/2 is for the daughter and 1/6 for the son's daughter, (for both shares) to make 2/3 of the estate; and the rest is for the sister." Afterwards we went to Abu Moosâ and told him of Ibn Mas'ood's verdict, whereupon he said, "As long as this knowledgeable scholar is among you, do not ask me." (B)

[The Inheritance of the Sister(s)]

Subsection: The full sisters are like the daughters concerning their designated shares. [IX.0.26]	فَصْلٌ: وَالأَخَوَاتُ لِلأَبَوَيْنِ، كَالْبَنَاتِ فِيْ فَرْضِهِنَّ.

[IX.0.26] This is in case the deceased is a kalâlah, as in the end of Soorat an-Nisâ'. The kalâlah is the person who has no far' wârith (inheriting descendants of either sex) or aṣl mudhakkar (inheriting male ancestors). In the presence of a grandfather, they may still inherit with him, but not according to the shares designated for them in that verse.

The paternal half sisters with the full sisters are like the sons' daughters with the daughters. [IX.0.27] However, no one except their brother can make them co-residuary heirs. [IX.0.28]	وَالأَخَوَاتُ مِنَ الأَبِ مَعَهُنَّ، كَبَنَاتِ الإِبْنِ مَعَ الْبَنَاتِ سَوَاءٌ، وَلَا يُعَصِّبُهُنَّ إِلَّا أَخُوْهُنَّ.

[IX.0.27] Therefore, they will not inherit in the presence of two or more full sisters. However, in the presence of one full sister, she will get 1/2 of the estate, and the paternal half sisters will get 1/6 for both shares to complete the 2/3 designated for the sisters.

In the absence of full sisters, the paternal half sisters will take their place.

The maternal half sisters have a different set of rulings, which are discussed in the following topic with the maternal half siblings.

[IX.0.28] Unlike the sons' daughters, their brothers' sons will not make them co-residuary heirs.

Sisters are co-residuary heirs in the presence of daughters; they get the remainder of the estate, [IX.0.29] but they would not have a designated share, and that is due to Ibn Mas'ood's statement concerning a daughter, a son's daughter, and a sister, "I will	وَالأَخَوَاتُ مَعَ الْبَنَاتِ عَصَبَةٌ لَهُنَّ مَا فَضَلَ، وَلَيْسَتْ لَهُنَّ مَعَهُنَّ فَرِيْضَةٌ مُسَمَّاةٌ لِقَوْلِ ابن مسعودٍ رضي الله عنه في بنت وبنت ابن وأخت: أَقْضِي فِيهَا بِقَضَاءِ رَسُولِ اللَّهِ ﷺ للبنت

judge according to the judgment of the Messenger of Allah (SA). For the daughter is one-half, for the son's daughter is one-sixth, and the rest is for the sister."	النِّصْفُ، وَلِابْنَةِ الِابْنِ السُّدُسُ، وَمَا بَقِيَ فَلِلْأُخْتِ.

[IX.0.29] This is if they have no brothers to inherit with them as co-residuary heirs. In this case – in the presence of daughters of the deceased and the absence of any sons, fathers, or grandfathers – the sisters will take the remainder of the estate. If there is a grandfather, the variant scenarios are discussed above.

In this case, the full sisters will take the place of the absent full brothers, blocking the paternal half brothers and any male kin more distant than them. If they are paternal half sisters, they will take the place of the absent paternal half brothers, blocking the uncles and any male kin who are farther from them.

[The Inheritance of the Maternal Half Siblings]

Subsection: The maternal half brothers and sisters are equal (the male like the female). If there is one, he or she gets one-sixth; [IX.0.30] if they are two, each gets one-sixth; and if they are more, they are equal partners in one-third of the estate. [IX.0.31]	فَصْلٌ: وَالإِخوة وَالأَخَوَاتُ مِنَ الأُمِّ سَوَاءٌ، ذَكَرُهُمْ وَأُنْثَاهُمْ، لِوَاحِدِهِمُ السُّدُسُ، وَلِلِاثْنَيْنِ السُّدُسَانِ، فَإِنْ كَانُوْا أَكْثَرَ مِنْ ذٰلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ.

[IX.0.30] There is no difference here between the male and female since they are connected to the deceased through a female.

[IX.0.31] This is in case the deceased is kalâlah. The kalâlah is the person who has no far' wârith (inheriting descendants of either sex) or aṣl mudhakkar (inheriting male ancestors). Unlike the other (full and paternal half) siblings, the maternal half siblings will never inherit in the presence of a (paternal) grandfather.

The maternal half siblings do inherit in the presence of the mother, even though they are connected to the deceased through her. They also count against her as siblings, along with the full and paternal half siblings of both sexes. The multiplicity (2 or more) of any siblings will partially block the mother, diminishing her share from 1/3 to 1/6.

The only other case where one inherits in presence of the connection between him or her and the deceased is the father's mother or the grandfather's mother.

[IX.1] Chapter on Blockage

بَابُ الْحَجْبِ

The full siblings will be blocked [IX.1.1] by three: the son, the son's son, and the father. [IX.1.2]	يَسْقُطُ وَلَدُ الأَبَوَيْنِ بِثَلَاثَةٍ: بِالِابْنِ، وَابْنِهِ، وَالأَبِ.

[IX.1.1] Ḥajb means blockage. Here, it refers to when an heir bars or excludes another heir from receiving any inheritance, in which case it will be called ḥajb ḥirmân (complete blockage), or the greater of the alternate shares, in which case it will be called ḥajb nuqṣân (partial blockage).

You will need to come back and read this chapter again after reading the following one on ʻaṣabah.

[IX.1.2] A son or a son's son, however far down an uninterrupted male line, completely blocks the collateral heirs. He does not completely block a surviving spouse, although he reduces the spouse's share.

The paternal half siblings will be blocked by those three (above) and the full brother.	وَيَسْقُطُ وَلَدُ الأَبِ بِهَؤُلَاءِ الثَّلَاثَةِ وَبِالأَخِ مِنَ الأَبَوَيْنِ.

The maternal half siblings will be blocked by four: the son or daughter, the sons' child, [IX.1.3] the father, and the grandfather. [IX.1.4]	وَيَسْقُطُ وَلَدُ الأُمِّ بِأَرْبَعَةٍ: بِالْوَلَدِ ذَكَرًا كَانَ أَوْ أُنْثَى، وَوَلَدِ الِابْنِ، وَالأَبِ، وَالْجَدِّ.

[IX.1.3] Sons here refers to the actual sons and the sons' sons (however many generations from the deceased), if they are connected through a line of male offspring. The children of those, whether they are sons or daughters, are considered inheriting descendants, who will block the maternal half siblings.

[IX.1.4] The grandfather in this chapter is the paternal grandfather, howsoever high (in generations). The maternal grandfather is considered dhoo raḥim (other kin). Please refer to the chapter on ʻuloo al-arḥâm.

The maternal half brother inherits as an heir with a designated share if there is no far' wârith or aṣl mudhakkar, as detailed above. The other brothers mentioned in the two previous paragraphs inherit only as residuary heirs.

Every grandfather is blocked by the father, and every grandfather is blocked by a grandfather who is closer to the deceased than he is. [IX.1.5]	وَيَسْقُطُ الْجَدُّ بِالأَبِ، وَكُلُّ جَدٍّ بِمَنْ هُوَ أَقْرَبُ مِنْهُ.

[IX.1.5] Likewise, every son or son's son of a closer generation blocks the sons' sons of farther generations. The same applies to the uncles with cousins and the children of brothers of various generations. Within the same branch of residuary kinship, the nearer degree excludes the more remote. Priority between different branches is determined first, as explained in [IX.2.7]. The Prophet (SA) said:

« أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ»

"Give the shares to those who are entitled to them, and what remains goes to the nearest male heir." (Ag – from Ibn 'Abbâs)

The parents, children, and spouses will never be completely blocked by anyone.

[IX.2] Chapter on Residuary Heirs

بَابُ الْعَصَبَاتِ

They include every male relative connected to the deceased directly or through an uninterrupted male line, [IX.2.1] excluding the husband. The female emancipator and her qualifying residuary heirs are also included. [IX.2.2]	وَهُمْ: كُلُّ ذَكَرٍ يُدْلِيْ بِنَفْسِهِ أَوْ بِذَكَرٍ آخَر، إِلَّا الزَّوْجَ. وَالْمُعْتِقَةُ وَعَصَبَاتُهَا.

[IX.2.1] Introduction

They are called ‘aṣabah, which comes from tying and strengthening, because they support one another and bail one another. As always in Islamic law, they are given rights that correspond with the obligations upon them. The maternal side of the family of the deceased were not required by law to bail him out if he killed someone by mistake or needed to pay the diyah (indemnity) for an injury, etc.

‘Aṣabah could be translated as universal heir, but I chose residuary heir because it is more descriptive of the way their entitlement is determined. They will only take the residual part after the heirs of designated shares take theirs.

It may sound like they are all less deserving than the heirs of designated shares. While that may be mostly true, one of them is the son of the deceased. There will never be a case where he will not have anything left to inherit, because he will completely block all the ḥawâshi (brothers and uncles and their children) and will partially block the parents, causing them to only take 1/6 each. He will also partially block the husband/wife, causing them to take 1/4 and 1/8 respectively. In his presence, it is not possible for the designated shares to be more than 1/3 (or 4/12) for both parents + 1/4 (or 3/12) for the husband, making 7/12 in total.

[IX.2.2] These are examples of exceptions to the rule of the ‘aṣabah being a male relative connected directly to the deceased or through male relatives. In the example of the husband, he is male and connected directly to the deceased, but he will not be an ‘aṣabah. In the example of the female

emancipator, she (or her ‘aṣabah) will be ‘aṣabah for the deceased even though she is female and they are connected to the deceased through her. You can also add to those the mother whose son has been denied paternity in li‘ân; she – or her ‘aṣabah, according to (A) – will be ‘aṣabah for the deceased, (if the deceased was not survived by male offspring).

The one who most deserves the inheritance is the closest, and the closest is the son, then his son however far down (in generations), and then the father, then his father however far upward (in generations), given there are no siblings, [IX.2.3] then the father’s children [IX.2.4] and their children however far down (in generations), then the children of the (paternal) grandfather, [IX.2.5] then their children however far down (in generations). This means the children of a more distant male ancestor will not inherit in the presence of the children of a closer male ancestor, and the most deserving of the children of one male ancestor are those closest (to that male ancestor), and if they are at the same distance, then precedence will be given to the one connected through both of his parents. [IX.2.6] [IX.2.7]	وَأَحَقُّهُمْ بِالْمِيْرَاثِ أَقْرَبُهُمْ، وَأَقْرَبُهُمُ الِابْنُ، ثُمَّ ابْنُهُ، وَإِنْ نَزَلَ، ثُمَّ الأَبُ، ثُمَّ أَبُوْهُ وَإِنْ عَلَا، مَا لَمْ يَكُنْ إِخْوَةٌ، ثُمَّ بَنُوْ الأَبِ، ثُمَّ بَنُوْهُمْ، وَإِنْ نَزَلُوْا، ثُمَّ بَنُوْ الجَدِّ، ثُمَّ بَنُوْهُمْ، وَعَلَى هَذَا لَا يَرِثُ بَنُوْ أَبٍ أَعْلَى مَعَ بَنِيْ أَبٍ أَدْنَى مِنْهُ وَإِنْ نَزَلُوْا، وَأَوْلَى كُلِّ بَنِيْ أَبٍ أَقْرَبُهُمْ إِلَيْهِ، فَإِنِ اسْتَوَتْ دَرَجَتُهُمْ، فَأَوْلَاهُمْ مَنْ كَانَ لأَبَوَيْنِ.

[IX.2.3] If there are siblings, they may inherit with the (paternal) grandfather, per (A) + (+M, +S), however, he will still be prioritized. See above for the full discussion on the inheritance of the grandfather in the presence of siblings.

[IX.2.4] These are the deceased’s full or paternal half brothers.

[IX.2.5] These are the deceased’s full or paternal half uncles.

[IX.2.6] ‘Ali (RA) said, “You recite this ayah: {After any bequest which was made or debt, as long as there is no detriment [caused]} (an-Nisâ’ 4:12). But indeed, the Messenger of Allah (SA) judged that debt (be paid) before the will, and that the children (sons and daughters) from the same mother and father inherit before those from different mothers. The man inherits from his full brother before the paternal half brother.” (T; Most Hadith scholars: W, but its meaning is accepted by consensus)

[IX.2.7] Order of ‘Aṣabât

You are looking first for the direction (jihah), favoring the filiality (bunuwwah) over paternity (ubuwwah), and that over the farther ancestry (judoodah, meaning grandparents and the generations above them) and brotherhood, and that over the uncles (‘umoomah) and then their sons.

Then you are looking for proximity (qurb) to the deceased, favoring the brother over the brother’s son and the latter over the brother’s son’s son, etc.

Finally, if they are equal in both jihah and qurb, you will look for the strength (quwwah), favoring the son of both parents over the son of the father only.

There are four who will make their sisters co-residuary heirs, so they will have all their inheritance divided between them (for the male twice as much as for the female). They are: the son, the son’s son, the full brother, and the paternal half brother.	وَأَرْبَعَةٌ مِنْهُمْ يُعَصِّبُوْنَ أَخَوَاتِهِمْ وَيَقْتَسِمُوْنَ مَا وَرِثُوْا لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ، وهم: الابن، وابنه، وَالأَخُ مِنَ الأَبَوَيْنِ أَوْ مِنَ الأَبِ.

Any other males will take the remainder, such as the brothers’ sons, the paternal uncles, and the sons of the paternal uncles. [IX.2.8]	وَمَنْ عَدَاهُمْ يَنْفَرِدُ الذُّكُوْرُ بِالْمِيْرَاثِ، كَبَنِيْ الإخوة وَالأَعْمَامِ وَبَنِيْهِمْ.

[IX.2.8] The female aunt and cousin do not inherit with their brother (unlike the daughter and sister). So if the deceased is survived by a brother’s son and daughter (the deceased’s nephew and niece), the nephew will take all

the residual inheritance. Likewise if his closest male relative is his paternal uncle or cousin; they will not share with their sisters.

When the residuary heir is alone, [IX.2.9] he or she [IX.2.10] inherits the entire estate. If there is an heir with a designated share along with (the residuary heir), that designated share will be given to him or her first, with the remainder for the residuary heir. This is because the Messenger of Allah (SA) said, "Give the designated shares to those who are entitled to them, and what remains goes to the nearest male heir." [IX.2.11]	وَإِذَا انْفَرَدَ الْعَصَبَةُ، وَرِثَ الْمَالَ كُلَّهُ، وَإِنْ كَانَ مَعَهُ ذُوْ فَرْضٍ بُدِئَ بِهِ، وَكَانَ الْبَاقِيْ لِلْعَصَبَةِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «أَلْحِقُوْا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ، فَلأَوْلَى رَجُلٍ ذَكَرٍ.»

[IX.2.9] With no one else in his degree.

[IX.2.10] A woman may be a residuary heir in her own right as the emancipator of the deceased, or, according to the alternative report followed here, as the mother of a child whose paternity was denied. Daughters, sons' daughters, and sisters may also inherit as residuaries through the relationships explained above.

[IX.2.11] (Ag – from Ibn 'Abbâs)

If the designated shares exhaust the entire estate, then the residuary heir is precluded, as in (the case where the deceased is survived by) a husband, a mother, two or more maternal half siblings, and one or more full brothers, with or without full sisters; here, the husband takes one-half, the mother one-sixth, and the maternal siblings one-third – and the full siblings are precluded. This is called: ***al-***	فَإِنِ اسْتَغْرَقَتِ الْفُرُوْضُ الْمَالَ، سَقَطَ الْعَصَبَةُ، فَإِذَا كَانَ زَوْجٌ وَأُمٌّ وَإِخْوَةٌ لأُمٍّ وَإِخْوَةٌ لأَبَوَيْنِ، فَلِلزَّوْجِ النِّصْفُ، وَلِلأُمِّ السُّدُسُ، وَلِلإِخْوَةِ لِلأُمِّ الثُّلُثُ وَسَقَطَ الإخوة لِلأَبَوَيْنِ، وَتُسَمَّى: الْمُشَرَّكَةَ وَالْحِمَارِيَّةَ. وَلَوْ كَانَ مَكَانَهُمْ أَخَوَاتٌ، كَانَ لَهُنَّ الثُّلُثَانِ، وَتَعُوْلُ إِلَى عَشَرَةٍ، وَتُسَمَّى: أُمَّ الْفُرُوْخِ.

musharrakah (shared) or ***al-ḥimâriyah*****. [IX.2.12]** If there are two or more full sisters and no full brother instead, they are (together) entitled to two-thirds, and the problem is subject to proportionate reduction of the shares (from sixths to tenths). This case is called ***Umm al-furookh***. [IX.2.13]	

[IX.2.12] Called al-ḥimâriyah in reference to ḥimâr (a donkey) because when ‘Umar precluded the full siblings from inheritance, Zayd told him, “Suppose their father was a donkey or a rock (that is, inconsequential),” so ‘Umar let them share with the maternal half siblings in their 1/3. ‘Umar’s later opinion of sharing was adopted by (-M, -S); his earlier position of dropping the full siblings was adopted by (A) + (+H).

They all drop the paternal half siblings.

[IX.2.13] “Mother of the chicks” is the literal meaning. It was called this because the denominator increased remarkably from 6 to 10. The husband takes one-half, the mother one-sixth, the maternal siblings one-third, and the (full or paternal half) sisters two-thirds.

[Inheritance of the *Khunthâ* (intersex person)]

If the child is intersex, the determination (of their sex) is based on the urinary orifice; if the urine comes out from the shaft, it is a male, and if it comes out from (between) the labia, it is a female. If urine comes from both organs equally, the person's sex remains indeterminate, [IX.2.14] who will be entitled to half of the inheritance of a male and half of the inheritance of a female. [IX.2.15] Likewise, are the cases concerning their blood money, (compensation for) injuries, and others. They may not marry [while their sex remains indeterminate.]	وَإِذَا كَانَ الْوَلَدُ خُنْثَى اعْتُبِرَ بِمَبَالِهِ، فَإِنْ بَالَ مِنْ ذَكَرِهِ، فَهُوَ رَجُلٌ، وَإِنْ بَالَ مِنْ فَرْجِهِ، فَهُوَ امْرَأَةٌ، وَإِنْ بَالَ بينهما وَاسْتَوَيَا، فَهُوَ مُشْكِلٌ، لَهُ نِصْفُ مِيْرَاثِ ذَكَرٍ وَنِصْفُ مِيْرَاثِ أُنْثَى. وَكَذٰلِكَ الْحُكْمُ فِيْ دِيَتِهِ وَجِرَاحِهِ وَغَيْرِهِمَا. وَلَا يُنْكَحُ بِحَالٍ.

[IX.2.14] With advances in medicine, the determination of the sex is much easier. The prevalence of intersex persons with completely ambiguous (gonads and genitalia) is extremely rare.

[IX.2.15] If clarification of the person's sex remains reasonably expected, each heir receives only the amount certainly due under either calculation, and the disputed balance is held back. When clarification is no longer expected, calculate the estate once treating the khunthâ as male and once as female, and give each heir the average of the two resulting shares.

[IX.3] Chapter on *Dhawi al-Arḥâm* (Other Kin)

بَابُ ذَوِيْ الأَرْحَامِ

[Definition of *Dhawi al-Arḥâm* (Other Kin)]

They are the rest of the relatives who are not residuary heirs and are not entitled to a designated share. [IX.3.1]	وَهُمْ: كُلُّ قَرَابَةٍ لَيْسَ بِعَصَبَةٍ وَلَا ذِيْ فَرْضٍ.

[IX.3.1] 'Uloo al-arḥâm literally means kin connected through the womb, but the phrase is sometimes translated as extended family or distant kin. I decided to use 'other kin' since 'uloo al-arḥâm in this chapter means, as explained in the matn (main text), those relatives who will not inherit as residuary heirs or heirs with designated shares. They are not necessarily distant, because they include the maternal grandfather and the maternal aunt – about whom the Prophet (SA) said:

«الْخَالَةُ بِمَنْزِلَةِ الْأُمِّ»

"The maternal aunt is like a mother." (D – from 'Ali; al-Albâni: S)

They are not necessarily farther from the deceased than a distant male paternal cousin, but the distant male paternal cousin will be a residuary heir if he is not blocked by anyone closer than him. This may not be understood correctly until we know that he is part of the 'aṣabah/'âqilah (extended paternal family) that would have been required to sustain the deceased during his childhood (if the father was not present), to bail him out by paying the blood money for a mistaken killing by him, etc. Since they

are liable, they are entitled to inherit the remainder of his estate in case there is anything left after the heirs with designated shares get them, as long as there is no residuary heir closer to the deceased who would block them.

‘Uloo al-arḥâm are:

- the children of the daughters
- the children of the sisters
- the daughters of the siblings
- the daughters of the paternal uncles
- the children of the maternal half siblings
- the maternal half brother of the father
- the paternal aunts (of any generation), including the grandfathers’ sisters
- the maternal uncles
- the maternal aunts
- the maternal grandfather and his male ancestors
- the grandmother who is connected to the deceased through a man between two women, such as the mother of the maternal grandfather; also, the mother of the father’s paternal grandfather and his male ancestors

anyone connected to the deceased through one of the above, such as the paternal or maternal aunt of his paternal or maternal aunt; they will take their place in their absence

[Their Inheritance]

They do not inherit [IX.3.2] in the presence of any residuary heirs or any heirs entitled to designated shares, except one of the spouses[IX.3.3] –	لَا مِيْرَاثَ لَهُمْ مَعَ عَصَبَةٍ وَلَا ذِيْ فَرْضٍ، إِلَّا مَعَ أَحَدِ الزَّوْجَيْنِ، فَإِنَّ لَهُمْ مَا فَضَلَ

then they would inherit the remainder without blockage (*ḥajb*) or correction for shortage (*'awl*). [IX.3.4]	عَنْهُ مِنْ غَيْرِ حَجْبٍ وَلَا مُعَاوَلَةٍ.

[IX.3.2] The scholars differed concerning the inheritance of 'uloo al-arḥâm. Mâlik and ash-Shâfi'i did not give them any right to inheritance, and they would give the estate or the remainder of it to bayt ul-mâl (the Muslim treasury) in the absence of residuary heirs or heirs entitled to designated shares.

The position of the majority is that they do inherit, in the absence of residuary heirs or heirs entitled to designated shares (aside from spouses), and they are given precedence over bayt ul-mâl. This is the position of Abu Ḥaneefah and Aḥmad, as well as later Mâlikis and Shâfi'is when bayt ul-mâl is not properly administered. The proof for this position is the saying of Allah:

{وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ ۗ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ}

{...But those of [blood] relationship are more entitled [to inheritance] in the decree of Allah. Indeed, Allah is Knowing of all things.} (al-Anfâl 8:75)

The Prophet (SA) said:

{الْخَالُ وَارِثُ مَنْ لَا وَارِثَ لَهُ}

"The maternal uncle is the heir of the one who has no heir." (T; T: R)

This is the position upheld by the laws in most of the Muslim countries, including Egypt and Syria.

It is recommended for the Muslim to bequeath some of his estate to the needy among those who will not inherit.

[IX.3.3] Because the spouses (according to the authorized position) receive only their designated shares; unlike the rest of the heirs, they do not receive the surplus of the estate through redistribution (radd).

[IX.3.4] In the presence of a spouse, if you give ‘uloo al-arḥâm the place of the heirs through which they are connected to the deceased, and the shares exceed the estate, you will not resort to ‘awl. The husband gets his 1/2 first, and then the rest is divided among the “presumptive” heirs and passed on to their survivors. Clarifying example: An individual is survived by a husband and a daughter’s daughter. You will learn in this chapter that the daughter’s daughter (when she gets to inherit) takes the place of her mother, who was the deceased’s daughter. Then, we give the daughter’s inheritance (which she would have received if she survived the deceased) to her daughter. Normally, the daughter partially blocks the husband (ḥajb nuqṣân), reducing his share from 1/2 to 1/4, but in this case, there is no blocking, so the husband gets his 1/2.

[The Rules of Their Inheritance]

They inherit by upward substitution, meaning that each one of them will be put in place of the relative through whom he or she is connected to the deceased. [Here are some examples:]	وَيَرِثُوْنَ بِالتَّنْزِيْلِ، فَيُجْعَلُ كُلُّ إِنْسَانٍ مِنْهُمْ بِمَنْزِلَةِ مَنْ أَدْلَى بِهِ.

The children of the daughters, of the sons’ daughters, and of the sisters will take the place of their mothers.	فَوَلَدُ الْبَنَاتِ وَوَلَدُ بَنَاتِ الِابْنِ وَالأَخَوَاتِ بِمَنْزِلَةِ أُمَّهَاتِهِمْ.

The daughters of the brothers and of the paternal uncles, and the sons [IX.3.5] of the maternal half brothers, will take the place of their fathers.	وَبَنَاتُ الإِخوةِ وَالأَعْمَامِ، وَبَنُو الإِخوة مِنَ الأُمِّ كَآبَائِهِمْ.

The paternal aunts and the father’s maternal half brothers will take the place of the father. The maternal uncles, maternal aunts, and maternal grandfather will take the place of the mother.	وَالْعَمَّاتُ وَالْعَمُّ مِنَ الأُمِّ كَالأَبِ. وَالأَخْوَالُ وَالْخَالَاتُ وَأَبُوْ الأُمِّ كَالأُمِّ.

[IX.3.5] And daughters as well.

[Multiple *Dhawi al-Arḥâm* (Other Kin) from One Direction]

If there are two or more from the same direction (*jihah*), then the most deserving is the one closest to the heir (who would have inherited had he or she been alive). [IX.3.6]	فَإِنْ كَانَ مِنْهُمُ اثْنَانِ فَصَاعِدًا مِنْ جِهَةٍ وَاحِدَةٍ فَأَسْبَقُهُمْ إِلَى الْوَارِثِ أَحَقُّهُم.

[IX.3.6] Clarifying example: There is a maternal aunt and a mother's paternal grandmother. They are both connected to the deceased through his mother (thus the direction is the same), but the aunt is closer, so she will get the entire inheritance. When there is both a daughter's daughter and a daughter's granddaughter, the daughter's daughter is closer, so she will get the (daughter's) entire inheritance of the daughter.

If the jihah is different, you do not consider the proximity. For example, if there is a daughter of a daughter's daughter and a son of a maternal half brother, the great-granddaughter will inherit and block the nephew because the daughter blocks the maternal half brother.

If they are equally close, then divide the money among those through whom they are connected to the deceased, and grant their shares to those related to the deceased through them, giving equal shares to the males and females from the same direction. Therefore, if he was survived by a daughter's son, a daughter of another daughter, and a son and daughter of a third daughter, you will divide the estate among the three daughters and then give their shares to their respective children. For the son of the first daughter is one-third and for the daughter of the second daughter is one-third, and for both the son and daughter of the third daughter is one-third to be divided equally between them.	فإن اسْتَوَوا قَسَمْتَ المَالَ بينَ مَن أدلَوا بِهِ وَجَعَلْتَ مَالَ كل واحد منهم لِمَن أدْلَى بِهِ، وَسَوَّيْتَ بَيْنَ الذَّكَرِ وَالأُنْثَى إِذَا اسْتَوَتْ جِهَاتُهُمْ مِنْهُ، فَلَوْ خَلَّفَ ابْنَ بِنْتٍ وَبِنْتَ بِنْتٍ أُخْرَى، وَابْنًا وَبِنْتَ بِنْتٍ أُخْرَى، قَسَمْتَ الْمَالَ بَيْنَ الْبَنَاتِ عَلَى ثَلَاثَةٍ، ثُمَّ جَعَلْتَهُ لأَوْلَادِهِنَّ، لِلابْنِ الثُّلُثُ وَلِلْبِنْتِ الثُّلُثُ، وَلِلابْنِ وَالْبِنْتِ الثُّلُثُ بَيْنَهُمَا نِصْفَيْنِ.

If he was survived by three paternal aunts of different strengths [IX.3.7] and three maternal aunts of different strengths, then one-third is divided over five shares among the three maternal aunts, and two-thirds are divided over five shares among the three paternal aunts. The problem can be solved (without fractions) if we make the denominator 15. [IX.3.8]	وَإِنْ خَلَّفَ ثَلَاثَ عَمَّاتٍ مُفْتَرِقَاتٍ، وَثَلَاثَ خَالَاتٍ مُفْتَرِقَاتٍ، فَالثُّلُثُ بَيْنَ الْخَالَاتِ عَلَى خَمْسَةٍ، وَالثُّلُثَانِ بَيْنَ الْعَمَّاتِ عَلَى خَمْسَةٍ، وَتَصِحُّ مِنْ خَمْسَةَ عَشَرَ.

[IX.3.7] One of them is a full sister of his father, the other is a paternal half sister, and the third is a maternal half sister.

[IX.3.8] The three maternal aunts will take the place of the mother because they are connected to the deceased through her, while the three paternal aunts will take the place of the father because they are connected to the deceased through him. You should imagine that the father and mother are alive and are the only heirs of the deceased. In this case, the mother would have gotten 1/3 and the father the remaining 2/3. The mother's 1/3 will then be divided among the maternal aunts as they would have inherited it from the mother of the deceased (their sister). Since one of them is a full sister, she gets 1/2 of the estate, and the paternal half sister gets the remainder of the 2/3, which is 1/6 of the estate. (Review the designated shares of sisters above.) The maternal half sister gets 1/6 of the estate. All this inheritance is through designated shares. However, the mother's inheritance is more than the shares, which add up to 5/6 (3/6 for the full sister, 1/6 for the paternal half sister, and 1/6 for the maternal half sister). The remaining 1/6 will be divided proportionately among them all by radd, thereby reducing the denominator from 6 to 5, so the full sister gets 3/5, and each of the other two gets 1/5. As for the father's sisters, the full sister gets 6/10, and each of the other two gets 2/10. All those shares will stay the same, and the denominator will be 15, making the shares for the maternal aunts: 3/15, 1/15, and 1/15, and for the paternal aunts: 6/15, 2/15, and 2/15.

[Multiple *Dhawi Al-Arḥâm* (Other Kin) from Different Directions]

If the directions of dhawi al-arḥâm differ, [IX.3.9] you make the more distant relative take the place of the	فَإِنِ اخْتَلَفَتْ جِهَاتُ ذَوِي الْأَرْحَامِ، نَزَّلْتَ الْبَعِيْدَ حَتَّى

one from whom he or she inherits, and then you divide the estate as we mentioned. [IX.3.10]	يَلْحَقَ بِوَارِثِهِ، ثُمَّ قَسَمْتَ عَلَى مَا ذَكَرْنَا.

[IX.3.9] Directions will be mentioned below.

[IX.3.10] Here is a clarifying example:

The deceased is survived by a daughter's daughter, a daughter of a full or paternal half sister, and a maternal aunt.

- The daughter's daughter will take the place of the daughter.
- The sister's daughter will take the place of the sister.
- The maternal aunt will take the place of the mother.

To solve the problem, first consider that the deceased was survived by a daughter, a sister, and a mother. The daughter takes 1/2, the mother takes 1/6, and the sister takes the remainder, which is 1/3. So the daughter's daughter gets her mother's share of 1/2, the sister's daughter gets her mother's share of 1/3, and the aunt gets her sister's share of 1/6.

There are three directions: filiation (*bunuwwah*), maternity (*umoomah*), and paternity (*ubuwwah*). [IX.3.11]	وَالْجِهَاتُ ثَلَاثٌ: الْبُنُوَّةُ، وَالأُمُوْمَةُ، وَالأُبُوَّةُ.

[IX.3.11] This is because any relatives are connected to the deceased through their parents or children.

These directions are different from those used to determine the most deserving of the residuary heirs.

[IX.4] Chapter on the Number of Shares/ Original Denominators

بَابُ أُصُوْلِ الْمَسَائِلِ

وَهِيَ سَبْعَةٌ:	The original (denominators/total number of shares) [IX.4.1] (in all problems of inheritance) are seven: [IX.4.2]
1. فَالنِّصْفُ مِنَ اثْنَيْنِ	1. When there is one-half, the estate will be divided into **2** shares.
2. وَالثُّلُثُ وَالثُّلُثَانِ مِنَ ثَلَاثَةٍ	2. When there is one-third or two-thirds, the estate will be divided into **3** shares.
3. وَالرُّبُعُ وَحْدَهُ أَوْ مَعَ النِّصْفِ مِنْ أَرْبَعَةٍ	3. When there is one-fourth, alone or with one-half, the estate will be divided into **4** shares.
4. وَالثُّمُنُ وَحْدَهُ أَوْ مَعَ النِّصْفِ مِنْ ثَمَانِيَةٍ	4. When there is one-eighth, alone or with one-half, the estate will be divided into **8** shares.

[IX.4.1] This is one of the arithmetic topics that are not directly related to fiqh, but they address matters that were important for the jurists to understand to be able to divide estates accurately. Due to the progress in these fields and the presence of advanced calculators and computers, we will not discuss these topics in detail.

What is intended here is to identify the number of shares the estate will be divided by. This number should not have fractions, so if there is 1/2 (a husband's or daughter's share, for instance), the estate will be divided into two shares. If there are two shares with each being 1/2 (e.g., a husband and a sister), then each gets one of the two shares (1/2). If there is one entitled to 1/4 and one entitled to 1/3, then we must divide the estate into 12 shares

(the least common denominator), so that we can give each one of the heirs their shares without fractions; in this case, the one entitled to 1/3 gets 4/12, and the one entitled to 1/4 gets 3/12.

[IX.4.2] The agreed upon denominators are those seven: 2, 3, 4, 6, 8, 12, 24. For the madh-habs that give the siblings part of the inheritance in the presence of the grandfather, there are two other denominators (total number of shares) that are used: 18 and 36.

Concerning these four, there is never ‘awl. [IX.4.3]	فَهَذِهِ الأَرْبَعَةُ لَا عَوْلَ فِيْهَا.

[IX.4.3] ‘Awl may be translated as proportionate reduction because this is what it means in practice. It is done when you have more shares deserved by heirs with designated shares than the shares by which the estate is divided. (In other words, the calculation results in more shares than exist.) For example, if a woman is survived by a husband and two sisters only, the husband is entitled to 1/2 and the sisters to 2/3. However, 1/2 and 2/3 add up to more than the estate. The original denominator of 6 must be increased to 7 to accommodate the designated shares, eventually giving the husband 3/7 instead of 3/6 and the sisters 4/7 instead of 4/6; this amounts to proportionate reduction of all of the shares of the designated-share heirs.

5. If, along with the one-half, there is also one-third, two-thirds, or one-sixth, then the denominator will be **6**. It may be subject to ‘awl, which increases (the denominator) up to **10**.	5- وَإِذَا كَانَ مَعَ النِّصْفِ ثُلُثٌ أَوْ ثُلُثَانِ أَوْ سُدُسٌ، فَهِيَ مِنْ سِتَّةٍ، وَتَعُوْلُ إِلَى عَشَرَةٍ.

6. If, along with the one-fourth, there is any of these three (one-third, two-thirds, or one-sixth), then the (denominator/total number of shares) will be **12**. It may be subject to ‘awl, increasing (the denominator) up to **17**.	6- وَإِنْ كَانَ مَعَ الرُّبُعِ أَحَدُ هَذِهِ الثَّلَاثَةِ، فَهِيَ مِنِ اثْنَيْ عَشَرَ، وَتَعُوْلُ إِلَى سَبْعَةَ عَشَرَ.

7. If, along with the one-eighth, there is one-sixth or two-thirds, then the denominator will be **24**. It may be subject to ‘awl, increasing (the denominator) to **27**.	7- وَإِنْ كَانَ مَعَ الثُّمُنِ سُدُسٌ أَوْ ثُلُثَانِ، فَهِيَ مِنْ أَرْبَعَةٍ وَعِشْرِيْنَ، وَتَعُوْلُ إِلَى سَبْعَةٍ وَعِشْرِيْنَ.

[IX.5] Chapter on Redistribution

بَابُ الرَّدِّ

If the designated shares do not exhaust the entire estate, and there are no residuary heirs, the remainder is redistributed among them, except for the spouses, in proportion to their designated shares.	وَإِنْ لَمْ تَسْتَغْرِقِ الْفُرُوْضُ الْمَالَ، وَلَمْ يَكُنْ عَصَبَةٌ، فالباقي يُرَدُّ عَلَيْهِمْ عَلَى قَدْرِ فُرُوْضِهِمْ، إِلَّا الزَّوْجَيْنِ.

[Arithmetic Problems of Redistribution]

If they have different designated shares, you take their shares from the original division of their problem and make the number of shares (by which the estate is divided) equal to the number of their shares. [IX.5.1] If this results in fractions, you multiply that number by their shares. [IX.5.2]	فَإِنِ اخْتَلَفَتْ فُرُوْضُهُمْ، أَخَذْتَ سِهَامَهُمْ مِنْ أَصْلِ مَسْأَلَتِهِمْ، ثُمَّ جَعَلْتَ عَدَدَ سِهَامِهِمْ أَصْلَ مَسْأَلَتِهِمْ. فَإِنِ انْكَسَرَ عَلَى بَعْضِهِمْ، ضَرَبْتَهُ فِيْ عَدَدِ سِهَامِهِمْ.

[IX.5.1] Example: If he is survived by a mother and a daughter, the mother is entitled to 1/6 and the daughter to 1/2. The original denominator/total number of shares of the problem is 6, so the mother would take 1/6 and the daughter 3/6. Upon radd, the estate is divided by 4 instead of 6, giving the mother 1/4 and the daughter 3/4.

This is the reverse of ‘awl.

[IX.5.2] Example: If he is survived by a mother and 3 daughters, the mother gets 1/6, and the three daughters (together) get 2/3. The number of shares here is 6, so the mother would get 1/6 and the three daughters 4/6. The shares in this problem will be reduced to 5, but then 4 shares divided by 3 daughters will result in fractions. To resolve this, you multiply that by 3, making the total number of shares 15, of which the mother gets 3/15 and each of the 3 daughters gets 4/15.

If there is a spouse, you give his or her shares first, and then you divide the rest of the estate among those heirs who are eligible for redistribution. If there are fractions, you do the corrections for both the new problem of the redistribution-eligible heirs and the original one involving the husband. [IX.5.3]	وَإِنْ كَانَ مَعَهُمْ أَحَدُ الزَّوْجَيْنِ أَعْطَيْتَهُ سَهْمَهُ مِنْ أَصْلِ مَسْأَلَتِهِ، وَقَسَمْتَ بَاقِيْ مَسْأَلَتِهِ عَلَى مَسْأَلَةِ أَهْلِ الرَّدِّ، فإن انْقَسَمَ وإلا ضَرَبْتَ مَسْألة الرَّدِّ في مَسْأَلَةِ الزَّوْجِ ثُمّ تُصَحَّحُ بعد ذلك على ما سَنَذْكُرُه.

[IX.5.3] For example: A man is survived by a wife, a mother, and 3 maternal half siblings. His wife takes 1/4, with the mother and siblings taking the remaining 3/4 (through designated shares and redistribution). The mother usually gets 1/6 and the 3 siblings 1/3. So far, the wife gets 1 share, the mother gets 1 share, and the 3 siblings together get 2 shares. However, you cannot divide 2 by 3, so to avoid fractions, you multiply the denominator of the problem of the redistribution-eligible heirs (which is 3) by 3, resulting in a denominator of 9. You give the mother 3 shares and the siblings a total of 6 shares (so 2 each).

At this point, you do not have one denominator for all the heirs (for dividing the estate into equal shares and giving each heir their shares without fractions). To correct the general problem, you multiply 4 (the common denominator of the original problem) x 3 (the original common denominator of the redistribution problem), giving a new denominator of 12. Multiply the wife's share x 3, so she gets 3/12, and you give the mother 3/12 and each sibling 2/12. (Using computers nowadays can spare us the need for most of the arithmetic problems.)

There is no 'awl or *radd* (redistribution) in any case where a residuary heir inherits. [IX.5.4]	ولَيْسَ في مَسْأَلَةٍ يَرِثُ فيها عَصَبَةٌ عَوْلٌ ولا رَدٌّ.

[IX.5.4] If the residuary heir inherits, then there is no shortage of the estate to cover the shares of the heirs with designated shares, so there is no 'awl. Also, the residuary heir inherits the rest of the estate, so there will be nothing left for radd.

[IX.6] Chapter on Eliminating Fractions

بَابُ تَصْحِيْحِ الْمَسَائِلِ

	إِذَا انْكَسَرَ سَهْمُ فَرِيْقٍ عَلَيْهِمْ، ضَرَبْتَ عَدَدَهُمْ، أَوْ وَفْقَهُ إِنْ وَافَقَ سِهَامَهُمْ فِيْ أَصْلِ مَسْأَلَتِهِمْ وَعَوْلِهَا إِنْ عَالَتْ، أَوْ نَقْصِهَا إِنْ نَقَصَتْ، ثُمَّ يَصِيْرُ لِكُلِّ وَاحِدٍ مِنْهُمْ مِثْلُ مَا كَانَ لِجَمَاعَتِهِمْ أَوْ وَفْقُهُ ، وَإِنِ انْكَسَرَ عَلىٰ فَرِيْقَيْنِ فَأَكْثَرَ ، وَكَانَتْ مُتَمَاثِلَةً، أَجْزَأَكَ أَحَدُهَا ، وَإِنْ كَانَتْ مُتَنَاسِبَةً، أَجْزَأَكَ أَكْثَرُهَا ، وَإِنْ تَبَايَنَتْ ضَرَبْتَ بَعْضَهَا فِيْ بَعْضٍ ، وَإِنْ تَوَافَقَتْ، ضَرَبْتَ وَفْقَ أَحَدِهِمَا فِي الْآخَرِ، ثُمَّ وَافَقْتَ بَيْنَ مَا بَلَغَ وَبَيْنَ الثَّالِثِ وَضَرَبْتَهُ أَوْ وَفْقَهُ فِيْ الثَّالِثِ، ثُمَّ ضَرَبْتَهُ فِيْ الْمَسْأَلَةِ، ثُمَّ كُلُّ مَنْ لَهُ شَيْءٌ مِنْ أَصْلِ الْمَسْأَلَةِ مَضْرُوْبٌ فِي الْعَدَدِ الَّذِيْ ضَرَبْتَهُ فِي الْمَسْأَلَةِ.

[IX.6] This is another arithmetic topic that can be replaced by our advanced computation tools. Here, Imam Ibn Qudâmah explains how to eliminate the fractions so that every heir gets a share without fractions. For example, the original division gives 2 shares to be split among the maternal half siblings. If we have 7 of them, then each one will get 2/7 of a share. Since this is a fraction, we need to resolve this problem by multiplying the number of shares enough so that each heir gets his/her share(s) without fractions.

[IX.7] Chapter on the Reconstruction of Problems upon the Death of an Heir (*al-Munâsakhât*)

بَابُ الْمُنَاسَخَاتِ

	إِذَا لَمْ تُقْسَمْ تَرِكَةُ الْمَيِّتِ حَتَّى مَاتَ بَعْضُ وَرَثَتِهِ، وَكَانَ وَرَثَةُ الثَّانِيْ يَرِثُوْنَهُ عَلٰى حَسْبِ مِيْرَاثِهِمْ مِنَ الْأَوَّلِ، قَسَمْتَ التَّرِكَةَ عَلٰى وَرَثَةِ الثَّانِيْ وَأَجْزَأَكَ، وَإِنِ اخْتَلَفَ مِيْرَاثُهُمْ، صَحَّحْتَ مَسْأَلَةَ الثَّانِيْ، وَقَسَمْتَ عَلَيْهَا سِهَامَهُ مِنَ الْأُوْلٰى، فَإِنِ انْقَسَمَ، صَحَّتِ الْمَسْأَلَتَانِ مِمَّا صَحَّتْ مِنْهُ الْأُوْلٰى، وَإِنْ لَمْ يَنْقَسِمْ، ضَرَبْتَ الثَّانِيَةَ، أَوْ وَفْقَهَا فِي الْأُوْلٰى، ثُمَّ كُلُّ مَنْ لَهُ شَيْءٌ مِنَ الْأُوْلٰى مَضْرُوْبٌ فِيْ الثَّانِيَةِ أَوْ وَفْقِهَا، وَمَنْ لَهُ شَيْءٌ فِيْ الثَّانِيَةِ مَضْرُوْبٌ فِيْ سِهَامِ الْمَيِّتِ الثَّانِيْ أَوْ وَفْقِهَا، ثُمَّ تَفْعَلُ فِيْمَا زَادَ مِنَ الْمَسَائِلِ كَذٰلِكَ.

[IX.7] This is another arithmetic topic that can be replaced by our advanced computation tools. Here, Imam Ibn Qudâmah teaches the jurist how to reconstruct the problem if one (or more) of the heirs dies before the distribution of the estate, so their share is passed onto their heirs. Instead of having two different distributions, this chapter allows the heirs of the deceased heirs to be part of the original problem.

A simple example on one of the types of reconstruction: A woman dies and is survived by her husband and 1 sister, each of whom will inherit 1/2. The husband dies soon afterwards, so his heirs inherit his 1/2. If he leaves behind 2 sisters and 1 brother, then that 1/2 share (from his wife) will be divided in 4, giving 2 shares to the brother and 1 to each sister. The original problem can be reconstructed to use 8 shares instead of 2, giving the sister of the first deceased 4 shares, the brother of her husband (who died after her) 2 shares, and each of the husband's sisters 1 share.

It is easier, though, to have two different problems, getting the first done with the division of the first problem and then dividing the estate of the second deceased.

[IX.8] Chapter on the Hindrances to Inheritance

بَابُ مَوَانِعِ الْمِيْرَاثِ

There are three hindrances: [IX.8.1] 1) Difference in religious affiliation, [IX.8.2] meaning that the people of one religion shall not inherit from the people of another, because the Messenger of Allah (SA) said, "The Muslim shall not inherit from the non-Muslim, nor shall the non-Muslim inherit from the Muslim," [IX.8.3] and, "People of two different religious affiliations may not inherit from one another." [IX.8.4] As for the apostate, he does not inherit from anyone, [IX.8.5] and if he dies, his estate becomes a *fay'* (spoils). [IX.8.6]	وَهِيَ ثَلَاثَةٌ: أَحَدُهَا: اخْتِلَافُ الدِّيْنِ، فَلَا يَرِثُ أَهْلُ مِلَّةٍ أَهْلَ مِلَّةٍ أُخْرٰى؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ:«لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ» ولقَولِهِ ﷺ: «لَا يَتَوَارَثُ أَهْلُ مِلَّتَيْنِ شَتَّى». وَالْمُرْتَدُّ لَا يَرِثُ أَحَدًا، وَإِنْ مَاتَ فَمَالُهُ فَـيْءٌ.

[IX.8.1] All individuals barred from inheritance are treated as non-existent, so they have no impact on the division; nor do they block anyone, either completely or partially.

[IX.8.2] Inheritance from a non-Muslim

This is the position of the four imams: (A) + (+H, +M, +S). This applies to the court-forced inheritance; as for the will, a Muslim may bequeath to, and accept bequests from, a non-Muslim. (In the West, most of the transfer of property upon death belongs to this category.)

[IX.8.3] (Ag)

[IX.8.4] (D – from ʻAbdullâh ibn ʻAmr ibn al-ʻÂṣ; al-Albâni: RS)

(A): Non-Muslims belonging to different religions will not inherit from one another, if they seek our judgment.

(a) + (-H, -S): Islam is one religion and all other religions are considered to be one, making it permissible for non-Muslims of any faith to inherit from one another.

[IX.8.5] Unless he returns to Islam before the division of the estate. (*al-Mughni*)

[IX.8.6] It belongs to the Muslim public treasury.

(t): The apostate's estate is passed on to his/her Muslim heirs.

2) Slavery; a slave may not inherit [IX.8.7] and has no estate to be inherited. One who is partially free will inherit, [IX.8.8] his or her money may be inherited, and he or she may block others (from inheritance) in proportion to the portion of himself or herself that is free.	الثَّانِيْ: الرِّقُّ، فَلَا يَرِثُ الْعَبْدُ أَحَدًا، وَلَا لَهُ مَالٌ يُوْرَثُ، وَمَنْ كَانَ بَعْضُهُ حُرًّا، وَرِثَ وَوُرِثَ، وحَجَبَ بِقَدْرِ ما فيهِ مِنَ الحُرِّيَّة.

[IX.8.7] Because they were owned. The way to extend kindness to slaves was to free them first. This could be done by the master while alive or upon his or her death, as in tadbeer (promise of emancipation upon the death of the master).

[IX.8.8] Partially free means that a portion of a slave has been emancipated.

3) Killing; [IX.8.9] the killer shall not inherit from one whom he or she killed unjustifiably. However, if he or she killed the deceased justifiably, such as for a capital crime or retribution, or when the legitimate authorities kill the rebels, then that will not be a hindrance against inheritance. [IX.8.10]	الثَّالِثُ: الْقَتْلُ، فَلَا يَرِثُ الْقَاتِلُ الْمَقْتُوْلَ بِغَيْرِ حَقٍّ، وَإِنْ قَتَلَهُ بِحَقٍّ كَالْقَتْلِ حَدًّا، أَوْ قِصَاصًا، أَوْ قَتْلِ الْعَادِلِ الْبَاغِيَ، لَمْ يُمْنَعْ مِيْرَاثُهُ.

[IX.8.9] It was reported that the Prophet (SA) said:

«ليسَ لقاتلٍ مِيرَاثٌ»

"There is no inheritance for a killer." (Ma; al-Albâni: Auth; many Hadith scholars: W)

There are several hadiths of controversial authenticity that bar the killer from inheritance. Collectively, they imply confidence that they were related from the Prophet (SA). Also, the wisdom behind this ruling is obvious, so the scholars agreed, in general, on their implication.

[IX.8.10] (A/SM): A person whose direct or indirect killing entails retaliation, blood money, or expiation is barred from inheriting from the victim, whether the killing was intentional or accidental and whether or not the killer was legally accountable. Mere causation without such liability does not by itself establish this impediment; examples such as digging a well must therefore be assessed in their legal circumstances.

The Ḥanbalis also discuss a guardian whose authorized treatment of a dependent causes death. Ibn Qudâmah and the author of ash-Sharḥ al-Kabeer do not bar inheritance when the act incurs no liability, and al-Buhooti considered this more consistent with the governing rules. The stricter treatment of particular cases should not obscure the general liability criterion. (-H): Indirect killing (causing death by an action that would not usually result in it) does not bar one from inheritance. Also, the non-mukallaf killer is not barred.

(-M): Intentional wrongful killing bars the killer from the victim's estate. An accidental killer may inherit the victim's other property, but not the blood money arising from that killing.

(-S): Anyone who took part in the killing in any way is barred, even if it was justifiable.

(A) + (+H, +M): The one who kills justifiably is not barred from inheritance.

Notice that on one side, the Mâlikis tried to hold to account only those who committed wrongdoing, while the Shâfi'is tried to strictly block all the means to the evil of bloodshed. The Ḥanafis and Ḥanbalis fell in the middle, trying to strike "the right balance."

[IX.9] Chapter on Miscellaneous Issues

بَابُ مَسَائِلَ شَتَّى

[Inheritance of Fetuses]

إِذَا مَاتَ عَنْ حَمْلٍ يَرِثُهُ، وَقَفْتَ لَهُ مِيْرَاثَ ذَكَرَيْنِ إِنْ كَانَ مِيْرَاثُهُمَا أَكْثَرَ، وَإِلَّا مِيْرَاثَ أُنْثَيَيْنِ، فَتُعْطِيْ كُلَّ وَارِثٍ الْيَقِيْنَ، وَتَقِفُ الْبَاقِيَ حَتَّى يَتَبَيَّنَ .	If one dies while there is a fetus (or fetuses) that would inherit from him or her, you reserve [IX.9.1] for them the greater of the inheritance of two males or two females; [IX.9.2] then you give all other heirs what is certainly theirs, and you keep the rest until (the outcome of the pregnancy) is clear. [IX.9.3]

[IX.9.1] This is done when the heirs insist on dividing the estate before the birth. It is preferred that they wait until they know the outcome of the pregnancy.

(-M): they must wait until they know the outcome of the pregnancy.

[IX.9.2] Delivering more than two babies is rare, but if there are more than two, then the fetuses can still obtain their full inheritance from the other heirs even after the distribution.

[IX.9.3] If the outcome of the pregnancy is a stillbirth, there will be no inheritance for the fetus, who only inherits if born alive because the Messenger of Allah (SA) said:

«إِذَا اسْتَهَلَّ الْمَوْلُودُ وَرِثَ»

“If the newborn cries (indicating life), he or she inherits.” (D – from Abu Hurayrah; al-Albâni: Auth)

Crying is not the only recognized evidence: nursing, sustained breathing, or other signs establishing life after complete delivery also suffice. In the classical Ḥanbali account, a fleeting twitch or similar movement alone does not establish this.

[Inheritance of the Missing Heir]

If one of the heirs is missing and his or her whereabouts are unknown, you give each of the other heirs their certain share; [IX.9.4] the rest will be reserved until his condition is known, [IX.9.5] unless he goes missing in perilous circumstances or from among his family, in which case you wait four years, and then his share will be divided. [IX.9.6]	وَإِنْ كَانَ فِيْ الْوَرَثَةِ مَفْقُوْدٌ لَا يُعْلَمُ خَبَرُهُ، أَعْطَيْتَ كُلَّ وَارِثٍ الْيَقِيْنَ، وَوَقَفْتَ الْبَاقِيَ حَتَّى يُعْلَمَ حَالُهُ، إِلَّا أَنْ يُفْقَدَ فِيْ مَهْلَكَةٍ أَوْ مِنْ بَيْنِ أَهْلِهِ، فَيُنْتَظَرُ أَرْبَعَ سِنِيْنَ ثُمَّ يُقْسَمُ.

[IX.9.4] The lesser amount of what they would get in the case of his life or death.

In certain cases, someone may inherit more in the presence of a certain co-heir. For example, if someone was survived by 2 daughters, 1 brother, 1 son's daughter and her missing brother, then that son's daughter will inherit with her brother as a co-residuary heir. However, if he is dead, the deceased's brother will be the residuary heir, and she will not inherit from her grandfather.

[IX.9.5] There are two reports from (A) concerning the period of waiting for one who goes missing in a non-perilous situation:

1) Wait until the person would have reached the age of 90 years, or

2) Wait until death is certain or a period in which the person could not ordinarily remain alive has elapsed; this is left for the court to decide.

This may be one of the issues that can be subjected to new ijtihâd considering the recent changes in the world. Additionally, the judgments of the Companions in this regard pertained to individual circumstances (waqâ'i' a'yân) that do not have the power of generalization as do the texts of revelation. Many of the laws in Muslim countries have attempted to lighten the burden of the family members, particularly the wives, of missing persons.

If it remains unknown whether the missing heir was alive when the deceased died, the Ḥanbalis have two approaches. *Al-Mughni* and al-Iqnâ' return the

reserved share to the first deceased's heirs. The position identified as the madhhab in *al-Inṣâf* and followed in al-Muntahâ instead treats the reserved share as part of the missing person's own property until death is established or judicially presumed. At the end of the prescribed waiting period, the reserved share is distributed with the missing person's other property among his or her own heirs, unless evidence establishes a different order of death.

[IX.9.6] Zakat on the estate left for the missing will be paid from it before it is divided among the heirs, as explicitly stated by Aḥmad (may Allah have mercy on him).

[Divorce during life-threatening Illness]

If he divorces his wife while he is terminally ill, in a manner that makes his divorce suspected of being intended to deprive her of inheritance, she is still entitled to the inheritance as long as she is in her waiting period. [IX.9.7] If the divorce is unfinalized (*raj'iy*), they inherit from each other during the waiting period, whether he divorces her while in a state of health or life-threatening illness.	وَإِنْ طَلَّقَ الْمَرِيْضُ فِيْ مَرَضِ الْمَوْتِ الْمَخُوْفِ امْرَأَتَهُ، طَلَاقًا يُتَّهَمُ فِيْهِ بِقَصْدِ حِرْمَانِهَا الْمِيْرَاثَ، لَمْ يَسْقُطْ مِيْرَاثُهَا، مَادَامَتْ فِيْ عِدَّتِهِ. وَإِنْ كَانَ الطَّلَاقُ رَجْعِيًّا، تَوَارَثَا فِيْ الْعِدَّةِ، سَوَاءٌ كَانَ فِيْ الصِّحَّةِ أَوِ الْمَرَضِ

[IX.9.7] (A/SM): If she did not marry or apostatize, she would still inherit him even if he dies after the end of her waiting period.

[Acknowledgment of Disputed Lineage]

If all the heirs acknowledge a co-heir [of previously unknown lineage], and that person confirms their acknowledgment or is a minor, his or her lineage and inheritance are established. If only some of the heirs admit this, the attribution to the deceased is not established. [IX.9.8] Still,	وَإِنْ أَقَرَّ الْوَرَثَةُ كُلُّهُمْ بِمُشَارِكٍ لَهُمْ فِيْ الْمِيْرَاثِ فَصَدَّقَهُمْ، أَوْ كَانَ صَغِيْرًا مَجْهُوْلَ النَّسَبِ، ثَبَتَ

he or she will get the difference between 1) the (received) share of inheritance of those heirs who admitted it, and 2) the (presumptive) share had he or she been eligible for inheritance. [IX.9.9]	نَسَبُهُ وَإِرْثُهُ، وَإِنْ أَقَرَّ بَعْضُهُمْ، لَمْ يَثْبُتْ نَسَبُهُ، وَلَهُ فَضْلُ مَا فِيْ يَدِ الْمُقِرِّ عَنْ مِيْرَاثِهِ.

[IX.9.8] Unless two trustworthy witnesses, from the heirs or others, testify that the individual was born to the deceased, or the deceased admitted to fathering him or her. In those cases, the attribution will be established. Establishment of lineage by acknowledgment requires acknowledgment by all legally competent heirs, a possible relationship, and the absence of a competing claimant. The requirement of previously unknown lineage applies to adults as well as minors. A person lacking legal capacity need not confirm the acknowledgment. Establishment of lineage does not override a separate impediment to inheritance.

[IX.9.9] Example: The deceased is survived by 2 sons. One son admits the deceased's paternity of a third son, while the other son denies it. The one who denies it gets 1/2 of the estate, the one who admits it gets 1/3 (which is what he would have gotten had the disputed paternity been established), and the disputed son gets 1/6 (the difference between the 1/2 and the 1/3).

The Inheritance of People Who May Have All Died at Once (e.g., Drowning/Fire/Under the Rubble) الغَرْقَى والحَرْقَى والهَدْمَى

(This topic was not addressed in the matn of al-'Umdah, so it may be appropriate to add it under this chapter.)

There are three scenarios:

1. If we know who died first, then the one who died later inherits from the one who died first.

2. If we know that they died all at once, then they do not inherit from one another.

3. If we do not know who died first, then:

a) If the heirs do not make claims regarding who died first, they inherit from one another, but they inherit from the original estate (as it was before they both died). So A inherits from B, and B inherits from A, but B inherits from A's estate without adding A's inheritance from B. This is to avoid falling into an infinite loop.

b) If the heirs make claims but fail to prove them, and then the heirs take oaths, neither one of the deceased individuals inherits from the other.

[IX.10] Chapter on Allegiance (to the Emancipator)

بَابُ الْوَلَاءِ

	الْوَلَاءُ لِمَنْ أَعْتَقَ ، وَإِنِ اخْتَلَفَ دِيْنُهُمَا؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ:«إِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» وَإِنْ عَتَقَ عَلَيْهِ بِرَحِمٍ أَوْ كِتَابَةٍ أَوْ تَدْبِيْرٍ أَوِ اسْتِيْلَادٍ، فَلَهُ عَلَيْهِ الْوَلَاءُ ، وَعَلىٰ أَوْلَادِهِ مِنْ حُرَّةٍ مُعْتَقَةٍ أَوْ مِنْ أَمَتِهِ، وَعَلىٰ مُعْتَقِيْهِ وَمُعْتَقِيْ أَوْلَادِهِ وَأَوْلَادِهِمْ وَمُعْتَقِهِمْ، أَبَدًا مَا تَنَاسَلُوْا ، وَيَرِثُهُمْ إِذَا لَمْ يَكُنْ لَهُ مَنْ يَحْجُبُهُ عَنْ مِيْرَاثِهِمْ ، ثُمَّ عَصَبَاتُهُ مِنْ بَعْدِهِ . وَمَنْ قَالَ: أَعْتِقْ عَبْدَكَ عَنِّيْ وَعَلَيَّ ثَمَنُهُ فَفَعَلَ، فَعَلىٰ الْآمِرِ ثَمَنُهُ، وَلَهُ وَلَاؤُهُ، وَإِنْ لَمْ يَقُلْ: عَنِّيْ، فَالثَّمَنُ عَلَيْهِ وَالْوَلَاءُ لِلْمُعْتِقِ ، وَمَنْ أَعْتَقَ عَبْدَهُ عَنْ حَيٍّ بِلَا أَمْرِهِ أَوْ عَنْ مَيِّتٍ، فَالْوَلَاءُ لِلْمُعْتِقِ ، وَإِنْ أَعْتَقَهُ عَنْهُ بِأَمْرِهِ فَالْوَلَاءُ لِلْمُعْتَقِ عَنْهُ بِأَمْرِهِ ، وَإِذَا كَانَ أَحَدُ الزَّوْجَيْنِ الْحُرَّيْنِ حُرَّ الْأَصْلِ، فَلَا وَلَاءَ عَلىٰ وَلَدِهِمَا ، وَإِنْ كَانَ أَحَدُهُمَا ، رَقِيْقًا، تَبِعَ الْوَلَدُ الْأُمَّ فِيْ حُرِّيَّتِهَا أَوْ رِقِّهَا، فَإِنْ كَانَتِ الْأُمُّ رَقِيْقَةً، فَوَلَدُهَا رَقِيْقٌ لِسَيِّدِهَا، فَإِنْ أَعْتَقَهُمْ، فَوَلَاؤُهُمْ لَهُ وَلَا يَنْجَرُّ عَنْهُ بِحَالٍ ، وَإِنْ كَانَ الْأَبُ رَقِيْقًا وَالْأُمُّ مُعْتَقَةً، فَوَلَدُهَا أَحْرَارٌ وَعَلَيْهِمُ الْوَلَاءُ لِمَوْلَى أُمِّهِمْ ، فَإِنْ عُتِقَ الْعَبْدُ، جَرَّ مُعْتِقُهُ وَلَاءَ أَوْلَادِهِ، وَإِنِ اشْتَرَى أَحَدُ الْأَوْلَادِ أَبَاهُ، عَتَقَ عَلَيْهِ ، وَلَهُ وَلَاؤُهُ وَوَلَاءُ إِخْوَتِهِ، وَيَبْقَى وَلَاؤُهُ لِمَوْلَى أُمِّهِ، لِأَنَّهُ لَا يَجُرُّ وَلَاءَ نَفْسِهِ، فَإِنِ اشْتَرَى أَبُوْهُمْ عَبْدًا فَأَعْتَقَهُ ثُمَّ مَاتَ الْأَبُ فَمِيْرَاثُهُ بَيْنَ أَوْلَادِهِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ ، فَإِذَا مَاتَ عَتِيْقُهُ بَعْدَهُ، فَمِيْرَاثُهُ لِلذُّكُوْرِ دُوْنَ الْإِنَاثِ ، وَلَوِ اشْتَرَى الذُّكُوْرُ وَالْإِنَاثُ أَبَاهُمْ فَعَتَقَ عَلَيْهِمْ ،ثُمَّ اشْتَرَى أَبُوْهُمْ عَبْدًا فَأَعْتَقَهُ، ثُمَّ مَاتَ الْأَبُ، ثُمَّ مَاتَ عَتِيْقُهُ، فَمِيْرَاثُهُمَا عَلىٰ مَا ذَكَرْنَا فِي الَّتِيْ قَبْلَهَا ، وَإِنْ مَاتَ الذُّكُوْرُ قَبْلَ مَوْتِ الْعَتِيْقِ، وَرِثَ الْإِنَاثُ مِنْ مَالِهِ بِقَدْرِ مَا أَعْتَقْنَ مِنْ أَبِيْهِنَّ ، ثُمَّ يُقْسَمُ الْبَاقِيْ بَيْنَهُنَّ وَبَيْنَ مُعْتِقِ الْأُمِّ، فَإِنِ اشْتَرَيْنَ نِصْفَ الْأَبِ، وَكَانُوْا ذَكَرَيْنِ وَأُنْثَيَيْنِ، فَلَهُنَّ خَمْسَةُ أَسْدَاسِ الْمِيْرَاثِ، وَلِمُعْتِقِ الْأُمِّ سُدُسُهُ؛ لِأَنَّ لَهُنَّ نِصْفَ الْوَلَاءِ ،وَالْبَاقِيْ بَيْنَهُنَّ وَبَيْنَ مُعْتِقِ الْأُمِّ أَثْلَاثاً، وَإِنِ اشْتَرَى ابْنُ الْمُعْتَقَةِ عَبْدًا فَأَعْتَقَهُ، ثُمَّ اشْتَرَى الْعَبْدُ أَبَا مُعْتِقِهِ، فَأَعْتَقَهُ جَرَّ وَلَاءَ مُعْتِقِهِ، وَصَارَ كُلُّ وَاحِدٍ مِنْهُمَا مَوْلَى الْآخَرِ ، وَلَوْ أَعْتَقَ الْحَرْبِيُّ عَبْدًا، فَسَبَاهُ الْعَبْدُ وَأَخْرَجَهُ إِلىٰ دَارِ الْإِسْلَامِ، ثُمَّ أَعْتَقَهُ، صَارَ كُلُّ وَاحِدٍ مِنْهُمَا مَوْلَىٰ الْآخَرِ .

[IX.10] In this chapter, Imam Ibn Qudâmah discusses the concept of *walâ'* (patronage/allegiance) extended to the emancipators, which entitles them to residuary inheritance from those they emancipated when no residuary heir by lineage takes precedence, including a remainder left after fixed shares. The details in this chapter are about the conditions that will make walâ' valid. Please refer to the appendix on slavery.

[IX.11] Chapter on Inheritance Through Allegiance (to the Emancipator)

بَابُ الْمِيْرَاثِ بِالْوَلَاءِ

	الْوَلَاءُ لَا يُوْرَثُ ، وَإِنَّمَا يَرِثُ بِهِ أَقْرَبُ عَصَبَةِ الْمُعْتِقِ ، وَلَا يَرِثُ النِّسَاءُ مِنَ الْوَلَاءِ ، إِلَّا مَا أَعْتَقْنَ ، أَوْ أَعْتَقَ مَنْ أَعْتَقْنَ، وَكَذٰلِكَ كُلُّ ذِيْ فَرْضٍ إِلَّا الْأَبَ وَالْجَدَّ لَهُمَا السُّدُسُ مَعَ الِابْنِ وَابْنِهِ ، وَالْوَلَاءُ لِلْكُبْرِ ، فَلَوْ مَاتَ الْمُعْتِقُ وَخَلَّفَ ابْنَيْنِ وَعَتِيْقَهُ، فَمَاتَ أَحَدُ الِابْنَيْنِ عَنْ ابْنٍ، ثُمَّ مَاتَ عَتِيْقُهُ، فَمَالُهُ لِابْنِ الْمُعْتِقِ ، وَإِنْ مَاتَ الابنانِ بَعْدَهُ وَقَبْلَ مَوْلَاهُ، وَخَلَّفَ أَحَدُهُمَا ابنا وَخَلَّفَ الْآخَرُ تِسْعَةً، فَوَلَاؤُهُ بَيْنَهُمْ عَلٰى عَدَدِهِمْ، لِكُلِّ وَاحِدٍ عُشْرُهُ ، وَإِذَا أَعْتَقَتِ الْمَرْأَةُ عَبْدًا ثُمَّ مَاتَتْ، فَوَلَاؤُهُ لِابْنِهَا وَعَقْلُهُ عَلٰى عَصَبَتِهَا.

[IX.11] In this chapter, Imam Ibn Qudâmah discusses the right of the emancipator to inherit from his/her freed slave through residuary inheritance (ta‘ṣeeb) when no residuary heir by lineage takes precedence, including a remainder left after fixed shares. Please refer to the appendix on slavery.

[X] The Book of Emancipation

كتاب الْعِتْقِ

	وَهُوَ: تَحْرِيْرُ الْعَبْدِ ، وَيَحْصُلُ بِالْقَوْلِ وَالْفِعْلِ ، فَأَمَّا الْقَوْلُ، فَصَرِيْحُهُ لَفْظُ الْعِتْقِ وَالتَّحْرِيْرِ، وَمَا تَصَرَّفَ مِنْهُمَا ، فَمَتَى أَتَى بِذٰلِكَ، حَصَلَ الْعِتْقُ وَإِنْ لَمْ يَنْوِهِ، وَمَا عَدَا هٰذَا مِنَ الْأَلْفَاظِ الْمُحْتَمِلَةِ لِلْعِتْقِ كِنَايَةٌ، لَا يَعْتِقُ بِهِ إِلَّا إِذَا نَوَى ، وَأَمَّا الْفِعْلُ، فَمَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ عَتَقَ عَلَيْهِ ، وَمَنْ أَعْتَقَ جُزْءًا مِنْ عَبْدِهِ، مُشَاعًا أَوْ مُعَيَّنًا، عَتَقَ كُلُّهُ ، وَإِنْ أَعْتَقَ ذٰلِكَ مِنْ عَبْدٍ مُشْتَرَكٍ ، وَهُوَ مُوْسِرٌ بِقِيْمَةِ نَصِيْبِ شَرِيْكِهِ ، عَتَقَ كُلُّهُ وَلَهُ وَلَاؤُهُ ، وَقُوِّمَ عَلَيْهِ نَصِيْبُ شَرِيْكِهِ ، وَإِنْ كَانَ مُعْسِرًا، لَمْ يَعْتِقْ عَلَيْهِ إِلَّا حِصَّتُهُ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ أَعْتَقَ شِرْكًا لَهُ فِيْ عَبْدٍ فَكَانَ لَهُ مَا يَبْلُغُ ثَمَنَ الْعَبْدِ، قُوِّمَ عَلَيْهِ قِيْمَةَ عَدْلٍ، فَأَعْطَى شُرَكَاءَهُ حِصَصَهُمْ وَعَتَقَ عَلَيْهِ الْعَبْدُ، وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ.» وَإِنْ مَلَكَ جُزْءًا مِنْ ذِيْ رَحِمِهِ، عَتَقَ عَلَيْهِ بَاقِيْهِ إِنْ كَانَ مُوْسِرًا، إِلَّا أَنْ يَمْلِكَهُ بِالْمِيْرَاثِ، فَلَا يَعْتِقُ عَلَيْهِ إِلَّا مَا مَلَكَ.

[X] Please refer to the appendix on slavery.

	فَصْلٌ فِيْ تَعْلِيْقِ الْعِتْقِ عَلٰى شَرْطٍ وَإِذَا قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ ،فِيْ وَقْتٍ سَمَّاهُ ،أَوْ عَلَّقَ عِتْقَهُ عَلٰى شَرْطٍ ،عَتَقَ إِذَا جَاءَ الْوَقْتُ أَوْ وُجِدَ الشَّرْطُ،وَلَمْ يَعْتِقْ قَبْلَهُ، وَلَا يَمْلِكُ إِبْطَالَهُ بِالْقَوْلِ ،وَلَهُ بَيْعُهُ وَهِبَتُهُ وَالتَّصَرُّفُ فِيْهِ، وَمَتَى عَادَ إِلَيْهِ، عَادَ الشَّرْطُ ،وَإِنْ كَانَتْ الْأَمَةُ حَامِلاً حِيْنَ التَّعْلِيْقِ وَوُجِدَ الشَّرْطُ،عَتَقَ حَمْلُهَا ، وَإِنْ حَمَلَتْ وَوَضَعَتْ فِيْمَا بَيْنَهُمَا، لَمْ يَعْتِقْ وَلَدُهَا .

[X.1] Chapter on Emancipation Upon the Death of the Owner

بَابُ التَّدْبِيْرِ

	إِذَا قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ بَعْدَ مَوْتِيْ، أَوْ قَدْ دَبَّرْتُكَ، أَوْ أَنْتَ مُدَبَّرٌ صَارَ مُدَبَّرًا ، يَعْتِقُ بِمَوْتِ سَيِّدِهِ، إِنْ حَمَلَهُ الثُّلُثُ ، وَلَا يَعْتِقُ مَا زَادَ إِلَّا بِإِجَازَةِ الْوَرَثَةِ ، وَلِسَيِّدِهِ بَيْعُهُ وَهِبَتُهُ وَوَطْءُ الْجَارِيَةِ، وَمَتَى مَلَكَهُ بَعْدُ، عَادَ تَدْبِيْرُهُ ، وَمَا وَلَدَتِ الْمُدَبَّرَةُ ، وَالْمُكَاتَبَةُ ، وَأُمُّ الْوَلَدِ مِنْ غَيْرِ سَيِّدِهَا، فَلَهُ حُكْمُهَا، وَيَجُوْزُ تَدْبِيْرُ الْمُكَاتَبِ وَكِتَابَةُ الْمُدَبَّرِ، فَإِنْ أَدَّى، عَتَقَ ، وَإِنْ مَاتَ سَيِّدُهُ قَبْلَ أَدَائِهِ، عَتَقَ إِنْ حَمَلَ الثُّلُثُ مَا بَقِيَ عَلَيْهِ مِنْ كِتَابَتِهِ ، وَإِلَّا عَتَقَ مِنْهُ بِقَدْرِ الثُّلُثِ، وَسَقَطَ مِنَ الْكِتَابَةِ بِقَدْرِ مَا عَتَقَ ، وَهُوَ عَلىٰ الْكِتَابَةِ بِمَا بَقِيَ ، وَإِنِ اسْتَوْلَدَ مُدَبَّرَتَهُ بَطَلَ تَدْبِيْرُهَا ، وَإِنْ أَسْلَمَ مُدَبَّرُ الْكَافِرِ أَوْ أُمُّ وَلَدِهِ، حِيْلَ بَيْنَهُ وَبَيْنَهُمَا، وَيُنْفِقُ عَلَيْهِمَا مِنْ كَسْبِهِمَا ، فَإِنْ لَمْ يَكُنْ لَهُمَا كَسْبٌ، أُجْبِرَ عَلىٰ نَفَقَتِهِمَا ، فَإِنْ أَسْلَمَ، رُدَّا إِلَيْهِ ، وَإِنْ مَاتَ عُتِقَا ، وَإِنْ دَبَّرَ شِرْكًا لَهُ مِنْ عَبْدٍ وَهُوَ مُوْسِرٌ، لَمْ يَعْتِقْ سِوَى مَا أَعْتَقَهُ ، وَإِنْ أَعْتَقَهُ فِيْ مَرَضِ مَوْتِهِ وَثُلُثُهُ يَحْتَمِلُ بَاقِيَهُ، عَتَقَ جَمِيْعُهُ.

[X.1] In this chapter, Imam Ibn Qudâmah discusses the concept of tadbeer, which gave people a final opportunity to earn the reward of emancipation by promising a slave freedom upon the master's death. Please refer to the appendix on slavery.

[X.2] Chapter on the Emancipated by Contract

بَابُ الْمُكَاتَبِ

الْمُكَاتَبَةُ: شِرَاءُ الْعَبْدِ نَفْسَهُ مِنْ سَيِّدِهِ بِمَالٍ فِيْ ذِمَّتِهِ ، وَإِذَا ابْتَغَاهَا الْعَبْدُ الْمُكْتَسِبُ الصَّدُوْقُ مِنْ سَيِّدِهِ, اسْتُحِبَّ لَهُ إِجَابَتُهُ إِلَيْهَا؛ لِقَوْلِ اللهِ تَعَالىٰ:[وَالَّذِيْنَ يَبْتَغُوْنَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوْهُمْ إِنْ عَلِمْتُمْ فِيْهِمْ خَيْرًا]، وَيُجْعَلُ الْمَالُ عَلَيْهِ مُنَجَّمًا، فَمَتَى أَدَّاهَا، عَتَقَ ، وَيُعْطَى مِمَّا كُوْتِبَ عَلَيْهِ الرُّبُعُ؛ لِقَوْلِ اللهِ تَعَالىٰ [وَآتُوْهُمْ مِنْ مَالِ اللَّهِ الَّذِيْ آتَاكُمْ] قَالَ عَلِيٌّ رَضِيَ اللهُ عَنْهُ: هُوَ الرُّبُعُ ، وَالْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، إِلَّا أَنَّهُ يَمْلِكُ الْبَيْعَ وَالشِّرَاءَ وَالسَّفَرَ، وَكُلَّ مَا فِيْهِ مَصْلَحَةُ مَالِهِ ، وَلَيْسَ لَهُ التَّبَرُّعُ وَلَا التَّزَوُّجُ وَلَا التَّسَرِّيْ، إِلَّا بِإِذْنِ سَيِّدِهِ ، وَلَيْسَ لِسَيِّدِهِ اسْتِخْدَامُهُ وَلَا أَخْذُ شَيْءٍ مِنْ مَالِهِ، وَمَتَى أَخَذَ شَيْئًا مِنْهُ أَوْ جَنَى عَلَيْهِ أَوْ عَلىٰ مَالِهِ، فَعَلَيْهِ غَرَامَتُهُ ،وَيَجْرِيْ الرِّبَا بَيْنَهُمَا، كَالْأَجَانِبِ ، إِلَّا أَنَّهُ لَا بَأْسَ عَلَيْهِ أَنْ يُعَجِّلَ لِسَيِّدِهِ، وَيَضَعُ عَنْهُ بَعْضَ كِتَابَتِهِ، وَلَيْسَ لَهُ وَطْءُ مُكَاتَبَتِهِ، وَلَا بِنْتِهَا وَلَا جَارِيَتِهَا ،فَإِنْ فَعَلَ، فَعَلَيْهِ مَهْرُ مِثْلِهَا، وَإِنْ وَلَدَتْ مِنْهُ، صَارَتْ أُمَّ وَلَدٍ، فَإِنْ أَدَّتْ عَتَقَتْ، وَإِنْ مَاتَ سَيِّدُهَا قَبْلَ أَدَائِهَا، عَتَقَتْ ،وَمَا فِيْ يَدِهَا لَهَا إِلَّا أَنْ تَكُوْنَ قَدْ عَجَزَتْ. وَيَجُوْزُ بَيْعُ الْمُكَاتَبِ؛ لِأَنَّ عَائِشَةَ رَضِيَ اللهُ عَنْهَا اشْتَرَتْ بَرِيْرَةَ وَهِيَ مُكَاتَبَةٌ، بِأَمْرِ رَسُوْلِ اللهِ ﷺ،وَيَكُوْنُ فِيْ يَدِ مُشْتَرِيْهِ مُبْقًى عَلىٰ مَا بَقِيَ مِنْ كِتَابَتِهِ، فَإِنْ أَدَّى، عَتَقَ وَوَلَاؤُهُ لِمُشْتَرِيْهِ، وَإِنْ عَجَزَ، فَهُوَ عَبْدٌ لَهُ ، وَإِنِ اشْتَرَى الْمُكَاتَبَانِ كُلُّ وَاحِدٍ مِنْهُمَا الْآخَرَ، صَحَّ شِرَاءُ الْأَوَّلِ وَبَطَلَ الثَّانِيْ ، فَإِنْ جُهِلَ الْأَوَّلُ مِنْهُمَا، بَطَلَ الْبَيْعَانِ ، وَإِنْ مَاتَ الْمُكَاتَبُ، بَطَلَتِ الْمُكَاتَبَةُ ، وَإِنْ مَاتَ السَّيِّدُ قَبْلَهُ، فَهُوَ عَلىٰ كِتَابَتِهِ يُؤَدِّيْ إِلىٰ الْوَرَثَةِ، وَوَلَاؤُهُ لِمُكَاتِبِهِ ، وَالْكِتَابَةُ عَقْدٌ لَازِمٌ لَيْسَ لِأَحَدِهِمَا فَسْخُهَا، وَإِنْ حَلَّ نَجْمٌ فَلَمْ يُؤَدِّهِ، فَلِسَيِّدِهِ تَعْجِيْزُهُ ، وَإِذَا جَنَى الْمُكَاتَبُ، بُدِئَ بِجِنَايَتِهِ ، وَإِنِ اخْتَلَفَ هُوَ وَسَيِّدُهُ فِيْ الْكِتَابَةِ ، أَوْ عِوَضِهَا ، أَوِ التَّدْبِيْرِ ، أَوِ الِاسْتِيْلَادِ، فَالْقَوْلُ قَوْلُ السَّيِّدِ مَعَ يَمِيْنِهِ.

[X.2] In this chapter, Imam Ibn Qudâmah discusses emancipation by contract, where slaves purchased their freedom from the owner with money they earned while still in slavery. Please refer to the appendix on slavery.

[X.3] Chapter on the Mothers of Children

بَابُ حُكْمِ أُمَّهَاتِ الْأَوْلَادِ

	إِذَا حَمَلَتِ الْأَمَةُ مِنْ سَيِّدِهَا فَوَضَعَتْ مَا تَبَيَّنَ فِيْهِ شَيْءٌ مِنْ خَلْقِ الْإِنْسَانِ، صَارَتْ بِذَلِكَ أُمَّ وَلَدٍ. تَعْتِقُ بِمَوْتِهِ، وَإِنْ لَمْ يَمْلِكْ غَيْرَهَا، وَمَادَامَ حَيًّا، فَهِيَ أَمَتُهُ، أَحْكَامُهَا أَحْكَامُ الْإِمَاءِ، فِيْ حِلِّ وَطْئِهَا وَمِلْكِ مَنَافِعِهَا وَكَسْبِهَا وَسَائِرِ الْأَحْكَامِ، إِلَّا أَنَّهُ لَا يَمْلِكُ بَيْعَهَا وَلَا رَهْنَهَا وَلَا سَائِرَ مَا يَنْقُلُ الْمِلْكَ فِيْهَا أَوْ يُرَادُ لَه، وَتَجُوْزُ الْوَصِيَّةُ لَهَا وَإِلَيْهَا. وَإِنْ قَتَلَتْ سَيِّدَهَا عَمْدًا، فَعَلَيْهَا الْقِصَاصُ، وَإِنْ قَتَلَتْهُ خَطَأً، فَعَلَيْهَا قِيْمَةُ نَفْسِهَا، وَتَعْتِقُ فِي الْحَالَيْنِ. وَإِنْ وَطِئَ أَمَةَ غَيْرِهِ بِنِكَاحٍ ثُمَّ مَلَكَهَا حَامِلاً، عَتَقَ الْجَنِيْنُ، وَلَهُ بَيْعُهَا.

[X.3] Here, Imam Ibn Qudâmah discusses another avenue to freedom, which is conceiving a child of the master. Please refer to the appendix on slavery.

[XI] The Book of Marriage (*Nikâḥ*)
كتاب النِّكَاحِ

Nikâḥ (marriage) is from the Sunnah (way) of the Messengers. [XI.0.1]	النِّكَاحُ مِنْ سُنَنِ الْمُرْسَلِيْنَ.

[XI.0.1] Introduction

The word ‘nikâḥ’ is used in the Qur’an and Sunnah sometimes to refer to the marriage contract and sometimes to refer to the actual consummation, so it is polysemic (lafdh mushtarak).

Marriage is also called zawâj (coupling). The past tense zawwaja means ‘paired up’, and the noun zawj refers to each one of a couple. Allah (ST) says:

{وَإِذَا النُّفُوسُ زُوِّجَتْ.}

{And when the souls are paired.} (at-Takweer 81:7)

This means that every group is paired up with its comrades or its deeds, or that the souls are joined with their bodies.

Zawâj, in the context of marriage, would mean the intended-to-be-permanent fusion of the husband and wife into the family unit.

Marriage: Way of the Messengers

Allah says:

{وَلَقَدْ أَرْسَلْنَا رُسُلًا مِّن قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً}

{And We have already sent messengers before you and assigned to them wives and descendants...} (ar-Ra‘d 13:38)

The Messenger of Allah (SA) said:

{... لَكِنِّي أَصُومُ وَأُفْطِرُ، وَأُصَلِّي وَأَرْقُدُ وَأَتَزَوَّجُ النِّسَاءَ، فَمَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي .}

"...yet I fast [some days] and break my fast [on others], I pray [part of the night] and I do sleep [part of it] and I also marry women, so he who deserts my way, is not from me (not from my followers)." (Ag – from Anas ibn Mâlik)

Islam does not condone monasticism, which isolates the most virtuous members of the society. If they were to be righteously engaged in the reality of life, instead of withdrawing from it, they would have a greater impact. Moreover, their withdrawal sends a message to those who do engage in real life that they cannot aspire to purity and righteousness.

It is better than forsaking it for the supererogatory acts of worship. [XI.0.2] This is because the Prophet (SA) disapproved of 'Uthmân ibn Madh'oon's attempt at celibacy. [XI.0.3] Moreover, he said, "O young people, let those of you who can afford marriage get married, for it will help them lower their gaze and protect their chastity. And for those who can't afford it, they may fast, [XI.0.4] for it curbs the sexual desire." [XI.0.5]	وَهُوَ أَفْضَلُ مِنَ التَّخَلِّيْ لِنَفْلِ الْعِبَادَةِ، لأَنَّ النَّبِيَّ «رَدَّ عَلَىٰ عُثْمَانَ بْنِ مَظْعُوْنٍ التَّبَتُّلَ، وقال: يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغَضُّ لِلْبَصَرِ وأَحْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وِجَاءٌ.»

[XI.0.2] The Virtue, Importance, and Ruling of Marriage

Islam divides the wants of human beings into three categories:

1) Necessities, the lack of which causes severe detriment – e.g., water for a thirsty person or shelter in severe cold weather

2) Needs, the lack of which causes hardship – e.g., a good home in a safe area close to work

3) Comforts/luxuries, which make one's life more enjoyable – e.g., a fancy car or a spacious home with a backyard.

The necessities include the essential preservation of the religion, life, property, intellect, lineage and honor. The needs and comforts serve those ultimate objectives as well by promotion and enhancement.

The wellbeing of the family structure is essential for the full preservation and promotion of the religion, life, lineage, and honor. There are proven positive impacts on the economy as well, so marriage is generally recommended and can even be mandatory in certain cases. This is true in all madh-habs, though they may differ on some details. Imam al-Kâsâni, a Ḥanafi scholar, said, "There is no dispute that marriage is an obligation on the capable when the desire is strong." (*Badâ'i' aṣ-Ṣanâ'i'*) If a person is old and has no desire for women, then marriage is only permissible for him. If he does not possess the means to marry, and it will burden him without achieving its objectives, then it is unfavorable. If it will cause significant harm to his spouse, then it is prohibited, as clearly stated by some Ḥanafis and Mâlikis. Therefore, marriage may come under any of the five legal values, ranging from obligation to prohibition.

Because of the great importance of marriage, and because it sometimes distracts one, to some extent, from other virtuous deeds, Allah greatly rewards those who assume this responsibility. He rewards the man for every cent he spends on his wife and household, and He even rewards him for intimacy with his wife. The same applies to the wife, whose spending is not a requirement but will be counted as charity. Both spouses are also rewarded for showing kindness and patience to one another. Moreover, they receive an enormous reward for raising their children and instructing them in righteousness.

[XI.0.3] (Ag – from Sa'd ibn Abi Waqqâṣ)

[XI.0.4] Other Means to Curb Lustful Desires

Fasting is one way to curb the desire, and it is a prescription from the Prophet (SA) that must be heeded. However, there are other means to help in this regard as well, including:

- Lowering one's gaze and avoiding improper interaction with the opposite sex.

• Staying busy with virtuous activities and endeavors, and maintaining high aspirations.

• Keeping good company and avoiding loneliness.

• Participating in sports and other permissible means of entertainment and recreation.

• Becoming engaged, though the engagement represents only a goal to pursue and an emotional attachment. This is after the proposal has been accepted but before the contract is signed; during this period, the fiancé may look at her and visit her at home (without seclusion, of course). No one else is allowed to propose to her unless the couple decides to end the engagement.

The second and more important step is getting contracted. In this stage, which is after the 'aqd (contract) and before the binâ' (consummation), the couple are a wife and husband and may go out together and spend time in seclusion, while avoiding intercourse until the binâ'. If they have intercourse, it is a violation of the promise the man gave to the guardian, but it is not zinâ (fornication) because they are already husband and wife. This three-step process – engagement, contracting and consummation – may bring patience to many young men and women who are frustrated with their inability to marry because of the temporary lack of means while in college, for example. It is important to note that it is preferable to begin the process after one is capable of proceeding to the end.

• Finally, if one fears falling into zinâ, then self-stimulation is permissible according to (A) + (+H).

[XI.0.5] (Ag – from 'Abdullâh Ibn Mas'ood)

[Engagement]

Whoever wants to propose to a woman is entitled to look at what customarily appears, such as her face, hands and feet. [XI.0.6]	وَمَنْ أَرَادَ خِطْبَةَ امْرَأَةٍ، فَلَهُ النَّظَرُ مِنْهَا إِلىٰ مَا يَظْهَرُ عَادَةً، كَوَجْهِهَا وَكَفَّيْهَا وَقَدَمَيْهَا.

[XI.0.6] That is because Abu Hurayrah (ra) said, "I was with the Prophet (SA), and a man came to him and told him that he had married a woman of the Anṣâr. The Messenger of Allah (SA) said:

«أَنَظَرْتَ إِلَيْهَا؟ قال: لا. قال: فَاذْهَبْ فَانْظُرْ إِلَيْهَا، فَإِنَّ فِي أَعْيُنِ الْأَنْصَارِ شَيْئًا»

'Have you looked at her?' He said, 'No.' He said, 'Go and look at her, for there is something (that may be undesirable to Makkans) in the eyes of the Anṣâr.'" (M)

Outside the prayer, they disagreed on the woman's 'awrah (part of the body that should be covered in public).

- (A2) + (H, +M, +S): She must cover the entire body except for the face (and hands, according to the majority and one report in the Ḥanbali madh-hab).

- (A): She must cover the entire body, including the face and hands. (Many latter Ḥanafis also held that young women should cover their face, not because it is 'awrah, but to avoid temptation. There are other scholars of the other madh-habs who chose the obligation of covering the face.)

- (H2): She must cover the entire body except for the face, hands, and feet.

The Extent of What Can Be Looked at

(A): He may look at the parts that usually appear at home, such as the face, hands, neck, and feet.

(a) + (+H, +M, +S): He may only look at the face and hands (and the feet according to (H), because they do not consider them 'awrah).

What Can the Woman in Our Times Do to Find Suitors?

A woman who is interested in getting married may take care of her appearance for that honorable cause, while observing proper hijab, based on the report in the madh-hab that does not require covering the face. Aḥmad and Muslim reported that Subay'ah (RAH) was married to Sa'd ibn Khawlah, and she was pregnant when he passed away during the Farewell

Pilgrimage. Not long after his death, she gave birth. When her postpartum bleeding ended, she beautified herself to receive marriage proposals (and in Aḥmad's version: she applied kohl), so Abu as-Sanâbil ibn Ba'kak went to her (in Aḥmad's version: met her) and said, "Why do I see that you have beautified yourself? Perhaps you hope to get married…!"

In the same vein, it may also be acceptable for a woman to go to places where she may be noticed. This includes family and Islamic events and conventions, etc. This may apply more where it is harder to find suitors. If a young woman is known, and suitors are coming to her door, she may not need any of the above.

Finally, while the norm is for the male suitor to propose to the woman or one of her relatives, it is also permissible for the woman to propose to a righteous suitor or his agent, if needed. Anas said, "A woman came to Allah's Messenger (SA) and presented herself to him, saying, 'O Allah's Messenger, have you any need for me (that is, would you like to marry me)?'" Thereupon Anas's daughter said, "What a shameless lady she was! Shame! Shame!" Anas said, "She was better than you; she had a liking for the Prophet (SA), so she presented herself for marriage to him." (B – from Thâbit al-Bunâni)

🕒 Is Looking Enough?

It may be said that looking is not enough to ascertain suitability, and this is largely true. The Companions (RAHUM) knew more about each other than we do now. There is no prohibition on having several visits and discussions until both parties are comfortable concerning their compatibility, as long as there is no seclusion or physical contact, for that remains prohibited. -- The exemption only pertains to looking. Moreover, in the following period between the 'aqd and binâ', compatibility can be further ensured. Ultimately, there will be some characteristics that appear only after marriage, and this is even true for those who live together for years before marrying; the divorce rates amongst them – including during the first year – are exceedingly high.

The Criteria One Should Be Looking for in a Potential Spouse

The most comprehensive hadith concerning this is the Prophet's saying:

«تُنْكَحُ اَلْمَرْأَةُ لِأَرْبَعٍ: لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا، فَاظْفَرْ بِذَاتِ اَلدِّينِ تَرِبَتْ يَدَاكَ.»

"A woman may be married for four reasons: her wealth, her lineage, her beauty, and her religion, so select the religious one, lest you become a loser." (Ag – from Abu Hurayrah)

As indicated in the previous hadith, this does not mean that other criteria should not be considered at all, but it emphasizes the importance of piety over all the others.

A man shall not propose to a woman to whom his brother proposed, unless he has not been accepted. [XI.0.7]	وَلَا يَخْطُبُ الرَّجُلُ عَلَىٰ خِطْبَةِ أَخِيْهِ إِلَّا أَنْ لَا يُسْكَنَ إِلَيْهِ.

[XI.0.7] Second Proposal

The Messenger of Allah (SA) said:

«... وَلَا يَخْطُبَ الرَّجُلُ عَلَى خِطْبَةِ أَخِيهِ حَتَّى يَتْرُكَ الْخَاطِبُ قَبْلَهُ أَوْ يَأْذَنَ لَهُ الْخَاطِبُ»

"... And a man should not propose to a woman to whom his brother proposed unless he (the first man) leaves her or gives him permission." (Ag – from Ibn 'Umar)

This is only applicable after the woman has shown explicit or implicit acceptance of the first proposal; prior to that, it would be permissible. The Messenger of Allah (SA) proposed to Fâṭimah bint Qays on behalf of Usâmah even after Abu Jahm and Mu'âwiyah had proposed to her. (M)

It is much worse to seek to divide a man from his wife to marry her, as the Messenger of Allah (SA) said:

«لَيْسَ مِنَّا مَنْ خَبَّبَ امرَأَةً عَلَى زَوجِهَا.»

"He is not one of us who turns a woman against her husband." (D – from Abu Hurayrah; al-Albâni: Auth)

The woman who allows another man to turn her against her husband and seeks to separate from him has also committed an enormity. The Prophet (SA) said:

«أَيُّمَا امرَأَةٍ سَأَلَت زَوجَهَا طَلَاقًا فِي غَيرِ مَا بَأسٍ فَحَرَامٌ عَلَيهَا رَائِحَةُ الجَنَّةِ.»

"Any woman who asks her husband for a divorce without a (justifying) hardship, the fragrance of paradise will be forbidden for her." (D, T – from Thawbân; T: S)

A marriage that begins with enormous disobedience committed by both parties will most likely be a source of grief for them.

It is not permissible to openly propose marriage to a woman during her waiting period. However, for one whose marriage termination is finalized, it is permissible to allude to that. [XI.0.8] He may, for instance, say, "Don't marry someone else," or "I am interested in a woman like you," etc.	وَلَا يَجُوْزُ التَّصْرِيْحُ بِخِطْبَةِ مُعْتَدَّةٍ، وَيَجُوْزُ التَّعْرِيْضُ بِخِطْبَةِ الْبَائِنِ خَاصَّةً، فَيَقُوْلُ: لَا تُفَوِّتِيْنِيْ بِنَفْسِكِ، وَإِنِّيْ فِيْ مِثْلِكِ لَرَاغِبٌ، وَنَحْوَ ذٰلِكَ.

[XI.0.8] Proposing during the Waiting Period

Proposing openly to a woman during her waiting period from divorce, annulment of marriage, or the death of her husband is forbidden, except for a former husband who may lawfully remarry her during that period. Allah said:

{وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُم بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنتُمْ فِي أَنفُسِكُمْ ...}

{There is no blame upon you for that to which you [indirectly] allude concerning a proposal to women or for what you conceal within yourselves...} (al-Baqarah 2:235)

It is implied from the verse that proposing openly to them is a sin.

As understood from the preceding verses, this verse pertains to women whose husbands have died. It is therefore the agreement of the fuqahâ' that it is permissible to hint at a proposal to those women.

On the other hand, the fuqahâ' agree that it is forbidden to hint at a proposal to a woman whose divorce is unfinalized because there is still a chance for reconciliation and the revocation of the divorce.

As for the women who got a finalized divorce without recourse (after the third consecutive divorce), hinting to them is permissible according to (A) + (+M, +S) since there is no chance of reconciliation; the Prophet (SA) told Fâṭimah to inform him of the end of her waiting period, hinting that he had a suitor for her. (-H, -s) forbade hinting to them during their waiting period because it might be offensive to the ex-husband.

[The Marriage Contract]

[The Spoken Form]

The marriage contract is not valid without an offer from the guardian or his agent, who says, "ankaḥtuka" or "zawwajtuka" [XI.0.9] (I marry you off) (to my ward), and an acceptance from the groom or his agent, who says, "I accepted" [XI.0.10] or "I married." [XI.0.11]	وَلَا يَنْعَقِدُ النِّكَاحُ إِلَّا بِإِيْجَابٍ مِنَ الْوَلِيِّ أَوْ نَائِبِهِ، فَيَقُوْلُ: أَنْكَحْتُكَ أَوْ زَوَّجْتُكَ، وَقَبُوْلِ الزَّوْجِ أَوْ نَائِبِهِ، فَيَقُوْلُ: قَبِلْتُ أَوْ تَزَوَّجْتُ.

[XI.0.9] The Spoken Form

(A) + (+S): The marriage contract is valid only with these words.

(-H, -M, -t): The contract is valid with these words or others that are indicative of marriage.

For non-Arabic speakers

(A): If they can say those words in Arabic, then they must do so for the nikâḥ to be valid. If they cannot, they should use a word in their language that explicitly means marriage.

(-H, -t): It is valid in their language, whether or not they can speak the Arabic words indicative of marriage.

In all the above positions, the view of (H) seems strong. Allah knows best.

[XI.0.10] (A): Any word indicative of acceptance of the offer that was made is sufficient.

[XI.0.11] Pillars and Conditions of Marriage

Like any contract, the marriage contract has pillars and conditions that must be fulfilled for its validity.

The pillars are:

- Two parties who are eligible to marry one another

- The offer

- The acceptance

The conditions are:

-The specific identification of both spouses

- The conducting of the marriage by the wali (guardian) on behalf of his ward (the bride) (+S, -H)

- The presence of two witnesses (+H, +S) (-M; see the details in the discussion of the announcement)

- The approval of the postpubescent groom (according to consensus) and the bride (according to A2 + H + t if she is virgin, and all fuqahâ' if she is thayyib, or non-virgin)

It is recommended that he make a statement before the contract, [XI.0.12] using the words of Ibn Mas'ood (RA), who said, "The Messenger of Allah (SA) taught	وَيُسْتَحَبُّ أَنْ يَخْطُبَ قَبْلَ الْعَقْدِ بِخُطْبَةِ ابْنِ مَسْعُوْدٍ رضي الله عنه الَّتِيْ قَالَ: «عَلَّمَنَا رَسُوْلُ اللهِ التَّشَهُّدَ فِيْ الْحَاجَةِ: إِنَّ

us to make the following *tashahhud* (declaration of faith) for our various needs: 'Most verily all praise is due to Allah. We praise Him and seek His assistance and forgiveness. We seek refuge with Allah from the evils of our inner selves and our wicked deeds. Whomever Allah guides cannot be misguided, and whomever Allah misguides cannot be guided. I testify that there is none worthy of worship except Allah, and I testify that Muhammad is His worshipper and Messenger.'"	الْحَمْدَ للهِ نَحْمَدُهُ، وَنَسْتَعِيْنُهُ، وَنَسْتَغْفِرُهُ، وَنَعُوْذُ بِاللهِ مِنْ شُرُوْرِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا، مَنْ يَهْدِ اللهُ فَلَا مُضِلَّ لَهُ، وَمَنْ يُضْلِلْ، فَلَا هَادِيَ لَهُ. وَأَشْهَدُ أَنْ لَا إِلٰهَ إِلَّا اللهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُوْلُهُ.»

[XI.0.12] (A) + (+H, +M, +S): Recommended.

(-Z): Obligatory.

The position of the majority is supported by incidents during the Prophet's time in which marriage took place without reciting those verses.

And (it is also mustaḥabb to) recite three verses: {O you who have believed, fear Allah as He should be feared and do not die except as Muslims [in submission to Him].} *(Âl 'Imrân 3:102)* {O humankind, fear your Lord, Who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer.} *(an-Nisâ' 4:1)*	وَيَقْرَأُ ثَلَاثَ آيَاتٍ: «يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تُقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنتُم مُّسْلِمُونَ» «يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُم مِّن نَّفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا» «يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا يُصْلِحْ لَكُمْ أَعْمَالَكُمْ»

{O you who have believed, fear Allah and speak words of appropriate justice. He will amend for you your deeds…} *(al-Aḥzâb 33:70–71)*	

It is recommended to announce the marriage. Beating a *duff* (one-sided drum) [XI.0.13] is recommended for women. [XI.0.14]	وَيُسْتَحَبُّ إِعْلَانُ النِّكَاحِ، وَالضَّرْبُ عَلَيْهِ بِالدُّفِّ لِلنِّسَاءِ.

[XI.0.13]



[XI.0.14] Ruling of Announcement and Proofs

The Prophet (SA) said:

«أَعْلِنُوا النِّكَاحَ.»

"Announce marriages." (A – from 'Abdullâh ibn az-Zubayr; al-Albâni: S)

And he said:

«فَصْلُ ما بين الْحَلَالِ وَالْحَرَامِ الدُّفُّ والصَّوْتُ.»

"The distinction between halal and haram (in conjugal relations) is by beating the duff and singing." (T – from Muhammad Ibn Ḥâṭib; T: S)

If there are both an announcement and witnesses, the marriage is valid by consensus. If they are both missing, it is invalid by consensus.

(a) + (-M): If there is an announcement but no witnesses, it is valid.

If there is no announcement, but there are witnesses, it is valid – but disliked – according to all, unless the witnesses are asked to keep it secret, in which case it is invalid according to (a) + (-M).

[XI.1] Chapter on Guardianship in Marriage

بَابُ وِلَايَةِ النِّكَاحِ

There is no (valid) nikâḥ without a wali [XI.1.1] and two Muslim witnesses. [XI.1.2]	لَا نِكَاحَ إِلَّا بِوَلِيٍّ وَشَاهِدَيْنِ مِنَ الْمُسْلِمِيْنَ.

[XI.1.1] The Wali as a Condition of Validity of Marriage

This is a matter of controversy between the imams.

(A) + (+M, +S): The permission of the wali is a condition of validity of the marriage.

(-H, -m): It is not a condition, but he can demand annulment of the marriage if his ward marries herself to a man who is not a suitable match (kufu'). Ibn 'Âbideen reports a later position selected for fatwa that such a contract does not validly form when she has an entitled guardian who did not consent beforehand.

The textual proofs are more abundant and stronger on the side of the jumhoor (majority of scholars), although they are not completely definitive in their authenticity and implication. In addition to the textual proofs (some of which are discussed below), there are rational arguments in support of demanding the approval of the wali and requiring his participation in conducting the marriage contract. Men who are concerned about the woman's welfare, such as her father or brother, would have better access into the world of men, enabling them to verify the suitability of a proposal. It is also known that some men engage in predatory behavior and may try to exploit the naiveté of some women. The wali would feel responsible for his ward's wellbeing and her support, even after the marriage. This ruling is part of a legal system that seeks to provide women with the protection and support they need. Moreover, marriage is not only about the union between two individuals; it is also about the coming together of two families. The responsibility of the woman's 'aṣabât (closest male relatives) toward her does not end with her marriage, so they should be entitled to take part in the decision to bring someone foreign into the family. Additionally, the involvement of the bride's father, for instance, would be conducive to greater future harmony between him and the groom. Finally, Islam did not

give the guardian unchecked power. If he was acting unreasonably, she would be able to get a legal severance of his guardianship as in the hadith herebelow and the discussion on the ‘âḍil (one who unjustly prevents his ward from marrying).

Can the Woman Conduct the Marriage Contract with Permission from the Wali?

(a): Yes. The Prophet (SA) said:

«أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا ، فَنِكَاحُهَا بَاطِلٌ ، فَنِكَاحُهَا بَاطِلٌ ، فَنِكَاحُهَا بَاطِلٌ ، فَإِنْ أَصَابَهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا ، فَإِنِ اشْتَجَرُوا ، فَالسُّلْطَانُ وَلِيُّ مَنْ لا وَلِيَّ لَهُ.»

“Any woman who gets married without the permission of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid. But if the marriage is consummated, then the mahr (ṣadâq) is hers because he had intercourse with her. If they dispute, then the ruler is the guardian of the one who has no guardian.” (T, D, Ma – from ‘Â’ishah; T: S)

The divergent implication (mafhoom al-mukhâlafah) of this hadith is that she may conduct the marriage contract with the permission of her guardian.

(A): She may not conduct her marriage contract because of the general implication of another hadith in which the Prophet (SA) said:

«لا نِكاحَ إلَّا بولـيٍّ وشاهدَيْ عَدلٍ.»

“There is no nikâḥ without a guardian and two trustworthy witnesses.” (Ḥib and others – from ‘Â’ishah and ‘Imrân ibn Ḥuṣayn. Controversial authenticity)

What If a Marriage Contract Was Performed Without a Wali?

According to the jumhoor, this marriage is invalid or contingent upon the subsequent approval of the wali. They do consider it consequential, however, in establishing paternity because it is valid according to some

mujtahid imams (those imams who are qualified to exercise ijtihâd). Wherever a judge has jurisdiction over a certain area, he may require that the marriage contract be redone if he believes it was invalid.

🕒 In the West, and wherever Muslims do not have their own judiciaries, one imam or preacher may not demand the redoing of a marriage that was conducted according to an excusable (sâ'igh) opinion of a mujtahid.

If a Mâliki, Shâfi'i or Ḥanbali imam is approached by a couple to marry them, and her wali is absent and not reachable, but the imam fears they may fall into sin if he turns them away, then it is prudent to marry them without the wali, based on the Ḥanafi position that validates such a marriage. (Please refer to the appendix on talfeeq: patching or mixing between the different madh-habs.)

[XI.1.2] The Witnesses

See the opinions about the witnesses in the previous chapter's discussion of the announcement.

(A) + (+S): The witnesses must be adult, sane, Muslim men.

(a) + (-H): A man and two women may suffice as witnesses.

Remember that (-M) does not require witnesses but only the announcement.

It is best if there are two male witnesses and an announcement, but if there are witnesses without an announcement, or an announcement without witnesses, then it should not be repeated because it would be valid according to some excusable positions of mujtahid imams. If the marriage is done in secret, without witnesses or an announcement, it is invalid and must be repeated.

The one who is most entitled to marrying the free woman off is her father, and then his (father), and so on; then her son and his descendants; then the closer of her paternal relatives; then the one who	وَأَوْلَى النَّاسِ بِتَزْوِيْجِ الْحُرَّةِ أَبُوْهَا، ثُمَّ أَبُوْهُ وَإِنْ عَلَا، ثُمَّ ابْنُهَا ثُمَّ ابْنُهُ وَإِنْ نَزَلُوْا، ثُمَّ الْأَقْرَبُ فَالْأَقْرَبُ مِنْ عَصَبَاتِهَا، ثُمَّ مُعْتِقُهَا، ثُمَّ الْأَقْرَبُ

freed her; then the closest of his paternal relatives; then the sultan (ruler). [XI.1.3]	فَالْأَقْرَبُ مِنْ عَصَبَاتِهِ، ثُمَّ السُّلْطَانُ.

[XI.1.3] In the Absence of the Sultan

In the absence of a sultan or an Islamic judiciary, some of their functions, such as guardianship, will be assumed by the imams and scholars who have recognition and authority in their respective communities. This obviously does not apply to establishing physical punishments or imprisonment because these verdicts require judges with full jurisdiction.

The agent of each one of those acts on his behalf and takes his position. [XI.1.4]	وَوَكِيْلُ كُلِّ وَاحِدٍ مِنْ هَؤُلَاءِ يَقُوْمُ مَقَامَهُ.

[XI.1.4] The guardian may authorize someone to conduct the marriage contract on his behalf. The same is true for the groom.

A more distant relative cannot validly marry (a woman) off if there is one who is closer, unless (the closer one) is a child, insane, or of a different religion than hers; if he prevents her from marrying a suitable person without a legitimate reason; [XI.1.5] or if he is absent at a distance that makes consulting him seriously difficult. [XI.1.6] [XI.1.7]	وَلَا يَصِحُّ تَزْوِيْجُ الْأَبْعَدِ مَعَ وُجُوْدِ الْأَقْرَبِ مِنْهُ، إِلَّا أَنْ يَكُوْنَ صَبِيًّا، أَوْ زَائِلَ الْعَقْلِ، أَوْ مُخَالِفًا لِدِيْنِهَا، أَوْ عَاضِلاً لَهَا، أَوْ غَائِبًا غَيْبَةً بَعِيْدَةً.

[XI.1.5] Who Is the ‘Âḍil?

In *al-Mughni*, Imam Ibn Qudâmah explained that a man is an ‘âḍil (one who unjustly prevents his ward from marrying) if he prevents her from marrying a man whom she desires and who is a suitable match, even if he allows her to marry others who are also suitable. He is not an ‘âḍil if he prevents her from marrying a man who is not a suitable match.

[XI.1.6] The issue is a distant or inaccessible guardian, not merely the length of his absence. Ibn Qudâmah favors assessing the hardship of reaching him.

A nearby guardian who cannot be consulted may likewise be treated as inaccessible.

«إنَّ ما لَيْسَ له ضابِطٌ في الشَّرْعِ ولا في اللغَةِ، يَرجِع إلى العُرْفِ»

"Whatever is not regulated by the Sharia or in the language, the custom is resorted to."

[XI.1.7] If a brother marries his sister off, but her father is alive and does not authorize it, then the marriage is not valid. A different report from the imam says that it is not invalidated, but its validity becomes contingent on the approval of the closer guardian, who is the father in this case.

There are no guardianship rights for anyone of a different religion, except for the Muslim if he is a sultan (ruler) or the master of a slave-woman. [XI.1.8]	وَلَا وِلَايَةَ لأَحَدٍ عَلَى مُخَالِفَةٍ لِدِيْنِهِ إِلَّا الْمُسْلِمُ إِذَا كَانَ سُلْطَانًا، أَوْ سَيِّدَ أَمَةٍ.

[XI.1.8] See the appendix on slavery.

It is permissible for the father to marry off his young children, both male and female, [XI.1.9] as well as his virgin daughters, without their permission. As for a postpubescent virgin, it is recommended to seek her approval. [XI.1.10]	وَلِلأَبِ تَزْوِيْجُ أَوْلَادِهِ الصِّغَارِ، ذُكُوْرِهِمْ وَإِنَاثِهِمْ، وَبَنَاتِهِ الْأَبْكَارِ بِغَيْرِ إِذْنِهِمْ، وَيُسْتَحَبُّ اسْتِئْذَانُ الْبَالِغَةِ.

[XI.1.9] The Approval of the Prepubescent Bride and Groom for Their Marriage

Most classical jurists permitted a guardian to contract a minor's marriage, although they differed over which guardians had that authority and what options became available at puberty. The Ḥanbali text here centers this authority on the father, while the Ḥanafis also recognized other qualified guardians in specified circumstances and generally gave a minor married by someone other than the father or paternal grandfather an option at puberty. Ibn Shubrumah and al-Aṣamm opposed contracting minors' marriages. It was meant in certain cases, such as the presence of a suitor whom the father fears may otherwise pass her (or him) up. None of them allow the husband

to consummate the marriage before the bride is physically and mentally ready. (See the appendix on the age of marriage in Islam and the appendix on 'buloogh' for an explanation of puberty or sexual maturity in Islamic law.)

[XI.1.10] The Approval of the Postpubescent Virgin

In *al-Mughni*, Ibn Qudâmah mentions a second narration from Aḥmad in which he concurred with Imam Abu Ḥaneefah that it is not permissible for the father to marry off his postpubescent virgin daughters without their permission. This is the position chosen by the shaykh of the later Ḥanbalis, Imam Ibn Taymiyah (may Allah bestow mercy on him), who said:

«و لَيْسَ لِأَحَدِ الْأَبَوَيْنِ أَنْ يُلْزِمَ الْوَلَدَ بِنِكَاحِ مَنْ لَا يُرِيدُ، فإن امْتَنَعَ لَا يَكُونُ عَاقًّا، كَأَكْلِ ما لَا يُرِيدُ.»

"The parents do not have the right to force their child to marry someone they do not want, and if they refuse, it is not considered disobedience. This is like eating something they do not want." (al-Ikhtiyârât)

He also said:

«وَأَمَّا تَزْوِيجُهَا مَعَ كَرَاهَتِهَا لِلنِّكَاحِ، فَهَذَا مُخَالِفٌ لِلْأُصُولِ وَالْعُقُولِ وَاللَّهُ لَمْ يُسَوِّغْ لِوَلِيِّهَا أَنْ يُكْرِهَهَا عَلَى بَيْعٍ أَوْ إجَارَةٍ إلَّا بِإِذْنِهَا وَلَا عَلَى طَعَامٍ أَوْ شَرَابٍ أَوْ لِبَاسٍ لَا تُرِيدُهُ. فَكَيْفَ يُكْرِهُهَا عَلَى مُبَاضَعَةٍ وَمُعَاشَرَةِ مَنْ تَكْرَهُ مُبَاضَعَتَهُ وَمُعَاشَرَةَ مَنْ تَكْرَهُ مُعَاشَرَتَهُ وَاللَّهُ قَدْ جَعَلَ بَيْنَ الزَّوْجَيْنِ مَوَدَّةً وَرَحْمَةً فَإِذَا كَانَ لَا يَحْصُلُ إلَّا مَعَ بُغْضِهَا لَهُ وَنُفُورِهَا عَنْهُ. فَأَيُّ مَوَدَّةٍ وَرَحْمَةٍ فِي ذَلِكَ ؟»

"As for forcing her into marriage against her desire, this is counter to the legal maxims and sound reason. Allah did not permit the guardian to force her in the matters of selling and leasing, except with her permission, not even in eating, drinking, and wearing what she does not want. Then how may her guardian compel her to have intercourse and live with someone with whom she does not wish to have intercourse or live? Allah put compassion and mercy between the spouses, so what compassion or mercy is expected to be there with her dislike of him and aversion to him?" (Majmoo'at al-Fatâwâ, Chapter on Pillars and Conditions of Marriage)

The following reports may be cited in support of the position of (A2) + (+H, +t):

The Prophet (SA) said:

«لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ، وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ. قَالُوا: يَا رَسُولَ اللَّهِ، وَكَيْفَ إِذْنُهَا؟ قَالَ: أَنْ تَسْكُتَ»

"No ayyim should be married off without her explicit mandate, and no virgin should be married off until her consent is sought." They said, "O Messenger of Allah, how does she indicate her consent?" He said, "Her silence." (Ag – from Abu Hurayrah)

The word ayyim is left without translation because its meaning is controversial and legally consequential.

(A) + (+S, +M): Here it refers to a thayyib, contrasted with a virgin; the precise Ḥanbali definition of thayyib is one who has been vaginally penetrated, not anally, by the male organ rather than another instrument, even through zinâ.

(-H): It means a woman who is not currently married.

It is noteworthy also that there are other wordings of this hadith in Bukhâri and Muslim in which the same word (tusta'mar, meaning that her explicit consent should be sought) is used in reference to the virgin as well.

A virgin young woman came to the Prophet (SA) and complained that her father had married her off against her wishes, and the Prophet (SA) gave her the choice. (D – from Ibn 'Abbâs; al-Albâni: Auth)

Umm Salamah (RAH) narrated that:

«أَنَّ جَارِيَةً زَوَّجَهَا أَبُوهَا، وَأَرَادَتْ أَنْ تَتَزَوَّجَ رَجُلا آخَرَ، فَأَتَتِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَتْ ذَلِكَ لَهُ، فَنَزَعَهَا مِنَ الرَّجُلِ الَّذِي زَوَّجَهَا أَبُوهَا، وَزَوَّجَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنَ الَّذِي أَرَادَتْ.»

"A young woman was married off by her father, but she wanted to marry someone else. She came to the Prophet (SA) and mentioned

this to him. He took her away from the man her father married her to, and he married her off to the man she wanted." (Haythami said, "Reported by aṭ-Ṭabarâni, and the narrators are those of the authentic collections.")

It is not for him to marry off his postpubescent sons or adult non-virgin daughters except with their permission. [XI.1.11]	وَلَيْسَ لَهُ تَزْوِيْجُ الْبَالِغِ مِنْ بَنِيْهِ وَبَنَاتِهِ الثَّيِّبِ إِلَّا بِإِذْنِهِمْ.

[XI.1.11] Bukhâri reported from Khansâ' bint Khidhâm that she was a thayyib but her father married her off against her wishes, so the Messenger of Allah (SA) annulled the marriage.

It is not for any of the other guardians to marry off a young boy or girl. Nor is it for them to marry off an older girl without her permission.	وَلَيْسَ لِسَائِرِ الْأَوْلِيَاءِ تَزْوِيْجُ صَغِيْرٍ وَلَا صَغِيْرَةٍ، وَلَا كَبِيْرَةٍ إِلَّا بِإِذْنِهَا.

For the non-virgin woman, consent is expressed verbally. A virgin's consent may be indicated by her silence when her permission is sought, provided she does not express refusal; explicit consent is also sufficient. The Messenger of Allah said, "The non-virgin has more right to herself than her guardian, and the virgin should be asked for permission regarding herself; her permission is indicated by her silence." [XI.1.12]	وَإِذْنُ الثَّيِّبِ الْكَلَامُ، وَإِذْنُ الْبِكْرِ الصُّمَاتُ، لِقَوْلِ رَسُوْلِ اللهِ «الأَيِّمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا، وَإِذْنُهَا صُمَاتُهَا.»

[XI.1.12] (Ag)

It is not for the guardian of a woman to marry her off to one who is not her match, unless she agrees. Arabs are	وَلَيْسَ لِوَلِيِّ امْرَأَةٍ تَزْوِيْجُهَا بِغَيْرِ كُفْئِهَا بِغَيْرِ رِضَاهَا، وَالْعَرَبُ

matches for one another; a slave is not a match for a free woman, and an immoral man is not a match for a chaste woman. [XI.1.13]	بَعْضُهُمْ لِبَعْضٍ أَكْفَاء، وَلَيْسَ الْعَبْدُ كُفُءَ الْحُرَّةِ، وَلَا الْفَاجِرُ كُفُءَ الْعَفِيْفَةِ.

[XI.1.13] Consideration of Proper Matching

Firstly, note that the requirement of equality applies to the man only. It is solely for the protection of women, so that they will not be married off to incompatible men. The situation where the woman is of lower status is not part of this discussion.

(a) + (-s, -Z, -t): Religious commitment is the only required factor in this view. The Mâliki formulation likewise does not require equality of lineage or occupation, but includes religion and freedom from defects that give the wife an option to dissolve the marriage. This position was narrated from Ibn Mas‘ood, Muhammad ibn Seereen, al-Ḥasan al-Baṣri, ‘Umar ibn ‘Abdul-‘Azeez, and what can be understood from Bukhâri’s choice of titles in his authentic collection.

The Messenger of Allah (SA) said:

«إِذَا جَاءَكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ ، إِلَّا تَفْعَلُوا تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ كَبِير»

“If someone comes to you, and his religiosity and manners are accepted by you, marry him off (to your wards), lest there be trials and great corruption on Earth.” (T – from Abu Hurayrah. Auth)

📖

This position is also consistent with the saying of Allah:

{يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُم مِّن ذَكَرٍ وَأُنثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِندَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ}

{O humankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most

righteous of you. Indeed, Allah is Knowing and Acquainted.} (al-Ḥujurât 49:13)

The Prophet (SA) emphasized this concept in many hadiths, one of which is:

«لَا فَضْلَ لِعَرَبِيٍّ عَلَى أَعْجَمِيٍّ ، وَلَا لِعَجَمِيٍّ عَلَى عَرَبِيٍّ ، وَلَا لِأَحْمَرَ عَلَى أَسْوَدَ ، وَلَا أَسْوَدَ عَلَى أَحْمَرَ إِلَّا بِالتَّقْوَى»

"There is no superiority of an Arab over a non-Arab, or of a non-Arab over an Arab, or of a white man over a black man, or of a black man over a white man, except on the basis of taqwâ (piety)." (A – from Abi Naḍrah. S)

(A2): Only two factors may be considered: religious commitment and position in the society.

According to (A), the other factors of compatibility in addition to the lineage, freedom, and religious commitment, are profession and wealth. In our times, educational level may be a more accurate indicator of the position in the society.

Equality Is Not a Condition of Validity

According to the very vast majority (including the majority of the latter Ḥanbalis), equality, beyond the condition of the groom being Muslim) is not a condition for the validity of the marriage contract. The bride and her guardians have the right to demand annulment only if one of them disapproves of the marriage. For example, if she married herself (without a wali, as permitted by -H) to someone who is deemed to not be her match, the original Ḥanafi position gives the guardian the right to demand annulment; likewise, if the guardian married her off to him, she can demand annulment. When the adult bride and her guardians are pleased with the groom, no one has the right to contest the marriage. In *al-Mughni*, Imam Ibn Qudâmah mentions several examples from the first community of Muslims in which freed slaves were married to noble women from Quraysh. Sâlim, the freedman associated with Abu Ḥudhayfah, married Hind bint al-Waleed ibn 'Utbah; Zayd ibn Ḥârithah married Zaynab bint Jaḥsh; the Prophet (SA) married Zayd's son Usâmah to Fâṭimah bint Qays; and Bilâl was married to

the sister of ‘Abdur-Raḥmân ibn ‘Awf. Moreover, there are many examples of Hashemite women (from the subclan of the Prophet [SA]) – including the Prophet’s own daughters Ruqayyah, Umm Kulthoom and Zaynab – marrying non-Hashemite men.

The Prophet (SA) said:

«يَا بَنِي بَيَاضَةَ أَنْكِحُوا أَبَا هِنْدٍ وَأَنْكِحُوا إِلَيْهِ»

“O Bani Bayâḍah, marry Abu Hind off to your female relatives, and marry his female relatives.” (D – from Abu Hurayrah; al-Albâni: R)

Abu Hind was a cupper (ḥajjâm), and this was considered one of the lowest professions in their society.

After citing many of the proofs above and more, Imam Ibn al-Qayyim (the great Ḥanbali scholar and most notable student of Imam Ibn Taymiyah) said in his book Zâd al-Ma‘âd:

What is implied from the decrees of the Prophet (SA) is that consideration should be given only to compatibility in religious commitment. A Muslim woman should not be given in marriage to a non-Muslim, or a chaste woman to an immoral man. The Qur’an and Sunnah do not consider any compatibility beyond that. No consideration is given to lineage, profession, wealth, or whether the man is free or a slave. It is permissible for a slave who is the son of slaves to marry a free woman of noble birth, if he is chaste and Muslim. Allah made it permissible for non-Qurayshi men to marry Qurayshi women, for non-Hashemite men to marry Hashemite women, and for poor men to marry wealthy women.

How to Understand the Scholarly Discourse on Compatibility

After establishing the fundamental Islamic principle that the most noble in the sight of God is the most pious, it is important that we understand the scholarly discourse on proper matching, within this context, as an attempt to alert women and their guardians to the importance of compatibility, and to prevent the guardians from marrying their wards to incompatible husbands. When ‘Â’ishah bought Bareerah and freed her, Bareerah wanted to separate from her husband Mugheeth, who was still a

slave, so the Prophet (SA) gave her the choice. Some scholars cited this in support of their view that a slave is not a match for a free woman. However, we should not forget that she was the one who wanted separation from him. Moreover, the Prophet (SA) personally interceded with her on behalf of Mugheeth to stay with him.

«فَقَالَ النَّبِيُّ صلى الله عليه وسلم « لَوْ رَاجَعْتِهِ». قَالَتْ يَا رَسُولَ اللَّهِ تَأْمُرُنِي قَالَ « إِنَّمَا أَنَا أَشْفَعُ ». قَالَتْ لاَ حَاجَةَ لِي فِيهِ.»

The Prophet (SA) said to Bareerah, "Why don't you return to him?" She said, "Do you command me?" He said, "No, I am only interceding on his behalf." She said, "I have no desire for him." (B – from Ibn 'Abbâs)

While Islam points out to us the highest peaks of virtue, it does not force us to climb faster than we can. It is a fact that the more compatible a couple is, the more likely they will have a successful marriage, and wide gaps in socioeconomic class and educational level may be a catalyst for conflict. However, if the adult bride and her guardians are willing to overlook those gaps because there are factors that make up for them, such as the knowledge or piety of the groom, or if they simply want to disregard them, then there is nothing to impede the marriage.

وَمَنْ أَرَادَ أَنْ يَنْكِحَ امْرَأَةً هُوَ وَلِيُّهَا، فَلَهُ أَنْ يَتَزَوَّجَهَا مِنْ نَفْسِهَا بِإِذْنِهَا.	Whoever wants to marry his ward may marry her to himself with her permission. [XI.1.14]

[XI.1.14] Such as when a cousin becomes the closest guardian to a woman and then wishes to marry her.

وَإِنْ زَوَّجَ أَمَتَهُ عَبْدَهُ الصَّغِيْرَ، فَلَهُ أَنْ يَتَوَلَّى طَرْفَيْ الْعَقْدِ، وَإِنْ قَالَ لأَمَتِهِ: أَعْتَقْتُكِ وَجَعَلْتُ عِتْقَكِ صَدَاقَكِ بِحَضْرَةِ شَاهِدَيْنِ، ثَبَتَ الْعِتْقُ وَالنِّكَاحُ؛ لأَنَّ رَسُوْلَ اللهِ «أَعْتَقَ صَفِيَّةَ وَجَعَلَ عِتْقَهَا صَدَاقَهَا.»	

[XI.2] Chapter on Marrying the Slaves

فَصْلٌ فِيْ نِكَاحِ الْعَبِيْدِ وَالْإِمَاءِ

وَلِلسَّيِّدِ تَزْوِيْجُ إِمَائِهِ كُلِّهِنَّ، وَعَبِيْدِهِ الصِّغَارِ بِغَيْرِ إِذْنٍ، وَلَهُ تَزْوِيْجُ أَمَةِ مُوَلِّيَتِهِ بِإِذْنِ سَيِّدَتِهَا، وَلَا يَمْلِكُ إِجْبَارَ عَبْدِهِ الْكَبِيْرِ عَلَىٰ النِّكَاحِ، وَأَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ سَيِّدِهِ فَهُوَ عَاهِرٌ، فَإِنْ دَخَلَ بِهَا فَمَهْرُهَا فِيْ رَقَبَتِهِ، كَجِنَايَتِهِ، إِلَّا أَنْ يَفْدِيَهُ سَيِّدُهُ بِالْأَقَلِّ مِنْ قِيْمَتِهِ أَوِ الْمَهْرِ، وَمَنْ نَكَحَ أَمَةً عَلَىٰ أَنَّهَا حُرَّةٌ ثُمَّ عَلِمَ فَلَهُ فَسْخُ النِّكَاحِ وَلَا مَهْرَ عَلَيْهِ إِنْ فَسَخَ قَبْلَ الدُّخُولِ، وَإِنْ أَصَابَهَا، فَلَهَا مَهْرُهَا، وَإِنْ أَوْلَدَهَا، فَوَلَدُهُ حُرٌّ يَفْدِيْهِ بِقِيْمَتِهِ، وَيَرْجِعُ بِمَا غَرِمَ عَلَىٰ مَنْ غَرَّهُ، وَيُفَرَّقُ بَيْنَهُمَا، إِنْ لَمْ يَكُنْ مِمَّنْ يَجُوْزُ لَهُ نِكَاحُ الْإِمَاءِ، وَإِنْ كَانَ مِمَّنْ يَجُوْزُ لَهُ ذٰلِكَ فَرَضِيَ بِهَا، فَمَا وَلَدَتْ بَعْدَ الرِّضَا، فَهُوَ رَقِيْقٌ.

[XI.2] See the appendix on slavery.

[XI.3] Chapter on Unmarriageable Women

بَابُ الْمُحَرَّمَاتِ فِيْ النِّكَاحِ

These are: [XI.3.1] the mothers, daughters, sisters, daughters of the brothers, daughters of the sisters, paternal aunts, maternal aunts, [XI.3.2] mothers of wives, wives of fathers, wives of sons, and daughters of wives (given that their mothers have been "entered on"). [XI.3.3] [XI.3.4]	وَهُنَّ الْأُمَّهَاتُ، وَالْبَنَاتُ، وَالْأَخَوَاتُ، وَبَنَاتُ الْإِخْوَةِ، وَبَنَاتُ الْأَخَوَاتِ، وَالْعَمَّاتُ، وَالْخَالَاتُ، وَأُمَّهَاتُ النِّسَاءِ، وَحَلَائِلُ الْآبَاءِ والأبْنَاءِ، والرَّبَائِبُ الْمَدْخُوْلُ بِأُمَّهَاتِهِنَّ.

[XI.3.1] Introduction and Types of Unmarriageable Women

There are two different types of prohibitions of marriage: permanent and temporary. As for the permanent prohibition, there are four reasons for it: consanguinity, marriage, breastfeeding, and li'ân.

The Permanent Prohibition (using the woman as the reference case)

Maḥrams by *Nasab* (Consanguinity)

Ancestors: Paternal and maternal forefathers.

Progeny: Sons, including sons' and daughters' sons.

Brothers: Full brothers, paternal half brothers, and maternal half brothers.

Nephews and great-nephews, meaning the progeny of all of her siblings.

Paternal and maternal uncles, including her ancestors' uncles.

Maḥrams by *Muṣâharah* (marriage)

Stepsons, meaning her husband's male progeny from another wife.

Fathers-in-law, meaning her husband's male ancestors (father, grandfathers, etc.).

Stepfathers: husbands of her mother or female ancestors, provided the marriage to that mother or ancestor was consummated by intercourse.

Sons-in-law, meaning her daughters' husbands.

Maḥrams by Raḍâ' (Breastfeeding)

Just like maḥrams by consanguinity and marriage as well, according to the vast majority. Therefore, his wife's nursing mother is prohibited to him by the marriage contract; her milk-daughter through another man becomes prohibited to him once he has had intercourse with the nursing wife.

(A) + (+M, +S): It is forbidden for an individual to remarry someone he made li'ân against.

(-H): They may get married if he denies his previous li'ân.

(A) + (+H, +M, +S): It is also forbidden for him to marry his daughter whom he denied via li'ân.

The Causes of Temporary Prohibition

Marriage: If a woman is married or observing her *'iddah* (waiting period after being divorced or widowed), she cannot marry another man. In addition, a man with four wives may not marry another until one marriage has ended and the waiting period required after divorce has expired. According to the Ḥanbalis, this includes an irrevocable divorce; the disagreement is explained below in [XI.3.9].

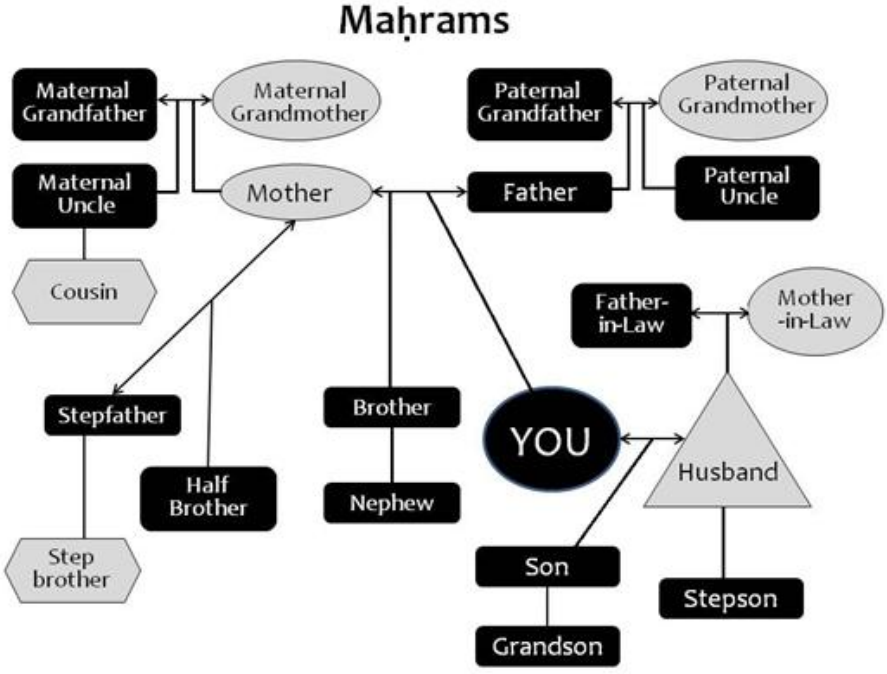
A woman whom he has divorced three times remains prohibited to him until, after her waiting period, she enters a valid marriage to another man, consummates it by intercourse, and that marriage ends by divorce or death, followed by completion of the applicable waiting period.

Forbidden co-wifery: A woman cannot be a co-wife with her sister or aunt (maternal or paternal).

Disbelief and fornication: A Muslim man cannot marry a woman who is not a Muslim, Christian or Jew until she believes. A Muslim woman can only marry a Muslim man. A man may not marry a woman known to

have committed zinâ until she repents (A). The same applies to the Muslim woman (a, t).

In the following diagram, the dark-shaded boxes indicate all permanent prohibitions for a woman:



[XI.3.2] In this chapter, the terms ‘mothers’ and ‘fathers’ include grandmothers and grandfathers of all generations. ‘Daughters’ and ‘sons’ refer to all of the progeny, females and males respectively. ‘Sisters’ include full sisters and half sisters, but not stepsisters. ‘Aunts’ include the sisters of all mothers and fathers of all generations.

[XI.3.3] Meaning that marriage with their mothers has been consummated. Mere seclusion does not establish this prohibition. In the relied-upon Ḥanbali position, intercourse with the mother is required. Other schools differ over the effect of additional sexual contact, but this should not be confused with mere seclusion.

Note that this applies to the stepdaughter (the wife's daughter), but it does not apply to the mother in-law (the wife's mother), for whom the prohibition is immediate once the contract is finalized with her daughter.

[XI.3.4] Allah (st) addressed this matter in detail in His book, indicating its importance. He said:

{حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُم مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا}

{Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful.} (an-Nisâ' 4:23)

Breastfeeding results in the same restrictions caused by consanguinity. [XI.3.5]	وَيَحْرُمُ مِنَ الرَّضَاعِ مَا يَحْرُمُ مِنَ النَّسَبِ.

[XI.3.5] This is the exact statement of the Prophet (SA) as reported by Bukhâri and Muslim from 'Â'ishah. See the details in the next chapter.

The daughters of unmarriageable women are also unmarriageable except the daughters of: paternal and maternal aunts, mothers of wives, and wives of fathers and sons. The mothers of unmarriageable women are unmarriageable except the mothers of:	وَبَنَاتُ الْمُحَرَّمَاتِ مُحَرَّمَاتٌ، إِلَّا بَنَاتِ الْعَمَّاتِ وَالْخَالَاتِ، وَأُمَّهَاتِ النِّسَاءِ، وَحَلَائِلِ الْآبَاءِ وَالْأَبْنَاءِ؛ وَأُمَّهَاتُهُنَّ مُحَرَّمَاتٌ، إِلَّا الْبَنَاتِ وَالرَّبَائِبَ وَحَلَائِلَ الْآبَاءِ وَالْأَبْنَاءِ.

daughters, daughters of wives, and the wives of fathers and sons.	

He who had intercourse with a woman, whether lawfully or unlawfully, she becomes unmarriageable for his father and son. Her mother and daughters become unmarriageable to him.	وَمَنْ وَطِئَ امْرَأَةً حَلَالاً أَوْ حَرَامًا حَرُمَتْ عَلَىٰ أَبِيْهِ وَابْنِهِ، وَحَرُمَتْ عَلَيْهِ أُمَّهَاتُهَا وَبَنَاتُهَا.

Subsection: It is forbidden to have a woman and her sister [XI.3.6] or a woman and her aunt (paternal or maternal) as co-wives. This is because the Messenger of Allah (SA) said, “There should be no combining (as co-wives) a woman with her (paternal or maternal) aunt.” [XI.3.7]	فَصْلٌ: وَيَحْرُمُ الْجَمْعُ بَيْنَ الْأُخْتَيْنِ، وَبَيْنَ الْمَرْأَةِ وَعَمَّتِهَا وَخَالَتِهَا؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَا يُجْمَعُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا، وَلَا بَيْنَهَا وَبَيْنَ خَالَتِهَا.»

[XI.3.6] The sister here includes the full sister and half sister. It also includes a milk-sister: two girls become milk-sisters when valid nursing links them to the same nursing mother or to the same man to whom the milk is legally attributed.

[XI.3.7] (Ag – from Abu Hurayrah)

Combining a Woman and Her Aunt – Significance of Ruling

Note that this is a matter of consensus among Ahl us-Sunnah (People of the Sunnah), so it is used as a proof for those who maintain that the Sunnah not only confirms and explains the Qur’an but also adds rulings not mentioned in it. Others may argue that the prohibition of combining the woman and her aunt has a basis in the Qur’an; they point to the Qur’an’s prohibition of combining sisters as its origin. However, it is clear that the prohibition of combining a woman and her aunt cannot be simply deduced by qiyâs (analogy) from the prohibition of combining sisters. In conclusion, both sides agree on the authority of Sunnah as a source of law, and they

agree that it contains legislation that is not found in the Qur'an. The difference between them is based on a technicality rather than on substance.

This hadith is also a singular report (khabar âḥâd), yet it specified the ruling of combining the woman and her aunt from the general implication of the Qur'anic statement:

{وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ}

{... And lawful to you are [all others] beyond these...} (an-Nisâ' 4:24)

There is proof here for the majority, (A) + (+M, +S), who hold the view that authentic singular reports may specify the generality of the verses of the Qur'an.

Note that the Ḥanafis did not outright reject the possibility of a singular report specifying a general proof, but instead stipulated conditions in which such an interpretive exercise could take place.

وَلَا يَجُوْزُ لِلْحُرِّ أَنْ يَجْمَعَ بَيْنَ أَكْثَرَ مِنْ أَرْبَعِ نِسْوَةٍ، وَلَا لِلْعَبْدِ أَنْ يَجْمَعَ إِلَّا اثْنَتَيْنِ.	It is not permitted for a free man to have more than four wives simultaneously, or for a slave to have more than two.

فَإِنْ جَمَعَ بَيْنَ مَنْ لَا يَجُوْزُ الْجَمْعُ بَيْنَهُ فِيْ عَقْدٍ وَاحِدٍ، فَسَدَ، وَإِنْ كَانَ فِيْ عَقْدَيْنِ لَمْ يَصِحَّ الثَّانِيْ مِنْهُمَا.	If a man simultaneously marries two women who are unlawful to combine in one contract, the contract becomes void. If he does that in two contracts, the latter of them is void.

وَلَوْ أَسْلَمَ كَافِرٌ وَتَحْتَهُ أُخْتَانِ، اخْتَارَ مِنْهُمَا وَاحِدَةً. وَإِنْ كَانَتَا أُمًّا وَبِنْتًا وَلَمْ يَدْخُلْ بِالْأُمِّ فَسَدَ نِكَاحُهَا وَحْدَهَا، وَإِنْ كَانَ قَدْ	If a man accepts Islam while already being married to two sisters, he must choose one of them to keep as a wife. If they (his co-wives) are a mother and daughter, and he has not entered on the mother, then the mother's marriage

alone becomes void; if he has entered on the mother, then both of their marriages become void, and they both become forever unmarriageable for him.	دَخَلَ بِهَا، فَسَدَ نِكَاحُهُمَا وَحُرِّمَتَا عَلَى التَّأْبِيْدِ.

If he accepts Islam while already being married to more than four women, he may keep only four of them and must separate from the rest. [XI.3.8] It is fine whether he keeps the one he married first or last. The same applies to a slave who accepts Islam while being married to more than two women.	وَإِنْ أَسْلَمَ وَتَحْتَهُ أَكْثَرُ مِنْ أَرْبَعٍ، أَمْسَكَ مِنْهُنَّ أَرْبَعًا وَفَارَقَ سَائِرَهُنَّ، سَوَاءٌ كَانَ مَنْ أَمْسَكَ مِنْهُنَّ أَوَّلَ مَنْ عَقَدَ عَلَيْهَا أَوْ آخِرَهُنَّ، وَكَذٰلِكَ إِذَا أَسْلَمَ الْعَبْدُ وَتَحْتَهُ أَكْثَرُ مِنِ اثْنَتَيْنِ.

[XI.3.8] This is a matter of consensus. When Ghaylân ibn Salamah accepted Islam, he had ten wives, who also accepted Islam. The Prophet (SA) ordered him to choose only four of them to keep. (T – from Ibn ‘Umar; al-Albâni: S, but controversial)

Had he married more than four while he was Muslim, only the first four would be his wives, and the rest of the marriages would be invalid. Under the Ḥanbali ruling stated here, he may choose any four because pre-conversion marriages are not reexamined for the formal requirements of Muslim marriage contracts. They may continue only insofar as the women can lawfully remain his wives after conversion. After conversion, though, he may only keep four wives.

If a man divorces a woman and then marries her sister, her aunt, or a fifth wife while the divorced woman is still in her ‘iddah, this (new) marriage is invalid, whether the divorce is finalized or not. [XI.3.9]	وَمَنْ طَلَّقَ امْرَأَةً فَنَكَحَ أُخْتَهَا أَوْ خَالَتَهَا أَوْ خَامِسَةً فِيْ عِدَّتِهَا، لَمْ يَصِحَّ، سَوَاءٌ كَانَ الطَّلَاقُ رَجْعِيًّا أَوْ بَائِنًا.

[XI.3.9] This is because many of the rulings of marriage are still applicable during the ‘iddah.

If the divorce is unfinalized, then the invalidity of a fifth marriage, or a marriage to a sister or aunt of the divorced wife is a matter of consensus.

(A) + (+H): If it is a finalized divorce, annulment, or khul‘ (termination of marriage initiated by the wife), then this new marriage is still invalid.

(-M, -S): If it is a finalized divorce, annulment, or khul‘, then this new marriage is valid.

	وَيَجُوْزُ أَنْ يَمْلِكَ أُخْتَيْنِ، وَلَهُ وَطْءُ إِحْدَاهُمَا، فَمَتَى وَطِئَهَا، حَرُمَتْ عَلَيْهِ أُخْتُهَا حَتَّى تَحْرُمَ الْمَوْطُوْءَةُ بِتَزْوِيْجٍ أَوْ إِخْرَاجٍ عَنْ مِلْكِهِ وَيَعْلَمَ أَنَّهَا غَيْرُ حَامِلٍ، فَإِذَا وَطِئَ الثَّانِيَةَ ثُمَّ عَادَتِ الْأُوْلٰى إِلٰى مِلْكِهِ، لَمْ تَحِلَّ لَهُ حَتَّى تَحْرُمَ الْأُخْرٰى، وَعَمَّةُ الْأَمَةِ وَخَالَتُهَا فِيْ هٰذَا كَأُخْتِهَا، وَلَيْسَ لِلْمُسْلِمِ وَإِنْ كَانَ عَبْدًا نِكَاحُ أَمَةٍ كَافِرَةٍ، وَلَا لِحُرٍّ نِكَاحُ أَمَةٍ مُسْلِمَةٍ إِلَّا أَنْ لَا يَجِدَ طَوْلَ حُرَّةٍ، وَلَا ثَمَنَ أَمَةٍ، وَيَخَافَ الْعَنَتَ، وَلَهُ نِكَاحُ أَرْبَعٍ إِذَا كَانَ الشَّرْطَانِ فِيْهِ قَائِمَيْنِ.

[XI.4] Chapter on Breastfeeding

بَابُ الرَّضَاعِ

The restrictions (of marriage) and subsequent rulings [XI.4.1] that result from breastfeeding are the same as those that result from consanguinity. [XI.4.2]	حُكْمُ الرَّضَاعِ حُكْمُ النَّسَبِ فِيْ التَّحْرِيْمِ وَالْمَحْرَمِيَّةِ.

[XI.4] Introduction

The extension of the bond of kinship through breastfeeding is of great value and wisdom. It does not apply only to orphans, yet it serves a great purpose for them in particular. If an infant loses his mother, another woman can nurse him, and he will be a member of her family forever. If it is a boy, he can mix with her daughters as if they were his sisters and with her sisters as if they were his aunts. If it is a girl who is nursed, she becomes a daughter to the milk-mother's husband and a sister to her sons. As discussed below, the minority position chosen by Ibn Taymiyah may be relevant to exceptional cases involving an older foster child whose continued presence in the household is needed and from whom observing hijab would cause hardship. This exceptional concession does not make nursing at any age a general means of establishing milk-kinship. (Without this, there are complications having a non-maḥram child live with the family.)

Note that many of the discussions in this chapter may seem irrelevant in our time, and it may be fair to say that they would also have been extremely rare scenarios in the author's own time. Still, he chose to mention them to train the mind of the jurists and to prepare them for all possible scenarios, regardless of their rarity.

[XI.4.1] Such as the permissibility of mixing without females wearing hijab.

[XI.4.2] The Restrictions That Result from Marriage

In addition, breastfeeding results in all the restrictions that result from marriage. Therefore, it is forbidden for a man to marry the woman who nursed his wife. His wife's milk-daughter, whom she nursed with milk attributable to another man, becomes permanently forbidden to him only

after he has consummated his marriage with the milk-mother. (See commentary note [XI.4.3].)

Once a woman breastfeeds a male child, he becomes a son to her and to the man who caused the production of the milk. [XI.4.3] This will make the restrictions of marriage for this boy the same as for their own biological son. If the woman breastfeeds a female infant, she also becomes a daughter to them both, with all the restrictions of marriage applying to her as if she is their own biological daughter. This is because the Messenger of Allah (SA) said, “Breastfeeding results in the same restrictions caused by consanguinity.” [XI.4.4]	فَمَتَى أَرْضَعَتِ الْمَرْأَةُ طِفْلاً، صَارَ ابْنًا لَهَا وَلِلرَّجُلِ الَّذِيْ ثَابَ اللَّبَنُ بِوَطْئِهِ، فَيَحْرُمُ عَلَيْهِ كُلُّ مَنْ يَحْرُمُ عَلَىٰ ابْنِهِمَا مِنَ النَّسَبِ، وَإِنْ أَرْضَعَتْ طِفْلَةً، صَارَتْ بِنْتًا لَهُمَا تَحْرُمُ عَلَىٰ كُلِّ مَنْ تَحْرُمُ عَلَيْهِ ابْنَتُهُمَا مِنَ النَّسَبِ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «يَحْرُمُ مِنَ الرَّضَاعَةِ مَا يَحْرُمُ مِنَ النَّسَبِ».

[XI.4.3] When Is the Husband Considered to Cause the Milk Production?

The husband is considered to be the cause of producing milk (or enhancing it) through intercourse and the consequent pregnancy and childbirth.

(a) + (-M, -s): He can become the child’s milk-father without the woman conceiving by him when the milk is legally attributed to his intercourse with her. The Mâlikis specify intercourse with ejaculation before the nursing. This paternal affiliation is also recognized in a non-preferred Shâfi‘i report; it is not the relied-upon Ḥanafi or Shâfi‘i position.

(A): The milk that causes prohibition is only that which is consequent to pregnancy.

[XI.4.4] (Ag – from ‘Â’ishah)

The Differences Between Prohibition by Breastfeeding and Consanguinity

To understand the differences, imagine the child being transplanted into a foster-family without the milk-mother being transplanted into his biological family. The child and his or her progeny would be forbidden to members of the foster (milk) family as if the milk-mother was the child's real mother and her husband was the child's real father. The milk-mother would not be forbidden to members of the child's biological family, though, so she could marry his or her biological ancestors and siblings.

The legally prohibitive breastfeeding is whatever milk enters the throat, whether by suckling or through drenching (pouring milk into the throat) or nasal feeding; [XI.4.5] and whether it was pure or mixed, as long as it is not diluted to insignificance (by the other substance). [XI.4.6]	وَالرَّضَاعُ الْمُحَرِّمُ مَا دَخَلَ الْحَلْقَ مِنَ اللَّبَنِ، سَوَاءٌ دَخَلَ بِارْتِضَاعٍ مِنَ الثَّدْيِ، أَوْ وَجُوْرٍ، أَوْ سَعُوْطٍ، مَحْضًا كَانَ، أَوْ مَشُوْبًا إِذَا لَمْ يُسْتَهْلَكْ.

[XI.4.5] Actual Suckling from the Breast Is Not Required

For the Prophet (SA) said:

«لَا رضَاعَ إِلَّا مَا أَنْبَتَ اللَّحْمَ وَأَنْشَزَ الْعَظْمَ»

"Breastfeeding is not legally consequential except what produces the growth of flesh and bones." (D – from Ibn Mas'ood; al-Albâni: S)

And feeding through those alternative routes does that just like suckling.

[XI.4.6] When Is the Milk Too Diluted?

As long as you can still recognize that the mixture contains milk, it will cause the restrictions of breastfeeding if given to the infant.

(A): Regardless of the percentage of milk in the mixture.

(a): Only if the milk is more than the other substance.

It is prohibitive only upon the fulfillment of three conditions. First: it should be human milk of a woman, [XI.4.7] whether she is a virgin or non-virgin; [XI.4.8] during her life or after her death. [XI.4.9] The milk of beasts, men, [XI.4.10] and the ambiguous hermaphrodite are not legally prohibitive.	وَلَا يُحَرِّمُ إِلَّا بِشُرُوْطٍ ثَلَاثَةٍ، أَحَدُهَا: أَنْ يَكُوْنَ لَبَنُ امْرَأَةٍ، بِكْرًا كَانَتْ أَوْ ثَيِّباً، في حَيَاتِهَا أَوْ بَعْدَ مَوْتِهَا، فَأَمَّا لَبَنُ الْبَهِيْمَةِ أَوِ الرَّجُلِ أَوِ الْخُنْثَى الْمُشْكِلِ، فَلَا يُحَرِّمُ شَيْئاً.

[XI.4.7] Muslim or non-Muslim

Muslim women may breastfeed non-Muslim children, and non-Muslim women may breastfeed Muslim children, for all of this is part of the kindness shown to all people.

[XI.4.8] Does the Virgin Woman's Breastfeeding Count?

(a) + (-H, -M, -S): It counts. This is also the position chosen by Ibn Qudâmah.

(A): Milk produced without a preceding pregnancy does not establish the prohibitions of breastfeeding; the classical explanation is that this is an unusual source of nourishment.

[XI.4.9] Milk-Motherhood Established After Death

(A) + (+H, +M): It is established in the rare circumstance that an infant gets the fifth suckling after the woman's death, or it is extracted before her death and the infant drinks it (from a cup, for example) after her death.

(-S): Milk taken from her body after death does not establish milk-kinship. Milk expressed during her life and drunk by the infant after her death does establish it, provided the other conditions are met.

[XI.4.10] In the event that a man is able to produce milk due to an illness or some other reason.

Second: it should be within the first two years, due to the statement of the Messenger of Allah (SA), “Breastfeeding is not legally consequential unless it expands the stomach and happens before the age of weaning.” [XI.4.11]	الثَّانِيْ: أَنْ يَكُوْنَ فِيْ الْحَوْلَيْنِ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَا يُحَرِّمُ مِنْ الرَّضَاعَةِ إِلَّا مَا فَتَقَ الْأَمْعَاءَ وَكَانَ قَبْلَ الْفِطَامِ.»

[XI.4.11] (T – from Umm Salamah; T: RS)

The Controversy over Breastfeeding al-Kabeer (Older than Two Years)

Allah said:

{وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ ۖ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَاعَةَ}

{Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]...} (al-Baqarah 2:233)

(A) + (+H, +M, +S): In addition to this verse and the hadith mentioned in the author’s text, there are multiple other reports indicating that the legally consequential breastfeeding is only that which takes place in the child’s first two years of life.

(There are variations: Abu Ḥaneefah: 30 months. The Mâliki position extends the period to 26 months, provided the child has not already been definitively weaned and become independent of milk through food.)

There is, however, an authentic hadith that the Prophet (SA) said to Abu Ḥudhayfah’s wife, concerning Abu Ḥudhayfah’s freed slave Sâlim:

«أَرْضِعِيهِ تَحْرُمِي عَلَيْهِ»

“Breastfeed him, and then you will become his maḥram.” (M – from ‘Â’ishah)

This happened after adoption was prohibited. Sâlim was their adoptee and a young adult, but he had nowhere else to go, so the Prophet

(SA) allowed her to do that in this special situation. Some of the scholars considered the breastfeeding of anyone older than two years to be prohibitive; that is the position of ‘Abdullâh ibn az-Zubayr, ‘Urwah, al-Qâsim ibn Muhammad, ‘Aṭâ’, and was most defended by Imam Ibn Ḥazm. Before that, it was adopted by ‘Â’ishah (rah). However, Umm Salamah and all other wives of the Prophet (SA) (except Ḥafṣah, as reported by aṭ-Ṭabari) refused that position and told ‘Â’ishah, “By Allah, we do not know whether that was a special concession granted by the Prophet (SA) to Sâlim, exclusive (to him) of the people.” The majority followed the reasoning of Umm Salamah and the Prophet’s other wives, considering this ruling to be exclusive for Sâlim or abrogated by the specification of the two-year term. Imams Ibn Taymiyah and Ibn al-Qayyim took a middle position. They considered it prohibitive only when there was a need similar to that of Abu Ḥudhayfah’s family, as in the case of orphans who would otherwise have no homes to accommodate them because of the problem of mixing between sexes and rules of hijab.

Keep in mind that it is sufficient to feed this older child the breastmilk from a cup.

(See the appendices on the agreement of the four madh-habs and the utility of weak positions.)

Third: The number of breastfeedings must be five, [XI.4.12] due to ‘Â’ishah’s statement, “It was revealed in the Qur’an, ‘ten breastfeedings shall cause prohibition’, and then this was abrogated by ‘five’. This matter was already settled by the time the Messenger of Allah (SA) died.” [XI.4.13]	الثَّالِثُ: أَنْ يَرْتَضِعَ خَمْسَ رَضَعَاتٍ؛ لِقَوْلِ عَائِشَةَ رَضِيَ اللهُ عَنْهَا: «أُنْزِلَ فِي الْقُرْآنِ عَشْرُ رَضَعَاتٍ يُحَرِّمْنَ فَنُسِخَ مِنْ ذَلِكَ خَمْسٌ فصَارَ إِلَى خَمْسِ رَضَعَاتٍ مَعْلُومَاتٍ يُحَرِّمْنَ فَتُوُفِّيَ رَسُولُ اللَّهِ ﷺ وَالْأَمْرُ عَلَى ذَلِكَ.»

[XI.4.12] The Number of Feedings Needed to Cause Restrictions Is Controversial

The most popular positions are two:

(A) + (+S): Five times. The hadith cited here and others support this position.

(a) – (-H, -M): One time. They cited the generalities of the Qur'an and Sunnah.

[XI.4.13] (M). In another report, 'Â'ishah added, "The Messenger of Allah (SA) died, and it (the five feedings) was still being recited as part of the Qur'an." (M) This means that the abrogation of the recitation (not the ruling) of this verse was so late in his life that by the time of his death, many had not heard about it yet.

The one who said, "This matter was already settled by the time the Messenger of Allah (SA) died" was az-Zuhri, as pointed out by Ibn Ḥajar.

If a man has more than one wife, there are additional restrictions caused by milk produced as a result of conjugal relations between him and his wives. If a man has two wives, and one wife breastfeeds a male infant (with the milk caused by him) while the other wife breastfeeds a female infant, the two infants become brother and sister through breastfeeding. This is because the fertilizer (semen) is one. [XI.4.14]	وَلَبَنُ الْفَحْلِ مُحَرِّمٌ، فَإِذَا كَانَ لِرَجُلٍ امْرَأَتَانِ فَأَرْضَعَتْ إِحْدَاهُمَا بِلَبَنِهِ طِفْلاً وَالأُخْرَى طِفْلَةً صَارَا أَخَوَيْنِ لِأَنَّ اللِّقَاحَ وَاحِدٌ.

[XI.4.14] The Milk-Father

Ibn 'Abbâs was asked about two women who were married to the same man. If one of them nursed a boy, and the other nursed a girl, would it be possible for the boy and the girl to get married? He said no because the liqâḥ (semen that caused the production of milk) is one. (T – from Ibn 'Abbâs; T: Auth chain) Moreover, this is the general implication of the Prophet's statement, "Breastfeeding results in the same restrictions caused by consanguinity," for this man is a father.

If one of (the wives) breastfeeds a female infant three times, and the other one breastfeeds her two times, she becomes his daughter but not theirs. [XI.4.15]	وَإِنْ أَرْضَعَتْ إِحْدَاهُمَا لِلَبَنِهِ طِفْلَةً ثَلَاثَ رَضَعَاتٍ، ثُمَّ أَرْضَعَتْهَا الْأُخْرَى رَضْعَتَيْنِ صَارَتْ بِنْتًا لَهُ دُوْنَهُمَا.

[XI.4.15] Although less obvious, it could also be deduced from the report from Ibn ʻAbbâs above.

From this point, most of the following paragraphs, until the discussion of claims, will be to exercise the fiqhi mind; you may call them fiqhi riddles.

If the female infant is his wife, their marriage becomes void, and he owes her half of her ṣadâq. He recovers this from the two wives in fifths [according to their respective feedings], and his marriages to them remain intact. If one of his two wives breastfeeds the girl five times, three with milk attributable to him and two with milk attributable to another man, she becomes the girl's mother, and both become unlawful to him. The girl also becomes permanently unlawful to the other man. If the girl is not his wife, his marriage to the nursing woman remains intact. If a woman marries a male infant and then breastfeeds him five times, she becomes unlawful to him, and their marriage becomes void. She also becomes unlawful to the man who caused the production of the milk, since she was once the wife of one of his children. [XI.4.16]	فَلَوْ كَانَتِ الطِّفْلَةُ زَوْجَةً لَهُ، انْفَسَخَ نِكَاحُهَا، وَلَزِمَهُ نِصْفُ صَدَاقِهَا، يَرْجِعُ بِهِ عَلَيْهِمَا أَخْمَاسًا، وَلَمْ يَنْفَسِخْ نِكَاحُهُمَا. وَلَوْ أَرْضَعَتْ إِحْدَى امْرَأَتَيْهِ الطِّفْلَةَ خَمْسَ رَضَعَاتٍ، ثَلَاثًا مِنْ لَبَنِهِ، وَاثْنَتَيْنِ مِنْ لَبَنِ غَيْرِهِ، صَارَتْ أُمًّا لَهَا، وَحَرُمَتَا عَلَيْهِ، وَحَرُمَتِ الطِّفْلَةُ عَلَى الرَّجُلِ الْآخَرِ عَلَى التَّأْبِيْدِ، وَإِنْ لَمْ تَكُنِ الطِّفْلَةُ امْرَأَةً لَهُ، لَمْ يَنْفَسِخْ نِكَاحُ الْمُرْضِعَةِ. وَلَوْ تَزَوَّجَتِ الْمَرْأَةُ الْمُرْضِعَةُ طِفْلاً، فَأَرْضَعَتْهُ خَمْسَ رَضَعَاتٍ، حَرُمَتْ عَلَيْهِ، وَانْفَسَخَ نِكَاحُهَا، وَحَرُمَتْ عَلَى صَاحِبِ اللَّبَنِ تَحْرِيْمًا مُؤَبَّدًا؛ لِأَنَّهَا صَارَتْ مِنْ حَلَائِلِ أَبْنَائِهِ.

[XI.4.16] For example: Her husband makes her pregnant and then divorces her, and then after childbirth, she marries an infant and breastfeeds him. This makes the infant her milk-son, who is forbidden to her (as a husband). She cannot remarry the ex-husband, either, because he has become the milk-father of the infant husband. (Discussing this hypothesis is important to clarify the matter. See the appendix on The Age of Marriage in Islam.)

Subsection: If a man marries an adult woman and does not consummate the marriage with her, and he also marries an infant, and then the adult woman breastfeeds the infant, the adult woman's marriage becomes void, and the infant's marriage is not voided. [XI.4.17]	فَصْلٌ: وَلَوْ تَزَوَّجَ رَجُلٌ كَبِيْرَةً وَلَمْ يَدْخُلْ بِهَا، وَصَغِيْرَةً، فَأَرْضَعَتِ الْكَبِيْرَةُ الصَّغِيْرَةَ، حَرُمَتِ الْكَبِيْرَةُ، وَثَبَتَ نِكَاحُ الصَّغِيْرَةِ.

[XI.4.17] When the wife breastfeeds the infant, she becomes her milk-mother. As the mother of the man's wife, she is forbidden to him because the prohibition of the wife's mother goes into effect upon the completion of the contract, whereas the prohibition of the wife's daughter goes into effect only after the consummation of the marriage.

If he is married (contracted) to two young girls, and his adult (contracted) wife breastfeeds them, the adult wife becomes unlawful to him. His marriage to the two young girls becomes annulled, [XI.4.18] but he can remarry either one of them afterwards. [XI.4.19]	وَإِنْ كَانَتَا صَغِيْرَتَيْنِ، فَأَرْضَعَتْهُمَا الْكُبْرٰى، حَرُمَتِ الْكُبْرٰى، وَانْفَسَخَ نِكَاحُ الصَّغِيْرَتَيْنِ، وَلَهُ نِكَاحُ مَن شَاءَ مِنَ الصَّغِيرَتَيْنِ.

[XI.4.18] Because they are now milk-sisters, so they may not be co-wives.

[XI.4.19] They are not permanently prohibited since he has not consummated the marriage with their milk-mother. What is forbidden for him is to combine the two milk-sisters in marriage at the same time.

If they are three, and the adult wife breastfeeds them at different times, she	وَإِنْ كُنَّ ثَلَاثاً فَأَرْضَعَتْهُنَّ مُنْفَرِدَاتٍ، حَرُمَتِ الْكُبْرٰى، وَانْفَسَخَ نِكَاحُ

becomes unlawful to him. His marriages to the two who breastfed first become null, but the marriage to the third one is still valid. [XI.4.20]	الْمُرْضَعَتَيْنِ أَوَّلاً، وَثَبَتَ نِكَاحُ الثَّالِثَةِ.

[XI.4.20] In this scenario, he is married to four wives (without consummation); one is older, and the other three are infants. After feeding any of the infant wives five times, the older wife becomes forbidden to him because she has become a mother to his infant wife (and thus become his mother-in-law). The first two she feeds become milk-sisters of each other; therefore, their marriages are voided since he cannot combine two sisters in marriage. Their marriages are void by the time the third becomes their milk-sister, so the marriage of the third (the last one to be nursed by the woman who is now his ex-wife) remains valid.

If the adult wife breastfeeds one first, separately, and then she breastfeeds the other two simultaneously, the marriages of all three of them become void. [XI.4.21] Afterwards, he can select one of them to remarry.	وَإِنْ أَرْضَعَتْ إِحْدَاهُنَّ مُنْفَرِدَةً وَاثْنَتَيْنِ بَعْدَهَا مَعًا، انْفَسَخَ نِكَاحُ الثَّلَاثِ، وَلَهُ نِكَاحُ مَنْ شَاءَ مِنْهُنَّ مُنْفَرِدَةً.

[XI.4.21] Because they simultaneously became milk-sisters while married to the same man.

If he has consummated his marriage with the adult one, then all of them become permanently unlawful for him. [XI.4.22] The adult wife does not deserve any *ṣadâq* (mahr, or bridal dower) if he has not consummated the marriage with her yet. [XI.4.23] If he has, then she is entitled to her ṣadâq. [XI.4.24] He owes the young ones half of their ṣadâq, which he may demand from the adult wife. [XI.4.25]	وَإِن كَانَ دَخَلَ بِالْكُبْرَى حَرُمَ الكُلُّ عَلَيْهِ عَلَى الأبَدِ. وَلَا مَهْرَ لِلْكُبْرٰى إِنْ كَانَ لَمْ يَدْخُلْ بِهَا، وَإِنْ كَانَ قَدْ دَخَلَ بِهَا، فَلَهَا مَهْرُهَا. وَعَلَيْهِ نِصْفُ مَهْرِ الْأَصَاغِرِ، يَرْجِعُ بِهِ عَلَىٰ الْكُبْرٰى.

[XI.4.22] In this scenario, the infant wives become permanently forbidden to him because they are the milk-daughters of a wife with whom he consummated the marriage.

[XI.4.23] In this case, she loses the ṣadâq because it was her breastfeeding of his wives that made her prohibited to him.

[XI.4.24] The ṣadâq becomes binding upon consummation, and he may not take it back even if her own action is what caused her to be prohibited to him.

[XI.4.25] He must pay the infant wives half of their ṣadâq because that is what is required upon separation after the contract but before the marriage has been consummated. He may demand that the older wife compensate him for their ṣadâq because she is the one who made them forbidden to him.

If the young wife suckles five times from the adult wife while she is asleep, she makes her unlawful to the husband, and the adult wife is entitled to half of her ṣadâq, which he can demand from the young one if her marriage has not been consummated. [XI.4.26] If it is after consummation, the adult wife is entitled to all of her bridal dower, which he cannot demand from anyone. [XI.4.27] The young one is not entitled to any bridal dower.	وَلَوْ دَبَّتِ الصُّغْرٰى إِلَى الْكُبْرٰى وَهِيَ نَائِمَةٌ، فَارْتَضَعَتْ مِنْهَا خَمْسَ رَضَعَاتٍ، حَرَّمَتْهَا عَلَى الزَّوْجِ، وَلَهَا نِصْفُ مَهْرِهَا عَلَيْهِ يَرْجِعُ بِهِ عَلَى الصُّغْرٰى، إِنْ كَانَ قَبْلَ الدُّخُوْلِ، وَإِنْ كَانَ بَعْدَهُ، فَلَهَا مَهْرُهَا كُلُّهُ، لَا يَرْجِعُ بِهِ عَلَى أَحَدٍ، وَلَا مَهْرَ لِلصُّغْرٰى.

[XI.4.26] In terms of religion, children are not liable for their mistakes; legally, though, they may be liable for financial losses they cause someone else through their actions.

[XI.4.27] The ṣadâq becomes due upon consummation. He may not ask for compensation because the ṣadâq became due before the wife was made forbidden to him.

If he marries a woman and then says, “She is my sister through breastfeeding,”	وَلَوْ نَكَحَ امْرَأَةً، ثُمَّ قَالَ: هِيَ أُخْتِيْ مِنَ الرَّضَاعِ،

her marriage becomes null, and she is entitled to her ṣadâq if he has already consummated the marriage. If not, she is entitled to half of the ṣadâq if she rejects his claim. If she acknowledged his claim before the consummation, she is not entitled to anything. If she is the one to say that he is her brother through breastfeeding, but he rejects her claim and she has no proof, then she continues to be his wife legally. [XI.4.28]	انْفَسَخَ نِكَاحُهُ وَلَهَا الْمَهْرُ إِنْ كَانَ دَخَلَ بِهَا، أَوْ نِصْفُهُ إِنْ كَانَ لَمْ يَدْخُلْ بِهَا وَلَمْ تُصَدِّقْهُ. وَإِنْ صَدَّقَتْهُ قَبْلَ الدُّخُوْلِ، فَلَا شَيْءَ لَهَا. وَإِنْ كَانَتْ هِيَ الَّتِيْ قَالَتْ: هُوَ أَخِيْ مِنَ الرَّضَاعِ، فَأَكْذَبَهَا وَلَا بَيِّنَةَ لَهَا، فَهِيَ امْرَأَتُهُ فِي الْحُكْمِ.

[XI.4.28] The Claim of a Breastfeeding Bond by One of the Spouses

Legally, she is his wife; however, if he is lying, she is not his wife in the sight of Allah, and he will be liable in the hereafter for this enormous abomination. In the previous case, the claimant was the husband. He is the one who holds the right to divorce, so he must separate from the wife. In this case, the wife is making her claim without offering proof, so the judge will not grant her a divorce. Still, if she knows that the man is her milk-brother, she must do everything within her capacity to separate from him, including running away and seeking khul‘.

[XI.5] Chapter on Marriage to Unbelievers

بَابُ نِكَاحِ الْكُفَّارِ

It is not permissible for a female Muslim to marry an unbeliever under any condition. [XI.5.1] Nor is it allowable for a male Muslim to marry an unbeliever except a free woman from the People of the Book (the Jews and the Christians). [XI.5.2]	لَا يَحِلُّ لِمُسْلِمَةٍ نِكَاحُ كَافِرٍ بِحَالٍ، وَلَا لِمُسْلِمٍ نِكَاحُ كَافِرَةٍ، إِلَّا الْحُرَّةَ الْكِتَابِيَّةَ.

[XI.5] Introduction to the Chapter on Inter-Religious Marriages

In this chapter, you will come to know that it is categorically impermissible for Muslim women to marry non-Muslim men. The same is true for Muslim men except that it is permissible, though disliked, for them to marry Jewish and Christian women in the lands of Islam. The reason behind discouraging or prohibiting inter-religious marriages is that people should look for commonalities when they seek a life partner. The journey of life is full of challenges, and the initial attraction may fade away with the test of time. Muslims, in particular, live their lives according to their religion, which guides their actions from the beginning of the day to the end and which makes up a very large component of their identity and lifestyle. In addition, in Islam, the spouses help one another to serve God by going to the mosque together, waking each other up for prayer, supporting one another during long days of fasting, etc. More importantly, they should raise their children jointly and harmoniously, without causing them confusion or distress.

The distinction between the ruling concerning Muslim men and women regarding marriage to non-Muslims is because of the undeniable differences between the roles of husbands and wives within the household. It is easier for a Muslim man to practice his religion while being married to a non-Muslim woman than for a Muslim woman married to a non-Muslim man. For example, a Muslim woman is prohibited from having intercourse during her menstrual periods and on days on which she is fasting, and this restriction may not necessarily be honored by a non-Muslim husband. Muslim men must avoid all forms of injustice towards their wives, including any form of religious compulsion for non-Muslim wives; they are meant to

allow them to worship God as instructed by their religion. In *Aḥkâm Ahl adh-Dhimmah*, Ibn al-Qayyim explained that the Muslim man must avoid marital relations with his wife if she is required to refrain from that during her mandatory fasting. Muslims believe in the Divine origin of Judaism and Christianity and are required to revere Prophets Moses and Jesus, but the opposite is not true for the Jews and Christians, who may not recognize the Qur'an and Prophet Muhammad (SA). Finally, Islam ensures the commitment of its followers to its tenets by the necessary legislations, and while it permits Muslim men to marry Jewish and Christian women, it does not force the women to accept those marriages.

[XI.5.1] Muslim Women Are Forbidden from Marrying Any Non-Muslim Men

The Qur'an categorically prohibits the marriage of a Muslim woman to a non-Muslim man. Allah says:

{يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لا هُنَّ حِلٌّ لَهُمْ وَلا هُمْ يَحِلُّونَ لَهُنَّ وَآتُوهُمْ مَا أَنْفَقُوا وَلا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ وَلا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ.}

{O you who have believed, when the believing women come to you as emigrants, examine them. Allah is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them. But give the disbelievers what they have spent. And there is no blame upon you if you marry them when you have given them their due compensation. And hold not to marriage bonds with disbelieving women...} (al-Mumtaḥinah 60:10)

Allah also said:

{وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ وَلأَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِنْ مُشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِنْ مُشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَئِكَ يَدْعُونَ

إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ}
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{And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite [you] to the fire, but Allah invites to paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.} (al-Baqarah 2:221)

The verses above indicate that it is generally prohibited for Muslim men and women to marry non-Muslims. There is no exception from that for Muslim women.

[XI.5.2] Muslim Men Marrying Non-Muslim Women

In the verses above, Muslim men are forbidden from marrying non-Muslim women, but aside from that general prohibition, Allah specifically gives men permission to marry women from the People of the Book:

📖 {…And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you...} (al-Mâ'idah 5:5) 📖 {وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِن قَبْلِكُمْ}

Islam allows Muslim men to marry women from the People of the Book because their books have instructions about marriage, chastity and manners that are compatible with Islamic teachings. Despite this permissibility, though, it is still disliked. Moreover, this permissibility pertains to marrying a Jewish or Christian woman in the land of Islam; the ruling on marrying them in non-Muslim lands is different.

The non-Muslim lands are either lands of war or peace ('ahd: a treaty of peace). Wherever Muslims have the right to practice their religion, the suggested term would be Dâr al-Amn (دارُ الأمْنِ , or "abode of security"). In the land of war, all scholars agree that marriage to non-Muslim women is at best disliked, and some go as far as forbidding it, including (A) + (+H, as

Ibn ‘Âbideen clarified that it is makrooh taḥreeman, or prohibitively disliked, in their madh-hab).

In the classical sources of fiqh, there is no detailed discussion of the issue in the land of ‘ahd. However, one can extrapolate from the analysis of the causes of prohibition in the land of war that many scholars would have said the same about the land of ‘ahd. There, too, the Muslim will be putting at risk his children’s adherence to Islam, especially in case of disputes. Additionally, some of the Companions, including ‘Umar ibn al-Khaṭṭâb, prevented Muslims in the newly opened lands from marrying non-Muslim women because this might put Muslim women at a disadvantage and cause them undue trials.

Upon the conversion to Islam by the husband of a woman from the People of the Book, or the conversion of two unbelievers simultaneously, their marriage remains in effect. [XI.5.3]	وَمَتَى أَسْلَمَ زَوْجُ الْكِتَابِيَّةِ، أَوْ أَسْلَمَ الزَّوْجَانِ الْكَافِرَانِ مَعًا، فَهُمَا عَلَىٰ نِكَاحِهِمَا.

[XI.5.3] Marriages Conducted Before Islam Are Considered Valid

This is always true unless there is a cause to prevent their continuation, such as when they are incestuous relationships. Many married couples accepted Islam during the Prophet’s time, and he did not demand their remarriage. In the two examples given, there is no cause to dissolve those marriages.

[One of the Spouses Changing Their Religion]

Aside from the husband of a woman from the People of the Book, if one of two unbelieving spouses converts to Islam, or one of two Muslim spouses apostatizes, and this is before the consummation, the marriage becomes annulled immediately. [XI.5.4] If this happens after the consummation, but the disbelieving spouse becomes	وَإِنْ أَسْلَمَ أَحَدُهُمَا، غير زَوْجِ الْكِتَابِيَّةِ، أَوِ ارْتَدَّ أَحَدُ الزَّوْجَيْنِ الْمُسْلِمَيْنِ قبل الدخول انْفَسَخَ النِّكَاحُ في الحالِ. وَإِنْ كَانَ ذٰلِكَ بَعْدَ الدُّخُوْلِ، فَأَسْلَمَ الْكَافِرُ مِنْهُمَا فِيْ عِدَّتِهَا، فَهُمَا عَلَىٰ نِكَاحِهِمَا، وَإِلَّا تَبَيَّنَا

Muslim before the end of the ‘iddah, then their original marriage remains in effect. [XI.5.5] Otherwise, the marriage will be considered to have been annulled as of the time their religions differed.	أَنَّ النِّكَاحَ انْفَسَخَ مُنْذُ اخْتَلَفَ دِيْنُهُمَا.

[XI.5.4] Because inter-religious marriages are forbidden for Muslims, except for the case of a Muslim man marrying a woman from the People of the Book.

A Muslim woman’s conversion to Judaism or Christianity is considered apostasy, causing annulment of her marriage.

[XI.5.5] For example, if two atheists are married, and then one of them accepts Islam, their marriage is suspended (but not annulled) until the end of the woman’s ‘iddah. If the other spouse also becomes Muslim before it ends, the marriage resumes without a need for a new contract. On the other hand, if the other spouse fails to accept Islam before the end of the ‘iddah, the marriage is annulled retroactively from the time that one of them accepted Islam.

Another narration from Aḥmad states that the separation is immediate and not contingent upon the ending of the ‘iddah, but the narration chosen in this book seems stronger. In its support, Ibn al-Qayyim argued in Zâd al-Ma‘âd that thousands of couples accepted Islam during the life of the Prophet (SA). In many cases, one of them must have converted before the other by a short or long period, yet we do not know of the Prophet (SA) asking them later to redo their marriages. In certain cases, we are sure of one preceding the other, such as Abu Sufyân converting before his wife Hind, and the wives of Ṣafwân ibn Umayyah and ‘Ikrimah ibn Abi Jahl converting before their husbands. Ibn al-Qayyim goes as far as to say that the marriage will be suspended until the end of the ‘iddah. After that, the woman may marry another man, but if she chooses to wait for her husband, their marriage will remain suspended until his conversion. If he converts at any time, the marriage resumes without a need for a new contract.

The same applies to a Christian couple if the wife accepts Islam. If it is the husband who becomes Muslim, they may continue their marriage.

[He Gave Her a Haram Dowry Before Their Conversion]

If (a ṣadâq) was assigned while they were unbelievers, and the wife received it while they were unbelievers, then nothing else is due to her even if (that ṣadâq) was unlawful. [XI.5.6] If she has not received it, and it is unlawful, she will have the ṣadâq of a woman her equal, [XI.5.7] or half of that when indicated. [XI.5.8]	وَمَا سُمِّيَ لَهَا وَهُمَا كَافِرَانِ فَقَبَضَتْهُ فِيْ كُفْرِهَا، فَلَا شَيْءَ لَهَا غَيْرَهُ، وَإِنْ كَانَ حَرَامًا، وَإِنْ لَمْ تَقْبِضْهُ وَهُوَ حَرَامٌ، فَلَهَا مَهْرُ مِثْلِهَا، أَوْ نِصْفُهُ حَيْثُ وَجَبَ ذٰلِكَ.

[XI.5.6] The unlawful ṣadâq already received before conversion is not reopened or replaced merely because the spouses enter Islam; their settled past dealings are left undisturbed. This does not mean that non-Muslims were never addressed by the obligations and prohibitions of the Sharia. (Examples of unlawful dowries are a herd of pigs or a barrel of wine.)

They Converted Before He Gave Her the Ṣadâq

[XI.5.7] Because they are now Muslim, she may not accept an unlawful ṣadâq.

[XI.5.8] Half of the ṣadâq is due on the husband if he divorces his wife before consummating the marriage.

	فَصْلٌ: وَإِنْ أَسْلَمَ الْحُرُّ وَتَحْتَهُ إِمَاءٌ فَأَسْلَمْنَ مَعَهُ، وَكَانَ فِيْ حَالِ اجْتِمَاعِهِمْ عَلَىٰ الْإِسْلَامِ مِمَّنْ لَا يَحِلُّ لَهُ نِكَاحُ الْإِمَاءِ، انْفَسَخَ نِكَاحُهُنَّ، وَإِنْ كَانَ مِمَّنْ يَحِلُّ لَهُ نِكَاحُهُنَّ، أَمْسَكَ مِنْهُنَّ مَنْ تُعِفُّهُ، وَفَارَقَ سَائِرَهُنَّ.

[XI.6] Chapter on Conditions in Marriage

بَابُ الشُّرُوْطِ فِيْ النِّكَاحِ

If the woman stipulates (in the marriage contract) that she will not be removed from her residence or town, or that he may not have a co-wife or concubine, she is entitled to her condition. If he does not honor it, she is entitled to annulment of the marriage. [XI.6.1] This is because the Messenger of Allah (SA) said, "The conditions that most deserve to be fulfilled are those through which sexual intercourse becomes permissible for you." [XI.6.2]	إِذَا اشْتَرَطَتِ الْمَرْأَةُ دَارَهَا، أَوْ بَلَدَهَا، أَوْ أَنْ لَا يَتَزَوَّجَ عَلَيْهَا، أَوْ أَنْ لَا يَتَسَرَّى، فلها شرطها، وإن لم يَفِ بِهِ فَلَهَا فَسْخُ النِّكَاحِ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «إِنَّ أَحَقَّ الشُّــرُوْطِ أَنْ تُـوَفُّــوْا بِهِ مَا اسْـتَحْلَلْتُمْ بِهِ الْفُـرُوْجَ.»

[XI.6] Introduction

Imam Ibn Qudâmah begins this chapter by addressing the default in prenuptial agreements, which is their validity. Then he mentions a few examples of invalid agreements, namely: shighâr (swap) marriage, mut'ah (temporary) marriage and taḥleel (marriage to make a wife permissible for an ex-husband).

[XI.6.1] The Prenuptial Conditions

In addition to the hadith above, the Messenger of Allah (SA) also said:

«وَالْمُسْلِمُونَ على شُرُوطِهِمْ إلا شَرْطًا حَرَّمَ حَلَالًا أو أَحَلَّ حَرَامًا.»

"Muslims abide by their conditions, except a condition that will make haram what is halal or make halal what is haram." (T – from 'Amr ibn 'Awf; T: RS)

Based on these two hadiths, the madh-hab of Imam Aḥmad is the most accommodating of prenuptial conditions. The other three madh-habs do not honor the stipulation that the husband not take another wife. Their

argument is the Prophet's saying in the hadith above, "except a condition that will make haram what is halal or make halal what is haram." They also cite his saying:

«فَأَيُّمَا شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ ، وَإِنْ كَانَ مِائَةَ شَرْطٍ»

"Any condition that is not in the book of Allah is invalid, even if they are 100 conditions." (B – from 'Â'ishah)

The Ḥanbalis, as clarified by Imam Ibn Qudâmah in *al-Mughni*, argue that this condition of not taking another wife does not forbid a permissible action; instead, it restricts the man's power and gives the wife the right to annul the marriage. They also argue that his saying, "Any condition that is not in the book of Allah," refers to a condition that is counter to His law, not that the conditions must all be mentioned in His book.

In *al-Fatâwâ al-Kubrâ*, Imam Ibn Taymiyah was asked about a man who married a woman on condition that he not take another wife or make her relocate, and that she be allowed to live with her mother. His answer was:

Yes, these conditions and similar ones are valid according to the madh-hab of Imam Aḥmad and others among the Companions and tâbi'een, like 'Umar ibn al-Khaṭṭâb, 'Amr ibn al-'Âṣ, Shurayḥ al-Qâḍi, al-Awzâ'i, and Is-ḥâq. The madh-hab of Mâlik is that if he agrees that she will be in control of her destiny if he takes another wife or a concubine, then she has the right to separation if he does. This is similar in substance to the view of Aḥmad… And 'Umar ibn al-Khaṭṭâb said:

«مَقاطِعُ الحُقوقِ عِندَ الشُّروطِ»

"Rights hinge upon conditions."

◷ In current family laws in Saudi Arabia, Syria, Jordan, Egypt, and Lebanon, women can stipulate in the marriage contract that the husband cannot take another wife. If the husband breaches this term of the marriage contract, the woman has the right to divorce.

Classification of Prenuptial Agreements (Summarized from *al-Mughni*)

1. Valid conditions

E.g.: She stipulates that he not take a co-wife or make her relocate.

These conditions are legally effective: if the husband breaches them, the wife has the right to seek annulment. The relied-upon Ḥanbali texts describe fulfillment as recommended, while Ibn Taymiyah favored making it obligatory. They entail a benefit for one of the spouses and do not violate the Sharia or the requirements of the marriage contract.

◷ According to the principles of (A), other conditions like the liberty to complete her education or pursue a halal occupation are also valid.

(-H, -M, -S): The husband is not required to abide by any of the above conditions.

◷ (H): The wife's demanding the right to divorce herself is a valid condition if it comes from her but not if it is offered by the husband. In other words, if the wife makes the eejâb (offer) of marriage with this condition, and the husband gives his qabool (acceptance), then the condition is binding. (-M, -S, -Z) and the majority of other scholars: This condition is invalid because it takes away the qiwâmah (leadership of the household) from the man. It also defies the rationale for entrusting him with divorce, which is that he is less emotional and more analytical, and in particular that he bears the financial burden of making and breaking the family. This does not mean the wife has no access to divorce; this is given to her through the court or khul'. It only means in the interest of herself, her spouse, and the entire family, it should not be at her fingertips.

◷ (See the Chapter on Explicit and Implicit Divorce for a discussion of this matter when it occurs after the marriage is finalized.)

2. Invalid conditions that do not invalidate the contract

E.g.: If he stipulates that he does not give her ṣadâq or does not spend on her, or she spends on him, or he gives her fewer nights than the rest of his wives, or if she stipulates that he does not impregnate her. All of these conditions are invalid. They are not counter to the essence of the marriage contract, though, so they will be dropped without invalidating the contract itself.

Note: Some of these conditions, such as her willingly spending on him, may be upheld as long as there is an ongoing mutual agreement. Also, if she willingly continues to accept having fewer nights than his other wives, there is no sin in that; this is what has become known as misyâr marriage, which is no more than a conventional marriage where the wife agrees to the husband spending fewer nights with her. If she subsequently demands equal division of the nights, though, she is entitled to that, and the condition is nullified.

3. Invalid conditions that invalidate the contract

Mut‘ah, shighâr, and taḥleel marriages are discussed in separate commentary notes below.

Additionally, if she stipulates that he not touch her, the stronger position is that this condition invalidates the contract. All of these conditions are counter to the essence of the contract of marriage, or constitute a major violation of its requirements, so they invalidate it.

[XI.6.2] (Ag – from ‘Uqbah ibn ‘Âmir)

The Messenger of Allah (SA) forbade the *mut‘ah* marriage, which means that a man marries a woman for a certain specified period; also, if he stipulates that he will divorce her at a certain time, it is not valid. [XI.6.3]	وَنَهَى رَسُوْلُ اللهِ ﷺ عَنْ نِكَاحِ الْمُتْعَةِ، وَهُوَ أَنْ يَتَزَوَّجَهَا إِلىٰ أَجَلٍ مَعْلُوْمٍ، وَإِنْ شَرَطَ أَنْ يُطَلِّقَهَا فِيْ وَقْتٍ بِعَيْنِهِ، لَمْ يَصِحَّ لِذٰلِكَ.

[XI.6.3] Mut‘ah (Temporary) Marriages

This is when, at the beginning of the marriage, the two parties agree on a fixed term for it. All four madh-habs agree that temporary marriage is invalid. The intended permanency of marriage is a requirement of stable families and societies, and it is essential for the welfare of the offspring. The fact that temporary marriage was allowed at one point during the life of the Prophet (SA), or that some Companions may have been unaware of the prohibition until after his death, should not detract from the definitiveness of this legislation. The same could be said about wine as well. Islam gradually transformed the generation of the Companions from one of the

most lawless communities to the most God-conscious and disciplined one in history. This meant that there were various phases during that transformation.

Marriage with the Intention of Divorce

This is when a man, at the time of the contract, has the intention to divorce his wife-to-be, but he does not make it part of the contract or otherwise inform her of this. The scholars disagree over the validity of this marriage. According to Ibn Qudâmah in *al-Mughni*, and an-Nawawi in Sharḥ Muslim, the marriage is valid according to the vast majority of scholars, with the exception of al-Awzâ'i, who considered it a variant of temporary marriage. The correct position of the madh-hab is the invalidity of this marriage. (A) According to the Permanent Fatwa Committee in KSA:

Getting married with the intention of divorce is a temporary marriage, and that is invalid because it is mut'ah, which is unlawful by consensus. It would be valid if he got married with the intention of keeping his wife if she was good and they got along, but divorcing her otherwise… (Fatâwâ al-Lajnat ad-Dâ'imah, 18:448–449)

The third opinion, which may in fact be what is intended by many of the scholars cited by an-Nawawi and Ibn Qudâmah to validate this type of marriage, is that it is valid but haram. The strength of this position is obvious because of the deception involved and the harm it causes the woman.

In conclusion, marrying with the intention of a subsequent divorce is at least forbidden. It may also result in the invalidity of the marriage, according to some scholars.

And he forbade shighâr, which is for a man to marry his daughter off to another man in exchange for the latter marrying his daughter off to the first man, without a ṣadâq for either one. [XI.6.4]	وَنَهَى عَنِ الشِّغَارِ، وَهُوَ أَنْ يُزَوِّجَ الرَّجُلُ ابْنَتَهُ عَلَىٰ أَنْ يُزَوِّجَهُ ابْنَتَهُ وَلَا صَدَاقَ بَيْنَهُمَا.

[XI.6.4] Shighâr (Swap) Marriages

The Messenger of Allah (SA) forbade the shighâr marriage. (Ag – from Ibn ‘Umar) The term ‘shighâr’ in this hadith was interpreted to mean when one man gives his daughter in marriage to another in exchange for the latter’s daughter, with no ṣadâq. (Some scholars attributed this explanation to Nâfi‘, the narrator who reported from Ibn ‘Umar.)

The Messenger of Allah (SA) forbade the shighâr marriage, explaining:

«وَالشِّغَارُ أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: زَوِّجْنِي ابْنَتَكَ وَأُزَوِّجُكَ ابْنَتِي ، أَوْ زَوِّجْنِي أُخْتَكَ وَأُزَوِّجُكَ أُخْتِي»

“Shighâr means a man saying to another, ‘Give me your daughter in marriage, and I will give you mine,’ or ‘Give me your sister in marriage, and I will give you mine.’” (M – from Abu Hurayrah)

Based on these reports, there are two positions within the Ḥanbali madh-hab regarding the ‘illah (effective cause) of the invalidity of shighâr marriages:

The omission of the ṣadâq and/or making the marriage of one woman the ṣadâq of the other. (A)

The mere fact that one marriage was conditional on another.

The stronger position is that either of these qualifies as an effective cause for the invalidity of such marriages. Great turmoil results from these swap marriages, or subtler variants of them, where the destiny of one marriage hinges on the other.

The Messenger of Allah (SA) cursed the *muḥallil* (one who makes something permissible) and the *muḥallal lahu* (one for whom something is made permissible). This refers to when he marries a woman who was divorced three times, to make her permissible for her ex-husband. [XI.6.5]	وَلَعَنَ رَسُوْلُ اللهِ ﷺ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ، وَهُوَ أَنْ يَتَزَوَّجَ الْمُطَلَّقَةَ ثَلَاثاً؛ لِيُحِلَّهَا لِمُطَلِّقِهَا.

[XI.6.5] Taḥleel Marriage (to make a wife permissible for an ex-husband)

After a man divorces his wife three times, they cannot resume marriage unless she truly consummates a marriage with another man and then that marriage is terminated. If a man pretends to marry her in order to make her permissible for her ex-husband, he is called a muḥallil, and the ex-husband is called muḥallal lahu; both are cursed by the Prophet (SA). The ex-husband incurs a sin only if he is part of the plot.

There are certain rulings that are accepted by consensus:

Taḥleel is invalid (meaning that she will not be permissible for the ex-husband) unless the marriage is consummated.

Taḥleel is forbidden if the contract mentions this intention, or if it is done for compensation, or if someone is known to do this habitually.

(-H, -S): If a man intends to marry a woman to make her permissible for her ex-husband, without any of the reservations above and without plotting this with the woman or her ex-husband, then she becomes permissible for her ex-husband.

(A) + (+M): She is not permissible for him. They cited the hadiths that strongly condemn this practice.

[XI.7] Chapter on Defects that Constitute Grounds for the Annulment of Marriage

بَابُ الْعُيُوْبِ الَّتِيْ يُفْسَخُ بِهَا النِّكَاحُ

Whenever one of the two spouses finds the other to be owned, insane, or afflicted with vitiligo [XI.7.1] or leprosy; or if the man finds the woman to have an obstructed genital tract, or she finds him with a cutoff penis, they are entitled to annulment of the marriage, assuming that (the defect) was not known prior to the contract.	مَتَى وَجَدَ أَحَدُ الزَّوْجَيْنِ الآخر مَمْلُوْكاً، أَوْ مَجْنُوْناً، أَوْ مَجْذُوْمًا، أَوْ أَبْرَصَ، أَوْ وَجَدَهَا الرَّجُلُ رَتْقَاءَ، أَوْ وَجَدَتْهُ مَجْبُوْباً، فَلَهُ فَسْخُ النِّكَاحِ، إِنْ لَمْ يَكُنْ عَلِمَ ذٰلِكَ قَبْلَ الْعَقْدِ.

[XI.7] Introduction

In this chapter, Imam Ibn Qudâmah mentions the conditions that constitute grounds for one of the spouses to seek annulment of the marriage contract, as long as they are discovered only afterwards and were not disclosed by the time of the marriage contract. This is a right given to the spouses, who may or may not claim it. If they choose to, they may resolve the issue by mutually agreeing to separate. Litigation should be a last resort; still, the law should make provisions for that outcome.

You will notice that there are two groups of conditions: those that prevent good companionship, like insanity, and those that prevent the attainment of sexual pleasure or cause physical aversion, like leprosy and impotence. (a) + (t) added the sterility of the man as grounds for annulment, and this position was later adopted by many Ḥanbalis such as Ibn Rajab and al-Mardâwi. They did not grant the same right to the man since he can have children from another wife.

Many chapters of fiqh mention individual examples, but it is more important to know the rationale behind the ruling than to memorize the specific examples. The examples may not be comprehensive, and they may change according to times and circumstances. (See the appendix on the change of fatwa.)

Are the Defects Limited to Specific Ones?

The four madh-habs agreed, in their formal positions, that they are limited. They disagreed over the exact conditions, with some making them five (H), seven (S), eight (A), thirteen (M), or sixteen (A2).

N.B.: The Ḥanafis say the right to annulment applies to women only if they find a defect in their husbands, since men can always divorce their wives. The majority contended that he may divorce, but if he seeks annulment, he will keep his ṣadâq unless they consummated the marriage. If the marriage was consummated or a khalwah establishing the mahr occurred, she is entitled to the mahr. Under the Ḥanbali rule, however, he may recover it from the person who deceived him, whether the wife herself, her guardian, or an agent. Mere guardianship does not create liability when the guardian neither knew of the defect nor deceived him.

Some scholars, including az-Zuhri, Shurayḥ, Abu Thawr, Muhammad ibn al-Ḥasan, Ibn Taymiyah and Ibn al-Qayyim said they are not limited to those but include any defects that will cause justifiable aversion to the spouse (a). This position has great merits. In Zâd al-Ma‘âd, Imam Ibn al-Qayyim supports it by citing a report in Muṣannaf ‘Abdur-Razzâq that ‘Umar ordered a man to disclose his sterility to his wife and give her the choice; he argues that sterility is not even one of the defects named by the majority. Moreover, you should note that those who said they are fixed still disagreed widely over the individual defects.

When a defect is determined by the court to be repulsive, it should be sufficient grounds for annulment. In our times, for instance, being HIV positive should allow the uninformed spouse to seek separation.

In our times, some of the defects may be treatable, so the court should allow time for medical intervention. (See the appendix on the change of fatwa.)

[XI.7.1] Vitiligo is a chronic disorder causing depigmented patches on the skin and its appendages.

Annulment is not permissible without a judicial ruling.	وَلَا يَجُوْزُ الْفَسْخُ إِلَّا بِحُكْمِ حَاكِمٍ.

If the woman claims that her husband is impotent and unable to have intercourse with her, and he admits that he has not had intercourse with her, he is given one lunar year from the time she brings the case before the judge. [XI.7.2] If he does not have intercourse with her during that period, she is given the choice of remaining with him or seeking separation.	وَإِنْ ادَّعَتِ الْمَرْأَةُ أَنْ زَوْجَهَا عِنِّيْنٌ لَا يَصِلُ إِلَيْهَا، فَاعْتَرَفَ أَنَّهُ لَمْ يُصِبْهَا أُجِّلَ سَنَةً مُنْذُ تُرَافِعُهُ، فَإِنْ لَمْ يُصِبْهَا، خُيِّرَتْ فِي الْمَقَامِ مَعَهُ أَوْ فِرَاقِهِ.

[XI.7.2] There are such reports from the Companions, including one from ‘Umar (RA) where he gave the husband one year to see if he would recover from his impotence. The scholars rationally justified this because the one year encompasses all four seasons, giving him a chance to recover from transient causes of impotence.

In our times, such cases should be referred to specialists, when available, for an expert opinion, which is a valid reference in the Islamic judiciary. This principle should be applied whenever warranted. Our great scholars (may Allah have mercy on them) spared no effort in seeking the expert opinions of their contemporaries, and we must do the same using our contemporary experts, not theirs.

If she chooses to leave him, the ruler will separate them unless she knew of his impotence before her marriage or said, “I accept him as impotent” at any point in time.	فَإِنْ اخْتَارَتْ فِرَاقَهُ، فَرَّقَ الْحَاكِمُ بَيْنَهُمَا، إِلَّا أَنْ تَكُوْنَ قَدْ عَلِمَتْ عُنَّتَهُ قَبْلَ نِكَاحِهَا، أَوْ قَالَتْ: رَضِيْتُ بِهِ عِنِّيْنًا فِيْ وَقْتٍ.

If she comes to know about it after the contract, yet she abstains from seeking separation, she retains her right to do so. [XI.7.3] If he says, “She knew of my impotence [before marrying me], or she accepted	وَإِنْ عَلِمَتْ بَعْدَ الْعَقْدِ وَسَكَتَتْ عَنِ الْمُطَالَبَةِ، لَمْ يَسْقُطْ حَقُّهَا. وَإِنْ قَالَ: قَدْ عَلِمَتْ عُنَّتِيْ أَوْ رَضِيَتْ بِيْ بَعْدَ

me after learning of it," and she denies it, her statement is accepted. [XI.7.4]	عِلْمِهَا، فَأَنْكَرَتْ فَالْقَوْلُ قَوْلُهَا.

[XI.7.3] If she finds this out before the contract or after the consummation, she loses her right to subsequently demand separation. If she comes to know about it between the contract and the consummation, she retains this right unless she explicitly states her acceptance.

[XI.7.4] He is the claimant (claiming that she knew of his impotence), and she is the denier. Therefore, her statement will be taken over his unless he can prove his claim.

If he had intercourse with her once, he is not impotent. [XI.7.5] If he claims to have had intercourse with her, but she denies it: 1. If she was a virgin, she will be examined by trustworthy women, and their statement shall be accepted. [XI.7.6] 2. If she was thayyib (non-virgin), his statement along with his oath shall be taken. [XI.7.7]	وَإِنْ أَصَابَهَا مَرَّةً، لَمْ يَكُنْ عِنِّيْنًا. وَإِنِ ادَّعَى ذٰلِكَ فَأَنْكَرَتْهُ: 1. فَإِنْ كَانَتْ عَذْرَاءَ أُرِيَتِ النِّسَاءَ الثِّقَاتِ وَرُجِعَ إِلٰى قَوْلِهِنَّ. 2. وَإِنْ كَانَتْ ثَيِّباً، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِيْنِهِ.

[XI.7.5] This does not mean that she must live with a man who does not satisfy her needs. A woman may ask for divorce due to harm, and if she is not granted that, she can obtain separation through khul' if she is truly resentful of her life with her husband.

[XI.7.6] If she is still a virgin, then his claim of having intercourse with her shall be rejected.

[XI.7.7] If the woman had previously had intercourse, and her new husband claims that he had intercourse with her, whereas she claims that he did not because of impotence, then examining her will not be helpful. It will be his statement against hers. Here, she is asking for the dissolution of marriage,

while he is seeking its continuation, which is the default/status quo (*al-aṣl*). To depart from that default/status quo, proof is needed, so her claim will not be accepted unless she can prove it. He will need to take an oath in support of his statement.

(A/SM): This is only when his impotence is not established by his admission or the testimony of experts (qualified physicians).

	فَصْلٌ: وَإِنْ عَتَقَتِ الْمَرْأَةُ وَزَوْجُهَا عَبْدٌ، خُيِّرَتْ فِيْ الْمُقَامِ مَعَهُ وَفِرَاقِهِ، وَلَهَا فِرَاقُهُ مِنْ غَيْرِ حُكْمِ حَاكِمٍ، فَإِنْ أُعْتِقَ قَبْلَ اختيارها أَوْ وَطْئِهَا بَطَلَ خِيَارُهَا، وَإِنْ عَتَقَ بَعْضُهَا، أَوْ عَتَقَ كُلُّهَا وَزَوْجُهَا حُرٌّ، فَلَا خِيَارَ لَهَا.

[XI.8] The Book of *Ṣadâq* (The Wedding Gift)

كِتَابُ الصَّدَاقِ

Anything that is lawful to be a compensation is lawful to be a ṣadâq, whether it is large or small. This is because of the statement of the Messenger of Allah (SA) to the man who asked him to marry him (the man) to a certain woman if the Messenger of Allah (SA) himself was not interested in marrying her, “Seek (something for a dower), even a ring of iron.” [XI.8.1]	كُلُّ مَا جَازَ أَنْ يَكُوْنَ ثَمَناً، جَازَ أَنْ يَكُوْنَ صَدَاقاً، قَلِيْلاً كَانَ أَوْ كَثِيْرًا، لِقَوْلِ رَسُوْلِ اللهِ ﷺ لِلَّذِيْ قَالَ لَهُ زَوِّجْنِيْ هَذِهِ الْمَرْأَةَ إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ، «الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيْدٍ.»

[XI.8] Introduction

The Definition and Ruling of Ṣadâq

The word ṣadâq will be used frequently here because it has beautiful connotations. It is derived from the same root as ṣidq (truthfulness). It is a demonstration of the groom’s truthful and honest commitment to the marital relationship. There is no good translation for ṣadâq, since the words commonly used for that purpose have some un-Islamic connotations. ‘Dowry’ typically refers to a gift given by the bride to the groom, and this is the opposite of ṣadâq. Also, according to Encyclopaedia Britannica, the dower may refer to “a morning gift: … a provision accorded by law to a wife for her support in the event that she should survive her husband,” or “a property brought to the marriage by the bride,” or “bride price: property made over to the bride’s family at the time of the wedding… does not pass to the bride herself.” (*Encyclopaedia Britannica Online*, retrieved July 28, 2009)

The ṣadâq in Islam is described by the word niḥlah, as Allah said:

{ وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً } 📖

📖 {And give the women [upon marriage] their [bridal] gifts (niḥlah) graciously…} (an-Nisâ' 4:4)

Niḥlah has two meanings: "given gladly and graciously" and "given as an obligation." Both meanings are applicable here; it is a gift given gladly and graciously by the husband as a show of commitment, and it is also an obligation, since Allah made it so. When ṣadâq is described in some fiqh books as a compensation for the woman's commitment to marriage, this does not mean that it is a price for the bride herself. In Islam, the bride never becomes the "property" of her husband; she maintains her independent identity, including her family name, as well as her financial independence.

The ṣadâq is an obligation on the man, but it is not a condition for the validity of the marriage. It is the woman's entitlement; she can either demand it immediately or defer it (all or in part) for an appointed term. She has the right to refuse consummation until she receives the portion of it that is due, but if she accepts consummation before receiving it, then it becomes a debt upon the husband.

Items that are unidentifiable, impermissible to use, or useless may not be given as compensation (prices for other goods) or ṣadâq. Thus, one may not give his wife an unknown item in a box, a herd of pigs, or bottles of wine as ṣadâq; nor may he give her insects or other useless articles.

The Appropriate Amount of Ṣadâq

Considering the varying circumstances of people, Islam did not fix the amount of ṣadâq. The hadith mentioned by the author about the iron ring is given as an example of a very modest ṣadâq. On the other hand, Allah said:

{وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا}

{…and you have given one of them a great amount [in gifts]…}
(an-Nisâ' 4:20)

This verse implies the permissibility of giving a great treasure as a ṣadâq.

There are two guidelines that we should be aware of in this regard.

1) Ṣadâq should never become an obstacle to marriage. The Messenger of Allah (SA) said:

«خير الصداق أيْسَرُه»

"The better ṣadâq is the easier one." (H – from 'Uqbah ibn 'Âmir; al-Albâni: Auth)

2) The ease of the ṣadâq does not mean that it is intended to be insignificant. 'Umar ibn al-Khaṭṭâb said:

Do not be excessive concerning the dowries of women, for if that were a sign of honor or piety, then Muhammad (SA) would have preceded you to it. However, he did not give any of his wives, and none of his daughters was given, more than 12 uqiyah (a measure of silver). It may happen that a man increases the dowry to the extent that he feels resentment towards her and says, "You cost me all my belongings, even the hanging string of the water skin." (Ma; al-Albâni: S)

Note that while the report may be used to warn against extravagance in dowries, it still tells us that the Prophet (SA) gave and received around 12 uqiyah as a ṣadâq for his wives and daughters. Now, what is the value of the 12 uqiyahs? One uqiyah is about 40 dirhams, so 12 uqiyahs are about 480-500 dirhams. Since one dirham is equal to about 3 grams, the 12 uqiyahs are equal to about 1500 grams of silver, which is about $500. This is what is usually mentioned as the value of his ṣadâqs. However, it is not an accurate estimation because the value of money itself differs. To determine the true value of the 500 dirhams, we should find out its buying power during the Prophet's time. One way we could understand that is by examining the different forms of compensation for mistaken killing (blood money) during his time. The blood money was paid in one of five forms (or six according to Aḥmad): 100 camels, 2000 sheep, 1000 dinars or 10,000 (or 12,000) dirhams. This tells us that one sheep was worth about 5 dirhams. This was not always the case, for sure, because the prices varied. For instance, in the report of 'Urwah al-Bâriqi, he bought two sheep for one dinar and sold one of them for one dinar. This illustrates variation in actual transactions; it does not establish a fixed exchange rate or a precise modern equivalent for the Prophet's ṣadâq. These examples show that the ṣadâq could represent meaningful wealth. They do not establish a precise number of sheep that it would always purchase. Finally, we should understand this within the

context of their very austere lifestyles. It would not be appropriate for people who live in luxury homes and drive fancy cars to insist on modesty only in their ṣadâqs.

[XI.8.1] (Ag – from Sahl ibn Sa‘d)

It is valid for a man to give his daughter in marriage for any ṣadâq. Other than the father, no one is allowed to give her in marriage for less than the ṣadâq of her equals, except with her permission. [XI.8.2]	فَإِذَا زَوَّجَ الرَّجُلُ ابْنَتَهُ بِأَيِّ صَدَاقٍ كَانَ جَازَ، وَلَا يَنْقُصُهَا غَيْرُ الْأَبِ مِنْ مَهْرِ مِثْلِهَا إِلَّا بِرِضَاهَا.

[XI.8.2] The father, being keen on the wellbeing of his daughter, may accept on her behalf less than the ṣadâq of her peers. This is because a father would usually not do that unless, in his estimation, the marriage was still in his daughter's best interest. If the father is absent and another male relative acts as her wali, he is not permitted to accept less than the ṣadâq of her equals unless she willingly agrees to that. If he does so, the husband will be liable for the difference. In another opinion in the madh-hab, the wali will be liable for the difference.

وَإِذَا أَصْدَقَهَا عَبْدًا بِعَيْنِهِ فَوَجَدَتْهُ مَعِيبًا، خُيِّرَتْ بَيْنَ أَرْشِهِ وَرَدِّهِ وَأَخْذِ قِيْمَتِهِ، وَإِنْ وَجَدَتْهُ مَغْصُوْبًا أَوْ حُرًّا، فَلَهَا قِيْمَتُهُ، وَإِنْ كَانَتْ عَالِمَةً بِحُرِّيَّتِهِ أَوْ غَصْبِهِ حِيْنَ الْعَقْدِ، فَلَهَا مَهْرُ مِثْلِهَا، وَإِنْ تَزَوَّجَهَا عَلَىٰ أَنْ يَشْتَرِيَ لَهَا عَبْدًا بِعَيْنِهِ، فَلَمْ يَبِعْهُ سَيِّدُهُ أَوْ طَلَبَ بِهِ أَكْثَرَ مِنْ قِيْمَتِهِ، فَلَهَا قِيْمَتُهُ.

Subsection: If he marries her without a ṣadâq, the marriage is valid. [XI.8.3] If he divorces her before the consummation, she is entitled only to the *mut‘ah* (gift of consolation), which should be proportionate to the wealth or poverty of the husband. The highest mut‘ah is a servant, and the lowest is a garment in which she can pray. [XI.8.4]	فَصْلٌ: وَإِنْ تَزَوَّجَهَا بِغَيْرِ صَدَاقٍ، صَحَّ. فَإِنْ طَلَّقَهَا قَبْلَ الدُّخُوْلِ، لَمْ يَكُنْ لَهَا إِلَّا الْمُتْعَةُ، عَلَى الْمُوْسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ، وَأَعْلَاهَا خَادِمٌ، وَأَدْنَاهَا كِسْوَةٌ يَجُوْزُ لَهَا الصَّلَاةُ فِيْهَا.

[XI.8.3] The ṣadâq is wâjib, but it is not a condition of the validity of the marriage. Thus, if it was not mentioned, the marriage is still valid. Allah said:

{لَّا جُنَاحَ عَلَيْكُمْ إِن طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً...}

{There is no blame upon you if you divorce women you have not touched nor specified for them an obligation…} (al-Baqarah 2:236)

[XI.8.4] In reference to the women divorced before the consummation of the marriage and the designation of the ṣadâq, Allah said:

{...وَمَتِّعُوهُنَّ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ}

{…But give them [a gift of] compensation – the wealthy according to his capability and the poor according to his capability – a provision according to what is acceptable, a duty upon the doers of good.} (al-Baqarah 2:236)

The examples of mut‘ah given here may not be relevant to our times. In another report in the madh-hab, its amount is left to the judge to determine. Those examples would still be helpful in providing the judge with some reference points. (See the discussion of mut‘ah for other women in the chapter of the maintenance of women observing ‘iddah.)

If one of them dies before the consummation of the marriage and the designation of a ṣadâq, then she will be entitled to the ṣadâq of her equals, no more and no less. [XI.8.5] The survivor will be entitled to inheritance, and if the survivor is the woman, she must observe the ‘iddah. This is because the Prophet (SA) decreed, concerning the case of Barwa‘ bint Wâshiq when her husband died before he consummated the marriage with	إِنْ مَاتَ أَحَدُهُمَا قَبْلَ الدُّخُوْلِ وَالْفَرْضِ، فُرِضَ لَهَا مَهْرُ نِسَائِهَا، لَا وَكْسَ وَلَا شَطَطَ، وَلِلْبَاقِيْ مِنْهُمَا الْمِيْرَاثُ وَعَلَيْهَا الْعِدَّةُ لأَنَّ النَّبِيَّ ﷺ قَضَى فِيْ بَرْوَعَ بِنْتِ وَاشِقٍ، لَمَّا مَاتَ زَوْجُهَا ولم يدخل بها ولم

her or designated a ṣadâq for her, that she was entitled to the ṣadâq of her equals, no more and no less; that she was entitled to her share of his inheritance; and that she had to observe the ‘iddah. [XI.8.6]	يَفرِضْ لها، أن لها مَهرَ نِسائها لَا وَكْسَ وَلَا شَطَطَ، ولها الْمِيْرَاثُ وَعَلَيْهَا الْعِدَّةُ.

[XI.8.5] The entire ṣadâq becomes firmly established upon consummation, a khalwah that establishes the mahr, or the death of either spouse. Consummation or khalwah does not by itself accelerate a validly deferred payment. When this chapter awards half the specified ṣadâq upon divorce before consummation, it assumes that no qualifying khalwah or other cause confirming the full mahr has occurred. If no mahr has yet been specified and none of those causes has occurred, the rule is mut‘ah rather than half a mahr.

[XI.8.6] (D, from Ibn Mas‘ood. Auth)

If she demands that he designate a ṣadâq for her before the consummation, she is entitled to that. If he designates for her the ṣadâq of her equals or more, she is entitled to nothing more. [XI.8.7] The same is true if he designates less for her and she accepts that. [XI.8.8]	وَلَوْ طَالَبَتْهُ قَبْلَ الدُّخُوْلِ أَنْ يَفْرِضَ لَهَا، فَلَهَا ذٰلِكَ، فَإِنْ فَرَضَ لَهَا مَهْرَ نِسَائِهَا أَوْ أَكْثَرَ، فَلَيْسَ لَهَا غَيْرُهُ، وَكَذٰلِكَ لَوْ فَرَضَ لَهَا أَقَلَّ مِنْهُ فَرَضِيَتْ.

[XI.8.7] If this was before the contract, she may ask for more than the ṣadâq of her equals, and she may refuse to proceed with the marriage if he did not give her what she demanded. However, if they performed the contract without designating the ṣadâq, she will only be entitled to the ṣadâq of her equals.

[XI.8.8] She may demand that her ṣadâq be designated. Before she has voluntarily surrendered herself, she may withhold consummation until she receives the portion payable immediately; a deferred mahr does not give her the same right of refusal.

Subsection: On the Separation Caused by the Woman before Consummation	فَصْلٌ: كُلُّ فُرْقَـةٍ جَـاءَتْ مِنَ الْمَـرْأَةِ قَبْلَ الدُّخُـوْلِ

The ṣadâq is dropped in all cases where separation is caused by the woman before consummation, such as her conversion to Islam, [XI.8.9] apostasy, breastfeeding or being breastfed, or defect. [XI.8.10] The same applies if annulment was caused by a defect of the husband's, his lack of means, or her emancipation.	وَكُلُّ فُرْقَـةٍ جَـاءَتْ مِنَ الْمَـرْأَةِ، قَبْلَ الدُّخُـوْلِ، كَإِسْـلَامِهَا، أَوِ ارْتِدَادِهَا، أَوْ إِرْضَاعِهَا، أَوِ ارْتِضَاعِهَا، أَوْ فَسْخٍ لِعَيْبِهَـا أَوْ فَسْـخِهَا لِعَيْبِهِ، وَإِعْسَـارِهِ، أَوْ عِتْقِهَـا، يَسْقُطُ بِهِ مَهْرُهَـا.

[XI.8.9] If she is married to a non-Muslim and then converts, she cannot proceed with the marriage. He is not liable for the ṣadâq since it was her action (conversion to Islam) that made the marriage null.

[XI.8.10] For example, if she breastfeeds his infant wife, she is no longer permissible for him to marry. In these cases, where she causes the marriage to be annulled, she will not be entitled to the ṣadâq.

If it (separation before consummation) comes from the side of the husband, as when he divorces her or grants her khul', then her deserved dower is halved, unless he exempts her (by paying the full bridal dower) or she exempts him (by forgoing the deserved half), assuming that she is *rasheedah* (mature). [XI.8.11]	وَإِنْ جَـاءَتْ مِنَ الزَّوْجِ، كَطَـلَاقِهِ وَخُلْعِهِ، تَنَصَّفَ بِهِ مَهْرُهَا بَيْنَهُمَا، إِلَّا أَنْ يَعْفُوَ لَهَا عَنْ نِصْفِهِ أَوْ تَعْفُوَ هِيَ عَنْ حَقِّهَا وَهِيَ رَشِيْدَةٌ، فَيُكْمَلُ الصَّدَاقُ لِلآخَرِ.

[XI.8.11] Allah said:

{وَإِن طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَن يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَن تَعْفُوا أَقْرَبُ لِلتَّقْوَىٰ وَلَا تَنسَوُا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ}

{And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified – unless they forgo the right or the one in

whose hand is the marriage contract forgoes it. And to forgo it is nearer to righteousness. And do not forget graciousness between you. Indeed Allah, of whatever you do, is Seeing.} (al-Baqarah 2:237)

If the separation is caused by a third party, the husband will owe half of the ṣadâq, but he can claim it from the party that separated them. [XI.8.12]	وَإِنْ جَاءَتْ مِنْ أَجْنَبِيٍّ فعلى الزوج نِصفُ المَهْرِ يَرْجِعُ بِهِ عَلَى مَنْ فَرَّقَ بَينَهُما.

[XI.8.12] A third party can result in voiding the marriage. For example, if he is contracted to marry an infant, and then his sister breastfeeds her, she becomes forbidden to him since she is now his niece through breastfeeding. He will have to pay half of the ṣadâq to the now ex-wife, and he may demand that amount from the third party (his sister) who ruined his marriage.

If the ṣadâq is halved, and it is a particular item that remains and whose value has not changed, [XI.8.13] it will be divided between them.	وَمَتَى تَنَصَّفَ الْمَهْرُ وَكَانَ مُعَيَّنًا بَاقِيًا لَمْ تَتَغَيَّرْ قِيْمَتُهُ، صَارَ بَيْنَهُمَا نِصْفَيْنِ.

[XI.8.13] Fungible and Non-Fungible Ṣadâqs

The ṣadâq may be a specific (non-fungible) item, like a particular camel or piece of furniture. It may be also something substitutable (fungible), like 20 dirhams, two tons of a certain brand of wheat, etc. The rulings below will mostly pertain to non-fungible ṣadâqs.

If the (value of the) ṣadâq increases, and that increase is separate from the original item, such as when a sheep gives birth to a baby lamb, the increase belongs to her. The original sheep will be divided between them. If the increase is attached to the original item, such as when a sheep gains weight, she can choose to return half of the larger sheep or to return half	وَإِنْ زَادَ زِيَادَةً مُنْفَصِلَةً، كَغَنَمٍ وَلَدَتْ، فَالزِّيَادَةُ لَهَا وَالْغَنَمُ بَيْنَهُمَا، وَإِنْ زَادَ زِيَادَةً مُتَّصِلَةً، مِثْلُ أَنْ سَمِنَتِ الْغَنَمُ، خُيِّرَتْ بَيْنَ دَفْعِ نِصْفِهَا زَائِدًا وَبَيْنَ دَفْعِ نِصْفِ قِيْمَتِهَا يَوْمَ الْعَقْدِ.

of the sheep's value as of the day of the contract. [XI.8.14]	

[XI.8.14] The Rulings on the Increase or Decrease of the Ṣadâq

For a specifically identified item, its ownership and its growth belong to the wife from the contract. Under the relied-upon Ḥanbali rule, she also bears its loss or deterioration from that time, even before delivery, unless the husband wrongfully withholds it from her or otherwise becomes liable for it.

The Rulings of Fungible Ṣadâqs

A fungible ṣadâq is the responsibility of the one who has it in his or her possession. Any profit that emanates from it belongs to him or her, and any loss incurred is his or her liability. If the agreed-upon ṣadâq is 2000 dirhams, the husband must give the wife 1000 dirhams if divorce takes place before consummation and he has not already given her the ṣadâq. If she has already received the 2000, then she must return 1000, regardless of the loss incurred or profit accrued.

The Rulings on Non-Fungible Ṣadâqs (Particular Items) Vary

In the case of an increase:

After the contract, any increase belongs to the wife, since the ṣadâq is now her property in its entirety (regardless of who is actually in possession of it). If she needs to return half of it because a divorce takes place before the consummation, she returns half of the original ṣadâq, keeping the other half as well as any growth/profit that emanated from it. If this growth can easily be separated from the original ṣadâq, such as in the case of livestock giving birth, then she returns half of the livestock he gave her, and she keeps the other half, along with all of the newborns. If the gain of the original ṣadâq is not easily separated from the original, such as when livestock gain weight, she has the option of returning half of the value of the original ṣadâq or half of the existing (fatter) livestock.

In the case of decrease:

If the husband wrongfully prevents her from taking possession of a specifically identified ṣadâq, he becomes liable for its loss or deterioration. If he then divorces her before consummation and before any qualifying khalwah, her entitlement is assessed under that liability rule, which can account for growth that became hers after the contract; it is not necessarily limited to half the item's original value. Ordinary market-price changes should not be confused with physical loss or deterioration. If she does not request it, then it is in his possession as a trust, and the rulings of trusts will apply. He is only liable for the loss if it results from negligence or wrongdoing on his part.

If she receives it, and then it is diminished or completely lost, she is liable. In the case of divorce before consummation, she must return to him half of the original value of the ṣadâq, unless he agrees to taking half of the diminished Ṣadâq (like an emaciated cow).

If it decreases, [XI.8.15] she [he] [XI.8.16] can choose to take half of the diminished property or half of its value as of the day of the contract. If the item has been lost or destroyed, he is entitled to half of its value as of the day of the marriage contract.	وَإِنْ نَقَصَتْ، فَلَهَا [فله] الْخِيَارُ بَيْنَ أَخْذِ نِصْفِه نَاقِصًا وَبَيْنَ أَخْذِ نِصْفِ قِيْمَتِه يَوْمَ الْعَقْدِ. وَإِنْ تَلِفَتْ، فَلَهُ نِصْفُ قِيْمَتِهَا يَوْمَ الْعَقْدِ.

[XI.8.15] For example, the livestock become physically impaired or some of them die.

[XI.8.16] There may be an error in the Arabic original. Note that the right position of the madh-hab, as explained above, is that she will be liable for the loss of the ṣadâq after receiving it. Therefore, the choice here should be his, not hers, as in the copy verified by Shaykh al-Bassâm.

Once he consummates the marriage with her, the mahr (ṣadâq) becomes entirely binding on him, and it will never be annulled.	وَمَتَى دَخَلَ بِهَا، اسْتَقَرَّ الْمَهْرُ وَلَمْ يَسْقُطْ بِشَيْءٍ.

If he has been in seclusion with her after the contract, but he says, “I did not have intercourse with her,” and she confirms his statement, the mahr is still binding on him, [XI.8.17] and the waiting period is binding on her. [XI.8.18]	وَإِنْ خَلَا بِهَا بَعْدَ الْعَقْدِ، وَقَالَ لَمْ أَطَأْهَا، وَصَدَّقَتْهُ، اسْتَقَرَّ الْمَهْرُ وَوَجَبَتِ الْعِدَّةُ.

[XI.8.17] (A) + (+H, +s-old)

(a) + (-M, -S): The whole mahr is binding only upon intercourse, so if they both deny it, the mere seclusion in itself does not entitle her to the entire ṣadâq. The position of (S) in this matter and the following is supported by the apparent meanings of the verses:

{وَإِن طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ ...}

{And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified...} (al-Baqarah 2:237)

The proof for the majority is the fatwas of the four caliphs, reported by ad-Dâraquṭni from Zurârah ibn Awfâ, that whenever seclusion takes place, the ṣadâq becomes binding and the woman must observe the ‘iddah. Seclusion is used in place of intercourse here because of the difficulty of verifying the latter. For instance, if the husband states that intercourse did not take place, the woman may be shy about contradicting him.

[XI.8.18] (A) + (+H, +M): The waiting period is binding on her after the khalwah, even if they both deny intercourse.

If the two spouses disagree about the ṣadâq or its exact amount, then the accepted claim will be that of the one who claims an amount comparable to the customary mahr for her equals, along with his or her oath. [XI.8.19]	وَإِنِ اخْتَلَفَ الزَّوْجَانِ فِيْ الصَّدَاقِ أَوْ قَدْرِهِ، فَالْقَوْلُ قَوْلُ مَنْ يَدَّعِيْ مَهْرَ الْمِثْلِ مِنْهُمَا مَعَ يَمِيْنِهِ.

[XI.8.19] The default here is the ṣadâq of the bride's equals. If they disagree over the amount of ṣadâq he designated for her, then the ṣadâq of her equals will be the reference point. For example, if the ṣadâq of her equals is 5000 dollars, and she claims that he promised her 5000 or less, her claim will be accepted. If he claims that he promised her 5000 dollars or more, his claim will be accepted.

(A/SM) and (A/Iqnâ'): The husband's claim is accepted (as long as it is realistic). This is because he acknowledged a certain amount and she claimed more, so the burden of proof is on her.

[XI.9] Chapter on the [Proper] Treatment of Women

بَابُ عِشْرَةِ النِّسَاءِ

Each of the two spouses must accompany their partner in life with fairness and kindness. Each one of them must fulfill the rights of the other without procrastinating or showing resentment.	وَعَلَىٰ كُلِّ وَاحِدٍ مِنَ الزَّوْجَيْنِ مُعَاشَرَةُ صَاحِبِهِ بِالْمَعْرُوْفِ وأداء حَقِّهِ الواجِبِ إليهِ مِنْ غَيْرِ مَطْلٍ وَلَا إِظْهَارِ الْكَرَاهَةِ لِبَذْلِهِ.

[XI.9] Introduction

Imam Ibn Qudâmah starts this chapter with a beautiful and fair introduction, recognizing the nature of this relationship as a companionship, and addressing both parties simultaneously.

Since this is a book of fiqh, not of manners, this chapter emphasizes the material rights of both parties, which may at some point require judicial intervention. Keep in mind, however, that the rights of the spouses due from each other are not limited to material ones or to those discussed here. There are specialized books that address them in more detail.

Allah said:

📖 {وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئاً وَيَجْعَلَ اللَّهُ فِيهِ خَيْراً كَثِيراً}

{…And live with them [your spouses] in kindness [bil-ma‘roof]. For if you dislike them – perhaps you dislike a thing and Allah makes therein much good.} (an-Nisâ’ 4:19)

The word “ma‘roof”, translated above as kindness, is also translated as common sense, beneficence, reason, or good. It encompasses all of those, but it also literally means that which is known to be good. The beauty of that expression is that it respects different expectations based on cultural norms (as long as they are not against the spirit or letter of the Sharia).

The foundational principle in this chapter is contained in the saying of Allah:

{وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ}

{…And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]…} (al-Baqarah 2:228)

There is an emphasis here on the equitable division of rights and obligations between the two spouses in a way that respects their differences.

Aside from differences stated in the revelation, the default is that the rights and obligations of the husband and wife are similar, and that is how the Companions would understand a verse like this. For example, Ibn ʻAbbâs said:

«إِنِّي أُحِبُّ أَنْ أَتَزَيَّنَ لِلْمَرْأَةِ, كَمَا أُحِبُّ أَنْ تَتَزَيَّنَ لِي الْمَرْأَةُ؛ لأَنَّ اللَّهَ تَعَالَى يَقُولُ: (وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ)»

I like to beautify myself for my wife, just as I would like her to beautify herself for me, because Allah said, "And due to the wives is similar to what is expected of them, according to what is reasonable." (Tafseer aṭ-Ṭabari)

The degree that is for men over their wives is the position of the qiwâmah. This is a position of responsibility, along with the corresponding authority, that must be extended to those burdened with responsibility. To put it simply, if the man is responsible for the safety and financial security of his family, then he should be allowed, after due consultation, to make the decisions that may affect them.

[The Rights of the Husband]

It is his right for her to let him enjoy lovemaking with her whenever he wishes [XI.9.1] and to obey him in this regard, [XI.9.2] unless she has an excuse.	وَحَقُّهُ عَلَيْهَا تَسْلِيْمُ نَفْسِهَا إِلَيْهِ، وَطَاعَتُهُ فِيْ الإِسْتِمْتَاعِ مَتَى أَرَادَهُ، مَا لَمْ يَكُنْ لَهَا عُذْرٌ.

[XI.9.1] Right of Conjugal Relations

It is a fact of life that if a wife denies her husband the right to intimacy, their relationship will become extremely strained and their marriage will be at risk of total demise. It is also common that men of weak religious commitment may be pushed into infidelity when they are denied their needs by their legitimate spouses. Unfortunately, our perception of the clear facts of life sometimes becomes muddled by personal and social biases. Therefore, it is important for the legislation of the All-Knowing to not only point them out, but also to shake us forcefully to fully realize their importance. Due to the seriousness of this matter, the Messenger of Allah (SA) used the following forceful words to warn women (for the sake of themselves and the society) against such reckless conduct:

«إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ فَأَبَتْ فَبَاتَ غَضْبَانَ عَلَيْهَا لَعَنَتْهَا الْمَلَائِكَةُ حَتَّى تُصْبِحَ»

“If a husband calls his wife to his bed (that is, to have intimacy) but she refuses, and then he goes to sleep angry with her, the angels will curse her until the morning.” (Ag – from Abu Hurayrah)

Note that this hadith, like all other reports, must not be taken out of the context provided by other verses and hadiths or by the practical example of the first generation. Of this important context is the principle of “no harm,” laid down by the Prophet (SA) and made into a legal maxim. Thus, if the woman is too exhausted, sick, or even psychologically incapable, then she may refuse sex. Her husband should be considerate, and Allah, her Creator, is All-Knowing of the legitimacy of her excuse or lack thereof.

Although this hadith was only addressed to women, it should be known that men also are not allowed to completely abandon their women and deprive them of their sexual needs, and they would also be sinners if they did so while they were capable of fulfilling their wives’ needs. It is known, however, that men may not always be able to have intercourse.

However, many people base their arguments upon the notion that there is no difference between men and women – but nothing could be farther from the truth. While men and women are held equal before their Lord, there are undeniable anatomical, biological, psychological and other differences between them. Men typically seek marital intimacy more often

than their wives do, and that is expected because of their higher sex drive (something that is conventionally established and supported by some modern studies). That is why the need was greater to remind women of their husband's right in this regard. Additionally, men may have less patience when deprived of their marital right to intimacy, and those of weak religious commitment may seek to fulfill their needs in illegitimate ways. This would bring about harm to the wife, the family, and the society at large, in addition to the man himself. So although the hadith may seem like it is concerned with the interest of men alone, in fact, it is not.

[XI.9.2] Obeying the Husband

Imam Ibn Qudâmah mentioned one example of obedience, but no Muslim scholar has ever denied that the wife must obey her husband in other regards, within reason. This obedience, however, is not an unqualified right of the husband; it is restricted by certain conditions. For his command to be deserving of obedience, it should be permissible, sensible, and purposeful. The Messenger of Allah (SA) said:

«لَا طَاعَةَ فِي مَعْصِيَةِ اللَّهِ؛ إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ.»

"There is no obedience to anyone at the expense of disobeying Allah. Obedience is only within reason (fil-ma'roof)." (Ag – from 'Ali)

While explaining the obedience due to parents, Imam Ibn Taymiyah said:

«وهذا فيما فيه منفعة لهما ولا ضرر»

"This is applicable when they (the parents) request something that benefits them and does not harm him or her (the child)." (al-Akhbâr al-'Ilmiyah min *al-Ikhtiyârât al-Fiqhiyah, al-Ba'li)*

Imam Ibn Ḥajar al-Haytami said in al-Fatâwâ al-Fiqhiyah al-Kubrâ:

«وبهذا يعلم أنه لا يلزم الولد امتثال أمر والده بالتزام مذهبه لأن ذاك حيث لا غرض فيه صحيح مجرد حمق.»

“According to this, it is to be known that the child may not have to obey the parent in following his madh-hab, because when this is devoid of a good reason, it is merely foolishness.”

The Shâfi‘i Imam Taqi ud-Deen as-Subki quoted the following from the Mâliki Imam aṭ-Ṭarṭoosi:

«إذا نهياه عن سنة راتبة المرة بعد المرة أطاعهما وإن كان ذلك على الدوام فلا طاعة لهما فيه لما فيه من إماتة الشرع.»

“If they (the parents) prevent him from some of the routine sunnah (recommended) prayers on a random basis, he should obey them. However, if they ask him to miss them all the time, there shall be no obedience due to them because that compromises the Sharia.”

We conclude from the above, and from the principles of Sharia, that the demand should be purposeful and sensible and should not cause the wife harm. Remember that the word “ma‘roof” mentioned in the hadith of the Prophet (SA) above not only means permissible but also means sensible and purposeful. For example, it may be permissible for the wife to stand up for an hour facing a wall, but such a demand would not be sensible or purposeful. Finally, the common sense mentioned here is not what the wife deems sensible, but what most reasonable people agree on as sensible. Otherwise, the concept of obedience would be meaningless.

Serving the Husband

It is noticeable here that the rights of the husband, mentioned by Imam Ibn Qudâmah in the matn, do not include being served by his wife. This is because the position of the majority of jurists, including the relied-upon Ḥanbali and Shâfi‘i positions and the Dhâhiris (A) + (+S, +Z), is that the marriage contract does not oblige the wife to perform household service for her husband. Non-obligation is also transmitted from Mâlik in the Mudawwanah and supported by other early Mâliki authorities. The rule adopted by Khaleel and his standard later commentators, however, requires customary domestic service when the husband is not required to provide her with a servant, including where he cannot afford one. The Ḥanafis distinguish religious obligation from judicial compulsion: appropriate customary household work is religiously obligatory for a wife who is capable of it and whose circumstances ordinarily involve doing it, although

she is not compelled by a court. Many other scholars, such as Ibn Abi Shaybah, Abu Thawr, al-Joozajâni, Ibn Ḥabeeb al-Mâliki, Ibn al-‘Arabi, Ibn Taymiyah, and other Ḥanafi, Mâliki, and Ḥanbali scholars maintained that the wife is required to serve her husband. Ibn Ḥabeeb said in *al-Wâḍiḥah* that the Prophet (SA) divided the work between ‘Ali and Fâṭimah, with the outdoor work for him and the indoor work for her. They argued that the Prophet’s wives and the female Companions used to serve their husbands, and they cited the norms and customs of people among their rational proofs. Additionally, they argued that it would be unfair to demand that the man work outside to earn their sustenance and then return home to finish the housework while his wife watches.

The reason I am addressing this matter in some detail is to highlight the controversy and to point out that the strongest proof for requiring the wife to serve her husband is reason and sensibility; once again, “al-ma‘roof” is the foundational principle of this chapter. Having said that, it would be unreasonable to ask the wife to share with her husband the burden of supporting the family financially and then to request her to shoulder all of the housework by herself, in addition to her unavoidable duties if she is a mother. It is also unfair to extend the right of being served, which is already controversial, to the rest of the husband’s family, including his siblings. And although it is highly recommended for the wife to treat her parents-in-law well and to serve them as much as she can, as a form of birr (kindness) to elderly Muslims and iḥsân (excellence) to her husband, this should not be expected of her, especially when it constitutes an undue burden. Finally, it is unacceptable for the husband to be unappreciative of his wife’s benevolence, blaming her for the slightest deficiency.

[The Rights of the Wife]

Once she does that, she is entitled to the sustenance, clothing, and shelter customarily sufficient for someone like her. [XI.9.3] If he withholds some or all of these rights from her, and she is able to take from his money an amount that is fair and sufficient for her and her children, she may do so. This is because of the report	وَإِذَا فَعَلَتْ ذٰلِكَ، فَلَهَا عَلَيْهِ قَدْرُ كِفَايَتِهَا مِنَ النَّفَقَةِ، وَالْكِسْوَةِ وَالْمَسْكَنِ، بِمَا جَرَتْ بِهِ عَادَةُ أَمْثَالِهَا. فَإِنْ مَنَعَهَا ذٰلِكَ أَوْ بَعْضَهُ، وَقَدَرَتْ لَهُ عَلَىٰ مَالٍ، أَخَذَتْ مِنْهُ قَدْرَ كِفَايَتِهَا وَوَلَدِهَا

mentioning that when Hind said to the Prophet (SA), “Abu Sufyân is a stingy man, and he doesn’t give me what is sufficient for my children and me,” he said, “Take what is reasonably sufficient for you and your children.” [XI.9.4]	بِالْمَعْرُوْفِ، لِمَا رُوِيَ أَنَّ النَّبِيَّ ﷺ قَالَ لِهِنْدٍ حِيْنَ قَالَتْ لَهُ: إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيْحٌ وَلَيْسَ يُعْطِيْنِيْ مِنَ النَّفَقَةِ مَا يَكْفِيْنِيْ وَوَلَدِيْ، فَقَالَ: «خُذِيْ مَا يَكْفِيْكِ وَوَلَدَكِ بِالْمَعْرُوْفِ.»

[XI.9.3] The Right to Maintenance

The Prophet (SA) said:

«... وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ.»

“... And their right over you is that you should provide for them and clothe them on a reasonable basis (bil-ma‘roof).” (M – from Jâbir)

Notice the frequent references to the customary norms: “bil-ma‘roof” (on a reasonable basis). The maintenance is not fixed because people’s circumstances vary. If the spouses seek their input, arbitrators and judges should consider the solvency or insolvency of the husband and the socioeconomic status of his wife. (A) Concerning the wife’s needs and status, refer to the hadith of Hind in this section. Concerning the husband’s solvency, Allah said:

{لِيُنفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا}

{Let a man of wealth spend from his wealth, and he whose provision is restricted – let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it…} (aṭ-Ṭalâq 65:7)

[XI.9.4] (Ag)

(A): The wife may take from her husband without his permission and without a court order. Imam an-Nawawi in *Sharḥ Ṣaḥeeḥ Muslim* mentioned two positions within the Shâfi'i madh-hab, based on their disagreement over the context of this hadith. If this was a fatwa from the Messenger of Allah (SA), then it applies to all women; however, if it was a decree from him (acting in his capacity as a judge), then each woman would need a similar decree from a judge giving her permission to take from her husband's money. Imam an-Nawawi deemed the first position stronger. It is obvious that this behavior should be taken only as a last resort, and people must consider the legal ramifications when such behavior is not tolerated by the local laws.

If she cannot take from his money because of his insolvency, or if he prevents her, and then she chooses to separate from him, the judge must separate them, whether he is an adult or a minor. If she is too young for him to have intimacy with her, she was not given to him, she did not obey him concerning his rights, or she travelled without his permission – or even with his permission but for her own interests, [XI.9.5] then he is not obliged to provide for her.	وَإِنْ لَمْ تَقْدِرْ عَلَىٰ الْأَخْذِ لِعُسْرَتِهِ، أَوْ مَنَعَهَا، فَاخْتَارَتْ فِرَاقَهُ، فَرَّقَ الْحَاكِمُ بَيْنَهُمَا، سَوَاءٌ كَانَ الزَّوْجُ كَبِيْرًا أَوْ صَغِيْرًا. وَإِنْ كَانَتْ صَغِيْرَةً لَا يُمْكِنُ الِاسْتِمْتَاعُ بِهَا، أَوْ لَمْ تُسَلِّمْ إِلَيْهِ، أَوْ لَمْ تُطِعْهُ فِيْمَا يَجِبُ لَهُ عَلَيْهَا، أَوْ سَافَرَتْ بِغَيْرِ إِذْنِهِ، أَوْ بِإِذْنِهِ فِيْ حَاجَتِهَا، فَلَا نَفَقَةَ لَهَا عَلَيْهِ.

[XI.9.5] (A2): If she travels with his permission, she is entitled to maintenance. This seems to be the appropriate default, but it may be left to their mutual agreement if he permits her to travel for her own interests on the condition that she not ask him for maintenance during her time away.

Subsection: She is entitled to his company – one night out of every four if she is a free woman; if she is a slave, she is entitled to one out of eight. [XI.9.6] This is in case he did not have an excuse. She is	فَصْلٌ: وَلَهَا عَلَيْهِ الْمَبِيْتُ عِنْدَهَا لَيْلَةٌ مِنْ كُلِّ أَرْبَعٍ إِنْ كَانَتْ حُرَّةً، وَمِنْ كُلِّ ثَمَانٍ إِنْ كَانَتْ أَمَةً، إِذَا لَمْ يَكُنْ لَهُ عُذْرٌ، وَإِصَابَتُهَا مَرَّةً فِيْ كُلِّ

also entitled to having sex once every four months, unless he has an excuse.	أَرْبَعَةِ أَشْهُرٍ، إِذَا لَمْ يَكُنْ لَهُ عُذْرٌ.

[XI.9.6] (A/SM & Iqnâ‘): If she is a slave, she is entitled to one out of seven nights.

According to (A), the man must have intercourse with his wife at least once every four months. (t): he must satisfy her needs within his capacity.

[*Eelâ’* (Oath of Abandonment)]

If he swears to abandon her for more than four months, [XI.9.7] and she waits until the end of the four months and then takes him to the judge, and then he denies either the oath or that four months have elapsed, or he claims that he had sex with her (and she was not a virgin) then his claim, along with his oath, shall be accepted. [XI.9.8] If he admits it, he should be ordered at her request to recant his oath and have intercourse with her. If he recants his oath and has intercourse with her, then Allah is most forgiving and most merciful. [XI.9.9] If he does not, then he will be ordered to divorce her, and if he refuses to do so, the judge will divorce her from him. [XI.9.10] If he takes her back as a wife or leaves her until the end of her waiting period so that she becomes foreign to him, and then he marries her again while there is still more time (remaining from his oath) than that of the maximum time of abandonment, he will be brought	فَإِنْ آلَى مِنْهَا أَكْثَرَ مِنْ أَرْبَعَةِ أَشْهُرٍ، فَتَرَبَّصَتْ أَرْبَعَةَ أَشْهُرٍ، ثُمَّ رَافَعَتْهُ إِلَى الْحَاكِمِ، فَأَنْكَرَ الْإِيْلَاءَ، أَوْ مُضِيَّ الْأَرْبَعَةِ أَشْهُرٍ، أَوِ ادَّعَى أَنَّهُ أَصَابَهَا وَكَانَتْ ثَيِّباً، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِيْنِهِ. وَإِنْ أَقَرَّ بِذٰلِكَ، أُمِرَ بِالْفَيْئَةِ عِنْدَ طَلَبِهَا، وَهِيَ الْجِمَاعُ، فَإِنْ فَاءَ، فَإِنَّ اللهَ غَفُوْرٌ رَحِيْمٌ، وَإِنْ لَمْ يَفِئْ، أُمِرَ بِالطَّلَاقِ، فَإِنْ طَلَّقَ، وَإِلَّا طَلَّقَ الْحَاكِمُ عَلَيْهِ، ثُمَّ إِنْ رَاجَعَهَا، أَوْ تَرَكَهَا حَتَّى بَانَتْ، ثُمَّ تَزَوَّجَهَا، وَقَدْ بَقِيَ أَكْثَرُ مِنْ مُدَّةِ الْإِيْلَاءِ، وُقِفَ لَهَا كَمَا وَصَفْتُ.

before the judge as I described (here above). [XI.9.11]	

[XI.9.7] Eelâ'

Now Imam Ibn Qudâmah starts to address the rulings of eelâ', which is when the husband takes an oath to not have intercourse with his wife for more than four months. The rulings are based on the saying of Allah:

{لِّلَّذِينَ يُؤْلُونَ مِن نِّسَآئِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَآؤُوا فَإِنَّ اللهَ غَفُورٌ رَّحِيمٌ وَإِنْ عَزَمُواْ الطَّلَاقَ فَإِنَّ اللهَ سَمِيعٌ عَلِيمٌ}

{For those who swear not to have sexual relations with their wives is a waiting time of four months, but if they return [to normal relations] – then indeed, Allah is Forgiving and Merciful. And if they decide on divorce – then indeed, Allah is Hearing and Knowing.} (al-Baqarah 2:226–227)

[XI.9.8] His statement carries more weight because the default is the continuation of the marriage, and his denial is supported by that default (status quo).

[XI.9.9] Meaning the marriage will resume, and he will be forgiven.

(A) + (+H, +M, +S): He will still have to expiate for the oath.

[XI.9.10] This is the position of (A) + (+M, +S).

(-H): The divorce takes place spontaneously at the end of the four months, without the need for the ruler to issue it.

Both positions find support in the fatwas of the Companions. Imam Ibn Qudâmah supported the first position in *al-Mughni* by the apparent implication of the verse above that there is still a chance at the end of the four months to recant or insist on the abandonment.

[XI.9.11] For example, he makes an oath to not touch her for a year; after four months, the judge orders him to divorce her. Three more months pass, and her divorce becomes finalized. If he marries her again, there are still

five months remaining until the one year is complete. After four of those five months have passed, he will be brought before the judge and asked to either recant his oath and expiate or to divorce her again.

If he is incapable of intercourse when demanded, [XI.9.12] he should say, “I will have intercourse with her once I can.” Then he may be given more time until he can.	وَمَنْ عَجَزَ عَنِ الْفَيْئَةِ عِنْدَ طَلَبِهَا، فَلْيَقُلْ: مَتَى قَدَرْتُ جَامَعْتُهَا، وَيُؤَخَّرُ حَتَّى يَقْدِرَ عَلَيْهَا.

[XI.9.12] Such as when he is sick or in a state of iḥrâm (the state of consecration for the pilgrimage).

[XI.10] Chapter on Division and Contempt

بَابُ الْقَسْمِ وَالنُّشُوْزِ

[Division of Company at Night among the Co-Wives]

The man must divide his time equally among his wives; [XI.10.1] what matters here is the nighttime. [XI.10.2] He should give one night for the slave and two for the free woman, even if she is of the People of the Book.	وَعَلَى الرَّجُلِ أَنْ يُسَاوِيَ بَيْنَ نِسَائِهِ فِيْ الْقَسْمِ، وَعِمَادُهُ اللَّيْلُ، فَيَقْسِمُ لِلأَمَةِ لَيْلَةً، وَلِلْحُرَّةِ لَيْلَتَيْنِ، وَإِنْ كَانَتْ كِتَابِيَّةً.

[XI.10.1] The Messenger of Allah (SA) said:

«مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَالَ إِلَى إِحْدَاهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَشِقُّهُ مَائِلٌ»

"If a man has two wives and becomes inclined towards one of them, he will come on the Day of Resurrection with one of his sides dropping." (D – from Abu Hurayrah; al-Albâni: S)

[XI.10.2] Obviously, men who work at night should divide their daytime equally among their wives.

He is not obliged to have sex with them equally. [XI.10.3] He is not allowed to give precedence to one of them in the division or in travel except through casting lots, because the Prophet (SA) used to cast lots among his women whenever he intended to travel. The one whose arrow was chosen would be the one to go out with him. [XI.10.4]	وَلَيْسَ عَلَيْهِ الْمُسَاوَاةُ بَيْنَهُنَّ فِيْ الْوَطْءِ. وَلَيْسَ لَهُ الْبَدَاءَةُ فِيْ الْقَسْمِ بِإِحْدَاهُنَّ، وَلَا السَّفَرُ بِهَا إِلَّا بِقُرْعَةٍ، فَإِنَّ النَّبِيَّ ﷺ كَانَ إِذَا أَرَادَ سَفَرًا، أَقْرَعَ بَيْنَ نِسَائِهِ فَأَيَّتُهُنَّ خَرَجَ سَهْمُهَا، خَرَجَ بِهَا مَعَهُ.

[XI.10.3] The equal treatment must be strictly observed within the husband's capacity. Although it is still better to have conjugal relations equally with the co-wives, this is not required because it may be beyond his capacity. The Messenger of Allah (SA) used to say:

«اللَّهُمَّ هَذَا قَسْمِي فِيمَا أَمْلِكُ فَلَا تَلُمْنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ»

"O Allah, this is my division concerning what I control, so do not blame me concerning what You control and I do not." (D – from 'Â'ishah. Controversial; Ibn al-Mulaqqin: S)

Equality regarding feelings and leanings of the heart is not required because it is not possible. What is meant is the equality mentioned in this verse:

{وَلَن تَسْتَطِيعُوا أَن تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ}

{And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging...} (an-Nisâ' 4:129)

[XI.10.4] (Ag)

وَلِلْمَرْأَةِ أَنْ تَهِبَ حَقَّهَا مِنَ الْقَسْمِ لِبَعْضِ ضَرَائِرِهَا بِإِذْنِ زَوْجِهَا، أو له فيَجْعَلَهُ لِمَن شاء مِنهن، لأن سَوْدَةَ وَهَبَت يَومَهَا لعائشة فكان رسول الله ﷺ يَقسِم لعائشة يَومَهَا ويَومَ سَودَةَ.	A woman may give her share (of her husband's company) to one of her co-wives, with her husband's permission. She may also leave it up to him to appoint it for whom he chooses. This is because Sawdah (RAH) gave her day to 'Â'ishah, so the Prophet (SA) used to give 'Â'ishah her own day and also Sawdah's day. [XI.10.5]

[XI.10.5] (Ag)

وَإِذَا عَرَّسَ عَلَىٰ بِكْرٍ، أَقَامَ عِنْدَهَا سَبْعًا، ثُمَّ دَارَ، وَإِنْ عَرَّسَ عَلَىٰ ثَيِّبٍ أَقَامَ عِنْدَهَا ثَلَاثاً، لِقَوْلِ أَنَسٍ: «مِنَ السُّنَّةِ إِذَا تَزَوَّجَ الْبِكْرَ عَلَىٰ الثَّيِّبِ، أَنْ يُقِيْمَ عِنْدَهَا سَبْعًا، وَإِذَا	If he weds a virgin, he spends seven days with her, and then he resumes the normal rotation; if he weds a non-virgin, he spends three nights with her. This is because of the statement of Anas (ra), "It is of the Sunnah for one who marries a

virgin to spend seven nights with her, and for one who marries a non-virgin to spend three nights with her." [XI.10.6] If the non-virgin wishes for him to spend seven nights with her, he should do that and then make it up to his other wives. This is because when the Prophet (SA) married Umm Salamah, he spent three nights with her and then said to her, "You have no inferior position among your family. If you wish, I will spend three nights all dedicated to you. If you want me to spend seven nights with you, I will do that, but then I will spend seven nights with the rest of my women." [XI.10.7]	تَزَوَّجَ الثَّيِّبَ عَلَىٰ الْبِكْرِ، أَقَامَ عِنْدَهَا ثَلَاثاً.» وَإِنْ أَحَبَّتِ الثَّيِّبُ أَنْ يُقِيْمَ عِنْدَهَا سَبْعًا، فَعَلَ، ثُمَّ قَضَاهُنَّ لِلْبَوَاقِيْ، لأَنَّ النَّبِيَّ ﷺ لَمَّا تَزَوَّجَ أُمَّ سَلَمَةَ، أَقَامَ عِنْدَهَا ثَلَاثاً، ثُمَّ قَالَ «لَيْسَ بِكِ هَوَانٌ عَلَىٰ أَهْلِكِ إن شِئْتِ أقمت عندك ثَلاثاً خَالِصَةً لكِ، وإنْ شِئْتِ سَبَّعْتُ لَكِ، وَإِنْ سَبَّعْتُ لَكِ سَبَّعْتُ لِنِسَائِيْ.»

[XI.10.6] (Ag)

[XI.10.7] (M)

[Etiquettes of Intimacy]

Subsection: It is recommended to cover oneself during intercourse [XI.10.8] and to say what Ibn 'Abbâs reported (from the Prophet [SA]), "If one of you says 'In the name of Allah, O Allah protect us from the devil and protect the progeny you grant to us from him' when he approaches his wife, and then it is decreed that they have a child, Satan will never harm him or her." [XI.10.9]	فَصْلٌ: وَيُسْتَحَبُّ التَّسَتُّرُ عِنْدَ الْجِمَاعِ، وَأَنْ يَقُوْلَ مَا رَوَاهُ ابْنُ عَبَّاسٍ رضي الله عنه قَالَ: قَالَ رَسُوْلُ الله ﷺ: «لَوْ أَنَّ أَحَدَكُمْ إِذَا أَتَى أَهْلَهُ قَالَ: بِسْمِ اللهِ، اللّهُمَّ جَنِّبْنَا الشَّيْطَانَ، وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا، فَقُضِيَ بَيْنَهُمَا وَلَدٌ، لَمْ يَضُرَّهُ الشَّيْطَانُ أَبَدًا.»

[XI.10.8] (A): Nakedness is disliked during intercourse.

(-H, -M, -S): It is permissible.

(A) based his conclusion on a few hadiths, including a famous one in which the Prophet (SA) said:

«إِذَا أَتَى أَحَدُكُمْ أَهْلَهُ فَلْيَسْتَتِرْ وَلَا يَتَجَرَّدْ تَجَرُّدَ الْعَيْرَيْنِ»

"When one of you has intercourse with his wife, let him cover and not be naked like donkeys." (Ṭab.A – from Ibn Mas'ood; Ba: W)

(-H, -M, -S) considered the previous hadith weak; they based their permission on the hadith of Bahz ibn Ḥakeem, from his father, from his grandfather, who said:

قُلْتُ يَا رَسُولَ اللَّهِ عَوْرَاتُنَا مَا نَأْتِي مِنْهَا وَمَا نَذَرُ قَالَ «احْفَظْ عَوْرَتَكَ إِلَّا مِنْ زَوْجَتِكَ أَوْ مَا مَلَكَتْ يَمِينُكَ» . قُلْتُ يَا رَسُولَ اللَّهِ أَرَأَيْتَ إِنْ كَانَ الْقَوْمُ بَعْضُهُمْ فِي بَعْضٍ قَالَ « إِنِ اسْتَطَعْتَ أَنْ لَا تُرِيَهَا أَحَدًا فَلَا تُرِيَنَّهَا » . قُلْتُ يَا رَسُولَ اللَّهِ فَإِنْ كَانَ أَحَدُنَا خَالِيًا قَالَ «فَاللَّهُ أَحَقُّ أَنْ يُسْتَحْيَى مِنْهُ مِنَ النَّاسِ »

"I said, 'O Messenger of Allah, with regard to our 'awrah, what may we uncover of it and what must we conceal?' He said, 'Cover your 'awrah except from your wife and those whom your right hand possesses (that is, concubines).' I said, 'O Messenger of Allah, what if the people live close together?' He said, 'If you can make sure that no one sees it, then do not let anyone see it.' I said, 'O Messenger of Allah, what if one of us is alone?' He said, 'Allah is more deserving that you should feel shy before Him than people.'" (T: S)

[XI.10.9] (Ag)

[Defiance]

Subsection: If a woman fears contempt from her husband or abandonment, she may seek his pleasure by giving up some of her rights, as did Sawdah when she feared that the Messenger of Allah (SA) might divorce her. [XI.10.10]	فَصْلٌ: وَإِنْ خَافَتِ الْمَرْأَةُ مِنْ زَوْجِهَا نُشُوْزًا أَوْ إِعْرَاضًا، فَلَا بَأْسَ أَنْ تَسْتَرْضِيَهُ بِإِسْقَاطِ بَعْضِ حُقُوْقِهَا، كَمَا فَعَلَتْ سَوْدَةُ حِيْنَ خَافَتْ أَنْ يُطَلِّقَهَا رَسُوْلُ اللهِ ﷺ.

[XI.10.10] Concerning this, Allah says:

{وَإِنِ امْرَأَةٌ خَافَتْ مِن بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَن يُصْلِحَا بَيْنَهُمَا صُلْحًا...}

{And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them…} (an-Nisâ' 4:128)

The terms of the settlement could be anything they both agree upon, whether it is the husband or the wife that gives up some rights. For example, Sawdah (RAH) proactively gave up her night to 'Â'ishah because she felt that she had grown too old, and she only needed the company of the Prophet (SA), not the conjugal relations. Since he visited all of his wives on a daily basis and spent time with them, she did not need for him to spend the night with her.

If the man fears that his wife will withhold his lawful marital rights, he should exhort her, and if she continues to show contempt, he may abandon her in bed. If that does not deter her, he may hit her lightly. [XI.10.11]	وَإِنْ خَافَ الرَّجُلُ نُشُوْزَ امْرَأَتِهِ، وَعَظَهَا، فَإِنْ أَظْهَرَتْ نُشُوْزًا، هَجَرَهَا فِيْ الْمَضْجَعِ، فَإِنْ لَمْ يَرْدَعْهَا ذٰلِكَ، فَلَهُ أَنْ يَضْرِبَهَا ضَرْبًا غَيْرَ مُبَرِّحٍ.

[XI.10.11] Allah says:

{... وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُواْ عَلَيْهِنَّ سَبِيلاً إِنَّ اللّهَ كَانَ عَلِيًّا كَبِيرًا.}

{...As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) hit them (lightly); but if they return to obedience, seek not against them means (of annoyance); for Allah is most High and Great (above you all).} (an-Nisâ' 4:34)

Please see appendix on hitting one's wife.

If discord is feared for them, the judge sends a trustworthy arbitrator from his (the husband's) side and a trustworthy arbitrator from her (the wife's) side. At their discretion, they shall unite or separate them. Whatever they decide shall be binding on the spouses. [XI.10.12]	وَإِنْ خِيْفَ الشِّقَاقُ بَيْنَهُمَا، بَعَثَ الْحَاكِمُ حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا، مَأْمُوْنَيْنِ، يَجْمَعَانِ إِنْ رَأَيَا أو يُفَرِّقَانِ، فَمَا فَعَلَا مِنْ ذٰلِكَ لَزِمَهُمَا.

[XI.10.12] If they fail to mend their relationship, and the matter reaches the judge, arbitrators may be appointed for them. Allah says:

{وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا.}

> *{And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].} (an-Nisâ' 4:35)*

It is important that these arbitrators be wise people with some understanding of the fiqh of marriage and divorce. Today there is an obvious lack of these people in many families, so the spouses may agree on arbitration by someone from outside the families, such as the local imam if he is knowledgeable and pious. The matn follows the report that these arbitrators possess judicial authority to separate the spouses. The later relied-upon Ḥanbali position treats them as the spouses' agents and requires their authorization; the independent-authority view is another report from Aḥmad, the Mâliki position, and Ibn Taymiyah's choice.

[XI.11] Chapter on *Khul‘* (Termination of Marriage Prompted by the Wife)

بَابُ الْخُلْعِ

If the woman hates her husband, and she fears that she may not be able to honor the injunctions of Allah concerning obedience to him, [XI.11.1] she may ransom herself (from that relationship) by whatever they both agree on.	وَإِذَا كَانَتِ الْمَرْأَةُ مُبْغِضَةً لِلرَّجُلِ وَخَافَتْ أَنْ لَا تُقِيْمَ حُدُوْدَ اللهِ فِيْ طَاعَتِهِ، فَلَهَا أَنْ تَفْتَدِيَ نَفْسَهَا مِنْهُ بِمَا تَرَاضَيَا عَلَيْهِ.

[XI.11] Introduction

This is an ingenious legislation of Islam. While terminating a marriage is detested or forbidden when unwarranted, it is still a necessity sometimes to save certain couples from their failed marriages. Islam gives the man the right to divorce, and makes it easy to conduct, because he is the one who is responsible for the expenses of marriage and for the expenses of divorce, including the alimony and maintenance of the wife as well as the ongoing maintenance of his children in a different household. These responsibilities will usually deter him from making a hasty decision to terminate the marriage. On the other hand, Islam does not leave the wife powerless in a failed relationship. If she proves to the court that her husband has harmed her or deprived her of her rights, she will be granted a court-ordered divorce, while retaining all her financial rights. The specifics of those harms vary from one madh-hab to another, but the Ḥanbali madh-hab considers: failure to provide sustenance, unexcused absence, abandonment (eelâ’), and defects that warrant annulment even if they arise after marriage. The Mâlikis explicitly state that the woman deserves to be granted a divorce if her husband has abused her verbally or physically, whereas the Ḥanbalis leave that up to the judge and arbitrators. In some cases, the court rejects a woman’s request for a divorce, or there has been no abuse, but she nevertheless cannot bear to stay in the marriage. If her husband refuses to give her a divorce, she is entitled to khul‘, another form of terminating a marriage, through a process that is somewhat lengthier than that of a divorce. Its compensation is what the spouses validly agree upon; returning the ṣadâq is the model established in the report of Thâbit’s wife. It is not an automatic debt consisting of the full ṣadâq plus every gift. A smaller agreed

payment or a valid waiver of the unpaid ṣadâq may also serve as compensation. If the husband refuses to cooperate with her, then judicial intervention is required, and the judiciary should remind the wife of the evils and dangers of an unwarranted termination of marriage.

[XI.11.1] Justification of Khul‘

It is known that it is a major sin for the wife to ask for the termination of her marriage without proper justification. The Messenger of Allah (SA) said:

«أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ.»

“Any woman who asks her husband for a divorce without harm, the fragrance of paradise will be forbidden to her.” (D, T, Ma – from Thawbân; T: S)

The harm mentioned in the hadith is not only limited to abuse; in fact, the husband may be a wonderful man, but the wife may still hate him or hate to live with him, and these psychological factors are respected by the legislation. When the wife of Thâbit ibn Qays went to the Prophet (SA) and requested the termination of her marriage, she said:

«يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتِبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ! فَقَالَ رَسُولُ اللَّهِ ﷺ أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ؟ قَالَتْ: نَعَمْ، قَالَ رَسُولُ اللَّهِ ﷺ اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً.»

“O Messenger of Allah, I do not find any fault in Thâbit ibn Qays, in his character or his religious commitment, but I do not want to show ungratefulness after my acceptance of Islam.” The Prophet (SA) said to her, “Will you give back his garden?” She said, “Yes.” The Prophet (SA) said to Thâbit, “Take back your garden and divorce her once.” (B)

The burden is left on the wife to speak the truth. If she claims that she hates her husband or hates living with him, while she is not truthful and merely acting vengefully or on impulse, then she may deceive the court and get what she wants, but she will not be able to deceive Allah.

It is recommended that he take no more than what he initially gave her. [XI.11.2]	وَيُسْتَحَبُّ أَنْ لَا يَأْخُذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا.

[XI.11.2] The Compensation of Khul‘

The position mentioned here is that the compensation for khul‘ has no ceiling and is decided by mutual agreement. It is only makrooh (disliked) for the husband to demand or take more than he gave her. The following verse is cited in support of this position:

{... وَلَا يَحِلُّ لَكُمْ أَن تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَن يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ...}

{... And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself...} (al-Baqarah 2:229)

There is another position (a), which is that of az-Zuhri, ‘Aṭâ’, Ṭâwoos, and others, and chosen by Abu Bakr, al-Khallâl’s companion, and (t) from the Ḥanbalis. They made the ṣadâq and the gifts given by the husband to the wife the ceiling for the compensation in khul‘. According to them, it is haram for the husband to take more. This seems to be the more equitable position and is supported by the hadith above. In fact, the version of this hadith reported by Ibn Mâjah has the following addition:

«فَأَمَرَهُ رَسُولُ اللَّهِ ـ صلى الله عليه وسلم ـ أَنْ يَأْخُذَ مِنْهَا حَدِيقَتَهُ وَلَا يَزْدَادَ»

“So the Messenger of Allah (SA) commanded him to take back his garden from her and seek no more than that.” (Ma; al-Albâni: Auth)

If he gives her khul‘ or divorces her in exchange for compensation, her divorce is immediately finalized, [XI.11.3] and she is	فَإِذَا خَالَعَهَا أَوْ طَلَّقَهَا بِعَوْضٍ، بَانَتْ مِنْهُ، وَلَمْ يَلْحَقْهَا طَلَاقُهُ بَعْدَ ذَلِكَ، وَإِنْ وَاجَهَهَا بِهِ.

not subject to more divorces from him, even if he says that to her in her face.	

[XI.11.3] The Effect of Khul‘

In the relied-upon Ḥanbali position, khul‘ is faskh (dissolution without counting a divorce) when expressed by khul‘, faskh, or mufâdâh without intending ṭalâq. If expressed as ṭalâq, or with the intention of ṭalâq, it is an irrevocable divorce counted among the three. Ibn Taymiyah regards separation for compensation as faskh regardless of the wording.

(A2) + (-H, -M, -S): It is ṭalâq.

According to all of them, it is a finalized termination, so the husband cannot return her during her ‘iddah. He may still seek to take her back, but he must propose to her like any suitor. If she agrees to go back to him, they initiate a new marriage contract. According to the Ḥanbali position discussed here, khul‘ requested by the wife is permissible and valid during menstruation. The Mâlikis prohibit khul‘ during menstruation, although the separation takes effect.

There are two practical differences between the two positions:

1- The waiting period is a separate disagreement. In the relied-upon Ḥanbali position, a woman who menstruates whose marriage was consummated or followed by qualifying seclusion observes three menstrual periods after khul‘, even when it is classified as faskh. Another report requires one menstrual period, and Ibn Taymiyah favors this view. A pregnant woman waits until childbirth.

2- If khul‘ is a form of annulment, then it will not count as one of the three ṭalâqs that the legislation gives to the couple (before their marriage is terminated with no chance of remarriage until she marries and divorces another man). In this case, a woman who was divorced twice and obtained khul‘ a few times could still go back to the same husband.

The compensation for khul‘ is anything that could be a ṣadâq, even if it is unknown. If she says, “Give me a khul‘ in exchange for the	وَيَجُوْزُ الْخُلْعُ بِكُلِّ مَا يَجُوْزُ أَنْ يَكُوْنَ صَدَاقًا، وَبِالْمَجْهُوْلِ، فَلَوْ قَالَتْ: اخْلَعْنِيْ بِمَا

dirhams in my hand" or for "the useful properties in my house," and he does, it is valid, and he is entitled to whatever is there. If nothing is there, he is entitled to three dirhams (in the first scenario) or the smallest article that could be considered useful property (in the second scenario). [XI.11.4]	فِيْ يَدِيْ مِنَ الدَّرَاهِمِ، أَوْ مَا فِيْ بَيْتِيْ مِنَ الْمَتَاعِ فَفَعَلَ، صَحَّ، وَلَهُ مَا فِيْهِمَا، فَإِنْ لَمْ يَكُنْ فِيْهِمَا شَيْءٌ، فَلَهُ ثَلَاثَةُ دَرَاهِمَ، وَأَقَلُّ مَا يُسَمَّى مَتَاعًا.

[XI.11.4] This is in contrast to the other forms of for-profit transactions (‘uqood al- mu‘âwaḍât). The other opinion within (a) is the invalidity of this agreement.

	وَإِنْ خَالَعَهَا عَلَىٰ عَبْدٍ مُعَيَّنٍ، فَخَرَجَ مَعِيْبًا، فَلَهُ أَرْشُهُ أَوْ رَدُّهُ وَأَخْذُ قِيْمَتِهِ، وَإِنْ خَرَجَ مَغْصُوْبًا أَوْ حُرًّا، فَلَهُ قِيْمَتُهُ.

Khul‘ is valid from anyone whose ṭalâq is valid. [XI.11.5] The payment of its compensation is valid only from one who is legally competent to conduct monetary transactions. [XI.11.6]	وَيَصِحُّ الْخُلْعُ مِنْ كُلِّ مَنْ يَصِحُّ طَلَاقُهُ، وَلَا يَصِحُّ بَذْلُ الْعِوَضِ، إِلَّا مِمَّنْ يَصِحُّ تَصَرُّفُهُ فِيْ الْمَالِ.

[XI.11.5] Khul‘ is not valid from a husband who lacks the capacity required for ṭalâq. The relied-upon Ḥanbali position validates khul‘ by a discerning minor who understands divorce, consistently with the matn's rule that khul‘ is valid from anyone whose ṭalâq is valid. An alternative Ḥanbali view does not validate a minor's divorce or khul‘.

The relied-upon Ḥanbali position does not authorize the father to terminate his minor or mentally incapacitated son's marriage by khul‘ or ṭalâq. Another report from Aḥmad authorizes the father where the son's interest requires it; the Mâlikis permit khul‘ by the guardian in appropriate cases. These are alternative positions, not the later Ḥanbali mu‘tamad.

Khul‘ Without the Approval of the Husband

While the majority requires the husband's approval in order for the khul‘ to be valid, (a) + (-t) make it binding on the husband to grant his wife khul‘ when she seeks it. The apparent implication of the hadith of Thâbit's

wife supports this opinion. Judicial separation for established grounds and separation by court-appointed arbitrators are distinct questions. The later relied-upon Ḥanbali position requires the spouses to authorize the arbitrators; another report from Aḥmad, the Mâliki position, and Ibn Taymiyah's choice allow the arbitrators to separate the spouses according to their assessment. I favor this latter view in cases of serious marital discord. The command to Thâbit also supports requiring a husband to respond to a justified request, but it should not be presented as the undisputed Ḥanbali rule of judicial enforcement.

[XI.11.6] (A) + (+H, +S): A woman who is under interdiction (ḥajr) because of young age or mental incompetency (insanity or foolishness) may not spend her money to get a khul‘ even if she has her guardian's permission.

[XI.12] The Book of Divorce

كِتَابُ الطَّلَاقِ

Divorce is only valid from a legally competent and willful husband.	لَا يَصِحُّ الطَّلَاقُ إِلَّا مِنْ زَوْجٍ، مُكَلَّفٍ، مُخْتَارٍ.

[XI.12] Introduction

The family is a form of partnership. Like any other partnership, it may become too dysfunctional to be in the best interest of any of its parties, including the children – in which case all parties involved may suffer a great deal of hardship. To relieve them of this hardship, Allah, the All-Wise, allowed divorce. However, the ruling of divorce varies, depending on the family circumstances. Imam Ibn Qudâmah clarified in *al-Mughni* that it may fall under any of the five legal categories:

- Haram (forbidden), such as divorce during menstruation; an alternative Ḥanbali report also prohibits divorce without a need.
- Makrooh (disliked), when there is no need, according to the relied-upon Ḥanbali position.
- Mubâḥ (permitted) when prompted by the wife's persistent misconduct
- Mustaḥabb (recommended) when there is severe conflict or when the woman is not observing the rights of Allah
- Wâjib (mandatory) when the woman is unchaste and the man fears that she may bring disgrace to the family by illicit sex, or when divorce is enforced by the judge or the two arbitrators

Note that one justification may straddle two legal categories, based on its extent. For example, we may reconcile the two reports in the madh-hab concerning unwarranted divorce by saying that it is haram if it is entirely unwarranted and makrooh if it is not entirely warranted. Also, when the woman compromises the rights of Allah, it may be wâjib for the husband to

divorce her if her conduct is alarmingly affecting the whole family, but it may be only mustaḥabb if that is not the case.

The default for the ruling on divorce when it is not clearly warranted is controversial.

(a) + (+H, +t): Forbidden.

(A) + (H2, +S): Permitted, though detested. (M): Permitted, though unfavorable.

The first position seems stronger because divorce inflicts harm on the wife and terminates all of the benefits of marriage. It is also from the works of the devils, according to the Prophet (SA), who said:

«إِنَّ إِبْلِيسَ يَضَعُ عَرْشَهُ عَلَى الْمَاءِ، ثُمَّ يَبْعَثُ سَرَايَاهُ فَأَدْنَاهُمْ مِنْهُ مَنْزِلَةً أَعْظَمُهُمْ فِتْنَةً، يَجِيءُ أَحَدُهُمْ، فَيَقُولُ: فَعَلْتُ كَذَا وَكَذَا، فَيَقُولُ: مَا صَنَعْتَ شَيْئًا، قَالَ: ثُمَّ يَجِيءُ أَحَدُهُمْ، فَيَقُولُ: مَا تَرَكْتُهُ حَتَّى فَرَّقْتُ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ، قَالَ: فَيُدْنِيهِ مِنْهُ، وَيَقُولُ: نِعْمَ أَنْتَ»

“Iblees places his throne upon the water, and then he dispatches his troops; the nearer to him in rank are those who are most effective in creating fitnah (discord and temptation). One of them comes and says, ‘I did such-and-such.’ He says, ‘You have done nothing.’ Then one amongst them comes and says, ‘I did not leave So-and-so until I sowed the seed of discord between him and his wife.’ He brings him closer and says, ‘Yes, you are the one!’” (M – from Jâbir)

The Types of Divorce

Unfinalized (raj‘iy): This is during the waiting period if the man still has the right to take his wife back, even without her approval.

Finalized (bâ’in): This is of two types:

1) Finalized with recourse (baynoonah ṣughrâ), which occurs:

- After divorce before both consummation and qualifying seclusion (in which case she has no ‘iddah to observe).

- Upon completion of the waiting period after a first or second divorce

- During the waiting period in the case where the divorce becomes immediately finalized, as in the case of khul‘

2) Finalized without recourse (baynoonah kubrâ), which occurs after the third divorce: she cannot remarry that husband unless she first contracts and consummates a valid marriage with another husband, that marriage ends, and its waiting period is completed. Li‘ân is different: in the Ḥanbali position it dissolves the marriage and permanently prohibits remarriage between the spouses, even after another marriage.

Divorce of a Child

‘Mukallaf’ usually refers to one who is sane and adult. (See the appendix on the meaning of ‘mukallaf’.)

(A/SM & Iqnâ‘): Imam Aḥmad considered the discerning child (usually above the age of ten but may be less according to A/ Iqnâ‘) legally competent to issue a divorce.

(a) + (-H, -M, -S): He is not.

Divorce under compulsion is invalid. [XI.12.1] Also invalid is the divorce of the one without intact intellect, [XI.12.2] except for the drunk. [XI.12.3]	وَلَا يَصِحُّ طَلَاقُ المكره ولا زَائِلِ الْعَقْلِ، إِلَّا السَّكْرَانَ.

[XI.12.1] Divorce under Compulsion

(A) + (+M, +S): It is invalid.

(-H): It is valid.

The position of the majority is supported by the saying of the Prophet (SA):

«إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ.»

"Allah has pardoned my people – for my sake - for their mistakes and their forgetfulness, and for what they have done under duress." (Ma – from Ibn 'Abbâs; al-Albâni: S)

The Ḥanafis say that the sin is waived, but not all of the legal consequences are. Another report says, "lifted off my nation…" It is obvious that error and forgetfulness themselves were not lifted off the Ummah (Muslim nation), so there must be a missing (and required) word.

(A) + (+S) maintain the generality of the required implication ('umoom al-muqtaḍâ), which in this case is (all the consequences of) error, forgetfulness and that which is done under duress.

(-H, -M) chose to narrow down the required implication (al-muqtaḍâ) to a minimum, which is (only the sin of) error, forgetfulness and that which is done under duress.

They all did this out of respect for the statement of the Prophet (SA). Those who generalized said that if it is not possible to uphold the literal meaning, we should choose that closest to it, which is 'all of the consequences'. On the other hand, those who restricted the required implication to a minimum argued that if we must insert something into the statement of the Prophet (SA), then we ought to insert the minimum that will make the statement plausible, which is 'the sin of'.

[XI.12.2] The Divorce of the One with Impaired Intellect

By consensus: This includes the insane.

(A) + (+H, +M, +S): The foolish one is not included here, so his divorce counts. The one who is joking will have his divorce counted as well, because even though he did not intend to divorce his wife, he uttered the word willfully.

(a) + (-H, -t): One who was in a state of severe anger may also be included here, and his divorce does not count. Ibn al-Qayyim and Ibn 'Âbideen do not restrict every exception to total unawareness of one's words, but their analyses should be distinguished. Ibn al-Qayyim argues for non-effectiveness in a disputed intermediate degree of severe anger that falls short of complete loss of awareness. Ibn 'Âbideen frames his own

conclusion in terms of predominant incoherence and the mixing of serious and unserious speech. Ordinary anger in which intellect remains unchanged, or subsequent regret alone, does not establish either exception. The strongest proof for this minority of scholars is the rational one, which is that anger can impair one's judgment to a point where he may not be acting completely willfully. It is agreed that he is responsible for the damage he causes to people's lives and properties, but divorcing his wife is a different matter that should not count from one who is not acting completely willfully. They also cite a hadith with controversial transmission:

«لا طَلاقَ وَلا عَتَاقَ فِي إِغْلاقٍ.»

"There is no (valid) divorce or manumission in the case of ighlâq (duress or infuriation)." (D, Ma – from 'Â'ishah; Ibn al-Mulaqqin and Ibn Ḥajar: S)

This hadith has been classified as weak by other scholars. They also disagree over the meaning of 'ighlâq' here. Some, like Abu Dâwood, said it means infuriation, while others said it means coercion. It comes from the three-lettered root (ghalaqa), meaning closed, which infers that the person's intellect was blocked out. This could happen because of anger.

[XI.12.3] The Divorce by One Who Is Intoxicated

First, divorce by a man who gets drunk after taking a permissible medicine, or after drinking an intoxicant mistakenly or under compulsion does not count, by consensus.

(A) + (+H, +M, +S): The one who consumes an intoxicant inexcusably shall have his divorce counted because the Companions held such a person accountable for murder and theft. They also cite the following hadith:

«كُلُّ طَلَاقٍ جَائِزٌ إِلَّا طَلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ»

"Every ṭalâq counts except the divorce of the ma'tooh (imbecile/mentally incompetent) who has been deprived of his intellect." (T – from Abu Hurayrah; T: W)

They argued that the intoxicated person was not deprived of his intellect; instead, he impaired it himself. However, the report traceable to the Prophet (SA) is very weak, according to at-Tirmidhi himself, although it is authentic as a statement of ‘Ali (RA).

(a) + (s, -t): Invalid. This is because it is reported from ‘Uthmân that he deemed it invalid. Ibn al-Mundhir said that it is the only verifiable report from a Companion that was not contested by the other Companions. This was also the position of ‘Umar ibn ‘Abdul-‘Azeez, al-Qâsim, Ṭâwoos, al-Layth, Is-ḥâq, Abu Thawr and others. This group argues that divorce, by agreement, is not like the other crimes for which the intoxicated is held liable. Finally, they cite the above saying of the Prophet (SA), “There is no (valid) divorce or manumission in the case of ighlâq.” The intellect of the intoxicated person is blocked out.

The free man is entitled to three divorces, and the slave is entitled only to two, whether the wife is free or not.	وَيَمْلِكُ الْحُرُّ ثَلَاثَ تَطْلِيْقَاتٍ، وَالْعَبْدُ اثْنَتَيْنِ، سَوَاءٌ كَانَ تَحْتَهُمَا حُرَّةٌ أَوْ أَمَةٌ.

After he uses the number of divorces he is entitled to, his wife is not eligible to marry him until she contracts a valid marriage with another man and they have intercourse. [XI.12.4] This is because of the statement of the Messenger of Allah (SA) to the wife of Rifâ‘ah, “Maybe you want to go back to Rifâ‘ah; nay, you cannot until you enjoy sex with him (the new husband), and he enjoys sex with you.” [XI.12.5]	فَمَنِ اسْتَوْفَى عَدَدَ طَلَاقِهِ، لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، نِكَاحًا صَحِيْحًا، وَيَطَأَهَا، لِقَوْلِ رَسُوْلِ اللهِ ﷺ لِامْرَأَةِ رِفَاعَةَ: «لَعَلَّكِ تُرِيْدِيْنَ أَنْ تَرْجِعِيْ إِلَى رِفَاعَةَ. لَا، حَتَّى تَذُوْقِيْ عُسَيْلَتَهُ وَيَذُوْقَ عُسَيْلَتَكِ.»

[XI.12.4] Finalized Divorce Without Recourse (Baynoonah Kubrâ)

The legislator (Allah) gave men three divorces. After the third divorce, the wife becomes unmarriageable for him until she marries another man and has intercourse with him, and then that marriage ends. The wisdom behind this is to spare women from the abuse of some men who may

repeatedly divorce and then take back their wives. The other comprehensible wisdom is to allow a couple who have had obvious difficulties with their marriage to try new lives. Often, people become paralyzed by the fear of the unknown and are too intimidated to break away from their miserable realities. Through this ruling, the legislator is forcing them to move away from their failed past.

[XI.12.5] (Ag – from ‘Â’ishah)

It is not permissible to combine the three divorces (at once). [XI.12.6]	وَلَا يَحِلُّ جَمْعُ الثَّلَاثِ.

[XI.12.6] The Composite Threefold Divorce

(A) + (+H, +M): This is a form of bid‘ah divorce.

(A2) + (+S): It is permissible.

The other pertinent question is whether it counts as three divorces or one. There are four positions regarding this; we mention here the stronger two:

1) The majority (A) + (+H, +M, +S) counts it as three, and their main proof is the reported consensus, although that was challenged. They cite other reports where the Prophet (SA) explicitly counted them as three, but these are not authentic. They also cite reports implying that the Prophet (SA) counted them as three; one of these concerns Rukânah, who divorced his wife with a battah (final) divorce. After the Prophet (SA) asked him if he meant one, Rukânah took an oath to that effect, and the Prophet (SA) returned his wife to him. However, this story has several variations and sometimes is actually used to support the opposite position.

According to this majority, the claim that ‘Umar changed this ruling himself not only is unbefitting of ‘Umar but would also set a precedent allowing others to abuse the rulings of Allah; since ‘Umar could not change the Prophet’s ruling, this must have been the way of the Prophet (SA). They also raised concerns about the statement of Ibn ‘Abbâs regarding the ruling being changed during ‘Umar’s time (although it was reported by Muslim through a solid chain).

Finally, while the agreement of the formal position of the four madh-habs carries a great weight that cannot be denied among Ahl us-Sunnah, it is not infallible. Nevertheless, challenging it is a gigantic task which can be undertaken only by those who are highly qualified to mount a formidable argument based on the text of revelation and the positions of the early generations. Collective ijtihâd or widespread acceptance will also be needed to bring into the mainstream a position that contradicts the agreement of the four madh-habs. (See the appendix on the agreement of the four madh-habs.)

2) The minority position is that it counts as a single divorce.

This position is held by many contemporary scholars, and it is the law in many Muslim countries, including Egypt, Syria, and Jordan. Historically, it was known to be the position of Imam Ibn Taymiyah, who was harshly criticized by some for having violated the consensus on this matter. Although Ibn Taymiyah may have stirred up a rigorous discourse on the issue among Ahl us-Sunnah of his time, it would be very dishonest to claim that he was the first to introduce it. In fact, Imam Ibn Ḥajar, a supporter of the majority position, marveled, in his commentary on the "Chapter of Those Who Permitted the Threefold Divorce" in *Fatḥ al-Bâri*, at Ibn at-Teen's claim that there was no disagreement on this issue. Ibn Ḥajar mentioned that this position had been reported from ʻAli, Ibn Masʻood, ʻAbdur-Raḥmân ibn ʻAwf, az-Zubayr ibn al-ʻAwwâm, Ibn ʻAbbâs, Ṭâwoos, ʻAṭâ', and several Mâliki scholars like Muhammad ibn Baqi ibn Makhlad, Muhammad ibn ʻAbdus-Salâm al-Khushani, and others. The contemporary Mâliki luminary Ibn ʻÂshoor, a supporter of this minority position, mentioned (in *at-Taḥreer wat-Tanweer*, in his commentary on the saying of Allah, "Divorce is twice,") the names of other Mâliki authorities, such as Muhammad ibn Zinbâ', Aṣbagh ibn al-Ḥubâb, and Aḥmad ibn al-Mugheeth aṭ-Ṭulayṭili. Ibn al-Qayyim in *Iʻlâm al-Muwaqqiʻeen* mentioned several others from every generation. This is also reported from Muhammad ibn Is-ḥâq and from Dâwood adh-Dhâhiri and many of his followers. It is also the position of Jaʻfar aṣ-Ṣâdiq and his father, and thus it is upheld by the Imamite Shiites.

The supporters of this position also cite many reports, including the story of Rukânah, which the majority uses to support their own position. Imam Aḥmad and others reported with a sound chain, from Ibn ʻAbbâs, that Rukânah divorced his wife by saying, "I divorce you three times," and then he regretted it. The Prophet (SA) returned her to him, saying, "This is only

one (divorce).” However, this story has many variations, and it is prudent to say that it should not be used in support of either position, given the consequential variations in its reports.

In my view, the strongest evidence for this position is the apparent implication in the saying of Allah:

{الطَّلَاقُ مَرَّتَانِ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ...}

{Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment…} (al-Baqarah 2:229)

Followed by His saying:

{فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ}

{And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.} (al-Baqarah 2:230)

The minority scholars argue that this verse implies that the third divorce follows the previous divorces; it does not accompany them. According to Ibn ‘Âshoor, this would be consistent with the intent of the legislation. Allah wanted to allow them up to three divorces so that after the first two reunions, they would improve their dealings with each other and perhaps ultimately avoid the third divorce.

The other strong proof for this position is this statement of Ibn ‘Abbâs:

«كَانَ الطَّلَاقُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، وَأَبِي بَكْرٍ، وَسَنَتَيْنِ مِنْ خِلَافَةِ عُمَرَ، طَلَاقُ الثَّلَاثِ وَاحِدَةً، فقَالَ عُمَرُ بْنُ الْخَطَّابِ: «إِنَّ النَّاسَ قَدِ اسْتَعْجَلُوا فِي أَمْرٍ قَدْ كَانَتْ لَهُمْ فِيهِ أَنَاةٌ، فَلَوْ أَمْضَيْنَاهُ عَلَيْهِمْ، فَأَمْضَاهُ عَلَيْهِمْ»»

"The way divorce was counted during the time of the Messenger of Allah (SA) and Abu Bakr, and in the first two years of 'Umar's caliphate, is that three divorce pronouncements (the threefold divorce) were counted as one. Then 'Umar ibn al-Khaṭṭâb said, 'Verily, the people are making haste regarding a matter about which they were to show deliberation, so let us impose it upon them,' and then he imposed it." (M – from Ṭâwoos)

The supporters of the majority position had many rebuttals to this report; they were best put together by Imam Ibn Ḥajar in his commentary on the "Chapter of Those Who Permitted the Threefold Divorce" in *Fatḥ al-Bâri*. However, the strength of the chain and clarity of the meaning would still make this report a formidable evidence for the minority position.

Finally, the hardship that results from forcing a finalized divorce without recourse upon a single pronouncement is obvious. The family is instantly dissolved without recourse, unless the wife marries another man and then her marriage with him ends. The contemporary Ḥanbali scholar Shaykh Ibn Bâz said about the minority position, "It is also my view, because that is consistent with all of the texts, and it is also more merciful and kind to the Muslims."

It is also impermissible to divorce the wife, after consummation of the marriage, during her menstrual period or during a time of purity in which he had intercourse with her. This is because Ibn 'Umar (RAHUMA) narrated that he divorced his wife while she was on her period, and when 'Umar (RA) mentioned that to the Messenger of Allah (SA), he said, "Order him to take her back and then keep her (as a wife) until she becomes pure, then she menstruates, and then she becomes pure. Afterwards, if he still wants to divorce her, let him do	وَلَا طَلَاقُ الْمَدْخُوْلِ بِهَا فِيْ حَيْضِهَا أَوْ طُهْرٍ أَصَابَهَا فِيْهِ، لِمَا رَوَى ابْنُ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَةً لَهُ وَهِيَ حَائِضٌ، فَذَكَرَ ذٰلِكَ عُمَرُ لِرَسُوْلِ اللهِ ﷺ فَتَغَيَّظَ عَلَيْهِ رَسُوْلُ اللهِ ﷺ ثُمَّ قَالَ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ يَمْسِكُهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيْضَ ثُمَّ تَطْهُرَ، فَإِنْ بَدَا لَهُ أَنْ يُطَلِّقَهَا، فَلْيُطَلِّقْهَا قَبْلَ أَنْ يَمَسَّهَا.»

that before touching her." [XI.12.7] [XI.12.8]	

[XI.12.7] (Ag – from ‘Abdullâh ibn ‘Umar)

[XI.12.8] Divorce during the Menstrual Period

This discussion pertains to the bid‘ah divorce, which means that it occurs during the menstrual period or in a period of ritual purity in which the couple had intercourse, of a woman with whom marriage was consummated. It does not pertain to the divorce of the contracted woman before consummation, or to a pregnant, premenarcheal or post-menopausal woman, whose divorce is valid at all times.

Allah said:

{يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ}

{O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period…} (aṭ-Ṭalâq 65:1)

The Prophet (SA) explained the meaning of this – that a woman should be divorced only when she is in a state of ritual purity (free from ḥayḍ [menstruation] and nifâs [postpartum bleeding]), when her husband has not had intercourse with her since the end of her last menses. In this case, she starts counting her waiting period from the first menstruation after the divorce. Otherwise, if she is divorced while menstruating, she has to drop that menstruation from the total count of three menstrual periods.

Divorce during menstruation in the case under discussion is prohibited. The Ḥanbali school also prohibits divorce during a period of purity in which intercourse occurred and pregnancy is not established. The Mâliki discussion classifies this latter timing as disliked.

Concerning its validity and whether the divorce takes effect, there are three different positions:

(A) + (+H, +M, +S): It is valid (and this is the position of the vast majority).

Ibn Ḥazm: It is invalid unless it is the third divorce or a threefold divorce.

It is invalid; this is the position of a few Mâlikis and Ḥanbalis, including Ibn ‘Aqeel, Ibn Taymiyah, and Ibn al-Qayyim. This is also the position of ash-Shawkâni, aṣ-Ṣan‘âni, Ṣiddeeq Ḥasan Khan, Aḥmad Shâkir, and Ibn Bâz. This is the position of the Shiites and Kharijites as well.

A detailed discussion of this matter is beyond the scope of this book, but the root cause of the disagreement can be briefly attributed to two issues:

1- The varying reports concerning the story of Ibn ‘Umar when he divorced his wife during her period and was ordered by the Prophet (SA) to take her back. In some of the reports, the following statements are mentioned: «فَرَدَّها عَلَيّ ولَمْ يَرَ هَا شَيْئاً» (“So he returned her back to me and did not consider it anything [valid/good]”) and he said, «لَيْسَ ذَلِكَ بِشَيْءٍ» (“That is nothing [valid/good]”). The other narrations, however, contained the following statements: «حُسِبَت عَلَيهِ» (“It was counted against him [Ibn ‘Umar]”) and «جَعَلَها واحِدَةً» (“He counted it as one”) and «اعْتَدَّ بِهَا» (“He counted it”).

2- The scholars who claimed that the divorce is invalid argued that it is not permissible, citing the following principle:

النَّـهْيُ يَقْتَضِي الفَسَادَ

The prohibition implies invalidity.

They cited the famous statement of the Prophet (SA):

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ فِيهِ فَهُوَ رَدٌّ »

“Whoever innovates something that is not in accordance with the principles of our religion will have it rejected.” (Ag – from ‘Â’ishah)

The position of the majority seems stronger because they cite reports that are more numerous and clearer. Even if we disregard this aspect of Ibn ‘Umar’s story because of the inconsistencies, the divorce should still count since it is done by someone who is legally authorized to issue it. The

majority maintains that the prohibition of divorce during this time is not related to the essence of divorce or its pillars, conditions of validity, or inseparable attributes. The prohibition is, at least in part, to avoid prolonging the waiting period for the woman, which is extraneous to the subject matter of divorce. In such cases, the prohibition does not imply invalidity. Allah knows best.

The Sunnah in divorce is to divorce the wife once during a state of purity during which he had no intercourse with her, then to leave her until her ‘iddah is over. [XI.12.9]	وَالسُّنَّةُ فِيْ الطَّلَاقِ أَنْ يُطَلِّقَهَا فِيْ طُهْرٍ لَمْ يُصِبْهَا فِيْهِ وَاحِدَةً، ثُمَّ يَدَعَهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا.

[XI.12.9] Without initiating more divorces.

If he says to her, “You are divorced according to the Sunnah,” while she is in a period of purity during which he did not have intercourse with her, she becomes immediately divorced. If he had intercourse with her during that period, or if she is menstruating, then the divorce takes place only once her menstruation ends.	فَمَتَى قَالَ لَهَا: أَنْتِ طَالِقٌ لِلسُّنَّةِ، وَهِيَ فِيْ طُهْرٍ لَمْ يُصِبْهَا فِيْهِ، طَلُقَتْ، وَإِنْ كَانَتْ فِيْ طُهْرٍ أَصَابَهَا فِيْهِ أَوْ حَيْضٍ، لَمْ تَطْلُقْ حَتَّى تَطْهُرَ مِنَ الْحَيْضَةِ.

If he says to her, “You are divorced according to the bid‘ah (innovated) way,” and she is menstruating or in a state of purity during which he had intercourse with her, then she becomes immediately divorced. If she is not, then she does not become divorced until he has sex with her or she menstruates.	وَإِنْ قَالَ لَهَا: أَنْتِ طَالِقٌ لِلْبِدْعَةِ، وَهِيَ حَائِضٌ أَوْ فِيْ طُهْرٍ أَصَابَهَا فِيْهِ، طَلُقَتْ، وَإِنْ لَمْ يَكُنْ كَذٰلِكَ، لَمْ تَطْلُقْ حَتَّى يُصِيْبَهَا أَوْ تَحِيْضَ.

As for the wife with whom marriage was not consummated, the pregnant wife	فَأَمَّا غَيْرُ الْمَدْخُوْلِ بِهَا، وَالْحَامِلُ الَّتِيْ تَبَيَّنَ

whose pregnancy becomes obvious, the postmenopausal wife, and the premenarcheal wife, whenever he says to her, “You are divorced according to the Sunnah or the bid‘ah way,” she becomes immediately divorced. [XI.12.10]	حَمْلُهَا، وَالْآيِسَةُ وَالَّتِيْ لَمْ تَحِضْ، فَلَا سُنَّةَ لِطَلَاقِهِا وَلَا بِدْعَةَ، فَمَتَى قَالَ لَهَا أنت طالِقٌ للسُّنَّةِ أو للبِدعَةِ طَلُقَتْ في الحال.

[XI.12.10] One of the problems with the bid‘ah ṭalâq is that it prolongs the waiting period for the woman. In the cases mentioned here, the waiting period is either fixed (three lunar months) or ends upon childbirth, or there is no waiting period to begin with (such as divorce before both consummation and qualifying seclusion).

[XI.13] Chapter on Explicit and Implicit Divorce

بَابُ صَرِيْحِ الطَّلَاقِ وَكِنَايَتِهِ

صَرِيْحُهُ: لَفْظُ الطَّلَاقِ وما تَصَرَّفَ مِنْهُ كَقَوْلِهِ: أَنْتِ طَالِقٌ أَوْ مُطَلَّقَةٌ أَوْ طَلَّقْتُكِ.	The explicit words of divorce (*ṭalâq*) are those derived from it, such as "You are *ṭâliq* (adjective)," or "You are *muṭallaqah* (adj. in passive voice)," or "I divorced you (*ṭallaqtuk*)." [XI.13.1]

[XI.13] Introduction

The distinction between explicit and implicit words is legally consequential. Explicit words do not ordinarily require an intention to effect divorce. Implicit words ordinarily require that intention; however, in the relied-upon Ḥanbali position, a qualifying context, such as a quarrel, anger, or a reply to her request for divorce, can stand in its place judicially. A truthful claim of a different intention may govern his responsibility before Allah even when the court does not accept it.

[XI.13.1] Explicit Words for Ṭalâq in Languages Other than Arabic

(A) + (+H, +S): Words that are customarily explicit on ṭalâq in other languages, such as 'divorce' in English, are considered explicit (+M: if witnessed by two who know the language).

فَمَتَى أَتَى بِهِ بِصَرِيحِ الطَّلَاقِ طَلُقَتْ وَإِنْ لَمْ يَنْوِهِ.	When he speaks an explicit word of ṭalâq, she becomes immediately divorced, even if he did not intend it. [XI.13.2]

[XI.13.2] Mistaken Pronouncement and Jesting

One may say the Arabic word 'ṭâliq' without intending divorce in one of the following conditions:

- He means to say the word jokingly but does not intend to divorce his wife. In this case, the divorce will take place according to (A) + (+H, +M, +S). The Messenger of Allah (SA) said:

«ثَلَاثٌ جِدُّهنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: اَلنِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ»

"There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after divorce)." (T, D, Ma – from Abu Hurayrah; T: S)

- He intends to say another word, but the word 'ṭâliq' comes out of his mouth unintentionally, or he intends to say the word 'ṭâliq' for another meaning of it, since it is a homonym which has other implications, such as "You are released (from your ties)." In these cases, if the wife believes him and does not escalate the matter to the court, the ṭalâq does not occur in the sight of Allah. If she takes him to court, there may be one of three scenarios, based on the corroborative evidence:

(A) + (+H, +M, +S): If there is no evidence or there is corroborative evidence that he intended divorce, as when he said it during an altercation with his wife, the court will officiate the ṭalâq.

(A) + (+M, +S): If there is corroborative evidence to support his claim that he did not intend ṭalâq, this claim will be accepted and there is no ṭalâq. (This is still unclear in the madhhab, but it is the proper way to reconcile the two reports from the imam.)

Otherwise, all implicit words that could mean divorce will be treated as metaphors, [XI.13.3] and their ultimate interpretation will depend on his intention. [XI.13.4]	وَمَا عَدَاهُ مِمَّا يَحْتَمِلُ الطَّلَاقَ فَكِنَايَةٌ لَا يَقَعُ بِهِ الطَّلَاقُ إِلَّا أَنْ يَنْوِيَهُ.

[XI.13.3] For example, if a husband says to his wife, "We are done," "This is the end," or the like.

[XI.13.4] Writing the Words of Divorce

(a) + (+S): Written words of divorce are treated as implicit pronouncements and require the writer's intention to divorce, even when the written formula is explicit. This position was adopted by some of the middle-period Ḥanbalis (*al-mutawassiṭoon*), including al-Dujayli in *al-Wajeez*, and was preferred by al-Mardâwi.

(A): In the later relied-upon position, legible writing of explicit words divorcing his wife takes effect even without an intention to divorce. If he intended only another purpose, such as practicing his handwriting or testing his pen, no divorce occurs, and his explanation is accepted judicially.

Signing the Documents of Divorce in a Secular Court

According to AMJA's Family Code:

A legally enforced divorce that is performed by the secular judicial system outside the lands of Islam, when contrary to the desire of the husband, only terminates the civil marriage contract. As for the marital bond in the eyes of the Sharia, that is referred back to the husband, or the Islamic judge, or those in his position. But if the husband willingly signs the divorce papers, then the divorce becomes legitimate, and the role of the secular judicial system in that case would simply be a documentation of that.

If a man is asked, "Do you have a wife?," and he says no, intending to lie, she does not become divorced. However, if he says, "I divorced her," she becomes divorced, even if he intended to lie. [XI.13.5]	فَلَوْ قِيْلَ لَهُ: أَلَكَ امْرَأَةٌ؟ قَالَ: لَا، يَنْوِيْ الْكَذِبَ، لَمْ تَطْلُقْ، وَإِنْ قَالَ: طَلَّقْتُهَا، طَلُقَتْ وَإِنْ نَوَى الْكَذِبَ.

[XI.13.5] The utterance of the word 'divorce' and those that are derived from it should be taken seriously because judges should only go by that which is apparent; they cannot discover people's intentions. In this case, he uttered the word 'divorce', so it will be counted against him.

If he says to his wife, "You are *khaliyah*, [XI.13.6] bariyah, [XI.13.7] bâ'in (finalized), [XI.13.8] battah, [XI.13.9] or batlah," [XI.13.10] intending to divorce her, she becomes divorced three times unless he intended less than that. [XI.13.11] Aside from that, the divorce will	وَإِنْ قَالَ لِامْرَأَتِهِ: أَنْتِ خَلِيَّةٌ، أَوْ بَرِيَّةٌ، أَوْ بَائِنٌ ، أَوْ بَتَّةٌ، أَوْ بَتْلَةٌ، يَنْوِيْ طَلَاقَهَا طَلُقَتْ ثَلَاثاً إِلَّا أَنْ يَنْوِيَ دُوْنَهَا، وَمَا عَدَا هَذِهِ يَقَعُ بِهِ وَاحِدَةً إِلَّا أَنْ يَنْوِيَ ثَلَاثاً.

always count as a singular divorce unless he intends a composite threefold divorce. [XI.13.12]	

[XI.13.6] Released from the bond of marriage; a she-camel is called khaliyah when released from her rope.

[XI.13.7] Adjective from al-barâ'ah, which means innocence and non-liability.

[XI.13.8] Adjective from al-bayn, which means separation.

[XI.13.9] Adjective from al-batt, which means cutting.

[XI.13.10] Adjective from at-tabattul. Maryam (Mary, mother of Jesus) is called al-batool because she had no interest in men or anything that would take her away from the worship of Allah.

[XI.13.11] All of these words are implicit, so the occurrence of the composite threefold divorce (which counts, according to the majority) will depend on his intention. (See the discussion of the threefold divorce in the previous chapter.)

[XI.13.12] According to another view, considered to be the madh-hab (A/SM & Iqnâ'): If he intends divorce by any of these strong metaphors, then three divorces will be binding, regardless of how many times he intended.

If he gives his wife the choice, and she chooses separation, she is divorced one time. [XI.13.13] If she does not choose, or if she chooses to remain with her husband, no divorce takes place. 'Â'ishah (rah) said, "The Messenger of Allah gave us the choice. Was that a divorce?" [XI.13.14]	وَإِنْ خَيَّرَ امْرَأَتَهُ، فَاخْتَارَتْ نَفْسَهَا، طَلُقَتْ وَاحِدَةً. وَإِنْ لَمْ تَخْتَرْ أَوِ اخْتَارَتْ زَوْجَهَا، لَمْ يَقَعْ شَيْءٌ، قَالَتْ عَائِشَةُ رَضِيَ اللهُ عَنْهَا: «قَدْ خَيَّرَنَا رَسُوْلُ اللهِ ﷺ، أَفَكَانَ طَلَاقاً؟»

[XI.13.13] If this was the first or second divorce, and it was not for compensation, he has the right to take her back during the 'iddah.

[XI.13.14] (Ag) This is a rhetorical question from ‘Â’ishah to deny that giving the wife a choice counts as a ṭalâq.

She is not entitled to choose except in the same session (when he gives her the choice), unless he gives her the option after that.	وَلَيْسَ لَهَا أَنْ تَخْتَارَ إِلَّا فِي الْمَجْلِسِ، إِلَّا أَنْ يَجْعَلَهُ لَهَا فِيمَا بَعْدَهُ.

If he says, “Your matter is in your hand,” [XI.13.15] or, “Divorce yourself,” then it is up to her, unless he rescinds (the authorization) or has intercourse with her. [XI.13.16]	وَإِنْ قَالَ لَهَا: أَمْرُكِ بِيَدِكِ، أَوْ طَلِّقِيْ نَفْسَكِ، فَهُوَ فِيْ يَدِهَا، حَتَّى يَفْسَخَ أَوْ يَطَأَ.

[XI.13.15] In this case, she may give herself a composite threefold divorce. (See the discussion of the threefold divorce in the previous chapter.)

[XI.13.16] Granting the Wife the Right of Divorce

Before or after the contract, the husband may give his wife the right of divorce. The discussion above is about granting her this right after their marriage contract is finalized. In the absence of an express extension of time, the right is limited to the same session according to (-H, -M), while (-S) requires an immediate response. Only (A) differentiates between giving her the choice, which will be limited to the same session, as indicated above, and granting her the right of divorce, which continues until he rescinds the authorization, divorces her, or has intercourse with her. (As for stipulating this right in the contract, see the Chapter on Conditions in Marriage.)

[XI.14] Chapter on Conditional Divorce

بَابُ تَعْلِيْقِ الطَّلَاقِ بِالشُّرُوْطِ

It is valid to make a conditional divorce or emancipation, as long as this happens after marriage or ownership, respectively. [XI.14.1]	يَصِحُّ تَعْلِيْقُ الطَّلَاقِ وَالْعِتَاقِ بِشُرُوْطٍ بَعْدَ النِّكَاحِ وَالْمِلْكِ.

[XI.14] Introduction

The normal form of divorce that occurred during the time of the Prophet (SA) was the munajjaz (immediately effective) divorce. After his death, people invented all sorts of divorces, one of which was contingent upon the occurrence of something. There are different types of contingencies here. Sometimes, one may suspend the divorce until a specific time in the future, such as the beginning of the month of Muḥarram.

(A) + (+H, +S): When that time comes, the divorce takes place.

(M): Divorce takes place immediately upon this pronouncement.

(Z): This divorce is not valid.

The other contingency is the performance of or abstention from a certain action which may or may not take place. The discussion below is about this scenario.

[XI.14.1] The Legal Consequences of Conditional Divorce

When a man says to his wife, “If you do (or do not do) such-and-such, you become divorced,” this is called a conditional divorce.

(A) + (+H, +M, +S): She is divorced when the condition is fulfilled.

(Z) and the Imamite Shiites: It does not count as a divorce.

(t) and currently adopted by the laws of Egypt, Syria, Jordan, and other Muslim countries: It depends on the husband’s intention. If he means to encourage someone to do something or refrain from it, as in the case of all other oaths, it will count as an oath, for which he will need to expiate. If

he intends that his wife in fact becomes divorced, then she is divorced when the condition is fulfilled.

The majority reported some fatwas from Companions such as Ibn ‘Umar and Ibn Mas‘ood to support their position. Ibn Ḥazm reported counter positions from other Companions like ‘Ali. (t) argued that the reconciliation of all positions is to differentiate among the different types of conditional divorces on the basis of what the husband intended. He and his supporters, including Imam Ibn al-Qayyim, argued that this would be more consistent with the saying of the Messenger of Allah (SA):

«إِنَّمَا الْأَعْمَالُ بِالنِّيَّات»

“Actions are (judged) by intentions (niyât).” (Ag – from ‘Umar)

وَلَا يَصِحُّ قَبْلَهُ، فَلَوْ قَالَ: إِنْ تَزَوَّجْتُ فُلَانَةً، فَهِيَ طَالِقٌ، أَوْ إِنْ مَلَكْتُهَا، فَهِيَ حُرَّة، فتزوجها أو ملكها لَمْ تَطْلُقْ، وَلَمْ تَعْتِقْ.	It is not valid before that (marriage or ownership). For example, if he says, “If I marry So-and-so, she is divorced,” or, “If I own her, she is free,” and then he marries her or owns her, she does not become divorced or free. [XI.14.2]

[XI.14.2] This is because the Messenger of Allah (SA) said:

«لا نَذْرَ لابْنِ آدَمَ فِيمَا لَا يَمْلِكُ، ولَا عِتْقَ لَهُ فِيمَا لَا يَمْلِكُ، ولا طَلَاقَ لَهُ فِيمَا لَا يَمْلِكُ»

“There is no (binding) vow for the son of Adam over that which he does not possess, and there is no (binding) emancipation concerning those he does not own, and there is no (binding) divorce for/on him before he possesses the right to it.” (T – from Ibn ‘Amr; T: RS)

وَأَدَوَاتُ الشَّرْطِ سِتٌّ: إِنْ، وَإِذَا، وَأَيٌّ، ومَتَى، وَمَنْ، وَكُلَّمَا، وَلَيْسَ فِيْهَا مَا يَقْتَضِيْ التِّكْرَارَ إِلَّا كُلَّمَا.	The conjunctions of conditional sentences are six: *in* (if), *idhâ* (once), *ayy* (whichever), *matâ* (when), *man* (whoever), *kullamâ* (every time). None of them indicates repetition except *kullamâ*.

For all of them, when used in an affirmative sentence, the consequent takes place upon the occurrence of the condition (antecedent). For example, if he says, “If you stand up, you are divorced,” and then she stands up, she becomes divorced, and the conditional statement is no longer operative. However, if he says, “Every time you stand up, you become divorced,” she becomes divorced every time she stands up. [XI.14.3]	وَكُلِّهَا إِذَا كَانَتْ مُثْبَتَةً، ثَبَتَ حُكْمُهَا، عِنْدَ وُجُوْدِ شَرْطِهَا، فَإِذَا قَالَ: إِنْ قُمْتِ فَأَنْتِ طَالِقٌ، فَقَامَتْ، طَلُقَتْ، وَانْحَلَّ شَرْطُهُ، وَإِنْ قَالَ: كُلَّمَا قُمْتِ، فَأَنْتِ طَالِقٌ، طَلُقَتْ كُلَّمَا قَامَتْ.

[XI.14.3] This Takes Us to the Possibility of Rescinding that Statement

(A) + (+H, +M, +S): The husband has no right to rescind it.

(a) + (-t): He may rescind it.

If used in a negative sentence, as when he says, “If I don’t divorce you, you are divorced,” it will be suspended if he didn’t intend a particular time, without the divorce occurring until the last time of possibility. [XI.14.4]	وَإِنْ كَانَتْ نَافِيَةً، كَقَوْلِهِ: إِنْ لَمْ أُطَلِّقْكِ، فَأَنْتِ طَالِقٌ، كَانَتْ عَلَى التَّرَاخِيْ، إذا لم يَنْوِ وقتًا بِعَيْنِهِ فَلَا يَقَعُ الطَّلَاقُ إِلَّا فِيْ آخِرِ أَوْقَاتِ الْإِمْكَانِ.

[XI.14.4] The last time of possibility is the last moment of his or her life, whoever dies first.

The rest of the conditional clauses (aside from ‘if’) will mean immediacy. For example, if he says, “When I don’t divorce you, you are divorced,” and he does not divorce her, she becomes immediately divorced.	وَسَائِرُ الْأَدَوَاتِ عَلَى الْفَوْرِ، فَإِذَا قَالَ: مَتَى لَمْ أُطَلِّقْكِ، فَأَنْتِ طَالِقٌ، وَلَمْ يُطَلِّقْهَا، طَلُقَتْ فِيْ الْحَالِ.

If he says, “Every time I don’t divorce you, you become divorced,” and a time elapses during which he could have divorced her three times, but he did not divorce her, then she becomes divorced three times (if her marriage was consummated).	وَإِنْ قَالَ: كُلَّمَا لَمْ أُطَلِّقْكِ، فَأَنْتِ طَالِقٌ، فَمَضَى زَمَنٌ يُمْكِنُ طَلَاقُهَا فِيْهِ ثَلَاثاً وَلَمْ يُطَلِّقْهَا، طَلُقَتْ ثَلَاثاً إِنْ كَانَتْ مَدْخُوْلاً بِهَا.

If he says, “Every time you give birth to a child, you become divorced,” and she gives birth to twins, then she becomes divorced upon the birth of the first. Upon the birth of the second child, her divorce becomes finalized because her ‘iddah is ended by this birth, but no divorce results from his birth. [XI.14.5]	وَإِنْ قَالَ: كُلَّمَا وَلَدْتِ وَلَدًا، فَأَنْتِ طَالِقٌ، فَوَلَدَتْ تَوْأَمَيْنِ، طَلُقَتْ بِالْأَوَّلِ، وَبَانَتْ بِالثَّانِيْ؛ لِانْقِضَاءِ عِدَّتِهَا بِهِ، وَلَمْ تَطْلُقْ بِهِ.

[XI.14.5] Because in this case, her ‘iddah was completed, so she was not a wife to be subject to divorce.

If he says, “When you menstruate, you become divorced,” she becomes divorced at the beginning of her ḥayḍ. If it turns out that it was not ḥayḍ, then she is not divorced. If she says, “I did menstruate,” and he contradicts her, she becomes divorced. If he says, “You menstruated,” and she contradicts him, she becomes divorced because of his admission. If he says, “If you menstruate, then you and my other wife are divorced,” and she says, “I menstruated,” but he contradicts her, then only she becomes divorced and not his other wife.	وَإِنْ قَالَ: إِنْ حِضْتِ، فَأَنْتِ طَالِقٌ، طَلُقَتْ بِأَوَّلِ الْحَيْضِ، فَإِنْ تَبَيَّنَ أَنَّهُ لَيْسَ بِحَيْضٍ، لَمْ تَطْلُقْ. وَإِنْ قَالَتْ: قَدْ حِضْتُ، فَكَذَّبَهَا، طَلُقَتْ، وَإِنْ قَالَ: قَدْ حِضْتِ، فَكَذَّبَتْهُ، طَلُقَتْ بِإِقْرَارِهِ، وَإِنْ قَالَ: إِنْ حِضْتِ، فَأَنْتِ وَضَرَّتُكِ طَالِقَتَانِ، فَقَالَتْ: قَدْ حِضْتُ، فَكَذَّبَهَا، طَلُقَتْ دُوْنَ ضَرَّتِهَا.

[XI.15] Chapter on the Impact of the Number of Divorces and Other Matters

بَابُ مَا يَخْتَلِفُ بِهِ عَدَدُ الطَّلَاقِ وَغَيْرُهُ

الْمَرْأَةُ إِذَا لَمْ يُدْخَلْ بِهَا تُبِيْنُهَا الطَّلْقَةُ، وَتُحَرِّمُهَا الثَّلَاثُ مِنَ الْحُرِّ وَالِاثْنَتَانِ مِنَ الْعَبْدِ، إِذَا وَقَعَتْ مَجْمُوْعَةً، كَقَوْلِهِ: أَنْتِ طَالِقٌ ثَلَاثاً، أَوْ أَنْتِ طَالِقٌ وَطَالِقٌ وَطَالِقٌ.	A woman with whom marriage was not consummated shall have a finalized divorce by a single pronouncement. Composite threefold divorce from the free man and twofold from the slave shall make her unmarriageable for him. [XI.15.1] For example, if he says, “You are divorced three times,” or if he says, “You are divorced and divorced and divorced.”

[XI.15.1] Until she genuinely marries another man and consummates the marriage with him, and then he divorces her or dies.

وَإِنْ أَوْقَعَهُ مُرَتَّباً، كَقَوْلِهِ: أَنْتِ طَالِقٌ فَطَالِقٌ، أَوْ ثُمَّ طَالِقٌ، أَوْ طَالِقٌ بَلْ طَالِقٌ، أَوْ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ، أَوْ إِنْ طَلَّقْتُكِ، فَأَنْتِ طَالِقٌ، ثُمَّ طَلَّقَهَا، أَوْ كُلَّمَا طَلَّقْتُكِ، فَأَنْتِ طَالِقٌ، أَوْ كُلَّمَا لَمْ أُطَلِّقْكِ، فَأَنْتِ طَالِقٌ، وَأَشْبَاهَ هَذَا، لَمْ يَقَعْ بِهَا إِلَّا وَاحِدَةٌ.	If he pronounces it in succession, such as when he says, “You are divorced, then divorced, then divorced,” or “You are divorced, you are divorced,” or says, “If I divorce you, then you are divorced,” and then divorces her, or says, “Every time I divorce you, you become divorced,” and then divorces her, or says, “Every time I do not divorce you, you become divorced,” and the condition is fulfilled, only one divorce will count for the woman described here. [XI.15.2]

[XI.15.2] This is referring to a woman with whom neither consummation nor legally effective seclusion (khalwah) has occurred. Her divorce becomes finalized immediately, and there is no ‘iddah for her. Accordingly, further separately effective divorces do not attach after the first has ended the marriage.

If her marriage was consummated, then all the divorces he pronounces will take effect. [XI.15.3]	وَإِنْ كَانَتْ مَدْخُوْلاً بِهَا وَقَعَ بِهَا، جَمِيْعُ مَا أَوْقَعَهُ.

[XI.15.3] Because after the first divorce becomes effective, she is in her waiting period, which means that she is still subject to more divorces (according to the vast majority).

Remember that according to (t), the threefold divorce counts as one, so the only way three divorces can take place is if the husband takes the wife back after the first divorce, then divorces her again and takes her back, then divorces her a third time.

Whoever doubts the occurrence of divorce or its number, or the occurrence or number of breastfeedings, should assume only what is certain. [XI.15.4]	وَمَنْ شَكَّ فِي الطَّلَاقِ أَوْ عَدَدِهِ، أَوِ الرَّضَاعِ أَوْ عَدَدِهِ، بَنَى عَلَىٰ الْيَقِيْنِ.

[XI.15.4] For example, if he is not sure whether he divorced his wife two or three times, then two of them are considered certain, and the third is doubtful. He will omit the doubtful one and count only the certain ones. The legal maxim invoked here is:

الشَّكُّ لا يَزْحَمُ اليَقِينَ

Doubt does not contend with certainty.

If he says to his wives, "One of you is divorced," and he doesn't intend a particular one, she will be appointed by casting lots. [XI.15.5]	وَإِنْ قَالَ لِنِسَائِهِ: إِحْدَاكُنَّ طَالِقٌ، وَلَمْ يَنْوِ وَاحِدَةً بِعَيْنِهَا، أُخْرِجَتْ بِالْقُرْعَةِ.

[XI.15.5] Jesting with Divorce

While addressing the rulings of divorce, Allah said:

{وَلَا تَتَّخِذُواْ آيَاتِ اللهِ هُزُواً}

{…And do not take the verses [instructions] of Allah in jest…} (al-Baqarah 2:231)

Many people did what they were forbidden from, taking the matter of ṭalâq lightly, as shown in some of the scenarios mentioned above. The jurists treated those cases with much strictness in order to deter the masses from such heinous conduct. They based many of their rulings on the following statement of the Messenger of Allah (SA):

«ثَلَاثٌ جِدُّهنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: اَلنِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ»

"There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after divorce)." (T, D, Ma – from Abu Hurayrah; T: S)

When a man divorces an unidentified one of his wives:

(A): She will be appointed by casting lots.

(a) + (-H, -S): He must choose one of them to divorce.

(-M): All of them become divorced.

If he divorces a part of his wife, whether or not the part is specifically identified, such as her finger or hand, she becomes divorced – except for the nails, teeth, hair, saliva, tears, and their like; divorcing those does not result in her divorce. [XI.15.6]	وَإِنْ طَلَّقَ جُزْءًا مِنِ امْرَأَتِهِ مُشَاعًا أَوْ مُعَيَّناً، كَإِصْبَعِهَا أَوْ يَدِهَا، طَلُقَتْ كُلُّهَا، إِلَّا الظُّفْرَ والسِّنَّ وَالشَّعْرَ وَالرِّيْقَ وَالدَّمْعَ وَنَحْوَهُ لَا تَطْلُقُ بِهِ.

[XI.15.6] The parts mentioned here are not considered integral living parts of the body. Therefore, if he divorces his wife's hair, nails, or teeth, she does not become divorced.

Remember it was the people who came up with this foolishness, not the scholars. The scholars were only reacting to real life scenarios the people innovated.

If he says, “You are divorced by half of a divorce,” or less than that, she becomes divorced once. [XI.15.7]	وَإِنْ قَالَ: أَنْتِ طَالِقٌ نِصْفَ تَطْلِيْقَةٍ، أَوْ أَقَلَّ مِنْ هَذَا، طَلُقَتْ وَاحِدَةً.

[XI.15.7] This is because a divorce cannot be divided into fractions: pronouncing part of a divorce counts as one complete divorce.

[XI.16] Chapter on Restoration of the Marriage

بَابُ الرَّجْعَةِ

If he divorces his wife, after consummation and without compensation, with less than three divorces (or less than two for the slave), he is entitled to *raj'ah* (restoration of the marriage), as long as she is still in her 'iddah. This is because of the saying of Allah, Most High: {And their husbands have more right to take them back in this [period] if they want reconciliation.} *(al-Baqarah 2:228)*	إذا طَلَّقَ امْرَأَتَهُ بَعْدَ الدُّخُوْلِ بِغَيْرِ عِوَضٍ، أَقَلَّ مِنْ ثَلَاثٍ أو العبد أقل من اثنتين فله رَجْعَتُها ما دامَتْ في العِدَّةِ لِقَولِ الله تعالى: «وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَٰلِكَ إِنْ أَرَادُوا إِصْلَاحًا» [البقرة: 228]

[XI.16] Introduction

Raj'ah (literally: return) means taking the wife back. This is the right of the husband during the waiting period after an unfinalized divorce. It is often translated as "the revocation of divorce," but I avoided this translation because it may insinuate that the divorce does not count if the husband takes his wife back during the waiting period, and this is not true. For the same reason, I avoided using the terms revocable and irrevocable divorce for the raj'ee and bâ'in divorces respectively. Instead, I used unfinalized and finalized (which are also used by some other translators).

As a rule, a divorce after consummation or legally effective seclusion in a valid marriage is unfinalized (raj'ee), allowing the husband to take his wife back during the waiting period, unless it exhausts the permitted number of divorces or is granted in return for compensation. A divorce before both consummation and such seclusion is finalized. An annulment ends the marriage without a right of raj'ah. Judicial divorce has further details. Divorce for eelâ' (an oath to abstain from marital intercourse) may be unfinalized according to (A) and (S). In (A), however, the judge may instead annul the marriage when that is needed to protect the wife. According to (t), a husband divorced for eelâ' may take her back only on condition that he immediately resumes marital intercourse if she requests it. Likewise, in (M), a husband divorced for inability to provide maintenance cannot validly take

her back unless he becomes able, during the waiting period, to provide the maintenance due to her.

Raj'ah occurs when the man says to two Muslim men, "Be witnesses [XI.16.1] that I took my wife back" or "…returned her" or "…kept her." [XI.16.2] For this, he does not need a wali, a payment more than the original ṣadâq, or even her approval. [XI.16.3]	وَالرَّجْعَةُ: أَنْ يَقُوْلَ لِرَجُلَيْنِ مِنَ الْمُسْلِمِيْنَ: اشْهَدَا عَلَيَّ أَنِّيْ قَدْ رَاجَعْتُ زَوْجَتِيْ أَوْ رَدَدْتُهَا أَوْ أَمْسَكْتُهَا، مِنْ غَيْرِ وَلِيٍّ، وَلَا صَدَاقٍ يَزِيْدُه، وَلَا رِضَاهَا.

[XI.16.1] Having Witnesses to Raj'ah

Allah said:

{فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِّنكُمْ...}

{And when they have [nearly] fulfilled their term, either retain them according to acceptable terms or part with them according to acceptable terms. And bring to witness two just men from among you...} (aṭ-Ṭalâq 65:2)

The apparent implication of this verse is that having witnesses to raj'ah is obligatory.

(a) + (-some Mâlikis, -s): Having witnesses to raj'ah is mandatory. (a) condition of validity.

(A) + (+H, +M, +S): It is only preferable. They argued that the witnessing mentioned in the verse pertained to both divorce and restoration of marriage. Since having witnesses to divorce is only preferable, according to the agreement of Ahl us-Sunnah, having witnesses to raj'ah must also be preferable. They also argued that, like divorce, raj'ah is the husband's right, and he does not need witnesses when he does it. Moreover, the reason why Allah commanded that the wife not move out of her home during her 'iddah is to allow the couple to restore the marriage, which may happen with a spontaneous awakening of emotions. If having witnesses is required here,

this spontaneity may be lost. Finally, the marital relationship is a private one, and its dynamics can be very peculiar. At times, divorce and raj‘ah may occur privately, sparing the couple the imprudent intervention of others.

[XI.16.2] This is the perfect way of restoring marriage. If he does this, the raj‘ah is valid by consensus.

[XI.16.3] Because Allah said:

{... وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَٰلِكَ إِنْ أَرَادُوا إِصْلَاحًا...}

{...And their husbands have more right to take them back in this [period] if they want reconciliation...} (al-Baqarah 2:228)

If he has intercourse with her, that, in itself, counts as a raj‘ah. [XI.16.4]	وَإِنْ وَطِئَهَا، كَانَ رَجْعَةً.

[XI.16.4] Raj‘ah by Actions

All of the fuqahâ’ agreed that raj‘ah takes effect through its recognized explicit wording. They differed over indirect wording accompanied by intention. In the relied-upon Ḥanbali position, raj‘ah is not established by indirect wording (kinâyah), whereas the Ḥanafis accept it with the relevant intention. As for raj‘ah through sexual intercourse and the actions that lead to it:

(-S): It is only valid if done verbally.

(-H): It is valid by means of intercourse or qualifying lustful kissing or touching, whether or not the husband intends raj‘ah.

(-M): It is valid by means of intercourse and the things that lead to it, as long as the husband intends by these actions to take her back.

(A): It is valid by means of intercourse only, whether or not the husband intends to take her back. (t): Only if he intends to take her back.

The one whose divorce is unfinalized is still a wife [XI.16.5] who is subject to divorce [XI.16.6] and *dhihâr*. [XI.16.7] She may beautify herself for her husband and reach out to him. He is entitled to have intercourse and be in seclusion with her, as well as to travel with her. [XI.16.8]	وَالرَّجْعِيَّةُ زَوْجَةٌ، يَلْحَقُهَا الطَّلَاقُ وَالظِّهَارُ، وَلَهَا التَّزَيُّنُ لِزَوْجِهَا وَالتَّشَرُّفُ لَهُ، وَلَهُ وَطْؤُهَا وَالْخَلْوَةُ بِهَا وَالسَّفَرُ بِهَا.

[XI.16.5] The Woman during the ‘Iddah after an Unfinalized Divorce

Remember that the bâ’in (a woman whose divorce is finalized) is not considered a wife during her waiting period, so she cannot be in seclusion with her ex-husband.

A woman whose divorce is not finalized (a raj‘iyah) is still considered a wife during her waiting period. Allah said:

{... وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَٰلِكَ إِنْ أَرَادُوا إِصْلَاحًا...}

{...And their husbands have more right to take them back in this [period] if they want reconciliation...} (al-Baqarah 2:228)

Note that Allah called them {their husbands}. He also said:

{... فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ ...}

{...either retain them according to acceptable terms or part with them according to acceptable terms...} (aṭ-Ṭalâq 65:2)

Notice that Allah said, {retain them}. This means they are still wives.

If a woman whose divorce is unfinalized is still in her ‘iddah, and either she or her husband dies, the other spouse will inherit.

[XI.16.6] This is according to (A) + (+H, +M, +S).

(t): Divorcing an already divorced woman is invalid unless there has been a raj‘ah. See the discussion on the composite divorce under the “Book of Divorce” above.

[XI.16.7] See the Book of Dhihâr.

[XI.16.8] If he did not intend by this intercourse to take her back, he will have committed an enormity, according to the scholars who demand an intention for the validity of raj‘ah (-M, -t). Remember that according to (S), no action counts as raj‘ah; a verbal statement is necessary.

If he takes her back, she resumes the marriage with the remainder of the divorces left. [XI.16.9]	وَإِذَا ارْتَجَعَهَا، عَادَتْ عَلَىٰ مَا بَقِيَ مِنْ طَلَاقِهَا.

[XI.16.9] For example, if the last divorce before the raj‘ah (restoration) was the second one, they will have only one more divorce remaining when she goes back to him, after which she becomes finally divorced without recourse. Note that there is no raj‘ah (restoration) after the third divorce.

If he leaves her until her divorce becomes finalized (by reaching the end of her ‘iddah), then she marries and later gets a finalized divorce from a second man, and then the first husband marries her again, she goes back to him with the number of the divorces she had remaining. [XI.16.10]	وَلَوْ تَرَكَهَا حَتَّى بَانَتْ ثُمَّ نَكَحَتْ غَيْرَهُ، ثُمَّ بَانَتْ مِنْهُ، وَتَزَوَّجَهَا الْأَوَّلُ رَجَعَتْ إليهِ على ما بقِيَ مِن طَلَاقِها.

[XI.16.10] The majority, including (A) + (+h, +M, +S), ‘Umar, ‘Ali, Abu Hurayrah and other major Companions: There is no impact for her marriage to another man in this case. This is because she married that other man after her first or second divorce, so if she went back to her first husband, they will only have two or one divorces remaining, respectively.

(a) + (-H), Ibn ‘Abbâs, and Ibn ‘Umar: She goes back to the first husband with three divorces.

Note that if her first husband divorced her a third time, and she married another man and got divorced from him and then went back to the

first husband, they would have three divorces remaining, by consensus (before the termination of their marriage is finalized without recourse).

If they disagree over the ending of her ‘iddah, her word will be taken over his, along with her oath, as long as her claim is possible. [XI.16.11]	وَإِذَا اخْتَلَفَا فِيْ انْقِضَاءِ عِدَّتِهَا، فَالْقَوْلُ قَوْلُهَا مَعَ يَمِيْنِهَا إِذَا ادَّعَتْ مِنْ ذٰلِكَ مُمْكِنًا.

[XI.16.11] The Shortest Duration of the ‘Iddah Is Controversial

Although it is by agreement three qur’s, the actual number of days is not agreed upon because it depends on:

1) The shortest possible period of ṭuhr (purity), which is 13 days in the madh-hab (or 15 days according to the majority), and

2) Whether the qur’s are counted as three menstrual periods or as three periods of purity (in between the menstrual periods).

If we say that the qur’ is the menstrual period itself, and the shortest period of purity is 13 days, then the shortest duration for an ‘iddah is 29 days. If he divorces her just before her period starts, this will be the breakdown of the 29 days: (1 day of menstruation + 13 days of purity + 1 day of menstruation + 13 days of purity + 1 day of menstruation).

If we say that the qur’ is the period of purity, then we count the period of purity during which the divorce happened, right before the beginning of menstruation, so the shortest waiting period is 28 days (1+13+1+13).

If the woman claims that her period has ended, and it has been more than one month, she is believed without having to produce proof because she has been entrusted with that. Allah said:

{وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۚ وَلَا يَحِلُّ لَهُنَّ أَن يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِن كُنَّ يُؤْمِنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ...}

{Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs

if they believe in Allah and the Last Day…} (al-Baqarah 2:228)

Allah addressed the women and warned them against lying concerning the pregnancy or menstruation which takes place in their wombs.

If she claims that her ‘iddah ended within one month, including at the one-month point, she must produce corroborating evidence under the stated Ḥanbali rule, and the claimed duration must also be legally possible. The minimum on the calculation above is 29 days and a moment sufficient to establish that the third period has ended; the separate requirement of ghusl must also be observed where applicable. This is because ‘Ali approved of Shurayḥ’s judgment when a woman claimed her ‘iddah ended in one month, and Shurayḥ accepted it on condition that she bring someone from her household to testify to it. (Ba, ad-Dârimi; Ibn Ḥajar: reliable narrators, but it is debatable whether ash-Sha‘bi heard anything from ‘Ali)

If, after the ending of her ‘iddah, the man claims that he took her back during her ‘iddah and she denies it, her word will be taken over his. [XI.16.12]	وَإِنِ ادَّعَى الزَّوْجُ بَعْدَ انْقِضَاءِ عِدَّتِهَا أَنَّهُ كَانَ قَدْ رَاجَعَهَا فِيْ عِدَّتِهَا، فَأَنْكَرَتْهُ، فَالْقَوْلُ قَوْلُهَا.

[XI.16.12] (A) + (+H, +M, +S): If her waiting period ends, and then he tells her that he has taken her back, he will have to prove it. If he does not have two witnesses, and she denies it, his claim will be rejected.

If he has evidence (of his claim), the decree will be in his favor because of it. If she has already married another man, she will be returned to the first, whether or not the second man has consummated his marriage with her. [XI.16.13]	وَإِنْ كَانَتْ لَهُ بَيِّنَةٌ، حُكِمَ لَهُ بِهَا، فَإِنْ كَانَتْ قَدْ تَزَوَّجَتْ، رُدَّتْ إِلَيْهِ، سَوَاءٌ دَخَلَ بِهَا الثَّانِيْ أَوْ لَمْ يَدْخُلْ.

[XI.16.13] If the first husband proves that he took her back during the waiting period, the relied-upon Ḥanbali position, together with the Ḥanafis and Shâfi‘is, invalidates the second marriage, whether or not it was consummated. Another Ḥanbali report and Mâlik’s position leave her with the second husband if he consummated the marriage while neither of them knew of the earlier raj‘ah. This

must not be extended to a merely contracted, unconsummated marriage or a marriage entered with knowledge of the earlier raj‘ah.

[XI.17] Chapter on the *'Iddah* (Waiting Period)

بَابُ الْعِدَّةِ

There is no 'iddah binding on a woman whose husband left her, during his life, without having intercourse or seclusion with her. This is because of the statement of Allah Almighty: {O you who believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them…} *(al-Aḥzâb 33:49)*	وَلَا عِدَّةَ عَلَىٰ مَنْ فَارَقَهَا زَوْجُهَا فِي الْحَيَاةِ قَبْلَ الْمَسِيْسِ وَالْخَلْوَةِ؛ لِقَوْلِهِ تَعَالى: «يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا» [سورة الأحزاب: الآية 49]

[XI.17] Introduction

The 'iddah is the waiting period during which the wife is obligated to remain unmarried. It is binding after an unfinalized or finalized divorce, legally enforced divorce, khul' (annulment/divorce initiated by the wife), li'ân, annulment (separation due to an invalid marriage), or death. There is no 'iddah after separation during the husband's life if neither intercourse nor legally effective seclusion has occurred. Under the relied-upon Ḥanbali position, such seclusion establishes the 'iddah even without intercourse; death establishes it in a valid marriage even without either. The 'iddah begins from the time of separation, regardless of whether or not the marriage was valid or whether or not they were living together.

The Wisdom Behind the 'Iddah Legislation

There is a great deal of wisdom behind the legislation of the 'iddah, including the confirmation that the woman is not pregnant. This is not the only purpose, though, so it would be inappropriate to say that medical investigations would make it unnecessary. For one thing, Allah decreed an 'iddah for the older woman who could not possibly be pregnant; also, there is a difference between the 'iddah after divorce and that after the husband's death. Therefore, we may assume that there are additional benefits, such as allowing the woman time to move past the shock of divorce or the husband's death and the consequent emotional instability. Some have suggested that

there may also be health reasons, presuming that serial relationships without a waiting period between them may be harmful to women.

The Difference Between ‘Illah (Effective Cause) and Ḥikmah (Wisdom)

In the Principles of Fiqh, it is stated that:

الحُكْمُ يَدُورُ مَعَ العِلَّةِ

The ruling hinges on the ‘illah.

So, for example, if the reason for prohibiting khamr (alcoholic drinks) is intoxication, then whenever a drink causes intoxication, the prohibition applies; in contrast, if the drink does not have the potency to cause intoxication, it is not khamr.

Note that this is the ‘illah, not the wisdom. The ‘illah is the direct effective cause upon which the ruling hinges; it is measurable and well-defined. For instance, travel is the ‘illah of shortening the prayers, but the wisdom behind it is the removal of hardship. Since the wisdom is not well defined, it is generally not used in place of the ‘illah, although according to some scholars (some Ḥanbalis, al-Âmidi, and Ibn al-Ḥâjib), it may be used if it is apparent (dhâhir) and measurable (munḍabiṭ). Lastly, the ruling will depend completely on a certain ‘illah when we are confident it is the only ‘illah. In the case of the ‘iddah, the wisdom is not apparent and measurable, and the ‘illah is not singular.

The women observing the ‘iddah belong to one of four types: First: Those who are pregnant Their ‘iddah is until they give birth. [XI.17.1] If a woman is carrying twins, her ‘iddah is not over until she gives birth to the second. The pregnancy whose end brings about the conclusion of the ‘iddah, and which gives the slave woman the status of *umm*	وَالْمُعْتَدَّاتُ يَنْقَسِمْنَ أَرْبَعَةَ أَقْسَامٍ: إِحْدَاهُنَّ: أُولَاتُ الْأَحْمَالِ فَعِدَّتُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ، وَلَوْ كَانَتْ حَامِلاً بِتَوْأَمَيْنِ لَمْ تَنْقَضِ عِدَّتُهَا حَتَّى تَضَعَ الثَّانِيَ مِنْهُمَا. وَالْحَمْلُ الَّذِيْ تَنْقَضِي بِهِ الْعِدَّةُ وَتَصِيْرُ بِهِ الْأَمَةُ أُمَّ وَلَدٍ، مَا يَتَبَيَّنُ فِيْهِ شَيْءٌ مِنْ خَلْقِ الْإِنْسَانِ.

walad (mother of the master's child), is that which has discernible human features. [XI.17.2]	

[XI.17.1] (A) + (+H, +M, +S): This also applies to the widow if she is pregnant.

If a woman belongs to more than one of the four categories (e.g., a pregnant or postmenopausal woman whose husband has died), we give first priority to pregnancy as the determinant of her 'iddah, and next is death. So the 'iddah of the pregnant widow ends upon childbirth – not after four months and ten days, and the 'iddah of the postmenopausal widow ends after four months and ten days – not after three months.

[XI.17.2] Physicians may be consulted to determine whether the expelled pregnancy tissue has discernible human formation, including formation not apparent to an untrained observer. In the stated Ḥanbali rule, merely confirming that pregnancy occurred does not by itself establish that its loss ends the 'iddah; the criterion here is the formation described in the matn.

Second: Those whose husbands have died They wait for four months and ten days. This is the same (whether death happened) before or after consummation. [XI.17.3]	الثَّانِيْ: اللَّاتِيْ تُوُفِّيَ أَزْوَاجُهُنَّ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، وَالْإِمَاءُ عَلَىٰ النِّصْفِ مِنْ ذٰلِكَ. وَمَا قَبْلَ الْمَسِيْسِ وَبَعْدَهُ سَوَاءٌ.

[XI.17.3] The only exception is if she is pregnant, in which case her 'iddah ends upon childbirth.

Third: Divorced women who menstruate They wait three qur'. [XI.17.4]	الثَّالِثُ: الْمُطَلَّقَاتُ مِنْ ذَوَاتِ الْقُرُوْءِ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوْءٍ. وَقُرْءُ الْأَمَةِ حَيْضَتَانِ.

[XI.17.4] What Is a Qur'?

Waiting for three qur's is a matter of consensus because Allah said:

{وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ...}

{Divorced women remain in waiting for three periods (qur's)...}
(al-Baqarah 2:228)

However, they disagreed over the definition of qur':

(A) + (+H, +m): It is the menstrual period.

(a) + (-M, -S): It is the period of purity between two menstrual periods.

(A) + (+H): The three qur's are three complete menstrual periods after the divorce; a period in which she was divorced does not count. In the relied-upon Ḥanbali position, cessation of the third period ends such consequences as maintenance and inheritance, but the right of raj'ah and the prohibition of marriage to another man continue until she performs ghusl. The Ḥanafis distinguish bleeding that reaches their maximum of ten days from bleeding that stops earlier; in the latter case, ghusl or the passage of a prayer time is relevant. (-M, -S): Her 'iddah ends at the beginning of the third menstrual cycle, because she will have gone through three periods of purity, including the one during which she was divorced.

Fourth: Those who are postmenopausal or premenarcheal Their waiting period is three months. [XI.17.5]	الرَّابِـــعُ: اللَّائِيْ يَئِسْنَ مِنَ الْمَحِيْضِ فَعِدَّتُهُنَّ ثَلَاثَـــةُ أَشْهُرٍ، وَاللَّائِي لَمْ يَحِضْنَ، وَلِلأَمَةِ شَهْرَانِ.

[XI.17.5] The Calculation of the Three Months

The months taken into consideration for all Sharia timespans are the lunar months. To calculate the three months if her husband divorces her on the 15th day of Muḥarram:

1) She needs to note how many days are left in the month of Muḥarram (14 or 15, depending on when the moon is sighted to begin the next month, Ṣafar).

2) She waits through the next two months of Ṣafar and Rabee‘ I.

3) She adds enough days from the following month, Rabee‘ II, to the 14 or 15 days of Muḥarram to bring the total to 30 days.

Her ‘iddah will end on the 15th or 16th day of Rabee‘ II.

It is prescribed to wait beyond the ‘iddah in three situations: First: If her menstruation ceases without a known cause. In this case, she waits nine months, and then she observes the ‘iddah of the post-menopausal woman. [XI.17.6] If she knows what caused the cessation of her menstruation, she continues to observe the ‘iddah until her menstruation resumes, and then counts her ‘iddah by it. [XI.17.7]	وَيُشْرَعُ التَّرَبُّصُ مَعَ الْعِدَّةِ فِيْ مَوَاضِعَ ثَلَاثَةٍ: أَحَدُهَا: إِذَا ارْتَفَعَ حَيْضُهَا لَا تَدْرِيْ مَا رَفَعَهُ، فَإِنَّهَا تَتَرَبَّصُ تِسْعَةَ أَشْهُرٍ، ثُمَّ تَعْتَدُّ عِدَّةَ الْآيِسَاتِ، وَإِنْ عَرَفَتْ مَا رَفَعَ الْحَيْضَ، فَإِنَّهَا لَمْ تَزَلْ فِيْ عِدَّةٍ حَتَّى يَعُوْدَ الْحَيْضُ، فَتَعْتَدَّ بِهِ.

[XI.17.6] If Her Menstruation Ceases Without a Known Cause

According to the AMJA’s Family Code, she will observe a waiting period of “three months, after confirming with the physicians that she is not pregnant.” This position may be more suitable for our times. This is one of the cases where the advances in medical sciences and practice could impact the rulings. There are two reasons for the observation of the ‘iddah: 1) to confirm the absence of pregnancy from the previous marriage, and 2) to separate the two marriages with a reasonable period. The position of AMJA here respects both wisdoms and does not contravene any textual proofs.

[XI.17.7] If the Menstruation Ceases Due to a Known Cause

According to the AMJA’s Family Code, she will “wait for three months after medically confirming the absence of pregnancy.”

Second: The missing (husband) who was lost in a dangerous situation or place, or vanished from among his family, with his whereabouts and condition unknown. His wife will wait four years, and then she will observe the ‘iddah for death (of her husband). If he went missing in different situations, such as travelling for business or the like, then she cannot marry until she becomes certain of his death. [XI.17.8]	الثَّانِيْ: امْرَأَةُ الْمَفْقُوْدِ الَّذِيْ فُقِدَ فِيْ مَهْلَكَةٍ، أَوْ مِنْ بَيْنِ أَهْلِهِ، فَلَمْ يُعْلَمْ خَبَرُهُ. تَتَرَبَّصُ أَرْبَعَ سِنِيْنَ، ثُمَّ تَعْتَدُّ لِلْوَفَاةِ. وَإِنْ فُقِدَ فِيْ غَيْرِ هَذَا، لَمْ تَنْكِحْ حَتَّى تَتَيَقَّنَ مَوْتَهُ.

[XI.17.8] The Missing Husband

(A/SM & Iqnâ‘): She waits until he reaches age 90.

Ibn Abi Shaybah and others reported from ‘Umar (and also from Ibn ‘Abbâs and Ibn ‘Umar) that the wife of a missing husband should wait four years and then start the waiting period of four months and ten days. They did not specify in all reports that this applied only when the man went missing in perilous circumstances. In fact, the report from ‘Umar concerned a man who went out to pray ‘ishâ’ and did not return. ‘Ali and Ibn Mas‘ood were reported to have said that she should wait until his death became certain. There is also a weak report from the Prophet (SA) himself indicating the same, but nothing can be authentically traced to him concerning this matter.

This may be one of the issues that can be subjected to a new ijtihâd in light of the recent changes in the world. Many of the laws in Muslim countries have attempted to lighten the burden of the wife of the missing.

According to the AMJA’s Family Code:

When the husband’s location or place of residence is unknown, and the wife is harmed by that, her affair is referred to an Islamic judiciary to consider separating her from her husband due to harm. This would be a last resort after exhausting all efforts to reach him and, if he were found, demanding he return to his wife or relocating her to be with him.

Third: If the woman doubts the end of her ‘iddah after its conclusion because signs of pregnancy appear, she cannot marry until the doubts end; if she marries, her marriage is invalid. If she starts to have the doubts after she marries another man, the marriage will not be voided unless she comes to be certain that she was pregnant when she got married. [XI.17.9]	الثَّالِثُ: إِذَا ارْتَابَتِ الْمَرْأَةُ بَعْدَ قَضَاءِ عِدَّتِهَا؛ لِظُهُوْرِ أَمَارَاتِ الْحَمْلِ، لَمْ تَنْكِحْ حَتَّى تَزُوْلَ الرِّيْبَةُ، فَإِنْ نَكَحَتْ لَمْ يَصِحَّ النِّكَاحُ، وَإِنِ ارْتَابَتْ بَعْدَ نِكَاحِهَا، لَمْ يَبْطُلْ نِكَاحُهَا إِلَّا إِن عَلِمَتْ أَنَّهَا نَكَحَتْ وَهِيَ حَامِلٌ.

[XI.17.9] Doubting the Presence of Pregnancy after the End of the Period

This may happen before or after she marries another man.

If she has already married another man, their marriage will not be voided because of this doubt, but her new husband may not have intercourse with her until the doubt is eliminated. If she gives birth to a child less than six months after the consummation, this marriage will be considered void because it must have taken place while she was pregnant from the previous marriage.

This is assuming that the baby was not deemed by expert physicians to be extremely premature.

If this doubt emerges before she marries another man, she must wait until the doubt is eliminated.

In our times, a simple lab test will establish the presence or absence of pregnancy, so the above scenarios may be applicable only in the absence of modern medical technology.

When a woman gets married during her ‘iddah, her marriage is void, and the two must be separated. [XI.17.10]	وَمَتَى نَكَحَتِ الْمُعْتَدَّةُ فَنِكَاحُهَا بَاطِلٌ وَيُفَرَّقُ بَيْنَهُمَا.

[XI.17.10] Because this results in the confusion of lineages. Allah said:

{وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّىٰ يَبْلُغَ الْكِتَابُ أَجَلَهُ}

{…And do not determine to undertake a marriage contract until the decreed period reaches its end…} (al-Baqarah 2:235)

If they are separated before the consummation, she then finishes the ‘iddah from the first marriage. [XI.17.11]	فَإِنْ فُرِّقَ بَيْنَهُمَا قَبْلَ الدُّخُوْلِ، أَتَمَّتْ عِدَّةَ الْأَوَّلِ.

[XI.17.11] Which is not interrupted by the second unconsummated marriage.

If the separation takes place after the consummation, she resumes the ‘iddah from the first marriage, which was interrupted at the time of the consummation of the second marriage. After the end of the ‘iddah from the first marriage, she will observe anew another ‘iddah from the second marriage. [XI.17.12] He (the second husband) may marry her after the conclusion of both ‘iddahs. [XI.17.13]	وَإِنْ كَانَ بَعْدَ الدُّخُوْلِ، بَنَتْ عَلَىٰ عِدَّةِ الْأَوَّلِ، مِنْ حِيْنِ دَخَلَ بِهَا الثَّانِيْ، وَاسْتَأْنَفَتِ الْعِدَّةَ لِلثَّانِيْ. وَلَهُ نِكَاحُهَا بَعْدَ قَضَاءِ الْعِدَّتَيْنِ.

[XI.17.12] If She Consummates a Second “Marriage” During Her ‘Iddah

First, the woman will have to finish what is left of the ‘iddah from the first marriage, starting the count from the time she separated from the second “husband”. After the first ‘iddah ends, she starts the ‘iddah from the second “husband”.

Example: A post-menopausal woman “marries” a second man only two months after a previous divorce, and she lives with the second “husband” for four months. She will be separated from him and must finish

the one month remaining from her first ‘iddah (from the time of separation from the second “husband”). Then she starts a new ‘iddah (from the second “marriage”) for another three months. Four months after her separation from the second “husband”, she is free to marry again.

This is ‘Umar’s decree regarding this matter.

(-H): The ‘iddahs overlap.

[XI.17.13] Married Her During Her ‘Iddah; Are They Permanently Unmarriageable?

If they did not consummate the marriage, the fuqahâ’ agreed that they may marry after she finishes her ‘iddah of the first marriage.

If they consummated their marriage:

(-H, -S): He may marry her after the end of her ‘iddah (from the previous husband).

(A): She must complete the two ‘iddahs before the marriage.

(a) + (-M): He will be forbidden to her permanently. Mâlik held that position because he reported in *al-Muwaṭṭa’* that a woman married during her ‘iddah, and ‘Umar said:

«أيُّما امرأةٍ نُكحت في عدتِها ولم يَدخلْ بها الذي تزوَّجها فُرِّق بينهما ثم اعتدَّت بقيةَ عدتِها من زوجِها الأولِ وكان خاطبًا من الخُطَّابِ وإن دخل بها فُرِّق بينهما ثم اعتدتْ بقيةَ عدتِها من زوجِها الأولِ ثم اعتدَّتْ من الآخرِ ولم ينكِحْها أبدا»

“When a woman marries during her ‘iddah, but they do not consummate the marriage, then they will be separated, and she will have to finish the remaining part of her ‘iddah of the first marriage. Afterwards he (the second man) will be considered like any suitor. If they had consummated the marriage, they will be separated, and she will have to finish her ‘iddah of the first marriage and then her ‘iddah from the second, and he (the second man) may never marry her.”

The majority argued that ‘Ali said that she may still marry him, and it was reported that ‘Umar recanted his position when he heard of ‘Ali’s. However, those reports are not established.

The majority also argued that a fornicator may still go back and marry the woman with whom he had illicit sex. Additionally, there is no proof in the Qur’an or Sunnah on this permanent prohibition of marriage.

If she gives birth to a child from one of them, her ‘iddah from him ends, and she continues her ‘iddah from the other. If the child could possibly be from either one of them, then he or she will be shown to the physiognomists and attributed to whomever they attribute him or her to. [XI.17.14] Her ‘iddah from the one who gets the child is ended, and the ‘iddah from the other one continues. [XI.17.15]	وَإِنْ أَتَتْ بِوَلَدٍ مِنْ أَحَدِهِمَا، انْقَضَتْ بِهِ عِدَّتُهُ، وَاعْتَدَّتْ لِلآخَرِ، وَإِنْ أَمْكَنَ أَنْ يَكُوْنَ مِنْهُمَا، أُرِيَ الْقَافَةَ، فَأُلْحِقَ بِمَنْ أَلْحَقُوْهُ مِنْهُمَا، وَانْقَضَتْ بِهِ عِدَّتُهُ مِنْهُ، وَاعْتَدَّتْ لِلآخَرِ.

[XI.17.14] “The qiyâfah of people is an investigative science that studies the physical characteristics of two individuals to assert their ancestry and filiality of one another… This practice is done by speculation and intuition, not by evidences and certainty, and Allah – the Glorified and High – knows best.” (Abjad *al-‘Uloom, al-Qanooji)*

[XI.17.15] Married During Her ‘Iddah and Gave Birth to a Baby

In the classical calculation being described, if she gives birth less than six months after intercourse with the second man to a child who survives, and the child can legally be attributed to the first husband, the child is attributed to the first. Her ‘iddah from the first ends at childbirth, and she then observes the ‘iddah due to intercourse with the second. The qualification concerning an extremely premature infant requires separate medical assessment. If she gives birth at least six months after intercourse with the second man and beyond the maximum interval used in this classical calculation for attribution to the first, the child is attributed to the second. Her ‘iddah from the second then ends at childbirth, after which she completes what remains of the first ‘iddah.

(A) + (+M, +S): Four years is the longest possible duration of pregnancy.

(a) + (-H): Two years is the longest.

(Z): Nine months is the longest.

Muhammad ibn ‘Abdul-Ḥakam: It is one lunar year. Egyptian and Syrian family laws adopted a similar limit of one solar year.

If the elapsed times permit attribution to either man under the classical calculation being discussed, the physiognomists are consulted to determine the child’s attribution.

In our times, whenever DNA testing is available, it will replace the expert opinion of the physiognomists, since its scope of operation and reliability is much greater.

In our times, premature babies born before six months of post-conceptional age (6-1/2 months of gestational age) may survive with advanced medical intervention. Whenever DNA testing is available, it can eliminate any possible confusion.

[XI.18] Chapter on Mourning

بَابُ الْإِحْدَادِ

It is binding on any woman whose husband dies.	وَهُوَ وَاجِبٌ عَلَىٰ الْمُتَوَفَّى عَنْهَا زَوْجُهَا.

It includes avoiding adornments, [XI.18.1] perfumes, kohl by ithmid, [XI.18.2] and wearing clothes that are dyed for beautification. [XI.18.3] This is because of the statement of the Messenger of Allah (SA), “No woman should mourn more than three days for anyone who dies, except for her husband, for whom she should mourn for four months and ten days. She should not wear garments that are dyed or patterned, except for the ‘aṣb garments. [XI.18.4] She should not put on kohl or perfume, but when having a ritual bath, [XI.18.5] she may use a little qusṭ or adhfâr.” [XI.18.6]	وَهُوَ: اجْتِنَابُ الزِّيْنَةِ والطِّيْبِ، وَالْكُحْلِ بِالْإِثْمِدِ، وَلُبْسِ الثِّيَابِ الْمَصْبُوْغَةِ لِلتَّحْسِيْنِ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَا تُحِدُّ امْرَأَةٌ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا إلا ثَوْبَ عَصْبٍ وَلَا تَكْتَحِلُ وَلَا تَمَسُّ طِيبًا إلا إذا اغتَسَلَت نُبْذَةً من قُسْطٍ أو أظْفَارٍ».

[XI.18.1] Avoidance of Adornments and Jewelry

She should avoid all forms of adornments and jewelry. The Prophet (SA) said:

«المتوفَّى عنها زوجُها لا تلبَسُ المعصفَرَ مِن الثِّيابِ ولا المُمَشَّقةَ ولا الحُلِيَّ ولا تختَضِبُ ولا تكتَحِلُ»

“A woman whose husband has died must not wear clothes dyed with safflower (‘uṣfur) or with red ochre (mishq), and she must not wear jewelry. She must not apply henna or collyrium (kohl).” (D, N – from Umm Salamah; al-Albâni: Auth)

[XI.18.2] A type of mineral (antimony) from which kohl is extracted.

[XI.18.3] Avoiding Dyed and Patterned Clothing

She should avoid patterns and colored garments, instead wearing garments made of materials in their natural colors. The scholars of the four madh-habs allowed colors that were not meant for beautification, such as black and other dark colors.

[XI.18.4] ‘Aṣb were certain Yemeni garments that used to be dyed, while bundled, after their spinning and before their weaving. After weaving, parts of the fabric were dyed, while others were not.

[XI.18.5] When she purifies herself after her menses.

[XI.18.6] (Ag – from Umm ‘Aṭiyah)

Qusṭ and adhfâr are two types of incense that are meant to remove bad odors. Some scholars said they are both one type, and in some reports, adhfâr comes as a description of the qusṭ.

وَعَلَيْهَا الْمَبِيْتُ فِيْ مَنْزِلِهَا الَّذِيْ وَجَبَتْ عَلَيْهَا الْعِدَّةُ وَهِيَ سَاكِنَةٌ فِيْهِ، إِذَا أَمْكَنَهَا ذٰلِكَ.	It is binding on her, whenever possible, to spend the nights [XI.18.7] at the home where she was living when the ‘iddah became incumbent on her. [XI.18.8]

[XI.18.7] May Go out During the Day for Needs, but at Night Only for Necessities

A woman who is observing ‘iddah, whether she is divorced or widowed, may go out during the day to run her errands because Jâbir (RA) said:

طُلِّقَتْ خَالَتِي ثَلَاثًا فَخَرَجَتْ تَجُدُّ نَخْلاً لَهَا فَلَقِيَهَا رَجُلٌ فَنَهَاهَا فَأَتَتِ النَّبِيَّ صلى الله عليه وسلم فَذَكَرَتْ ذَلِكَ لَهُ فَقَالَ لَهَا «اخْرُجِي فَجُدِّي نَخْلَكِ لَعَلَّكِ أَنْ تَصَدَّقِي مِنْهُ أَوْ تَفْعَلِي خَيْرًا»

“My maternal aunt was divorced three times, and she went out to harvest her palm trees. A man met her and forbade her from that. She mentioned that to the Prophet (SA), who said, ‘Go out and

harvest your palm trees; perhaps you will give some charity or do some good.'" (M – from Jâbir)

Mujâhid narrated:

Some men were martyred on the day of Uḥud, and their wives came to the Messenger of Allah (SA) saying, "O Messenger of Allah, we feel scared at night. Can we stay in the house of one of us, and then go to our own houses in the morning?" He said, "Chat together in the house of one of you, then when you want to sleep, each one should go back to her own house." She is not to stay overnight anywhere outside of her own home, or to go out at night, except in cases of necessity. (Ibn al-Qayyim and Ibn al-Mulaqqin: Mursal,* but Ibn al-Mulaqqin said there are corroborating narrations)

*Mursal means that Mujâhid did not mention the Companion from whom he heard this.

[XI.18.8] The marital home where they lived together.

If she has left for travel or pilgrimage, and her husband dies while she is still near, she should return to spend the waiting period in her home. If she is far, [XI.18.9] she can carry on with her travel.	فَإِنْ خَرَجَتْ لِسَفَرٍ أَوْ حَجٍّ؛ فَتُوُفِّيَ زَوْجُهَا وَهِيَ قَرِيْبَةٌ، رَجَعَتْ لِتَعْتَدَّ فِيْ بَيْتِهَا، وَإِنْ تَبَاعَدَتْ مَضَتْ فِيْ سَفَرِهَا.

[XI.18.9] 'Far' means at a distance where she is allowed to shorten the prayers. (*al-Mughni*)

The one who has been divorced three times is similar to her except for observing the 'iddah in her home. [XI.18.10]	وَالْمُطَلَّقَةُ ثَلَاثاً مِثْلُهَا، إِلَّا فِيْ الِاعْتِدَادِ فِيْ بَيْتِهَا.

[XI.18.10] Mourning after the Threefold Divorce

One report from Aḥmad, also adopted by the Ḥanafis, requires iḥdâd (mourning restrictions) during the 'iddah of a bâ'in divorce. The exception concerning residence in the marital home belongs to the Ḥanbali discussion

here and must not be attributed to the Ḥanafis, who require the divorced woman to observe her ‘iddah in the prescribed home, subject to recognized excuses. The argument for obligatory iḥdâd draws an analogy between the bâ’in woman and the widow, as neither may be married during this waiting period.

(A) + (+M, +S): She is not required to observe any mourning.

(A/SM & Iqnâ‘): It is allowed for her if she so desires.

They cited the hadith mentioned in the text above, “No woman should mourn for anyone who dies for more than three days, except for a husband…” (Ag – from Umm ‘Aṭiyah), which indicates that mourning is prescribed only for death. They added that she should not be required to mourn her separation from her husband when he is the one who divorced her.

[XI.19] Chapter on Maintenance of Women Observing *'Iddah*

بَابُ نَفَقَةِ الْمُعْتَدَّاتِ

They are three categories: First: The woman whose divorce is unfinalized, so her husband can take her back. She is entitled to maintenance and accommodation. [XI.19.1]	وهن ثَلَاثَةُ أَقْسَامٍ: أَحَدُهَا: الرَّجْعِيَّةُ، وَهِيَ: مَن يُمْكِنُ زَوْجَهَا إِمْسَاكُهَا، فَلَهَا النَّفَقَةُ وَالسُّكْنَى.

[XI.19] Introduction

In this chapter, Imam Ibn Qudâmah discusses the maintenance due to the woman during her waiting period, which varies depending on the type of separation. The termination of marriage may be by death, divorce, or annulment. Divorce may also be finalized (bâ'in) or unfinalized (raj'iy).

Note that all divorces are finalized after reaching the end of the waiting period, but the discussion here concerns the maintenance during the waiting period. If the husband does not have the right to take his wife back, the divorce is considered finalized during the waiting period.

After the end of the waiting period, the ex-wife is not entitled to any maintenance unless it is for another reason, such as her being the caretaker (ḥâḍinah) of the husband's children or breastfeeding some of them.

Mut'ah (Consolation Gift or Alimony)

There is another financial right to which women are entitled upon separation; this is mut'ah (translated as alimony or a consolation gift). This was addressed briefly in The Book of Ṣadâq.

(A) + (+H): The mut'ah is obligatory only if the woman was divorced before consummation and before a ṣadâq had been appointed for her. They argued that these women are the only ones who do not get a ṣadâq (or half of it), so the mut'ah is in place of that, and they cited the saying of Allah:

{لَّا جُنَاحَ عَلَيْكُمْ إِن طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتِّعُوهُنَّ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ}

{There is no blame upon you if you divorce women you have not touched nor specified for them an obligation. But give them [a gift of] compensation – the wealthy according to his capability and the poor according to his capability – a provision according to what is acceptable, a duty upon the doers of good.} (al-Baqarah 2:236)

(a) + (-Z, -t): Every divorced woman is entitled to mut'ah. They cited the generality of Allah's statement:

{وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقّاً عَلَى الْمُتَّقِينَ.}

{And for divorced women is a provision according to what is acceptable – a duty upon the righteous.} (al-Baqarah 2:241)

"Divorced women," Imam Ibn Taymiyah argued, is general in implication, and the obligation is emphasized by the word "duty" (ḥaqq). This is further emphasized by the phrase "upon the righteous".

(-S): It is granted to all divorced women except those who have a designated ṣadâq and are divorced before consummation (who will only get half of the ṣadâq). Ash-Shâfi'i's position was chosen by AMJA's Family Code.

There is an obvious need to adopt this position in arbitration in the West, since it may spare the Muslim woman the fitnah (test) of pursuing half of the possessions of her husband via the statutory laws. In determining the amount of this alimony, the arbitrators should take into consideration the condition of the husband and wife and the duration of their marriage.

[XI.19.1] She is treated like a wife in regard to her maintenance and accommodation.

If the husband of an unbeliever becomes Muslim, or the wife of a Muslim apostatizes, the wife is not entitled to maintenance. If the wife of an unbeliever	وَإِنْ أَسْلَمَ زَوْجُ الْكَافِرَةِ أَوِ ارْتَدَّتْ امْرَأَةُ الْمُسْلِمِ فَلَا نَفَقَةَ لَهُمَا، وَلَوْ أَسْلَمَتِ امْرَأَةُ الْكَافِرِ أَوِ

becomes Muslim, or the husband of a Muslim apostatizes after consummation, the wife is entitled to maintenance. [XI.19.2]	ارْتَدَّ زَوْجُ الْمُسْلِمَةِ بَعْدَ الدُّخُوْلِ فَلَهَا نَفَقَةُ الْعِدَّةِ.

[XI.19.2] If, after consummation, the husband of a non-Muslim woman who is not Jewish or Christian becomes Muslim while she remains in her religion, she is not entitled to maintenance during this suspended marital situation. If the husband of a woman of the People of the Book, whose parents are both of the People of the Book, becomes Muslim, they remain married, because marriage to her may be initiated, so continuing it is more clearly permissible.

The individual Muslims will have to comply with the statutory laws of their respective jurisdictions.

Second: The one whose separation (during the life of a husband) is finalized, such as through divorce or annulment, is never entitled to accommodation. She is entitled to maintenance only if she is pregnant. [XI.19.3]	الثَّانِيْ: الْبَائِنُ فِيْ الْحَيَاةِ بِطَلَاقٍ أَوْ بِفَسْخٍ، فَلَا سُكْنَى لَهَا بِحَالٍ، وَلَهَا النَّفَقَةُ إِنْ كَانَتْ حَامِلاً، وَإِلَّا فَلَا.

[XI.19.3] The Non-Pregnant Woman Whose Divorce Is Finalized (Bâ'in)

(A): She is not entitled to maintenance or accommodation. In general, if the husband is not entitled to take her back, then she is not entitled to maintenance unless she is pregnant.

Fâṭimah bint Qays (RAH) was divorced by her husband for a third time, and she asked the Messenger of Allah (SA) about maintenance for a woman in her situation. He said:

«لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ»

"She is not entitled to accommodation or maintenance." (M – from Fâṭimah bint Qays)

She is entitled to compensation herself (which amounts to maintenance) if she is the ḥâḍinah (physical custodian) of his children. This is because her caring for the children may prevent her from seeking provisions or getting married; it should not be an undue burden on her when the children's father is capable of meeting their financial needs.

(-H): She is entitled to maintenance and accommodation. This was also the position of 'Umar ibn al-Khaṭṭâb. They used the general implication of this verse:

{أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُم مِّن وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِن كُنَّ أُولَاتِ حَمْلٍ فَأَنفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ.}

> *{Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth...} (aṭ-Ṭalâq 65:6)*

Note that the Ḥanafis do not accept the divergent implication (mafhoom al-mukhâlafah), so according to their principles, the conditional statement in the verse above is not sufficient to indicate the lack of maintenance for the non-pregnant divorced woman during her 'iddah.

(-M, -S): She is entitled to accommodation only. They argued that this is the meaning of the verse above. They also required her to stay in the marital home during the 'iddah, but since the divorce is final, the accommodation must be able to be divided so that each one has separate quarters. If that is not possible, then the husband should move out until the end of the 'iddah.

In *al-Mughni*, Ibn Qudâmah recommended that the husband allow his ex-wife to stay in the marital home after a final divorce until the end of her 'iddah. This is to steer away from a conflict with the three other madh-habs, since they require her to stay in the marital home.

The Pregnant Divorced Woman, Whether Her Divorce Is Finalized or Not

The relied-upon Ḥanbali position grants the pregnant bâ'in woman maintenance and accommodation, provided the pregnancy is attributable to the former husband. Ibn Qudâmah reports agreement on this in *al-Mughni*.

Third: The woman whose husband has died is not entitled to maintenance or accommodation. [XI.19.4]	الثَّالِثُ: الَّتِيْ تُوُفِّيَ زَوْجُهَا عَنْهَا، فَلَا نَفَقَةَ لَهَا وَلَا سُكْنَى.

[XI.19.4] The Accommodation for the Widow

(A) + (+H): She is not entitled to accommodation, whether she is pregnant or not, because her husband's estate will have already been transferred to his heirs. Her maintenance during the pregnancy could then come out of her share.

(A2): She is entitled to accommodation only if she is pregnant. They likened her to the pregnant one after a finalized divorce.

(-S): She is entitled to accommodation in both cases because she is bound to that home by the Sharia.

If the marital home was owned by the deceased or its rent had been prepaid, the widow's entitlement to remain must be assessed under the school being followed. In the Mâliki account, the rule also considers consummation or her having been installed in the home. If rent was not prepaid, the Mâliki school generally does not charge it to the estate; there is a narrower transmitted disagreement concerning a lease for a specified term. The Ḥanbali account discussed here permits her to move when she cannot obtain the home except by paying from her own property.

[XI.20] Chapter on the Waiting Period for Slave Women

بَابُ اسْتِبْرَاءِ الْإِمَاءِ

	وَهُوَ وَاجِبٌ فِيْ ثَلَاثَةِ مَوَاضِعَ: أَحَدُهَا: مَنْ مَلَكَ أَمَةً، لَمْ يُصِبْهَا حَتَّى يَسْتَبْرِئَهَا، الثَّانِيْ: أُمُّ الْوَلَدِ وَالْأَمَةُ الَّتِيْ يَطَؤُهَا سَيِّدُهَا، لَا يَجُوْزُ لَهُ تَزْوِيْجُهُمَا حَتَّى يَسْتَبْرِئَهُمَا. الثَّالِثُ: إِذَا أَعْتَقَهُمَا سَيِّدُهُمَا أَوْ عَتَقَا بِمَوْتِهِ، لَمْ يَنْكِحَا حَتَّى يَسْتَبْرِئَا أَنْفُسَهُمَا، وَالِاسْتِبْرَاءُ فِيْ جَمِيْعِ ذٰلِكَ بِوَضْعِ الْحَمْلِ إِنْ كَانَتْ حَامِلاً، أَوْ حَيْضَةٍ إِنْ كَانَتْ تَحِيْضُ، أَوْ شَهْرٍ إِنْ كَانَتْ آيِسَةً أَوْ مِنَ اللَّائِيْ لَمْ يَحِضْنَ، أَوْ عَشْرَةِ أَشْهُرٍ إِنِ ارْتَفَعَ حَيْضُهَا لَا تَدْرِيْ مَا رَفَعَه.

[XI.20] Please refer to the appendix on slavery.

[XI.21] The Book of *Dhihâr*

كِتَابُ الظِّهَارِ

وَهُوَ: أَنْ يَقُوْلَ لِإِمْرَأَتِهِ: أَنْتِ عَلَيَّ كَظَهْرِ أُمِّيْ، أَوْ مَنْ تَحْرُمُ عَلَيْهِ عَلَى التَّأْبِيْدِ، أَوْ يَقُوْلَ: أَنْتِ عَلَيَّ كَأَبِيْ، يُرِيْدُ تَحْرِيْمَهَا بِهِ.	This is to say to one's wife, "You are to me like the back of my mother," or to liken her in this way to another woman permanently [XI.21.1] unmarriageable to him, or to say to her, "You are to me like my father," intending by that to make her forbidden to him. [XI.21.2]

[XI.21] Introduction

This form of taḥreem (making impermissible) of the wives is sinful. Allah said:

{الَّذِينَ يُظَاهِرُونَ مِنكُم مِّن نِّسَائِهِم مَّا هُنَّ أُمَّهَاتِهِمْ ۖ إِنْ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ ۚ وَإِنَّهُمْ لَيَقُولُونَ مُنكَرًا مِّنَ الْقَوْلِ وَزُورًا ۚ وَإِنَّ اللَّهَ لَعَفُوٌّ غَفُورٌ}

{Those who pronounce dhihâr among you [to separate] from their wives – they are not [consequently] their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and a falsehood. But indeed, Allah is Pardoning and Forgiving.} (al-Mujâdilah 58:2)

It will not terminate the marriage. However, before resuming intercourse he must perform the expiation. In the relied-upon Ḥanbali position, sexual enjoyment short of intercourse is also prohibited until he has expiated.

[XI.21.1] Or temporarily (A/SM)

[XI.21.2] Dhihâr, as in the original agreed upon form, is to liken his wife to the back of his mother. Men used to do that as a form of exaggeration, meaning, "You are as forbidden to me as is the back of my mother." The scholars then debated whether likening her to other body parts and other maḥram women would take the same ruling; they also debated whether likening her to men or even to animals would take the same ruling.

The details of this discussion are largely irrelevant to our times and environment and beyond the scope of this book.

In ambiguous statements, the man will be entrusted with explaining his intention. Ibn Qudâmah said in *al-Mughni*, "If he says, 'You are to me like my mother,' intending dhihâr, then it is (dhihâr) according to the majority, including Abu Ḥaneefah and his two companions, ash-Shâfi'i and Is-ḥâq. If he intended to honor her or to say that she is like her in age or in some other quality, then this is not dhihâr. What matters is what he reveals about his intention." (Note that he said 'like my mother', not 'the back of my mother', which would be dhihâr by consensus.)

Some scholars (A) disliked for a man to call his wife 'mother' or 'sister' because of Abu Dâwood's report that a man said to his wife, "O my sister," and the Messenger of Allah (SA) said (disapprovingly), "Is she your sister?" This hadith is not authentic, though, so other scholars regarded this as permissible if it was meant to show affection or respect.

Then she is not permissible for him (to have intercourse with) until he expiates by emancipating a slave. If he cannot afford it, he should fast two consecutive months before they can have intercourse, and if he cannot do that, then he should feed 60 poor individuals. [XI.21.3]	فَلَا تَحِلُّ لَهُ حَتَّى يُكَفِّرَ بِتَحْرِيْرِ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا، فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا، فَمَنْ لَمْ يَسْتَطِعْ، فَإِطْعَامُ سِتِّيْنَ مِسْكِيْنًا.

[XI.21.3] For Allah said:

{وَالَّذِينَ يُظَاهِرُونَ مِن نِّسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَن يَتَمَاسَّا ۚ ذَٰلِكُمْ تُوعَظُونَ بِهِ ۚ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ. فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَن يَتَمَاسَّا ۖ فَمَن لَّمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا ۚ ذَٰلِكَ لِتُؤْمِنُوا بِاللَّهِ وَرَسُولِهِ ۚ وَتِلْكَ حُدُودُ اللَّهِ ۗ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ}

{And those who pronounce dhihâr from their wives and then [wish to] go back on what they said – then [there must be] the freeing of a slave before they touch one another. That is what you are admonished thereby; and Allah is Acquainted with what you do. And he who does not find [a slave] – then a fast for two months

consecutively before they touch one another; and he who is unable – then the feeding of 60 poor persons. That is for you to believe [completely] in Allah and His Messenger; and those are the limits [set by] Allah. And for the disbelievers is a painful punishment.} (al-Mujâdilah 58:3–4)

Its ruling and description are similar to the expiation for having intercourse during the (daytime) of Ramadan.	وَحُكْمُهَا وَصِفَتُهَا كَكَفَّارَةِ الْجِمَاعِ فِيْ شَهْرِ رَمَضَانَ.

It is sinful to have intercourse before expiation, and he must still expiate with the expiation mentioned above. [XI.21.4]	فَإِنْ وَطِئَ قَبْلَ التَّكْفِيْرِ، عَصَى، وَلَزِمَتْهُ الْكَفَّارَةُ الْمَذْكُوْرَةُ.

[XI.21.4] The expiation is still the same, without any punitive increase.

If one pronounces dhihâr against his wife multiple times without expiation, he is liable for one expiation only. If he pronounces dhihâr against all of his wives in one statement, then he is required to expiate once. If he pronounces dhihâr against his wives in separate statements, one expiation is required for each one of them.	وَمَنْ ظَاهَرَ مِنْ امْرَأَتِهِ مِرَارًا، وَلَمْ يُكَفِّرْ، فَكَفَّارَةٌ وَاحِدَةٌ. إن ظَاهَرَ من نسائه بكلمة واحدة فَكَفَّارَةٌ وَاحِدَةٌ ، وَإِنْ ظَاهَرَ مِنْهُنَّ بِكَلِمَاتٍ فَعَلَيْهِ كَفَّارَةٌ لِكُلِّ واحدة.

If he pronounces dhihâr against his slave woman or forbids her for himself or forbids something else that is permissible, or if the wife pronounces dhihâr against her husband [XI.21.5] or forbids him for herself, he does not become forbidden. The expiation for all that is like the expiation for the (unfulfilled) oath. [XI.21.6]	وإن ظَاهَرَ مِنْ أَمَتِهِ أَوْ حَرَّمَهَا، أَوْ حَرَّمَ شَيْئًا مُبَاحًا، أَوْ ظَاهَرَتِ الْمَرْأَةُ مِنْ زَوْجِهَا أَوْ حَرَّمَتْهُ، لَمْ يَحْرُمْ، وَكَفَّارَتُهُ كَفَّارَةُ يَمِيْنٍ.

[XI.21.5] (A/SM): the same expiation like dhihâr, and she cannot initiate intimacy, but she must not keep herself from him.

[XI.21.6] The Expiation for Taḥreem

Allah said to His Messenger (SA) when he forbade honey for himself:

{يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ ۖ تَبْتَغِي مَرْضَاتَ أَزْوَاجِكَ ۚ وَاللَّهُ غَفُورٌ رَّحِيمٌ. قَدْ فَرَضَ اللَّهُ لَكُمْ تَحِلَّةَ أَيْمَانِكُمْ ۚ وَاللَّهُ مَوْلَاكُمْ ۖ وَهُوَ الْعَلِيمُ الْحَكِيمُ}

{O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you, seeking the approval of your wives? And Allah is Forgiving and Merciful. Allah has already ordained for you [Muslims] the dissolution of your oaths. And Allah is your protector, and He is the Knowing, the Wise.} (at-Taḥreem 66:1–2)

The expiation for the dissolution of oaths was decreed in Soorat al-Mâ'idah:

{لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَٰكِن يُؤَاخِذُكُم بِمَا عَقَّدتُّمُ الْأَيْمَانَ ۖ فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ ۖ فَمَن لَّمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ۚ ذَٰلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ ۚ وَاحْفَظُوا أَيْمَانَكُمْ ۚ كَذَٰلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ.}

{Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your [own] families or clothing them or the freeing of a slave. But whoever cannot find [or afford] it – then a fast of three days [is required]. That is the expiation for oaths when you have sworn. But guard your oaths. Thus does Allah make clear to you His verses that you may be grateful.} (al-Mâ'idah 5:89)

	وَالْعَبْدُ كالحر فِي الْكَفَّارَةِ سَوَاءٌ، إلا أنه لا يُكَفِّرُ إلا بالصِّيامِ.

[XI.22] The Book of *Li‘ân* (Mutual Invocation of Curses)

كتاب اللِّعَانِ

[When Is *Li‘ân* Required?]

If a man accuses his adult, sane, free, and chaste Muslim wife of adultery, he is subject to the ḥadd of qadhf if she demands it and he neither establishes his accusation nor completes li‘ân. [XI.22.1]	إِذَا قَذَفَ الرَّجُلُ امْرَأَتَهُ، الْبَالِغَةَ، الْعَاقِلَةَ، الْحُرَّةَ، الْمُسْلِمَةَ، الْعَفِيْفَةَ، بالزنا، لَزِمَهُ الْحَدُّ، إِنْ لَمْ يُلَاعِنْ.

[XI.22] Introduction

Li‘ân means mutual invocation of curses; it is also translated as ‘public imprecation’. In the context of this chapter, it is the invocation of curses (upon oneself) as a prescribed legal procedure. This procedure was prescribed to resolve the dilemma that arises when a man sees his wife committing adultery. If he accused any other woman but failed to produce witnesses, he would be punished. Because of the husband’s position and the nature of the marital relationship, though, he does not have to produce four witnesses (to avoid the punishment); instead, he can take public oaths in support of his accusation. If the wife counters his oaths with her own, she will ultimately be acquitted, but he will not be punished either. Li‘ân was also prescribed in previous scriptures, as in the Old Testament’s Numbers 5:11–31. The Islamic form, however, does not entail uncovering the woman’s head or making her drink “the water that causes the curse.” Also, in Islam, the husband, not only the wife, must take the oaths. If the woman is too shy to come to the courthouse, the judge will send someone to oversee the li‘ân at her home (A).

[XI.22.1] This is the ḥadd of qadhf (accusation of zinâ without proof) mentioned in the saying of Allah:

{وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا ۚ وَأُولَٰئِكَ هُمُ الْفَاسِقُونَ}

{And those who accuse chaste women and then do not produce four witnesses – lash them with 80 lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.} (an-Noor 24:4)

If she is a slave woman or *dhimmi*, [XI.22.2] then he is subject to a discretionary punishment (*ta'zeer*) if he does not go through li'ân and she sues him.	وَإِنْ كَانَتْ ذِمِّيَّةً أَوْ أَمَةً، فَعَلَيْهِ التَّعْزِيْرُ، إِنْ لَمْ يُلَاعِنْ، وَلَا يُعْرَضُ لَهُ حَتَّى تُطَالِبَهُ.

[XI.22.2] A dhimmi is a non-Muslim under the protection of the Muslim state. The differentiation between the rights of Muslim and non-Muslim women here was based on the differences in their obligations. The non-Muslim wife would be still able to take the oaths and refute her Muslim husband.

[Description of *Li'ân*]

Li'ân is to say, in front of the ruler or his agent, "I bear witness by Allah that I am truthful in accusing my wife of adultery," while pointing at her. If she is not present, he mentions her full name. Before the fifth oath, he should be stopped and told, "Fear Allah, for it is binding, [XI.22.3] and the torment of this life is easier than the torment of the hereafter." If he insists on proceeding, then he says, "May the curse of Allah be upon me if I am lying concerning the adultery I accused my wife of." [XI.22.4]	وَاللِّعَانُ أَنْ يَقُوْلَ بِحَضْرَةِ الْحَاكِمِ أَوْ نَائِبِهِ، أَشْهَدُ بِاللهِ إِنِّيْ لَمِنَ الصَّادِقِيْنَ، فِيْمَا رَمَيْتُ بِهِ امْرَأَتِيْ هَذِهِ مِنَ الزِّنَى، وَيُشِيْرُ إِلَيْهَا، فَإِنْ لَمْ تَكُنْ حَاضِرَةً سَمَّاهَا وَنَسَبَهَا، ثُمَّ يُوْقَفُ عِنْدَ الْخَامِسَةِ ، فَيُقَالُ لَهُ: اتَّقِ اللهَ فَإِنَّهَا الْمُوْجِبَةُ، وَعَذَابُ الدُّنْيَا أَهْوَنُ مِنْ عَذَابِ الْآخِرَةِ، فَإِنْ أَبَى إِلَّا أَنْ يُتِمَّ فَلْيَقُلْ: وَإِنَّ لَعْنَةَ اللهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِيْنَ فِيْمَا رَمَيْتُ بِهِ امْرَأَتِيْ هَذِهِ مِنَ الزِّنَى.

[XI.22.3] It will make the torment of Allah binding on him.

[XI.22.4] For Allah said:

{وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ ۙ إِنَّهُ لَمِنَ الصَّادِقِينَ. وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِن كَانَ مِنَ الْكَاذِبِينَ}

{And those who accuse their wives [of adultery] and have no witnesses except themselves – then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful. And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars.} (an-Noor 24:6–7)

But it averts the punishment from her if she bears witness four times (with an oath) by Allah, that he (her husband) is lying concerning the adultery he is accusing her of. She will be stopped before the fifth time and discouraged from it just as the man is; if she insists on proceeding, she must invoke the wrath of Allah on herself if he (her accuser) is telling the truth about the accusation of adultery against her. [XI.22.5]	وَيَدْرَأُ عَنْهَا الْعَذَابَ: أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللهِ إِنَّهُ لَمِنَ الْكَاذِبِيْنَ فِيْمَا رَمَانِيْ بِهِ مِنَ الزِّنَا، ثُمَّ تُوْقَفُ عِنْدَ الْخَامِسَةِ وَتُخَوَّفُ، كَمَا خُوِّفَ الرَّجُلُ، فَإِنْ أَبَتْ إِلَّا أَنْ تُتِمَّ، فَلْتَقُلْ: وَإِنَّ غَضَبَ اللهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِيْنَ فِيْمَا رَمَانِيْ بِهِ زَوْجِيْ هَذَا مِنَ الزِّنَا.

[XI.22.5] For Allah said:

{وَيَدْرَأُ عَنْهَا الْعَذَابَ أَن تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ ۙ إِنَّهُ لَمِنَ الْكَاذِبِينَ. وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِن كَانَ مِنَ الصَّادِقِينَ}

{But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars. And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful.} (an-Noor 24:8–9)

The judge should then say, "I separate you two," making her forever unmarriageable to him.	ثُمَّ يَقُوْلُ الْحَاكِمُ: قَدْ فَرَّقْتُ بَيْنَكُمَا، فَتَحْرُمُ عَلَيْهِ تَحْرِيْمًا مُؤَبَّدًا.

If they have a child and he denies paternity, then (the child) is not attributed to him, whether still in the womb or already born, provided that he has neither previously acknowledged paternity nor acted in a way that indicates acknowledgment. This is because of Ibn 'Umar's narration that a man went through li'ân against his wife and denied the paternity of her child, so the Messenger of Allah (SA) separated them and attributed the child to his mother. [XI.22.6]	وَإِنْ كَانَ بَيْنَهُمَا وَلَدٌ فَنَفَاهُ انْتَفَى عَنْهُ، سَوَاءٌ كَانَ حَمْلاً أَوْ مَوْلُوْدًا، مَا لَمْ يَكُنْ أَقَرَّ بِهِ، أَوْ وُجِدَ مِنْهُ مَا يَدُلُّ عَلَىٰ الْإِقْرَارِ بِهِ، لِمَا روى ابن عمر: أَنَّ رَجُلاً لَاعَنَ امْرَأَتَهُ وَانْتَفَى مِنْ وَلَدِهَا، فَفَرَّقَ رَسُوْلُ اللهِ ﷺ بَيْنَهُمَا، وَأَلْحَقَ الْوَلَدَ بِالْأُمِّ.

[XI.22.6] (Ag) The matn permits denial while the child is still in the womb. (A/SM & Iqnâ'): Denial of the unborn child does not take effect; li'ân for denying paternity must be completed after birth.

(A/SM & Iqnâ'): The separation follows completion of both spouses' li'ân; the judge's declaration announces that separation rather than bringing it into existence.

Subsection: If his wife gives birth to a child who could possibly be his, the child's lineage is attributed to him. The same applies to his slave woman if he acknowledges having had intercourse with her and the child could possibly be his. This is because the Messenger of Allah (SA) said, "The child belongs to the	فَصْلٌ: وَمَنْ وَلَدَتِ امْرَأَتُهُ أَوْ أَمَتُهُ الَّتِيْ أَقَرَّ بِوَطْئِهَا وَلَدًا يُمْكِنُ كَوْنُهُ مِنْهُ، لَحِقَهُ نَسَبُهُ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ».

lawful bed, and the fornicator has no claim to the child." [XI.22.7]	

[XI.22.7] (Ag – from 'Â'ishah) See the appendix on attributing a child to the illegitimate biological father (fornicator).

[Denial of Paternity]

The wife's child can never be denied paternity except through li'ân. [XI.22.8]	وَلَا يَنْتَفِيْ وَلَدُ الْمَرْأَةِ إِلَّا بِاللِّعَانِ. وَلَا وَلَدُ الْأَمَةِ إِلَّا بِدَعْوَى اسْتِبْرَائِهَا.

[XI.22.8] Role of DNA Testing in Denial of Paternity

It is not permissible in the Sharia to depend on DNA evidence to deny paternity or to give it precedence over li'ân. However, DNA can be used as a corroborative proof to support the husband's demand for li'ân, or it could contradict his claim and thereby dissuade him from li'ân. (AMJA's Family Code)

In the commentator's view, when the DNA proves the paternity of the husband, the court may decline to take his case for the denial of paternity, although it may still hear his charges concerning the wife's adultery. This is because DNA results have a great level of certainty, particularly when done more than once and in separate laboratories.

If it is not possible that (the child) is his – such as when his slave woman gives birth less than six months [XI.22.9] from the time he had intercourse with her; or his wife gives birth in less than that period from the time it was possible for them to be together; [XI.22.10] or he cannot possibly be a father, such as one who is younger than ten years, who is castrated, or who has undergone penectomy	وَإِنْ لَمْ يُمْكِنْ كَوْنُهُ مِنْهُ، مِثْلَ أَنْ تَلِدَ أَمَتُهُ لأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ مُنْذُ وَطْئِهَا، أَوِ امْرَأَتُهُ لأَقَلَّ مِنْ ذٰلِكَ مُنْذُ أَمْكَنَ اجْتِمَاعُهُمَا، أَوْ كَانَ الزَّوْجُ مِمَّنْ لَا يُوْلَدُ لِمِثْلِهِ، كَمَنْ لَهُ دُوْنَ عَشْرِ سِنِيْنَ، أَوِ الْخَصِيِّ أَوِ الْمَجْبُوْبِ، لَمْ يَلْحَقْهُ.

[XI.22.11] – then the child will not be attributed to him. [XI.22.12]	

[XI.22.9] Duration of Pregnancy

Today, a premature baby of less than six months gestational age may survive due to advanced medical intervention. Therefore, experts must be consulted in these cases, and the attribution of the infant to the husband should not be automatically dismissed. According to AMJA's Family Code, Article 105, "The minimum duration of a pregnancy is six months (and experts must be consulted for less than that), and its maximum duration is legally a full lunar year."

[XI.22.10] For example, if they got married while in two different countries, it would only have been possible for them to consummate the marriage later when they were physically together.

[XI.22.11] (A/SM): he cannot possibly be a father if he is castrated and has undergone penectomy, not either one of them separately.

[XI.22.12] In these cases, he does not need to go through li'ân to deny the paternity of the child.

Subsection: If two men mistakenly have intercourse with one woman in the same period of purity (between two menstruations); or if two co-owners of a slave woman have intercourse with their slave woman during the same period of purity, and she then gives birth to a child; or if two men seek the attribution of the same child whose lineage is unknown; (the child) will be shown to the physiognomists, [XI.22.13] along with them (the two men) or their relatives, and will then be attributed to whomever the physiognomists attribute him or her to.	فَصْلٌ: وَإِذَا وَطِئَ رَجُلَانِ امْرَأَةً فِيْ طُهْرٍ وَاحِدٍ بِشُبْهَةٍ، أَوْ وَطِئَ الشَّرِيْكَانِ أَمَتَهُمَا فِيْ طُهْرٍ وَاحِدٍ، فَأَتَتْ بِوَلَدٍ، أَوِ ادَّعَى نَسَبَ مَجْهُوْلِ النَّسَبِ رَجُلَانِ، أُرِي القافَة معهما أو مع أقاربهما فأُلْحِقَ بمن ألحَقوه منهما، وإن ألحَقوه بهما لَحِقَ بهما، وَإِنْ أَشْكَلَ أَمْرُهُ، أَوْ تَعَارَضَ قَوْلُ الْقَافَةِ، أَوْ لَمْ يُوْجَدْ قَافَةٌ، تُرِكَ حَتَّى

[XI.22.14] If they attribute (the child) to both men, he or she will be attributed to both. If the attribution becomes difficult, the physiognomists disagree, or there are no physiognomists (that is, neither can prove his claim), the child will be left to choose who to belong to, once he or she reaches puberty. [XI.22.15]	يَبْلُغَ، فَيُلْحَقَ بِمَنِ انْتَسَبَ إِلَيْهِ مِنْهُمَا.

[XI.22.13] Qiyâfah (Physiognomy)

The qiyâfah of people is an investigative science that studies the physical characteristics of two individuals to assert their ancestry and filiality of one another… This practice is done by speculation and intuition, not by evidences and certainty, and Allah – the Glorified and High – knows best. (*Abjad al-'Uloom*, translated by the commentator)

[XI.22.14] The Utility of Qiyâfah (Physiognomy)

When the paternity of a child is disputed, for instance because two men mistakenly had intercourse with a woman during the same non-menstrual period, (A) + (+S, +m) held that qiyâfah should be practiced, whereas (H) held that the child should be attributed to them both. The well-known Mâliki position restricts this use of qiyâfah to children of slave women. This is evidence of Islam's propensity to assert the actual ancestry by means of the available capabilities, and qiyâfah was the most ideal means in those eras. The majority was correct in acting upon qiyâfah whenever it was the best available means because it provides that which is most probable, which is usually the basis for rulings. Their evidence for this came from the Sunnah; the Messenger of Allah (SA) used it himself, as related in the story of Hilâl ibn Umayyah and Shareek ibn Saḥmâ'. He said after the li'ân was conducted:

« أَبْصِروها فإنْ جاءتْ به أكْحَلَ العينين سابغ الأَلْيَتَيْن خَدَلَّجَ الساقين فهو لشَرِيكِ بن سَحْمَاء »

"Watch her. If she brings him forth with dark eyes, wide hips, and full legs, then he belongs to Shareek ibn Saḥmâ'." (B – from Ibn 'Abbâs)

☞ The use of physiognomy, despite it being speculative, is an indication that the use of DNA testing is supportable in Sharia. It should also have much wider scope of operation than physiognomy.

[XI.22.15] In the meantime, both claimants will share responsibility for the child's expenses.

Whenever available, DNA testing is certainly superior to the expert opinion of the physiognomist.

The opinion of the physiognomist will not be accepted unless he is trustworthy and has been tried and proven to be skillful. [XI.22.16]	وَلَا يُقْبَلُ قَوْلُ الْقَائِفِ إِلَّا أَنْ يَكُوْنَ عَدْلاً، مُجَرَّباً فِي الْإِصَابَةِ.

[XI.22.16] We can use the same level of caution and precision that the fuqahâ' used in the past, by demanding that DNA testing be repeated more than once, in two or more laboratories, under blinded conditions, for cross-validation.

[XI.23] Chapter on Physical Custody

بَابُ الْحَضَانَةِ

The most deserving of the physical custody of a child is the mother, [XI.23.1] then her mothers, [XI.23.2] however high (however many generations up), then the father, then his mothers, then the grandfather, then his mothers, then the full sister, then the paternal half sister, then the maternal half sister, [XI.23.3] then the maternal aunt, then the paternal aunt, then the closest related women, and then the closest of his paternal kin. [XI.23.4]	أَحَقُّ النَّاسِ بِحَضَانَةِ الطِّفْلِ أُمُّهُ، ثُمَّ أُمَّهَاتُهَا وَإِنْ عَلَوْنَ، ثُمَّ الْأَبُ، ثُمَّ أُمَّهَاتُه، ثُمَّ الْجَدُّ، ثُمَّ أُمَّهَاتُه، ثُمَّ الْأُخْتُ مِنَ الْأَبَوَيْنِ، ثُمَّ الْأُخْتُ مِنَ الْأَبِ، ثُمَّ الْأُخْتُ مِنَ الْأُمِّ، ثُمَّ الْخَالَةُ ثُمَّ الْعَمَّةُ، ثُمَّ الْأَقْرَبُ فَالْأَقْرَبُ مِنَ النِّسَاءِ، ثُمَّ عَصَبَاتُهُ الْأَقْرَبُ فَالْأَقْرَبُ.

[XI.23] Introduction

Ḥaḍânah (translated as custody, tutelage, foster care) entails caring for the children, keeping them safe, and managing their day-to-day affairs up to a certain age. The children will spend the nights with the one entitled to their physical custody.

I chose ‘physical custody’ in the translation to point out that this custody does not supplant two other forms of custody, namely, the general custody (wilâyah ‘âmmah) and financial custody (wilâyah mâliyah), which the father keeps even if the mother has physical custody. This means that the father will be the guardian for his daughters until they marry, and he manages his children’s assets for them (unless he is disqualified).

If the two parents are married, the ḥaḍânah of the child is the right and responsibility of both of them. The child cannot be severed from either or both of them except for a necessity. The discussion of the entitlement to ḥaḍânah pertains to parents who are separated, or the rare case where they are disqualified from ḥaḍânah.

Ḥaḍânah is established in the best interest of the child. The parents and all involved parties must fear Allah and do what is best for the child. Using the issue of custody to cause harm to an ex-spouse is evil and reckless.

Note that in all cases, and regardless of who gets custody, children will not be prevented from seeing either parent; likewise, parents will not be prevented from spending time with their children unless real harm is feared for the children's safety.

[XI.23.1] The most deserving of the child's custody is the qualified mother who has not remarried. Beyond this, there is little agreement concerning the most deserving of custody.

[XI.23.2] "Mothers" here means the mother, then the grandmothers, then the great-grandmothers, and so on.

[XI.23.3] (A/SM & Iqnâ'): The maternal half sister comes before the paternal half sister.

[XI.23.4] (A/SM & Iqnâ'): 'Uloo al-arḥâm will come after the ones mentioned here and before custody is given to the state.

Each madh-hab has its own order of entitlement to custody.

It is for the Islamic judiciary (or, outside the lands of Islam, those in its place, when the contending parties seek arbitration) to assign physical custody to the most qualified relatives (that is, those who will realize the best interest of this child) in light of the suggested orders of priority provided by the different madh-habs.

The right to physical custody does not belong to a slave, [XI.23.5] a *fâsiq* (one who commits a major sin or persists in minor sins), [XI.23.6] or a woman married to a man unrelated to the child. [XI.23.7] Once the hindrances to the right of physical custody are removed, [XI.23.8] their entitlement to it returns.	وَلَا حَضَانَةَ لِرَقِيْقٍ، وَلَا فَاسِقٍ، وَلَا امْرَأَةٍ مُزَوَّجَةٍ لأَجْنَبِيٍّ مِنَ الطِّفْلِ، فَإِنْ زَالَتِ الْمَوَانِعُ مِنْهُمْ، عَادَ حَقُّهُمْ مِنَ الْحَضَانَةِ.

[XI.23.5] It is feared that the child's interest will not be best served because the one in the bond of slavery may not have the sufficient time and capability to take care of the various affairs of the child. Ibn Qudâmah explains that a partially freed person with an arrangement dividing time with the owner may have custody during his or her free days. (A/Iqnâ'): The later rule denies custody even with such an arrangement. (See the appendix on slavery.)

[XI.23.6] The late Ḥanbali rule excludes a fâsiq from custody. The Ḥanafis distinguish misconduct that results in neglect of the child from misconduct that does not: in the latter case, the female custodian retains priority until the child reaches understanding.

[XI.23.7] Mothers First Unless They Marry

Because the Prophet (SA) said:

« أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي »

"You have more right to him as long as you do not marry." (D – from Ibn 'Amr; al-Albâni: R)

This was when a woman approached him and said, "O Messenger of Allah, my womb was a vessel for this son of mine; my breasts served as a water-skin for him, and my lap as a cradle. Yet his father has divorced me and wants to take him away from me."

This hadith was reported through a controversial chain that is accepted by most Hadith scholars; it is that of 'Amr ibn Shu'ayb from his father, from his great-grandfather. Ibn Ḥazm did not accept the hadith and did not act upon it, so he gave custody to the mother, regardless of her marital status, for both genders until they reached puberty. This was also reported from 'Uthmân and al-Ḥasan al-Baṣri. The four imams transfer the right of custody from the mother if she marries a man who is not related to the child. (If she marries a relative of the child, (A) does not drop her right to custody; also (H) if he was unmarriageable kin by blood.)

This is only in case of dispute. If the father agrees to leave the child with the mother after her marriage, then she may keep him or her.

[XI.23.8] Other Hindrances That Disqualify Relatives from Custody

In addition to the hindrances mentioned in the matn, there are four others in the madh-hab:

Insanity (A) + (+H, +M, +S)

Incapacity, such as blindness (A) + (+M)

Contagious diseases (A) + (+M)

Difference of religion: (A) + (+S) require a Muslim custodian for a Muslim child, including the mother. The Ḥanafis allow a qualified non-Muslim female custodian until the child understands religion or there is fear that the child will become attached to disbelief. The Mâlikis do not require Islam in a custodian, whether male or female; if harm to the child's religion is feared, they require Muslim supervision. These custody rules do not, by themselves, require severing the child's contact with a non-Muslim mother. Besides the rational proof of the mother's irreplaceable compassion, (-H, -M) cited the report from 'Abdul-Ḥameed ibn Salamah al-Anṣâri, from his father, from his grandfather, that he became Muslim, but his wife refused to become Muslim. He brought a young son of theirs, who had not yet reached puberty, and the Prophet (SA) seated the father on one side and the mother on the other side, and he gave him the choice. He said, "O Allah, guide him," and (the child) went to his father. (N) Although the hadith was accepted by some Hadith scholars, (A) + (+S) pointed out the controversy over its transmission, and they also argued that the Prophet (SA) knew that Allah would answer his supplication for the child to choose his Muslim father, who would be certainly more trusted to raise him or her as Muslim. (-H, -M) argue that the Prophet (SA) would have not given the child a choice if granting custody to the non-Muslim mother was prohibited.

Nowadays, where Muslims live as minorities, such cases will be settled in the secular court. Whenever the children are in his company, the Muslim father should do his best to show them the beauty and soundness of Islam and to teach them about it.

When the boy reaches the age of seven years, he is given the choice between his	وَإِذَا بَلَغَ الْغُلَامُ سَبْعَ سِنِيْنَ، خُيِّرَ بَيْنَ أَبَوَيْهِ،

parents, and then he will be with whomever he chooses. [XI.23.9] When the girl reaches the age of seven years, her father is more deserving of her. [XI.23.10]	فَكَانَ عِنْدَ مَنِ اخْتَارَهُ مِنْهُمَا. وَإِذَا بَلَغَتِ الْجَارِيَةُ سَبْعًا، فَأَبُوْهَا أَحَقُّ بِهَا.

[XI.23.9] The Boy Is Given the Choice at Seven

This is the position of (A) + (+S), for Abu Hurayrah said, "I heard a woman who came to the Messenger of Allah (SA) while I was sitting with him, and she said, 'My husband wishes to take away my son, Messenger of Allah, and he draws water for me from the well of Abi 'Inabah, and he has been helpful to me.' The Messenger of Allah (SA) said:

«اسْتَهِمَا عَلَيْهِ»

'Cast lots for him.'

Her husband asked, 'Who could dispute with me about my son?' The Prophet (SA) said:

« هَذَا أَبُوكَ وَهَذِهِ أُمُّكَ فَخُذْ بِيَدِ أَيِّهِمَا شِئْتَ»

'This is your father, and this is your mother, so take by the hand whichever of them you wish.'

He took his mother's hand, and she went away with him." (D; T: RS)

(A): If both parents remain qualified for custody, the boy may change his choice and move to the other parent. His preference is not followed when he chooses a parent to escape proper discipline or gain access to harmful conduct.

[XI.23.10] The Girl Moving to Her Father

This is the correct position in (A) because the children in the hadiths of granting the choice to the child were boys. (A) also argued that the girl needs greater protection, and suitors will be proposing to her father, etc.

(-S): The girl, like the boy, will be given the choice at the age of discernment, which is seven.

(-M): Custody goes to the mother for a boy until he reaches puberty and for a girl until her husband consummates the marriage.

(-H): Custody goes to the mother until the boy is 7 and the girl is 9, when they are placed in the custody of their father.

The father must provide a wet-nurse for his child unless the mother wants to feed him or her with the customary wages of someone like her, in which case she becomes more deserving of him than all others. [XI.23.11] This is true whether she is still married (to the child's father) or divorced (from him). If (the child) has no father or wealth, then it is binding on his or her heirs to provide the compensation for the wet-nurse in proportion to their shares of inheritance from him. [XI.23.12]	وَعَلَى الْأَبِ أَنْ يَسْتَرْضِعَ لِوَلَدِهِ، إِلَّا أَنْ تَشَاءَ الْأُمُّ أَنْ تُرْضِعَهُ بِأَجْرِ مِثْلِهَا، فَتَكُوْنُ أَحَقَّ بِهِ مِنْ غَيْرِهَا، سَوَاءٌ كَانَتْ فِيْ حِبَالِ الزَّوْجِ أَوْ مُطَلَّقَةً. فَإِنْ لَمْ يَكُنْ لَهُ أَبٌ وَلَا مَالٌ، فَعَلَى وَرَثَتِهِ أَجْرُ رَضَاعِهِ، عَلَى قَدْرِ مِيْرَاثِهِمْ مِنْهُ.

[XI.23.11] (A): The mother is entitled to compensation for breastfeeding and/or having physical custody of the baby, even if there is another woman who volunteers to do it for free.

[XI.23.12] The compensation for breastfeeding the infant is only one of the financial obligations of the father or of those who will be responsible for the child. (In the absence of a father or of wealth owned by the child, the child's heirs share the financial responsibility in proportion to the share of the inheritance they would receive from him or her.) The other two financial obligations are:

1. The maintenance of the child.

2. (A) + (+H, +S): The compensation for physical custody.

(-M): No compensation for custody.

[XI.24] Chapter on Maintenance of Relatives and Slaves

بَابُ نَفَقَةِ الْأَقَارِبِ وَالْمَمَالِيْكِ

It is mandatory to spend on one's parents, [XI.24.1] his grandparents however many generations up, his children and their descendants however many generations down, [XI.24.2] and those from whom one inherits, whether in the form of designated shares (farḍ) or residuaries (ta'ṣeeb). [XI.24.3] This is the case when they are poor and one has money to spend on them. [XI.24.4]	وَعَلَى الْإِنْسَانِ نَفَقَةُ وَالِدَيْهِ وَإِنْ عَلَوْا، وَأَوْلَادِهِ وَإِنْ سَفَلُوْا، وَمَنْ يَرِثُهُ بِفَرْضٍ أَوْ تَعْصِيْبٍ، إِذَا كَانُوْا فُقَرَاءَ، وَلَهُ مَا يُنْفِقُ عَلَيْهِمْ.

[XI.24.1] In the case of parents who are poor, their maintenance is obligatory, by consensus, on their solvent children regardless of their gender.

[XI.24.2] The Maintenance of Needy Older Children

(A) + (+H, +M, +S): Where the father is able and legally responsible for the child's maintenance, it is binding on him alone, not divided between him and the mother. (-s): Binding on both solvent parents, 2/3 on the father and 1/3 on the mother.

If the older son is poor but capable of earning, there are two reports in the madh-hab concerning his father's obligation to support him. (t) chose that his maintenance is only binding if he is incapable. The vast majority required the father to spend on his daughter until she marries.

(A) + (+H): The maintenance of young children is likewise binding on the father. If he dies, and there is a mother and a paternal grandfather, the mother is responsible for 1/3 and the grandfather for the rest.

[XI.24.3] Aside from one's young children and wife, the maintenance of the relatives is controversial.

(-M): Only the parents and children are entitled to maintenance due to kinship.

(a) + (-S): All the direct ancestors and descendants are entitled to maintenance.

(A) + (+H): Additional relatives are entitled to maintenance.

(A): The relatives who are entitled to maintenance are those from whom one inherits if they leave an estate behind. On the side of (A) are the following words of Allah:

«وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَّهُ بِوَلَدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَٰلِكَ...»

{…Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the heir is [a duty] like that [of the father]…} (al-Baqarah 2:233)

On the Ḥanbali reading, the heir here is the infant's heir, who bears the corresponding duty of support. Other interpretations of the verse are discussed below.

(a) + (-M, -S): The verse is not conclusive and only addresses the case of the suckling infant. Also, the meaning of the heirs here is not agreed upon. They also cite the following hadith, in which the Prophet (SA) said:

« إِنَّ الصَّدَقَةَ عَلَى الْمِسْكِينِ صَدَقَةٌ وَعَلَى ذِي الرَّحِمِ اثْنَتَانِ صَدَقَةٌ وَصِلَةٌ »

"Giving charity to a poor person is charity, and (giving) to a relative is two things: charity and upholding the ties of kinship." (T, N, Ma – from Salmân ibn 'Âmir; Ibn Ḥajar: R)

Notice that he considered giving to a relative as a form of charity. Still, it is not conclusive since the relative here is not necessarily one who is inherited from.

The position of (a) + (-S) may be more practical for our times. The Prophet (SA) did not leave behind clear and detailed instructions concerning the maintenance of relatives. Therefore, keeping the obligation specific to the ancestors and descendants, and urging wealthy people to be generous towards their kin, seems to be the most suitable way for our times.

[XI.24.4] These conditions are always applicable to all relatives and in all madh-habs, except that (A) has a peculiar position concerning the father; he allows the father, regardless of his financial status, to take from his son as long as this does not harm the son and he is not taking from one son to give to another.

(a) + (-H, -M, -S): The father is only allowed to take from his son to cover his needs.

If a poor person has two or more heirs, his maintenance is binding on them in proportion to their shares of his inheritance. This excludes the son, because his father is already responsible for his maintenance.	وَإِنْ كَانَ لِلْفَقِيْرِ وَارِثَانِ فَأَكْثَرَ، فَنَفَقَتُهُ عَلَيْهِمْ عَلَىٰ قَدْرِ مِيْرَاثِهِمْ، إلا الابن فَإِنَّ نَفَقَتَهُ عَلَىٰ أَبِيْهِ خَاصَّة.

It is binding on the masters of slaves to spend on them and to provide them with the food and clothing they need. If they fail to do that, then they will be forced to sell them if they (the slaves) demand it.	وَعَلَىٰ مُلَّاكِ الْمَمْلُوْكِيْنَ الْإِنْفَاقُ عَلَيْهِمْ، وَمَا يَحْتَاجُوْنَ إِلَيْهِ مِنْ مُؤْنَةٍ وَكِسْوَةٍ. فَإِنْ لَمْ يَفْعَلُوْا، أُجْبِرُوْا عَلَىٰ بَيْعِهِمْ، إِذَا طَلَبُوْا ذٰلِكَ.

[XI.25] Chapter on the *Waleemah* (Wedding Banquet)

بَابُ الْوَلِيْمَةِ

This is the invitation to a wedding party, and it is recommended because when ‘Abdur-Raḥmân ibn ‘Awf told him that he had gotten married, the Messenger of Allah (SA) said, “May Allah bless it for you. Have a banquet, if only with a sheep.” [XI.25.1]	وَهِيَ دَعْوَةُ الْعُرْسِ، وَهِيَ مُسْتَحَبَّةٌ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ لِعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ حِيْنَ أَخْبَرَهُ أَنَّهُ تَزَوَّجَ: «بَارَكَ اللهُ لَكَ، أَوْلِمْ وَلَوْ بِشَاةٍ.»

[XI.25] Introduction

The waleemah, or wedding banquet, is a chance for the family and community to share in the new couple’s happiness. It serves as a public announcement of the marriage, and it gives a chance for friends and community members to show goodwill and compassion to the newlywed couple and their families. The fact that it is recommended (or near obligatory) is another sign of Islam’s emphasis on social harmony. Traditionally, it was done after the consummation of marriage, and that is when the Prophet (SA) always had it, but it suffices to do it before the consummation.

[XI.25.1] (Ag – from Anas ibn Mâlik)

The Ruling of the Waleemah

(A) + (+H, +M, +S): Recommended.

(a) + (-m, -s, -Z): Obligatory.

The main proof for those who consider the waleemah mandatory is the hadith above, where the Prophet (SA) ordered ‘Abdur-Raḥmân (RA) to offer it. The majority argued that the command in this context does not necessarily mean obligation; he also ordered him to slaughter a sheep, and it is agreed that this is not mandatory. This food is not only donated to the poor but is also served to the rich, making the waleemah more like the

uḍḥiyah (an animal sacrificed as an act of worship during the days of Eid al-Aḍḥâ), which is not mandatory. Furthermore, marriage itself is not obligatory, so why would one of its rituals be? Finally, they cited the report that the Prophet (SA) said, "There is nothing due on wealth other than zakat." (Ma – from Fâṭimah bint Qays) However, the authenticity of this hadith is not established, and the exact opposite was reported from the Prophet (SA) through the exact same chain, "Indeed there is a duty on wealth aside from zakat." (T – from Fâṭimah bint Qays)

Imam ash-Shâfi'i himself stated that the waleemah is mandatory, but the madh-hab's later scholars ratified the other position. This is an example where al-qawl manṣooṣ (the verbatim statement of the Imam) is not always al-aṣaḥḥ (the truer) in the madh-hab.

Accepting it is mandatory because the Messenger of Allah (SA) said, "And he who does not respond will have disobeyed Allah and His Messenger." [XI.25.2]	وَالْإِجَابَةُ إِلَيْهَا وَاجِبَةٌ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «وَمَنْ لَمْ يُجِبْ فَقَدْ عَصَى اللهَ وَرَسُوْلَهُ.»

[XI.25.2] (Ag) This is part of a longer hadith in which the Prophet (SA) said:

«شَرُّ الطَّعَامِ طَعَامُ الْوَلِيمَةِ يُدْعَى لَهَا الْأَغْنِيَاءُ وَيُتْرَكُ الْفُقَرَاءُ وَمَنْ تَرَكَ الدَّعْوَةَ فَقَدْ عَصَى اللَّهَ وَرَسُولَهُ»

"The worst food is that of the wedding banquet to which the rich are invited while the poor are not. And he who turns down an invitation (to a banquet) disobeys Allah and His Messenger (SA)." (B – from Abu Hurayrah)

The Ruling on Answering the Invitation to a Waleemah

(A) + (+h, +M, +S): Mandatory.

(-H): Emphasized Sunnah, close to wâjib. Some Mâlikis, Shâfi'is and Ḥanbalis, including (t), supported this position.

The majority cited the hadith above and others. The minority said that the context is about extending kindness, so the command of the Prophet (SA) is for encouragement and emphasis, not obligation. However, Ibn ‘Abdul-Barr made a strong argument on behalf of the majority when he said, “The Prophet’s saying ‘disobeyed’ ends the dispute.” (at-Tamheed)

The madh-habs mention different conditions for the obligation. (A): The invitation must be personal, from a Muslim whose invitation is not properly declined on grounds of a prescribed boycott, and for the first day of the wedding banquet. The host’s earnings must be lawful, and the guest must have no valid excuse, such as harm or conflicting obligations. If the banquet includes a prohibited act that the guest can remove, attendance and its removal are obligatory; if the guest cannot remove it, attendance is prohibited.

He who does not wish to eat should just pray for them and leave. [XI.25.3]	وَمَنْ لَمْ يُحِبَّ أَنْ يَطْعَمَ، دَعَا وَانْصَرَفَ.

[XI.25.3] Congratulating a man on his marriage, the Prophet (SA) said:

«بَارَكَ اللَّهُ لَكَ، وَبَارَكَ عَلَيْكَ، وجَمَعَ بَيْنَكُمَا فِي خَيْرٍ»

“May Allah send his blessings for you and upon you and join both of you in goodness.” (D, T, N, Ma – from Abu Hurayrah; T: Auth)

As for the scattering of treats, it is permissible but disliked. [XI.25.4] It is better if they are distributed among the attendees.	وَالنِّثَارُ وَالْتِقَاطُهُ مُبَاحٌ مَعَ الْكَرَاهَةِ. وَإِنْ قُسِّمَ عَلَى الْحَاضِرِيْنَ، كَانَ أَوْلى.

[XI.25.4] Scattering Treats

It is permissible to scatter treats for people to grab, because the Messenger of Allah (SA) sacrificed five or six camels and then said:

«مَنْ شَاءَ اقْتَطَعَ»

“Anyone who wants may cut off a piece.” (D – from ‘Abdullâh ibn Qurṭ; al-Albâni: S)

It is disliked, though, because it is undignified for people to snatch them away from each other, and unbefitting of generous men and women with integrity. The Prophet (SA) offered the meat to the Companions, who would have known how to behave gracefully.

Here is a perfect example of Islam's recognition of the great variations between people. It points out the top of the hill but recognizes the people's varying capacities in climbing.

[XII] The Book of Foods [and Medicines]

كِتابُ الأَطْعِمَةِ

They are of two types: animals and others. As for all foods other than animals, they are permissible, [XII.0.1] except for that which is filthy (*najis*) [XII.0.2] or harmful, [XII.0.3] such as poisons.	وَهِيَ نَوْعَانِ: حَيَوَانٌ وَغَيْرُهُ. فَأَمَّا غَيْرُ الْحَيَوَانِ، فَكُلُّهُ مُبَاحٌ، إِلَّا مَا كَانَ نَجِسًا أَوْ مُضِرًّا، كَالسُّمُوْمِ.

[XII.0.1] This is in conformity with the following legal maxim:

الأَصْلُ فِي الأَشْيَاءِ الإِبَاحَةُ

Permissibility is the default concerning all things.

It is derived from the saying of Allah Most High:

«هُوَ الَّذِي خَلَقَ لَكُم مَّا فِي الْأَرْضِ جَمِيعًا»

{It is He Who created for you all of that which is on the earth…} (al-Baqarah 2:29)

The burden of proof lies on the one who claims that it is prohibited, not the one who maintains that it is permissible.

[XII.0.2] This is because the Prophet (SA) explained that the ‘illah (effective cause) of forbidding the consumption of the flesh of donkeys is their najâsah (impurity). On the day of Khaybar, Allah’s Messenger (SA) commanded Abu Ṭalḥah to announce:

«إِنَّ اَللَّهَ وَرَسُولَهُ يَنْهَيَانِكُمْ عَنْ لُحُومِ اَلْحُمُرِ اَلْأَهْلِيَّةِ، فَإِنَّهَا رِجْسٌ»

“Allah and His Messenger (SA) have prohibited you from (consuming) the flesh of donkeys, for it is impure (rijs).” (Ag – from Anas)

[XII.0.3] This is because of the following legal maxim:

لَا ضَرَرَ وَلَا ضِرَارَ

There should be no harm nor reciprocation of harm.

This maxim has the exact wording of a hadith of the Messenger of Allah (SA). (Ma – from Ibn ‘Abbâs. Accepted by the fuqahâ’)

This maxim is the foundation of the prohibition of smoking tobacco.

[Drinks]

All drinks are permissible [XII.0.4] except those that cause *sukr* (intoxication); [XII.0.5] those are forbidden, whether large or small in amount, regardless of their source. [XII.0.6] This is because the Messenger of Allah (SA) said, "Every intoxicant is haram, and that which will intoxicate in the amount of *al-farq*, [XII.0.7] a handful of it is (also) forbidden (to consume)." [XII.0.8]	وَالْأَشْرِبَةُ كُلُّهَا مُبَاحٌ، إِلَّا مَا أَسْكَرَ، فَإِنَّهُ يَحْرُمُ كَثِيْرُهُ وَقَلِيْلُهُ، مِنْ أَيِّ شَيْءٍ كَانَ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «كُلُّ مُسْكِرٍ حَرَامٌ وَمَا أَسْكَرَ مِنْهُ الْفَرْقُ فَمِلْءُ الْكَفِّ مِنْهُ حَرَامٌ»

[XII.0.4] He omitted the exception of what is najis or harmful from this general permissibility because it was mentioned in the previous paragraph.

[XII.0.5] Is There a Difference Between Khamr and Drugs?

The ʻillah of the prohibition of khamr is sukr, which is best translated as intoxication, yet this is still not entirely accurate. There are consequential differences between the intoxication that results from the consumption of alcoholic beverages and that which results from cocaine, for example. By consensus, all drugs and substances that cause impairment of judgment are forbidden, but many scholars who forbid all such drugs do not necessarily give them the same rulings as khamr; they distinguish between the intoxication that results from them and that which results from alcoholic beverages. Of those scholars are: the Mâliki scholars al-Ḥaṭṭâb and al-Qarâfi, the Shâfiʻi scholar Zakariyâ al-Anṣâri, and others. Their position is backed by the medical differences between the intoxicant effects of alcoholic beverages and drugs.

Most scholars did not differentiate between the intoxication of khamr and that of hashish. Of them are: an-Nawawi, Ibn Taymiyah, Ibn Ḥajar, al-Munoofi al-Mâliki, Ibn ʻÂbideen al-Ḥanafi, and others. Most still distinguish hashish from substances such as banj that remove awareness without the same intoxicating pleasure.

Some practical consequences of this disagreement include: Is the consumption of drugs punishable by ḥadd? Can morphine and other drugs be used for medical indications? If you take the position of the first group, the answer to the first question is no and to the second is yes. Some of the scholars who uphold the position that drugs are just like khamr will still allow their medical use.

[XII.0.6] The Source of the Khamr Is Irrelevant

This is supported by the following statement of ‘Umar (RA):

«إِنَّهُ قَدْ نَزَلَ تَحْرِيمُ الْخَمْرِ وَهِيَ مِنْ خَمْسَةِ أَشْيَاءَ الْعِنَبِ وَالتَّمْرِ وَالْحِنْطَةِ وَالشَّعِيرِ وَالْعَسَلِ وَالْخَمْرُ مَا خَامَرَ الْعَقْلَ»

“When the prohibition of khamr was revealed, it used to be made from grapes, dates, honey, wheat and barley. Khamr is what covers (confounds) the mind.” (Ag – from Ibn ‘Umar)

[XII.0.7] A large measure of volume, equal to about 16 or 100 pounds.

[XII.0.8] (T); a variant form is (Ag).

If khamr turns into vinegar (by itself), it becomes pure and permissible (to consume). However, if it is turned into vinegar (by human intervention), it does not become pure. [XII.0.9]	وَإِنْ تَخَلَّلَتِ الْخَمْرُ، طَهُرَتْ وَحَلَّتْ، وَإِنْ خُلِّلَتْ، لَمْ تَطْهُرْ.

[XII.0.9] (A) + (+S); also reported from ‘Umar (RA). The main support for this position comes from a hadith in which Abu Ṭalḥah (RA) asked the Prophet (SA), “O Prophet of Allah! I had purchased some wine for the orphans under my care.” (He had bought the wine before khamr was prohibited, and he wanted to know if he could use it now to make vinegar.) The Prophet (SA) said:

«أَهْرِقِ الْخَمْرَ وَاكْسِرِ الدِّنَانَ»

“Spill out the wine and break the jugs.” (T – from Anas, from Abu Ṭalḥah)

(-H, -M) considered vinegar pure and halal to consume even if it came from khamr through human intervention. They argued that after this transformation, it is a different substance with different rulings. Aṭ-Ṭaḥâwi interpreted the command of the Prophet (SA) in the hadith above to be a way of deterrence in a beginning stage of legislating the complete prohibition of khamr, to sever any relationship between the community and khamr. He supported his interpretation by pointing out that the Prophet (SA) also commanded the breaking of the jugs, and this is neither necessary nor required by the scholars who forbid the consumption of the vinegar, since they could be washed and purified after spilling the wine.

[Sea and Land Animals]

[Sea Animals]

Subsection: Animals Are of Two Types: Sea animals and land animals. As for the sea animals, they are all permissible (to consume) except for the snake, frog, [XII.0.10] and crocodile. [XII.0.11]	فَصْلٌ: وَالْحَيَوَانُ قِسْمَانِ: بَحْرِيٌّ وَبَرِّيٌّ. فَأَمَّا الْبَحْرِيُّ، فَكُلُّهُ حَلَالٌ، إِلَّا الْحَيَّةَ، وَالضِّفْدَعَ، وَالتِّمْسَاحَ.

[XII.0.10] Because the snake and frog are considered khabeeth (unwholesome/repulsive). See the discussion below about unwholesome things. Additionally, the Prophet (SA) forbade the killing of frogs.

[XII.0.11] Since crocodiles are fanged meat-eaters (carnivores).

[Land Animals]

And as for land animals, it is forbidden to eat: [XII.0.12] 1. All fanged predatory beasts, 2. All clawed birds, [XII.0.13] 3. Domestic donkeys, [XII.0.14] mules, [XII.0.15] 4. Scavenger birds such as eagles, vultures, large black crows and pied crows, [XII.0.16] 5. All unwholesome/repulsive animals [XII.0.17] such as pests, mice and the like, except for the jerboa [XII.0.18] and ḍabb lizard, because the Messenger of Allah (SA) saw it consumed at his table, and when asked if it was haram, he said no. [XII.0.19]	وَأَمَّا الْبَرِّيُّ فَيَحْرُمُ مِنْهُ: 1. كُلُّ ذِيْ نَابٍ مِنَ السِّبَاعِ، 2. وَكُلُّ ذِيْ مِخْلَبٍ مِنَ الطَّيْرِ، 3. وَالْحُمُرُ الْأَهْلِيَّةُ، وَالْبِغَالُ، 4. وَمَا يَأْكُلُ الْجِيَفَ مِنَ الطَّيْرِ، كَالنُّسُوْرِ وَالرَّخَمِ، وَغُرَابِ الْبَيْنِ وَالْأَبْقَعِ، 5. وَمَا يُسْتَخْبَثُ مِنَ الْحَشَرَاتِ، كَالْفَأْرِ وَنَحْوِهَا، إِلَّا الْيَرْبُوْعَ وَالضَّبَّ لِأَنَّهُ

Aside from these animals, all others are permissible (to consume).	أُكِلَ عَلَى مَائِدَةِ رَسُولِ اللهِ ﷺ وهُوَ يَنْظُرُ وقِيلَ لَه: أحَرَامٌ هُوَ؟ قال: لا. وَمَا عَدَا هَذَا مُبَاح.

[XII.0.12] Pork will not be mentioned here, because its prohibition is a must-be-known. Pork, blood, and dead carcasses are all najis. Allah said:

{قُل لَّا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَىٰ طَاعِمٍ يَطْعَمُهُ إِلَّا أَن يَكُونَ مَيْتَةً أَوْ دَمًا مَّسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ}

{Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine – for indeed, it is impure [rijs]…"} (al-An'âm 6:145)

[XII.0.13] This is the exact wording of the following hadith:

«نَهَى رَسُولُ اللَّهِ ﷺ عَنْ كُلِّ ذِي نَابٍ مِنَ السِّبَاعِ وَعَنْ كُلِّ ذِي مِخْلَبٍ مِنَ الطَّيْرِ.»

"The Messenger of Allah (SA) prohibited the eating of all fanged beasts of prey and all birds having talons." (M – from Ibn 'Abbâs)

The prohibition of eating the flesh of predatory animals saves humans from getting into the cycle of disease transmission among the carnivores.

[XII.0.14] Jâbir (RA) narrated, "On the day of Khaybar, the Messenger of Allah (SA) prohibited eating the flesh of domestic donkeys but permitted horse flesh." (Ag)

[XII.0.15] Jâbir (RA) narrated, "On the day of Khaybar, we slaughtered horses, mules, and donkeys. The Messenger of Allah (SA) forbade us from (consuming the flesh of) mules and donkeys, but he did not forbid horse flesh." (D; al-Albâni: Auth)

[XII.0.16] The Messenger of Allah (SA) said:

« خَمْسٌ فَوَاسِقُ يُقْتَلْنَ فِي الْحَرَمِ الْعَقْرَبُ (في مسلم، الثعبان) وَالْفَارَةُ وَالْحُدَيَّا وَالْغُرَابُ وَالْكَلْبُ الْعَقُورُ.»

"Five are the vicious beasts which should be killed even in the Ḥaram (sacred precinct): the scorpion (M: the snake), the rat, the kite, the crow and the vicious dog." (Ag – from 'Â'ishah)

Had these been halal to consume, it would have not been lawful to kill them; instead they would be slaughtered for consumption.

[XII.0.17] This is because Allah, Most High, said concerning His Messenger (SA):

{وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ}

{…and makes lawful for them the good things and prohibits for them the khabâ'ith (evil/foul)…} (al-A'râf 7:157)

Under this category also is the hedgehog. The report about it is weak, but it belongs to this category by sound reasoning. The scholars of the madh-hab also forbade worms, snakes, scorpions, beetles, geckos, and chameleons.

[XII.0.18] Because 'Umar decreed that the expiation for killing a jerboa in the Ḥaram is a jafrah (small female goat). (*al-Muwaṭṭa'*. Ibn Ḥajar: Auth chain)

In a variant report in the madh-hab, Aḥmad forbade jerboas because they look like mice.

[XII.0.19] (Ag – from Ibn 'Abbâs)

It is also permissible to eat (the flesh of) horses and hyenas, since the Prophet (SA) permitted (the consumption of) horse meat and referred to the hyena as game. [XII.0.20]	وَيُبَاحُ أَكْلُ الْخَيْلِ وَالضَّبُعِ؛ لِأَنَّ النَّبِيَّ ﷺ أَذِنَ فِيْ لُحُوْمِ الْخَيْلِ، وَسَمَّى الضَّبُعَ صَيْدًا.

[XII.0.20] The Ruling on Hyenas

(A) + (+S): Halal to consume. They cited the following hadith:

«عَنِ ابْنِ أَبِي عَمَّارٍ، قَالَ سَأَلْتُ جَابِرَ بْنَ عَبْدِ اللَّهِ عَنِ الضَّبُعِ، فَأَمَرَنِي بِأَكْلِهَا . قُلْتُ أَصَيْدٌ هِيَ قَالَ نَعَمْ . قُلْتُ أَسَمِعْتَهُ مِنْ رَسُولِ اللَّهِ صلى الله عليه وسلم قَالَ نَعَمْ»

Ibn Abi ‘Ammâr narrated, “I said to Jâbir, ‘Is the hyena a type of game?’ He replied, ‘Yes.’ I asked, ‘Did the Messenger of Allah (SA) say that?’ He replied, ‘Yes.’” (D, T, N, Ma; Bukhâri: Auth)

They said this hadith is specific, whereas the hadith forbidding fanged predatory animals is general, and the specific overrides the general.

(-H): Eating hyena is forbidden. In the Mâliki school, the relied-upon ruling presented by al-Dardeer is dislike (makrooh), although prohibition is also reported. Those who prohibit it invoke the prohibition of fanged predators. Ibn al-‘Arabi said, “I marvel at those who forbid eating foxes, when they only prey on chickens, yet they allow eating hyenas that prey on human beings and devour them.” There are also some reports about the reprehensibility of eating hyenas, but they are weak.

[XII.1] Chapter on Proper Slaughtering

بَابُ الذَّكَاةِ

All sea animals are permissible (to consume) without proper slaughter (*dhakât*) because the Messenger of Allah (SA) said concerning the sea, "Its dead is permissible." [XII.1.1] Excluded from this are the amphibious animals that (also) live on land; [XII.1.2] they are not permissible until properly slaughtered, except for crabs and the like.	يُبَاحُ كُلُّ مَا فِيْ الْبَحْرِ بِغَيْرِ ذَكَاةٍ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ فِيْ الْبَحْرِ: «هُوَ الْحِلُّ مَيْتَتُهُ» إِلَّا مَا يَعِيْشُ فِيْ الْبَرِّ، فَلَا يُبَاحُ حَتَّى يُذَكَّى، إِلَّا السَّرَطَانَ وَنَحْوَهُ.

[XII.1] Consuming meat requires the killing of animals, but taking the lives of those animals must be done only with permission from Allah, and all the rituals attached to proper slaughter are a reminder of this fact. When we mention the name of Allah before slaughter, we are acknowledging that we need His permission to take this life. The permissibility of slaughter as opposed to other forms of killing is presumed to be for health reasons and for minimizing the pain the animals suffer.

[XII.1.1] (A, D, T, N, Ma – from Abu Hurayrah)

[XII.1.2] Like turtles and sea lions.

None of the land animals is permissible without proper slaughter, except for locusts and their like. [XII.1.3]	وَلَا يُبَاحُ شَيْءٌ مِنَ الْبَرِّيِّ بِغَيْرِ ذَكَاةٍ، إِلَّا الْجَرَادَ وَشِبْهَهُ.

[XII.1.3] Ibn Abi Awfâ narrated, "We went on seven expeditions with the Messenger of Allah (SA), and we were eating locusts." (Ag)

Also, the Messenger of Allah (SA) said:

«أُحِلَّتْ لَنَا مَيْتَتَانِ وَدَمَانِ؛ فَأَمَّا الْمَيْتَتَانِ، فَالْجَرَادُ وَالْحُوتُ، وَأَمَّا الدَّمَانُ، فَالطِّحَالُ وَالْكَبِدُ»

"Two types of dead animals and two types of blood were made lawful for us. The dead animals are locusts and fish (seafood), and

the two types of blood are the spleen and liver." (Ma – from Ibn 'Umar)

The spleen and liver are mentioned here because they contain blood; the other organs are known to be halal.

[Types of *Dhakât*]

There are three types of proper slaughter: *naḥr* (stabbing at the base of the neck), *dhabḥ* (slaughter by cutting), and *'aqr* (fatal wounding). [XII.1.4] It is recommended to slaughter camels by stabbing, and it is recommended to slaughter all other animals by cutting. If one stabs what is preferable to cut, or cuts what is preferable to stab, it is still permissible. [XII.1.5]	وَالذَّكَاةُ تَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ: نَحْرٍ، وَذَبْحٍ، وَعَقْرٍ. وَيُسْتَحَبُّ نَحْرُ الْإِبِلِ، وَذَبْحُ مَا سِوَاهَا، فَإِنْ نَحَرَ مَا يُذْبَحُ أَوْ ذَبَحَ مَا يُنْحَرُ، فَجَائِزٌ.

[XII.1.4] Fatal wounding ('aqr) may substitute for ordinary slaughter when a lawful animal cannot be brought under control or reached for slaughter, whether it is hunted game or escaped or inaccessible livestock. The wound may be inflicted on an accessible part of its body, subject to the relevant conditions.

[XII.1.5] Both methods cause blood to gush out; the Prophet (SA) said:

«مَا أَنْهَرَ اَلدَّمَ وَذُكِرَ اِسْمُ اَللَّهِ عَلَيْهِ، فَكُلْ...»

"As long as the blood is made to gush out, and the name of Allah is mentioned over it, you may eat…" (Ag – from Râfi' ibn Khadeej)

[Conditions for the Validity of *Dhakât*]

There are three conditions for the validity of proper slaughter: First: The eligibility of the slaughterer, which means that he must be sane,	وَيُشْتَرَطُ لِلذَّكَاةِ كُلِّهَا ثَلَاثَةُ شُرُوطٍ: أَحَدُهَا: أَهْلِيَّةُ الْمُذَكِّيْ، وَهُوَ أَنْ يَكُوْنَ عَاقِلاً، قَادِرًا عَلَى الذَّبْحِ مُسْلِمًا

capable of slaughtering, and Muslim or of the People of the Book. [XII.1.6] As for a child, [XII.1.7] an insane person, one who is drunk, or an unbeliever other than the People of the Book, their *dhabeeḥah* (slaughtered animal) is not permissible (to consume).	أَوْ كِتَابِيًّا، فَأَمَّا الطِّفْلُ وَالْمَجْنُوْنُ وَالسَّكْرَانُ وَالْكَافِرُ الَّذِيْ لَيْسَ بِكِتَابِيٍّ فَلَا تَحِلُّ ذَبِيْحَتُهُ.

[XII.1.6] Allah said:

{وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَّكُمْ}

{...and the food of those who were given the Scripture is lawful for you…} (al-Mâ'idah 5:5)

This means their dhabeeḥah, since the non-animal foods of all people are halal for us to consume. It is also halal to consume any food cooked by anyone as long as the meat fulfills the conditions of proper slaughter.

The food of the People of the Book is halal as long as the other conditions of permissibility are met. Their animals killed by strangulation or electric shock are not halal, just as their pork is not.

[XII.1.7] This means the non-discerning child. Ibn al-Mundhir reported the consensus on the permissibility of slaughter by the discerning child.

Second: To mention the name of Allah at the time of slaughtering or setting off the tool of hunting. This is required if one can speak, but if one is mute, he or she points to the heavens. If one intentionally neglects to mention the name of Allah upon the slaughtered animal, it is not permissible (to eat). [XII.1.8] If one forgets, it is permissible. [XII.1.9] When hunting, if one does not mention the name of Allah, whether that is done	الثَّانِيْ: أَنْ يَذْكُرَ اللهَ عِنْدَ الذَّبْحِ، أَوْ إِرْسَالِ الْآلَةِ فِيْ الصَّيْدِ، إِنْ كَانَ نَاطِقًا، وَإِنْ كَانَ أَخْرَسَ، أَشَارَ إِلَى السَّمَاءِ. فَإِنْ تَرَكَ التَّسْمِيَةَ عَلَى الذَّبِيْحَةِ عَامِدًا، لَمْ تَحِلَّ، وَإِنْ تَرَكَهَا سَاهِيًا، حَلَّتْ.

intentionally or forgetfully, it is not permissible. [XII.1.10]	وَإِنْ تَرَكَهَا عَلَىٰ الصَّيْدِ، لَمْ يَحِلَّ، عَمْدًا كَانَ أَوْ سَهْوًا.

[XII.1.8] Allah said:

{وَلا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ}

{And do not eat of that upon which the name of Allah has not been mentioned…} (al-An'âm 6:121)

[XII.1.9] Tasmiyah

(A) + (+H, +M): Tasmiyah (mentioning the name of Allah) is a condition except in the case of forgetfulness.

(-S): Tasmiyah is sunnah.

(-Z): Tasmiyah is a condition, without exception.

The position of the majority best reconciles the various textual proofs. The distinction between intentional omission and forgetfulness is supported by the maxims and the statement of Ibn 'Abbâs (RAHUMA):

«إن في المسلم اسم الله، فإذا نسي أحدكم أن يسمي على الذبيحة؛ فَلْيُسَمِّ، وليأكل»

"The Muslim has the name of Allah in him, so if one of you forgets to say bismillâh upon slaughtering, let him say it (afterwards) and eat." (from 'Abdur-Razzâq)

There are other weak reports traceable to the Prophet (SA) that could be strengthened by one another and by this athar (report) from Ibn 'Abbâs as well.

Also, 'Â'ishah narrated that some people said to Allah's Messenger (SA), "There are people who bring us meat, and we do not know whether they have mentioned Allah's name over it." He replied:

«سَمُّوا اَللَّهَ عَلَيْهِ أَنْتُمْ، وَكُلُوهُ»

"Mention Allah's name yourselves and eat it." (B)

These people were recent converts, as related in other reports, but the hadith may support the position of the majority that distinguishes between the omission of tasmiyah by intention and by forgetfulness.

[XII.1.10] The distinction between the ruling of tasmiyah in slaughtering and hunting is a peculiarity of the madh-hab. They justified this by the emphasis on tasmiyah in the reports of hunting and the higher likelihood of forgetting while slaughtering since it is done in mass, unlike hunting.

(a): the exemption in forgetfulness applies to hunting as well.

Third: to slaughter with a sharp blade, whether it is made of iron, stone, cane, or anything else except teeth and claws. The Messenger of Allah (SA) said, "As long as the blood is made to gush out, and the name of Allah is mentioned over it, you may eat – except for the tooth and the claw." [XII.1.11]	الثَّالِثُ: أَنْ يُذَكِّيَ بِمُحَدَّدٍ، سَوَاءٌ كَانَ مِنْ حَدِيْدٍ أَوْ حَجَرٍ أَوْ قَصَبٍ أَوْ غَيْرِهِ، إِلَّا السِّنَّ وَالظُّفْرَ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَا أَنْهَرَ اَلدَّمَ وَذُكِرَ اِسْمُ اَللَّهِ عَلَيْهِ، فَكُلْ لَيْسَ اَلسِّنَّ وَالظُّفْرَ»

[XII.1.11] (Ag – from Râfi' ibn Khadeej)

Teeth and claws may not be used as knives.

[Proper Hunting Tools]

As for hunting, what matters is to use a sharp-pointed (tool) or set off a (trained) predatory beast that will wound the game. If one kills the game using a stone, *bunduq* (mudballs), [XII.1.12] or a snare, or if the predatory animal kills it by knocking it out, suffocation, or shock, it is not permissible.	وَيُعْتَبَرُ فِيْ الصَّيْدِ أَنْ يَصِيْدَ بِمُحَدَّدٍ أَوْ يُرْسِلَ جَارِحًا يَجْرَحُ الصَّيْدَ. فَإِنْ قَتَلَ الصَّيْدَ بِحَجَرٍ، أَوْ بُنْدُقٍ أَوْ شَبَكَةٍ، أَوْ قَتَلَ الْجَارِحُ الصَّيْدَ بِصَدْمَتِهِ أَوْ خَنْقِهِ أَوْ رَوْعَتِهِ، لَمْ يَحِلَّ.

[XII.1.12] Small globular objects made of mud and left to dry.

This is different from the modern bullet because the bullet, like the arrow, pierces the body and causes the animal to bleed.

If one uses the *mi'râḍ*, [XII.1.13] he or she may eat what is killed with its pointed end but not what is killed by its blunt side. [XII.1.14]	وَإِنْ صَادَ بِالْمِعْرَاضِ، أَكَلَ مَا قُتِلَ بِحَدِّهِ دُوْنَ مَا قُتِلَ بِعَرْضِهِ.

[XII.1.13] mi'râḍ: a featherless arrow that sometimes hits the target with its blunt edge, or a pole with a piece of pointed iron attached to its head; it may hit the target with the pointed end or the shaft.

[XII.1.14] 'Adiy ibn Ḥâtim narrated, "I asked the Messenger of Allah (SA) about hunting using a featherless arrow (mi'râḍ). He replied:

«إِذَا أَصَبْتَ بِحَدِّهِ فَكُلْ, وَإِذَا أَصَبْتَ بِعَرْضِهِ، فَقُتِلَ، فَإِنَّهُ وَقِيذٌ، فَلَا تَأْكُلْ»

'If you strike the game with its pointed end, eat it, but if you strike with the shaft and the game is killed, it is considered a waqeedh (killed by a violent blow), so do not eat it.'" (B)

If one sets up sickles and mentions the name of Allah, [XII.1.15] and they wound the game or kill it, it is permissible (to consume).	وَإِنْ نَصَبَ الْمَنَاجِلَ لِلصَّيْدِ وَسَمَّى، فَعَقَرَتِ الصَّيْدَ أَوْ قَتَلَتْهُ، حَلَّ.

[XII.1.15] They would set up sickles and just leave them for the animals to run into.

[Conditions Specific to Slaughtering by *Dhabḥ* and *Naḥr*]

Subsection: There Are Two Conditions Specific to Slaughtering by dhabḥ and naḥr: The first: (For the incision) to be in the throat and at the base of the neck, thereby cutting the air tube (trachea) and esophagus and that whose cutting is incompatible with life. [XII.1.16]	فَصْلٌ: وَيُشْتَرَطُ فِيْ الذَّبْحِ وَالنَّحْرِ خَاصَّةً شَرْطَانِ: أَحَدُهُمَا: أَنْ يَكُوْنَ فِيْ الْحَلْقِ وَاللَّبَّةِ، فَيَقْطَعُ الْحُلْقُوْمَ وَالْمَرِيْءَ، وَمَا لَا تَبْقَى الْحَيَاةُ مَعَ قَطْعِهِ.

[XII.1.16] The four structures discussed in slaughter are the trachea, the esophagus, and the two major blood vessels alongside the throat (wadajayn). Cutting all four is preferred and satisfies the requirements listed here for the four schools. Their minimum requirements are: (A) + (+S): The trachea and esophagus.

(-H): Any three out of the four.

(-M): The trachea and the two wadajayn.

The second: the presence of life (prior to the slaughter) in the animal to be slaughtered. If it only has the life of an (already) slaughtered animal or one whose guts have been removed, then it will not be made permissible by slaughter through cutting or stabbing. If it is not like this, it becomes permissible, due to the report of Ka'b, "We had some sheep grazing at Sal' (a mountain near Madinah), and a girl of ours saw one of them dying, so she broke a stone and slaughtered it. The Messenger of Allah (SA) was asked concerning it, and he permitted eating it." [XII.1.17]	الثَّانِيْ: أَنْ يَكُوْنَ فِيْ الْمَذْبُوْحِ حَيَاةٌ يُذْهِبُهَا الذَّبْحُ، فَإِنْ لَمْ يَكُنْ فِيْهِ إِلَّا كَحَيَاةِ الْمَذْبُوْحِ، وَمَا أُبِيْنَتْ حَشْوَتُهُ، لَمْ يَحِلَّ بِالذَّبْحِ وَلَا النَّحْرِ، وَإِنْ لَمْ يَكُنْ كَذٰلِكَ، حَلَّ؛ لِمَا رَوَى كَعْبُ بْنُ مَالِكٍ، قَالَ: «كَانَتْ لَنَا غَنَمٌ تَرْعَى بِسَلْعٍ، فَأَبْصَرَتْ جَارِيَةٌ لَنَا بِشَاةٍ مِنْ غَنَمِنَا مَوْتاً، فَكَسَرَتْ حَجَراً، فَذَبَحَتْهَا بِهِ، فَسُئِلَ النَّبِيُّ ﷺ عَنْ ذٰلِكَ، فَأَمَرَ بِأَكْلِهَا.»

[XII.1.17] (B – from Ka‘b ibn Mâlik)

[*‘Aqr* (fatal wounding)]

As for ‘aqr, it is killing by a wound that is not in the throat or the base of the neck.	وَأَمَّا الْعَقْرُ، فَهُوَ: الْقَتْلُ بِجُرْحٍ فِيْ غَيْرِ الْحَلْقِ وَاللَّبَّةِ.

It is prescribed for any animal that is uncontrollable, whether game or livestock. This is because of a report from Râfi‘, who said that a camel ran away from his owners and they could not pursue it, so one of them shot it with an arrow and was able to cripple it. The Messenger of Allah (SA) said, “Verily these cattle have wild instincts like those of the wild beasts, so whichever of them goes beyond your control, then do to it the same.” [XII.1.18]	وَيُشْرَعُ فِيْ كُلِّ حَيَوَانٍ مَعْجُوْزٍ عَنْهُ مِنَ الصَّيْدِ وَالْأَنْعَامِ، لِمَا رَوَى رَافِعٌ أَنَّ بَعِيْرًا نَدَّ فَأَعْيَاهُمْ، فَأَهْوَى إِلَيْهِ رَجُلٌ بِسَهْمٍ فَحَبَسَهُ، فَقَالَ رَسُوْلُ اللهِ ﷺ: «إِنَّ لِهَذِهِ الْبَهَائِمِ أَوَابِدَ كَأَوَابِدِ الْوَحْشِ فَمَا غَلَبَكُمْ مِنْهَا فَاصْنَعُوا بِهِ هَكَذَا.»

[XII.1.18] (Ag)

If a camel fell in a well and could not be slaughtered by stabbing, so one wounded it anywhere on its body, and then it died because of that, it would be permissible to consume.	وَلَوْ تَرَدَّى بَعِيْرٌ فِيْ بِئْرٍ فَتَعَذَّرَ نَحْرُهُ، فَجُرِحَ فِيْ أَيِّ مَوْضِعٍ كَانَ مِنْ جَسَدِهِ، فَمَاتَ بِهِ، حَلَّ أَكْلُهُ.

[XII.2] The Book of Hunting

كِتَابُ الصَّيْدِ

Every hunted game animal that can be slaughtered is not permissible except by slaughtering. As for those that cannot be slaughtered but die after being wounded, they are permissible if six conditions are met, of which we mentioned three in the Chapter on Proper Slaughtering. [XII.2.1]	كُلُّ مَا أَمْكَنَ ذَبْحُهُ مِنَ الصَّيْدِ، لَمْ يُبَحْ إِلَّا بِذَبْحِهِ. وَمَا تَعَذَّرَ ذَبْحُهُ فَمَاتَ بِعَقْرِهِ، حَلَّ بِشُرُوْطٍ سِتَّةٍ، ذَكَرْنَا مِنْهَا ثَلَاثَةً فِيْ الذَّكَاةِ.

[XII.2.1] The three conditions mentioned there are: that the slaughterer 1) must be eligible, 2) must mention the name of Allah, and 3) must use a sharp/pointed tool or a hunting animal that wounds the game.

Fourth: that the hunting predator be trained; [XII.2.2] this is the one that sets off when instructed and comes back when instructed. It is also a condition, for the dog and cheetah especially, that they not eat from the game animal after catching it. [XII.2.3] This is not necessary for (predatory) birds.	وَالرَّابِعُ: أَنْ يَكُوْنَ الْجَارِحُ الصَّائِدُ مُعَلَّمًا، وَهُوَ: مَا يَسْتَرْسِلُ إِذَا أُرْسِلَ، وَيُجِيْبُ إِذَا دُعِيَ. وَيُعْتَبَرُ فِيْ الْكَلْبِ وَالْفَهْدِ خَاصَّةً، أَنَّهُ إِذَا أَمْسَكَ لَمْ يَأْكُلْ، وَلَا يُعْتَبَرُ ذٰلِكَ فِيْ الطَّائِرِ.

[XII.2.2] This is a matter of consensus. Allah said:

{قُلْ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ}

{…Say, "Lawful for you are [all] good foods and [game caught by] what you have trained of hunting animals which you train as Allah has taught you…."} (al-Mâ'idah 5:4)

[XII.2.3] (A): The proof of this authorized view is the hadith of 'Adiy ibn Ḥâtim, which will be mentioned in the main text, where the Prophet (SA) said, "…If you reach it when the dog has killed it but not eaten any of it,

then eat it, for the catching by the dog counts as dhakât. If he has eaten of it, then do not eat, for I fear that he would have caught it for himself." (Ag)

(a): It is permissible even if the dog eats. Their proof is the hadith of Abi Tha'labah al-Khushani, in which the Prophet (SA) said:

«إِذَا أَرْسَلْتَ كَلْبَكَ وَذَكَرْتَ اسْمَ اللَّهِ فَكُلْ وَإِنْ أَكَلَ مِنْهُ»

"If you set off your dog and mentioned Allah's name, then eat (the animal), even if it eats any of it." (D. Some Hadith scholars: munkar because it contradicts the previous one, but many others: acceptable)

One way to reconcile both is to say that the Prophet (SA) directed 'Adiy to what was more cautious due to 'Adiy's wealth, whereas he directed Abu Tha'labah to a ruling that considered scarcity of resources and need.

Fifth: For the hunter to set off the hunting implement or predatory animal/bird. If the dog goes off by itself, its hunted game is not permissible. [XII.2.4]	الْخَامِسُ: أَنْ يُرْسِلَ الصَّائِدُ الآلَةَ. فَإِنِ اسْتَرْسَلَ الكَلْبُ بِنَفْسِهِ، لَمْ يُبَحْ صَيْدُهُ.

[XII.2.4] For the Prophet (SA) said:

«إِذَا أَرْسَلْتَ كَلْبَكَ وَذَكَرْتَ اسْمَ اللَّهِ عَلَيْهِ»

"If you set off your dog and mention Allah's name." (Ag – from 'Adiy ibn Ḥâtim)

Sixth: For the hunter to intend hunting. If he shoots his arrow to hit some target or sets off his dog while unaware of any game, and then he hits one, that game is not permissible (to consume). When the killing is caused in part by other means, such as a dog or arrow other than his, and he does not know who set it off or whether that	السَّادِسُ: أَنْ يَقْصِدَ الصَّيْدَ، فَإِنْ أَرْسَلَ سَهْمَهُ، لِيُصِيْبَ بِهِ غَرَضًا أَوْ كَلْبَهُ وَلَا يَرَى صَيْدًا، فَأَصَابَ صَيْدًا، لَمْ يُبَحْ، وَمَتَى شَارَكَ فِي الصَّيْدِ مَا لَا يُبَاحُ قَتْلُهُ، مِثْلَ أَنْ يُشَارِكَ كَلْبَهُ أَوْ سَهْمَهُ

person mentioned the name of Allah on it, the hunted game is not permissible. The same is also true if he shoots the game with a poisoned arrow to facilitate its killing, or it drowns, or he finds marks that may have caused the death, but they are from other than his own dog or arrow. This is all because of ‘Adiy ibn Ḥâtim’s report from the Prophet (SA), “If you set off your trained dog and mention Allah’s name (say *bismillâh*), and it catches something for you and you come up to it while it is still alive, then slaughter it. If you come up to it after the dog has killed it, but it has not eaten any of it, then eat it, for the catching by the dog counts as dhakât. If he has eaten from it, then do not eat, for I fear that he would have caught it for himself. If you find other dogs with yours, do not eat, for you mentioned Allah over your dog and not others. When you shoot your arrow, mention Allah’s name, and if the game goes out of sight for a day or two and you find it without any marks except for that arrow, eat it if you wish. But if you find it drowned in water, do not eat it, for you will not be able to tell whether the water or your arrow killed it.” [XII.2.5]

كَلْبٌ أَوْ سَهْمٌ لَا يَعْلَمُ
مُرْسِلَهُ، أَوْ لَا يَعْلَمُ أَنَّهُ
سُمِّيَ عَلَيْهِ، أَوْ رَمَاهُ
بِسَهْمٍ مَسْمُوْمٍ يُعِيْنُ
عَلَىٰ قَتْلِهِ، أَوْ غَرِقَ
فِيْ الْمَاءِ، أَوْ وَجَدَ بِهِ
أَثَرًا غَيْرَ أَثَرِ السَّهْمِ أَوِ
الْكَلْبِ، يُحْتَمَلُ أَنَّهُ
مَاتَ بِهِ، لَمْ يَحِلَّ؛ لِمَا
رَوَى عَدِيُّ بْنُ حَاتِمٍ
أَنَّ رَسُوْلَ اللهِ ﷺ قَالَ:
«إِذَا أَرْسَلْتَ كَلْبَكَ
الْمُعَلَّمَ وَذَكَرْتَ اسْمَ اللَّهِ
عَلَيْهِ فَأَمْسَكَ عَلَيْكَ
فَأَدْرَكْتَهُ حَيًّا فَاذْبَحْهُ،
وَإِنْ قَتَلَ وَلَمْ يَأْكُلْ مِنْهُ
فَكُلْهُ فإِنَّ أَخْذَ الكَلبِ لَه
ذَكَاةٌ، فَإِن أكَلَ فلا
تَأْكُلْ فَإِنِّي أَخَافُ أَنْ
يَكُونَ إِنَّمَا أَمْسَكَ عَلَى
نَفْسِهِ وَإِنْ خَالَطَهَا
كِلَابٌ مِنْ غَيْرِهَا فَلَا
تَأْكُلْ فَإِنَّك إِنَّمَا سَمَّيْتَ
عَلَى كَلْبِكَ وَلَمْ تُسَمِّ
عَلَى غَيْرِهِ، و إِذَا
أرسَلْتَ سَهْمَكَ فَاذْكُرِ
اسْمَ اللَّهِ عَلَيه، وإن
غَابَ عَنْكَ يَوْمًا أو
يَومَيْن ولَمْ تَجِدْ فِيهِ إلا
أثَرَ سَهْمِكَ فَكُلْهُ إِنْ
شِئْتَ، وَإِنْ وَجَدْتَهُ
غَرِيقاً فِي المَاءِ فَلا
تَأْكُلْ فَإِنَّكَ لَا تَدْرِي ،
الْمَاءُ قَتَلَهُ أَوْ سَهْمُكَ.»

[XII.2.5] (Ag – from ‘Adiy ibn Ḥâtim) This hadith supports the exception of dhabeeḥah, by the scholars of the four madh-habs, from the general maxim:

الأَصْلُ فِي الأَشْيَاءِ الإِبَاحَةُ

Permissibility is the default concerning all things.

The scholars add another exception to this maxim: the permissibility of marital relations. The reason behind this second exception is that the Prophet (SA) made the doubt that arises from a claim of breastfeeding sufficient to forbid marriage.

Ibn Rajab (may Allah have mercy on him) said:

«وَمَا أَصْلُهُ الْحَظْرُ كَالْأَبْضَاعِ وَلُحُومِ الْحَيَوَانِ ، فَلَا تَحِلُّ إِلَّا بِيَقِينِ حِلِّهِ مِنَ التَّذْكِيَةِ وَالْعَقْدِ.»

“Those things which are initially forbidden, such as sexual relations and the meat of animals, only become permissible by certainty of their permissibility by halal slaughter (of the meat) and contract.” (The Compendium of Knowledge and Wisdom, Ibn Rajab al-Ḥanbali, translated by Abdassamad Clarke. London: Turath Publishing, 2007, 105.)

[XII.3] Chapter on the Compelled

بَابُ الْمُضْطَرِّ

If one is forced (by necessity) in scarcity and finds nothing but impermissible (food), it is permitted to eat enough of it to save one's life. [XII.3.1]	وَمَنِ اضْطُرَّ فِيْ مَخْمَصَةٍ، فَلَمْ يَجِدْ إِلَّا مُحَرَّمًا، فَلَهُ أَنْ يَأْكُلَ مِنْهُ مَا يَسُدُّ رَمَقَهُ.

[XII.3.1] Can One Get Full?

There is disagreement over whether one can eat one's fill or eat only enough to avoid death.

(A) + (+H, +m, +S): The view chosen here is to eat enough of it to save one's life. This is because one is permitted to eat to avoid demise, so once there is no fear of that, he or she may not eat more.

(A2) + (-M, -s): The other view in the madh-hab allows getting full. This view finds support in this hadith:

«أَنَّ رَجُلاً، نَزَلَ الْحَرَّةَ وَمَعَهُ أَهْلُهُ وَوَلَدُهُ فَقَالَ رَجُلٌ إِنَّ نَاقَةً لِي ضَلَّتْ فَإِنْ وَجَدْتَهَا فَأَمْسِكْهَا . فَوَجَدَهَا فَلَمْ يَجِدْ صَاحِبَهَا فَمَرِضَتْ فَقَالَتِ امْرَأَتُهُ انْحَرْهَا . فَأَبَى فَنَفَقَتْ فَقَالَتِ اسْلُخْهَا حَتَّى نُقَدِّدَ شَحْمَهَا وَلَحْمَهَا وَنَأْكُلَهُ . فَقَالَ حَتَّى أَسْأَلَ رَسُولَ اللَّهِ ﷺ فَأَتَاهُ فَسَأَلَهُ فَقَالَ « هَلْ عِنْدَكَ غِنًى يُغْنِيكَ » . قَالَ لاَ . قَالَ :فَكُلُوهَا»

"A man settled at al-Ḥarrah with his wife and children. Another man said (to him), 'My she-camel has strayed; if you find it, hold it.' He found it but did not find its owner, and it fell ill. His wife said, 'Slaughter it,' but he refused, and it died. She said, 'Skin it so that we may dry its fat and flesh and eat them.' He said, 'Let me ask the Messenger of Allah (SA).' So he went to him and asked. The Prophet (SA) said, 'Do you have what is sufficient for your needs?' He replied, 'No.' The Prophet (SA) said, 'Then eat it.'" (D – from Jâbir ibn Samurah; al-Albâni: R chain)

When May One Eat?

One may eat before fearing immediate demise if they are afraid that by not eating, they may eventually suffer demise, loss of limbs or organs, or other severe harm. One may also eat if they are afraid that not eating will cause them to lag behind their company and not be able to catch up with them, thus putting their lives in peril. These positions can find support in the hadith of Jâbir as well.

If one finds something that is impermissible by agreement and something else whose permissibility is controversial, he or she should eat from that which is controversial. [XII.3.2]	وَإِنْ وَجَدَ مُتَّفَقًا عَلَىٰ تَحْرِيْمِهِ وَمُخْتَلَفًا فِيْهِ، أَكَلَ مِنَ الْمُخْتَلَفِ فِيْهِ.

[XII.3.2] For example, if one has to choose between a pig and a fox, he or she should eat the fox since its prohibition is debatable, whereas the pig is known to be prohibited.

If one only finds food that belongs to someone else who is subject to the same adversity, it is not permissible to take it. If (the other person) has no need for it, one may purchase it from him. If he bars him from it, one may take it by force, yet he or she is liable for its value and must compensate him for it whenever he or she can. If the one in adversity is killed, he is a martyr, and the killer is liable; if the withholder is killed, there is no liability.	فَإِنْ لَمْ يَجِدْ إِلَّا طَعَامًا لِغَيْرِهِ، بِهِ مِثْلُ ضَرُوْرَتِهِ، لَمْ يُبَحْ لَهُ أَخْذُهُ، وَإِنْ كَانَ مُسْتَغْنِيًا عَنْهُ، أَخَذَهُ مِنْهُ بِثَمَنِهِ، فَإِنْ مَنَعَهُ مِنْهُ، أَخَذَهُ قَهْرًا، وَضَمِنَهُ لَهُ مَتَى قَدِرَ، فَإِنْ قُتِلَ الْمُضْطَرُّ، فَهُوَ شَهِيْدٌ، وَعَلَىٰ قَاتِلِهِ ضَمَانُهُ، وَإِنْ قُتِلَ الْمَانِعُ، فَلَا ضَمَانَ فِيْهِ.

[Medicines]

Seeking treatment with forbidden medicines is impermissible. [XII.3.3]	وَلَا يُبَاحُ التَّدَاوِيْ بِمُحَرَّمٍ.

[XII.3.3] The Use of Forbidden Substances as Medicines

(A): In the madh-hab, all khamr and repulsive things are forbidden for use as medicines; they even mentioned the impermissibility of treatment with forbidden songs. However, medicines mixed with poisons thought to be safe and beneficial are permissible. Also, they allowed external use of forbidden substances.

Points of Agreement

The jurists agreed in principle on the prohibition of using forbidden and filthy substances in treatment. They also agreed on the impermissibility of using haram substances as medicine when halal alternatives are available. It is reported that there is a consensus on the prohibition of using pure khamr as medicine.

Positions of Other Madh-habs

(-H) Allowed the use of forbidden and filthy matters for treatment on the conditions that they are known to be cures and there is no alternative. They interpreted the prohibitive reports to apply only when halal options were available. In the case of necessity or need, the prohibition is lifted.

(-M) Considered the prohibition general and applicable to all forbidden and filthy substances except through external application to save one's life.

(-S) They prohibited treatment with unmixed wine but permitted medicinal compounds in which it was absorbed into the mixture. They also permitted treatment with other impure or otherwise prohibited substances, subject to the relevant conditions, including an established therapeutic benefit and the absence of a suitable lawful alternative.

Evidence and Discussion

In support of the permission are the following proofs:

Allah said:

{وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُم مَّا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ...}

{And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled…} (al-An‘âm 6:119)

The Messenger of Allah (SA) said:

«لَا ضَرَرَ وَلَا ضِرَارَ»

“There should be no harm nor reciprocation of harm.” (Ma – from Ibn ‘Abbâs; Nawawi: R)

The nose of ‘Arfajah ibn As‘ad was cut off on the day (battle) of al-Kulâb, so he wore a nose made of silver, but it became foul-smelling. The Prophet (SA) ordered him to get a nose made of gold. (D – from ‘Abdur-Raḥmân ibn Ṭarafah; al-Albâni: R)

The Prophet (SA) also permitted ‘Abdur-Raḥmân ibn ‘Awf and az-Zubayr to wear silk due to some itching they suffered from. (Ag – from Anas)

Eight people from ‘Ukl came to the Prophet (SA) and gave him the pledge of Islam. Their bodies didn’t agree with the climate of Madinah, and it made them sick, so they complained to the Messenger of Allah (SA), who said:

«أَلَا تَخْرُجُونَ مَعَ رَاعِينَا فِي إِبِلِهِ فَتُصِيبُونَ مِنْ أَبْوَالِهَا وَأَلْبَانِهَا»

“I recommend for you to go out with our shepherd and his camels, so that you may have a share of their urine and milk.” (Ag – from Anas)

They agreed and went out and drank urine and milk from the camels, and they recovered.

This particular hadith cannot be used against the Mâlikis and Ḥanbalis because they consider the urine of halal-to-eat livestock clean.

In support of the prohibition are the following proofs:

The Messenger of Allah (SA) said:

«إِنَّ اللَّهَ أَنْزَلَ الدَّاءَ وَالدَّوَاءَ، وَجَعَلَ لِكُلِّ دَاءٍ دَوَاءً، فَتَدَاوَوْا، وَلا تَدَاوَوْا بِحَرَامٍ».

"Allah sent down the disease and the cure, and He made a cure for every disease. So seek treatment, but do not use as medicine that which is haram." (D – from Abi ad-Dardâ'; Ibn Ḥajar: R)

He also said:

«إِنَّ الله لَمْ يَجْعَلْ شِفاءَكُمْ فيما حَرَّمَ عَلَيْكُم»

"Allah did not put your healing in that which He has forbidden to you." (Ba – from Umm Salamah. al-'Ayni: S)

While treatment was mainly based on conjecture in the past, it is not anymore. The benefit of a medicine is sometimes almost a matter of certainty, like the fact that fire burns or knives cut. Therefore, the permission to use treatments made of forbidden substances, in the case of necessity or need and in the absence of alternatives, is most consistent with the principles of Sharia. Pure khamr is an exception, since the Prophet (SA) said it is a (cause for) disease, not a cure. There is also a reported consensus on its prohibition.

Likewise, drinking wine is not permissible for someone who is thirsty. [XII.3.4]	وَلَا شُرْبُ الْخَمْرِ مِنْ عَطَشٍ.

[XII.3.4] The discussion here is about intense thirst, so we might expect that it would be permitted due to necessity. Those who forbade it argued that it does not quench the thirst. (A) + (+M, +S)

The authorized position in the madh-hab is to allow its consumption when it is mixed with another liquid that may quench the thirst.

(-H, -s): Allowed it for intense thirst; some did that on condition that it does in fact quench the thirst.

However, one who is choking may remove his choke with it (khamr) if he cannot find another liquid.	وَيُبَاحُ دَفْعُ الْغُصَّةِ بِهَا، إِذَا لَمْ يَجِدْ مَائِعًا غَيْرَهَا.

[XIII] Chapter on Vows

بَابُ النَّذْرِ

Whoever vows (to do) an act of obedience is obligated to do it [XIII.0.1] because the Messenger of Allah (SA) said, “Whoever vows to obey Allah, let him obey Him.” [XIII.0.2]	مَنْ نَذَرَ طَاعَةً، لَزِمَهُ فِعْلُهَا؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعْهُ».

[XIII] Introduction

A vow makes a particular act obligatory upon the one who undertakes it, even though that act would not have been obligatory in itself before the vow. More precisely, a valid vow of obedience transfers an otherwise non-obligatory act into a personal obligation by virtue of one’s own commitment before Allah.

I would have preferred that the author place this chapter under the Book of Oaths, which follows, since vows and oaths are thematically closer to one another than vows are to the Book of Foods. This is true even though vows, oaths, and foods are often connected in practice, for people frequently vow or swear concerning what they will eat or drink. For this reason, I have chosen to begin Section XIII here, placing the division where I believe it more naturally belongs.

[XIII.0.1] The Ruling on Making and Fulfilling a Vow

They all agreed that it is binding to fulfill a valid vow of a mustaḥabb deed.

They disagreed on the ruling on taking a vow.

(A): Makrooh.

(-H): Mustaḥabb.

(-M): Mustaḥabb if it is not conditional, and makrooh if it is.

(-S): Mustaḥabb if it is for the pleasure of Allah, and makrooh if it is to encourage or deter oneself or others from a certain conduct.

Those who said that it is mustaḥabb argued that it is obligating oneself to perform a virtuous act of worship.

The reason why it is makrooh according to (A) is that it is (usually) conditional, and also because it adds a burden on oneself that is not prescribed. Anyone who wants to excel in worship may do that without taking vows. The textual proof for (A) is the statement of the Messenger of Allah (SA):

«لَا تَنْذِرُوا فَإِنَّ النَّذْرَ لَا يُغْنِي مِنْ الْقَدَرِ شَيْئًا وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ»

"Do not make vows, for vows have no effect on what is decreed. They are only a means of extracting something from the miserly." (M – from Abu Hurayrah)

[XIII.0.2] (B – from 'Â'ishah) The rest of the hadith is:

«وَمَنْ نَذَرَ أَنْ يَعْصِيَهُ فَلَا يَعْصِهِ»

"... and whoever vows to disobey Allah, let him not disobey Him."

If he cannot tolerate it, as in the case of an old man vowing a fast he cannot tolerate, then he must expiate for it [XIII.0.3] because the Messenger of Allah (SA) said, "If one takes a vow that he cannot fulfill, its expiation is the same as that for an oath." [XIII.0.4]	فَإِنْ كَانَ لَا يُطِيْقُها، كَشَيْخٍ نَذَرَ صِيَامًا لَا يُطِيْقُهُ، فَعَلَيْهِ كَفَّارَةُ يَمِيْنٍ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ نَذَرَ نَذْراً لَا يُطِيقُهُ، فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ».

[XIII.0.3] This is different from vowing to do something impossible (muḥâl), like fasting yesterday. In such case, the authorized view in the madh-hab is that expiation is not required. (A) The later relied-upon position also requires one who is permanently unable to perform a vowed fast to feed one poor person for each day, in addition to the oath expiation.

[XIII.0.4] (D – from Ibn ‘Abbâs) The rest of the report says:

«مَنْ نَذَرَ نَذْرًا لَمْ يُسَمِّهِ ، فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ ، وَمَنْ نَذَرَ نَذْرًا فِي مَعْصِيَةٍ ، فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ ، وَمَنْ نَذَرَ نَذْرًا لَا يُطِيقُهُ ، فَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ ، وَمَنْ نَذَرَ نَذْرًا أَطَاقَهُ ، فَلْيَفِ بِهِ»

“If someone takes a vow but does not name it, its expiation is the same as that for an oath; if someone takes a vow to do an act of disobedience, its expiation is the same as that for an oath; and if someone takes a vow that is beyond his or her capacity, its expiation is the same as that for an oath. However, if someone takes a vow that is within his or her capacity, he or she must fulfill it.”

The scholars of Hadith, including Abu Dâwood, accepted the version of this hadith that was mawqoof (traceable only to the Companion). At the least, it is the fatwa of Ibn ‘Abbâs.

If one vows to walk to the sacred house of Allah, his or her vow will only be fulfilled by walking for Hajj or ‘umrah; [XIII.0.5] if unable to walk, he or she should ride and expiate. [XIII.0.6]	وَمَنْ نَذَرَ الْمَشْيَ إِلَى بَيْتِ اللهِ الْحَرَامِ، لَمْ يَجْزِهِ إِلَّا الْمَشْيُ فِيْ حَجٍّ أَوْ عُمْرَةٍ، فَإِنْ عَجَزَ عَنِ الْمَشْيِ، رَكِبَ وَكَفَّرَ.

[XIII.0.5] Because that is implied in the vow.

[XIII.0.6] Due to the report of Ibn ‘Abbâs. Also, ‘Uqbah ibn ‘Âmir (RA) narrated that his sister took a vow to walk barefooted to Allah’s House (for pilgrimage). Then she asked him to consult Allah’s Messenger (SA), so he consulted him and the Prophet (SA) said, “Let her walk and ride.” (Ag)

In another report of the same incident, the Prophet (SA) said:

« إِنَّ اللَّهَ لَا يَصْنَعُ بِشَقَاءِ أُخْتِكَ شَيْئًا، فَلْتَحُجَّ رَاكِبَةً وَلْتُكَفِّرْ عَنْ يَمِينِهَا»

"Allah benefits not from the suffering of your sister; let her perform Hajj riding and expiate for her oath." (D; D:controversial authenticity, Ibn Ḥajar: R, al-'Ayni and Aḥmad Shâkir: S)

If one vows a consecutive fast but is unable to do it consecutively, he should divide it and expiate. If, in the middle of the fast, he finds himself unable to continue it consecutively, he will be given the choice of restarting it anew or completing the remaining days and expiating. If he interrupts the fast without an excuse, he must restart it anew. [XIII.0.7] If one vows the fast of certain days [XIII.0.8] and he breaks his fast in some of them, he must finish the fast, make up (for the missed days), and expiate, whether or not he had an excuse. [XIII.0.9]	وَإِنْ نَذَرَ صِيَامًا مُتَتَابِعًا، فَعَجَزَ عَنِ التَّتَابُعِ، صَامَ مُتَفَرِّقًا، وَكَفَّرَ، وَإِنْ تَرَكَ التَّتَابُعَ لِعُذْرٍ فِيْ أَثْنَائِهِ، خُيِّرَ بَيْنَ اسْتِئْنَافِهِ وَبَيْنَ الْبِنَاءِ وَالتَّكْفِيْرِ، وَإِنْ تَرَكَهُ لِغَيْرِ عُذْرٍ وَجَبَ اسْتِئْنَافُهُ. وَإِنْ نَذَرَ مُعَيَّنًا، فَأَفْطَرَ فِيْ بَعْضِهِ، أَتَمَّهُ وَقَضَى، وَكَفَّرَ بِكُلِّ حَالٍ.

[XIII.0.7] The principle here is that one must fulfill the vow as long as he is capable, but if he is not capable, he will need to expiate. One who has an excuse for interrupting the fast will not be considered to have intentionally violated its continuity but still must expiate unless he redoes it consecutively, because he failed to fulfill the vow.

[XIII.0.8] Like the month of Rajab, for example.

[XIII.0.9] There is no mention here of whether or not one must restart the fast anew if one interrupts it without an excuse. According to Aḥmad himself, it is not required. However, the authorized position of the madh-hab (A) is that one must restart the fast anew, because even if the individual does not stipulate it, the saying, "I will fast the month of Rajab" implies a fast of all the days consecutively.

If one vows (the emancipation of) a slave, then (the emancipation of) any slave eligible for obligatory emancipation will suffice,	وَإِنْ نَذَرَ رَقَبَةً، فَهِيَ الَّتِيْ تُجْزِئُ عَنِ الْوَاجِبِ، إِلَّا أَنْ يَنْوِيَ رَقَبَةً بِعَيْنِهَا.

unless he vowed (to emancipate) a particular slave.	

There is no (binding) vow to commit a sin [XIII.0.10] or to carry out a (merely) permissible act, [XIII.0.11] and there is no (binding) vow concerning that which one does not possess or cannot do. [XIII.0.12] There is also no (binding) vow if an oath was intended. [XIII.0.13] All of this is because the Messenger of Allah (SA) said, “There is no (binding or valid) [XIII.0.14] vow to commit disobedience, and no (binding or valid) vow concerning that which the son of Adam does not possess,” [XIII.0.15] and, “There is no (binding or valid) vow except for an act seeking the pleasure of Allah, the Exalted.” [XIII.0.16]	وَلَا نَذْرَ فِيْ مَعْصِيَةٍ، وَلَا مُبَاحٍ، وَلَا فِيْمَا لَا يَمْلِكُ ابْنُ آدَمَ، وَلَا فِيْمَا قَصَدَ بِهِ الْيَمِيْنَ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «لَا نَذْرَ فِي مَعْصِيَةٍ وَلَا نَذْرَ فِيمَا لَا يَمْلِكُ ابْنُ آدَمَ» وقال: «لَا نَذْرَ إِلَّا فِيمَا ابْتُغِيَ بِهِ وَجْهُ اللَّهِ سُبْحَانَه»

[XIII.0.10] Vowing to Do an Impermissible Act

One must not commit the sin.

(A) + (+H): One must still expiate, as in Abu Dâwood’s report from Ibn ‘Abbâs (above). Also, it was reported that the Prophet (SA) said:

«لَا نَذْرَ فِي مَعْصِيَةٍ، وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ.»

“No vow must be taken to do an act of disobedience, and the expiation for it is the same as for an oath.” (D – from ‘Â’ishah. Controversial; the majority: W)

(A): One who vows to do something makrooh has the option of doing it or expiating for it, but it is recommended to expiate and avoid the makrooh.

(a) + (-M, -S): In the two previous examples in the text, the vow is not valid, and no expiation is binding because of the hadiths mentioned in the main text.

[XIII.0.11] Vowing to Do a Permissible Act

(A/SM & Iqnâ‘) + (+some Mâlikis): This is an act such as eating a type of food, wearing wool, standing, sitting, etc. This vow is not binding (so one has the option to do it or not), but it is valid, according to the madh-hab, so if it is not fulfilled, he or she must expiate with the expiation of an oath.

The proof for this position (validating such vows) is that the Messenger of Allah (SA) went out for one of his expeditions, and when he came back, a black slave girl came to him and said, "O Messenger of Allah, I made a vow that if Allah returned you safely, I would beat the duff before you and sing." The Messenger of Allah (SA) said to her:

«إِنْ كُنْتِ نَذَرْتِ فَاضْرِبِي وَإِلَّا فَلَا »

"If you have made a vow, then beat it, but if you have not, then do not." (T – from Buraydah; T: R)

(a) + (-H, -S): The vow is not valid, and no expiation is required, because of the hadiths mentioned in the main text.

[XIII.0.12] As when one vows to slaughter a neighbor's sheep or donate their car or demolish their house.

(A/SM & Iqnâ‘): Anyone who makes such a vow must not fulfill it but must still expiate, according to the madh-hab, as in Abu Dâwood's report from Ibn ‘Abbâs.

(a) + (-H, -M, -S): The vow is not valid, and no expiation is required because of the hadiths mentioned in the main text.

[XIII.0.13] For example, one may condition a vow on doing or not doing something in order to urge an act, prevent it, or reinforce an assertion. If the condition occurs, a valid vow of contention or anger gives the person a

choice between fulfilling what was vowed and making the usual expiation for an oath.

[XIII.0.14] The words inserted are required for clarity. Since people do make such vows, the Prophet (SA) must not have meant there are none, but rather that they are not valid and not binding. If they are not valid, then there is no fulfillment or expiation required; if they are not binding, then fulfilling them is not (required/permitted), but one must still expiate. The disagreement over the required implication (dalâlat al-iqtiḍâ') is one of the causes of disagreement among the scholars. (A): The required insertion is 'binding'.

[XIII.0.15] (N, Ma – from 'Imrân ibn Ḥuṣayn; al-Albâni: S)

[XIII.0.16] (D – from Ibn 'Amr through the chain of 'Amr ibn Shu'ayb from his father from his grandfather. Controversial, but the majority considers it reliable)

If one combines in the vow an act of obedience with another act, he or she is only required to fulfill the act of obedience. This is due to the report of Ibn 'Abbâs where he said, "The Messenger of Allah (SA) saw a man standing, so he asked about him. The people said, 'This is Abu Isrâ'eel; he vowed not to speak, seek shade from the sun, or sit, and to fast.' The Messenger of Allah (SA) said, 'Go and tell him to speak, seek shade, and sit, but let him complete his fast.'" [XIII.0.17]	وَإِنْ جَمَعَ فِي النَّذْرِ بَيْنَ الطَّاعَةِ وَغَيْرِهَا، فَعَلَيْهِ الْوَفَاءُ بِالطَّاعَةِ وَحْدَهَا لِمَا رَوَى ابْنُ عَبَّاسٍ قَالَ: «أَبْصَرَ رَسُوْلُ اللهِ ﷺ رَجُلاً قَائِمًا فِيْ الشَّمْسِ، فَسَأَلَ عَنْهُ، فَقَالُوْا: أَبُوْ إِسْرَائِيْلَ، نَذَرَ أَنْ يَقُوْمَ فِيْ الشَّمْسِ وَلَا يَقْعُدَ وَلَا يَسْتَظِلَّ وَلَا يَتَكَلَّمَ، وَيَصُوْمَ، فَقَالَ: مُرُوهُ فَلْيَتَكَلَّمْ وَلْيَسْتَظِلَّ وليَقْعُدْ وَلْيُتِمَّ صَوْمَه.»

[XIII.0.17] (B)

He or she will still need to expiate for all the vows they are not required to fulfill, but only once because they are treated as elements of one vow. (A/SM)

One who makes an unspecified vow for Allah will owe an expiation like that for a broken oath. [XIII.0.18]	وَإِنْ قَالَ: للهِ عَلَيَّ نَذْرٌ، وَلَمْ يُسَمِّهِ، فَعَلَيْهِ كَفَّارَةُ يَمِيْنٍ.

[XIII.0.18] Undefined Vow

Such as when someone says, “Upon me is a vow,” without identifying any act to be done. It was narrated that the Messenger of Allah (SA) said:

«كَفَّارَةُ النَّذْرِ إِذَا لَمْ يُسَمَّ كَفَّارَةُ يَمِينٍ»

“The expiation of an undefined vow is (like) the expiation of an oath.” (T – from ‘Uqbah ibn ‘Âmir; T: RS; many other scholars of Hadith: W, but the report of Ibn ‘Abbâs corroborates it)

Summary

If someone vows to perform an act of obedience that is not wâjib in Sharia, and this act is within their capacity, then the vow is valid and binding on them.

If someone vows to do something intrinsically impossible, such as fasting yesterday, the vow is invalid and no expiation is due. A vow to perform an existing obligation, such as fasting Ramadan, is binding according to (A, t). Performing the duty fulfills the vow as well. Deliberately neglecting it also requires an oath expiation, which does not discharge the original obligation. Most scholars, however, hold that a vow to perform an existing duty creates no additional obligation.

A vow that does not fall under either of these two scenarios is considered valid but not binding (that is, fulfilling it is not required, even though it is legally consequential and requires expiation if not fulfilled), as when one vows to do something that is beyond their capacity or that concerns something not in their possession.

If one vows to do a permissible act, he or she may either do it or expiate. If the act is makrooh, one may still do it or expiate, although it is encouraged to expiate and avoid it. If it is haram, one must avoid it and

expiate. If the vow is for lajâj (encouragement or deterrence) or made in a state of anger, one may either fulfill it or expiate. The same is true whenever an oath is intended. Finally, an undefined vow makes an expiation binding. The expiation of any of these vows is like that of an oath.

[XIII.1] The Book of Oaths

كتاب الأيمان

One who swears to refrain from something and then does it (that thing), or swears to do something within a specified time and fails to do it within that time, is bound to expiate for that broken oath. [XIII.1.1] Expiation is not required if one says "Inshallah (Allah willing)," connected with the oath without separation, or if one does it under coercion or out of forgetfulness. [XIII.1.2]	وَمَنْ حَلَفَ أَلَّا يَفْعَلَ شَيْئًا، فَفَعَلَهُ، أَوْ لَيَفْعَلَنَّهُ فِيْ وَقْتٍ، فَلَمْ يَفْعَلْهُ فِيْهِ، فَعَلَيْهِ كَفَّارَةُ يَمِينٍ، إِلَّا أَنْ يَقُوْلَ: إِنْ شَاءَ اللهُ مُتَّصِلاً بِيَمِيْنِهِ، أَوْ يَفْعَلَهُ مُكْرَهًا أَوْ نَاسِيًا، فَلَا كَفَّارَةَ عَلَيْهِ.

[XIII.1.1] When someone takes an oath to do something or abstain from it, they must fulfill their oath or expiate. If it is something inferior, or they find another course of action superior, they are advised to do what is superior and expiate. The Messenger of Allah (SA) said:

«إِذَا حَلَفَ أَحَدُكُمْ عَلَى الْيَمِينِ فَرَأَى خَيْرًا مِنْهَا فَلْيُكَفِّرْهَا وَلْيَأْتِ الَّذِي هُوَ خَيْرٌ»

"When one of you takes an oath and then finds (something) better, he should expiate his (breaching of the) oath and do what is better." (M – from 'Adiy)

[XIII.1.2] The Prophet (SA) said:

«مَنْ حَلَفَ عَلَى يَمِينٍ فَقَالَ إِنْ شَاءَ اللَّهُ فَقَدِ اسْتَثْنَى.»

"If one takes an oath and then says, 'Inshallah', he has made an exception (made it non-binding)." (D – from Ibn 'Umar; Ḥib: Auth)

[Coercion and Forgetfulness]

If someone takes an oath to not do something but then does it under compulsion or absent-mindedly, he or she has not breached the oath. [XIII.1.3]	وإن حَلَفَ أَلَّا يَفْعَلَ شَيْئًا فَفَعَلَه مُكْرَهًا أَوْ نَاسِيًا لَم يَحنَث.

[XIII.1.3] The Prophet (SA) said:

«إنَّ الله تَعالى وَضَعَ عَن أمَّتِي الخَطَأ، والنِّسيان، وما استُكرهوا عَلَيه.»

"Allah exempted my nation from what they do by mistake, absentmindedly, or under compulsion." (Ma, Ḥib, H; al-Albâni: S; Nawawi: R)

[Dipping (False) Oath]

There is no expiation for oaths concerning the past, whether one intended to lie or thought he or she was telling the truth, but it turned out to not be so. [XIII.1.4]	وَلَا كَفَّارَةَ فِي الْحَلْفِ عَلَى مَاضٍ، سَوَاءٌ تَعَمَّدَ الْكَذِبَ أَوْ ظَنَّهُ كَمَا حَلَفَ، فَلَمْ يَكُنْ.

[XIII.1.4] Dipping (False) Oath

(A) + (+H, +M): There is no expiation for the false oath.

(S): There is expiation.

It is an enormity according to all. The Prophet (SA) said:

«الكَبَائِرُ: الإشْرَاكُ بالله وَعُقُوقُ الوَالِدَيْنِ وَقَتْلُ النَّفْس وَاليَمِينُ الغَمُوسُ.»

"The major sins are: ascribing partners to Allah, disobedience to parents, murder, and the dipping (false) oath." (B – from Ibn 'Amr)*

*called dipping because it dips its taker into the hellfire.

Ibn Mas'ood (RA) said:

«كُنَّا نَعُدُّ الذَّنْبَ الَّذِي لَيْسَ لَهُ كَفَّارَةٌ الْيَمِينَ الْغَمُوسَ.»

"We used to consider the sin that has no expiation (atonement in this world) to be the dipping (false) oath." (Ibn al-Ja'd)

[Slips of the Tongue]

There is also no expiation for the oath that one utters inadvertently, such as saying in the middle of speaking, "No, by Allah" or "Yes, by Allah." This is because of the saying of Allah, Most High, that {Allah does not impose blame upon you for what is unintentional in your oaths…} *(al-Baqarah 2:225* and *al-Mâ'idah 5:89) [XIII.1.5]*	وَلَا فِيْ الْيَمِيْنِ الْجَارِيَةِ عَلَىٰ لِسَانِهِ مِنْ غَيْرِ قَصْدٍ إِلَيْهَا، كَقَوْلِهِ فِيْ عُرْضِ حَدِيْثِهِ: لَا وَاللهِ، وَبَلَى واللهِ؛ لِقَوْلِ اللهِ تَعَالَى: «لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ».

[XIII.1.5] 'Â'ishah (RAH) said:

«أُنْزِلَتْ هَذِهِ الآيَةُ {لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ} فِي قَوْلِ الرَّجُلِ لَا وَاللَّهِ، وَبَلَى وَاللَّهِ.»

"This verse, {Allah does not impose blame upon you for what is unintentional in your oaths…}, was revealed about a man's statement, 'No, by Allah,' and 'Yes, by Allah' (in the middle of his talk)." (B)

An expiation is only binding in the case of (breaching) an oath made in the name of Allah the Most High, or one of His names, or one of the attributes of His *dhât* (Divine Essence), such as His knowledge, speech, might, power, greatness, covenant, or trust. [XIII.1.6] The exception to this is a vow with which an oath is intended; the expiation for it is like that for a breached oath. [XIII.1.7]	وَلَا تَجِبُ الْكَفَّارَةُ إِلَّا فِي الْيَمِيْنِ بِاللهِ تَعَالَى، أَوِ اسْمٍ مِنْ أَسْمَائِهِ، أَوْ صِفَةٍ مِنْ صِفَاتِ ذَاتِهِ، كَعِلْمِهِ، وَكَلَامِهِ، وَعِزَّتِهِ، وَقُدْرَتِهِ، وَعَظَمَتِهِ، وَعَهْدِهِ، وَمِيْثَاقِهِ، وَأَمَانَتِهِ، إِلَّا فِي النَّذْرِ الَّذِيْ يُقْصَدُ بِهِ الْيَمِيْنُ، فَإِنَّ كَفَّارَتَهُ كَفَّارَةُ يَمِيْنٍ.

[XIII.1.6] One may swear by Allah only; the Messenger of Allah (SA) said:

«إِنَّ اللَّهَ يَنْهَاكُمْ أَنْ تَحْلِفُوا بِآبَائِكُمْ فَمَنْ كَانَ حَالِفًا فَلْيَحْلِفْ بِاللَّهِ أَوْ لِيَصْمُتْ.»

"Allah prohibits you from swearing by your fathers. Whoever intends to take an oath may only swear by Allah or remain silent." (Ag – from Ibn 'Umar)

[XIII.1.7] As when one says, "If I speak with him, Hajj will be binding upon me." Although he did not swear by Allah, he still must expiate if he chooses not to perform Hajj.

The difference between a vow and an oath is that someone who takes a vow intends to oblige himself to perform a certain act, whereas someone who makes an oath intends to encourage himself to do something or discourage himself from doing something.

If one swears by all this[XIII.1.8] and the entire Qur'an, then breaches this oath, or if one repeats an oath on something before expiating for it, [XIII.1.9] or if one makes one oath with multiple resolutions, [XIII.1.10] only one single expiation will be binding on him or her. If he made multiple oaths concerning more than one resolution, then he is bound to expiate for every oath separately. [XIII.1.11]	وَلَوْ حَلَفَ بِهَذَا كُلِّهِ، وَالْقُرْآنِ جَمِيْعِهِ فَحَنِثَ، أَوْ كَرَّرَ الْيَمِيْنَ عَلَى شَيْءٍ وَاحِدٍ قَبْلَ التَّكْفِيْرِ، أَوْ حَلَفَ عَلَى أَشْيَاءَ بِيَمِيْنٍ وَاحِدَةٍ، لَمْ يَلْزَمْهُ أَكْثَرُ مِنْ كَفَّارَةٍ. وَإِنْ حَلَفَ أَيْمَانًا عَلَى أَشْيَاءَ، فَعَلَيْهِ لِكُلِّ يَمِيْنٍ كَفَّارَتُهَا.

[XIII.1.8] Saying, for example, "By Allah and His might and glory, I will do such-and-such."

[XIII.1.9] In another report from Aḥmad, if he swears by the entire Qur'an or by a chapter of it, he will have multiple expiations binding on him; the number will be equal to the number of verses in the Qur'an or in that chapter. (a)

[XIII.1.10] Saying, for example, “By Allah, I will not eat, drink, sleep, or sit, etc.”

[XIII.1.11] For example, “By Allah, I will not eat,” “By Allah, I will not drink,” “By Allah, I will not sleep,” etc.

(A): If the person fails to expiate for breaching one oath before breaching the second and third, there will be only one expiation binding on him or her.

(A2) + (-H, -M, -S): One must expiate for each broken oath.

[Equivocation]

One who equivocates in his oath, by intending something other than the obvious implication of his statement, is judged according to his intention – except for the wrongdoer, whose equivocation will not benefit him. [XIII.1.12] This is because the Messenger of Allah (SA) said, “Your oath is about the matter that your companion believes it to be about (because of your oath).” [XIII.1.13]	وَمَنْ تَأَوَّلَ فِيْ يَمِيْنِهِ، فَلَهُ تَأْوِيْلُهُ، إِلَّا أَنْ يَكُوْنَ ظَالِمًا، فَلَا يَنْفَعُهُ تَأْوِيْلُهُ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «يَمِينُكَ عَلَى مَا يُصَدِّقُكَ بِهِ صَاحِبُكَ».

[XIII.1.12] Equivocation

This means using semantics to mislead others by intending something other than what a listener would be expected to understand – for instance, a man swearing that someone is his “brother,” knowing that it will be taken to mean his biological brother, while he actually means that he is his “brother in Islam.”

1) When a person takes an oath to convince someone else to believe him, he may be the oppressor, the oppressed, or neither. If he is the oppressor/delinquent party, and he is taking the oath to deceive the other party, then his equivocation does not spare him from sin and punishment. (See the hadith in the main text.)

2) If one takes the oath in order to protect himself or others from an oppressor, then equivocation is recommended over lying directly, although that may also be permitted if needed. (A)

‘Imrân ibn Ḥuṣayn used to say:

«إِنَّ فِي مَعَارِيضِ الْكَلَامِ لَمَنْدُوحَةً عَنِ الْكَذِبِ»

“The use of equivocation spares one from lying.” (Al-Adab al-Mufrad) The report traceable to the Prophet (SA) is not authentic.

3) When one uses equivocation but without intending deceit (for example, intending to avoid embarrassment), and without wronging anyone or being wronged, it is not considered a sin. (A)

It is important to remember that equivocation may only be used very sparingly; otherwise, it becomes a gateway to lying and dishonesty.

Jokes that Contain Lies

(A): What can be understood from the positions of the scholars of the madh-hab is that jokes containing lies are forbidden, and they clearly forbade attending parties where such jokes are made. (SM, Kash-shâf al-Qinâ‘). Ibn Taymiyah also clearly said it was forbidden to make up stories to cause people to laugh.

Other scholars did not consider them lies if it was understood from the context that they were just jokes, and they allowed such jokes as long as they did not include mockery of anyone or obscenity.

The Prophet (SA) always held himself to the highest standard. Even in his jokes, he never said other than the truth. Abu Hurayrah narrated, “They said, ‘O Messenger of Allah! You joke with us?’ He said:

«إِنِّي لَا أَقُولُ إِلَّا حَقًّا »

‘Indeed, I say nothing except a truth.’” (T; T: RS)

[XIII.1.13] (M – from Abu Hurayrah)

[XIII.2] Chapter on Interpretation of Oaths

بَابُ جَامِعِ الأَيْمَانِ

[Implication of Oaths Is Contingent on Intentions]

The implication of the oath depends on the intention, as long as the wording accommodates that. If one swears to not speak to a man, intending a certain man, or to not have lunch, intending a certain lunch, the oath will apply to that only.[XIII.2.1]	وَيُرْجَعُ فِيْهَا إِلَى النِّيَّةِ، فِيْمَا يَحْتَمِلُهُ اللَّفْظُ. فَإِذَا حَلَفَ لَا يُكَلِّمُ رَجُلاً، يُرِيْدُ وَاحِدًا بِعَيْنِهِ، أَوْ لَا يَتَغَدَّى، يُرِيْدُ غَدَاءً بِعَيْنِهِ، اخْتَصَّتْ يَمِيْنُهُ بِهِ.

[XIII.2.1] This is discussed under the following maxim:

هَل النِّيَّةُ تُخَصِّصُ اللَّفْظَ الْعَامَّ أو تُعَمِّمُ اللَّفْظَ الْخَاصَّ؟

Do intentions (play a role in) specifying a general expression or generalizing a specific expression?

Which is a subordinate maxim of the first universal maxim:

الأُمُورُ بِمَقَاصِدِهَا

Matters are (judged) by their objectives.

(A) + (+M): The intention generalizes the specific and specifies the general.

(-S): When it comes to oaths, the intention specifies the general expression but does not generalize the specific.

(-H): The intention specifies the general in the scope of religious liability but not judicially. In other words, his claim of specification is not accepted in court, but in the sight of Allah, he is only liable for what he intended.

If one swears to not drink someone's water to quench one's thirst, intending to reject all things that count as favors, it will breach the oath to accept any favors from him. [XIII.2.2]	وَإِنْ حَلَفَ لَا يَشْرَبُ لَهُ الْمَاءَ مِنَ الْعَطَشِ، يُرِيْدُ قَطْعَ مِنَّتِهِ، حَنِثَ بِكُلِّ مَا فِيْهِ مِنَّةٌ.

[XIII.2.2] (A) + (+M): True, because the intention generalizes the specific.

(-H, -S): He does not break his vow by taking food or clothing from that person because the intention does not generalize the specific.

If he swears to not wear a garment that she wove, intending to not take favors from her, but then he sells it and makes use of its price, then he has breached his oath.	وَإِنْ حَلَفَ لَا يَلْبَسُ ثَوْبًا مِنْ غَزْلِهَا، يُرِيْدُ قَطْعَ مِنَّتِهَا، فَبَاعَهُ وَانْتَفَعَ بِثَمَنِهِ، حَنِث.

If he swears to pay someone tomorrow, intending to pay no later than tomorrow, but he pays him today, he has not breached his oath. [XIII.2.3]	وَإِنْ حَلَفَ لَيَقْضِيَنَّهُ حَقَّهُ غَدًا، يُرِيْدُ أَنْ لَا يَتَجَاوَزَهُ، فَقَضَاهُ الْيَوْمَ، لَمْ يَحْنَثْ.

[XIII.2.3] Unless one intends to pay on that specific day, in which case it must be done on that day.

	وَإِنْ حَلَفَ أَنْ لَا يَبِيْعَ ثَوْبَهُ إِلَّا بِمِئَةٍ، فَبَاعَهُ بِأَكْثَرَ مِنْهَا، لَمْ يَحْنَثْ، إِذَا أَرَادَ أَنْ لَا يَنْقُصَهُ عَنْ مِئَةٍ. وَإِنْ حَلَفَ لَيَتَزَوَّجَنَّ عَلَى امْرَأَتِهِ، يُرِيْدُ غَيْظَهَا، لَمْ يَبَرَّ إِلَّا بِتَزْوِيْجٍ يَغِيْظُهَا، وَإِنْ حَلَفَ لَيَضْرِبَنَّهَا، يُرِيْدُ تَأْلِيْمَهَا، لَمْ يَبَرَّ إِلَّا بِضَرْبٍ يُؤْلِمُهَا، وَإِنْ حَلَفَ لَيَضْرِبَنَّهَا عَشْرَةَ أَسْوَاطٍ، فَجَمَعَهَا فَضَرَبَهَا بِهَا ضَرْبَةً وَاحِدَةً، لَمْ يَبَرَّ.

[In the Absence of a Defined Intention]

If there was no intention, then the implication of the oath will depend on the reason for taking it; this will take the place of the intention in determining the implication.	فَإِنْ عُدِمَتِ النِّيَّةُ، رَجَعَ إِلَى سَبَبِ الْيَمِيْنِ وَمَا هَيَّجَهَا، فَيَقُوْمُ مَقَامَ نِيَّتِهِ، لِدِلَالَتِهِ عَلَيْهَا.

If that is also unknown, then the oath will be interpreted according to its apparent implication. If there is a Sharia-based implication, such as in ṣalât or zakat, the oath will be understood according to it and will infer the valid form of it. [XIII.2.4] So if he swears to not sell, and then he enters into an invalid sales contract, he has not breached his oath – unless he makes an oath to not sell a freeman or wine, in which case his oath will apply to that type of sale.	فَإِنْ عُدِمَ ذٰلِكَ، حُمِلَتْ يَمِيْنُهُ عَلَى ظَاهِرِ اللَّفْظِ، فَإِنْ كَانَ لَهُ عُرْفٌ شَرْعِيٌّ، كَالصَّلَاةِ وَالزَّكَاةِ، حُمِلَتْ يَمِيْنُهُ عَلَيْهِ، وَتَنَاوَلَتْ صَحِيْحَهُ. فَلَوْ حَلَفَ لَا يَبِيْعُ، فَبَاعَ بَيْعًا فَاسِدًا، لَمْ يَحْنَثْ، إِلَّا أَنْ يُضِيْفَهُ إِلَى مَالَا يَصِحُّ بَيْعُهُ، كَالْحُرِّ وَالْخَمْرِ، فَتَتَنَاوَلَ يَمِيْنُهُ صُوْرَةَ الْبَيْعِ.

[XIII.2.4] (A) + (+M, +s): If there was no accompanying intention or circumstantial evidence to reveal the intent of the oath, and one swore to not eat meat, the oath would be breached by eating fish, because Allah called it meat in the Qur'an.

(a) + (-H, -S): The oath is not breached, because 'meat' is not customarily used to refer to fish.

When no relevant intention or contextual indication determines the meaning, terms with an established Sharia usage, such as ṣalât and zakât, are understood in that usage.

If there is no Sharia-based implication, but there is a customary one, such as *dâbbah* (beast of burden) or *dha'eenah* (woman traveler), the oath will be understood according to the customary implication. For example, if he swears to not ride a dâbbah, then his oath will apply (only) to horses, mules, and donkeys. [XIII.2.5]	وَإِنْ لَمْ يَكُنْ لَهُ عُرْفٌ شَرْعِيٌّ وَكَانَ لَهُ عُرْفٌ فِي الْعَادَةِ، كَالدَّابَّةِ وَالظَّعِيْنَةِ، حُمِلَتْ يَمِيْنُهُ عَلَيْهِ، فَلَوْ حَلَفَ لَا يَرْكَبُ دَابَّةً، فَيَمِيْنُهُ عَلَى الْخَيْلِ وَالْبِغَالِ وَالْحَمِيْرِ.

[XIII.2.5] The order that should be followed in interpreting people's oaths is:

- Their intention

- The context of taking the oath

- The Sharia-based implication (for common Sharia-based terminology)

- The customary implication

- The apparent linguistic implication

A court may accept a claimed intention reasonably supported by the wording of an oath; a wrongdoer swearing at the judge's demand cannot evade another person's right by an unspoken intention.

	وَإِنْ حَلَفَ لَا يَشَمُّ الرَّيْحَانَ، فَيَمِيْنُهُ عَلَى الْفَارِسِيِّ، وَإِنْ حَلَفَ لَا يَأْكُلُ شِوَاءً، حَنِثَ بِأَكْلِ اللَّحْمِ الْمَشْوِيِّ دُوْنَ غَيْرِهِ، وَإِنْ حَلَفَ لَا يَطَأُ امْرَأَتَهُ، حَنِثَ بِجِمَاعِهَا، وَإِنْ حَلَفَ لَا يَطَأُ دَارًا، حَنِثَ بِدُخُوْلِهَا كَيْفَ مَا كَانَ، وَإِنْ حَلَفَ لَا يَأْكُلُ لَحْمًا وَلَا رَأْسًا وَلَا بَيْضًا، فَيَمِيْنُهُ عَلَى كُلِّ لَحْمٍ وَرَأْسِ كُلِّ حَيَوَانٍ وَبَيْضِهِ، وَالأُدْمُ كُلُّ مَا جَرَتِ الْعَادَةُ بِأَكْلِ الْخُبْزِ بِهِ، مِنْ مَائِعٍ وَجَامِدٍ، كَاللَّحْمِ، وَالْبَيْضِ، وَالْمِلْحِ، وَالْجُبْنِ، وَالزَّيْتُوْنِ . وَإِنْ حَلَفَ لَا يَسْكُنُ دَارًا، تَنَاوَلَ مَا يُسَمَّى سَكَنًا، فَإِنْ كَانَ سَاكِنًا بِهَا، فَأَقَامَ بِهَا بَعْدَ مَا أَمْكَنَهُ الْخُرُوْجُ مِنْهَا، حَنِثَ، وَإِنْ أَقَامَ لِنَقْلِ قُمَاشِهِ، أَوْ كَانَ لَيْلاً، فَأَقَامَ حَتَّى يُصْبِحَ، أَوْ خَافَ عَلَى نَفْسِهِ، فَأَقَامَ حَتَّى أَمِنَ، لَمْ يَحْنَثْ.

[XIII.3] Chapter on Expiation for Oaths

بَابُ كَفَّارَةِ الْيَمِيْنِ

The expiation (for the breached oath) is by {…the feeding of ten needy people from the average of that which you feed your [own] families or clothing them or the freeing of a slave.[XIII.3.1] But whoever cannot find [or afford] it – then a fast of three days [is required]… } *(al-Mâ'idah 5:89) [XIII.3.2]*	وَكَفَّارَتُهَا: «إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ ۖ فَمَن لَّمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ» [سورة المائدة: الآية 89]

[XIII.3.1] Must One Feed Ten Poor Persons?

(A) + (+M, +S): He must feed or clothe ten poor people.

(a) + (-H): It is allowable to feed one poor person once a day for ten days.

Is Giving the Value of Food or Clothes Acceptable?

(A) + (+M, +S): The value of the food or clothes is not an acceptable substitute.

(-H): It is acceptable.

Can One Give This Expiation to Non-Muslims?

(A) + (+M, +S): Only to Muslims.

(-H): May also be given to non-Muslim subjects of the Muslim state (dhimmis).

[XIII.3.2] The Consecutiveness of the Fast

(A) + (+H, +s): The three days are to be fasted consecutively. Among the evidence cited is the noncanonical reading reported from Ibn Mas'ood, and also from Ubayy ibn Ka'b, which includes the word "consecutive":

«فصيام ثلاثة أيام (متتابعات)»

"Then a fast of three (consecutive) days" (is required).

(A) + (+H): Ibn Mas'ood's addition of 'consecutive' is considered ḥujjah (proof) because they assume that he heard that interpretation from the Prophet (SA).

(s): The obligation is established through analogy to other expiatory fasting, such as in dhihâr.

(-M, -S): Consecutiveness is preferred, not wâjib. They argued that this interpretation by Ibn Mas'ood is not part of the Qur'an, nor is it clear that it was transmitted from the Prophet (SA).

He is free to expiate before or after breaching the oath. This is because the Messenger of Allah (SA) said, "He who took an oath, but found something else better than that, should expiate for his oath and do that which is better." [XIII.3.3] It was also reported, "...should do that which is better and expiate for his oath." [XIII.3.4]	وَهُوَ مُخَيَّرٌ بَيْنَ تَقْدِيْمِ الْكَفَّارَةِ عَلَى الْحِنْثِ وَتَأْخِيْرِهَا عَنْهُ؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيُكَفِّرْ عَنْ يَمِينِهِ وَلْيَأْتِ الَّذِي هُوَ خَيْرٌ» وروي «فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ وَلْيُكَفِّرْ عَنْ يَمِينِهِ».

[XIII.3.3] (M – from Abu Hurayrah)

[XIII.3.4] (M – from Abu Hurayrah)

The clothing required for expiation is that in which ṣalât will be valid: for the man, a single garment; for the woman, a dress and a *khimâr* (headscarf worn as part of the hijab). It is sufficient for one to feed five poor persons and clothe five. [XIII.3.5] Emancipating half of a slave and feeding or clothing five persons is not sufficient; the same is true for emancipating one-half of two slaves. [XIII.3.6]	وَيُجْزِئُهُ فِي الْكِسْوَةِ مَا تَجُوْزُ الصَّلَاةُ فِيْهِ، لِلرَّجُلِ ثَوْبٌ، وَلِلْمَرْأَةِ دِرْعٌ وَخِمَارٌ، وَيُجْزِئُهُ أَنْ يُطْعِمَ خَمْسَةَ مَسَاكِيْنَ، وَيَكْسُوَ خَمْسَةً. ولَوْ أَعْتَقَ نِصْفَ رَقَبَةٍ أَوْ أَطْعَمَ خَمْسَةً، أَوْ كَسَاهُمْ، أَوْ

	أَعْتَقَ نِصْفَ عَبْدَيْنِ، لَمْ يُجْزِئْهُ.

[XIII.3.5] Food Type and Amount

(A): As for feeding, he must give two mudd(s) of any of the food staples that are permitted to give for zakat al-fiṭr; one mudd of wheat also suffices. (One mudd is the fill of the two hands of an average adult, which is approximately 0.51-0.75 liters.)

(a) + (-t): Imam Ibn Taymiyah argued that varying reports from the Companions indicated that they gave any type of food they used to eat. He ruled that feeding ten people from the average food consumed by the one expiating is sufficient; this is also the apparent interpretation of the verse.

[XIII.3.6] Mixing Two Forms of Expiation

The verse above gives a choice among feeding, clothing and emancipation. Fasting is in a different category and is only valid when one cannot afford one of the first three options. Therefore, only feeding and clothing may be combined and substituted for each other, so one can feed three poor people and clothe seven, for example.

(a): Emancipation may not be halved, per the text above, so freeing 1/2 of two slaves does not suffice, as indicated above.

(A/SM & Iqnâʿ): It does suffice.

The slave expiates by fasting only; likewise for anyone who cannot find the means to expiate after providing sustenance for himself and his dependents, and paying his debts. He is not required to sell for that anything he needs, such as his home, servant, or furniture, as well as books and utensils. The same is true concerning merchandise he relies on for a needed profit.	وَلَا يُكَفِّرُ الْعَبْدُ إِلَّا بِالصِّيَامِ، وَيُكَفِّرُ بِالصَّوْمِ مَنْ لَمْ يَجِدْ مَا يُكَفِّرُ بِهِ، فَاضِلاً عَنْ مُؤْنَتِهِ، وَمُؤْنَةِ عِيَالِهِ وَقَضَاءِ دَيْنِهِ. وَلَا يَلْزَمُهُ أَنْ يَبِيعَ فِيْ ذٰلِكَ شَيْئًا يَحْتَاجُ إِلَيْهِ مِنْ مَسْكَنٍ، وَخَادِمٍ، وَأَثَاثٍ، وَكُتُبٍ، وَآنِيَةٍ،

وَبِضَاعَةٍ يَخْتَلُّ رِبْحُهَا الْمُحْتَاجُ إِلَيْهِ.	

وَمَنْ أَيْسَرَ بَعْدَ شُرُوْعِهِ فِيْ الصَّوْمِ، لَمْ يَلْزَمْهُ الِانْتِقَالُ عَنْهُ. وَمَنْ لَمْ يَجِدْ إِلَّا مِسْكِيْنًا وَاحِدًا، رَدَّدَ عَلَيْهِ عَشَرَةَ أَيَّامٍ.	Someone who becomes solvent after starting the fast is not required to switch to another form of expiation. One who can find only one poor person should give him food daily for ten days.

[XIV] The Book of Crimes of Fatal and Non-Fatal Assault

كِتَابُ الْجِنَايَاتِ

Unjustifiable killing [XIV.0.1] is divided into three types: [XIV.0.2]	اَلْقَتْلُ بِغَيْرِ حَقٍّ يَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ:

[XIV.0.1] Introduction

Despite the seriousness of murder, and the fact that the revelation has specified punishments for it and for lesser forms of manslaughter and bodily injuries, these are not considered ḥudood crimes. The Sharia considers ḥudood crimes to be violations of ḥuqooq Allâh (the rights of Allah) as opposed to violations of ḥuqooq al-'ibâd (the rights of the servants), which include the human being's right to physical safety.

This distinction has practical consequences. For violations of ḥuqooq al-'ibâd, the victim's family (or the victim himself in the case of injuries) can choose between pressing and dropping charges and between pardoning the offender and accepting an indemnity. This is not true in the ḥudood crimes (except for the controversy over the ḥadd of qadhf). In qiṣâṣ, while the state oversees these litigations and carries out punishments, the charges are brought to court by the victim or the victim's family. In the absence of family, "The authority (sultan) is the guardian of those who have no guardian."

Empowering the victim's relatives enables them to overcome their pain and grief. It also allows them to show forgiveness and graciousness, particularly since these crimes may involve many nuances and intricacies. They may also seek substantial compensation, which could be essential for their wellbeing, especially when a family has lost its breadwinner.

(a/ *al-Aḥkâm as-Sulṭâniyah* by Abu Ya'lâ) + (-H, -M, -s): The state may still impose a ta'zeer punishment even if the victim's family pardons the murderer.

(A) + (+S): The state has no right to do so.

[XIV.0.2] There is an additional type that will not be mentioned here because (A) considers it the same as intentional murder. It is gheelah

murder, which is killing that involves treachery or deception – for example, if the offender made an appointment to meet the victim in a remote place and then killed him there.

(A) + (+H, +S, +Z): Gheelah is like all other forms of intentional murder.

(a) + (-M, -t): It warrants the death penalty with no chance for clemency granted by the victim's family. They considered it one of the ḥudood (the rights of Allah), not a form of qiṣâṣ.

First: Intentional murder, [XIV.0.3] in which one kills (the victim) by wounding him or by any action that is likely to cause death, such as beating him with a large, weighty object [XIV.0.4] or repeating the trauma with a smaller one; throwing him from a height; suffocating, burning, or drowning him; giving him poison to drink; falsely testifying against him, thus bringing onto him the death penalty; wrongfully judging him liable to the death penalty; or the like of those actions, while intending murder and being aware of the inviolability of the murdered. In such a case, the entitled heirs (of the victim) will be given the choice between lethal retaliation and receiving an indemnity, because the Messenger of Allah (SA) said, "If someone is killed, his or her entitled heirs may choose between killing the murderer and sparing him or her (in exchange for an indemnity)." [XIV.0.5] If (both parties) mutually agree on more than the prescribed indemnity in exchange for waiving retaliation, it is permissible.	أَحَدُهَا: الْعَمْدُ الْمَحْضُ، وَهُوَ: أَنْ يَقْتُلَهُ بِجُرْحٍ، أَوْ فِعْلٍ يَغْلِبُ عَلَى الظَّنِّ أَنَّهُ يَقْتُلُهُ، كَضَرْبِهِ بِمُثَقَّلٍ كَبِيْرٍ، أَوْ يُكَرِّرُهُ بِصَغِيْرٍ، أَوْ إِلْقَائِهِ مِنْ شَاهِقٍ، أَوْ خَنْقِهِ أَوْ تَحْرِيْقِهِ، أَوْ تَغْرِيْقِهِ، أَوْ سَقْيِهِ سُمًّا، أَوِ الشَّهَادَةِ عَلَيْهِ زُوْرًا بِمَا يُوْجِبُ قَتْلَهُ، أَوِ الْحُكْمِ عَلَيْهِ بِهِ، وَنَحْوِ هَذَا، قَاصِدًا، عَالِمًا بِكَوْنِ الْمَقْتُوْلِ آدَمِيًّا مَعْصُوْمًا، فَهَذَا يُخَيَّرُ الْوَلِيُّ فِيْهِ بَيْنَ الْقَوَدِ وَالدِّيَةِ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا أَنْ يُقْتَلَ وَإِمَّا أَن يَفْدِيَه.» وَإِنْ صَالَحَ الْقَاتِلُ عَنِ الْقَوَدِ بِأَكْثَرَ مِنَ الدِّيَةِ جَازَ.

[XIV.0.3] In addition to the worldly punishment, Allah said:

{وَمَن يَقْتُلْ مُؤْمِنًا مُّتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا}

{But whoever kills a believer intentionally – his recompense is hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.} (an-Nisâ' 4:93)

And also said:

{مِنْ أَجْلِ ذَٰلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا}

{Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain humankind entirely. And whoever saves one – it is as if he had saved humankind entirely…} (al-Mâ'idah 5:32)

The Messenger of Allah (SA) said:

«مَنْ قَتَلَ مُعَاهِداً لَمْ يَرَحْ رَائِحَةَ اَلْجَنَّةِ, وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَاماً»

"Whoever kills a mu'âhid (covenanted non-Muslim) will not smell the fragrance of paradise, even though its fragrance can be smelled at a distance of 40 years." (B – from Ibn 'Amr)

And:

«لَنْ يَزَالَ الْمُؤْمِنُ فِي فُسْحَةٍ مِنْ دِينِهِ، مَا لَمْ يُصِبْ دَمًا حَرَامًا»

"A believer remains at ease regarding his religious commitment until he kills someone who is inviolable. "(B – from Ibn 'Umar)

[XIV.0.4] This could be a big rock, hammer, marble slab, or any other heavy object that may cause death.

[XIV.0.5] (Ag – from Abu Hurayrah)

Second: Quasi-intentional manslaughter (mistaken death resulting from a deliberate assault) This is where one intentionally assaults someone in a way that would not usually cause death. There is no lethal retaliation in this case, and the indemnity is due from the ‘âqilah (male paternal kin of the murderer). [XIV.0.6]	الثَّانِيْ: شِبْهُ الْعَمْدِ وَهُوَ: أَنْ يَتَعَمَّدَ الْجِنَايَةَ عَلَيْهِ بِمَا لَا يَقْتُلُهُ غَالِبًا، فَلَا قَوَدَ فِيْهِ، وَالدِّيَةُ عَلَىٰ الْعَاقِلَةِ.

[XIV.0.6] Ibrâheem Ibn Mufliḥ (may Allah have mercy on him) said in al-Mubdi‘ that in addition to the indemnity, a discretionary punishment of imprisonment may be enforced.

(A/SM): They must also expiate like in mistaken killing. The expiation is the responsibility of the killer. It is the freeing of a believing slave; and whoever does not find or afford to buy one must fast for two months consecutively. (an-Nisâ’ 4:92)

Third: Mistaken killing, which has two types: First: To do something that does not target the victim but that results in his killing, or to cause his killing by digging a well or the like. [XIV.0.7] The ruling concerning a killing committed by a sleeping person, a child, or a mentally incompetent person is like that for quasi-intentional manslaughter. [XIV.0.8]	الثَّالِثُ: الْخَطَأُ وَهُوَ نَوْعَانِ: أَحَدُهُمَا: أَنْ يَفْعَلَ فِعْلاً لَا يُرِيْدُ بِهِ الْمَقْتُوْلَ، فَيُفْضِيْ إِلَىٰ قَتْلِهِ، أَوْ يَتَسَبَّبُ إِلَىٰ قَتْلِهِ بِحَفْرِ بِئْرٍ وَنَحْوِهِ. وَقَتْلُ النَّائِمِ وَالصَّبِيِّ وَالْمَجْنُوْنِ، فَحُكْمُهُ حُكْمُ شِبْهِ الْعَمْدِ.

[XIV.0.7] When a well is dug to get water, not to harm the victim, but the victim falls into the recently dug, unmarked well.

If all safety precautions were taken, the digger/owner is not liable. The legal maxim says:

ما لا يمكن التحرز عنه لا ضمان فيه.

That (loss/harm) which cannot be avoided, there will be no liability concerning it.

[XIV.0.8] Meaning there is no retaliation, but there is an indemnity due.

Allah said concerning the indemnity for mistaken death:

{وَمَا كَانَ لِمُؤْمِنٍ أَن يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً ۚ وَمَن قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَدِيَةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَن يَصَّدَّقُوا ۚ فَإِن كَانَ مِن قَوْمٍ عَدُوٍّ لَّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ ۖ وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمْ وَبَيْنَهُم مِّيثَاقٌ فَدِيَةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ ۖ فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ ۗ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا}

{And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake – then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer – then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty – then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] – then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever Knowing and Wise.} (an-Nisâ' 4:92)

Note how the verse also commands the expiation. This expiation is binding on the killer in mistaken killing by consensus.

In quasi-intentional manslaughter, unlike mistaken killing, there may be additional discretionary punishment.

Second: To kill a Muslim in the abode of war, [XIV.0.9] thinking he is a warring enemy, or to target the lines of (combatant) unbelievers and fatally injure	اَلنَّوْعُ الثَّانِيْ: أَنْ يَقْتُلَ مُسْلِمًا فِيْ دَارِ الْحَرْبِ يَظُنُّهُ حَرْبِيًّا، أَوْ يَقْصِدَ رَمْيَ صَفِّ الْكُفَّارِ،

a Muslim – then there will be an expiation without indemnity. [XIV.0.10] This is because Allah said, {…But if the deceased was from a people at war with you and he was a believer – then [only] the freeing of a believing slave…} *(an-Nisâ' 4:92)*	فَيُصِيْبُ سَهْمُهُ مُسْلِمًا، فَفِيْهِ كَفَّارَةٌ بِلَا دِيَةٍ؛ لِقَوْلِ اللهِ تَعَالىٰ: «فَإِن كَانَ مِن قَوْمٍ عَدُوٍّ لَّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ» [سورة النساء: الآية 92]

[XIV.0.9] The Abodes of War, Peace and Treaty

Classical jurists classified the world into the abodes of Islam, war, and treaty, giving them descriptive names according to the conditions of their times. The treaties signed by Muslim countries, particularly the United Nations Charter, justify treating the world by default as Dâr al-'Ahd ("abode of treaty"), which could also be referred to as Dâr aṣ-Ṣulḥ ("abode of conciliation"), except where actual hostilities alter that relationship. Wherever Muslims have the right to practice their religion, the suggested term would be Dâr al-Amn ("abode of security").

[XIV.0.10] If the victim is from a people with whom the Muslims are at peace, there will be an indemnity in addition to the expiation. Allah said:

{وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمْ وَبَيْنَهُم مِّيثَاقٌ فَدِيَةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ}

{…and if he was from a people with whom you have a treaty – then a compensation payment presented to his family and the freeing of a believing slave…} (an-Nisâ' 4:92)

[XIV.1] Chapter on Conditions of the Obligation and Execution of *Qiṣâṣ* (Equal Retribution)

بَابُ شُرُوْطِ وُجُوْبِ الْقِصَاصِ وَاسْتِيْفَائِهِ

وَيُشْتَرَطُ لِوُجُوْبِهِ أَرْبَعَةُ شُرُوْطٍ: أَحَدُهَا: كَوْنُ الْقَاتِلِ مُكَلَّفًا، فَأَمَّا الصَّبِيُّ وَالْمَجْنُوْنُ فَلَا قِصَاصَ عَلَيْهِمَا.	There are four conditions for the obligation of retribution: First: The murderer must be mukallaf. There is no retribution against the child or the insane.
الثَّانِيْ: كَوْنُ الْمَقْتُوْلِ مَعْصُوْمًا، فَإِنْ كَانَ حَرْبِيًّا، أَوْ مُرْتَدًّا، أَوْ قَاتِلاً فِيْ الْمُحَارَبَةِ، أَوْ زَانِيًا مُحْصَنًا، أَوْ قَتْلُهُ دَفْعًا عَنْ نَفْسِهِ، أَوْ مَالِهِ، أَوْ حُرْمَتِهِ، فَلَا ضَمَانَ فِيْهِ.	Second: The victim must be inviolable. As for (killing) the ḥarbi, the apostate, the killer member of a group of bandits, the muḥṣan adulterer, or one killed in self-defense, or to protect one's property or honor, there is no liability in these cases.
الثَّالِثُ: كَوْنُ الْمَقْتُوْلِ مُكَافِئًا لِلْقَاتِلِ، فَيُقْتَلُ الْحُرُّ الْمُسْلِمُ بِالْحُرِّ الْمُسْلِمِ، ذَكَرًا كَانَ أَوْ أُنْثَى، وَلَا يُقْتَلُ حُرٌّ بِعَبْدٍ، وَلَا مُسْلِمٌ بِكَافِرٍ؛ لِقَوْلِ النَّبِيِّ ﷺ: «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ.» وَيُقْتَلُ الذِّمِّيُّ بِالذِّمِّيِّ وَالْمُسْلِمِ، وَيُقْتَلُ الْعَبْدُ بِالْعَبْدِ، وَالْحُرُّ بِالْحُرِّ.	Third: The victim must be equal (in terms of religion and freedom) to the killer, so the free Muslim will be killed for (killing) a free Muslim, regardless of sex. A freeman will not be killed for (killing) a slave, [XIV.1.1] nor a Muslim for a non-Muslim, [XIV.1.2] because the Messenger of Allah (SA) said, "No believer is to be killed for a disbeliever (that is, in qiṣâṣ)." [XIV.1.3] The dhimmi is killed for (killing) another dhimmi or a Muslim, a slave for a slave, and a freeman for a freeman.

[XIV.1.1] Qiṣâṣ from a Freeman for Killing a Slave

(a) + (-H, -t): A freeman will be killed for killing a slave. The Ḥanafi rule has some exclusions.

Please refer to the appendix on slavery.

There is a difference between the sinfulness of the act and the obligation of qiṣâṣ. Killing anyone unjustifiably is an enormity by consensus.

Just because qiṣâṣ is not required does not mean that the judiciary cannot impose any punishment. The punishment should be severe enough to deter people from these crimes.

[XIV.1.2] Qiṣâṣ from a Muslim Who Killed a non-Muslim

(-H): A Muslim is subject to qiṣâṣ for deliberately killing a dhimmi when the other conditions are met.

The killing of a non-combatant non-Muslim is an enormity by consensus. The Messenger of Allah (SA) said:

«مَنْ قَتَلَ مُعَاهِداً لَمْ يَرَحْ رَائِحَةَ ٱلْجَنَّةِ, وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَاماً»

"Whoever kills a mu'âhid will not smell the fragrance of paradise, even though its fragrance could be smelled at a distance of 40 years." (B – from Ibn 'Amr)

There is a disagreement in this case about retaliation or discretionary punishment by the Muslim state. The Ḥanafis (the formal madh-hab of the Abbasid and Ottoman caliphates) decreed that a Muslim is to be killed in retaliation for killing a non-Muslim; this was also the position of ash-Sha'bi, an-Nakha'i and Ibn Abi Laylâ. To explain the meaning of the hadith used here in the main text, they cited the hadith where the Prophet (SA) said:

«لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ»

"No believer is to be killed for (killing) a disbeliever, nor should one who has a covenant with the Muslims be killed (for

killing a disbeliever) while his covenant holds." (D – from 'Ali; H: S)

They argued that in this hadith, the Messenger of Allah (SA) made the mu'âhid (non-Muslims under a treaty of peace) different from the kâfir (one who rejects Islam), which is in this case the ḥarbi. As for non-Muslims under a treaty of peace, it was reported that Caliphs 'Ali (as reported by Ba) and 'Umar ibn 'Abdul-'Azeez (in Muṣannaf 'Abdur-Razzâq) ordered retaliation if they were killed by Muslims.

[XIV.1.3] (D, N, A; H: Auth)

Fourth: The killer is not the victim's parent. A parent will not be killed for (killing) his descendant, no matter how many generations down; the two parents are the same in this regard. [XIV.1.4] If the blood-custodian [XIV.1.5] or one of them (regardless of how small his entitlement) is a descendant of the killer, retribution will not be executed.	الرَّابِعُ: أَنْ لَا يَكُوْنَ أَبًا لِلْمَقْتُوْلِ، فَلَا يُقْتَلُ وَالِدٌ بِوَلَدِهِ وَإِنْ سَفَلَ، وَالْأَبَوَانِ فِيْ هَذَا سَوَاءٌ، وَلَوْ كَانَ وَلِيُّ الدَّمِ وَلَدًا، أَوْ لَهُ فِيْهِ حَقٌّ وَإِنْ قَلَّ، لَمْ يَجِبِ الْقَوَدُ.

[XIV.1.4] (-M): If it is clear that the parent intended to kill the child, he or she will be subject to qiṣâṣ.

[XIV.1.5] Blood-custodian (lit., waliy ad-dam, or the one in charge of the blood): The family member(s) who have the right to press charges against the killer and to demand retribution or diyah.

Subsection: There are three conditions for the actual execution of retribution First: The blood-custodian must be mukallaf. If it is for a non-mukallaf, or if one of the blood-custodians – no matter how small his share – is not mukallaf, then taking retribution is not permitted. [XIV.1.6] If the non-mukallaf	فَصْلٌ: وَيُشْتَرَطُ لِجَوَازِ اسْتِيْفَاءِ الْقِصَاصِ شُرُوطٌ ثَلَاثَةٌ أَحَدُهَا: أَنْ يَكُوْنَ لِمُكَلَّفٍ، فَإِنْ كَانَ لِغَيْرِهِ، أَوْ لَهُ فِيْهِ حَقٌّ وَإِنْ قَلَّ، لَمْ يَجُزِ اسْتِيْفَاؤُهُ، وَإِنِ اسْتَوْفَى غَيْرُ

executes the retribution himself, it will suffice. [XIV.1.7]	الْمُكَلَّفِ حَقَّهُ بِنَفْسِهِ، أَجْزَأَ ذٰلِكَ.

[XIV.1.6] Because they are not fit to make the choice between demanding qiṣâṣ and taking the indemnity.

(A): The decision between qiṣâṣ and indemnity is deferred until the child reaches buloogh or the insane regains sanity. If other blood-custodians choose indemnity, they are immediately entitled to that, and there will be no qiṣâṣ.

(a): The adult, sane heirs may demand qiṣâṣ even if a co-heir is a child or insane.

(a): A child's guardian can demand qiṣâṣ on behalf of the child.

[XIV.1.7] Meaning there will be no indemnity deserved in this case.

(a) + (-H, -M, -t): the other heirs may demand qiṣâṣ.

(A) + (+S): the offender will be imprisoned until the child reaches puberty and decides.

Second: All of the entitled (blood-custodians) must agree on the execution of retribution. If some of them do not agree or are absent, retribution may not be executed. If one of them carries it out, there will be no retribution against him, but he will owe the remaining portion of the indemnity. [XIV.1.8] His co-heirs will be entitled to their shares of the indemnity, taken from the murderer's estate. [XIV.1.9] All the (victim's) co-heirs deserve (the right of) qiṣâṣ in proportion to their shares of the inheritance. [XIV.1.10]	الثَّانِيْ: اتِّفَاقُ جَمِيْعِ الْمُسْتَحِقِّيْنَ عَلىٰ اسْتِيْفَائِهِ فَإِنْ لَمْ يَأْذَنْ فِيْهِ بَعْضُهُمْ، أَوْ كَانَ فِيْهِمْ غَائِبٌ، لَمْ يَجُزِ اسْتِيْفَاؤُهُ، فَإِنِ اسْتَوْفَاهُ بَعْضُهُمْ، فَلَا قِصَاصَ عَلَيْهِ، وَعَلَيْهِ بَقِيَّةُ دِيَتِهِ لَهُ، وَلِشُرَكَائِهِ حَقُّهُمْ فِيْ تَرِكَةِ الْجَانِيْ. وَيَسْتَحِقُّ الْقِصَاصَ كُلُّ مَنْ يَرِثُ الْمَالَ

	عَلَىٰ قَدْرِ مَوَارِيْثِهِمْ.

[XIV.1.8] After his share is subtracted from the total amount.

[XIV.1.9] Clarifying example: Y kills X, who had three children (A, B, C). A and C are absent and have neither pardoned Y nor authorized execution, but B goes ahead and carries out the qiṣâṣ against Y. There are two solutions for this in the madh-hab:

1) The one mentioned in the matn, where A and C can still demand their share of the indemnity from Y's estate; B will be liable for that amount and owes it to Y's heirs. (A/SM)

2) The other (easier) solution is to make B owe A and C their share of the indemnity, since his killing of Y took away from X's heirs (blood-custodians) the right to an indemnity.

[XIV.1.10] Thus, if any of them forgive the killer, they will be entitled only to the diyah, which will be distributed among them according to their shares of the victim's estate.

Third: Assurance of No Transgression in Execution If the offender is a pregnant woman, it is not permissible to carry out qiṣâṣ, whether (in retaliation) for murder or a wound; [XIV.1.11] nor is it permissible to execute a ḥadd until she gives birth and her child becomes independent of her. [XIV.1.12]	الثَّالِثُ: الْأَمْنُ مِنَ التَّعَدِّيْ فِيْ الِاسْتِيْفَاءِ فَلَوْ كَانَ الْجَانِيْ حَامِلاً، لَمْ يَجُزِ اسْتِيْفَاءُ الْقِصَاصِ مِنْهَا فِيْ نَفْسٍ وَلَا جُرْحٍ، وَلَا اسْتِيْفَاءُ حَدٍّ مِنْهَا، حَتَّى تَضَعَ وَلَدَهَا، وَيَسْتَغْنِيَ عَنْهَا.

[XIV.1.11] For qiṣâṣ in retaliation for wounds, it will be also mentioned later that there must be assurance that the harm of the retribution will not exceed the harm inflicted by the original wound.

[XIV.1.12] After weaning, if there is no one else to nurse the baby. She should be spared at least until she gives her baby the colostrum.

Subsection: The Obligation Becomes Void if One of the Following Occurs: First: Pardoning, so if some of the co-heirs waive their right to all or part of the retribution, it all becomes void, [XIV.1.13] and the remaining co-heirs are entitled to their share of the indemnity. If pardoning was in return for compensation, he will be entitled to his share of the indemnity. Otherwise, he will be only entitled to the reward (of the hereafter). [XIV.1.14]	فَصْلٌ: وَيَسْقُطُ بَعْدَ وُجُوْبِهِ بِأُمُوْرٍ ثَلَاثَةٍ أَحَدُهَا: الْعَفْوُ عَنْهُ، أَوْ عَنْ بَعْضِهِ، فَلَوْ عَفَا بَعْضُ الْوَرَثَةِ عَنْ حَقِّهِ أَوْ عَنْ بَعْضِهِ، سَقَطَ كُلُّهُ، وَلِلْبَاقِيْنَ حَقُّهُمْ مِنَ الدِّيَةِ، وَإِنْ كَانَ الْعَفْوُ عَلَىٰ مَالٍ، فَلَهُ حَقُّهُ مِنَ الدِّيَةِ، وَإِلَّا فَلَيْسَ لَهُ إِلَّا الثَّوَابُ.

[XIV.1.13] Because life cannot be divided.

[XIV.1.14] Pardoning the Murderer

Allah said:

{وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا ۖ فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ}

{And the retribution for an evil act is an evil one like it, but whoever pardons and makes reconciliation – his reward is [due] from Allah...} (ash-Shoorâ 42:40)

Ibn Taymiyah pointed out that this verse couples pardoning with reconciliation and rectification (iṣlâḥ). He reflected that if pardoning were expected to embolden the aggressor and result in more oppression, then it was not a means of rectification and reconciliation; in such a case, demanding qiṣâṣ was better.

Second: If the killer inherits the entitlement to retribution, [XIV.1.15] or if one of his offspring does. [XIV.1.16]	الثَّانِيْ: أَنْ يَرِثَ الْقَاتِلُ، أَوْ بَعْضُ وَلَدِهِ شَيْئًا مِنْ دَمِهِ.

[XIV.1.15] The killer cannot inherit from the victim due to the Prophet's explicit statement:

«الْقَاتِلُ لَا يَرِثُ»

"The killer does not inherit."

(T – from Abu Hurayrah; Earlier Hadith scholars: W, but it is accepted by some of the later ones, like Ibn Ḥajar and al-Albâni. All jurists acted upon it.)

However, the killer may indirectly inherit the right to retribution for his own victim. Clarifying example: A man kills his father, and then the man's mother dies. He does not inherit any right to retribution for his father's death because he was the killer himself, but his mother inherits 1/8 of that right, so he inherits part of it from her when she dies.

(a): This will still not acquit him from being subject to qiṣâṣ.

[XIV.1.16] Clarifying example: A woman kills her husband, so their son is entitled to demand retribution, but she is not subject to qiṣâṣ because the son cannot demand the killing of his parent.

Third: If the killer dies, then qiṣâṣ will not be executable, and the indemnity will be binding on his estate.	الثَّالِثُ: أَنْ يَمُوْتَ الْقَاتِلُ، فَيَسْقُطُ، وَتَجِبُ الدِّيَةُ فِيْ تَرِكَتِهِ.

If one person intentionally kills two people, and their blood-custodians agree on having him killed (in retaliation) for both, he will be killed (in retaliation) for both. If they dispute over the execution of retribution, he will be killed (in retaliation) for the first, and (the co-heirs of) the second will be entitled to the indemnity. If the (right to) retribution for the first becomes void, the blood-custodians of the second will be entitled to carry out (qiṣâṣ).	وَلَوْ قَتَلَ وَاحِدٌ اثْنَيْنِ عَمْدًا، فَاتَّفَقَ أَوْلِيَاؤُهُمَا عَلَىٰ قَتْلِهِ بِهِمَا، جَازَ، وَإِنْ تَشَاحُّوْا فِيْ الْمُسْتَوْفِيْ، قُتِلَ بِالْأَوَّلِ، وَلِلثَّانِيْ الدِّيَةُ. فَإِنْ سَقَطَ قِصَاصُ الْأَوَّلِ، فَلِأَوْلِيَاءِ الثَّانِيْ اسْتِيْفَاؤُهُ.

Qiṣâṣ is exacted by striking the neck with the sword. He will not be mutilated unless he killed the victim in a certain way, in which case he may be subjected to the same. [XIV.1.17]	وَيُسْتَوْفَى الْقِصَاصُ بِالسَّيْفِ فِيْ الْعُنُقِ، وَلَا يُمَثَّلُ بِهِ، إِلَّا أَنْ يَفْعَلَ شَيْئًا، فَيُفْعَلُ بِهِ مِثْلُهُ.

[XIV.1.17] There are two reports in the madh-hab about exacting lethal retribution. One does not allow anything except striking with a sharp sword (A/SM); the other allows killing in the same way the victim was killed.

[XIV.2] Chapter on Partnering in Murder

بَابُ الإِشْتِرَاكِ فِي الْقَتْلِ

A group will be killed (in retaliation) for (killing) one person. [XIV.2.1] If it is not feasible to apply lethal retribution to one of them because of his parental relationship (to the victim), the inequality of his status (in terms of religion or freedom), or his being pardoned, his partners will (still) be killed. If one of them is not mukallaf, or if one kills in error, then lethal retribution is not binding on any of them. [XIV.2.2]	وَتُقْتَلُ الْجَمَاعَةُ بِالْوَاحِدِ، فَإِنْ تَعَذَّرَ قَتْلُ أَحَدِهِمْ؛ لِأُبُوَّتِهِ، أَوْ عَدَمِ مُكَافَأَةِ الْقَتِيلِ لَهُ، أَوِ الْعَفْوِ عَنْهُ، قُتِلَ شُرَكَاؤُهُ. وَإِنْ كَانَ بَعْضُهُمْ غَيْرَ مُكَلَّفٍ، أَوْ خَاطِئًا، لَمْ يَجِبِ الْقَوَدُ عَلَىٰ وَاحِدٍ مِنْهُمْ.

[XIV.2.1] (A) + (+H, +M, +S)

[XIV.2.2] In all these cases, the non-obligation of qiṣâṣ does not mean that the judiciary cannot impose any punishment. The punishment should be severe enough to deter people from these crimes.

(-H): In the classical rules discussed here, qiṣâṣ applies to a Muslim who deliberately kills a dhimmi, and to a freeman who kills a slave, subject to the relevant conditions and exceptions.

If a person forces another to kill, [XIV.2.3] and he (the other) does so; or one of them inflicts one wound (on the victim), whereas the other inflicts 100 wounds; or one of them maims the victim at the wrist, whereas the other maims him at the elbow; they are both considered murderers and are liable for qiṣâṣ. [XIV.2.4] If indemnity is required, both are equally liable for it.	وَإِنْ أَكْرَهَ رَجُلٌ رَجُلاً عَلَىٰ الْقَتْلِ، فَقَتَلَ، أَوْ جَرَحَ أَحَدُهُمَا جُرْحًا وَالآخَرُ مِئَةً، أَوْ قَطَعَ أَحَدُهُمَا مِنَ الْكُوعِ وَالآخَرُ مِنَ الْمِرْفَقِ، فَهُمَا قَاتِلَانِ، وَعَلَيْهِمَا الْقِصَاصُ، وَإِنْ وَجَبَتِ الدِّيَةُ، اسْتَوَيَا فِيهَا.

[XIV.2.3] (A): Saying, “Kill him, or I will kill you” is a form of compulsion, and it makes the one giving the command also liable.

[XIV.2.4] This is because of the difficulty in ascertaining the cause of the death.

If one of them slaughters the victim, and then the other cuts off his hand or slices him into two halves, the murderer is the first one. [XIV.2.5] If one cuts (a part of) him off, and then the other slaughters him, the one who cuts will be cut (in retaliation), and the one who slaughters will be slaughtered.	وَإِنْ ذَبَحَهُ أَحَدُهُمَا، ثُمَّ قَطَعَ الْآخَرُ يَدَهُ، أَوْ قَدَّهُ نِصْفَيْنِ، فَالْقَاتِلُ الْأَوَّلُ، وَإِنْ قَطَعَهُ أَحَدُهُمَا، ثُمَّ ذَبَحَهُ الثَّانِيْ، قُطِعَ الْقَاطِعُ، وَذُبِحَ الذَّابِحُ.

[XIV.2.5] Because the action of the second, though reprehensible, was inconsequential to the death of the victim.

If one person commands another (who knows the inviolability of the victim) to kill, and thus he kills, then qiṣâṣ is binding against the one who carries it out, and the one who commands it will be punished (by a discretionary penalty). [XIV.2.6] If a person commands someone who does not know (the victim’s) inviolability, or someone who is not discerning, then qiṣâṣ is binding against the one who gave the order. [XIV.2.7]	فَإِنْ أَمَرَ مَنْ يَعْلَمُ تَحْرِيْمَ الْقَتْلِ بِهِ، فَقَتَلَ، فَالْقِصَاصُ عَلَىٰ الْمُبَاشِرِ، وَيُؤَدَّبُ الْآمِرُ. وَإِنْ أَمَرَ مَنْ لَا يَعْلَمُ تَحْرِيْمَهُ بِهِ، أَوْ لَا يُمَيِّزُ، فَالْقِصَاصُ عَلَىٰ الْآمِرِ.

[XIV.2.6] (A) + (+H, +M, +S): If the commander has no authority over the executor, then only the executor will be killed.

If the commander has authority over the executor but does not clearly compel him to kill:

(-M): Both will be killed, because this authority is considered a form of coercion.

(-h, Abu Yoosuf): Neither will be killed where the command constitutes coercion.

(A) + (+S): Only the one who carries it out will be killed.

If the commander compels the executor

(A) + (+M, +S): Both will be killed.

(-H, -s): Only the one who commands it will be killed.

(-s): Only the one who carries it out will be killed.

[XIV.2.7] In all these cases, just because qiṣâṣ is not obligatory does not mean the judiciary cannot punish those who were found to have committed a wrongdoing. The punishment should always be severe enough to deter people from these crimes.

(-H): In the classical rules discussed here, qiṣâṣ applies to a Muslim who deliberately kills a dhimmi, and to a freeman who kills a slave, subject to the relevant conditions and exceptions, including the exceptions for ownership explained above.

If one restrains a person to be killed, and that person is killed, the killer will be killed, and the restrainer will be imprisoned until he dies. [XIV.2.8]	وَإِنْ أَمْسَكَ إِنْسَاناً لِلْقَتْلِ، فَقُتِلَ، قُتِلَ الْقَاتِلُ، وَحُبِسَ الْمُمْسِكُ حَتَّى يَمُوْتَ.

[XIV.2.8] The principle here is equal retribution.

(-M): If the restraining was done for the killing and was essential for its execution, the killer and the restrainer should both be killed.

[XIV.3] Chapter on Retribution for Wounds

بَابُ الْقَوَدِ فِي الْجُرُوْحِ

For each part of the (victim's) body, retribution is obligatory on its counterpart (in the offender's body). Therefore, an eye (is taken) for an eye, a nose for a nose, and each one of the eyelids, lips, tongue, teeth, hands, feet, penis, testicles, for its counterpart – and likewise for every part concerning which retribution is plausible.	يَجِبُ الْقَـوَدُ فِيْ كُلِّ عُضْـوٍ بِمِثْلِهِ، فَتُؤْخَذُ الْعَيْنُ بِالْعَيْنِ، وَالْأَنْـفُ بِالْأَنْفِ، وَكُلُّ وَاحِدٍ مِنَ الْجَفْنِ وَالشَّفَةِ، وَاللِّسَانِ وَالسِّنِّ، وَالْيَدِ وَالرِّجْلِ، وَالذَّكَرِ، وَالْأُنْثَيَيْنِ بِمِثْلِهِ، وَكَذٰلِكَ كُلُّ مَا أَمْكَنَ الْقِصَاصُ فِيْهِ.

[Prerequisites for the Obligation of *Qiṣâṣ*]

The following must be considered (for retribution): 1. The victim must be equal to the offender. [XIV.3.1] 2. The crime must be intentional. 3. There must be assurance there will not be transgression. This assurance is plausible when he cuts at a joint or when the wound has an identifiable extent, such as the *mooḍiḥah* (head and face wound that reaches the bone but does not damage it). As for breaking the bones or cutting at the forearm or leg, there is no retribution in that; nor is there retribution for the penetrating wound (that reaches the hollow interior) or any of the head and face wounds aside from the mooḍiḥah unless he accepts inflicting a mooḍiḥah for a wound greater than it. There is no retribution for injuries to	وَيُعْتَبَرُ: 1. كَوْنُ الْمَجْنِيِّ عَلَيْهِ مُكَافِئًا لِلْجَانِيْ 2. وَكَوْنُ الْجِنَايَةِ عَمْدًا 3. وَالْأَمْنُ مِنَ التَّعَدِّيْ، بِأَنْ يُقْطَعَ مِنْ مِفْصَلٍ أَوْ حَدٍّ يَنْتَهِيْ إِلَيْهِ، كَالْمُوْضِحَةِ الَّتِيْ تَنْتَهِيْ إِلَى الْعِظَامِ. فَأَمَّا كَسْرُ الْعِظَامِ، وَالْقَطْعُ مِنَ السَّاعِدِ وَالسَّاقِ، فَلَا قَوَدَ فِيْهِ. وَلَا قَوَدَ فِيْ الْجَائِفَةِ، وَلَا فِيْ شَيْءٍ مِنْ

the nose, except for injury to the ball of the nose (which is the soft part).	شِجَاجِ الرَّأْسِ، إِلَّا الْمُوْضِحَةِ، إِلَّا أَنْ يَرْضَى فِيْمَا فَوْقَ الْمُوْضِحَةِ بِمُوْضِحَةٍ، وَلَا فِيْ الْأَنْفِ إِلَّا مِنَ الْمَارِنِ، وَهُوَ مَا لَانَ مِنْهُ.

[XIV.3.1] In terms of religion and freedom. In all these cases, just because qiṣâṣ is not obligatory does not mean the judiciary cannot impose any punishment. The punishment should be severe enough to deter people from these crimes.

(-H): In the classical rules discussed here, qiṣâṣ applies to a Muslim who deliberately kills a dhimmi, and to a freeman who kills a slave, subject to the relevant conditions and exceptions, including the exceptions for ownership explained above.

Equality of the part applies to the name and location; thus, the right, left, upper, and lower parts will only be taken for their exact counterparts. The finger, fingertip or tooth will only be taken for its exact counterpart. The whole hand with a full set of fingers will not be taken for a defective one (lacking some fingers); the fine hand is not taken for the paralyzed one. However, the defective may be taken for the whole and the paralyzed one for the fine one, as long as there is assurance that it will not cause death (ensuing from the wound). [XIV.3.2]	وَيُشْتَرَطُ التَّسَاوِيْ فِي الِاسْمِ وَالْمَوْضِعِ، فَلَا تُؤْخَذُ وَاحِدَةٌ مِنَ الْيُمْنٰى وَالْيُسْرٰى وَالْعُلْيَا وَالسُّفْلٰى إِلَّا بِمِثْلِهَا، وَلَا تُؤْخَذُ إِصْبَعٌ وَلَا أَنْمُلَةٌ وَلَا سِنٌّ إِلَّا بِمِثْلِهَا، وَلَا تُؤْخَذُ كَامِلَةُ الْأَصَابِعِ بِنَاقِصَةٍ، وَلَا صَحِيْحَةٌ بِشَلَّاءَ. وَتُؤْخَذُ النَّاقِصَةُ بِالْكَامِلَةِ، وَالشَّلَّاءُ بِالصَّحِيْحَةِ إِذَا أُمِنَ التَّلَفُ.

[XIV.3.2] Cutting the paralyzed limb could be more dangerous because of the possibility of bleeding until death or an air embolus.

[Mutilation of Pieces of Body Parts]

فَصْلٌ: وَإِذَا قَطَعَ بَعْضَ لِسَانِهِ أَوْ مَارِنِهِ أَوْ شَفَتِهِ أَوْ حَشَفَتِهِ أَوْ أُذُنِهِ، أُخِذَ مِثْلُهُ، يُقَدَّرُ بِالْأَجْزَاءِ، كَالنِّصْفِ وَالثُّلُثِ وَنَحْوِهِمَا.	Subsection: If one cuts off part of his tongue, tip of the nose, lip, glans, or ear, the equivalent will be cut in retaliation. The equivalence is based on fractions, such as one-half, one-third, and so on.
وَإِنْ أُخِذَتْ دِيَتُهُ، أُخِذَ بِالْقِسْطِ مِنْهَا.	If the indemnity is taken instead, it is proportionate to that.
وَإِنْ كُسِرَ بَعْضُ سِنِّهِ، بُرِدَ مِنْ سِنِّ الْجَانِي مِثْلُهُ، إِذَا أُمِنَ انْقِلَاعُهَا.	If one breaks part of his tooth, the equivalent of the broken tooth will be filed off the offender's tooth, as long as there is assurance it will not be dislodged.
وَلَا يُقْتَصُّ مِنَ السِّنِّ حَتَّى يَيْأَسَ مِنْ عَوْدِهَا، وَلَا مِنَ الْجُرْحِ حَتَّى يَبْرَأَ.	Retribution for the tooth is not executed until there is no hope that the victim's tooth will re-erupt. Similarly, retaliation is not executed for a wound until it has healed.
وَسِرَايَةُ الْقَوَدِ مُهْدَرَةٌ.	The complications of the wound inflicted in retribution are not compensable.
وَسِرَايَةُ الْجِنَايَةِ مَضْمُونَةٌ بِالْقِصَاصِ وَالدِّيَةِ، إِلَّا أَنْ يَسْتَوْفِيَ قِصَاصَهَا قَبْلَ بُرْئِهَا، فَيَسْقُطُ ضَمَانُهَا.	The complications of the wound inflicted in aggression warrant retribution or indemnity, but if retribution is taken before it is completely healed, there is no (further) liability for complications that may occur later.

[XIV.4] The Book of Indemnities

كِتَابُ الدِّيَاتِ

دِيَةُ الْحُرِّ الْمُسْلِمِ، أَلْفُ مِثْقَالٍ، أَوِ اثْنَا عَشَرَ أَلْفَ	The indemnity for (killing) a free Muslim man is 1,000 mithqâls, [XIV.4.1] 12,000 dirhams, [XIV.4.2] or 100 camels. [XIV.4.3]

If (the 100 camels) is an indemnity for intentional murder, then it consists of: 30 *ḥiqqah* (three-year-old female camels), 30 *jadha'ah* (four-year-old female camels), and 40 pregnant she-camels. It is all immediately due from the murderer's assets. [XIV.4.4] If it is quasi-intentional manslaughter (mistaken death resulting from a deliberate assault), then the ages are the same. It is binding on the 'âqilah (extended paternal family) over three years, with one-third due at the end of each year (since the death). If it is an indemnity for mistaken killing, it is also binding on the 'âqilah, but it comprises: 20 *bint makhâḍ* (one-year-old female camels), 20 *ibn makhâḍ* (one-year-old male camels), 20 *bint laboon* (two-year-old female camels), 20 ḥiqqah, and 20 jadha'ah.	دِرْهَمٍ، أَوْ مِئَةٌ مِنَ الْإِبِلِ. فَإِنْ كَانَتْ دِيَةَ عَمْدٍ، فَهِيَ ثَلَاثُوْنَ حِقَّةً، وَثَلَاثُوْنَ جَذَعَةً، وَأَرْبَعُوْنَ خَلِفَةً، وَهِيَ الْحَوَامِلُ، وَتَكُوْنُ حَالَّةً فِيْ مَالِ الْقَاتِلِ. وَإِنْ كَانَ شِبْهَ عَمْدٍ فَكَذٰلِكَ فِيْ أَسْنَانِهَا، وَهِيَ عَلَى الْعَاقِلَةِ، فِيْ ثَلَاثِ سِنِيْنَ، فِيْ رَأْسِ كُلِّ سَنَةٍ ثُلُثُهَا. وَإِنْ كَانَتْ دِيَةَ خَطَأٍ، فَهِيَ عَلَى الْعَاقِلَةِ كَذٰلِكَ، إِلَّا أَنَّهَا عِشْرُوْنَ بَنَاتِ مَخَاضٍ، وَعِشْرُوْنَ بَنُوْ مَخَاضٍ، وَعِشْرُوْنَ بَنَاتِ لَبُوْنٍ، وَعِشْرُوْنَ حِقَّةً، وَعِشْرُوْنَ جَذَعَةً.

[XIV.4.1] mithqâl: a unit of measure equal to one gold dinar. (One dinar equals 4.25 grams.)

[XIV.4.2] One dirham equals 2.975 grams.

[XIV.4.3] (A/SM & Iqnâ‘): Or 200 cows or 2,000 sheep/goats.

[XIV.4.4] (A/SM): In both intentional and quasi-intentional murder, the division of the camels is 25 bint makhâḍ, 25 bint laboon, 25 ḥiqqah, and 25 jadha‘ah.

The indemnity for (killing) the free Muslim woman is one-half of that for the man. [XIV.4.5] Her wounds are equal to his up to (being worth) one-third of the complete indemnity (for killing). If it is more than that, it will be halved. [XIV.4.6]	وَدِيَةُ الْحُرَّةِ الْمُسْلِمَةِ نِصْفُ دِيَةِ الرَّجُلِ، وَتُسَاوِيْ جِرَاحُهَا جِرَاحَهُ إِلىٰ ثُلُثِ الدِّيَةِ، فَإِذَا زَادَتْ، صَارَتْ عَلَىٰ النِّصْفِ.

[XIV.4.5] This is the position of the vast majority and the four madhâhib. It is not because her life is considered less valuable; it is because the man is responsible for the financial support of the family. The indemnity is meant to compensate the survivors for the financial hardship they may incur from the death of their caretaker.

It is to be noted here that some contemporary scholars supported the position of Ibn ‘Ulayyah and al-Aṣamm which makes her indemnity equal to that of the man.

[XIV.4.6] In the later relied-upon Ḥanbali position, the reduction applies when the assessment reaches one-third of the male diyah or exceeds it.

The indemnity for a man from the People of the Book is half of that of a Muslim, and for their women is half of that. The indemnity for a Majusi (Zoroastrian) man is 800 dirhams, and for their women is half of that. [XIV.4.7]	وَدِيَةُ الْكِتَابِيِّ نِصْفُ دِيَةِ الْمُسْلِمِ، وَنِسَاؤُهُمْ عَلَىٰ النِّصْفِ مِنْ ذٰلِكَ، وَدِيَةُ الْمَجُوْسِيِّ ثَمَانُ مِائَةِ دِرْهَمٍ، وَنِسَاؤُهُمْ عَلَىٰ النِّصْفِ مِنْ ذٰلِكَ.

[XIV.4.7] (-H): The indemnity of a dhimmi is like the indemnity of a Muslim. This was also the position of Mujâhid, az-Zuhri, an-Nakha‘i, and ath-Thawri, and was reported from ‘Umar and ‘Uthmân. (*al-Mughni*) Note that the Ḥanafi madh-hab was the formal madh-hab of the Abbasid and Ottoman caliphates.

	وَدِيَةُ الْعَبْدِ وَالْأَمَةِ قِيْمَتُهُمَا بَالِغَةً مَا بَلَغَتْ، وَمَنْ بَعْضُهُ حُرٌّ، فَفِيْهِ بِالْحِسَابِ مِنْ دِيَةِ حُرٍّ وَقِيْمَةِ عَبْدٍ.

[Indemnity for Aborting a Fetus]

The indemnity for a free fetus delivered dead is a *ghurrah* (male or female slave), which is equal in value to five camels and will be passed on to the heirs. [XIV.4.8] If a pregnant woman drinks medicine, thereby (deliberately) aborting her fetus, she will be liable for that ghurrah, of which she will not inherit anything. If the fetus is from the People of the Book, the indemnity required is one-tenth of that for the mother. If the fetus is expelled alive and subsequently dies because of a blow, and this abortion happens at a time (phase of the pregnancy) after which he or she could have lived, then the complete indemnity (for killing) is required on his or her behalf.	وَدِيَةُ الْجَنِيْنِ الْحُرِّ إِذَا سَقَطَ مَيْتًا غُرَّةٌ؛ عَبْدٌ أَوْ أَمَةٌ، قِيْمَتُهَا خَمْسٌ مِنَ الْإِبِلِ مَوْرُوْثَةٌ عَنْهُ. وَلَوْ شَرِبَتِ الْحَامِلُ دَوَاءً فَأَسْقَطَتْ بِهِ جَنِيْنَهَا، فَعَلَيْهَا غُرَّةٌ، لَا تَرِثُ مِنْهَا شَيْئًا. وَإِنْ كَانَ الْجَنِيْنُ كِتَابِيًّا، فَفِيْهِ عُشْرُ دِيَةِ أُمِّهِ، وَإِنْ كَانَ عَبْدًا، فَفِيْهِ عُشْرُ قِيْمَةِ أُمِّهِ. وَإِنْ سَقَطَ الْجَنِيْنُ حَيًّا، ثُمَّ مَاتَ مِنَ الضَّرْبَةِ، فَفِيْهِ دِيَةٌ كَامِلَةٌ إِذَا كَانَ سُقُوْطُهُ لِوَقْتٍ يَعِيْشُ فِيْ مِثْلِهِ.

[XIV.4.8] The indemnity discussed here is the ghurrah for a fetus lost through a legally compensable injury, with the conditions detailed in the school, including discernible human formation. Its prescribed value in this case is five camels and it passes to the eligible heirs. A child born with legally recognized stable life who then dies from the injury is subject to a different assessment, which may be a full diyah.

[XIV.5] Chapter on the *ʻÂqilah* (Paternal Male Kin) and Their Responsibility

بَابُ الْعَاقِلَةِ وَمَا تَحْمِلُهُ

It is all of the men from the paternal family of the killer, [XIV.5.1] close or distant, related	وَهِيَ عَصَبَةُ الْقَاتِلِ كُلُّهُمْ، قَرِيْبُهُمْ وَبَعِيْدُهُمْ، مِنَ النَّسَبِ

through lineage or through patronage [XIV.5.2] – except those who are children, insane, or poor, or have a different religion (than the killer's). [XIV.5.3]	وَالْمَوَالِيْ، إِلَّا الصَّبِيَّ وَالْمَجْنُوْنَ وَالْفَقِيْرَ، وَمَنْ يُخَالِفُ دِيْنُهُ دِيْنَ الْقَاتِلِ.

[XIV.5.1] (A) + (+S)

(-H, -M): They are Ahl ud-Deewân, people who are registered in the same registry (district/village). After them, his paternal family is responsible.

(-H): People of the same profession may also be considered ‘âqilah.

This is a system of collective financial support. The eligible members of the ‘âqilah bear the prescribed indemnity for accidental and quasi-intentional killing, and qualifying non-deliberate bodily injuries that reach the school's threshold. The rule does not extend merely by amount to every injury: intentional injury, for example, is excluded from their ordinary liability. In some areas, Sharia-compliant cooperative insurance could serve some of these purposes – for example, when a group of physicians (or members of other professions) agrees to partake in cooperative malpractice insurance.

[XIV.5.2] Patronage as in allegiance to the emancipator.

[XIV.5.3] Women are also exempt from this liability.

The determination of how much each one of them is responsible for is left to the imam. [XIV.5.4] He will assign to each one an amount that is affordable and will not cause hardship. [XIV.5.5] The rest of the indemnity will be binding on the killer. Likewise is the indemnity binding upon someone without an ‘âqilah. [XIV.5.6]	وَيُرْجَعُ فِيْ تَقْدِيْرِ مَا يَحْمِلُهُ كُلُّ وَاحِدٍ مِنْهُمْ إِلىٰ اجْتِهَادِ الْإِمَامِ، فَيَفْرِضُ عَلَيْهِ قَدْرًا يَسْهُلُ عَلَيْهِ وَلَا يَشُقُّ، وَمَا فَضَلَ فَعَلىٰ الْقَاتِلِ، وَكَذٰلِكَ الدِّيَةُ فِيْ حَقِّ مَنْ لَا عَاقِلَةَ لَهُ.

[XIV.5.4] Meaning the authorities. In this case, the deputies of the imam are the judges.

[XIV.5.5] The judgment is based on each person's wealth/income, with each being responsible for what he can handle without hardship. The closest relatives come first, and then the next (more distant) layer of paternal relatives will be required to help, and so on, until the whole indemnity is paid to the victim.

[XIV.5.6] (A/SM & Iqnâ'): In both cases, for a Muslim offender, the state will be responsible for paying the indemnity or what's left of it.

The 'âqilah will not be responsible for (the indemnity for) intentional murder, [XIV.5.7] (the killing of) a slave, [XIV.5.8] (the indemnity binding upon a) settlement [XIV.5.9] or confession, [XIV.5.10] or anything less than one-third of the complete indemnity.	وَلَا تَحْمِلُ الْعَاقِلَةُ عَمْدًا، وَلَا عَبْدًا، وَلَا صُلْحًا، وَلَا اعْتِرَافًا، وَلَا مَا دُوْنَ الثُّلُثِ.

[XIV.5.7] They are only forced to help their relative/patron in the case of mistaken killing or quasi-intentional manslaughter. In intentional murder, the murderer is solely responsible for the entire indemnity.

[XIV.5.8] The offender is responsible for the entire indemnity.

[XIV.5.9] Such as when the plaintiffs have no proof, but the defendant agrees to pay the indemnity without admitting guilt (as in accepting civil, but not criminal, responsibility). Also, they may settle for an indemnity instead of retribution in intentional murder. In both cases, the 'âqilah is not liable; only the offender is.

[XIV.5.10] In settlements and confessions, the offender's acknowledgment is binding on him only because al-iqrâr (acknowledgment) is a restricted proof, incurring liability only upon the one making the acknowledgment. Otherwise, he could plot the whole matter with the victim or the victim's family, have his 'âqilah pay the indemnity, and then share it with the victim's family.

The dhimmis (non-Muslim subjects of a Muslim state) shall have their own 'âqilah share the responsibility with them.	وَيَتَعَاقَلُ أَهْلُ الذِّمَّةِ. وَلَا عَاقِلَةَ لِمُرْتَدٍّ.

As for apostates, they have no ‘âqilah. The same is true for one who becomes Muslim after committing his offense. [XIV.5.11]	وَلَا لِمَنْ أَسْلَمَ بَعْدَ جِنَايَتِهِ.

[XIV.5.11] His non-Muslim ‘âqilah is not responsible for the indemnity because he is now Muslim. His Muslim ‘âqilah is also not responsible because he committed the offense before he was Muslim. He is solely responsible for any indemnity that may become binding on him. (A/SM): what matters is the time of wounding or killing. If he shoots and then changes his deen before hitting the target is the case in which no one will be his ‘âqilah.

	أَوِ انْجَرَّ وَلَاؤُهُ بَعْدَهَا. وَجِنَايَةُ الْعَبْدِ فِيْ رَقَبَتِهِ، إِلَّا أَنْ يَفْدِيَهُ السَّيِّدُ بِأَقَلِّ الْأَمْرَيْنِ، مِنْ أَرْشِهَا أَوْ قِيْمَتِهِ، وَدِيَةُ الْجِنَايَةِ عَلَيْهِ مَا نَقَصَ مِنْ قِيْمَتِهِ فِيْ مَالِ الْجَانِيْ.

Damage incurred by an animal [XIV.5.12] is non-compensable unless the animal was under the control of a human being, such as a rider, one pulling it from the front, or one directing it from behind; they will be liable for the damage the animal causes with its foreleg or mouth, but not that which it causes with its hind leg or tail. If one transgresses by tying it to the property of others or in the way (of others), he is liable for all of the damage it causes. He is not liable for any crops it spoils during the day unless it is under his control. He is liable for whatever it spoils at night. [XIV.5.13]	وَجِنَايَةُ الْبَهَائِمِ هَدَرٌ، إِلَّا أَنْ تَكُوْنَ فِيْ يَدِ إِنْسَانٍ، كَالرَّاكِبِ وَالْقَائِدِ وَالسَّائِقِ، فَعَلَيْهِ ضَمَانُ مَا جَنَتْ بِيَدِهَا أَوْ فَمِهَا، دُوْنَ مَا جَنَتْ بِرِجْلِهَا أَوْ ذَنَبِهَا. وَإِنْ تَعَدَّى بِرَبْطِهَا فِيْ مِلْكِ غَيْرِهِ، أَوْ طَرِيْقٍ، ضَمِنَ جِنَايَتَهَا كُلَّهَا. وَمَا أَتْلَفَتْ مِنَ الزَّرْعِ نَهَارًا، لَمْ يَضْمَنْهُ، إِلَّا أَنْ تَكُوْنَ فِيْ يَدِهِ، وَمَا أَتْلَفَتْ لَيْلاً، فَعَلَيْهِ ضَمَانُهُ.

[XIV.5.12] The Arabic word used is bahâ'im (sg. baheemah), which refers in general to four-limbed land or sea animals, but particularly to non-predatory ones.

[XIV.5.13] Because at night, he is supposed to keep his animals in their stables; on the other hand, during the day, the farmers are expected to be tending to their crops.

If it is customary or required by law to keep the animals in their stables (or under supervision) throughout the day and night, then the owner is liable for damage caused by his failure to comply.

[XIV.6] Chapter on Indemnities for Wounds

بَابُ دِيَاتِ الْجِرَاحِ

(The mutilation) of anything of which there is one (part/faculty) in the human body makes a complete indemnity binding.[XIV.6.1] This includes (the mutilation or dismemberment of) one's tongue, nose, penis, hearing, eyesight, sense of smell, intellect, speech, ability to strike, and ability to walk. Likewise is the case for twisting his face to one side, [XIV.6.2] blackening it or his cheeks, [XIV.6.3] causing him urinary or fecal incontinence, or causing hairlessness of his head or beard.	كُلُّ مَا فِيْ الْإِنْسَانِ مِنْهُ شَيْءٌ وَاحِدٌ، فَفِيْهِ دِيَةٌ، كَلِسَانِهِ، وَأَنْفِهِ، وَذَكَرِهِ، وَسَمْعِهِ، وَبَصَرِهِ، وَشَمِّهِ، وَعَقْلِهِ، وَكَلَامِهِ، وَبَطْشِهِ، وَمَشْيِهِ. وَكَذٰلِكَ فِيْ كُلِّ وَاحِدٍ مِنْ صَعَرِهِ، وَهُوَ أَنْ يَجْعَلَ وَجْهَهُ فِيْ جَانِبِهِ، وَتَسْوِيْدِ وَجْهِهِ، وَخَدَّيْهِ، وَاسْتِطْلَاقِ بَوْلِهِ أَوْ غَائِطِهِ، وَقَرْعِ رَأْسِهِ، وَلِحْيَتِهِ دِيَةٌ.

[XIV.6.1] The indemnity due for killing.

[XIV.6.2] By causing his neck to rotate to one side.

[XIV.6.3] In the Ḥanbali books *al-Mubhij* and *at-Targheeb*, this was explained as "changing the original color of his face."

As for paired (organs/parts), a complete indemnity is binding for the (mutilation) of both (organs/parts); mutilating one of them makes one-half of a complete indemnity binding, such as one of the eyes, eyebrows, lips, ears, jawbones, hands, breasts, buttocks, testicles, labia majora, or legs.	وَمَا فِيْهِ مِنْهُ شَيْئَانِ، فَفِيْهِمَا الدِّيَةُ، وَفِيْ أَحَدِهِمَا نِصْفُهَا، كَالْعَيْنَيْنِ، وَالْحَاجِبَيْنِ، وَالشَّفَتَيْنِ، وَالْأُذُنَيْنِ، وَاللِّحْيَيْنِ، وَالْيَدَيْنِ، وَالثَّدْيَيْنِ، وَالْأَلْيَتَيْنِ، والأُنْثَيَيْنِ، وَالْإِسْكَتَيْنِ، وَالرِّجْلَيْنِ.

A complete indemnity is binding for (mutilating) the four eyelids, and it will also be binding for their eyelashes. For each one is one-quarter of a complete indemnity. If he removes them along with their eyelashes, only one complete indemnity is binding.	وَفِي الْأَجْفَانِ الْأَرْبَعَةِ الدِّيَةُ، وَفِيْ أَهْدَابِهَا الدِّيَةُ، وَفِيْ كُلِّ وَاحِدٍ رُبْعُهَا، فَإِنْ قَلَعَهَا بِأَهْدَابِهَا، وَجَبَتْ دِيَةٌ وَاحِدَةٌ.

There is a binding complete indemnity for (mutilating) the fingers of both hands or the toes of both feet. For (mutilating) each finger/toe, there is one-tenth of the complete indemnity. For each phalanx is one-third of the indemnity (of the finger/toe), except that for each phalanx of the thumb or great toe, there is one-half the indemnity (of the finger/toe). [XIV.6.4]	وَفِيْ أَصَابِعِ الْيَدَيْنِ الدِّيَةُ، وَفِيْ أَصَابِعِ الرِّجْلَيْنِ الدِّيَةُ، وَفِيْ كُلِّ إِصْبَعٍ عُشْرُهَا، وَفِيْ كُلِّ أَنْمُلَةٍ ثُلُثُ عَقْلِهَا، إِلَّا الْإِبْهَامَ فِيْ كُلِّ أَنْمُلَةٍ نِصْفُ عَقْلِهَا.

[XIV.6.4] Each finger has three phalanges (sg. phalanx) except for the thumb, which has only two.

For every tooth that does not re-erupt, [XIV.6.5] there is (an indemnity of) five camels.	وَفِيْ كُلِّ سِنٍّ خَمْسٌ مِنَ الْإِبِلِ إِذَا لَمْ تَعُدْ.

[XIV.6.5] This includes all types of teeth: incisors, canines, premolars, and molars.

For (the mutilation of) the soft tip of the nose, the nipple of the breast, the hand or foot, the glans penis, or the erupted part of the tooth – or blackening it, a full indemnity of the organ will be binding. [XIV.6.6] For mutilating a portion of them, the corresponding indemnity will be binding. [XIV.6.7]	وَفِيْ مَارِنِ الْأَنْفِ، وَحَلَمَةِ الثَّدْيِ، وَالْكَفِّ، وَالْقَدَمِ، وَحَشَفَةِ الذَّكَرِ، وَمَا ظَهَرَ مِنَ السِّنِّ، وَتَسْوِيْدِهَا دِيَةُ الْعُضْوِ كُلِّهِ. وَفِيْ

	بَعْضِ ذٰلِكَ بِالْحِسَابِ مِنْ دِيَتِهِ.

[XIV.6.6] These parts are essential for the function of the limb of which they are part. This means that mutilating the soft tip of the nose is like mutilating the entire nose, warranting the obligation of the complete indemnity. For each nipple is the indemnity of the breast, which is 1/2 the complete indemnity. For each hand or foot, there is 1/2 the complete indemnity. The reason why he mentions them here is that there is no difference in the authorized position of the madh-hab between cutting the hand at the wrist or (the forearm at) the elbow or the foot at the ankle or (the leg at) the knee. If he breaks off the erupted part of the tooth, the entire indemnity for the tooth will be binding, as if he extracted it from the root.

[XIV.6.7] If he cuts off 1/2 of the tip of the nose, the victim is entitled to 1/2 of the indemnity. If he breaks off 1/2 of the tooth, the victim is entitled to 2.5 camels (2 camels plus the value of 1/2 a camel).

For (mutilating) the paralytic hand, leg, or penis; the penis of the castrated or impotent; the tongue of the mute; the blind eye; the black tooth; the penis whose glans is missing; the breast whose nipple is missing; the nose whose tip is missing; or the extra digit, the compensation will be determined by the authorities. [XIV.6.8] As for the paralytic ear or nose, the nose of one who has no sense of smell, or the ear of the deaf, the entire indemnity of the organ will be binding. [XIV.6.9]	وَفِي الأَشَلِ مِنَ الْيَدِ وَالرِّجْلِ وَالذَّكَرِ، وَذَكَرِ الْخَصِيِّ وَالعِنِّيْنِ، وَلِسَانِ الأَخْرَسِ، وَالْعَيْنِ الْقَائِمَةِ، وَالسِّنِّ السَّوْدَاءِ، وَالذَّكَرِ دُوْنَ حَشَفَتِهِ، وَالثَّدْيِ دُوْنَ حَلَمَتِهِ، وَالأَنْفِ دُوْنَ أَرْنَبَتِهِ، وَالزَّائِدِ مِنَ الأَصَابِعِ وَغَيْرِهَا، حُكُوْمَةٌ. وَفِي الأَشَلِّ مِنَ الأُذُنِ وَالأَنْفِ وَأَنْفِ الأَخْشَمِ، وَأُذُنِ الأَصَمِّ دِيَتُهَا كَامِلَةٌ.

[XIV.6.8] To be determined by the court, because these organs are missing essential parts/qualities, so they are not treated like perfect organs.

[XIV.6.9] Because they still provide a vital function and beauty, despite the defects mentioned.

[XIV.7] Chapter on Head and Face Injuries and Others

بَابُ الشِّجَاجِ وَغَيْرِهَا

[Facial Injuries]

Shijâj (sg. *shajjah*) are the head and face injuries. There are nine [XIV.7.1] (arranged in order of their depth): 1- *al-ḥârişah*, which disrupts the skin without causing any bleeding 2- *al-bâzilah*, which causes slight bleeding 3- *al-bâḍi'ah*, which cuts into the flesh beneath the skin 4- *al-mutalâḥimah*, which cuts through the flesh 5- *as-simḥâq*, which separates from the bone by a fine membrane (periosteum) These five injuries (above) have no fixed compensation [XIV.7.2] and no retribution in any case. [XIV.7.3] 6- *al-mooḍiḥah*, which reaches the bone; five camels are due for it, or the equal retribution if it was intentional 7- *al-hâshimah*, which exposes and crushes the bone; ten camels are due for it	الشِّجَاجُ هِيَ: جُرُوْحُ الرَّأْسِ وَالْوَجْهِ. وَهِيَ تِسْعٌ: 1. أَوَّلُهَا الْحَارِصَةُ: الَّتِيْ تَشُقُّ الْجِلْدَ شَقًّا لَا يَظْهَرُ مِنْهُ دَمٌ 2. ثُمَّ الْبَازِلَةُ: الَّتِيْ يَنْزِلُ مِنْهَا دَمٌ يَسِيْرٌ 3. ثُمَّ الْبَاضِعَةُ: الَّتِيْ تَبْضَعُ اللَّحْمَ بَعْدَ الْجِلْدِ 4. ثُمَّ الْمُتَلَاحِمَةُ: الَّتِيْ أَخَذَتْ فِيْ اللَّحْمِ 5. ثُمَّ السِّمْحَاقُ: الَّتِيْ بَيْنَهَا وَبَيْنَ الْعَظْمِ قِشْرَةٌ رَقِيْقَةٌ فَهَذِهِ الْخَمْسُ لَا تَوْقِيْتَ فِيْهَا، وَلَا قِصَاصَ بِحَالٍ. 6. ثُمَّ الْمُوْضِحَةُ، وَهِيَ الَّتِيْ وَصَلَتْ إِلَى الْعَظْمِ، وَفِيْهَا خَمْسٌ مِنَ الْإِبِلِ، وَالْقِصَاصُ إِذَا كَانَتْ عَمْدًا 7. ثُمَّ الْهَاشِمَةُ، وَهِيَ الَّتِيْ تُوْضِحُ

8- *al-munaqqilah*, which exposes, crushes, and displaces the bone; 15 camels are due for it 9- *al-ma'moomah*, which reaches the sheath of the brain (dura mater); one-third the full indemnity is due for it	الْعَظْمَ وَتُهَشِّمُهُ، وَفِيْهَا عَشْرٌ مِنَ الْإِبِلِ 8. ثُمَّ الْمُنَقِّلَةُ وَهِيَ الَّتِيْ تُوْضِحُ وَتُهَشِّمُ وَتَنْقُلُ عِظَامَهَا، وَفِيْهَا خَمْسَ عَشْرَةَ مِنَ الْإِبِلِ 9. ثُمَّ الْمَأْمُوْمَةُ وَهِيَ الَّتِيْ تَصِلُ إِلىٰ جِلْدَةِ الدِّمَاغِ، وَفِيْهَا ثُلُثُ الدِّيَةِ

[XIV.7.1] (A/SM): They are ten: the nine mentioned here and ad-dâmighah, which penetrates the sheath of the brain (dura mater); one-third of the full indemnity is due for it.

[XIV.7.2] The compensation will be determined by the judiciary.

[XIV.7.3] Retribution is not permissible here because of the difficulty of ensuring equality since the wound does not stop at a discernible landmark, such as in the case of the sixth one, al-mooḍiḥah.

[Other Injuries]

For the *jâ'ifah* (wound that penetrates into a body cavity), the compensation is one-third of the complete indemnity. If it comes out from the other side, it is considered two jâ'ifahs.	فِيْ الْجَائِفَةِ ثُلُثُ الدِّيَةِ، وَهِيَ الَّتِيْ تَصِلُ إِلىٰ الْجَوْفِ، فَإِنْ خَرَجَتْ مِنْ جَانِبٍ آخَرَ، فَهِيَ جَائِفَتَانِ.

For (breaking) a rib, one camel is the due compensation; for the two collar bones	وَفِيْ الضِّلَعِ بَعِيْرٌ، وَفِيْ التَّرْقُوَتَيْنِ بَعِيْرَانِ، وَفِيْ

(clavicles), two camels; [XIV.7.4] and for (breaking) the wrists, four camels. [XIV.7.5]	الزَّنْدَيْنِ أَرْبَعَةُ أَبْعِرَةٍ.

[XIV.7.4] One camel for each collar bone.

[XIV.7.5] Two camels for each wrist. What is meant here is the distal end of the forearm that meets the hand; it consists of two bones, the ulna and radius, so there is one camel due for each bone.

Aside from the injuries that have fixed compensation and those like them, the compensation will be determined on a case-by-case basis. The compensation is determined by assuming that the injured is a slave, and his value as a slave before the injury will be determined; then his value after the complete healing of the injury will be assessed. The depreciation in value (as a percentage) will be the basis of calculating the diyah for the injury. [XIV.7.6] The exception to this is when the (mutilated) organ has a fixed compensation, in which case he (the assessor) should not exceed that. For example, for a head and face injury that is less than a mooḍiḥah, the compensation cannot be more than that for the mooḍiḥah. Likewise, the compensation for injuring a phalanx should not be more than that for cutting it off completely.	وَمَا عَدَا هَذَا مِمَّا لَا يُقَدَّرُ فِيْهِ، وَلَا هُوَ فِيْ مَعْنَاهُ، فَفِيْهِ حُكُوْمَةٌ. وَهِيَ أَنْ يُقَوَّمَ الْمَجْنِيُّ عَلَيْهِ كَأَنَّهُ عَبْدٌ لَا جِنَايَةَ بِهِ، ثُمَّ يُقَوَّمَ، وَهِيَ بِهِ قَدْ بَرَأَتْ، فَمَا نَقَصَ مِنْ قِيْمَتِهِ، فَلَهُ بِقِسْطِهِ مِنْ دِيَتِهِ، إِلَّا أَنْ تَكُوْنَ الْجِنَايَةُ عَلَىٰ عُضْوٍ فِيْهِ مُقَدَّرٌ، فَلَا يُجَاوِزُ بِهِ أَرْشَ الْمُقَدَّرِ، مِثْلَ أَنْ يَشُجَّهُ دُوْنَ الْمُوْضِحَةِ، فَلَا يَجِبُ أَكْثَرُ مِنْ أَرْشِهَا، أَوْ يَجْرَحَ أَنْمُلَةً، فَلَا يَجِبُ أَكْثَرُ مِنْ دِيَتِهَا.

[XIV.7.6] If the victim’s value as a slave is thought to be 100 dinars, and after the injury it is thought to be 85, then 15% of the value was lost because of the injury. The compensation for the injury is then 15% of the complete indemnity.

[XIV.8] Chapter on Expiation for Killing

بَابُ كَفَّارَةِ الْقَتْلِ

Whoever kills a believer or a dhimmi without justification, [XIV.8.1] or participates in a killing or in the abortion of a fetus, must expiate. The expiation is by freeing a believing slave; he who does not find the means to do so must fast two consecutive months to show repentance to Allah. This is whether or not he (the killer) is mukallaf and whether he is free or a slave.	وَمَنْ قَتَلَ مُؤْمِنًا أَوْ ذِمِّيًّا بِغَيْرِ حَقٍّ، أَوْ شَارَكَ فِيْهِ، وَفِيْ إِسْقَاطِ جَنِيْنٍ، فَعَلَيْهِ كَفَّارَةٌ، وَهِيَ تَحْرِيْرُ رَقَبَةٍ مُؤْمِنَةٍ، فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، تَوْبَةً مِنَ اللهِ، سَوَاءٌ كَانَ مُكَلَّفًا أَوْ غَيْرَ مُكَلَّفٍ، حُرًّا أَوْ عَبْدًا.

[XIV.8.1] This indicates that there is expiation in all three types of unjustifiable killing. Here are the details:

Ibn al-Mundhir reported the consensus that expiation is obligatory in the case of mistaken killing. This is because Allah said:

{وَمَن قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَدِيَةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَن يَصَّدَّقُوا}

{…And whoever kills a believer by mistake – then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity…} (an-Nisâ' 4:92)

As for intentional murder:

(A) + (+H, +M): No expiation; it is too enormous a sin to be subject to expiation.

(a) + (-S): There is expiation; if one who kills by mistake must expiate, then the one who kills intentionally is even more bound to expiate.

As for the quasi-intentional murder:

(A) + (+H, +S): There is expiation.

(-h): There is no expiation.

Note that in the popular view of the Mâlikis, killing is either intentional or mistaken; there is no third category of quasi-intentional murder.

If two people collide and die, then a *kaffârah* (expiation) is binding on each of them, and the indemnity for each one is binding on the other's family. If they were two horsemen (on horses), and their horses died, each one of them would be liable for the other's horse. If one of them was standing and the other was moving, the moving one would be liable for the mount of the standing one, and his 'âqilah would owe the indemnity for him. This is unless the standing one was committing a violation by standing, such as one who sits in a narrow street or a path that belongs to the moving commuter; in this case, he would be liable for the expiation, the compensation for the moving commuter and his mount, and nothing would be owed by the moving commuter or his 'âqilah. [XIV.8.2]	فَلَوْ تَصَادَمَ نَفْسَانِ فَمَاتَا، فَعَلَىٰ كُلِّ وَاحِدٍ مِنْهُمَا كَفَّارَةٌ، وَدِيَةُ صَاحِبِهِ عَلَىٰ عَاقِلَتِهِ، وَإِنْ كَانَا فَارِسَيْنِ، فَمَاتَ فَرَسَاهُمَا فَعَلَىٰ كُلِّ وَاحِدٍ مِنْهُمَا ضَمَانُ فَرَسِ الْآخَرِ. وَإِنْ كَانَ أَحَدُهُمَا وَاقِفًا وَالْآخَرُ سَائِرًا، فَعَلَىٰ السَّائِرِ ضَمَانُ دَابَّةِ الْوَاقِفِ، وَعَلَىٰ عَاقِلَتِهِ دِيَتُهُ. إِلَّا أَنْ يَكُوْنَ الْوَاقِفُ مُتَعَدِّيًا بِوُقُوْفِهِ، كَالْقَاعِدِ فِيْ طَرِيْقٍ ضَيِّقٍ، أَوْ مِلْكِ السَّائِرِ، عَلَيْهِ كَفَّارَةٌ وَضَمَانُ السَّائِرِ وَدَابَّتِهِ، وَلَا شَيْءَ عَلَىٰ السَّائِرِ وَلَا عَلَىٰ عَاقِلَتِهِ.

[XIV.8.2] Notice the extent of precision and detail in the tradition of fiqh – and this in a book that is considered only an introductory manual. The richness of this legacy provides immense resources for our contemporary jurists to draw on and extrapolate from.

If three people (launch a projectile) using a catapult, and the rock kills an inviolable	وَإِذَا رَمَى ثَلَاثَةٌ بِالْمَنْجَنِيْقِ، فَقَتَلَ

person, expiation is binding on each one of them, and one-third of the indemnity is due from his ‘âqilah. If the rock kills one of them (the three), the same applies, except that one-third of the indemnity will be dropped (since his death was partially caused by the individual himself). If they are more than three, then the share for which the victim is responsible is dropped, and the remaining indemnity is binding on the rest.	الْحَجَرُ مَعْصُوْمًا، فَعَلٰى كُلِّ وَاحِدٍ مِنْهُمْ كَفَّارَةٌ، وَعَلٰى عَاقِلَتِهِ ثُلُثُ دِيَتِهِ، وَإِنْ قُتِلَ أَحَدُهُمْ فَكَذٰلِكَ، إِلَّا أَنَّهُ يَسْقُطُ ثُلُثُ دِيَتِهِ فِيْ مُقَابَلَةِ فِعْلِهِ. وَإِنْ كَانُوْا أَكْثَرَ مِنْ ثَلَاثَةٍ، سَقَطَتْ حِصَّةُ الْقَتِيْلِ وَبَاقِيْ الدِّيَةِ فِيْ أَمْوَالِ الْبَاقِيْنَ.

[XIV.9] Chapter on Collective Repetitive Oath Taking (*Qasâmah*)

بَابُ الْقَسَامَةِ

Sahl ibn Abi Ḥathmah and Râfi‘ ibn Khadeej narrated that Muḥayyiṣah and ‘Abdullâh ibn Sahl went to Khaybar and parted (from each other) among palm trees. ‘Abdullâh ibn Sahl was killed, and the Jews were blamed (for the murder). The Messenger of Allah (SA) said, “Let 50 of you take oaths regarding (accusing) a man from them, and he should be surrendered with his rope (around his neck).” They said, “We did not see this matter ourselves. How can we take an oath?” He said, “The Jews will exonerate themselves by the oaths of 50 of them.” They said, “Messenger of Allah, they are a people who are unbelievers.” Then the Messenger of Allah (SA) paid them the blood money himself. [XIV.9.1]	رَوَى سَهْلُ بْنُ أَبِيْ حَثْمَةَ، وَرَافِعُ بْنُ خَدِيْجٍ أَنَّ مُحَيِّصَةَ، وَعَبْدَ اللهِ بْنَ سَهْلٍ انْطَلَقَا قِبَلَ خَيْبَرَ فتفرقا في النخل فَقُتِلَ عَبْدُ اللهِ بْنُ سَهْلٍ، فاتَّهَمُوا الْيَهُوْدَ به، فَقَالَ رَسُوْلُ اللهِ ﷺ: «يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ» فقَالُوا أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ قَالَ «فَتُبَرِّئُكُمْ يَهُودُ بِأَيْمَانِ خَمْسِينَ مِنْهُمْ» قَالُوا «قَوْمٌ كُفَّارٌ؛» قَالَ، «فَوَدَاهُ النَّبِي ﷺ مِنْ قِبَلِهِ.»

[XIV.9] Introduction

Islamic law is ultimately concerned with the protection of life. When people are wounded or cheated by someone else, they can be there to speak for themselves, but this is not the case when the victim is killed. Moreover, murder usually happens in places and circumstances that make the establishment of definitive proof against the offender harder than in other crimes. This was even truer in the past, before the remarkable advancements in forensic sciences. This chapter deals with a very special topic pertaining to admissible proofs for establishing the crime of murder.

Some of the scholars did not accept the collective and repetitive oath taking (which will be explained) as an admissible proof in the Islamic judiciary; these include Sâlim ibn ‘Abdullâh, Abu Qilâbah, ‘Umar ibn

‘Abdul-‘Azeez, Sulaymân ibn Yasâr and al-Ḥakam ibn ‘Utaybah. The majority, including (A) + (+H, +M, +S), accepted it, although they had many disagreements regarding its nature, prerequisites, and scope of operation, and the punishment required once guilt was established through it.

[XIV.9.1] (Ag) The scholars who declined to act on qasâmah argued that the Prophet (SA) only told them to take the oaths, as they would have done in jâhiliyah (the age of spiritual darkness before Islam), to show them that this was not permissible in Islam. When his Companions argued that they could not take oaths about something they had not witnessed, he did not tell them that they could; he simply said that the Jews would then take the oaths to deny their involvement in the killing of their relative. These scholars also argued that there is no traceable proof that the Prophet (SA), Abu Bakr or ‘Umar ever applied qasâmah in retribution.

When a murder victim is found, if his heirs blame a certain man for killing him, and it is known that there was hostility between them previously, as well as reasonable suspicion [XIV.9.2] – as in the case of the Anṣâr and the people of Khaybar – then those heirs will take 50 oaths against one of them, and they will thereby be entitled to take his life; [XIV.9.3] if they do not take the oaths, then the defendant will take 50 oaths (that he is innocent) and will be acquitted. If they decline to take the oaths, they will be bound to pay the diyah.	فَمَتَى وُجِدَ قَتِيْلٌ، فَادَّعَى أَوْلِيَاؤُهُ عَلَىٰ رَجُلٍ قَتْلَهُ، وَكَانَتْ بَيْنَهُمْ عَدَاوَةٌ وَلَوْثٌ، كَمَا كَانَ بَيْنَ الْأَنْصَارِ، وَأَهْلِ خَيْبَرَ، أَقْسَمَ الْأَوْلِيَاءُ عَلَىٰ وَاحِدٍ مِنْهُمْ خَمْسِيْنَ يَمِيْنًا، وَاسْتَحَقُّوْا دَمَهُ، فَإِنْ لَمْ يَحْلِفُوْا حَلَفَ الْمُدَّعَى عَلَيْهِ خَمْسِيْنَ يَمِيْنًا، وَبَرِئَ، فَإِنْ نَكَلُوْا فَعَلَيْهِمُ الدِّيَةُ.

[XIV.9.2] Prerequisites for Qasâmah

They all agreed that:

Qasâmah applies only to homicide. (A) + (+M, +S): There is another condition, which is the presence of lawth (grounds for strong suspicion) that falls short of complete proof but gives credence to the claim of the heirs. According to (a, M, S), lawth may consist of corroborating circumstances

that strongly support the accusation against the defendant. These circumstances alone do not establish guilt; they permit recourse to the prescribed oath procedure, subject to its remaining conditions. Examples accepted as lawth under this broader definition, with differences among the jurists:

- The testimony of one person (whereas two would be required as proof).

- Two people who can testify that X wounded Y, but not that X killed Y.

- The murder victim saying before death that X is responsible for his or her death.

- The presence of X near the crime scene, holding a sharp tool or having bloody garments.

If you examine the reasons for suspicion, add to them the presence of pre-existing hostility, and then add the willingness of all the victim's heirs to take 50 oaths against the accused, you will come to the conclusion that qasâmah is not based on mere conjecture. Some of the examples of lawth above would be considered sufficient to establish murder in some modern judiciaries.

(A): Lawth is manifest pre-existing hostility between the deceased and the defendant, such as a blood feud.

(-H): They do not require lawth. Their procedure applies when a homicide victim is found in a locality or property whose inhabitants or owners bear responsibility under its rules. It is noteworthy here to say that (-H) will ask the defendants, not plaintiffs, to take the denial oaths. In this case, qasâmah ensures that every neighborhood provides enough protection to outsiders, to avoid being responsible for the indemnity of those who get killed in their precinct.

[XIV.9.3] Punishment Warranted upon Qasâmah

(A) + (+M): The establishment of guilt through qasâmah justifies qiṣâṣ. This position is supported by the evident implication of the hadith mentioned in the matn.

(-H, -S): It only entitles the victim's heirs to the indemnity. This was also reported from Abu Bakr, 'Umar, and Ibn 'Abbâs.

If the plaintiffs do not take the oaths and do not accept the oaths of the defendant, then the imam (authorities) will pay his indemnity from bayt ul-mâl. They cannot take oaths against more than one person. If there was neither known, pre-existing hostility between them nor lawth (reasonable suspicion), the defendant will take one oath only and will thereby be acquitted.	فَإِنْ لَمْ يَحْلِفِ الْمُدَّعُوْنَ، وَلَمْ يَرْضَوْا بِيَمِيْنِ الْمُدَّعَى عَلَيْهِ، وَدَاهُ الْإِمَامُ مِنْ بَيْتِ الْمَالِ. وَلَا يُقْسِمُوْنَ عَلٰى أَكْثَرَ مِنْ وَاحِدٍ. وَإِنْ لَمْ يَكُنْ بَيْنَهُمْ عَدَاوَةٌ وَلَا لَوْثٌ، حَلَفَ الْمُدَّعَى عَلَيْهِ يَمِيْنًا وَاحِدَةً، وَبَرِئَ.

[XIV.10] Chapter on *Ḥudood* (Fixed Penalties)

كِتَابُ الحُدُودِ

The ḥadd punishment is only binding against one who is mukallaf (legally liable) and aware of the prohibition. No one other than the imam or his deputies (authorities) may execute it.	لَا يَجِبُ الْحَدُّ إِلَّا عَلَىٰ مُكَلَّفٍ، عَالِمٍ بِالتَّحرِيمِ، وَلَا يُقِيْمُهُ إِلَّا الْإِمَامُ أَوْ نَائِبُهُ.

[XIV.10] Introduction

Ḥudood punishments are those that have been specified by the revelation. The word ḥudood (sg. ḥadd) means boundaries or restrictions. This is a suitable name, since these punishments are meant to act as deterrents for certain crimes where strong drives may overwhelm human willpower and restraint through some of our greatest weaknesses, such as lust, as in zinâ; greed, as in theft (sariqah); addiction, as in consuming intoxicants (shurb al-khamr); anger and vengefulness, as in unproven accusations of fornication (qadhf); and many of them combined, as in banditry (ḥirâbah). These five are the only agreed-upon ḥudood crimes. Some madh-habs added others to the ḥudood crimes: public apostasy (riddah), sodomy between two males (liwâṭ), and treacherous murder (qatl al-gheelah). Of these three, only the punishment for sodomy is recognized as a ḥadd by (A).

See the appendix on ḥudood.

	إِلَّا السَّيِّدُ، فَإِنَّ لَهُ إِقَامَتَهُ بِالْجَلْدِ خَاصَّةً عَلَىٰ رَقِيْقِهِ الْقِنِّ؛ لِقَوْلِ رَسُوْلِ اللهِ «إِذَا زَنَتْ أَمَةُ أَحَدِكُمْ، فَلْيَجْلِدْهَا.» وَلَيْسَ لَهُ قَطْعُهُ فِيْ السَّرِقَةِ، وَلَا قَتْلُهُ فِيْ الرِّدَّةِ، وَلَا جَلْدُ مُكَاتَبِهِ وَلَا أَمَتِهِ الْمُزَوَّجَةِ. وَحَدُّ الرَّقِيْقِ فِيْ الْجَلْدِ نِصْفُ حَدِّ الْحُرِّ.

If one confesses to (a crime punishable by) a ḥadd and then recants the confession, it (the ḥadd) is dropped. [XIV.10.1]	وَمَنْ أَقَرَّ بِحَدٍّ ثُمَّ رَجَعَ عَنْهُ سَقَطَ.

[XIV.10.1] If one retracts a confession establishing a ḥadd that is purely a right of Allah, the ḥadd based on that confession is dropped. This does not erase established human rights: in the Ḥanbali school, an admission of qadhf

is not cancelled by retraction, and a property owner's financial right is a separate matter.

Subsection: In flogging, the whip used should be neither new nor worn out. The person being flogged is not to be laid on the ground, restrained or stripped of his or her clothing. The flogger should spare the face, head, and external genitalia. [XIV.10.2]	فَصْلٌ: وَيُضْرَبُ فِيْ الْحَدِّ بِسَوْطٍ، لَا جَدِيْدٍ وَلَا خَلَقٍ، وَلَا يُمَدُّ، وَلَا يُرْبَطُ وَلَا يُجَرَّدُ، وَيُتَّقَى وَجْهُهُ وَرَأْسُهُ وَفَرْجُهُ.

[XIV.10.2] Peter Moskos, an associate professor of law in the USA, discussed the replacement of corporal punishments by long-term imprisonment; he concluded that the latter often has more damaging consequences on the prisoners and may not bring about the desired outcome for the society. (In Defense of Flogging, Peter Moskos. NY: Basic, 2011, 50.) Imprisonment, which is more feasible now than before, may still be a valid option for punishment, and our jurists recognized that as one of the ta'zeer punishments. However, the discussion should be about the scope and frequency of its use.

The man is flogged standing, while the woman is flogged sitting; her clothes should be fastened on her, and her hands held.	وَيُضْرَبُ الرَّجُلُ قَائِمًا، وَالْمَرْأَةُ جَالِسَةً وَتُشَدُّ عَلَيْهَا ثِيَابُهَا، وَتُمْسَكُ يَدَاهَا.

If one is sick but is expected to recover, the punishment will be deferred until he or she recovers. [XIV.10.3] This is because of what has been reported on the authority of 'Ali (RA) that "A slavewoman belonging to the Messenger of Allah (SA) committed adultery, so he ordered me to flog her. But she had recently given birth to a child, and I was afraid that if I flogged her, I might kill her. So I mentioned that to the Prophet (SA), and he said, 'You have done well.'" [XIV.10.4]	وَمَنْ كَانَ مَرِيْضًا يُرْجَى بُرْؤُهُ، أُخِّرَ حَتَّى يَبْرَأَ، لِمَا رَوَى عَلِيٌّ رضي الله عنه: «أَنَّ أَمَةً لِرَسُولِ اللَّهِ ﷺ زَنَتْ فَأَمَرَنِي أَنْ أَجْلِدَهَا فَإِذَا هِيَ حَدِيثُ عَهْدٍ بِنِفَاسٍ فَخَشِيتُ إِنْ أَنَا جَلَدْتُهَا أَنْ أَقْتُلَهَا فَذَكَرْتُ ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ ‹أَحْسَنْتَ›.»

If recovery is not expected, and there is a concern about the safety of flogging, then he or she will be struck once with a handful of as many branches as the number of times he or she should be flogged. [XIV.10.5]	فَإِنْ لَمْ يُرْجَ بُرْؤُهُ وَخُشِيَ عَلَيْهِ مِنَ السَّوْطِ، جُلِدَ بِضِغْثٍ فِيْهِ عِيْدَانٌ بِعَدَدِ مَا يَجِبُ عَلَيْهِ مَرَّةً وَاحِدَةً.

[XIV.10.3] (a) + (-H, -M, -S) (the vast majority)

(A/SM & Iqnâʿ): It will not be deferred.

[XIV.10.4] (M)

[XIV.10.5] For example, instead of being flogged 40 times, the person will be flogged just once with one bundle of 40 shoots. This will fulfill the obligation without causing more harm.

Subsection: If many ḥadd punishments come due for Allah against one person, and these include the death penalty, then he will be killed, and the rest are all dropped. [XIV.10.6] If he commits fornication or theft several times, and the ḥadd punishments are not executed, only one ḥadd punishment will be binding. If many ḥadd punishments of different sorts (excluding the death penalty) become binding, they will all be carried out, starting with the lightest. [XIV.10.7]	فصل: وَإِنِ اجْتَمَعَتْ حُدُوْدٌ للهِ تَعَالىٰ فِيْهَا قَتْلٌ، قُتِلَ، وَسَقَطَ سَائِرُهَا. وَلَوْ زَنَى مِرَارًا، أَوْ سَرَقَ مِرَارًا، وَلَمْ يُحَدَّ، فَحَدٌّ وَاحِدٌ. وَإِنِ اجْتَمَعَتْ حُدُوْدٌ مِنْ أَجْنَاسٍ لَا قَتْلَ فِيْهَا، اسْتُوْفِيَتْ كُلُّهَا، وَيُبْدَأُ بِالْأَخَفِّ فَالْأَخَفِّ مِنْهَا.

[XIV.10.6] As for the rights of people, like retribution for injuries, he is still liable for all of them.

[XIV.10.7] For example, if he steals and also drinks alcohol, the ḥadd for drinking will be executed first, and then that for stealing.

Ḥadd punishments must be averted if there is any doubt (ambiguity). If a man has	وَتُدْرَأُ الْحُدُوْدُ بِالشُّبُهَاتِ، فَلَوْ زَنَى

intercourse with a slavewoman in whom he owns a share, however small, or who belongs to his child, or has intercourse in a marriage whose validity is disputed or under duress, or he steals from a property in which he or his descendants have some entitlement, or he steals from a debtor from whom he cannot recover what is owed to him, up to the amount of his right, [XIV.10.8] then he will not be punished by the ḥadd.	بِجَارِيَةٍ لَهُ فِيْهَا شِرْكٌ وَإِنْ قَلَّ، أَوْ لِوَلَدِهِ، أَوْ وَطِئَ فِيْ نِكَاحٍ مُخْتَلَفٍ فِيْهِ، أَوْ مُكْرَهًا، أَوْ سَرَقَ مِنْ مَالٍ لَهُ فِيْهِ حَقٌّ، أَوْ لِوَلَدِهِ وَإِنْ سَفَلَ، أَوْ مِنْ مَالِ غَرِيْمِهِ الَّذِيْ يَعْجِزُ عَنْ تَخْلِيْصِهِ مِنْهُ بِقَدْرِ حَقِّهِ، لَمْ يُحَدَّ.

[XIV.10.8] Like a delinquent debtor, or a person who wrongfully seized his property or falsely denied receiving a trust from him.

Subsection: If one commits a ḥadd crime while outside of the Ḥaram and then seeks refuge inside it, or if one who is liable for retribution seeks refuge inside it, the ḥadd will not be executed until he leaves the Ḥaram. However, he will not be sold to or bought from. If he commits that (crime) in the Ḥaram, then the ḥadd will be executed there. If he commits a ḥadd crime while on a military expedition, the ḥadd will not be executed until he leaves the abode of war.	فَصْلٌ: وَمَنْ أَتَى حَدًّا خَارِجَ الْحَرَمِ، ثُمَّ لَجَأَ إِلَى الْحَرَمِ، أَوْ لَجَأَ إِلَيْهِ مَنْ عَلَيْهِ قِصَاصٌ، لَمْ يُسْتَوْفَ مِنْهُ حَتَّى يَخْرُجَ. لَكِنْ لَا يُبَايِعُ وَلَا يُشَارِيْ، وَإِنْ فَعَلَ ذَلِكَ فِيْ الْحَرَمِ، اسْتُوْفِيَ مِنْهُ فِيْهِ. إِنْ أَتَى حَدًّا فِيْ الْغَزْوِ، لَمْ يُسْتَوْفَ حَتَّى يَخْرُجَ مِنْ دَارِ الْحَرْبِ.

[XIV.11] Chapter on the *Ḥadd* (Penalty) for Fornication and Adultery

بَابُ حَدِّ الزِّنَى

If one commits fornication in the front or back (private parts) of a woman who is not legal for him or with a boy, or if this is done to him, his ḥadd punishment will be stoning if he is *muḥṣan* (see next section) or 100 lashes and exile for one year if he is not. This is because the Messenger of Allah (SA) said, “Take from me. For Allah has a way made for them: For the virgin who commits fornication with a virgin is 100 lashes and exile for one year, and for a muḥṣan who commits adultery with a muḥṣan is stoning.” [XIV.11.1]	مَنْ أَتَى الْفَاحِشَةَ فِيْ قُبُلٍ أَوْ دُبُرٍ، مِنِ امْرَأَةٍ لَا يَمْلِكُهَا، أَوْ مِنْ غُلَامٍ، أَوْ مَنْ فُعِلَ بِهِ ذٰلِكَ، فَحَدُّهُ الرَّجْمُ، إِنْ كَانَ مُحْصَنًا، أَوْ جَلْدُ مِئَةٍ وَتَغْرِيْبُ عَامٍ، إِنْ لَمْ يَكُنْ مُحْصَنًا، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «خُذُوا عَنِّي، قَدْ جَعَلَ اَللَّهُ لَهُنَّ سَبِيلاً، اَلْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ، وَتَغْرِيبُ عَامٍ، وَالثَّيِّبُ بِالثَّيِّبِ الرَّجْمُ.»

[XIV.11.1] (M – from ‘Ubâdah ibn aṣ-Ṣâmit)

[Who Is the *Muḥṣan?*]

The muḥṣan is the sane, free adult who has previously had intercourse with a wife who has these same attributes, in the front (genitalia), during the course of a valid marriage.	وَالْمُحْصَنُ هُوَ: الْحُرُّ الْبَالِغُ الْعَاقِلُ الَّذِيْ قَدْ وَطِئَ زَوْجَةً مِثْلَهُ فِيْ هٰذِهِ الصِّفَاتِ، فِيْ قُبُلِهَا فِيْ نِكَاحٍ صَحِيْحٍ.

[Admissible Proofs of *Zinâ*]

Fornication can be established only with one of two (admissible proofs): [XIV.11.2] 1. The offender admitting to the act four times, while being explicit in describing its true nature.	وَلَايَثْبُتُ الزِّنَا إِلَّا بِأَحَدِ أَمْرَيْنِ: 1. إِقْرَارٌ بِهِ أَرْبَعَ مَرَّاتٍ، مُصَرِّحًا بِذِكْرِ حَقِيْقَتِهِ

2. The testimony of four free, adult, trustworthy men, describing the act of fornication, in one session, and agreeing on their (detailed) testimony concerning the very same act of fornication.	2. أَوْ شَهَادَةِ أَرْبَعَةِ رِجَالٍ أَحْرَارٍ عُدُوْلٍ، يَصِفُوْنَ الزِّنَى، وَيَجِيْؤُوْنَ فِيْ مَجْلِسٍ وَاحِدٍ، وَيَتَّفِقُوْنَ عَلَىٰ الشَّهَادَةِ بِزِنًى وَاحِدٍ.

[XIV.11.2] In the lifetime of the Prophet (SA), the crime of adultery was never established through four witnesses but only through the confession of the sinners, who sought purification from their sins even though they were encouraged to conceal them and repent in private. When Mâ'iz came to the Prophet (SA) and confessed, the Prophet (SA) asked if he was crazy, and he suggested that he may have only kissed the woman. He also encouraged him to retract his confession. (*M*, no. 1695a) In another narration, the Prophet (SA) asked, "Have you done it like a collyrium (eyeliner) stick when enclosed in its case and a rope in a well?" (*D*, no. 4428) This is the testimony the witnesses need to make.

[XIV.12] Chapter on the *Ḥadd* (Penalty) for Unproven Accusation of Fornication

بَابُ حَدِّ الْقَذْفِ

If one accuses a muḥṣan of zinâ or testifies against him or her, but he does not meet the requirements for a valid testimony, he will be flogged 80 times if the accused demands it. The muḥṣan (here) is the chaste, sane, free, adult Muslim. [XIV.12.1]	وَمَنْ رَمَى مُحْصَنًا بِالزِّنَا، أَوْ شَهِدَ عَلَيْهِ بِهِ، فَلَمْ تَكْمُلِ الشَّهَادَةُ عَلَيْهِ، جُلِدَ ثَمَانِيْنَ جَلْدَةً، إِذَا طَالَبَ الْمَقْذُوْفُ. وَالْمُحْصَنُ هُوَ الْحُرُّ الْبَالِغُ الْمُسْلِمُ العاقل الْعَفِيْفُ.

[XIV.12] Introduction

Islam preserves people's honor and dignity. One of the five essentials to be enshrined by the Muslim societies is honor; the rest are: spirituality, life, intellect, and property. Islam does not allow the invasion of people's privacy and the spoiling of their reputation as demonstrated in the culture of the tabloid newspapers. These scandalmongers destroy people's lives, strain or completely destroy family relations, and spread lewdness and obscenity in the society by normalizing them through their frequent mention; all of this is perpetrated in the name of the freedom of a few deviant people to express their sick ideas. A woman or a man accused of zinâ has the right, in the Islamic judiciary, to require the accuser to produce four trustworthy adult witnesses to attest to having seen the details of the act of fornication. If the accuser is unable to prove the accusation, the victim may demand that he or she be flogged.

[XIV.12.1] (A/SM & Iqnâʿ): Accusing a child who may realistically be a partner in intercourse, like a ten-year-old boy or nine-year-old girl, will make the punishment binding also.

Likewise, the one who accuses a woman involved in liʿân, or her child, will be punished by the ḥadd (of qadhf). [XIV.12.2]	وَيُحَدُّ مَنْ قَذَفَ الْمُلَاعِنَةَ أَوْ وَلَدَهَا.

[XIV.12.2] See The Book of Li‘ân under the section for family laws. If a woman is accused by her husband of zinâ, and she then undergoes the process of li‘ân, she is still considered innocent in the eyes of the law, and her honor and dignity are protected. Her accuser will be treated like the accuser of any chaste woman.

Whoever (wrongly) accuses a group in one statement will be punished once if they, or one of them, demands it. If some of them pardon him, the rights of the others are not relinquished.	وَمَنْ قَذَفَ جَمَاعَةً بِكَلِمَةٍ وَاحِدَةٍ، فَحَدٌّ وَاحِدٌ، إِذَا طَالَبُوْا أَوْ وَاحِدٌ مِنْهُمْ. فَإِنْ عَفَا بَعْضُهُمْ، لَمْ يَسْقُطْ حَقُّ غَيْرِهِ.

[XIV.13] Chapter on the *Ḥadd* (Penalty) for Drinking *Khamr*

بَابُ حَدِّ الْمُسْكِرِ

Whoever willingly drinks a *muskir*, [XIV.13.1] whether a small or large amount, while knowing that a large amount of it causes sukr, is flogged 40 times. [XIV.13.2] This is because ‘Ali flogged al-Waleed ibn ‘Uqbah 40 times for drinking khamr, and he said, “The Prophet (SA) flogged 40 times, Abu Bakr flogged 40 times, and ‘Umar flogged 80 times; all are Sunnah, and I prefer this.” [XIV.13.3]	وَمَنْ شَرِبَ مُسْكِرًا، قَلَّ أَوْ كَثُرَ، مُخْتَارًا، عَالِمًا أَنَّ كَثِيْرَهُ يُسْكِرُ، جُلِدَ الْحَدَّ أَرْبَعِيْنَ جَلْدَةً؛ لأَنَّ عَلِيًّا رضي الله عنه جَلَدَ الْوَلِيْدَ بْنَ عُقْبَةَ فِيْ الْخَمْرِ أَرْبَعِيْنَ، وَقَالَ: «جَلَدَ النَّبِيُّ ﷺ أَرْبَعِيْنَ، وَأَبُوْ بَكْرٍ أَرْبَعِيْنَ، وَعُمَرُ ثَمَانِيْنَ، وَكُلٌّ سُنَّةٌ، وَهَذَا أَحَبُّ إِلَيَّ.»

[XIV.13.1] Muskir is the drink that causes sukr. Intoxication and intoxicant are the best translations for sukr and muskir, respectively, yet they are still not entirely accurate; there are consequential differences between the intoxication that results from the consumption of alcoholic beverages and that which results from cocaine, for example.

The Ruling on Drugs

By consensus, taking drugs in amounts that impair reason for pleasure or recreation is forbidden; legitimate medical use is a separate matter. Still, many of the scholars who forbid such use and consider it an enormity do not give all these substances the same rulings as khamr; they distinguish between the intoxication associated with alcoholic beverages and other forms of impairment. Among them are the Mâliki scholars al-Ḥaṭṭâb and al-Qarâfi, the Shâfi‘i scholar Zakariyâ al-Anṣâri, and others. I find these distinctions significant, since substances that affect the mind do not all produce the same effects, although their effects may overlap. In my understanding, sukr, in the sense relevant to this prescribed punishment, involves more than impairment of reason alone. Ibn Taymiyah, however, regarded intoxicating hashish as included directly within the wording and

meaning of the texts prohibiting khamr and intoxicants. I nevertheless incline to the view that their shared prohibition does not, by itself, require that all these substances receive the same particular rulings as alcoholic beverages, especially the ḥadd. According to (A, t), intoxicating hashish incurs the ḥadd. However, al-Qarâfi, Zakariyâ al-Anṣâri, and Ibn Ḥajar al-Haytami hold that it incurs ta‘zeer instead, and their position has its own strength. While the difference in the manifestations of intoxication may not be consequential to their prohibition, since it is linked to the preservation of intellect, it causes enough ambiguity to ward off the ḥadd from people who consume such drugs vs. alcoholic beverages. The judge may still impose a discretionary punishment (ta‘zeer).

[XIV.13.2] (a) + (-S): 40 lashes.

(A/SM) + (+H, +M): 80 lashes.

[XIV.13.3] (M)

The same applies whether it is the juice of grapes or anything else. [XIV.13.4]	وَسَوَاءٌ كَانَ مِنْ عَصِيْرِ الْعِنَبِ أَوْ غَيْرِهِ.

[XIV.13.4] As long as it causes intoxication. The Prophet (SA) said:

{ كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ ، مَنْ شَرِبَ الْخَمْرَ فِي الدُّنْيَا فَمَاتَ وَهُوَ يُدْمِنُهَا لَمْ يَتُبْ ؛ لَمْ يَشْرَبْهَا فِي الآخِرَةِ }

“Every intoxicant is khamr, and every intoxicant is haram. If one drinks khamr in this world and then dies addicted to it, without having repented, he will not drink it in the hereafter.” (M – from Ibn ‘Umar)

Also, Ibn ‘Umar said, I heard ‘Umar say, from the minbar (raised pulpit) of the Messenger of Allah (SA):

«أما بعد، أيها الناس، إِنَّهُ قَدْ نَزَلَ تَحْرِيمُ الْخَمْرِ وَهِيَ مِنْ خَمْسَةِ أَشْيَاءَ الْعِنَبِ وَالتَّمْرِ وَالْعَسَلِ وَالْحِنْطَةِ وَالشَّعِيرِ وَالْخَمْرُ مَا خَامَرَ الْعَقْلَ.»

"O people, the prohibition of khamr was revealed when khamr was made from five things: grapes, dates, honey, wheat and barley. Khamr is whatever befogs the mind." (Ag)

When one commits an act that is forbidden but not punishable by a ḥadd, the punishment is not more than 10 lashes because Abu Burdah reported that the Messenger of Allah (SA) said, "No one should be flogged with more than 10 lashes, except in a ḥadd prescribed by Allah." [XIV.13.5] The only exception is when a man has intercourse with his wife's slave with his wife's permission; he will be flogged 100 times.	وَمَنْ أَتَى مِنَ الْمُحَرَّمَاتِ مَا لَا حَدَّ فِيْهِ، لَمْ يُزَدْ عَلَىٰ عَشْرِ جَلَدَاتٍ؛ لِمَا رَوَى أَبُوْ بُرْدَةَ قَالَ: قَالَ رَسُوْلُ اللهِ ﷺ: «لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرِ جَلَدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ» إِلَّا أَنْ يَطَأَ جَارِيَةَ امْرَأَتِهِ بِإِذْنِهَا، فَإِنَّهُ يُجْلَدُ مِئَةً.

[XIV.13.5] (Ag – from Abu Burdah)

[XIV.14] Chapter on the *Ḥadd* (Penalty) for Theft

بَابُ حَدِّ السَّرِقَة

If one [XIV.14.1] steals one-fourth of a dinar of gold, three dirhams of silver, or the equivalent of either one of them of any other property, [XIV.14.2] taking it out of the *ḥirz* (customary place for safeguarding similar properties), [XIV.14.3] his right hand will be amputated from the wrist and cauterized. [XIV.14.4]	وَمَنْ سَرَقَ رُبْعَ دِيْنَارٍ مِنَ الْعَيْنِ، أَوْ ثَلَاثَةَ دَرَاهِمَ مِنَ الْوَرِقِ، أَوْ مَا يُسَاوِيْ أَحَدَهُمَا مِنْ سَائِرِ الْمَالِ، وَأَخْرَجَهُ مِنَ الْحِرْزِ، قُطِعَتْ يَدُهُ الْيُمْنىٰ مِنْ مِفْصَلِ الْكَفِّ وَحُسِمَتْ.

[XIV.14] Introduction

Please see the appendix on ḥudood.

It must be remembered here that ‘Umar (RA) suspended this penalty in the year of famine. This penalty is meant to be upheld in a community where justice is afforded to all, but where some of them transgress, despite the lack of necessity, and violate the sanctity of others’ property. Within the proper context, it is meant to be a deterrent to those criminals and to those considering a career in crime. Where this is implemented, the rates of theft are dramatically lower although the punishment is rarely executed in actuality. In Saudi Arabia, for example, the historical figures cited by Brown record forty-five amputations for theft between 1981 and 1992. (Islamic Law and Legal System, Frank Vogel. Leiden: Brill, 2000, 246-47; Between God and the Sultan: A History of Islamic Law, Knut Vikør. Oxford: Oxford University Press, 2005, 266. From Stoning and Hand Cutting: Understanding the Hudud and the Shariah in Islam, J. Brown.)

[XIV.14.1] This punishment is applicable to sane adults only.

[XIV.14.2] This is the Ḥanbali position. (-H): The threshold is 10 dirhams.

One who steals less than this is usually stealing to afford the minimal requirements of sustenance. One-fourth dinar of gold is 1.063 grams.

One may not be cut if it was possible that he or she did not know that Islam prohibits stealing or that the value of the stolen property exceeded the niṣâb (threshold) for cutting.

[XIV.14.3] If the thief consumed the property inside the ḥirz, or reduced its value below the niṣâb before taking it out, for example by slaughtering it, there will be no cutting.

[XIV.14.4] To stop the bleeding and save the life of the offender.

If he does it again, his left foot will be cut from the ankle and cauterized. If he does it again, he should be imprisoned, but no more than one hand and one foot may be cut.	فَإِنْ عَادَ، قُطِعَتْ رِجْلُهُ الْيُسْرٰى مِنْ مِفْصَلِ الْكَعْبِ وَحُسِمَتْ. فَإِنْ عَادَ حُبِسَ، وَلَا يُقْطَعُ غَيْرُ يَدٍ وَرِجْلٍ.

Theft can only be established by the testimony of two trustworthy (witnesses) or an acknowledgment (repeated) twice.	لَا تَثْبُتُ السَّرِقَةُ إِلَّا بِشَهَادَةِ عَدْلَيْنِ، أَوِ اعْتِرَافٍ مَرَّتَيْنِ.

(The thief) is not cut unless the one whose property was stolen demands his property. If the owner gives or sells it to the thief before (going to the authorities), the cutting is cancelled; if he or she does it after that, it is not cancelled.	وَلَا يُقْطَعُ حَتَّى يُطَالِبَ الْمَسْرُوْقُ مِنْهُ بِمَالِهِ، وَإِنْ وَهَبَهَا لِلسَّارِقِ، أَوْ بَاعَهُ إِيَّاهَا قَبْلَ ذٰلِكَ، سَقَطَ الْقَطْعُ، وَإِنْ كَانَ بَعْدَهُ، لَمْ يَسْقُطْ.

If (the value of the property) falls below the niṣâb after it is taken out (of the ḥirz), the cutting is not annulled, but if that depreciation happens before, then (cutting) is not obligatory.	وَإِنْ نَقَصَتْ عَنِ النِّصَابِ بَعْدَ الْإِخْرَاجِ لَمْ يَسْقُطِ الْقَطْعُ، وَإِنْ كَانَ قَبْلَهُ لَمْ يَجِبْ. وَإِذَا قُطِعَ، فَعَلَيْهِ رَدُّ الْمَسْرُوْقِ، إِنْ

If he is cut, he must (still) return the stolen property if it exists. If it is lost or damaged, then he must return the value of it.	كَانَ بَاقِيًا، أَوْ قِيْمَتُهُ إِنْ كَانَ تَالِفًا.

[XIV.15] Chapter on the *Ḥadd* (Penalty) for Bandits

بَابُ حَدِّ الْمُحَارِبِيْنَ

They are those who openly intercept people in the desert [XIV.15.1] to seize their property.	وَهُمُ الَّذِيْنَ يَعْرِضُوْنَ لِلنَّاسِ فِيْ الصَّحْرَاءِ جَهْرَةً؛ لِيَأْخُذُوْا أَمْوَالَهُمْ.

[XIV.15.1] (A/SM): or in the city dwellings. What matters according to (A) is the lack of access to rescuers.

Those who commit murder and seize people's property must be killed and crucified until (their punishment) becomes well-known. [XIV.15.2] Afterwards, they (their bodies) will be given to their families.	فَمَنْ قَتَلَ مِنْهُمْ، وَأَخَذَ الْمَالَ، قُتِلَ وَصُلِبَ حَتَّى يَشْتَهِرَ، وَدُفِعَ إِلَىٰ أَهْلِهِ.

[XIV.15.2] Since this is a serious threat to the community, the severe punishment was meant to act as a deterrent to protect people and their property.

Those who kill but do not unlawfully seize property must be killed but should not be crucified.	وَمَنْ قَتَلَ وَلَمْ يَأْخُذِ الْمَالَ، قُتِلَ وَلَمْ يُصْلَبْ.

Those who seize property unlawfully (but do not kill) must have the right hand and left leg (foot) amputated in one session and cauterized. No one should have his limbs amputated unless he steals an amount that meets the threshold for cutting the (hand of the) thief.	وَمَنْ أَخَذَ الْمَالَ وَلَمْ يَقْتُلْ، قُطِعَتْ يَدُهُ الْيُمْنَىٰ وَرِجْلُهُ الْيُسْرَىٰ فِيْ مَقَامٍ وَاحِدٍ، وَحُسِمَتَا. وَلَا يُقْطَعُ إِلَّا مَنْ أَخَذَ مَا يُقْطَعُ السَّارِقُ بِهِ.

Those who frighten the wayfarers, but do not kill or seize property, should be exiled.	وَمَنْ أَخَافَ السَّبِيْلَ وَلَمْ يَقْتُلْ وَلَا أَخَذَ مَالاً، نُفِيَ مِنَ الْأَرْضِ.

If one repents before being subdued, then his ḥadd punishment that is due to Allah is dropped. He is still accountable for the rights of the people unless they pardon him. [XIV.15.3]	وَمَنْ تَابَ قَبْلَ الْقُدْرَةِ عَلَيْهِ، سَقَطَتْ عَنْهُ حُدُوْدُ اللهِ، وَأُخِذَ بِحُقُوْقِ الْآدَمِيِّيْنَ، إِلَّا أَنْ يُعْفَى لَهُ عَنْهَا.

[XIV.15.3] According to (a, s), the ḥadd punishments for zinâ, theft, and drinking intoxicants are waived if the offender repents even after the case is brought to court, before the punishment is carried out. According to (A), repentance must precede establishment of the offense in court.

Subsection: If one is ambushed by someone who wants to take his life, property, or women, or who threatens him with a weapon or enters his home without his permission, he is entitled [XIV.15.4] to deter him by the lightest deterrent that will stop him. If nothing less than killing will deter him, then one is entitled to kill him without incurring any liability. If the one defending himself is killed, he is a martyr, and his killer is held liable for killing him.	فَصْلٌ: وَمَنْ عَرَضَ لَهُ مَنْ يُرِيْدُ نَفْسَهُ، أَوْ مَالَهُ، أَوْ حَرِيْمَهُ، أَوْ حَمَلَ عَلَيْهِ سِلَاحًا، أَوْ دَخَلَ مَنْزِلَهُ بِغَيْرِ إِذْنِهِ، فَلَهُ دَفْعُهُ بِأَسْهَلِ مَا يَعْلَمُ أَنَّهُ يَنْدَفِعُ بِهِ، فَإِنْ لَمْ يَنْدَفِعْ إِلَّا بِقَتْلِهِ، فَلَهُ قَتْلُهُ، وَلَا ضَمَانَ عَلَيْهِ. وَإِنْ قُتِلَ الدَّافِعُ، فَهُوَ شَهِيْدٌ، وَعَلَىٰ قَاتِلِهِ ضَمَانُهُ.

[XIV.15.4] (A/SM): He must avert harm from his women, and from himself if it is not a time of fitnah. He is entitled to defending his property. He must also defend the lives of others outside a time of fitnah, and their honor when the required safety conditions are met. It is forbidden to defend their property if physical harm will befall him or the attacker.

Whoever gets attacked by an animal [XIV.15.5] is entitled to deter it similarly, without incurring any liability.	وَمَنْ صَالَتْ عَلَيْهِ بَهِيْمَةٌ، فَلَهُ دَفْعُهَا بِمِثْلِ ذٰلِكَ، وَلَا ضَمَانَ فِيْهَا.

[XIV.15.5] In Arabic, the word used is baheemah, which refers to four-limbed land or sea animals, in general, but particularly to non-predatory ones.

If someone peers into a person's home or sleeping quarters through a hole/crack in the door, and that person throws a pebble at him, knocking out his eye, he will incur no liability. [XIV.15.6]	وَمَنِ اطَّلَعَ فِيْ دَارِ إِنْسَانٍ، أَوْ بَيْتِهِ مِنْ خَصَائِصِ الْبَابِ أَوْ نَحْوِهِ، فَحَذَفَهُ بِحَصَاةٍ، فَفَقَأَ عَيْنَهُ، فَلَا ضَمَانَ عَلَيْهِ.

[XIV.15.6] This is according to (A) + (+S).

(-H, -M): He must warn him first or attempt to deter him by other means.

Likewise, if someone bites another's hand and that person pulls his hand away, causing the biter's teeth to fall out, there will be no liability (for the one who was bitten).	وَإِنْ عَضَّ إِنْسَانٌ يَدَهُ فَانْتَزَعَها فَسَقَطَتْ ثَنَايَاهُ، فَلَا ضَمَانَ فِيْهَا.

[XIV.16] Chapter on Fighting the Insurgent Rebels

بَابُ قِتَالِ أَهْلِ الْبَغْيِ

These are the insurgents who rebel against the imam (rightful ruler), wanting to depose him. The Muslims are required to support their imam in deterring them by the lightest means sufficient for deterrence. If this results in killing them or the destruction of their property, there is no liability on the defender, and if the defender dies, he is a martyr.	وَهُمُ: الْخَارِجُوْنَ عَلَىٰ الْإِمَامِ، يُرِيْدُوْنَ إِزَالَتَهُ عَنْ مَنْصِبِهِ، فَعَلَى الْمُسْلِمِيْنَ مَعُوْنَةُ إِمَامِهِمْ فِيْ دَفْعِهِمْ بِأَسْهَلِ مَايَنْدَفِعُوْنَ بِهِ، فَإِنْ آلَ إِلَىٰ قَتْلِهِمْ، أَوْ تَلَفِ مَالِهِمْ، فَلَا شَيْءَ عَلَىٰ الدَّافِعِ، وَإِنْ قُتِلَ الدَّافِعُ كَانَ شَهِيْدًا.
Those of them who retreat should not be pursued, and those who are wounded should not be killed. Their property is not seized as war spoils, and their families are not enslaved. Those of them who are killed should be washed, shrouded and have a *janâzah* (funeral) prayer offered for them.	وَلَا يُتْبَعُ لَهُمْ مُدْبِرٌ، وَلَا يُجْهَزُ عَلَىٰ جَرِيْحٍ، وَلَا يُغْنَمُ لَهُمْ مَالٌ، وَلَا تُسْبَى لَهُمْ ذُرِّيَّةٌ. وَمَنْ قُتِلَ مِنْهُمْ غُسِّلَ وَكُفِّنَ وَصُلِّيَ عَلَيْهِ.
Neither of the two parties is held liable for damage to lives and properties that they caused during the war.	وَلَا ضَمَانَ عَلَىٰ أَحَدِ الْفَرِيْقَيْنِ فِيْمَا أَتْلَفَ حَالَ الْحَرْبِ، مِنْ نَفْسٍ أَوْ مَالٍ.
Whatever the rebels had taken while in power – zakat, *jizyah* (tax on non-Muslims living under the protection of a Muslim government), or *kharâj* (agricultural tax) – is not collected from them or from those who paid them. The judgments issued by their judges are not reversed except in the	وَمَا أَخَذَ الْبُغَاةُ حَال امْتِنَاعِهِمْ مِنْ زَكَاةٍ، أَوْ جِزْيَةٍ،أَوْ خَرَاجٍ لَمْ يُعَدْ عَلَيْهِمْ، وَلَا عَلَىٰ الدَّافِعِ إِلَيْهِمْ، وَلَا يُنْقَضُ مِنْ حُكْمِ حَاكِمِهِمْ، إِلَّا مَا يُنْقَضُ مِنْ حُكْمِ غَيْرِهِ.

same way as judgments of any other judges would be. [XIV.16.1]	

[XIV.16.1] Judgments are reversed only if they are not supported by an acceptable ijtihâd.

[XIV.17] Chapter on the Ruling of the Apostate

بَابُ حُكْمِ الْمُرْتَدِّ

Whoever, whether male or female, apostatizes from Islam must be killed, because the Messenger of Allah (SA) said, “He who changes his religion (that is, apostatizes), kill him.” [XIV.17.1] They are not killed until their repentance is sought for three days; then they either repent or are executed by the sword.	وَمَنِ ارْتَدَّ عَنِ الْإِسْلَامِ مِنَ الرِّجَالِ وَالنِّسَاءِ، وَجَبَ قَتْلُهُ، لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» لَا يُقْتَلُ حَتَّى يُسْتَتَابَ ثَلَاثًا، فَإِنْ تَابَ، وَإِلَّا قُتِلَ بِالسَّيْفِ.

[XIV.17] Introduction

Refer to the appendix on apostasy.

Notice that he did not call it the ḥadd of apostasy. This is because Ibn Qudâmah himself clarifies in *al-Mughni* that this punishment is not a ḥadd (penalty fixed by the Divine for His own ḥaqq).

[XIV.17.1] (B – from Ibn ‘Abbâs)

One who denies God, Most High; ascribes to Him partners, a mate, or a child; belies Allah (Exalted is He) or curses Him; denies or curses His Messenger (SA); denies one of the prophets, all or part of the Book of Allah, or one of the pillars of Islam; or makes lawful that which is unlawful – by clear consensus, commits apostasy. The exception is one who is ignorant of the obligations and prohibitions; he must be taught, and then if he shows no acceptance, he becomes a disbeliever.	وَمَنْ جَحَدَ اللهَ تَعَالَى، أَوْ جَعَلَ لَهُ شَرِيْكًا أَوْ صَاحِبَةً أَوْ وَلَدًا أَوْ كَذَّبَ اللهَ تَعَالَى أَوْ سَبَّهُ، أَوْ كَذَّبَ رَسُوْلَهُ أَوْ سَبَّهُ، أَوْ جَحَدَ نَبِيًّا، أَوْ كِتَابَ اللهِ، أَوْ شَيْئًا مِنْهُ، أَوْ جَحَدَ أَحَدَ أَرْكَانِ الْإِسْلَامِ، أَوْ أَحَلَّ مُحَرَّمًا ظَهَرَ الْإِجْمَاعُ عَلَى تَحْرِيْمِهِ، فَقَدِ ارْتَدَّ، إِلَّا أَنْ يَكُوْنَ مِمَّنْ تَخْفَى عَلَيْهِ الْوَاجِبَاتُ وَالْمُحَرَّمَاتُ، فَيُعَرَّفُ ذٰلِكَ، فَإِنْ لَمْ يَقْبَلْ، كَفَرَ.

The acceptance of Islam by a discerning child is valid. [XIV.17.2] If he apostatizes, he will not be killed until he is asked to repent for three days after he reaches adulthood (*buloogh*). [XIV.17.3]	وَيَصِحُّ إِسْلَامُ الصَّبِيِّ الْعَاقِلِ، وَإِنِ ارْتَدَّ لَمْ يُقْتَلْ حَتَّى يُسْتَتَابَ ثَلَاثًا بَعْدَ بُلُوْغِهِ.

[XIV.17.2] They consider a ten-year-old discerning enough to accept Islam, and it is also accepted before that if the child shows signs of discernment. It was reported that Aḥmad himself said, "The Islam of a seven-year-old is valid."

[XIV.17.3] See the appendix on 'buloogh'.

If one's apostasy is established, and then he returns to Islam, (his return) is accepted. For his (return to) Islam to be valid, it is enough for him to bear witness that there is no god but Allah and that Muhammad (SA) is the Messenger of Allah. If his (prior) disbelief was due to denying a prophet, a book, an obligation, or the like, or if he believed that Muhammad (SA) was sent only to the Arabs, then (his return to Islam) will not be accepted until he acknowledges what he previously denied.	وَمَنْ ثَبَتَتْ رِدَّتُهُ فَأَسْلَمَ، قُبِلَ مِنْهُ، وَيَكْفِيْ فِيْ إِسْلَامِهِ أَنْ يَشْهَدَ لَا إِلَهَ إِلَّا اللهُ، وَأَنَّ مُحَمَّدًا رَسُوْلُ اللهِ، إِلَّا أَنْ يَكُوْنَ كُفْرُهُ بِجَحْدِ نَبِيٍّ، أَوْ كِتَابٍ، أَوْ فَرِيْضَةٍ، أَوْ نَحْوِهِ، أَوْ يَعْتَقِدَ أَنَّ مُحَمَّدًا ﷺ بُعِثَ إِلَى الْعَرَبِ خَاصَّةً، فَلَا يُقْبَلُ مِنْهُ حَتَّى يُقِرَّ بِمَا جَحَدَهُ.

وَإِذَا ارْتَدَّ الزَّوْجَانِ وَلَحِقَا بِدَارِ الْحَرْبِ فَسُبِيَا، لَمْ يَجُزْ اسْتِرْقَاقُهُمَا، وَلَا اسْتِرْقَاقُ مَنْ وُلِدَ قَبْلَ رِدَّتِهِمَا، وَيَجُوْزُ اسْتِرْقَاقُ سَائِرِ أَوْلَادِهِمَا.

[XV] The Book of Jihad
كِتَابُ الْجِهَادِ

[Ruling of Jihad]

It is a farḍ kifâyah (collective obligation); so if it is performed by a sufficient number, the obligation is fulfilled. It is an individual obligation for anyone who shows up at the battlefield or whose town is surrounded by the enemy. It is only obligatory on capable, sane, free adult males.	وَهُوَ فَرْضُ كِفَايَةٍ، إِذَا قَامَ بِهِ مَنْ يَكْفِي، سَقَطَ عَنِ الْبَاقِيْنَ، وَيَتَعَيَّنُ عَلَىٰ مَنْ حَضَرَ الصَّفَّ، أَوْ حَصَرَ الْعَدُوُّ بَلَدَهُ. وَلَا يَجِبُ إِلَّا عَلَىٰ ذَكَرٍ حُرٍّ، بَالِغٍ، عَاقِلٍ، مُسْتَطِيْعٍ.

[XV] Introduction

See the appendix on jihad.

[Virtue of Jihad]

Jihad is the best of the supererogatory acts. This is because Abu Hurayrah narrated that Allah's Messenger (SA) was asked, "What is the best deed?" He replied, "To believe in Allah." The questioner then asked, "What is the next best?" He replied, "To perform jihad in Allah's cause, then to perform Hajj that is *mabroor* (accepted)." [XV.0.1] It has also been narrated on the authority of Abu Sa'eed al-Khudri that the Messenger of Allah (SA) was asked, "Who is the best of men?" He replied, "A man who fights in the way of Allah, putting his wealth and his life at stake." [XV.0.2] Battling at sea is better than battling on land.	وَالْجِهَادُ أَفْضَلُ التَّطَوُّعِ؛ لِقَوْلِ أَبِيْ هُرَيْرَةَ: سُئِلَ رَسُوْلُ اللهِ ﷺ أَيُّ الْأَعْمَالِ أَفْضَلُ؟ قال: «إِيمَانٌ بِاللَّهِ». قال: ثم أي؟ قال: «الْجِهَادُ فِي سَبِيلِ اللَّهِ ثُمَّ حَجٌّ مَبْرُورٌ» وَعَنْ أَبِيْ سَعِيْدٍ قَالَ: سُئِلَ رَسُوْلُ اللهِ ﷺ أَيُّ النَّاسِ أَفْضَلُ؟ قال: «رَجُلٌ يُجَاهِدُ فِي سَبِيلِ اللَّهِ بِمَالِهِ وَ نَفْسِهِ»

	وَغَزْوُ الْبَحْرِ أَفْضَلُ مِنْ غَزْوِ الْبَرِّ.

[XV.0.1] (B)

[XV.0.2] (Ag)

[Jihad with Wicked Commanders]

He must fight under the command of the righteous and the wicked. Each group should fight the enemies in closest proximity to it.	وَيَغْزُو مَعَ كُلِّ بَرٍّ وَفَاجِرٍ. وَيُقَاتِلُ كُلُّ قَوْمٍ مَنْ يَلِيهِمْ مِنَ الْعَدُوِّ.

[Duration of *Ribâṭ*]

The full period of *ribâṭ* (guarding at the frontiers) is 40 days. It was narrated that the Prophet (SA) said, “Spending a day on the frontier for Allah’s cause is better than 1,000 days in any other pursuit.” [XV.0.3] He also said, “Spending a day on the frontier for Allah’s cause is better than fasting for a whole month and standing in prayer through all its nights. If one dies while observing ribâṭ, the reward for his good deeds will go on perpetually until the Day of Judgment, and he will be saved from *al-Futtân*.” [XV.0.4]	وَتَمَامُ الرِّبَاطِ أَرْبَعُونَ يَوْمًا، وَرُوِيَ عَنِ النَّبِيِّ ﷺ قَالَ: «رِبَاطُ يَوْمٍ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنْ أَلْفِ يَوْمٍ فِيمَا سِوَاهُ» وقَالَ: «رِبَاطُ يَوْمٍ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنْ صِيَامِ شَهْرٍ وَقِيَامِهِ وَمَنْ مَاتَ مُرَابِطًا أُجْرِيَ له أجره إِلَى يَوْمِ الْقِيَامَةِ وَوُقِيَ الْفُتَّانَ»

[XV.0.3] (T – from ‘Uthmân; al-Albâni: S. A variant wording is in M)

[XV.0.4] (M – from Salmân) Al-Futtân is the plural of al-Fattân, meaning the trying one; it refers to the angels who question everyone upon burial.

[Who May Participate in Jihad]

One whose Muslim parent is alive may not perform jihad without his or her permission unless it is individually binding on him.	وَلَا يُجَاهِدُ مَنْ أَحَدُ أَبَوَيْهِ مُسْلِمٌ، إِلَّا

No woman may enter the abode of war except for very old women to provide water (to the soldiers) and treat the wounded. The help of a polytheist is not sought or accepted except when needed.	بِإِذْنِهِ، إِلَّا أَنْ يَتَعَيَّنَ عَلَيْهِ. وَلَا يَدْخُلُ مِنَ النِّسَاءِ أَرْضَ الْحَرْبِ إِلَّا امْرَأَةٌ طَاعِنَةٌ فِيْ السِّنِّ؛ لِسَقْيِ الْمَاءِ وَمُعَالَجَةِ الْجَرْحَى. وَلَا يُسْتَعَانُ بِمُشْرِكٍ إِلَّا عِنْدَ الْحَاجَةِ إِلَيْهِ.

[Soldiers' Code of Conduct]

Jihad is not permissible except with the permission of the emir (commander), unless a feared enemy takes them by surprise or they come across an opportunity they are afraid to miss. After entering the abode of war, no one is permitted to leave the camp – to obtain fodder, firewood, or anything else – without the permission of the emir. If one takes anything of value from the abode of war, [XV.0.5] he may not keep it for himself, except for food and fodder, from which he may take what he needs only. If he sells it, he must return the price to the common booty. If he has anything left of it when he returns to his hometown, he must return it unless it is of little value, in which case he may eat it or give it away. [XV.0.6]	وَلَا يَجُوْزُ الْجِهَادُ إِلَّا بِإِذْنِ الْأَمِيْرِ، إِلَّا أَنْ يَفْجَأَهُمْ عَدُوٌّ يَخَافُوْنَ كَلَبَهُ، أَوْ تَعْرِضَ فُرْصَةٌ يَخَافُوْنَ فَوْتَهَا. وَإِذَا دَخَلُوْا أَرْضَ الْحَرْبِ، لَمْ يَجُزْ لِأَحَدٍ أَنْ يَخْرُجَ مِنَ الْعَسْكَرِ لِتَعَلُّفٍ، أَوِ احْتِطَابٍ، أَوْ غَيْرِهِ، إِلَّا بِإِذْنِ الْأَمِيْرِ. وَمَنْ أَخَذَ مِنْ دَارِ الْحَرْبِ مَا لَهُ قِيْمَةٌ، لَمْ يَجُزْ لَهُ أَنْ يَخْتَصَّ بِهِ، إِلَّا الطَّعَامَ وَالْعَلَفَ، فَلَهُ أَنْ يَأْخُذَ مِنْهُ مَا يَحْتَاجُ إِلَيْهِ، فَإِنْ بَاعَهُ، رَدَّ ثَمَنَهُ فِيْ الْمَغْنَمِ، وَإِنْ فَضَلَ مَعَهُ مِنْهُ شَيْءٌ بَعْدَ رُجُوْعِهِ إِلَىٰ بَلَدِهِ، لَزِمَهُ رَدُّهُ، إِلَّا أَنْ يَكُوْنَ يَسِيْرًا، فَلَهُ أَكْلُهُ وَهَدِيَّتُهُ.

🕒 Classical jurists classified the world into the abodes of peace, war, and treaty, giving them descriptive names according to the conditions of their times. The treaties signed by Muslim countries, as members of the United Nations and signatories to other covenants such as the Geneva Conventions, make the default classification for the whole world Dâr al-‘Ahd (“abode of treaty”), which could also be referred to as Dâr aṣ-Ṣulḥ (“abode of conciliation”). Wherever Muslims have the right to practice their religion, the suggested term would be Dâr al-Amn (“abode of security”).

[XV.0.6] (A/SM & Iqnâ‘): Even if it is of little value, he must still return it to the common booty.

[Rulings of Engagement]

It is permissible to attack the unbelievers at night, to use the catapult against them, and to start fighting them before calling them (to Islam). [XV.0.7] This is because the Prophet (SA) took Bani al-Muṣṭaliq by surprise while they were unsuspecting, when their cattle were being taken to the bodies of water for drinking; he killed their fighters and took their offspring into captivity. [XV.0.8] Among the unbelievers, it is not allowed to kill a child, insane person, woman, monk, or senile older person, or an infirm, blind, or feeble-minded person – unless they fight. [XV.0.9]	وَيَجُوْزُ تَبْيِيْتُ الْكُفَّارِ وَرَمْيُهُمْ بِالْمَنْجَنِيْقِ، وَقِتَالُهُمْ قَبْلَ دُعَائِهِمْ؛ لِأَنَّ النَّبِيَّ ﷺ أَغَارَ عَلَى بَنِي الْمُصْطَلِقِ، وَهُمْ غَارُّونَ، وَأَنْعَامُهُمْ تُسْقَى عَلَى الْمَاءِ، فَقَتَلَ مُقَاتِلَتَهُمْ، وَسَبَى ذَرَارِيَّهُمْ. وَلَا يُقْتَلُ مِنْهُمْ صَبِيٌّ، وَلَا مَجْنُوْنٌ، وَلَا امْرَأَةٌ، وَلَا رَاهِبٌ، وَلَا شَيْخٌ فَانٍ، وَلَا زَمِنٌ، وَلَا أَعْمَى، وَلَا مَنْ لَا رَأْيَ لَهُمْ، إِلَّا أَنْ يُقَاتِلُوْا.

[XV.0.7] (t): Use of the catapult is only permissible in obligatory jihad (conducted for self-defense), out of necessity; otherwise, it is not permissible to use it knowing that its missiles (rocks) may kill women and children. (*Majmoo‘ al-Fatâwâ*, 24:269–270, in the chapter on Funerals, Subsection: Using Wine in Medical Treatment)

Fighting them before calling them to Islam here concerns those whom the call to Islam has already reached; calling them again before fighting is

recommended. Those whom the call has not reached must first be invited. This requirement does not prevent the Muslims from immediately defending themselves against an attack. *al-Mughni,* Kash-shâf al-Qinâ‘.

[XV.0.8] It was reported that the chief of Banu al-Muṣṭaliq, al-Ḥârith ibn Abi Ḍirâr, had assembled an army to attack the believers, so the Prophet (SA) proceeded to them in secret and took them by surprise. Hostility had already been established between the believers and Banu al-Muṣṭaliq, who had joined with Quraysh to attack the believers in the Battle of Uḥud. (*as-Seerah*, Ibn Is-ḥâq; aṭ-Ṭabaqât, Ibn Sa‘d)

[XV.0.9] When they had to go to war, the Prophet (SA) used to instruct them not to kill "an older man, a child or a woman," and he would say:

«وَأَصْلِحُوا وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينِ»

"Do righteousness and show kindness, for Allah loves those who are kind." (D – from Anas; al-Albâni: W, but accepted by the fuqahâ')

Ibn Mâjah added the Prophet's prohibition against killing the 'aseef, which is best translated as a non-combatant attachment to the army.

Abu Bakr would say:

"Do not engage in treachery; do not steal from the booty; do not betray; do not mutilate the dead; do not kill a child, an older man, or a woman; do not cut a palm tree or burn it or any fruitful tree; and do not slaughter a goat, cow, or camel except to eat." (Târeekh aṭ-Ṭabari)

He would also say, "…And you will pass by monks who devote themselves to solitude in their tents, so leave them alone with what they are dedicated to." (al-Wâqidi, *Târeekh ash-Shâm*)

'Umar would add, "…and fear Allah regarding the farmers." (Muṣannaf Ibn Abi Shaybah)

[Rulings of the Captives]

As for male captives, the imam is given the choice of killing, enslavement, taking a ransom, or benevolent release. He must do what is in the best interest of the Muslims. [XV.0.10] If he enslaves them or takes a ransom, they become part of the common booty.	وَيُخَيَّرُ الْإِمَامُ فِيْ أُسَارَى الرِّجَالِ، بَيْنَ الْقَتْلِ، وَالِاسْتِرْقَاقِ، وَالْفِدَاءِ، وَالْمَنِّ، وَلَا يَخْتَارُ إِلَّا الْأَصْلَحَ لِلْمُسْلِمِيْنَ. وَإِنِ اسْتَرَقَّهُمْ أَوْ فَادَاهُمْ بِمَالٍ، فَهُوَ غَنِيْمَةٌ.

[XV.0.10] No heavenly religion sought to deplete the institution of slavery more than Islam did. Islam would, therefore, welcome the current state of abolishment of slavery worldwide, and it would certainly be keen on all the nations of the world maintaining that. A central credo of Muslims' conduct is that when they engage in any agreement, they must fulfill their agreement. To this point, Allah said:

{يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِ}

{O you who have believed, fulfill [all] contracts…} (al-Mâ'idah 5:1)

Refer to the appendix on slavery.

Ibn Rushd reported from al-Ḥasan ibn Muhammad al-Tameemi that the consensus of the Companions was to not kill the captives. This was based on the following verse:

فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْخَنتُمُوهُمْ فَشُدُّوا الْوَثَاقَ فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا

So when you meet those who disbelieve [in battle], strike [their] necks until, when you have inflicted slaughter upon them, then secure their bonds, and either [confer] favor afterwards or ransom [them] until the war lays down its burdens. [Muhammad 47:4]

Two options only were given. The instances when the Prophet commanded the killing of captives are rare and mostly inauthentic. Any authentic incident case can be easily justified by their known war crimes. There were

no Nuremberg trials, however, the fairest of all humanity deemed death the fair punishment for their numerous crimes.

Bidâyat al-Mujtahid wa Nihâyat al-Muqtaṣid, Ibn Rushd al-Ḥafeed, 2:145.

He must not separate captives who are maḥram relatives unless they are *bâligh* (adults). [XV.0.11] If one buys captives on the premise that they are maḥram relatives, and that turns out not to be true, he must return (to the common booty) the difference in their value. [XV.0.12]	وَلَا يُفَرَّقُ فِيْ السَّبْيِ بَيْنَ ذَوِيْ رَحِمٍ مَحْرَمٍ، إِلَّا أَنْ يَكُوْنُوْا بَالِغِيْنَ. وَمَنِ اشْتَرَى مِنْهُمْ عَلَى أَنَّهُمْ ذَوُوْ رَحِمٍ، فَبَانَ خِلَافُهُ، رَدَّ الْفَضْلَ الَّذِيْ فِيْهِ بِالتَّفْرِيْقِ.

[XV.0.11] (A/SM & Iqnâ‘): Even if they are bâligh, they cannot be separated.

Refer to the appendix on ‘buloogh’.

[XV.0.12] If they were related, they would be cheaper for several reasons, one of which is that they could not be separated.

[Financial Matters Related to Jihad]

If one is given something to support him during the expedition, he may keep the remaining part of it upon his return. If it was not given to him for this particular expedition only, he will use the rest in other expeditions. [XV.0.13] If he is given a horse for the sake of Allah, he may keep it upon his return unless it was designated as a waqf. When something is captured from the enemy and it belongs to one of the Muslims, it should be returned to the owner if (the original Muslim owner) is known before the distribution (of the booty). If it is already distributed before the original owner is	وَمَنْ أُعْطِيَ شَيْئًا يَسْتَعِيْنُ بِهِ فِيْ غَزْوِهِ، فَإِذَا رَجَعَ، فَلَهُ مَا فَضَلَ، إِلَّا أَنْ يَكُوْنَ لَمْ يُعْطَ لِغَزْوَةٍ بِعَيْنِهَا، فَيَرُدُّ الْفَضْلَ فِيْ الْغَزْوِ. وَإِنْ حُمِلَ عَلَى فَرَسٍ فِيْ سَبِيْلِ اللهِ، فَهِيَ لَهُ إِذَا رَجَعَ، إِلَّا أَنْ يُجْعَلَ حَبِيْسًا. وَمَا أُخِذَ مِنْ أَهْلِ الْحَرْبِ مِنْ أَمْوَالِ الْمُسْلِمِيْنَ، رُدَّ إِلَيْهِمْ، إِذَا عُلِمَ صَاحِبُهُ قَبْلَ

known, then (the original Muslim owner) may take it for the price estimated for it during the distribution and on which basis its taker got it. If one of the Muslims took it (from the enemy) in return for a price, its (original Muslim owner) may take it from him for that price. If he took it without paying for it, then he should return it to (the original Muslim owner). If one buys a captive from the enemies, the captive must repay him the price he paid.	الْقِسْمَةِ. وَإِنْ قُسِمَ قَبْلَ عِلْمِهِ، فَلَهُ أَخْذُهُ بِثَمَنِهِ الَّذِيْ حُسِبَ بِهِ عَلَىٰ آخِذِهِ. وَإِنْ أَخَذَهُ مِنْهُمْ أَحَدُ الرَّعِيَّةِ بِثَمَنٍ، فَلِصَاحِبِهِ أَخْذُهُ بِثَمَنِهِ، وَإِنْ أَخَذَهُ بِغَيْرِ شَيْءٍ، رَدَّهُ. وَمَنِ اشْتَرَى أَسِيْرًا مِنَ الْعَدُوِّ، فَعَلَى الْأَسِيْرِ أَدَاءُ مَا اشْتَرَاهُ بِهِ.

[XV.0.13] Many warriors were volunteers, not salaried members of standing armies. They could be supported by the community to serve the noble cause of jihad.

[XV.1] Chapter on *Anfâl* (Bounties of War)

بَابُ الْأَنْفَالِ

وَهِيَ: الزِّيَادَةُ عَلَىٰ السَّهْمِ الْمُسْتَحَقِّ، وَهِيَ ثَلَاثَةُ أَضْرُبٍ:	It means the extra rewards granted, beyond the deserved share of the booty. It is of three types:

[XV.1] Introduction

At that time, the spoils of war were seized and owned by the victor. Otherwise, the fighters for the Divine cause of justice would have been at a great disadvantage because they would finance the war effort and put themselves in peril, having their possessions seized by the enemy if they were defeated, yet they would be required to return the enemies' possessions to them in case of victory. This would have dramatically stifled the efforts to fight tyranny and injustice. Also, Islam was not the first to legislate this ruling about the spoils of war. There are many verses in the Bible regarding this matter; for instance, it is said that God said, "Only the women and the children and the animals and all that is in the city, all its spoil, you shall take as booty for yourself; and you shall use the spoil of your enemies which the Lord your God has given you." (Deuteronomy 20:14)

It is important that we do not judge one era through the norms, sensibilities, and social constructs of another. For instance, in those times of scarcity, the women and children of the defeated army might have suffered greatly if they had no one to look after them. (Please refer to the appendix on slavery.)

Having said that, Islam's legal framework is flexible enough to allow for the adjustments needed in changing circumstances and times. The Muslims were always encouraged to show kindness and generosity towards their adversaries, but more bindingly, to honor their treaties. Given the concept of reciprocation in international laws and diplomacy, the Muslims would be bound to honor their agreements if they were part of a treaty concerning this matter. Allah said:

{يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِ}

{O you who have believed, fulfill [all] contracts…} (al-Mâ'idah 5:1)

First, the personal booty of each enemy killed is given, without deducting one-fifth, to the one who killed him. This is because of the statement of the Messenger of Allah (SA), "Anyone who has killed an enemy is entitled to his spoils." [XV.1.1] This refers to the clothes he was wearing, his jewelry, his weapons, and his horse with its gear. He deserves them only if he killed the enemy in combat, without him (the enemy) having been severely wounded or given up fighting.	أَحَدُهَا: سَلَبُ الْمَقْتُوْلِ غَيْرُ مَخْمُوْسٍ لِقَاتِلِهِ؛ لِقَوْلِ النَّبِيِّ ﷺ: «مَنْ قَتَلَ قَتِيلاً فَلَهُ سَلَبُهُ». وَهُوَ مَا عَلَيْهِ مِنْ لِبَاسٍ، وَحَلْيٍ، وَسِلَاحٍ، وَفَرَسُه بِآلَتِهِ. وَإِنَّمَا يَسْتَحِقُّهُ مَنْ قَتَلَهُ حَالَ قِيَامِ الْحَرْبِ غَيْرَ مُثْخَنٍ، وَلَا مُمْتَنِعٍ مِنَ الْقِتَالِ.

[XV.1.1] (B, Ba, and others – from Abu Qatâdah and Anas)

Second, whatever the emir grants, without a prior promise, to someone who did the Muslims a valuable service. On the day of Dhi Qarad, the Prophet (SA) gave Salamah ibn al-Akwa' the share of a horseman and that of a foot soldier; [XV.1.2] also, Abu Bakr (RA) granted him, on the night he brought him nine families, a woman from among them. [XV.1.3]	الثَّانِيْ: أَنْ يُنَفِّلَ الْأَمِيْرُ مَنْ أَغْنَى عَنِ الْمُسْلِمِيْنَ غَنَاءً مِنْ غَيْرِ شَرْطٍ، كَمَا أَعْطَى النَّبِيُّ ﷺ سَلَمَةَ بْنَ الْأَكْوَعِ يَوْمَ ذِيْ قَرَدٍ سَهْمَ فَارِسٍ وَرَاجِلٍ، وَنَفَّلَهُ أَبُوْ بَكْرٍ رضي الله عنه لَيْلَةً جَاءَهُ بِتِسْعَةِ أَهْلِ أَبْيَاتٍ امْرَأَةً مِنْهُمْ.

[XV.1.2] (D – from Salamah ibn al-Akwa'; al-Albâni: R)

[XV.1.3] (M – from Salamah ibn al-Akwa')

Third, whatever is deserved due to a prior promise, and this is of two types: 1- When the emir says, "Whoever enters through a breach in the wall or climbs	الثَّالِثُ: مَا يُسْتَحَقُّ بِالشَّرْطِ، وَهُوَ نَوْعَانِ: • أَحَدُهُمَا: أَنْ يَقُوْلَ الْأَمِيْرُ، مَنْ دَخَلَ

the fence will be entitled to such-and-such, and whoever brings (from the enemy's possessions) ten cows or the like will be entitled to one of them," then he who fulfills that condition will deserve the designated compensation. 2- When the emir sends a unit forth (ahead of the army) on his way to battle and grants it one-quarter (of the spoils), and on his way back and grants it one-third, so whatever it brings back (of the booty), he takes out one-fifth of it, then he gives the unit whatever he promised them, and then he divides the rest among the entire army, including that unit.	النَّقْبَ، أَوْ صَعِدَ السُّوْرَ، فَلَهُ كَذَا، وَمَنْ جَاءَ بِعَشْرٍ مِنَ الْبَقَرِ، أَوْ غَيْرِهَا، فَلَهُ وَاحِدَةٌ مِنْهَا، فَيَسْتَحِقُّ مَا جُعِلَ لَهُ. • الثَّانِيْ: أَنْ يَبْعَثَ الْأَمِيْرُ فِيْ الْبَدَاءَةِ سَرِيَّةً، وَيَجْعَلَ لَهَا الرُّبُعَ، وَفِي الرَّجْعَةِ أُخْرٰى، وَيَجْعَلَ لَهَا الثُّلُثَ، فَمَا جَاءَتْ بِهِ، أَخْرَجَ خُمُسَهُ، ثُمَّ أَعْطَى السَّرِيَّةَ مَا جَعَلَ لَهَا، وَقَسَّمَ الْبَاقِيَ فِيْ الْجَيْشِ وَالسَّرِيَّةِ مَعًا.

Subsection: Those not entitled to full shares of the spoils, such as the women, children, slaves, and unbelievers, will be given rewards in proportion to their contribution. He (the emir) will not give the foot soldiers among them the full share of foot soldiers, or those on horses the full share of horsemen.	فَصْلٌ: وَيُرْضَخُ لِمَنْ لَا سَهْمَ لَهُ مِنَ النِّسَاءِ، وَالصِّبْيَانِ، وَالْعَبِيْدِ، وَالْكُفَّارِ، فَيُعْطِيْهِمْ عَلٰى قَدْرِ غَنَائِهِمْ، وَلَا يَبْلُغُ بِالرَّاجِلِ مِنْهُمْ سَهْمَ رَاجِلٍ، وَلَا بِالْفَارِسِ مِنْهُمْ سَهْمَ فَارِسٍ.

	وَإِنْ غَزَا الْعَبْدُ عَلىٰ فَرَسٍ لِسَيِّدِهِ، قُسِمَ لِسَيِّدِهِ سَهْمُ الْفَرَسِ، وَرُضِخَ لِلْعَبْدِ.

[XV.2] Chapter on *Ghanâ'im* (Spoils of War)

بَابُ الْغَنَائِمِ وَقِسْمَتِهَا

[Deserving Recipients of Land]

It is of two types: First, the land. The imam is given the choice between dividing it or making it a waqf for the Muslims and then taking land taxes from it indefinitely, to be collected annually as a form of rent from those who hold it in their possession. [XV.2.1] Whatever has been made a waqf by the imams of those lands may not be changed or sold.	وَهُوَ نَوْعَانِ: أَحَدُهُمَا: الْأَرْضُ، فَيُخَيَّرُ الْإِمَامُ بَيْنَ قَسْمِهَا وَوَقْفِهَا لِلْمُسْلِمِيْنَ، وَيَضْرِبُ عَلَيْهَا خَرَاجًا مُسْتَمِرًّا، يُؤْخَذُ مِمَّنْ هِيَ فِيْ يَدِهِ كُلَّ عَامٍ أُجْرًا لَهَا. وَمَا وَقَفَهُ الْأَئِمَّةُ مِنْ ذٰلِكَ، لَمْ يَجُزْ تَغْيِيْرُهُ وَلَا بَيْعُهُ.

[XV.2] Ghaneemah is the singular form of ghanâ'im. It refers to the goods seized by the victor in war, whereas fay' refers to goods taken from the enemies without using force. Anfâl refers to the part given out by the commander before the prescribed division of the booty.

[XV.2.1] This is in case the land was seized by force. The imam does also have the right to make treaties without such conditions. He even had the right to make a treaty where Muslims pay a tribute to their enemies when necessary to avert grave harm to the Muslims.

[Deserving Recipients of Movables]

Second, the rest of the property. This is for those able fighters who attended the battle, whether they were merchants or others, and whether they fought or not – on the basis of their status when they attended the battle: whether horsemen, infantry, slaves, Muslims, or unbelievers.	الثَّانِيْ: سَائِرُ الْأَمْوَالِ، فَهِيَ لِمَنْ شَهِدَ الْوَقْعَةَ، مِمَّنْ يُمْكِنُهُ الْقِتَالُ، وَيَسْتَعِدُّ لَهُ، مِنَ التُّجَّارِ وَغَيْرِهِمْ، سَوَاءٌ قَاتَلَ أَوْ لَمْ يُقَاتِلْ عَلَى الصِّفَةِ الَّتِيْ شَهِدَ الْوَقْعَةَ فِيْهَا، مِنْ كَوْنِهِ فَارِسًا، أَوْ

Their status before or after (the battle) is not taken in consideration. No share is deserved by someone who could not fight because of illness or something else, or by someone who came after the end of the battle, such as the reinforcements or the like. Whoever the commander sends away in the interest of the army is given a share. Whatever booty the army seizes is shared with its detached units, and they share with the army whatever booty they seize.	رَاجِلاً، أَوْ عَبْدًا، أَوْ مُسْلِمًا، أَوْ كَافِرًا، وَلَا يُعْتَبَرُ مَا قَبْلَ ذٰلِكَ وَلَا بَعْدَهُ. وَلَا حَقَّ فِيْهَا لِعَاجِزٍ عَنِ الْقِتَالِ بِمَرَضٍ أَوْ غَيْرِهِ، وَلَا لِمَنْ جَاءَ بَعْدَ مَا تَنْقَضِيْ الْحَرْبُ مِنْ مَدَدٍ، أَوْ غَيْرِهِ. وَمَنْ بَعَثَهُ الْأَمِيْرُ لِمَصْلَحَةِ الْجَيْشِ، أَسْهَمَ لَهُ. وَيُشَارِكُ الْجَيْشُ سَرَايَاهُ فِيْمَا غَنِمَتْ، وَتُشَارِكُهُ فِيْمَا غَنِمَ.

[Order of Distribution]

He starts by keeping aside whatever is needed to preserve [XV.2.2] and transport the booty, as well as any other needs. Next, he gives the personal booties and the promised rewards to those who are entitled to them.	وَيَبْدَأُ بِإِخْرَاجِ مُؤْنَةِ الْغَنِيْمَةِ؛ لِحِفْظِهَا وَنَقْلِهَا، وَسَائِرِ حَاجَاتِهَا، ثُمَّ يَدْفَعُ الْأَسْلَابَ إِلىٰ أَهْلِهَا، وَالْأَجْعَالَ لِأَصْحَابِهَا.

[XV.2.2] Like fodder for the cattle.

Then he takes one-fifth of it and divides that into five parts: 1- One share is for Allah and His Messenger (SA); this is spent on weaponry, horses (and other mounts), and other interests. [XV.2.3] 2- One share is for the Prophet's kin; they are Banu Hâshim and Banu al-Muṭṭalib, for the rich and poor	ثُمَّ يُخَمِّسُ بَاقِيَهَا، فَيَقْسِمُ خُمْسَهَا خَمْسَةَ أَسْهُمٍ: 1- سَهْمٌ للهِ تَعَالىٰ وَلِرَسُوْلِهِ ﷺ يُصْرَفُ فِي السِّلَاحِ وَالْكُرَاعِ، وَالمَصَالِحِ. 2- وَسَهْمٌ لِذَوِي الْقُرْبىٰ، وَهُمْ بَنُوْ هَاشِمٍ وَبَنُوْ

among them, with each male getting twice the share of the female. [XV.2.4] 3- One share for the orphans who are poor 4- One share for the needy 5- One share for the wayfarers	الْمُطَّلِبِ غَنِيُّهُمْ وَفَقِيْرُهُمْ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ -3 وَسَهْمٌ لِلْيَتَامَى الْفُقَرَاءِ -4 وَسَهْمٌ لِلْمَسَاكِيْنِ -5 وَسَهْمٌ لِأَبْنَاءِ السَّبِيْلِ

[XV.2.3] During the Prophet's lifetime, he kept it but then spent most of it in the way of Allah. He once led the prayer facing a camel which had been taken as booty; when he finished the prayer, he took a hair from the camel's side and said:

«وَلَا يَحِلُّ لِي مِنْ غَنَائِمِكُمْ مِثْلُ هَذَا إِلَّا الْخُمُسَ وَالْخُمُسُ مَرْدُودٌ فِيكُمْ »

"I have no right to even this much of your booty, aside from one-fifth, and the one-fifth is returned to you." (D – from 'Amr ibn 'Abasah; al-Albâni: Auth)

The ascetic life the Prophet (SA) led was one of many signs of his devotion to the Lord and His message. Commenting on the prosperity the people enjoyed during his time, 'Umar once recalled, "I saw the Messenger of Allah (SA) spend the whole day writhing from hunger, and he could not even find low-grade dates to fill his stomach." (M)

[XV.2.4] This is also the position of (+S).

(-M): It is left to the discretion of the imam.

(-H): Only the poor among them are given from the booty to suffice their needs, since they cannot take zakat. This is because during the life of the Prophet (SA), only two of the four clans descended from his great-great-grandfather Abd Manâf were given from this share. The progeny of Hâshim and al-Muṭṭalib were given it not merely for their relationship to the Prophet (SA) – which was also shared by the progeny of 'Abd Shams and Nawfal – but because of their support for the Prophet (SA) throughout his struggle against the unbelievers, including suffering with him through the years of

siege and embargo in the Shi‘b (ravine) of Abu Ṭâlib. Those who take this opinion also cite that after the Prophet’s death, Abu Bakr and ‘Umar (RAHUMA) did not maintain that share for his kin.

The position of (-H), which is based on the actions of Abu Bakr and ‘Umar, may be essential for the legacy of the Prophet (SA) and the distinguished position of his family. Had they been getting 1/5 of the khums regardless of need, some of them might have amassed enviable wealth, and that could have caused many to harbor resentment towards them.

Then he takes out the rest of the extra bounties of war and the prizes (for those not entitled to full shares). [XV.2.5]	ثُمَّ يُخْرِجُ بَاقِيَ الْأَنْفَالِ، وَالرَّضْخِ.

[XV.2.5] These are taken from the 4/5, before it gets divided among the soldiers.

Then he divides the rest: [XV.2.6] For the foot soldier one share, and for the horseman three shares, one for him and two for his horse. This is because of Ibn ‘Umar’s narration that the Messenger of Allah (SA) gave the horse two shares and its owner (rider) one share. [XV.2.7] If the horse is not Arabian, it is entitled to one share, [XV.2.8] and its rider is entitled to one. If a man has two horses, (the commander) assigns shares to both of them. He does not give shares to more than two horses (per rider), and he does not give shares to beasts of burden other than horses.	ثُمَّ يَقْسِمُ مَا بَقِيَ لِلرَّاجِلِ سَهْمٌ وَلِلْفَارِسِ ثَلَاثَةٌ، لَهُ سَهْمٌ وَلِفَرَسِهِ سَهْمَانِ؛ لِمَا رَوَى ابْنُ عُمَرَ أَنَّ رَسُوْلَ اللهِ ﷺ جَعَلَ لِلْفَرَسِ سَهْمَيْنِ، ولِصَاحِبِهِ سَهْمًا. وَإِنْ كَانَ الْفَرَسُ غَيْرَ عَرَبِيٍّ، فَلَهُ سَهْمٌ وَلِصَاحِبِهِ سَهْمٌ. وَإِنْ كَانَ مَعَ الرَّجُلِ فَرَسَانِ، أُسهِمَ لَهُمَا، وَلَا يُسْهَمُ لِأَكْثَرَ مِنْ فَرَسَيْنِ، وَلَا يُسْهَمُ لِدَابَّةٍ غَيْرِ الْخَيْلِ.

[XV.2.6] After the 1/5 (for the five categories mentioned above) is excluded, and the extra bounties of war and rewards are taken out of the remaining 4/5.

[XV.2.7] (Ag)

[XV.2.8] This distinction is because of the superior speed of the Arabian horses.

There is another report from Aḥmad that treats all types of horses equally. This would be the chosen position if a certain breed is as beneficial in combat as the Arabian horses.

[Fay' vs. Ghaneemah]

Subsection: Whatever the unbelievers leave behind when they run away in panic, which is acquired without needing any attack by horses or camels (or other beasts of burden), is considered fay', and it will be spent in the various interests of the Muslims. [XV.2.9]	فَصْلٌ: وَمَا تَرَكَهُ الْكُفَّارُ فَزَعًا وَهَرَبُوْا، لَمْ يُوْجَفْ عَلَيْهِ بِخَيْلٍ وَلَا رِكَابٍ، وَأُخِذَ مِنْهُمْ بِغَيْرِ قِتَالٍ، فَهُوَ فَيْءٌ يُصْرَفُ فِيْ مَصَالِحِ الْمُسْلِمِيْنَ.

[XV.2.9] Allah said:

{وَمَا أَفَاءَ اللَّهُ عَلَىٰ رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ مِنْ خَيْلٍ وَلَا رِكَابٍ وَلَٰكِنَّ اللَّهَ يُسَلِّطُ رُسُلَهُ عَلَىٰ مَن يَشَاءُ ۚ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ * مَّا أَفَاءَ اللَّهُ عَلَىٰ رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنكُمْ ۚ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانتَهُوا ۚ وَاتَّقُوا اللَّهَ ۖ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ * لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِن دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلًا مِّنَ اللَّهِ وَرِضْوَانًا وَيَنصُرُونَ اللَّهَ وَرَسُولَهُ ۚ أُولَٰئِكَ هُمُ الصَّادِقُونَ * وَالَّذِينَ تَبَوَّءُوا الدَّارَ وَالْإِيمَانَ مِن قَبْلِهِمْ يُحِبُّونَ مَنْ هَاجَرَ إِلَيْهِمْ وَلَا يَجِدُونَ فِي صُدُورِهِمْ حَاجَةً مِّمَّا أُوتُوا وَيُؤْثِرُونَ عَلَىٰ أَنفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ ۚ وَمَن يُوقَ شُحَّ نَفْسِهِ فَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ * وَالَّذِينَ جَاءُوا مِن بَعْدِهِمْ يَقُولُونَ رَبَّنَا اغْفِرْ لَنَا وَلِإِخْوَانِنَا الَّذِينَ سَبَقُونَا بِالْإِيمَانِ وَلَا تَجْعَلْ فِي قُلُوبِنَا غِلًّا لِّلَّذِينَ آمَنُوا رَبَّنَا إِنَّكَ رَءُوفٌ رَّحِيمٌ.}

{What Allah restored to His Messenger from them was not gained through horses or camels you drove against them. Rather, Allah

*grants His messengers power over whomever He wills, and Allah has power over everything. * And what Allah restored to His Messenger from the people of the towns – it is for Allah and for the Messenger and for [his] near relatives and orphans, the needy, and the [stranded] traveler – so that it will not be a perpetual distribution among the rich from among you. And whatever the Messenger has given you – take; and what he has forbidden you – refrain from. And fear Allah; indeed, Allah is severe in penalty. * For the poor emigrants who were expelled from their homes and their properties, seeking bounty from Allah and [His] approval and supporting Allah and His Messenger, [there is also a share]. Those are the truthful. * And [also for] those who were settled in Madinah and [adopted] the faith before them. They love those who emigrated to them and find not any want in their breasts of what the emigrants were given but give [them] preference over themselves, even though they are in privation. And whoever is protected from the stinginess of his soul – it is those who will be the successful. * And [there is a share for] those who came after them, saying, "Our Lord, forgive us and our brothers who preceded us in faith and put not in our hearts [any] resentment toward those who have believed. Our Lord, indeed You are Kind and Merciful."} (al-Ḥashr 59:6–10)*

When 'Umar disagreed with Bilâl and other Companions (RAHUM) over the distribution of conquered land, because he wanted to keep it for the entire Ummah instead of distributing it all among the warriors, he cited these verses and said that he only saw that it included all Muslims of all times.

Whoever finds an unbeliever (from the warring enemies) lost in the abode of Islam and takes him, he will be his. [XV.2.10]	وَمَنْ وَجَدَ كَافِرًا ضَالًّا عَنِ الطَّرِيْقِ أَوْ غَيْرِهِ فِيْ دَارِ الْإِسْلَامِ، فَأَخَذَهُ فَهُوَ لَهُ.

[XV.2.10] This refers to conditions where there is known hostility and no treaty. It does not apply to anyone who resides legally in the abode of Islam,

who enters it legally, or who belongs to another nation with whom there is peace.

The treaties signed by the Muslim countries, as members of the United Nations and signatories to other covenants such as the Geneva Conventions, make the default classification for the whole world Dâr al-'Ahd ("abode of treaty"), which could be also referred to as Dâr aṣ-Ṣulḥ ("abode of conciliation"). Wherever Muslims have the right to practice their religion, the suggested term would be Dâr al-Amn ("abode of security"). The subjects of those lands, and even those of the abode of war, must be treated according to the covenants that Muslims have agreed to.

If a group of Muslims without a significant force entered stealthily into the abode of war, [XV.2.11] without the permission of the imam, they are entitled to whatever they capture after the one-fifth is taken out. [XV.2.12]	وَإِنْ دَخَلَ قَوْمٌ لَا مَنَعَةَ لَهُمْ أَرْضَ الْحَرْبِ مُتَلَصِّصِيْنَ بِغَيْرِ إِذْنِ الْإِمَامِ، فَمَا أَخَذُوْا، فَهُوَ لَهُمْ بَعْدَ الْخُمُسِ.

[XV.2.11] See above for the classification of abodes.

[XV.2.12] In another report from Aḥmad, all of it will go to bayt ul-mâl because they are considered sinners by this act, who may not be entitled to what they captured.

[XV.3] Chapter on Granting Security and Asylum

بَابُ الْأَمَانِ

Whoever says to a ḥarbi, “I grant you asylum or security,” or “You shall not be harmed,” or the like, [XV.3.1] has bindingly given him security.	وَمَنْ قَالَ لِحَرْبِيٍّ: قَدْ أَجَرْتُكَ، أَوْ أَمَّنْتُكَ، أَوْ لَا بَأْسَ عَلَيْكَ، وَنَحْوَ هَذَا، فَقَدْ أَمَّنَهُ.

[XV.3.1] (A/SM): If the statement could be understood to mean security, it confers security, even it was not intended. If it does not, yet the non-Muslim argued this is what he understood, he should be returned to safety.

Granting security is valid by every willing, sane Muslim, whether free or slave, man or woman, because the Messenger of Allah (SA) said, “The blood of Muslims is equal (that is, in qiṣâṣ/retribution and blood money); the right of protection (granting asylum) is extended to the lowest [in status] among them.” [XV.3.2]	وَيَصِحُّ الْأَمَانُ مِنْ كُلِّ مُسْلِمٍ، عَاقِلٍ، مُخْتَارٍ، حُرًّا كَانَ أَوْ عَبْدًا، رَجُلاً أَوِ امْرَأَةً؛ لِقَوْلِ رَسُوْلِ اللهِ ﷺ: «اَلْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ وَيَسْعَى بِذِمَّتِهِمْ أَدْنَاهُمْ».

[XV.3.2] (D, N, A; H: Auth) They must honor the asylum given by one of them to the enemy.

The asylum is valid if granted by individual subjects of the Muslim state to small groups, by the commander to the state he was commissioned to fight, or by the imam (caliph) to all unbelievers. Whoever enters their land with their promise of security will have in turn given them a binding promise of security from him. [XV.3.3]	وَيَصِحُّ أَمَانُ آحَادِ الرَّعِيَّةِ لِلْجَمَاعَةِ الْيَسِيْرَةِ، وَأَمَانُ الْأَمِيْرِ لِلْبَلَدِ الَّذِيْ أُقِيْمَ بِإِزَائِهِ، وَأَمَانُ الْإِمَامِ لِجَمِيْعِ الْكُفَّارِ. وَمَنْ دَخَلَ دَارَهُمْ بِأَمَانِهِمْ، فَقَدْ أَمَّنَهُمْ مِنْ نَفْسِهِ.

[XV.3.3] This applies nowadays to anyone who receives a visa to enter a country, as well as citizenship or any form of legal residence.

Additionally, due to the UN charter and the treaties among all countries of the world, no one may wage war without having the jurisdiction to withdraw from those treaties. Individuals cannot, thereby, illegally cross the borders of sovereign countries and commit acts of war against their residents.

If they release a Muslim captive on condition that he sends them a certain amount of money, he is required to fulfill his promise. If they stipulate as a condition that he must return to them if he fails to fulfill his promise, he must do so, except for a woman, who does not return to them.	وَإِنْ خَلَّوْا أَسِيْرًا مِنَّا بِشَرْطِ أَنْ يَبْعَثَ إِلَيْهِمْ مَالًا مَعْلُوْمًا، لَزِمَهُ الْوَفَاءُ لَهُمْ، فَإِنْ شَرَطُوْا عَلَيْهِ أَنْ يَعُوْدَ إِلَيْهِمْ، إِنْ عَجِزَ عَنْهُ، لَزِمَهُ الْعَوْدُ، إِلَّا أَنْ تَكُوْنَ امْرَأَةً فَلَا تَرْجِعُ إِلَيْهِمْ.

[Truces and Treaties with the Unbelievers]

It is permissible to have truces with the unbelievers if the imam (caliph) finds it beneficial, but this may only be agreed by the imam or his deputy. He (the imam) must then protect them (those unbelievers with whom there is a truce) from Muslims, but not from the (other) warring enemies. [XV.3.4] If he fears that they will breach the contract, he must openly terminate it. [XV.3.5] If they are taken into captivity by other unbelievers, it is not permissible for (the Muslims) to purchase them. [XV.3.6]	فَصْلٌ: وَتَجُوْزُ مُهَادَنَةُ الْكُفَّارِ، إِذَا رَأَى الْإِمَامُ الْمَصْلَحَةَ فِيْهَا، وَلَا يَجُوْزُ عَقْدُهَا إِلَّا مِنَ الْإِمَامِ أَوْ نَائِبِهِ. وَعَلَيْهِ حِمَايَتُهُمْ مِنَ الْمُسْلِمِيْنَ، دُوْنَ أَهْلِ الْحَرْبِ. وَإِنْ خَافَ نَقْضَ الْعَهْدِ مِنْهُمْ نَبَذَ إِلَيْهِمْ عَهْدَهُمْ. وَإِنْ سَبَاهُمْ كُفَّارٌ آخَرُوْنَ، لَمْ يَجُزْ لَنَا شِرَاؤُهُمْ.

[XV.3.4] He must also protect them from non-Muslim subjects of the Muslim state.

[XV.3.5] Allah says:

{وَإِمَّا تَخَافَنَّ مِن قَوْمٍ خِيَانَةً فَانبِذْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ.}

{If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allah does not like traitors.} (al-Anfâl 8:58)

This means that you cannot reciprocate betrayal by betrayal. Being on equal terms here means that you and they should be equally aware of the termination of the treaty.

[XV.3.6] Since enslaving them would be a violation of the contract.

[Migration to the Land of Islam]

Hijrah (migration) is mandatory for those who cannot openly practice their religion in the abode of war, [XV.3.7] and it is recommended for those who can. Hijrah does not end as long as the unbelievers are being fought, except from a district after its successful conquest. [XV.3.8]	وَتَجِبُ الْهِجْرَةُ عَلَىٰ مَنْ لَمْ يَقْدِرْ عَلَىٰ إِظْهَارِ دِيْنِهِ فِيْ دَارِ الْحَرْبِ، وَتُسْتَحَبُّ لِمَنْ قَدِرَ عَلَىٰ ذٰلِكَ. وَلَا تَنْقَطِعُ الْهِجْرَةُ مَا قُوْتِلَ الْكُفَّارُ، إِلَّا مِنْ بَلَدٍ بَعْدَ فَتْحِهِ.

[XV.3.7] The Abodes of War, Peace and Treaty

Classical jurists classified the world into the abodes of peace, war, and treaty, giving them descriptive names according to the conditions of their times. The treaties signed by Muslim countries, as members of the United Nations and signatories to other covenants such as the Geneva Conventions, make the default classification for the whole world Dâr al-'Ahd ("abode of treaty"), which could also be referred to as Dâr aṣ-Ṣulḥ ("abode of conciliation"). Wherever Muslims have the right to practice their religion, the suggested term would be Dâr al-Amn ("abode of security").

[XV.3.8] Today, the entire world is an abode of Ṣulḥ (conciliation) by default as a result of the United Nations charter. However, Muslims should always be ready to migrate to a Muslim majority land if they fear for their

deen (religion) or their children's deen. Still, there are many nuances regarding Hijrah. For instance, Muslims could stay in a land engaged in war against another Muslim country if they were able to freely practice their deen, since fighting now is usually between countries, not one religion against another. They must avoid aggression against their co-religionists and compatriots.

[XV.4] Chapter on Non-Muslim Poll Taxes (*Jizyah*)

بَابُ الْجِزْيَةِ

Jizyah is not taken from anyone but the People of the Book, [XV.4.1] and they are the Jews and whoever believes in the Torah, and the Christians and whoever believes in the Gospel; and the Zoroastrians [XV.4.2] if they abide by the payment of the jizyah and the rulings of the religion (Islam). [XV.4.3]	وَلَا تُؤْخَذُ الْجِزْيَةُ إِلَّا مِنْ أَهْلِ الْكِتَابِ، وَهُمُ الْيَهُوْدُ وَمَنْ دَانَ بِالتَّوْرَاةِ، وَالنَّصَارَى وَمَنْ دَانَ بِالْإِنْجِيْلِ، وَالْمَجُوْسُ إِذَا الْتَزَمُوْا أَدَاءَ الْجِزْيَةِ وَأَحْكَامَ الْمِلَّةِ.

[XV.4] Introduction

The non-Muslims in a Muslim state were not required to partake in the military effort. In return for their protection, and as a show of the sovereignty of the Muslim state, this tax was levied on them; it is somewhat comparable to contemporary defense taxes. When Abu ‘Ubaydah (RA) heard that the Romans were preparing to retake Syria, he returned the jizyah to the inhabitants; he explained that he had been informed that enemy troops were gathering, and since the people had paid this tax in return for protection, the Muslims were morally bound to return the money now that they could not fulfill that condition. (Abu Yoosuf, *Kitâb al-Kharâj*) It is known that bayt ul-mâl used to look after the needs of the non-Muslim subjects of the Muslim state, so a portion of this jizyah was thus spent back on them.

It must also be mentioned that this matter is subject to treaties and agreements entered into by the head of state, who may make peace with any nation or people without collecting jizyah. In this case, the treaty governs the relationship between the two states or between the Muslim state and its new subjects. Ibn Qudâmah mentioned in *al-Mughni* that Banu Taghlib ibn Wâ’il refused to give the jizyah, insisting on calling their contribution to the state ‘zakat’ instead, so ‘Umar – after some negotiations – agreed to that, and none of the Companions opposed him. (*Kitâb al-Kharâj*, Abu Yoosuf; *Kitâb al-Amwâl,* Abu ‘Ubayd) Ibn Rushd al-Mâliki said that the specifics of the jizyah (e.g., amount due, date due, and who must pay) agreed upon

between the Muslims and the people of treaty are "referred back to the terms of the agreement." (Bidâyat al-Mujtahid)

Because of the above, some contemporary scholars, such as Shaykh Muhammad Abu Zahrah, suggested that zakat be made obligatory for non-Muslims in the same way that it is obligatory for Muslims, as a substitute for the jizyah.

[XV.4.1] (-H): It can be taken from all original unbelievers except Arab polytheists. Ibn Taymiyah also chose its acceptance from all original unbelievers in his Refutation of the Râfiḍi; another position is reported from him.

[XV.4.2] Although they are not from the People of the Book, they are treated like them in this regard.

[XV.4.3] Were Non-Muslim Subjects of the Caliphate Required to Comply with Sharia?

Their compliance with Sharia was only in regard to matters of statewide laws imposed in the public sphere, such as the prohibition of theft. It was not required in their personal or religious affairs, or even in interpersonal dealings among themselves; in these matters, they were permitted to uphold their own laws and have their own judiciaries.

Once they make that request, it must be honored, and fighting them becomes prohibited.	وَمَتَى طَلَبُوْا ذٰلِكَ، لَزِمَ إِجَابَتُهُمْ وَحَرُمَ قِتَالُهُمْ.

[Amount of *Jizyah*]

Jizyah is taken annually. It is 48 dirhams from the wealthy, 24 from the middle class, and 12 from those below that. [XV.4.4] It is not levied on a child, woman, frail old man, infirm or blind person, slave, or poor man who cannot afford it.	وَتُؤْخَذُ الْجِزْيَةُ فِيْ رَأْسِ كُلِّ حَوْلٍ. مِنَ الْمُوْسِرِ ثَمَانِيَةٌ وَأَرْبَعُوْنَ دِرْهَمًا، وَمِنَ الْمُتَوَسِّطِ أَرْبَعَةٌ وَعِشْرُوْنَ دِرْهَمًا، وَمِمَّنْ دُوْنَهُ اثْنَا عَشَرَ دِرْهَمًا. وَلَا جِزْيَةَ عَلٰى صَبِيٍّ، وَلَا امْرَأَةٍ، وَلَا شَيْخٍ فَانٍ، وَلَا

	زَمِنٍ، وَلَا أَعْمَى، وَلَا عَبْدٍ، وَلَا فَقِيْرٍ عَاجِزٍ عَنْهَا.

[XV.4.4] Amount of Jizyah

The later relied-upon Ḥanbali position leaves the amount of jizyah to the imam's judgment; the fixed amounts in the matn represent another report. Using 2.975 grams of silver per dirham, 12 dirhams equal 35.7 grams. However, we can use the price of commodities to come up with a more realistic valuation of the jizyah during those times. For instance, in the hadith of 'Urwah al-Bâriqi, he bought two sheep for one dinar and sold one of them for one dinar.

In a book titled *al-Aqbâṭ Hal Sâ'adoo al-Muslimeen fee Fatḥ Miṣr* (Copts: Did They Assist the Muslims in Conquering Egypt?), the Coptic author Nabeel Luqa pointed out in the third chapter (dedicated to the taxes under Byzantine rule) that the jizyah was only 1/10 of what the Byzantine rulers collected from the Egyptians. When we also factor in those who were exempt from the jizyah, it becomes obvious that it was never an undue burden on the people of conquered territories. Because of this and other manifestations of the justice of Muslim rule, the Christian inhabitants of Egypt welcomed the Muslim conquest. "When in 645 the Byzantines landed an army in the Delta and tried to reconquer the country, the native Christians actively joined in repulsing them." (*A History of Medieval Islam*, J. J. Saunders, p. 53)

If one accepts Islam after it becomes due on him, it is cancelled. If he dies (before paying it), it is taken from his estate. If a non-Muslim subject conducts business outside of his hometown/country and then returns, five percent is taken from him. [XV.4.5] If a merchant who is a ḥarbi enters our land, 10 percent is taken from him. [XV.4.6]	وَمَنْ أَسْلَمَ بَعْدَ وُجُوْبِهَا، سَقَطَتْ عَنْهُ، وَإِنْ مَاتَ، أُخِذَتْ مِنْ تَرِكَتِهِ. وَمَنِ اتَّجَرَ مِنْهُمْ إِلَىٰ غَيْرِ بَلَدِهِ، ثُمَّ عَادَ، أُخِذَ مِنْهُ نِصْفُ الْعُشْرِ. وَإِنْ دَخَلَ إِلَيْنَا تَاجِرٌ حَرْبِيٌّ، أُخِذَ مِنْهُ الْعُشْرُ.

[XV.4.5] This 5% of the merchandise was taken only once a year. It was waived for merchandise worth less than 10 dinars, and it was not levied on merchants who were in debt.

(A2): It is not levied on women.

[XV.4.6] These are the customs fees that were imposed on subjects of warring states when they brought merchandise into Muslim territories.

(H): The 1/10 is levied as customs fees only in reciprocation. If the warring state does not levy such customs on the Muslim merchants, nothing will be taken from their subjects.

If one breaches the covenant by refusing to pay the jizyah or to submit to the rulings of the religion, by fighting against the Muslims and the like, or by escaping to the abode of war, [XV.4.7] the inviolability of his life and property ceases. However, the covenant with his women and children is not terminated unless he takes them with him to the abode of war. [XV.4.8]	وَمَنْ نَقَضَ الْعَهْدَ بِامْتِنَاعِهِ مِنِ الْتِزَامِ الْجِزْيَةِ، أَوْ أَحْكَامِ الْمِلَّةِ، أَوْ قِتَالِ الْمُسْلِمِيْنَ وَنَحْوِهِ، أَوِ الْهَرَبِ إِلىٰ دَارِ الْحَرْبِ، حَلَّ دَمُهُ وَمَالُهُ، وَلَا يَنْتَقِضُ عَهْدُ نِسَائِهِ وَأَوْلَادِهِ بِنَقْضِهِ، إِلَّا أَنْ يَذْهَبَ بِهِمْ إِلىٰ دَارِ الْحَرْبِ.

[XV.4.7] The Abodes of War, Peace and Treaty

Classical jurists classified the world into the abodes of peace, war, and treaty, giving them descriptive names according to the conditions of their times. The treaties signed by Muslim countries, as members of the United Nations and signatories to other covenants such as the Geneva Conventions, make the default classification for the whole world Dâr al-‘Ahd (“abode of treaty”), which could also be referred to as Dâr aṣ-Ṣulḥ (“abode of conciliation”). Wherever Muslims have the right to practice their religion, the suggested term would be Dâr al-Amn (“abode of security”).

[XV.4.8] (A/SM & Iqnâ‘): The covenant with his women and children is not terminated even if he takes them to the abode of war.

[XVI] The Book of the Judiciary

كِتَابُ الْقَضَاءِ

وَهُوَ فَرْضُ كِفَايَةٍ، يَلْزَمُ الْإِمَامَ نَصْبُ مَنْ يُكْتَفَى بِهِ فِيْ الْقَضَاءِ، وَيَجِبُ عَلىٰ مَنْ يَصْلُحُ لَهُ، إِذَا طُلِبَ وَلَمْ يُوْجَدْ غَيْرُهُ، الْإِجَابَةُ إِلَيْهِ. وَإِنْ وُجِدَ غَيْرُهُ، فَالْأَفْضَلُ تَرْكُهُ.	It is a farḍ kifâyah. The imam must appoint enough qualified judges; those who are qualified must accept the positions if they are asked and there are no others to replace them. If there are others (who are qualified), then it is better for one to avoid it. [XVI.0.1]

[XVI.0.1] This is because of the great risk one takes by accepting the position of a judge. The Messenger of Allah (SA) said:

«الْقُضَاةُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ.»

"Judges are of three types; one will go to paradise and two to hell. The one who will go to paradise is a man who knows what is right and judges accordingly. The man who knows what is right but transgresses in his judgment will go to hell, and the man who judges between people while he is ignorant will go to hell." (D, T, N, Ma; Al-Ḥâkim: S)

وَمِنْ شَرْطِهِ أَنْ يَكُوْنَ رَجُلاً، حُرًّا، مُسْلِمًا، سَمِيْعًا، بَصِيْرًا، مُتَكَلِّمًا، عَدْلاً، عَالِمًا.	Its prerequisites include being a free Muslim man [XVI.0.2] with intact hearing, vision, and speech, who is trustworthy and knowledgeable.

[XVI.0.2] (A) + (+M, +S): A woman cannot be a judge in any branch of the judiciary.

(-H): Her judgments are effective in matters other than ḥudood and qiṣâṣ, although the classical Ḥanafi formulation states that the authority appointing her sins by doing so.

(-Muhammad ibn al-Ḥasan, -aṭ-Ṭabari, -Z): She may be a judge in all cases.

The first position is the position of the vast majority. They cite, among other evidence, the fact that the Prophet (SA) and his successors never appointed a woman judge. It is important to note, however, that the scholars do not claim that this ruling has anything to do with spiritual deficiency. In fact, Ibn al-Qayyim clearly states in aṭ-Ṭuruq al-Ḥukmiyah:

«والمَرْأَةُ العَدْلُ كالرَّجُلِ في الصِّدْقِ والأَمَانَةِ والدِّيَانَةِ.»

"And the trustworthy woman is like the trustworthy man in terms of truthfulness, honesty, and religiosity."

It is not due to intellectual deficiency either. It is known that a woman could be a mufti, which is even higher than a judge or imam; in fact, the judges ask the muftis about matters that are unclear to them.

According to the group of scholars who rejected the appointment of women as judges, the wisdom behind this is related to experience and wit in the matters of dispute, financial or criminal. Also, the judge is required to be present among men's gatherings and to mix with disputants and witnesses, and he may need to be alone with them. Islam seeks to protect women and preserve their honor and dignity. Finally, women are designed to fulfill their main mission in life, which is motherhood. This means that they were endowed with more emotions than men and more likely to be affected by these emotions.

He may not accept a bribe, nor may he accept a gift from someone who was not in the habit of giving him gifts before. [XVI.0.3] He may not judge before knowing the truth, and if he has any difficulty, he should consult with the people of knowledge and trustworthiness. He must not pass any judgment while he is angry or in any condition that will prevent him from fully employing his intellect.	وَلَا يَجُوْزُ لَهُ أَنْ يَقْبَلَ رِشْوَةً، وَلَا هَدِيَّةً مِمَّنْ لَمْ يَكُنْ يُهْدِيْ إِلَيْهِ، وَلَا الْحُكْمُ قَبْلَ مَعْرِفَةِ الْحَقِّ، فَإِنْ أَشْكَلَ عَلَيْهِ، شَاوَرَ فِيْهِ أَهْلَ الْعِلْمِ وَالْأَمَانَةِ. وَلَا يَحْكُمُ وَهُوَ غَضْبَانُ، وَلَا فِيْ

	حَالٍ يَمْنَعُ اسْتِيْفَاءَ الرَّأْيِ.

[XVI.0.3] The exception for gifts from someone who habitually gave him gifts before his appointment applies only when the giver has no case before him; declining even an otherwise permissible gift is preferable.

He should not use a doorman for the courtroom. He must treat the two litigants equitably in terms of admission into his room, seating, and the manner in which he addresses them.	وَلَا يَتَّخِذُ فِيْ مَجْلِسِ الْحُكْمِ بَوَّابًا، وَيَجِبُ عَلَيْهِ الْعَدْلُ بَيْنَ الْخَصْمَيْنِ فِيْ الدُّخُوْلِ عَلَيْهِ، وَالْمَجْلِسِ، وَالْخِطَابِ.

[XVI.1] Chapter on the Manner of Judging (Court Proceedings)

بَابُ صِفَةِ الْحُكْمِ

When the two litigants sit before him (the judge), and one of them makes a claim against the other, the claim will not be heard unless it is accurately detailed and the details are revealed to the defendant. If (the subject of dispute) is a debt, he must mention its amount and type. [XVI.1.1] If it is real estate, he must mention its location and borders. If it is a particular item that is present, he must point it out. If it is absent, he must mention its type and value. Then he says to his opponent, “What do you say?” If he admits (the charges made by the claimant), a ruling will be made in favor of the claimant. If he denies them, then there are only three possibilities:	إِذَا جَلَسَ إِلَيْهِ الْخَصْمَانِ، فَادَّعَى أَحَدُهُمَا عَلَى الْآخَرِ، لَمْ تُسْمَعِ الدَّعْوَى إِلَّا مُحَرَّرَةً تَحْرِيْرًا يَعْلَمُ بِهِ الْمُدَّعَى عَلَيْهِ. فَإِنْ كَانَ دَيْنًا، ذَكَرَ قَدْرَهُ وَجِنْسَهُ، وَإِنْ كَانَ عَقَارًا، ذَكَرَ مَوْضِعَهُ وَحُدُوْدَهُ، وَإِنْ كَانَ عَيْنًا حَاضِرَةً عَيَّنَهَا. وَإِنْ كَانَتْ غَائِبَةً، ذَكَرَ جِنْسَهَا وَقِيْمَتَهَا، ثُمَّ يَقُوْلُ لِخَصْمِهِ: مَا تَقُوْلُ؟ فَإِنْ أَقَرَّ، حُكِمَ لِلْمُدَّعِيْ، وَإِنْ أَنْكَرَ، لَمْ يَخْلُ مِنْ ثَلَاثَةِ أَقْسَامٍ:

[XVI.1.1] The type of currency (e.g., US vs. Canadian dollars) or the type of grains. For example, if wheat comes in many types, the type of wheat in dispute must be specified, etc.

The first: (The subject of dispute) is physically in the possession of one of them. In this case, (the judge) will ask the claimant, “Do you have proof?” If he says yes and establishes it, then a ruling will be made in his favor on this basis. If he has no proof, (the judge) will say, “You are entitled to have him take an oath (of denial).” If (the claimant) demands it, (the judge) will ask	أَحَدُهَا: أَنْ تَكُوْنَ فِيْ يَدِ أَحَدِهِمَا، فَيَقُوْلُ لِلْمُدَّعِيْ: أَلَكَ بَيِّنَةٌ؟ فَإِنْ قَالَ: نَعَمْ، وَأَقَامَهَا، حَكَمَ لَهُ. وَإِنْ لَمْ تَكُنْ لَهُ بَيِّنَةٌ، قَالَ لَهُ: فَلَكَ يَمِيْنُهُ، فَإِنْ طَلَبَهَا،

(the defendant) to take the oath and thereby be acquitted. This is because the Messenger of Allah (SA) said, “If people were given whatever they claimed (in disputes), some people would claim the lives and wealth of others – but the oath (of denial) must be taken by the defendant.” [XVI.1.2] If (the defendant) declines to take the oath and passes it back to the claimant, (the judge) will demand that he (the claimant) take the oath and (if he does, he should) judge in his favor; [XVI.1.3] however, if (the claimant) also declines to take the oath, (the judge) will dismiss them both. If they both have proof, he will judge in favor of the claimant. [XVI.1.4] If the person who is in possession (of the disputed property) acknowledges that it is owned by another party, then that party – instead of the one who possesses (the disputed property) – will be the claimant’s opponent.	اسْتَحْلَفَهُ وَبَرِئَ؛ لِقَوْلِ النَّبِيِّ ﷺ: «لَوْ أُعْطِيَ اَلنَّاسُ بِدَعْوَاهُمْ، لَادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ، وَلَكِنِ اَلْيَمِينُ عَلَى اَلْمُدَّعَى عَلَيْهِ». وَإِنْ نَكَلَ عَنِ الْيَمِيْنِ، وَرَدَّهَا عَلَىٰ الْمُدَّعِيْ، اسْتَحْلَفَهُ وَحَكَمَ لَهُ، وَإِنْ نَكَلَ أَيْضًـا، صَرَفَهُمَـا. وَإِنْ كَانَ لِكُلِّ وَاحِدٍ مِنْهُمَـا بَيِّنَةٌ، حَكَمَ بِهَا لِلْمُدَّعِيْ. وَإِنْ أَقَرَّ صَاحِبُ الْيَدِ لِغَيْرِهِ، صَارَ الْمُقَرُّ لَهُ الْخَصْمَ فِيْهَا، وَقَامَ مَقَامَ صَاحِبِ الْيَدِ فِيْ مَا ذَكَرْنَا.

[XVI.1.2] (Ag – from Ibn ‘Abbâs)

[XVI.1.3] (A/SM & Iqnâ‘): The judge will not demand that the claimant take the oath, but if he asks him to rule in his favor due to the defendant’s refusal to take the oath, the judge should do so.

[XVI.1.4] (A2): He should judge in favor of the defendant because he has possession and proof, whereas the claimant has proof only.

The second: Both of them have physical possession. In this case, if either one of them	الثَّانِيْ: أَنْ تَكُوْنَ فِيْ يَدَيْهِمَا، فَإِنْ

has proof (of his entitlement to the disputed property), the judge will judge in his favor on the basis of that proof. If neither of them has proof, or if they both have proof, it will be divided between them. Each of them will take an oath concerning the one-half he is granted. If one of them claims to own the entire property, while the other claims to own one-half of it, but there is no proof, then it will be divided between them. The one who claims one-half will be responsible for taking the oath. If they both have proof, it will be given to the one who claims to own the entire property.	كَانَتْ لِأَحَدِهِمَا بَيِّنَةٌ، حُكِمَ لَهُ بِهَا. وَإِنْ لَمْ يَكُنْ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ، أَوْ لَهُمَا بَيِّنَتَانِ، قُسِمَتْ بَيْنَهُمَا، وَحَلَفَ كُلُّ وَاحِدٍ مِنْهُمَا عَلَىٰ النِّصْفِ الْمَحْكُوْمِ لَهُ بِهِ. وَإِنِ ادَّعَاهَا أَحَدُهُمَا، وَادَّعَى الْآخَرُ نِصْفَهَا، وَلَا بَيِّنَةَ، قُسِمَتْ بَيْنَهُمَا، وَالْيَمِيْنُ عَلَىٰ مُدَّعِيْ النِّصْفِ. وَإِنْ كَانَتْ لَهُمَا بَيِّنَتَانِ، حُكِمَ بِهَا لمدَّعِي الْكُلِّ.

The third: It is in the possession of a third party. If the possessor acknowledges that one of them or another person owns it, then the one whom he acknowledges as the owner will be in the position of one who has possession. If he acknowledges that they both own it, it will be like the example where they both are in possession (of the disputed property). If he says, “I don’t know which one of them is the owner,” and one of them has proof, it will be his. If both have no proof, or if both have proof, they will cast lots to determine which one will take the oath. He whose lot comes out first will take the oath and thereby take (the disputed property).	الثَّالِثُ: أَنْ تَكُوْنَ فِيْ يَدِ غَيْرِهِمَا، فَإِنْ أَقَرَّ بِهَا لِأَحَدِهِمَا، أَوْ لِغَيْرِهِمَا، صَارَ الْمُقَرُّ لَهُ كَصَاحِبِ الْيَدِ. وَإِنْ أَقَرَّ لَهُمَا، صَارَتْ كَالَّتِيْ فِيْ يَدَيْهِمَا. وَإِنْ قَالَ: لَا أَعْرِفُ صَاحِبَهَا مِنْهُمَا، وَلِأَحَدِهِمَا بَيِّنَةٌ، فَهِيَ لَهُ، وَإِنْ لَمْ تَكُنْ لَهُمَا بَيِّنَةٌ، أَوْ لِكُلِّ وَاحِدٍ بَيِّنَةٌ، اسْتَهَمَا عَلَىٰ

الْيَمِيْنِ، فَمَنْ خَرَجَ سَهْمُهُ، حَلَفَ وَأَخَذَهَا.	

[XVI.2] Chapter on Conflicting Claims

بَابُ تَعَارُضِ الدَّعَاوٰى

If they dispute over a shirt while one of them is wearing it and the other is holding its sleeve, it will be for the one wearing it. If they dispute over a beast of burden while one of them is riding it or has his belongings on it, it will be his. If they dispute over a piece of land that has trees, buildings, or crops belonging to one of them, it will be his.	إِذَا تَنَازَعَا قَمِيْصًا، أَحَدُهُمَا لابِسُهُ، وَالْآخَرُ آخِذٌ بِكُمِّهِ، فَهُوَ لِلابِسِهِ. وَإِنْ تَنَازَعَا دَابَّةً، أَحَدُهُمَا رَاكِبُهَا، أَوْ لَهُ عَلَيْهَا حِمْلٌ، فَهِيَ لَهُ. وَإِنْ تَنَازَعَا أَرْضًا فِيْهَا شَجَرٌ أَوْ بِنَاءٌ، أَوْ زَرْعٌ لأَحَدِهِمَا، فَهِيَ لَهُ.

If two craftsmen dispute over the tools in a store, the tools of each craft will be for the one who practices it. [XVI.2.1]	وَإِنْ تَنَازَعَ صَانِعَانِ فِيْ قُمَاشِ دُكَّانٍ، فَآلَةُ كُلِّ صِنَاعَةٍ لِصَاحِبِهَا.

[XVI.2.1] These are examples of judging by qarâ'in (pl. of qareenah: corroborative evidence). In the past, the jurists differed regarding the methods by which a claim is established in the Islamic judiciary. Some limited it to whatever has been explicitly stated in, or extracted from, the revealed texts, while others widened the circle of evidence to include whatever reveals the truth and paves the way for justice. For this reason, basing rulings on qarâ'in was a matter of debate among the jurists. The difference today is that forensic science has evolved to such a degree that judicial systems throughout the world rely heavily on it. Legal experts call this type of evidence 'tangible proof,' and despite its being considered a largely modern phenomenon, it still falls under corroborative evidence. The question is: Where should the Islamic judiciary stand regarding forensic science? Should it benefit from it? Should this benefit be limited to guiding the criminal investigator and enlightening the judge with important details of the crime? Or should this evidence be used by the judge whenever it qualifies, even in the absence of the customary types of evidence known to Islamic jurisprudence, such as witness testimony, confessions, oaths, and nukool (refusal to take an oath)?

I believe that a reasoned incorporation of the tangible evidence in what counts as admissible proofs is completely warranted, and this was the position of luminaries like Ibn al-Qayyim, Ibn Taymiyah, and Ibn Farḥoon, and of the remaining Mâlikis, in addition to Ibn al-Ghars of the Ḥanafis and some Ḥanbalis (mentioned in order of the strength of their support for the use of qarâ'in and the scope of its use in their ijtihâd.)

If two spouses dispute over the furniture and housewares, the husband will be entitled to that which is more suitable for men and the wife to that which is more suitable for women, and what is suitable for both will be divided between them.	وَإِنْ تَنَازَعَ الزَّوْجَانِ فِيْ قُمَاشِ الْبَيْتِ، فَلِلرَّجُلِ مَا يَصْلُحُ لِلرِّجَالِ، وَلِلْمَرْأَةِ مَا يَصْلُحُ لِلنِّسَاءِ، وَمَا يَصْلُحُ لَهُمَا، فَهُوَ بَيْنَهُمَا.

If they dispute over a wall that is attached to both of their buildings or that is not attached to either one, it will be for them both. If it is attached to the building of one of them alone, then it is his. If the owners of the upper and lower floors in a building dispute over the ceiling between them, it will be for both of them. Likewise, if the owners of a piece of land and a water stream dispute over the fence between them, it will be for both of them. Finally, if two people dispute over a shirt while one of them is holding its sleeve but the other person has the rest of it, it will be for both of them.	وَإِنْ تَنَازَعَا حَائِطًا مَعْقُوْدًا بِبِنَائِهِمَا، أَوْ مَحْلُوْلاً مِنْهُمَا، فَهُوَ بَيْنَهُمَا، وَإِنْ كَانَ مَعْقُوْدًا بِبِنَاءِ أَحَدِهِمَا وَحْدَهُ، فَهُوَ لَهُ. وَإِنْ تَنَازَعَ صَاحِبُ الْعُلُوِّ وَالسُّفْلِ فِيْ السَّقْفِ الَّذِيْ بَيْنَهُمَا، أَوْ تَنَازَعَ صَاحِبُ الْأَرْضِ وَالنَّهْرِ فِيْ الْحَائِطِ الَّذِيْ بَيْنَهُمَا، أَوْ تَنَازَعَا قَمِيْصًا أَحَدُهُمَا آخِذٌ بِكُمِّهِ وَبَاقِيْهِ مَعَ الْآخَرِ، فَهُوَ بَيْنَهُمَا.

If a Muslim and an unbeliever dispute over a deceased person, each one claiming that the person died on his faith: if his original religion is known, then that will be his religion; if his original religion is unknown,	وَإِنْ تَنَازَعَ مُسْلِمٌ وَكَافِرٌ مِيْرَاثَ مَيِّتٍ، يَزْعُمُ كُلُّ وَاحِدٍ مِنْهُمَا أَنَّهُ كَانَ عَلَىٰ دِيْنِهِ، فَإِنْ عُرِفَ أَصْلُ دِيْنِهِ، حُمِلَ عَلَيْهِ،

then the inheritance will belong to the Muslim, [XVI.2.2] and likewise if they both have proof (of their claims). [XVI.2.3] However, if only one of them has proof, a judgment will be made in his favor.	وَإِنْ لَمْ يُعْرَفْ أَصْلُ دِيْنِهِ، فَالْمِيْرَاثُ لِلْمُسْلِمِ، وَإِنْ كَانَ لَهُمَا بَيِّنَتَانِ، فَكَذٰلِكَ، وَإِنْ كَانَتْ لِأَحَدِهِمَا بَيِّنَةٌ، حُكِمَ لَهُ بِهَا.

[XVI.2.2] (A/SM & Iqnâ‘): If a father whose religion is not known is survived by two children, a Muslim and non-Muslim, and each one claims that he died upon their religion, then all of the inheritance will go to the non-Muslim if the Muslim acknowledges that he is his brother, or it is proven. Otherwise, it will be divided between them.

[XVI.2.3] (A/SM & Iqnâ‘): The estate will be divided between them.

	وَإِنِ ادَّعَى كُلُّ وَاحِدٍ مِنَ الشَّرِيْكَيْنِ فِيْ الْعَبْدِ أَنَّ شَرِيْكَهُ أَعْتَقَ نَصِيْبَهُ مِنْهُ، وَهُمَا مُوْسِرَانِ، عَتَقَ كُلُّهُ وَلَا وَلَاءَ لَهُمَا عَلَيْهِ، وَإِنْ كَانَ أَحَدُهُمَا مُوْسِرًا وَالْآخَرُ مُعْسِرًا، عَتَقَ نَصِيْبُ الْمُعْسِرِ وَحْدَهُ، وَإِنْ كَانَا مُعْسِرَيْنِ، لَمْ يَعْتِقْ مِنْهُ شَيْءٌ، وَإِنِ اشْتَرَى أَحَدُهُمَا نَصِيْبَ صَاحِبِهِ، عَتَقَ حِيْنَئِذٍ وَلَمْ يَسْرِ إِلىٰ بَاقِيْهِ، وَلَا وَلَاءَ لَهُ عَلَيْهِ، وَإِنِ ادَّعَى كُلُّ وَاحِدٍ مِنَ الْمُوْسِرَيْنِ أَنَّهُ أَعْتَقَهُ، تَحَالَفَا وَكَانَ وَلَاؤُهُ بَيْنَهُمَا. وَإِنْ قَالَ السَّيِّدُ لِعَبْدِهِ : إِنْ بَرِئْتُ مِنْ مَرَضِيْ هٰذَا، فَأَنْتَ حُرٌّ، وَإِنْ قُتِلْتُ، فَأَنْتَ حُرٌّ، فَادَّعَى الْعَبْدُ بُرْءَهُ، أَوْ قَتْلَهُ، وَأَنْكَرَ الْوَرَثَةُ، فَالْقَوْلُ قَوْلُهُمْ، وَإِنْ أَقَامَ كُلُّ وَاحِدٍ مِنْهُمْ بَيِّنَةً بِقَوْلِهِ، عَتَقَ الْعَبْدُ؛ لِأَنَّ بَيِّنَتَهُ تَشْهَدُ بِزِيَادَةٍ . وَلَوْ مَاتَ رَجُلٌ وَخَلَّفَ ابْنَيْنِ وَعَبْدَيْنِ مُتَسَاوِيَيْ الْقِيْمَةِ، لَا مَالَ لَهُ سِوَاهُمَا، فَأَقَرَّ الِابْنَانِ أَنَّهُ أَعْتَقَ أَحَدَهُمَا فِيْ مَرَضِهِ، عَتَقَ ثُلُثَاهُ إِنْ لَمْ يُجِيْزَا عِتْقَهُ كُلَّهُ، وَإِنْ قَالَ أَحَدُهُمَا: أَبِيْ أَعْتَقَ هٰذَا، وَقَالَ الْآخَرُ: بَلْ هٰذَا، عَتَقَ ثُلُثُ كُلِّ وَاحِدٍ مِنْهُمَا، وَكَانَ لِكُلِّ ابْنٍ سُدُسُ الَّذِيْ اعْتَرَفَ بِعِتْقِهِ وَنِصْفُ الْآخَرِ، وَإِنْ قَالَ الثَّانِيْ: أَبِيْ أَعْتَقَ أَحَدَهُمَا لَا أَدْرِيْ مَنْ مِنْهُمَا، أُقْرِعَ بَيْنَهُمَا، وَقَامَتِ الْقُرْعَةُ مَقَامَ تَعْيِيْنِهِ.

[XVI.3] Chapter on the Correspondence of Judges

بَابُ حُكْمِ كِتَابِ الْقَاضِيْ

Judging against an absentee is permissible if the claimant has proof. [XVI.3.1] When judgment is passed against an absentee, and the judge writes to the judge in the town where the absentee resides (to inform him of this judgment), he (the second judge) must accept it and enforce it upon the person against whom the judgment was passed.	يَجُوْزُ الْحُكْمُ عَلَىٰ الْغَائِبِ، إِذَا كَانَتْ لِلْمُدَّعِيْ بَيِّنَةٌ. وَمَتَى حَكَمَ عَلَىٰ غَائِبٍ، ثُمَّ كَتَبَ بِحُكْمِهِ إِلَىٰ قَاضِيْ بَلَدِ الْغَائِبِ، لَزِمَهُ قَبُوْلُهُ، وَأَخَذَ الْمَحْكُوْمَ عَلَيْهِ بِهِ.

[XVI.3.1] This is the position of (A).

(a) + (-H): The judge may not listen to the claim against the absentee.

It may be said that the judge must exhaust all avenues to urge the absentee to attend, but if he fails to appear, the judge may listen to the claimant's argument.

The letter must be authenticated through the testimony of two trustworthy witnesses who say, "He read it before us," or "It was read before the judge in our presence, and then he said, witness that this is my letter to So-and-so or to whomever it reaches of the Muslim judges and rulers." [XVI.3.2]	وَلَا يَثْبُتُ إِلَّا بِشَاهِدَيْنِ عَدْلَيْنِ، يَقُوْلَانِ: قَرَأَهُ عَلَيْنَا، أَوْ قُرِئَ عَلَيْهِ بِحَضْرَتِنَا، فَقَالَ: اشْهَدَا عَلَيَّ أَنَّ هَذَا كِتَابِيْ إِلَىٰ فُلَانٍ، أَوْ إِلَىٰ مَنْ يَصِلُ إِلَيْهِ مِنْ قُضَاةِ الْمُسْلِمِيْنَ وَحُكَّامِهِمْ.

[XVI.3.2] (a): It is sufficient to recognize the judge's handwriting and seal.

What is intended based on this second view is the confidence that the letter is genuine. In our times, there may be other means to ensure that. The standard rule required witnesses, but later Mâliki authorities recognized the practice of accepting known judicial handwriting out of necessity. Ibn al-

Munâṣif (d. 620 AH) said in Tanbeeh al-Ḥukkâm that judges in the regions known to him had adopted this practice.

If the one (judge/ruler) being addressed by the letter dies or is removed from his post before it reaches him, and it reaches someone else, then that person should still act upon it. If the sender dies or is removed from his post after he has already issued the verdict, it is still valid to accept his letter. Letters from judges are accepted concerning all cases except ḥudood and qiṣâṣ. [XVI.3.3]	فَإِنْ مَاتَ الْمَكْتُوْبُ إِلَيْهِ، أَوْ عُزِلَ، فَوَصَلَ إِلَىٰ غَيْرِهِ، عَمِلَ بِهِ، وَإِنْ مَاتَ الْكَاتِبُ، أَوْ عُزِلَ بَعْدَ حُكْمِهِ، جَازَ قَبُوْلُ كِتَابِهِ. وَيُقْبَلُ كِتَابُ الْقَاضِيْ فِيْ كُلِّ حَقٍّ، إِلَّا الْحُدُوْدَ وَالْقِصَاص.

[XVI.3.3] (a) + (-H): As mentioned here above.

(A/SM & Iqnâʿ): Accepted in qiṣâṣ and other human-right claims, including qadhf, but not in pure divine-right ḥudood such as zinâ and drinking intoxicants.

(-M, -S): Accepted in all cases.

[XVI.4] Chapter on Division (of Shared Properties)

بَابُ الْقِسْمَةِ

There are two types: First, a division that can be imposed: Those properties that can be divided without any harm (to any partner) or need for compensation (of any partner). [XVI.4.1] If one of two partners requests that the property be divided, but the other refuses, the judge will force him to accept it as long as there is proof of their shared ownership. [XVI.4.2] If their ownership is established through acknowledgment, then the second one will not be forced to accept the division. If they both agree to divide the property in this case, it will be divided between them, but it will be documented that the division was based on their mutual acknowledgment of shared ownership, not on proof of it. [XVI.4.3]	وَهِيَ نَوْعَانِ: قِسْمَةُ إِجْبَارٍ، وَهِيَ: قِسْمَةُ مَا يُمْكِنُ قِسْمَتُهُ مِنْ غَيْرِ ضَرَرٍ، وَلَا رَدِّ عِوَضٍ إِذَا طَلَبَ أَحَدُ الشَّرِيْكَيْنِ قَسْمَهُ، فَأَبَى الْآخَرُ، أَجْبَرَهُ الْحَاكِمُ عَلَيْهِ إِذَا ثَبَتَ عِنْدَهُ مِلْكُهُمَا بِبَيِّنَةٍ، فَإِنْ أَقَرَّ بِهِ، لَمْ يُجْبِرِ الْمُمْتَنِعَ عَلَيْهِ، وَإِنْ طَلَبَاهَا فِيْ هَذِهِ الْحَالِ، قُسِمَتْ بَيْنَهُمَا، وَأُثْبِتَ فِي الْقَضِيَّةِ أَنَّ قَسْمَهُ كَانَ عَنْ إِقْرَارِهِمَا، لَا بِبَيِّنَةٍ.

[XVI.4.1] For example, if two men inherit a piece of land that has a well on one side, where the land is worth 100 and the water well is worth 200, then whoever takes the well will need to pay 50 to the one who gets the rest of the land (to make the value of each inheritance the same – that is, 150). In this case, the transaction is a sale that must be concluded with mutual agreement.

If the land is worth 1000 and the well is worth 500, then each should receive a value of 750; one of them may take the well and 1/4 of the land

(500+250), while the other takes the rest of the land (worth 750). This would be enforceable by (A) + (+H, +S), if there is no harm to either one.

[XVI.4.2] Based on that, there are three conditions for the division to be enforceable by the court:

1. There is no harm for either partner.

2. There is no need to compensate either partner with something that is not part of the property being divided.

3. The ownership of the parties is established via admissible proofs, not merely by their mutual acknowledgment.

[XVI.4.3] (-S): It will not be divided, due to the possibility that it may be owned (totally or partially) by a third party.

Second, a division by mutual agreement: The division associated with harm to either party such that they cannot benefit from their share in the way it was intended, [XVI.4.4] or it cannot be divided evenly without one of the partners having to pay a (separate) compensation to the other. [XVI.4.5] In this case, the division cannot be imposed on them. [XVI.4.6]	والثَّاني: قِسْمَةُ التَّرَاضِي، وَهِيَ قِسْمَةُ مَا فِيْهِ ضَرَرٌ؛ بِأَنْ لَا يَنْتَفِعَ أَحَدُهُمَا بِنَصِيْبِهِ فِيْمَا هُوَ لَهُ، أَوْ لَا يُمْكِنُ تَعْدِيْلُهُ، إِلَّا بِرَدِّ عِوَضٍ مِنْ أَحَدِهِمَا، فَلَا إِجْبَارَ فِيْهَا.

[XVI.4.4] If, for example, land and a factory are divided so that one individual takes part of the factory, leaving the other individual unable to use it as it was intended (as a factory). According to (A), a decrease in value caused by the division is sufficient to prevent compulsory partition, even if the divided shares remain usable.

[XVI.4.5] (A): Using the land with a well as an example, if the party that will not get the well can be made whole from the land itself, the division can be imposed, but if he will have to be paid a separate compensation, such as 50 dirhams or the like, then it cannot be imposed.

[XVI.4.6] In other words, the judge cannot proceed with the division unless all parties agree.

Division is (simply) a sorting out of rights, in which there is no right to preemption and no option to rescind. It is permissible to divide items that are measurable by volume on the basis of weight instead, and to divide those measurable by weight on the basis of volume instead. Also, it is permissible to divide fruits on the basis of estimation (of the yield before it is actually harvested). [XVI.4.7]	وَالْقِسْمَةُ إِفْرَازُ حَقٍّ لَا يُسْتَحَقُّ بِهَا شُفْعَةٌ، وَلَا يَثْبُتُ فِيْهَا خِيَارٌ. وَتَجُوْزُ فِيْ الْمَكِيْلِ وَزْنًا، وَفِيْ الْمَوْزُوْنِ كَيْلًا، وَفِيْ الثِّمَارِ خَرْصًا.

[XVI.4.7] This is all to say that this division of property is not a sales transaction. In contrast, if it were a sale, the right to preemption and the option of return would be established; moreover, in a sales transaction, conjecture is avoided in order to avoid usury, and items measured by weight must be measured by weight, not volume. (Refer to the Chapter on Usury.) This text refers to the case when the division can be made evenly without any separate compensation needed. In the example of the land with the well, there will be a sales transaction if the party who does not get the well is made whole by a separate compensation (50 dirhams). If he will be made whole by getting a larger piece of the land to be divided, then (A) does not consider it a sale; it is still a sorting out (unscrambling) of rights.

It is permissible to divide the waqf as long as there will be no need for compensation. If some of the property is privately owned and some is waqf, and the private owner will need to pay compensation, then the division is not permissible, but if the waqf manager will have to pay the compensation, it is permissible. [XVI.4.8]	وَتَجُوْزُ قِسْمَةُ الْوَقْفِ إِذَا لَمْ يَكُنْ فِيْهَا رَدُّ عِوَضٍ، فَإِنْ كَانَ بَعْضُهُ طِلْقًا، وَبَعْضُهُ وَقْفًا، وَفِيْهَا رَدُّ عِوَضٍ مِنْ صَاحِبِ الطِّلْقِ لَمْ يَجُزْ ، وإِنْ كَانَ من رَبِّ الوَقْفِ جَازَ.

[XVI.4.8] The need for compensation means that in order for the waqf to stay whole after the division, the other partner (whether it is another waqf or a private entity) will need to compensate it. In the example of the land with the well, if the land is worth 100 and the well is worth 200, then the one getting the well will need to pay the other party 50 dirhams to make them even (with 150 each). If this land was originally shared by a waqf and a private owner, the waqf must get the well and compensate the private owner (if they agree). The opposite is not permissible because the private owner would be purchasing part of the waqf for 50 dirhams, and a waqf may not be sold. If the land was shared by two waqfs, the division would not be possible either, because neither of them may be partially sold.

After adjusting the shares (to make them equitable), he will then cast lots (between the partners). He whose lot comes out indicating entitlement to a particular share will have it, and it will be binding.	وَإِذَا عُدِّلَتِ الْأَجْزَاءُ، أُقْرِعَ عَلَيْهَا، فَمَنْ خَرَجَ سَهْمُهُ عَلَىٰ شَيْءٍ، صَارَ لَهُ، وَلَزِمَ بِذٰلِكَ.

The people doing the dividing (working for) the authorities must be trustworthy, and the scribes should also be.	وَيَجِبُ أَنْ يَكُوْنَ قَاسِمُ الْحَاكِمِ عَدْلاً، وَكَذٰلِكَ كَاتِبُهُ.

[XVI.5] The Book of Testimonies

كِتَابُ الشَّهَادَاتِ

Witnessing (legally consequential events) and testifying (as to what was witnessed) is a farḍ kifâyah. If there are only two people found who can do so, it is required of them, whether regarding relatives or strangers, if they can both do this without incurring harm. This is due to the statement of Allah, Exalted is He: {O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents…} *(an-Nisâ' 4:135)*	تَحَمُّلُ الشَّهَادَةِ وَأَدَاؤُهَا فَرْضُ كِفَايَةٍ، إِذَا لَمْ يُوْجَدْ مَنْ يَقُوْمُ بِهَا سِوَى اثْنَيْنِ، لَزِمَهُمَا الْقِيَامُ بِهَا، عَلَىٰ الْقَرِيْبِ وَالْبَعِيْدِ، إِذَا أَمْكَنَهُمَا ذٰلِكَ مِنْ غَيْرِ ضَرَرٍ؛ لِقَوْلِ اللهِ تَعَالَىٰ: «يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدَيْنِ» [سورة النساء: 135]

(Legally consequential events) that are witnessed fall into four categories: 1) Fornication and anything which mandates its ḥadd is not confirmed except by four free, trustworthy, male individuals.	الْمَشْهُوْدُ بِهِ أَرْبَعَةُ أَقْسَامٍ: أَحَدُهَا: الزِّنَى وَمَا يُوْجِبُ حَدَّهُ، فَلَا يَثْبُتُ إِلَّا بِأَرْبَعَةِ رِجَالٍ أَحْرَارٍ عُدُوْلٍ.

2) Financial transactions and other contracts pertaining to them [XVI.5.1] are confirmed by two (male) witnesses, or a man and two women, [XVI.5.2] or a man along with the oath of the claimant.	الثَّانِيْ: الْمَالُ وَمَا يُقْصَدُ بِهِ الْمَالُ، فَيَثْبُتُ بِشَاهِدَيْنِ، أَوْ بِرَجُلٍ وَامْرَأَتَيْنِ، وَبِرَجُلٍ مَعَ يَمِيْنِ الطَّالِبِ.

[XVI.5.1] Such as collateral or guaranteeing another's debt.

[XVI.5.2] There is reason to believe that there are certain differences between men and women that make the testimony of two women equal to that of one man in financial matters, whereas a single trustworthy woman's testimony can suffice in other areas, such as childbirth (A +H) and

breastfeeding (A). The scholars of the past and present have indicated that women, in general, do not have as much exposure to those financial transactions, so they are less cognizant and observant of their details. This has nothing to do with trustworthiness; otherwise, it would have been the case in all matters. Also, if women were less trustworthy, their narrations of the Prophet's sayings and actions would have not been accepted, but it is established that they are just as reliable as those of men. In fact, Imam adh-Dhahabi stated that no woman narrator has ever been accused of fabrication. Ibn al-Qayyim said in aṭ-Ṭuruq al-Ḥukmiyah:

«والمَرْأَةُ العَدْلُ كالرَّجُلِ في الصِّدْقِ والأَمَانَةِ والدِّيَانَةِ، إلا أَنَّها لمَّا خيفَ عليها السَّهْوُ والنِّسيانُ قُوِّيَت بمثلِها.»

"And the trustworthy woman is like the trustworthy man in terms of truthfulness, honesty, and religiosity, except that inattention and forgetfulness were feared in her case, so (her testimony) was corroborated with another woman like her."

3) Aside from the above two categories, any matters that men are customarily acquainted with [XVI.5.3] can only be confirmed by the testimony of two men. [XVI.5.4]	الثَّالِثُ: مَا عَدَا هَذَيْنِ مِمَّا يَطَّلِعُ عَلَيْهِ الرِّجَالُ فِيْ غَالِبِ الْأَحْوَالِ، فَلَا يَثْبُتُ إِلَّا بِشَهَادَةِ رَجُلَيْنِ.

[XVI.5.3] Aside from ḥudood and qiṣâṣ, this category includes marriage, divorce, raj'ah, establishment of lineage, walâ' (allegiance to the emancipator), and agency or testamentary appointment in nonfinancial matters. Hiring under an ijârah contract and bequests of property belong to the category of financial claims. Under the later relied-upon Ḥanbali position, emancipation also accepts the forms of proof admitted in financial claims.

[XVI.5.4] This is the position of (A) + (+M, +S).

(a) + (-H): The testimony of one man and two women is accepted in all matters except ḥudood and qiṣâṣ. They cited some reports from the Companions and righteous predecessors, including a report from az-Zuhri:

«مَضَت السُّنَّةُ مِن لَدُن رسول الله ﷺ والخَليفَتَينِ مِن بعدِهِ أن لا شَهادة للنِّساءِ في الحُدودِ والقِصاصِ»

"The established Sunnah from the time of the Prophet (SA) and his two successors is that there is no valid testimony by women in ḥudood and qiṣâṣ." (Al-Hidâyah, from az-Zuhri. W.)

(-Z, -ash-Shawkâni): Women's testimony is accepted in all matters, including ḥudood and qiṣâṣ.

(-t, -Ibn al-Qayyim, -some Mâlikis): Women's testimony is accepted regarding crimes that occur in their gatherings to which men usually have no access, such as public baths for women.

4) (Issues) that men do not have access to observe – such as childbirth, menstruation, waiting periods, and body defects that are customarily covered – are confirmed by the testimony of a trustworthy woman. This is because 'Uqbah ibn al-Ḥârith said that he married Umm Yaḥyâ bint Abi Ihâb. He said, "A black slave-lady came and said, 'I suckled you both.' I then mentioned that to the Prophet (SA), so he said, 'How can you (keep her as your wife) when the lady has claimed that she suckled both of you?'" [XVI.5.5]	الرَّابِعُ: مَا لَا يَطَّلِعُ عَلَيْهِ الرِّجَالُ، كَالْوِلَادَةِ، وَالْحَيْضِ، وَالْعِدَّةِ، وَالْعُيُوْبِ تَحْتَ الثِّيَابِ، فَيَثْبُتُ بِشَهَادَةِ امْرَأَةٍ عَدْلٍ؛ لِأَنَّ عُقْبَةَ بْنَ الْحَارِثِ قَالَ: تَزَوَّجْتُ أُمَّ يَحْيَى بِنْتَ أَبِيْ إِهَابٍ، فَجَاءَتْ أَمَةٌ سَوْدَاءُ، فَقَالَتْ: قَدْ أَرْضَعْتُكُمَا، فَذَكَرْتُ ذٰلِكَ لِلنَّبِيِّ ﷺ، فَقَالَ: « وَكَيْفَ وَقَدْ زَعَمَتْ ذَلِكَ.»

[XVI.5.5] (B)

	وَتُقْبَلُ شَهَادَةُ أَمَةٍ فِيْمَا تُقْبَلُ فِيْهِ شَهَادَةُ النِّسَاءِ؛ لِلْخَبَرِ، وَشَهَادَةُ الْعَبْدِ فِيْ كُلِّ شَيْءٍ، إِلَّا فِيْ الْحُدُوْدِ وَالْقِصَاصِ.

The testimony of a person about their own acts is acceptable, like the one who	وَتُقْبَلُ شَهَادَةُ الْفَاعِلِ عَلَىٰ فِعْلِهِ، كَالْمُرْضِعَةِ

breastfed (testifying) about her breastfeeding, and the distributor (testifying) about his distribution; also the testimony of a brother for his own brother, or a friend for his friend; the testimony of a deaf person about (events) that were seen; the testimony of a blind person who is certain of the voice; the testimony of someone who was hiding (at the time of witnessing); and the testimony of someone who heard a person confess something, even if (the confessor) did not tell the witness, “Witness (what I say).”	عَلَىٰ الرَّضَاعِ، وَالْقَاسِمِ عَلَىٰ الْقِسْمَةِ، وَشَهَادَةُ الْأَخِ لِأَخِيْهِ، وَالصَّدِيْقِ لِصَدِيْقِهِ، وَشَهَادَةُ الْأَصَمِّ عَلَىٰ الْمَرْئِيَّاتِ، وَشَهَادَةُ الْأَعْمَىٰ إِذَا تَيَقَّنَ الصَّوْتَ، وَشَهَادَةُ الْمُسْتَخْفِي، وَمَنْ سَمِعَ إِنْسَانًا يُقِرُّ بِحَقٍّ، وَإِنْ لَمْ يَقُلْ لِلشَّاهِدِ: اشْهَدْ عَلَيَّ.

If something, such as lineage or childbirth, is reported by so many people that it becomes established (as true) in one’s heart, then one may testify about it. However, this is not permissible in the case of ḥadd or qiṣâṣ. The testimony of the *qâdhif* [XVI.5.6] and the like will be accepted after their repentance.	وَمَا تَظَاهَرَتْ بِهِ الْأَخْبَارُ، وَاسْتَقَرَّتْ مَعْرِفَتُهُ فِيْ قَلْبِهِ، جَازَ لَهُ أَنْ يَشْهَدَ بِهِ، كَالشَّهَادَةِ عَلَىٰ النَّسَبِ وَالْوِلَادَةِ، وَلَا يَجُوْزُ ذٰلِكَ فِيْ حَدٍّ وَلَا قِصَاصٍ. وَتُقْبَلُ شَهَادَةُ الْقَاذِفِ وَغَيْرِهِ، بَعْدَ تَوْبَتِهِ.

[XVI.5.6] qâdhif: one who makes an unproven accusation of fornication

[XVI.6] Chapter on Those Whose Testimony Is Rejected

بَابُ مَنْ تُرَدُّ شَهَادَتُهُ

Testimony is not accepted from: the child, the mentally incompetent, the mute, the unbeliever, the fâsiq, or one whose condition (in terms of credibility) is unknown. [XVI.6.1] Likewise, it is not accepted from: someone who will benefit himself or repel harm from it; the parent, however many generations removed, for the child; the child for the parent; the master for his or her slave or *mukâtib*, [XVI.6.2] or their testimony for him or her; one spouse for the other; the guardian about that which is under his custody; the agent about that which is within his power of attorney; or the partner about the partnership. Moreover, the testimony of enemies against each other is not accepted, nor that of one who is known for frequent errors and oversights. Finally, testimony is not accepted from one who has no *muroo'ah* (integrity), like the one who acts foolishly, causing himself to be mocked; the one who exposes his private parts in public; and the like.	لَا تُقْبَلُ شَهَادَةُ صَبِيٍّ، وَلَا زَائِلِ الْعَقْلِ، وَلَا أَخْرَسَ، وَلَا كَافِرٍ، وَلَا فَاسِقٍ، وَلَا مَجْهُوْلِ الْحَالِ. وَلَا جَارٍّ إِلَىٰ نَفْسِهِ نَفْعًا، وَلَا دَافِعٍ عَنْهَا شَرًّا، وَلَا شَهَادَةُ وَالِدٍ وَإِنْ عَلَا لِوَلَدِهِ، وَلَا وَلَدٍ لِوَالِدِهِ، وَلَا سَيِّدٍ لِعَبْدِهِ وَلَا مُكَاتَبِهِ، وَلَا شَهَادَتُهُمَا لَهُ، وَلَا أَحَدِ الزَّوْجَيْنِ لِصَاحِبِهِ، وَلَا شَهَادَةُ الْوَصِيِّ فِيْمَا هُوَ وَصِيٌّ فِيْهِ، وَلَا الْوَكِيْلِ فِيْمَا هُوَ وَكِيْلٌ فِيْهِ، وَلَا الشَّرِيْكِ فِيْمَا هُوَ شَرِيْكٌ فِيْهِ، وَلَا الْعَدُوِّ عَلَىٰ عَدُوِّهِ، وَلَا مَعْرُوْفٍ بِكَثْرَةِ الْغَلَطِ وَالْغَفْلَةِ، وَلَا مَنْ لَا مُرُوْءَةَ لَهُ، كَالسُّخْرَةِ، وَكَاشِفِ عَوْرَتِهِ لِلنَّاظِرِيْنَ فِيْ حَمَّامٍ أَوْ غَيْرِهِ.

[XVI.6.1] fâsiq: a perverted, open or frequent sinner who crosses the boundaries set by the Sharia; usually refers to someone who has no piety, so they commit sin without fear of God, shyness, or regret.

The matn names the mute and the non-Muslim; the later Ḥanbali text qualifies this by accepting a mute witness's written testimony and, under its

specified conditions, two male People-of-the-Book witnesses to a testament made during travel when Muslim witnesses are unavailable.

[XVI.6.2] mukâtib: a slave who entered into an agreement to buy himself freedom

If someone testifies but is suspected (of lying) about part of it, then his or her entire testimony will be rejected. The testimony of two people is required to discredit or accredit witnesses, to translate in court, and in similar matters. If there are conflicting testimonies, the one asserting untrustworthiness will be favored.	وَمَنْ شَهِدَ بِشَهَادَةٍ يُتَّهَمُ فِيْ بَعْضِهَا، رُدَّتْ كُلُّهَا. وَلَا يُسْمَعُ فِيْ الْجَرْحِ وَالتَّعْدِيْلِ، وَالتَّرْجَمَةِ، وَنَحْوِهَا، إِلَّا شَهَادَةُ اثْنَيْنِ. وَإِذَا تَعَارَضَ الْجَرْحُ وَالتَّعْدِيْلُ، قُدِّمَ الْجَرْحُ.

If one witness testifies (that someone is entitled to) 1000 (units of currency), and another testifies that it is 2000, then 1000 will be awarded. If he likes, he may take an oath, along with the testimony of the other witness, concerning the other 1000. If one of them says the 1000 was a loan, but the other says it was the price of a sold commodity, then the testimony is not conclusive.	وَإِنْ شَهِدَ شَاهِدٌ بِأَلْفٍ، وَآخَرُ، بِأَلْفَيْنِ، قُضِيَ لَهُ بِأَلْفٍ، وَحَلَفَ مَعَ شَاهِدِهِ عَلَى الْأَلْفِ الْآخَرِ إِنْ أَحَبَّ، وَإِنْ قَالَ أَحَدُهُمَا: أَلْفٌ مِنْ قَرْضٍ، وَقَالَ الْآخَرُ: مِنْ ثَمَنِ مَبِيْعٍ، لَمْ تَكْمُلِ الشَّهَادَةُ.

If four people testify to fornication, or two witnesses testify to something else, yet they disagree over the location, time, or description (of the offense), their testimony is not conclusive.	وَإِذَا شَهِدَ أَرْبَعَةٌ بِالزِّنَى، أَوْ شَهِدَ اثْنَانِ عَلَى فِعْلٍ سِوَاهُ، وَاخْتَلَفُوْا فِيْ الْمَكَانِ، أَوِ الزَّمَانِ، أَوِ الصِّفَةِ لَمْ تَكْمُلْ شَهَادَتُهُمْ.

[XVI.7] Chapter on Hearsay Testimony and Retracting It

بَابُ الشَّهَادَةِ عَلَىٰ الشَّهَادَةِ وَالرُّجُوْعِ عَنْهَا

وَتَجُوْزُ الشَّهَادَةُ عَلَىٰ الشَّهَادَةِ فِيْمَا يَجُوْزُ فِيْهِ كِتَابُ الْقَاضِيْ، إِذَا تَعَذَّرَتْ شَهَادَةُ الْأَصْلِ؛ بِمَوْتٍ، أَوْ غَيْبَةٍ، أَوْ مَرَضٍ وَنَحْوِهِ، بِشَرْطِ أَنْ يَسْتَرْعِيَهُ شَاهِدُ الْأَصْلِ، فَيَقُوْلُ: اشْهَدْ عَلَىٰ شَهَادَتِيْ، أَنِّيْ أَشْهَدُ أَنَّ فُلَانًا أَقَرَّ عِنْدِيْ، أَوْ أَشْهَدَنِيْ بِكَذَا. وَتُعْتَبَرُ مَعْرِفَةُ الْعَدَالَةِ فِيْ شُهُوْدِ الْأَصْلِ وَالْفَرْعِ.	Hearsay testimony [XVI.7.1] is permissible in cases where the book of the judge is permissible, [XVI.7.2] as long as the primary witness cannot testify due to death, absence, disease, or the like, on condition that the primary witness drew attention to the testimony by saying, “Bear witness that I testify that So-and-so acknowledged such-and-such before me, or that he asked me to witness such-and-such.” [XVI.7.3] Trustworthiness of both the primary and secondhand witnesses is a prerequisite.

[XVI.7.1] Hearsay evidence refers to testimony from a person who did not see or hear something directly but was told by the person who did witness it.

[XVI.7.2] The books (or letters) of judges are accepted concerning all cases except ḥudood and qiṣâṣ. For the later Ḥanbali position, see [XVI.3.3].

[XVI.7.3] According to this position, the original witness must have informed the secondhand witness so that he or she would pay attention to the testimony. If the secondhand witness simply overheard another person mentioning something that he witnessed, this is not enough to authorize him or her to testify concerning the testimony of the primary witness.

وَمَتَىٰ لَمْ يُحْكَمْ بِشَهَادَةِ الْفَرْعِ حَتَّىٰ حَضَرَ شُهُوْدُ الْأَصْلِ،	If the primary witnesses appear, then the judgment will depend solely on their testimony, as long as a verdict has not already been passed

based on the testimony of secondary witnesses. [XVI.7.4] If any of them (the primary witnesses) gets involved in conduct that deems their testimony inadmissible, their testimony shall not be acted upon. [XVI.7.5]	وَقَفَ الْحُكْمُ عَلَىٰ سَمَاعِ شَهَادَتِهِمْ. وَإِنْ حَدَثَ مِنْ بَعْضِهِمْ مَا يَمْنَعُ قَبُوْلَ الشَّهَادَةِ، لَمْ يُحْكَمْ بِهَا.

[XVI.7.4] Because if the primary witnesses show up in court before a verdict is passed, the need for the secondhand witnesses becomes void.

[XVI.7.5] In this case, hearsay testimony will also be rejected because it relies on the testimony of the primary witnesses.

Subsection: If a trustworthy witness changes his testimony (by adding to it or deleting from it) before the verdict is passed, it will be accepted. [XVI.7.6] If he does something that makes his testimony inadmissible, his testimony will be rejected. If this happens after the verdict has been given, though, it will not have any effect. [XVI.7.7]	فَصْلٌ: وَمَتَى غَيَّرَ الْعَدْلُ شَهَادَتَهُ قَبْلَ الْحُكْمِ بِهَا، فَزَادَ أَوْ نَقَصَ، قُبِلَتْ. وَإِنْ حَدَثَ مِنْهُ مَا يَمْنَعُ قَبُوْلَهَا بَعْدَ أَدَائِهَا، رُدَّتْ، وَإِنْ حَدَثَ ذٰلِكَ بَعْدَ الْحُكْمِ بِهَا لَمْ يُؤَثِّرْ.

[XVI.7.6] (A): The addition, deletion, or change will be accepted.

(a): Both testimonies will be rejected.

[XVI.7.7] For example, someone testifies and then acts in a way that deems him fâsiq. If a verdict has already been passed, his testimony will stand; if not, his testimony will be voided.

[Recanting One's Testimony]

If the witnesses recant their testimony after the verdict has been passed, the verdict will not be overturned, and execution will not be stopped – except in cases of ḥudood and qiṣâṣ. They must pay compensation for any	وَإِنْ رَجَعَ الشُّهُوْدُ بَعْدَ الْحُكْمِ بِشَهَادَتِهِمْ، لَمْ يُنْقَضِ الْحُكْمُ، وَلَمْ يُمْنَعْ الِاسْتِيْفَاءُ، إِلَّا فِي

losses incurred because of their testimony; if it is fungible material, they have to pay the equivalent, but if not, they must pay its value.	الْحَدِّ وَالْقِصَاصِ. وَعَلَيْهِمْ غَرَامَةُ مَا فَاتَ بِشَهَادَتِهِمْ بِمِثْلِهِ، إِنْ كَانَ مِثْلِيًّا، وَقِيْمَتِهِ إِنْ لَمْ يَكُنْ مِثْلِيًّا.

(The liability) should be divided equally among them. If just one of them recants, he will be responsible for his share (of liability).	وَيَكُوْنُ ذٰلِكَ بَيْنَهُمْ عَلٰى عَدَدِهِمْ، فَإِنْ رَجَعَ أَحَدُهُمْ، فَعَلَيْهِ حِصَّتُهُ.

If their testimony was about murder or physical assault, and they admit that they intended (to falsely testify), they will be subject to qiṣâṣ. If they say, “We did it by mistake,” they will be liable for the diyah or the compensation for the injury.	وَإِنْ كَانَ الْمَشْهُوْدُ بِهِ قَتْلاً، أَوْ جَرْحًا، فَقَالُوْا: تَعَمَّدْنَا، فَعَلَيْهِمُ الْقِصَاصُ، وَإِنْ قَالُوْا: أَخْطَأْنَا، غَرِمُوْا الدِّيَةَ، أَوْ أَرْشَ الْجُرْحِ.

[XVI.8] Chapter on Oaths in Court Claims

بَابُ الْيَمِيْنِ فِي الدَّعَاوٰى

[Admissible Oaths]

The only admissible oath for (establishing) rights (through the courts) is swearing by Allah (Exalted is He), whether the person taking the oath is a Muslim or an unbeliever.	الْيَمِيْنُ الْمَشْرُوْعَةُ فِيْ الْحُقُوْقِ، هِيَ الْيَمِيْنُ بِاللهِ تَعَالٰى، سَوَاءٌ كَانَ الْحَالِفُ مُسْلِمًا، أَوْ كَافِرًا.

[Where Oaths Are Applicable]

Concerning properties and the like, it is permissible to base the verdict on one witness and one oath, [XVI.8.1] because the Prophet (SA) passed a judgment on the basis of one witness and one oath.	وَيَجُوْزُ الْقَضَاءُ فِيْ الْأَمْوَالِ وَأَشْبَاهِهَا بِشَاهِدٍ وَيَمِيْنٍ؛ لِأَنَّ النَّبِيَّ ﷺ قَضٰى بِشَاهِدٍ وَيَمِيْنٍ.

[XVI.8.1] (A) + (+M, +S)

This is when there is only one witness, and the claimant takes an oath to corroborate the testimony. The combination of the testimony of one witness and the oath of the claimant makes an admissible proof, according to the majority.

(-H): It is not an admissible proof in court.

[Where Certainty Is Required]

All oaths are taken with certainty (affirming or denying an occurrence), except an oath denying someone else's act, which is merely a negation of being aware of the act.	وَالْأَيْمَانُ كُلُّهَا عَلٰى الْبَتِّ، إِلَّا الْيَمِيْنُ عَلٰى نَفْيِ فِعْلِ غَيْرِهِ، فَإِنَّهَا عَلٰى نَفْيِ الْعِلْمِ.

[Who May Take an Oath]

If a deceased or bankrupt person is entitled to some right, and has a witness to that,	وَإِذَا كَانَ لِلْمَيِّتِ أَوِ الْمُفْلِسِ حَقٌّ بِشَاهِدٍ،

and then the bankrupt person or the heirs of the deceased take an oath, this right will be granted. If they do not take an oath, and the creditors offer to take an oath, they (the creditors) will not be allowed to take one. [XVI.8.2]	فَحَلَفَ الْمُفْلِسُ، أَوْ وَرَثَةُ الْمَيِّتِ مَعَهُ ثَبَتَ. وَإِنْ لَمْ يَحْلِفُوْا، فَبَذَلَ الْغُرَمَاءُ الْيَمِيْنَ لَمْ يُسْتَحْلَفُوْا.

[XVI.8.2] For example: X owes Y money, and Y owes Z money, but Y is declared bankrupt. The creditor (Z) wants to establish his debtor's (Y's) entitlement to the money from X so that he (Z) can be paid from it, but he will not be allowed to take an oath because he is not the party who is entitled. Additionally, his oath would be suspect because of his material interest.

[Claim by a Group]

If the claim is made by a group, he (the denier) must take an oath for each one of them. If he says, "I will take one oath for all of them," it will not be accepted unless they approve of it.	وَإِذَا كَانَتِ الدَّعْوٰى لِجَمَاعَةٍ، فَعَلَيْهِ لِكُلِّ وَاحِدٍ يَمِيْنٌ، وَإِنْ قَالَ: أَنَا أَحْلِفُ يَمِيْنًا وَاحِدَةً لِجَمِيْعِهِمْ، لَمْ يُقْبَلْ مِنْهُ، إِلَّا أَنْ يَرْضَوْا.

[Multiple Claims Against One Individual]

If one person has many claims of entitlement against another, the defendant will have to take an oath for each claim (that he denies).	وَإِنِ ادَّعَى وَاحِدٌ حُقُوْقًا عَلٰى وَاحِدٍ، فَعَلَيْهِ فِيْ كُلِّ حَقٍّ يَمِيْنٌ.

[No Oaths Taken for Allah's Rights]

The taking of an oath is prescribed regarding all the rights of humans. [XVI.8.3] However, it is not prescribed regarding the rights of Allah, such as in ḥudood and acts of worship. [XVI.8.4]	وَتُشْرَعُ الْيَمِيْنُ فِيْ كُلِّ حَقٍّ لِآدَمِيٍّ، وَلَا تُشْرَعُ فِيْ حُقُوْقِ اللهِ مِنَ الْحُدُوْدِ وَالْعِبَادَاتِ.

[XVI.8.3] (A/SM & Iqnâ'): There are ten exceptions: marriage, restoration of marriage, divorce, eelâ', claiming the slavery of a foundling, walâ', a

claim of fathering a child with a slave girl, a claim of lineage, qadhf, and equal retribution – aside from the case of qasâmah.

[XVI.8.4] No one is allowed to take an oath to establish a ḥadd crime against someone; likewise, one may not take an oath to establish someone else's liability regarding acts of worship. For example, the collector of zakat may not take an oath against the zakat giver if there is a dispute over whether he possesses the niṣâb for zakat; in this case, the statement of the zakat giver will be accepted without taking an oath.

Oaths are taken to establish one's entitlement to a right. Allah does not need people to take oaths to establish His rights, whether it is an individual's performing an act of worship or the establishment of guilt against someone.

[XVI.9] Chapter on Acknowledgment/Confession

بَابُ الْإِقْرَار

[One Whose Acknowledgment Is Valid]

If a free person who is *rasheed* (competent in managing money), [XVI.9.1] mukallaf, and not terminally ill, voluntarily [XVI.9.2] acknowledges some right (as in a debt to others), he or she will be responsible for it.	وَإِذَا أَقَرَّ الْمُكَلَّفُ، الْحُرُّ، الرَّشِيْدُ، الصَّحِيْحُ، الْمُخْتَارُ بِحَقٍّ، أُخِذَ بِهِ.

[XVI.9] Admission/acknowledgment is the strongest proof; it is stronger than the testimony of witnesses and it is legally consequential, by consensus. The Messenger of Allah (SA) established the ḥadd of adultery against Mâ'iz and the Ghâmidiyah upon their confession.

[XVI.9.1] A child's acknowledgment is invalid except in the case of a discerning child who is allowed to conduct a particular business transaction; his acknowledgment is valid concerning that particular transaction.

The acknowledgment of the insane is invalid.

A person interdicted for financial imprudence (safah) is restricted for the protection of that person's own property. Under the relied-upon Ḥanbali position, an acknowledgment of a financial liability is valid, but payment is deferred until the interdiction ends, unless the guardian knows the acknowledgment to be true, in which case the guardian must discharge it. Bankruptcy interdiction is different: it protects existing creditors, and a debt established merely by the bankrupt person's acknowledgment does not share in the assets already reserved for them; it is pursued after the interdiction ends.

[XVI.9.2] Confession/acknowledgment under duress is invalid. The Prophet (SA) said:

«إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ.»

"Allah has pardoned my people – for my sake - for [their] mistakes and [their] forgetfulness and for what they have done under duress." (Ma – from Ibn 'Abbâs)

[Exception from Acknowledgment]

If someone acknowledges (owing) a certain number of dirhams but then stays silent for a period of time in which he could have spoken, and then says, "counterfeit" [XVI.9.3] or "small" [XVI.9.4] or "deferred", he will immediately be liable for (the specified number of) genuine and whole dirhams. If, however, he describes them with these qualities in direct connection with his acknowledgment, [XVI.9.5] he will be liable for what he acknowledged (as he described it).	وَمَنْ أَقَرَّ بِدَرَاهِمَ، ثُمَّ سَكَتَ سُكُوْتًا يُمْكِنُهُ الْكَلَامُ فِيْهِ، ثُمَّ قَالَ: زُيُوْفًا أَوْ صِغَارًا، أَوْ مُؤَجَّلَةً، لَزِمَتْهُ جِيَادًا، وَافِيَةً، حَالَّةً، وَإِنْ وَصَفَهَا بِذَلِكَ مُتَّصِلاً بِإِقْرَارِهِ، لَزِمَتْهُ كَذَلِكَ.

[XVI.9.3] Mixed with lead or other substances.

[XVI.9.4] Dirhams are silver coins. Small dirhams weighed less than standard ones; their value was about 2/3 that of the standard dirhams.

[XVI.9.5] Without any pause in between.

If he excludes from his acknowledgment less than half of it, in connection with his acknowledgment, his exception will be valid. But if he separates them (the acknowledgment and the exclusion) by a period of silence in which he could have spoken, or by irrelevant speech, or if he excludes more than half (of what he acknowledges) [XVI.9.6] or something from a different genus, [XVI.9.7] he will be liable for the entire acknowledgment. [XVI.9.8]	وَإِنِ اسْتَثْنَى مِمَّا أَقَرَّ بِهِ، أَقَلَّ مِنْ نِصْفِهِ مُتَّصِلاً بِهِ، صَحَّ اسْتِثْنَاؤُهُ، وَإِنْ فَصَلَ بَيْنَهُمَا بِسُكُوْتٍ يُمْكِنُهُ الْكَلَامُ فِيْهِ، أَوْ بِكَلَامٍ أَجْنَبِيٍّ، أَوِ اسْتَثْنَى أَكْثَرَ مِنْ نِصْفِهِ، أَوْ مِنْ غَيْرِ جِنْسِهِ، لَزِمَهُ كُلُّهُ.

[XVI.9.6] Because it is not linguistically customary or sound to exclude more than 1/2 of what was acknowledged.

[XVI.9.7] As when he acknowledges owing a number of dirhams and then makes an exception for a number of goats.

[XVI.9.8] In other words, the exception will not be valid.

Whoever says, “For him upon me is X dirhams” and then says, “as a deposit for safekeeping,” his (second) statement will not be accepted. [XVI.9.9] If he says, “For him with me (instead of upon me), …” and then says, “as a deposit for safekeeping,” his (second) statement will be accepted.	وَمَنْ قَالَ: لَهُ عَلَيَّ دَرَاهِمُ، ثُمَّ قَالَ: وَدِيْعَةٌ، لَمْ يُقْبَلْ قَوْلُهُ. وَإِنْ قَالَ: لَهُ عِنْدِيْ، ثُمَّ قَالَ: وَدِيْعَةٌ قُبِلَ قَوْلُهُ.

[XVI.9.9] This has to do with semantics. The Arabic phrase translated here as “upon me” is (عَلَيَّ), which means that he is liable for the property in his possession in case of loss or damage. A deposit for safekeeping (wadee‘ah) is not guaranteed by the holder, and he is not liable for it in case of loss or damage, so this second statement is counter to the meaning of his first statement.

(t): Whenever a layperson claims they did not understand the proper implications of a word in their acknowledgment, and it is expected of their likes not to understand it, their claim will be accepted.

[Ambiguous Acknowledgment]

Whoever acknowledges (owing) *darâhim* (dirhams), the least that he will be liable for is three, [XVI.9.10] unless the one who is owed the money agrees to a lesser amount. If one acknowledges (owing) an unidentified item, his explanation of it will be accepted as long as it is plausible. [XVI.9.11]	وَمَنْ أَقَرَّ بِدَرَاهِمَ، فَأَقَلُّ مَا يَلْزَمُهُ ثَلَاثَةٌ، إِلَّا أَنْ يُصَدِّقَهُ الْمُقَرُّ لَهُ فِيْ أَقَلَّ مِنْهَا. وَمَنْ أَقَرَّ بِشَيْءٍ مُجْمَلٍ، قُبِلَ تَفْسِيْرُهُ بِمَا يَحْتَمِلُهُ.

[XVI.9.10] This is because the word used, darâhim, is plural. In Arabic, nouns have a special form meaning two (dirhamân for two dirhams), so if one uses the plural form, darâhim, without specifying a number, it means three or more dirhams.

[XVI.9.11] If he admits that he owes someone money, any amount of money will be a plausible explanation of his ambiguous acknowledgment. Likewise, if he acknowledges owing a garment, anything that may be called a garment is a plausible explanation.

[Acknowledgments by Children]

Subsection: The acknowledgment by one who is not mukallaf is not accepted regarding anything – except in the case of a discerning child who is allowed to conduct a particular business transaction; his acknowledgment is valid concerning the particular transaction he is permitted to conduct.	فَصْلٌ: وَلَا يُقْبَلُ إِقْرَارُ غَيْرِ الْمُكَلَّفِ بِشَيْءٍ، إِلَّا الْمَأْذُوْنَ لَهُ مِنَ الصِّبْيَانِ فِيْ التَّصَرُّفِ فِيْ قَدْرِ مَا أُذِنَ لَهُ.

[Acknowledgments by Fools]

If a foolish person confesses to a crime that is punishable by ḥadd or subject to qiṣâṣ, he will be held liable. If he acknowledges a divorce, he is bound by it. If he acknowledges (owing) money, his acknowledgment will not be accepted. [XVI.9.12]	وَإِنْ أَقَرَّ السَّفِيهُ بِحَدٍّ أَوْ قِصَاصٍ، أَوْ طَلَاقٍ، أُخِذَ، وَإِنْ أَقَرَّ بِمَالٍ، لَمْ يُقْبَلْ إِقْرَارُهُ.

[XVI.9.12] A person interdicted for financial imprudence is not entrusted with independent management of money. The statement that a financial acknowledgment is not accepted concerns enforcement during interdiction: under the relied-upon Ḥanbali position it remains enforceable after the interdiction ends, and the guardian must pay it immediately if the guardian knows it to be true. The person's valid confession to a crime is a separate matter.

‘Foolish’ is a term used for safeeh, which is one who is imprudent in managing his/her money. This is completely different from the insane, whose confession and acknowledgment are both invalid.

	وَكَذَلِكَ الْحُكْمُ فِيْ إِقْرَارِ الْعَبْدِ، إِلَّا أَنَّهُ يَتَعَلَّقُ بِذِمَّتِهِ، يُتْبَعُ بِهِ بَعْدَ الْعِتْقِ، إِلَّا أَنْ يَكُوْنَ مَأْذُوْنًا لَهُ فِيْ التِّجَارَةِ، فَيَصِحُّ إِقْرَارُهُ فِيْ قَدْرِ مَا أُذِنَ لَهُ.

[Acknowledgments by the Sick]

The acknowledgment by a (terminally) ill person in favor of non-inheritors is valid, but one in favor of an heir is not valid unless the other heirs concur. If he acknowledges (a right) in favor of an heir who later becomes a non-inheritor, the acknowledgment is not valid. However, if he acknowledges (a right) in favor of a non-inheritor who later becomes an heir, the acknowledgment is valid. [XVI.9.13] His acknowledgment of an heir is valid. [XVI.9.14]	وَيَصِحُّ إِقْرَارُ الْمَرِيْضِ بِالدَّيْنِ لِأَجْنَبِيٍّ، وَلَا يَصِحُّ إِقْرَارُهُ فِيْ مَرَضِ الْمَوْتِ لِوَارِثٍ، إِلَّا بِتَصْدِيْقِ سَائِرِ الْوَرَثَةِ، وَلَوْ أَقَرَّ لِوَارِثٍ، فَصَارَ غَيْرَ وَارِثٍ، لَمْ يَصِحَّ، وَإِنْ أَقَرَّ لَهُ وَهُوَ غَيْرُ وَارِثٍ، ثُمَّ صَارَ وَارِثاً، صَحَّ إِقْرَارُهُ، وَيَصِحُّ إِقْرَارُهُ بِوَارِثٍ.

[XVI.9.13] In the two scenarios mentioned, what matters is the state, at the time of the acknowledgment, of the person who benefits. Under this position, an acknowledgment in favor of an heir during a fatal illness is not, by itself, enforceable against the other heirs, because it may conceal a preferential gift; this does not permit concealing a genuine debt, which remains payable if established by independent proof or confirmed by the other heirs.

According to another report (a), the two scenarios mentioned here have the opposite rulings. The rationale behind this is treating the acknowledgment like the bequest. In bequests, what matters is the state of the legatee at the time of the testator’s death, not at the time of making the bequest.

[XVI.9.14] Such as acknowledging someone as his own child or brother.

[Acknowledgments Concerning the Estate of the Deceased]

If the deceased owed a debt, the heirs are not required to pay it off unless he leaves behind an estate, in which case the debt will be paid from it. If the heirs wish to pay off the debt and take the estate (intact), they are entitled to that.	وَإِذَا كَانَ عَلَىٰ الْمَيِّتِ دَيْنٌ، لَمْ يَلْزَمِ الْوَرَثَةَ وَفَاؤُهُ، إِلَّا أَنْ يُخَلِّفَ تَرِكَةً، فَيَتَعَلَّقُ دَيْنُهُ بِهَا، فَإِنْ أَحَبَّ الْوَرَثَةُ وَفَاءَ الدَّيْنِ، وَأَخْذَ تَرِكَتِهِ، فَلَهُمْ ذَلِكَ.

If all of the heirs acknowledge a debt owed by their testator, the debt is binding because of their acknowledgment. [XVI.9.15] If only some of them acknowledge it, it will be binding for them in proportion to their shares. [XVI.9.16] If the deceased left behind two sons and 200 dirhams, and one of the sons acknowledges that his father owed 100 dirhams, that son will be responsible for 50 dirhams only. If he is trustworthy and testifies in favor of the claimant, the claimant may take an oath and thereby take the rest of his money from the other brother.	وَإِنْ أَقَرَّ جَمِيْعُ الْوَرَثَةِ بِدَيْنٍ عَلَىٰ مُوَرِّثِهِمْ، ثَبَتَ بِإِقْرَارِهِمْ. وَإِنْ أَقَرَّ بِهِ بَعْضُهُمْ، ثَبَتَ بِقَدْرِ حَقِّهِ، فَلَوْ خَلَّفَ ابْنَيْنِ وَمِئَتَيْ دِرْهَمٍ، فَأَقَرَّ أَحَدُهُمَا بِمِئَةِ دَيْناً عَلَىٰ أَبِيْهِ لَزِمَهُ خَمْسُوْنَ دِرْهَمًا، فَإِنْ كَانَ عَدْلاً وَشَهِدَ بِهَا، فَلِلْغَرِيْمِ أَنْ يَحْلِفَ مَعَ شَهَادَتِهِ وَيَأْخُذَ بَاقِيَهَا مِنْ أَخِيْهِ.

[XVI.9.15] It will be only payable if the estate left by the deceased covers it or some of it. If not, they will not be responsible for paying it, although they are encouraged to do so.

[XVI.9.16] This is because:

Clear evidence is a transitive proof, whereas confession/acknowledgment is a restricted proof.

Thus, acknowledgment is a proof against the one who made it, not against anyone else.

He leaves behind one son and 100 (coins); then a man claims that the deceased owed him 100, and the son agrees with him. Then another man claims the same, and the son agrees with him as well. If both happen in the same session, the 100 will be divided between them; if they occur in two different sessions, the first man gets the 100, and the second is not entitled to anything. If the first man claims that the 100 (coins) are his wadee'ah (money he had deposited with the father for safekeeping), and the son concurs, and then another man claims the same 100 (coins as his wadee'ah), and the son concurs with him as well, it will all be for the first, with nothing for the second. The son will have to compensate the second man since it was his first acknowledgment that caused this man to lose it. [XVI.9.17]	وَإِنْ خَلَّفَ ابْنًا وَمِئَةً، فَادَّعَى رَجُلٌ مِئَةً عَلَىٰ أَبِيْهِ، فَصَدَّقَهُ، ثُمَّ ادَّعَى آخَرُ مِثْلَ ذٰلِكَ وَصَدَّقَهُ الإِبْنُ، فَإِنْ كَانَ فِيْ مَجْلِسٍ وَاحِدٍ، فَالْمِئَةُ بَيْنَهُمَا، وَإِنْ كَانَ فِيْ مَجْلِسَيْنِ، فَهِيَ لِلْأَوَّلِ وَلَا شَيْءَ لِلثَّانِيْ. وَإِنْ كَانَ الْأَوَّلُ ادَّعَاهَا وَدِيْعَةً، فَصَدَّقَهُ الإِبْنُ، ثُمَّ ادَّعَاهَا آخَرُ، فَصَدَّقَهُ الإِبْنُ فَهِيَ لِلْأَوَّلِ، وَلَا شَيْءَ لِلثَّانِيْ، وَيَغْرَمُهَا لَهُ؛ لِأَنَّهُ فَوَّتَهَا عَلَيْهِ بِإِقْرَارِهِ.

[XVI.9.17] The same 100 coins cannot be given to both the first and the second man. If the son has already acknowledged the claim of the first man and given him the 100, and then he acknowledges the claim of the second man, he must compensate him for it. However, if the two men come at the same time, each claiming 100 coins, and the son concurs with them both, then the 100 coins will be divided between the two.

The difference between this scenario and the previous one is that in this scenario, the two claimants claimed the same property, and this is not possible. In the previous scenario, they each claimed that the deceased owed them money, which is possible.

Appendix 1: *Takleef* and *Buloogh*

Takleef

Takleef is a verbal noun meaning legal and moral responsibility in the sight of God. *Mukallaf*, a related word, is an adjective in the passive voice, meaning one who is required to carry a burden. "Allah *kallafa* his servant" means "Allah required His servant to carry a burden." Technically, *mukallaf* refers to one who is morally and legally responsible (liable) before God. Assuming that Islam is one of the conditions of *takleef*, a *mukallaf* is one who is both responsible and authorized – whereas non-Muslims are not authorized to perform the devotional duties of Islam and are not rewarded for them unless they accept the faith. Generally speaking, sane, adult (post-pubertal) Muslims are *mukallaf*.

The beauty of the word *mukallaf* is that its three-letter root also means 'loved'. "He *kalifa* his wife" means "He loved his wife." This is so appropriate within the context of the Divine obligations because the true believers will fulfill these obligations lovingly, seeking nearness to their Lord and hoping for His pleasure.

Buloogh

Buloogh (becoming of age, or reaching sexual maturity) is a mark of adulthood in Islam; it ushers in the beginning of *takleef*. Therefore, it is important to understand it and know its signs.

The word *bâligh* means sexually mature. In this book, the word 'post-pubertal' may be used to translate *bâligh* because it is the closest to it, although the linguistic and medical definitions of puberty may be different from the Islamic concept of *buloogh*.

The fuqahâ' unanimously agreed on the following three signs as indicative of puberty:

1. Ejaculation, for men and women. (To the jurists, this also refers to the discharge released by a woman at orgasm.)
2. Menarche, for women. (Note that in contemporary medical terminology, menarche is different from puberty, which typically begins two years before menarche.)
3. Pregnancy, for women.

The majority (A) + (+M, +Z +Abu Yoosuf) added to these the growth of coarse pubic hair. The Mâlikis added to these criteria some secondary sexual characteristics, such as armpit odor and the changing of the voice.

Finally, the vast majority (with the exception of Dâwood adh-Dhâhiri) indicated that if none of those characteristics have appeared by a certain age, the individual is considered to have reached adulthood, although they differed on the exact age.

(A) + (+H, +M2, +S): 15 years, for men and women. This is because of the agreed-upon hadith of Ibn ‘Umar (RAHUMA), in which he said:

«عُرِضْتُ عَلَى رَسُولِ الله ﷺ وَأَنَا ابْنُ أَرْبَعَ عَشْرَةَ سَنَةً، فَلَمْ يُجْزِنِي فِي الْقِتَالِ، وَعُرِضْتُ عَلَيْهِ، وَأَنَا ابْنُ خَمْسَ عَشْرَةَ، فَأَجَازَنِي»

<<I was presented to the Messenger of Allah (SA) at age 14, but he did not approve of my participation in fighting. Then I was presented to him at 15, and he approved.>>

At-Tirmidhi reported that when ‘Umar ibn ‘Abdul-‘Azeez heard of this, he said this is the distinction between childhood and adulthood.

(-h / Abu Ḥaneefah, -M): 18 years; (-h / Abu Ḥaneefah: 17 for females) They cited a report from Ibn ‘Abbâs explaining the age of

ashudd (full maturity) to be 18. This report was deemed weak by aṭ-Ṭabari and the great Ḥanafi Hadith scholar az-Zaylaʻi.

In summary, a man becomes *bâligh* (sexually mature) when he has ejaculation, growth of coarse pubic hair, or reaches the age of 15. A woman becomes *bâlighah* (sexually mature) when she has ejaculation, grows coarse pubic hair, starts menstruating, becomes pregnant, or reaches the age of 15.

Appendix 2: Age of Marriage in Islam

The scholars did not establish a minimum age for marriage when conducted by fathers on behalf of their sons and daughters. This does not refer to consummation of the marriage, but only to conducting the contract. In fact, scholars agree that the husband is not permitted to consummate the marriage until his wife is ready, as determined by experts. Some jurists restricted this permission to fathers (and, according to ash-Shâfi'i, grandfathers), since they are expected to be compassionate and protective towards their children. Other jurists allowed other guardians to act under specified conditions. There is also an opinion (attributed to Ibn Shubrumah and al-Aṣamm) that prevents even the fathers from marrying off their young children.

Before we discuss the justification for this matter within its historical context, it is important to note that many contemporary scholars allow the ruler to set a minimum age for marriage. This is known as 'restricting the permissible' (*taqyeed al-mubâḥ*). Whether you agree with that position or not, it is essential to mention it when discussing this matter with skeptics. It may enable them to get beyond their cultural biases. When taking part in such conversations, you are speaking on behalf of Islam and Islamic scholarship in general, not representing your own favorite positions.

Marriage customs and expectations have varied considerably across societies and historical periods. In Shakespeare's *Romeo and Juliet*, Juliet is not yet fourteen when her mother urges her to consider marriage, telling her that younger girls in Verona have already become mothers and that she herself was a mother at about Juliet's age.[15] Historical laws also reveal substantial changes in age thresholds. California raised the female age of consent from ten to fourteen in 1889, to sixteen in 1897, and to eighteen in 1913. These were thresholds under sexual-offense law, not necessarily minimum marriage ages. Actual marriage patterns have also changed markedly

[15] *Romeo and Juliet*, William Shakespeare, Act I, scene 3.

within relatively short periods. Recent U.S. marriage laws provide further examples. Until January 1, 2019, New Hampshire permitted girls as young as thirteen and boys as young as fourteen to marry with judicial permission under its provisions for minors; the minimum became sixteen in 2019 and eighteen in 2025.[16] North Carolina permitted fourteen- and fifteen-year-olds to marry with judicial approval in circumstances involving pregnancy or parenthood until August 26, 2021, when its minimum rose to sixteen.[17] As of October 2026, Mississippi permits girls to marry at fifteen and boys at seventeen with parental or guardian consent, and allows a judge to authorize marriage below those ages when the statutory conditions are satisfied, without specifying an absolute minimum age for that exception.[18]

The recent extensive changes in world circumstances have led to enormous changes in people's customs and norms, and one does not have to agree with the age of marriage in a certain society, where the context of the circumstances and normative customs has an undeniable impact on our choices. Clearly, it would be wrong to judge the entire history of humanity from one's personal or societal viewpoint. While there are some mental axioms that human beings agree upon, most of what is described as 'logical' is in fact variable and relative, based largely on social constructs that are products of the dominant culture in a particular time and place. What sounds totally reasonable today may have seemed completely absurd in the recent past, and vice versa.

Islam's guidance was not meant for us only, but rather for all people in all places and times, from the middle of the desert to the forests of Africa, Asia, or Latin America; in the 21st century and the 7th century, in between, and beyond them. Permitting a practice is very different from requiring it; the point is to grant people flexibility

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16 *Revised Statutes Annotated*, New Hampshire, §§ 457:4, 457:6–7, former provisions; 2018 N.H. Laws ch. 272; 2024 N.H. Laws ch. 81.

17 *Session Laws 2021-119*, North Carolina, §§ 1–2, 4.

18 *Mississippi Code Annotated*, § 93-1-5(1), particularly subsection (d).

so that they may exercise discretion in accordance with their various circumstances and needs. In fact, scholars like ash-Shâfi‘i who allowed a father to marry off his young daughter still described it as a detested act.

The biases of people concerning this issue lead to inconsistencies even within the same country. In the US, for example, the marriage of a 14-year-old girl may be legal in some states but prohibited in others until she is 18. Whether sexual relations constitute a crime also depends on the applicable age-of-consent law and any marital exception. This is not to criticize either side, but to point out the inconsistencies. In Islamic countries, historically, a woman was considered ready to consummate the marriage when she was able to have sexual intercourse without it causing her harm; the age differs from one woman to another. According to many contemporary scholars, establishing one fixed number, while it may sound necessary, was not historically practical or favorable for the welfare of women and societies – which is why neither the Torah nor the Gospels mention any minimum age for marriage.

Modern medical science indicates that girls typically reach menarche (the first menstrual period) around 12 to 13 years of age, with considerable variation from one girl to another and from one environment to another. Pubertal onset at age 8 or later in girls is not classified as precocious puberty.[19] Finally, in the vast majority of Muslim countries today, there is a minimum age for marriage for both men and women. Even if there were not, most Muslims would still choose to wait for their children to mature before marrying them off. They should first be able to competently handle the responsibilities of marriage. The Messenger of Allah (SA) said:

«مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ»

[19] Puberty and Precocious Puberty, NIH/NICHD; Committee Opinion No. 651, ACOG, 2015.

<<Let those of you who afford the requirements of marriage get married.>> (Ag – from Ibn Mas‘ood)

Appendix 3: Hitting the Wife

The following verse of the Qur'an is usually quoted with regard to the issue of a man hitting his wife:

{الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ ... وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُواْ عَلَيْهِنَّ سَبِيلاً إِنَّ اللهَ كَانَ عَلِيًّا كَبِيرًا.}

{Men are the protectors and maintainers of women … As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance); for Allah is most High and Great (above you all).} *(an-Nisâ' 4:34)*

Some modern scholars have claimed that, given its usage in other places in the Qur'an (e.g., *az-Zukhruf 43:5),* the word *ḍarb* used in the verse should actually be translated as 'to leave' (*al-mufaraqah wa at-tark*).[20] We will attempt here to explain the more apparent and established understanding of this verse, which is that it means 'hit'.

First, pay attention to the beginning of the verse: {Men are the protectors and maintainers of women.} It is speaking about the extreme condition of *nushooz* (a wife's rebellion against her husband), and it advises a gradual manner of handling it; finally, it orders that any corrective measures stop once the problem is resolved.

If one wonders why a woman cannot do the same thing to her husband if he shows rebellion, the answer is the obvious impracticality of this and how it would upset the entire family dynamics. However, it was explicitly written in jurisprudential manuals, like that of the Mâliki jurist ad-Dasooqi (d. 1230 H), that if a woman complained to a judge of being harmed by her husband's

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[20] *Ḍarb al-Mar'ah Waseelah li-Ḥall al-Khilâfât az-Zawjiyah*, 'Abdul-Ḥameed Abu Sulaymân.

insults, abandonment, or physical hitting, then the judge could order that the husband himself be physically beaten in retribution.[21]

As for the nature of this ‘hitting’, the Prophet (SA) explained it as "light, or not harsh," saying:

«اتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانَةِ اللَّهِ ، وَاسْتَحْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ ، وَإِنَّ لَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئْنَ فُرُشَكُمْ أَحَدًا تَكْرَهُونَهُ، فَإِنْ فَعَلْنَ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبَرِّحٍ ، وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ»

<<Fear Allah with regard to women, for you have taken them through a trust from Allah, and intimacy with them has become permissible to you by the word of Allah. Your right over them is that they should not allow anyone whom you dislike to sit on your furniture/marital beds; if they do that, then hit them, but not harshly. And their right over you is that you should provide for them and clothe them on a reasonable basis.>> (M)

This was further elucidated by ‘Abdullâh ibn ‘Abbâs, who said it was hitting with the siwâk (a small twig used as a toothbrush). The scholars said that it could be with the end of one’s garment and the like.

Next, the verse must be understood within the context of the rest of the revelation, including Allah’s saying:

{وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُم مِّنْ أَنفُسِكُمْ أَزْوَاجًا لِّتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُم مَّوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ.}

{And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.} *(ar-Room 30:21)*

This verse shows the overall environment that should dominate the Muslim home.

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[21] *Ḥâshiyat ad-Dasooqi ‘alâ ash-Sharḥ al-Kabeer*, ad-Dasooqi, 2:343.

Allah also said regarding the kind treatment of wives:

{وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِن كَرِهْتُمُوهُنَّ فَعَسَى أَن تَكْرَهُواْ شَيْئًا وَيَجْعَلَ اللّهُ فِيهِ خَيْرًا كَثِيرًا}.

{Live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing, and Allah brings about through it a great deal of good.} *(an-Nisâ' 4:19)*

Moreover, the Prophet (SA) warned against the psychological impact that hitting might have on the marital relationship, saying:

«بِمَ يَضْرِبُ أحدكم امْرَأَتَهُ ضَرْبَ الْفَحْلِ ثُمَّ لَعَلَّهُ يُعَانِقُهَا.»

<<How does anyone of you beat his wife as he beats the stallion camel and then embrace (sleep with) her?>> (B)

And he said:

«لَا تَضْرِبُوا إِمَاءَ اللَّهِ.»

<<Do not hit the female servants of Allah.>> (Ḥib; authenticated by al-Albâni)

He also pointed out that the men who resort to this measure are not the best men. He said:

«لَقَدْ طَافَ بِآلِ مُحَمَّدٍ اللَّيْلَةَ سَبْعُونَ امْرَأَةً ، كُلُّهُنَّ يَشْتَكِينَ الضَّرْبَ ، وَايْمُ اللَّهِ لا تَجِدُونَ أُولَئِكَ خِيَارَكُمْ.»

<<Some seventy (used to represent a large number) women visited my family complaining about their husbands (beating them). By Allah, you will not find those men to be the best of you.>> (Ḥib; authenticated by al-Albâni)

In these reports, it is clear that the Prophet (SA) is urging the Muslims to avoid this bitter remedy as much as possible and only resort to it if all other means are exhausted. He also makes it clear that not all women deserve this extreme disciplinary measure. In fact, for many women and in many cultures, that intervention may be counterproductive. The great Mâliki scholar Ibn ‘Âshoor (d. 1393 H)

opined that the relevance of such instructions depended on one's socioeconomic class and culture.[22] The reports also indicate that the noblest men will refrain from this, for the Prophet (SA) said, "These husbands are not the best of you." After all, his example is the best, and an-Nasâ'i reported from 'Â'ishah that he never hit a woman, servant, or child.

If some Muslims deviate from the Islamic position mentioned here, it is not the fault of Islam, just as it is not the fault of Islam that many Muslims commit sins or abandon their obligations. It remains to be said that we must rise to protect the rights of women in Muslim societies against those who abuse them. The Messenger of Allah (SA) said:

«لا يُقَدِّسُ اللَّهُ أُمَّةً لا يأخُذونَ لِلضَّعِيفِ حَقَّهُ.»

<<Allah will not glorify a nation that does not support the weak until they take their full rights.>> (*Ṣaḥeeḥ al-Jâmi'*; reported by aṭ-Ṭabarâni from Ibn Mas'ood)

Many contemporary scholars indicated that the state has the authority to ban this hitting if it deems that men will fail to observe the legislated guidelines in implementing those reprimands and will not cease from overstepping their limits.[23]

One may ask whether these teachings contribute – even indirectly – to the reality that we live in. The simple answer is no. Sinners do not need any justification to commit their sins, yet they may use weak arguments afterwards to justify them. Besides, domestic abuse of women also occurs in Western countries. According to the National Coalition Against Domestic Violence, one in four women in the US will experience domestic violence during

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22 *at-Taḥreer wat-Tanweer*, Ibn 'Âshoor, 5:44; discussed in "The End to Hitting Women: Islamic Perspective on Domestic Violence," Abdullah Hasan.

23 *at-Taḥreer wat-Tanweer*, Ibn 'Âshoor, 5:44; discussed in "The End to Hitting Women: Islamic Perspective on Domestic Violence," Abdullah Hasan.

her lifetime, and in 2000, 1247 women were killed by an intimate partner. In 2001, there were 691,710 non-fatal incidents of domestic violence.[24]

Finally, this exceptional intervention (from which most of us have been barred) was only permitted in certain circumstances, with certain women, after the exhaustion of all other means, and as the last intervention before the dissolution of the family. It is like grabbing someone violently when they are about to fall (or jump) off a cliff.

[24] "Domestic Violence Facts," National Coalition Against Domestic Violence, http://www.ncadv.org/files/DV_Facts.pdf.

Appendix 4: Paternity for the Fornicator

In general, paternity of a child is not assigned to a fornicator, because the Messenger of Allah (SA) said, **"The child is for the [marital] bed, and the stone is for the adulterer."**[25] There are exceptions, though.

To determine what the Prophet (SA) intended, it is essential to understand the relevant incident. 'Â'ishah (RAH) said:

<<'Utbah ibn Abi Waqqâṣ wanted his brother, Sa'd, to take custody of the son born to Zam'ah's concubine. 'Utbah had said, "He is my son."

Sa'd and 'Abd ibn Zam'ah went together to the Messenger of Allah (SA). Sa'd ibn Abi Waqqâṣ said, "This is my brother's son. He assured me that this is his son."

'Abd ibn Zam'ah said, "O Messenger of Allah, this is my brother, the son of Zam'ah; he was born upon his bed."

The Messenger of Allah (SA) looked at the son born to Zam'ah's concubine and found that he resembled 'Utbah ibn Abi Waqqâṣ more than anyone else. Thus, the Messenger of Allah (SA) said, "**Veil yourself from him, Sawdah,"** due to the resemblance of 'Utbah ibn Abi Waqqâṣ that he noticed.[26]

'Â'ishah said, "The Messenger of Allah (SA) said, '**The child is for the [marital] bed, and the stone is for the adulterer.**'">>[27]

The hadith describes a specific incident when two men were arguing over the paternity of a child; one claimed the child for the owner of the marital bed, and the other claimed him for the fornicator. There was no proof other than the marital bed and the

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[25] *Ṣaḥeeḥ al-Bukhâri,* no. 2053; *Ṣaḥeeḥ Muslim,* no. 1457a.

[26] Sawdah was the daughter of Zam'ah. If the concubine's son was the son of Sawdah's father, he would have been her maḥram, but as the son of 'Utbah, he would not be.

[27] The son was attributed to Zam'ah.

qareenah (corroborative evidence) of resemblance, so the Messenger of Allah (SA) closed the door in the face of this grave evil spreading. Otherwise, fornicators and scandalous men would be emboldened to claim that they were the fathers of children born to women who had husbands.

If a woman is not married, then what is closer to the Sunnah is to attribute the child to the fornicator, in the view of some Mâlikis, al-Ḥasan, Ibn Seereen, an-Nakha'i, Is-ḥâq ibn Râhwayh, Sulaymân ibn Yasâr, and Ibn Taymiyah. This was also the position of the Ḥanafis – on the condition that he marries the woman and the child is born at least six months after the marriage.[28]

There are several evidences, including:

1- The hadith of 'Ali (RA) about casting lots. Three individuals came to 'Ali in Yemen, disputing over a child; all three had had intercourse with the same woman during a single non-menstrual period…
He said, "You are all adamant in your claims, so I will cast lots among you. Whoever wins, the child belongs to him, and he must pay two-thirds of the blood money to his two companions."[29] He cast lots among them and allotted the child to the winner, which made the Prophet (SA) laugh until his molar teeth could be seen. He did not ask the men if they had copulated with the woman mistakenly, despite that being an extremely unlikely possibility.[30]

2- The hadith of attributing the child to Shareek ibn Saḥmâ'. In front of the Prophet (SA), Hilâl ibn Umayyah accused his wife of committing adultery with Shareek ibn Saḥmâ'… so the Prophet (SA) said, **"Watch her; if she brings him (a child) forth with dark eyes, wide buttocks, and full legs, then he**

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28 *Majmoo' al-Fatâwâ*, Ibn Taymiyah, 32:112–113.

29 This was to compensate them for losing their right to the paternity of the child without clear evidence.

30 *Sunan Abi Dâwood.*

belongs to Shareek ibn Saḥmâ'." Later, she delivered a baby as described, so the Prophet (SA) said, **"Were it not for what preceded from the Book of Allah,[31] there would have been a [different] matter between her and me."**[32]

The point of reference is that the Prophet (SA) attributed the child to Shareek based on resemblance. The woman was married, but her husband denied the child; this denial, along with the resemblance, was satisfactory to accept that the child was fathered by Shareek. The hadith did not make it clear, though, whether the child was legally attributed to Shareek.

3- As for children who were born of fornication during *jâhiliyah,* 'Umar (RA) attributed them to whoever claimed them. Al-Bayhaqi narrated that two men both claimed a child, so 'Umar summoned the people of *qiyâfah* (physiognomy).[33] They said, "He resembles both of them."

'Umar told the child, "Give allegiance to whichever of them you wish."[34] This was authenticated by al-Bayhaqi.

4- The absence of evidence preventing such an attribution, since the aforementioned hadith, **"…and the stone is for the**

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31 The Book of Allah gave more weight to her denial than to her husband's accusation.

32 *Sunan Abi Dâwood,* no. 2254 (2:76), authenticated by al-Albâni; see *also the* verification by Mash-hoor.

33 *Abjad al-'Uloom*, Ṣiddeeq Ḥasan Khân, 2:436. Resemblance (qiyâfah) denotes recognizing paternity based on physical resemblance.

The *qiyâfah* of people is an investigative science that studies the physical characteristics of two individuals to assert their ancestry and filiality of one another… This practice is done by speculation and intuition, not by evidences and certainty, and Allah – the Glorified and High – knows best.

34 *as-Sunan al-Kubrâ*, al-Bayhaqi, 10:263.

adulterer," is specific to an incident where the legitimate partner did not deny the child.[35]

5- Most jurists permit attributing a child with no known ancestry to the one who claims him, without investigating the claim, if this is logically possible.[36] They do not stipulate that the claimant must have been previously married, but they do stipulate that he not explicitly admit to fornication.

From this and other evidence, it appears that if the mother was unmarried, a child born of fornication is attributed to his father. Preserving the rights of these children is of the goals of Sharia.

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[35] Shaykh Ibn 'Uthaymeen said:

Regarding the statement of the Prophet (SA), **"The child is for the [marital] bed, and the stone is for the adulterer,"** some scholars viewed it as being specific to disputes. In other words, if the fornicator and the owner of the bed dispute, we allot him [the child] to the owner of the bed. If there is no dispute with the fornicator, and the fornicator claims him, then he has the right to do so, and he [the child] is attributed to him. This is the preponderant view which, upon consideration, suits both sound logic and the Sharia. (Taken from the Shaykh's website)

[36] *Badâ'i' aṣ-Ṣanâ'i'*, al-Kâsâni, 6:242; *Sharḥ Mukhtaṣar Khaleel*, al-Kharashi, 6:100; Ḥâshiyat ad-Dasooqi, ad-Dasooqi, 3:412; and *al-Aḥwâl ash-Shakhṣiyah*, Abu Zahrah, p. 395.

Appendix 5: Slavery

The issue of slavery may be one of the hardest issues to discuss. Our collective conscience as a global community is extremely averse to the discussion because of a variety of factors, not least of which is the cruel treatment that slaves suffered for centuries. Many preachers find it difficult to talk about the issue, particularly when they are asked why Islam's stance did not mandate the immediate and absolute abolition of slavery. Furthermore, classical books of Islamic law contain extensive discussions of the rulings pertaining to the slaves, causing discomfort to many educators who must address them. In the following discussion, I will attempt to highlight some of the facts about Islam's stance from slavery.

A Historical Matter

To begin with, any discussion of slavery in Islam that does not put the issue in its proper historical context will be flawed. No heavenly religion sought to eliminate the institution of slavery more than Islam did. It would welcome the current state of abolishment of slavery worldwide, and it would certainly be keen on all the nations of the world maintaining this state. A central credo of conduct for Muslims is that when they engage in any agreement, they must comply with it, for Allah says:

{يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِ}

{O you who have believed, fulfill [all] contracts…} *(al-Mâ'idah 5:1)*

This defense of the Islamic stance on slavery, and its description of the excellent treatment of the slaves in Islam is, therefore, only a topic of theological and historical importance, not a practical matter.

Never Racist

The second important point to highlight is that slavery in Islam was never a racist practice. In the early history of the Muslim state, there were slaves from all nations, and even before Islam, the Arabs had slaves of all races. The most famous slaves in the history of Islam were the Prophet's esteemed Companions Salmân the Persian, Bilâl the Abyssinian, and Ṣuhayb the Roman (RAHUM). Indeed, as British historian S. H. Leeder writes, the issue of color was irrelevant to the early Muslims.

> "TAKE away that black man!" exclaimed the Christian Archbishop Cyrus. "I can have no discussion with him!" when the Arab conquerors had sent a deputation of their ablest men to discuss terms of surrender of the capital of Egypt, headed by the negro Ubâdah, as the ablest of them all. To the scared archbishop's astonishment, he was told that this man was commissioned by the General Amr; that the Moslems held negroes and white men in equal respect – judging a man by his character and not by his colour.[37]

This is not to claim that there have never been racist Muslims. Racism is a human condition that arises from egoism and is manifested in different forms, such as tribalism, groupism, classism, nationalism, etc. The closer and more devoted you become to Allah, the less egoistic you will be. The information here is about the institution of slavery in its theory, governing laws, and communal legal practice. Throughout the history of Islamic states, slaves came from all backgrounds; in fact, through most of Islamic history, they were from non-African nations, since there were not many conquests in sub-Saharan Africa. As in the Far East, those nations mostly came into the fold of Islam without war.

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[37] Veiled Mysteries of Egypt and the Religion of Islam, S.H. Leeder (New York: Charles Scribners' Sons, 1913), 332.

Slavery before Islam and in Other Religions

Slavery existed before Islam, and it spanned nearly every culture, nationality, and religion. While it may not have been known among hunter-gatherer populations, it was a part of every ancient civilization. In both a socio-geographic and religious context, slavery was normalized and tolerated worldwide, including in pre-Columbian America. Slavery was also common in Africa; in non-Muslim Africa, it was associated with pagan practices such as burying one or two young slaves alive next to the body of their deceased master. The spread of Islam is credited with ending this practice.[38]

Research shows that no religion encouraged the ending of the practice as much as Islam did; likewise, no religion encouraged the beneficent treatment of the slaves as much as Islam did.

Here are some mentions of slavery in the Bible. (Translations differ in their use of the words ‘slave’ and ‘servant’.)

Numbers 31:17–18, NIV

> "Now kill all the boys. And kill every woman who has slept with a man, but save for yourselves every girl who has never slept with a man."
>
> This statement, attributed to Moosâ (AS), clearly allows capturing, enslaving and having sex with young women.

Leviticus 25:44–46, NIV

> "Your male and female slaves are to come from the nations around you; from them you may buy slaves. You may also buy

[38] *Slavery in the Arab World*, Murray Gordon, p. 7.

> some of the temporary residents living among you and members of their clans born in your country, and they will become your property. You can bequeath them to your children as inherited property and can make them slaves for life, but you must not rule over your fellow Israelites ruthlessly..."

Exodus 21:2–6, NASB1995

> "If you buy a Hebrew slave, he shall serve for six years; but on the seventh he shall go out as a free man without payment. If he comes alone, he shall go out alone; if he is the husband of a wife, then his wife shall go out with him. If his master gives him a wife, and she bears him sons or daughters, the wife and her children shall belong to her master, and he shall go out alone. But if the slave plainly says, 'I love my master, my wife and my children; I will not go out as a free man,' then his master shall bring him to God, then he shall bring him to the door or the doorpost. And his master shall pierce his ear with an awl; and he shall serve him permanently."

American historian and philosopher Will Durant describes the position of the Church as follows:

> The Church did not condemn slavery. Orthodox and heretic, Roman and barbarian alike assumed the institution to be natural and indestructible; a few philosophers protested, but they too had slaves… Pagan laws condemned to slavery any free woman who married a slave; the laws of Constantine ordered the woman to be executed, and the slave to be burned alive. The Emperor Gratian decreed that a slave who accused his master

of any offense except high treason to the state should be burned alive at once, without inquiring into the justice of the charge.[39]

Islam's Answer to the Dilemma of Slavery

It may be said that Islam did not take an absolute abolitionist stance on the institution of slavery, and this is true to some extent. One must remember, though, that during the time of the ministry of the Prophet (SA), not only was the immediate abolitionist approach not proposed by any religious or secular order, but it would have been infeasible. Furthermore, it might have resulted in social and economic turmoil, not only for the larger communities, but firstly for the many slaves who would have been unable to fend for themselves.

In addition, the issue of how to handle war captives made slavery the surest path to saving their lives. In the past, armies could not keep the captives in prison and provide for them due to the scarcity of resources. Freeing them was not always possible because they could regroup and go back to fighting.

Finally, since the enslavement of captives was a common practice of all armies, it would have been unexpected for the Muslims to free all the captives when they won a battle but still be taken as captives when they lost.

Islam's answer to the dilemma of slavery can be summarized in two major points:

1. Gradual diminishment of the institution by simultaneously cutting off its tributaries and widening its runoffs
2. Enjoining the excellent treatment of slaves for as long as the institution survived

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[39] *The Age of Faith*, Will Durant.

In the following paragraphs, I will address these two points.

The Gradual Diminishment of the Institution of Slavery

When one wishes to drain a river of its water, there are two methods: cutting off its tributaries (sources) and increasing its runoffs. Before Islam, a person could be condemned into slavery through various means, including a man selling his own wife or child, child abandonment, debt-slavery, captivity in war, kidnapping, and as a punishment for certain crimes. Islam cut off all of those tributaries that fed into the river of slavery except for one: captivity in war, for, as mentioned previously, it was a logistical necessity at times, and more importantly, enslavement helped protect the captives' lives. Despite that, Islam recommended freeing those captives. The Prophet (SA) said:

«فُكُّوا الْعَانِيَ يَعْنِي الْأَسِيرَ وَأَطْعِمُوا الْجَائِعَ وَعُودُوا الْمَرِيضَ»

<<Free the captives, feed the hungry and visit the sick.>> (B)

Islam's Encouragement of the Emancipation of Slaves

Evidence from the Qur'an and the Sunnah makes it clear that the emancipation of slaves is considered one of the greatest virtues and ways to earn the Lord's pleasure.

Allah said:

{وَهَدَيْنَاهُ النَّجْدَيْنِ*فَلَا اقْتَحَمَ الْعَقَبَةَ *وَمَا أَدْرَاكَ مَا الْعَقَبَة* فَكُّ رَقَبَةٍ}

{And have shown him (humankind) the two ways [of good and evil]? But he has not broken through the difficult pass [to righteousness]. And what can make you know what is [breaking through] the difficult pass? It is the freeing of a slave.} *(al-Balad 90:10–13)*

{لَّيْسَ الْبِرَّ أَن تُوَلُّواْ وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللهِ وَالْيَوْمِ الآخِرِ وَالْمَلآئِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ ...}

{Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask [for help], and for freeing slaves;...} *(al-Baqarah 2: 177)*

Abu Hurayrah narrated that the Prophet (SA) said:

«من أَعْتَقَ رَقَبَةً مُسْلِمَةً أَعْتَقَ الله بِكُلِّ عُضْوٍ منه عُضْوًا من النَّارِ...»

<<Whoever frees a Muslim slave, Allah will save all the parts of his body from the (hell) fire as he has freed the body parts of the slave.>>

Sa‘eed ibn Marjânah said that he narrated this hadith to ‘Ali ibn al-Ḥusayn, who then freed his slave, even though ‘Abdullâh ibn Ja‘far had offered him ten thousand dirhams, or one thousand dinars, for that slave. (B)

Abu Hurayrah also narrated that the Prophet (SA) said:

«من أَعْتَقَ شِقْصًا له في عَبْدٍ أُعْتِقَ كُلُّهُ إن كان له مَالٌ وَإِلَّا يستسعى غير مَشْقُوقٍ عليه»

<<Whoever frees his portion of a jointly-owned slave should free the slave completely by paying the rest of his price if he has enough money; otherwise, the price of the slave is to be estimated, and the slave should be helped to work, without hardship, until he can pay the rest of his price.>> (B)

Islam also specified the freeing of slaves as the expiation for many sins.

Yet the best system Islam legislated was to give the slaves control over their own passage into the world of the free, by allowing them to purchase their own freedom with the help of the community members whom Allah ordered to support their cause. Allah says:

{وَٱلَّذِينَ يَبۡتَغُونَ ٱلۡكِتَٰبَ مِمَّا مَلَكَتۡ أَيۡمَٰنُكُمۡ فَكَاتِبُوهُمۡ إِنۡ عَلِمۡتُمۡ فِيهِمۡ خَيۡرٗاۖ وَءَاتُوهُم مِّن مَّالِ ٱللَّهِ ٱلَّذِيٓ ءَاتَىٰكُمۡۚ}

{…And those who seek a contract [for eventual emancipation] from among whom your right hands possess – then make a contract with them if you know there is within them goodness and give them from the wealth of Allah which He has given you...} *(an-Noor 24:33)*

This was beneficial for the slaves who had to be weaned from depending on their masters for provisions, for they would have faced problems if they were suddenly required to provide their own food, clothes, and shelter. (We must not underestimate the potential impact on the stability and security of the society if it had been mandated that all the slaves be immediately freed.) Of course, it was also beneficial for the masters, who were, to a great extent, dependent on the slaves for their businesses.

This was also favorable for the community, for they would see responsible people, who knew the value of work and labor, moving from the ranks of the slaves to those of the free.

It is worth noting that the Prophet (SA) led by example. According to the books of *seerah* (the Prophet's noble history), he emancipated slaves he had before Islam was revealed to him, as well as slaves given to him after Islam. In the most authentic book of Hadith, 'Amr ibn al-Ḥârith (RA), the brother of the Mother of Believers, Juwayriyah (RAH), reported that when he died, the

Messenger of Allah (SA) left neither a dinar nor a dirham, neither a male nor a female slave, nor anything else except his white riding mule, his weapons, and the land which he had given in charity to wayfarers. (B)

Finally, in attestation to the Islamic plan for eliminating slavery, C. Snouck Hurgronje writes:

> Setting slaves free is one of the most meritorious pious works, and, at the same time, the regular atonement for certain transgressions of the sacred law. So, according to Mohammedan principles, slavery is an institution destined to disappear.[40]

Islam's Enjoinment of the Excellent Treatment of the Slaves

The excellent treatment of slaves in Islam is a fact that I will try to highlight by proofs from the textual and historical accounts, including testimonies by non-Muslim historians and thinkers.

In the Qur'an, there are several verses commanding the good treatment of slaves, including:

{وَاعْبُدُواْ اللّهَ وَلَا تُشْرِكُواْ بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالجَنبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ إِنَّ اللّهَ لَا يُحِبُّ مَن كَانَ مُخْتَالاً فَخُورًا}

{Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful.} *(an-Nisâ' 4: 36)*

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[40] Mohammedanism, C. Snouck Hurgronje (New York: G. P. Putnam's Sons, 1916), 129.

The Messenger of Allah (SA) repeatedly commanded people to treat the slaves with mercy and compassion. One of his last recommendations to the Muslims before he died was to fear Allah regarding their slaves. A quick review of the following hadiths will further testify to his instructions regarding the excellent treatment of slaves:

«ولا يَقُلْ أحدكم عَبْدِي أَمَتِي وَلْيَقُلْ فَتَايَ فَتَاتِي غُلَامِي»

<<None of you should say, "My slave (‘*abdi*)" or "My slave woman" but should say, "My young man," "My young woman," or "My boy.">> (B)

Al-Ma‘roor ibn Suwayd narrated:

<<I saw Abu Dharr al-Ghifâri wearing a cloak, and his slave was wearing a cloak (like it). We asked him about that.

He replied, "Once I abused a man, and he complained of me to the Prophet (SA)."

The Prophet (SA) asked me:

«يا أَبَا ذَرٍّ أَعَيَّرْتَهُ بِأُمِّهِ إِنَّكَ امْرُؤٌ فِيكَ جَاهِلِيَّةٌ إِخْوَانُكُمْ خَوَلُكُمْ جَعَلَهُمْ الله تَحْتَ أَيْدِيكُمْ فَمَنْ كان أَخُوهُ تَحْتَ يَدِهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ ولا تُكَلِّفُوهُمْ ما يَغْلِبُهُمْ فَإِنْ كَلَّفْتُمُوهُمْ فَأَعِينُوهُمْ»

"Did you abuse him by slighting his mother? You are a man who has *jâhiliyah* (pre-Islamic ignorance and disbelief)." He added, "Your slaves are your brethren, upon whom Allah has given you authority. If you have your brethren under your control, you should feed them with the like of what you eat and clothe them with the like of what you wear. You should not overburden them with what they cannot bear, and if you do so, help them (in their hard job)".>> (B)

The Prophet (SA) unequivocally prohibited the separation of a mother from her slave child. Abu Moosâ reported:

«لَعَنَ رسُولُ اللَّهِ - صلى الله عليه وسلم - من فَرَّقَ بين الْوَالِدَةِ وَوَلَدِهَا وَبَيْنَ الْأَخِ وَبَيْنَ أَخِيهِ»

<<The Messenger of Allah (SA) cursed whoever separates a mother from her child, or a brother from his sibling.>> (A weak hadith recorded by Ibn Mâjah)

And for one who humiliates his slave by beating him or slapping him, the Prophet (SA) said:

«من لَطَمَ مَمْلُوكَهُ أو ضَرَبَهُ فَكَفَّارَتُهُ أَنْ يُعْتِقَهُ»

<<He who slaps his slave or beats him, there is no expiation for this but to free him.>> (M)

The Messenger of Allah (SA) was always concerned about the wellbeing of the slaves, and he would always mention them at the times when he expected the greatest attention from his audience, such as the time of his death and during the Farewell Pilgrimage, where he had the largest audience in his lifetime. "As for your slaves, male and female," he exhorted them during the Farewell Pilgrimage, "feed them with what you eat yourself and clothe them with what you wear. If you cannot keep them or they commit any fault, discharge them. They are God's people like unto you and be kind unto them."[41]

No other nation or religious group in the world treated slaves better than the Muslims did, as demonstrated by the aforementioned examples of instructions from Allah and His Messenger (SA). The

[41] *Slavery in the Arab World*, Murray Gordon, p. 19.

following are the testimonies of non-Muslim historians and leaders regarding this very fact:

On the attitude of the Muslim master towards his slaves, American historian and philosopher Will Durant writes:

> …he handled them with a genial humanity that made their lot no worse - perhaps better, as more secure - than that of a factory worker in nineteenth-century Europe… It is astonishing how many sons of slaves rose to high place in the intellectual and political world of Islam, how many, like Mahmud and the early Mameluks, became kings.[42]

At the end of the eighteenth century, Mouradgea d'Ohsson (an Armenian historian and diplomat who wrote extensively about the Ottoman Empire) declared:

> There is perhaps no nation where the captives, the slaves, the very toilers in the galleys are better provided for or treated with more kindness than among the Muhammedans.[43]

Napoleon Bonaparte, a military leader who was Emperor of France from 1804 to 1814, is recorded as saying about the condition of slaves in Muslim countries:

> In the East, slavery never had the same characteristics as in the West. The slavery of the East is that which is seen in the Holy Scripture: the slave inherits from his master and marries his daughter. Most of the Pashas had been slaves; a great number of grand viziers, all the Mamluks, Ali Bey al-Kabir, and Murad Bey had all been slaves. They started by performing the most

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[42] *The Age of Faith*, Will Durant, p. 209.

[43] *The Encyclopaedia of Islam*, new ed., 1:35.

menial services in the house of their master and subsequently rose in status because of their merit or through favours. In the West, on the other hand, the slave was always below the domestic servant; he occupied the lowest rank...[44]

With regard to the question of concubines and having sex with the slave girls, we must first say that the Prophet (SA) encouraged the masters to free their female slaves and marry them. He said:

«وَرَجُلٌ كانت له أَمَةٌ فَغَذَّاهَا فَأَحْسَنَ غِذَاءَهَا ثُمَّ أَدَّبَهَا فَأَحْسَنَ أَدَبَهَا ثُمَّ أَعْتَقَهَا وَتَزَوَّجَهَا فَلَهُ أَجْرَانِ»

<<He will be doubly rewarded… the man who had a slave girl, and he fed her well, taught her manners and educated her, and then freed her and married her.>> (Ag)

Secondly, this system was not new, nor was it introduced by Islam; many prophets before Islam acknowledged it and used it. There is no argument among the Jews, Christians, and Muslims that Hâjar was the concubine of Prophet Ibrâheem, and the Old Testament contains countless stories about concubines, including those of the Prophets Dâwood and Sulaymân (peace and blessings be upon them).

We can never view sexual relations with a female slave nowadays from the same perspective of those who lived during those times. It is illogical to deal with historical matters without understanding their context; judging a practice as good or bad cannot be done in the abstract, separate from its context and the norms of the time. Prostitution refers to sex outside of the socially acceptable context, but in ancient times, the concubine (like the wife) was allowed to have sex with the master as a legitimate partner. No

[44] *Bonaparte et l'Islam*, Christian Cherfils, p. 124.

woman would ever be allowed to have two sexual partners during the same time, so this concubine was not a sex tool to be enjoyed by the master and his relatives and friends. She could only be wed to one person, and her rights, along with the rights of her children, were guaranteed. Ultimately, sex with the female slave provided a way to fulfill her needs, and she also gained a special status once she delivered a child, who had the same rights as the master's other children. After bearing his child, she could not be sold and was freed upon the death of the master.

I would conclude by emphasizing that Islam was keen on the emancipation of the slaves, and it enjoined this throughout its teachings. The original and natural state in which God created his servants is the state of freedom, and He desires a return to that freedom. Let us all pray for the deliverance of all people from all forms of disguised slavery that exist in our world today and for the end of all manifestations of subjugation of people by others.

Appendix 6: Ḥudood Punishments

The *ḥudood* punishments are those that have been specified in the revelation. The word ḥudood (sg. *ḥadd*) means boundaries or restrictions, which is appropriate because these punishments are not meant to be a form of revenge against people who violate religious commandments; for example, there is no ḥadd punishment for usury or consumption of pork. The ḥudood punishments were meant to deter certain crimes whose appeal can overwhelm human willpower and restraint. Lust tempts people into adultery/fornication (*zinâ)*, greed entices some to commit certain types of theft (*sariqah*), addiction can lead to consuming intoxicants (*shurb al-khamr*), anger and vengefulness may prompt unproven accusations of fornication (*qadhf*), and a combination of these may lure people into banditry (*ḥirâbah*). These five are the only agreed upon ḥudood crimes, but some madh-habs added others: public apostasy (*riddah*), sodomy (*liwâṭ)*, and treacherous murder (*qatl al-gheelah*).

It is noticeable that the number of crimes punishable by a ḥadd penalty is miniscule. Another category of punishments is qiṣâṣ (equal retribution). The third and largest category of punishments is *ta'zeer* (discretionary punishments), encompassing thousands of offenses whose punishments are left up to the discretion of legislatures or judiciary.

The severity of the ḥudood penalties serves to remind the community of the great evil of these crimes and their severe impact on the peace, order, and wellbeing of the society.[45] It is because of this impact that the establishment of these punishments is considered

[45] "Putting Severity of Punishment Back in the Deterrence Package," Silvia M. Mendes and Michael D. McDonald, pp. 588–610, for more on the importance of severity of punishment in deterrence.

the right of Allah; in modern legal systems, this would correspond to the right of the state. The severe nature of the punishments is not intended to inflict harm on the offender as much as it is meant to be a reminder for the society and a deterrent for those considering those crimes. This fact is proven through a careful study of how these punishments are applied. Guilt is extremely difficult to establish, given the stringent criteria for admissible evidence, such as the requirement for four eyewitnesses to the very act of *zinâ* (fornication or adultery), and the principle of warding off the punishment if there are any ambiguities. This was first expressed by the Prophet (SA) himself in the following hadith:

«ادْرَؤوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ، فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يُخْطِئَ فِي الْعَفْوِ، خَيْرٌ مِنْ أَنْ يُخْطِئَ فِي الْعُقُوبَةِ»

<<Ward off the ḥudood from the Muslims as much as you can. If there is any way out for the person, then let them go, for it is better for the imam (authority) to err on the side of mercy than to err on the side of punishment.>>[46]

In the lifetime of the Prophet (SA), the crime of adultery among Muslims was never established through four eyewitnesses but only by the confession of the sinners themselves, seeking purification from their sin, even though they were encouraged to conceal them and repent in private. When Mâ'iz came to the Prophet (SA) and confessed, the Prophet (SA) asked if he was crazy, suggested that he may have only kissed the woman, and encouraged him to retract his confession.[47] In another report of this incident, the

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[46] *Sunan at-Tirmidhi*, at-Tirmidhi, from 'Â'ishah. The *mawqoof* report (traceable to 'Â'ishah only) is stronger. However, it is corroborated by statements of several Companions, and its meaning is accepted by all jurists.

[47] *Ṣaḥeeḥ Muslim*, no. 1695a.

Prophet (SA) asked him, "Have you done it like a collyrium (eyeliner) stick when enclosed in its case and a rope in a well?"[48] This is also the level of detail that eyewitnesses would need to testify to. The feasibility of four trustworthy men witnessing that is extremely hard to imagine unless the act was part of an orgy, in which case, it is unlikely to be witnessed by four men in good standing.

Due to the stringent criteria for enforcing these penalties, their actual application was very rare. In fact, in the roughly five hundred years that the Ottoman Empire ruled Constantinople, records show only one instance of stoning for adultery, while fifty people were executed in the American colonies between 1608 and 1785 for various sexual crimes.[49]

It should also be noted that in the later Ḥanbali position, the ḥadd punishments for zinâ, drinking, and theft are waived if the offender repents before they are established before the judge.[50] **Another Ḥanbali position allows their waiver by repentance even after judicial establishment, provided the repentance occurs before the punishment is carried out.**[51] A view in the Shâfi'i madhhab also allows their waiver by repentance, **including after referral to the judge according to one transmission**, but this is not its stronger position.[52]

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48 *Sunan Abi Dâwood*, no. 4428.

49 "Women and the Public Eye in Eighteenth-Century Istanbul," Fariba Zarinebaf-Shahr, pp. 302–304; *Cruel and Unusual*, Anne-Marie Cusac, *p. 22; both cited in* "Stoning *and Hand Cutting: Understanding the Hudud and the Shariah in Islam," Jonathan A. C. Brown.*

50 *Kash-shâf al-Qinâ'*, al-Buhooti, Ministry of Justice edition, 14:190–191.

51 *Taṣḥeeḥ al-Furoo'*, al-Mardâwi, printed with *al-Furoo'*, 10:159–160.

52 *Tuḥfat al-Muḥtâj*, Ibn Ḥajar al-Haytami, 9:164.

When the ḥudood are not applied because of some doubt (ambiguity), but it is still probable that a crime occurred, the victims' civil rights (such as having the stolen items or their value returned) are not dropped, and the judge can impose a ta'zeer punishment.

While it is important for all Muslims to believe in the perfection of the Divine and His legislation, Muslims who live as minorities should clearly explain to their compatriots what the *ḥudood* are – and what they are not; they should also stress that Islamic law is applicable only within the jurisdiction of Muslim countries. As for the Muslims in Muslim-majority countries, they must reach a societal agreement on how to approach those laws.

Appendix 7: Can the Punishment for Apostasy Be Suspended?

The punishment for apostasy in Islamic law (Sharia) is one of the most frequently raised questions about Islam. This discussion will not focus on the controversy within contemporary Islamic scholarly circles over the validity of this punishment; it will focus instead on a more practical inquiry: Is this punishment binding on the authorities in Muslim countries, or can they suspend it?

In the past, not only were Muslim countries like those in nearby Christendom, in terms of punishing apostates, but the punishment for apostasy or heresy was less of a phenomenon in Muslim lands than in Medieval Europe, for example. However, the current conditions in Europe, its offshoots, and the bulk of Christian majority countries are very different from the past, with more religious freedoms granted to the citizens of those countries now. Although this is a positive development, it was not merely a show of courtesy to people of other faiths, but rather a conviction that Europeans came to adopt about the importance of religious relativism for the civic good. This conviction came about after centuries of religious wars and fanatic bloodshed; one of the last such wars was the Thirty Years' War between 1618 and 1648.[53]

Regardless of how and why religious relativism and pluralism became the norm in Europe, the contrast now between the practices in European countries and Muslim-majority ones makes the Sharia's treatment of apostates a favorite theme for many, as well as an agenda item in most debates. The fact that apostasy is still criminalized in many Muslim-majority countries (even though the statutes are rarely enforced) continues to have serious political ramifications. This discussion will attempt to answer the following questions:

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[53] *The Oxford Handbook of Religious Diversity, ed. Chad Meister.*

- Was Islam the only religion that prescribed a punishment for apostates?
- If not, why are the Muslim countries the only states where a punishment for apostasy is still canonized? (Note that the Islamic law pertaining to this matter can only be enforced by the courts in Muslim lands.)[54]
- Finally, is upholding this punishment binding on Muslim legislatures, or can they suspend it?

The Punishment for Apostasy in Other Religions

The discussion here focuses on the Abrahamic faiths. The Eastern philosophies have been more accepting of religious relativism, pluralism, and even syncretism; this is to be expected since the founders of those philosophies, as human beings, cannot claim a monopoly on the truth. The Abrahamic faiths have a completely different paradigm: a messenger who brings a Divine message to humanity. It would not be expected that God would be indifferent to human being's choice of a deity.

The Biblical Teachings Regarding Apostasy

There is no doubt that the Biblical teachings (particularly in the Old Testament, which is the Word of God according to both Jews and Christians) are explicit on the capital punishment for apostasy. The following Bible verses call for the killing of apostates and heretics.

> 2 If there be found among you, within any of thy gates
> which the LORD thy God giveth thee, man or woman,

[54] *al-Mughni*, Ibn Qudâmah, 9:8 (Maktabat al-Qâhirah edition).

that hath wrought wickedness in the sight of the LORD thy God, in transgressing his covenant,

3 And hath gone and served other gods, and worshipped them…

5 Then shalt thou bring forth that man or that woman, which have committed that wicked thing, unto thy gates, even that man or that woman, and shalt stone them with stones, till they die.[55]

6 If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, Let us go and serve other gods…

9 But thou shalt surely kill him; thine hand shall be first upon him to put him to death, and afterwards the hand of all the people.

10 And thou shalt stone him with stones, that he die; because he hath sought to thrust thee away from the LORD thy God…[56]

1 If there arise among you a prophet, or a dreamer of dreams, and giveth thee a sign or a wonder,

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[55] The Holy Bible, Deuteronomy 17:2–5, KJV.

[56] The Holy Bible, Deuteronomy 13:6–10, KJV.

2 And the sign or the wonder come to pass, whereof he spake unto thee, saying, Let us go after other gods, which thou hast not known, and let us serve them;

3 Thou shalt not hearken unto the words of that prophet, or that dreamer of dreams…

5 And that prophet, or that dreamer of dreams, shall be put to death...[57]

The History of the Punishment for Apostasy in the Judeo-Christian Tradition

The Bible itself tells us about the most famous case of applying the death penalty to apostates, when the three thousand Israelites who had worshipped the calf were condemned to death:

27 And he [Moses] said unto them, Thus saith the LORD God of Israel, Put every man his sword by his side, and go in and out from gate to gate throughout the camp, and slay every man his brother, and every man his companion, and every man his neighbour.

28 And the children of Levi did according to the word of Moses: and there fell of the people that day about three thousand men.[58]

The history of *inquisition*s shows that European Christians, represented by the papacy, have implemented capital punishment for

[57] The Holy Bible, Deuteronomy 13:1–5, KJV.

[58] The Holy Bible, Exodus 32:27–28, KJV.

apostasy and heresy for centuries.[59] In *Inquisition*, Edward Peters states:

> When faced with a convicted heretic who refused to recant, or who relapsed into heresy, the inquisitors were to turn him over to the temporal authorities – the "secular arm" – or animadversio debita, the punishment decreed by local law, usually burning to death.[60]

One of the most popular executions carried out as a consequence of those *inquisition*s was that of Giordano Bruno, an Italian Dominican friar, philosopher, and astrologer who was known for his cosmological theories. He was found guilty of heresy by the inquisitors and burned at the stake in Rome's Campo de' Fiori in 1600 CE.

In addition to the punishment inflicted upon conviction, in 1252, a papal bull (decree issued by Pope Innocent IV) entitled *Ad extirpanda* authorized the use of torture by the inquisitors.[61]

It is important to note that in the history of Islamic legislation, torture was never sanctioned to extract a confession of apostasy, because according to the vast majority of scholars, an outward denial of apostasy (or repentance) was sufficient to end the case.[62]

The Classical Position and Contemporary Scholarly Discourse Within Islam

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59 The punishment of the heretics and apostates did not start with the *inquisition*s, for sure, but the era of the *inquisition*s was the most recent segment in the history of this punishment in Christendom.

60 *Inquisition*, Edward Peters, p. 67.

61 "Aquinas on Torture," *Jordan Bishop, pp. 229–237.*

62 *Fatḥ al-Bâri*, Ibn Ḥajar al-'Asqalâni, 12:269.

The four schools of Sunni Islam are seen as the representatives of the classical Islamic views on matters of law, and their agreement is that the male apostate should be killed if he fails to repent. There are some reports from ‘Umar ibn al-Khaṭṭâb, Ibrâheem an-Nakha‘i, and Sufyân ath-Thawri that his repentance should be sought indefinitely.[63] Such reports are sometimes countered by other reports supporting the position of the four schools, and there are other reports from ‘Umar and Ibrâheem that are counter to those cited above.[64] Otherwise, they are considered invalid interpretations by the majority.

The discourse of contemporary scholars can be divided into four main positions:

1. The punishment is valid.
2. The punishment is not valid.
3. There is a distinction between apostates who actively threaten the community (by assaulting the religion) and those who do not.[65]
4. The punishment was established, but Muslim legislatures are not bound to uphold it because it is not a ḥadd (fixed punishment designated by the Divine).[66]

As for the scholars who validate the punishment and those who deny it, I will summarize their arguments here.

The deniers cite the following verses of the Qur’an:

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63 Marâtib *al-Ijmâ‘*, Ibn Ḥazm, p. 127.

64 *Fatḥ al-Bâri*, Ibn Ḥajar al-‘Asqalâni, 12:268.

65 *Jareemat ar-Riddah wa ‘Uqoobat al-Murtadd*, Yoosuf al-Qaraḍâwi, pp. 52–53.

66 *Fee Uṣool an-Nidhâm al-Jinâ’i al-Islâmi*, Muḥammad Saleem al-‘Awwa, pp. 179–210.

﴿لَا إِكْرَاهَ فِي الدِّينِ ۖ قَد تَّبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ ۚ فَمَن يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِن بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا انفِصَامَ لَهَا ۗ وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾

{There is no compulsion in the religion; right-mindedness has already been evidently (distinct) from misguidance. …} (*al-Baqarah 2: 256*, translated by Ghali)

﴿وَقُلِ الْحَقُّ مِن رَّبِّكُمْ ۖ فَمَن شَاءَ فَلْيُؤْمِن وَمَن شَاءَ فَلْيَكْفُرْ﴾

{And say, "The Truth is from your Lord; so whoever decides, then let him believe, and whoever decides, then let him disbelieve."} (*al-Kahf 18:29,* Ghali)

﴿فَذَكِّرْ إِنَّمَا أَنتَ مُذَكِّرٌ لَّسْتَ عَلَيْهِم بِمُصَيْطِرٍ﴾

{So remind them! Surely you are only a constant Reminder; You are not in any way a dominator over them.} (*al-Ghâshiyah 88:21–22,* Ghali)

They also argue that some of the reports supporting punishment for apostates are not specific, and they may be understood in the context of rebelling against the community, as in the following hadith of the Prophet (SA):

«لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ إِلَّا بِإِحْدَى ثَلَاثٍ الثَّيِّبُ الزَّانِ وَالنَّفْسُ بِالنَّفْسِ وَالتَّارِكُ لِدِينِهِ الْمُفَارِقُ لِلْجَمَاعَةِ.»

<<It is not permissible to take the life of a Muslim who bears testimony that there is no god but Allah, and I am the Messenger of Allah, but in one of three cases: the married adulterer, a life for life, and the deserter of his religion (Islam), abandoning the community.>> (M)

Some contemporary scholars argue that the addition of "abandoning the community" at the end is consequential to the meaning of the hadith, and they cite classical scholars who pointed

out the distinction, like Ibn Taymiyah, who indicated the difference, not to deny the punishment for apostasy, but to affirm the death penalty for armed rebellion.[67]

The most explicit hadith on the punishment of apostasy is a report that the Prophet (SA) said:

«مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ»

<<If someone changes his religion, kill him.>> (B)

This seems to be the strongest proof for the punishment of apostasy. Those who denied the punishment argued that it is counter to the Qur'an, and that its implication is controversial since it means that anyone who changes his religion, regardless of his original one, is to be killed. They also cite that it is a singular report,[68] and that in the domain of ḥadd punishments, some scholars do not accept those as proof.[69] Finally, they argue that the Prophet (SA) himself never applied that punishment solely for apostasy, as will be discussed later.

The arguments of the deniers, however, did not find much support in Islamic orthodoxy of the past, for the following reasons:

- As for the argument of the reports being singular, it is important to point out that the scholars who invoked this point in this particular discussion did not deny the authority of those reports in general;[70]

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67 *aṣ-Ṣârim al-Maslool 'alâ Shâtim ar-Rasool*, Ibn Taymiyah, p. 319.

68 Reported by a small number (the threshold is controversial) in each layer of the chain of narration, making the transmission speculative, not certain, even if the chain is deemed acceptable and the hadith is deemed authentic.

69 *al-Islâm 'Aqeedah wa Sharee'ah*, Maḥmood Shaltoot, p. 281.

70 The singular reports are those transmitted to us by a lesser number of narrators than that needed to justify certainty in their transmission. Although not definitive in their transmission, they are definitely binding on us in the domain of 'amal (practice), by consensus. They are also

they only pointed out that the ḥudood may be beyond their scope of operation. This is not always true, though, and the simplest proof for this is the agreement of all madh-habs on using them here.[71]

- As for the argument of the hadith(s) contradicting the Qur'an, one must acknowledge some contradiction between the punishment for apostasy, as related in the Sunnah, and the apparent implications of the Qur'an verses mentioned above. It is also true that the Qur'an has no mention of a worldly punishment inflicted by the judiciary, but this contradiction can be reconciled. The earlier scholars indicated that the verses of the Qur'an forbid forcing people to change their religion into Islam, but they do not give a license to Muslims to abandon Islam. Finally, the absence of any mention of the punishment in the Qur'an still has practical consequences, particularly the fact that denying this punishment does not amount to an act of disbelief.
- Admittedly, the agreement of the four schools is not a valid consensus, but there is no doubt that it carries weight in Islamic orthodoxy, and they agreed on the punishment for men. It is hard to find someone before the four Imams who explicitly denied it, except in some questionable reports from one or two scholars. The

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authoritative in the domain of 'aqeedah (belief), according to the stronger position – in the author's view. A small number of scholars questioned their authority in the area of ḥudood. Their rejection in the area of practice is an assault on the entirety of Islam. Having said that, if someone rejected the transmission of one of those reports, he would have not committed an act of disbelief. In summary, while one is not supposed to have a certain belief that the Prophet (SA) uttered those words, all of us Muslims are bound to comply with the hadith, and act upon it, once it is deemed authentic.

71 *al-Ishrâf 'alâ Madhâhib al-'Ulamâ'*, Ibn al-Mundhir, 8:54.

consensus[72] was later reported by Ibn al-Mundhir, an-Nawawi, Ibn Rushd, and Ibn Qudâmah.[73]

- Although there is only one explicit hadith on this punishment, there are a few others that support it, albeit with some controversy over their establishment and meaning. There is also the early practice of the Companions, such as one report from Abu Moosâ and Mu‘âdh while they were in Yemen, in which Mu‘âdh said about the punishment, “It is what Allah and His Messenger decreed.” This could possibly have been Mu‘âdh’s own understanding of what Allah and His Messenger (SA) decreed, but it still corroborates the reports traceable to the Prophet (SA).
- Additionally, while we do not take the rulings of our religion from the Bible, the legislations of those before us are invoked as a secondary source of legislation as long as they are not counter to our sources and their authenticity is verified by our revelation. In this case, the Qur’an mentions the story of the Israelites who were commanded by Moosâ (AS) to kill themselves, and there are hadiths that agree with the explicit text of the Bible.
- To summarize this part… In order to challenge the validity of the orthodox position, one must reject the consensus (reported by four verifying scholars) and the agreement of the four schools (as far as male apostates are concerned), and one must have an esoteric interpretation of the reported hadiths. Furthermore, one must reject the action of the Companions, question the transmission of reports

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[72] This consensus is also not definitive. However, when verifying scholars report a consensus that was not confirmed in the time of the Companions, it must still be treated as a speculative proof. It adds a huge burden on its opponent to refute it and validate his argument.

[73] *al-Ishrâf ‘alâ Madhâhib al-‘Ulamâ’*, Ibn al-Mundhir, 8:54; Bidâyat al-Mujtahid, Ibn Rushd al-Ḥafeed, *4:242; al-Mughni*, Ibn Qudâmah, 9:8 (Maktabat al-Qâhirah edition).

related to us by the most authentic sources, or decline the authority of singular reports in this domain. The deniers failed – in the author's view – to mount a formidable argument that could justify all this. Moreover, while I do not doubt that some of the deniers are well-meaning scholars, their arguments could have serious consequences for our understanding of the religion and our approach to the law in general, not only concerning this issue.

This discussion was presented for completeness, and to make the reader aware of some of the discourse on the punishment itself and its validity. However, the main thesis of this discussion is whether the punishment, established as valid in the four schools of Sunni Islam, is binding on the rulers/legislatures to uphold.

Why Only in Muslim Countries?

There are no more *inquisition*s in Europe and the Western countries in general. The last case in Spain, for instance, was in 1826, when Cayetano Ripoll, a school teacher, was executed by hanging for allegedly teaching Deism.[74] Killing the apostates has not completely stopped in non-Muslim communities, but it is true that the vast majority of countries with non-Muslim majority do not currently criminalize apostasy, while many Muslim countries still do. In a few of them, it is a capital punishment, although rarely enforced.

There are several explanations that could be offered for this phenomenon. Some conservative Muslims might say that this punishment was established in all Divine revelations and was previously practiced by all of their followers, so the mere fact that Western countries abandoned the practice in favor of religious pluralism should not cause Muslim countries to automatically follow

[74] *Humanism: A Very Short Introduction*, Stephen Law, p. 23.

suit. Others, particularly those labelled 'political Islamists', argue that the despotic governments in Muslim countries do not have the legitimacy needed to take courageous steps to suspend that punishment. Another group argues that the main reason behind the criminalization of apostasy is that the Muslims have been under pressure for centuries to abandon their religion. First, there were crusades, then colonialism, and now a perceived Western hegemony. There is also the economic factor and the exploitation of poverty by some missionaries who prey on people's needs. When people feel threatened, they become more keen to close the gates and protect their identity. For instance, a discussion about suspending this punishment in Algeria during the French occupation would have sounded ludicrous. Even though the punishment was not enforced anyway, no scholar of any caliber could have suggested its suspension, on an intellectual level, while two million of his compatriots were being martyred. While Europe was progressing towards religious pluralism and liberty for all of its citizens, it was simultaneously conquering and occupying the vast majority of Muslim lands. Finally, there are Muslims who reject the validity of the punishment for apostasy, considering all laws which criminalize it to be un-Islamic. To them, the continuation of this punishment is a mere failure of judgment on the part of the Muslim scholars and legislatures that uphold it.

Is this Punishment Binding on Muslim Legislatures?

The more practical and consequential question is whether the punishment for apostasy can be suspended or whether it is binding on Muslim legislatures and judiciaries. I believe it is not binding, for the following reasons:

1- Although the specificity of the cause does not restrict the general applicability of the statements of the revelation, knowing the context of the legislation at the time of its

foundation can facilitate the understanding of the ‘illah/manâṭ (effective cause) of the ruling and enable the *mujtahid* to apply it within its accurate scope of operation. In the case of the punishment for apostasy, Shaykh Muhammad Rasheed Riḍâ (may Allah have mercy on him) said the following regarding its context (translation by the author):

> The apostates among the disbelievers of Arabia used to return to fighting against the Muslims and oppressing them. Therefore, the legitimacy of killing them is more apparent than killing the rest of the disbelievers who were at war against Islam. Some of the Jews would even pretend to accept Islam and then apostatize to defame the religion. Allah described those when He said, “And a section of the People of the Book said, ‘Believe in that which has been sent down upon the ones who have believed in the early part of the daytime and disbelieve at the last part of it, that possibly they would return (that is to your religion)’”. (*Âl ‘Imrân 3:72,* Ghali) It appears that the command to kill the apostates was meant to deter the evil of the disbelievers and the plotting of those Jews. It was for reasons dictated by the political environment of that time, which may be known now as part of the politico-military rules of engagement, but it was not to oppress the people. Do you not see that when some Muslims attempted to force their own

children to accept Islam, after having earlier converted to Judaism, the Prophet (SA) prevented them due to a revelation from Allah.[75]

So far, nothing can be deduced from this clarification of the context, but it is important to keep the context in mind while we address the other points that are more legally consequential. It is equally important to keep in mind that there is not a single authentic report of the Prophet (SA) enforcing a punishment solely for apostasy, as will be discussed.

2- It is known that a ḥadd punishment cannot be waived. If we can establish that some people abandoned Islam during the time of the Prophet (SA) and were not punished, then we may have a good reason to say that this punishment is not required by the Divine to be upheld at all times. A few cases can be cited here.

A) Allah said:

{سَتَجِدُونَ آخَرِينَ يُرِيدُونَ أَن يَأْمَنُوكُمْ وَيَأْمَنُوا قَوْمَهُمْ كُلَّ مَا رُدُّوا إِلَى الْفِتْنَةِ أُرْكِسُوا فِيهَا ۚ فَإِن لَّمْ يَعْتَزِلُوكُمْ وَيُلْقُوا إِلَيْكُمُ السَّلَمَ وَيَكُفُّوا أَيْدِيَهُمْ فَخُذُوهُمْ وَاقْتُلُوهُمْ حَيْثُ ثَقِفْتُمُوهُمْ ۚ وَأُولَٰئِكُمْ جَعَلْنَا لَكُمْ عَلَيْهِمْ سُلْطَانًا مُّبِينًا}

{You will find others who wish to obtain security from you and [to] obtain security from their people. Every time they are returned to [the influence of] disbelief, they fall back into it. So if they do not withdraw from you or offer you peace or restrain their hands, then seize them and kill

[75] "As'ilah *min Ba'ḍ Ahl al-'Ilm bi-Toonis," Muḥammad Rasheed Riḍâ, al-Manâr* 10, p. 285.

them wherever you overtake them. And those – We have made for you against them a clear authorization.} (*an-Nisâ' 4: 91*)

Commenting on this verse, Ibn Katheer relates from aṭ-Ṭabari that he said:

> Mujâhid said that the verse was revealed about a group from Makkah who used to go to the Prophet (SA) in Madinah, pretending to be Muslims. However, when they went back to Quraysh, they reverted to worshipping idols. They wanted to be at peace with both sides. Allah commanded they should be fought against, unless they withdrew from combat and resorted to peace.

The point here is that this group, even though were going in and out of Islam, were not to be fought if they withdrew from combat and resorted to peace.

B) Bukhâri and Muslim reported from Jâbir ibn ‘Abdullâh (RA) that a Bedouin took an oath of allegiance in Islam with the Messenger of Allah (SA) and then got a fever in Madinah. He came to the Messenger of Allah (SA) and said, "Release me from my pledge," but the Messenger of Allah (SA) refused. He came to him again and said again,

"Release me from my pledge." The Messenger of Allah (SA) refused again. Then he came a third time and said, "Release me from my pledge." After the Bedouin left, the Messenger of Allah (SA) said:

«إِنَّمَا الْمَدِينَةُ كَالْكِيرِ تَنْفِي خَبَثَهَا وَيَنْصَعُ طِيبُهَا»

<<Madinah is like the blacksmith's furnace. It removes the impurities and purifies the good.>> (B)

In this authentic report, we see that the Messenger of Allah (SA) was not intent on chasing after apostates so he could punish them. He clearly indicated that if someone did apostatize, then it was his loss, and it was also the work of Allah, Who removed him from the community of the believers.

C) It has also been narrated, on the authority of Anas (RA), that Quraysh made peace with the Prophet (SA) and set the condition that if any of the Muslims joined them, the Makkans would not return them, but if any of their people joined the Muslims, the Muslims would have to send them back to Makkah. The Companions (RAHUM) said, “Messenger of Allah, should we write this?” He said:

«نَعَمْ إِنَّهُ مَنْ ذَهَبَ مِنَّا إِلَيْهِمْ فَأَبْعَدَهُ اللَّهُ وَمَنْ جَاءَنَا مِنْهُمْ سَيَجْعَلُ اللَّهُ لَهُ فَرَجًا وَمَخْرَجًا»

<<Yes. The one who goes away from us to join them – may Allah keep him away! And the one who

comes to join us from them (and is sent back), Allah will provide him relief and a way of escape.>> (M)

In this report, it is clear that the Prophet (SA) favored peace with Quraysh even if it meant that some members of the community of the believers were returned to them. In pursuit of that peace, he even accepted a one-sided treaty where Quraysh would keep those who became Muslim, yet he could not prevent those who returned into disbelief from rejoining Quraysh. In our times, if other nations offered to keep the gates between the religions open and allow the historical conflicts to be transferred to the intellectual domain, should we refuse? I believe that we should not, but we must ensure that they hold true to their offer, as we will discuss later.

D) It was also reported by Bukhâri that once when the Prophet (SA) distributed something among his followers, a man said, "This distribution has not been done justly and is not for the sake of Allah."

<<I went to the Prophet (SA) and told him (of that). He became so angry that I saw the signs of anger on his face. Then he said, "May Allah bestow His Mercy on Moosâ (AS), for he was harmed more than this, yet he endured patiently.">> (B)

This man had accused the Prophet (SA) of injustice, which amounts to disbelief, yet the Prophet (SA) left him without punishment. Commenting on this, Ibn Ḥajar suggested that the Prophet (SA) left him unpunished for

the sake of reconciliation. [76]The justification Ibn Ḥajar (may Allah have mercy on him) provides for not punishing this man is one, among many others, that would allow the Muslim legislatures to suspend that punishment.

E) Ibn Salool once said, "When we go back to Madinah, the mighty (meaning himself) will drive out the humiliated (referring to the Prophet [SA])." 'Umar asked the Prophet (SA) for permission to kill Ibn Salool for this and other previous demonstrations of his disbelief and rebellion, but the Prophet (SA) replied, "Leave him, 'Umar, lest the people say that Muhammad kills his Companions." (B)

   Again, this person made an open statement of disbelief, and he was not punished. Now, the question is whether we are in greater need, in our times, of reconciling hearts and avoiding the negative impressions that might result from killing apostates.

F) There were other instances where individuals committed acts of disbelief and were not punished, such as when a man accused the Prophet (SA) of

[76] *Fatḥ al-Bâri*, Ibn Ḥajar al-'Asqalâni, 12:299.

favoring his cousin az-Zubayr when judging between them. Again, the same explanation of reconciliation was used by Ibn Ḥajar.[77]

G) Finally, I also agree with those who deny the punishment that there was not a single case where the Prophet (SA) commanded the killing of a particular apostate solely for apostasy. The report about Umm Marwân (or Umm Roman) is weak according to the most notable Hadith scholars, such as Ibn Ḥajar.[78]

3- In *al-Mughni*, Ibn Qudâmah makes a distinction between the punishment for apostasy and the ḥudood punishments.[79] In *Sharḥ al-'Aqeedat as-Safâreeniyah*, the late Shaykh Muhammad ibn 'Uthaymeen denied that the punishment for apostasy, which he validates, is a ḥadd. He pointed out that the ḥadd punishments are not dropped if one repents, whereas the punishment for apostasy is dropped upon repentance.[80] I believe the punishment of apostasy belongs to the category of *as-Siyâsat ash-Shar'iyah* more than it belongs to the ḥudood. After all, if it were a ḥadd, the Prophet (SA) would have meted it out in all of the cases mentioned above. He said:

«تَعَافَوُا الْحُدُودَ فِيمَا بَيْنَكُمْ، فَمَا بَلَغَنِي مِنْ حَدٍّ فَقَدْ وَجَبَ»

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77 *Fatḥ al-Bâri*, Ibn Ḥajar al-'Asqalâni, 5:39–40.

78 at-Talkheeṣ al-Ḥabeer, Ibn Ḥajar al-'Asqalâni, 4:136 (Dâr al-Kutub al-'Ilmiyah edition).

79 *al-Mughni*, Ibn Qudâmah, 9:8 (Maktabat al-Qâhirah edition).

80 *Sharḥ al-'Aqeedat as-Safâreeniyah*, Ibn 'Uthaymeen, 1:670.

<<Forgive the ḥadd punishments among yourselves (because) once it (the case) reaches me, it becomes binding.>> (D)

This distinction is consequential to our discussion, because the application of ḥudood was more emphatically required of the Muslim judiciaries, who were instructed to be strict in their execution.

4- If ‘Umar (RA) suspended the agreed-upon ḥadd for theft during a year of famine, because of reasons pertaining to its *manâṭ* (effective cause) and its other declarative rules (*aḥkâm waḍ‘iyah*), including *al-mawâni‘* (hindrances of application), then it is quite acceptable to re-examine the punishment for apostasy in light of the same thinking.

Suspending such punishments would not be a matter of abandoning a ruling merely on the basis of public interest; rather, it is based on the very manâṭ of the ruling. It is like ‘Umar’s choosing not to divide the annexed lands among the conquerors, despite the objections of some Companions who took a more literalist approach to the matter. It is also similar to ‘Uthmân’s ordering the lost camels to be picked up instead of being left, because the Prophet’s command to leave them came at a time when there was ample security in Madinah, so there was little concern that they would be stolen.

In this case, we will be choosing the way of the Prophet (SA) if we overlook the apostasy of people, as described above, because it suits our current conditions. The societies and legislatures in Muslim-majority countries will then need to find appropriate methods for deterring people from insulting the religion and its symbols. The fact that some Christian-majority countries recognize the freedom to curse a prophet like Jesus (AS) does not make it binding on Muslim-majority

countries to do the same. The dominant powers in today's world need to understand that different nations have different value systems. Continuing to ignore this fact and seeking complete conformity with one value system will only result in more contention and conflict. All people should be given the right to choose for themselves how to prioritize and apply their values.

Conclusion

Islam's punishment of apostasy is not an anomaly. The Bible is more explicit on this than is any part of the Islamic tradition, and the Jews and Christians upheld this practice before the Muslims did. Now, at least officially, it is almost exclusively canonized in some Muslim countries, and the reasons behind this apparent discrepancy are not easy to break down. There are multiple reasons, some of which are theological, while many are political. The established position on this issue in Islamic orthodoxy was not substantially challenged by Muslim scholars until recently. While I do not support the challenges to the orthodox position (maintaining the validity of this punishment), I do find that it is not a ḥadd (fixed punishment designated by the Divine), and thus it can be suspended by Muslim legislatures. Finally, it remains to be said that Muslim communities will need to find other ways to prevent the many forms of subtle coercion and diversion of the masses away from their religion, by powers that use their military and economic superiority to pave the road for well-orchestrated (and often politically motivated) missionary campaigns exploiting the despair and poverty of the overwhelmed masses.

Appendix 8: Jihad

Jihad is the struggle against all forms of evil and injustice, both within one's own self (*nafs*) and against others. Thus, jihad is not limited to the use of military force, although such armed struggle is one form of it, and in that sense, jihad has been practiced and sanctioned by all nations since the beginning of time. After all, nations maintain armies, and martyrdom is seen as the ultimate sacrifice. War, then, may be good or bad, depending on the motives of those who engage in it and their conduct during and after the campaign. We believe that armed struggle was prescribed in Islam to defend not only Muslims but also non-Muslims who suffer from oppression, as well as to support God's cause of justice on Earth. It was also meant to protect the right to worship of God, Who created us, in complete security; it is natural that He would want that right granted to His servants.

There are, however, certain Qur'an verses that may be taken out of context and wrongly described as a declaration of endless war against the unbelievers. For example, Allah says:

{وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً كَمَا يُقَاتِلُونَكُمْ كَافَّةً}

{…and fight against the polytheists collectively as they fight against you collectively…} *(at-Tawbah 9:36)*

And:

{فَإِذَا انسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدتُّمُوهُمْ}

{And when the sacred months have passed, then kill the polytheists wherever you find them…} *(at-Tawbah 9:5)*

While the vast majority of Muslims do not think that we should be fighting perpetually against the rest of humanity, a fringe minority of mostly youth, inflamed by the real and perceived injustices committed against Muslim peoples, use these verses and

others to wage jihad against all of their opponents, both Muslims and non-Muslims. Lacking any means to wage conventional wars, they resort to terrorism to pursue their agenda or to avenge themselves against the enemies who fight them. Such is the dilemma that Muslims are facing nowadays and that mars the name of jihad.

It is true that the verses cited are the words of Allah, Most High. He also said:

{قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّىٰ يُعْطُوا الْجِزْيَةَ عَن يَدٍ وَهُمْ صَاغِرُونَ}

{Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth [that is, Islam] from those who were given the Scripture – [fight] until they give the jizyah (poll tax) willingly while they are humbled.} *(at-Tawbah 9:29)*

He also said:

{وَقَاتِلُوهُمْ حَتَّىٰ لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ ۖ فَإِنِ انتَهَوْا فَلَا عُدْوَانَ إِلَّا عَلَى الظَّالِمِينَ}

{Fight them until there is no [more] fitnah and [until] religion [that is, worship] is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors.} *(al-Baqarah 2:193)*

And the Prophet (SA) said:

«أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ، عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ، إِلَّا بِحَقِّ الْإِسْلَامِ، وَحِسَابُهُمْ عَلَى اللَّهِ تَعَالَى»

<<I was commanded to fight the people until they testify that none is worthy of worship except Allah, and that Muhammad is Allah's Messenger, establish the prayer, and give the zakat. If they do that,

then they have safeguarded their blood and wealth from me, except according to it (Islam), and their judgment is upon Allah.>> (Ag)

Not only that, but in previous scriptures, namely the Bible, much more than this is attributed to God, including the killing of infants and children, referred to in the books of Deuteronomy, Joshua, and others.[81] Certainly, we do not believe that those

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[81] The Holy Bible, 1 Samuel 15:1–3. Samuel said to Saul:

I am the one the LORD sent to anoint you king over his people Israel; so listen now to the message from the LORD. 2 This is what the LORD Almighty says: I will punish the Amalekites for what they did to Israel when they waylaid them as they came up from Egypt. 3 Now go, attack the Amalekites and totally destroy everything that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys.

According to Deuteronomy 20:10–18, God said:

10 When you march up to attack a city, make its people an offer of peace. 11 If they accept and open their gates, all the people in it shall be subject to forced labor and shall work for you. 12 If they refuse to make peace and they engage you in battle, lay siege to that city. 13 When the LORD your God delivers it into your hand, put to the sword all the men in it. 14 As for the women, the children, the livestock and everything else in the city, you may take these as plunder for yourselves. And you may use the plunder the LORD your God gives you from your enemies. 15 This is how you are to treat all the cities that are at a distance from you and do not belong to the nations nearby. 16 However, in the cities of the nations the LORD your God is giving you as an inheritance, do not leave alive anything that breathes. 17 Completely destroy them—the Hittites, Amorites, Canaanites, Perizzites, Hivites and Jebusites—as the LORD your God has commanded you. 18 Otherwise, they will teach you to follow all the detestable things they do in worshiping their gods, and you will sin against the LORD your God.

In Numbers 31:17–18, Moosâ said, “17 Now kill all the boys. And kill every woman who has slept with a man, 18 but save for yourselves every girl who has never slept with a man.”

statements about children and infants are from God, because it would be too hard to provide context that could explain them. However, in Islam, there is an explanatory context for all of these verses. First, it is important to note that Allah also says:

{وَإِن جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ ۚ إِنَّهُ هُوَ السَّمِيعُ الْعَلِيمُ}

{And if they incline to peace, then incline to it [also] and rely upon Allah. Indeed, it is He Who is the Hearing, the Knowing.} *(al-Anfâl 8:61)*

{فَإِنِ اعْتَزَلُوكُمْ فَلَمْ يُقَاتِلُوكُمْ وَأَلْقَوْا إِلَيْكُمُ السَّلَمَ فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلًا}

{So if they remove themselves from you and do not fight you and offer you peace, then Allah has not made for you a cause [for fighting] against them.} *(an-Nisâ' 4:90)*

Allah's Messenger (SA) said:

«يَا أَيُّهَا النَّاسُ لَا تَتَمَنَّوْا لِقَاءَ الْعَدُوِّ وَاسْأَلُوا اللَّهَ الْعَافِيَةَ فَإِذَا لَقِيتُمُوهُمْ فَاصْبِرُوا وَاعْلَمُوا أَنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ»

<<O people, do not wish to meet the enemy, and ask Allah for well-being. But if you meet them, be patient and know that paradise is under the shade of the swords.>> (Ag)

Who should be connecting the dots and reconciling the seemingly conflicting reports? The scholars well-grounded in the tradition. One of them, namely Imam Ibn Taymiyah, wrote a treatise on *Qitâl al-Kuffâr wa Muhâdanatuhum* [War and peace (treaties) with the disbelievers], in which he showed conclusively that the *'illah* (effective cause) for fighting them is their aggression, not their disbelief. He pointed out that the texts implying an open fight against them can never be used as proof for fighting the people at large,

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And in Joshua 6:21, "They devoted the city to the LORD and destroyed with the sword every living thing in it—men and women, young and old, cattle, sheep and donkeys."

because they appear to contradict other evidences (some of which is mentioned above), the consensus, and even the life of the Messenger (SA) himself. Some of them appear to suggest fighting the people at large until there is no religion on Earth except Islam – yet this is contrary to the consensus. Do you not see that the Messenger of Allah (SA) made peace and truces with non-Muslims? In fact, he said:

«دَعُوا الْحَبَشَةَ مَا وَدَعُوكُمْ وَاتْرُكُوا التُّرْكَ مَا تَرَكُوكُمْ»

<<Leave the Abyssinians alone so long as they leave you (alone), and leave the Turks (alone) as long as they leave you alone.>> (Abu Dâwood, and deemed ḥasan by al-Albâni)

This clearly indicates that the command to fight does not apply to the people at large. Rather, Ibn al-Qayyim (may Allah bestow mercy upon him) said in *Hidâyat al-Ḥayârâ* [Guiding the bewildered]:

> When Allah sent His Messenger (SA), most adherents of the religions willingly submitted to him and to his caliphs after him. He never forced the religion upon anyone, and he would only fight those who fought and warred against him. As for those who made peace with him, he did not fight them or compel them to embrace his religion, out of compliance with the command of his Lord (st), Who says:
>
> {لَا إِكْرَاهَ فِي الدِّينِ ۖ قَد تَّبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ}
>
> {There is no compulsion in religion; truth has been made clear from falsehood.} *(al-Baqarah 2:256)*

These verses and hadiths, which appear to enjoin fighting the people at large, were referring to specific peoples during the Prophet's time, or to fighting in specific circumstances – such as defending the oppressed in accordance with the words of the Most High:

{وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ}

{And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children…} *(an-Nisâ' 4:75)*

Or to prevent tyrants from forcing those who embraced Islam to abandon worshipping Allah, the One and Only, as in the words of the Most High: {And fight them until there is no [more] fitnah…} *(al-Baqarah 2:193),* or preemptively against (genuine, not imaginary) enemy aggression, as the Muslims did when the Persians sent troops to arrest the Messenger of Allah (SA), or the Romans incited their allies, the Christians of *Shâm*, against the Muslims. The Christians blocked the Muslims' roadways and surrounded their trade caravans, and the ally of the Romans, Shuraḥbeel ibn 'Amr al-Ghassâni, killed al-Ḥârith ibn 'Umayr al-Azdi, who was the Prophet's messenger to the ruler of Busra.

Scholars in the past entertained the following question: Is the default in international relations peace or warfare? The majority viewed peace as the default, while others believed it was warfare, although some of the latter may have been referring to the situation at their time, when they had no stable borders or statehood as we know it. Empires were constantly fighting against others to expand their territories (as can be seen in any infographics showing the changes in the map of Europe over the last one thousand years.) If we pose this question to them again, using different wording, asking, "Do we prefer peace or warfare?", perhaps all of them would answer in favor of peace. Did not the Messenger of Allah (SA) say, in addition to all of the aforementioned?

<<Indeed, Allah is gentle and loves gentleness, and He grants because of gentleness what He does not grant because of harshness, nor what He grants because of anything else.>> (Ag)

If a nation that essentially rules with justice makes peace with us, grants security to the Muslims within its borders, and does not

persecute us, then why should we fight them? If our objectives are that no one is deprived of the right to worship their Lord in peace, that no tyrant subjugates any of the creation of Allah, and that no one threatens the interests of our Ummah, and we can attain all that peacefully, is fighting still justified? Would choosing it in these circumstances embody the gentleness that Allah loves in all matters?

Even after all this discussion, we have still not looked at the essence of the matter in question: war. Was war one thousand years ago the same as war today? This is not an insignificant inquiry because applying the legislative rulings correctly is contingent upon understanding the current reality in the place where these specific rulings are to be applied. In our age, the structure of nations has become stabilized, and the borders of these nations have become distinct, in contrast to previous ages when the nations did not rule themselves. Instead, they were ruled by dynasties and factions whose sovereignty would expand and then contract, only to be occupied by another.

In the past, fighting between ruling factions on the battlefield had a much more limited destructive reach than modern bombardment of populated cities, which can bring devastation to ordinary people, farmers, women, and the weak on an immense scale. Furthermore, the masses would enjoy the rule of a just nation that replaced the tyranny that they had lived under for decades or centuries. This would bring them joy, just as the Christians of Shâm were overjoyed when the Muslims liberated them from Rome and its allies. But nowadays, the price of warfare is widespread chaos, corruption, and tragedy that do not differentiate between soldiers and civilians – for bombs and rockets are not like arrows and spears.

If Imam Ibn Taymiyah held that catapult fire involving the killing of non-combatants was impermissible in non-obligatory

jihad, what would he say about the indiscriminate bombardment of cities with modern weapons? [82]

In the past, jihad was sometimes necessary to secure the deliverance of *da'wah* to the entire creation, for it removed the obstacles, such as the tyrants and their oppressive regimes, that were preventing it. In our times, the deliverance of the da'wah is possible through the jihad of articulation and the tongue, via broadcasts, satellite channels, and especially the Internet, which delivers written, audible, and visual statements alike. Furthermore, the *du'ât* can travel to distant lands, mix with their people, and invite them, while enjoying security throughout.

To conclude this point, we can never deny the virtue of jihad and martyrdom in Islam and its raising its people upon courage, dignity, honor, and sacrifice. However, we must also be confident that Islam decisively prefers peace over war.

The default for the relationship with United Nations member states is that of peace. All the Muslim states who signed the charter of this organization committed to peace with the rest of the signatory states. Such a covenant is acceptable in Islam and makes all the world, by default, a land of *muwâda'ah* (peace). The Ḥanafi *fuqahâ'* declared that *al-muwâda'at al-mutlaqah* (a peace treaty without an agreed-upon term) is one of the types of valid treaties.[83] There is a difference of opinion on this issue among the Shâfi'i and Ḥanbali schools, but Ibn al-Qayyim (d. 751 AH/ 1350 CE), the famous Ḥanbali jurist and disciple of Ibn Taymiyah (d. 728 AH/ 1328 CE), made a strong case for the validity of such treaties.[84] Imam Muhammad ibn Idrees ash-Shâfi'i (d. 204 AH/ 820 CE) has himself explicitly stated that such a treaty is valid if the parties are given the

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82 *Majmoo' al-Fatâwâ*, Ibn Taymiyah, 24:269–270.

83 Badâ'i' aṣ-Ṣanâ'i', al-Kâsâni, 6:77.

84 *Aḥkâm Ahl adh-Dhimmah*, Ibn al-Qayyim, 1:336–344.

option to terminate the treaty at will.[85] … ‘Uthmân ibn ‘Affân made a treaty with the Nubians that stated:

> We (Muslims) shall not wage war against you, prepare for war against you, or attack you, as long as you observe the conditions of the treaty between us and you… But it will not be incumbent upon the Muslims to drive away any enemy who may encounter you, or to prevent him from you, between the limits of the territory of Ulwah and Aswan.[86]

There is another pertinent discussion here, which is that the war that Islam deems justifiable, at times, is an ethical war that must also be Sharia-compliant. It is a war where the civilians, or to be more precise, all non-combatants, are spared. Abu Dâwood reported from Anas that when they had to go to war, the Prophet (SA) would instruct them not to kill “an older man, a child, or a woman,” and he would say, “Do righteousness and show kindness, for Allah loves those who are kind.” Ibn Mâjah added that the Prophet (SA) forbade killing the *‘aseef*, which is best translated as a non-combatant attachment to the army.

May Allah bring peace, justice, and security to the distressed and suffering among humankind.

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[85] *al-Umm*, ash-Shâfi‘i, 4:110.

[86] *The Muslim Conduct of State*, Muhammad Hamidullah, p. 293.

Appendix 9: Sharia and the Muslim Subject of a non-Muslim State

The presence of large Muslim minorities in non-Muslim lands is not a recent phenomenon, but the concepts of nation-states and secular governments are relatively new. There is a pressing need to normalize and harmonize the relationship between those minorities and their respective countries. This effort is a major part of the needed ijtihâd-based *tajdeed* (renewal of the religion); we need an authentic and realistic formula to reconcile religious allegiance with national belonging.

Muslims in non-Muslim countries must not be, or even be seen to be by their compatriots, a Trojan horse or potential traitors. Islam instills in us aversion to treason, which is an ugly quality. Allah says:

{وَإِمَّا تَخَافَنَّ مِن قَوْمٍ خِيَانَةً فَانبِذْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ}

{If you (O Muhammad) fear treachery from any people, throw back (their covenant) to them (so as to be) on equal terms (that there will be no more covenant between you and them). Certainly, Allah likes not the treacherous.} *(al-Anfâl 8:58)*

When some Muslims were unable to emigrate to Madinah, Allah told the believers in Madinah to support them if they were persecuted by their tribes because of their religion. He added an important contingency, though: that the tribe should not be party to a covenant with the Muslims in Madinah.

{وَإِنِ اسْتَنصَرُوكُمْ فِي الدِّينِ فَعَلَيْكُمُ النَّصْرُ إِلَّا عَلَىٰ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُم مِّيثَاقٌ ۗ وَاللَّهُ

بِمَا تَعْمَلُونَ بَصِيرٌ}

{And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty. And Allah is Seeing of what you do.} *(al-Anfâl 8:72)*

These verses mean that we Muslims who are citizens of non-Muslim majority countries should not betray the trust that comes with the covenant of citizenship, and the same applies to those who are granted visas to enter specific countries. Allah says:

{يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ}

{O you who believe! Fulfill (your) contracts…} *(al-Mâ'idah 5:1)*

And:

{وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدتُّمْ وَلَا تَنقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا}

{And fulfill the Covenant to Allah when you have covenanted and break not the oaths after you have confirmed them.} *(an-Naḥl 16:91)*

They must, therefore, comply with the laws of their countries, albeit without disobeying the Divine imperatives. It is rare that such a conflict arises, since most of those secular laws only restrict *mubâḥ* (permissible) acts, which is also within the power of the authorities in Muslim countries as long as certain conditions are fulfilled. In non-Muslim countries, accepting to be a party to the social contract among the citizens of that country means giving up some of our freedoms. Also, when a true conflict arises, there is often a way out,

particularly in countries that respect human freedoms and rights. For example, one may decline to partake in an unjust war on religious grounds.

Scholars have even extended some of those principles to the lands of sworn enemies when entered without express covenants. Imam Muhammad ibn Ḥasan ash-Shaybâni is reported as saying:[87]

> If it happens that a company of Muslims pass through the enemy's front lines by pretending to be messengers of the Muslim Caliph, whether or not they display a document resembling his, and are allowed to enter, they are not allowed to engage in any hostilities with the enemy troops. Nor are they entitled to seize any of their money or properties as long as they are in the enemy's area of authority. This also applies if the Muslims are truly trusted by the other party.

Shaykh Salmân al-'Odeh, a contemporary Ḥanbali scholar, said:

> Muslims living in non-Muslim countries must comply with the laws and regulations of the country they have been entrusted, through valid visas, to enter. At the same time, they must avoid whatever contradicts Islamic teachings. If they are obliged by law to uphold something that is contrary to Islamic teachings, they must adhere to

[87] *Sharḥ as-Siyar al-Kabeer*, as-Sarakhsi, p. 507.

> the minimum required by law. One of the best approaches for Muslims living in these countries is patience. As long as he agrees to live in a non-Muslim country, he is never to rebel against the people living in that area where he chose to reside, even it seems too hard for him to endure.[88]

Finally, the Sharia is what we live by in our individual worship and conduct, but it is not enforceable as a public law outside of the jurisdiction of Muslim states, wherein it would be enforceable by the authorized legislatures and judiciaries.

[88] Islamtoday.net, the shaykh's website.

Appendix 10: Flexibilities in Islamic Legal Theory – *Tanaqqul*, *Takhayyur,* and *Talfeeq* and the Usefulness of Weak Positions

Imam Ibn Taymiyah said of earlier scholars:

إجْمَاعُهُمْ حُجَّةٌ قَاطِعَةٌ وَاخْتِلافُهُمْ رَحْمَةٌ وَاسِعَةٌ.

> Their consensus is a definitive proof, and their divergence of opinion is a vast mercy.[89]

The vastness of our *fiqhi* legacy and the many disagreements among the different madh-habs and independent *mujtahideen* cause frustration to some students of fiqh and junior fuqahâ'. In fact, this is a major source of flexibility, which enables renewal. Many followers of the four most reputable schools allowed *tanaqqul* (transfer) from one madh-hab to another, even for the public,[90] *takhayyur* (choosing different experts), and *talfeeq* (patching together positions) from different madh-habs (something done frequently in contemporary *fiqh* assemblies by scholars who are otherwise wholly committed to their own madh-habs).

Concerning the concept of tanaqqul from one madh-hab to another, Imam Ibn Nujaym al-Ḥanafi wrote:

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89 *Majmoo' al-Fatâwâ*, Ibn Taymiyah, 30:80. The hadith cited in this regard is not authentic.

90 *at-Taqreer wat-Taḥbeer*, Ibn Ameer Ḥâjj, *3:352.*

It is permissible to follow any mujtahid one pleases, even after the codification of the madh-habs as is the case today. It is also permissible for one to transfer from his madh-hab, but he should not seek out concessions (*rukhaṣ*) – but if he did, would he be a *fâsiq* (deviant)? [There are] two views. The most eminent view, according to the commentator: [he is] not, and Allah knows best. In the beginning of *at-Tatârkhaniyah*, [the author] wrote two chapters on religious decrees; the summary of the first is that Abu Yoosuf said that issuing a fatwa is permissible only for a mujtahid, while Muhammad permitted it for anyone whose correct views are more numerous than his errors. It is reported from *al-Iskâf* that the most knowledgeable person in a town has no excuse to avoid [issuing fatwas].[91]

Imam Zakariyâ al-Anṣâri ash-Shâfi‘i said:

It is permissible for the non-mujtahid “to follow any mujtahid he chooses, if the madh-habs are codified like they are today.” Then they may follow each of them in some issues, for the Companions used to ask someone one time and someone else another time, without any

[91] al-Baḥr ar-Râ’iq, Ibn Nujaym, *6:292; at-Taqreer wat-Taḥbeer*, Ibn Ameer Ḥâjj, 3:352.

> denunciation [of this practice by any of them]. "He may also transfer from his madh-hab" to another one, whether or not we said he is bound to seek the more knowledgeable or we allowed him to choose any of them, as when he follows someone in their ijtihâd concerning the qibla sometimes and [follows] someone else at other times. However, he may not seek out the concessions, for selecting them leads to the compromise of one's religious dutifulness. "If he still chose them from the different madh-habs, would he become a fâsiq? [There are] two views. The more esteemed one is no." This is different from one who selects them from the madh-habs that have not been documented; if he was in the early era, he would certainly not be a deviant fâsiq, but if he is from the latter ages, it appears that he would become a fâsiq for sure.[92]

The Ḥanbalis agree with this concept, and Abu al-Khaṭṭâb al-Kalwadhâni (may Allah have mercy on him) even cites a consensus on it.[93] Al-Qâḍi Abu Ya'lâ (may Allah have mercy on him) cites several reports from Aḥmad allowing his disciples, and others who asked him, to find concessions in fatwas by other scholars, referring them at times to 'Abdul-Wahhâb al-Warrâq, Is-ḥâq, or Abu Thawr,

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92 *Asnâ al-Maṭâlib fee Sharḥ Rawḍ aṭ-Ṭâlib*, Zakariyâ al-Anṣâri, 4:286.

93 *at-Tamheed fee Uṣool al-Fiqh*, Abu al-Khaṭṭâb al-Kalwadhâni, 4:334.

and even to locations where scholars gathered so that they could ask any of them.[94] It is obvious that to Abu Ya'lâ (d. 458 AH), the concept was not limited to the four madh-habs.

We may even adopt an opinion that we consider weak, in order to relieve some hardship, provided that it meets certain conditions, as mentioned in the following verses by the Mâliki author of *Marâqi as-Su'ood*:

وكَوْنِهِ يُلْــجى إليهِ الضَّرَرُ إنْ كانَ لَمْ يَشْتَــدّ فِيهِ الخَوَرُ
وثُبَتَ العَــزْوُ وقَدْ تَحَقَّقَا ضُرّاً مَن الضُّرُّ بِهِ تَعَلَّــقَا

> Finally, because the pressing need or necessity may compel people to act upon such [weak positions] if they are not too weak,
> and their attribution [to a mujtahid] was established, and the one under duress is certain of the necessity.[95]

One may add two more conditions that al-Qarâfi quoted from previous Mâliki scholars:

1- **That one does not seek out concessions wherever they are.** This may be part of the condition mentioned above, which is the presence of a need. Thus, one may not screen all the madh-habs of the previous scholars in order to take the easiest position among them concerning every matter. This is the

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94 *al-'Uddah fee Uṣool al-Fiqh*, Abu Ya'lâ al-Farrâ', 5:1571.

95 *Nashr al-Bunood 'alâ Marâqi as-Su'ood*, 'Abdullâh ibn Ibrâheem al-'Alawi ash-Shinqeeṭi, 2:270–271.

position of the vast majority of scholars, but a minority allowed it. It is also attributed to ‘Umar ibn ‘Abdul-‘Azeez, who said:

مَا أُحِبُّ أَنَّ أَصْحَابَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمْ يَخْتَلِفُوا؛ لأَنَّهُ لَوْ كَانُوا قَوْلا وَاحِدًا كَانَ النَّاسُ فِي ضِيقٍ وَإِنَّهُمْ أَئِمَّةٌ يُقْتَدَى بِهِمْ وَلَوْ أَخَذَ رَجُلٌ بِقَوْلِ أَحَدِهِمْ كَانَ فِي سَعَةٍ

I would not like it if the Companions of the Messenger of Allah (SA) had not differed, for if they had agreed on one opinion, people would be restricted. They (the Companions) are the leaders to be followed, and if a person were to adopt the opinion of one of them, he would not be blameworthy.[96]

However, the vast majority of scholars qualify that statement to mean that one may take an easier position of a qualified mujtahid if it spares him or her some hardship, but one may not simply select every easy position he or she can find.

2- That one does not compose a position that is rejected by consensus. (This applies mostly to talfeeq.)

Al-Qarâfi reported approvingly from az-Zanâti that the three conditions to make permissible a transfer from one madh-hab to another are that: 1) the opinions of different madh-habs are not patched together in a way that produces a position that has been rejected by consensus, 2) the person engaging in this

[96] *Jâmi‘ Bayân al-‘Ilm wa Faḍlih*, Ibn ‘Abdul-Barr, 2:901.

talfeeq believes in the virtue of the mujtahid being followed, and 3) concessions are not sought out from among all the madh-habs. Al-Qarâfi commented that the concessions that cannot be adopted are those that are unfounded, to the extent that they may be revoked even if issued by a judge.[97]

Also, talfeeq that results in a position rejected by all the integrated madh-habs should only be forbidden in certain cases. If one engages in *taqleed* (following) of one imam for some clauses of a sales transaction and another imam for other clauses, the contract should still be valid unless the clauses are mutually exclusive or lead to inequity or deviation that is repugnant to the *maqâṣid* (objectives) of the Sharia. This is based on the stronger position, which is that the *'ammi* (layperson) has no madh-hab.[98] An example of forbidden talfeeq is when an individual marries without witnesses, citing Imam Mâlik, and without announcing it, citing the majority. This marriage is a secretive relationship that is considered unlawful by all. Another example is when one applies different standards to oneself than to others, such as invoking the right to preemption against one of his neighbors but then refusing to

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97 *Sharḥ Tanqeeḥ al-Fuṣool*, al-Qarâfi, p. 432.

98 al-Baḥr al-Muḥeeṭ, Badr ad-Deen az-Zarkashi, *8:375; Radd* al-Muḥtâr, Ibn 'Âbideen, 1:48.

honor that right if another neighbor attempts to use it against him.

It should be obvious that these examples are different from the case of a layperson who asks two different muftis about two different matters pertaining to wuḍoo'; the Shâfi'i mufti answers that wiping any part of the hair is sufficient, and the Ḥanafi mufti answers that a man touching a woman without lust is not a nullifier. If he makes wuḍoo' according to the Shâfi'i position and then touches a woman without lust, he will have no wuḍoo' according to any of the four.[99] Despite that, it seems that his wuḍoo' should still be valid[100] because these issues are neither interdependent nor mutually exclusive. Although the majority of scholars after the tenth century prevented this type of talfeeq, we do not find it mentioned before the seventh century.[101] Also, it is the consensus of the Companions that someone who had asked Abu Bakr and 'Umar about one issue could ask Mu'âdh, Abu Hurayrah, or someone else about another issue.[102] They never restricted this to asking about other issues that do not pertain to the same act of worship.

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99 Because according to ash-Shâfi'i, touching a woman nullifies the wuḍoo', and according to the other madh-habs, the Shâfi'i wuḍoo' (wiping only one hair) does not count.

100 *al-Fiqh al-Islâmi wa Adillatuhu*, Wahbah az-Zuḥayli, 1:106–107.

101 *al-Fiqh al-Islâmi wa Adillatuhu*, Wahbah az-Zuḥayli, 1:106–107.

102 *Sharḥ Tanqeeḥ al-Fuṣool*, al-Qarâfi, pp. 432–433.

Without the permission of regulated talfeeq, many modern contracts would not be permissible according to any single madh-hab. A great deal of hardship would ensue and the vastness of our fiqhi legacy would lose an important feature of its flexibility and resilience.

One may add another condition here: that the follower of the weaker position must not have certain knowledge of its faultiness. Imam ash-Shâfi‘i stated:

أَجْمَعَ المُسلِمُونَ عَلَى أَنَّ مَن استَبَانَت لَهُ سُنَّةُ رَسُولِ اللهِ ﷺ لَم يَكُن لَهُ أَن يَدَعَهَا لقَولِ أحَدٍ مِنَ النَّاسِ.

The Muslims have unanimously agreed that if the Sunnah of the Messenger of Allah (SA) becomes apparent to someone, it becomes impermissible for him to abandon it for the statement of anyone else, regardless of who that is.[103]

Although this statement referred to scholars, the same applies to anyone who is certain that a position is erroneous.[104] Wâbiṣah ibn Ma‘bad (ra) said, “I came to the Messenger of Allah (SA), and he said, ‘You have come to ask about righteousness.’ I replied, ‘Yes.’ He said:

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[103] *I‘lâm al-Muwaqqi‘een*, Ibn al-Qayyim, 1:6.

[104] *at-Taqreer wat-Taḥbeer*, Ibn Ameer Ḥâjj, 3:352.

«اسْتَفْتِ قَلْبَكَ؛ الْبِرُّ مَا اطْمَأَنَّتْ إِلَيْهِ النَّفْسُ وَاطْمَأَنَّ إِلَيْهِ الْقَلْبُ، وَالإِثْمُ مَا حَاكَ فِي النَّفْسِ وَتَرَدَّدَ فِي الصَّدْرِ وَإِنْ أَفْتَاكَ النَّاسُ وَأَفْتَوْكَ»

'Consult your heart. Righteousness is that about which the soul feels at ease and the heart feels tranquil. And *ithm* (sin) is that which wavers in the soul and causes uneasiness in the breast, even though people have repeatedly given you their legal opinion.'"[105]

[105] *al-Arba'oon an-Nawawiyah*, an-Nawawi, no. 27, https://sunnah.com/nawawi40/27. A reliable hadith reported by Imam Aḥmad and by ad-Dârimi with a good chain.

Appendix 11: Agreement of the Four *Madh-habs*

The four madh-habs in Sunni Islam are intellectual accomplishments that every Sunni Muslim should feel proud of. Thousands of scholars, in various disciplines and through the generations, contributed to the making of these intellectual wonders, and the vast majority of Muslim scholars recommend that the student of knowledge first be instructed in one of the four schools. The authority of the four madh-habs and our need for them are as clear as the sun in the middle of a summer day, as the Arabic proverb goes. Moreover, the truth rarely diverges from that which is agreed upon by the four madh-habs. Imam Ibn Taymiyah (may Allah have mercy on him) stated:

> As for one who says, "I am not bound by any of the four imams," if he means he is not bound by a particular one of them as opposed to the rest, then he has spoken well; in fact, this is the correct of the two [known] positions. However, if he means that he is bound by none of them and that he disagrees with them all, then surely he will be wrong most of the time because in the vast majority of the [laws of] Sharia, the truth does not diverge from their positions. Only in a few cases did people disagree on whether the truth could be different from their positions.[106]

[106] Mukhtaṣar al-Fatâwâ al-Miṣriyah, Badr ad-Deen al-Ba'li, 1:61.

Any attempt to belittle all, some, or any of the four madh-habs is an assault on the Ummah and its heritage; nevertheless, it is essential to have a balanced understanding regarding them. The Ummah cannot afford to swing with the pendulum of extremism. 'Anti-madh-habism' is wrong, but it cannot be blamed for all the ailments of our Ummah, as some ideologues on the opposite end of the spectrum may believe. This simplistic reduction of complex phenomena is not new to human thinking, but it seems contrary not only to the facts but indeed to the very concept of causation. After all, who would have the audacity to claim that our Ummah was thriving before the advent of this 'new phenomenon'? This is not only about defeat by external forces, but also about backwardness, inner conflicts, and *ta'aṣṣub* (zealotry), whether interdenominational or inter-madh-habi. The verifying scholars used to complain about the conditions of *fiqh* and the *fuqahâ'* in their times. The stagnation within the madh-habs resulted in a divide between *fiqh* and the needs of the people, and this pushed the leaders, long before the colonial era, to legislate arbitrarily. And why is it that countries and communities that were not affected by this 'new phenomenon' are not faring better than those that were affected?

Having said that, this is not a discussion of the importance of the legacy of the four madh-habs; nor is it an attempt to referee between the contestants on the two ends of the spectrum concerning them. The discussion here is about the status of positions outside of

those they agreed upon, which many Muslim scholars treat as a de facto binding consensus. Some scholars have gone as far as to claim that there is a consensus, at least in the spheres of fatwa and judging, that no scholar may take a position outside that of the four schools.[107] According to Dâr al-Iftâ' al-Miṣriyah (the Egyptian fatwa agency), this agreement is subject to change over time, as people's customs change and other positions come to be accepted and trusted, and it is also subject to enforcement by the state.[108] The most that someone can say about this agreement (and it is extremely difficult to establish that they agreed that the agreement of the four madh-habs is binding) is that it was a procedural decision that may have had some merit at some point but is in no way a binding consensus that the Ummah must abide by indefinitely. It is interesting to note that earlier scholars disagreed not about whether a mujtahid was obliged to follow the opinion of another mujtahid, but about whether he or she was permitted to do so. Imam Abu Ḥaneefah (may Allah have mercy on him) allowed it, whereas Imam ash-Shâfi'i (may Allah have mercy on him) prohibited it, arguing that the level of certainty

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107 *Tuḥfat al-Muḥtâj fee Sharḥ al-Minhâj*, Ibn Ḥajar al-Haytami, 10:109.

108 "Ittibâ' al-Madhâhib al-Fiqhiyah al-Arba'ah wa Ḥukm Mukhâlafatihâ", Dâr al-Iftâ' al-Miṣriyah [اتباع المذاهب الفقهية الأربعة وحكم مخالفتها; Following the Four Schools of Law and the Ruling of Being at Variance with Them], accessed August 14, 2017, http://www.dar-alifta.org/AR/ViewFatawaConcept.aspx?ID=187.

attained through the mujtahid's own ijtihâd must exceed that which could ever be attained through someone else's ijtihâd.[109]

Whenever we seek a ruling on a particular issue, it is either a contemporary matter or one that has been previously addressed. If it is new, there is no existing position from the four madh-habs except through *takhreej* (a form of analogical deduction based on a position in the madh-hab), which usually offers some flexibility and is not particularly binding. If it is a matter that has been addressed previously, then the question is whether a position outside of the agreement of the four madh-habs may have any merit.

While it is commendable for Muslims to be cautious about positions that conflict with the agreement of the four imams, we should not completely rule out the possibility that the truth may be outside of their agreement. Abu al-Khaṭṭâb (may Allah have mercy on him) (d. 510 AH) stated a pertinent principle in his discussion of the four Rightly Guided Caliphs in *at-Tamheed fee Uṣool al-Fiqh*:

> The proofs on the [authority of] consensus do not pertain to them (the four Rightly Guided Caliphs), because they are among the believers of the Ummah, and their status as imams does not change the rulings of ijmâ'.[110]

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[109] *Qawâ'id al-Aḥkâm fee Maṣâliḥ al-Anâm*, 'Izz ad-Deen ibn 'Abdus-Salâm, 2:160.

[110] *at-Tamheed fee Uṣool al-Fiqh*, Abu al-Khaṭṭâb al-Kalwadhâni, 3:281.

Ibn Taymiyah (may Allah have mercy on him) held the same opinion and mentioned several instances where some followers of the four imams had dissented from their agreement.[111] While Imam al-Qarâfi (may Allah have mercy on him) was one of the scholars who reported from Ibn aṣ-Ṣalâḥ (may Allah have mercy on him) the agreement on following one of the four madh-habs, he said in a different place (and context) that a consensus was established during the time of the Companions (RAHUM) that whoever converts to Islam may ask any of the scholars and is not bound to ask certain ones, so that one who has asked Abu Bakr and ‘Umar may still ask Mu‘âdh and Abu Hurayrah and others. Imam al-Qarâfi challenged anyone who claimed that this consensus had been revoked, calling on them to produce evidence.[112] Imam Ibn Ḥajar al-Haytami ash-Shâfi‘i (may Allah have mercy on him) explained that it is permissible for a scholar to follow an ijtihâd that is outside the four madh-habs as long as it is well documented and its conditions and all necessary details are known; he attributed this opinion to Imam as-Subki (may Allah have mercy on him).[113] Imam an-Nafrâwi al-Mâliki (may Allah have mercy on him) attributed this position to some of the verifying scholars –

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111 *Majmoo‘ al-Fatâwâ*, Ibn Taymiyah, 20:10.

112 *Sharḥ Tanqeeḥ al-Fuṣool*, al-Qarâfi, pp. 432–433.

113 *Tuḥfat al-Muḥtâj*, Ibn Ḥajar al-Haytami, 1:47.

without limiting the permissibility of *taqleed* (following the juridical opinions of a mujtahid) to the scholars.[114]

What should be clear is that there is no legitimate evidence for the notion that the agreement of the four madh-habs establishes consensus, and if it does not, then there are no grounds for considering their agreement an additional source of legislation. Still, their agreement should serve as a warning sign for the mujtahid to proceed with caution and for the non-mujtahid to stop. As mentioned above, even those who did not allow the public to follow other than one of the four madh-habs recognized that the truth might exist outside their agreement, and they allowed the faqeeh to adopt a position outside it.[115] As mentioned in our discussion on the usefulness of weak positions, they also allowed the use of unauthorized positions in the madh-habs when there was a valid reason.

In our times, what can be done to protect people from the chaos of unregulated fatwas? We must 1) emphasize the guidelines that must be followed in mainstreaming positions that are counter to the agreement of the four madh-habs, and 2) advance the cause of collective ijtihâd, which confers greater validity on new positions, as

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[114] *al-Fawâkih ad-Dawâni*, an-Nafrâwi, 2:356.

[115] Fayḍ al-Qadeer, ‘Abdur-Ra’oof al-Munâwi, 1:210.

Shaykh Muṣṭafâ az-Zarqâ remarked when he talked about reopening the gates of ijtihâd.[116]

An example of collective ijtihâd mainstreaming the fatwa of a mujtahid is Ibn Taymiyah's position on the composite threefold divorce. He counted it as one divorce, contrary to the authorized view in the four madh-habs. The adoption of this position by fatwa agencies in many Muslim countries, including Egypt, Syria, and Jordan, has conferred mainstream acceptance upon it. In summary, one may say that the mainstreaming of positions that are outside the agreement of the four madh-habs should be contingent upon their validation by collective ijtihâd or their acceptance by a large group of verifying scholars.

[116] *al-Ijtihâd al-Jamâ'i wa Dawr al-Fiqh fee Ḥall al-Mushkilât*, Muṣṭafâ az-Zarqâ, p. 49.

Appendix 12: The Change of Fatwa

This discussion is part of a wider discussion about the renewal of the religion. The default status in the religion is that it remains unchanging, and most of what is meant by 'renewal of the deen'[117] is actually restoration achieved simply through reviving that which is original, and cleansing that which is unoriginal, such as innovations and customs that conflict with the revelation. It is also about restoration of the values and principles that were upheld by earlier generations in a completely different world environment; in other words, it is restoration with adaptation, or a meaningful restoration. However, aside from that, there is still another type of renewal: ijtihâd-based renewal, which is what the scholars refer to when they say, "The change in rulings due to the change in times is not to be denounced."[118] One example of this was when 'Umar (RA) prevented *al-mu'allafati quloobuhum*[119] from receiving their share of zakat. He saw that, during his blessed caliphate, Allah had empowered Islam and the Muslims, and he felt that he no longer needed to repel their evil or earn their loyalty by giving them money from the zakat funds. In another instance, 'Uthmân (ra) commanded during his caliphate that the stray camel be taken, sold, and its price kept in escrow for its owner. This was contrary to the original ruling, which prohibited taking stray camels, but he resorted to this because of the moral

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[117] *Sunan Abi Dâwood*, no. 4291; also collected by al-Ḥâkim, who authenticated it, on the authority of Abu Hurayrah. The Messenger (SA) said:

«إِنَّ اللَّهَ تَعَالَى يَبْعَثُ لِهَذِهِ الأُمَّةِ عَلَى رَأْسِ كُلِّ مِائَةِ سَنَةٍ مَنْ يُجَدِّدُ لَهَا دِينَهَا»

"Indeed, Allah sends for this Ummah, at the onset of every century, those who renew the religion for it."

[118] *Majallat al-Aḥkâm al-'Adliyah*, Article 39. This was also stipulated in different wordings by some of the most erudite scholars of *uṣool*, such as Ibn al-Qayyim, ash-Shâṭibi, ash-Shawkâni, and others.

[119] *al-mu'allafati quloobuhum* (at-Tawbah 9:60) are new or non-Muslims whose hearts the Muslims hope to win over.

deterioration that had occurred since the time of the Prophet (SA). ‘Ali (ra) made craftsmen liable for the materials they received from clients, when he feared that they may otherwise become negligent or reckless in safeguarding people’s property. Similarly, it was undisputed among the early Ḥanafi scholars that taking a wage for teaching the Qur’an was unlawful, but when volunteers became few in number and they feared that knowledge of the Qur’an would be lost, they allowed Qur’an teachers to receive payment. In fact, the collection of the Qur’an itself was initiated by ‘Umar’s ijtihâd, and Abu Bakr and Zayd (RAHUM) objected at first, asking, “How can we do something the Messenger of Allah (SA) did not do?” ‘Umar (ra) convinced them of *wujood al-muqtadi* **(the** presence of indication), since many of those who had memorized the Qur’an had been killed in the wars of apostasy, and of *intifâ’ al-mâni‘* (the absence of hindrances), since this was not explicitly prohibited and it did not conflict with the objectives of Sharia or the maxims of the law.

Did these noble scholars change the legislated ruling? Never, for the legislation of Allah is not subject to change. Allah, the Most High, said of the followers of previous religions:

{اتَّخَذُوا أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِّن دُونِ اللَّه}

{They took their scholars and monks as lords besides Allah…} *(at-Tawbah 9:31)*

The Messenger of Allah (SA) explained to ‘Adiy ibn Ḥâtim (RA) that this verse referred to their making permissible that which was unlawful and making unlawful that which was permissible,[120]

[120] *as-Sunan al-Kubrâ*, al-Bayhaqi, 10:116, “The Manners of the Judge, and What the Judge Rules By” (Dâr al-Bâz edition).

which was exactly what the Messenger of Allah (SA) prohibited when he said:

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ»

<<If anyone introduces into this matter of ours what is not from it, it will be rejected.>>[121]

Therefore, it is impossible that they changed the *ḥukm* (ruling – as it refers to the Divine *khiṭâb*, or instruction), and if some scholars used that term, they only meant the fatwa (religious edict) and not the actual ruling in Sharia. A single act can have two different fatwas depending on the circumstances and context.

To clarify further, let us look again at the example of receiving wages for teaching the Qur'an. The early Ḥanafi scholars agreed that the practice was prohibited, but they later permitted it. The question is: were the prohibition and permission actually in regard to the same thing? They appear to be, but a closer look makes clear that we cannot equate 1) accepting a wage for teaching the Qur'an during an era when many were enthusiastic about teaching it as an act of devotion to Allah, and were supported financially from the state treasury, and 2) the same action at a time when teachers were no longer sustained by the state treasury. In the latter situation, if they devoted themselves to teaching, their families would be lost, and if they devoted themselves to earning a livelihood, their students would be lost.

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[121] *Ṣaḥeeḥ al-Bukhâri*, no. 2697; *Ṣaḥeeḥ Muslim*, no. 1718a.

Thus, different scenarios may call for different sets of rulings, and the mujtahid chooses the most suitable of these rulings. If the matter falls between two rulings or two principles, he or she should attribute the matter to the closer of the two. Obviously, this is pertinent only to rulings whose *manâṭât* (effective causes) are affected by people's customs and interests. Imam ash-Shâṭibi (may Allah have mercy on him) explained:

> Rulings that differ whenever customs differ are not a [reflection of] any difference in the Divine instruction itself, for the Sharia was revealed to be permanent and eternal. Hypothetically, were this world to remain without end, and the people remained liable [to uphold the Sharia] as well, the Sharia would not need any additions. In other words, whenever customs changed, they would fall under another [different] principle of Sharia that would govern them…[122]

In the example of wages for teaching the Qur'an, there were two principles involved: 1) that there was no intention in acts of devotion other than pleasing Allah – and this supported the earlier view of impermissibility, and 2) to preserve the Qur'an by teaching it to youngsters – and this supported the later view of permissibility. The ijtihâd-based renewal considers changes in time and place, not because they themselves are consequential to the rulings but because

[122] *al-Muwâfaqât*, ash-Shâṭibi, 2:217 ('Abdullâh Darâz edition).

they are receptacles of different circumstances that may be consequential to those rulings.

To cite a modern example, the jurist must carefully investigate the reason behind the prohibition of making a *ṣoorah* (translated as 'picture') of any being that can be said to have a soul. Is the same prohibition applicable to a photograph, simply because the two things (picture and photograph) share a name in Arabic? Not likely, although this does not mean that they could not share the same ruling. The prohibition of photographs (if one is inclined to do so) must be reached through analogy, and only if it meets the requirements. Also, was war during the time of the Prophet (SA) like war today? Lexically speaking, yes, but we must ask ourselves whether the one-on-one confrontation of thousands of individual soldiers sparring in a battlefield is equivalent to the indiscriminate mass devastation that ensues from modern war. If Imam Ibn Taymiyah held that catapult fire involving the killing of non-combatants was impermissible in non-obligatory jihad, what would he say about the indiscriminate bombardment of cities with modern weapons?[123] Should the difference be consequential? Should it make war even more remote as a last resort? Didn't the early Muslims fight to liberate humanity from tyranny and to afford them the right to worship their Lord? If so, is it consequential that most nations today allow their subjects freedom of religion?

[123] *Majmoo' al-Fatâwâ*, Ibn Taymiyah, 24:269–270.

When the Prophet (SA) prohibited women from travelling alone, was the travel the same as travel is now? Would a difference be consequential? It would, according to the scholars who accept women's travelling if they are with safe company; these scholars must have understood that there is some identifiable *'illah* for the prohibition. As mentioned previously, erudite scholars sometimes even make the well-defined *ḥikmah* (wisdom) consequential to the rulings. Some might claim that this same rationale could also be used to dispense with the need for hijab or rules of proper conduct between men and women, arguing that the human community has matured and it is safer for women to go out in whichever attire they please. This, however, would be in defiance of the clear texts as well as the unchanging human nature. The Islamic rules of modesty protect women, men, and entire societies from the avalanche of evil that results from a failure to observe them. It must also be observed that modern and 'civilized' societies of the twenty-first century still experience infidelity, family breakdown, rape, and psychological disorders related to sex. Education and cultural sophistication do not, by themselves, eliminate these ills.

We sometimes find conflicting scholarly positions, some of which may be indispensable in our times, even if they are counter to the majority position. When there is nothing definitive in the Qur'an and the Sunnah to prevent us from choosing an opinion that solves a contemporary problem, we ought to do that. For example, jurists in

the past differed over the methods of establishing claims in the Islamic judiciary. Some limited it to what has been explicitly stated in, or extracted from, the revealed texts, while others widened the circle of evidence to include whatever reveals the truth and paves the way for justice. For this reason, basing rulings on *qarâ'in* (corroborative evidence) was a matter of debate among the jurists. Today, forensic science has evolved to such a degree that judicial systems throughout the world rely on it. So where should the Islamic judiciary stand regarding forensic science? Should it benefit from it? Should this benefit be limited to guiding the criminal investigator and enlightening the judge with important details of the crime? Or should these evidences be used by the judge whenever they qualify, even in the absence of the customary types of evidences known to Islamic jurisprudence, such as eyewitness testimony, confessions, oaths, and *nukool* (refusal to take an oath)? I believe that a reasoned incorporation of tangible evidence in what counts as admissible proofs is entirely warranted. This was the position of luminaries like Ibn al-Qayyim,[124] Ibn Taymiyah,[125] and Ibn Farḥoon[126] of the

[124] *I'lâm al-Muwaqqi'een* and *aṭ-Ṭuruq al-Ḥukmiyah*, Ibn al-Qayyim.

[125] *I'lâm al-Muwaqqi'een* and aṭ-Ṭuruq al-Ḥukmiyah, Ibn al-Qayyim; al-Inṣâf, al-Mardâwi, *10:233; al-Furoo'*, Ibn Mufliḥ, 6:85; and as-Siyâsat ash-Shar'iyah, Ibn Taymiyah, p. 136.

[126] *Tabṣirat al-Ḥukkâm fee Uṣool al-Aqḍiyah wa Manâhij al-Aḥkâm*, Ibn Farḥoon, part 2, on the types of evidence.

Mâlikis, in addition to Ibn al-Ghars[127] of the Ḥanafis, and some Ḥanbalis.[128]

"Customs are binding" is a legal maxim of Sharia, so *'urf* (norms) which do not oppose the Sharia are given authority and recognized as evidence. In other words, the Law-Giver considers customs a determining factor in rulings on interpersonal dealings, not usually as a stand-alone source of law but as a secondary one that will ensure the proper application of the *naṣṣ* (text of revelation). Imam al-Qarâfi stated:

> Whenever the customs change, take that into consideration, and whenever they die out, drop them (out of the equation). Do not be rigidly bound your entire life by what is written in books. Similarly, when someone from outside your region comes to seek your fatwa, do not apply to him the norms of your town. Instead, ask him about the norms of his town, and base your fatwa on them, not on the norms of your town or that which is established in your books. This is the plain truth; rigidity in applying the transmitted edicts is misguidance in the religion and

[127] Radd al-Muḥtâr, Ibn 'Âbideen, 5:354.

[128] These are mentioned in order of the strength of their support for the use of *qarâ'in* and the scope of its use in their *ijtihâd*.

ignorance of the objectives of the Muslim scholars and the pious predecessors.[129]

Imam Ibn al-Qayyim wrote:

> He who issues fatwas to people based only on what is transmitted in books, despite the differences in their norms, customs, times, and places, and their own conditions, has gone astray and led others astray. His crime against the religion is greater than that of one who treats all people, regardless of their countries, customs, times, and personal inclinations, by that which is in the books of medicine. These ignorant muftis and physicians are the most damaging to the people's religion and bodies. And Allah alone is the one sought for assistance.[130]

Through this maxim, the Sharia recognizes people's varying norms, customs and traditions, and preserves the cultural identities of diverse nations. This also applies to people of different times, accommodating the changes that humans of different generations are bound to experience.

While ijtihâd is always necessary in all fields to correct our understanding, the following are matters that are not subject to

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[129] *al-Furooq*, Shihâb ad-Deen al-Qarâfi, 1:191.

[130] *I'lâm al-Muwaqqi'een*, Ibn al-Qayyim, 3:66.

change, whether due to changes in customs, world conditions, technological advancements, or any circumstantial variables:

- All matters of creed. These are not subject to new ijtihâd in the sense of forming new positions compatible with new realities, but we do need ijtihâd to correct our own understanding of some of these concepts. For example, the misunderstanding of *qadr* (predestination) and *zuhd* (asceticism, or renunciation of worldly matters) has been detrimental to the wellbeing of the Ummah and can impede any prospects for progress. Simply put, we need to reset our collective understanding of these concepts – back to that of the Messenger (SA) and his Companions (RAHUM), whose teachings and lives will always be the brightest beacon of light and the unfailing benchmark.
- The pillars of Islam.
- Rulings in the sphere of worship whose causes we do not understand, such as the times of the different prayers and their composition, the rituals of Hajj and fasting, and the like.
- Quantified injunctions of the Sharia (*muqaddarât*) that were fixed by the text of revelation, such as expiations (*kaffârât*), duration of the waiting period (*'iddah*), and entitlements to inheritance.

- Matters about which there is an explicit text with a definitive implication, a certain transmission, and their effective cause is still operative.
- Matters on which there is a clear and genuine consensus that is not based on circumstantial variables such as in cases where the common interest (or weighing harm vs. benefit) is the deciding factor.
- Basic rulings of morality and those that define the Islamic value system, such as the prohibition of arrogance, prejudice, murder, fornication, usury, gossip, slander, and so on; the obligation of mutual agreement in contracts; and the protection of basic human rights such as the sanctity of life, property, and reputation. Regarding these issues, change may only be related to the means of preserving those values and rights.

After excluding those spheres, it seems that the renewal of ijtihâd is most needed in the areas of governance, public policy, international relations, financial transactions, employment, corporate ethics, admissible proofs, judiciary proceedings, and to some extent interpersonal relations and relations with people of different theological orientations and religious affiliations.

In all these areas, *ijtihâd*-based renewal is necessary to maintain the vitality and relevance of the laws and Divine teachings.

A seasoned Azhari scholar of the fourteenth century, Shaykh ‘Abdul-Wahhâb Khallâf, traces the stagnation in ijtihâd to four reasons:

1- Political division and infighting within the Muslim state, which derailed scholars in all fields from developing their respective disciplines
2- Madh-hab-based partisanship, which kept many scholars preoccupied with a keen interest in supporting their own madh-hab and proving it correct, precluding an impartial inquiry into the body of evidences, particularly the Qur’an and the Sunnah
3- The “fatwa chaos” that the scholars had failed to control during that time;[131] out of an abundance of caution, they preemptively closed the door of ijtihâd, which resulted in considerable stagnation
4- Moral decay that affected many scholars, causing them to envy and disparage anyone who attempted independent ijtihâd[132]

Finally, it must be noted that this ijtihâd-based renewal can only be exercised by the most distinguished mujtahid scholars of each era. If the matter is left to those who have not reached this degree of ijtihâd, the religion will fall into peril and be subject to distortion, and the enormity committed by non-scholars who engage

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131 The “fatwa chaos” resulted in many odd and esoteric fatwas and teachings; many scholars attempted to regain control of the situation by shutting down independent ijtihâd (*ijtihâd muṭlaq*) and decreeing that it was allowed only for the scholars of the past.

132 *‘Ilm Uṣool al-Fiqh*, ‘Abdul-Wahhâb Khallâf, p. 260.

in this is beyond needing to be mentioned. This involves the greatest calamity: forging lies about Allah – the Mighty and Majestic – and speaking about Him without knowledge.

Allah (st) says:

{وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَٰئِكَ كَانَ عَنْهُ مَسْئُولًا}

{And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart – about all those [a person] will be questioned.} *(al-Isrâ' 17:36)*

Therefore, what is required is the reunion of theory and practice, in light of the ijtihâd that preserves the constants but accommodates the changing variables. This is what existed during the days of the Rightly-Guided Caliphate, and it is what enabled the Ummah to accommodate the Persian, Roman, Nabataean, Kurdish, Coptic, Berber, and other cultures, leading to a degree of civilizational, technological, and cultural development that has never been matched in the history of this world. All of that occurred without the religion itself being tainted with any distortion. But when this vigilant ijtihâd vanished, around the middle of the Abbasid era, the gap between theory and practice began widening until Muslim society became divided into groups: people of extravagance who had no care for religion, Sufis who mostly fled the trials of life by escaping into spirituality and monasticism (and some into mysticism) in search of what would satisfy their souls' longing for

truth, scholars who withdrew to fixate upon serving the texts and literature, and the masses who became lost as their leaders lost their compass. At the same time, there remained small numbers of God-fearing scholars who were committed to the spirit and letter of the deen, to purifying the interior (actions of the heart) and to upholding the law. They were true beacons of light that – by Allah's bounty – no era in the life of this Ummah will be void of. They are those who continued fighting to revive the true teachings of Islam, despite their having been subverted by heedlessness and corrupted customs, and to make these teachings guide the life of the Ummah once again, thus contributing to the wellbeing of humankind.

Glossary of Islamic Terms

The Arabic words are transliterated according to the conventions of the Transliteration Chart found in this book. If a word has become part of the English language (that is, is found in a dictionary of Standard English), that spelling is used in this book and appears first in this Glossary, with the transliterated form in brackets after it.

a		
a'martuka	أَعْمَرْتك	I gave it to you for life
Ab	أَب	father
abu (or *abi*)	أَبُو، أَبِي	father (of)
adhân	أذَان	the call to prayer
'âḍil	عَاضِل	one who impedes, as in unjustly preventing his ward from marrying
'âdiyah	عادِيَّة	re-dug; ancient, *lit.* referring to the tribe of 'Âd
âḥâd	آحَاد	a category of hadith describing narrations related by narrators whose number is fewer than the minimum requirement for the *mutawâtir* narration
'ahd	عَهْد	a treaty or covenant
Ahl ud-Deewân	أَهْل الدِيوان	people who are registered in the same registry (military stipend roll)
Ahl as-Sunnah	أَهْل السُّنَّة	'people of the Sunnah'; the orthodox Sunni majority; the mainstream Muslims who honor all the Companions of the Prophet (SA) and accept the authority of his Sunnah
ajeer	أَجِير	hired worker
ajeer khâṣṣ	أَجِير خاص	someone who works for one employer during a certain time slot

ajeer mushtarak	أَجِير مشْترك	shared worker who does piece work on commission from different people
ajnabi	أَجْنَبي	non-relative; non-maḥram
ajr	أَجْر	wages, compensation
ajr al-mithl	أَجْر المِثْل	fair-market compensation
al-akdariyah	الأَكْدَرِيَّة	a special case of inheritance; also known as the "muddying problem"
alḥamdulillâh	الحمد لله	all praise is for Allah
Allâhu akbar	الله أكبر	Allah is the Greatest
âmeen	آمين	O Allah, accept our invocation; amen
anfâl (sg. *nafal*)	أنفال	part of the war booty given by the commander before the prescribed division of the booty
Anṣâr	أنصار	'helpers': the Muslim citizens of Madinah who gave refuge to the Prophet (sa) and the other Muslim emigrants from Makkah
'aqd (pl. *'uqood*)	عَقْد	contract
'aqd istiṣnâ'	عَقْد استِصْناع	manufacturing contract
'aqeeqah	عَقيقة	animal sacrifice for a newborn baby
'âqilah	عَاقِلَة	extended paternal family
'aqr	عَقْر	severe wounding that may be fatal
'Arafah (pl. *'Arafât*)	عَرَفَة ، عرفات	the plain outside of Makkah where pilgrims gather at the climax of the Hajj

‘arâyâ	عَرايا	a transaction where, for example, dry dates are exchanged for their estimated equivalent of ripe dates on the palm trees
‘aṣabah (pl. *‘aṣabât)*	عَصَبَة	residuary heir
al-aṣaḥ	الأصَحّ	Truer
‘aseef	عَسيف	a non-combatant attachment to the army
‘Âshoorâ’	عاشوراء	the tenth day of the Islamic month of Muḥarram; it is recommended that Muslims fast on this day to commemorate the victory of Prophet Moosâ (as) over the Pharaoh
aṣl	أَصْل	default; status quo; principle; foundation
aṣl mudhakkar	أَصْل مُذَكَّر	inheriting male ancestors
‘aṣr	عصر	mid-afternoon; the obligatory prayer at that time
as-salâmu ‘alaykum	السلام عليكم	a greeting, which means “Peace be upon you”
astaghfir Allâh	أستغفر الله	I seek Allah's forgiveness
‘aṭeeyat al-mareeḍ	عَطِيَّة المَريض	gifts from the (terminally) ill
athar	أَثَر	a report
‘awl	عَوْل	proportionate reduction of shares due to shortage (in determining inheritance)
awliyâ’	أوْلياء	friends (of Allah)
‘awrah	عَوْرَة	the part of a person’s body that must be screened from public view

awsuq (sg. *wasq*)	أَوْسُق	*pl.* of *wasq*; see *wasq*
ayyim	أَيِّم	a woman who was previously married or a woman who is not currently married
B		
bâḍi'ah	بَاضِعَة	a head or face wound that cuts into the flesh underneath the skin
bahâ'im (sg. *baheemah*)	بَهَائِم	four-limbed land or sea animals, particularly non-predatory ones
bâ'in	بائن	finalized, as in a divorce; it may be with recourse (*baynoonah ṣughrâ),* or without (*baynoonah kubrâ*)
bâligh	بالِغ	adult; one who has reached puberty
banu (or *bani*)	بنو ، بني	*lit.* 'children (of)'; *usu.* referring to a tribe that claims a common ancestor
Baqee' Cemetery	البَقِيع	the cemetery located next to the Prophet's Mosque in Madinah, in which many of the Prophet's Companions and family members are buried
basmalah	البَسْمَلة	the Arabic noun that refers to the entire phrase '*bismillâh ir-raḥmân ir-raḥeem'* (in the name of Allah, the Compassionate, the Merciful)
battah	بتَّة	final, as in divorce
bay'	بَيْع	sale
bay' al-ajal	بَيْع الأجَل	sale with deferred payment of the price
bay' al-kâli'	بَيْع الكالِئ	sale with deferment of both the price and the merchandise

bay‘ al-murâbaḥah lil-âmir bish-shirâ’	بَيْع المُرابَحَة للآمِر بالشِّراء	cost-plus sale to the purchase orderer
baynoonah kubrâ	بَيْنُونَة كُبْرَى	a divorce finalized without recourse
baynoonah ṣughrâ	بَيْنُونَة صُغْرَى	a divorce finalized with recourse
bayt ul-mâl	بَيْتُ المَال	the Muslim public treasury
bâzilah	بَازِلَة	a head or face wound that causes slight bleeding
bid‘ah	بِدْعَة	innovation, *esp*. undesired innovation in matters of religion
bin-niyâbati ‘anhu	بالنِّيابَةِ عَنهُ	on behalf of someone
binâ’	بِناء	consummation
bint laboon	بِنْت لَبُوْن	a two-year-old female camel
bint makhâḍ	بِنْت مَخَاضٍ	a one-year-old female camel
birr	بِرّ	kindness, often referring to kindness to parents and the elderly
bismillâh	بسم الله	in the name of Allah
buloogh	بُلوغ	having reached puberty/adulthood
bunduq	بُنْدُق	mudballs
bunuwwah	بُنُوَّة	filiation
buyoo‘	بُيوع	selling; commercial transactions
d		

dâbbah	دابَّة	beast of burden
ḍa'eef	ضَعِيف	a grade of hadith: weak
dalâlat al-iqtiḍâ'	دَلَالَة الاقْتِضَاء	the required implication
ḍamân	ضَمان	liability; guarantor-ship
ḍâmin	ضَامِن	guarantor of payment
Dar al-'Ahd	دارُ العَهْد	Abode of Treaty; the default classification for the whole world now due to covenants such as the UN Charter (same as *Dar aṣ-Ṣulḥ)*
Dâr al-Amn	دارُ الأمْن	Abode of Security, where Muslims have the right to practice their religion (same as *Dar al-'Ahd*)
Dar aṣ-Ṣulḥ	دارُ الصُّلْح	Abode of Conciliation; the default classification for the whole world now due to covenants such as the UN Charter
ḍawâbiṭ	ضَوابِط	regulators
da'wah	دَعْوَة	disseminating the teachings of Islam and calling people to accept and embrace Islam
dayn	دَيْن	debt
deen	دِين	religion
dhabeeḥah	ذَبِيْحَة	slaughtered animal
dhabḥ	ذَبْح	slaughter by cutting
dha'eenah	ظَعِينَة	woman traveler
dhâhir	ظَاهِر	apparent
dhakât	ذَكَاة	proper slaughter
dhât	ذَات	self

adh-Dhât al-Ilâhiyah	الذَّات الإلَهِيَّة	divine self, divine essence
dhawi al-arḥâm	ذَوِيْ الأَرْحَامِ	*pl.* of *dhoo raḥim:* kin, but within the context of laws of inheritance, other kin; the relatives who are not residuary heirs and not entitled to a designated share of inheritance
dhihâr	ظِهَار	likening one's wife to the back of his mother (which makes her forbidden to him)
dhikr Allâh	ذِكْر الله	remembrance of Allah
dhimmi	ذِمِّي	protected or covenanted non-Muslims in Muslim lands
dhirâ'	ذِراع	cubit (about 48 cm)
dhoo farḍ	ذُوْ فَرْضٍ	heirs of designated shares
dhoo raḥim	ذُوْ رَحِم	kin, but within the context of laws of inheritance, other kin; the relatives who are not residuary heirs and not entitled to a designated share of inheritance
dhuhr	ظُهر	noon; the obligatory prayer at that time
dinar *(deenâr)*	دِينار	originally, a gold coin; a unit of currency
dirham (pl. *darâhim*)	دِرهَم	originally, a silver coin; a unit of currency
diyah	دِيَة	indemnity; sometimes known as blood money
du'â'	دُعاء	supplication; invocation
duff	دُفّ	one-sided drum
ḍuḥâ'	الضُّحى	mid to late morning; the optional prayer at that time

e		
eejâb	إِيجَاب	offer (of marriage)
eelâ'	إيلاء	when the husband takes an oath to not have intercourse with his wife for more than four months
Eid *('eed)*	عِيد	*lit.* festival; the two Islamic celebrations: Eid al-Fiṭr at the end of Ramadan and Eid al-Aḍḥâ at the culmination of the Hajj
f		
fajr	فجر	dawn; the prayer at that time (see also *ṣubḥ)*
faqeeh (pl. *fuqahâ'*)	فَقِيه (فُقَهاء)	scholar of Islamic jurisprudence *(fiqh)*
far' wârith	فَرْع وَارِث	inheriting descendants of both sexes
farḍ	فَرْض	designated share (in regard to inheritance law)
farḍ kifâyah	فَرْض كِفاية	communal obligation
farq	فَرْق	a large measure of volume, equal to about 16 or 100 pounds
farsakh	فَرْسَخ	a unit of measurement representing a distance of 5,541 meters
fâsiq	فَاسِق	one who commits a major sin or persists in minor sins
faskh	فَسْخ	annulment
fatwa	فَتْوى	religious decision or decree
fay'	فَيْء	wealth which reaches the Muslim authority from non-Muslims without fighting

fiqh	فِقْه	Islamic jurisprudence; understanding or interpreting Islamic law
fitnah	فِتْنَة	*lit*. trial, temptation; (attempting to sow) discord between people
fuqahâ' (sg. *faqeeh*)	فُقَهَاء	See *faqeeh*
furooḍ (sg. *farḍ)*	فُرُوض	the designated shares of an inheritance
Futtân (sg. *Fattân*)	فُتَّان	the trying ones; the angels who question everyone upon burial
g		
ghabn	غَبْن	inequity
ghalbat adh-dhan	غلبة الظن	propensity, likelihood
ghaneemah (pl. *ghanâ'im*)	غَنِيمَة	spoils of war; goods seized by the victor in war
gharar	غَرَر	(undue) risk taking
gharar fâḥish	غَرَر فاحِش	extreme risk taking
al-Gharrâwiyah	الغَرَّاوِيَّة	special case of inheritance also called al-'Umariyah
ghaṣb	غَصْب	wrongful seizure of another person's property by force
gheelah	غِيلَة	a murder involving treachery
ghusl	غُسْل	ritual shower that is recommended or could be necessary, particularly after a major impurity, e.g., after sexual intercourse or at the end of the menstrual period

h		
ḥaḍânah	حَضَانَة	custody, tutelage, foster care
ḥadathun akbar	حَدَثٌ أَكْبَر	major nullifier
ḥadd (pl. *ḥudood)*	حَدّ	prescribed punishment as specified by divine revelation
ḥadhr	حَظْر	prohibition
ḥâḍinah	حَاضِنَة	the one who has physical custody (of children)
Hadith *(ḥadeeth)*	حَدِيث	the collected reports about the statements, actions, and tacit approvals of Prophet Muhammad (sa) that with the Qur'an form the basis of Islamic law
hadith *(ḥadeeth)*	حَدِيث	a statement or action of Prophet Muhammad (sa) that was remembered and recorded by his Companions and followers
hady	هَدْي	offering by a pilgrim of an animal for sacrifice
ḥajb	حَجْب	Blockage. When an heir bars or excludes another heir from receiving any inheritance, it is *ḥajb ḥirmân* (complete blockage); when an heir bars or excludes another heir from receiving the greater of the alternate shares, it is *ḥajb nuqṣân* (partial blockage).
Hajj *(Ḥajj)*	حَجّ	the major pilgrimage to the Sacred precincts in and around Makkah, to be undertaken by every able Muslim at least once in a lifetime
ḥajjâm	حَجَّام	cupper or blood-letter
ḥajr	حَجْر	interdiction; placing the debtor's property under legal seizure and preventing him or her from disposing of it

halal *(ḥalâl)*	حَلال	permitted according to Islamic law
ḥaqq	حَقّ	right; truth
Ḥaram	حَرَم	the sacred area surrounding and including the Kaaba in Makkah; any inviolable or holy area
haram *(ḥarâm)*	حَرَام	forbidden according to Islamic law
ḥarbi	حَرْبِي	citizen of a warring (enemy) state
ḥârisah	حَارِصَة	a head or face wound that disrupts the skin without causing any bleeding
ḥasan	حَسَن	a grade of hadith: acceptable or reliable
hâshimah	هَاشِمَة	a head or face wound that exposes and crushes the bone
ḥawâlah	حَوَالة	debt transference
ḥawâshi	حَوَاشي	Side-notes and footnotes; in the section of inheritance, it refers to brothers and uncles and their children
ḥawl	حَوْل	an Islamic (lunar) year, used for calculating zakât due
ḥayḍ	حَيْض	menstruation
hibah	هِبَة	gift
ḥijâmah	حِجامة	cupping that involves bloodletting
Ḥijâz	حِجاز	the Western region of the Arabian Peninsula that includes Makkah and Madinah
ḥijr Ismâ'eel	حِجْر إسماعيل	the crescent-shaped area next to the Kaaba, which includes part of the Kaaba

Hijrah	هِجْرَة	migration (*esp*. the migration from Makkah to Madinah by Prophet Muhammad [SA]); used as the beginning of the Islamic calendar
ḥikmah	حِكمَة	wisdom
al-ḥimâriyah	الْحِمَارِيَّة	special case of inheritance
ḥiqqah	حِقَّة	A three-year-old female camel
ḥirâbah	حِرابَة	banditry
ḥirz	حِرز	the customary place for safeguarding similar properties
ḥudood (sg. *ḥadd)*	حُدُود	see *ḥadd*
ḥujjah	حُجَّة	proof
ḥukm	حُكْم	ruling; decree
ḥukm takleefi	حُكْم تَكْليفى	defining law
ḥukm waḍ'i	حُكْم وَضْعي	declaratory law
ḥullah	حُلَّة	a two-piece suit
ḥuqooq Allâh	حُقُوق الله	the rights of Allah
ḥuqooq al-'ibâd	حُقُوق العِباد	the rights of the servants
i		
'ibâdât (sg. *'ibâdah*)	عِبادات	acts of worship
ibn makhâḍ	ابن مَخَاض	A one-year-old male camel
'iddah	عِدَّة	waiting period of a woman after being widowed or divorced

idhn al-Imâm	إِذْن الإمام	the ruler's permission
ifrâd	إِفْراد	one of the three types of Hajj; in this case, the pilgrim performs Hajj alone (not combined with 'umrah)
iftirâsh	اِفْتِراش	a position in which one sits during the prayer; one lays the left foot on its side and sits on it, while making the right foot flexed and perpendicular to the ground, heel up, toes flat on the ground, tips pointing to the qibla
ighlâq	إِغْلاق	duress or infuriation
iḥrâm	إِحْرَام	the state of consecration for Hajj or 'umrah; the special clothing worn by the pilgrim in such a state
iḥsân	إِحْسان	goodness, perfection, excellence; to worship Allah as if you see Him, knowing that even if you do not see Him, He sees you
iḥyâ' al-mawât	إِحْياء المَوات	reviving barren land
ijârah	إِجارَة	leasing or hiring
ijmâ'	إِجْماع	consensus; a method of deriving rulings in jurisprudence
ijtihâd	اِجْتِهاد	to use one's knowledge of the Qur'an, the Sunnah, and other Islamic sciences to derive rulings on matters not specifically or explicitly mentioned in either source of Islamic law
'illah	عِلَّة	effective cause, which refers in the principles of jurisprudence to the cause behind the ruling
'ilm al-farâ'iḍ	عِلْم الفَرائض	the science of inheritance (see also *'ilm al-mawâreeth*)

‘ilm al-mawâreeth	عِلْم المَواريث	the science of inheritance (see also *‘ilm al-farâ’iḍ)*
imam *(imâm)*	إمَام	ruler; prayer leader
‘inân	عِنان	(full rein) partnership; the two parties contribute both capital and work, so they are equal
inshallah (*in shâ’Allâh*)	إنْ شَاء الله	God willing
iqâmah	إقامة	the call to rise for prayer, given when the prayer is about to begin
iqrâr	إقْرَار	acknowledgment
irth	إرْث	inheritance
‘ishâ’	عِشاء	evening; the obligatory prayer at that time
iṣlâḥ	إصْلاح	rectification; reform; reconciliation
istiḥâḍah	إستحاضة	non-menstrual bleeding
istilḥâq	اسْتِلحاق	demanding the attribution of a child to oneself as their parent
istiṣḥâb	اسْتِصْحاب	presumption of continuity
istiṣnâ‘	اسْتِصْنَاع	manufacturing
i‘tikâf	إعْتِكاف	seclusion in the mosque solely for the purpose of worship
izâr	إزار	a garment which is worn wrapped around the lower half of the body
j		
ja‘âlah	جَعَالَة	per-job wages; when a certain compensation is set for finishing a particular piece of work

jadha'ah	جَذَعَة	a four-year-old female camel
jafrah	جَفْرَة	a small female goat
jahâlah	جهالة	lack of knowledge or ambiguity about the details of the contract by one or both parties
jâhiliyah	جَاهِلِيَّة	*lit.* 'ignorance'; the age of spiritual darkness before Islam
jâ'ifah	جَائِفَة	a wound that penetrates into a body cavity
jâ'iḥah	جَائِحَة	destructive natural calamity
jâ'iz	جَائِز	permissible; if used to describe a contract, it means non-binding/revocable (contract)
al-Jamâ'ah	الجَماعة	the Group, which has different meanings depending on the use; it could refer to the mainstream Muslim body; select groups such as the seven collectors of Hadith; or in the Ḥanbali madhhab, the main disciples of Imam Aḥmad.
jamrah (pl. *jamarât*)	جَمْرة	*lit.* stone; one of the stone structures at which pilgrims throw pebbles during the Hajj, emulating the Prophet Ibrâheem (as) when he threw stones at the devil
jamrat ul-'aqabah	جَمْرة العَقَبَة	the largest jamrah; also known as *jamrat ul-kubrâ*
janâbah	جَنابَة	a state of ritual impurity due to sexual activity or emission
janâzah	جَنازَة	funeral; the dead body itself
Jibreel	جِبريل	the Arabic name for Gabriel (as), the archangel who transmitted the verses of the Qur'an and other communication from Allah to Prophet Muhammad (sa)
jihad *(jihâd)*	جِهَاد	struggle or striving (in Allah's cause)

jihah	جِهَة	direction
jinâyah	جِنايَة	wrongdoing, usually used in the context of criminal offenses
jizyah	جِزْيَة	a tax that used to be levied on the People of the Book when they were under the protection of a Muslim government
judoodah	جُدودَة	forebears; grandparents and those in the generations above them
ju'l	جُعْل	compensation or prize money
jumhoor	جُمْهُور	the majority of scholars
Jumu'ah	جُمُعَة	Friday; also the midday congregational prayer of that day
k		
Kaaba (*Ka'bah*)	الكَعْبَة	the House of Allah in Makkah, originally built by Prophets Ibrâheem and Ismâ'eel, which Muslims face wherever they pray
kabeer	كَبير	old; in the context of breastfeeding rules, a child older than two years
kafâlah	كَفالَة	guarantor-ship
kafeel	كَفيل	guarantor of appearance
kaffârah	كَفَّارَة	expiation
kâfir	كَافِر	one who rejects Islam
kalâlah	كَلالَة	person who has no *far' wârith* (descendants entitled to inheritance) or *aṣl mudhakkar* (paternal male ancestors)
khabar âḥâd	خَبَر آحاد	singular report

khabeeth (pl. *khabâ'ith*)	خَبِيث	unwholesome, repulsive
khalwah	خَلْوَة	seclusion; usually refers to a man and woman being in seclusion together (which may or may not be permissible, depending on their relationship)
khamr	خَمْر	wine; alcoholic drink
kharâj	خَرَاج	tax on agricultural land, payable to the Muslim state
kharqâ'	خَرْقَاء	comes from kharaqa (penetrated); used in inheritance to refer to the many positions the Companions had concerning a particular case, which reached seven.
khimâr	خِمَار	a scarf or similar head-covering worn by a Muslim woman as part of her hijab
khiyâr	خِيار	option; in sales, it refers to the option to cancel
khiyâr al-'ayb	خِيار العَيْب	option to cancel due to a defect in the merchandise
khiyâr al-ghabn	خِيار الغَبْن	option to cancel due to inequity
khiyâr al-majlis	خِيار المَجْلِس	option of cancelling after the conclusion of the deal and before parting
khiyâr ash-sharṭ	خِيار الشَّرْط	option to cancel within an agreed upon period, if the contract included that as a condition
khul'	خُلْع	termination of marriage when initiated by the wife in return for a payment
khunthâ	خُنْثَى	intersex person
khuṭbah	خطبة	sermon

kufu'	كُفُوْ	an equal; in the context of marriage, it refers to a suitable match
l		
lâ ilâha illâ Allâh	لا إله إلا الله	there is none worthy of worship other than Allah
labbayk Allâhumma labbayk	لبّيك اللهمّ لبّيك	'Here I am, O Allah, here I am (responding to your call)!'; the phrase repeated by pilgrims throughout the rites of pilgrimage to the Sacred Mosque
lafdh mushtarak	لَفْظ مُشْتَرَك	homonym
laḥd	لَحْد	an 'L'-shaped grave with a niche at the bottom, aligned so that a body placed within it would be facing the qibla
lajâj	لَجَاج	disputation or stubbornness; within the context of vows, it refers to a vow for encouragement or deterrence
laqeeṭ	لَقيط	abandoned child; foundling
lawth	لَوْث	manifest animosity giving rise to suspicion of murder, in the context of murder investigations
Laylat al-Qadr	لَيْلَة القَدْر	the 'Night of Destiny' or 'Night of Power' in which the Qur'an was first revealed
legatee		the recipient of the bequeathed property or usufruct
li'ân	لِعَان	mutual invocation of curses (upon oneself) as a prescribed legal procedure
liqâḥ	لِقَاح	semen: in the context of breastfeeding, it is semen that caused the production of breast milk

liwâṭ	لِوَاط	sodomy between two males
luqaṭah	لُقَطَة	lost and found property
m		
mabroor	مَبْرُور	accepted and deserving of reward, as in an act of worship
madh-hab	مَذْهَب	school of juristic thought
madhy	مَذْي	the secretion excreted by one when thinking of sex or during foreplay
mafhoom al-mukhâlafah	مَفْهوم المُخَالَفَة	divergent implication
maghrib	مَغْرِب	sunset; the obligatory prayer at that time
mahr	مَهْر	obligatory marriage gift presented by the groom to the bride as an obligation arising from marriage (see also *ṣadâq)*
maḥram	مَحْرَم	a degree of consanguinity precluding marriage; a man whom a woman may never marry due to the close blood, marriage, or breastfeeding relationship - e.g., father, brother, son, uncle, father-in-law, and milk-brother
makrooh	مَكْرُوه	disliked
makrooh taḥreeman	مَكْرُوه تَحْرِيمًا	prohibitively disliked
ma'moom	مَأْمُوم	the one who is led in prayer (by an imam)
ma'moomah	مَأْمُوْمَة	a head or face wound that reaches the sheath of the brain (dura mater)
manâṭ	مَنَاط	effective cause

manfa'ah	مَنْفَعَة	Usufruct; the right to enjoy or use another's property
mareeḍ	مَرِيض	ill
Marwah	المَرْوَة	one of the two hills between which pilgrims must hurry back and forth during the rites of the Hajj and the 'umrah (see also *Ṣafâ)*
al-maṣâliḥ al-mursalah	المَصَالِح المُرْسَلَة	consideration of public interest
al-Mash'ar al-Ḥarâm	المَشْعَر الحَرام	the sacred site; a mountain in Muzdalifah
Mashriq	مَشْرِق	lands to the east; sunrise
masjid	مسجد	*lit.* a place of prostration; a mosque
al-Masjid al-Aqṣâ	المسجد الأَقْصَى	the 'Farthest Mosque', mentioned in the Qur'an (*al-Isrâ'* 17:1)
al-Masjid al-Ḥarâm	المسجد الحَرام	the Sacred Mosque in Makkah where the Kaaba is situated
mathmoon	مَثْمون	priced commodity
matn	مَتْن	text or content of a hadith; abridged book or manual
ma'tooh	مَعْتُوه	imbecile/mentally incompetent
matrook	مَتْروك	*lit.* 'abandoned', meaning 'rejected'; a term used by Hadith scholars to describe someone considered to be an unreliable narrator
mawqoof	مَوْقُوف	*lit.* 'restricted': in the science of Hadith, it refers to a category of Hadith that refers to sayings or actions traceable only to the Companions, as opposed to those of the Prophet (SA)

meeqât (pl. *mawâqeet*)	مِيقات	the fixed place at which one enters the state of iḥrâm for Hajj or ‘umrah
miḥrâb	مِحْراب	a niche in the mosque that indicates the direction to be faced during ritual prayer
minbar	مِنْبَر	raised pulpit in a mosque from which sermons are presented; the pulpit in a mosque is different from that in a church. The pulpit in a mosque is basically a raised platform at the top of a set of steps, and it usually has a railing for the imam or speaker to lean on. This is why one can speak of ‘sitting on the pulpit’, and ‘ascending the pulpit’.
mi‘râḍ	مِعْرَاض	a featherless arrow that sometimes hits the target with its blunt edge, or a pole with a piece of pointed iron attached to its head; it may hit the target with the pointed end or the shaft
mishq	مِشْق	red ochre
misyâr	مِسْيَار	a marriage in which the wife voluntarily gives up some of her rights
mithliyât	مِثْليَّات	fungibles (substitutable commodities) such as a certain measure of wheat
mithqâl	مِثْقال	a unit of measure equal to one gold dinar
mooḍiḥah	مُوْضِحَة	a head or face wound that reaches the bone but does not damage it
mooṣâ bihi	مُوصَى بِهِ	bequeathed property
mooṣâ ilayhi	مُوصَى إِلَيْهِ	executor of bequest
mooṣâ lahu	مُوصَى لَهُ	legatee
mooṣi	مُوصِي	testator

mu'adh-dhin	مؤذّن	caller to prayer; one who makes the adhân
mu'âhid	مُعَاهِد	a non-Muslim who has a peace covenant with the Muslim state
mubâḥ	مُباح	permissible; actions that are morally neutral, neither forbidden nor recommended, and there is no reward or punishment for the act in itself
muḍârabah	مُضَارَبَة	a type of partnership in which the investor provides capital to a laborer/entrepreneur to invest in a business initiative, with the objective of sharing the profit
mudd	مُدّ	a measure of volume: approx. what one's two hands can scoop up; generally estimated to be ¾ liter (750ml)
mufaṣṣal	مُفَصَّل	chapters found in the last seventh of the Qur'an, starting from Soorat Qâf (no. 50)
mufâwaḍah	مُفاوَضَة	contract partnership sharing full authority
mufradât	مُفْرَدات	(sg. *mufrad*); words of a language; peculiar positions (opinions, as in a madh-hab)
muḥâl	مُحَال	something impossible
muḥallal lahu	مُحَلَّل لَهُ	one for whom something is made permissible
muḥallil	مُحَلِّل	someone or something that makes something else halal, e.g., a contestant who does not offer prize money, so his or her participation in a race makes the prize money lawful
Muḥassir	مُحَسِّر	*lit.* 'withholder'; the place where Allah (st) prevented the elephant of Abrahah from proceeding when Abrahah came to demolish the Kaaba

*mujtahid (*pl. *mujtahideen)*	مُجْتَهِد	a person qualified to exercise *ijtihâd*
mukallaf	مُكَلَّف	legally liable, addressed by the injunctions of Sharia
mukâtabah	مُكاتَبَة	contractual agreement with the owner, whereby slaves can purchase their freedom
mukâtab	مُكَاتَب	a slave who has an agreement with his or her master to buy his or her own freedom by paying a certain amount of money
mukhtaṣarat Zayd	مُخْتَصَرَة زَيْد	a special case of inheritance
al-multazam	المُلْتَزَم	*lit.* 'the place to be embraced'; the part of the Kaaba between the Black Stone and the door
munajjaz	مُنَجَّز	immediately effective
munaqqilah	مُنَقِّلَة	a head or face wound that exposes, crushes, and displaces the bone
al-Munâsakhât	المُنَاسَخَات	reconstruction of inheritance problems if one (or more) of the heirs died before the distribution of the estate
munḍabiṭ	مُنْضَبِط	measurable
muqaddimah	مُقَدِّمَة	introduction
muqâyaḍah	مُقايَضَة	bartering
al-muqtaḍâ	المُقْتَضَى	the required implication
murâbaḥah	مُرابَحَة	sale with profit; cost-plus sales
muroo'ah	مُرُوْءَة	integrity
mursal	مُرْسَل	a category of hadith: a narration that a *tâbi'i* ascribes to the Prophet (SA) without

		mentioning the intervening transmitter or transmitters
muṣâharah	مُصَاهَرَة	relationships established through marriage
muṣallâ	مُصَلَّى	a space used for prayer (other than a mosque)
musâqâh	مُساقاة	watering; a type of partnership between the owner of an orchard and a laborer who waters the trees and takes care of them in return for a portion of the produce
muṣ-ḥaf	مُصْحَف	A copy of the Arabic text of the Qur'an that is neither accompanied by commentary nor translated
al-musharrakah	الْمُشَرَّكَة	special case of inheritance
mushrikoon (or *mushrikeen;* sg. *mushrik*)	مُشْرِكون	polytheists, idolaters
muskir	مُسْكِر	a drink that causes *sukr*
musnad	مُسْنَد	a compilation of hadiths arranged according to the original narrators
mustaḥabb	مُسْتَحَبّ	recommended acts and deeds that are not obligatory, as per the Sharia; one who performs them is rewarded, but one who does not is not punished
mut'ah	مُتْعَة	1) temporary marriage; 2) a gift given by a husband to his wife upon her divorce (in certain cases about which they disagreed)
mutalâḥimah	مُتَلَاحِمَة	a head or face wound that cuts through the flesh
mutawâtir	مُتَوَاتِر	a category of hadith describing narrations that are related by such a large number of

		people in every layer of the chain that they cannot agree upon a lie
muwakkil	مُوَكِّل	authorizer
muzâbanah	مُزابَنَة	to exchange ripe dates for dry ones
muzâra'ah	مُزارَعَة	sharecropping
n		
nadb	نَدْب	eulogy
nafl	نَفْل	supererogatory prayers; sometimes used to refer to sunnah prayers other than the ones specified before and after the mandatory prayers
naḥr	نَحْر	slaughter by stabbing the animal at the base of the neck
najâsah	نَجَاسَة	physical impurities or filth, as defined by Sharia; may also be used to refer to moral impurity
najis	نَجِس	impure or filthy, as defined by Sharia
najsh	نَجْش	provocation, which is when a third party pretends to compete for a commodity, provoking the buyer to raise the price
nasab	نَسَب	consanguinity
naṣeeb	نَصِيب	a share of an inheritance
nifâs	نِفاس	postpartum bleeding
niḥlah	نِحْلَة	1) given gladly and graciously; 2) given as an obligation
nikâḥ	نِكَاح	1) marriage; 2) consummation

niṣâb	نِصَاب	the zakât threshold; the minimum amount of something that one must own before being required to pay zakât on it
niyâbah	نِيابَة	deputation; acting on behalf of someone else
niyah (pl. *niyât*)	نِيَّة	intention; a prerequisite for the acceptance of one's deeds is that they be purely for the sake of Allah
nukool	نُكُول	refusal to take an oath
nuṣooṣ	نُصوص	texts of revelation
q		
qabool	قَبُول	acceptance (as in an offer of marriage)
qadhf		accusation of *zinâ* without proof
qâdhif	قَاذِف	one who makes an unproven accusation of *zinâ*
qafeez	قَفيز	a unit of measurement, which is about 36 ṣâ's (78 kg)
qarâ'in (sg. *qareenah*)	قَرَائِن	corroborative evidence
qarḍ	قَرْض	loan
qasâmah	قَسَامَة	collective repetitive oath taking
qawâ'id	قَوَاعِد	legal maxims
qawl	قَوْل	position; literally 'statement'
al-qawl al-manṣooṣ	القَوْل المَنْصُوص	the verbatim statement (of the Imam)

qeemiyât	قِيمِيَّات	non-fungibles, such as a camel or a piece of furniture, whose exact substitution may not be easy to have, though its valuation is easy
qeerâṭ	قِيراط	*lit.* a unit of measurement that could be large or small; one carat; figuratively, the 'measurement' of a reward from Allah
qibla *(qiblah)*	قِبْلَة	the direction toward the Kaaba from one's location; the direction that all Muslims must face in prayer
qirân	قِران	one of the three types of Hajj; in this type, the pilgrim performs Hajj combined with 'umrah
qiṣâṣ	قِصَاص	retribution
qiwâmah	قِوَامَة	leadership of the household and family
qiyâfah	قِيَافَة	the study of the physical characteristics of two individuals to assert their ancestry and filiality
qiyâs	قِياس	analogy: a method of deriving rulings in jurisprudence by identifying consequential similarities between matters with established rulings and newly emerged ones
qullatayn	قُلَّتَين	two large containers
qunoot	قُنوت	a du'â' (supplication) offered during the prayer, usually while standing after bowing
qur'ah	قُرْعَة	lot; casting lots
Quraysh	قُرَيْش	the tribe of the Prophet Muhammad (SA); it was the dominant tribe in Makkah at the time of his mission and was a society based on polytheism
qurb	قُرْب	proximity
quwwah	قُوَّة	strength

r		
raḍâ‘	رَضَاع	breastfeeding
radd	رَدّ	redistribution (in determining inheritance)
rahn	رَهْن	mortgage; security
ra’i	رَأي	‘opinion or logical thinking’; this term usually refers to Ḥanafi scholars, when mentioned in the phrase “Ahl ur-Ra’i” (the people of logical deduction).
raj‘ah	رَجْعَة	restoration of the marriage (taking the wife back) after a divorce
raj‘iy	رَجْعِي	unfinalized, as a divorce where the wife can still be returned to the husband
rak‘ah	رَكْعَة	a unit of the formal prayer (ṣalât)
Ramadan (Ramaḍân)	رَمَضَان	the ninth month in the Islamic calendar; the month of obligatory fasting; the month in which the first verses of the Qur’an were revealed
rasheed (f. *rasheedah*)	رَشِيد(ة)	one who is mature or competent in managing money
ribâ	رِبا	usury; charging interest on debt, among other forms
ribâ al-faḍl	رِبا الفَضْل	the ribâ of ‘increase’
ribâ an-nasee’ah	رِبا النَّسيئَة	the ribâ of deferment
ribâ al-yadd	رِبا اليَد	the ribâ of ‘the hand’; deferring the handing over of something that should have been immediately delivered
ribâṭ	رِبَاط	guarding at the frontiers

ridâ'	رِداء	upper garment
riddah	رِدَّة	apostasy
rijs	رِجْس	impure
riwâyah	رِوايَة	report
ruqyah	رُقْيَة	recitation of a part of the Qur'an (such as *Soorat al-Fâtiḥah)* or supplication to Allah to obtain protection or relief from illness
rushd	رُشْد	financial prudence; competence in managing property
s		
ṣâ'	صاع	a measurement of volume roughly equivalent to 3 litres, or four times the volume of a *mudd*
sabaq	سَبَق	prize money
ṣadâq	صَدَاق	bridal gift from husband (see also *mahr*)
ṣadaqah	صَدَقَة	voluntary charity; in the Qur'an and Hadith, the word is often used to refer to zakât
ṣadaqah jâriyah	صَدَقَة جارِيَة	perpetual charity
sadd adh-dharâ'i'	سَدّ الذَّرائع	blocking the means (to evil)
Ṣafâ	الصَّفا	one of the two hills between which pilgrims must hurry back and forth during the rites of the Hajj and the 'umrah (see also *Marwah*)
safah	سَفَه	foolishness; recklessness
ṣaḥeeḥ	صَحيح	a grade of hadith: sound or authentic
sâ'igh	سَائغ	excusable

sa'iy	سَعْي	one of the rites of Hajj, in which the pilgrim walks seven times between the hills of Ṣafâ and Marwah, re-enacting Hajar's search for water for her baby Ismâ'eel
salaf	سَلَف	predecessors; an advance payment sale (see also *salam*)
as-salaf aṣ-ṣâliḥ	السَّلَف الصَّالِح	the righteous predecessors; the earliest generations of Muslims, from whom we take much of our knowledge
salam	سَلَم	an advance payment sale (see also *salaf*)
salâm	السَّلام	peace; the greeting of peace
ṣalât (or *ṣalâh)*	صَلَاة	formal prayer: a combination of physical postures, recitation, meditation and supplication
ṣarf	صَرْف	currency exchange
sariqah	سَرِقَة	theft
shahâdah	شهادَة	testimony, *usu.* the statement *lâ ilâha illâ Allâh, Muḥammadun rasool Ullâh* (There is none worthy of worship other than God [Allah]; Muhammad is the Messenger of God)
Shâm	الشَّام	the Levant; the area that includes the current states of Syria, Lebanon, Jordan and Palestine
shaqq	شَقّ	a regular grave (like a pit)
shar'	شَرْع	revealed law
sharâkah	شَرَاكَة	partnership
sharâkah mutanâqiṣah	شَرَاكَة مُتَنَاقِصَة	declining partnership

sharikat al-‘aqd	شَرِكَة العَقْد	contract partnership
sharikat al-milk	شَرِكَة المِلْك	property partnership
sharikat wujooh	شَرِكَة وُجوه	(credit) partnership; the partners put forth no capital, but they use their reputation with the merchants, buy merchandise on credit and sell it, and divide the profit and loss
shi‘b	شِعب	ravine
shighâr	شِغَار	swap marriage
shijâj (sg. *shajjah*)	شِجَاج	head and facial injuries
shuf‘ah	شُفْعَة	pre-emption
shurb al-khamr	شُرْب الخَمر	drinking intoxicants
shurooḥ	شُروح	commentaries
shurooṭ	شُروط	conditions
ṣidq	صِدْق	truthfulness
simḥâq	سِمْحَاق	a head or facial wound that separates from the bone by a fine membrane (periosteum)
siwâk (or *miswâk*)	سِواك	a small twig (*usu*. of the Arâk tree) used as a toothbrush
soorah (or *soorat*)	سُورة	chapter of the Qur’an
ṣubḥ	صُبح	the obligatory prayer at dawn (see also *fajr*)
subḥân Allâh	سبحان الله	glory be to Allah

Sukr	سُكْر	intoxication
ṣulḥ	صُلح	settlement
ṣulḥ ʻalâ inkâr	صُلح على إنْكار	settlement despite negation; one party agrees to a settlement without admitting to the claim of the other party
sunnah	سُنَّة	1) the way (e.g., of the Messenger or the early generations), 2) acts that are recommended but not mandatory
Sunnah	سُنَّة	the practice and collected sayings and tacit approvals of Prophet Muhammad (SA) that together with the Qur'an forms the basis of Islamic law
t		
taʻaddi	تَعَدِّي	transgression
tâbiʻoon (or *tâbiʻeen*; sg. *tâbiʻi*)	تَابِعُون	‘successors’; those Muslims who met any of the Companions
tadbeer	تَدْبِير	emancipation of a slave upon the master’s death
tadlees	تَدْليس	any form of deception, whether innocent or otherwise, when relating a narration; any scam that results in the concealment of defects or ostensible enhancement of the merchandise
tafreeṭ	تَفْريط	negligence
taḥallul	تَحَلُّل	release from the state of iḥrâm
taḥleel	تَحْلِيل	making something permissible; in family laws, it refers to marriage to make a wife permissible for her ex-husband
taḥreem	تَحْرِيم	making something impermissible (haram)

takbeer	تَكْبِير	the act of saying *Allâhu akbar*
ṭalâq	طَلَاق	divorce
talbiyah	تَلْبِية	the prayer that is repeated by pilgrims who are making Hajj; it begins: Here I am, O Allah, here I am
talfeeq	تَلْفِيق	patching or mixing between different madh-habs
tamattu‘	تَمَتُّع	one of the three types of Hajj; in this type, the pilgrim performs ‘umrah during the Hajj season, then performs Hajj separately
taqwâ	تَقْوَى	fearful awareness of Allah; being mindful of Allah; pious dedication; being careful not to transgress the bounds set by Allah
tarâweeḥ	تَرَاوِيح	special communal night prayers performed only in Ramadan
tarwiyah	تَرْوِية	*lit.* ‘storing water’; in the Hajj, the 8th day of Dhul-Ḥijjah is known as the Day of Tarwiyah because in the past, the pilgrims used to get water on that day so they would have it at ‘Arafât and Mina
taṣarruf al-fuḍooli	تَصَرُّف الفُضولي	transaction by an unauthorized agent
ta‘ṣeeb	تَعْصِيب	making someone a residuary heir
tashahhud	تَشَهُّد	the testimony that states that there is none worthy of worship other than Allah, and that Muhammad (sa) is His Slave and His Messenger
tashreeq	التَّشْرِيق	the three holy days following the 10th of Dhul-Ḥijjah; part of Eid al-Aḍḥâ
tasleem(*ah*)	تَسليم	the act of saying *as-salâmu ‘alaykum (wa raḥmat Allâh)* to end the prayer

tasmiyah	تَسْمِيَة	saying *bismillâh;* mentioning the name of Allah
ṭawâf	طَواف	circumambulation of the Kaaba
ṭawâf al-ifâḍah	طَواف الإفاضَة	the circumambulation of the Kaaba that is a pillar of Hajj (also called *ṭawâf az-ziyârah*)
ṭawâf az-ziyârah	طَواف الزِّيارَة	the circumambulation of the Kaaba that is a pillar of Hajj (also called *ṭawâf al-ifâḍah)*
tawarruk	تَوَرُّك	a position in which one sits during the ṣalâh; one sits on the left thigh; the left foot rests on its side and comes out under the right leg, while the right foot is flexed and perpendicular to the ground with heel up, toes flat on the ground, tips pointing to the qibla
tayammum	تَيَمُّم	dry-earth ablution, performed when no pure water is available or can be safely used
ta'zeer	تعْزِيْر	discretionary punishment
testator		a person who has made a will or given a bequest (see *mooṣi)*
thaman	ثَمَن	price; currency
thayyib	ثَيِّب	someone who has had vaginal intercourse
tis'eeniyat Zayd	تِسْعِيْنِيَّة زَيْد	a special case of inheritance using 90 shares
ṭuhr	طُهْر	purity
u		***u***
ubuwwah	أُبُوَّة	paternity
uḍḥiyah	أُضحِيَة	an animal sacrificed as an act of worship during the days of Eid al-Aḍḥâ

ujrat	أُجْرَة	wage, rent
ujrat al-mithl	أُجْرَة المِثْل	*lit*. equivalent (market-value) wage, rent
'uloo al-arḥâm	أُولُو الْأَرْحَامِ	*lit*. kin connected through the womb, but within the context of laws of inheritance, other kin; the relatives who are not residuary heirs and not entitled to a designated share of inheritance
al-'Umariyah	العُمَرِيَّة	a special case of inheritance also called *al-Gharrâwiyah*
Umm al-Furookh	أُمّ الْفُرُوْخ	a special case of inheritance
umm walad	أُمَ وَلَدٍ	*lit*. 'the mother of a child'; a slave woman who gives birth to her master's child; she cannot be sold or passed on in inheritance, and she becomes free upon the death of her master
Ummah	أُمَّة	community or nation: *usu*. used to refer to the entire global community of Muslims
'umoom al-balwâ	عُموم البَلْوَى	unavoidable or widespread matter
'umoom al-muqtaḍâ	عُمُوْم المُقْتَضَى	the generality of the required implication
umoomah	أُمُوْمَة	maternity
'umoomah	عُمُوْمَة	uncles
'umr	عُمْر	lifetime
'umrâ	عُمْرَى	lifetime gift; gift for life
'umrah	عُمْرَة	a minor pilgrimage to Makkah
'umraka	عُمْرَك	for (your) life

unseen		a term used to denote phenomena or aspects that cannot be known using ordinary human faculties
uqiyah	أوقِيَّة	a weight measure used during the time of the Prophet (SA); 40 dirhams, which is equal to about 120 grams. Now, it refers to one ounce or one-sixteenth of a pound.
*ʻuqood (*sg. *ʻaqd)*	عُقُود	contracts
ʻuqood al-muʻâwaḍât	عُقُود المُعاوَضَات	exchange-of-benefit (for profit) contracts
ʻuqood at-tabarruʻât	عُقُود التَّبَرُّعات	benevolent (not-for-profit) contracts
ʻurf	عُرْف	custom
ʻuṣfur	عُصْفُر	safflower
uṣool (sg. *aṣl)*	أُصُول	foundations, roots, or origins; main commodities
uṣool al-fiqh	أُصُول الفِقْه	principles of Islamic jurisprudence; legal theory
ustâdh	أُسْتاذ	teacher, professor
w		***w***
wadeeʻah	وَدِيْعَة	deposit for safekeeping
wady	وَدْي	a thick, white, cloudy fluid that is sometimes discharged after urination, without any sexual arousal
wajh	وَجْه	face; view
wâjib	واجِب	mandatory; also a binding (contract)
wakâlah	وَكالَة	agency

wakeel	وَكِيل	authorized agent
walâ'	وَلاء	patronage/allegiance; the right of inheritance between two people if one of them emancipated the other
waleemah	وَلِيْمَة	wedding banquet
wali	وَلِيّ	1) friend or ally ; 2) guardian; 3) friend of Allah
wâlid	والِد	parent
waliy	وَلِيّ	guardian
waliy ad-dam	وَلِيّ الدَّم	blood-custodian; a family member who has the right to press charges against the killer and to demand retribution or *diyah* (*lit.* the one in charge of the blood)
waqâ'i' a'yân	وَقَائع أعْيان	individual circumstances
waqeedh	وَقِيذ	game animal killed by a violent blow
waqf	وَقْف	trust; inalienable endowment
wârith	وارِث	a family member receiving a share of inheritance
waṣiy	وَصِيّ	executor of the bequests
waṣiyah	وَصِيَّة	a verbal noun used to refer to the act of bequeathing and the bequeathed property itself
wasq (pl. *awsuq*)	وَسْق	a unit of measurement which is equivalent to sixty *ṣâ',* or about 150-180 liters
wilâyah	وَلايَة	guardianship
wilâyah 'âmmah	وِلايَة عَامَة	general custody of a child

wilâyah mâliyah	وِلايَة مَالِيَّة	financial custody of a child
witr	وِتْر	*lit.* an odd number: odd-numbered supererogatory prayer, to be prayed any time after the evening (*'ishâ'*) prayer and before the call for the dawn prayer
wuḍoo'	وُضوء	ablution required before prayer
y		
yuwakkil	يُوَكِّل	authorizes
z		
zakat (*zakât* or *zakâh*)	زَكَاة	obligatory charity: an 'alms tax' on wealth payable by Muslims
zakat *al-fiṭr*	زَكَاة الفِطْر	obligatory charity at the end of the fast of Ramadan
Zamzam	زَمْزَم	the blessed spring of water that Allah caused to gush out at baby Ismâ'eel's feet; located near the Kaaba
zawâj	زَوَاج	marriage
zawâl	زَوال	when the sun passes westward beyond its meridian
zinâ	زِنَا	fornication; adultery

Conclusion

The Sharia, based on the holy revelation (the Qur'an and Sunnah), sets out the way for believers to sustain a devotional relationship with their Creator and to treat His creation with justice and graciousness. In *'Umdat al-Fiqh*, Imam Ibn Qudâmah has produced a valuable resource by summarizing all the rules according to the Ḥanbali school; in these volumes, I have translated his authoritative manual and written a commentary on it. My commentary includes the views of the other schools of fiqh where warranted, and it addresses some contemporary issues, particularly those pertaining to Muslims living as minorities in non-Muslim societies. I augmented it with proofs from the revelation, as well as rational arguments, and expounded on some of the wisdoms of the legislation. Moreover, I used symbols and bullet points, as well as charts, tables, and graphs for simplification. This, I hope, will allow for the book to be utilized with ease and referred to as a primary source of fiqh.

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