Book of Marginal Notes

Volume One

In the name of God, the Most Merciful, the Compassionate.

Book of Purification

Concerning What God Most High Has Commanded His Believing Servants Regarding Purification

From the *Mukhtaṣar al-Āthār*: Jaʿfar ibn Muḥammad, peace be upon him, said concerning His saying, exalted is He, "When you rise for prayer": that is, **when you rise from sleep**.

From the *Kitāb al-Akhbār*: The outward sense of God Most High's words, "When you rise for prayer," indicates that purification is obligatory for everyone who rises to pray. However, the Sunna and the consensus of the Imams and the community indicate that what is intended is rising from sleep that causes ritual impurity, and ritual impurity from which purification is required.

Concerning the Occurrences That Necessitate Ablution

It is said in the *Ikhtiṣār*: There is no requirement in the case of *wadhy*—the thin fluid that follows urination—other than ablution.

From the *Mukhtaṣar al-Muṣannaf*: Whatever exits from the front or rear passage—whether a stone, wind, pus, or purulent discharge—invalidates ablution. An enema, fainting, insanity, and penetration of the glans into the front passage of a living or dead person also invalidate it.

> "*Ghāʾiṭ*" is a euphemism for defecation. The word originally means a low-lying place in the ground, the place to which people used to go to relieve themselves. — From the *Ikhtiṣār*.

From the Questions Put to the Shaykhs of India and Answered by the Masters of Yemen, May Their Sanctity Endure

Question: What do you say, O best of those who have cast upon us from the lights of their knowledge what our intellects had struggled to comprehend, regarding what occurs in the *Book of Purification*, namely the prohibition against a man urinating beneath fruit-bearing trees? O our master, does this mean trees actually bearing fruit at the time, or trees whose nature is to bear fruit?

Answer: Trees on which there is fruit, or whose nature is to bear fruit.

Question: What do you say, O you toward whose meeting God has made my soul yearn ever since I grew up, however long the interval may be, concerning what occurs in the books of the *daʿwa* prohibiting greeting a person who is in a state of ritual impurity and speaking while in that state? O our master, if the person in ritual impurity rises from that place after cleansing himself with a stone or something else, is it permissible to speak to him and greet him with peace, or not?

Answer: Once he has risen, it is permissible to greet him. He must return the greeting, and he may speak.

Question: What does our master, may God perpetuate his support, say concerning a stone or clod of earth with which a man cleans himself after urinating, which is then left until it dries: may it be used again?

Answer: There is no harm in that provided no impurity or moisture is visibly present upon it.

Concerning the Etiquette of Ablution

From the *Kitāb al-Akhbār*: They forbade greeting one who is urinating or defecating.

From ʿAlī, peace be upon him: "Whoever urinates should place his middle finger beneath the perineum and draw it forward three times."

And they forbade cleansing oneself with charcoal.

From the Questions Mentioned Above

Question: What does our master, may God illuminate his subtle essence, say concerning someone who forgot to cleanse himself after major evacuation until he had prayed and the prayer time had passed, and then remembered? Must he cleanse himself, perform ablution, and repeat the prayer?

Answer: He repeats the prayer, because he prayed while impurity was upon him.

Question: What does our master, may God perpetuate his support, say concerning a man who performs ablution and bathes naked in a bathing-place that conceals him so that no one can see him? May he pray with that ablution?

Answer: The concealment of some of the Imams, peace be upon them, while in water is mentioned as a matter of superior etiquette. If a person is in a place where no one can see him, there is no harm in being naked, though covering oneself is preferable. He may pray with the purification performed while naked or otherwise.

Whoever urinates in a particular place should not cleanse himself in that same spot but in another. Whoever cleanses himself after defecation with a stone should not return afterward to the same stone that he used previously.

Chapter on the Manner of Ablution

It is said in the *Book of Purification*: One who intends to perform ablution begins with the vessel containing the water and places it to his left. He tilts it from the outside with his left hand, pouring water upon his right hand, and washes both hands until they are clean, once or several times. If there is nothing on his right hand that would spoil the water and he places both hands into the vessel before washing them, there is no blame upon him, although washing them first is preferable.

Then he scoops water with his right hand, places his left hand upon his private parts, pours water with the right upon the left, and washes the private parts from the front toward the anus. There is no fixed amount of water for this; he removes whatever feces or urine is present with little or much water. He then moves the vessel from his left side to his right, rubs the inner surfaces of the fingers of his left hand upon the ground, and pours water over them with his right hand until any odor adhering to them disappears.

It is said in the *Taʾwīl al-Daʿāʾim*: In the outward practice, one who wishes to perform ablution goes to the vessel containing the water with which he will perform ablution and purification and places it on his **right**.

From the *Kitāb al-Īḍāḥ*: The Messenger of God, may God bless him and his family, said: "Gabriel commanded me from my Lord to wash the two *fankayn* during ablution."

And in the sound reports: "When you perform ablution, do not neglect the two *fankayn*," meaning the two sides where the jaw meets the neck, to the right and left of the small beard beneath the lower lip.

From the *Kitāb al-Akhbār*: Concerning the statement that if a man does not comb water through his beard but merely passes water over it, that suffices, it is said: not if he is in a state of major ritual impurity; in that case he must wet the hair and cleanse the skin.

From the *Mukhtaṣar al-Muṣannaf*: Whoever has on his hand a ring bearing the name of God must not touch impurity with it.

Our master al-Nuʿmān said in the *Kitāb al-Īḍāḥ*: "In describing the washing of the hands I have mentioned what is transmitted from Abū Jaʿfar ibn Muḥammad, peace be upon him: 'You should not wipe your forearms except from the elbow upward, and wipe them with a wiping motion.' If this applies to the hands despite the small amount of hair upon them, it applies all the more to the head."

From the *Kitāb al-Akhbār*: They recommended wiping the back of the neck and the temples; whoever omits this has nevertheless fulfilled what is required.

From the *Book of Purification*: He then takes water in his right hand from the vessel, pours it over the top of his right foot, and wipes it with his left hand; then he does the same with the left foot.

In the *Taʾwīl al-Daʿāʾim*: Likewise, if the person performing ablution interrupts his ablution, he resumes it so long as the water has not dried from the limbs that were previously washed.

From the *Mukhtaṣar al-Muṣannaf*: If both hands have been amputated above the elbows so that nothing remains of them, the obligation to wash the hands falls away.

From the *Ikhtiṣār al-Āthār*: It is recommended to perform ablution before the prayer time begins, so that the time enters while the person is already in a state of purification and can pray at its beginning.

Question: What do you say, O best of those who have encouraged us to love wisdom and the wise, regarding the statement in the *Book of Purification* that rinsing the mouth, drawing water into the nose, and cleansing oneself after evacuation are Sunna practices that should not deliberately be abandoned, but that whoever forgets or is ignorant of them does not invalidate his ablution and need not repeat the prayer performed with it? What is meant here by cleansing oneself?

Answer: Cleansing oneself, rinsing the mouth, and drawing water into the nose are Sunna practices and should not deliberately be abandoned. Whoever omits them does not thereby invalidate his prayer. But cleansing oneself is obligatory insofar as it removes impurity, because removing impurity is obligatory.

Question: What do you say, O best of those whose auspicious meeting has made us forget the love of family, children, and loved ones, concerning what occurs in the *Daʿāʾim* regarding washing the face while causing water to reach the eyes? Does the ablution of one who closes his eyes while washing his face become deficient?

Answer: If he causes water to reach his eyes, that is preferable; if he does not, his ablution is complete.

Question: What do you say, O best of those who have brought us what God approves only for His righteous servants, concerning a man who has wounds or an abscess upon his face or hands that he cannot allow water to touch? Should he leave the place untouched during ablution or ritual bathing?

Answer: Whoever has upon his legs or elsewhere an ailment such as wounds or an abscess that water cannot touch may wipe over the bandages or whatever is covering the wound. If he fears that removing them would harm him, or if severe cold might destroy him, or if he is traveling, he performs *tayammum*. This is the ruling for ablution.

As for complete ritual purification, if someone suffers from smallpox, wounds, or another ailment, he pours water over them. If he fears for himself, he performs *tayammum*, whether traveling or resident.

Question: What does our master and benefactor, may God grant us his satisfaction, say regarding wiping the feet when most of the foot is uncovered but a smaller portion is covered by the strap of a sandal? Is wiping over it valid?

Answer: This is an obligatory act; one must wipe beneath it.

Question: What does our master, may God illuminate his subtle essence, say concerning someone who forgot cleansing after major evacuation until he prayed and the prayer time passed, then remembered? Must he cleanse himself, perform ablution, and repeat the prayer?

Answer: He repeats the prayer, because prayer is not valid while impurity is upon him.

Question: What does our master, may God perpetuate his support, say concerning one who entered prayer after performing ablution and then remembered that he had forgotten to cleanse himself with water? Should he complete the prayer or repeat it?

Answer: Prayer is not permissible while a person knowingly has impurity upon him, until he washes it away.

Another ruling:

Whoever performs ablution but forgets to wash a hand or the face, then prays and remembers after the prayer time has passed, does not repeat the prayer. If a man performs half his ablution, then gets up and walks away and the limbs dry, he begins ablution anew. If they have not dried, he completes what remains. If one performs ablution for prayer and later sees that a place that should have been washed is dry, he does not repeat the entire ablution; he merely wipes the dry place. A man whose hands have been amputated and who is unable to perform ablution should have his slave-girl or his wife perform it for him. If he has neither, he performs *tayammum* and prays.

Concerning Water

From the *Mukhtaṣar al-Āthār*: Naturally created water in whose production human beings have had no part is pure by the judgment of God Most High in His Book and by the exposition of His Messenger.

If something is thrown into it and changes it so that it no longer possesses the quality of water, the ruling of water ceases to apply and it is named after whatever predominates over it. For example, if dates, raisins, or honey are placed in water, but what is added does not alter it and is not perceptible within it, its ruling remains that of water. But if the added substance becomes apparent and changes its color, taste, or smell, it then becomes *nabīdh* and the name "water" no longer applies to it, and purification with it is invalid. The same applies to milk mixed with water. If the milk is not perceptible, the liquid remains water; once the milk predominates, its ruling is that of milk and the designation "water" ceases to apply. The same rule applies to beverages and other substances mixed with water.

From the *Mukhtaṣar al-Muṣannaf*: If a man finds a small amount of water upon the ground, in a hollow, or somewhere similar, and it is greatly changed but he does not know whether impurity has entered it, he may perform ablution with it, because water can change without impurity entering it.

Liquids extracted from substances by pressing or distillation, such as rosewater and the like, may not be used for purification. Water that has been used to purify limbs upon which there was no impurity, provided it has not collected in an impure vessel, may be used for purification. It is permissible to perform ablution with water that has already been used once for ablution so long as no impurity has entered it.

Question: What do you say, O you whom God Most High has made the trustee of His friends, concerning a pond or empty place where people defecate and urinate, after which water flows into it together with filth, until the accumulated water becomes so abundant that it exceeds the legally defined amount and overcomes the impurities, with none of their qualities remaining perceptible? May purification be performed with it?

Answer: If the water overcomes the impurity, purification with it is permissible provided it is abundant and exceeds the limit specified in the Sharīʿa.

Question: What do you say, O you whom God Most High has made the delight of the eyes of God's beloved ones, concerning a vessel filled with water until it exceeds the prescribed quantity, after which impurity appears in it or falls into it and one of the qualities of impurity becomes manifest; then more water is poured in until every visible trace of impurity disappears? May purification be performed with it?

Answer: The water has become impure. Purification with it is not permissible unless, after the vessel itself has been purified, the quantity of water exceeds the prescribed limit.

Question: What do you say, O you whom God Most High has made a spring of water through which the souls of those who submit attain abiding life, concerning a small amount of pure water with which someone purifies himself while no impurity is present on his body, then another person purifies himself with it, and then another; and likewise concerning earth used for *tayammum*? The Sharīʿa states that used water remains pure and purifying, but we have found no mention of used earth. The common people do not permit either water or earth to be used twice for purification.

Answer: It is permissible to purify oneself with it once or repeatedly.

Question: What do you say concerning the meaning of the saying, peace be upon him: "Whomever the sea does not purify, may God not purify him"?

Answer: Water purifies but is not itself purified; likewise is the knowledge of the Imam: **whomever it does not purify, nothing else can purify him.**

If the water in a pool measures eight cubits in length and width, even if its depth is only a span or less, purification with it is permissible. If rain falls in a city and the water flows together with feces and filth into a large pool from which both a man and a camel could draw water, and the pool fills, washing and purification with it are permissible so long as its color, taste, or smell has not changed. If water is drawn from a well by oxen while fresh water continues flowing into it, and an unbeliever washes a garment there and its dirt can be seen, purification with the water remains permissible because it has the ruling of flowing water.

Concerning the Ritual Bath after Major Impurity

From the *Mukhtaṣar al-Muṣannaf*: Whoever forgets ablution until after he has bathed should then perform ablution, and there is nothing further upon him. If a man performs ablution and then begins his ritual bath but experiences a minor ritual impurity before finishing it, he completes the bath and afterward performs ablution for prayer.

It is mentioned in the *Mukhtaṣar al-Āthār* that if a person who has fainted knows what occurred to him and finds no trace of seminal discharge, no ritual bath is obligatory when the interval has been brief enough that he would not have been unaware of what occurred.

From the same work: The ritual bath is obligatory after sexual impurity and menstruation, when an unbeliever embraces Islam, and when someone regains consciousness after having been unconscious for days or for such a length of time that he does not know what occurred to him and cannot know whether seminal fluid was discharged. If the loss of consciousness was shorter and of a kind in which this could be perceived and known, no ritual bath is required.

Bathing after post-partum bleeding is obligatory. It is mentioned in the *Majālis al-Muʾayyadiyya*, quoting the *Ikhtiṣār*: Washing oneself with rainwater while rain is falling suffices.

From the *Mukhtaṣar al-Āthār*: If something is discharged after urination, only ablution is required; no ritual bath is necessary.

Also from the *Mukhtaṣar al-Āthār*: One who has had intercourse should not sleep, eat, or drink until he has washed his hands. It is disliked for him to trim his nails, shave his head, or undergo cupping while in a state of major ritual impurity.

From the *Kitāb al-Akhbār*: It is recommended that he clean his hands before eating; if no contamination is upon them, there is nothing further upon him.

From the *Ikhtiṣār al-Āthār*: A person performing the ritual bath should place his finger into his navel so that water reaches its interior.

From the *Book of Purification*: A woman likewise places her hands beneath her breasts, between any folds she may have, and wherever her skin folds upon itself.

From the same work: After this, one performing purification washes his feet, dries himself with a cloth, and one performing ablution may likewise wipe his face dry after finishing if he wishes.

Question: What do you say, O best of those concerning whose praise, gratitude, and commendation our tongues fall short, regarding what occurs in some books of the Sharīʿa—peace be upon their author—that if a person who requires the ritual bath fears the cold, he performs *tayammum* and prays, then when he obtains access to water he bathes and repeats the prayer? O our master, does this ruling apply equally to resident and traveler?

Answer: If he fears that water will harm him, whether resident or traveler, he performs *tayammum* and prays, and does **not** repeat the prayer.

Question: What do you say, O you whose excellence both near and far have witnessed, concerning the ritual bath after sexual impurity? Since sexual intercourse is a symbol of imparting and receiving knowledge, explain the ritual bath according to what the person bathing must remember when he performs it, because its explanation in the books of the guiding *daʿwa*—peace be upon their author—is very lengthy.

Answer: The ritual bath is a symbol of the removal of doubt, and doubt arises only in the course of imparting and receiving knowledge.

Question: What do you say, O you whom God Most High has made a rope extended from heaven to this lower world for the people of the earth who remember Him while sitting and standing, regarding the Sharīʿa ruling that when someone who has fainted awakens after several days and does not know whether perhaps he experienced seminal discharge, he must bathe? O our master, what is the limit in this matter if he sees no trace of semen?

Answer: If he is unaware of his own condition and is in doubt concerning it, the ritual bath becomes obligatory for him.

Question: What does our master, may God inspire him with what benefits the *daʿwa*, say concerning a weak man in a state of major ritual impurity who fears harm from the cold if he bathes and the prayer time has arrived? May he perform *tayammum* as a sick person does?

Answer: If he fears harm from water, he performs *tayammum* and does not repeat the prayer.

Question: What does our master, may God perpetuate his support, say concerning a man who wakes from sleep and sees upon his garment a trace of semen, wet or dry, although he did not dream that he emitted the gushing fluid? Is the ritual bath obligatory?

Answer: He must perform the ritual bath.

Question: What do you say, O fulfiller of the needs of those in need, regarding the statement in the Sharīʿa that it is disliked for a person in major ritual impurity or a menstruating woman to remove hair or nails from themselves—and the woman with post-partum bleeding has the same ruling as the menstruating woman? Is doing so merely disliked but permissible, or completely impermissible?

Answer: It is preferable to leave it until purification has been performed.

Question: What do you say, O you to whom nothing brought me except pure love, concerning a person in major impurity or a menstruating woman reading supplications or other books containing some Qurʾānic material, whether the reader recognizes it as Qurʾān or not? What should they do—read or abstain—given that the noble Sharīʿa states that they must not recite the Qurʾān or touch it? May they recite *lā ilāha illā Allāh*, *Allāhu akbar*, *al-ḥamdu li-llāh*, and *subḥāna Allāh*, all of which occur in the Qurʾān? May they recite the *basmala*, given that it has been said to be a verse of the Qurʾān?

Answer: Neither the menstruating woman nor the person in major ritual impurity should deliberately recite anything from the Qurʾān, whether in a supplication or in another book. Nor should either recite the *basmala* with the intention of Qurʾānic recitation.

Another ruling: Whoever forgets ablution until after performing the ritual bath should then perform ablution, and nothing further is required. If a man performs ablution and then begins bathing but experiences minor impurity before completing the bath, he completes the bath and afterward performs ablution for prayer.

Concerning the Purity of Bodies, Garments, Ground, and Furnishings

It is said in the *Book of Purification*: Any wet impurity that comes into contact with the body or a garment must be washed away until the affected place is clean. If the impurity was dry but its odor adheres, it is washed; if no odor remains, there is no harm. Washing the place for cleanliness is nevertheless good.

From the *Mukhtaṣar al-Muṣannaf*: Prayer in the clothes of children who do not take precautions against impurity is permissible unless impurity is actually known to be present.

From the *Mukhtaṣar al-Āthār*: Things such as the blood of fleas, mites, and bedbugs; droplets splashed during ablution or bathing from ground upon which impurity has fallen; flies that alight upon impurity and then upon garments; and comparable slight and inconspicuous matters are excused so long as they do not become conspicuously abundant. If they become abundant, they must be washed away.

From the *Kitāb al-Akhbār*: They transmitted that blood must be washed from a garment if its amount is equal to a dirham or more. If less than that, there is no harm.

From the same work: Water is poured over the urine of a male infant; once he eats solid food, it must be washed. The urine of a girl and boy is treated alike.

From the *Book of Purification*: One should not pray in garments that polytheists have worn until they have been washed.

From the *Mukhtaṣar al-Āthār*: Whoever prays in a garment he believes to be pure and afterward learns that impurity was upon it has completed his prayer and owes nothing further. If he learns this while still praying, he removes the garment. If another pure garment beneath it adequately covers him, he continues his prayer; if it was his only garment, he removes it, puts on a pure garment, and prays in it.

From the *Kitāb Taʾwīl al-Sharīʿa* of our master al-Muʿizz li-Dīn Allāh, God's blessings upon him: The Prophet, may God bless him and his family, said: "If a dog laps from the vessel of any one of you, let him wash it seven times, one of them with earth."

From the *Mukhtaṣar al-Muṣannaf*: A vessel made impure by a dog lapping from it is washed seven times, the first with earth; the pig has the same ruling.

In the *Book of Purification*: the **last** washing is with earth.

From the *Mukhtaṣar al-Muṣannaf*: If impurity falls into one of two vessels and it is not known which one, neither should be used. One performs *tayammum* and prays.

From the *Mukhtaṣar al-Āthār*: If a person walking in footwear steps upon wet impurity and then wipes the footwear upon the ground until the moisture disappears, it is pure. If the moisture does not disappear, it must be washed.

Likewise, if he walks upon impurity with bare feet and then walks upon pure ground until the moisture disappears, no washing is required; if moisture remains, he washes his feet. It also says that for every animal whose flesh may lawfully be eaten, its hide, feathers, hair, wool, fur, bones, and sinews are pure if it was lawfully slaughtered. If it died without lawful slaughter, all of these are impure. Nevertheless, permission is given to wear or make use of such material just as one may use a garment touched by impurity, although prayer may not be performed in it. As for an animal whose flesh may not lawfully be eaten, all such parts of it are impure. They may nevertheless be used, but prayer may not be performed in them.

Anything of this kind bought in the market of the Muslims, when it is not known to come from carrion, is presumed pure until the contrary becomes known, just as meat sold in Muslim markets may be bought and eaten even if the buyer did not personally witness the slaughter. Muslims are trusted in matters of this kind.

From the *Mukhtaṣar al-Muṣannaf*: As for exterior rooms or outbuildings, prayer in them has not been prohibited, although it is not recommended.

From the Questions Mentioned Above

Question: What do you say, O best of those who commanded us to be patient before God's decree and determination, concerning vomit? Does it render whatever it touches impure as blood, pus, and other impurities do?

Answer: Vomit does not render what it touches impure, though it is preferable to wash it.

Question: What do you say, O you whom God Most High has made a means for one who seeks to reach God Most High, concerning ground upon which children urinate and defecate, after which it dries and both the smell and substance of the impurity disappear? May one pray directly upon it without a prayer mat and perform *tayammum* from it?

Answer: Once the substance of the impurity has disappeared, its ruling is that of pure ground, provided it is not a place specifically designated for relieving oneself.

Question: What do you say, O you whom God Most High has made a standard by which the corrupt is distinguished from the pure in God's religion, regarding the Sharīʿa ruling that if impurity falls upon the ground and water then flows over it, after which it dries and the smell and substance of impurity disappear, prayer upon it and *tayammum* from it are permitted? It is also said that there is no harm in praying upon dry ground in camel enclosures and sheepfolds. O our master, what is the difference between the two?

Answer: The sun and air dry it and the light removes their effects. Once both the substance and odor of the impurity have disappeared, prayer upon it and *tayammum* from it are permissible.

Question: What does our master, may his seat of authority endure, say concerning the saying of the Commander of the Believers, peace be upon him: "Whoever touches the body of a dead person after it has grown cold must perform the ritual bath"? What is meant by "after it has grown cold"?

Answer: It means after death has been definitively established and after those required by the Sunna have washed the body. The corpse has then become impure. If its moisture touches a living person, that person becomes impure. This is the meaning of the obligation of washing.

Question: Concerning something a person wishes to purify but cannot rub or wring out three times—such as a fur garment, mat, carpet, quilted covering, or similar furnishing—how is it purified?

Answer: If a thing requiring purification cannot be rubbed or wrung out three times, one passes one's hand over it until the impurity and its odor disappear, then lifts it from the water and leaves it until the water within it drips away. It is then returned to the water in the same manner three times.

Other things are rubbed with the feet as described, then taken from the water and trodden upon until the water comes out, and this is repeated several times.

Question: If a woman's milk comes into contact with another person's clothing, is it pure?

Answer: Concerning this, the son ʿIzz al-Dīn Saʿd ibn ʿAbd Allāh ibn ʿAlī said: "The milk of a nursing woman, if she is Muslim, is pure for herself and for others."

We say that this is a firmly established ruling, for her milk is like her saliva, and the saliva of every Muslim is pure and does not render what it touches impure.

Question: If a man shaves his head and some wet hair falls upon his garment or body, does the hair render what it touches impure?

Answer: If it is only a small amount, a small degree of impurity has been excused.

Question: Concerning camels, cattle, sheep, or goats that feed upon filth: if their milk, clarified butter, or the whites of eggs from such chickens touch the garments or bodies of those praying, does this render them impure?

Answer: The ruling is as stated in the first question: a small amount is excused.

Question: Concerning a traveler or sick person whose garments have been touched by impurity and who is unable to clean them: is his prayer valid through *tayammum*, without having to make it up?

Answer: Prayer is not complete except in a pure garment. *Tayammum* has been prescribed for ritual impurity, not for impurity upon clothing. As for a sick person, he must instruct someone else to wash his garments.

Question: A polytheist worships idols and does not know what is lawful and unlawful. If he weaves cloth, after which it is bleached and sewn, is his workmanship pure such that prayer may be performed in it, given the saying, "The polytheists are impure"?

Answer: All garments remain pure until the polytheist wears them. If he wears them, they become impure, whether visible impurity appears upon them or not.

The *Daʿāʾim* states: "The Imams, peace be upon them, permitted prayer in garments made by polytheists provided they had not worn them and no impurity appeared upon them." It was likewise said, may God Most High perpetuate his support: A dyed garment remains pure even if the dyer is a polytheist, until he wears it. If he wears it, it becomes impure and prayer in it is not permissible.

Question: What does our master, may God perpetuate his support, say regarding garments bleached by polytheists? Are they to be presumed pure or not? Kindly explain.

Answer: I say—and upon God's granting of success I rely, and from the blessings of His friends I seek assistance—that the garments of polytheists cannot be considered pure except those they have made before wearing them. As for garments that they themselves have bleached or dyed, they may not be considered pure until they have been washed. Perhaps those who heard the ruling concerning this did not understand it precisely and transmitted it without grasping the original form of the question.

Question: What does our master, may God perpetuate his support, say regarding garments made by polytheists that they have not worn, although during weaving they sprinkle them with impure water, after which the water dries and the garments are sold, without ever having been worn or dyed by them? May prayer be performed in them?

Answer: There is no harm in praying in them; the noble Sharīʿa has permitted them.

Question: What do you say, O you through whose praiseworthy conduct the people who have responded to his summons take pride, concerning a broad, long garment or furnishing, part of which is pure and part

impure? May one pray upon the pure portion? The common people say that if the garment is large enough that moving one end does not move the other end, prayer upon the pure portion is permissible.

Answer: One must not pray upon it; prayer upon it is not permissible.

Concerning the Tooth-Stick (*Siwāk*)

It is said in the *Book of Purification*, concerning the statement, "Use the tooth-stick crosswise and do not use it lengthwise": this means that the person using the *siwāk* should pass the tooth-stick, or his finger, crosswise over his teeth, from his right to his left and from his left to his right. He should not use it lengthwise along the teeth, meaning that he should not pass his finger or the tooth-stick from the upper part of the tooth, at the upper gum, down to its lower part, or from the lower part of the teeth upward toward the upper gum. This is disliked and is not among the proper forms of using the tooth-stick, because doing so harms the gums and causes them to recede from the teeth.

It also says: the tooth-stick removes phlegm, and he, peace be upon him, used the tooth-stick until the creaking of his teeth could be heard.

From the *Sharḥ al-Akhbār*: *rayḥān* means every sweet-smelling plant, although the term came to be used specifically for myrtle.

From the Questions Mentioned Above

Question: What do you say, O you whose words bring relief to our souls wandering in the sea of prime matter, concerning the custom of most people of India whereby, after finishing with the tooth-stick, they take a split piece of bamboo or something else and scrape their tongues with it to remove impurities? Is this permissible or not?

Answer: The essential matter is the tooth-stick. There is no blame upon them if they do this.

Another ruling: it is disliked for anyone to use the tooth-stick while in a state of major ritual impurity.

Concerning *Tayammum*

From the *Kitāb al-Akhbār*, concerning the saying, "I was aided by terror, so that the enemy is struck with fear of me from a month's journey away."

It is said in the *Mukhtaṣar al-Muṣannaf*: If a group of travelers has an imam who is in a state of major ritual impurity, and they possess only enough water for the ablution of one man, their imam should perform *tayammum* and lead those among them who have likewise performed *tayammum* in prayer.

If a man is traveling and has only enough water for his ablution, but there is impurity on his garment, he should use that water to wash his garment, perform *tayammum*, and pray. If a man becomes ritually impure while traveling and the time of the noon prayer arrives, and he has enough water for ablution but not enough for the complete ritual bath, he performs *tayammum* and prays, and does not perform ablution. When the afternoon prayer arrives, if that same water is still with him, he performs ablution with it and does not perform *tayammum*, because he is then pure from major ritual impurity. If afterward he finds water, his *tayammum* becomes invalid and he returns to the state of major ritual impurity. If he does not bathe and the time of the sunset prayer arrives while he has only enough water for ablution, he again performs *tayammum*. When the time of the night prayer arrives, if that water is still with him, he performs ablution with it, because he is pure.

If an unbeliever embraces Islam and cannot find water, he performs *tayammum* and prays. It is recommended that if a man awakens in the Mosque of the Prophet, may God bless him and his family, and finds himself in a state of major ritual impurity, he should perform *tayammum* and should not pass through the mosque except after performing it, until he has left. The same applies in the Sacred Sanctuary. If a corpse and a person in major ritual impurity are together, and there is only enough water for one complete washing, the

person in major ritual impurity bathes, while *tayammum* is performed for the corpse. If a sick person is unable to perform *tayammum* for himself, a healthy person performs it for him.

From the same work: a person in a state of minor ritual impurity who is in a town may perform *tayammum* for the funeral prayer if he fears missing it.

If someone performs *tayammum* and prays while there was water among his belongings that he had forgotten, then if he remembers while the prayer time still remains, he performs ablution and repeats the prayer; if the prayer time has passed, what he did suffices.

It is said in the *Book of Purification*: one should not perform *tayammum* from the soil of graveyards, bathhouses, or privies, because the Messenger of God, may God bless him and his family, said: "The earth was made for me a place of prostration and a means of purification, except the bathhouse, the graveyard, and the privy."

One may perform *tayammum* from dry places in camel resting-grounds and sheepfolds, provided nothing of their dung adheres there; one touches the earth itself. One should not perform *tayammum* from the soil of churches until it has been washed.

From the same work: *tayammum* is not for a healthy person while resident, because water is available. God's friends granted permission for a healthy person to use it while traveling, but did not grant him such permission while resident.

From the same work: likewise, permission was granted to one attending a funeral who is not in a state of purity and cannot find water to perform *tayammum* and pray over the deceased, because the funeral prayer is not repeated.

From the *Taʾwīl al-Daʿāʾim*, concerning the statement that if a man is trapped in a crowd and cannot get free to reach water before the prayer time arrives, he performs *tayammum*, prays, and later repeats the prayer: this means that he repeats it once he is able to reach water and purify himself.

It is said in the *Book of Purification*: one should not purchase water at a price that would cause serious hardship or at an exorbitant price, nor seek it in a place where one fears for one's life or in a place so distant that the prayer time would pass before one could return. Rather, one performs *tayammum*.

From the Questions Mentioned Above

Question: What do you say, O best of those who have especially encouraged us to sit with the learned, concerning rock protruding from the ground? If there is no dust upon it and no soil can be found, may one perform *tayammum* from it, or is *tayammum* invalid unless dust is present? What is the difference between it and other stones?

Answer: If there is dust upon it, one may perform *tayammum*. If there is no dust upon it, one may not.

Question: What does our master, may God perpetuate his support, say concerning a man who leaves the city for a place closer than the legal distance of travel and the prayer time comes while he is on the road and cannot find water? May he perform *tayammum*?

Answer: He may not perform *tayammum* while resident except because of illness. If he is traveling and is so far from water that he cannot perform ablution before the prayer time passes, or fears for himself or his property if he goes to the water, he performs *tayammum*.

Question: Concerning a man who required the ritual bath during a night of Ramaḍān but forgot to bathe until he set out on a journey: does *tayammum* suffice for his prayer and fasting?

Answer: If he forgot to bathe until he traveled and then could not find water, *tayammum* suffices for both prayer and fasting.

Question: Concerning a man who is resident but has an ailment in his private parts that prevents cleansing after evacuation: after washing the limbs, must he also perform *tayammum*?

Answer: This has already been addressed in the answer to the first question.

Question: Concerning a man who dies while traveling and water cannot be found.

Answer: *Tayammum* is performed for the deceased.

Another ruling: if a traveler finds water when prayer time comes but fears that using it will make him ill, he performs *tayammum*.

Question: Concerning a traveler who has only a little water, enough either to wash the limbs or enough to cleanse himself after evacuation—[text uncertain]—which should he begin with? And if he does not cleanse himself, does washing suffice in place of *tayammum*?

Answer: Our master al-Nuʿmān, may his sanctity endure, said in the *Book of Purification*: if he cleanses himself with stones or something else and removes what is there, then he performs ablution. If this is because of an impediment—and lack of water is an impediment—there is no need for *tayammum*.

Question: Concerning a traveler who performs the obligatory prayers before their times expire: if he misses their times, may he make them up with *tayammum*?

Answer: In the absence of water, prayer is valid both when performed on time and when made up afterward.

Another ruling: if the wife of a traveler menstruates, then becomes pure but cannot find water, she performs *tayammum* and prays, and it becomes lawful for her husband to have intercourse with her. If a group of travelers has an imam who is in a state of major ritual impurity and only enough water for one man's ablution, their imam performs *tayammum* and leads those among them who have performed *tayammum*. If a traveler has only enough water for his ablution but his garment is impure, he washes the garment with that water, performs *tayammum*, and prays. If a traveler becomes ritually impure and the noon prayer arrives while he has only enough water for ablution but not for the complete bath, he performs *tayammum* and prays without performing ablution. When the afternoon prayer arrives, if the water is still with him, he performs ablution and does not perform *tayammum*, because he is pure from impurity.

If a corpse and a person in major ritual impurity are together and there is only enough water for one full washing, the person in major impurity bathes and *tayammum* is performed for the corpse. If a traveler is accompanied by a Christian or Zoroastrian wife and she menstruates on the road, then becomes pure but cannot find water, she performs *tayammum*. Her husband teaches her how to do so and may then have intercourse with her.

Concerning the Purity of Foods and Drinks

It is said in the *Kitāb al-Akhbār* concerning foodstuffs rendered impure: they are fed to dogs and to animals whose flesh is not eaten.

From the same work: if a dead mouse is found in a cooking pot, the broth is poured away, the meat is washed, and then eaten.

From the *Taʾwīl al-Daʿāʾim*: ablution with water means washing the hands when food is brought.

From the Questions Mentioned Above

Question: What do you say, O you whom God Most High has made a refuge whose gate is sought by one overcome by hardship, concerning Yemeni oil? People know that most of its fruit is eaten only by crows and similar birds, after which the pits emerge from their excrement, dry, and are collected by people, sold, bought by oil-pressers, pressed, and sold. A bitter oil is extracted from them, and no impurity can be seen in it. Is it permissible to sell and buy it, use it in lamps, and touch it?

Answer: The excrement of an animal whose flesh is unlawful to eat is impure. It may not be eaten, sold, or bought.

Question: What do you say, O best of those who have enabled us to see, from the treasury of his knowledge, what our eyes had been veiled from, concerning what occurs in the *Book of Purification*: that there is no harm in the leftover water of a menstruating woman, a Jew, a Christian, beasts of prey, and riding animals; while it also says that what a dog has lapped from is impure. How are these two reports reconciled?

Answer: If there is moisture [from impurity], then it has become impure and is impure. Selling it is not forbidden. The preferable ruling concerns water that exceeds the prescribed amount.

Question: What does our master, possessor of all, may God perpetuate his support, say concerning honey, clarified butter, oil, or sesame oil in which a mouse is found? Should these be fed to animals or buried in the ground? If soap is made from them by adding alkali and lime, may it be sold in the market or elsewhere, or should it be given to people without payment?

Answer: Any liquid in which an animal having flowing blood dies may not be eaten. Nor should something forbidden be fed to an animal whose flesh is lawful to eat. There is no harm in making soap from it, but it should not be sold unless the buyer is informed of its impurity. A garment washed with impure soap must afterward be washed with pure water.

Similarly, if one pellet of mouse droppings is found in food, it is removed and the food is eaten. The same applies to two pellets. But if three pellets are found, the food may not be eaten by a human being or by an animal whose milk is drunk.

From the *Akhbār*: it is fed to dogs and animals whose flesh is not eaten.

From the same work: if a dead mouse is found in a cooking pot, the broth is poured away, the meat washed, and then eaten.

Question: Concerning betel that is eaten with a small amount of lime: is this permissible?

Answer: If the lime is a small amount that does not harm the teeth, there is no harm in eating it with other things. A small amount of earth may also be present in water or broth, and this does not make it forbidden unless it is excessive and harmful to the person eating it. God and His friends know best.

Question: What about clarified butter, sesame oil, honey, and other edible condiments possessed by unbelievers and sold by them in Muslim markets? Is it permissible to eat them?

Answer: Success is through God. The slaughtered animals of unbelievers were prohibited because they do not mention God's name over them and do not slaughter them toward the qibla. Food and moist condiments that they have touched become impure through them. But what they have not touched with their hands or impure instruments may be sold, bought, eaten, and used as condiments.

Yet in practice it is rare that their workmanship remains untouched, since they are impure and handle such things with their instruments while they are moist. Therefore, if something else can be found, what they have prepared should be avoided. If there is need for it, only their slaughtered animals are actually forbidden, while their moisture is impure. If any condiment or moist food prepared by polytheists falls upon a garment or upon a person's body and it is known that they rendered it impure, the affected place must be washed. Another ruling: the leftover water in a small vessel from which a Jew, Christian, Zoroastrian, or cat has drunk may be used for purification provided no saliva is visibly present.

Concerning Cleanliness and the Purifications of Natural Disposition (*Fiṭra*)

It is said in the *Taʾwīl al-Daʿāʾim*: outwardly, the master of a household, when among his family and those beneath him in rank, may perform ablution before them; but when someone whom he honors and esteems is present as his guest and whose right he observes, he gives him precedence over himself in this matter.

From the questions of Ḥākim Zawāra, Khaṭṭāb ibn Wasīm, to our master al-Nuʿmān: "You asked concerning a man found uncircumcised who had already married a woman and had children by her. If he had not been circumcised, he must be circumcised. No uncircumcised man is to be left in Islam even if he reaches eighty years of age, unless he was born circumcised, for it is related that some Prophets, may God bless them, were born in that state.

If the glans, or most of it, is already exposed, he is not compelled to undergo circumcision. If he is young, it is recommended that the remaining skin over the glans be drawn back and cut away."

It is said in the *Book of Purification*: "Let each of you trim his mustache and remove the hair from his nose, for this increases his beauty."

It also says: permission was given to dye the hair black in order to appear impressive before the enemy, and it is said that al-Ḥusayn ibn ʿAlī, peace be upon him, used such dye. It also says: by "cutting off what the fathers loved" is meant cutting off what the forefathers used to cherish.

It is said in a copy of the *Daʿāʾim*: "Then I saw in the original, in the handwriting of al-Qāḍī al-Nuʿmān ibn Muḥammad, may his sanctity endure, that al-Mahdī bi-llāh, peace be upon him, disapproved of that"—meaning dyeing [the hair black].

From the Questions Mentioned Above

Question: What do you say, O diver into the currents of the sciences, concerning the Sharīʿa ruling that an uncircumcised man is not to be left in Islam until he is circumcised even if he reaches eighty years of age? O our master, if a woman grows old without having undergone *khafḍ* [female circumcision], is she to be left uncircumcised or not?

Answer: She is to undergo *khafḍ* and is not to be left without it.

Question: What do you say, O our master, support, and pillar, concerning the custom in India whereby men and women part the hair of the head only as far as the middle and not all the way to the nape? Does this suffice as a parting?

Answer: It should be parted into two halves from the front of the head to the back, and one should not deliberately omit this.

Question: What do you say, O best of those from whom we hope the gates of good will be opened to us, concerning beard hair when some of it is long and some short? If the wearer trims some of it so that it becomes even and thereby increases his beauty, is there any blame upon him?

Answer: He has been permitted to shorten the hair of the sideburns, but apart from that he is not permitted to shorten the beard.

Question: What do you say, O you whom God Most High has made a path of honor for those obedient to God, concerning body hair other than that which has specifically been ordered removed? Is there any blame upon a person if he shaves, shortens, or plucks it?

Answer: There is no blame upon him for that, except in the case of the beard, from which he should remove nothing.

Question: What do you say, O you whom God Most High has made a physician who treats the spirits of the Friends from every ailment, concerning a man and his wife using the same comb? Some people of India dislike this.

Answer: No reliance should be placed upon that view.

Question: What do you say, O best of those who through the light of his knowledge have removed every blindness from the eyes of our insight, regarding what occurs in the *Book of Purification*, that Abraham, peace be upon him, was the first to be circumcised, at eighty years of age? O our master, does this mean outwardly that this ruling and what follows from it had not been revealed before then?

Answer: Outwardly this is established, because Abraham, peace be upon him, was not commanded to undergo this purification until he had reached eighty years of age.

Question: What do you say concerning what occurs in the *Book of Purification*, that ʿAlī, peace be upon him, said: "O women, when you perform *khafḍ* upon your daughters, do not cut excessively; leave something of it, for that is more beautiful for the face and more pleasing to the husband." O our master, do they incur sin if they cut excessively? And what is meant by "more beautiful for the face"?

Answer: They should act as stated and should not cut excessively. It is better in respect of the husband's attraction toward her.

Question: What do you say, O best of those whom God has made a repository of the secrets of His felicitous Friends, concerning the Prophet's instruction, may God bless him and his family, to a menstruating woman that she should adopt a *quṣṣa* and a *jumma*? O our master, may we be your ransom, what does this mean?

Answer: The *jumma* means braiding the hair from the temples to the nape. The *quṣṣa* means cutting the hair of the head while leaving approximately one quarter of it at the front. As for the *qunzuʿa*, it means removing the hair while leaving patches of it, and this too is prohibited.

Question: What do you say, O sea of sciences, concerning most women of India who decorate the palms and feet with henna for adornment, while some also dye their teeth with a red elixir or something else for adornment, given that the Sharīʿa prohibits patterned dyeing? What is their ruling?

Answer: Patterned dyeing and dyeing of the teeth have been prohibited, but there is no harm in ordinary dyeing with henna.

Question: What do you say, our master, concerning a man who dyes his hands and feet with henna merely for adornment and not for some benefit? Is that permissible?

Answer: Men should not use henna merely for adornment. Women are instructed to do so. For a man, leaving it is preferable unless there is some ailment, but one who does it incurs no sin.

Question: What do you say, O treasury of the jewels of wisdom, concerning a man or woman whose teeth are uneven, some long and others short: if they are made even by filing them with stone, iron, or something else so as to improve their appearance, is there any sin in that?

Answer: There is no harm in this for women.

Question: What do you say, O sea of hopes, concerning women in India who pierce their ears and those of their young daughters and lengthen the openings as much as they can in order to wear jewelry? Is there any blame upon them?

Answer: There is no harm in that.

Question: What do you say, O you through whom our souls have life, concerning a man who lets the hair of his head grow but does not comb or part it every day? Does this cause any deficiency in his prayer? How often should he comb and part it?

Answer: If it is divided into two halves, there is no deficiency upon him, but he should not leave it without a parting. If he deliberately omits this as a matter of ruling, his prayer is invalid.

Question: What do you say, O refuge of those among the people of the *daʿwa* who come to him, concerning combing the hair on the eve of Friday? Most people of India regard refraining from it as absolutely obligatory.

Answer: No reliance should be placed upon that.

Question: What does our master, may God perpetuate his exaltation, say regarding what is mentioned in the Sharīʿa, that an uncircumcised male is not to be left in Islam until circumcised? Should he be circumcised after death?

Answer: The Sunna I prefer is that he be circumcised after death if he is a child.

Another ruling: the prayer of an uncircumcised woman and intercourse with her are valid, and likewise in the case of an uncircumcised man; nevertheless the Sunna is to hasten to perform it. Food cooked by an uncircumcised slave-girl is permissible.

From the answers of our master al-Nuʿmān, may his sanctity endure: "You asked concerning a man found uncircumcised who had married a woman and fathered children by her. He must be circumcised, and no uncircumcised male is to be left in Islam even if he reaches eighty years of age, unless he was born circumcised, for it has been related that some Prophets were born in that condition. If the glans, or most of it, is exposed, he is not compelled to undergo circumcision. If he is young, it is recommended that the remaining skin covering the glans be drawn back and cut away."

Concerning the Purity of Hides, Bones, Hair, and Wool

It is said in the *Taʾwīl al-Daʿāʾim*: the hair of goats is not shorn as the wool of sheep is shorn so as to benefit from it while they are alive. Wearing it and praying in or upon it becomes lawful, just as their flesh, hides, bones, and all other parts become lawful and pure when they have been properly slaughtered.

From the *Mukhtaṣar al-Muṣannaf*: If one of a person's bones is broken, it may only be repaired with the bone of an animal whose flesh is lawful to eat and which was properly slaughtered.

Whoever repairs one of his bones with the bone of carrion, or of a properly slaughtered animal whose flesh is unlawful to eat, or with the bone of a dead human being, must have it removed and must repeat every prayer he performed while it was in place. The ruler is to compel him to remove it if his condition becomes known. If this is not discovered until after he dies, the bone is not removed after death. Human hair may not be used for benefit in the manner in which animal hair is used.

It is said in the *Taʾwīl al-Daʿāʾim*, concerning the statement "one may benefit from a covering that does not touch": this means that it does not touch anything pure while one of the two is wet, lest impurity reach it.

From the *Akhbār*: they disliked benefiting from pig bristles.

From the Questions Mentioned Above

Question: What do you say, O ray of the Sun of Guidance, concerning impure garments, carrion hides, or hides of beasts of prey that touch the body while either they or the body are wet? Must the body be washed? And what of garments washed by the hands of polytheists?

Answer: If they touch the body, it must be washed, and likewise anything washed by polytheists with their hands.

Question: What do you say concerning what occurs in the *Taʾwīl al-Daʿāʾim*, that goat hair is not shorn like sheep's wool and benefited from while the animals are alive, but that wearing it and praying in or upon it

become lawful, together with their flesh, hides, and bones, once they are properly slaughtered? O our master, may one pray upon their hair and hides if these are taken after slaughter?

Answer: If their hair and hides are taken after lawful slaughter, prayer upon them is permissible. The goat is a kind of sheep whose hindquarters are exposed because its tail points upward; it has two horns and is particularly common in India.

Question: Concerning a lawful animal: if some of its wool, fur, or hair is shorn while it is alive, must it be washed in the same way as an impure garment? If it contains moisture before washing and touches a garment or the body, does it render it impure?

Answer: The explicit text states that prayer in it is not permissible until it has been washed, but it is not itself impure.

Question: What does our master, may God perpetuate his support and right guidance, say concerning, for example, a skin container made from carrion hide in a region called Wāghar, most of whose inhabitants are unbelievers, which is filled with clarified butter or sesame oil and brought to Aḥmadābād, where its contents are sold? Is that permissible? If soap is made from it by mixing it with lime and alkali, may the soap be bought and sold?

Answer: If edible substances are placed in such a container, they become impure. One may not pray in a garment touched by them. Buying and selling them is permissible, but the buyer must be informed that the clarified butter or soap is impure. Buying and selling carrion hides themselves is unlawful.

From the *Taʾwīl al-Daʿāʾim*: “Hair is not to be shorn from the animal while it is alive, for it is carrion.” This explicit ruling concerns this case specifically.

Concerning Menstruation

From the *Mukhtaṣar al-Muṣannaf*: If a woman begins the prayer within its time and then menstruates, she does not make up that prayer.

If she menstruates for one or two days, then the bleeding stops and she remains pure for ten days, that is not menstruation, because menstruation cannot be less than three days. If she had omitted prayer, she must repeat it. If she sees blood for one or two days, then remains pure for less than ten days, then sees blood again, both the first and second bleeding count as menstruation. A woman in post-partum bleeding refrains from fasting for the number of days of her post-partum bleeding, or according to her customary duration if she has an established habit.

It is said in the *Book of Purification*: if she sees blood during the daytime in Ramaḍān, she abstains from food and drink for the remainder of that day and later makes it up together with the other days she owes.

If she becomes pure during the daytime in Ramaḍān, she likewise abstains from food and drink for the rest of the day and later makes it up.

From the same work: if a woman gives birth, or sees blood before delivery in a manner resembling menstruation, then so long as the bleeding continues she remains in that state until it ceases, after which she bathes as a menstruating woman bathes when she becomes pure.

If the bleeding continues excessively, she is considered to have irregular bleeding (*istiḥāḍa*), and post-partum blood is distinguished from the blood of *istiḥāḍa*.

From the *Taʾwīl al-Daʿāʾim*, concerning the statement that whoever has intercourse with a menstruating woman has done what is unlawful and what he ought not to do, and must seek God’s forgiveness and repent of his error; if he also gives charity, that is good.

If a woman menstruates and her condition continues for ten days, and after the ten days continues another two, three, four, or five days, she does not pray or fast and her husband does not have intercourse with her, nor

does she make up the prayers after becoming pure if it is established that the blood is menstrual blood and cannot be distinguished from *istiḥāḍa*. If she is uncertain regarding the blood, she is treated as one suffering from *istiḥāḍa*, according to what we have stated concerning distinguishing menstrual blood from irregular bleeding.

From the *Taʾwīl al-Daʿāʾim*: the same obligation applies to the woman if she willingly consents to intercourse. If the man forces her, there is no blame upon her. If he does not know that she is menstruating and she conceals it from him until he has intercourse with her, the sin falls upon her and there is no blame upon him because he did not know of her menstruation.

A menstruating woman must not touch the Qurʾānic codex. — From the *Book of Purification*.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that a menstruating woman should wrap herself in a lower garment from below the navel to the knees, and that her husband may enjoy what is above and below the garment? O our master, may he touch all of her body apart from intercourse in the vagina?

Answer: Yes, he may touch all of her, although it is preferable to avoid what lies beneath the lower garment for fear that fluid may reach her private parts.

Question: What do you say concerning a woman who becomes pure from menstruation or post-partum bleeding during a prayer time, but by the time she finishes bathing the time for the noon prayer has passed? Must she make up that prayer?

Answer: If she was negligent, she makes it up. If she was diligently occupied with bathing and did not finish until the prayer time passed, she does not have to make it up.

From the answers of our master al-Nuʿmān, may his sanctity endure: “You asked concerning a blind woman who asked you how she should determine her menstruation. Tell her to insert a piece of cotton or a white cloth and show it to a woman whose religion she trusts. So long as blood continues to appear upon it, she is menstruating. When it comes out white, she has become pure, and she bathes, prays, fasts, and her husband may have intercourse with her. She should do the same at the beginning of menstruation if she herself does not perceive it.”

Another ruling: if a woman becomes pure from menstrual blood during Ramaḍān before sunset but fears harm from bathing, she may perform *tayammum* and fast, and she does not make up that fast. Likewise, if a man experiences a nocturnal emission during Ramaḍān and bathing at night would harm him, he performs *tayammum*, fasts, and does not make up the fast.

Question: Concerning a woman who becomes pure during Ramaḍān, fasts nine days, and then menstruates on the tenth: are her nine days of fasting valid?

Answer: It has been stated that the minimum duration of menstruation is three days and the minimum interval of purity is ten days.

Question: The *Book of Purification* states that the maximum duration of menstruation is ten days. If bleeding continues beyond this period, are her prayer and fasting valid even if the blood remains thick and foul-smelling?

Answer: Menstrual blood and the blood of *istiḥāḍa* have already been described and distinguished from one another. One should rely upon the explicit text in this matter.

Question: The Sharīʿa gives the limit of post-partum bleeding as forty days, while some books give sixty days. Which is more correct?

Answer: This answer is from our master Ḥasan ibn Nūḥ, speaking on behalf of our master, may his sanctity endure. He said, may God perpetuate his support:

A woman in post-partum bleeding determines its duration according to her customary period. Post-partum blood is distinguishable from the blood of *istiḥāḍa*. Whenever she becomes clean and free of blood, she bathes, prays, fasts, and her husband may have intercourse with her.

It is said in the *Book of Purification*: if a woman gives birth, or sees blood before giving birth in a manner resembling menstruation, then as long as the blood continues she remains in that state until it ceases. She then bathes as a menstruating woman bathes when she becomes pure. If the bleeding continues excessively, she is considered to have *istiḥāḍa*. Post-partum blood can be distinguished from the blood of *istiḥāḍa*, just as we have described the distinction between menstrual blood and irregular bleeding.

It is said in the *Mukhtaṣar al-Āthār*: the woman in post-partum bleeding is like the menstruating woman, and in her condition the same obligations apply to her and to her husband as apply during menstruation. She bathes when the post-partum bleeding ceases.

It is said in the *Mukhtaṣar al-Muṣannaf*: the woman in post-partum bleeding refrains from prayer for the number of days of her post-partum bleeding, or for the period established by her customary habit if she has one. The *Daʿāʾim al-Islām* follows the same course.

I have seen in one of the books of the Sharīʿa of the People of the House, peace be upon them, a reckoning of the days of post-partum bleeding. It stated that the minimum is twenty days, the middle duration forty days, and the maximum sixty days. This applies if the blood continues. It must not exceed sixty days; anything beyond that is *istiḥāḍa*. Nor is the period ever less than twenty days, and a woman in post-partum bleeding does not become pure before twenty days. This is the intended meaning of that book's words. I did not have the original wording before me when writing this sheet, so I cannot reproduce it verbatim. But if I live until next year and find that book, I shall write down its exact wording, God willing. The intended ruling, however, has been explained to you: once the woman in post-partum bleeding becomes free of blood after twenty days, she has become pure. This is definitively the ruling for post-partum bleeding.

After that, one relies upon her habitual duration. If the bleeding exceeds her habit, one examines whether the blood has changed. If it has changed, it is *istiḥāḍa*. If it has not changed, its ruling remains as first stated. Our master al-Nuʿmān, may his sanctity endure, mentioned in the *Muntakhaba*: "The woman in post-partum bleeding remains seated for the period corresponding to menstruation. If her blood continues flowing, she waits until two months have passed, then, after purifying herself, makes up the prayers and fasts between the two periods as a precaution so that she may be safe." I have already stated her ruling if *istiḥāḍa* continues after this period. Thus, if post-partum blood persists beyond her customary duration and remains dark, thick, and foul-smelling like post-partum blood, she refrains from prayer and fasting and keeps herself from her husband until two months have passed.

After two months, if the bleeding continues, she is without doubt in a state of *istiḥāḍa*. She bathes and makes up the prayers and fasts she omitted from the end of her customary period until the completion of the two months, as a precaution, because this interval is a matter of doubt: it is possible that she menstruated after the post-partum bleeding. This is the ruling concerning post-partum bleeding. God and His Messenger know best. The answer of our master is complete, praise be to God and through Him.

It is said in the *Mukhtaṣar al-Muṣannaf*: if a woman begins the prayer in its time and then menstruates, she does not make up that prayer. If she menstruates for one or two days and then the blood stops and she remains pure for ten days, that is not menstruation, because menstruation cannot be less than three days. If she omitted prayer, she repeats it. If she sees blood for one or two days, then remains pure for less than ten days, then sees blood again, both the first and second bleeding count as menstruation.

It is said in the *Taʾwīl al-Daʿāʾim*: although the term *nifās* is ordinarily used in connection with childbirth, what is actually intended by it is the blood that occurs with it.

This is clarified by what is related from the Messenger of God, may God bless him and his family. He said to one of his wives, who was with him upon his bed and suddenly got up: "What is the matter with you? Have

you begun *nifās*?" She said: "Yes," meaning that she had begun menstruating. Likewise with the woman suffering from *istiḥāḍa*, whose bleeding does not cease but can be distinguished from menstrual blood. When menstruation comes, the blood resembles menstrual blood: thick and dark. When menstruation has passed, the blood becomes thin. What is incumbent upon her is that so long as menstrual blood is present she remains in the state of menstruation: she does not pray, does not enter the mosque, and her husband does not approach her. When the menstrual blood ceases and the blood that comes becomes thin, she purifies herself as she would after menstruation. She is then in a state of purity: she prays, fasts, enters the mosque, and her husband may have intercourse with her.

Whenever any of that irregular blood appears, she performs ablution, because it is an ailment affecting her.

Concerning *Istibrāʾ*

It is said in the *Ikhtiṣār*: If a man has a wife who has a child by another man, and that child dies leaving property, the husband should abstain from intercourse with her until *istibrāʾ* has been established.

If she is pregnant, the unborn child may inherit from the deceased if its mother herself would not inherit; otherwise one must not introduce into the womb someone who has no rightful claim to the inheritance. This applies if the mother is a slave-woman or a polytheist. If she is a free Muslim woman, her inheritance belongs to her rather than to the siblings, and the husband need not abstain from her.

It is said in the *Kitāb al-Akhbār*: they transmitted that for a girl who has reached puberty but has not menstruated, the period is forty-five nights. They also transmitted that if a virgin reaches puberty without menstruating and the seller then wishes to hand her over, she undergoes *istibrāʾ* for nine months.

It is said in the *Kitāb al-Zīna*, concerning the saying, "The child belongs to the marriage-bed and the adulterer receives the stone": this means that the adulterer has no right to claim lineage from the child.

From the Questions Mentioned Above

If someone commits fornication with a woman, whether virgin or previously married, and afterward wishes to marry her, the marriage contract is not permissible until *istibrāʾ* has been completed.

Concerning the Description and Sunna of Prayer

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever forms the intention for prayer and then lets that intention lapse before entering into it, because of distraction, forgetfulness, or something else, and afterward prays, that prayer does not suffice him.

From the same work: After the opening *takbīr*, the worshipper recites the opening supplication. The imam and the follower are alike in this, unless the imam has already preceded the follower in part of the prayer by beginning the recitation after the opening supplication.

It is said in the *Ikhtiṣār*: Prayer is opened with a *takbīr* during which one raises the hands, the palms spread and the fingers held together and extended.

It is said in the five hundred and twenty-third session of the *Majālis al-Muʾayyadiyya*: The opening *takbīr* (*takbīrat al-iḥrām*) is obligatory, while all the other *takbīrs* are Sunna. The first salutation is obligatory and the second is Sunna.

From the *Akhbār*: Abū Jaʿfar Muḥammad ibn ʿAlī said that a woman should hold her hands close to her breast so as to cover her breasts.

It is said in the *Book of Purifications*: There is no harm in reciting some parts aloud and some silently in the voluntary night prayer. It is related that when the Messenger of God, may God bless him and his family, rose at night to pray, he would sometimes recite one or two verses aloud, or more or less than that, and likewise recite some silently. If one recites all of it aloud or all of it silently, there is no harm.

The better practice, however, is not to raise the voice so loudly that those around one hear, because that is safer from ostentation. One should hear oneself and those nearby, but not one's neighbors or people farther away who would thereby learn that one has risen to pray voluntarily. For the merit of voluntary worship lies in concealing it from people, whereas the merit of obligatory worship lies in making it manifest.

It is said in the *Mukhtaṣar al-Muṣannaf*: It does not suffice for a man merely to recite inwardly unless he actually articulates the words with his tongue.

From the same work: The least by which prayer is complete consists of five limits: opening with the *takbīr*; standing for one who is able; bowing; prostration; and sitting for the testimony of faith. Whoever performs these five limits but forgets or is ignorant of what lies beyond them has completed his prayer. But whoever knows its limits and deliberately omits something from its obligatory or Sunna elements has no prayer and must repeat what he omitted in this manner. The ignorant person must learn.

From the *Akhbār*: A woman places her hands above her knees upon her thighs so that she does not bend too far and thereby raise her buttocks.

It is said in the *Taʾwīl al-Daʿāʾim*: Those praying behind the imam, when he says, "God hears the one who praises Him," say quietly, "Our Lord, to You belongs praise." If the congregation is so large that someone is appointed to relay the imam's words to them, he recites this aloud together with the *takbīr* and the salutation, but he does not recite the glorification aloud.

It is said in the *Mukhtaṣar al-Āthār*: When one raises one's head from the first prostration, one sits until every joint has returned to its place. One places the hands upon the thighs, lays the left foot beneath the right thigh without sitting upon it, and keeps the right foot upright upon its big toe if able; otherwise one lays it upon the toe. Then one performs the second prostration and sits in the same manner for both the first and final *tashahhud*.

It is said in the *Book of Purifications*: He returns his hands and spreads them upon his thighs near the knees without raising them, then says the *takbīr* and prostrates a second time as he did the first. In doing so he returns his hands to the ground as in the first prostration, without raising them as he does for certain *takbīrs*. He then rises and says the *takbīr*, but does not raise his hands at that point, nor during the *takbīr* between the two prostrations, nor at any other *takbīr* in prayer except the opening *takbīr*, the *takbīr* for bowing as he descends into it, and when he raises his head from bowing and says, "God hears the one who praises Him."

It is said in the *Mukhtaṣar al-Āthār*: When one rises from the first *tashahhud*, one supports oneself on the hands and says quietly, "O God, by Your power and strength I rise and sit," and says the *takbīr* while standing.

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever recites only the first *tashahhud* does not thereby fulfill the second; but the second suffices for the first.

From the *Akhbār*: When one sits for the *tashahhud*, one places the forearms upon the thighs, spreads the fingers of the hands near the knees, avoids leaning, and keeps the hip in contact with the ground.

From the same work: One sits upon the ground and not upon the feet.

It is said in the *Ikhtiṣār*: There is no harm in sitting in the *iqʿāʾ* posture between the two prostrations.

It is said in the *Ikhtiṣār*: A woman sits close to the ground, keeps her thighs together, and raises her knees.

From the Questions Mentioned Above

Question: What do you say concerning what is related in the *Book of Purifications*, that Ibn al-Kawwāʾ repeatedly opposed the Commander of the Believers ʿAlī, peace be upon him, raising his voice during prayer, and that ʿAlī, peace be upon him, then recited: "So be patient; indeed, the promise of God is true…"? O our master, may we be your ransom, had he begun the prayer with the sūra whose final part contains this verse?

Answer: No. Rather, he recited this verse in order to suppress and rebuke him.

Question: What do you say concerning the references in the Sharīʿa to the long, middle, and short portions of the *mufaṣṣal*? O our master, what are their limits according to the doctrine of the People of the House, God's blessings upon them all?

Answer: The long *mufaṣṣal* extends from *al-Ḥujurāt* to *al-Mujādala*; the middle from *al-Mujādala* to *ʿAmma yatasaʾalūn*; and the short from *ʿAmma yatasaʾalūn* to *al-Nās*.

Another set of rulings:

Whoever abandons a prayer without excuse, or any obligatory act, has broken the covenant. Whoever accuses a believer, so that the accused swears by God and the accuser still does not believe him, has broken the covenant. Whoever commits fornication or kills a believer has broken the covenant. Whoever insults the *dāʿī* or one appointed by the *dāʿī* has broken the covenant. Whoever forms the intention for prayer and then loses that intention before entering the prayer because of distraction, forgetfulness, or otherwise, and then prays, the prayer does not suffice him. It does not suffice for a man to recite inwardly unless he articulates with his tongue. Whoever recites the first *tashahhud* only does not thereby fulfill the second; the second, however, suffices for the first.

Concerning Supplication after Prayer

It is stated in the *Book of Purifications* concerning the words "Peace be upon you" that the definite article should be retained: one says *al-salāmu ʿalaykum*, not merely *salāmun ʿalaykum*, as some common people do when giving a single salutation.

It is said in the *Ikhtiṣār al-Āthār*: When giving the salutation, one intends thereby those around oneself if praying in congregation, and the two guardian angels if praying alone. When one turns away from the prayer intending to rise, one turns to the right. If one is the imam and leaves while people are performing voluntary prayers, one should not walk in front of the rows but pass through them, and should not walk in front of those praying.

It is said in the *Taʾwīl al-Daʿāʾim*: Outwardly, when the worshipper sits in prayer he folds the left leg and keeps the right upright.

It is said in the *Ikhtiṣār al-Āthār*: The Messenger of God, may God bless him and his family, said: "Shall I direct you to a weapon by which God will fortify you against your enemy and increase your provisions?" They said: "Yes, O Messenger of God." He said: "Call upon your Lord night and day, for the weapon of the believer is supplication."

He also said: "The most beloved glorification to God is the glorification amid discourse." He was asked: "What is the glorification amid discourse, O Messenger of God?" He replied: "When people are immersed in worldly affairs, falsehood, and their passions, a man seizes the opportunity to call upon God, Mighty and Exalted, remember Him, and glorify Him." He said, may God bless him and his family: "God, Mighty and Glorious, never opens for a servant a door of supplication without opening for him a door of response; nor a door of seeking forgiveness without opening a door of forgiveness; nor a door of gratitude without opening a door of increase; nor a door of action without opening a door of acceptance."

The Book of God bears witness to this. God Most High and Blessed said: "Call upon Me and I shall answer you"; "Whoever seeks God's forgiveness will find God Forgiving and Merciful"; "If you are grateful, I shall surely increase you, but if you are ungrateful, My punishment is severe"; and "Whoever does an atom's weight of good shall see it."

Also from the *Ikhtiṣār al-Āthār*: The Messenger of God, may God bless him and his family, said: "Supplication turns back a decree even after it has been firmly decreed. Affliction may descend upon a servant from heaven; he calls upon God and asks for well-being, and the supplication ascends and meets the affliction. The two then remain confronting one another until the Day of Resurrection."

From the same work: Whoever sees someone afflicted and says, “Praise be to God who has granted me well-being from that with which He has afflicted you and has favored me over you and over many of His creatures,” deserves from God not to be struck by that affliction.

Jaʿfar ibn Muḥammad, peace be upon him, said: “Whoever supplicates should invoke blessings upon Muḥammad and the family of Muḥammad in his supplication, for the servant’s supplication is not raised to heaven until he invokes blessings upon the Prophet and his household.” The Messenger of God, may God bless him and his family, said: “Place me at the beginning and end of your supplication.” He also said: “Four have been appointed as intercessors: Paradise, the Fire, the houris, and an angel at my head in my grave after I die. When the servant says, ‘O God, lodge me in Paradise,’ Paradise says, ‘O God, lodge him within me.’ When he says, ‘O God, protect me from the Fire,’ the Fire says, ‘O God, protect him from me.’ When he says, ‘O God, marry me to the houris,’ the houris say, ‘O God, marry him to us.’ And when he says, ‘O God, bless Muḥammad and the family of Muḥammad,’ the angel at my head says to me, ‘O Muḥammad, so-and-so has invoked blessings upon you and your family,’ and I say, ‘O God, bless him just as he blessed me.’”

Jaʿfar ibn Muḥammad, blessings of God upon him, then said: “God wards off through supplication an affair that He knew the servant would supplicate concerning and that He would answer. Were it not for God’s granting success to the servant in making that supplication, an affliction would have struck him that would uproot him from the face of the earth.” There is no Muslim who calls upon God without God either answering him, or averting from him through that supplication an affliction greater than what he asked to be removed, or postponing the response until a time when it will be more beneficial for him, provided that he does not supplicate for injustice or the severing of kinship. He, peace be upon him, said: “Supplication turns back the decree even after it has been firmly decreed. Therefore increase your supplication, for it is the key to every good and the success of every need. What is with God is attained only through supplication. There is no door that is knocked frequently except that it is soon opened to the one who knocks.”

From the same work: The Prophet, may God bless him and his family, said: “The supplication of a believer is answered so long as he does not become impatient.” He was asked: “What is impatience, O Messenger of God?” He replied: “He supplicates, sees no effect of his supplication, and says: ‘I prayed, but God Most High did not answer me.’”

Jaʿfar ibn Muḥammad, peace be upon him, said: “God hastens for His believing servant whatever He wills when that is better for him, and God is truer than His promise. He said: ‘Call upon Me and I shall answer you.’” And on the Day of Resurrection He, exalted be His praise, undertakes the reckoning of His believing servant. Good deeds appear for him that he had not performed. It is said to him: “Do you recognize these good deeds?” He replies: “No.” It is said to him: “You called upon God on such-and-such a day concerning such-and-such a matter. He answered you, but postponed the response until this day because it was better for you.” When the believer sees the greatness of his reward on that day, he says: “My Lord, would that You had not hastened anything of my supplications for me but had postponed them all until this day.”

From the Questions Mentioned Above

Question: What do you say concerning what occurs in the books of the guiding *daʿwa*, that supplication is not to be recited after the afternoon prayer? Does this refer specifically to the supplication of approach (*duʿāʾ al-taqarrub*) or to all supplications?

Answer: Both the supplication of approach and other supplications. If someone nevertheless supplicates, there is no sin upon him.

Question: Should the worshipper supplicate after the obligatory afternoon prayer? And should he wipe his face at the place of prostration after every prayer, or only specifically after the afternoon and dawn prayers?

Answer: Our masters, may God sanctify their spirits, commanded wiping after the afternoon and dawn prayers in particular. They received this from the pure Imams, God’s blessings upon them. It has also been

stated that one should not prolong supplication after the afternoon prayer; if one does prolong it, however, there is no blame.

Concerning Speech and Actions during Prayer

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever eats or drinks during prayer, whether forgetfully or deliberately, breaks his prayer.

It is said in the one hundred and thirty-fifth session of the *Majālis al-Muʾayyadiyya*: *Qunūt* in the language means silence. The exegetes said: "We continued speaking during our prayers until this verse was revealed: 'Stand before God in devout silence'; then we became silent."

It is said in the *Book of Purification*: One should not greet someone who is praying, except when entering a mosque in which people are praying; then one gives the greeting, in accordance with the Sunna that one entering a mosque should greet. Whoever hears him returns the greeting after completing the prayer.

But if someone passes a person praying outside a mosque, he should not greet him. If he enters while the person is praying in his house, however, he gives the greeting, because God Most High said: "O you who believe, when you enter houses, greet yourselves with a greeting from God, blessed and good…" If someone sees something objectionable and wishes to draw attention to it, and says "Glory be to God," intending it as recitation—since it belongs to Qurʾānic recitation—or as glorification, that does not invalidate his prayer. Likewise, if he makes a gesture to someone he wishes to address concerning what he wants, or strikes the inside of one hand against the back of the other hand, or against his thigh, or something else in order to make a sound, this likewise does not invalidate his prayer.

From the same work: If someone closes his eyes during prayer because something occurs to him or so that looking will not distract him, there is no harm.

It is said in the *Ikhtiṣār*: They forbade the worshipper to wipe from his forehead during prayer dust or anything else upon which he prostrates. He should wipe it after completing the prayer and should not leave it there.

From the Questions Mentioned Above

Question: What do you say concerning a man praying behind an imam who forgets something, whereupon the man alerts him by clearing his throat or otherwise rather than by saying *subḥān Allāh*? Is there anything upon him?

Answer: Deliberately clearing the throat without necessity invalidates the prayer. One should alert the imam by glorification or gesture.

Question: What do you say concerning a man who frequently clears his throat during prayer merely because it is his habit? Is anything incumbent upon him?

Answer: If he does so deliberately, he must repeat the prayer.

Question: What do you say concerning a woman praying either in congregation or alone who carries her child during prayer so that it will stop crying? Is that permissible?

Answer: She may not occupy herself during prayer with something of that kind.

Question: What do you say concerning someone praying while there is some food in his mouth that he placed there because of pain? Does this cause a deficiency in his prayer?

Answer: If he put it in his mouth out of necessity, there is nothing upon him.

Question: What does our master, may God perpetuate his support, say concerning a man who prays with his braid wound inside his turban, bringing it from the back of his head around to the forehead above the forelock without placing it over the middle of his head? Is that permissible?

Answer: There is no harm in that. The prohibited *ʿaqṣ* is to return the hair to its root, meaning gathering it at the middle of the head.

If a man prays with something in his mouth like a ring-stone, a dirham, or the like, then if it does not prevent him from properly articulating the letters, his prayer is complete. If he holds something in his hand and it does not prevent him from properly observing the limits of his prayer, there is nothing upon him. It is preferable, however, that he be free of such things. Another ruling: Whoever eats or drinks during prayer, whether forgetfully or deliberately, breaks his prayer.

Concerning Clothing in Prayer and What the Worshipper Prostrates Upon

It is said in the *Mukhtaṣar al-Muṣannaf*: If a man prays with his private parts uncovered without knowing it until after he has completed the prayer, and then becomes aware of it, he must repeat the prayer.

If a free woman or a slave-woman prays with her private parts exposed, whether she knew it or not, her prayer is invalid.

From the same work: One who has no garment except an impure one and cannot obtain another or water with which to purify it should pray in it and repeat the prayer when he finds another garment or water with which to cleanse it.

If he has two garments, one of which is impure but he does not know which, he must perform the prayer once in each garment, intending each time to perform the obligatory prayer. There is no harm in praying upon a carpet containing images provided that they are not at the place of prostration, lest they distract him from prayer. Plaster and similar material that has been fired with carrion as fuel and then used to plaster a mosque may be prostrated upon, because fire has purified it.

It is said in the *Taʾwīl al-Daʿāʾim*, concerning the statement that there is no harm in praying in a single thick shirt if one wraps it around oneself: this means so that when the worshipper bows, his private parts will not become visible from its opening.

From the same work, concerning the phrase “like the wings of a swallow”: this means a garment that a person casts upon his back and brings its two ends over his shoulders when nothing else is available.

From the same work, concerning the prohibition of *ishtimāl al-ṣammāʾ*: this consists in a man wrapping himself in a single garment, placing its middle over his head or shoulders, holding its two ends to his body with his left hand, turning the right-hand end around to his left and behind him, and gathering it with his right hand so that it surrounds him while both hands are trapped beneath it.

If he prays in this condition, he cannot properly perform the prayer, cannot place his palms directly upon the ground as required, cannot properly bow or prostrate, and cannot raise his hands. His prayer in this state is therefore incomplete and does not suffice him.

It is said in the *Mukhtaṣar al-Muṣannaf*: There is no harm if a slave-woman, a *mukātaba*, a *mudabbara*, or a girl who has not yet reached menstruation prays without a head-covering. If any of them is emancipated without knowing it, she must repeat every prayer she performed after emancipation without a head-covering.

It is said in the *Book of Purification*: A woman should not prostrate upon the edge of her veil. Rather, she should lift it away from the place where her forehead prostrates and place her forehead directly upon that upon which she prostrates.

From the Questions Mentioned Above

Question: What do you say, O you whom God Most High has made a pillar of the summons of the Friend of God, concerning a prayer mat, carpet, or other cloth bearing designs of the qibla or other patterns, provided

that they do not distract the worshipper when he looks at them? May he pray upon them, whether the designs are at the place of prostration or elsewhere?

Answer: If they are such that they distract the worshipper when he looks at them, prayer upon them is not valid. If they do not distract him, prayer is permissible, except in the case of images, upon which prayer should not be performed.

Question: What do you say concerning a man praying in a garment dyed with safflower but not intensely red? Is his prayer permissible? And concerning a woman praying in pure silk or a very red garment, whether safflower-dyed or otherwise?

Answer: This concerns etiquette. If someone wears such a garment, the prayer is not invalid, whether the wearer is male or female, except that pure silk is disliked for men.

Question: What says the one who guided us to the Straight Path concerning the statement in the books of the Sharīʿa that if any part of a woman's nakedness becomes exposed during prayer, her prayer is invalid whether she knew it or not? Women of the *daʿwa* in India do not customarily wear long gowns and veils, and their lower legs sometimes become exposed once or twice during prayer. What is the status of their prayer?

Answer: Covering is indispensable, because the woman in her entirety is *ʿawra*. If any part of her *ʿawra* becomes exposed, her prayer is not valid, whether she knew this ruling or was ignorant of it. This is its meaning.

Question: Concerning one wading through water, one who is afraid, or a traveler earnestly pursuing his journey, when they carry weapons containing things that prevent prayer, such as feathers on arrows, leather straps, animal matter in daggers, or pure silk clothing: is their prayer valid without having to be repeated?

Answer: Prayer does not suffice except in pure garments. Anything impure must be removed by the worshipper.

Question: Concerning a man praying while carrying weights of coined or uncoined gold and silver in his chamber: is his prayer valid?

Answer: His prayer is valid and complete.

Question: It is said in the *Mukhtaṣar al-Muṣannaf*: "There is no harm in praying upon a carpet bearing images provided they are not at the place of prostration, lest they distract him from prayer." Does this mean prayer upon it is permissible? Likewise, may garments bearing images be worn during prayer?

Answer: Prayer upon a carpet or in a garment bearing images is not permissible if the images are visible. If they are not visible, prayer in or upon them is permissible.

Question: If a person prays upon a stone, brick, or something similar, is the prayer permissible?

Answer: Obligatory prayer is not permissible upon it; voluntary and Sunna prayer is.

Question: What does our master, may God perpetuate his support, say concerning a man who applies henna to his hands or feet merely for adornment and not for benefit? Is that permissible?

Answer: Men should not use henna merely for adornment. Women are commanded to do so. For men without an ailment, leaving it is preferable, but there is no sin upon one who does it.

Other rulings:

Prayer is permissible in the garments of Muslim children and Muslim slaves so long as no impurity is visible or seen upon them, provided they themselves have not prayed in them. Whoever completes the prayer and afterward sees that his garment is impure: if he had known of the impurity beforehand, the prayer is invalid and he must repeat it whether its time has passed or not. A person should not pray bareheaded, without a turban or an outer mantle; if he cannot obtain them, however, he prays. If someone prays with only a small

cloth cast over his shoulders—meaning a small turban-cloth—while possessing another garment, the prayer is not valid. If nothing else is available, prayer in it is permissible.

Concerning the Friday Prayer

It is said in the *Book of Purification*: Give your families something special from fruit every Friday so that they may rejoice in it.

It is related from ʿAlī, peace be upon him, that he permitted prisoners to attend the Friday prayer and did not prevent those among them who wished to attend. He ordered that they be closely guarded, and when they had completed the prayer they were returned to prison. The Messenger of God, may God bless him and his family, forbade preventing a hired laborer from attending the Friday prayer.

From the same work, concerning the statement "they begin their work anew": this means that their previous sins have been forgiven.

It is said in the *Ikhtiṣār al-Āthār*: They disliked taking medicine on Thursday or Friday lest the person become too weak to attend the Friday prayer.

It is said in the *Mukhtaṣar al-Muṣannaf*: Performing Friday prayer behind the Imam of the Muslims is better than performing it behind his deputies. If the Imam is delayed because he is occupied with some interest of the Muslims, and his deputies lead prayer on his behalf in nearby mosques, prayer in the mosque in which he customarily leads it is preferable to prayer elsewhere.

It is said in the *Book of Purifications*: If there are three miles between two congregational mosques, Friday prayer may be established in each, whether they are in the same town or in two different towns. If the distance between them is less than that within a single town, Friday prayer should be established in only one of them.

From the same work: They, peace be upon them, instructed whoever wishes to perform Sunna or voluntary prayer between the call to prayer on Friday and the imam's appearance to do so. Once the imam emerges and ascends the pulpit, those in the mosque should cease praying, turn their faces toward the imam, listen to him, and empty their hearts for remembrance and reflection upon it.

From the same work: They, God's blessings upon them, commanded going early to Friday prayer, meaning setting out for it before midday at the time of the midday heat.

It is said in the *Mukhtaṣar al-Muṣannaf*: The call to prayer that obliges one upon whom Friday prayer is incumbent to leave off buying and selling is the call proclaimed in front of the preacher once he has seated himself in the place from which he gives the sermon.

If two persons upon whom Friday prayer is obligatory buy and sell during the prohibited time, their transaction is not annulled. If someone becomes thirsty while the imam is upon the pulpit, he may drink.

It is said in the *Book of Purifications*: They should conduct themselves as in prayer, except in sitting, where there is no harm in sitting in a posture different from the prayer posture.

It is said in the *Mukhtaṣar al-Āthār*: When the imam enters the mosque on Friday, he first goes up the pulpit. When he is settled upon it, he turns his face toward the people, greets them, and sits. The callers to prayer then stand and call to prayer before him. When they finish, they sit, and he rises, praises God, and extols Him.

It is said in the *Mukhtaṣar al-Muṣannaf*: If the imam gives the Friday sermon and then experiences ritual impurity, descends and performs ablution, he may repeat the sermon if he wishes or proceed directly to prayer; either suffices.

If he gives the sermon seated because of illness or excuse, it suffices. It is disliked for him to omit sitting between the two sermons, but if he does so he need not repeat them. If the imam gives the Friday sermon and then some urgent affair suddenly confronts the people so that they go to it and only one man remains with him, he performs four cycles of prayer. If he gives the Friday sermon and leads them in one cycle of prayer, after

which they all depart and he remains alone, he completes Friday prayer with two cycles. If he begins the prayer and they leave before he bows, he begins the noon prayer anew with four cycles. If the imam leads the people in Friday prayer and, after completing the second cycle, rises as though to stand and then remembers, he must sit, recite the *tashahhud*, give the salutation, and perform the two prostrations of forgetfulness.

From the same work: Whoever sleeps while waiting for Friday prayer and then the prayer is established before he has time to purify himself performs *tayammum*, prays with the imam, and afterward repeats it as a four-cycle prayer.

From the *Akhbār*: The preacher should lean upon his sword; if he has no sword, then upon a staff.

From the Questions Mentioned Above

Question: What do you say concerning what occurs in the *Book of Purification*, that if there are three miles between two congregational mosques, whether in the same town or two towns, Friday prayer may be established in both, whereas if the distance is less than this within one town it is established in only one? O our master, if the distance is less than three miles but they are in two separate towns, may Friday prayer be held in both?

Answer: It is not established in both if the distance is less than three miles, whether they are in one town or two.

Question: Concerning the words of our master al-Muʾayyad, may God exalt his sanctity, in the Friday sermon: "Whoever deliberately abandons it or treats its right lightly without excuse, whether under a just or unjust imam, may God never reunite his scattered affairs…"?

Answer: Prayer behind the people of injustice is not permissible except through *taqiyya*. It is related in the Sharīʿa from our master Muḥammad ibn ʿAlī, blessings of God upon him, that he said: "Do not count prayer behind the *nāṣibī* or the Ḥarūrī as prayer. Treat him as one of the pillars of the mosque and recite for yourself as though you were alone."

It is related in the *Sharḥ al-Akhbār* that al-Ḥusayn ibn ʿAlī, blessings of God upon him, dealt with Muʿāwiya concerning the prayer over his brother al-Ḥasan ibn ʿAlī, peace be upon them both, and said: "Were it not for the Sunna, I would not have given you precedence." He meant thereby the Sunna of the People of his House, blessings of God upon them, concerning *taqiyya*, as one of the Imams said: "*Taqiyya* is my religion and the religion of my fathers." As for what he, may God sanctify his spirit, intended by "an unjust imam," it refers to one appointed from among the *dāʿīs* in whom injustice and transgression later become manifest. Prayer behind him remains obligatory; but when people observe such behavior from him, they must report him to the holder of authority and await his reply. This is the meaning of his words, "O righteous ones, understand this correctly and do not doubt after certainty, for you have taken hold of God's firm rope." Another ruling:

As for what is transmitted that on Friday voluntary prayer is permissible from the beginning of the day until the afternoon prayer: if someone performs the afternoon prayer together with the noon prayer at the beginning of its time, or an hour later, he may not perform voluntary prayer after having prayed the afternoon prayer. But one who performs the noon prayer may perform as much voluntary prayer afterward as he wishes until the time of the afternoon prayer ends. Once he has performed the afternoon prayer and its time has passed, voluntary prayer is no longer permitted.

Concerning the Two Festival Prayers

It is said in the *Mukhtaṣar al-Muṣannaf*: The ritual bath for the two festivals is Sunna. Its earliest time is dawn and its latest time is noon.

It is said in the *Book of Purification*: On the Day of Sacrifice one should eat nothing until returning, slaughtering one's sacrificial animal, and eating from it. Such is the Sunna.

From the same work, concerning the words in the supplication: "Nor relying upon the intercession of any creature before You in whom I have placed hope": a believer who wishes to recite such a supplication should not say this phrase, because believers hope for the intercession of their Imams. Instead, if he wishes, he should say: "Hoping for the intercession of the one whose intercession before You I hope for."

From the *Akhbār*: The *qunūt* is: "O God, forgive me, have mercy upon me, grant me well-being, and pardon me in this world and the hereafter. Surely You have power over all things."

It is said in the *Mukhtaṣar al-Āthār*: If Bedouins and passing travelers attend the festival prayer, that is good and they receive merit for it.

From the same work: Those Bedouins who live within two *farsakhs* or less of the town should attend the festival.

It is said in the *Mukhtaṣar al-Muṣannaf*: Its congregation consists of five persons, one of whom is the imam, just as in the Friday prayer. When the one who establishes it is present, it is obligatory like Friday prayer.

Whoever misses it with the one who establishes it but catches the two sermons afterward likewise performs four cycles. Whoever misses one cycle of the festival prayer and catches the second with the imam adds another cycle with its *takbīrs*. The Sunna concerning the festival *takbīr* is that it begins after completion of the fast, on the night of the Breaking of the Fast and the day of the feast, and continues until one prays and finishes the prayer. Whoever performs the festival prayer raises his hands with every *takbīr*. If he forgets some of the *takbīrs*, he completes them before bowing. If he passes beyond the bowing and becomes certain that he omitted them, he performs the two prostrations of forgetfulness.

It is said in the *Mukhtaṣar al-Āthār*: They, blessings of God upon them, said that the *takbīr* begins after completion of the prescribed number of fasting days on the night of the Breaking of the Fast.

From the same work: If people awaken on the festival morning not knowing that it is the festival, but learn before noon that it is the festival day, they go out, perform the prayer, and break the fast if it is the Festival of Breaking the Fast. If they do not learn until after noon, they break the fast and then go out the following morning at the normal time for the festival prayer, pray in the same manner as on the festival day, and return.

From the same work: The time for going out to the festival prayer is when the Sun has risen somewhat. Going out on the Festival of Breaking the Fast is delayed slightly compared with the Day of Sacrifice.

From the same work: Likewise the *takbīr* is recited while going out to the prayer place on the Day of Sacrifice and on the Festival of Breaking the Fast, except that on the latter one does not say, "God is greatest for what He has provided us of grazing livestock."

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa statement that there is no *tashrīq* for a traveler except in a congregational town? O our master, is *tashrīq* here intended to mean the festival prayer? And if someone forgets one or more *takbīrs* in the festival prayer, what should he do?

Answer: It is stated in the *Kitāb al-Makhzan*, in the discussion of the ages of camels, cattle, and other animals, that "there is no *tashrīq* except in a congregational town," meaning the prayer of the two festivals, because they are performed at sunrise (*shurūq al-shams*), and the person praying them is called *musharriq*.

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever forgets some of the *takbīrs* completes them before bowing. If he has passed beyond the bowing and is certain of the omission, he performs the two prostrations of forgetfulness.

Question: What does our master, may God perpetuate his support, say concerning the *takbīrs* from the Day of ʿArafa until the end of the Days of *Tashrīq*? They number twenty-three, whereas in our lands people add one *takbīr* after the festival prayer, making twenty-four. Also, what meaning do they signify? May our master, whose ransom we are, answer and be rewarded, God Most High willing.

Answer: Know that the *takbīrs* during those days are twenty-three. They symbolize what occurs in the summons of the five resolute Speakers corresponding to the five prayers: remembrance of the ten spiritual *ḥudūd*, the ten corporeal *ḥudūd*, the Speaker of the cycle, his Legatee, and the Imam of the age. So take what you have been given and be among the grateful.

Other rulings:

Whoever performs the festival prayer while still owing the dawn prayer has performed a valid festival prayer and does not repeat it. The same applies to the funeral prayer. From our master Ḥasan ibn Idrīs ibn Ḥasan, may God show them kindness: Whoever performs the festival prayer before giving the alms of *fiṭra* does not repeat the prayer; he gives the *fiṭra* afterward. The ritual bath for the two festivals is Sunna; its earliest time is dawn and its latest time is noon. Whoever performs the festival prayer before noon because of an excuse has done so validly.

Concerning Forgetfulness in Prayer

It is said in the *Majālis al-Bayān*: "Doubt in prayer" is an expression that causes difficulty for many jurists, who imagine that it is the same as forgetfulness. It is not so. The forgetful person becomes certain of what he forgot, whereas the doubter is not certain concerning that about which he doubts.

It is said in the *Book of Purification*: Whoever doubts while standing whether he has bowed should bow. After giving the salutation he performs the two prostrations of forgetfulness. If the doubt occurs only after he has already prostrated, he continues his prayer and nothing is required of him.

From the same work: The prostration of forgetfulness, in all cases we have mentioned and will mention, takes place after the salutation and before standing up or speaking. One performs two prostrations with a *takbīr*, then recites a brief *tashahhud*, gives the salutation, and departs.

From the *Akhbār*, concerning the phrase "he performs the two prostrations of forgetfulness after the salutation and recites a brief *tashahhud* afterward."

It is said in the *Mukhtaṣar al-Āthār*: Whoever forgets a prostration performs it when he remembers, recites the *tashahhud*, and then performs the two prostrations of forgetfulness. In the *tashahhud* he says: "In the name of God and through God; I bear witness that there is no god but God, and may God bless Muḥammad and his family."

From the same work: They said that whoever is praying and becomes uncertain whether he is performing an obligatory or voluntary prayer—if he originally stood intending the obligatory prayer but later forgot and imagined it was voluntary, it suffices as the obligatory prayer and the forgetfulness does not harm him. If he originally stood for a voluntary prayer, it remains voluntary.

They said: Whoever doubts whether he performed the noon or afternoon prayer, if some of the afternoon prayer time remains, should perform it. If the Sun has already set when the doubt occurs, no makeup is required. They said: If you doubt concerning the dawn prayer, repeat it; if you doubt concerning the sunset prayer, repeat it. They said: Whoever forgets several times during a single prayer owes only the two prostrations of forgetfulness.

It is said in the *Mukhtaṣar al-Muṣannaf*: If a man performs a four-cycle prayer, forgets, and rises for a fifth, then if he had recited the *tashahhud* in the fourth he gives the salutation while standing and leaves the prayer.

If he had not recited the *tashahhud*, he sits, recites it, and performs the two prostrations of forgetfulness. If he remembers that he rose for the fifth only after having bowed, but had recited the *tashahhud* in the fourth, his prayer is complete; he adds another cycle to that extra cycle, making the two a voluntary prayer. If he had neither recited the *tashahhud* in the fourth nor sat for the duration required for it, he repeats the prayer. Whoever has forgotten a prayer and does not know which one it was performs two, three, or four cycles. If an imam leads people and recites the Qurʾān aloud in a place where it should be recited silently, he has acted

badly but his prayer is valid. If he did so forgetfully, he owes the two prostrations of forgetfulness. If he is not an imam but praying alone and recites silently where one should recite aloud, or aloud where one should recite silently, nothing is incumbent upon him. The same rules concerning forgetfulness in resident prayer apply to prayer while traveling.

From the Questions Mentioned Above

Question: If someone authorized to grant permission for prayer permits a person who does not know all the places in prayer where forgetfulness occurs, may that person perform the two prostrations of forgetfulness after every obligatory prayer whenever something seems doubtful to him?

Answer: If he is certain that he forgot something, he performs the prostrations of forgetfulness. Otherwise he does not.

Question: What do you say concerning what occurs in the *Book of Purification*, that whoever forgets the opening *takbīr*, deliberately omits it, or omits it through ignorance and then prays must repeat the prayer? O our master, if a man forgets the opening *takbīr* after every two cycles in a four- or six-cycle prayer, is his prayer invalid?

Answer: If he does not say the *takbīr* after every two salutations, his prayer is invalid.

Question: What do you say concerning what occurs in the *Book of Purification*, that if someone forgetfully adds something to his prayer, then if he did not sit for the *tashahhud* he repeats the prayer if what he added was bowing; but if what he added was prostration, he completes the prayer and performs the two prostrations of forgetfulness? What does this mean?

Answer: If he adds a bowing and had not sat for the *tashahhud*, he repeats the prayer. If he added either bowing or prostration but had sat for the *tashahhud*, he completes two cycles.

Question: What do you say concerning a man following the imam in prayer who neglects to perform one of its pillars together with the imam? What is the status of his prayer, may we be your ransom?

Answer: The imam bears responsibility for forgetfulness except in bowing and the opening *takbīr*. It is preferable that he not neglect these.

Question: What do you say concerning the Sharīʿa ruling that whoever forgets a prostration performs it after giving the salutation whenever he remembers? O our master, may we be your ransom, how can he prostrate after having left the prayer?

Answer: He prostrates if he remembers before giving the salutation. If he has already departed from the prayer, nothing is required of him.

Question: What do you say, our master, concerning a man performing an obligatory prayer who forgetfully recites the sūras in reverse order, from the lower toward the higher? Must he perform the two prostrations of forgetfulness?

Answer: There is no harm in that, and the two prostrations of forgetfulness are not required.

Question: A man prayed one cycle of the noon prayer, then sat and recited the first *tashahhud*. He then rose, prayed two more cycles, recited the *tashahhud*, gave the salutation, and afterward remembered that he had prayed only three cycles. What should he do?

Answer: After the salutation he performs the missing cycle, reciting in it the Opening and another sūra, because it belongs to the first two cycles. He then recites the *tashahhud*, gives the salutation, and performs the two prostrations of forgetfulness.

Question: Concerning someone who forgets during the first *tashahhud* of an obligatory prayer and recites the longer *tashahhud*, then remembers before giving the salutation: must he perform the prostrations of forgetfulness?

Answer: No explicit text has been transmitted concerning this. Where there is no explicit text, he need not perform them.

Question: Concerning a man who repeats the same sūra after the Opening in an obligatory prayer: does forgetfulness apply to him?

Answer: No explicit ruling has been transmitted concerning that either.

Question: Concerning a man who commits two or three acts of forgetfulness during a single obligatory prayer: after giving the salutation, must he perform two prostrations for every act of forgetfulness, or do two prostrations suffice for all of them?

Answer: Once the forgetful person has performed the two prostrations of forgetfulness, he does not add anything beyond them.

From the *Kitāb al-Akhbār*: Whoever forgets several times during a single prayer owes only the two prostrations of forgetfulness.

Question: Concerning someone praying with an imam who forgets to formulate the intention in his prayer that he is following the imam, and only after the imam gives the salutation remembers that he did not verbally intend to follow him: is his prayer valid?

Answer: If the intention in his heart was to follow the imam, his prayer is complete even if he did not pronounce the intention verbally.

Question: From the *Daʿāʾim*, from Jaʿfar ibn Muḥammad, peace be upon him: "Whoever forgets the recitation in part of the prayer and recites in what remains, that suffices him. If he forgets the recitation entirely but completes the bowing, prostration, and *takbīrs*, he need not repeat the prayer."

Answer: This statement is not problematic.

Question: If one forgets part or all of the recitation, must one perform the two prostrations of forgetfulness?

Answer: He must perform the two prostrations of forgetfulness.

Question: What does our master, may God perpetuate his support, say concerning a latecomer whom the imam has preceded in part of the prayer? Must the latecomer perform the two prostrations of forgetfulness for forgetfulness that occurred to the imam before the latecomer joined?

Answer: Everyone who joins the prayer with the imam performs the imam's two prostrations of forgetfulness, even if he caught nothing with him before the salutation except the opening *takbīr*.

Question: Concerning a latecomer who prays part of the prayer with the imam and then commits forgetfulness while completing what remains for himself: must he perform the two prostrations of forgetfulness?

Answer: If he forgets during what he performs for himself, he prostrates.

Question: It is stated in the explicit text that actions are accepted only through intentions. If a person, during purification, prayer, fasting, or another obligatory act of God Most High, forgets to formulate the intention verbally while intending the act in his heart, is the act valid? And if he deliberately omits verbal formulation of the intention, is his act valid?

Answer: Intention is in the heart. What is pronounced by the tongue is merely its verbal expression, as mentioned in the *Daʿāʾim*. If he forms the intention, his act is complete. As for deliberately omitting the intention with the tongue, his prayer is not complete. Thus it stands in the original.

Concerning Breaking Off the Prayer

It is said in the *Book of Purification*: If a person experiences a nosebleed or vomiting during prayer, and can wash away the blood, stop the bleeding, and rinse his mouth after vomiting without turning his face away from the qibla, he does so and continues from where he had reached in the prayer.

If he turns his face away from the qibla, he repeats the prayer from the beginning.

From the *Akhbār*: "…unless he smells it, hears its sound, or another person hears it from him," meaning the occurrence of ritual impurity.

From the Questions Mentioned Above

If someone vomits during prayer and the vomit reaches his garment, then if water is nearby he washes it; otherwise his prayer becomes invalid. He then washes his garment and prays again. Whoever experiences ritual impurity before the *tashahhud* repeats the prayer. If ritual impurity occurs after he has said, "Peace be upon you, O Prophet, and the mercy of God and His blessings; peace be upon us and upon the righteous servants of God," the prayer is valid and he does not repeat it.

Concerning One Who Joins after Missing Part of the Prayer

It is said in the *Mukhtaṣar al-Muṣannaf*: If someone catches the imam while he is bowing, he says the opening *takbīr*, then another *takbīr* for bowing, and counts that cycle.

If he fears missing the bowing, a single *takbīr* suffices for both opening and bowing. Whoever joins the imam after having missed part of the prayer enters into whatever posture the imam is in. If it is a part that counts toward his prayer, he builds upon it; otherwise it is voluntary for him. He performs whatever he catches with the imam and afterward completes what he missed.

From the *Akhbār*: If an imam experiences ritual impurity and appoints as his substitute a latecomer who does not know how much of the prayer the imam had already completed, the substitute proceeds according to what he knows with certainty until those behind him say *subḥān Allāh*, whereupon he corrects himself accordingly.

From the Questions Mentioned Above

Question: Concerning a worshipper who joins the imam during the final *tashahhud* of any of the five prayers, intends in his prayer that he is following the imam, and sits with the imam until the imam gives the salutation, after which the latecomer rises and performs his prayer: has he attained the congregational prayer, and is his prayer valid?

Answer: If he catches the imam during the *tashahhud*—and the *tashahhud* is the final limit of the prayer—he intends the prayer as a follower, sits, and recites the opening supplication. When the imam gives the salutation, he rises and performs his prayer. He has thereby attained the congregational prayer.

Concerning the Age at Which Children Are Commanded to Pray

It is said in the *Ikhtiṣār al-Āthār*: Separating children in their sleeping places once they reach this stage is a precaution to prevent them from lying too close to one another, since they have approached puberty and the stirring of sexual desire, lest through their proximity in sleeping places something occur that is feared for them.

Concerning the Traveler's Prayer

It is said in the *Mukhtaṣar al-Muṣannaf*: If a traveler performs the prayer in full, whether forgetfully or deliberately, and some of its prescribed time remains, he should repeat it; if the time has passed, he need not.

Every prayer or prostration that becomes obligatory upon a person while he is on the ground cannot validly be made up while riding. But every prostration that became obligatory while he was riding may validly be made up on the ground. As for the Sacred Mosque, there is no shortening of the prayer there for anyone, whether resident or visitor.

It is said in the *Ikhtiṣār al-Āthār*: They said that the traveler performs the Sunna and voluntary prayers. If he is traveling during the day and pressing onward, he performs the obligatory prayer as two cycles and postpones the Sunna prayer until he stops at night, when he makes it up together with the night prayer.

From the same work: A *barīd* is four *farsakhs*, and a *farsakh* is three miles. A mile is three thousand cubits, which is one thousand moderate paces measured by one foot, from the place where the right foot is raised until it is set down.

If the place to which he intends to travel is one *barīd* distant, has no inhabitants or settlement, and he intends to return from it in fewer than ten days, he shortens the prayer and breaks the fast until he returns. A traveler breaks the fast and shortens the prayer from the time he leaves his home and sets out upon his journey until he returns and enters his home again, provided that he is proceeding earnestly on his journey.

From the *Akhbār*: They said that if a traveler stops with his family during his journey for a day and a night, it is recommended that he not shorten the prayer.

It is said in the *Book of Purification*: If a traveler leads residents in prayer, he leaves after two cycles and instructs them to complete the prayer. This should not deliberately be made a regular practice, because the obligation of the traveler differs from that of the resident. A traveler therefore should not deliberately join a congregational prayer of residents, nor should a resident deliberately lead travelers.

Concerning the statement that a naked person prays seated and indicates the bowing and prostration by gestures: while seated in prayer, he covers his private parts with his hand or with whatever he can find.

It is said in the *Mukhtaṣar al-Āthār*, concerning the prohibition against praying on the main road: this means the highway, the place where people pass, and the space between the two sides of the road.

From the Questions Mentioned Above

Question: What do you say concerning a man who has two houses, one in Aḥmadābād and another in Nahrwāla, and resides some days in Aḥmadābād and some days in Nahrwāla? May he perform the prayer in full as soon as he enters the boundaries of the town in which his house is located?

Answer: If he remains for five prayer-times with his wife or with his blood relatives within the prohibited degrees, he performs both his prayer and his fast in full.

Question: What do you say concerning what occurs in the *Book of Purification*, that if a person's journey is a journey for recreation (*nuzha*), he does not shorten the prayer? O our master, what is meant by a journey for recreation?

Answer: If a person possesses land extending for a distance that would otherwise warrant shortening the prayer, and merely wishes to walk through it for recreation, he does not shorten the prayer.

Question: What do you say concerning a man who performs Sunna and voluntary prayers aboard a ship, and the ship turns? Must he turn with it?

Answer: At the time of entering the state of prayer he should determine the direction as best he can. If the ship subsequently turns, nothing is incumbent upon him. If he is able to turn with it and does so, that is better. In an obligatory prayer he should turn with it as far as he is able.

Question: What do you say concerning a slave, whether authorized to engage in trade or not, who is sent on a journey during Ramaḍān or at another time? Must he shorten the prayer and break the fast?

Answer: Yes. He shortens the prayer and breaks the fast.

Question: What do you say concerning the *muṭallaqīn* in India: if someone accompanies them on a journey for trade or another purpose during Ramaḍān or otherwise, should he perform the prayer in full because he is accompanying them and observe the fast of Ramaḍān? And likewise if someone goes out with the tax-collector?

Answer: If their purpose is specifically to go out accompanying him, they perform in full. If they go out for some other reason, their ruling is that of travelers.

Question: God has forbidden thirteen categories of kinship in marriage in the Qurʾān. O our master, with which of these relatives does a traveler perform prayer and fasting in full?

Answer: Every blood relative within the degrees of kinship causes the traveler to perform the prayer and fast in full if he remains in the place for five prayer-times. A man also performs in full when staying with his wife. This does not apply through the wife's relatives or through foster-kinship.

Question: If someone travels from Nahrwāla to Aḥmadābād and meets one of his relatives outside the city, does he perform the prayer in full?

Answer: He does not perform the prayer in full until he enters the boundaries of the town in which his relative resides.

Other rulings:

Whoever leaves his house intending to travel but spends the night within the city, or in the house of a relative, or remains there for one or more days, does not shorten the prayer so long as he remains within the city. If he leaves the city and spends the night outside it or remains outside for one or more days, he shortens the prayer. The owner of a vessel and merchants who habitually travel all perform the prayer in full—for example, someone who continually travels from Cambay to Aden and whose occupation is nothing other than this, even though he does not trade after reaching his family. Another ruling:

If a traveler is on the road when the prayer time arrives and clouds are so dense that he cannot determine the qibla, he performs each obligatory prayer toward all four directions. God Most High excuses His servant when He tests him in such a way. If he finishes praying and the sky then clears so that he recognizes the qibla while the time for performing the prayer still remains, he repeats the prayer. If a traveler stops in a place intending to reside there, but after two or more days some unavoidable matter arises requiring him to travel, he does not repeat what he has already performed. Whoever enters Mecca performs the prayer in full and does not shorten it even if he remains only an hour or a day, because God Most High said: "the resident therein and the visitor are equal."

Question: What does our master, may God perpetuate his support, say concerning authorized shaykhs such as Shaykh ʿAbd Allāh ibn Nūḥ, who travels around villages in order to visit the believers, some villages being near one another and others at or beyond the distance that normally requires shortening the prayer? Does he shorten the prayer or break the fast?

Answer: He is like a governor traveling through his province. He does not shorten either the prayer or the fast. This answer is from our master Idrīs, may God sanctify his spirit.

Question: Concerning a traveler who reaches relatives before noon and remains with them until after noon the following day: does this count as a day and a night?

Answer: If he intends to remain until he performs the afternoon prayer on the following day, he performs his prayer and fast in full.

Question: Which relatives cause a traveler to perform prayer and fasting in full? Are they those mentioned by God, Mighty and Glorious, in the Qurʾān: "Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother's daughters, and your sister's daughters," together with the corresponding male relatives? And do mothers-in-law, stepdaughters, and foster-relatives also cause him to perform prayer and fasting in full?

Answer: The relatives by blood, male and female, are those through whom prayer and fasting are performed in full. Mothers-in-law and the others mentioned do not have this effect.

Other rulings:

If a man returns from travel during Ramaḍān and enters the gate of the town where his relatives reside before noon, but the Sun passes the meridian before he reaches his house, he performs his prayer and fast in full. If a traveler reaches a village in which his father-in-law or other relation by marriage lives, he continues to shorten the prayer. But if his wife is staying in her father's house, even though she does not permanently reside there, or if he comes to the house of a blood relative within the prohibited degrees who is a minor or an unborn child, he performs the prayer in full and does not shorten it. Whoever travels less than two *barīds* while intending to reside at his destination and the prayer time arrives on the road performs the prayer in full and does not shorten it. Whoever travels one *barīd* intending to return, then turns back toward his family and the prayer time arrives while he is on the road, performs the prayer in full and does not shorten it.

Question: It occurs in the Sharīʿa that when a man returns from travel and enters the town quarter, he performs the prayer in full. O our master, are places such as Kālūpūr, Sārangpūr, and the remaining suburbs of Aḥmadābād all considered one place, or does each have its own boundary? May our master graciously answer and heal our hearts.

Answer: Our master, may God grant the believers enjoyment through his long life, said: A traveler returning from a journey to his home may not perform the prayer in full until he actually enters his home. If he enters one of the city gates but has not yet reached his residence, and fears that the prayer time will pass, he prays in shortened form.

Likewise, if he leaves his house while still within the city but has not yet gone out through one of its gates and the prayer time comes, he prays in shortened form, in accordance with what is explicitly stated. In the *Mukhtaṣar al-Āthār*, composed by our master al-Nuʿmān, may God sanctify his spirit, it says: "The traveler breaks the fast and shortens the prayer from the time he leaves his house and sets out upon the journey until he returns and enters his house, provided he is proceeding earnestly upon his journey." If, however, he encounters one of his blood relatives residing in a place less than the legal travel distance from his own town, he performs his prayer in full.

Question: If a traveler intends to remain in a dwelling for ten days and then, after four or five days have passed, an unavoidable need arises requiring him to leave, what is the status of the prayers and fasts he has already performed?

Answer: So long as the intention to remain continues in his heart, he performs prayer and fasting in full. When he forms the intention to travel and leave the place in which he had been staying, and actually proceeds toward travel, he shortens once the journey enters his mind and he resolves upon it.

Question: If a traveler leaves a dwelling in which he had intended to remain ten days before those ten days are completed and goes to another dwelling only a mile away, does he have to form a new intention to remain there for ten full days, or may he complete the original ten-day intention?

Answer: So long as he intends to return to the place in which he originally intended to stay, he continues to perform prayer and fasting in full. But if he left it with the intention of travel, he does not perform in full at the second place unless he renews the intention to remain there for ten days.

Question: If a traveler has family in a village and enters its outskirts or one of its houses but has not yet encountered his family or relatives there, does he pray in full or shortened form?

Answer: He does not perform the prayer in full until he meets his blood relatives, provided that he is staying with them for five prayer-times. If, however, he intends to remain ten days, then from the time he reaches the village and forms that intention he performs prayer and fasting in full.

These three answers are from our master Idrīs ibn al-Ḥasan, may God sanctify his spirit.

Concerning the Prayer of the Sick

It is said in the *Book of Purification*: If the sick person cannot make gestures with his head, he gestures with his eyes. If he cannot do even that, he gestures with his heart.

It is said in the *Mukhtaṣar al-Āthār*: If a sick person can perform only the obligatory prayer, he does so. When he recovers, he may, if he wishes, make up whatever Sunna or voluntary prayers he omitted. There is merit and reward in this, but making them up is not obligatory as making up an obligatory prayer is.

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever drinks something medicinal that causes him to lose consciousness must make up whatever prayers he misses while in that condition. The same applies if he does something to himself that causes loss of consciousness, whether what he did was an act of obedience to God Most High or an act of disobedience.

From the Questions Mentioned Above

Question: What do you say concerning a sick person who is able to pray standing but only by gesturing, whereas if he sits or sits cross-legged he can perform bowing and prostration? What should he do?

Answer: He should pray seated or cross-legged, performing bowing and prostration, for God excuses His servant when He afflicts him.

Concerning the Prayer of Fear

It is said in the *Mukhtaṣar al-Muṣannaf*: If the imam performs the prayer of fear with three men while three other men guard him, that is valid. If they are fewer than three, it is not recommended for them to perform the prayer of fear, because the word "group" (*ṭāʾifa*) does not apply to fewer than three.

If the eclipse prayer and the funeral prayer occur together with the prayer of fear, the imam first performs the funeral prayer and then performs the eclipse prayer in the form of the prayer of fear.

It is said in the *Mukhtaṣar al-Āthār*, after the statement: "If they are unable even to gesture, they say one *takbīr* in place of each cycle and intend thereby the prayer." In this manner the Commander of the Believers ʿAlī, blessings of God upon him, and his companions prayed on the Night and Day of al-Harīr.

From the Questions Mentioned Above

Question: What do you say concerning what occurs in the *Book of Purification*, that when swords are being exchanged, men are fighting hand-to-hand, and spears are being thrust, they make their prayer consist of *takbīrs*, saying one *takbīr* in place of each cycle? O our master, do they shorten the number of *takbīrs* just as they shorten the prayer because of fear?

Answer: The *takbīrs* are shortened in accordance with what is obligatory upon him.

Concerning the Eclipse Prayer

It is said in the *Book of Purification*: Whoever comes to the mosque performs the eclipse prayer following the imam. Whoever prays in his house because he is unable to pray in the mosque performs it in the same manner as we have described.

He opens the prayer with a *takbīr* as one normally opens prayer. The imam—or a person praying alone if not in congregation—then recites, raising his voice slightly whether by night or day. After the Opening of the Book, he recites as much as he is able from a long sūra.

From the same work: In his *qunūt* he supplicates quietly and does not recite the *qunūt* aloud.

From the same work: The announcement is made: "Prayer in congregation for the eclipse—may God have mercy upon you!"

From the same work: Likewise, one recites "In the name of God, the Most Merciful, the Most Compassionate" only at the beginning of each sūra. If one divides a sūra into portions, one does not repeat the *basmala* but begins again from where one stopped. One does not perform the fifth bowing, after which one prostrates, except after reaching the end of the sūra.

From the same work: The eclipse prayer is performed while traveling. If travelers cannot dismount, they pray upon their mounts facing whichever direction they are moving, making gestures as we have described for the traveler's voluntary prayer.

The eclipse prayer is not performed until the eclipse actually becomes visible. It is not performed merely because an astrologer or anyone else says that an eclipse will occur when clouds or something else obstructs the view. It is performed only when the eclipse becomes apparent and is seen with the eyes.

It is said in the *Ikhtiṣār*: The beginning of a sūra marks the point of standing, and likewise when one rises from prostration in the second cycle. Thus the eclipse prayer consists of two cycles and four prostrations, with five bowings in each cycle. In this manner the Commander of the Believers, blessings of God upon him, led the people in prayer.

From the same work: If the obligatory prayer intervenes, after completing it one resumes the eclipse prayer from where one left off.

From the Questions Mentioned Above

Question: Concerning the eclipse that occurred in the year 837 [AH], in the month of Dhū al-Qaʿda, whose first day fell on a Monday: two hours after the Sun had passed the meridian, an eclipse occurred according to astronomical calculation. Yet it is mentioned in the Epistles of the Brethren of Purity, in the epistle on astronomy, that a solar eclipse occurs only at the end of the month, and the reason for this is explained there. This had likewise repeatedly happened before that year. We ourselves were fasting at the beginning of blessed Ramaḍān when an eclipse occurred, and the believers were perplexed. What is the answer concerning this?

Answer: The statement transmitted from our master, the author of the Epistles—peace be upon him—was given in general terms. The pure Imams and the *ḥudūd* who followed them have explained the matter. They said that a lunar eclipse may occur on the morning of the fifteenth or the morning of the sixteenth, while a solar eclipse may occur at the beginning of the month or at its end. The affair rests in the hand of God, glory be to Him. There is no power and no strength except through God, the Most High, the Mighty.

Question: If someone joins the imam in the eclipse prayer after the imam has already preceded him by two bowings, how does he complete it?

Answer: If he joins the imam at the third bowing, he counts that as the beginning of his own prayer. He bows with the imam and prostrates with him. When the imam rises from prostration, he rises with him and performs the five bowings with him, then prostrates with him.

When the imam recites the *tashahhud*, the latecomer sits poised to rise. When the imam gives the salutation, the latecomer stands and completes the bowings that remain for him, performs the *qunūt*, bows, prostrates, recites the *tashahhud*, and gives the salutation. He does not count the first two prostrations that he performed with the imam, just as one who joins an imam only at the prostration at the end of an obligatory prayer does not count that as having attained the cycle. Another ruling:

Whoever misses part of the eclipse prayer with the imam counts what he catches as the beginning of his prayer. If he arrives before the first two prostrations, he performs what remains with the imam. When the imam performs those first two prostrations, he prostrates with him, because it has been mentioned that whoever omits them is deficient. When the imam rises, the latecomer performs the five bowings with him, prostrates, rises with the imam, and when the imam prostrates he prostrates with him. When the imam sits, the latecomer sits poised to rise. When the imam gives the salutation, the latecomer rises, completes the remaining bowings, prostrates, recites the *tashahhud*, and gives the salutation. He does not count the first two prostrations in which he joined the imam, just as with one who has missed part of an obligatory prayer and joins only at its prostration.

Concerning the Prayer for Rain

It is said in the *Iqtiṣār*, the *Akhbār*, and the *Muntakhaba*: The imam then faces the people and says "God is greatest" one hundred times. He turns to his right and says "Glory be to God" one hundred times. He turns to his left and says "There is no god but God" one hundred times, raising his voice throughout. Then he faces the people and praises God one hundred times, magnifying and extolling Him.

It is said in the *Book of Purification*: He delivers two sermons as he does at the two festivals, then descends and departs, and the people depart. He gives the sermon leaning upon an Arab bow if he can obtain one, as the Messenger of God, may God bless him and his family, did.

From the same work: There is no harm if they go out for the prayer for rain on a day other than Monday.

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever delivers the sermon before the prayer must perform the prayer and then deliver the sermon again.

Concerning the *Witr* Prayer, the Two Cycles before Dawn, and the *Qunūt*

It is said in the *Maʿālim al-Dīn*: The *witr* prayer is obligatory, and there is no dispensation for abandoning it. It is attached to the obligatory prayers, even though it is Sunna. Its makeup is not ordered at the beginning of the night after the final evening prayer.

It is said in the *Book of Purification*: In the first cycle one recites the Opening of the Book and "Say: I seek refuge in the Lord of daybreak"; in the second, the Opening of the Book and "Say: I seek refuge in the Lord of mankind." One then recites the *tashahhud* and gives the salutation.

These two cycles form part of the *witr*. During them the worshipper sits cross-legged as we have described, spreads his palms upon his thighs with the tips of his fingers upon his knees, and recites. When he finishes the recitation, he bows, placing the inner surfaces of his palms upon his knees while still sitting cross-legged. When he raises his head from bowing, he brings his right leg behind him, sets his feet upright, and prostrates. He sits for the *tashahhud* in the same manner as he sits in the ordinary prayer.

From the same work: He says it quietly to himself with the articulation of his tongue—meaning the *qunūt*.

From the *Kitāb al-Akhbār*: They differed regarding the *qunūt* of the dawn prayer. Some transmitted that the Messenger of God, may God bless him and his family, used to curse in his *qunūt* the misguided and disobedient among Quraysh.

It is also related that ʿAlī, peace be upon him, used to curse certain men by name in his *qunūt*, among them Muʿāwiya, ʿAmr ibn al-ʿĀṣ, Abū al-Aʿwar al-Sulamī, and al-Mughīra ibn Shuʿba.

From the Questions Mentioned Above

Question: Concerning a man who forgets the *qunūt*.

Answer: In the *witr* he repeats the prayer; in the dawn prayer he performs the two prostrations of forgetfulness.

Question: What does our master, may God perpetuate his support, say concerning a man who performs the *witr* and forgets the *qunūt*, then remembers only after bowing, prostrating, or sitting? Must he repeat the *witr* or perform the two prostrations of forgetfulness?

Answer: The *qunūt* is a supplication and should not deliberately be omitted. Whoever forgets it need not repeat the prayer, and there are no prostrations of forgetfulness in Sunna prayers. Whoever deliberately omits it in the *witr* repeats the prayer. The minimum *qunūt* is three glorifications or three *takbīrs*.

Question: When is the *qunūt* recited in the *witr*?

Answer: The *qunūt* is recited after the worshipper says, "Our Lord, to You belongs praise." Understand this correctly.

Whoever performs the two cycles of the *shafʿ* and then becomes occupied with something until dawn rises repeats the *shafʿ* as a makeup prayer. But if he has completed three cycles and only the final sitting remains when dawn rises, he does not repeat the three cycles; he makes up only the sitting with the intention of makeup.

Question: If the worshipper gives the salutation after the first cycle of the *witr*, may he speak, or must he connect one opening *takbīr* directly to the next? It has been said that the prayer of one sitting is worth half the prayer of one standing, while elsewhere it is stated that prayer is entered through its *takbīr* and exited through its salutation. Which ruling is followed?

Answer: Our master al-Nuʿmān, may God exalt his sanctity, said in the *Muntakhaba*:

The *witr* may be divided by the salutation, without action and without speech. If necessity compels him to speak, there is no harm so long as the conversation is not prolonged.

Question: May the *shafʿ* and *witr* be performed on time at the first dawn, which the Arabs call "the wolf's tail," before the second dawn spreads across the horizon? And is there then permission to perform the two Sunna cycles of dawn?

Answer: The *shafʿ* and *witr* remain valid for you so long as the true dawn has not spread.

If someone praying the dawn prayer with an imam bows before the *qunūt*, then raises his head and bows a second time with the imam, his prayer is valid because his prayer follows the imam's prayer. If he is praying alone, he must repeat the prayer. Whoever performs the dawn prayer and forgets the *qunūt* performs the two prostrations of forgetfulness after the salutation.

Question: If a man performs the *shafʿ*, then enters the mosque and performs the greeting of the mosque, and afterward the time for the *shafʿ* is still present, must he repeat the *shafʿ*?

Answer: He repeats the *shafʿ*, because he should not perform another prayer after it until dawn rises. Once dawn rises, he performs the greeting of the mosque and then the dawn prayer.

Concerning Sunna and Voluntary Prayer

It is said in the *Mukhtaṣar al-Āthār*: Whoever has not memorized the Qurʾān should recite whatever is easy for him from it. God Most High said: "Recite whatever is easy of it."

Whoever wishes may stand in prayer throughout the whole night repeating a single sūra, or part of it, or two sūras, or more.

From the same work, concerning the *ḍuḥā* prayer: Yazīd ibn Muʿāwiya—may God curse them both—later revived it when the head of al-Ḥusayn, peace be upon him, was brought to him in the forenoon. He stood and performed cycles of prayer and made them a regular observance for himself.

May God curse that transgressor! He did not intend by them repentance for what he had perpetrated, but rather performed them, as he imagined, in gratitude for what God had caused him to attain—whereas God consigned him to the lowest depth of the blazing Fire.

From the Questions Mentioned Above

Question: What do you say concerning the supplications of the night vigil? If someone has not memorized them, may he simply intend the voluntary prayer?

Answer: He intends the prayer of night vigil and recites the prescribed supplication if he has memorized it; otherwise he supplicates with whatever is easy for him and intends the night-vigil prayer. It consists of twelve cycles and has two times: one between the sunset and evening prayers, and another at the end of the night. A person performs it reciting the short sūras of the *mufaṣṣal*.

Question: What does our master, may God perpetuate his support, say concerning the *tarāwīḥ* prayer, which believers perform with the imam out of *taqiyya*, intending voluntary prayer, while the imam recites the Qurʾān from its beginning downward? Such sequential recitation is otherwise used specifically in obligatory prayers, and also in the *witr*, the Sunna of dawn, and the greeting of the mosque.

Answer: There is no harm because of *taqiyya*, but they should not actually intend to follow the imam.

Question: It is mentioned in the *Kitāb al-Shawāhid wa-l-Bayān* that the worshipper performs ten cycles for noon, eight for afternoon, five for sunset, and ten for the evening prayer.

Answer: Reliance is upon the *Daʿāʾim*, which is the compendium of the legal questions. If a person omits anything of the Sunna because of *taqiyya*, he makes it up afterward.

Question: It is stated concerning the Prayer of Glorification (*ṣalāt al-tasbīḥ*) that when one rises in the second cycle one says the glorification ten times. O our master, how exactly does one perform the glorification—sitting upon the feet or while standing?

Answer: Our master, may God support him, said: When someone performing the Prayer of Glorification wishes to rise, after lifting his head from the second prostration he sits poised to rise and recites the glorification ten times; then he sits and rises for the second cycle.

Likewise, after the second cycle he sits poised to rise after the second prostration and recites the glorification ten times, then sits firmly, recites the *tashahhud*, and gives the salutation. The same is done in the first two cycles. This practice, however, is anomalous. The practice actually followed in the Prayer of Glorification is that after raising his head from the second prostration in every cycle, he sits firmly and recites the glorification ten times, then rises for the next cycle. After the second cycle he recites the glorification while sitting firmly and then recites the *tashahhud* in that same seated posture.

Question: It is stated concerning the Prayer of Sufficiency (*ṣalāt al-kifāya*) that in the first cycle one recites the Opening of the Book, Sūrat al-Ikhlāṣ, Sūrat al-Kāfirūn, and the Throne Verse once each; in the second twice each; in the third three times; and in the fourth four times. O our master, is the Opening likewise repeated in each cycle?

Answer: The Opening is recited once in each cycle. God knows best.

Concerning the Qurʾānic Prostrations

It is said in the *Mukhtaṣar al-Muṣannaf*: If a reciter reads one of the verses requiring obligatory prostration, he prostrates, as do those in his presence.

If he then recites that same verse again, neither he nor those present need prostrate a second time so long as they remain in that same gathering. As for the other verses of prostration, whoever wishes may prostrate and whoever wishes may omit it, although prostration is preferable.

From the same work: During a Qurʾānic prostration a man says what he normally says in prostration.

It is said in the *Taʾwīl al-Daʿāʾim*, concerning the Messenger of God's voluntary prayer upon his riding animal while traveling toward Medina: he indicated the prostration by moving his head, even though the qibla was behind him.

From the Questions Mentioned Above

Question: What do you say concerning someone reciting a supplication that contains a verse of prostration? Must he prostrate?

Answer: If it is one of the verses requiring obligatory prostration, he must prostrate.

Question: What do you say concerning a teacher of children who is teaching them the Qurʾān and comes across the verses of prostration while instructing them? Must he and everyone hearing him prostrate every time he passes one?

Answer: He has a choice: if he wishes he may prostrate, and if he wishes he may omit it.

Another ruling: During the Qurʾānic prostration a man says what he says in ordinary prostration.

Book of Funerals

Concerning Illnesses, Visiting the Sick, and the Approach of Death

It is said in the *Taʾwīl al-Daʿāʾim*: *Iḥtiḍār* means the coming of death and the nearness of departure from this world to the hereafter.

It is said in the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, said that God says:

> "I afflicted My servant with illness, and he remained patient for three days without complaining to those who visited him. I replaced his flesh with flesh better than his flesh and his blood with blood better than his blood. If I cause him to die, I cause him to die into My mercy; and if I restore him to health, I restore him with no sin remaining upon him."

From the same work: We have transmitted from the People of the House, God's blessings upon them, that they commanded this—meaning that when a sick person approaches death, he should be oriented toward the qibla. He is laid upon his back with his face toward the qibla and his feet in its direction, if possible. If that is not possible, he is laid upon one of his sides with his face turned toward the qibla.

Concerning the Command to Remember Death

It is said in the *Taʾwīl al-Daʿāʾim*: *Rayḥān* means the tips or tender parts of every fragrant plant. Myrtle came to be particularly designated by this term because of its fame in this respect and because it endures through time: its leaves do not fall and its branches do not dry up in winter or summer as those of other plants do. A single tender sprig of such a plant is called a *rayḥāna*.

Concerning Condolences, Patience, and the Weeping They Permitted

It is said in the *Ikhtiṣār*, concerning the saying, "Patience is at the first shock": that is, at the moment of the calamity.

It is said in the *Mukhtaṣar al-Muṣannaf*: The hair of the deceased is not shaved or combed, nor are his nails trimmed.

Concerning Washing the Dead

It is said in the *Book of Purification*: When a person dies, he is washed before burial. He is placed upon a bier, board, leather mat, or something similar that separates him from the ground and prevents him from being soiled, if such a thing is available; or he is placed upon a cistern or something similar.

He is laid upon his back with his feet toward the qibla and his private parts are covered.

It is said in the *Mukhtaṣar al-Muṣannaf*: Among those present, the person with the strongest claim over the deceased has the greatest right to wash him.

From the same work: If a martyr was in a state of major ritual impurity, he is washed for that impurity. If a dead person is found with no visible mark upon him, he is washed, perfumed, and shrouded.

It is said in the *Book of Purification*: The washer turns him onto his right and left sides and passes water over him without following the hand [over the body]. He washes his head and beard, and washes a woman's hair with marsh-mallow, lote leaves, or similar cleansing substances.

From the same work: Concerning the statement "he performs ablution for him as for prayer, except that he does not rinse his mouth or draw water into his nose."

From the same work: He removes whatever dirt or stain is present, rubs away anything of this kind from the soles of his feet, and cleans whatever dirt is beneath his nails.

It is said in the *Mukhtaṣar al-Āthār*: At that point he gently presses the abdomen while pouring water over the private parts, so that anything present may emerge.

From the same work: If the water needs to be heated in order to wash him, it is heated.

From the same work: One who drowned or burned is washed. Likewise, if a human limb is found such that it is known a person could not live after losing it, it is washed. Whatever falls away from the deceased is washed and placed with him. If his limbs or any of them have become separated, they are washed, each limb is placed in its proper position, and he is shrouded and buried in that state.

From the Questions Mentioned Above

Question: What do you say concerning a man who washes the dead? Must he perform ablution for them three times corresponding to the three washings?

Answer: Yes, he performs ablution for them in each of the three washings. If he performs it only during the final washing, that suffices, as stated in the *Kitāb al-Akhbār*.

Another ruling:

If someone [apparently thought dead] remains where he is and is not moved, then revives after an hour or two or a day, speaks, and performs ablution, he is not washed, because he was not removed from his place.

Question: Concerning a person who dies while traveling when no water can be found; a man who dies among women when he has no wife present; and a woman who dies when she has no husband and no woman can be found to wash her: is *tayammum* with earth to be performed for such deceased persons?

Answer: It has been stated that if a person in major ritual impurity and a corpse are together and there is only enough water for one of them, the person in major impurity bathes and *tayammum* is performed for the corpse. These cases are the same.

Another ruling:

If a man dies and the person washing him is in a state of major ritual impurity, the washer should bathe and then wash the deceased. If bathing would harm him, he performs *tayammum* and may wash the deceased if no one else is available. If the person in major impurity is more suitable than another person to wash the deceased, he may do so.

Concerning Embalming Perfume and the Shroud

It is said in the *Mukhtaṣar al-Āthār*: *Ḥanūṭ* consists of perfume, but neither *wars* nor saffron is placed in the embalming perfume of men. These may be used in that of women.

It is said in the *Book of Purification*: The embalming perfume and camphor are placed upon the forehead, nose, inner palms, knees, and tops of the feet—these being the places of prostration.

From the same work: Cotton is placed upon his face, beneath his armpits, between his knees, legs, and feet, if available.

It is said in the *Taʾwīl al-Daʿāʾim*: This is the Sunna concerning fumigating the dead: the deceased himself is not fumigated, nor is incense carried with his funeral procession. Rather, his shroud, the place in which he is washed, and the place where he is shrouded are fumigated, and nothing beyond that.

From the Questions Mentioned Above

Question: What do you say concerning what occurs in the *Kitāb al-Akhbār*, that the first thing taken from the estate of the deceased is the cost of his shroud and funeral preparation, then debts, then the bequest? O our master, if his debts exceed the value of the estate, is his funeral preparation still provided according to his social condition even if this is expensive?

Answer: His shroud and funeral preparation must be provided in accordance with his condition.

Another ruling:

The embalming perfume is placed upon the deceased's places of prostration, the private parts, the feet, between the thumb and forefinger, the navel, armpits, chest, mouth, eyes, nose, forehead, ears, palms, and knees. A little powdered aromatic substance, wheat, and perfume is placed in water on the third night, and the water is poured upon the grave on the third day. If the deceased was among the people of rank, the Qurʾān is recited at his grave for seven days; for others, for three days. This is how our masters—may God prolong their lives—have acted. It is transmitted from our master Ḥasan ibn our master Idrīs ibn al-Ḥasan, may God show them kindness: The Qurʾān is recited seven times for people of rank and three times for others, whether in the mosque, at the graves, in the house, or elsewhere.

Concerning Walking with Funeral Processions

It is said in the *Kitāb al-Akhbār*: They disliked announcing a funeral by a public call, but permitted informing people of it without such a proclamation.

It is said in the *Taʾwīl al-Daʿāʾim*: The proper rule is that one should not stand when a funeral passes unless one intends to follow it, and one who follows it should not sit until the bier has been placed at the edge of the grave.

It is said in the *Mukhtaṣar al-Āthār*: We have transmitted from the Imams of the Household of the Messenger of God, may God bless him and his family, that they ordered that after the deceased has been shrouded he be placed upon a bier, if one can be found and this is possible, and that men carry him upon their shoulders when available.

If that cannot be done, he is carried upon an animal or whatever means can be found. His shroud is covered from above with a cloth if one is available and this is possible. Upon the bier of a woman is placed a *naʿsh*, that is, a covered canopy, which is itself covered with cloth. The deceased should be secured if there is fear that he might fall from the bier.

From the same work: When the funeral reaches the burial-ground, the bier is placed crosswise with the deceased lying on his back, his right side toward the qibla and his left side toward the person who will lead the funeral prayer.

From the *Taʾwīl al-Daʿāʾim*: Among what is transmitted from the Messenger of God, may God bless him and his family, is that he saw women following a funeral procession. He stopped and said to them:

"Will you pray over the deceased among those who pray?"

They said: "No." He said: "Will you carry him among those who carry him?" They said: "No." He said: "Will you lower him into the grave among those who lower him?" They said: "No." He said: "Will you bury him among those who bury him?" They said: "No." He said: "Then return, bearing sin rather than reward."

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa command to walk behind the funeral procession? O our master, does one sin by walking in front of it?

Answer: It is mentioned in the *Kitāb al-Akhbār* that walking in front is disliked specifically in the case of the funeral of a *nāṣibī*, because the angels of wrath meet it.

As for the funeral of a believer, it does not matter where you walk in relation to it, because the angels of mercy surround it. Nevertheless, walking behind it is preferable.

Concerning the Funeral Prayer

It is said in the *Majālis al-Bayān*: Prayer over the dead is an obligation upon those Muslims who know of the funeral until one of them performs it; once one person has performed it, the others become volunteers with respect to it.

It is said in the *Akhbār*: The transmitters related from the People of the House, blessings of God upon them, that it is recommended to perform the funeral prayer at the regular prayer-times so long as there is no fear of missing the obligatory prayer. If there is such fear, the obligatory prayer is performed first.

It is said in the *Taʾwīl al-Daʿāʾim*: Likewise, if the Imam of the Age is not present, then whoever he has appointed as judge or entrusted with some affair of the Muslims has the greater right to lead the prayer over the deceased.

If several persons holding appointments from the Imam or from one appointed by the Imam are present, the one highest in rank has precedence. If only one of them is present, he has greater right than the deceased's guardian to lead the funeral prayer, provided he is someone appointed by the Imam, or by the Imam's appointee, to some affair of the Muslims, or someone appointed to lead the people in prayer. If none of these is present, then the nearest rightful guardian of the deceased has the greatest right to lead the prayer.

It is said in the *Mukhtaṣar al-Āthār*: Funeral prayer is performed over a martyr, over those who committed major sins and transgressions, and over someone executed as a prescribed punishment or in retaliation.

From the same work: If several funerals are gathered together, the imam may, if he wishes, perform a single funeral prayer over all of them. If they are all men or all women, he arranges the bodies in a row and stands opposite the middle of the row. If he performs the prayer over each separately, that is also permissible.

From the *Mukhtaṣar al-Muṣannaf*: During the daytime the supplication is recited quietly, while at night it is recited aloud. Funeral prayer is also performed over one who killed himself.

It is said in the *Mukhtaṣar al-Āthār*: Whoever does not catch the imam before he gives the salutation has missed the funeral prayer. He may supplicate for the deceased if he wishes, but he does not perform the funeral prayer over him separately.

From the same work: He completes it while reciting all of it quietly except the *takbīr*, which he pronounces aloud. If he performs the funeral prayer at night, he recites aloud as in the night prayer.

From the same work: The funeral prayer should not be performed at night unless necessity requires it, for it is transmitted from the Messenger of God, may God bless him and his family, that he said: "Bury your dead during the daytime, for the angels of the day are more merciful than the angels of the night."

It is said in the *Book of Purification*: He then gives two salutations, one to his right and one to his left. Those behind the imam do likewise, and then they depart.

Concerning Burial and Graves

It is said in the *Mukhtaṣar al-Āthār*: They receive the deceased and take him with their hands. If the deceased is a woman, they spread a cloth over the grave to conceal her while lowering her until she is covered.

They supplicate for the deceased with whatever prayers occur to them. They may place bricks, a board, or palm stalks over him if they wish; and if they heap earth directly over him, that is good.

From the same work: If it becomes necessary to bury two or more persons in a single grave, they may be buried there. The most excellent among them is placed nearest the qibla. If there are men and women, the men are placed before the women, and some earth is placed between every two bodies.

It is said in the *Kitāb al-Akhbār*: They said that a man is drawn out lengthwise, while a woman is received frontally. By "drawing out" they mean placing the head of the bier at the foot of the grave and taking hold of the head of the deceased, drawing him down from the bier by the hands. By "receiving frontally" they mean placing the bier lengthwise along the grave on the qibla side, then receiving the deceased and lowering her by hand. Permission was given for the frontal method for both women and men, and this is the practice followed.

From the same work: They disliked attending the funerals of polytheists, and they disliked praising the deceased.

From the *Mukhtaṣar al-Muṣannaf*: The knots of the shroud are untied, the deceased's right hand is brought out from beneath his side, and his cheek is placed against the earth. The grave is made level and not raised in a hump.

If a woman dies while carrying a living fetus of six months or more, the child is extracted if possible.

It is said in the *Mukhtaṣar al-Āthār*: If a polytheist woman dies while carrying a child fathered by a Muslim and the child has not separated from her, the people of her religion take charge of her and she is buried in their cemetery.

If a woman dies while a living child is moving in her womb, there is no harm if the midwife inserts her hand, dismembers the child, and removes it if she is able. If she cannot do so, the woman's abdomen is opened and the child removed. If no midwife is available, the nearest male relative does this. It is only to be done when the child's life is certain and the pregnancy has reached six months or more, such that it is known the child could live if removed. Otherwise it is left until it dies within her, for she must not be buried while the child is still moving within her. Likewise, if a fetus dies in a woman's womb and there is fear for her, the midwife inserts her hand and removes it in pieces. Since people have survived after their bodies were opened for reasons other than childbirth, opening the abdomen of the dead woman is preferable to killing the child within her.

It is said in the *Mukhtaṣar al-Āthār*: Permission was given to mark a grave with a sign so that it may be recognized, and to plaster, whitewash, and roof it over.

It is said in the *Ikhtiṣār*: They forbade prayer among graves, and also defecating or urinating there.

From the Questions Mentioned Above

Question: What do you say concerning a man who dies in a place where there is no authorized man, but an authorized woman is present? May she lead the women in the funeral prayer, or should the men pray over him individually, or simply bury him?

Answer: Prayer by the men accords more closely with the doctrine of the People of the House, God's blessings upon them.

Question: What do you say concerning prayer over the deceased? May it be performed after he has been carried away from the place where he was prepared, or must one wait until he reaches the cemetery?

Answer: One may perform the prayer wherever one wishes—in the cemetery, in his house, or elsewhere. Whoever wishes may recite the supplications between the funeral *takbīrs*, while whoever wishes may leave them and rely upon the imam. Funeral prayers are permissible at the normally disliked prayer-times and during an eclipse.

Question: What do you say concerning what occurs in the Sharīʿa, that whatever falls from the body of a living person is to be buried? O our master, may a person bury it wherever he wishes, or only in a cemetery? And if he neglects it and does not bury it, does he sin?

Answer: He may bury it wherever he wishes, and there is no blame upon him if he discards it.

Question: What do you say concerning a man on whose land people bury their dead without his permission? When he learns of this and wishes to remove them, may he do so?

Answer: No one may be buried on his land without his permission. But since they did so without his authorization, he is entitled only to the value of the places occupied by the graves; he may not remove the bodies.

Question: What do you say concerning the Sharīʿa command that bodies be buried where they fall and the prohibition against transporting them elsewhere? O our master, what should be done if the cemetery is far away?

Answer: The deceased is buried in the place where he dies, in the cemetery of the people of that locality, and should not be transported to another town. If he dies in open wilderness, there is no harm in carrying him to the nearest cemetery.

Question: What do you say, our master, concerning a woman who dies and no close male relative who may lawfully look upon her is present in the town? Who lowers her into the grave?

Answer: If a woman dies and no blood relative permitted to look upon her is present at her grave, the nearest person to her takes charge of her burial. If no relative is available, then out of necessity one of the trustworthy non-relatives buries her.

Question: What do you say concerning what occurs in the books of the guiding *daʿwa*—peace be upon their author—that bricks, wood, or whatever else they wish may be placed over the deceased, and that if earth is heaped directly over him, that is good? O our master, may fired brick, stone, or other available materials be used? The people of the outward law dislike fired brick, so what is the ruling?

Answer: Fired brick and whatever else is available may be placed over him. Rely upon this and pay no attention to anything else except where *taqiyya* requires it.

Book of Zakāt

Concerning the Severity of Withholding Zakāt from Those Entitled to It

In the name of God, the Most Merciful, the Compassionate.

It is said in the *Mukhtaṣar al-Āthār*: Whoever possesses camels, cattle, or sheep and does not pay their zakāt will have them spread out before him on the Day of Resurrection upon a broad, level plain. They will trample him with their hooves, butt him with their horns, and bite him with their mouths. Whenever the last has passed over him, the first returns, until the reckoning of all creatures has been completed.

It is said in the *Mukhtaṣar al-Āthār*: God, Mighty and Glorious, said: "They shall be encircled by that which they withheld on the Day of Resurrection." He said that the wealth of one who withholds zakāt will be represented in the form of a bald-headed serpent that coils around his neck and bites him until the people's reckoning is finished, saying: "I am your wealth whose zakāt you withheld."

Concerning God's words, Mighty and Glorious: "Those who hoard gold and silver and do not spend it in the path of God—give them tidings of a painful punishment, on the day when it will be heated in the Fire of Hell and their foreheads, sides, and backs will be branded with it: 'This is what you hoarded for yourselves, so taste what you used to hoard.'"

He said: "Hoarded treasure is wealth whose zakāt has not been paid. Wealth from which zakāt has been paid is not hoarded treasure." He also said: On the Day of Resurrection, the wealth of one who withheld zakāt will be brought and beaten into plates, heated in the Fire of Hell, and his forehead, sides, and back branded with them. Whenever they cool, they are reheated and he is branded again until the reckoning of all creatures has been completed.

From the Questions Mentioned Above

Question: What do you say concerning the prohibition in the Sharīʿa against a person concealing the zakāt of his wealth from his Imam? O our master, does this refer to one who withholds zakāt completely or to someone else? How could one conceal zakāt from his Imam while outwardly giving it to him?

Answer: This report concerns someone who pays only part of the zakāt. As for one who withholds it altogether, he has abandoned an obligatory duty.

Question: What do you say concerning what occurs in the *Daʿāʾim*, that the Messenger of God, may God bless him and his family, said: "We, the People of the House, are not permitted to receive alms"? O our master, does "the People of the House" here mean the Imams, or all descendants through Fāṭima al-Zahrāʾ?

Answer: What is intended in the *Daʿāʾim* is the Imams, peace be upon them.

Question: What is meant by *ḥamāla* in the statement in the *Daʿāʾim* that alms are not lawful for a wealthy person except in five cases, one being a man who has undertaken a *ḥamāla*?

Answer: Either a penalty imposed by an unjust ruler or bearing the blood-money owed by the *ʿāqila*.

Question: In the covenant written by the Commander of the Believers to Mikhnaf ibn Sulaym, it says that if one of the people obedient to us, living in al-Jazīra or between Kūfa and Syria, claims that he has paid his alms to the officials of Syria while he remains within our territory, protected by our cavalry and men, this does not suffice him even if what he claims is true, for he has no right to live in our lands and pay the alms on his wealth to our enemies. How is this ruling to be understood? And does the ruler's protection of the land of India by his cavalry and men make zakāt due to him?

Answer: The meaning of the covenant written by the Commander of the Believers to Mikhnaf ibn Sulaym, and of his statement that zakāt is not demanded from one whom his cavalry and men have not brought under his control, is that zakāt is not demanded from someone held by the enemy who is not among his loyal Shiʿa.

It is transmitted from the People of the House in the *Daʿāʾim* and elsewhere that whoever delivers zakāt to someone other than the one whom God, Mighty and Glorious, has commanded him to give it to has not discharged his obligation. Even if it is plundered or stolen from him, it does not suffice until he delivers it to the holder of authority or to the one who receives it by his command.

Concerning Zakāt on Gold, Silver, and Precious Materials

It is said in the *Mukhtaṣar al-Muṣannaf*: Zakāt becomes obligatory once the property reaches the prescribed minimum (*niṣāb*) in pure form and a full year has passed over it.

From the same work: If someone entrusted with a deposit alters it, does something that removes it from the legal status of a deposit, consumes it, or replaces it with his own property, zakāt becomes obligatory upon him in all such cases.

If a year passes over the estate left by a deceased person and the heirs have not yet divided it, zakāt is not imposed upon the undivided estate as a whole. Rather, it applies to the individual shares. Whoever's share reaches the *niṣāb* must pay zakāt upon it; whoever's share does not reach the *niṣāb* and has no other property owes no zakāt on it. If a man owns property while owing a debt, and a year passes, what he owes and what he owns are compared. If his property exceeds his debt by at least one *niṣāb*, zakāt becomes obligatory on the surplus beyond the debt. If a man exchanges trade goods for other goods also intended for trade, the second goods are valued at the end of the year reckoned from when he first acquired the original goods, whether he profited or suffered loss, and he pays whatever zakāt is due.

It is said in the *Mukhtaṣar al-Āthār*: If a man has one hundred dirhams and ten dinars whose value is one hundred dirhams or more, he owes no zakāt until the dinars reach twenty and the dirhams two hundred and a year has passed over them, unless he exchanges part of them before the end of the year in order to escape zakāt.

For example, if a man possesses two hundred dirhams and, when he sees that zakāt has become due, exchanges some of them for dinars in order to cause the zakāt obligation to lapse—or has dinars and exchanges some of them for dirhams for the same purpose—he must nevertheless pay zakāt.

It is said in the *Mukhtaṣar al-Āthār*: Precious stones, pearls, and ambergris are subject to the one-fifth levy when extracted from their mine or natural place by the one who extracts them. No zakāt is due on them while he retains them.

If he sells them and they pass into the ownership of a purchaser, they become like other property. If intended for trade, the purchaser values them and pays zakāt at the end of the year.

It is said in the *Mukhtaṣar al-Muṣannaf*: One-fifth is due on whatever is extracted from a mine, and the remainder belongs to the finder. One-fifth is likewise due on buried treasure. Dinars bearing an Islamic coinage mark are treated as lost property.

It is also said in the *Ikhtiṣār*: Mineral stones and other such things are subject to one-fifth; once transferred, they are treated like other property.

It is said in the *Mukhtaṣar al-Āthār*: If something is copper, iron, lead, or the like that has been plated, it is valued according to its underlying substance, combined with the rest of one's property, and zakāt is paid upon it.

It is said in the *Mukhtaṣar al-Muṣannaf*: Likewise, if someone buys trade goods with money of a kind upon which zakāt is due, the time for the money and the goods is reckoned together. When the year is completed, zakāt is paid.

From the *Akhbār*: They transmitted that whoever loses surplus property and later finds it must pay zakāt for the elapsed period.

From the same work: An apostate begins the zakāt period anew and does not pay zakāt for the period of apostasy.

It is said in the *Daʿāʾim*: The Messenger of God, may God bless him and his family, exempted servants, houses, clothing, and household furnishings so long as they were not intended for trade.

From the *Taʾwīl al-Daʿāʾim*: This means that there is no zakāt upon these things when a person owns them for his own use; but whatever is intended for trade is valued and zakāt is due upon it.

It is said in the *Mukhtaṣar al-Āthār*: There is no zakāt upon a child's property until he reaches puberty, takes possession of it, and a full year passes while it is in his hands. If it comes into the hands of an adult who trades with it, zakāt is due from the one who trades with it; any loss is borne by him, while the profit belongs to the child.

It is said in the *Mukhtaṣar al-Āthār*: If someone dies owing zakāt that he did not pay, it is taken from the principal estate whether he made a bequest concerning it or not, provided that the obligation is known and established.

From the Questions Mentioned Above

Question: A man appoints two executors. One of them, or another of the deceased's loved ones, fears that the other executor will prevent him from paying what is due from the deceased's wealth in one-fifth, zakāt, pilgrimage, and other obligations. He therefore pays it secretly without informing him. Is there any blame upon him? And what must necessarily be paid when the deceased specified no amount but left the matter general, while his relatives know that he used to withhold zakāt, did not pay one-fifth on all his wealth, and had not performed the pilgrimage?

Answer: If the executor frees the deceased from what was due from him, there is no harm, because zakāt is a debt that must be discharged; then comes pilgrimage, then the one-fifth. If the executors fail to discharge these, there is no blame upon others if they free his liability, secretly or openly.

Question: What does our master, may God perpetuate his support, say concerning eating food in the house of a man who does not pay zakāt?

Answer: The answer has been given: there is no harm in that.

Question: What do you say, O our guide to the Abode of Peace, concerning a man who acquired wealth but did not pay its one-fifth before dying? Must one-fifth be taken from his entire estate, including houses, servants, and goods?

Answer: Yes, one-fifth is taken from his entire estate.

Question: What do you say, O you who guided us to the Straight Path, concerning a man who owned the *niṣāb* but did not pay zakāt, or who did not own the *niṣāb* until he died, after which the goods and houses he left were assessed and the estate was found to have reached the *niṣāb*? Must zakāt be paid from it? And likewise pilgrimage and other obligations upon his property?

Answer: If what he left that had been held for buying, selling, and trade reaches the *niṣāb*, zakāt must be paid from it. The pilgrimage expense is taken after zakāt.

Question: What does our master, may God perpetuate his support, say concerning a man who dies and, upon examining his entire estate, it is found sufficient to cover pilgrimage and other obligations such as expiation, *sharwā*, and one-fifth, although during his life he possessed little besides his house and household goods? Are pilgrimage and the other obligations to be paid, or may the heirs take the estate?

Answer: If he leaves property, pilgrimage takes precedence over inheritance because it is a debt, and debts precede inheritance. The other obligatory duties must likewise be discharged if the estate is sufficient and something remains for the heir.

Question: A customs officer takes ten dirhams from every two hundred dirhams belonging to polytheists and five dirhams from every two hundred belonging to Muslims. If the officer remits one or two dirhams for one Muslim, and then a cloth merchant for whom the officer granted no remission comes to the one who received the remission and has the goods entered under his name on condition that they divide the difference equally, is it permissible to take that amount?

Answer: Whatever the partners knowingly agree upon among themselves is permissible.

Question: A man dies leaving two hundred dinars, or less or more, while zakāt, pilgrimage, one-fifth, *sharwā*, and expiation are all due from him. Which is taken first from the principal estate?

Answer: Zakāt is taken first, for it is a debt upon him and is not part of his own property; then pilgrimage, then one-fifth, then expiation, then *sharwā*.

Question: A man dies leaving property and heirs but makes no bequest. Are one-fifth, *sharwā*, and expiation to be taken from the principal estate?

Answer: One-fifth must be taken from the principal estate. If the heirs are God-fearing, it is obligatory upon them to discharge it from the liability of the deceased and purify the property. If they refuse, there is no compulsion in religion.

Another ruling:

Whoever pays two years' zakāt in advance to the authorized official before the second year begins has discharged it.

Question: A man possesses two hundred *mithqāls*. At the end of the year he pays zakāt, then leaves one hundred in his house without buying, selling, or trading with it, while trading with the remaining hundred. When the second year is completed, does he pay zakāt on the two hundred or only the hundred? Likewise, if he buys merchandise and a year passes without selling it, while its price has fallen, is zakāt still due?

Answer: Zakāt continues to be obligatory upon property once it has become due, so long as it remains with its owner, whether he trades with it or hoards it, until what he owns falls below the *niṣāb*.

Question: It is stated in the legal questions that *sharwā* is one hundred and nineteen dirhams, while the wealthy owe one dinar. O our master, what is the threshold of wealth, what is the weight of a dinar, and what is the weight of a dirham?

Answer: Our master, possessor of all, may God perpetuate his glory and prolong his life, said:

The threshold of wealth is possession, after one full year, of the amount upon which zakāt becomes obligatory: either two hundred silver dirhams or twenty gold dinars. Each dirham is fourteen carats and two-fifths of a carat. On this reckoning, two hundred dirhams weigh eighteen Arab ounces. In the weights of

Gujarat this corresponds to [the manuscript gives local measures]. Each dinar is twenty-four carats. Twenty dinars therefore weigh three Arab ounces of gold, corresponding in Gujarati weights to [local measures]. There remains a difficulty, however, because the relative price of gold and silver changes from age to age according to people's greater or lesser demand for one or the other. Sometimes the value of twenty dinars exceeds that of two hundred dirhams, and sometimes the reverse. The believer should therefore calculate according to whichever of the two specified amounts—gold or silver—has the lower monetary value.

Question: What does our master, may God perpetuate his support, say concerning a man who possesses five hundred *tankas*, pays one hundred as one-fifth in the first year, and has four hundred remaining. He trades with it and earns three hundred in profit, of which two hundred are spent on his household, leaving one hundred of the profit. Does he pay one-fifth on the full three hundred of profit or only on the one hundred remaining?

Answer: Once one-fifth has been paid upon the principal capital, one-fifth on subsequent gain applies only to what remains in his possession. If he pays one-fifth upon the whole amount, that is meritorious, but it is not an obligatory duty.

This answer is from our master Idrīs, may God sanctify his spirit.

Concerning Zakāt on Livestock

It is said in the *Mukhtaṣar al-Muṣannaf*: No zakāt is due on livestock until they are pasture-fed and a full year has passed. If they graze during part of the year and are stall-fed during part, the predominant condition determines the ruling.

From the same work: Whoever owns five camels and fails to pay their zakāt for two years owes one sheep for the first year and nothing for the second, because the sheep has become a debt upon him. The same principle applies to livestock other than camels.

If a man owns camels but their pasture includes sheep belonging to him, what is taken from his sheep as zakāt must be suitable for sacrifice. The same applies in the zakāt of sheep. Buffaloes and cattle have the same ruling, and sheep and goats likewise.

It is said in the *Mukhtaṣar al-Āthār*: Partners in livestock owe no zakāt until each partner's individual share reaches the amount upon which zakāt is due.

When this occurs and their shares are equal, zakāt is taken accordingly. If one owns more than the other, they compensate one another for the difference. For example, if two men jointly own sheep, nothing is due until the flock reaches eighty. When it reaches eighty, two sheep are due, one upon each partner, if they own it equally. If one owns one-third and the other two-thirds, only one sheep is due from the owner of the larger share until the flock reaches one hundred and twenty. When it exceeds that by one sheep, two sheep are due, and the partners settle the difference between themselves. This principle applies to all forms of wealth—cash, camels, cattle, sheep, grain, and everything else subject to zakāt—when jointly owned. Each partner owes only what he would have owed on his own share had there been no partnership, because partnership neither abolishes ownership nor transfers one person's property to another.

Likewise, if owners combine and mix their property without establishing a legal partnership, what is due from each is assessed separately and the mixing of their property is disregarded.

From Jaʿfar ibn Muḥammad, peace be upon him: If co-owners combine their livestock and use one shepherd and one breeding male, their property is not combined for purposes of zakāt; what is due from each individual is taken from his own property.

From the *Taʾwīl al-Daʿāʾim*: This means specifically his own sheep. If nothing is due upon his own share, nothing is taken from him.

Concerning Zakāt on Grain, Fruit, and Plants

It is said in the *Akhbār*: Crops sold after the grain has formed are subject to zakāt. If sold before the grain forms and then harvested, no zakāt is due. The same applies to fruit.

From the same work: The owner of the land does not deduct what he spent [before calculating the zakāt].

It is said in the *Mukhtaṣar al-Muṣannaf*: This obligation applies to young and old, poor and rich, and to one who is in debt.

From the *Kitāb al-Akhbār*: They transmitted that land subject to the tithe (*ʿushr*) includes every part of Arabia not conquered by Muslim cavalry or mounted forces, and every land in the mountain regions reclaimed by its inhabitants that is not irrigated by the great rivers.

From the same work: Land subject to *kharāj* includes the Sawād and the mountain lands conquered by Muslim cavalry and force of arms. If the inhabitants of enemy territory embrace Islam while remaining upon their land, it becomes tithe land.

They transmitted that whoever revives dead land acquires it and it is tithe land. They differed over whether the tithe is also imposed upon produce from *kharāj* land. Some transmitted that tithe and *kharāj* are not both imposed upon the same land. Others transmitted that whatever *kharāj* land produces of a kind subject to tithe is itself subject to tithe. This latter report is more firmly established. They transmitted that if a Muslim purchases *kharāj* land from a protected non-Muslim and takes possession of it, its legal status is not altered by its transfer to a Muslim; it remains *kharāj* land. Likewise, if a protected non-Muslim purchases tithe land from a Muslim, the tithe is due upon what it produces. The obligation concerns the produce of the land and not the identity of its owner.

It is said in the *Maʿālim al-Dīn*: Zakāt is due on every grain that functions like wheat and dates, provided it reaches five *wasqs*.

It is said in the *Muntakhaba*: The *niṣāb* for the grains mentioned is five *wasqs*, and one *wasq* is sixty *ṣāʿs*.

It is said in the *Kitāb al-Akhbār*: If part of the crop is irrigated in one manner and part in another, the predominant method determines the ruling. If the two are equal, three-quarters of one-tenth is taken.

One type of grain or fruit is not combined with another to reach the *niṣāb*. No zakāt is due on any single type until that type reaches the amount upon which zakāt becomes obligatory.

It is said in the *Mukhtaṣar al-Āthār*: The tithe becomes obligatory on grain only once the grain has formed. At that point, when its ripeness begins to appear, it is estimated for its owners by a just assessment.

From the Questions Mentioned Above

Question: The *niṣāb* for gold is twenty *mithqāls* and for silver two hundred dirhams. How is the *niṣāb* for grain determined?

Answer: It is stated in the *Daʿāʾim* that zakāt is due from everything the earth produces, and upon this our masters rely. One must follow them. They paid one-tenth from both small and large amounts, and there is merit in this.

The Sharīʿa also states that the *niṣāb* for grain is five *wasqs*, each *wasq* being sixty *ṣāʿs*.

Concerning Zakāt al-Fiṭr

From the *Mukhtaṣar al-Muṣannaf*: If a protected non-Muslim embraces Islam before dawn on the Day of Breaking the Fast, zakāt al-fiṭr is due from him. If he embraces Islam after dawn, nothing is due.

It is said in the *Akhbār*: They transmitted that zakāt al-fiṭr is paid on behalf of a *mukātab* slave.

It is said in the *Maʿālim al-Dīn*: If a child is born before dawn breaks on the Day of Breaking the Fast, zakāt al-fiṭr is paid on his behalf.

It is said in the *Taʾwīl al-Daʿāʾim*: Likewise, it has been said that it is paid on behalf of a fetus before birth.

It is said in the *Muntakhaba*: [The amount is] one *ṣāʿ* of dried curds or half a *ṣāʿ* of wheat.

It is said in the *Maʿālim al-Dīn*: The weight of one *ṣāʿ* is four and a half Meccan *raṭls*. In the measure of Medina it is five *raṭls* less one-third of a *raṭl*, and in the Baghdadi measure nine *raṭls* and one-tenth.

From the Questions Mentioned Above

Question: The custom among the earlier authorized officials when collecting *fiṭra* was to mix four types—grain, rice, millet, and wheat—and take their monetary value. Yet the noble Sharīʿa states that zakāt al-fiṭr is one *ṣāʿ* of dates, raisins, or barley. Does it suffice for someone simply to give one *ṣāʿ* of barley?

Answer: Reliance is upon what is mentioned in the *Daʿāʾim*: one *ṣāʿ* of wheat, barley, dates, or raisins is given as *fiṭra*, from the best of what you eat and the purest of what you store.

Whoever mixes the *fiṭra* from everything he ate during Ramaḍān has discharged the obligation. Whoever ate nothing but barley has discharged it by giving barley. Understand this.

Question: What does our master, may God prolong his life, say concerning a man who wishes to deliver his *fiṭra* before Ramaḍān begins because he fears poverty or travel may prevent him from delivering it at its proper time? Does the noble law regard this as sufficient? Obligatory acts are prohibited from being performed before their times just as they are not made up until their times have passed. Yet the *Daʿāʾim al-Islām* states that there is no harm in taking zakāt from its owners before the time it becomes due if there is need. What is the ruling? And what of someone who did this in ignorance—has it discharged his obligation?

Answer: If he delivers his *fiṭra* to one entitled to receive it, it discharges him. The prohibition means only that a person should not break his fast until he has delivered the *fiṭra*. No specific restriction of advancement or delay is stated; the obligation is its delivery.

Book of Fasting and Retreat

Concerning the Obligation of Fasting Ramaḍān and Its Merits

It is said in the *Mukhtaṣar al-Muṣannaf*: Fasting is a veil against the Fire for the tongue, hearing, sight, and all the limbs. It does not consist merely of abstaining from food and drink; every limb has its share in it.

Whoever fulfills this is truly fasting. Whoever neglects any part of it loses from the merit of his fast in proportion to what he neglects. The fast of Ramaḍān is obligatory upon every adult, sane, healthy, resident Muslim man, and likewise upon every woman.

From the *Mukhtaṣar al-Āthār*: We have transmitted from Jaʿfar ibn Muḥammad, peace be upon him, that as Ramaḍān approached he would say in his supplication:

> "O God, Ramaḍān has drawn near. If You cause us to reach it, assist us in it and accept it from us. Surely You have power over all things."

When the month began he would say:

> "O God, this is the month of Ramaḍān in which the Qurʾān was sent down as guidance for mankind and clear proofs of guidance and discrimination. O God, bless Ramaḍān for us, assist us in it, and accept it from us. Surely You have power over all things."

From his father: "Do not say simply 'Ramaḍān'; rather say, as God, Mighty and Glorious, said, 'the month of Ramaḍān.'"

It is said in the *Mukhtaṣar al-Muṣannaf*: There is no valid fast for one who is hypocritical toward the Imam and disobedient to him.

It is said in the *Mukhtaṣar al-Āthār*: Concerning God's saying, Mighty and Glorious, "Seek help through patience and prayer," he said: patience means fasting. "The patient shall indeed be paid their reward without reckoning."

The Messenger of God, may God bless him and his family, said to ʿAlī: "O ʿAlī, fast in the heat, perfect your ablution in the cold, and train yourself in patience." He said: "Those who experience the longest rest at the standing places [of the Resurrection] are those who ate least in this world; and those who experience the greatest thirst and hunger on the Day of Resurrection are those who were most glutted in this world." He, peace be upon him, said: "God, Mighty is His Name, has appointed His angels to supplicate for those who fast. He said: 'I have never commanded My angels to supplicate for any of My creatures except that I answer them.'"

Concerning Entering into the Fast

From the *Mukhtaṣar al-Muṣannaf*: The Sunna is to hasten the breaking of the fast—that is, after sunset—and to delay the pre-dawn meal.

From the same work: The Commander of the Believers, peace be upon him, said: "God made the crescent moons signs for fasting, appointed times for pilgrimage, and terms for debts. This is among God's blessings upon His creation."

Concerning What Invalidates the Fast and What Is Required of One Who Invalidates It

It is said in the *Book of Purification*, concerning the phrase "and if he is unable, he feeds sixty poor persons": he feeds them enough to sustain them for their day and night.

It is said in the *Mukhtaṣar al-Āthār*: Whoever has intercourse with his wife during the daytime in Ramaḍān while she is asleep, or compels her, or if she is insane or a child, must make up the day and perform expiation, provided he is legally responsible and adult. Nothing is required of the woman in any of the conditions just mentioned.

From the same work: Whoever eats, drinks, or has intercourse forgetfully during Ramaḍān should complete his fast; no makeup or expiation is required.

When he remembers, he stops immediately, expels whatever food or drink is in his mouth, rinses his mouth, and completes the fast. If after remembering he deliberately swallows any of it, or continues intercourse, he owes both makeup and expiation.

It is said in the *Mukhtaṣar al-Muṣannaf*: If a fasting person commits several acts in one day that would require expiation before he has performed any expiation, only one expiation is due.

If he performs the expiation and then commits such acts on separate days, an expiation is due for each day, whether or not he had previously performed the expiation. Whoever forgetfully does something whose deliberate commission would require expiation owes nothing. If he commits at the beginning of the day an act that makes expiation obligatory, and later something occurs that would have permitted him to break the fast, the expiation does not fall away. If a fasting person eats forgetfully and then thinks this has invalidated his fast, so he deliberately eats again, no expiation is due, but he must make up that day.

It is said in the *Ikhtiṣār al-Āthār*: If someone eats and then discovers that he ate before sunset, he should cease eating and drinking until sunset; nothing further is required.

If a fasting person applies kohl and its taste reaches his throat, he must make up that day if he did not know its taste would reach his throat. If he knew this would happen and deliberately applied it, he owes both makeup and expiation. If its taste does not reach the throat, nothing is required. They permitted use of the *siwāk* by the fasting person, except with a fresh, moist stick. If he uses such a stick and its taste reaches his throat, the fast is broken. If he deliberately swallows it, both makeup and expiation are due; if not deliberate, only makeup is due. If he uses a dry stick, nothing is required.

It is said in the *Ikhtiṣār*: If vomiting overtakes him, he makes up one day. If he knows that cupping causes this to happen to him, he should not subject himself to cupping unless necessity requires it.

It is said in the *Kitāb al-Akhbār*: They forbade reciting poetry during Ramaḍān, by night or day.

From the Questions Mentioned Above

Question: What do you say concerning a man living where the Imam's command does not reach him and who does not know the calendrical calculation? He fasts the doubtful day voluntarily, then before noon someone informs him that he has seen the crescent. Must he do anything besides make up the day?

And likewise, if he was not fasting that day, refrained from eating until noon passed, then ate, and afterward someone informed him that the crescent had been seen, what is required?

Answer: If he is informed before noon, it suffices for him to intend it as a fast of Ramaḍān and complete it; he does not make it up.

If he is informed after noon, the time for forming the intention has passed. He should complete the fast and then make it up. If he had not been fasting, waited until noon, ate, and was then informed, he must make up the day but owes no expiation.

Question: What do you say concerning what occurs in the *Daʿāʾim*: "Whoever enters a state of major ritual impurity, knows this, and does not bathe until the prayer time has passed must complete his fast and make up a day in its place"? O our master, if he deliberately leaves the bath for the entire day despite knowing it is obligatory, is anything required beyond making up the day?

Answer: If he deliberately does so, he has acted wrongly.

Another ruling:

Whoever intends a Sunna fast while in a state of major ritual impurity and bathes only after dawn has risen invalidates the fast and does not continue fasting.

Concerning Fasting while Traveling

It is said in the *Mukhtaṣar al-Muṣannaf*: If the months become confused for a prisoner and he estimates when Ramaḍān is, then if his fast coincides with Ramaḍān itself or with a month after it, it suffices. If it coincides with a month before Ramaḍān, it does not suffice.

If someone breaks the fast of Ramaḍān because of illness, then recovers for ten days before death comes upon him, he is required to provide food only for the number of days during which he was healthy after the illness. If a woman is obliged to fast two consecutive months and breaks the fast during the first month for a reason other than menstruation, she must begin the fasting period anew. If the interruption is due to menstruation, she resumes it afterward.

From the Questions Mentioned Above

Question: What do you say concerning a man who is resident during Ramaḍān in a particular place, then decides to travel from there to his home or elsewhere? May he continue fasting on the day he leaves if he sets out after noon?

Answer: If he leaves before noon, he makes up that day. If he leaves after noon while fasting, his fast is complete.

Question: What do you say concerning a man who stays in a place during Ramaḍān, fasts, and performs the prayer in full, then after seven days or more an unavoidable need to travel arises? Is his fasting valid just as his prayer was valid?

Answer: If he had intended to remain ten days and then the need arose and he traveled, both his fasting and prayer are complete.

Question: What do you say concerning a man who is resident at the end of Shaʿbān, Ramaḍān begins while he is there, and he fasts one or two days or more until the originally intended period of residence is completed? May he then return to his family or travel for an unavoidable need?

Answer: Yes, he may do so if he wishes, and his fasting is complete.

Question: What do you say concerning someone who travels continually and does not remain settled in one place? May he perform the prayer in full and fast while traveling and elsewhere?

Answer: If he is continually going back and forth every month, his fasting and prayer are performed in full.

Question: What do you say concerning a man who travels to a place and finds there his wife or one of his blood relatives, even if a child, residing there with the intention of staying, or he arrives specifically to visit those relatives? May he perform prayer and fasting in full if he remains there for five prayer-times?

Answer: Yes. He performs his prayer in full and observes the fast of Ramaḍān.

Question: Concerning a traveler in Ramaḍān who is accompanied by his wife: may he have intercourse with her during the daytime?

Answer: The explicit text mentions only eating and drinking. Where no explicit text exists, one should refrain. If he nevertheless does it believing it permissible, no expiation is required.

Question: Concerning a man who intends to travel during the daytime in Ramaḍān, breaks the fast before leaving his house, and then something occurs causing him not to travel. Does he owe makeup and expiation?

Answer: He has acted wrongly. If he had firmly resolved upon the journey with sincere intention and then something arose that prevented it, no expiation is due. But if he broke the fast before his intention to travel was firmly established, both makeup and expiation are due.

Question: Concerning a man whose house lies at the far end of the city of Ṣanʿāʾ. He returns from travel and enters the main city gate before noon, but does not reach his house until after noon, while intending to fast. Is his fast valid?

Answer: It has already been stated that he shortens from the time he leaves and does not complete his fast until he enters his house.

Another ruling:

If a man returning from travel during Ramaḍān enters the gate of a city or village before noon, but the Sun passes the meridian before he reaches his house, he performs his prayer and fast in full. A vowed fast and an expiatory fast may be made up while traveling, except the fast of Ramaḍān itself, whose makeup is performed only while resident. The makeup of Ramaḍān may also be performed while traveling [the manuscript here preserves an apparent tension in the rulings]. Likewise, one does not fast the makeup of Ramaḍān during Dhū al-Ḥijja, whereas vowed and Sunna fasts may be performed then. If a man travels during Ramaḍān by day and is killed, so that the obligation of fasting would otherwise have returned upon him, nothing is required from him, nor must his guardian make up the fast for him. Likewise, if he travels during Ramaḍān and becomes ill in Shawwāl while still traveling, his guardians are not required to make up his fast.

Concerning Breaking the Fast Because of Illnesses That Arise

It is said in the *Mukhtaṣar al-Muṣannaf*: If a man begins the morning fasting in Ramaḍān in order to make up a day that he owes, and then deliberately breaks the fast, no expiation is required of him.

If he rinses his mouth for purification, he should spit three times before swallowing.

It is said in the *Mukhtaṣar al-Āthār*: They said that when a woman menstruates during Ramaḍān, she breaks her fast and must make up the days afterward. They encouraged hastening to make up whatever was missed from Ramaḍān at the earliest possible opportunity after it. There is no blame upon one who delays the makeup until before the following Ramaḍān. If the next Ramaḍān arrives before she has made it up, she feeds [the poor] as we have previously described for the missed days.

From the Questions Mentioned Above

Question: What do you say concerning a sick person who senses that fasting is worsening his illness, although he thinks he may still be able to endure it, so he fasts and then realizes that he has become weak and breaks the fast? Is anything required of him?

Answer: If he thinks himself capable of fasting, he fasts; but if he fears weakness or destruction, he breaks the fast, and nothing is required of him.

Question: May vowed fasts, expiatory fasts, and their makeup be performed during Dhū al-Ḥijja?

Answer: The explicit prohibition concerns only [the makeup of] Ramaḍān. No prohibition has been transmitted concerning the others.

Question: What does our master, may God perpetuate his support, say concerning the Sharīʿa statement that it is recommended for the guardian of a deceased person to fast on his behalf? O our master, if the guardian is unable to fast and the deceased has no other guardian, what is the ruling?

Answer: If the guardian is unable to fast and there is no other guardian, he gives charity by feeding one poor person for each day.

Question: Concerning a man who begins the morning intending a makeup fast for Ramaḍān and then travels: may he break the fast without illness and make up another day, or not?

Answer: It has been mentioned that if he deliberately breaks such a fast, no expiation is required.

If someone breaks the fast of Ramaḍān because of illness, then recovers for ten days and death comes upon him, food is provided only for the number of days during which he was well after his illness. If a woman is obliged to fast two consecutive months and interrupts the first month for a reason other than menstruation, she begins the fast anew. If the interruption is menstruation, she continues afterward. If a man begins the morning fasting outside Ramaḍān in order to make up what he owes from it, then deliberately breaks the fast, no expiation is required. If he rinses his mouth for purification, he spits three times before swallowing. If someone falls ill during Ramaḍān and dies during that illness, his guardians are not required to fast the days he missed. If he recovers from his illness, then becomes ill again after Ramaḍān and dies, his male guardians may fast on his behalf, but not the women. If there is no male guardian other than [a woman], she is not required to make up his fast; rather, expiation for the fast is given.

Whoever loses consciousness during Ramaḍān and later regains consciousness does not have to make up that period.

Concerning Breaking the Fast

It is said in the *Mukhtaṣar al-Āthār*: If something obstructs the view [of sunset], the sign that the solar disk has set is the darkening of the eastern horizon, the approach of night from that direction, and the disappearance of redness from it.

Concerning Sunna and Voluntary Fasting

It is said in the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, used to fast in Muḥarram, Rajab, and Shaʿbān.

From the same work: He used to fast on Mondays and Thursdays.

He, peace be upon him, said: "Noah boarded the Ark on the first day of Rajab and commanded those with him, both jinn and humans, to fast that day."

It is said in the *Īḍāḥ*: A woman may undertake a voluntary fast without her husband's permission. If, however, he prohibits her from voluntary fasting, she may not thereafter fast voluntarily without his permission.

If she begins a voluntary fast and he commands her to break it, she must do so, unless her fast is a vow, the makeup of an obligatory fast, or another fast that has become obligatory upon her; in such a case he may not prevent her. What is transmitted from Jaʿfar ibn Muḥammad, blessings of God upon him—"She should not fast except with his permission"—means when he has prohibited her. And the statement that if she fasts without his permission the reward of her fast belongs to him means if she disobeys him after he has prohibited her. Fasting is an act of obedience and righteousness, and it is not obligatory for a woman to ask her husband's permission for it unless he has first forbidden her, after which she must seek his permission.

It is said in the *Mukhtaṣar al-Āthār*: Whoever breaks a voluntary fast before the Sun passes the meridian owes no makeup. If he breaks it after the meridian, he makes up that day.

It is said in the *Īḍāḥ*: ʿAlī, peace be upon him, used to say: Whoever resolves during the night to fast and then dawn comes upon him, after which he breaks the fast, must make up that day. If he wishes to withdraw from his intention before dawn, he may do so.

What I have mentioned is evidence that one who had not resolved during the night to fast, but only forms the intention at dawn or afterward, has a choice until midday. If he breaks the fast before then, there is no makeup upon him.

From the Questions Mentioned Above

Question: What do you say concerning the fast of "seeing off" Ramaḍān? It is stated in a book of the *daʿwa* that it is the fast of the second of Shawwāl, while some texts speak of "the days of seeing off." O our master, explain to us how many days there are.

Answer: The Sunna I prefer is that Ramaḍān be seen off with three days of fasting after the Day of Breaking the Fast, as is mentioned in some writings of the *ḥudūd* of religion—may God brighten their faces.

Question: A man is observing a Sunna fast. His believing brother comes and tells him to break it, so he breaks his fast. Does he still receive the reward of fasting?

Answer: He receives the reward, because actions are according to intentions.

Question: Most believers do not observe the Sunna fasts as they observe the Sunna prayers.

Answer: They may omit the Sunna fasts, and no makeup is required. As for Sunna prayers, whoever misses them should make them up. The pure Imams, blessings of God upon them, and their followers acted in this way. If they observe the Sunna fasts, they receive reward from God Most High.

Concerning Retreat (*Iʿtikāf*)

It is said in the *Mukhtaṣar al-Muṣannaf*: *Iʿtikāf* is a recommended Sunna. If a person binds himself to it by a commitment, fulfilling it becomes obligatory upon him.

It is recommended for one entering retreat to stipulate conditions for his retreat like the conditions stipulated by one entering the state of consecration (*iḥrām*). It is recommended that he fulfill whatever he has

bound himself to, though if he does not, he has latitude. If he makes an obligatory retreat incumbent upon himself and then dies before fulfilling it despite having had the ability to do so, half a *ṣāʿ* of food is given from his estate for every day, to the corresponding number of poor persons. If he leaves no property, it is recommended for his guardian to provide this on his behalf. Whoever vows to observe retreat during a specified month and that month passes without his doing so must make it up. If someone enters retreat without making anything obligatory upon himself and then interrupts it, nothing is required of him. If he vows a month or thirty days of retreat without specifying a particular month, the retreat must be continuous. He may begin whenever he wishes, but if he interrupts it he begins again.

If a woman vows a month of retreat and menstruates during it, she must make up the days of menstruation and join them continuously to the month. If she does not join them, she must begin the retreat anew and observe the entire period continuously.

It is said in the *Akhbār*: Retreat is valid only in the Sacred Mosque, the Mosque of the Messenger, may God bless him and his family, or a congregational mosque.

From the same work: They transmitted that there is no harm in one observing retreat leaving in order to attend a funeral or visit a sick person, provided he does not sit down until he returns to his place of retreat.

It is said in the *Muntakhaba*:

They may observe retreat in the houses of Mecca, since, they said, all of Bakka is a mosque.

It is said in the *Ikhtiṣār*: One in retreat should not occupy himself with conversation except where necessary.

From the Questions Mentioned Above

Whoever wishes to observe *iʿtikāf* should do so only in a congregational mosque.

Book of Pilgrimage

Concerning the Obligation of Pilgrimage and Its Merits

From the *Mukhtaṣar al-Muṣannaf*: Pilgrimage is obligatory once in a lifetime upon every free, adult, sane Muslim who has the means. The lesser pilgrimage (*ʿumra*) is likewise obligatory. Whoever possesses neither wealth nor any means of fulfilling the obligation is not required to undertake it.

It is said in the *Taʾwīl al-Daʿāʾim*: What is intended is that if a woman wishes to perform pilgrimage, her husband may not prevent her when it is the obligatory pilgrimage and she has one of her unmarriageable male relatives to accompany her on the journey, while the husband voluntarily accompanies her.

It is said in the *Akhbār*: She may not undertake a voluntary pilgrimage except with his permission.

From the *Akhbār*: They permitted pilgrimage to be performed with money belonging to a child born of fornication, and a father may perform pilgrimage using the property of his minor son, repaying it when he becomes prosperous.

It is said in the *Taʾwīl al-Daʿāʾim*: The months of pilgrimage are three: Shawwāl, Dhū al-Qaʿda, and Dhū al-Ḥijja. Pilgrimage is not entered into outside them. Within Dhū al-Ḥijja, it is entered into during its first nine days. Thus His saying that pilgrimage is prescribed "in them" means during part of them, and this is the consensus of the Muslims.

From the *Mukhtaṣar al-Muṣannaf*: "The known days" are the four days of Minā, while "the numbered days" are the three Days of Tashrīq following the Day of Sacrifice. Whoever pronounces the pilgrimage formula outside the months of pilgrimage incurs nothing.

Concerning Entering the City of the Prophet, May God Bless Him and His Family, and What One Who Enters It as a Visitor Intending Pilgrimage Should Do

From the *Mukhtaṣar al-Muṣannaf*: Visiting the grave of the Prophet, may God bless him and his family, is highly recommended.

Whoever enters his mosque should perform two cycles before sitting near the place of his head, and should frequently supplicate and invoke blessings upon him and his family.

It is said in the *Ikhtiṣār al-Āthār*: If you are able to remain in Medina for three days—Wednesday, Thursday, and Friday—then on Wednesday pray between the grave and the pulpit at the column adjoining the grave, and supplicate there, exerting yourself in prayer and asking God for your needs in this world and the hereafter.

On Thursday, pray and supplicate likewise at the Column of Repentance.

On Friday, pray and supplicate at the station of the Prophet, may God bless him and his family, at the large column.

Fast those three days, for there is merit in this.

It is said in the *Mukhtaṣar al-Āthār*: Perform two cycles before sitting at the foremost column on the side of the pulpit near the corner of the grave, for that is the place of [text defective] of the Prophet, may God bless him and his family.

Concerning the Stations for Entering *Iḥrām*

It is said in the *Taʾwīl al-Daʿāʾim*: One who intends to enter *iḥrām* for an *ʿumra* in a particular month, but knows that he will not reach the appointed station (*mīqāt*) during that month in which he intended and obligated the *ʿumra*, should enter *iḥrām* before reaching the *mīqāt* at the end of that month so that his *ʿumra* belongs to the month in which he intended it.

It is said in the *Taʾwīl al-Daʿāʾim*: *Iḥrām* means making the pilgrimage or *ʿumra* obligatory upon oneself.

It is said in the *Mukhtaṣar al-Āthār*, concerning the tooth-stick during *iḥrām*: he may use the *siwāk*.

It is said in the *Daʿāʾim* concerning a woman's *iḥrām*: she covers her head, while her *iḥrām* is in her face—that is, she does not cover her face.

From the *Mukhtaṣar al-Muṣannaf*: The *qārin* and the one performing *ifrād* are alike in their rites except that a sacrificial animal is incumbent upon the *qārin*.

Concerning Garlandings, Marking the Sacrificial Animal, the Declaration of Divine Unity, and the *Talbiya*

From the *Taʾwīl al-Daʿāʾim*: One says *labbayka* with the meaning: "drawing near to You and obeying You."

It is said in the *Taʾwīl al-Daʿāʾim* concerning *ishʿār*: The "rites/signs of God" (*shaʿāʾir Allāh*) are, according to the lexicographers, the rites of pilgrimage, that is, its signs. The singular is *shaʿīra*.

Shaʿīra may also mean a sacrificial camel driven as an offering to the House of God, Mighty and Glorious, and its plural is *shaʿāʾir*. In the language, *shaʿāʾir* means signs. From this derives the *shiʿār* used in war, the watchword cried out because it serves as a distinguishing sign among the combatants. The answer transmitted from al-Ṣādiq, peace be upon him, concerning *shaʿāʾir* refers specifically to the sacrificial camels rather than

to all the other rites and signs of pilgrimage. The sacrificial camels offered during pilgrimage are themselves among its signs.

It is said in the *Mukhtaṣar al-Muṣannaf*: The one performing *tamattuʿ* and one performing an independent *ʿumra*, upon entering the sanctuary, cease the *talbiya* and begin the declaration of divine unity and the *takbīr*. The pilgrim ceases the *talbiya* at noon on the Day of ʿArafa.

A woman is like a man with respect to the *talbiya*; she continues it until the sacrifice.

It is said in the *Taʾwīl al-Daʿāʾim*: The one performing *tamattuʿ* by *ʿumra* followed by pilgrimage continues the *talbiya* until he sees the House. When he sees the House, he ceases it and devotes himself to the *takbīr* and declaration of divine unity.

Then, when he goes out to Minā, he enters *iḥrām* from the Sacred Mosque and recites the *talbiya* until he sets out toward the standing place at ʿArafa. This is what is obligatory regarding the *talbiya*.

From the Questions Mentioned Above

Question: What does our master, may God perpetuate his support, say concerning a debtor whose acquaintance tells him, "Come with me on pilgrimage, and I shall pay your expenses," although pilgrimage had not yet become obligatory upon him since reaching puberty? If he goes and performs pilgrimage with him, does that suffice? Likewise, if someone gives the debtor enough money to perform pilgrimage and provide for his household while he still owes many debts, what is his ruling?

Answer: If God later grants him prosperity, he must perform the pilgrimage again.

Question: What does our master, possessor of all, may God preserve him, say concerning an adult woman who is physically capable of undertaking the journey? May she perform pilgrimage on her own behalf during her lifetime?

Answer: The *dāʿīs*, may God sanctify their spirits, have permitted this for women in India because of the great distance. It is nevertheless preferable that she wait until she becomes weak.

Question: The *Daʿāʾim* transmits from the Messenger of God, may God bless him and his family: "Part of the completion of pilgrimage and *ʿumra* is to enter *iḥrām* from the stations appointed by the Messenger of God." O our master, what is the ruling if a pilgrim reaches the *mīqāt*, deliberately passes it, and only enters *iḥrām* from Wādī Hudhud between Jidda and Mecca? Is an expiation required while his pilgrimage and *ʿumra* remain valid, or are they invalid?

Most people enter *iḥrām* only at Wādī Hudhud. In the Ḥanafī and Shāfiʿī schools, a compensatory sacrifice is given and the pilgrimage remains valid. What is the ruling according to the doctrine of the People of the House? People say that entering *iḥrām* at the *mīqāt* causes severe hardship, because after entering *iḥrām* one does not know whether the ship will reach Jidda in ten days, a month, more, or less. The vessel is at sea and the matter rests with God. Severe cold and intense sun may occur while they remain in *iḥrām*. When they safely reach Jidda, if they have merchandise with them, the customs officer may delay them for the tithe. For these reasons most people do not enter *iḥrām* until Wādī Hudhud.

Answer: If the pilgrim reaches the *mīqāt* and forgets or is ignorant that he should enter *iḥrām* there, his ruling is as stated in the *Daʿāʾim* from our master Jaʿfar, peace be upon him:

> "Whoever reaches the *mīqāt* and forgets or is ignorant that he must enter *iḥrām* from it until he has passed it or reached Mecca and then learns of it: if sufficient time remains and he is able to return to the *mīqāt*, he returns and enters *iḥrām* there. If he fears missing the pilgrimage and cannot return, he enters *iḥrām* from wherever he is. If he is already in Mecca and can leave the sanctuary to enter *iḥrām* from outside the sacred territory and then re-enter it in *iḥrām*, he should do so; otherwise he enters *iḥrām* from his place."

This is the ruling for one who forgets or is ignorant. Likewise, he—may God perpetuate his support—said: Whoever reaches the *mīqāt* and deliberately passes it, whether because of an excuse or without excuse, whether sick or healthy, until he reaches Mecca, has missed his *ʿumra*. He then enters *iḥrām* for an independent pilgrimage beneath the waterspout [of the Kaʿba]. He receives the reward of one performing *ifrād*, but has lost the reward of *tamattuʿ*.

Question: What do you say concerning a pilgrim in *iḥrām* whose garments become dirty? Must he remove or wash them?

Answer: Entering *iḥrām* in a dirty garment is prohibited. He may not wash his *iḥrām* garment unless impurity falls upon it.

Concerning What Is Forbidden to One in *Iḥrām* and What Becomes Obligatory upon Him

It is saidʾ in the *Taʾwīl al-Daʿāʾim*: The known months of pilgrimage mentioned by God, Mighty and Glorious, are Shawwāl, Dhū al-Qaʿda, and the first ten days of Dhū al-Ḥijja; during them one who wishes to perform pilgrimage enters into it.

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever deliberately has intercourse after entering *iḥrām* has invalidated his pilgrimage. A sacrificial animal—that is, a camel—is required of him, and he must perform the pilgrimage the following year. If he coerced the woman, he performs expiation on her behalf as well.

It is said in the *Ikhtiṣār al-Āthār*, concerning the statement that one in *iḥrām* neither contracts marriage for himself nor contracts it for another: if he contracts marriage, the marriage is invalid. If he knew it was unlawful, or she knew, she is never lawful for him thereafter. If both were ignorant, they are separated and, after leaving *iḥrām*, they may marry if they wish.

It also states that the blood-sacrifice is a sheep or anything greater. It says: If one in *iḥrām* disputes and says, “No, by God,” or “Yes, by God,” and is truthful, nothing is required until he says this three times or more, after which a blood-sacrifice is required. If he is lying, one blood-sacrifice is required for the first instance, and it increases with each repetition. If a person in *iḥrām* shaves his head, he owes a sheep. If he removes some hair from his head or beard, he gives charity in proportion to what was removed.

From the same work: If he shaves the place where cupping is to be performed, he gives charity.

It is said in the *Īḍāḥ*: The ransom consists of fasting three days, or giving three *ṣāʿs* of food to six poor persons, or offering a sacrificial animal, namely a sheep.

From the same work: Concerning what is required of one in *iḥrām* if he wears a garment, Abū ʿAbd Allāh, peace be upon him, was asked about various kinds of clothing that a person in *iḥrām* might wear because of need and what is incumbent upon him. He said: “For every type, there is a separate ransom.”

From the *Akhbār*: They disliked for one in *iḥrām* to answer someone calling him by saying *labbayka*. Some said that he should say *yā saʿdayka* instead.

It is said in the *Akhbār*: They, peace be upon them, forbade entering *iḥrām* in a dirty garment and forbade washing the *iḥrām* garment unless impurity falls upon it.

It is said in the *Ikhtiṣār al-Āthār*: If one in *iḥrām* wears forbidden clothing or does something forbidden to him through ignorance or forgetfulness, nothing is required of him.

Concerning the statement that the person in *iḥrām* strips down to two clean garments: white is preferable and is what is prescribed unless unavailable.

From the same work: Permission was given to one in *iḥrām* whose tooth is causing him pain to have it extracted.

A man in *iḥrām* should not cover his head, and a woman in *iḥrām* should not cover her face, although she may let her garment hang down over it. A man should not cover his ears. If he has a headache, there is no harm in binding his head, or in placing the strap of a water-skin over it when drawing water. If a man covers his head, or a woman covers her face, each gives charity. There is no harm in bathing while in *iḥrām*, although immersing the head completely in water is disliked.

It is said in the *Akhbār*: If he covers his head while asleep or forgetfully, nothing is required.

From the same work: He may bandage wounds if he has any. If he bathes, he should not rub his head lest he kill lice or pull out hair.

He may slaughter those animals whose slaughter is lawful, including sheep and cattle; he may slaughter a camel and domestic chickens, and anything that is not game. But he may not slaughter hunted game. If he does so forgetfully or ignorantly, neither he nor anyone else may eat it. They also transmitted that one in *iḥrām* may discipline his slave.

From the Questions Mentioned Above

Question: What do you say concerning one in *iḥrām*: may he slaughter cattle and sheep while consecrated?

Answer: He may slaughter animals whose slaughter is lawful, including sheep and cattle; he may slaughter camels and domestic chickens and anything that is not game. As for game, he may not slaughter it. If he does so forgetfully or ignorantly, neither he nor anyone else may eat it.

Question: It is stated in the Sharīʿa that if a person in *iḥrām* kills an ostrich, a *badana* suffices as compensation. Some lexicographical works say that *badana* may refer to an animal offered from either camels or cattle. It is also stated that if one in *iḥrām* destroys ostrich eggs, a male camel is to be sent among virgin she-camels. What is meant here by *badana*? And how is one to send a male camel among she-camels if he owns none? Would it suffice to give the value as charity or to slaughter the compensation and distribute it?

Answer: If the compensation arises during an *ʿumra*, it is slaughtered in Mecca and distributed as charity.

Here *badana* means a camel, and when the offense requires it, a male camel must be put to a she-camel.

Question: What do you say concerning the Sharīʿa ruling that if a person in *iḥrām* says "No, by God" and "Yes, by God" three times, a blood-sacrifice is required? Does this apply if he says it three times in a single gathering or only in separate gatherings?

Answer: If he is truthful and says in a single gathering "No, by God" or "Yes, by God" three times, one expiation is required. If he is lying while in *iḥrām* and says "No, by God" or "Yes, by God," an expiation is required for every occurrence.

Concerning Compensation for Game Killed by One in *Iḥrām*

It is said in the *Mukhtaṣar al-Muṣannaf*: A pilgrim slaughters compensation for hunted game at Minā, while one performing *ʿumra* does so at Mecca.

If two persons not in *iḥrām* kill game within the sanctuary, one compensation is required from them jointly. If a person in *iḥrām* points out game to someone not in *iḥrām*, who then kills it, the one who pointed it out owes compensation. If the killer is also in *iḥrām*, each owes separate compensation. Whoever eats from the compensation for game he himself killed must pay the value of what he ate.

It is said in the *Mukhtaṣar al-Āthār*: Whoever owes compensation but cannot find it, cannot afford to feed the poor, and is unable to fast has nothing further required of him. God, Mighty and Glorious, said: "God does not burden a soul beyond its capacity," and "God does not burden a soul beyond what He has given it."

Whoever does not possess or have the ability to perform what he has been charged with owes nothing until he acquires the means or ability. If he later obtains what was required, he fulfills it. If he becomes capable of fasting, he fasts in the manner already described.

From the same work: They, peace be upon them, said concerning a person in *iḥrām* who kills game outside the sanctuary that he owes the compensation previously described. If he kills it within the sacred sanctuary, he owes that compensation plus the value of the game, which he gives in charity as an additional severity and out of reverence for the sanctuary, lest he deem lawful within it anything God and His Messenger have forbidden.

From the same work: For wounding game, he gives in charity an amount of compensation corresponding proportionally to the amount of blood-money represented by the injury.

From the same work, concerning a person in *iḥrām* who kills game: he gives compensation for it but does not eat from it and does not feed it to anyone else, whether that person is in *iḥrām* or not. If he does so, he must compensate for it a second time.

They, peace be upon them, instructed that it be buried so that it will not be eaten. If someone later digs it up and eats it, nothing falls upon the person who killed it, provided he did not order or direct this; responsibility rests upon the person who took it.

From the same work: Permission was given to throw stones at crows and kites.

Concerning Entering the Sanctuary and Conduct within It

It is stated in the *Mukhtaṣar al-Muṣannaf* that the sanctuary measures one *barīd* by one *barīd*.

It is said in the *Ikhtiṣār*, concerning the permissions relating to vegetation: permission was given regarding *idhkhir* grass, the shepherd's staff, what is needed to repair a bucket, fruit and vegetables, plants that enter people's dwellings, what riding animals and camels eat directly with their mouths, and trees planted by people rather than those naturally produced by the sanctuary.

Whoever takes any of the prohibited vegetation must give its value in charity.

It is said in the *Akhbār*: They transmitted that if the root of a tree lies inside the sanctuary while its branch extends outside it, the branch is sacred because of the root. If the root lies outside the sanctuary while the branch extends within it, the root becomes sacred because of the branch.

From the same work: If someone shoots an animal within the sanctuary and it exits the sanctuary and dies outside it, compensation is still required.

From the *Mukhtaṣar al-Muṣannaf*: Whoever removes any stones or soil from the sanctuary must return them. If unable to do so, he places them in the most excellent mosque he is able to reach.

It is said in the *Ikhtiṣār al-Āthār*: Then you approach the Corner and kiss the Black Stone if you are able and circumstances permit, or touch it—that is, place your hand upon it. If you cannot reach it, gesture toward it with your hand, then begin the circumambulation.

From the same work: There is no harm in wearing sandals or riding [during circumambulation].

From the Questions Mentioned Above

Whoever enters Mecca performs the prayer in full and does not shorten it, even if he remains only an hour or a day, because of God's saying: "the resident therein and the visitor are equal."

Concerning Circumambulation (*Ṭawāf*)

It is said in the *Mukhtaṣar al-Āthār*: A woman suffering from irregular bleeding may circumambulate and complete all the rites provided she is not actually in a state of menstruation.

It is said in the *Taʾwīl al-Daʿāʾim*: Although the term *nifās* is ordinarily mentioned in connection with childbirth, what is intended by it is the blood occurring with it.

This is clarified by what is transmitted from the Messenger of God, may God bless him and his family: he said to one of his wives, who was with him upon his bed and suddenly got up, "What is the matter with you? Have you begun *nifās*?" She said, "Yes," meaning that she had begun menstruating. Likewise, a woman with *istiḥāḍa* experiences continuous bleeding, but it can be distinguished from menstrual blood. When menstruation comes, the blood is thick and dark; when menstruation passes, the blood becomes thin. So long as menstrual blood is present, she is in the state of menstruation: she does not pray, enter the mosque, or have intercourse with her husband. When the menstrual blood ceases and the continuing blood becomes thin, she purifies herself as after menstruation. She is then considered pure though afflicted by an ailment: she prays, fasts, enters the mosque, and her husband may have intercourse with her. Whenever any of the irregular blood appears, she performs ablution.

Thus the statement in this chapter that a woman with *istiḥāḍa* does not enter the mosque, circumambulate the House, or go between al-Ṣafā and al-Marwa refers to the period when her condition is as described above, namely actual menstruation. Once menstruation ceases, her ruling is that of a pure woman suffering from an ailment.

It is said in the *Mukhtaṣar al-Āthār*: The obligatory circumambulations for one performing *tamattuʿ* and for the *qārin* are: first, the circumambulation of *ʿumra* upon entering Mecca; then the pilgrimage circumambulation after departing from Minā, which is also the circumambulation of *ifāḍa*. With each of these comes the *saʿy* between al-Ṣafā and al-Marwa, whose manner we shall describe.

Then comes the Circumambulation of Women after the circumambulation of *ifāḍa* and its *saʿy*. This latter is circumambulation of the House alone. These are the obligatory circumambulations. Each consists of seven circuits. The farewell circumambulation when departing Mecca is recommended and desirable. All other circumambulation is voluntary and meritorious; whoever wishes may perform as many circumambulations as he wishes by night or day, but each circumambulation consists of a complete set of seven.

From the same work: One should not begin an obligatory circumambulation when the prayer time is so near that the time for the imam's prayer will enter before one has completed the circumambulation and *saʿy*. Instead, one delays the circumambulation until after performing the obligatory prayer, and then circumambulates.

From the same work: If one begins at al-Marwa before al-Ṣafā, the *saʿy* must be repeated. One begins *saʿy* at al-Ṣafā and concludes at al-Marwa.

When the Messenger of God, may God bless him and his family, ascended al-Ṣafā he recited: "Indeed al-Ṣafā and al-Marwa are among the signs of God," and then said: "I begin with what God began with." Thus one who circumambulates the House should join the *saʿy* immediately to the circumambulation, as the Messenger of God did. It is mentioned in the *Muṣannaf al-Wazīr*: The basic rule is that if a person performs a voluntary circumambulation at a time when voluntary prayer is prohibited, he does not perform the two cycles belonging to the circumambulation at that time. He makes them up later when voluntary prayer becomes permissible. If he wishes to perform a second circumambulation, he separates the two by sitting and later makes up four cycles, as we have described.

It is said in the *Ikhtiṣār*: If this occurs during an obligatory circumambulation, he intends the second as voluntary and the first as obligatory.

It also states: He performs seven traversals between al-Ṣafā and al-Marwa for the obligatory *saʿy*. If he wishes to perform another seven voluntarily, he may; if he wishes, he may leave it.

From the *Mukhtaṣar al-Muṣannaf*: The Sunna in circumambulating the House is to begin by touching the Corner containing the Black Stone, then proceed to the right while keeping the House on one's left, completing seven circuits and performing the brisk walk. Women do not perform the brisk walk.

When he completes the circumambulation, he performs two cycles. The *saʿy* between al-Ṣafā and al-Marwa is obligatory. Whoever deliberately abandons it must perform the pilgrimage again. If he omitted it forgetfully or through ignorance, he instructs someone to perform it on his behalf and this suffices. The circumambulation and *saʿy* of *ʿumra* are like the circumambulation and *saʿy* of pilgrimage. Our master al-Nuʿmān, may God sanctify his spirit, explained and clarified in a section of the *Kitāb al-Īḍāḥ* that *saʿy* between al-Ṣafā and al-Marwa consists of seven traversals involving four standings upon al-Ṣafā. One begins at al-Ṣafā, stands at al-Marwa, and concludes at al-Marwa. The return journey from al-Marwa to al-Ṣafā counts as a traversal just as the journey from al-Ṣafā to al-Marwa does. Thus there are four traversals from al-Ṣafā to al-Marwa and three from al-Marwa to al-Ṣafā, making seven in total. This is how he, may God sanctify his spirit, explained it.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that if someone completes half or more of his circumambulation and then becomes ill, he may instruct someone to complete what remains for him? O our master, what should be done if he becomes ill during the *saʿy* between al-Ṣafā and al-Marwa?

Answer: The same rule applies to *saʿy* and to throwing the pebbles at the stone-pillars as applies to circumambulation.

Question: What do you say concerning the Sharīʿa ruling that obligatory circumambulation must be performed in a state of purity? O our master, is *saʿy* between al-Ṣafā and al-Marwa valid without purification?

Answer: Neither obligatory circumambulation nor obligatory *saʿy* is valid without ablution.

Question: What do you say concerning the Sharīʿa ruling that circumambulation must pass outside the Ḥijr, so that whoever enters the Ḥijr must repeat it? O our master, does he repeat merely the circuit during which he entered it, or the entire circumambulation from the beginning?

Answer: If he passed through the Ḥijr during one circuit, he repeats that circuit.

Question: It is stated in the *Mukhtaṣar al-Muṣannaf* that *saʿy* between al-Ṣafā and al-Marwa is obligatory; whoever deliberately abandons it must perform pilgrimage again, while one who omits it through forgetfulness or ignorance instructs someone to perform it for him. The circumambulation and *saʿy* of *ʿumra* are like those of pilgrimage.

O our master, if someone forgets or is ignorant of the *saʿy* but remembers before returning to his family, must he perform it himself?

Answer: Whoever forgot it performs the *saʿy* when he remembers. If through ignorance or forgetfulness he does not remember until after returning home, he instructs someone to perform it on his behalf.

Whoever begins *saʿy* at al-Marwa must repeat it from the beginning.

Question: What do you say concerning a man who arrives in Mecca after dawn or after the afternoon prayer and wishes to perform two or three voluntary sets of circumambulation? When the permissible prayer time arrives, may he then perform two cycles for each set, or should he perform only one set of circumambulation?

Answer: Whenever voluntary circumambulation is performed during times when voluntary prayer is prohibited, the associated prayer is not performed until a time when voluntary prayer becomes permissible.

Concerning *Tamattuʿ*

It is said in the *Taʾwīl al-Daʿāʾim*: *Saʿy* means moving quickly in walking, like the brisk walking mentioned during circumambulation of the House.

From the same work: Likewise, whoever entered into pilgrimage and *ʿumra* but failed to attain the *ʿumra* while still attaining the pilgrimage performs the pilgrimage, and performs the *ʿumra* only afterward by entering *iḥrām* from the *mīqāt* once the pilgrimage has been completed—that is, the circumambulation of *ʿumra*.

It is said in the *Ikhtiṣār al-Āthār*: This means one who combined the two in a single journey and entered *iḥrām* for both together, pronouncing the formula for both.

From the same work: He should not perform voluntary circumambulation after the circumambulation of *tamattuʿ* until he has left that *iḥrām* and shortened his hair.

From the same work: If he shaves [after the *ʿumra*] and his hair does not grow back before the Day of Sacrifice, he owes the blood-sacrifice of a sheep.

From the same work: If a woman performing *tamattuʿ* by *ʿumra* followed by pilgrimage menstruates before performing the *ʿumra* circumambulation, she delays it until she becomes pure, then performs it before the pilgrimage circumambulation.

From the same work, concerning the words "whatever sacrificial animal is easy to obtain": this means a sheep or something greater. He slaughters it during the days of Minā and gives it in charity, eating none of it. If he cannot find a sheep, he shares in a camel. If he cannot do this, he fasts.

It is said in the *Akhbār*: If his hair later grows and he then sets out for the pilgrimage, nothing is required of him. If he cannot find [a sacrificial animal], he fasts instead.

If he goes out for pilgrimage with a slave and the slave performs *tamattuʿ*, he may slaughter on the slave's behalf if he wishes, or instruct him to fast.

It is said in the *Kitāb al-Farāʾiḍ* of Jaʿfar ibn Manṣūr al-Yaman, may God exalt his sanctity: Whoever enters Mecca during the months of pilgrimage while in *iḥrām* for *ʿumra* must leave the boundaries of the sanctuary, enter *iḥrām* for pilgrimage, and then re-enter the sanctuary.

No one is permitted to substitute *ʿumra* for pilgrimage during these months. *ʿUmra* is permissible during all the other months of the year and no sacrificial offering is then obligatory. Whoever combines *ʿumra* with pilgrimage during the months of pilgrimage must drive a camel or sheep as sacrificial offering; this offering is obligatory upon him.

Concerning Going Out to Minā and Standing at ʿArafa

It is said in the *Mukhtaṣar al-Āthār*: This is likewise what the Messenger of God, may God bless him and his family, did. He then stood, and the people stood, remaining upright with their faces toward the Sun, calling upon God, beseeching Him, and asking Him for their needs in this world and the hereafter.

Whoever wished recited the Qurʾān; whoever wished pronounced the *takbīr*, declaration of divine unity, glorification, and sought forgiveness.

From the *Ḍiyāʾ*: *Ṣafḥ*, with ḥāʾ, means the broad side of a mountain; with ṣād its plural is *ṣufūḥ*.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that whoever arrives late on the Day of Tarwiya may still perform *tamattuʿ* and catch the people at Minā, whereas whoever arrives on the Day of ʿArafa has missed *tamattuʿ*? O our master, what if someone arrives on the night before ʿArafa, circumambulates, performs *saʿy*, leaves *iḥrām*, then enters *iḥrām* again and sets out for Minā after the people have already left it?

Answer: Whoever reaches the standing at ʿArafa has attained the pilgrimage. If his arrival in Mecca is on the Day of ʿArafa and he fears that performing *tamattuʿ* will cause him to miss the pilgrimage, he may perform an independent *ʿumra* after completing the pilgrimage if he wishes.

Question: What do you say concerning the Sharīʿa ruling that whoever enters Mecca with an *ʿumra* during the months of pilgrimage and remains there until performing pilgrimage is a *mutamattiʿ*, whereas if he departs there is nothing upon him and the *ʿumra* remains independent? O our master, does "depart" mean leaving the boundary of the sanctuary or something else? And how can *tamattuʿ* be valid for one who originally intended only an independent *ʿumra*, since actions are according to intentions?

Answer: Yes. If he leaves the boundary of the sanctuary, it remains an independent *ʿumra* and his former intention comes to an end. [The relevant new intention is] his resolve to perform pilgrimage during the pilgrimage months.

Question: It is stated in the Sharīʿa that when a *mutamattiʿ* completes the *ʿumra*, he shortens the hair from the sides of his head, his mustache, and his beard, and clips some of his nails. O our master, if many days remain between completion of the *ʿumra* and the Day of ʿArafa, may he repeatedly shorten his head hair?

Answer: There is no harm in that. He should not shave, however, except at Minā—that is, after returning from ʿArafa.

Question: It is stated in the Sharīʿa that a *mutamattiʿ* shortens the hair around his head in order to leave the *iḥrām* of *ʿumra*, and that if he instead shaves his head a blood-sacrifice is due. O our master, is the sacrifice due only if he did so deliberately?

Answer: If he did so forgetfully or ignorantly, nothing is required. If he deliberately shaved but his hair grows back before he sets out for pilgrimage, nothing is required. If it does not grow back, a blood-sacrifice is required.

Question: What do you say concerning the Sharīʿa ruling that whoever performs *tamattuʿ* with a child must slaughter on the child's behalf? O our master, what should one do if he performs *tamattuʿ* with a slave or child but cannot afford a sacrifice on his behalf?

Answer: Whoever performs *tamattuʿ* with a child and cannot find anything to slaughter on the child's behalf should fast on the child's behalf.

If someone sets out with a slave and the slave performs *tamattuʿ*, he may slaughter on his behalf if he wishes or instruct the slave to fast. The sacrificial offering for *tamattuʿ* is given in charity after slaughter, because it is obligatory. If he eats any of it, he gives in charity the value of what he ate.

Question: What do you say concerning the Sharīʿa ruling that whoever departs from Muzdalifa before the people depart—except those for whom permission has been granted—owes a blood-sacrifice if he does so deliberately, whereas one who is ignorant owes nothing? O our master, does someone who leaves after the dawn prayer but slightly before the people also owe a sacrifice?

Answer: Whoever departs before dawn owes the blood-sacrifice of a sheep if he did so deliberately. If he was ignorant, nothing is required.

Question: What do you say, O Gate of Divine Mercy, concerning the people of the *daʿwa*, who, when departing from Muzdalifa for Minā, suffer severe exposure and are accused by members of the common people whom they encounter of being Rāfiḍīs and unbelievers? If abandoning the overnight stay at Muzdalifa because of *taqiyya* were sufficient and permitted, kindly grant that concession so that the people of the *daʿwa* may remain at ʿArafāt until all the people arrive and then depart with them, making up whatever they miss of the rites at Muzdalifa and Minā.

Answer: There is no dispensation for that.

Another ruling:

Whoever departs from ʿArafa for Muzdalifa does not perform the sunset and night prayers until reaching Muzdalifa. Even if one-third, one-half, or two-thirds of the night has passed, whenever he performs them there they are still considered performed within their time.

Concerning Departing from ʿArafa for Muzdalifa

From the *Mukhtaṣar al-Muṣannaf*: Even if he returns [to ʿArafa], the compensatory offering does not fall away; the ignorant person owes nothing.

It is said in the *Ikhtiṣār*: When the Sun has set, whoever departs from ʿArafa before sunset owes a camel, which he slaughters or whose value he gives in charity.

It is said in the *Mukhtaṣar al-Āthār*: Except if he returns during what remains of the night and stands there.

From the same work: When the Messenger of God, may God bless him and his family, performed the dawn prayer on the Day of Sacrifice at Jamʿ, he mounted al-Qaṣwāʾ. "Jamʿ" is a name for Muzdalifa, a place associated with ʿArafāt, and it was called this because the people gather there.

ʿ*Anaq* is a manner of traveling, namely fast walking in which the camel's neck moves. If its pace increases until it becomes a running gait with alternating steps, that is called *khabab*. — From *Kifāyat al-Mutaḥaffiẓ*.

Concerning Throwing the Pebbles at the Jamarāt

They are called *jamarāt* because the stones became *tajammara*, that is, gathered together.

It is said in the *Īḍāḥ*: Let the distance between you and the *jamra* be approximately ten or fifteen cubits.

Elsewhere in the same work: Let there be five cubits between you and it.

It is said in the *Muntakhaba*:

Let them stand before it at a distance of approximately five cubits or ten.

From the *Mukhtaṣar al-Muṣannaf*: [One throws] seven separate pebbles, saying the *takbīr* with each one, with the *jamra* on his right and the House on his left, and then supplicates.

From the same work: During the Days of Tashrīq, one stands to supplicate at the middle and smaller *jamras*, but does not stand at the [greater] *jamra*. Whoever forgets all the throwing until the Days of Tashrīq have passed owes a blood-sacrifice.

It is said in the *Mukhtaṣar al-Āthār*: When throwing the pebbles, the pilgrim places Minā on his right and the House on his left. He throws from the floor of the valley and not from above it.

From the same work: Whoever misses any part of the pebble-throwing makes it up when he remembers, or instructs someone to make it up on his behalf.

Concerning the Sacrificial Offering (*Hady*)

Hady means the offering driven to the House.

From the *Mukhtaṣar al-Muṣannaf*: The place for slaughtering the sacrificial offering of the *qārin* and the one performing independent pilgrimage is Minā; the place for the independent ʿ*umra* offering is Mecca.

Whoever forgets to slaughter at Minā may slaughter in Mecca.

From the same work: The owner of the obligatory sacrificial offering does not eat from it. If he eats any, he gives in charity the value of what he ate.

From the same work: "The known days" are the four days of Minā; "the numbered days" are the three Days of Tashrīq.

From the same work: [Text defective] concerning those permitted to eat from the sacrificial offering.

From the same work: If he wishes, he seeks [reimbursement] for its price from the one who sold it to him.

It is said in the *Mukhtaṣar al-Āthār*: They forbade offering as *hady* a *jallāla*, an animal that habitually eats excrement and refuse, and forbade eating its flesh until it has been cleansed by confinement and feeding with proper fodder for a specified period.

Likewise, its milk is not drunk until it has been purified in this way. A she-camel or camel is confined for forty days, a cow for twenty days, a sheep for seven days, a duck for five days, and a chicken for three days.

From the Questions Mentioned Above

Question: What does our master, may God perpetuate his support, say concerning a man who performs pilgrimage, stands at ʿArafa, and sacrifices his *uḍḥiya* at Minā? Does this suffice both for his pilgrimage offering and for the sacrifice of the Day of Sacrifice? May our master, whose ransom we are, graciously answer, God Most High willing.

Answer: This sacrificial offering also suffices as the *uḍḥiya* for the one who offers it and for those whom he supports.

Concerning Shaving and Shortening the Hair

From the *Mukhtaṣar al-Muṣannaf*, concerning the statement that shaving is preferable to shortening for men, while a woman is instructed to shorten.

From the *Akhbār*: When a woman leaves *iḥrām*, she takes from the ends of the locks of her hair an amount approximately equal to a fingertip.

From the *Ikhtiṣār*, concerning the statement that shaving should extend as far as the two projecting bones beneath the temples, level with the ears.

From the same work, concerning the command to bury hair: “Whatever falls from a son of Adam while he is alive is carrion.”

It is said in the *Ikhtiṣār al-Āthār*: Together with shaving, they commanded taking some hair from the sides of the beard and mustache and clipping the nails.

Concerning What the Pilgrim Does during the Days of Minā

It is said in the *Mukhtaṣar al-Muṣannaf*: There is no harm in throwing the pebbles before shaving and slaughtering, or after them.

One should not perform the visitation circumambulation before shaving, slaughtering, and throwing the pebbles, unless one does so forgetfully or ignorantly. If he forgets or is ignorant, nothing is required; when he returns, he performs the shaving, sacrifice, and throwing.

It is said in the *Kitāb al-Akhbār*: They transmitted that whoever forgets the Circumambulation of Women until he has returned to his family should send someone to perform it on his behalf. If he dies before that is done, his son performs it on his behalf.

Women do not become lawful to him until he himself fulfills it or it is fulfilled on his behalf. Some were especially strict regarding this and said that it cannot be fulfilled except by the person himself.

From the same work: They transmitted that whoever has intercourse with women before fulfilling it owes a camel.

From the same work: They transmitted that whoever has intercourse after performing the visitation circumambulation but before the Circumambulation of Women owes a camel.

If he had already completed more than half of the Circumambulation of Women and then had intercourse with his wife, he bathes and completes what remained. If he had completed less than half, he owes a camel, bathes, and begins the entire circumambulation anew. It is mentioned in the *Muṣannaf*: The basic rule is that the festival prayer is not performed at Minā. Our master al-Nuʿmān, may God exalt his sanctity, likewise mentioned this in the *Taʾwīl al-Daʿāʾim*.

From the same work: The pilgrim shortens the prayer at Minā, while a Meccan performs it in full there.

From the *Ikhtiṣār*: He may perform as much voluntary circumambulation during the day as he wishes.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that women do not become lawful to the pilgrim until after he performs the Circumambulation of Women? O our master, if someone forgets it until he has returned to his country, or has intercourse with his wife before fulfilling it, is anything required of him?

Answer: If he forgets it and returns to his country, he must send someone to perform it on his behalf, and women do not become lawful to him until it has been fulfilled on his behalf.

If he dies before that, his son performs it on his behalf. If he has intercourse before it is fulfilled, he owes a camel. If he has completed more than half of the Circumambulation of Women and then has intercourse with his wife, he bathes and completes what remains. If he had completed less than half, he owes a camel, bathes, and begins the circumambulation anew from the beginning.

Question: What do you say concerning the Sharīʿa report that the Prophet, may God bless him and his family, shortened the prayer at Minā? O our master, should those who go out for pilgrimage, whether Meccans or others, shorten the prayer at all the pilgrimage stations?

Answer: All of them perform prayer in full in noble Mecca. Outside it they shorten, except the Meccan, who performs prayer in full at Minā.

It is stated in the *Muṣannaf*: The festival prayer is not performed at Minā. Our master al-Nuʿmān, may God sanctify his spirit, said likewise in the *Taʾwīl al-Daʿāʾim*. We have verified from our master, possessor of all, that the festival prayer there is not performed in congregation; rather, each person performs it individually for himself.

Concerning Departing from Minā

It is said in the *Mukhtaṣar al-Āthār*: It is recommended for someone intending to leave Mecca to buy dates there for whatever amount of dirhams he is able, give them in charity, and intend this as compensation for whatever shortcomings occurred from him during his *iḥrām* and pilgrimage.

It also says: One returning from pilgrimage should not hasten excessively in his journey as though he were fleeing from something he disliked toward something he loved. Rather, he should return with tranquility.

From the same work: Prayer is not permissible upon it.

It is said in the *Mukhtaṣar al-Muṣannaf*: Voluntary prayer may be performed there, but not obligatory prayer.

From the same work: He should perform seven circuits around the House—that is, the farewell circumambulation.

From the *Ikhtiṣār*: Between the two columns upon the red marble there is no spot on earth more excellent than it.

Concerning the Independent ʿUmra

From the *Mukhtaṣar al-Muṣannaf*: The independent ʿumra consists of circumambulation, *saʿy*, and shaving or shortening the hair. One who enters *iḥrām* for it abstains from everything from which the pilgrim in *iḥrām* abstains.

Whoever, through ignorance, enters *iḥrām* for two pilgrimages or two ʿumras is regarded as having rejected one of them, whether he explicitly intended that or not.

It is said in the *Kitāb al-Akhbār*: They transmitted that whoever has intercourse with his wife while performing an independent ʿumra before completing its circumambulation or *saʿy* owes a camel and must remain until he performs another ʿumra.

It is said in the *Ikhtiṣār*: One who performs an independent ʿumra enters *iḥrām* for it from the *mīqāt*.

From the Questions Mentioned Above

Question: What do you say concerning a man who reaches the *mīqāt* in Rajab intending both ʿumra and *tamattuʿ*? In which course is the greater reward: that he perform a voluntary Rajab ʿumra and remain in Mecca until the pilgrimage months begin, then enter *iḥrām* from Mecca because of his residence there and perform *tamattuʿ*; or that he perform the obligatory ʿumra in Rajab and then perform an independent pilgrimage?

Answer: There is reward and merit in the Rajab ʿumra.

Concerning Being Prevented and Being Confined

From the *Mukhtaṣar al-Muṣannaf*: If his sacrificial animal is not prevented from reaching its destination, he sends it with someone who will slaughter it and remains in the state of *iḥrām* until the time he has appointed for its slaughter.

This applies when he is prevented after having entered *iḥrām*. If the obstruction is removed before he has left *iḥrām* and he can still catch the pilgrimage, he continues in his state of consecration. If the obstruction is removed after he has already left *iḥrām*, he enters *iḥrām* anew. It is permissible for him to fight one who deliberately prevents him. If someone legally entitled to prevent him stops him from completing what his *iḥrām* requires, this is not classed as *ṣadd* [being barred]; rather, it falls under the category of confinement through illness. Whoever is barred in Mecca from reaching ʿArafāt leaves *iḥrām* by circumambulation, *saʿy*, shaving, and sacrifice. Whoever is barred in Mecca from circumambulation is like one barred from the whole pilgrimage.

From the Questions Mentioned Above

Question: What do you say concerning someone who is prevented from reaching the House after entering *iḥrām* at the *mīqāt*, while he has a sacrificial animal with him? Must he send it onward as the confined person does, or slaughter it where he is? It is mentioned in the Sharīʿa that when the Prophet, may God bless him and his family, was prevented from reaching the House, he slaughtered his sacrificial animal where he was, shortened his hair, and departed.

Answer: If his sacrificial animal is not itself prevented, he sends it with someone who will slaughter it, and he remains in *iḥrām* until the appointed time of slaughter.

If the obstruction is removed before he has left *iḥrām* and he can still catch the pilgrimage, he continues in his consecration. The same applies to a sick person: if he recovers and knows that he can still catch it, he should proceed. If the obstruction is removed after he has left *iḥrām*, he renews his consecration if he wishes. If he returns home, women become lawful to him. But for the one confined by illness, women do not become

lawful, because he must perform pilgrimage the following year, and likewise the ʿumra if that was what he had entered *iḥrām* for.

Concerning Pilgrimage on Behalf of the Chronically Disabled and the Dead

It is said in the *Mukhtaṣar al-Āthār*: As for one who is capable of setting out, nothing suffices except that he go and perform the pilgrimage personally, whether circumstances currently permit him or not, even if he fears an enemy.

For he remains in a condition in which he may hope for the removal of that fear and for the way to pilgrimage to become accessible. Pilgrimage has no fixed deadline; rather, it is incumbent upon a person once in his lifetime. So long as he continues to hope for the opportunity, the obligation remains upon him. If he delays it while possessing the means to go, he has acted wrongly.

From the same work: Whoever takes payment to perform pilgrimage on behalf of another and has some of that payment left over after his expenses may keep the surplus.

From the same work: A man may perform pilgrimage on behalf of a man, and a woman on behalf of a woman.

From the same work: He should intend the pilgrimage on behalf of that person and pronounce this intention at every station, sacred place, and rite of pilgrimage, whether obligatory or Sunna.

From the same work: One who performs pilgrimage on behalf of another should strive to perfect the pilgrimage and fulfill all its rites.

From the same work: He, peace be upon him, said: "Through a single pilgrimage God, Mighty and Glorious, admits three persons into Paradise: the one who bequeathed that pilgrimage be performed on his behalf; the one who executes his bequest after him; and the pilgrim who performs it on his behalf, provided that he exerts himself and fulfills what is obligatory upon him."

From the same work, concerning one who performs pilgrimage for another: At the time of entering *iḥrām*, he should say: "O God, I perform pilgrimage on behalf of so-and-so. Accept it from him and reward me for fulfilling it on his behalf."

He intends and articulates this at every sacred station and at every act of the pilgrimage, obligatory or Sunna.

From the Questions Mentioned Above

Question: What do you say concerning a man who bequeaths that pilgrimage be performed on his behalf with an amount insufficient for someone to travel from his own country, although the deceased had already performed the obligatory pilgrimage of Islam? What is to be done?

Answer: The pilgrimage may be performed on his behalf beginning from whatever point the bequest can fund as far as the *mīqāt*.

If he had been a *ṣarūra* [one who had never performed the obligatory pilgrimage], and his entire estate amounted only to what would cover the required pilgrimage, then pilgrimage and ʿumra are taken from the estate whether he expressly bequeathed them or not.

Question: What do you say concerning what occurs in the *Kitāb al-Akhbār*, that if a *ṣarūra* performs pilgrimage on behalf of another, it suffices both for himself and for the person who commissioned him; but if he later acquires wealth, he performs pilgrimage for himself? What is meant by this?

Answer: He receives reward if he strives to fulfill the rites properly.

If he had vowed to perform pilgrimage and then performed pilgrimage in fulfillment of that vow while still a *ṣarūra*, it suffices as his obligatory pilgrimage of Islam if he intended it as such. Likewise, if he performs pilgrimage on behalf of another while also having vowed pilgrimage, it suffices for fulfillment of his vow.

Concerning Missing the Pilgrimage

From the same work, concerning the statement: Whoever reaches Jamʿ [Muzdalifa] after the people have already departed and the Sun has risen has missed the pilgrimage.

He should convert it into an ʿumra and must perform pilgrimage the following year, unless at the time of entering *iḥrām* he had stipulated that his release from *iḥrām* would occur wherever he was prevented; in that case he is not required to perform pilgrimage the following year, except that if he is a *ṣarūra*—meaning one who has not previously performed pilgrimage—he must perform it whenever he becomes able. Likewise, if he fails to catch the people until after that time, he should circumambulate the House and convert what he has entered into into an independent ʿumra if he was a *qārin* or *mutamatti*ʿ. But if he had entered *iḥrām* solely for an independent pilgrimage, he may not convert it into ʿumra, because he neither entered *iḥrām* for ʿumra nor intended it, unless he returns to the *mīqāt* and enters *iḥrām* for ʿumra there.

It is said in the *Mukhtaṣar al-Muṣannaf*: Whoever enters *iḥrām* for pilgrimage, then reaches Mecca after having missed the pilgrimage, and remains in *iḥrām* until performing pilgrimage the following year, has not thereby fulfilled it.

From the same work: If someone loses consciousness after setting out for the House intending pilgrimage, and his companions pronounce the pilgrimage formula on his behalf and carry him through the rites, this suffices as his obligatory pilgrimage of Islam if he dies in that condition or regains consciousness but remains incapable of performing pilgrimage.

If, however, he recovers and becomes capable, pilgrimage remains obligatory upon him. Whoever is hired to perform pilgrimage bears from his own property whatever expiation becomes necessary because of an act that invalidates or damages the pilgrimage.

It is said in the *Muṣannaf al-Wazīr*: The obligatory pilgrimage and ʿumra are performed on behalf of the deceased whether he bequeathed this or not, for they are in the position of a debt.

It is said in the *Mukhtaṣar al-Āthār*, in the chapter on vows of pilgrimage: Whoever vows an obligatory pilgrimage and then performs pilgrimage in fulfillment of that vow while still a *ṣarūra*, this suffices for his obligatory pilgrimage of Islam, according to what is transmitted from Abū ʿAbd Allāh Jaʿfar ibn Muḥammad, blessings of God upon them both—meaning if he intends it as such.

He likewise said that if such a person performs pilgrimage on behalf of another while having vowed pilgrimage, that pilgrimage suffices for his vow. It is related from ʿAlī, peace be upon him, that he said: Whoever vows to perform pilgrimage but cannot do so should send a camel as an offering and enter *iḥrām*, remaining in a state of consecration while at home until the animal is slaughtered on his behalf.

From Jaʿfar ibn Muḥammad, peace be upon him: Whoever makes a binding vow to walk to the Sacred House of God should walk until he becomes exhausted and unable to continue on foot. Then he may ride and offer a camel.

God does not burden a soul beyond its capacity. Once he has reached the limit of his ability, nothing further is incumbent upon him. A binding vow is one made in obedience to God. Whoever vows to commit an act of disobedience incurs no obligation.

It is said in the *Kitāb al-Akhbār* concerning one who vows to perform pilgrimage on foot but cannot do so: Some transmitted that he should walk until exhausted, then ride; if he cannot perform pilgrimage on foot, he performs it mounted, and this suffices.

Others transmitted that if he cannot walk, he must slaughter an offering and ride. The first transmission is more firmly established. What occurs in the second regarding the command to sacrifice is recommended rather than obligatory.

It is said in the *Muntakhaba*:

If walking was what he vowed, then let him do so until incapacity appears upon him. Then at that point let him offer a sacrifice and ride; one pilgrimage suffices for what became obligatory.

Book of Jihad

Concerning the Obligation of Jihad

From the *Mukhtaṣar al-Muṣannaf*: Jihad is of several kinds. The most excellent is a person's struggle against his own soul concerning what it desires of the things God Most High has forbidden, restraining it from whatever does not please Him.

Then comes jihad against unbelievers, oppressors, polytheists, and rebels, by word and deed according to one's capacity and ability. This is obligatory upon all Muslims.

From the same work: Obedience to the holder of authority is obligatory. Unbelievers, after warning has been given to them, may be fought by whatever means are possible.

It is said in the *Ḍiyāʾ*: A she-camel described as *ʿaḍbāʾ* has a split ear.

It is said in the *Gharībayn*: ʿUbayd said that *ʿaḍb* may also refer to a defect in the ear.

He said: As for the Prophet's she-camel, may God bless him and his family, she was called al-ʿAḍbāʾ, but this does not derive from that meaning; it was simply her name.

From the same work: One says that a person is "from the miscellaneous people" (*min afnāʾ al-nās*) when his lineage or identity is unknown.

It is said in the *Mukhtaṣar al-Āthār*: Whoever possesses the qualities described is among those whom God, Mighty and Glorious, promised what He promised in the verse.

But one who does not possess those qualities, yet fights seeking worldly gain or pride, or is compelled to fight while not safeguarding his religion and not belonging to the category God described in His Book, is among those concerning whom the Messenger of God, may God bless him and his family, said: "God may support…" [the remainder refers to the previously cited tradition].

From the *Taʾwīl al-Daʿāʾim*: According to the linguists, *aʿrāb* properly refers to the miscellaneous tribes of the Arabs, and the collective of *aʿrāb* is *aʿārīb*.

They said that the pure Arabs (*al-ʿarab al-ʿāriba*) are the authentic Arabs, descendants of Ishmael son of Abraham, blessings of God upon them both. The Arabized Arabs (*al-ʿarab al-mustaʿriba*) are those who entered among them and became Arabized—that is, people of miscellaneous origin who mixed with the Arabs and came to speak their language.

From the *Mukhtaṣar al-Muṣannaf*: Jihad is not obligatory upon slaves so long as there is no need for them, nor upon women or the sick, unless their masters take them out on campaign.

A woman may go out with a male relative in order to treat those requiring medical care. If a group sets up a catapult and fires it, and the stone rebounds upon one of them and kills him, his blood-money falls upon the *ʿāqila* of those who fired the catapult. If the person killed was himself among those firing it, his proportional share is deducted from the blood-money. Nothing falls upon someone who merely held a rope or piece of

equipment but did not pull with them. If someone upon whom fighting was not originally obligatory becomes present at the battle, the rules concerning flight from battle that apply to one obliged to fight also apply to him. If a group goes out against another group and stipulates that no one will assist anyone else, the condition is invalid, because God, Mighty and Glorious, has obligated the believer to defend his brother against one who intends him harm and not to refrain from assisting him in obedience to God.

If one polytheist challenges one Muslim to single combat and stipulates that he is safe from the other Muslims apart from the one he has challenged, and the Muslims fear that he will kill or wound their companion, they may rescue their companion without killing the challenger. If the challenger refuses to release him and turns to fight them, they may fight him, because he has violated his own safe-conduct. They should not assist their companion in the duel so long as he possesses sufficient strength and ability to fight the polytheist.

Concerning the Merits of Jihad

It is said in the *Īḍāḥ*: Above every act of righteousness there is another act of righteousness until a man is killed as a martyr in the path of God; and above every act of undutifulness there is another until a man kills one of his parents.

It is mentioned in the *Book of Blood-Money*, in the discussion of the gravity of disobedience toward one's parents, followed by killing or assisting in their killing. What is stated in the *Daʿāʾim* in this chapter—"until a man kills one of his parents"—is correct. It is also mentioned and interpreted in the *Taʾwīl al-Daʿāʾim*, where the parents and their allegorical interpretation are discussed.

Concerning the Merits of Keeping Horses Ready in the Path of God

It is said in the *Ḍiyāʾ*: *Ribāṭ* means remaining stationed at a frontier facing the enemy, and is a verbal noun. *Ribāṭ al-khayl* means horses kept ready for this purpose.

It is said that "so-and-so has a *ribāṭ* of horses," meaning, according to one interpretation, five horses or more. God Most High said: "and of horses kept ready."

It is said in the *Akhbār*: He, may God bless him and his family, said: "The chestnut horses are the best of them, the dark bay ones the toughest, and the black ones their kings."

From the *Mukhtaṣar al-Muṣannaf*: Racing may take several forms.

One is that a person voluntarily contributes some of his own property as a prize for whoever wins, while the loser pays nothing. Another is that one of the two racers pledges something of his own property to the other if the other wins, whereas if he himself wins he merely retains his own property. A third form is impermissible: each competitor contributes something from his own property and whichever wins takes both. Competition in archery follows the same rules as horse racing. An archery competition is not valid until the competitors are equalized regarding the number of shots, the criterion for a hit, the shooting positions, the location and identity of the target, its condition, and the place at which a hit counts.

From the same work: If they stipulate that one shoots with one kind of bow and the other with another kind, that is permissible.

The archers should appoint an impartial arbiter who draws a line for them at the shooting position beyond which they do not pass. There is no harm in taking security for a wager. The holder of the prize has no right to begin the shooting himself or to choose who begins unless this was stipulated. If there was no stipulation and they dispute who begins, lots are drawn; whoever receives the lot begins. If all of them agree to dissolve the arrangement, that is permissible. The one awarded the right to begin may put forward whichever member of

his side he wishes, and the opposing side may pair him with whichever of their own men they wish. No wager is valid in property whose ownership is itself unlawful.

From the *Gharībayn*: al-Naḍrī said concerning the phrase, "Do not seek from them the old blood-feuds by which you had bereaved them in the Age of Ignorance…"

Muḥammad ibn al-Ḥasan said: This means, "Do not hang bowstrings around their necks so that they choke." He says: do not collar them with bowstrings. Mālik ibn Anas used to say that people formerly placed bowstrings around the necks of camels to ward off the evil eye, so they were ordered to cut them off, teaching them that bowstrings cannot repel anything from God's decree. From *Ḍiyāʾ al-Ḥulūm*: *Naḍalahu* in archery means that he defeated him. *Intaḍala al-qawm* means that the people shot arrows against one another. They also say *intaḍalū* concerning poetry and speech when people compete against one another in them. Likewise, *intiḍāl al-ibil* means camels casting their forelegs forward against one another as they travel.

Concerning the Etiquette of Travel

From its *Taʾwīl*: *Waʿthāʾ al-safar* in the language means the hardship and roughness of travel, while *kaʾāba* means a bad and broken appearance caused specifically by sorrow visible upon the face.

From the same work: Refraining from narrating things about one's companions after separating from them means refraining from tale-bearing concerning believers and from mentioning whatever objectionable things may have occurred among them.

From the *Ikhtiṣār*, concerning the statement "he should not stop there for even a *fawāq*": this means without necessity.

From the *Gharībayn*: *Nasala* means "he moved briskly," that is, hastened.

Nasl also means progeny and offspring. In another tradition, some people complained to him of fatigue, so he instructed them to *yansilū*, to walk briskly. In the tradition of Luqmān ibn ʿĀd, "When the people moved at a brisk pace (*nasalan*)" means that when they ran because of a raid or fear, they shortened their steps while moving quickly. *Nasalān* is a pace slower than full running.

From the Questions Mentioned Above

Question: What do you say concerning what occurs in the *Daʿāʾim*, prohibiting a man from traveling alone, and the saying, "One traveler is a devil, two travelers are two devils, but three constitute a company"? O our master, does someone sin if he travels alone or with only one other person, outwardly for trade or another purpose?

Answer: A person does not sin by traveling alone or with one other person, but he encounters hardship. For this reason it was said that fewer than three should not travel together, because if one dies, the other two can take charge of his affairs.

Concerning What Is Due to Commanders and What Is Due from Them

From *Fiqh al-Lugha*: Ibn Khālawayh said that the smallest military unit is the *jarīda*, a detachment separated from the army. Then comes the *sariyya*, numbering from fifty to four hundred. Then the *katība*, from four hundred to one thousand. Then the *jaysh*, from one thousand to four thousand; the terms *faylaq* and *jaḥfal* are likewise used. Then comes the *khamīs*, numbering from four thousand to twelve thousand. The term *ʿaskar* encompasses all of them.

It is said in the *Mukhtaṣar al-Āthār*: Those over whom the Imam, peace be upon him, appoints a commander or places an official must obey him, follow his commands, refrain from what he prohibits, and not precede him in any matter.

For obedience to him is part of obedience to God, His Messenger, and the Imam who appointed and commissioned him. If they disapprove of some aspect of his conduct or see that he has exceeded what he was commanded to do, they should report this to the Imam. Once they have conveyed it to him, nothing further is required of them in that matter. The Imam, peace be upon him, then deals with his affair according to what God Most High shows him. But if the commander openly abandons obedience to the Imam and opposes him, obedience to him ceases to be binding upon them, and they become obligated to fight him together with whomever the Imam appoints for that purpose.

Concerning the Actions That Should Be Taken before Fighting

It is said in the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, forbade assisting oppressors and said: "The oppressor, the one who assists him, and the one who approves of his action are partners in sin."

Concerning Fighting the People of Rebellion

It is said in the *Kitāb al-Akhbār*: The Messenger of God, may God bless him and his family, said: "Do not kill in war except those upon whom [the legal conditions of combat] apply." [The wording transmitted here is defective.]

Concerning the Ruling on Captives

From the *Mukhtaṣar al-Muṣannaf*: There is no harm in detaining a messenger if there is fear that releasing him will enable some stratagem.

It is permissible for the commander to make it appear that he intends one destination while actually intending another. Mutilation is forbidden, as is cutting fruit-bearing trees except where military necessity requires it. A Muslim should not kill his polytheist father. If his father attacks him, he defends himself.

From the same work: The ruling concerning captives belongs to the Imam or to whomever he appoints.

Before distribution, the governor has the option of granting release. Once distribution has taken place, the option of release ceases and whatever each person has acquired belongs to him. If a captive embraces Islam, he remains *fayʾ*. If a man kills a captive after the fighting has ended without authorization, he is disciplined and must pay the value of the captive, which is returned to the common distribution, whether he himself captured him or someone else did. If the ruler of the Muslims permits a group of polytheists to enter the abode of Islam with Muslim captives in order to exchange them, and they enter but demand an excessive ransom, he may prevent them from leaving and compel them to accept the amount of the blood-money if the captives are free persons, or their market value if they are slaves.

From the same work: If a child from the enemy is captured and brought into the abode of Islam without either parent, then dies before reaching an age of understanding Islam, the funeral prayer is performed over him.

If he is brought out together with one parent, or if they are removed at the same time but through separate routes, and one parent was taken out before him, no funeral prayer is performed over the child. If the child was taken out before his parents, the funeral prayer is performed over him. If a captive is taken and claims that he had already been a Muslim but cannot establish proof, his claim is disregarded without evidence, and both he and his property are treated as *fayʾ*.

From the same work: If a captive is compelled to say or do something that Islam does not permit, the ruling of apostasy does not apply unless he accompanied it with actual intention.

There is no harm in exchanging polytheist men and women for Muslim captives held by them, using polytheist men, women, and children who were captured together with their parents, but not children captured without their parents.

Concerning Safe-Conduct

From the *Mukhtaṣar al-Muṣannaf*: Safe-conduct (*amān*) is valid, and its conditions must be observed. It may not be extended beyond the Book of God and the Sunna of His Prophet, may God bless him and his family.

From the same work: If a Muslim gestures to unbelievers in a manner that they understand as granting them safe-conduct, or says, "I granted them safety by the gesture," then it constitutes safe-conduct.

If he says that he did not grant them safety, his statement is accepted. If he dies before saying anything, they are not considered protected by safe-conduct. If a combatant unbeliever has property in the abode of Islam and is killed in enemy territory, everything he left in the abode of Islam becomes *fayʾ*. A spy who enters Muslim territory without safe-conduct may lawfully be killed. If he embraces Islam, he is not killed. If he entered under the guise of a merchant, he is severely beaten and expelled from Muslim lands until he reaches a place of safety. If the enemy's spy is himself a Muslim, he is treated like a combatant unless he offers a plausible excuse of a kind that could reasonably be accepted; he is then warned not to repeat it. If he repeats it, he is punished.

It is said in the *Ikhtiṣār*: A protected visitor (*mustaʾmin*) is prevented from leaving Muslim territory with weapons, riding animals, or a Muslim slave belonging to him; he is compelled to sell the slave within the abode of Islam.

Concerning Peace-Treaties, Truces, and the Jizya

From the *Mukhtaṣar al-Muṣannaf*: Any unbeliever from among the People of the Book who agrees to pay the jizya and requests to be left upon his religion on condition that the jizya be taken from him, that he be permitted to remain upon what he professes, and that the rulings of the Muslims apply to him, must be accepted on these terms.

This applies whether he is a Jew, Christian, Zoroastrian, Ṣābian, or Samaritan. At the time of the covenant, the condition of *ṣaghār* is imposed upon them, meaning that Muslim judgments apply to them when disputes arise among them and they submit those disputes to Muslim courts. The jizya is not accepted from those who are not People of the Book, nor from Arabs who entered a scriptural religion only after the appearance of Islam. As for those whose ancestors already professed such a religion before Islam, their ruling is that of the People of the Book. If doubt arises concerning their status, they are required to produce evidence for what they claim.

From the same work: If they live among the Muslims and collectively violate the covenant, their affair belongs to the Imam. If he wishes, he may punish them without first sending them back to a place of safety; if he wishes, he may disperse them; if he wishes, he may seize their property and place them in prison. Whatever he does of these or similar things is correct.

From the same work, concerning the statement: "They should be dealt with faithfully so long as they remain faithful."

From the same work: Jizya is taken from free adult men in three classes.

The upper class consists of the wealthy: four dinars from those possessing gold, or forty-eight dirhams from those possessing silver. The middle class pays two dinars or twenty-four dirhams. The lower class pays one dinar or twelve dirhams. Nothing beyond this may be exacted from them.

From the same work: They may not construct a new church, synagogue, or fire-temple in Muslim territory, nor establish a new monastery or monk's cell, nor rebuild such structures that have fallen into ruin within Muslim settlements.

It is stipulated for the protected communities that whenever they do something they were commanded not to do, or fail to do something they had undertaken to do, the protection of God, His Messenger, the Imam, and the believers is discharged from them.

From the same work: If the jizya is taken in advance, that is permissible.

If a protected non-Muslim dies after having prepaid the jizya, the portion corresponding to the remainder of the year after his death is returned to his heirs. If he dies owing an accrued portion of the year's jizya, the corresponding amount is taken from his estate for the part of the year that elapsed before his death. If he dies insolvent, the collector of the jizya ranks together with his other creditors. If one of the protected communities changes from his religion to another religion whose adherents are permitted to remain under jizya, he may be left upon the religion to which he converted. If he converts to a religion whose adherents may not be retained under jizya, nothing is accepted from him except Islam. If he refuses, he is killed; his ruling in this respect is that of an apostate. The protected communities may not bury their dead in lands from which they themselves are prohibited from residing. If they do so, they are ordered to remove the remains of their dead from those lands.

From the same work: [A treaty may also be concluded] on condition that some of the Muslims' rights be remitted.

In cases of necessity, it is permissible for Muslims to pay the enemy compensation in exchange for peace. None of these arrangements, however, is inherently obligatory.

From the same work: A truce may not be concluded in perpetuity.

If someone ignorant of the Sunna concludes such a treaty, the agreement is upheld for ten years and whatever exceeds that period is invalidated. If Muslims need to renew the truce, they enter into a second agreement after the first has expired. If the protected people violate the truce in whole or in part, their protection is discharged. The same applies if some of them violate it and the others neither repudiate the violation nor dissociate themselves from it, nor assist in preventing the violator or handing him over to the Imam. **Marginal note:** The prohibition against transgressing against treaty-protected people means those with whom a covenant has been concluded allowing them to remain upon their religion in return for payment of the jizya.

From the *Gharībayn*: *Khaḍar* is a kind of vegetation; its singular is *khaḍra*. It refers to herbage whose root lies deep in the earth, such as *naṣī* and *ṣilyān* grasses.

Concerning the Ruling on Booty before Distribution

From its *Ta'wīl*: That is, before one-fifth has been taken from it and the portion due to God's Friends has been apportioned.

From the *Mukhtaṣar al-Muṣannaf*: One may take from it only enough for one's immediate need, and nothing of it may be sold. If something is sold, its price belongs to the booty.

Concerning the Distribution of Spoils

From the *Mukhtaṣar al-Muṣannaf*: *Fay'* is divided into three categories.

The first belongs exclusively to the Messenger of God, may God bless him and his family, and to the Imams who succeed him; no one shares with them in it. This includes what no Muslim fought for, what was surrendered voluntarily, what the wind drives from the property of polytheists into the sea or deposits from it upon land without expenditure or effort, gifts brought to him by kings and leaders of communities, and

whatever he selects for himself from booty before its distribution. The second category is what the protected communities surrender by treaty in return for being confirmed in their lands, and what is taken as one-tenth from enemy merchants trading in Muslim territory. This likewise belongs to those entitled to the one-fifth and is not transferred to others.

It includes land conquered by force and owned by the Muslims, whose inhabitants are then allowed to remain and work it in return for land-tax and poll-tax; the tithes taken from protected non-Muslims when they trade in Muslim territory; and the property left by a protected non-Muslim who dies without an heir. The one-fifth in these matters follows the same ruling as God's share in the one-fifth of war booty.

From the same work: One-fifth is obligatory in everything gained as booty by the Muslims.

The Imam supervises the collection of the one-fifth and its distribution among those entitled to it.

From the *fayʾ* are also paid the stipends of judges, magistrates, officials, and those whose assistance the people entitled to *fayʾ* cannot dispense with.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that four-fifths of the booty belong to those who fought for it, with two shares for a horseman and one for a foot-soldier? O our master, are slaves and the people of the army market counted among them if they participated in the fighting?

Answer: Slaves receive no regular share, except from the miscellaneous household goods and discarded effects if they were present at the battle. They have no allotted share.

As for the people of the market, if they fought, a share is assigned to them.

Concerning Fighting the People of Rebellion

It is said in the *Iqtiṣār*: Whatever rights the people of rebellion have against the people of justice are fulfilled for them once they return to obedience, and whatever obligations they owe are taken from them.

Whatever they inflicted upon the people of justice through an interpretation they believed legitimate—whether prescribed punishment or destruction of property—is not demanded from them. Whatever they did without such an interpretation is demanded from them. Whatever property of the people of justice is found still existing in their hands is taken back from them whether they originally seized it under an interpretation or without one.

From the *Mukhtaṣar al-Muṣannaf*: Reconciliation between Muslims is permissible.

But if one of two groups rebels against the other and the oppressive group openly takes up arms against the wronged group, the ruling of reconciliation ceases to apply and the Imam must fight the rebellious group until he returns it to the judgment of God Most High. The believers are obligated to rise with him and assist him in fighting them. The people of rebellion are fought and killed by all the means by which polytheists are fought and killed. If a group from among the protected non-Muslims assists the rebels and fights the people of justice, their protected status is discharged. The Imam may cut off the stipend of anyone who fails to attend him in fighting the people of rebellion. If the two armies meet and a believer kills another believer, saying, "I thought he was one of the rebels," he is made to swear concerning what he believed and owes blood-money and expiation. If the people of rebellion repent, they are not held liable for what they destroyed of the property of the people of justice during the fighting.

Whatever property is found intact in their hands is returned to its owner. Whatever their military camp contained is booty and is divided as war booty. A truce between the people of justice and the rebels is permissible just as it is permissible between the Muslims and polytheists when the Imam's welfare requires it. Misappropriation of booty is not permissible. The copying of this book was completed on the third day of Rabīʿ al-Ākhir in the year 1425 of the Hijra of the Prophet, may God bless him and his family. It was typed on

the computer by the servant of our beneficent master, the exalted *dāʿī*, our lord Muḥammad Burhān al-Dīn—may God prolong his noble life—Muḥammad ibn al-Shaykh Ṭayyib ʿAlī, Madras.

Book of Marginal Notes

Volume Two

In the name of God, the Most Merciful, the Compassionate.

Concerning Encouragement to Seek Livelihood and Moderation in Seeking It

It is said in the *Mukhtaṣar al-Āthār*: A man came to the Messenger of God, may God bless him and his family, and said:

> "O Messenger of God, I have a soul that is never content with anything of this world and is never satisfied by it."

The Prophet, may God bless him and his family, said to him:

> "Say: O God, make me content with Your decree, bless for me what You have bestowed, and make me satisfied with what You have apportioned to me, so that I do not desire the hastening of what You have delayed or the delaying of what You have hastened."

Al-Ṣādiq, peace be upon him, said:

> "Among the supplications of us, the People of the House, is: O God, do not burden me with seeking what You have not apportioned to me, lest my preoccupation with it become prolonged and distract me from obedience to You, while I am unable to attain any of it. O God, whatever You have apportioned to me, bring it to me with chastity and ease, and reform me by that through which You reformed the righteous, for the righteousness of the righteous is through You."

He said: "My father—may God be pleased with him—used to say that this was among the supplications of David, peace be upon him." He, peace be upon him, said: "God has apportioned sustenance among His servants, and beyond it He has much bounty that He has not apportioned. So ask God Most High of His bounty."

It is said in the *Mukhtaṣar al-Āthār*, concerning the phrase "my awaiting this affair": this means awaiting the manifestation of the *amr*.

ʿAlī ibn al-Ḥusayn, peace be upon him, said: "God has made livelihood ten parts: nine of them are in trade, and one in all other things."

From the *Mukhtaṣar al-Āthār*: Al-Ṣādiq, peace be upon him, said to a man by way of counsel:

> "When you go out in the morning or evening seeking livelihood and desire success in it, perform two cycles of prayer. When you have finished the *tashahhud*, say:
>
> 'O God, I have gone out this morning'—if it is morning—or say, 'I have gone out this evening'—if it is evening—'seeking of Your bounty as You commanded me. So provide me from Your bounty with lawful and wholesome provision, and grant me well-being in what You provide me.'

Say this three times. Then perform another two cycles and, after the *tashahhud*, say:

> ‘I have gone out this morning’—if morning—or ‘I have gone out this evening’—if evening—‘by God’s power and strength, without any power or strength of my own, but by Your power, O Lord, and Your strength. I acknowledge before You, O Lord, [my lack of] power and strength. O God, I ask You for the good of this day, if it is daytime, or the good of this night, if it is nighttime, and I ask You to provide me from Your bounty with lawful and wholesome provision, driving it to me through Your power and strength while I remain in chastity and modesty.’

Say this three times, then rise and pursue what you seek.” Pasted text

Concerning Things Whose Sale Is Prohibited

It is said in the *Mukhtaṣar al-Muṣannaf*: If a protected non-Muslim purchases a Muslim slave, whether young or old, male or female, the purchase is valid, but he is compelled to sell the slave to Muslims and the Muslim is not left in his possession.

Likewise, if the slave of a protected non-Muslim embraces Islam, he is compelled to sell him. A Muslim may not remain in the ownership of an unbeliever. Similarly, if he purchases a Qurʾānic codex, the purchase is valid, but he is compelled to sell it. If a protected non-Muslim sells a slave on condition that he retains an option for three days and the slave embraces Islam during that period, the seller retains his option. If he cancels the sale, he is then compelled to sell the slave. If the slave of a Christian embraces Islam and the Christian is compelled to sell him, but another Christian later establishes a prior right to the slave after the purchaser has emancipated him, the emancipation is invalid. The claimant takes him and is compelled to sell him. If a Muslim buys grape juice from another Muslim but does not take possession until it becomes wine, the sale is invalid.

If one Christian purchases wine from another and it turns into vinegar after both have embraced Islam, the purchaser has the option either to accept it or leave it.

It is said in the *Maṭlab fī Fiqh al-Madhhab*: If the seller is a protected non-Muslim, there is no harm in taking the price from him; it is lawful for him. If the seller is a Muslim, it is not permissible, because of the Prophet’s saying, may God bless him and his family, “The price of wine is illicit gain.” This statement concerns the Muslim.

If the person collecting a debt knows that the payment derives from such a source, it is preferable for him not to consume illicit gain.

It is said in the *Mukhtaṣar al-Āthār*: Permission was given to accept the prices of all things whose sale is forbidden from someone who sells such things for his own account. The prohibition applies to the one who sells and buys them.

As for taking their price from someone into whose possession it has come by a legitimate claim, there is no harm. There is likewise no harm in trading with polytheists and accepting as payment money in their hands that came to them as the price of things whose sale is unlawful. Most of their wealth consists of usury and illicit gains, yet it is taken from them as jizya and as payment for things they purchase from Muslims, and it becomes lawful for the one who takes it from them by right. Pasted text

It is said in the *Mukhtaṣar al-Īḍāḥ*: The owners of land upon which rain falls may not sell the water that runs off from it after their land has taken what it needs.

The Prophet, may God bless him and his family, adjudicated concerning the floodwaters of Mahzūr that the owners of date palms should retain water up to the ankles, and the owners of crops up to the straps of the sandals, after which the water is released to those below them. It has been said that the prohibition against selling water means selling well-water while it is still in the well. It has also been said that it refers to selling surplus water beyond the needs of livestock: those owning the livestock well have first right to its water, but if anything remains beyond their need, people share equally in it. It has also been said that the prohibition against selling water may refer to selling the flow of water in a canal for a day or night because the amount is

unknown. Another interpretation of the prohibition against selling surplus water is that a person waters his own land and then pours the remainder onto the ground rather than allowing anyone else to take it.

In my view, the correct interpretation is what I have mentioned from the *Mukhtaṣar al-Īḍāḥ*. Whoever purchases grazing rights for fifty dirhams, less, or more, and then wishes to bring another person in to graze alongside him and charge him money may do so, provided he does not take from him an amount equal to what he himself paid while continuing to graze there. Thus, if he paid fifty dirhams and his own flock's share of the grazing is worth one dirham, there is no harm in taking forty-nine dirhams from the other person. But he may not sell access for fifty dirhams while himself continuing to graze, nor for more than fifty. If he himself no longer grazes there, he may [transfer it], unless he has performed work upon the pasture that gives it additional value, such as digging a well or cutting a canal; in that case he may sell it for more. No one may reserve pasture and sell it unless it lies upon land belonging to him. Even there, refraining from reserving it would be more cautious.

It is said in the *Mukhtaṣar al-Āthār*, concerning the prohibition against selling fire where it is not embodied in something possessed: if the fire is contained in property such as firewood, charcoal, or some other material in which fire is produced, selling it is permissible because the material is property.

It is said in the *Mukhtaṣar al-Īḍāḥ*: The sale of *majar* was prohibited. This means selling what is in wombs. It has also been said to mean selling the camel or other animal that is still within the belly of a she-camel. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa statement that God Most High hates a man who, after the afternoon prayer, swears that he was offered such-and-such a price for his merchandise, whereupon another person, believing him, buys it, although he is lying? O our master, does this threat not also apply to someone who swears before the afternoon prayer?

Answer: It applies to one who swears both before and after it, but an oath after the afternoon prayer is graver.

Question: What do you say concerning the Sharīʿa prohibition against selling cats? O our master, is this a prohibition making the sale unlawful?

Answer: It is not a prohibition of unlawfulness, but a disciplinary prohibition.

Question: What do you say concerning what occurs in the *Daʿāʾim*: if there is abundant food or other merchandise in a town, so that people can readily find what they wish to purchase, there is no harm in hoarding it. O our master, what is meant by "merchandise" here? Does this apply to things other than food?

Answer: "Merchandise" here likewise means food, because of people's need for it at a time of scarcity. The word "or" here expresses uncertainty.

Question: What do you say concerning small children who cry and wail because they want toys, musical instruments, or similar things to occupy themselves with? May those caring for them or others buy such things for them or instruct someone to do so, given that the noble Sharīʿa prohibits buying and selling instruments of amusement?

Answer: They should not be made accustomed to anything belonging to amusements.

Question: What does our master say concerning [the custom] in our country whereby gazelle hide has upon it a thin plate, approximately ten carats in weight, of beaten silver or gold, and people knowingly buy and sell it although they know it is hide from a dead gazelle? Is its sale and purchase permissible? May our master graciously answer, whose ransom we are, God Most High willing.

Answer: Whatever is known to be carrion hide is impure and prayer may not be performed in it.

As for the sale, if the transaction concerns the gold or silver attached to it, there is no harm. If it is not known with certainty to be carrion hide, prayer may be performed in it and it is treated as pure. Pasted text

Concerning Sales Involving Uncertainty (*Gharar*)

It is said in the *Mukhtaṣar al-Īḍāḥ*: There is no harm in selling the hides upon cattle or sheep at the place [of slaughter], but it is not permissible to sell a sheep with the condition that its hide be included separately. "At the place" means at the slaughtering place at the time of slaughter.

It is said in the *Dhāt al-Bayān*: If the seller acknowledges that he knows what he is selling and the purchaser what he is buying, the sale is valid, even if each knows it only by description rather than direct inspection. On this basis deeds of sale are written.

It is said in the *Mukhtaṣar al-Āthār*: Permission was given to sell mineral-bearing earth for dinars hand-to-hand, even if it later yields more or less [gold] than the amount paid, because at the time of purchase it is neither silver nor gold but merely earth.

It is said in the *Mukhtaṣar al-Āthār* concerning selling wool while still upon the backs of sheep, and hides likewise, before shearing or skinning.

From the same work: The sale of hides before they are removed from the animal was prohibited.

From the same work: *Ṣakka* means a written document, and a *ṣakk* upon a man means a debt recorded in such a document. Thus *ṣukūk* means debts. Pasted text

Concerning the Sale of Fruit

It is said in the *Mukhtaṣar al-Āthār*, concerning the sale of fruit once some of it has ripened: even if no additional fruit subsequently develops, the price may be attributed to what had already ripened at the time of sale.

The common jurists do not permit the sale of fruit for several years, claiming that this is *gharar*. Yet they allow its sale once signs of ripeness have appeared in some of it, and they include within the sale whatever later develops even though, at the moment of sale, it had neither ripened, formed, nor shown signs of maturity. But this is precisely what they objected to and rejected, for they objected that part of the sale would concern something not yet in existence. Yet in the transaction they permit, part of what is sold likewise does not yet exist, and part is something whose sale is prohibited because its ripeness has not yet appeared. They nevertheless allow its sale together with the portion already ripe because the price may be regarded as applying to the portion whose ripeness had appeared.

Most of those who reject the sale of fruit for several years rely upon a general report that they claim to transmit from the Prophet, may God bless him and his family, namely that he prohibited "the sale of years" (*bayʿ al-sinīn*), without mentioning fruit or anything else. If authentic, however, this is a general and ambiguous report. The interpretation of the Imams makes clear that what is intended is not what the common jurists have understood. If they insist upon taking the report in its unrestricted sense, they must apply it to everything falling under the expression. For *sinīn* in Arabic may mean periods of time as well as years of hardship. They say, "The *sinīn* followed one another upon us," meaning hardships and drought. One says, "This is a *sana* year," meaning a year of famine and distress.

On that interpretation, the prohibition would apply to everything sold during periods of hardship, so that every sale made in such circumstances would be invalid.

In figurative usage, "selling the years" might also mean selling something during years or for payment deferred until years later, and many interpretations are possible. It is therefore preferable to follow what has

been explicitly explained by the Imams, especially where legal principles bear witness to it and subsidiary rulings branch from it.

It is said in the *Mukhtaṣar al-Āthār*, concerning the prohibition of *muzābana*: grapes still on the vines may not be exchanged for raisins, nor grain once it has formed ears and kernels for wheat.

It is said in the *Ikhtiṣār*: Crops may not be sold before they form ears if the price is wheat, unless they are sold on condition that they be harvested immediately in their present state.

If sold on condition that they remain until they form ears and kernels, this is impermissible. If bought for something other than wheat, however, there is no harm whether they are harvested immediately or left until the ears form.

It is said in the *Dhāt al-Bayān*: Green crops sold on condition that they be harvested in their present state may validly be sold. If sold on condition that they remain until fully mature and are then harvested, the sale is invalid.

It is said in the *Mukhtaṣar al-Āthār*: This ruling likewise includes trees bearing fruit that has reached the stage attained by date-fruit at the time of pollination. Unless the purchaser expressly stipulates that the fruit is included, it belongs to the seller. Pasted text

Concerning Fraud and Deception Prohibited in Sales

It is said in the *Mukhtaṣar al-Āthār*: Fraud in measuring and weighing (*tatfīf*) consists in taking extra when receiving and giving less when paying out.

God, exalted be His remembrance, said: “Woe to those who give short measure, who, when they take measure from people, take in full”—that is, when receiving from them—“but when they measure or weigh for them, cause loss”—that is, when giving to them. This applies to sales and exchanges. As for gifts, alms, and voluntary donations, whoever gives the full amount gains greater reward, but if he gives less, nothing is incumbent upon him. If, however, the payment is an obligation, he must give it in full. Jaʿfar ibn Muḥammad, blessings upon him, forbade different measures and weights within a single town because this leads to confusion and deception.

It is said in the *Mukhtaṣar al-Āthār*: They, peace be upon them, prohibited buying and selling with defective dinars and dirhams when their defect is obscure and can be recognized only by experts, while ordinary people are ignorant of it and may be deceived.

But if their inferiority is well known and readily recognizable, and they circulate at an appropriate rate, or if they are recognized coinages differing openly in value, there is no harm in buying and selling with them. The same applies to copper coins and other currencies whose nature is known rather than concealed.

It is said in the *Mukhtaṣar al-Āthār*: The purchaser of a milk-retained animal (*muṣarrāt*) has the option regarding it for three days after milking it.

If he wishes, he keeps it; if he wishes, he returns it and returns with it one *ṣāʿ* of dates in compensation for the milk he consumed. If he obtained no milk from it, he returns it and owes nothing. This option is distinct from the general three-day option for animals. A *muṣarrāt* may be returned even if the seller disclaimed the ordinary three-day option, provided the seller concealed the deliberate retention of milk. But if he informed the purchaser of it before the sale, disclaimed liability for it, and told him how many days the animal had been left unmilked, and the purchaser accepted this, he may not return it on account of the *taṣriya* unless he discovers some other defect.

It is said in the *Dhāt al-Bayān*: The People of the House, blessings of God upon them, set the limit for meeting incoming caravans at a morning’s or evening’s journey, approximately one *barīd* or less. A *barīd* is twelve miles.

Whoever purchases goods beyond that distance does not fall within the prohibition and is like one who purchases in the countryside or villages. According to the People of the House, any purchase concluded within the distance they specified is rescinded because it is a prohibited sale.

It is said in the *Mukhtaṣar al-Āthār*: Al-Ṣādiq Jaʿfar ibn Muḥammad, blessings upon him, fixed the limit for intercepting incoming goods and prohibited doing so within a morning's or evening's journey. Beyond that distance it is not considered interception.

It is said in the *Mukhtaṣar al-Īḍāḥ*: A morning's or evening's journey is four *farsakhs*.

It is said in the *Mukhtaṣar al-Āthār*, concerning permission for a purchaser to ask the seller for an additional amount after the seller has fulfilled what was due: the seller may give it if he wishes and may decline if he wishes.

If such an addition was stipulated in the contract of sale and its amount was unknown, the sale is invalid. If its amount was known, it is not invalid. Pasted text

Concerning Prohibited Forms of Sale

From the *Mukhtaṣar al-Āthār*: The Prophet prohibited selling what is not in your possession. This means selling something guaranteed for delivery at a future time when goods of that kind are not ordinarily available—for example, grapes or fruit during a season in which they do not exist.

From the same work, concerning a man who has a debt owed to him by a craftsman and assigns him work in discharge of that debt on terms they agree upon: this is invalid.

The worker receives the customary wage if either or both parties proceed with the arrangement; any excess is returned or any remaining amount owing to him is paid. If the debt was payable at a fixed future date and the creditor agrees to accelerate payment before maturity in return for receiving only part of what is owed, there is no harm.

From the same work: Likewise, if a debt belongs jointly to several persons and they divide it so that each agrees to collect only the portion assigned to him, this is not permissible. Whatever each collects belongs jointly to them all.

From the same work: If a man purchases food when it is abundant among the people in order to store and trade it, there is no harm so long as people can readily obtain what they need.

If food becomes unavailable, he may not hoard it while allowing people to perish. He is compelled to bring it out and sell it.

From the same work: They transmitted that the Messenger of God, may God bless him and his family, instructed a man who had sold a house to invest its price in another similar property.

This is a disciplinary instruction, because it is also transmitted that when landed property is sold and its price is not put into something similar, it is liable to be consumed or destroyed. He, peace be upon him, forbade buying and selling in mosques and at the time of the Friday prayer [and] before sunrise. Al-Ṣādiq, peace be upon him, said: "The second call to prayer on Friday"—meaning the call pronounced before the Imam while he is upon the pulpit—"is the one from which buying and selling become unlawful until the Friday prayer has been completed."

It is said in the *Muntakhaba*:

Sales, it is said, come to an end at sunset and at sunrise.

It is said in the *Mukhtaṣar al-Muṣannaf*: If two persons upon whom Friday prayer is obligatory buy and sell during the prohibited period, the transaction is not rescinded.

It is disliked to sell timber to someone who will make it into a cross or idol, or cloth to one whom one knows will use it to cover a cross or idol, and analogous cases. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the prohibition in the *Daʿāʾim* against combining a sale and a loan? Some say this means that one man lends another money and then sells something to him because of that loan. O our master, may we be your ransom, how precisely is this to be understood?

Answer: It is when the borrower says, "Lend me such-and-such an amount," and the lender says, "I will lend it to you on condition that you sell me such-and-such." This is a loan that brings a benefit.

Question: What do you say concerning what occurs in the *Daʿāʾim*, that one form of *kāliʾ bi-l-kāliʾ* [debt exchanged for debt] is when a man has a debt owed to him by a craftsman and assigns him work in discharge of it? O our master, may we be your ransom, what exactly does this mean?

Answer: He may not assign work to him in discharge of the debt when the wage for that work is itself made payable from the debt.

Question: What does our master say concerning the Sharīʿa ruling that if a man buys food from another and the seller states that he has already measured it, and the purchaser believes him and takes it on the basis of that measurement, there is no harm? O our master, may the purchaser then resell it before measuring it himself?

Answer: There is no harm in the purchaser selling it before remeasuring it if he has taken possession and accepted the seller's statement concerning the measure.

Question: It is stated in the Sharīʿa that food may not be sold before possession is taken. O our master, what is meant here by "food," and does sesame fall within this category?

Answer: Our master—may God perpetuate his dominion and his shade—said concerning sesame that the following occurs in the *Daʿāʾim al-Islām*:

From Jaʿfar ibn Muḥammad, peace be upon him: "Whoever buys food and wishes to sell it should not sell it until he has measured or weighed it, if it is something measured or weighed. But if he transfers it to another at cost price (*tawliya*), there is no harm in such transfer before measurement or weighing."

This is what occurs in the *Daʿāʾim*. Our master, possessor of all, said: What is meant by *tawliya* is that if a man purchases something sold by measure or weight but has not yet measured or weighed it, he may transfer it to another at his original cost, saying, "I assign this purchase to you," or "I transfer this purchase to you." This is permissible before measurement or weighing. But if he sells it for profit and gain, such that a second sale is concluded between the first purchaser and the second purchaser before measurement or weighing, that second sale does not become valid until the measuring or weighing has occurred. For before measurement or weighing, the property is still legally part of the first seller's property and has not yet entered the ownership of the first purchaser. If it perishes before measurement or weighing, the loss belongs to the first seller, who returns the price to the first purchaser. How, then, could the first purchaser sell something before he owns it?

This ruling applies to everything sold by measure or weight, and sesame is among the things sold by measure or weight.

Question: What do you say concerning what occurs in the Sharīʿa, that al-Ṣādiq, peace be upon him, was asked about wheat exchanged for water on deferred terms and permitted it? O our master, explain this to us, whose ransom we are.

Answer: Purchasing things on deferred terms for wheat—that is, *burr*—was prohibited in every case except water, for which permission was granted.

Question: What do you say concerning houses belonging to soldiers that the ruler has plundered? Some of those soldiers are his slaves, others his servants, and others servants of different persons. The ruler orders the

contents of their houses—timber, bricks, and other things—to be sold in the market, and members of the *daʿwa* and others purchase them. What is their ruling? Kindly provide what will relieve them from this difficulty and put them upon the correct path.

Answer: If such property belongs to the public treasury, its disposition belongs to the one appointed over the affairs of God's Friends. If it belongs to them [the dispossessed persons], it has been taken unlawfully.

Question: Concerning a man who wishes to give another person three hundred *tankas* as *muḍāraba*. The owner of the capital says to the working partner: "One hundred *tankas* is an interest-free loan to you, while two hundred belong to me; with respect to the profit and loss on the full three hundred, one-third belongs to you and two-thirds to me." Is this permissible?

Answer: A loan that brings a benefit is prohibited.

If, however, the loan was made before the *muḍāraba* without being connected to the transaction, and afterward the *muḍāraba* was concluded, then the working partner may say to the capital-owner: "Here is this property, together with the amount of yours that I owe you; whatever I trade with from it, its profit and loss are divided between us according to whatever proportion we mutually agree." This is permissible.

Question: What does our master Ḥasan ibn Idrīs ibn al-Ḥasan ibn ʿAbd Allāh ibn ʿAlī al-Anf—may God sanctify his spirit—say concerning an unjust ruler who becomes angry with one of his commanders or officials and orders people to plunder his property, after which they plunder and sell it? May a Muslim buy such property from them in a Muslim market?

Answer: If it is known to be plundered property, neither its sale nor purchase is permissible unless the Imam of Justice orders it. Pasted text

Concerning Currency Exchange (*Ṣarf*)

From the *Mukhtaṣar al-Āthār*: Abū Jaʿfar, blessings of God upon him, said: In an exchange of gold for gold or silver for silver, no copper coins or other things may be inserted in order to increase one side beyond the weight of the other.

Abū ʿAbd Allāh, blessings of God upon him, said: No excess is permissible in such transactions even if one of the two types is superior to the other. That is, when gold is sold for gold, silver for silver, or anything measured or weighed for another thing of the same kind, it is permissible only weight for equal weight where it is weighed, or measure for equal measure where it is measured. If pure refined gold of the finest quality is purchased with inferior gold, the exchange remains invalid unless weight is equal to weight so long as the name "gold" applies to both. Only when the inferior material has become pure copper, or copper predominates so that it is attributed to copper and no longer called gold, may it be purchased with gold as copper is purchased, even at unequal amounts. The same principle applies to silver exchanged for silver, and to everything sold by measure or weight, however great the difference in quality between the two kinds.

From the same work: Wheat for wheat, barley for barley, flour for flour, dates for dates, rice for rice, raisins for raisins, millet for millet, and *sult* for *sult* must be exchanged measure for measure. Whoever gives or demands an excess has committed usury.

From the *Mukhtaṣar al-Āthār*: No option [to rescind] applies in currency exchange.

If a man buys one hundred copper coins for a dirham, pays the seller the dirham, and takes possession of fifty coins, but the remaining coins then cease to circulate as currency, the sale becomes void with respect to the remaining fifty, and the seller returns half of the dirham he received. If the coins do not cease circulation but merely fall or rise in price, the sale remains valid and the purchaser is entitled to the remaining coins. If he buys copper coins for a dirham, takes possession of them, but has not yet paid the price when they cease circulating, the sale remains valid and the dirham remains a debt upon him. If he buys fruit or something else

with copper coins, takes possession of what he purchased, and the coins then become invalid currency, the sale is rescinded and he returns what he took if it remains, or its value if it has been consumed.

From the same work: If a man has two orphans under his guardianship, he may not exchange his own dinars belonging to one of them for dirhams belonging to the other.

If a man owes another one thousand dirhams and gives him dinars saying, "Exchange these and take your due," and the resulting dirhams perish before the creditor takes his right, the loss belongs to the debtor and the creditor is merely a trustee. The same applies if the dinars perish before they are exchanged.

From the same work: If an orphan owns dirhams and the guardian exchanges them at the current market rate, this is not permissible when the purpose is speculative hoarding. But if he exchanges them to meet the orphan's maintenance expenses, that does not fall under the prohibition.

It is said in the *Kitāb Ḥudūd al-Maʿrifa* of our master al-Nuʿmān: Usury (*ribā*) includes unequal exchange in sales involving things sold by measure or weight.

It also includes retaining wealth that God has made obligatory to disburse, with the intention that what one keeps for oneself may increase. God has informed us that He destroys such increase in His saying: "God obliterates usury and causes alms to grow"; and, "Whatever you give as usury so that it may increase in people's wealth does not increase with God; but whatever you give as zakāt seeking God's face—those are the ones who receive manifold increase." Pasted text

From the Questions Mentioned Above

Question: What do you say concerning a man who takes money from another and agrees to pay him usury, then after a long period the owner of the money asks for his capital. The debtor says: "I have already paid you a great deal in the form of usury. Calculate it; if what I have paid you as usury does not equal your capital, then demand only the remainder." Does he sin by doing so, given the emphatic prohibition in the noble law against transactions involving usury?

Answer: Usury and dealing in it are forbidden, but he incurs no sin by counting what he has paid toward repayment of the principal until the principal has been fully restored.

From the *Yanbūʿ*: Whoever inherits property from someone without knowing that the deceased had dealt in usury may consume what he inherits.

If he specifically knows which portion is usurious gain, he returns it to its owner. If he cannot identify it, he may consume the inheritance, and the sin rests upon the person who acquired it.

Question: What do you say concerning a guardian who holds dinars and dirhams belonging to an orphan and wishes to exchange them for copper coin or something else? Is this permissible?

Answer: If a man has two orphans under his guardianship, he may not exchange his own dinars belonging to one against dirhams belonging to the other.

If the orphan has dirhams and the guardian exchanges them at the current rate, this is impermissible when done for speculative hoarding. If he exchanges them for the orphan's maintenance, there is nothing upon him. Pasted text

Concerning the Exchange of Foods with One Another

From the *Mukhtaṣar al-Muṣannaf*: It is permissible to sell one ostrich egg for twenty chicken eggs. Pasted text

Concerning the Option of the Two Parties to a Sale

It is said in the *Dhāt al-Bayān*: "The two parties to a sale retain the option so long as they have not separated, except in a sale involving an expressly stipulated option."

This means that each of them has the option either to confirm the sale or rescind it so long as they have not physically separated after concluding the contract. The phrase "except in a sale involving an option" is an exception to this rule. It means that the sale may be concluded on condition that both parties, or one of them, retain the option concerning that sale until a specified period or without a specified period. In that case, their physical separation does not make the sale irrevocable until the stipulated period has expired. The person to whom the option was granted may rescind the transaction at any point before the end of that period. Once the period expires, he has no further right of rescission and the sale becomes binding, whatever the length of the stipulated period. If no period was specified, the option remains with the person to whom it was granted whenever he chooses to exercise it.

This is based on the saying of the Messenger of God, may God bless him and his family: "Muslims are bound by their conditions so long as those conditions do not contradict the Book of God. Whoever stipulates a condition contrary to the Book of God, his condition is invalid." This is the doctrine of the People of the House, blessings of God upon them.

From the same work: By "the two parties to the sale" (*al-bayyiʿān*) are meant the seller and the buyer.

Al-Khalīl ibn Aḥmad said likewise, noting that the Arabs use *biʿtu* in the sense "I bought," and *lā tabiʿ* in the sense "do not buy."

It is said in the *Maṭlab*: If someone purchases a house or other property on condition that the seller retains an option to recover the property upon returning an equivalent amount of the price within a specified period, and the purchaser needs to sell it during the option period while imposing upon the next purchaser the same condition under which he himself bought it, I have found no explicit text concerning this case.

The view closest to correctness is that he should transfer it to another at the same original price, with neither increase nor decrease, subject to the original seller's option, because such a transfer at cost (*tawliya*) is expressly recognized. If he sells it with the permission of the original seller who holds the option against him, the sale is valid.

From the *Mukhtaṣar al-Āthār*: Whoever buys something subject to an option for a fixed period and the thing perishes before the period ends, before the purchaser has chosen to confirm it, the loss falls upon the seller.

The purchaser must swear that he had neither chosen nor accepted the item. If he refuses to swear, liability falls upon him.

From the same work: The seller of an animal has no option after the parties separate.

If the purchaser causes any new change in the animal before the three days expire, the purchase becomes binding upon him.

From the same work: If at the time of concluding the sale the seller expressly disclaims the one-year liability and the three-day option applying to animals, and the purchaser releases him from both, that release is binding and the purchaser may not later claim anything under either.

From the *Mukhtaṣar al-Īḍāḥ*: The separation that makes the sale binding means physical separation, as we have said—for example, one of the parties getting up and leaving the place where they had been sitting for another location.

From the *Ikhtiṣār*: Whoever purchases something subject to an option for a fixed period, incurs expenses upon it, and derives profit from it, then elects to return it, must return whatever profit he derived while being reimbursed for whatever he spent upon it.

Marginal note: If a man purchases a slave-woman while the seller retains an option, then has intercourse with her without the seller's knowledge, and the seller later rescinds the sale, the purchaser owes her customary bridal due. If she gives birth, he owes the value of the child. If the purchaser remains silent while possessing an option until its stipulated period expires, the sale becomes binding.

From the *Mukhtaṣar al-Muṣannaf*: If the purchaser dies while holding the option before exercising it, the purchase becomes binding and the option is not inherited from him. The same applies if both parties possessed the option and both die.

He also said: If seller and purchaser both possess an option, neither the confirmation nor rescission of one becomes effective against the objection of the other until they come together and agree.

It is said in the *Maṭlab*: The option is not inherited unless they expressly stipulate that the person possessing it shall have the right for his heirs to inherit the option after his death until the end of its stipulated period. In that case, the option belongs to him and, if he dies, to his heirs until the period expires.

From the *Mukhtaṣar al-Muṣannaf*: If seller and purchaser disagree as to whether an option was stipulated, the statement of the one denying the stipulation is accepted.

If they agree that an option existed but disagree over its duration, the statement of the one acknowledging the shorter period is accepted. If they disagree over whether the period has expired, the statement of the one denying its expiration is accepted.

From the same work: If a man purchases a slave-woman and she looks at his private parts or kisses him, while he himself neither does anything of this nor requests it, he retains his option.

If a purchaser emancipates a slave-woman while the seller retains an option over her, the purchaser's emancipation is invalid. If the seller emancipates her, it is valid. If a purchaser returns an item under his option and the seller says, "This is not the thing I sold you," the purchaser's statement is accepted with an oath, while the seller must provide evidence. But if the purchaser returns it because of a defect and the seller denies that he sold that item, the seller's statement is accepted with an oath and the purchaser must provide evidence. If the hand of a slave is cut off while in the purchaser's possession and the seller retains the option, then if the seller elects to take him back he receives him together with half his value, while the purchaser pursues the offender for liability. If a man buys a slave but before taking possession the seller cuts off the slave's hand, the purchaser may either accept him at half the original price or reject him.

If the purchaser cuts off the slave's hand and then the seller cuts off his leg, the purchaser may accept him at three-quarters of the price or reject him, while owing half the price.

From the same work: If the purchaser stipulates that the option belongs to another person, then says, "I choose to confirm the sale," while the person holding the option says, "I do not consent," the sale nevertheless becomes binding upon the purchaser.

The same ruling applies to the seller if he stipulates the option for another person. Whoever purchases oil or wheat and sees part of it is regarded as having inspected the whole. Whoever takes two garments, each having a known price, and receives them on condition that he will keep whichever he chooses at its price and return the other, then if both perish while in his possession he owes half the price of each, whether their prices were equal or different. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning a man who purchases a specified item, takes possession on condition that he has the option for two days, and pays its price or part of it, after which it perishes during the option period? Does the loss fall upon him or upon the seller?

Answer: The loss falls upon the purchaser because he stipulated the option only after the sale had already become binding.

As for one who takes two garments and receives them on condition that he will keep whichever he wishes at its stated price and return the other, if both perish while in his hands he owes half the price of each, whether their prices were equal or different.

Question: What do you say concerning what occurs in the Sharīʿa, that if someone becomes entitled to possession of goods after seller and purchaser have separated and then finds in them a defect from which the seller had not exempted himself, he may return them? O our master, may they be returned for a defect even when it is an obvious defect of a kind readily noticed by people?

Answer: Whoever purchases goods and finds in them a defect that he already knew about is bound by the purchase even if the seller did not disclaim liability for it.

If he discovers a defect and then offers the item for sale, makes use of it, or—if it is a slave-woman—has intercourse with her or employs her; or, if an animal, rides it; or, if a garment, wears it; or does something comparable, this constitutes acceptance on his part and he has no further claim. If someone purchases goods consisting of several items, whether all of one kind or of different kinds, and a defect is found in some of them, then if that item has an equivalent, the seller may replace it with an equivalent free of defect and nothing further is incumbent upon him. If it has no true equivalent and the defect lies in the principal or major part of the goods for which the transaction was undertaken, the purchaser may return the entire lot because of that defect. If the defect lies only in an insignificant, secondary part, he may not return the whole transaction because of it, but he is entitled to the value of the defect.

If someone purchases goods, discovers a pre-existing defect, but another defect has arisen while they were in his possession, he is told: either return the amount by which the new defect diminished the goods and recover your purchase price, or retain the goods and receive the value of the original defect. An exception applies to a slave-woman with whom he has had intercourse. If he later discovers a defect, he is entitled only to the value of the original defect. If, however, he discovers that she was pregnant, he may return her and must return with her half of one-tenth of her value if he had intercourse with her before learning of the defect. Male and female slaves may be returned on account of defects arising within "the year," including insanity, leprosy, vitiligo, and *qarn* [an obstructive genital condition]. Liability for death in slaves lasts three days, unless the seller expressly disclaimed such liability and the purchaser accepted this at the time of sale; in that case the loss falls upon the purchaser.

Question: What do you say concerning what occurs in the *Daʿāʾim*, that there is no warranty in a sale made with a disclaimer of liability or in a "sale of inheritance"? O our master, what is meant here by a sale of inheritance?

Answer: The seller bears no warranty when selling something he inherited. Pasted text

Concerning the Rules of Defects

It is said in the *Dhāt al-Bayān*: In every purchased item found to contain a defect that would normally justify return, the purchaser has the right to return it provided that he did not previously know of the defect, the seller did not disclaim liability for it when concluding the sale, and the purchaser did not use the item, derive benefit from it, or offer it for sale after learning of the defect.

If any of these occurred, it constitutes acceptance of the defect by the purchaser and he no longer has the right to return the item because of it.

From the same work: Two men brought a dispute before the Messenger of God, may God bless him and his family. One had purchased a slave from the other, employed him for a period, then discovered a defect and sought to return the slave and recover his price.

The Messenger of God ruled that he could do so. The seller said: "O Messenger of God, he has employed him for some time." The Messenger of God replied: "The yield belongs to the one who bears the liability" (*al-ghulla bi-l-ḍamān*). In some transmissions the wording is, "The revenue belongs to the one who bears the liability" (*al-kharāj bi-l-ḍamān*). The meaning is that whatever benefit the purchaser derived remains lawful for him even if he later returns the item because of a defect, because had the item perished while in his possession, the loss would have been his. Since he bore the liability, the benefit belongs to him. The same

work says that most jurists among the common schools agree with the People of the House that the yield belongs to the purchaser because he bore the liability. Some distinguished the case of animals, saying that if an animal gives birth or reproduces, it is returned together with its offspring.

This is not the doctrine of the People of the House or of those common jurists who agree with them, except where the offspring was already conceived at the time of sale or had already been born. As for offspring conceived and born while in the purchaser's possession, they belong to him even if he returns the mother. If he returns her while pregnant, the fetus belongs to the seller to whom she is returned because it has not yet emerged and separated so as to count as yield; rather, it is an increase within her. Whether the item has increased through improvement or diminished without any wrongful act by the purchaser, it returns to the seller in whatever condition it then possesses.

From the same work: If an animal or other purchased item perishes while suffering from a defect unknown to the purchaser, the purchaser may recover from the seller the value of the defect, while the loss itself falls upon the purchaser just as the yield belonged to him.

The same applies if the purchased item was a slave whom he emancipated or some other property that he gave away or donated as charity.

From the same work: If purchased goods consist of multiple items of one kind or different kinds and a defect appears in some, then if the defective item has an equivalent, the seller replaces it with an equivalent free of defect and nothing further is incumbent upon him.

If no equivalent exists and the defect affects the principal and major part of the goods for which they were purchased, the purchaser may return the whole transaction because of that defect. If the defect concerns only an insignificant secondary portion, the goods are not returned, but the purchaser receives the value of the defect.

From the *Īḍāḥ*: No judge should rule upon a defect alleged by the purchaser until the defect has been established.

If it is an internal defect visible only to women, he instructs one free Muslim woman to examine it; two women are preferable. Once they report the defect, he rules accordingly.

From the same work: If a man buys a slave in exchange for a slave-woman and they exchange possession, then discovers a defect in the male slave but has meanwhile caused a change preventing his return, the slave is valued once as sound and once as defective.

If the defect reduces his value by one-tenth, the purchaser recovers one-tenth of the value of the slave-woman, and likewise according to whatever proportion the defect diminished him. The same rule applies to animals and all merchandise. If the slave is executed while in the purchaser's possession by retaliation for an offense committed while he belonged to the seller, the purchaser recovers the entire purchase price. Whoever sells something but has not yet received its price, then buys it back for less than he sold it, may not do so unless some defect has arisen in it. If he buys it back in exchange for other property, it is permissible. Once he has received the entire price, he may buy it back for less or more.

From the *Mukhtaṣar al-Muṣannaf*: Whoever purchases a slave without knowing that the slave owes a debt, then discovers it, may return him unless the seller pays the debt on his behalf or the creditors release him.

Whoever purchases a female servant on the representation that she is Khurāsānī but discovers that she is Sindī may return her.

From the same work and from the *Yanbūʿ*: Running away and urinating in bed are defects.

Pregnancy is a defect in a slave-woman but not in livestock. Premature graying of the hair is a defect; a blackened tooth is a defect, as is a missing tooth. Theft is a defect. If someone purchases a male slave and discovers that he is effeminate, or a female slave and discovers that she commits fornication, this is a defect;

unbelief is likewise a defect. If someone sells a slave-woman stating that she is pregnant, the sale is valid, since this amounts to disclosure and disclaimer of that defect.

From the *Mukhtaṣar al-Īḍāḥ*: If a man purchases a slave and the seller did not inform him that the slave has a free wife, the seller must accept rescission and return the price because the separation [of the spouses] arose through the first seller, and he must therefore undo the sale.

If someone sells a slave-woman who has a free husband without informing the purchaser, the purchaser has the option either to return her or retain her. If both husband and wife are slaves and the owner sells the female slave, selling her effects her divorce from his male slave.

From the same work, concerning the statement that a slave may be returned because of "defects arising within the year": I said, "How is he returned because of defects arising within the year?"

He replied: "This means the beginning of the year, namely Muḥarram. If you purchase a slave and one of these conditions arises between that time and Dhū al-Ḥijja, you return him to his owner." Al-Ṣādiq, peace be upon him, was asked how witnesses should testify concerning insanity. He said: "They need not testify concerning the whole condition; rather, it is sufficient that they say: 'We saw him insane,' or 'he suffers from insanity,' or 'he behaves irrationally,' or 'he falsely accused someone,' or 'he committed fornication,' or 'he killed someone and neither prescribed punishment nor retaliation was carried out against him.'"

From the same work: If someone purchases a servant and she develops a fever during the warranty period, then he brings her to the seller, informs him of her condition, produces witnesses to the fever, and wishes to return her during the warranty period, but the seller refuses to receive her, the purchaser is required to swear by God that he retained her only in the hope that she would recover and not because he had decided permanently to keep her. He may then return her.

From the same work: A *ratqāʾ* is a woman whose genital passage has no opening except the urinary passage; *qarn* is a genital disorder that prevents intercourse.

From the same work: *Ibāq*—running away—is a defect justifying return when evidence establishes that the slave had already run away while belonging to the seller. Pasted text

Concerning *Murābaḥa*

From the *Mukhtaṣar al-Āthār*, concerning the statement that the purchaser may be granted the same period of delay that the seller had, unless the seller says to him at the time of contracting:

> "This cost me such-and-such, and I sell it to you for such-and-such,"

without saying:

> "at a profit of such-and-such."

From the same work, concerning a man who purchases a slave-woman and has intercourse with her and then asks whether he may sell her by *murābaḥa*: there is no harm in doing so.

Likewise, if he buys an animal and rides it, a slave and employs him, or a garment and wears it. If his use has diminished the item, it is safer to disclose this to the purchaser. If he does not disclose it, however, nothing is incumbent upon him.

From the Questions Mentioned Above

Question: What do you say, O examiner of the treasuries of the *daʿwa*, concerning a man from among the people of the *daʿwa* whose cloth is approached by someone from the people of the outward law or another person wishing to buy it. The buyer says:

> "What is the price of this cloth? Tell me truthfully how much this cloth cost you, swear to it, and add one or two dirhams; whatever you say, I will pay."

The buyer is known for causing harm and injury, so the seller fears that he may harm him or force down the price. The seller therefore increases the amount he claims the cloth cost him and swears that this was its cost, after which the buyer either pays him that amount or bargains it down. Does the cloth-owner incur sin in this?

Answer: This is like a *murābaḥa* sale. He must not increase the stated cost. If he swears to something untrue, he has sinned. Pasted text

Concerning *Salam* (Forward Purchase)

It is said in the *Mukhtaṣar al-Āthār*: A *salam* contract has four conditions: the thing for which advance payment is made must be described by a known description; its measure or weight must be specified if it is something measured or weighed; the place at which it is to be received must be stated; and the term at which delivery becomes due must be specified.

From the same work: They, peace be upon them, permitted cancellation (*iqāla*) of a *salam* contract, in whole or in part, provided that the purchaser receives back only his original capital. If anything is added to it, that is not permissible.

From the same work: Jaʿfar ibn Muḥammad was asked about a man who advances payment for a specified thing but then accepts something of inferior quality, or is given something superior. He said: "If this occurs by mutual consent, there is no harm."

From the *Mukhtaṣar al-Īḍāḥ*: If someone makes advance payment for food or an animal to a man who possesses neither crops nor animals at the time, but who will purchase the item when the appointed term arrives, there is no harm in that.

From the same work: It was disliked for a man to make a purchase at whatever the prevailing market price might be unless they agreed upon a definite price.

From the *Ikhtiṣār al-Āthār*: Al-Ṣādiq, peace be upon him, said: If someone enters into a *salam* contract for the produce of a particular village or specified place, the contract is not valid until the crop has begun to ripen. If he does not specify that particular place, the *salam* is valid and remains guaranteed as a debt in the liability of the seller.

Permission was given for *salam* with someone who does not presently possess the goods being purchased in advance, provided he guarantees them as a debt upon himself; when the term comes due, he purchases them and delivers them.

It is said in the *Dhāt al-Bayān*, in explaining the prohibition of sales involving uncertainty and sales by description: a transaction of this kind is not permissible in *salam* unless it is concluded upon four conditions: the goods are described by a known description; delivery is fixed for a known term; the goods contracted for must be available at the time when delivery falls due, for if they are unavailable then the *salam* becomes a sale of what one does not possess; the purchaser must pay the price, for if he does not, it becomes a debt exchanged for a debt (*kāliʾ bi-l-kāliʾ*); and the place of delivery must be specified. A sale by description conforming to these conditions is permissible.

From the *Mukhtaṣar al-Īḍāḥ*: He, peace be upon him, was asked concerning a man who advances twenty dinars in a *salam* transaction and the recipient of the advance then borrows ten dinars or whatever amount he wishes from him. He said: "That is not proper if it is a loan that brings a benefit."

It is said in the *Mukhtaṣar al-Muṣannaf*: If the *salam* concerns goods of a specified quality and the debtor brings something superior and says, "Take this and add one dirham for me," that is not permissible.

From the same work: It is permissible to advance something measured by volume in exchange for something sold by weight, or something weighed in exchange for something measured by volume. But it is not permissible to advance something measured for something of the same measured category, nor something

weighed for another weighed item, except in the case of dinars or dirhams, because they are the prices and values of things.

Copper coins may be advanced for weighed goods except copper itself, since that is of the same genus. A sword may be advanced for something sold by weight except iron, since iron is of its own genus. If someone receives dirhams as the capital of a *salam* transaction and later finds counterfeit coins among them, then if the counterfeit portion amounts to one-half or more, the *salam* is invalid to that extent. If it is less than half, the defective coins are replaced and the *salam* remains as it was. If the parties disagree, the recipient saying, "The counterfeit coins amount to half of the capital, so half the *salam* is void," while the purchaser says, "They amount to only one-third," the statement of the recipient is accepted. If the recipient offers early delivery of what he owes and the purchaser refuses to take it, he is not compelled to accept it. A *salam* contract containing a condition of option is not valid unless the person possessing the option relinquishes it before the parties separate.

From the same work: *Salam* is not permissible in birds, their meat, precious stones, honey still mixed with its wax, because these consist of two different and indeterminate things, nor in musk while still in its musk-pod.

It is permissible in perfumes that can be described by a description independent of mere shape and by reference to their recognized type; where experts differ over such matters, one refers to those knowledgeable about them. The same applies to all other merchandise. There is no good in *salam* involving glass except broken glass capable of being determined by weight; if, however, it is a known kind whose specifications are not uncertain, there is no harm. If the parties disagree over the quality stipulated in the *salam*, the purchaser saying, "You stipulated superior quality for me," and the debtor saying, "Rather, I stipulated medium quality," they both swear and the transaction is rescinded. If both produce evidence, the purchaser's evidence prevails. If they disagree over the term, the purchaser claiming that it has fallen due and the debtor claiming a later date, the purchaser's statement is accepted with an oath, while evidence belongs to the debtor.

If they deny the *salam* after the capital has been received and disagree over its amount, the debtor's statement is accepted with an oath. The same applies if they disagree over the place of delivery.

From the same work: There is no harm in *salam* for wool, clarified butter, or milk. But if the advance is specifically for the wool, butter, or milk of particular identified sheep, it is invalid.

From the same work: If a man advances ten dirhams for two *qafīzes* of wheat, each falling due at a different time, this is not permissible unless each *qafīz* is separately contracted for at a specified price and specified term.

From the Questions Mentioned Above

Question: What do you say concerning a man who buys food, an animal, or clarified butter from another man for cash, on condition that the seller deliver the goods after one month, while the purchaser fixes the price according to the market rate prevailing on the day of delivery? Is this permissible?

Answer: This is like *salam*. It is not permissible to purchase at "the market price" unless a definite price is agreed upon.

There is no harm in *salam* for wool and clarified butter for a known term during which goods of that kind will be available. If they will not be available at that time, the *salam* is invalid. If the advance is specifically for the wool, clarified butter, or milk of identified sheep, it is not permissible.

Concerning Conditions in Sales

From the *Mukhtaṣar al-Muṣannaf*: Conditions are divided into three categories.

One category consists of cases in which the sale is valid but the condition is void—for example, where the seller stipulates that the purchaser may not transmit the sold property by inheritance, or something similar. A

second category consists of cases in which both the sale and the condition are invalid—for example, where the purchaser stipulates that the seller must make him a loan; or purchases wheat on condition that the seller cook it for him; sesame on condition that he press it into oil; or a sheep on condition that it is pregnant, or that its offspring be included, or that it yield a specified quantity of milk, and analogous conditions. A third category consists of cases in which both the sale and the condition are valid—for example, where he sells a slave-woman on condition that the purchaser emancipate her, or a house on condition that the seller continue to reside in it for one month.

From the same work: If someone purchases something on condition that he provide a guarantor for his person, whether the guarantor is named or not, the transaction is invalid because it is unknown whether that person will agree to provide the guarantee.

If the guarantor is present before the seller and all agree to the arrangement, it is permissible. If someone purchases something on condition that he provide collateral but does not specify what the collateral will be, the transaction is invalid. If someone purchases a fish and finds within it an unpierced pearl, the pearl belongs to him. If he purchases an animal that eats refuse and finds a jewel or some other object in its belly, it belongs to the seller if the seller claims it; otherwise it has the ruling of lost property. It is permissible to exclude a known portion from the sold property or from the price—for example, "I sell you four parts of this cloth for one dinar except one-sixth," or to buy one hundred walnuts except twenty. But if someone buys one hundred sheep except twenty, that is invalid because of the differences in value among individual sheep.

Concerning Judicial Rulings in Sales

From the *Mukhtaṣar al-Īḍāḥ*, concerning one who sells merchandise and afterward claims that he made a mistake concerning its price: the matter is examined. If the discrepancy is gross and the loss manifest, the seller swears by God, other than whom there is no god, that he speaks truthfully and that the matter is as he has stated. His statement is then accepted. He may also have evidence establishing his mistake. The purchaser is told: "If you wish, take it at its actual value; if you wish, leave it."

From the *Maṭlab*: If someone appoints an agent to purchase a particular slave-woman for him, but the agent purchases her for himself using the principal's money, then has intercourse with her and fathers a child by her, both the slave-woman and her child belong to the principal. The child's lineage is not established through the agent because he had intercourse with a woman who was not lawful for him.

From the *Mukhtaṣar al-Āthār*: Whoever purchases a slave and finds property in the slave's possession—the property belongs to the seller unless the purchaser stipulated its inclusion in the sale.

If he stipulated it, the seller has no right to it even if its value exceeds the price of the slave. This is because the property belongs to the slave and is merely in his possession, and when it exceeds the price of the slave it does not enter into the prohibited category of usury—particularly if it consists of merchandise, or if it is cash while the slave was purchased for merchandise, or if it is gold and the slave was purchased for silver, or silver and the slave was purchased for gold.

It is said in the *Ikhtiṣār*: Whatever a judge or ruler sells in satisfaction of a debt, on behalf of a child, or in a similar matter, the one whom he orders to conduct the sale bears no warranty or liability. Liability rests upon the property of the person on whose behalf the sale was made, or upon his person if he possesses no property.

It is said in the *Iqtiṣār*: If the ruler sells property belonging to an incapacitated person, an absent person, or a child, warranty attaches to the one whose property was sold, not to the ruler or his appointed agent.

From the same work: Related slaves within prohibited degrees of kinship are not separated by sale unless they are adults and consent to it. If slaves belonging to protected non-Muslims embrace Islam, they are sold away from those owners.

From the *Mukhtaṣar al-Āthār*: Jaʿfar ibn Muḥammad al-Ṣādiq, peace be upon him, said concerning a man who bought merchandise from another and afterward asked the seller to rescind the sale, but the seller refused; the

purchaser then relinquished part of the price to induce him to rescind, and the seller agreed. He said: "The seller may take what the purchaser relinquished if he actually rescinded the sale. But if the seller purchases the item back from him at a price lower than that for which he sold it, this is permissible. A true *iqāla* cannot be made by deducting something from the price."

It is said in the *Mukhtaṣar al-Īḍāḥ*: If someone purchases a garment for ten and asks the seller to rescind the sale, but the seller refuses, and the purchaser then says, "Take five and take your garment back," and the seller does so, the rescission becomes binding but he must return the five.

If someone returns a garment to the seller and the seller refuses to accept it except for a reduction in price, this is invalid. If they act in ignorance and the seller takes it and subsequently sells it for more than the original price, he must return the excess to the first owner. But if he purchases the garment back from the purchaser in a new sale for a lower price, that is permissible. Compensation may not be taken merely in return for consenting to an *iqāla*, unless there are two distinct contracts of sale.

From the *Mukhtaṣar al-Muṣannaf*: Whoever sells merchandise to a man and afterward agrees to rescind the sale in return for something the purchaser relinquishes from the price may take what was relinquished.

Whoever sells something without having yet received its price and then buys it back for less than he sold it for may not do so unless a defect has arisen in it. If he purchases it back for merchandise rather than cash, that is permissible. If he has already received the entire price, he may subsequently buy it back for less or more.

From the same work: If someone purchases a slave-woman in exchange for a slave, possession is exchanged, the purchaser emancipates her, and then it is discovered that the slave he gave in exchange was actually free, the emancipation of the slave-woman is invalid.

From the Questions Mentioned Above

Whoever purchases a slave-woman, camel, or cow that is pregnant when neither seller nor purchaser knew of the pregnancy and no condition regarding it was stipulated at the time of sale—the offspring belongs to the purchaser. Whoever commits fornication with another man's slave-woman and then purchases her while she is pregnant may not approach her until she gives birth. When she gives birth, the child may be sold even if it was conceived by him, because "the child belongs to the marriage-bed, while the adulterer receives the stone." Whoever purchases merchandise, takes possession, but leaves it in the seller's house after possession, saying, "I will pay you the dirhams," then if the goods perish in the seller's house before the three days expire, the loss belongs to the purchaser. If the purchaser pays after the three days, the seller has the option whether or not to deliver the goods, while the purchaser has no option unless a defect appears.

Whoever purchases a male slave, female slave, or riding animal and it dies within the three-day period, the loss belongs to the seller unless the purchaser caused some new change in it.

Concerning the Rules of Debts

From the *Mukhtaṣar al-Muṣannaf*: Whoever lends to a child or mentally incapacitated person, who then consumes what was lent, has no claim for compensation. When the child reaches adulthood or the incapacitated person recovers, nothing is owed by them.

Whoever lends to a slave who is legally restricted from transactions has no enforceable claim while the slave remains enslaved; after emancipation, he may pursue him for it. If a protected non-Muslim dies leaving wine or pigs while owing debts, the judge appoints another protected non-Muslim to sell them and pay his debts from the proceeds.

From the same work: A loan is not permissible in animals. If someone nevertheless makes such a loan and the animal remains intact, it is returned; if consumed or lost, its value is owed.

The same applies to real property and clothing. As for cotton, flax, copper, unworked iron, and similar things, they may be lent by known weight, and an equivalent quantity is owed. [The text appears defective here.] A loan is valid in things determined by measure, weight, or number where the individual units do not vary significantly. Fresh aromatic plants, vegetables, and similar things, as well as vessels of gold, silver, and other precious materials, are not treated as loans but as borrowed objects (*ʿawārī*). If the borrower sells them, his sale is invalid, and if they perish he owes their value.

From the same work: If a debt has fallen due and the debtor says to his creditor, "I cannot find anything with which to pay you, but sell me something on deferred payment so that I may sell it and pay you from its proceeds," and the creditor does so, there is no harm in that.

From the *Mukhtaṣar al-Āthār*: A *mukātab* slave came to ʿAlī, peace be upon him, asking for assistance, but he had nothing at the time to give him. ʿAlī said: "Shall I tell you something better than that?"

He said: "Yes. What is it?" He said: "Something I heard the Messenger of God, may God bless him and his family, say: 'Even if you owed a debt as great as Mount Ṣabir, God would discharge it for you.' Ṣabir is a mountain in Yemen." The *mukātab* asked: "What is it?" He said: "Say: O God, make what You have made lawful sufficient for me against what You have forbidden, and enrich me through Your bounty so that I have no need of the bounty of anyone besides You."

It is said in al-Harawī's *Gharībayn*: *ʿĪna* is when a man sells merchandise to another for a known price payable at a stated future date, then buys it back from him for less than the price for which he sold it. This is disliked.

If, however, in the presence of the person seeking *ʿīna*, he purchases merchandise from a third party for a known price and takes possession of it, then sells it to the seeker at a higher deferred price, after which the purchaser sells it back to the original seller for cash at a lower price, this too is called *ʿīna*. It is less objectionable than the first form and is considered permissible by some. It is called *ʿīna* because the seeker obtains ready cash (*ʿayn*), for he buys the merchandise only in order to sell it immediately for present money. The prohibited form of *ʿīna* is for a person to take more dirhams than he originally gave. If merchandise or some other property intervenes genuinely between the two transactions, the sale becomes lawful between them. Al-Ṣādiq, peace be upon him, was asked concerning a man who says to another: "Buy such-and-such merchandise for me, and I will purchase it from you on deferred payment with an increase of such-and-such." He said: "There is no harm in that."

From the Questions Mentioned Above, from the *Mukhtaṣar al-Āthār*

Question: What do you say concerning a man who is owed a debt by another, but the debtor dies or disappears, whereupon the creditor intends to give the debt away to him as charity for God's sake? Is the debtor thereby released from liability, given that the noble Sharīʿa states that a charitable gift becomes valid when accepted by the recipient whether possession has occurred or not?

Answer: If the creditor gives the debt as charity to the deceased debtor and seeks no compensation in return, the debtor's liability is discharged.

If a man advances dirhams to another and has him formally witnessed when payment is made, then later demands the money and the debtor denies owing him anything, and the creditor produces two witnesses before the judge who testify for him, while the debtor asks that the creditor also swear an oath together with the two witnesses, the creditor may swear. If he refuses, he has no claim.

Concerning Assignment of Debt and Suretyship

It is said in the *Dhāt al-Bayān*: If a man says to another, "Whatever this man owes you is upon me," without specifying the amount, then if he later specifies what the debtor owes and the creditor accepts the guarantee from the guarantor, the amount becomes due from the guarantor when the creditor demands it.

If no amount had been specified and the creditor later claims a particular amount, while the guarantor denies it, the claimant must produce evidence. Once the debt is established, the guarantor must pay it from his own property. If the original debtor had instructed the guarantor to assume liability, the guarantor may recover from him what he paid once liability is established by acknowledgment without contrary intention. If the debtor did not instruct him to guarantee it, the guarantor cannot recover from him unless evidence establishes that the debt truly belonged to the debtor. He may, if he wishes, require the debtor to swear that the debt was not his, that he never acknowledged it, and that he never instructed the guarantor to guarantee it. If the debtor refuses to swear, and the guarantor swears that the debtor instructed him to guarantee it, the guarantor may recover from him.

From the same work: If several persons jointly guarantee an obligation for another person, the creditor may demand the whole from whichever of them he wishes unless they expressly stated that each is liable only for his proportional share.

From the *Mukhtaṣar al-Muṣannaf*: If the person whose presence has been guaranteed is absent in another land and evidence establishes this, the guarantor is granted enough time for the journey there and back. If he does not produce him after that, he is imprisoned.

If the guaranteed person presents himself to the claimant and says, "I deliver myself to you from the guarantee of so-and-so," the guarantor is released. The same applies if another person delivers him on behalf of the guarantor. If a man owes another money and a third person guarantees it on his behalf, and the creditor releases the original debtor, that is valid. The creditor may not then pursue the original debtor unless the judge declares the guarantor insolvent or the guarantor dies before payment.

From the same work: If a debt is transferred to an insolvent person and the creditor who accepts the transfer did not know of his insolvency, he may return to the original transferor for his right even if he had released him, because he was deceived.

If he knew of the transferee's insolvency and nevertheless accepted the transfer and released the transferor knowingly, he may not return to him. If the transferred debt is presently due and the transferee accepts it while solvent, but the creditor voluntarily gives him additional time until he becomes insolvent, the creditor may not return against the transferor. Assignment of debts is permissible between strangers and relatives in all kinds of debt.

From the same work: If a man guarantees another person "by his person," "by his face," "by his body," or by an unspecified share of his body, he is a guarantor for his appearance.

If the guarantor dies, or the person whose appearance was guaranteed dies, a personal suretyship becomes void. If a man guarantees another's dirham debt at that person's request while the original debt is deferred, and the guarantor names no separate term, his liability is deferred until the same date as the original debt. If the guarantor dies before the term falls due, the guaranteed amount becomes immediately due from his estate, but his heirs may not recover from the original debtor until the original term. If the principal debtor dies before the term, the debt becomes due from his estate but does not become due against the guarantor until the original term. A guarantor of money is not discharged merely by producing the person of the debtor. Suretyship is not valid for prescribed punishments, retaliation, or entrusted property, unless the guarantor guarantees compensation if the trustee wrongfully consumes or destroys it.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that when a man guarantees another man's appearance until a specified term and the term arrives before he produces him, the guarantor is imprisoned? O our master, should he first be granted time in which to bring the guaranteed person?

Answer: If evidence establishes that the guaranteed person is absent, the guarantor is given sufficient time for the journey there and back. If he then fails to produce him, he is imprisoned.

The guarantor is released from personal suretyship if the guaranteed person himself presents himself to the claimant and says, “I have delivered myself to you from the guarantee of so-and-so,” or if another person delivers him on the guarantor’s behalf. If a man owes another money and a third person guarantees it, and the creditor releases the original debtor, that is valid. He may not pursue the original debtor unless the judge declares the guarantor insolvent or the guarantor dies before payment. Producing the debtor does not release a guarantor of money.

Question: What do you say concerning a man who says to another, “Whatever this man owes you is upon me,” without specifying an amount, and the claimant later demands his right from the guarantor and establishes by evidence how much is owed? Must the guarantor pay it himself and then recover it from the original debtor?

Answer: If the claimant accepted that suretyship from the guarantor, the guarantor must pay the established amount if he acknowledges the claimant’s statement. If he denies it, the claimant must prove his right by evidence.

The guarantor may then recover from the original debtor if the debtor had instructed him to assume the guarantee. If the debtor had not instructed him, the guarantor cannot recover from him unless evidence establishes that the debt was indeed upon him. The guarantor may require the debtor to swear that the debt was not his, that he did not acknowledge it, and that he did not instruct the guarantor to guarantee it. If the debtor refuses to swear and the guarantor swears that he was instructed to assume the guarantee, the guarantor may recover from him.

Question: What do you say concerning a man who, at another’s instruction, guarantees a debt in dirhams payable at a future term, then dies before the term falls due? Is it paid from the guarantor’s estate or from the principal debtor’s property?

Answer: It is paid from the guarantor’s estate, and his heirs recover it from the original debtor when the original term arrives.

If the principal debtor dies before the term, it is paid from his estate rather than from the guarantor’s property.

Concerning Legal Incapacity and Insolvency

From the *Kitāb al-Taʿaqqub wa-l-Intiqād*: God, Mighty and Glorious, said: “Do not keep your hand chained to your neck, nor extend it completely.”

Correspondingly, in outward legal judgment, the hand of one who squanders his property must be restrained. Likewise, if someone who possesses wealth deprives himself of reasonable maintenance, he is not to be left to destroy himself and his dependents. The extravagant person is restrained, his property is removed from his control, and both the squanderer and the excessively miserly person are placed in the position of someone under guardianship: they do not exercise authority over themselves or others.

From the *Maṭlab fī Fiqh al-Madhhab*: It is transmitted from the pure Imams that puberty is recognized by emission of semen and by the appearance of pubic hair.

When these signs are absent, age serves as the criterion. People differ in this respect: some attain puberty at eleven years, which is the earliest age at which it ordinarily occurs; some at thirteen years, which is the middle period; and some at fifteen. A girl’s puberty is recognized by the same general signs, but she has two additional signs specific to females and necessarily indicating puberty: menstruation and pregnancy. Whenever a girl menstruates or becomes pregnant, she is legally adult. If she gives birth, she is adjudged to have been adult six months before delivery, because six months is the minimum term of pregnancy.

From the *Īḍāḥ*, from Abū ʿAbd Allāh, peace be upon him: “When a boy reaches thirteen years, his good deeds and evil deeds are recorded and his transactions are valid unless he is foolish or deficient.

When he reaches fourteen and enters his fifteenth year, both man and woman are considered adult whether or not the signs have appeared. If a woman menstruates before fourteen, she has reached puberty; if a boy has a nocturnal emission before fourteen, he has reached puberty."

From the *Mukhtaṣar al-Muṣannaf*: If legal restriction is removed from a person and it later becomes clear that he is still not financially sound, the restriction is restored.

His transactions during the interval are then examined: what accorded with sound management remains valid; whatever did not is rescinded. Whenever he becomes sound in judgment, the restriction is lifted; whenever he becomes foolish, it is reimposed. If an adult under restriction emancipates a slave, the emancipation is valid, but the slave must work to pay his value. If he declares a slave to be *mudabbar*, the slave serves him until his death; if he dies before his sound judgment has been established, the slave works to pay his own value. Any bequest he makes at death that is reasonable, free of extravagance or foolishness, and directed toward charitable purposes is valid. If an adult who squanders his property marries, his marriage is valid, but any amount stipulated for the woman beyond the customary bridal due is void. If he divorces her before consummation, she is entitled to half of the valid bridal due from his property.

If an adult under restriction confesses to intentional homicide, he may be executed; if to theft, his hand may be cut; if to false accusation, the prescribed punishment applies. If a boy reaches adulthood while already dissipating his wealth but his matter is not brought before the judge until after he has sold, gifted, and donated property, then when the case is brought before the judge, the judge invalidates all of these transactions. If he has already consumed the prices he received, after the judge rescinds the sales the restricted person bears no liability for the prices he had taken.

From the same work: A debtor may be imprisoned for every debt except a debt owed by a child to his parents or grandparents through them.

A father may, however, be imprisoned for failing to maintain his child, for maintenance is not analogous to an ordinary debt. A Muslim may be imprisoned for a debt owed to a protected non-Muslim, and a chronically ill debtor for a debt owed to a healthy creditor.

From the *Mukhtaṣar al-Āthār*: Something similar is transmitted from the Commander of the Believers ʿAlī, peace be upon him: an *umm walad* may be sold to satisfy the unpaid price of her own purchase—that is, where someone bought her while possessing no other property and then fathered a child by her.

If he possesses other property, the seller joins the other creditors for his proportional share, while whatever remains due becomes a debt in the liability of the emancipated person and may be sought whenever he becomes solvent. Whichever becomes solvent, the emancipator or the emancipated slave, may be pursued. If the emancipator becomes solvent, the creditor cannot return against the *umm walad* or the person emancipated, but may pursue the remaining amount against the emancipator personally. If there is surplus value in the *umm walad* or slave beyond what is owed, that excess is treated as something bestowed upon him and the remainder is returned.

From the same work: If a man becomes insolvent while owing debts to several persons and the property in his possession is insufficient, what he has is divided among the creditors proportionately.

For example, if he owes one man one hundred dinars and another two hundred but possesses only thirty, the creditor owed one hundred receives ten, and the creditor owed two hundred receives twenty.

From the *Iqtiṣār*: If he possesses property or children, whatever visible property he owns is sold on his behalf and he is imprisoned regarding whatever remains in his possession. If he persists obstinately in refusing payment, he is beaten until he pays.

From Answers to Questions

From the questions of Khaṭṭāb ibn Wasīm to our master al-Nuʿmān:

You asked concerning the wording by which a witness testifies to insolvency. The witness should say that he testifies that so-and-so has been deprived of whatever he once possessed, or has spent it, or it has left his possession in some manner; or he may say that he is insolvent and possesses no property, and that the witness is personally acquainted with his circumstances and knowledgeable about them. It does not suffice merely to say, "I do not know of any property belonging to him," because most people do not know the circumstances of many others. Rather, the witness must state that he possesses knowledge and familiarity with the man and knows him to be destitute and insolvent.

Concerning Sharecropping and Irrigation Partnerships

From the *Mukhtaṣar al-Muṣannaf*: If a man pledges land and date palms as security for a debt, then after the mortgagee takes possession the pledgor says to him, "Look after it and irrigate it, and whatever it produces shall be divided equally between us," and he does so, the arrangement is invalid.

The produce belongs to the owner of the date palms, while the mortgagee receives the customary wage for his labor, though not for merely safeguarding the property. If the pledged property is bare agricultural land and the mortgagee enters into sharecropping on it for one-half of the produce, supplying the seed himself, this is valid. The produce is divided according to their agreement. The land thereby leaves the mortgage and does not return to the status of pledged property except through a renewed pledge. If the pledgor dies while owing debts, the mortgagee has no priority over the other creditors. If instead the seed belongs to the pledgor, the sharecropping is likewise valid, and the mortgagee may return the land to the mortgage after the crop has been harvested, as though he had lent the land temporarily. If the pledgor dies in this case, the mortgagee has priority over the other creditors both before and after completion of the sharecropping.

From the same work: If a man gives another land for sharecropping on the basis of half the produce, and after they agree the cultivator says, "I have changed my mind about cultivating it this year," the landowner may not compel him to sow it.

This differs from leasing the land for a fixed rent. Whoever leases land in the Nile region may not validly do so until the water has risen upon it. If the water then recedes and it dries up, the lease is annulled. If part becomes suitable while part remains unusable, the tenant has the option either to take the sound portion for its proportional rent or to abandon the lease. If he cultivates, the portion of rent corresponding to what was destroyed falls away, while the portion corresponding to what he cultivated remains due. If fire, locusts, or another calamity destroys the crop, the calamity falls upon the crop, not upon the land. If one man enters into sharecropping with another on condition that if he plants wheat the produce will be divided according to a particular proportion, this is valid, and whatever crop is sown is divided according to their stipulation. The same applies if he plants part of the land with trees.

If a man takes land in sharecropping for three years, cultivates it, then the landowner dies in the first year after the crop has sprouted, the agreement terminates for the remaining years, but the heirs have no right to the land until the crop is ready for harvest. The same applies if the cultivator dies. If they stipulate that whatever one specified portion of the land produces belongs to the cultivator and whatever the rest produces belongs to the landowner, the sharecropping is invalid. The crop belongs to the owner of the seed, and the laborer receives his wage. If they stipulate that the fruit will be divided between them, the trees planted belong to the planter, who removes them when the agreement ends. If they agree that if he sows on the first of Jumādā I the crop will be divided equally, but if he sows on the first of Jumādā II two-thirds will belong to the landowner and one-third to the cultivator, this is valid.

Likewise, different proportions may validly be stipulated depending on whether he irrigates from a canal or relies on rainwater. If they agree that he will plant safflower and whatever yellow [product] it yields belongs to one of them while whatever safflower [seed] it yields belongs to the other, that is invalid; analogous arrangements are likewise invalid. If a landowner gives land to a cultivator on condition that the cultivator hire laborers from his own property, this is valid. If they stipulate that the laborers be hired from the landowner's

property, it is invalid. If the cultivator is to hire laborers from his own money but recover those expenses from the crop before the remainder is divided equally, that is invalid. If the landowner gives land to a cultivator on condition that the produce be divided equally, and the cultivator then gives it to a third person on the same terms, one-half of the crop belongs to the landowner and the other half to the final cultivator; the intermediary receives nothing.

From the *Mukhtaṣar al-Āthār*: If a cultivator plows another's land wrongfully and without permission, and this is established against him, while he does not claim to have leased it—or claimed this but refused to swear—then once the land has been restored [the owner has an option].

The landowner may either take the customary rent for the land, or reimburse the cultivator for his expenses and seed and retain the crop. He may not uproot the crop because uprooting it would constitute waste and destruction.

From the same work: When the period agreed upon expires, the improved land returns to its owner.

Likewise, if land is subject to *kharāj* and another man accepts it together with its *kharāj* liability, there is no harm.

From the same work: Whoever leases land in order to cultivate it but then leaves it uncultivated without the owner preventing him or obstructing access must pay the rent for the period for which he leased it, whether he chooses to cultivate or leave it fallow.

An exception applies if they expressly stipulated that rent is due only if he cultivates, leaving the decision whether to cultivate or refrain entirely to him. If they concluded the agreement on that basis, the condition governs. He, peace be upon him, was asked about villagers upon whom the ruler imposed a tax unjustly. They gave the matter to a man on condition that he protect them from whatever was demanded, whether little or much. He discharged what was demanded and retained a surplus. He said: "Whatever they agreed upon is permissible if they consented to it, and the person who assumed the burden for them may keep whatever surplus remains."

From the *Dhāt al-Bayān*: Leasing land for cash or merchandise other than the kind of grain to be planted in it is permissible.

It is not permissible to lease it in return for something produced by the land itself, because the land may produce or may fail to produce. This is the form to which the prohibition applies.

Concerning Hire and Lease

It is said in the *Ikhtiṣār*: Abū Jaʿfar Muḥammad ibn ʿAlī, peace be upon him, was asked about a man before whom another reads the Qurʾān, and when the reader completes it the pupil prepares food, as people customarily do, invites the other pupils who study with him, and invites the teacher from whom he reads.

He said: "There is no harm in that so long as it is not done as payment for the Qurʾān."

From the same work: A document was found in the sword-case of the Messenger of God, may God bless him and his family, containing the words:

> "The curse of God, the angels, the Prophets and Messengers, and the curse of Muḥammad the Prophet, may God bless him and his family, be upon whoever claims descent from someone other than his father, affiliates himself with patrons other than his rightful patrons, wrongfully withholds a laborer's wage, or steals the markers of the road."

It is said in the *Ikhtiṣār*: Abū Jaʿfar Muḥammad ibn ʿAlī, peace be upon him, was asked about taking payment for teaching the Qurʾān. He disliked it and said:

> "A man said to the Commander of the Believers ʿAlī, peace be upon him, 'I love you, O Commander of the Believers.'

He replied, ‘But I hate you.’ The man asked, ‘Why?’ He said, ‘Because you take payment for teaching the Qurʾān. I heard the Messenger of God, may God bless him and his family, say: Whoever takes payment for teaching the Qurʾān, that will be his portion on the Day of Resurrection.’” They, peace be upon them, permitted taking payment for teaching writing, literature, and other subjects that teachers teach children, and they themselves hired teachers for this and paid them. Thus, if a teacher teaches children the Qurʾān together with other subjects for which payment is lawful, there is no harm. The payment is considered to be for what may lawfully be compensated, not for what may not.

From the same work: He was asked about a man who leases a dwelling containing trees and stipulates that their fruit is included in the lease.

He said: If the fruit had already begun to ripen at the time of the contract, or some of it had done so, or if some presently existing property was included together with it, the agreement is valid. Otherwise it is not, and the lease is invalid if concluded in this combined form.

From the same work: A porter or hired carrier is liable for goods entrusted to him for carriage when he receives wages for carrying them and personally assumes charge over them.

But if a man merely hires out his riding animal and the renter himself accompanies and watches his goods, then if the goods are broken or perish, the owner of the animal bears no liability. If the hired worker or porter claims that what was delivered to him was lost from his hands and the owner denies this, the burden of proof rests upon the claimant and the owner swears that he does not know that it was lost from him. The worker or porter is liable unless he produces evidence establishing the loss. If witnesses testify that it was stolen or forcibly taken from his hands, he bears no liability.

From the same work: If someone leases land and it is struck by flooding, the drying up of a spring, or the interruption of a river, then if the tenant wishes, he may spend upon repairing it from one year’s rent, and that expenditure ultimately falls upon the landowner.

Otherwise the tenant owes rent proportionate to the extent to which he was able to cultivate and benefit from it.

From the same work: If a man hires someone to build him a wall of plaster and bricks and specifies its length, width, and height, the contract is valid.

If he hires him “for one day until night,” the working period extends from the time of the dawn prayer until sunset. As for people customarily working only until the afternoon prayer, they may not do so unless they stipulated this or it is an established local custom, in which case the custom has the force of a condition.

From the *Mukhtaṣar al-Muṣannaf*: Hire (*ijāra*) is a species of sale and applies to a known service or known usufruct.

A debt may be assigned for wages, whether immediately due or deferred. If someone leases a house for residence or land for cultivation, a surety guaranteeing the actual residence or cultivation is not valid. Likewise, if someone hires a craftsman and stipulates that he personally perform the work, he may not take a guarantor for that performance. The same applies to other personal services. But if someone hires a craftsman to produce something without stipulating that he personally perform it and takes a guarantor, that is permissible. The guarantor is responsible for completion of the work; if he performs it himself, he may recover the customary wage from the person for whom he guaranteed it. A wet nurse may be hired for a known period and known wage. Her own food and clothing are her responsibility, though if these are stipulated upon the employers the condition is valid. She may not nurse another child with her milk except her own child.

If she nurses another, that constitutes a breach of trust, although nothing is deducted from her wage. If the child dies before completion of the nursing period, she receives wages proportionate to the time elapsed. If the child is lost from her, falls, or jewelry is stolen from him, she is not liable. The employers may not dismiss her before the end of the term except for an excuse, such as the child refusing her milk, her becoming pregnant so that they fear harm to the child, or her manifesting immoral conduct. Likewise, the wet nurse herself may not

leave them except for an excuse, such as her husband refusing permission, the child's family mistreating her, or her becoming ill. If she was hired with her husband's permission and the child's family wishes to prevent him from having intercourse with her for fear that she may become pregnant, they may do so.

From the same work: Whoever leases a house, animal, real property, or anything else and it becomes unusable, or is seized by a usurper so that benefit from it ceases, owes no rent from that day onward, though he owes whatever accrued before then.

The tenant's statement is accepted regarding how long the obstruction lasted. Hiring a male animal specifically for breeding is not permissible. A son may not hire his father, however remote in the paternal line, nor his mother, however remote in the maternal line. If a house belongs jointly to two men and they lease it to another, then one co-owner dies, the lease terminates with respect to his share. If his heirs are adults and agree with the tenant to continue the lease, this is permissible. If there are two tenants and one dies, the lease terminates with respect to his share even if his heirs wish to continue. The death of an agent does not terminate a lease, but the death of the landowner or tenant does. If both lessor and lessee enter enemy territory, the lease terminates. If they do not dispute until one returns repentant while some of the term remains, the lease remains binding for what remains. Neither party may cancel the lease except for an excuse.

An excuse for the landlord is that he incurs a debt for which he is imprisoned and possesses no property except the leased house; he may then sell it. An excuse for the tenant is that he leases a shop but becomes insolvent and leaves the market; he may then terminate the lease.

From the same work: If the owner wishes to sell the leased house without such an excuse, the sale is valid only if the purchaser accepts continuation of the lease; otherwise it is not valid.

If a guardian leases an orphan's land and the orphan then reaches adulthood, the orphan may not rescind the lease.

From the same work: Whoever enters a bathhouse without paying and stipulates that the proprietor safeguard his clothing—the proprietor is not liable.

A common shepherd who tends livestock for anyone who hires him is liable for animals that perish unless he establishes by evidence that the loss occurred without wrongdoing or negligence on his part. If he mixes people's sheep so that they can no longer be distinguished, he owes their value and the sheep become his; his statement concerning their value is accepted with an oath. If he is hired exclusively by one person to tend his flock, he may not graze another's flock together with it. If one of those sheep perishes or is eaten by a wolf, he is not liable, and his statement is accepted with an oath because he is an exclusive employee. An exclusive employee is one who does not work for anyone else. A shepherd is not liable for livestock that simply dies, whether he is a common or exclusive shepherd. Whoever hires a garment may wear it and is not liable if it is lost, but he may not let another person wear it. If he does so, he is liable for any diminution in value.

Whoever hires a shirt until night but leaves it unused in his house still owes the rent. Whoever hires a tent may allow another person to enter it. The cost of returning a hired donkey falls upon the renter unless stipulated upon the owner. If an emergency arises at sea requiring the sailor to throw some cargo overboard, the sailor and passengers share liability for it proportionately. If someone hires an animal to take him to a city, the owner must convey him as far as his family's residence within that city. If a man leases *kharāj*-land for a known rent over several years and the ruler subsequently increases its *kharāj*, the increase falls upon the owner of the land. The explanation is that this applies where the inhabitants of the land had previously been independent or rebellious and the ruler settled with them for a known *kharāj*, then later brought them under control and collected the legally due amount; the increase then falls upon the landowner, as stated.

From the answers of our master al-Nuʿmān to Khaṭṭāb ibn Wasīm, governor of Zawāra:

You asked concerning two men, each of whom received an unmeasured quantity of goods on behalf of the other and personally guaranteed that he would bear any shortfall. If a shortfall appears, he is liable for what he guaranteed. If he was caring for the goods in return for compensation or wages, he bears responsibility for the

shortfall whether or not he expressly guaranteed it, unless he establishes by evidence that the loss occurred while in his possession without any wrongful act on his part.

From the Questions Mentioned Above

Question: What do you say concerning a man who leases land and then wishes to sublease it for more than he himself pays? Is this permissible?

Answer: There is no harm in taking a surplus on land; land is not like a house or a shop.

If someone leases a house, he may not sublease it for more than he himself pays unless he has added something to it.

Question: Concerning a man who hires a riding animal from an owner in Aḥmadābād to carry cloth from Nahrwāla to Aḥmadābād. The animal-owner travels with the animal to Nahrwāla, but the cloth is not found or some excuse arises on the renter's side. Does the renter owe any hire?

Answer: If they stipulated something at the time of the hiring contract, the condition is binding.

If there was no condition between them and the renter did not intentionally prevent fulfillment, he owes hire proportionate to the distance the owner traveled.

Concerning the Rules Governing Craftsmen

From the *Mukhtaṣar al-Muṣannaf*: If food belongs jointly to two men and one hires the other to grind it, this is not permissible.

Whoever hires the space occupied by a palm-trunk in order to place it into a wall may not do so. Likewise, leasing a wall in order to build a screen upon it, or leasing the space of an opening in order to pierce it, is invalid.

From the same work: If someone orders a cupper to extract a particular tooth and the cupper removes a tooth, after which the patient says, "This is not the tooth I ordered you to remove," the patient's statement is accepted and the cupper is liable.

From the same work: If someone brings a tailor to his house to sew a shirt, and the tailor completes part of it before it is stolen, he receives wages proportionate to the part he sewed.

If the same thing happens while the tailor is working in his own premises, he receives no wage. If craftsmen work from rented premises, they may not retain the customer's goods as security for their wages, though they are liable for damage caused by their own hands. If they work in their own homes, they may retain the goods until their wages are paid. If a fuller deliberately or accidentally returns to a man a garment belonging to someone else, and the recipient cuts and sews it, then the true owner appears, the owner has a choice. If he wishes, he may make the fuller pay the value of his garment, after which the fuller recovers from the person who cut it and returns that person's own garment to him. If the true owner wishes, he may instead make the person who cut it liable, and that person then recovers his own garment from the fuller. Whoever hires a digger to excavate a well of a specified depth and circumference has entered a valid contract.

If the digger completes one-third and encounters solid rock, he may not abandon the work if it is still possible to excavate it. If it is impossible, he may stop and receives wages proportionate to what he dug.

Concerning Pledges and Mortgages

It is said in the *Mukhtaṣar al-Āthār*: The mortgagee may not derive any benefit from pledged property.

If it perishes, the loss belongs to the pledgor unless the mortgagee wrongfully caused the damage. If the pledge perishes, the mortgagee has no right to demand another pledge in its place; he may only claim payment of his debt when it falls due.

From the *Mukhtaṣar al-Muṣannaf*: If a man pledges land containing no date palms and date palms later grow upon it, the palms are outside the pledge. The same applies to anything else that grows there.

If the pledgor becomes insolvent while owing debts, the land and palms are sold together; the price is apportioned, the mortgagee receives what corresponds to the land itself, and with respect to any remainder of his claim he joins the other creditors in the price attributable to the palms. If the mortgagee's trustworthiness becomes compromised, the pledgor may demand that the pledge be removed from his possession and entrusted to an impartial third party, and the judge compels this. If his trustworthiness remains unimpaired, the pledge is not removed from his possession merely to place it with another.

It is said in the *Dhāt al-Bayān*: If a man gives another property as security and says, "If I do not bring you your right by such-and-such a time, sell this and recover your claim; any surplus belongs to me and any deficiency remains upon me," this arrangement is not valid.

The mortgagee may not sell the property to himself. Rather, the matter must be brought before the judge, who orders its sale. If both parties place the pledge in the hands of an impartial third party and authorize him to sell it once the term falls due, this is permissible.

From the same work: The impartial holder is like an agent for both pledgor and mortgagee.

The mortgagee himself should not ordinarily act as agent to sell property he holds for another while he is simultaneously the claimant against it.

From the same work: The Messenger of God, may God bless him and his family, said: "A pledge is not forfeited."

This refers, for example, to a man who gives property as security for a debt on condition that if he does not bring payment by the appointed time the pledged property becomes the creditor's and the pledgor receives nothing. Such a condition is invalid, and the property remains a pledge.

It is said in the *Yanbūʿ*: If the pledgor appoints the mortgagee as agent to sell the pledged property when the term falls due, and the mortgagee sells it while producing witnesses to the authorization, the sale is valid.

From the *Mukhtaṣar al-Āthār*: If the pledgor has authorized the mortgagee to sell the pledge when the debt falls due, and the mortgagee sells it while obtaining witnesses both to the sale and to his effort to obtain the best possible price, nothing further is required of him.

If the pledgor accuses him of misconduct in the sale, he may require him to swear.

From the *Mukhtaṣar al-Muṣannaf*: Whoever borrows a garment from another in order to pledge it may pledge it for whatever amount, small or large.

If the owner of the borrowed garment pays the redemption amount on behalf of the pledgor, he may recover it from the pledgor if he did so with the latter's authorization. If he paid without authorization, he may not recover anything. If they disagree, the pledgor saying, "You paid without my permission," while the owner says, "Rather, I paid with your permission," the pledgor's statement is accepted.

From the same work: If the pledgor authorizes the mortgagee to repledge the pledged property to another and he does so, it leaves the first pledge.

From the *Mukhtaṣar al-Īḍāḥ*: If a *mukātab* slave fears inability to complete his payments and wishes to pledge his *umm walad*, that is permissible, and so is selling her.

He may not sell or pledge his child.

From the *Mukhtaṣar al-Āthār*: Pledged property may not be sold, gifted, emancipated if it is a slave, or otherwise disposed of until it has been redeemed.

If the pledgor possesses other property, his attempted disposition of the pledge is still invalid. If he pays part of the debt, he does not become entitled to recover the pledge or any part of it until the whole debt has been discharged.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that no benefit may be taken from pledged property, and that whatever benefit is taken must be credited against the debt? O our master, if the mortgagee resides in a pledged house, must he credit the customary rental value against what is owed to him?

Answer: Yes. If the mortgagee benefits from the pledge, the pledgor may, if he wishes, account against the debt the value of whatever benefit the mortgagee obtained.

Question: What does our master, may God perpetuate his support, say concerning a man who pledges a house to another for one hundred *mithqāls*, more or less, and the mortgagee then wishes to live in and benefit from the house, leasing it from the pledgor for a small amount upon which they mutually agree? Is this permissible?

Answer: The mortgagee to whom the pledge was given may not benefit from it merely by virtue of the pledge.

But if the pledgor agrees to lease it to the mortgagee for a known rent, there is no harm, provided that this was not made a condition at the time the pledge was created.

Concerning Partnership

From the *Mukhtaṣar al-Muṣannaf*: A *muḍārib* has no right to maintenance from the *muḍāraba* capital unless he travels, in which case his ordinary travel expenses are paid from it according to what is customary for someone of his standing.

If he travels with one thousand dirhams of *muḍāraba* capital while personally owning ten thousand dirhams, his expenses are divided into eleven shares: one share is charged to the *muḍāraba* and ten to his own wealth. If the *muḍārib* travels with the partnership capital and spends upon himself from it, then earns a profit, the capital-owner first recovers his principal. What remains of the profit after expenses is then divided according to their agreed proportion. If the enterprise makes a loss, the travel expenses are charged against the principal capital. If someone gives a man *muḍāraba* capital in a town in which the latter has no family, he still may not spend on himself from the capital unless he travels outside that town. In an invalid *muḍāraba*, the worker has no right to maintenance even if he travels. Any amount he spends upon himself is accounted against him; he receives only the customary wage for his labor, while profit and loss belong to the owner of the capital.

It is said in the *Ikhtiṣār*: Of the two parties, the one who contributes no capital is the *muḍārib* or *muqāriḍ*. The term *muḍāraba* derives originally from "striking out through the land" (*al-ḍarb fī al-arḍ*).

From the *Mukhtaṣar al-Muṣannaf*: If the capital-owner dies while merchandise remains in the *muḍārib*'s possession, the *muḍāraba* continues until the merchandise is sold.

If he holds only dirhams or dinars, the *muḍāraba* terminates and the money has the status of a deposit. If a man gives another one thousand dirhams as *muḍāraba* capital for one-half of the profit, they earn another thousand and divide that profit while the original capital remains in the worker's hands, then the capital is lost, the first division is invalid. The five hundred taken by the capital-owner as his share of the profit is treated as part of the return of his principal, and the worker must return what he took, while what perished is treated as the profit. If instead the profit was two thousand and each took one thousand, after which the original capital perished, what the capital-owner already took counts as the return of his principal, while what the *muḍārib* took was profit and he must return half of it to the capital-owner. Profit may not validly be divided until the

capital-owner has recovered his entire principal. Once he has recovered it, a subsequent division of profit is valid and cannot be reopened.

From the *Mukhtaṣar al-Āthār*: If one partner dies, the partnership is dissolved.

Either partner may dissolve the partnership whenever he wishes.

From the same work: A believer should not enter into partnership with a protected non-Muslim or with someone who differs from him in doctrine and regards as lawful forms of buying and selling that the believer regards as unlawful, because this may introduce forbidden gains and usury into his property.

If, however, the believer or Muslim alone conducts the buying and selling rather than the non-Muslim or doctrinal opponent, there is no harm in entering partnership with him.

From the answers of our master al-Nuʿmān—may God sanctify his spirit—to the questions of Khaṭṭāb ibn Wasīm, leader and governor of Zawāra:

You asked concerning two partners, one of whom sells a house belonging to the other while the other is absent, and the absent partner denies the sale, while the purchaser establishes that the house was acquired from the surplus of their joint profits. If they were partners with full mutual authority (*mufāwaḍa*) over all their property and all profits accruing to them, and each customarily sold property without consulting the other, the sale is valid. But if their partnership concerned only specified capital, they earned profits, and one partner used his individual share of those profits to purchase a house for himself, the other partner may not sell that house without his authorization and appointment as agent.

Concerning Pre-emption (*Shufʿa*)

It is said in the *Maṭlab*: If a purchaser deliberately takes property subject to pre-emption and gives it in charity, gifts it, dedicates it as an endowment, or builds a mosque upon it, and then the pre-emptor asserts his right, the pre-emptor retains his right of *shufʿa* and what the purchaser did is invalidated.

When a right of pre-emption belongs to a Muslim charitable endowment, a mosque, or another charitable institution, the Imam asserts it according to what he judges to be in its best interest.

From the same work: Pre-emption applies to leasing real estate just as it applies to ordinary sales.

If a man leases an entire house where shared rights with neighboring property would ordinarily give rise to pre-emption, or leases a share of a house, the co-owner possesses the right of pre-emption whether the claimant himself is an owner or merely a tenant, because lease is a species of sale and there is no reason to exclude from it the rules of pre-emption applying to sales.

From the same work: Pre-emption in jointly owned real property belongs to the co-owner when the property is sold for a known price or for property having a known equivalent, such as measured food—wheat, dates, raisins—or weighed commodities.

If the property is sold for something whose value is unknown, or for an individually specified item or merchandise of indeterminate value, pre-emption does not apply.

From the same work: If a man says to another, “I give you my share of this house on condition that you give me one thousand dirhams,” the transaction is legally equivalent to a sale and pre-emption applies.

Whatever wording is used—whether gift or otherwise—the legal ruling is the same.

From the same work: If the pre-emptor learns of his right and says, “I relinquish it,” or “I relinquish half of it,” this counts as relinquishing the whole.

If his guardian, father, or other lawful representative exercises the right while he is a child and then relinquishes it in a manner genuinely intended for the child’s welfare rather than to harm him, the relinquishment is valid and the child cannot revive the right after reaching adulthood. If, however, it is known

that the guardian relinquished it specifically to harm the child, the child retains the right upon reaching adulthood and the guardian's relinquishment is ineffective.

It is said in the same work: If the pre-emptor is absent and upon returning seeks his right, but the purchaser hides from him or leaves the town, the pre-emptor may call witnesses to his demand and his right remains intact however long the matter lasts.

If the purchaser appears in another town where the property itself is not situated, the pre-emptor is not required to travel there or demand the property outside the town where it lies.

It is said in the *Kitāb al-Akhbār*: They transmitted that pre-emption arises through joint ownership of the wall between two houses, joint use of a water-channel, joint ownership of a road, and every case involving a shared right between the seller and the claimant of pre-emption.

From the *Mukhtaṣar al-Īḍāḥ*, concerning the statement that if a slave is jointly owned by two men and one sells his share, the other has priority to purchase it if there is only one co-owner:

This is a specific explanatory report, whereas the earlier report, "There is no pre-emption in animals," is general. The explanatory report governs the general one. There is no pre-emption in mills, wells, or rivers unless the claimant also owns part of the underlying land. **Marginal note:** Concerning the phrase "if the man gives the share"—meaning if he marries her in exchange for the share, for he is discharging dinars, dirhams, or something else owed to her with it. If it is given in satisfaction of an obligation, it is treated like a sale.

It is said in the *Dhāt al-Bayān*: If the pre-emptor successfully asserts pre-emption against the purchaser, takes the property from him, and pays him what he originally paid, but it later becomes legally established that the purchaser had no valid title and the property is removed from the pre-emptor by judgment, the pre-emptor recovers the price from the original seller who had received it from the first purchaser.

From the same work: If the property subject to pre-emption was purchased on deferred payment, then when the pre-emptor asserts his right, if he is trustworthy and solvent he receives the same deferment as the purchaser.

If he is not solvent or not trustworthy but provides a trustworthy and solvent guarantor, he may still receive the deferment. If he cannot do that, he must either pay the price immediately or relinquish the pre-emption; he has no third choice.

From the same work: If the sold property has several co-owners and only one of them asserts pre-emption, he may take the whole of what was sold.

If all or some assert the right, those who assert it share the property, excluding those who did not.

From the same work: If real property is purchased for fungible merchandise having a known equivalent, the partner may assert pre-emption by providing an equivalent amount of that same merchandise.

If the merchandise has no known equivalent, pre-emption does not apply.

It is said in the *Mukhtaṣar al-Āthār*: If the sale was conducted secretly, the pre-emptor retains his right for one year from the time news of the sale reaches him.

If the sale was public, the pre-emptor was present, and he waits until after one year and then claims that he never heard of it, his statement is not accepted because of the public notoriety of the sale. Pre-emption does not arise until the sale has actually been concluded.

From the same work: The pre-emptor may assert his right against either seller or purchaser; whichever one he proceeds against is sufficient once the sale has become binding.

It is said in the *Maṭlab*: If a sale giving rise to pre-emption occurs while the pre-emptor is present, but he travels immediately afterward and remains away for a year, less, or more, then returns and demands pre-emption, his case is examined.

If his absence was less than one year, there is no obstacle to his demand. If his absence lasted a year or more, the circumstances of his journey are considered. If he traveled to a place from which he could reasonably have gone and returned before the year elapsed, and he says that he continually retained his pre-emption right but was prevented by an act of God from returning, his statement is accepted with an oath and he retains the right. In that case he falls under the rule that an absent pre-emptor retains his right until he returns, however long or short the absence. If, however, he traveled to a place from which it was impossible to go and return within the year, he has forfeited his pre-emption.

From the *Mukhtaṣar al-Muṣannaf*: If the pre-emptor is informed that one-half of a house subject to his right was sold and he relinquishes pre-emption, then later learns that the entire house was sold, he may renew his demand.

But if he was told that the whole was sold, relinquished the right, and later learns that only half was sold, his relinquishment remains effective. If the purchaser turns the house into a mosque and the pre-emptor later appears, the pre-emptor may invalidate what the purchaser did and take the house by pre-emption, while the purchaser may remove the structure he added.

From the same work: If the sale is subject to an option belonging to the purchaser, pre-emption arises immediately.

If the option belongs to the seller, or jointly to seller and purchaser, pre-emption does not arise until the option has expired.

From the same work: If a judge sells property to satisfy the debt of a deceased person, the pre-emptor may invalidate the sale and take the property by pre-emption.

[The text repeats the phrase “take it by pre-emption.”] If the property is then sold to a second purchaser, he may, if he wishes, assert pre-emption against that second purchaser. If the deceased had made a bequest concerning it, the pre-emptor takes it and the bequest is invalidated. If the judge had already awarded the house to the pre-emptor by judgment before the pre-emptor died, but he died before taking possession, the judgment is binding for his heirs.

From the *Mukhtaṣar al-Muṣannaf*: There is no pre-emption when property is exchanged for non-fungible merchandise—for example, a house for another house, merchandise, or something similar.

The pre-emptor may not take it by paying the monetary value of that merchandise. But if the very same item used as the price comes into the pre-emptor’s ownership before his right expires and before he relinquishes it, and the item remains unchanged and undiminished, he may return that exact item to the purchaser and take the house by pre-emption, because he has returned the purchaser’s own property.

From the same work: If the price is higher than the amount for which the pre-emptor previously relinquished his right, he has no pre-emption, because if he relinquished at the lower amount, he has all the more relinquished it at the higher.

If the pre-emptor dies during the period in which pre-emption remains available before making his demand, his heirs may assert the right he possessed. They share it according to their respective shares of his inheritance. If the purchaser dies during the pre-emption period while the pre-emptor remains alive, the pre-emptor retains his right.

From the Questions Mentioned Above

Question: What do you say concerning a man who purchases land and builds a mosque upon it, after which the pre-emptor asserts his right, takes the land, and wishes to demolish the mosque? May he do so?

And concerning a man who takes land by pre-emption from someone who purchased it and built something upon it: may the pre-emptor take the land without the building?

Answer: The pre-emptor may demolish the mosque if he wishes.

The pre-emptor must, however, pay the value of the building because it has become part of the land.

Question: What do you say concerning a house sharing with a mosque a wall, water-channel, or road? If the owner sells the house, does the mosque possess a right of pre-emption?

Answer: Whenever a right of pre-emption belongs to a Muslim charitable endowment, mosque, or other charitable institution, the Imam or the person acting by his authority asserts the right according to what he judges beneficial.

From the answers of our master al-Nuʿmān, may God sanctify his spirit, to Khaṭṭāb ibn Wasīm:

You mentioned that you found in the *Daʿāʾim* that a child possesses pre-emption until reaching adulthood, and that his father or guardian may assert it on his behalf during childhood. You asked whether the silence of the father or guardian during the ordinary period for a present claimant causes the child's pre-emption to lapse.

Answer: The child possesses the right until reaching adulthood, but if his legal representative validly relinquishes it on his behalf, he may not assert it after reaching adulthood.

You also asked concerning the pre-emption right of the absent person and the child. The absent person retains the right until he returns, unless he relinquished it during his absence or returns only after a year has passed, in which case he may not demand it. The child retains the right until reaching adulthood; if he then demands it, it is his right. If he leaves it thereafter for a prolonged period, he loses it. A present person has up to one year. There is no pre-emption in divided property except certain forms of real estate, and in a slave jointly owned by two persons the remaining partner has priority when his partner wishes to sell. You asked concerning pre-emption in houses contained within a single compound and sharing a common gate. The residents of the compound have pre-emption because they share the gate. Likewise, where houses lie along a blind alley, the residents of that alley have priority in pre-emption because of their shared right in it.

If the road is a public thoroughfare open at both ends, there is no pre-emption arising from it, because it belongs to the Muslims generally and the residents of the houses own none of it beyond what they use immediately adjoining their dwellings.

From the *Mukhtaṣar al-Īḍāḥ*: A mere neighbor does not possess pre-emption, though he has rights and inviolability as a neighbor.

The boundary of neighborhood is forty cubits in every direction.

Book of Oaths and Vows

Concerning the Command to Preserve Oaths and Covenants

From the *Mukhtaṣar al-Āthār*: An *alghāz* [equivocation or riddle] is figurative resemblance in speech: a person intends one thing but likens it to another, causing the listener to understand that the thing used in the comparison is what he actually means, while inwardly he intends and conceals something else.

The protected non-Muslims are made to swear by God and by whatever things they regard as solemn in their own oaths.

Concerning Which Oaths Become Binding and Which Do Not

It is said in the *Mukhtaṣar al-Āthār*: God, Blessed and Most High, commanded His Prophet, may God bless him and his family, to make the exception ["if God wills"] after forty days, when revelation had been withheld.

From the *Mukhtaṣar al-Muṣannaf*: Whoever swears concerning a right belonging to another person and then adds an exception does not thereby escape the obligation.

From the same work: If someone swears that he will not live in a particular house, and the house is demolished and an entirely different building erected in its place, then if he meant the former building he does not break his oath by living there; but if he meant the location itself, he does break it.

Whoever swears that he will not eat any of this flour, then eats bread made from it, has broken his oath. If he swears not to eat this *sawīq* and then drinks it, he has not broken his oath. If he swears not to wear a shirt and instead wraps cloth around his waist, he has not broken his oath. If he swears not to give something as a gift to a particular person but then gives it to him as charity, he has not broken his oath. If he swears not to speak to a man but gestures to him, sends him a message, or writes to him, he has not broken his oath. If he swears not to sit upon the ground but then sits on a mat placed between himself and the ground, he has broken his oath. If someone swears not to live in a hair-tent, tent, or pavilion, then if he is a town-dweller he does not break the oath by doing so unless he specifically intended such structures. If he is a Bedouin, however, residing in a hair-tent does break the oath.

Concerning Vows

From the *Mukhtaṣar al-Āthār*: If someone makes a vow concerning something and then fulfills it, that is sufficient; it is considered a voluntary act rather than an obligation. If he makes the vow equivalent to the expiation for an oath, that is good and proper.

From the same work: If someone makes a vow contingent upon something occurring, but that event had already occurred before he imposed the vow upon himself and he did not know that it had occurred, nothing is incumbent upon him.

A man asked Abū Jaʿfar Muḥammad ibn ʿAlī, peace be upon him: "I have a slave-woman by whom I do not wish to have children. Her menstruation stopped, and I feared that she had become pregnant. I therefore made it incumbent upon myself before God Most High to emancipate [a slave], fast, and give charity if she menstruated. But it turned out that she had already menstruated before I imposed this upon myself, without my knowing it." He said: "Nothing is incumbent upon you." Abū ʿAbd Allāh Jaʿfar ibn Muḥammad, peace be upon him, said: Whoever swears that he will not give a man dinars, but instead gives him goods of equivalent value, has not broken his oath. Whoever swears that he will not sell his merchandise for a particular price, but then sells it for goods worth that amount, has not broken his oath. Whoever is owed dinars by another and swears that he will accept them only in full, but the debtor gives him part in dinars and gives him goods for the remainder, has not broken his oath.

He, peace be upon him, was asked concerning a man who swore that he would slaughter his own son. He said: "Nothing is incumbent upon him. This is among the footsteps of Satan." He, peace be upon him, said: "Expiation comes after breaking the oath."

From the *Mukhtaṣar al-Muṣannaf*: Whoever makes a vow contingent upon the arrival of an absent person and then discovers that the person had already arrived before the vow was made owes nothing.

Whoever vows something beyond his capacity owes nothing. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning a man upon whom there is a specified vow, but he wishes to annul it and not fulfill it? Is anything incumbent upon him?

Answer: If the vow was made for the sake of God, he must fulfill it. It is not permissible for him to annul it, and he sins if he does so. There is no expiation upon him for that. It is appropriate that the vow be equivalent to the expiation for an oath.

From the *Book of Claims and Evidence*: The People of the Book are made to swear according to their own religion—that is, peace be upon them, if they recognize no oath other than that and do not regard perjury as

binding when one swears by God. Likewise, an unbeliever who worships idols is made to swear by the idols; all are made to swear according to their own creeds.

Whoever swears by "the Merciful" or by one of the names of God Most High, intending thereby God, owes expiation [if he breaks the oath]. But one should not deliberately swear by such names instead of swearing by God Himself. Whoever swears, "If I do such-and-such, pilgrimage is incumbent upon me," or "my wife is divorced," or "my slave is emancipated," and then does not perform the stated act, nothing becomes incumbent upon him. Pasted text

Concerning Expiations

It is said in the *Mukhtaṣar al-Muṣannaf*: If a person gives each poor person a garment, this does not suffice as the clothing required in expiation; but if its value equals the required food and he intends it as food-equivalent, it suffices.

If he gives each poor person the monetary value of the clothing, that suffices. If he clothes a poor person and later inherits that garment from him, his expiation is not invalidated. A slave performs expiation by fasting. Pasted text

Book of Foods

Concerning Feeding Others

From the *Mukhtaṣar al-Āthār*, in the chapter on fasting: When the Messenger of God, may God bless him and his family, ate food provided by a household, he would say:

> "May those fasting break their fast with you; may the righteous eat your food; and may the angels invoke blessings upon you."

By this he indicated the merit of providing food for one who is fasting. Pasted text

Concerning the Varieties of Food, Their Preparation, and the Need for Them

It is said in the *Ṣiḥāḥ*: *Waẓīfa* means the amount of food or provision that a person assigns for each day; one says *waẓẓafahu tawẓīfan*, "he assigned it as a fixed allowance." Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the prohibition in the Sharīʿa against cutting bread with a knife? O our master, the people of India cut thin breads with knives and make from the pieces, together with meat, another kind of dish. Is anything incumbent upon them for doing this? Is it disliked to eat such bread after it has been cut?

Answer: It may be eaten and there is no blame in that. The prohibition belongs to etiquette and reverence for the blessing.

Question: What do you say concerning what occurs in the Sharīʿa: "When your believing brother enters upon you, feed him from the best food in your house; and if he is fasting, anoint him"? O our master, what is meant here by "anointing"?

Answer: It means honoring one's brother, if he is fasting, by anointing his body with oil. Pasted text

Concerning the Etiquette of Eating

It is said in the *Kitāb al-Akhbār* in the section on jurisprudence: They transmitted that the Sunna is to begin washing with the person seated on the right of the host, then the next person and the next until the last, while the master of the house washes last.

From the *Mukhtaṣar al-Āthār*: When a man's brethren are present with him for a meal, he should eat with them so as to encourage them, and he should be the last among them to withdraw his hand and the last among them to wash before and after the meal.

From the *Mukhtaṣar al-Muṣannaf*: Hands are washed before and after eating. A man washes his hands with his household before they do, but when eating with others he washes after them. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the bedstead upon which people in India sleep? Is it disliked to wear clothes or eat food upon it? Some people dislike this.

Answer: There is no harm in eating upon it or wearing clothes upon it.

Question: What do you say concerning the custom of some people of the *daʿwa* in India who sit at meals leaning upon the left hand and place the food upon something raised a span or more above the ground? Is anything incumbent upon them?

Answer: Leaning in that manner is something done by the arrogant; humility is preferable. As for placing the food upon a table or something similar, there is no harm. Pasted text

Concerning What Foods May and May Not Be Eaten

From the *Mukhtaṣar al-Āthār*: The flesh of camels, cattle, sheep, and all wild animals, as well as their milk, is lawful except for beasts of prey possessing fangs with which they hunt and devour animals; neither their flesh nor anything derived from them is lawful.

All birds are lawful when properly slaughtered except birds of prey possessing talons with which they seize and devour animals; neither they nor their eggs are lawful.

From the answers of our master al-Nuʿmān to Khaṭṭāb ibn Wasīm, governor of Zawāra:

You asked concerning the food of the People of the Book and whether there is any distinction between Jews and Christians. Jews and Christians are People of the Book. God Most High said: "The food of those who were given the Book is lawful for you, and your food is lawful for them." This applies to grains and condiments. As for animals slaughtered by them, God Most High said: "Do not eat of that over which the name of God has not been mentioned." Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the bones, veins, hides, horns, and hair of animals whose flesh is lawful according to the Sharīʿa? May they be eaten just as their flesh is eaten?

Answer: There is no harm, except for what the Sharīʿa has specifically prohibited, such as blood, glands, and similar things.

Question: What do you say concerning the Sharīʿa ruling that a person driven by necessity may eat carrion? O our master, what is the limit of necessity, since people differ in their ability to endure hunger? May he eat carrion if he is still capable of begging or eating from what a wild beast has killed?

Answer: If necessity arises and he fears death, there is no harm in eating it. There is no precisely fixed limit in this matter.

Question: What do you say, O master of masters, possessor of all, concerning animals classed as *jallāla*, whose flesh and milk the noble law says may not be consumed? People ordinarily pay no attention to animals of this sort sold in Muslim markets. When exactly is an animal legally considered a *jallāla*? The common people claim that if most of its feed consists of excrement and only a smaller portion is pure feed, it is so classified. May our master graciously provide the decisive answer.

Answer: Reliance is upon what is stated in the Sharīʿa: its milk, flesh, and sale are forbidden until it has been confined [and fed clean fodder for the required period]. Once its condition as a *jallāla* is established, it is not lawful to sell or purchase it.

Question: If *jallāla* animals have been confined and fed pure fodder for only a few days, but then one of them falls ill before completing the prescribed period, does its flesh become lawful?

Answer: Its flesh does not become lawful until the prescribed period has been completed.

Question: In the *Daʿāʾim* it is transmitted from Jaʿfar ibn Muḥammad, blessings upon him, that he permitted the food of the People of the Book and other communities when the food contains no slaughtered meat. How is this to be understood? Does "other communities" include polytheists and unbelievers who worship idols rather than the Merciful and do not know lawful from unlawful, while God Most High has said, "The polytheists are impure"? Is food other than slaughtered meat permissible?

Answer: Foods such as bread, thin bread, and other dry foods are permissible. Moist foods are disliked.

From the answers of our master al-Nuʿmān, may God sanctify his spirit:

You asked concerning the food of the People of the Book and whether there is any difference between Jews and Christians. Jews and Christians are People of the Book, and God Most High said: "The food of those who were given the Book is lawful for you, and your food is lawful for them." This concerns grains and condiments. As for slaughtered animals, He said: "Do not eat of that over which the name of God has not been mentioned." If a Muslim is present when a scripturalist slaughters an animal and the latter slaughters it while pronouncing God's name, it may be eaten, for God Most High says: "Why should you not eat of that over which God's name has been mentioned?"—provided it is slaughtered according to the proper Sunna. If, however, the scripturalist slaughters it outside the presence of a Muslim, it should not be eaten, because they may dedicate it to something other than God. God, Mighty and Glorious, said: "Forbidden to you are carrion, blood…" through the words "…and what has been dedicated to other than God."

A polytheist is not trusted in this regard as Muslims are trusted concerning their slaughtered animals. Pasted text

Collection of the Chapters on Beverages

Concerning What Is Forbidden to Drink

From the *Ikhtiṣār al-Āthār*: The Messenger of God, may God bless him and his family, said: "No one drinks wine in this world and then drinks it in the Enclosure of Holiness."

From the *Mukhtaṣar al-Muṣannaf*: A Muslim is not subjected to the prescribed punishment merely because the smell of wine is detected upon him until two witnesses testify that he drank it, or he confesses, unless he is found intoxicated.

If one witness testifies that he drank wine and another that he vomited it, he is not subjected to the prescribed punishment. Likewise, if one witness testifies that he drank and another that he confessed to drinking, the punishment is not applied. If he drank under compulsion, no prescribed punishment applies. If an intoxicated person falsely accuses another of fornication, he is imprisoned until sober, then punished for the

false accusation. He is then detained until the marks of the beating subside, and afterward punished for intoxication.

From the *Kitāb al-Akhbār*: They transmitted that *fuqqāʿ* prepared in vessels that have become saturated through repeated use is forbidden and may not be drunk. There is no harm, however, in a vessel that has been used for it only once or twice.

From the same work, concerning vessels: The transmitters related from the People of the House that the Messenger of God, may God bless him and his family, prohibited the use of *dubbāʾ*—gourd vessels; *ḥantam*—which some said were red jars and others green; *muqayyar*—pitch-coated vessels; and *naqīr*—a vessel hollowed out from a palm trunk.

All these were vessels in which people used to steep beverages and which were generally saturated through repeated use. He prohibited putting lawful drinks into them lest the residue alter and transform them. He also prohibited drinking from vessels of gold and silver and from vessels ornamented with gold or silver. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the prohibition in the Sharīʿa against drinking water from the *ʿurwa* of a vessel? O our master, what is meant here by *ʿurwa*? If the vessel has two or more openings, which one is called the *ʿurwa*?

Answer: The purpose here is etiquette. The *ʿurwa* means the opening, and there is no blame upon one who drinks from it. Pasted text

Collection of the Chapters on Medicine

Concerning Seeking Healing through Acts of Piety

From the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, noticed that a man had been absent. When the man came to him after some time, he said:

> "What kept you away from us?"

He replied: "Illness and poverty, O Messenger of God." The Messenger of God said: "Shall I teach you words with which you may supplicate, by which God will remove that from you?" He said: "May my father and mother be your ransom, yes, O Messenger of God."

He said:

> "Say: There is no power and no strength except through God. I place my trust in the Living One who does not die. Praise be to God, who has not taken a son, who has no partner in sovereignty and no protector out of weakness; magnify Him greatly."

From the same work: A man said: "O son of the Messenger of God, teach me what I should supplicate with."

He said:

> "Say: O God, O Merciful, O Compassionate, O Hearer of supplications, O Giver of good things, give me the good of the hereafter and this world, avert from me their evil, and remove what lies between my eyes, for it has distressed and saddened me."

From the same work: Abū ʿAbd Allāh, peace be upon him, related that one of his companions complained to him of a disorder in his stomach, saying that whatever food he ate harmed him and caused indigestion.

He said to him: "Pronounce God's name over every food you eat and whenever you eat each different kind of it; then it will not harm you." He did so and was cured.

From ʿAlī, peace be upon him: “If one of you has before him a vessel containing food or drink and fears that it contains something harmful or suspects it, let him pronounce the name of God and partake of it, for nothing harms when accompanied by the name of God.” Pasted text

Concerning Seeking Refuge and Incantations

It is transmitted from the *Sharḥ al-Akhbār*: Concerning the word *hāma*: *hamīm* means the creeping of vermin; *hawāmm al-arḍ* are the creeping creatures of the earth, such as scorpions and the like. The singular is *hāma*, because it “moves” or “creeps.” The “afflicting eye” (*al-ʿayn al-lāmma*) is the eye that strikes a person—that is, affects him. One says, “I seek refuge in God from the poisonous and the afflicting,” meaning by “the afflicting” whatever may be feared to befall a person.

From the *Mukhtaṣar al-Āthār*: The *ḥuma* of a scorpion is not its sting, as common people say; this is an error.

Rather, *ḥuma* means the venom of the scorpion, snake, or other creature. A *ḥuma* may also refer to any venomous creeping creature. The scorpion’s sting itself is called the needle.

From the *Gharībayn*, in the tradition of Ibn ʿAbbās: “I seek refuge in God from the evil of a throbbing vein.”

One says *naʿara al-ʿirq bi-l-dam* when blood surges forcefully through the vein. Pasted text

Concerning Treatments and Medicines

From the answers of Khaṭṭāb ibn Wasīm to which our master al-Nuʿmān responded:

You asked about a man who wounds another, and a physician treats the wound medically, but the wounded man dies. If the physician was unskilled and the wounded man died because of the physician’s action, nothing falls upon the original assailant except compensation for the wound or retaliation for it if it is of a kind subject to retaliation. If the physician was skilled and the wounded man did not die from his action [but from the original wound], the assailant is put to death if he intentionally inflicted the wound; if it was accidental, blood-money is due.

From the *Mukhtaṣar al-Āthār*: [The Prophet] asked someone: “Do you eat dates while suffering from ophthalmia?”

He replied: “O Messenger of God, only my right eye is affected, and I eat with my left molars.” The Messenger of God smiled and did not forbid him.

From the same work: Al-Ṣādiq, peace be upon him, said that one of the Prophets complained to God Most High of having few children, so He commanded him to eat meat with eggs.

From the same work: The Messenger of God, may God bless him and his family, called the cupping point upon the head “the rescuer” and that between the shoulders “the beneficial.”

From the same work: Whoever can obtain the milk of wild asses—this is preferable.

From the same work: *Ḥamīm* may mean rainwater falling during intense heat, and it also means hot water. Rain that falls during severe heat may become heated as it runs over the ground. The prohibition against drinking it is not because it is unlawful or impure, but because it was disliked on account of its harmfulness.

From the *Īḍāḥ*: Abū ʿAbd Allāh said that al-Aṣmaʿī explained *mishqaṣ* as an arrowhead that is long rather than broad, while if it is broad rather than long it is called a *miʿbala*, plural *maʿābil*.

From the *Kitāb al-Akhbār*: If three handfuls of it are taken dry on an empty stomach, it removes bile and phlegm to such an extent that it is said to leave nothing of them.

From the *Mukhtaṣar al-Muṣannaf*: There is no harm in administering a woman’s milk through the nose of a man or in his drinking it when he has need of it. Pasted text

Book of Clothing and Perfume

Concerning the Etiquette of Clothing

From the *Ikhtiṣār*, concerning the statement that one should shorten the lower garment, shirt, and cloak: the prohibited *isbāl* is that in which the garment trails along the ground. Pasted text

Concerning What Clothing Is Lawful and What Is Forbidden

From the *Mukhtaṣar al-Āthār*: The Imams, blessings of God upon them, disliked black clothing because the Banū al-ʿAbbās adopted it as their distinctive dress and claimed that they wore it in mourning for al-Ḥusayn, blessings upon him.

Had there been virtue in doing so or had it been obligatory, the Imams descended from al-Ḥusayn would have preceded them in it. And had the ʿAbbāsids truly mourned him as they claimed, they would not have committed against his descendants what they committed. For this reason the Imams, blessings of God upon them, disliked adopting their distinctive dress.

From the same work: Al-Muʿizz, peace be upon him, said when some people's dislike of images of living beings was mentioned before him on the grounds that God, Mighty and Glorious, created them:

> "Is He not likewise the Creator of everything—trees, inanimate things, and everything seen? Yet they depict these and see no harm in depicting them. What difference, then, is there between this and that?"

From the same work: They disliked pure silk clothing for men but permitted garments woven partly with fibers derived from plants.

They transmitted that the Messenger of God, may God bless him and his family, permitted silk for certain people and allowed it to be worn in order to display magnificence before the enemy and adorn oneself so that the enemy might recognize the strength of the Muslims, in accordance with God's saying: "Prepare against them whatever force you can, and horses kept ready."

From the same work: The Imams, blessings of God upon them, likewise wore it woven with other materials, and even pure silk when lined with plant-derived cloth, displaying splendor before the enemies of God.

They permitted their followers to do likewise when displaying strength before their enemies. Though this world and everything in it were among the least significant things in their eyes, they displayed what they displayed from it as preparation for the strength of Islam and the Muslims and as a manifestation of power before all who set themselves against and opposed them.

It is said in the *Iqtiṣār*: Silk clothing and gold ornaments are not lawful for men. Pasted text

Concerning Wearing Jewelry

From the *Mukhtaṣar al-Āthār*: It is transmitted that the Messenger of God, may God bless him and his family, would often turn his ring around so that the bezel lay against the inside of his palm. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning women in India who adorn themselves with objects made from minerals and plants, while some wear bracelets of elephant ivory, purchase them, and pray while wearing them? Is this permissible for them? The common people claim that the first woman to wear ivory was Fāṭima, daughter of the Messenger of God, blessings upon her, and that he himself caused her to wear it.

Answer: Prayer while wearing elephant ivory is not permissible. They have lied concerning the daughter of the Messenger of God, may God bless him and his family. Its sale and purchase are not permissible.

As for objects derived from minerals and plants, women may make from them whatever ornaments they wish.

Question: What does our master, may God perpetuate his support, say concerning gold jewelry for women and silver jewelry for men? May they wear as much of these as they wish?

Answer: Women may wear both gold and silver. Men may wear silver, including bracelets and similar ornaments.

Question: What do you say, O Sun of the World of Wisdom, concerning the Sharīʿa permission for men to wear silver rings? If one wears two or more rings on the little finger or another finger, is this permissible? Does this cause any deficiency in his prayer?

Answer: Reliance is upon the Sharīʿa.

Question: What do you say concerning a ring engraved with a tree or something else, without any of the names of God Most High? May someone wear it while praying if he is not distracted by looking at it?

And if a ring bears the name of God or some recognized remembrance of Him, must one remove it from the hand used for cleansing oneself after relieving oneself?

Answer: This causes no harm.

As a matter of etiquette, it is preferable to remove it, but there is no blame if one does not. Likewise, there is no blame upon one who wears a ring bearing something other than the name or remembrance of God.

Question: What does our master, may God perpetuate his support, say concerning mother-of-pearl shell? People make vessels and jewelry from it. May one pray while wearing it?

Answer: Pearls are pure and one may pray while wearing them. As for the shell, refraining from its use is preferable. God and His Friends know best.

Question: What does our master, may God perpetuate his support, say concerning a man who wears the noble *iḥtifāẓ* and has with him silver ornament weighing more than one *mithqāl*, while its cord is made of silk? Is his prayer valid?

Answer: There is no harm in praying while wearing silver ornamentation on clothing, ornamented swords, and similar things.

One should not pray while wearing pure gold if it is not mixed with silver, nor while wearing silk unless it is woven together with plant-derived fiber.

Question: Concerning the saying of the Prophet, may God bless him and his family, that he prohibited gold jewelry for men and said it is forbidden to them in this world: may they wear a ring of pure gold?

Answer: They may not wear a ring of pure gold. But if the ring itself is silver and the settings holding the stones are gold, there is no harm. Pasted text

Concerning Perfume, Its Recommendation, and Its Merit

From the *Mukhtaṣar al-Āthār*: “No servant’s undergarment was ever clean except that his defects were few, and no one’s scent was pleasant except that his intellect increased.”

From the same work: They, peace be upon them, disliked refusing perfume when it was offered, and likewise refusing water.

Al-Muʿizz, peace be upon him, said:

> "Al-Manṣūr, may God sanctify his spirit, said to me: One day when I was a small boy I attended the table of al-Mahdī, peace be upon him, together with a group of his sons and grandsons, eating before him.

A slave-girl stood serving us water. She offered it to one of the boys, but he refused it. Al-Mahdī, peace be upon him, sharply rebuked her by God and said to her: 'Were it not for the sanctity of the food, I would discipline you properly. What made you offer him water when he had not asked for it?' Then he said to the boy: 'And you—when it was offered to you, why did you refuse it? Water is too noble to be offered to one who has not requested it or to be refused by one to whom it has been offered.' Al-Manṣūr said: 'At that time I did not understand what he meant. But once I came to understand it, I recognized his intention. Perfume is the same.'"

From the same work: ʿAlī, peace be upon him, said: "The Children of Israel were destroyed because of storytelling, patterned dyeing, and leaving tufts of hair."

From the *Mukhtaṣar al-Muṣannaf*: It is disliked to refuse perfume when it is offered, and likewise water. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning perfume? Is it permissible to smear the entire body with perfume? Some people in India dislike applying it to the private parts.

Answer: There is no blame in that, except in view of the saying of the Prophet, may God bless him and his family: "The perfume of men is that whose scent is apparent and color hidden, while the perfume of women is that whose scent is hidden and color apparent."

If someone nevertheless does so, there is no blame upon him.

Question: What does our master say concerning moist and powdered perfumes sold in the shops of polytheists and others when no visible impurity is seen upon them? What is their ruling?

Answer: If they are dry, they are pure. If they are moist, they are impure when they are among moist substances touched by the hands of unbelievers. Pasted text

Book of Hunting

Concerning What Game Is Lawful and What Is Forbidden

From the *Mukhtaṣar al-Āthār*: Concerning the sea, he said: "Its water is purifying and its carrion lawful."

This means what is taken alive from it of creatures lawful to eat and then dies after being removed—not what dies in the sea itself. God Most High said: "Lawful to you is the game of the sea and its food as provision for you and for travelers." By "its food" He meant what is taken from the sea and then eaten outside it, not that it is eaten beneath the water or at the bottom of the sea. Likewise, by "its carrion" he meant what dies after being taken from the sea alive. As for what dies in the sea before being caught, it is not lawful according to the doctrine of the People of the House, blessings upon them. This is the floating dead fish (*al-ṭāfī*).

From the same work: God, Mighty and Glorious, permitted hunting on land and sea to those not in *iḥrām*, except what He excluded through the tongue of His Messenger and the Imams of his Household, who clarify His intent, in accordance with His saying: "We sent down to you the Reminder so that you may explain to people what was sent down to them."

From the *Mukhtaṣar al-Muṣannaf*: Hunting swallows, shrikes, and hoopoes, and killing them, is disliked.

Hunting on Friday before the Friday prayer is also disliked.

From the *Kitāb al-Akhbār*: Game belongs to whoever first takes possession of it, not to the one who merely flushed it out if he failed to catch it. Pasted text

From the Questions Mentioned Above

Question: What does our master, may God perpetuate his success, say concerning fish caught by people of the outward law, when we know that their doctrine does not require pronouncing God's name over it? What is its status?

Answer: What has not had the name of God pronounced over it is not eaten. This may be known by observing the fisherman or by his own acknowledgment.

Question: What is the ruling concerning fish from the sea or a pond sold in Muslim markets by a Muslim seller when one does not know whether God's name was pronounced when it was caught?

Answer: Whatever Muslims sell in their markets of game and other lawful foods may be purchased and eaten unless it is established that it was slaughtered facing away from the qibla or that God's name was not pronounced over it.

If the person forgot or was ignorant, there is no blame. If he deliberately omitted it or this is known with certainty, it is not eaten. If a Muslim takes a fish out of the sea or a pond without pronouncing God's name over it, it is not eaten. If he releases a trained dog or bird upon game and pronounces God's name, and the trained animal eats part of the game, the remainder may be eaten. If they are untrained and eat part of it, the remainder may not be eaten. If a Zoroastrian releases a dog upon game and pronounces God's name, it may be eaten. Pasted text

Concerning Game Seized by Hunting Animals

From the *Mukhtaṣar al-Muṣannaf*: Concerning what a trained dog catches: if the trained dog kills it merely by impact, without inflicting a wound, it may not be eaten.

From the same work: If a man releases a trained dog and it is assisted by a dog released by a Zoroastrian or polytheist, or by an untrained dog or wild beast, and together they kill the prey, it is not eaten unless one reaches it in time to perform lawful slaughter.

From the *Mukhtaṣar al-Āthār*: From ʿAlī, peace be upon him, that he prohibited eating game belonging to Zoroastrians and Arab Christians that had died before lawful slaughter could be performed, as well as game caught by hunting animals they had trained, unless those animals were subsequently trained by Muslims.

From the same work: They said that all dogs have the same ruling, whether Kurdish, Salūqī, or other kinds; what they catch may be eaten if they are trained.

They, peace be upon them, said: If the prey is reached alive after the hunting animal has wounded it, but it is not slaughtered and dies in one's hands from the wound caused by the hunting animal, it may be eaten. If the hunting animal had not wounded it but carried it off, and it later dies, it may not be eaten. Pasted text

Concerning Game Killed by Hunters

From the *Mukhtaṣar al-Muṣannaf*: Whoever shoots at game after pronouncing God's name, the missile passes through it and then strikes another animal—the second may also be eaten.

If one man shoots game so that it can no longer escape, and another subsequently shoots and kills it, the game may not be eaten, and the second must compensate the first for its value in the condition it had then reached. If the first wounds it but it remains capable of escape, and the second then shoots and kills it, it belongs to the second. Domesticated animals that become wild are treated like hunted game with respect to

lawful slaughter. Game that is already incapable of escape because of its youth or an infirmity, if someone shoots and kills it with an arrow, may not be eaten.

From the same work: If a man strikes game with a sword and cuts it into two pieces, or severs its head or another part without which it cannot survive, he may eat all of it.

But if he severs a hand, leg, or another part after whose loss the animal could survive for an hour or more, the severed part may not be eaten.

From the *Mukhtaṣar al-Āthār*: If a hand, leg, or other limb is cut off and the animal is subsequently lawfully slaughtered, the animal may be eaten except for the severed limb.

A *ḥabāla* is a device set for hunting, such as nets, traps, and similar things. Pasted text

Book of Slaughtered Animals

Concerning the Acts of Slaughterers

Concerning the statement that mutilation of animals was prohibited: there is no harm in branding livestock anywhere except the face, nor in cutting the fat tails of sheep when this benefits them, though the severed tail-fat itself is not eaten.

Castrating animals is disliked, but castration is forbidden only in the case of human beings.

From the *Mukhtaṣar al-Āthār*: An animal should not be slaughtered with stone, tooth, fingernail, bone, or anything else except iron. Pasted text

Concerning Whose Slaughtered Animals May and May Not Be Eaten

From the *Mukhtaṣar al-Muṣannaf*: Animals slaughtered by idol-worshippers and those like them may not be eaten, nor animals slaughtered by an apostate.

The slaughter of an intoxicated person is disliked. Pasted text

From the Questions Mentioned Above

Question: Concerning a Muslim man who slaughters a lawful animal while holding it up in the air in his left hand, with its neck between his fingers—what is its ruling?

Answer: No prohibition has been transmitted concerning slaughtering an animal while holding it in the air.

If the slaughterer pronounces the name of God Most High and slaughters facing the qibla, there is no harm. Slaughtering upon the ground is preferable, and this is the practice followed in the doctrine of the pure Imams.

Question: If a limb of a lawful animal is cut but remains hanging by the skin, and then the animal is slaughtered, may that limb be eaten as part of the slaughtered animal?

Answer: If the limb had become effectively severed and could not have been restored by setting it back in place, its consumption is forbidden.

Question: What do you say concerning a slave who slaughters someone's animal with or without his master's permission? Is anything incumbent upon him? The common people strongly dislike a slave's slaughtering without his master's permission.

Answer: If he pronounces God's name, the slaughtered animal may be eaten. There is no need for his master's permission.

Another ruling: The animal slaughtered by someone in a state of major ritual impurity may be eaten, except on the Day of Sacrifice and during pilgrimage.

From the answers of our master al-Nuʿmān to our master Khaṭṭāb ibn Wasīm:

You asked concerning one who slaughtered without pronouncing God's name. If he did so forgetfully or through ignorance, he pronounces God's name when he remembers and the animal may be eaten. If he deliberately omitted the invocation of God's name, the animal may not be eaten. You asked concerning one who slaughtered without severing the two jugular veins. The proper Sunna of slaughter is to cut the two jugular veins, esophagus, and windpipe, carrying the knife down to the bone without severing the head. One slaughters from the throat and leaves the laryngeal prominence attached to the head. If someone was ignorant of some of this and did not perform it precisely as required, but the animal died through his act, it may still be eaten.

If he deliberately departed from the Sunna while knowing it, the animal may not be eaten—unless he cannot reach the normal place of slaughter and fears that the animal will die, in which case he may pierce it with a spear wherever he can reach a vital point, pronouncing the name of God, and eat it, just as one does with game that cannot otherwise be reached. Pasted text

Concerning Recognition of Lawful Slaughter

From the *Mukhtaṣar al-Muṣannaf*: If an egg is found inside a dead hen and has already developed a hard shell, there is no harm in eating it.

From the *Mukhtaṣar al-Āthār*: ʿAlī, peace be upon him, was asked concerning the fetuses of livestock whose mothers are slaughtered while they are still in the womb: are the fetuses lawfully slaughtered by this?

He said: "Their slaughter is the slaughter of their mothers, for they are one of their limbs." If they emerge alive, they are left until they die and may then be eaten if they have developed hair or wool, or any trace of this, even upon their tails, because the tail is the first place upon which hair appears. He disliked eating one that had developed neither hair nor wool. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning a fish found dead inside another fish that has been caught? What is its ruling?

Answer: [The text appears defective here.] What is intended is what dies through lawful slaughter. If it is dead without having been lawfully slaughtered, it is not eaten. Pasted text

Book of Sacrificial Animals and ʿAqīqa

Concerning Sacrifices

Marginal note: The sacrificial animal may not be slaughtered before the festival prayer, as has been mentioned, and may be slaughtered until the Sun passes the meridian. Once the Sun has passed the meridian, it may not be slaughtered until sunrise the following day. This applies throughout all the Days of Tashrīq, both in the towns and at Minā. The most excellent time for slaughter is the Day of Sacrifice itself.

From the *Mukhtaṣar al-Āthār*: The term *budn* applies to both camels and cattle; this is likewise transmitted from ʿAlī, peace be upon him.

From the *Muṣannaf al-Wazīr*: If one of the partners in a jointly offered camel or other sacrificial animal dies, and his heirs consent to its being slaughtered on his behalf together with the other partners, it suffices for them.

If one of the partners in a camel does not intend it as a sacrificial offering but merely wants meat for himself, it does not suffice for the others. Those sharing in a camel as a sacrificial offering should not include someone whose sole purpose is meat. Whichever of the partners slaughters it on the Day of Sacrifice, this suffices for them all.

From the *Iqtiṣār*: Offering an animal individually is preferable.

Whoever cannot obtain a sacrificial animal for himself alone may share with others. A camel suffices for ten persons and a cow for seven.

From the *Book of Zakāt*: A camel or bull suffices only for one person.

From the *Niẓām*: *Anʿām* means all grazing livestock—camels, cattle, and sheep—while *naʿam* specifically means grazing camels.

From the *Mukhtaṣar al-Muṣannaf*: If someone makes a sacrificial animal obligatory upon himself, then it is stolen and slaughtered, and afterward he recovers it, it suffices for him if it was slaughtered within the proper time.

If it was slaughtered outside the proper time, it does not suffice; he may keep the meat, while the thief owes him the difference between its value alive and slaughtered. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa statement that among camels only a *thanī*, among cattle only a *musinna*, and among goats only a *thanī* suffices for sacrificial offerings? What do these two terms mean? May we be your ransom.

Answer: A *thanī* is an animal whose central incisor has fallen out. *Thanāyā* are the four front teeth—two above and two below.

A gazelle is always classed as *thanī* because no replacement incisor grows for it. A *musinn* is one whose sixth tooth has grown, namely the tooth following the fourth incisor.

Question: What do you say concerning what occurs in the Sharīʿa, that if someone purchases an animal for sacrifice and it dies before the Day of Sacrifice, it suffices for him? O our master, what if it is stolen?

Answer: It suffices for him if it disappears or is stolen and he does not recover it until the Days of Tashrīq have passed.

Question: What do you say concerning the Sharīʿa prohibition against selling any part of one's sacrificial animal? O our master, if someone sells its hide or some other part through forgetfulness or ignorance, is anything incumbent upon him?

Answer: Making use of the hides of sacrificial animals is preferable. If he sells one, he must give its price in charity. Pasted text

Concerning ʿAqīqa

From the *Mukhtaṣar al-Muṣannaf*: If the *ʿaqīqa* is not performed on the seventh day after birth, it should be done on the fourteenth; if delayed further, then on the twenty-first. It should not be delayed beyond that.

From the same work: They instructed that the *ʿaqīqa* be performed on the seventh day after the child's birth or thereafter.

If the child dies before the seventh day, no *ʿaqīqa* is required. The *ʿaqīqa* falls upon the father; if he is poor, then upon the mother. If both are poor, it is recommended for the child, once he becomes capable and reaches understanding, to perform an *ʿaqīqa* for himself.

Part of the ʿ*aqīqa* is to shave the hair with which the child was born on the seventh day and give in charity the equivalent of its weight in gold or silver.

From the *Sharḥ al-Akhbār*: Some of the sacrificial blood is placed upon the spot of the child's head that was shaved.

From the *Mukhtaṣar al-Muṣannaf*: One leg of the ʿ*aqīqa*, amounting to one-quarter of it, is given to the midwife if she is Muslim; if she is a protected non-Muslim, she receives the monetary value of that portion.

Whatever is permissible in sacrificial animals is permissible in the ʿ*aqīqa*.

From the *Kitāb al-Akhbār*: It is recommended when the ʿ*aqīqa* is slaughtered that it be divided into joints without breaking its bones.

From the *Sharḥ al-Akhbār*: The poor are fed from it.

From the *Mukhtaṣar al-Āthār*: The Prophet, may God bless him and his family, concerning names, prohibited four *kunyas*: Abū ʿĪsā, Abū al-Ḥakam, Abū Mālik, and Abū al-Qāsim when the personal name is Muḥammad.

He prohibited this for people generally, but permitted it specifically to ʿAlī, to the Mahdī alone, and to their descendants, blessings of God upon them all. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning naming a child after one of his parents? Is this permissible? The people of India never do so.

Answer: No reliance is to be placed upon this custom. A man may name his children however he wishes.

Question: What do you say concerning a man who slaughtered a sheep as ʿ*aqīqa* for his child but did not perform the practices involving its blood, the rear quarter, dividing it into joints, or reciting the transmitted supplication at slaughter? Does the ʿ*aqīqa* still suffice on account of his sincere intention? And if he omitted these things, must he give the midwife compensation in place of the quarter?

Answer: These matters belong to etiquette; nothing is incumbent upon him for omitting them.

The hide of an animal slaughtered as a vowed offering or as an ʿ*aqīqa* may be sold. Pasted text

Book of Marriage

Concerning Encouragement toward Marriage

From the *Mukhtaṣar al-Muṣannaf*: The command to marry was not given in the form of an obligation whose abandonment makes one sinful.

Rather, marriage is an established and emphatically recommended Sunna. Whoever feels no need for it, or is able to abstain from it and does not marry, incurs no blame. Pasted text

Concerning Whom It Is Recommended to Marry and Whom It Is Preferable to Avoid

From the *Mukhtaṣar al-Āthār*: The expression *ghull qummal* refers to something by which people in the Age of Ignorance used to shackle captives and those whom they wished to torment.

They would put around the captive a strip of freshly flayed camel hide, with the hair turned inward against his skin, and bind it tightly around him. As it dried, it contracted and lice bred beneath it, but because of its

tightness the lice could not be reached, causing severe pain to the person upon whom it had been fastened. This was used as a simile for an evil wife and the suffering her husband endures from her.

From the *Mukhtaṣar al-Āthār*: Abū ʿAbd Allāh, peace be upon him, was told by Dāwūd ibn ʿAlī:

> "You have committed a sin that God will never forgive you."

He asked: "What is it?" He replied: "You married your daughter to a man from the Banū Umayya."

Abū ʿAbd Allāh, peace be upon him, said:

> "My example in this is the Messenger of God, may God bless him and his family. He married his daughter Zaynab to Abū al-ʿĀṣ ibn al-Rabīʿ, and married ʿUthmān ibn ʿAffān to Umm Kulthūm. When she died, he married him to his daughter Ruqayya.

ʿUmar sought the hand of Umm Kulthūm from ʿAlī, but ʿAlī refused him. ʿUmar then went to al-ʿAbbās and complained to him, threatening the Banū ʿAbd al-Muṭṭalib. Al-ʿAbbās therefore went to ʿAlī and said, 'O son of my brother, you see the situation in which we find ourselves. ʿUmar has threatened you and us because you rejected him.' He continued speaking to him until ʿAlī entrusted the matter of her marriage to him, and al-ʿAbbās then married her to ʿUmar." The most excellent and preferable course is to marry among those who share one's allegiance, or at least among those who do not display hostility toward the family of the Messenger of God, blessings upon him and them all. Marriage with a believer is preferable to marriage with anyone else. In cases of necessity there is no harm in marrying Muslims who differ in doctrine, and likewise in giving women in marriage to them. This is not forbidden as marriage with polytheists is forbidden.

Nevertheless, preference and choice lie in marriage among those of concordant allegiance, and after them among the weak or non-hostile.

From the *Mukhtaṣar al-Āthār*: Al-Ṣādiq, peace be upon him, was asked about a man marrying a woman of illegitimate birth. He said: "There is no harm, provided the defect is not carried over to his child."

He was asked whether a female child of fornication may be had intercourse with, sold, and purchased if she is a slave-woman. He said: "Yes. What is unlawful does not make lawful things unlawful or corrupt them." If people were to avoid and prohibit marriage with such persons, corruption on earth would become widespread. God may reform the corrupt and accept the repentance of sinners. One of the People of the House, peace be upon them, was asked concerning God's saying: "The fornicator marries none but a fornicatress or a polytheist." He said that *nikāḥ* here means touching and sexual intercourse. If what is intended is physical intercourse, then the verse refers to fornication rather than lawful marriage. Others said that the words "except a fornicator or polytheist" mean that no one incurs God's wrath by engaging in such an act except one who thereby acts as a polytheist. The Messenger of God, may God bless him and his family, said: "The fornicator does not fornicate while he is a believer." Pasted text

Concerning Proposals to Women

From the *Mukhtaṣar al-Āthār*: If another suitor proposes, or another bidder increases the price of merchandise, after an agreement has been reached but before the marriage or sale contract has actually been concluded, then legally the matter belongs to whoever ultimately concludes the contract.

Although such conduct exceeds what is proper and virtuous, it does not invalidate the marriage or sale, because no binding right arises before the contract itself.

From the *Mukhtaṣar al-Muṣannaf*: A marriage contract resembles a sale, except that once the marriage contract has been concluded there is no option of rescission either before or after the parties separate.

If a man says to a woman's guardian, "I seek the hand of so-and-so from you," and the guardian replies, "I marry her to you," the suitor must say, "I accept," because he may have been proposing on behalf of someone else. But if a master says to his male slave, "I marry you to my slave-woman so-and-so," the marriage is valid without the slave having to say, "I accept."

From the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, said:

> "Whoever among you wishes to marry should praise God and extol Him, then say:
>
> 'O God, provide me with a wife who is fertile, loving, jealous, and grateful; if I treat her well, she is grateful; if I wrong her, she forgives; if I remember God, she assists me; if I forget, she reminds me; if I leave her, she safeguards my secrets; if I enter upon her, she makes me happy; if I command her, she obeys; if I adjure her, she fulfills my oath; and if I become angry, she reconciles me. O Possessor of Majesty and Honor, grant me this, for I receive only what You allot and bestow.'"

The Messenger of God, may God bless him and his family, said: "Whoever does this, God Most High grants him what he asks." Pasted text

Concerning Consummation with Women and Marital Relations

From the *Mukhtaṣar al-Āthār*: All of this indicates the prohibition of amusement, listening to singing, flutes, lutes, and similar instruments used for entertainment.

As for what is employed in war, when armies are drawn up and reviewed, and in similar public assemblies before the Imams and commanders of armies—such as drums, large kettledrums and similar instruments, and blowing horns, trumpets, and comparable wind instruments—when these are not used for pleasure and entertainment, they do not fall under the preceding prohibition. Rather, their use is recommended in the appropriate circumstances.

It is transmitted that the Messenger of God, may God bless him and his family, passed by a group of Africans beating their drums and said:

> "Go on, go on, O Banū Arfida, so that the Jews may know there is latitude in our religion."

If someone asks why we hear and see in lands governed by the authority of the Imams, blessings upon them, forms of entertainment that have been prohibited, he is told:

That is no more surprising than the other immoral acts that God has prohibited, which people commit in their houses and behind their doors and curtains. God, Mighty and Glorious, commanded the prescribed punishments to be applied only to immoral acts for which such punishments are legislated when they become public, are witnessed, and proven. He alone knows what remains hidden and concealed, and He alone determines punishment or pardon for it, hastening what He wills and delaying what He wills. It has become clear and widely known to all people that the Imams, blessings upon them, condemn those who engage in such things and do not grant them license, even though these matters are not subject to prescribed legal punishments. Rather, they must be condemned and prohibited.

From the *Īḍāḥ*: This means that the man should not hasten her, but should allow her to satisfy her need and delay his own ejaculation as much as he can.

The words "let him be truthful with her" mean—God knows best—firmness in intercourse and avoiding excessive gentleness in it.

From the *Ikhtiṣār al-Āthār*: From ʿAlī, peace be upon him: "A man should not sleep between two free women, though he may sleep between his slave-women. He should not look upon the nakedness of a free woman nor expose his own nakedness to her."

From the *Mukhtaṣar al-Muṣannaf*: When a man has concluded the marriage contract with a woman and paid her immediate bridal due, she is compelled to enter his household whenever he wishes if she is an adult or of an age at which girls like her are ordinarily capable of intercourse.

She may refuse until a wound [or physical impediment] has healed completely. Her statement is accepted if she claims that the condition persists. If this continues for a long time and women capable of determining the matter say that intercourse will not harm her, she is compelled to allow him access.

From the same work: If he acts before that and thereby injures her, he is liable. The same is mentioned in the *Mukhtaṣar al-Āthār*.

From the *Yanbūʿ*: Intercourse with women in the anus was prohibited.

If a man does this, it does not render her lawful for a husband from whom she had been triply divorced, nor does it establish the legal status of consummation for her. If she brings a complaint against him and he admits it, he is disciplined.

From the *Mukhtaṣar al-Āthār*: "Conversation with women produces forgetfulness and causes the heart to deviate; it is one of the snares of Satan."

From the same work: "Do not lodge them in upper rooms, do not teach them writing, and teach them Sūrat al-Nūr."

From the same work: The Messenger of God, may God bless him and his family, once asked his companions:

"What is a woman?"

They said: "Something to be concealed, O Messenger of God." He said: "Yes. And when is she closest to her Lord?" They had no answer.

ʿAlī mentioned this to Fāṭima, blessings upon her, and she said:

"Return to him and say: O Messenger of God, she is closest to her Lord when she remains in the innermost part of her house."

He went and told the Prophet. The Prophet said: "Is this from you, O ʿAlī?" He replied: "No, O Messenger of God. Fāṭima told me." The Messenger of God said: "She has spoken truthfully; she is a part of me."

From the *Ikhtiṣār*: Women were forbidden, when walking behind men, to walk in the middle of the road together with them.

From the same work: Women were forbidden to comb their hair with wine or with the dregs of wine.

From the *Mukhtaṣar al-Āthār*: He, peace be upon him, forbade a woman to deny herself to her husband when he asks for her, and to deny him her service and labor.

He said: "The best adornment with which a woman adorns herself is fear of God and obedience to her husband."

From the same work: The Messenger of God, may God bless him and his family, assigned to his daughter Fāṭima, peace be upon her, service within the house, and assigned to ʿAlī service outside it.

Abū ʿAbd Allāh Jaʿfar ibn Muḥammad, peace be upon him, was asked about the right of a woman over her husband, such that if he fulfills it he is considered to have treated her well. He said: "He feeds her sufficiently, clothes her, and when she harms him he forgives her." He said: "My father had a wife who would harm him, yet he forgave her and used to say: The Messenger of God, may God bless him and his family, said: 'A woman is like a rib: if you leave it as it is, you benefit from it; if you attempt to straighten it, it breaks.'" He was asked: "What if a woman is jealous concerning her husband?" He replied: "That comes from love." ʿAlī, peace be upon him, was asked concerning a man who turns away from his wife because worship, fasting, and prayer occupy him.

A wife of ʿUthmān ibn Maẓʿūn came to the Messenger of God and said:

"O Messenger of God, ʿUthmān fasts during the day and spends the night in prayer."

The Messenger of God understood what she meant. He went out to the mosque and found ʿUthmān ibn Maẓʿūn standing in prayer.

He said:

> "O ʿUthmān, God did not send me with monasticism. He sent me with the upright religion. Whoever loves my innate way should follow my Sunna, and marriage is part of my Sunna."

From the Messenger of God, may God bless him and his family: He forbade striking women except where there is a legally required cause.

From the Messenger of God, may God bless him and his family: "Protective jealousy is part of faith, while *madhāʾ* is part of hypocrisy."

This means jealousy concerning what is unlawful. The term *madhāʾ* is derived from *madhī* [pre-ejaculatory fluid] and refers to bringing men and women together for such purposes. In another tradition from ʿAlī, peace be upon him, the word is *midhāl* with an *l*, meaning absence of protective jealousy. Its root is from the expression "a man disclosed his secret," meaning made it manifest; hence it refers to exposing one's household to men. As for jealousy concerning lawful conduct, it is disliked and prohibited. ʿAlī said: "There is no jealousy concerning what is lawful." This follows the statement of the Messenger of God, may God bless him and his family, "Do not do anything until I come to you both," referring to the night when ʿAlī first entered upon Fāṭima, peace be upon her, after she had become his wife. The Messenger of God said this after they had lain down. ʿAlī refrained, and the Messenger of God entered, supplicated for them, blessed them, and then departed. Pasted text

From the Questions Mentioned Above

Question: What do you say concerning the people of India disliking intercourse between a man and his wife on the night before he intends to travel or on the day of his departure?

Answer: No reliance is to be placed upon this.

Question: What do you say concerning what occurs in the Sharīʿa, that looking at the sexual act causes blindness and speaking during it causes muteness? Does this apply to the man, the woman, or both? Does it apply to every act of intercourse or only intercourse resulting in conception? Does the person who does this sin before God?

Answer: It applies to every act of intercourse. Neither of them may look at that [act].

Question: Concerning concluding a marriage contract or holding a wedding feast between the Festival of Breaking the Fast and the Festival of Sacrifice, during the first ten days of Muḥarram, or during Ṣafar until the twelfth of Rabīʿ I: the common people dislike doing these things during such times and refrain from them.

Answer: No reliance is to be placed upon this.

Question: What do you say concerning the Sharīʿa statement disliking intercourse with women in the anus? O our master, is this a dislike meaning prohibition, so that the one who does it sins, or is it merely disliked but not forbidden?

Answer: It is not permissible. It has been condemned in the Sharīʿa and he has no right to do it.

Question: What do you say concerning the Sharīʿa prohibition against a man having intercourse with his wife while another woman is present in the same room? O our master, if the barrier between them and the other person in the room is deep sleep or complete darkness, may he have intercourse with her?

Answer: This has been prohibited. He may do so only if he places a covering or partition between them.

Question: What do you say concerning the threats transmitted against a man who permits his wife to go out to public baths, lamentation gatherings, visits to the sick, and weddings? The people of India constantly do all of these things except going to public baths, and this is the custom of the land.

Answer: Reliance is upon what is stated in the noble Sharīʿa.

Question: What do you say, O Gate of Remission for those who prostrate, concerning withdrawal (*ʿazl*, coitus interruptus) when the woman consents to it but the man dislikes it? May he act according to his own wishes? The Sharīʿa states that withdrawal from a free woman is prohibited without her permission and from a slave-woman without her master's permission.

Answer: It is not to be done except with the consent of both.

Intercourse with one's wife is permissible on the night of the festival and before the festival prayer.

Question: What do you say concerning a woman who owns male slaves, or whose father or one of her unmarriageable relatives owns them? May she display her adornment before them or converse with them privately or publicly? Graciously clarify this for us; may God make us your ransom.

Answer: She should not display her adornment before them and should not converse with them [in this manner]; they are like unrelated men. Pasted text

Concerning Guardians in Marriage and Witnesses to the Marriage Contract

It is said in the *Yanbūʿ*: A woman who has no guardian is married by the judge.

If she appoints an agent, witnesses to that agency are indispensable. The father of a virgin daughter may marry her without having witnesses to her authorization, because he has a stronger right over her and is entrusted with her interests. If one of a virgin woman's other guardians marries her and she says, "I did not consent," while he claims that she did, her statement is accepted with her oath, and the husband must produce evidence. But if her father married her and she says, "I did not authorize him," no attention is paid to her statement. The same applies to her paternal grandfather.

From the same work: If the contracting party is joking, intoxicated, or coerced, the contract does not take effect—meaning where the joking person contracts without guardian or witnesses.

It is said in the *Mukhtaṣar al-Īḍāḥ*: If a man jokingly says to a woman, "I have married you," and she says, "Yes," it is valid—meaning when there are a guardian and witnesses.

It is also said there: If a man marries a woman in jest, divorces her in jest, or emancipates his slave in jest, and two witnesses testify to it, the act takes effect.

It is said in the *Mukhtaṣar al-Īḍāḥ*: A woman may not marry except with the permission of her agnatic kin (*ʿaṣaba*). Her *ʿaṣaba* are her guardians. A son belongs to the *ʿaṣaba*, because if he is the sole heir he takes the whole estate.

It is said in the *Yanbūʿ*: When a guardian seeks the consent of a virgin, her consent may be indicated by weeping, silence, or laughter. If she refuses, he does not marry her off.

As for a previously married woman, she is not married until she explicitly gives permission.

From the same work: If a woman appoints one of her guardians as agent to marry her and he marries her to someone who is not a suitable match, the marriage is invalid.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Ṣādiq, peace be upon him, said: If a father marries off his minor son, the marriage is valid, but the father may not divorce on his behalf while he is still a minor.

The bridal due is upon the father if he guaranteed it when marrying off his minor son. If he did not guarantee it, it is upon the son—unless the son has no property, in which case it is upon the father whether he expressly guaranteed it or not. A father may marry his minor son to another man's minor daughter if her father does so. The marriage of minors may be contracted only by their fathers. If a father marries off his son and

then dies, the bridal due is taken from the father's entire estate and not merely from the son's share, for it is treated as a debt.

From the *Mukhtaṣar al-Āthār*: A man came to the Commander of the Believers, peace be upon him, and said: "I went away and entrusted my household and my daughter to someone, saying, 'If you find a suitable match for her, marry her.' Is the marriage he contracted valid?"

He said: "Yes," and approved it. Qāsim ibn Ibrāhīm was asked whether an executor may marry off a woman. He said: "An executor has no authority simply by virtue of being an executor where there is a guardian by blood. Guardians are those who share kinship." What is meant here is that this applies where the father had not entrusted him with the matter and specifically authorized him to marry his daughter to a named man. If the father did so, then the executor or agent who marries her by the father's authorization acts validly. If he marries her while she is still a child, it is not valid—meaning in the case where her mother has embraced Islam, since every child whose father or mother embraces Islam becomes Muslim through that parent.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Ṣādiq, peace be upon him, was asked about a previously married woman who appoints a man to marry her without the permission of her guardian.

He said: "There is no marriage without a guardian, whether for a previously married woman or a virgin, so long as the guardian is competent to act. If the guardian refuses, the matter belongs to the ruler. We prefer that it be the judge, but if it is another governor vested with judicial authority, that is also valid."

From the *Mukhtaṣar al-Āthār*: If this is not known, the contract is invalidated and a new one is concluded.

From the *Mukhtaṣar al-Īḍāḥ*: It is transmitted from the Commander of the Believers—blessings upon him and the Imams among his descendants—that he said concerning a woman who came to a people saying, "I have no husband," while no one knew her:

> "She is not to be married until she establishes through upright witnesses that she has no husband. Then her marriage may be contracted, and she may authorize someone to conclude it on her behalf."

From the same work: If she has no witnesses, she is entitled to the customary bridal due of women like her.

From the *Mukhtaṣar al-Muṣannaf*: The same applies to a paternal cousin and similar guardians.

If a woman's guardian marries her without her command or permission and she does not learn of it until the husband has died, the marriage counts for nothing and they do not inherit from one another. If a woman denies a marriage and one witness testifies that he married her today while another testifies that he married her yesterday, the marriage is invalid. If a minor boy and minor girl are married by someone other than the father or paternal grandfather, the marriage is annulled and there is no inheritance between them. If, after reaching adulthood, he consummates the marriage with her, she is entitled to the bridal due and they are separated.

From the *Book of Agency*: If a man appoints an agent to marry a woman for him and the agent marries him to someone who is not a suitable match, the marriage is invalid.

If he authorizes the agent to marry him to two women in one contract and the agent marries him to only one, it is valid. But if he says, "Do not marry me except to two women in a single contract," and the agent marries him to one, it is invalid.

From the *Mukhtaṣar al-Īḍāḥ*: [The father's authority] applies to a virgin but not to a previously married woman. I think "virgin" here means one who has not reached puberty, because the father's contract for a minor girl is valid whether she wishes it or refuses it.

From the same work: If she has no witnesses, she receives the customary bridal due of women like her.

From the Questions Mentioned Above

Question: What do you say concerning a man who meets with a woman's guardian, the two of them conclude a valid contract, and one of them recites the marriage sermon? Does this suffice?

And if a man wishes to marry a woman, may he command someone beneath him in rank to conclude the contract between them and recite the marriage sermon?

Answer: The marriage is valid if the woman has granted authorization. There is likewise no harm in a person lower in rank concluding the contract between them.

Question: What do you say concerning a guardian who wishes to marry a woman for whom there is no other guardian, either because the others are absent or because he himself is the closest relative? How does he contract the marriage? May he appoint an agent on his own side and then conclude the contract with him?

Answer: He may appoint an agent, and the woman may also appoint that same person, and then conclude the contract with him. "Take what you have been given and be among the grateful."

Question: What does our master, may God perpetuate his support and dominion, say concerning a minor girl who is married by one of her guardians who does not possess authority to marry her while she is still a child?

Some shaykhs say that the marriage remains suspended until she reaches puberty, at which point she is given the choice: if she chooses the marriage, she is sent to her husband; otherwise they are separated. Others say that her marriage has no validity until puberty.

Answer: No one may marry her off except her father, her paternal grandfather, an agent, or an executor if the father had specifically authorized him to marry his minor daughter, whether to an adult or another minor.

If he appointed him as agent while she was still a child, she has no option upon reaching puberty.

Question: What does our master, may God perpetuate his shadow, say concerning a woman whom the governor married after it had been established before him that she had no guardian, but afterward her guardian arrived from another place? Is the marriage annulled?

Answer: The marriage is annulled and the guardian marries her.

Question: What does our master, may God perpetuate his support and beneficence, say concerning a woman whose guardian is absent? She summons him but he refuses to come, saying, "I will not leave this place." How long is he to be waited for?

Answer: If he refuses both to contract the marriage and to appoint an agent, and upright testimony establishes this, while she has no other guardian, the judge marries her.

Question: If the guardian has traveled a month's distance, less or more, and a year or two passes, how is an adult woman to marry?

Answer: A woman may be married only by her guardian. If he is absent, she waits for his return unless he appoints someone to marry her or she has another guardian.

Question: If a man appoints an executor concerning the marriages of his children, while the nearest guardian is a minor and then reaches adulthood, who has priority in contracting marriages for the orphans?

Answer: Once the orphans reach adulthood they have no need of the executor, and the guardian has priority.

Question: A woman wishes to marry and has no guardian except her son, who is absent. May her grandson act as guardian in the marriage contract if he is an adult?

Answer: The grandson takes the place of the son in his absence.

Question: A woman wishes to marry and has a maternal half-uncle, her father's brother through the mother, and also a paternal cousin related through her father's father and mother. Which of them has authority to contract the marriage?

Answer: [The text reads:] "There is no guardianship through her father [i.e. through the maternal half-uncle]." The paternal agnatic relative is intended.

Question: A woman has a full brother who is absent at a distance of two postal stages, while the son of that brother is present. If she wishes to marry, may the nephew act as guardian if he is an adult?

Answer: There is explicit text concerning this: when the guardian is absent, the nearest available guardian contracts the marriage in accordance with the Sharīʿa.

Question: If the relatives previously mentioned are absent at the time of the marriage contract, may the woman turn to any relative on her father's side?

Answer: Her guardian is the nearest relative through the father rather than a more remote one.

Question: If a woman has no guardian except a distant relative whom many people consider related through her mother, while both the man and the woman believe him to be related through her father, does he have guardianship over her?

Answer: He has no guardianship unless upright evidence establishes that he is related through the father. If there is no such evidence, her guardian is the judge.

Question: May an adult woman appoint the Muslim judge as agent for her marriage when there is someone from her father's kin available?

Answer: The judge is guardian of one who has no guardian. If there is any relative on the father's side, even a remote one, he has priority over the judge.

Question: If the nearest guardian demands a bribe from a woman in order to marry her and she refuses, may she appoint the next guardian after him?

Answer: If upright testimony establishes that he demanded this, the woman may appoint the nearest guardian after him. He has no right to demand a bribe from her.

Question: If the guardian prevents the woman from marrying out of fear that someone might thereby enter into competition over inheritance, may she appoint the next guardian after him?

Answer: If upright evidence establishes his wrongful obstruction (*ʿaḍl*), the woman may appoint the nearest guardian after him.

Question: What does our master say concerning a man who has a minor son and another man who has a minor daughter? The father of the boy proposes for the girl on behalf of his son. They gather before the locally authorized representative, who says to the father of the girl: "I marry the son of this man, named so-and-so, to your daughter so-and-so for such-and-such bridal due." The girl's father says, "Yes."

Then he says to the boy's father, "And do you accept that for your son?" He says, "Yes," in the presence of witnesses. They separate upon this understanding. Five years, less or more, then pass, and after the children reach puberty they renew the contract a second time, with consummation then taking place. If either the girl or boy dies during the interval between the two contracts and before consummation, do they inherit from one another?

Answer: The marriage contract is binding.

It has been said that "a marriage without a sermon is like a mutilated hand." If the two fathers explicitly pronounced the marriage of their two minor children, the girl's father saying, "I marry my daughter to your son," and the boy's father saying, "I marry my son to your daughter," the marriage is established and they inherit from one another. Renewing the contract afterward is preferable as conformity with the Sunna. The bridal due is owed by the husband's father. This answer is from our master Idrīs ibn al-Ḥasan ibn al-Ḥasan ibn ʿAbd Allāh, may God sanctify his spirit.

Question: If the nearest guardian insists on finding a socially suitable match but none is found and much time passes, while the woman wants to marry, may she appoint the next guardian?

Answer: If the woman is content with a Muslim man and the guardian refuses to marry her to him, the next guardian marries her.

From the answers of our master al-Nuʿmān, may God sanctify his spirit, to Khaṭṭāb ibn Wasīm:

You asked about a woman who received a proposal while she had both a father and a brother. Her father refused to marry her, so she appointed her brother and he married her. What is the status of the marriage? The father has greater authority over her than the brother, and she may not substitute her brother for her father. If she does so and the brother marries her, the marriage is annulled and a new marriage must be concluded with guardian and witnesses. Her father should marry her, by her authorization, to whomever she wishes. If he refuses, she raises her matter to the authority who adjudicates among the Muslims in her locality. That authority orders her father to marry her to the man she requests.

If the father says, "He is not a suitable match for her," no attention is paid to his statement, for Muslims are suitable matches for one another—except the Household of the Messenger of God, blessings upon him and them, for none outside them is their equal because of their superiority over others, though they may marry outside their own house. If the father persists in refusing, the adjudicating authority appoints her brother or the nearest other guardian. If she has no guardian, he appoints a Muslim man whom she authorizes, and he contracts the marriage for her. You asked whether a judge or anyone else may marry off an orphaned minor girl out of necessity. A minor girl may be married only by her father, paternal grandfather, or someone whom either of them has specifically appointed or authorized for her marriage. No one beneath them may marry her. The judge separates her from anyone who married her in this manner, though if he consummated the marriage she is entitled to the bridal due.

Question: Concerning the saying of Abū Jaʿfar Muḥammad ibn ʿAlī, peace be upon him: "Your son has greater claim over you than your grandson, your grandson has greater claim than your brother, and the son of your full brother has greater claim than the son of your paternal half-brother," and so on—if these persons take charge of a deceased person's affairs, are they likewise the guardians who contract marriage for an adult woman, by her authorization, in order of proximity?

Answer: The grandson has priority over the son of a full brother, and the son of a full brother has priority over the son of a paternal half-brother.

Another ruling: If an adult woman wishes to marry but her nearest guardian is still a minor, her guardian is the judge. If a woman is married without a guardian and the guardian arrives before consummation and approves the marriage, the marriage becomes valid. If he arrives only after consummation, the marriage is not valid without concluding a new contract.

Concerning Bridal Dues for Women

From the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, did not marry any of his daughters for more than twelve and a half ounces of silver.

An ounce is forty dirhams and half an ounce is twenty, making a total of five hundred dirhams. [The marriage goods also included] a woven cloak and bedding made from a ram's hide. This is the bridal due of the Sunna (*mahr al-sunna*), though there is no fixed legal maximum for bridal dues.

From the *Yanbūʿ*: A man may marry his minor daughter for more than the customary bridal due of women like her, provided the excess is not gross.

The statement that "dirhams at that time had a weight of six" means that ten dirhams weighed six *mithqāls*. A *mithqāl* weighs twenty-four carats. The weight of a dirham—meaning the Islamic standard dirham—is three-fifths of a *mithqāl*, making the dirham fourteen and two-fifths carats, with the carat represented by a carob seed. Some say that a *mithqāl* is twenty carats, in which case the dirham would be twelve carats. As for the "weight of seven" mentioned in the *Muntakhaba*, it is said that ten dirhams equal seven *mithqāls*. If the

mithqāl is twenty-four carats and the dirham is seven-tenths of a *mithqāl*, then the dirham is sixteen and four-fifths carats. If the *mithqāl* is twenty carats, as some say, the dirham would be fourteen carats. God knows best.

It is said in the *Yanbūʿ* and *Mukhtaṣar al-Īḍāḥ*: Ten dirhams weigh seven *mithqāls*.

It is said in the *Kitāb al-Akhbār*, from ʿAlī ibn Abī Ṭālib: "I dislike for a bridal due to be less than ten dirhams, lest it resemble the payment made for prostitution."

From the *Mukhtaṣar al-Īḍāḥ*, concerning who may waive the bridal due:

God, exalted be His remembrance, said: "If you divorce them before touching them, after having appointed for them a bridal due, then half of what you appointed [is due], unless they waive it or the one in whose hand is the marriage tie waives it." The transmitters differed over the interpretation of "the one in whose hand is the marriage tie." It is transmitted from the Commander of the Believers, peace be upon him, that he said: "It is the husband." A second transmission from him states that the one in whose hand is the marriage tie is the father, brother, or person appointed by testament, and anyone entrusted with her affairs whose authority over the woman's property is valid. Such a person may settle on her behalf, and if she approves, it is valid. If he waives part, he may leave part, but he does not have the right to waive the whole amount. From al-Ṣādiq, peace be upon him, it is transmitted that "it is the patron who emancipated her and has authority over her affairs."

This latter interpretation is the more numerous and better known in the books of the People of the House.

From the *Mukhtaṣar al-Āthār*: This concerns a marriage contract concluded on the basis that the marriage of one woman is exchanged for the marriage of another, each woman being made the compensation for the other.

If, however, they conclude the marriages in the ordinary manner without naming a bridal due and without stipulating such an exchange, the contracts are valid and each woman receives the customary bridal due of women like her.

From the *Mukhtaṣar al-Muṣannaf*: If a man marries a woman without naming a bridal due and she releases him from it, that release is invalid.

From the *Mukhtaṣar al-Āthār*: If he consummates the marriage, she receives the customary bridal due of women like her, considering her circumstances, beauty, and a man of comparable circumstances and means—unless this exceeds the bridal due of the Sunna, in which case it is reduced to that amount.

From the same work: Her circumstances, wealth, and beauty are considered, together with those of a comparable man, unless the amount exceeds the bridal due of the Sunna.

From the *Mukhtaṣar al-Muṣannaf*: Death makes the entire bridal due payable, and inheritance arises between spouses who may legally inherit from one another whether or not consummation occurred.

From the same work: Women comparable to her include her full sisters, paternal half-sisters, daughters of paternal aunts and uncles, and her nearest female relatives on her father's side.

She receives the bridal due customary for a woman like herself in circumstances like hers. If she has no known lineage, the comparison is with the woman most closely resembling her.

From the same work: If he gives her livestock as bridal due and the animals give birth while in her possession, then he divorces her before consummation, if they became pregnant while in her possession she returns only half of the mothers.

If, however, he gave them to her already pregnant, he takes back half together with their offspring. The same principle applies to date palms that produce fruit while in her possession or his. If livestock becomes pregnant while in her possession, gives birth, and is diminished by childbirth, then he divorces her before consummation, he may choose either to take half of the animals as they now are or half of their value on the day he delivered them.

It is said in the *Yanbūʿ*: In determining the customary bridal due one considers a man comparable to her in wealth, youth, appearance, and locality, because bridal dues differ from one region to another.

From the *Mukhtaṣar al-Muṣannaf*: If a man marries a woman on condition that her father be emancipated as her bridal due, the father is emancipated by the marriage contract.

If he gives her her own father as bridal due while she is under legal restriction, the marriage is valid but the assignment of her father as bridal due is invalid.

From the *Mukhtaṣar al-Āthār*: If the master revokes a *tadbīr* arrangement or sells the slave-woman, she is entitled to half her value.

From the *Mukhtaṣar al-Āthār*: If a man gives his wife a bridal due and she then gifts it back to him or gives it to him in charity, and he later divorces her, he recovers from her half its value as of the day he married her.

If he dies while having neither specified a bridal due nor consummated the marriage, she receives no bridal due but she inherits from him.

From the same work: If he marries her on condition that he perform some work for her, the marriage is valid and the wage for that work stands in place of the bridal due.

He may not consummate the marriage until he has performed the work for which she hired him or gives her something in its place.

From the *Mukhtaṣar al-Muṣannaf*: If a man marries two women for a total bridal due of one thousand dirhams, it is divided between them according to the customary bridal due of each.

No one may waive a bridal due or any part of it unless he legally owns the right to do so.

From the same work: If he marries a woman for a specified number of camels, cattle, sheep, or garments of a described type whose individual values do not vary substantially, she receives an average specimen of that category.

If he divorces her before consummation, she receives half of what was specified. If he instead brings its value in dinars or dirhams, she is compelled to accept the value. If he marries her for something sold by measure or weight, naming the category and quantity, she receives what was specified. If he offers its monetary value instead, she is not compelled to accept unless she agrees. If he marries her for “a garment” without specifying its type, “a house” without identifying it, or something similar, she receives the customary bridal due of women like her. If he gives her a specified slave-woman as bridal due but she has not yet taken possession, and he has intercourse with that slave-woman, who gives birth, and he claims the child as his own, his claim is not accepted. If he later divorces his wife before consummation, the slave-woman is divided equally between them. She does not become an *umm walad* by that claim.

The child must work off half its value for the woman, but not for the man, because he claimed the child, though legal paternity is not thereby established. If the wife becomes insolvent after he divorces her before consummation, and he had given her own father to her as bridal due, neither the husband nor her creditors may claim the father, because he became free by virtue of the marriage contract and the debts attach to her liability rather than his person. If he marries her for a slave, delivers him, and later divorces her before consummation after the slave committed an offense while in her possession, the husband may either take half of the slave and then jointly surrender him for the offense or redeem him, without claiming anything from her because of the offense; or he may leave the slave and take half his value from her. The same applies if the offense occurred while the slave was still in the husband’s possession before delivery.

If a slave marries with his master’s permission, the bridal due is paid from the master’s property.

From the same work: Whoever makes emancipation of his slave-woman her bridal due and then divorces her before consummation may require her to work off half her value.

From the *Mukhtaṣar al-Īḍāḥ*: If he divorces her before consummation, she returns half her value.

If a man says to his slave-woman, "I make your emancipation your bridal due," and she says, "I accept," she becomes his wife. If he divorces her before consummation, she receives half her value.

From the *Mukhtaṣar al-Āthār*: This applies where the woman claims intercourse.

If, however, she admits that he did not have intercourse with her, even though he had drawn the curtain and closed the door upon them, and then he divorces her, she receives only half the bridal due but must observe the waiting period. The waiting period is not waived merely because she claims that intercourse did not occur once he closed the door and drew the curtain.

From the *Mukhtaṣar al-Muṣannaf*: Once a man fixes a bridal due for a woman, the marriage contract obliges him to pay half of it.

What makes the full amount obligatory is intercourse or what legally stands in its place, such as sexual enjoyment, looking at the private parts, kissing, or similar acts. If a castrated or impotent man obtains sexual enjoyment of this kind, the full bridal due becomes due.

From the same work: A husband is not discharged from the bridal due owed to a previously married woman who manages her own affairs, or to a legally competent virgin who manages her own property independently of her father, merely by paying it to a guardian who has no authority over her property.

He must pursue the person to whom he wrongly paid it and remains responsible for delivering it to the woman entitled to it.

From the same work: From ʿAlī, peace be upon him: "Once a woman has entered upon her husband, she has no claim to an unpaid bridal due after entering upon him except with evidence"—meaning if she claims that he paid her nothing and that some part of the bridal due remains due.

From the same work: This applies when the marriage condition precedes emancipation, as when he says: "I marry you on condition that I make your bridal due your emancipation."

But if emancipation precedes, and he says, "I emancipate you for the sake of God on condition that your emancipation be your bridal due and that I marry you on that basis," then she has the choice. If she wishes she marries him, and if she wishes she does not, because she became free and acquired control of herself independently of him. If he marries her after that, he must marry her with a separate bridal due.

From the answers of our master the judge al-Nuʿmān, may God exalt his sanctity:

You asked concerning drawing the curtains and whether this makes the full bridal due obligatory. If a man draws the curtain, closes the door upon his wife, and then divorces her or claims that he never touched her, then if she confirms his statement, she receives half the bridal due and must observe the waiting period. If she denies his claim, she must observe the waiting period and receives the entire bridal due.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that when a man closes his door upon a woman and draws the curtain, the entire bridal due becomes obligatory whether intercourse occurs or not?

O our master, does this form of "entry" make a bridal due due to a woman for whom no bridal due had been specified if her husband then dies? And does such entry establish the legal consequences of *īlāʾ* and *ẓihār*?

Answer: This entry makes the bridal due obligatory, and nothing further.

She must also observe the waiting period. Al-Ṣādiq said: "The bridal due is whatever people mutually agree upon, whether little or much, even if only two dirhams." [A further ruling:] A man died leaving a contracted wife whom he had not yet taken into his household. She receives the full bridal due and one-quarter of the inheritance.

Concerning Conditions in Marriage

From the *Mukhtaṣar al-Āthār*: Abū ʿAbd Allāh Jaʿfar ibn Muḥammad, blessings upon him, said:

If a man stipulates for a woman that if he marries another wife or takes a concubine over her, he owes her one hundred dinars—or whatever amount he imposes upon himself—the marriage is valid. If the amount he assigned as bridal due is part of the original bridal due, he owes it. But if it was merely attached as a condition, it is not binding.

From the same work: They said that *istimtāʿ* is not permissible with a virgin. Some people claimed that it is permissible even with married women. This is pure fornication, in which there is no ambiguity and no concealment.

From the *Gharībayn*: "A woman should not ask for her sister's divorce so that she may overturn what is in her vessel."

The verb derives from overturning a pot in order to empty what is inside it. It is a metaphor for turning toward herself the share of companionship and support that another wife receives from her husband. Al-Kisāʾī said: One says *kafaʾtu al-ināʾ* when one overturns a vessel, and *akfaʾtuhu* or *kaffaʾtuhu* when one inclines it.

From the *Mukhtaṣar al-Muṣannaf*: If a man marries a woman on the representation that she is free and later discovers that she is a slave-woman who had permission to marry, she remains his wife.

If he wishes he keeps her; if he wishes he divorces her. His children by her are free. He owes their value to her master, and the father may recover that amount from whoever deceived him. If no one deceived him except the woman herself, he may recover it from her once she is emancipated. The father bears no liability for any child who died before the dispute arose. If one of the children was killed and its blood-money paid, he owes the child's value. If the father dies before the master makes his claim, the value is taken from the father's estate because it is a debt upon him. The other heirs do not recover it from the child's share. If the father leaves no property, nothing is taken from the child. The same ruling applies to a *mudabbara*, an *umm walad*, and a *mukātaba* who becomes incapable of fulfilling her contract and returns to slavery. If the deceived husband himself is a slave, the value of the children becomes due from him once he is emancipated, and he may recover it from whoever deceived him.

From the same work: If a male slave presents himself deceptively to a free woman as though he were free, she may choose either to remain with him or separate from him once she learns the truth.

If he had consummated the marriage, she is entitled to the bridal due from whoever deceived her. If the slave himself deceived her, he owes it once emancipated. If there had been no consummation, she receives nothing. The same is mentioned in the *Mukhtaṣar al-Āthār*.

From the same work: If the same kind of defect exists in the man, and the woman did not know of it, then once she learns she receives the full bridal due if consummation occurred and half if it did not—except in impotence or similar cases, where she receives the full bridal due once she has made herself available.

If the marriage is concluded while one spouse has a defect entitling the other to annulment, but the defect is treated and disappears, or disappears without treatment and no comparable defect arises again, the marriage is not annulled. If some such defect arises in either spouse after the marriage contract but before consummation, its subsequent occurrence does not create a right of annulment.

From the *Yanbūʿ*: If the same defect exists in the man and the woman did not know of it, she may annul the marriage when she learns.

From the same work: If an impotent man, an intersex person, a castrated man, or a man whose penis has been amputated deceives a woman concerning his condition, she has the option when she discovers it.

If she chooses to remain but he has not been able to have intercourse with her and she brings a claim, he is given one year. If the year passes and he has still not had intercourse with her, she may, if she wishes, remain, or else she has greater right to herself and they are separated. If he had intercourse with her even once, she no longer has a right to separation on that ground. If she married one of these men while knowing his condition, she has no option.

From the *Iqtiṣār*: If he claims that he had intercourse with her and she denies it, then if she is a virgin her statement is accepted with an oath; if she is previously married, his statement is accepted with an oath.

From the *Mukhtaṣar al-Muṣannaf*: An intersex person legally classified as male is given the same term as an impotent man if unable to have intercourse.

If a man marries a woman, has intercourse with her, divorces her, then marries her again under a new contract but is unable to have intercourse under the second marriage, he is given the same term as an impotent husband because this marriage is distinct from the first.

Concerning Prohibited and Permitted Marriages

If a man marries a woman and then divorces her or she dies before he has consummated the marriage, he may marry her daughter.

From the same work: Jaʿfar ibn Muḥammad, blessings upon him, said:

If a man marries a woman and she dies or he divorces her before consummation, she nevertheless remains permanently forbidden to his male descendants however far down and to his fathers however far up. If a man looks at his slave-woman with desire, touches her, has intercourse with her, or looks at her private parts, she becomes forbidden to his sons and his fathers however far removed.

From the same work: This applies when the divorce is revocable, because in that case marrying her sister would amount to combining the two women.

But if he divorces her irrevocably, with no right of return, he may marry her sister or another woman, provided he has no more than three other free wives.

From the *Mukhtaṣar al-Muṣannaf*: If a man marries a woman or takes a slave-concubine, there is no harm in his son marrying her daughter by another man, or having intercourse with her by ownership if she is a slave.

This is the same whether the daughter was born before or after the father's marriage, provided the birth was not so close to the father's separation from the mother as to create doubt. If there is no possibility of doubt, or the birth is sufficiently remote from the separation, there is no harm. If a man claims that a woman is his wife and establishes evidence, while her sister establishes evidence that she is the one he married, the husband's statement is accepted and his evidence prevails, whether the first woman confirms him or not. If the husband produces evidence that he married one of the two sisters but the witnesses cannot identify which one, while he says, "This one is she," then if she confirms him she is his wife. If she denies it, there is no marriage between him and either of them. No oath is required of the woman against whom he makes the claim. If a woman produces evidence that one of two men married her but the witnesses cannot identify which man, and both men deny it, the claim is void.

She receives no bridal due from either and no oath is required. If she specifically claims against one of the two men that he married her and divorced her before consummation and therefore owes half the bridal due, he is made to swear concerning the bridal due. If she claims that he divorced her after consummation and owes the full bridal due, he is made to swear concerning it. If he refuses the oath, the amount becomes due from him, but the marriage itself is not thereby established because he denies it. If he swears, he is released. If two men dispute over a woman, each claiming she is his wife and producing evidence, then if she is residing in the

house of one of them or one has consummated marriage with her, she is his wife unless the other proves that he married her first. If she is in neither man's house, whichever proves that his marriage was earlier has the stronger right. If neither can establish priority, whichever man she acknowledges as her husband is treated as such unless the other proves an earlier marriage.

If she acknowledges neither, she is separated from both. If neither consummated marriage with her, she receives nothing. If both consummated and it is unknown which marriage occurred first, each owes the lesser of the named bridal due and the customary bridal due. Our master Jaʿfar ibn Manṣūr al-Yaman said in the *Kitāb al-Rushd wa-l-Hidāya*:

God permitted whoever among the community of Muḥammad, may God bless him and his family, wishes to marry to have four wives. Whoever exceeds this and marries a fifth makes the fifth and the four [impermissible to him].

From the *Mukhtaṣar al-Muṣannaf*: If a man commits fornication with a woman and she later gives birth to a daughter, he should not marry that daughter because of the doubt created by the prior intercourse.

From the *Mukhtaṣar al-Īḍāḥ*: When her waiting period ends, they may marry if both wish.

[In the case where] a woman's husband dies, she gives birth, and then she remarries before completing four months and ten days: if the second husband consummated the marriage, they are separated and she is never lawful for him again. She completes whatever remained of the first waiting period and then begins a new waiting period of three menstrual cycles from the second husband. If he had not consummated the marriage, they are separated, she completes the remainder of the first waiting period, and afterward he is merely one of her potential suitors.

From the Questions Mentioned Above

Question: What do you say concerning a man who has four wives, divorces one, and then marries a fifth before the divorced woman has completed her waiting period, whether deliberately or not?

Do all his wives become forbidden to him until he concludes new marriage contracts with whichever ones he wishes to retain? Our master Jaʿfar ibn Manṣūr al-Yaman, may God sanctify his spirit, says in the *Kitāb al-Rushd wa-l-Hidāya*: "God has permitted four wives to whoever among the community of Muḥammad wishes to marry; whoever exceeds that and marries a fifth makes her and the four forbidden to him."

Answer: Outwardly, only the fifth is forbidden to him. Whoever exceeds the limit and marries a fifth—the fifth is forbidden to him.

Question: What do you say concerning God's words, Mighty and Glorious: "Nor may you ever marry his wives after him"? What is intended outwardly and inwardly? Does this ruling concern only the wives of the Prophet, may God bless him and his family, or inwardly also the wives of all the Imams?

Answer: Outwardly and inwardly it concerns the wives of the Prophet; inwardly it also concerns the wives of the Imams.

Question: What do you say concerning a man who travels somewhere and marries a woman while inwardly intending to divorce her when he returns home? Is anything incumbent upon him according to the outward noble law, or is the marriage valid and nothing falls upon him?

Answer: Nothing is incumbent upon him. She remains his wife until he divorces her.

Question: May a man pray with, speak to, sit with, and look at all his unmarriageable female relatives without a partition?

Answer: He may look upon the rest of his unmarriageable female relatives. Marriage with them is unlawful, while speaking with them and praying with them without a partition is permissible.

The statement in the *Taʾwīl al-Daʿāʾim* that a *dāʿī* may have no more than four *maʾdhūns*, though he may have fewer if he wishes, is specific to the ḥujja of the Imam, peace be upon him. It does not apply to an ordinary *dāʿī* of an island (*jazīra*). The Messenger of God, may God bless him and his family, did not marry another woman while Khadīja, may God be pleased with her, was alive, but married after her death. Likewise, the Legatee and the Imam did not marry another woman over the woman from whom the Imam succeeding them was born until she died. If a child of fornication prays, purifies himself, has received the noble covenant, and follows a praiseworthy path, there is no harm in his marrying a free woman who is not herself a fornicatress, and the same applies to a daughter of fornication.

From the answers of our master al-Nuʿmān, may God sanctify his spirit:

You asked about a man who marries a woman during her waiting period. If both knew—or either one knew—that this was unlawful, they are separated and she is never lawful for him thereafter, whether or not he consummated the marriage. If both were ignorant and believed it lawful, they are separated until her waiting period ends, after which, if they wish, they may conclude a new marriage contract. You asked about a marriage contract concluded without naming a bridal due. That is valid. God, Mighty and Glorious, said: "There is no blame upon you if you divorce women before you have touched them or appointed for them a bridal due; provide for them, the wealthy according to his means and the poor according to his means." If he divorces her or dies before consummation, she receives the consolatory gift (*mutʿa*) but no bridal due. In the case of death she must observe the waiting period and inherits from him.

In the case of divorce she has no waiting period, in accordance with God's saying: "If you divorce them before touching them, you have no waiting period to count against them." If he consummates the marriage and then dies or divorces her, she receives the customary bridal due of women like her in circumstances comparable to hers in wealth and beauty. If the man says, "I specified a bridal due for her," while she denies that any was specified, her statement is accepted with her oath. He must produce evidence for his claim that he named a particular amount and that she accepted and married him on that basis.

Question: May a man travel with his son's wife, or with his wife's mother, without a partition, speaking with her? May he bury her or travel with her? What is the status of relatives through milk-kinship?

Answer: Greater caution concerning such matters is preferable, in accordance with the saying of the Prophet: "The God-fearing person is one who leaves even what is harmless out of fear of falling into what is harmful."

If one of their own blood relatives is available, he should act. If no such relative exists, it is permissible. God knows best.

Concerning the Missing Person

From the *Mukhtaṣar al-Muṣannaf*: If a man dies leaving a missing son, property, two daughters, and a son of the missing son, and the daughters say, "Our absent brother died before our father," while the grandson says, "Rather, my father is merely missing," the matter is examined.

If the father died ten years after his son disappeared, the grandson has no right to inheritance through the missing son. If ten years have not elapsed, the missing son's inheritance is held in suspension. Whenever a relative dies during the ten years after the disappearance and the missing person might inherit from him, the missing person's potential share is likewise suspended because it is unknown whether he is alive and inherits or not. If anyone brings a claim against the missing person concerning a debt, deposit, partnership, divorce, emancipation, return for defect, or other demand, no attention is paid to the claim and evidence concerning it is not heard. All suspended property of this kind, as well as found property, stray animals, and similar things, is placed in the public treasury until the rightful claimant appears. The same applies to estates of those who die leaving no known heir.

If a pregnant woman's husband dies, or the master of an *umm walad* dies leaving property, and the woman disappears before giving birth, the inheritance of the fetus she carries is suspended according to the same principle.

From the same work: If a long period passes with no information concerning the missing person, ten years are waited, after which his property is divided among his heirs.

If no news is known and the heirs request distribution, their request is granted. If they prefer to wait, the property remains undivided for them. If during the interval of disappearance one of his children or heirs dies, that heir does not inherit anything from the missing person's estate. At the time of distribution, the missing person's property goes to those entitled to inherit at that time. It is recommended to require a guarantor from each person who receives part of such property, as an additional precaution.

From the *Ikhtiṣār al-Āthār*: A man seen between the two battle lines during fighting who cannot be found after the armies separate is treated as missing.

Likewise, someone aboard a ship that disappears or is wrecked and is not found among those who survived is missing.

From the *Iqtiṣār*: If the missing husband has no property and his guardian refuses to support the wife, the ruler compels him to divorce her.

She then observes her waiting period and may marry. If her original husband subsequently returns, he has the stronger right to her, while she is entitled to the bridal due from the second husband in return for his lawful enjoyment of her if the second marriage had been consummated.

It is said in the *Muntakhaba*:

If he refuses her, she completes her waiting period, until, when its term has been fulfilled, she chooses to marry and then is married; if thereafter her missing husband comes—whether after consummation or before it—it is ruled that her marriage-right returns to him if he wishes. But if before her new marriage men came reporting that he had died long ago, and two witnesses testified to this, then he returned and took her back as at first, her bridal due is upon those witnesses for the man from whom she was removed, while he is entitled to her for what he had enjoyed of her. The waiting period of divorce from him becomes incumbent upon her when she leaves him, and the returning husband may not approach her if he returns before she has completed it.

From the *Mukhtaṣar al-Īḍāḥ*, concerning the missing person: evidence must testify that he died or divorced.

It is transmitted from al-Ṣādiq, peace be upon him, concerning a woman for whom two men testified that her husband had died. She observed the waiting period of a widow, then married another man. Her first husband subsequently returned. The second husband owes her the full bridal due for having lawfully enjoyed her. He recovers the bridal due from the two witnesses, who are subjected to the prescribed punishment. The woman observes a waiting period, and when it is completed she returns to the first husband. From al-Bāqir, peace be upon him: He was asked about two men who testified concerning an absent man that he had divorced

his wife. She completed the waiting period and married another man. The absent husband then returned and claimed that he had never divorced her, and one of the witnesses retracted his testimony.

He said: “The second man has no further claim upon her. She receives the bridal due from him. The amount is recovered from those who testified and returned to the second man. The first husband may not approach her until her waiting period has ended.” It is mentioned in the *Kitāb al-Akhbār* and the *Mukhtaṣar al-Īḍāḥ* that the wife of a missing man, after his guardian divorces her, observes a waiting period of four months and ten days.

From the Questions Mentioned Above

Question: What do you say, O source from which the flowing water of life is drawn, concerning someone who boards a ship while traveling outward or returning, and the vessel disappears with no news of it, while the overwhelming probability is that it sank? What is the status of his wife and estate?

Answer: His ruling is that of an absent person, not that of a legally missing person.

Question: What do you say concerning a man who returns from a journey but never reaches his family?

Some of them travel to the place from which they know he departed and ask about him. The people there say, “He left us heading toward his home.” After his departure they encounter people who say, “We saw so-and-so at such-and-such a place.” They go there and ask, and some people say: “A man matching his description was killed outside this place several days ago.” They investigate but find no trace of him, though the overwhelming probability is that he was killed. What is the status of his wife and estate?

Answer: His death must be established with certainty in every case. Until then he is called an absent person.

Concerning Milk-Kinship

From the *Mukhtaṣar al-Muṣannaf*: If a man marries an adult woman and two minor girls, and the adult woman nurses both girls, or nurses one before the other, before he has consummated the marriage with the adult woman, then the adult woman and the first girl she nurses become forbidden to him.

The adult woman receives no bridal due. The first girl receives half her bridal due from him, and he may recover this amount from the adult woman if she deliberately intended to corrupt the marriage, unless she acted ignorantly or forgetfully. The second girl remains his wife. The adult woman is permanently forbidden to him. As for the first girl, she becomes lawful to him if he separates from the one who remains his wife. If all this occurs after consummation with the adult woman, all three become forbidden to him. The adult woman receives her full bridal due and both girls half theirs. He may recover from the adult woman according to the conditions previously explained. If a man acknowledges that a woman is his milk-sister or milk-daughter and later says, “I was mistaken,” and the woman confirms him, their statements are accepted and he may marry her. Likewise if she makes the acknowledgment and he denies it.

An acknowledgment of milk-kinship that is chronologically possible is treated like an acknowledgment of blood relationship so long as neither party contradicts it. Only what becomes legally established on the basis of the acknowledgment is binding. If they remain upon such an acknowledgment, witnesses testify to it, or the acknowledgment becomes publicly known from their statements, then if one later denies it, the denial is disregarded. If a man says to his wife, whether or not he consummated the marriage, “This is my daughter,” but the woman has a known lineage, his statement is not accepted. If she has no known lineage, is of an age at which she could have been born to him, and he persists in the claim, they are separated. If after the marriage contract a woman claims that she and the man are related by blood or milk in a degree prohibiting marriage, while he denies it, her claim is not accepted without evidence.

The testimony of one admissible and trustworthy woman who is not suspected of bias is sufficient in matters of breastfeeding.

From the same work: If a man marries a minor girl and she is nursed by his foster-mother, his biological mother, his sister by blood or milk, his father's wife using milk produced through his father, or his son's wife using milk produced through his son, whether related by blood or milk, the girl becomes forbidden to him.

She receives half the bridal due. The husband may recover that amount from the woman who nursed her if it is established that she intended to corrupt the marriage. If she acted mistakenly or ignorantly, he recovers nothing. Her own statement is accepted concerning her intent. Everything prohibited through milk-kinship in free marriage is likewise prohibited with respect to intercourse by ownership.

From the *Mukhtaṣar al-Muṣannaf*: If a woman gives birth by one man, he divorces her, she marries another, and while married to the second she nurses a child with milk produced from the first husband, the milk-relationship is attributed to the first husband rather than the second.

What matters is the man from whom the milk originates, not the man to whom she is presently married. If a virgin woman who has never married develops milk and nurses a child, a milk-relationship is established.

From the same work and the *Yanbūʿ*: Breastfeeding counts only during the first two years, yet if breastfeeding occurs during those two years after the child has been weaned, it still establishes prohibitive milk-kinship.

From the same work: Know that milk-kinship prohibits whatever blood relationship prohibits only with respect to marriage.

Ownership, sale, and receiving the purchase price remain lawful except in the case of the nursing woman herself.

From the same work: They prohibited employing as a wet nurse a woman whose milk derives from fornication, such as one who committed fornication and gave birth from it.

Neither she nor her daughter born from fornication should be employed as a wet nurse.

From the *Mukhtaṣar al-Muṣannaf*: If milk is expressed from a woman's breast and she then dies, and a child drinks it, or if milk is expressed after her death, it establishes milk-kinship in either case.

If two children suckle from a sheep or another animal, this does not create milk-kinship. If a man conducts *liʿān* against his wife and denies paternity of her child, marriage becomes forbidden between that child and the mother's relatives who would otherwise be forbidden through blood or milk. Relations on the husband's side are not forbidden because the child's lineage from him has been severed. If the husband later retracts and acknowledges the child, the prohibitions return because milk-kinship follows lineage. **Marginal note:** In this case even a single suckling establishes the milk-relationship when one admissible, trustworthy, non-suspect woman testifies to it. It is mentioned in the *Īḍāḥ* that if a man marries and consummates marriage with a woman, then upright testimony establishes a milk-relationship between them, they are not separated unless the breastfeeding reaches the maximum threshold recognized in the law, namely the equivalent of three consecutive days of nursing, and upright testimony establishes that degree.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that if a man marries and consummates marriage with a woman and later learns of a milk-relationship between them, they are not separated unless the breastfeeding lasted three consecutive days?

O our master, what if it did not occur on three consecutive days but was spread over a longer period?

Answer: If he consummated the marriage, they are not separated except upon testimony establishing breastfeeding equivalent to three days, whether consecutive or separate.

Question: A woman nurses a boy or girl by one husband, then that husband divorces her or dies and she marries another man, gives birth by him, and nurses another boy or girl. May marriages take place between the children she nursed at the different times?

Answer: No, because everyone whom the same woman nurses becomes a sibling through the mother, even though the milk derives from different husbands.

Question: If a barren woman claims that she nursed a child with her own milk, does milk-kinship arise between her and the child? Must witnesses be required?

Answer: If she is not suspected of falsehood and says, "I nursed him and milk came from me," even if only a little, she is treated as his mother.

Question: A woman gives birth and the child's head reaches the ground before it falls into the hands of the midwife. Does the midwife herself, or her daughter, become forbidden to that child in marriage?

Answer: He may not marry the midwife or her daughter, because she received his body.

Question: What does our master, may God perpetuate his support, say concerning the Sharīʿa ruling that a midwife and her daughter may not be married? May the daughter of her daughter be married?

Answer: Marriage with the midwife, her daughter, and her daughter's daughter is prohibited, however far down the line.

Concerning Marriage to Slave-Women

From the *Mukhtaṣar al-Muṣannaf*: If a man marries a slave-woman and afterward acquires ownership of any share in her, the marriage is invalidated.

If he had consummated the marriage, he owes the bridal due to her master. If he had not consummated, no bridal due is owed.

From the *Mukhtaṣar al-Āthār*: If a man marries a free woman and a slave-woman in a single marriage contract, one looks at whose name was mentioned first.

If the free woman was named first, the marriage to the slave-woman is invalid. If the slave-woman was named first and the free woman consents to remain together with her, both marriages remain valid provided that the man is legally among those permitted to marry slave-women, as previously explained. A man may conclude marriage with a free woman even when he does not possess the means to pay her bridal due. If he does possess the means, the marriage to the slave-woman is invalid whether she was named first or second. Likewise, if it is not known which was named first, the marriage to the slave-woman is invalid.

From the same work: If a male slave marries a free woman, his children by her are free.

His master may not stipulate that the children born to the free woman will be slaves, just as one marrying a slave-woman may not stipulate that his children by her will be free. A slave-woman may be married only with her master's permission and witnesses, in accordance with God's saying: "Marry them with the permission of their people."

From the same work: If a man wishes to marry a slave-woman, he may emancipate her and then marry her if both wish.

The Messenger of God, may God bless him and his family, married Ṣafiyya daughter of Ḥuyayy ibn Akhṭab and placed the veil upon her. Jaʿfar ibn Muḥammad, peace be upon him, said: "Any man who emancipates his slave-woman and then wishes to marry her should do so in the presence of witnesses and with a specified bridal due." If he makes her emancipation itself her bridal due, that is valid, as previously explained. A *mukātaba* may marry with her master's permission.

From the same work: The husband should not consummate the marriage until the second master approves it.

If the second master does not approve, the marriage is annulled.

From the same work: If [the owners] are adults, she is not lawful for him unless they sell her to him.

From the same work: He was asked about a woman who ordered her son to have intercourse with a slave-woman belonging to the son's father so that she would become forbidden to the father.

He said: "She has sinned, and her son has sinned, and the prescribed punishment applies to him if he is an adult."

From the same work: A *mudabbara* may marry with her master's permission.

Her ruling is that of an ordinary slave-woman until her master dies and she becomes free. If a slave-woman is emancipated while married, then if her husband is free she remains his wife and has no option. If her husband is a slave, she has the option upon emancipation. If the husband of a *mukātaba* assists her in paying her contract until she becomes free, she has no option against him.

From the *Ikhtiṣār*: If a slave-woman is jointly owned by two men, neither may lawfully have intercourse with her even if the other grants permission, because sexual access cannot be divided, licensed, or gifted.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that a free man should not marry a slave-woman, and that if he does so the two are separated and he is disciplined—meaning when he has sufficient means to marry a free woman?

O our master, if he consummated the marriage, does he owe her the bridal due? And must she observe the waiting period of a divorced slave-woman?

Answer: He owes the bridal due, and she observes the waiting period prescribed for slave-women.

Concerning the Marriage of Male Slaves

From the *Mukhtaṣar al-Muṣannaf*: If a slave wishes to marry, his master is not obligated to marry him.

If the master wishes to marry the slave, the slave may not refuse. The same applies to a slave-woman. If a woman acquires ownership of any share in her husband, her marriage to him is invalidated.

From the same work: If a slave or *mukātab* marries his master's daughter with the master's consent, that is permissible.

If the master then dies, the marriage of the ordinary slave is invalidated, but that of the *mukātab* is not, because the daughter has inherited only a debt owed by the *mukātab*. A man may not marry off the slave belonging to his minor son, and neither may the son's executor. If a slave marries without his master's permission and the master says to him, "Divorce her," that statement counts as approval of the marriage. Likewise, if the master does not object, there is no separation between them, and his silence is treated as approval. If the slave divorces before consummation and wishes to waive the half of the bridal due due back to him, he may not do so.

From the same work: If a slave marries with his master's permission, the bridal due is paid from the master's property.

From the same work: If a master marries his slave-woman to someone, he may no longer look at her private parts, nor may she look at his.

A marriage contract resembles a sale, except that once marriage is concluded there is no option of rescission either before or after separation of the contracting parties. If a man says to a woman's guardian, "I have proposed for so-and-so," and the guardian says, "I marry her to you," the suitor must respond, "I accept," because he might have been proposing on behalf of someone else. But if a master says to his slave, "I marry you to my slave-woman so-and-so," the marriage is valid and the slave need not say, "I consent."

From the *Ikhtiṣār*: The divorce of women married by a slave lies in the hand of his master, who may divorce them on his behalf whenever he wishes.

From the *Mukhtaṣar al-Āthār*: If a slave-woman is sold while married to a free man, she remains his wife.

She is not lawful sexually to the purchaser until her husband divorces her or dies and she completes the waiting period. It is also mentioned in the *Mukhtaṣar al-Āthār* that when a slave-woman is sold, her sale counts as her divorce, and the purchaser may remove her from her husband whenever he wishes. If, however, he leaves her with her husband and thereby accepts the marriage, he cannot later separate them.

From the Questions Mentioned Above

Question: What do you say concerning the Sharīʿa ruling that if a woman comes to own her husband or any share in him, she becomes forbidden to him because a male slave cannot be married to his female owner?

O our master, if the husband comes to own his wife or a share in her, does she likewise become forbidden to him?

Answer: It is stated in the *Mukhtaṣar al-Muṣannaf*: If a man marries a slave-woman and afterward acquires ownership of any share in her, the marriage is invalidated.

If he had consummated marriage, he owes the bridal due to her master; otherwise no bridal due is owed. If a slave marries a slave-woman belonging to other people or a free woman, the master may separate them without divorce. But if the master had authorized the slave to marry, he may not separate them; the slave himself must divorce. If the master marries his slave to another person's slave-woman, and the woman is subsequently emancipated and chooses herself in relation to the slave, they remain married. If the male slave tries to exercise a corresponding choice against her, he has no such right.

Concerning the Marriages of Polytheists

From the *Mukhtaṣar al-Āthār*: Marriages contracted by polytheists among themselves, whether belonging to one religious community or different communities, are valid if concluded according to what their religions require, and should not be annulled for them.

From the same work: A woman may not marry her own male slave unless she first emancipates him. If both then wish, he may marry her.

From the same work: She is entitled to the bridal due in return for the sexual access that he lawfully obtained.

From the *Mukhtaṣar al-Muṣannaf*: No Muslim woman may marry anyone except a Muslim.

It is disliked for a Muslim man to marry a non-Muslim woman when a Muslim woman is available. Marriage with scripturalist women is nevertheless permissible.

From the *Mukhtaṣar al-Āthār*: It is transmitted from ʿAlī and Abū Jaʿfar, peace be upon them, that they prohibited marriage with women of the Arab Christians.

Marginal note: If a polytheist man divorces, while still in unbelief, a wife whom he had validly married according to his religion, his divorce is examined. If the kind of divorce he pronounced would produce a valid separation in Islam, then a Muslim may contract marriage with her after the proper requirements are met. If it would not produce a valid separation, she cannot marry until his marriage bond over her has been dissolved by a form that truly ends it. Protected non-Muslims may contract marriages for their minor children. If a polytheist from the Arab Christians or other People of the Book embraces Islam while his wife remains upon his former religion, Islam is offered to her. If she embraces Islam, she remains his wife if he wishes. If she refuses, they are separated. If he had not consummated marriage, she receives no bridal due because the separation came from her side. This separation is not a divorce.

From the *Mukhtaṣar al-Muṣannaf*: If a husband and wife are both captured and fall into the war booty together, they remain married.

If she is captured before him, or he before her, while both remain in the booty in enemy territory, the marriage continues. But if one of them is brought into the abode of Islam without the other, the marriage is invalidated. If both are captured, whoever comes to own them may separate them as he separates his other slaves, unless they surrendered under a treaty whose terms prohibit separation, in which case the agreed conditions must be observed.

From the *Mukhtaṣar al-Āthār*: If a man and his wife are both in the booty, they remain married.

If her husband is captured several days after her, the same applies, unless one of them has already been secured and brought into the abode of Islam. In that case their marriage is invalid and they are not lawful to one another without a new marriage. If she is captured before him, or he before her, and whichever one is captured remains in the booty as long as may be, they remain married until one enters the abode of Islam, at which point the marriage is invalidated. If she embraces Islam and afterward her husband is captured after she has completed three menstrual cycles, but she had not yet been secured into Muslim territory, and he then embraces Islam, they remain married. The owner of both may separate them if he wishes as with his other slaves, unless at the time of capture they obtained safe-conduct stipulating that they would not be separated, in which case separation is not permitted.

From the same work: [A missing unbeliever in this context] is treated as dead: his property is divided among his heirs, his wives observe the waiting period of widows, and afterward may marry if they wish.

From the same work: He has no further claim upon her and she may marry if she wishes; no waiting period is required, though her womb is first ascertained to be empty.

From the *Mukhtaṣar al-Muṣannaf*: If a protected non-Muslim woman embraces Islam before her protected non-Muslim husband has consummated marriage with her, she acquires control over herself and owes him no waiting period.

She receives half the bridal due. If he embraces Islam at the same time as she does, they remain married. If his conversion comes later than hers, then upon becoming Muslim he is merely one of her suitors.

Concerning Division of Nights among Co-Wives

From the *Mukhtaṣar al-Muṣannaf*: If a man has two or four wives and remains with one of them for a month while the others refrain from objecting, then later they bring a claim against him, he must begin anew to divide his time equitably among them.

What has already passed is disregarded, though he is sinful for what he did. Each wife receives one night out of every four.

From the *Yanbūʿ*: It is not recommended for him to have intercourse with a wife on a day assigned to another.

If he does, no expiation is required. If a mentally incapacitated man has several wives, his guardian is instructed either to take him around among them or bring them to him in the same way that would be required of a sane man. Time is allotted to a woman with vaginal obstruction, a menstruating woman, a woman in postpartum bleeding, a wife from whom he has sworn abstinence, and a woman in *iḥrām*, because the division concerns presence and companionship, not intercourse. An impotent, castrated, or amputated man, and anyone incapable of intercourse, is treated like a healthy man in this respect. He may divide time in blocks of three nights each, but it is not recommended to exceed three. A virgin and previously married wife are equal in ordinary division, except at the beginning of marriage: a virgin receives seven nights and a previously married woman three, after which equal division begins. If he wishes to take one of them on a journey, he draws lots.

If a man has among his wives both free women and slave-women, a free woman receives twice the share of a slave-woman. If he spends one day with the slave-wife and she is then emancipated, he spends only one day with the free wife; after emancipation she now has the status of a free woman.

From the *Mukhtaṣar al-Āthār*: If a man becomes desirous of intercourse while with one of his wives, he should not deliberately refrain from it merely in order to preserve himself for another wife.

From the Questions Mentioned Above

Question: What do you say concerning what occurs in the *Mukhtaṣar al-Muṣannaf*, that a man whose wives include a slave-woman gives a free woman twice the time allotted to the slave-woman?

O our master, what if one of the wives is a protected non-Muslim woman?

Answer: He gives the Muslim wife two nights and the free protected non-Muslim wife one night, just as time is divided between a free woman and a slave-woman.

Concerning Maintenance of Wives

From the *Yanbūʿ*: Wives are entitled from their husbands to maintenance and clothing according to what is customary and sufficient for their necessities: food, drink, condiments, oil, winter clothing, and summer clothing.

The wealthy man provides according to his means and the poor man according to his means. A Muslim wife and a protected non-Muslim wife are equal in this respect. There is no fixed amount because the circumstances of those providing maintenance, prices, times, and countries differ. If the husband says, "I am poor," while she says, "Rather, you are wealthy," the husband's statement is accepted with his oath and she is assigned the maintenance of a poor man. The woman must provide evidence that he is prosperous. If he produces evidence that he is poor and she produces evidence that he is prosperous, her evidence prevails. Whoever maliciously refuses to maintain his wife is imprisoned just as a debtor is imprisoned. If husband and wife dispute concerning maintenance, the husband saying, "I paid it to her," while she says, "He paid me nothing," her statement is accepted with her oath, and he must produce evidence that he paid her or that she released him from the obligation.

If she refuses to move into his household after he has paid the immediately due portion of her bridal due, she is not entitled to maintenance until she joins him. A minor wife too young for intercourse receives no maintenance. If she is of an age at which girls like her are capable of intercourse, she receives maintenance whether her husband is young or old. If a man gives his wife maintenance or clothing and it is stolen from her, he owes her nothing further until the period for which she received it has ended.

From the same work: [In a case of inability to consummate] the judge grants whatever period he considers appropriate.

If the husband becomes able to do what is required, she remains his wife. If not, the judge separates them if she wishes. Whenever the inability to have intercourse arises from the woman's side—such as rebelliousness, refusal to enter the marital household, or youth making intercourse impossible—maintenance is not obligatory. Whenever the obstacle comes from the man's side, maintenance does not fall away. If she develops an illness or wasting disease making intercourse impossible, or a condition such as vaginal obstruction, or becomes old, none of this causes her maintenance to fall away. The same applies whether the condition arose before or after consummation, so long as she does not refuse herself to him and her guardian does not prevent him. He is told: "If you wish, maintain her; if you wish, divorce her," because she herself is not denying him access.

From the same work: If a man is absent but has property present in the locality and his wife seeks maintenance from it, his guardian assigns maintenance to her after she swears that the husband did not already provide it before leaving.

A guarantor is taken from her concerning this, while the absent husband retains his right to contest the claim later.

From the same work: A master must provide maintenance for the mothers of his children, his *mudabbar* slaves, and all his slaves—male and female, Muslim and unbeliever.

He need not maintain his *mukātab* slaves until they become incapable of completing their contracts. Neither a Muslim nor a protected non-Muslim is compelled to maintain relatives who belong to enemy territory, whether they remain in enemy lands or reside in Muslim territory under safe-conduct.

From the same work: If maintenance has been judicially imposed upon a husband while he also owes his wife an unpaid bridal due, and he gives her money, and she says, "This is for maintenance," while he says, "It is toward the bridal due," his statement is accepted.

The same applies to the repayment of multiple debts arising from different obligations. If a woman obtains from her husband a guarantor for a specified amount of monthly maintenance, the guarantor is liable for only one month. If he guarantees a year's maintenance, that guarantee is binding. If he says, "I guarantee your maintenance for as long as I live," that is binding upon him. If the judge assigns maintenance for a woman against her husband and she supports herself from her own property without taking anything from him, that amount becomes a debt upon the husband and she may later recover it from him. A man is compelled to perform for his wife what is necessary outside the home, such as bringing into the house things she cannot go out to bring herself. Matters inside the home are her responsibility.

From the *Ikhtiṣār*: She receives the customary wage from the child's own property if the child has property from inheritance or another source.

From the Questions Mentioned Above

Question: What do you say concerning a woman who marries a man and he keeps her in one house together with his parents and brothers, all their food expenses being combined, while his mother leaves her hungry although there is plenty in the house?

May she eat from that household whatever satisfies her? Likewise, if the husband keeps her separately in his own house but leaves both her and his children hungry, may she eat from the house what satisfies her and take what is needed to maintain the children?

Answer: She is entitled to lodging, maintenance, and clothing, while obedience is incumbent upon her.

Maintenance is according to each man's circumstances. She does not sin if she takes from the household what she needs to eat.

Question: What do you say concerning the Sharīʿa ruling that if a woman's husband dies leaving her with his child, and she places the child with a female servant of hers who nurses him, and the woman then asks the executor for payment for nursing the boy, she is entitled to the customary wage?

O our master, must the executor pay her this from the child's own property?

Answer: He pays it from the child's property if the child possesses property from inheritance or any other source.

Book of Divorce

Concerning Prohibited and Permissible Divorce

From the *Mukhtaṣar al-Āthār*: [A man] may divorce women without a particular cause. It is said that he once passed by a group of women, and they sent to him asking, "Do you know this group of women?" He replied, "No." They said, "There is not one among us whom you have not married and then divorced."

From the same work: If he divorces her in the manner first described, with a single divorce, then takes her back before her waiting period expires, or remarries her after it expires with a new marriage contract, he may not divorce her again until he has had intercourse with her.

If he then wishes to divorce her a second time, he leaves her until she menstruates and becomes pure, and divorces her while she is pure during a period of purity in which he has not had intercourse with her.

From the *Dhāt al-Bayān*: If she is a woman who does not menstruate and he has consummated the marriage with her, he divorces her in the same manner, one divorce at the beginning of each month, and she observes the waiting period by months.

From the same work: They did not regard a divorce pronounced in a fit of anger as effective when there had been no prior intention or settled resolve to divorce.

From the *Mukhtaṣar al-Muṣannaf*: If a man divorces his wife and calls one man to witness the divorce, then several days later calls another man to witness it, this counts for nothing unless he has them both witness it together.

From the *Ikhtiṣār*: No menstruation or period of purity need be awaited in the case of those women [whose divorce may occur at any time], including a visibly pregnant woman. Whenever one of these women is divorced, the divorce takes effect and she observes the waiting period by months, each month standing in place of one menstrual period, except for a woman with whom the marriage has not been consummated: if she is divorced, she has no waiting period, in accordance with God's saying, "You have no waiting period to count against them."

Marginal note: A "long absence" means three months or more. The relevant distance is one at which prayer would be shortened, namely two postal stages (*barīds*). If a man travels while his wife is menstruating, his divorce becomes valid one month after the day on which he departed on the journey. If a man separates from or abandons his wife for a year or years while remaining in the same town, he in one place and she in another, where the distance between them is not one that requires shortening the prayer, his divorce is not valid and does not take effect until he knows that she is in a state of purity.

From the *Mukhtaṣar al-Īḍāḥ*: Only one divorce may be pronounced during a single period of purity, and likewise only one divorce may be pronounced during pregnancy.

From the same work: Divorce becomes binding only through an explicit utterance together with intention in the heart, and the utterance that creates it must be an expression of divorce.

If divorce could take effect without the explicit language of divorce and the waiting period, the matter would rest upon inner intention rather than outward expression, whereas no divorce is found in the outward wording. As previously explained, the formula of divorce is that the man says to his wife, at the beginning of the waiting period after she has become pure from menstruation and before he has intercourse with her, "You are divorced," or says, "Observe the waiting period," intending divorce by it, in the presence of two upright male witnesses. Anything other than this is not the wording of divorce, unless it is spoken in a non-Arabic language whose meaning corresponds to what has just been described. Divorce in a non-Arabic language is valid, for a non-Arab is bound by the legal effects of his own words just as an Arabic speaker is in matters of acknowledgment, release from liability, false accusation, gift, charity, *ẓihār*, divorce, *īlāʾ*, and all the rulings of Islam.

A non-Arab divorces by speaking in his own language in a form corresponding to what has been described and conforming to the Sunna, including *khulʿ* and choice where applicable.

From the *Mukhtaṣar al-Muṣannaf*: If a man gives his wife the option while they are together on a riding animal or in a litter, and she does not choose immediately after his statement but remains silent until the animal has traveled some distance, her option lapses.

If he gives her the option and she says, “I choose myself and my husband,” she is divorced. If she says, “I choose my husband and myself,” she remains his wife and has no further option.

From the *Mukhtaṣar al-Āthār*: If a man gives the choice to his wife, her father, brother, or guardian, and she agrees to the choice of the person to whom he entrusted her matter, that is valid.

Likewise *tamlīk*—placing her matter in her own hands—is equivalent to giving her the choice, such as when he says, “I have placed your own self in your hands,” or “I have placed your affair in your hands.” All of this is equivalent to saying, “Choose.”

From the same work: Witnesses must be called to this.

From the same work: If he gives her the choice and she says, “I do not accept your choice,” she has no choice.

If he gives her the choice while she is menstruating, or during a period of purity in which he has had intercourse with her, or without two witnesses, it counts for nothing.

From the *Mukhtaṣar al-Muṣannaf*: If a man dies and his wife says, “He divorced me during his final illness and died while I was still in the waiting period,” while the heirs say, “Rather, he divorced you while healthy and your waiting period had already expired,” her statement is accepted.

A man brought forward for execution is treated like a sick person. One who is bedridden, paralyzed by an old paralysis, suffering from a wound or ulcer, tuberculosis, or a long-standing chronic illness that has persisted for a year or more is treated like a healthy person with respect to divorce and other matters.

From the same work, in the chapter on coercion: If a man marries a woman in jest, divorces in jest, or emancipates his slave in jest, and two witnesses testify to it, the act takes effect.

This is unlike leases, divisions, and similar transactions, which can be undone by mutual agreement. The same is stated in the *Yanbūʿ*: jest is not effective in marriage, divorce, or emancipation [i.e. such declarations are treated seriously].

From the *Mukhtaṣar al-Īḍāḥ*: If an exception is made explicitly—for example, a man wishing to divorce his wife says, “You are divorced, if God wills”—the exception is operative.

From the *Ikhtiṣār al-Āthār*: If a man says to four wives or fewer, all of whom are in a condition in which divorce is legally possible, “I have divorced you all with one divorce divided among you,” each woman receives one divorce.

Likewise if he says, “I divorce you all with two divorces divided among you,” or three, or four, each woman still receives only one divorce. If he says, “Five divorces are divided among you,” each woman likewise receives only one divorce.

From the Questions Mentioned Above

Question: What do you say concerning a man who travels to a place eight days’ journey or more away, remains there for two days or more, and then divorces his wife before upright witnesses without knowing for certain that she is in a state of purity? Is the divorce valid?

Answer: His divorce is not valid until three months or more have elapsed.

Question: A woman receives news that her absent husband divorced her, observes the waiting period, remarries, and gives birth. She then receives news that her first husband had taken her back before witnesses before the waiting period expired. What is her status with the second husband?

Answer: She receives her bridal due, observes a waiting period, and returns to the first husband. Nothing is incumbent upon the second husband because he acted according to the outward ruling of the Sharīʿa.

Question: It is stated in the *Yanbūʿ* that if one of the two witnesses to a divorce dies and the husband denies having divorced her, it is not lawful for the woman to remain with him if she is able to leave, nor may she marry another.

Likewise if a woman discovers that her husband is inwardly an unbeliever while outwardly professing Islam. O our master, how may the divorced woman marry if one of the witnesses has died but the husband himself acknowledges the divorce?

Answer: The divorce is repeated unless the surviving witness is himself the person authorized to contract her marriage by the one vested with authority.

Likewise, if both witnesses die and the woman wishes to marry, the divorce is repeated.

Question: What do you say concerning the report in the *Kitāb al-Akhbār* that if a man is absent from his wife for a period sufficient for her to become pure from his intercourse and divorces her once, she becomes separated from him? What is the precise form of this ruling?

Answer: If a man travels while his wife is menstruating, his divorce takes effect after one month from the day he departs on his journey.

If he returns before her waiting period has expired, he may take her back if he wishes.

Question: A man divorces his wife after she has ceased menstruating but before she has performed the ritual bath. Is the divorce valid?

Answer: Divorce is not valid until after she has performed the ritual bath following menstruation.

Question: What does our master say concerning the rule that a man may divorce his wife only when he knows with certainty that she is pure during a period of purity in which he has not had intercourse with her, or that she is pregnant? What should he do if he is uncertain about her condition?

Answer: In such a case he stays away from her for nine months and then divorces her.

Question: A man swears six times in one sitting by God that he will divorce his wife today, this month, or the like, but afterward changes his mind and wishes to keep her and not divorce her. Does he owe six expiations? If he expiates by fasting, must he fast eighteen consecutive days?

Answer: Whether the oath was uttered once or repeated several times in one sitting, only one expiation applies.

Question: What does our master say concerning a free and sane man who verbally acknowledges, “I divorced my wife according to the Sunna”? May his wife remarry merely on the basis of his acknowledgment without producing witnesses?

Answer: If she belongs to the five categories of women who may be divorced in any condition, her remarriage is valid.

Otherwise the divorce is not established except in the presence of two upright witnesses, and she is questioned concerning her state of purity and whether intercourse occurred. If a slave calls witnesses to a divorce, it is valid.

Question: A man divorces his pregnant wife with a revocable divorce. The text states that her term lasts until she delivers, and when she gives birth she becomes separated from him.

If she is divorced in this manner and then experiences postpartum bleeding at delivery, may her husband take her back before she delivers, or not?

Answer: If he divorced her with a divorce in which he possesses the right of return, she does not become separated from him until she gives birth.

Postpartum bleeding does not prevent him from taking her back.

Question: A man divorces his wife while she is below puberty, so she observes the waiting period by months. After the waiting period ends, she begins menstruating during the last ten days. Once she becomes pure from that menstruation, may she marry?

Answer: If her waiting period had already ended before she menstruated, no additional waiting period is imposed because of that menstruation.

Question: A man divorces his wife while absent from her at a distance of two postal stages and has already been away from her for more than three months. After her waiting period has ended, he learns that she was menstruating on the day he divorced her. Is the divorce valid?

Answer: Absence is determined by both time and distance.

Question: A man divorces his wife while absent from her. After her waiting period ends, he learns that when he divorced her she was actually less than two postal stages away by one *farsakh*, having traveled toward him. Is the divorce valid?

Answer: The divorce is not complete until both the required period of time and the required distance are fulfilled.

Question: If a man wishes to divorce a wife with whom he has consummated marriage, must he wait for one of two things: either that she menstruate and then become pure, after which he divorces her in a period of purity during which he has not had intercourse with her; or, if she does not menstruate, that her pregnancy become evident, so that he divorces her with certainty concerning her condition?

Our master Jaʿfar ibn Muḥammad al-Ṣādiq, blessings upon him, said: "If a man wishes to divorce his wife, let him wait until she menstruates and then emerges from menstruation, and let him divorce her while she is pure in a period of purity in which he has not had intercourse with her."

Answer: If she menstruates, he may divorce her after she becomes pure, provided he has not had intercourse with her in that period of purity.

If pregnancy becomes evident, divorce is permissible.

Question: If that is the rule, how is one to understand the form of divorce mentioned from the Commander of the Believers, our master ʿAlī ibn Abī Ṭālib, blessings upon him, in the *Daʿāʾim*: "If a man divorces his wife and she claims that she is pregnant, she waits nine months. If she gives birth, [the matter is clear]; otherwise she then observes three months and becomes separated from him"?

Answer: That case concerns a claim made by the woman, so she observes the waiting period according to his ruling, blessings upon him. The former case involves no doubt.

Question: A man divorces his wife in a state of purity in which he has not touched her, in the presence of two witnesses. The woman observes the waiting period, and after it ends another man contracts marriage with her but has not yet consummated it.

It is then established that the two divorce witnesses were withholding the zakāt, while the Prophet, may God bless him and his family, said: "May God curse the one who withholds zakāt and those who consume usury." Does the divorce remain valid?

Answer: If it becomes known that the two witnesses failed to fulfill the religious obligation mentioned, the divorce is invalid.

Question: Is the testimony of Sunnī Muslims who practice the Sharīʿa and are not hostile to the Family valid in divorce when members of the *daʿwa* are unavailable?

Answer: The testimony of a Muslim who is not hostile, if he is upright according to his own doctrine, is valid in divorce and other matters.

Concerning *Khulʿ* and *Mubāraʾa*

From the *Mukhtaṣar al-Īḍāḥ*: Abū Jaʿfar said: A woman divorced by *khulʿ*, a woman separated by *mubāraʾa*, a woman given the choice, and a woman who has requested control over her own divorce do not inherit from their husbands.

They inherit nothing from them during their waiting periods because the marital bond between them and their husbands has already been severed. Their husbands have no right of return over them, nor is there inheritance between them.

From the *Mukhtaṣar al-Muṣannaf*: If a minor girl who has not reached puberty, or a woman under legal restriction, enters into *khulʿ*, the *khulʿ* is invalid and the divorce is revocable.

If a man says to his wife, "I separate from you by *mubāraʾa* in return for one hundred dirhams," or "I divorce you by *khulʿ*," acceptance belongs to her in the same session. If they separate before she says anything, the offer lapses. The same applies if she makes the proposal first. If the woman is a minor, under legal restriction, or mentally incapacitated, and she gives compensation for *khulʿ* or *mubāraʾa*, whether little or much, the compensation is rejected and he retains the right of return. The same applies if her guardian gives the compensation from her property. But if he gives it from his own property, the separation is valid. A protected non-Muslim woman under restriction has the same ruling as a Muslim woman. A slave-woman may not validly give compensation for *khulʿ*, whether she is financially foolish or sound. If her master authorizes her and pays from his own property, it is valid. If he does not pay, it becomes a debt attached to her person, like a debt incurred by a trading slave, and she may be sold for it.

An *umm walad* and a *mudabbara* have the same ruling as a slave-woman. If a *mukātaba* has become partially free and gives compensation for *khulʿ*, it is valid in proportion to the part of her that is free. If a man divorces two wives by *khulʿ* in return for one thousand dirhams, the amount is divided between them according to the proportion of the bridal due for which he married each, unless the two women agree upon another division.

From the same work: If he divorces her by *khulʿ* in return for something unspecified, it is invalid.

If he divorces her in return for a specified item and stipulates that if she does not deliver it on a particular day he has the stronger right to take her back, this is valid. If she fails to deliver what she gave in exchange for the *khulʿ*, the divorce becomes revocable. The specified period in such a condition may not extend beyond the waiting period; it is valid only within a period during which, had the divorce been revocable, he could still have taken her back. If she obtains *khulʿ* from him while he is sick, whatever she gives him in exchange, little or much, is valid. If she herself is sick and gives him the bridal due he owes her as *khulʿ* compensation, then dies during the waiting period after consummation, if the amount was less than or equal to his inheritance from her, it is valid. If greater, it is reduced to the amount of his inheritance. If she dies after the waiting period ends, he receives the bridal due from one-third of her estate.

If the marriage had not been consummated, he receives half on account of divorce and half from one-third. The same applies if she gave more or less than her bridal due.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Bāqir, peace be upon him, said:

"As for *mubāraʾa*, take from her whatever you wish below the amount of the bridal due.

As for *khulʿ*, take from her whatever they mutually agree upon, whether equal to the bridal due or more." Al-Ṣādiq, peace be upon him, said: "When a woman separates from her husband by *mubāraʾa*, that counts as one divorce. It is when she says to her husband, 'What you owe me is yours; leave me,' or gives him something from her own property. But he must say: 'If you take back anything of what you have given me, then I have greater right to your sexual bond.' He may not take from her more than less than the full bridal due. Afterward he is merely one of her suitors. If she wishes, she may marry him before or after the waiting

period ends; if she does not wish, she need not." Al-Ṣādiq, peace be upon him, was asked about a woman who says to her husband, "Take such-and-such and let me go." He said: "This is *mubāraʾa*, not *khulʿ*."

From the same work: Two upright witnesses together are required, but it is not necessary in addition to say, "She is divorced."

From the *Mukhtaṣar al-Īḍāḥ*: It is stated in the *Ikhtiṣār al-Āthār* that when he performs *khulʿ* or *mubāraʾa* upon that basis, he divorces her with a single divorce in the manner previously described, and she thereby becomes irrevocably separated from him.

From the *Mukhtaṣar al-Muṣannaf*: A woman may ransom herself by agreeing to nurse his child, by assigning the rent of a specified house belonging to her, or by granting him its use for a known period.

If the child dies before the nursing is completed or the house collapses, he receives the value of the lease. No one may enter into *khulʿ* unless he is legally capable of pronouncing divorce.

From the *Iqtiṣār*: *Khulʿ* and *mubāraʾa* each constitute a single irrevocable divorce.

From the *Kitāb al-Manāqib wa-l-Mathālib*: The jurists unanimously agree that if two arbiters appointed between spouses rule contrary to what is right, their judgment is invalid.

If they separate the spouses without divorce or a waiting period, or reunite them contrary to what the Book and Sunna require, their act is invalid. If they judge according to the Book of God and the Sunna of His Messenger, their judgment is valid.

From the Questions Mentioned Above

Question: A man divorces his minor wife, after which her father releases the husband from the bridal due.

Is the father's release valid, so that both father and husband are discharged from the bridal due, or does the bridal due remain upon the father alone if she later claims it upon reaching adulthood? And if she is fourteen years old, is a release pronounced by her own mouth valid?

Answer: The father's release is not valid. When she reaches adulthood, she may claim the bridal due from the husband if she wishes.

Her own release is valid in her fifteenth year if she is of sound mind.

Question: A man pays his wife whatever part of the bridal due is immediately due under the marriage contract, and she releases him from part of that immediate portion.

He then divorces her. Does he still possess the right of return over her?

Answer: The immediate portion is part of the bridal due. If she releases him from even a small amount of it and the release and divorce occur in the same session, her case is that of *mubāraʾa*.

Question: A man from Ḥiṣn Rayʿān is under siege with us. His wife asks to leave, but he refuses to let her go.

She then asks him for a divorce. In the presence of a group of members of the *daʿwa*, he divorces her, and she releases him from the bridal due. The release and divorce occur in the same session. The woman is pregnant and near term. The next day she gives birth, and her husband is killed that same day after she has delivered. Does she inherit from him, and must she observe a waiting period? Is this analogous to what the Commander of the Believers, peace be upon him, ruled when ʿUthmān divorced his wife while under siege, imposing upon her the waiting period and granting her inheritance, treating his divorce like that of a sick man?

Answer: If the husband was killed after she gave birth, she had already become separated from him and does not inherit from him.

God and His Friends know best. If those under siege still had freedom to enter and leave, the ruling is as stated. Otherwise, the judgment of the Commander of the Believers, blessings upon him, concerning

ʿUthmān's divorce while under siege is well known and should be followed in a comparable case. That ruling applies where both spouses mutually seek and agree upon divorce. But if the woman herself requests the divorce in the manner of a woman seeking *khulʿ* or exercising choice, she does not inherit even if the husband dies from the illness or condition in which he divorced her.

Question: A husband divorces his wife after having paid her full bridal due except for one *ūqiyya* of a deferred thousand dinars.

She releases him from that final *ūqiyya*. Does he retain the right of return?

Answer: If the release and divorce take place in the same session, it is *mubāraʾa*.

Question: It is transmitted in the *Daʿāʾim* from our master Jaʿfar ibn Muḥammad, blessings upon him, that if news reaches a woman that her husband has died, or she is informed that he divorced her, and she observes the waiting period and remarries, but afterward her husband returns, he has the stronger right to her than the man she married, whether or not the second husband consummated the marriage.

If the second husband consummated marriage and then the first husband returns, must she observe one menstrual period for ascertainment of the womb before being returned to the first husband, and afterward observe another waiting period? If she becomes pregnant by the second husband but legally belongs to the first, who bears her maintenance during pregnancy, the first husband or the second? And must the second husband recover from the false witnesses whatever bridal due and other liabilities became incumbent upon him because of their deception?

Answer: If the witnesses testified that the first husband divorced her or died, the second husband must withdraw from her until she has completed the waiting period and her womb has been ascertained.

The second husband may recover from the witnesses whatever bridal due and other liabilities became incumbent upon him.

Question: Husband and wife mutually seek separation, and upright witnesses are present.

The woman, freely and without coercion, releases the husband from everything he owes her, including bridal due and other claims. The husband calls those present to witness that he accepts the release, but the woman does not explicitly state that her release is conditional upon divorce, and he does not divorce her. Is the woman's release from her husband valid?

Answer: If the release was made for the sake of divorce and the husband did not divorce her, the release is invalid.

She must swear that she released him only for the sake of divorce.

Question: A man pays his wife everything he owes her from debts and transactions, and at the time of divorce asks her to gift him an item from the bridal due.

Does he retain the right of return?

Answer: If she has received her entire bridal due, she is not a woman separated by *mubāraʾa*, even if she afterward gives him a gift.

Question: A man divorces his wife while absent and the bridal due remains owed by him.

When the woman learns of the divorce, she brings upright witnesses and declares before them that she has released the husband from the bridal due and everything he owes her. Are both the divorce and release valid?

Answer: This is not a divorce by *mubāraʾa*.

If he divorces her in accordance with the noble Sharīʿa, the divorce is established as revocable. If she gifts him her bridal due, the gift becomes effective when news reaches him and he accepts it.

Question: A man is absent, and his wife calls upright witnesses to testify that she has released him from the bridal due he owes her, without making this conditional upon divorce.

Her husband later learns of the release, witnesses his acceptance, and then divorces her. Are the divorce and release valid?

Answer: This likewise is not *mubāraʾa*. Its ruling is the same as the previous case.

If a man divorces a woman with whom he has not consummated marriage, she becomes immediately separated from him and may marry that very day if she wishes. If he wishes to marry her again, he must conclude a second marriage contract. If an absent man divorces his wife after three months of absence, the divorce is valid, and she becomes separated from him after her waiting period ends. If he divorces her before three months have passed, it is not valid.

Concerning *Īlāʾ*

If he refuses [to return to marital relations or divorce], he is imprisoned and subjected to pressure until he responds by choosing one of the two.

From the same work: If a man makes *īlāʾ* from his wife while she is a slave-woman and then purchases her, the *īlāʾ* lapses.

Likewise, if a male slave makes *īlāʾ* from a free woman, she later purchases and emancipates him, and then marries him under a new marriage contract, the *īlāʾ* lapses. If a man makes *īlāʾ* from one wife and then says to another wife, "I include you with her in the *īlāʾ*," nothing results from this. If he says to his wife, "By God, I will not have intercourse with you for a year except once," he is not yet treated as one who has made *īlāʾ*, because he may still have intercourse with her once without breaking the oath. If he then has intercourse with her once and more than four months of the year remain, he is treated as one who has made *īlāʾ*. If only four months or less remain, the *īlāʾ* lapses. If the woman says, "You made *īlāʾ* from me and four months have passed," while he says, "I made *īlāʾ* only one day ago," his statement is accepted with his oath and she must produce evidence. **Marginal note:** A man whose penis has been amputated and who cannot have intercourse, if he makes *īlāʾ* from his wife, must "return" to her verbally.

From the *Mukhtaṣar al-Āthār*: *Īlāʾ* is valid only during a period of purity in which he has not had intercourse with her, and in the presence of witnesses, just like divorce.

From the *Mukhtaṣar al-Muṣannaf*: The expiation for *īlāʾ* becomes obligatory after its legal effect occurs.

From the same work: The expiation for *īlāʾ* is the expiation for an oath.

From the *Mukhtaṣar al-Āthār*: If the husband subject to *īlāʾ* says, "I have had intercourse with her," his statement is accepted with his oath—meaning where he had previously been capable of intercourse.

For if a man has previously had intercourse with his wife and later becomes incapable, they are not separated. If he was incapable before ever consummating the marriage, he is given a term and afterward they may be separated.

Concerning *Ẓihār*

From the *Mukhtaṣar al-Āthār*: *Ẓihār* is valid only during a period of purity in which the husband has not had intercourse with his wife and in the presence of two witnesses, just like divorce.

If it occurs otherwise, it counts for nothing.

From the same work: *Ẓihār* may occur only once within a single period of purity.

From the *Mukhtaṣar al-Muṣannaf*: If a man making *ẓihār* mentions a part of his mother's private parts or those of another woman treated equivalently to her, he has committed *ẓihār*.

But if he says, “You are to me like her hand,” “like her foot,” or something similar, this is not *ẓihār*. If four separate expiations for *ẓihār* become incumbent upon him regarding four wives, and he emancipates one slave because he can find no other, then fasts four months in the prescribed manner, then becomes ill and feeds sixty poor persons, but does not assign a separate intention to each specific expiation corresponding to a particular wife, instead intending through all of this simply to discharge the expiations incumbent upon him, it suffices.

From the *Mukhtaṣar al-Īḍāḥ*: If a man pronounces *ẓihār* in Shaʿbān and cannot find a slave to emancipate, he waits through Ramaḍān, fasts Ramaḍān, and afterward fasts two consecutive months.

If he pronounces *ẓihār* while traveling, he does not fast until he returns.

From the *Mukhtaṣar al-Āthār*: In expiation for *ẓihār*, it is not permissible to emancipate an insane slave, a slave with a disabling defect, a *mudabbar* unless the master first revokes the *tadbīr*, or a *mukātab* who is paying his installments.

It is permissible, however, to emancipate a living runaway slave as expiation for *ẓihār*.

Concerning *Liʿān*

From the *Mukhtaṣar al-Muṣannaf*: If a husband and three other men testify against the wife for fornication and all are acceptable witnesses, their testimony is valid.

If the husband had accused her and then brings three witnesses, one of the three testifies and the husband performs *liʿān*. If a man accuses his wife of fornication with a specifically named man, and that man comes demanding the prescribed punishment for false accusation, the husband is liable to the punishment of a slanderer.

From the *Mukhtaṣar al-Āthār*: There is no *liʿān* between a man and his wife until consummation has occurred.

If he accuses her of fornication and denies paternity of her child, but refuses to perform *liʿān* when she brings the matter before the ruler, he is flogged with the prescribed punishment for accusing her, unless he has evidence supporting what he said. If he has evidence consisting of four upright witnesses testifying to her fornication, she is stoned and *liʿān* is no longer needed. Likewise, if he denies paternity of her child but does not perform *liʿān*, he is flogged for the accusation if she brings the matter before the ruler, and she remains his wife unless he divorces her.

From the *Mukhtaṣar al-Āthār*: If a man accuses his wife and then divorces her, and she brings the matter against him while still in her waiting period, he performs *liʿān* with her.

If she brings the claim only after the waiting period has ended, he is subjected to the prescribed punishment unless he produces evidence for what he alleged.

From the same work: Otherwise, he swears that he neither drew a curtain around her nor had intercourse with her.

Concerning the Waiting Period

From the *Mukhtaṣar al-Muṣannaf*: If a divorced woman’s menstrual pattern becomes irregular during the third period of purity and menstruation returns before ten complete days of purity have elapsed after the second menstruation, she does not thereby become finally separated from the husband, and he may still take her back.

If ten complete days of purity have elapsed, the right of return ends as soon as she sees the third menstruation.

From the same work: If a man divorces his wife and has only one house, a partition may be placed between them where the divorce is revocable.

A man should not harm a woman or constrict her circumstances so as to force her to leave his house while he still possesses the right of return over her.

From the same work: If a man is traveling with his wife and then divorces her, she may, if she wishes and with his permission, continue traveling with him, or she may return to her home and observe the waiting period there.

If he has no right of return over her, she may observe the waiting period wherever she wishes.

From the same work: If a man divorces his wife after she has given birth and become pure from postpartum bleeding, but she is one of those women who do not menstruate while nursing, her waiting period is three months.

If he divorces a menstruating wife and she then passes three months without seeing blood, if pregnancy becomes apparent she is treated as pregnant. If pregnancy does not appear, she waits until nine months have elapsed. If she still gives birth to nothing, she waits an additional three months as a precaution, and after that no suspicion remains upon her and she may marry whomever she wishes. If he divorces her irrevocably and she gives birth more than one year after the divorce, the child is not attributed to the husband, provided pregnancy did not become apparent during the nine months of the waiting period. If the divorce was revocable and she gives birth after one year and he acknowledges the child, it is his. If he denies the child, she must produce evidence of the return. If she proves the return, the child is attributed to him; if he then denies paternity, he performs *liʿān* concerning the child.

If a divorced woman states that her waiting period ended through three menstrual cycles within a period in which such a number is possible, and then gives birth more than six months after the date of her statement, the child is not attributed to him. If she gives birth in less than six months, the child is attributed to him. If the woman is a minor and observes the waiting period by months, and after the waiting period ends gives birth less than six months later, the child is attributed to the husband. If she gives birth more than six months after completion of the waiting period, the child is not attributed to him. If a man divorces his wife, she marries another man during the waiting period, the second husband consummates the marriage, and pregnancy then appears, if she gives birth less than six months after the second husband's intercourse, the child belongs to the first. If she gives birth six months or more after the second husband's intercourse, the child belongs to the second.

If both claim the child and the duration of pregnancy is unknown, lots are drawn between them.

From the same work: If a man has an *umm walad* whom he marries to another man, and both her husband and her master die but it is unknown which died first, she observes the waiting period of a free woman, four months and ten days.

If a man dies leaving a slave-woman with whom he used to have intercourse but who is not an *umm walad*, she has no formal waiting period but her womb must be ascertained to be empty. If a *mudabbara* was being used sexually by her master and he dies before revoking the *tadbīr*, she observes four months and ten days. If the master marries his *umm walad* to another man and then dies while she remains married, she owes no waiting period because of the master's death. The same applies if he emancipates her. If the master marries his *umm walad* or *mudabbara* to an unrelated man and that husband dies, she observes the waiting period of a slave-woman. If he consummates and then divorces her, she likewise observes the slave-woman's waiting period for divorce. If the master dies after that waiting period has ended, she owes no additional waiting period. If he dies before it ends, she completes the waiting period prescribed for a free woman with respect to both death and divorce.

Concerning Maintenance of Women in the Waiting Period and Their Children

From the *Iqtiṣār*: A pregnant divorced woman is entitled to housing and maintenance.

A widow is entitled to neither maintenance nor housing [on account of the marriage].

From the *Mukhtaṣar al-Muṣannaf*: If maintenance is judicially imposed upon a man for a relative, and another person then spends upon that relative from his own property even though the obligated person had the means to provide it, he may not recover anything already spent from the person upon whom maintenance had been imposed, because entitlement to it arose from poverty.

From the same work, concerning maintenance of relatives:

A wealthy man is compelled to maintain his father and mother if they are in need, and likewise his paternal and maternal grandparents however far removed, so long as there is no nearer heir than him. If another person shares with him in inheritance, each bears maintenance proportionately to the share he would inherit. The same applies to his minor child and grandchildren. If a child is an adult, he is not compelled to maintain him unless the child is chronically disabled or mentally incapacitated. The point at which a father's obligation of maintenance toward children ends is puberty for boys, and for girls it continues until they marry after puberty, at which point maintenance passes to their husbands. Every poor relative who cannot earn a livelihood is maintained by the relative who would inherit from him, according to the proportion that person would inherit. The wife is an exception: her maintenance is upon her husband, while he has no reciprocal right of maintenance against her.

If the person upon whom maintenance would otherwise be obligatory is poor, nothing is required of him. The person entitled to maintenance in such a case is treated like one who has no guardian and must seek provision from God's bounty. No one farther removed in kinship who would not inherit if the poor nearer heir died is required to provide maintenance when the nearer heir is poor. A wealthy woman is compelled in such matters just as a wealthy man is. An insolvent person is not burdened with maintenance for any relative except a wife and minor children. No maintenance is adjudged from the property of an absent or missing person except for parents, children, and wife. If maintenance is voluntarily provided from his property to other relatives and guarantors are taken for it, there is no harm. A Muslim is not compelled to maintain an unbelieving relative except parents, children, and wives. Nor is an unbeliever compelled to maintain Muslim relatives except parents, children, and wives.

If a woman is poor and has a wealthy son and a wealthy mother, her maintenance falls upon the son rather than the mother. The same applies in the case of the father. A wealthy person is not compelled to maintain a poor relative who is healthy and able-bodied. Neither a Muslim nor a protected non-Muslim is compelled to maintain relatives who are people of enemy territory, whether they remain in enemy lands or reside in Muslim territory under safe-conduct. There is no fixed amount or defined measure for maintenance beyond which one may not go or below which one may not fall, because people's circumstances differ according to times, countries, kinds of provisions, difficulty and ease, high and low prices, wealth and poverty. The judge assigns to the person entitled to maintenance an amount appropriate to someone in his condition without extravagance or miserliness.

From the *Mukhtaṣar al-Īḍāḥ*: If a man divorces his wife once before consummation, she becomes irrevocably separated from him and is not lawful to him except through a new marriage contract.

She owes no waiting period. For the husband possesses the right of return only when the woman is in a waiting period arising from him. Where no waiting period exists, there is no right of return, and she becomes separated from him by consensus. She may marry whomever she wishes immediately. If he had specified a bridal due for her, she receives half. If he had not specified one, he must give her a consolatory gift.

From the *Mukhtaṣar al-Īḍāḥ*: If a man divorces a wife by whom he has a small child, the mother has the stronger right to custody of the child, while the father bears maintenance, so long as she does not marry another man.

After the mother, the maternal grandmother has the stronger right. If there is neither mother nor grandmother, the father has the stronger right. If there is no father, the maternal aunt, because she occupies the position of the mother; after her, the nearest relative in order.

From the *Mukhtaṣar al-Muṣannaf*: When women dispute custody of a child, every relative through the mother has priority over a relative through the father.

If two guardians of the same degree exist, custody belongs to the one more righteous and scrupulous. If equal in that respect, it belongs to the older. If the person entitled to custody is foolish or legally incompetent, the right passes to the next person. Any guardian may transfer custody of the child to the next eligible person. There is no payment for nursing after two years. If the spouses have not separated, the mother is not entitled to wages for nursing their child. If she refuses to nurse, she is not compelled. If the child is mentally incapacitated, his custody after puberty follows the same rule as that of a child. If an adult woman marries and, after consummation, is divorced and does not wish to reside with any of her guardians, she may choose this if she is legally competent. If she is not, her guardian may take her into his household.

If the marriage was concluded in the woman's own city but her husband took her to his country and then divorced her while she had a small child by him, or died leaving her there, she may return with the child to her own city. If the marriage was concluded outside her own city, she may not take the child away either to her own city or to the place where the marriage was concluded. If the original marriage was contracted in a district composed of several villages and she wishes to move with the child from one village to another, she may do so if the villages are close enough that the move does not prevent the father from checking upon his child. An *umm walad* emancipated by her master has the same status as a divorced free woman. As for an ordinary slave-woman, her children belong as slaves to her master, who has the stronger right over them. If a man removes his child from the mother because she remarries, and she has a mother, the maternal grandmother has the stronger right.

Once a boy has passed beyond the period of custody, the father has the stronger right, then the paternal grandfather, then the brother, then the paternal uncle, then the next nearest relative.

From the same work, earlier in the chapter:

When spouses separate and have a child, the mother has the stronger right to custody if the child is a boy until he becomes independent of her, usually between seven and eight years depending upon his strength, activity, and intelligence. People's circumstances differ, and judgment concerning the boy is based upon what is observed of his condition. If the child is a girl, her mother has the stronger right until she reaches menstruation, after which the father has the stronger right. If the mother remarries before that, the father has the stronger right. If the father takes the child from the woman because of her remarriage and she is later divorced and becomes fully separated from her second husband, her right of custody returns. If she marries again, he removes the child from her. This applies whether the second husband consummated marriage with her or not, and whether he is absent or present. The maternal grandmother has the same status as the mother in this respect.

If the maternal grandmother also has a husband, the father has the stronger right unless that husband is the child's grandfather. The same principle applies to the paternal grandmother if custody devolves upon her.

Concerning Mourning

From the *Mukhtaṣar al-Muṣannaf*: Mourning (*iḥdād*) is obligatory upon a woman whose husband dies, whether or not marriage was consummated.

There is no mourning obligation upon a woman divorced revocably or irrevocably.

From the *Ikhtiṣār al-Āthār*: No mourning is required of a divorced woman, a woman separated by *khulʿ*, a woman separated by *mubāraʾa*, or a woman separated after *liʿān*.

From the Questions Mentioned Above

Question: What do you say concerning a widow who is prevented from observing mourning because she is fleeing from an enemy or for some other reason to a land in which she cannot remain, scarcely staying in any town even eight days, so that the days of the waiting period pass while she remains in this state?

Must she later make up the mourning period? If she marries after the term has elapsed while the mourning remains an unfulfilled obligation upon her, is she lawful for the second husband? And do women owe any expiation if they fail to observe mourning out of necessity?

Answer: Once she becomes settled, she must observe mourning for four months and ten days, or, if pregnant, until the later of the two terms.

If four months and ten days pass without mourning and she marries, she has failed to fulfill an obligation. No expiation is mentioned for this.

Concerning the Consolatory Gift (*Mutʿa*)

From the *Mukhtaṣar al-Muṣannaf*: A woman divorced according to the Sunna or according to the prescribed waiting-period divorce is entitled to a consolatory gift.

A woman separated irrevocably receives no *mutʿa*. There is no *mutʿa* in an invalid marriage.

From the *Iqtiṣār*: A woman separated by *khulʿ* or *mubāraʾa* receives no *mutʿa*.

Concerning Taking a Wife Back

From the *Mukhtaṣar al-Muṣannaf*: A man possesses the same right of return during the waiting period over a scripturalist wife or slave-wife as over a free Muslim wife.

From the *Ikhtiṣār al-Āthār*: If he takes her back before the waiting period ends, there is no compensation and no new bridal due.

If her waiting period has ended and they agree to return to marriage, he may take her back only through a new bridal due, which must be specified for her.

From the Questions Mentioned Above

Question: A man divorces his wife revocably and she observes the waiting period in his house.

During the waiting period he looks at her lustfully, kisses her, or touches from her what would be forbidden to a non-husband. Does this count as taking her back?

Answer: Return occurs only through explicit verbal declaration or intercourse.

Concerning Making Lawful Again a Woman Divorced Three Times

The Commander of the Believers, blessings upon him, said: If a man divorces his wife three times before consummation, she does not become lawful to him again until she marries another husband. This means: he

divorces her before consummation, then remarries her, divorces her again before consummation, remarries her, and divorces her a third time in the same manner. She is then unlawful to him until she marries another husband because he has divorced her three times.

From the same work: An irrevocable divorce—meaning three divorces.

Whoever marries a woman during her waiting period does not become lawful to her first husband until she marries another husband.

From the same work: An irrevocable divorce—meaning two divorces.

Concerning the Divorce of Slaves

From the *Mukhtaṣar al-Muṣannaf*: If a male slave belongs to a man and the master marries him to another person's slave-woman or to a free woman, the slave owes no maintenance to his children and has no right of custody over them.

This is because the children of a slave-woman belong as slaves to her master, while a male slave does not inherit from his children by a free woman so long as he remains enslaved, nor does he possess property from which to maintain them. If a slave divorces a slave-wife twice and afterward both are emancipated, he may not marry her again until she marries another husband. Likewise, if he alone is emancipated and then purchases her, he may not have intercourse with her by ownership until she has married someone else. If a slave divorces her once before consummation and afterward both are emancipated and he marries her again, she remains with him with two divorces still available, because her legal status with him has shifted to that of free women. The same applies if she alone is emancipated while he remains a slave.

Book of Emancipation

Concerning the Merits of Emancipation

From the *Mukhtaṣar al-Āthār*: The most excellent slave to emancipate is a believing male capable of supporting himself, then a believing female capable of supporting herself, then a Muslim male likewise, then a Muslim female.

The best is the one who is most valuable and precious to his owners. After that comes the younger slave who is capable of supporting himself, down to the newborn; among such persons, the older is preferable to the younger.

From the *Mukhtaṣar al-Muṣannaf*: Whoever emancipates a small child incapable of earning a livelihood must support him until he grows up or becomes independent.

The same applies to a very old person or to persons afflicted by chronic disability who have no means of supporting themselves. If a man says to his slave, "Emancipate yourself," and the slave emancipates himself, the emancipation is valid.

Concerning Absolute Emancipation and What Is and Is Not Valid

From the *Iqtiṣār*: Whoever emancipates part of his slave while healthy thereby emancipates the whole slave, whether he possesses wealth or not, because a human being cannot be divided or partitioned, and God has no partner in what has been dedicated to Him—exalted be His remembrance.

From the *Mukhtaṣar al-Muṣannaf*: If a slave is jointly owned by three persons and two of them emancipate their shares simultaneously, neither having preceded the other, or an agent acting for both emancipates them,

and the third partner requires them to compensate him for his share, the value of that share is divided equally between the two emancipators even if their original ownership shares were unequal, because they are like joint participants in a single injurious act.

If one is insolvent with respect to all or part of what he owes, the solvent one must pay the third partner's share and may recover the other's portion when he later becomes solvent. If one partner emancipates his share in a slave during his final illness and then dies solvent, compensation for the co-owner's share is paid from one-third of the estate.

From the *Ikhtiṣār al-Āthār*: If he is ill with the illness from which he dies, the entire slave is emancipated out of one-third of his estate.

From the *Mukhtaṣar al-Muṣannaf*: If a sick man says concerning two slaves, "One of you is free," without specifying which one, and then dies, lots are drawn between them.

If he owns no other property, one-third of the combined value of the two is emancipated from whichever one receives the lot of emancipation. If a man bequeaths the unborn child of his slave-woman to another person and the heir emancipates the slave-woman before she gives birth, her emancipation is valid and her *walāʾ* belongs to the heir. The unborn child likewise belongs to him, but he must compensate the legatee for the value of the fetus on the day of birth.

From the same work: If a man emancipates slaves during his final illness and owns no property other than them, they are divided into three equal groups and lots are drawn.

Whichever group receives the lot of freedom is emancipated and the others remain enslaved. The same rule applies to *mudabbar* slaves, slaves whose emancipation was bequeathed, and slaves emancipated during the illness. Those actually emancipated during the illness take precedence over slaves whose emancipation was merely bequeathed and over *mudabbar* slaves. If the actual emancipations do not consume the whole one-third and something remains, the remainder is assigned by lot among the *mudabbar* slaves and those whose emancipation was bequeathed. Lots are drawn only between persons whose legal circumstances are equal and where none has a superior claim through proof or evidence. Offenses committed by slaves after emancipation had been declared but before lots are drawn, offenses committed against them, and prescribed punishments incurred by them remain suspended until lots are drawn. Whoever receives the lot of freedom is treated in those matters as a free person. Whoever remains a slave is treated as a slave.

If only a portion of one of them is emancipated—one-half, more, less, down to one-sixth—then in all legal matters capable of apportionment he is treated as free in proportion to the part emancipated and as a slave in proportion to the part remaining enslaved.

From the same work: If a man emancipates his slave in return for performing a specific task and that task later becomes impossible or the slave becomes chronically incapacitated from performing it, no substitute is required.

If he says, "If you serve me, you are free," and the slave serves him for one year, he does not thereby become free. If he says, "You are free on condition that you serve me for one year before the festival," he becomes free immediately but owes the year of service. If the master dies, the heirs may require him to complete whatever remains of that year.

From the same work: [A witness] must be trustworthy.

From the same work: The slave is required to work off what remains due to the heirs if they do not accept the witness's testimony.

If another upright witness joins him in testifying that the deceased emancipated the slave, the slave is emancipated from one-third. If the heir-witness is not trustworthy, only his own share in the slave is emancipated by his acknowledgment, and the other heirs are not entitled to compel the slave to work off their shares; rather, he serves them proportionately.

From the same work: Whoever emancipates the unborn child of his slave-woman does so validly.

If he says to her, "Whatever is in your womb is free," and then sells her, and she gives birth less than six months after the sale, the child is free and the sale is invalid. If he says, "Every child you give birth to is free," then every child she gives birth to while remaining in his ownership is emancipated. If the master dies while she is pregnant and she gives birth afterward, the child is not emancipated by that declaration. The same applies if he sells her while pregnant. If someone strikes her abdomen and she miscarries a dead fetus, compensation is that due for the fetus of a slave-woman. But if he had said specifically, "What is in your womb is free," then if another person injures the fetus, compensation is that due for the fetus of a free woman.

From the *Mukhtaṣar al-Āthār*: A prohibited degree of kinship for purposes of ownership means a relative whom, if one of the two were female, the other could not lawfully marry.

Other relatives outside such prohibited degrees may lawfully be owned if ownership is acquired through a valid means.

From the *Mukhtaṣar al-Muṣannaf*: If a person acquires ownership of a share in either of his parents, whether by purchase or inheritance, the portion he owns is immediately emancipated.

If he is solvent, he must compensate the co-owners for the value of their remaining shares, or if the value of his inherited share is sufficient to cover their entire ownership, the same applies. If he is insolvent, the parent must work to compensate the other co-owners for their remaining shares unless they themselves emancipate those shares. If the child later acquires wealth and offers them the value of their shares, they may not refuse payment in order to insist upon the parent's continued service. Other unmarriageable relatives have the same ruling as parents.

From the Questions Mentioned Above

Question: What do you say concerning what is transmitted in the Sharīʿa from Abū Jaʿfar, peace be upon him:

> "If the deceased names the slaves and says, 'Emancipate on my behalf so-and-so and so-and-so,' one examines the one-third of his estate and their prices.

One begins by emancipating them in the order in which he named them. If the one-third is enough for all of them, all are emancipated. If something remains from the one-third but is insufficient to cover the full price of the next slave named after the last fully emancipated one, then if the portion represented is one-sixth or more, that corresponding portion is emancipated and the remainder is worked off." O our master, what is a concrete example of this ruling?

Answer: Suppose he says: "Emancipate on my behalf Miftāḥ, Saʿīd, Badr, and Mithqāl."

Suppose one-third of his estate is fifty dinars and their total values are sixty:

Miftāḥ is worth ten, Saʿīd ten, Badr twenty, and Mithqāl twenty. Miftāḥ, Saʿīd, and Badr are fully emancipated. Ten dinars remain from the one-third to apply to Mithqāl, and this is more than one-sixth of his value, since he is worth twenty. Thus one-half of Mithqāl is emancipated, and he must work off the other half, as previously explained from Abū ʿAbd Allāh, peace be upon him.

Concerning *Mukātab* Slaves

From the *Mukhtaṣar al-Āthār*: "Good" (*khayr*) here means ability to earn and uprightness.

It does not mean wealth, as it does in God's saying, "If death approaches one of you and he leaves behind good, a bequest is prescribed for parents," where "good" means property. A slave owns no independent property; what he has belongs to his master.

From the *Mukhtaṣar al-Muṣannaf*: If a man concludes a *kitāba* contract with his slave while healthy and afterward emancipates him during final illness while owning no other property, the slave may, if he wishes, work off two-thirds of his market value or two-thirds of the amount of the *kitāba*.

If a man concludes a *kitāba* contract while sick for the normal contractual amount and then acknowledges that he has received payment, his acknowledgment is not accepted beyond one-third. If debts consume his entire estate, the acknowledgment is not accepted at all, though the slave becomes free and remains liable for the *kitāba* amount unless he establishes by evidence that he paid it during the illness. If the *kitāba* was concluded while the master was healthy and this is known, and he later acknowledges during illness that payment was received, his acknowledgment is accepted. If a man bequeaths regarding his *mukātab*, saying, "Remit one-third of his *kitāba*," one-third of the original contractual amount is remitted, not one-third of what remains unpaid. If the slave refuses to accept this bequest, his refusal has no effect, because it resembles emancipation, in which the slave has no option against the master. If a protected non-Muslim concludes a *kitāba* contract with a Muslim slave, the arrangement is valid.

If the slave becomes unable to pay, he must work off his market value and can never again be returned to slavery. An executor for an orphan may not conclude a *kitāba* contract with the orphan's slave in a form whereby emancipation progressively accrues as each installment is paid. He may, however, conclude one providing that if the slave becomes unable to pay he returns to slavery, because this causes no harm to the orphan's estate and is closer to preserving it. There is no harm in concluding *kitāba* with a *mudabbar* slave. Whichever event comes first—the full payment of the *kitāba* or the master's death—effects his emancipation. Anything that may lawfully serve as consideration in buying and selling may also serve as the consideration in a *kitāba* contract.

From the same work: If a *mukātab* becomes unable to pay and the master afterward says, "I restore you to the *kitāba*," this is not valid unless he renews the contract with him.

From the same work: If a slave claims that his master concluded a *kitāba* contract with him, or after the master's death claims against the master's son that the father did so, and the defendant says, "I did conclude the *kitāba*, but I was under legal restriction," or the son says, "My father concluded it while under legal restriction or mentally incapacitated," while the *mukātab* says, "Rather, he concluded it while legally competent," then if it is known that the master was at some time under restriction or mentally incapacitated, the master's or heir's statement is accepted with an oath, and the alleged *kitāba* is invalid unless the slave produces evidence that it was concluded during soundness and legal competence.

If no such incapacity was ever known of the master, the *mukātab*'s statement is accepted. If a man concludes *kitāba* with his slave in return for a quantity of something measured or weighed and afterward remits to him something of another category, nothing of the contractual obligation has thereby been remitted. **Marginal note:** If master and slave dispute over the amount of the *kitāba*, the master saying, "I contracted with you for two thousand," and the slave saying, "You contracted with me for one thousand," the slave's statement is accepted whether he has paid something or nothing. If the master says, "I contracted with you for one thousand due in one year," while the slave says, "Rather, due in two years," the master's statement is accepted. If the master says concerning the slave-woman's child, "She gave birth to this child before I concluded *kitāba* with her," while she says, "Rather, I gave birth during the *kitāba*," the statement of whichever of the two has possession of the child is accepted.

If both produce evidence, the slave-woman's evidence prevails regardless of whose possession the child is in. If a slave-woman has been emancipated and she and another person dispute similarly concerning her child, her evidence prevails because she is asserting the child's freedom.

From the *Mukhtaṣar al-Muṣannaf*: If a man concludes *kitāba* with his slave-woman on condition that he may continue having intercourse with her, the *kitāba* is valid but the condition is void.

Whoever concludes *kitāba* with his slave for "his value" without specifying it has made an invalid contract. If a *mukātab* dies while owing a debt and liability for an offense, and leaves free children, priority is given first

to the debt, then to the liability for the offense, then to the *kitāba*. What remains is inherited by his heirs. If a *mukātab* purchases his father, mother, or another relative within the prohibited degrees, each becomes free in proportion to the part of the *mukātab* himself that is free and remains enslaved in proportion to the part of him that remains enslaved. Once he completes payment of the entire *kitāba*, they all become fully free.

From the same work: If the master of a *mukātab* becomes insolvent, his insolvency does not invalidate the *kitāba*.

His creditors may collect the contractual payments as they fall due. If the *mukātab* incurs a debt before becoming fully free, his creditors have a stronger right to his property than the master has to the installments of the *kitāba*. If the master surrenders the *mukātab* to the creditors, they may take his property, his slaves, and his *umm walad* together with his own person. They do not take a child born to him by another man's slave-woman, because that child belongs as a slave to that woman's master. Nor do they take the children of a slave-woman he purchased, because if he becomes unable to complete the *kitāba*, those children become slaves belonging to his own master and are not property independently belonging to him. If a man concludes a *kitāba* with his slave for specified installments and stipulates that only after the master's death will payment of those installments result in emancipation, the *kitāba* is invalid.

Concerning *Mudabbar* Slaves

From the *Mukhtaṣar al-Muṣannaf*: If a man declares his *mukātab* slave to be *mudabbar*, the slave has the choice.

If he wishes, he may cancel the *kitāba* and remain a *mudabbar*. If he wishes, he may continue with the *kitāba*. If the master dies owning no property other than that slave, the slave must work off the lesser of two-thirds of his market value or two-thirds of the *kitāba* amount. If a protected non-Muslim makes his slave *mudabbar* and the slave later embraces Islam, the master is told:

"If you wish to revoke the *tadbīr*, we shall sell him.

If you do not wish to revoke it, we shall leave him with you; he will pay you his earnings until you die, at which point he becomes free, or you may arrange for him to work off his value if you both agree."

From the same work: If a man dies after having made his share in a jointly owned male or female slave *mudabbar*, his case is like that of one who emancipated his share in a jointly owned slave, as previously explained.

If a man says, "Every slave I own is free after my death," then every slave in his ownership at the time of that statement becomes *mudabbar*. Slaves acquired afterward do not fall under the declaration. If he owned only a partial share in a slave, that share does not become *mudabbar* unless he specifically intended it. A *mudabbar* slave may be sold to satisfy the debts of the person who made the *tadbīr* if no other property exists. If the master dies leaving a *mudabbara* slave-woman with a child, and the heirs say, "She gave birth before the *tadbīr*," while she says, "Rather, after the *tadbīr*," the heirs' statement is accepted. If she produces evidence, the child becomes free.

From the same work: If a *mudabbar* slave commits an offense and the master refuses to redeem him from liability, the judge may sell the slave.

If the former master later purchases him again, he does not return to *mudabbar* status; the sale annulled the *tadbīr*. If the master instead redeems him, the *tadbīr* remains. If the slave produces two witnesses establishing that his master made him *mudabbar*, and the heirs say, "He later revoked it," the heirs must produce evidence. One witness together with the slave's oath is not sufficient in this matter, nor is such a combination sufficient for an heir. If the slave claims *tadbīr* but produces no evidence, the heirs swear and he remains enslaved. If they themselves had emancipated him out of one-third, they may require him to swear. A *mudabbar* is treated in all legal matters like an ordinary slave so long as his master is alive.

From the *Mukhtaṣar al-Āthār*: Unless the heirs consent to emancipate them from beyond the one-third.

If the *mudabbar* slaves do not all fit within the one-third, as much of them as the one-third can cover according to their values becomes free, following the method previously described for emancipation during final illness.

From the *Mukhtaṣar al-Muṣannaf*: If a man strikes the abdomen of a *mudabbara*, causing her to miscarry a dead fetus and then die, compensation for the fetus is one-tenth of the mother's value on the day of the injury, while compensation for the mother is her full value.

All of this belongs to the master. If she miscarries a living fetus and then dies, her full value is due for her and the fetus's own value for the fetus. If a man concludes a *kitāba* contract with a *mudabbar* slave, the *kitāba* does not annul the *tadbīr*. If the slave completes the *kitāba* before the master dies, he becomes free and the *tadbīr* lapses. If the master dies and the slave can be fully emancipated from one-third, he becomes free and the *kitāba* lapses. If he cannot be fully covered by one-third, the portion covered becomes free, and the same proportion is deducted from the *kitāba* obligation; he must work off the remainder. If the master dies owning no property other than the slave and the slave has paid nothing toward the *kitāba*, one-third of him becomes free, and he may choose to work off either two-thirds of his market value or two-thirds of the contractual *kitāba* amount.

Concerning *Umm Walad* Slave-Women

From the *Mukhtaṣar al-Muṣannaf*: If a man marries his *umm walad* to another man and she bears him a child, the child has the same legal status as she does. The master's liability for an offense committed by an *umm walad* does not exceed her value.

If a slave-woman is jointly owned by two men and bears a child by a third man, and that man says, "You two married her to me," one owner confirming him while the other says, "Rather, we sold her to you," then one-half of her has the status of an *umm walad*, while the other half remains enslaved to the owner who said, "We married her to you." Of the child, the share corresponding to the owner who acknowledged the sale becomes free, while the child must work to redeem the other half of his value from the owner who denied the sale. The man who had intercourse with her owes the customary bridal due: half to the owner who acknowledged the marriage and half to the one who claimed a sale, as part of the latter's claim. If the child's father dies, the slave-woman must work to redeem half her value from the owner who acknowledged the marriage.

If the father claimed instead that he had purchased her, she becomes his *umm walad*. He owes half the purchase price to the owner who confirms the sale, and half her value plus half her customary bridal due to the owner who denies it. If the father claims that she was given to him as a gift while both owners say, "We sold her to you," she nevertheless becomes his *umm walad*, but he owes her value unless he establishes his claim by evidence. A man may conclude a *kitāba* contract with his *umm walad*. If she commits an offense while under *kitāba*, she must work to discharge its liability. If an offense is committed against her, the compensation belongs to her. If she dies leaving a child, the child works to discharge what remained upon his mother and then becomes free. If her master dies before she has paid anything, she becomes free and owes no further labor.

From the same work: If a man, while healthy, acknowledges that a slave-woman of his bore a child by him, she becomes an *umm walad*. The same applies if he makes the acknowledgment during his final illness while the child is present. If no child is present, she is emancipated from one-third of his estate.

Whatever a slave-woman with whom her master has intercourse delivers—whether a fully formed or incompletely formed fetus, living or dead—makes her an *umm walad* through him. If a man acknowledges having had intercourse with his slave-woman during the period of purity in which she conceived, but then denies the child and claims that he practiced withdrawal, the child is nevertheless attributed to him. If a man

purchases from another person the son of his own *umm walad*, that son does not thereby become free. If a man marries another person's slave-woman, she bears him a child, and he afterward purchases her, she becomes his *umm walad*. [The following clause in the manuscript is compressed, but concerns compensation to a co-owner for his share whether the father is solvent or insolvent.] If the *umm walad* of a Christian embraces Islam, she is ordered to work to redeem her value and is treated like a *mukātaba*.

From the *Mukhtaṣar al-Āthār*: If he purchased her while solvent but had not yet paid her price when he became insolvent, she remains an *umm walad*. She is not sold to discharge his debts or even the unpaid price of her own person.

When the man by whom she bore a child dies, she becomes free through his death. The *walāʾ* of an *umm walad* belongs to the person who emancipated her and afterward to those who succeed to it through him.

From the same work: If a man has intercourse with his slave-woman and she gives birth to something known to be a pregnancy, whether fully or incompletely formed, living or dead, she thereby becomes an *umm walad*.

From the *Mukhtaṣar al-Īḍāḥ*: If a man marries his slave-woman to another man and she bears a child by him, then the husband dies or divorces her and she returns to her master, after which her master causes her to bear a child, the earlier child remains enslaved because the emancipation affecting the mother arose only afterward.

From the Questions Mentioned Above

Question: What do you say, O our singular and glorious master, concerning a man who marries his *umm walad* to another man? What is the status of her child by that husband? Is the child like her, becoming free when her master emancipates her or dies, or not?

Answer: The child becomes free when she becomes free and remains enslaved while she remains enslaved.

Question: What do you say, O Gate of our remission, concerning a slave-woman who already has a child from fornication or another source and afterward bears a child by her master? What is the status of the first child?

Answer: The first child remains enslaved.

Question: What do you say, O House of Divine Light, concerning a slave-woman who becomes pregnant through fornication and whose master wishes to cause the fetus to miscarry through medicines or otherwise? Is that permissible?

Answer: It is not permissible.

From the answer of our master al-Nuʿmān, may God sanctify his spirit: You asked about a miscarried fetus of a slave-woman impregnated by her master. Every miscarriage known to be a child, whether fully formed or not, gives the slave-woman the legal status of an *umm walad*, and she observes through it the waiting period of a free woman.

If life was known to have existed in it through movement, breathing, or another sign of life, it inherits and may itself be inherited from. There is no significance in the "cry at birth" you mentioned, because the child may be mute.

Concerning *Walāʾ*

From the *Mukhtaṣar al-Muṣannaf*: *Walāʾ* is of two kinds: *walāʾ al-ʿitāqa*, the patronage arising from emancipation, and *walāʾ al-ʿalāqa*, namely patronage through a pact of alliance (*walāʾ al-muwālāt*).

Inheritance may arise through either when no blood relative exists. The patronage of emancipation arises when a man emancipates his male or female slave, and the emancipated person later dies leaving property but no relative. His estate then belongs to the emancipator. If he leaves blood relatives, they have priority. If the deceased leaves both a patron through emancipation and a patron through alliance, the emancipating patron

has the stronger right. If he leaves only a patron by alliance, that patron inherits through the alliance. If he leaves an "upper patron," namely the person who emancipated the deceased, and a "lower patron," namely someone whom the deceased himself emancipated, the upper patron inherits. *Walāʾ* belongs to the emancipator except in the case of a *sāʾiba*, over whom the emancipator retains no *walāʾ* and who may ally himself with whomever he wishes.

If a polytheist embraces Islam and enters into a pact of *walāʾ* with a Muslim who assumes liability for his legal compensation (*jarīra*), the Muslim becomes his patron and inherits from him. If a man enters into such a pact with another man, children subsequently born to him are attached in *walāʾ* to the man with whom their father contracted it. A man who has entered into *walāʾ* with another may transfer it elsewhere until that patron has paid blood-liability on his behalf or on behalf of his father where the person was born under that patronage. If a man dies and two persons claim his *walāʾ*, each producing evidence, then in *walāʾ* by emancipation the earlier date is preferred; in *walāʾ* by alliance the later date is preferred, unless the evidence shows that the earlier patron had already borne legal compensation for him. If the two sets of evidence provide no date and are equal in probative value, the matter will be discussed in the *Book of Claims*.

From the same work: If a polytheist's slave embraces Islam and his master emancipates him before he is compelled to sell him, his *walāʾ* belongs to the Imam. If the emancipator afterward embraces Islam, the *walāʾ* returns to him.

Whenever an emancipated person subsequently falls again into slavery, the former *walāʾ* is annulled; any later *walāʾ* belongs to the person who subsequently emancipates him. If a man dies leaving property but no heir, and another man claims to be his heir while two witnesses testify merely that the deceased was his client (*mawlā*), this is insufficient. They must testify either that the surviving man emancipated him while owning him, or that the deceased entered into a pact of *walāʾ* with him and he bore legal liability for him, and that they know of no other heir. If a man acknowledges that he is another man's client through emancipation, whether as an upper or lower patron, and the other confirms him, the *walāʾ* is established and the relevant blood-liability applies. If the person making the acknowledgment has adult children who deny it and no evidence exists, the father's acknowledgment is binding upon himself while the children's denial is accepted for themselves.

If the children are minors, the father's acknowledgment binds them. The mother's denial is disregarded. If a man acknowledges, "I am the client of this woman because she emancipated me," but she replies, "I did not emancipate you; rather, you embraced Islam at my hands and entered into *walāʾ* with me," he remains her client and may not transfer his allegiance elsewhere. If he says, "I embraced Islam at her hands," while she says, "Rather, I emancipated you," he is still her client, but he may transfer the alliance unless she or her people have borne blood-liability on his behalf.

From the *Mukhtaṣar al-Īḍāḥ*: If a man declares *walāʾ* toward another but the latter does not accept it, or is absent, it has no effect until the other accepts the alliance and assumes it upon himself.

From the *Mukhtaṣar al-Āthār*: Those who inherit ordinary property also inherit *walāʾ*, except spouses. Husband and wife inherit nothing through *walāʾ*, just as no remainder after the fixed shares is returned to them, unless they are also blood relatives and thereby inherit through kinship.

From the same work: A person may say upon emancipating his slave, "I have emancipated you for the sake of God Most Generous; you are a *sāʾiba*, and neither I nor anyone connected with me has any *walāʾ* over you." If he says this, the emancipated person may enter into *walāʾ* with whomever he wishes, and neither his emancipator nor the latter's heirs possess patronage over him. If he does not say this, the *walāʾ* belongs to the emancipator.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Bāqir, peace be upon him, was asked about a free woman whom a man married to his slave and who bore children by him. The slave then passed into another person's ownership and was emancipated. To whom does the *walāʾ* of the children belong, given that their mother was the first man's client—to him, or to the man who emancipated their father?

He said: “If the mother is free, the father draws the *walāʾ* to himself. But if you yourself had emancipated him, his father could not draw the *walāʾ* away.” Al-Ṣādiq, peace be upon him, said concerning the child of one free and one enslaved parent: “The child follows whichever of the two is free.”

Book of Gifts and Benefactions

Concerning Gifts and What Is Permissible of Them

From the *Mukhtaṣar al-Muṣannaf*: Whatever a sick person gives from his property during his final illness and then dies is valid only from one-third.

If he owes debts, the one-third is calculated only after satisfaction of the debts. If the debts consume the whole estate, none of the gift is valid.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Ṣādiq, peace be upon him, said that charity consisting of an undivided share in a house is valid, as is a gift.

If someone gives in charity an inheritance that came to him from his father or someone else even though he does not yet know exactly what it consists of, this is valid. Charity before partition and before possession is valid, and so is a gift. **Marginal note:** ʿAbd Allāh ibn Rawāḥa and Ḥassān ibn Thābit were two of the Anṣār and poets during the time of the Prophet, may God bless him and his family; the third was Kaʿb ibn Mālik al-Anṣārī. They praised the Messenger of God and defended him.

From the *Mukhtaṣar al-Muṣannaf*: [The transmitted sentence here appears defective.]

From the Questions Mentioned Above

Question: It is stated in the *Risālat Tanbīh al-Ghāfilīn* that a man should not give anything for a purpose other than God unless he gives an equivalent amount for God. O our master, does this apply when his giving for a purpose other than God is voluntary and desired by him, or when he gives to protect his honor and ward off harm?

Answer: Protecting one’s honor and warding off harm are valid and permissible, because the Prophet, may God bless him and his family, said: “Every act of tactful conciliation is charity,” and whatever a person gives to protect his honor is recorded for him as charity.

Question: A man, while healthy and of sound mind, says willingly, “I bequeath this house to one of my children, and this property to so-and-so as a gift.” He first makes the bequest and then, in the same sitting, makes the gift. Is his gift valid?

Answer: As for the bequest, there is no bequest to an heir. But if after making the bequest he gave the property as a completed gift and the recipient accepted it, the gift is established and he may not revoke it because it constitutes maintenance of kinship.

Question: Since a maternal relative has no guardianship over a paternal relative, if a maternal relative gives something to a minor paternal relative who has no guardian on his father’s side, may the giver accept the gift on the child’s behalf?

Answer: The judge accepts it for him.

Question: If a mother gives a gift to her minor child and the child has no guardian, may she accept it for him?

Answer: The answer is the same as in the preceding question.

Question: Since a polytheist has no guardianship over a Muslim, and a gift is not valid without acceptance, if a polytheist gives a gift to his minor Muslim child, may the polytheist accept it on the child’s behalf?

Answer: We say, trusting in God—and God and His Friends know best—that if the child of the polytheist has embraced Islam, the nearest Muslim relative accepts it for him. If he has no Muslim relative, the Muslim judge accepts it on his behalf.

If a man gives something to another man's slave, it belongs to the slave's master because the slave is owned. If the master gives something to his own slave and the slave wishes to perform pilgrimage and does so, then afterward becomes free, pilgrimage remains incumbent upon him.

Concerning Mutual Giving and Maintaining Social Bonds

From the *Mukhtaṣar al-Āthār*: Fulfilling the needs of a believer and giving proper attention to his rightful claims are among the duties owed by one believing brother to another. If one takes compensation for doing so, it is illicit gain.

From the Questions Mentioned Above

Question: If a Muslim meets a polytheist and the latter bows his head while the Muslim likewise bows his own, is anything incumbent upon the Muslim? Sometimes a Muslim also uses the greeting customary among polytheists. Is there anything upon him for that?

Answer: If the Muslim does not greet the polytheist, there is no blame upon him, and he should not abase himself by such a practice.

Question: The Sharīʿa prohibits greeting women. Yet in India people customarily go to the houses of relatives and others and first greet the women. How are they to avoid difficulty in this?

Answer: If the women are within the prohibited degrees of kinship, there is no harm.

Question: O remover of the anxieties caused by our ignorance, it is customary among the people of India for one person to ask another for water, salt, condiments, and similar small things that people do not regard as burdensome. They consider this permissible and exchange such things freely. Those asking are not incapable of purchasing them, but sometimes do not have them immediately at hand. Is such asking permissible?

Answer: There is no harm in it. It arises from purity of affection and good brotherhood.

Question: Concerning greeting shaykhs, teachers, and persons whose dignity is to be respected: most people in India do not pronounce the salutation aloud before them, but bow their heads intending thereby to greet them. Some say this resembles the practice of unbelievers. Give us an answer that leaves no room for objection.

Answer: Spreading the verbal greeting of peace is preferable.

Question: Is it obligatory when returning a greeting that the Muslim pronounce it loudly enough for the greeter to hear? Must someone respond again when he hears the return greeting? With sneezing, is blessing the sneezer required only after one hears him say "Praise be to God," or merely upon hearing the sneeze? Must the blessing be loud enough for the sneezer to hear?

Answer: This is etiquette, not an obligation. A person may do it however he wishes and incurs no blame by omitting it, except that a greeting must in general be returned, whether audibly or quietly.

Question: People in India customarily believe that if someone sets out on some business and hears another person sneeze, he should stop and not proceed until some time has passed, regarding this as binding. Does this have any established basis, or is it an innovation?

Answer: No reliance is to be placed upon anything of this kind. It has no foundation.

From the answers of our master al-Nuʿmān, may God sanctify his spirit: You asked about a blind elderly man whose sons are responsible for caring for him. If he is poor and his children are wealthy and capable of

maintaining him, they are obliged to do so. If he is wealthy and they are poor, nothing is required of them: "God does not burden a soul beyond its capacity."

Concerning the Merit of Charity

From the *Mukhtaṣar al-Muṣannaf*: The basic rule concerning obligatory zakāt and obligatory expiation is that they should be given openly. Voluntary charity is better concealed, though there is no harm if it is made public. The same is mentioned in the *Ikhtiṣār al-Āthār*.

From the Questions Mentioned Above

Question: It is stated in the books of the rightly guiding *daʿwa* that whoever performs an act on behalf of a deceased person receives its reward himself while the reward also reaches the deceased. Does "act" here mean charity alone, or all acts such as prayer, fasting, and others? May acts likewise be performed on behalf of the living?

Answer: Charity on behalf of the deceased benefits him, and prayer and fasting likewise reach him. The same applies to the living; know this.

Question: What do you say concerning what common people do by holding celebratory observances (*ʿurs*) for Prophets and shaykhs, which some regard as binding? Some people of the *daʿwa* likewise do this for their fathers and mothers, while others do not. Is it obligatory?

Answer: Such a thing is not to be relied upon and is not binding. As for charity on behalf of the dead, whoever wishes may give whatever charity he wishes.

Question: The Sharīʿa states that whoever grants a debtor further time after a debt has fallen due receives every day the equivalent amount as charity. If the lender continually asks for repayment after maturity and presses the borrower, does he still receive the reward of that amount each day as charity?

Answer: If the debtor cannot find the means to pay and the creditor grants him respite without pressing him, he receives each day the reward of an equivalent amount as charity.

Question: Should human lifespans be believed to be fixed by God, neither increasing nor decreasing? If so, what is meant by statements in the books that something "increases life" or "shortens life"?

Answer: Lifespans are appointed terms that neither increase nor decrease. The language of increase and decrease is nevertheless true in the sense that what is diminished in a former cycle (*dawr*) is increased in the subsequent one.

Concerning What May and May Not Be Made into a Charitable Endowment

From the *Mukhtaṣar al-Muṣannaf*: *Waqf* and *taḥbīs* have the same meaning.

An endowment may be created in any separately identifiable property. A valid *waqf* is something from which benefit can be obtained while its substance remains. It is not valid to endow something whose benefit necessarily consumes the thing itself, such as dinars, dirhams, and similar property. If someone endows slaves, animals, or property liable eventually to become unusable, there is no harm in selling an animal approaching destruction through chronic disability, or an implement or garment that has become worn out, and replacing it with something purchased for its price if possible. Alternatively, its proceeds may be spent for the purpose for which the original item had been endowed, or part may be used for the upkeep of what remains, or the person in whose possession the endowed property lies may sell it for one of these purposes.

From the same work: Endowments made by polytheists for places in which they worship other than God—such as fire temples, idols, and the like—are annulled if Muslims acquire authority over them. The Imam disposes of them as he sees fit, and they are treated like God's share of war booty.

If People of the Book have endowed property for a sinful purpose that does not amount to associating partners with God, and they bring the matter before Muslim judges, the endowment is annulled, the property is returned as inheritance to its owners' heirs, and they are permitted to sell it if they wish. If, however, the endowment is for something involving neither sin nor polytheism but for a purpose that would also be permissible in Islam, it is valid like a Muslim endowment.

From the *Mukhtaṣar al-Īḍāḥ*: One of the companions of Abū al-Ḥasan, blessings upon him, asked him: "My mother gave me in charity a share she possessed in a house. I said, 'The judges do not recognize this, so record it as a sale.' She replied, 'Do with it as you think best,' and I did so. She later died, and some heirs now wish to make me swear that I paid her the purchase price, though I paid her nothing. What do you think?"

He said: "Swear to them."

From the *Mukhtaṣar al-Muṣannaf*: If a person assigns the revenue of his charitable endowment to specified purposes and directs that anything remaining afterward go to his family, the family receives nothing until all the purposes named first have been satisfied.

If anything remains, it belongs to the family. If the revenue is insufficient for the named purposes and all were stipulated in a single formulation, each purpose is reduced proportionately. If he specified them successively, the first is satisfied in full, then the second, and so on, so that the deficiency falls upon the last. If the administrator of the endowment dies while the founder is alive, the founder may appoint whomever he wishes in his place. If the founder dies after the administrator without appointing anyone, authority passes to the judge. A founder should not appoint strangers to administer an endowment so long as there are competent relatives able to do so.

From the same work: If he says, "This charity is for my children," without saying "and the children of my children," it belongs to his own sons and daughters and not to his grandchildren.

If he specifies how it is to be divided—whether one is to receive more than another or males and females are to receive equal portions—his condition is followed. If he specifies nothing, a male receives the share of two females. If he says, "The revenue of this endowment belongs to my heirs," it is divided like inheritance, with nearer heirs excluding remoter ones. If one of the nearest descendants dies, his entitlement passes to those then nearest and does not return to his siblings among the founder's descendants. If he stipulates that a particular generation of descendants shall receive it exclusively until they become extinct, after which it passes to the next generation, the condition is valid. If the endowment is made for a group who do not inherit from one another, such as the descendants of the Commander of the Believers ʿAlī, blessings upon him, the revenue is divided per capita unless the founder expressly prefers some over others.

If he endows it upon his own children and the children of his sons but does not state that the higher generation excludes the lower, both children and grandchildren share. If he says simply, "My children and my children's children," descendants through sons and daughters are included. If he says, "My blood relatives," both males and females of his kin are included. If he stipulates that ultimately the endowment shall revert to the poor, and the original beneficiaries become extinct, poor relatives of those beneficiaries have priority. If there are none, it passes to unrelated poor people.

From the *Mukhtaṣar al-Āthār*: [In the revocable form discussed there] the property becomes inheritance for his heirs if he dies, while during his lifetime he may revoke it whenever he wishes.

From the Questions Mentioned Above

Question: A man says before his death, "I have endowed this house or shop of mine upon myself, and whatever rent it produces, use it to feed people," and all his heirs approve. What happens if it becomes dilapidated or collapses?

Answer: If the heirs approve, it is valid. If it becomes ruined, nothing is incumbent upon the heirs and it reverts to inheritance.

Question: A man owes a debt to officials of the fiscal administration or others, and gives them something as a bribe so that they will grant him a longer period to pay. Does he sin?

Answer: Nothing is upon him if he fears the ruler.

Question: A man owes creditors money and brings a mixture of good and debased dirhams, then gives the money-changer or another person something as a bribe so that the inferior coins are counted as good. Does he sin? Some people in India deal in this way with unjust rulers.

Answer: If what he gives is intended as a legitimate fee and he deceives no one, there is no harm. But if he intends it as a bribe and deceives others by passing inferior currency as good, it is forbidden to both giver and recipient.

Question: A man gives an item in charity to another, and the recipient later sells it. May the original donor purchase it from him or from a subsequent purchaser?

It is stated in the *Daʿāʾim* that once a man gives something as charity, it is not lawful for him to buy it, receive it as a gift, or acquire ownership of it afterward except through inheritance; if it returns to him by inheritance, it becomes lawful. Likewise, people in our land visit princes, notables, and loved ones and present them with gifts. At the time of departure, those notables sometimes give the visitors things drawn from those gifts. May the visitors accept and consume them?

Answer: With trust in God: whatever a person gives while explicitly saying, "I give this as charity for the sake of God," he may not take back unless it returns to him by inheritance.

But if he gave it as a gift, companionship-offering, or act of closeness without explicitly saying, "This is charity for the sake of God," there is no harm if he later eats some of it, purchases it, or some of it is returned to him.

From the *Yanbūʿ*: Whoever gives a gift intending God's face and the maintenance of kinship may not revoke it after acceptance.

Husband and wife in matters of gifts are treated like close relatives. Whoever gives to a man as a gift a debt that the latter owes him may not revoke it. A gift given to someone out of fear of his harm or to avert oppression is illicit gain and unlawful for the recipient. Gifts from usurping rulers and unjust Imams are unlawful for those who serve them in disobedience to God. A gift is valid only from a sane, adult, legally competent person of sound judgment.

Book of Bequests

Concerning the Command to Make a Bequest and What Should Be Included

From the *Mukhtaṣar al-Muṣannaf*: For a healthy person, making a bequest is a prudent precaution; for a sick person, it is an obligation.

Concerning What Bequests Are and Are Not Permissible

From the *Mukhtaṣar al-Muṣannaf*: A person making a bequest should assign a portion of it to the Imam, the minimum being one-third of the disposable one-third, and also to poor relatives who are excluded from inheritance by nearer heirs.

If he says, "One-third of my property is for the children of so-and-so," this includes males and females. If he says, "for the descendants of so-and-so," it includes children and grandchildren, males and females. If he says, "One-third of my property is for the sons of so-and-so," and they are five, but one dies before the testator and another child is born to so-and-so before the testator dies, the bequeathed third belongs to the children who are alive when the testator dies, including the newborn child. The "one-third" means one-third of what he actually leaves at death. If he bequeaths one-third of his sheep to a man and the sheep perish before his death, the bequest lapses. The same applies to other specified movable property. But if he says, "A sheep from my property belongs to so-and-so," although he owns no sheep, this is valid and the recipient receives the value of a sheep. Likewise if he says, "A *qafīz* of wheat from my property," or something similar.

If he says, "A sheep from my sheep," or "a *qafīz* from my wheat," but owns neither sheep nor wheat, the bequest has no effect. If a man dies leaving a child and three slaves and no other property, and the heir first says, "My father emancipated this slave during his illness," then says, "No, rather this other one," and then, "No, rather the third," all three become free.

From the same work: If a man bequeaths an amount for pilgrimage on his behalf that is insufficient to send someone from his own city, pilgrimage is performed for him from whatever point toward the *mīqāt* the money is sufficient.

If he bequeaths an obligatory pilgrimage, zakāt, or something similar, it is paid from the principal estate unless he expressly directs that it be taken from the one-third. If he says, "Have so-and-so perform pilgrimage for me for one thousand," and one thousand exceeds the customary fee for someone traveling from his city, the surplus is a bequest to the named person, provided one-third of the estate can bear the entire thousand. If a man says to his slave, "If after my death you perform pilgrimage on my behalf, you are free," and one-third of his estate covers the slave's value, the heirs may not prevent him from making pilgrimage, and he becomes free once he completes it. If the deceased owns no property other than that slave, two-thirds belong to the heirs and one-third is held in suspense until the slave works off two-thirds of his value. Once he pays it to the heirs, he is told, "Perform pilgrimage with the remaining one-third of your value," and if he does so he becomes free.

From the *Kitāb Ḥudūd al-Maʿrifa*: A believer should include in his bequest whatever he owes of God's rights, the rights of His *walī*, and the rights of people, as well as whatever acts of devotion by which he seeks closeness to God.

God has permitted believers to dispose by bequest of one-third of their wealth or less in avenues of righteousness and wherever they wish. But anyone upon whom there remains an obligatory duty he has neglected, or property due to God or His Friends, must discharge it during his lifetime if able. If he is unable, he must bequeath it and record it in his testament, and must not meet God while persisting in withholding God's rights, the rights of His Friends, and the rights of His servants. In this connection God said that a bequest is for parents and near relatives, and the Messenger of God said to ʿAlī: "You and I, O ʿAlī, are the fathers of the believers." Thus God assigned the testamentary one-third to "parents and near relatives" through the kinship of religion, while assigning the other two-thirds as inheritance to kinship by blood. He then spoke severely concerning alteration of the bequest: "Whoever changes it after hearing it, its sin falls only upon those who change it."

As for outward parents and near relatives, according to the generality of the community no bequest is made to those who are already heirs, for their entitlement is the inheritance God has assigned them. If a testator "inclines" (*janafa*) away from what is right toward his outward descendants, leaving his property to them while making no bequest to his inward parents and relatives, there is no harm in informing the heirs afterward

so they may rectify the matter, not enrich themselves with what does not belong to them, and return what their deceased patron wrongfully diverted to them to those entitled to it.

From the *Mukhtaṣar al-Īḍāḥ*: These ten parts are from one-third of the deceased's property, not from the entire estate.

From the *Dhāt al-Bayān*: A bequest may be made to parents who do not inherit—for example because they are slaves, polytheists, or killers of the child who makes the bequest—or for any other reason preventing them from inheriting.

Likewise, a bequest may be made to relatives who receive nothing from the inheritance because nearer relatives exclude them. Such persons are entitled to bequests precisely because they are not heirs.

From the *Mukhtaṣar al-Āthār*: [The text adds:] "…or through suckling, or my inward parents."

From the *Dhāt al-Bayān*: "…or killers of the child."

From the *Mukhtaṣar al-Muṣannaf*: If a sick man says, "One-sixth of my house belongs to so-and-so," this is treated as a bequest, not an acknowledgment.

If he says, "The one-sixth in my house belongs to him," this is an acknowledgment. If a man makes a bequest to a relative who is an heir at the time of the bequest but later ceases to be one, or who is not an heir when the bequest is made but becomes one before the testator dies, the legal status is determined at the time of the testator's death.

From the *Iqtiṣār*: There is no bequest to an heir unless the other heirs consent.

From the *Ikhtiṣār*: Unless the heirs authorize it.

From the *Mukhtaṣar al-Muṣannaf*: If a man appoints an executor only in the event that he dies on a particular journey and then returns, the appointment lapses.

Likewise, if he appoints an executor in the event that he dies from a particular illness and then recovers. If he appoints two executors and one dies after the testator but no replacement had been named, the judge appoints another executor in his place. If an executor dies and appoints another executor, the latter is executor only over his own estate, not over the estate for which the deceased executor had originally been appointed, unless he explicitly transmits the first executorship to him. If an executor neither accepts nor rejects the executorship but acts in any part of it, the executorship becomes binding upon him. If two executors testify that the deceased had appointed a third together with them, and the third acknowledges this, he becomes their partner. If he denies it, the first two may not act independently, because they have themselves acknowledged that the deceased did not entrust the matter to them without a third.

If a man leaves two testamentary instruments bearing different dates, the later one is acted upon, provided it was duly witnessed. If an executor approaches death and appoints someone to act in his place in the executorship without departing from the authority given by the first testator, this is permissible. If a man, whether healthy or ill, acknowledges that a house or estate in his possession belongs to his children rather than to himself, and specifies preference or equality among them, it is allocated as he stated. If he states no shares and then dies, it returns to division according to God's laws of inheritance. If a man bequeaths the service of his slave to one person and the slave's ownership to another, and this fits within the one-third, the bequest is valid. If that slave is killed accidentally, his value is taken and another slave purchased with it to serve the beneficiary of the service-right as the first slave had done. If the two beneficiaries agree to divide the compensation instead, that is permissible.

If the injury would entail retaliation, the owner of the slave's person cannot insist upon retaliation unless he compensates the beneficiary of the service-right for its value, or they mutually agree upon retaliation. If the offender pays compensation and the injury diminishes the slave's capacity for service, another slave is purchased with the compensation to serve alongside him, or the injured slave is sold, his price added to the compensation, and another slave purchased to perform the service. If they agree to divide the proceeds, that is

permissible. If the injury does not diminish the service at all, the compensation belongs entirely to the owner of the slave's person. Everything earned by the slave belongs to the owner of his person. If the subject of the bequest is a slave-woman, the same applies; any child she bears belongs to the owner of her person. The slave's maintenance and clothing are borne by the beneficiary of the service.

From the same work: If the testator tells his executor, "Whoever comes to you claiming something but has no evidence, make him swear and then give it to him," that is permissible within the one-third.

An executorship may be entrusted to a man or woman, or to several men and women. Different executors may be granted different powers. A legally competent father has the strongest right to manage the affairs of his minor children, then the paternal grandfather, then a legally competent mother. If the executor's trustworthiness changes, the authority of the Muslims may associate another person with him or replace him altogether as he sees fit. The executor bears no liability for property lost before its rightful recipients or their agents appear to receive it. But if the rightful claimant appears and the executor wrongfully delays delivery until the property perishes, he is liable.

From the same work: If an executor says to two adult heirs, "I gave you the inheritance, which was one thousand dirhams," and one confirms him while the other denies it, the one who confirmed must account to his co-heir for two hundred and fifty dirhams—half of what he acknowledged receiving—subject to his oath.

If two heirs testify concerning a debt owed by the deceased and are upright, their testimony is accepted. If two executors themselves testify to a debt against the deceased and pay it without a judicial judgment, but afterward another debt is established by other witnesses, they are liable for what they improperly paid. If instead they first testified before the judge, the judge ruled upon their testimony and ordered payment, they bear no liability. If two upright heirs testify concerning a bequest, it is carried out and the other heirs must implement it, unless the two witnesses thereby establish some right for themselves or remove some liability from themselves. **Marginal note from the *Mukhtaṣar al-Muṣannaf*:** If a Muslim appoints as executor an immoral person whose handling of the property is feared, the judge annuls the appointment and replaces him with a trustworthy person of good reputation.

If a man bequeaths one-third and the heirs are minors, and the executor partitions the estate with the beneficiaries of the bequest, giving them one-third and retaining two-thirds for the heirs, this is valid. If the heirs' portion subsequently perishes, they cannot reclaim anything from the beneficiaries. If a man bequeaths one year of his slave's service to another while possessing no other property, the slave serves the heirs two days and the beneficiary one day until the beneficiary has received the equivalent of one year's service. If he bequeaths residence in his house for one year while possessing no other property, the beneficiary occupies one-third of the house for one year, while the heirs occupy two-thirds.

From the same work: If an executor purchases the deceased's burial shroud with his own money, he may reimburse himself from the estate; the same applies to an heir.

If protected non-Muslims bring disputes concerning their wills before Muslim courts, only provisions valid under Muslim judgments are enforced. If a protected non-Muslim bequeaths one-third of his property to "the poor" without further specification, it goes to the poor of his own religious community. An executor may sell slaves, animals, or other property whose retention imposes needless expense upon minor heirs, and likewise movable goods whose spoilage or depreciation is feared. It is not recommended that he sell stable assets of the estate such as real property, jewelry, and property not liable to deterioration. If a man tells his executor, "Place my one-third wherever you wish," the executor may give it to himself, his relatives, or anyone else. But once he allocates it to someone and that person accepts it, he may not transfer it elsewhere. If the wording is, "Give my one-third to whomever you wish," he may not give it to himself.

From the same work: If an executor spends his own money on orphans, he should have witnesses to it; otherwise his claim is not accepted.

If he holds property of theirs and says, “I spent from this upon them,” his statement is accepted to the extent customary and reasonable. When the children reach adulthood, his statements about maintenance are accepted, though if they accuse him they may require him to swear. They may require proof concerning property he claims to have emancipated or debts he claims to have paid where their liabilities were thereby discharged.

From the same work: If an executor pays a debt of the deceased by order of the judge and another debt later appears, he bears no liability; the newly appearing creditor pursues the first creditor for his proportional share.

If he paid without the judge’s order and another debt later appears, the executor is liable for the latter creditor’s share. An executor may not compromise away a right belonging to an orphan unless the settlement is clearly in the orphan’s interest. It is not recommended that an executor sell his own property to the orphan or purchase the orphan’s property for himself; if the transaction is at fair value, however, there is no harm. If two or more persons jointly hold the executorship, none may act independently of the others unless the testator expressly gave each separate authority. One of them may appoint another as agent where he himself has an independent numerical share of authority; but if he has no separate authority, he may not do so, because the testator did not consent to his acting alone.

From the Questions Mentioned Above

Question: If a male or female child possesses property earned by his or her own hand or from another source, may the parents or custodian take it in return for caring for the child?

Answer: The child’s maintenance is paid reasonably from his own property. No excess may be taken except with his willing consent once he becomes legally competent.

Question: A man makes a bequest to an heir, or makes a bequest to someone else exceeding one-third, and all the heirs consent. They later change their minds and wish to revoke their consent. May they do so? The same question applies if, during his final illness, he gives an heir or another person more than one-third.

Answer: Once the heirs have consented, the matter is complete and they may never revoke it.

Question: An executor trades with an orphan’s property and spends upon him, but suffers losses in trade. When the maintenance expenditure is added to what remains, the total equals or exceeds the original capital. Is the executor liable for anything?

Answer: Profit belongs to the orphan, loss is borne by the executor, and maintenance is charged to the orphan’s own entitlement.

Question: The Sharīʿa mentions reward for creating an endowment. May jewelry be endowed?

Answer: A *waqf* is not valid in something whose benefit cannot be obtained without consuming its substance, such as dinars, dirhams, and similar things.

There is no harm in the founder or administrator selling an endowed animal approaching destruction through infirmity, or an old garment or other worn item, and using the price to replace it if possible, or spending it for the endowment’s purpose, or upon the upkeep of the remaining endowed property. If the founder stipulated, “If I become needy, I have the stronger right to it,” then upon his death it becomes inheritance for his heirs and during his lifetime he may revoke it whenever he wishes. If the revenue of something is endowed for charitable purposes and the underlying thing later ceases to yield benefit, its remainder belongs to the heirs according to their shares.

Question: A man’s relative dies, but the executor or another person prevents him from receiving the share due to him according to the doctrine of the People of the House. He wishes to litigate before a judge of an unjust regime, knowing that such a judge would reduce his lawful share. May the deprived heir secretly take something from the deceased’s estate? Does he sin?

Answer: He may take only through a lawful avenue—that is, he may not take more than what is rightfully his.

Question: A man dies leaving heirs both adult and minor and appoints one of them or another person as executor. The executor trades and supports the heirs, and they follow his instructions. Years later he tells them: "Debts have accumulated and our trade has suffered major losses since the deceased died. There is no solution except to sell the house, shop, and other property, and the debts exceed their value." May the executor do so?

Answer: If the executor is trustworthy, he may sell the property and pay the debts.

Question: The *Mukhtaṣar al-Īḍāḥ* reports that al-Ṣādiq, peace be upon him, was asked about a man holding the property of his orphaned nephew as executor: "May he trade with his property?" He said, "Yes, as he would trade with another's property, and the profit is divided between them." He was asked, "Does he bear liability?" He replied, "No, if he is acting prudently."

Does this apply only where the deceased expressly authorized such trading? May all executors trade with orphans' wealth and share the profits without an express testamentary authorization?

Answer: One may not act in this manner with an orphan's property except by testamentary authorization or appointment by a legally competent judge.

Question: A man dies leaving books of the *daʿwa* and other property, while he owes debts greater than the value of the ordinary property. Are the books to be placed in their repository or sold to pay his debts?

Answer: If they are books of the *daʿwa*, they may not be used for that purpose, because they belong to the *daʿwa* and are not inherited.

Question: A child enters his fifteenth year. Are his contracts, marriage, sales, purchases, and testamentary directions at death concerning pilgrimage, visitation, *sharwā*, and other matters valid?

Answer: If sound judgment and proper care of his property are known of him, his declarations and bequests are valid, except *sharwā*, which is valid only after taking the covenant (*mīthāq*), unless the heirs authorize it. A visitation-bequest is taken from the one-third.

Book of Inheritance Shares

From the *Mukhtaṣar al-Muṣannaf*: Inheritance applies to the entire estate of the deceased after bequests and debts have been satisfied. Every rightful heir receives the share prescribed for him, whether child, parent, sibling, spouse, or other relative, male or female. The burial shroud is taken from the principal estate.

From questions of one of the descendants of Abū al-Minhāl answered by our master al-Nuʿmān, may God sanctify his spirit:

A man had two sons. One son had one son; the other had two sons and one daughter. Both sons died, leaving their children. The single grandson said: "Half the property belongs to me"—apparently meaning half of his grandfather's estate, on the assumption that the grandfather died after his two sons. The children of the other son said: "The whole inheritance should be divided among us all, the male receiving the share of two females, because our grandfather is one and our inheritance from him is one." They asked that judgment be given according to the teaching of the People of the House.

Answer: The single child of one deceased son receives from his grandfather what his father would have received, namely one-half if the grandfather had no heirs other than those two sons.

The children of the other deceased son—two sons and a daughter—receive what their father would have received if alive, namely the other half. They divide that half into five shares: each male receives two-fifths of that half and the female one-fifth, "the male receiving the share of two females." The same rule applies to

children of brothers. This was copied from a booklet said to have been in the handwriting of our master ʿAlī ibn Ḥanẓala, may God sanctify his spirit.

From the *Mukhtaṣar al-Īḍāḥ*: If a man dies leaving a son's son and his own father, the father receives one-sixth and the remainder goes to the son's son. The same applies if the descendant is a son's daughter.

If the descendant is a daughter's son, the father receives one-sixth and the daughter's son receives one-half, representing his mother's share, while the remainder is returned to them proportionately. If a man dies leaving his parents, wife, grandmother, and son, the wife receives one-eighth, the parents together one-third, the grandmother one-sixth, and the remainder belongs to the son.

Concerning the Inheritance of Spouses Alone and Together with Others

From the *Mukhtaṣar al-Īḍāḥ*: If a man leaves a son, a daughter's son, and his wife, the wife receives one-eighth.

Likewise, if a woman leaves a son's son and daughter's son, her husband receives one-quarter. If a woman dies leaving a husband and descendants, whether by him or another man, or descendants of descendants, he receives only one-quarter. Likewise, if a man dies leaving descendants by that wife or another, or descendants of descendants, the wife receives only one-eighth. The *Iqtiṣār* states that no remainder is returned to either husband or wife.

From the *Mukhtaṣar al-Īḍāḥ*: If a woman dies leaving a husband and both parents, the husband receives one-half, the mother one-third, and the father one-sixth; a grandmother receives nothing.

If a man dies leaving his parents, a wife, and a grandmother, the wife receives one-quarter, the mother one-third, the grandmother one-sixth, and the remainder goes to the father.

Concerning the Inheritance of Siblings, Grandfathers, and Grandmothers

From the *Iqtiṣār*: Two or more maternal siblings receive one-third when there is no child or parent. If there is no other heir, the remainder is returned to them. Male and female receive equal shares.

A single maternal brother or sister receives one-sixth, and if there is no other heir the remainder is returned to that one person.

From the answers of our master al-Nuʿmān to one of the descendants of Abū al-Minhāl:

If a man dies leaving descendants of full brothers who died before him and descendants of maternal brothers, they inherit according to what their respective fathers would have inherited. Thus, if there were descendants of two or more maternal brothers, they collectively receive one-third; if they descend from only one maternal brother, they receive one-sixth. They divide it equally between males and females, just as maternal siblings themselves do. The remaining two-thirds go to descendants of the full brothers according to the number of their fathers. Each group receives what its father would have received, whether the descendants are few or many, and within each group the male receives the share of two females. The same principle applies to descendants of sisters: each group receives what its mother would have received, except that where they stand in the place of maternal siblings, male and female share equally because they derive their claim through their mother, just as maternal siblings do.

Likewise descendants of paternal uncles of different degrees: each group receives what its father would have received, males receiving twice the share of females.

From the *Mukhtaṣar al-Īḍāḥ*: A paternal grandfather has the status of paternal siblings; a maternal grandfather has the status of maternal siblings.

A grandfather and a brother's son share according to the father's entitlement. If a man dies leaving a paternal grandfather and maternal siblings, the maternal siblings receive one-third and the remainder goes to the grandfather. If there is only one maternal brother or sister, that one receives one-sixth and the remainder goes to the grandfather. If he leaves a maternal grandfather and paternal siblings, the grandfather receives one-sixth and the remainder goes to the siblings. If a man dies leaving a brother's son and two grandmothers, the two grandmothers receive one-third and the brother's son the remainder, representing his father's share—meaning one paternal and one maternal grandmother. If a man dies leaving three grandmothers on his father's side, two on his mother's side, and a daughter, the mother's mother and father's mother each receive one-sixth; the remainder goes to the daughter, while the other grandmothers receive nothing.

If a man dies leaving parents, siblings, and a grandmother, whether paternal or maternal, the grandmother receives one-sixth, the mother one-sixth, and the remainder goes to the father. If a man dies leaving a grandmother, grandfather, full brother, and paternal half-brother, the grandmother receives one-sixth and the remainder is divided equally between the grandfather and the full brother.

From the *Mukhtaṣar al-Āthār*: The paternal grandfather is in the position of full and paternal siblings, inheriting as one of them and being excluded by whoever excludes them.

The maternal grandfather is in the position of maternal siblings, inheriting as they do and being excluded as they are.

From the *Īḍāḥ*: The paternal grandmother receives one-sixth together with a brother.

From the same work: If a man dies leaving a brother's son and two grandmothers, one paternal and one maternal, the two grandmothers receive one-third and the brother's son the remainder.

From the *Mukhtaṣar al-Muṣannaf*: A grandfather with siblings counts as a brother regardless of how many they are.

A brother's son inherits together with the grandfather the share his father would have inherited, and the same applies to a sister's son. A maternal grandfather among maternal siblings counts as one maternal brother. Likewise, a maternal grandmother with a paternal grandfather receives one-sixth, and the remainder belongs to the grandfather.

From the *Mukhtaṣar al-Āthār*: Every relative who approaches through the mother among *dhawū al-arḥām* shares inheritance as maternal siblings do, male and female equally. This shows that the maternal grandfather and grandmother, the parents of the deceased's mother, divide equally just as maternal siblings do.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Ṣādiq, blessings upon him, said concerning one who leaves three grandmothers on his father's side, two on his mother's side, and a daughter: the mother's mother and father's mother each receive one-sixth, and the remainder belongs to the daughter. The other grandmothers receive nothing.

Nothing is returned to the two grandmothers. Either one alone may inherit one-sixth alongside her son or daughter, according to the Sunna established by the Messenger of God. But when both are present together with both of their children—the deceased's father and mother—they receive nothing. If the two grandmothers are present with only the father or only the mother, each receives one-sixth.

Concerning the Inheritance of Cognates, Agnates, and Other Relatives

From the *Mukhtaṣar al-Īḍāḥ*: If a man dies leaving a paternal aunt who is his father's maternal half-sister and another paternal aunt who is his father's full sister, the full paternal aunt receives five-sixths and the maternal half-aunt receives the remainder.

From the *Mukhtaṣar al-Āthār*: Relatives who approach through the mother among *dhawū al-arḥām* divide as maternal siblings do, male and female equally.

This shows that if a sister's children inherit from their maternal uncle, or an aunt's children inherit through her, they divide equally. Likewise, children of a daughter who inherit from their maternal grandfather through her divide equally.

From the *Mukhtaṣar al-Muṣannaf*: If a man leaves a maternal uncle who is his mother's full brother and another maternal uncle who is only her paternal half-brother, the full maternal uncle has priority.

The same rule applies among paternal uncles and aunts. If instead of the paternal half-brother of his mother he leaves a maternal half-brother of his mother, the latter receives one-sixth together with the full maternal uncle. If he leaves his maternal grandfather, maternal uncle, and maternal aunt, the inheritance belongs to the grandfather. If he leaves his mother's paternal uncle and her maternal uncle, the property is divided equally between them. If he leaves his father's paternal aunt and his father's maternal aunt, one-third goes to the maternal aunt and two-thirds to the paternal aunt.

Concerning Who May Inherit and Who Has No Inheritance

From the *Mukhtaṣar al-Muṣannaf*: There is no inheritance between a child disavowed through *liʿān* and the man who performed *liʿān*, nor between that man's descendants and the child through him.

If the man later acknowledges the child after previously denying him, the child inherits from him, but the acknowledging man does not inherit from the child. Inheritance runs between a child of *liʿān* and his mother's family.

From the same work: There is no mutual inheritance between a child born from fornication and the man who committed fornication with his mother even if that man acknowledges him.

The child inherits from his mother and she from him, and each side's kinship is traced through the mother. If a man claims a child whose mother is not known to have been a fornicator, and a child of that age could normally have been born to him, and no one else claims the child, the child is attributed to him and mutual inheritance follows, even if he had previously denied the child.

From the same work: [The source then refers to] a foundling whose father and mother are unknown.

From the *Mukhtaṣar al-Īḍāḥ*: If a child of *liʿān* leaves a maternal sister and his maternal grandfather, the estate is divided equally between them.

If he leaves his maternal grandfather and maternal grandmother, the estate is divided equally. Likewise, if he leaves his brother's son and maternal grandfather, the estate is divided equally.

From the same work: Everything stated in this chapter concerning a child whose mother is suspected [of fornication] indicates that he does not inherit where the master has not acknowledged him.

The instruction that something should be assigned to him by testament at death therefore appears to be a voluntary bequest, not a fixed legal entitlement, since it is neither limited nor specified, and I know of no fixed inheritance share whose amount is wholly unspecified.

From the *Mukhtaṣar al-Muṣannaf*: The testimony of the midwife alone is accepted in such a matter if she is upright and no one else was present.

From the same work: A *ḥamīl* is one who was taken captive from the lands of polytheism.

From the *Ikhtiṣār al-Āthār*: A Jew does not inherit from a Christian, nor a Christian from a Jew, and neither Jew, Christian, nor Zoroastrian inherits from a Muslim.

A Muslim, however, inherits from them through kinship, as transmitted from the Imams, blessings upon them, and an unbeliever does not exclude him. The transmitted report is correct in this sense: they do not mutually inherit where polytheists do not inherit from Muslims but Muslims inherit from them. Members of each non-Muslim religious community inherit among themselves according to the prescribed shares when they litigate before Muslim judges. If they instead divide inheritance according to their own religion and do not bring the matter before a Muslim authority, they are left to do so without interference.

From the *Mukhtaṣar al-Muṣannaf*: If the deceased has an unbelieving relative who would have the strongest right to inherit if he were Muslim, that relative is disregarded as though nonexistent, and inheritance passes to the next legally entitled heir.

A believer is not excluded by an unbeliever, nor a free person by a slave.

From the same work: Concerning an apostate who dies upon apostasy or flees to enemy territory [the text here is incomplete].

From the same work: A husband inherits from the blood-money of his wife, and a wife from that of her husband, but neither has the right to pardon the blood claim.

If a woman drinks a drug causing her to miscarry, she owes the corresponding blood-compensation as will be described, but she inherits nothing from it.

From the *Iqtiṣār*: If a man has a wife who has a child by another man, and that child dies leaving property, the husband abstains from intercourse with the mother until it is established whether her womb is empty.

If she is pregnant, the fetus inherits from the deceased child in a case where its mother herself does not inherit him; otherwise the husband should not place in the womb a person who would have no right to the inheritance. This applies where the mother is a slave-woman or polytheist. If she is a free Muslim woman, the inheritance belongs to her rather than the deceased child's siblings, and the husband need not abstain.

From the *Mukhtaṣar al-Īḍāḥ*: Only the Imam carries out the rule of purchasing the enslaved heir [from the estate in order to emancipate him].

Our master al-Nuʿmān, may God sanctify his spirit, mentioned in the third part of the *Sharḥ al-Akhbār* the intersex person (*khunthā*) concerning whom ʿAlī, peace be upon him, ruled: this person married and gave birth, and also had intercourse with a slave-woman and caused her to bear a child. He judged the person according to the ribs, as mentioned in this book, and classified the person among males.

From the *Mukhtaṣar al-Muṣannaf*: If one intersex person marries another, their status is suspended until it becomes clear which is male and which female.

Until then they do not inherit from one another. If an intersex person dies after puberty before the matter is clarified, the body is not ritually washed; rather, it is given *tayammum* and buried. If funeral prayer is performed over the intersex person together with a man and a woman, the intersex person stands beside the man: the man is nearest the Imam, the woman nearest the qibla, while in burial the intersex person is placed before the woman and behind the man. If circumcision becomes necessary before the sex can be determined, a slave-woman is purchased to perform it, from the person's own property or the guardian's property; if neither has means, from the public treasury, and her purchase price is later returned. If an intersex person commits false accusation or theft, the prescribed punishment applies. If someone accidentally cuts off the person's hand or puts out an eye, judgment concerning the injury is suspended until the person is legally determined to be male or female.

If a man bequeaths one thousand to a fetus if male and five hundred if female, and the child is born intersex, distribution is suspended until the sex is determined. If two upright witnesses testify that the intersex person is male and another two that the person is female, then if the person seeks inheritance, the testimony identifying the person as male is followed; if someone claims to be the person's husband, the testimony identifying the person as female is followed. If the intersex person claims inheritance while a man claims to be married to the person and each produces evidence supporting the respective claim, the person's physical condition is examined according to the criteria previously mentioned rather than deciding between the two sets of witnesses.

From the *Ikhtiṣār al-Āthār*: [Concerning simultaneous deaths:] suppose two brothers, each the client of a different group through *walāʾ*, die in circumstances where it is unknown which died first and have no heirs other than their patrons. One leaves one thousand dinars and the other one hundred.

The brother who left one hundred is treated as having survived his brother and inherited the thousand, while the brother who left one thousand is treated as having survived the other and inherited the hundred. Thus the patrons of the brother who originally left one thousand receive one hundred, while the patrons of the brother who originally left one hundred receive one thousand. In this way, each deceased relative is treated as inheriting from the other before his own heirs inherit from him.

From the same work: A *mukātab* and a person partially emancipated inherit and are inherited from in proportion to the portion of them that is free.

From the same work: If a man divorces his wife irrevocably so that he has no right of return, there is no inheritance between them.

An exception exists if he divorces her while suffering from the illness from which he dies: she continues to inherit from him while that illness persists, unless he recovers or she marries another man. If he recovers or she remarries, she no longer inherits. [The following brief clause on *walāʾ* is textually compressed:] Among men and women, those nearer in the chain of *walāʾ* have priority over those more remote.

From the *Mukhtaṣar al-Muṣannaf*: Blood relatives have priority in inheritance over a patron through emancipation.

Walāʾ is inherited by those who inherit ordinary property. If a man leaves no heir except a slave whom he himself had emancipated, that former slave inherits him just as a patron inherits his emancipated client. If he leaves both a slave whom he himself had emancipated and an upper patron who had emancipated him, the estate belongs to the upper patron rather than the lower client. A person partially emancipated inherits, is inherited from, excludes other heirs, and may make valid bequests in proportion to the portion of him that is free. If a man irrevocably divorces a wife who is a slave-woman or scripturalist, and before the waiting period ends the scripturalist embraces Islam or the slave-woman is emancipated, she does not inherit from him because he was not attempting to evade her inheritance at the time he divorced her. If a woman obtains *khulʿ* from her husband during his illness, or he gives her the choice and she chooses herself, she does not inherit from him.

From the same work: If the deceased has free relatives and also a slave-relative who has been partially emancipated, that person inherits in proportion to the part that is free.

The portion he would have received had he been wholly free, but from which his remaining slavery excludes him, returns to the deceased's free relatives who inherit alongside him. For example, a free woman dies leaving a free father, a mother who is half free, and a free husband. The husband receives one-half. The mother receives half of what she would have received if wholly free, namely one-sixth out of the one-third otherwise due to her. The remainder of the share from which her enslavement excludes her passes to her counterpart in inheritance, namely the father, who thereby receives one-third. If a man has two slave-women who each bear a son, whether during his illness or while healthy, and he acknowledges one son but denies the

other, then dies without anyone knowing which one he acknowledged, while each slave-woman claims that her own son was the acknowledged child and neither has evidence, lots are drawn.

Whichever child receives the lot of sonship inherits, his mother becomes an *umm walad*, and the other child and his mother remain slaves.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Ṣādiq, peace be upon him, was asked about a man who dies owing a debt equal to the value of his burial shroud.

He said: “He is shrouded from what he left, unless another person supplies the shroud, in which case what he left is used to discharge the debt.” The cost of the shroud is taken from the whole estate before everything else; as far as I know, the jurists agree upon this, and God knows best. Embalming substances, digging the grave, and whatever else is indispensable for burial have the same ruling as the shroud and are taken from the general estate.

From the *Mukhtaṣar al-Āthār*: If a man leaves no heir except a slave whom he himself had emancipated, that former slave inherits him.

If he leaves a former slave whom he had emancipated and also an upper patron who had emancipated him, the estate belongs to the patron who emancipated him rather than the client whom he himself emancipated.

From the same work: If some heirs acknowledge a debt of the deceased, each is liable for it in proportion to his share of the inheritance.

If the acknowledging heir is upright and testifies concerning the debt, his testimony is accepted against the remaining heirs.

From the same work: Suppose a man dies leaving two sons. One acknowledges a third brother while the other denies him.

The denying son receives one-half of his father’s estate. The son who acknowledged the third brother takes one-third and gives one-sixth to the acknowledged brother, so that between those two the property is divided as it would have been had there actually been three brothers.

From the *Mukhtaṣar al-Īḍāḥ*: The first thing taken from a deceased person’s estate is the burial shroud.

From the Questions Mentioned Above

Question: A man dies leaving a maternal grandfather, maternal grandmother, siblings, and a wife. How is the estate divided?

Answer: The wife receives one-quarter and the grandmother one-sixth.

If the siblings are maternal and there are no paternal siblings, the maternal grandfather counts as one of them. If the siblings are paternal or full siblings, the maternal grandfather receives one-sixth and the remainder belongs to the full or paternal siblings.

Question: A man dies leaving children, a paternal grandfather, paternal grandmother, and maternal grandmother. How is the property divided?

Answer: Each grandmother receives one-sixth and the remainder belongs to the deceased’s children. The grandfather receives nothing alongside descendants.

Question: What of a maternal grandfather and a maternal brother’s son? Is the estate divided equally between them?

Answer: There is an explicit text concerning this, though the wording in this copy is corrupt at the end.

Question: The *Daʿāʾim* states that the Prophet assigned the grandmother one-sixth and that this became her prescribed share.

The *Minhāj al-Farāʾiḍ*, from our master al-Nuʿmān, may God sanctify his spirit, says that a grandmother is never excluded by direct descendants or others, based on the report that the Prophet gave the maternal grandmother one-sixth when the mother was no longer alive, even together with children of the deceased and others.

Answer: We say that it has been transmitted from the People of the House, blessings upon them, that the Messenger of God gave the grandmother inheritance alongside descendants while her own children were present.

It has also been transmitted, however, that when the two grandmothers are present together with the descendant and their two children—namely the father and mother of the deceased—the two grandmothers are excluded.

Question: If a grandmother inherits one-sixth while the father and the deceased's direct descendants are present, then when there are no descendants and the grandmother stands alone, does she have priority over a maternal uncle and paternal aunt?

Does the share the Prophet fixed for her fall under the saying of our master Jaʿfar ibn Muḥammad al-Ṣādiq, peace be upon him, that whoever has been assigned a prescribed share in any circumstance has priority in inheritance over one for whom no fixed share was assigned? Or if she does not exclude the maternal uncle and paternal aunt, does she lose her one-sixth or retain it?

Answer: God and His Friends know best.

Qāḍī al-Nuʿmān, may God sanctify his spirit, said in the *Ikhtiṣār al-Āthār* that the Messenger of God gave the grandmother inheritance out of consideration for her child and assigned her one-sixth. If there is no one else with her and she is the sole heir, she receives one-sixth by prescribed share and the remainder by return, thereby taking the whole estate. If there are two grandmothers, one maternal and one paternal, the paternal grandmother receives two-thirds and the maternal grandmother one-third. A nearer grandmother excludes a more remote one. The paternal grandfather has the status of full and paternal siblings, inheriting as one of them and being excluded by whoever excludes them. The maternal grandfather has the status of maternal siblings, inheriting and being excluded as they are. Thus the grandmother does not possess a Qurʾānic fixed share alongside a child; her prescribed share derives from what the Messenger of God granted her.

The grandfather is like a brother, and a brother's son likewise, according to the transmitted texts from the Imams of guidance. When there is no grandfather, brother, or brother's son, the two grandmothers take priority over a paternal or maternal uncle. Each receives one-sixth, and the remainder is returned to them, so that the maternal grandmother ultimately receives one-third and the paternal grandmother two-thirds. As our master al-Nuʿmān states in the *Mukhtaṣar al-Īḍāḥ*: if a man leaves his paternal grandmother, paternal aunt, and maternal aunt, the maternal aunt receives one-third representing the maternal side, while the paternal grandmother and paternal aunt receive two-thirds representing the paternal side. If there are a paternal cousin, maternal cousin, and two grandmothers, the two grandmothers inherit. Another ruling: If a man dies leaving his father, mother, paternal grandmother, and maternal grandmother, the two grandmothers do not inherit alongside his father and mother.

If a grandfather, whether paternal or maternal, is present with a single grandmother, [the text states] only the grandmother inherits in that particular case. It is transmitted from the Messenger of God that he gave a grandmother one-sixth while "her son was alive"—meaning the father of the deceased—and looked to her child—meaning the deceased's parent—and out of compassion assigned her one-sixth, which thus became an established share for her. [The next sentence is textually confused in the manuscript:] one who dies leaving a son and two grandmothers… [the text gives sixths and then mentions a brother's son]. If a man dies leaving no free heir but has an enslaved heir, that slave is purchased from the estate, emancipated, and given the remainder as inheritance. This ruling is carried out by the Imam if he chooses to emancipate the slave; otherwise the property goes to the treasury. This was copied from a booklet said to have been in the handwriting of our master ʿAlī ibn Ḥanẓala, may God sanctify his spirit.

In the name of God, the Most Merciful, the Compassionate.

From the *Mukhtaṣar al-Īḍāḥ*: If a man dies leaving a son's son and his father, the father receives one-sixth and the remainder goes to the son's son. The same applies where the descendant is a son's daughter.

If the descendant is a daughter's son, the father receives one-sixth and the daughter's son one-half representing his mother's share, while the remainder is returned proportionately. If a man dies leaving his parents, a wife, and a grandmother, the wife receives one-quarter, the mother one-third, the grandmother one-sixth, and the remainder belongs to the father. Two full or paternal brothers reduce the mother from one-third to one-sixth; likewise one brother and two sisters, or four sisters, and similarly mixed combinations. If a man leaves his wife, son's son, and daughter's son, the wife receives one-eighth. Likewise, if a woman leaves a son's son and daughter's son, her husband receives one-quarter. If a woman dies leaving a husband and descendants by him or another man, or descendants of descendants, he receives only one-quarter. Likewise, if a man dies leaving a wife and descendants by her or another woman, or descendants of descendants, she receives only one-eighth.

If the deceased leaves a full sister, a maternal brother and sister, and a paternal brother and sister, the maternal brother and sister share one-third equally. The full sister receives one-half as her prescribed share, and the remainder is returned to her by kinship. The paternal siblings receive nothing. The maternal grandfather has the status of maternal siblings, and the paternal grandfather the status of paternal siblings. A grandfather together with a brother's son receives one-half. If a man dies leaving a paternal grandfather and maternal siblings, the maternal siblings receive one-third and the remainder goes to the grandfather. If there is only one maternal brother or sister, that one receives one-sixth and the remainder goes to the grandfather. If he leaves a maternal grandfather and paternal siblings, the maternal grandfather receives one-sixth and the remainder goes to the siblings.

If he leaves a brother's son and two grandmothers, the two grandmothers receive one-third and the brother's son receives the remainder as his father's share. From al-Ṣādiq, peace be upon him: If a man leaves three grandmothers on his father's side, two on his mother's side, and one daughter, the mother's mother and father's mother each receive one-sixth, and the remainder belongs to the daughter. The other grandmothers receive nothing. Nothing is returned to the two grandmothers. A grandmother alone may inherit one-sixth together with her son or daughter, according to the Sunna established by the Messenger of God. If both grandmothers are present together with both their children, they inherit nothing. If both grandmothers are present with only the father or only the mother, each receives one-sixth. If a man dies leaving parents, siblings, and a grandmother, the grandmother receives one-sixth, the mother one-sixth, and the remainder goes to the father, whether the grandmother is paternal or maternal.

If a man leaves a grandmother, grandfather, full brother, and paternal half-brother, the grandmother receives one-sixth and the remainder is divided equally between the grandfather and full brother. If a man leaves a paternal aunt who is his father's maternal half-sister and another paternal aunt who is his father's full sister, the full aunt receives five-sixths and the maternal half-aunt the remainder. If a man leaves his parents, grandmother, wife, and son, the wife receives one-eighth, the two parents together one-third, the grandmother one-sixth, and the remainder goes to the son. If the deceased leaves the children of his maternal brother, they inherit equally. The same applies to maternal uncles and aunts. Where kinship is through the father, males receive twice the shares of females; wherever kinship is exclusively through the mother, male and female share equally. A man dies leaving a paternal uncle and the daughter of a brother's son: the property belongs to her rather than the paternal uncle.

A man dies leaving a maternal uncle and a sister's son: the sister's son has the stronger right to the estate. The Commander of the Believers, blessings upon him, said: "A newborn does not inherit until it gives a sign of life." The testimony of the midwife alone concerning the newborn's sign of life is admissible. It is transmitted from our master Ḥasan ibn Idrīs ibn al-Ḥasan—may God show them His grace—that concerning a woman who dies leaving her husband, mother, daughter, and two grandmothers, the husband receives one-

quarter, the mother one-sixth, the two grandmothers together two-sixths, and the remainder belongs to the daughter.

From the Questions Mentioned Above

Question: What do you say concerning what is stated in the Sharīʿa: that if an intersex person (*khunthā*) urinates from both organs, one looks to whichever one the urine emerges from first and assigns the person the legal status corresponding to that organ? O our master, if neither precedes the other, but more urine emerges from one than from the other, what is to be done?

Answer: If more urine comes from the male organ than from the female organ, the person is judged to be male; if more comes from the female organ, the person is judged to be female.

Question: What do you say concerning intersex persons: what is the cause by which they have deserved to enter into these composite forms?

Answer: They deserved this because of shortcomings in what preceded.

Concerning the Abbreviated Reckoning of Inheritance Shares

It is mentioned in the *Mukhtaṣar al-Īḍāḥ* that no remainder is returned to the two grandmothers. It is mentioned in the *Ikhtiṣār* that no remainder is returned to husband or wife. The *Mukhtaṣar al-Īḍāḥ* and this book state: If the deceased leaves a full sister, a maternal brother and sister, and a paternal brother and sister, the maternal brother and sister receive one-third, the full sister receives one-half as her named share, and the remainder is returned to her by kinship; the paternal siblings receive nothing. Thus the phrase “the remainder is returned to her by kinship” makes clear that the remainder is not returned to maternal siblings unless there is no other heir.

From the *Mukhtaṣar al-Āthār*: Everyone whom God, Mighty and Glorious, has expressly named among the heirs in the Book has priority over one whom He has not named. If anything remains after the share assigned to him, it is returned to him; and where there are two or more such heirs, the remainder is returned to them in proportion to their inheritance shares, except husband and wife, to whom no remainder is returned unless they also possess kinship through which they are independently entitled to the return.

Another note: Regarding the example, “A man leaves a wife, twenty daughters, and a father…” down to the words “it does not correspond to any fraction”: rather, it does correspond by one-quarter and one-quarter. Multiply the root number of their heads, namely five, by forty, giving two hundred. The wife receives one-eighth, namely twenty-five. The father receives what remains from his one-fifth, namely thirty-five. The daughters receive four-fifths, namely one hundred and forty, divided among them so that each daughter receives seven.

Book of Blood-Money

Concerning the Prohibition of Shedding Blood Without Right and the Severity of Its Sin

From the *Īḍāḥ*: The major sins include associating partners with God and intentionally killing a believer, as stated in the relevant report.

From the same work: [Another major sin is] fleeing from battle, except as a tactical maneuver for fighting or to join another force.

Concerning Retaliation

From the *Mukhtaṣar al-Muṣannaf*: If a man intentionally kills another man, and then an unrelated third person attacks the killer and gouges out his eye, cuts off his hand, or inflicts a similar injury, the killer is entitled either to retaliation for the injury inflicted upon him or to compensation if he wishes.

The slain man's guardian has no claim upon that compensation, unless he chooses blood-money instead of retaliation, in which case he may take it from that property or from other property of the killer.

From the same work: If two men confess to killing one man, one saying, "I killed him intentionally," while the other also says, "I killed him," the victim's guardian may kill either one of them, but has no claim against the other.

If someone strikes another with something light, such as a garment or similar object, of a kind not ordinarily capable of killing, the resulting death is treated as accidental.

From the same work: In an intentional offense, only the testimony of two upright male witnesses is admissible. If the offense was accidental, the testimony of one man and two women, or one witness together with an oath, is admissible.

From the same work: If a man intentionally kills an intersex person who has already been legally assigned to either the male or female category, the ruling follows that category.

If the person has not been assigned to either category, the heirs may choose either to kill the killer and pay his heirs one-quarter of the blood-money, or to take three-quarters of the blood-money and waive retaliation. If they disagree among themselves, lots are drawn and judgment is given according to the lot.

From the same work: If two women intentionally kill a man, his guardian may kill one of them and take half the man's blood-money from the other.

If four women intentionally kill a man, his guardian may kill one of them, while the remaining women bear three-quarters of the blood-money: one-half goes to the slain man's guardian and one-quarter to the heirs of the woman executed in retaliation. If a man gouges out another's eye, then cuts off his hand, and then kills him, if he did these as separate acts, each injury is retaliated for and then he is killed. But if he struck him only once and that blow severed the hand and then extended to the rest of the body, he is retaliated against for the final injury without separate retaliation for the first wound.

From the same work: If a man and woman jointly intentionally kill a man, and the male offender is a slave, the victim's guardian may kill the woman and acquire the slave if the slave's value equals one-half of the blood-money.

If his value exceeds that, only the portion corresponding to one-half of the blood-money is acquired. Alternatively, the guardian may kill the slave and receive one-half of the blood-money from the woman.

From the same work: If a slave commits an offense early in the day exhausting his entire value and judgment awards him to the first injured party before he commits another offense later that day, he has become that person's property and must then be surrendered to the second injured party or redeemed.

But if the second offense occurs before judgment in favor of the first, the two injured parties share in his value. **Marginal note:** The master of the slain person may choose either to have the offender killed or enslaved. If an *umm walad* commits an offense, her master may redeem her. If he does so, she remains his *umm walad*. If he refuses, she must work to discharge whichever is less: the compensation for the offense or her own value. The same applies if she commits many offenses: she is never liable to work for more than her value. If she has worked off compensation for an offense smaller than her value, she must continue working for her master for the remaining value and then becomes free, unless the master chooses to emancipate the remaining share. If a *mudabbara* kills her master, she must work to pay her value to his heirs because the *tadbīr* was a testamentary grant to her.

From the same work: Intentional homicide means that a person deliberately strikes another with a weapon or another instrument, whether or not blood is shed; or strangles him; drowns him; throws him into fire; casts him from a height; confines him without food and drink for a period in which a person ordinarily cannot survive; deprives him of bedding so that he dies of cold; gives him poison; or intentionally causes his death in any other manner ordinarily capable of killing.

All this and what resembles it is intentional killing. The victim's heirs may choose retaliation, blood-money, or pardon. If a man is intentionally killed and has no guardian other than the Imam, the Imam may choose either to kill the murderer or to take blood-money, but may not pardon him.

From the same work: If a man cuts off the nose of a slave, or inflicts upon him another injury which, if inflicted upon a free person, would entail full blood-money, the offender pays the slave's master his full value and takes ownership of him.

If a slave injures a protected non-Muslim, that person acquires no ownership in the slave's person. If the master does not redeem him, the slave is sold and the protected non-Muslim receives compensation for the injury from the sale price. A free person is not killed for killing a slave unless he killed him while committing highway robbery, in which case he is treated as a *muḥārib*.

From the same work: Whoever intentionally kills either of his parents is killed in retaliation.

From the *Iqtiṣār*: The ruler carries out the execution.

From the same work: Retaliation for a wound is not carried out until the wound has healed.

From the *Ikhtiṣār al-Āthār*: The ruler himself carries out the killing and does not hand the offender over to the heirs of a protected non-Muslim.

From the same work: If some of the victim's heirs are children, mentally deficient, or absent while others are adult and present, the adult heirs may carry out retaliation. The killer is not held until the children reach adulthood or the absent heirs return.

From the *Mukhtaṣar al-Muṣannaf*: If a man alleges intentional killing and prefers blood-money, he may not establish the claim by one man and two women or by one witness together with an oath, because no monetary claim arises until the right of retaliation has first been established.

From the same work: If the right to blood belongs jointly to two men and one testifies that the other waived the blood claim while the latter denies this, retaliation lapses and both receive blood-money.

If a man is intentionally killed while owing debts or leaving bequests, his heirs may nevertheless exercise retaliation even if the creditors and beneficiaries of the bequests object. Likewise, if the guardian waives both retaliation and blood-money, his waiver is valid even if the deceased owed debts. If the guardian of the blood is under legal restriction, his waiver of retaliation is valid, but his waiver of blood-money is not. If the son of an injured man tells the offender before his father dies, "I waive your offense against my father," his waiver is invalid because the right belongs to the father while he lives. Once the father dies, the matter passes to the son. If a person is killed accidentally, the blood-money belongs to his heirs, and a beneficiary to whom one-third was bequeathed has a right in it. Such a beneficiary has no right in blood-money for intentional homicide and cannot waive anything concerning it.

If a person injured accidentally waives the offender's liability, this has the status of a bequest and is valid only to the extent that his bequests are valid. If he waives blood-money against an intentional killer, the waiver is invalid because blood-money does not arise until retaliation has first been waived and blood-money substituted for it; at that point the right belongs to the heirs. If a victim's guardian appoints someone to execute the killer and afterward says, "I have pardoned him," then if this occurs before execution, the agent may no longer carry out the killing and the agency is terminated. If the agent carries out retaliation before learning of the pardon, he incurs no liability, while the person who granted the pardon owes the blood-money from his own property. If the guardian says, "I have pardoned him" only after the execution has already occurred, the

statement has no effect. If the guardian of blood dies, his heirs take his place with respect to the right that belonged to him.

From the *Mukhtaṣar al-Īḍāḥ*: [The Imam was asked:] "What if the Imam pardons him?"

He replied: "It is a right belonging to all the people. The Imam may only kill him or take the blood-money; he has no right to pardon."

From the same work: Al-Ṣādiq, peace be upon him, was asked about a man who kills another in the sacred precinct.

He said: "Retaliation is carried out against him." If he committed the killing outside the sanctuary and then entered the sanctuary, he is not killed there. Rather, the people and merchants are informed of him; no one buys from him, sells to him, sits with him, or gives him shelter. When he leaves the sanctuary, he is killed if he can be apprehended.

From the Questions Mentioned Above

If a man accidentally kills another and admits it himself, the blood-money is upon him personally. If he does not confess and witnesses later establish the accidental killing, the blood-money falls upon the *ʿāqila*.

Concerning Blood-Money

From the *Īḍāḥ*: The blood-money is twelve thousand dirhams when ten dirhams weigh six *mithqāls*.

Whoever says that the blood-money is ten thousand dirhams calculates them at the standard in which ten dirhams weigh seven *mithqāls*. Another source states: the difference between the two calculations is 323⅓ dirhams, on the basis that the dirham weighs four and one-fifth carats. The difference amounts to 4,800 carats. This difference applies when ten dirhams correspond to six *mithqāls*. But when ten dirhams correspond to seven *mithqāls*, the difference is 285 dirhams and five-sevenths of a dirham. The difference between the two positions is two hundred *mithqāls*: if blood-money is ten thousand dirhams at seven *mithqāls* per ten dirhams, that equals seven thousand *mithqāls* of silver; while twelve thousand dirhams at six *mithqāls* per ten equals 7,200 *mithqāls*. Know this.

From the *Mukhtaṣar al-Muṣannaf*: Compensation for an injury to a slave is calculated from his value in the same proportion as compensation for an injury to a free person is calculated from his blood-money.

Thus compensation for his eye is one-half of his value, for his hand one-half of his value, and for one finger one-tenth. If a slave has been partially emancipated, offenses committed by him and injuries committed against him are apportioned according to the percentage free and the percentage enslaved.

From the *Iqtiṣār*: Blood-money for intentional killing, in camels, consists of forty pregnant she-camels carrying offspring, ranging from mature *thaniyya* to *bāzil* of their year, thirty *ḥiqqa*, and thirty *bint labūn*.

For accidental killing: thirty *ḥiqqa*, thirty *bint labūn*, twenty *bint makhāḍ*, and twenty *ibn labūn*.

From the *Muntakhaba*:

The blood-money for accidental killing in the Sanctuary, and, it is said, in the sacred month, is increased, as they have explained, by one-third of the blood-money.

From the same work: Two hundred suits of clothing, each suit valued at five dinars. The meaning is the same, and this is likewise stated in the *Iqtiṣār*.

From the *Kitāb al-Akhbār*: Those who pay in silver owe ten thousand dirhams.

Some transmit twelve thousand at the six-weight standard and ten thousand at the seven-weight standard, meaning that every ten dirhams weigh six or seven dinars [i.e. *mithqāls*]. The dirham in current use is at the seven-weight standard. As for the disagreement concerning silver, what appears strongest to me according to the doctrine of the People of the House, blessings upon them all, is that the exchange rate of the locality at the relevant time should be considered, because all the alternative commodities taken as blood-money are calculated on the value of one thousand dinars. A *ḥulla* consists of two garments.

From the *Dhāt al-Bayān*: This refers to the blood-money of a man, not a woman.

Al-Ṣādiq, peace be upon him, ruled concerning three fingers of a woman that she receive thirty camels, which is approximately one-third of a man's blood-money, because a man's is one hundred camels and a woman's fifty.

From the *Iqtiṣār*: The expiation for accidental killing comes in addition to the blood-money.

In intentional killing, if blood-money is accepted, the expiation is emancipation of a believing slave.

Concerning the *ʿĀqila*

The word *ʿaql* originally refers to hobbling a camel: its forelegs are gathered with a tether, or its lower leg and forearm are bound while its knee is bent, leaving it standing on three legs. The term was then applied to blood-money because people used to pay it in camels, bringing them to the person entitled to receive them and hobbling them in his courtyard until witnesses attested their delivery.

From the *Dhāt al-Bayān*, and similarly in the *Niẓām*: The *Mukhtaṣar al-Muṣannaf* and other works state that this rule applies whether the killer is wealthy or poor.

A man's *ʿāqila* consists of his nearest relatives and those having a fixed share in his inheritance whom no one excludes. If he has no relatives with a fixed Qurʾānic share and his paternal and maternal relatives are equally close in degree, two-thirds of the blood-money are imposed specifically upon his paternal kin and one-third upon his maternal kin. If blood-money is imposed upon the *ʿāqila* and one member dies, he owes nothing. If one is absent and nothing is known of his condition and his property is inaccessible, he is treated as though nonexistent and his share returns upon the other members of his class who are present.

From the same work: If a man orders a child to kill someone and the child does so, the blood-money falls upon the child's *ʿāqila*, who then recover it from the *ʿāqila* of the person who gave the order.

Whatever injury is caused by a child or by an insane person whose reason is overcome falls upon their *ʿāqila*. Their intentional acts are treated as accidental. If a man suffers intermittent insanity and later claims after committing an injury, "I did it while insane," his statement is accepted unless witnesses establish that he committed the act while lucid.

From the same work: If a drunk person became intoxicated through something unlawful that he voluntarily consumed, retaliation applies for injuries committed while intoxicated.

If he became intoxicated from a medicinal drink or from something mixed with it that unexpectedly overpowered him, he is treated like one whose reason was overcome.

From the *Ikhtiṣār*: Intentional acts of children and insane persons are treated as accidental, and blood-money is upon the *ʿāqila*.

A poor member of the *ʿāqila* bears nothing.

From the *Iqtiṣār*: Maternal siblings, women, insane persons, and poor persons bear no share of blood-money as members of the *ʿāqila*.

From the *Mukhtaṣar al-Muṣannaf*: It is paid over three years from the day judgment is rendered.

The *Mukhtaṣar al-Āthār* states that maternal siblings inherit from blood-money but do not bear liability for it as members of the *ʿāqila*.

From the *Dhāt al-Bayān*: An intentional act deliberately committed by the offender is paid from his own property.

The meaning of the phrase "nor a slave" is that an offense committed by a slave attaches to his value: his master may either surrender him for the offense or redeem him. Likewise, if a free person accidentally kills or injures a male or female slave, compensation comes from his own property and not from his *ʿāqila*.

From the same work: Settlement (*ṣulḥ*) concerning alleged injuries is likewise not borne by the *ʿāqila*.

If a man alleges that another injured him or accidentally killed his relative but has no proof, and the defendant makes a settlement with him, the *ʿāqila* bears none of that settlement. Likewise, if a man confesses that he injured someone or accidentally killed his relative but no evidence establishes this, the *ʿāqila* bears nothing; whatever liability arises from the confession is paid from the confessing person's own property.

Concerning Injuries That Require Blood-Money but Not Retaliation

From the *Mukhtaṣar al-Muṣannaf*: If two men meet and fight each other with weapons, and witnesses testify that each was deliberately attacking the other but do not know who began, then if each kills the other, each killing is set against the other in retaliation.

If each inflicts nonfatal injuries, each is liable for what he inflicted upon the other. If one dies and the other survives wounded, the heirs of the deceased may execute the survivor but must pay his heirs compensation for his wounds. Alternatively, they may choose blood-money, from which an amount equal to the compensation for the deceased's injury to the survivor is deducted. If the surviving man's injuries amount to a full blood-money, the two liabilities offset one another. If his injuries exceed a blood-money and the heirs choose retaliation, they may execute him but he is entitled from the deceased's estate to whatever compensation was due for his own wounds. If they do not choose retaliation, the wounded survivor may recover from the deceased's estate the excess compensation due for his injuries.

From the same work: If a disciplinarian chastises a child with a sandal-strap or similar instrument with the father's permission, or a slave with the master's permission, and does not exceed proper limits, he bears no liability.

From the same work: Whoever digs a well wrongfully on another person's land without the owner's permission is liable if someone perishes in it.

If the landowner admits that he ordered him to dig it, neither bears liability.

From the same work: If several men jointly perform one task—such as digging a well, demolishing a wall, or carrying something heavy—and one of them is injured through it, the *ʿāqilas* of the others bear his blood-money after deducting his own proportionate share.

Likewise, if a slave and free man perform such work and the free man dies, one-half of his blood-money attaches to the slave's person: his master either surrenders him or redeems him. If the slave dies, the free man owes one-half of his value. If a man strikes the side of his ship in order to repair something, causing it to break and the passengers and cargo to drown, the blood-money of those who drown is upon his *ʿāqila*, while the value of the destroyed property is paid from his own wealth. If a sleeping person falls upon a child or adult and kills him, blood-money is upon his *ʿāqila*. If the person who fell dies, his death is uncompensated. If a man embraces Islam but has not yet entered a pact of *walāʾ*, shoots an arrow at someone, then enters *walāʾ* with another person before the arrow reaches its target, and the arrow thereafter kills the person, the *walāʾ* is invalid.

But if he digs a well wrongfully, then enters *walāʾ* before anyone falls into it, and afterward someone falls in and dies, the *walāʾ* is valid and the blood-money falls upon him. This differs from the first case because a well can be filled in whereas an arrow already released cannot be stopped. If a man confesses before the judge to accidental homicide and the victim's guardian asks the judge to award blood-money against him personally, and judgment is given, but afterward the guardian discovers evidence and asks to transfer liability to the *ʿāqila*, he may not do so.

From the same work: If an unrelated man with no guardianship over a child mounts the child upon an animal and the child falls and dies, he is liable.

If a slave places a free child upon an animal and the child falls and dies, the blood-money attaches to the slave's person: his master either surrenders or redeems him. If the master ordered the slave to do this, the blood-money falls upon the master's *ʿāqila*. If the child and slave ride together upon the animal and injure someone who dies, one-half of the blood-money falls upon the child's *ʿāqila* and one-half attaches to the slave's person, for which he is surrendered or redeemed.

From the *Īḍāḥ*: It is transmitted from ʿAlī, blessings upon him, that if someone calls out on the road, "Make way!" so that people hear him, he bears no liability.

From the *Dhāt al-Bayān*: Any injury exceeding a *mūḍiḥa*, or involving a bone in a place where retaliation might cause death or where exact retaliation cannot be achieved, is not subject to retaliation but to blood-money.

The ruler also disciplines the offender according to the gravity of the offense, lest someone who finds payment of blood-money easy deliberately injure others in this manner.

From the *Mukhtaṣar al-Īḍāḥ*: This concerns a girl younger than nine years. If he has intercourse with her at that age and causes *iḍāʾ* or a similar injury, he is liable because he had intercourse with one who is not ordinarily fit for intercourse.

If she is older and of an age at which girls like her are ordinarily capable of intercourse, and he has lawful intercourse with her but unintentionally causes *iḍāʾ*, he owes nothing so long as he keeps her as his wife. If she is not his wife but he commits fornication with her, whether she consented or not, and causes *iḍāʾ*, he owes the blood-money because the intercourse was unlawful, and he is also subjected to the prescribed punishment. The Commander of the Believers, blessings upon him, said: "Whoever consummates marriage with a woman and she dies through his intercourse owes no blood-money for her." This supports the preceding ruling where she is of an age suitable for intercourse, for life is greater than anything less than it; if no liability is due for the loss of life, then it is still less likely to be due for a lesser injury.

From the same work: [In the relevant case] she is flogged eighty lashes.

He, peace be upon him, said concerning the virginity of a free woman: its compensation is the full bridal due, neither diminished nor excessive. For the virginity of a slave-woman, one-tenth of her price is due. He also ruled concerning a woman who ruptured a slave-girl's virginity with her finger and claimed that she had found a man upon her: she owed the slave-girl her full bridal due.

From the same work: Abū ʿAbd Allāh, peace be upon him, said concerning a pregnant woman killed by a man while the fetus remained in her womb and had not separated from her: the full blood-money of the woman is paid, together with blood-money for the fetus equal to one-half the blood-money of a boy and one-half the blood-money of a girl—meaning where it is known that the spirit had entered it.

From the *Mukhtaṣar al-Muṣannaf*: The same applies if the act is done directly by a man's hand.

From the same work: If the mother of a fetus dies after being struck, and then expels the fetus after her death, nothing is due for the fetus while full blood-money is due for her.

If she carries twins and delivers one before her death and the other afterward, compensation is due for the one delivered before her death according to the rules already described, while nothing is due for the one

expelled dead after her death. If the latter emerges alive and then dies, full blood-money is due for it, and it receives its share of inheritance from its mother and from what she had inherited from its sibling. If a woman miscarries because of an injury and one set of witnesses testifies that the fetus emerged alive while another says it emerged dead, testimony to its having emerged alive is accepted if the mother claims that. If a slave-woman or protected non-Muslim woman is struck while pregnant, but the slave-woman is emancipated or the protected woman embraces Islam before expelling the fetus, the fetus is judged according to the mother's status at the time of birth.

The *Yanbūʿ*, in the *Book of Inheritance*, states that if a pregnant woman drinks a hot drug and thereby miscarries, she owes the blood-compensation due for the fetus. The *Mukhtaṣar al-Muṣannaf* states the same and adds that she inherits nothing from that compensation. If she expels the fetus alive and it then dies, full blood-money is due, whether the fetus is male or female.

From the *Mukhtaṣar al-Āthār*: *ʿAlaq* is congealed blood before it dries; *ʿalaqa* is one unit of such congealed blood.

From the same work: For a *muḍgha* once it has become flesh, sixty dinars are due. Once bone has formed, eighty dinars.

From the same work: Whoever violates a corpse by cutting off its head or performing another act which, had it been done while the person was alive, would have caused death, owes one hundred dinars.

From the *Īḍāḥ*, from ʿAlī, peace be upon him: Compensation for the fetus of a Jewish, Christian, or Zoroastrian woman is one-tenth of the mother's blood-money.

From the same work: In my view, the case in which people refuse water to a person who then dies can only fall under one of two possibilities.

Either the water withheld is publicly available water, such as water from a well or river in which Muslims share equally, rather than privately owned household water or other water whose origin is not public. Or the water is privately owned, but those from whom the thirsty man asks know that he will die without it, recognize the signs of approaching death, possess the water and are capable of giving it to him so that—by God's permission—he would not die, and it is known that he did in fact die of thirst. But if a man owns water or food and another asks him for some, and he refuses without knowing that the refusal will cause his death, and the requester dies, I do not know of anyone who imposes liability upon the owner. If liability were imposed, then whenever someone died in famine or destitution, his blood-money would become due from everyone whom he had asked and who had refused him; I know of no one who says this. God knows best.

From the same work: ʿAlī, peace be upon him, ruled that if a horse's eye is gouged out, compensation is one-quarter of its value on the day the eye was injured.

From Abū ʿAbd Allāh: Concerning someone who inflicts a *mūḍiḥa* wound upon an animal, he owes one-twentieth of the animal's value.

From Qāsim ibn Ibrāhīm al-ʿAlawī: He was asked about an animal fetus and said that equitable compensation is assessed according to what is appropriate in such a case. He was asked about an animal's eye and tail and said that it has been said compensation is whatever diminution occurs in the animal's value, and also that one-quarter of the animal's value is due.

Concerning one who cuts off the udder of a milk-giving animal, he said that the full value of the animal is due and the offender is disciplined—meaning if the animal dies from this, or after being delivered to him if still alive.

From the *Mukhtaṣar al-Muṣannaf*: If one animal enters upon another in the latter's place and the intruding animal is injured, the stationary animal's owner owes nothing.

If the stationary animal is injured, and the other animal entered because its owner let it loose, negligently failed to secure it, or deliberately released it, he is liable for the damage it caused.

From the *Dhāt al-Bayān*: David gave judgment in precisely such a case.

From the same work: Likewise, if livestock graze upon crops or trees because their owner deliberately sent them there, he must compensate what they destroy.

If they escape there during the day without being intentionally released, he owes nothing. If they escape at night, he is liable, because owners of gardens and crops are responsible for guarding them by day, while livestock owners are responsible for guarding their animals by night.

From the *Mukhtaṣar al-Īḍāḥ*, at the end of the *Book of the Etiquette of Judges*: ʿAlī wrote to Rifāʿa ibn Shaddād: "Do not allow farmers to cut off public roads."

Whoever deliberately neglects an animal so that it enters another's crops should be properly disciplined and made to compensate for what his animal destroys. If the animal escapes into crops at night, he pays compensation; if during the day, the owners of the gardens are responsible for guarding their own property.

Concerning Cases in Which There Is Neither Blood-Money nor Retaliation

From the *Yanbūʿ*: Whoever defends himself or his property and thereby kills the aggressor incurs no blood liability; there is neither blood-money nor retaliation.

The same applies to a woman defending herself against someone intending fornication with her, and to a boy defending himself from one who intends sodomy with him. If an insane person attacks a man with a sword or another instrument ordinarily capable of killing, the man may defend himself; if he kills the insane attacker, no blood-money is due. The same applies to a charging camel or biting animal.

From the *Mukhtaṣar al-Muṣannaf*: If a man shoots an enemy combatant and the arrow has not yet reached him when he embraces Islam, the shooter incurs no liability.

If a man irrigates his own land and the water spreads and destroys something, he is not liable. If he burns dry grass on his own land and the fire spreads to someone else's land and destroys something, he is not liable provided he acted in the customary manner.

From the *Kitāb al-Īḍāḥ*: ʿAlī, peace be upon him, said: "If we strike someone as disciplinary punishment concerning one of the rights of people and he dies from it, his blood-money is upon us."

God knows best, this apparently means disciplinary beating concerning private rights for which no fixed punishment exists, since prescribed legal punishments belong to the limits ordained by God, like the punishment for false accusation which God Himself prescribed. He also said: "Whoever dies through retaliation is one slain by the Qurʾān," meaning that the Qurʾān itself caused his death through the ruling it prescribed. This indicates that no blood-money or other compensation is due when someone dies from a properly executed prescribed punishment, provided no excess occurred. The statement attributed to ʿAlī concerning liability therefore seems to refer to a case where an opponent wrongs another, delays payment despite solvency, refuses to discharge a right, or commits some other act deserving discretionary discipline rather than a fixed punishment, and is then subjected to a specified beating or similar disciplinary measure.

Concerning *Qasāma*

From the *Mukhtaṣar al-Muṣannaf*: *Qasāma* applies where there is *lawth*—a strong presumption of guilt.

Lawth exists where the suspects are enemies of the victim and he is found slain among them; or where evidence points to a killer but falls short of proof sufficient for judgment, such as testimony by women, persons lacking full probity, or minors; or where witnesses testify to a relevant circumstance; or where the

dying man says, “So-and-so killed me,” and bears marks of wounding or strangulation; or where a man is found carrying a corpse. If none of these circumstances exists, there is no *qasāma*, for death could have occurred without any circumstance creating suspicion. Where circumstances give rise to a strong presumption that the accused was responsible, *qasāma* applies together with the *lawth*. If the victim’s heirs swear *qasāma* against one man as the killer but, before judgment is entered against him, formal evidence establishes that someone else committed the killing, the evidence is followed and the *qasāma* is nullified.

From the *Mukhtaṣar al-Īḍāḥ*: Those participating in *qasāma* may have personally witnessed the killing of their relative, may have heard the killer confess, or may have received trustworthy reports through which the matter became firmly established in their minds.

Similarly, a man may die leaving a small child. When the child grows up, he may find his father’s property in the executor’s possession and rightfully take ownership of it on the basis of information from trustworthy persons. If another person later brings a claim against him concerning it, he may swear that the claimant has no right to it. All this is based upon what has been established for him through reports of those he trusts.

From the *Dhāt al-Bayān*: In blood cases, where *lawth* exists, the evidentiary structure is reversed: evidence is upon the accused and the oath upon the claimant.

Qasāma arises only with *lawth*, such as witnesses who do not meet full standards of probity, minors, manifest suspicion, or other circumstances establishing suspicion. An example is the hostility between the Anṣār and the Jews of Khaybar, when an Anṣārī was found slain among their gardens and dwellings, surrounded by them with no one else there. Likewise, if a dying man says, “So-and-so killed me, if I die,” this creates *lawth*. Without circumstances of this sort, evidence remains upon the claimant and the oath upon the defendant. If *lawth* exists but the accused produces evidence of innocence, his evidence is accepted and *qasāma* is not permitted against him—for example, witnesses establish that he was with them at the time of the killing or was in a place from which he could not possibly have reached the victim. One may swear *qasāma* only concerning what one knows.

From the same work: The heirs entitled to the blood claim begin with the oaths where *lawth* exists.

If they do not swear and have no evidence, the defendant must swear if they demand his oath. If he refuses to swear, blood-money is imposed upon him, but he is not executed merely for refusing the oath.

From the same work: Only the heirs entitled to the blood claim swear the *qasāma*.

If someone from the deceased’s household or tribe has no share in the blood claim, is not suspected of tribal partiality, and is upright, his testimony against the accused is admissible.

From the same work: [The phrase] “he came carrying a corpse upon the *ṣaqab*.”

From the *Dhāt al-Bayān*: *Ṣaqab* means proximity.

From the *Ikhtiṣār al-Āthār*: If they wish to require the suspects to swear, the suspects are put under oath. If the suspects produce evidence of their innocence, it is accepted.

From the same work: If the eligible oath-takers number fewer than fifty, the available persons repeat their oaths until fifty oaths have been completed.

From the *Mukhtaṣar al-Muṣannaf*: *Qasāma* consists of the victim’s heirs swearing fifty oaths that the defendant they identify killed their deceased relative.

If there are fifty men, each swears once. If there are fewer, the oaths are repeated among them until fifty are reached. If the clan is numerous, the victim’s heirs may choose trustworthy members of the clan to swear when they wish to proceed by oath. If a slain person is found in a Muslim market or mosque, his blood-money is paid from the public treasury.

Concerning Injuries to Bodily Members

From the *Mukhtaṣar al-Āthār*: [In testing visual range,] a hair is suspended and the injured person is told to look at it; it is then moved farther away until he says, "I can no longer see the hair," and that point is determined.

From the *Īḍāḥ*: ʿAlī, peace be upon him, said: "The measurement is not performed on a cloudy day."

From the *Mukhtaṣar al-Muṣannaf*: If a person loses his hearing, receives the full compensation for it, and later regains hearing, he is not required to return what he received.

From the same work: If a person claims diminished sight in both eyes and it is known that his sight was not congenitally weak, the range of his vision is measured in all four directions with both eyes open.

Then the visual range of three upright men of approximately his age is measured. The middle value among the three is used as the norm, and the injured person receives a proportion of the blood-money corresponding to his loss. The same procedure applies where he claims loss or diminution of hearing in both ears or one ear. If a man cuts off another's ears and this causes loss of hearing, he owes compensation both for the ears and for the hearing.

From the *Mukhtaṣar al-Āthār*: If the loss concerns smell, something fragrant is brought near and then moved farther away in the same manner as in testing sight and hearing; compensation is assigned proportionately.

From the *Yanbūʿ*: [Concerning the lips:] they retain saliva and food. For a notch in the lip, one-third of the lip's compensation is due.

From the *Mukhtaṣar al-Muṣannaf*: If a man strikes another's tooth and loosens it, one waits for the period experts deem necessary.

If the tooth falls out or turns black, full compensation for the tooth is due. If it returns to normal, one-third of its compensation is due, analogous to a dislocated hand that heals. If a person's teeth are complete and another breaks off their ends so that the remaining portions are equivalent to normal roots, compensation is proportionate to what was lost. If another person later injures the same teeth or some of them, he owes the full compensation less what had already been received from the first offender. Even if the victim had forgiven the first offender, the amount corresponding to the first injury is still deducted from the second.

From the same work: Injury to the tongue of a delirious person, or of a person whose speech is naturally heavy but intelligible, is treated like injury to the tongue of one with normal speech.

The same applies to a child not yet old enough to speak if the child moves the tongue while crying or otherwise and has no defect in hearing. For the beard of an intersex person legally classified as male, the same compensation applies as for a man's beard. If legally classified as female, one-third of the blood-money is due. For the tongue of a mute person, for the male organ of an intersex person classified as female, for a withered male organ, a paralyzed hand, or a paralyzed finger, one-third of the ordinary compensation for that part is due.

From the *Muntakhaba*:

If afterward it becomes blackened, one-half of its assigned compensation is due.

From the same work: No compensation is due for a supernumerary tooth, namely one that grows above another.

From the same work: Full blood-money is due for fracture of both cheekbones.

From the *Īḍāḥ*: ʿAlī, peace be upon him, said that for the two cheekbones one thousand dinars are due where the bones are broken and the flesh destroyed: five hundred dinars for each.

If a cheekbone is fractured and then heals without defect or disfigurement, its compensation is one hundred dinars.

From the same work: There is an error in the fractional calculation in this case, which I think can only have arisen from transmitters or calculators.

The correct amount is thirty-five dinars and five-sevenths of a dinar for each letter.

From the *Mukhtaṣar al-Muṣannaf*: If a person claims muteness caused by an injury, his tongue is pricked with a needle.

If the blood emerges red, he is lying; if black, that is among the signs confirming his claim.

From the *Muntakhaba*: For fracture of the shoulder, upper arm, elbow, or forearm, if each heals properly, one hundred dinars are due.

If it heals with deformity, one-third of the full blood-money is due.

From the *Īḍāḥ*: If it is cracked, three-fifths of its compensation is due, namely two hundred dinars.

From the *Mukhtaṣar al-Muṣannaf*: For every finger-joint, one-half of the compensation for the thumb-joint is due.

There is no fixed blood-money for supernumerary fingers; rather, equitable compensation is assessed as for a scratch. If a fingernail splits, three-fifths of its compensation is due. For a *mūḍiḥa* exposing the bone of a finger, one-tenth of the finger's compensation is due.

From the *Muntakhaba*:

Whatever of them becomes completely paralyzed
receives the full compensation transmitted for it;
but if it was already paralyzed when injured,
its compensation is one-third of its ordinary amount.

From the *Īḍāḥ*: Compensation for the nail of each finger is five dinars.

From the *Mukhtaṣar al-Muṣannaf*: If a man cuts off another's hand in which two, three, fewer, or more fingers are already paralyzed, the healthy hand of the offender is not amputated in exact retaliation.

The injured man may choose either to take compensation for the whole hand, or to have the offender's healthy fingers corresponding to his own healthy fingers amputated and receive compensation for the remaining disabled fingers and for the palm. If a man cuts off another's hand above the joint and the victim seeks retaliation, he may amputate the offender's hand at the joint but may not go above it. He receives monetary compensation for the remaining portion of the forearm, or leg if the injury concerned a leg.

From the same work: Each male breast carries one-half of the full blood-money, and each nipple one-quarter of the compensation for the breast. The same rule applies to a woman's breasts.

If a man terrifies another by threatening his life or otherwise and the victim becomes so frightened that he permanently loses his reason, full blood-money is due.

From the same work: [Where two persons have separate rights of retaliation for one right hand,] if a man cuts off the right hands of two men, his own right hand is amputated on behalf of both and he additionally owes compensation for one hand between them if they both appear together.

If one of them pardons, the other retains retaliation. If one appears while the other is absent, the absent person is not waited for. If the present claimant chooses blood-money, he takes it while the absent claimant retains his right to retaliation or blood-money. If the present claimant carries out retaliation, the absent one retains his right to blood-money. If both appear and judgment awards them retaliation and blood-money, then one accepts blood-money and the other later pardons retaliation, the pardon is valid; the first has no right to retaliation and receives one-half of the blood-money.

From the same work: If an intersex person possessing both male and female organs is injured by someone who cuts off both, lots are drawn.

If the person is determined male, full compensation is due for the male organ and one-third of the compensation for the female organ. If determined female, full compensation is due for the female organ and one-third for the male organ.

From the same work: Compensation for bodily members of protected non-Muslims is proportional to the blood-money applicable to their persons.

Concerning Head Wounds and Other Wounds

From the *Mukhtaṣar al-Muṣannaf*: There are ten categories of *shijāj* head wounds: the *dāmiʿa*, also called the lesser *dāmiya*; the greater *dāmiya*; the *fāqira*; the *bāḍiʿa*; the *mutalāḥima*; the *simḥāq*; the *mūḍiḥa*; the *hāshima*; the *munaqqila*; and the *āmma*.

The *Mukhtaṣar al-Īḍāḥ*, *Kitāb al-Akhbār*, *Muntakhaba*, and *Yanbūʿ* state that compensation for the *fāqira* is twelve and one-half dinars. The *Ikhtiṣār al-Āthār* gives twelve dinars. The *Muntakhaba* states that the specified compensations for these wounds apply when they occur on the head or face; if they occur on the body, one-half those amounts is due. The *Ikhtiṣār al-Āthār* likewise states: all these amounts apply to the head and face. If they occur on the body, compensation is one-half; if on a particular bodily member, such as a finger or the like, compensation is calculated proportionately from the blood-money assigned to that member. The *Iqtiṣār* states: all this concerns wounds on the head; if they occur on another bodily member, compensation is calculated according to the blood-money of that member.

Book of Prescribed Punishments

Concerning the Enforcement of the Prescribed Punishments and the Prohibition of Neglecting Them

From the *Mukhtaṣar al-Āthār*: [In a report] he wrote to Rifāʿa ibn Shaddād, his judge over al-Ahwāz. ʿUmar said to him, “Advise me, O Abū al-Ḥasan,” and he gave him the advice mentioned in the report.

From the same work: Three men testified before him against a man for fornication. He asked, “Where is the fourth?” When none could be found, they said, “We will bring him later, O Commander of the Believers.”

He replied: “There is not even an hour’s delay in prescribed punishments,” and imposed upon the three the punishment for false accusation.

From the *Mukhtaṣar al-Muṣannaf*: A prescribed punishment should not be carried out in summer except during the coolest part of the day, nor in winter except toward the end of the day.

Retaliation for blood, however, is carried out whenever judgment requires it. From [an unidentified source]: There is no harm in the Imam and his deputies employing adherents of opposing doctrines to assist in enforcing prescribed punishments and other matters where the Imam’s command is the effective authority.

Concerning the Prescribed Punishment for Fornication

From the *Mukhtaṣar al-Muṣannaf*: A Muslim man attains the status of *muḥṣan* only through a free Muslim wife with whom he has consummated marriage.

A minor girl, slave-woman, protected non-Muslim woman, or slave-concubine with whom he has intercourse by ownership does not make him *muḥṣan*. Likewise for a woman: she does not become *muḥṣana* through a minor boy, slave, insane man, or impotent man. A man absent from his wife, and a woman whose

husband is absent from her, are not considered *muḥṣan*. Testimony of one man and two women is admissible concerning the establishment of *iḥṣān*. If four witnesses testify that a man committed fornication with a particular woman at a certain time and place, while four others testify that at that very same time he committed fornication with another woman at a different place so distant that both acts could not have occurred, the prescribed punishment is averted from all parties. If each group testifies concerning a different time, the testimony is valid and the man and the two women are punished.

If four protected non-Muslims testify against a protected non-Muslim that he committed fornication with a Muslim woman, their testimony is invalid and they are punished for falsely accusing the Muslim woman. If four protected non-Muslims testify against two protected non-Muslims for fornication and one of the accused embraces Islam, the prescribed punishment is averted from both.

From the same work: Whoever forcibly kisses a woman is beaten severely.

Likewise, a procurer who brings together a man and woman for fornication receives seventy-five lashes and is banished from the town in which he resides. A man does not become *muḥṣan* through an invalid marriage, and the same applies to a woman. If two witnesses testify that a man committed fornication and another two testify that he confessed to fornication, no prescribed punishment is imposed upon him or any of the witnesses.

From the *Mukhtaṣar al-Āthār*: [Where the offense is established,] each person who confessed and against whom evidence was established is flogged one hundred lashes.

Then each is taken out and a pit is dug reaching to the navel. The person is placed standing within it and earth is packed around him. If the offense was established by confession, the judge before whom the confession was made begins the stoning, then orders the people to stone them with medium-sized stones, about what fills the palm or smaller, until they die. They are then removed, washed, prayed over, and buried. A confession to fornication is not legally established until the offender confesses on four occasions while sane, acting voluntarily, and not under coercion. If the offense was established by witnesses, the witnesses begin the stoning, then the judge, then the people. The *Iqtiṣār* states: The witnesses throw first, then the Imam, then the people, using small stones until death. If the punishment rests upon confession, the Imam begins, followed by the people.

From the same work: A slave-woman does not confer *iḥṣān* upon a free man, nor a free woman upon a male slave.

From the *Mukhtaṣar al-Āthār*: If a man has intercourse with a slave-woman in whom he owns a share, he is punished in proportion to the share he does not own, while the punishment is averted in proportion to his ownership.

Likewise, if she is a *mukātaba*, he receives a proportion of the punishment corresponding to the portion of her that is free, while the portion corresponding to what remains enslaved is averted. The *Iqtiṣār* says: There is no prescribed punishment in *sifāḥ* [a legally defective or doubtful sexual union]. The *Ikhtiṣār al-Āthār* states: Whoever performs the act of the people of Lot and penetrates the passive partner is stoned just as adulterers are stoned. If there is only intercourse between the thighs, the prescribed punishment is imposed upon both.

From the *Sharḥ al-Akhbār*, from Abū ʿAbd Allāh, peace be upon him: “God has afflicted our Shiʿa with many things, but He will not afflict them with four: being of illegitimate birth, ejaculating into their palms, being penetrated from behind, or being [the final word in the copy is uncertain].”

From the *Mukhtaṣar al-Āthār*: [A rapist] is killed if not *muḥṣan*; if *muḥṣan*, he is first given the prescribed flogging and then stoned.

There is no prescribed punishment upon a woman who was coerced. If he ruptures her virginity, she receives the customary bridal due. If she is a slave-girl, he owes one-tenth of her value; if she had previously been married, one-twentieth. There is no prescribed punishment upon an insane person. There is no prescribed

punishment in *sifāḥ*, such as where a man marries a woman during her waiting period or through another invalid form of marriage.

From the same work: [Where two women participate voluntarily in the specified sexual offense,] they are killed if neither is *muḥṣana*; if both are *muḥṣana*, they receive the prescribed punishment and are stoned.

From a work containing Qāḍī al-Nuʿmān's answers, may God sanctify his spirit, to questions posed by Khaṭṭāb ibn Wasīm al-Zawāwī, chief and governor of the Zawāwa:

You asked about a man who committed intercourse with a dead woman and confessed that he penetrated her vagina. He must be killed. For one who forcibly violates a living woman is killed whether *muḥṣan* or not, and what this man did to a dead woman is like violating her while alive—indeed, it is an even graver sin and greater audacity against God, Mighty and Glorious. The sanctity of a person after death is like the sanctity of that person while alive. Thus one who has intercourse with a dead woman is killed just as one who violates a living woman is killed.

From the *Mukhtaṣar al-Āthār*: Whoever has intercourse with an animal receives the prescribed punishment and must pay its owner the animal's value.

If it is an animal whose flesh is ordinarily eaten, it is slaughtered and buried and may not be eaten. If it is an animal not ordinarily eaten, it is sold away from him and sent elsewhere so that it will no longer be recognized or associated with the act.

From the Questions Mentioned Above

Question: What do you say concerning a woman notorious for fornication, eating opium, drinking wine, or committing other acts prohibited by the Sharīʿa, while her relatives are righteous people distressed by her behavior and have tried severely to restrain her but she does not desist?

Some of them then consider killing her by poison or otherwise because of the seriousness of her opposition to the doctrine of the People of the House. Is this permissible?

Answer: She must not be killed. Rather, she is to be prohibited, disciplined, and treated severely by whatever means are possible.

Question: What do you say concerning a free woman or slave-woman with whom a man commits fornication, or toward whom he performs acts leading to fornication, or whom he falsely accuses of fornication, whether she is present or absent?

If afterward he seeks God's forgiveness and sincerely repents with pure intention, does God forgive that sin so that no further liability remains upon him?

Answer: God forgives all sins if the repentance is sincere.

Question: It is stated in the Sharīʿa that a man absent from his wife and a woman whose husband is absent are not *muḥṣan*, and that the *iḥṣān* for which stoning becomes applicable requires the man to be with his wife and the woman with her husband.

O our master, is stoning required for a man who commits fornication while his wife is in the same house but temporarily refuses him because of menstruation, postpartum bleeding, or another reason?

Answer: If she is present with him, he is *muḥṣan*. Menstruation and postpartum bleeding make no difference.

If two men commit the act of the people of Lot and neither is *muḥṣan*, the prescribed punishment upon both is the punishment of a fornicator.

Concerning the Prescribed Punishment for False Accusation

From the *Mukhtaṣar al-Muṣannaf*: If a person claims that another falsely accused him and produces evidence, the accused is punished. Otherwise no oath is required from him.

If two witnesses testify that a man falsely accused another, they are asked what words he used. If they merely say, "We testify that he falsely accused him," their testimony is not accepted until they specify the wording. If one witness testifies that he heard the false accusation while another testifies that the man confessed to making it, no prescribed punishment is imposed. The same principle applies in criminal injuries. If two witnesses testify to a false accusation requiring the prescribed punishment but the judge does not yet know their probity, he imprisons the accused until their character is investigated and does not release him on bail. If the two witnesses differ concerning the day on which the accusation occurred, their testimony is not thereby invalidated.

From the *Yanbūʿ*: *Taʿzīr* ranges from somewhat more than ten lashes up to thirty-nine lashes, while *taʾdīb* ranges from three to ten.

From the *Mukhtaṣar al-Īḍāḥ*: Al-Ṣādiq, peace be upon him, was asked, "What is the extent of *taʿzīr*?"

He said: "Between ten lashes and twenty."

From the *Mukhtaṣar al-Āthār*: Whoever falsely accuses a polytheist incurs no prescribed punishment unless the polytheist has a Muslim child who brings the claim against the accuser, in which case the accuser is punished out of respect for Islam.

A Muslim should not falsely accuse a polytheist or anyone else. If a man or woman is accused of something they actually did, and they admit it or the accuser establishes evidence exactly as God, Mighty and Glorious, has stated, there is no prescribed punishment upon the accuser.

From the same work: If a child or insane person makes a false accusation, no prescribed punishment applies to them, though the child is disciplined lest he become emboldened in making accusations.

From the *Mukhtaṣar al-Muṣannaf*: If a man says to another man, "O adulteress," no prescribed punishment applies.

If a man says to a woman, "O adulterer," the punishment applies. If a man says to an unrelated woman, "O adulteress," and she replies, "Yes, I committed fornication with you," the man is not punished because of her admission, while the woman is punished for falsely accusing him through her reply. If a man says to a woman, "You committed fornication with a bull, donkey, or similar animal," no prescribed punishment applies because the wording is open to more than one interpretation. But if he says, "You committed fornication with a cow, she-camel, garment, dirhams, or the like," the punishment applies, because such wording can only reasonably mean that these things were the price paid for fornication. If a man says to another, "O adulterer," and a third man says, "You have spoken truth," the original accuser is punished while the third is not, unless he says, "You have spoken truth in what you accused him of," or equivalent words.

From the *Iqtiṣār*: Whoever acknowledges a child as his own and later denies him is flogged with the punishment for false accusation and remains legally bound to the child.

From the *Mukhtaṣar al-Muṣannaf*: In the cases mentioned here, disciplinary punishment and *taʿzīr* are imposed according to what the judge considers appropriate.

Concerning wine, the *Mukhtaṣar al-Muṣannaf* states: Whoever drinks wine, whether a little or much, receives eighty lashes.

Whoever drinks another intoxicating substance that is not wine receives *taʿzīr*; if he becomes intoxicated by it, he receives eighty lashes. *Taʿzīr* is more severe than ordinary discipline (*taʾdīb*), but neither is carried to the level of a fixed *ḥadd* punishment.

From the *Mukhtaṣar al-Āthār*: If protected non-Muslims openly display [conduct forbidden in Islam], they are subjected to the prescribed punishment, because their covenant was granted on condition that they not openly manifest anything prohibited by the religion of Islam.

Concerning Judgments in Matters of the Prescribed Punishments

From the *Mukhtaṣar al-Āthār*: Whoever is accused by testimony of an offense carrying a prescribed punishment is detained until the witnesses have been established as upright. Once their uprightness has been established and the punishment carried out, he is not detained further.

From the *Mukhtaṣar al-Muṣannaf*: If it is established by a man's own confession that he committed false accusation, theft, fornication, and drinking wine, and that he also gouged out another man's eye, the Imam begins with retaliation for the eye because it concerns the rights of human beings.

After he has recovered, he is subjected to the prescribed punishment for false accusation. Once he has recovered from that, the remaining prescribed punishments are imposed one by one. Whoever sells his wife has his hand cut off. When the punishments are entirely among the rights owed to God Most High, such as those for fornication and theft, the Imam may begin with whichever he wishes. Whenever one punishment is carried out, the offender is detained until he recovers and then the next is imposed. If someone is liable to one of the prescribed punishments involving no private human claim and flees after part of the punishment has been carried out, then if he is caught immediately, the remainder is completed. If he is not caught at that time and is only found after several days, the remainder is remitted. But if the punishment concerns a human right, whatever is due is carried out whenever he is apprehended.

If a man or woman commits an act carrying one of God's prescribed punishments and claims ignorance of its prohibition, and the person's circumstances make such ignorance plausible, the punishment is averted. If the claim is implausible in light of that person's condition, it is not accepted. Human rights, however, do not lapse in either case. A prescribed punishment belonging to God may be delayed by the Imam for a valid reason if he considers this appropriate. A punishment concerning the rights of people is not delayed once the matter has been brought before him.

Book of Thieves and Highway Robbers

Concerning the Ruling on Thieves

From the *Mukhtaṣar al-Muṣannaf*: If the person from whom property was stolen settles with the thief for the value of the stolen property and afterward brings him before the authorities, the thief's hand is not cut off.

From the *Mukhtaṣar al-Āthār*: If the person carrying out the amputation makes a mistake and cuts off the thief's left hand or right foot, that suffices and no other limb is cut off.

From the same work: The thief should be admonished after the amputation. It is transmitted concerning ʿAlī, peace be upon him, in the relevant report.

From the Questions Mentioned Above

Question: What do you say concerning what is stated in the Sharīʿa, that when a group jointly commits theft, all of them are subjected to amputation? O our master, are they all subjected to it even if the total stolen amount equals only the minimum threshold that would require amputation for one person?

Answer: If they jointly commit the theft and each individual's share reaches the minimum threshold for amputation, they are all subjected to it. Otherwise they are not.

Concerning Those upon Whom Amputation Is Required and Those from Whom It Is Averted

From the *Mukhtaṣar al-Īḍāḥ*: Four categories are not subjected to amputation.

The first is the snatcher (*mukhtalis*), for this is open brigandage rather than concealed theft; he is beaten and imprisoned. The second is one who embezzles from war booty (*ghulūl*). The third is theft by a hired worker, which is treated as breach of trust. [The fourth category is implicit in the source's continuation.]

From the same work: Judgment was given concerning a man who broke through the wall of a house and was caught after entering but before taking anything.

He said: "There is no amputation upon him," and ordered him imprisoned. He also said: "If a thief is caught before obtaining anything, he is punished. If he is caught after removing the property, amputation applies."

From the same work: The statement that there is no amputation for stealing food means, in my view, food while it remains upon its trees or roots in a place without secured protection, such as standing crops and fruits on trees.

Once it has been gathered into secure custody, whoever steals from it an amount reaching the legal threshold is subjected to amputation.

From the *Dhāt al-Bayān*: Amputation is averted from one who steals such produce while it remains upon the tree.

Indeed, it is called *thamar* specifically while still upon the tree; once picked, each item is called by its own name. Whoever steals it thereafter, once secured, is subjected to amputation if the value stolen reaches the threshold, which is one-fifth of a dinar or more.

From the *Iqtiṣār*: There is no amputation for stealing any type of stone other than gemstones.

From the same work: There is no amputation for open brigandage, for property taken from a lawful possession under certain circumstances, for the pickpocket, or in cases of legal doubt.

From the same work: [Amputation applies] only if the stolen property is removed from its secure place.

From the *Mukhtaṣar al-Muṣannaf*: A thief's hand is not cut off until he confesses to theft twice or two witnesses testify against him.

If two unbelievers testify against a Muslim and an unbeliever that the two stole a garment, their testimony is invalid; however, the unbeliever must compensate the claimant for one-half of the garment.

From the same work: If both amputation for theft and retaliation are due upon the thief's hand, the hand is amputated for retaliation and he pays monetary compensation for the theft.

If the owner of the stolen property pardons him, no amputation is carried out for the theft. If the claimant entitled to retaliation settles with him but the owner of the stolen property does not, amputation is imposed for theft. If the thief acquires lawful ownership of the stolen property by any means before the matter reaches the judge, he is not subjected to amputation. If ownership is transferred to him only after that, he is. If several persons enter a house, take property, place it upon one of them, and that man carries it out while the others leave with him, before him, or after him, and each one's share of the stolen property amounts to one-fifth of a dinar or more, all are subjected to amputation. If a man secures his belongings in his tent and a thief steals from inside it, amputation applies. If the thief steals the tent itself, it does not. Likewise, if he cuts into a saddlebag on an animal's back and removes property from within it, amputation applies.

If he takes the animal together with what is upon it, amputation does not apply. If a thief steals a very young slave who has no understanding, amputation applies. If the slave is old enough to understand, it does not. If a thief steals a garment and dyes it, or iron and makes it into a sword, or makes a similar transformation,

the owner takes the object back but must reimburse the thief for any increase in value. If the thief alters it in a way that decreases its value, the owner takes it back together with compensation for the diminution. If the stolen property consists of dinars or dirhams and the thief turns them into a vessel or piece of jewelry, the owner takes the resulting object and the thief receives nothing for the increase in value. If someone steals property that later produces offspring while in his possession, he must return both the original property and its offspring. If witnesses testify that a thief stole a dinar, they are asked whether they know it was truly a dinar or merely a plated qīrāṭ.

If they affirm with certainty that it was a dinar, amputation applies. If they cannot establish that, it does not.

From the same work: If two witnesses testify that a man committed theft and he says, "This is my property; I had entrusted it to him and he denied it," or, "I purchased it from him and he told me to take it from his house," amputation is averted because a legal dispute has arisen between them.

If evidence then establishes the falsity of his claim, the doubt disappears and he is subjected to amputation. Likewise if he says, "I was his guest."

From the same work: If several people jointly commit theft and each individual's share reaches the threshold for amputation, all are subjected to it.

Concerning the Rules Governing Highway Robbers

From the *Mukhtaṣar al-Muṣannaf*: One who blocks a road within a town or between two nearby villages is not legally classified as a *muḥārib*.

Rather, a *muḥārib* is one who blocks roads in open country and in places remote from assistance. If a group of Muslims or protected non-Muslims blocks the road against Muslims or protected non-Muslims and terrorizes travelers, they are *muḥāribūn*, whether or not they kill and whether or not they take property. The Imam imposes the prescribed punishment upon them. If they repent before being apprehended, they are pardoned with respect to the public punishment. If they had shed blood or taken property and repent afterward, coming to the Imam, he orders them to return whatever property remains in their hands, holds them liable for what has been consumed, and hands them over to those possessing blood claims. Those persons may pardon them or exercise retaliation, and pardon is permissible at that point. Open brigands within towns are required to return what they took, are subjected to severe disciplinary punishment, and are imprisoned. These are those who obstruct roads inside towns or between nearby villages.

If one witness testifies that a man committed highway robbery and another testifies that the man confessed to highway robbery, the testimony is insufficient. If slaves are among a group of highway robbers, judgment concerning them belongs to the Imam and they are treated like free persons in this respect; their masters have no say. If the ruler finds property in the hands of highway robbers whose owners are unknown, he places it in the public treasury until the rightful owners appear.

From the *Iqtiṣār*: If a person terrorizes the road and acts as a *muḥārib*, the ruler may impose whichever of the prescribed penalties he considers appropriate, whether the robber killed or did not kill and whether he took property or did not, provided the act occurred upon the road.

There is no legal *ḥirāba* within towns. Whoever acts openly there is an open brigand (*dāʿir*); whoever acts secretly is a snatcher (*mukhtalis*) and is severely disciplined.

Book of Apostasy and Innovation

Concerning the Rules Governing the Apostate

From the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, said: “The killing of a believing person is not lawful except in one of three cases: unbelief after faith, fornication after *iḥṣān*, or killing a person without legal justification.”

From the *Mukhtaṣar al-Muṣannaf*: If a Jew becomes Christian, or a Christian becomes Jewish, or a person moves from one form of unbelief to another equivalent form of unbelief, he is not interfered with, because unbelief is one category and such a person is not treated as an apostate.

But if a scripturalist leaves his religion for idolatry, *zandaqa*, or another form of unbelief whose adherents possess no covenant, he is not left upon it. He is told: “Either embrace Islam, return to your former religion, or enter another religion whose adherents possess a covenant; otherwise you will be killed.” If a man commits apostasy while intoxicated, he is questioned after becoming sober. If he repents, his repentance is valid. If he continues to profess apostasy, he is treated according to the legal rule applicable to one in that state. If two witnesses testify that a man or woman has apostatized, the accused is questioned. If the person admits it, the ruling is carried out. If the person denies it, testifies to God’s oneness and to Muḥammad’s mission, acknowledges the Sharīʿa and Islam, and repudiates every religion opposed to it, this is accepted. No one may be declared an apostate on account of a statement susceptible to interpretation or for which a plausible explanation exists.

A finding of apostasy requires explicit unbelief admitting no doubt. Nor may testimony of apostasy be based merely upon hearsay, widespread report, or testimony upon testimony. If a man apostatizes, he is treated during his apostasy as though legally interdicted from disposing of his property. Debts he incurs and purchases he makes while apostate do not attach to his estate unless there had already been a valid obligation before apostasy. A sorceress is treated in the same manner as an apostate woman. If an apostate is killed while professing Christianity, Christians are prevented from taking possession of his corpse, even if they offer money for it. If a man apostatizes, flees, and later returns repentant wishing to resume marriage with his wife, while she claims that her waiting period expired before his repentance, her statement is accepted unless she alleges an impossible duration. Whatever property of others an apostate destroys through usurpation or aggression is charged against his property.

This is unlike debts or purchases undertaken during apostasy. Likewise, injuries he commits while apostate are charged against his property if he later repents.

From the same work: This rule applies equally whether the apostate is free, enslaved, or extremely old.

From the same work: When a man apostatizes, his wife becomes separated from him unless he repents while she is still within her waiting period.

Her maintenance is paid from his property while she remains in his waiting period, until he dies or repents and resumes the marriage. If the woman is the apostate, she receives no maintenance. If either spouse apostatizes and then dies before the waiting period ends, the Muslim spouse inherits the share due from the apostate. If the Muslim spouse dies, the apostate does not inherit. If one spouse apostatizes before consummation, the marriage is immediately dissolved. If the man apostatized, he owes half the bridal due. If the woman apostatized, she receives nothing.

From the *Mukhtaṣar al-Āthār*: If an apostate flees, whatever property he leaves behind becomes inheritance for his heirs, because his apostasy is treated as death.

His wife observes the waiting period and may marry afterward if she wishes.

From the *Mukhtaṣar al-Muṣannaf*: The minor children of an apostate man remain Muslim, and likewise the minor children of an apostate woman.

From the *Mukhtaṣar al-Āthār*: If either parent embraces Islam, that parent's minor children, including those born afterward, are Muslim.

If they grow up and refuse Islam, they are treated as apostates and the rules governing apostasy are applied to them.

Concerning the Ruling on Innovators and *Zanādiqa*

From the *Mukhtaṣar al-Muṣannaf*: A Muslim sorcerer is killed, and female sorcerers are treated as apostate women.

Book of Usurpation and Wrongful Taking

Concerning Usurpation

From the *Mukhtaṣar al-Muṣannaf*: Whoever wrongfully obtains any of another person's property must return it to its owner.

If he has consumed or destroyed it, he must compensate the owner. If he does not know who the owner is, he places it in the public treasury as a deposit until the owner or heir appears. If he has no access to the public treasury, he gives it in charity, repents to God, Mighty and Glorious, yet remains liable to its owner. Anyone who withholds a right that has become obligatory upon him is in the position of a usurper. If a man wrongfully takes a new garment worth one dinar on the day of usurpation and wears it until it becomes worn out, but meanwhile clothing rises in price so that the worn garment is now worth two dinars, he must return the garment itself together with the difference between its value when new and its value when worn.

If he usurps an item not measured by volume or weight and it is destroyed, and the owner litigates against him at a time when its value is greater than at the time of usurpation, he owes the highest value it reached from the moment of usurpation until the litigation, because throughout that period he remained obliged to return it. If the property is something measured or weighed, he owes an equivalent. If an equivalent cannot be obtained, he owes its value at the time of litigation. If he usurps both an animal and barley and feeds the barley to the animal, he returns the animal and an equivalent amount of barley. If he wrongfully takes land and plants trees in it, then the rightful owner establishes his claim, the usurper owes the customary rental value for the period during which he occupied it and must uproot what he planted. If uprooting damages the land, he is liable for the diminution.

If he usurps a garment, cuts it into the shape of a shirt but does not sew it, the owner may take the garment together with compensation for its diminution; alternatively, he may take the garment's value and leave it to the usurper. If he usurps flax and weaves it into cloth, the cloth belongs to the usurper, but he owes the owner an equivalent quantity or its value.

From the same work: If a man usurps wheat jointly owned by two persons and conceals it from them, then settles with one owner for dinars or for another measured or weighed commodity and pays him, the other co-owner is entitled to half of what was received, because the matter resembles a jointly held debt of which one creditor has collected his share.

But if the usurped property is openly present in the usurper's possession, whether he admits or denies the usurpation, there is no partnership between the two owners in what one of them receives through settlement. In that case the settlement is treated like a sale and the other owner remains free to pursue his own right. The same rule applies to analogous cases.

From the same work: If the usurper claims the property has passed out of his possession and pays its value, but the property later appears either in his own possession or someone else's, the owner may choose either to keep the compensation already received or to return it and recover the original property.

If a man sells a slave and the purchaser emancipates him, but evidence later establishes that the seller had usurped him, the emancipation is annulled and the slave returned to his true owners. If there is no evidence but the alleged usurper admits the claimant's allegation, his confession is not accepted against the emancipated person; the emancipation stands and the owner recovers from the usurper the highest value the slave had reached. Likewise, if the purchaser bought from a usurper, emancipated the slave, and afterward both purchaser and seller acknowledge the claimant's right, their admissions cannot invalidate the emancipation. The purchaser owes the value and then recovers it from the usurper. This applies if the claimant chooses to proceed against the purchaser. He may instead proceed against the usurper.

From the same work: If someone usurps a garment worth ten dirhams and dyes it so that the dye increases its value by five, the owner may choose to pay the value of the dye and retain the dyed garment.

Alternatively, he may require the usurper to pay the value of the garment while white, in which case the garment belongs to the usurper. Or the two may become partners in the garment according to the respective value of the cloth and dye. If the usurper wishes to extract his dye, he may do so but must compensate any resulting diminution in the garment. If the dye adds nothing to the garment's value, the usurper is told either to pay the value of the white garment or leave it to the owner. If the dye decreases its value, the usurper owes the amount of diminution and may remove his dye if this is possible. If a man usurps both safflower and a garment from someone and dyes the garment with the safflower, the owner may simply take his own dyed garment, because both garment and dye were his. Alternatively, the garment and safflower are valued; if their combined value is less than the garment's value once dyed, the usurper must compensate the difference because he caused the reduction by his act.

If one person proves that a garment in another's possession was usurped from him, while a second person proves that the possessor acknowledged the garment as belonging to him, judgment is given to the one who proved the usurpation. The usurper's acknowledgment to a third party is disregarded.

From the same work: If a man bequeaths a slave-woman in his possession after having fathered a child by her, and another man later appears claiming that the first man had usurped her, and the possessor admits this while the slave-woman denies it, his admission is not accepted against her or against the child.

He must nevertheless pay her value to the claimant unless evidence establishes the usurpation. If someone usurps a slave-woman worth one thousand and her value increases in his possession to two thousand, then later falls back to one thousand, when the owner recovers her he also receives compensation for the diminution from the higher value. If a slave is worth more on the day recovered than on the day of usurpation, that increase itself is not relevant; only later diminution or increase that occurs during the period is considered. If the usurped property has disappeared from the usurper's possession, his statement concerning its value is accepted with his oath. If a man usurps a slave-woman and she bears him a stillborn child, her owner takes her back together with compensation for the diminution caused by childbirth. If the value represented by the child is sufficient to cover that diminution, nothing additional is due. If insufficient, he owes the difference. If the mother dies, he pays her value and the child is taken.

From the questions of Khaṭṭāb ibn Wasīm, governor of the Zawāwa, answered by our master al-Nuʿmān:

You asked about a man who purchases a slave-woman believing her to be rightfully owned by the seller, and she herself acknowledges the seller's ownership. Later the true owner establishes that the seller had usurped her, or had purchased her from someone who had usurped her, and the original owner recovers her after she has borne a child by the final purchaser. She is returned to her original owner. If the man who fathered the child knew she had been usurped, his child is enslaved to her owner. If he did not know, he keeps his child by paying the child's value to the owner of the slave-woman, and then recovers both the amount paid for the child and the purchase price of the slave-woman from the person who deceived him if that person was

the usurper who sold her. If the seller was not himself the usurper and did not know she was usurped, he bears no liability for the child's value but returns the price received for the slave-woman, while the child's father recovers the amount paid for the child from the actual usurper.

You also asked about a man who purchases a young girl and later learns that she was free after he has already sold her, and her guardian establishes her freedom and demands her return. If the purchaser did not know she was free, he is not himself required to search for her. The original usurper is pursued if he can be found. If he cannot be found, her guardian and the public authority seek her wherever she is, and once her freedom is established she is removed from the possession of whoever holds her. Each successive buyer and seller then returns the purchase price through the chain of sales.

Concerning Wrongful Encroachment

From the *Mukhtaṣar al-Muṣannaf*: Whoever has property stolen or usurped and then finds that very property may take it.

What is forbidden is taking some other property as compensation in its place.

From the *Iqtiṣār*: Whoever is betrayed or wrongfully dispossessed by another and later gains access to the very property that was taken from him may recover it.

It is not lawful for him to betray or wrongfully seize other property belonging to that person in compensation.

From the answers of our master al-Nuʿmān:

You asked about a group belonging to the people of the qibla who fell into civil strife, during which some killed others and some plundered others' property. They later called one another to reconciliation and concluded a complete settlement by mutual consent, waiving all claims arising from previous killings, plunder, and demands of every kind after full knowledge of them. They separated in mutual consent, reconciliation, and agreement. Afterward one group violated the settlement, killed members of the other group, and plundered their property. The first settlement remains binding if it occurred as described. Whoever commits aggression afterward acts unjustly and is held liable for what he committed against the victim. If there is someone in the locality empowered to enforce the judgments of the Muslims, the injured party may seek redress before him, provided the judge has the power to enforce the ruling. If he cannot, the matter is referred to the Imam of the Muslims, who decides it according to what God shows him.

Book of Loans for Use and Deposits

Concerning Loans for Use (*ʿĀriya*)

From the *Mukhtaṣar al-Muṣannaf*: If a person borrows land for use on the condition that he may build a house or plant trees upon it, and the owner grants permission, the owner may not later remove him unless he pays him the value of the building, in which case the building becomes the lender's.

Likewise, if the land was lent for a fixed period and the owner wishes to remove the borrower before the period expires, the borrower may require him to compensate the value of the building, unless the borrower chooses instead to remove it himself. If the loan was for a fixed period on the condition that the land be returned exactly as received, the borrower must demolish his building or remove his planting, because the lender did not mislead him. If land is lent for a fixed period and the borrower plants a crop, and the period ends when harvest is near, he may not be removed until the crop is ready for harvest. The owner receives the customary rent for the additional period. This differs from permanent structures and planted trees, because crops have a known end to their useful duration, whereas buildings and trees do not.

If a man lends land to another saying he may build upon it and reside there as long as he wishes, but stipulates that when he leaves the building will belong to the landowner, this arrangement is invalid and resembles an invalid lease. The occupant must pay the customary rental value of the land, while the building remains his. Loans for use of jewelry and vessels made of gold or silver are permissible. If a man borrows an animal to ride to the main mosque of a town, rides beyond the mosque, then returns to it, and the animal perishes, he is liable. If a man rides an animal under lease or loan, dismounts in town to enter a mosque for prayer, leaves the animal unattended, and it perishes, he is liable. If he is in open country, dismounts to pray while holding it, and it escapes, he is not liable. If the lender finds his animal in the possession of someone who claims ownership, that possessor becomes his opponent in the dispute.

But if he says, "So-and-so, who borrowed it from you, deposited it with me," there is no direct dispute between the owner and him.

From the same work: If the borrower lends the borrowed item to another and it perishes in the second borrower's possession, then if the second borrower had guaranteed it, liability rests upon him toward the owner.

If he had not guaranteed it, the owner may choose whether to proceed against the first borrower or the second. If he proceeds against the second, the second may recover from the first because the first misled him by lending something he did not own. The legal effect of the loan terminates upon the death of either lender or borrower. If the owner stipulates payment, the arrangement ceases to be a gratuitous loan for use. Dinars and dirhams are guaranteed when borrowed because they become loans for consumption. The same applies to commodities measured by volume, weight, or number, such as walnuts, eggs, and the like. If a man borrows an animal to carry something upon it, uses it accordingly, or merely keeps it, and no guarantee was stipulated, he is not liable. If he borrowed it to carry wheat but carries stones instead, he is liable. If he borrowed it to carry one kind of grain but carries another of equal or lighter weight, he is not liable.

If he borrowed it to carry something belonging to himself but carries an equivalent load for someone else, he is not liable. If he borrows a garment to wear and lets another person wear it, he is liable.

From the same work: If a man rents land for one year but cultivates it for several years, he owes the fixed rent for the first year and customary rent for the additional years.

From the *Dhāt al-Bayān*: Dinars, dirhams, and copper coins do not operate under the rules of *ʿāriya*, because once transferred they cannot be individually identified.

They are treated as loans, and the borrower must return their equivalent.

From the *Iqtiṣār*: A borrower is a trustee if he is a believer.

From the *Mukhtaṣar al-Āthār*: If a borrower pledges or sells the borrowed item and its owner establishes his right against whoever possesses it, the owner takes it back.

The purchaser then recovers the purchase price from the seller, and the pledgee recovers from the pledgor either another pledge of equivalent value or the debt for which the item was pledged. But if the owner had authorized the borrower to pledge or sell it, the owner has no claim against the person who now possesses it.

Concerning Deposits

From the *Mukhtaṣar al-Muṣannaf*: If the depositary spends part of the deposited property, he is liable for it.

If he later replaces what he took, he must inform the owner. Merely replacing it does not remove his liability unless he informs the owner and the owner accepts him anew as depositary. If he spends the entire deposit and then restores it in full, but it later perishes, he remains liable for the whole. If the deposit is mixed voluntarily by the depositary with something that diminishes it and cannot subsequently be separated, he is liable. If the mixing occurred without his choice, he is not liable. A depositary may not redeposit the property with another person. If he takes part of the deposit intending to spend it but then returns the very same

property without having spent it, he is not liable. If the depositor demands return of the deposit and the depositary says, “I already returned it to you,” the depositary’s statement is accepted.

But if he says, “I sent it to you, then the messenger brought it back to me, and it was lost while with me,” he is liable unless he produces evidence that it was returned to him exactly as originally received.

From the same work: The depositary is a trustee and bears no liability if the deposit perishes while properly secured.

If it perishes while he is taking it to the secure place, he likewise bears no liability unless he caused the loss through wrongdoing. If someone deposits property with a man and he places it in his chest, or gives it to his wife or another trustworthy person within his household and instructs that person to secure it, and it then perishes, he is not liable.

From the *Yanbūʿ*: If a depositary wrongfully trades with the deposit, he is liable for it, while the profit belongs to the owner.

The *Muntakhaba* states the same. If the depositor says, “Hide it in this house and not in the other house,” and the depositary places it in the prohibited house, he is liable. If he says, “Do not remove it from this house,” but the house catches fire and the depositary removes it, he is not liable. Neither a depositary nor another trustee is liable merely for loss. The depositary must secure it as he secures his own property. If it perishes, falls from him while he is carrying it to a secure place, or becomes lost without wrongdoing, he is not liable.

From the *Mukhtaṣar al-Āthār*: Whoever receives property as a deposit must protect it and secure it as property of that kind is normally secured.

If it is destroyed or lost without fault after he has done so, he bears no liability. If he neglects it, harms it, or wrongfully exceeds his authority, he is liable. If two men jointly deposit property with one man and one later demands it while the other is absent or has died, the claimant receives one-half. But if, when depositing it, they instructed him not to deliver any of it to either one without the other, then if one alone comes to claim it, he receives nothing until the other appears with him; if the other has died, his heirs must appear and the deposit is delivered accordingly.

From the *Mukhtaṣar al-Muṣannaf*: If a man acknowledges holding property but then claims a circumstance that would remove liability, saying, “It was a deposit with me,” or “It was partnership capital in my hand and I lost it,” his claim is not accepted without evidence.

If a depositary initially says, “He deposited nothing with me,” then later admits the deposit and claims it was lost, he bears no liability. But if he first acknowledges the deposit and claims that he returned it, then when the owner denies this changes his claim and says it was lost, he is liable because his accounts contradict one another. Likewise if he first claims destruction and, once accused, changes to claiming return. If he claims that he returned it and then produces evidence that it was lost, he is liable because he has contradicted his own evidence. If the depositary disobeys the depositor’s instructions without necessity, he is liable. If a man deposits one dinar with another and a messenger comes saying, “The owner sent me to collect it,” and the depositary believes him and gives it to him, then the owner later denies sending him, the depositary is liable and has no claim against the messenger.

If the depositary neither believed nor disbelieved the messenger but nevertheless handed it over, he remains liable to the owner and may recover from the messenger what the messenger took. If a man has one dinar deposited with another and also one dinar owed to him as a loan, and the other gives him one dinar, but they later disagree—the creditor saying, “I received the deposited dinar,” and the debtor saying, “I repaid the loan and the deposited dinar was lost”—the debtor’s statement is accepted with his oath. This differs from a person who acknowledges holding property and then claims that it was merely a deposit. If an authorized trading slave admits that he held a deposit which was lost through his own wrongdoing, his admission is not effective against his master because it creates a debt against the slave’s person.

From the *Mukhtaṣar al-Āthār*: Whoever entrusts property to a child or insane person and it is lost has no claim, because he himself exposed his property to risk.

From the Questions Mentioned Above

If the original depositor gives property to a depositary, and the depositary, while the owner is absent and without permission, deposits part of it with someone else and later restores it, but the property subsequently perishes, he is liable for the portion he removed. If he had permission, he bears no liability.

Book of Found Property, Foundlings, and Runaway Slaves

Concerning Found Property

From the *Mukhtaṣar al-Muṣannaf*: It is recommended for a person who takes possession of found property to have others witness that he found it.

If a person finds dinars or dirhams and the owner later appears and correctly specifies their weight, number, and distinguishing features, or if the item is a garment and the claimant accurately describes it, or likewise with another object, the finder may choose either to return it after requiring the claimant to swear and provide a guarantor, though judicially he is not required to do so, or to retain it until the claimant produces evidence. If he believes the claimant and hands it over without proof, but another person later establishes by evidence that the property belonged to him, the true owner may hold the finder liable. If the finder pays, he may then recover from the person to whom he originally gave the property. Alternatively, the true owner may proceed directly against the recipient. If the found property perishes while in the finder's possession, and when he first found it he announced it publicly and secured it properly, he bears no liability. If he failed to do so, he is liable.

If the Imam or one of his deputies finds found property in the possession of someone not trustworthy to keep it, he removes it and gives it to an upright trustee or places it in the public treasury. If perishable found property is sold by order of the judge and its owner later appears, the owner is entitled only to the sale price. If a slave finds property and his master knows of it, allows him to keep it, and it later perishes, liability falls upon the master's property. If the master did not know, liability attaches to the slave's person. If a man finds an abandoned child and another person later takes the child from him, and the two dispute over custody, the child is returned to the original finder. If a slave finds an abandoned child and this is known only through the slave's own statement, while the master says, "He lies; the child is my slave," the master's statement is accepted with his oath if the slave is under legal restriction. If the slave is authorized to conduct transactions, his own statement is accepted.

From the same work: Stray camels, cattle, and sheep should be preserved for their owners.

Expenses upon them are made by order of the judge and later recovered from their owners. The most cautious course is to refer their matter to the Imam of the Muslims.

From the *Mukhtaṣar al-Āthār*: If the owner comes to reclaim the animal and the finder asks for a reward, the owner is not legally obliged to pay one, because God has made protection of a believer's property an obligation upon believers.

The finder nevertheless has his reward from God if he acted with that intention, and he may recover whatever necessary expenses he incurred upon the animal.

From the *Mukhtaṣar al-Muṣannaf*: If the owner of a runaway slave or stray animal announces a reward for whoever returns it, whoever brings it back is entitled to that reward.

If the reward was offered only to a specifically named person and someone else returns the property, the latter is entitled to nothing. If the owner says to one man, “If you bring my slave, I will give you one hundred dirhams,” and to another, “If you bring him, I will give you two hundred,” and both bring him jointly, each receives one-half of the reward individually promised to him. If no reward was promised and someone returns the runaway slave, the owner must reimburse the expenses incurred upon the slave and transporting him. If a master declares a runaway slave *mudabbar* or emancipates him while he is absent, this is valid. If the master sells him alone without any other present property attached to the transaction, the sale is invalid. If he gives him as a gift to a relative, the gift is valid. A judge should not accept another judge’s written description of a male or female slave merely from descriptive traits, because descriptions may coincide. Identification must be by witnesses who testify to the actual person.

If a judge sells a runaway slave after lengthy detention and the slave later dies in the purchaser’s possession, and a man then claims him, producing evidence that “my slave was named so-and-so and had such-and-such description,” and the name and description match the slave sold by the judge, that is insufficient. The claimant is not given the sale price unless the witnesses testify that the very runaway slave sold by the judge was this claimant’s slave.

From the same work: If someone finds pre-Islamic buried treasure in land owned by no one, it is *rikāz* and one-fifth is due from it.

From the *Mukhtaṣar al-Āthār*: If it is buried property belonging to earlier peoples, it is delivered to the public treasury of the Muslims.

Concerning Foundlings and Runaway Slaves

From the *Mukhtaṣar al-Muṣannaf*: If a pledged slave runs away and is later recovered, whether during the pledgor’s lifetime or after his death, he remains pledged as before.

If a slave runs away because he was assigned work beyond his capacity, ordered to disobey God, or mistreated by his master in food, drink, or clothing, the master is ordered to cease such conduct. If he does so, the slave remains with him. If he refuses, the slave is sold away from him.

From the *Mukhtaṣar al-Āthār*: A foundling is free.

If his parents are unknown, his estate goes to the public treasury of the Muslims. No relative inherits from him, nor does he inherit from relatives or transmit inheritance through kinship, except that inheritance may arise through marriage. If he grows up, becomes financially able, and the person who found and raised him claims reimbursement for maintenance, he must repay it.

From the *Mukhtaṣar al-Muṣannaf*: If a foundling dies leaving property and someone claims afterward, “He was my son,” the claim is not accepted because lineage cannot be established after death.

If a foundling found in one of the Muslim towns grows up and then rejects Islam, he is compelled to return to Islam. If he dies before reaching an age of understanding, funeral prayer is performed over him whether the finder was Muslim or protected non-Muslim. If he was found in a synagogue, church, or village containing no Muslims, he is not compelled to Islam; if he dies before understanding, funeral prayer is not performed over him. If a non-Muslim from that village claims him as his child, the claim is accepted. If he is found in a village containing both Muslims and protected non-Muslims, he is treated as Muslim and funeral prayer is performed if he dies. A protected non-Muslim’s claim of paternity is not accepted there. If both a Muslim and an unbeliever claim him, judgment is given to the Muslim. If a free man and slave both claim him, judgment is given to the free man.

If evidence establishes that he is the slave’s son, his lineage is attributed to the slave but the child remains free unless evidence establishes that his mother was a slave-woman, in which case he belongs as a slave to her master. If the ruler apprehends a runaway slave and someone appears who establishes ownership by evidence, the claimant takes him but must provide a guarantor. If no evidence exists but the slave acknowledges that

person as his owner, the person takes him upon providing security. If no claimant appears and the Imam considers it appropriate to sell the slave, he may do so. Any maintenance expenses incurred are recovered from the owner if he later appears, or from the sale price if the slave is sold. A runaway by an authorized trading slave terminates that slave's authority to transact.

From the Questions Mentioned Above

Question: What do you say concerning found property that a man sees lying on the road, but he fears that if he announces it publicly someone other than the owner will claim it? May he simply leave it and continue on his way?

Answer: If he leaves it, nothing is upon him.

If he takes it, he announces it, and whoever provides identifying signs is given it.

Question: What do you say concerning a man who finds property in his house or shop and knows it is not his, but fears that if he announces it publicly someone other than the true owner will claim it? What should he do?

Answer: He announces it, and whoever provides the identifying signs is given it.

Book of Partition and Buildings

Concerning Partition

From the *Mukhtaṣar al-Muṣannaf*: Any jointly owned real property or other property capable of division without harm to any co-owner is divided by judicial compulsion.

Anything whose division would cause harm is not divided by compulsion but may be divided by mutual consent. The same applies to anything that would have to be broken or cut in a harmful manner. If one co-owner demands division of something that can be divided without harm, it is divided and the others are compelled to accept. If one requests sale of the whole property, the others are not compelled to sell. If two men divide a house, one receiving one side and the other another, and a wall falls to one of them whose visible width above ground is two brick-widths but whose foundation is four brick-widths, extending one brick-width into the other man's share, the owner of the wall may not claim the portion of land occupied by the underground foundation. He is entitled only to what appears above ground as part of the wall.

From the same work: If heirs establish the original inheritance by evidence and jointly own a house whose partition they seek, it is divided among them.

If one heir is a minor or absent, the judge appoints someone to receive and safeguard the absent or minor heir's share. But if the house was jointly purchased rather than inherited, and all co-owners are present and acknowledge the shares and request partition, it is divided. If one is absent, it is not divided, even if the others establish the purchase by evidence. This differs from inheritance because division in a purchased property would constitute judgment against the absentee, whereas inheritance involves judgment concerning the deceased's estate. If three persons draw lots in a partition and one wishes to withdraw before any lot is drawn, he may do so. Likewise, he may withdraw after only one lot has been drawn. But once two lots have been drawn and only one remains, he may not withdraw because the allocation has effectively occurred. A father may divide property on behalf of his minor, mentally incapacitated, or legally restricted child so long as there is no gross inequity.

The same applies to the father's executor and to the paternal grandfather. A finder of an abandoned child has no authority to divide property on the foundling's behalf merely because he supports him. An executor appointed by the judge over an orphan has the same status as the father's executor. A public bath and similar

property are not compulsorily divided because division would cause harm, unless all parties consent. Anything requiring destructive cutting or breaking likewise is divided only by consent.

From the same work: If the executor is a protected non-Muslim while the deceased and heirs are Muslims, the judge removes him from the executorship.

But if he carries out a partition for the minor before being removed, the partition remains valid. If cattle, sheep, camels, other riding animals, slaves, garments, or other homogeneous property is jointly owned and some partners request division while others object, and the original ownership is established, the judge divides items capable of equal partition. The same applies to all measurable or weighable homogeneous goods. If the jointly owned property consists of different kinds, it is divided only by consent of all partners. A condition granting an option to rescind in a partition is valid just as in a sale. If a house belongs jointly to two men and one receives one-third of its front portion worth one hundred dinars, while the other receives the remainder also worth one hundred, and part of the front portion is later successfully claimed by a third party, the partition is annulled.

If the recipient of the front portion had sold what he received and thereafter the remainder still in his hand is successfully claimed, the property remaining in the other co-owner's hand becomes jointly owned between the two in equal halves, while the first must compensate the second for half the value of what he sold.

From the *Yanbūʿ*: It is recommended that a public road be seven cubits wide, especially a major thoroughfare.

If a house jointly belongs to two men and another person possesses a right of passage through it, the co-owners may divide the house. The width of the passage is made equal to the width of the principal doorway of the house, extending from that doorway to the door of the person entitled to passage. That passage remains jointly subject to his right of access, while the rest of the house is divided in halves.

From the *Mukhtaṣar al-Muṣannaf*: If a judge partitions different houses between partners so that one receives a house worth one thousand dinars while another receives two houses each worth five hundred, and one of the two houses is later successfully claimed by a third party, the partition is not annulled.

The remaining house belongs to the second co-owner, who may recover from his partner one-quarter of the thousand-dinar house. If heirs divide a house, formally attest the partition, and afterward the deceased's wife claims an unpaid bridal due and establishes it by evidence, she may have the partition annulled. Their division of the inheritance did not extinguish her preexisting claim. The same applies to any heir who establishes a debt. But if after partition one heir claims that the deceased had sold, gifted, or given the house to him as charity, such a claim is not accepted. **Marginal note from the *Yanbūʿ*:** If a single parcel of land is divided between two men and one builds upon his allotted portion, but a third party later establishes ownership of that specific portion, the builder must demolish his building and may not recover any part of its value from his co-partitioner, because the latter did not cause the loss or compel him to build.

But if two men divide two separate houses or plots, each receiving one, and a third party later establishes ownership of one after the recipient has built upon it and the building is demolished, the partition is annulled and the remaining house becomes jointly owned between the two. The dispossessed builder may recover one-half of the value of his building from the other co-partitioner. This differs from the single-parcel case. This rule applies when the partition was voluntary. If the partition was ordered by the judge, neither co-owner has recourse against the other. The legal position in partition resembles that of one who receives property through a sale.

Concerning Buildings

From the *Mukhtaṣar al-Muṣannaf*: The owner of a building may raise its height upon his own property as much as he wishes.

He may construct within it a bathhouse, oven, or other facility. [The following clause is abbreviated in the copy:] if one party wishes to demolish a jointly relevant structure in order to rebuild it together with the other, he may demolish it; alternatively, he may pay one-half of its value in demolished condition.

From the *Mukhtaṣar al-Āthār*: If a wall belongs to one of two neighbors and collapses, its owner must rebuild it.

If he abandons it to the other and the other rebuilds it, the original owner thereafter has no right in it.

From the Questions Mentioned Above

Question: What do you say concerning a man who builds a dome over the grave of his parents or loved ones from his own property and afterward wishes to sell the building materials?

Likewise, if he builds up their graves from his own property with stone or other materials and later wishes to sell part of the materials, may he do so?

Answer: If, when he built it, he dedicated it purely to God Most High, he may not do so.

If he intended ostentation or hypocrisy and did not intend the face of God, he may do as he wishes. It is stated in some books of jurisprudence that partition is not compelled merely because one party demands it unless the smaller share can provide its owner with a viable dwelling, as mentioned earlier. Otherwise there is no compulsory partition without the owner's consent. Al-Ṣādiq, peace be upon him, was asked about two men living in a cul-de-sac. One of them wished to open another door into it besides his existing door, or to create a new latrine outlet. He said: "He may not do so in a cul-de-sac by opening a new door or creating a latrine that he did not previously possess." But if both are on a public road shared by the people and one wishes to open another doorway onto it, whether opposite his existing doorway or elsewhere, he said:

> "Whatever opens onto a public thoroughfare is permitted, and the other may not prevent him unless actual harm is demonstrated; then he is prevented from causing the harm."

Book of Testimony

Concerning the Command to Give Testimony and the Prohibition of False Testimony

From the *Mukhtaṣar al-Āthār*: The Messenger of God, may God bless him and his family, said: "Whoever conceals knowledge that he possesses will come on the Day of Resurrection bridled with a bridle of fire."

Concerning Whose Testimony Is Admissible and Whose Is Not

From the *Mukhtaṣar al-Muṣannaf*: No one may accuse an upright person of anything that would destroy his probity unless a disqualifying defect is established against him.

Likewise, no one should formally attest another person's uprightness until his trustworthiness has become sufficiently clear to justify doing so.

From the answers to Khaṭṭāb ibn Wasīm given by our master al-Nuʿmān, may God sanctify his spirit:

You asked about the attestation (*tazkiya*) by which a person's probity is established. It consists in two upright persons or more among those competent to attest character saying that they know so-and-so through association, dealings, acquaintance, and neighborhood, that they know him to be among the people of goodness, and know no evil of him. ʿAlī, peace be upon him, was asked about this and said: "Whoever performs the five prayers in a congregational mosque, is known for good, and is not known for evil—accept his testimony." You asked about disqualification (*tajrīḥ*). Disqualifying evidence overrides prior attestation of

probity. If a person has been attested as upright, his probity is established and the judge must inform the opposing party of this and ask whether he has any objection or proof against him. If that party produces two upright witnesses or more who disqualify the witness and mention misconduct known to them of a kind that destroys legal probity, then his probity falls.

This is because attestation establishes an existing state of uprightness, while disqualification establishes something arising thereafter. A man may be righteous and later become wicked, trustworthy and later betray trust, chaste and later commit fornication.

From the *Īḍāḥ*: [The abbreviated clause means:] the person in whose favor the testimony was given inherits his father rather than his brother.

From the *Mukhtaṣar al-Muṣannaf*: Witnesses should not testify upon the testimony of another witness merely because that witness informed them of his testimony.

He must specifically charge them with preserving it, saying: "Bear witness that I testify for so-and-so against so-and-so concerning such-and-such." A judge may not rule upon testimony transmitted from another witness unless he knows that the original witness was upright both when he first gave the testimony and when he charged others to transmit it. If evidence shows that his condition changed afterward, that does not invalidate the earlier testimony. If a woman acknowledges an obligation and two witnesses identify her as so-and-so daughter of so-and-so, the woman who made the acknowledgment and attested against herself, then the remaining witnesses may testify concerning her even if they never looked upon her face. If a single witness testifies that a man committed theft, the claimant may swear alongside his witness and the accused becomes financially liable, but no amputation is imposed upon the testimony of one witness.

If one witness testifies that a man shot another with an arrow, which pierced and emerged from his body and then struck another man, killing or wounding him, *qasāma* applies concerning the first victim, while the heirs of the second may swear together with their witness and recover compensation for the injury or blood-money for death. That blood-money falls upon the *ʿāqila*, or upon the offender personally if the amount is below one-third. The testimony of an illiterate person is admissible if he is upright and accurately understands what he witnessed. The same applies to a eunuch. The testimony of someone openly given to frivolity and shameless behavior is not accepted, nor that of one harboring rancor against his brother, nor that of a tale-bearer. If any such person repents and reforms his conduct, his legal probity returns.

From the *Īḍāḥ*: A blind person's testimony concerning what he hears is equivalent to that of a sighted person.

The earliest Muslims transmitted reports from the wives of the Prophet, may God bless him and his family, while they remained behind a veil. The blind and sighted are alike in this respect, narrating what they heard from them, and no one rejects this. This is among the matters disputed by the jurists of the various regions: whether a man may testify concerning a woman whom he is not permitted to look upon solely by recognizing her voice, distinctive tone, and habitual speech. This is analogous to a blind person testifying to a voice without seeing the speaker, while a sighted person may identify a person speaking from behind a curtain. Ibn Umm Maktūm was blind, and most of the people of the two Sanctuaries took the call to prayer from him. He testified to the Prophet's practice concerning the adhān, and the people accepted his testimony though he was blind. Many jurists themselves are blind and people transmit from them what they have heard concerning religion.

From the same work: There is no prayer behind him, one does not marry into his family, and one does not give a woman in marriage to him.

From the *Mukhtaṣar al-Muṣannaf*: If a hired worker or dependent gives testimony concerning property connected with the employment from which he himself derives benefit, his testimony is not accepted because it draws advantage to himself.

But if he is upright and trustworthy and testifies for the person who hired him, or for someone upon whom he is dependent, in a matter from which he himself derives no such benefit, his testimony is admissible together with that of other acceptable witnesses. The *Mukhtaṣar al-Āthār* states the same.

From the *Mukhtaṣar al-Āthār*: ʿAlī, peace be upon him, did not accept the testimony of one who races ahead of the pilgrimage caravan.

From the *Yanbūʿ*: The testimony of a child born from fornication is not admissible, even if his conduct is praiseworthy.

From the *Mukhtaṣar al-Īḍāḥ*: Testimony is not accepted from those who practice sorcery; those who contract marriage with a woman during her waiting period; those who eat, drink, or have intercourse during the daytime of Ramaḍān without illness or travel; those who wear silk outside of warfare; those who wear a gold ring; those who look into a neighbor's house to observe private matters; those who touch a woman unlawful to them; those who address her with suspicious or improper speech; those who incite a woman against her husband or a slave-girl against her owner.

Nor is the statement of a diviner, physiognomist, or thief accepted. The testimony of a professional female mourner is not admissible, nor that of a poet who harms people with his tongue, nor that of someone habitually playing chess. If any of these says, "I have repented," he remains legally disqualified and unacceptable unless he establishes by evidence that he abandoned such conduct at least a year or approximately a year before the present testimony. A shorter period is not sufficient; his repentance must become manifest and ordinarily not less than a year is required.

From the same work: This shows that whoever outwardly displays good conduct and from whom no wrongdoing is known may have his testimony accepted.

ʿAlī, peace be upon him, once had brought before him a man whose hand and foot had previously been amputated for highway robbery. He accepted the man's testimony because he had repented and his repentance had become known. The testimony of a wealthy man who fails to perform pilgrimage is not accepted. If someone had a known blemish, lapse, or bad reputation but repents and thereafter good conduct becomes known of him, his testimony becomes admissible, especially where the bad conduct had persisted for some time. If a person delays performance of an obligation but does not treat it contemptuously or regard omission as lawful, this alone does not legally disqualify him. Whoever outwardly displays good conduct and is not known at the relevant time to possess any hidden disgrace or established disqualifying defect may testify.

From the same work: If a person gives testimony while a child, unbeliever, or legally corrupt person and the testimony is rejected because of childhood, unbelief, or corruption, then afterward the child reaches adulthood or the corrupt person reforms and comes to testify again concerning the same property, his testimony is still not accepted in that same case.

It may, however, be accepted in other matters once he is upright. The *Mukhtaṣar al-Āthār* states the same.

From the *Mukhtaṣar al-Muṣannaf*: The testimony of protected non-Muslims is admissible against persons from enemy territory who have entered under safe-conduct.

The testimony of such protected visitors from enemy territory is not admissible against protected non-Muslims. The testimony of a protected non-Muslim in favor of a Muslim concerning a debt owed by another protected non-Muslim is admissible.

From the same work: If a protected non-Muslim dies leaving property and two sons who divide it, and one son later embraces Islam, then two protected non-Muslims testify that the deceased father owed a debt, their testimony is accepted only against the share belonging to the son who remains protected non-Muslim.

From the same work: If a woman appoints two men to contract her marriage and they do so, and afterward those two testify that the husband divorced her, their testimony is admissible if they are upright, whether the woman affirms or denies it.

If two witnesses testify that a man has died but admit that they did not personally witness his death, their testimony is not accepted unless his death is publicly notorious, in which case it may be accepted. If a man establishes by evidence that another died on a certain day and that he inherited him, the witnesses knowing of no other heir, but a woman then establishes by evidence that the deceased married her on a later date and subsequently died, her evidence is accepted because she is asserting a positive claim and no vested right had arisen merely from the earlier report of death. But if the heir had established by evidence that a particular person killed his father on a given day and judgment was rendered accordingly, and a woman later establishes by evidence that the father married her after that day, her testimony is disregarded because the judgment concerning killing created a legally vested right in favor of the heir.

From the same work: If two men testify upon the testimony of a third person concerning a right, and one of the two also offers his own direct testimony concerning that same right, this is not admissible.

From the *Mukhtaṣar al-Āthār*: Testimony upon the testimony of one witness requires two men.

It is permitted only where the original witness is absent at a distance at which prayer is shortened and fasting may be broken during travel, or is ill or chronically disabled and unable to attend the judge's session, or has died after charging others to preserve his testimony. If he is present and healthy, he must testify personally. The *Mukhtaṣar al-Muṣannaf* states the same.

From the same work: *Istihlāl* here means the cry of the newborn.

If the child cries and then dies, it is thereby known that it was born alive. Women's testimony is not accepted concerning the crescent of Ramaḍān so as to establish fasting or breaking the fast.

From the *Yanbūʿ*: Women may participate with men in testimony concerning fornication only in the form of two women together with three men.

Their testimony together with men is admissible in marriage. Women alone may testify only concerning matters at which men do not ordinarily look. In such a case, the testimony of one free upright woman, such as a midwife or another woman, is admissible if no second woman was present.

From the *Mukhtaṣar al-Muṣannaf*: If two witnesses testify that a presently due debt owed by a man was deferred by its creditor for one year and judgment is given accordingly, then before the year expires they retract their testimony, they must compensate the creditor for the amount.

They may recover that amount from the debtor once the original term arrives. If three men testify concerning property and one later retracts, he owes nothing. If two retract, they compensate one-half of the amount established by their testimony. If two witnesses testify that a man emancipated a slave-woman and the judge orders her emancipation, and she subsequently marries, but the witnesses later retract, they must compensate the former master for her value. If a man dies leaving a well-known brother and no other known heir, and another person produces witnesses establishing that he is the deceased's son and judgment grants him the inheritance, then the witnesses later retract, they must compensate the brother for the entire inheritance. If two witnesses give mutually contradictory testimony that cannot both be true, neither testimony is accepted—for example, one set testifies that a man cut off another's right hand in Basra while another set testifies that he cut off the same hand in Kufa.

If one witness testifies that a man loaned another one hundred dirhams and another testifies that the debtor acknowledged owing that amount, the testimony is admissible. Likewise in analogous cases. If two witnesses testify that a man sold his house to another and received the price in full without naming the exact amount, the testimony is admissible. If two witnesses establish a monetary claim and the judge rules accordingly, then the person against whom judgment was rendered claims that the witnesses later retracted and wishes to require them to swear, no oath is imposed upon them. Even if evidence is produced that they retracted, it is not accepted so long as they deny before the judge that they retracted. If a man purchases a house and two witnesses testify that he is entitled to pre-emption, and the judge awards it to him, then they later retract, they owe nothing because their testimony did not itself destroy property.

But if the purchaser had built upon the property and the judge ordered the building demolished as a consequence of their testimony, he may recover from them the value of his building, and the demolished materials belong to the witnesses.

From the same work: If two witnesses testify that a man married a woman for a bridal due of five hundred, which is the customary bridal due for a woman like her, and the husband pays it, then the witnesses retract, they owe nothing and the marriage remains valid.

If the customary bridal due was only one hundred and the husband had denied what they testified, they owe him the excess. If a man claims that he married a woman for one hundred and she says, "Rather, you married me for five hundred," which is her customary bridal due, and the husband produces two witnesses testifying to one hundred, judgment is given accordingly. If he later consummates the marriage and the witnesses retract, they owe the woman four hundred dirhams. If he divorced her before consummation, they owe nothing. If she had denied the marriage altogether, they owe her nothing. If two witnesses testify that a man sold this slave to another for one thousand while the seller denies the sale and the purchaser claims it, and the judge orders the sale and payment of the price, then the witnesses retract, if the slave's value was one thousand they owe nothing. If the slave was worth more, they compensate the purchaser for the excess. The same rule applies to every sale established by their testimony.

From the same work: Likewise if a person hears a man acknowledge a right belonging to another.

From the same work: In all financial matters, the testimony of one witness together with the claimant's oath is admissible, whether the claim concerns cash, goods, animals, a house, or any other property having monetary value.

If a witness testifies in favor of a child, mentally incapacitated person, or person bereft of reason, judgment is suspended. If the child reaches adulthood or the incapacitated person regains reason and swears together with the witness, the right is established. If that person dies before this occurs, the heirs take his place. Whenever an oath becomes necessary, the judge causes the person to swear by God—there is no god but He—who knows of the hidden what He knows of the manifest. If the judge uses a shorter formula, that is sufficient. No oath is by anything other than God, Mighty and Glorious. A Jew is made to swear by God who revealed the Torah to Moses son of ʿImrān and split the sea for the Children of Israel. A Christian swears by God who revealed the Gospel to Jesus son of Mary. A Zoroastrian swears by God who created fire. One witness together with an oath is not sufficient in divorce, marriage, emancipation, agency, *kitāba*, testimony upon testimony, appointment as executor, false accusation, or analogous matters.

If a man produces two women as witnesses to a right, that alone is insufficient.

From the *Mukhtaṣar al-Īḍāḥ*: Testimony based purely on public report (*samāʿ*) is not admissible unless a long period of time has passed.

A period such as five years is not sufficient to permit testimony by public report. He was asked about a man who acknowledged to a group that their father had once lent him money but claimed that he had repaid it. If he alleges that the repayment occurred recently, the claim does not benefit him unless he produces decisive evidence of payment. If a long period has passed, and the acknowledging person swears, his statement is accepted. But if his acknowledgment was merely by way of expressing gratitude, as when a man says, "May God reward so-and-so; once I came to him and he lent me money, and I repaid him," simply recounting another's kindness, no liability arises from such words whether the event was long ago or recent.

Concerning the report, "Whoever possesses something for ten years, it belongs to him," he said: possession does not run against an absent person.

If witnesses testify by public reputation that "so-and-so is the client (*mawlā*) of so-and-so," judgment may be given concerning property, but not concerning the legal relationship of *walāʾ* itself. He also said: the

testimony of two men may be accepted concerning testimony transmitted from a single upright witness on the basis of reliable hearing.

From the Questions Mentioned Above

Question: What does our master, may God perpetuate his support, say concerning a man who gives testimony before a judge regarding one of the rights of God or the rights of people, while the judge knows that he is not among those whose uprightness and probity are established, that he does not pray, and that his character is not praiseworthy but rather the opposite? In times such as these, if his testimony is not accepted in accordance with what is stated in the Sharīʿa, corruption will greatly increase. May our master graciously answer; may we be his ransom.

Answer: There is no harm if the judge says to the defendant, "Do you accept the testimony of this witness?" If he accepts it, it is established; otherwise one follows what is stated in the law.

Question: A man dies leaving his wife pregnant. At the time she gives birth, two upright women are present. One testifies that the child was born moving and alive, while the other testifies that it emerged dead. Which testimony is followed?

Answer: Reliance is placed upon the testimony of the woman who testified that it was alive.

From the answers of our master al-Nuʿmān, may God sanctify his spirit, to the questions of Khaṭṭāb ibn Wasīm:

You asked concerning the testimony of a mute person. His testimony is admissible if he is upright and his gestures are known and understood. Copied from the *Mukhtaṣar al-Īḍāḥ*: As far as I know, the jurists unanimously agree that the testimony of a Muslim man is admissible before the judge when he is knowledgeable, adult, sane, free, able to speak, of known lineage, sighted, and is neither a parent of the person for or against whom he testifies, nor his child, brother, spouse, hired worker, adversary, enemy, agent, partner, nor someone whose testimony brings a benefit to himself; provided also that he is not an adherent of innovation, a poet known for harming people, a drinker of wine, a chess-player so engrossed in it that he neglects prayer until its time passes, one who falsely accuses Muslims of fornication, or one who openly persists in any sin, minor or major. Rather, he must be one who performs the obligatory duties and avoids what is forbidden.

From al-Ṣādiq, peace be upon him: Women's testimony concerning a debt is admissible together with the claimant's oath, and their testimony together with one man is admissible concerning debt and other matters. Muslims should not sleep together under a single covering. If they do, their testimony is not admissible unless each has covered his private parts with trousers; if they sleep under one covering in that manner, their testimony is admissible.

From the answers of our master al-Nuʿmān, may God sanctify his spirit:

You asked about the wording of testimony establishing destitution. The witness should say that he testifies that so-and-so has been stripped of what he formerly owned, or has spent it, or has lost it in some other manner; or he may say that the man is insolvent and possesses no property, and that the witness is among those who know him well and have knowledge of his circumstances. It is not sufficient simply to say, "I know of no property belonging to him," because most people do not know what property many others possess. Rather, he must testify from actual knowledge and familiarity that the person is destitute and insolvent. You asked about transmission of testimony and whether it is sufficient for the transmitting witness merely to say, "I was entrusted with such-and-such testimony," without naming the person who entrusted him with it.

Answer: That is not sufficient.

Transmission of testimony is established only when the original witness has died, or is absent from the judge's locality at a distance of twenty-four miles or more, or is ill and unable to attend the judge's session. In that event two witnesses transmit his testimony, name him, and the judge investigates both the original witness

and the transmitters if he does not already know their probity. If their uprightness is established, he rules upon the testimony in matters in which such testimony is legally sufficient. You asked about the attestation (*tazkiya*) that establishes legal uprightness. Two or more persons qualified to attest character should say that, through association, dealings, acquaintance, and neighborhood, they know so-and-so to be among the people of goodness and know no evil of him. ʿAlī, peace be upon him, was asked about this and said: "Whoever performs the five prayers in a congregational mosque, is known for goodness, and is not known for evil—accept his testimony." You asked about disqualification (*tajrīḥ*).

Evidence of disqualification overrides prior attestation of uprightness. Once a man has been attested as upright, his probity is established. The judge must inform the opposing party of that fact and ask whether he has any objection or proof. If he produces two upright witnesses or more who disqualify the witness and mention misconduct known to them of a kind sufficient to destroy legal probity, his uprightness falls. This is because *tazkiya* establishes a state of probity, whereas disqualification may arise afterward: a man may be righteous and then become corrupt, trustworthy and then betray trust, chaste and then commit fornication. You asked about the testimony of a blind person. His testimony is admissible concerning what he heard if the voice is firmly identified. A person may testify concerning women's speech from behind a curtain. Likewise, people accepted what they transmitted and established from the wives of the Prophet, may God bless him and his family.

If a person witnessed something while sighted and later became blind, he may transmit that testimony if he accurately preserves it. You asked about testimony by those who differ in doctrine, such as followers of Mālik and others counted among the jurists of the generality. The testimony of those regarded as upright according to their own doctrine is admissible. You asked about the testimony of a mute person. His testimony is admissible if he is upright and his signs are known and understood. You asked about testimony among relatives. Relatives may testify for one another if they are upright, whether the relationship is near or remote. A partner may testify for his partner concerning a matter in which they share no partnership and from which his testimony brings him no profit, provided he is upright. He may not testify concerning something in which he himself has a share. You asked about the testimony of a hired worker and dependent.

Their testimony is admissible in matters from which they do not derive personal benefit, which are not part of the work for which they receive wages, and in which they are not suspected of bias. The testimony of a person under suspicion is not admissible. You asked about the testimony of a slave. His testimony is admissible if he is upright, except where it brings a benefit to himself or his master, causes his own emancipation, or is testimony in favor of another slave belonging to his master. In such cases his testimony is not admissible. You asked whether testimony concerning real property may be based upon public report. This is not permissible except in the case of charitable endowments (*aḥbās*); in other cases involving real property, it is not.

Book of Claims and Evidence

From the *Mukhtaṣar al-Muṣannaf*: Anyone who seeks to obtain something not presently in his possession, or seeks release from an obligation already incumbent upon him, is a claimant.

From the *Dhāt al-Bayān*: The distinction between claimant and defendant is that the claimant is the person who seeks by his claim either to obtain something he does not presently possess or to invalidate something already binding upon him.

The defendant is the one from whom something is sought to be taken, or whose established right the claimant seeks to diminish.

From the *Mukhtaṣar al-Īḍāḥ*: The meaning of "it is obligatory upon him" is that he is required to produce it if asked to establish the right he claims; it does not mean that it is already legally binding merely by his assertion.

Likewise, the statement that "the oath is upon the defendant" means that he clears himself by it, not that an oath is automatically imposed upon him in every circumstance.

From the *Mukhtaṣar al-Āthār*: Whoever swears by God should speak truthfully, and whoever is given an oath by God should accept it as truthful. Whoever does not do so is not a Muslim.

From the same work: If the claimant does not swear, he receives nothing until he does.

If the testimony concerns a minor or an absent person, the judge does not award the claimant judgment until the claimant swears together with his evidence.

From the same work: If a man brings a claim against another, the defendant denies it, is required to swear, and does so, but the claimant afterward produces evidence supporting his claim, the evidence is heard and the defendant's earlier oath is disregarded.

From the *Iqtiṣār*: If the claimant does not request the defendant's oath, the latter is not made to swear, except where the claimant is a minor or absent.

[The text apparently intends:] the judge requires the claimant to swear together with his evidence before awarding the right.

From the same work: If the evidence of one party establishes that the original ownership of the property was his, or that it was born or produced in his possession, while the opposing party's evidence merely establishes present ownership without proving the origin, judgment goes to the party whose evidence establishes the original title.

From the *Mukhtaṣar al-Īḍāḥ*: A man's right may cease in ways of which the witnesses are unaware.

From the same work: The statement in this chapter that no oath is imposed upon one who has produced evidence means that he does not also have to swear that the defendant owes him precisely what the evidence has established.

Such an oath becomes necessary only where he has a single witness. Ordinarily, the claimant's duty is to produce evidence; once he brings full evidence, nothing else is required. But requiring him to swear that nothing of the established right has subsequently been discharged is a different matter. The evidence may have established the right, while afterward the claimant may have received payment, granted release, or the right may have fallen away in some other manner unknown to the defendant and witnesses. Accordingly, he may be required to swear that he received nothing, granted no release, and that the right was not discharged in any way. If the evidence establishes for the claimant a right of which he himself has no direct knowledge—for example, property formerly belonging to his father or another relative—then he is not required to swear positively that nothing of it has been discharged after it became due, because he lacks knowledge of that. Were he to swear positively to something beyond his knowledge, he would lie.

No one is made to swear except concerning what he knows.

From the *Mukhtaṣar al-Muṣannaf*: If a house is in one man's possession and another produces evidence that he purchased it from the possessor for one hundred dinars and paid the price, while the possessor produces evidence that he purchased it from the claimant for fifty dinars and paid the price, then if neither set of witnesses assigns a date, the house remains with the person presently possessing it.

If the witnesses assign dates and the claimant's purchase occurred first, judgment likewise goes to the current possessor and the claimant's claim fails. If the current possessor's purchase occurred first, judgment goes to the person claiming the later purchase, because the later sale supersedes the earlier one. If a house is in one man's possession and another produces evidence that he bought it from a certain person for a specified price and paid it, the house is not removed from the possessor until the witnesses also testify that the seller owned the house at the time of sale. Once they establish that, the claim is valid. If after judgment in favor of the purchaser the seller denies having sold it, the purchaser is not required to reproduce his evidence; the prior judgment stands.

From the *Mukhtaṣar al-Āthār*: If two or more men have intercourse with the same woman during one period of purity—whether they are free, slaves, or polytheists—and she becomes pregnant, and each claims the child, lots are drawn among them.

The child is attributed to whoever receives the lot. If the lot falls to a polytheist while the mother is Muslim, the child is Muslim and the polytheist has no authority over the Muslim woman. If the mother is a polytheist and the lot falls to the polytheist, the child follows her religion. If the lot falls to a Muslim or slave, the child is free and Muslim.

From the *Mukhtaṣar al-Īḍāḥ*: Lots are drawn concerning a child only where the intercourse took place through marriage or ownership.

A man who merely claims the child of a woman over whom he had no lawful sexual access is not believed, because the Prophet, may God bless him and his family, said: "The child belongs to the marital bed, and the fornicator gets the stone."

From the same work: He then said, "You are quarrelsome partners, and I shall draw lots among you. Whoever receives the lot gets the child, but owes his two companions two-thirds of the blood-money."

From the *Mukhtaṣar al-Muṣannaf*: If a house is jointly possessed by three men, and one claims the whole, another one-half, and the third two-thirds, but none has evidence, then each initially possesses one-third.

They swear against one another concerning the portions each claims. If the other two refuse to swear against the claimant to the whole, the entire house goes to him. If they refuse the oath against the claimant to two-thirds while swearing against the claimant to the whole and the claimant to one-half, the claimant to two-thirds keeps the one-third already in his possession and receives from each of the other two one-sixth of the entire house. If they refuse the oath against the claimant to one-half while the other two swear, the claimant to one-half keeps the one-third in his possession and additionally receives from each of the other two one-half of one-sixth of the whole house. If the claimant to the whole refuses the oath against the claimant to one-half, the latter retains his one-third and receives one-half of one-sixth of the whole house from the share in the claimant to the whole's possession. Judgment among them proceeds analogously in the remaining permutations.

From another source: If a slave is in one man's possession and another produces evidence merely that "this slave was in my possession yesterday," the slave is not removed from the current possessor. The witnesses must testify to something establishing the first man's ownership, such as that the current possessor usurped him, received him as a deposit, found him after he ran away from his master, or another circumstance definitively establishing that the slave belongs to the first claimant. Then the testimony is accepted and the slave awarded to him. If a child is in one man's possession and another establishes by evidence that the child is his son by a specified woman and that both parents are free, while the possessor produces evidence that the child is his free son but does not identify a mother, judgment goes to the first claimant because lineage has been established through the mother.

If a child is jointly in the possession of a man and woman, the man claiming that the child is his by another woman and the woman claiming that the child is hers by another husband, and each produces evidence, the child is deemed the child of those two possessors together rather than of the absent parents each named. If a slave is in one man's possession, and another establishes by evidence that the slave was born in his ownership and that he emancipated him, while the current possessor establishes that the slave was born in his ownership, judgment goes to the claimant establishing emancipation. If one man claims that a boy is his son and another claims that the same boy is his slave, and each proves his claim, the child may legally be both the first man's son and the second man's slave, because that combination is not impossible—unless the claimant of paternity proves that the child was born to him by a free woman, in which case the child is free and no one has a claim of slavery over him.

From the *Mukhtaṣar al-Muṣannaf*: If a slave-woman claims that her master caused her to bear a child, while he denies it and she wishes to put him under oath, he is not required to swear.

If a male slave claims against his master that the master emancipated him or concluded a *kitāba* contract with him, and the master denies it, the slave may require him to swear. If a man owns a slave-woman and she becomes pregnant while he acknowledges having intercourse with her during the period of purity in which conception occurred, but he denies the child and claims that he practiced withdrawal, the child is nevertheless legally his. If he claims that before selling her he had established *istibrāʾ*, that she menstruated once, and that he did not approach her afterward, his statement is accepted without oath. If a man finds an abandoned child and then claims that the child is his slave, his claim is not accepted without evidence. If instead he claims the child as his son and the child has no known lineage, the child is attributed to him.

If a man purchases his own enslaved wife and she gives birth less than six months after he acquired her, and he denies the child, the child is nevertheless attributed to him through the former marriage. If she gives birth six months or more after purchase, he may deny the child. She then has the status of an *umm walad* if he acknowledges the child; if he does not, he may deny it. If he emancipates her after purchasing her and she gives birth within six months from the date of purchase, the child is attributed to him.

From the same work: If a man owned a slave while healthy and, during the illness from which he dies, acknowledges that the slave is his son, provided the slave has no known lineage and is of an age at which he could reasonably be the man's child, he inherits from him and does not have to work off any part of his value, even if the deceased's debts consume the estate, because he had owned him during health.

The same applies where a slave-woman in his possession bore a child while he was healthy and he acknowledged during his final illness that the child was his. Likewise if the birth originally occurred outside his ownership. But if he acquired ownership of the person only during the illness and then acknowledged him as his son, whether the acknowledgment was made after or before acquisition, and the deceased owns nothing else, the lineage is established but the son must work off two-thirds of his value for the heirs. If the deceased's debts consume his value, he must work off his entire value for the creditors.

If a man, while healthy, acknowledges that a boy in his possession is his son by his slave-woman so-and-so and was born on his marital bed, and the man later dies, but his adult children claim that their father had married that slave-woman to his own slave before she gave birth and that the boy was born on the slave's marital bed, while the boy and slave-woman deny this, the adult children's evidence is not accepted and the boy remains the deceased's son. But if the slave himself makes that claim and proves the marriage by evidence, the boy's lineage is attributed to the slave because he was then the possessor of the marital bed. The boy and his mother are nevertheless free by virtue of the master's acknowledgment. If that acknowledgment occurred during the master's final illness, their emancipation comes from the one-third.

If a slave produces evidence that a certain man emancipated him while that man denies it or acknowledges it, and another man produces evidence that the slave belongs to him, judgment goes to the man who establishes ownership—unless the first witnesses testify that the man emancipated the slave while he legally owned him, in which case the evidence of emancipation prevails.

From the *Iqtiṣār*: If a man sends dirhams through another person to a third man, and the messenger says, "I delivered them," while the intended recipient denies receiving them, the messenger's statement is not accepted without evidence.

But if the sender had instructed him, "Give them in charity," and the messenger says, "I have given them in charity," his statement is accepted with his oath if suspicion arises.

From the *Mukhtaṣar al-Muṣannaf*: If a manufactured garment is in one man's possession and another produces evidence that he wove it with his own hands, judgment does not go to him unless the witnesses testify that it belongs to him.

If a garment dyed with saffron is in one man's possession and two witnesses testify that the saffron used in the garment belonged to another person and was used to dye that garment, but they do not know who performed the dyeing, while the garment's owner denies the claimant's allegation that he himself did it, the

claimant is not believed merely on that assertion. Instead, the garment is valued while white and again while dyed. The owner of the garment must pay the owner of the saffron the increase in value produced by the dye. If he refuses, the saffron owner becomes a partner in the garment to the extent of that increase. If the garment owner refuses to make payment, the garment is sold and the price divided between them: the garment owner receives the value of the white garment and the saffron owner the amount by which the dye increased its value.

From the *Sharḥ al-Akhbār*: Two men disputed before ʿAlī, peace be upon him, concerning a garment.

One said, “It is my garment,” and produced evidence. The other said, “It is my garment; I purchased it in the market from a man I do not know.” ʿAlī awarded the garment to the one who produced evidence and told the other: “Seek out the seller from whom you bought it.”

Book of Judges

Concerning the Etiquette of Judges

From the *Ikhtiṣār*: The statement “that some of you should litigate against others before the people of injustice” means those who oppose you in your religious authority.

From the *Dhāt al-Bayān*: Some ignorant judges and officials write in their judicial records, after mentioning the claimant and his claim, “I ordered him to produce evidence for what he alleged.”

This wording is erroneous, because the judge’s command is itself a ruling, and he should command only what is legally obligatory and binding. Likewise, judges sometimes say to the claimant in court, once the defendant denies the claim: “Produce your evidence.” This too is improper. Rather, he should ask: “Do you possess evidence for your claim?” If the claimant says yes, he may be told: “Produce it if you wish,” or the claimant himself may say, “I will produce evidence,” and permission is given. In the written record and judgment one should state: “I asked him whether he had evidence,” not “I ordered him.”

From the *Iqtiṣār*: A treacherous or bribed judge is to be dismissed in the most disgraceful manner.

Such judges must reimburse whatever of people’s property they wrongfully acquired, and likewise whatever they wrongfully awarded by judgment; there is no further disputation over this.

From the *Mukhtaṣar al-Muṣannaf*: [Prisoners] are brought out at appropriate times, and no one should prevent people from bringing them food or drink.

From the same work: A judge should not prompt one litigant with a legal argument.

He should not sit for judgment until he has eaten and drunk and removed from himself the distractions caused by hunger and thirst. Whenever he senses that he has departed from a state of equilibrium, he should rise from the judicial session and wait until that condition passes.

From the *Yanbūʿ*: If one litigant submits to the judge a written document containing an acknowledgment, the judge may not rule upon the acknowledgment merely from the writing.

He must ask the litigant, “Did you write this and acknowledge what it contains?” If he says yes, the judge may then rule upon what the document contains.

From the *Mukhtaṣar al-Muṣannaf*: It is preferable for a judge to sit in the mosque, though there is no harm in judging in his own house.

He should not render judgment while walking or riding. He should attend marriages, funerals, visit the sick, and attend general invitations, but it is not recommended that he attend private invitations. There is no harm in bringing witnesses before him together or individually according to what he considers appropriate. If a case arouses suspicion, he may separate the witnesses. If they differ in a way that invalidates their testimony, he rejects it. If their differences do not invalidate it, he accepts it and does not reject testimony merely on

suspicion or conjecture. If the judge asks the witnesses about something and one gives his testimony, it is not sufficient for the other merely to say, “I testify likewise.” Each must state explicitly what he testifies to. If a witness gives testimony in brief or abbreviated wording that is susceptible to more than one meaning, the judge should not accept it until he asks for a full explanation.

If the explanation establishes what is necessary for judgment, he accepts it; otherwise he suspends the testimony. If one witness speaks a foreign language, two men or one man and two women interpret for him. This is treated like testimony upon testimony. [The wording that follows is defective in the copy, apparently stating that an unreliable translation is not admissible.] The judge should employ as his clerk a person of legal probity, not a protected non-Muslim or someone under suspicion. It is not recommended that the judge purchase property belonging to orphans or engage in buying or selling with their trustees.

From the same work: Any judgment the judge intentionally renders contrary to right, or any error for which he himself is responsible, is compensated from his own property.

If he claims that he enforced the judgment upon the testimony of witnesses, the witnesses are questioned. If they acknowledge their testimony, liability falls upon them. If they deny it but the judge says the witnesses have since died, the judge is treated as trustworthy and the Imam may require him to swear if he wishes. When a judge rules upon valid evidence, he bears no liability; responsibility rests upon the witnesses. But if he executes judgment on the testimony of someone whose testimony is legally inadmissible, the error is attributed to the judge. If a written judicial judgment reaches another judge only after the judge who wrote it has died or been dismissed, the receiving judge does not act upon it. If the judge hopes the litigants may reach reconciliation, he may postpone judgment, and there is no harm in referring them to upright Muslims for mediation.

If the judge orders his trustee to deliver property and the trustee says, “I delivered it,” while the intended recipient denies receiving it, the trustee is believed for purposes of clearing himself from liability but not for establishing receipt against the recipient. It is recommended for a judge to explain himself to the party against whom he rules and clarify the basis of the right. There is no harm in giving precedence in audience to a person of rank or authority, one closely related to the Imam, or someone holding a place of proximity to him.

From the *Iqtiṣār*: A judge should possess dignity, deliberation, and careful judgment regarding the character of those whom he employs and brings near.

He should refrain from mixing excessively with common market people and from personally buying and selling. He should entrust such dealings to someone whose religion and trustworthiness he trusts, while warning him neither to exploit anyone on his behalf nor to allow others to exploit him.

From the same work: Judicial rulings made by rebellious authorities during their period of control according to their own doctrines are not reopened merely because they differ from the rightful judge’s doctrine.

A judge should not render judgment until he has fully examined the arguments available to the party against whom judgment would be entered.

From the same work: A light whip or switch is used in punishment for false accusation, *taʿzīr*, and ordinary discipline, while established prescribed punishments are carried out with the whip.

From the *Ikhtiṣār al-Āthār*: The judgment of an upright judge is enforced.

A letter from another judge is not accepted unless trustworthy persons attest it. Testimony recorded in the register of a preceding judge is not sufficient by itself for a new judgment. If the defendant denies the recorded testimony, he is required to swear if the claimant requests it. If he swears that such testimony was never properly established against him, the claimant is asked to produce the witnesses anew.

From the *Mukhtaṣar al-Muṣannaf*: If a claimant says that he has witnesses presently available against a denying defendant and asks that the defendant be imprisoned or compelled to provide security until the witnesses appear, he has no right to demand this.

He may, however, remain physically in attendance upon him while asserting that his evidence is present.

From the same work: A judge does not act upon a letter from the judge of a village or rural district, but only upon a letter from the judge of a major town.

A judge is believed when he states that the person against whom he ruled confessed before him or that evidence was established before him and he gave judgment accordingly. Prescribed punishments, however, may be carried out only upon witnesses to the act itself or to the confession. If the judge is later removed from office and the person against whom he had ruled follows him and challenges the judgment, the former judge's statement that he had lawfully ruled against him is accepted. A judge should order his assistants to deal gently with people and refrain from rebuking them harshly.

From the *Iqtiṣār*: The judgments of the preceding judge are enforced.

A letter from a judge is not accepted unless trustworthy witnesses attest it. Evidence merely found recorded in the preceding judge's register is not sufficient to enforce judgment. If the opposing party denies the testimony, he is put under oath; if he swears that it was not duly established against him, the claimant is required to produce the evidence anew.

Chapter of Miscellaneous Questions

Question: What do you say, O you whom God Most High has made a secure sanctuary for those who obey Him while people around him are snatched away, concerning a book belonging to the writings of the People of the House, peace be upon them, which is in the possession of someone from the generality? If one is able to take it without his permission, is that permissible?

Answer: The generality possess no right in it. If it is one of the books of the esoteric truths (*ḥaqāʾiq*), it belongs to the *daʿwa*, provided no other right is attached to it.

Question: What do you say concerning parrots and other predatory birds and animals which a person purchases and confines in a cage or elsewhere, feeds, teaches portions of the Qurʾān or other good speech and proper conduct, and disciplines by striking or rebuke? Is anything incumbent upon him?

Answer: There is no harm in that and nothing is incumbent upon him.

Question: What do you say concerning the Prophet's saying, may God bless him and his family, "Whoever casts off the cloak of modesty has no protection from backbiting," and his saying, "There is no backbiting concerning a *fāsiq*," and similar reports?

What is the definition of the *fāsiq* with respect to whom the backbiter incurs no liability? And what exactly is backbiting? Does one sin by backbiting people who are not members of the *daʿwa*?

Answer: A Muslim should not be spoken of behind his back with something untrue of him or something he would dislike.

As for the *fāsiq*, he is one who departs from the sanctity of the *daʿwa* through his actions, not merely through his words.

Question: What do you say concerning what occurs in the *Daʿāʾim*, that the ignorant blindly followed their leaders without proof from the Book, Sunna, or any consensus transmitted from the Imams and the *umma*?

O our master, may God make us your ransom, what is meant here by "the *umma*" and their consensus?

Answer: The meaning is that their imitation of their leaders is not something upon which the Imams and the totality of Muslims together agreed.

Question: What do you say concerning the report in the *Daʿāʾim* that a group claimed that the women whom God Most High prohibited in marriage were intended to mean only "the women of the Prophet," while all others were permissible?

O our master, did they mean by “the women of the Prophet” his wives, his mothers, paternal and maternal aunts, and other female relatives, or only his wives?

Answer: They meant only the wives of the Prophet, may God bless him and his family.

Question: What do you say concerning the custom of some people who place a weapon beside a deceased person when the corpse remains overnight in the house, while others consider sitting beside the corpse throughout the night an obligatory requirement? How is this, O our master, may God make us your ransom? Graciously grant us an answer that brings healing to us and all believers.

Answer: No reliance is to be placed upon anything of this sort.

Question: What do you say concerning sweeping houses? Most people of India absolutely refuse to sweep them at night and consider doing so improper. Likewise, they do not sweep shops and market stalls either at night or sometimes by day. What is the ruling?

Answer: No reliance is to be placed upon this, and there is no blame upon one who does it.

Question: What do you say concerning the statement in the sixth session of the *Majālis al-Muʾminīn*: “The intelligent person is not the one who distinguishes good from evil; rather, the intelligent person is the one who recognizes the better of two evils”?

O our master, what is meant by “the better of two evils”?

Answer: This is among the proverbial expressions of the Arabs.

The meaning is that one evil may be less harmful than another, and the intelligent person is the one who distinguishes between them. Similar is their saying: “Even among evils there is a choice.”

Question: What do you say concerning the Prophet’s saying, may God bless him and his family: “Whoever looks into his brother’s book without permission is as though he were looking into the Fire”?

O our master, students at a school gather together and look through one another’s books without asking permission. What is meant by this report?

Answer: This concerns books of the esoteric truths (*kutub al-ḥaqīqa*): no one may look into them except with permission from the person authorized to grant access.

As for other books, seeking permission is a matter of etiquette and not a binding requirement.

Question: What do you say concerning the saying, “Utterly wretched is the one whom the Hour overtakes while still alive and who has not died”?

Is the meaning that the most wretched person is the one upon whom death comes while he still remains in sensory, animal life and has not passed into angelic life, or is something else intended?

Answer: The intended meaning is that the Hour reaches him while he remains in the state of the beast.

Question: What do you say, O our master, O illuminator of the truths for those worthy of them, concerning the fact that our master Ḥamīd al-Dīn, may God sanctify his spirit, demonstrated in the *Tanbīh al-Hādī wa-l-Mustahdī* the corruption of the doctrines of Abū Ḥanīfa, al-Shāfiʿī, and other innovated schools by decisive proofs?

Likewise our master al-Nuʿmān, may God sanctify his spirit, did so in the *Daʿāʾim*. And the most illustrious, accomplished, and discerning chief missionary, our master Idrīs ibn al-Ḥasan, may God exalt his sanctity, says in the *Zahr al-Maʿānī* that al-Ṣādiq, blessings upon him, had granted al-Shāfiʿī authorization secretly. O our master, did al-Shāfiʿī’s condition later change, as did the conditions of al-Mughīra, Abū al-Khaṭṭāb, and others like them? Or did the ignorant fabricate the attribution of a school to him, just as a sect claimed the Imamate for Muḥammad ibn al-Ḥanafiyya and ʿAbd Allāh ibn Muʿāwiya even though those two never claimed it for themselves? Kindly provide a concise answer sufficient for those possessing insight in religion.

Answer: Yes. Permission had been granted to him only because he acknowledged the excellence of the People of the House, peace be upon them, and for no other reason.

From the *ʿUyūn al-Akhbār*: Mālik ibn Anas, Abū Ḥanīfa al-Nuʿmān ibn Thābit, and Muḥammad ibn Idrīs al-Shāfiʿī were contemporaries of al-Ṣādiq, peace be upon him, and they became leaders of those opposing the Shiʿa.

Al-Shāfiʿī was among those who transmitted from Mālik, yet later objected to him and said: "It was not lawful for Mālik to issue legal opinions."

Question: Concerning the saying, peace be upon him, "Two goats would not butt heads over it": in ordinary experience goats butt each other in this world with their horns very fiercely. What is intended?

Answer: He intended it figuratively.

It means that the matter has passed away, become void, and has no one to pursue it. It is also said that ʿAṣmāʾ bint Marwān, from Banū Umayya ibn Zayd, used to incite against the Muslims, harm them, and compose poetry against them. ʿUmayr ibn ʿAdī vowed that if God returned His Messenger safely from Badr, he would kill her. It is said that ʿUmayr went to her in the middle of the night and killed her. He then joined the Prophet, may God bless him and his family, and prayed the dawn prayer with him. The Prophet asked ʿUmayr: "Did you kill ʿAṣmāʾ?" He replied: "Yes, O Messenger of God. Is there any liability upon me for killing her?" He said: "No two goats will butt heads over her"—that is, her blood is unclaimed. The expression then became proverbial among the Arabs.

A Concluding Chapter on Miscellaneous Proverbs

Know, O brother—may God grant you success in what is right—that you asked about the meanings of certain proverbs commonly current among people. Among them is the saying of the Prophet, may God bless him and his family:

> **"Test [people] and you will hate them"** (*ikhbur taqlahu*).

Ikhbur is an imperative derived from "experience" or "testing": that is, if you come to know people through experience, you may come to dislike them. The *hāʾ* in *taqlahu* is an added letter, comparable to certain colloquial imperative formations. His saying:

> **"Do not be as though dead while alive"** means: do not behave hypocritically or make a display of false mortification.

His saying:

> **"Some eloquence is sorcery"** means that an eloquent speaker may accomplish through subtle verbal skill what a sorcerer accomplishes through the subtlety of his devices.

His saying:

> **"Some poetry is wisdom"** means that poetry should not simply be passed over heedlessly, for some sages deposited profound wisdom in their poetry.

Here *ḥukm* and *ḥikma* carry the same sense. His saying:

> **"Some knowledge is ignorance"** means that when a scholar forces himself to speak about what he does not know, he brings ignorance upon himself and upon those who learn from him.

Therefore, when asked about something he does not know, he should say: "I do not know." His saying:

> **"Some speech is a burden"** means that presenting discourse to someone unworthy of it becomes burdensome upon him and impoverishes the speaker—that is, carries away what he possesses.

His saying:

“In indirect expressions there is an escape from lying” means that by speaking allusively and intending something other than what the listener assumes, one can avoid a direct lie.

His saying:

“Beware of the green growth upon dung-heaps” refers to vegetation that grows upon manure: its outward appearance is attractive while there is no goodness at its root.

It is a proverb for a beautiful woman raised in an evil environment. His saying:

“This religion is firm, so enter deeply into it gently, for the exhausted rider neither crosses the land nor preserves his mount” means: enter religion stage by stage.

Do not burden yourself all at once with the full weight of supererogatory acts so that you become repelled from them. Such a person resembles one whose mount has been exhausted: he neither traverses the land nor preserves the animal beneath him. His saying:

“When the sandals become wet, prayer is upon the mounts” means: if the ground is soaked and you cannot find a suitable place to pray, pray upon your camel’s saddle or riding equipment.

His saying:

“War is deception” means: if you cannot overcome your enemy by endurance and strength, deceive him and use stratagem.

The Arabs’ saying:

“May God destroy their greenness” or **“their luxuriance”** means: may God destroy the best or greatest part of them.

Their saying to a newly married man:

“With harmony and sons” means: may God unite you in concord and provide you with sons.

Their saying:

“The concealment has departed” means: the secret has disappeared and the veil has been removed.

Their expression:

“The white and illustrious hand” means a manifest and renowned favor.

Their expression [in amazement], **“May God requite them!”** means: may God recompense them. In a curse, **“May God fight them!”** means: may God curse and disgrace them. Their saying:

“He came down upon him with the sword and switch” means that he struck him with them.

Their saying:

“Give me Zayd!” means: hand Zayd over to me.

Their saying:

“From his right” means: from the direction of his right side, since *ʿan* in this construction may function as a noun governed by a preposition.

Their saying:

“This is below that” means: this is nearer than that.

One may likewise say in consolation, *dūnaka*. Their word **ẓāli**ʿ, with *ẓāʾ*, not **ḍāli**ʿ with *ḍād*, means someone who limps or presses unevenly in his gait, rather than someone congenitally misshapen. Their expression in praise:

“To God belongs his abundance!” means: may God increase what he receives.

When cursing someone they say:

“May his abundance not abound,” meaning: may his good not increase.

Their saying:

“To God belongs your excellence as a man!” uses the following noun as an explanatory specification of the pronoun in the expression.

Their saying:

“Give the bow to the one who fashioned it” means: seek assistance in a task from someone who knows how to perform it well.

Their saying:

“If you cannot overcome, use charm” means: if you cannot obtain what you need through force and domination, seek it through gentleness and tact.

The root meaning of *khilāba* is deception. Their saying:

“Cast your bucket among the buckets” is an exhortation to work for one’s livelihood and abandon idleness.

Their saying:

“Are you against us or with the army?” means: are you against us or on our side?

Their saying:

“One-eyed man, your eye—and the stone!” means: O one-eyed man, beware for your eye because of the stone.

It is proverbial for someone who persists in exposing himself to harm: just as a one-eyed person has greater reason than others to protect his remaining eye, so you have greater reason to reconsider your behavior when destruction is near. Its origin is that a man saw a crow upon his camel and picked up a stone, but feared that throwing it might strike the camel. So he kept gesturing toward the crow with the stone and saying, “One-eyed one, your eye—and the stone!” The crow was called “one-eyed” figuratively because of the sharpness of its sight. Their saying:

“Be content with clinging on when you cannot ride” is an exhortation to contentment.

Their saying:

“Follow the horse with its bridle” is a proverb for a person who accomplishes the main part of a task but fails to complete it.

Their saying:

“Your bucket has become entangled with another bucket” means: an obstacle has arisen in your affair.

Their saying:

“Will you still travel today when noon has already passed?” contains an ellipsis comparable to the Qurʾānic expression “Every soul shall taste death.”

Its meaning is: do you still intend to travel today although the proper time for departure has passed? It is a proverb for a need whose attainment has become hopeless: do you still hope for it after the grounds for despair have already become apparent? Their saying:

“Rotten dates—and short measure too?” is a proverb for combining two kinds of loss against a person: giving him inferior fruit and also cheating him in the measure.

Their saying:

"Jealousy and cowardice together?" is a proverb for a man in whom two faults are combined.

Its origin is that a man held back from battle while his people fought. Then he saw his wife watching the fighting and struck her. She said this to him, meaning: "Do you combine jealousy with cowardice?" Thus she condemned his jealousy in that situation, even though jealousy concerning what is forbidden is ordinarily among the praiseworthy qualities of men. Their saying:

"Give the slave a shank and he asks for a forearm" is a proverb for a greedy man who is given something, takes it, and then asks for more.

Their saying:

"If one donkey dies, another is at the tether" is used for something whose loss is treated lightly.

ʿAyr means a male donkey, the female being *ʿayra*, and *ribāṭ* is the rope with which an animal is tethered. Their saying:

"Go gently upon your limp," or **"Measure according to your span,"** is said to someone who exceeds his proper limits in an affair.

Their saying:

"His backside is narrower than that" is proverbial for someone to whom a great affair is attributed though his capacity does not reach it.

Their saying:

"A woman's backside has greater right to the brazier" is attributed to al-Aḥnaf ibn Qays.

His wife brought him a brazier and said, "Perfume yourself with incense." He replied: "A woman's backside has greater right to the brazier." Their saying:

"When you scratch a sore, you make it bleed" is a proverb for one who is accurate in his suspicions: when he suspects something, it is as though he has already seen it.

I have thus explained to you the meanings of these few proverbs. The proverbs of the Arabs are many. Take what you have been given, be among the grateful, and praise God and the one through whom this favor has reached you, so that you may prosper with those who prosper. God is sufficient for us, and He is the best disposer of affairs.

From the *Mukhtaṣar al-Āthār*: He said:

"Do not make me like the rider's drinking cup. He fills his cup and sets it aside; once he has finished with his equipment and needs, if he still needs a drink he drinks, and if he needs water for ablution he uses it, but otherwise he pours it away.

Place me at the beginning of your supplication, in the middle of your supplication, and at the end of your supplication." That is, may God bless him and his family: blessings upon him and his family should not be confined merely to the end of a supplication, but should occur at its beginning, middle, and end. The copying of this book onto the computer was completed on the seventeenth day of Jumādā II—15 August 2004—praise be to God Most High, through His favor and by the blessing of the supplication of our master and lord Abī al-Qāʾid Jawhar Muḥammad Burhān al-Dīn, the gracious, beneficent, and bountiful master—may God prolong his noble life until the Day of Judgment.