

كِتَابُ فُرُوعِ الْفِقْهِ الْحَنْبَلِيِّ

"This particular translation is very timely as we are witnessing a resurgence in the study of the madhhab traditions, with the hearts of people drawn toward the authenticity and richness contained in the classical Islamic tradition."

Dr. Mustafa Baig

Lecturer in Islamic Studies, University of Exeter

This book is a translation of Yūsuf b. 'Abd al-Hādī's (d. 909/1503) Ḥanbalī law manual, *Kitāb furū' al-fiqh*. The purpose of this rendition is to present the main aspects of Islamic law in a simple and modern manner. The manual at hand is considered to be the shortest law manual in the Ḥanbalī school. The translation covers the articles of law pertaining to the aspects of worship (*ibādāt*) and social dealings (*mu'āmalāt*). The appendix contains a translation of the chapters of fasting and devotional seclusion from Ibn Qudāma's (d. 620/1223) Ḥanbalī law manual, *al-Muqni'*. A rendition of Ibn 'Aqīl's (d. 513/1119) treatise on Islamic manners, *Fuṣūl al-ādāb wa makārim al-akhlāq al-mashrū'a*, has been included to compliment the articles of law.

Jewel Jalil has carried out his foundational Arabic and Islamic studies in England and Yemen. He has a Masters in Islamic Studies from SOAS, University of London. Currently he is pursuing a PhD in Arab and Islamic Studies, focusing on the Ḥanbalī school's early consolidation.

An Epitome of Ḥanbalī Substantive Law - Yūsuf b. 'Abd al-Hādī al-Ḥanbalī

An Epitome of Ḥanbalī Substantive Law



Yūsuf b. 'Abd al-Hādī al-Ḥanbalī (d. 909/1503)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

“The house of al-Arḡam is the house of Islām”

Al-Ḥākīm (d.403h.) in *al-Mustadrak ‘ala al-Ṣaḥīḥayn* (6185)

An Epitome of
Ḥanbalī Substantive Law



Yūsuf b. ‘Abd al-Hādī al-Ḥanbalī (d. 909/1503)

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Translated and Introduced by Jewel Jalil

Foreword by Dr. Mustafa Baig

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An Epitome of
ḤANBALĪ
SUBSTANTIVE LAW

Yūsuf b. ‘Abd al-Hādī al-Ḥanbalī (d. 909/1503)

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First of all, I must thank Allāh who made it possible for me to complete this translation. The road to rendering this legal manual began some five years ago during my stay in Yemen. I am indebted to my teacher, Shaykh Abū Zura‘ Mīthāq al-‘Adanī, for introducing to me this concise Ḥanbalī manual, which we studied over the course of a year. I started translating the manual during the course of our study and completed it around March 2011. Upon my return to the UK, I taught the manual to a small group of English speaking students using my translation. While teaching, I realised the translation required a lot of refining, so I decided to edit the work. A work of this kind is bound to have errors in it; some will be questions of interpretation, others will be mistakes. I am alone responsible for these.

I would like to especially thank Dr. Mustafa Baig for reviewing the translation and writing the foreword. I am also grateful to my good friend, Alomgir Ali, for providing me a better copy of the manual, which I used for editing my initial translation. I am also obliged to him for introducing me to the world of Islamic law and the Ḥanbalī school over a decade ago. I am very grateful to my two companions Mustafa Malik and A. Ullah, without whose encouragement and support I could not have produced this translation. Also my friend, Parvez Ahmed, for proof reading the script and gifting me a copy of

Ibn 'Aqīl's essay on Islamic manners, which has been rendered and added to this work.

Finally, I would like to express my gratitude to my family, especially my wife Shireen Akhtar, for the constant support and admirable patience throughout my studies. My siblings Jamal Jalil, Sabina Jalil and Minufa Khatun, for encouraging me to visit Yemen and being there for me during my difficult times. My children Yahya, Safiyya, and Zakariya, for always keeping a smile on my face. I am forever indebted to father, Abdul Jalil, and my late mother, Kulsum Jalil, who continues to be an inspiration for me, to whom I dedicate this work.

Jewel Jalil

London, UK

September 2017

Foreword

All praise belongs to Allāh and may copious blessings and peace be upon our beloved Prophet Muḥammad, his family and his companions. The Prophet (peace be upon him and his family) said, “If Allāh wants good for a person, He gives him deep understanding of the religion.”

The study of Islamic law has great virtues and it is a prerequisite to perform acts of worship and engage in social dealings properly. Ibn ‘Abd al-Hādī’s law manual, *Kitāb furū‘ al-fiqh* is an introductory book in Islamic law for readers without substantial background in the field. The manual provides a general overview of Islamic law covering a vast range of subjects that are typically only covered in longer compilations. A number of features makes Ibn ‘Abd al-Hādī’s manual stand out from other concise law manuals. The work is considered to be the shortest law manual in the Ḥanbalī school. The author has presented the content of his book in a systematic manner that is rare, enabling the reader to understand the relationship between the topics and its related chapters. Despite being concise, the author managed to include most of the topics of Islamic law (albeit briefly, as is the aim of the book). The manual has been the subject of some commentaries over the years.

This particular translation is very timely as we are witnessing a re-

surge in the study of the *madhhab* traditions, with the hearts of people drawn toward the authenticity and richness contained in the classical Islamic tradition. This issue is particularly acute—and hence making the present work more pertinent—in the case of the Ḥanbalī school, due to a need to reclaim and recover the *madhhab* that might otherwise have become skewed as a result of the dominance of certain regions assumed to be representing the Ḥanbalī school. A work in *furū'* precisely serves that function, in that it seeks to express the authoritative and representative (*mu'tamad*) positions of the school. Therefore, a work of this kind is particularly useful as a reference point as well as for (introductory) teaching purposes if one wishes to be reliably informed about the actual views of the Ḥanbalī school on a particular issue.

Jewel Jalil's translation of *Kitāb furū' al-fiqh* (*An epitome of Ḥanbalī substantive law*) will allow English readers to access a classical work of the Ḥanbalī school. He is well placed to undertake this translation (and to provide useful explanatory comments) having studied, as part of his Islamic studies, Ḥanbalī *fiqh* for a number of years in the UK and Yemen. He is now pursuing a PhD specialising in the development and consolidation of the early Ḥanbalī school—may Allāh grant him *tawfiq* from His unbounded benevolence.

The translation includes some introductory material in relation to Islamic law as well as a useful appendix and an epistle on Islamic manners. The language employed in the translation has been kept simple and modern (rather than archaic) to make it accessible to a wider-speaking English audience – law student or otherwise.

We ask Allāh to make us among those upon whom His favour is and enable us to correctly understand His religion. May Allāh reward abundantly the author, the translator, the publishers, and the readers

Introduction

of this manual.

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Translator's Introduction

Translations and law manuals

Translation is a process of changing the original written text (the source text or ST) in the original verbal language (the source language or SL) into a written text (the target text or TT) in a different verbal language (the target language or TL). In short, it is rendering the meaning of a text into another language in the way the author intended the text.¹ Therefore, it is incumbent to fully comprehend the ST for the correct application of the TL syntax and lexis. Inadequate understanding of the ST brings about errors pertaining to syntax and grammar in the TL. Thus, thorough research is required to fully understand the ST and become acquainted with the subject matter. According to Nida, the 'basic requirements' of a translation must consist of four elements. Firstly, it must make sense. Secondly, it must convey the spirit and manner of the original. Thirdly, it must have a natural and easy form of expression. Fourthly, it must produce a similar response.²

Translators take different positions in portraying a specific text into

1 Paul Newmark, *A Textbook of Translation* (Hertfordshire: Prentice Hall International Ltd, 1998), 5.

2 Basil Hatim, *Discourse and the Translator* (New York: Longman, 1990), 16.

English; some prefer ‘free translations’ over ‘literal translations’ while others prefer ‘translations with commentaries.’³ The three different styles of translations have their merits and their shortfalls. Translators have also disputed whether a legal text should be translated literally or contextually owing to its sensitive nature.⁴ Those who preferred literal translation argued that legal texts are complicated as a whole and authoritative in their nature. Therefore vagueness must be avoided in the rendition and thus a literal equivalence should be opted for. Proponents of this methodology also stress on the importance of fidelity in translation of law,⁵ thus they argue that a literal equivalence is the preferred choice for legal transaction. It is indisputable that the TT must be precise and accurate, however, owing to the nature of the Arabic ST, a literal translation focusing on lexical equivalence does not always bring about a successful outcome.

Over the recent years a number of Islamic law manuals have been rendered into English from the Sunnī law schools. The process of rendering Islamic law manuals into English traces back as far as the eighteenth century.⁶ Despite the brevity of Ḥanbalī law school in Europe and America, a number of manuals have been translated into English. Dr. Anas Khalid carried out a full-annotated translation of al-Khiraqī’s manual, *Mukhtaṣar fī al-fiqh*. The translation appeared in 1992 as a PhD thesis. Muhtar Holland’s rendition of Ibn Qudāma’s primer ‘*Umdat al-fiqh*’ was published in 2009. Holland’s rendition, *The*

3 Hatim, *Discourse*, 36.

4 Susan Sarcevic, *New Approach to Legal Translation* (The Hague: Kluwer Law International, 1997), 23.

5 Rafat Alwazna, *Translating Ḥanbalī Shari‘a code from Arabic to English* (Saarbrücken: Lambert Academic Publishing, 2013), 262.

6 Imran Nyazee, *The Distinguished Jurist’s Primer* (Reading: Garnet, 1994), vol.1 [Introduction].

Mainstay Concerning Jurisprudence is very commendable, but occasionally the language and choice of words employed in the translation made the text challenging to understand. Readers who are unfamiliar with substantive law and legal terminologies may find this particular rendition difficult; nevertheless it is a valuable translation. Dr. Hatem al-Haj's rendition of '*Umdat al-fiqh*' was published in 2011 with a brief commentary; only the first half of the manual was translated. The language and the choice of words used were simple and straightforward. The inclusion of the parallel Arabic text, useful notes, illustrations, diagrams, and charts made it easy to understand the text. However, the constant Arabic transliterations, extended annotations, and the frequent wedging of parenthetical interpolations into the text could have been avoided in the translation for a better flow.

Concise law manuals were generally authored for people aspiring to be jurists and judges. Concise law manuals do not normally include passages of the Qur'ān or Prophetic traditions as supportive material for the legal opinions in the manuals. However, it is important to keep in mind that the phrases in the manuals were based on revealed sources and rational arguments. *Mukhatṣar fī al-fiqh* was the first abridged Ḥanbalī manual, which al-Khiraqī (d. 324/935) authored towards the end part of his life.⁷ Ibn Qudāma (d. 620/1223) in the thirteenth century authored a series of law manuals, as a curriculum, to progressively develop Ḥanbalī law students. The manuals he authored differed in its levels, ranging from beginner to scholarly level. The later Ḥanbalī jurists followed in the footsteps of Ibn Qudāma and authored concise manuals; some of these manuals became more celebrated than others. The celebrated manuals include: '*Umdat al-fiqh*

⁷ Bakr b. Abū Zayd, *Al-Madkhal al-mufaṣṣal* (Riyadh: Dār al-Āsima, 1997), vol.1 p.687.

of Ibn Qudāma, *Zād al-mustaḥṣin* of al-Ḥajjāwī (d. 968/1560), *Dalīl al-tālib* of Marʿī b. Yūsuf (d. 1033/1623) and *Akhṣar al-mukhtaṣarāt* of Ibn Balbān (d. 1083/1672).

Ibn ʿAbd al-Hādī's *Kitāb furūʿ al-fiqh* is among the manuals that did not receive attention. This is probably because he did not write it as separate law manual; the content of this book originally appeared as a chapter in a much larger work of his. This manual is a much simpler text than the aforementioned; it primarily states the well-known Ḥanbalī opinions, without indulging into difference of opinions too much. The author on some occasions differed with the mainstream Ḥanbalī opinions owing to his diligent enquiry. The manual encompasses topics that are normally found in long compilations. However, owing to the succinctness of the manual, the author omitted some key points and pre-requisites for certain topics. For some chapters, only definitions were given, without any details about the fundamental issues connected to these chapters. The manual serves as a basic primer, and gives a holistic overview on the contents of Islamic law. The language employed by the author has been kept concise so that the rulings contained within the manual can be memorised effortlessly. It is hoped that this English translation will be in the spirit of the original Arabic, producing a similar response.

Methodology and issues associated with the translation

The objective of this translation is to render the Arabic text into English, which will be clear and concise for the English speaker. Bearing in mind, the 'basic requirements' of a translation, the rendition will focus on conveying the meanings premeditated by the author, while trying to maintain as much as possible the lexical, grammatical, and syntactical aspects of it in the translation. While keeping the translation accurate and precise, the language employed in the translation

has been made simple and modern to make it accessible to everyone who speaks English – law student or otherwise. The present translation is simple and straightforward, and it is hoped that the legal language does not descend to an unfitting level.

The translation was based on its first published Arabic edition, which was issued by Maktabat al-Rushd in Riyadh in 2007, and edited by Dr. 'Abd al-Salām al-Shuwai'ir. In order to convey the premeditated meanings, the translation relied upon well-known commentaries. Two particular commentaries were given special attention to: *al-Sharḥ al-mumtī*' of Ibn al-'Uthaymīn (d. 1421/2001) an explanation of al-Ḥajjāwī's (d. 968/1560) *Zād al-mustaqni*' and 'Abdullāh b. Jibrīn's (d. 1430/2009) audio commentary of *Kitāb furū' al-fiqh*. The different commentaries were cited to fully understand the ST, to become acquainted with the subject matter, and to evaluate the contextual translation at each stage. This was done because accuracy in legal translation is imperative. The goal of legal translation is to preserve the meaning of the original,⁸ thus such pre-translation procedures were applied. The correct meanings were achieved by understanding the words fully in its correct context through the commentaries. Previous related translations were occasionally consulted for aiding the current translation, including Nyazee's *The Distinguished Jurist's Primer*, al-Haj's *Fiqh of Worship*, and Keller's *Reliance of the Traveller*.

Arabic legal texts are rich in liturgical and legal expressions, which can be absent in the English language owing to the two languages being diverse linguistically and culturally.⁹ Owing to the cultural, lexical, and grammatical differences between the Arabic and English language

8 Sarcevic, *New Approach*, 23.

9 Hussein Abdul-Raof, *Cultural Aspects in Qur'an Translation* (Clevedon: Multilingual Matters Ltd, 2005), 172.

complications occurred during the translation. The constructions of Arabic and English sentences are different and this is more so the case in legal texts. This particular issue brought challenges to the translation. Throughout the translation, to maintain the grammatical rules of English while trying to keep the TT as close as possible to the Arabic, it was necessary to restructure parts of the text entirely or partially. The restructuring of the text gave rise to additional problems which needed to be tackled, such as translation loss, problems related to pronominal references, and connectives. Challenges also stemmed from managing substitutions, additions, and omissions in translation, which were unavoidable.

Generally, the rendition follows the system of transliteration used in *The Encyclopaedia of Islam*. Arabic terminologies that did not have an English equivalent, which are few in number – have not been translated. For such terminologies, the transliteration of the terms has been written in italic, however the meanings of the terms have been explained in the annotations. Arabic words and expressions that initially appear in the translation have been written in italic followed by its translation between brackets, and thereafter, only the Arabic transliterations appear. The transliterations do not differentiate between *alif-lām* before sun and *alif-lām* before moon letters, hence the definite article has been written as ‘*al-*’ throughout. The abbreviation ‘b.’ has been employed after the mention of a forename, whether it follows the name of the individual’s actual father or otherwise. It does not distinguish between names that follow the actual father’s name (e.g. Anas bin Mālik) and names that do not (e.g. Aḥmad ibn Ḥanbal).

The years have been cited firstly according to the Hijrī calendar, then according to the Gregorian calendar; e.g., (d. 505/1111), the year which al-Ghazālī died. Glorifications and invocations after certain names have not been included in the rendition to maintain the flow

of the script. The editor's format and layout of the Arabic text is very commendable, but I did not limit myself to the editor's format while presenting the English translation, although I tried my best to maintain its foundation.

The Chicago notes and referencing system has been used. Throughout the translation, footnotes have been employed to assist the reader to understand the text easily. The purpose of the annotations is neither to present a commentary to the manual nor to clarify the official opinions of the Ḥanbalī school. The chief purpose of this rendition is to present Ibn 'Abd al-Hādī's manual. Hence, the notes that appear at the bottom of the translated text have been kept short and minimal. The wedging of parenthetical interpolations into the text has also been kept very minimal to prevent the reader from being sidetracked. Editor's notes and remarks that were believed to offer additional benefit to the reader have been translated and inserted in the annotations.

Chronology of the Ḥanbalī school

- 780 Birth of Aḥmad in Bagdad, the epicenter of the Ḥanbalī school.
- 833 The inquisition of Aḥmad regarding the Qur'ān being created.
- 855 Death of Aḥmad b. Ḥanbal.
- 845-1012 Era of the early-generation Ḥanbalī scholars. The transmission and growth of the Ḥanbalī school occurred during this era. This era witnessed the recording and accumulation of Aḥmad's opinions as well as the formulation of abridged law manuals.
- 1012-1479 Era of the mid-generation Ḥanbalī scholars. The spread of the Ḥanbalī school occurred from al-Shām to Egypt.
- 1055 Abū Ya' lā al-Farrā': the first Ḥanbalī appointed to the Judiciary system.
- 1187 Ibn Qudāma participates with Ṣalāḥ al-Dīn al-'Ayyūbī to liberate Jerusalem from the Crusaders.
- 1263 Birth of Ibn Taymiyya.
- 1479 Era of the later-generation Ḥanbalī scholars. During this period, approximately one hundred Ḥanbalī jurists authored around five hundred works on substantive law.
- 1503 Death of Ibn 'Abd al-Hādī.

- 1740 The Ḥanbalī school begins to spread from Najd to the other regions of Saudi Arabia under Muḥammad b. 'Abd al-Wahhāb's propagation, which was derived from the Ḥanbalī doctrine.
- 1897 Walter Patton produces the first Western work on Aḥmad b. Ḥanbal as PhD thesis, *Aḥmed ibn Ḥanbal and the Mihna* (Leiden University).
- 1921 Ibn Qāsim initiates the voluminous compilation of the legal verdicts of Ibn Taymiyya.
- 1927 King 'Abd al-'Azīz issues a proclamation stating that the Ḥanbalī doctrine should be uniformly applied in Saudi Courts.
- 1970 Dr. Sulaimān's PhD thesis *The role of Ibn Qudāma in Ḥanbalī Jurisprudence* (University of London).
- 1992 Dr. Anas Khalid's English translation of *Mukhatṣar fī al-fiqh*.
- 1997 Ḥanbalī school is the official school of law in Saudi Arabia and Qatar.

Principles of Aḥmad b. Ḥanbal's law

The Ḥanbalī scholars have written at length about the sources Aḥmad b. Ḥanbal used to infer his legal verdicts (*fatāwā*). Aḥmad b. Ḥanbal himself did not author any documented work on legal theory (*uṣūl al-fiqh*), that is, the science which deals with the sources of Islamic law, its order of priority, and the procedures by which substantive laws (*fiqh*) are inferred. The Ḥanbalī jurists filled this gap and wrote on the topic; one of the earliest jurists to write on the subject was Ibn Ḥāmid (d. 403/1011).¹⁰ By studying and examining Aḥmad b. Ḥanbal's responsa collections (*masā'il*), the scholars generally agreed that he used five primary sources to issue his legal verdicts.¹¹ Ibn al-Qayyim (d. 751/1350) and Ibn Badrān (d. 1346/1927) listed the primary sources:¹²

1. Text of the Qur'ān and the Prophetic traditions.

If textual evidence were available, Aḥmad would base the le-

10 Abū Zayd, *Al-Madkhal al-mufaṣṣal*, vol.1 p.604.

11 Abdul Hakim al-Matroudi, *The Ḥanbalī School of Law and Ibn Taymiyyah* (New York, Routledge, 2006), 32.

12 'Abd al-Qādir b. Badrān, *Al-Madkhal*, (Damascus: Mu'assasat al-Risāla, 2011), 113-119. This categorisation mentioned by Ibn Badrān is of Ibn al-Qayyim (d. 751/1350).

gal verdicts on the Qur'ān and the Prophetic traditions, and would not opt for anything else.

2. Legal verdicts of the Companions, which they did not differ upon.

In absence of the first source, Aḥmad would resort to the legal verdicts of the Companions of the Prophet. He would not base his legal verdicts upon practices (*'amal*), opinions or upon analogy (*qiyās*) if legal verdicts of the Companions were available.

3. Legal verdicts of the Companions, which they differed upon.

Aḥmad would select one of their opinions, which he regarded to be closest to the Qur'ān and the Prophetic traditions. If the closest opinion were unclear to him, he would transmit the various opinions of the Companions.

4. Weakly attested Prophetic traditions and *mursal* reports.¹³

5. Analogy.¹⁴

13 A narration attributed to Prophet without naming the intermediating Companion. It is worth noting that during Aḥmad b. Ḥanbal's time, the Prophetic traditions were divided only into two main categories in terms of soundness: authentic (*ṣaḥīḥ*) and weak (*ḍa'īf*). The latter category varied in its strength of soundness.

14 Ibn Badrān, *al-Madkhal*, 113-119. Ibn al-Qayyim mentioned that Aḥmad b. Ḥanbal used analogy out of necessity.

Determining the official opinions of the Ḥanbalī school

Ḥanbalī jurists such as Ibn Ḥāmid, Abū Ya‘lā (d. 526/1131), Ibn Qudāma, al-Mardāwī (d. 885/1480), and others attempted to establish the “correct” positions for Aḥmad’s jurisprudence. To ascertain Aḥmad’s “correct” juristic position for a particular issue, the participants must be definite about Aḥmad’s closing opinion (i.e. the juristic opinion he did not change his mind about later). This can be problematic because the reports in the *Masā’il* and *Jāmi’* collections were not chronologically arranged, and perhaps for this reason al-Ṭūfī (d. 716/1316) was inclined to say:

It is improper for us to be certain about an Imām’s position until we know his final position before he died. This is ascertained from his works or what has been narrated from him close to his death. Its impossible for us to know this regarding Aḥmad. As for the critical revisions of Aḥmad’s positions, they are in fact, diligent enquiries of Aḥmad’s associates, who came after him such as Ibn Ḥāmid, Abū Ya‘lā and later jurists like Ibn Qudāma.¹⁵

Nevertheless, certain revision methods (*tarājīḥ*) have been put in

15 Najm al-Dīn b. al-Ṭūfī, 2011. *Sharḥ mukhtaṣar al-rawḍat* (Damascus: Mu’assasat al-Risāla, 2011), vol.3 p.627.

place to determine the correct/official positions of the school. That is, if there were numerous opinions from Aḥmad for a legal issue, the Ḥanbalī scholars opted for one of these opinions following the certain revision methods. The correct opinion can be achieved through three different techniques: by analysing the reporters of Aḥmad's responsa; by selecting the preferred opinions of the Ḥanbalī masters (*shuyūkh al-madhhab*); and by examining the reliable Ḥanbalī manuals. The last method (*tarjih bi-l-kutub*) is similar to the second method; it follows a type of tier system (according to each era) to determine the official opinion. In general, to establish the official positions, some scholars opted for the following manuals from the mid-generation era:

- (1) The agreement between *al-Muḥarrar* and *al-Muqni'*. If the two manuals differed on a legal opinion, the official position will be what Ibn Qudāma opted for in his manual, *al-Kāfi*.
- (2) The opinions which Abū al-Khaṭṭāb (d. 510/1116) opted for in his manual, *Ru'ūs al-masā'il*.
- (3) The opinions which Ibn Qudāma opted for in his manual, *al-Mughnī*.
- (4) The opinions which al-Majd (d. 652/1254) opted for in his work, *Sharḥ al-hidāya*.

From the later-generation manuals, the following were selected to determine the official positions:

The opinions in *al-Iqnā'* and *al-Muntahā*. If the two manuals differed on a matter, the official position will be what's in the manual, *Ghāyat al-muntahā*.¹⁶

¹⁶ Abū Zayd, *Al-Madkhal al-mufaṣṣal*, vol.1 p.295; vol.1 p.293-320.

The Five Legal Rulings

The action of a person who is deemed legally responsible under Islamic law enters into one of the five legal rulings (*aḥkām*). The legal theorists went into great depths in clarifying the premeditated meanings and associated issues surrounding these five legal rulings. In this section, a summary of Ibn al-‘Uthaymīn’s (d. 1421/2001) description¹⁷ of the five legal rulings has been presented.

1. *Wājib* (obligatory)

It is something the Lawgiver has commanded to do without a choice. The person, who performs the obligatory act out of obedience to Allāh, is rewarded, and the person who leaves it is liable for punishment.

2. *Mandūb* (recommended/commendable)

It is something the Lawgiver has commanded to with a choice. The person, who performs the recommended act out of obedience to Allāh, is rewarded, and the person who leaves it is not liable for punishment.

3. *Ḥarām* (prohibited/impermissible)

¹⁷ Muḥammad b. al-‘Uthaymīn, *Al-Uṣūl min ‘ilm al-uṣūl* (Cairo: Dār ‘Umar b. Khaṭṭāb, 2006), 8-10.

It is something the Lawgiver has forbidden from doing, which must be avoided. The person, who leaves the prohibited act out of obedience to Allāh, is rewarded, and the person who falls into it is liable for punishment.

4. ***Makrūh*** (detested/reprehensible)

It is something the Lawgiver has forbidden from doing but left it optional. The person, who leaves the disliked act out of obedience to Allāh, is rewarded, and the person who falls into it is not liable for punishment.

5. ***Mubāh*** (permissible)

It is something, which is not connected to a command or a prohibition in and of itself. As long as the action is deemed permissible, the concept of reward or punishment will not result from the act.

Encouragement to study Islamic law

The knowledge of Islamic law has numerous virtues. It is also required to perform devotional acts of worship correctly and carry out social dealings properly. The scholars have compiled works, which specifically deal with the merits of learning and teaching Islamic knowledge. In this section, a few traditions along with its commentaries have been included to shed some light on the merits of learning Islamic law.

Al-Bukhārī (d. 256/870) reported: Sa'īd narrated to us, he said: Ibn Wahb narrated to us from Yūnus who narrated from Ibn Shihāb, he said: Ḥumaid b. 'Abd al-Raḥmān said: I heard Mu'āwiya preaching and he said: I heard the Prophet saying:

If Allāh wants good for a person, He gives him understanding of the religion.

Al-Nawawī (d. 676/1277) understood this narration to indicate the excellence of knowledge and the excellence of understanding religious matters. The narration encourages people to understand the

religion,¹⁸ which includes knowing the legal rulings of the religion.¹⁹ While explaining this ḥadīth, Ibn Ḥajar (d. 856/1452) mentioned:

Its implied from the ḥadīth: if a person does not try to understand the religion, then the person will be deprived of much good. Therefore, an individual who did not acquire any knowledge related to the foundations of Islam and its branches will be included in this category of people.²⁰

In his lengthy discussion, Ibn al-'Uthaymīn explained that motives behind acquiring religious knowledge are very important; he also discussed the importance of implementing knowledge:

If Allāh knows there is some goodness in a person, He will want good for that person and consequently, He will grant him understanding of Islam, which include His laws and regulations. Deep understanding does not mean mere accumulation of knowledge, but also its implementation.²¹

In a different narration, Ibn 'Adī (d. 365/975) reported: Aḥmad b. Ḥafṣ narrated to us, he said: Suwaid narrated to us, he said: Al-Walīd b. Muḥammad al-Mūqirī narrated to us from Thawr b. Yazīd, who narrated from Khālīd b. Ma'dān on the authority of Mu'āwiya, who said that the Prophet said:

18 Muḥī al-Dīn al-Nawawī, *Al-Minhāj* (Beirut: Dār al-Ma'rifa, 2009), vol.7 p.127.

19 Muṣṭafā al-Bughā, *Nuzhat al-muttaqīn* (Damascus: Dār al-Muṣṭafā, 2006), vol.2 p.188.

20 Aḥmad b. Ḥajar al-Asqalānī, *Fath al-bārī bi-sharḥ ṣaḥīḥ al-bukhārī* (Riyadh: Dār al-Ṭayyiba, 2011), vol.1 p.290.

21 Muḥammad b. al-'Uthaymīn, *Sharḥ riyāḍ al-ṣālīḥīn* (Riyadh: Madār al-Waṭn, 2006), vol.5 p.422.

If Allāh wants good for a person, He gives him understanding of the religion. Whoever does not try to understand the religion, Allāh does not care about such an individual.²²

Ibn Ḥajar and others considered this narration to be *ḍaīf* (weak) but considered the meaning of the latter part of the ḥadīth to be correct. This is because the person who does not acquaint himself with the matters of Islam, will not be considered as a lawyer or even a law student and thus, divine goodness will be deprived from such an individual.

Al-Tirmidhī (d. 279/892) reported: Muḥammad b. Ismā‘īl narrated to us, he said: Ibrāhīm b. Mūsā informed us, he said: Al-Walīd, the son of Muslim informed us, he said: Rawḥ b. Janāḥ narrated from Mujāhid: Ibn ‘Abbās said that the Prophet said:

A well-versed jurist is more powerful against the Satan than a thousand regular worshippers.²³

Al-Mubārakfūrī (d. 1353/1934) clarified why a well-versed jurist is more powerful against the Satan compared to regular worshippers:

The person well versed in law does not accept any of the deceptions of the Satan. Furthermore, the person well versed in law commands people to goodness, which is opposite of what Satan commands people to do. The saying in the ḥadīth, ‘than a thousand’ – numerousness is the intended for stating that particular figure. So, every time the Satan opens up a door

22 Abū Aḥmad b. ‘Adī al-Jurjānī, *Al-Kāmil fī ḍu‘afā’ al-rijāl* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), vol.8 p.351.

23 Al-Tirmidhī (2681) and others. This narration was graded as *ḥasan* (fair) by al-Tirmidhī

of passion and stimulates desires in the hearts of people, the well-versed jurist clarifies the plots and traps of the Satan for them. The jurist blocks off these doors, and makes the Satan's plot unsuccessful. This is contrary to the regular worshipper, who may be engaged and busy in worship while in the snares of Satan, and does not even acknowledge.²⁴

What we learn from the narrations is that when a person tries to understand Islam, including its laws, it shows that Allāh wants well for the individual. The person who attains religious knowledge, understands it, and implements it, is considered to be a successful person in the sight of Allāh. The accomplishment of Islamic knowledge is achieved through divine assistance as well as hard work. The classical scholars considered it essential to have righteous intentions to study law. A well-versed jurist is believed to be more austere against the Satan than a normal worshipper. Therefore, an educated person will naturally be more honorable in the sight of Allāh than an ignorant person.

Jewel Jalil

24 Muḥammad al-Mubārakfūrī, *Tuḥfat al-aḥwadhī* (Beirut: Dār al-Kutub al-'Ilmiyya, 2010), vol.7 p.450.

The Author

He is Yūsuf b. al-Ḥasan b. Aḥmad b. al-Ḥasan b. Aḥmad b. ‘Abd al-Hādī al-Ṣāliḥī al-Dimishqī al-Ḥanbalī. His lineage traces back to ‘Umar b. al-Khaṭṭāb, so he is a Quraishī from the tribe of Banī ‘Adī. His agnomens include: Abū al-Maḥāsin, Jamāl al-Dīn, and Ibn al-Ma-brad. Ibn ‘Abd al-Hādī was born in the year 840/1436 in Ṣāliḥiyya, Damascus.

Yūsuf b. ‘Abd al-Hādī excelled in his studies under the instruction of numerous scholars and gained licenses to teach. He authored three books regarding his teachers and his studies. His well-known teachers especially in substantive law include the following three:

Taqī al-Dīn Ibn Qundus al-Ṣāliḥī (d. 861/1456), the author of:

- *Ḥāshīyat al-furū‘*
- *Ḥāshīyat al-muḥarrar*

Taqī al-Dīn b. al-Jurā‘ī al-Dimishqī (d. 883/1478), the author of:

- *Ghāyat al-maṭlab fī ma‘rifat al-madhhab*

‘Alā’ al-Dīn al-Mardāwī (d. 885/1480), the author of:

- *Al-Inṣāf fī ma‘rifat al-rājiḥ min al-khilāf*

- *Al-Tanqīh al-mushbi' fī tahrīr ahkām al-muqni'*
- *Taṣhīh al-furū'*

These three personalities were the forerunners in substantive law during their era; Ibn 'Abd al-Ḥādī was fortunate enough to study with them. Ibn 'Abd al-Ḥādī during his lifetime wrote numerous works in diverse subjects and sciences. His student, Ibn Ṭūlūn (d. 944/1537), regarding his writings mentioned:

He devoted himself to writing in numerous subjects until it got to the point that the content list of subjects became a volume! In his book, he arranged the various subjects in its alphabetical order.

Kamāl al-Ghazzī (d. 1214/1799) regarding Ibn 'Abd al-Ḥādī said:

He has authored works, which exceed more than four hundred volumes. The majority of his writings are in the sciences of ḥadīth and the Prophetic Sunna.

Yūsuf b. 'Abd al-Ḥādī passed away on Monday 16th of Muḥarram in the year 909/1503. He was buried at Ṣaḥḥ Qāsiyūn and his funeral was attended by a multitude of people. May Allāh forgive him and have mercy on him.

The Manual

Yūsuf b. ‘Abd al-Hādī wrote a larger work known as *Jāmi‘ al-‘ulūm*. He included a lot of topics in the work; it included topics on Islamic law, Arabic language, natural sciences, medicine, and much more. The author summarised the work and retitled it, *Zubad al-‘ulūm wa-ṣāhib al-manṭūq wa-l-mafhūm*. The summerised version included thirty different topics. In his introduction to the work, Ibn ‘Abd al-Hādī wrote:

Praise belongs to Allāh for His excellence. I bare witness there is none worthy of worship except Allāh and I bare witness Muḥammad is His servant and messenger. Peace and blessing be upon him, his family, and his companions.

When I wrote my book *Jāmi‘ al-‘ulūm*, I included all the prevailing topics. Upon inspection, I realised it was too voluminous in size and far too difficult for the students of our era. I decided to compile a small-summerised book, which the students can take from what they require. I sought Allāh’s aid and relied on Him to achieve this goal; I began to recompile without citing any referential materials.

Thereafter, Ibn ‘Abd al-Hādī started to mention the title headings for the different subjects, beginning with belief then moving on to substantive law etc.

When I came across the aforementioned work, I noticed Yūsuf b. 'Abd al-Hādī mastered the law section in particular. Because of this reason I wanted to publish it with some remarks and annotations. The following points are the primary features of the manual for its publication:

Firstly, to the best of my knowledge, it is considered to be the shortest manual in the Ḥanbalī school; its manuscript just covers sixteen pages (seven folios). The shortness of the manual makes it suitable to study over a short period under the supervision of teachers.

Secondly, the author adopts a new methodology for arranging and dividing the chapters in the manual. The author incorporated and unified legal issues under each chapter. This type of arrangement is probably more suitable for learning the chapter of substantive law and its sub-issues. The style of the author is rare to find in the typical abridged Ḥanbalī manuals.

Thirdly, the work includes most of the major-chapters of substantive law – even the chapter of inheritance and the chapters of food and drink! However, it has left out some chapters, such as the chapter of menstruation, the chapter of calling to prayers, the different categories of business partnerships, the chapter of preemption, as well as others. The omission of these chapters is probably because of the manual's extreme succinct nature. Therefore, him missing out these chapters is understandable. Finally, the words and sentences used therein are simple and contain very few pronouns.

I decided to publish the law section from *Zubad al-'ulūm* because publishing the entire work, with all its topics will not really benefit students. Furthermore, owing to the numerous topics it contains, a lot

Introduction

of effort will be required to edit the entire compilation.²⁵

25 Extracts from Dr. 'Abd al-Salām al-Shuwai'ir's introduction to the Arabic manual.

An epitome of
Ḥanbalī Substantive Law

The spheres of Islamic law are based on ten components: worship, social dealing, marriage, divorce, injurious crimes, legal punishments, judgeship, food, drink, and inheritance.

Worship

The acts of worship are five in number: ritual prayer, obligatory charity (*zakāt*), fasting, pilgrimage, and warfare (*jihād*).

[1] Ritual Prayer

The ritual prayer consists of seven matters: pre-requisites (*shurūt*), integrals (*arkān*), obligations (*wājibāt*), recommendations, permissible acts, detestations, and prohibitions. The pre-requisites of the ritual prayer are six in number:

1. Purification from ritual impurities

This pre-requisite encompasses three matters: the performer of the purification, the substances used for the purification, and the purification in itself along with its nullifiers.

The performer of purification is every competent person in full possession of his faculties (*mukallaf*), who is not prevented by tangible factors or legitimate impediments. The substances used for purification are purifying water and clean earth. Clean earth is used in the absence of purifying water or if using water will cause harm to the person. The purification is the minor-ritual purification, known as *wuḍūʿ* (ablution).

The *wuḍū'* consists of recommended acts:

- Mentioning the name of Allāh (*bismillāh*)
- Washing the hands three times before performing the *wuḍū'*
- Repeating the washing of the limbs twice or thrice
- Permeating water between the fingers and the beard
- Exaggerating in rinsing the mouth and snuffing water
- Cleaning the teeth
- Starting the washings from the right side

The obligatory acts of *wuḍū'* are:

- Washing of the face, arms, and feet
- Wiping over the head including the ears
- Washing the limbs in its sequential order
- Avoiding long intervals between of the acts of ablution.
- Intention

Leather socks can be wiped over while a person is in the state of minor ritual impurity. Bandages can be wiped over in the state of minor or major ritual impurity. The residential person can wipe over his leather socks for a day and a night, whereas the travelling person can wipe over his leather socks for three days and three nights, from the timing of breaking one's *wuḍū'* to the next. Wiping is established upon leather socks, which are robust in itself and completely covers the feet up to the ankles.

The major-ritual ablution (*ghusl*) consists of recommended and obligatory acts, the obligatory acts are:

- Intention

- Washing the entire body

The recommended acts of the major-ritual ablution are:

- Washing off any filth
- Performing *wuḍū'*
- Washing the body thrice
- Rubbing the body with the hands thoroughly
- Beginning the washes with the right side
- Mentioning the name of Allāh
- Running fingers through the hair to saturate it with water
- Washing the two feet in another place if the place was not paved or tiled

There are eight²⁶ nullifiers of *wuḍū'*:

- Anything exiting from the two private parts
- Repulsive excretions from other than the two private parts
- Losing consciousness unless it was due to light sleep, sitting or standing²⁷
- Touching the private parts
- Touching a woman with desire
- Eating camel meat
- Apostasy

²⁶ The author has mentioned only seven nullifiers of *wuḍū'*. The jurists consider washing the human corpse to be a nullifier of *wuḍū'*.

²⁷ Sitting and standing are connected to light sleep, so if a person slept leaning or reclining on something, it would nullify the person's *wuḍū'*.

There are six things which necessitates the major-ritual ablution:

- Ejaculation of sperm accompanied with lust and desire
- Meeting of the 'two circumcised parts' [private parts]
- A disbeliever becoming Muslim
- Menstruation
- Post-natal bleeding
- Death

[From the pre-requisites of the prayer]

2. Purification from physical impurities

This pre-requisite includes four matters: the impurities, the person removing the impurities, the removing of substances, and places from where impurities are removed.

The impurities are:

- Urine
- Excrement
- Urine and faeces of animals which are impermissible to eat
- Alcohol
- All prohibited animals that are larger than the size of a cat
- Skins of carrion, and it is not purified through tanning
- Bones of carrion

Sea animals and humans do not become physically impure upon death. The person removing the impurities is every individual who is proficient in cleaning and removing the impurities. The removing substance is purifying water; purifying water is accompanied with

clean earth for cleaning and removing impurities associated with dogs and pigs. Stones are specifically used to remove impurities after defecation. Impurities are removed from every place that is in contact with the impurity. The performer of the prayer removes impurities from his body, his clothes, and the place of his prayer.

[From the pre-requisites of the prayer]

3. The entry of prayer times

The timing of the noon prayer (*ẓhur*) commences when the sun reaches its zenith. The timing of the mid-afternoon prayer (*'asr*) follows the noon prayer; it commences when the length of an object's shadow becomes equal to the object's height. The preferred timing for praying the mid-afternoon prayer is until the length of an object's shadow equals twice as long as the object's height and thereafter, the timing of necessity enters. The timing of the sunset prayer (*maghrib*) follows the mid-afternoon prayer; it commences with the disappearance of the sun. The timing of the nightfall prayer (*'ishā'*) follows the sunset prayer; it commences with the disappearance of the red twilight. The preferable timing for the night prayer lasts until the third of the night, and thereafter the timing of necessity enters. The timing of the dawn prayer (*fajr*) follows the nightfall prayer; it begins with the 'true dawn' and lasts until sunrise.

Pronouncing the initial exclamation of 'Allāh is the greatest!' (*allāhu akbar*) before the prayer's last moments allows the prayer to be caught on time. The Friday prayer, however is only caught with the complete performance of one unit of the prayer (*raka'*).

[From the pre-requisites of the prayer]

4. Clothing body parts that are deemed blameworthy in public view

(*ʿawra*)

The *ʿawra* must be covered with something, which renders the skin imperceptible. The man's *ʿawra* is between the navel and the knees. The slave-woman's *ʿawra* is the areas of her body, which do not generally show. The free-woman's *ʿawra* is her entire body except for the face, hands and feet.

5. Facing the *Qibla*

It is a pre-requisite of the prayer except in an event of extreme fear, or when the prayer offered is a voluntary prayer, which is being performed in a vehicle whilst travelling.

6. Intention [for the particular prayer to be performed]

The intention is made simultaneously while pronouncing the initial exclamation of 'Allāh is the greatest!' in the prayer.²⁸

The integral components within the prayer are twelve:

- Standing
- The initial exclamation of 'Allāh is the greatest!'
- Recitation of *al-Fātiḥa*
- Bowing
- Rising from the bowing position and straightening up
- Prostration
- Sitting after the prostration

²⁸ It is recommended to make the intention of the prayer simultaneously. It is not an obligation and hence, it is permissible to make the intention shortly before the initial exclamation.

- Tranquility in all the aforementioned
- The final testification of faith supplication (*tashahhud*)
- Sitting for the final testification of faith supplication
- The first invocation of peace (*al-salāmu 'alaykum*)
- Doing the aforementioned in its systematic order

The obligations of the prayer are nine:²⁹

- Exalting Allāh in the bowing position (*subhān rabbī al- 'aẓīm*)
- Exalting Allāh in prostration (*subhān rabbī al-a 'lā*)
- The invocations (*sami ' allāh li-man ḥamida*) when rising from the bowing position, and (*rabbānā wa-lak al-ḥamd*) upon straightening up
- The exclamations of 'Allāh is the greatest!' except the initial one
- The first testification of faith supplication
- Sitting for the first testification of faith supplication
- Invoking prayers and blessings upon the Prophet
- The second invocation of peace

The recommended verbal actions of the prayer include: the opening supplication, seeking refuge in Allāh from the Satan, reciting *bismillāh al-rahmān al-rahīm*, exalting Allāh more than once during the bowings and the prostrations, and seeking Allāh's forgiveness between the two prostrations. Other actions include, raising the hands accordingly, placing them on the thighs while sitting etc.

The permissible actions are all matters, which are overlooked while

²⁹ The ninth obligation: to ask for Allāh's forgiveness between the two prostrations.

performing the prayers such as counting the passages of the Qur'ān, counting the number of exaltations made [using one's fingers], killing snakes, scorpions and lice etc.

The detested matters in prayers are purposeless actions and the likes, which are contrary to the prayer, however it does not render the prayer invalid; such as popping the knuckles, interlacing the fingers etc. The prohibited matters render the prayer invalid, for example excessive movements that are not from the elements of the prayer.

Categories of the Ritual Prayer

The prayer is of three categories: the obligatory, the communal obligatory, and the voluntary prayers. The obligatory prayers are the five daily prayers, which are obligatory upon Muslims who are deemed legally accountable. The five daily prayers are not obligatory upon women who suffer from menstrual and post-natal bleeding. The person who lost consciousness owing to some reason is excused for not performing the obligatory prayers. The obligatory prayers, which are a communal obligation, are as follows:

Festive prayer ('īd):

The 'īd sermon is delivered after the prayer. The timing of the two 'īd prayers begins upon sunrise and it is performed with the additional exclamations of 'Allāh is the greatest!' The 'īd exclamations are recited generally during the night of the two 'īd's. During 'īd al-*adḥā*, the 'īd exclamations are recited after every obligatory congregational prayer. This starts from 'aṣr on the day of 'Arafa, and ends on the 13th of Dhu al-Ḥijja.

Funeral prayer (*janāza*):

Four exclamations of 'Allāh is the greatest!' are made in the funeral prayer without any bowing or prostrating. After the first exclamation, *al-Fātiḥa* is read; following the second exclamation, prayers and blessings are invoked upon the Prophet; and after the third exclamation, a supplication is read for the deceased.³⁰ The funeral prayer is performed for the deceased after the process of washing, cleaning and shrouding the corpse. The corpse of a male is shrouded with three shrouds, whereas the corpse of a female is shrouded with five segments. The deceased is carried towards the cemetery in a quadratic-cyclic manner (*tarbī'a*).³¹ The deceased is buried after the funeral prayer in a deep enough grave that will prevent any foul odours from emerging.

The voluntary prayers are of different types: general prayers (*muṭlaq*) and particular prayers (*muqayyad*). The general prayers are not confined to a specific time. It is recommended to pray it at any time ex-

30 The author has not mentioned the fourth exclamation. Al-Futūḥī said: "After the fourth exclamation, the person does the invocation of peace (*al-salāmu 'alaykum*) towards his right only; no supplication is made after the fourth exclamation." Muḥammad al-Futūḥī, *Muntahā al-irādāt* (Kuwait: Ghirās, 2013), 179.

31 According to the Ḥanbalī jurists, it is recommended to carry the coffin in a quadratic-cyclic manner (*al-tarbī'a*). The person participating in carrying the coffin alternates from one corner of the coffin to another – and consequently achieves carrying the coffin from its all four corners or supports. Ibn al-'Uthaymīn explained: "The participant starts at the top-right side of the coffin then falls back to carry it from the bottom-right side of the coffin. The participant then shifts to the top-left side of the coffin and then carries it from the bottom-left side of the coffin. Thereafter, the participant can carry the coffin from whichever direction he desires." Muḥammad b. al-'Uthaymīn, *Al-Sharḥ al-mumtī'* ('Unayza: Dār Ibn al-Jawzī, 2006), vol.5 p.355.

cept in the five forbidden periods. The five forbidden timings are as follows:

- The time period from the dawn prayer until close to sunrise
- The time period from close to sunrise until the sun has fully risen
- The time period shortly before the sun reaching its zenith
- The time period after the mid-afternoon prayer until close to sunset
- The time period close to the sunset until the sun has set completely

The particular prayers are confined to specific timings for its performance. The timings are either connected with the timings of the five obligatory prayers or otherwise. The prayers that are connected with the timing of the five obligatory prayers are the regular voluntary prayers (*al-sunan al-rawātib*). As for the particular prayers that are not connected with the timings of the obligatory prayers, they are as follows:

Midmorning prayer (*ḍuhā*):

The midmorning prayer begins when the sun has risen fully over the horizon, and its timing ends just before the sun reaches its zenith.

Odd-unit night prayer (*witr*):

The timing of the last odd-unit night prayer begins after the nightfall prayer and lasts until the appearance of dawn.

Night prayer in Ramadan (*tarāwīḥ*):

It is performed in congregation during the month of Ramaḍān and

carried out between the timing of nightfall prayer and dawn.

Eclipse prayer (*kusūf*):

It is performed during solar and lunar eclipse.

Rain prayer (*istisqā'*):

The rain prayer is performed especially during times of droughts when rain is needed. It entails praying two units of prayer in congregation; a sermon is thereafter delivered.

Prostration for Qur'ān recital (*sujūd al-tilāwa*):

A prostration is made for reciting the appropriate passages of the Qur'ān. Reaching the appropriate passages, the person exclaims 'Allāh is the greatest!' and prostrates, thereafter sits and utters the invocation of peace without reciting the testification of faith supplication. The prostration for Qur'ān recital is also made during the prayers.

Congregation prayer (*jamā'a*):

The five daily prayers in congregation are obligatory upon men. The person who is given precedence to lead the prayer is the best reciter of the Qur'ān, then the most learned [regarding the rulings of prayer], then the eldest, then the noblest in lineage, and then the person whose migration was earlier.

A man leading the prayer stands in front of the congregation, whereas a woman leading [women in prayer] stands between them. It is deemed correct for members of the congregation to stand on the right and left side of the imam, however if there is only one person being lead in the prayer, the person does not stand on the left side. If there

is only one woman being lead in prayer by a man, she stands behind him.

A person is discharged from attending the obligatory congregation prayers with valid excuses, that is, legal excuses, which bring about hardship by attending the congregational prayers.

Friday prayer (*jumu`a*):

The minimum number of participants for the Friday congregation must be forty. There are two opinions regarding the number of participants required for the *ʿid* congregation. The Friday prayer is not compulsory upon women, slaves, and travellers.

If a person, [who is not obliged to perform the Friday prayer] was present at the Friday prayer congregation, the Friday prayer becomes obligatory upon the person, and consequently the Friday prayer becomes effective.³² The pre-requisites of the Friday prayer include:

- The presence of the minimum number of participants in the con-

³² The author has mentioned this sentence in the original manuscript but clarification is required regarding the rulings it contains. Firstly, if a woman, a slave or a traveller was present at the Friday congregation, the Friday prayer does not become obligatory upon them. As the Friday prayer is not obligatory upon such attendees, they are not counted towards making up the minimum number (40) for the establishing the Friday prayer. This is according to Ibn Qudāma, al-Ḥajjāwī and appears to be the well-known opinion within the Ḥanbalī school. Secondly, if a person attended the Friday congregation despite having a restriction excuse (*māni` al-wujūb*), the Friday prayer becomes obligatory upon the person. In this scenario, the person will be counted towards making up the minimum number for establishing the Friday prayer. Excuses that can restrict a person from attending the Friday prayer include illness, fear etc.

gregation

- The Friday prayer being established in a permanent settlement
- The Imam's approval for establishing the Friday prayer
- The delivery of two sermons

[2] Obligatory Charity

The theme of *zakāt* comprises of four matters: the individual upon whom *zakāt* is obligatory, things that are subject to *zakāt*, the person who makes the payment, and the people to whom *zakāt* is payable.

The person, upon whom *zakāt* is obligatory, is every free Muslim who has complete ownership of the minimum level of wealth.

Individuals and wealth are subject to *zakāt*. Individuals are required to pay the *zakāt al-fiṭr*; it is obligatory upon every Muslim, whether old or young. If the person is capable, he pays the *zakāt al-fiṭr* for himself and for individuals under his care. The amount for the *zakāt al-fiṭr* is 2.04 kilograms³³ (*ṣā'*) of dates or 2.04 kilograms of whole barley or wheat; the flour and the crushed form of the barley or wheat can also be given. Cheese made from sour milk (*aqiṭ*) can be used for paying the *zakāt al-fiṭr*. If the aforementioned is not available, then staple food can be used to pay for the *zakāt al-fiṭr*. Wealth that is subject to *zakāt* is of four categories.

Livestock:

Free-pasturing livestock animals are camels, cattle, sheep and goats.

- On five camels a sheep is due, and thereafter on every five cam-

33 Ibn al-'Uthaymīn, *Mumtī'*, vol.6 p.176.

els there is a sheep payable until the number of camels reaches twenty-five.

- A one-year old female camel (*bint makhād*) is payable if the number of camels reaches between twenty-five and thirty-five.
- A two-year old female camel (*bint labūn*) is payable if the number of camels reaches between thirty-six and forty-five.
- A three-year old female camel (*ḥiqqa*) is payable if the number of camels reaches between forty-six and sixty-one.
- A four-year old camel (*jadha* ') is payable if the number of camels reach between sixty-one and seventy-five.
- Two *ḥiqqas* are payable if the number of camels reaches between seventy-six and ninety.
- Three *bint labūns* are payable if the number of camels reaches between ninety-one and one hundred and twenty.
- One *bint labūn* is payable on every forty camels, and one *ḥiqqa* on every fifty camels if the number of camels reaches one hundred and twenty-one.

On cattle, the *zakāt* payable on every thirty head is a yearling male calf (*tabī* ') or a female calf (*tabīa* '), and on every forty head, a two-year-old female (*musinna*) is due.

On forty sheep, the *zakāt* payable is one sheep until the number of sheep reaches one hundred and twenty. Two sheep are payable if the number reaches between one hundred and twenty-one and two hundred. Three sheep are payable if the number exceeds two hundred, and thereafter for every hundred sheep, there is one sheep.

Currency:

Currency consists of gold and silver. On gold, the minimum amount

required for *zakāt* to be levied is 85 grams³⁴, on which, 2.12 grams is payable (2.5 percent). On silver, the minimum amount required for *zakāt* to be levied is 595 grams³⁵, on which, 14.87 grams is payable (2.5 percent).

Buried treasures:³⁶

The payable amount on buried treasures from pre-Islamic periods is one-fifth (20 percent).

Trade goods:

On trade goods, *zakāt* becomes payable if the value of the goods reach the minimum level of wealth required for *zakāt* to be levied.

Agricultural produce:

There is *zakāt* on all types of grains and dates, which can be measured by capacity, and stored. The *zakāt* is payable if the net dried weight of the products reaches 612 kilograms.³⁷ For all types of wealth, ownership of the minimum level of wealth (*niṣāb*) is a pre-requisite for *zakāt* to be levied. The passing of a year (*ḥawl*) is also a pre-requisite for all types of wealth, but not for agricultural produce.

The person, who makes the payment, is the owner of the wealth or someone, who the owner has appointed to make the payment. Inten-

34 Ibn al-‘Uthaymīn, *Mumti‘*, vol.6 p.97.

35 Ibn al-‘Uthaymīn, *Mumti‘*, vol.6 p.98.

36 The author stated earlier there are four types of wealth subject to *zakāt*, however he included this addition category, making it five in total.

37 Ibn al-‘Uthaymīn, *Mumti‘*, vol.6 p.70; Aḥmad al-Zūmān, *Ghāyāt al-muqtaṣidīn sharḥ manḥaj al-sālikīn* (Riyadh: Dār Ibn al-Jawzī, 2014), vol.2 p.36.

tion is a requirement for the payment of *zakāt*.

The people, to whom *zakāt* is due are of eight categories: the poor, the needy, *zakāt* workers, those whose hearts needs winning over, those purchasing their freedom, those in debt, for Allāh's cause, and for travellers in need. It is not permissible to make the payment to:

- A wealthy person
- One's ascendants and descendants in lineage
- One's spouse
- Family members of the Prophet from Banī Hāshim and their freed slaves.
- Relatives that are under one's care
- Family members of the Prophet from Banī al-Muṭṭalib, however its disagreed upon.

[3] Fasting

The topic of fasting includes four matters: the person who fasts, the types of fasts, things that invalidate fasting, and actions that are done during fasting.

The person, upon whom it is obligatory to fast, is every competent person in full possession of his faculties. The fast is not obligatory upon a travelling person or upon a female, that is, if the woman is in the phase of her menstruation or postpartum bleeding. Any rational individual who is able to distinguish between things can perform the recommended fasts, but a female in the phase of her menstruation or postpartum bleeding is not permitted to fast.

The fasts are of three categories: obligatory, necessary, and recommended. Fasting during the month of Ramadan is obligatory. If a

person vowed to fast or needed to make up missed fast-days from Ramadan, then such fasts are necessary. The recommended fasts can be either unrestricted, or be restricted to a specific time.

The unrestricted fasts are any fasts that are not confined to a specific time. It will be considered as an unrestricted fast as long as the fast was not done owing to a vow, or to make up the missed fast-days from Ramadan, or done during the reprehensible or impermissible timings. The reprehensible timings include singling out fasting for:

- Fridays and Saturdays
- The day of *Nayrūz*³⁸
- The day of *Mihrajān*³⁹

The impermissible timings include fasting:

- The two days of *'īd*⁴⁰
- The three days⁴¹ following *'īd al-adḥā*.

The restricted fasts are done during specific times, which includes fasting:

38 Ibn Jibrīn mentioned that these two are Christian celebrations. 'Abdullāh al-Turkī mentioned *Nayrūz* occurs on the 1st day of Persian solar calendar, which coincides with the 21st of March in the Gregorian calendar.

39 Al-Zamakhsharī said that *Nayrūz* occurs on the third month in spring, whereas *Mihrajān* occurs on the 7th day of autumn. 'Alā' al-Dīn al-Mardāwī, *Al-Inṣāf* (Riyadh: Dār 'Ālam al-Kutub, 2011), vol. 7 p. 530-536.

40 The first is *'īd al-fiṭr* which falls on the 1st of Shawwāl; the second is *'īd al-adḥā* which falls on the 10th of Dhū al-Ḥijja.

41 The days of *Tashrīq*; 11th, 12th, and 13th of Dhū al-Ḥijja.

- The day of ‘Arafa⁴²
- The day of ‘Āshūrā⁴³
- Mondays and Thursdays
- The six days of Shawwāl after the Ramadan fasts
- Three days of every lunar month
- The months of Muḥarram and Sha‘bān

The things that invalidate fasting include:

- Deliberately eating [and drinking] – even if its something not edible
- Inserting anything into body cavity through any place
- Sexual intercourse and its foreplay; the expiation becomes mandatory for having sexual intercourse
- Performing bloodletting or having it performed upon oneself

The actions done during the fast can be recommended, permissible, reprehensible or prohibited. The recommended actions are for example being occupied in doing good deeds. The permissible actions are actions which a person is allowed to do during the fast. The reprehensible actions, for example, a person tasting food and chewing on mastics,⁴⁴ that is, if parts from the mastics do not dissolve and separate. Prohibited actions include backbiting etc., but a person is not required to make up the fast-days for this.

Devotional Seclusion:

42 The day of ‘Arafa is on the 9th of Dhū al-Ḥijja.

43 The day of ‘Āshūrā is on the 10th of Muḥarram.

44 The Arabic word ‘*itk* has been rendered as ‘mastics.’ However, ‘*itk* refers to a type of chewable gum that comes from the sap of certain trees.

Devotional seclusion is a recommended act to do in a mosque for the fasting person.⁴⁵ It is performed to keep oneself busy in worshipping Allāh. The things that invalidate fasts also spoil the devotional seclusion.⁴⁶

[4] Pilgrimage

This topic encompasses four matters: the person performing the pilgrimage, the pilgrimage, the place of the pilgrimage, and the actions done during the pilgrimage. The person performing the obligatory pilgrimage must be a free Muslim, who has reached puberty, and in full possession of his faculties. Any Muslim, who is in full possession of his faculties and is able to distinguish between things, can perform the voluntary pilgrimages.

The pilgrimage can be obligatory or recommended. The pilgrimage and minor-pilgrimage (‘*umra*), which are required once in a person’s lifetime, are obligatory. Similarly, the pilgrimage becomes obligatory if a person vows to perform a pilgrimage. Besides these two types of pilgrimages, the others are recommended.

The place of the pilgrimage is the House within the Holy Mosque of Mecca. The actions carried out during the pilgrimage include entering into the state of sanctification (*ihrām*) from the appropriate sites. It is not permitted to pass the sites unless a person is in the state of sanc-

45 This is because the fast is a pre-requisite for the validity of the devotional seclusion according to the second opinion from Aḥmad. If a person decided to do it for the length of a single night, it is invalid because the person has not met the pre-requisite, namely, fasting.

46 Refer to the Appendix for a detailed presentation of the chapters of fasting and devotional seclusion.

tification. Entering into the state of sanctification is of two categories. First, in relation to time – its time of entry is during the months of Shawwāl, Dhū al-Qa‘da, and first ten days of Dhū al-Ḥijja. Second, in relation to location – its sites of entry differs from one country to another.

The person has a choice between the different ways of performing the pilgrimage:

- *Tamattu‘* – the person enters into the state of sanctification to perform the minor-pilgrimage. Once it has been completed, the person re-enters into the state of sanctification to perform the pilgrimage.
- *Qirān* – the person enters into the state of sanctification to perform the minor-pilgrimage and the pilgrimage simultaneously.
- *Ifrād* – the person enters into the state of sanctification to perform the pilgrimage only.

The best way to perform the pilgrimage is in the manner of *tamattu‘*.

The pilgrim chants the formula of monotheism while entering into the state of sanctification, and thereafter the chanting is maintained. Once a person enters into the state of sanctification, seven things are prohibited for the person to do: removing hair and nail; covering the head; wear fitted sewn garments; smelling and applying perfumes; hunting and eating the meat of game animals; contracting marriage; and having sexual intercourse. There is a difference of opinion regarding taking back a divorced wife. The rules for women are like that of men with the exception of wearing sewn garments. Also, the woman’s state of sanctification just pertains to her face.

Whoever breaches the conditions for the state of sanctification, ex-

piation becomes obligatory upon the individual. A sheep or a goat is sacrificed for doing the following:

- Removing three or more hairs; if its less than three, for each hair, half a kilogram (*mudd*) of food is donated
- Covering the head
- Wearing a sewn garment (males)
- Smelling perfumes

The expiation for killing a game animal is to slaughter a domestic live-stock animal, which resembles the killed game animal. The expiation for having sexual intercourse is to slaughter a camel. If a person commits sexual intercourse, it spoils one's pilgrimage.

Hunting in the sacred sanctuary of Mecca, and cutting down its trees and plants are prohibited. It is also prohibited to do the aforementioned in the sacred sanctuary of Medina. However, if there is a requirement, then it is not prohibited.

It is recommended to enter Mecca from its northern side and leave from its southern side. Similarly, it is recommended to use the gate of Banī Shayba when entering the House. The pilgrim starts at the House and circumambulates it seven times. Thereafter, the pilgrim goes between the hills of Ṣafā and Marwa seven times, and then shortens or shaves the hair. Once this has been done, the pilgrim is out of the state of sanctification, that is, if the pilgrim intended to perform the pilgrimage in the manner of *tamattu'*.

On the 8th day of Dhū al-Ḥijja, the pilgrim enters into the state of sanctification to perform the pilgrimage. The pilgrim then makes his way to 'Arafa to position himself there for the 9th day of Dhū al-Ḥijja. When the sun has set, the pilgrims go forth to Muzdalifa; the pilgrims

pick up the pebbles for the stoning at Mina from Muzdalifa. In the morning they go forth towards the direction of Mina (*al-Ma 'shar al-Harām*) and then do the symbolic stoning of the Devil. Thereafter, the pilgrims shorten or shave the hair before making their way to Mecca to do the going-forth circumambulation, and the walks between the hills of Şafā and Marwa. Once this has been done, the pilgrims return back to Mina to complete the symbolic stoning of the Devil. Thereafter, they go back to Mecca to perform the farewell circumambulation and then leave Mecca. When the pilgrimage is over, the pilgrims visit the tomb of the Prophet and his two companions – God be pleased with them.

The integrals of pilgrimage are the following:

- Standing at 'Arafa
- The going-forth circumambulation (*ṭawāf al-ziyāra* or *ṭawāf al-ifāda*)
- The state of sanctification
- Going between the hills of Şafā and Marwa

The obligations of pilgrimage are the following:

- Entering into the state of sanctification from the designated places
- Standing at 'Arafa until sunset
- Staying in Muzdalifa until midnight
- Staying the nights in Mina
- Symbolic stoning of the Devil at Mina
- Shaving [or shortening] the hair
- The farewell circumambulation

Anything besides the aforementioned is recommended.

The integrals of the minor-pilgrimage are circumambulation, being in the state of sanctification, and going between the hills of Ṣafā and Marwa. It is obligatory to shave [or shorten] the hair. If the pilgrim missed out an integral part of the pilgrimage, the pilgrimage will be considered incomplete, and, must be done to complete the pilgrimage. However, if an obligation was missed out, the pilgrim must expiate for it by sacrificing an animal. There is nothing owed for leaving out recommended acts.

Sacrifices on 'īd al-aḍḥā:

It is recommended to sacrifice camels, cattle, sheep or goats. The sheep to be sacrificed must be over six months old; the other remaining livestock animals must complete its stipulated age.⁴⁷ The animals must be free from all forms of defects. In my opinion, it is acceptable to sacrifice animals besides the livestock animals.⁴⁸

The time for slaughter begins after offering the prayer and it finishes at the end of the second day following 'īd. A portion of the meat is given away as charity; however, it is recommended that a third be eaten, a third be gifted, and a third be donated. If a person planned to sacrifice an animal, he should not cut his hair nor trim his nails.

Sacrifice for a newborn ('aqīqa):

If the newborn was a baby girl, a sheep or a goat is sacrificed, and if it was a boy, two sheep or two goats are sacrificed. The animals are sac-

47 The stipulated age for goats is one year, for camels, five years, and for cattle, two years.

48 This is the opinion of the author and is unique to him. So, according to him, as long as the animal or bird was lawful to eat, then it will be sufficient and acceptable to offer it as a sacrifice.

rificed on the seventh day.⁴⁹ The rules for 'aqīqa are similar to that of 'id al-aḏḥā. But, the meat for 'aqīqa is prepared and cooked without breaking any of the bones (i.e. by cutting at the joints), and is used to feed people.

[5] Warfare

Jihād can be participated in alongside all righteous and impious emirs. It is a communal obligation to participate in *jihād*; however it becomes a personal obligation when the enemies attack. The topic of *jihād* covers four matters: the person who is obligated to fight, the people who are fought, spoils of war, and peace treaties.

The person obligated to fight in *jihād* is a competent Muslim man, who is in full possession of his faculties. The Muslims engage in fighting with the enemies that are nearest to them. The Muslim army must have an emir; without the emir's permission, fighting or anything else must not occur. It is impermissible for the Muslims to flee from enemies that are similar to them. If the Muslim army gains victory, they should not burn or cut down trees, or destroy anything unless there is some sort of benefit.

The people who are to be fought are all mature male soldiers, in full possession of their faculties. A non-Muslim subject (*dhimmī*) or a person who has been granted protection (*musta'man*) must not be fought. If the Muslims gained victory and captured a soldier, the caliph can decide between the prisoner's death, release, or ransoming him in exchange for a Muslim prisoner or money. If a Muslim kills an

49 For example, if the child was born on a Saturday, the sacrifice will be made on the coming Friday (i.e. the seventh day); Ibn al-'Uthaymīn, *Mumtā'*, vol.7 p.493.

enemy soldier while being fully engaged (i.e. face to face) during the battle, he is entitled to the property of the killed soldier.

If anyone decided to pay the non-Muslim poll tax (*jjzya*), it becomes impermissible for us to kill such people. Any male or female Muslim that grants a non-Muslim protection is considered correct. If a non-Muslim subject murders a Muslim, or commits adultery with a Muslim, or uses blasphemous language for Allāh and His Prophet, it will violate the person's agreement with the state.

The spoils of war gained from them are wealth and land. The caliph divides the wealth the way Allāh has mentioned in the Qur'ān. As for lands, the caliph can either choose to endow it or divide it among Muslims.

Peace treaties in the following forms are permissible:

- Exchange of enemy prisoners for Muslim prisoners or a payment
- Cessation of fighting for a period
- Lands owned by the Islamic State: leased out to non-Muslims in exchange for a percentage of the produce. However, the occupiers must leave the land at any time we request.
- Lands owned by non-Muslim under the state: it remains with them in exchange for a percentage of the produce.

Social Dealings

Social dealings encompass a number of things:

[1] Sale (*bai*')

Selling consists of the seller, the buyer, the price, the article purchased, and the expressions or something to that effect for carrying out the sale.

The conditions that must exist in the seller are as follows: he must be a person who is permitted to administer his property, for this, the person needs to be mature and competent. Slaves cannot administer property without consent. The seller must agree to the sale, and own the article or have permission to sell it (if it does not belong to him). The buyer also must be a person who is permitted to administer his property.

The conditions that must exist in the price are as follows: it has to be wealth that is considered lawful to use; it must be known and be deliverable; the buyer must own that wealth.

The article for sale: must be lawful to use without necessity; the seller must own the item; and it should be deliverable. The article for sale must be identifiable either through sight or by its descriptions.

Expression for carrying out the sale is the verbal offer and the verbal acceptance. It also includes conducting sales without the exchange of any verbal communication.

A number of matters are connected to sales. This includes the conditions within sales (i.e. conditions that are stipulated by the buyer or the seller). Such conditions fall into two categories: correct stipulations, such as, how the payment and sale item should be or the kinds of benefits and advantages they must contain. Incorrect conditions include stipulating anything that contradicts the objectives and the spirit of buying and selling.

[2] The option to cancel a sale (*khiyār*)

There are seven options to cancel a sale:

- During the time of the agreement, that is, as long as the buyer and the seller have not separated physically or metaphorically.
- In cases of stipulation, the period for the stipulation must be defined, even if it was a prolonged time period.
- In cases of deceptions, artificial outbidding, gullible buyers, and deceiving outsider-sellers by meeting them before they arrive at the market squares.
- In cases of defectiveness – owing to all types of deficiencies.
- In cases of false prices for a commodity, the buyer later discovers the actual price, and the price he paid was false.
- In cases of disagreements between the buyer and the seller. They both swear an oath by God, including in it an affirmation and a rejection of their claims.⁵⁰

⁵⁰ Ibn Jibrīn explained: For example, the seller starts by making an oath with

- In cases of cheating (i.e. hiding defects or beautifying the products to raise its price)

[3] Usury (*ribā*)

Usury is of two categories:

- Usury in excess (*faḍl*): occurs when a foodstuff, which is normally sold by weight or capacity, is exchanged for a same class of foodstuff (inequitably).
- Usury in delay (*nasī'a*): occurs when two classes of properties are exchanged (without immediacy), sharing the same legal cause (*'illa*) in the cases of excess usury.

If money is exchanged between same classes (i.e. gold for gold or dollars for dollars), delay and quantitative disparity in the exchange are prohibited. However, if the exchange is between two different classes (i.e. gold for silver), only the delay in exchange is prohibited.

[4] Buying in advance (*salam*)

Sold products are either offered straight away or delivered at a later date; the latter is termed as buying in advance. The former has already been discussed (i.e. normal sales). In addition to the conditions for normal sales, other conditions are stipulated for buying in advance:

God and says, 'By Allāh! I did not sell you this sheep for 100; I sold it for 120.' This sentence includes an affirmation and a rejection. Then the buyer makes an oath and says, 'By Allāh! I did not buy this sheep for a 120; I purchased it for 100.' The buyer also combines between an affirmation and a rejection. This is a case of disagreement between the two parties, which allows them to cancel the sale.

- Quantity of the product must be determined precisely through capacity, weight, or measurements etc.
- Product details must be specified and described.
- Delivery of the sold product must be deferred to a stipulated time; it must be available for the agreed time and location (i.e. in the shop or elsewhere).
- Payment for the products must be received at the time of concluding the contract.

[5] Hire and rent (*ijāra*)

A trade contract is either associated with a corporeal item of material value or with utility services. The former has been discussed. The latter is termed as hiring and renting. It can be in the following forms:

- Renting something to benefit from it directly, such as renting a plot of land for farming crops.
- Renting something to benefit from the utilities it provides, for example, renting a flat to reside in or hiring a vehicle to get around etc.
- Hiring workers for their services. Private workers offer services to one person (such as a personal bodyguard), and public workers provide services for everyone (such as a shoe-repairer).

Hiring and renting is incorrect unless the service requested is lawfully permitted, specified, its duration is agreed, and the labour to be carried out is clearly stipulated.

[6] Personal loans (*qard*)

It is recommended to give anything as a personal loan that can be purchased in advance, without any increase or stipulation of increase.

The recipient of the loan repays its equivalence. It is permissible to offer extra on top of the original loan, whether in quality or quantity, as long as it was not pre-stipulated.

[7] Security strategies for financial recoveries (*wathā'iq*)

There are three types of security strategies for financial recoveries:

- Pawning (*rahn*)

Pawning is to deposit an object (as security) for money lent, which is permissible to sell to recover the bill. The pawned object is sold if the money lent is not repaid. It is not permissible for the pawned object to be disposed of in any way by the debtor. It remains with the creditor and no part of the collateral can be separated or redeemed unless the debt is paid in full.

- Guaranteeing payments for debts (*damān*)

It is to guarantee a payment of another's financial obligations towards a creditor. The guarantee is considered correct as long as the guarantor is permitted to dispose of his wealth.

- Guaranteeing debtor's attendance (*kafāla*)

It is to assure that an indebted person will be made to appear in person. If the indebted person fails to appear, to clear his financial obligations, the assurer must guarantee the debt.

[8] Debt transfers (*hawāla*)

It is an agreement to transfer a debt from one person's liability to another. The consent of the transferee (*muḥāl 'alayh*) is not required for the debt transfer. If the transferee was rich, consent from the creditor

(*muḥāl*) to transfer the debt is not required.

[9] Disposer of wealth and property: interdiction (*ḥijr*)

The person who can dispose and administer wealth can either be permitted to do so unrestrictedly, such as a competent person, in full possession of his faculties. On the other hand, a person can be interdicted from administering his wealth and property (*maḥjūr alayh*). The interdiction falls into two categories:

- In the interests of the interdicted person – this can be a child until he reaches maturity or an insane person until he regains sanity.
- In the interests of others – this is in the case of a foolhardy (i.e. the person in a lot of debt with others).

[10] Deputising (*wakāla*) and partnerships (*sharika*)

The person who administers wealth and property either deals with his own wealth or with the wealth of others. The latter divides into two categories, that is, the administrator can either be a deputy or be a business partner. Deputising is allowed for matters wherein deputyship can enter. It is permissible for a person to act as a deputy as long as he is allowed to administer wealth.

A business partner can be in a partnership, as a silent partner (*muḍārib*), who puts in (only financial support) for profits. Such a partner puts capital into a business for his partner to deal with, in return for a specified percentage of profit.

A business partner can be in a partnership, based on putting in capital assets collectively to do business. Under this category, the following types of partnerships are included:

- Reputable partnerships (*sharikat al-wujūh*)
- Manual partnerships (*sharikat al-abdān*)

Manual partnerships include the different forms of sharecropping (*musāqāh, muzāra* 'a). The former entails watering (someone's) fruit-bearing trees for a stipulated share of its fruits. The latter entails farming (on someone's land) for a stipulated share of its harvested crops.

[11] Wealth gained without exchange (*akhdh al-amwāl bi-ghayr 'iwāḍ*)

The type of wealth acquired without trade or exchange falls in several categories:

- Lending something for use (*'āriya*)

It is allowed to loan anything that can be benefitted from, while the article itself still remains. The item is returned after the loaning period. If it is damaged, whether partly or completely, the person must compensate the owner.

- Depositing something for safekeeping (*wadī* 'a)

The deposited item remains as a trust with the person that is looking after the item. There is no compensation upon its keeper (for damage or loss) unless there was transgression from his part.

- Usurpation (*ghaṣb*)

Refers to an individual seizing another person's legitimate property, whose blood is inviolable (i.e. prohibited to kill). This includes prop-

erty that is transferable to people whose blood is inviolable.⁵¹ It becomes obligatory upon the usurper to return the usurped property. If the item was partially or fully damaged, the usurper must compensate. If the item was prohibited, no compensation is due.

▪ Lost and found (*māl multaqaṭ*)

Lost and found can be related to a person or properties. A foundling person is an abandoned child. If money is found with the lost child, it is used for his expenses. If no money was found with the child, expenses are paid for by the Muslim common fund. The lost child is considered to be a free Muslim, as long as he was not found in a disbelieving country, with no Muslims at all. Lost properties are of three types:

1. Wealth that is considered insignificant among average people. Items such as these can be picked up and used by a person until its owner shows up; such articles are not advertised for (a year).
2. Animals that are not menaced by small predators; animals such as these are prohibited to be picked up as a lost and found.
3. Every other type of wealth. For this category, the lost and found item is picked up and advertised for the duration of a year. After a year, the item enters in the person's possession (i.e. owns it).

51 Ibn Jibrīn explained: For example, if wealth was seized from a combatant fighter and it happens to be something a non-Muslim citizen (*dhimmī*) deposited with him for safekeeping, then it is transferred to the non-Muslim citizen, as their blood is inviolable under Islam. If such wealth was seized, the rules of usurpation apply.

[From the types of wealth that are gained without exchange]

- Gifts and bestowals (*hiba*, *ʿaṭiyya*) can be owned by a person after taking possession of the items. Gifts and bestowals are prohibited to take back after it has been given.
- Obligatory charity (*zakāt*), wealth that is given to its recipients.
- Spoils of war (*ghanīma*), wealth that is distributed (after the fifth).
- Bribes (*rushwa*) are prohibited for judges and governors.
- Presents (*hadiyya*) are permissible to give except to the ruler. The latter part of the rule applies if it was uncustomary for a person to bestow gifts to the ruler.
- Revitalisation of barren lands (*arḍ al-mawāt*) belongs to the person who revives the (derelict) lands.
- Buried treasures (*rikāz*) are wealth buried before the Islamic era. The buried treasures belong to its finder after submitting a fifth of it to the Muslim treasury.
- Mines (*ma ʿādin*) belong to the person who locates them.
- Treasures (*kunūz*) belong to the person who finds them, as long as the treasures were not found on a land that is owned by someone else.
- Everything from the seas and oceans, its fishes, its animals, its pearls and gems etc. belong to the person who acquires them.
- Open country birds and nests are permissible for the person who obtains them.
- Wild land animals, whether they are legally edible or not, are permissible for the person who seizes them.
- Deserted wealth which has been abandoned in cites, open country, ruins, and wildernesses, owing to its defects and maintenance, can be kept by the person who finds such discarded wealth.

- Herbage and pastures that were not cultivated by human input are permissible to take. This applies regardless of whether the plants were from an owned land or a barren land.
- Trees that were not planted by people are permissible for the person who finds them, as long as the trees were not on a land owned by someone else.
- Water from rivers and flowing springs is owned by the person who fetches it from them.

[12] Wealth distribution and extraction

Wealth gained from a person can come in two forms. The first case involves exchanging something, such as in sales and gifts (i.e. with the stipulation of getting a gift in return). The second case involves giving out wealth (legally or ethically) without any exchanges. The latter enters into the following categories:

- Obligatory charity (*zakāt*)
- The poll tax (*jizya*) for the disbelievers is obtained from all non-Muslims residing under our authority as protected citizens.
- Endowments (*waqf*) refer to the retention of a property that can be used to benefit others. Endowment can be established with clear statements or through indications from a person, who is permitted to dispose his wealth freely, intending righteousness.
- The annual business tax (*'ushr*) is obtained from non-Muslims, who come to do business in the Islamic State.
- Bequests (*waṣīyya*) are considered correct from a person, who is permitted to dispose his wealth freely. It consists of four matters; the bequest itself, the bequeathed, its heir, and the bequest's executor.

As for the bequest, if there were inheritors involved, it is recommended to devote a third of a person's wealth to bequests. However, if the person did not have heirs, it is permissible to devote over a third. A bequest is considered incorrect if a person devoted over a third, without the permission of his inheritors. The bequeathed refers to the person's financial resources and properties. The bequest's heirs are those who receive the bequest. The bequest's executor can be anyone that is permitted to dispose and deal with wealth.

- Manumission (*'itq*): it is recommended to free slaves that have the ability to sustain themselves. Manumission comes into action through direct and indirect statements from the master. It can occur through speech and by owning blood relatives (as slaves).

If a rich master decides to manumit his share of a slave, who is shared by other co-masters. The master should attempt to free the slave entirely (by buying the remaining shares of the slave from the other co-masters). However, if the master was underprivileged, the slave will be partially free.

It is permissible for the freedom to come into effect instantly or be related to a particular time. If the freedom is related to the death of the master, this is termed *tadbīr*. The financial value of these freed slaves, account towards the third of a person's wealth for bequests. The sale of these slaves by their masters is considered correct (even though they have been promised freedom after the death of their masters).

If a slave decides to buy his freedom from his master with deferred payments, this is termed *kitāba*. It is recommended for a master to agree to this procedure if good is known regarding the slave. The slave becomes free once the payments have been made;

however if the slave is unable, he remains in slavery.

If a slave-woman bears a child from her master that appears to be a human fetus, she becomes *umm walad*. The slave-woman becomes manumitted after the death of her master. Its not permitted for the master to sell such slave-women.

Marriage

The third component from the matters of substantive law is conjunction (i.e. marriage) and separations (i.e. divorces and separations). Marriages include five matters: the groom; the bride; the bride's guardian; the marriage agreement; and the bride's marriage payment.

The groom has to be a male and of the same religion. There is an exemption when a Muslim can marry a non-Muslim, and that is when a Muslim man marries a *dhimmi* woman (a free non-Muslim subject). It is stipulated for the groom to consent to the marriage. If the groom was a child or an insane person, the father marries him off.

The bride has to be a woman and of the same religion unless she was Jewish or a Christian woman, marrying a Muslim man. The bride cannot be related to the groom through consanguinity. The bride cannot be his sister, his daughter or his maternal or paternal aunts.

The same categories of relatives who are unlawful to marry because of consanguinity are, also, unlawful through foster-relationships (i.e. established through nursing). Therefore, if a woman nursed the groom or if he shared the same wet nurse as the bride, marriage between them will be unlawful. However, if there was no foster-relation established between the wet nurse and other family members of the groom; his brothers, his uncles, and their children, then the prohibi-

tion through foster-relationships does not apply nor extend to them.

It is impermissible for a free man to marry more than four women; as for a slave, he should not marry beyond two women. It is unlawful to marry two sisters at the same time; similarly, it is unlawful to marry a woman simultaneously with her paternal or maternal aunties. A fornicating woman is prohibited to marry unless she repents from her sin.

The consent of the bride is essential. If the bride was a virgin daughter – that is, a minor who has not reached maturity, then her father gives her in marriage, which is also the case for an insane daughter.

The person who gives the bride in marriage is her guardian. The guardian (after the father) is her nearest male agnate (and when a woman has no male agnates) the judge becomes her guardian. The bride is not given in marriage without her consent. If the bride was insane, her consent is not required (i.e. coerced).

The marriage agreement is the spoken offer and the spoken acceptance; it is essential for the marital agreement. It is necessary to clearly specify the bride and groom, and have the marriage witnessed. In regards to stipulating suitability (*kafā'a*) in marriage contracts, there is a difference of opinion.

The bride's marriage payment is the dowry; it is essential for the marriage agreement. If divorce occurs before intercourse, the groom retains half of the dowry. The dowry can be (something intangible) such as teaching the bride Qur'ān, calligraphy, or sacred knowledge.

Divorce

Separations in marriage incorporate a number of things:

[1] A dissolution of the marriage from the wife (*khul'*)

A dissolution of the marriage occurs for a payment when there are difficulties between couples. Separation through a dissolution is considered to be an annulment (*faskh*); therefore, it does not count as one of three divorces couples are normally allowed.

[2] Divorce (*talāq*)

Divorces comprise of three elements: the husband, the wife, and the way the divorce comes into effect. The person who affects the divorce is the husband or someone who he has deputised to do the divorce, which can even be the wife. The person impacted by the divorce is the wife. The way the divorce comes into effect is through words. It can be statements that clearly result in divorce even if the husband did not intend to divorce. It can also be allusive circumlocutions, which can either be apparent or ambiguous. The former results in divorce without an intention, whereas the latter requires an intention.

A free man has three pronouncements of divorce, even if he was married to a female slave, however a male slave has two pronouncements of divorce despite being married to a free woman. Divorce depend-

ing on an exception in relation to numbers is correct – that is, if the husband exempts a lesser number from a larger number (i.e. less than half). The effectiveness of a divorce can occur immediately or conditionally; the latter happens when the condition expressions are fulfilled.

The types of divorces:

- The irrevocable divorce (*bā'in*) includes the triple divorce, the divorce for an exchange of payment (i.e. dissolution of the marriage),⁵² and the divorce that occurred before consummation.
- The revocable divorce (*raj'ī*) refers to when a man pronounces divorce upon his wife once (or twice) after consummating the marriage. This excludes the dissolutions of the marriage for a payment.

The husband possesses the right over the wife's return as long as it was within the waiting period; even if wife detested the return, it is still applicable. The wife returning to her husband must be witnessed.

[3] Comparing wife to mother's back (*zihār*)

If a husband swears against his wife in which he compares her to his mother's back, the wife becomes prohibited for him until he expiates for the oath.

52 As preceded, Ibn 'Abd al-Hādī mentioned that disillusion of the marriage (*khul'*) is considered as an annulment (*faskh*), but here he has listed it as an irrevocable divorce (*baynūna ṣughrā*). This is because the Ḥanbalī jurists consider *khul'* as irrevocable divorce if the intention was for a divorce or if the statements used for the *khul'* consisted the wordings of divorce. On the other hand, if the statements used did not consist the wordings of divorce nor was a divorce was intended, the *khul'* will be considered an annulment only (*faskh*).

[4] Charging one's wife with adultery (*li'ān*)

If a man charges his wife with adultery, he must establish the proof for it (i.e. through four testimonials), otherwise the husband is liable for punishment for the false accusation. If the husband is not able to establish the proof, the procedure of public imprecation is enacted (*mulā'ana*). To do this, the husband accuses his wife with adultery five times; the wife participates (in her defense), and denies the allegation five times. Thereafter, the wife is unlawful for him permanently, unless he admits to lying and defamation.

If a husband swears to abstain from sexual intercourse with his wife for less than four months, but ended up having sexual intercourse with her before the stipulated time, he must expiate for violating his oath. However, if he made an oath to abstain for more than four months, it is termed as forswearing (*ilā'*). The husband is given four months, he either has sexual intercourse or he will be separated from his wife.

Injurious Crimes and Legal Punishments

Injurious crimes (*jināyāt*) can result in homicides, cause injuries to the body, or lead to loss of wealth. Homicides can be either premeditated or unpremeditated; for premeditated homicides, the legal retaliation becomes mandatory. If the homicide was unpremeditated, indemnity becomes mandatory. The full indemnity (*diyya*) can be either: twelve thousand dirhams, one hundred camels, two hundred cattle or one thousand sheep.

Indemnities for injuries caused to the body:

The full indemnity is paid if an unpaired body part (such as a nose) or a paired body part (such as a pair of ears) are severed. Similarly, the full indemnity is due for the loss of body parts, which consist of four parts (such as eyelids) or ten parts (such as fingers). In proportion to the number of body parts afflicted, a fraction of the full indemnity is submitted. If the injurious crimes were premeditated, legal retribution is due for them.

There are many enormities, they include:

- Fornication (*zinā*) is the greatest of sins and the legal penalty becomes obligatory. The penalty for an offender who had the capability to remain chaste is stoning. If the offender was a virgin, the penalty entails scourging the offender one hundred stripes and banishment for a year. The penalty for a slave-offender is half of

that but without banishment.

- The penalty for committing sodomy (*liwāt*) is the same as fornication.
- Accusing a person of adultery (*qadhf*) is prohibited; it obligates the legal penalty of scourging the accuser eighty stripes.
- Consuming alcohol (*shurb al-khamr*) is prohibited. The one who consumes it is scourged eighty stripes.
- Theft (*sariqa*) is prohibited. It obligates amputation and the thief becomes liable for the stolen items.
- Highway robberies (*qat' al-ṭarīq*) are prohibited. If the highwaymen killed their victims, they are executed and crucified; however if the highwaymen did not commit murder, they are exiled.
- Rebellion (*baghī*) against the Imam and revolting against him (*khurūj*) are prohibited. Whoever participates in such acts is to be fought.
- Apostasy (*ridda*) is prohibited. It becomes obligatory to kill the apostate unless he repents and returns to Islam.
- The person who participates in sorcery (*sihr*) becomes a disbeliever. He is killed unless he repents and returns to Islam.

There is nothing besides the prescribed punishment (*ḥadd*) for the sins associated with a legal punishment. Similarly, there is nothing apart from prescribed expiations for sins associated with expiation (*kaffāra*); for example, when a person has sexual intercourse in Ramadan or when a husband has sexual intercourse with his spouse after comparing her to his mother's back, nothing is due besides the prescribed expiations. The discretionary disciplinary (*ta'zīr*) can be enacted for sins, which do not have prescribed punishments nor expiations.

Judgeship

It involves adjudication of rights, whether it pertains to Allāh (i.e. when a person sins) or to the rights of human beings. The basis for the judgement requires judges, witnesses, oaths, and confessions.

The judge can be the Imam, his deputy, or appointed judges etc. Islamic judgeship is a communal obligation. The judge has to be a diligent enquirer (*mujtahid*).

The number of testimonies required from witnesses in Islamic judgeships differs from one case to another:

- The testimony for fornication is not accepted unless there are four witnesses
- Two men are required for injurious crimes and legal punishments
- Two men or two women and a man are required when it concerns cases involving property or transactions dealing with property
- The testimony of two women regarding things, which men do not normally encounter

The testimonies of the following are not acceptable:

- A disbeliever – unless he was a witness to a bequest for a Muslim during his travels.
- A corrupt person (*fāsiq*)

- A minor
- An enemy
- A person testifying for his son or his father
- A lover for the beloved

In the absence of evidence, the defendant has the right to an oath. The defendant swears an oath by Allāh. Regarding confessions, whomsoever confessed to something, the confession will be accepted.

Food and Drink

Food and beverages, which are pure and harmless to a person are permissible; it includes:

- Livestock animals (camels, cattle, sheep and goats)
- Fruits
- Plants and vegetation
- Birds
- Land and sea animals
- *Fuqqā*⁵³ and its likes.

Things which are impure and harmful to a person, are prohibited; it includes:

- Dogs
- Predatory animals with canines
- Birds that possess talons, such as vultures and etc.
- Repulsive creatures, such as hedgehogs, rats, and all types of insects
- Intoxicating herbs and harmful plants, such as Stinking Night-

53 A kind of non-alcoholic or quasi-alcoholic beverage made from wheat loaves soaked in water, sugar, pomegranate juice, and spices, but often erroneously translated as 'beer'.

shade and Cushion Spurge

- All categories of intoxicants, such wine and etc.

The property of others is prohibited unless a person is in a situation of dire need (*ḍarūra*).

Inheritance

There are three categories of inheritors:

[1] **The heirs who are entitled for an obligatory share of the estate (*dhū farḍ*)**

It includes the following people:

- The deceased's husband; he receives one-half of the estate if there is no inheriting descendent. If there is an inheriting descendent, the husband receives one-fourth of the estate.
- The deceased's wife; she receives one-fourth of the estate if there is no inheriting descendent. If there is an inheriting descendent, the wife or the wives receive one-eighth of the estate in total.
- The deceased's father; he receives one-sixth of the estate if the deceased has a son to inherit from him.
- The deceased's grandfather's share is similar (i.e. receives one-sixth of the estate).
- The deceased's mother; she receives one-third of the estate and if the deceased has a child, she receives one-sixth.
- The deceased's grandmother; she receives one-sixth of the estate.
- The deceased's daughter; she receives one-half of the estate. However, if the deceased also had a son, the daughter becomes a co-

universal heir (*‘aṣaba*) with the son.⁵⁴

- The deceased's sister; her share is similar (i.e. receives one-half of the estate).
- The deceased's son's daughter; her share is similar (i.e. receives one-half of the estate). If there is more than one, two-thirds of the estate is due (i.e. this applies to the cases for the deceased's daughters, sisters, and son's daughters). If the deceased had a daughter and daughters from the son, the daughter receives one-half of the estate and the son's daughters receive one-sixth. However, if the deceased had a daughter as well as sisters, they become co-universal heirs (*‘aṣabāt*).
- The deceased's step siblings from the same mother; if there was one sibling, one-sixth of the estate is due but if there was more than one, one-third of estate is due.

[2] Universal heirs (*‘aṣabāt*)

The universal heirs include:

- Male decedents (i.e. son, son's son and downward)
- Male ascendants (i.e. father, father's father and upward)
- Males who are of the same generation as the deceased from amongst his brothers (for example, full brother, half brother from the same father)
- Males who are of the same generation as the deceased's father from amongst his paternal uncles

⁵⁴ The son and daughter jointly constitute the universal heir and share the estate so that each male receives twice the amount of each female (i.e. a 2:1 ratio). The co-universal heir refers to any female who are entitled for an obligatory share. The females require someone else to become a universal heir.

- Manumitted slaves

[3] Extended family members (*dhū al-arḥām*)

They are close relatives of the deceased who are related through a female (for example, daughter's children, mother's brother's son, sister's children etc.) Such relatives are put in positions of the person, through whom the close relative is related to the deceased (for example, the daughter's children would be given the position of the deceased's daughter and would inherit accordingly).

Those whose shares are eliminated by others (*ḥajb*)

The existence of a near family member from amongst the universal heirs eliminates the share of a distant family member, so for example:

- The deceased's grandmother's share is eliminated by the mother
- The deceased's grandfather's share is eliminated by the father
- The deceased's sisters and stepsiblings shares are eliminated by inheriting decedents

The Arabic Text

كتاب

فروع الفقه

للشيخ يوسف بن عبد الهادي الحنبلي (ابن المبرّد)

(٨٤٠ - ٩٠٩ هـ)



كِتَابُ فُرُوعِ الْفِقْهِ

مَدَارُ الْفِقْهِ عَلَى عَشْرَةِ أَشْيَاءَ :

- ١ / عِبَادَةٌ .
- ٢ / مَعَامَلَاتٌ .
- ٣ / اجْتِمَاعٌ .
- ٤ / وِفْرَاقٌ .
- ٥ / وَجَنَائَاتٌ .
- ٦ / مَعَاصِي .
- ٧ / وَاسْتِخْرَاجُ ذَلِكَ .
- ٨ / وَأَكْلٌ .
- ٩ / وَشُرْبٌ .
- ١٠ / وَقَسْمُ مَوَارِيثٍ .

الأوَّلُ .. فِي الْعِبَادَاتِ

وَهِيَ خَمْسَةٌ : الصَّلَاةُ . وَالزَّكَاةُ . وَالصَّوْمُ . وَالْحَجُّ . وَالْجِهَادُ .

الأوّل مِنْهَا الصَّلَاةُ

وَتَشْتَمَلُ أُمُورُهَا عَلَى سَبْعَةِ أَشْيَاءَ : شَرْطٌ . وَرُكْنٌ . وَوَاجِبٌ .
وَسُنَّةٌ . وَمُبَاحٌ . وَمَكْرُوهٌ . وَمَحْرَمٌ .

الأوّل : الشُّرُوطُ .. وَهِيَ سِتَّةٌ :

الأوّلُ مِنْهَا : الطُّهَارَةُ مِنَ الْحَدَثِ .

وَلَا بُدَّ فِيهِ مِنْ ثَلَاثَةِ أُمُورٍ ^(١) :

مُتَطَهَّرٌ .

وَمُتَطَهَّرٌ بِهِ .

وَطُهَارَةٌ .

وَنَاقِضٌ .

* أَمَّا الْمُتَطَهَّرُ .. فَهُوَ الْمُكَلَّفُ الْخَالِي عَنْ مَانِعٍ حَسَبِيٍّ ، أَوْ شَرْعِيٍّ .

* وَأَمَّا الْمُتَطَهَّرُ بِهِ .. فَالْمَاءُ الطُّهُورُ . أَوْ التُّرَابُ عِنْدَ عَدَمِهِ ،

أَوْ ضَرْبٌ فِي اسْتِعْمَالِهِ .

(١) كَذَا قَالَ [ثَلَاثَةٌ] . وَقَدْ عُدَّ أَرْبَعَةً .

* وَأَمَّا الطَّهَّارَةُ .. فَهِيَ صُغْرَى؛ وَهِيَ الْوُضُوءُ يَحْتَوِي عَلَى سُنَّةٍ؛ وَهُوَ التَّسْمِيَةُ . وَغَسْلُ الْيَدَيْنِ قَبْلَهُ ثَلَاثًا . وَالْعَسَلَةُ الثَّانِيَةُ وَالثَّلَاثَةُ . وَتَخْلِيلُ الْأَصَابِعِ وَاللَّحْيَةِ . وَالْمُبَالَعَةُ فِي الْمَضْمَضَةِ وَالِاسْتِنْشَاقِ . وَالسَّوَاكِ . وَالتِّيَامُنُ .

وَأَمَّا الْوَاجِبُ .. فَعَسَلُ الْأَعْضَاءِ الثَّلَاثَةُ . وَمَسْحُ الرَّأْسِ مَعَ الْأُذُنَيْنِ . وَالتَّرْتِيبُ . وَالْمُوَالَاةُ . وَالنِّيَّةُ .

وَيُمَسَّحُ عَلَى الْخُفَّيْنِ فِي الطَّهَّارَةِ الصُّغْرَى . وَعَلَى الْجَبِيرَةِ مِنْهُمَا^(١) .

وَيَمَسَّحُ عَلَى الْخُفِّ الْمَقِيمِ يَوْمًا وَلَيْلَةً، وَالْمَسَافِرُ ثَلَاثَةَ أَيَّامٍ وَلَيَالِيَهُنَّ مِنَ الْحَدَثِ إِلَى مِثْلِهِ عَلَى سَائِرِ ثَابِتٍ بِنَفْسِهِ .

وَأَمَّا الطَّهَّارَةُ الْكُبْرَى .. فَتَحْتَوِي عَلَى سُنَّةٍ . وَوَاجِبٍ .

الْوَاجِبُ .. النِّيَّةُ . وَتَعْمِيمُ سَائِرِ الْجَسَدِ .

وَالْمَسْتَحَبُّ .. غَسْلُ مَا بِهِ مِنْ أذى . وَالْوُضُوءُ . وَالغَسْلُ ثَلَاثًا . وَالذَّلْكُ . وَالتِّيَامُنُ . وَالتَّسْمِيَةُ . وَتَخْلِيلُ الشَّعْرِ . وَغَسْلُ قَدَمَيْهِ فِي غَيْرِ مَوْضِعِهِ إِذَا لَمْ يَكُنْ مُبَلِّطًا .

(١) أي من الحدث الأصغر والأكبر معاً .

* وَالنَّوَاقِضُ فِي الطَّهَارَةِ الصُّغْرَى ثِمَانِيَةٌ^(١) ..

- ١ / الخَارِجُ مِنَ السَّبِيلِينَ .
- ٢ / وَالْفَاجِشُ مِنْ غَيْرِهِمَا .
- ٣ / وَزَوَالُ الْعَقْلِ بِغَيْرِ نَوْمٍ يَسِيرٍ جَالِسًا أَوْ قَائِمًا^(٢) .
- ٤ / وَمَسُّ الْفَرْجِ .
- ٥ / وَالْمَرَأَةُ لَشَهْوَةٍ .
- ٦ / وَأَكْلُ لَحْمِ الْإِبِلِ .
- ٧ / وَالرَّذَّةُ .

وَفِي الطَّهَارَةِ الْكُبْرَى سِتَّةٌ ..

- ١ / الْمَنِيُّ الدَّافِقُ بِلَذَّةٍ .
- ٢ / وَالتَّقَاءُ الْحَيْتَانِينَ .
- ٣ / وَإِسْلَامُ الْكَافِرِ .
- ٤ / وَالْحَيْضُ .
- ٥ / وَالتُّفَّاسُ .
- ٦ / وَالْمَوْتُ .

(١) [جالساً أو قائماً] متعلقٌ بيسير النوم، فإن كان متكئاً أو مستنداً انتقض وضوؤه.

(٢) عدُّ المصنف سبعةً فقط . والفقهاء يعدُّونَ (غسل الميت) من نواقض الوضوء . ولعلَّ المصنفَ تركه عن اجتهادٍ في هذه المسألة، فيرى أنه ليس بناقضٍ .

الثاني : الطَّهَارَةُ مِنَ النَّجَاسَةِ ..

وَهِيَ مُشْتَمَلَةٌ عَلَى أَرْبَعَةِ أَشْيَاءٍ ..

نَجَاسَةٌ .

وَمُزِيلٌ .

وَمُزَالٌ بِهِ .

وَمُزَالٌ عَنْهُ .

* النِّجَاسَةُ .. بَوْلٌ . وَغَائِطٌ . وَغَيْرُ مَأْكُولٍ . وَخَمْرٌ . وَكُلُّ حَيَوَانَ مُحَرَّمٍ فَوْقَ الْهَرِّ . وَجِلْدُ كُلِّ مَيْتَةٍ ، وَلَا يَطْهَرُ بِالذَّبَاغِ . وَعَظْمُ كُلِّ مَيْتَةٍ ؛ غَيْرِ حَيَوَانَ بَحْرٍ لَا يَنْجَسُ بِمَوْتِهِ ، وَأَدْمِي .

* وَأَمَّا الْمُزِيلُ .. فَهُوَ كُلُّ مَنْ يُحْسِنُ الْإِزَالََةَ .

* وَأَمَّا الْمُزَالُ بِهِ .. فَالْمَاءُ الطَّهَوْرُ . وَمَعَ الثَّرَابِ فِي الْكَلْبِ وَالخَنْزِيرِ . وَالْأَحْجَارُ فِي الْاسْتِجْمَارِ خَاصَّةً .

* وَأَمَّا الْمُزَالُ عَنْهُ .. فَكُلُّ مَا عَلَقَتْ النَّجَاسَةُ بِهِ .

وَيَتَطَهَّرُ الْمُصَلِّي فِي بَدْنِهِ . وَتَوْبِهِ . وَبُقْعَةِ صَلَاتِهِ .

الثالثُ : الوقتُ ..

في الظهرِ بالزَّوالِ . ويليهِ وقتُ العَصْرِ من مَصِيرِ ظِلِّ الشَّيْءِ
مثله [إلى مَصِيرِ ظِلِّ كُلِّ شَيْءٍ مِثْلِهِ] ^(١) مُخْتَارًا، ثمَّ ضَرْوَرَةٌ .

ويَليهِ وقتُ المَغْرِبِ من مَغِيبِ الشَّمْسِ .

ويَليهِ وقتُ العِشاءِ من مَغِيبِ الشَّفَقِ الأَحْمَرِ إلى ثُلُثِ اللَّيْلِ
مُخْتَارًا، ثمَّ ضَرْوَرَةٌ .

ويَليهِ وقتُ الفَجْرِ من طُلُوعِ الفَجْرِ الثَّانِي إلى طُلُوعِ الشَّمْسِ .
وتُدْرِكُ الصَّلَاةُ بتكبيرَةٍ، والجُمُعَةُ بركعةٍ .

الرَّابِعُ : سِتْرُ العَوْرَةِ ..

بِمَا لَا يَصِفُ البَشْرَةَ مَا بَيْنَ سُرَّةِ رَجُلٍ وَرُكْبَتَيْهِ . وَأَمَةٌ مَا يَظْهَرُ
غَالِبًا . وَحُرَّةٌ كُلُّهَا غَيْرَ وَجْهِ وَكَفِّ وَقَدَمٍ .

الخَامِسُ : اسْتِقْبَالُ القِبْلَةِ ..

في غيرِ شِدَّةِ خَوْفٍ، وَنَافِلَةٍ عَلَى رَاحِلَةٍ في السَّفَرِ .

السَّادِسُ : النِّيَّةُ .. مُقَارِنَةٌ لِلتَّعْبِيرِ ^(٢) .

(١) مَا بَيْنَ المَعْكُوفَتَيْنِ لَيْسَ فِي الأَصْلِ، وَهِيَ مِنَ المَحْقُوقِ لَيْسَتْ قِسْمًا مِنَ الكَلَامِ .

(٢) أَي اسْتِحْبَابًا، فَمُقَارِنَةُ النِّيَّةِ لِلتَّعْبِيرِ (وَهُوَ التَّكْبِيرُ فِي الصَّلَاةِ) وَأَوَّلُ العَمَلِ

مُسْتَحَبٌّ، وَلَيْسَ وَاجِبًا . فَيَجُوزُ تَقْدِيمُهَا قَبْلَهُ بِسَيْرٍ .

الثاني^(١) : الأركان .. اثنا عشر ..

- ١ / القيام .
- ٢ / وتكبير الإحرام .
- ٣ / والفتحة .
- ٤ / والرُّكُوع .
- ٥ / والرَّفْعُ مِنْهُ، وَالاعْتِدَالُ^(٢) .
- ٦ / والسُّجُود .
- ٧ / وَالجُلُوسُ مِنْهُ .
- ٨ / وَالطَّمَانِينَةُ فِي كُلِّ ذَلِكَ .
- ٩ / وَالتَّشَهُدُ الْأَخِيرُ .
- ١٠ / وَالجُلُوسُ لَهُ .
- ١١ / وَالتَّسْلِيمَةُ الْأُولَى .
- ١٢ / وَالتَّرْتِيبُ .

(١) أي الأمر الثاني مما تشتمل عليه الصلاة؛ وقد سبق الأمر الأول وهو (شروط الصلاة).

(٢) والرَّفْعُ من الركوع داخلٌ في الاعتدال منه . قاله البهوتي في (الروض المربع ١/١٩٥) . وفرق بينهما بعض أهل العلم في موضع واحد وهو في صلاة الكسوف [انظر : شرح المنتهى ١/٤٤٣] .

الثالث : الواجبات .. تسعة^(١) ..

- ١، ٢ / التَّسْبِيحُ فِي الرُّكُوعِ، وَالسُّجُودِ .
- ٣ / وَقَوْلُ : « سَمِعَ اللَّهُ لِمَنْ حَمِدَهُ »، وَ « رَبَّنَا وَلَكَ الْحَمْدُ » .
- ٤ / وَالتَّكْبِيرُ غَيْرَ تَكْبِيرَةِ الْإِحْرَامِ .
- ٥ / وَالتَّشَهُدُ الْأَوَّلُ .
- ٦ / وَالْجُلُوسُ لَهُ .
- ٧ / وَالصَّلَاةُ عَلَى النَّبِيِّ ﷺ .
- ٨ / وَالتَّسْلِيمَةُ الثَّانِيَةُ^(٢) .

(١) ذكر المصنف أن واجبات الصلاة تسعة .. وإنما عدَّ ثمانية .. والواجب التاسع هو :

٩/ سؤال المغفرة بين السجدين .

وقد قيل : إنها ركنٌ . وقيل : إنها سنة . [الإنصاف ٣/ ٦٧١] .

والمذهب عند المتأخرين أنها واجبة، وهو ما اختاره المؤلف في (مغني ذوي الأفهام ص ٣٧ ط: الأولى ١٣٨٨هـ) .

(٢) عدَّ الشيخُ -رحمه الله- الصلاة على النبي ﷺ، والتسليمة الثانية واجبين من واجبات الصلاة .. وقد وافق في ذلك إحدى الروايتين في المذهب [الإنصاف ٣/ ٦٧٣] .

والمذهب عند المتأخرين أنهما رُكنان من أركان الصلاة [شرح المنتهى ١/ ٤٤٥] .

الرَّابِعُ : الْمُسْتَحَبُّ ..

مِنْهُ قَوْلٌ؛ كَالِاسْتِفْتَاخِ . وَالتَّعَوُّذِ . وَالبَسْمَلَةِ . وَمَا زَادَ عَنِ الْمَرْءِ
فِي التَّسْبِيحِ . وَسُؤَالِ الْمَغْفِرَةِ . وَنَحْوِ ذَلِكَ .
وَمِنْهُ فِعْلٌ؛ كَالرَّفْعِ . وَالْوَضْعِ . وَنَحْوِ ذَلِكَ .

الخَامِسُ : الْمُبَاحُ ..

كُلُّ فِعْلٍ سُمِّحَ فِيهِ فِيهَا؛ مِثْلُ عَدِّ الْآيِ، وَالتَّسْبِيحِ^(١) . وَقَتْلِ
الْحَيَّةِ، وَالْعَقْرَبِ، وَالْقَمَلَةِ . وَنَحْوِ ذَلِكَ .

السَّادِسُ : الْمَكْرُوهُ ..

كُلُّ فِعْلٍ مَخَالَفَ لَهَا عِبْتًا، أَوْ نَحْوَهُ^(٢) مِمَّا لَا يُبْطَلُ؛ كَفَرَقَعَةِ
الْأَصَابِعِ، وَتَشْبِيكِهَا، وَنَحْوِ ذَلِكَ .

السَّابِعُ : الْمَحْرَمُ ..

وَهُوَ مُبْطَلٌ؛ كَالْعَمَلِ الْكَثِيرِ مِنْ غَيْرِ جَنْسِهَا .

(١) أي عدُّ التسبيح بالأصابع [انظر : الإنصاف ٣/٦٠٨] .

ويحتمل أن يكون مراده تسبيح المأموم لسهو الإمام [معني ذوي الأفهام ص ٣٨] .

(٢) ونحوه مما قد لا يكون عبثاً لكنه ليس من مصلحة الصلاة .

وَالصَّلَوَاتُ ثَلَاثَةٌ أَقْسَامٌ .. فَرَضٌ عَيْنٍ، وَفَرَضٌ كِفَايَةٌ،
وَسُنَّةٌ .

الأول : الصَّلَوَاتُ الخَمْسُ .. عَلَى كُلِّ مُسْلِمٍ مُكَلَّفٍ؛ غَيْرِ
حَائِضٍ، وَنَفْسَاءٍ، وَرَآئِلِ الْعَقْلِ بِأَمْرٍ يُعْذَرُ فِيهِ .

والثاني :^(١) فَرَضُ الكِفَايَةِ ..

* صَلَاةُ الْعِيدَيْنِ .. وَيُحْتَبُ بَعْدَهَا . وَوَقْتُهَا عِنْدَ ارْتِفَاعِ
الشَّمْسِ . وَيُصَلِّي بِتَكْبِيرٍ .

وَيُكَبَّرُ فِي لَيْلَتِي الْعِيدَيْنِ مُطْلَقًا، وَفِي الْأَضْحَى عَقِبَ الْفَرَائِضِ فِي
جَمَاعَةٍ مِنْ عَصْرِ عَرَفَةَ إِلَى آخِرِ أَيَّامِ التَّشْرِيقِ .

* وَصَلَاةُ الْجِنَازَةِ .. يُكَبَّرُ فِيهَا أَرْبَعًا مِنْ غَيْرِ رُكُوعٍ، وَلَا
سُجُودٍ، يَقْرَأُ فِي الْأُولَى الْفَاتِحَةَ، وَيُصَلِّي عَلَى النَّبِيِّ ﷺ فِي الثَّانِيَةِ،
وَيَدْعُو لِلْمَيِّتِ فِي الثَّالِثَةِ .

وَتَكُونُ الصَّلَاةُ عَلَيْهِ بَعْدَ أَنْ يُعْسَلَ، وَيُنْتَظَفَ، وَيُكْفَنَ .

وَيُكْفَنُ الرَّجُلُ فِي ثَوْبَيْنِ . وَالْمَرْأَةُ فِي خَمْسَةٍ .

وَيُحْمَلُ تَرْبِيعًا . وَيُدْفَنُ بَعْدَ الصَّلَاةِ فِي قَبْرِ عَمِيْقٍ يَمْنَعُ ظُهُورَ

الرَّائِحَةِ .

(١) زيادة من المحقق يقتضيها السياق، حيث ذكر المؤلف الأول .

[الثالث^(١)] : وَالسُّنَّةُ أَنْوَاعٌ .. مُطْلَقٌ . وَمُقَيَّدٌ .

[الأول] : الْمُطْلَقُ .. مَا لَا يَخْتَصُّ بِوَقْتٍ . فَيُسَنُّ فِي جَمِيعِ الْأَوْقَاتِ إِلَّا فِي خَمْسَةِ أَوْقَاتٍ؛ بَعْدَ الْفَجْرِ حَتَّى تَطْلُعَ الشَّمْسُ . وَعِنْدَ طُلُوعِهَا حَتَّى تَرْتَفِعَ . وَقَبْلَ الزَّوَالِ . وَبَعْدَ الْعَصْرِ . وَعِنْدَ الْغُرُوبِ .

الثاني : الْمُقَيَّدُ .. وَهُوَ مَا لَهُ وَقْتُ يُفْعَلُ فِيهِ .

- وَهُوَ إِمَّا وَقْتُهُ تَابِعٌ لَوَقْتِ فَرَضٍ؛ وَهُوَ السُّنُّ الرُّوَاتِبِ .

- وَمَا لَيْسَ بِتَابِعٍ .. ؛ وَهُوَ صَلَاةُ الضُّحَى مِنْ ارْتِفَاعِ الشَّمْسِ إِلَى الزَّوَالِ .

* وَالْوِتْرُ مِنْ صَلَاةِ الْعِشَاءِ إِلَى طُلُوعِ الْفَجْرِ .

* وَالتَّرَاوِيحُ فِي رَمَضَانَ جَمَاعَةٌ مِنْ دُخُولِ وَقْتِ الْعِشَاءِ إِلَى الْفَجْرِ .

* وَصَلَاةُ الْكُسُوفِ عِنْدَ كُسُوفِ الشَّمْسِ أَوْ الْقَمَرِ .

* وَصَلَاةُ الْاسْتِسْقَاءِ عِنْدَ الْقَحْطِ وَالْجَذْبِ خَاصَّةٌ؛ رَكَعَتَيْنِ فِي جَمَاعَةٍ . وَيُخْطَبُ بَعْدَهَا .

* وَسُجُودُ الْقُرْآنِ عِنْدَ قِرَاءَةِ سَجْدَةٍ، يُكَبَّرُ وَيَسْجُدُ؛ وَلَوْ فِي صَلَاةٍ، وَيَجْلِسُ وَيُسَلِّمُ، وَلَا يَتَشَهَّدُ .

(١) زيادة من المحقق يقتضيها السياق .

* وَتَجِبُ الْجَمَاعَةُ لِلصَّلَاةِ الْخَمْسِ عَلَى الرَّجَالِ . يَوْمٌ فِيهَا الْأَفْرَأُ، ثُمَّ الْأَعْلَمُ، ثُمَّ الْأَسْنُ، ثُمَّ الْأَشْرَفُ، ثُمَّ الْأَقْدَمُ هِجْرَةً ..
 قَدَامَ الْمَأْمُومِ إِنْ كَانَ رَجُلًا . وَمَعَهُنَّ الْمَرْأَةُ . وَيَصِحُّ عَنْ يَمِينِهِ وَيَسَارِهِ . وَلَا يَقِفُ الْوَاحِدُ عَنْ يَسَارِهِ . وَالْمَرْأَةُ الْوَاحِدَةُ تَقِفُ خَلْفَهُ .
 وَيُعْذَرُ فِي الْجَمَاعَةِ بِكُلِّ عُدْرٍ تَعْظُمُ مَعَهُ الْمَشَقَّةُ بِالْحَضُورِ .
 * وَجَمَاعَةُ الْجُمُعَةِ أَرْبَعُونَ . وَفِي الْعِيدِ رَوَاتَانِ .
 وَلَا تَجِبُ الْجُمُعَةُ عَلَى امْرَأَةٍ، وَلَا عَبْدٍ، وَلَا مُسَافِرٍ . وَمَنْ حَضَرَهَا وَجَبَتْ عَلَيْهِ وَانْعَقَدَتْ بِهِ ^(١) .
 وَمِنْ شَرْطِهَا الْعَدَدُ . وَالِاسْتِيطَانُ . وَإِذْنُ الْإِمَامِ . وَالْخُطْبَانِ .

(١) كذا وردت في الأصل بخط المصنف . وفيه تأمل ..

فإن المرأة والعبد إذا حضرا الجمعة لم تجب عليهما ولم تتعقد بهما؛ أمّا المرأة فبلا نزاع، وأمّا العبد فعلى الصحيح من المذهب [الإنصاف ٥/١٧٣] . لذا قال الموفق في (المقنع) : (ومَنْ حضرها منهم أجزاءه، ولم تتعقد به) . ثم قال الموفق بعد ذلك : (ومَنْ سقطت عنه لعذر إذا حضرها وجبت عليه، وانعقدت به) .
 أي عُذر طارئ ومنه السفر ونحوه؛ لذا نقل في (الإنصاف ٥/١٧٦) عن ابن عبدالقوي في (مجمع البحرين) أنه قال : (كلامُ الشيخ هنا عام يدخل فيه المسافر، ومَنْ دام ضرره بمطر ونحوه فإنه لا تجب عليه، ويجوز له الانصراف على ما حكاها الأصحاب فيكون مراده التخصيص .. إلخ) .
 فالصواب تقييد هذه العبارة بالمسافر دون العبد والمرأة .

الثَّانِي الزُّكَاة

وَهِيَ مُشْتَمِلَةٌ عَلَى .. مُزَكِّي . وَمُزَكِّي . وَمَدْفُوعٌ . وَمَدْفُوعٌ إِلَيْهِ .

الأول : المُزَكِّي ..

وَهُوَ كُلُّ مُسْلِمٍ حُرٍّ مَلَكَ الْمَالَ مِلْكَاً تَامّاً .

الثاني : المُزَكِّي .. وَيَجِبُ فِي نَفْسٍ، وَمَالٍ .

أَمَّا النَّفْسُ .. فَزَكَاةُ الْفِطْرِ . عَلَى كُلِّ مُسْلِمٍ كَبِيرٍ، وَصَغِيرٍ عَنِ
نَفْسِهِ، وَمَنْ تَلَزَّمَهُ مُؤْتَنُهُ إِذَا مَلَكَ ذَلِكَ . صَاعاً مِنْ تَمْرٍ أَوْ شَعِيرٍ، أَوْ
بُرٍّ، أَوْ دَقِيقٍ، أَوْ سَوِيقٍ، أَوْ أَقِطٍ . وَمَعَ عَدَمِهِ مَا يُقْتَاتُ .

وَالْمَالُ .. أَرْبَعَةٌ أَنْوَاعٌ ^(١) ..

* مِنَ الْمَالِ السَّائِمَةِ مِنْ بَهِيمَةِ الْأَنْعَامِ؛ وَهِيَ الْإِبِلُ، وَالْبَقَرُ،
وَالْعَنَمُ .

فَفِي خَمْسٍ مِنَ الْإِبِلِ شَاةٌ، وَفِي كُلِّ خَمْسِ شَاةٍ، إِلَى خَمْسٍ
وَعِشْرِينَ فَتَجِبُ بِنْتُ مَخَاضٍ، إِلَى خَمْسٍ وَثَلَاثِينَ، فَإِذَا بَلَغَتْ سِتّاً
وَثَلَاثِينَ بِنْتُ لَبُونٍ، ثُمَّ إِلَى سِتٍّ وَأَرْبَعِينَ حِقَّةً، ثُمَّ إِلَى إِحْدَى وَسِتِّينَ

(١) عَدَّ الْمَصْنَفُ خَمْسَةَ أَنْوَاعٍ بِزِيَادَةِ (الرَّكَازِ) .

فَتَجِبُ فِيهَا جَدَعَةٌ، إِلَى سِتِّ وَسَبْعِينَ فَتَجِبُ ابْتِنَا لُبُونٍ، ثُمَّ إِلَى إِحْدَى
وَتَسْعِينَ فَتَجِبُ حَقَّتَانِ، إِلَى مِائَةٍ وَإِحْدَى وَعِشْرِينَ فَتَجِبُ ثَلَاثُ بَنَاتِ
لُبُونٍ، ثُمَّ فِي كُلِّ أَرْبَعِينَ بِنْتُ لُبُونٍ، وَفِي كُلِّ خَمْسِينَ حِقَّةٌ .

وَفِي الْبَقَرِ فِي كُلِّ ثَلَاثِينَ تَبِيعٌ أَوْ تَبِيعَةٌ، وَفِي كُلِّ أَرْبَعِينَ مُسِنَّةٌ .

وَفِي الْعَنَمِ فِي الْأَرْبَعِينَ شَاةٌ، إِلَى مِائَةٍ وَإِحْدَى وَعِشْرِينَ شَاتَانِ،
إِلَى مِائَتَيْنِ وَوَأَحِدَةٌ ثَلَاثُ شَيَاءٍ، ثُمَّ فِي كُلِّ مِائَةٍ شَاةٌ .

* وَالْأَثْمَانُ .. وَهِيَ الذَّهَبُ وَالْفِضَّةُ . فَتَجِبُ فِي كُلِّ عِشْرِينَ
مِثْقَالًا فَيَجِبُ فِيهَا نِصْفُ مِثْقَالٍ . وَفِي مِائَتَيْ دِرْهَمٍ خَمْسَةُ دَرَاهِمٍ .

* وَفِي الرُّكَازِ .. دَفْنِ الْجَاهِلِيَّةِ الْخُمْسِ .

* وَعَرُوضُ التَّجَارَةِ إِذَا بَلَغَتْ قِيمَتُهَا نِصَابًا .

* وَالخَارِجُ مِنَ الْأَرْضِ فِي كُلِّ حَبٍّ، وَتَمْرٍ يُكَالُ وَيُدَخَّرُ إِذَا بَلَغَ
خَمْسَةَ أَوْسُقٍ .

وَيُشْتَرَطُ النُّصَابُ فِي الْكُأِ . وَالْحَوْلُ فِي غَيْرِ الْخَارِجِ مِنَ
الْأَرْضِ .

[الثالث:]^(١) وَأَمَّا الدَّافِعُ .. فَهُوَ رَبُّ الْمَالِ، أَوْ وَكَيْلُهُ بِالنِّيَّةِ^(٢) .

[الرابع:]^(٣) وَأَمَّا المَدْفُوعُ إِلَيْهِ .. فَهُمُ الثَّمَانِيَةُ أَصْنَافُ؛ الْفُقَرَاءُ .
وَالْمَسَاكِينُ . وَالْعَامِلِينَ^(٤) عَلَيْهَا . وَالْمَوْلُفَةُ قُلُوبُهُمْ . وَفِي الرِّقَابِ .
وَالْعَارِمِينَ^(٥) . وَفِي سَبِيلِ اللَّهِ . وَابْنِ السَّبِيلِ .

وَلَا يَجُوزُ دَفْعُهَا إِلَى غَنِيِّ، وَلَا عَمُودِي نَسَبٍ، وَلَا زَوْجٍ، وَلَا بَنِي
هَاشِمٍ، وَلَا مَوَالِيهِمْ .

وَفِي قَرِيبٍ تَلَزَمَهُ مُؤْتَتُهُ، وَبَنِي الْمُطَلَّبِ خِلَافَ .

(١) مَا بَيْنَ الْمَعْكُوفَتَيْنِ زِيَادَةٌ مِنَ الْحَقِّقِ . وَقَدْ سَبَقَ أَنَّ الشَّيْخَ -رَحِمَهُ اللَّهُ- ذَكَرَ
الْأَوَّلَ، وَالثَّانِي، فَنَاسَبَ ذِكْرَ هَذِهِ الزِّيَادَةِ .

(٢) فَلَا بُدَّ مِنْ نِيَّةِ رَبِّ الْمَالِ لَصِحَّةِ إِخْرَاجِ الْوَكِيلِ لِلزَّكَاةِ .

(٣) مَا بَيْنَ الْمَعْكُوفَتَيْنِ لَيْسَتْ فِي الْأَصْلِ .

(٤) كَذَا فِي الْأَصْلِ، وَلَعَلَّهُ [الْعَامِلُونَ] .

(٥) كَذَا فِي الْأَصْلِ، وَلَعَلَّهُ [الْعَارِمُونَ] .

الثالثُ الصَّوْمُ

وَيَشْتَمِلُ عَلَى أَرْبَعَةٍ .. صَائِمٌ، وَصَوْمٌ، وَمُفْسِدٌ لَهُ، وَمَفْعُولٌ فِيهِ .

* أَمَّا الصَّائِمُ .. فَهُوَ فِي الْوَاجِبِ .. كُلُّ مُكَلَّفٍ؛ غَيْرِ مُسَافِرٍ،

وَحَائِضٍ، وَنُفْسَاءِ .

وَفِي الثَّقَلِ .. كُلُّ مُمَيِّزٍ عَاقِلٍ؛ غَيْرِ حَائِضٍ، وَنُفْسَاءِ .

* وَأَمَّا الصَّوْمُ .. فَهُوَ ثَلَاثَةُ أَقْسَامٍ ..

١ / فَرَضٌ^(١)؛ وَهُوَ رَمَضَانَ .

٢ / وَوَاجِبٌ؛ وَهُوَ الْمَنْدُورُ^(٢)، وَقَضَاءُ رَمَضَانَ .

٣ / وَسُنَّةٌ؛ وَهُوَ مُطْلَقٌ ..؛ وَهُوَ كُلُّ صَوْمٍ لَيْسَ بِمَنْدُورٍ، وَلَا

قَضَاءً، وَقَعَ فِي زَمَانٍ لَا يُكْرَهُ صَوْمُهُ، وَلَا يَحْرُمُ .

(١) ذَكَرَ الْمُصَنِّفُ فِي (شَرْحِ غَايَةِ السُّؤْلِ إِلَى عِلْمِ الْأَصُولِ ص ١٥٦)

أَنَّ الْأَصْحَابَ فِي الْكُتُبِ الْفُرُوعِيَّةِ قَدْ قَطَعُوا كُلَّهُمْ بِالْتَبَايُنِ بَيْنَ الْفُرْضِ وَالْوَاجِبِ ..

فَنظَرُوا فِي مَسَائِلِ الْفُرُوعِ إِلَى بَابِ الصَّحَّةِ وَالْفَسَادِ .. فَالْفُرْضُ عِنْدَهُمْ لَا تَصَحُّ

الْعِبَادَةُ إِلَّا بِهِ، وَأَمَّا الْوَاجِبُ فَتَصَحُّ بِدُونِهِ وَتَجِبُ . إ.هـ .

(٢) فِي الْأَصْلِ [الْمَنْدُورُ] .

فَالْمَكْرُوه؛ مثل إفراد الجمعة، والسَّبْتِ، وَالثَّيْرُوزِ، وَالْمَهْرَجَانِ .

وَالْمَحْرَمُ؛ مثلُ يَوْمِي الْعِيدَيْنِ، وَأَيَّامِ التَّشْرِيقِ .

- وَالْمَقِيدُ .. يَوْمُ عَرَفَةَ، وَعَاشُورَاءَ، وَالْاِثْنَيْنِ، وَالْخَمِيسِ، وَسِتَّةُ

أَيَّامٍ بَعْدَ رَمَضَانَ فِي شَوَّالٍ، وَثَلَاثٍ مِنْ كُلِّ شَهْرٍ، وَالْمَحْرَمُ، وَشَعْبَانَ .

* وَالْمُفْسِدُ .. كُلُّ أَكْلٍ، أَوْ إِدْخَالِ جَوْفٍ مِنْ أَيِّ مَوْضِعٍ كَانَ

مُتَعَمِّدًا، وَلَوْ غَيْرَ مَطْعُومٍ . وَجَمَاعٌ، وَدَوَاعِيهِ، وَيَلْزَمُ بِالْجَمَاعِ كَفَارَةٌ .

وَحَجْمٌ لهما^(١) .

* وَالْمَفْعُولُ فِيهِ .. مُسْتَحَبٌّ؛ كَالِاشْتِعَالِ بِالطَّاعَةِ .

- وَمَبَاحٌ؛ كَتَّعَاطِي الْمَبَاحَاتِ .

- وَمَكْرُوهٌ؛ كَذَوْقِ طَعَامٍ، وَمَضْغِ عِلْكَ لَا يَتَحَلَّلُ، وَقُبْلَةٍ، وَنَحْوِ

ذَلِكَ .

- وَمَحْرَمٌ؛ كَغَيْبَةٍ، وَنَحْوِهَا، وَلَا يَقْضِي .

وَيُسْنُ الْأَعْتِكَافُ فِي كُلِّ صَوْمٍ بِمَسْجِدٍ لِالاشْتِعَالِ بِالطَّاعَةِ لَا

غَيْرِهَا .

وَيُفْسِدُهُ مَا يُفْسِدُ الصَّوْمَ .

(١) أي وفعل الحجامة مفسدٌ لصوم الحاجم والمحجم معاً .

الرَّابِعُ الْحَجُّ

- وَهُوَ مُشْتَمِلٌ عَلَى حَاجٍ . وَحَجٍّ . وَمَحْجُوجٍ . وَأَفْعَالٍ فِيهِ .
- * أَمَّا الْحَاجُّ .. فَهُوَ مَحَلٌّ وَاجِبٌ؛ وَهُوَ كُلُّ مُسْلِمٍ بَالِغٍ عَاقِلٍ حُرٍّ .
وَمَحَلٌّ سُنَّةٍ؛ وَهُوَ كُلُّ مُسْلِمٍ مُمَيِّزٍ عَاقِلٍ .
- * وَأَمَّا الْحَجُّ .. فَمِنْهُ وَاجِبٌ؛ وَهُوَ حَجَّةُ الْإِسْلَامِ وَعُمْرَتُهُ،
وَكَذَا الْمَنْدُورِ .
- وَأَمَّا السُّنَّةُ؛ فَهُوَ مَا عَدَا ذَلِكَ .
- * وَأَمَّا الْمَحْجُوجُ .. فَهُوَ الْبَيْتُ .
- * وَأَمَّا الْأَفْعَالُ فِي الْحَجِّ .. فَهِيَ أَشْيَاءٌ ..
- أَحَدُهَا : الْإِحْرَامُ مِنَ الْمِيقَاتِ، وَأَنْ لَا يَجَاوِزُهُ غَيْرَ مَحْرَمٍ .
وَلَهُ مِيقَاتَانِ :
- مِيقَاتُ زَمَانِيٍّ؛ وَهُوَ شَوَّالٌ، وَذُو الْقِعْدَةِ، وَعَشْرٌ مِنْ ذِي الْحِجَّةِ .
فَلَا يُحْرَمُ قَبْلَهُ وَلَا بَعْدَهُ .
- وَمِيقَاتُ مَكَانِيٍّ؛ يَخْتَلِفُ بِاخْتِلَافِ الْبُلْدَانِ .

وَهُوَ مَخْيِرٌ فِي الْإِحْرَامِ بَيْنَ التَّمَتُّعِ؛ بَأَن يُحْرِمَ بِالْعُمْرَةِ فَإِذَا فَرَغَ مِنْهَا
أَحْرَمَ بِالْحَجِّ .

وَالْقِرَانَ؛ بَأَن يُحْرِمَ بِهِمَا .

وَالْإِفْرَادَ؛ بَأَن يُحْرِمَ بِالْحَجِّ مُفْرَدًا . وَالْأَفْضَلُ التَّمَتُّعُ .

وَيُلَبِّي عِنْدَ الْإِحْرَامِ، وَبَعْدَهُ .

وَإِذَا أَحْرَمَ حَرَّمَ عَلَيْهِ سَبْعَةٌ أَشْيَاءَ؛ أَخَذَ الشَّعْرَ، وَالْأظْفَارَ .
وَتَغْطِيَةُ الرَّأْسِ . وَلِبْسُ الْمَخِيطِ . وَشَمُّ الطَّيِّبِ، وَالتَّطْيِبُ .
وَقَتْلُ صَيْدِ الْبَرِّ، وَأَكْلُهُ . وَعَقْدُ النِّكَاحِ، وَفِي الرَّجْعَةِ خِلَافٌ .
وَالْوَطْءُ فِي الْفَرْجِ .

وَالْمَرْأَةُ كَالرَّجُلِ إِلَّا فِي لِبْسِ الْمَخِيطِ . وَإِحْرَامُهَا فِي وَجْهَيْهَا فَقَطْ .

وَمَنْ فَعَلَ مَخْظُورًا وَجَبَ عَلَيْهِ الْفِدْيَةُ؛ وَهِيَ فِي ثَلَاثِ شَعْرَاتٍ
فَصَاعِدًا دَمًّا، وَفِيمَا دُونَ ذَلِكَ فِي كُلِّ وَاحِدٍ مُدٌّ طَعَامًا .

وَفِدْيَةُ تَغْطِيَةِ الرَّأْسِ، وَلِبْسِ الْمَخِيطِ، وَشَمِّ الطَّيِّبِ دَمٌّ .

وَفِدْيَةُ قَتْلِ الصَّيْدِ فِدَاؤُهُ بِمِثْلِهِ مِنَ النَّعَمِ .

وَفِدْيَةُ الْوَطْءِ بَدَنَةٌ، وَيَفْسُدُ بِهِ الْحَجُّ .

وَيُحْرَمُ صَيْدُ الْحَرَمِ، وَشَجَرُهُ، وَنَبَاتُهُ . وَكَذَلِكَ هُوَ مِنْ حَرَمِ
الْمَدِينَةِ؛ إِلَّا مَا تَدْعُو الْحَاجَّةُ إِلَيْهِ .

وَيُسْنُ أَنْ يَدْخُلَ مَكَّةَ مِنْ أَعْلَاهَا، وَيَخْرُجَ مِنْ أَسْفَلِهَا . وَيَدْخُلُ
الكَعْبَةَ مِنْ بَابِ بَنِي شَيْبَةَ .

وَيَبْدَأُ بِالْبَيْتِ فَيَطُوفُ بِهِ سَبْعًا، ثُمَّ يَسْعَى سَبْعًا، ثُمَّ يَجْلِقُ وَيُقَصِّرُ،
ثُمَّ قَدْ حَلَّ إِنْ كَانَ مُتَمَتِّعًا .

فَإِذَا كَانَ يَوْمُ التَّرْوِيَةِ أَحْرَمَ بِالْحَجِّ . ثُمَّ صَعَدَ إِلَى عَرَفَةَ فَوَقَفَ بِهَا
يَوْمَ عَرَفَةَ، ثُمَّ يَدْفَعُ بَعْدَ غُرُوبِ الشَّمْسِ . ثُمَّ يَأْتِي الْمَزْدَلِفَةَ،
وَيَأْخُذُ حَصَى الْجِمَارِ مِنْهَا . ثُمَّ يُصْبِحُ بِمَشْعَرِ . وَيَرْمِي الْجِمَارَ .
وَيَجْلِقُ أَوْ يُقَصِّرُ . ثُمَّ يُفِيضُ إِلَى مَكَّةَ فَيَطُوفُ وَيَسْعَى . ثُمَّ يَرْجِعُ
إِلَى مَنَى وَيَرْمِي بَقِيَّةَ الْأَيَّامِ . ثُمَّ يَرْجِعُ بَعْدَهَا إِلَى مَكَّةَ فَيَطُوفُ
لِلْوَدَاعِ . ثُمَّ يَخْرُجُ . وَيَزُورُ بَعْدَهُ قَبْرَ النَّبِيِّ ﷺ وَصَاحِبِيهِ -رَضِيَ اللَّهُ
عَنْهُمَا- .

وَأَرْكَانَ الْحَجِّ .. الْوُقُوفُ . وَطَوَافُ الزِّيَارَةِ . وَالْإِحْرَامُ .
وَالسَّعْيُ .

وَوَاجِبُهُ .. الْإِحْرَامُ مِنَ الْمَيْمَاتِ . وَالْوُقُوفُ إِلَى اللَّيْلِ . وَالْمَيْمَاتُ
بِمَزْدَلِفَةَ إِلَى بَعْدِ نِصْفِ اللَّيْلِ . وَالْمَيْمَاتُ بِمَنَى . وَالرَّمْيُ . وَالْحِلَاقُ .
وَطَوَافُ الْوَدَاعِ .

وَعَبْرُ ذَلِكَ سُنَّةٌ .

* وَأَرْكَانُ الْعُمْرَةِ .. الطَّوَافُ . وَالْإِحْرَامُ . وَالسَّعْيُ فِي أَوَانِهِ .
وَوَاجِبُهَا .. الْحِلَاقُ فِي أَوَانِهِ .
فَمَنْ تَرَكَ رُكْنًا لَمْ يَتِمَّ نُسُكُهُ إِلَّا بِهِ . وَمَنْ تَرَكَ وَاجِبًا جَبَرَهُ بِدَمٍ .
وَمَنْ تَرَكَ سُنَّةً فَلَا شَيْءَ عَلَيْهِ .

فرع

وَتَسُنُّ الْأَضْحِيَّةُ مِنْ بَهِيمَةِ الْأَنْعَامِ - وَعِنْدِي وَمِنْ غَيْرِهَا^(١) -
بِجَذَعِ ضَنْانٍ، وَثِيٍّ غَيْرِهِ صَحِيحٍ مِنْ سَائِرِ الْعِيُوبِ يَوْمَ الْعِيدِ بَعْدَ
الصَّلَاةِ إِلَى آخِرِ يَوْمَيْنِ مِنْ أَيَّامِ التَّشْرِيقِ .
وَيَتَصَدَّقُ مِنْهَا . وَالسُّنَّةُ أَكْلُ التَّلْتِ، وَإِهْدَاءُ التَّلْتِ، وَالتَّصَدُّقُ
بِالتَّلْتِ .

وَمَنْ أَرَادَ أَنْ يُضَحِّيَ فَلَا يَأْخُذُ مِنْ شَعْرِهِ وَلَا بَشْرِهِ شَيْئًا .
وَالْعَقِيقَةُ عَنِ الْجَارِيَةِ شَاةٌ . وَعَنِ الْغُلَامِ شَاتَانِ يُذَبِّحُ يَوْمَ
السَّابِعِ؛ كَالْأَضْحِيَّةِ إِلَّا أَنْ يُطَبَّخَ أَجْدَالًا^(٢)، وَيُطْعَمُ .

(١) هذا رأي للمؤلف تفرد به.. فإنه يرى أن الأضحية يجزئ فيها كل ما يحمل أكله
من طائر وذئ أربع مباح .. وقد ألف فيها رسالة (في عام ٨٦٥ هـ) بعنوان : (الرد
على من شدد وعسر في جواز الأضحية بما تيسر) قرر فيها ذلك، وهي مطبوعة
بتحقيق : إسماعيل غازي .. لكن حكى في (الفروع) الاتفاق على خلافه .
(٢) قال في (لسان العرب) : «الجدل» كل عظم لم يكسر .

وَالْخَامِسُ الْجِهَادُ

مَعَ كُلِّ بَرٍّ وَفَاجِرٍ .

وَهُوَ فَرَضٌ كِفَايَةٌ . وَاجِبٌ مَعَ مُفَاجَأَةِ الْعَدُوِّ .

وَهُوَ مُشْتَمِلٌ عَلَى .. مُقَاتِلِ، وَمُقَاتَلِ، وَمَعْنُومٍ، وَمُصَالِحَةٍ .

* الْمُقَاتِلُ .. هُوَ كُلُّ مُسْلِمٍ مُكَلَّفٍ ذَكَرَ . فَيُقَاتِلُ كُلَّ قَوْمٍ مَنِ
يَلِيهِمْ مِنَ الْعَدُوِّ .

وَلَا بُدَّ لِكُلِّ جَيْشٍ مِنْ أَمِيرٍ لَا يُقَاتِلُ إِلَّا بِإِذْنِهِ، وَلَا يُحَدِّثُ
حَدَّثًا إِلَّا بِإِذْنِهِ .

وَلَا يَحِلُّ لِلْمُسْلِمِينَ الْفِرَارُ مِنْ مِثْلِهِمْ .

وَإِذَا ظَفَرَ الْجَيْشُ لَمْ يَجْرُقُوا، وَلَمْ يَقَطْعُوا الشَّجَرَ، وَلَا يَتْلِفُوا شَيْئًا
بِلا مَنَفَعَةٍ .

* وَالْمُقَاتَلُ .. كُلُّ حَرْبِيٍّ لَيْسَ بِذِمِّيٍّ، وَلَا مُسْتَأْمِنٍ؛ إِذَا كَانَ
بِالْعَاقِلِ ذَكَرًا .

وَإِذَا ظَفَرَ بِهِ خَيْرُ الْإِمَامِ فِيهِ بَيْنَ الْقَتْلِ، وَالْمَنِّ، وَالْفِدَاءِ بِمُسْلِمٍ،
أَوْ بِمَالٍ .

وَمَنْ قَتَلَهُ فِي حَالِ الْحَرْبِ مُنْهَمِكًا عَلَيْهِ فَلَهُ سَلْبُهُ .
وَمَنْ بَدَلَ مِنْهُمْ الْجِزْيَةَ حَرُمَ عَلَيْنَا قَتْلُهُ . وَكَذَلِكَ كُلُّ مَنْ أَمَّنَهُ
مُسْلِمًا .

وَيَصِيحُ أَمَانُ كُلِّ مُسْلِمٍ مِنْ ذَكَرٍ وَأُنْثَى .
وَكُلُّ مَنْ قَتَلَ مُسْلِمًا، أَوْ زَنَى بِمُسْلِمٍ، أَوْ سَبَّ اللَّهَ وَرَسُولَهُ
انْتَقَضَ عَهْدُهُ .

* وَالْمَغْنُومُ مِنْهُمْ .. مَالٌ . وَأَرْضٌ .
- فَاَلْمَالُ .. يُحْمَسُهُ الْإِمَامُ؛ كَمَا ذَكَرَ اللَّهُ عَزَّ وَجَلَّ^(١) .
- وَالْأَرْضُ .. يُخَيَّرُ الْإِمَامُ بَيْنَ وَقْفِهَا، وَقَسْمِهَا .

* وَالْمِصَالِحَةُ .. إِنْ كَانَتْ عَلَى نَفْسٍ بِمَالٍ .
أَوْ عَلَى تَرْكِ قِتَالٍ مُدَّةً .
أَوْ عَلَى أَرْضٍ بِأَنَّ لَنَا عَلَيْهَا الْخَرَاجَ مَتَى أَرَدْنَا أَخْرَاجَتَاهُمْ مِنْهَا .
أَوْ لَهُمْ وَلَنَا خَرَاجٌ عَلَيْهَا . أَيُّ ذَلِكَ فَعَلَ جَاز .

(١) فِي قَوْلِهِ جَلَّ وَعَلَا : (وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ
وَلِلرَّسُولِ {سُورَةُ الْأَنْفَالِ آيَةٌ ٤١} .

الثاني .. المعاملات

وهي أشياء ..

أحدها^(١) : البَيْع .. وَلَا بُدَّ فِيهِ مِنْ بَائِعٍ . وَمُبْتَاعٍ . وَثَمَنِ .
وَمُثْمَنٍ . وَلَفْظٍ يُؤَدِّي بِهِ ، أَوْ مَا فِي مَعْنَاهُ .

* الأولُ : البائع .. فَيُسْتَرَطُّ فِيهِ ...

- أَنْ يَكُونَ جَائِزَ التَّصَرُّفِ ؛ وَهُوَ الْبَالِغُ الرَّشِيدُ ؛ غَيْرَ عَبْدٍ بِلَا إِذْنٍ .

- وَأَنْ يَكُونَ رَاضِيًا .

- وَأَنْ تَكُونَ الْعَيْنُ مِلْكَهُ ، أَوْ مَأْذُونًا لَهُ فِي بَيْعِهَا .

* الثاني : المُبْتَاع .. وَيُسْتَرَطُّ فِيهِ ..

- أَنْ يَكُونَ - أَيْضًا - جَائِزَ التَّصَرُّفِ .

* الثالثُ : الثَّمَنُ .. وَيُسْتَرَطُّ فِيهِ ..

- أَنْ يَكُونَ مَالًا فِي نَفْعٍ مُبَاحٍ^(٢) .

(١) لم يذكر المصنف الأمر الثاني . وقد حَدَّثَ عِنْدَهُ تَدَاخُلٌ فِي التَّرْقِيمِ ؛ كَمَا سَيَأْتِي ، وَلَعَلَّ سَبَبَ ذَلِكَ أَنَّهُ قَدْ أَمْلَاهَا مِنْ ذَهْنِهِ .

(٢) .. لغير ضرورة؛ كما في الثمن .

- مَعْلُومًا .

- مَقْدُورًا عَلَى تَسْلِيمِهِ .

- مَمْلُوكًا لِلْمُشْتَرِي .

* الرَّابِعُ : الْمُثْمَنُ .. وَيُشْتَرَطُ فِيهِ .. أَنْ يَكُونَ فِيهِ نَفْعٌ مُبَاحٌ

لِغَيْرِ ضَرُورَةٍ .

- وَأَنْ يَكُونَ مِلْكًا لِبَائِعِهِ، أَوْ مَآذُونًا لَهُ فِي بَيْعِهِ .

- وَأَنْ يَكُونَ مَقْدُورًا عَلَى تَسْلِيمِهِ .

- وَأَنْ يَكُونَ مَعْلُومًا بِرُؤْيَا، أَوْ صِفَةٍ يَحْصُلُ بِهَا مَعْرِفَتُهُ .

* الْخَامِسُ : اللَّفْظُ الْمُؤَدِّي بِهِ .. وَهُوَ الْإِيجَابُ وَالْقَبُولُ .

وَالْمُعَاطَاةُ .

* وَيَتَعَلَّقُ بِالْبَيْعِ عِدَّةُ أُمُورٍ ..

أَحَدُهَا : الشَّرُوطُ .. وَهِيَ قِسْمَانِ ..

١ / صَحِيحٌ؛ مِثْلُ صِفَةِ فِي الثَّمَنِ . أَوْ الْمُثْمَنِ . أَوْ نَفْعٌ فِيهِمَا .

أَوْ لُهُمَا .

٢ / وَفَاسِدٌ؛ كَمَنَافٍ مُقْتَضَاهُ^(١)، وَنَحْوِ ذَلِكَ .

(١) أَي مَقْتَضَى الْبَيْعِ . وَأَمَّا مَا يَخَالَفُ حَقِيقَةَ الْعَقْدِ فَإِنَّهُ يَبْطُلُ الْعَقْدُ .

وَالثَّانِي : الْخِيَارُ

سَبْعَةُ أَقْسَامٍ ..

- ١/ خِيَارُ الْمَجْلِسِ مَا لَمْ يَتَفَرَّقَا حِسًّا، أَوْ حُكْمًا .
- ٢/ وَالشَّرْطُ مُدَّةٌ مَعْلُومَةٌ؛ وَلَوْ طَالَت .
- ٣/ وَالْغَيْبُ فِي النَّجْشِ . وَالْمُسْتَرَسِلُ . وَالتَّلْقِي (١) .
- ٤/ وَالْغَيْبُ بِكُلِّ نَقْصٍ .
- ٥/ وَالتَّخْيِيرُ بِرَأْسِ الْمَالِ (٢)؛ بَأَن يَظْهَرَ كَاذِبًا .
- ٦/ وَاخْتِلَافِ الْمُتَبَايَعِينَ (٣) بَعْدَ الْحَلْفِ مِنْ كُلِّ مِمَّا يَجْمَعُ إِثْبَاتًا وَنَقْيًا .
- ٧/ وَالتَّصْرِيهَ (٤) .

(١) أي تلقي الجلب؛ وفي حديث أبي هريرة أن النبي ﷺ قال : (لا تلتقوا الجلب فمن تلقاه فاشترى منه فإذا أتى السوق فهو بالخيار) رواه مسلم .
وخيار (المسترسل)، و(التلقي) داخلان في (خيار الغين) عند الفقهاء . انظر :
[الشرح الكبير والإنصاف ١١/٣٤٢] .
(٢) أي في التولية والشركة والمواضعة والمراجعة .
(٣) في الأصل [المتبايعان] . والصواب ما أثبت .
(٤) وهذا النوع هو الذي يُسمى عند الفقهاء (بخيار التدليس) .

وَالثَّالِثُ : الرَّبَّاءُ

قِسْمَان ..

١/ رَبَّاءُ الْفَضْلِ .. فِي كُلِّ جَنْسٍ مَطْعُومٍ^(١) مَكِيلٍ، أَوْ مَوْزُونٍ .

٢/ وَرَبَّاءُ النَّسِيئَةِ .. فِي كُلِّ جَنْسَيْنِ اتَّحَدَتَا فِيهِمَا عِلَّةٌ رَبَّاءُ

الْفَضْلِ .

وَيَجْرُمُ فِي الصَّرْفِ التَّفَاضُلِ، وَالنَّسَاءُ فِي الْجَنْسِ الْوَاحِدِ . وَالنَّسَاءُ

دُونَ التَّفَاضُلِ فِي الْجَنْسَيْنِ .

(١) لفظة [مطعموم]، موجودة بخط المؤلف، ثم ضرب عليها، ولا أعلم أهو منه، أم
من غيره .

وكون العلة مركبة من الكيل والطعم معاً، هو اختيار الموفق، والشارح، والشيخ
تقي الدين . [انظر الإنصاف ١٦/١٢] .

والمذهب عند المتأخرين .. أن الرباء يجري في كل مكيل أو موزن بجنسيه؛ مطعوماً
كان أو غير مطعموم؛ كما في (شرح منتهى الإرادات ٣/٢٤٥) . و (الإقناع
٢/٢٤٥) .

- الرَّابِعُ .. الْبَيْعُ .. إِمَّا حَاضِرًا وَهُوَ مَا تَقَدَّمَ .
- وَإِمَّا غَائِبًا وَهُوَ السَّلْمُ .. يَصِحُّ بِشُرُوطِ الْبَيْعِ، وَيَزِيدُ عَلَيْهِ؛ بَأَن يَكُونَ فِي مَا يُمْكِنُ ضَبْطُ صِفَتِهِ بِكَيْلٍ، أَوْ وَزْنٍ، أَوْ ذَرْعٍ، وَنَحْوِ ذَلِكَ .
- مَوْصُوفًا .
- مُؤَجَّلًا إِلَى مُدَّةٍ مَعْلُومَةٍ يُوجَدُ الْمُسَلَّمُ فِيهَا فِي مَحَلِّهِ .
- وَقَبْضِ رَأْسِ مَالِهِ فِي الْمَجْلِسِ .
- الخَامِسُ .. الْبَيْعُ إِمَّا عَيْنًا تَقَدَّمَ حُكْمُهَا .
- وَإِمَّا مَنَفَعَةً؛ وَهِيَ الْإِجَارَةُ ..
- وَهِيَ .. إِمَّا عَلَى عَيْنٍ يَأْخُذُ مِنْهَا نَفْعَهَا . وَإِمَّا عَلَى مَنَفَعَةٍ مِنْ عَيْنٍ . وَإِمَّا عَلَى مَنَفَعَةٍ شَخْصٍ .
- * الْأُولَى : كِإِجَارَةِ أَرْضٍ لِلزَّرْعِ .
- * وَالثَّانِيَةُ : كَسُكْنَى الدَّارِ، وَرُكُوبِ الدَّابَّةِ، وَنَحْوِ ذَلِكَ .
- * وَمَنَفَعَةُ الشَّخْصِ .. إِنْ تَسَلَّمَ^(١) فَهُوَ الْأَجِيرُ الْخَاصُّ . وَإِنْ سَلَّمَ الْعَمَلَ فَهُوَ الْمَشْتَرِكُ .
- وَلَا تَصِحُّ الْإِجَارَةُ إِلَّا فِي نَفْعٍ مُبَاحٍ . مَعْلُومٍ . مُقَدَّرٍ بِوَقْتٍ، أَوْ فِعْلٍ مَعْلُومٍ .

(١) أي تسلّم الشخص .

السَّادِسُ .. الْقَرْضُ .. مَدْنُوبٌ فِي كُلِّ مَا صَحَّ السَّلْمُ فِيهِ؛ بِغَيْرِ
زِيَادَةٍ، وَلَا شَرْطِهَا .

وَيَبْرُدُ مِثْلَهُ . وَإِنْ زَادَ مِنْ غَيْرِ شَرْطٍ قَدْرًا، أَوْ جَوْدَةً جَازَ .

السَّابِعُ .. الْوَثَائِقُ عَلَى الْحَقُوقِ ثَلَاثَةٌ ..

* الرَّهْنُ .. بَأَنْ يَضَعَ عِنْدَهُ عَيْنًا يَصِحُّ بَيْعُهَا عَلَى مَالِهِ . وَمَتَى لَمْ
يَجِئْهُ بِمَالِهِ بَاعَهَا .

فَلَا يَجُوزُ لَهُ التَّصَرُّفُ فِيهَا بَعْدَ ذَلِكَ، وَتَكُونُ عَلَيْهِ لَا يَنْفَكُ شَيْءٌ
مِنْهَا إِلَّا بَرْدُ الْجَمِيعِ .

* الضَّمَانُ .. وَهُوَ ضَمُّ ذِمَّةٍ إِلَى ذِمَّةٍ فِي الْحَقِّ . وَيَصِحُّ مِنْ كُلِّ
جَائِزِ التَّصَرُّفِ .

* وَالْكَفَالَةُ .. وَهُوَ التَّرَامُ إِحْضَارِ الْعَرِيمِ . فَمَتَى لَمْ يَأْتِ بِهِ مَعَ
بَقَائِهِ ضَمِينَ مَا عَلَيْهِ .

الثَّامِنُ : الْحَوَالَةُ .. تَنْقُلُ الْحَقَّ مِنْ ذِمَّةٍ إِلَى ذِمَّةٍ .

وَلَا يُعْتَبَرُ فِيهَا رِضَا الْمَحَالِ عَلَيْهِ . وَلَا الْمَحَالِ إِذَا كَانَ الْمَحَالُ
عَلَيْهِ مَلِيئًا .

[التاسع^(١)] : المتصرف ..

- إمّا جائز التصرف مطلقاً؛ وهو المكلف الرشيد .

- أو محجوراً عليه .. وهو قسمان ..

محجور عليه لحضه؛ وهو الصبي حتى يبلغ، والمجنون حتى يفيق .

ومحجور عليه لغيره؛ وهو السفیه .

[العاشير^(٢)] : المتصرف .. إمّا بنفسه . أو بغيره .

* وهو^(٣) إمّا وكيل .. فيجوز توكيل كلّ جائز التصرف فيما

وكلّ فيه .

* أو شريك .. وهو إمّا في الربح؛ وهو المضارب كلّ من دفع

إليه المال ليتّجر فيه بجزء معلوم من ربحه .

وإمّا في الأعيان، ونمايتها؛ وهي أقسام .. منها شركة الوجوه .

والأبدان .

ومنها : المساقاة، والمزارعة في عرس كلّ شجر له ثمر، وكلّ زرع

بجزء معلوم منه .

(١) في الأصل [الثامن] . والصواب ما أثبت .

(٢) الأصل [التاسع] . والصواب ما أثبت .

(٣) أي المتصرف بغير نوعان إمّا وكيل، أو شريك ..

[الحادي عشر]^(١) : أَخَذُ الْأَمْوَالِ بِغَيْرِ عِوَضٍ أَقْسَامٌ :

أحدها : العارية .. فِي كُلِّ عَيْنٍ يُتَّفَعُ بِهَا مَعَ بَقَائِهَا . وَيَرُدُّهَا .
وَيَضْمَنُ عَيْنَهَا ، وَأَجْزَاءَهَا بِالتَّلْفِ^(٢) .

الثاني : الوديعة .. عِنْدَ الْمُسْتَوْدِعِ أَمَانَةٌ ، لَا ضَمَانَ عَلَيْهِ فِيهَا مِنْ
غَيْرِ تَعَدُّ .

الثالث : الغصب .. كُلُّ مَنْ غَصَبَ مَالًا مُحْتَرَمًا مِّنْ^(٣) حَرْمٍ
عَلَيْهِ قَتْلُهُ ، أَوْ كَانَ مُنْتَقِلًا إِلَى مَنْ حَرَّمَ عَلَيْهِ قَتْلُهُ^(٤) . وَجَبَ عَلَيْهِ رَدُّهُ .
وَضَمِنَهُ بِالتَّلْفِ ، وَكَذَلِكَ يَضْمَنُ أَجْزَاءَهُ إِذَا لَمْ يَكُنْ مُحْرَمًا .

الرابع : الْمَالُ الْمُلْتَقَطُ .. إِمَّا آدَمِيًّا ، أَوْ مَالًا غَيْرَهُ .

* أَمَّا الْآدَمِيُّ ؛ فَهُوَ الطِّفْلُ الْمُنْبُوذُ فَقَطْ . وَيُنْفَقُ عَلَيْهِ مِمَّا وَجَدَ
مَعَهُ ، وَإِلَّا فَمِنْ بَيْتِ الْمَالِ .

وَهُوَ حُرٌّ مُسْلِمٌ ، مَا لَمْ يَكُنْ فِي بَلَدٍ كُفَّارٍ لَا مُسْلِمٍ فِيهِ .

(١) في الأصل [العاشر] . والصواب ما أثبت .

(٢) المذهب أن الأجزاء لا تضمن باستعمال معروف [الإنصاف ١٢/٩٣ ، المنتهى ٤/١١٤]

(٣) في الأصل : [من ممن] .

(٤) قوله [منتقلًا إلى من حرم عليه قتله] .. لتدخل الحقوق غير المقومة بالمال ؛
كالكلب ، وخر الذمي ، والسرجين ، ونحوها فإنها منتقلة إلى من يحرم قتله ، وهي
قابلة للغصب ، وليست بمال محترم . [انظر : المبدع ٥/١٥٠] .

* وَالْمَالُ ثَلَاثَةٌ أَقْسَامٌ ..

- مَا لَا يَتَّبَعُهُ هِمَّةٌ أَوْ سَاطِرُ النَّاسِ . يَمْلِكُهُ بِالتَّقَاطُهِ، وَيَتَنَفَّعُ بِهِ إِلَى أَنْ يُوجَدَ رَبُّهُ . وَلَا يُعْرَفُ .

- وَمَا يَمْتَنِعُ مِنْ صِعَارِ السَّبَاعِ . يَحْرُمُ التَّقَاطُهِ .

- وَسَائِرُ الْمَالِ غَيْرَهُمَا . يُلْتَقَطُ وَيُعْرَفُ سَنَةً، وَيُמَلِكُ بَعْدَهَا .

الخَامِسُ : الْهِبَةُ وَالْعَطِيَّةُ .. يُمَلِكُ بِالتَّقْبُضِ . وَيَحْرُمُ الرَّجُوعُ فِيهَا .

السَّادِسُ : الْمَأْخُوذُ مِنَ الزَّكَاةِ .

السَّابِعُ : الْمَأْخُوذُ مِنْ مَالِ الْغَنِيْمَةِ .

الثَّامِنُ : الرَّشْوَةُ .. لِلْقَاضِي، وَالْحَاكِمِ وَهِيَ مُحْرَمَةٌ .

التَّاسِعُ : الْهَدِيَّةُ . وَهِيَ مُبَاحَةٌ لِغَيْرِ الْحَاكِمِ؛ إِذَا لَمْ يَكُنْ لَهُ مِنْ الْمُهْدِيِّ عَادَةٌ .

العَاشِرُ : أَرْضُ الْمَوَاتِ .. مَمْلُوكَةٌ لِمَنْ أَحْيَاهَا .

الحَادِي عَشْرُ : الرِّكَازُ .. وَهُوَ دَفْنُ الْجَاهِلِيَّةِ . مَمْلُوكٌ لِمَنْ وَجَدَهُ بَعْدَ الْخُمْسِ .

الثَّانِي عَشْرُ : الْمَعَادِنُ .. مَمْلُوكَةٌ لِمَنْ وَجَدَهَا .

الثالث عشر : الكنوز .. مملوكة لمن وجدها؛ إن لم يكن في أرض مملوكة .

الرابع عشر : كل ما في البحر من سمك، وحيوان، ولؤلؤ، ومرجان، وغير ذلك . مملوك لمن أخذه .

الخامس عشر : كل الطيور البرية، وأعشاشها .. مباحة لمن أخذها .

السادس عشر : كل حيوان البر الوحشي .. مباح لمن أخذه مأكولاً كان، أو غيره .

السابع عشر : مال من رغب عنه وتركه في مصر، أو برية، أو مضيعة، أو مهلكة؛ لعجزه عنه، أو لا . مملوك لمن أخذه .

الثامن عشر : كل عشب، وكلام لم يزرعه آدمي . مباح لمن أخذه؛ سواء كان في أرض مملوكة، أو غير مملوكة .

التاسع عشر : كل شجر بري لم يغرسه آدمي . مباح لمن أخذه؛ إذا كان في أرض غير مملوكة .

العشرون : ماء كل نهر، وعين جار . مملوك لمن أخذه .

[الثاني] ^(١) عَشْرٌ : إِخْرَاجُ الْأَمْوَالِ عَنِ مَالِكِهَا ..

* إِمَّا بَعْوَضٍ ؛ وَهُوَ الْبَيْعُ ، وَالْهَبَةُ بِشَرْطِ عَوَضٍ .

* وَإِمَّا بَعِيرٍ عَوَضٍ ؛ وَهِيَ أَقْسَامٌ ..

أَحَدُهَا : الزَّكَاةُ .

الثاني : الْجُزْئِيَّةُ .. مِنْ كُلِّ كَافِرٍ أَقَامَ تَحْتَ أَيْدِينَا ذِمَّةً .

الثالث : الْوَقْفُ .. وَهُوَ تَحْيِيسُ الْأَصْلِ ، وَتَسْيِيلُ الْمَنْفَعَةِ مِنْ كُلِّ

جَائِزِ التَّصَرُّفِ ، فِي بَرٍّ ، بَلْفَظٍ صَرِيحٍ أَوْ كِنَايَةٍ .

الرابع : الْعُشْرُ .. مِنْ كُلِّ كَافِرٍ اتَّعَجَرَ إِلَيْنَا .

الخامس : الْوَصِيَّةُ .. تَصِيحٌ مِنْ جَائِزِ التَّصَرُّفِ . وَهِيَ مُشْتَمَلَةٌ

عَلَى وَصِيَّةٍ . وَمُوصَى بِهِ . وَمُوصَى لَهُ . وَمُوصَى إِلَيْهِ .

* فَالْوَصِيَّةُ .. مُسْتَحَبَّةٌ بِالثُّلْثِ لِمَنْ لَهُ وَارِثٌ . وَبِأَكْثَرِ لِمَنْ لَا

وَارِثَ لَهُ . وَلَا تَصِيحٌ بِأَكْثَرِ مِنَ الثُّلْثِ إِلَّا بِإِجَازَةِ الْوَرِثَةِ .

* وَالْمُوصَى بِهِ .. الْمَالُ .

(١) فِي الْأَصْلِ [الْحَادِي عَشْرًا] ، وَالصَّوَابُ مَا أُثْبِتَ . وَهَذَا مُتَعَلِّقٌ بِمَا سَبَقَ مِنْ

الْأُمُورِ الْمُتَعَلِّقَةِ بِالْبَيْعِ ، وَقَدْ سَبَقَ أَحَدُ عَشْرٍ أَمْرًا .

* وَالْمَوْصَى لَهُ .. كُلُّ مَنْ يَمْلِكُ .

* وَالْمَوْصَى إِلَيْهِ .. كُلُّ جَائِزِ التَّصْرُفِ .

السَّادِسُ : الْعِتْقُ .. يُسْنُّ لِمَنْ لَهُ كَسْبٌ بَلْفِظِ صَرِيحٍ، وَكِنَايَةٍ .

وَيَحْصُلُ بِقَوْلٍ، وَمَلِكٍ رَجِمٍ مُحَرَّمٍ .

وَمَنْ أَعْتَقَ شِرْكَاءَ لَهُ مِنْ عَبْدٍ عَتَقَ كُلَّهُ إِنْ كَانَ مُوسِرًا، وَمَا أَعْتَقَ

إِنْ كَانَ مُعْسِرًا .

وَيَصِحُّ خَالًا، وَمُعَلَّقًا إِلَى وَقْتٍ .

فَإِنْ عُلِّقَ بِالْمَوْتِ فَهُوَ تَدْبِيرٌ يُعْتَبَرُ مِنَ الثَّلَاثِ . وَيَصِحُّ بَيْعُ الْمُدَبَّرِ

فِي تَالِيهِ^(١) .

وَإِنْ بَاعَ السَّيِّدُ عَبْدَهُ لِنَفْسِهِ بِمَالٍ إِلَى أَجَلٍ فَهِيَ كِتَابَةٌ، مُسْتَحَبَّةٌ لِمَنْ

عَلِمَ فِيهِ خَيْرٌ . وَيَعْتَقُ بِالْأَدَاءِ .

وَإِنْ عَجَزَ عَادَ رِقًّا .

وَإِنْ وُلِدَتِ الْأُمَّةُ مِنْ سَيِّدِهَا مَا يَتَبَيَّنُ فِيهِ خُلُقُ الْإِنْسَانِ صَارَتْ

لَهُ بِذَلِكَ أُمَّ وَوَلَدُهُ تَعْتَقُ بِمَوْتِهِ، وَلَا يَجُوزُ لَهُ بَيْعُهَا .

(١) كَذَا تُقْرَأُ فِي الْأَصْلِ .. وَمَعْنَاهَا أَنَّهُ إِذَا بَاعَ مُدَبَّرًا وَلَمْ يُعِدْ إِلَيْهِ مَلَكُهُ بِبَيْعٍ، أَوْ

هَبَةً، وَنَحْوَهَا صَحَّ الْبَيْعُ .

فَإِنْ عَادَ إِلَيْهِ مَلِكُ الْمُدَبَّرِ فَهُوَ عَلَى التَّدْبِيرِ الْأَوَّلِ .

الثَّالِثُ مِنْ أُمُورِ الْفُرُوعِ .. الاجْتِمَاعُ وَالْإِفْتِرَاقُ

فَالاجْتِمَاعُ مُشْتَمِلٌ عَلَى .. نَاكِحٍ . وَمُنْكَوحٍ . وَمُنْكِحٍ .
وَمُنْكَحٍ بِهِ . وَمُنْكَحٍ عَلَيْهِ .

* النَّاكِحُ .. هُوَ الزَّوْجُ؛ وَهُوَ كُلُّ ذَكَرٍ مُوَافِقٍ فِي الدِّينِ؛ إِلَّا
المُسْلِمَ يُبَاحُ لَهُ نِكَاحُ نِسَاءِ أَهْلِ الذِّمَّةِ .
وَيُشْتَرَطُ فِيهِ .. أَنْ يَكُونَ رَاضِيًا إِذَا لَمْ يَكُنْ طِفْلًا، أَوْ مَجْنُونًا
زَوْجَهُ أَبُوهُ .

* وَالْمُنْكَوحُ .. هِيَ الْمَرْأَةُ الْمُوَافِقَةُ فِي الدِّينِ، إِلَّا الْكِتَابِيَّةَ مُسْلِمًا .
لَيْسَتْ مِنْ عَمُودِي النَّسَبِ، وَلَا أَحْتًا، وَبَنَاتِهَا، وَعَمَّةٌ، وَخَالََةٌ .

وَيَحْرُمُ مِنَ الرِّضَاعَةِ مَا يَحْرُمُ مِنَ النَّسَبِ . إِذَا رَضَعَ مِنْ امْرَأَةٍ،
أَوْ أَرْضَعَتْ بِنْتًا .

وَلَا تَحْرِيمٌ فِي حَقِّ مَنْ لَمْ يَرْضَعَ مِنْ إِخْوَتِهِ، وَأَوْلَادِهِمْ، وَأَعْمَامِهِ،
وَأَوْلَادِهِمْ .

وَلَا يَجُوزُ لِلْحُرِّ أَنْ يَتَزَوَّجَ أَكْثَرَ مِنْ أَرْبَعٍ . وَلَا لِلْعَبْدِ أَنْ يَزِيدَ
عَلَى اثْنَتَيْنِ .

وَيَحْرُمُ الْجَمْعُ بَيْنَ الْأَخْتَيْنِ . وَبَيْنَ الْمَرْأَةِ وَعَمَّتَيْهَا وَخَالَئِهَا .
وَتَحْرُمُ الزَّانِيَةُ حَتَّى تَتُوبَ .

وَلَا بُدَّ مِنْ كَوْنِ الزَّوْجَةِ رَاضِيَةً؛ إِلَّا أَنْ يُزَوَّجَ الرَّجُلُ ابْنَتَهُ الْبَكْرَ
غَيْرَ الْبَالِغَةِ^(١)، أَوْ الْمَجْنُونَةَ .

* وَالْمُنْكَحُ .. هُوَ الْوَالِي؛ وَهُوَ^(٢) أَقْرَبُ ذَكَورِهَا وَجُودًا، ثُمَّ
الْحَاكِمُ وَلَا يُزَوَّجُهَا إِلَّا بِرِضَاهَا؛ إِلَّا الْمَجْبُورَةَ .

* وَالْمُنْكَحُ بِهِ .. هُوَ الْإِيحَابُ وَالْقَبُولُ .. وَلَا بُدَّ مِنْهُ، وَلَا بُدَّ مِنْ
تَعْيِينِ الزَّوْجَيْنِ . وَالْإِشْهَادُ . وَفِي الْكِفَاءَةِ خِلَافٌ .

* وَالْمُنْكَحُ عَلَيْهِ .. هُوَ الصَّدَاقُ . وَلَا بُدَّ مِنْهُ . وَأَنْ يَكُونَ شَيْئًا
لَهُ نِصْفٌ^(٣)؛ وَلَوْ قُرْآنًا، وَكِتَابَةً، وَتَعْلِيمَ عِلْمٍ .

(١) مشهور المذهب أن ولاية الإجماع للأب على ابنته البكر مطلقاً؛ ولو كانت
بالغاً . والمؤلف وافق رأي الشيخ تقي الدين [الإنصاف ٢١/٢١، شرح المنتهى
١٢٤/٥] .

(٢) طُمَسَ فِي الْأَصْلِ بِمَقْدَارِ ثَلَاثَةِ حُرُوفٍ، وَلَعَلَّهَا مَا أُثْبِتَ .

(٣) أي له نصف يتموّل؛ وبه قال الخرقي، وصاحب الإقناع [شرح المنتهى
٢٣٥/٥، الإقناع ٣/٢٧٥] .

وَالْفِرَاقُ أَشْيَاءُ

أحدها : الخُلْعُ .. عَلَى عِوَضٍ عِنْدَ الشَّقَاقِ . وَهُوَ فَسْخٌ لَا يُنْقِصُ عَدَدَ الطَّلَاقِ .

الثاني : الطَّلَاقِ .. وَهُوَ مُرْتَبٌ عَلَى .. مُطْلَقٍ . وَمُطْلَقٍ . وَمُطْلَقٍ بِهِ .

* الْمُطْلَقُ .. هُوَ الزَّوْجُ ، أَوْ وَكَيْلُهُ ؛ حَتَّى الزَّوْجَةِ .

* وَالْمُطْلَقُ .. هِيَ الزَّوْجَةُ .

* وَالْمُطْلَقُ بِهِ .. هُوَ اللَّفْظُ .. مِنْهُ صَرِيحٌ يَقَعُ بِهِ مِنْ غَيْرِ نِيَّةٍ . وَكِنَايَةٌ ظَاهِرَةٌ ، وَخَفِيَّةٌ . يَقَعُ بِالظَّاهِرَةِ وَبِالْخَفِيَّةِ مَعَ النِّيَّةِ .

وَمِلِكُ الْحُرِّ ثَلَاثَ تَطْلِيقَاتٍ ؛ وَإِنْ كَانَ تَحْتَهُ أَمَةٌ . وَالْعَبْدُ تَطْلِيقَتَيْنِ ؛ وَإِنْ كَانَ تَحْتَهُ حُرٌّ .

وَيَصِحُّ اسْتِثْنَاءُ أَقَلِّ مِنَ النُّصْفِ .

وَيَصِحُّ الطَّلَاقُ مُنْجِزًا ، وَمُعْلَقًا عَلَى شَرْطِ يَقَعُ عِنْدَ وُجُودِهِ .

وَمِنْ الطَّلَاقِ .. بَائِنٌ؛ وَهُوَ الثَّلَاثُ . وَالطَّلَاقُ عَلَى عَوَضٍ^(١) .
وَقَبْلَ الدُّخُولِ .

- وَرَجْعِيٌّ؛ وَهِيَ الْوَاحِدَةُ لِلْمَدْخُولِ بِهَا إِذَا كَانَتْ بَعِيرٍ عَوَضٍ .
يَمْلِكُ رَجْعَتَهَا مَا دَامَتْ فِي الْعِدَّةِ؛ وَلَوْ كَرِهَتْ؛ إِذَا أَشْهَدَ .

الثالث من الفراق : الظَّهَارُ .. فَإِذَا تَظَاهَرَ مِنْ زَوْجَتِهِ حُرْمَتُ
عَلَيْهِ حَتَّى يُكْفَرَ .

الرَّابِعُ : اللَّعَانُ .. فَإِذَا قَذَفَهَا بِالزَّنَا . فَعَلَيْهِ الْيَبْنَءُ، أَوْ الْحَدُّ،
أَوْ الْمَلَاعِنَةُ؛ بَأَن يَشْهَدَ خَمْسَ مَرَّاتٍ أَنَّهَا زَنْتٌ، وَتُكذِّبُهُ خَمْسَ مَرَّاتٍ .
فَتَحْرُمُ عَلَيْهِ مَا لَمْ يُكذِّبْ نَفْسَهُ .

وَمَنْ حَلَفَ عَلَى تَرْكِ وَطْءِ زَوْجَتِهِ أَقْلًا مِنْ أَرْبَعَةِ أَشْهُرٍ .
لَمْ يَطَّأَهَا فِي كُلِّ الْوَقْتِ، فَإِنْ فَعَلَ كَفَّرَ .
وَكَثُرَ مِنْهَا يَكُونُ الْإِيْلَاءُ، يُضْرِبُ لَهُ مُدَّةُ الْأَرْبَعَةِ أَشْهُرِ، وَبَعْدَهَا
يَطَّأُ، أَوْ يُفَارِقُ .

(١) سبق أن ذكر المؤلف أن الخلع على عوض فسحّ وليس طلاقاً . وهنا ذكر أن الطلاق على عوض طلاق بائن - أي بينونة صغرى - .. ووجه ذلك أن فقهاء الحنابلة يرون أن الخلع طلاق بائن إذا كان بلفظ الطلاق أو يئنه . وأما إن كان بلفظ صريح في الخلع ولم ينو به طلاقاً فإنه يكون فسحاً . [شرح المنتهى ٥ / ٣٤٠] .

الرَّابِعُ .. الْجِنَايَاتُ وَالْمَعَاصِي

الْجِنَايَةُ .. إِمَّا عَلَى النَّفْسِ، أَوْ عَلَى الْأَعْضَاءِ، أَوْ عَلَى الْمَالِ .

* الْجِنَايَةُ عَلَى النَّفْسِ .. إِمَّا عَمْدًا فَيُوجِبُ الْقِصَاصَ .
أَوْ دُونَهَا فَيُوجِبُ الدِّيَةَ؛ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ، أَوْ مِائَةَ مِثْلِ
الْإِبِلِ، أَوْ مِائَتَا بَقْرَةٍ، أَوْ أَلْفَ شَاةٍ .

* وَالْجِنَايَةُ عَلَى الْبَعْضِ .. إِنْ كَانَتْ إِذْهَابَ مَا فِي الْإِنْسَانِ مِنْهُ
وَاحِدٌ فِيهِ الدِّيَةُ . وَمَا مِنْهُ اثْنَانِ فِيهِمَا الدِّيَةُ . وَمَا مِنْهُ أَرْبَعَةٌ فِيهَا
الدِّيَةُ . وَمَا مِنْهُ عَشْرَةٌ فِيهَا الدِّيَةُ . وَفِي كُلِّ مَحْصَابِهِ .
وَإِنْ كَانَتْ الْجِنَايَةُ عَمْدًا .. فَفِيهِ الْقِصَاصُ، وَكَذَلِكَ كُلُّ جِنَايَةٍ .

وَأَمَّا الْمَعَاصِي .. فَهِيَ كَثِيرَةٌ؛

* أَعْظَمُهَا الزُّنَا . وَيَجِبُ بِهِ الْحَدُّ؛ لِلْمُحْصَنِ الرَّجْمُ . وَالْبِكْرُ
الْجُلْدُ مِائَةً، وَتَغْرِيبُ عَامٍ .
وَالْعَبْدُ عَلَى نِصْفِهِ، بِلَا تَغْرِيبٍ .
* وَاللَّوْاطُ .. مِثْلُهُ .

- * وَمِنْهَا الْقَذْفُ .. مُحْرَمٌ مُوجِبٌ لِلْحَدِّ ثَمَانِينَ جَلْدَةً .
- * وَمِنْهَا شَرْبُ الْخَمْرِ .. مُحْرَمٌ يُحَدُّ شَارِبُهُ ثَمَانِينَ .
- * وَمِنْهَا السَّرِقَةُ .. مُحْرَمَةٌ مُوجِبَةٌ لِلْقَطْعِ، وَصَمَّانٍ مَا أُخِذَ .
- * وَمِنْهَا قَطْعُ الطَّرِيقِ .. مُحْرَمٌ .. مُحْتَمٌّ فِيهِ قَتْلٌ مِّنْ قَتْلِ وَصَلْبِهِ .
وَنَفْيٌ مِّنْ لَّمْ يَقْتُلْ وَتَشْرِيدُهُ .
- * وَمِنْهَا الْبَغْيُ عَلَى الْإِمَامِ وَالْخُرُوجُ عَلَيْهِ .. مُحْرَمٌ . يُقَاتَلُ مَنْ
فَعَلَهُ .
- * وَمِنْهَا الرُّدَّةُ .. مُحْرَمَةٌ مُّوجِبَةٌ لِلْقَتْلِ إِنْ لَمْ يَرْجِعْ .
- * وَمِنْهَا السُّحْرُ .. يَكْفَرُ فَاعِلُهُ، وَيُقْتَلُ إِنْ لَمْ يَرْجِعْ .
- وَكُلُّ مَعْصِيَةٍ فِيهَا حَدٌّ . فَلَا شَيْءَ فِيهَا غَيْرُهُ .
وَإِنْ كَانَ فِيهَا كَفَّارَةٌ؛ كَوَطْءِ الصَّائِمِ فِي رَمَضَانَ، وَوَطْءِ الْمُظَاهِرِ،
وَنَحْوِ ذَلِكَ فَلَيْسَ فِيهَا غَيْرُهَا . وَإِلَّا ففِيهَا التَّعْزِيرُ .

الخَامِسُ .. اسْتِخْرَاجُ ذَلِكَ مِنَ الْمَعَاصِي، وَحُقُوقِ الْأَدَمِيِّينَ

- وَيَحْتَاجُ .. إِلَى حَاكِمٍ . وَشُهُودٍ . وَبَيِّنٍ . وَإِقْرَارٍ .
- * أَمَّا الْحَاكِمُ .. فَهُوَ الْإِمَامُ، أَوْ نَائِبُهُ؛ قَاضٍ، أَوْ غَيْرُهُ .
وَنَصَبُهُ فَرَضٌ كِفَايَةٌ، وَأَنْ يَكُونَ مُجْتَهِدًا .
- * وَأَمَّا الشُّهُودُ .. فَيُخْتَلَفُونَ بِاخْتِلَافِ الشُّهُودِ بِهِ ..
- فَلَا يَقْبَلُ فِي الرِّثَا إِلَّا أَرْبَعَةٌ .
- وَفِي الْجَنَائِزِ، وَالْحُدُودِ . ذَكَرَانَ .
- وَفِي الْأَمْوَالِ، وَمَا يَقْصَدُ بِهِ . رَجُلَانِ، أَوْ رَجُلٌ وَامْرَأَتَانِ .
- وَفِيمَا لَا يَطَّلَعُ عَلَيْهِ الرَّجَالُ . امْرَأَتَانِ .
- وَلَا تُقْبَلُ شَهَادَةُ كَافِرٍ فِي غَيْرِ الْوَصِيَّةِ فِي السَّفَرِ، وَلَا فَاسِقٍ، وَلَا
صَبِيٍّ، وَلَا عَدُوٍّ، وَلَا وَلَدٍ، وَلَا وَالِدٍ، وَعَاشِقٍ لِمَعْشُوقَةٍ .
- * وَأَمَّا الْيَمِينُ .. فَفِي حَقِّ كُلِّ مُنْكَرٍ إِذَا لَمْ تَكُنِ الْبَيْتَةُ حَاضِرَةً،
فَيَحْلِفُ بِاللَّهِ .
- * وَأَمَّا الْإِقْرَارُ .. فَكُلُّ مَنْ أَقْرَأَ بِحَقِّ أَخِيذٍ بِهِ .

السَّادِسُ .. المَأْكَلُ وَالْمَشْرَبُ

فَيَبَّحُ كُلُّ طَاهِرٍ لَا مَضْرَرَةَ فِيهِ مِنْهُمَا^(١)؛ مِنْ أَنْعَامٍ، وَثَمَارٍ،
وَأَعْشَابٍ، وَطَيْرٍ، وَحَيَوَانِ بَحْرٍ وَمَاءٍ، وَفِقَاعٍ^(٢)، وَنَحْوِهِ .

وَيُحْرَمُ كُلُّ نَجَسٍ مُضَرٍّ كَكَلْبٍ، وَكُلِّ ذِي نَابٍ مِنَ السَّبَاعِ،
وَمُخَلَّبٍ مِنَ الطَّيْرِ، وَرَخْمٍ، وَنَحْوِ ذَلِكَ .

وَيُحْرَمُ مُسْتَحَبَّتٌ؛ كَقَنْفُذٍ، وَقَارَةَ، وَكُلِّ حَشْرَاتٍ .

وَحَشِيشَةٌ مُسْكِرَةٌ . وَكُلُّ عُشْبٍ مُضَرٍّ كَبَنْجٍ، وَشُبْرُمٍ^(٣)، وَنَحْوِهِ .

وَكُلُّ مُسْكِرٍ؛ كَحَمْرٍ، وَنَحْوِهِ .

وَمَالَ الْغَيْرِ مِنْ غَيْرِ ضَرُورَةٍ دَاعِيَةٍ إِلَيْهِ .

(١) أي من المأكولات والمشروبات .

(٢) «الفقاع»: هو النبيذ الذي لم يشتد ولم يغل، ويُتخذ لهضم الطعام، ولا يُكره شربه؛ كما نصَّ عليه فقهاء المذهب . [الفروع ١٠٥/٦، شرح المتهى ٣/٣٦٣، مطالب أولي النهى ٢١٦/٦] .

(٣) «شُبْرُم»: على وزن قفد .. وهو نوعٌ من الشَّيخ، عرق شجرة، حارٌّ يسبب الإسهال، والإكثار منه يقتل [الأدب الشرعية لابن مفلح ٦٦/٢، الفائق للزنجشري ٢/٢١٩] . وهو معروف بهذا الاسم إلى الآن ..

السَّابِعُ .. الْمَوَارِيثُ

وَالْوَرَاثُ ثَلَاثَةٌ ..

* ذُو فَرْضٍ ... وَتَعُمُّ .. الزَّوْجُ؛ وَلَهُ النِّصْفُ . وَمَعَ الْوَالِدِ الرَّبِيعِ .

وَالزَّوْجَةُ؛ وَلَهَا الرَّبِيعُ، وَمَعَ الْوَالِدِ الثَّمَنِ؛ وَلَوْ تَعَدَّتْ .
وَالْأَبُ مَعَ ذَكَورِ الْوَالِدِ لَهُ السُّدُسُ . وَالْجَدُّ كَذَلِكَ .
وَالْأُمُّ لَهَا الثَّلَاثُ، وَمَعَ الْوَالِدِ السُّدُسُ . وَالْجَدَّةُ لَهَا السُّدُسُ .
وَالْبِنْتُ لَهَا النِّصْفُ، وَمَعَ أَخٍ ذَكَرٍ عَصَبَةٌ . وَالْأَخْتُ كَذَلِكَ .
وَبَنَاتُ الْإِبْنِ كَذَلِكَ . وَإِنْ زَادَتْ عَلَى وَاحِدَةٍ كَانَ لَهَا الثُّلَاثَانُ .
وَإِنْ كَانَتْ بِنْتُ وَبَنَاتُ ابْنٍ كَانَ لِلْبِنْتِ النِّصْفُ، وَلِبَنَاتِ الْإِبْنِ السُّدُسُ .

وَإِنْ كَانَ بِنْتُ وَأَخَوَاتُ كُنَّ عَصَبَاتُ .

وَوَالِدُ الْأُمِّ إِنْ كَانَ وَاحِدًا لَهُ السُّدُسُ، وَإِنْ زَادَ لَهُ الثَّلَاثُ .

* وَالْعَصَبَاتُ .. فُرُوعُ الرَّجُلِ، وَأَصُولُهُ الذَّكَورُ؛ كَالْأَبِ،
وَالْأَوْلَادِ، وَمَنْ فِي دَرَجَتِهِ مِنْ إِخْوَتِهِ، وَمَنْ فِي دَرَجَةِ أَبِيهِ مِنَ الْأَعْمَامِ .
وَالْمَوْلَى الْمُنْعَمُ .

* وَذُو الْأَرْحَامِ .. كُلُّ قَرَابَةٍ أَدْلَى بِأُنثَى . يُجْعَلُ بِمَنْزِلَةِ مَنْ
أَدْلَى بِهِ .

* وَكُلُّ قَرِيبٍ مِنَ الْعَصَبَاتِ يَحْجِبُ الْبَعِيدَ ..
وَالْأُمُّ تَحْجِبُ الْجَدَّةَ .
وَالْأَبُ يَحْجِبُ الْجَدَّ .
وَالْوَالِدُ يَحْجِبُ وَلَدَ الْأُمِّ، وَالْأَخَوَاتِ^(١) .

(١) هذه العبارة تحتاج إلى تقييد .. فالذي يحجب الأخ لأم هو مُطلق الولد سواء
كان ذكراً، أو أنثى .
والذي يحجب الأخت إنما هو الولد الذكر فقط .

Appendix

Ibn Qudāma's Chapters on Fasting and Devotional Seclusion

The manual, *al-Muqni'*, was authored by Muwaffaq al-Dīn bin Qudāma al-Maqdisī, a thirteenth century jurist (d. 620/1223). Ibn Qudāma authored a series of manuals in Ḥanbalī law, as a syllabus, for gradual development in the jurisprudence of Aḥmad b. Ḥanbal. The manuals varied in their levels, ranging from beginner to scholarly levels. The scholars of the past and present have praised Ibn Qudāma for his scholarly writings. Regarding Ibn Qudāma, Ibn Taymiyya said, "After al-Awzā'ī, no one entered Syria more knowledgeable than al-Muwaffaq", and Ibn al-Ṣalāḥ said, "I have not seen anyone similar to al-Muwaffaq."

This particular manual has been highly praised by the scholars of the past and present. This manual has been the prop for the Ḥanbalī scholars from Ibn Qudāma's era to this present day. It is the most reputable manual after *Mukhtaṣar al-khiraqī*. A large number of commentaries and other associated works have been authored revolving around the manual, indicating to the manual's prominence within the Ḥanbalī

school. This manual is intermediary in its level and it primarily focuses on the difference of opinions within the Ḥanbalī school.

These chapters were originally rendered from Arabic to English as a translation project for a Masters’ module in Islamic Studies. I have removed the theoretical aspects of the study and annotations connected to the translation methodologies etc. It is hoped the content of these chapters will be self-explanatory. However, for a proper comprehension of these legal articles, a person is required to cite the well-known commentaries of the manual. I decided to add these chapters from *al-Muqni‘* because Ibn ‘Abd al-Ḥādī’s section on fasting is very brief and require some supplementary material.

The rendition of the chapters of this manual was based on its first edition, published by Maktabat al-Sawādī, in Jeddah, in the year 2000. In order to convey the meanings as premeditated, the translation relied on two well-known commentaries of *al-Muqni‘*. The first, *Al-Sharḥ al-kabīr* of Ibn Abī ‘Umar (d. 682/1283), he was Ibn Qudāma’s nephew. The second, *Al-Inṣāf* of al-Mardāwī (d. 885/1480), he was considered to be a verifier of the Ḥanbalī school owing to his in-depth knowledge. These two commentaries were published by Dār al-‘Ālim al-Kutub, in Riyadh, 2011. Besides these two commentaries, Ibn al-‘Uthaymīn’s *Al-Sharḥ al-mumti‘* was often cited. This is a commentary of al-Ḥajjāwī’s *Zād al-mustaqni‘*, an abridged version of *al-Muqni‘*.

Fasting

It is mandatory to fast the month of Ramadan upon sighting the crescent moon. If the crescent moon is not seen with the presence of clear skies, the length of the month of Sha‘bān is completed as thirty days and fasting commences thereafter. However, if the sighting of the crescent moon was prevented in the thirtieth night owing to the presence of cloud or dust, it becomes mandatory to fast with the intention of fasting for Ramadan. This is the apparent opinion of the school; it is also reported from Aḥmad that it does not become mandatory. There is a third report stating that the people should follow the Imam; if the Imam fasts, the people fast. If the crescent moon was sighted during the daytime before the meridian of the sun or after it, this crescent moon is for the coming night.

It becomes obligatory to fast if the people of that country sighted the crescent moon. The statement of a single trustworthy person is accepted for the moon sighting of Ramadan. However, the statement of a single trustworthy person is not accepted for any of the other months besides Ramadan; two trustworthy person’s affirmation is required.

If the people commenced fasting based on the testimony of two people and completed thirty days of fasting, they should break their fasts. However, if the people commenced fasting based on the testimony

of one person, there are two views. If they commenced fasting in the presence of the sky being obscured by clouds, they should not break their fast.

Whoever sighted the crescent moon of Ramadan by himself alone but the testimony was rejected, it becomes binding for him to fast alone. However, if a person sighted the crescent moon of Shawwāl by himself alone, he should not break his fast.

If the months become obscure for the prisoner, the prisoner attempts his hardest to figure out the timing and then fast. If his fasts coincided with the month of Ramadan or coincided after it, it would be accepted from him. However, if his fasts occurred before the entry of Ramadan, his fasts would not suffice.

Fasting is not obligatory on [anyone] except Muslims that are in full possession of their faculties, mature, and are capable. It is not obligatory upon the disbeliever, the insane, and the child. However, if the child was able to endure it, he should be commanded to fast. It is imposed upon the child so the child gets accustomed to fasting.

If the start of Ramadan becomes established by sighting the moon during the daytime, it becomes binding to refrain from the nullifiers of fasting. The fast for that day also needs to be made up at a later date. This is also the case for the following scenarios: if a disbeliever becomes a Muslim, if an insane person regains his consciousness, and if a child reaches puberty. It is reported from Aḥmad that there is nothing mandatory upon them to do (as a result of these cases). According to al-Qāḍī, if a child reaches puberty while he is observing the fast, the child must complete that fast but is not required to make it up. However, according to Abū al-Khaṭṭāb, the child has to make up the fast for that day. If the menstruating woman and the woman

suffering from postpartum bleeding become pure during the daytime or if the traveller returns from his journey during the daytime (and was not fasting), it becomes binding upon them to make up that fast later. Regarding refraining from the nullifiers of fasting, there are two narrations.

Whoever is incapable of fasting owing to old age or an incurable illness, such a person can break their fast and instead of fasting, he can feed a poor person for each day. It is commendable for a sick person or a traveller to break their fast if they apprehend harm owing to the fast. However, if they decided to fast, it will be sufficient. It is not permissible for the sick person or the traveller to do other fasts besides the fasts of Ramadan. Whoever intended to fast during his travels, it is permissible for him to break his fast. If a resident intended to fast initially and then later decide to travel, it will be permissible for him to break his fast. It is also reported from Ahmad that it is not permissible.

If a pregnant woman or a breast-feeding woman apprehend harm for themselves by fasting, then in such cases, they break their fast and make up for it. However, if they apprehend harm for the child, they can similarly break their fast and make it up later, however they also need to feed a poor person for each day missed.

Whoever made the intention to fast before dawn but then lost his sanity or became unconscious for the whole day, such a person's fast is invalid. However, if the person regained his consciousness for a portion of the day, his fast is correct. If a fasting person slept throughout the whole day, his fast is correct. It is mandatory on the person who lost his consciousness to make up the fast, but it is not mandatory on the person who lost his sanity.

Obligatory fasts are not valid unless a specific intention is made at night, prior to dawn. It is also reported from Aḥmad that specifying intention for Ramadan is not obligatory; therefore, a person does not need stipulate that he will be fasting them as obligatory fasts. Ibn Ḥāmid said that it is obligatory to specify intention.

If a person intended: 'If tomorrow is Ramadan, my fast will be an obligatory fast; however, if its not Ramadan tomorrow, my fast will be a voluntary one.' – the fast will not be counted; it is also reported from Aḥmad that such a fast will be sufficient. A person can invalidate his fast if he made an intention to break his fast. A voluntary fast is valid if it is accompanied by an intention which was made during the day, whether it was before or after noontime. Al-Qāḍī said that if it was made after noontime, it does not suffice.

Invalidators and expiations

Whoever did any of following things deliberately while remembering that he is fasting, his fast becomes invalid. [They are as follows]: eating; drinking; taking snuff; inserting something into the anus; anything reaching the body cavity as a result of treating deep-wounds; applying *kohl*⁵⁵ to the eyelids which travels to the throat; inserting something into body cavity through any place; treating wounds that reaches the brain's cavity; anything reaching the brain owing to the application of eardrops; inducing vomit; masturbating; kissing or touching that results in the emission of pre-ejaculate fluid or sperm; ejaculating owing to looking repetitively; and performing bloodletting or having it performed upon oneself. If the person did any of the aforementioned absentmindedly or compellingly, the fast is not be invalidated.

55 A preparation of pulverised antimony used for darkening the edges of the eyelids.

A person does not invalidate his fast owing to the following: fly or dust particles entering his throat; a person discharging drops into the urethra; ejaculating owing to thoughts; experiencing nocturnal emission; instinctive vomiting; waking up with food particles in one's mouth but spitting it out; and water entering the throat as a result of having a bath, gurgling, or rinsing the nose. If the person increased thrice upon gurgling and rinsing or exaggerated in them, there are two derived-opinions regarding the fast being broken.

Whoever ate while doubting about the emergence of dawn, he does not have to make up the fast later on. However, if the person ate while doubting about the timing of sunset, then he must make up the fast later. Whoever ate believing that it was night-time but it was in fact daytime, in such a case, the person must make up the fast at a later time.

If a person had sexual intercourse through the private part in Ramadan during the daytime, whether it be vaginal or anal, then it becomes obligatory upon the person to make up for that day and expiate. This applies whether it was done deliberately or absentmindedly. It is also reported from Aḥmad that there is no expiation, that is, if sexual intercourse resulted out of force or forgetfulness. The expiation is not obligatory upon the woman who had an excuse. However, is the expiation obligatory upon the woman if she did not have an excuse? Regarding this there are two narrations. It is reported from Aḥmad: a fasting person not obliged to make up the fast or do anything if something overpowers him to break his fast. This statement shows that making up fasts and expiations are rescinded if actions are occasioned by force or due to forgetfulness.

If a person ejaculates by penetrating other than the private parts or has sexual intercourse through the private parts of an animal, his fast

breaks. There are two narrations regarding whether there is expiation for these two scenarios. If a person had sexual intercourse during the daytime who had his moon-sighting testimony rejected the day before, for him it becomes obligatory to make up the fast and expiate.

If a person has sexual intercourse on two separate days but did not expiate for it; does he offer one or two expiations? There are two derived-opinions. If a person had sexual intercourse and expiated for it, but later on the day had sexual intercourse again, the second expiation will become obligatory. This has been textually reported from Aḥmad. The same ruling applies for anyone who is obligated to abstain, but had sexual intercourse. If a person had sexual intercourse while he was healthy but then became sick, insane, or became a traveller, in such scenarios the expiation does not rescind. However, if a person intended to fast while he was travelling but afterwards he decided to have sexual intercourse, there will be no expiation upon him. It has also been reported from Aḥmad: expiation will be upon the person. The expiation is not obligatory except in the case of having sexual intercourse while fasting during Ramadan.

The expiation is to emancipate a slave. If the person is incapable of doing that, he has to fast two months consecutively; and if he is unable to do that, he needs to feed sixty poor people. If the person cannot find anything to feed the sixty people, the expiation rescinds. It is also reported from Aḥmad: the expiation does not rescind. Another report from Aḥmad suggests: the expiation is a matter of choice; therefore a person can choose from any of the three options and it will suffice.

Reprehensible and commendable actions

It is reprehensible for the fasting person to accumulate his saliva in the mouth and swallow it; similarly its reprehensible to swallow phlegm.

However, do these two actions break a person's fast? Regarding this there are two derived-opinions. It is reprehensible for a person to taste food; if the taste of the food reaches the throat, the fast is broken. It is reprehensible to chew mastics⁵⁶ if parts from it do not dissolve and separate; however, it is not permissible to chew mastics if parts from it dissolve and separate unless the person avoids swallowing his saliva. If the taste of the mastics reaches the throat, the fast is broken. Kissing is reprehensible unless the person is from amongst those who are not aroused by his desires easily – this is according to one of the two narrations. It is obligatory upon the person to keep away from lying, backbiting, and verbal abuse. If a person is verbally abused, it is commendable to say: 'I am fasting'.

It is commendable to hasten in breaking the fast and delay the pre-dawn meal. Similarly, it is commendable to break the fast with dates and if dates are unavailable, then with water. When breaking the fast, a person should say: 'Allāh! For you I have fasted and with your provisions I have broken my fast. Glorified and praised be you. Allāh! Accept it from me, certainly you are hearing and knowing.'

Making up missed fasts

It is impermissible to postpone making up the missed fasts of Ramadan until the following Ramadan without an excuse. However, if a person did so, it is obligatory on him to make up the missed fasts as well as feed a poor person for each day. If a person postponed making up the missed fasts owing to an excuse but died, there will be nothing upon him. However, if the person postponed it without an excuse and died before the following Ramadan, a poor person is fed on his

⁵⁶ The Arabic word *'itk* has been rendered as 'mastics'; however, *'itk* refers to a type of chewable gum that comes from the sap of certain trees.

behalf for each missed fast. If the person passed away after the following Ramadan, should one or two poor person be fed on his behalf? Regarding this there are two derived-opinions. If a person died while owing vowed fasts, pilgrimage or spiritual retreat, his guardians perform the acts on his behalf. However, if the person owed vowed prayers, there are two narrations regarding this scenario.

Recommended fasts

The best of the recommended fasts is the fast of Prophet David. He used to fast every other day. It is commendable to fast the full-moon days of every lunar month, and likewise every Monday and Thursday. Whoever fasted the month of Ramadan and followed it up by fasting six days of Shawwāl, it is as if the person had fasted for the entire year. Fasting the day of 'Āshūrā expiates the sins for a year whereas, fasting the day of 'Arafa expiates sins for two years. It is not commendable to fast the day of 'Arafa for those who are present in mount 'Arafa. It is commendable to fast the initial nine days of the month of Dhū al-Hijja. After the month of Ramadan, the best fasting-days falls in the month of Muḥarram, Allāh's month.

It is reprehensible to single out fasting in the following times: the month of Rajab; Fridays; Saturdays; on the day of uncertainty concerning whether it is the first day of Ramadan or not; the day of *Nayrūz* and the day of *Mihrajān*. It is reprehensible to single them out for fasting unless these specific days coincide with one's habitual fasting.

It is impermissible to fast during the two days of 'īd, whether the fasting was for an obligatory fast or a voluntary fast. If the person adamantly fasted during these two days of 'īd, he would be sinful and the obligatory fasts done in the 'īd days would not suffice. It is impermis-

sible to fast voluntarily during the three days following *ʿīd al-adḥā*. However, if the fasting in these three days were obligatory fasts, there are two narrations regarding them.

Whoever started a voluntary fast or a prayer, it is commendable for the person to complete it. If a person decides to spoil it, then it will not be obligatory upon the person to make up for it.

The Night of Decree is sought out during the last ten nights of Ramadan. The odd nights are more assuring and the twenty-seventh night is most likely to be the Night of Decree. During the night, the person supplicates with what has been narrated from ʿĀisha; she said: “O Messenger of Allāh! What shall I supplicate in the Night of Decree?” The Prophet replied: “Say: Allāh! Certainly you are pardoning. You love to pardon, so pardon me!”

Devotional Seclusion

Devotional seclusion is adhering to a mosque for the purpose of worshipping Allāh. It is a commendable act to do; however, if a person vows to perform it then it becomes obligatory. Devotional seclusion without fasting is valid. It has been reported from Aḥmad: it will be invalid. Therefore, according to the latter opinion, performing devotional seclusion for the length of one night or for part of the day is invalid.

It is impermissible for a woman to perform devotional seclusion without the permission of her husband and likewise, it is impermissible for the slave without the permission of his master. If they started the devotional seclusion without any permission, it is permissible for the husband and the master to withdraw them. However, if the woman and the slave started the devotional seclusion with their permission, it is permissible for the husband and the master to withdraw them if it was a voluntary one. However, if it was not a voluntary one, it is not permissible from them to be withdrawn.

It is permissible for a *mukātab*⁵⁷ slave to perform devotional seclusion

57 *Mukātab* is a slave who purchases himself from his master with deferred

and pilgrimage without permission. This is also the case for the person who is partly free. However, if there was rotation between serving himself and serving his master, it is permissible for him to perform devotional seclusion and pilgrimage in his free time, otherwise it is not permissible. Devotional seclusion is not valid in a mosque unless it establishes the congregational prayers. It is permissible for a woman to perform the devotional seclusion in any mosque but not in her house. The best devotional seclusion is in a mosque where the Friday prayer is established and the timing of the devotional seclusion falls therein.

Whoever made an oath to perform the devotional seclusion or pray in a specific mosque, the person may perform it in any mosque unless the person made an oath to perform the acts in one of the Three Mosques. The superior of the Three Mosques is the Holy Mosque of Mecca, followed by the Prophet's Mosque and then Al-'Aqsā mosque. If a person made an oath to perform the devotional seclusion in the most superior of them, it will not suffice to perform it elsewhere. However, if a person made an oath to perform it in an inferior one, it is permissible to perform it in a superior one.

If a person vowed to perform the devotional seclusion for a specific month, he must start before the first night of that month and finish when the month ends. However, if the person vowed to perform it during an unstipulated month, it becomes binding upon the person to perform it during the successive month.

If the person vowed to perform the devotional seclusion for a number of days, the person may do them intermittently; however, this is not according to the opinion of al-Qāḍī. If a person vowed to perform it

wealth that he earns.

during consecutive days or nights, it becomes binding upon the person to include the nights and days that comes in-between the consecutive days or nights.

It is impermissible for the person performing the devotional seclusion to leave the mosque except in cases of dire necessity, such as: to relieve oneself; to perform purification; to attend the Friday prayer; to set out for obligatory battles; to give obligatory testimonies; apprehends harm because of illness or ordeals; menstruation; post-natal bleeding; completing the mourning period, etc. The person is not permitted to visit the sick or attend funerals, unless it was pre-stipulated. It is also reported from Aḥmad: it is permissible do these acts without pre-stipulation. The person can enquire about the sick patients along the way, as long it does not make him stop over to visit. It is also permissible for the person along the way to enter into another mosque to complete his devotional seclusion therein.

If the person leaves the mosque because of typical necessities such as relieving oneself or for purification, there will be nothing due upon the person. However, if the person leaves from an unspecified devotional seclusion because of an uncommon necessity and prolongs the leave, the person chooses between starting it again and completing it while giving expiation for violating an oath.

If the person leaves a specified devotional seclusion because of uncommon necessities, the person must make up what was missed. There are two derived-opinions regarding its expiation.

If the person leaves from an unspecified devotional seclusion unnecessarily, it becomes binding upon the person to re-start. However, if the person leaves from a specified devotional seclusion unnecessarily, there is expiation upon the person; there are two derived-opinions

about re-starting.

The person nullifies his devotional seclusion if he had sexual intercourse through the private parts. There is no expiation upon the person for nullifying it unless the person had violated an oath. According to Abū Bakr al-Khallāl the expiation of violating an oath is due on the person, but according to al-Qāḍī the expiation of injurious assimilation is due on him. Ejaculation resulting from fondling⁵⁸ nullifies devotional seclusion; however if there was no ejaculation, it will not be nullified.

It is commendable for the person to be occupied with righteous actions and avoid things that do not concern him. It is not commendable for the person in devotional seclusion to engage in teaching Qur'ān, sacred knowledge, and debate. However, according to Abū al-Khaṭṭāb: it is commendable if a person intended obedience to Allāh by these acts.

58 This is referring to fondling with other than the private parts.

Addendum

Ibn ‘Aqīl al-Ḥanbalī’s essay on Islamic manners

Ibn ‘Aqīl (d. 513/1119) was one of the greatest scholars of Islam. He was born into a Ḥanafī family. His family members from his father’s side were all writers, chancery secretaries, poets, and humanists. Ibn ‘Aqīl began to study law at the age of fifteen. Following the traditions of his family, he initially studied under the instructions of a Ḥanafī jurist, known only as Abū ‘Amr al-Faqīh. Ibn ‘Aqīl studied Ḥanafī law for about a year before he transferred to the study of Ḥanbalī law. He studied Ḥanbalī law under the instruction of al-Qāḍī Abū Ya‘lā, the head of the Ḥanbalī law school during his era. This continued until his mentor and master passed away. Both of them came from Ḥanafī families and it was probably Qāḍī Abū Ya‘lā’s influence that caused Ibn ‘Aqīl to change his law school.

Bibliographers of the past and present have praised Ibn ‘Aqīl’s intelligence and his contribution towards Islamic scholarship. Ibn Ḥajar said, “This man was from amongst the greatest of scholars. Yes, he was a Mu‘tazilī, but he openly repented from having such beliefs, so his repentance is accepted. He went on to author works refuting them. The scholars of his era and those after them praised Ibn ‘Aqīl.”

Another scholar, al-Silafi regarding Ibn 'Aqīl said, "My eyes have not witnessed anyone similar to him. No one was able to speak (i.e. argue) with him because of his immense knowledge, eloquence, the appropriateness of his inclusions, and the strength of his arguments."

What follows is a translation of Ibn 'Aqīl's essay on Islamic manners, *Fuṣūl al-ādāb wa makārim al-akhlāq al-mashrū'a*. The essay is thought to be a fragment his larger encyclopedic work, *al-Funūn*. The encyclopedic work is said to have reached over eight hundred volumes and considered to be the largest book ever written! The content of the work apparently covered over four hundred different topics. For the translation, I relied on the original Arabic text that was edited by Dr. 'Abdullāh b. Ṣālīh al-Fawzān. The essay was published by Dār Ibn al-Jawzī with a commentary, entitled: *al-Fawa'id al-majmū'a fī sharḥ fuṣūl al-ādāb wa makārim al-akhlāq al-mashrū'a*. In the translation, basic annotations from the commentary were included regarding the sources Ibn 'Aqīl cited. The sub-titles in bold were inserted to divide the contents of the essay.

In the name of Allāh, the Gracious, the Merciful

My Lord, make it easy and not difficult.

All praise belongs to Allāh, the Lord of the worlds. May Allāh's abundant blessings and peace be upon Muḥammad, the last of the prophets, and leader of the righteous; may Allāh's blessing be upon his household and his companions until the Day of Judgment. This is a fragment from the chapters in Islamic manners and praiseworthy etiquettes authored by the honorable Imām, Abū l-Wafā' b. 'Aqīl – may Allāh have mercy on him.

Greetings (*salām*)

The standing person initiates the greeting for the seated person and the person in a vehicle initiates the greeting for those standing or sitting. It is recommended to initiate the greeting.

If a person gave the greeting from a group of standing people or a from a group of people in a vehicle, the greeting of that single person will suffice on behalf of that group. Similarly, if only a person from a group of seated people gave the greeting, it will suffice on behalf of that group.

The formula for the greeting is, *salāmuḥunna 'alaykum*, and the reply is, *wa-'alaykum al-salām*. The extra phrases in the greeting are recommended to add which is: *wa-rahmatullāh wa-barakātu*. It is not

recommended to add beyond these phrases in the greeting. It is recommended for the one initiating the greeting to limit it to, *salāmunn 'alaykum wa-rahmatullāh* because this will allow the replying person to answer with a better phrase than the initiator of the greeting.

If something separated two individuals after greeting each other such as a tree or a wall, then repeating the greeting upon meeting each other again is recommended. The Companions of the Prophet used to do this.

It is reprehensible to give the greeting to young women. Giving greeting to them necessitates a reply and listening to their voices, which can lead to temptations. Is it not so that many voices have lead people to temptations and desires? There is no problem giving greeting to senile women and women who openly deal with men as there is no notion of temptation from hearing their voices. Out of necessity, the women who openly deal with men require the greeting to be given to her and similarly, the acceptance of her reply.

It is permissible for a witness to look at the face of a woman for legal proceedings while being mindful of her appearance. Similarly, it is permissible for goldsmiths, spinners of wool or anyone else to look at the face of women, who do business with women in the trading industry.

There is no problem greeting children to teach them manners, which make it beloved to them and accustom them to good social practices.

It is recommended to do the greeting when encountering and departing from a person. However, it is more strongly recommended to do the greeting when encountering.

Shaking hands, hugging, kissing and standing up for others

It is recommended for men to shake hands. However, it is not permissible for a man to shake the hands of a young woman as this will arouse temptations and desires.

There are no problems in hugging a person. Likewise, it is permissible to kiss the head or the hand of a virtuous person from among the Muslim scholars and the elderly.

It is recommended to stand up for just rulers, parents, and religious personalities, that is, personalities of piety and knowledge and individuals of noble nature and descent. Besides the aforementioned, it is not recommended to stand for anyone else.

Listening to private conversations

It is not befitting for a person to get into people's secrets or conversations that others did not include him in. It is not permissible to listen to the consultations of a group of people.

If a person keeps looking around during a conversation, this should be treated as a private conversation. In this scenario it becomes obligatory to safeguard the person's words because him looking around suggests that he is worried about people listening to his conversation.

Walking arrogantly

It is reprehensible to walk arrogantly; a person should walk moderately. Walking arrogantly is hateful to Allāh, however it is not hateful when a person walks arrogantly in front of enemy lines.

Shortcomings of people

It is from noble manners to ignore any shortcomings of people, which occur out of heedlessness such as exposure of *'awra* (nakedness) and the release of gas accompanied by sound or smell. Whoever hears it should appear not to hear it, pretend to be asleep or ignore it to avoid the person from getting embarrassed. This is from noble etiquettes.

Natural disposition

Ten things are natural for a person to do; five pertaining to the head and five things pertaining to rest of the body. Snuffing water, rinsing the mouth, using the tooth stick, trimming the moustache and growing the beard pertains to the head. Removing the pubic and armpit hairs, clipping the nails, using water to clean the private parts, and doing circumcision all relates to the body.

White hair

It is reprehensible to pluck out white hair strands because it has been reported in a ḥadīth that the white hair 'is Allāh's light'.⁵⁹ The growth of white hair also warns a person of his death, reduces his hopes in life, encourages him to do righteous actions, and it makes a person dignified.

It is reprehensible to shave the back of the head unless a person intends to do bloodlettings as mentioned in the books of ḥadīth (i.e. shave part of the head and leave part of it).

59 The report presented by Ibn 'Aqīl is worded slightly different in the books of ḥadīth: Abū Dāwūd (4202); al-Tirmidhī (2721); Ibn Māja (3721) and others. The editor mentioned that he was not able to find the report Ibn 'Aqīl mentioned with these specific wordings.

Permission to enter a person's residence

It is not befitting to enter into a person's residence without their permission, whether the person was a relative or someone foreign. This is to avoid catching people in inappropriate clothing that may expose their 'awra (nakedness). Permission is requested three times. If permission is granted, the person can enter but without permission, the person should not enter.

Private conversations

It is prohibited for two people to have a private conversation excluding a third person (who is present among them). This necessitates desolation (i.e. displeasure) and affects a person's heart.

Eating and drinking

When a person commences eating, it is recommended to say, *bismillāh*, and when one ends, it is recommended to say, *al-ḥamdulillāh*. The person should eat with his right hand. If the food was of one type, the person should eat what is nearest to him (i.e. in front of him).

A person should not eat from the centre of a dish (i.e. the highest part), but should start from its sides. Likewise, when weighing food-stuff, a person should not start from the centre. This is done to receive blessings as reported in the Prophetic traditions.

A person should not blow on hot or cold food. It is not reprehensible to eat and drink standing but it is reprehensible while reclining. If a person finished with some food or drink and needs to pass it on, the person should start with the individual on his right first – this is what the Prophet used to do.

Bedtime

Before sleeping a person should lock his doors, seal water bottles, cover utensils, and turn off the lights – as narrated in the Prophetic traditions.

Aḥmad b. Ḥanbal reprehended the washing of hands before eating food. However, there is a report regarding washing the hands, perhaps Aḥmad did not consider this report to be authentic.

Strong odours, mosques, invitations, and rights of a Muslim

It is recommended to wash the hands immediately after eating food that has strong odours. And it is strongly recommended to wash them before sleep because there is a report condemning individuals who do not wash their hands before sleeping.

Whoever enters the mosque for praying or for devotional seclusion, it is reprehensible for such a person to consume unpleasant food and vegetables such as onions, garlic, and leek. The Prophet forbade from nearing the mosques after eating such vegetables.

It is recommended to accept wedding feast invitations. It is not necessary for a person to accept invitations for circumcision ceremonies – this is something new in Islam. If a person attends for a wedding feast, it is not incumbent for him to eat the food. The person can eat if he wants, however he should make himself present, supplicate for the person, and then leave if he wants.

It is recommended to go to invitations, which are free from play, amusement, and evil. However, it is prohibited to attend gatherings containing prohibited elements. If it contains reprehensible elements, the ruling for attending such a gathering will be reprehensible.

It is reprehensible for the people of nobility and virtue to readily accept food invitations. They should excuse themselves from attending non-Islamic gatherings. By attending such gatherings it can abase a person and reduce people's reverence for them.

The following things are recommended for a Muslim to do: visit his sick Muslim brother, attend his funeral, and send condolences to his family. A non-Muslim citizen can be visited during his illness. The Prophet visited a sick Jew and said: "How are you doing, Oh Jew?"⁶⁰

Backbiting

It is prohibited to backbite a person who conceals his sins and shameful deeds. Allāh said: "Do not backbite each other."⁶¹

If an evil person is mentioned to warn others, this will not be considered as backbiting. The person who speaks about the evil individual (i.e. to warn others) will not be sinful but will be rewarded for being honest. The Prophet said: "Say regarding the evil person, which will warn others of him."⁶² A person can speak the truth about an evil person when enquired for marriage proposals, business partnerships, and social dealings.

‘Umar was not considered to have fallen into backbiting when he mentioned some of the faults and weaknesses of the committee mem-

60 The editor mentioned that he was not able to find the report Ibn ‘Aqīl mentioned with these specific wordings. However, Ibn al-Qayyim mentioned a report in his book, *Aḥkām ahl al-dhīmīya*, (vol.1 p. 202), which resembles its wordings.

61 Qur’ān 49:12

62 There is another narration with a different wording in *Kashf al-khafā’* (vol. 1 p.114), but the report is not authentic.

bers when consulting about who should succeed him. 'Umar mentioned their faults and weaknesses for the sake of Allāh, His messenger, and Islam.

Backbiting occurs when a person's shortcomings and ills are mentioned, it is done to undermine the person.

It is recommended to control one's tongue, and speak little unless it is really necessary. It is better to use the tongue to benefit oneself and others than to remain silent. This includes reading the Qur'ān, teaching knowledge, remembering Allāh, commanding good, forbidding evil, and making peace between people.

Clothing and beautification

Silk clothing is prohibited for men and permissible for women. This is also the case with gold jewellery. It is prohibited for men to wear rings even if it contained an insignificant amount of gold.

It is not reprehensible to wear silk garments that are mixed with animal fur; however, the fur content must be more than silk content. Similarly, garments with more cotton content than silk are not reprehensible for men to wear.

It is not permissible to have pictures on clothes and nor is it permissible to have it on beddings and curtains; the prohibition pertains to images of living beings. This is owing to the Prophetic report; "Angels do not enter a house, which has pictures in it."⁶³

It is better to wear rings on the left hand however if a person wears it

63 This alludes to the ḥadīth in Ṣaḥīḥ al-Bukharī (5949) and Ṣaḥīḥ Muslim (2106)

on his right hand, it is not a problem.

It is not permissible for anyone to drag his garments out of pride and arrogance.

It is permissible for men to use public baths as long as they cover the lower parts of their body (i.e. *'awra*). However, it is reprehensible for women to use public baths unless there is an excuse or a pressing need.

There is no harm in colouring one's hair with Henna, in fact it is recommended. It is also recommended to colour it using Katam, however it is reprehensible to colour one's hair black.

It is not permissible for a man to be in seclusion with a marriageable woman. It is also impermissible for two nude males or two females to share one duvet or a single lower garment.

It is impermissible to attend gatherings of play and amusement, which has musical instruments such as drums and wind-based instruments. The play of the duff has been singled out for weddings. This is because of the Prophetic report, "Announce the marriage to others and play the duff."⁶⁴

There is no harm in using Allāh's names to protect oneself and use in amulets (*ta 'wīdh*).

Medical treatments

Treating illnesses through bloodlettings, venesection, cauterization, and intake of medicine is permissible. However, it is impermissible to treat illnesses with prohibited and impure things. It has been narrated

64 Reported in Mustadrak al-Ḥākim vol.2 p. 173.

from Aḥmad that he considered venesection and cauterization to be reprehensible, but the other narration from Aḥmad is believed to be more authentic.

Pests

If a person sees a snake in his house, he should command it to leave three times, and if it reappears, he should kill the snake. Aḥmad said: "If the snake was a *Dhu al-Ṭufyatayn* or an *al-Abtar*, it can be killed. The person does not need to command it to leave before killing such snakes." *Dhu al-Ṭufyatayn* is a snake that has two black stripes on its back and *al-Abtar* is a short tailed snake. The way to command a snake to leave from one's residence is as follows: 'Pass by in peace!' or 'Leave in peace!'

It is permissible to kill geckos but it is impermissible to kill ants or destroy their nests. It is reprehensible to kill lice using fire and it is impermissible to kill frogs because the Prophet forbade the killing of frogs.

Etiquettes in the mosques

It is reprehensible to remove bodily-filth inside mosques; actions such as clipping nails, trimming moustaches, and removing armpit hairs are therefore reprehensible.

Similarly, it is reprehensible to use mosques for labour and craftworks. Actions such as embroidery, needlework, ginning cotton, trading, and similar actions are therefore reprehensible if it was carried out abundantly. However, if the craftworks are insignificant, it will not be reprehensible. So, actions such as patching one's garment, mending one's sandals, and fixing one of its straps that came apart are not reprehensible.

Treatment of livestock animals

It is impermissible to castrate livestock animals and brand them using a hot source. However, it is permissible to do the latter for treatments, that is, only to an extent it is permitted for people to be treated. This is according to one of the opinions of Imām Aḥmad.

Parents

Good treatment of one's parents is incumbent upon a person (*wājib*). Imām Aḥmad was asked regarding good treatment of one's parents, he replied, "I do not say it is obligatory (*farḍ*) but its incumbent upon a person (*wājib*)."

It is not permissible to obey them while disobeying Allāh; it has been narrated from Aḥmad in this manner because of the Prophetic report: "There is no obedience to the creation in disobedience to Allāh."⁶⁵

Sitting positions and gatherings

It is reprehensible to sit depending on one's left hand while it is behind one's back. Sitting between the sun and the shaded [areas] is likewise reprehensible.

To conclude gatherings it is recommended to say: 'Glory and all praise belongs to you Allāh! There is no god worthy of worship except you! I seek your forgiveness and repent to you!' This supplication will expiate any sins which may have occurred in the gatherings.

It is reprehensible to sit under the shades of minarets, to sweep the house using a piece of rag, and to drink from the broken parts of a

⁶⁵ There are similar reports to this one in Ṣaḥīḥ Muslim (1840 and 1839)

vessel.

These things are in sum from manners and etiquettes and what is correct is from Allāh the Exalted.

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