

# Reliance of the Traveller and Tools for the Worshipper.

A CLASSIC MANUAL OF ISLAMIC SACRED LAW BY AHMAD IBN  
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## BOOK A

### SACRED KNOWLEDGE

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## **a1.0 THE KNOWLEDGE OF GOOD AND BAD**

**a1.1 (Abd al-Wahhab Khallaf:) There is no disagreement among the scholars of the Muslims that the source of legal rulings for all the acts of those who are morally responsible is Allah Most Glorious.**

**1.2 The question arises. Is it possible for the mind alone, unaided by Allah's messengers and revealed scriptures, to know rulings, such that someone not reached by a prophet's invitation would be able through his own reason to know Allah's rule concerning his actions? Or is this impossible?**

**a1.3 The position of the Asharis, the followers of Abul Hasan Ash'ari, is that the mind is unable to know the rule of Allah about the acts of those morally responsible except by means of His messengers and inspired books. For minds are in obvious disagreement about acts. Some minds find certain acts good, others find them bad. Moreover, one person can be of two minds about one and the same action. Caprice often wins out over the intellect, and considering something good or bad comes to be based on mere whim. So it cannot be said that an act which the mind deems good is therefore good in the eyes of Allah, its performance called for and its doer rewarded by Allah; or that whatever the mind feels to be bad is thus bad in the eyes of Allah, its nonperformance called for and its doer punished by Allah.**

**a1.4 The basic premise of this school of thought is that the good of the acts of those morally responsible is what the Lawgiver (syn. Allah or His messenger (Allah bless him and give him peace) has indicated is good by permitting it or asking it be done. And the bad is what the Lawgiver has indicated is bad by asking it not be done. The good is not what reason considers good, nor the bad what reason considers bad. The measure of good and bad, according to this school of thought, is the sacred Law not reason (dis:W3).**

**a1.5 According to this school, a person is not morally obligated by Allah to do or refrain from anything unless the invitation of a prophet and what Allah has legislated have reached him (n:w4 discusses Islam's relation to previous prophets' laws). No one is rewarded for doing something or punished for refraining from or doing something until he knows by means of Allah's messengers. What he is obliged to do or obliged to refrain from. So whoever lives in such complete isolation that the summons of a prophet and his Sacred Law do not reach him is not morally responsible to Allah for anything and deserves neither reward nor punishment. And those who lived in one of the intervals after the death of a prophet and before a new one had been sent were not responsible for anything and deserve neither reward nor punishment. This view is confirmed by the word of Allah Most High.**

**"We do not punish until we send a messenger" (Koran 17:15). (.Ilm usul al-fiqh (y71) 96-98)**

## **a2.1 THE SUPERIORITY OF SACRED KNOWLEDGE OVER DEVOTIONS**

**a2.1 (Nawawi:) Allah most High says:**

**(1) "Say, Are those who know and those who do not know equal?" (Koran 39:9).**

**(2) "Only the knowledgeable of His slaves fear Allah" (Koran 35:28).**

(3) "Allah raises those of you who believe and those who have been given knowledge whole degrees" (Koran 58:11).

a2.2 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever Allah wishes well, He gives knowledge of religion."

(2) "The superiority of the learned Muslim over the devotee is as my superiority over the least of you."

Then the Prophet (Allah bless him and give him peace) said,

"Allah and His angels, the inhabitants of the heavens and the earth, the very ant in its anthill and the fish bless those who teach people what is good."

(3) "When a human being dies his work comes to an end except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him."

(4) "A single learned Muslim is harder on the Devil than a thousand worshippers."

(5) "Whoever travels a path seeking knowledge Allah makes easy for him a path to paradise."

"Angels lower their wings for the seeker of knowledge out of pleasure in what he seeks."

"Those in the heavens and the earth, and the very fish in the water ask Allah to forgive the person endowed with Sacred Knowledge."

"The superiority of the learned Muslim over the devotee is like the devotee is like the superiority of the moon over all the stars."

"The learned are the heirs of the prophets. The prophets have not bequeathed dinar nor dirham, but have only left Sacred Knowledge, and whoever takes it has taken an enormous share."

(6) "He who calls others to guidance shall receive the like of the reward of those who follow him without this diminishing their own reward in the slightest. And he who calls others to misguidance shall bear the like of the sins of those who follow him without this diminishing their own sins."

(7) "He who goes forth to seek Sacred Knowledge is in the way of Allah [syn jihad def:09] until he returns."

(8) "This world and what is in it are accursed [dis: w5] except for the remembrance of Allah, that which Allah loves, someone with Sacred Knowledge or someone learning it."

a2.3 'Ali ibn Abi Talib (Allah be well pleased with him) said,

"The religious scholar is greater in reward than the fighter in the way of Allah who fasts the day and prays the night."

a2.4 Abu Darda' (Allah be well pleased with him) said,

"Teaching Sacred Knowledge for a brief time is better than spending a night in prayer."

a2.5 Yahya ibn Abi Kathir said,

"Studying Sacred Knowledge is a prayer."

a2.6 Sufyan al-Thawri and Shafi'i said,

"There is nothing after what is obligatory that is superior to seeking Sacred Knowledge."

a2.7 (Nawawi:) There are similar statements from whole groups of early Muslims I have not mentioned that are like those I have quoted, the upshot of which is that they concur that devoting one's time to Sacred Knowledge is better than devoting it to voluntary fasting or prayer, better than saying "Subhan Allah" (lit. "Exalted is Allah above any limitation"), or other supererogatory devotions.

Among the proofs for this, besides the foregoing, is that:

(1) the benefit of Sacred Knowledge affects both its possessor and the Muslims, while the above mentioned supererogatory works are confined to oneself;

(2) Sacred Knowledge validates, so other acts of worship require it, though not vice versa;

(3) scholars are the heirs of the prophets, while devotees are not characterized as such;

(4) the devotee follows the scholar, being led by and imitating him in worship and other acts, obeying him being obligatory and not the other way around;

(5) the benefit and effect of Sacred Knowledge remain after its possessor departs, while supererogatory works cease with the death of their doer;

(6) knowledge is an attribute of Allah Most High;

(7) Sacred Knowledge, meaning the knowledge we are discussing, is a communal obligation (def: c3.2), and it is thus better than the supererogatory. The Imam of the Two Sanctuaries

(A: Juwayni) says in his book alGhiyathi that "the communal obligation is superior to the personal obligation in that the person performing it fulfills the need of the Islamic Nation (Umma) and lifts the obligation from it, while the obligation of the individual is restricted to himself." And success is through

Allah (alMajmu' (y108), 1.18-22).

### a3.0 THE BLAMEWORTHINESS OF SEEKING SACRED KNOWLEDGE FOR OTHER THAN ALLAH

a3.1 (Nawawi:) Know that what we have mentioned about the merit of seeking Sacred Knowledge only applies to the seeker who thereby intends Allah Himself, not some end concerned with this world. Whoever seeks it for a worldly aim such as money, leadership, rank, prestige, fame, people inclining towards him, defeating opponents in debate, or similar motive, is blameworthy. (A When the basic reason is Allah but other motives play a role, they diminish the merit in the proportion that they enter into it.)

a3.2 Allah Most High says:

(1) "Whoever wants to cultivate the afterlife We shall increase for him his village, while whoever wants to cultivate this world, we shall give him of it, but he will have no share in the next (Koran 42:20).

(2) "Whoever wants the present world We hasten for him therein whatever We will, for whomever We want, and then consign him to hell, roasting in it condemned and rejected". (Koran 17:18).

(3) "Verily, your Lord is ready at ambush" (Koran 89:14).

(4) "They were not ordered except to worship Allah, making their religion sincere unto Him as pure monotheists" (Koran 98:5).

a3.3 The Prophet (Allah bless him and give him peace) said:

(1) "The first person judged on Resurrection Day will be a man martyred in battle.

"He'll be brought forth, Allah will reacquaint him with His blessings upon him and the man will acknowledge them, where-upon Allah will say, 'What have you done with them?' to which the man will respond, 'I fought to the death for you.'

"Allah will reply, 'You lie. You fought in order to be called a hero, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire."

"Then a man will be brought forward who learned Sacred Knowledge, taught it to others, and who recited the Koran. Allah will remind him of His gifts to him and the man will acknowledge them, and then Allah will say. 'What have you done with them?' The man will answer. 'I acquired Sacred Knowledge, taught it, and recited the Koran, for Your sake.'"

"Allah will say, 'You lie. You learned so as to be called a scholar, and read the Koran so as to be called a reciter, and it has already been said. 'Then he will be sentenced and dragged away on his face to be flung into the fire."

(2) "Anyone who seeks Sacred Knowledge to argue with fools, vie with scholars, or draw people's attention to himself, will take a place in hell."

(3) "The most severely tortured on Resurrection Day shall be the scholar who did not benefit from his knowledge."

a3.4 Sufyan al-Thawri said.

"No servant increased in knowledge and then in desire for the things of this world, save that he increased in distance from Allah." (Ibid.,1.23-24)

### a4.0 PERSONALLY OBLIGATORY KNOWLEDGE

a4.1 (Nawawi:) There are three categories of Sacred Knowledge. The first is the personally obligatory (fard al-`ayn, def:c2.1), which is a morally responsible individual's learning the knowledge that the obligatory acts he must perform cannot be accomplished without, such as how the ablution (wudu) and prayer are done and so forth. Its obligatory character is how groups of scholars have interpreted the hadith in the Musnad of Abu Ya'la al-Mawsuli, from Anas, who relates that the Prophet (Allah bless him and give him peace) said, "Seeking knowledge is an obligation upon every Muslim." The meaning of this hadith, though the hadith itself is not well authenticated (A: being weak (dis:p9.5)), is true.

a4.2 As for the basic obligation of Islam, and what relates to tenets of faith, it is adequate for one to believe in everything brought by the Messenger of Allah (Allah bless him and give him peace) and to credit it with absolute conviction free of any doubt. Whoever does this is not obliged to learn the evidences of the scholastic. The Prophet (Allah bless him and give him peace) did not require of anyone anything but what we have just mentioned, nor did the first four caliphs, the other prophetic Companions, nor others of the early Muslim community who came after them. Rather, what befits the common people and vast majority of those learning or possessing Sacred Knowledge is to refrain from discussing the subtleties of scholastic theology, lest corruption difficult to eliminate find its way into their basic religious convictions. Rather, it is fitter for them to confine themselves to contentment with the above-

mentioned absolute certainly. Our Imam Shafi'i (Allah Most High have mercy on him) went to the greatest possible lengths in asserting that engaging in scholastic theology is forbidden. (A: What he meant thereby was the heretical scholastic theology that proliferated in his time and put rationalistic theories ahead of the Koran and sunna, not the science of theology (ilm al-tawhid) by which Ash'ari and Maturidi scholars (dis: x47) have clarified and detailed the tenets of faith of Sunni Islam, which is an important part of the Islamic sciences.) He insistently emphasized its unlawfulness, the severity of the punishment awaiting those who engage in it, the disgrace of doing it, and the enormity of the sin therein by saying, "For a servant to meet Allah with any other sin than idolatry (shirk) is better than to meet Him guilty of anything of scholastic theology." His other statements expressing the same meaning are numerous and well known. But if someone has doubts (Allah be our refuge) about any of the tenets of faith in which belief is obligatory (def: books u and v), and his doubt cannot be eliminated except by learning one of the theologians' proofs, then it is obligatory for him to learn it in order to remove the doubt and acquire the belief in question.

a4.3 Scholars disagree about the Koranic verses and hadiths that deal with the attributes of Allah (n: such as His `hand' (Koran 48:10), His `eyes' (52:48) or His `nearness' (50:16)) as to whether they should be discussed in terms of a particular figurative interpretation (ta'wil, def:w6) or not. Some say that they should be figuratively interpreted as befits them (n: interpreting His `hand.' for example, as an allusion to His omnipotence). And this is the more well known of the two positions of the scholastic theologians.

Others say that such verses should not be given a definitive interpretation, but rather their meaning should not be discussed, and the knowledge of them should be consigned to Allah Most High, while at the same time believing in the transcendence of Allah Most High, and that the characteristics of created things do not apply to Him. For example, it should be said we believe that "the All-merciful is 'established' [Ar. istawa, dis:v1.3] on the Throne" (Koran 20:5), but we do not know the reality of the meaning of that, nor what is intended thereby, though we believe of Allah Most High that;

"there is nothing whatsoever like unto Him" (Koran 42:11), and that He is above indwelling in created things (hulul, dis:w7), or having the characteristics of temporal, contingent existence (huduth, dis:w8). And this is the path of the early Muslims, or the vast majority of them, and is the safest, for a person is not required to enter into discussions about this. When one believes in Allah's transcendence above created things, there is no need for debate on it, or for taking risks over what there is neither pressing necessity nor even any real call for. But if the need arises for definitive interpretations to refute someone making unlawful innovations and the like, then the learned may supply them, and this is how we should understand what has come down to us from scholars in this field. And Allah knows best.

a4.4 A person is not obliged to learn how to perform ablution, the prayer, and so forth, until the act itself is obligatory for him. As for trade, marriage, and so forth, of things not in themselves obligatory, the Imam of the Two Sanctuaries (A: Juwayni), Ghazali, and others say that learning their means and conditions is personally obligatory for anyone who wants to do them. It has also been said that one should not call this knowledge "personally obligatory," but rather say, "It is unlawful to undertake them until one knows the conditions for their legal validity." And this expression is more accurate.

a4.5 It is obligatory for one to know what is permissible and what is unlawful of food, drink, clothing, and so forth, of things one is unlikely to be able to do without. And likewise for the rulings on treatment of women if one has a wife.

a4.6 Shafi'i and colleagues (Allah have mercy on them) say that fathers and mothers must teach their children what will be obligatory for them after puberty. The guardian must teach the child about purification, prayer, fasting, and so forth; and that fornication, sodomy, theft, drinking, lying, slander, and the like are unlawful; and that he acquires moral responsibility at puberty and what this entails. It has been said that this education is merely recommended, but in fact it is obligatory, as the plain content of its scriptural basis (n: mentioned below) shows. Just as it is mandatory for a guardian to wisely manage his charge's property, this is even more important. The merely recommended is what exceeds this, such as teaching him the Koran, Sacred Law, etiquette, and teaching him what he needs to earn a living. The evidence for the obligation of teaching a young child is the word of Allah Mighty and Majestic,

"O you who believe, protect yourselves and families from a fire" (Koran 66:6).

'Ali ibn Abi Talib (Allah be well pleased with him), Mujahid, and Qatada say it means. "Teach them that with which they can save themselves from hell,"

a4.7 As for knowledge of the heart, meaning familiarity with the illness of the heart such as envy, pride, and the like (dis:book p.r. and s). Ghazali has said that knowledge of their definitions, causes, remedy, and treatment is personally obligatory.

(A: And this is what Ghazali meant when he said that Sufism (Tasawwuf, dis:w9) is personally obligatory for every Muslim. He did not mean that taking a way (tariqa) and sheikh are obligatory, but rather the elimination of unlawful inner traits, which one could conceivably accomplish through the companionship of a single sincere brother.)

Others hold that if the morally responsible individual is endowed with a heart free of all these unlawful diseases, it suffices him, and he is not obliged to learn what will cure them. But if not safe from them he must reflect: if he can purify his heart from them without instruction then he must purify it, just as he must shun fornication and the like without learning the evidence proving he must. But if he cannot rid himself of these unlawful traits except through learning the above mentioned knowledge, then he is personally obliged to. And Allah knows best (al-Majmu' (y 108), 1.24-26).

#### a5.0 COMMUNALLY OBLIGATORY KNOWLEDGE

a5.1 (Nawawi) The second category (in of Sacred Knowledge) is what is communally obligatory (fard al-kifaya, def:c3.2), namely the attainment of those Sacred Sciences which people cannot do without in practicing their religion, such as memorizing the Koran and hadith, their ancillary disciplines, methodological principles, Sacred Law, grammar, lexicology, declension, knowledge of hadith transmitters, and of scholarly consensus (ijma'. def:b7) and nonconsensus.

a5.2 As for learning which is not Sacred Knowledge but is required to sustain worldly existence, such as medicine and mathematics, it too is a communal obligation (ibid.,1.26).

#### a6.0 RECOMMENDED KNOWLEDGE

a6.1 (Nawawi:) The third category is the supererogatory (def: c4.2), such as in-depth research into the bases of evidences, and elaboration beyond the amount required by the communal obligation, or such as an ordinary Muslim learning the details of nonobligatory acts of worship for the purpose of performing them; though not the work of scholars in distinguishing the obligatory from the nonobligatory, which is a communal obligation in respect to them. And Allah knows best (ibid, 1.27).

#### a7.0 SUBJECTS THAT ARE NOT SACRED KNOWLEDGE

a7.1 (Nawawi:) Having mentioned the categories of Sacred Knowledge the subjects it excludes are those that are unlawful offensive, or impermissible.

a7.2 Unlawful knowledge includes:

- (1) learning sorcery (dis: p3), since according to the most reliable position, it is unlawful, as the vast majority of scholars have decisively stated:
- (2) philosophy (dis:w10);
- (3) magic (Sha`badha, meaning sleight of hand, etc.);
- (4) astrology (dis:p41);
- (5) the sciences of the materialists (dis:w11).
- (6) and anything that is a means to create doubts (n: in eternal truths), Such things vary in their degree of unlawfulness.

a7.3 Offensive knowledge includes such things as post-classical poetry which contains romance and uselessness.

a7.4 Permissible knowledge includes post-classical poetry which does not contain stupidity or anything that is offensive, incites to evil, hinders from good; not yet that which urges one to do good or helps one to do it (n: as the later would be recommended) (ibid., 1.27).

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## BOOK B THE VALIDITY OF FOLLOWING QUALIFIED SCHOLARSHIP

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## **b1.0 INTRODUCTION**

**b1.1 (Muhammad sa'id Buti:) What is the proof that it is legally valid and even obligatory to accept the authority of qualified scholarship (taq lid) when one is not capable of issuing expert legal opinion (ijtihad) on matters of Sacred Law? There are several aspects to it (n: discussed in the sections that follow) (al-Lammadhabiyya akhtar bid a tuhaddidu al-sharia al-Islamiyya (y33), 70).**

**b1.2 (n:) For the key term qualified to issue expert legal opinion (Ar. mujtahid. this ability being ijtihad) please turn to book o and read o22.1(d) the qualifications of an Islamic judge (qadi). The difference between the qualifications for the Imam of a school and those for a judge or a mufti is that the former's competence in giving opinion is absolute ,extending to all subject matters in the Sacred Law, while the competence of the judge or mufti is limited respectively to judging court cases or to applying his Imam's ijtihad to particular questions.**

**No age of history is totally lacking people who are competent in ijtihad on particular questions which are new, and this is an important aspect of Sacred Law to provide solutions to new ethical problems by means of sound Islamic legal methodology in applying the Koranic and hadith primary texts. But while in this specific sense the door of ijtihad is not and cannot be closed, Islamic scholarship has not accepted anyone's claims to absolute ijtihad since Imams Abu Hanifa Malik, Shafi'i, and Ahmad. If one studies the intellectual legacy of these men underscholars who have a working familiarity with it, it is not difficult to see why.**

**As for those who decry "hidebound conservatism" and would open the gate of ijtihad for themselves while lacking or possibly not even knowing the necessary qualifications, if such people have not studied the rulings of a particular school and the relation between these rulings, the Koranic and hadith primary texts, and the school's methodological principles, they do not know how ijtihad works from an observer's standpoint, let alone how to employ it. To ask them for example which of two equally authenticated primary texts that conflict on a legal question should be given precedence, and why, is like asking an aspiring drafting student for the particulars of designing a suspension bridge. Answers may be forthcoming, but they will not be the same as those one could get from a qualified contractor. To urge that a mujtahid is not divinely protected from error (ma'sum) is as of little relevance to his work as the fact that a major physicist is not divinely protected from simple errors in calculus; the probability of finding them in his published work is virtually negligible. Regarding other, long-dead schools, such as**

the Zahiriyya, the difference between their work and that of the four living schools is firstly one of quality, as their positions and evidence have not been re-examined and upgraded by succeeding generations of first-rank scholars like those of the four schools (dis:w12), and secondly the lack of verification of the actual positions of their Mujtahid's through reliable chains of transmitters, as described below at b7.6.

## **b2.0 THE KORANIC EVIDENCE FOR FOLLOWING SCHOLARS**

**b2.1 (Muhammad Sa'id Buti;) The first aspect of it is the word of Allah the Majestic. "Ask those who recall if you know not" (Koran 16:43).**

By consensus of all scholars (ijma.def:b7), this verse is an imperative for someone who does not know a ruling in Sacred Law or the evidence for it to follow someone who does. Virtually all scholars of fundamentals of Islamic law have made this verse their principle evidence that it is obligatory for the ordinary person to follow the scholar who is a mujtahid.

**b2.2 Similar to the above verse in being evidence for this is the word of Allah Most High:**

**"Not all of the believers should go to fight. Of every section of them, why does not one part alone go forth, that the rest may gain knowledge of the religion to admonish their people when they return, that happily they may take warning" (Koran 9:122).**

Allah Most High prohibited the people to go out altogether in military expeditions and jihad and ordered a segment of them to engage solely in becoming knowledgeable in the religion of Allah, so that when their brothers returned to them, they would find someone qualified to give them legal opinion on the lawful and unlawful and to explain the rule of Allah the Glorious and Exalted (ibid., 71).

## **b3.0 THE PRACTICE OF THE PROPHETIC COMPANIONS (SAHABA)**

**b3.1 (Muhammad Sa'id Buti:) A second aspect is the consensus of scholars that the Companions of the Prophet (Ar. Sahaba, anyone who personally met the Prophet (Allah bless him and give him peace) and died while believing in Islam) were at various levels of knowledge in religion; not all of them were capable of giving formal legal opinion (fatwa), as Ibn Khaldun has noted, nor was the religion taken from all of them.**

**b3.2 Rather, there were those of them capable of legal opinion and ijtihad and these were a small minority in relation to the rest, and there were those of them who sought legal opinion and followed others therein, and these were the vast majority of them.**

(n: Suyuti, in Tadrīb al-rawī, quotes Ibn Hazm's report that most of the Companions legal opinions came from only seven of them: 'Umar, Ali, Ibn Mas'ud, Ibn Umar, Ibn Abbas, Zayd ibn Thabit, and Aisha; and this was from thousands of the Companions (Tadrīb al-rawī fi sharh Taqrīb al-Nawawī(y109),2,219).)

**b3.3 Nor did the individual Companion giving a legal opinion necessarily mention the evidence for it to the person who had asked about it, Al-Amidi notes in his book al-Ihkām: "As for scholarly consensus [ijma dis: b7.2] it is that ordinary people in the times of the Companions and those who immediately followed them, before there were dissenters, used to seek the opinion of mujtahids and would follow them in rules of Sacred Law.**

**"The learned among them would unhesitatingly answer their questions without alluding to mention of evidence. No one censured them for doing this; a fact that establishes scholarly consensus on the absolute permissibility of the ordinary person following one capable of ijtihad."**

**b3.4 The Prophet (Allah bless him and give him peace) used to dispatch the most knowledgeable of the Companions to places whose inhabitants knew nothing more of Islam than its five pillars. The latter would follow the person sent to them in everything he gave his judgment upon and had them do, of works, acts of worship, dealing with one another, and all matters of the lawful and unlawful. Sometimes such a person would come across a question on which he could find no evidence in the Koran or sunna, and he would use his own personal legal reasoning and furnish them an answer in light of it, and they would follow him therein.**

**b3.5 As for the era of those who came after them (Ar. tabi'in, those who had personally learned from one or more of the Companions but not the Prophet himself (Allah bless him and give him peace)), the scope of legal reasoning had expanded, and the Muslims of this time followed the same course as had the Companions of the Prophet (Allah bless him and give him peace), except that the legal efforts were**



represented by the two main schools of thought, that of juridical opinion (ra'y) and that of hadith (n: the former in Iraq, the latter in Medina) because of the methodological factors we previously mentioned when we quoted Ibn Khaldun..

There were sometimes discussions and sharp disputes between leading representatives of the two schools, but the ordinary people and learners not at the main figures' level of understanding were unconcerned with this disagreement, and followed whomever they wanted or whomever was near to them without anyone censuring them for this (al-Lamadhhabiyya akhtar bid'a tuhaddidu al-shari'a al-Islamiyya (y33), 71-73).

#### **b4.0 THE RATIONAL EVIDENCE FOR FOLLOWING SPECIALISTS**

**b4.1 (Muhammad Sa'id Buti:)** A third aspect is the obvious rational evidence, which we express in the words of Sheikh `Abdullah Diraz, who says: "The logical proof is that, assuming that a person does not have the qualifications for ijtihad, when an instance of a particular religious ruling arises, he will either not worship by any means at all, which all concur is impermissible, or, if he worships by means of something, it will either be by examining the proof that verifies the ruling or by following a competent authority. "The former is inadmissible because it would lead, in respect to him and all others like him, to in-depth examination of the evidences for all such instances, preoccupation with which would obviate the earning of livelihoods, disrupting trades and occupations, running the world by neglect of tillage and offspring, and preventing any one's following another's ijtihad, placing everyone under the most extreme hardship. The sole remaining alternative is to follow another, which is the means through which one must worship in such a case" (ibid.,73).

#### **b5.0 THE OBLIGATORINESS OF FOLLOWING QUALIFIED SCHOLARSHIP**

**b5.1 (Muhammad sa'id Buti:)** Because scholars accept the evidence from Koran, sunna, and reason as complete and intersubstantiative that the ordinary person or learned one not at the level of textual deduction and ijtihad is not entitled but to follow a qualified mujtahid who has a comprehensive grasp of the evidence -they say that a formal legal opinion (fatwa) from a mujtahid is in relation to the ordinary person just as a proof from the Koran and sunna is in relation to the Mujtahid for the Koran just as it obligates the scholar thoroughly versed in it to hold to its evidences and proofs, also obligates (n:in the verse quoted above at b2.1) the uninformed person to adhere to the formal legal opinion of the scholar and his ijtihad (ibid.,73).

#### **b6.0 WHY QUALIFIED SCHOLARS DIFFER ON LEGAL QUESTIONS**

**b6.1 (Salih Mu'adhdhin:)** Muslims of the Sunna and Community are in agreement that we have arrived at all the rulings of Sacred Law through evidence that is either of unquestionably established transmission (qat'i al-wurud) or probabilistically established transmission (zanni al-wurud). The suras of the Koran, all of its verses, and those hadiths which have reached us by so many channels of transmission that belief in them is obligatory (mutawatir,def:o22.1(d(II)))are all of unquestionably established transmission, since they have reached us by numerous means, by generation from generation, whole groups, from whole groups such that it is impossible that the various channels could all have conspired to fabricate them. As for the evidentiary character of these texts, regardless whether they are of unquestionably or probabilistically established transmission, they are of two types. The first type, unquestionable as evidence (qat'i al-dalala), is a plain text that does not admit of more than one meaning, which no mind can interpret beyond its one meaning, which no mind can interpret beyond its one meaning, and which there is no possibility to construe in terms of other than its apparent sense. This type includes Koranic verses that deal with fundamental tenets of faith in the oneness of Allah, the prayer, zakat, and fasting; in none of which is there any room for disagreement, nor have any differences concerning them been heard of or reported from the Imams of Sacred Law. Everything in this category is termed unquestionable as evidence.

The second type, probabilistic as evidence (zanni al-dalala), is a text that can bear more than one meaning, whether because it contains a word that can lexically have two different meanings, or because it was made by way of figure of speech or metaphor, or because it can be interpreted in other than its apparent sense in the context without this contradicting what was intended by the Wise Lawgiver. It is here that we find scope for scholarly difference of opinion to a greater or lesser extent depending on the number of meanings a text can imply, how much interpretation it will bear, and so forth.

All of the derivative rulings of Sacred Law are of this type, probabilistic as evidence, so we naturally find differences among Islamic legal scholars as to their interpretation, each scholar interpreting them according to his comprehension and the broadness of his horizons, while not giving the text a reading it does not imply, and then corroborating his interpretation with evidence acceptable to scholars. Scholarly differences are thus something natural, even logically necessary, as a result of the factors we have just described. Allah Mighty and Majestic has willed that most texts of the Sacred Law be probabilistic as evidence because of a wisdom He demands, namely, to give people more choice and leave room for minds to use *ijtihad* in understanding His word and that of His messenger (Allah bless him and give him peace).

b6.2 We conclude this short summary with an example to clarify what we have said. Consider the word of Allah. "Divorced women shall wait by themselves for three periods" (Koran 2:228).

as opposed to His saying, in the same sura,

"Those who forswear their women have a wait of four months" (Koran 2:226).

Allah's saying "three" in the former and "four" in the latter are texts that are decisive as evidence, in that neither admits of more than one interpretation, namely, the well-known numbers.

But in contrast with this, when Allah says "periods" (*Ar.quru'*) in the first, and "months" (*ashhur*) in the second, we find that the former word can have more than one sense in its Arabic lexical root meaning, while months cannot, the latter being decisive in meaning and incapable of bearing another interpretation. Concerning this question, Imam Qurtubi says in his Koranic exegesis: "Scholars differ about the word periods. Those of kufa hold that it means menstrual periods, and this is the position of 'Umar, 'Ali, and Ibn Mas'ud. But those of the Hijaz hold it means the intervals of purity between menstrual periods, and this is the view of 'A' isha, Ibn 'Umar, and Shafi'i."

Considering this, is it not natural that there should be various opinions about understanding the verse "three periods" but only one about understanding Allah's saying "four months"? If Allah had wanted all opinions to coincide on this question. He might have said for example, "three menstrual periods" (*hiyad*) or "three intervals of purity between menstrual periods" (*athar*), just as He said "four months." And all the texts of Sacred Law that can bear more than one meaning are comparable to this example (*'Umdat al-salik* (y90). 11-13).

## b7.0 SCHOLARLY CONSENSUS (IJMA')

b7.1 ('Abdal-Wahhab Khallaf:) Scholarly consensus (*ijma'*) is the agreement of all the mujtahids (def:o22.1(d)) of the Muslims existing at one particular period after the Prophet's death (Allah bless him and give him peace) about a particular ruling regarding a matter or event. It may be gathered from this that the integral elements of scholarly consensus are four, without which it is invalid:

(a) that a number of mujtahids exist at a particular time:

(b) that all mujtahids of the Muslims in the period of the thing or event agree on its ruling, regardless of their country, race, or group, though nonmujtahids are of no consequence;

(c) that each mujtahid present his opinion about the matter in an explicit manner, whether verbally, by giving a formal legal opinion on it, or practically, by giving a legal decision in a court case concerning it;

(d) and that all mujtahids agree on the ruling, for if a majority of them agree, consensus is not effected, no matter how few those who contradict it, nor how many those who concur.

b7.2 When the four necessary integrals of consensus exist, the ruling agreed upon is an authoritative part of Sacred Law that is obligatory to obey and not lawful to disobey. Nor can mujtahids of a succeeding era make the thing an object of new *ijtihad* because the ruling on it, verified by scholarly consensus, is an absolute legal ruling which does not admit of being contravened or annulled.

b7.3 The proof of the legal authority of scholarly consensus is that just as Allah Most Glorious has ordered the believers, in the Koran, to obey Him and His Messenger, so too He has ordered them to obey those of authority (*ulu al-amr*) among them, saying, "O you who believe, obey Allah and obey the Prophet and those of authority among you" (Koran 4:59). such that when those of authority in legal expertise, the mujtahids, agree upon a ruling, it is obligatory in the very words of the Koran to follow them and carry out their judgement. And Allah threatens those who oppose the Messenger and follow other than the believers' way, saying, "Whoever contraverts the Messenger after guidance has become clear to him and follows other than the believers' way, We shall give him over to what he has turned to and roast him in hell, and how evil an outcome" (Koran 4:115).

b7.4 A second evidentiary aspect is that a ruling agreed upon by all the mujtahids in the Islamic

Community (Umma) is in fact the ruling of the Community, represented by its mujtahids, and there are many hadiths that have come from the Prophet (Allah bless him and give him peace), as well as quotes from the Companions, which indicate that the Community is divinely protected from error, including his saying (Allah bless him and give him peace):

- (1) "My Community shall not agree on an error."
- (2) "Allah is not wont to make my Community concur on misguidance."
- (3) "That which the Muslims consider good, Allah considers good." (Ilm usul al-fiqh (y71), 45-47)

b7.5 (n: Another hadith that scholars quote in connection with the validity of scholarly consensus is the following, given with its commentary.)

The Prophet (Allah bless him and give him peace) said,

"Allah's hand is over the group, and whoever dissents from them departs to hell."

Allah's hand is over the group (al-`Azizi:) Munawi says, "Meaning His protection and preservation of them, signifying that the collectivity of the people of Islam are in Allah's fold, so be also in Allah's shelter, in the midst of them, and do not separate yourselves from them. "The rest of the hadith, according to the one who first recorded it (n: Tirmidhi), is, and whoever dissents from them departs to hell. Meaning that whoever diverges from the overwhelming majority concerning what is lawful or unlawful and on which the Community does not differ has slipped off the path of guidance and this will lead him to hell (al-Siraj al-munir sharh al-Jami' al-saghir (y18), 3.449).

b7.6 (n: In addition to its general interest as a formal legal opinion, the following serves in the present context to clarify why other than the four Sunni schools of jurisprudence do not necessarily play a role in scholarly consensus.)

( Abd al-Rahman Ba'alawi:) Ibn Salah reports that there is scholarly consensus on its being unlawful to follow rulings from schools other than those of the four Imams, meaning in one's personal works, let alone give court verdicts or formal legal opinions to people from the, because of the untrustworthiness of the ascription of such rulings to the scholars who reportedly gave them, there being no channels of transmission which obviate the possibility of textual corruption and spurious substitutions.

The Zaydis, for example, who trace themselves to Zayd ibn 'Ali Husayn (n:son of 'Ali and Fatima), the beatitude of Allah be upon them, despite the fact that Zayd was one of Imams of the religion and a renowned figure well qualified to give guidance to those seeking it, his followers identify him with extreme permissiveness on many questions, ascriptions based on failure to check as to what his positions actually were (n: by naming the intermediate transmitters and establishing their reliability). It is quite otherwise with the four schools, whose Imams (Allah reward them) have spent themselves in checking the positions of their schools, explaining what could be rigorously authenticated as the position of the person it was attributed to, and what could not be. Their scholars have thus achieved safety from textual corruption and have been able to discern the genuine from the poorly authenticated (Bughya al-mustarshidin fi talkhis fatawa ba'd al-a'imma min al-muta'akhhirin (y19),8).

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## BOOK C THE NATURE OF LEGAL RULINGS

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## **c1.0 KINDS OF RULINGS**

**c1.1 ('Abd al-Wahhab Khallaf:) A legal ruling is a statement from the Lawgiver (syn. Allah or His messenger (Allah bless him and give him peace)) concerning the acts of those morally responsible which:**

- (1) requires something;**
- (2) allows a choice;**
- (3) or gives stipulations.**

**c1.2 An injunctive ruling is one that enjoins the morally responsible individual to either do or refrain from an act, or gives him an option to do or refrain from it.**

**An example of enjoining one to do an act is Allah's saying,  
"People owe Allah to make pilgrimage to the House" (Koran 3:97).**

**An example of enjoining one to refrain from an act is His saying,  
"Let no people mock another people" (Koran 49:11).**

**And an example of giving an option to do or refrain from an act is His saying,  
"When the prayer is finished, go forth in the land" (Koran 62:10).**

**c1.3 As for stipulatory rulings, they entail that something is made a legal reason (sabab) for another thing, a condition (shart) for it, or a preventive (mani) of it.**

**An example of being stipulated as reason for something is Allah's saying,  
"O believers, when you go to pray, wash your faces and wash your forearms to the elbows" (Koran 5:6),  
which stipulates wanting to pray as a reason for the obligation of performing ablution (wudu).**

**An example of something being made a condition for another thing is His saying,  
"People owe Allah to make pilgrimage to the House, whoever is able to find a way" (Koran 3:97),  
which implies that the ability to get to the House (n: Kaaba) is a condition for the obligatoriness of one's pilgrimage. Another example is the Prophet's saying (Allah bless him and give him peace),  
"There is no marriage unless there are two witnesses,"**

which means the presence of two witnesses is a condition for the validity of a marriage. An example of being made a preventive of something is the Prophet's saying (Allah bless him and give him peace), "The killer does not inherit," which entails that an heir's killing the deceased is preventive of his inheriting an estate division share from him ('Illm usul al-fiqh (y71), 100-102).

## c2.0 TYPES OF HUMAN ACT

c2.1 (N:) The obligatory (fard) is that which the Lawgiver strictly requires be done, Someone who performs an obligatory act out of obedience to Allah is rewarded, while a person who refrains from it without excuse deserves to be punished. (A: In the Shafi'i school there is no difference between obligatory (fard) and requisite (wajib) except in the pilgrimage, where nonperformance of a requisite does not invalidate the pilgrimage, but necessitates an expiation by slaughtering. For any conditions necessary for its validity and all of its integrals (rukun, pl. arkan) are obligatory, since it is unlawful to intentionally perform an invalid act of worship.)

c2.2 The sunna (n: or recommended (mandub)) is that which the Lawgiver asks be done, but does not strictly require it. Someone who performs it out of obedience to Allah is rewarded, though someone who refrains from it is not punished.

c2.3 The permissible (mubah) is what the Lawgiver has neither requested nor prohibited, so the person who does it is not rewarded or punished. Rather, doing or not doing it are equal, though if a person does it to enable him to perform an act of obedience to Allah, or refrains from it for that reason, than he is rewarded for it. And if he does such an act to enable him to perform an act of disobedience, he is sinning.

c2.4 The offensive (makruh) is that which the Lawgiver has interdicted but not strictly forbidden. A person who refrains from such an act out of obedience to Allah is rewarded, while the person who commits it does not deserve to be punished.

c2.5 The unlawful (haram) is what the Lawgiver strictly forbids. Someone who commits an unlawful act deserves punishment, while one who refrains from it out of obedience to the command of Allah is rewarded. (n: Scholars distinguish between three levels of the unlawful:

- (1) minor sins (saghira, pl. sagha'ir), which may be forgiven from prayer to prayer, from one Friday prayer (jumu'a) to another, and so forth, as in mentioned in hadith;
- (2) enormities (kabira, pl. kaba'ir), those which appear by name in the Koran or hadith as the subject of an explicit threat, prescribed legal penalty, or curse, as listed below at book p;
- (3) and unbelief (kufr), sins which put one beyond the pale of Islam (as discussed at o8.7) and necessitate stating the Testification of Faith (Shahada) to reenter it.

Repentance (def: p77) is obligatory for all three (al-Zawajir 'an iqtiraf al-kaba'ir (y49), 1.5-9.)

c2.6 (Nawawi:) There is no doubt that the merit of an act varies. Fasting, for example, is unlawful on 'Eid Day, obligatory before it, and recommended after it. The prayer is highly desirable most of the time, but offensive at some times and situations, such as when restraining oneself from using the lavatory. Reciting the Koran is desirable, but offensive when bowing in the desirable, but offensive when bowing in the prayer or prostrating. Dressing one's best is good on the 'Eid or on Friday, but not during the drought prayer. And so forth. Abul Qasim al-Junayd (Allah have mercy on him)said, "A sincere person changes forty times a day, while the hypocritical show-off stays as he is forty years." The meaning of this is that the sincere person moves with what is right, wherever it may lead, such that when prayer is deemed better by the Sacred Law, then he prays, and when it is best to be sitting with the learned, or the righteous, or guests, or his children, or taking care of something a Muslim needs, or mending a broken heart, or whatever else it may be, then he does it, leaving aside what he usually does. And likewise for fasting, reciting the Koran, invoking Allah, eating or drinking, being serious or joking, enjoying the good life or engaging in self-sacrifice, and so on. Whenever he sees what is preferred by the Sacred Law under the circumstances, he does it, and is not bound by a particular habit or kind of devotion as the show-off is. The Prophet (Allah bless him and give him peace) did various things of prayer, fasting, sitting for Koran recital and invocation, eating and drinking, dressing, riding, lovemaking with his wives, seriousness and jest, happiness and wrath, scathing condemnation for blameworthy things, leniency in punishing those who deserved it and excusing them, and so on, according to what was possible and preferable for the time and circumstances (al-Majmu' (y108),1.17-18).

### **c3.0 OBLIGATORY ACTS**

**c3.1 ('Abd al-Wahhab khallaf:)** Obligatory acts are distinguished in four ways, according to various considerations. One distinction is whether current performance is time-restricted or non-time-restricted. A time-restricted obligatory act is one the Lawgiver demands be done at a particular time, such as the five obligatory prayers, for each of which the time for current performance is set, such that the particular prayer is not obligatory before it, and the individual is guilty of serious sin if he delays it past its time without excuse. A non-time-restricted obligatory act is one which the Lawgiver strictly demands, but does not specify a time for its current performance, such as the expiation obligatory for someone who swears and oath and breaks it (def: 020).

**c3.2** A second distinction between obligatory acts is made on the basis of who is called upon to perform them, namely whether an act is personally obligatory or communally obligatory. A personally obligatory (fard al-'ayn) act is what the Lawgiver requires from each and every morally responsible person. It is insufficient for someone to perform such an act on another's behalf, such as the prayer, zakat (def: h1.0), pilgrimage, keeping agreements, and avoiding wine or gambling. A communally obligatory (fard al-kifaya) act is what the Lawgiver requires from the collectivity of those morally responsible, not from each one of them, such that if someone undertakes it, then the obligation has been fulfilled and the sin and responsibility (n: of nonperformance) is lifted from the rest, while if no one undertakes it, then all are guilty of serious sin for neglecting the obligation, Examples include commanding the right and forbidding the wrong (def: book q), praying over the dead, building hospitals, lifesaving, fire fighting, medicine, industries people require, the existence of Islamic courts and judges, issuing formal legal opinions, responding to someone who says "as-Salam 'alaykum," and testifying in court. The Lawgiver requires that these obligatory acts exist in the Islamic Community regardless of who does them. But He does not require they be done by each person, or some particular one, since the interests of the Community are realized by the existence of these things through the efforts of some of those morally responsible, and do not entail every particular person's performance of them. Someone able through himself or his property to perform the communally obligatory act is obliged to perform it, and someone unable to do it himself is obliged to urge and have the person do it who can. If the obligatory act is done, all are cleared of the sin, and if neglected all the guilty of serious sin. The person capable of it is guilty because he neglected a communally obligatory act he could have done, and the rest are guilty because they neglected to urge him and have him perform the obligatory act he was capable of. When an individual is the only one available who can perform a communally obligatory act, it becomes personally obligatory for him.

**c3.3** A third way Obligatory acts are distinguished is by the amount of them required, that is, whether the act is of a defined amount or an undefined amount. Obligatory acts of defined amount are those for which the Lawgiver has determined a particular quantity, such that the subject is not free of the obligation until he has done the amount stipulated by the Lawgiver, as with the five obligatory payers, or zakat. Obligatory acts of undefined amount are those which the Lawgiver has not stipulated the amount of, but rather demands them from the subject in an undetermined quantity, such as spending in the way of Allah, cooperating with one another in good works, feeding the hungry, helping those in distress, and so forth.

**c3.4** A fourth distinction between obligatory acts is whether an act is a specific obligation, or an obligation to choose between certain alternatives. Specific obligations are those in which the Lawgiver demands the act itself, such as the prayer, fasting in Ramadan, paying for merchandise, rent from a tenant, or returning something wrongfully taken; such that the individual is not free of the obligation until he does that very act. An obligation to choose between certain alternatives is when the Lawgiver requires the performance of one of a given number of actions, such as one of the options in expiating a broken oath, where Allah Most High requires the person who has broken his oath to feed ten poor people, clothe them, or free a slave ('abd,def:w13), and the obligation consists of doing any of these three things ('Ilm usul al-fiqh (y71), 106, 108-11).

### **c4.0 RECOMMENDED ACTS**

**c4.1 ('Abd al-Wahhab Khallaf:)** Recommended acts are divided into three categories. The first is recommended acts whose demand is confirmed. Someone who neglects such an act does not deserve punishment, but does deserve censure and blame. This includes the sunnas and recommended acts that are legally considered to complete obligatory acts, such as the call to prayer (adhan) or performing the obligatory prayers, in a group, as well as all religious matters that the Prophet Allah bless him and give him peace) diligently performed and did not omit except once or twice to

show that they were not obligatory, like rinsing out the mouth when performing ablution, or reciting a sura or some verses of the Koran after the Fatiha during the prayer. This category is called the confirmed sunna (sunna mu akkada ) or sunna of guidance.

c4.3 The second category is those acts whose performance is sanctioned by sacred Law such that the person who performs them is rewarded, though someone who omits them deserves neither punishment nor blame. This includes acts the Prophet (Allah bless him and give him peace) did not diligently perform, but did one or more times and then discontinued. It also includes all voluntary acts, like spending on the poor, fasting on Thursday of each week, or praying rak'as (units) of prayer in addition to the obligatory and confirmed sunna prayers. This category is called the extra sunna or supererogatory (nafila).

c4.4 The third category consists of the superlatively recommended, meaning those acts considered part of an individual's perfections. It includes following the Prophet (Allah bless him and give him peace) in ordinary matters that proceeded from him as a human being, as when a person eats, drinks, walks, sleeps, and dresses like the Prophet used to. Following the example of the Prophet (Allah bless him and give him peace) in these and similar matters is an excellence and considered among one's refinements, as it shows one's love for the Prophet and great attachment to him. But someone who does not follow the Prophet (Allah bless him and give him peace) in matters like these is not considered a wrongdoer, because they are not part of his lawgiving (A: though such acts are rewarded when one thereby intends to follow the prophet (Allah bless him and give him peace), and every desirable practice one performs means a higher degree in paradise which the person who neglects it may not attain to). Acts of this category are called desirable (mustahabb), decorum (adab), or meritorious (ibid., 112).

#### c5.1 UNLAWFUL ACTS

c5.1 ( `Abd al-Wahhab Khallaf:) The unlawful is of two kinds.

The first is the originally unlawful in itself, meaning the Sacred Law forbids it from the outset, such as adultery, theft, prayer without ritual purity, marrying a member of one's unmarriageable kin while knowing them to be such, selling unslaughtered dead animals, and so forth, of things that are intrinsically unlawful because they entail damage and harm, the prohibition applying from the outset to the very act. The second is the unlawful because of an extrinsic reason, meaning that the initial ruling of an act was that it was obligatory, recommended, or permissible, but an extrinsic circumstance became linked with it that made it unlawful, such as a prayer performed in a garment wrongly taken, or a sale in which there is fraud, or a marriage whose sole purpose is to allow the woman to remarry her previous husband who has pronounced a threefold divorce against her, or fasting day after day without breaking the fast at night, or an unlawfully innovated divorce (def: n2.3), and so forth, of things unlawful because of an external circumstance. The prohibition is not due to the act itself. But because of something extrinsic to the act; meaning the act is not damaging or harmful in itself, but something has happened to it and become conjoined with it that makes it entail damage or harm.

c5.2 One consequence of the above distinction is that an intrinsically unlawful act is uncountenanced by the Law to begin with, so it cannot be a legal cause or reason, or form the basis for further legal consequences. Rather, it is invalid. Because of this, prayer without ritual purity is invalid, marriage to a close unmarriageable relative when one knows them to be such is invalid, and the sale of an unslaughtered dead animal is invalid. And something legally invalid is without other legal efficacy. But an act that is unlawful because of an extrinsic circumstance is intrinsically lawful, and can thus be a legal reason and form the basis for further legal consequences, since its prohibition is accidental to it and not essential. Because of this a prayer while wearing a garment wrongfully taken is legally valid, though the person is guilty of serious sin for having taken it; a sale in which there is fraud is legally valid (N: though the buyer has the option to cancel the sale and return the merchandise for a full refund); and an unlawfully innovated divorce is legally effective.

The reason for this is that the prohibition of an act because of an extrinsic event or circumstance does not vitiate either the basis of its being a legal cause or its identity, provided all its integrals and conditions exist. As for intrinsic unlawfulness, it negates the basis of an act's being a legal cause and vitiates its identity by the nonexistence of one of its integrals or conditions, so that it is no longer something that is of legal consideration (ibid., 113-14).

#### c6.0 DISPENSATION (RUKHSA) AND STRICTNESS ( `AZIMA)

c6.1 ( `Abd al-Wahhab khallaf:) Strictness is what Allah initially legislates, of general rulings not concerned with one circumstance rather than another, or one individual rather than another.

**c6.2 Dispensation is when what is normally forbidden is made permissible because of necessity or need. For example, if someone is forced to make a statement of unbelief (kufr) it is made permissible, to ease his hardship, for him to do so as long as faith remains firm in his heart. Likewise with someone who is forced to break his fast in Ramadan, or forced to destroy the property of another; the normally prohibited act which he is forced to do becomes permissible for him, to ease the hardship. And it is made permissible for someone forced by extreme hunger or severe thirst to eat from an unslaughtered dead animal or drink wine. (A: The latter is not permissible even under such conditions in the Shafi'i school) Dispensation also includes being permitted to omit an obligatory act when an excuse exists that makes its performance a hardship (dis: c7.2. second par.) upon the individual. Thus, someone who is ill or travelling in Ramadan is permitted not to fast. And someone who is travelling is permitted to shorten prayers of four rak'as to only two rak'as (ibid., 121-22).**

**c6.3 (n:) Since it is permissible for a Muslim to follow any of the four Imams in any of his acts of worship, comparison of their differences opens another context from discussing dispensation and strictness, a context in which classical scholars familiar with various schools often use the term "dispensation " to refer to the ruling of the school easiest on a particular legal question, and "strictness" to refer to the ruling of the school that is most rigorous. Which school this is varies from question to question. The following entry discusses how and when it is permissible for ordinary Muslims to use dispensation in the sense of following easier rulings from a different school, while entry c6.5 discusses the way of greater precaution (al-ahwat fi al-din) taken by those Muslims who purposely select the strictest school of thought on each legal question because of its being more precautionary and closer to godfearingness (taqwa).**

**c6.4 Scholars frequently acknowledge that the difference of the Imams is a mercy, and their unanimity is a decisive proof, Sheikh `Umar Barakat, the commentator of 'Umdat al-salik, says: "It is permissible to follow each of the four Imams (Allah be well pleased with them), and permissible for anyone to follow one of them on a legal question, and follow a different one on another legal question. It is not obligatory to follow one particular Imam on all legal questions" (Fayd al-Ilah al-Malik (y27), 1.357). This does not, however, imply that it is lawful to indiscriminately choose dispensations from each school, or that there are no conditions for the above mentioned permissibility. Imam Nawawi was asked for a formal legal opinion on whether pursuing dispensations in such a manner was permissible; (Question:) "Is it permissible for someone of a particular school to follow a different school in matters that will be of benefit to him, and to seek out dispensations?" He answered (Allah be well pleased with him), "It is not permissible to seek out dispensations [A: meaning it is unlawful, and the person who does is corrupt (fasiq)], and Allah knows best" (Fatawa al-Imam al-Nawawi (y105),113). But when forced by necessity or hardship to take such a dispensation (A: even retroactively as when one has finished the action, and then makes the intention to have followed another Imam's school of thought on the question), then there is nothing objectionable in it, provided that one's act of worship together with its prerequisites is valid in at least one of the schools. One may not simply piece together (taliq) constituent parts from various schools in a single act of worship, if none of the schools would consider the act valid. An example is someone who performs an ablution that is minimally valid in the Shafi'i school by wetting only a few hairs of his head in the ablution sequence, something not permitted by Hanafis, and then prays behind an imam without himself reciting the Fatiha, something permitted by Hanafis but not shafiis. His ablution, the necessary condition for his prayer is inadequate in the Hanafi school and his performance of the prayer is inadequate school, with the result that neither considers his prayer valid, and in fact it is not, Whoever follows a ruling mentioned in this volume from another school must observe the conditions given at w14 and make sure his worship is valid in at least one school, which for prayer can best be achieved by performing all recommended measures in the present volume relating to purity, for example, e5,e11, and so on, as if obligatory.**

**c6.5 A second way to use differences between schools is to take the way of greater precaution by following whoever is most rigorous on a given question. For example, when performing the purificatory bath (ghusl), rinsing the mouth and nostrils with water is a nonobligatory, sunna measure according to the Shafi'i school, but obligatory and necessary for the purificatory bath's validity according to Hanafis. The way of greater precaution is for the Shafi'i to perform it as diligently as if it were obligatory, even though omitting it is permitted by his school.**

**(`Abd al-Wahhab Sha'rani:) My brother, when you first hear of the two levels of this scale (n: dispensation and strictness), beware of jumping to the conclusion that there is absolute free choice between them, such that an individual may without restriction choose either dispensation or strictness in any ruling he wishes. It does not befit a person able to perform the stricter ruling to stoop to taking a**



dispensation permissible to him. (A: The more rigorous is always preferable in the Shafi'i school even when the dispensation is permissible.) For as you know my brother, I do not say that the individual is free to choose between taking the dispensation or taking the stricter ruling when he is able to perform the stricter ruling obligatory for him. I take refuge in Allah from saying such a thing, which is like making a game of religion. Of an absolute certainty, dispensation are only for someone unable to perform the stricter ruling, for in such a case, the dispensation is the stricter ruling in relation to him.

Moreover, I hold that mere sincerely and honesty demand of anyone who follows a particular school not to take a dispensation that the Imam of his school holds is permissible unless he is someone who needs to; and that he must follow the stricter ruling of a different Imam when able to, since rulings fundamentally refer back to the word of the Lawgiver, no one else; this being especially necessary when the other Imam's evidence is stronger, as opposed to what some followers do. We find among the dictums of the Sufis that one should not follow a position in Sacred Law for which the evidence is weaker except when religiously more precautionary than the stronger position. For example, the Shafi'i opinion that (n: a male's) ablution is nullified by touching a girl who is a child or touching the nails or hair of a woman: though this position is considered weaker by them (n: than the position given at e7.3), it is religiously more precautionary, so performing ablution for the above-mentioned things is better (al-Mizan al-kubra (y1230,:10-11)). (A Because more rigorous rulings necessarily meet the requirements of less rigorous ones (though not vice versa), following more rigorous rulings from another school is unconditionally valued, unlike following its dispensations. And Allah knows best.)

## c7.0 THINGS ONE MAY BE HELD LEGALLY RESPONSIBLE FOR

c7.1 ('Abd al-Wahhab Khallaf:) Three conditions must exist in any act that it is legally valid to make an individual responsible for. The first is that the act be well enough known to the individual that he can perform it in the way required of him. It should be noted that the individual's knowledge of what he is responsible for means the possibility of his knowing it, not his actual knowledge of it. Whenever a person reaches puberty, of sound mind and capable of knowing the rulings of Sacred Law by himself or by asking those familiar with them, then he is considered to know what he is responsible for, and rulings are carried out on him, their consequences exacted of him, and the excuse of being ignorant of them is not accepted from him. The second condition is that it is known that the ruling has been imposed by someone who possesses the authority to do so and whose rules the individual is obliged to observe, since it is through this knowledge that the individual's will can be directed to obey him. This is the reason that in any proof for a ruling of Sacred Law the first point discussed is why it is legally binding for individuals. The third condition is that the act the subject is responsible for be possible and within the capacity of the subject to do or to refrain from. This condition in turn implies two things: first, that it is legally invalid to impose something impossible, whether impossible in itself or impossible because of another thing; and second, that it is invalid to ask that a particular individual be responsible for someone else's performing an act or refraining from one, since someone else's action or inaction is not within the individual's own capacity. Hence, a person is not responsible for his father's paying zakat, his brother's performing the prayer, or his neighbor's refraining from theft. As regards others, all a person is obliged to do is to advise, to command the right and forbid the wrong, for these are acts he is capable of. Nor is it legally valid to make a person responsible for various innate human states which are the results of natural causes that are not of the person's acquisition or choice, such as emotional arousal when angry; turning red when embarrassed; love, hate, grief, elation, or fear when reasons them exist; digestion; breathing; being short or tall, black or white; and other innate traits with which people are born and whose presence or absence is subject to natural laws, not to the individual's will and choice, and which are thus beyond his capacity and not among the things possible for him. And if some primary texts have reached us that apparently show that there is responsibility for some of the things that are not within a person's capacity, these are not as they seem. For example, the order of the Prophet (Allah bless him and give him peace), "Do not become angry," is outwardly an order to refrain from something natural and unacquired, namely, anger when motives for it exist. But the real meaning is "Control yourself when angry and restrain yourself from its bad consequences."

c7.2 From the condition that an act must be within the individual's capacity before he can be held accountable for it, one should not jump to the conclusion that this implies there will not be any hardship whatsoever for the individual in the act. There is no contradiction between an act's being within one's capacity and its being hard. Nothing a person is responsible for is completely free of hardship, since moral responsibility is being obliged to do that in which there is something to bear with, and some type

of difficulty. Hardship, however, is of two types. The first is that which people are accustomed to bear, which is within the limits of their strength, and were they to continue bearing it, it would not cause them harm or damage to their persons, possessions, or other concerns. The second is that which is beyond what people are accustomed to bear and impossible for them to continually endure because they would be cut off, unable to go on, and damage and harm would affect their persons, possessions, or one of their other concerns. Examples include fasting day after day without breaking it at night, a monastic life, fasting while standing in the sun, or making the pilgrimage on foot. It is a sin for someone to refuse to take a dispensation and insist on the stricter ruling when this will probably entail harm (Ilm usul al-fiqh (y71), 128-33).

## **c8.0 WHO MAY BE HELD RESPONSIBLE**

**c8.1 ( Abd al-Wahhab Khallaf:)** Two conditions must exist in an individual for it to be legally valid to hold him responsible. The first condition is that he is able to understand the evidence that he is responsible for something, such that it is within his capacity to understand legal texts from the Koran and sunna by which the ruling is imposed, whether by himself or through another (dis: b5.1). Since human reason is something hidden, unobservable by outward sense perception, the Lawgiver has conjoined responsibility for rulings with something manifest and perceptible to the senses from which reason may be inferred, namely, puberty. Whoever reaches puberty without showing signs of impaired intellectual faculties, his capacity for responsibility exists. And conversely, neither an insane person nor child are responsible, because of their lack of intellect, which is the means of understanding the evidence that something is a ruling. Nor are those responsible who are in a state of absentmindedness or sleeping, because while they are heedless or asleep it is not within their capacity to understand. The Prophet (Allah bless him and give him peace) said,

"The pen has been lifted from three: the sleeper until he awakens, the child until his first wet dream, and the insane person until he can reason."

The second condition (n:for the legal validity of holding someone responsible) is that he be legally eligible for the ruling. Eligibility is of two types, eligibility for obligation, and eligibility for performance.

**c8.2 Eligibility for obligation is the capacity of a human being to have rights and duties. This eligibility is established for every person by the mere fact of being human, whether male, female, fetus, child, of the age of discrimination, adolescent, intelligent, foolish, sane or insane, healthy or ill; because its basis is an innate attribute found in man. Every human being, whoever he or she may be, has eligibility for obligation and none lacks it because one's eligibility for obligation is one's humanness.**

There are only two human states in relation to eligibility for obligation, partial and full. One could have partial eligibility for obligation by being entitled to possess rights over others but not have obligations towards them, like a fetus in its mother's womb, which has rights, since it can be an heir, inherit a bequest, and the proceeds of an endowment (waqf) can accrue to it, but it does not have any obligations to others. Full eligibility for obligation means a person has rights upon others and obligations towards them. Every human being acquires it at birth.

**c8.3 Eligibility for performance is the capacity of an individual for words and actions that are legally significant, such that if an agreement or act proceeds from him, it legally counts and entails the rulings applicable to it. If he prays, fasts, makes the pilgrimage, or does anything obligatory; it is legally acknowledged and discharges the obligation. And if he commits a crime against another's person, possessions, or honor, he is held accountable for his crime and is bodily or financially penalized. So eligibility for performance is responsibility, and its basis in man is intellectual discrimination.**

There are three states which a person may have in relation to eligibility for performance:

(1) A person could completely lack or lose eligibility for performance, like a young child during his childhood or an insane person during his insanity (regardless of his age), neither of whom has eligibility for performance because they lack human reason, and for neither of whom are there legal consequences entailed by their words or actions. Their agreements and legal dispositions are null and void, the limit of which is that if either of them commits a crime against another's person or possessions, he is responsible for paying the indemnity out of his own property, but not subject to retaliation in his own person. This is the meaning of the scholars' expression, "The intentional act of a child or insane person is an honest mistake."

(2) A person could have partial eligibility for performance, an example of which is the child who has reached the age of mental discrimination (def: f1.2) but not puberty (k13.8), or the retarded person, who is not disturbed in intellect nor totally bereft of it, but rather is weak-minded and lacking in intellect, so that the Sacred Law treats him as it does the child with discrimination.

Because each of these two possesses the basis of eligibility for performance by the fact of having discrimination, those of their legal actions which are absolutely beneficial to them, such as accepting gifts or alms, are valid without their guardian's permission.

As for those of their legal actions which are wholly harmful to them, such as giving donations or waiving their rights to something, these are not in any way valid, even with the guardian's permission. The gift, bequest, endowment, and divorce of such persons are not valid, and the guardian's permission is irrelevant to these actions.

The legal actions of the child with discrimination or the retarded person which are between absolute benefit and absolute harm to him are valid, but only on condition that the guardian gives his permission for them. If the guardian gives permission for the agreement or disposition, it is implemented, and if he does not permit it, the action is invalid.

(3) Or a person could have full eligibility for performance by the fact of having reached puberty sound of mind. Events, however, may befall this eligibility. They include those that happen to a person without affecting his eligibility for performance by eliminating or diminishing it, but which alter some rulings concerning him because of considerations and interests that arise through these events, not because of loss or lessening of eligibility for performance. Examples include the foolhardy and the absentminded person. Both have reached puberty with normal intelligence and have full eligibility for performance, but to protect their own property from loss and prevent them from becoming a financial burden on others, they are declared legally incompetent in financial dealings such that neither their financial transactions nor donations are valid. This is not because of a lack or lessening of their eligibility for performance, but rather to protect their own property. A debtor has likewise reached puberty with normal intelligence and possesses full eligibility for performance, but to protect the rights of his creditors, he is declared legally incompetent to make transactions with his money that infringe on the rights of his creditors, such as charitable donations (Ilm usul al-fiqh (y71) 134-40).

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## BOOK D AUTHOR'S INTRODUCTION TO `UMDAT AL-SALIK

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### d1.0 AUTHOR'S INTRODUCTION

d1.1 In the name of Allah, Most Merciful and Compassionate. Praise be to Allah, Lord of the Worlds. Allah bless our liegelord Muhammad, his folk, and his Companions one and all.

d1.2 This is a summary of the school of Imam Shafi'i (the mercy and bliss of Allah Most High be upon him) in which I have confined myself to the most dependable positions (al-sahih) of the school according to Imam Rafi'i and Imam Nawawi, or according to just one of them. I may mention a difference of opinion herein, this being when their recensions contend (dis: w12), giving Nawawi's position first (0: as he is the foremost reference of the school), and then as opposed to it, that of Rafi'i (n:generally left untranslated because it is the weaker position where mentioned).

d1.3 I have named it The Reliance of the Traveller and Tools of the Worshipper. (0: Reliance means that which is depended upon, since the author meant that this text should be a reliable resource work for whoever goes by it, because it contains the most dependable positions of the school and omits the weak ones. Traveller (salik) derives from travel (suluk), meaning to proceed along, the allusion being to the spiritual journey, meaning one's seeking knowledge of the rules of religion with seriousness and effort, to thereby reach Allah Most High and be saved from perdition. Tools are physical instruments their owner depends on in his work, like those of a carpenter. The tools here are knowledge of the rules of Sacred Law found in this text which the validity of worship depends upon.)

d1.4 I ask Allah to give benefit through it, and He is my sufficiency, and best to rely on.

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## e1.0 WATER

e1.1 Water is of various types:

- (1) purifying;
- (2) pure;
- (3) and impure.

e1.2 Purifying means it is pure in itself and it purifies other things.

(O: Purification (Ar. tahara) in Sacred Law is lifting a state of ritual impurity (hadath, def:e7), removing filth (najasa, e14), or matters similar to these, such as purificatory baths (ghusl) that are merely sunna or renewing ablution (wudu) when there has been no intervening ritual impurity.)

e1.3 Pure means it is pure in itself but cannot purify other things (O: such as water that has already been used to lift a state of ritual impurity).

e1.4 Impure means it is neither purifying nor pure. (O: Namely:

- (1) less than 216 liters of water (qullatayn) which is contaminated by filth (najasa), even when none of the water's characteristics (n: i.e. taste, color, or odor) have changed.
- (2) or 216 liters or more of water when one of its characteristics of taste, color, or odor have changed (n:through the effect of the filth. As for the purity of water that has been used to wash away filth, it is discussed below at e14.14).)

e1.5 It is not permissible (O: or valid) to lift a state of ritual impurity or remove filth except with plain water (O: not used water (def:(2) below), or something other than water like vinegar or milk), meaning

purifying water as it comes from nature, no matter what quality it may have (O: of taste, such as being fresh or saline (N: including seawater); of color, such as being white, black, or red; or of odor, such as having a pleasant smell).

**e1.7 It is not permissible to purify (def: e1.2(O:)) with:**

- (1) water that has changed so much that it is no longer termed water through admixture with something pure like flour or saffron which could have been avoided;
- (2) less than 216 liters of water that has already been used for the obligation (dis:c2.1(A:), end) of lifting a state of ritual impurity, even if only that of a child;
- (3) or less than 216 liters of water that has been used to remove filth, even if this resulted in no change in the water.

**e1.8 It is permissible to purify with water:**

- (1) (non-(1) above) that has been only slightly changed by saffron or the like;
- (2) that has been changed by proximity with something such as aloes or oil that are (O: i.e. even if) fragrant;
- (3) that has been changed by something impossible to prevent, such as algae, tree leaves falling in it, dust, or the effects of standing too long;
- (4) (non-(2) of the previous ruling) that has already been used for a nonobligatory use such as the sunnas of rinsing out the mouth, renewing ablution when there has been no intervening state of ritual impurity, or a sunna purificatory bath;
- (5) or water that has already been used (n: to lift a state of ritual impurity) and has now been added together until it amounts to 216 liters or more.

**e1.9 With less than 216 liters, if a person performing ablution (after washing his face once) or the purificatory bath (after making intention for it) makes the intention in his heart to use his hands to scoop up the water, then the introduction of his hands into this amount of water does not make the water used. But if not (O: if he does not make this intention at all, or does so after putting his hands in the water, which is less than 216 liters), then the rest of the water is considered as already used (n: and no longer purifying. But in the Maliki school (dis: c6.4 (end)), it is valid (though offensive) to lift a state of ritual impurity with water that has already been used for that purpose (al-Sharh al-saghir'ala Aqrab al-Malik ila madhhab al-Imam Malik (y35), 1.37)).**

**e1.10 As for 216 liters or more of water, even if two or more persons in a state of major ritual impurity (janaba, def; e10) are immersed in it, whether simultaneously or serially, their impurity is lifted and the water does not thereby become used (n: but remains purifying).**

**e1.11 Qullatayn (lit. "two great jars") roughly equal five hundred Baghdad ritls, and their volume is one and a quarter dhira in height, width, and length. (n: The definition of qullatayn as being 216 liters is based on estimating the dhira' at fortyeight centimeters. Metric equivalents of Islamic weights and measures are given at w15.)**

**e1.12 Two hundred and sixteen liters of water does not become impure by mere contact with filth, but only becomes so by changing (n: in taste, color, or smell) because of it, even when (O: this change is) only slight.**

**e1.13 If such change (n: in 216 liters or more of water) disappears by itself (O: such as through standing at length) or by water is used or impure) then the water is again purifying.**

**e1.14 But the 216 liters of water does not become purifying if the change disappears by (O: putting) such things as musk (O: in it, or ambergris, or camphor, which mask the Scent ; or putting saffron and the like in which mask the color) or vinegar (O: which masks the taste) or earth.**

**e1.15 Less than 216 liters becomes impure by mere contact with filth, whether the water changes or not, unless filth falls into it whose amount (N: before it falls in is so small that it) is indiscernible by eyesight (A eyesight, here and for all rulings, meaning an average look, not a negligent glance nor yet a minute inspection), or if something dead falls into it of creatures without flowing blood, such as flies and the like, in both cases it remains purifying. This is equally true of running or still water.**

**e1.16 When less than 216 liters of impure water is added to (O: even if with impure water) until it amounts to 216 liters or more and no change (def: below) remains in it, then it is (O: has become)**

purifying.

**e1.17** Change, resulting from something pure or impure, means in color, taste, or smell.

(N: But the least change caused by filth makes water (n: even if more than 216 liters) impure, while change caused by something pure does not hurt as long as it can still be termed water. For example, when sugar and tea, it has become pure but not purifying. As for a slight discoloration by tea leaves, or a slight sweetness from sugar, this does not negate water's being purifying.)

## **e2.0 CONTAINERS AND UTENSILS**

**e2.1** Purification is permissible with water from any pure container, except those of gold or silver, or those to which enough gold or silver has been applied that any of it could be collected from the vessel by heating it with fire (N: meaning that if the vessel were exposed to fire, the metallic coat would melt and separate from the container, even if not drop by drop). Such containers or utensils are unlawful for men or women to use in purification, eating, drinking, or other use (O: of any type whatever). It is unlawful to acquire such a container or utensil even if one does not use it. Even a small eye-liner stick of silver is unlawful.

**e2.2** Vessels soldered with gold are absolutely unlawful. It is unlawful to use a vessel to which much (def:14.5) silver solder has been applied by way of decoration; permissible to use a vessel to which only a little silver solder has been applied by way of a needed repair; and offensive but not unlawful to use a vessel to which only a little silver has been applied for decoration, or much out of necessity. Solder means that a part of the vessel has been broken and then silver is put there to hold it together.

**e2.3** It is offensive to use the vessels of non-Muslims (N: before washing them) (O: to be certain of the purity of the vessels used, since non-Muslims are not as concerned about purity as Muslims are) or wear their cloths (O: for the same reason).

**e2.4** It is permissible to use a vessel made of any precious gem, such as a ruby or emerald.

## **e3.0 USING A TOOTHSTICK (SIWAK)**

(O: In Sacred Law it refers to the use of a twig or the like on the teeth and around them to remove an unpleasant change in the breath or similar, together with the intention (n: of performing the sunna).)

**e3.1** Using a toothstick is recommended any time, except after noon for someone who is fasting, in which case it is offensive. (A: Using toothpaste is also offensive then, and if any reaches the stomach of someone fasting, it is unlawful (n: if the fast is obligatory, as this breaks a fast).)

**e3.2** It is especially desirable to use the toothstick for every prayer, for reading (O: the Koran, hadith, or a lesson), ablution, yellowness of teeth, waking from sleep, entering one's house, and for any change of breath from eating something with a bad odor or from not eating. (A: When there exists a demand for an act, such as using the toothstick before reading the Koran, and an equal demand not to, as when it is after noon on a fast-day, then the proper course is not to do it.)

**e3.3** Anything coarse is adequate (n: to fulfill the sunna) except rough fingers, though the best is a twig from the arak (n: a desert shrub) that is dried (N: meaning previously cut from the shrub long enough to have dried) and then moistened.

**e3.4** It is best to clean the teeth laterally, beginning on the right and paying particular attention to the bases of the back teeth, and to intend the sunna thereby.

## **e4.0 THE BODY**

**e4.1** It is sunna:

(1) to trim the fingernails and toenails;

(2) to clip one's mustache (O: when it grows long. The most one should clip is enough to show the pink of the upper lip. Plucking it out or shaving it off is offensive.) (A: Shaving one's beard is unlawful according to all Imams except Shafi'i, who wrote two opinions about it, one that it is offensive, and the others that it is unlawful. A weak chain of narrators ascribes an opinion of offensiveness to Imam Malik. It is unbelief (kufr) to turn from the sunna in order to imitate non-Muslims when one believes their way to be superior to the sunna);

(3) for those used to it, to pluck away the hair of the underarms and nostrils, though if plucking the



underarms is a hardship, then shaving them; and to shave the public hair;  
(4) and to line the eyes with kohl (n: an antimonic compound that one should be careful to see contains no lead), each eye an odd number of times, preferably three.

e4.2 It is offensive to shave part of the head and leave part unshaven (A: though merely cutting some of the hair shorter than another part is not objectionable). There is no harm in shaving it all off (O: but it is not recommended except for the rites of hajj and umra (n: the greater and lesser pilgrimages)).

e4.3 Circumcision is obligatory (O: for both men and women. For men it consists of removing the prepuce from the penis, and for women, removing the prepuce (Ar. bazr) of the clitoris (n: not the clitoris itself, as some mistakenly assert). (A: Hanbalis hold that circumcision of women is not obligatory but sunna, while Hanafis consider it a mere courtesy to the husband.)

e4.4 It is unlawful for men or women to dye their hair black, except when the intention is jihad (O: as a show of strength to unbelievers). Plucking out gray hair is offensive. It is sunna to dye the hair with yellow or red. (N: It is unlawful for a woman to cut her hair to disfigure herself (n:e.g. for mourning), though if done for the sake of beauty it is permissible.) It is sunna for a married woman to dye all of her hands and feet with henna (n: a red plant dye). but it is unlawful for men to do so unless it is needed (N: to protect from sunburn, for example).

#### e5.0 ABLUTION (WUDU)

(N: Meaning to wash certain parts of the body with water, with the intention of worship.)

(O: The legal basis for ablution, prior to scholarly consensus, is the word of Allah Most High.

"O believers, when you go to pray, wash your faces, and wash your forearms to the elbows, wipe your heads, and [wash] your feet to the two anklebones" (Koran 5.6)  
and the hadith related by Muslim.

"A prayer is not accepted without purification.")

#### THE INTEGRALS OF ABLUTION

e5.1 Ablution has six obligatory integrals:

- (a) to have the intention when one starts washing the face;
- (b) to wash the face;
- (c) to wash the arms up to and including the elbows;
- (d) to wipe a little of the head with wet hands;
- (e) to wash the feet up to and including the anklebones;
- (f) and to do these things in the order mentioned.

The sunnas of ablution are all its actions besides the above. (N: The obligatory minimum is to perform (b), (c), (d), and (e) once, though the sunna is to perform them each three times.)

#### THE INTENTION

e5.2 The person performing ablution intends:

- (1) to lift a state of lesser ritual impurity (hadath) (O: since the purpose of ablution is to eliminate that which prevents prayer and the like);
- (2) to purify for the prayer;
- (3) or to purify for something not permissible without purification, such as touching a Koran, or something else.(N: The simple intention to perform the obligation of ablution suffices in place of all the above.)

e5.3 The above intentions are not used by three types of people when performing ablution:

- (1) a woman with chronic vaginal discharge (def:e13.6);
- (2) a person unable to hold back intermittent drops of urine coming from him (n: or with some similar state of chronic annulment of ablution (e13.7));
- (3) or a person intending to perform dry ablution (tayammum,def:e12).

Such people merely intend permission to perform the obligation of the prayer as they begin their ablution. (O: The intention to lift a state of minor ritual impurity is inadequate for these people because their state of impurity is not lifted.) (n: Rather the Sacred Law gives them a dispensation to perform the prayer and so forth without lifting it.)

e5.4 The necessary condition of ablution is that the intention for it exist in the heart and that it

accompany one's washing the first part of the face. It is recommended to pronounce it aloud, and that it be present in the heart from the first of ablution (O: during the preliminary sunnas before washing the face, so as to earn their reward). It is obligatory that this intention persist in the heart until one washes the first part of the face (O: as that is the first part of the face (O: as that is the first integral). If one confines oneself to making the intention when washing the face, it suffices, but one is not rewarded for the previous sunnas of rinsing the mouth and nostrils and washing the hands (N: provided that one merely intended cleanliness or something else by them and the intention of worship did not come to one's mind).

## HOW TO PERFORM ABLUTION

e5.5 It is recommended to begin ablution by mentioning (n: in Arabic, like the other invocations in this volume (def:w1)) the name of Allah Most High (O: by saying "In the name of Allah," which is the minimum. The optimum is to say, "In the name of Allah. Most Merciful and Compassionate," Before this, it is sunna to say, "I take refuge in Allah from the accursed Devil," and to add after the Basmala: "Praise to Allah for Islam and its blessings. Praise to Allah who made water purifying and Islam a light. My Lord, I take refuge in You from the whispering of devils and take refuge in You lest they come to me." It is sunna to say all the above to oneself.) If one internationally or absentmindedly omits saying the name of Allah (n: at the first of ablution), then one pronounces it during it (O: by saying, "In the name of Allah, first to last").

e5.6 It is recommended to wash the hands three times. (O: By saying "three times," the author indicates the sunna character of performing such acts thrice, and that it is an independent sunna (N: rewarded apart from the sunnas it is conjoined with).) If one has doubts as to whether or not one's hands are free of filth, it is offensive to dip them into less than 216 liters of water without first washing them three times. (O: When sure they are pure, it is not offensive to immerse them. When sure they are impure, it is unlawful to dip them into this amount of water (N: since it spoils it by making it impure).)

e5.7 One next uses the toothstick (def:e3), and then rinses the mouth and nose out three times, with three handfuls of water. One takes in a mouthful from a handful of water and snuffs up some of the rest of the handful into the nostrils (n: swishing the water around the mouth, and expelling the water of the mouth and the nose simultaneously), then again rinses the mouth and then the nostrils from a second handful of water, followed by rinsing the mouth and then the nostrils from the third handful of water. One lets the water reach as much of the mouth and nostrils as possible, unless fasting, when one goes lightly.

c5.8 Then one washes the face three times, face meaning from the point where the hairline usually begins to the chin in height, and from ear to ear in width.

e5.9 It is obligatory to wash all facial hair-inner, outer, and the skin beneath, whether the hair is thick or thin or thin-such as eyebrows, mustache, and so forth; except for the beard, since:  
(1) if it is thin its inner and outer hair and the skin beneath must be washed;  
(2) but if thick, then the outer hair is enough, though it is recommended to saturate it by combing it from beneath with wet fingers. It is obligatory to cause the water to flow over the outer(O: hair of the ) part of the beard that hangs below the chin (O: though not its inner hair). It is obligatory to wash part of the head in every direction beyond the bounds of the face, to make sure everything has been completely covered. It is sunna to use new water to saturate one's beard (O: if it is thick) by combing it from beneath with the fingers.

c5.10 Then one washes the hands up to and including the elbows three times. (If the arm has been amputated between the hand and elbow, it is necessary to wash the remaining forearm and the elbow, If amputated at the elbow, then the end of the upper arm must be washed. If it has been amputated between the elbow and shoulder, then it is recommended to wash the rest of the upper arm.)

c5.11 Then one wipes the head with wet hands, beginning at the front of the head, sliding the paired hands back to the nape of the neck, and then returning them to where one began. (O: This is an explanation of the best way, for otherwise, fulfilling the obligation does not depend on starting at the front, but may be from any part of the head.) One does this three times. If one is bald, or one's hair never grew, or is long, or braided, then it is not recommended to slide the hands back to the front. Each of the following suffices as wiping the head:

(1) to place the hand on the head without moving it so that one wets any of what is referred to by

"wiping the head," the minimum of which is part of a single hair, provided this part does not hang below the limits of the head;

(2) to drip water on the head without making it flow over it;\

(3) or to wash the head

(If it is difficult to remove one's turban, then after wiping the minimum of the head required, one may finish by wiping the turban.)

c5.12 One then wipes the ears inside and out with new water, three times, and then the ear canals with one's little fingers with more new water, three times (O: though this second sunna is not separately mentioned in the more well known books, which speak of the two sunnas together, making "wiping the ears" include the ear canals).

c5.13 Then one washes the feet up to and including the anklebones three times.

c5.14 If one does not know whether one washed a particular limb or the head three times (N: as is sunna), then one assumes one has washed it the least number that one is sure of, and washes as many additional times as it takes to be certain one has reached three.

c5.15 One begins with the when washing arms and legs, but not the hands, cheeks, and ears, which are washed right and left simultaneously.

c5.16 One washes more than is obligatory of the face by adding part of the head and neck, and likewise with the arms and legs by washing above the elbows and ankles, the maximum of which is the whole upper arm or lower leg.

c5.17 One washes the parts of the body successively and without pausing between them (O:such that in normal weather the last part would not dry before one began the next), though if one pauses between them, even for a long time, one's ablution is still valid without renewing the intention.

c5.18 After finishing, one says: "I testify that there is no god but Allah, alone, without partner, and I testify that Muhammad is His slave and messenger. O Allah, make me one of the oftrepentant, one of the purified, one of Your goodly slaves. O Allah, I declare Your exaltedness above every imperfection and Your Praise. I testify ther is no god but you. I ask Your forgiveness and turn to You in repentance." There are supplications said for each limb washed, but these are not authenticated as being of the sunna.

#### OTHER RECOMMENDED MEASURES

e5.19 Other recommended measures (adab) include:

(1) facing the direction of prayer;

(2) not to talk during ablution for other than a necessity;

(3) and to begin with the top of the face and not slap water upon it.

e5.20 If another person is pouring one's water (N: or if using a tap) one begins washing the arms from the elbows, and the feet from the anklebones. If pouring one's own water (N: from a jug, for example), one begins washing the arms from the fingers and the feet from the toes.

e5.21 One should take care that water reaches the inner corners of the eyes, and the heels (N: up to the level of the anklebones) and similar places it is feared one may neglect, especially during the winter.

e5.22 One moves one's ring when washing the hand to allow water to reach the skin beneath. (O: If the water cannot otherwise get under it, it is obligatory to move the ring.)

e5.23 One saturates between the toes using the little finger of the left hand. One begins with the little toe of the right foot, coming up through the toes from beneath, and finishes with the little toe of the left.

#### THINGS OFFENSIVE IN ABLUTION

e5.24 It is offensive:

(1) to have another person wash one's limbs, unless there is some excuse (O: such as old age or the like);

(2) to wash the left before the right;

(3) or to waste water.

**e5.25 It is recommended:**

- (1) not to use less than 0.51 liters (mudd) of water for ablution;**
- (2) not to use less than 2.03 liters (sa') of water for the purificatory bath (ghusl);**
- (3) not to dry off the parts washed in ablution (N: unless there is an excuse such as illness or cold weather) or shake the water off one's hands;**
- (4) not to ask another to pour water for one's ablution;**
- (5) and not to wipe the neck.**

## **OTHER PROVISIONS**

**e5.26 If dirt under the nails prevents the water (O: of ablution or the purificatory bath from reaching the skin beneath) then the ablution (O: or bath) is not valid. (N: The same is true of waterproof glue, paint, nail polish, and so forth on the nails or skin: if it prevents water from reaching any part of the nails or skin, no matter how small, one's ablution or purificatory bath is not valid.)**

**e5.27 If one has doubts during the course of the ablution that one has washed a particular limb or the head, then it is obligatory to wash it again and everything that follows it in the ablution sequence. But if these doubts arise after one has finished ablution, one need not repeat anything. (A: The same is true of the purificatory bath (ghusl).)**

**e5.28 It is recommended to renew the ablution (N: when there has been no intervening state of minor ritual impurity) when one has performed any prayer, obligatory or nonobligatory, will it.**

**e5.29 Ablution is recommended for someone in a state of major ritual impurity (janaba) who wishes to eat, drink, sleep or make love again. And Allah knows best.**

## **e6.0 WIPING FOOTGEAR**

**(N: Wiping one's footgear (Ar. khuff) with wet hands is a dispensation that can take the place of the fifth ablution integral of washing the feet. The footgear Muslims generally use for this are ankle-high leather socks that zip up and are worn inside the shoes.)**

**e6.1 Wiping footgear is permissible for 72 hours (lit. "three days and nights") to a traveller on a lawful trip (N: one not undertaken for purposes of disobeying Allah) that fulfills the conditions permitting one to shorten prayers on journeys (def:f15.1-5). Wiping them is permissible to a nontraveller for 24 hours (lit. "a day and a night"). (n: At the end of these periods, one removes the footgear to perform ablution, or, if one has ablution at the time, to wash the feet, before putting them on again and starting a new period of permissibility, as at e6.7) The beginning of the period is reckoned from the time of the first minor ritual impurity (hadath) that occurs after having put them on while in a state of ablution. Wiping footgear is permissible for only 24 hours:**

- (1) when one has wiped one has wiped both of a pair of footgear for ablution or just one of the pair (n: leaving the other for later) when not on a trip, and then begun travelling;**
- (2) or (O: When one has wiped both of a pair of footgear or just one) when on the trip and then finished travelling;**
- (3) or when one is in doubt as to whether one first wiped one's footgear for ablution while travelling or whether it was while not travelling. Wiping footgear is permissible for 72 hours if one's ablution is nullified when not travelling and one then lifts that state of minor ritual impurity by wiping them for the ablution while travelling.**

**e6.2 When one doubts as to whether or not the permissible period for wiping them has expired, then one may not wipe them while the doubt exists. (A: Because dispensations cannot be taken unless one is certain (N: of their necessary conditions).) If one has doubts(n: when near the end of the permissible period for wiping them, for example, and uncertain exactly when it began) about whether one nullified one's ablution at the time of the noon prayer, or whether it was at the time of the midafternoon prayer, then one proceeds on the assumption that it was at the time of the noon prayer.**

**e6.3 If a state of major ritual impurity (janaba) occurs during the permissible period for wiping footgear, then one must take them off for the purificatory bath (ghusl).**

**e6.4 The conditions for the permissibility of wiping footgear are:**

- (a) that one have full ablution when one first puts them on;**

(b) that they be free of filth;  
(c) that they cover the whole foot up to and including the anklebones;  
(d) that they prevent water (N: if dripped on them drop by drop from directly) reaching the foot (O:- if water reaches the foot through the holes of a seam's statues, it does not affect the validity of wiping them, though if water can reach the foot through any other place, it violates this condition);  
(e) and that they be durable enough to keep walking around upon a travellers do in attending to their needs (O: when encamping, departing, etc.);  
-no matter whether they are of leather, felt, layers of rags (N: including thick, heavy wool socks that prevent water from reaching the foot (A: not modern dress socks (n:due to non(d) and (e) above), which are not valid to wipe in any school, even if many are worn in layers)), wood, or other; nor whether they have a cleavage laced up with eyelets (O: provided none of the foot shows).  
One may not wipe footgear if wearing just one of a pair, washing the other foot. Nor if any of the foot shows through a hole in them.

e6.6 It is sunna to wipe the footgear on the top, bottom, and heel in lines (N: as if combing something with the fingers), without covering every part of them or wiping them more than once.  
One puts the left hand under the heel and the right hand on top of the foot at the toes, drawing the right hand back towards the shin while drawing the left along the bottom of the foot in the opposite direction towards the toes. It is sufficient as wiping the footgear to wipe any part of their upper surface 9n: with wet hands), from the top of the foot up to the level of the anklebones. It is not sufficient to only wipe some of the bottom, heel, side of the foot, or some of the footgear's inner surface that faces the skin.

e6.7 When on an ablution that was performed by wiping the footgear, and then some part of the foot shows because of taking them off, or through a hole, it's sufficient (N: to complete one's ablution) to merely wash the feet again (O: without repeating the ablution).

e7.0 THE FOUR CAUSES OF MINOR RITUAL IMPURITY (HADATH)  
(N: Meaning the things that nullify one's ablution.)

#### ANYTHING THAT EXITS FROM THE PRIVATE PARTS

e7.1 The first is anything that exits from the front or rear private parts, whether a substance (O: such as urine or feces) (N: or the mucus that exits from the vagina with or without sexual stimulation, though not a woman's sexual fluid that appears through orgasm, discussed below) or wind, and whether something usual or something uncommon such as a worm or stones. But not a male's sperm or female's sexual fluid (Ar. maniyy, that which exits with orgasmic contractions, whether a man's or a woman's (def:e10.4)), which necessitates the purificatory bath (N: as it causes major ritual impurity) but does not necessarily nullify ablution, an example of this being someone firmly seated (dis: e7.2 second paragraph) who sleeps and has a wet dream, or someone who looks at something lustfully and sperm or sexual fluid come. Otherwise, if one makes love to one's spouse, or has an orgasm while lying asleep, ablution is nullified (n: respectively) by touching the spouse's skin (e7.3) or by sleep (below).

#### LOSS OF INTELLECT THROUGH SLEEP ETC.

e7.2 The second cause of minor ritual impurity is loss of intellect (O: meaning the loss of the ability to distinguish, whether through insanity, unconsciousness, sleep, or other. Loss of intellect excludes drowsing and daydreaming, which do not nullify ablution. Among the signs of drowsing is that one can hear the words of those present, even if uncomprehendingly). Sleep while firmly seated on the ground (A: or any other surface firm enough to prevent a person's breaking wind while seated on it asleep) does not nullify ablution, whether riding mounted, leaning on something which if removed would cause one to fall, or otherwise seated. If one sleeps when firmly seated and one's rear moves from its place before one awakens, this nullifies one's ablution. But not if:

- (1) one's rear moved after or during awakening, or if one is uncertain about whether it happened before awakening or during;
- (2) one's arm dropped to the ground while one was firmly seated;
- (3) or when one drowns while not firmly seated, hearing but not comprehending, or if one is uncertain as to whether one drowsed or slept, or uncertain as to whether one slept while firmly seated or not firmly seated.

#### CONTACT OF MAN AND WOMAN'S SKIN

e7.3 The third cause of minor ritual impurity is when any, no matter how little, of the two skins of a man and woman touch (N: husband and wife, for example) when they are not each other's unmarriageable kin (Ar. mahram, def:m6), even if they touch without sexual desire, or unintentionally, and even if with tongue or a nonfunctional or surplus limb; though touching does not include contact with teeth, nails, hair, or a severed limb. Ablution is also nullified by touching AN AGED person or a corpse (N: of the opposite sex) but not by touching a member of one's unmarriageable kin, or a child who is younger than the age that usually evokes sexual interest. One's ablution is not nullified when one is uncertain about:

- (1) whether one touched a male or female;
- (2) whether one touched hair or skin;
- (3) or whether the person one touched was one's unmarriageable kin or not.

#### TOUCHING HUMAN PRIVATE PARTS WITH HAND

e7.4 The fourth cause of minor impurity is touching human private parts with the palm or inner surface of the fingers only(N: i.e those parts which touch when the hands are put together palm to palm), whether one touches the private parts:

- (1) absentmindedly;
- (2) without sexual desire;
- (3) in the front or rear;
- (4) of a male or female;
- (5) of oneself or another, even if deceased, or a child;

-but not if one touches them with one's finger tips, the skin between the fingers, with the outer edge of the hand, or touches the corresponding parts of an animal.

e7.5 Ablution is not nullified by vomiting, letting blood, nosebleed, laughing during the prayer, eating camel meat, or other things (N: not discussed above).

e7.6 When certain that a minor ritual impurity has occurred, but uncertain whether one subsequently lifted it (N: with ablution), then one is in a state of minor ritual impurity (A: because in Sacred Law, a state whose existence one is certain about does not cease through a state whose existence one is uncertain about). When certain that one had ablution, but uncertain that it was subsequently nullified, then one still has ablution.

#### e8.0 ACTIONS UNLAWFUL DURING MINOR RITUAL IMPURITY

e8.1 The following are unlawful for someone in a state of minor ritual impurity:

- (1) to perform the prayer;
  - (2) to prostrate when reciting the Koran at verses in which it is sunna to do so (def; f11.13);
  - (3) to prostrate out of thanks (f11.19);
  - (4) to circumambulate the Kaaba (j5);
  - (5) or to carry a Koran, even by a strap or in a box, or touch it, whether its writing, the spaces between its lines, its margins, binding, the carrying strap attached to it, or the bag or box it is in.
- (n: Other aspects of proper manners (adab) towards the Book of Allah are treated below at w16.)  
(A: The opinion expressed in Fiqh al-sunna that it is permissible to touch the Koran without ritual purity is a deviant view contrary to all four schools of jurisprudence and impermissible to teach (dis:r7.1(3), except to explain that it is oberrant)(n:Though in the Hanifi school. it is permissible for someone in a state of minor ritual impurity to touch or carry a Koran that is inside a cover not physically attached to it, such as a case or bag, as opposed to something joined to it, like a binding (al-Lubab fi sharh al-Kitab (y88), 1.43). And Allah knows best.)

e8.2 It is also unlawful (n: when without ablution) to touch or carry any of the Koran written for the purpose of study, even a single verse or part of one, as when written on a slate or the like.  
(O: But this is permissible for nonstudy purposes such as when the Koran is intended to be an amulet (def:w17). It is not prohibited to touch or carry such an amulet even if it contains whole suras, or even, as Sheikh (N:Shirbini) al-Khatib has said, if it contains the whole Koran.) It is permissible to carry a Koran in one's baggage and to carry money, rings, or clothes on which Koran is written. It is permissible to carry books of Sacred Law, hadith, or Koranic exegesis which contain Koran, provided that most of their text is not Koran (O:because the non-Koranic part is the purpose, though this is unlawful if half or more is Koran).

Boys who have reached the age of discrimination (def:f1.2(O:)) may touch or carry the Koran while

in a state of minor ritual impurity (O:because of the need to learn it and the hardship of their keeping ablution, and likewise for young girls, though this is for study alone, as opposed to nonstudy, when it is unlawful. As for children under this age, their guardian may not give a Koran to them) (A:as this is an insult to it. Also,teachers should remind children that it is unlawful to moisten one's fingers with saliva to turn its pages). Someone in a state of minor or major impurity may write Koran if he does not touch or carry what he has written.

e8.3 When one fears that a Koran may burn, get soaked, that a non-Muslim may touch it,or that it may come into contact with some filth, then one must pick it up if there is no safe place for it, even if one is in a state of minor or major ritual impurity, though performing the dry ablution (tayammum, def:e12) is obligatory if possible.

e8.4 It is unlawful to use a Koran or book of Islamic knowledge as a pillow (O:except for fear of theft, when it is permissible to do so). And Allah knows best.

## e9.0 GOING TO LAVATORY

e9.1 It is recommended when one intends to use the lavatory:

(1) to put something on one's feet, unless there is an excuse (O:such as not having shoes);

(2) to cover the head (O:even if only with a handkerchief or other);

(3) to set aside anything on which there is the mention of Allah Most High. His messenger (Allah bless him and give him peace), or any revered name (O:like those of prophets or angels). If one enters with a ring (O:on which something worthy of respect is written), one closes one's hand around it;

(4) to ready stones (N: or other suitable material (def:e9.5)) (O:if one uses them) to clean oneself of filth (N:though water alone is sufficient);

(5) to say before entering:

"In the name of Allah. O Allah, I take refuge in You from demons, male and female," and after leaving.

"[O Lord,] Your forgiveness: Praise be to Allah who rid me of the hurt and gave me health";

(6) to enter with the left foot first and depart with the right foot first (and this, together with (3) and

(5) above, are not only for indoors, but recommended outdoors as well);

(7) not to raise one's garment until one squats down to the ground (O: to keep one's nakedness covered as much as possible) and to lower it before one stand up;

(8) to put most of one's weight on the left foot while squatting;

(9) not to spend a long time;

(10) not to speak;

(11) when finished urinating, for men to squeeze the penis with the left hand from base to head (O: recommended because this is where the urethra is, and for women to squeeze their front between thumb and forefinger) (N: so urine does not exit later and nullify one's ablution) pulling lightly three times (O: this being recommended when one thinks the urine has stopped, though if one thinks it has not, this is obligatory);

(12) not to urinate while standing (O: which is offensive) unless there is an excuse (N: such as when standing is less likely to spatter urine on one's clothes than sitting, or when sitting is a hardship);

(13) not to clean oneself with water in the same place one relieved oneself, if it might spatter, though if in a lavatory one need not move to a different place;

(14) to distance oneself from others if outdoors and to screen oneself;

(15) not to urinate into holes, on hard places, where there is wind, in waterways, where people gather to talk, on paths, under fruit trees, near graves, in still water, or in less than 216 liters of running water;

(16) and not to relieve oneself with one's front or rear facing the sun, moon, or the Sacred Precinct in Jerusalem.

e9.2 It is unlawful to urinate on anything edible, bones, anything deserving respect, a grave or in a mosque, even if into a receptacle.

e9.3 It is unlawful to urinate or defecate with one's front or rear towards the direction of prayer when outdoors and there is no barrier to screen one, though this is permissible when one is indoors within a meter and a half of a barrier at least 32 cm. high, or in a hole that deep. When one is not this close to such a barrier at least 32 cm. high, or in a hole that deep. When one is not this close to such a barrier, it is not permissible except in a lavatory, where, if the walls are farther from one than the maximal distance or are shorter than the minimal height, relieving oneself with front or rear towards the direction of prayer is permissible, though offensive.

**e9.4** It is obligatory to clean oneself of every impure substance coming from one's front or rear, though not from gas, dry worms or stones, or excrement without moisture.

**e9.5** Stones suffice to clean oneself, though it is best to follow this by washing with water. Anything can take the place of stones that is a solid, pure, removes the filth, is not something that deserves respect or is worthy of veneration, nor something that is edible (O: these being five conditions for the validity of using stones (N: or something else) to clean oneself of filth without having to follow it by washing with water). But it is obligatory to wash oneself with water if:

- (1) one has washed away the filth with a liquid other than water, or with something impure;
- (2) one has become soiled with filth from a separate source;
- (3) one's waste has moved from where it exited (n: reaching another part of one's person) or has dried;
- (4) or if feces spread beyond the inner buttocks (N: meaning that which is enfolded when standing), or urine moved beyond the head of the penis, though if they do not pass beyond them, stones suffice.

It is obligatory (N: when cleaning oneself with a dry substance alone) to both remove the filth, and to wipe three times, even when once is enough to clean it, doing this either with three pieces (lit. "stones") or three sides of one piece. If three times does not remove it, it is obligatory to (N: repeat it enough to) clean it away (O: as that is the point of cleaning oneself. Nawawi says in al-Majmu' that cleaning oneself (N: with a dry substance) means to remove the filth so that nothing remains but a trace that could not be removed unless one were to use water) (N: and when this has been done, any remaining effects of filth that could have been done, any remaining effects of filth that could have only been removed with water are excusable). An odd number of strokes is recommended. One should wipe from front to back on the right side with the first piece, similarly wipe the left with the second, and wipe both sides and the anus with the third. Each stroke must begin at a point on the skin that is free of impurity. It is offensive to use the right hand to the oneself of filth.

**e9.6** It is best to clean oneself of filth before ablution, though if one waits until after it to clean, the ablution is nevertheless valid (N: provided that while cleaning, the inside surface of the hand (def: e7.4 does not touch the front or rear private parts). If one waits until after one's dry ablution (tayammum, def:e12) to clean away filth, the dry ablution is not valid (A: because lack of filth is a condition for it).

#### **e10.0 MAJOR RITUAL IMPURITY (JANABA)**

**e10.1** The purification bath (ghusl, def:e11) is obligatory for a male when:

- (1) sperm exists from him;
  - (2) or the head of his penis enters a vagina;
- and is obligatory for a female when:

- (1) sexual fluid (def: below) exits from her;
- (2) the head of a penis enters her vagina;
- (3) after her menstrual period;
- (4) after her postnatal lochia stops or after a child is born in a dry birth.

(n: The Arabic term maniyy used in all these rulings refer to both male sperm and female sexual fluid, i.e that which comes from orgasm, and both sexes are intended by the phrase sperm or sexual fluid wherever it appears below.)

**e10.3** When a woman who has been made love to performs the purificatory bath, and the male's sperm afterwards leaves her vagina, then she must repeat the ghusl if two conditions exist:

- (a) that she is not a child. but rather old enough to have sexual gratification (A: as it might otherwise be solely her husband's sperm);
- (b) and that she was fulfilling her sexual urge with the lovemaking, not sleeping or forced.

**e10.4** Male sperm and female sexual fluid are recognised by fact that they:

- (a) come in spurts (n: by contractions);
- (b) with sexual gratification;
- (c) and when moist, smell like bread dough, and when dry, like egg-white.

When a substance from the genital orifice has any one of the above characteristics, then it is sperm or sexual fluid and makes the purificatory bath obligatory. When not even one of the above characteristics is present, it is sperm or sexual fluid. Being white or thick are not being yellow or thin are not necessary for it to be considered female sexual fluid.

**e10.5** The purificatory bath is not obligatory:

- (1) when there is an unlustful discharge of thin, sticky, white fluid (madhy) caused by amorous play



or kissing;

(2) or when there is a discharge of the thick, cloudy white fluid (wady) that exits after urinating (O: or carrying something heavy).

e10.6 If one does not know whether one's discharge is sperm or whether it is madhy (def:(1) above), then one may either:

(1) consider it sperm, and perform the purificatory bath (O: in which case washing the portions of clothes and so forth affected with it is not obligatory, as it is legally considered a pure substance);

(2) or consider it madhy, and wash the affected portions of the body and clothes (N: which is obligatory, as it is legally considered filth), and perform ablution, though not the purificatory bath.

The best course in such cases of uncertainty is to do all of the above (O: of bathing, washing the affected portions, and ablution, so as to take due precaution in one's worship).

e10.7 All things unlawful for someone in minor ritual impurity (def: e8.1) are also unlawful for someone in a state of major ritual impurity (N: or menstruation). In addition, it is likewise unlawful for such a person:

(1) to remain in a mosque;

(2) or to recite any of the Koran, even part of a single verse, though it is permissible to use its invocations (dhikr) when the intention is not koran recital (O: such as saying in disasters, "Surely we are Allah's, and unto Him we will return," and the like). If one intends Koran recital, it is disobedience, but if one intends it primarily as invocation (dhikr), or as nothing in particular, it is permissible.

It is permissible to pass through a mosque (A: though not to enter and leave by the same door (Ar. taraddud), which is unlawful) when one is in a state of major ritual impurity, but this is offensive when there is no need.

#### e11.0 HOW TO PERFORM THE PURIFICATORY BATH (GHUSL)

e11.1 When performing the purificatory bath, one:

(1) begins by saying, "In the name of Allah, Most Merciful and Compassionate";

(2) removes any unclean matter on the body (O: pure or impure);

(3) performs ablution (wudu) as one does before the prayer;

(4) pours water over the head three times, intending the purificatory bath, or to lift a state of major ritual impurity (janaba) or menstruation, or to be permitted to perform the prayer, and running the fingers through one's hair to saturate it;

(5) and then pours water over the body's right side three times, then over the left side three times, ensuring that water reaches all joints and folds, and rubbing oneself.

(6) If bathing after menstruation, a woman uses some musk to eliminate the afterscent of blood (O: by applying it to a piece of cotton and inserting it, after bathing, into the vagina as far as is obligatory (def: (b) below) for her to wash). (N: What is meant thereby is a substance that removes the traces of filth, by any means, and it is fine to use soap.)

Two things (N: alone) are obligatory for the validity of the purificatory bath:

(a) having the intention (4 above) when water is first applied to the parts that must be washed;

(b) and that water reaches all of the hair and skin (N: to the roots of the hair, under nails, and the outwardly visible portion of the ear canals, though unlike ablution the sequence of washing the parts is not obligatory), even under the foreskin of the uncircumcized man, and the private parts of the nonvirgin woman which are normally disclosed when she squats to relieve herself.

(n: In the Hanafi school, rinsing out the mouth and nostrils (defL e5.7) is obligatory for the validity of the purificatory bath (al-Lubab fi sharh al-Kitab (y88) 1.14) It is religiously more precautionary for a Muslim never to omit it, and Allah knows best.)

e11.2 If one begins the purificatory bath while on ablution (wudu) but nullifies it (def:e7) before finishing, one simply completes the bath (N: though one needs a new ablution before praying).

e11.3 If there is filth (najasa) on the body, one washes it off by pouring water on it and then performs the purificatory bath, though washing oneself a single time suffices for both removing it and for the purificatory bath.

e11.4 When a woman who is obliged to both lift a state of major ritual impurity (janaba) and purify after menstruation performs the purificatory bath for either of these, it suffices for both.

Whoever performs the bath one time with the intention to (n: both) lift a state of major ritual impurity and fulfill the sunna of the Friday prayer bath has performed both, though if he only intends

one, his bath counts for that one but not the other.

**e11.5 The purificatory bath is sunna:**

- (1) for those who want to attend the Friday prayer (def:f18) (O: the bath's time beginning at dawn);
- (2) on the two 'eids (f19) (O: the time for it beginning from the middle of the night);
- (3) on days when the sun or moon eclipse;
- (4) before the drought prayer (f21);
- (5) after washing the dead (O: and it is sunna to perform ablution (wudu) after touching a corpse);
- (6) after recovering one's sanity or regaining consciousness after having lost it;
- (7) (N: before) entering the state of pilgrim sanctity (ihram, def:j3), when entering Mecca, for standing at 'Arafa (j8), for circumambulating the Kaaba (j5) and going between Safa and Marwa (j6), for entering Medina, at al-Mash'ar al-Haram (j9.2), and for each day of stoning at Mina (j10) on the three days following 'Eid al-Adha.

**e12.0 DRY ABLUTION (TAYAMMUM)**

(N: When unable to use water, dry ablution is a dispensation to perform the prayer or similar act without lifting one's minor or major impurity, by the use of earth for one's ablution.)

**e12.1 Three conditions must be met for the legal validity of performing dry ablution.**

- (a) The first is that it take place after the beginning of the prayer's time if it is for an obligatory or a nonobligatory one that has a particular time. The act of lifting earth to the face and arms (N: the first step of dry ablution) must take place during that time. If one performs dry ablution when unsure that the prayer's time has come, then one's dry ablution is invalid, even if it coincides with the correct time (dis e6.2(A:)). If one performs dry ablution in midmorning for the purpose of making up a missed obligatory prayer, but the time for noon prayer comes before one has made up the missed obligatory prayer, then one may pray it (N: the noon prayer) with that dry ablution (N: because one did not perform dry ablution for it before its time, but rather performed dry ablution for a different prayer in that prayer's time, which clarifies why this does not violate the conditions of praying with dry ablution), or one could pray a different missed prayer with it (O: as one is not required to specify which obligatory prayer the dry ablution is for).
- (b) The second condition is that dry ablution must be performed with plain, purifying earth that contains dust, even the dust contained in sand; though not pure sand devoid of dust; nor earth mixed with the likes of flour; nor gypsum pottery shards (O: which are not termed earth), or earth that has been previously used, meaning that which is already on the limbs or has been dusted off them.
- (c) The third condition is inability to use water. The person unable to use water performs dry ablution, which suffices in place of lifting all forms of ritual impurity permitting the person in a state of major ritual impurity (janaba) or woman after her menstrual period to do everything that the purificatory bath (ghusl) permits them to do. If either of them subsequently has a minor ritual impurity (hadath), then only the things prohibited on minor impurity are unlawful for them (def:e8.1) (N: not those prohibited on major impurity (e10.7), that is, until they can again obtain water to life their state of major impurity, when they must, for the dry ablution is only a dispensation to pray and so forth while in states of impurity and is nullified by finding water).

**e12.2 Inability to use water has (O: three) causes (n: lack of water, fear of thirst, and illness).**

**LACK OF WATER**

**e12.3 The first is lack of water. When one is sure there is none, one performs dry ablution without searching for it. If one thinks there might be some, one must look through one's effects and inquire until one has asked all of one's party or (N: if too numerous) there is no time left except for the prayer. One does not have to ask each person individually, but may simply call out, "Who has water, even for a price?" Then one looks around, if on level ground. If not level, one checks on foot within the range at which one's group could be expected to respond to a cry for help, provided there is no threat to life or property. Or one may climb a nearby hill. The search for water must occur after the particular prayer's time has come. When one checks, does not find water, performs dry ablution, (N: prays an obligatory prayer with it,) and remains at the place, one need not search again before performing dry ablution for another obligatory prayer (N: when the next prayer's time comes), provided one made sure there was no water the first time, and nothing has happened to change one's mind. But if one did not make sure, or if something has happened to suggest that there might now be water, like the appearance of rain clouds or riders, one is obliged to check again for water.**

e12.5 When sure that one can obtain water by waiting until the last of a prayer's time, then it is better to wait. But if one thinks otherwise, then it is better to perform dry ablution (n: and pray) at the first of the time.

e12.6 (N: This entry's rulings apply equally to obtaining water for purification and to obtaining clothing to fulfill the prayer's condition of covering one's nakedness (def:f5).) If a person gives or loans one water, or loans one a bucket (O: when it is the sole means of the water) then one must accept it; though not if the person loans or gives one the price of these things (O: because of the burden of accepting charity that it involves. If one finds water or a bucket for sale at the usual price for that locality and time, then one is obliged to buy it, provided one's money is in excess of one's debts, even if they are not due until a future date; and provided one's money exceeds the amount required for the journey's expenses, round trip. When someone has water he does not need but will not sell, one may not simply take it from him by force, except when compelled by thirst (N: provided the water's owner is not also suffering from thirst, and provided one pays him the normal price for it in that locality and time, because one's need does not eliminate another's rights).

e12.7 If one finds some water, but not enough to complete purification, one must use it as far as it will go, and then perform dry ablution in place of the rest. For minor ritual impurity, one uses the water on the face, then the arms, and so forth, in the usual ablution sequence. For major ritual impurity (janaba), one begins wherever one wishes, though it is recommended to start at the top of the body.

### FEAR OF THIRST

e12.8 The second cause of inability to use water is fear of one's own thirst, or that of worthy companions and animals with one, even if in the future (O: worthy meaning those whose killing is unlawful, such as a trained hunting dog or other useful animal, while unworthy includes non-Muslims at war with the Muslims, apostates from Islam (def:08), convicted married adulterers, pigs, and biting dogs). Ablution (N: as well as the purificatory bath (ghusl)) is unlawful in such a case. One should conserve one's water for oneself and others, and may perform dry ablution for prayer with no need to make up the prayer later (A: provided lack of water predominates in that place (dis:e12.19(N))).

### ILLNESS

e12.9 The third cause is an ailment from which one fears (N: that performing a normal ablution or purificatory bath would cause):

- (1) harm to life or limb;
- (2) disability;
- (3) becoming seriously ill;
- (4) an increase in one's ailment;
- (5) a delay in recovering from one's illness;
- (6) considerable pain;
- (7) or(n: a bad effect from the water such as) a radical change in one's skin color on a visible part of the body. One may depend on one's own knowledge (N: as to whether one of the above is to be apprehended) (O: if one is knowledgeable in medicine) (N: though it is not a condition that one be knowledgeable in medicine, for one's own previous experience may be sufficient to establish the probability that one of them will occur if a full ablution or bath (ghusl) is performed). Or one may depend on a physician whose information concerning it is acceptable (A: meaning one with skill in medicine whose word can be believed, even if he is not a Muslim).

e12.10 (n:Rulings e12, 11-13 below have been left in Arabic and deal with a person who has injuries that prevent a normal ablution or bath for one of the above reasons. Strictness on the question( azima) is to follow the Shafi'i's, while dispensation (rukhsa) is to follow the Hanafi school ((2) below).

(1) The Shafi'i school is the hardest in this matter, insisting on a full ablution except for the injured part, where a full dry ablution must be performed at the proper point in the ablution sequence in place of washing the injured part, as at e12.11 below.

If someone has a cast or dressing harmful to remove, as at e12.12, it must be first applied when one has ablution, and thereafter one must wipe it with water when one comes to it in the ablution sequence in addition to performing a complete dry ablution at that point. Finally, when someone with such a bandage on the members of dry ablution (the face or arms) recovers and has his cast or dressing removed, he is obliged to make up (repray) all the prayers he performed with such an ablution, as at e12.13(O:).

(2) The Hanafi school requires someone with an injury who wants to pray to make a complete

ablution (N: or bath, if needed). But if this would entail harm, such as one of the things mentioned above at e12.9. then when he comes to the injury in the ablution sequence, he is merely required to wipe it with wet hands so as to cover more than half of the injury. If this would also entail harm, or if he has a bandage that cannot be removed without harm or he cannot reapply the dressing by himself and has no one to help him to do so, then he simply wipes more than half the bandage when he comes to it in his ablution. He may pray with such an ablution and need not repeat the prayer later (al-Hadiyya al-'Ala'iyya (y4) (43-44). It is not necessary that he be free of minor or even major impurity (janaba) at the time the dressing is applied (al-Lubab fi sharh al-Kitab (y88), 1.41).

(3) (N: There is strong evidence for performing dry ablution (tayammum) in place of washing such an injury. To add it at the proper point of the ablution sequence as a precautionary measure (dis: c6.5) would not interfere with the validity of following the Hanafi position just discussed.)

e12.14 If it is cold that one fears an illness or one of the things previously mentioned(12.9) from the use of water and one lacks means of heating the water or warming one's limbs up afterwards, then one performs the dry ablution (N: prays), and repeats the prayer later.

e12.15 When one lacks both water and earth, one is obliged to pray the obligatory prayer by itself, and later make up the prayer when one again finds water or finds earth, if in a place where dry ablution suffices as purification for a prayer that need not be made up later (N: such as in the desert (dis:e12.19(N:))).

## THE INTEGRALS OF DRY ABLUTION

e12.16 Dry ablution has seven obligatory integrals:

- (a) the intention, one intending permission to perform the obligation of the prayer, or that which requires dry ablution (N: such as carrying the Koran when there is no water for ablution). It is inadequate to intend to lift a state of minor ritual impurity (dis:e5.3 90:)) or intend the obligation of dry ablution. If one is performing dry ablution for an obligatory prayer, one must intend its being obligatory, though need not specify whether, for example, it is for the noon prayer or the midafternoon prayer. If one were to intend it for the obligation of performing the noon prayer, one could (N: instead) pray the midafternoon prayer with it (N: though not both, as at e12.20). If one intends a dry ablution for both an obligatory prayer and a nonobligatory prayer, then both may be prayed with that same dry ablution. But if one's intention is merely for a nonobligatory prayer, a funeral prayer (janaza), or simply prayer, then one may not pray an obligatory prayer with that dry ablution. If one intends an obligatory prayer, one may pray nonobligatory prayers only, or pray them before and after an obligatory prayer during the obligatory prayer's time, or after the obligatory prayer's time has expired. The intention must occur when one conveys the earth (O: meaning when one first strikes the earth) and must continue until one wipes part of the face;
- (b and c) that one's hands contact the earth and convey it (N: up to the face and arms, after having shaken the excess dust from one's hands);
- (d and e) to wipe the face (N: not missing under the nose) and arms including the elbows;
- (f) to do the above in the order mentioned;
- (g) and that the dry ablution be performed by striking the earth twice, once for wiping the face, and a second time for wiping the arms.

It is not obligatory to make the earth reach under the hair (N: of the arms and face).

## THE SUNNAS OF DRY ABLUTION

e12.17 The sunnas of dry ablution are:

- (1) to say, "In the name of Allah, Most Merciful and Compassionate";
- (2) to wipe the upper face before the lower;
- (3) to wipe the right arm before the left;
- (4) and for wiping the arms, (N: holding the palms up,) to place the left hand crosswise under the right with left hand's fingers touching the backs of the fingers of the right hand, sliding the left hand up to the right wrist. Then, curling the fingers around the side of the right wrist, one slides the left hand to the right elbow, then turns the left palm so it rests on the top of the right forearm with its thumb pointed away from one before sliding it back down to the wrist, where one wipes the back of the right thumb with the inside of the left thumb. One then wipes the left arm in the same manner, followed by interlacing the fingers, rubbing the palms together, and then dusting the hands off lightly. (N: This method is not obligatory, but rather any way will suffice that wipes all of both arms.)

e12.18 One separates the fingers when striking the earth each of the two times, and must remove one's ring for the second (N: before wiping the arms).

#### THINGS WHICH NULLIFY DRY ABLUTION

e12.19 Dry ablution is nullified by both the things which nullify ablution (def: e7) and by the mere belief that one can now obtain water when this belief occurs before one begins praying, such as by seeing a mirage or a troop of riders. This belief also nullifies dry ablution when it occurs during one's prayer if the prayer is one which must be later made up, like that of someone at home who performs dry ablution for lack of water (N: because if one performs dry ablution in a place where water is generally available during the whole year, it is obligatory to make up one's prayer, in view of the fact that the dry ablution has been performed for a rare excuse. The rule is that whoever performs the prayer without full ritual purity because of a rare excuse is obliged to make up his prayer, as when the water of a city or village is cut off for a brief period of time during which those praying perform dry ablution, while if one has performed it in a place where water is seldom available during the year, it is not obligatory to make up one's prayer, as when one performs dry ablution in the desert). But if not of those prayers that must be made up later, such as that of a (N: desert) traveller who has performed dry ablution, then it (N: the belief that one can now obtain water, when it occurs during prayer) does not (N: nullify one's dry ablution) and one finishes the prayer, which is adequate, though it is recommended to interrupt it in order to begin again after one has performed ablution.

e12.20 One may not perform more than one obligatory prayer with one dry ablution, whether one of the prescribed obligatory prayers or one vowed (def: j18), though one may pray any number of nonobligatory prayers or funeral prayers with it.

#### e13.0 THE MENSTRUAL PERIOD

e13.1 The minimal age for menstruation is about 9 full years. There is no maximal age for the end of it, as it is possible until death. The minimal menstrual period is a day and a night. It generally lasts 6 or 7 days. The maximal period is 15 days. The minimal interval of purity between two menstruations is 15 days. There is no maximal limit to the number of days between menstruations.

e13.2 Whenever a woman who is old enough notices her bleeding, even if pregnant, she must avoid what a woman in her period avoids (def: L e13.4). If it ceases in less than 24 hours (lit. "the minimum"), then it is not considered menstruation and the woman must take up the prayers she has omitted during it. If it ceases at 24 hours, within 15 days, or between the two, then it is menstruation. If it exceeds 15 days, then she is a woman with chronic vaginal discharge (dis: e13.6). Yellow or dusky colored discharge is considered menstrual flow. If a woman has times of intermittent bleeding and cessation during an interval of 15 days or less, and the times of bleeding collectively amount to at least 24 hours, then the entire interval, bleeding and nonbleeding, is considered menstruation.

e13.3 Postnatal bleeding (nifas) lasts at least a moment, generally 40 days, and at most 60. If it exceeds this, the woman is considered to have chronic vaginal discharge (dis: e13.6)

e13.4 All things unlawful for someone in a state of major ritual impurity (janaba) (dis: e10.7) are unlawful for a woman during her menstruation and postnatal bleeding. It is also unlawful for her to fast then, and the (N: obligatory) fast-days she misses must be made up later, though not missed prayers. It is unlawful for her:

- (1) to pass through a mosque when she thinks some of her blood might contaminate it (N: and it is unlawful for her to remain in the mosque under any circumstances (n: when menstruating or during postnatal bleeding));
- (2) to make love, or take sexual enjoyment from what is between her navel and knees;
- (3) to be divorced;
- (4) or to perform purification with the intention to raise a state of ritual impurity.

When her bleeding ceases, then fasting, divorce, purification, and passing through the mosque are no longer unlawful for her, though the other things remain unlawful for her until she performs the purificatory bath (ghusl, def: e11).

e13.5 If a woman claims to be having her period, but her husband does not believe her, it is lawful for him to have sexual intercourse with her.

e13.6 A woman with chronic vaginal discharge (N: preparing to pray) should wash her private parts,

apply something absorbent to them and a dressing, and then perform ablution (N: with the intention discussed above at e5.3). She may not delay (N: commencing her prayer) after this except for reasons of preparing to pray such as clothing her nakedness, awaiting the call to prayer (adhan), or for a group to gather for the prayer. If she delays for other reasons, she must repeat the purification. She is obliged to wash her private parts, apply a dressing, and perform ablution before each obligatory prayer (N: though she is entitled, like those mentioned below, to perform as many nonobligatory prayers as she wishes, carry and read the Koran, etc. until the next prayer's time comes (n: or until her ablution is broken for a different reason), when she must renew the above measures and her ablution).

e13.7 People unable to hold back intermittent drops of urine coming from them must take the same measures (def: above) that a woman with chronic vaginal discharge does. (N: And likewise for anyone in a state of chronic annulment of ablution, such as continually breaking wind, excrement, or madhy (def:e10.5) though washing and applying an absorbent dressing are only obligatory when filth exits.) (A: If a person knows that drops of urine will not stop until the time for the next prayer comes, then he takes the above measures and performs the prayer at the first of its time.)

#### e14.0 FILTH (NAJASA)

e14.1 Filth means:

- (1) urine
- (2) excrement;
- (3) blood;
- (4) pus;
- (5) vomit;
- (6) wine;
- (7) any liquid intoxicant (n: including, for the Shafi'i school, anything containing alcohol such as cologne and other cosmetics, though some major Hanafi scholars of this century, including Muhammad Bakhit al-Muti'i Egypt and Badr al-Din al-Hasani of Damascus, have given formal legal opinions that they are pure (tahir) because they are not produced or intended as intoxicants.(N: Other scholars hold they are not pure, but their use is excusable to the extent strictly demanded by necessity.) While it is religiously more precautionary to treat them as filth, the dispensation exists when there is need, such as for postoperative patients who are unable for some time after their surgery to wash away the alcohol used to sterilize sutures. And Allah knows best.)(N: As for solid intoxicants, they are not filth, though they are unlawful to take, eat, or drink);
- (8) dogs and pigs, or their offspring;
- (9) wady and madhy (def:e10.5);
- (10) slaughtered animals that (N: even when slaughtered) may not be eaten by Muslims (def:16);
- (11) unslaughtered dead animals other than aquatic life, locusts, or humans (A: which are all pure, even when dead, though amphibious life is not considered aquatic and filth when dead);
- (12) the milk of animals (other than human) that may not be eaten:
- (13) the hair of unslaughtered dead animals;
- (14) and the hair of animals (other than human) that may not be eaten, when separated from them during their life (N: or after their death. As for before it is separated from them, the hair is the same as the particular animal, and all animals are pure during their life except dogs and swine). (n: In the Hanafi school, the hair of an unslaughtered dead animal (other than swine), its bones, nails (hoofs), horns, rennet and all parts unimbued with life while it was alive (A: including its ivory) are pure (tahir). That which is separated from a living animal is considered as if from the unslaughtered dead of that animal (Hashiya radd al-muhtar ala al-Durr al-mukhtar sharh Tanwir al-absar(y47, 1.206-7).)

14.2 Rennet (n: a solidifying substance used in cheese-making) is pure if taken from a slaughtered (def:j17) suckling lamb or kid that has eaten nothing except milk.

14.3 That which comes from the mouth of a sleeping person is impure if from the stomach, but pure if from the saliva ducts.

e14.5 The following are pure:

- (1) seminal fluid that has reached the stages of gestation in the womb, becoming like a bloodclot and then becoming flesh;
- (2) the moisture (N: mucus) of a woman's private parts (O: as long as it remains inside the area that need not be washed in the purificatory bath (def: e11.1(b). end) though if it exit, it is impure);
- (3) the eggs of anything;
- (4) the milk, fur, wool, or feathers of all animals that may be eaten, provided they are separated from

the animal while living or after properly slaughtered;

(5) human milk, male sperm, and female sexual fluid (def:e10.4).\

e14.6 No form of filth can become pure, except:

(1) wine that becomes vinegar;

(2) the hide of an unslaughtered dead animal that is tanned;

(3) new animate life that comes from filth (O:such as worms that grow in carrion);

(4) (n: and for the Hanafis, filth which is transformed [molecularly changed] into a new substance, such as a pig becoming soap, etc. (al-Hadoyya al-Ala'iyya (y), 54)).

Wine that becomes vinegar without anything having been introduced into it is pure, as are the sides of the container it touched when it splashed or boiled. But if anything was introduced into the wine before it became vinegar, then turning to vinegar does not purify it. (A: In the Hanafi school it is considered pure whether or not anything has been introduced into it.) Tanning means removing from a hide all excess blood, fat, hair and so forth by using an acrid substance, even if impure. Other measures such as using salt, earth, or sunlight, are insufficient. Water need not be used while tanning, though the resultant hide is considered like a garment affected with filth, in that it must be washed with purifying water before it is considered pure. Hides of dogs or swine cannot be purified by tanning. Any hair that remains after tanning has not been made pure, though a little is excusable.

e14.7 Something that becomes impure by contact.(def:below) with something from dogs or swine does not become pure except by being washed seven times, one of which (recommended not to be the last) must be with purifying earth (def: e12.1 (b)) mixed with purifying water, and it must reach all of the affected area. One may not substitute something else like soap or glasswort in place of earth. (n: The contact referred to is restricted, in the Shafi'i school, to contamination by traces of moisture from dogs or swine, whether saliva, urine, anything moist from them, or any of their dry parts that have become moist (Mughni al-muhtaj ila ma'rifa alfaz al- Minhaj (y73), 1.83). (A: If something dry such as the animal's breath or hair touches one's person, it need only be brushed away.) In the Maliki school, every living animal is physically pure, even dogs and swine (al-Fiqh 'ala al-madhahib al-arba'a (y66), 1.11) (A: and they consider the above sevenfold washing as merely a sunna). While more precautionary to follow the Shafi'i school, the dispensation exists for those who have difficulty in preventing contamination from dogs, provided their prayer with its prerequisites is considered valid in the Maliki school (dis:c6.4(end) and w14.1(6)). And Allah knows best.)

e14.9 The urine of a baby boy who has fed on nothing but human milk can be purified from cloths by sprinkling enough water on the spot to wet most of it, though it need not flow over it. The urine of a baby girl must be washed away as an adult's is.

## WASHING AWAY FILTH

e14.10 As for kinds of filth that are "without substance" (N: i.e. without discernible characteristic (najasa hukmiyya) such as a drop of dry urine on a garment that cannot be seen), it is sufficient (N: to purify it) that water flow over it. But if it is a substance (N: with discernible characteristic (najasa 'ayniyya)), it is obligatory to remove all taste of it, even if difficult, and to remove both color and odor if not difficult. If the odor alone is difficult to remove, or the color alone, then the fact that one of these two remains does not affect a spot's purity, though if both the odor and color of the filth remain in the spot, it is not considered pure.

e14.11 When using less than 216 liters of water to purify a spot affected by filth, it is obligatory that the water flow over it (N: and it may not be simply immersed in the water (dis: e1.15), though this would be permissible with more than 216 liters), but is not obligatory to wring it out. After one purifies it is recommended to wash it a second and third time.

e14.12 When the ground (A: or floor, or carpet) is affected with liquid filth (A: like wine or urine), it is enough to drench the place with water and is not necessary that the filth sink into the ground. If the effects of sun, fire, or wind remove the traces of the filth, the ground is still not pure until one drenches it with water.

e14.13 Liquids other than water, such as vinegar or milk, cannot be purified after they become affected with filth. But if a solid is affected, such as shortening, one discards the filth that fell into it and the shortening around it, and the remainder is pure.

e14.14 Water used to wash away filth is impure when:

- (1) it changes (def: e1.17);
- (2) its weight increases;
- (3) (O: or if neither of the above have occurred, but some trace (N: i.e. an inexcusable amount (def:

e14.10, second par)) of filth remains on the place to be purified);

-but if none of the above occurs, then it is not impure (O: i.e then the water is pure but not purifying to other things); though if it amounts to (N: or is added to until it amounts to ) 216 or more liters (dis

e1.16), then it is purifying. If less, it is considered the same as the spot it washed: if the spot is pure (N: i.e an inexcusable trace does not remain) then the water is pure, but if the spot is still impure, then the water is impure.

e14.15 (n: the Hanafi school, if a garment's damp spot of filth, whose quantity is too slight to wring out any drops, touches another dry, pure garment, the latter does not become impure (Maraqi al-falah sharh Nur al-idah(y126), 31).)

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#### **F1.0 WHO MUST PRAY**

(O: The legal basis for the prayer, prior to scholarly consensus, is Koranic verses such as the word of Allah Most High, "And perform the prayer" (Koran 2:43), and hadiths such as the word of the Prophet (Allah bless him and give him peace):

"On the night I was taken from Mecca to Jerusalem [dis: Koran 17:1], Allah imposed fifty obligatory prayers upon my community. So I kept petitioning Him in the matter, asking they be lightened, until He made them but five each day and night."

a hadith related by Bukhari, Muslim, and others.)

f1.1 The prayer is only obligatory for Muslims who have reached puberty, are sane, and in purity (O: meaning not during menstruation or postnatal bleeding). Those who lose their reason through insanity or illness do not have to make up the prayers they miss while in this state, and nor do converts to Islam (N: make up prayers from before their Islam).

An apostate from Islam (murtadd, def:o8) who then returns must make up every prayer missed. (n: w18 discusses why making up prayers missed without excuse is obligatory.)

f1.2 When a child with discrimination (O: meaning he can eat, drink, and clean himself after using the toilet unassisted) is seven years of age, he is ordered to perform the prayer, and when ten, is beaten for neglecting it (N: not severely, but so as to discipline the child, and not more than three blows).

f1.3 Someone raised among Muslims who denies the obligatoriness of the prayer, zakat, fasting Ramadan, the pilgrimage, or the unlawfulness of wine and adultery, or denies something else upon which there is scholarly consensus (ijma`, def:b7) and which is necessarily known as being of the religion (N: necessarily known meaning things that any Muslim would know about if asked) thereby becomes an unbeliever (kafir0 and is executed for his unbelief (O: if he does not admit he is mistaken and acknowledge the obligatoriness or unlawfulness of that which there is scholarly consensus upon. As for if he denies the obligatoriness of something there is not consensus upon, then he is not adjudged an unbeliever).

f1.4 A Muslim who holds the prayer to be obligatory but through lack of concern neglects to perform it until its proper time is over has not committed unbelief (dis: w18.2). Rather, he is executed, washed, prayed over, and buried in the Muslim's cemetery (O: as he is one of them. It is recommended, but not obligatory, that he be asked to repent (N: and if he does, he is not executed)).

f1.5 No one has an excuse to delay the prayer beyond its time except:

(1) someone asleep (N: when its time first came who remained so until the time ended);

- (2) someone who forgot it;
- (3) or someone who delayed it to combine two prayer during a journey (dis:f15.12).

## **f2.0 PRAYER TIMES AND MAKING UP MISSED PRAYERS PRAYER TIMES**

**f2.1 The prescribed prayers are five:**

- (1) The time for the noon prayer (zuhr) begins after the sun's zenith for that day, and ends when an object's shadow, minus the length of its shadow at the time of the sun's zenith, equals the object's height.
- (2) The time for the midafternoon prayer (ʿasr) begins at the end of the noon prayer's time, and ends at sunset, though when an object's shadow (N: minus the length of its shadow at the sun's zenith) is twice as long as the object's height, the preferred time is over and the merely permissible time remains.
- (3) The time for the sunset prayer (maghrib) begins when the sun has completely set. It only lasts long enough to perform ablution (wudu), clothe one's nakedness, make the call to prayer (adhan) and call to commence (iqama) and to pray five moderate length rak'as (units) of prayer. It is a sin to delay commencing the sunset prayer beyond this, and if one does, one is making up a missed prayer (O: i.e., according to the position the author has adopted, which contradicts the more reliable opinion that one's prayer is not a makeup until after the red has disappeared from the sky), though if one begins it within the right time, one may continue until the red disappears from the sky.
- (4) The time for the nightfall prayer (ʿisha) begins when the red of sunset leaves the sky, and ends at true dawn (n:true dawn being when the sky around the horizon begins to grow light. Before this, a dim light sometimes appears overhead for some minutes followed by darkness, and is termed the deceptive dawn (al-kadhib) (Al-Iqna' fi hall alfaz Abi Shuja' (y7), 1.95). But after a third of the night has passed, the preferred time for nightfall prayer has ended and the merely permissible remains.
- (5) And the time for the dawn prayer (subh) begins at true dawn and ends at sunrise, though the preferred time for it ends when it becomes light outside, after which the merely permissible remains. (n: Prayer times vary a little each day with the season and the year, and from one town to another through the effects of latitude and longitude. One can keep abreast of the changes by obtaining the whole year's times in a printed calendar from one's local Muslim association or mosque, or by using the pocket computer mentioned below at w19, which discusses how one fasts and prays at northerly latitudes (including much of North America and Europe during the summer months) lacking the features that legally define the true prayer and fasting times, such as nightfall or true dawn.)

**f2.2 it is best to pray every prayer at the first of its time, taking the necessary steps at its outset, such as purification, clothing one's nakedness, giving the call to prayer (adhan and call to commence (iqama), and then praying.**

**f2.3 If less than one rak'a of one's prayer occurs within the proper time (A: meaning that one does not lift one's head from the second prostration of the rak'a before the time ends) and the remainder takes place after it, then the whole prayer is considered a make-up. If one rak'a or more takes place within the prayer's time and the remainder is after it, then the prayer is considered a current performance, though it is unlawful to intentionally delay the prayer until part of it occurs after the time is finished.**

**f2.5 It is permissible to relay (N: for knowledge that a prayer's time has come) on a knowledgeable, dependable muezzin (caller to prayer). If one lacks someone to inform one of the time, then one may reason on the basis of reciting a scheduled period of invocation or Koran recital (Ar.wird)(n:referring to those whose wirts normally take the whole time between two prescribed prayers such that when they finish, they know the time for the second prayer has come. The legal basis of wirts is discussed at w20), and the like (N:including modern clocks, and prayer time calendars issued by experts on the times in various localities.**

## **MAKING UP MISSED PRAYERS**

**f2.6 When enough of a prayer's time has elapsed to have performed the prayer during it and someone who has not yet prayed loses their reason or their menstrual period begins they are obligated to make up that missed prayer (O: as soon as they are able).**

**f2.7 Whenever a prescribed prayer is missed for a valid reason (def:f1.5). it is recommended to make it up immediately. If missed without a valid reason, it is obligatory to make it up (dis: w18) immediately (A: meaning during all one's time that is not occupied by necessities, In the Shafi'i school, it is not even permissible for such a person to perform sunna prayers(N:before having finished making up the missed ones). The same applies to making up missed obligatory fasts (N: by fasting a day in place of each day**

missed), and it is unlawful to delay doing so until the following Ramadan(dis:i1.33).

**f2.8** It is recommended that missed prayers be made up in the order they were missed. (n:The call to prayer (adhan) and call to commence (iqama) when making up missed prayers are discussed at f3.5, and whether to recite prayers aloud or to oneself at f8.25.)

**f2.9** It is recommended to make up missed prescribed prayers before performing the current one, unless one fears its time will pass, in which case it is obligatory to pray the current one first. If one begins making up a missed prayer thinking that there will be time for both it and the current prescribed prayer, but finds that there is only enough time left for the latter, then one must discontinue the make-up in order to perform the current one.

**f2.10** If one has a prayer to make up and finds the current prayer being performed by a group, it is recommended to perform the make-up by oneself before praying the current one.

**f2.11** If one misses one or more of the five prayers but does not remember which of them it was, then one must pray all five, intending for each one making up the missed prayer.

**f2.12** (n:If someone finds he has been consistently mistaken day after day in praying, for example, the dawn prayer(subh) before its time, or some similar timing error, then each prayer performed after the first day of the whole series of prayers thus mistakenly prayed is considered the make-up of the day before it, and when such a person discovers the error, he has only one prayer to make up, namely the one on the last day prior to learning of the mistake (Mughni al-muhtajila ma'rifa ma'ani alfaz al-Minhaj(y73), 1.127).)

### **f3.0 THE CALL TO PRAYER (ADHAN) AND CALL TO COMMENCE (IQAMA)**

**f3.1** The call to prayer(adhan) and call to commence(iqama) are two sunnas for the prescribed prayers, even when praying alone or in the second group to pray (N: in a mosque, for example), such that there is public cognizance (O: of both the call to prayer and to commence, whether in a large or small town).

**f3.2** To give the call to prayer (adhan) is better than being the imam for a group prayer (O: though to be imam is superior to giving the call to commence(iqama)).

**f3.3** When praying alone in a mosque where a group has already prayed, one does not raise one's voice in giving the call to prayer, though if no group has yet prayed, one raises it. The same applies to a second group to pray: they do not raise their voice.

**f3.4** It is sunna for a group of women who are praying together to give the call to commence without giving the call to prayer.

**f3.5** When making up one or more missed prescribed prayers, one gives the call to prayer only for the first (N: in the series), but gives the call to commence for each one.

**f3.6** The words of the call to prayer and call to commence are well known.

(n: The words of the call to prayer mean: "Allah is greatest, Allah is greatest. Allah is greatest, Allah is greatest. I testify there is no god but Allah. I testify there is no god but Allah. I testify that Muhammad is the Messenger of Allah. I testify that Muhammad is the Messenger of Allah. Come to the prayer. Come to the prayer. Come to success. Come to success. [n: At this point, before the dawn prayer only, one adds: "Prayer is better than sleep. Prayer is better than sleep. "] Allah is greatest. Allah is greatest. There is no god but Allah."

The words of the call to commence mean: "Allah is greatest, Allah is greatest. I testify there is no god but Allah. I testify that Muhammad is the Messenger of Allah. Come to the prayer. Come to success. The prayer is commencing. The prayer is commencing. Allah is greatest, Allah is greatest. There is no god but Allah.")

**f3.7** Each word (N: of both of them) must be recited in the order mentioned above.

If one remains silent for long or speaks at length between the words of the call to prayer (O: or call to commence), it is not valid and must be begun again, though a short remark or silence while calling it does not invalidate it. When giving the call to prayer or call to commence by oneself, the minimal audibility permissible is that one can hear oneself. The minimum when calling them for a group is that all their contents



can be heard at least one other person.

**f3.8** It is not valid to give the call to prayer before a prayer's time has come, except for the dawn prayer, when it is permissible to give the call to prayer from the middle of the night onwards (N: as is done in Mecca and Medina).

**f3.9** When giving the call to prayer and call to commence, it is recommended to have ablution (wudu), stand, face the direction of prayer, and to turn the head(not the chest or feet) to the right when saying, "Come to the prayer," and to the left when saying, "Come to success." It is offensive to give the call to prayer while in a state of minor ritual impurity (hadath), more offensive to do so in a state of major ritual impurity(janaba), and even worse to give the call to commence(iqama) while in either of these two states. It is recommended:

- (1) to give the call to prayer from a high place near the mosque;
- (2) to put one's fingertips in one's ears while calling it;
- (3) to take one's time in giving the call to prayer (A: pausing for an interval after each sentence equal to the sentence's length) (O: except for repetitions of "Allah is Greatest," which are said in pairs);
- (4) and to give the call to commence rapidly, without pause.

**f3.10** It is obligatory for the muezzin (O: or person giving the call to commence):

- (a) to be Muslim;
- (b) to have reached the age of discrimination (def:f1.2);
- (c) to be sane;
- (d) and if calling for a men's group prayer, to be male.

It is recommended that he be upright (def:o24.4) and have a strong, pleasant voice.

It is offensive for a blind person to give the call to prayer unless a sighted person is with him (O: to tell him when the time has come).

**f3.11** When one hears the call to prayer (N: or call to commence), it is recommended to repeat each phrase after the muezzin, even if in a state of major ritual impurity (janaba), during menstruation, or when reciting impurity (janaba), during menstruation, or when reciting the Koran (N: and a fortiori when reading or reciting something else).

One does not repeat the phrases "Come to the prayer" or "Come to success," but rather says after them, "There is no power or strength except through Allah." And at the call to prayer at dawn, one does not repeat "Prayer is better than sleep,"but instead says, "You have spoken the truth, and piously."When the person giving the call to commence says, "The prayer is commencing," one replies,"May Allah establish it and make it endure as long as the heavens and earth, and make me one of the righteous of its folk." If one hears it while making love, going to the lavatory, or performing the prayer, one says the words when finished.

**f3.12** It is recommended for the muezzin, after he finishes, and those hearing him to bless the Prophet (Allah bless him and give him peace). (A: It is unobjectionable in the Shafi'i school for the muezzin to do so as loudly as the call to prayer.) Then one adds, "O Allah, Lord of this comprehensive invitation and enduring prayer, grant our liegeland Muhammad a place near to You, an excellence and exalted degree, and bestow on him the praiseworthy station that You have promised him."

#### **f4.0 PURITY OF BODY, CLOTHES, AND PLACE OF PRAYER**

**f4.1** It is a necessary condition (shart) for the validity of prayer that one have purity (N: absence of filth (najasa, def:e14.1)) in :

- (a) body;
- (b) clothing, whether or not it moves with the person (N:who is praying);
- (c) anything that touches the body or clothing (O: though if one's chest overhangs something impure while prostrating without touching it, this does not hurt);
- (d) and the place on which one is standing during the prayer.

**f4.2** One's prayer is invalid if one is holding the end of a rope connected with something impure.

One's prayer is valid if performed on the pure portion of a rug which is affected with some filth (N: on another part)or on a bed whose legs rest on something impure, even if the rug or bed moves when one's own portion moves. (N: The rule illustrated by these examples is that it is not permissible for the person praying to support or carry something affected by filth, but is permissible for him to be supported by it, provided he is not in direct contact with the filth.)

**f4.3 Impure substances (najasa) other than blood (dis:below) that are indiscernible by (A:average) vision are excusable, though if visually discernible, they are inexcusable. (A: That which is seen by a normal look is not excusable, while that which can only be seen by minute scrutiny is excusable.)**

**f4.4 As for blood or pus, if it is from another, (O: human or otherwise,) then only a little (def:below) is excusable, though if from the person praying, it is excusable whether much or little regardless if from a squeezed pimple, a boil, a sore, being bled, cupped, or something else.**

**f4.5 (N: In rulings of Sacred Law, the application of key descriptive terms like little, much, near, far, briefly, at length, and so forth, is governed by the concept of common acknowledgement ('urf). To know whether something is little or much, which could be stipulations in a particular ruling, we stop to reflect whether it is commonly acknowledged as such, namely, whether most people would describe it as such when speaking about it. Common acknowledgement also takes into consideration what is normal or expected under the circumstances. For example, a few drops of animal blood on the clothes of a butcher would be little, while the same amount on the clothes of student would be much.)**

**f4.7 If one prays with (N: an inexcusable amount of) something impure (N: on one's person, place, or clothes) that one did not know of or forgot, and notices it after finishing, one must repeat the prayer, It invalidates the prayer if noticed during it.**

**f4.8 If one gets some mud on oneself from the street and but is not certain it contains, filth, then it is considered pure (N: the rule being that the initial presumption for all things is that they are pure, as long as their impurity has not been decisively established).**

**f4.9 Someone unable to remove filth from his person or who is being held in an impure place must pray and later make up the prayer when capable of purity. (N: When being held in an impure place,) one bows the head as close to the ground as possible without actually contacting the filth, which is unlawful to place the forehead upon.**

**f4.10 If one loses track of a spot of filth on a garment, then, all of it must be washed without trying to decide where the spot might be, though if someone reliable knows where it is and informs one, one may accept this.**

**f4.11 If a spot of filth is on one of two garments (N: one of which the person wants to pray in) and the person is not sure which then he may reason and choose the one he believes is pure (N: to pray in), regardless of whether another pure one is available or whether he can wash one to use. (N: But it is not obligatory to try to decide which is pure. Rather, he may wash one, or both, and pray in them, or pray in some other garment.) If one washes the garment believed to have filth on it, then one may pray wearing both garments, or pray in each garment alone, though if one makes no attempt to decide which garment is impure, but rather performs a prayer in each one separately, then neither prayer is valid.**

**f4.12 If one loses track of its location on a small plot of ground in open country, one may pray wherever one wishes. But if one loses track of the location of filth on the ground or in a room (bayt, lit. "house," meaning a one-room dwelling), then all the ground or floor must be washed (def:e14.12) before one may pray on any of it.**

**f4.14 It is offensive to pray:**

- (1) in a bathhouse or its outer room where clothes are removed;**
- (2) in the middle of a path;**
- (3) at a rubbish dump;**
- (4) at a slaughterhouse;**
- (5) in a church;**
- (6) in places where taxes (dis: p32) are gathered or taken;**
- (7) in places likely to be contaminated by wine;**
- (8) on top of the Kaaba;**
- (9) or towards a tomb (dis:w21).**

**f4.15 Prayer is unlawful in a garment or on land wrongfully taken, being legally valid (dis:c5.2), but without reward.**

## **f5.0 CLOTHING ONE'S NAKEDNESS**

**f5.1 Clothing one's nakedness (O: from the eyes of men as well as jinn (def:w22) and angels, for these too see people in this world) is obligatory, by scholarly consensus (ijma,b7), even when alone, except when there is need to undress. (O: Zarkashi states (A: and it is the authoritative position for the school) that the nakedness it is obligatory to clothe when alone consists solely of the front and rear private parts for, men, and of that which is between the navel and the knees for women.)**

**f5.2 Clothing one's nakedness is a necessary condition for the validity of the prayer (O: when one is able). Seeing a hole in one's clothes after a prayer is like seeing a spot of filth (n; meaning the prayer must be repeated, as at f4.7, unless one covers the hole immediately, as below at f5.5).**

**f5.3 The nakedness of a man (O: man meaning the counterpart of the female, including young boys, even if not yet of the age of discrimination) consists of the area between the navel and knees. The nakedness of a woman (O: even if a young girl) consists of the whole body except the face and hands. (N: The nakedness of woman is that which invalidates the prayer if exposed (dis:w23). As for looking at women, it is not permissible to look at any part of a woman who is neither a member of one's unmarriageable kin (mahram, def:m6.1) nor one's wife, as is discussed below in the book of marriage (m2).)**

**f5.4 It is a necessary condition that one's clothing:**

**(a) prevent the color of the skin from being perceptible (n:Nawawi notes, "A thin garment beneath which the blackness or whiteness of the skin may be seen is not sufficient, nor a garment of thick, gauze like fabric through which part of the nakedness appears"(al-Majmu'(y108),3.170));**

**(b) enclose the body as a garment, for a prayer, performed without clothes in a small tent would not be valid;**

**(c) and conceal the nakedness from view on all sides and above, though it need not do so from below.**

**f5.5 One's prayer is valid when there is a tear through which one's nakedness shows that one covers with one's hand (A: immediately, i.e. one must do so before enough time passes to say "Subhan Allah") (O: that is, one must cover it with one's hand when not prostrating, at which point not covering it is excusable)**

**f5.6 It is recommended for a woman to wear a covering over her head (khimar), a full length shift, and a heavy slip under it that doesn't cling to the body. (O: She should not wrap it so tightly about herself that it hinders standing, sitting, and other postures connected with the actions of prayer. She is recommended to pray in three garments even though the headcover and shift alone are sufficient as a covering .)**

**f5.7 It is recommended for a man to pray in his best clothes, and to wear an ankle-length shirt and a turban (O: and a shawl over head and shoulders, a mantle, and a wraparound or loose drawers (N: under the ankle-length shirt)). If he does not wear all of these, it is desirable to wear two, namely the ankle-length shirt with either the mantle, the wraparound, or the loose drawers.**

**f5.8 If only wearing enough to clothe one's nakedness, one's prayer is valid, though it is recommended to place something on one's shoulders even if only a piece of rope. If one does not have clothes but is able to conceal part of one's nakedness, one must cover the front and rear private parts. If only one of these two can be covered, it must be the front. If one has no clothes at all, then one performs the prayer without clothes and need not make it up later.**

## **f6.0 FACING THE DIRECTION OF PRAYER (QIBLA)**

**f6.1 Facing the direction of prayer (QIBLA) is a necessary condition for the prayer's validity, with the sole exceptions of praying in extreme peril (dis:f16.5) and nonobligatory prayers performed while travelling.**

**f6.2 (N: The rulings below deal with nonobligatory prayers, not the five prescribed ones, which must be performed while facing the proper direction for prayer(qibla) whether one is riding in a vehicle or not (dis:w24).) A traveller may perform nonobligatory prayers riding or walking, even on short trips. When riding and able to face the direction of prayer, prostrate, and bow, as when on a ship, one is obligated to. If not able, the one is only required to face the direction of prayer, during the first Allahu Akbar of the prayer, provided this is not difficult, as when one's mount is stationary or when one can turn oneself or one's mount the proper direction. If it is difficult , as one's mount is not properly saddle**

broken, or if the reins are not in one's hands, as when riding in a pack train with each animal tied to the one ahead of it, then it is not obligatory to face the direction of prayer at any point of the prayer's performance, and one merely nods in the direction of travel instead of bowing and prostrating. One's nod for prostration must be deeper than the nod for bowing. One does not have to bow to the limit of one's capacity, nor bow the forehead until it touches the mount's back, though this is permissible if oneself, though this is permissible if one trouble oneself to do so. When praying while walking, one must stop to bow and prostrate on the ground (O: if easy, though if walking in mud, water, or snow, one may simply nod), and may walk during the rest of the prayer, though it is obligatory to face the direction of prayer during the first Allah Akbar and at each bowing and prostration.

Such prayers (O: whether riding or walking) are only valid on condition.

(a) that one's journey continue for the prayer's duration;

(b) and that one not turn from the direction of travel towards anything but the direction of prayer.

If one reaches home while thus praying, or the destination, or a town where one intends to stay, then one must face the direction of prayer, and bow and prostrate on the ground or on one's mount if stopped.

f6.3 When at the Kaaba, one must pray directly towards the Kaaba itself. One's prayer is invalid if one merely faces the semicircular wall (N:Hijr Isma'il) that is to one side of it, or directs any part of the body outside the outline of the Kaaba, unless one is standing at the end of a long row of people praying at the periphery of al Masjid al-Haram (n:the mosque of the Kaaba), a row which, if the people in it were to advance, some of them would be facing outside the Kaaba's outline. To pray in such a row is valid for everyone in it.

f6.5 For knowledge of the proper direction it is obligatory to rely to rely on the prayer niche (mihrab) of mosque in a city or village through which many people pass. At every place the Prophet (Allah bless him and give him peace) faced to pray and established where he stood, it is obligatory to pray facing as he did, without reconsidering the direction of prayer or turning right or left, though in other places one may use personal reasoning as to whether to turn right or left.

f6.6 If one does not find an informant to tell one of the proper direction of prayer by having seen the Kaaba in that direction, then one employs personal reasoning, using other evidence. (n: To establish the direction of prayer in cities far from Mecca one may use a world globe and a piece of string, since in North America, Australia, and other regions, using a flat world map will yield the wrong direction because of the curvature of the earth, and the error factor is often considerable. One puts the end of the string on the position of Mecca on the globe, the other end on one's own city, and pulls the string taut, observing the bearing of the string and drawing a line in the same direction on a local map, which can be oriented with a compass and used to indicate the proper direction to pray.) If one does not know how to use other evidence, (O: and it is a communal obligation (def:c3.2) for someone to know,) or one is blind, then one follows another (O:reliable sighted person acquainted with the evidence)

f6.7 If, after praying one becomes certain one was mistaken, then the prayer must be repeated. (n:In the Hanafi, Maliki, and Hanbali schools, the criterion for facing the direction of prayer is merely that some portion of the person's face be directed towards the Kaaba (al-Fiqh 'ala al-madhahib al-arba'a (y66), 1.195). (A: This takes in 180 degrees, from far left to far right, such that when the Kaaba's anywhere between, one is considered to be facing the direction of prayer .)

#### f7.0 PLACING A BARRIER IN FRONT OF ONE'S PRAYER PLACE

f7.1 It is recommended to put a barrier at least 32 cm, high in front of oneself when performing the prayer, or to spread out a mat, or if one cannot, to draw a line (N:on the ground, straight out, perpendicular to one's chest) about a meter and a half (O: or less) in front of one. It is then unlawful for a anyone to pass (O: between the person praying and such a barrier, even when there is no other way to pass (dis:p75.27)).

If someone tries to pass between oneself and the barrier, it is recommended to gently him back. If he persists, one may push him back as hard as necessary, as one would an attacker (def: 07.3). Where he to die as a result, one would not be subject to retaliation (03) or have to pay an indemnity(04) to his kin.

f7.2 If there is no barrier, or if the person praying is farther than a meter and a half from it, then passing in front of him is merely offensive, and the person praying is not entitled to push him.

f7.3 (A: Passing in front of a person without a barrier, in a mosque for example, is limited to the length

of his prostration, and it is not Unlawful or offensive to pass in front of him when farther than that.)

f7.4 When one notices a gap in row of people performing a group prayer, one is entitled to pass in front of others to fill it.

## f8.0 DESCRIPTION OF THE PRAYER

f8.1 (n:Special vocabulary:

Allahu Akbar: Allah is greatest.

Ameen: a one-word supplication meaning "Answer our prayer."

as-Salamu 'alaykum: Peace be upon you.

Fatiha: the opening sura of the Koran.

Follower: someone praying in group behind an imam.

Integral(ruku): one of the legally essential elements found within an action that compose it.

Imam: someone leading a group prayer.

Rak'a: one complete cycle of the words and actions of the prayer.

Sura: a chapter of the Koran.

Ta'awwudh : to say in Arabic, "I take refuge in Allah from the accursed Devil.")

## MEASURES RECOMMENDED BEFORE PRAYER

f8.2 It is recommended:

(1) to stand for the prayer after the end of the call to commence (iqama);

(2) to be in the first row;

(3) to make the rows straight, especially if one is the imam (O: when one should order the group to do so);

(4) and to fill up the first row first, then the second, and so on (O: meaning there should not be a second row when the first one is not full (A: as to pray in such a second row is the same as not praying with a group, and is rewarded as if one had prayed alone), nor gaps within one row, nor a distance in excess of a meter and a half between rows). It is superior to stand on the imam's right (A: though the sunna is for the imam to be in the middle) (N: and if one arrives at a group prayer in which the row extends to the right, one's rewards is greater for standing on the left, since one is performing the sunna).

## THE INTENTION

f8.3 Then one makes the intention with one's heart.

If it for an obligatory prayer, one must intend performing the prayer, and that it is obligatory, and know which one it is, such as the noon, midafternoon, or Friday prayer. The intention must coincide with one's first Allahu Akbar, obligatory existing in the mind and recommended to be uttered with the tongue (N: before the first Allahu Akbar) as well. One intends it from the first of the phrase " Allahu akbar" to the last of it. It is not obligatory to specify the number of rak'as or that it is for Allah Most High, or whether it is a current performance or a makeup prayer, though specifying these is recommended. (A: some scholars hold that the mere determination to perform a particular prayer existing in the mind before hand is sufficient. Such an intention could be expressed, for example, by walking to the mosque after hearing the call to the noon prayer (dis: w25).) If the intention is for a nonobligatory prayer that has a particular time, one must intend which one it is, such as for 'Eid, the eclipse prayer, assuming the state of pilgrim sanctity (ihram), the sunna prayers before and after the noon prayer, and so forth. If it is for a nonobligatory prayer that is wholly supererogatory, unconnected with a particular time, one may simply intend to perform prayer.

f8.5 It immediately invalidates one's prayer:

(1) to cease to intend praying ;

(2) to decide that one will cease to;

(3) not to know whether one has ceased to or not (O: meaning one hestiates in one's heart, saying, "Shall I stop intending or continue?" The mere thought of how it would be if one were to hesitate during the prayer is of no consequence, but rather the occurrence of doubt that negates one's resolve and certainty);

(4) to intend during the first rak'a to stop when one reaches the second;

(5) or to decide to interrupt one's prayer if such and such a thing happens, regardless whether the event will definitely occur during the prayer or whether it merely may happen, such as, " I'll stop if Zayd comes in ."

**f8.6** If one knowingly begins the noon prayer (N: for example) before its time has come, one's prayer is not legally considered to have begun. If one does so unknowingly, it is validly begun, but counts as a nonobligatory prayer.

## **THE OPENING ALLAHU AKBAR**

**f8.7** The Allahu Akbar (n: an integral) that begins the prayer can only be in Arabic and must be pronounced "Allah akbar" or "Allahu akbar." One's prayer is not legally considered to have begun if one omits any of its letters, pauses between the two words, adds the letter waw between them, or says "Allahu akbar" with a long a between the final b and r. If unable to pronounce it because of being a mute or similar, one must move the tongue and lips according to one's capacity.

**f8.9** The minimal valid auditability for saying "Allah akbar," reciting the Koran, and all invocations (dhikr), is that one can hear them oneself, given normal hearing and lack of extraneous noise. The imam speaks aloud (def: below) every time he says "Allahu akbar" in the prayer.

**f8.10** (A: Throughout the rulings, aloud (jahran) means that someone beside or behind the speaker could distinguish his words, while to oneself (sirran) means that the speaker can distinguish his own words, but such a person could not.)

**f8.11** It is obligatory that one be standing when one opens an obligatory prayer with "Allahu akbar." If a single letter of it occurs while not standing, the prayer is not considered to have validly begun as an obligatory prayer, but is considered to have begun as a supererogatory prayer, provided one is ignorant that it is unlawful, though not if one knows. (N: The latecomer to a group prayer should take careful note of this, and not bow or make other prayer movements until he has completed the opening Allah Akbar while standing.)

**f8.12** It is recommended to lift the hands to shoulder level when one says "Allahu akbar" (O: meaning that one's fingertips are even with the tops of the ears, thumbs with the earlobes, and palms with one's shoulders), fingers slightly outspread. If one intentionally or absentmindedly does not lift one intentionally or absentmindedly does not lift the hands at the first of saying "Allahu Akbar," one may do so during it, though not afterwards. The palms face the direction of prayer (qibla) and the hands are uncovered.

After the opening Allahu Akbar, one places the hands between the chest and navel, grasping the left wrist with the right hand, and fixing one's gaze on the place where one's forehead will prostrate. (O: One does this when not reciting the Testification of Faith (Tashahud, def;f8.45), where one only looks at the place of prostration until one says "except Allah," and then looks at the index finger.)

(A: It is offensive to close one's eyes while praying unless it is more conducive to awe and humility towards Allah.)

## **THE OPENING SUPPLICATION (ISTIFTAH)**

**f8.13** Then one recites (N: to oneself) the Opening Supplication (Istiftah), which means: "I turn my face to Him who created the heavens and earth, a pure monotheist, in submission, and am not of those who associate others with Him. My prayer, worship, life, and death are for Allah, Lord of the Worlds, who has no partner. Thus I have been commanded, and I am of those who submit."

This is recommended for anyone performing an obligatory or supererogatory prayer, even if seated; no matter whether a child, woman, or traveller (O: alone or in a group, imam or follower), though not for a funeral prayer.

**f8.14** If one intentionally or absentmindedly omits the Opening Supplication (Istiftah) and begins saying "I take refuge, etc." (Ta'awudh), one may not return to the Opening Supplication.

**f8.14** When (N: joining a group that has already begun, and) the imam says "Ameen" just after one's opening Allahu Akbar, one says "Ameen" with him and then recites the Opening Supplication (Istiftah). If one says the opening Allahu Akbar and the imam finishes the prayer with Salams before one has sat down with the group, then one recites the Opening Supplication (Istiftah). But if one has already sat down when the imam finishes with Salams and one rises (N: to finish one's prayer), then one does not recite it (O: the Opening Supplication). If one joins the group while the imam is standing, and one knows it is possible (O: to recite the Opening Supplication) together with saying "I take refuge," and so on (Ta'awudh) and the Fatihah (N: all before the imam will finish his recital and bow), then one may recite

the Opening Supplication, though if one has doubts (N: that there is enough time), one omits both the Opening Supplication and Ta'awwudh, and begins reciting the Fatiha. If the imam bows, before one finishes (O: the Fatiha), one bows with him, provided one has omitted the Opening Supplication and Ta'awwudh, though if one did not omit them, then one must recite as much (A: as many letters) of the Fatiha as one recited of them, since if one bows before having recited that much, it invalidates one's prayer. If one recites what we have just said is enough of the Fatiha to permit one to bow with the imam (n: when one is a latecomer, for otherwise it is obligatory to recite it all, as at f12.17(O:)), but one holds back from bowing with him without excuse, then if the imam straightens up from bowing before one has oneself bowed, one has missed that rak'as (N: and must rise after the group has finished to perform it).

#### SAYING "I TAKE REFUGE, ETC. " (TA'AWWUDH)

f8.16 After the Opening Supplication, it is recommended to recite the Ta'awwudh, saying, "I take refuge in Allah from the accursed Devil." It is said in every rak'a and especially recommended in the first, whether one is imam, follower, or praying by oneself, and whether the prayer is obligatory, supererogatory, or even a funeral prayer. It is said to oneself in both the prayers recited to oneself and those recited aloud.

#### THE FATIHA

f8.17 Then one recites the Fatiha (def:w1.16) in every rak'a(n: an integral), whether one is imam, follower, or praying alone. The Basmala (n: the words "In the name of Allah, Most Merciful and Compassionate") is one of its verses. (n: In the other three schools, it is recited to oneself even when the rest is recited aloud (Sharah al-sunna (y22), 3.54).) It is obligatory to recite the Fatiha's verses in order and without interruption. It is considered to be interrupted and must be begun again if one deliberately pauses, at length during it, or pauses briefly but thereby intends to cease reciting, or mixes with it some words of invocation (dhikr) or Koran that are not in the interests of the prayer.

One's recital of the Fatiha is not considered to be interrupted if one speaks words during it that are in the interests of the prayer, such as saying "Ameen" in response to the imam's Ameen, or reminding him of the right words when he errors, or prostrating with him as a sunna for his Koran recital (def:

f11.14). Nor is it interrupted if one forgetfully falls silent during it or absentmindedly adds some words of invocation (dhikr). f8.18 If one omits one of the Fatiha's letters (Ar. harf, a consonant or long vowel (A: mistakes in a short vowel (haraka) do not harm as long as they do not alter the meaning)), fails to double a letter that should be doubled, or substitutes a wrong letter for the right one, it invalidates (O: one's recital of that particular word, and one must recite the word again (dis: s3.3). But it does not invalidate one's prayer unless it changes the meaning and was done deliberately).

#### SAYING "AMEEN"

f8.19 After reciting (n: the last words of the Fatiha)" nor of the lost, " one says "Ameen" to oneself in prayers spoken to oneself and aloud in those recited aloud. When following an imam, one says "Ameen" when he does, and then a second time (N: to oneself) when finished with one's own recital of the Fatiha.

#### RECITING A SURA

f8.20 If one is the imam or praying by oneself, it is recommended in the first and second rak'as only to recite one complete sura (O: even if short) the Fatiha. It is recommended to recite:

- (1) the suras from al-Hujurat (Koran 49) to al-Naba'(Koran 78) for the dawn (subh) and noon (zuhr) prayers;
- (2) the suras from al-Naba'(Koran 78) to al-Duha (Koran 93) for the midafternoon ('as) and nightfall ('isha) prayers; (provided that there are a restricted number of followers (O: meaning no others are praying behind the imam) who do not mind the length of these ((1) and (2) above) recitations, though if otherwise, the imam should be brief)
- (3) the suras from al-Duha (Koran 93) to the end (Koran 114) for the sunset prayer (maghrib);
- (4) al-Sajda (Koran 32) for the dawn prayer on Friday (n: in the first rak'a' when the group may prostrate during the recital, as at f11.14), and al-Insan (Koran 76) (n:in the second rak'a);
- (5) and al-Kafirun (Koran 109) (n: in the first rak'a) and al-Ikhlās (Koran 112)(n: in the second )for the sunna prayers that accompany the sunset and dawn prayers (def:f10.2), for the two rak'as after circumambulating the Kaaba (j5), and for the guidance prayer (istikhara, f10.12).

f8.21 It is recommended to recite the Koran in a distinct, pleasant way (tartil) (O: i.e. to recite it as

revealed by Allah, observing the proper rules of Koranic recitation) and to reflect upon its lessons and meanings (dis:w26).

**f8.22** It is offensive for a follower to recite a sura when praying behind an imam whose recital is audible to him, though it is recommended for the follower to recite the sura during prayers that are not recited aloud, or those recited aloud if he cannot hearing, or can hear it, but uncomprehendingly.

**f8.23** One recites a longer sura in the first rak'as than in the second.

**f8.24** If a latecomer to a group prayer misses the first two rak'as with the group and then performs them alone after the imam has finished the group prayer with Salams, he is recommended to recite the suras to himself during them.

**f8.25** The imam (or person praying by himself) recites the Fatiha and suras aloud for the dawn prayer (subh), Friday prayer (jumu'a), prayer on the two 'Eids (def: f19), drought prayer (f21), lunar eclipse prayer (f20), the group prayer that is sunna on the nights of Ramadan (tarawih, f10.5), and for the first two rak'as of the sunset (maghrib) and nightfall ('isha) prayers.

In other prayers, the Fatiha and suras are recited to oneself.

When making up at night (lays, from sunset to true dawn) a prayer that one missed during the day or night, one recites aloud. When making up in the daytime (nahar, from dawn to sunset) a prayer that one missed during the day or night, one recites to oneself. At dawn, however (N: from true dawn to sunrise), all makeup prayers are recited aloud. (N: The upshot is that one recites aloud in all prayers that are made up at times when one normally recites aloud, and recites to oneself at the times one normally recites to oneself.)

## STANDING

**f8.27** Standing is an integral in all obligatory prayers (O: for anyone who can stand, whether by himself or assisted by another, though it is not an integral in nonobligatory prayers).

Standing requires that the spine be upright. One is not standing if one inclines forward so that the backbone is no longer straight, or bends so that one is closer to bowing (def: f8.29) than to standing. If a person's back is bowed with age or the like so that this normal posture resembles someone bowing, then he stands as he is, but must bend a little further for bowing if able to. It is offensive in prayer to stand on one foot, for both feet to be held together (A: though this is sunna for women), or for one foot to be ahead of the other. To stand at length (A: reciting the Koran in prayer) is better than to prostrate or bow at length (A: therein).

**f8.28** It is permissible to pray nonobligatory prayer seated (O: any way one wishes, though the iftirash (def: f8.37) style of sitting is best or lying down, even when able to stand (A: but the merit is less than to do so standing).

## BOWING

**f8.29** Then one bows from the waist (n: an integral). The minimum is to bow as far as an average size person needs to when he wants to put his hands on his knees. It is obligatory that one repose therein, minimally meaning to remain motionless for a moment after having moved. It is also obligatory that one intend nothing by the motion but bowing.

**f8.30** The optimal way is to raise one's hands and say "Allahu akbar" so that one begins raising the hands as one starts saying it, and when the hands are at shoulder level, one bows. Whoever one says "Allahu akbar" during a movement from one prayer posture to another, it is recommended to prolong the words until one reaches the next posture (A: so that one's prayer is not devoid of invocation (dhikr) at any point). Then one puts the hands on the knees, fingers apart, with back and neck extended, legs straight, and elbows out, though women keep them close. One then says, "My Lord Most Great is exalted above all limitation," three times, the least that is optimal. If praying alone, or the imam of a limited number of followers who do not mind the extra length, one may increase the number of times one says this to five, seven, nine, or eleven. When finished, (O: however many times one has said it,) it is recommended to say, "O Allah, to You I bow, in You I believe, to You I submit. My hearing, sight, mind, bones nerves, and all that my feet bear up are humbled before You."

## STRAIGHTENING UP



**f8.31** Then one lifts one's head, the minimum of which is to return to standing as one was before bowing, and, then remain motionless for a moment. (n: Each is an integral.) It is obligatory to intend nothing by one's movement except straightening up.

**f8.32** The optimal way is to raise the hands (A: lifting them from the knees as one starts straightening up, raising them to shoulder level) and the head together, saying, "Allah hears whoever praises Him," This is said whether one is imam, follower, or praying alone. When one is standing upright, one says. "Our Lord, all praise is Yours, heavenful, earthful, and whatever-else-You-will-full."

(O: If following an imam or praying alone, one says this to oneself. If imam, one says "Allah hears whoever praises Him" aloud, but the rest to oneself.) Those we have previously mentioned who wish to add to the words of bowing may add here "O You who deserve praise and glory, the truest thing a slave can say (and all of us are Your slaves) is, 'None can withhold what You bestow, non can bestow what You withhold, and the fortune of the fortunate avails nothing against You.'"

## **PROSTRATION**

**f8.33** Then one prostrates (n: an integral). The conditions for its validity are:

- (a) that an uncovered portion of the forehead touch a part of the place prayer (N: it is not obligatory that any of the other limbs of prostration be uncovered);
- (b) that one remain motionless for a moment while prostrating
- (c) that the place of prostration bear the weight of the head;
- (d) the one's higher than one's head;
- (e) that one not prostrate on something joined to one's person that moves with one's motions, such as a sleeve or turban;
- (f) that nothing but prostration be intended by one's motion;
- (g) and that part of each knee, the bottom of the toes of each foot, and the fingers of each hand be placed on the ground.

(O: In our school, it is not Obligatory that the nose touch the ground in prostration, though it is desirable)

**f8.34** If one cannot fully prostrate so that one's forehead touches the ground (N: a pregnant woman, for example), then it is not necessary to stack up pillows on the place of prostration to touch the forehead on them. One merely bows as low as one can. If one has put a bandage on the foreheads because of an injury that affects all of it, and there is hardship in removing it (O: severe enough to permit dry ablution (tayammum) (def: e12.9)), then one may prostrate upon it and need not make up the prayer.

**f8.35** The optimal way to prostrate is to say "Allahu akbar" and:

- (1) to put the knees down first, then the hands, and then the forehead and nose (O: the order is called for, and any other order is offensive);
- (2) to prostrate with the hands directly under one's shoulders, fingers together, extended towards the direction of prayer (qibla), hands uncovered;
- (3) for men to keep 1 span (n: about 23 cm) between the two knees and two feet (O: though a woman's are kept together);
- (4) for men to keep the stomach apart from the thighs, though women keep them together;
- (5) and to say three times, " My Lord Most High is exalted above all limitation."

Those we have previously mentioned who wish to add to the words of bowing may increase the number of times this is said as previously described (O: namely, in odd numbers up to eleven) and add: "O Allah, I prostrate myself to You, believe in You, and surrender to You. My face prostrates to Him, and surrender to you. My face prostrates to Him who created it and gave it form, who opened its hearing and vision by His Power and strength. Allah is exalted in perfection, the Best of Creators." It is commendable to supplicate Allah while prostrating.

## **SITTING BETWEEN PROSTRATIONS**

**f8.36** Then one raises the head (N: and sits back before prostrating a second time. Sitting at this point is an integral). It is obligatory to sit motionlessly for at least a moment and to intend nothing but sitting by one's movement.

**f8.37** The optimal way is:

- (1) to say "Allahu akbar" (N: as one raises the head);
- (2) to sit in ifirash, which is to place the left foot on its side and sit upon it while keeping the

right foot resting on the bottom of its toes, heel up;

(3) to place one's two hands on the thighs near the knees, fingers extended and held together;

(4) and to say, "O Allah forgive me, have mercy on me, pardon me, set me right, guide me, and sustain me."

**f8.38** There are two other ways of sitting back (iq'a') (O: between the two prostrations, or at the first and second Testifications of Faith (Tashahhud, def:f8:45)). One way is to sit back on the heels with the bottom of the toes and knees upon the ground. This is recommended between the two prostrations, though iftirash (def: f8.37) is better. The other way is to simply sit on the ground, palms down, and knees, drawn up. This is offensive in any prayer.'

**f8.39** Then one prostrates again just as before. (O: The first rak'a is only completed when one has performed the second prostration, because each prostration is a separate integral, as is the moment of motionlessness in each.)

**f8.40** After this one raises the head, saying "Allah akbar" (O: as one first raises it, drawing out the words until one is standing upright). It is sunna, here land in each rak'a that is not followed by the Testification of Faith (Tashahhud), to briefly rest in the iftirash style of sitting (f8.37) before rising. Then one (O: quickly) raises, helping oneself up with both hands (O: palms down), and prolonging the Allah Akbar until standing. If the imam omits this brief sitting, the follower performs it anyway. It is not done after a Koran recital prostration (def: f11.13).

**f8.41** Then one performs the second rak'a of the prayer just like the first, except for the initial intention, the opening Allah Akbar, and Opening Supplication (Istiftah).

**f8.42** If one's prayer exceeds two rak'as one sits in iftirash (def:f8.37) after the first two rak'as and recites the Testification of Faith (Tashahhud, f8.45) and the Blessings on the Prophet (Allah bless him and give him peace), though not upon him family (N: which is done only in the final Testification of Faith at the end of the prayer). Then one rises, saying "Allah akbar" and leaning on one's hands (n: as before). When standing, one lifts the hands to shoulder level (A: which one does here, but not after rising from the first or third rak'a) and then goes on to perform the remainder of the prayer as one did the second rak'a, except that one recites the Fatiha to oneself and does not recite a sura after it.

#### TESTIFICATION OF FAITH (TASHAHHUD)

**f8.43** One sits back (n: an integral) at the last of one's prayer for the Testification of Faith in the tawarruk style of sitting, with one's (O: left) posterior on the ground and left foot on its side, emerging from under right, which is vertical. (O: The wisdom in the difference between the ways of sitting during the two Testifications of Faith, namely, iftirash (f8.37) in the first and tawarruk in the second, is that a latecomer to group prayer may know by observing the former that the prayer has not finished and by the latter that it nearly has.

Imam Malik holds the sunna in both testifications to be the tawarruk style of sitting; while Abu Hanifa holds that the iftirash style is sunna for both. May Allah have mercy on them all for explaining the Deity's command without the slightest loss.) However one sits here (O: in the final Testification of Faith (Tashhud)) and in the foregoing (O: Testification of Faith, as well as between the two prostration) is permissible, though iftirash and tawarruk are sunna. A late comer to a group prayer sits in iftirash at the end of his imam's prayer and sits in tawarruk at the end of his own. Similarly, the person who must perform a forgetfulness prostration (def: f11) sits in iftirash for his last Testification of Faith, prostrates for forgetfulness, and then sits in tawarruk for his Salams.

**f8.44** In the two Testifications of Faith, one's left hand rests on the left thigh near the knee, its fingers extended and held together. The right hand is similarly placed, but is held closed with its thumb touching the side of the index finger, which alone is left extended. One lifts the index finger and points with it when one says the words "except Allah" One does not move it while it is thus raised (O: following the sunna from a hadith related by Abu Dawud. It is offensive to move it here, though some hold that it is recommended, the evidence for which is also from the sunna, in a hadith related by Bayhaqi, who states that both hadiths are rigorously authenticated (sahih). Precedence is given to the former hadith, which negates moving the finger, over the latter hadith, which affirms it, because scholars hold that what is sought in prayer is lack of motion, and moving it diminishes one's humility. The Prophet's moving it (Allah bless him and give him peace) was merely to teach people that it was permissible (A: as it was the Prophet's duty (Allah bless him and give him peace) to distinguish for his Community the acts that were

offensive from those that were unlawful, and he was given the reward of the obligatory for doing such offensive acts.) Moreover, Bayhaqi says that the meaning of moving it in the latter hadith is simply raising it. So there is no actual contradiction).

**f8.45** The minimal Testification of Faith (Tashahhud) is to say: "Greetings to Allah. Peace be upon you, O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon Allah's righteous slaves. I testify there is no god except Allah, and that Muhammad is the Messenger of Allah."

The optimal way is to say: "Greetings, blessings, and the best of prayers to Allah. Peace be upon you O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon Allah's righteous slaves. I testify that there is no god except Allah, and that Muhammad is the Messenger of Allah."

Its words (N:minimal or optimal) are obligatory (O: i.e when one can recite the Arabic, one may not use other words) and their order is a condition. If one cannot say it, one must learn. If one cannot learn (O: because there is no teacher, or there is, no teacher, or there is, but one is unable), then one may translate it (O: to any language one wishes) One then says the Blessings on the Prophet (Allah bless him and give him peace) (n: an integral after the final Testification of Faith, but merely sunna after the first one, as at f9.15 below). The minimum is to say, "O Allah, bless Muhammad." (n: One confines oneself to this minimum at the first Testification of Faith, as mentioned above at f8.42.)

The optimal way is to say: "O: Allah, bless Muhammad and the folk of Muhammad as You blessed Ibrahim and the folk of Ibrahim. O Allah, show grace to Muhammad and the folk of Muhammad as You did to Ibrahim and the folk of Ibrahim in the worlds, for You are truly the Most Praiseworthy and Noble." (A: It is desirable to add before each mention of the names Muhammad and Ibrahim the word sayyidina ("our liegeland"). The hadith "Do not liegeland me in the prayer" is a forgery containing corrupt Arabic)

**f8.46** It is recommended afterwards (O: after the second Testification of Faith (Tashahhud) of the prayer, though not after the first) to supplicate Allah for any permissible thing one wishes concerning one's religion or this world. One of the best supplications is: "O Allah, forgive me what I have done and what I may do, what I have hidden and what I have made known, my excesses and what You know better than I. Only You put one ahead or behind. There is no god but You."

It is recommended (O: if one is imam) that such supplications be briefer than the Testification of Faith with its Blessings on the Prophet (Allah bless him and give him peace) (O: though if one is alone, one may supplicate as long as one wishes, if not afraid of forgetting (N: that one is still in the prayer)).

## CLOSING THE PRAYER WITH SALAMS

**f8.47** Then one says the final Salams (n: an integral). The minimum is to say "as-Salamu `alaykum" (peace be upon you), and it must occur while one is sitting. (O: It is inadequate to say "Salam salaykum" without the first word being definite (n: i.e. as-Salamu), since this has not reached us through any hadith texts, and invalidates the prayer if done intentionally.) The optimal way is to say, "Peace be upon you, and the mercy of Allah" (O: though to add the words "and His grace" (was barakatuhu) is not sunna) and to turn the head to the right enough to show the right cheek. (N: to those behind). One thereby intends to finish the prayer and intends greetings of peace to the angels and Muslims (whether human or jinn (deff:w22)) on the right. One then turns one's head to the left and repeats the Salam, intending to greet to those on the left. A follower intends one of the two Salams as a response to the imam's, depending on which side the imam is on, or if the follower is directly behind him, he may intend either Salam as a response to him.

**f8.48** When one is a latecomer to a group prayer, it is recommended not to stand up to finish one's missed rak`as until the imam has said both Salams. It is permissible to stand after he has said just one, but if one stands before he has said the first Salam it invalidates one's prayer, unless one purposely intended to cease participation in the group prayer before doing so. A latecomer, if making his first Testification of Faith while the group is making their last one, may sit at length (O: for dhikr or supplications) after the imam's Salams before he stands up to finish his own rak`as, though it is offensive. If he does this when not at the point of his first Testification of Faith, it invalidates his prayer if intentional.

**f8.49** Someone who is not a latecomer to a group prayer may sit as long as he wishes after the imam's Salams to supplicate, finishing with his own Salams whenever he wants (O: because the imam's leadership ends with the imam's first Salam, so there is no harm in the follower taking his time, as he is now praying alone, and someone praying alone may do so as long as he likes.

**f8.50** It is recommended to invoke Allah Most High (dhikr) to oneself and to supplicate after the prayer. (O: Shafi'i says in al-Umm, "I prefer that the imam and follower invoke Allah (dhikr) after the

Salams, and do so silently, unless the imam wants to be learned from, in which case he says the invocations aloud until he believes that he has been learned from, after which he says them to himself.") (n: The following invocations are listed in the commentary and have been written in full and vowelled by the translator in the facing column of Arabic. Their order is sunna, as the commentator notes below.

- (1) Ayat al-Kursi (Koran 2:255) (said once);
  - (2) al-Ikhlās (Koran 112)(once);
  - (3) al-Falaq (Koran 113) (once);
  - (4) al-Nas (Koran 114)(once);
  - (5) "I ask Allah's forgiveness"(three times):
  - (6) "O Allah, You are peace, from You is peace, You are exalted through Yourself above all else, O You of Majesty and Beneficence";
  - (7) "O Allah, none can withhold what You bestow, none can bestow what You withhold, and the fortune of the fortunate avails nothing against You";
  - (8) "Allah is exalted above any limitation or imperfection"(thirty-three times);
  - (9) "Praise be to Allah" (thirty-three times);
  - (10) "Allah is greatest" (thirty-three times (A: or thirty-four) times);
- (N: (8), (9), and (10) above are also recommended before going to sleep at night, in which case "Allah is greatest" is said thirty-four times)
- (11) and "There is no god but Allah, alone, without partner. His is the dominion, His the praise, and He has power over all things."
- (O: It is recommended to begin the supplication with the Koran when called for, like Ayat al-Kursi and so forth, then, (5)through (10) above.) One should invoke the Blessings on the Prophet (Allah bless him and give him peace) at the beginning (O: and middle) and end of one's supplications

**f8.51** The imam turns for (N: postprayer) invocation and supplications so that his right side is towards the group and his left side towards the direction of prayer (qibla). He leaves his place as soon as he finishes, if there are no women (N: in which case he waits for them to leave first). It is recommended that the followers remain seated until the imam stands.(A: In the Shafi'i school, the invocations are recommended to precede the postprayer sunna rak'as)

**f8.52** It is recommended for those who perform nonobligatory prayers after the prescribed prayer to first wait till after some conversation: it being better to pray them elsewhere, and best to perform them in one's home. (O: However, it is better to perform certain nonobligatory prayers in the mosque, such as those before the Friday prayer, those after circumambulating the Kaaba, and those before entering the state of pilgrim sanctity (ihram) if there is a mosque at the site. (A: Others that are better in the mosque include.)

- (1) the midmorning nonobligatory prayer (duha, def:f10.6);
- (2) the guidance prayer (istikhara, f10.12);
- (3) the two rak'as that are sunna before departing on a journey and when arriving from one;
- (4) prayers performed during a period of spiritual retreat in a mosque (i'tikaf,i3);
- (5) confirmed sunna prayers (sunna mu'akkada, f10.2) that one is afraid of missing if one does not pray them in the mosque;
- (6) and the sunna rak'as before the sunset prayer.))

**f8.33** While performing the dawn prayer (subh)it is sunna to lift one's hands supplicate after straightening up from bowing in the second rak'a. One says: " O Allah, guide me among those You guide, grant me health and pardon among those You grant health and pardon, look after me among those You lookafter, grant me grace in what You have given me, and protect me from the evil [A: here, one turns the palms down for a moment ] of what You have ordained; for You decree and non decrees against You, and non is based whom You befriend. O our Lord, who are above all things sacred and exalted, all praise is Yours for what You decree. I ask Your forgiveness and turn to You in repentance." It is commendable to add "and none is exalted whom You are at enmity with" (A: after the above words "and non is based whom You befriend"). If one is imam, one pluralizes the singular pronominal suffix so that, for example, ihadina ("guide us") and so forth (dis:w1.27).

The words of this supplication are not set and may be accomplished by pronouncing any supplication (O: and praise) or Koranic verse containing a supplication, such as the last verses of al-Baqara (Koran 2:285-86), though the above words are better.

After this, one invokes the Blessings on the Prophet (Allah bless him and give him peace).

It is recommended to raise one's hands throughout the supplication (O: palms up when asking the good, palms down when asking Allah to avert affliction). One does not stroke the face or chest with one's hands after the supplication (O: as opposed to other supplications, for which it is recommended to

wipe the face with the hands, as is mentioned in hadith).

The imam says the supplications aloud. The follower says "Ameen" after each supplication that is audible to him and participates in the praises and so forth by responding with similar expressions. If the imam is inaudible, the follower himself the supplication. When praying alone one says it to oneself. When disasters (O: such as drought or an epidemic) befall the Muslims, they similarly supplicate in every prescribed prayer (O: after straightening up from bowing in the last rak'a).

#### **f9.0 WHAT INVALIDATES, IS OFFENSIVE, OR OBLIGATORY IN PRAYER EXTRANEOUS SPEECH**

**f9.1** The prayer is invalidated (if one has no excuse (def:below)) by uttering two or more letters or when two or more letters worth of sounds such as laughter, crying, groaning, clearing the throat, blowing, sighing, or similar are audible. It is also invalidated by much (O: i.e. more than six words worth of) sound, even when there is a valid excuse such as blurting out words unthinkingly, laughter or coughing overcoming one, absentmindedly speaking, or when one speaks because as a new Muslim one does not know it is unlawful during the prayer; though with such an excuse a slight amount of speech does not invalidate the prayer. One's prayer is invalid if one speaks knowing that it is unlawful but ignorant of the fact that it invalidates the prayer, and is also invalid if one says "Aah" during it out of fear of hell. When it is impossible to recite the Fatiha(N: to oneself) (A: or the final Testification of Faith (Tashahhud) or Salams) except by clearing one's throat, one may do so even when it approximates two letters, though if it is merely impossible to recite aloud, then one may not clear one's throat, but must instead recite to oneself. (A: Some things which are not commonly known to invalidate the prayer, such as clearing the throat, do not invalidate the prayer of ordinary people, whose ignorance of them is excusable, though a scholar has no such excuse.)

**f9.2** If one notices (N: during the prayer) a blind person about to fall into a well, or the like, then one must speak up to alert him if there is not a nonverbal means of warning him of it.

**f9.3** No form of invocation of Allah (dhikr) invalidates the prayer unless it is a direct address such as "Allah have mercy on you" or "And upon you be peace", though it does not invalidate the prayer if it refers to someone not present, such as "Allah have mercy on Zayd" (O: nor is it invalidated by addressing Allah or the Prophet (Allah bless him and give him peace)).

**f9.4** When something happens to one during the prayer. (O: such as someone asking permission to enter, or having to remind the imam that he has forgotten something), then if one is male, one says "Subhan Allah" (O: intending only invocation (dhikr) thereby, as one may not merely intend to inform, nor lack any particular intention thereby, for these invalidate the prayer), or if female, one claps the right palm on the back of the left hand, not palm to palm. If one recites a Koranic expression such as "O Yahya, take the book" (Koran 19:12), intending only to inform (O: without intending invocation) or not intending anything in particular, this invalidates the prayer, though not if the intention is Koran recital or recital and informing together.

#### **A SUBSTANCE REACHING THE BODY CAVITY**

**f9.5** The prayer is invalidated when any (even if a little) substance (A: other than saliva) reaches the body cavity intentionally. It also invalidates the prayer if it occurs absentmindedly or in ignorance of its prohibition, provided the amount of the substance is commonly acknowledge to be much (def:f4.5), though not if it is little.

#### **EXTRANEOUS MOTION**

**f9.6** Adding surplus action that is an Integral, such as bowing, invalidates the prayer if done intentionally, but does not invalidate it if done because one has forgotten (O: that one has already performed it). The prayer is not invalidated by intentionally or absentmindedly adding a surplus spoken Integral such as repeating one's recital of the Fatiha or the Testification of Faith (Tashahhud) or reciting them in the wrong place.

**f9.7** The prayer is invalidated by adding, even if absentmindedly, a motion that is not one of the actions of prayer, provided it is both (O: considered by common acknowledgement (def:f4.5) to be) much and uninterruptedly consecutive, such as three steps (O: or successively moving three separate body parts like the head and two hands, though an up-and-down motion is considered just one) or three or more consecutive motions. The prayer is not invalidated by action that is not much, such as two steps,

or is much but is separated so that the subsequent motion is considered to be unconnected with the proceeding (O: slight) action is grossly improper, such as jumping, it invalidates the prayer.

f9.8 Slight actions such as scratching oneself, or turning a rosary (subha, dis: w27) do not affect the validity of the prayer, nor does remaining silent at length.

#### THINGS OFFENSIVE IN PRAYER

f9.9 It is offensive to perform the prayer while one is holding back from urinating or defecating, (O: If enough time remains to perform the prayer, the sunna is to relieve oneself first, even when one fears missing praying with a group, since it diminishes one's awe and humility in prayer.)

f9.10 It is offensive to pray in the presence of food or drink one would like to have, unless one fears that prayer's time will end. It is offensive during the prayer:

- (1) to interlace the fingers;
- (2) to turn (N: the head when there is no need. As for turning the chest from the directions of prayer (qibla), it invalidates the prayer except when there is an excuse such as in extreme peril, or when performing a nonobligatory prayer during a journey);
- (3) to look to the sky;
- (4) to look at something distracting;
- (5) to gather one's clothes or hair with the hand, tuck one's hair under a turban, or wipe the dust from one's forehead;
- (6) to yawn, though if it overcome one, one should cover mouth with the hand;
- (7) to exaggerate in lowering one's head while bowing;
- (8) or to put one's hands on the hips.

f9.11 It is offensive during the prayer to spit to the front of one or to the right. Rather, one should expectorate to the left, in the left, in the hem of one's garment, or under the foot (N: when one is praying in a desert or similar). (O: It is unlawful to spit in a mosque except into the left hem of one's garment (N: or a handkerchief. The slight motions necessary to take out one's handkerchief and return it do not harm, as they are inconsiderable).)

#### THINGS OBLIGATORY IN PRAYER

f9.12 The prayer has conditions (def: f9.13), integrals (f9.14), main sunnas (f9.15), and ordinary sunnas.

#### THE CONDITIONS OF PRAYER

f9.13 The prayer's conditions are eight:

- (a) purification from minor and major ritual impurity (hadath and janaba) (A: through ablution (wudu, def: e5) and the purificatory bath (ghusl, e11) respectively, as well as from menstruation and postnatal bleeding by bathing after them);
- (b) that one be free of filth (najasa, e14) (A: in body, clothes, and place of prayer (f4));
- (c) that one's nakedness be clothed(f5);
- (d) the one be facing the direction of prayer (qibla,f6);
- (e) that one avoid the actions prohibited in prayer, i.e. extraneous speech, eating, and excessive motion (f9.1-7);
- (f) knowing or believing that the prayer's time has come (f2);
- (g) knowing that the prayer is obligatory;
- (h) and knowing how it is performed.

Whenever one violates any of these conditions, one's prayer is invalidated, such as:

- (1) (non-(a) above) when a state of ritual impurity occurs during the prayer, even if absentmindedly;
- (2) (non-(b)) when some filth containing moisture affects a garment during the prayer, but one does not immediately shed the garment; or when some dry filth affects it, but one throws it off with the hand or sleeve (O: since in that case one is supporting it and in contact with it (dis: f4.2 (N:)));
- (3) (non-(c)) when the wind discloses a part of one's nakedness and its cover gets beyond reach;
- (4) or (non-(g)) when one believes that some elements of the prayer are obligatory and some are merely recommended, but does not know which are obligatory. One's prayer is not invalidated if one thinks that all the prayer's parts are obligatory, or (2) above) if one immediately sheds the garment affected by moist filth, brushes off dry filth, or((3) above) immediately re-covers one's nakedness.

## THE INTEGRALS OF PRAYER

f9.14 The prayer's integrals (ruku, pl, arkan) are seventeen:

- (a) the intention (def: f8.3);
- (b) the opening Allahu Akbar (f8.7);
- (c) standing (f8.27);
- (d) the Fatiha (f8.17);
- (e) bowing (f8.29);
- (f) remaining motionless a moment therein;
- (g) straightening back up after bowing (f8.31);
- (h) remaining motionless a moment therein;
- (i) prostration (f8.33);
- (j) remaining motionless a moment therein;
- (k) sitting back (f8.36) between the two prostrations;
- (l) remaining motionless a moment therein;
- (m) the prayer's final Testification of Faith (Tashahhud) (f8.45);
- (n) sitting therein (f8.43);
- (o) the Blessings on the Prophet (Allah bless him and give him peace) after the prayer's final Testification of Faith (f8.45);
- (p) saying "as-Salamu 'alaykum" the first of the two times it is said at the end of the prayer (f8.47);
- (q) and the proper sequence of the above integrals.

## THE MAIN SUNNAS OF PRAYER

f9.15 The prayer's main sunnas (A: meaning those which if omitted call for a forgetfulness prostration (def:f11)) are six:

- (a) the prayer's first Testification of Faith (Tashahhud) (N: in prayers that have two);
- (b) sitting during it;
- (c) the Blessings on the Prophet (Allah bless him and give him peace) after it (f8,45);
- (d) the blessings on his family in the prayer's final Testification of Faith (Tashahhud);
- (e) the supplication (f8.53) after bowing in the final rak'a of the dawn prayer (subh);
- (f) and standing therein.

## OTHER SUNNAS

f9.16 All other parts of the prayer are ordinary sunnas (O: and missing one is not compensated by a forgetfulness prostration).

## 10.0 SUPEREROGATORY PRAYER

f10.1 The prayer is the best of the body's spiritual works (O: prayer referring to the prescribed prayer, and body excluding worship connected with the heart, such as faith in Allah, which is better than the works of the body), and supererogatory prayers are the best of voluntary spiritual works (O: though scholarly work in Islamic religious knowledge, meaning beyond what is obligatory to ensure the validity of one's worship, is superior to nonobligatory prayer because it fulfills a communal obligation (fard alkifaya, def:c3.2)). Supererogatory prayers that the Sacred Law stipulates be prayed in groups, such as the prayer on the two 'Eids (f19), the prayer at solar and lunar eclipses, and the drought prayer, are better than those it does not stipulate be prayed in groups, namely, all others besides these. But the sunna rak'as before and after the prescribed prayers (O: whether confirmed sunna (sunna mu'akkada, def: below) or otherwise) are superior to the group prayer that is sunna on the nights of Ramadan (tarawih).

## THE SUNNA PRAYERS BEFORE AND AFTER THE PRESCRIBED PRAYERS

f10.2 It is sunna to diligently perform the nonobligatory prayers that are offered before and after the prescribed ones. The optimal number of these is two rak'as before the dawn prayer (subh), four before and after the noon prayer (zuhr), four before the midafternoon prayer ('asr), two after the sunset prayer (maghrib), and two after the nightfall prayer ('isha). The confirmed sunnas (dis:c4.1) of these (O: confirmed (mu'akkada) meaning those which the Prophet (Allah bless him and give him peace) did not omit whether travelling or at home) consist of ten rak'as:

- (1) two before the dawn prayer (subh);

(2) two before and after the noon prayer (zuhr);

(3) two after the sunset prayer (maghrib);

(4) and two after the nightfall prayer ('isha).

It is recommended to pray two rak'as before the sunset prayer. The sunnas of the Friday prayer (jumu'a) are the same as those of the noon prayer (zuhr) (dis:w28.1).

The time for the nonobligatory rak'as that come before prescribed prayers is that of the prescribed prayers. It is proper (adab) to pray such a sunna before the prescribed prayer, though if prayed after it, it is still a current performance (A: not a makeup, and one must intend it, for example, as the sunna before noon prayer (zuhr)). The time for nonobligatory rak'as that come after the prescribed prayer begins when one has performed the prescribed prayer and ends with the end of the prayer's time.

## WITR (THE FINAL PRAYER AT NIGHT)

f10.3 The minimal performance for witr (lit, "odd number") is one rak'a (O: even if one omit the sunnas after the nightfall prayer ('isha)), (A: A witr of at least three rak'as is obligatory (wajib) in the Hanafi school, and one should never omit it.) The optimal way is to perform eleven rak'as and (O: if one perform more than three) one should finish with Salams (def: f8.47) after every pair. The least considered optimal is three rak'as (O: and one separates them by) finishing two times with Salams (N: i.e. by finishing two rak'as with Salams and then performing the final rak'as). One recites al-A'la (Koran 87) in the first rak'a al-Kafirun (Koran 109) in the second, and al-Ikhlās, al-Falaq, and al-Nas (Koran 112, 113, and 114) in the third. It is permissible to (n: serially) join all the rak'as of any witr prayer that has from three to eleven rak'as by finishing them once with Salams (O: in the final rak'a, In that case and also when one's witr is only a single rak'a onw merely intends whereas in other witr's prayer in pairs (n: until one reaches the last one), one intends each pari as two rak'as of witr).

When joining the rak'as of witr one may limit oneself to a single Testification of Faith (Tashahud) (A: in the final rak'a), or may recite two Testifications, one in the last rak'a and one in the next to last, and to thus recite two Testifications is superior (A: if one separates the final two rak'as from one another by finishing the next to the last rak'a with Salams (N: before praying the final rak'a by itself), for otherwise it is better to recite a single Testification, as making witr resemble the sunset prayer (maghrib) is offensive). More than two Testifications (A: in a joined witr) invalidates the whole prayer.

f10.4 The best time for witr is just after the sunna rak'as that follow the nightfall prayer ('isha), unless one intends to offer the night vigil prayer (tahajjud; to rise at night after having slept, to pray some nonobligatory rak'as), in which case it is best to pray witr after the night vigil prayer (A: provided that one usually manages to get up when one has made such an intention. If not, then it is better to perform witr after the sunnas of the nightfall prayer ('isha)). When one has already performed witr, but decides to pray the night vigil prayer (tahajjud), one performs the latter's rak'as two by two, and there is no need to repeat the witr, or "make it an even number" by performing one rak'as before the night vigil prayer. However, it is recommended not to intend performing prayer between witr and dawn.

## TARAWIH

f10.5 It is recommended to perform tarawih, which is twenty rak'as of group prayer on each night of Ramadan. (O: As well as being sunna to pray tarawih alone, it is also sunna to pray it in a group.) One finishes each pair of rak'as with Salams. It is recommended to pray witr in a group after tarawih, unless one intends the night vigil prayer (tahajjud), in which case one should postpone witr until after it. During the second half of Ramadan, in the last rak'a (N: of witr), it is recommended to supplicate as one does in the dawn prayer (def: f8.53), and then one adds: "O Allah, we ask Your help, Your forgiveness, and Your guidance. In You we believe, on You we rely, You we praise with every good, we are grateful to You and not ungrateful, and disown and abandon him who commits outrages against You. O Allah, You alone do we worship, to You we pray and prostrate, You we strive for and hasten to obey, hoping for Your mercy and fearing Your punishment. Truly, Your earnest punishment shall overtake the unbelievers." The time for witr and tarawih is between the nightfall prayer ('isha) and dawn.

## THE MIDMORNING PRAYER (DUHA)

f10.6 It is recommended to pray the midmorning prayer (duha), which minimally consists of two rak'as, is optimally eight rak'as, and maximally twelve. One finishes each pair of rak'as with Salams. Its time is after the sun is well up until just before the noon prayer (zuhr). (O: The preferable time for its performance is after a quarter of the day has passed.)



f10.7 When one misses (O: even intentionally) any supererogatory prayer that has a specified time, such as the two 'Eids, duha, witr, or the Sunnas before and after the prescribed prayers, it is recommended to make it up at any time afterwards. If one misses a supererogatory prayer that is contingent upon some passing event, such as the eclipse prayer, drought prayer, greeting the mosque, or the prayer for guidance (istikhara. def: 10.12), one does not make it up.

#### THE NIGHT VIGIL PRAYER (TAHAJJUD)

f10.8 Supererogatory prayer at night is a confirmed sunna (def: f10.2 (O:)), even if one can only do a little. Wholly supererogatory prayers (O: meaning those unconnected with a particular time or reason) at night are better than during the day. If one divides the night into six parts, the fourth and fifth part are the best for prayer. If divided in half, the second half is best. If divided into thirds, the middle part is best. Praying the entire night, every night, is offensive. It is recommended to begin one's night vigil prayers (tahajjud) with two brief rak'as to have intended the night vigil prayer before going to sleep, and not to make a practice of more prayer than one can regularly perform without harm to oneself.

(A: It is a sunna to recite the suras of the night vigil prayer sometimes aloud, sometimes to oneself.)

f10.9 One (O: who is performing wholly supererogatory prayers, whether in the night or day) finishes every two rak'as with Salams, though one may also:

(1) join three or more rak'as by finishing but once with Salams;

(2) pray a single supererogatory rak'a by itself;

(3) recite the Testification of Faith (Tashahhud) every two rak'as (O: without finishing them with Salams), or every three, or every four, even if the Testifications of Faith grow very numerous (A: before finishing the series of rak'as with Salams). (N: This is if not praying witr (dis: f10.3, end));

(4) or confine oneself to just one Testification of Faith (Tashahhud) in the final rak'a (O: in which case one recites a sura in each of the rak'as and finishes with Salams after the above mentioned final Testification of Faith), though it is not permissible to recite the Testification of Faith in every rak'a (O: without finishing with Salams).

When one's intention (N: in a wholly supererogatory prayer) is to perform a specific number of rak'as (O: four or more), then one may change one's mind as to the number and pray fewer rak'as, or more, provided one changes the intention before (O: having added or subtracted any). Thus it is permissible to intend four but finish after two, if one intends to subtract two, though it invalidates the prayer to purposely finish it after two without having made the intention to curtail the planned four rak'as. If one absentmindedly finishes with Salams, one goes on to complete the four and performs the forgetfulness prostration (def:f11) at the end.

#### GREETING THE MOSQUE

f10.10 It is recommended for whoever enters a mosque to greet the mosque by praying two rak'as each time he enters, even if many times within an hour. One is no longer entitled to pray if after sitting. It is accomplished anytime one enters a mosque and prays two rak'as, whether one intends merely performing two supererogatory rak'as fulfilling a vow, the sunna rak'as before or after a prescribed prayer, the prescribed prayer alone, or the prescribed prayer together with the intention of greeting the mosque. (O: If one enters the mosque when one does not have ablution (wudu), it is sunna to say four times, "Allah is far exalted above any limitation, praise be to Allah, there is no god but Allah, Allah is greatest.")

f10.11 It is offensive to begin any nonobligatory prayer, whether greeting the mosque, the sunna rak'as before a prescribed prayer, or other, when the imam has begun the prescribed prayer or the muezzin has begun the call to commence (iqama).

#### THE GUIDANCE PRAYER (ISTIKHARA)

f10.12 (n: the translator has added the following text from Imam Nawawi's Riyad al-salihin:) Jabir (Allah be well pleased with him) relates that "the Prophet (Allah bless him and give him peace) used to teach us the guidance prayer (istikhara) for all matters, as he would a sura of the Koran, saying :

" 'When a matter concerns one of you, pray two nonobligatory rak'as [dis: f8.20(5)] and say; "O Allah, I ask You to show me what is best through Your knowledge, and bring it to pass through Your power, and I ask You of Your immense favor; for You are all-powerful and I am not, You know and I do not, and You are the Knower of the Unseen. O Allah, if You know this matter to be better for me in

my religion, livelihood, and final outcome [or perhaps he said, " the short t and long term of my case"], then bring it about and facilitate it for me, and bless me with abundance therein. And if You know this matter to be worse for me in my religion, livelihood, and final outcome [or perhaps he said, "the short and long term of may case"], then keep it from me, and keep me from it , and bring about the good for me whatever it may be, and make me pleased with it," and then one should mention the matter at hand.'" (Riyad al-salihin (y107),325-26)

**f10.13** A nonobligatory prayer at home is superior to one performed at the mosque (dis: f8.52).

**f10.14** It is offensive for one to single out the night before Friday (lit, "night of Friday," i.e Thursday night, since in Arabic the night of a given date comes before its day) as a special night for prayer.

**f10.15** It is an offensive, blameworthy innovation (bid'a def:w29) to perform any of the following spurious prayers:

- (1) twelve rak'as between the sunset prayer (maghrib) and nightfall prayer ('isha) on the first Thursday night of the month of Rajab;
- (2) one hundred rak'as in the middle of the month of Sha'ban;
- (3) (O: two rak'as after each of three times of reciting Ya Sin (Koran 36) on the night of mid-Sha'ban;
- (4) or the so-called prayer of 'Ashura' on 10 Muharram.)

## **f11.0 PROSTRATIONS OF FORGETFULNESS, KORAN RECITAL, OR THANKS**

### **THE FORGETFULNESS PROSTRATION**

**f11.1** The two reasons for the forgetfulness prostration are nonperformance of something called for (O: such as a main sunna (f9.15)), or performance of something uncalled-for (O: such as absentmindedly adding a rak'a to one's prayer).

**f11.2** (n: As for nonperformance,) if one misses an integral of the prayer (def:f9.14) and does not remember it until doing what comes after it, then one must (A: it still in the same rak'a) go back to it, perform it and what comes after it, and (A: it is sunna to ) prostrate for it at the end of one's prayer (O: provided one is not a follower. As for a follower who misses an integral, he continues following the imam until the imam finishes with Salams, and then the follower rises alone and performs a makeup rak'a. One is only obligated to reperform a missed integral (A: in the same rak'a i.e. when praying by oneself) if one's forgetfulness of it doesn't continue (A: until the next rak'a). If one's forgetfulness continues and one goes on to perform the integral (A: during the course of the subsequent rak'a) then the same integral (A: of the following rak'a) takes the missed integral's place (A: in which case the rak'a containing the omission does not count and one does not return to it, but performs the rest of the prayer and then adds a makeup rak'a at the end, after which one performs the forgetfulness prostration before one finishes with Salams)).

**f11.3** (O: If there is a surplus action, such as when one absentmindedly goes from standing to prostration without having bowed, but then remembers, in such a case one stands up and bows, and performs the forgetfulness prostration (N: at the end of the prayer). This (N: having stood twice before bowing) is a surplus action. One does not prostrate for forgetfulness when there is no surplus action, as when one omits the final prostration of the prayer, but remembers it before one finishes with Salams and performs it, in which case one does not prostrate for it because there has not been an addition.)

**f11.4** If one misses a main sunna (def: f9.15), even purposely, one perform a forgetfulness prostration. If one misses anything besides an integral or main sunna, then one does not prostrate for it.

**f11.5** One does not prostrate for (A: either intentionally or absentmindedly) doing an uncalled for action of the type which when done intentionally does not invalidate the prayer (O: such as turning the head, or taking one or two steps), though reciting a part or all of the Fatiha or Testification of Faith (Tashahhud) at the wrong place in the prayer are exceptions to this in that, although intentionally reciting them at the wrong place does not invalidate the prayer, it does call for a forgetfulness prostration.

**f11.6** One performs a forgetfulness prostration for unintentionally doing an uncalled-for action of the type which when done intentionally invalidates the prayer (O : Such as a small amount of extraneous speech), provided it is not the type of action whose unintentional performance also invalidates the prayer

(O: such as much extraneous speech or action (def:f9)) (N: since doing it would in any case invalidate the prayer and obviate the need for a forgetfulness prostration). Straightening back up after bowing (f8.31), and sitting between prostration (f8.36) are two brief integrals. To intentionally make them lengthy invalidates one's prayer, though to do so absentmindedly merely calls for a forgetfulness prostration (A: An exception to this is standing at length after bowing in the final rak'a of any prayer, as this does not invalidate the prayer even when done intentionally, and even if one does not supplicate therein.)

f11.7 If one forgets the first Testification of Faith (Tashahhud) and stands up it is unlawful to return to it. If one intentionally returns to it, this invalidates one's prayer (O: because one has interrupted an obligatory act (A: the Integral of standing ) for the sake of something nonobligatory (A: the main sunna of the first Testification of Faith (Tashahhud))). But if one returns to it absentmindedly or out of ignorance, one merely prostrates for it, though one must (O: interrupt the Testification of Faith that one has returned to , and ) stand up as soon as one remembers.

If one (A: has omitted the first Testification of Faith and started to rise, but) checks oneself before standing and sits down again, this does not call for a forgetfulness prostration (O: as it is not a full surplus action (def: f11.3)). But if one intentionally rises and then returns to sitting after having been closer to standing, one's prayer is invalid. If not (O: i.e. if one had not yet been that close, or had, but returned absentmindedly or in ignorance of its prohibition), it is not (O: invalid). The same applies to omitting the supplication of the dawn prayer (f8.53), where placing the forehead on the ground is as standing up is in the above ruling(N; that is , one may return to the omitted supplication as long as one has not yet completed one;s (A:first) prostration).

f11.8 When praying behind an imam who misses the first Testification of Faith (Tashuhhud) by standing, the follower may not remain seated to recite it by himself (O: as this is a gross contravention of his leadership and invalidates the prayer when done purposely and in awareness of its prohibition) unless he has made the intention to cease his participation in the group prayer and finish alone.

But if the imam omits the first Testification of Faith (Tashahhud) and the follower stands up with in, and then the imam sits, down, it is unlawful for the follower to follow him therein, Rather, the follower should either cease his participation in the group prayer, or else remain standing and wait for the imam to rise before they continue the prayer together. If the follower intentionally sits back down when the imam does (O: knowing it is unlawful) when his prayer is invalid.

If the imam is sitting for the Testification of Faith and the follower absentmindedly stands up, then he must sit again, in deference to his imam's leadership (O: because following him in what is correct takes priority over starting an obligatory integral, which is also why the late comer to group prayer may omit both standing and reciting the Fatiha (n: to bow when the imam bows, as above at f8.15)).

f11.9 One does not perform the forgetfulness prostration when one is uncertain (A: i.e. does not know or believe) that one did something that calls for a forgetfulness prostration, or that one added a surplus integral, or did something uncalled for. But if uncertain whether one omitted a main sunna (def: f9.15), or performed the forgetfulness prostration, or whether one prayed three rak'as or four (A: and this includes being uncertain (N: i.e not knowing or believing it probable) that one performed one or more of a rak'a integrals, since without all seventeen integrals (def: f9.14), the rak'a remains unperformed), then one proceeds on the assumption that one did not yet do it (O: returning to the original basis, which was that one had not done it) and one finishes with a forgetfulness prostration. When one's doubt (A: that one has performed an extra rak'a) is resolved before finishing the prayer with Salam, one also prostrates for forgetfulness because of the rak'a one prayed while uncertain, which was presumed to have possibly been extra (A: i.e the final rak'a, which one performed thinking it might be extra). But if performing it would have been obligatory in any case, as when one is uncertain during the third rak'a(A: of a four-rak'a prayer ) as to whether it is the third or fourth rak'a (A: both of which would be obligatory for the prayer in any case), but one remembers during it that it is the third, then one does not prostrate for one's forgetfulness, though if one did not remember which it was until rising for the fourth rak'a (A: which one presumed might be the fifth), one prostrates for forgetfulness. ( A: The same applies to prayers of less than four rak'as.)

f11.10 The forgetfulness prostration, even if there are numerous reasons for it in one prayer, is only two prostrations.

f11.11 If one comes late to a group prayer and the imam performs a forgetfulness prostration at the end of the group's prayer, one performs it with the group, and once again at the end of one's own prayer. A follower does not prostrate for forgetfulness when he makes an individual mistake (A: the imam did not make ) while following (n: unless he omits an integral, as discussed above at f11.2(O:)), though he does

prostrate if his mistake occurred before joining the group or after the imam finished with Salams. If the imam makes a mistake, even if it was before one joined the group prayer, then one must prostrate for it with the group out of deference to the imam's leadership. One does not invalidate one's prayer. If the imam neglects to perform a forgetfulness prostration, the follower does so anyway. If one comes late to group prayer, absentmindedly finishes with Salams with the imam, and then remembers (O: the rest of the prayer that one has to complete), one performs the remainder and prostrates for forgetfulness.

f11.12 The forgetfulness prostration is a sunna. It is performed before one's final Salams, whether the reason is a surplus action or an omitted one. One is no longer entitled to perform it if one deliberately finishes with Salams before it, or absentmindedly finishes with Salams and there is a lengthy interval before one recalls that one was supposed to have performed it; though if this interval is brief and one wishes, then one may prostrate, and one has thereby returned to the prayer and must again finish it with Salams.

## THE KORAN RECITAL PROSTRATION

f11.13 To prostrate for recital of appropriate verses of the Koran is sunna for the person reciting, listening, or merely hearing.

f11.14 One prostrates for one's own recital if praying by oneself or if one is imam (O: but it invalidates one's prayer to intentionally and with knowledge of its prohibition recite a verse for the purpose of prostrating during the prayer (N: if one prostrates therein), except for al-Sajda (Koran 32) recited in the dawn prayer (subh) on Friday. (A: Though if such a verse merely occurs in the course of one's prayer, as when one is reciting a particular sura containing it, one may prostrate)). But if either of them prostrates upon hearing someone else's recital, it invalidates their prayer. A follower prostrates with his imam. The follower's prayer is invalid if he prostrates for his own recital, the recital of someone besides the imam, or does not prostrate when the imam does.

f11.15 There are fourteen prostration verses, two of them in al-Hajj (Koran 22). They do not include the prostration at Sad (Koran 38:24), which is a prostration of thanks, not of Koran recital, and is only performed outside of prayer. To purposely prostrate for it during the prayer invalidates the prayer.

f11.16 When one prostrates for reciting while in the prayer, it is recommended to say "Allahu akbar" before prostrating and again when rising. It is obligatory to stand again after it (O: or to sit up again if performing a nonobligatory prayer seated) and recommended to then recite more of the Koran before one bows. When one prostrates for reciting while outside of the prayer, it is obligatory to say an opening Allahu Akbar (O: and to finish with Salams, The four integrals of both the prostration of Koran recital (A; outside of prayer) and of the prostration of thanks are:

- (a) the intention;
- (b) the opening Allahu Akbar;
- (c) the prostration;
- (d) and the final Salams (A: which can only be performed in a sitting position).

Whether in or out of prayer, the things that invalidate a normal prayer invalidate the prostrations of recital or thanks, and the conditions of the prayer, i.e. ablution (wudu), clothing nakedness, the entry of the proper time which is when the last letter of a prostration verse has been recited - facing the direction of prayer (qibla), and so forth, are also conditions of these prostrations).

It is recommended to say "Allahu akbar" when one prostrates and rises, though not to recite the Testification of Faith (Tashahhud) therein.

f11.17 If one delays the recital prostration past its time and the interval is brief (O: meaningless than the time of two brief, medium-length rak'as) then one is still entitled to prostrate. If longer than that, one does not make it up. When one repeats a prostration verse within one sitting or within one rak'a and one has missed the prostration at its first mention, then it is accomplished by a single prostration (O: though if one prostrates for the first, one still prostrates for the subsequent times, as the reason to do so has been renewed).

f11.18 When reciting the Koran, whether during the prayer or not, it is recommended to ask Allah for mercy at the verses mentioning mercy, and to seek refuge in Him (Ta'awwudh) at verse mentioning punishment.

## THE PROSTRATION OF THANKS

f11.19 Whenever a manifest blessing appears in one's life (O: such as a child, wealth, or prestige), it is recommended to prostrate out of thanks to Allah, and likewise when an affliction is averted (O: such as being saved from drowning, regaining health, or the reappearance of someone lost or the death of a tyrant), or when one sees someone Allah has afflicted with disobedience or illness, though in the latter case one should prostrate in private (O: so as not to sadden the person). The prostration of thanks is the same as the Koran recital prostration outside of the prayer (O: regarding its integrals and conditions (def: f11.16)). It invalidates one's prayer if performed during it.

f11.20 It is unlawful to prostrate without occasion merely to humble oneself to Allah to draw near to Him (O: because it is a reprehensible innovation (bid'a def: w29.3)).

f11.21 The recital prostration's requirements of facing the direction of prayer (qibla), purity, and clothing nakedness are the same those of nonobligatory prayers.

## f12.0 GROUP PRAYER AND THE IMAM

### GROUP PRAYER

f12.1 Group prayer is a communal obligation (def:c3.2) upon all male nontravellers for the five current prescribed prayers, such that the rite of the prayer be public. (O: In a small town, it is enough to merely gather somewhere and pray. In a city, the prayer must be held in public places such that the manifestations of obedience to Allah's command are evident. If held in houses where the rite of prayer is not public, the obligation remains unfulfilled (A: though a house with a sign on it is sufficient).)

f12.2 Group prayer is sunna for women, travellers, and for makeup prayers in which the imam and followers are performing the same type of prayer; though it is not sunna for a follower's makeup prayer to be performed behind an imam's current prescribed prayer, or for a makeup prayer to be performed behind a different type of makeup (O: such as a follower making up the noon prayer (zuhr) behind an imam who is making up the midafternoon prayer ('asr)).

f12.3 It is personally obligatory to perform the Friday prayer (jumu'a) in a group (A: for every male Muslim who is not travelling).

f12.4 The group prayer for which the demand is the strongest is the dawn prayer (subh), then the nightfall prayer ('isha), and then the midafternoon prayer ('isha), and then the midafternoon prayer ('asr). The minimal number of people for a group prayer is an imam and a follower. It is best for men to perform group prayer at the mosque (O: as the act of going to the mosque makes the group prayer evident). The best mosque in which to pray is the one with the most people. If there is a nearby mosque attended by few people, then it is better to go to a distant one attended by more, unless the imam there commits reprehensible innovations (bid'a def:w29.3), is immoral, does not consider one of the integrals of the prayer to be an integral (n: though this does not matter if it is the result of the imam's following a different school of jurisprudence, as below at f12.29(N:)), or if one's going to the farther mosque will make group prayer impossible at the one nearby (A: as when one is one of the only two people who are likely to come), in all of which cases it is better to pray at the nearby mosque.

It is better for women to pray at home than at the mosque (A; whether they are young or old). It is offensive for an attractive or young woman to come to the mosque to pray (O: or for her husband to permit her), though not offensive for women who are not young or attractive when this is unlikely to cause temptation. (N: The author's words here must be interpreted in the light of the following details: If a woman's going to group prayer or elsewhere will definitely lead to temptation between the sexes, it is unlawful for her to go. If such temptation can be definitely prevented, her going to attend group prayer remains sunna, as is attested to by the hadiths that have reached us on the subject. If temptation is feared but not certain to occur, her going becomes offensive. Whether such temptation is likely to occur is something that differs with different times, places, and people. An old woman is not like a young one, nor a righteous society like one in which temptation between the sexes is the rule; nor is a special prayer place set aside for women at a mosque like a prayer place which they share with men. This is why 'A'isha (Allah be well pleased with her) said.

"Had the Prophet (Allah bless him and give him peace) seen what women do now, he would have forbidden them the mosque as the women of Banu Isra'il were forbidden."

a hadith reported Bukhari and Muslim.

The temptation between the sexes whose occurrence is to be feared when they intermingle is of various degrees, the least of which is a person's appreciating and admiring the other, then being attracted to enamored with the other, and finally, those indecencies which are not hidden from anyone. Islam is eager to eliminate evil at its inception and extirpate temptation from its outset, and the word of Allah Most High.

"Tell believers to lower their eyes and to guard their private parts"(Koran 24:30), explains both the starting point and final outcome of the temptation of men through women and the temptation of women through men.)

f12.5 There is no demand to go to group prayer (O: whether communally obligatory (dis: f12.1), personally obligatory (f12.3), or sunna (f12.2)), when there is a valid excuse not to, such as:

- (1) hardship due to rain or snow that soaks clothing;
- (2) hardship due to heavy mud (O: from getting soiled or slipping when walking through it);
- (3) (O: severe) winds at night (O: or dawn);
- (4) severe heat or cold (O: because of the hardship of moving in them, and likewise intense darkness at night, which is an excuse not to attend);
- (5) being in the presence of food or drink that one wants to have (O: as they obviate the awe and humility befitting they prayer. One should eat enough to take the edge off one's hunger (A: and then go to join the group));
- (6) holding back from going to the toilet or breaking wind (O: as one should relieve oneself first, even if one fears missing the group prayer);
- (7) hazard to one's person;
- (8) hazard to one's property (O: from theft or seizure, whether it belongs to oneself or to another whose property one is obliged to protect. It also includes bread one has put in the oven that would burn if one were to leave and attend the prayer);
- (9) hardship from an ailment (O: even when one is able to attend, if it entails a hardship comparable to that of walking in the rain. If one is suffering from a slight indisposition such as a toothache or the like, it is not an excuse);
- (10) taking care of a sick person (O: who would suffer harm if one left to pray, whether a relative, friend, or total stranger) or taking care of someone ill who is strongly attached to one's staying with him;
- (11) the death of relative, friend, (O: or spouse);
- (12) fear of missing the impending departure of the party one intends to travel with;
- (13) having eaten something with a bad odor(O: such as raw onions or garlic, though not if cooked as this eliminates the smell);
- (14) or fear of meeting someone who will try to collect a debt one owes him and one is unable to pay. (O: The demand for group prayer is not eliminated by other the above excuses.)

f12.6 It is a condition of a valid group prayer that the follower intend to follow the imam (O: whether at the opening Allahu Akbar or thereafter). If the follower neglects to do so, his prayer is as if he had performed it alone. It invalidates one's prayer to purposely omit the intention to follow the imam while at the same time praying behind him and following his motions by awaiting them at length, though awaiting them shortly or performing one's own prayer simultaneously with his does not invalidate it. It invalidates one's prayer to take a follower as one's imam when the follower is concurrently praying behind an imam (O: though if his imam finishes with Salams and the follower is still praying, he may then be taken as one's imam.).

f12.7 The imam intends the prayer as imam. If he neglects this intention then his own prayer counts as if he had prayed alone (N: though his follower's prayer counts as a group prayer), the imam having lost the reward for praying in a group.

In the Friday prayer (jumu'a), it is a necessary condition for the prayer's validity that the imam intend leading as imam.

f12.8 When going to a group prayer, it is recommended to walk with tranquillity. (O: It is sunna not to gambol about, speak of disapproved things, or engage in acts which are offensive in the prayer itself, such as looking right or left.) It is recommended to diligently seek the spiritual merit of being at the group prayer's opening Allahu Akbar, meaning that one says it just after the imam does.

f12.9 If one has begun a nonobligatory prayer when the call commence (iqama) is given, one should finish it before joining the group, as long as one does not fear the group will finish before one can join them. If afraid they will, then one interrupts the nonobligatory prayer to join them. If one has begun

praying a prescribed prayer alone and the call to commence (iqama) is given for a group prayer, it is recommended to turn one's prayer into a supererogatory prayer of two raka's and pray the prescribed prayer with the group. Were one to merely change one's intention to that of following their imam, it would count as a valid group prayer for one, but it is offensive. In such a case if one reaches the end of one's prayer before the group, one may either wait for them to finish with one while sitting in the final Testification of Faith (Tashahhud), or else finish with Salams as soon as one reaches the end of one's prayer. (O: One may not follow the imam in what is in excess of one's own prayer.)

f12.10 It is permissible to start praying with a group, and then cease one's participation in praying with them (A: by a silent intention) and finish one's prayer alone, though this is offensive when there is no excuse, such as being ill, or unable to endure the imam's lengthy Koran recital because of weakness or having business to attend to (N: or a pressing emergency).)

f12.11 When one arrives late to a group prayer in which the imam is already bowing, it is obligatory for one to say the opening Allahu Akbar while standing upright, after which one says a second Allahu Akbar before one bows to join the group (O: though if one only says it once, intending the opening Allahu Akbar thereby, then omitting the second Allahu Akbar of bowing does no harm, as it is sunna). If any part of one's opening Allahu Akbar occurs when one is not standing upright (def: f8.27), one's prayer is invalid. A latecomer is considered to have performed the rak`a if he manages to say "Allahu akbar," bow, and remains motionless a moment therein before the imam straightens up beyond the definitional limit of bowing (f8.29). If one is uncertain as to whether the imam straightened up past the limits of bowing before one reached that position, or whether it was after, then one has not performed the rak`a (O: as one assumes, when uncertain, that one had not yet reached it). Nor does the rak`a count for such a follower when it does not count for the imam, such as when the imam nullifies his ablution (wudu), or has overlooked something impure on his person, or has mistakenly added a fifth rak`a to his prayer.

If one does not join the group until the imam has straightened up from bowing, or thereafter, then one follows his motions, saying "Allah akbar" with him and repeating "Subhan Allah" and the Testification of Faith (Tashahhud) when he does, even when this does not correspond to the rak`a in which one's own Testification of Faith would be if one were praying alone.

If one joins the group just as the imam is prostrating or sitting in the final Testification of Faith, then one prostrates or sits with him (N: after having recited one's opening Allahu Akbar while standing) without (A: a second) Allahu Akbar (O: though one does say "Subhan Allah" in prostration and recite the Testification of Faith with the imam, in deference to his leadership).

If the final Testification of Faith of the imam coincides with one's own first Testification, then when the imam finishes with Salams, one stands up with an Allahu Akbar to finish one's prayer; though if the imam's final Testification does not coincide with one's first Testification, one rises to finish without an Allahu Akbar.

f12.12 Whenever one joins the group before the imam finishes with Salams, one has attained the merit of the group prayer. (N: But it is less than the merit of praying with the group from the beginning or joining them in the middle, though joining them at the end is better than praying alone.)

f12.13 That rak`as one performs before the imam finishes with Salams are the first rak`as of one's prayer, and those performed after the imam finishes are the last. Hence, if the imam performs the dawn prayer's supplication (def: f8.53) in the rak`a in which one joins the group, one repeats it in one's own second rak`a.

f12.14 It is obligatory for one to follow the imam's leadership in prayer actions, such that each of one's movements begins after the imam begins it and before he finishes (N: the following integral). (O: It is highly desirable that) one follows the imam's spoken integrals in the same way, with the sole exception of saying "Ameen" (def: f8.19), which should be simultaneous with his.

It invalidates one's prayer to say one's opening Allahu Akbar simultaneously with the imam, or to be uncertain as to whether one did so or not. It is offensive to perform some other part of the prayer simultaneously with the imam, and one thereby loses the merit of group prayer.

f12.15 It is offensive to proceed to an integral ahead of the imam, as when one bows before he does, and one is recommended to return to following him.

(N: An "integral" in rulings concerning the person who gets ahead of the imam or lags behind him refers to integrals that are physical actions, such as standing, bowing, straightening up, prostrating, or sitting up between prostrations. It does not refer to spoken integrals such as reciting the Fatiha, or to

remaining motionless for a moment in the various positions.)

It is unlawful, though it does not invalidate the prayer, to completely finish an integral before the imam comes to it, as when one bows, straightens up, and then waits for him to straighten up.

It invalidates one's prayer to completely finish two integrals before the imam does, if one does so intentionally (O: and knowing it is unlawful). If one does so absentmindedly (O: or in ignorance of its prohibition), it does not invalidate the prayer, but the rak`a does not count (O: and one must add an additional rak`a after the imam finishes with Salams).

## **LAGGING BEHIND THE IMAM**

**f12.16** If there is no excuse (def: below), it is offensive to lag behind the imam until he completely finishes an integral (def: f12.15(N:)) ahead of one, and it invalidates one's prayer to lag behind the imam until he finishes to integrals. If the imam bows and straightens up while (N: without excuse) one has not yet bowed, it does not invalidate one's prayer until the imam actually begins going down towards prostration and one still has not bowed (O: since lagging means that the imam has finished two integrals before the follower has reached the first of them). This invalidates one's prayer even before the imam reaches prostration, as he has completed two integrals.

**f12.17** When one lags behind the imam for a valid reason, such as one's slow recital (O: the imam being fast in his recital) due to one's inability (A: whether natural inability or being a non-Arabic-speaker), not merely to unfounded misgivings (waswasa, def: s3.3), and the imam bows, then it is obligatory for one to finish the Fatiha (O: one is not entitled in such a case to simply omit the rest of the Fatiha and bow with the imam, as a latecomer is entitled to do (dis: f8.15, third par.)), after which one rapidly performs the elements of the prayer to catch up with the imam, provided the imam is not more than three (O: long) integrals ahead of one. (O: Long excludes the integrals of straightening up after bowing and sitting between prostrations, which are short. Rather, the imam's being three integrals ahead of one means he has bowed, prostrated once, and begun the second prostration, while the follower still has not bowed.) If one is further behind than that (O: as when he has started to stand up while one is still standing for recital), then one follows from where one is (N: the number of rak`as one has done) and performs the ones missed after the imam finishes with Salams.

**f12.18** When the imam is bowing or in the final Testification of Faith (Tashahhud), and becomes aware of someone coming to join the group prayer, it is recommended that he wait for the latecomer (N: so the rak`a counts for him if they are bowing, or so the group prayer counts for him if they are in the final Testification of Faith), provided:

(a) that the person has entered the mosque or place of prayer;

(b) that the wait is not excessively long;

(c) and that the imam's intention is obedience to Allah, not to give distinction or honor to the latecomer, such as by waiting for the noble but not the lowly.

Waiting for a latecomer is offensive in other than bowing and the final Testification of Faith.

**f12.19** When a mosque has an imam assigned to it (O:by the person in charge of the mosque, or as a condition of an endowment (waqf, def:k30)),and the mosque is not in a busy location, it is offensive for another to commence the group prayer without the imam's permission (O: because the imamate is his, no one else's, and because of the alienation and hurt feelings it involves). It is not offensive for another to do so in a mosque at a busy location or one to which no imam has been assigned.

**f12.20** When one has already performed one's prescribed prayer alone or in a group, and finds another group prayer being performed, it is recommended to repeat one's prayer with them, intending the obligatory prayer. (A: The first fulfills one's obligation of the prescribed prayer, but one intends repeating, e.g., the noon prayer (zuhr).) Its reward is that of a supererogatory prayer.

**f12.21** The imam is recommended to keep his recital of sura brief (O: not necessarily the absolute minimum, but not the maximum desirable for someone praying alone).

When leading a group composed solely of those who do not mind lengthy prayers, he is recommended to lengthen the recital.

(O: The imam should not prolong the recital when he does not know how everyone feels, and of those present some generally prefer lengthy rak`as and some do not, or when praying in a mosque at a busy location where people often join the prayer after the imam has begun.)

**f12.22** When the imam stops reciting the Koran because of uncertainty, it is recommended for the



follower to remind him of what comes next. (N: When he does not stop but merely hesitates, the follower does not remind him, so as not to fluster him.) If the imam forgets an invocation (dhikr), the follower says it so the imam can hear. If he forgets an action, the follower should remind him of it by saying "Subhan Allah" (n: with the intention of invocation, as at f9.4(O:)). If the imam remembers having missed the action, he performs it. But if he does not remember having missed it. It is not permissible for him to perform it just because the followers or others are reminding him, even if they are numerous. (A: The more reliable opinion is that if their number reaches four or more, he must act upon it.)

f12.23 If the imam omits an obligatory element of the prayer (O: and does not return to it and perform it), then it is obligatory for the follower to cease his participation (def: f12.10) in the group prayer. If the imam omits a sunna that the follower cannot add without considerably lagging behind, such as the first Testification of Faith (Tashahhud), then it is unlawful for the follower to perform the missing sunna (O: rather, he must follow the imam). If he performs it anyway (O: intentionally and knowing it is unlawful), it invalidates his prayer, though he is entitled to cease his participation in the group prayer to perform the sunna in the course of finishing his own prayer alone. IF the sunna omitted by the imam can be done without much of a lag, such as sitting briefly before rising for a new rak`a (def: f8.40), then the follower may add it without ceasing his participation in the group. (O: This also applies to when the imam omits the dawn prayer's supplication (f. 8.53), which the follower may perform it he can catch up with the imam before the imam lifts his head from the second prostration, though if the imam lifts his head before the follower has prostrated even once and the follower has not intended to cease his participation in the group prayer, then the follower's prayer is invalid.)

f12.24 Whenever the imam ceases his prayer because of his ablution (wudu) being nullified, or another reason, he may choose a successor to finish leading the prayer, provided the successor is eligible (def: f12.27) to lead the group. If the group performs a whole integral (f12.15(N:)) after the imam has stopped leading, then he may no longer choose a successor.

Any follower may be picked as the successor (O: even if he came late to the group prayer). If a latecomer, he leads the group beginning at the same point in the prayer where the imam left off. When he finishes leading them in their prayer, he stands (O: to finish his own), and indicates to them to cease following his leadership, or better yet, indicates for them to remain waiting for him (A: in their final Testification of Faith (Tashahhud)) until he comes to it after finishing his own rak`as. If he does not know which rak`a the imam was in, then he should observe (O: by looking left or right to see if the followers are sitting or) whether they are ready to rise. If they are, he rises, and if not, then he sits in a Testification of Faith.

It is permissible for the successor to be someone who has not been praying with the group, provided he is picked in the first or third rak`a (if the prayer has four rak`as), though he may not be picked in the second or fourth rak`a (A: because the order of the person's prayer will not correspond to theirs, for such a person is not committed to the imam's order). The followers need not intend to follow the successor. They may each simply break off and finish alone. If the imam chooses someone but they put forward someone else, their choice takes precedence.

## THE IMAMATE

f12.25 The one with the right to be imam (N: in order of preference, when there is a disagreement) is: (1) the most learned in Sacred Law (A: i.e. the rulings concerned with prayer) (O: even if he has not memorized any of the Koran except the Fatiha, since the need in prayer for knowledge of its rules is practically unlimited, while the only Koran recital required is the Faitha);

(2) he who has memorized the most Koran;

(3) the most godfearing (O: because leading the prayer is an embassy between the servant and Allah Most High, and best befits him most honored by Allah);

(4) he who has been a Muslim longest;

(5) the noblest in lineage;

(6) he with the best life history or reputation;

(7) the cleanest in person and clothes;

(8) he with the best voice;

(9) and the most handsome.

When only one of the above is present, he is chosen. If all people present or some of them possess one or more of these characteristics, then someone from the first of the list takes priority over those listed after him. If two are equal and each insists on being the imam, they draw lots.

(N: It is permissible for a less qualified person to lead, even when a better qualified one is present.) The imam assigned to a mosque or a person living in the house where the prayer takes place, even if only

renting, takes precedence over everyone on the list, from the most learned on down, though he may select anyone else he wishes to lead the prayer. The sultan and those under him, of Islamic judges, regional governors, and so on, take precedence over even the imam of the mosque, the householder, and others. The following take precedence even when the latter is more learned in Sacred Law:

- (1) a nontraveller over a traveller;
- (2) an upright person (def: o24.4) over a corrupt one;
- (3) and an adult over a child.

A slighted and a blind person are equally eligible to lead the prayer.

f12.26 It is offensive for someone to lead a group at prayer when most of the group dislike him for a reason recognized by Sacred Law (O: such as wrongdoing, not taking precautions against filth (najasa), having a blameworthy income, keeping the company of oppressors or the immoral, and so forth. If a minority dislike him, it is not offensive, for nobody lacks someone who dislikes him).

f12.27 It is not permissible (O: or valid) to follow an imam who is non-Muslim, insane, in a state of ritual impurity (def: e7,e10), or who has filth (najasa) on his clothing or person, or is a woman leading men, or someone who omits or mispronounces (def: f8.18) a letter of the Fatiha leading someone who knows it, or a mute, or someone who slurs the words so the letters are indistinct from one another, or someone with a lisp.

If after the prayer one finds out that the imam was one of the above, then one must make up the prayer, unless the imam had filth upon him that was concealed, or he was in a state of ritual impurity (N: in which cases one need not make it up).

f12.28 The group prayer is valid:

- (1) When the imam is performing a supererogatory prayer and the follower is performing a prescribed prayer, or vice versa;
- (2) when the imam is performing the noon prayer (zuhr) and the follower is praying the dawn prayer (subh) (A: i.e. when the type of prayer differs), or vice versa;
- (3) when the imam is praying while sitting and the follower is praying standing, or vice versa;
- (4) and when the imam is performing a makeup prayer and the follower is performing a current one, or vice versa.

(n: But a person shortening his prayer because of travelling may not pray behind an imam who is performing the full number, as at f15.8(f).)

f12.29 It is valid for a Shafi'i to follow the leadership of an imam who follows a different school of jurisprudence whenever the follower is not certain that the imam has omitted an obligatory element of the prayer, though if certain the imam has omitted one, it is not valid to follow him. The validity is based solely on the belief of the follower as to whether or not something obligatory has been omitted. (N: One should mention the position of the Malikis and Hanbalis here, which is that the criterion for the validity of following the imam is the imam's school of jurisprudence, such that if his prayer is valid in his own school, it is permissible to follow him as imam. How close this is to the spirit of the Law, which strives for Muslim unity.)

f12.30 It is offensive to take an immoral person (def: o24.3(A:)) as imam (O: because he might not be concerned about the things that are obligatory in the prayer), or someone who stutters over the letter f or the letter t, or who makes inconsequential mistakes in the Arabic vowelings (O: that do not change the meaning).

## RULES AND CONDITIONS OF FOLLOWING

F12.31 When there are two or more male followers, it is sunna for them to stand behind the imam. A single male follower stands on the imam's right, and if a second follower arrives, the newcomer stands to the imam's left and says his opening Allahu Akbar, after which the two followers move back (O: little by little). If they cannot move back (O: for lack of room) then the imam moves forward.

f12.32 When there are men, boys, and women present, the men form the front row or rows, then the boys, and then the women. (A: This is also the rule for husband and wife: the wife prays in a separate row behind the husband.)

(O: If the men's back row is incomplete, it should be completed with boys (A: and a latecomer may not remove the boys to make a place for himself unless they are directly behind the imam). Those who form a new row behind a row that is incomplete do not attain the merit of group prayer.)

A woman leading women in prayer stands in the middle of their first row.

f12.33 It is offensive for the imam's place to be higher or lower than the follower's unless the imam wishes to teach the followers the actions of prayer. If the imam and follower are not in a mosque, it is obligatory that part of the imam's body be level with part of the follower's when both are of average height.

f12.34 A latecomer to a group prayer who does not find a place in the last row should stand behind it, begin his prayer with the opening Allahu Akbar, and then indicate to someone in the row to stand with him, by drawing him back; and it is recommended that the person selected cooperate by stepping back (A: this is only if the latecomer does not expect anyone else to come).

f12.35 The follower's prayer is invalid if his heel is farther forward than the imam's. (O: He should be farther back than the imam's heel, even if only a little, but not more than 1.44 meters, for otherwise the merit of group prayer is lost (A:i.e. unrewarded, though not legally invalid).)

f12.36 Whenever an imam leads a follower in a mosque, the group prayer is valid no matter if they are at a distance from each other, and no matter whether they are in the same chamber or not, as when one of them is on the roof (even if the door is closed) and the other is in the mosque's well, provided that (O: both places open onto the mosque, and that) the follower can know when the imam is performing the motions of the prayer, whether by seeing the imam, or hearing his backup man (muballigh, the person who repeats the imam's Allahu Akbars and Salams in a loud voice so people can hear). Multiple interconnected mosques opening onto each other are considered as one mosque (O: and so are the mosque's outer courtyards, even when there is a walkway between the courtyard and mosque).

#### MAXIMAL DISTANCES BETWEEN THE IMAM AND FOLLOWERS

f12.37 When the imam and follower are not in a mosque, but are in an open expanse such as a desert or large house, their group prayer is valid as long as the distance between them does not exceed approximately 144 meters. If farther apart than this, their group prayer is not valid. If there are rows of people behind the imam, this distance is the maximum that is valid between each row and the one in front of it, even if there are miles between the imam and the last row, or a fire, river that would have to be swum to reach him, or busy street between them.

If the imam is in one building and the follower in another, such as two houses, or if there is a house, inn, or school where the imam is in a courtyard and the follower is under a covered porch, or vice versa, then the maximum allowable distance is the same as for outdoors (def: above), provided that there is nothing between the imam and follower that obstructs passage to the imam, such as a latticework window (O: and provided that there is nothing that prevents the follower from seeing him, such as a closed door) The group prayer is valid when the imam is in a mosque and the follower is in an adjoining space, provided that there is 144 meters or less between the follower and the edge of the mosque, and that between the follower and the mosque there is not a barrier lacking a breach in it, breach meaning, for example, when the follower is standing before a wall's open gate. If such a person's group prayer with the imam is thus valid, then the prayer of those behind him or in the row with him is also valid, even when (O: these others are numerous, and) the group extends beyond the area fronting the gate. Such a person's group prayer is not valid if he turns from the gate, or if the wall of the mosque, a window, or a closed door (locked or not) lies between him and the imam.

#### f13.0 TIMES WHEN THE PRAYER IS FORBIDDEN

f13.1 (O: The rules below apply to prayers that are wholly supererogatory, i.e. which are not performed for any particular occasion or reason, and apply to prayers performed for a reason that will occur after the prayer, such as the two sunna rak`as before entering the state of pilgrim sanctity (ihram).)

f13.2 The prayer is unlawful and invalid:

- (1) from sunrise until the sun is a spear's length above the horizon (N: meaning when a distance equal to the sun's diameter appears between the sun and the horizon);
- (2) from the time the sun is at its highest point in the sky until it moves on;
- (3) from when the sun yellows before sunset until after it has set;
- (4) after praying the current dawn prayer (subh);
- (5) and after praying the current midafter-noon prayer (‘asr).

**f13.3** It is permissible at the above times to offer nonobligatory prayers that are performed for a particular reason, such as the funeral prayer, greeting the mosque (def: f10.10), or the two rak'as that are sunna after ablution (wudu); and is also permissible to make up missed prayers; though one may not perform the two rak'as that are sunna before entering the state of pilgrim sanctity (ihram).

**f13.4** It is not offensive to pray within the Meccan Sacred Precinct (Haram) at any time. Nor is it offensive to pray when the sun is at its zenith on Fridays (N: whether in the Sacred Precinct or elsewhere).

#### **f14.0 THE PRAYER OF A SICK PERSON**

**f14.1** Someone unable to stand may pray the prescribed prayer seated (O: and need not make it up), unable meaning that standing involves manifest hardship, will cause illness or the worsening of a present illness, or cause vertigo, as when one is on a ship. Such a person may sit for the prayer any way he likes, though the iftirash style of sitting (def: f8.37) is recommended. It is offensive in prayer to simply sit on the ground, palms down and knees drawn up, or to sit with legs outstretched (A: when there is no excuse).

**f14.2** When seated for the prayer, the minimal bowing is to incline until the forehead is farther forward than the knees. The optimal way is to incline until the forehead is as far forward as the place where the head rests in prostration. When unable to bow or prostrate, one comes as close to the ground with the forehead as one can. When unable to do this, one performs them by nodding.

**f14.3** If an abscess or the like prevents one from sitting, then one "sits" standing (A: meaning ordinary standing, with the intention of sitting (N: so that one stands between prostrations and for the Testification of Faith (Tashahhud))).

**f14.4** If one is capable of standing but suffers from a painful swelling of the eyes or something similar (O: such as a wound that can be treated by having the patient remain lying down) and a reliable physician (O: in terms of knowledge and expertise in medicine, who can be believed) tells one that praying while on one's back will enable one to be treated, then it is permissible to pray while lying down O: without having to make up the prayer>

**f14.5** If unable to stand and unable to sit, one lies on one's right side (O: the right is recommended) facing the direction of prayer (qibla) with the face and front of the one's body, though one must bow and prostrate if possible (O: meaning one stands up enough to bow, then bows, then prostrates; or else sits up and bows). If this is not possible, one bows and prostrates by merely nodding one's head (O: bringing one's forehead as near to the ground as possible), deeper for prostration than for bowing. If unable to even nod, one merely glances down with the eyes for bowing and prostration. If one cannot, one goes through the integrals of the prayer in one's mind. If unable to speak (O: to recite the Fatiha) one recites it in one's heart. The obligation of prayer exists as long as one is able to reason (dis: f1.1, second par.).

**f14.6** If one is standing during the prayer and becomes unable to remain standing, one sits to finish the prayer. If this occurs during the Fatiha, one may not interrupt reciting it, but must continue to do so as one proceeds to sit. If one's condition improves enough (O: i.e. if seated during a prescribed prayer because of illness and a recovery of strength enables one to now stand), then one must stand to complete the prayer.

#### **f15.0 SHORTENING OR JOINING PRAYERS FOR TRAVEL OR RAIN**

(A: The two travel dispensations of shortening and joining prayers have no effect on each other; one may take both together, either, or none. It is superior in our school not to take dispensations that are permissible.)

#### **SHORTENING PRAYERS WHILE TRAVELLING**

**f15.1** It is permissible to shorten the current prescribed prayers of noon (zuhr), midafternoon ('asr), and nightfall ('isha) to two rak'as each, when one:  
(a) is travelling for a reason that is not disobedience to Allah (O: as there is no dispensation to shorten prayers on such a trip);  
(b) on a journey of at least 48 Hashemite miles (n: approximately 81 km./50 mi.) one way.  
One may also shorten the above prayers when one both misses them and makes them up on the trip, though one must pray the full number if one misses them while not travelling and makes them up on the

trip, or misses them on the trip and makes them up while not travelling.

f15.2 This distance (n: 81 ka/50 mi. one way) holds for travel by water as well as by land. If such a distance is traversed in an instant (O: preternaturally, because of a miracle (karama, def: w30)), one may still shorten the prayer. (O: The brevity of the time taken to travel the distance is of no consequence.)

f15.3 When there are two routes to a destination and one of them is less than the distance that permits shortening prayers but one chooses the longer way for a legitimate purpose such as safety, convenience, or recreation (O: provided that recreation is merely the reason for taking that route, not the reason for the trip itself, which must have some other legitimate purpose such as trade, for an outing is not a legitimate purpose) then one may shorten prayers. But if the only reason for choosing the longer way is to take the dispensation, then doing so is not valid and one must pray the full number. (A: Purely recreational trips whose purpose is not disobedience are permissible, but there are no travel dispensations in them, though if undertaken in order to gain religious knowledge, to visit a fellow Muslim, or visit the grave of a righteous or learned Muslim (dis: g5.8), these and similar purposes are legitimate and permit the dispensations.)

f15.4 The journey's destination must be known. If a wife travelling with her husband or a soldier with his leader does not know the destination, they may not shorten their prayers (N: as long as they have not yet travelled the distance that permits shortening. When they have travelled it, then they may). If they know the destination and the journey meets the conditions (def: f15.1), then they may shorten their prayers (N: from the beginning of the journey).

f15.5 Someone whose journey constitutes an act of disobedience, such as a woman travelling against her husband's wishes, may not shorten their prayer but must pray the full number. (O: The same applies to someone who undertakes a legitimate trip and then changes the purpose of it to disobedience.) (N: Though shortening prayers is permissible for someone who commits an act of disobedience while on a legitimate trip, as when someone travels for trade, but then sins by drinking wine, for example.)

#### THE BEGINNING OF THE JOURNEY

f15.6 If one's city has walls, one may begin shortening prayers as soon as one has passed them, whether or not there are other buildings outside them. If there are no walls, one may shorten one's prayers after passing beyond the last buildings, excluding farms, orchards, and cemeteries. (N: When the buildings of a city extend to the next city, one's journey begins at the former's city limits, or at what people commonly acknowledge (def: f4.5) to be the edge of town.) A desert dweller may begin shortening prayers when he passes beyond his people's tents. (O: A person living in a valley begins shortening prayers when he has traversed the distance of the valley's width. Someone living on a hill begins when he comes down from it. A person living in a gorge begins when he climbs up out of it.)

#### THE END OF THE JOURNEY

f15.7 When the trip ends one must pray the full number of rak`as for each prayer.

A trip ends when one reaches one's hometown. It also ends:

(1) by the mere intention to stay in a place at least 4 full days, not counting the day one arrives or the day one departs;

(2) or by staying that long without the intention, so that after one has stayed 4 full days, not counting the days of arrival and departure, one prays the full number of rak`as, unless one is staying in a place in order to fulfill a purpose that one expects to accomplish and intends to leave as soon as one does. As long as this is the case, one may shorten one's prayers for up to 18 days. If longer than this, one prays the full number. This holds for both jihad (def: o9) and other purposes.

When one reaches one's destination and intends to stay there for a significant amount of time (O: 4 days), one must pray the full number of rak`as, but if not (O: as when not intending to stay at all, or intending 3 days or less), then one may continue shortening prayers for either 4 days (O: if one learns that one cannot accomplish one's purpose during them), or 18, if one can expect one's purpose to be accomplished at any moment.

#### THE CONDITIONS FOR SHORTENING THE PRAYER

f15.8 The conditions for shortening the prayer while travelling are:

(a) (O: that the trip be legitimate (def: f15.5);

- (b) that it be at least 81 km./50 mi. one way;
- (c) that the destination be known (f15.4));
- (d) that the prayer take place from start to finish while one the trip (A: if one's vehicle arrives before the prayer is finished, one prays the full number);
- (e) that the intention to shorten the prayer coincide with the opening Allahu Akbar (O: it not being valid if made after this);
- (f) that no portion of the prayer be performed while following an imam who is praying the full number of rak'as;
- (g) (O: that one be aware of the permissibility of shortening prayers for travel;
- (h) and that the intention be free of things which nullify it (A: such as vacillation or doubts (dis: below))).

One must pray the full number of rak'as if:

- (1) (non-(d) above) the intention to stay at the place for 4 days occurs during the prayer;
- (2) (non-(h)) one is uncertain whether one's intention was to shorten, but one soon recalls that one did intend it;
- (3) (non-(h)) one vacillates in the intention between shortening the prayer or not doing so;
- (4) or (non-(f)) one does not know whether one's imam is shortening or not, though if one does not know the imam's intention, it is valid to intend that if the imam shortens the prayer, one will shorten, and if he prays the full number, one will pray the full number, and then to do this.

#### JOINING TWO PRAYERS DURING A JOURNEY

f15.9 It is permissible to join the noon prayer (zuhr) and midafternoon prayer (ʿasr) during the time of either of them (N; or the Friday prayer (jumu'a) and midafternoon prayer in the time of the Friday prayer), and permissible to similarly join the sunset prayer (maghrib) and nightfall prayer (ʿisha) during the time of either, provided one joins them during a journey in which prayer may be shortened (def: f15.8(a,b,c,d)). If one stops travelling (A: to rest, for example) during the time of the first of the two prayers, then this is the best time to join them, but if one is travelling steadily during the first time, the time of the second is better.

f15.10 The conditions for joining two prescribed prayers on a trip in the time of the first of them are:

- (a) that the trip continue (A: until one finishes both prayers);
  - (b) that the first of the two be prayed first;
  - (c) that the intention to join the two prayers occur before finishing the first, either coinciding with the opening Allahu Akbar, or occurring during the prayer;
  - (d) and that one not separate the two prayers by waiting between them, though a short interval (A: meaning one that could contain two rak'as of the briefest possible) is of no consequence, nor is a brief search for water (dis: e12.3) by someone who has performed dry ablution (tayammum).
- If one prays the second of the two prayers before the first (non-(b) above,), then that prayer is invalid (O: and must be repeated after the first, if one still wants to join them).

One must wait to perform the second of the two prayers until its own time if:

- (1) (non-(a) above) one finishes one's journey before performing the second prayer;
- (2) (non-(c)) one neglects to intend joining them during the first prayer;
- (3) or (non-(d)) one waits at length between them.

f15.11 If one has performed both prayers and the journey subsequently ends (A: whether in the time of the first prayer or the time of the second), they are and remain valid.

f15.12 The necessary condition for joining two prayers in the time of the second of them (A: in addition to f15.8 (a,b,c,d)) is that one make the intention to do so before the end of the first prayer's time (O: by an interval which could contain at least one rak'a). If one neglects this intention, one has sinned, and praying the first prayer during the second prayer's time is considered making it up.

f15.13 When joining two prayers in the time of the second, it is recommended (A: not obligatory):

- (1) to pray the first one before the second;
- (2) to not pause at length between them;
- (3) and that the intention to join them be present during the prayer one performs first.

#### JOINING PRAYERS BECAUSE OF RAIN

f15.14 It is permissible for a nontraveller to pray the noon prayer (zuhr) and the midafternoon prayer

(asr) at the time of the noon prayer (N: or the Friday prayer (jumu`a) and midafternoon prayer at the time of the Friday prayer), and to similarly pray the sunset prayer (maghrib) and nightfall prayer (`isha) at the time of the sunset prayer if:

- (a) it is raining hard enough to wet one's clothing (O: and like rain in this is melted snow or hail);
- (b) one is praying with a group in a mosque (O: or other place of prayer);
- (c) the mosque is far (O: from one's door, i.e. far by common acknowledgement (def: f4.5));
- (d) it is raining when the first prayer begins, when it ends, and when the second prayer begins;
- (e) and conditions f15.10 (b,c,d) exist.

f15.15 (A: If one arrives during the second of two prayers joined because of rain and does not finish one's own first prayer before the group finishes their second, then one is no longer entitled to join one's prayers for rain. It is a necessary condition that one pray at least part of the second prayer with them though one may hurry through one's own first prayer alone to catch up with and join them during their second.)

f15.16 If the rain stops after one finishes the two prayers or during the second one, both prayers are and remain valid.

f15.17 It is not permissible to join two prayers in the time of the second of them because of rain.

f15.18 (n: In the Shafi`i school, there are no valid reasons other than travel or rain for joining prayers, though others exist in the Hanbali school, as discussed in what follows.)

(`Abd al-Rahman Jaziri:) The hanbalis hold that the above mentioned joining between the noon prayer (zuhr) and midafternoon prayer (`asr), or between the sunset prayer (maghrib) and nightfall prayer (`isha) is permissible, whether in the time of the first prayer of each of these two pairs, or in the time of the second prayer of each of them, though it is superior not to join them.

It is a necessary condition for the permissibility of joining them that the person praying be:

- (1) a traveller on a trip in which shortening prayers is permissible;
- (2) a sick person for whom not to join prayers would pose a hardship;
- (3) a woman who is nursing an infant, or who has chronic vaginal discharge (dis: e13.6), since she is permitted to join prayers to obviate the hardship of purification for every single prayer;
- (4) someone with an excuse similar to the woman with chronic discharge, such as a person unable to prevent intermittent drops of urine coming from him (e 13.7);
- (5) or someone who fears for himself, his property, or his reputation, or who fears harm in earning his living if he does not join prayers; the latter giving leeway to workers for whom it is impossible to leave their work. (al-Fiqh `ala al-madhahib al-arba`a (y66), 1.487)

## PRAYING THE SUNNA RAK`AS WHEN ONE JOINS PRAYERS

f15.19 (O: When one wants to join the midafternoon prayer (`asr) and noon prayer (zuhr) in the time of the noon prayer, one first prays the sunnas that come before the noon prayer, followed by the noon prayer, the midafternoon prayer, the sunnas that come after the noon prayer, and then the sunnas that come before the midafternoon prayer. Similarly, when one joins the nightfall prayer (`isha) with the sunset prayer (maghrib), one prays the sunnas that come before the sunset prayer, and postpones those that follow the sunset prayer until after one has prayed the nightfall prayer, after which one prays the sunnas that come before and after the nightfall prayer, and then witr. Their order is sunna.)

## f16.0 THE PRAYER OF PERIL

f16.1 The prayer of peril may be performed when the Muslims are engaged in permissible fighting (O: whether obligatory, as when fighting non-Muslims or highwaymen whom the caliph (def: o25) is fighting, or permissible, as when fighting someone who is trying to take one's property or that of others).

f16.2 When the enemy is not in the direction of prayer (qibla), the imam divides the Muslim force into two groups. One group faces the enemy while the other prays a rak`a, the group makes the intention to cease following his leadership in the prayer and then finishes their second rak`a alone as individuals while the imam remains standing at the beginning of his second rak`a, reciting the Koran and awaiting the second group. Then this first group goes to relieve the others in facing the enemy, and the others come and begin their group prayer behind the imam, who is still standing and who remains so long enough for the second group to recite the Fatiha and a short sura. At the end of this rak`a when the imam sits in the Testification of Faith (Tashahhud), the group rises and performs their second rak`a without him

(while he remains sitting at the end of his second rak`a waiting for them to reach the same point in their own prayer). When they catch up with him, he closes the prayer with Salams.

If this prayer is the sunset prayer (maghrib), the first group prays two rak`as following the imam's lead, and the second group follows him in the third rak`a. If it is a prayer with four rak`as, then each group follows the imam for two rak`as. The imam may also divide the Muslim force into four groups and have each group pray one rak`a behind him.

f16.3 When the enemy is visible in the direction of prayer (qibla) and the Muslims are numerous, the imam arranges them in two or more rows, opens the group prayer with "Allahu akbar," and (O: after reciting the Faitha with all of them) he bows and straightens up with everyone following his lead. Then he prostrates together with the row nearest him, while the other row remains standing. When the imam and his row stand after their second prostration, the other row performs its own prostrations and rises to catch up with the imam and his row, who have remained standing waiting for them.

In the second rak`a all bow and straighten up together, but when the imam prostrates, the second row, who remained standing on guard before, prostrate with him while the row nearest him remain standing on guard. When those who have prostrated with the imam sit back (O: after their prostration, for the Testification of Faith (Tashahhud)) then the row nearest him (O: who have been standing on guard) prostrate (O: and catch up with the others in the Testification of Faith (Tashahhud)).

f16.4 It is recommended to remain armed during the prayer of peril.

f16.5 When the peril is great, in actual combat, Muslims may pray walking or riding, facing the direction of prayer (qibla) or not, in a group or singly, and nodding in place of bowing and prostration when they are unable to perform them, nodding more deeply for prostration than for bowing. If forced to strike blow after blow during the prayer, this is permissible. Shouting is not.

#### f17.0 UNLAWFUL CLOTHING AND JEWELRY

f17.1 (A: It is offensive for men to wear tight clothing that discloses the size of the parts of their body which are nakedness (def: f5.3), and this is unlawful for women.)

f17.2 It is unlawful for men to wear silk or use it in any way, even to line clothing, though it is permissible to use it as padding in a cloak, pillow, or mattress.

f17.3 Women may wear and use silk, and it is permissible for a guardian to dress a child in it before puberty.

f17.4 It is permissible for men to use fabric composed partly of silk as long as the weight of the silk is half or less of the weight of the fabric; to embroider with silk thread where (O: the width of) the design does not exceed four fingers (O: though the length does not matter); to have a silk fringe on a garment; It is also permissible for men to use silk when there is need to in severe heat or cold, to clothe their nakedness with it for the prayer when there is nothing else, or to use it when suffering from itching or for protection from lice. (O: The upshot is that when there is real need for it, one may use it. Otherwise, it is an enormity (def: c2.5(2)). Imam Ghazali attributes its prohibition to its effeminacy and softness, which are unbecoming of men.)

f17.5 It is permissible to wear a garment affected by something impure (najasa, def: e14.1) when not in prayer (O: or other activities requiring purity, provided one is not in a mosque. As for wearing such a garment in a mosque, one may not, since it is not permissible to carry something impure into the mosque when there is not some need, such as having to take one's shoes inside).

It is unlawful to wear leather taken from the carcass of an unslaughtered animal (n: before tanning, as at e 14.6) except when there is pressing need, such as in the event of a sudden outbreak of war (A: when there is nothing else) and the like.

f17.6 It is unlawful for men to wear gold jewelry, even the teeth of a ring's setting that holds its stone. (O: Unlike silk, there is no difference for the prohibition of gold between small and large amounts.) Nor may men wear objects painted or plated with gold, though if these tarnish so that the gold is no longer apparent, then they are permissible.

f17.7 It is permissible to repair teeth with gold.



f17.8 It is unlawful (A: for both sexes) to wear a silver ring (A: the sunna for men being to do so on the little finger, of either hand), and (A: for men) to decorate battle weapons with silver, but not riding gear such as saddles and the like, nor an inkwell, writing utensil case, work knife, penknife, or lamp fixture-even if in a mosque- nor to have silver jewelry other than rings, such as a necklace, armband, bracelet (O: because these resemble the habits of women and it is unlawful for men to imitate women), or a crown. It is not permissible to use silver (A: or gold) to embellish the ceiling or walls of a house or mosque (O: even those of the Kaaba, because it is wasteful, and no one has reported that the early Muslims did so), though if the amount is so slight that none could be melted off by applying fire, then it may remain. If more than that, then not (O: i.e. it must be removed)

f17.9 (O: It is offensive to use cloth for interior decoration in houses (A: meaning that if curtains and the like are used merely for decoration, it is offensive, though there is nothing wrong with using them to screen a room from view), even for shrines at the tombs of the righteous and learned. It is unlawful to decorate walls with pictures (n: of animate life, as at p44).)

f17.10 It is permissible for both men and women to decorate copies of the Koran and to embellish writing with silver (O: out of reverence for it). It is permissible for women to have copies of the Koran decorated with gold, but this is unlawful for men.

f17.11 All gold jewelry is permissible for women, even on shoes and woven into fabric, provided it is not wasteful. But if a woman is wasteful, such as when she has a 720-gram anklet of gold (O: meaning that it (N: i.e. the weight of a piece, though there is no limit to the number of average -weight pieces) exceeds the customary), then it is unlawful (O: since gold is only permitted to women for the sake of beauty, and when gold exceeds what is normal it is repulsive and devoid of beauty. (A: and zakat must be paid on such wasteful jewelry (n: as opposed to jewelry that is not wasteful, on which no zakat is due (dis: h4.4))).

#### f18.0 THE FRIDAY PRAYER (JUMU`A)

f18.1 (O: Attending the Friday prayer is personally obligatory. It is the finest of prayers, and its day, Friday, is the best day of the week. Its integrals and conditions are the same as other prayers (def: f9.13-14).)

f18.2 Anyone obliged to pray the noon prayer (zuhr) is obliged to pray the Friday prayer (jumu`a), except for women and for travellers on a trip that is not disobedience (def: f15.5), even if the trip is less than 81 km/50 mi. one way (n: though one's departure for the journey must have taken place before dawn on Friday, as at f18.6). Valid excuses for not attending group prayer (def: f12.5), such as illness or taking care of a sick person, excuse one from attending the Friday prayer (jumu`a).

f18.3 Eligible Muslims living in a village where there are not forty men (n: the minimum required for a valid Friday prayer, as at f18.7(e)) must go to a larger town for the Friday prayer, when the two places are close enough that the call to prayer (adhan) from the larger town is audible to them under normal circumstances, given a calm wind and no interference. Audible means that the call of a man with a loud voice standing in the larger town on the side facing the village could be heard by a man with normal hearing standing on the side of the village facing the town. If such a call would be inaudible, then the villagers are not obliged to go to pray the Friday prayer (A: but merely pray the noon prayer (zuhr)).

f18.4 A Muslim present at the mosque who is not obliged to pray the Friday prayer may leave (A: instead participating in it, such as a traveller merely wanting to pray the noon prayer (zuhr) and go), except for the following, who must pray the Friday prayer:

- (1) someone with an illness for whom waiting for the Friday prayer poses no hardship, provided that he has arrived after its time has begun (O: namely noon, for if he arrives before this, or if waiting is a hardship, then he may leave);
- (2) someone who is blind;
- (3) or someone whose excuse is muddy terrain (dis: f12.5(2)).

Those present at the mosque who are not obliged to pray the Friday prayer (A: other than the above mentioned) may choose between performing the Friday prayer and the noon prayer, (zuhr) (O: even when the fact that they are present eliminates their excuse). If they want to perform the noon prayer (zuhr) in a group (O: as is sunna) and their excuse from the Friday prayer is not obvious to onlookers, then they should conceal their group prayer rather than that display it. (O: which would be offensive under the circumstances). If a person is not obliged to perform the Friday prayer, but believes the reason

for his excuse may disappear, such as sick person (A: hoping to recover before the prayer ends), then he should postpone his noon prayer (zuhr) until he can no longer hope to attend the Friday prayer. But if one's excuse from the obligation of attending the Friday prayer is not expected to cease, such as being a woman, then it is recommended to pray the noon prayer (zuhr) at the first of its time.

f18.5 The noon prayer (zuhr) of someone obliged to perform the Friday prayer is not valid until he has missed the Friday prayer (A: by its having finished without his having attended).

- (1) there is a place on his route where the Friday prayer will take place;
- (2) or he is going to travel with a group (O: of people not obliged to pray the Friday prayer) who are departing, such that his staying behind would entail harm for him.

f18.7 In addition to the usual conditions for the prayer (def: f9.13), a valid Friday prayer (jumu`a) also requires:

- (a) that it be a group prayer;
- (b) that it take place during the time of noon prayer(zuhr);
- (c) that it follow two sermons (khutba, def: f18.9);
- (d) that its site be located among the dwellings of the community;
- (e) that there be a minimum of forty participants who are male, have reached puberty, are sane, and are local residents, meaning they live there and do not leave except when they need to (n: though the minimum according to Abu Hanifa is three participants besides the imam (al-Lubab fi sharh al-Kitab (y88), 1.111));
- (f) and that, in places where it is no hardship for everyone to pray at one location, there be no other Friday prayer prior to or simultaneous with it (O: i.e. in the opening Allahu Akbar of the prayer (dis: below)).The imam is counted as one of the forty ((e) above).

A group performing the Friday prayer must finish it as a noon prayer (zuhr) if:

- (1) (non-(e) above) the number of participants diminishes during it to less than forty;
- (2) or (non-(b)) if its time ends during the prayer (O: with the coming of the midafternoon prayer's time). If the group has doubts before starting the Friday prayer that they will be able to finish it within its time, then they must begin it as a noon prayer (zuhr).

f18.8 In places where having everyone assemble in one location is a hardship, as in Cairo or Baghdad, it is valid to hold as many Friday prayers as are needed. In places where it poses no hardship, such as Mecca or Medina, if two Friday prayers are held, the first of them (A: to open with "Allahu akbar") is the Friday prayer, and the second is invalid (A: and must be re prayed as a noon prayer). If two are held in such a place and it is not clear which was first, they should start over together as one Friday prayer.

## THE SERMON (KHUTBA)

f18.9 The integrals of the sermon (khutba) are five (O: and their order is sunna) (n: (a), (b), and (c) below are required in each of the two sermons, while (d) may be in either, and (e) must occur in the second, as mentioned below):

- (a) saying "al-Hamdu lillah" (praise be to Allah), this particular utterance being prescribed;
  - (b) the Blessings on the Prophet (Allah bless him and give him peace), which is also a prescribed utterance;
  - (c) enjoining godfearingness (taqwa), for which a particular expression is not prescribed, it being sufficient to say "Obey Allah";
  - (the above (O: integrals (a), (b), and (c)) are obligatory in each of the two sermons)
  - (d) reciting one verse of the Koran (O: that conveys an intended meaning, such as a promise, threat, exhortation, or similar) in at least one of the two sermons;
  - (e) and to supplicate for believers (O: male and female) in the second of the two sermons (O: which must be for their hereafter, as supplications of this world alone do not fulfill the integral).
- (n: The following sermon, added her by the translator from the commentary at m2, has been related by two chains of transmission, one ascribing it to Ibn Mas`ud, and the other through him to the Prophet (Allah bless him and give him peace):

"Praise is truly Allah's. We praise Him, seek His help, and ask His forgiveness. We seek refuge in Allah from the evils of our selves and our bad actions. Whomever Allah guides none can lead astray, and whomever He leads astray has no one to guide him. I testify that there is no god but Allah alone, without any partner, and that Muhammad is His slave and messenger. Allah bless him and give him peace, with his folk and Companions. O you who believe: fear Allah s He should be feared, and do not die other than as Muslims.

"O people, fear your Lord who created you from one soul and created its mate from it, and spread

forth from them may men and women. And be mindful of your duty to Allah, by whom you ask of one another, and to the wombs (that bore you), for verily, Allah is vigilant over you" (Koran 4:1).

(n: This sermon fulfills conditions (a), (b), (c), and (d) above (A: and the rest of the sermon may be in any language), and after sitting briefly, one rises and says, "al-Hamdu lillah," the Blessings on the Prophet (Allah bless him and give him peace), enjoins the people to fear Allah, and must add a supplication for the Muslims ((e) above), such as saying, "O Allah, forgive the believers" (Ar. Allahumma-ghfir lil-mu'minin wal-mu'minat).)

**f18.10** The conditions of the two sermons are:

- (a) that the speaker be in a state of purity (O: from minor (def: e7) and major (e10) ritual impurity and from filth (najasa, e14.1));
- (b) that his nakedness be clothed;
- (c) that the two sermons occur during the noon prayer's time (zuhr) before performing the two rak`as of the Friday prayer;
- (d) that the speaker be standing during them (O: if able);
- (e) that he sit down between the two;
- (f) and that his voice be loud enough for the forty required participants (def: f18.7(e)) to hear (O: the sermons' integrals).

**f18.11** The sunnas of the sermon include:

- (1) that the speaker stand on a pulpit (minbar) or high place (O: and that it be to the right of the prayer niche (mihrab) and that the speaker stand on the right side of the pulpit);
- (2) that he say "as-Salamu `alaykum" to those present when he enters the mosque and (O: again) when he ascends the pulpit (O: and reaches his seat there);
- (3) that he sit until the muezzin has finished (A: the second (dis: w28.2) call to prayer (adhan));
- (4) that when speaking, he lean on a sword, bow, or stick (O: which is in his left hand. It is desirable for him to put his other hand on the pulpit. If he does not have a sword or the like, he keeps his hands still be placing the right upon the left, or dropping them to his sides. He does not move them or fidget with one, as the aim is stillness and humility);
- (5) and that he face the group during both sermons (O: and not turn to the right or left during them, for it is a reprehensible innovation. It is desirable for the listeners to face the speaker).

## DESCRIPTION OF THE FRIDAY PRAYER

**f18.12** The Friday prayer (jumu`a) consists of two rak`as. It is sunna for the imam to recite al-Jumu`a (Koran 62) in the first rak`a (A: meaning the entire sura, the sunna being to make the sermon brief and the rak`as long, though wisdom must be used in deciding how much those present will accept) and al-Munafiqun (Koran 63) in the second rak`a (O: following the sunna from a hadith reported by Muslim, who also reported that the Prophet (Allah bless him and give him peace) sometimes recited al-A`la (Koran 87) in the first rak`a of the Friday prayer and al-Ghashiya (Koran 88) in the second).

**f18.13** A latecomer who joins the group prayer in time to bow and remain motionless a moment therein while the imam is still bowing in the second rak`a is legally considered to have attended the Friday prayer (A: though such a person must rise after the imam has finished with Salams to pray the rak`a he missed). If the latecomer joins the group after this point, he has missed the Friday prayer, but (O: obligatorily) intends performing the Friday prayer anyway and follows the imam (O: in case the imam has omitted an integral and has to repeat a rak`a, in which event the latecomer will have attended the Friday prayer). (N: But if this does not happen, then) when the imam finishes with Salams, the latecomer rises and completes his prayer as a noon prayer (zuhr).

## RECOMMENDED MEASURES FOR THOSE ATTENDING THE FRIDAY PRAYER

**f18.14** It is recommended to perform a purificatory bath (ghusl) (O: and offensive not to) before going to the Friday prayer, though it may be performed anytime after dawn. If one is unable to bathe, one may perform the dry ablution (tayammum).

It is also recommended to clean the teeth with a toothstick (siwak, def: e3), trim the nails, remove (O: bodily) hair, eliminate offensive odors, wear perfume and one's finest clothes (white being the best), and for the imam to dress better than anyone else. (A: Because of the time taken by these measures, it is offensive to visit others on Friday mornings.) It is offensive for women who attend the Friday prayer to wear perfume or fine clothes.

It is recommended:

(1) to arrive early (O: which is recommended for everyone besides the imam, so as to take a seat and wait for the prayer), the best time being from dawn on;  
(2) to come on foot in tranquility and dignity, and not to ride to the mosque unless there is an excuse (O:such as old age, weakness, or being so far from the mosque that the fatigue of walking would obviate one's humility and presence of mind in the prayer);  
(3) to sit near to the imam;  
(4) and to invoke Allah (dhikr) (O: both on the way and at the mosque before the sermon), and to recite the Koran and invoke Blessings (O: on the Prophet (Allah bless him and give him peace)).

f18.15 It is offensive (O: for anyone but the imam, when there is no need) to step over people to reach a place among them, unless one sees a vacant spot that cannot be reached otherwise. It is unlawful to make someone sitting in the mosque rise and then sit in his place, though if someone voluntarily rises it is permissible (O: for another to sit there).

f18.16 It is offensive to give another person one's place in the front row, in closeness to the imam, or to put others ahead of oneself in performing any act of worship (O: as is proved by the rigorously authenticated (sahih)hadith, "People keep staying behind until Allah keeps them behind."  
As for Allah's saying, "...preferring others to themselves, though poverty be their lot" (Koran 59:9), it refers to things that relate to the physical self, such as feeding a hungry person when one needs the food, in which case preferring another to one self is desirable, without a doubt). It is permissible to send someone to the mosque to save a place for oneself there by spreading something out (O: such as a rug, for no one else may pray on it), though it is permissible for another to move it aside and sit down in its place.

f18.17 It is offensive, though not unlawful, for someone sitting in the mosque to speak or to rise and perform the prayer while the imam is giving the sermon (khutba). (O: The more reliable position is that prayer is unlawful during the sermon (N: for the person already sitting in the mosque, as opposed to someone who has just arrived, as next discussed).) A latecomer who arrives (O: when the imam is speaking or seated on the pulpit) should pray two brief rak`as to greet the mosque (O: if the prayer is being held in a mosque. If held elsewhere, one should intend them as the two rak`as that are sunna before the Friday prayer, though if one has already prayed these at home, one should simply sit down without praying. It is offensive for a latecomer to simply omit the two rak`as of greeting the mosque, though if one enters the mosque at the end of the imam's sermon and believes that praying them will prevent one's participating in the opening Allahu Akbar with the group, then one should remain standing until they rise and incorporate one's greeting the mosque into the obligatory prayer (dis: f10.10)).

f18.18 It is recommended to recite al-Kahf (Koran 18) and invoke Blessings on the Prophet (Allah bless him and give him peace) on the night before Friday and during its day.

f18.19 It is recommended to supplicate Allah much on Fridays, seeking the moment when prayers are answered (O: in view of the hadith related by Bukhari and Muslim, "There is a moment on Friday when the slave shall not ask Allah for anything save that He will give it to him"), which lies between the time the imam first sits on the pulpit and when the prayer finishes. (A: Others hold that the moment occurs after the midafternoon prayer (`asr).)

#### f19.0 THE PRAYER ON THE TWO `EIDS

(N: Meaning `Eid al-Fitr at the end of Ramadan, and `Eid al-Adha on 10 Dhul Hijja.)

f19.1 The prayer on the two `Eids is a confirmed sunna (def: c4.1) and is recommended to be prayed in a group. Its time begins at sunrise, and it is recommended to take place after the sun is a spear's length (def:

f13.2(1)) above the horizon (O: the time for its current performance continuing) until noon.

f19.2 It is best to perform it in the mosque if there is room, though if there is not, then it is better to hold it outdoors.

#### RECOMMENDED MEASURES FOR THE `EID PRAYER

f19.3 It is recommended not to eat anything on `Eid al-Adha until one performs the prayer, though one should eat an odd number of dates before the prayer on `Eid al-Fitr.

f19.4 It is recommended to perform the purificatory bath (ghusl) after dawn, even if one does not attend the prayer, though it may be performed from midnight on. It is recommended to wear perfume, dress one's best, for young boys to come in their good clothes, and for women who do not attract men's attention to attend, though without wearing perfume or fine clothes. It is offensive for an attractive woman to attend (dis: f12.4(N:)).

It is sunna:

- (1) to come early after the dawn prayer (subh) on foot;
- (2) to return home by a different route (N: than one came);
- (3) for the imam to delay his arrival until the time of the prayer;
- (4) and to call the people to prayer with the words "The prayer is gathering," as one also does for the eclipse prayer (def: f20) and the drought prayer (f21).

## DESCRIPTION OF THE `EID PRAYER

f19.5 The `Eid prayer consists of two rak`as.

(A: In addition to the opening Allahu Akbar,) one says "Allahu akbar " seven times in the first rak`a after the Opening Supplication (Istiftah, def: f8.13) and before saying "I take refuge, etc." (Ta'awwudh,

f8.16); and five times in the second rak`a, not counting the Allahu Akbar for rising from prostration, before saying the Ta'awwudh. One raises one's hands (f8.12) each time one says "Allahu akbar." One invokes Allah Most High (N: to oneself) between each Allahu Akbar (O: saying "Glory be to Allah, praise be to Allah, there is no god but Allah, Allah is greatest"), placing the right hand upon the left (A: each time one says this invocation). Missing or adding repetitions of "Allahu akbar" does not necessitate a forgetfulness prostration at the end of one's prayer. If one forgets them and proceeds directly to the Ta'awwudh, one does not return to them.

f19.6 It is recommended to recite Qaf (Koran 50) in the first rak`a and al-Qamar (Koran 54) in the second. Or if one wishes, one may recite al-A`la (Koran 87) in the first rak`a and al-Ghashiya (Koran 88) in the second. (A: Or one may recite al-Kafirun (Koran 109) in the first rak`a and al-Ikhlis (Koran 112) in the second.)

f19.7 After the two rak`as, the imam gives two sermons (khutba) like those of the Friday prayer (O: in the integrals (def: f18.9), not conditions (n: which here exclude f18.10(c,d,e))). It is recommended to open the first sermon by saying "Allahu akbar" nine times and to open the second by saying it seven times. It is permissible for the imam to sit during the sermons.

f19.8 There are two types of Allahu Akbars (A: said for the `Eids), unrestricted and restricted. The unrestricted, meaning those not confined to a particular circumstance but rather recited in mosques, homes, and the street, are sunna to recite from sunset on the night before each `Eid until the imam commences the `Eid prayer with the opening Allahu Akbar.

The restricted, meaning those recited after prayers (O: whether the five prescribed prayers or the nonobligatory), are sunna for `Eid al-Adha only, from the noon prayer (zuhr) on `Eid day until the dawn prayer (Subh) on the last of the three days that follow it, which is the fourth day of the `Eid. (N: The more reliable position is that the time for them begins from dawn of the Day of `Arafa (n: 9 Dhul Hijja) and ends at the midafternoon prayer (`asr) on the last of the three days that follow `Eid al-Adha.) They are recited (O: by men, by women (who say them to themselves), by both nontravellers and travellers, and whether one is praying by oneself or in a group) after the current prescribed prayers or making up prescribed prayers missed during the `Eid or before, and after prayers performed to fulfill a vow, funeral prayers (janaza), and supererogatory prayers. If one misses a prayer during the `Eid but does not make it up until after the `Eid, then one does not recite "Allahu Akbar" after it.

One says, "Allahu akbar, Allahu akbar, Allahu akbar" (N: and then, "there is no god but Allah. Allahu akbar, Allahu akbar, praise be to Allah"). It is commendable to add, as people are accustomed to. "Allah is ever greatest, etc." (O: namely: "Much praise be to Allah. Glory to Him morning and evening. There is no god but Allah. Him alone we worship, making our religion sincerely His though the unbelievers be averse. There is no god but Allah alone. He fulfilled His promise, gave victory to His slave, strengthened His army, and vanquished Confederates alone. There is no god but Allah. Allah is ever greatest")

f19.9 It is recommended to say "Allahu akbar" on the first ten days of Dhul Hijja whenever one sees a head of livestock (O: out of reverence for its Creator).

## f20.0 THE ECLIPSE PRAYER

(O: Eclipse refers to both that of the moon and sun.)

f20.1 The eclipse prayer is a confirmed sunna (def: c4.1) (O: and missing it is not permissible, but rather is offensive).

f20.2 (O: Like the drought prayer, it has no call to prayer (adhan) (n: besides that mentioned at f19.4(4)).)

f20.3 It is recommended to be performed in a group at the mosque.

It is recommended for women without attractive figures to attend (O: in their household clothes, that is, women advanced in years and the like. As for women who have attractive figures, it is desirable for them to perform it in their homes (dis: f12.4(N:))).

## DESCRIPTION OF THE ECLIPSE PRAYER

f20.4 The eclipse prayer consists of two rak'as. The minimum is:

- (a) to open with "Allahu akbar";
- (b) to recite the Fatiha;
- (c) to bow;
- (d) to straighten up;
- (e) to recite the Fatiha again;
- (f) to bow again;
- (g) to (O: straighten up and ) remain motionless a moment;
- (h) and to prostrate, then sit up, and then prostrate again.

This is one rak'a. comprising standing twice, reciting (O: the Fatiha) twice, and bowing twice.

One then prays the second rak'a like the first.

It is not permissible to lengthen the amount of time one stands or bows merely because eclipse has not yet passed, or to shorten the rak'as to less (O: than the above way after having intended it) because the eclipse has passed.

f20.5 The optimal way is that after reciting the Opening Supplication (Isiftah, de: f8.13), the Ta'awwudh (f8.16), and the Fatiha, one:

- (a) recite al-Baqara (Koran 2) for the first Koran recital;
- (b) recite Al 'Imran (Koran 3) after the second time one recites the Fatiha (A: in the first rak'a); (A: then, in the second rak'a)
- (c) recite al-Nisa (Koran 4) for the third recital;
- (d) and recite al-Ma'ida (Koran 5) for the fourth recital.

Or one may recite comparable amounts of the Koran in place of the above suras.

One bows and says "Subhana Rabbiya al-'Adhim' ("How far above any limitation is my Lord Most Great") after the first of the four Koran recitals for a period equal to reciting one hundred verses of al-Baqara (N: about 20 minutes); after the second recital for the length of eighty of its verses; after the third for the length of seventy verses; and after the fourth for the length of fifty verses.

The other parts of the eclipse prayer are the same as other prayers.

f20.6 After praying, it is recommended that the imam give two sermons like those of the Friday prayer (O: in integrals (def:f18.9) and conditions (f18.10), except that here the sermons follow the prayer, as opposed to those of the Friday prayer, which precede it).

f20.7 One may no longer perform the eclipse prayer if one has not yet begun it when the eclipse passes, when the sun sets while still eclipsed, or when the sun rises while the moon is still eclipsed. But if one has begun the prayer and the eclipse passes or the sun sets while still in eclipse, one nevertheless completes the prayer.

## f21.0 THE DROUGHT PRAYER

f21.1 The drought prayer is a confirmed sunna (def: c4.1) (O: even for someone travelling, or praying alone), and is recommended to be prayed in a group.

f21.2 When the land is parched or the water supply is cut off or diminished, the imam (A: i.e. the caliph (def: o25) or his representative) warns people against wrongdoing and orders them to repent for their sins, give charity (O: because this influences the acceptance of prayers), settle their differences with enemies (O: if the enmity is not for Allah's sake. Otherwise, it is not objectionable, for severing ties with the corrupt is something that one should do), and fast for three days (O: which must be consecutive, for this is obligatory if the caliph orders it). Then, on the fourth day while still fasting, they come out to an empty expanse (lit. "desert") in their work clothes, accompanied by those of the women who do not have attractive figures (dis:f12.4(N:)). livestock, men and women advanced in years, infants and small children, the pious, and those related to the Messenger of Allah (Allah bless him and give him peace); and they ask Allah to give them rain because of those present (O: i.e. by virtue of their spiritual grace (baraka), interceding through them). Each mentions to himself the good works he has done and intercedes through them. Non-Muslim subjects of the Islamic state who attend are not hindered from doing so, but may not mix with us.

## DESCRIPTION OF THE DROUGHT PRAYER

f21.3 The drought prayer consists of two rak'as like those of the 'Eid (def: f19.5). The imam then gives two sermons like those of the `Eid, except that in place of each Allahu akbar (f19.7), the imam says, "I ask forgiveness of Allah Most Great, whom there is no god but He, the Living, the Ever Subsistent, and I turn to Him in repentance." During the sermons, the imam frequently asks Allah's forgiveness (istighfar), blesses the Prophet (Allah bless him and give him peace), supplicates Allah, and recites the verses, "Ask forgiveness of your Lord - verily He is soft-forgiving - and He will loose the sky upon you in torrents, aid you with wealth and sons, and make gardens and rivers yours" (Koran 71:10-12). In the second sermon (O: about a third of the way through it) the imam turns toward the direction of prayer (qibla) and switches his cloak around (O: by putting the right side of it on his left and vice versa. It is also sunna to turn it upside down. Both sunnas can be effected by putting the lower left corner on the right shoulder and lower right corner on the left shoulder. The wisdom therein is the favorable portent of a change of state). The people do likewise. He should supplicate to his utmost, both to himself and aloud. (O: Those present raise their hands with the backs of the hands up. The sunna supplication is: "O Allah, send us rain, raining wholesomely, healthily, torrentially, widespread, pouringly, in sheets, drenchingly, continuously till Judgement Day. O Allah, give us rain and make us not of those who despair. Allah, servants and cities are in distress, hunger, and want, from which we can ask none but You for relief. O Allah, make the crops grow and the milk of the livestock flow, and send down the sky's blessings upon us and bring forth for us the blessings of the earth. Raise from us the affliction that none but You can lift.") If they pray but are not given any rain, they repeat the prayer (O: until given rain). If they prepare (O: and gather), but are given rain before the prayer, they pray in thanks and ask for more.

f21.4 It is recommended for those whose land is flourishing to supplicate after prayers for those whose land is parched. (O: This being the middle course. The minimum is to make a supplication, while the optimum is to take the above measures of performing two rak'as with the two sermons, the supplications, and asking for forgiveness.)

f21.5 At the first rainfall of the year, it is recommended to uncover part of the body for the rain to strike.

f21.6 It is recommended to glorify Allah when thunder is heard (O: saying, "Glory to Him the thunder and the angels glorify, in awe of Him,") and when lightening is seen (O: saying, "Glory to Him who shows you the lightening that you may have fear and hope").

f21.7 If it rains so much that harm is feared, it is recommended to supplicate as has come in the sunna: "O Allah, around us, not upon us. O Allah upon the hills and bluffs, the valley floors and copses of trees."

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## BOOK G THE FUNERAL PRAYER (JANAZA)

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## **g1.0 VISITING THE SICK AND DYING**

**g1.1** It is recommended for everyone to frequently remember death, particularly if one is ill, and to prepare for it by repenting (def:p77) (O: because of the hadith.

"Remember often the Ender of Pleasures,"

meaning death, a hadith related by Tirmidhi, Ibn Hibban, and Hakim, the latter two classifying it as rigorously authenticated (sahih). Nasa'i's version has the addition.

"for truly, it is not remembered in a plentitude save it diminishes it, and not remembered in a dearth save it increases it,"

"plentitude" meaning of wives and this-worldly goods, and "dearth" meaning of spiritual works).

**g1.2** It is recommended to visit the ill, even if the malady is only sore eyes, whether the person is a friend or enemy. If the sick person is a non-Muslim subject of the Islamic state (dhimmi, def;o11) then if he is a relative or neighbor, visiting him is recommended. If not, visiting him is merely permissible.

**g1.3** It is offensive to sit lengthily with a sick person. It is recommended not to continuously visit (O: but only from time to time) unless one is a relative or similar person (O: of his friends) whom the sick person is fond of, or someone (O: of the righteous) from whose presence others derive spiritual blessing (baraka), for any of whom visiting the sick person is recommended at any time as long as there is no objection (O: by the sick person to long visits).

**g1.4** If the visitor has hopes that the patient will survive, he supplicates for him (O: saying, "O Allah, Lord of Men, remove the harm and heal- for You are the Healer besides whom there is no other-with a cure that will not leave behind pain or sickness,') and then leaves. But if the visitor sees little hope of a recovery, he should encourage the sick person to repent and to make his bequests (def:L1-3) (O: by telling him, e.g. "You should repent of all your sins so that Allah Most High heals you, for repentance is reason for cures. And you should make some provision for bequests, as it prolongs one's life. A person should make bequests while alive and only die after having done so for there is no one who does not pass on").

## **INSTRUCTING THE DYING PERSON**

**g1.5** If the visitor sees the person is dying, he should make him desirous of Allah's mercy (O: since hope should predominate over fear in this state) and should turn him to face the direction of prayer (qibla) by laying him on his right side, or if impossible, on his left. If this too is impossible, he is laid on his back (O: with his face and feet towards the direction of prayer (qibla) by laying him on his right side, or if impossible, on his back (O: with his face and feet towards the direction of prayer (qibla) by propping up his head a little, feet meaning the bottoms of them).

The visitor should then instruct the dying person to say "There is no god but Allah," letting him hear it (N: so he can repeat it) but without irritating insistence, and without telling him "Say...." When he says it, then he is let be until he himself speaks of something else.

It is recommended that the person instructing him to say it be neither his heir nor enemy.

## **IMMEDIATE MEASURES AFTER DEATH**

**g1.6** When he dies, it is recommended that the kindest to him of his unmarriageable kin (mahram) close his eyes. It is recommended:

(1) to close his jaws (O: with a wide bandage tied above his head so his mouth is not left open);

(2) to make his joints flexible (O: by bending the forearm to the upper arm, calf to thigh, thigh to stomach, and then straightening them, and to similarly flex the fingers in order to facilitate washing and shrouding him. If the joints are flexed at this point, they remain flexible, but if not, it becomes impossible afterwards);

(3) to (O: gently) remove his clothes, and to cover him with a light cloth (O: tucking the edge under his head and feet so they do not become uncovered);

(4) and to place something heavy on his stomach (O: to prevent bloating).

**g1.7** It is recommended to hasten in paying off the debts of the deceased (dis: L4.2-3) or having them waived (n: by creditors). It is recommended to hurry in implementing his bequests, and in readying him for burial (O: haste being recommended (N: in readying him and burying him) when it is unlikely that the

body will rapidly change, but obligatory when this is likely).

**g1.8** When someone dies suddenly (O: or is believed to have died), the body is left until it is certain he is dead (O: by a change in odor or the like).

**g1.9** Washing the dead person, shrouding him, praying over him, carrying him, and burying him are communal obligations (def:c3.2)

## **g2.0 WASHING THE BODY**

**g2.1** Then the body is washed (O: obligatorily).

### **WHO SHOULD WASH THE BODY**

**g2.2** when the deceased is male, the best suited to wash the body (A: anyone may wash it, but it is not permissible (N: being offensive) for a non-Muslim to wash the body of a Muslim, and non-Muslim relatives are as though nonexistent in the following priority list) is:

- (1) the father of the deceased;
- (2) the father's father;
- (3) the son;
- (4) the son's son;
- (5) the brother;
- (6) the father's brother;
- (7) the son of the father's brother;
- (8) those named in the sequence given at L10.6(12-14);
- (9) men related to the deceased;
- (10) men not related to him;
- (11) his wife;
- (12) and his unmarriageable female relatives (mahram, def:m6.1).

**g2.3** If the deceased is female, the best suited to wash the body is:

- (1) one of her female relatives (O: meaning the women of her immediate family, such as her daughter or mother);
- (2) other women;
- (3) her husband;
- (4) and then a member of her unmarriageable male relatives (mahram, def:m6.2) (O: in the above (g2.2) order).

**g2.4** If the deceased is a non-Muslim, then his non-Muslim relatives are better suited to wash him.

**g2.5** It is recommended that the washer be trustworthy (O: so that he can be relied on to wash the deceased completely and so forth. If he notices something good, it is sunna to mention it, but if he notices something bad, it is unlawful to mention it, as this is slander(ghiba, def:r2.2)).

### **HOW TO WASH THE BODY**

**g2.6** It is obligatory for the washer to keep the nakedness (def:f5.3) of the deceased clothed (f5.4) while washing him. It is sunna that no one be present except the washer and his assistant. (O: It is preferable that the body be washed while clothed in an anklelength shirt into which the washer inserts his hand from the sleeve if ample enough, while pouring water over the garment and washing the body under it. If the sleeve is not wide enough for this, he tears open the seam from the side under the arm. It is obligatory that the body be covered from naval to knees.) Incense should be burned from the start of washing to the finish (O: as is sunna). It is best to wash the body under a roof, and best that cold water be used, except when necessary (O: to heat it, such as to clean away filth that could not otherwise be removed, or when the weather is cold, since the deceased suffers from it just as a living person would).

**g2.7** It is unlawful to look at the nakedness of the deceased (def:f5.3) or touch it, except with a cloth (O: or similar, since direct contact without there being something in between is not permissible). It is recommended not to look at or directly touch the other parts of the body save with a cloth.

**g2.8** It is recommended:

- (1) to force out waste from the stomach;
- (2) to clean the private parts of filth (O: which is recommended when one is not certain anything has exited from those parts, though if it has, cleaning is obligatory);
- (3) to give the body ablution (wudu) (O: like the ablution of a living person, turning the head when rinsing the mouth and nostrils so that no water reaches the stomach);
- (4) to make the intention of performing the purificatory bath (ghusl), and then to wash the head, beard, and body each three times with water infused (with sidr(n:i.e. lote tree(Rhamus spina christi) leaves), taking care each time to press the hand on the stomach (N: in a downward stroke) (O: leaning on it to force its contents out, but gently so as not to hurt the deceased. If the hair of the head or beard is matted, it should be gently combed with a wide-toothed comb so as not to pull any out. If hair comes out as a result, the washer should return it and place it in the shroud to be buried with the deceased).

#### g2.9 (O: It is sunna:)

- (1) that the place of washing be on an incline so the head is highest and the water flows down away from it;
- (2) that there be an incense burner present with incense in it;
- (3) to put one's right hand on the shoulder of the deceased with the thumb on the nape of his neck so that the head does not loll, and brace his back up against one's right knee;
- (4) to have the helper pour abundant water during the process to obviate offensive odors from waste leaving the body;
- (5) to stroke the stomach firmly and effectively with one's left hand;
- (6) and when finished, to lay the deceased down again on his back with his feet towards the direction of prayer (qibla.)

g2.10 If the body is not clean after three times, one washes it again, reaching an odd number of washings. (O: If clean after an even number of washings, it is sunna to add another. If clean after an odd number, one does not add any.) It is sunna to add a little camphor to the water, especially for the last washing. The obligatory minimum for this purificatory bath (ghusl) is that water reach all external parts of the body (O: and it is obligatory to remove any filth (najasa, def: e14.1), if present). The body should be dried with a cloth afterwards. If anything leaves the body after washing, only the affected area need be washed. (O: It is not necessary to repeat the ablution (wudu) of bath (ghusl), even if the excretion is from the front or rear private parts.)

### g3.0 SHROUDING THE BODY

g3.1 Then the body is shrouded (O: obligatorily).

g3.2 If the deceased is male it is recommended that he be wrapped in three washed (O; not new) white shrouds, without an ankle-length shirt or turban, each shroud covering the whole body (O: unless the deceased was in a state of pilgrim sanctity (ihram), in which case the head of the male or face of the female must be left uncovered). It is permissible to add (O: beneath the shrouds) an ankle-length shirt and a turban. It is unlawful to use silk (N: to shroud a man). If the deceased is a woman it is recommended that she be dressed in a wraparound, headcover, and a shift, and that she be wrapped in two shrouds (O: like those used for men in being white and washed, each of which covers her (O: entire body). It is offensive for a woman's shroud to be made of silk, or fabric dyed with saffron or safflower. The obligatory minimum for shrouding a man or woman is to completely cover their nakedness. (O: For a man it is obligatory to cover the navel, the knees, and what lies between them, and for a woman, her entire body.)

g3.3 It is recommended:

- (1) to send the shrouds with incense (O: from aloes and the like)
- (2) to sprinkle them with hunut (O: an aromatic compound of camphor, reed perfume, and red and white sandalwood) and camphor;
- (3) to place cotton and hunut on the apertures of the body (O: such as the eyes, mouth, nostrils, and ears) and on places that touch the ground in prostration (O: the forehead, nose, palms, bottoms of the feet, and the knees);
- (4) and it is commendable to perfume the entire body.

g3.4 If a person dies while in a state of pilgrim sanctity (Ihram, def:j3), it is unlawful to scent th body, to dress it in a garment with any sewing in it (A: if male), and to cover the head of a male's body or the face of a female's.

**g3.5** It is not recommended to prepare a shroud for oneself, unless to ensure that it comes from a lawful source or from the effects of a virtuous person (O: meaning those who worship much, or religious scholars who apply their knowledge in their lives. In such a case, one may procure it for the blessing therein (tabruk, di:w31)).

#### **g4.0 THE PRAYER OVER THE DEAD**

**g4.1** Then the deceased is prayed over (O: obligatorily). The obligation is fulfilled if a single Muslim male (O: who has reached the age of discrimination) prays over the deceased. It is not fulfilled by a prayer of women alone when there is a male available, though if there is no one besides women, they are obliged to pray and their prayer fulfills the obligation.

**g4.2** It is recommended to perform the funeral prayer in a group. It is offensive to pray it at a cemetery (O: though not in a mosque, which is preferable).

#### **WHO SHOULD LEAD THE FUNERAL PRAYER**

**g4.3** The person best suited to lead the funeral prayer as imam is the one who is best suited to wash the deceased (dis:g2.2) except for women, who have no right to lead (dis:f12.27). The family member responsible for the deceased is given preference in leading the prayer even over the sultan (O: or imam of the mosque). The older of two persons (O: meaning more years in Islam, provided he is upright (def:o24.4)) takes precedence over the more learned in Sacred Law (O: when they are at the same level (n: of the g2.2 precedence order), such as two sons or two brothers, since the purpose is to pray for the deceased, and the supplication of an older person is more likely to be answered) and (n: the older) is given precedence over any others (A: at that level), though if they are of the same age, then one is chosen according to the order used for the imamate of other prayers (def:f12.25). The responsible family member is given precedence in leading the funeral prayer even when the deceased has stipulated some other nonfamily member to be the imam.

#### **PLACING THE BODY FOR THE FUNERAL PRAYER**

**g4.4** It is recommended (N: in the funeral prayer itself, where the deceased, enshrouded, is on a bier in front of the imam and lying on his right side facing the direction of prayer (qibla)) that the imam stand by the head of the deceased, if male, and by the posterior, if female (O: because this better screens her from view).

**g4.5** If there are several bodies, it is best to perform a separate funeral prayer for each individual, though it is permissible to pray for all of them in a single prayer by putting the biers directly in front of the imam (O: one after another (N: parallel with the rows of worshippers), each body facing the direction of prayer (qibla)). The closest body to the imam (O: if the dead differ in gender) should be an adult male, then a boy, then a woman (O: though if all are male, all female, or all boys), then the best Muslim, then the next best (O: in piety, abstinence from this world, godfearingness, and all praiseworthy traits), and so forth. If bodies are brought successively, the first one brought is placed closest to the imam, even if a prior arrival is less virtuous or is a boy, though not if a female, whose body should be placed further from the imam than that of a male brought subsequently.

#### **DESCRIPTION OF THE FUNERAL PRAYER**

**g4.6** Then one intends to perform the prayer, One must keep in mind its obligatory character, though need not explicitly intend it as a communal obligation (def: c3.2). (O: One may confine oneself to merely intending to pray four Allahu akbars over the particular deceased person as an obligatory act, without intending its being in fulfillment of a communal obligation. The intention must coincide with one's opening Allahu akbar.) It is valid for someone to perform a funeral prayer for a dead person who is absent (dis:g4.18) while following an imam who is praying over a dead person who is present.

**g4.7** One says "Allahu akbar" four times in the funeral prayer, raising one's hands (O: to shoulder level) at each one, and it is recommended between each one to fold the right hand over the left. The funeral prayer is not invalidated by adding a fifth Allahu akbar, even intentionally, though if the imam adds one the follower does not do likewise, but simply waits to finish with him when he says his Salams.

**g4.8** After the first Allahu akbar it is obligatory to recite the Fatiha. It is recommended to say "I take

refuge, etc." (Ta'awwudh, def:f8.16) before it and "Ameen" after it, though not to recite the Opening Supplication (Istiftah, f8.13) or a sura therein.

(A: It is obligatory that the Fatiha be recited in the funeral prayer and that the other spoken elements be uttered, but as for each occurring after its respective Allahu akbar, the only one which must obligatorily be in its place is the Blessings on the Prophet (Allah bless him and give him peace), which must come after the second Allahu akbar.)

**g4.9** After the second Allahu akbar (N: and one, remains standing throughout the funeral prayer), it is obligatory to say the Blessings on the Prophet (Allah bless him and give him peace), after which it is sunna to supplicate for the believers.(O: It is also sunna to bless the folk of the Prophet after the blessings upon him (Allah bless him and give him peace) and to say "al-Hamdulillah" before it.)

**g4.10** After the third Allahu akbar one supplicates for the deceased. The recommended supplication is: "O Allah, this is Your slave, and son of Your slave. He has left the zephyr of this world and its spaciousness, in which were the things and people he loved, for the darkness of the grave and that which he will meet. He testified that there is no god but You alone without a partner, and that Muhammad is Your slave and messenger. You know him better than we. O Allah, he has gone to remain with You, and You are the best to remain with. He is now in need of Your mercy, and You have no need to torment him. We come to You in desire for You, interceding for him. O Allah, if he did well, treat him the better, and if he did wrong, disregard it and through Your mercy show him Your good pleasure and protect him from the trial and torment of the grave. Make his grave spacious for him and distance the earth from his sides, and through Your mercy protect him from Your torment until You raise him and send him safely to Your paradise, O Most Merciful of the Merciful." (n: This is the optimal supplication, The minimum is mentioned below at g4.13(f).)

**g4.11** It is commendable to say before the above: "O Allah, forgive those of us who are alive and those who are young head those present and those who are and those who are old, those who are male and those who are female. O Allah, let those of us You give life live by Islam, and let those of us You take back die in a state of faith."

If it is the funeral of a child, one may add to this: "O Allah, send him ahead to smoothe the way for his parents, and make him a reason for reward, a treasure, admonition, reflection, and intercessor. Make the scales of their good deeds heavy through him, and fill their hearts with patience."

**g4.12** After the fourth Allahu akbar, it is sunna to say, "O Allah, do not withhold from us his recompense, nor try us after him, but forgive us and him."

Then one says "as-Salamu 'alaykum" twice (O: the first one being obligatory and the second sunna).

**g4.13** The integrals of the funeral prayer are seven:

- (a) the intention;
- (b) standing;
- (c) saying "Allahu akbar" four times;
- (d) the Fatiha;
- (e) the Blessings on the Prophet (Allah bless him and give him peace);
- (f) the supplication for the deceased, the minimum being "O Allah, forgive this deceased";
- (g) and the first of the two times one says "as-Salamu 'alaykum" to finish the prayer.

**g4.14** The conditions of the funeral prayer are the same as other prayers (def:f9.13), but in addition require:

- (a) that the deceased's body has been washed before the prayer;
- (b) and that the imam and those praying do not stand ahead of the body during the prayer (N: i.e closer to the direction of prayer (qibla)). It is offensive to perform the funeral prayer over a body before it has been shrouded. If someone dies under a pile of rubble, and it is impossible to take out the body and wash it (non-(a) above), then he is not prayed over.

**g4.15** A latecomer to the funeral prayer whom the imam has preceded by having already said "Allahu akbar" a number of times recites (O: the Fatiha) after his own opening Allahu akbar, and then says "Allahu akbar" each time the imam does, though he performs the integrals in order from the point at which he began (O: reciting the Fatiha after his first Allahu akbar, the Blessings on the Prophet (Allah bless him and give him peace) after the second, and the supplication for the deceased after his third), and when the imam finishes with Salams, the latecomer goes on to complete his remaining number of times of saying "Allahu akbar" and the other spoken elements, and then finishes with his own Salams.

It is recommended that the body not be lifted until the latecomer finishes his prayer.

If the latecomer joins the group with his opening Allahu akbar, and the imam immediately says the (O: second) Allahu akbar (N: before the latecomer has had a chance to recite the Fatiha), then the latecomer (N: omits the Fatiha and ) says "Allahu akbar" with the imam. Here the latecomer has performed the first two Allahu akbars (O: both the second one which he performed with them, and the first one which lacked the Fatiha), and he is no longer obliged to recite the Fatiha. If the imam's Allahu akbar occurs while such a latecomer is reciting the Fatiha, he discontinues it and says "Allahu akbar" with the imam. If the imam says " Allahu akbar" and the follower does not say it until the imam has said it a second time, it invalidates the follower's prayer.

## REPEATING THE FUNERAL PRAYER

**g4.16** When one has performed a funeral prayer over someone, it is recommended that one not repeat it.

**g4.17** Someone who has missed praying (O: a funeral prayer until after the deceased has been buried) may pray it at the grave (O: and such a prayer is legally valid whether the deceased was buried before the funeral prayer had been performed over him, or whether after, though it is unlawful to bury a Muslim before his funeral prayer, and anyone who knows of it is guilty of a sin), but only on condition that the person praying at the grave had reached puberty and was sane on the day the deceased died (O: as he was thus one of those responsible for the communal obligation of praying over the deceased). Otherwise, he may not pray there.

## PRAYING OVER THE DEAD WHO ARE NOT PRESENT

**g4.18** It is permissible to perform the funeral prayer for an absent person whose body is out of town, even if not far (O: and even if the body is not in the direction of prayer (qibla) which the person praying faces (non-(g4.14(b))). But such a prayer does not lift the communal obligation from the people of the town where the deceased died). It is not permissible to perform the funeral prayer over someone, who is absent (O: from the place of prayer) when the body is in the same town (A: though this is permissible if it is at the edge of a large city and is a problem to reach).

**g4.19** If part of the body of a person whose death has been verified is found, then it is obligatory to wash, shroud, and pray over it (O: even if the part is a fingernail or hair, as there is no difference between a little and a lot (A: provided that the part was separated from him after death (N: and provided the rest of him has not been prayed over, for if it has, then it is not obligatory to pray over the part))).

## BURYING MARTYRS

**g4.20** It is unlawful to wash the body of a martyr (O: even if in a state of major ritual impurity (janaba) or the like) or perform the funeral prayer over him. A martyr (shahid) means someone who died in battle with non-Muslims (O: from fighting them, as opposed to someone who died otherwise, such as a person killed out of oppression when not in battle, or who died from fighting non-polytheists, such as (N: Muslim) transgressors). It is recommended that war gear be removed from the body (O: such as a breastplate and the like), and it is best to bury the martyr in the rest of his bloodstained clothes (O: since it is the effect of worship), though the responsible family member may nevertheless remove the garments and shroud the body before burial.

## BURYING THE STILLBORN

**g4.21** A premature baby (A: meaning one born before six full months) that dies is treated as an adult if it gave a cry (O: sneeze, or cough when it left the mother) or showed movement (O: treated as an adult meaning it is obligatory to wash, shroud, pray over, and bury the baby, since its life and death have been verified). If it did not, then:

- (1) if it had reached four months in the womb (O: which is the time at which the spirit is breathed into it) then it is washed before burial but not prayed over;
- (2) but if it had not, it is only obligatory to bury it.

## CARRYING THE DECEASED TO THE GRAVE

**g4.22** The burial should take place immediately after the funeral prayer and not be delayed to wait for anyone besides the responsible family member, provided he is (O: reasonably) nearby, if it is not be

feared that the condition of the body will change (O: though if this is feared, then the family member is not awaited).

f4.23 It is best that the bier be carried by its poles, sometimes by four (O: men) (N: one pole on the shoulder of each, the poles being parallel with the bier and supporting it, two ends forward and two ends fat) and sometimes by five, the fifth man between the two forward poles. It is recommended that the bearers walk faster than usual, though they should not trot.

g4.24 It is recommended for men to follow the bier to the place of burial close enough behind to be considered part of the funeral procession. It is offensive to follow it with fire or incense burners, which are likewise offensive at the burial.

## g5.0 BURIAL

g5.1 Then the deceased is buried (O: obligatorily). It is best to bury him in the cemetery. It is unlawful to bury someone where another person has been buried unless the previous body is completely disintegrated (O: such that nothing of it remains, neither flesh nor bone). It is also unlawful to bury two people in the same grave unless absolutely necessary, as when there has been much killing or death, in which case a wall of earth is made between the two bodies as a barrier. If the bodies differ in gender, this is even more imperative, especially, when two people (O: of the same gender or not) are not related. If someone dies on a ship and it is impossible to bury him on land, the body is placed (O: tightly lashed) between two planks (O: to obviate bloating) and thrown into the sea (O: so that it reaches shore, even if the inhabitants are non-Muslims, since a Muslim might find the body and bury it facing the direction of prayer (qibla)).

## DIGGING THE GRAVE

g5.2 The obligatory minimum for a grave is that it conceal the odor of the body and that it protect it from (O: being dug up and eaten by) animals. It is recommended to dig the grave wider than the obligatory minimum and that its depth equal the height of an average man with his arm fully extended upward. A lahd (O: i.e. a grave with a lateral hollow large enough for the body dug into the side of the bottom of the grave that is towards the direction of prayer (qibla)) is superior to a shaqq (O: meaning a simple trench dug down into the middle of the floor of the grave with low block walls raised along the trench's sides, in which the deceased is placed before the walls are ceilinged with blocks (N: and the earth is shovelled back into the grave on top of the them)), unless the earth is soft, in which case the shaqq is preferable (O: so as not to cave in on the deceased). It is offensive to bury the deceased in a coffin (O: or to put in a pillow for him, because all of this wastes money without being of any benefit) unless the earth is soft (O: quick to for) or moist (O: in which cases it is not offensive. If otherwise, then even if a coffin was stipulated by the deceased in his will, it is not provided).

## BURYING THE BODY

g5.3 Men should bury the dead, even if the deceased is female, in which case the best suited is the husband, if able, and then (n: for either sex) those listed in the funeral prayer preference order (g4.3), except that (A: when two are on the same level, such as two sons or brothers) the most learned in Sacred Law is preferred to the oldest, unlike the order for the prayer (O: the purpose thereof being knowledge of the rules of burial, which a learned person is likely to know better than others). It is recommended that the number of men (O: burying the deceased) be an odd number.

g5.4 It is preferable to conceal it (O: the grave) with a cloth while placing the body in it (N: a blanket is stretched over the grave about half a meter above the level of the ground, helpers holding each corner, while another person stands down in the grave at the foot end, ready to take the body from the bier). (O: This is especially necessary when burying a female, and is done because something might be disclosed of the deceased that is desirable to conceal.)

The head of the deceased is placed near the foot of the grave (O: foot meaning the end which will accommodate the feet when the body is in place), and the body is slid from the bier head-first. It is recommended for the person burying the deceased (N: who is standing in the grave taking the body, and there may be more than one):

- (1) to say (O: to the deceased), "In the name of Allah and according the religion of the Messenger of Allah (Allah bless him and give him peace)";
- (2) to supplicate Allah for (O: the forgiveness of) the deceased;
- (3) to place a block as a pillow for him, and to pull back the shroud enough to lay his cheek directly

on the surface of the block (O: as it is more expressive of lowliness);

(4) and to place the deceased upon his right side.

It is obligatory that the body be placed facing the direction of prayer (qibla) (O: and this is absolutely necessary. If buried facing the other way, or lying on his back, he is disinterred and reburied facing the direction of prayer).

g5.5 The lateral hollow dug into the side of the grave (N: in the lahd (def: g5.2)) for the body is walled up with blocks (A: after the body has been placed in it, before filling in the grave. It is sunna to use nine blocks).

g5.6 The person at the graveside sprinkles three scoops of earth (O: using two hands) into the grave. (O: it is sunna to say with the first, "Of it We created you all." with the second, "To it We shall make you all return," and with the third, "And from it We shall bring you forth again" (Koran 20:55).)

Then the grave is filled in, using shovels, after which one stays for a moment:

(1) to instruct the deceased (dis: w32) (N: the answers he will need to know when Munkar and Nakir (u3.3) question him in the grave as to his Lord, religion, and prophet);

(2) to supplicate for him (O: such as to say: "O Allah, make him steadfast. O Allah, teach him his pleas");

(3) and to ask forgiveness for him.

## THE FINISHED GRAVE

g5.7 One should raise the grave's surface (O: up to) 1 span (n: about 23 cm.) above the ground (O: so that it can be known, visited, and respected), except in countries at war with the Muslims (O: where it is not raised but rather concealed, so as not to be meddled with), and to make its top flat is better (O: than mounding it). No earth should be added (O: when levelling it) to what was excavated from it. It is recommended to sprinkle water over the grave and to put pebbles on it.

It is offensive:

(1) to whiten the grave with plasters

(2) to build (O: a cupola or house) over it;

(3) to put khaluq (O: a perfume) on the grave (O: as it is of no benefit and wastes money) or rose water;

(4) to place an inscription on it (O: whether it is the name of the deceased or something other, on a board at the head of the grave or on something else; unless the deceased is a friend of Allah (wali, def: w33) or religious scholar, in which case his name is written so that he may be visited and honored, it then not being offensive);

(5) or to put a pillow or mattress under the deceased.

## VISITING GRAVES

g5.8 It is recommended for men to visit graves (dis: w34) (O: of Muslims, especially on Fridays. As for visiting graves of non-Muslims, it is merely permissible. The spirit of the dead person has a connection with his grave that is never severed, but is stronger from the midafternoon prayer (‘asr) on Thursday until sunrise on Saturday, which is why people often visit graves on Friday and on Thursday afternoon). There is no harm in wearing one's shoes when visiting (O: to walk between graves). The visitor walks up to the grave as close as he would if the deceased were alive, and says, "Peace be unto you, abode of a believing folk; Allah willing, we will be joining you."

It is sunna to recite (O: as much of the Koran as is easy) and to supplicate Allah (O: to forgive the deceased, while facing the direction of prayer, as supplications benefit the dead and are more likely to be answered if made after reciting the Koran). (n: w35 discusses whether the spiritual reward for reciting the Koran may be donated to the deceased.)

g5.9 It is offensive for women to visit graves (O: because of their lack of fortitude and excessive grief, though this does not apply to visiting the prophet's tomb (Allah bless him and give him peace) which they should do. And like the Prophet (Allah bless him and give him peace) in this is their visiting the graves of the prophets, righteous, and learned).

## g6.0 CONSOLING NEXT OF KIN

g6.1 It is recommended to console all the relatives of the deceased, except young women who are not (O: the consoler's) unmarriageable kin (O: since only her unmarriageable relatives (mahram, def: m6.2) may console her, console meaning to enjoin steadfastness and encourage it by mentioning the reward in



the hereafter, to warn against overburdening oneself with grief, and to pray for forgiveness for the deceased and the lightening of the burden of those bearing the misfortune) when there has been a death in the family, for approximately three days after the burial.

It is offensive to sit for it (O: that is, for the extended family of the deceased to be seated and gather in one place for people to come and console them, because it is an innovation (muhdath, syn, bid'a. def. w29.3) that the Prophet (Allah bless him and give him peace) did not do, nor those after him. It is offensive for either men or women).

If one is absent (O: whether one is the consoler or person to be consoled) and then arrives after a period (O: of three days), one should console (N: the deceased's relatives) or be consoled (N: if one of them).

**g6.2** It is recommended to say:

(1) to a Muslim who has lost a Muslim relative, "May Allah greaten your reward, perfect your consolation, and forgive your deceased";

(2) to a Muslim who has lost a non-Muslim relative. "May Allah greaten your reward and perfect your consolation";

(3) and to a non-Muslim who has lost a Muslim relative, "May Allah perfect your consolation and forgive your deceased."

**g6.3** It is permissible to weep before someone dies, but better not to afterwards (O: since the Prophet (Allah bless him and give him peace) wept for his son Ibrahim before his death. It is only considered better not to weep afterwards because it is sorrow for something that has already passed).

**g6.4** It is unlawful to eulogize the dead, lament in a raised voice, slap one's cheeks (n: as a display of grief), rend one's garments, or dishevel one's hair.

**g6.5** It is recommended for distant relatives and neighbors to prepare enough food for the deceased's close family relatives to suffice them for a day and night, and to urge them to eat.

**g6.6** For the deceased's family to prepare food and gather people over it is an unpraiseworthy innovation (bid'a, def:w29.3).

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## **h1.0 WHO MUST PAY ZAKAT**

**(Muhammad Shirbini Khatib:) Lexically zakat means growth, blessings an increase in good, purification, or praise. In Sacred Law it is the name for a particular amount of property that must be paid to certain kinds of recipients under the conditions mentioned below. It is called zakat because one's wealth grows through the blessings of giving it and the prayers of those who receive it, and because it purifies its giver of sin and extolls him by testifying to the genuineness of his faith (al-Iqna fi hall alfaz Abi Shuja (y7), 1.183.)**

### **h1.1 Zakat is obligatory:**

- (a) for every free Muslim (O: male, female, adult, or child);**
- (b) who has possessed a zakat-payable amount (Ar.nisab, the minimum that necessitates zakat, def; for livestock h2.4-5; for grain and dried foodstuffs h3.4; for gold, silver, and other money h4.2; and for trade goods h5.1);**
- (c) for one lunar year.**

**h1.2 Non-Muslims are not obliged to pay zakat, nor apostates from Islam (murtadd, def:o8) unless they return to Islam, in which case they must pay for the time they spent out of Islam, though if they die as non-Muslims their property is not subject to zakat(N:because their property is considered to belong to the Muslim common fund (bayt al-mal) from the moment such people leave Islam).**

**h1.3 The guardian of a child or insane person is obliged to pay zakat from their property (N: if they owe any ). It is a sin for the guardian not to pay the zakat due on their property, and when the child or insane person becomes legally responsible (O: upon reaching puberty or becoming sane), he is obliged to pay the amount that his guardian neglected to pay (O: of zakat in the past).**

### **h1.4 Zakat is due from the owner of property that has been:**

- (1) wrongfully seized from him;**
  - (2) stolen;**
  - (3) lost;**
  - (4) fallen into the sea;**
  - (5) or loaned to someone who is tardy in repayment;**
- only if the owner regains possession of it, whereupon he must pay zakat on it for the whole time it was out of his hands (O: for the year or years that no zakat was paid in the absent property, since his having regained it establishes that it belonged to him the whole time, and his ownership of it not vitiated by the mere fact of its not having been in his possession during these years, provided that it has remained a zakat-payable amount (nisab) during them. If it has diminished through expenditure to less than the zakat-payable amount, then no zakat need be paid on it). If the owner cannot regain the property, there is no zakat on it.**

**h1.5 If a landlord rents someone a house for two years for 40 dinars, which he accepts in advance and retains possession of until the end of the two years, then at the end of the first of the two years he only pays zakat on 20 dinars, but at the end of the second year he pays one year's zakat on the 20 which he paid zakat on at the end of the first year (N: as the 20 has now been in his possession a second year) and pays two years' zakat on the 20 for which he did not previously pay zakat (N: as it has remained in his possession for two full years).**

**h1.6 Someone with only the zakat-payable amount (O: of gold or silver) must pay zakat on this amount even when he is in debt for an amount equal to it, for debts do not remove the obligation of zakat.**

### **h1.7 Zakat is not due on anything besides:**

- (1) livestock (def: h2.1);**
- (2) (n: some) food crops (h3.2);**
- (3) gold and silver (A: or their monetary equivalents);**
- (4) trade goods;**
- (5) mined wealth (n: meaning gold or silver exclusively, as at h6.1):**

**(6) and wealth from treasure trovers (A: buried in pre-Islamic times).**

**h1.8 Zakat is paid from the property itself, though it is permissible to take it from another lot of property (N: on condition that the amount paid is from the same type of property (n: of the five types mentioned above) that the zakat is due on, such that one may not, for example, pay money for zakat due on wheat (n: but must pay wheat. An exception to this is trade goods, which are appraised, and zakat may be paid on them with money, as at h5.1(O:) below)).**

## **THE ZAKAT YEAR**

**h1.9 By the mere fact that a full lunar year transpires (O: i.e. begins and ends while zakat-payable property is in the owner's possession), the poor now own the portion of it that the owner is obliged to pay as zakat. Thus, if someone has had 200 dirhams (n: the minimal zakat-payable amount of silver) in his possession for years without paying zakat, he is only obliged to pay zakat on it for the first year (O: because after that year, the amount owned by the poor (n: 5 dirhams) has diminished the money he possesses to less than the zakat-payable amount).**

**h1.10 If all one's property were destroyed after having been in one's possession a full year but before it was possible to pay zakat (O: to deserving recipients), then there is no obligation to pay zakat on it (O: because it was destroyed through no fault of the owner); but if only part of the property has been destroyed, such that this diminishes the rest to less than the zakat-payable amount, then one must take the percentage due on the original amount (n; 2.5 percent, for example) from the remaining property, and no zakat is paid on the amount destroyed.**

**If all or part of one's property is destroyed after having been in one's possession a full year and after it was possible to have paid zakat on it (O: by there being both property and recipients), then one must pay the zakat due on both the remainder and the property destroyed.**

**h1.11 Zakat is not obligatory if a person's ownership of the property ceases during the year, even if only for a moment, and it then returns to his possession; or if it does not return; or if the person dies during the year.**

**h1.12 The zakat year begins on property purchased or inherited when the buyer or inheritor takes possession of it, though if a person relinquishes his ownership of property during the zakat year merely to avoid paying zakat on it, this is offensive (O: as the learned differ about its unlawfulness). The more reliable opinion is that it is unlawful, though the transaction would be legally valid (dis: c5.2). But if such a person sells the property after possessing it a full year and before paying zakat on it (O: as when he sells it all, or sells part and the rest is not enough to require zakat), then the sale of the proportion of the property that was owed as zakat is invalid (O: because it belonged to someone else (n: i.e. the recipients, as at h1.9), and it is not valid to sell another's property without his consent), although the sale of the proportion of the property that was not owed as zakat is valid.**

## **h2.0 ZAKAT ON LIVESTOCK**

**h2.1 Zakat on livestock is restricted to camels, cattle, sheep, and goats.**

**h2.2 Zakat is obligatory when one has owned:**

**(a) a zakat-payable number of livestock;**

**(b) for one year;**

**(c) and has been grazing them (n: on unowned open range, as discussed below) for the entire year.**

**There is no zakat on work animals, for example, those trained to plow or bear loads (O: since the purpose in having them is utility, like clothes or household furnishings, and is not production).**

**Grazing means they have been grazed on open range pasturage (O: open range excluding pasturage growing on land that a person owes (A: as it would then be considered fodder)). If the livestock have been given fodder for a period long enough that they would have been unable to survive had they not eaten during it, then there is no zakat on them, though if fed with it for less than such a period, then this**

does not affect the necessity of paying zakat on them. (A: There is no zakat on cattle that have been solely fed fodder or grain, even if they could have otherwise been grazed.)

(n: It is religiously more precautionary (def: c6.5) and of greater benefit to the poor to follow Imam Malik on this question. Malik holds that zakat is obligatory whenever one has possessed a zakat-payable number of livestock for a year, whether or not they are work animals, and whether they have been grazed on open pasturage or fed with fodder for the entire year (al-Sharh al-saghir ala Aqrab al-masalik ila madhhab al-Imam Malik(y35), 1.592).)

## ZAKAT ON CATTLE

**h2.4** For cattle, the minimum on which zakat is payable is 30 head, for which it is obligatory to pay a yearling, meaning a male calf in its second year (A: though a female may take its place, being worth more).

The zakat due on 40 head is a two-year-old female that has entered its third year (A: a male will not suffice).

The zakat on 60 head is 2 yearling males. Zakat on additional numbers is figured in the same way: on 30 head, a yearling male, and on 40 head, a two-year-old female (N: according to which of the two alternatives accommodates the last 10 head (dis:h2.6)).

## ZAKAT ON SHEEP AND GOATS

**h2.5** For sheep or goats (n: the Arabic ghanam meaning both), the minimum on which zakat is payable is 40, on which it is obligatory to pay a shah, meaning either a one-year-old sheep (O: in its second year) or a two-year-old goat (O: in its third year). The zakat on 121 sheep or goats is 2 shahs on 201 sheep or goats is 3, on 400 sheep or goats is 4 and for every additional 100 the zakat is 1 shah.

## CALCULATING THE NUMBER OF ANIMALS

**h2.6** Numbers (O: of camels, cattle or sheep) which are between zakat quantities (N: i.e. which number more than the last relevant zakat quantity but do not amount to the next highest one) are not counted, and no zakat is due on them.

**h2.7** New offspring of a zakat-payable quantity of livestock that are born during the year are counted for the zakat of the year their mothers are currently in, no matter whether their mothers survive or die. Thus, if one owned 40 sheep or goats which gave birth to 40 young a month before the year's end, but then the 40 mothers died, one's zakat on the offspring would be 1 shah.

**h2.9** If a group of livestock are all female, or are both male and female, then only a female animal may be paid as zakat, except as mentioned above (h2.4) for 30 cattle, where a yearling male is acceptable.

**h2.10** If a group of livestock are all male, then a male animal may be paid as zakat.

**h2.11** If all the livestock are below the minimum age that may be given as zakat (def: h2.4-5), then one of them is given anyway. But if the herd is mixed, with only some of them underage, then only an animal of the acceptable age may be paid.

**h2.12** If the animals of the herd are defective, an animal is taken which is of the average defectiveness (O: of the group, defective meaning with defects that permit return for refund when sold as merchandise (def: k5.3)).

**h2.13** If the herd is composite, such as sheep and goats, then either kind may be paid as zakat, though the value of the animal given must correspond to the average value of the members of the herd.

**h2.14** The following are not taken as zakat unless the owner wishes to give them:

- (1) a pregnant female (O: because of its superiority);
- (2) one that has given birth (O: because of the high yield of milk);
- (3) a stud (O: as it is for insemination, and the owner would suffer its loss);
- (4) a superior quality animal;

(5) or one fattened for eating.

## ZAKAT ON JOINTLY OWNED PROPERTY OR VENTURES WITH SHARED FACILITIES

h2.15 Two people pay zakat jointly as a single person if:

(1) they jointly own a zakat-payable amount of livestock or something else (O: such as fruit, grain, money, or trade goods), as when two people inherit it;

(2) or when the property is not jointly owned, as when each owner has, for example, 20 head of cattle (N: of a herd amounting to the zakat minimum of 40), but they share the same place to bed them down, to gather them before grazing, to pasture, water, or milk them, or share the same stud, employ the same shepherd, or similar, such as having the same watchman (O: for orchards and fields), the same drying or threshing floor (O: for fruit or grain), the same store, or the same warehouse.

## h3.0 ZAKAT ON CROPS

h3.1 (N: The rulings of this section apply to the farmers who raise the crops. As for those who buy agricultural produce with the intention to sell it, their produce is no longer considered as crops are, but is rather a type of trade goods, and the zakat on it must be paid accordingly (def; h5).)

h3.2 There is no zakat on grains or legumes except the staple types that people cultivate, dry, and store, such as wheat, barley, millet, rice, lentils, chickpeas, broad beans, grass peas, and Sana'i wheat.

There is no zakat on fruit except for raw dates and grapes (O: the zakat on grapes being taken in raisins, and on dates, in cured dates). There is no zakat on vegetables. Nor is there zakat on seasonings such as cumin or coriander (O: since the aim in using them is preparation of food, not nourishment).

h3.3 One is obliged to pay zakat as soon as one possesses the zakat-payable amount (def: below) of grain, or when the ripeness and wholeness of a zakat-payable amount of dates or grapes is apparent. Otherwise, one is not obliged.

## THE ZAKAT-PAYABLE AMOUNT OF CROPS

h3.4 The minimal quantity on which zakat is payable for crops is 609.84 kilograms of net dried weight, free of husks or chaff, though for rice and Sana'i wheat, which are stored in the kernal, the zakat minimum, including husks, is 1219.68 kilograms of dried weight.

Zakat is not taken from grain until it has been winnowed (O: made free of straw), nor from fruits until they are dried (n: made into raisins and dates).

The produce for the entire year (N: i.e the agricultural year) is added together in calculating the zakat minimum (N: when, for example, the season's first crop alone is less than the zakat minimum). When one crop is harvested after another—due to varietal differences or the location of the two fields—in the same year, and of the same kind of crop (n: such as spring wheat and winter wheat), zakat is payed from them as if they were a single quantity. Different varieties of grain are also calculated additively when harvested at the same time, though the fruit or grain of a different year.

Grapes are not calculated cumulatively with dates, nor wheat with barley (O: as they are different from one another).

h3.5 The zakat for crops that have been watered without effort, as by rain and the like, is 10 percent of the crop (N: i.e of the net dried storage weight of the grain, raisins, or dates). The zakat for crops that have been watered with effort such as on land irrigated by ditches (O: or a waterwheel) is 5 percent of the crop.

If a crop has been raised without irrigation for part of the year and irrigated for part of it, then the zakat is adjusted (O: according to the period, meaning how much of the time the fruit or crops were growing). (N: It is more reliable to consult agricultural experts as to how much of the crop's water came from rain and how much came from irrigation. If 50 percent of the water came from each, for

example, one would pay 7.5 percent of the crop as zakat, as this is the mean between the above two percentages.)

**h3.6** After one has paid zakat once on a crop (N: if one is the farmer), there is nothing further due on it (O: as there is no repetition of zakat on one's crops when they are in storage, unlike the repetition of it on money), even if it remains in one's possession for years.

**h3.7** It is unlawful for the grower to consume dates or grapes or otherwise dispose of them or sell them before they have been assessed (O: i.e estimated as to how much there is, and the owner made responsible for the portion to be paid as zakat), and if he does, he is responsible for the loss (O: since part of it belongs to the poor (dis:h1.9)).

**h3.9** If an act of God destroys the fruit after assessment, there is no zakat on it.

#### **H4.0 ZAKAT ON GOLD, SILVER, AND OTHER MONEY**

**h4.1** Zakat is obligatory for anyone who has possessed the zakat-payable amount of gold or silver for one year.

#### **THE ZAKAT-PAYABLE AMOUNTS OF GOLD, SILVER, AND OTHER MONEY**

**h4.2** The zakat-payable minimum for gold is 84.7 grams, on which 2.1175 grams (2.5 percent) is due. The zakat-payable minimum for silver is 592.9 grams, on which 148225 grams (2.5 percent) is due. There is no zakat on less than this.

(N: One must pay zakat (n: 2.5 percent) on all money that has been saved for a year if it equals at least the market value of 592.9 grams of silver (n:that is current during the year). While there is a considerable difference between the value of the gold zakat minimum and the silver zakat minimum, the minimum for monetary currency should correspond to that of silver, since it is better for the poor.)

**h4.3** Zakat is exacted proportionately (2.5 percent) on any amount over these minimums, whether the gold or silver is in coins, ingots, jewelry prepared for uses that are unlawful or offensive (dis:f17.6,8,11), or articles which are permanent acquisitions.

**h4.4** There is no zakat on (n: gold or silver) jewelry that is for permissible use.

#### **h5.0 ZAKAT ON TRADE GOODS**

**h5.1** A zakat of 2.5 percent (O: like that of gold and silver as merchandise is assessed according to its value in them) is obligatory for anyone who:

(a) has possessed trade goods for a year (N: whether the merchandise itself remains, or whether there is sale and replacement, as below at h5.4-5);

(b) whose value (n: at the zakat year's end, as at h5.3) equals or exceeds the zakat minimum (N: 592.9 grams of silver if bought with monetary currency or silver, and 84.7 grams of gold if bought with gold, these being reckoned according to the values of silver and gold existing during the year); provided:

(c) that the trade goods have been acquired through a transaction (O: such as a purchase, or acquired by a woman as her marriage payment (Mahr, def:m8), or received as a gift given in return for something else (dis:k31.4), or such as articles rented from someone in order to rent them out to others at a profit, or land rented from someone in order to rent it out to others at a profit);

(d) and that at the time of acquisition, the owner intended to use the goods for trade.

There is no zakat on the trade goods if (non-(c) above) the owner acquired them by estate division (irth, def:L1) or received them as a gift, or if (non-(d)) he acquired them by purchase but at the time did not intend using them for trade.

## THE BEGINNING OF THE ZAKAT YEAR FOR TRADE GOODS

**h5.2** When the owner buys trade goods that cost (N: at least) the gold or silver zakat minimum, the year of the merchandise's possession is considered to have begun at the beginning of the gold or silver's zakat year (N: so that a merchant's zakat is figured yearly on his total business capital and goods).

But the year of the merchandise's possession is considered to have begun at the moment of purchase if:

(1) the owner has bought the merchandise for less than the zakat minimum (O: provided the price of the merchandise plus his remaining money do not amount to the zakat minimum);

(2) or he has bought it (N: in exchange) for nonmonetary goods (N: provided these are not also trade goods, as at h5.4, for if they are, the zakat year continues from the zakat year of the previous goods).

## ESTIMATING WHETHER THE VALUE OF ONE'S TRADE GOODS AMOUNTS TO THE ZAKAT MINIMUM OR NOT

**h5.3** Merchandise is appraised (A: at its current market value) at the end of the zakat year:

(1) in terms of the same type of money that it was purchased with, if bought with money (N: i.e. if purchased with silver or monetary currency, we see if the merchandise's market value at the year's end has reached the silver zakat minimum (def:h5.1(b)); or if with gold, we see if its market value has reached the gold minimum) even if it had been purchased for less than the zakat minimum (N: at the beginning of the year) (O: so that if it has now reached the value of the zakat minimum, one pays zakat on it, and if not, then there is no zakat);

(2) or in terms of its value in local monetary currency, if the merchandise was acquired by other than paying money for it (O: such as in exchange for goods, or acquired by a woman as her marriage payment (mahr), or by a husband in exchange for releasing his wife from marriage (def:n5)). If its value equals the zakat minimum (h5.1(b)), then zakat is paid. But if not, then there is no zakat on it until the end of the next year, when it is reappraised and zakat is paid if its value amounts to the zakat minimum, and so on (N: in the following year).

It is not a condition that the value of the trade goods amount to the zakat minimum except at the end of the year (O: not at the beginning, middle, or during the whole of the year).

**h5.4** If trade goods are exchanged for other trade goods during the course of the year, this does not interrupt their possession (O: because zakat on merchandise is based on the value, and the value of the previous merchandise and the new merchandise is the same, so the year of its possession is not interrupted by merely transferring it from one set of goods to another), though the zakat year of the funds which a professional money changer exchange, for other funds is interrupted by each exchange (N: and he pays no zakat as long as he keeps changing his business capital).

**h5.5** If merchandise is sold during the zakat year at a profit and its price is kept until the end of the year, then zakat on the merchandise's original value is paid at the end of that zakat year, but the zakat on the profit is not paid until the profit has been possessed for a full year.

(n: A second position in the Shafi'i school is that the zakat on the profit is simply paid in the current zakat year of the merchandise, just as one pays zakat on the offspring of livestock (dis:h2.7) in the current year of their mothers (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 1.399).)

## H.6.0 ZAKAT ON MINES AND TREASURE TROVES

**h6.1** A zakat of 2.5 percent is immediately due on:

(a) the zakat minimum or more of gold or silver (def:h4.2) (O: gold or silver excluding anything else, such as iron, lead, crystal, turquoise, cornellian, emerald, antimony, or other, on which there is no zakat);

(b) extracted from a mine (O: i.e. a site at which Allah has created gold or silver) located on land permissible for the miner to work or owned by him;



(c) and that this amount of ore has been gathered by working the site one time, or several times uninterrupted by abandoning or neglecting the project.

The zakat is only paid after the ore is refined into metal.

If the person stops working the site for a justifiable reason, such as to travel (O: not for recreation, but for something such as an illness) or to fix equipment, then he adds (O: the ore collected after the interruption to that collected before, in calculating the zakat minimum).

Ore found on someone else's land belongs to the owner of the land.

## ZAKAT ON TREASURE TROVES

**h6.2** An immediate zakat of 20 percent is due when one finds a treasure trove that was buried in pre-Islamic times (N: or by non-Muslims, ancient or modern) if it amounts to the zakat minimum (def: h4.2) and the land is not owned. If such a treasure is found on owned land, it belongs to the owner of the land. If found in a mosque or street, or if it was buried in Islamic times, it is considered as a lot and found article (def: k27).

## h7.0 THE ZAKAT OF `EID AL-FITR

### WHO MUST PAY IT

**h7.1** The zakat of `Eid al-Fitr is obligatory for every free Muslim, provided:

(a) that one has the necessary amount (O: 2.03 liters of food);

(b) and that on the night before the `Eid and on the ~Eid itself, this is in excess of what one needs to feed oneself and those whom one is obliged to support (def:m12.1), what one needs to clothe them, and in excess of one's debts and housing expenses. If one's excess amounts to only part of the required zakat, one must pay as much of it as one has.

### PAYING THE ZAKAT OF `EID AL-FITR FOR ONE'S DEPENDENTS

**h7.2** Someone obligated to pay the zakat of 'Eid al-Fitr must also pay it for every person he is obliged to support, such as his wife and family (O: e.g. his young son, grandson, father, or mother), if they are Muslim and if he has enough food (O: 2.03 liters per person above his own expenses and theirs), though he is not obliged to pay it for his father's wife when supporting his father because of the father's financial difficulties, even though he is obliged to support her (dis: m12.5).

**h7.3** If one is obligated to pay the zakat of 'Eid al-Fitr but only has enough to pay part of it, then one begins by paying one's own, then that of one's wife, young child, father, mother, and then one's adult son (O: without an income, as when he is chronically ill or insane, for otherwise one is not obligated to support him).

**h7.4** A wealthy woman married to a man too poor to pay her ~Eid al-Fitr zakat is not obliged to pay her own (A: though it is sunna for her to pay this and all forms of zakat to her husband, even if he spends it on her).

**h7.5** The zakat of ~Eid al-Fitr becomes obligatory when the sun sets on the night before the `Eid (n: meaning on the evening of the last day of Ramadan).

### WHAT TYPE OF FOOD MUST BE GIVEN

**h7.6** The zakat of `Eid al-Fitr consists of 2.03 liters of the main staple of the area in which it is given, of the kinds of crops on which zakat is payable (def:h3.2). (A: If the main staple is bread, as in many countries, only wheat may be given, and is what is meant by the expression giving food here and in all texts below dealing with expiations (e.g. j3.22(2)).) (N: The Hanafi school permits paying the poor the wheat's value in money, both here and for expiations.) It is permissible to give the best quality of the staple food of the area, but not to give less than the usual quality (O: such as by giving barley where wheat is the main staple).

**h7.7** It is permissible to give the zakat of `Eid al-Fitr (N: to deserving recipients (dis: h8.26)) anytime

during Ramadan, though the best time is on the day of `Eid al-Fitr before the prayer (def:f19.1). It is not permissible to delay giving it until after the day of the `Eid (O: that is, one may give it until sunset), and is a sin to delay until after this, and one must make it up (N: by paying it late).

## **h8.0 GIVING ZAKAT TO DESERVING RECEIPIENTS**

**h8.1 It is unlawful to delay paying what is due from a zakat-payable amount of property when:**

- (a) it has been possessed for one year;**
- (b) one can find the (O: eight) categories (O: of eligible recipients, or some of them) so as to be able to pay it;**
- (c) and the property is present (O: within 81 km./50 mi.);**

unless one is awaiting a poor person more deserving than those present, such as relative (O: of the person paying zakat whom he is not obliged to support), a neighbor, or a more righteous or needy person (O: than those present. Under these circumstances it is not unlawful to delay giving it because there is an excuse, unless withholding it involves considerable harm for those present).

## **PAYING ZAKAT IN ADVANCE**

**h8.2 Zakat, on all types of property that a year's possession of the zakat minimum makes giving obligatory, may be payed for the current year (A: alone) before the year's end whenever the property owner possesses the zakat minimum.**

**This zakat in advance is considered valid only when the year ends and:**

- (a) the recipient is still among the types eligible for zakat (O: meaning, for example, that his state has not changed from poverty to wealth);**
- (b) the zakat giver is still obligated to pay it;**
- (c) and the property is still as it was (O: i.e. the zakat minimum still exists and has not been destroyed or sold). The zakat in advance is not valid if (N: before the end of the year):**
  - (1) (non-(a) above) the poor person who accepted it dies, or becomes financially independent for some other reason than having accepted the zakat;**
  - (2) (non-(b)) the giver dies;**
  - (3) or (non-(c)) the property diminishes to less than the zakat minimum by more than the amount given in advance (O: such as when the giver takes out 5 dirhams as zakat in advance from 200 dirhams, but his holdings are subsequently reduced by 10 (N: to 190 dirhams, which is less than the zakat minimum)), even when this reduction is because of sale.**

When the zakat in advance is not valid, the giver may take it back if he has explained that the money has been given in advance (O: by merely having said, "This is my zakat in advance," or if the recipient knows it). If what was given as zakat still exists, the recipient gives it back together with any increment organically connected with it, such as additional weight gained by a head of livestock while in the recipient's possession. But the property owner is not entitled to take back an increment that is not organically connected to the zakat, such as its offspring (O: born from the animal while in the recipient's possession).

If the zakat given in advance no longer exists, then the giver is entitled to take back a substitute (O: whether it be the substitute for a commodity that is fungible (mithli, def: k20.3 (1)), such as silver dirhams, or whether for a nonfungible (mutaqawwim) commodity such as sheep or goats, in which case its price is the market value at the time the zakat in advance was accepted, not the time it ceased to exist). After the return of the zakat in advance, the zakat giver pays the zakat from his wealth again if he is still obliged to.

The zakat in advance that is paid from the zakat-payable amount (nisab) is considered as if still part of the giver's property (O: only in respect to calculating whether the giver's total property equals the zakat-payable amount. It is not actually considered as still belonging to the zakat giver, since the recipient is entitled to dispose of it by sale or otherwise while it is in his possession). Thus, if the zakat giver paid a sheep in advance as zakat on 120 head, and one of the sheep then gave birth to a new lamb, the giver would now be obliged to pay another sheep (O: it being as if he owns the (N: next highest) zakat-payable amount of 121 head (dis:h2.5)).

#### AUTHORIZING ANOTHER TO DISTRIBUTE ONE'S ZAKAT

**h8.3** It is permissible for the zakat giver to personally distribute his zakat to eligible recipients or to authorize an agent (wakil, def:k17) to do so.

It is permissible for the zakat giver to pay his zakat to the imam (A: i.e. the caliph (o25) or his representative), and this is superior unless the imam is unjust, in which case it is better to distribute it oneself.

#### THE PRAYER OF THE RECIPIENT FOR THE ZAKAT GIVER

**h8.4** It is recommended for the poor person (O: receiving zakat when the owner is distributing it) or the agent assigned to deliver the zakat to recipients (N: if the imam has gathered it by means of agents to distribute to the poor) to supplicate for the giver, saying, "May Allah reward you for what you have given, bless you in what you have retained, and purify it for you."

#### THE INTENTION OF ZAKAT

**h8.5** Making the intention of zakat is a necessary condition for the validity of giving it. The intention is made when zakat is paid to the poor person or the one being authorized to distribute it, and one must intend giving it as the zakat of one's property. (O: It is permissible to make the intention before paying the money.) When the owner has made this intention, it is not necessary that the agent distributing it also make an intention before giving it (O: because the owner's intention is sufficient, whether the agent is an ordinary individual or is the ruler. It is also permissible for the owner to authorize an agent to both make the intention and distribute the zakat).

**h8.6** It is recommended that the imam dispatch a zakat worker, (O: to collect zakat funds from those obliged to pay, to make this easier for them. Such an agent must be) an upright Muslim (def: o24.4) who knows the rulings of zakat, and who is not of the Hashimi or Muttalibi clans of Quraysh.

#### THE EIGHT CATEGORIES OF RECIPIENTS

**h8.7** It is obligatory to distribute one's zakat among eight categories of recipients (O: meaning that zakat goes to none besides them), one-eighth of the zakat to each category. (n: In the Hanafi school, it is valid for the giver to distribute his zakat to all of the categories, some of them, or to confine himself to just one of them (al-Lubab fi sharh al-Kitab(y88), 1.155).)

#### THE POOR

**h8.8** The first category is the poor, meaning someone who:

(a) do not have enough to suffice himself (O: such as not having any wealth at all, or having some, but (N: he is unable to earn any, and) what he has is insufficient to sustain him to the end of his probable life expectancy if it were distributed over the probable amount of remaining time; insufficient meaning it is less than half of what he needs. If he requires ten dirhams a day, for example but the amount he has when divided by the time left in his probable life expectancy is four dirhams a day or less, not paying for his food, clothing, housing, and whatever he cannot do without, to a degree suitable (dis:f4.5) to someone of his standing without extravagance or penury, then he is poor - all of which applies as well to the needs of those he must support (def;m12.1).) (N: A mechanic's tools or scholar's books are not sold or considered part of his money, since he needs them to earn a living);

(b) and is either:

(1) unable to earn his living by work suitable to him (O: such as a noble profession befitting him (N: given his health and social position), as opposed to work unbefitting him, which is considered the same as not having any. If such an individual were an important personage unaccustomed to earning a living by physical labor, he would be considered "poor". This also includes being able to do work suitable to one, but not finding someone to employ one);

(2) or is able to earn his living, but to do so would keep him too busy to engage in attaining knowledge of Sacred Law. (n: Nawawi notes, "If able to earn a living at work befitting him except that he is engaged in attaining knowledge of some subject in Sacred Law such that turning to earning a living would prevent the acquisition of this knowledge (dis: w36), then it is permissible for him to take zakat because the attainment of knowledge is a communal obligation, though zakat is not lawful for someone able to earn a living who cannot acquire knowledge, even if he lives at a school. What we have just mentioned is the most correct and well known position. Darami mentions three positions concerning someone engaged in attaining religious knowledge:

-that he deserves charity even when able to earn a living;

-that he does not deserve it;

and that if he is an outstanding student who can be expected to develop a good comprehension of the Sacred Law and benefit the Muslims thereby, then he deserves charity, but if not, then he does not.

"Darami mentioned this in the chapter of "Voluntary Charity" (al-Majmu' (y108), 6, 190-91).)

But if one's religious devotions are what keeps one too busy to earn a living one is not considered poor.

**h8.9** Someone separated from his money by at least 81 km/50 mi is eligible for zakat. (N: This was in the past. In our day it is fitter to say that he must be far from his money in terms of common acknowledgement (def: f4.5).) (O: Such a person's absent property is as if nonexistent, and his "poverty" continues until the money is present. Likewise, someone owed money on a debt not yet due who does not have any other money is given zakat when it is distributed (N: to suffice him) until the debt becomes due.)

**h8.10** People whose needs are met by the expenditures of those who are obliged to support them such as their husbands or families are not given zakat (N: for poverty) (O: though it is permissible for a third party to give zakat to such a dependent by virtue of the dependent's belonging to some category other than the poor or those short of money (def: below), as when the person belongs to a category such as travellers needing money (h8.18) or those whose hearts are to be reconciled (h8.14)).

## THOSE SHORT OF MONEY

**h8.11** The second category is people short of money, meaning someone who has something to spend for his needs but it is not enough, as when he needs five dirhams, but he only has three or four. The considerations applicable to the poor person also apply to someone short of money (O: namely, that he is given zakat if he cannot earn a living by work befitting him (def: h8.8(b)), or if he can earn a living but attainment of knowledge of Sacred Law prevents his doing so; though if he is able to earn a living but extra devotions prevent him from doing so, then he may not take zakat).

## HOW MUCH THE POOR ARE GIVEN

**h8.12** A person who is poor or short of money is given as much as needed of tools and materials (O: if he has a trade, such as the tools of a carpenter) with which he can earn a living, or property with which he can engage in trade (O: if a merchant), each according to the demands of his profession. This amount varies, depending on whether, for example, he is a jeweller, clothier, grocer, or other.

If the recipient has no trade (O: i.e. is unable to do any work, whether for wages, by trading, or other), then he is given enough zakat to fulfill his needs from the present till the end of his probable life expectancy (O: based on (N: the average lifespan for someone like him in) that locality). Another position is that such a person is given enough for just one year.

These measures are obligatory when abundant zakat funds are available, whether the imam distributes them or a property owner. But if there is not much zakat available (O: meaning if the owner or imam distributes funds that are too little to last the poor person for his probable life expectancy or for

even one year), it is distributed as is, an eighth to each category.

## ZAKAT WORKERS

**h8.13** The third category consists of zakat workers, the above-mentioned agents (h8.6) dispatched by the imam. These include the person collecting it, the clerk (O: recording what the owners give), the person who matches the payees to recipients, and the one who distributes it to recipients.

The zakat workers receive an eighth of the zakat funds. If this amount is more than it would cost to hire someone to do their job, then they return the excess for distribution to the other categories of recipients. But if less (N: than the cost of hiring someone), then enough is taken from the zakat funds to make up the difference. All of this applies only if the imam (A: caliph) is distributing the zakat (O: and has not allotted a fee to the zakat workers from the Muslim common fund (bayt al-mal)). If the property owner is distributing the zakat (O: or if the imam has allotted the workers a fee from the common fund) then the zakat funds are divided solely among the other categories of recipients.

## THOSE WHOSE HEARTS ARE TO BE RECONCILED

**h8.14** The fourth category is those whose hearts are to be reconciled. If they are non-Muslims, they are not given zakat, but if Muslims, then they may be given it (O: so that their certainty may increase, or if they are recent converts to Islam and are alienated from their kin).

Those to be reconciled include:

(1) the chief personages of a people (O: with weak Islamic intentions) whose Islam may be expected to improve, or whose peers may be expected to enter Islam;

(2) or the heads of a people who collect zakat for us from Muslims living near them who refuse to pay it, or who fight an enemy for us at considerable expense and trouble to themselves.

## THOSE PURCHASING THEIR FREEDOM

**h8.15** The fifth category is slaves who are purchasing their freedom from their owners. They are given enough to do so if they do not have the means.

## THOSE IN DEBT

**h8.16** The sixth category is those who have debts (O: and they are of three types):

(1) A person who incurs debts in order to settle trouble (O: between two people, parties, or tribes) involving bloodshed (O: as when there has been a killing but it is not known who the killer is, and trouble has arisen between the two sides) or to settle trouble concerning property (O: such as bearing the expense when trouble occurs over it) is given zakat even if he is affluent.

(2) A person who incurs debts to support himself or his dependents is given zakat if he is poor, but not if affluent. If he incurs a debt (O: for something lawful) but spends it on something unlawful, and then repents (O: and is felt to be sincere in this, and the original reason is known to have been something lawful), then he is given zakat.

(3) (O: And a third type, not mentioned by the author, which (n: given persons P,Q, and R ) is when R incurs a debt by guaranteeing (daman, def; k15) to P that Q will pay P (n: what Q owes him). If R finds that neither he nor Q can pay, then R is given zakat (n: because he has gone into debt in order to guarantee Q's debt), even if the reason R agreed to guarantee Q was not charity (N: but was rather that Q would pay him back).)

## THOSE FIGHTING FOR ALLAH

**h8.17** The seventh category is those fighting for Allah, meaning people engaged in Islamic military operations for whom no salary has been allotted in the army roster (O: but who are volunteers for jihad without remuneration). They are given enough to suffice them for the operation, even if affluent; of weapons, mounts, clothing, and expenses (O: for the duration of the journey, round trip, and the time they spend there, even if prolonged. Though nothing has been mentioned here of the expense involved

in supporting such people's families during this period, it seems clear that they should also be given it).

## TRAVELLERS NEEDING MONEY

**h8.18** The eighth category is the traveller in need of money, meaning one who is passing among us (O: i.e. through a town in Muslim lands where zakat is collected), or whose journey was not undertaken for the purpose of disobeying Allah. If such a person is in need, he is given enough to cover his personal expenses and transportation, even if he possesses money back home.

## PAYING ZAKAT TO RECIPIENTS

**h8.19** A person who qualifies as a member of two or more of the above categories is only given zakat for one of them.

**h8.20** When the (N: eight) categories of recipients exist in the town where zakat is collected, it is unlawful and invalid to give it to recipients elsewhere (O: as it must be paid to those present if the property owner is distributing his own zakat. The other schools of jurisprudence permit giving it elsewhere). But if the imam (A: caliph) is distributing the zakat, he may give it to recipients in a different place.

If the zakat giver's property is in the desert, or none of the eight categories of eligible zakat recipients exist in his own town, then the zakat should be distributed in the nearest town.

**h8.21** Each category of recipients must receive an equal share, one-eighth of the total (dis:h8.7(n:)) (A: though one may give various individuals within a particular category more or less), except for zakat workers, who receive only their due wage (def:h8.13).

If one of the categories does not exist in one's town, their eighth is distributed over the other categories such that each of them gets oneseventh. If two categories of recipients do not exist in the town, then each of the remaining categories receive a sixth of the zakat, and so on (O: such that if there were only one category in town, all the zakat would be paid to it).

It is obligatory to give zakat to every individual member of a category if the owner is distributing zakat and the individuals are of a limited, known number, or if the imam is distributing zakat and it is possible to give it out person by person and include them all because of the abundance of funds.

If the owner is distributing zakat and the recipients in each category are not of a limited, known number, then the fewest permissible for him to give to in one category of zakat workers, in which a single person is enough.

**h8.22** It is recommended to give one's zakat to relatives other than those one is obliged to support (def: m12.1).

**h8.23** It is recommended to distribute zakat to recipients in proportion to their needs, giving someone who needs 100 dirhams, for example, half of what one gives to someone who needs 200.

**h8.24** It is not permissible to give zakat to a non-Muslim, or to someone whom one is obliged to support (def: m12.1), such as a wife or family member.

**h8.25** It is not valid for one to give zakat to a poor person on condition that he return it to one to pay off a debt he owes, or to tell the recipient, "O hereby make the money you owe me zakat, so keep it for yourself." But it is permissible:

- (1) for the giver to pay his zakat (O: to a poor person who owes him money) when the giver's intention is that the recipient should pay him back with it;
- (2) for the zakat giver to tell the poor person, "Pay me the money you owe me so that I can give it to you as zakat";
- (3) or for the poor person to tell his creditor, "Give me (O: zakat) so that I can pay it back to you (O: for the debt I owe you)"; though it is not obligatory to fulfill these promises (O: meaning the outcomes alluded to in (2) and (3) above).

**h8.26** All of the above rulings concerning zakat (h8.2-25) apply to the zakat of 'Eid al-Fitr (def; h7) (O:

in details, in giving it to deserving recipients (N: the eight categories described in this section), and in giving it in advance). It is permissible for a group of people to pool their zakat of `Eid al-Fitr, mix it, and collectively distribute it, or for one of them to distribute it with the others permission. (O: The author mentions this to inform people that anyone can distribute their zakat of `Eid al-Fitr to all categories of recipients, no matter how little it is.)

## **h9.0 VOLUNTARY CHARITY**

**h9.1** Giving voluntary charity is recommended at all times; especially during Ramadan, before praying for something one needs, (O: when there is an eclipse, illness, or journey,) and at all noble times and places (O: e.g. times such as the first ten days of Dhul Hijja or the days of `Eid and places such as Mecca or Medina).

**h9.2** It is superior to give charity to righteous people (O: meaning those who give Allah and His slaves their due), to one's relatives (A: which is better than giving to the righteous), even those of them who are one's enemies (A: and this is better than giving to one's friends among them), and to give from the best of one's wealth (O: meaning that which is lawful, which is better than giving what is from a doubtful source, or giving what is of poor quality, either of which are offensive to give as charity. It is unlawful to give property that has been unlawfully obtained (N: if one knows its rightful owner. If not, one must give it as charity (A: or taxes (def: p32) to remove it from one's possession)).

**h9.3** It is unlawful to give as charity money needed to support one's dependents or needed to pay a debt that is currently due (O: because supporting one's dependents or paying a current debt are obligatory, and obligatory acts take precedence over recommended ones).

**h9.4** It is recommended to give away in charity everything one owns that is in excess (O: of personal expenses and the expenses of those one is obliged to support), provided one can be patient with the resultant poverty. (O: But if one cannot be patient, it is offensive to give away what is in excess of one's needs.)

**h9.5** It is offensive to ask for anything besides paradise with the words "For the sake [lit. "By the countenance (O: i.e. entity)"] of Allah," though if someone does, it is offensive not to give to him.

**h9.6** It is unlawful to remind a recipient of charity that one has given him (mann, dis:p36), and it eliminates the reward.

**h9.7** (O: It is permissible to give charity to a person not in need, or to a relative of the Prophet (Allah bless him and give him peace). It is offensive for a person not in need to accept charity, and preferable that he avoid it. It is unlawful for such a person to accept it if he pretends to be needy, and is unlawful for him to ask for charity.

It is permissible to give charity to a non-Muslim (n: but not zakat, as above at h8.24).  
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## **BOOK I FASTING**

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## **i1.0 FASTING RAMADAN**

(O: The month of the fast is the best of months, and it is one of the distinctive features of this Community (Umma); that is, as now practiced, a fact not contradicted by the word of Allah Most High,

"Fasting is prescribed for you, as it was prescribed for those before you" (Koran2:183), the resemblance interpreted as referring to fasting without other qualification, not to its amount and time. Fasting Ramadan is one of the pillars of Islam (def: u2) by scholarly consensus (ijma'). Bukhari and Muslim relate that the Prophet (Allah bless him and give him peace) said,

"Islam is built upon five: testifying there is no god but Allah and that Muhammad is the messenger of Allah, performing the prayer, giving zakat, making the pilgrimage to the House [Kaaba], and fasting Ramadan.")

### **WHO MUST FAST RAMADAN**

i1.1 Fasting Ramadan is obligatory for:

- (a) every Muslim (O: male or female) who:
- (b) has reached puberty;
- (c) is sane;
- (d) is capable of bearing the fast;
- (e) and if female, is not in the period of menstruation or postnatal bleeding (nifas).

### **THOSE NOT OBLIGED TO FAST RAMADAN**

i1.2 The following are not required to fast:



- (1) (non-(a) above) a non-Muslim (O: meaning that we do not ask him to, nor would it be valid if he did (N: though he is punished in the next life for not doing so));
- (2) (non-(b)) a child;
- (3) (non-(c)) someone insane;
- (4) or (non-(d)) someone whom fasting exhausts because of advanced years or having an illness from which he is unlikely to recover.

None of the above-mentioned is obliged to fast or to make up missed fast-days, though someone who misses a fast because of (4) above must give 0.51 liters of food (def: h7.6 (A)) for each fast-day he misses.

il.3 The following are not required to fast, though they are obliged to make up fast-days missed (A:making up, according to our school, meaning that one fasts a single day for each obligatory fast-day missed):

- (1) those who are ill (N: the illness that permits not fasting being that which fasting would worsen, delay recovery from, or cause one considerable harm with; the same dispensation applying to someone who needs to take medicine during the day that breaks the fast and that he can not delay taking until night);
- (2) those who are travelling (def:i1.7);
- (3) a person who has left Islam (murtadd, def:o8);
- (4) or a woman who is in her menses or period of postnatal bleeding.

If the ill person or traveller take it upon themselves to fast, it is valid, though a fast by someone who has left Islam, or a woman in menstruation or period of postnatal bleeding is not valid.

When not fasting on a day of Ramadan, if a non-Muslim becomes a Muslim, an insane person regains his sanity, or a child reaches puberty, it is recommended but not obligatory that they fast the rest of that day and make up the fast later. A child who reaches puberty while fasting on a day of Ramadan is obliged to fast the rest of the day, and is recommended to make it up.

A woman whose period ends during a day of Ramadan is recommended to fast the rest of the day is obliged to make up the fast (O: and the fast-days prior to it missed during her period or postnatal bleeding).

i1.4 If the testimony of a witness (O: that the new moon has been seen during the previous night) is made during a day (N: that was initially) uncertain as to whether it was the first of Ramadan, then it is obligatory (O: for people) to fast the rest of the day and to make it up later.

i1.5 A child of seven is ordered to fast, and at ten is beaten for not fasting (N: with the reservations mentioned at f1.2).

i1.6 Excessive hunger or thirst, meaning likely to cause death or illness, are legitimate excuses not to fast, even when they occur on a day one has already begun to fast, as soon as the fast becomes a hardship.

i1.7 It is permissible not to fast when travelling, even when the intention to fast has been made the night before, provided that the journey is at least 81 km./50 mi one way, and that one leaves town (def:f15.6) before dawn. If one leaves after dawn, one is not entitled to omit the fast. It is preferable for travellers not to fast if fasting would harm them, though if not, then fasting is better.

i1.8 A woman who is breast-feeding a baby or is pregnant and apprehends harm to herself or her child may omit the fast and make it up later, though if she omits it because of fear (A: of harm) for the child alone (O: not for herself) then she must give 0.51 liters of food (def:h7.6(A:)) in charity for each day missed, as an expiation (A: in addition to making up each day).

## SIGHTING THE NEW MOON

i1.9 Fasting Ramadan is only obligatory when the new moon of Ramadan is sighted (O: i.e in respect to the person who sees it, though for those who do not see it, it only becomes obligatory when the sighting is established by the testimony of an upright witness (def:o24.4)). If it is too overcast to be seen,

then (n: the preceding lunar month of) Sha'ban is presumed to last for thirty days, after which people begin fasting Ramadan. If the new moon is sighted during the day (O: before noon on the last of the thirty days), it is considered as belonging to the following night (O: and the ruling for that day does not change).

If the moon is seen in one city but not another, then if the two are close (O: i.e. in the same region), the ruling (n: that the new month has come) holds for both. But if the two are not close, then not (O: i.e. the people far from the place where it was seen are not obliged to fast), not close meaning in different regions, such as the Hijaz, Iraq, and Egypt.

i1.10 The testimony of a single witness (N: that the new moon has been seen) is sufficient to establish that the month of Ramadan has come, provided the witness is upright (Def o24.4), male, and responsible for the duties of Islam (O: which excludes boys who have reached the age of discernment but not puberty).

i1.11 If a person knows by calculations of lunar movements or the positions of the stars that the next day is Ramadan, fasting is nevertheless not obligatory (O: for him or the public), though it is permissible for him alone.

i1.12 If it is difficult to learn which month it is, for someone imprisoned or the like (O: such as someone being held in a dark place who cannot tell night from day, or someone who does not know when Ramadan has come because of being in a land without habitations or people who know when it is), then such a person is obliged to reckon Ramadan as best he can and to fast it. Such a fast is valid if it remains unknown as to whether the month fasted actually coincided with Ramadan, or if it did coincide with it, or if the month fasted occurred after it, though if the month fasted was before Ramadan, it is not valid.

## THE CONDITIONS OF A VALID FAST

i1.13 The conditions of a valid fast are:

- (a) the intention;
- (b) and refraining from things which break the fast.

## THE INTENTION

i1.14 One must make the intention to fast for each day one fasts. If the intended fast is obligatory, then the intention must:

- (a) be specific (O: as to the fast being for Ramadan, a vow, an expiation, or whatever);
- (b) and be made in the night prior to dawn. (n: For Hanafis, the intention for a day of Ramadan (but not a makeup) is valid if made before midway between true dawn and sunset of the day itself (al-Hadiyya al-'Ala'iyya (y4), 171).)

The optimal way is to intend (O: in one's heart) to fast the following day as a current performance of the obligation of Ramadan in the present year for Allah Most High (O: fast and of Ramadan being unanimously considered as integral to the intention, though scholars differ concerning the obligatoriness of intending it as a current performance, an obligation, or for Allah Most High).

i1.15 One's intention is valid if on the night before a day of uncertainty (N: as to whether it will be the first day of Ramadan), someone one trusts but who does not have all the qualifications of an acceptable witness (def:i1.10) informs one of having seen the new moon, and relying on this information one intends to fast the next day to fulfill the obligation of Ramadan. and the next day turns out to be Ramadan. But one's fast is not valid if one makes the intention without anyone having informed one of sighting the new moon, no matter whether if one's intention is firm or whether undecided, as when one intends that if the following day is Ramadan, one will fast, but if not, one will not.

i1.16 One's fast is valid if on the night before 30 Ramadan, one intends that if the following day is of Ramadan, one will fast, but if not, one will not, and then the next day is of Ramadan (O: since it already

is Ramadan and the initial presumption is that it will remain so (dis:e7.6(A:)).

i1.17 Nonobligatory fasts are valid by merely making the intention to fast before noon (O: without needing to specify the type of fast).

#### THINGS WHICH INVALIDATE THE FAST

i1.18 Each of the following things invalidates the day's fast when one knows they are unlawful (A: during an obligatory fast) and remembers one is fasting (A: but does them deliberately anyway); and they obligate one to both make up the fast-day later and fast the remainder of that day:

- (1) eating;
- (2) drinking (N: and smoking (A: though not if there is some smoke in the air that one unintentionally inhales));
- (3) taking snuff (O: up the nose that reaches the sinuses, a ruling likewise applicable to oil or water preparation);
- (4) suppositories(O: vaginal or anal);
- (5) pouring (O: water, oil, or other) into the ears until it reaches the eardrum;
- (6) inserting a finger or something else into the anus or vagina further than the area disclosed when one squats(O: to relieve oneself);
- (7) anything that enters the body cavity, whether stabbed into it (O: such as a knife or spear thrust which penetrates it) or whether medicine (N: though intramuscular or intravenous injections of medicine do not break one's fast);
- (8) vomiting (N: if it is deliberate and one is able to prevent it, though if nausea overcomes one, vomiting does not break one's fast.
- (9) sexual intercourse (O: if deliberate, even if there is no orgasm), or orgasm from stroking a nongenital region or from masturbation (O: no matter whether such orgasm is produced by unlawful means, like one's own hand (dis:w37), or whether by lawful means, such as the hand of one's wife);
- (10) using so much water to rinse out the nose and mouth that some reaches the stomach (O: i.e. if any reaches the body cavity because of using an abundance of water, it breaks the fast, though if some water slips down when an abundance has not been used, it does not break it. Nor does it harm to swallow one's saliva after rinsing the mouth out, even if able to expectorate it);
- (11) swallowing saliva that has left the mouth, such as when threading a needle and one moistens the end of the thread, and then remoistens it, swallowing some of the saliva that the thread had been previously wetted with;
- (12) swallowing saliva that has been qualitatively altered, such as when threading a needle and one wets the end, and some dye from the thread remains in the mouth and is swallowed (A: so people who use toothpaste should take care to eliminate it from the mouth before dawn on fastdays);
- (13) swallowing saliva that has been made impure by contact with filth (najasa), such as when one's mouth is bloodied and one spits out the saliva until it is clear and colorless, but neglects to wash one's mouth out (O: before swallowing the saliva, which breaks the fast because the mouth is still affected by impurity (n: and water is necessary to purify it, as at e14.10));
- (14) allowing phlegm or mucus at the back of the mouth to be swallowed when one could have spit them out (n: though in the Hanafi school this does not break the fast, even if intentional (al-Hadiyya al-`Ala'yya (y4), 180));
- (15) or to continue making love, even for a moment, after dawn has arrived.

#### THE CRITERION FOR THINGS WHICH INVALIDATE THE FAST

i1.19 The criterion as to whether something invalidates the fast is (N: whether it comes under any one of three headings):

- (1) a substance, even if not much, that reaches the body cavity through an open passageway (O: substance excluding odors, and open excluding anything else, such as absorption through pores). (N: The deliberate introduction of anything besides air or saliva into the body cavity breaks the fast, though if the person fasting does so absentmindedly or under compulsion, it does not break it);
  - (2) sexual intercourse (O: meaning inserting the head of the penis into the vagina);
  - (3) or orgasm, whether as the result of touching (O: such as kissing, contact, lying between the thighs, or something else), or because of masturbation;
- provided that one is aware that these acts are unlawful and that one remembers one is fasting (N: and provided they are done deliberately and voluntarily).

## THE EXPIATION FOR VITIATING A FAST-DAY BY SEXUAL INTERCOURSE

i1.20 In addition to making up the fast, an expiation is obligatory for fast-days of Ramadan that are (A: deliberately) vitiated by sexual intercourse. (O: The legal occasion of the offense is the particular day of fasting, so that if it were committed on two separate days, two separate expiations would be necessary, though if it were committed twice in one day there would be only one expiation.)

The expiation consists of freeing a sound Muslim slave (dis:k32), or if not possible, then to fast the days of two consecutive months. (A: In our school the expiation is only for sexual intercourse, though the Hanafis hold it is obligatory for vitiating the fast for other reasons as well.) If this is not possible, then the expiation is to feed sixty unfortunates (N:0.51 liters of food (def: h7.6 (A:)) to each unfortunate). If one is unable to do this, the expiation remains as an unperformed obligation upon the person concerned.

The woman who is made love to is not obliged to expiate it.

## THINGS THAT DO NOT BREAK THE FAST

i1.21 The fast remains valid if any of the things which break it are done absentmindedly (O: not remembering the fast), out of ignorance (O: that doing the things which break the fast are unlawful, whether this is due to being a new Muslim, or to being born and raised far from Islamic scholars), or under compulsion. Not is it broken by:

- (1) involuntary vomiting;
- (2) having a wet dream, or orgasm as a result of thinking or looking at something (A: unless the latter two usually cause orgasm, in which case one has broken one's fast by not avoiding them);
- (3) some water reaching the body cavity as a result of rinsing out the mouth or nose, provided not much (def: f4.5) water was used;
- (4) saliva carrying down some food particles from between one's teeth, provided this is after having cleaned between them (O: after eating, by using a toothpick or the like between them), if one is unable to spit them out;
- (5) gathering saliva in the mouth and swallowing it, bringing saliva as far forward as the tongue (O: but not to the lips) and then swallowing it, or coughing up phlegm from the throat and spitting it out;
- (6) the arrival of dawn when there is food in one's mouth which one spits out;
- (7) the arrival of dawn when one is lovemaking and one immediately disengages;
- (8) or when sleeps all day or has lost consciousness, provided one regains consciousness for at least a moment of the day.

## EATING OR DRINKING WHEN UNCERTAIN OF THE TIME OF DAWN OR SUNSET

i1.22 Making up the fast-day is obligatory if one eats, thinking it is night, but then finds that it is day; or eats, presuming (N: but uncertain) that the sun has set, and the question (O: as to whether one ate before sunset or after) continues and remains unresolved (dis:e7.6 (A:)).

It is not obligatory to make up a fast-day on which one ate on the presumption that dawn had not yet come, and the question (O: as to what the case was) remains unresolved (A: since the initial certainty was that it was night).

## INVOLUNTARY ACTS WHICH INVALIDATE THE FAST

i1.23 A fast-day is invalidated by;

- (1) insanity, even for a moment;
- (2) being unconscious the entire day;
- (3) or the appearance of menstrual or postnatal flow.

(N: The insane person is not obliged to make up such a day's fast, while the others are.)

## RECOMMENDED MEASURES WHILE FASTING

i1.24 A predawn meal is recommended, even if it is slight or consists of water alone (O: and the time for it begins from the middle of the night onwards). It is best to delay it to just before dawn, as long as one does not apprehend dawn's arrival while still eating (O: though when one does not know when dawn is, it is not the sunna to thus delay it).

i1.25 It is best to hasten breaking the fast when one is certain that the sun has set. One should break it with an odd number of dates, though if one has none, water is best. It is recommended to say after doing so, "O Allah, for You I fasted, and upon Your bounty I have broken the fast."

i1.26 It is recommended in Ramadan:

- (1) to be especially generous (O: in giving charity);
- (2) to improve one's relations with family and relatives;
- (3) to recite the Koran much;
- (4) to spend periods of spiritual retreat (i'tikaf, def:13) in the mosque, especially during the last ten days of Ramadan;
- (5) to break the fast of others after sunset, even if only with water (O: because of the hadith related by Tirmidhi that the Prophet (Allah bless him and give him peace) said,

"He who breaks another's fast earns the same reward as the one who fasted without diminishing the latter's reward in the slightest");

- (6) and if in a state of major ritual impurity (janaba), to perform the purificatory bath (ghusl) before dawn.

i1.27 It is recommended to avoid:

- (1) slander (def: r2.2), lying, and foul language (N: which are always unlawful, but even worse when fasting);
- (2) the pleasure of the senses (O: i.e. those that do not break the fast, such as smelling fragrant plants or looking at them, because of the gratification therein which is incompatible with the wisdom of the fast, even though they are permissible when not fasting) (A: and while it is recommended not to use perfume during a fastday, it does not hurt to use it on the night before);
- (3) and medicinal bloodletting (N: or blood donating) or cupping (O: as these, like the fast, weaken a person and could have a synergistic debilitating effect).

If someone abuses one while fasting; one should say tohim, "I am fasting"

#### THINGS THAT ARE UNLAWFUL OR OFFENSIVE WHILE FASTING

i1.28 It is unlawful to kiss (O: or embrace, or pet with the hand) on fast-days for those it sexually arouses.

i1.29 It is unlawful not to eat or drink anything (wisal) between fast-days, though it is not unlawful if one has some water, even a mouthful, before dawn.

i1.30 It is offensive during the fast to taste food, or to use a toothstick (def: e3) after noon.

i1.31 It is offensive during the fast to line the eyes with kohl (def:e4.1(4)) or to bathe.

i1.32 It is offensive (dis:w38) for anyone (O: whether fasting or not) to keep silent all day until night (O: when there is no need to) (A: need including the necessity of restraining the tongue from useless talking (dis:r1.1)).

#### MAKING UP MISSED FAST-DAYS

i1.33 Someone obliged to make up some fastdays of Ramadan is recommended to do so consecutively and immediately.

It is not permissible for a person with some unperformed fast-days of Ramadan to delay making them up until the next Ramadan unless there is an excuse (N: for delaying). If one delays until the next Ramadan, one must pay 0.51 liters of food (def: h7.6(A:)) (N: to the poor) for each fast-day missed, in addition to making it up. If making up a fast-day is delayed until a second Ramadan comes, then one must pay double this amount for each day. And so forth; every year that passes upon an unfulfilled fast day adds 0.51 liters to be paid for that day. (O: But if one's excuse for not performing them persists, such as travel or illness, then it is permissible for one to delay making them up as long as the excuse is present, even it is lasts for years. One is not obliged to pay the penalty fee for this delay even if several Ramadans go by, but is merely obliged to make up the missed fastdays).

If someone dies with unperformed fast-days which he could have fasted but did not, then each fast-

day is paid for (N: by the responsible family member) with 0.51 liters of food (N: or he can fast for him (A: in place of paying for each day)). (O: As for someone who dies after two Ramadans elapse upon his missed fast-days, each fast is paid for with 1.02 liters (n: double the above) of food (N: or the family member can both fast a day and pay 0.51 liters for each day (A:i.e the family member may fast in the deceased's stead for the initial nonperformance of the fast-day, though he cannot fast in place of paying the 0.51 liters of food for each year that making up a fast-day was delayed before the deceased's death, because this is the legal expiation for the delay). As for someone who died before his excuse (n: for not fasting) ceased to exist, nothing at all is obligatory for him).)

## i2.0 VOLUNTARY FASTING

### DAYS ON WHICH FASTING IS RECOMMENDED

i2.1 It is recommended to fast:

- (1) on six days of the month of Shawwal, and that they be the six consecutive days immediately following `Eid al-Fitr (O: their being consecutive and their immediately following the 'Eid are two separate sunnas), though it is permissible to fast them nonconsecutively;
- (2) on 9 and 10 Muharram;
- (3) on the full moon (lit. "white") days of every lunar month, which are the thirteenth and the two days that follow it;
- (4) on Mondays and Thursdays;
- (5) on the first nine days of Dhul Hijja;
- (6) during the inviolable months, which are four: Dhul Qa'da, Dhul Hijja, Muharram, and Rajab;
- (7) (n: and on every other day, a fast described by the Prophet (Allah bless him and give him peace) as "the most beloved fast to Allah" (Riyad al-salihin (y107), 466)).

The best fast-days, after Ramadan, are those of Muharram, then Rajab, then Sha'ban. (O: In general, the best month for fasting, after Ramadan and the inviolable months, is Sha'ban (A: there being no objection to fasting an entire month or just part of one).

It is recommended to fast on the Day of `Arafa (O: 9 Dhul Hijja), unless one is a pilgrim present at Arafa (def:j8), when it is better not to fast. It is not offensive for such a person to fast, though it is better for him not to.

### FASTS THAT ARE OFFENSIVE OR UNLAWFUL

i2.2 It is offensive to fast every day of the year (O: besides the two `Eids and the three days following Eid al-Adha (n: these being unlawful to fast (dis: below) rather than offensive)) if this harms one (O: in body or mind) or causes one not to do something one should do (O: for oneself or others, even if merely recommended). If not, then it is not offensive.

i2.3 It is unlawful and not valid to fast (O: whether voluntarily, as a vow, or as a makeup) on the two Eids or the three days following `Eid al-Adha.

i2.4 It is also unlawful and invalid to fast on a day of uncertainty (N: as to whether it is the first day of Ramadan), meaning that on 30 Sha'ban, someone who does not have the necessary qualifications of a witness (def:i1.10) mentions having seen the new moon of Ramadan. Otherwise (O: when no one has mentioned seeing it, or when an acceptable witness has), then it is not considered a day of uncertainty.

Fasting on a day of uncertainty is not valid as a day of Ramadan, though it can validly fulfill a vow or a makeup fast. Voluntary fasting on such a day is only valid when one would have fasted anyway because it falls on a day one habitually fasts, or when one has been fasting each day since before mid-Sha'ban. If neither of these is the case, then it is unlawful and invalid to fast on it.

It is unlawful to fast during the days after mid Sha'ban unless one would have fasted anyway because they fall on days one habitually fasts, or unless one has been fasting each day since before mid-Sha'ban.

i2.5 (Nawawi: (n: with commentary by Muhammad Shirbini Khatib)) It is offensive to single out Fridays or Saturdays ((Shirbini:) or Sundays for fasting, i.e. to single out one of the above-mentioned days when they do not coincide with days one normally fasts. The fast of someone who usually fasts

every other day and whose fast coincides with one of these days or with a day of uncertainty is not offensive, because of the hadith related by Muslim, "Do not single out Friday for fasting unless it happens to coincide with a fast one of you performs," similar days being analogous to Fridays in this respect) (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 1.447)).

i2.6 Once begun, it is unlawful to interrupt either an obligatory fast-day or an obligatory prayer, whether it is current, a makeup, or vowed; though if it is nonobligatory (O: whether wholly supereogatory or linked with a particular event or time), then one may interrupt it (O: but it is offensive to do so if there is no excuse).

### i3.0 SPIRITUAL RETREAT (I'TIKAF)

i3.1 It is sunna, at any time, to make spiritual retreat (i'tikaf) in the mosque.

#### LAYLAT AL-QADR

i3.2 Spiritual retreat (i'tikaf) is especially recommended in Ramadan, particularly in the last ten days of it, seeking Laylat al-Qadr (lit. "the Night of the Divine Decree") (O: which is, as Allah Most High says,

"better than a thousand months" (Koran 97:3).

meaning that spiritual works therein are better than works of a thousand months lacking Laylat al-Qadr. Indicating its excellence, the Prophet (Allah bless him and give him peace)said, "He who prays on Laylat al-Qadr in faith and expectation of its reward will be forgiven his previous sins").

Laylat al-Qadr could be on any night of Ramadan (n: or any other month of the year, according to some (dis:w39)). It probably occurs within the last ten nights, more likely on the odd numbered ones (N: remembering that the night of an Islamic date comes before the day of that date), the twenty first and twenty third of which are the likeliest(n:though most scholars hold it to be the twenty-seventh (Mughni al-Muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y730, 1.450)). On Laylat al-Qadr it is recommended to frequently repeat, "O Allah, You are oft-relenting and love to forgive, so forgive me."

#### HOW TO PERFORM SPIRITUAL RETREAT

i3.3 At minimum, spiritual retreat (i'tikaf) consists of:

(a) staying, with the intention of spiritual retreat, for more than the least amount of time that can be considered repose (A: i.e. a moment);

(b) while being Muslim, sane, conscious, and free of major ritual impurity (O: i.e. of menstruation, postnatal bleeding, and major impurity (janaba));

(c) in a mosque, even when this stay is no more than entering the periphery and then leaving by the same entrance (taraddud), though to merely pass through is insufficient. Optimally, the spiritual retreat (i'tikaf) should be accompanied by fasting, take place in the Friday congregational mosque (O: because of the size of the group prayer therein, and so as not to have to leave to attend the Friday prayer), and be no less than a day.

#### VOWING SPIRITUAL RETREAT IN PARTICULAR MOSQUES

i3.4 If one vows (def: j18) to make spiritual retreat (i'tikaf) in:

(1) al-Masjid al-Haram (n: in Mecca);

(2) al-Masjid al-Aqsa (n:in Jerusalem);

(3) or Masjid al-Medina;

then the vow cannot be fulfilled elsewhere. Spiritual retreat (i'tikaf) in al-Masjid al-Haram fulfills a vow

to make spiritual retreat in either of the other two (n: al-Aqsa or Medina), but not vice versa (N: they do not fulfill a vow to make a spiritual retreat in al-Masjid al-Haram). Spiritual retreat in Masjid al-Medina fulfills a vow to do so in al-Masjid al-Aqsa, but not vice versa. If one vows to make a spiritual retreat in any mosque besides these three, the vow can be fulfilled in any mosque whatever (O: since none besides these three is superior to any other).

i3.5 Spiritual retreat (i'tikaf) is invalidated by lovemaking and by orgasm as a result of touching.

#### VOWS TO SPEND A CERTAIN CONSECUTIVE PERIOD IN SPIRITUAL RETREAT

i3.6 If one vows to make spiritual retreat for a consecutive period, then one is obligated to do so. The consecutiveness of such a period is not nullified by leaving the mosque for something necessary such as eating (even when it is possible to do so in the mosque), drinking (provided it is not possible to do so in the mosque), using the lavatory, attending to an illness, the onset of a menstrual period, or similar things; though one's spiritual retreat is interrupted by leaving the mosque to visit a sick person, perform a funeral prayer (janaza), or attend the Friday prayer (jumu'a).

i3.8 Touching another with sexual desire is unlawful for someone in spiritual retreat (i'tikaf).

i3.9 It is not permissible for a wife to make spiritual retreat without her husband's permission.

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#### BOOK J

#### THE PILGRIMAGE

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## **j1.0 WHO MUST PERFORM HAJJ AND `UMRA**

**(O: Hajj and `umra are obligatory because of the word of Allah Most High:**

**"People owe Allah to make pilgrimage to the House, whoever is able to find a way" (Koran 3:97),**

**and, "Complete the hajj and 'umra for Allah" (Koran 2:196),**

**meaning, "Perform both of them completely.")**

**j1.1 (n: This section uses the following special vocabulary in addition to some of the terms previously mentioned at f8.1:**

**'Arafa: (syn.'Arafat) the name of a plain about thirteen miles to the eastsoutheast of Mecca.**

**Hajj: the pilgrimage to Mecca. Ihram: the state of consecration that pilgrims enter for hajj and 'Umra.**

**Labbayk: a litany meaning, "Ever at Your service, O Allah, ever at Your service."**

**al-Masjid al-Haram: the Holy Mosque in Mecca that encompasses the Kaaba.**

**Safa and Marwa: two hillocks connected by a course adjoining al-Masjid al-Haram.**

**Umra: the lesser pilgrimage or visit to Mecca that may be performed at any time of the year.)**

**j1.2 Both hajj and 'umra are obligatory, though neither is obligatory more than once in a person's lifetime unless one vows (def:j18) more than that.**

**j1.3 They are only obligatory for someone who:**

**(a) is Muslim;**

**(b) has reached puberty;**

**(c) is sane;**

**(d) and is able (def:j1.6-10) to make them.**

**j1.4 The hajj or `umra of someone considered unable (non-(d) above) is valid (O: i.e. if he undertakes the hardship, travels, and stands at 'Arafa (def:j8), it fulfills the obligation), though not that of a non-Muslim, or a child below the age of discrimination (f1.2) who is unaccompanied by a guardian.**

**It is valid for a child of the age of discrimination to enter the state of ihram with his guardian's permission (O: guardian meaning the person with lawful disposal over the child's property).**

**It is also valid for the guardian to enter ihram on behalf of an insane person or a child below the age**

of discrimination, in which case the guardian has his charge do as much as he is able, by having him (O: telling him to ) perform the purificatory bath (ghusl), remove clothing that has seams, and put on hajj garments; and forbidding him the things prohibited while in the state of ihram, such as perfumes and the like (def; j3.5), after which he takes him to the various places of the hajj rites (O: it being insufficient for the guardian to go alone), and performs the acts that the charge cannot do himself, such as entering into ihram (n: which the charge, lacking discrimination, is unable to make a legally valid intention for), the two rak'as after circumambulating the Kaaba, and stoning at Mina. (N: But the hajj of someone who has not reached puberty does not fulfill the obligation Islam imposes, since even though it is valid, it is supererogatory.)

#### **WHO IS CONSIDERED ABLE TO PERFORM THE HAJJ**

**j1.5** Those able to perform the hajj are of two types: those able to perform the hajj in person, and those able to fulfill the hajj by sending someone in their stead.

#### **THOSE ABLE TO PERFORM THE HAJJ IN PERSON**

**j1.6** The conditions for being considered able to perform the hajj in person are:

- (a) to be healthy (O: enough to ride there without serious harm);
- (b) to be able to obtain provisions for the trip;
- (c) to have enough money to afford water at the going price at the places people travel through because of the water there;
- (d) to have transportation suitable to someone like oneself (O: though if one cannot find any, or if it is more than the usual price (A: usual meaning that the fare to the hajj is no more than the fare to another destination of comparable distance). then one is not obliged to perform the hajj);
- (all of the above (O: (b), (c) and (d)) apply equally to the journey there and back)
- (e) to be able to pay for (b), (c), and (d), round trip, with money one has that is in excess of the amount one requires to support the members of one's family and clothe them while one is travelling there and back, and obtain leadings for oneself; and that is in excess of any money one owes for debts, even those not yet due (O: scholars concur that a debtor is not obliged to perform the hajj even when his creditor does not mind postponing the debt until after the hajj, and that a person is not obliged to perform the hajj when someone is willing to loan him the money to do so (N: though such a person's hajj would be valid, as previously discussed (j1.4)));
- (f) and that a route exist that is safe for one's person and property from predators and enemies, whether the latter be non-Muslims or whether highwaymen wanting money, even when the amount is inconsiderable (A: including so called hajj fees, which are not countenanced by Sacred Law). If there is no route except by sea, then one must take it if it is usually safe, but if not, then it is not obligatory. (N: These are the conditions for the obligatoriness of the hajj or `umra, meaning that if one of them is lacking, the hajj and `umra are not obligatory for that year, though if one performs them anyway, one's performance validly fulfills the rites which Islam imposes, as mentioned above at j1.4)

**j1.7** The above conditions apply equally to a woman, who in addition requires someone to accompany her to protect her, such as a husband, an unmarriageable male relative (mahram, def: m6.2), or some (O: two or more) reliable women, even if they are not accompanied by any of their unmarriageable male relatives.

**j1.8** If the above conditions are met, but there is no longer time to reach Mecca, then the hajj is not obligatory. But if time remains, it is obligatory.

**j1.9** It is recommended to perform hajj as soon as possible (N: i.e. to perform it the first year that one is able to, and likewise for `umra). One is entitled to delay it, but if one dies without performing it after having been able to, one dies in disobedience, and it is obligatory to take out the cost for it from the deceased's estate (n: just as debts are, as at L4.3(1)) to pay for someone to make it up (A: in the deceased's place (dis:below)).

#### **THOSE ABLE TO PERFORM THE HAJJ BY SENDING SOMEONE IN THEIR STEAD**

**j1.10** The second type of being able to perform hajj is when one may fulfill it by sending another in one's place, the necessary conditions for which are:

- (a) that one is unable to ride there (O: at all, or is able, but with great difficulty) because of chronic illness or old age;
- (b) and that one either has the money (n: to hire someone to go in one's place) or (N: if lacking the money) has someone to obey one (O: by agreeing to perform the rites of hajj for one (N: at their own expense, as a charitable donation)), even if not a family member- in which case one is obliged to either

hire someone (N: in the former instance) or give permission to someone (N: in the latter instance) to perform hajj in one's place.

One may also have someone perform a nonobligatory hajj for one under such conditions.

## THE PRIORITY OF THE OBLIGATORY HAJJ OVER ANY OTHER

j1.11 It is not permissible for someone who has not yet performed his own obligatory hajj:

- (1) to perform the hajj for someone else;
- (2) to perform a nonobligatory hajj;
- (3) or to perform hajj in fulfillment of a vow or as a makeup.

(N: If he does any of these, it counts instead as his own obligatory hajj).

j1.12 The order of performing hajj (O: or `umra) must be:

- (1) the obligatory hajj first;
- (2) then a makeup hajj (def:j3.14:(c)) if any is due;
- (3) then a hajj in fulfillment of a vow, if any has been made;
- (4) and then a supererogatory hajj, or one in another person's place.

If one tries to change this order, for example, by commencing a hajj with the intention for a supererogatory performance or a vow when one has not yet made the obligatory hajj, the intention is invalid, and the hajj counts instead as fulfilling the obligatory one. The same is true for the other types (A:i.e if one extends any of the types in the order just mentioned when a prior type exists unperformed, then one's hajj counts as fulfilling the prior one, regardless of the intention).

## WAYS OF PERFORMING THE HAJJ

j1.13 It is permissible to enter ihram with the intention for any of four ways of performing the hajj, which are, in order of superiority:

- (1) hajj before `umra (ifrad);
- (2) `umra first (tamattu');
- (3) hajj and `umra simultaneously (qiran);
- (4) and the unconditional intention to perform hajj and `umra (itlaq).

### HAJJ BEFORE `UMRA (IFRAD)

j1.14 Hajj before `umra (ifrad) means to perform hajj (O: i.e enter ihram for hajj) first (O: before subsequently entering ihram for `umra) at the ihram site for people from one's country (def: j2), then (O: after having completed one's hajj) to go outside the Sacred Precinct (Haram) and enter ihram for `umra. (O: There is no special place for the second ihram: if one went to the closest place outside of the Sacred Precinct, it would suffice for this ihram of `umra.) (N: People generally go to the Mosques of `A' isha (Allah be well pleased with her) al-Tan'im because it is close.)

### UMRA FIRST (TAMATTU')

j1.15 'Umra first (tamattu') (N: perhaps the easiest and most practical way to perform hajj in our times, since one does not have to remain in a state of ihram throughout the week or more that one is generally there between the initial `umra and subsequent hajj) means to perform the `umra first (O: before the hajj) by:

- (a) entering ihram for it from the ihram site for people of one's own country;
- (b) during the hajj months (def:j1.19);
- (c) and then (O: after finishing the `umra) performing hajj within the same year from Mecca (O: meaning to intend hajj from Mecca (n: by entering ihram there), if one wants to have to slaughter (n: in expiation, as at j12.6(I)), which relieves one of the necessity to return to the ihram site of people of one's country, though if one returns to that site to enter ihram for hajj, then one is no longer obliged to slaughter and one's ihram is valid).

It is recommended to enter ihram for hajj on 8 Dhul Hijja if one is performing `umra first (tamattu') and has an animal to slaughter. But if one does not have an animal, (O: one enters ihram) on 6 Dhul Hijja (O: so that one's (N: three day expiatory) fast (N: in place of slaughtering (def: j12.6(I)) takes place before standing at `Arafa (A: since in the Shafi'i school, being in ihram for hajj is obligatory during these three days of fasting though for the Hanafi school, these days may be fasted before entering ihram for hajj, after one's umra), thus fasting on the sixth, seventh, and eighth, and not on the Day of `Arafa' (N:the ninth) if one was able to fast on the sixth, though if not then fasting the day of Arafa is mandatory because of the previous inability. If one does not fast it, it is a sin and the delayed fast day is a makeup,

as its obligatory time is before the Day of `Arafa). One enters ihram for hajj in Mecca from the door of one's lodgings. Then one proceeds in a state of ihram to al-Masjid al-Haram as a Meccan would (O: to perform a farewell circumambulation (tawaf al-wada'. def: j11.2) of the Kaaba, which is desirable (mustahabb) for non-Meccans who are leaving Mecca to go to `Arafa. For Meccans, the farewell circumambulation is obligatory when leaving Mecca, even for a short distance).

#### HAJJ AND `UMRA SIMULTANEOUSLY (QIRAN)

j1.16 Hajj and `umra simultaneously (qiran) means to enter ihram intending both (O: hajj and `umra) at the ihram site for people of one's country, and then perform only the rites of hajj (O: Such that one does not perform an additional circumambulation or a second going between Safa and Marwa (def:j6), but rather once is sufficient to fulfill the obligation of both hajj and `umra, because the actions of the `umra have been incorporated into the actions of the hajj. The author mentions a second way of performing hajj and `umra simultaneously (qiran) by saying:)Or the person may enter ihram first for `umra, and then before beginning his circumambulation (O: even if only by a single step), incorporate into his intention for `umra the intention to perform hajj, this taking place in the months of hajj.

#### THE OBLIGATION TO SLAUGHTER OR FAST FOR THOSE PERFORMING THE `UMRA FIRST (TAMATTU') OR HAJJ AND `UMRA SIMULTANEOUSLY (QIRAN)

i1.17 A Person performing `umra first (tamattu') or performing hajj and `umra simultaneously (qiran) is obliged to slaughter (N: a shah (def:h2.5) or to fast, as mentioned below), though if the person performing hajj and `umra simultaneously (qiran) lives within the Sacred Precinct (Haram) or within 81 km./50 ml. of it, or if the person performing `umra first (tamattu') returns to the ihram site for people of his country(N:after his umra) to enter ihram for hajj, or lives within 81 km./50mi. of the Sacred Precinct - in any of these cases he is not obliged to slaughter.If one (O: performing `umra first (tamattu') or hajj and `umra simultaneously (qiran)) is obliged to slaughter but:

- (1) lacks an animal there (O: i.e. in the Sacred Precinct (Haram), which is the place of the obligation to slaughter, lacks meaning absolutely, as when there is not an animal available that meets slaughter specifications (def:j14.2));
  - (2) or (O: there is an animal, but one lacks) its price (O: or has the price but needs the money for expenses and the like);
  - (3) or finds that it is being sold for more than the normal price for that locality and time;
- then one must fast three days of the hajj (O: For our school it is insufficient to fast them before the hajj, as opposed to the school of Abu Hanifa, in which it is permissible to fast them before the hajj (A: i.e. when performing the `umra first (tamattu'), fasting them after having finished the initial `umra and before entering ihram for hajj).) It is recommended that these days be before the Day of `Arafa (O: time permitting, as when one fasts from 1 Dhul Hijja after having entered ihram for hajj. It is unlawful to delay these fast-days till after the Day of `Arafa), and one must fast seven additional days after returning home (n: making a total of ten fast-days).

The time for current performance of the three fast-days ends after the Day of `Arafa (O: and it is not permissible to fast any of them on `Eid-al-Adha or on the three days following Eid), and if one thus delays them, it is obligatory to make them up before the other seven fast-days, by an interval between the three and seven fast-days equal to the interval that would have separated them had they been a current performance, namely the time taken by the trip (O: from Mecca to home) plus four days (O: equal to the `Eid and the three days that follow it).

#### THE UNCONDITIONAL INTENTION TO PERFORM HAJJ AND `UMRA (ITLAQ)

j1.18 The unconditional intention to perform hajj and `umra (itlaq) means to merely intend entering into the performance of rites, without specifying at the time of ihram that it is for hajj, `umra, or hajj and `umra simultaneously (qiran). After this, one may use it (O: the ihram, made unconditional by the intention) as one wishes (O: meaning to perform hajj only, `umra only, or hajj and `umra simultaneously (qiran) (A: though one may not use the unconditional intention as a way to perform `umra first (tamattu') without having to either return to the ihram site to enter ihram for hajj, or to slaughter or fast (def :1.17))).

#### THE TIME OF YEAR TO ENTER IHRAM FOR HAJJ OR `UMRA

j1.19 It is not permissible to enter ihram for hajj other than during its months, namely, Shawwal, Dhul Qa'da, and the first ten nights of Dhul Hijja (A: with their days). If one enters ihram for hajj during non-hajj months, one's ihram counts for `umra.

Entering ihram for `umra is valid at any time of the year except for a person on hajj encamped at Mina for stoning (def:j10).

## **j2.0 SITES FOR ENTERING IHRAM**

**J2.1** The sites for entering ihram for hajj or `umra are as follows:

- (1) (N: people going to hajj from the West by plane must enter ihram before boarding it, or during the flight before it passes the airspace that is even (def:j2.3) with the city of Rabigh, on the western coast of the Arabian Peninsula, this generally being announced on the plane);
- (2) Medina residents (N: or those travelling through Medina to Mecca) enter ihram at Dhul Hulayfa;
- (3) residents of the Syria-Palestine region, Egypt, and North Africa enter ihram at al-Juhfa;
- (4) residents of al-Tihama in Yemen enter ihram at Yalamlam;
- (5) residents of Najd of Yemen and the Najd of the Hijaz enter ihram at Qarn;
- (6) and residents of Iraq and Khurasan enter ihram at Dhat `Iraq, preferably at al-`Aqiq.

**j2.2** Someone at Mecca, even if merely passing through, enters ihram for hajj in Mecca, and for `umra must go (N: at least) to the nearest place outside of the Sacred Precinct (Haram), of which the best is al-Ji'rana, then al-Tan'im, and then al-Hudaybiya. Someone residing closer to Mecca than the ihram site is to Mecca should enter ihram (O: for hajj or `umra) at his residence.

**j2.3** When coming by a route lacking an ihram site, one enters ihram when even with (O: on the left or right) the ihram site that is nearest.

**j2.4** For someone residing farther from Mecca than the ihram site is, to enter ihram at the ihram site is superior (A: than for him to enter ihram at his own residence).

## **THE EXPIATION FOR NEGLECTING TO ENTER IHRAM AT THE PROPER SITE:**

**j2.5** Someone intending hajj, `umra, or both, who passes the ihram site (O: intentionally, absentmindedly, or in ignorance of it) and enters ihram somewhere closer to Mecca, is obliged to slaughter (def:j12.6(I)), though if he returns to the proper site and enters ihram there before having performed a single rite, he is no longer obliged to slaughter.

## **j3.0 IHRAM (THE STATE OF PILGRIM SANCTITY) MEASURES RECOMMENDED PRIOR TO IHRAM**

**j3.1** When one wishes to enter ihram, it is recommended (even for a woman in menstruation) to perform the purificatory bath (ghusl), intending bathing for ihram. If there is not much water, one merely performs ablution (wudu). It is also recommended to shave pubic hair, pluck the underarms, clip the mustache. (O: trim the nails,) clean oneself of dirt, and wash the head.

## **OBLIGATORY MEASURES BEFORE IHRAM**

**j3.2** Then (O: if male) one:

- (a) sheds any garments that have sewing in them (O: taking them off being obligatory for ihram, which is incomplete if one does not remove them before entering it);
- (b) puts on a clean white mantle (Ar. rida', the rectangular piece of cloth worn over the shoulders that covers the upper body of a man in ihram) and wraparound (izar, the cloth worn around the lower body), and sandals (O: that do not enclose the foot, but rather reveal the toes and heels, as opposed to sandals that cover the toes, for wearing such sandals obliges one to slaughter (def: j12.6(II)));
- (c) and it is recommended to perfume the body, though not one's clothes.

The above measures (j3.1) apply equally to women, although women do not divest themselves of sewn garments (O: a woman being obliged to cover all of her body except the face and hands, which, in ihram as well as in prayer, are not considered nakedness). It is recommended that she dye her hands and face with henna (O: a measure that is desirable, and whose nonperformance is without consequence).

(A: But women do not use perfume.)

All of the foregoing are done before entering ihram.

## **ENTERING IHRAM**

**j3.3** One then prays two rak'as, provided it is not a time when the prayer is forbidden (def:f13),

intending the sunna of ihram. (O: It is sunna to recite al-Kafirun (Koran 109) in the first rak'a and al-Ikhlas (Koran 112) in the second.) Then one rises to start travelling to Mecca. As soon as one begins travelling to Mecca, one has entered ihram. Ihram (O: which is an integral of hajj and 'umra) is the intention to enter into the performance of the rites (O: of hajj, 'umra, or both (qiran)). One intends in one's heart to perform the hajj for Allah Most High, if one wants to perform hajj; or to perform 'umra if one wants to; or both together if one wants to perform them simultaneously (qiran). It is recommended that one also pronounce this intention with the tongue.

## CHANTING "LABBAYK"

j3.4 Then one chants "Labbayk" (n: as described below), raising the voice (O: enough to (N: at least) hear oneself, the raising being relative. For the duration of the time one is in ihram one raises it enough for those nearby to hear), though a woman should lower her voice when saying it (O: as raising the voice is offensive for a woman) saying: "Ever at Your service, O Allah, ever at Your service. Every at our service, You have no partner, ever at Your service. Verily, all praise, blessings, and domination are Yours. You have no partner" (O: saying this three times).

Then (O: after chanting the above) one recites the Blessings on the Prophet (Allah bless him and give him peace) in a softer voice, asking Allah Most High for paradise (O: saying, "O Allah, I ask You for paradise and its blessings," and asking for His good pleasure and acceptance (ridwan)) and seeking refuge in Him from hell (O: saying, "I take refuge in You from Your wrath, and hell," and asking Him for whatever one wishes of the good of this world and the next).

It is desirable to chant "Labbayk" for the duration of one's ihram, whether standing, sitting, riding, walking, lying down, and even in a state of major ritual impurity (janaba), or for a woman in menstruation. It is particularly desirable when:

- (1) changing from one state, time, or place to another, such as when going uphill or down, or getting on or off a vehicle;
- (2) meeting groups of people;
- (3) at the approach of dawn, night, or daytime;
- (4) after prayer;
- (5) and in all mosques.

One does not chant "Labbayk" while circumambulating the Kaabba or going between Safa and Marwa (O: as these have their own particular invocations). It is undesirable to stop chanting it in order to speak, though if someone greets one with "as-Salamu 'alaykum," it is recommended (O: but not obligatory) to return his greeting.

When one sees something pleasing (O: or displeasing) during ihram, it is recommended to say, "Ever at Your service, truly, the real life is the life of the hereafter" (O: and if one sees the like while not in ihram, one says, "O Allah, truly, the real life is the life of the hereafter," without saying "Labbayk."

## THINGS UNLAWFUL WHILE IN IHRAM

j3.5 Five things are unlawful (dis:j12.6) when one has entered ihram. (n: Namely:

- (1) Sewn garments on men (dis: j3.6);
- (2) using perfume (j3.7);
- (3) removing hair or nails (j3.8);
- (4) sexual intercourse or foreplay (j3.13);
- (5) and hunting (j3.21).

## SEWN GARMENTS ON MEN

j3.6 The first thing unlawful in ihram is wearing sewn clothing such as shirts, trousers, moccasins (khuff, def: e6), anything else sewn (N: sewn meaning that which is for wearing, not just any sewing, as a patched mantle or wraparound are permissible), and anything that encircles the body as sewn garments do, such as (N: those seamed) by being woven or felted together and the like.

It is unlawful to cover the head with anything, sewn or unsewn, that is generally considered a headcover (O: such as a hat, cloth, bandage (N: or blanket while sleeping)). It is permissible while in ihram to carry a (N: sewn) bag or the like, or to tote a basket (O: on one's head, though it is unlawful if one intends it as a headcover). (A: It is permissible to carry an umbrella held in the hand for protection against the sun.) It is not permissible to fasten one's mantle by tucking part of it through a hole, tying it together, passing a string through one end and then the other, or by tying a string to each of the two ends (N: though it is permissible to fasten it together with safety pins). It is permissible to tie one's wraparound (O: one end to the other) or tie a string over it (O: so that it holds it fast, like a



drawstring, and one may likewise use a waistband) (N: the reason for the permissibility (n: of tying the wraparound but not the mantle) being that if the wraparound but not the mantle) being that if the wraparound were to fall it would reveal one's nakedness, unlike the mantle). (n: Safety pins are permissible to fasten the wraparound, and are useful to make pleats at the waistline by safety-pinning two or three tucks of cloth there to gather the wraparound at the waist and leave more freedom of movement for the legs below.) (A: A belt may also be used to hold one's wraparound at the waist.)

## PERFUME

j3.7 The second thing that is unlawful after entering ihram is using perfume, such as musk, camphor, or saffron on one's clothing, body, or bedding. It is also unlawful to smell roses, or bedding. It is also unlawful to smell roses, violets, lilies, or anything fragrant; to sprinkle rose water or flower water about; or to use scented oils (N: or scented bar soap), whether to smell them or to apply them to any part of the body. It is also unlawful:

(1) to apply unscented oils like olive, sesame, and so on to the beard or scalp, unless one is bald (A: in which case it can be used on the skin of the head), though it is permissible to smell them or apply them to any of the body (O: except the hair of the head and face);

(2) to eat food in which the use of a cosmetic is manifest, whether in taste, color, or scent, such as the scent of rose water, the color of saffron or its taste, or the taste of ambergris in cooked grain and the like;

(3) or to use scented perspiration deodorant or eyeliner.

## REMOVING HAIR OR NAILS

j3.8 The third thing that is unlawful while in ihram (O: for both men and women, but only if one does so deliberately, knowing that it is unlawful, voluntarily, and remembering that one is in ihram) is:

(1) cutting or plucking hair (O: i.e. removing it by any means whatever), even if only part of a single hair (by shortening it), and whether from the head, underarms, pubes, mustache, or any other part of the body (A: the obligatory expiation for one hair is to give 0.51 liters of food to the poor in Mecca, and for two hairs, twice that amount. For three or more, a full expiation (def: j12.6(ii)) is obligatory);

(2) or clipping fingernails or toenails, even if only part of one (A: my above remark on expiations also applies to nails).

## THE EXPIATION FOR VIOLATING THE CONDITIONS OF IHRAM

j3.9 It is necessary to slaughter a shah (def: h2.5) (n: or perform one of the other alternatives mentioned below at j12.6(II)) when one is in ihram and one:

(1) uses perfume;

(2) wears a prohibited garment (def: j3.6):

(3) removes three or more hairs, fingernails, or toenails (def: j12.6(II(1-2)));

(4) touches another person with desire in a nongential area;

(5) or applies unscented oil to one's hair (dis:j3.7).

j3.10 A person obliged to perform such an expiation may fulfill it (A: any time thereafter) in any of the following ways:

(1) by slaughtering a shah (def: h2.5) (O: and distributing its meat to the poor and those short of money is the Sacred Precinct);

(2) by distributing 6.09 liters of food (def: h7.6) to the poor in charity, giving 1.015 liters to each person;

(3) or by fasting three days (O: even if unconsecutive).

## ACCIDENTALLY REMOVING A HAIR

j3.11 It is unlawful during ihram to comb one's beard (N: or hair) or run one's fingers through it if one knows that hair will be pulled out. When one runs the fingers through one's beard or washes the face and then notices hair in one's hand, then if one knows one pulled it out while doing this, and expiation (def:j12.6(II)) must be paid, though if one knows that it came out by itself, or does not know whether it did or not, then one is not obliged to expiate.

j3.12 The following things necessitate the expiation (def: j12.6(II)), but when done out of need, are not unlawful:

(1) having to cut one's hair because of illness, heat, or lice;

- (2) having to wear something sewn because of intense heat or cold;
- (3) or having to cover one's head.

## SEXUAL INTERCOURSE OR FOREPLAY

j3.13 The fourth thing unlawful while in ihram is sexual intercourse or touching a nongenital area with sexual desire, such as kissing, hugging, or touching lustfully.

j3.14 If one intentionally has sexual intercourse before finishing one's 'umra, or while on hajj before partial release from ihram (def: j9.13), then:

- (a) this nullifies the hajj or 'umra;
- (b) it is nonetheless obligatory to complete the hajj or 'umra from the point at which it was spoiled to the end;
- (c) it is obligatory to make it up as soon as possible, even if the spoiled hajj or 'umra was merely supererogatory;
- (d) and it is obligatory to pay the expiation (def: below) (O: for the male, not the female, who need not do any thing, though it is a sin if she participated willingly) (A: the more reliable position is that if the woman was unwilling, none of the above ((a), (b), (c), or (d)) apply to her, though if willing, (a), (b), and (c) apply to her but not (d)).

j3.15 The expiation for the above (j3.14) is to slaughter (A: and distribute to the poor of the Sacred Precinct, immediately):

- (1) a camel (O: i.e. a male or female that meets slaughter specifications (def: j14.2)), but if this is not possible (N: within the days of that hajj), then one must slaughter:
- (2) a cow, but if not possible, then:
- (3) seven shahs (def: h2.5), but if not possible, then:
- (4) one estimates the cost of a camel and how much food (def: h76) this would buy, and then gives that much food (N: to the poor in Mecca), but if not possible, then:
- (5) one fasts one day for every 0.51 liters of food, that would have been given had (4) been done (N: One may fast anywhere, but it is not permissible to delay it without an excuse.)

j3.16 A person making up a hajj or 'umra nullified by sexual intercourse must enter ihram for the makeup hajj or 'umra at the same ihram site as the original (n: nullified) hajj or 'umra, though if one entered ihram for it at a location closer to Mecca (N: than the ihram site (dis: j2.5)), one must enter ihram for the makeup at the (O: prescribed) site (N: for those of one's country).

j3.17 When someone (O: in ihram who intends to make up a nullified hajj) is accompanied on the makeup hajj by the wife he made love to, he is recommended to separate himself from her while they are at the place where they had intercourse.

(N: Such a makeup counts as the original hajj or 'umra would have counted: if it was obligatory, it counts as the obligatory one; if supererogatory, as supererogatory; and if vowed, as vowed.)

j3.18 If a man has sexual intercourse after partial release from ihram (def: j9.13), it does not nullify his hajj (n: i.e. does not entail j3.14 (a,b,c,d)), though he must pay an expiation (O: of the type discussed at j12.6(II)).

j3.19 If one has sexual intercourse absentmindedly (O: forgetting one is in ihram or out of ignorance of its prohibition or because of being forced), then one is not obliged to do anything (A: i.e. none of j3.14(a,b,c,d)).

## THE PROHIBITION OF MARRYING WHILE IN IHRAM

j3.20 It is unlawful while in ihram to marry, or to marry someone to another (zawwaja, def: m3.2(a)) (O: whether one does so oneself or through an agent). If one does so, the marriage contract is invalid. It is offensive while in ihram to get engaged to marry, or to serve as a witness for a marriage contract.

## HUNTING

j3.21 The fifth thing that is unlawful while in ihram is:

- (1) to kill any wild game that may be eaten by Muslims;
- (2) or to kill the offspring of matings between game animals that may be eaten by Muslims and game

animals that may not be eaten by Muslims. Someone in ihram is obliged to pay the expiation (def:below) whenever such an animal dies at his hands, is destroyed by an act of his, or is injured, in which case one must expiate in proportion to the part damaged.

#### THE EXPIATION FOR HUNTING

j3.22 If the animal killed has a domestic counterpart, one may fulfill the expiation in any of the following ways:

- (1) to slaughter a head of domestic livestock that is like the wild animal which was killed (O: like meaning an approximation, not actual resemblance. The criterion is the condition of the animal, not its value. One expiates a game animal that was, for example, large, small, healthy, diseased, fat, thin, or defective, with a head of livestock of the same description, heeding the correspondences. It is a necessary condition that the wild animal and the head of livestock share, if the animal was defective, the same type of defect, such as blindness (N: though it is permissible, indeed superior, to pay a healthy one for a defective one or a whole one for one that is lacking some part));
- (2) to estimate the value of the like head of livestock, and distribute an equal value of food (def: h7.6) to the poor;
- (3) or to fast one day for every 0.51 liters of food (N: that would have been bought had (2) been done).

j3.23 If the animal killed does not have a domestic counterpart, then one may fulfill the expiation in any of the following ways:

- (1) to distribute funds to the poor which equal the value of the game animal, although if the animal was a pigeon, one is obliged to slaughter a shah (def: h2.5) (O: which is obligatory for killing even a single pigeon);
- (2) to buy food equal to the animal's value and distribute it as charity;
- (3) or to fast one day for each 0.51 liters of food (N: that would have been bought had (2) been done).

j3.24 The prohibition of all things unlawful while in ihram applies to both men and women, except for not wearing sewn clothing (def: j3.6) and not covering the head, which are restricted to men. A woman, however, may not veil her face in ihram (dis: (j12.6(II(3)))). If she wants to conceal it from people, she may drape something in front provided it does not touch her face (N: such as a veil worn over a cap's visor), though if it touches it without her intention, it is of no consequence.

j3.25 It is permissible when in ihram to scratch one's head or body with one's fingernails as long as this does not remove any hair. It is also permissible in ihram to kill lice (N: or other insects harmful to humans), though if one kills a louse, it is recommended to expiate its death by giving charity, even if only a single bite of food.

#### j4.0 ENTERING MECCA

j4.1 It is recommended when one wants to enter Mecca:

- (1) to perform the purificatory bath (ghusl) outside of the city with the intention of entering Mecca;
- (2) to enter in the daytime, and from the Mu'alla gate of Thaniyyat Kada' (N: a pass from the direction of Jedda);
- (3) to walk barefoot, provided one does not apprehend something unclean (najasa);
- (4) not to annoy anyone by jostling;
- (5) and after entering, to proceed to al-Masjid al-Haram.

#### WHEN ON FIRST SEES THE KAABA

j4.2 When one first sees the Kaaba, it is recommended to lift the hands and say: "O Allah, increase this house in nobility, honor, reverence, and dignity. Increase those going on hajj or 'umra who honor and reverence it in honor, reverence, and piety. O Allah, You are Peace, the Source of Peace: O Lord, raise us after death in peace." And then one asks Allah for whatever one wishes of religious matters or those of this world.

#### j5.0 CIRCUMAMBULATING THE KAABA (TAWAF)

j5.1 Then one enters al-Masjid al-Haram from the Bani Shayba door (O: even if it is out of one's way, as it is sunna) prior to getting one's luggage down or finding a place to stay and so forth (O: such as deciding to rest or to eat; all this should be put off until after circumambulating the Kaaba). Rather (n:

by turns), some of one's party should stay with the luggage while others go to the mosque (O: to circumambulate), and after they finish, they return to watch the luggage so the rest can go.

O: The arrival circumambulation (tawaf alqudum) is desirable for anyone who enters al-Masjid al-Haram, whether in ihram or not.)

## HOW TO CIRCUMAMBULATE THE KAABA

j5.2 Prior to circumambulating the Kaaba one proceeds to the Black Stone (diagram: 1) (O: next to the Kaaba's door, on the east corner), drawing near to it, if one can do so without hurting others by justling. One faces the Black Stone, places the hand on it, and without a word, kisses the stone thrice and touches the forehead upon it thrice. (O: Touching, kissing, and placing the forehead on the stone are only sunna for women when the circumambulation area is vacant, whether in the night or day.)

j5.3 One ceases to chant "Labbayk" at this point, not to resume until after having finished both circumambulating the Kaaba and going between Safa and Marwa (def: j6). One puts the center (N: of the top edge) of one's mantle under the right arm and its two ends over the left shoulder so that the right shoulder is left bare (dis: j5.13, second par.).

One begins circumambulating by first standing facing the Kaaba with the Black Stone on one's right and the Yamani corner (diagram: 8) on one's left, standing back from the stone a little towards the Yamani corner (n: i.e. behind the black stripe in the marble pavement, extending out from the stone, that marks the beginning of one's circumambulation). One should intend performing the circumambulation for Allah Most High (O: though this intention is only necessary for a supererogatory or a departure circumambulation, not for an obligatory or an arrival circumambulation, since the intention to perform the rites of hajj or 'umra (def: j3.3) includes the intention for the latter two types of circumambulation). Then one:

(1) places the hand on the Black Stone, and then kisses it and places the forehead on it thrice, as mentioned above (A: i.e. it is done again here to begin the circumambulation, just as it was done before circumambulation (j5.2));

(2) says "Allahu akbar" three times;

(3) and adds, "O Allah, out of faith in You and to affirm Your book, fulfill Your covenant, and follow the sunna of your prophet Muhammad (Allah bless and give him peace).

j5.4 Then one moves sideways (A: as is recommended) to the right, passing in front of all of the Black Stone with all of the body, while facing it. When past the stone, one turns (O: from facing it) so that the Kaaba is on one's left and then proceeds to circumambulate it. (O: If one did this (N: kept the Kaaba on one's left while passing the stone) from the beginning and neglected to face the stone, it would likewise be permissible.)

j5.5 At the Kaaba's door (diagram: 2) one says, "O Allah, verily this house is Your house, the sanctuary Your sanctuary, the safety Your safety, and this is the station of him who took refuge in You from fire" (N: i.e. the Station of Ibrahim (diagram: 3), though some hold the words mean "him who takes refuge," alluding to oneself).

j5.6 When one reaches the corner (diagram: 4) by the opening of the Hijr (n: a semicircular wall that stands apart from the Kaaba (diagram: 5)), one says, "O Allah, I take refuge in You from doubt, from ascribing partners to You, from discord, hypocrisy, evil traits, and from bad turns of fortune in money, spouse, and children."

j5.7 When even with the rainspout (N: called the Spout of Mercy (Mizab al-Rahma), at the top of the Kaaba (diagram: 6)), one says: "O Allah, shade me in Your shade on a day when there is no shade but Yours, Give me to drink from the cup of Your prophet Muhammad (Allah bless him and give him peace), a wholesome drink after which I will never thirst."

j5.8 Between the third corner (diagram: 7) and the Yamani corner (diagram: 8), one should say, "O Allah, make this a pious hajj, a rewarded effort, an accepted work, and a transaction that will never perish, O All-powerful and Oft-forgiving one."

j5.9 When one reaches the Yamani corner, one does not kiss it, but touches it and then kisses one's hand.

j5.10 One does not kiss any of the Kaaba (O: meaning that it is not required, though if one kisses any of

its parts, it is not offensive, but rather is good) except the Black Stone. Nor does one touch any of it except the Yamani corner, which is the one before the Black Stone.

j5.11 When one reaches the Black Stone, one has completed a single round (O: provided its conditions (def: j5.16) have been met).

j5.12 One goes around the Kaaba seven times (O: the seventh ending where one began, at the Black Stone. One's circumambulation is incomplete as long as even a span remains between oneself and the place even with the stone).

#### TROTTING FOR THE FIRST THREE ROUNDS

j5.13 It is sunna in the first three rounds of circumambulation to hasten one's gait (N: if one can do so without harming others) (O: taking close steps, without running) which is termed trotting (ramal) (O: and which is desirable for men only, not women).

Both trotting and baring the right shoulder (def:j5.3) are only called for in circumambulations that are followed by going between Safa and Marwa (def:j6). If one wishes to go between Safa and Marwa after one's arrive circumambulation, then one does the two sunnas (O: both trotting and baring the shoulder at this point, but when one later performs one's going-forth circumambulation (tawaf al-ifada, def: j9.10), one does not do these two sunnas because that circumambulation is not followed by going between Safa and Marwa (N: if one has already gone between them before)).

But if one wishes to go between Safa and Marwa after the going-forth circumambulation (O:which is superior), one postpones the two (O: sunnas of trotting and baring the shoulder) until then. While trotting, one says, "O Allah, make this a pious hajj, a rewarded effort, and forgive my sins." In the last four rounds of one's circumambulation, it is sunna to proceed at one's normal pace, while saying: "My Lord, forgive me, show me mercy, and pardon that which You know. Verily You are the All-powerful and the Most Generous. Our Lord, give us what is good in this world and the next, and keep us from the torment of hell." This supplication is particularly recommended in the odd-numbered rounds of the circumambulation (O: as they are superior. Reciting the Koran while circumambulating is better than making supplications that have not reached us through prophetic hadith, though supplications from hadith are superior to reciting the Koran during it).

j5.14 It is recommended to kiss the Black Stone in each round (O: and to place the forehead on it, each three times) and to touch the Yamani corner, particularly in the odd-numbered rounds.

If it is not possible to kiss the Black Stone because of crowds or because one fears to hurt people (O: or be hurt) by jostling, one may touch it with one's hand and then kiss the hand. If this is not possible, one may touch it with a stick (O: or the like, such as a scarf) and kiss the stick. If this too is impossible, then one points to it (O: or the Yamani corner) with the hand (O: and it is sunna to kiss one's hand).

j5.15 A noteworthy detail here is that there is a buttress at the base of the Kaaba that resembles a ledge and slide. It is part of the Kaaba, and when one kisses the stone, one's head is in the space above the buttress. So one is obliged to keep one's feet motionless until one finishes kissing the stone and straightens up, after which one continues circumambulating. (N: One may not move one's feet as part of the circumambulation while one's head is within the space above the buttress, as it nullifies that particular round because of the condition (dis: j5.16(j)) that circumambulation be done around the Kaaba, and not within its confines.) If, when leaning over to kiss the stone, one's feet move even a finger's width towards the Kaaba's door, and after this, one continues circumambulating, then that particular round does not count (O: nor do the others that come after it, if one limits oneself to just those seven, considering the spoiled one as a valid round. But if one adds an extra round (N: to make up for the invalid one), then one's circumambulation is valid).

It is more precautionary when one has straightened up from kissing the stone, to step back to the left towards the Yamani corner (j5.2 diagram: 8) enough to ensure that one is where one was before kissing the stone. (N: The same is true of touching the Yamani corner with one's hand.)

#### THE CONDITIONS OF A VALID CIRCUMAMBULATION

j5.16 The conditions of a valid circumambulation (O: of any kind, obligatory or nonobligatory) are: (a) that one's nakedness (def: f5.3) be clothed, because the round is invalid whenever any of one's

nakedness shows, even a single hair of a woman's head (O: meaning that the particular round in which it showed is invalid, provided it was done intentionally. If it happened inadvertently and the woman immediately covered it (A immediately meaning after no more than the time required to say "Subhan Allah"), then it does not invalidate that round, though if she does not cover it until after it is showing, the subsequent round takes the place of the above-mentioned invalid one);

(b) ritual purity (O: from minor (hadath) and major (janaba) impurity) (n: though for Hanafis, touching a marriageable member of the opposite sex (N: despite being unlawful) does not nullify one's ablution (Maraqī al-falqh sharh Nural-idah (y126), 17), and considering the difficulty of avoiding it at a contemporary hajj, taking the dispensation seems a virtual necessity);

(c) to be free from impure substances (najasa) on one's person, clothing, and the place of walking while circumambulating;

(d) that it take place within al-Masjid al-Haram;

(e) that one's circumambulation comprise seven full rounds;

(f) that it begin from the Black Stone, as described above, and that one pass by all of the stone with all of one's body, for if one begins from another part of the Kaaba, then the round does not count until one reaches the stone, from whence it begins;

(g) that one keep the Kaaba on one's left and move towards the door (j5.2 diagram: 1-2);

(h) that each round be outside of the Hijr (diagram: 5) such that one does not enter the opening between the Hijr and the Kaaba and then exit through the other opening;

(i) and that all of the body of the person circumambulating be exterior to all parts of the Kaaba, such that while walking around it, one does not put one's hand in the space above the buttress previously mentioned (j5.15), which violates the condition of being wholly outside all of the Kaaba while making one's rounds.

j5.17 Everything besides the above conditions is sunna (N: not obligatory), such as trotting in the first three rounds, the various supplications, and the other things previously mentioned.

## TWO RAK'AS AFTER CIRCUMAMBULATION

j5.18 When one has finished circumambulating, and after putting one's mantle over both shoulders, it is recommended to pray two rak'as for the sunna of circumambulation (O: and it is best to perform them) behind the Station of Ibrahim (j5.2 diagram: 3), In the first rak'a, one recites al-Kafirun (Koran 109), and in the second, al-Ikhals (Koran 112).

After this, one supplicates Allah from behind the station (O: if one prays there. Otherwise, one may perform the two rak'as (N: in order of superiority) in the Hijr (diagram: 5), al-Masjid al-Haram, the Sacred Precinct, or whenever and wherever one wishes to pray them, and they remain a current performance until the day one dies. It is sunna to recite the suras aloud in these two rak'as if performed at night, and to recite them to oneself if performed during the day. It is desirable to make the supplication related by Jabir, who said that the Prophet (Allah bless him and give him peace) prayed two rak'as behind the station (N: of Ibrahim) and then said:

"O Allah, this is Your city, and al-Masjid al-Haram, and Your inviolable house, and I am Your slave, the son of Your slave and bondwoman. It have come to You with many sins, mistakes, and wicked acts, and this is the station of him who took refuge in You from the fire; so forgive me, verily You are the All-forgiving and Compassionate. O Allah, You have called Your servants to Your inviolable house, and I have come, asking for Your mercy and seeking what pleases You, and You are the Rewarder, so forgive me and have mercy on me, verily You have power over everything").

Then one returns to the Black Stone and touches it (O: kisses it, and bows one's head upon it).

## j6.0 GOING BETWEEN SAFA AND MARWA (SA'Y)

j6.1 Then it is recommended to exit through the Safa door of al-Masjid al-Haram if one wishes to go between Safa and Marwa immediately. (O: It is necessary for the validity of going between Safa and Marwa (N: for hajj) prior to the Day of 'Arafa that one do so after one's arrival circumambulation (tawaf al-qudum) (N: though one may not do so on an 'umra first (tamattu') hajj, for which the initial circumambulation and going between Safa and Marwa are part of one's 'umra (dis: j12.2(c))), nor do so after a supererogatory or farewell circumambulation.) One may postpone it until after the going-forth circumambulation (tawaf al-ifada, def: j9.10) (O: which is superior).

## HOW TO GO BETWEEN SAFA AND MARWA

j6.2 One begins from Safa. It is recommended:

- (1) for men (O: not women) to climb upon Safa the height of a person, so that one can see the Kaaba through the mosque's door, and to face the Kaaba;
- (2) to say: "La ilaha illa Llah, Allahu akbar," and "There is no god but Allah alone, without partner. His is the dominion, His the praise, He gives life and causes to die, all good is in His hand, and He has power over everything. There is no god but Allah alone, without partner. He kept His promise, give His slave the victory, and routed the Confederates alone. There is no god but Allah. We worship none but Him making our religion sincerely for Him, though unbelievers be averse";
- (3) to supplicate for whatever one wishes (O: which is called for here because it is one of the places where prayers are answered. 'Umar (Allah be well pleased with him) used to supplicate lengthily here);
- (4) and to repeat (2) and (3) a second and third time.

j6.3 Then one descends from Safa and walks (O: towards Marwa) at one's normal pace until within three meters of the first green marker suspended from the left wall. Here one runs (N: women walk) until midway to the second green marker, at which midpoint one resumes one's usual pace until one reaches Marwa. One claims Marwa and says the same invocation as was said at Safa. This is once. Then one descends from Marwa and returns, walking and running at the proper places, until one reaches Safa. This is twice. At Safa one says the same invocation and supplication, and then goes back to Marwa, which is three times. One repeats the process until one has completed seven times, finishing at Marwa.

#### THE OBLIGATORY ELEMENTS OF GOING BETWEEN SAFA AND MARWA

j6.4 The obligatory elements (O: i.e. conditions for the validity) of going between Safa and Marwa are four:

- (a) to begin at Safa. If one begins at Marwa and walks to Safa, this does not count and one's going between them is not considered to have begun until one reaches Safa;
- (b) to traverse the entire distance. It would be invalid if one neglected even a single span or less of the distance. One must begin by putting one's heel against the wall at Safa, and finish at Marwa by putting the toes against the wall there (N: the course has now been enlarged and paved so that one's going between them is complete without having to reach the walls that are currently there. Rather, between the two sides of the paved track (n: the lanes for going and coming) there is a smaller track for wheelchair patients, and the ends of this smaller track currently represent the minimal distance);
- (c) to complete seven times: from Safa to Marwa equals one, from Marwa to Safa is another one, and so on, as mentioned above. If doubts arise while going between them as to how many times it has been-or while circumambulating the Kaaba, how many rounds have been done-then one assumes one has done the least number one is sure of and completes the rest (O: though if the doubts arise after finishing, one need not do anything);
- (d) and that going between Safa and Marwa take place after the going-forth circumambulation (tawaf al-ifada, def: j9.10) or else after one's arrival circumambulation, provided that standing at 'Arafa does not intervene between the arrival circumambulation and going between Safa and Marwa (dis: j6.1).

#### THE SUNNAS OF GOING BETWEEN SAFA AND MARWA

j6.5 The sunnas of going between Safa and Marwa are those previously mentioned (j6.2-3), to have ablution (wudu), that one's nakedness (def: f5.3) be clothed, and to say while between Safa and Marwa: "My Lord, forgive, show mercy, and overlook that which Your know. Vify Your are the Most Powerful and Generous. O Allah, our Lord, give us what is good in this world and the next, and protect us from the torment of hell."

If one recites the Koran (A: while going between them) it is better (O: than anything besides the invocations that have reached us in hadith (A: i.e. the above), which are better here than reciting the Koran).

j6.6 It is not recommended to repeat going between Safa and Marwa.

#### j7.0 THE WAY TO 'ARFA

j7.1 On 7 Dhul Hijja it is recommended for the imam (A:i.e. the caliph or his representative) to give a sermon after the noon prayer (zuhr) in Mecca (O: at the Kaaba), instructing the pilgrims about the rites they will soon perform, and ordering them to go forth on the following day (O: the morning of the eighth) to Mina.

j7.2 The imam goes forth with them after the dawn prayer (subh) on 8 Dhul Hijja.

He prays the noon, midafternoon, sunset, and nightfall prayers with them at Mina, and they spend the night and pray the following dawn prayer there. When the sun rises over the mountain at Mina that is called Thabir, they proceed to 'Arafa.

Spending the night and staying at Mina during this time are a sunna (O: and not part of the hajj rites. If one does not spend the night at Mina at all, or go there, it does not entail any consequences) that many people no longer do, but come to 'Arafa at the end of the night with lighted candles. The lighting of candles is a disgraceful innovation (O: as is their coming there a day or two before of Dhul Hijja, a mistake that contravenes the sunna, and through which they miss many other sunnas).

j7.3 It is sunna on the way to 'Arafa to say: "O Allah, to You I betake myself, seeking Your noble countenance. Forgive me my sins, make my hajj a pious one, show me mercy, and do not disappoint me"; and to do much of chanting "Labbayk," invocation (dhikr), supplication, and Blessings on the Prophet (Allah bless him and give him peace).

j7.4 When the pilgrims reach a place called Namira (N: the site of a large mosque) just before 'Arafa, they stop, and do not immediately enter 'Arafa. When the time for the noon prayer comes, it is sunna for the imam to give two sermons before the prayer, and then they pray, joining the noon and midafternoon prayers together. This too is a sunna that few follow.

#### j8.0 STANDING AT 'ARAFA

j8.1 Then they enter 'Arafa after the sunna bath (ghusl) for standing at 'Arafa, chanting "Labbayk" in lowliness and humility.

#### THE SUNNAS OF STANDING TO 'ARAFA

j8.2 It is recommended to stand exposed to the sun (O: and not take shade beneath a tent, umbrella, or other, unless there is an excuse such as harm from exposure) facing the direction of prayer (qibla) with one's heart fully attentive and not occupied with this-Worldly matters, and to do much of chanting "Labbayk," reciting the Blessings on the Prophet (Allah bless him and give him peace), asking Allah's forgiveness, supplicating, and weeping, for here tears are shed and mistakes annulled. The greater part of one's words would be: "There is no god but Allah alone, without partner. His is the dominion, His the praise, and He has power over everything." And one should pray for one's family, friends, and all Muslims.

j8.3 It is recommended to stand (O: if possible without hurting anyone) by the large round boulders that lie at base of the hill called Jabal al-Rahma (lit... "Mount of Mercy"). As for climbing Jabal al-Rahma, which lies in the middle of 'Arafa, there is no merit in doing so (O: above the merit of standing in other parts of 'Arafa). Standing is valid any where in the whole expansive plain, and this bluff is merely a part of it, the same as any other, though standing by the boulders below is better (A: as the Prophet (Allah bless him and give him peace) did so). It is better to be mounted, and not fasting. It is best for women to sit at the edge of the crowd (O: not in the middle of it, because men should not randomly mix with women).

#### THE OBLIGATORY ELEMENTS OF STANDING AT 'ARAFA

j8.4 The obligatory elements of standing at 'Arafa are:

(a) to be present (O: while in ihram) in some portion of 'Arafa;

(b) while sane and in full possession of one's faculties;

(c) at some point between the noon prayer (zuhr) on 9 Dhul Hijja and dawn of the following day.

(O: It is sunna to remain at 'Arafa until sunset so as to include both night and day.) Anyone who is present and sane during any of this time, even if merely passing though for a moment, has accomplished the hajj (O: as the Prophet (Allah bless him and give him peace) said,

"The pilgrimage is 'Arafa," meaning that most of it is 'Arafa).

Someone who misses standing at 'Arafa or who spends it unconscious has missed the hajj and he releases himself from ihram by performing the rites of 'umra; that is, by circumambulating, going between Safa and Marwa, and cutting his hair, and he is thus released from his ihram.

Such a person is obliged to make up the hajj and to slaughter as do those who perform an 'umra first (tamattu') hajj def: j12.6(I)).



## **j9.0 MUZDELIFA, MINA, AND THE GOING-FORTH CIRCUMAMBULATION**

### **MUZDELIFA**

**j9.1** When the sun sets on 9 Dhul Hijja, those on hajj go forth to Muzdelifa, occupied with invocation (dhikr), chanting "Labbayk," proceeding with tranquility and dignity, not jostling or injuring others (though if the way is clear it is desirable to hurry), and they join the sunset and nightfall prayers in the time of the nightfall prayer ('isha) at Muzdelifa. (O: It is necessary to have made the intention to join the prayers while in the time of the sunset prayer.)

When they reach Muzdelifa, they stop, pray, and spend the night there (O: which is best, and optimal. If one cannot spend the night, then the obligation to be present to Muzdelifa can be met by coming there, even for a brief moment, during the second half of the night, for spending the night merely means to be present there during the second half of the night, not actually staying overnight, as opposed to spending the night at Mina (dis: j10.4), which must be for the greater part of the night. If someone misses spending the night at Muzdelifa in the above-mentioned sense, does not return there before dawn, and has no excuse (N: of those given below), then he is obliged to slaughter as one does for an 'umra first (tamattu') hajja (def:L j12.6(I)). But if he misses spending the night there for one of the same reasons which justify not spending the night at Mina (def: j10.10), then he is not obliged to slaughter. Other valid excuses for not spending the night at Muzdelifa include:

(1) being occupied with standing at 'Arafa because of not having arrived there until after sunset, since it is more important than Muzdelifa;

(2) or going forth from 'Arafa after the middle of the night to Mecca in order to perform the (A: obligatory) going-forth circumambulation (tawaf al-ifada), missing Muzdelifa because of being occupied with it, since it too is more important than Muzdelifa.

In either of these two cases, one does not have to slaughter (A: for having missed Muzdelifa)).

In the morning, the pilgrims pray the dawn prayer at the first of its time.

They also pick up seven pebbles not one stone broken into seven (O: which is offensive), to throw at the stoning site (Ar. jamra, the enclosed round space with a pillar in the middle of it) at Mina, and it is best that these be the size of a broadbean (N: i.e. about the size of a thumbprint).

### **STOPPING AT AL-MASH'AR AL-HARAM**

**j9.2** After the dawn prayer, it is sunna to stop by a hill at the last of Muzdelifa (O: in the direction of Mina) called al-Mash'ar al-Haram (lit. "the Sanctuary Landmark"), which it is recommended to climb if possible. (A: Others hold that al-Mash'ar al-Haram refers to all of Muzdelifa.) It is desirable to face the direction of prayer (qibla), to do much of chanting "Labbayk," supplication, and invocation (dhikr), and to say, "O Allah, as You have brought us to stand in it and shown us to it, so too, give us success in Your remembrance, as You have guided us. Forgive us, and show us the mercy You have promised us by saying (and Your word is the truth):

"And when you move on from 'Arafa, remember Allah at al-Mash'ar al-Haram. Remember Him, for He has guided you though you were astray. And then go forth from where the people go forth, and seek Allah's forgiveness. Truly Allah is Oft-relenting and Most Compassionate' (Koran 2:198-99). "Our Lord, give us what is good in this world and the next, and keep us from the torment of hell."

**j9.3** When the day lightens considerably, the pilgrims proceed to Mina with gravity and tranquility before the sun rises.

### **RELEASE FROM IHRAM: THE INITIAL STONING AT MINA**

**j9.4** When the pilgrims, reach the valley of Muhassir near Mina, it is sunna to quicken their step for a distance of a stone's throw. Then they take the middle way which leads to (N: one of the three stoning sites called) Jamrat al-'Aqaba. They stone it as they are when they arrive (O: i.e. if mounted, they stone it mounted, and if on foot, they stone it on foot) with the seven stones picked up from Muzdelifa. These may be picked up from anywhere, not necessarily Muzdelifa, though it is offensive to take them from the stoning sites themselves, laterines (O: or other unclean places), or around mosques (O: which is not merely offensive but rather unlawful if they are taken from grounds included in the endowment (waqf, def: k30) for the mosque).

**j9.5** When one begins to stone Jamrat al-'Aqaba, one ceases chanting "Labbayk," and does not resume it thereafter (O: as its time is over, which was the period, of ihram, and stoning Jamrat al-'Aqaba is the first step to release from ihram).

The (O: optimal way to stone Jamrat al-'Aqaba is to stand in the middle of the valley after the sun is up so that 'Arafa lies to the right, Mecca to the left, and the stoning-site before one, and to throw the pebbles, one by one (O: as throwing them two at a time or all at once counts as having thrown one pebble) with the right hand, saying "Allahu akbar" with each pebble, lifting the arms high enough when throwing (O: if male, though not if female) that the underarm shows, and to actually throw the pebbles (O: meaning hard enough to be considered throwing), not merely flick them off the thumb with the forefinger. (n: The minimal conditions for the validity of stoning are given at j10.8)

j9.6 When finished stoning (N: Jamrat al-'Aqaba), one slaughters a voluntary sacrifice animal (hady) driven to hajj or one due by reason of hajj (dis: j12.6); or other sacrifice animal (udhiya, def: j12).

#### RELEASE FROM IHRAM: CUTTING THE HAIR

j9.7 Then men have their entire head shaved, which is optimal, though one may confine oneself to (O: removing (A: by any means)) three hairs thereof (O:i.e. from the head, not something else such as the beard or mustache), or many merely shorten it, for which the optimal is to clip a little less than two centimeters from all the hair. As for women, it is optimal for them to shorten their hair in the latter way (O: it being offensive for a woman to shave her head).

j9.8 While having one's hair cut it is best:

- (1) to face the direction of prayer (qibla);
- (2) to say "Allahu Akbar" (O: that is, "Allahu akbar, Allahu akbar, Allahu akbar, walillahil-hamd");
- (3) for the person shaving to start from the right;
- (4) and to bury the hair afterwards (O: a measure recommended for any parts separated from a living being).

j9.9 Cutting the hair is an integral without which the hajj remains unfinished (O: and which may not be compensated for by merely slaughtering), and a person remains in ihram until it is done. Someone without hair can simply pass a razor over his head (O: which is recommended, not obligatory, because it is a rite whose condition is the existence of a particular site, as it also the case with washing a hand (n: for ablution) when the hand has been amputated (A:i.e. it need not be done if the site does not exist). After one's hair, has been cut, it is sunna to say, "O Allah, for each hair reckon for me a good deed, annul a bad one, and raise me a degree. Forgive me, those who shave their hair, those who shorten it, and all the Muslims").

#### RELEASE FROM IHRAM: THE GOING-FORTH CIRCUMAMBULATION (TAWAF AL-IFADA)

j9.10 On the same day (A: 10 Dhul Hijja) one enters Mecca and performs the going-forth circumambulation (tawaf al-ifada), which is an integral without which the hajj remains unfinished (O: the author's expression "without which the hajj remains unfinished" meaning that it may not be compensated for by merely slaughtering, though the time it may be performed is anytime thereafter, according to our school. The Hanafis hold it must be done by sunset on 12 Dhul Hijja, and if the sun sets and one has not performed it, this obliges one to slaughter), and one remains in ihram until one does it. Its obligatory features are as described above (dis: j5.16).

After it, one prays two rak'as (O: intending the sunna of circumambulation (def: j5.18)).

j9.11 Then, if one has already gone between Safa and Marwa after the arrival circumambulation (dis: j6.1), one does not repeat it, though if he has not yet done it, one must do so, since going between Safa and Marwa is also an integral without which the hajj is unfinished, and one remains in ihram (O: legally, regarding one's relations with women (dis: j9.13)) until it is performed.

#### RELEASE FROM IHRAM: GENERAL PROVISIONS

j9.12 The best order in which to perform:

- (1) stoning Jamrat al-'Aqaba;
- (2) cutting the hair;
- (3) and the going-forth circumambulation (tawaf al-ifada); is (1), (2) and (3) (O: and the sunna is to do all three on this day), though it is valid to do them in some other order.

The time for these three begins at the middle of the night (A: between sunset of 9 Dhul Hijja and dawn of the tenth) on 'Eid al-Adha (O: though it is best for the stoning to take place after sunrise). The (O: preferred) time for stoning Jamrat al-'Aqaba ends at the end of the day of the 'Eid (O: at sunset. As for the permissible time, it lasts until the end of the three days after the 'Eid. The best time to stone on

'Eid al-Adha finishes at noon. Thus, the stoning has three times: the best, the preferred, and the merely permissible), while the time for cutting one's hair and the going-forth circumambulation lasts indefinitely, even if years.

j9.13 The release from ihram in hajj is in two stages, partial (lit. "first") and full ("second"). Partial release from ihram occurs when any two of the three rites of stoning, cutting the hair, and the going-forth circumambulation are performed, whether cutting the hair and stoning, cutting the hair and circumambulation, or stoning and circumambulation. Doing any two of them accomplishes partial release from ihram, rendering permissible all the things that were made unlawful by ihram (def: j3.5) except those relating to women, such as sexual intercourse, getting married, or touching with desire. Full release from ihram occurs when all three rites have been performed, and it renders permissible everything made unlawful by ihram (O: though one still has to stone at the three stoning sites and stay overnight at Mina during the days following the 'Eid (Ayam al-Tashriq)).

#### **j10.0 ENCAMPMENT AND STONING AT MINA ON THE DAYS AFTER 'EID**

j10.1 When finished with the going-forth circumambulation (tawaf al-ifada) and going between Safa and Marwa (O:i.e. doing the latter if one had not previously performed it after the arrival circumambulation (dis: j6.1)), one is obliged to return to Mina (O: to stay overnight there and stone on the days following the 'Eid (Ayam al-Tashriq). It is desirable to arrive before noon to perform the noon prayer there as the Prophet did (Allah bless him and give him peace)), and one spends the night there. One picks up twenty-one pebbles from Mina on the days after the 'Eid (the first of which is the second day of the 'Eid), taking care to shun the three places mentioned above (dis:j9.4 (end)).

j10.2 After the time for the noon prayer has come (O: on 11 Dhul Hijja, the first day after the 'Eid) one stones with the pebbles before performing the noon prayer. (N: It is well to mention some ruling about stoning that enable one to avoid the crowding at Mina on a contemporary hajj. The time for stoning on each of the three days that follow the 'Eid (Ayam al-Tashriq) begins at noon of that day and all of one's stoning until the afternoon of the third day, having remained to Mina until then. But in such a case, the correct order is still Obligatory: one must begin by stoning with the intention of performing it for the first day, standing at the first the third (Jamrat al-'Kubra). then the second site (Jamrat al-Wusta), and then the third (Jamrat al-Aqaba) Then one stones with the intention of performing it for the second day, the first stoning site first, then the second, then the third. And then one stones for the third day, observing the same order.)

#### **THE PROPER SEQUENCE FOR STONING**

j10.3 The first site one stones (O: called Jamrat al-Kubra) is the one closest to al-Khayf mosque. One (A: optimally) walks up to it, keeping it on one's left and facing the direction of prayer (qibla), stones it pebble by pebble as mentioned above (j9.5), and turns from the direction of prayer to avoid others' pebbles, after which one puts the stoning site behind one and again turns to the direction of prayer, to supplicate and invoke Allah humbly and imploringly for as much time as it takes to recite al-Baqara (Koran 2) (N: about an hour).

One then proceeds to the second site (O: called Jamrat al-Wusta), repeats the stoning procedure, and when finished, supplicates (O: and invokes Allah Most High) for as long as it takes to recite al-Baqara. Then one goes to the third site, which is Jamrat al-`Aqaba that was previously stoned with seven pebbles on `Eid al-Adha, and stones it as one did at that time (dis: j9.5), facing it with the direction of prayer (qibla) to the left, though when finished, one does not stand there.

#### **THE SECOND DAY AFTER THE `EID**

j10.4 One is obliged to spend the night at Mina (A: that evening, after sunset on 11 Dhul Hijja). The following day, the second day after the `Eid (A: i.e. 12 Dhul Hijja), one picks up twenty-one pebbles, and after the noon prayer's time has come, one stones the three stoning sites as described above, seven pebbles at each site. It is not permissible to stone for each of the days after the `Eid until after the noon prayer's time arrives. The correct sequence of stoning the sites is obligatory: the one closest to al-Khayf mosque first, the middle one second, and Jamrat al-`Aqaba third.

j10.5 It is recommended to take a bath (ghusl) each day for stoning.

#### **THE PERMISSIBILITY OF LEAVING MINA ON THE SECOND DAY**

**j10.6** After stoning on the second day after the `Eid, it is recommended for the imam to give a sermon informing people about the permissibility of leaving early (A: on the second day rather than the third) (O: which is permissible provided:

- (a) that one's departure takes place after the noon prayer's time has come;
- (b) after having stoned the three stoning sites;
- (c) that one's departure is from Mina itself, as it is not permissible to leave directly from Jamrat al-`Aqaba, in view of the position that it is not part of Mina;
- (d) that one intends leaving while within the boundaries of Mina;
- (e) and that one leaves before sunset).

Then the imam bids them farewell.

**j10.7** One then has a choice between leaving early on the second day after the `Eid, or waiting (A: until having stoned on the third day). If one wishes to leave early, one may do so, provided the departure from Mina occurs before sunset. If the sun sets and one is still at Mina, it is not permissible to leave early, and one is obliged to spend the night there and stone the sites the next day. If one does not wish to leave early, one stays overnight at Mina, picking up twenty-one pebbles and stoning the sites on the following day after the time of the noon prayer has begun, as previously mentioned.

#### **CONDITIONS FOR THE VALIDITY OF STONING**

**j10.8** (O: Having mentioned the conditions for stoning in various rulings above, it is well enumerated all seven together:

- (a) that seven pebbles be used;
  - (b) that they be thrown one by one;
  - (c) that one's action may be termed throwing, not merely putting the pebbles into the throwing place;
  - (d) that what is thrown be some form of stone;
  - (e) that it be done with the hand, as a bow or foot would be inadequate;
  - (f) that one aim at the throwing place;
  - (g) that one be certain that the pebble reaches it, even if it falls out again, for if one doubts that the stone reached it, then that stone does not count;
- (the above seven conditions hold for both `Eid al-Adha (dis: j9.5) and for the days following the `Eid, though the days following the `Eid require two additional conditions:)
- (h) that the stoning be done after the time for the noon prayer arrives;
  - (i) and that one stone the three sites in the proper sequence (dis: j10.3).)

**j10.9** Then one (O: who has (n: remained at Mina and) stoned on the third day after the `Eid) leaves (O: after stoning. None of the conditions for leaving early (def: j10.6) are necessary to leave at this point).

#### **VALID EXCUSES FOR NOT SPENDING THE NIGHT AT MINA**

**j10.10** (O: If there is an acceptable excuse for not spending the night at Mina, then not doing so does not entail any consequences. Excuses include:

- (1) having property one fears to lose were one to stay overnight;
- (2) fearing for one's person or the funds with one;
- (3) having a sick person with one who requires care;
- (4) having an illness that makes spending the night a hardship;
- (5) or a similar excuse.

People in such circumstances do not have to spend the night, and may leave on the second day after the `Eid, even after sunset. These excuses, which permit one to not spend the night at Mina, likewise permit not spending the night at Muzdalifa, in connection with which some other excuses have been previously mentioned (dis: j9.1(1-2)).)

**j10.11** It is recommended (N: after leaving Mina) to spend the night at al-Muhassab, which is by the mountain near the cemetery of Mecca, one's hajj now being finished.

#### **j11.0 THE FAREWELL CIRCUMAMBULATION AND FINAL MEASURES**

**j11.1** If one wishes to perform the `umra, one may do so (O: i.e. enter ihram for it) from any point outside of the Sacred Precinct (Haram), as mentioned below in the description of `umra (def: j12).

## THE FAREWELL CIRCUMBULATION

j11.2 When one wants to return home, one comes to Mecca and performs the farewell circumambulation (tawaf al-wada`) (O: as is obligatory. It is disobedience to Allah to leave without the farewell circumambulation, and one must return to Mecca to perform it if still within 81 km./ 50mi. of it. If farther than this, one is not obliged to return, but must slaughter (def: j12.6(l) (N: i.e. if one goes by the position that the farewell circumambulation is obligatory, though slaughtering is sunna if one goes by the position (A: the weaker position in the Shafi`i school) that the farewell circumambulation is merely sunna). The integrals and conditions of the farewell circumambulation are the same as the obligatory circumambulation (def: j5.16). The farewell circumambulation is not only for those performing hajj or `umra, but is required from (A: i.e. obligatory for) anyone leaving Mecca a considerable distance, no matter whether intending to return or not).

j11.3 After the farewell circumambulation, one prays two rak`as (O: a sunna in our school) and stands at the place between the Black Stone and the door of the Kaaba, and supplicates: "O Allah, the house is Your house, the servant Your servant and son of Your two servants. You have carried me on a creature You have made submissive to me, bringing me to Your city and showing me Your grace that I might fulfill Your rites. If You are pleased with me then be the more so, and if not, then bless me now before my residence and the place where I am visited grow far from Your house. Now is the time I depart if You permit me, who seek none but You and no other than Your house, and am not averse to You or Your house. O Allah, give me good health in body and protect me in my religion. Make my affairs turn out well and give me the sustenance of obedience to You as long as You let me live. Give me the best of this world and the next, for truly, You have power over everything. "One blesses the Prophet (Allah bless him and give him peace), and then walks away normally (O: turning one's back on the Kaaba) without backing away from it (O: while facing it, as many people do, which is offensive because it is a reprehensible innovation (bid'a, def: w29.3)).

j11.4 One then immediately prepares for departure. If one stops to stand (O: lengthily), or becomes involved in something unconnected with travel (O: like shopping, paying a debt, visiting a friend or sick person, and so forth), then one's farewell circumambulation is invalid (A: though such things do not nullify it in the Hanafi school) and it is obligatory to repeat it. But if one's activity concerns travelling, such as making one's baggage fast or buying travel provisions and the like (O: such as a rope with which to tie up one's baggage) then it is permissible.

j11.5 A woman in her monthly period may depart without a farewell circumambulation, and need not slaughter in expiation (O: though it is sunna for her to come to the door of the mosque and say the supplication mentioned above (j11.3)).

## RECOMMENDED MEASURES FOR THOSE STAYING IN MECCA

j11.6 It is recommended to do much of:

- (1) performing `umra (O: the whole time one is in Mecca, especially in Ramadan);
- (2) looking at the Kaaba (O: as it is said that Allah Most High sends down one hundred and twenty mercies day and night upon the Noble House, sixty for those circumambulation, forty for those praying there, and twenty for those looking at it);
- (3) drinking the water of the Well of Zamzam for whatever intention one wishes, religious or this-Worldly (O: as the Prophet (Allah bless him and give him peace) said, "The water of Zamzam is for whatever it is drunk for." It is sunna to face the Kaaba while drinking, to breathe three times, and say "al-Hamdu lillah" and "Bismillah" each time one drinks), drinking one's fill of it;
- (4) and visiting the noble places of Mecca (O: which are many, such as the birthplace of the Prophet (Allah bless him and give him peace) and that of `Ali (Allah be well pleased with him).

j11.7 It is unlawful to take the slightest bit of the earth of the Sacred Precinct or its stones, or take cups or jugs made from the clay of the Sacred Precinct of Medina.

## j12.0 THE OBLIGATORY FEATURES OF HAJJ AND `UMRA

### A DESCRIPTION OF UMRA

J12.1 The `umra consists of entering ihram as one does for hajj (def:j3) (o: resembling the hajj in the

Obligatoriness of the intention when one enters ihram, in the sunna of bathing (ghusl) for it, and in the necessity of divesting oneself of sewn clothing before or after the intention). If one is a Meccan (N: or a temporary resident (dis: j2.2)), one must go to (n: enter ihram from at least as far as) the nearest place outside of the Sacred Precinct. If one is from outside (O: meaning a stranger travelling towards Mecca), then one enters ihram at the ihram site (O: which one passes, meaning the hajj ihram sites (def: j2.1)), as previously mentioned. All of the things unlawful while in ihram for hajj (def: j3.5) are unlawful while in haram for 'umra. Then one enters Mecca and performs the circumambulation (def: j5.16) of 'umra, though the arrival circumambulation (tawaf al-qudum) is not called for by Sacred Law (O: at all, since one is performing an Obligatory circumambulation). One then goes between Safa and Marwa (j6), and finally shaves the head or shortens the hair (def: j9.7) (O: the former being preferable for men and the latter for women). When this has been done, one is released from the ihram of 'umra.

## THE INTEGRALS OF HAJJ AND 'UMRA

j12.2 The integrals of 'umra are:

- (a) ihram (def: j3);
- (b) circumambulation (def: j5.16);
- (c) going between Safa and Marwa (def: j6.4);
- (d) shaving or shortening the hair (def: j9.7);
- (O: and performing them in the order given which is a fifth Integral).

j12.3 The integrals of hajj are these four (n: (a), (b), (c), and (d) above) plus standing at 'Arafa (def: j8.4).

The hajj's other requisites (wajibat, dis: c2.1(A:)) are:

- (a) that one enter ihram at the proper site (def: j2.1-2);
- (b) stoning the stoning sites at Mina (def: j9.4, j10);
- (c) staying the night at Muzdelifa (def: j9.1) (N: another position is that this is sunna and not obligatory);
- (d) staying the nights following the 'Eid at Mina (def: j10.1, 4, 7);
- (e) and the farewell circumambulation (def: j11.2).

Everything besides the above is sunna.

## THE NONPERFORMANCE OF AN OBLIGATORY FEATURE OF HAJJ OR 'UMRA

j12.4 Someone who does not perform an integral (N: of hajj or 'umra) remains in ihram until he performs it. Someone who does not perform some other obligatory feature of them must slaughter in expiation (def: j12.6(l)) (O: if he does not return and perform it before its time is finished, as in such cases as:

- (1) returning to enter ihram at the proper site before one starts circumambulating (dis: j2.5), though if one returns after having begun circumambulating, it does not lift the obligation to slaughter;
- (2) not spending the night at Muzdelifa (j9.1), which necessitates slaughtering if one does not return before sunrise, though to do so after sunrise does not lift the obligation to slaughter;
- (3) or not spending most of the night at Mina, if one does not return to it before most of the time has passed, though if one does (n: return while most of it remains), then one need not slaughter. And similarly for the other requisites). Someone who does not perform a sunna is not obliged to do anything.

## BEING PREVENTED BY OTHERS FROM COMPLETING THE INTEGRALS OF HAJJ OR 'UMRA AFTER HAVING ENTERED IHRAM

j12.5 Someone prevented by an enemy (O: non-Muslim or Muslim) from entering Mecca (O: and fulfilling the integrals (A: of hajj or 'umra, including being barred from performing the obligatory circumambulation (tawaf al-ifada) or going between Safa and Marwa) when there is no alternative route, releases himself from ihram by intending release from it, shaving his head, and slaughtering a sacrifice animal at the place he has been prevented, if an animal is available. If not (O: such as when unable to find an animal at all, or finding one for more than the going price of similar animals at that place and time), one gives the animal's value in food (A: wheat) (O: as charity to the poor and those short of money is the Sacred Precinct (N: or place one is prevented)); or if unable (O: to give food), one fasts a single day for each 0.51 liters of food (A: wheat) that would have been given had the latter been done (O: fasting the days wherever one wishes. When fasting is the only option possible, one is immediately released from ihram after shaving one's head with the intention of releasing oneself).

If such a hajj or 'umra was to have been supererogatory, one is not obliged to make it up.

## A FULL SUMMARY OF THE EXPIATIONS CONNECTED WITH HAJJ AND 'UMRA

j12.6 (n: Muhammad 'Abdullah Jurdani distinguishes between four categories of expiations relating to hajj and 'umra.

(I) The first category consists of alternatives in a fixed precedence order and predetermined amount (dam tartib wa taqdir), meaning that one must either slaughter a shah (def: h2.5) meeting sacrifice specifications (def: j14.2), distributing its meat to the poor and those short of money (def: h8.11) in the Sacred Precinct; or if unable to slaughter (N: lack of money (def j1.17.2) while on the hajj, even if one has enough money back home), then one must fast three days during the hajj and seven more at home, making ten days. (N: If this expiation is for something that should have been performed after standing at 'Arafa (n: (4), (5), (6) or (9) below), the three days "during the hajj" may be fasted after one's release from ihram while still in Mecca, or if one fails to do so while three (A: as is obligatory), they become a makeup fast that must be performed before the other seven fasted at home (A: by an interval equal to the days of one's journey home).)

There are nine things which necessitate this type of expiation:

- (1) performing an 'umra first (tamattu') hajj (def: j1.15,17);
- (2) performing hajj and 'umra simultaneously (qiran, def: j1.16,17);
- (3) not standing at 'Arafa (def: j8.4);
- (4) to miss stoning (def: j10.8) at the stoning sites of Mina on the three days after the 'Eid, the time for which ends at sunset on the third day (dis: j10.2 (N:)) if one does not leave early (def: j10.6);
- (5) to miss all three nights at Mina after the 'Eid (def: j10.1,4,7), though if one only misses a single night, one distributes 0.51 liters of wheat to the poor of the Sacred Precinct, and if two nights, then double this amount;
- (6) to miss spending the night at Muzdelifa (def: j9.1, second par.);
- (7) not entering ihram at the proper site (dis: j2.5);
- (8) breaking one's vow (def: j18.5);
- (9) or not performing the farewell circumambulation (tawaf al-wada', def: j11.2).

(II) The second category consists of expiations in which one is free to choose one of three predetermined alternatives (dam takhyir wa taqdir), namely: to slaughter and distribute a shah as described above (I); to fast three days, even if unconsecutive, wherever one wishes; or to give 1.015 liters of wheat to each of six of the poor or those short of money at the Sacred Precinct.

There are eight things which necessitate this type of expiation:

- (1) removal of three hairs (dis: j3.8) at one time and place, meaning that the interval between removing each is not considered long (dis: f4.5), and one has remained at the same place, though if their removal does not occur at a single time and place, one must pay 0.51 liters of wheat to the poor or fast one day for each hair, even if their number exceeds three;
- (2) trimming three nails at one time and place, with the same rules and restrictions as just mentioned;
- (3) men wearing sewn garments or covering their head (dis: j3.6), or women covering their faces (dis: j3.24);
- (4) using oil (def: j3.7(1));
- (5) using scent (j3.7);
- (6) sexual foreplay (n: other than intercourse) (dis: j3.13);
- (7) having sexual intercourse a second time after having spoiled one's hajj (dis: j3.14) by an initial sexual intercourse;
- (8) or having sexual intercourse between partial and full release (def: j9.13) from ihram.

(III) The third category consists of expiations in a fixed precedence order of alternatives involving estimate-based substitutes (dam tartib wa ta'dil). It is necessitated by two things.

- (1) The first is being prevented by another from completing all the integrals of the hajj or 'umra (def:

j12.5), in which case one must release oneself from ihram by slaughtering and distributing a shah as described above (I); or if unable to slaughter, one estimates its value, buys food for that amount, and distributes it to the poor of the Sacred Precinct (N: or place one is prevented); or if unable to give food, one fasts one day for each 0.51 liters of wheat that would have been given if one had been able to.

(2) The second is having spoiled one's hajj or 'umra by sexual intercourse (def: j3.14), in which case one must slaughter a camel, or if unable to, one must perform the alternative one is capable of, of those mentioned at j3.15. (IV) The fourth category involves choosing between alternatives consisting of estimate-based substitutes (dam takhyir wa ta'dil). It is necessitated by two things.

(1) The first is killing a game animal while in ihram, where if there is a domestic animal of similar value (lit. "like"), one has a choice between the alternatives mentioned at j3.22, though if there is not, then those mentioned at j3.23.

(2) The second is destroying a tree of the Sacred Precinct, where, if it is large in relation to other

trees of its kind, one slaughters and distributes a cow, and if small, one slaughters a sheep. In either case, one has a choice between slaughtering it and distributing its meat to the poor of the Sacred Precinct, estimating its cost and buying wheat to distribute to the poor of the Sacred Precinct, or fasting a day for each 0.51 liters of wheat that would have been bought had the latter been done.

(Mufid' awam al-Muslimin ma yajibu' alayhim min ahkam al-din (y67), 230-38))

(N: Throughout the above, whenever one is obliged to slaughter an animal, it is permissible to commission (wakala, def: k17) another person to do so by means of the written contracts readily available at a modern hajj, simply paying an amount of money and signing the agreement. They then slaughter for one in the early morning of the 'Eid and distribute the meat to deserving recipients. Secondly, giving food or wheat to the poor, wherever it is mentioned in connection with expiations, means giving them the type of food that is valid for the zakat of 'Eid al-Fitr (def: h7.6), and the remarks made in that section about the Hanafi school permitting other than wheat apply equally here.) (n: In the Hanafi school, slaughtering must take place in the Sacred Precinct, though one may distribute both the meat and other expiations anywhere (al-Lubab fi sharh al-Kitab (y88), 1.212, 1.224).)

### **j13.0 VISITING THE TOMB OF THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE)**

j13.1 It is recommended when one has finished the hajj to visit the tomb of the Prophet (Allah bless him and give him peace) (n: in Medina). (O: One should enter his mosque with the right foot first, as in any mosque, and say the well-known supplication: "In the name of Allah, praise be to Allah. O Allah, bless our liege lord Muhammad, his folk and his Companions, and give them peace. O Allah, open unto me the gates of Your mercy.")

#### **HOW TO VISIT THE PROPHET'S TOMB**

j13.2 It is recommended to pray two rak'as to greet his mosque, and then approach the noble and honored tomb and stand at the head of it with one's back to the direction of prayer (qibla). One bows one's head and summons to mind reverent awe and humility, then greets the Prophet (Allah bless him and give him peace) and blesses him in a normal voice (O: saying: "Peace be upon you, O Messenger of Allah. Peace be upon you, O Prophet of Allah. Peace be upon you, O Chosen One of Allah. Peace be upon you, O Best of Allah's Creation. Peace be upon you, O Beloved of Allah"), after which one supplicates Allah for whatever one wishes. The one steps half a meter to the right to greet Abu Bakr, and again to the right to greet 'Umar (Allah be well pleased with them). Then it is recommended to return to one's original place and do much of supplicating Allah, turning to Allah through the Prophet (tawassul, def: w40) (O: concerning one's aims and goals, since he is the greatest intermediary, in intercession and other things), and invoking blessings upon him (Allah bless him and give him peace), after which one supplicates beside the pulpit (minbar) and in the Rawda (N: which is the space designated by the white pillars between the chamber containing the noble tomb and the pulpit).

j13.3 It is unlawful to circumambulate the tomb.

It is offensive to nudge the wall around the tomb with one's back or front, to kiss it, or touch it (O: with one's hand. Proper conduct here is to stand back from it as one would if present during his life (Allah bless him and give him peace). This is what is right, and what scholars have said and are agreed upon. One should not be deceived by what some common people do in their ignorance of proper manners, for it is reprehensible innovation (bid'a, def: w29.3)).

One of the most disgraceful innovations is the entering of dates in the Rawda.

j13.4 It is recommended to visit al-Baqi' (O: the cemetery of Medina. It is desirable to go to it every day, for buried there are the wives of the Prophet (Allah bless him and give him peace), some of his children, his father's brother 'Abbas, our liege lord 'Uthman ibn 'Affan the successor of the Messenger of Allah (Allah bless him and give him peace), a number of his Companions (Sahaba), and Imam Malik, founder of the Maliki school of jurisprudence, the bliss and benefaction of Allah be upon them all).

j13.5 When one desires to travel, one bids farewell to the mosque by praying two rak'as, and to the noble tomb with a visit and supplication. And Allah knows best.

### **j14.0 SACRIFICES ON 'EID AL-ADHA**

(O: Sacrifices are the livestock slaughtered in worship of Allah Most High between 'Eid al-Adha and the last of the three days that follow it. They are a general hospitality from Allah to believers (A: to whom the meat is distributed. It is unlawful to give any of it to non-Muslims).)



j14.1 'Eid al-Adha sacrifices are a confirmed sunna (def: c4.1) (N: which is considered Obligatory in the Hanafi school) (O: being sunna for those able to slaughter, though uncalled-for from the poor person who is unable).

It is recommended for someone who intends to sacrifice not to cut his hair or trim his nails on 10 Dhul Hijja until he slaughters (O: these being offensive until he does). The times for slaughtering begins when it is long enough after sunrise to have performed the 'Eid prayer (def: f19) with its two sermons (A:i.e. about forty minutes) (O: even if one does not attend it) and it ends at (A: sunset on) the last of the three days following the 'Eid.

#### **SACRIFICE ANIMAL SPECIFICATIONS**

j14.2 Only camels, cattle, sheep, or goats may be slaughtered. At the youngest, camels must be over five full years, cattle and goats over two full years, and sheep over one full year.

A single camel or cow fulfills the sunna for seven (A: men and their families), though a shah (def: h2.5) only fulfills it for one. It is superior to slaughter a single shah than to have a share in slaughtering a camel. The best animal to sacrifice is a camel, then a cow, then a sheep, and then a goat. The best kind of shah (h2.5) to slaughter is white, then tawny colored, then black and white, and then a black one. It is a necessary condition that a sacrifice animal be free of defects that diminish (A: the quality of) its meat. It is invalid to slaughter:

(1) a lame animal (O: that has an obvious walking problem that hinders its going to pasture and thus weakness it);

(2) a blind or one-eyed animal (O: whose defect is manifest, as this diminishes its ability to graze);

(3) a sick animal (O: whose infirmity is plain);

(though if these defects are slight, the animal will suffice. It is likewise invalid to sacrifice an animal that is:)

(4) deranged by malnutrition or insane;

(5) mangy or scabrous (O: even when it is not obvious);

(6) with an ear that has been cut off of a piece of its separated, even if not much (O: or one born without an ear);

(7) or missing a considerable part of the haunch or similar meat-bearing portion (O: though not if it is a slight amount). It is permissible to sacrifice an animal with a slit in its ear (O: a measure for identification that does not diminish the meat) or open with part or all of a horn broken off.

#### **HAVING ANOTHER SLAUGHTER FOR ONE**

j14.3 It is best to slaughter (def:j17.4) the animal oneself (O: if one can slaughter well. If not, then it is obligatory to have someone who can slaughter properly do it for one). If unable to slaughter well, it is recommended to be present when it is done.

#### **THE INTENTION**

j14.4 The intention to sacrifice must be made at the time of slaughtering. (O: It suffices the person who is having another slaughter for him to make the intention when he authorizes the other to do so.)

#### **DISTRIBUTING THE MEAT**

j14.5 It is recommended that a third of the animal sacrificed be eaten, a third be given away (O: even to wealthy Muslims, and a third be given as charity (O: raw, not cooked).

It is obligatory to give away some of the (O: raw) meat as charity, even if it is not much (O: it suffices to give it to one Muslim), and the hide is given in charity or used at home. It is not permissible to sell the hide or meat (O: all of the above applying to sunna or voluntary sacrifices). It is not permissible for a person who has vowed (def:j18) a sacrifice to eat any of the animal slaughtered.

#### **j15.0 SACRIFICE FOR A NEWBORN ('AQIQA) AND NAME GIVING**

(O: Lexically, 'aqiqa means the hair on a baby's head at birth. In Sacred Law, it means the animal sacrificed when the baby's hair is cut, which is a confirmed sunna (def: c4.1).)

#### **SUNNAS AFTER BIRTH**

j15.1 It is recommended for anyone to whom a child is born to shave its hair on the seventh day

thereafter (O: meaning any newborn, whether male or female; a baby girl should also have her hair shaved) and give away in charity gold or silver equal to the weight of the hair. It is also recommended (N: when the baby is first born) to give the call to prayer (adhan, def: f3.6) in its right ear and the call to commence (iqama) in its left.

## THE SACRIFICE

j15.2 If the baby is male, it is recommended to slaughter two shahs (def:h2.5) that meet 'Eid Sacrifice specifications (def:j14.2), while if the baby is female, it is recommended to slaughter one. (O: The person called-upon to slaughter for a newborn is the one obliged to support the child (dis: m12.1).) After slaughtering, the shah is cooked (O: as at any feast) in sweet sauce, but none of its bones are broken (A: it is cut at the joints), and it is recommended to distribute the meat to the poor.

## NAME-GIVING

j15.3 It is sunna to give the child a good name such as Muhammad or 'Abd al-Rahman. (O: It is desirable to name a child even if it dies before being named.) (A: It is sunna for a new Muslim to take a good name like the above, or one of the names of the prophets (def:u3.5) (Allah bless them and give them peace).)

## j16.0 FOODS

(O: This section is an explanation of what is lawful (halal) and unlawful (haram), the knowledge of which is among the most important concerns of the religion, since knowing it is personally obligatory for every Muslim.)

## AVOIDING DOUBTFUL FOODS

j16.1 (n: The following hadith and its commentary have been added here by the translator.) Anas (Allah be well pleased with him) relates that the Prophet (Allah bless him and give him peace) found a date in his path, and said, "But for fear that it was charity, I would have eaten it." (Riyad al-salihin (Y107), 277) (Muhammad ibn 'Allah Bakri:) The hadith shows that when a person doubts that something is permissible, he should not do it. The question arises, Is refraining from it in such a case obligatory or recommended?- to which our Imams explicitly reply that it is the latter, because a thing is initially assumed to be permissible and fundamentally not blameworthy, as long as some prior reason for considering it unlawful is not known about it that one doubts has been removed. For example, when one doubts that one of the conditions for valid slaughtering (def: j17.2-4) has been met, conditions which make (N: a particular piece of meat) lawful, the assumption is that it remains unlawful (N: since initially the animal was alive, a state in which it is unlawful to eat, while it only becomes lawful by a specific procedure, i.e. Islamic slaughtering), so that the meat does not become lawful except through certainty (A: that it has been slaughtered. The case of meats is exceptional in this, since most other foods are initially permissible, and one assumes they remain so unless one is certain something has occurred which has made them unlawful). In cases of doubt, only likely possibilities are taken into consideration, since it appears probable (N: in the above hadith) that dates for charity were present at the time. As for remote possibilities, taking them into consideration only leads to a blameworthy extremism and departure from how the early Muslims were, for the Prophet (Allah bless him and give him peace) was given some cheese and a cloak (A: by members of a non-Muslim Arab tribe) and he ate the one and wore the other without considering whether they might have mixed the former with pork, or whether the wool came from a slaughtered or unslaughtered animal. Were one to take such possibilities into consideration, one would not find anything lawful on the face of the earth. This is why our colleagues say, "Complete certainty that something is lawful is only conceivable about rainwater falling from the sky into one's hand: (Dalil al-falihin li turuq Riyad al-salihin (y25), 5.37-38).

## ANIMALS LAWFUL AND UNLAWFUL TO EAT

j16.2 It is permissible to eat the oryx, zebra, hyena, fox, rabbit, porcupine, daman (n: a Syrian rock badger), deer, ostrich, or horse.

j16.3 It is unlawful to eat:  
(1) (N: any form of pork products);

- (2) cats or disgusting small animals that creep or walk on the ground such as ants, flies, and the like (O: disgusting being used here to exclude inoffensive ones such as the jerboa, locust, and hedgehog, which are small creeping animals, but are recognized as wholesome, and are pure);
- (3) predatory animals that prey with fangs or tusks, such as the lion, lynx, leopard, wolf, bear, simians, and so forth (O: including the elephant and weasel);
- (4) those which hunt with talons, such as the falcon, hawk, kite, or crow, except for the barnyard crow, which may be eaten;
- (5) or the offspring of an animal permissible to eat and one not permissible to eat, such as a mule (O: which is a cross between one eaten, the horse, and one not eaten, the donkey).

j16.4 It is permissible to eat any aquatic game (sayd al-bahr) except frogs and crocodiles.

#### OTHER SUBSTANCES UNLAWFUL TO EAT

j16.5 It is unlawful to eat anything harmful, such as poison, glass, or earth. (A: If something has been proven harmful, it is unlawful to consume, while if suspected to be harmful, it is offensive to.) (n: w41 discusses cigarette smoking.)

j16.6 It is unlawful to eat anything impure (najasa, def: e14.1) (O: whether impure in itself, or because of being affected with something impure, as is the case with (N: befouled) milk, vinegar, or honey). It is also unlawful to eat substances which are pure, but generally considered repulsive, such as saliva or sperm.

j16.7 If forced to eat from a unslaughtered dead animal (O: out of fear of losing one's life or fear of an illness growing worse), then one may eat enough (O: the necessary minimum) to avert destruction (O: meaning enough to keep life from ending. One may not eat to repletion from a dead animal unless one believes that confining oneself to the survival minimum entails dangerous consequences, in which case it is obligatory to take the edge off one's hunger). If circumstances force one to choose between a dead animal and some permissible food belonging to someone else (O: who is not present), one is obliged to eat of the dead animal.

#### j17.0 HUNTING AND SLAUGHTERING

j17.1 It is not permissible to eat any animal (O: that Muslims are permitted to eat) until it has been properly slaughtered, the only exceptions to which are fish (def: j16.4) and locusts, which are permissible to eat even when they die unslaughtered.

j17.2 It is unlawful to eat meat slaughtered by a Zoroastrian, someone who has left Islam (murtadd, def:08), or an idol worshipper, (O: included with whom are those (zanadiqa) with corrupt convictions about tenets of faith that are well-known as essential parts of Islam (def: books u and v),) or a Christian of the desert Arab tribes (O: the upshot of which is that it is a necessary condition that the slaughterer be of a people whose women we are permitted to marry, whether Muslims, Jews, or Christians).

j17.3 It is permissible to slaughter with anything that has a cutting edge; but not a tooth, bone, or claw, whether human or otherwise, attached to the body or not.

j17.4 The necessary condition for slaughtering any animal which is within one's capacity to slaughter (O: domesticated or wild) is to cut both the windpipe and the gullet (O: windpipe meaning the channel of breath, and gullet meaning the channel of food and drink which lies beneath the windpipe). It is not necessary for the validity of slaughtering to cut the carotid arteries, which are two blood vessels on the sides of the neck encompassing the windpipe. If the slaughterer neglects to cut any part of either the windpipe or gullet and the animal dies, it is considered an unslaughtered dead animal, as is an animal with nothing but purely reflexive movement left when one finishes cutting a part of the windpipe or gullet previously missed. If the slaughterer cuts from the back of the neck until he severs the windpipe and gullet, it is a sin because of the excess pain caused (A: though it is valid as slaughtering. Chopping off heads of chickens with a hatchet is offensive, though the meat is lawful).

The slaughterer should cut swiftly and not take his time such that he has to cut two or more times. If he does, and there is no life remaining in the animal on the second swipe, then the animal (A: has died unslaughtered and) is impermissible to eat. The determining factor is whether life remains in the animal when the knife is applied at the beginning of the last stroke (A: the one which successfully severs both

the windpipe and gullet), no matter whether this is the second or third).

**j17.5 It is recommended when slaughtering:**

- (1) to turn the animal towards the direction of prayer (qibla);**
- (2) to sharpen the knife;**
- (3) to cut rapidly (O: even faster than is obligatory, such that it does not take two or more swipes, as mentioned above);**
- (4) to mention Allah's name (O: for the spiritual grace therein, saying "Bismillah," as is sunna) (A: this is obligatory in the Hanafi school);**
- (5) to bless the Prophet (Allah bless him and give him peace);**
- (6) and to cut the large blood vessels (O: on either side of the neck).**

**j17.6 It is recommended to slaughter camels by thrusting the knife (O: into the hollow at the base of the neck (A: between the two collarbones) above the chest so that one severs them (A: the windpipe and gullet) in this concavity, since it is easier than cutting the throat, for it seeds the exit of the spirit from the body by bypassing the length of the neck, being the preferable way to slaughter any animal with a long neck, such as a duck, goose, ostrich, or giraffe), with the camel left standing, one foreleg bound up.**

**j17.7 It is recommended to slaughter other than camels (O: such as cattle, sheep, goats, or horses (A: by drawing the knife) across the throat at the top of neck) after laying them on their left side. (O: Slaughtering them this way is only called for to easily enable the slaughterer to hold the knife in his right hand and the animal head with is left. It is also sunna for the animal's legs to be bound, except the right hind leg, so the animal will not jerk during slaughtering and cause the slaughterer to miss his mark. The right hind leg is left free in order to pacify the animal by giving it something to move).**

**j17.8 It is a necessary condition that the slaughterer not raise his knife-hand while slaughtering (O: while drawing it across the neck). If it lefts it before completely severing both the windpipe and gullet, and then returns to cut them, the animal is not lawful to eat.**

## **HUNTING**

**j17.9 As for hunting, a game animal is lawful to eat whenever on hits it with an arrow (A: or according to the Maliki school, shoots it with a rifle or shotgun) or brings it down with a trained hunting animal (A: such as a falcon or dog) (O: but only if trained), and it dies before one can slaughter it (O: that is, provided that one did not reach it when there was any life let in it besides reflexive motion. If one reaches it while it is alive or any life remains, then one must properly slaughter it), provided that the hunter is not blind, is of a people whose slaughtered food Muslims may eat (def: j17.2), and provided that the animal does not die from being struck by the mere weighting of the arrow , but rather dies by its edge weighting that it hits the animal point-first, wounding it). If the game was brought down by a trained hunting animal, it is a necessary condition that the animal ate nothing of the game. If the game animal dies from being struck by the weight of the trained hunting animal (A: as in falconing), then the game is lawful to eat.**

**j17.10 A game animal is not lawful to eat if:**

- (1) an arrow hits it and it then drips into water (O: because of the likelihood that it died from drawing (N: if that is probable) rather than from being short);**
- (2) it is brought down on a peak which it then falls from (O: because of the likelihood that it died from the fall);**
- (3) or if it disappears after having been wounded and is found dead (O: because it might have died for some other reason than being wounded (N: though if it is obvious that it dies from the wound, it is lawful to eat)).**

**j17.11 A camel or other (O: domestic animal such as a cow, sheep, goat, or horse) that strays and cannot be retrieved, or that falls into a well and cannot be gotten out may be made lawful to eat by shooting it (O: because of the impossibility of slaughtering it), no matter where one hits its body (N: provided one mortally wounds it). And Allah knows best.**

## **j18.0 VOWS (NADHAR)**

**(O: Lexically, the word vow means any promise. It is legally defined as making obligatory some act of worship that was not originally obligatory in Sacred Law, such as a supererogatory or fast, and like. There is a difference of opinion among scholars whether a vow in itself is an act of worship or whether it is offensive. The strongest position is that it is an act of worship when made to perform a pious act (A:**

since Allah Most High describes the pious as "fulfilling their vows" (Koran 76:7)), for it is an intimate discourse with Allah Most High; though it is offensive in the head of an argument.)

(A: The advantage of a vow is that one may obtain the reward of an obligatory act by fulfilling it. Its drawback is that unlike broken oaths, which may be expiated (dis: o20), there is no way to lift the vowed action: it remains obligatory unless one is physically unable (N: in which case one performs an alternative (n:e.g. giving food in place of fasting if there is one in Sacred Law). For this reason. many pious and learned Muslims avoid making vows.)

## THE CONDITIONS FOR THE LEGAL VALIDITY OF A VOW

j18.1 A vow (O: to perform some pious act) is only valid:

(a) if made by a Muslim who is legally responsible (mukallaf, def: c8.1);

(b) when it concerns some act of worship (A: meaning, for the Shafi'is, any recommended act, though for the Hanafi school it can only be an act that is similar in kind to an obligatory form of worship (n: such as prayer, fasting, or hajj));

(c) and is stated in words such as "I hereby owe Allah to perform such and such," or "I am hereby obliged to do such and such."

(O: A vow to do something that is merely permissible, such as standing, sitting, eating, or sleeping, is not legally valid because these are not acts of worship; the reason being the hadith related by Bukhari that the Prophet (Allah bless him and give him peace) passed a man standing in the sun without seeking shade, whom he inquired about and was told that it was Abu Isra'il, who had vowed to stand while fasting without sitting, taking shade, or speaking; to which he replied, "Pass by him and have him sit in the shade and speak, but let him finish fasting."

By act of worship, our author means acts that are supererogatory and not obligatory, since an oath to undertake an obligatory act is invalid whether it involves performance of something, such as an obligatory prayer or fast, or nonperformance of something, such as vowing to abstain from wine or fornication and the like. Such vows are not valid to begin with, as Allah has made these obligatory and "obligating oneself to do them" is meaningless.

The obligatory acts which are not valid to vow are restricted to the personally obligatory. As for the communally obligatory (def: c3.2), a vow to do such an act obliges one to fulfill it, because it is an act of worship not originally obligatory in the law, meaning not initially called for from any particular person.)

## GENERAL PROVISIONS REGARDING VOWS

j18.2 A valid vow to do an act of worship makes the act obligatory.

j18.3 One must fulfill a vow that one has made conditional upon the occurrence of some event, such as by saying, "If Allah heals my sick friend, I am obliged to do such and such" (O: of fasting, praying, or charity), which becomes obligatory if the sick person regains his health.

j18.4 If someone makes a vow by way of argument and in anger, saying, for example, "If I speak to Zayd, I am obliged to do such and such," then if he speaks to Zayd, he has a choice between doing what he has vowed, or else paying the expiation form a broken oath (def: 020).

j18.5 If one vows to perform the hajj riding but instead does so on foot, or vows to perform it on foot but then does so riding, this accomplishes the vow, though one is obliged to slaughter (O: as one does for an 'umra first (tamattu') hajj (def: j12.6(I)).

(N: Because the vowed walking or riding has become one of the obligatory elements of one's hajj, the expiation for its nonperformance is as other unperformed obligatory acts of hajj, and if such a person lacks a shah (def: h2.5) or lacks the money for it, he may fast. As for a person who vows to do something unconnected with the hajj and finds he cannot fulfill it, he performs a valid alternative if one exists in Sacred Law (dis:

j18.0 (A:)). If there is no valid alternative in Sacred Law, he remains responsible for performing the vowed act.)

(O: If one does not fulfill a vow because of being unable to or because of forgetfulness, it is not a sin, but one must slaughter, an obligation that incapacity or forgetfulness does not lift. To summarize, the sin (A: of not fulfilling one's vow) only exists when one is capable of fulfilling it, not when one is incapable, though someone who does not fulfill a vow because of incapacity must slaughter a shah meeting sacrifice specifications (def: j14.2).)

j18.6 If one vows to go to the Kaaba, Masjid al-Medina, or al-Masjid al-Aqsa (n: in Jerusalem), then one is obliged to. If one vows to go to the Kaaba, then one must perform hajj or 'umra (O: because hajj and 'umra are what is fundamentally intended in Sacred Law by going to the Sacred Precinct, and the vow is interpreted according to this convention of the Law as a vow to perform either hajj or 'umra). If one vows to go to Masjid al-Medina or al-Masjid al-Aqsa, then one must either perform the prayer or else spend a period of spiritual retreat (i'tikaf, def:i3) in the mosque (O: i.e. one is entitled to choose between prayer or spiritual retreat).

If one vows to go to some other mosque, the vow does not oblige one to do so (dis: i3.4(end)) (O: since travelling to other mosques is not an act of worship (N: that is, if intended for itself, though if one intends it in order to perform the prayer or (for spiritual retreat there in, it is an act of worship)).

j18.7 If one vows to fast for the whole of a particular year, one does not have to make up days not fasted on the two 'Eids or the three days following 'Eid al-Adha (dis:i2.3), or the days fasted during Ramadan, or the days a woman misses during her monthly period or postnatal bleeding.

j18.8 Someone who vows to perform the prayer (A: but does not specify how much) must pray two rak'as.

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## **k1.0 SALE**

(O:The legal basis for sale, prior to scholarly consensus (ijma'), is such Koranic verses as the word of Allah Most High,

"Allah has made sale lawful..." (Koran 2:275)

The more reliable of the two positions reported from our Imam (Allah Most High be well pleased with him) is that this verse is general in meaning, excluded by other evidence. For the Prophet (referring to all sales except those specifically). (Allah bless him and give him peace) forbade various sales but did not explain the permissible ones, his not doing so proving that the initial presumption for the validity of a sale is that it is lawful. This is also borne out by hadiths such as the one in which the Prophet (Allah bless him and give him peace) was asked what type of earning was best, and he answered.

"The work of a man's own hand, and every pious sale."

Meaning sales free of cheating and deceit. Hakim related this hadith, which he classified as rigorously authenticated (sahih). Lexically, sale means to transact something for something else. In Sacred Law it means to exchange an article of property for other property in a particular way. Its integrals are six:

- (a) the seller;
- (b) the buyer;
- (c) the price;
- (d) the article purchased;
- (e) the spoken offer;
- (f) and the spoken acceptance.)

(N: Sale (bay'), wherever it is used in the ruling below, refers to both exchanging goods for money and exchanging them for other goods (n: i.e. barter).)

## THE SPOKEN OFFER AND ACCEPTANCE

k1.1 A sale is not valid unless there is a spoken offer (O: by the seller) and spoken acceptance (O: by the buyer). Offer means the statement of the seller or his agent (wakil, def: k17) "I sell it to you" or "I make it yours." Acceptance means the statement of the buyer or his agent "I buy it" or "I take possession of it" or "I accept,"

(A: Regarding mujatah, which is giving the seller the price and taking the merchandise without speaking, as when buying something whose cost is well known, Bajuri notes, "Nawawi and a group of scholars have adopted the position that sales conducted by it (A: mu'atah) are valid for all transactions that people consider sales, since the determining factor therein is that acceptance of both parties, and there is no decisively authenticated primary text stipulating that it be spoken, so common acknowledgement ('urf, def: f4.5) is the final criterion (A: as to what legally constitutes acceptance)" (Hashiya al-Shaykh Ibrahim al-Bajuri (y5), 1.355).)

(N: The category of mu'atah also includes sales conducted by means of vending machines (A: provided it is clear what one is buying before one puts the money in the machine).)

It is permissible for the buyer's acceptance to precede the offer, such as his saying, "I buy it for so-and-so much," and for the seller to reply, "I sell it to you," It is also permissible to say, "Sell it to me for so-and-so much," and for the seller to reply, "I sell it to you." All of these are unequivocal expressions. Sales can likewise be effected, if the intention exists, by equivocal expressions such as "Take it for so-and-so much," or "I consider it yours for so-and-so much," thereby intending a transaction with the buyer, who then accepts. If one does not intend a transaction by such expressions, then the sale is nothing (O: but empty words, and the buyer is obliged to return the merchandise to its owner if it still exists, or replace it if used up while in his possession).

It is obligatory (O: for the validity of the sale agreement that other conditions be met, among them):

- (a) that the interval between the offer and its acceptance not be longer than what is customary (O: the criterion being whether it gives the impression that one is averse to accepting, not merely a brief interval. Other conditions include:
- (b) that conversation extraneous to the agreement by either of the two parties not intervene between the offer and acceptance, even if inconsiderable, since, it gives the impression of nonacceptance;
- (c) that the offer and its acceptance correspond, for if the offered price is one thousand, and the buyer "accepts" for five hundred, the transaction is invalid;
- (d) that neither the offer nor acceptance be made conditional (ta'liq) upon an event extraneous to the agreement, such as saying, "I sell it to you, should my father die";
- (e) and that the sale not be subject to time stipulations (ta'qit) such as saying, "I sell it to you for a period of one month";

-because both (d) and (e) vitiate the necessary intention).

A mute's gesture is as binding as a speaker's words.

## THE BUYER AND SELLER

k1.2. The conditions that must exist in the buyer and seller are:

- (a) having reached puberty (A: Imam Ahmad permits the buying and selling of minor items by children, even before they have reached the age of discrimination (def:f1.2) and without their guardian's permission);
- (b) sanity;
- (c) that one's disposal over one's property not be suspended (def:k13);
- (d) and that one not be unjustly forced to make the sale. (O: The agreement of someone unjustly forced to sell his property is invalid because of lack of consent, though it is valid if he is justly forced, as when he is ordered to sell his property to repay a debt.)
- (e) If a Koran is being purchased for someone, it is obligatory that the person be Muslim. (O: The same is true of books of hadith and books containing the words and deeds of the early Muslim, "Koran" in this context means any work that contains some of the Koran, even a slight amount.) (A: This ruling holds for any religious books, even the Tabaqat of Sha'rani (n: a collection of biographical sketches of Muslims), though the Hanafi school permits non-Muslims to buy or be given the Koran and other Islamic books.)
- (f) It is a condition that someone buying weapons be of a people who are not at war with Muslims.

## THE OPTION TO CANCEL A SALE AT THE TIME OF THE AGREEMENT

k1.3 When a sale is effected, both buyer and seller have the option to cancel at the time of the agreement (khiyar al-majlis), meaning the right to nullify the agreement at any time before they (O: physically) part company, or both waive the right to cancel, or until one of them cancels the sale. (O: The option to cancel at the time of the agreement exists at every sale, and for its duration, the ownership of the articles exchanged is suspended (def:k1.5))

## STIPULATING AN OPTION TO CANCEL PERIOD

k1.4 Both the buyer and seller have the right to stipulate an option to cancel period, an interval during which either party may cancel the agreement, of up to three days (O: provided the days are consecutive. The option to cancel period is not period, is not valid if the two parties stipulate an indeterminate period or leave it open-ended by merely stipulating "an option to cancel" (A: though the buyer has the right to return the article because of defects (dis:k5) regardless of what they stipulate), or when the period is determinately known, but exceeds three days). The option to cancel may be given (A: depending on what the buyer and seller agree upon) to both parties, or just one of them (O: and not the other, or they may give the option to a third party, since the need for this might arise. In any case, both buyer and seller must agree to the conditions). But such a period may not be stipulated for transactions in which it is unlawful to part company before taking possession of the commodities exchanged (O: by one or both parties) as is the case in exchanging the kinds of foodstuffs and moneys in which usurious gain (riba, dis:k3.1-2) is present, or in buying in advance (salam, dis:k9.2(a)).

k1.5 If the option to cancel is given to the seller alone, then the merchandise is considered his property during this period (O: meaning that he owns the proceeds earned by the property, and its increments such as its milk, eggs, or fruit, and he is obliged to cover its maintenance and other expenses). If the option to cancel is given to the buyer alone, then the merchandise is considered his property during this period (O: and the above increments and expenses are his). If the option to cancel is given to both buyer and seller, then the ownership of the merchandise during this period is suspended, meaning that if the transaction is finalized, it is established that it belonged to the buyer (O: from the time the agreement was first made, together with its increments and expenses), but if the transaction is cancelled, it is established that it belonged to the seller (O: meaning that it never left his ownership).

## k2.0 THE THINGS EXCHANGED IN A TRANSACTION

(N: Things here refers to both the merchandise and its price.)

k2.1 Five conditions must exist in any article transacted. It must:

- (a) be pure (O: in itself, or if affected with filth, it must be capable of being purified by washing);
- (b) be useful;
- (c) be deliverable (O: by the seller to the buyer, meaning that the buyer is able to take possession of it);
- (d) be the property of the seller or the person whom the seller has been authorized to represent;
- (e) and be determinately known (ma'lum) (O: to the buyer and seller, as to which particular thing it is, how much it is, and what kind it is, in order to protect against chance or risk (gharar), because of the hadith related by Muslim that the Prophet (Allah bless him and give him peace) forbade the transaction of whatever involves chance or risk) (n: w42 discusses buying and selling insurance policies.)

## PURITY

**k2.2** It is invalid to transact something that is impure in itself (najasa, def: e14.1) such as a dog, or something affected with filth that cannot be purified (O: by washing), like milk or shortening, though it can be, like a garment, then it may be transacted.

#### **USEFULNESS**

**k2.3** It is invalid to transact something which is not useful (O: whether the reason for invalidity is the article's baseness or the smallness of the amount being dealt with,) such as vermin, a single grain of wheat, or unlawful musical instruments (dis: r40) (O: such as the mandolin or flute, since there is no lawful benefit in them).

#### **DELIVERABILITY**

**k2.4** It is invalid to transact something undeliverable, such as a bird on the wing or something that a third party has wrongfully taken from one, though if one sells the latter to a buyer who is able to take it back from the third party, the sale is valid; while if the buyer is unable to take it from him, then the buyer has the option to either declare the sale binding or cancel it. It is invalid to transact a particular half of a whole object such as a vessel, sword, or garment (O: since the buyer cannot take possession of that part without breaking or cutting the article, involving the lessening and loss of property), or part of anything whose value is diminished by cutting or breaking, though if it does not diminish its value, as with a bolt of heavy cloth, such portions may be sold.

#### **LAWFUL DISPOSAL OVER THE PROPERTY**

**k2.5** It is not valid for the owner of an article that has been put up as collateral (def:k11) to sell it without the permission of the person to whom the collateral has been given. Nor is it valid to sell property belonging to another, unless the seller is the owner's guardian (def: k13.2) or authorized representative (def: k17).

#### **BEING DETERMINATELY KNOWN**

**k2.6** It is not valid to sell property not determinately identified such as "one of these two garments" (O: since "one of them" is not an identification. Likewise with saying, "I sell you one of these sheep." It makes no difference whether all the objects are of equal or unequal value). It is not valid to transact a particular thing that is not in view (O: meaning that it has not been seen by both buyer and seller or by one of them) such as saying, "I sell you the Mervian robe I have up my sleeve," or "the black horse that is in my stable." But if the buyer has seen it before and the article is something that does not generally change within the time that has elapsed since it was last seen, then such sales are valid. It is permissible to sell something like a pile of wheat that is in plain view when its weight is unknown, or to sell something for a heap of silver that is visible when the silver's weight is unknown, for seeing is sufficient. The selling and buying of a blind person are not valid. He must commission another to buy and sell for him (A: though the Hanafi, Maliki, and Hanabali schools permit him to buy and sell for himself). It is valid for a blind person to buy in advance (def:k9) or for another to buy in advance from him, provided the payment is forwarded to and held by the person being bought from in advance.

#### **k3.0 USURIOUS GAIN (RIBA)**

(O: The word riba lexically means increment. In Sacred Law it is (N: of two types, the first being usurious gain (riba) in selling, which is) an agreement for a specific recompense whose equivalence to the merchandise is unknown (def: k3.1 (a)) according to the standards of the Law at the time of the transaction, or in which the exchange of the two properties transacted is delayed, or one of them is delayed. (N: The second type concerns loans, and consists of any loan by which the lender obtains some benefit (dis: k10.5).) The basis for its unlawfulness, prior to scholarly consensus (ijma', def:b7), is such Koranic verses as:

"Allah permits trade but forbids usurious gain:" (Koran 2:275),

and,

"Fear Allah and relinquish what remains of usury, if you are believers" (Koran 2:278),

and such hadiths as that related by Muslim,

"The Messenger of Allah (Allah bless him and give him peace) cursed whoever eats of usurious gain (riba), feeds another with it, writes an agreement involving it, or acts as a witness to it."

Another hadith, in al-Mustadrak (n:by Hakim), relates that the Prophet (Allah bless him and give him peace) said,

"Usurious gain is of seventy kinds, the least of which is as bad as a man marrying his mother."

(n:w43 discusses taking interest in enemy lands (dar al-harb).)

### **USURIOUS GAIN IN SALES OF FOODSTUFFS, GOLD, AND SILVER**

**k3.1** Gain is not unlawful except in certain exchanges involving (O:human) foodstuffs, gold, and silver (A: or other money) (N: which is the ruling for usurious gain in sales. As for usurious gain or interest from loans, it is unlawful for any type of property whatever). The determining factor in the prohibition of usurious gain in foodstuffs is their being edible, and in gold and silver, their being the value of things. When a foodstuff is sold for a foodstuff of the same kind, such as wheat exchanged for wheat (O: or the gold is traded for gold). three conditions are obligatory:

- (a) exact equivalence in amount (def: k3.5) (O: which must be made certain of, this stipulation precluding exchanges of foodstuffs, gold, or silver in which the amounts are not known, for such sales are not valid even if the two quantities transacted subsequently turn out to be equal, because of the ignorance of their equivalence at the time of the transaction, since ignorance of it is the same as actual nonequivalence);
- (b) that the properties transacted be in the respective possession of buyer and seller before they part company;
- (c) and immediacy (N: such that the agreement does not mention any delay in the exchange, even if brief).

**k3.2** When foodstuffs are sold for foodstuffs of a different kind, such as wheat for barely (O: or when gold is sold for silver), only two conditions are obligatory:

- (a) that the exchange be immediate;
- (b) and that the properties exchanged be in the respective possession of buyer and seller before they part company. If these two conditions are met, the two commodities exchanged may differ in amount.

### **TRANSACTING GOLD AND SILVER**

**k3.3** When gold is exchanged for gold, or silver for silver, conditions k3.1 (a,b,c) are obligatory. If gold is exchanged for silver, their amounts may differ, but conditions k3.2(a,b) are obligatory.

**k3.4** When foodstuffs are sold for gold or silver, the transaction is unconditionally valid (O: meaning none of the above conditions are necessary).

**k3.5** Equivalence in amount for commodities customarily sold by volume is reckoned according to volume (O: even if weights differ), and for articles customarily sold by weight according to weight. Thus, it is invalid to sell a pound of wheat for a pound of wheat when there is a difference between the two's volume, though it is valid to sell a bushel of wheat for a bushel of wheat even when their weights differ. Customarily transacted by weight or volume means according to the prevalent custom in the Hijaz during the time of the Messenger of Allah (Allah bless him and give him peace). If this is unknown, then according to the custom of the town where the transaction takes place. If the foodstuff is of a kind not customarily exchanged by either weight or volume, and it has no dried strong state, such as cucumbers, quinces, or citrons, then it may not be traded for its own sort.

Equivalence in amount is not applicable to foodstuffs until they are completed, meaning, for fruits, in the dried storage state. It is invalid to trade fresh dates for fresh dates for dried dates, fresh grapes for fresh dates, fresh dates for dried or fresh grapes for raisins. Types of dates and grapes not sold as dried dates and raisins may not be exchanged for their own sort. it is also invalid A: because of ignorance of their equivalence) to exchange:

- (1) flour for flour (O: when they are of the same type);
- (2) flour for wheat;
- (3) bread for bread (O: when of the same type);
- (4) a pure foodstuff for a mixed one;
- (5) cooked food for uncooked, or cooked food for other cooked food, unless the cooking is very slight, such as separating honey (O: from the comb) or milkfat (O: from milk).

It is not permissible to exchange (N: for example) a measure of dates plus one dirham for two dirhams, or for two measures of dates, or for a measure of dates and a dirham. Nor is it permissible to exchange a measure of dates and a garment for two measures, nor a dirham and a garment for two dirhams.

It is invalid to transact meat for a live animal (O: even when the two are not of the same kind of animal).

### **k4.0 SOME PROHIBITED KINDS OF TRANSACTIONS**

(O: Prohibited transactions may be invalid, as is usually the case with the prohibited, for prohibition generally entails invalidity; or not, such that the transaction is valid despite being prohibited (dis:c5.2).)

## **SELLING THE OFFSPRING OF EXPECTED OFFSPRING**

**k4.1** It is invalid to sell the offspring of (A: expected) offspring, such as saying, "When my she-camel gives birth, and her offspring in turn gives birth to a camel, I hereby sell you that camel" (O: i.e. the offspring of the offspring. The reason for invalidity is that it is a transaction of an article that is not owned, known, or deliverable). Nor is it valid to sell something for a price whose payment is deferred to a time similar to the above (O: that is, till the time the offspring of an offspring is born, because the date of payment is not known).

## **EITHER-OR SALES**

**k4.2** It is invalid to make a transaction whose terms include two different possible deals (A: without specifying which has been agreed upon) such as saying, "I sell you this for either one thousand in case or two thousand in deferred payment" (O: which is invalid because the price is not known), or such as saying, "I sell you my robe for a thousand, provided you sell me your sword for five hundred" (O: which is invalid because of the invalid stipulation (dis: below)).

## **SALES WITH EXTRANEOUS STIPULATIONS**

**k4.3** It is not valid to make a transaction that includes an invalid stipulation (A: such as a condition that is extraneous to the original agreement which adds to its price) (O: because the Prophet (Allah bless him and give him peace) forbade transactions with such conditions, like stipulating a loan or a second transaction), saying for example, "I hereby sell it to you (n: for a thousand) provided you loan me a hundred" (O: or "provided you sell me your house for such and such a price" (A: or "Provided you do not sell it to So-and-so"). Its invalidity is due to considering both as the price. Stipulating this invalidates the transaction, and paying this "price" is void, it not being determinately known (def: k2.1(e)). (A: The invalidating factor is stipulating a second transaction, not the mere fact that it accompanies the first transaction, for it is permissible to join two transactions, as discussed at k4.12 below.)

## **SALES WITH VALID STIPULATIONS**

**k4.4** The following types of conditions do not invalidate transactions that stipulate them:  
(1) a condition to postpone payment, though this requires that the date of payment be specified;  
(2) a condition that collateral (def: k11) be put up as security (N: for payment of the price or for delivery of the merchandise);  
(3) a condition that a particular individual will guarantee (def: k15) payment;  
(4) or other conditions (O: from the seller, the buyer, or both) that the deal requires, such as an option to return the merchandise if defective, and so forth.

It is valid for the seller to stipulate that he is free of responsibility for defects in the merchandise. By doing so, he is not held responsible for an animal's internal defects which he does not know of, though he remains responsible for all other kinds of defects. (O: The conditions for this ruling are that the defect be internal, be found in an animal, be unknown to the seller, and that it exist at the time of the agreement.)

## **PAYING NONREFUNDABLE DEPOSITS**

**k4.5** It is not valid to pay a nonrefundable deposit towards the price of an article, such as paying a dirham for piece of merchandise on the basis that if the buyer decides to keep it, the dirham is part of the price, but if he does not, then the seller keeps the dirham for free.  
(A: The school of Imam Ahmad permits non refundable deposits.)

## **UNDERCUTTING ANOTHER'S DEAL**

**k4.7** It is unlawful to undercut a brother's deal (A: or a non-Muslim's, since there is no difference between Muslims and non-Muslims in rulings concerning commercial dealings) that he has made with a customer, after they have settled on the price excludes someone going around taking bids from those who are increasing them, as auctioneers do, which is not unlawful). It is also unlawful to undercut a brother's price (O: that is, during the option to cancel at the time of the agreement (def: k1.3), or during a stipulated option to cancel period (def: k1.4)) by telling the buyer, "Cancel the deal and I'll sell you one cheaper."  
(O: This also holds for other contracts, such as renting or lending the use of something.)

## **BIDDING UP MERCHANDISE**

**k4.8** It is unlawful to bid up the price of a piece of merchandise that one is not really interested in, to fool another bidder.

## **SELLING GRAPES TO A WINEMAKER**

**k4.9** It is unlawful to sell grapes to someone who will make wine from them. (O: Like grapes in this is the sale of dates, bread, wheat, or barley, whenever one knows that this (A: i.e. alcoholic drink) will result, or thinks it will. If there is doubt or if one merely imagines it, then the transaction is merely offensive. (N: Think (zann) means to believe it probable, doubt (shakk) means one is undecided, and imagine (wahm) means to merely consider it possible.) Selling in such cases is unlawful or offensive because it is a means to disobedience, whether certain or suspected (A: means meaning an instrumental cause, as opposed to something which is not instrumental, such as renting a house to a drunkard, which is not unlawful because it is not a cause, though it is unlawful to rent a building to someone who intends to open a bar, for example). Tirmidhi relates that the Prophet (Allah bless him and give him peace) cursed whoever drinks wine, gives it to others to drink, sells it, buys it, presses it for another, transports it, receives it, or eats its price.)

**k4.10** If one makes any of the above unlawful transactions (k4.6-9), the agreement is valid (dis: c5.2)

## **A VALID SALE COMBINED WITH AN INVALID SALE**

**k4.11** If one combines something valid to sell with something invalid to sell in one transaction, such as selling one's own garment together with someone else's without his permission, or such as selling wine and vinegar, then the transaction is valid for the portion of the price that covers the valid sale (O: no matter whether the person knew what the case was, or whether he did not and believed the sale permissible, thinking at the time, e.g. that the wine was vinegar) and is invalid for the portion of the price that was not valid (A: and the portion must be refunded to the buyer). The buyer has the option to cancel the whole agreement if, at the time the deal was made, he did not know it included something impermissible.

## **JOINING TWO TYPES OF TRANSACTIONS IN ONE CONTRACT**

**k4.12** It is valid to join two contracts of different kinds (O: for example, a sale with a rent agreement) such as saying, "I sell you my horse and rent you my house for a year for such and such an amount" (O: though it is not necessary that they be different kinds, for the ruling also applies to two contracts of the same type, such as a partnership (def: k16) linked with financing a profitsharing venture (qirad, def: k22)), or such as saying, "I marry you my daughter and sell you her house (N: as her proxy, the proceeds being hers) for so-and-so much," and the price is considered as proportionately distributed over the two transactions.

## **k5.0 THE RETURN OF MERCHANDISE BECAUSE OF A DEFECT**

(O: The criterion for defect is based on something that is expected to exist (n in merchandise), whether this expectation results from:

- (1) stipulations agreed upon (dis: k4.4(4));
- (2) the customary level of quality (dis: f4.5) for merchandise of its type;
- (3) or outright deception by the seller.

The author does not mention (1) in this section, but confines himself to (2) and (3).)

## **INFORMING A PROSPECTIVE BUYER OF DEFECTS IN MERCHANDISE**

**k5.1** Whoever knows of a defect in the article (O: he is selling) is obliged to disclose it. If he does not, he has cheated (O: the buyer, which is prohibited by the Prophet's statement (Allah bless him and give him peace), "He who cheats us is not one of us"), though the transaction is valid (A: provided the buyer accepts it, as discussed below).

## **RETURNING DEFECTIVE MERCHANDISE**

**k5.2** When a buyer notices a defect in the merchandise that existed when the seller had it, he is entitled to return it (O: though if he is content to accept the defect, he does not have to return it. He may also return it when the defect occurred after the sale but before the merchandise was delivered, since the merchandise is the seller's responsibility during this period).



**k5.3 The criterion (O: of defectiveness) is:**

**(a) any flaw that diminishes the article or its value to a degree that hinders a valid purpose;**

**(b) provided that such an imperfection does not usually exist in similar merchandise.**

**(O: The former restriction excludes such things as amputation of a surplus digit or a minor nick from the animal's thigh or hock that is inconsequential and does not obviate its purpose, in which case there is not option to return it. The latter restriction excludes defects not generally absent in similar merchandise, such as missing teeth in older animals. There is no option to return such merchandise, even if the value is diminished.)**

**k5.4 If the buyer notices a defect in the merchandise after it has been destroyed (O: whether physically, such as an animal being killed, a garment worn out, or food eaten; or whether legally finished, by being no longer permissible to transfer from person to person, as when a site has been made an endowment (waqf, def: k30))- then a compensation (A: from the seller to the buyer) is obligatory. (O: The buyer is entitled to it because of the impossibility of returning the article due to its no longer existing. Compensation means a part of the article's price whose relation to the whole price is the same as the relation of the value which the defect diminished to the full value of the article if it had been without defect. (N: The difference between price and value is that the value is how much money an article is worth in the marketplace, while the price is whatever the sale agreement specifies, whether this be more or less than the value.) The value in such a case is fixed at the lowest value (A: for articles of its type current in the marketplace) between the time the deal was made and the time the buyer took possession of it.) The buyer is no longer entitled to seek compensation for such a defect if (O: he notices the defect after) he no longer owns the article because of having sold it or otherwise disposed of it. But if such an article returns to the buyer's possession after this (O: i.e. after having left his ownership, whether as a gift, or returned (A: from a subsequent buyer) because it was defective, or because of a cancelled deal, or he buys it back), then he is entitled to return it (A: to the person who originally sold it to him).**

**k5.5 If an additional defect occurs in an article (O: other than the above-mentioned defect (A: that existed before the buyer received the article)) while it is in the buyer's possession, then the buyer is only entitled to take a compensation (O: from the seller, to compensator for the original defect) and is not entitled to (A: insist that the seller accept) return (A: of the article for a full refund). But if the original seller is willing to accept it back with the (O: new) defect, (A: refunding the original price,) then the buyers is not entitled to (A: keep the article and) demand compensation (O: for the original defect. Rather, the buyer is told, "Either return it, or else be content with it as it is and you get nothing,"; for the harm to the original seller which is what prevents (A: it being obligatory for him to accept) its return no longer exists if the seller is content to take it back, and the merchandise is as if the additional defect never occurred.**

**Their agreement is implemented if buyer and seller agree upon:**

**(1) the seller taking it back with (A: the seller refunding the original price, and the buyer giving him) compensation for the new additional defect;**

**(2) or the buyer keeping the merchandise, and the seller paying him compensation for the original defect; since either of these options might satisfy the interests of the two parties. If the buyer and seller disagree about which of these two options should be implemented, the decision goes to whichever of them requests option (2), whether this person is the buyer or the seller, since it confirms the original contract).**

**k5.6 If the new defect which occurs while the article is in the buyer's possession is the sole means of disclosing the old defect, such as breaking open a (A: spoiled) watermelon or eggs, and so forth, then the new defect does not prevent (A: the obligation of the seller to accept) its return. But if the new damage exceeds the extent that was necessary to reveal the original defect, then the seller is no longer compelled to accept it back.**

**k5.7 It is a necessary condition for (A: cases where the buyer seeks a refund for something he is) returning (O: because of a defect) that the buyer return it immediately upon noticing the defect (O: and his option to return it is cancelled if he delays without an excuse). On his way back to the seller, he should have two witnesses affirm that he is cancelling the agreement (A: so if the seller is unavailable at the time, the buyer is nevertheless able to prove that he went to return it immediately). If the defect is noticed while one is praying, eating, using the lavatory, or at night (A: if the night presents a problem in returning it), then one is entitled to delay returning it until the hindrance preventing one from doing so is no longer present, provided one stops using and benefiting from it. If the buyer delays returning it when capable of doing so, then the seller is no longer obliged to accept the article back for a refund, or no longer obliged (A: in cases like k5.5 above) to compensate the buyer for the original defect (O: because the delay gives the impression that the buyer is satisfied with the defect).**

**k5.9** (A: The term murabaha applies to sales where the seller states the price in terms of "the original price plus such and such an amount as profit," whether by original price he means the amount he originally paid for the whole lot, or whether he means the proportion of that price represented by the percentage of the lot which he is now selling.) The seller in murabaha (O: meaning an agreement where the price consists of the original price plus increment) is obliged to inform the buyer of any defect that occurred in the merchandise while in his possession, such as by saying, "I bought it for ten (O: or "bought it for one hundred and sell it to you at what I bought it for, plus one dirham's profit on every ten") but such and such a defect happened to it while I had it." (O: He is likewise obliged to say, for example, "Such and such a defect appeared in it that was from the previous owner, and I accepted this.")

The seller in murabaha is also obliged to explain how much time he was given to pay the original price (A: since deferring payment generally raises the price, and merely stating such a raised price without mentioning that it was deferred would give the new buyer a false impression).

(O: The author should have mentioned (A: that telling the prospective buyer the above information is also obligatory in sales of) discount (A: on a lot of goods or portion thereof), as when the seller tells someone, "I sell it to you for what I bought it for, minus one from every eleven." These relings likewise apply to agreements stated in terms of, "I sell you it at the same price the original deal was made for.")

## **k6.0 SELLING FRUIT AND CROPS**

**k6.1** It is not permissible (O: or valid) to sell the fruit alone from a tree (A: without the tree, while still on it) before it is ripe, unless the agreement stipulates immediate picking of the fruit. But such a sale is valid without restriction if made after the fruit is ripe, meaning, for fruits that do not change color, to become fit to eat; and for fruits whose color changes, to start to turn the color of ripeness. If both the tree and the fruit are sold together, the sale is permissible without stipulating that the fruit be picked.

**k6.2** Grain, when green, is subject to the same rulings as fruit before it is ripe: it may not be sold (O: nor would the sale be valid) unless the agreement stipulates immediate harvest, though there are no restrictions on sales made after the grain is sold and firm.

**k6.3** It is not permissible to sell grain when still in the husk, or to sell unripe nuts, almonds, or broadbeans when these are in the shell. (A: When the latter three are dried, they may be sold in the shell.)

## **k7.0 MERCHANDISE BEFORE THE BUYER TAKES POSSESSION OF IT**

**k7.1** Merchandise is the responsibility of the seller before the buyer has taken possession (def: k7.3) of it. If such merchandise is destroyed (Ar. talifa, to be finished off or used up) by itself or through an act of the seller, then the agreement is cancelled and no payment is due for it. If the buyer destroys such merchandise, he must pay its price, and his destroying it is considered as having taken possession of it. If a third party destroys such merchandise, the deal is not cancelled but rather the buyer is given a choice to either:  
(1) cancel the agreement and make the value (def: k5.4(N:)) (O: of what the third party destroyed) a debt that the third party owes to the seller;  
(2) or effect the deal, paying the seller the price (O: if he agrees to effect the deal) and making the third party liable to pay the value (O: to the buyer).

**k7.2** When one buys something, it is not permissible (O: or valid) to sell it until one has taken possession of it. (O: The invalidity of selling it likewise applies to all transactions disposing of it (A: such as renting it, giving it away, and so forth). It is also invalid for the seller to dispose of the price in any way before it has been received from the buyer, unless the new transaction is with the same buyer and involves the very same (A: article that is the) price.) But if the price is a financial obligation (N: that is, an amount of money, unspecified as to which particular pieces of money it is), the seller may ask for a different sort of payment, provided he has not already accepted the payment, as when he sells something for dirhams, but then accepts gold, a garment, or something else instead of them.

**k7.3** Taking possession means:

- (1) for transportable things such as wheat or barley, that they be transported (N: by the buyer or his representative) (O: that is, when he moves the merchandise to a place not belonging to the seller, such as the street or the buyer's house);
- (2) for things dealt with by hand, such as a garment or book, that they be taken in hand;
- (3) and for other things, such as a house or land, that they be given over (O: i.e. the seller give the buyer control over them, such as by handing the key to him or moving others' belongings off the property).

## **k8.0 DISPUTES OVER WHAT THE TERMS OF A TRANSACTION WERE**

**k8.1** When two parties agree on the validity of a transaction but disagree on its terms, and there is no proof, then they each swear an oath (dis: k8.2) affirming their side of the story. Such a disagreement could be:

(1) the seller saying that he sold it for immediate payment, while the buyer asserts that payment was to be deferred;

(2) the seller stating that he sold for ten, while the buyer maintains it was five;

(3) the seller saying he sold it to the buyer on condition that there be an option to cancel period (def:

k1.4), while the buyer asserts that no such option was stipulated: or similar disputes.

**k8.2** (N: Swearing an oath (def:o18) is a means for urging one's case when there is no proof, meaning no witnesses. When rulings mention, for example, that "So-and-so's word is believed," or "So-and-so's word is accepted," it means that his word is accepted when he swears an oath in cases where there is no proof presented by either of the two pairs. If there is proof, whether from the plaintiff or defendant, it is given precedence over an oath.)

**k8.3** In the oath for such cases, the seller swears first, saying, for example, "By Allah, I did not sell it to you for such and such an amount, but rather for such and such an amount." Then the buyer swears, "By Allah, I did not buy it for such and such, but rather bought it for such and such." It consists of one oath (A: from each party) which joins the denial of the other's claim with the affirmation of one's own claim, and in which the denial is recommended to precede the affirmation.

**k8.4** When the buyer and seller have sworn, but subsequently reach a solution that both accept, the agreement is not cancelled. But if they cannot reach an accord, they cancel the agreement, or one of them cancels, it, or the Islamic magistrate does (O: to end the trouble between them. When the agreement is cancelled, each returns whatever he has accepted from the other).

**k8.5** If either the buyer or seller testifies that a particular agreement is invalid, but the other party says it is valid, then the word of whichever of them asserts it is valid is accepted if he swears an oath (dis: k8.2). If the buyer comes to the seller with a piece of merchandise, that he wants to return because of a defect, but the seller says that it is not the one he sold him, then the seller's word is accepted (O: when he swears). If the buyers and seller disagree about a defect in an article that could have occurred while it was in the buyer's possession, but each party asserts that the defect occurred while in the other's possession, then the seller's word is accepted (O: when he swears).

## **k9.0 BUYING IN ADVANCE (SALAM)**

**k9.1** Buying in advance means the sale of described merchandise which is under (A: the seller's) obligation (A: to deliver to the buyer at a certain time).

### **THE CONDITIONS FOR THE VALIDITY OF BUYING IN ADVANCE**

**k9.2** In addition to the conditions for valid sales (def: k1.1-2, k2.1), other conditions (O: seven of them) must be met for buying in advance to be valid:

(a) that the price of the merchandise be received when the agreement is first made. It is sufficient to merely see the price that is being accepted, even when its exact amount is unknown;

(b) that the merchandise bought in advance be a financial obligation (dayn) (O: owed by the seller (N: meaning that buying in advance is not valid for particular individual articles ('ayn) (A: i.e "this one" and no other)) which the seller will deliver when its time comes). Its delivery may be due from the present onwards, or may be due later through deferment (O: by clearly stating whether it is to be due immediately or deferred) to a specific date (O: which specificity is a necessary condition for the validity of differing payment). It is not permissible to say, "I advance you these dirhams for that particular horse" (O: which is invalid because of the condition that the merchandise bought in advance be a financial obligation (dayn), which the above-mentioned horse is not, but is rather a particular individual article ('ayn));

(c) that the location to which the merchandise is to be delivered be clearly stipulated (A: though this is only a condition) in cases in which the buyer pays for it at a place where it cannot be delivered, such as the wilderness; or to which the merchandise can be delivered, but transporting it there involves considerable difficulty;

(d) that the merchandise bought in advance be determinately known by volume, weight, quantity, or yardage in terms of a familiar measure. It is not valid for someone to say "the weight of this stone," or "the capacity of this basket," if the (O: stone's) weight or basket's capacity is not known;  
(e) that the merchandise be within the seller's power to deliver (def: k2.4) when the time for delivery arrives;  
(f) that the merchandise not be generally subject to unavailability. If it is something rare (O: such as a great quantity of the season's first fruits of a particular kind of produce) or something not typically safe from unavailability, such as "the fruit of this particular date palm," then its sale in advance is not permissible;

(g) that those characteristics of the merchandise over which the buyer and seller might be at cross-purposes be expressly delineated by clear specifications. It is not permissible (O: to buy things in advance which cannot be defined by clear criteria, such as) for jewels or composites like meat pastry (O: composed of wheat, meat, and water, all of which are expected but not delineable in terms of minimal or maximal amounts), ghaliya perfume (O: composed of musk, ambergris, aloes, and comphor), or slippers (O: composed of outer and inner layers and padding), nor articles whose top randomly differs from their bottom, like a lamp or pitcher (O: the top of which is sometimes wider than the bottom, or vice versa) (N: though the Hanafi school permits such agreements, calling them made to order (istisna'), which they hold includes whatever is customarily bought in this way. They affirm the buyer's option to cancel the agreement when he see the merchandise, and it is obligatory that the article be described very precisely), nor something substantially processed and altered by fire (A: meaning heart), such as bread or roast meat, since describing it (A: i.e how much cooking it takes) is impossible in a precise way.

k9.3 It is not permissible for the buyer to sell something he has bought in advance until he has received it.

k9.4 It is not permissible to take some other type of merchandise in place of the article bought in advance (A: that is, when the buyer demands the substitute before the delivery of the original is due, though they may agree on it after that). If the seller delivers the merchandise specified, or better (O: than what was specified), the buyer must accept it (O: since it is apparent that the seller could not find a way to fulfill his obligation save through this means. If the seller delivers merchandise that is inferior to what was specified, then the buyer may accept it, as this is voluntarily refraining from demanding his due, but he is not obliged to, because of the loss therein).

#### k10.0 PERSONAL LOANS (QARD)

(A: A Loan means repayable financial aid. It does not refer to lending a particular article ('ayn) for someone to use and then return after use, which is termed an 'ariyya (def: k19).)

k10.1 Loaning (O: meaning to give something to the borrower on the basis that he will return its equal) is recommended.

k10.2 A loan is effected through a spoken offer and acceptance (def:k1.1), such as saying, "I loan you this," or, "I advance you it."

k10.3 It is permissible to give as a personal loan any article that may be brought in advance (def: k9.2 (b,d,e,f,g)) and nothing else (A: though this restriction does not apply to lending for use ('ariyya, dis: k10.0 (A:))).

k10.4 It is not permissible for the lender to impose as a condition that the loan be repaid on a certain date (N: though for the Maliki school, to stipulate that repayment is obligatory on a certain date is valid and legally binding).

k10.5 It is not permissible for the lender to impose some condition that will enable him to benefit from the loan, such as a condition that the borrower must return superior to what was loaned, or such as saying, "on condition that you sell me your horse for such and such an amount," for these are usurious gain (riba). But it is permissible for the borrowers to return superior to what was loaned without this having been stipulated.

k10.6 It is permissible for the loan agreement to include the condition of collateral (O: meaning for the recipient to give the lender something as collateral (def: k11) for what he borrows) or the condition of a guarantor (O: such that the recipient brings someone to guarantee that the loan will be repaid (def: k15)).

k10.7 The recipient of a loan is obliged to repay the equal of what was lent, though it is permissible for the lender to accept something other than the (A: type of) thing loaned. If the lender gives the recipient a loan

and later meets him in another town and asks for it back, the recipient must repay it if it was gold or silver and the like, though if the loaned commodity was something troublesome to carry, such as wheat or barley, then the recipient is not obliged to pay it back (A: in kind) but is merely obliged to pay back its value.

#### **k11.0 PUTTING UP COLLATERAL (RAHN)**

(O: In Sacred Law collateral is a piece of saleable property put up as security for a financial obligation to cover the amount if it should prove impossible to repay.)

#### **CONDITIONS FOR THE VALIDITY OF PUTTING UP COLLATERAL**

**k11.1** Putting up collateral is only valid when done by someone with full disposal over his own property, as security for a financial obligation (dayn, dis: k9.2(b)) that is currently due, such as the price (O: due for merchandise after its delivery), or a personal loan, or for a financial obligation that is currently becoming due (N: such as something's price) during the option to cancel period (def: k1.4). (O: The collateral's being security for a financial obligation is one restriction on its validity, and for one that is currently due is another. It is not valid to put up collateral for a particular individual article ('ayn) or the use of an article, since (A: the obligation to deliver) a particular article is not a financial obligation (dayn), as the selfsame article cannot be obtained by selling the collateral.) Putting up collateral is not valid in cases in which the financial obligation is not yet due, such as collateral accepted (O: by a lender) as security for a loan that he will make (O: in the further). It is necessary (O: for the validity of putting up collateral) that there be a spoken offer (O: by the person putting up the collateral) and spoken acceptance (O: from the person accepting it, just as it is necessary for sales, the conditions mentioned in connection with sales (k1.1) applying equally here). The agreement is not legally binding until the collateral has been taken possession of with the permission of the person putting it up, who is entitled to cancel the agreement (A: at any point) before the collateral has been taken possession of (def: k7.3). When the agreement has been effected, if the two parties (A: the collateral's giver and receiver) agree that the collateral should be kept with either of them, or with a third party, this is done. If not (O: if they do not agree), the Islamic magistrate has it kept with an upright person (def: o24.4) (O: to end the disagreement. But the magistrate is not entitled to place it with either of the two parties without the other's permission).

#### **GENERAL PROVISIONS CONCERNING COLLATERAL**

**k11.2** The collateral must be an article that is permissible to sell (def: k2.1). None of the collateral may be separated from the rest of it until the financial obligation has been entirely paid off. The person who put up the collateral is not entitled to dispose of it in any way which infringes upon the right of the person who has received it as collateral (O: such as transferring its ownership to another) by selling it or giving it away (O: or putting it up as collateral for another person), or to dispose of it in any way that diminishes its value, such as wearing (O: a garment put up that would depreciate by being worn), though he may use it in ways that do not harm (O: the interests of the person who has received it) such as riding it, or living (O: in a house that has been put up as collateral).

**k11.3** An article put up as collateral for a financial obligation may not (A: at the same time) be put up as collateral for a second financial obligation, even when the second obligation is with the same person who has accepted the article (A: for the first one).

**k11.4** The expenses for maintaining an article put up as collateral (O: such as fodder for livestock, or the wages of a person watering trees) are the responsibility of the person who put it up, and he may be compelled to pay them to protect the rights of the person receiving it (O: lest it be destroyed). The person who put it up is entitled to the increments produced by it (O: that are separable from it) such as milk or fruit.

**k11.5** If the article is destroyed while in the possession of the person who received it as collateral without negligence on his part (A: meaning he took the precautions normal for similar articles), then he is not obliged to pay anything for its loss. But if destroyed because of his negligence, then he is obliged to pay the article's value to the person who put it up though its destruction does not eliminate any of the original financial obligation for which the destroyed collateral was put up. (O: When the collateral has been destroyed and the two parties are at a disagreement,) the final word as to how much the article was worth (A: when there is no proof (dis; k8.2)) belongs to the person who received it as collateral (O: provided he swears an oath as to how učit was). But the final word as to whether the collateral has been returned (A: to its owner after his financial obligation has been paid) belongs to the person who put it up (A: when there is no proof, and he swears).

**k11.6** The benefit of collateral is that the article is sold (A: by the person who put it up) when there is need to pay the amount which is due. If the person who put it up refuses (O: to sell the article when the person who has received it as collateral asks him to), then the Islamic magistrate has him either pay the original obligation or else sell the article. (O: He is given a choice between the two alternatives.) If he continues to refuse (O: to sell), then the Islamic magistrate sells it for him. (O: If the person who put it up is absent, then this is established by proof to the magistrate, who sells it for him and gives the person who accepted the collateral his due. If there is no Islamic magistrate and no proof (A: that there is a financial obligation for which the collateral has been put up), then the person who accepted it as collateral is entitled to sell it himself.)

#### **k12.0 BANKRUPTCY (TAFLIS)**

(O: Bankruptcy occurs when the Islamic magistrate makes a debtor bankrupt by (N: declaring him so and) forbidding him to dispose of his property (N: such that if he disposes of it, his disposition is not effected).)

**k12.1** When someone obliged to pay a current debt is being asked to pay it, and he claims that he is unable to (O: while his creditors deny this), then if it is known that he has saleable property, he is kept under arrest until he provides evidence that he cannot pay. If no (O: i.e if it is not known that he has saleable property), then he swears an oath (O: that there is no property), and (O: when it is established that he is unable to pay, whether through evidence, or through his oath) he is released (O: and given time) until his circumstances allow him to pay (O: and his creditors may not keep after him, because of Allah's word, "If there be someone in difficulties, let him have respite until things are easier" (Koran 2:280)).

**k12.2** But if he has saleable property (O: such as real estate, home furnishings, or livestock) and refuses to pay his debt, then the Islamic magistrate sells it for him and pays his debt. If the proceeds of the sale are insufficient to cover the debt, and he or his creditor asks the magistrate that he be suspended from dealing in his property, then this is done (O: obligatorily, if requested). When the person is suspended, his disposal over his own saleable property is not legally binding or effective, and the magistrate pays the person's expenses and those of his family (O: whom he is obliged to support (def: m12.1)) out of this (O: suspended) property if he is unable to earn enough to pay his expenses. Then (O: after the person has been suspended) the magistrate sells the property in the most profitable manner and divides the proceeds according to the percentage of the total debt which is owed to each creditor.

**k12.3** If one of the creditors is owed money on a debt which is not yet due, he is not entitled to be paid from the proceeds. (N: Rather, if the bankrupt does not agree to pay the person immediately, the magistrate keeps this person's share until the debt is due (A: and then pays him).)

**k12.4** If one of the creditors has accepted an article of the bankrupt's property as collateral from him for a debt, he is paid the amount owed to him from the sale of the collateral (O: and if there is money from its sale in excess of what was owed to him, it is distributed among the other creditors).

**k12.5** If one of the creditors finds the very piece of merchandise he sold to the bankrupt person, he may choose between selling it and dividing the profits with the other creditors, or cancelling the deal and taking back the piece of merchandise, provided there is nothing to prevent taking it back such as it being subject to preemption by a part owner (shuf'a, def: k21), or the bankrupt person having made it collateral to another person, or the merchandise's being mixed with merchandise better than it, or some similar objection.

**k12.6** The bankrupt person is permitted to keep a suitable set of clothes and enough food for himself and his dependents to suffice for the day on which his saleable property is divided up. (N: If the bankrupt is then earning enough to suffice himself and his dependents, he is left as is. If not, then he is supported by the Muslim common fund (bayt al-mal), like all poor people. If there is no common fund, he must be supported by all the Muslims.)

#### **k13.0 THE SUSPENSION OF CHILDREN AND THE INSANE FROM DEALINGS**

(O: Suspension is of two types:

(1) The first has been established in Sacred Law for the interests of others, such as the suspension of a bankrupt person in the interests of his creditors, or the suspension of the person putting up collateral from dealing in it, in the interests of the person who has accepted it.

(2) The second has been established in Sacred Law in the interests of the suspended person, which is

the type of suspension our author refers to in the following.)

**k13.1** It is not permissible for a child or insane person to dispose of their own property (N: and their doing so is considered legally invalid) (O: to protect them from loss. The fact that a person is a child, male or female, even if at the age of discrimination (def:f1.2), negates the legal efficacy of whatever he says, as well as his legal authority over others, both in respect to transactions such as sale, and in respect to religion, such as Islam. His Islam is not valid, since it requires full capacity for legal responsibility (taklif, dis: c8.1). And this state continues until he reaches puberty. Insanity similarly negates the legal efficacy of whatever the insane person says, as well as his legal authority over others. His Islam is not valid, nor his leaving Islam (def: o8), nor are his dealings, as previously mentioned). (A: Also suspended from commercial dealings is the foolhardy person (safih), meaning a spendthrift who is chronically careless with his money. In the schools of Shafi'i and Ahmad, this class also includes those who are careless about their religious obligations, as they too are considered too foolish to deal in their own property.)

**k13.2** A guardian conducts such a charge's affairs, the guardian being:

(1) the charge's father;

(2) the father's father, if the father is deceased;

(O: it is a necessary condition that they be upright (def: o24.4), at least outwardly, though they need not be Muslim unless the child is Muslim)

(3) if neither of them is alive, then the person designated by the guardian's will (wasiyya, def: L3) to take custody of the charge;

(4) or if no one has been designated by the will. then the Islamic magistrate or his representative.

#### THE GUARDIAN'S DISPOSAL OF HIS CHARGE'S PROPERTY

**k13.3** The guardian deals with the charge's property to the charge's best financial advantage (O: and is entitled to sell it for needs that arise, such as when he does not have enough to cover his charge's expenses and clothing).

**k13.4** If the guardian claims to have spent his charge's property to cover the charge's expenses, or claims that the property has been destroyed (O: by an act of God (A: and not through his negligence)), then his word is accepted (O: about it without having to swear an oath). But if the guardian claims to have given the property to the charge (O: i.e. to the child who has reached maturity or the insane person who has regained his sanity), then his word is not accepted (O: because of the ease with which he could have legally established that he gave the property to his charge at the time of doing so. if he did not obtain witnesses to observe the property being handed over, he is guilty of remissness for neglecting to have it witnessed).

**k13.5** Suspension from dealings ends (O: without a ruling from the judge) when a child reaches puberty and mental maturity, meaning that he:

(a) is physically mature;

(b) shows religious sincerity;

(c) and is competent to handle his own property.

(O: For an insane person, suspension ends when he regains his sanity, shows religious sincerity, and displays competence in handling his property. Religious sincerity means that a person performs acts of obedience and avoids disobedience and the unlawful. Competence in handling one's property means that one does not waste it by losing it, for example, in buying something outrageously overpriced. Both of these traits ((b) and (c)) are the criteria for maturity according to Imam Shafi'i, as opposed at Abu Hanifa and Malik, who hold that competence in handling property is sufficient.)

**k13.6** A charge is not give his property until his competence in handling it has been tested before puberty in a manner appropriate to him. (O: Thus a merchant's son is tried at striking a bargain in dealings, having been given money to do this, though not actually concluding the deal, which is done by the guardian. A farmer's son is tested at agriculture and managing the expenditures connected with it. An examination is also made of the charge's religion, by observing whether he performs acts of worship, avoids acts of disobedience, shuns the unlawful, and is wary of things that are doubtful (dis: j16.1). It is necessary that this testing be repeated one or more times.)

**k13.7** If the suspended person reaches puberty or regains his sanity but is corrupt in his religion or incompetent in financial dealings, then his suspension continues and he is not permitted to deal in his

property by selling or anything else, with or without his guardian's permission, though if the guardian permits him to marry, the marriage is valid.

If the suspended person reaches puberty with religious sincerity and financial competence, but subsequently squanders his wealth, then he is resuspended by the Islamic magistrate not the guardian. But if the person becomes morally corrupt (A: after having reached puberty), he is not resuspended (N: provided his corruption does not involve spending money on what is unlawful, though if it does, he is suspended from dealing).

k13.8 Puberty applies to a person after the first wet dream, or upon becoming fifteen (O: lunar) years old, or when a girl has her first menstrual period or pregnancy.

#### k14.0 TRANSFERRING THE RIGHT TO COLLECT A DEBT (HAWALA)

(O: In Sacred Law, a transfer is an agreement that moves a debt from one person's responsibility to another's.)  
(n: Given three persons, X (al-muhtal), Y (al-Muhil), and Z (al-muhal `alayhi) (A: where X loans Y a dirham, and Z already owes Y a dirham, so Y transfers the right to collect the old debt (that Z owes him) to X, instead of repaying X for the new debt. Such transfers have six integrals:

- (a) Y;
- (b) X;
- (c) Z;
- (d) Y's debt to X;
- (e) Z's debt to Y;
- (f) Y's spoken offer and X's spoken acceptance.)

k14.1 It is a necessary condition for the validity of transferring a debt that Y wishes to do so, and that X accepts. It is not necessary that Z wishes it.

(O: The agreement also requires a form, which is the spoken offer and acceptance (def:k1.1), meaning Y's offer and X's acceptance.)

k14.2 Such a transfer is not valid unless Z owes Y a debt and Y owes X a debt.

A transfer is valid respecting a legally binding debt(O: owed to X) for another legally binding debt (O: Z owes to Y), provided:

- (a) that X and Y know what is being transferred (A:gold, silver, or wheat, for example) for what;
- (b) that X and Y know that the two debts are homogeneous in type (A: such as money for money, or wheat for wheat) and in amount (O: though if Y owes X five, and Z owes Y ten, and Y transfers (A: the right to collect) five of it to X, then this is valid);
- (c) and that X and Y know whether the debts are currently due or payable in the future (A: the two debts may differ in this respect if both parties agree).

k14.3 (O: The validity of a transfer is not affected by the existence of collateral (def: k11) or of a guarantor (def;k15) as security for one of the debts, but the occurrence of the transfer eliminates (A: either form of) security, the guarantor being relieved of any responsibility and the collateral no longer being collateral.)

k14.4 Through a valid transfer, Y no longer owes X a debt, Z no longer owes Y a debt, and the debt owed to X becomes the responsibility of Z. If X is unable to collect the debt from Z because Z is bankrupt or denies the existence of the debt or for some other reason (O: such as Z's death), then X is not entitled to go back to Y (A: to collect it) (N: but rather it is as though X has accepted for the debt a remuneration which was subsequently destroyed in his possession).

#### k15.0 GUARANTEEING PAYMENT (DAMAN)

(O: Guarantee lexically means ensuring implementation, and in Sacred Law means to ensure a financial obligation which is another's or ensure the appearance of a particular person whose presence is required.)  
(n: Given three persons, P (al-madmunlahu), Q (al-madmun 'anhu), and R (al-damin) (A: where P loans Q a dirham, and R guarantees to P that either Q will repay it or else he, R, will repay it. Such guarantees have five integrals:

- (a) R;
- (b) P;
- (c) Q;
- (d) the debt covered;
- (e) and the form of the agreement.)

#### GUARANTEEING ANOTHER'S FINANCIAL OBLIGATION



**k15.1** It is necessary condition for the validity of guaranteeing payment that R have full right to manage his own property. It is not valid from a child, someone insane, or a foolhardy person (def: k13.1(A:)), though it is valid from someone suspended for bankruptcy.

**k15.2** It is a condition for the validity of a guarantee that R know P, though it is not necessary that P agree to it. It is not necessary that Q agree, or that R know Q.

**k15.3** It is necessary that the guaranteed debt be a financial obligation (dayn, dis: k9.2(b)) that is existent (O: since it is not valid to guarantee a debt before it exists, such as "tomorrow's expenses") and is determinately known (O: in terms of amount, type, and description).

**k15.4** It is necessary that R make the guarantee in words (O: or their written equivalent, with the intention) that imply he is effecting it, such as "I guarantee your debt [O: that So-and-so owes you], "I will cover it," or the like. (O: These are explicit expressions in that they mention the guaranteed financial obligation. When it is not mentioned, the expression is allusive, which is valid provided the financial obligation is what is intended, and the speaker knows how much it is. Otherwise, allusive expressions are not valid.) It is not valid to base the implementation of a guarantee on a condition, such as saying, "When Ramadan comes, I hereby guarantee it." (O: Nor is it valid to make it subject to time stipulations, such as saying, "I guarantee what So-and-so owes for one month, after which I no longer guarantee it.")

**k15.5** When a seller has accepted the price of something, it is valid (O: for someone) to guarantee the buyer his money back if the merchandise should prove to belong to another or to be defective. (O: It is likewise valid for someone to guarantee to the seller that the merchandise will be returned if the price paid for it should turn out to belong to someone other than the buyer.)

**k15.6** P is entitled to collect the guaranteed debt from R and Q (O: by asking both of them or either for the full amount, or one of them for part of it and the other for the rest of it). If another guarantor guarantees the debt for R (O: by saying (A: to P), "I guarantee Q's debt [A: to you] for R"), then P is entitled to collect it from all (A: from Q,R, and the new guarantor).

**k15.7** If P asks for payment from R, then R is entitled to ask Q to pay the debt, provided that Q had given his permission to R before R guaranteed it.

**k15.8** If P cancels the debt Q owes him, then R is also free of the obligation to pay P. But if P cancels R's obligation to cover Q's debt, then Q is not thereby free of the debt he owes P.

**k15.9** If R pays Q's debt to P, then R can collect it from Q, provided that q had given his permission to R before R guaranteed it. But if Q had not (O: given his permission to R to guarantee), then R is not now entitled to collect it from Q, no matter whether R paid it off with Q's leave or without it.

**k15.10** It is not valid to guarantee delivery of particular articles (ʿayn) (A: as they are not financial obligations (dis: k9.2(b)), such as something wrongfully taken, or articles loaned for use (O: i.e. "guaranteeing" they will be returned to their owner).

#### **GUARANTEEING ANOTHER'S APPEARANCE**

**k15.11** It is permissible for R to guarantee that Q will appear in person (O: in court) provided:  
(a) that Q owes someone something or is liable to punishment for a crime against another person, such as when the other is entitled to retaliate (def: O1-03) against Q, or when Q has charged someone with adultery without evidence (def:o13);  
(b) and that Q gives R permission to guarantee his appearance.  
It is not valid to guarantee Q's appearance if (non-(a) above) Q's crime is against Allah Most High (O: such as drinking, adultery, or theft).

**k15.12** If R guarantees Q's appearance but does not specify when, he is required to produce Q at once. But if R stipulates a certain time, then he is required to do so at that time. If Q disappears and his whereabouts is unknown, R is not required to produce Q until he knows where Q is.  
(A: When R knows where Q is, then) R is given time to travel to where Q is and return. If R does not bring Q, then R is under arrest, though he is not responsible for Q's (A: unfulfilled) financial obligations. If Q dies, the guarantee is nullified, though if R is asked to produce Q's body before burial to verify its identity, he is obliged

to if able.

## **k16.0 PARTNERSHIPS (SHARIKA)**

**k16.1 Partnership is valid with anyone having full right to dispose of his own property.**

### **COOPERATIVE PARTNERSHIP**

**k16.2 There are four kind of partnership (dis:k16.9) of which one alone, cooperative partnership, is valid. It consists of each of the two (A: or more) partners putting up capital, which must be either money or a fungible commodity typically transacted measure for measure (mithli, def:k20.3(1)) (O: as opposed to goods appraised and sold as particular pieces of merchandise (mutaqawwim), which cannot form the basis of a partnership because it is impossible to mix each partner's share with the other's (dis:below)).**

**k16.3 It is a condition for the validity of a cooperative partnership that the two shares of capital put up by the partners be inter mixed such that it is impossible to tell them apart.**

**k16.5 It is a necessary condition that each partner give the other his permission to handle the capital (O: that they have put in common). Each partner must deal in a way that realizes their common capital's best advantage and maximal safety. Thus, neither partner may travel with it (O: i.e. the shared capital, because of the danger in travelling) or sell for postponed payment (N: unless the other partner gives him permission, in which case (A:either of) these are permissible).**

**k16.6 It is not necessary that the two shares of capital put up by the partners be equal in amount. Both profits and losses are divided between the two partners in proportion to the percentage of the shared capital each of them put up (O: even if there is a difference in the amount of work that each does). If they stipulate otherwise, the partner who put up one hundred, for example gets two-thirds, while the partner who put up two hundred gets one-third; or stipulating that each gets an equal share, despite having put up unequal amounts). (N: This is in the Shafi'i school. The Hanafis and Hanbalis hold that it is permissible for the distribution of profits to be disproportionate (A: to the amount of capital each invests, corresponding to the disproportionate amount of work each puts into the venture (A: or any other division of the profits which they both agree upon).)**

**k16.7 If partner A forbids partner B handle the shared capital, then B is not entitled to handle it, though A is still entitled to (O: handle both shares, one of which is his by ownership, and the other by permission of his partner) until B forbids him to handle it.**

**k16.8 Each partner is entitled to cancel the partnership whenever he wants (O: and it is also cancelled by the death or insanity of either or both partners).**

**k16.9 The following types of partnerships are not valid:**

- (1) manual partnership (sharika al-abdan), such as the partnership of two porters or other workers agreeing to divide their earnings between them (N: though this type of partnership is valid in the Maliki, Hanbali schools);**
- (2) well-known partner partnership (sharika al-wujuh) (n: such as of two individuals who put up no capital, but have good reputations among people which create confidence and enable them to purchase trade goods for deferred payment, the profits from the sale of which they agree to divide between them (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 2.212)).**
- (3) and comprehensive partnership (sharika al-mufawada) (n: an agreement by which the partners share whatever they each earn from their respective (A: separate) funds and labor, mutually covering the financial liabilities incurred by either (ibid.,2.212)).**

### **k17.0 COMMISSIONING ANOTHER TO DO SOMETHING (WAKALA)**

**(n: Given persons X (al-muwakkil) and Y (al-wakil) (A: where X and Y article to sell for him. This section deals with commissioning others to carry out such requests, which have four integrals:**

- (a) X;**
- (b) Y;**
- (c) the act that is being commissioned (al-muwakkal fihi);**
- (d) and the words by which X commissions Y to do it.)**

**k17.1 It is a necessary condition that both X and Y have full right to perform the act being commissioned, though it is permissible to commission a child to let people into one's house or take a gift to someone.**

## **THINGS ONE MAY COMMISSION OTHERS TO DO**

**k17.2 X may commission Y:**

- (1) to conclude contracts on X's behalf (O: such as a sale, gift, putting up collateral, conducting a marriage contract, guaranteeing payment, or transferring a debt);**
- (2) to cancel contracts on X's behalf (O: such as cancelling a sale or returning defective merchandise);**
- (3) to conduct X's divorce;**
- (4) to make claims (A: by lawsuit against others, as lawyers do);**
- (5) to ensure fulfillment of established claims (O: from whoever owes them to X, after they have been established by proof);**
- (6) or to take possession of something that is free to take, such as wild game, pasturage, or water (O: by Y conveying it from land which X is permitted to take it from, since this is a way of gaining property just as sale is).**

**k17.3 It is not permissible for Y to undertake obligations of worship that X owes Allah Most High, except for:**

- (1) distributing zakat to deserving recipients (O: or giving food or alms as an expiation, or voluntary charity);**
- (2) performing hajj (O: or 'umra, which another may perform on the behalf of an invalid or a deceased person);**
- (3) and slaughtering sacrifices (dis: j12.6 (end), j14.3).**

**k17.4 It is permissible to commission Y to perform an obligation (O: to Allah) that consists of inflicting a prescribed legal penalty (hadd) (O: such as the penalties for the crimes of accusing another of adultery without proof (def:o13), adultery, or drinking), but is not permissible to commission Y to establish that such an obligation exists (O: such as by X telling Y, "I commission you to affirm [A: in court, by Y submitting X's testimony] that So-and-so has committed adultery," or "that So-and-so has drunk wine").**

**k17.5 It is a necessary condition for the validity of X's commissioning Y that there be:**

- (a) a spoken proposal (O: indicating X's wish for Y to handle some matter for him) that does not restrict the (A fact of there being a) commission by giving conditions under which the commission takes effect (O such as saying, "If So-and-so come, I hereby commission must be) such as saying, "I commission you, " or "Sell this garment for me";**
- (b) and an acceptance (O: by Y, whether this be) in word or deed, i.e. by Y simply doing what he has been asked to, it is not necessary that his acceptance take place immediately.**

**k17.6 When X validity commissions Y to do something, X may include stipulations about how it is to be carried out, such as saying, "I commission you, but don't sell it till after a month." (A: The previous ruling prohibits stipulations restricting the fact of Y being commissioned Y and his stipulations merely govern how Y is to do it.) (O: A temporary commission, such as saying, "I commission you for one month," is also valid.)**

**k17.7 Y may not commission another to perform what X has commissioned Y to do unless X either gives Y permission to commission another, or Y cannot undertake the task (O: because he is unable to, or it does not benefit him) or it is incapable of it because it is too much (A: for a single person to perform).**

## **THE AGENTS DISCRETIONARY POWERS**

**k17.8 Y is not entitled to sell an article (A: he has been commissioned to sell) to himself or his underage son, nor (O: is it valid) to sell it:**

- (1) for less than the current price of similar articles;**
  - (2) for deferred payment;**
  - (3) or for other than the type of money used locally;**
- though Y may do these (O: (1), (2), or (3) if X grants him permission to.**

**k17.9 Y's sale of the commissioned article is not valid when X specifies the type of funds he wants as its price, but Y sells it for a different type, such as when X says, "Sell it for a thousand dirhams," but Y sells it for a thousand dinars. But Y's selling it is valid if X specifies the amount he wants and Y sells it for more, provided the type of funds is the same, as when X says, "Sell it for a thousand," but Y sells it for two thousand-unless X has specifically prohibited this (O: in which case the sale would not be valid, as it contravenes X's commission).**

**k17.10** If X commissions Y to "buy such and such a thing for a hundred, "but Y buys one worth a hundred for less than a hundred, then the purchase is valid. But if Y buys one for two hundred that is worth two hundred (A: when X has commissioned him to buy one for a hundred), then the purchase is not valid. If X tells Y, "Buy a sheep with this dinar, "(O: and describes it in type and so forth, since without such a description, the commission would not be valid), but Y buys two sheep (A: with that dinar) of which each one is worth a dinar, then the purchase is valid and both sheep belong to X, though if the sheep are not each worth a dinar, then the purchase is not valid.

**k17.11** When X commissions Y to sell something to a particular person, it is not permissible (O: or valid) for Y to sell it to another.

**k17.12** When X tells Y, "Buy this [A: particular] garment," and Y buys it and X finds it is defective, then Y may return it for a refund (O: and so may X, since he is its owner). But when X merely tells Y to "buy a garment" (O: without further restriction), then it is not permissible for Y to buy a defective one (O: because the lack of further restrictions is understood to mean being free of defects, and if Y buys a defective one, the purchase is invalid).

**k17.13** It is a necessary condition that the thing Y is being commissioned to do is determinately known (O: to X and Y) in some respects. Thus, if X says, "I commission you to sell my property and conduct the divorce of my wives," his commission is valid, though if he merely commissions Y to "handle everything large or small," or "all of my affairs," it is not valid.

**k17.14** Y's responsibility in a commission is that of someone who has been given a trust (O: since he represents X, and his possession of the article is like X's). meaning that if (O: X's) property is destroyed without negligence while in Y's possession, Y does not have to pay for it. (O: But when Y is to blame and negligent, a when he uses the article himself or keeps it in a place lacking the normal precautions for safeguarding similar articles, then he must pay for its loss, as with any trust.)

**k17.15** Y's word (dis: k8.2) is accepted over X's when there is a dispute:

- (1) concerning the commissioned article's destruction;
- (2) as to whether the article was or was not returned to X;
- (3) or whether Y betrayed his trust.

**k17.16** Either X and Y may cancel the commission at any time. If X relieves Y of his commission, but Y does not learn of this and performs it, then what he has done is not legally binding or effective (O: because he did not have the right to handle the matter).

**k17.17** The commission is cancelled when X and Y dies, loses his sanity, or loses consciousness (Ar. ughmiya 'alayhi, i.e. through other than falling asleep).

#### **k18.0 DEPOSITS FOR SAFEKEEPING (WADI'A)**

(n: Given persons P (al-mudi') and Q (al-wadi') (A: where P deposits an article with Q for safekeeping until such time as P should want it back. Such deposits have four integrals:

- (a) the article (al-wadi'a);
- (b) the verbal agreement;
- (c) P;
- (d) and Q.)

(O: The appropriateness of mentioning deposits for safekeeping after having discussed commissioning others is plain, namely that both the person commissioned and the person with whom something is deposited are bearers of a trust, and do not pay for the loss or destruction is the result of their wrongdoing (A: or remissness in taking normal precautions).)

**k18.1** Deposits for safekeeping are only valid when both P and Q full right to handle their own property. Thus, if a child or a foolhardy person (def: k13.1 (A:)) deposits something for safekeeping with an adult, he should not accept it. If he does, then he is responsible for it (O: and must cover the cost if it destroyed) and is not free of the responsibility until he returns it to the child's guardian. He is not free of the responsibility if he merely returns it to the child. If an adult deposits something for safekeeping with a child (A: or other person without full disposal over their affairs), then the child is not responsible if the article is destroyed through negligence or otherwise (O: as when an act of God befalls it), though if the child destroys the article, he is financially responsible for it.

**k18.2** It is unlawful for Q to accept a deposit for safekeeping when he is not able to protect it. It is offensive for him to accept it if he is able to protect it but cannot trust himself and fears he may betray the responsibility> But if he can trust himself, it is desirable and praiseworthy for him to accept it.

**k18.3** If Q accepts a deposit for safekeeping, he is obliged to keep it in a place meeting the normal specifications for safeguarding similar articles (A: for his town and times) (O: which varies according to the nature of the article deposited, as each thing has precautions proper to safeguarding it (dis:o14.3)).

**k18.4** If Q plans to travel or fears he may die, he must return the deposited article to P. If Q cannot find P or someone commissioned by P (A: to manage P's affairs), then he must deliver it to the Islamic magistrate (A: to keep for P). If there is none, Q leaves it with a trustworthy person (O: and he is not obliged to delay his trip), though if he deposits the article with a trustworthy person when there is an Islamic magistrate, he is still financially responsible for it. If Q fails to take the above measures (A: of returning it to the owner or next most appropriate person available ) and he dies without having provided in his will for returning the article, or he travels with it, then he is financially responsible for it, unless he dies suddenly, or looting or fire breaks out in the city, and he travels with it because of being unable to give it to any of the above persons.

**k18.5** Whenever P asks for the deposited article, Q is obliged to return it by allowing P to take it (O: i.e. by relinquishing possession of it, though this does not mean he has to transport it to P).

**k18.6** Q is financially responsible for the deposited article if:

- (1) without excuse, he delays allowing P to take it;
- (2) he deposits the article or safekeeping with a third party, without having had to travel and when there was no need;
- (3) he mixes the deposited property with his own property or with some of P's other property such that the deposited property is no longer distinguishable from what it has been mixed with (O: as opposed to when the deposited property can be easily distinguished and has not depreciated as a result of being mixed);
- (4) he takes the article out of the place of safekeeping to use, even if he did not use it (O: because merely taking it out with such an intention is a betrayal of his trust);
- (5) he does not keep it in a place meeting the normal specifications for safeguarding similar articles;
- (6) or if P has told him, "Keep it in such and such a particular place for safeguarding, "but he instead puts it in a different place less protected (O: than the one P indicated), even when this second place meets the normal specifications for safeguarding similar articles (O: though if Q puts it in a different place with protection equal or superior to the place P has indicated, Q is not responsible for it).

**k18.7** Either party may cancel the deposit for safekeeping agreement at any time. The agreement is also annulled when either party dies, loses his sanity, or loses consciousness (Ar. ughmiya `alayhi, i.e. through other than falling asleep).

**k18.8** Q's responsibility in accepting a deposit for safekeeping is that of someone who has been given a trust (O: meaning that his claims when he swears an oath (N: and neither side has proof (dis:k8.2)) are accepted, a he is a trustee). His word is accepted over P's when there are disputes about:

- (1) whether the deposit for safekeeping was actually made (O: When P claims that it was);
- (2) whether the article was returned to P;
- (3) or whether and how the article was destroyed (O: when Q claims it was).

Thus if Q says, "You did not deposit anything with me," or "I returned it to you," or "It was destroyed without negligence on my part," then his word is accepted when he swears.

**k18.9** It is a necessary condition for the validity of a deposit for safekeeping that P states it in words such as "I entrust it to you to keep," or "I entrust it to you to protect." It is not necessary that Q give a spoken reply to this, but is sufficient for him to simply accept the article.

**k19.0** LENDING SOMETHING FOR USE ( `ARIYYA)

(n: Given persons A (al-mu'ir) and B (al-musta'ir) (A: where A lends B an article to use and return after use. This section discusses such loans, which have four integrals:

- (a) the article (al-`ariyya);
- (b) the verbal agreement;
- (c) A;
- (d) and B.)

**k19.1** A's lending an article for B to use is valid if A possesses full disposal over his own property and has the lawful right to the article's use, even if he is only renting (n: though not if someone else has lent him the article without giving him permission to relend it, as at k19.8).

**k19.2** It is permissible to lend anything that can be benefited from while the article itself still remains (O: such that B gets some use out the article, as is usually the case, or else he materially gains from it, as when he borrows a sheep for its milk or its expected offspring, or borrows a tree for its fruit. It is not valid to lend something of no lawful benefit such as a musical instrument (dis: r40), or such things as edibles, which do not themselves exist after use, since their use consists solely in their consumption). (A: The latter would be a loan (qard, def:k10) repayable in kind, and hence not included in lending for use.)

**k19.3** It is necessary for the validity of lending something for use that either A or B state the agreement in words. (O: The loan is not valid except by either A or B stating it, such as by B telling A, "Loan me such and such." and then A giving it to him. The action alone, between A and B, is insufficient.)

**k19.4** B may then use the article according to the permission given. He may:

(1) do what A has given him permission to;  
(2) or do the equivalent (O: in respect to the wear and tear on the article involved) or something less, though not if A has forbidden B to do other than what he has specifically given him permission to do. If A tells B, "Plant wheat," (A: on land lent), then it is permissible for B to plant barley, though not vice versa (O: since wheat is harder on the soil than barley), while if A merely permits B to plant, without further restriction, then B may plant whatever he wishes.

**k19.5** When A permits B to plant an orchard or build buildings on property he lends B, but later wants the land back, then:

(1) if A had stipulated that B would have to remove the trees or buildings, then B removes them (O: obligatorily, performing what was stipulated, for if B will not, then A may remove them);  
(2) but if A had not stipulated this, then if B whether, he may remove them, though if B does not (O: but rather chooses to keep them there), then A has a choice between leaving them on the land for rent (O: from B for the land), or else removing them (O: the trees or buildings) and being obliged to pay B a compensation for the loss of value (O: to the trees (A: or buildings)) caused by removal. A is entitled to take back the article lent at any time he wishes.

**k19.6** B is financially liable for the article lent (N: even if it is destroyed by an act of God). If it is destroyed while B is using it for other than what A gave him permission to do with it, even if not through B's negligence, then B is responsible to A for the article's value (A: at the market price current for similar articles on) the day of its destruction (O: and he may either replace it or pay A for it). But if the loaned article wears out through being used in the way that A gave permission to use it; then B is not financially responsible for it (N: as when B borrows a garment to wear which becomes worn out through use alone).

**k19.7** B is responsible for the measures entailed in returning the article to A.

**k19.8** B may not loan (O: the article lent to him) to a third party (O: without permission).

#### **k20.0 THE RETURN OF WRONGFULLY TAKEN PROPERTY (GHASB)**

(O: Taking another's property is an enormity (dis:p20), the scriptural basis for its prohibition being Koranic verses such as the word of Allah Most High, "Do not consume each other's property through falsehood" (KOran 2:188).) (n: Given persons X and Y (A: where X takes an article belonging to Y. This section presents the details of X's obligation (dis: p77.3) to restore Y his property).)

**k20.1** Wrongfully taking (ghasb) means to appropriate what is another's right (O: even if this consists of the right to use something, such as forcing someone sitting in a mosque or marketplace to get up from his place) unjustly.

**k20.2** When X wrongfully takes anything of value from Y, even if the value is inconsiderable, he is obliged to return it unless this involves destruction to life or lawful property, as when X takes a plant and nails it over a leak in the hull of a ship at sea that is bearing others' property or worthy people or animals (N: meaning those not obligatory to kill (def:e12.8(O:))).

**k20.3** If the article taken is destroyed while in X's possession or X himself destroys it, then:

- (1) if it was fungible (mithli, a homogeneous commodity transacted by weight or measure, an equal amount of which precisely supplies the place of another), then X is financially responsible for replacing it with an equal amount, fungible meaning that which is measured by volume or weight, and which can be validly sold in advance (def; k9.2 (b,d,f,g)) such as grain, gold or silver, and so forth, while nonfungible (mutaqawwim, commodities appraised and transacted as particular pieces of merchandise) means everything else, such as livestock and articles of heterogeneous composition, like meat pastry, and so forth;
  - (2) if the article was fungible (mithli) but it is no longer possible for X to obtain an equal amount to return to Y, then X owes Y its value, which is reckoned at its highest market value between the time X seized it and the time of its subsequent unavailability;
  - (3) but if the article was nonfungible (mutaqawwim), X owes Y its highest market value during the interval between X's taking it and the time of its destruction.
- (N: The foregoing apply to when X has appropriated a physical article or commodity (‘ayn). As for when he has wrongfully appropriated the use of something, the obligation consists of repaying Y the cost of renting a similar article for a similar amount of time.)

**k20.4** X's word (O: provided he swears an oath (N: and neither side has proof (dis:k8.2))) is accepted over Y's when there is a dispute about the destroyed article's value (O: when both agree that it has been destroyed) or about its destruction (A: as to when it occurred, for example). But Y's word is accepted over X's when there is a dispute about whether or not X returned the article to Y.

**k20.5** If the property returned by X is materially diminished or has depreciated in value because of some new defect, or both, then X is obliged to pay Y compensation for the loss of value (O: while still being obliged to return the rest). But if the article has diminished in value solely because its market price is now less, then X is not required to pay anything.

**k20.6** If the article possesses a utility (O: meaning a rentable utility, as a house does), then X owes Y its rent for the period that X had it, no matter whether he used it or not.

**k20.7** Anyone who obtains the wrongfully appropriated article from X, or subsequently obtains it from the person who got it from X, and so forth, on down, is financially responsible (def: k20.2-6) to Y for it, no matter whether such a person knows of its having been wrongfully appropriated or not.

**k20.8** (N: Given persons X,Y, and Z, where X has wrongfully taken something from Y, and then Z obtains it from X. This ruling describes the compensation due to Y when the article has been damaged or destroyed in Z's possession.) Y is entitled to demand restoration or payment for the loss or depreciation of the article from either X or Z. The obligation to cover this becomes Z's own financial liability-meaning that if Y asks Z for compensation, Z may not in turn demand it from X; though if Y asks X for it, X may in turn demand it from Z-in the following cases:

- (1) when Z obtained it knowing that it had been wrongfully appropriated;
- (2) when Z obtained it not knowing that it had been wrongfully appropriated, but the means by which Z obtained it would have made him financially responsible for its destruction anyway, as when Z himself wrongfully appropriated it or borrowed it for use (def: k19) from X. (O: Z is also financially liable if he bought it from X);
- (3) or when Z obtained it not knowing it had been wrongfully taken, and the means by which he got it from X would not otherwise have made him responsible for its destruction except for the fact that he himself precipitated its destruction (A: as when X deposits it with Z for safekeeping and Z destroys it).

**k21.0 PRE-EMPTING THE SALE OF A CO-OWNER'S SHARE TO ANOTHER (SHUF'A)**

(n: Given P, Q, and R (A: where P and Q each own part of some dividable piece of real estate, and P sells his part to R, a third party. In such a case, Q can legally force R to sell the part to him by right of pre-emption (N: whose purpose is to prevent the harm to Q that would result if R were to subsequently go to the Islamic magistrate and demand that the property be divided to distinguish his property from Q's)).)

**k21.1** Preemption is only legally binding:

- (a) on a portion of real estate (A: that belonged to P and Q) which can be divided without loss of value;
- (b) when P has sold his part (A: to R) for recompense.

In such a case, Q may preempt its being sold to R by buying R's share for the price that P and R agreed on. If there are several co-owners in place of Q, they each buy a part of the share proportionate to the percentage of the whole property they respectively own.

(A: If there is disagreement between the parties as to how much P sold it to R for, and there is no proof, then) R is the one to say (A: when he swears(def:k8.2)) how much the price of the part was.

**k21.2** It is a necessary condition for the pre-emptive sale that Q effect it with words such as "I hereby appropriate this property by preemption." It is also necessary that Q give R the price, that R agree to let Q pay it later, or that the Islamic magistrate rule that Q may buy the property by preemption; in any of which cases Q takes possession of it. If R paid P with something fungible (mithli, def: k20.3(1)), then Q must pay R an equal amount. If R paid with something nonfungible, then Q must pay its value (A: in the marketplace on) the day of the sale.

**k21.3** There is no preemption if:

- (1) the property is divided (N: already, by boundary markers or similar);
- (2) the building and trees on the land are sold separately from it;
- (3) the property cannot be divided without eliminating its usefulness (non-k21.1(a)), such as a cistern or a narrow walkway;
- (4) R acquired it without paying a price for it, as when it has been given to him as a gift;
- (5) or if R bought it with a price whose amount was not known(A: such as "for this pile of silver you see").

**k21.4** If the building and trees have been sold with the land (A: for one price), then Q also takes them as part of the land he preempts.

**k21.5** Preemption must occur immediately (A: upon Q's learning of P's having sold the property to R). When Q learns of it, he must preempt at once (def:f4.5). If he delays without excuse, he no longer has the right to preempt, unless R bought the property from P for postponed payment, in which case Q has a choice between buying it at once, or waiting until payment is due and then buying it. If Q learns of the sale while ill, or being denied, he must commission someone (def:k17) to preempt for him. If he does not, he loses the right to preempt, unless he was unable to commission someone, or the person who informed him of the sale was a child or someone unreliable, or he was informed of it while travelling and then started returning in order to preempt; in all of which cases he may still preempt.

**k21.6** If R has built, or planted trees (A: before Q could preempt), then Q has a choice between paying R the value of the new buildings (A: or trees) and taking possession of them, or else removing them and paying R for the loss of value (A: to them as a result of being removed). If R has given away the part of the property (A: that he bought from P), made it a charitable endowment (waqf,def;k30), sold it, or returned it to P because of a defect, then Q may annul any of these transactions that R has effected. Q also has the right to take the property from the person who bought it from R, by paying this person who bought it from R, by paying this person the amount for which he bought it.

**k21.7** If Q dies (A: before he is able to preempt), his heirs can preempt. If some of them decline to do so, the rest of the heirs may still preempt the entire portion, or may relinquish the right to preempt any of it.

## **k22.0 FINANCIAL A PROFIT SHARING VENTURE (QIRAD)**

(n: Given persons X (al-malik) and y (al-'amil) (A: where X and Y a sum of money for Y to do business with, on the basis that X will take a percentage of the profits. Such ventures have six integrals:

- (a) X;
- (b) Y;
- (c) the work performed by Y;
- (d) the profit (n: divided between them at a given percentage);
- (e) the spoken form;
- (f) and the venture's capital (n: which is put up by X)).

**k22.1** Financing a profit-sharing venture (qirad) means for X to give Y money with which to trade, the profits to be shared between them. (O: It is not valid to finance such a venture on the basis that a third party gets any of the profit.) It is only valid when both parties have full right to manage their own property. It also requires that there be:

- (a) a spoken proposal (O: by X, such as "I finance you," or "I engage you, "or "Take these dirhams [N: as a trade loan]");
- (b) an acceptance (O: by Y in words. It is insufficient for him to begin working without saying anything); and that the invested capital be:
- (c) money (lit. "gold or silver" (A: money taking their place in these rulings));
- (d) of known amount;



(e) physically existent (A: i.e. it can be seen and handled, not merely a debt or financial obligation to be collected);

(f) delivered to Y (O: it is not valid to finance a profit-sharing venture on condition that the funds be held by someone other than Y, such as X holding them and paying for what Y buys, since y might not find X he needs him);

(g) (A: and that Y be given the funds) in return for (A: X's receiving) a known fraction of the entire profit, such as a half or a third. Financing a profit-sharing venture is not valid when:

(1) (non-(c) above) the capital put up consists of commodities;

(2) (non-(f)) X holds the funds;

(3) (non-(g)) it is stipulated that either X or y be specifically entitled to the profits from a certain part of the business (O: such as saying, "You get the profits from the clothing, and I get the profits from the livestock");

(4) (non-(g)) either X or Y is guaranteed (N: for example) ten dirhams of the profit (O: since they might not make more than ten, in which case the second partner would get nothing) (A: rather, they must specify the percentage that each will take);

(5) (non-(g)) it is stipulated that one of them be entitled to all of the profit;

(6) or (non-(f)) it is stipulated that X work with Y in the business.

**k22.2** Y's role is to conduct business and related matters with consideration for their best financial advantage and with circumspection. Y may not sell at a loss, sell for deferred payment, or travel with the capital, and so forth, without X's permission.

**k22.3** The agreement between X and Y is nullified whenever X stipulates (O: something that is not obligatory for Y in such ventures, such as) that Y buy wheat, mill it, and bake it; that Y buy yarn, weave it, and sell it; that Y not deal except in such and such a rare commodity; or that Y deal exclusively with So-and-so.

**k22.4** When such an agreement is invalid, the transactions Y has conducted are valid, and Y is paid the wages that are usual for such work, unless X had stipulated, "I get all the profits, "in which case he takes all of it and Y gets nothing (O: since he worked without expecting anything).

**k22.5** When either X or Y cancels the agreement, loses his sanity, or loses consciousness (Ar. ughmiya alayhi, i.e. through other than falling asleep), then the agreement is annulled and Y is obliged to liquidate the holdings (A: by changing them back into funds).

**k22.6** (A: When neither party has proof,) Y's word (O: if he swears (dis:k8.2)) is accepted over X's when there are disputes:

(1) concerning the amount of capital originally put up;

(2) as to whether or not the capital was restored to X;

(3) concerning the destruction of the holdings;

(4) or as to whether Y betrayed his trust.

**k22.7** If X and Y dispute as to how much of the profit was stipulated half for me," and X replies, "To the contrary, it was onethird"), then each party swears an oath supporting his own claim (O: and when they have sworn, X gets all the profit, and Y receives the wages customary for the work he did).

**k22.8** Y does not own his share of the profit until the venture's final division. (O: His possession of it is only finalized by dividing the profits when the holdings are liquidated and the agreement is terminated.)

## **k23.0 WATERING GRAPES OR DATES FOR PART OF THE CROP**

### **k24.0 SHARECROPPING (MUZARA'A)**

(n: Sharecropping means to farm someone's land for a share of the harvest. In the Shafi'i school, it is not permissible or valid except on strips of land between date groves under certain conditions, such as:

(a) that the landowner provide the seed;

(b) that it be unfeasible to separate working the trees from working the ground;

(c) and that the sharecropper be currently working the trees also, under the above 9k23) arrangement.

This section has been left in Arabic below, and rulings from the Hanafi school, which permits sharecropping, have been added by the translator.)

**k24.2** (Ahmad Quduri:) Abu Hanifa (Allah have mercy on him) holds that sharecropping, for one-third or one-fourth of the harvest (or anything less or more), is invalid, though Abu Yusuf and Muhammad (A: the colleagues of Abu Hanifa) hold it to be valid. Sharecropping, in the view of the latter two, is of four

types (A: three of them valid and one invalid). (n: Given persons X and Y, and the four agricultural variables: land, seed, labor, and oxen (i.e. the means of plowing):)

- (1) X provides the land and seed, and y provides the labor and oxen; and seed; which is permissible;
- (2) X provides the land, and Y provides the labor, oxen, and seed; which is permissible;
- (3) X provides the land, oxen, and seed and Y provides the labor, which is permissible;
- (4) or X provides the land and oxen, and Y provides the seed and labor; which is not valid.

A sharecropping agreement is only valid if the period of the agreement is determinately specified (lit. "known"), and it requires that the total produce be divided between the partners (A: not a specific number of bushels to one, for example, or on condition that the produce from one part of the land belong to one of them and the produce from another part belong to the other) (al-Lubab fi sharh al-kitab (y88), 2.228-30).

#### **k25.0 RENTING THINGS AND HIRING PEOPLE'S SERVICES (IJARA)**

(n: Given persons P and Q, where Q rents a pack animal from P, or hires P as a guide. The title of this section, Ijara, has the dual significance of renting an article and hiring a person's services.)

(O: Lexically, rent is a name for the rental fee. In Sacred Law it means to take possession of a utility or service for payment under certain conditions, it has four integrals:

- (a) the spoken form;
- (b) the fee;
- (c) the utility or service;
- (d) and the persons making the agreement.)

**k25.1** A rental agreement is only valid between two persons entitled to conduct sales (def; k1.2) It requires both a spoken offer, such as "I rent this to you." or "the use of it"; and a spoken acceptance. (O: The agreement must also specify how much the rental fee is.)

**k25.2** There are two types of rental agreements:

- (1) renting anticipated utilities or services described in advance and under obligation to deliver (ijara dhimma);
- (2) or renting the use or services of an identified thing or individual who is present (ijara 'ayn).

Rental of something anticipated (ijara dhimma) consists of Q saying, for example, "I am renting from you a pack animal of such and such a description," or "I am hiring you to tailor a garment for me," or "to provide me with transportation to Mecca." Rental of something identified and present (ijara'ayn) consists of Q saying, for example, "I rent this animal from you," or I hire you to sew this particular garment for me."

**k25.3** It is a necessary condition for a valid rental of something anticipated (ijara dhimma) that P accepts the fee for it at the time the agreement is made.

**k25.4** The necessary conditions for a valid rental of something identified and present (ijara 'ayn) are:

- (a) that the article (or person whose services are) being rented be a particular individual (O: meaning visible to the eye, as in sales);
- (b) that the article (or person's service) be within P's power to deliver such that Q can utilize it as intended (O: within one's power to deliver including both the actual ownership of an article and the possession of the right to use it, such that if Q is renting it from P, Q may in turn rent it out to a third party);
- (c) that Q have the right to utilize the article (or services of the person hired) as soon as the deal is made;
- (d) that the utility for which the article is being rented not entail the article's destruction;
- (e) and that the agreement specify a rental period that the rented article will probably outlast, even if it be a hundred years, as in the case of land. Thus, rental of something identified and present (ijara'ayn) is invalid when it consists of:
  - (1) (non-(a) above) hiring the services of "one of these two servants";
  - (2) (non-(a)) hiring someone absent (A: from the place where the agreement is made);
  - (3) (non-(b)) renting land for agricultural use when the land is without water and the area's rainfall is insufficient for crops;
  - (4) (non-(c)) P renting out something (A: that he is already renting to Q) to a third party for the year following the current one, though Q may rent it for the following year (O: since his rental period is unexpired and the two periods are contiguous);
  - (5) (non-(d)) wax for fuel;
  - (6) (non-(e)) or renting out an article unlikely to last, for example, more than a year, for a period longer than that.

**k25.5** (O: Additional) conditions for rental of something identified and present (ijara 'ayn) (O: relating to its use or service) are that its utility be:

- (a) permissible in Sacred Law;

- (b) of some value;
- (c) determinately known (O: as to which one it is, its amount, and its utility, meaning that both P and Q know these things), such as saying, "I rent you this land to raise crops on," or "[A: I rent you this pack animal] to carry such and such a quantity of iron," or "of cotton";
- (d) for a period known (O: to both P and Q);
- (e) and for a fee known (O: to both P and Q, in type and amount), even when it is merely seen in bulk, or when it consists of the use of some other utility or service.
- Thus, rental of something identified and present (ijara'ayn) is not valid when the utility for which it is being hired or rented consists of:
- (1) (non-(a) above) playing a flute;
  - (2) (non-(a)) transporting wine, other than to pour it out;
  - (3) (non-(b)) a hawker's cry that does not require any effort, even if it increases the demand for the merchandise;
  - (4) (non-(c)) carrying such and such a quantity (O: on a pack animal) when the nature of the load is unspecified;
  - (5) (non-(d)) being rented for "one dirham per month" when the total period (A: of occupancy, for example) is unspecified (A: though one may renew a valid rent agreement each month, and in such a case the landlord has the right to ask for it in advance);
  - (6) or (non-(e)) hiring someone for the "fee" of providing him with food and clothing.

k25.6 The particulars of the utility (N: such as its precise duration) might not become determinately known except through the passage of time, as when renting a house or hiring a wet nurse in such cases the time must be preestimated (A: when the agreement is made, as a condition for its validity). Similarly, the utility or service might not become determinately known except through the work itself, such as when hiring someone to perform hajj in one's place (dis: j1.10) or the like, in which case the amount of work involved must be preestimated. If the utility requires both time and work to become determinately known, as is the case with tailoring, building, or teaching someone the Koran, then the utility is preestimated (A: i.e. stated in the rental agreement) with regard to one of these two variables alone. It is not valid to estimate the utility with regard to both, such as Q saying, "[O: I hire you to ] tailor this garment for today's daylight hours" (O: since the work involved might take more or less time than that).

k25.7 The necessary things required by Q in order to utilize, such as the key (A: to a house), or the reins, girth, or saddle (A: of a mount), are P's responsibility to provide. Things that merely enhance or improve the utility for which Q has rented the article are Q's responsibility.

k25.8 Q is entitled to normal use of the article in obtaining the utility for which he has rented it of an equivalent utility (A: riding it in a different direction, for example, the same distance as the agreed upon and under the same conditions). If Q travels farther than the agreed upon destination, then he is obligated to pay the rental fee agreed upon, plus the amount customarily paid for a distance comparable to the excess.

k25.9 It is permissible (O: only when renting something identified and present (ijara 'ayn)) for Q to pay in advance or to defer payment to the future. If neither party states whether it is to be paid in advance or whether in the future, then it is payable in advance. When renting anticipated utilities or services (ijara dimma), it is permissible to let Q use the utility prior to the agreed upon period, or to delay use until after the period.

k25.10 (O: When renting something identified and present (ijara 'ayn)), if the article being rented is destroyed, the agreement is thereafter cancelled (O: with respect to the future, since the article to be utilized is no longer available then, as opposed to the period that has transpired after the article's delivery, for which Q must pay an appropriate proportion of the agreed upon fee, based on the current market value of similar utilities or services). (O: When renting an identified and present utility or service (ijara 'ayn),) if a defect occurs (O: in the article being rented, and the defect obviously entails a discrepancy in the rental fee), then Q has the option to cancel the agreement (O: unless P immediately undertakes to correct or repair the defect, for if he does, Q is not entitled to cancel it). But if the rental agreement concerns an anticipated utility or service (ijara dhimma) (O: and the rented article has been destroyed after its delivery), then the agreement is not nullified and Q may not cancel it, but is only entitled to ask P to replace the article so that Q can obtain the utility anticipated.

k25.11 If the material Q has hired P to work on (A: e.g. when Q hires P to tailor a garment from material Q has given him) is destroyed in P's possession without his negligence, then P is not obliged to pay for its loss. If Q has rented an article from P and it is ruined in Q's possession without his negligence, then Q is not obliged to pay for its loss.

**k25.12** If P and Q dies while the rental agreement is in effect, it is not cancelled. (O: Rather, if P has died, Q finishes using the article, while if Q has died, then Q's heirs finish utilizing it. Neither party has the right to cancel the agreement in such a case when the article itself still exists.) (A; The death of either party is considered by the Hanifi school to nullify the agreement.)

**k25.13** When the rental period is over, Q must return the article rented and is responsible for the measures (A: and the expenses) entailed in returning it.

**k25.14** When P or Q stipulates a particular rental period or a specific use for the article, then when P has delivered the article to Q and the period stipulated elapses, or a period elapses that is sufficient for the utility stipulated to have been obtained from the article (O: even if it has not in fact been obtained), then the rental fee is due (O: from Q, who rented the article under such stipulations), and the article must be returned. (O: This ruling holds for both renting something identified and present (ijara 'ayn) and renting something anticipated (ijara dhimma).)

**k25.15** In an invalid agreement, Q owes P the amount typically paid for renting similar utilities, due whenever he would have owed P the fee agreed upon had the agreement been valid.

#### **k26.0 JOB WAGES (JA'ALA)**

(n: Given persons X and Y, where X offers Y a dirham to do a certain job.)

**k26.1** When X says, "I owe whoever builds me a wall a dirham" (A: or makes a similar offer), this is termed job wages. It is permissible that (A: the particulars of ) such a job be unknown, though not the amount of the wage. Whoever then builds the wall for X is entitled to the amount stated, even if they are a group of people.

**k26.2** Whoever works when no wage has been stipulated does not deserve anything. If X and Y a garment to clean, saying "Wash it," but does not mention a wage, and Y washes it, then Y deserves nothing (N: unless it is a well known customary usage that Y should receive a fee, as when Y is a barber or presses clothes and the like). If Y says, "You stipulated a wage for me," but X denies it, then X's word is accepted (A: when there is no proof (dis:k8.2)) (O: if he swears an oath).

**k26.3** Both X and y are entitled to cancel their agreement (O: before the job is finished), but if X cancels it after Y has begun work, then X is obliged to pay Y an appropriate portion of the wage agreed upon (O: such that if the job is half done, then X owes Y half the amount, and so forth). Otherwise (O: if X cancels it before Y has begun, or if Y cancels it himself after having begun), Y gets nothing.

#### **k27.0 LOST AND FOUND (LUQTA)**

(n: Given Z, who finds an article lying on the ground and picks it up.)

**k27.1** When a responsible adult finds a lost and found article it is permissible for him to take (O: or leave )it.

**k27.2** If he can trust himself to take the proper measures for such articles (dis:below), it is recommended that he pick it up, though if he cannot depend on himself not to betray the trust (A: by simply appropriating the article without telling anyone), then it is offensive for him to take it.

**k27.3** It is recommended that the finder determine the type, description, and amount of the article he has found, its container, and the string with which it was tied (O: it being preferable that he record this in writing so as not to forget), and for him to have witnesses attest to his having found it.

**k27.4** The following two kinds of articles are permissible to pick up for safekeeping (def:k27.5) but unlawful to pick up as lost and found (A: to be advertised and then appropriated (def:k27.6)). and should he do the latter, Z is financially responsible for the article:

(1) something lost and found within the Meccan Sacred Precinct (Haram);

(2) or an animal unmenaced by small predators, such as a camel or a horse lost and found on open range.

In other than these two cases it is permissible for Z to pick up the article, either for safekeeping or to be advertised and then appropriated.

**k27.5** If Z picks up the article for safekeeping, he is not obliged to advertise having found it, and it remains in his care as a trust (def:k17.14) which he is never entitled to dispose of in any way until he

finds its owner, in which case he gives it to him. If Z wishes to deliver it to the Islamic magistrate, the latter must accept it. If Z picks up the article within the Meccan Sacred Precinct (Haram) for safekeeping, he is obliged to advertise his having found it (n: as below).

**k27.6** If Z picks up an article intending to appropriate it if he cannot find the owner, then he is obliged to advertise its having been found for a (O: full) year on the doors of mosques, in the marketplaces, and the vicinity where he found it, in the manner customary for advertising such things. At the first of the period he should publicize it morning and evening, then subsequently once a day, then once a week, then once a month, such that the first advertisement is not forgotten and that it is realized that the subsequent notices are repetitions of it (O: and this is what is meant by the customary matter mentioned above). Z should mention some of the article's characteristics in the advertisement, but not all of them (A: so that a would-be claimant is able to prove ownership by describing it in detail)(O: for if Z divulges them all (A: and a pretender takes it), then Z is financially responsible for its loss (A: if the real owner should appear and the pretender cannot be found)). If the lost and found item is not something major, meaning something unlikely to cause much regret and which will probably be unsought after its loss, then it is not obligatory to advertise it for a whole year, though one must advertise it long enough that its owner will probably have ceased to be concerned about it (N: and this latter is the criterion for advertising most lost and found things, which need not be advertised for a whole year).

**k27.7** When Z advertises a lost and found article for a year, it does not enter his possession until he chooses to appropriate it with a formal statement to that effect (O: and not by the mere intention. The statement consists of saying, "I take possession of it," or the like). Z takes possession of it when he chooses to do so (O: by uttering the above words). If it is destroyed before he chooses to appropriate it, Z is not financially responsible for its loss.

**k27.8** If Z has appropriated the article (N: which thus enters his financial liability), and the owner one day appears, then the owners is entitled to take:

- (1) the article itself, if it still exists;
- (2) an equal quantity (O: if it was fungible (Mithli, def:k20.3(1)));
- (3) its market value (O: if it was nonfungible (mutaqawwim), where market value refers to the going price for similar articles on the day Z formally appropriated it);
- (4) or, if the article still exists but some defect has occurred in it, then the owner takes it back with an appropriate compensation (def:k5.4) (O: for the new defect that occurred while Z had it).

**k27.9** It is offensive for a corrupt person (def: o24.3) to pick up a lost and found article. If he does, the article is taken from him and deposited with someone trustworthy, and a reliable person is dispatched to oversee the corrupt person's advertising (def:k27.6) of the find, after which the corrupt person may appropriate it.

**k27.10** In cases where safekeeping the article is not practicable as when it is a watermelon or similar Z may choose to either eat it or sell it (A: in either case covering the cost if the owner subsequently appears), after which he advertises finding it for a year (O: if it something major, or less than a year (dis:k27.6 second par.) if minor). If it is possible to preserve the article, as when it consists of dates (A: which are conserved by drying), then if it is to the owner's advantage to sell it, Z sells it, while if it is to the owner's advantage to dry it, then Z dries it. (O: In such a case, if Z wants to simply donate the cost of drying it to the owner, he does so, Otherwise , he sells part of the lot to cover the cost of drying the rest, in the owner's interests. The difference between this and an animal found, of which all is sold, is that an animal's maintenance requires repeated expenditures that may add up to more than it is worth).

#### **k28.0 A FOUNDLING CHILD (LAQIT)**

(O: Meaning a child found abandoned without anyone to care for it. The scriptural basis for these rulings is Allah's word:

"And do what is good" (Koran 22:77).

and,

"Cooperate with one another in [works of] piety and godfearingness" (Koran 5:2.)

**k28.1** To pick up a foundling is a communal obligation (def: c3.2). A child that is found (N: in a Muslim town) is considered a Muslim, and likewise if found in a non-Muslim town if there is a single Muslim therein, even if he denies the child is his (N: because the religion of someone whose religion is unknown is considered to be that of the people of his own city, and in this case there are two religions, with Islam given precedence, as it always surpasses and is never surpassed. Moreover, considering the

child a Muslim is a cause for his own happiness and salvation, as he will be raised in Islam).

**k28.2** If money is found with the child or under his head, it belongs to him.

**k28.3** If the finder is a resident, trustworthy, and Muslim, then the child remains with him, and he is obliged to have witnesses attest to his having found the child and whatever was found with him (O: such as clothing or money). The finder spends the money found with the child for its own expenses with the permission of the Islamic magistrate. If there is no Islamic magistrate, then the finder spends it anyway, but has witnesses attest to the amount of the expenditures. If no money was found with the child, then its expenses are paid for by the Muslim common fund. If there is no money in the Muslim common fund (N: or no Muslim common fund), then the finder may borrow money to cover its expenses as a financial obligation to be later repaid by the child. If the finder is a corrupt person (def: o24.3 (A:)) or a non-Muslim, then if the child is considered a Muslim (dis:k28.1), he is taken from the finder. If two people find the child and disagree about whom the child should remain with, then the one who is a resident and wealthy is given preference.

**k28.4** (A: Adoption is unlawful in Islam when it means giving a child one's own name, a share of one's estate division (irth,def:L1.0), and so on. But when it merely means giving the child a home and other advantages provided by family life until it grows up, then it is a charitable act rewarded by Allah. And Allah knows best.)

#### **k29.0 GAMES, CONTESTS, AND PRIZES**

(O: The scriptural basis for competitions and races entailing prize money is the word of Allah Most High. "And make ready against them whatever force and lines of horses you can" (Koran 8:60). Muslim relates from 'Uqba ibn 'Amir that the Prophet (Allah bless him and give him peace) said, "Force means marksmanship," repeating this three times.)

#### **RACES FOR PRIZE MONEY**

**k29.1** Races with prize money for the winner are permissible between horses, mules, donkeys, camels, or elephants, provided that the animals competing are of the same species, though it is not, for example, permissible to have such a race between a camel and a horse. It is a necessary condition for such a race that the participants know which animals will be ridden, the amount of the prize, and the distance to be run.

**k29.2** The prize money may be put up by both contestants, either one, or by a third party. If the prize money is put up by either contestant or by a third party, then the race is unconditionally permissible, and the winner takes all (N: regardless whether he was the one who put up the money or whether it was the other person). But if the prize money is put up by both contestants, then it is a necessary condition that a third rider enter the contest with a mount equal to theirs (A: in speed, stamina, and so forth.) who puts up no money (N: so that it may be distinguished from gambling. If all three put up the money, then it is necessary that there be a fourth contestant with them who does not pay, and so on). (A: Similarly, bets from one side alone, such as saying, "I will give you ten dinars if what you have said proves to be correct," are lawful when the other party bets nothing.) Here, the winner takes all. If two riders finish together, they divide the prize.

#### **COMPETITIONS IN MARKSMANSHIP FOR PRIZE MONEY**

**k29.3** It is also permissible to compete for prize money in competitions of skill at archery, spear throwing, or other military weaponry, when the prize is put up by both contestants, either one, or a third party, though if put up by both, it is necessary that a third marksman enter the contest, as mentioned above (A: meaning one comparable to the others in marksmanship, who puts up nothing). It is a necessary condition for the validity of such a competition that the following details be specified before the contest:

- (a) who will be shooting;
- (b) the number of shots per bout, how many shots are needed to win, and the criterion for a hit (A: that is, in archery, whether the arrow must stick or whether it need merely leave a mark);
- (c) the distance to the target;
- (d) and which of the contestants is to begin.

**k29.4** It is not permissible to conduct contests for prize money that involve birds, footracing, or wrestling (O: since they are not military weaponry or equipment).

## **RULING CONCERNING GAMES**

**k29.5 (N: As for games:**

- (1) every game played by two or more people that relies on luck, conjecture, and guessing is unlawful, no matter whether money is stipulated or not;**
- (2) paying prize money in every game that encourages and assists fighting for Allah (jihad, def:o9) is permissible if the terms of the competition conform to the rulings discussed above in this section (k29.1-4);**
- (3) every game not of the preceding two types is permissible if no money is paid therein;**
- (4) and any of the above mentioned things which are permissible become unlawful if they prevent one from performing a religious or this worldly duty.)**

### **30.0 ESTABLISHING AN ENDOWMENT (WAQF)**

**(O: Lexically, waqf means to be retained. In Sacred Law, it refers to the retention of any property that can be benefited from while the property itself still remains, by suspending disposal of it; with the financial proceeds of it going to some permissible expenditure. The scriptural basis for it is the hadith related by Muslim that the Prophet (Allah bless him and give him peace) said.**

**"When a human being dies, his work comes to an end, except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him,"**

**from which scholars understand ongoing charity as meaning an endowment (waqf).)**

**(n: Given persons P (al-waqif) and Q (almawquf `alayhi) (A:where P owns, for example, an apartment building that he makes an endowment (waqf), the rent of which will henceforth go to Q, and P stipulates that Q must supervise the upkeep of the building. This section deals with such endowments).)**

**k30.1 Establishing an endowment is an act of worship.**

**k30.2 Establishing an endowment is not valid unless the following conditions are met:**

- (a) that P have full right to manager his own property (O: full right to manage his own property including the non-Muslim, whose endowment is legally valid, even if it is for a mosque);**
- (b) that the endowment concern a particular identified article ( `ayn) (O: it being invalid to make the mere "right to use something" an endowment, because it is not a particular article);**
- (c) that the article have a (O: lawful) use;**
- (d) that it remain existent (O: for a period in which it would be feasible to rent or hire it out), such as real estate or an animal (O: or clothing, weapons, Korans, or books. It is not permissible to make an endowment of something that cannot be utilized except by using it up, such as food);**
- (e) that the beneficiary be some particular party (O:such as the poor, for example) besides P himself, whether the endowment is an act of worship, as when the beneficiary is mosques (O: or Islamic schools), one's relatives, or the general good; or whether it is merely permissible, such as an endowment that benefits the wealthy, or Jewish and Christian subjects of the Islamic state;**
- (f) and that the endowment be formally established by words that effect it such as "I make it an endowment," or "I restrict [O: such and such a thing to benefit So-and-so]," or "I give [A:such and such] as nonsaleable charity."**

**k30.3 When the endowment has been made, the ownership of the article belongs to Allah Most High (O: not P or Q) (N: meaning that even though everything is the property of Allah, the article is now dissevered from its metaphorical human ownership), while Q owns the proceeds from it and its utilities (O: and all the benefits that come from it after the endowment has been made, such as rent, the fruit of trees, or offspring, Q may dispose of these as an owner would, as this is the purpose of the endowment. He may utilize the endowment either personally, or through another by loaning it for use or renting it out).**

**k30.4 The interests of the endowment (O: i.e. its concerns, condition, upkeep (N: and supervision)) are looked after by whoever P stipulates, whether himself or Q or a third party. If P does not stipulate (O: that anyone in particular look after it), then the responsibility belongs to the Islamic authority (N: by himself, or though the person he appoints to do so).**

**k30.5 The proceeds of the endowment (O: such as the produce of an acreage endowment, or the rent of a property endowment, are disposed of as P stipulates, in terms of (A: for example):**

- (1) proportionality of shares (O: between recipients as to the amount each receives, such as having stipulated twice as much for males as females, or vice versa, or equal shares for each);**
- (2) precedence (O: in some receiving the proceeds before others when they are a group, through a condition that determines who deserves to receive it);**
- (3) inclusiveness (O: of (A:all) recipients, as by saying, "I make this an endowment for my children**

and their children,"where the word and implies that each person must be given a share);  
(4) priority (O: such as saying, "I make this an endowment for the benefit of Islamic scholars, without restriction, and after that [A:if there are no more to be given a share] to the poor," or "I make this an endowment for the benefit of Zayd, and then `Amr,"where if one dies, the next one receives his share);  
(5) or other conditions (O: such as the proceeds going to those most closely related to P (N: of his offspring), and then the less closely related).

**k30.6** (n: The following are examples of invalidity of establishing an endowment due to lack of one of the conditions mentioned at k30.2 above.) An endowment is not valid when it consists of:

- (1) (non-k30.2(b)) a debt (N: that someone owes to P);
- (2) (non-(b)) "One of these two houses";
- (3) (non-(d)) food;
- (4) (non-(d)) sweet basil (A: which used to be spread on floors as an air freshener) (O: since it quickly deteriorates) (N:i.e. if it is uprooted, though if it is growing, it is valid to make it an endowment);
- (5) (non-(e)) when its beneficiary is unidentified by P, or unknown (O: since the endowment cannot be implemented. It is thus invalid if P stipulates "whoever Zayd says" as the beneficiary), or is P himself (O: including P stipulating that the proceeds of the endowment be used to pay off his debts, or when P eats of its produce, or utilizes the endowment for his own benefit, any of which invalidates the endowment);
- (6) (non-(c)) when the proceeds are directed to an unlawful use, such as building a church (dis:o11.5(7)) (O: or purchasing lamps for a church, or building walls around it, since this assists disobedience to Allah. Rafi'i says, "The same is true of an endowment for printing the Torah or New Testament, which is invalid because the Jews and Christians have altered the texts and interpolated spurious material, it not being permissible to occupy oneself with printing their scriptures because doing so is to participate in their disobedience to Allah");
- (7) (non-(f)) when the beginning or end of the endowment's being in effect are subject to conditions such as saying, "I make it an endowment starting from the first of next month, "or "for one year, " or "provided that I am entitled to sell it" (O: or "condition that I may take it back whenever I wish");
- (8) or (non-(e)) when (n: I stipulates, as a priority order of beneficiaries, "Q, then R, "and) Q is not an eligible recipient - such as P stipulating himself as the first beneficiary but R is an eligible recipient, as when P stipulates (A: after himself) "and then the poor."

**k30.7** If P designates a particular recipient (O: or group of recipients), it is a necessary condition for the validity of the endowment that the recipient accept it. If he refuses it, this invalidates the endowment.

**k30.8** If P designates a particular person (lit. "Zayd") as an endowment's beneficiary, but does not stipulate anyone after him, then the endowment is valid, and after the particular person is gone, its beneficiaries are the poor of P's relatives.

**k31.0 GIFT GIVING (HIBA)**  
(n: As when X gives Y a gift.)

**k31.1** Gift giving is recommended, It is superior to give gifts to one's relatives than to nonrelatives. When giving gifts to one's children, it is recommended to give each child the equal of what the others are given.

**k31.2** Gift giving is only valid under the following conditions:  
(a) that X have full right to manage his own property;  
(b) that the gift be something permissible to sell (def:k2.1);  
(c) that X give it with spoken words that effect it;  
(d) and that Y accept it with a spoken reply.

**k31.3** Y does not own the gift until he takes possession(def:k7.3) of it, before which X may take it back. It is not valid for Y to take possession of the gift without X's permission. In cases where X gives Y an article that is already being kept with Y (O: as when Y has it as a trust for safekeeping, or has borrowed it), or X has put up the article as collateral for Y, and now simply gives Y the article, then it is necessary that Y obtain X's permission to take possession of the gift, and that enough time elapse for Y to reach the gift, (O: if it is distant) and take possession of it. Once Y has taken possession of the gift, X is no longer entitled to take it back. An exception to this is when one gives a gift to one's child, or their descendant, in which case one may take the gift back, unless such a receiver has sold it in the meantime, and the article has subsequently returned to him (O: by sale or gift), in which case one may no longer take it back.



k31.4 If X and Y something and stipulates that Y give him something determinately known in return, this is valid, but is a sale (A: not a gift). If X stipulates that Y give him something in return that is not determinately known, then the gift is invalid. If X does not stipulate that anything be given him in return, then Y is under no obligation to him.

### **k32.0 MANUMISSION (ITQ)**

(n: This section, which begins, "To free a slave is an act of worship, "deals with a system of ownership that Islam did not invent but found fully established and not possible to instantly abolish, so it rather encouraged its elimination in steps, with incentives. It closed all avenues for obtaining new slaves except the capture of war prisoners, the soldiers of whom the caliph had the option to enslave or not; it encouraged the freeing of slaves by the tremendous reward from Allah Most High; and it materially helped slaves to purchase their freedom by providing them the money to do so from zakat funds (dis: h8.15). Like previous references to slaves, the following four sections have been left untranslated because the issue is no longer current, unlike the times of our author Ibn Naqib, whose rulers, the Mamelukes of Egypt, were themselves slaves who legally belonged to the Islamic state, a fact sufficient to show the fallacy of understanding slavery in the Islamic milieu in terms of the institution that existed in nineteenth-century America and elsewhere in the West (dis: w13).)

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## L1.0 BEQUESTS (WASIYYA)

(n: Sections L1, L2, and L3 have been moved here from their original place at the end of last book. They deal with bequests, meaning testamentary disposition of one's property (wasiyya) such as to say, "I bequeath such and such to So-and-so", while sections L4 through L10 form the original content of book L, and deal with estate division (irth).) (A: The difference between bequests (wasiyya) and estate division (irth) is that a bequest is the act of a living person disposing of his own property, even if it is to be implemented after his death, while estate division occurs after his death according to the Koranic rules of inheritance. Because a bequest is the act of a living person with his own money, it is legally valid for a Muslim to bequeath up to a third of his property to a non-Muslim (dis:L3.13(1)) and similarly valid for a non-Muslim to bequeath his property to a Muslim, Nawawi says:

"A bequest is legally valid from any legally responsible free person, even if non-Muslim (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73),3.39).

But it is invalid and unlawful for a non-Muslim to inherit property through estate division from a Muslim (dis: L5.2), or vice versa. The determining factor in the permissibility of a Muslim and non-Muslim inheriting from each other is whether the property comes by way of a bequest (wasiyya) made by the deceased before his death, in which case it is permissible, or whether it comes by way of estate division (irth) made after the deceased's death according to the Koranic rules of inheritance, in which case the difference between their respective religions prevents it.)

(O: Our author only mentions bequests at this point (n: at the end of book k, as mentioned above) before estate division because of the fact that a person first makes bequests, then dies, and then the estate is divided. The scriptural basis for the validity of bequests, prior to the consensus of scholars is the word of Allah Most High,

"...after any bequest which has been made, and after any debts" (Koran 4:12).)

(n: Given persons X (al-musi), Y (al-wasiyy), and Z (al-musa lahu) (A: where X has made provision in his will for Z to receive a bequest (wasiyya) of a sum of money, and X appoint Y as his executor to make sure this is done).)

L1.1 A bequest made by X is valid if he is legally responsible (mukallaf, def: c8.1), even if he is a spendthrift.

L1.2 The discussion is in two parts (n: namely, section L2, on X's appointing Y as the executor, and Section L3, on the bequest itself).

## L2.0 THE BEQUESTS EXECUTOR

(O: Appointing an executor means for X to put Y in charge of his property and young children, bequests, paying his debts, or collecting his property from others. The verbal form is, "I appoint So-and-so to execute such and such a bequest.")

L2.1 The necessary conditions for the validity of X appointing Y as the executor of his bequest are that Y be:

- (a) legally responsible (mukallaf, def: c8.1);
- (b) upright (def: o24.4) (O: meaning the uprightness of Islam, as it is not valid under any circumstances for Y to be a non-Muslim if X is a Muslim);
- (c) and that Y have the knowledge and capacity to properly undertake the bequest.

L2.2 The following examples of X appointing Y as the executor of his bequest are legally valid:

- (1) when X appoints Y as his executor at a time when Y is not legally eligible to be it, but by the time of X's death, Y is eligible (O: by fulfilling all the above (L2.1) conditions);
- (2) when X appoints a group of two or more people as his executors (O: and if he does so, then if he does not stipulate that each of them must manage their respective role, but rather says that they are to manage the legacy collectively, or does not say anything, then they must cooperate and not manage the work, maintenance, and dealings as separate individuals. Cooperate in such a case means that their acts proceed from the decision of the group, and does not mean, for example, that when they buy something they must all conduct the transaction together. Rather, if all agree to permit something, it is sufficient for one of them to take the matter in hand and carry it out);
- (3) when X appoints (n: for example,) W, and then after him, Y (N: or vice versa) (O: saying, "I appoint W as executor until Y comes, but when Y arrives, he is the executor," or "I make W executor for one year, and when it has passed, then Y is the executor");
- (4) or when X appoints Y as executor, authorizing him to appoint in turn whomever he chooses as executor of the bequest (O: if the person fulfills the conditions (L2.1)).

**L2.3 X's appointing Y as the executor of his bequest is not legally effective until Y accepts this responsibility after X's death, even if this acceptance is not immediately thereafter. Both X and Y are entitled to cancel the appointment of Y as executor of the bequest whenever they wish (O: unless (A: after X's death) Y feels it almost certain that the property will be lost through a wrongdoer appropriating it, in which case Y may not withdraw as executor, meaning it is unlawful for him to do so. In such a case, if Y withdraws of his own choice, he is not thereby free of having to execute the bequest, though he is not obliged to continue therein without remuneration, but does so for a fee).**

**L2.4 It is not legally valid to appoint an executor unless the bequest consists of some good work or pious act such as paying off a debt, making up a hajj (dis:j1.9), looking after the welfare of one's children, and so forth (O: excluding actions that are not dispositions of property, such as marrying off the children) (A: and excluding acts of disobedience such as those mentioned above at k30.6(6)).**

**L2.5 When X's father is still alive and fit for guardianship (def:m13.2), X may not appoint y to look after the welfare of his children.**

### **L3.0 THE BEQUEST**

**L3.1 X may devote one-third or less of his financial resources to bequests, but not more than this, one-third meaning a third of his property as it stands at the time of his death (O: not before or afterwards). (A: If there are no Muslim heirs, or if the existent Muslim heirs do not deserve the whole estate, such as when the sole eligible estate division heir is a husband or wife (dis:L6.3-4), then the Hanafi school permits disposing of more than a third of one's property in bequests (dis:w44), more than a third meaning everything in excess what one's eligible heirs deserve by estate division (irth).) (n: The ruling in the Shafi'i school is that such an excess may not be disposed of in bequests, but rather is given to the Muslim common fund (Bayt al-mal) if it exists, as mentioned below (L3.3(O:) and L9.1).)**

**L3.2 If X's heirs (def: L4.4 are not poor, it is recommended for X to devote a full one-third to bequests, but if not (O: i.e. if his heirs are not well off, as when they do not have any money at all, or have some, but not enough for their expenses, and the other two-thirds (A: of the estate that constitutes their obligatory shares) which they deserve is insufficient), then it is not recommended for X to devote a full one-third to bequests.**

**L3.3 If X wills more than one-third in bequests, then his dispositions are not valid regarding the portion in excess of one-third when he has no one (O: in particular) to lawfully inherit the rest (A: who, if they existed, could give permission for the excess, as discussed below). (O: In cases where there are no heirs, the Muslim people have better right to X's property, and no one may waive this right.) Nor are X's bequests in excess of one-third valid when he has an heir, but the heir refuses to authorize the excess, though if the heir (N: or group of heirs unanimously) permits it, such a bequest is valid. It is not valid for the heir to authorize the excess or refuse to do so until after X's death.**

**L3.4 Charitable expenditures made by X in his will (O: such as an endowment (waqf, def:k30), gift, and so forth) are considered as part of the bequeathable one-third.**

**L3.5 Bequests concerning obligatory expenditures are also considered from the bequeathable one-third, provided that X has stipulated that they come from it. (O: Though if the bequeathable third does not cover these (A: despite X having stipulated that they come from it), then the excess is paid from the remaining two-thirds. Obligatory expenditures include such things as paying debts making up the hajj(dis:j1.9), paying zakat (A: for any year that the deceased neglected to pay it), expiations, and the fulfillment of vows that would have been binding had X been well.) But if X did not stipulate (O: that these obligatory expenditures come from the bequeathable one-third), then they come directly from the other two-thirds.**

**L3.6 Current charitable dispositions of property made by X during his life, such as establishing an endowment (waqf, k30), giving a gift or others, are considered as personal expenditures of his own money (O: and he could spend it all without any objection) if made while he was in sound health. But if X makes such current dispositions under any of the following circumstances, when these are linked with his death, then the dispositions are considered as having come from the bequeathable one-third:**

- (1) in the final illness which brought about X's death:**
- (2) in military combat;**

(3) while travelling on rough seas in a storm;  
(4) as a final request before being killed;  
(5) or (O: if female) X dies while giving birth, or afterwards before separation of the placenta.  
If otherwise, (O: meaning if the current charitable disposition was not made under any of the above circumstances, or was, but the circumstance was not linked with X's death) then the disposition is not taken from the bequeathable one-third.

L3.7 (N: We distinguish between the above-mentioned current dispositions (n: such as gifts, endowments, and donations), and between bequests by noting that current dispositions are effective before X's death, while bequests are effective after. Current dispositions are normally implemented even if X uses up all his money, while bequests-unless X's heirs unanimously agree to allow otherwise-are restricted to one-third of the estate. An exception to permitting current dispositions to amount to as much of X's property as he wishes is when they are effected during his death illness (n: or other L3.6 circumstance), in which case they are limited to one-third of the estate, just as bequests are.)  
If one-third of the estate does not cover the cost of the (N: current) dispositions which X made during his (N: final) illness, then (O: if these have been given in some order) they are implemented first thing first, then second, then third, and so on.  
(N: Thus, if during his death illness, X said to his three friends P, Q, and R, "I give P a gift of 100 dinars, Q 100 dinars, and R 100 dinars, "but it turns that X's total estate is only 600 dinars, then his gifts to P and Q are valid, but we take back his gift to R, which is not valid because it exceeds the 200 dinars that is a third of the 600 dinars constituting the whole estate. This is what is meant by implementing them in order.)

L3.8 The bequeathable one-third of the estate is divided (O: proportionally (N: if shares vary)) between all the recipients X designates when:  
(1) (N: in cases of death illness current dispositions such as gifts) X did not state them in any particular order (N: such as by saying (n: in a situation like the above example) to P,Q, and R, "I give you each a hundred dinars," in which case the bequeathable one-third is divided between them):  
(2) or (N: in cases where X has explicitly made bequests) the bequeathable one-third will not cover all the bequests, whether they were made separately or not.  
(N: All of the above (L3.6-8) only holds if the heirs do not agree to permit more than one-third of the estate for bequests or current dispositions, since if they unanimously agree, it may exceed a third, even if it takes the whole estate.)

L3.9 Bequests made to nonspecific individuals such as the poor are effective when X dies. (O: They own the property without the fact of ownership depending on their accepting it.)

L3.10 When X bequeaths something to Z, a particular individual, the ownership of the article bequeathed is suspended, meaning that if Z accepts it after X's death, even if after some time has passed, then Z has owned it from the moment X died; but if Z declines to accept it, then X's heirs own it. If Z accepts it, but then refuses it before having taken possession of it (def:k7.3) this cancels his ownership of it, though if he refuses after having taken possession of it, it does not cancel his ownership (O: as his refusal is meaningless in such a case).

L3.11 It is permissible to make the implementation of a bequest subject to a condition, whether the condition is something occurring before X's death (O: such as his saying, "If Z enters So-and-so's house, I bequeath to him such and such of my property,") or after (O: such as his saying, "If Z enters So-and-so's house after my death, I bequeath to him such and such of my property").

#### THINGS WHICH MAY BE BEQUEATHED

L3.12 It is permissible to bequeath any of the following:  
(1) the right to utilize something (O: while not bequeathing the actual thing);  
(2) particular things;  
(3) something not yet existent, such as "what this tree will bear";  
(4) something not determinately known (O: whether it be an unknown thing (A: such as "the contents of this box"), or something unknown in amount);  
(5) something undeliverable (non-k2.4);  
(6) something not currently owned (O:at the time the bequest is made, but which X owns at the time of his death);  
(7) or something impure (najasa, def:e14.1) that has a lawful use, such as a (O: trained hunting) dog, or oil

contaminated with impurity; though not something impure that is without lawful use, such as wine or pigs.

## **THOSE TO WHOM BEQUESTS ARE VALID**

**L3.13** It is permissible for X to bequeath something to Z even if Z is:

- (1) a non-Muslim at war with Muslims (A: and with still better right when Z is an ordinary non-Muslim);
- (2) a Jewish or Christian subject of the Islamic state;
- (3) an apostate from Islam;
- (4) the person who kills X;
- (5) X's heir (def: L4.4), provided X's other heirs permit him to receive it (O: though if they do not, then the bequest is not carried out);
- (6) or to a person yet unborn, in which case the bequest is paid to the person (O: i.e. guardian) who knows of the unborn's existence at the time X makes the bequest, provided that the child is either born alive within six months of the time the bequest is made, or is born alive more than six months and less than four years after the bequest is made, during which time the mother has had no husband (O: from whom the pregnancy could have resulted).

## **CANCELLING ONE'S BEQUESTS**

**L3.14** If X makes some article a bequest but then changes his mind, his taking it back is valid, annulling his bequest. X's doing any of the following is also considered taking it back (A: and cancels the bequest):

- (1) X's loss of ownership (O: of the bequeathed article) such as by sale or gift;
- (2) X's subjecting the article to loss of ownership by putting it up as collateral, offering it for sale, or making another bequest that stipulates that it be sold;
- (3) or when the name of the article changes, such as wheat being ground into flour, flour made into dough, yarn woven into fabric, or when X mixes a particular article with other goods.

**L3.15** If Z dies before X, the X's bequest to him is invalid. If Z dies after X but before Z accepts the bequest, then Z's heirs may accept or reject it.

## **L4.0 ESTATE DIVISION (IRTH)**

(O: Estate division refers to the share allotted to each heir by Sacred Law. The scriptural basis for estate division, prior to the consensus of scholars, consists of the Koranic verses on inheritance (Koran 4:11-2,4:176) and hadiths such as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said,

"Give the obligatory shares of the estate to those who deserve them, and the rest belongs to the closest male to the deceased."

Encouragement to master the knowledge of estate division comes from such hadiths as the one from Ibn Mas'ud (Allah be well pleased with him) that the Prophet (Allah bless him and give him peace) said, "Learn estate division and teach it to people, for I am someone who will be taken from you, and this knowledge will be taken from you and calamities will ensure, until two men will one day disagree about the obligatory apportionment and will not find anyone to judge between them.")

## **HOW TO WORK AN ESTATE DIVISION PROBLEM**

**L4.1** (n: To work an estate division problem, one should:

- (a) determine the amount of the deceased's estate after deducting the L4.2-3 expenses;
- (b) make a list showing which of the deceased's heirs mentioned at L4.4 exist;
- (c) eliminate from the list any heirs with preventives L5.1-4;
- (d) on a sheet of paper, copy the parenthesized introductory paragraph ("N: summary of - 's share,") for every heir that exists, such as the deceased's:

- (1) husband (dis: L6.3);
- (2) wife (L6.4);
- (3) father (L6.5);
- (4) mother (L6.6);
- (5) daughter (L6.7);

(as mentioned at L6.8, the shares of the above-named family members are not eliminated by anyone, though the shares of those named below may be eliminated by the existence of certain other heirs)

- (6) son's daughter (L6.9);
- (7) full sister (L6.10);

- (8) half sister from the same father (L6.11);
  - (9) grandfather (father's father only) (L6.13);
  - (10) grandmother (L6.18)
  - (11) half brother or half sister from the same mother (L6.20);
  - (12) and then the others (sons and so forth) mentioned at L6.22;
  - (e) read section L7 and cross off the list of heirs those whose shares are eliminated by the other existent heirs;
  - (f) if any universal heirs (def: L10.5) exist, see which of them eliminates the shares of the other universal heirs, as at L10.6;
  - (g) make a table of the heirs remaining (after (e) and (f) above) like the tables shown at L6.6, where one writes the type of heir, the fraction each deserves (with the universal heir receiving the remainder, if any), and then at the top writes the total shares (this being the common denominator of the fractions), after which one calculates the shares that go to each;
  - (h) if the fractions (of those besides the universal heir) add up to more than one (i.e. the total estate), then one must adjust for this as shown at L8.2;
  - (i) but if the fractions add up to less than the total estate and there is no universal heir to inherit the rest, then one must redistribute the shares as described at L9.1-2.
- One may practice and test one's skill at estate division by reading through the present section and doing the problems depicted in the tables, though to do all the problems one must have (or memorize) a full worksheet that contains all the information mentioned in (d), (h), and (i), above, plus the rules concerning universal heirs discussed at L10.1-4. Finally, it is best to check one's answers with an Islamic scholar, preferably a teacher from whom to take instruction, since this is a subject that is easier to acquire from its masters than from books.)

#### EXPENSES DEDUCTED FROM THE ESTATE PRIOR TO ESTATE DIVISION

L4.2 The first thing (O: obligatorily) taken from X's property is the expense of preparing his body (O: such as the cost of the water to wash him, the washer's fee, cost of the shroud and perfume placed therein, pallbearers' fees, and so forth) and of burying him. These expenses are deducted before X's debts are paid, his bequests fulfilled, or his estate divided, unless there is a financial obligation due on the property itself, such as:

- (1) when there is zakat (A: due from any year X neglected to pay it before his death);
- (2) when some of the property has been put up as collateral (dis: k11.2);
- (3) or when X dies bankrupt with unpaid-for merchandise among his property (A: which must be returned to the seller before paying other expenses from X's property).

L4.3 After the above are paid, the following measures are taken (A: and the sequence given is obligatory):

- (1) X's debts are paid (N: though if a government takes non-Islamic estate taxes, these are deducted from the main part of the estate (A: before debts or bequests, as any other loss would be));
- (2) then X's bequests (def: L1-3) are carried out (O: from a third of what remains after debts);
- (3) and then X's remaining property is divided between his estate division heirs.

#### HEIRS

L4.4 X's male heirs consist of:

- (1) X's son;
- (2) X's son's son, son's son, and on down;
- (3) X's father;
- (4) X's father's father (A: the term grandfather throughout the book of inheritance refers only to this paternal grandfather), father's father's father, and on up;
- (5) X's full brother, or half brother from X's father or mother;
- (6) the son of X's full brother, or son of X's half brother from the same father;
- (7) X's father's full brother, or son of X's half brother from the same father;
- (8) the son of X's father's full brother or father's half brother from the same father;
- (9) and X's husband.

X's female heirs are:

- (1) X's daughter;
- (2) X's son's daughter, son's son's daughter, son's son's daughter, and on down;
- (3) X's mother;
- (4) X's grandmother (whether she is the mother of X's father or mother), great-grand-mother, and on up;
- (5) X's full sister, or half sister from the same father or mother;

(6) and X's wife.

#### **EXTENDED FAMILY MEMBERS WHO DO NOT NORMALLY INHERIT**

**L4.5** The following extended family members may not inherit from X's estate (except under the conditions discussed at L10.8):

- (1) X's daughter's children (O: male or female);
- (2) X's mother's brother's sons;
- (3) X's sister's children, the sons or daughters of X's daughter's children, or the sons or daughters of X's sister's children;
- (4) X's brother's (O: whether full brother's from the same father) daughters;
- (5) X's father's brother's (O: whether full brother's or half brother's from the same father) daughters;
- (6) X's father's half brother from the same mother;
- (7) X's mother's father;
- (8) X's mother's brother or sister;
- (9) X's father's sister;
- (10) or anyone related to X through one of the above.

#### **L5.0 THE FOUR PREVENTIVES OF INHERITING AN ESTATE DIVISION SHARE**

(O: Preventive means that if someone is an estate division heir (def:L4.4) but one of the following characteristics exists in him, then he may not inherit.) (A: In calculating the estate division, an heir who is made ineligible by a preventive is considered nonexistent. Such a person is nonheir, and as such is eligible for a bequest (def: L1.0) if X wills him one.)

**L5.1** The first preventive is killing. Whoever kills X may not inherit from him, no matter whether the killing was:

- (1) lawful, as in retaliation (def: o3) or imposing a criminal penalty;
- (2) without lawful right;
- (3) accidental;
- (4) intentional;
- (5) direct (O: such as Z shooting while hunting, and the shot hitting X);
- (6) or when Z is a causal factor in X's death, such as testifying to an act of X's that calls for retaliation against X, or such as digging a well into which X falls.

To summarize, whoever has a hand in X's death, no matter how, cannot inherit from him.

**L5.2** The second preventive is being non-Muslim: a Muslim may not inherit from a non-Muslim, and a non-Muslim may not inherit from a Muslim (dis:L1.0).

**L5.3** The third preventive is slavery.

**L5.4** The fourth is uncertainty as to who died first, such as when X and Z both drown or both die in the collapse of a building, and it is not known who died before the other. In such a case neither may inherit from the other.

#### **L6.0 THE ESTATE DIVISION SHARES**

**L6.1** The six obligatory shares mentioned in the Koran (Koran 4:11-12) are one-half, one-fourth, one-eighth, two-thirds, one-third and one-sixth.

**L6.2** They go to ten categories:

- (1) X's husband;
- (2) X's wife;
- (3) X's father;
- (4) X's mother;
- (5) X's daughters;
- (6) X's son's daughters or the daughters of X's son's son, son's son, and on down;
- (7) X's sister;
- (8) X's father's father;
- (9) X's mother's or father's mother;
- (10) X's half brothers or half sisters from the same mother.



**L6.3 (N: A summary of X's husband's share:**

**-1/2 if there is no inheriting descendant.**

**-1/4 if there is an inheriting descendant.**

**-The husband's share is not eliminated by anyone.)**

**X's husband:**

**(1) receives one-half the estate when X has no child who may inherit (O: even if the child is from a different husband) (N: the word child (Ar. walad) including both males and females (A: of all ages)), and X's son has no child who may inherit;**

**(2) but receives one-fourth the estate when X has a child who may inherit (O: whether from X by this husband or a different husband, and whether male or female), or when X's son has a child who may inherit.**

**L6.4 (N:A summary of X's wife's share:**

**-1/4 if there is no inheriting descendant.**

**-1/8 if there is an inheriting descendant.**

**-The wife's share is not eliminated by anyone.)**

**X's wife:**

**(1) receives one-fourth the estate when X has no child to inherit (O: even if by a different wife) and X's son has no child to inherit;**

**(2) but receives one-eighth the estate when X has a child to inherit, or X's son has a child to inherit (O: whether X's son is from her or from another wife).**

**If there are two, three, or four wives, they jointly receive the one-fourth or one-eighth (O: meaning that the share apportioned to one wife is given to two or more (A: to divide up between them)).**

**L6.5 (N:A summary of X's father's share:**

**-1/6 if there is an inheriting descendant.**

**Universal heir (def: L10.5) if there is no male inheriting descendant.**

**-The father's share is not eliminated by anyone.)**

**X's father:**

**(1) receives one-sixth of the estate when X has a son to inherit, or when X's son has a son to inherit (O: or when X has a daughter or X's son has a daughter, who may inherit (N: though in such a case, the father takes (A: the sixth plus) the remainder of the estate as universal heir (n: as discussed next))**

**(2) but is universal heir (O: by himself, meaning he takes the whole estate if there are no others who have an obligatory share coming; or if there are such others, he receives the remainder of the estate after they have received their shares) when X has no son to inherit and X's son has no son to inherit**

**L6.6 (N: A summary of X's mother's share:**

**-1/6 if there is an inheriting descendant, or if there are two or more of X's brothers or sisters.**

**-1/3 of the remainder after deducting the share of X's husband or wife in cases where the heirs include both X's father and the husband or wife but no inheriting descendant.**

**-1/3 of the estate when none of the above mentioned heirs exists.**

**The mother's share is not eliminated by anyone.)**

**X's mother:**

**(1) receives one-third of the estate when all three of the following are the case:**

**(a) X has no child (male or female) who may inherit, nor does X's son;**

**(b) X does not have two or more brothers or sisters, whether full brothers or sisters or half brothers or sisters from either parent:**

**(c) and the heirs do not include X's husband and X's two parents, or X's wife and two parents (A: of which X's mother is one);**

**(2) she receives one-sixth of the estate when (non-(a) above) X has a child who may inherit, or when (non-(b)) X has two or more brothers or sisters;**

**(3) and she receives one-third of the remainder after deducting the share of X's husband or wife when:**

**-(non-(c) above) the heirs include X's husband and two parents, in which case she receives one-third of the remainder after X's husband receives his share of one-half, meaning she receives a sixth of the estate, as that is a third of the remainder, and X's father receives the rest:**

**Share 6**

**husband 1/2**

**mother 1/6**

**father universal heir**

**-or (non-(c) above) when the heirs include X's wife and two parents in which case she receives one-third of the remainder after X's wife receives her share of one-fourth, meaning that the mother receives one-**

fourth of the estate, as that is a third of the remainder, and the father receives the rest:

Shares 4

wife 1/4 1

mother 1/4 1

father universal heir 2

**L6.7 (N: A summary of X's daughter's share:**

-1/2 if there are no other of X's sons or daughters (n: whether full or half brothers or sisters to her).

-2/3 for her to share equally (if there are no sons) with other daughters, if any.

-She is co-universal heir (def:L10.3) with X's sons(s) if existent, meaning that they jointly constitute the universal heir, dividing this share so that each male receives twice the amount of each female (A: since men are obliged to support women in Islam (dis:m11) and not vice versa).

-The daughter's share is not eliminated by anyone.)

(1) X's sole daughter (O: who is without a co-universal heir such as her brother, and without someone else on her own level, such as her sister) receives half of the estate.

(2) Two or more daughters jointly receive two-thirds.

**L6.8 (N: It is important to remember for the persons named in the following rulings that the share of any of them who is related to X through an inheriting heir is eliminated by the existence of that heir (dis:L7.4-6), except for X's half brother from the same mother, whose share is not eliminated by the mother's existence.)**

**L6.9 (N: A summary of the share of X's son's daughter:**

-Her share is eliminated if X's son exist (n: an example of the above rule).

-1/2 if X has no daughter son's son or any other daughter of a son.

-2/3 for her to share equally with the other daughters of X's son(s), if X has no daughter(s) or son's son(s).

-1/6 when there is a sole daughter (def:L6.7(1)).

-She is co-universal heir (def:L10.3) with X's son's son(s) (A: in the absence of X's daughter, dividing this share of each male receives twice the share of each female).

-Her share is eliminated when X has two or more daughters.)

When X's sole daughter (def:L6.7(1)) exists, X's son's daughter(s) (A: if there are more than one, they share) receives one-sixth of the estate, which with the sole daughter's share of one-half, makes two-thirds (N:which is the maximum that may go to the category of daughters).

**L6.10 (N: A summary of the share of X's full sister:**

-1/2 if there are no other full brothers or sisters.

-2/3 for her to share equally with other full sisters.

-She is co-universal heir (def:L10.3) with full brother(s) if any, each male receiving twice the share of each female.

-She is universal heir through X's daughter(s) (def: L0.4)

-Her share is eliminated if X's father or X's son exists.)

(1) X's sole full sister (N: meaning no other full brothers or sisters exist) receives one-half of the estate.

(2) Two or more such sisters (N: when there are no full brothers) jointly receive two-thirds.

(n: L6.12 discusses X's full sister(s) with X's daughters.)

**L6.11 (N: A summary of the share of X's half sister from the same father:**

-1/2 in the absence of X's full brother, full sister, other half sister from the same father, and half brother from the same father.

-2/3 for her to share equally with other half sister(s) from the same father, when there are no full brothers or sisters, and no half brothers from the same father.

-1/6 when there is X's sole full sister.

-She is universal heir through X's daughters or X's son's daughters (def:L10.4) provided there are no full brothers or sisters, or half brothers from the same father.

-She is co-universal heir (def:L10.3) with X's half brother(s) from the same father, the male receiving twice the share of each female.

-Her share is eliminated if X's father or son exists.)

(1) X's sole half sister from the same father receives one-half of the estate.

(2) Two or more such paternal half sisters jointly receive two-thirds.

(3) When such a half sister, or two or more, exists with X's sole full sister, then the half sister(s) (A: jointly, if more than one) receives one-sixth, which with the half that goes to the full sister, makes two-thirds.

**L6.12 X's full sister(s) is universal heir through X's daughter(s) (def:L10.4). If X has no full sisters, X's half sisters by the same father are the estate's universal heirs through X's daughter(s) (L10.4). An example of the former is when the heirs are X's daughter and full sister. The daughter receives one-half (dis:L6.7(1)), and the sister receives the rest (A: as universal heir):**

shares: 2  
 daughter 1/2 1  
 full sister universal heir 1

Another example is when there are X's two daughters, a full sister, and a paternal half sister, in which case the two daughters jointly receive two-thirds (dis: L6.7(2)), and the full sister receives the rest (A: as universal heir), while the paternal half sister's share is eliminated (A: by the full sister's universal heirship):

shares 3  
 2 daughters 2/3 2  
 full sister universal heir 1  
 half sister eliminated 0

**L6.13 (N: summary of X's grandfather's (father's father's)share:**

-His share is eliminated if X's father exists.

-1/6 if X has an inheriting male descendant.

-He is universal heir in the absence of both X's father and any inheriting male descendant.

-If X's brother(s) or sister(s) exists, then

(1) when there is no other heir who has an obligatory share coming, then the grandfather receives whichever of the following two alternatives yields the maximum:

-1/3 of the estate; or dividing the estate with X's brother(s) or sister(s) as if he were one of them, the male receiving twice the share of the female. If only X's sister(s) exists, then she becomes co-universal heir (def:L10.3) with him;

(2) but when there are one or more other heirs who have no obligatory share coming besides the brother(s) or sister(s), then the grandfather receives whichever of the following three alternatives yields the maximum:

-1/6 of the estate;

-1/3 of the remainder after the (non-brother/sister)heir(s) receives their share; Or dividing the estate with X's brother(s) or sister(s) as if he were one of them, the male receiving twice the share of the female. If only X's sister(s) exists, then she becomes co-universal heir (L10.3) with him.)

As for the grandfather, sometimes X's brothers or sisters exist with him and sometimes they do not.

When they do not, then the grandfather receives one-sixth of the estate of X's son or son's son (O: or

X's daughters or son's daughters) exist (N: but in such a case he takes the sixth plus the rest as universal heir); while the grandfather is the universal heir (def: L10.5) in the absence of X's son or son's son (N: or

daughter or son's daughter). When X's (full or paternal half) brothers or sisters exist, then sometimes there are other inheriting heirs (dis:L6.15) and sometimes not (L6.14).

**L6.14 When (Besides X's brother(s) or sister(s)) the grandfather's consurvivors do not include other inheriting heirs, the grandfather divides the estate with the brothers (A: and sisters) as if he were one of them, and (if there are only sisters) is co-universal heir (def: L10.3) with the sisters. But such a division is only effected when it does not result in less than one-third of the estate going to the grandfather. If it would result in less than a third for him, then his obligatory share is one-third of the estate, and the brothers or sisters divide the rest between them, the males receiving the share of two females. This is illustrated by the following examples (A: in each of which the grandfather receives at least a third):**

(1) X's grandfather and one sister:

shares: 3  
 grandfather 2  
 sister 1

(2) grandfather and two sisters:

shares: 4  
 grandfather 2  
 sister 1  
 sister 1

(3) grandfather and three sisters:

shares: 5  
 grandfather 2  
 sister 1  
 sister 1

sister 1  
 (4) grandfather and four sisters:  
 shares: 6  
 grandfather 2  
 sister 1  
 sister 1  
 sister 1  
 sister 1

(5) grandfather and one brother:  
 shares: 2  
 grandfather 1  
 brother 1

(6) grandfather and two brothers:  
 shares: 3  
 grandfather 1  
 brother 1  
 brother 1

(7) grandfather, brother, and sister:  
 shares: 5  
 grandfather 2  
 brother 2  
 sister 1

(8) grandfather, brother, and two sisters:  
 shares: 6  
 grandfather 2  
 brother 2  
 sister 1  
 sister 1

In each of the above examples, the grandfather divides the estate with them, the male receiving the share of two females.

L6.15 When (besides X's brothers or sisters) the grandfather's cosurvivors include another inheriting heir, then the heir is given his share, and the grandfather receives the maximal amount of three possibilities:

- (a) division (A: meaning to divide it with the brothers or sisters as in the above examples);
  - (b) a third of the remainder (A: taking a third of what remains after the (non-brother/sister) heir has taken his share);
  - (c) or one-sixth of the estate (A: as the estate stands before the above-mentioned heir has received his share).
- This ruling may be illustrated by (n: the following four examples):

(1) X's husband, grandfather, and brother, where division is better for the grandfather. (n: To show why division ((a) above) is better, we may compare the three possibilities ((a),(b)and (c)) for this example:

(a) division:  
 shares : 4  
 husband 1/2 (dis: L6.3(1)) 2  
 grandfather 1  
 brother division 1

(b) third of remainder (after the husband's share);  
 shares: 6  
 husband 1/2 3  
 grandfather 1/3 remainder 1  
 brother universal 2

(c) sixth of estate:  
 shares: 6  
 husband 1/2 3  
 grandfather 1/6 estate 1  
 brother universal 2

The comparison reveals that division, giving the grandfather 1/4, is better than the other alternatives, which only give him 1/6, and so division is the alternative that must be implemented.)

(2) X's two daughters, two brothers, and grandfather, where a sixth of the estate is better for him.

(n: Comparison:

(a) division:  
 shares: 9

daughter		3
daughter	2/3 (dis: L6.7(2))	3
grandfather		1
brother	division	1
brother		1

(b) third of remainder (after the daughters share):

shares:	9	
daughter		3
daughter	2/3	3
grandfather	1/3 remainder	1
brother	Universal	1
brother		1

(c) sixth of estate:

shares:	12	
daughter		4
daughter		4
grandfather	1/6 estate	2
brother	universal	1
brother		1

The comparison reveals that a sixth of the estate is better than the other alternatives, which only give him 1/9, and so the former is the alternative that must be implemented.)

(3) X's wife, three brothers, and grandfather, where a third of the remainder is better for him. (n:

Comparison:

(a) division:

shares:	16	
wife	1/4 (dis: L6.4(1))	4
grandfather		3
brother		3
brother	division	3
brother		3

(b) third of remainder (after the wife's share):

shares:	12	
wife	1/4	3
grandfather	1/3 remainder	3
brother		2
brother		2
brother		2

(c) sixth of estate:

shares:	36	
wife	1/4	9
grandfather	1/6 estate	6
brother		7
brother	universal	7
brother		7

The comparison reveals that a third of the remainder, which gives the grandfather 1/4, is better for him than division with the brothers (which gives him 3/16), or a sixth of the estate, so he must receive a third of the remainder.)

(4) X's two daughters, mother, grandfather, and brothers, where a sixth of the estate is better for him. (n: Comparison:

(a) division:

shares:	6	
daughter		2
daughter	2/3 (dis: L6.7(2))	2
mother	1/6 (dis: L6.6(2))	1
grandfather		
brothers	division	1

(b) third of remainder (after the shares of the daughters and mother):

shares:	18	
daughter		6
daughter	2/3 (dis:L6.7(2))	6
mother	1/6 (dis:L6.6(2))	3

grandfather	1/3 remainder	1
brothers	universal	2

(c) sixth of estate:

shares: 6		
daughter		2
daughter	2/3	2
mother	1/6	1
grandfather	1/6	1

(In this case, there is no one who can eliminate the shares of the inheriting heirs above, who have used up the estate so that there is nothing left for the universal heir (the brothers) to inherit (dis: L10.5):)

brothers	eliminated	0
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The comparison shows that a sixth of the estate is better for the grandfather than a third of the remainder, which would give him 1/16, or division with the brothers, which would give him 1/12 or less, and so he must receive a sixth of the estate.)

L6.16 If both X's brothers and half brothers from the same father exist with the grandfather, the brothers add the number of the half brothers shares with their own shares in calculating their own versus the grandfather's, but then the brothers receive both their own shares and the half brothers' shares. (A: The latter are eliminated (dis: L7.3) by the brothers, but are initially reckoned in as a dispensation for the brothers.) This may be illustrated by the following example, in which there is X's grandfather, brother, and half brother from the same father.

(initial division)

shares: 3		
grandfather		1
brother	division	1
half brother		1

but then, because the brother eliminates the half brother's share,

shares: 3		
grandfather		1
brother		2
half brother	eliminated	0

and this is the actual division.

In a second, similar case, if there is a sister, half brother from the same father, and grandfather, then (A: the half brother's share is reckoned with the sister's share versus that of the grandfather, and) her portion of the estate is brought up to one-half (A: which is the maximum she may receive as at L6.10(1)) from the (n: additive) amount, and the rest goes to the half brother (A: since the grandfather already has his share and she may receive more than her obligatory share of one-half). (n: To illustrate, first we make a plain division, the males receiving the share of two females:

shares: 5		
grandfather		2
sister	division	1
half brother		2

Then, as in the previous case, we give the half brother's share to the sister, since there is none to eliminate her full share of one-half (dis: L6.10(1)).

shares: 5		
grandfather		2
sister		3
half brother		0

But since this gives the sister more than her maximal share of one-half, the surplus is returned to the half brother, and this is the final division. Here, for convenient redivision, we multiply the case's shares by two:

(2 x 5=) shares: 10		
grandfather		4
sister		5
half brother		1

which is the actual division.)

L6.17 When there is a sister (O: full sister or half sister from the same father) and grandfather, the sister does not normally receive a particular obligatory share (O: since she is co-universal heir (def: L10.3) with the grandfather), except in the following case (Ar.al-akdariyya lit "the murkiest") in which there is X's husband, mother, grandfather, and sister.

shares: 6

husband 1/2 (dis: L6.3(1)) 3  
 mother 1/3 (dis: L6.6(1)) 2  
 grandfather 1/6 (dis: L6.15(c)) 1

But at this point, the estate has been used up, despite the fact that the sister deserves her share of one-half, and no one can eliminate it:

sister 1/2 (dis: L6.10(1)) 3

so we redivide the estate by adding the three shares that the sister deserves to the initial division's six shares, which become nine (A: this procedure being an adjustment (awl, def; L8.1) for not being able to give everyone full shares, one which proportionately distributes the deficit to all recipients).

(6 + 3 =) shares: 9

husband 3  
 mother 2  
 grandfather 1  
 sister 3

But this results in the grandfather receiving less than if he were to divide the remaining estate with the sister (n: which is impermissible because of ruling L6.15), and so the grandfather and sister add their shares to together (equalling four) and divide them, the male receiving the portion of two females (n: Here, for convenient redivision, we multiply the case's shares by three:

(3 x 9 =) shares : 27

husband 9  
 mother 6  
 grandfather 8  
 sister division 4

and this is the actual division.)

**L6.18 (N: A summary of the share of X's grandmother (whether she is X's father's mother or mother's mother, or, if both exist, they share the portion):**

-1/6 if X's mother does not exist.

-Her share is eliminated if X's mother exists.

-Her share is eliminated by the existence of X's father if X is descended from her through the father.)

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X

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O # mother

F # father

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(1) X's grandmother (or great-grandmother) gets one-sixth of the estate when:

- she is A, E, and so on, up that line (n: on the chart above);
- she is C, G and so on, up that line;
- or when she is H, and so on, up that line.

(2) If there are two grandmothers/great-grandmothers on the same level (A: level II, for example), they jointly get one-sixth to share between them, such as when both C and A exist, or when both G and H exist.

(3) If one of two surviving grandmothers/great-grandmothers is closer (A: on a closer level) to X, then:(a) if the closer of the two is on X's mother's side (n: the left of the chart) then she eliminates the share of the farther of the two. For example, the existence of A eliminates G's share;

(b) but if the closer of the two is on the father's side (n: the right of the chart), she does not eliminate the share of the one on the mother's side who is farther from X. Rather, both jointly receive the sixth to divide between them. For example, C does not eliminate E.

L6.19 As for great-grandmother F, she does not inherit, as she is an extended family member who may not inherit (A: being related to X through B, who may not inherit (dis: L4.5(7, 10))).

L6.20 (N: A summary of the share of X's half brother or sister from the same mother:

-1/6 if there is just one of them, when none of X's inheriting male ancestors (A: father on up) exists, nor any inheriting descendants.

-1/3 if there are two or more of them, to share between them, but which is divided so that males and females receive equal shares.

- Their share is eliminated by the existence of any of X's inheriting male ancestors or inheriting descendants.)

(1) X's half brother or sister from the same mother receives one-sixth if alone.

(2) When there are two or more of them, they jointly receive one-third. This amount is divided with equal shares going to male and female alike.

L6.21 To summarize all of the foregoing:

(1) One-half of the estate is the obligatory share of five types of heir;

-X's husband, under certain circumstances (dis : L6:3(1))

-X's (sole) daughter (L6.7(1));

-X's son's daughter (L6.9 (N:));

-X's (sole) full sister (L6.10(1));

-and X's (sole) half sister from the same father (L6.11(1)).

(2) One-fourth of the estate is the obligatory share of two types of heir;

-X's husband, under certain circumstances (L6.3(2));

-and X's wife (L6.4(1)).

(3) One-eighth of the estate is the obligatory share of X's wife, under certain circumstances (L6.4(2)).

(4) Two-thirds of the estate is the obligatory share of four types of heir;

-two or more of X's daughters (L6.7(2));

-two or more of X's son's daughters (L6.9(N));

-two or more of X's full sisters (L6.10(2));

-and two or more of X's half sisters from the same father (L6.11(2)).

(5) One-third of the estate is the obligatory share of:

-X's mother, under certain circumstances (L6.6(1));

-two or more of X's half brothers or sisters from the same mother (L6.20(2));

-and it may be the share of the grandfather when X's brothers exist (L6.14, second par).

(6) One-sixth of the estate is the obligatory share of seven types of heir;

- X's father (L6.5(1));

- X's grandfather (L6.13(N:) and L6.15(c));

- X's mother (L6.6(N:));

- X's grandmother (L6.18 (1));

- one or more daughters of X's son when X's daughter also exists (L6.9);

- one or more of X's half sisters from the same father when X's sole full sister also exists (L6.11(3));

- and X's sole half brother from the same mother (L6.20(1)).



**L6.22 (N: A summary of the other heirs'shares:**

**(1) X's son is universal heir.**

**(2) X's son's son;**

- is eliminated by X's son;

- and is universal heir in the absence of X's son.

**(3) X's full brother;**

- is eliminated by the existence of an inheriting male descendant;

- is eliminated by X's father;

and is universal heir in the absence of both an inheriting male descendant and father.

**(4) X's half brother by the same father:**

- is eliminated by any inheriting male descendant;

- is eliminated by X's father;

- is eliminated by X's full brother;

- and is universal heir in the absence of all these.

**(5) The son of X's full brother is the same as X's full brother ((3) above), but eliminated by him.**

**(6) The son of X's half brother by the same father is the same as (5) above, but eliminated by him.**

**(7) The brother of X's father:**

- is eliminated by any of the following: X's father, grandfather, brothers, and their sons;

and is universal heir in the absence of all of these.

**(8) The son of the brother of X's father is the same as (7) above, but eliminated by him.)**

## **L7.0 THOSE WHOSE SHARES ARE ELIMINATED BY OTHERS (HAJJ)**

**L7.1 The share of X's half brother from the same mother is eliminated by the existence of four types of heir;**

- X's inheriting descendant (male or female);

- the descendant (male or female) of X's son;

- X's father;

or X's grandfather

**L7.2 The share of X's full brother is eliminated by three:**

- X's son;

- X's son's son;

- or X's father

**L7.3 The share of X's half brother from the same father is eliminated by four:**

- X's son;

- X's son's son;

- X's father;

- or X's full brother

**L7.4 The share of the son of X's son is eliminated by X's son, and likewise the son of the son of X's son, and on down: each is eliminated by the existence of a son closer to X (A: meaning fewer generations from X, even if the one who is closer is from a different one of X's sons).**

**L7.5 X's grandmother or great-grandmother does not inherit if X's mother exists.**

**L7.6 Neither X's grandfather (A: i.e. father's father) nor grandmother or great-grandmother on the father's side may inherit when X's father exists.**

**L7.7 When X's daughters receive a full two thirds of the estate (dis: L6.7(2)), then the daughters of X's son do not inherit, unless they are made co-universal heirs (def: L10.3) by the existence of a male who is at the same distance (A: number of generations) from X as they are or by one who is farther from X than they when they are co-universal heirs, the male receives the share of two females.**

**For example, if there are two daughters and a daughter of X's son, the two daughters take two thirds and the son's daughter receives nothing. But if there also exists with her X's son's son, or son's son, then she (A: as co-universal heir 9def; L10.3) with him) gets the rest of the estate with him, the male receiving the share of two females (N: and such a male is nicknamed her blessed brother (akh mubarak)).**

**L7.8 Similarly, when X's full sisters receive two-thirds of the estate (dis:L6.10(2)), then X's half sisters from the same father do not inherit, unless they have a brother to make them co-universal heirs, the male**

receiving the share of two females.

**L7.9** Someone who does not inherit to begin with (N: due to the existence of a preventive (def: L5)) cannot eliminate the share of anyone (A: such a person being as if nonexistent in figuring the estate division).

**L7.10** Someone who may inherit, but whose share has been eliminated by another, cannot eliminate the share of anyone, although such a person's existence may diminish the share of someone, as when there exist X's half brothers from the same mother, and X's father and mother. In such a case, the half brothers do not inherit (dis: L6.20(N:)), but their existence diminishes the mother's share from a third to a sixth (dis:L6.6(2)).

#### **L8.0 ADJUSTMENT WHEN THE SHARES EXCEED THE TOTAL ESTATE (ʿAWL)**

**L8.1** (A: Adjustment (ʿawl) is used in cases where the estate is not enough to give everyone their full shares, and proportionately distributes the deficit to all the heirs in an equitable way.)

**L8.2** Whenever the shares deserved by heirs exceed the number of available shares, the number of shares is additively increased to the number needed.

An example is the case (al-mubahala) in which there are X's husband, mother, and full sister:  
shares: 6

husband	1/2 (dis: L6.3(1))	3
sister	1/2 (dis: L6.10(1))	3

but at this point, the estate has been used up despite the fact that the mother deserves her share of one-third, and no one can eliminate it:

mother	1/3 (dis: L6.6(1))	2
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so we redivide the estate by adding the mother's portion (n: two shares) as an adjustment:

(6 + 2 =) shares: 8

husband		3
sister		3
mother		2

and this is the actual division. (n: L6.17 furnishes another example of adjustment.)

#### **L9.0 REDISTRIBUTION WHEN THE SHARES ARE LESS THAN THE ESTATE (RADD)**

(n: This section has been moved here from its original place after L10.7 below.)

**L9.1** If X has no (A: universal heir) relatives (def; L10.5) then (A: the remainder of) his estate goes to the Muslim common fund (bayt al-mal) as an inheritance to the Muslims, provided the Islamic ruler is just. If the Islamic ruler is not just (A: or not existent), then it (A: the excess) is redistributed among the inheriting heirs in proportion to their relative shares, except for X's husband or wife, who may not receive any of the redistributed amount.

**L9.2** (N: Three illustrations of redistribution follow:

(1) X's sister and grandmother:

shares: 6

sister	1/2 (dis: L6.10(1))	3
grandmother	1/6 (dis: L6.18(1))	1

But at this point, the obligatory shares are less than the estate, so we redistribute the excess estate in proportion to the heirs' respective shares by reducing the shares of the case to four, which is the number of the existing heirs' shares:

(3 + 1 =) shares: 4

sister		3
grandmother		1

and this is the solution, and is how we redistribute in cases that require it, when there is neither a husband nor wife among the heirs. As for when there is a husband or wife, the examples below furnish illustrations of the division.

(2) X's wife, half brother from the same mother, and grandmother:

shares: 12

wife	1/4 (dis: L6.4(1))	3
half brother	1/6 (dis: L6.20(1))	2
grandmother	1/6 (dis: L6.18(1))	2

But here, the obligatory shares are still less than the estate, in which there are five remaining shares:  
excess 5

So, excluding the wife as mentioned above (L9.1(end)), we divide the excess between the half brother and grandmother in proportion to their respective shares, namely two-to-two, which means a half-and-half division of the excess five shares. For convenient division of these five shares, we first multiply the case's total

(12 x 2 =)	shares: 24
wife	6
half brother	4
grandmother	4
excess	10

and then we divide the ten excess shares between the half brother and grandmother, while the wife gets only her original share (dis:19.1 (end)):

shares: 24	
wife	6
half brother (5 + 4 =)	9
grandmother (5 + 4 =)	9

and this is the solution.

(3) X's wife, mother, and half brother from the same mother;

shares: 12		
wife	1/4 (dis: L6.4(1))	3
mother	1/3 (dis: L6.6(1))	4
half brother	1/6 (dis: L6.20(1))	2

But the obligatory shares are still less than the estate, in which there are three remaining shares:

excess	3
--------	---

So, excluding the wife, as before, we divide the excess between the mother and half brother in proportion to their respective shares, namely four-to-two, which means a two-to-one division of the three excess shares:

shares: 12	
wife	3
mother (2 + 4 =)	6
half brother (1 + 2 =)	3

and this is the solution.)

## L10.0 UNIVERSAL HEIR (ASABA)

L10.1 (A: A universal heir (asaba) is someone who takes the remaining estate, if any, after heirs deserving obligatory shares have taken them. When there are no such heirs, the universal heir takes all. There are three types of universal heir:

- (1) universal heir by oneself (asaba bi nafsihi);
- (2) co-universal heir (asaba bi ghayrithi);
- (3) and universal heir through the existence of another (asaba ma'a ghayrithi.)

(n: The following three definitional entries have been added to this section by the translator.)

### UNIVERSAL HEIR BY ONESELF

L10.2 (Hasanaya Muhammad Makhluf:) The universal heir by oneself is X's male relative who is not related to X through a female, whether this be because:

- (1) there is no one between him and X, as is the case with X's father or son;
- (2) or whether because there is someone between him and X, but not a female, such as X's grandfather (the father of X's father) X's son's son, X's full brother, or X's half brother from the same father.

### CO-UNIVERSAL HEIR

L10.3 The co-universal heir is any female deserving an obligatory share who requires someone else in order to become a universal heir, and with whom she participates in this universal share. It is a class confined to four type of women, those whose share if alone is one-half, and if there are more than one is two thirds. They are;

- (1) X's daughter;
- (2) X's son's daughter;
- (3) X's full sister;
- (4) and X's half sister from the same father.

Whenever a male exists with one of these four who is universal heir by himself (def; L10.2) of the same

generation as her and of the same strength (N:ie both we full or half siblings). she becomes co-universal heir with him and inherits by the universal share, not her obligatory share. They divide the universal share so the male receives the portion of two females.

#### **UNIVERSAL HEIR THROUGH THE EXISTENCE OF ANOTHER**

**L10.4** The universal heir through the existence of another is any female deserving an obligatory share who requires someone else to become a universal heir, but with whom she does not share this universal share. These are only two people from among those who deserve obligatory shares:

- (1) X's full sister;
  - (2) and X's half sister from the same father;
- provided that X's brother who would form a co-universal heir (def: L10.3) with them (A: in which case they would not be a universal heir through another) does not exist, and provided that either of the above two females exists with X's daughter(s) or son's daughter(s), and on down (A: these being the someone else needed to make them a universal heir through another) (al-Mawarith fi al-shari'a al-Islamiyya (y80), 99, 102, 103).

**L10.5** The universal heir is a person who takes the whole estate if there is no other heir, or takes any of it that is in excess of the obligatory portions which are given to heirs, when they also exist. If there is nothing in excess of the heirs' obligatory shares, then the universal heir does not receive anything.

**L10.6** Their order (A: these being the universal heirs by themselves (def: L10.2 )) in closeness to X (A: such that the existence of someone at the first of the list eliminates the universal heirship of anyone following him) is:

- (1) X's son;
- (2) X's son's son;
- (3) X's son's son's son, and on down, no matter how many generations;
- (4) X's father;
- (5) X's father's father;
- (6) X's father's father, and on up, no matter how many generations;
- (7) X's full brother;
- (8) X's half brother from the same father;
- (9) the son of X's full brother;
- (10) the son of X's half brother from the same father;
- (11) the brother of X's father;
- (12) the son of the brother of X's father this son's son, and on down;
- (13) the brother of X's father's father;
- (14) and then (13)'s son, this son's son, and on down.

**L10.8** When there is no universal heir, and no heir inheriting an obligatory portion that the excess estate could be redistributed to (dis: L9.1), then the estate is divided between the extended family members (def:L4.5) such that each of them takes the place of the person through whom they are related to X For example:

- (1) X's daughter's child takes the share of X's daughter;
- (2) X's sister's child takes the share of X's sister;
- (3) X's brothers' daughters take the share of the brothers;
- (4) the daughters of X's father's brother take the latter's share;
- (5) X's mother's father takes her share;
- (6) X's mother's brother or sister takes her share;
- (7) and X's father's half brother or sister from the same mother takes the father's share.

**L10.9** No universal heir may inherit (A: a universal share) when there is a universal heir who is closer to X than he is.

**L10.10** No one constitutes a co-universal heir (def: L10.3) with his sister except:

- (1) X's son (N: with X's daughter);
- (2) X's son's son (N: with X's son's daughter);
- (3) and X's brother (A: with X's sister)

Each of them constitutes a co-universal heir with his sister, the male receiving the portion of two females.

**L10.11** (N: In addition to being co-universal heir with X's son's daughter ((2)above),) X's son's son (N: or son's son's son, and on down) is (n: also ) co-universal heir with the daughters of his father's brother who are of the same generation as he, and those of his father's sisters and the daughters of his father's

father's brother(s) who are above him (N: of a closer generations to X) , provided they (A: those closer to X than he) have no obligatory shares coming. (N: Because if they do, then they take their share and are not co-universal heirs with him. This may be illustrated by the following example:

1) X's husband, daughter, son's daughter, son's daughter, son's son's daughter, and son's son's son:

Shares: 12

husband	1/4 (dis: L6.3(2))	3
daughter	1/2 (dis:L6.7(1))	6
son's daughter	1/6 (dis: L6.9)	2
son's son's daughter		
son's son's son	universal	1

But if there were two of X's daughters in the above case, we would have to divide the estate as follows:

shares: 12

husband		3
2 daughters	2/3 (dis: L6.7(2))	8

Here, the son's daughter does not have an obligatory share coming, since the two daughters have taken the full two-thirds, and so the son's daughter (dis: text above) is co-universal heir with the son's son's daughter and son's son's son:

son's daughter

son's son's daughter	universal	1
son's son's son		

**L10.12** A person who is a universal heir does not participate in the share of someone who has an obligatory share coming, except in the following case (al-musharraka):

Given X's husband, mother (or grandmother, for the result is the same), two half brothers from the same mother, and a full brother:

shares: 6

husband	1/2 (dis: L6.3(1))	3
mother	1/6 (dis: L6.6(2))	1
2 half brothers	1/3 (dis: L6.20(2))	2

in which case the estate has been used up and nothing remains for the brother:

(N: But the full brother is closer to X than the half brothers, and should not be eliminated by their share,

so an exception is made and the half brothers and full brother are made co-universal heirs:)

shares: 6

husband		3
mother		1
2 half brothers		0
full brother	universal	2

(N: It is important to remember in such cases that the universal share is divided so the males and females receive equal shares (dis: L6.20(2)).)

**L10.13** When a person both deserves an obligatory share and is a universal heir, then he inherits both of these. An example is when the son of X's father's brother (A: who is universal heir (dis: L6.22(8))) is also X's husband (A: deserving a husband's share (dis: L6.3)); or when the son of X's father's brother is also X's half brother from the same mother.

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#### **m1.0 WHO SHOULD MARRY**

(O: The legal basis for marriage, prior to scholarly consensus (ijma') is such Koranic verses as "Marry such women as seen good to you" (Koran 4:3), and hadiths such as, "Marry one another, that you may increase," which was related by Shafi'i.)

m1.1 A man who needs to marry (O: because of desire for sexual intercourse) and has enough money (O: for the bride's marriage payment (mahr def;m8), for clothing for the season of the year in which he marries, and the expenditures of one day) is recommended to do so (O: to protect his religion, no matter whether he is occupied with religious devotions or not). One who needs to marry but does not have enough to pay for these expenses is recommended not to marry. but rather to suppress his sexual desire by fasting (O: and if it is not suppressed by fasting, then he should marry, borrowing the money to pay the bride's marriage payment if she will not accept his owing it to her).

m1.2 It is offensive for someone who does not need marriage (O: being undesirous of it because of a physical defect or other reason) to marry when he does not have enough money to cover the expenses. Marriage is not offensive for a man who has enough money, even when there is something that might prevent him from doing so such as old age or a chronic illness, though it is superior for him to devote himself to worship instead (O: being occupied with enjoyments and not thinking of worship at all) then marriage is better (O: since someone whose lack of sexual desire is not due to a physical defect may later have such desire, as opposed to someone whose lack of desire is because of such a defect, to whom this will not happen).

m1.3 As for a woman, if she needs to marry, it is recommended for her to do so, though if she does not, (O: not feeling any sexual desire within herself, and she is engaged in worship,) then it is offensive for her to do so. (N: Though such a woman needs a husband or unmarriageable relative to travel and so forth (dis:m10.3).)

#### **DESIRABLE CHARACTERISTICS IN A BRIDE**

m1.4 It is recommended for a man to marry a virgin (O: unless there is a reason not to, such as sexual incapacity or needing someone to take care of his children) (A: though it is permissible to marry a nonvirgin even if she has not previously married (dis: p12.1(3(n:)))) who is fertile (O: which in a virgin is inferable from her relatives), attractive, intelligent, religious, of a good family, and not a close relative. (O: In Sharh al-Minhaj, Ibn Hajar notes that when one must choose between the above characteristics, the order of preference should be:

- (1) religiousness, which takes precedence over anything else;
- (2) intelligence;
- (3) a good character and disposition;
- (4) fertility;
- (5) a good family;
- (6) virginity;
- (7) beauty;
- (8) and then that which fulfills some other relevant interest.)

#### **m2.0 ENGAGEMENT AND LOOKING AT THE OPPOSITE SEX**

##### **SUNNAS OF ENGAGEMENT**

m2.1 (O: It is recommended for a guardian to offer his marriageable female charges in marriage to righteous men. It is sunna:

- (1) to intend by one's marriage to fulfill the sunna and protect one's religion, since one is only rewarded for it if one intends some form of obedience to Allah, such as remaining chaste or having a pious son;
- (2) for the marriage contract to be made in a mosque;
- (3) and for it to take place on Friday, at the first of the day, and in the month of Shawwal.)



## LOOKING AT ONES PROSPECTIVE BRIDE

m2.2 The sunna when one wants to marry a woman is to look at her face and hands (O: as the face indicates her beauty, and the hands her robustness of body. Tirmidhi reports from al-Mughira that when he got engaged to a woman, the Prophet (Allah bless him and give him peace) said.

"Look at her, for it is likelier to last between you."

meaning that love is likelier to last, and tenderness) before getting engaged to her, even if the woman does not give her permission to do so (O: since the Lawgiver's permission is sufficient). Such a person is entitled to repeat looking at her (A: as many times as he wishes) (O: when he needs to make sure of how she looks, so he does not come to have regrets after getting married. And she is entitled to do the same) but he may not look at other than her face and hands. (O: If unable to go see her, he should send a reliable woman to go see he for him, as such a woman would be likely to notice more than he, and she may describe her to him, this being an exception to the unlawfulness of describing a woman to a man who is not one of her unmarriageable kin.)

## LOOKING AT MEMBERS OF THE OPPOSITE SEX

m2.3 It is unlawful for a man to look at a woman who is not his wife or one of his unmarriageable kin (def: m6.1) (O: there being no difference in this between the face and hands or some other part of a woman (N: if it is uncovered), though part excludes her voice, which is not unlawful to listen to as long as temptation is unlikely. Allah Most High says, "Tell believers to lower their gaze" (Koran 24:30).

A majority of scholars (n: with the exception of some Hanafis, as at m2.8 below) have been recorded as holding that it is unlawful for women to leave the house with faces unveiled, whether or not there is likelihood of temptation. When there is likelihood of temptation, scholars unanimously concur that it is unlawful, temptation meaning anything that leads to sexual intercourse or its usual preliminaries. As for when there is real need (dis: m2.11), looking is not unlawful, provided temptation is unlikely).

(A: Being alone with a woman who is not one's wife or unmarriageable kin is absolutely unlawful, though if there are two women and a man, the man and the woman are no longer considered alone.)

m2.4 A man may look at his wife (N: or vice versa) including her nakedness (def: f5.3), though it is offensive for either husband or wife to look at the other's genitals.

m2.5 A man may look at his unmarriageable female relatives (def: m6.1), and a woman look at her unmarriageable male relatives (m6.2), viewing any part of the body (n: that shows e.g. while they are working) except what is between the naval and knees.

m2.6 As for a woman looking at (O: a man) other than her husband or unmarriageable male relatives, it is unlawful, just as a man's looking at her is.

m2.7 It is unlawful for a woman to show any part of her body to an adolescent boy or a non-Muslim woman (n: unless the latter is her kinswoman (def: m6.1 (1-12)), in which case it is permissible (Mughni al-muhtaj ila ma` rifa ma` ani alfazal-Minhaj (y73), 3.132)).

m2.8 (n: The following rulings from the Hanafi school have been added here as a dispensation (dis: c6.3).)(Ahmad Quduri:)

(1) It is not permissible for a man to look at a woman who is not his wife or unmarriageable relative except for her face and hands ((Maydani:) because of the necessity of her need to deal with men in giving and taking and the like). If a man is not safe from lust, he may not look at her face except when it is demanded by necessity.

(2) A man may look at the whole body of another man except for what is between the navel and (A: including) the knees (A: as the knees are considered nakedness by Hanafis, though not by Shafi`i).

(3) A woman may look at the parts of a man that another man is permitted to look at.

(4) A woman may look at the parts of another woman that a man is permitted to look at of another man.(al-Lubab fi sharh al\_kitab (y88), 4.162-63)

m2.9 Whenever looking is unlawful, so is touching (O: whenever meaning the part; i.e. whatever is unlawful to look at is also unlawful to touch). (N: And any permissible looking that leads to temptation is unlawful.) (A: Ordinary people sometimes mistakenly assume that the Hanafi position that touching a woman does not nullify one's ablution (wudu) means they permit men shaking hands with women who

are not wives or unmarriageable relatives, something which is unlawful, and which neither the Hanafi school nor any other holds to be permissible.)

## DOCTORS TREATING PATIENTS OF THE OPPOSITE SEX

m2.10 Both (O: looking and touching) are permissible for medicinal bloodletting, cupping, and medical treatment (N: when there is real need. A Muslim woman needing medical attention must be treated by a Muslim woman doctor, or if there is none, then by a non-Muslim woman doctor. If there is none, then a male Muslim doctor may treat her, while if none of the above are available, then a male non-Muslim doctor. If the doctor is of the opposite sex, her husband or an unmarriageable male relative (def: m6.2) must be present. It is obligatory to observe this order in selecting a doctor). (A: The same rules apply to Muslim men with regard to having a doctor of the same sex and religion: the same sex takes precedence over the same religion.)

(O:Necessary treatment of her face or hands permits looking at either. As for other parts of the body, the criterion for permissibility is the severity of the need for treatment, meaning that there must be an ailment as severe as those permitting dry ablution (def: e12.9), and if the part concerned is the genitals, the need must be even more acute (N: though it includes gynecological examinations for women with fertility problems, which are permissible).

## PERMISSIBLE LOOKING AT A MARRIAGEABLE MEMBER OF THE OPPOSITE SEX

m2.11 Looking at a woman is permissible for testimony in court, for commercial dealings (O: with a marriageable man, or noncommercial dealings, as when he wishes to marry her), and so forth (O: such as obligatory or recommended learning (def: a4, a6)), in which cases looking is permissible to the degree required. (O: It is not permissible to exceed the degree required, as when looking at part of the face is sufficient, in which case looking at the rest of it is not permissible, as it exceeds the amount required.)

## RULES FOR PROPOSING MARRIAGE OR ACCEPTING A PROPOSAL

m2.12 It is unlawful to propose marriage, openly or allusively, to another's wife when she is in the waiting period of an unfinalized (A: i.e. less than threefold (dis: n9.0 (N:))) divorce (O: because she is still considered as a wife is).

m.2.13 As for a woman who is in any of the following types of waiting period (def: n9), it is unlawful for a suitor to propose openly to her, though not for him to hint at it:

- (1) the waiting period of a finalized (threefold) divorce;
- (2) the waiting period after having had her husband release her for payment (def: n5);
- (3) or the waiting period to remarry after her husband's death (def: n9.11).

(O: Proposing allusively is only permissible in such cases because of the husband's lack of authority over her. To propose openly means to decisively indicate one's desire to wed, such as by saying, "I want to marry you," while to propose allusively means to employ words that could indicate a desire to marry or something else, such as "I am desirous of you," or "Your are beautiful," for these do not necessarily imply a desire for marriage.)

m2.14 (O: The rulings regarding the lawfulness or unlawfulness of a woman's accepting a marriage proposal are the same as those for proposing to her (def: m2.12-13).)

m2.15 It is unlawful to propose marriage to a woman to whom another has already done so, if the first proposal has been openly accepted, unless the first suitor gives his permission. (O: And like his permission in the legality of another proposing to her is when the first suitor has shown himself disinclined, such as by having given up, or when enough time has elapsed to give others the impression that he no longer wants to marry, or when the woman's guardian (def: m3.4) becomes averse to him.) But if the first suitor's proposal was not openly accepted, then a second suitor may propose to her. (O: It is also permissible for one to take the initiative and propose to a woman when one does not know whether or not she is engaged, or whether the first proposal was plainly accepted or not.)

m.2.16 Whoever is asked about what kind of person a prospective groom is should truthfully mention his failings (O: meaning his defects and mistakes. This is obligatory (N: but only to the degree necessary (A: to protect the person who is asking))), as Nawawi has stated in al-Adhkar (dis: r2120(2))).

m2.17 It is recommended to give a short address when (O: i.e. before) making a marriage proposal (O:

address meaning words begun by praising Allah and concluded with a supplication and moral exhortation. If one wants to be brief, one may simply say, "Praise be to Allah, and blessings and peace upon the Messenger of Allah (Allah bless him and give him peace). I enjoin you to fear Allah. I have come to you to engage your noblest [A: mentioning her name]." Then her guardian gives a similar address).

m2.17 It is also recommended to give another brief address when (O: i.e. just before) the marriage contract is made, saying (O: i.e. it is recommended for the guardian to say, before the contract is formally effect), "I marry her to you according to the command of Allah Most High, to kindly retain or graciously release."

### m3.0 THE INTEGRALS OF A MARRIAGE AGREEMENT

m3.1 Marriage has integrals (A: which are five in number:

- (a) the spoken form;
- (b) the witnesses;
- (c) the bride's guardian;
- (d) the groom;
- (e) and the bride).

#### THE SPOKEN FORM

m3.2 The first integral is the explicitly stated spoken form (O: comprising a spoken offer by the guardian and its acceptance by the groom, like other, nonmarital transactions. Its necessary conditions are the same as those of valid sale (def: k1.1(a,b,c,d,e))), the form being valid in languages other than Arabic even when one is able to speak Arabic.

The spoken form is not valid if allusive. Nor is it valid without:

- (a) a statement (N: from the guardian) that effects it, namely "I marry you" (n: i.e. to her, the Arabic *zawwaja* meaning to marry someone to another);
- (b) and an immediate spoken acceptance (A: by the groom), namely "I marry her," or "I accept her marriage."

(N: The spoken form, when the other integrals exist, is what is meant by the term marriage contract, not an actual written document, though it is sunna to write it. Extraneous conditions added to the marriage contract, such as that the husband observe monogamy or the like, are not binding, being meaningless, though they do not invalidate the marriage agreement, which remains effective.)

#### THE WITNESSES

m3.3 The second integral is that the marriage have witnesses, it not being valid unless two witnesses are present who are:

- (a) male (O: since a marriage witnessed by a man and two women would not be valid (A: though it would be valid in the Hanafi school));
- (b) sound of hearing
- (c) sound of eyesight
- (d) familiar with the language of the two contracting parties;
- (e) Muslims;
- (f) and upright (def:o24.4) witnesses, even if their uprightness is merely apparent (O: since marriages take place among average, common people, and if they were made responsible to know the inward uprightness of witnesses, it would cause delays and difficulties. Apparent uprightness means the person is outwardly known to be upright, even if he is inwardly unknown).

#### THE BRIDE'S GUARDIAN

m3.4 The third integral is the (A: bride's guardian (O: since a woman may not conduct her own marriage. Ibn Majah relates that the Prophet (Allah bless him and give him peace) said.

"Let no woman marry a woman to another or marry herself to another."

Daraqutni related this hadith with a chain of transmission meeting the standards of Bukhari and Muslim). The marriage agreement is not valid without a guardian who is:

- (a) male;
- (b) legally responsible (mukallaf, def: c8.1);
- (c) Muslim;

(d) upright (def: o24.4);

(e) and of sound judgement.

The following may not be a bride's guardian:

(1) (non-(a) above) a woman;

(2) (non-(b)) a child or insane person;

(3) (non-(c)) a non-Muslim;

(4) (non-(d)) a corrupt person (def: o24.3) (O: though the opinion of most later scholars is that a corrupt person may be a guardian);

(5) or (non-(e)) someone whose judgement is unsound because of old age or weakmindedness (O: whether innate or acquired. Old age includes someone with severe pain or illnesses which distract him from realizing what is most advantageous for his charge and her interests, since such a person would be incapable of learning how suitors really are and whether they are an appropriate match (def: m4) for the bride). It is of no consequence if the guardian is blind.

A non-Muslim responsible for a non-Muslim bride may be her guardian (O: provided he does not violate the rules of his own religion), though a Muslim may not.

m3.6 (n: If the bride has no Muslim guardian and there is no Islamic magistrate to act as one, she may authorize a male Muslim who has the qualifications of an Islamic judge (def: o22.1)-or if there is none, then a male Muslim who is legally upright (def: o24.4)-to act as her guardian in marrying her to the groom (Mughni al-muhtaj ila ma`rifa ma`ani alfaz al-Minhaj (y73), 3.147).)

#### THE ORDER OF LAWFUL GUARDIANSHIP AMONG THE BRIDE'S RELATIVES

m3.7 The male relatives of a free woman are the ones who may marry her to another, and the order (O: as to who has the right to be her guardian) is her:

(1) father;

(2) father's father (O: and on up);

(3) brother;

(4) brother's son;

(5) father's brother;

(6) her father's brother's son (O: and so on, in the same order as the universal heirs in estate division (def: l10.6(12-14)));

(7) and then the Islamic magistrate (A: i.e. the judge (qadi)).

None of the above may marry her to someone when a family member higher on the list exists. If there are two of equal standing (A: two brothers, for example) and one is related to her through two parents while the other is related to her through the father alone, then the one related to her through both parents is the guardian. If both are equal in this respect, precedence is given to the oldest, most learned in Sacred Law, and most god-fearing. But if the other (A: less deserving of two would-be guardians who are of equal affiliation to her) marries her to the groom, the marriage is valid. If both insist on being the one, they draw lots to see who will do it, though if the loser marries her to the groom, the marriage is also legally valid.

m3.8 If a guardian does not have the right to be a guardian because of the existence of one of the above-mentioned preventives (dis: m3.4 (1-5)), the guardianship devolves to the next family member in the m3.7 order of lawful guardians.

#### THE BRIDE'S RIGHT TO MARRY A SUITABLE MATCH OF HER CHOICE

m3.9 Whenever a free woman asks to marry a suitor who is a suitable match (def m4) (O: by telling her guardian, "Marry me to him"), the guardian must marry her to him (O: whether she is a virgin or nonvirgin, and whether prepubescent or not). The Islamic magistrate (A: i.e. judge marries her to such a groom if the guardian:

(1) in the presence of the magistrate refuses to marry her to the groom;

(2) is on a journey farther than 81 km./50 mi. from home;

(3) or is in a state of pilgrim sanctity (ihram) (O: for hajj, `umra', or both) (dis: j3.20).

In such cases, the guardianship does not devolve to the next most eligible in the m3.7 order of lawful guardians, If (non-(2) above) the guardian is on a journey of less than 81 km./50 mi, from home, the bride may not be married to someone without the guardian's leave.

#### COMMISSIONING ANOTHER TO EFFECT THE MARRIAGE AGREEMENT

**m3.10** The guardian may commission another (def: k17.5-6) to marry his charge to someone, though it is not permissible to commission someone who himself lacks the requisite conditions (m3.4(a,b,c,d,e)) to be a guardian. The groom too may commission someone to accept the marriage agreement on his behalf, provided the person commissioned is someone who would be legally entitled to accept such a marriage for himself. (O: A child, for example, may not accept a marriage for himself, let alone someone else, nor may a woman be commissioned for this, nor someone in a state of pilgrim sanctity (ihram).)

**m3.11** Neither the guardian of the bride nor his agent may state the marriage offer (def: m3.2(a)) for the guardian's own marriage (A:to her). If her guardian wants to marry her, as when, for example, he is the son of her father's brother, then he lets a different son of the father's brother stand in as guardian. If there is no one in his own degree (A: of relation to her), then the Islamic judge stands in as guardian.

**m3.12** No one may state both the proposal and its acceptance (def:

m3.2(a,b)) for one marriage, except the bride's grandfather when marrying his son's daughter to his (A: other) son's son.

#### **GUARDIANS WHO MAY MARRY A VIRGIN TO A MAN WITHOUT HER CONSENT**

**m3.13** Guardians are of two types, those who may compel their female charges to marry someone, and those who may not.

(1) The only guardians who may compel their charge to marry are a virgin bride's father or father's father, compel meaning to marry her to a suitable match (def: m4) without her consent.

(2) Those who may not compel her are not entitled to marry her to someone unless she accepts and gives her permission. Whenever the bride is a virgin, the father or father's father may marry her to someone without her permission, though it is recommended to ask her permission if she has reached puberty. A virgin's silence is considered as permission. As for the nonvirgin of sound mind, no one may marry her to another after she has reached puberty without her express permission, no matter whether the guardian is the father, father's father, or someone else.

**m3.15** No guardian may marry a woman to someone who is not a suitable match (def: m4) without her acceptance and the acceptance of all who can be guardians (def: m3.7). If the Islamic magistrate is her guardian, he may not under any circumstances marry her to someone who is not a suitable match for her. If the bride selects a suitor who is not a suitable match for her, the guardian is not obliged to marry her to him. If she selects a suitable match but her guardian chooses a different suitor who is also a suitable match, then the man chosen by the guardian takes precedence if the guardian is one who may lawfully compel her to marry (def: m3.13(1)), while the one she selects takes precedence when the guardian may not lawfully compel her to marry (m3.13(2)).

#### **m4.0 A SUITABLE MATCH (KAFA'A)**

(N: The definition of a suitable match should not be misunderstood as a recommendation for whom to marry. It is merely a legal restriction to protect a woman's interests when the father or grandfather of a virgin marry her to someone without her consent (dis: m3.13, 15). As for when she wishes to marry someone who is not a suitable match, and her guardian has no objection, there is nothing wrong or offensive in her doing so.)

**m4.1** Suitability concerns lineage, religiousness, profession, and being free of defects that permit annulling the marriage contract (def: m7). (N: As for color, it is of no consideration in suitability.)

**m4.2** The following are not suitable matches for one another:

(1) a non-Arab man for an Arab woman (O: because of the hadith that the Prophet (Allah bless him and give him peace) said, "Allah has chosen the Arabs above others");

(2) a corrupt man (def: o24.3) for a virtuous woman (O: though it is sufficient for the would-be husband to have given up his wrongdoing);

(3) a man of a lowly profession for the daughter of someone with a higher profession, such as a tailor wanting to marry a merchant's daughter (A: though an Islamic scholar is a suitable match for any level whatever);

(4) or someone with a defect that permits annulling the marriage (def: m7) for someone without such defects. Being wealthy has nothing to do with suitability (O: for money comes and goes, and those with self-respect and intelligence do not take pride in it), nor does being elderly.

m4.3 The marriage agreement is invalid whenever a guardian marries his charge to someone who is not a suitable match for her, if done without both her acceptance and the acceptance of all who are eligible as guardians (def: m3.7) and are on the guardian's level of relation to her (A: such as his brothers). But if both these parties agree, then the bride's relatives further from her than the guardian may not object.

m4.4 When the father or father's father see that the best advantage is to be served by marrying a young boy (or girl) to someone, they may do so, though they are not entitled to marry the child to someone with a physical defect (dis: m7) that legally permits annulment of the marriage.

m4.5 If a person is foolhardy (safih, def: k13.1(A)) or continuously insane, but needs to marry, then his father, grandfather, or the Islamic magistrate may marry him to someone. If they grant permission to the foolhardy person to marry himself, his marriage is valid, though if he does so without their leave, it is invalid.

## m5.0 CONJUGAL RIGHTS

### THE WIFE'S MARITAL OBLIGATIONS

m5.1 It is obligatory for a woman to let her husband have sex with her immediately when:

(a) he asks her;

(b) at home (O: home meaning the place in which he is currently staying, even if being lent to him or rented);

(c) and she can physically endure it.

(d) (O: Another condition that should be added is that her marriage payment (mahr, def: m8) has been received or deferred to a term not yet expired. As for when sex with her is not possible, such that having it would entail manifest harm to her, then she is not obliged to comply.)

If she asks him to wait, she is awaited, to a maximum of three days (O: She does not ask to wait because of not having finished her period or postnatal bleeding, for there is not physical harm entailed in her complying as she is, though if she fears that such foreplay with him will lead to actual copulation (A: which is unlawful under such circumstances), then she may refuse, as that is not obligatory). (n: w45 discusses wives' other duties to husbands.)

### THE WIFE'S RIGHT TO INTERCOURSE

m5.2 (Imam Ghazali:) One should make love to one's wife every four nights, as is fairest, since the number of wives one may have is four, and one may wait this long to do so, though one should make love to her more or less than this, according to the amount she needs to remain chaste and free of want for it (N: if one is able), since it is obligatory for a husband to enable her to keep chaste (Ihya' `ulum al-din (y39), 2.46).

### THE WEDDING NIGHT

m5.3 The first time they sleep together, it is recommended for the husband to grasp his bride's forelock and supplicate Allah for an increase in blessings (baraka) (O: such as by saying, ``May Allah bless each of us in their partner").

### THE HUSBAND'S RIGHTS

m5.4 A husband possesses full right to enjoy his wife's person (A: from the top of her head to the bottoms of her feet, though anal intercourse (dis:p75.20) is absolutely unlawful) in what does not physically harm her. He is entitled to take her with him when he travels.

### CONTRACEPTION

m5.5 The husband is permitted to practice coitus interruptus (n: w46 discusses the relation of this to other methods of contraception) in lovemaking with his wife (O: meaning to make love to her until he feels an impending orgasm, when he withdraws to ejaculate outside the vagina) though it is better not to (O: it being considered offensive in our school (dis: w46.2) because it is a means to prevent reproduction).

m5.6 The husband is entitled to insist that his wife undertake both the measures necessary for having sex

with her such as the purificatory bath (ghusl) after her monthly period, and those necessary to full enjoyment of her such as the purificatory bath after major ritual impurity (janaba), shaving her private parts, and removing filth.

#### **m6.0 UNMARRIAGEABLE KIN (MAHRAM)**

(N: It is unlawful for one to marry one's ancestors, descendants, parents' descendants, or the first generation of one's grandparent's offspring, meaning one's paternal or maternal aunts (n: or uncles, if one is female). One's unmarriageable kin (mahram) are those one is forbidden to marry forever.)

**m6.1 It is unlawful (O: meaning both sinful and legally invalid) for a man to marry his:**

- (1) mother;
- (2) grandmothers (O: from his mother's or father's side) and on up;
- (3) daughters;
- (4) daughters of his children, children's children, and on down;
- (5) sisters;
- (6) daughters of brothers or sisters, their children's daughters, and on down;
- (7) mother's sisters, grandmother's sisters, and on up;
- (8) father's sisters, father's father's sisters, and on up;
- (9) wife's mother;
- (10) wife's grandmother;
- (11) the wives of his father, father's father, and on up;
- (12) the wives of his children, children's children, and on down;  
(all of whom ((9) through (12)) are unlawful for him to marry by the mere fact of marriage. As for a man's wife's daughter (N: from a different husband), she is not unlawful for him to marry until he has had sexual intercourse with her mother. Were he to divorce the mother before intercourse, it would be permissible for him to marry the daughter)
- (13) (n: and all those considered as unmarriageable kin to him through his having been breast-fed by a particular wet nurse in infancy, as at n12.2).

**m6.2 (N: It is unlawful and invalid for a woman to marry her:**

- (1) father, grandfather, and on up;
- (2) son, son's son, daughter's son, and on down;
- (3) brother;
- (4) father's brother, meaning the brother of any male ancestor;
- (5) mother's brother, meaning the brother of any female ancestor;
- (6) brother's son, sister's son, or any other descendants of brothers or sisters;
- (7) the husband of her mother, grandmother, and on up;
- (8) the husband of her daughter or other female descendant;
- (9) her husband's father, grandfather, and on up, and husband's son and descendants;
- (10) (n: and unmarriageable kin to her through her having been breast-fed by a particular wet nurse in infancy, as at n12.2).

**m6.3 It is unlawful for a man to marry both:**

- (1) a woman and her sister;
- (2) a woman and her father's sister;
- (3) or a woman and her mother's sister.

(N: but if a man is no longer married to one of the above and the waiting period (def: n9) has expired, then he may marry the other.)

**m6.5 The same categories of relatives who are unlawful for one to marry because of one's kinship relation to them are also unlawful to one by "foster relationship," through having been breast-fed by a particular wet nurse in infancy (dis: n12.2) (N: since someone nursed in infancy by a woman is prohibited to marry those whom her offspring and her husband's offspring are prohibited to marry).**

**m6.7 It is unlawful for a Muslim man to marry:**

- (1) a Zoroastrian woman;
- (2) an idol worshipper;
- (3) an apostate from Islam (murtadd, def: o8);
- (4) or a woman with one parent who is Jewish or Christian, while the other is Zoroastrian.
- (5) (N: It is not lawful or valid for a Muslim man to be married to any woman who is not either a Muslim, Christian, or Jew; nor is it lawful or valid for a Muslim woman to be married to anyone besides

a Muslim.)

m6.8 It is unlawful for a man who has divorced his wife by public imprecation (def:n11) to remarry her (N: though she is not considered his unmarriageable kin (mahram), and he may not look at or be alone with her).

m6.9 It is unlawful to marry a woman who is in a state of pilgrim sanctity (ihram, def: j3) (N: for hajj or umra), or in her waiting period (def: n9) after marriage to another.

m6.10 It is unlawful for a free man to marry more than four women. It is fitter to confine oneself to just one.

m6.12 The following types of marriage are legally invalid:

- (1) to marry by ``trading daughters [or sisters]" (A: such that the marriage of each by the guardian of the other supposedly takes the place of the woman's marriage payment (mahr));
- (2) to have a ``temporary marriage" (mut`a), meaning to marry a woman for a stipulated period (O: whether specified, such as a month, or unknown, such as ``until So-and-so comes");
- (3) or to marry a woman after her threefold divorce solely to cohabit and thus permit her (dis: n7.7) to remarry her previous husband (A: which is an enormity (dis: p29)), though if the marriage agreement is made for this reason but does not expressly stipulate it, then it is legally valid (dis: c5.2).

#### m7.0 DEFECTS IN THE SPOUSE PERMITTING ANNULMENT OF MARRIAGE

m7.1 In any of the following circumstances, the husband or wife has the option to annul the marriage agreement immediately, if this is done in the presence of the Islamic magistrate (O: or a third party chosen to judge between them (dis: o21.4), provided that he is a mujtahid (def: o22.1(d)) and there is no Islamic judge), even when the partner annulling the marriage has the same defect whose existence in the spouse has motivated him or her to annul it (O: as when, for example, both are insane):

- (1) one finds that the spouse is not sane, or has elephantiasis or leprosy;
- (2) the husband finds that the wife's vagina is closed or nearly so because of an abnormal growth of flesh or bone;
- (3) or the wife finds that the husband is impotent, or that his penis has been dismembered.

The agreement may also be annulled when the defect occurs after making the marriage agreement, except when a husband's impotence occurs after he has had sexual intercourse with his wife, in which case annulment is no longer possible. When a husband (N: impotent from the beginning) acknowledges his impotence, the magistrate postpones action on the case for one year from the day it is first submitted to his consideration. If the husband has intercourse with her during the year, then she is not entitled to annul the marriage, though if he does not, then she may annul it. In cases of impotence, her above-mentioned prerogative of annulling the marriage ``immediately" means after this period of one year.

m7.2 When a marriage is annulled before sexual intercourse, the woman does not receive her marriage payment (mahr) (N: no matter whether the defect is in her or in him (A: as opposed to divorce before sexual intercourse, as discussed at m8.7)).

When a marriage is annulled after intercourse because of a defect that occurred after it, the full marriage payment stipulated by their agreement must be paid to her.

When a marriage is annulled (N: after sexual intercourse) because of a defect that occurred before intercourse (O: whether simultaneously with the marriage agreement or after it but before intercourse), then the bride is only given the amount typically received as marriage payment by similar brides (def: m8.8).

m7.4 If any of the following occurs before intercourse has taken place, then the marriage is immediately annulled:

- (1) one of a couple who are idolators becomes a Muslim;
- (2) one of a Zoroastrian couple becomes Muslim;
- (3) the wife of a Jew or Christian becomes a Muslim;
- (4) both husband and wife leave Islam;
- (5) or one of them does.

But when one of the above things happens after intercourse, then a waiting period (def: n9) must intervene before the marriage is annulled. If both husband and wife (A: are, or) become Muslim before the waiting period finishes, then their marriage continues. And if not, then the marriage is considered to have been over since the change of religion first took place.



m7.5 When a (A: non-Muslim) man who has more than four wives becomes Muslim, he is obliged to choose just four of them (A: and the others' marriages are annulled).

#### m8.0 THE BRIDE'S MARRIAGE PAYMENT (MAHR)

(O: The marriage payment is the money or property a husband must pay a woman to marry her.)

m8.1 It is sunna to name the amount of the marriage payment in the marriage agreement (O: to prevent discord). If it is not mentioned, it does not hurt (O: the validity of the marriage, though if unmentioned in the agreement, it is considered to be the amount typically received as marriage payment by similar brides (def: m8.8). There is complete scholarly consensus on the validity of a contract that does not mention it, though it is offensive not to).

m8.2 A guardian may not marry his prepubescent daughter to someone for less than the amount typically received as marriage payment by similar brides, nor marry his prepubescent son to a female who is given more than the amount typically received. If he does either of these, the amount stipulated is void and the amount typically received is paid instead (O: in both these cases, as a necessary condition for the validity of the marriage contract).

m8.3 Nor may a foolhardy man (def: k13.1(A:)) marry a woman for more than the amount typically received as marriage payment by similar brides.

m8.4 Anything that may be lawfully used as a price (def: k2) may be given as marriage payment. It may be paid immediately or deferred, and may be an individual article (ayn), a financial obligation (dayn), or the use or benefit of something.

m8.5 The bride possesses the marriage payment when it has been expressly stipulated (O: in the marriage agreement, whether validly stipulated or invalidly. If valid, she owns the amount stated, while if invalid, she owns the amount typically received as marriage payment by similar brides (def: m8.8). She may dispose of it when she accepts it, and her ownership of it is finalized when her husband has sexual intercourse with her (O: after which none of it is refundable), or when one of them dies before they have had intercourse.

m8.6 If payable immediately, the bride may refuse to have sexual intercourse until her husband gives her the marriage payment, though if she allows him to have intercourse with her before she accepts the amount, she may no longer refuse to have intercourse (N: but may demand the amount).

m8.7 If the couple is separated (A: by having annulled the marriage (dis: m7.4)), before intercourse because of an act on the bride's part, as when she becomes a Muslim (O: and the husband remains non-Muslim), or she leaves Islam (O: and the husband remains Muslim), then she is not entitled to any of the marriage payment. But if it is because of an act on the husband's part, as when he becomes Muslim, leaves Islam, or divorces her, then she receives only half of the marriage payment; or the husband may ask for half of it back (O: if she already accepted it), provided the article given as payment still exists. If it does not, he receives half of the lowest market value of similar articles between the time of the marriage agreement and when the article ceased to exist. If the article was diminished while in the bride's possession, the husband has a choice between taking it back in its defective condition, or accepting half of its value.

#### THE AMOUNT TYPICALLY RECEIVED AS MARRIAGE PAYMENT BY SIMILAR BRIDES

m8.8 The amount typically received as marriage payment by similar brides (mahr al-mithl) means that which would be desirable to a woman like her (O: a woman like the bride, under normal circumstances), like her meaning a woman of her relatives resembling her in such characteristics as age, intelligence, beauty, wealth, being virgin or nonvirgin, and in having the same hometown. (O: her relatives living therein are taken as the standard, and not those living elsewhere, since the amount typically received varies in different towns. Rafi'i holds that if all of them live in another town, they are nevertheless more suitable to be taken as the standard than nonfamily women from the same town.) If the bride is superior to them (O: respecting the above characteristics) or inferior, then this is taken into consideration (O: meaning she deserves a marriage payment that suits how she is). If she has no female relatives related to her through her father, then those like her refers to her maternal relatives (O: i.e. the mother's relatives, such as the bride's grandmother or mother's sister). If none of the above exist, then the standard for

comparison is the marriage payment of those women of the same town who resemble the bride.

#### WHEN A HUSBAND IS UNABLE TO PAY THE MARRIAGE PAYMENT

m8.9 When a husband proves financially unable to give his wife the marriage payment (A: if it has not been deferred) before the first time they have sexual intercourse, then the bride may annul the marriage, though if he proves unable afterwards, she may not. If husband and wife disagree (A: in court, when neither side has proof) as to whether he has given her (O: all, or part of) the marriage payment, then the wife's word is accepted over the husband's (dis: k8.2). But if they disagree as to whether they have had sexual intercourse, the husband's word is accepted over the wife's.

m8.10 A man is obliged to pay a woman the amount typically received as marriage payment by similar brides (def m8.8) when the marriage was (N: consummated, but) invalid, or when a man forces a woman to fornicate with him. When a woman voluntarily fornicates with a man, she does not receive any marriage payment.

#### AMENITY PAYMENT

m8.11 Whenever a woman is divorced (O: before having had intercourse) and the marriage payment is reduced to one-half (dis: m8.7), she does not receive an amenity payment (def: below). But she is entitled to one when the marriage payment is not reduced to one-half, such as when:

- (1) she receives no marriage payment because of having allowed her guardian to choose a spouse for her and then having been divorced before intercourse and before any payment was stipulated;
- (2) or when she receives the full marriage payment, as when she is divorced after intercourse.

An amenity payment is an amount (N: paid by the husband) determined by the Islamic judge through his own personal reasoning (O: it being obligatory that both the husband and wife agree to it, and sunna that it not be less than thirty dirhams (n: 88.94 grams of silver) or something worth that much, and that it amount to less than half the marriage payment), in view of the circumstances of both parties (O: such as how rich or poor the husband is, and the wife's lineage and other characteristics previously discussed).

#### m9.0 THE WEDDING FEAST

m9.1 The wedding feast is a sunna (A: whose time never expires, though it is recommended to be after intercourse). The sunna is for the meal to consist of a sheep or goat (shah, def: h2.5), though it is permissible to serve whatever food is readily available.

#### THE OBLIGATION TO ATTEND

m9.2 It is obligatory for whoever is invited to attend (O: and whoever does not respond to the invitation has disobeyed Allah and His messenger (Allah bless him and give him peace)), whether fasting or not. If one attends, it is recommended to eat, though not obligatory. If one is performing a voluntary fast and attends, and it is not burdensome for the host, then it is best to complete one's fast, though if this would weigh on the host, it is better for one to eat. It is only obligatory to respond to such an invitation if the following conditions are met:

- (a) that the host not have invited the rich to the exclusion of the poor;
- (b) that the invitation be for the first day of the wedding feast, for if the host celebrates if for three days, it is not obligatory to respond if invited on the second day, and offensive to do so on the third;
- (c) that the motive for attending not be fear of the host or desire for the prestige of having attended;
- (d) that no one will be there who will hurt one, or whose company is unsuitable (O: because of their vileness, for example, such as people devoid of morals or character;
- (e) and that there will be nothing blameworthy there such as flutes, wine, silk-covered sitting mats, or pictures of animate life (dis: p44) on the ceiling, walls, upright pillows (O: not those lying flat (dis: below)), or draperies; or clothing inscribed with something blameworthy, and so forth (O: since a person who attends in the presence of such things is as though accepting and acquiescing to what is condemnable). But if the blameworthy thing will be removed through one's attending, or if the above-mentioned pictures are on the ground, a carpet, or pillows people lean upon (N: or other humiliated deployment, which is lawful), or if the living figures are decapitated, or there are pictures of (n: Vegetative life such as) trees, then one must attend.

m9.3 Strewing sweets and the like around at marriage agreements or picking them up is not offensive,

but it is better not to.

## **m10.0 RELATIONS BETWEEN A HUSBAND AND WIVES**

**m10.1** It is obligatory for both husband and wife to treat each other well (O: since Allah Most High says, "Women deserve the like of what they are obliged to give, in kindness" (Koran 2:228)), and for each to give the other what they must (O: meaning that both spouses are required to, the husband giving her the expenditures he is obliged to (def: m11), and the wife giving herself to him and obeying him concerning his rights therein) without intentional delays or displaying resentment.

**m10.2** It is unlawful for a man to house two wives in the same lodgings unless they both agree.

## **PERMITTING ONE'S WIFE TO LEAVE THE HOUSE**

**m10.3** (A: A husband may permit his wife to leave the house for a lesson in Sacred Law, for invocation of Allah (dhikr), to see her female friends, or to go to any place in the town. A woman may not leave the city without her husband or a member of her unmarriageable kin (def: m6.2) accompanying her, unless the journey is obligatory, like the hajj. It is unlawful for her to travel otherwise, and unlawful for her husband to allow her to.) (n: In the Hanafi school, it is not unlawful for her to travel beyond city limits without a husband or member of her unmarriageable kin unless the distance to her intended destination exceeds ca. 77 km./48mi. (al-Lubab fi sharh al-Kitab (y88), 1.105).)

**m10.4** The husband may forbid his wife to leave the home (O: because of the hadith related by Bayhaqi that the Prophet (Allah bless him and give him peace) said.

"It is not permissible for a woman who believes in Allah and the Last Day to allow someone into her husband's house if he is opposed, or to go out if he is averse").

But if one of her relatives dies, it is preferable to let her leave to visit them.

## **TAKING TURNS WITH WIVES**

**m10.5** A husband with more than one wife is not obliged to spend his nights with them in turns but may keep away from them (A: all) without sin. But he may not begin spending the night with one of them unless he chooses her by drawing lots. Whenever he spends the night with one wife, he is obliged to spend nights with the others, giving equal time to each one. When a husband intends to begin staying with his wives (A: after an intermission or absence), the wife whose lot is drawn is the first with whom he spends the night. All are included in taking turns, whether a wife in her period or postnatal bleeding, one who is ill, or one who cannot have intercourse because of a vaginal birth defect.

The minimal amount of time for one turn is a night and day, whether the day comes before or after the night; while the maximum is three days (A: and nights. The minimal turn for the Hanafi and Maliki schools is whatever all can agree upon). It may not be more than three days (A: except by their leave). The basic turn of someone who makes their living by day is the night, with the day being an adjunct, while for someone who makes their living at night, such as a watchman, the basic turn is the day. In staying the night, the husband is not obliged to have sexual intercourse with the wife, though it is recommended to have intercourse (and share all other marital enjoyments) with all one's wives on an equal basis.

**m10.6** If the husband wants to take one of his wives on a journey with him, he may not do so unless he draws lots to see who it will be. If he draws lots (A: and takes the winner with him), then when he returns, he does not need to make up the turns which the other wives missed while he was on the journey. If he did not draw lots but just chose a wife to travel with him, this is a sin, and on his return he must give equal time to the other wives for the time they missed.

**m10.7** It is permissible for one of the wives to give her turn to another wife, if the husband agrees. If one of them gives him her turn, then he may give it to whomever he wants. If the wife later chooses to take her turn back, she returns to her usual place in the order of taking turns as it stands on the day she takes it back.

**m10.8** It is not permissible for a husband to enter the quarters of a wife during another wife's turn without business there, though if he stops in during the day because of something he needs, or during the night because of something absolutely necessary (A: such as bringing her supper), then he may enter. Otherwise he may not.

If he prolongs such a visit, then he is obliged to make up the turn of the wife whose turn it originally was.

**m10.9** If a man marries a new wife when he already has another, he interrupts the succession of turns to spend time with the new wife. If she is a virgin, then he stays with her seven days and need not make them up with the other wives. If she is a nonvirgin, then he may choose to either spend seven days with her and make up (O: to the others the number in excess of three days), or spend three days with her and not make up the time with the others. In such cases it is recommended to let the new wife choose the alternative she prefers. If the husband stays with her for seven days at her request, he must make up all seven days with the others, though if he stays seven days without her having requested it, he need only make up four with the others.

**m10.10** The husband is entitled to leave home during the day to fulfill his needs and obligations.

## **DEALING WITH A REBELLIOUS WIFE**

**m10.11** When a husband notices signs of rebelliousness in his wife (nushuz, dis: p42) (O: whether in words, as when she answers him coldly when she used to do so politely, or he asks her to come to bed and she refuses, contrary to her usual habit; or whether in acts, as when he finds her averse to him when she was previously kind and cheerful), he warns her in words (O: without keeping from her or hitting her, for it may be that she has an excuse. The warning could be to tell her, "Fear Allah concerning the rights you owe to me," or it could be to explain that rebelliousness nullifies his obligation to support her and give her a turn amongst other wives, or it could be to inform her, "Your obeying me [def: (3) below] is religiously obligatory"). If she commits rebelliousness, he keeps from sleeping (O: and having sex) with her without words, and may hit her, but not in a way that injures her, meaning he may not (A: bruise her,) break bones, wound her, or cause blood to flow. (O: It is unlawful to strike another's face). He may hit her whether she is rebellious only once or whether more than once, though a weaker opinion holds that he may not hit her unless there is repeated rebelliousness.

(N: To clarify this paragraph, we mention the following rulings:

(1) Both man and wife are obliged to treat each other kindly and graciously.

(2) It is not lawful for a wife to leave the house except by the permission of her husband, though she may do so without permission when there is a pressing necessity. Nor may a wife permit anyone to enter her husband's home unless he agrees, even their unmarriageable kin. Nor may she be alone with a nonfamily-member male, under any circumstances.

(3) It is obligatory for a wife to obey her husband as is customary in allowing him full lawful sexual enjoyment of her person. It is obligatory for the husband to enable her to remain chaste and free of want for sex if he is able. It is not obligatory for the wife to serve her husband (dis: w45.1); if she does so, it is voluntary charity.

(4) If the wife does not fulfill one of the above-mentioned obligations, she is termed "rebellious" (nashiz), and the husband takes the following steps to correct matters:

(a) admonition and advice, by explaining the unlawfulness of rebellion, its harmful effect on married life, and by listening to her viewpoint on the matter;

(b) if admonition is ineffectual, he keeps from her by not sleeping in bed with her, by which both learn the degree to which they need each other;

(c) if keeping from her is ineffectual, it is permissible for him to hit her he believes that hitting her will bring her back to the right path, though if he does not think so, it is not permissible. His hitting her may not be in a way that injures her, and is his last recourse to save the family;

(d) if the disagreement does not end after all this, each partner chooses an arbitrator to solve the dispute by settlement, or divorce.)

## **m11.0 THE WIFE'S FINANCIAL SUPPORT**

(O: Support means the financial rights of a wife.)

**m11.1** (A: The rulings of this section are not recommendations for how much to spend, but rather define the minimum permissible, which a stingy husband may not lawfully spend less than. Extra spending on one's wife is charity.)

## **FOOD**

**m11.2** The husband is obliged to provide his wife's sustenance day by day. If affluent, he must daily furnish her with one liter of the grain that is the staple food of the town in which they live. (O: By the

grain that is the staple food of the town, the author means if people eat it. If not, then whatever they eat, even if it is hardened, dried white cheese. If the wife asks for something other than the staple food of the town, the husband does not have to provide it for her, and if he gives her something besides the staple, she need not accept it. The staple food is what is obligatory.) If he is not affluent, then he is obliged to provide 0.51 liters of grain a day for his wife; while if between affluence and nonaffluence, he must provide 0.77 liters per day.

He is also obliged to cover the expenses of grinding it into flour and baking it into bread (O: even when she is used to doing it herself, as there would otherwise be need for this expenditure), and to buy the foods that normally accompany bread to make it savory and agreeable, as much as is customary in the town of meat, oil, and so forth (O: such as dates, vinegar, and cheese. The obligatory measures differ with the seasons, it being necessary in each season to provide that which is proper to it. Fruits might predominate in one season, and thus be obligatory. As for the obligatory amount of meat, one sees how much is customarily consumed in town per week).

If husband and wife agree that he give her compensation in place of the above-mentioned (O: grain and other things she is entitled to, the compensation being in money or clothing), this is permissible.

## ARTICLES FOR PERSONAL HYGIENE

m11.3 The wife is entitled to what she needs of oil for her hair, shampoo (lit. "sidr"), and a comb (O: to keep her hair clean, of the kind and amount that is customary in town, in order to prevent harm to herself. If oil scented with rose or violet is the custom of the town, it must be provided, though not things which are merely cosmetic and not for cleanliness, such as eyeliner or henna, which need not be provided, though the husband may provide them if he wishes. It is also obligatory for him to provide deodorant (lit. "litharge") or the like to stop underarm odor if water and soap will not suffice), and the price of water for her purificatory bath (ghusl) when the reason for it is sexual intercourse or the end of postnatal bleeding, though not if the reason is the end of her monthly period or something else (dis:m11.1).

## COSMETICS AND MEDICINE

m11.4 The husband is not obliged (N: but rather is recommended) to pay for his wife's cosmetics, doctor's fees, the purchase of medicine for her, and similar expenses (A: though he must pay for expenditures connected with childbirth).

## CLOTHING

m11.5 A wife is entitled to the kind of clothing that is customary in town for dressing oneself (O: and not just anything termed clothing will suffice. What is obligatory is the amount necessary for the woman, which varies according to whether she is tall or short, thin or fat, and with the hot or cold climate of various towns. In the summertime, it is obligatory to provide her with a head covering, shift, underdrawers, shoes, and a shawl, because of her need to go out; and the same in the wintertime, plus a cloak quilted with cotton to protect her against the cold. If she needs two cloaks because of the extreme cold, it is obligatory to provide them. If she needs fuel because of the severity of the winter, it is obligatory to buy the necessary wood and coal) and (O: he must also provide the amount customary in town of the) bedding, blankets, and pillows that are suitable for someone of his income. (O: She also deserves cooking implements, and utensils for eating and drinking).

m11.6 It is obligatory for the husband to give his wife the expenditures for her support at the first of each day, and to provide her clothing at the first of each season (O: meaning the beginning of winter and summer).

m11.7 If he gives her clothing for a season, and it wears out before the end of the season, he is not obliged to furnish new clothing, though if it lasts beyond the season, he is nevertheless obliged to provide new clothing for each new season. The wife is entitled to dispose of the clothing as she wishes, whether by selling it or other (O: means of disposal, such as giving it away, the reason being that it is her own property).

## HOUSING AND SERVANTS

m11.8 The wife is entitled to housing of the same quality as that of similar women. (O: The standard of housing depends on the wife herself, while the standard for her clothing and support takes the state of

the husband into consideration. The difference is because the expenditures for her support and clothing become her own property and are not merely for her use, while housing is solely for use (N: meaning that while she can take compensation in place of food or clothing and buy some other kind, she cannot rent a different house). In any case, she is obliged to stay in the lodgings her husband arranges for her.) If she had servants in her father's house, the husband is obliged to provide servants for her.

#### THE CONDITIONS THAT ENTITLE A WIFE TO SUPPORT

m11.9 The husband is only obliged to support his wife when she gives herself to him or offers to, meaning she allows him full enjoyment of her person and does not refuse him sex at any time of the night or day. She is not entitled to support from her husband when:

- (1) she is rebellious (nashiz, def: m10.12(N:)) (O: meaning when she does not obey him) even if for a moment;
- (2) she travels without his permission, or with his permission but for one of her own needs;
- (3) she assumes ihram for hajj of `umra (def: j3);
- (4) or when she performs a voluntary fast without her husband's permission (O: though if he allows her to fast and does not ask her to break it, he must provide her support)>

#### SUPPORT FOR A WOMAN IN HER POSTMARITAL WAITING PERIOD

m11.10 As for a woman in her postmarital waiting period (def: n9), she is entitled to housing during it no matter if it is because of her husband's death, a divorce in which the husband may take her back, or a threefold, finalized divorce. As for her support (A: in terms of food) and clothing:

- (1) it is not obligatory to provide her with it during the waiting period after (N: a threefold divorce, a release for payment (def: n5), or) her husband's death;;
- (2) it must be provided in the waiting period of a (A: not yet threefold) divorce in which her husband may take her back;
- (3) and if a woman in the waiting period of a threefold divorce is pregnant, she is given support each day (A: until the child is born, after which she is entitled to support and wages for taking care of it), but of not pregnant, she is not entitled to support.

m11.11 If the husband and wife disagree (A: in court, when neither has proof (dis: k8.2)) about whether she received her support from him, her word is accepted over his. If they disagree as to whether she allowed him full enjoyment of her person, then his word is accepted over hers unless he admits that she first made herself available to him, but claims she then refuses, in which case her word is accepted over his.

m11.2 Whenever the husband neglects to provide his wife's support for a period of time, the amount he should have paid remains a debt he owes to her.

m11.3 The wife is entitled to annul their marriage whenever the husband is unable to provide her with the support obligatory for a nonaffluent person to pay (def: m11.2) and provide clothing or housing for her.

If she wishes, she may choose to bear with him (O: supporting herself with her own money), and it (O: the amount the husband is unable to pay) remains a financial obligation that he owes her (O: If she does not wish to tolerate his financial incapacity, she cannot annul the marriage by herself, but must establish her husband's inability to support her before the Islamic judge, who annuls the marriage or allows her to do so, since he is the one who judges the matter (A: and if there is no judge, she has two persons (Def: o21.4) decide)).)

m11.14 The wife is not entitled to annul the marriage when the husband is unable to provide foods besides the staple food, support her servant, or provide the support that must be provided by an affluent person or person between affluence and nonaffluence (def: m11.2).

#### m12.0 SUPPORT OF ONE'S PARENTS AND CHILDREN

m12.1 It is obligatory for one to support the persons listed below, whether one is male or female, when one has money in excess of one's own living expenses and (n: if male,) those of one's wife (O: meaning enough for a day and night, oneself taking priority over others, followed by one's wife, who takes precedence over other family members):

- (1) one's father, father's father, and on up;
- (2) one's mother , grandmothers (from either parent's side) and on up (O: it making no difference

what their religion is (A: since the religion of the family members is of no consequence in any of the rulings of this section)):

(3) and one's children, male and female, their children, and on down.

(O: Money in excess of one's own living expenses and those of one's wife means one is obliged to sell (A: if necessary to fulfill the obligation to support the above-mentioned persons) whatever must be sold when one has to pay debts, including real estate and other property.)

But supporting the above-mentioned persons is only obligatory when:

(a) there is poverty (O: a restriction applicable to both support of one's ancestors and one's descendants, meaning that it is necessary in order for it to be obligatory to support one's ancestor that the ancestor be poor, since if he has enough money, one need not support him);

(b) an incapacity (O: to earn a living) due to chronic illness, being a child, or to mental illness. (O: This condition is only applicable to support of one's offspring, not of one's ancestors. If an (A: impoverished) ancestor (A: such as one's father) were able to earn a living from a job suitable to him, it would nevertheless be obligatory for one to support him, and he would not be called upon to gain livelihood, because of the extreme respect due to him, as opposed to one's descendant, whom one need not support if the descendant is able to earn his own living, but who rather is called upon to do so himself.

The upshot is that the support of whoever has enough money for their own support is not obligatory upon another family member, no matter whether the former is mentally ill or sane, a child or adult, chronically ill or well; because he does not deserve charity in such a condition-while a descendant able to earn an adequate living does not deserve support from his ancestors.)

m12.2 A child is obliged to support his father's wife (A: if the father cannot).

m12.3 When a person has both ancestors and children (A: deserving support) but does not have enough for all, then (O: after himself and then his wife) he gives precedence (A: in order) to :

(1) his mother

(2) his father

(3) his young son (O: or daughter)

(4) and then to his adult children (A: if they are unable to earn).

m12.4 The amount of such support must be enough to suffice, though (N: if this much is not paid) it does not become a debt owed by the person who should have given it. (O: It is no longer obligatory after its time has passed (A: but if the deserving person borrows money to support himself during this period, the person who should have supported him is obliged to pay the debt), even though the person who was obliged to give it has committed a sin by thus allowing the time to pass.

m12.5 When a father who is poor needs to marry, then a son who is financially able must provide him with the means to keep chaste by finding him a wife (O: i.e by giving her the marriage payment (mahr, def: m8). It is not permissible to marry him to a deformed or aged women).

m12.6 Whoever owns an animal is obliged to pay for its maintenance.

(O: The restoration and maintenance of property without a living spirit, such as a canal or house, is not obligatory for its owner. Mutawalli explains this by the fact that such maintenance is an augmentation to the property and as such is not mandatory, as opposed to livestock, whose owner must feed them, since to neglect to do so would entail harm for them. Other scholars explain the difference in terms of the sacredness of animate life, which the author of al-Istiqsa' (n: `Uthman ibn `Isa Marani) says is the reason that it is wrong for someone to prevent living things from drinking surplus water (dis: p69), while it is not a sin to neglect watering crops.)

m13.0 CHILD CARE AND CUSTODY

(O: The meaning of child care in Sacred Law is the protection of someone who does not possess discernment and cannot manage for himself, whether a child or a mentally ill adult, by seeing to his interests through such things as bathing him, washing his clothes, or grooming him; or securing an infant in the cradle, turning him over to sleep, and protecting him from death or harm. It entails a kind of authority and control and may be possessed by either men or women, though women have a better right to it, since they are tenderer towards children, more patient in carrying out the demands of the task, more discerning in raising children, and more steadfast in staying with them. The following discussion first centers on who best deserves the custody of a child, in order of precedence, and then treats the

characteristics of the guardian and ward.)

**m13.1** The person with best right to custody of a child (A: in order) (O: when there is a dispute concerning who should have it) is:

- (1) the mother;
- (2) the mother's mother, mother's mother's mother, and on up, such that the one of the generation closest to the child takes precedence;
- (3) the father;
- (4) the father's mother, father's mother's mother, and on up, where again, the one of the generation closest to the child takes precedence;
- (5) the father's father;
- (6) the father's father's mother, her mother, and on up, where the one of the generation that is closest takes precedence;
- (7) full sister;
- (8) full brother (O: though when the siblings are all male or all female and there is a disagreement over who should have custody, they draw lots to see who will get it. When both males and females exist, females take precedence);
- (9) the child's half brothers or sisters from the same father;
- (10) the half brothers or sisters from the same mother;
- (11) the mother's sister;
- (12) the daughters of the full brothers;
- (13) the sons of the full brothers;
- (14) the daughters of the half brothers from the same father;
- (15) the sons of the half brothers from the same father;
- (16) the daughters of the half brothers from the same mother;
- (17) the sons of the half brothers from the same mother;
- (18) the father's sister;
- (19) the father's brother;
- (20) the daughters of the mother's sister;
- (21) the daughters of the father's brother;
- (22) and then the son of the father's brother.

**m13.2** The necessary conditions for a person to have custody of a child are:

- (a) uprightness (def: o24.4) (O: a corrupt person may not be a guardian, because child care is a position of authority, and the corrupt are unqualified for it. Mawardi and Ruyani hold that outward uprightness (def: m3.3(f)) is sufficient unless there is open wrongdoing. If the corruptness of a child's mother consists of her not performing the prayer (salat), she has no right to custody of the child, who might grow up to be like her, ending up in the same vile condition of not praying, for keeping another's company has its effects);
- (b) sanity (O: since a mother uninterruptedly insane has no right to custody, though if her insanity is slight, such as a single day per year, her right to custody is not vitiated by it);
- (c) and if the child is Muslim, it is a necessary condition that the person with custody be a Muslim (O: because it is a position of authority, and a non-Muslim has no right to authority and hence no right to raise a Muslim. If a non-Muslim were given charge of the custody and upbringing of the child, the child might acquire the character traits of unbelief (kufr)).

**m13.3** (A: It is offensive to send one's children to a day-care center run by non-Muslims. It is unlawful to send Muslim children to Christian schools, or those which are designedly atheist, though it is not unlawful to send them to public schools in which religion is not mentioned (N: in a way that threatens the students' belief is Islam).

**m13.4** A woman has no right to custody (A: of her child from a previous marriage) when she remarries (O: because married life will occupy her with fulfilling the rights of her husband and prevent her from tending the child. It makes no difference in such cases if the (A: new) husband agrees or not (N: since the child's custody in such a case automatically devolves to the next most eligible on the list (dis: m13.1)), unless the person she marries is someone (A: on the list) who is entitled to the child's custody anyway (O: as opposed to someone unrelated to the child, since such a person, even if willing, does not deserve custody because he lacks the tenderness for the child that a relative would have).

**m13.5** When a child reaches the age of discrimination (O: which generally occurs around seven or eight years of age) he is given a choice as to which of his parents he wants to stay with (O: since the Prophet



(Allah bless him and give him peace) gave a young boy the choice between his father and his mother. The child is only given such a choice when the necessary conditions for child custody (def: m13.2) exist in both parents. If one of them lacks a single condition, then the child is not given a choice, because someone lacking one of the conditions is as though nonexistent).

If the child chooses one of the parents, he is given to the care of that one, though if a son chooses his mother, he is left with his father during the day so the father can teach him and train him. (O: Other possible outcomes of such a choice are when the child chooses both parents, in which case they draw lots to see who receives custody of him; or when he chooses neither, in which case the mother takes precedence since the custody is hers, and the child has not chosen someone else.) If the child subsequently chooses the other parent, he is given to the care of them (O: for he might want to stay with one of them at one time and with the other at another, just as one desires food at one time but not another. Or the child's intention might be to maintain good relations with both sides. The author restricts the permissibility of such cases of transferring the child's custody from one to another by saying:) unless it is apparent that the child is merely enamored with going back and forth or is weakminded (O: indicating his lack of discernment. In such cases his choice is not followed, and he remains with whomever he was with before reaching the age of discernment).

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## **BOOK N DIVORCE**

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#### n1.0 WHO MAY EFFECT A DIVORCE

(O: The legal basis for the permissibility of divorce is the Koran, sunna, and consensus of Muslims.

As for the Koran, Allah Most High says,  
"Divorce is two times..." (Koran 2:229).

And as for the sunna, there is the rigorously authenticated (sahih) hadith.

"No permissible thing is more detested by Allah than divorce."

Our sheikh, Bajuri, says the meaning of permissible in the hadith is offensive, since it is permissible, meaning lawful, though detested by Allah.

Its integrals are five:

- (a) the spoken form;
- (b) the wife;
- (c) the authority to effect it;
- (d) the intention;
- (e) and the person who effects it (A: i.e. the husband.)

n1.1 Divorce is valid from any:

- (a) husband;
- (b) who is sane;
- (c) has reached puberty;
- (d) and who voluntarily effects it.

A divorce is not valid from:

- (1) (non-(c) above) a child;
- (2) (non-(b)) someone insane;
- (3) or (non-(d)) someone who is wrongfully coerced to do it, as when one is threatened with death, dismemberment, being severely beaten, or even mere verbal abuse or a slight beating if the person being coerced is someone whose public image is important and would thereby suffer. (O: Someone being forced should use words that give a misleading impression (def: r10.2) for his ostensible "divorce.")

n1.2 A statement of divorce is legally effective when pronounced by a person whose mental faculties are lacking because of something inexcusable such as having become intoxicated or having needlessly taken some mind-altering drug (O: though someone who takes such a drug out of need for medical treatment is considered as an insane person, in that this statement of divorce is not legally effective).

n1.3 The person conducting the divorce may effect it himself or commission another (def: k17.5-6) to do so, even if the person commissioned is a woman.

The person commissioned may effect the divorce at any time (O: provided the one who commissions him does not cancel the commission before the divorce takes place (def: k17.16)), though when a husband tells his wife, "Divorce yourself," then if she immediately says, "I divorce myself," she is divorced, but if she delays, she is not divorced unless the husband has said, "Divorce yourself whenever you wish."

## n2.0 GENERAL PROVISIONS CONCERNING DIVORCE

n2.1 A free man has three pronouncements of divorce (O: because of the word of Allah Most High, "Divorce is two times, then retain with kindness or graciously release" (Koran 2:229),

and when the Prophet (Allah bless him and give him peace) was asked about the third time, he said, "It is Allah's having said, or graciously release").

n2.2 It is offensive to make a pronouncement of divorce when there is no need (O: need including when the wife has displeasing qualities of morals), to make three pronouncements (N: even if separate being more offensive, and combining them in one interval of purity between menstruations even more offensive).

n2.3 There are various categories of divorce: sunna, unlawful innovation, and that which is neither sunna nor unlawful innovation.

The sunna is to make a pronouncement of divorce in an interval between menstruations in which no sexual intercourse with the wife has taken place.

Unlawful innovation consists of either making a pronouncement of divorce during the woman's menstrual period when this is not for payment (O: from the wife in exchange for the husband's releasing her from marriage (def: n5), though if the divorce is in exchange for a sum paid by the wife, it is not

unlawful innovation because it implies that she accepts that the waiting period should be thus prolonged (dis: n9.7))-or else making the pronouncement during an interval between menstruations in which they have had sexual intercourse. If one effects such a divorce, it is recommended to take the wife back (O: if one did not pronounce it the full number of (n: three) times).

Neither sunna nor unlawful innovation means the divorce of a wife who is prepubescent, postmenopausal, pregnant, or one with whom one has not yet had sexual intercourse.

### n3.0 THE WORDS THAT EFFECT A DIVORCE

n3.1 The words that effect a divorce may be plain or allusive. Plain words effect the divorce whether one intends divorce by them or not, while allusive words do not effect it unless one intends divorce by them.

n3.2 Using plain words to effect a divorce means expressly pronouncing the word divorce (O: or words derived from it). When the husband says' `` I divorce you," or `` You are divorced," the wife is divorced whether he has made the intention or not.

(A: Here and in the rulings below, expressions such as ``The wife is divorced," or ``The divorce is effected," mean just one of the three times (def: n9.0(N:)) necessary to finalize it, unless the husband thereby intends a two-or threefold divorce (dis: n3.5) or repeats the words three times.)

n3.3 Using allusive words to effect a divorce includes:

(1) the husband's saying, ``You are now alone," ``You are free," ``You are separated," ``You are parted," ``You are no longer lawful to me," ``Rejoin your kin," ``You are footloose," and the like;

(2) his saying, ``I am divorced from you";

(3) or when he commissions the wife to pronounce the divorce, and she says, ``You are divorced";

(4) when someone asks. ``Do you have a wife?" and he says ``No".

(5) or when the husband writes words that effect the divorce (O: no matter whether able or unable to speak at the time of writing, or whether he is present or absent, or whether he writes in plain or allusive words).

When one intends divorce by any of the above, the words effect it, but if one does not, they do not.

n3.4 When a husband is asked, ``Have you divorced your wife?" and he says ``Yes," then she is divorced (O: even if he does not intend).

n3.5 If the husband says, ``You are divorced," and thereby intends a two-or threefold pronouncement, then whatever number he intends is effected, this rule holding for all words that effect divorce, whether plain or allusive. (O: The proof that a single pronouncement can validly effect a threefold divorce is the hadith classified as rigorously authenticated (sahih) by Ibn Hibban that the Prophet (Allah bless him and give him peace), when Rukana divorced his wife and then said, ``I did not intend it except as one time," made him swear an oath to that effect, and then returned her to him. If a single pronouncement could not effect a threefold divorce, there would not have been any point in the Prophet's making him swear the oath (Allah bless him and give him peace).)

n3.7 If a husband tells his wife, ``You are divorced in sha' Allah [if Allah wills]," or ``if Allah does not will," or ``unless Allah wills," then the divorce is not effected.

### n4.0 CONDITIONAL EXPRESSIONS THAT EFFECT DIVORCE

n4.1 It is permissible to make the efficacy of a divorce conditional. If the husband makes the divorce conditional on something, and the event occurs, then the wife is divorced. If he says, ``If your monthly period begins, you are divorced," then she is divorced when her menstrual flow appears.

n4.3 If the husband says, ``If you leave the house without my permission, you are divorced," then gives

her permission to go out, and she does but then goes out a second time without permission, she is not divorced.

If he says, "Anytime you go out without my permission you are divorced," then if she leaves at anytime without permission, she is divorced.

n4.5 When a husband makes a divorce conditional on one of his own acts but then does the act not remembering that he made it a condition, or does the act because he is forced to, the wife is not divorced.

n4.6 When the husband makes a divorce conditional on another person's act, such as by saying, "If So-and-so enters the house, you are divorced," and the person enters before or after he knows it is a condition, whether remembering it or not, then if the person named is not someone who would mind if they were divorced (O: meaning it is no problem for him if it happens, and he would not be saddened if it did, because of lack of friendship for them). then the wife is divorced. But if the person knows it is a condition and enters forgetfully, then if he is someone who would mind if they were divorced, the wife not divorced.

If the husband, tells his wife, "If you enter that house, you are divorced," and she is subsequently divorced," and she is subsequently divorced from him with a finalized divorce, after which he remarries her, and she then enters the house, then she is not divorced.

#### n5.0 A RELEASE FOR PAYMENT FROM THE WIFE (KHUL`)

(O: A release for payment means a separation in return for remuneration given to the husband (A: which is a finalized cancellation of the marriage agreement, differing from a threefold divorce by the fact that they may remarry in such a case without her marrying another husband first (dis: n7.7)).)

n5.1 A release for payment is valid from any person whose divorce is valid (def: n1.1).

n5.2 Release is offensive except when:

(1) the husband or wife fear they will not be able to keep within Allah's limits (O: i.e. those that Allah Most High has made obligatory upon them (dis: m10.1)) while the marriage lasts;

(2) or when the husband swears that a threefold divorce is incumbent upon him if he performs some action, but then finds he needs to do it (O: since he cannot clear himself from the oath without giving her a release), so he releases her, marries her (O: with a new agreement, a new marriage payment (mahr), and upright witnesses), and then does the act on which the divorce was conditional (O: though it is fitter to do it before the new marriage, as the oath is nullified as soon as they are unmarried), for then its performance does not necessitate a threefold divorce.

n5.3 If the husband is foolhardy (A: meaning suspended by the court from dealing in his own money because of chronic carelessness (dis: k13.1(A:))), his granting a release is valid, though his guardian accepts the compensation.

A release for compensation is no: legally valid from a wife who is foolhardy.

n5.4 A release is validly effected by both the words for divorce and the words for release, such as "You are divorced for a thousand," or "I release you for a thousand," and if the wife says "I accept," then she is separated from him and she owes him the thousand. She is also released when the husband says, "If you give me a thousand, you are divorced," and then she gives him it, or when she says, "Divorce me for a thousand," and he says, "You are divorced," in which case she is released and owes him the thousand.

n5.5 Anything that may be used as a marriage payment (def: m8.4) may be used as recompense for a release. If a husband releases his wife for something not determinately known (non-k2.1(e)) or without lawful value (non-k2.3) such as wine, then she is released in exchange for the amount typically received as marriage payment by women like her (def: m8.8).

n5.6 A release enacted by words that effect it is a divorce in plain words (A: in not needing the

intention (dis: n3.2), (N: in having a waiting period (def: n9), and in being a finalized cancellation of the marriage, though as previously mentioned (n5.0(A:)), the partners may remarry each other (N: even if before the end of the waiting period) without the wife first having to marry another).

#### **n6.0 DOUBTS ABOUT THE FACT OF HAVING DIVORCED**

(A: Doubt means that one does not remember exactly what one said or did. As for when one is ignorant of rulings about divorce or the consequences of one's actions, it is not an excuse, and one must ask those who know.)

n6.1 Whoever does not know whether he has divorced his wife or not has not divorced her. It is more godfearing in such a case to take the wife back.

n6.2 If one does not know whether one has divorced one's wife once or whether more than once, then one has divorced her the least number one is certain of.

n6.3 When a husband divorces his wife with a threefold divorce during his deathbed illness (def: L3.6(1-4), she does not inherit (A: a wife' estate division share (def: L6.4)) from the division of his estate (A: though if it is less than a threefold divorce, she inherits).

#### **n7.0 TAKING BACK A DIVORCED WIFE (RAJ`A)**

(O: Lexically, to take back means returning, and in Sacred Law it means the return of a woman who is in her waiting period (def: n9) from an unfinalized, non-threefold divorce to the state of marriage).

n7.1 When a free man pronounces divorce upon his wife once or twice after previously having had sexual intercourse with her, then if the divorce is not (A: a release) for compensation (def:n5), he may take her back at any time before the end of her waiting period (def: n9), whether she wishes to return or not. Or he may finalize the divorce during this period (A: by pronouncing it a third time).

n7.2 If the husband or wife dies (A: during the waiting period (N: of an unfinalized, nonthreefold divorce)), then the spouse inherits his or her obligatory share from the deceased's estate division (dis: L6), though it is not permissible for the husband to have sexual intercourse with, look at, or physically enjoy the wife before he takes her back.

n7.3 When a divorce occurs before the husband has made love to the wife, or afterwards (A: in a release) for compensation from her, then he may not take her back (A: without remarrying her)>

n7.4 Returning the wife to marriage is only valid by explicitly stating it, such as by saying, "I return her," "I take her back," or, "I retain her." (N: The Hanafis consider the husband's touching her with desire, such as kissing her, to be a valid return to marriage.)

n7.5 It is not a necessary condition (O: but is sunna) to have the return attested to by witnesses.

n7.6 When a husband takes a wife back, she returns with whatever number (A: of times of saying "I divorce you") remains to complete a threefold divorce. (A: If, for example, he has said it twice, then she only has one time left.)

n7.7 When a free man has pronounced a threefold divorce, the divorced wife is unlawful for him to remarry until she has married another husband in a valid marriage and the new husband has copulated (dis: p29) with her, which at minimum means that the head of his erect penis fully enters her vagina.

#### **n8.0 FORSWEARING ONE'S WIFE MORE THAN FOUR MONTHS**

(O: In Sacred Law, forswearing means that the husband swears he will not have sexual intercourse with his wife, either for an unrestricted period or for more than four months.)

n8.1 Forswearing one's wife is unlawful. It consists in the husband swearing an oath by Allah (def: o18) that for more than four months (O: more than four months including oaths in which no time period is stipulated) he will not have sexual intercourse with his wife, or swears that if he does, then he is obliged to divorce her, fast, pray, or something else.

**n8.3 A husband is not considered to have forsworn his wife (A: in the above unlawful sense) when he forswears sexual intercourse for four months or less, or when he is impotent.**

#### **n9.0 A WOMAN'S POSTMARITAL WAITING PERIOD ( IDDA)**

**(O: Meaning the period in which a woman waits (N: before she may remarry) to verify that she is not pregnant, or out of mourning for her deceased husband.)**

**(N: If the waiting period finishes after a once-or twice-pronounced divorce, the wife is free to marry another man or to remarry the husband with a new contract-returning to the latter with the number of times left (one or two) needed to enact a threefold, finalized divorce (dis: n7.7); while if the waiting period of a less-than-thrice-pronounced divorce has not yet expired, the husband may take her back (def: n7) without a new contract.)**

**(n: The husband's obligation to support her during the waiting period is discussed at m11.10 above.)**

**n9.1 There is no waiting period for a woman divorced before having had sexual intercourse with her husband.**

**n9.2 A waiting period is obligatory for a woman divorced after intercourse, whether the husband and wife are prepubescent, have reached puberty, or one has and the other has not.**

**Intercourse means copulation (def: n7.7). If the husband was alone with her but did not copulate with her, and then divorced her, there is no waiting period.**

**n9.3 When a waiting period is obligatory (O: upon a woman, cause of divorce or annulment of marriage), then if she is pregnant, the waiting period ends when she gives birth, provided tow conditions are met:**

**(a) The first is that she has given birth to all she was carrying, If carrying two or more children, it is necessary that she have given birth to all, whether live or stillborn, and whether fully developed or an undeveloped fetus which midwives (O: two or more) swear is the beginning of a human form. Whenever there is less than six months between two births, the babies are considered twins. There is no maximal number that may be born, as it is possible for a woman to give birth to four or more babies from one pregnancy.**

**(b) The second condition is that the child is from the husband whom the waiting period is for. If the woman is pregnant from committing adultery (def: n11.2(O:)) (O: or from a marriage which was invalid, after which the husband divorced her), the waiting period does not end when she gives birth, but rather (N: after giving birth), she completes the waiting period of a woman who has been divorced (def: n9.6).**

**n9.5 The minimal duration of a pregnancy (A: from which a live child is born ) is six months, while the maximum is four years).**

**n9.6 If a woman is not pregnant and has menstrual periods, her waiting period ends when three intervals between menstruations have finished. A part of an interval between menstruations is considered the same as a whole interval. Thus, if the woman's husband divorced her and her menses began an instant later, her waiting period would end after two more intervals between menstruations had finished and a third menstruation begun.**

**n9.7 If a woman is divorced during her menstrual period, she must wait until the end of three intervals between menstruations. When her fourth menstruation begins, her waiting period is over.**

**n9.8 There is no difference in respect to the above rulings (n9.6-7) whether a woman's menstrual periods are close together or far apart, close together, for example, meaning a woman whose period lasts a single day and night, and who has fifteen days between periods. Were such a woman divorced just before the end of an interval between menses (A: by a single moment), then her waiting period would finish in thirty-two days and two moments (O: one of which would be part of the waiting period, i.e. the one in which the divorce occurred, and the second of which would not be part of it, namely, that in which it became evident that the waiting period was over by the onset of a subsequent menstruation). If such a woman were divorced at the end of a menstrual period, her waiting period would be forty-**

seven days plus a moment. These are the shortest possible waiting periods.

An example of a woman whose periods are far apart is one whose menstruation lasts fifteen days, and whose intervals between menses last, for example, a year or more. Such a woman must wait for three intervals between menstruations, even if it takes years (N: though medicine may be taken to induce or regulate menstruations).

n9.9 The waiting period for a woman who does not menstruate, whether prepubescent or postmenopausal, is three months.

If a woman normally menstruates, but her periods have stopped for some reason such as breastfeeding or the like, or without apparent reason, then she must wait until the age of menopause, after which her waiting period is three months. (N: In the Maliki school, such a woman must wait nine months, and if neither pregnancy nor menses appear, she is considered to be as if menopausal, and her waiting period is three more months, making a total of one entire year in which there is no menstrual flow.)

n9.10 All of the above rulings apply to the waiting period for divorce (N: or release (def: n5)).

#### THE WAITING PERIOD FOR A DECEASED HUSBAND

n9.11 If a woman's husband dies, even if during the waiting period of a nonfinalized divorce, then if she is pregnant, her waiting period ends when she gives birth, as previously mentioned (n9.3). But if not (O: i.e. if the deceased's wife is not pregnant from him), her waiting period is four months and ten days, no matter whether she normally menstruates or not (N: and no matter whether the husband has had sexual intercourse with her or not).

#### THE LODGINGS OF A WOMEN IN HER WAITING PERIOD

n9.13 A woman in her waiting period is obliged to remain in the home (O: and neither the husband nor his family may force her out; nor may she leave. If the husband agrees to allow her to leave when there is no necessity, it is still not permissible).

A woman in the waiting period of an unfinalized, less than threefold divorce is under the husband's authority and may not leave without his permission. If in the waiting period of a finalized divorce (N: or release (def: n5)) (O: or annulment,) or after her husband's death, a woman may leave home during the day to fulfill her needs (N: including work, if she has no means of support) and obligations.

n9.14 The waiting period must take place in the same lodgings where the divorce occurred, and the woman may not be moved to other quarters unless there is a real necessity, such as fear (O: for her person or property), or when the landlord objects (O: such as when the house in question was on loan to the husband and its time has expires), or because of considerable annoyance to the woman from neighbors or the husband's relatives, or annoyance to them from her-in all of which cases she may move to the nearest available housing.

n9.15 It is unlawful for the husband of a woman in her waiting period to be alone with her or share the same housing (N: i.e. he must move out) unless she is in a (O: separate) wing of the house (O: with its own kitchen, restroom, cistern, and stairs to the roof, in which case it is permissible to share the housing, which is as if it were two neighboring houses).

#### AVOIDING ADORNMENT AFTER A HUSBAND'S DEATH OR A FINALIZED DIVORCE

n9.16 It is obligatory for a woman whose husband had dies (N: while she was his wife, or died while she was in the waiting period of an unfinalized divorce form him) to avoid adornment during the subsequent waiting period. It is recommended for a woman to do so during the waiting period of a finalized divorce. It is unlawful for a woman to avoid adornment longer than three days for the death of anyone besides her husband. Avoiding adornment means not to enhance her beauty, wear jewelry or cosmetics, and so forth. A woman avoiding adornment should not wear solid colors (N: if intended to beautify) such as blues, greens, reds, or yellows; or style her hair or use cosmetics for body, clothes, or food (A: such as saffron in rice). She may wear silk, wash her hair (N: or comb it, or bathe) for cleanliness, or pare her nails during this period.



## THE END OF THE WAITING PERIOD

n9.17 If the husband of a woman in her waiting period takes her back but divorces her again before having had sexual intercourse with her, then a new waiting period starts over from the beginning (N: though it is unlawful for him to do this merely to prolong her waiting period).

If a husband releases his wife for payment (def: n5), remarries her during the release's waiting period, but divorces her before having had sexual intercourse, then she merely finishes the remainder of the release's waiting period.

n9.18 When a woman claims that her waiting period has expired (O: if it does not comprise a particular number of months, but rather consists of a number of intervals between menstruations, or of giving birth) within an amount of time in which it could have possibly ended, then her word is accepted (dis: k8.2).

n9.19 If news of a husband's death reaches a woman after his death by four months and ten days, her waiting period is already over (O: since her knowledge of his death is not a condition for the waiting period).

## n10.0 ESTABLISHING PATERNITY

n10.2 The husband of a woman who bears a child (O: no matter whether his marriage to her is valid or invalid) is considered to be the child's father whenever it is (N: legally) possible that the child could be his, meaning that:

- (a) the woman gave birth to the child six months plus a moment after the marriage agreement;
- (b) she gave birth to it less than four years from when she and her husband could last have possibly met and had sexual intercourse, even if they were living at a distance from one another, and even if the husband does not know whether he had sexual intercourse with her. (A: These conditions are for the child's protection against being disowned, and only concern what can be established in court. Hence, if the husband and wife were living apart at a distance at which they could possibly have travelled and met, for the child's sake the court presumes the child to be the husband's)
- (c) and the husband is at least nine and a half years old.

n10.3 The husband is not legally considered the child's father when the child could not possibly be his, such as when:

- (1) (non-(a) and (b) above) the wife gave birth to the child in less than six months or more than four years since intercourse;
- (2) (non-(b)) the husband is absolutely certain he did not have sexual intercourse with her;
- (3) (non-(c)) the husband is under the above-mentioned age;
- (4) or the husband's genitals have been dismembered.

n10.4 Whenever a husband is absolutely certain that a child which is legally considered his (def: n10.2) is not his, by knowing that he never had intercourse with the wife at all (O: or did, but less than six months or more than four years before the birth), then he is obliged to deny paternity by public imprecation (i'an, def: n11.3) (O: immediately, because denying paternity of a child immediately is like the return of defective merchandise (dis: k5.7)). He does so by going to the Islamic judge and saying, "This child is not mine." If he delays, his denial is no longer valid. As for the public imprecation itself, he may perform it at any time thereafter. If he claims that he was ignorant of the necessity of denying paternity, or the obligatory character of its immediacy, and he is someone who might well be ignorant of it, then his claim (A: of ignorance) is accepted when he swears an oath to that effect. Denial of paternity likewise entails charging the wife with adultery, and this too is obligatory immediately).

n10.5 If a husband is not absolutely sure that the child is from someone else, it is unlawful for him to deny paternity (O: as mere doubts that have arisen in his mind are of no consequence) and unlawful to charge his wife with adultery. (O: It is also unlawful for him to publicly imprecate (def: n11.3) against her in such a case, even when he knows she has committed adultery, because the child would suffer harm through his mother being charged with adultery and its being established against her by public imprecation, the child being disgraced by this and gossip circulated about him. The child need not endure this harm merely to satisfy the husband's revenge, who may separate from her by divorce).

n10.6 When a child is legally considered (def: n10.2) to be from a husband who is entitled to deny

paternity but delays doing so without excuse and subsequently wants to deny it by public imprecation, we (O: i.e. the judge) do not allow him to do so (O: because denial of paternity must take place immediately, as mentioned above (n10.4), and his delay obviates the possibility of denial). But if the husband intends to deny paternity immediately, we implement his intention.

#### **n11.0 CHARGING ONE'S WIFE WITH ADULTERY**

**n11.1** Anyone who charges his wife with adultery (O: in plain words, as when he says, "you adulteress," or allusively, as when he says, "I did not find you a virgin,") and who is thereby liable to be punished for accusing another of adultery without witnesses (dis: o13.1), may prevent the punishment by public imprecation against her (li`an, def: n11.2), provided he:

- (a) has reached puberty;
- (b) is sane;
- (c) does so voluntarily; and provided his wife:
- (d) is legally innocent of adultery (A: meaning there is neither a confession from her nor four eyewitnesses (dis: n11.2(O:)));
- (e) and that she is capable of sexual intercourse.

**n11.2** A husband who accuses his wife of adultery is disciplined (ta`zir, def:o17) by the magistrate and not allowed to imprecate against her when her adultery is already legally established (O: whether by her own admission, or by proof, meaning that four upright witnesses (o24.4) have looked at her when she was copulating and seen the adulterer's penis in her vagina), or when (N: adultery is impossible, such as when) the person accused is a mere infant.

#### **PUBLIC IMPRECACTION (LI`AN)**

**n11.3** Public imprecation consists of the Islamic magistrate (O: or his equivalent) telling the husband to repeat four times, "I testify by Allah that I am truthful in charging her with adultery" (O: and it is necessary to identify her by her first and family name, though if she is present he says, "this wife of mine," and points to her); and if there is a child, "and that this child [O: or if absent, "the child she gave birth to from adultery"] is not from me." The fifth time, after the magistrate warns him, enjoins him to fear Allah (O: reminding him that the punishment of the hereafter is worse than punishment in the present life), and after he has put his hand in from of the husband's mouth, the husband adds, "And may the curse of Allah be upon me if I am lying."

**n11.4** When the husband has done this, he is no longer liable to be punished for accusing another of adultery without witnesses, he has denied paternity of the child, and his wife is divorced from him and unlawful for him to marry, be alone with, or look at, forever. She is now liable to be punished for adultery.

**n11.5** The wife in such a case may avoid being punished for adultery by public imprecation against the husband. Upon being ordered by the magistrate, she says four times, "I testify by Allah that he is lying about what he has charged me with." The fifth time, after being warned by the magistrate of the severity of the consequences, as described above, she says, "And may the wrath of Allah be upon me if he is telling the truth." When she has done this, she is no longer liable to be punished for adultery.

**n11.6** (O: Public imprecation is legally valid in a non-Arabic language even when the speaker knows Arabic, because the imprecation is a kind of oath or attestation, either of which may be given in any language.)

#### **n12.10 BECOMING UNMARRIAGEABLE KIN BY SUCKLING (RIDA`)**

**n12.1** An infant becomes the "child" of the female who breast-feeds him (A: in respect to being unable to marry her, to the permissibility of looking at her and being alone with her, and in his ablution (wudu) not being nullified by touching her) when:

- (a) the milk comes from a female at least nine years old, whether it is occasioned by sexual intercourse or something else;
- (b) and she breast-feeds a child who is less than two full years old;

(c) in at least five separate breast-feedings (O: a restriction that excludes anything less than five, which is of no consequence. Separate breast-feedings means whatever is commonly acknowledged (def: f4.5) to be separate).

n12.2 In such a case:

(1) it is unlawful for the wet nurse to marry the child and its subsequent descendants (O: by familial relation or by suckling) exclusively (O: exclusively meaning that only the child's descendants become unlawful for her to marry, not the child's ancestors (N: or brothers));

(2) she becomes the child's "mother," and it is unlawful for the child to marry her, her ancestors (O: by familial relation or by suckling), her descendants (O: who become as if they were the child's brothers and sisters), or her brothers and sisters (O: though the child is not forbidden to marry the latter's children).

n12.3 If the wet nurse's milk was occasioned by a pregnancy from her husband, then:

(1) the child she nurses becomes the husband's "child," and the husband may not marry the child or its descendants (O: by familial relation or by suckling, since they are now as if his grandchildren) exclusively;

(2) and the husband becomes the child's "father," and it is unlawful for the child to marry him, his ancestors, his descendants, or his brothers and sisters.

n12.4 Upon becoming unmarriageable kin through suckling, marriage between the above-mentioned persons is prohibited, and it is permissible for the respective members of the opposite sex to look at each other as they do with their familial unmarriageable relatives (dis: m2.5), and to be alone with them (O: though other kinds of rulings applicable to natural relatives, such as inheritance (def: L4-6) or having to support them (m12) are not applicable to unmarriageable kin by suckling).

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**o1.0 WHO IS SUBJECT TO RETALIATION FOR INJURIOUS CRIMES**

(O: Injurious crimes includes not only those committed with injurious weapons, but those inflicted otherwise as well, such as with sorcery (def: x136). Killing without right is, after unbelief, one of the very worst enormities, as Shafi`i explicitly states in (n: Muzani's) The Epitome. The Prophet (Allah bless him and give him peace) said:

``The blood of a Muslim man who testifies that there is no god but Allah and that I am the Messenger of Allah is not lawful to shed unless he be one of three: a married adulterer, someone killed in retaliation for killing another, or some-one who abandons his religion and the Muslim community," and in another hadith,

``The killing of a believer is more heinous in Allah's sight that doing away with all of this world." Allah Most High says:

``... and not to slay the soul that Allah has forbidden, except with right" (Koran 6:151), and, ``O you who believe, retaliation is prescribed for you regarding the slain..." (Koran 2:178.)

**o1.1 Retaliation is obligatory (A: if the person entitled wishes to take it (dis: o3.8)) against anyone who kills a human being purely intentionally and without right. (O: Intentionally is a first restriction and excludes killing someone through an honest mistake, while purely excludes a mistake made in a deliberate injury (def: o2.3), and without right excludes cases of justifiable homicide such as lawful retaliation.)**

**o1.2 The following are not subject to retaliation:**  
**(1) a child or insane person, under any circumstances (O: whether Muslim or non-Muslim.**  
The ruling for a person intermitently insane is that he is considered as a sane person when in his right

mind, and as if someone continuously insane when in an interval of insanity. If someone against whom retaliation is obligatory subsequently becomes insane, the full penalty is nevertheless exacted. A homicide committed by someone who is drunk is (A: considered the same as that of a sane person,) like his pronouncing divorce (dis: n1.2));  
(2) a Muslim for killing a non-Muslim;  
(3) a Jewish or Christian subject of the Islamic state for killing an apostate from Islam (O: because a subject of the state is under its protection, while killing an apostate from Islam is without consequences);  
(4) a father or mother (or their fathers or mothers) for killing their offspring, or offspring's offspring;  
(5) nor is retaliation permissible to a descendant for (A: his ancestor's) killing someone whose death would otherwise entitle the descendant to retaliate, such as when his father kills his mother.

## o2.0 INTENTIONALITY IN INJURIOUS CRIMES

o2.1 Injurious crimes (O: of all types, whether killing or something less) are of three types:

- (1) an honest mistake;
- (2) a mistake made in a deliberate injury;
- (3) or purely intentional.

o2.2 An honest mistake is an act such as shooting an arrow at a wall and hitting a person (O: or shooting at a person and hitting someone else), or slipping from a height and falling on someone. The criterion for it is that the act is intended but not the person, or neither the act nor the person is intended.

o2.3 A mistake made in a deliberate injury is when one intends an injury that is not generally fatal, such as hitting someone with a light stick in a nonvital spot (A: from which the person dies) and the like.

o2.4 Purely intentional means to intend an injury of the type that is generally fatal, whether with a blunt instrument or a sharp one.

## o3.0 RETALIATION FOR BODILY INJURY OR DEATH (QISAS)

o3.1 Retaliation is obligatory (A: if those entitled wish to take it (dis: o3.8)) when there is a (N: purely) intentional injury (def: o2.4) against life or limb.

o3.2 Retaliation is obligatory in return for injuries (A: part for commensurate part) whenever the retaliatory injury can be (O: fully) inflicted without exceeding the extent of the original injury, such as (A: when the retaliatory injury is on) an eye, eyelid, the soft part of the nose, the ear, tooth, lip, hand, foot, finger, fingertip, penis, testicles, vulva, and the like; provided that the retaliatory injury is like the original, meaning that a right member is not taken for a left, an upper one for a lower, nor a functional member for a paralyzed one. (N: Nor is there retaliation for nonfatal bullet wounds in the stomach or chest, for example, because such injuries cannot be reproduced without risk of greater damage than the original, for which reason they call for an indemnity (dis: o4.15) alone.) There is no retaliation for (O: breaking) a bone (A: though payment is due to cover the cost of treatment and so forth).

o3.3 Females are entitled to retaliate against males, children against adults, and lower class people against upper class; whether the retaliation is a life for a life, or limb for a limb.

o3.4 It is not permissible to exact retaliation against someone without the presence of the caliph (def:

o25) or his representative (O: meaning that it is necessary to have the permission of one of them because of the danger and lack of knowledge involved in exacting retaliation oneself, as it requires the judgement and personal reasoning of a ruler. If someone takes retaliation without the caliph's permission, then it is valid (A: i.e. suffices the demand for it) but the person who took it is disciplined (def: o17) for arrogating the caliph's prerogative, since administering retaliation is one of his functions, and to encroach upon it is wrong). If a person who is entitled to retaliate is able to do so proficiently (O: being a strong man who knows how to do it), he is allowed to. If not, he is ordered (N: by the rules or his representative) to have another do it.

o3.5 If two (O: or more) people are entitled to exact retaliation against the offender, it is not permissible for just one of them to insist on doing so (O: though if they choose one of themselves to exact it, this is permissible, and the one chosen is considered as the other's commissioned agent. The two may not take retaliation together, as this amounts to torturing the person being retaliated against). If each insists that he be the one, they draw lots to see who will do it.



o3.6 There is no retaliation against a pregnant woman until she has given birth and the infant is able to suffice with another's milk.

o3.8 Whenever someone who is entitled to exact retaliation decides instead to forgive the offender and take an indemnity (def: o4) from him, then retaliation is no longer called for, and the deserving person is entitled to the indemnity. If some of a group of people who are entitled to retaliation agree to forgo it, as when a murder victim has children and one of them forgives the murderer, then retaliation is no longer obligatory, and the group deserves an indemnity from the offender. (A: Or the indemnity may also be waived.)

o3.9 When someone kills a group of people or maims them one after another, retaliation is exacted for the first individual attacked, and the other deserving parties receive an indemnity. If the offender injures them all at one, then those entitled to retaliate against him draw lots to determine who will do so.

o3.10 When a group of people together murder a single person, they are all killed in retaliation, no matter whether the amount of injury inflicted by each upon the victim is the same or whether it differs.

o3.12 There is no retaliation against anyone for an injury or death caused by someone who did so intentionally but in conjunction with someone who did so by mistake. When an injurious crime is caused by a nonfamily member in cooperation with the victim's father, retaliation is only taken against the nonfamily member (dis: o1.2(4)).

o3.13 Retaliation is also obligatory (dis: o3.8) for every wound that cuts to the bone, such as a cut on the head or face that reaches the skull, or a cut to the bone in the upper arm lower leg, or thigh. To the bone means that it is known that a knife or a needle, for example, has reached the bone, not that the wound actually exposes the bone to view.

#### o4.0 INDEMNITY (DIYA)

(A: The rulings below concern the maximum that the victim or victim's family may demand. If both sides agree on an indemnity of lesser amount, or nothing at all, this is legally valid and binding.)

o4.1 An indemnity is obligatory (N: though it may be waived by deserving recipients, like retaliation) in cases of death caused:

(1) by an honest mistake (def: o2.2)'

(2) by a mistake made in a deliberate injury (o2.3);

(3) or intentionally, if those entitled to retaliate agree to forgo retaliation (dis: o3.8).

o4.2 The indemnity for killing a male Muslim is 100 camels.

(N: Shafi'i scholars early converted the pastoral equivalents to gold dinars (n: one dinar equalling 4.235 grams of gold (dis: w15)), the amount due in the rulings below being the weight of the gold, regardless of its current market value.) (A: The stronger position in the Shafi's school is that indemnities should be reckoned in camels, after which both parties may agree on a lesser amount or another form of payment.)

#### THE INDEMNITY FOR A PURELY INTENTIONAL KILLING

o4.3 The indemnity for cases of purely intentional homicide (def: o2.4) is made severe in three ways:

(a) it must be paid immediately;

(b) it is due from the offender himself;

(c) and the amount paid is (N: 1.333.3 gold dinars (n: 5,646.6 grams of gold) or else:) 30 she-camels in their fourth year, 30 she-camels in their fifth year, and 40 pregnant she-camels.

#### THE INDEMNITY FOR DEATH BY MISTAKE IN A DELIBERATE INJURY

o4.4 When the killing is a mistake made in a deliberate injury (def:o2.3), the indemnity is only made severe in one respect, namely that the payment consists of the three types of camel mentioned above (n: or 5,646.6 grams of gold), while it is less severe in that:

(a) payment is deferred (def: o4.11);

(b) and is due (N: not from the offender, but) from those of the offender's extended family who are required to pay (aqila, def: o4.10).

## THE INDEMNITY FOR A DEATH CAUSED BY AN HONEST MISTAKE

o4.5 When the killing occurred through an honest mistake (def: o2.2), the indemnity is less severe in three ways:

- (a) payment is deferred;
- (b) it is due from those of the offender's extended family who are required to pay (def: o4.10);
- (c) and the amount paid is (N: 1,000 gold dinars (n: 4,235.0 grams of gold) or: 20 she-camels in their second year, 20 she-camels and 20 he-camels in their third year, 20, she-camels in their fourth year, and 20 she-camels in their fifth year.

o4.6 But no matter whether the killing was a mistake or intentional, the three-types-of-camel-indemnity (def: o4.3(c)) must be paid if the person killed was:

- (1) an unmarried kin by birth relative of the killer (def: m6.1(1-8) and m6.2(1-6));
- (2) slain in the Sacred Precinct in Mecca;
- (3) or killed during one of the sacrosanct months of Dhul Qa`da, Dhul Hijja, Muharram, or Rajab.

o4.7 Defective animals may not constitute payment.

o4.8 It is permissible for deserving recipients to accept payment other than camels if both parties agree.

o4.9 (A: For the rulings below, one multiplies the fraction named by the indemnity appropriate to the death or injury's type of intentionality and other relevant circumstances that determine the amount of a male Muslim's indemnity (def: o4.2-6 and o4.13).)

The indemnity for the death or injury of a woman is one-half the indemnity paid for a man.

The indemnity paid for a Jew or Christian is one-third of the indemnity paid for a Muslim. The indemnity paid of a Zoroastrian is one-fifteenth of that a Muslim. When a miscarriage results from someone having struck the stomach of a pregnant woman (O: or other part of her, or when someone frightens her, resulting in a miscarriage), the indemnity for the fetus is a male or female slave worth one-twentieth of the indemnity payable for killing the fetus's father, or one-tenth that of its mother.

(A: The indemnity is whatever they agree upon.)

o4.10 The members of the offender's extended family who are liable for certain kinds of indemnities consist of the offender's universal heirs, excluding his father, father's father (O: and on up), his son, son's son (O: and on down). (A: Meaning that they consist of those mentioned at L10.6(7-14).) Those of the extended family who are poor (A: poor meaning someone who has enough for himself but no more), prepubescent, or insane are not obliged to pay (N: anything in conjunction with the other members). If the offender is Muslim, then his non-Muslim relatives are not obliged to pay, as is also the case if the offender is non-Muslim and his relatives are Muslim.

o4.11 When the extended family is obliged to, they must pay the entire indemnity of 100 camels (N: or the gold equivalents) within three years. Every required extended family member who is well-off is obliged to pay one-half dinar (n:2.1175 grams of gold) at the end of each year, while every member who is between affluence and poverty is obliged to pay a quarter dinar (n; 1.05875 grams of gold). If any of the indemnity remains to be paid after three years (N: or if the offender has no family to pay it), it is paid by the Muslim common fund (bayt al-mal). If there is none, the offender himself must pay.

o4.12 When the indemnity due is less than a full indemnity (A: full meaning that which is due for a Muslim male (def: o4.2-6)), as when it is for a wound, miscarriage, female, or a Jewish or Christian subject of the Islamic state, then:

- (1) if it consists of one-third or less of a full indemnity, it must be paid within one year;
- (2) if it consists of two-thirds or less of a full indemnity, then one of the thirds must be paid in the first year, and the rest in the second year;
- (3) and if it amounts to more than two-thirds of a full indemnity, then the two-thirds must be paid within two years and the rest in the third year.

## THE INDEMNITY FOR BODILY INJURIES

o4.13 If a nonpaired body part of aesthetic value and utility (A: a tongue, for example) is dissevered, then a full indemnity is paid, meaning the indemnity due if the member's owner were killed (def: o4.2-6, o4.9). The same is due for each pair of limbs: if both are cut off, a full indemnity is paid, while if only one

is cut off, then half the full indemnity. The same is true for the faculties of sense (A: such as hearing): for each faculty the injury eliminates, there is a full indemnity. Thus, a full indemnity is paid for cutting off two ears, and a half indemnity for one. This also holds for a pair of eyes, lips, jaws, hands, feet, buttocks, testicles, eyelids, the nipples of a female, vulval labia, the soft part of the nose, the tongue, head of the penis, or whole penis. A full indemnity is also paid for injuries which paralyze these members, or for injuring the peritoneal wall between vagina and rectum so they become one aperture, or for flaying a person, breaking his back, or eliminating the use of his mind, hearing, vision, speech, sense of smell, or taste.

o4.14 The indemnity for each finger is ten camels, and five for each tooth (N: or 10 and 5 percent respectively of the equivalent gold values (def: o4.3-5), depending on the relevant circumstances (dis: o4.9(A:))).

o4.15 As for wounds on the body, their indemnity consists of a fraction of the full indemnity proportionate (A: by the calculation of the Islamic magistrate) to the extent of the damage.

o4.16 The indemnity for wounds on the head or face, when not to the bone, is also such a proportionate fraction, though if such wounds are to the bone, as mentioned above (o3.13), the indemnity is five camels (dis: o4.14(N:)). There are other injuries which I prefer to omit for the sake of brevity.

o4.17 There is no indemnity obligatory for killing a non-Muslim at war with Muslims (harbi), someone who has left Islam, someone sentenced to death by stoning (A: for adultery (def: o12)) by virtue of having been convicted in court, or those it is obligatory to kill by military action (N: such as a band of highwaymen).

#### o5.0 THE EXPIATION TO ALLAH FOR TAKING A HUMAN LIFE

o5.1 An expiation is due to Allah Most High from anyone who kills someone unlawful to kill, whether the killing is through a mistake or is intentional, and no matter whether retaliation (def: o3) or an indemnity (o4) is obligatory or not.

o5.2 The expiation consists of freeing a slave (def: k32), or if one cannot, then two consecutive months of fasting. (O: There is no difference in this precedence order whether the killer is legally accountable or not, as when he is a child or insane, in which case the guardian must free a slave on his behalf. (A: Though if a child fasts, it fulfills the expiation.))

o5.4 (O: There is no expiation for killing someone who has left Islam, a highwayman (def: o15). or a convicted married adulterer, even when someone besides the caliph kills him.)

#### o6.0 FIGHTING THOSE WHO REBEL AGAINST THE CALIPH

o6.1 When a group of Muslims rebel against the caliph (khalifa, def: o25) and want to overthrow him, or refuse to fulfill an obligation imposed by Sacred Law such as zakat, and rise in armed insurrection, he sends someone to them and redresses their grievances if possible.

If they obdurately refuse to obey him (O: no matter whether he is just or unjust, as Nawawi mentions in his commentary on Sahih Muslim, citing the consensus of Muslims (ijma`, def: b7) that it is unlawful to revolt against caliphs and fight them, even if they are corrupt), he fights them with (O: military) weaponry that does not cause general destruction, as do fire and mangonel (O: for the aim is to suppress them, not destroy them), and does not pursue those who retreat, or kill the wounded

o6.2 There is no financial responsibility for what they destroy of ours nor what we destroy of theirs in such military action.

o6.3 They are subject to Islamic laws (O: because they have not committed an act that puts them outside of Islam that they should be considered non-Muslims. Nor are they considered morally corrupt, for rebels is not a pejorative term, but rather they merely have a mistaken understanding), and the decisions of their Islamic judge are considered legally effective (O: provided he does not declare the lives of upright Muslims (def: o24.4) to be justly forfeitable) if they are such as would be effective if made by our own judge.

o6.4 If they do not rebel by war, the caliph may not fight them.

#### o7.0 WARDING OFF AGGRESSORS

o7.1 Someone whom a Muslim is trying to kill is entitled to kill the Muslim, though it is not obligatory to. Someone whom a non-Muslim or animal is trying to kill is obliged to defend himself.

o7.2 If an aggressor is trying to take one's money or property, it is permissible to defend it but not obligatory. If the aggressor intends one's womenfolk (O: such as one's wife or son's wife), it is obligatory to defend them.

o7.3 To defend means to use the minimum amount of force required. If one knows that shouting will repel the aggressor, one may not strike him. If a hand is enough, a stick may not be employed. If a stick will do, a sword may not be used. If cutting the other's hand will suffice, one may not kill him. (O: Mawardi states that this precedence order is for crimes that are not indecencies. As for when an aggressor is raping someone whom it is unlawful for him to have sexual intercourse with, it is permissible to kill him forthwith.) Someone who knows (O: i.e. believes) that an aggressor cannot be dissuaded by anything short of killing him may kill him and is not accountable for it.

o7.4 When one has warded off an aggressor, it is unlawful to take further measures against him.

#### o8.0 APOSTASY FROM ISLAM (RIDDA)

(O: Leaving Islam is the ugliest form of unbelief (kufr) and the worst. It may come about through sarcasm, as when someone is told, "Trim your nails, it is sunna," and he replies, "I would not do it even if it were," as opposed to when some circumstance exists which exonerates him of having committed apostasy, such as when his tongue runs away with him, or when he is quoting someone, or says it out of fear.)

o8.1 When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed.

o8.2 In such a case, it is obligatory for the caliph (A: or his representative) to ask him to repent and return to Islam. If he does, it is accepted from him, but if he refuses, he is immediately killed.

o8.3 If he is a freeman, no one besides the caliph or his representative may kill him. If someone else kills him, the killer is disciplined (def: o17) (O: for arrogating the caliph's prerogative and encroaching upon his rights, as this is one of his duties).

o8.4 There is no indemnity for killing an apostate (O: or any expiation, since it is killing someone who deserves to die).

o8.5 If he apostatizes from Islam and returns several times, it (O: i.e. his return to Islam, which occurs when he states the two Testifications of Faith (def: o8.7(12))) is accepted from him, though he is disciplined (o17).

o8.6 (A: If a spouse in a consummated marriage apostatizes from Islam, the couple are separated for a waiting period consisting of three intervals between menstruations. If the spouse returns to Islam before the waiting period ends, the marriage is not annulled but is considered to have continued the whole time (dis: m7.4).)

#### ACTS THAT ENTAIL LEAVING ISLAM

o8.7 (O: Among the things that entail apostasy from Islam (may Allah protect us from them) are:

(1) to prostrate to an idol, whether sarcastically, out of mere contrariness, or in actual conviction, like that of someone who believes the Creator to be something that has originated in time. Like idols in this respect are the sun or moon, and like prostration is bowing to other than Allah, if one intends reverence towards it like the reverence due to Allah;

(2) to intend to commit unbelief, even if in the future. And like this intention is hesitating whether to do so or not: one thereby immediately commits unbelief;

(3) to speak words that imply unbelief such as "Allah is the third of three," or "I am Allah"-unless one's tongue has run away with one, or one is quoting another, or is one of the friends of Allah Most

High (wali, def: w33) in a spiritually intoxicated state of total oblivion (A: friend of Allah or not, someone totally oblivious is as if insane, and is not held legally responsible (dis: k13.1(O:))), for these latter do not entail unbelief;

(4) to revile Allah or His messenger (Allah bless him and give him peace);

(5) to deny the existence of Allah, His beginningless eternity, His endless eternity, or to deny any of His attributes which the consensus of Muslims ascribes to Him (dis: v1);

(6) to be sarcastic about Allah's name, His command, His interdiction, His promise, or His threat;

(7) to deny any verse of the Koran or anything which by scholarly consensus (def: b7) belongs to it, or to add a verse that does belong to it;

(8) to mockingly say, "I don't know what faith is";

(9) to reply to someone who says, "There is no power or strength save through Allah"; "Your saying 'There's no power or strength, etc,' won't save you from hunger";

(10) for a tyrant, after an oppressed person says, "This is through the decree of Allah," to reply, "I act without the decree of Allah";

(11) to say that a Muslim is an unbeliever (kafir) (dis: w47) in words that are uninterpretable as merely meaning he is an ingrate towards Allah for divinely given blessings (n: in Arabic, also "kafir");

(12) when someone asks to be taught the Testification of Faith (Ar. Shahada, the words, "La ilaha ill Allahu Muhammadun rasulu Llah" (There is no god but Allah, Muhammad is the Messenger of Allah)), and a Muslim refuses to teach him it;

(13) to describe a Muslim or someone who wants to become a Muslim in terms of unbelief (kufr);

(14) to deny the obligatory character of something which by the consensus of Muslims (ijma', def: b7) is part of Islam, when it is well known as such, like the prayer (salat) or even one rak'a from one of the five obligatory prayers, if there is no excuse (def: u2.4);

(15) to hold that any of Allah's messengers or prophets are liars, or to deny their being sent;

(n: 'Ala' al-din' Abidin adds the following:

(16) to revile the religion of Islam;

(17) to believe that things in themselves or by their own nature have any causal influence independent of the will of Allah;

(18) to deny the existence of angels or jinn (def: w22), or the heavens;

(19) to be sarcastic about any ruling of the Sacred Law;

(20) or to deny that Allah intended the Prophet's message (Allah bless him and give him peace) to be the religion followed by the entire world (dis: w4.3-4) (al-Hadiyya al-'Ala'iyya (y4), 423-24).)

There are others, for the subject is nearly limitless. May Allah Most High save us and all Muslims from it.)

## o9.0 JIHAD

(O: Jihad means to war against non-Muslims, and is etymologically derived from the word mujahada signifying warfare to establish the religion. And it is the lesser jihad. As for the greater jihad, it is spiritual warfare against the lower self (nafs), which is why the Prophet (Allah bless him and give him peace) said as he was returning from jihad.

"We have returned from the lesser jihad to the greater jihad."

The scriptural basis for jihad, prior to scholarly consensus (def: b7) is such Koranic verses as:

(1) "Fighting is prescribed for you" (Koran 2:216);

(2) "Slay them wherever you find them" (Koran 4:89);

(3) "Fight the idolators utterly" (Koran 9:36);

and such hadiths as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said:

"I have been commanded to fight people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, and perform the prayer, and pay zakat. If they say it, they have saved their blood and possessions from me, except for the rights of Islam over them. And their final reckoning is with Allah";

and the hadith reported by Muslim,

"To go forth in the morning or evening to fight in the path of Allah is better than the whole world and everything in it." Details concerning jihad are found in the accounts of the military expeditions of the Prophet (Allah bless him and give him peace), including his own martial forays and those on which he dispatched others. The former consist of the ones he personally attended, some twenty-seven (others say twenty-nine) of them. He fought in eight of them, and killed only one person with his noble hand, Ubayy ibn Khalaf, at the battle of Uhud. On the latter expeditions he sent others to fight, himself remaining at Medina, and these were forty-seven in number.)

## THE OBLIGATORY CHARACTER OF JIHAD

**o9.1 Jihad is a communal obligation (def: c3.2). When enough people perform it to successfully accomplish it, it is no longer obligatory upon others (O: the evidence for which is the Prophet's saying (Allah bless him and give him peace),**

**"He who provides the equipment for a soldier in jihad has himself performed jihad," and Allah Most High having said:**

**"Those of the believers who are unhurt but sit behind are not equal to those who fight in Allah's path with their property and lives. Allah has preferred those who fight with their property and lives a whole degree above those who sit behind. And to each, Allah has promised great good" (Koran 4:95).**

**If none of those concerned perform jihad, and it does not happen at all, then everyone who is aware that it is obligatory is guilty of sin, if there was a possibility of having performed it. In the time of the Prophet (Allah bless him and give him peace) jihad was a communal obligation after his emigration (hijra) to Medina. As for subsequent times, there are two possible states in respect to non-Muslims. The first is when they are in their own countries, in which case jihad (def: o9.8) is a communal obligation, and this is what our author is speaking of when he says, "Jihad is a communal obligation," meaning upon the Muslims each year. The second state is when non-Muslims invade a Muslim country or near to one, in which case jihad is personally obligatory (def: c3.2) upon the inhabitants of that country, who must repel the non-Muslims with whatever they can).**

**o9.2 Jihad is personally obligatory upon all those present in the battle lines (A: and to flee is an enormity (dis: p11)) (O: provided one is able to fight. If unable, because of illness or the death of one's mount when not able to fight on foot, or because one no longer has a weapon, then one may leave. One may also leave if the opposing non-Muslim army is more than twice the size of the Muslim force).**

**o9.3 Jihad is also (O: personally) obligatory for everyone (O: able to perform it, male or female, old or young) when the enemy has surrounded the Muslims (O: on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means. All of which is if conditions permit gathering (A: the above-mentioned) people, provisioning them, and readying them for war. If conditions do not permit this, as when the enemy has overrun the Muslims such that they are unable to provision or prepare themselves for war, then whoever is found by non-Muslim and knows he will be killed if captured is obliged to defend himself in whatever way possible. But if not certain that he will be killed, meaning that he might or might not be, as when he might merely be taken captive, and he knows he will be killed if he does not surrender, then he may either surrender or fight. A woman too has a choice between fighting or surrendering if she is certain that she will not be subjected to an indecent act if captured. If uncertain that she will be safe from such an act, she is obliged to fight, and surrender is not permissible).**

#### **WHO IS OBLIGED TO FIGHT IN JIHAD**

**o9.4 Those called upon (O: to perform jihad when it is a communal obligation are every able bodied man who has reached puberty and is sane.**

**o9.5 The following may not fight in jihad:**

**(1) Someone in debt, unless his creditor gives him leave;**

**(2) or someone with at least one Muslim parent, until they give their permission;**

**unless the Muslims are surrounded by the enemy, in which case it is permissible for them to fight without permission.**

**o9.6 It is offensive to conduct a military expedition against hostile non-Muslims without the caliph's permission (A: though if there is no caliph (def: o25), no permission is required).**

**o9.7 Muslims may not seek help from non-Muslims allies unless the Muslims are considerably outnumbered and the allies are of goodwill towards the Muslims.**

#### **THE OBJECTIVES OF JIHAD**

**o9.8 The caliph (o25) makes war upon Jews, Christians, and Zoroastrians (N: provided he has first invited them to enter Islam in faith and practice, and if they will not, then invited them to enter the social order of Islam by paying the non-Muslim poll tax (jizya, def: o11.4)-which is the significance of their paying it, not the money itself-while remaining in their ancestral religions) (O: and the war continues)**

until they become Muslim or else pay the non-Muslim poll tax (O: in accordance with the word of Allah Most High,

"Fight those who do not believe in Allah and the Last Day and who forbid not what Allah and His messenger have forbidden—who do not practice the religion of truth, being of those who have been given the Book—until they pay the poll tax out of hand and are humbled" (Koran 9.29),

the time and place for which is before the final descent of Jesus (upon whom be peace). After his final coming, nothing but Islam will be accepted from them, for taking the poll tax is only effective until Jesus' descent (upon him and our Prophet be peace), which is the divinely revealed law of Muhammad. The coming of Jesus does not entail a separate divinely revealed law, for he will rule by the law of Muhammad. As for the Prophet's saying (Allah bless him and give him peace),

"I am the last, there will be no prophet after me,"

this does not contradict the final coming of Jesus (upon whom be peace), since he will not rule according to the Evangel, but as a follower of our Prophet (Allah bless him and give him peace)).

o9.9 The caliph fights all other peoples until they become Muslim (O: because they are not a people with a Book, nor honored as such, and are not permitted to settle with paying the poll tax (jizya)) (n: though according to the Hanafi school, peoples of all other religions, even idol worshippers, are permitted to live under the protection of the Islamic state if they either become Muslim or agree to pay the poll tax, the sole exceptions to which are apostates from Islam and idol worshippers who are Arabs, neither of whom has any choice but becoming Muslim (al-Hidaya sharh Bidaya al-mubtadi' (y21), 6.48-49)).

## THE RULES OF WARFARE

o9.10 It is not permissible (A: in jihad) to kill women or children unless they are fighting against the Muslims. Nor is it permissible to kill animals, unless they are being ridden into battle against the Muslims, or if killing them will help defeat the enemy. It is permissible to kill old men (O: old man (shaykh meaning someone more than forty years of age) and monks.

o9.11 It is unlawful to kill a non-Muslim to whom a Muslim has given his guarantee of protection (O: whether the non-Muslim is one or more than one, provided the number is limited, and the Muslim's protecting them does not harm the Muslims, as when they are spies) provided the protecting Muslim has reached puberty, is sane, and does so voluntarily (O: and is not a prisoner of them or a spy).

o9.12 Whoever enters Islam before being captured may not be killed or his property confiscated, or his young children taken captive.

o9.13 When a child or a woman is taken captive, they become slaves by the fact of capture, and the woman's previous marriage is immediately annulled.

o9.14 When an adult male is taken captive, the caliph (def: o25) considers the interests (O: of Islam and the Muslims) and decides between the prisoner's death, slavery, release without paying anything, or ransoming himself in exchange for money or for a Muslim captive held by the enemy.

If the prisoner becomes a Muslim (O: before the caliph chooses any of the four alternatives) then he may not be killed, and one of the other three alternatives is chosen.

o9.15 It is permissible in jihad to cut down the enemy's trees and destroy their dwellings.

## TRUCES

o9.16 (O: As for truces, the author does not mention them. In Sacred Law truce means a peace treaty with those hostile to Islam, involving a cessation of fighting for a specified period, whether for payment or something else. The scriptural basis for them includes such Koranic verses as:

(1) "An acquittal from Allah and His messenger..." (Koran 9:1);

(2) "If they incline towards peace, then incline towards it also" (Koran 8.61);

as well as the truce which the Prophet (Allah bless him and give him peace) made Quraysh in the year of Hdaybiya, as related by Bukhari and Muslim.

Truces are permissible, not obligatory. The only one who may effect a truce is the Muslim ruler of a legion (or his representative) with a segment of the non-Muslims of the region, or the caliph (o25) (or his representative). When made with other than a portion of the non-Muslims, or when made with all of them, or with all in a particular region such as India or Asia Minor, then only the caliph (or his representative) may effect it, for it is a matter of the gravest consequence whether globally or in a given

locality, and our interests must be looked after therein, which is why it is best left to the caliph under any circumstances, or to someone he delegates to see to the interests of the various regions.

There must be some interest served in making a truce other than mere preservation of the status quo.

Allah Most High says,

"So do not be faint-hearted and call for peace, when it is you who are the uppermost" (Koran 47:35).

Interests that justify making a truce are such things as Muslim weakness because of lack of members or materiel, or the hope of an enemy becoming Muslim, for the Prophet (Allah bless him and give him peace) made a truce in the year Mecca was liberated with Safwan ibn Umayya for four months in hope that he would become Muslim, and he entered Islam before its time was up. If the Muslims are weak, a truce may be made for ten years if necessary, for the Prophet (Allah bless him and give him peace) made a truce with Quraysh for that long, as is related by Abu Dawud. It is not permissible to stipulate longer than that, save by means of new truces, each of which does not exceed ten years.

The rulings of such a truce are inferable from those of the non-Muslim poll tax (def: o11); namely, that when a valid truce has been effected, no harm may be done to non-Muslims until it expires.)

## **o10.0 THE SPOILS OF BATTLE**

**o10.1** A free male Muslim who has reached puberty and is sane is entitled to the spoils of battle when he has participated in a battle to the end of it.

After personal booty (def: o10.2), the collective spoils of the battle are divided into five parts. The first fifth is set aside (dis: o10.3), and the remaining four are distributed, one share to each infantryman and three shares to each cavalryman. From these latter four fifths also, a token payment is given at the leader's discretion to women, children, and non-Muslim participants on the Muslim side.

A combatant only takes possession of his share of the spoils at the official division. (A: Or he may choose to waive his right to it.)

**o10.2** As for personal booty, anyone who, despite resistance, kills one of the enemy or effectively incapacitates him, risking his own life thereby, is entitled to whatever he can take from the enemy, meaning as much as he can take away with him in the battle, such as a mount, clothes, weaponry, money, or other.

**o10.3** As for the first fifth that is taken from the spoils, it is divided in turn into five parts, a share each going to:

(1) the Prophet (Allah bless him and give him peace), and after his death, to such Islamic interests as fortifying defenses on the frontiers, salaries for Islamic judges, muezzins, and the like;

(2) relatives of the Prophet (Allah bless him and give him peace) of the Bani Hashim and Bani Muttalib clans, each male receiving the share of two females;

(3) orphans who are poor;

(4) those short of money (def: h8.11);

(5) and travellers needing money (h8.18).

## **o11.0 NON-MUSLIM SUBJECTS OF THE ISLAMIC STATE (AHL AL-DHIMMA)**

**o11.1** A formal agreement of protection is made with citizens who are:

(1) Jews;

(2) Christians;

(3) Zoroastrians;

(4) Samaritans and Sabians, if their religions do not respectively contradict the fundamental bases of Judaism and Christianity;

(5) and those who adhere to the religion of Abraham or one of the other prophets (upon whom be blessings and peace).

**o11.2** Such an agreement may not be effected with those who are idol worshippers (dis: o9.9 (n:)), or those who do not have a Sacred Book or something that could have been a Book.

(A: Something that could have been a Book refers to those like the Zoroastrians, who have remnants resembling an ancient Book. As for the pseudoscriptures of cults that have appeared since Islam (n: such as the Sikhs, Baha' is, Mormons, Qadianis, etc.), they neither are nor could be a Book, since the Koran is the final revelation (dis: w4).)

**o11.3** Such an agreement is only valid when the subject peoples:

(a) follow the rules of Islam (A: those mentioned below (o11.5) and those involving public behavior



and dress, though in acts of worship and their private lives, the subject communities have their own laws, judges, and courts, enforcing the rules of their own religion among themselves);  
(b) and pay the non-Muslim poll tax (jizya).

## **THE NON-MUSLIM POLL TAX**

o11.4 The minimum non-Muslim poll tax is one dinar (n: 4.235 grams of gold) per person (A: per year). The maximum is whatever both sides agree upon. It is collected with leniency and politeness, as are all debts, and is not levied on women, children, or the insane.

o11.5 Such non-Muslim subjects are obliged to comply with Islamic rules that pertain to the safety and indemnity of life, reputation, and property. In addition, they:

- (1) are penalized for committing adultery or theft, though not for drunkenness;
- (2) are distinguished from Muslims in dress, wearing a wide cloth belt (zunnar);
- (3) are not greeted with "as-Salamu 'alaykum";
- (4) must keep to the side of the street;
- (5) may not build higher than or as high as the Muslims' buildings, though if they acquire a tall house, it is not razed;
- (6) are forbidden to openly display wine or pork, (A: to ring church bells or display crosses,) recite the Torah or Evangel aloud, or make public display of their funerals and feastsdays;
- (7) and are forbidden to build new churches.

o11.6 They are forbidden to reside in the Hijaz, meaning the area and towns around Mecca, Medina, and Yamama, for more than three days when the caliph allows them to enter there for something they need).

o11.7 A non-Muslim may not enter the Meccan Sacred Precinct (Haram) under any circumstances, or enter any other mosque without permission (A: nor may Muslims enter churches without their permission).

o11.8 It is obligatory for the caliph (def: o25) to protect those of them who are in Muslim lands just as he would Muslims, and to seek the release of those of them who are captured.

o11.9 If non-Muslim subjects of the Islamic state refuse to conform to the rules of Islam, or to pay the non-Muslim poll tax, then their agreement with the state has been violated (dis: o11.11) (A: though if only one of them disobeys, it concerns him alone).

o11.10 The agreement is also violated (A: with respect to the offender alone) if the state has stipulated that any of the following things break it, and one of the subjects does so anyway, though if the state has not stipulated that these break the agreement, then they do not; namely, if one of the subject people:

- (1) commits adultery with a Muslim woman or marries her;
- (2) conceals spies of hostile forces;
- (3) leads a Muslim away from Islam;
- (4) kills a Muslim;
- (5) or mentions something impermissible about Allah, the Prophet (Allah bless him and give him peace), or Islam.

o11.11 When a subject's agreement with the state has been violated, the caliph chooses between the four alternatives mentioned above in connection with prisoners of war (o9.14).

## **o12.0 THE PENALTY FOR FORNICATION OR SODOMY**

o12.1 The legal penalty is obligatorily imposed upon anyone who fornicates or commits sodomy (A: provided it is legally established (def: n11.2 (O:))) when they:

- (a) have reached puberty;
- (b) are sane;
- (c) and commit the act voluntarily; no matter whether the person is a Muslim, non-Muslim subject of the Islamic state, or someone who has left Islam.

o12.2 If the offender is someone with the capacity to remain chaste, then he or she is stoned to death (def: o12.6), someone with the capacity to remain chaste meaning anyone who has had sexual intercourse (A: at least once) with their spouse in a valid marriage, and is free, of age, and sane. A person is not considered to have the capacity to remain chaste if he or she has only had intercourse in a

marriage that is invalid, or is prepubescent at the time of material intercourse, or is someone insane at the time of marital intercourse who subsequently regains their sanity prior to committing adultery. If the offender is not someone with the capacity to remain chaste, then the penalty consists of being scourged (def: o12.5) one hundred stripes and banished to a distance of at least 81 km./50 mi. for one year.

o12.4 Someone who commits fornication is not punished if he says that he did not know it was unlawful, provided he is a new Muslim or grew up in a remote (O: from Islamic scholars) wilderness, though if neither of these is the case, such a person is punished.

o12.5 An offender is not scourged in intense heat or bitter cold, or when he is ill and recovery is expected (until he recovers), or in a mosque, or when the offender is a woman who is pregnant, until she gives birth and has recovered from childbed pains. The whip used should be neither new nor old and worn-out, but something in between. The offender is not stretched out when scourged, or bound (O: as his hands are left loose to fend off blows), or undressed (O: but rather an ankle-length shirt is left upon him or her), and the scourger does not lay the stripes on hard (O: by raising his arm, such that he draws blood). The scourger distributes the blows over various parts of the body, avoiding the vital points and the face. A man is scourged standing; a woman, sitting and covered (O: by a garment wrapped around her). If the offender is emaciated, or sick from an illness not expected to improve, then he or she is scourged with a single date palm frond (O: upon which there are a hundred strips, or fifty. If a hundred, such an offender is struck once with it, and if fifty, then twice), or with the edge of a garment.

o12.6 If the penalty is stoning, the offender is stoned even in severe heat or cold, and even if he has an illness from which he is expected to recover. A pregnant woman is not stoned until she gives birth and the child can suffice with the milk of another.

#### o13.0 THE PENALTY FOR ACCUSING A PERSON OF ADULTERY WITHOUT PROOF

o13.1 When a person (who has reached puberty and is sane) voluntarily:  
(a) accuses another person of adultery or sodomy, whether the accusation is in plain words or allusive words intended as an accusation;  
(b) and the accused is someone who could be chaste (def:o13.2) and is not the offspring of the accuser; then the accuser is subject to the penalty for accusing a person of adultery without four witnesses (A: which, if it concerns his spouse, he may obviate by public imprecation (dis: n11.1)), no matter whether he is a Muslim, non-Muslim subject of the Islamic state, someone who has left Islam, or is of a group that has a truce with Muslims.

o13.2 Someone who could be chaste in this context means someone who has reached puberty, is sane, free, Muslim, and has not committed an act of fornication (O: that is punishable)(A: meaning it has not been legally established (def: r.11.2(O:))).

o13.3 The penalty for making such an accusation without witnesses is to be scourged (def: o12.5) eighty lashes.

o13.4 Accusations in plain words include such expressions as "You have committed fornication," and the like, while allusive words means such expressions as "You lecher," or "You wretch," If the latter terms are accompanied by the intention to accuse, they amount to an accusation, though if not, they do not. The accuser is the one whose word is accepted (A: when there is no proof, if he swears an oath) as to what he intended by such allusive words.

o13.5 If someone accuses a whole group of people of adultery who could not possibly all be guilty, such as saying, "All the people in Egypt are adulterers, he is disciplined (def: o17). But when his accusation is not impossible, such as saying, "The So-and-so clan are adulterers," then he must bear a separate penalty for every single person in the group.

o13.6 Someone who twice accuses someone of adultery without witnesses is punished only once. Someone who accuses a person of adultery and is punished for the accusation, but then again accuses the person of the same act of fornication is merely disciplined (def: o17).

o13.7 When someone accuses a person who could possibly be chaste (def: o13.2) of adultery, but the accuser has not yet been punished at the time the accused subsequently commits an act of fornication,

then the accuser is not punished.

**o13.8** The penalty for accusing a person of adultery without witnesses is only carried out when the Islamic magistrate is present, and the accused requests that it be carried out. If the accused forgives the offender, there is no punishment.

**o13.9** When an accusation has been made, if the accused dies (A: before the accuser has been punished), then his right (A: to demand that the punishment be carried out) is given to his heirs.

#### **o14.0 THE PENALTY FOR THEFT**

**o14.1** A person's right hand is amputated, whether he is a Muslim, non-Muslim subject of the Islamic state, or someone who has left Islam, when he:

(a) has reached puberty;

(b) is sane;

(c) is acting voluntarily;

(d) and steals at least a quarter of a dinar (n: 1.058 grams of gold) or goods worth that much (A: at the market price current) at the time of the theft:

(e) from a place meeting the security requirements normal (A: in that locality and time for safeguarding similar articles (def: o14.3);

(f) provided there is no possible confusion (dis: o14.2(3)) as to whether he took it by way of theft or for some other reason.

If a person steals a second time, his left foot is amputated; if a third time, then his left hand; and if he steals again, then his right foot. If he steals a fifth time, he is disciplined (def: o17). If he does not have a right hand (N: at the first offense), then his left foot is amputated. If he has a right hand but loses it after the theft (O: by an act of God) but before he has been punished for it, then nothing is amputated. After amputation, the limb is cauterized with hot oil (A: which in previous times was the means to stop the bleeding and save the criminal's life).

**o14.2** A person's hand is not amputated when:

(1) (non-(d) above) he steals less than the equivalent of 1.058 grams of gold;

(2) (non-(e)) he steals the article from a place that does not meet normal requirements for safeguarding similar articles (dis: below);

(3) or (non-(f)) when there is a possible confusion as to why he took it, as when it was taken from the Muslim common fund (bayt al-mal) (O: provided the person is Muslim, since he might have intended to use it to build mosques, bridges, or hospices), or when it belongs to his son or father.

**o14.3** A place that meets normal security requirements for safeguarding similar articles means a place appropriate for keeping the thing, this varying with the type of article, the different countries, and with the justness of the ruler or face of it, as well as the ruler's relative strength or weakness. A suitable place for safeguarding fine clothes, money, jewels, and jewelry, for example, is a locked box; the place for trade goods, a locked warehouse with guards; the place for livestock, a stable; the place for pallets and bedding, a shelf in the house; and the place for a shroud, the grave.

**o14.4** If two persons jointly steal the equivalent of 1.058 grams of gold, then neither's hand is amputated.

**o14.5** A freeman's hand may not be amputated by anyone besides the caliph or his representative (def: o25).

**o14.6** There is no amputation for forcible seizure (O: meaning someone relying on force (N: to take people's money, who has a gang nearby to bet him in this)), snatching (O: meaning someone who depends on running away and is unarmed), or betraying a trust (O: of something entrusted to him, such as a deposit for safekeeping), or appropriating something by disavowal (A: i.e. denying that the victim loaned or entrusted him with such and such a thing), (O: because of the Prophet's (Allah bless him and give him peace) saying,

"There is no amputation for someone who seizes by force, snatches and runs, or betrays a trust,:" a hadith Tirmidhi classified as rigorously authenticated (Sahih)). (A: But if one of the abovementioned persons is a repeated offender whom it is in the interests of society to kill, the caliph may kill him.)

#### **o15.0 THE PENALTY FOR HIGHWAY ROBBERY**

**o15.1** The caliph is obliged to summon whoever uses a weapon (O: though force suffices to be considered a weapon, or taking money by dint of one's fists) and makes people afraid to use the road (O: no matter whether in the wilderness, a village, or in the country; meaning he frightens those who pass along the way by means of his strength or weapons). If the highwayman responds to the summons before he has injured anyone, then he is only disciplined (def: o17).

If he steals the equivalent of 1.058 grams of gold under the previously mentioned conditions (o14.1), both his right hand and left foot are amputated.

(A: The difference between a highwayman and someone who takes by forcible seizure (dis: o14.6) is that the latter does so within earshot of help, while the offense of the highwayman is far greater because he menaces the lifeline of the community, its trade routes.)

**o15.2** If a highwayman kills someone, he must be executed, even when the person entitled to retaliation (def: o3) agrees to forgo it. If the highwayman robs and kills, he is killed and then left crucified for three days. If he wounds or maims someone, retaliation is taken against him, though it may be waived by those entitled to take it.

**o15.3** (N: The penalty for highway robbery, such as mandatory execution, crucifixion, and amputating the hand and foot, is cancelled if the highwayman repents (A: desists, and gives himself up) before he has been apprehended, though he is still liable to retaliation (def: o3) by parties entitled to it (A: for injuries or deaths he caused to victims) and is financially responsible for restoring the money he has taken.)

#### **o16.0 THE PENALTY FOR DRINKING**

**o16.1** Any beverage that intoxicates when taken in large quantities is unlawful both in small and large quantities, is unlawful both in small and large quantities, whether it is wine, (A: fermented) raisin drink, or something else.

**o16.2** The penalty for drinking is obligatorily enforced against anyone who:

- (a) drinks;
- (b) has reached puberty;
- (c) is sane;
- (d) is Muslim;
- (e) does so voluntarily;
- (f) and knows it is unlawful (A: the restrictions mentioned above (o12.4) about the ignorance of the prohibition of adultery also applying here).

**o16.3** The penalty for drinking is to be scourged forty stripes, with hands, sandals, and ends of clothes. It may be administered with a whip, but if the offender dies, an indemnity (def: o4.4) is due (A: from the scourger) for his death. If the caliph (def: o25) increases the penalty to eighty stripes, it is legally valid, but if the offender dies from the increase, the caliph must pay an adjusted indemnity, such that if he is given forty-one stripes and dies, the caliph must pay 1/41 of a full indemnity.

**o16.4** Someone who commits adultery several times (O: or drinks several times, or steals several times) before being punished is only punished once for each type of crime.

**o16.5** The penalty for a crime is not obviated by the offender's having repented for it, with the sole exception of the highwayman, who is not penalized at all (dis: o15.3) if he repents before he is caught.

**o16.6** It is not permissible to drink an intoxicant under any circumstances, whether for medicine (O: or in bread, or to cook meat with it), or out of extreme thirst, with the sole exception of when one is choking on a piece of food and there is no other means of clearing it from one's throat save by drinking the intoxicant, in which case it is obligatory. (O: Sheikh al-Islam (A: Zakariyya Ansari) states, "It may not be used for medicine or extreme thirst, though there is no prescribed penalty for doing so, even when something besides it is available." The prohibition of using it for medicine or extreme thirst refers to when it is unadmixed, as opposed to when it is compounded with something else that renders it completely indistinguishable, such that no taste, color, or odor of it remains, in which case it is permissible.)

#### **NONALCOHOLIC INTOXICANTS**

**o16.7 (Muhammad Shirbini Khatib:)** The term beverage (dis: o16.1) excludes plants, such as hashish, which hashish users eat. The two sheikhs (A: Rafi'i and Nawawi) report in their section on foods the position of ruyani that eating it is unlawful, though no legal penalty is fixed for it (Mughni al-muhtaj ila ma`rifa ma`ani alfaz al-Minhaj (y73), 4.187).

**(al-Mawsu`a al-fiqhiyya:)** Just as any beverage that intoxicates when taken in large quantities is also unlawful in small quantities, so too it is absolutely unlawful to use any solid substance detrimental to mind or body which produces languor or has a narcotic effect, this prohibition applying to the amount that is deleterious of it, not to the minute, beneficial amounts prescribed to treat illnesses, for such substances are not unlawful in themselves, but unlawful because they are deleterious (mawdu' al-ashriba. Tab`a tamhidiyya li mawdu`at al-Mawsu`a al-fiqhiyya, no. 1(y134), 49).

#### **o17.0 DISCIPLINARY ACTION (TA`ZIR)**

**o17.1** Someone who commits an act of disobedience to Allah Most High that entails neither a prescribed legal penalty nor expiation, such as bearing false witness, is disciplined to the extent the caliph (def: o25) deems appropriate. (O: He exercises his own legal reasoning (ijtihad) and does what he thinks should be done, whether imprisonment and beating, either one separately, or mere verbal reprimand. He may not administer a more severe degree of punishment than what he feels is strictly necessary.)

**o17.2** Disciplinary action may not reach the amount of the least prescribed legal penalty. For example, a freeman (o: if scourged) may not receive forty stripes.

**o17.3** If the caliph sees fit not to take any disciplinary action, this is also permissible (O: when it concerns a right owed to Allah Most High, for the ruler is entrusted with using his own legal reasoning. But if it concerns a right owed to a fellow human being who has demanded that it be fulfilled (A: such as when someone has been cheated) it is impermissible to do nothing. If a person is entitled to have another disciplined, but instead forgives him, the ruler may nevertheless discipline him).

**o17.4** (O: A father or grandfather (and on up) is entitled to discipline those under his care when they commit an act that is unbecoming. And so may a mother with her child. a husband is entitled to discipline his wife for not giving him his rights (def: m5.1). A teacher may discipline a student. (A: Spanking a student, for example, is permissible if there is a valid lawful purpose to be served thereby, and the student's guardian has given the teacher permission.))

#### **o18.0 OATHS (YAMIN)**

**(A: An oath is a solemn statement to do or refrain from something, or that something is true, such that if things turn out otherwise, the swearer must make an expiation (def: o20.2).)**

**o18.1** An oath is only valid from a person (O: whether Muslim or non-Muslim) who:

- (a)** has reached puberty;
- (b)** is sane;
- (c)** makes the oath voluntarily;
- (d)** and intends an oath thereby.

**o18.2** The oath of someone whose tongue runs away with him and who unthinkingly swears an oath, or someone who intends a particular oath but unintentionally swears something else, does not count and is an unintentional oath (A: which is mentioned in the Holy Koran (n: at 5:89)).

**o18.3** An oath is only validly effected if sworn by a name of Allah Most High, or an attribute of His entity (dhat).

**(N: It is offensive to swear an oath by other than Allah if one merely intends it as an asseveration of one's statement, though it is unlawful to do so if one intends reverence to the thing sworn by.)**

**o18.4** There are some names of Allah Most High that are applied to no one but Him, such as Allah, the All-merciful, the All-vigilant, and Knower of the Unseen. An oath sworn by any of these is valid without restriction.

**o18.5** Other names of Allah may be conditionally applied to other than Him, such as Lord (Rabb) (n: rabb bayt meaning, for example, home owner), the All-compassionate (al-Rahim) (n: rahim al-qalb

meaning softhearted), or the Omnipotent (al-Qadir) (n:qadir 'alayhi meaning capable of it; the second term of each of these examples indicating that Allah is not meant). An oath sworn by such names is validly effected unless the swearer specifically intends something else.

o18.6 Other of Allah's names are applied to both Him and His creatures, such as the Living (al-Hayy), the Existent (al-Mawjud), or the Seeing (al-Basir). An oath sworn by such names is not validly effected unless the swearer specifically intends it as an oath.

o18.7 An oath sworn by the attributes of Allah that are inapplicable to creatures, such as Allah's glory, His exaltedness, His endless eternity, or the Koran, is validly effected without restriction.

o18.8 An oath sworn by divine attributes that are sometimes used to allude to creatures, such as Allah's knowledge, His power, of His right, is validly effected unless the swearer intends something else by them, such as meaning by knowledge the things known, by power the things under its sway, or by right (n: the) acts of worship (n: that are His right), in which cases an oath has not been validly effected.

o18.9 An oath is validly effected when a person says, "I swear by Allah that....," or "I've sworn by Allah that....," unless the person merely intends to inform.

o18.10 Unless one particularly intends it as an oath, an oath is not validly effected when the following expressions are used: "I will not do such and such, by the life of Allah," or "I resolve by Allah," or "by the covenant of Allah," "His guarantee," "His trust," "His sufficiency," or "I ask you by Allah," or "I swear by Allah that you must do such and such."

#### o19.0 EXAMPLES OF BREAKING AND NOT BREAKING OATHS

o19.1 If one swears, "I will not eat this wheat," but then makes it into flour or bread (A: and eats it), one has not broken one's oath. If one swears, "I will not drink from this river," but then drinks its water from a jug, one has broken one's oath. If one swears, "I will not eat meat," but then eats fat, kidneys, tripe, liver, heart, spleen, fish, or locusts, one has broken one's oath.

o19.3 If one swears, "I will not enter the house," but then does so absentmindedly, in ignorance of its being the house, under compulsion, or by being carried in, then one's oath is not broken and is still in effect.

o19.5 When a person swearing an oath about something (O: in the future, affirming or denying that it will occur) includes the expression in sha' Allah ("if Allah will") before finishing the oath, then the oath is not broken in any event if he thereby intends to provide for exceptions. But if he merely says it out of habit, not intending to make an exception to his oath, or if he says it after having finished swearing the oath, then the exception is not valid (O: because when an oath has been completed, its efficacy is established and not eradicable by a statement of exception).

#### o20.0 THE EXPIATION FOR A BROKEN OATH

o20.1 An expiation is obligatory for someone who swears and breaks an oath. If the swearer is entitled to expiate by the expenditure of property (def: o20.2(1-3)), it is permissible for him to do so before or after breaking the oath. But if it consists of fasting, then he may only do so after breaking the oath.

o20.2 The expiation consists of (N: a choice of any) one of the following:

(1) to free a sound Muslim slave;

(2) to feed ten people who are (N: poor or) short of money (def: h8.8-11) each (0.51 liters of grain (O: though it is not a condition that it be grain, but rather the type of food payable for the zakat of 'Eid al-Fitr (def: h7.6), even if not grain (A: and the Hanafi school permits giving its value in money));

(3) or to provide clothing of any kind for ten such persons, even if it consists of a wraparound or clothing previously washed, though not if ragged.

If one is unable to do any of the above, one must fast for three days. It is better to fast them consecutively, though permissible to do so nonconsecutively.

o20.4 (O: Someone eligible to receive zakat funds or expiations because of being poor (def: h8.8) or short of (def:h811) may expiate broken oaths by fasting.)

## **o21.0 THE JUDGESHIP**

**o21.1 To undertake the Islamic judgeship is a communal obligation (def: c3.2) (O: for those capable of performing it in a particular area). If only one competent person exists who can perform it, then it is personally obligatory for him to do so. If he refuses, he is compelled to accept (O: though he is only obliged to accept the judgeship when it is in his own home area, not when it is elsewhere, for this would be like a punishment, involving as it does wholly leaving one's home). Such an individual person may not take a salary for it- (N: because in respect to him it has become personally obligatory, and it is not permissible to take a wage for something personally obligatory, as opposed to something that is a communal obligation (A: for which accepting a wage is permissible))- unless he is needy (O: in which case the Muslim common fund gives him enough to cover his expenses and those of his dependents, without wastefulness or penury. But if he agrees to judge without being paid (N: i.e. in expectation of the reward from Allah), it is better for him).**

**o21.2 It is permissible to have two or more judges in the same town.**

**o21.3 It is not valid for anyone besides the caliph (def: o25) or his representative to appoint someone as judge.**

**o21.4 It is permissible for two parties to select a third party to judge between them if he is competent for the judgeship (def: o22.1) (O: provided the case does not concern Allah's prescribed penalties, (A: and they may select such a person) even when a judge exists), It is obligatory for them to accept his decision on their case, though if either litigant withdraws his nomination before the third party gives his judgement, the latter may not judge.**

## **o22.90 THE JUDGE AND THE COURT**

**O22.1 The necessary qualifications for being an Islamic judge (qadi) are:**

**(a) to be a male freeman;**

**(b) to have full capacity for moral answerability (taklif, def: c8.1);**

**(c) to be upright (o24.4):**

**(d) to possess knowledge (O: of the rulings of Sacred Law, meaning by way of personal legal reasoning (ijtihad) (A: from primary texts), not merely by following a particular qualified scholar (taqlid) (A: i.e if he follows qualified scholarship, he must know and agree with how the rulings are derived, not merely report them). Being qualified to perform legal reasoning (ijtihad) requires knowledge of the rules and principles of the Koran, the sunna ( A: is this context meaning the hadith, not the sunna as apposed to the obligatory), (N: as well as knowledge of scholarly consensus (ijma', def: b7)), and analogy (def: III below), together with knowing the types of each of these. (A: The knowledge of each "type" below implies familiarity with subtypes and kinds, but the commentator has deemed the mention of the category as a whole sufficient to give readers as general idea.)**

**(I) The types of Koranic rules include, for example:**

**(1) those ('amm) of general applicability to different types of legal rulings;**

**(2) those (khas) applicable to only one particular ruling or type or type or ruling;**

**(3) those (mujmal) which require details and explanation in order to be properly understood;**

**(4) those (mubayyan) which are plain with out added details;**

**(5) those (mutlaq) applicable without restriction;**

**(6) those (muqayyad) which have restrictions;**

**(7) those (nass) which unequivocally decide a particular legal question;**

**(8) those (zahir) with a probable legal signification, but which may also bear an alternative interpretation;**

**(9) those (nasikh) which supersede previsouly revealed Koranic verses;**

**(10). and those (mansukh) which are superseded by later verses.**

**(II) The types of sunna (A: i.e. hadith) include:**

**(1) hadiths (mutawatir) related by whole groups of individuals from whole groups, in multiple contiguous channels of transmission leading back to the Prophet himself (Allah bless him and give him peace), such that the sheer number of separate channels at each stage of transmission is too many for it to be possible for all to have conspired to fabricate the hadith (A: which is thereby obligatory to believe in, and denial of which is unbelief (kufr));**

**(2) hadiths (ahad) related by fewer than the above-mentioned group at one or more stages of the transmission, though traced though contiguous successive narrators back to the Prophet (Allah bless him**

and give him peace). (n: If a hadith is transmitted through just one individual at any point in the history of its transmission, the hadith is termed singular (gharib). If it is transmitted through just two people at any stage of its transmission, it is termed rare ('aziz). If its channels of transmission, come through only three people at any point of its history, it is termed wellknown (mashhur). These designations do not directly influence the authenticity rating of the hadith, since a singular hadith, for example, might be rigorously authenticated (sahih), well authenticated (hasan) (N: hadiths of both types being obligatory for a Muslim to believe in, though someone who denies them is merely considered corrupt (fasiq), not an unbeliever (kafir)), or not well authenticated (da'if), depending on the reliability ratings of the narrators and other factors weighed and judged by hadith specialists);

(3) and other kinds. (n: Yusuf Ardabili mentions the following in his list of qualifications for performing legal reasoning (ijtihad):)

(4) hadiths (mursal) from one of those (tabi'i) who had personally met (N: not only met, but actually studied under) one or more of the prophetic Companions (Sahaba) but not the Prophet himself (Allah bless him and give him peace) (n: hadiths reported in the form, "The Prophet said (or did) such and such," without mentioning the Companion who related it directly from the Prophet);

(5) hadiths (musnad) related through a contiguous series of transmitters back to the Prophet (Allah bless him and give him peace);

(6) hadiths (muttasil) related through a contiguous series of transmitters (n: either from the Prophet (Allah bless him and give him peace). such a hadith being termed ascribed (marfu'), or else only from one of the Companions, such a hadith being termed arrested (mawquf));

(7) hadiths (munqata') related through a chain of transmitters of whom one is unknown (n: though if two or more are unknown, it is not considered merely incontinuous (munqata'), but rather problematic (mu'dal));

(8) the positive and negative personal factors (jarh wa ta'dil) determining the reliability ratings of the individual narrators of a hadith's channel of transmission:

(9) the positions held by the most learned of the Companions (Sahaba) on legal questions, and those of the scholars who came after them;

(10) and on which of these positions there is scholarly consensus (def: b7), and which are differed upon (Kitab al-anwar lia'mal al-abrar fi fiqh al-Imam al-Shafi'i (yII), 2.391).

(n: The English glosses and remarks on the meanings of the above hadith terminology are from notes taken by the translator at a lesson with hadith specialist Sheikh Shu'ayb Arna'ut.)

(III) Types of analogical reasoning (qiyas) include:

(1) making an a fortiori analogy between acts p and q, where if p takes a ruling, q is even likelier to take the same ruling. For example, if saying "Uff!" to one's parents is unlawful (n: as at Koran 17:23), one may analogically infer that beating them must also be unlawful;

(2) making an analogy between acts p and q, where if p takes a ruling, one may infer that q is equally likely to take the same ruling. For example, if it is unlawful to wrongfully consume an orphan's property, then it must also be unlawful to destroy his property by burning it up;

(3) and making an analogy between acts p and q, where if p takes a ruling, one may infer that it is likely, though less certain, that q takes the same ruling (A: because of a common feature in the two acts which functions as the basis ('illa) for the analogy). For example, if usurious gain (riba) is unlawful in selling wheat (dis: k3.1), then it is also unlawful in selling apples, the basis for the analogy being that both are food.

The meaning of knowledge of the above matters is (A: for a judge) to know part of what is connected with the Koran, sunna (A: i.e. hadith), and analogy, not complete knowledge of the Book of Allah, total familiarity with the rules of the sunna, or comprehensive mastery of the rules of analogical reasoning, but rather that which is pertinent to giving judgements in court (A: though an absolute giving judgements in court (A: though an absolute expert in Islamic legal reasoning (mujtahid mutlaq) such as Abu Hanifa. Malik; Shafi'i, or Ahmad, is obliged to know what relates to every subject matter in Sacred Law). He must know the reliability ratings of hadith narrators in strength and weakness. When two primary texts seems to contend, he gives precedence to:

(1) those of particular applicability (Khas) over those of general applicability ('amm);

(2) those that take restrictions (muqayyad) over those that do not (mutlaq);

(3) those which unequivocally settle a particular question (nass) over those of merely probabilistic legal significance (zahir);

(4) those which are literal (muhkam) over those which are figurative (mutashabih);

(5) and those which supersede previous rulings, those with a contiguous channel of transmission, and those with a well-authenticated channel of transmission, over their respective opposites.

He must likewise know the positions of the scholars of Sacred Law regarding their consensus and differences and not contradict their consensus (A: which is unlawful (dis: b7.2)) with his own reasoning. If no one possesses the above-mentioned qualifications, and a strong ruler appoints an unfit Muslim



to the bench, such as someone who is immoral, or who (A: is incapable of independent legal reasoning (ijtihad) and) merely follows other qualified scholars (taqlid), or a child, or a woman, then the appointee's decisions are implemented because of necessity, so as not to vitiate people's concerns and interests (A: and this is what exists in our day, when the conditions for an Islamic judge are seldom met with));

(e) sound hearing;

(f) sound eyesight;

(g) and the faculty of speech.

(O: The author did not mention the necessary condition of being a Muslim, evidently feeling that uprightness ((c) above) was sufficient to imply it.)

o22.2 It is recommended that the judge be stern without harshness, and flexible without weakness (O: so the litigants do not despise or disdain him for otherwise, people entitled to rights would not be able to obtain them).

o22.3 If the judge needs to appoint another person to handle a part of his caseload because it is too heavy for him, then he may assign someone to deal with the extra cases if the person himself is qualified to be a judge. If the judge does not need to, he may not appoint such a person without special permission (A: from the regional ruler).

o22.4 If the judge needs a court secretary, he must be Muslim, upright (def: o24.4), sane, and learned (O: meaning familiar with writing up plaintiffs' cases, recording what is done in each case and the judge's decisions, and must be able to distinguish between writing it correctly and incorrectly. The above four conditions are obligatory, there only remaining to be mentioned that the secretary must be male and free).

o22.5 The judge should not have a doorkeeper (O: if there is no crowd), though if he needs one, the doorkeeper must be sane, reliable, and unbribeable.

o22.6 When not in the area of his jurisdiction, the judge may not give legal decisions, appoint others, or hear evidence (O: or claims).

o22.7 He may not accept gifts except from someone who customarily gave him gifts before he became judge, who is not a plaintiff, and whose gifts are not more lavish than those given before the judge's appointment. (O: The same is true for entertaining the judge as a guest, as well as lending articles to him which are of rentable value, such as lending him lodgings.) It is better for a judge not to accept any gifts. (O: And whenever gifts are not lawful to accept, he does not legally own them but must return them.)

o22.8 He should not decide cases when angry, hungry, thirsty, overwrought, exultant, ill, tired, flatulent, annoyed, or when the weather is irritatingly hot or cold (O: it being offensive for a judge to decide a case in any state that affects his temperament for the worse), though if he does, his decision is implemented.

o22.10 The judge should not sit in a mosque to decide cases (O: lest voices be raised therein, and because he might need to bring in the insane, children, a woman in her period, or non-Muslims;' for which reasons sitting in a mosque to decide cases is offensive). But if his sitting in the mosque (O: in prayer, spiritual retreat (i'tikaf), or awaiting group prayer) happens to coincide with the coming of two litigants, then he may judge between them (O: without it being offensive).

o22.11 The judge should sit with tranquility and gravity (O: as it creates greater respect for him and makes it likelier that he will be obeyed). He should have witnesses present and scholars of jurisprudence to consult with on points of difficulty. If a case is not clear, he should postpone giving a decision on it. He may not merely imitate another's decision on a case (A: but must be capable of expert legal reasoning (ijtihad) himself).

o22.12 The judge handles the cases on a firstcome-first served basis, one case per turn. If two arrive at the same time, they draw lots to see whose case will be heard first.

The judge (O: obligatorily) treats two litigants impartially, seating both in places of equal honor, attending to each, and so forth, unless one is a non-Muslim, in which case he gives the Muslim a better seat. He may not treat either litigant rudely, nor prompt one (O: as to how to state his case).

**o22.13** The judge may intercede with one of them on behalf of the other (O: meaning to ask the two parties to settle their differences, which is what a judge's "intercession" is. It does not take place until after the truth has been established, which obviates his unfairly inclining to either one) and he may also pay one litigant what the other owes him.

**o22.14** (N: When assigned to a new jurisdiction,) the judge first looks into the cases of the imprisoned, then orphans, and then of lost and found items.

### **o23.0 COURT CLAIMS**

**o23.1** If a plaintiff makes a claim that is not true, the judge considers it as if he had not heard it (O: and need not ask the defendant about it).

When a claim is true, the judge asks the defendant, "What do you say?" If the defendant admits the claim is true, the judge does not give a decision on the case (A: there being no need to) unless the plaintiff asks him to. But if the defendant denies the claim, then if the plaintiff has no proof, the defendant's word is accepted if he swears an oath to that effect. (O: This is when the claim does not involve blood (A: i.e. retaliation (def: o3) or indemnity (04)). If it does, then if there is obscurity in the matter, the plaintiff's word is accepted (N: provided fifty separate oaths are sworn by and distributed over all those entitled to take retaliation.) The judge does not have the defendant swear an oath unless the plaintiff requests it. If the defendant refuses to swear, then the judge has the plaintiff swear (A: that his claim is true), and when he does, he is entitled (O: to what he has claimed (A: from the defendant). But if the plaintiff also refuses to swear, the judge dismisses both of them (O: from his presence). If the defendant is silent (O: not responding to the claim against him) then the judge should say, "Would that you would answer, for unless you do. I'll give the plaintiff the opportunity to swear an oath." If the defendant does not, then the plaintiff may swear an oath, and if he does, he is entitled to his claim.

**o23.2** If the judge knows the truth of the claim (O: against the defendant), and it concerns one of the prescribed penalties of Allah Most High, meaning for fornication, theft, rebellion, or drinking, then he may not sentence the defendant, on that basis alone (O: on the basis of his knowledge of one of the above crimes. It is related of Abu Bakr Siddiq (Allah be well pleased with him) that he said, "Where I to see someone who deserved a prescribed legal penalty, I would not punish him unless two witnesses attested to his deserving it in front of me.") But when the judge knows the truth about something other than prescribed legal penalties, he must judge accordingly (O: the necessary condition for which is that he plainly state that he knows, such as by saying, "I know what he claims against you to be true, and have judged you according to my knowledge").

**o23.3** When the judge does not know the language of the litigants, then he refers to upright (def: o24.4) persons familiar with it, provided they are a number (O: two or more) sufficient to substantiate the claim (def: o24.7-10).

**o23.4** If a judge gives a decision on a case but then learns of an unequivocal text relating to it (O: from the Koran or mutawatir hadith (def: o22.1 (d(II))), a consensus of scholars, or an a fortiori analogy (o22.1(d(III))), that controverts his decision, then he reverses it.

**o23.5** A court claim is not valid except from a plaintiff possessing full right to deal with his own property.

**o23.6** It is not valid to litigate over something that is not determinately known (def: k2.1 (e)), though some exceptions to this exist, such as claiming a bequest. If the plaintiff is claiming a financial obligation (dayn), he must mention its type, amount, and description. If he is claiming some particular article ('ayn) (O: such as a house), he must identify it. If he is unable to (O: as when the article is portable, and out of town), then he must describe it (O: with a description that would be valid for buying in advance (def: k9.2(d,g))).

**o23.7** If a defendant denies a claim against him (A: and the plaintiff has no proof) then his denial is accepted (A: provided he swears on oath), as also when he says, "I owe him nothing."

**o23.8** If the claim is for a particular article that is currently in the possession of one of the litigants, then the word of the person who has it is accepted when he swears an oath that it is his. If the article is in the possession of both litigants (O: together, and there is no proof as to whose it is; or when it is in the possession of neither, such as when a third party has it), then each swears an oath (O: that it does not belong to the other) and half the article is given to each of them.

o23.9 When another person owes one something, but denies it, then one may take it from his property without his leave (O: whether one has proof of it or not). But if the person acknowledges that he owes it to one, one may not simply take it from him (O: because a debtor may pay back a debt from whatever part of his property he wishes).

#### o24.0 WITNESSING AND TESTIFYING

o24.1 It is a communal obligation (def: e3.2) to both witness (A: i.e observe) legal events and to testify to have witnessed them. If there is only one person to do so, then it is personally obligatory upon him, in which case he may not accept payment for it, though if it is not personally obligatory, he may accept a fee.

o24.2 Legal testimony is only acceptable from a witness who:

(a) is free;

(b) is fully legally responsible (mukallaf, def: c8.1) (O: as testimony is not accepted from a child or insane person, even when the child's testimony regards injuries among children that occurred at play);

(c) is able to speak;

(d) is mentally awake;

(e) is religious (O: meaning upright (o24.4) (A: and Muslim), for Allah Most High says,

"Let those of rectitude among you testify" (Koran 65:2),

and unbelief is the vilest form of corruption, as goes without saying);

(f) and who is outwardly respectable (O: respectability (muru'a) meaning to have the positive traits

which one's peers possess in one's particular time and place. Sheikh al-Islam (A: Zakariyya Ansari) says,

"Respectability is refraining from conduct that is unseemly according to standards commonly

acknowledged among those who observe the precepts and rules of the Sacred Law." It is according to

standards commonly acknowledged (def: f4.5) because there are no absolute standards for it, but rather

it varies with different persons, conditions, and places, Such things as eating and drinking (A: in the

marketplace or wearing nothing on one's head may vitiate it (A: though the latter is of no consequence

in our times), as may a religious scholar's wearing a robe or cap in places where it is not customary for

him to do so). The testimony of an absentminded person (O: meaning someone who often makes mistakes and forgets) is not acceptable (O: because he is unreliable).

o24.5 Nor is testimony acceptable from someone who:

(1) has committed an enormity (O: meaning something severely threatened against in an unequivocal text from the Koran or hadith (dis: book p) N: though if someone who commits such an act then repents (def: p77) and is felt to be sincere in this, he regains his legal uprightness and his testimony is accepted, provided he is tested after his repentance long enough to believe in its genuineness);

(2) persists in a lesser sin (O: because it then becomes an enormity, as opposed to when one does not persist therein. A lesser sin is one that has not been severely threatened against in an unequivocal text);

(3) or is without respectability (def: o24.2(f)), such as a street-sweeper, bathhouse attendant, and the like.

(A: A legally corrupt or immoral person (fasiq) is someone guilty of (1) or (2) above.)

o24.4 (A: Normal uprightness ('adala) for purpose other than giving testimony in court means that one avoids (1) and (2) above, while (3) concerns court testimony alone (N: i.e. uprightness for testimony in court means a person is none of the above).)

o24.5 The testimony of a blind person is accepted about events witnessed before he became blind, though not events witnessed after, unless they are public events that are discussed among people, or when someone says something the blind person hears (O: such as a divorce, for example), and he takes the speaker by the hand and conducts him to the judge and testifies as to what he has said.

o24.6 The testimony of any of the following is unacceptable:

(1) a person testifying for his son (O: son's son, and on down) or his father (O: father's father, and on up);

(2) a person who stands to benefit (O: by his own testimony);

(3) a person who stands to avoid loss to himself through his testimony;

(4) a person testifying about his enemy;

(5) or a person testifying about his own act.

o24.7 The testimony of the following is legally acceptable when it concerns cases involving property, or transactions dealing with property, such as sales:

(1) two men;

- (2) two women and a man;
- (3) or a male witness together with the oath of the plaintiff.

o24.8 If testimony does not concern property, such as a marriage or prescribed legal penalties, then only two male witnesses may testify (A: though the Hanafi school holds that two women and a man may testify for marriage).

024.9 If testimony concerns fornication or sodomy, then it requires four male witnesses (O: who testify, in the case of fornication, that they have seen the offender insert the head of his penis into her vagina).

024.10 If testimony concerns things which men do not typically see (O: but women do), such as childbirth, then it is sufficient to have two male witnesses, a man and two women, or four women.

## o25.0 THE CALIPHATE

(n: This section has been added here by the translator because the caliphate is both Obligatory in itself and the necessary precondition for hundreds of rulings (books k through o) established by Allah Most High to govern and guide Islamic community life. What follows has been edited from al-Ahkam al-sultaniyya wa al-wilayat ad-diniyya by Imam Abul Hasan Mawardi, together with three principal commentaries on Imam Nawawi's Minhaj al-talibin, extracts from which are indicated by parentheses and the initial of the commentator. Ibn Hajar Haytami (H:), Muhammad Shirbini Khatib (K:), or 'Abd al-Hamid Sharwani (S:).)

## THE OBLIGATORY CHARACTER OF THE CALIPHATE

o25.1 (Mawardi:) The reason the office of supreme leadership has been established in Sacred Law is to fulfill the caliphal successorship to prophethood in preserving the religion and managing this-worldly affairs. The investiture of someone from the Islamic Community (Umma) able to fulfill the duties of the caliphate is obligatory by scholarly consensus (def: b7), though scholars differ as to whether its obligatory character is established through reason or through Revealed Law. Some say that it is obligatory by human reason, because of the agreement of rational individuals to have a leader to prevent them from wronging one another and to come between them when conflict and arguments arise. Without authorities, there would be a chaos of neglected people and a disorderly mob. Others hold that it is obligatory not through reason, but rather through Sacred Law, for the caliph performs functions that human reason might not otherwise deem ethically imperative, and which are not entailed by reason alone, for reason are not entailed by reason alone, for reason merely requires that rational beings refrain from reciprocal oppression and strife, such that each individual conform with the demands of fairness in behaving towards others with justice and social cohesion, each evaluating their course with their own mind, not anyone else's, whereas Sacred Law stipulates that human concerns be consigned to the person religiously responsible for them. Allah Mighty and Majestic says.

"You who believe, obey Allah and obey the Propeht and those of authority among you" (Koran 4:59).

thereby obliging us to obey those in command, namely the leader with authority over us. Abu Hurayra relates that the Propeht (Allah bless him and give him peace) said.

"Leaders shall rule you after me, the godfearing of them ruling you with godfearingness and the profligate ruling you with wickedness. So listen to them and obey them in everything that is right; for if they do well, it will count for you and for them, and if they do badly, it will count for you and against them."(al-Ahkam al-sultaniyya wa al-wilayat al-diniyya (y87),(5-6)

o25.2 (H: The caliphate is a communal obligation (def: c3.2) just as the judgeship is (S: because the Islamic community needs a ruler to uphold the religion, defend the sunna, succor the oppressed from oppressors, fulfill rights, and restore them to whom they belong).)

## THE QUALIFICATIONS OF A CALIPH

O25.3 (Nawawi:) among the qualifications of the caliph are that he be:

(a) Muslim (H: so that he may see to the best interests of Islam and the Muslims (K: it being invalid to appoint a non-Muslims (K: it being invalid to appoint a non-Muslim (kafir) to authority, even to rule non-Muslim.) (S: Qadi 'Iyad states that there is scholarly consensus (def: b7) that it is not legally valid to invest a non-Muslim as caliph, and that if a caliph becomes a non-Muslim (dis: 08.7) he is not longer caliph, as also when he does not maintain the prescribed prayers (A: meaning to both perform them himself and order Muslim to) and summon the people to them, and likewise (according to the majority

of scholars) if he makes reprehensible innovations (bid'a, def: w29.3) (A: by imposing an innovation on people that is Offensive or unlawful). If the caliph becomes a non-Muslim, alters the Sacred Law- (N: such alteration being of two types, one of which consists of his changing the Law by legislating something which contravenes it while believing in the validity of the provisions of the Sacred Law, this being an injustice that does not permit rebellion against him, while the other consists of imposing rules that contravenes the provisions of the religion while believing in the validity of the rules he has imposed, this being unbelief (kufr) (A: it is questionable whether anyone would impose much rules without believing in their validity))- or imposes reprehensible innovations while in office, then he loses his authority and need no longer be obeyed, and it is obligatory for Muslims to rise against him if possible, remove him from office, and install an upright leader in his place. If only some are able, they are obliged to rise up and remove the unbeliever (A: whether they believe they will succeed or fail), through it is not obligatory to try to remove a leader who imposes reprehensible innovations unless they believe it possible. If they are certain that they are unable to (A: remove an innovator), they are not obliged to rise against him. Rather, a Muslim in such a case should emigrate from his country (N: if he can find a better one), fleeing with his religion (A: which is obligatory if he is prevented in his home country from openly performing acts of worship));

(b) possessd to legal responsibility (def: c8.1) (K: so as to command the people, it being invalid for a child or insane-person to lead):

(c) free (K: so that others may consider him competent and worthy or respect):

(d) male (K: to be able to devote himself fulltime to the task, and to mix with men, the leadership of a woman being invalid because of the rigorously authenticated (sahih) hadith.

"A people that leave its leadership to a woman will never succeed"):

(e) of the Quraysh tribe (K: because of the (H: well-authenticated (hasan)) hadith related by Nasa'i.

"The Imams are of the Quraysh."

a hadith adhered to by the Companions of the Prophet (Allah bless him and give him peace) and those after them, this qualification being obligatory when there is a member of Quraysh available who meets the other conditions) (H: though when there is not , then the next most eligible is a qualified member of the Kinana tribe, then of the Arabs, then of the non-Arabs);

(f) capable of expert legal reasoning (ijtihad) (H: as a judge must be (def: o22). 1(d)) and with even greater need (K: so as to know the rulings of Sacred Law, teach people, and not need to seek the legal opinion of others concerning unprecedented events), scholarly consensus (def: b7) having been related concerning this condition, which is not contradicted by the statement of the Qadi (A: 'lyad) that "an ignorant upright person is fitter than a knowledgeable corrupt one," since the former would be able to refer matters requiring expert legal reasoning to qualified scholars, and moreover the remark applies to when the available leaders are not capable of legal reasoning (S: while possessing the other qualifications for leadership));

(g) courageous (K: meaning undaunted by danger, that he may stand alone, direct troops, and vanquish foes);

(h) possessed of discernment (H: in order to lead followers and see to their best interests, religious or this-worldly discernment meaning at minimum to know the various capacities of people), sound hearing and eyesight, and the faculty of speech (K: so as to decisively arbitrate matters);

(i) (H: and be upright (def: o24.4) as a judge must be, and with even greater need. But it is valid, if forced to, to resor to the leadership of a corrupt person, which is why Ibn 'Abd al-Salam says, "If there are no upright leaders or rules available, then the least corrupt is given precedence").

## THE THREE WAYS A CALIPH MAY BE INVESTED WITH OFFICE

o25.4 The caliphate may legally be effected (K: through three means, the first of which is):

(1) by an oath of fealty (H: like the one sworn by the prophetic Companions to Abu Bakr (Allah be well pleased with them)) which, according to the soundest position, is (H: legally binding if it is) the oath of those with discretionary power to enact or dissolve a pact (ahl al-hall wa al-'aqd) of the scholars, leaders, and notables able to attend (K: since the matter is accomplished through them, and all the people follow them. It is not a condition that all those with discretionary power to enact or dissolve a pact be present from every remote region, or that there be a particular number present, as the author's words seem to imply, but rather, if discretionary power to enact or dissolve a pact exists in a single individual who is obeyed, his oath of fealty is sufficient.) (H: As for an oath of fealty from common people without discretionary power to enact or dissolve a pact, it is of no consequence) and they (H: those pledging fealty) must possess the qualifications necessary to be a witness (K: such as uprightness and so forth (def: 024.2)) (Mughni al-muhtaj ila ma'rifa ma'ani al-fazl al-Minhaj (y73), 4.129-31, and Hawashi al-Shaykh 'Abd al-Hamid al-Sharwani wa al-Shaykh Ahmad ibn Qasim al-'Abbad'i'ala Tuhfa al-muhtaj bi sharh al-Minhaj (y2), 9.74-76).

(Mawardi:) When those with power to enact or dissolve a pact meet to select the caliph, they examine the state of the available qualified candidates, giving precedence to the best of them and most fully qualified, whose leadership the public will readily accept and whose investiture people will not hesitate to recognise. When there is only one person whom the examiners' reasoning leads them to select, they offer him the position. If he accepts, they swear an oath of fealty to him and the supreme leadership is thereby invested in him, the entire Islamic Community (Umma) being compelled to acknowledge fealty to him and submit in obedience to him. But if he refuses the caliphal office, not responding to their offer, he is not forced to comply-as investiture comes of acceptance and free choice, not compulsion and constraint-and they turn to another qualified candidate (al-Ahkam al-sultaniyya wa al-ʿOwlayat al-diniyya (y87), 7-8);

(2) (Nawawi:) and (H: the second means (K: through which it may be effected is)) by the caliph appointing a successor (H: meaning someone after him, even if it be his descendant or ancestor, for Abu Bakr appointed 'Umar (Allah be well pleased with them) as his successor, and scholarly consensus (def: b7) was effected in recognizing its legal validity. This type of investiture consists of the caliph appointing a successor while still alive, to succeed him after death. Though actually his successor during his life, the successor's disposal of affairs is suspended until the caliph dies).

If the caliph appoints a group to select a successor from among themselves, it is as if he had appointed a successor (K: though the successor is not yet identified) (H: resembling an appointment in it being legally binding and obligatory to accept the outcome of their choice) and they choose one of their number (K: after the caliph's death, investing the person they select with the caliphate) (H: because 'Umar appointed a committee of six to choose his successor from among themselves: 'Ali, 'Uthman, Zubayr, 'Abd al-Rahman ibn 'Awf, Sa'd ibn Abi Waqqas, and Talha, and after his death they agreed upon 'Uthman, (Allah be well pleased with them));

(3) an (H: the third means is) through seizure of power by an individual possessing the qualifications of a caliph (H: meaning by force, since the interests of the whole might be realized through such a takeover, this being if the caliph has died, or has himself obtained office through seizure of power, i.e. when he lacks some of the necessary qualifications.) (S: As for when the office is wrested from a living caliph, then if he himself became caliph through seizure of power, the caliphate of his deposer is legally valid. But if he became caliph through an oath of fealty (def: o25.4(1)) or having been appointed as the previous caliph's successor (def: o25.4(2)), then the deposer's caliphate is not legally valid). A takeover is also legally valid, according to the soundest position, by someone lacking moral rectitude (dis:

o25.3(i)) or knowledge of Sacred Law (o25.3(f)) (K: meaning the caliphate of a person lacking either condition is legally valid when the other conditions exist) (H: as is the takeover of someone lacking other qualifications, even if he does not possess any of them (S: besides Islam, for if a non-Muslim seizes the caliphate, it is not legally binding, and so too, according to most scholars, with someone who makes reprehensible innovations, as previously mentioned (dis: o25.3(a))). The caliphate of someone who seizes power is considered valid, even though his act of usurpation is disobedience, in view of the danger from the anarchy and strife that would otherwise ensue).

## THE OBLIGATORY CHARACTER OF OBEDIENCE TO THE CALIPH

o25.5 (K: It is obligatory to obey the commands and interdictions of the caliph (N: or his representative (def: o25.7-10)) in everything that is lawful (A: meaning it is obligatory to obey him in everything that is not unlawful, offensive, or merely in his own personal interests), even if he is unjust, because of the hadith,

"Hear and obey, even if the ruler placed over you is an Ethiopian slave with amputated extremities," and because the purpose of his authority is Islamic unity, which could not be realized if obeying him were not obligatory. It is also obligatory for him to give sincere counsel to those under him to the extent that it is possible.)

## THE INVALIDITY OF A PLURALITY OF CALIPHS

o25.6 (K: It is not permissible for two or more individuals to be invested with the caliphate (H: at one time), even when they are in different regions, or remote from one another, because of the disunity of purpose and political dissolution it entails. If two are simultaneously invested as caliph, neither's caliphate is valid. If invested serially, the caliphate of the first of them is legally valid and the second is disciplined (def: o17) for committing an unlawful act, together with those who swear fealty to him, if they are aware of the first's investiture as caliph) (Mughni al-Muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 4.132, and Hawashi al-Shaykh 'Abd al-Hamid al-'Abbadi 'ala Tuhfa al-muhtaj bisharh al-Minhaj (y2), 9.77-78).

## DELEGATING AUTHORITY TO THOSE UNDER THE CALIPH

**o25.7 (Mawardi:)** The authority delegated to a minister of state may be of two kinds, full or limited.

(1) Full ministerial authority is when the caliph appoints as minister an individual who is entrusted with independently managing matters through his own judgement and implementing them according to his own personal reasoning (ijtihad).

Appointing such an individual is not legally invalid, for Allah Most High says, quoting His prophet Moses (Allah bless him and give him peace),

"And appoint for me a minister from any family. Aaron my brother; fortify me through him and have him share my task" (Koran 20:29-32),

and if valid respecting the task of prophethood, it is valid a fortiori regarding the function of the caliphate. Another reason is that the direction of the Islamic Community (Umma), which is the caliph's duty, cannot be fully conducted alone without delegating responsibility; for him to appoint a minister to participate therein is sounder than attempting to manage everything himself, a minister to help keep him from following mere personal caprice, that he may thus be further from error and safer from mistakes.

The conditions necessary for such a minister are the same as those for a caliph, excepting lineage alone (dis: o25.3e)), for the minister must implement his views and execute his judgements, and must accordingly be capable of expert legal reasoning (ijtihad). He must also possess an additional qualification to those required for the caliphate, namely, by being specially qualified to perform the function he is appointed to.

(2) Limited ministerial authority is a lesser responsibility and has fewer conditions, since the role of personal judgement therein is confined to the views of the caliph and their implementation, this minister being, as it were, an intermediary between the caliph, his subjects, and their appointed rulers; delivering orders, performing directives, implementing judgements, informing of official appointments, mustering armies, and informing the caliph in turn of important events, that the minister may deal with them as the caliph orders. He is an assistant in carrying out matters and is not appointed to command them or have authority over them. Such a ministry does not require an appointment but only the caliph's permission.

**o25.8** When the caliph appoints a ruler over a region or city, the ruler's authority may be of two kinds, general or specific. The general may in turn be of two types, authority in view of merit, which is invested voluntarily; and authority in view of seizure of power, invested out of necessity.

**o25.9** Authority in view of merit is that which is freely invested by the caliph through his own choice, and entails delegating a given limited function and the use of judgement within a range of familiar alternatives. This investiture consists of the caliph appointing an individual to independently govern a city or region with authority over all its inhabitants and discretion in familiar affairs for all matters of government, including seven functions:

(1) raising and deploying armies on the frontiers and fixing their salaries, if the caliph has not already done so;

(2) reviewing laws and appointing judges and magistrates;

(3) collecting the annual rate (kharaj) from those allowed to remain on land taken by Islamic conquests, gathering zakat from those obliged to pay, appointing workers to handle it, and distributing it to eligible recipients;

(4) protecting the religion and the sacrosanct, preserving the religion from alteration and substitution;

(5) enforcing the prescribed legal measures connected with the rights of Allah and men;

(6) leading Muslims at group and Friday prayers, whether personally or by representative;

(7) facilitating travel to the hajj for both pilgrims from the region itself and those passing through from elsewhere, that they may proceed to the pilgrimage with all necessary help,

(8) and if the area has a border adjacent to enemy lands, an eighth duty arises, namely to undertake jihad against enemies, dividing the spoils of battle among combatants, and setting aside fifth (def: o10.3) for deserving recipients.

**o25.10** Authority in view of seizure of power, invested out of necessity, is when a leader forcibly takes power in an area over which the caliph subsequently confirms his authority and invests him with its management and rule. Such a leader attains political authority and management by takeover, while the caliph, by giving him authorization, is able to enforce the rules of the religion so that the matter may be brought from invalidity to validity and from unlawfulness to legitimacy. And if this process is beyond what is normally recognized as true investiture of authority with its conditions and rules, it yet preserves the ordinances of the Sacred Law and rules of the religion that may not be left vitiated and compromised (al-Ahkam al-sultaniyya wa al-wilayat al-diniyya (y87), 25-39).

## o26.0 THE CONCLUSION OF 'UMDAT AL-SALIK

o26.1 And Allah Most High and Glorious knows best what is correct (O: meaning that He knows best what actually 1" corresponds to the truth, in word and deed, the author thereby denying the claim to know better. There is scholarly disagreement as to whether the truth (A: about the rule of Allah for a particular ruling) is really one or multiple (A: many scholars holding that all positions of qualified mujtahids on a question are correct). In fact, it is one, the Imam who is right about it (Allah be well pleased with them all) receiving two rewards, one for his attempt and one for being correct, while the one who is not is mistaken, receiving a reward for his effort and being excused for his mistake. All of which applies to particular rulings of Sacred Law (furu'), as opposed to fundamentals of Islamic faith (usul, def: books u and v), in which the person wrong about them is guilty of serious sin, as is anyone who contradicts the tenets of the orthodox Sunni Community (Ahl al-Sunna wa al-Jama'a)).

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#### **p0.0 THE AUTHOR'S INTRODUCTION**

(n: The first of the books translated as appendices to our basic text 'Umdat al-salik concerns the enormities alluded to above in the context of court testimony (dis: 024.3), and has been edited from the Kitab al-kaba'ir (Book of enormities) of Imam Dhahabi, who defines an enormity as any sin entailing either a threat of punishment in the hereafter explicitly mentioned by the Koran or hadith, a prescribed legal penalty (hadd), or being accursed by Allah or His messenger (Allah bless him and give him peace).)

**p0.1 In the name of Allah, Most Merciful and Compassionate.**

O Lord, facilitate and help. The sheikh, Imam, and hadith master (hafiz, def: w48.2 (end) Shams al-Din Muhammad ibn Ahmad ibn 'Uthman Dhahabi (may Allah forgive him) said: Praise be to Allah for true faith in Him, His books, messengers angels, and decrees. Allah bless our prophet Muhammad, his folk, and those who support him, with a lasting blessing that will grant us the Abode of Permanences near to Him.

This is a book useful in knowing the enormities, both in general and in detail. May Allah by His mercy enable us to avoid them. Allah Most High says,

"If you avoid the enormities of what you have been forbidden, We shall acquit you of your wrongdoings and admit you to a generous place to enter" (Koran 4:31).

In this text, Allah Most High promises whoever avoids the enormities to admit him to paradise. The Prophet (Allah bless him and give him peace) said,

"The five prescribed prayers, and from one Friday prayer to another entail forgiveness for what is between them as long as you do not commit the enormities."

So we are obliged to learn what they are, that the Muslim may avoid them.

## **p1.0 ASCRIBING ASSOCIATES TO ALLAH MOST HIGH (SHIRK)**

**p1.1** Ascribing associates to Allah Most High means to hold that Allah has an equal, whereas He has created you, and to worship another with Him, whether it be a stone, human, sun, moon, prophet, sheikh, jinn, star, angel, or other.

**p1.2** Allah Most High says:

(1) "Allah does not forgive that any should be associated with Him, but forgives what is other than that to whomever He wills" (Koran 4:48).

(2) "Surely, whoever ascribes associates to Allah, Allah has forbidden him paradise, and his refuge is hell" (Koran 5:72).

(3) "Of a certainty, worshipping others with Allah is a tremendous injustice" (Koran 31:13).

**p1.3** The Koranic verses concerning this are very numerous, it being absolutely certain that whoever ascribes associates to Allah and dies in such a state is one of hell's inhabitants, just as whoever believes in Allah and dies as a believer is one of the inhabitants of paradise, even if he should be punished first.

## **p2.0 KILLING A HUMAN BEING**

**P2.1** Allah Most High says:

(1) "Whoever intentionally kills a believer, his recompense shall be hell, abiding therein forever, and Allah shall be wroth with him, damn him, and ready for him a painful torment" (Koran 4:93).

(2) "Whoever takes a life other than to retaliate for a killing or for corruption in the land is as if he had slain all mankind" (Koran 5:32).

**p2.2** The Prophet (Allah bless him and give him peace) said:

"When two Muslims meet with drawn swords, both the slayer and the slain go to hell." Someone said, "O Messenger of Allah, that is for the slayer. But why the slain?" And he replied, "Because he meant to kill the other."

## **p3.0 SORCERY**

**p3.1** Sorcery is an enormity because the sorcerer must necessarily disbelieve (dis: x136), and the accursed Devil has no other motive for teaching a person witchcraft than that he might thereby ascribe associates to Allah (shirk).

**p3.2** Allah Most High says:

(1) "A sorcerer will never prosper wherever he goes" (Koran 20:69).

(2) "... But the devils disbelieved, teaching people sorcery" (Koran 2:102).

And Allah Most High says, concerning Harut and Marut.

(3) "The two do not teach anyone before telling them, 'We are only a temptation, so be not unbelievers,' but they learn from these two that which they use to separate a man from his wife" (Koran 2:102).

## **p4.0 NOT PERFORMING THE PRAYER**

**p4.0** Allah Most High says:

(1) But a generation followed them who dissipated the prayer and pursued (their) lusts, and they shall find Ghayy (n: a "valley in hell" (Tafsir al-Jalalayn (y77), 402), save he who repents..." (Koran 19:59-60).

(2) "Woe to those who pray, unmindful of their prayers" (Koran 107:4-5).

93) "'What has brought you to hell?' And they shall say, 'We were not of those who prayed'" (Koran 74:42-43).

**p4.2** The Prophet (Allah bless him and give him peace) said,

"The agreement that is between us and them is the prayer: whoever leaves it has disbelieved (dis: w18.2-5)."

## **p5.0 NOT PAYING ZAKAT**

**p5.1** Allah Most High says:

(1) "Woe unto polytheists, who do not pay zakat and are disbelievers in the hereafter" (Koran 41:6-7).92)

"Those who hoard gold and silver, spending it not in the way of Allah, give them glad tidings of a

painful torment, the day they are roasted upon it in the fire of hell" (Koran 9:34-35).

#### **p6.0 SHOWING DISRESPECT TO ONE'S PARENTS**

**p6.1 Allah Most High says:**

(1) "Your Lord decrees that you shall worship none but Him and treat your parents well, and if one or both of them each old age with you, say not 'Uff!' to them nor upbraid them, but speak noble words and lower the wing of humility to them out of mercy" (Koran 17:230-24).

(2) "And We enjoin man to be good to his parents" (Koran 29:8).

**p6.2 The Prophet (Allah bless him and give him peace) said,**  
"Shall I not tell you of the worst of the enormities?..."  
and one of those he mentioned was undutiful behavior to one's parents.

#### **p7.0 ACCEPTING USURIOUS GAIN (RIBA) (def:k3)**

**p7.1 Allah Most High says:**

"O you who believe: fear Allah and forgo what remains of usurious gain if you are believers. If you will not, then know of a declaration of war (against you) from Allah and His messenger" (Koran 2:278-79).

**p7.2 the Prophet (Allah bless him and give him peace) said,**  
"May Allah curse him who eats of usurious gain (riba) or feeds it to another (A: curse (la'n) meaning to put someone far from the divine mercy)."

#### **p8.0 WRONGFULLY CONSUMING AN ORPHAN'S PROPERTY**

**p8.1 Allah Most High says:**

(1) "Verily, those who wrongfully eat the property of orphans but fill their bellies with fire, and shall roast in a blaze" (Koran 4:10).

(2) "Approach not the orphan's property, save in exchange for that which is better" (Koran 6:152).

**p8.2 If the orphan's guardian is poor and consumes some of his charge's property without exceeding what is permissible, there is no harm in it (A: no haram (la ba's) being a technical term in Sacred Law meaning that it is better not to). What is in excess of the permissible is absolutely unlawful. (N: Scholars say that the guardian may lawfully only take whichever is less: the amount he needs, or else the wage typically received for work comparable to that performed for the orphan.) The criterion of the permissible is what is customary among people who are true believers free from base, ulterior motives.**

#### **p9.0 LYING ABOUT THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE)**

**p9.1 Some scholars hold that lying about the Prophet (Allah bless him and give him peace) is unbelief (kufr) that puts one beyond the pale of Islam. There is no doubt that a premeditated lie against Allah and His messenger that declares something which is unlawful to be permissible or something permissible to be unlawful is pure unbelief. The question (A: as to when it is an enormity rather than outright unbelief) only concerns lies about other than that.**

**p9.2 The Prophet (Allah bless him and give him peace) said:**

(1) "A lie about me is not the same as a lie about someone else: whoever intentionally lies about me shall take a place for himself in hell."

(2) "Whoever relates words purportedly from me, thinking it is a lie, is a liar."

**p9.3 It is clear from this that narrating a forged (mawdu') hadith is not permissible.**

**p9.4 (Ibn Kathir:) As for detecting forged hadiths, there are many signs that enable one to do so, such as internal evidence of forgery in wording or content, including poor grammar, corrupt meaning, the mention of incredible rewards for inconsiderable efforts, or inconsistency with what is established in the Koran and rigorously authenticated (sahih) hadith. It is not permissible for anyone to relate such a hadith except by way of condemning it, to warn one of the ignorant public or common people who might be deceived by it. there are many types of individuals who forge hadiths, including those with corrupt convictions about basic tenets of Islamic faith, as well as devotees who believe they are doing good by making up hadith-like stories that encourage others to do good, avoid bad, or perform**

meritorious acts, that such stories may be acted upon (al-Bahith al-hathith sharh Ikhtisar 'ulum al-hadith (y61), 78).

p9.5 (n: Having discussed lies and forgeries, we must strictly distinguish them from the hadith category called not well authenticated (da'if, lit. "weak"), so termed because of such factors as having a channel of transmission containing a narrator whose memory was poor, one who was unreliable, unidentified by name, or for other reasons. Such hadiths legally differ from forgeries in the permissibility of ascribing them to the Prophet (Allah bless him and give him peace) and in other ways discussed at w48 below.)

#### **p10.0 BREAKING ONE'S FAST DURING RAMADAN**

p10.1 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever breaks a fast-day of Ramadan without an excuse or dispensation could not requite it by fasting a lifetime, were he to do so (A: meaning that making up that day, while obligatory, does not remove the sin, though repentance does)."

The above hadith is not well authenticated.

(2) "The five prescribed prayers, and from one Friday prayer to another or from Ramadan to Ramadan, expiate the sins between them as long as the enormities are avoided."

93) "Islam is based on five things: testifying that there is no god but Allah and that Muhammad is the Messenger of Allah, performing the prayer, giving zakat, fasting Ramadan, and the pilgrimage to the House (kaaba)."

#### **P11.0 FLEEING FROM COMBAT IN JIHAD**

p11.1 Allah Most High says,

"On that day, whoever turns his back to them, unless pretending flight in order to reattack, or separating to join another unit, will bear the wrath of Allah and his refuge will be hell, a terrible end" (Koran 8:16).

#### **p12.0 FORNICATION**

p12.1 Allah Most High says:

(1) "Approach not fornication, it is surely an indecency and evil as a way" (Koran 17:32).

(2) "The fornicator and Fornicatress, scourge them each a hundred stripes and let not pity for them take you" (Koran 24:2).

(3) "The fornicator shall not wed other than a fornicatress or idolatress. The fornicatress, none shall wed her but a fornicator or idolator. That is unlawful for believers" (Koran 24:3).

(n: The latter verse "was revealed when some poor Muslim emigrants in Medina were considering marrying the polytheists' prostitutes, who were wealthy, so that the prostitutes could provide for them. One opinion is that the Koranic prohibition concerned these people alone. A second position is that it was a general prohibition, but was superseded by the revelation of the subsequent verse, 'And marry those of you who are without spouses' (Koran 24:32)."  
(Tafsir al-Jalalayn (y77), 457))

p12.2 The Prophet (Allah bless him and give him peace) said,

"Whoever fornicates or drinks wine. Allah takes his faith from him as a man takes a shirt off over his head."

#### **p13.0 THE LEADER WHO MISLEADS HIS FOLLOWING, THE TYRANT AND OPPRESSOR**

p13.1 Allah Most High says:

(1) "The dispute (lit. "way against") is only with those who oppress people and wrongfully commit aggression in the land: these will have a painful torment" (Koran 42:42).

(2) "They did not forbid each other the evil that they did, and how wicked was what they would do" (Koran 5:79).

p13.2 The Prophet (Allah bless him and give him peace) said:

(1) "All of you are trustees, and each is responsible for those entrusted to his care."

(2) "Any superior who misrules his followers shall go to hell."

(3) "There will come corrupt, tyrannous rulers: whoever confirms their lies and assists them in their oppression is not of me, nor I of him, and shall not meet me at my watering place in paradise."

(4) "He who shows no mercy will no be shown any."

(5) "the worst of your rulers shall be those whom you detest and who detest you, whom you curse and who curse you." They said, "O Messenger of Allah, can we not throw, them out?" And he replied, "No, not as long as they maintain the prescribed prayer (dis: o25.3(a(A:))) among you."

(6) "You'll be anxious to lead, and this will be a source of remorse to you on the Day of Judgement."

#### **P14.0 DRINKING**

**P14.1 Allah Most High says:**

(1) "They will ask you about wine and gambling. Say: 'There is great sin therein'" (Koran 2:219).

(2) "O you believe: wine, gambling, idols, and fortune-telling arrows are but filth of the Devil's handiwork, so shun them..." (Koran 5:90).

**p1.2 The Prophet (Allah bless him and give him peace) said:**

(1) "Scourge whoever drinks wine. If he drinks it again, scourge him again. If he drinks it again, scourge him again. If he drinks it a fourth time, kill him." (N: The ruling of this hadith was later superseded, for the Propeht (Allah bless him and give him peace) was brought a drunkard for a forth time, but did not kill him, showing that execution had been superseded, though the hadith remains a proof that the crime of drunkenness is an enormity.)

(2) "Allah has cursed wine, and whoever drinks it, pours it, sells it, buys it, presses it for another, presses if for himself, carries it, accepts its delivery, or eats its price."

(3) "Whoever drinks wine in this world shall be forbidden it in the next."

#### **p15.0 ARROGANCE, PRIDE, CONCEIT, VANITY, AND HAUGHTINESS**

**p15.1 Allah Most high says:**

(1) "Moses said, 'I surely seek refuge in my Lord and yours from every arrogant person who disbelievers in the Day of Reckoning'" (Koran 40:27).

(2) "Assuredly, Allah loves not those who hold aloof out of pride" (Koran 16:23).

(3) "Such is the Final Abode. We grant it to those who seek not exaltation in the land, nor corruption" (Koran 28:83).

(4) "Turn not your cheek from people out of pride, not walk haughtily through the land, for Allah loves no one who is conceited and boastful" (Koran 31:18).

**p15.2 The Prophet (Allah bless him and give him peace) said:**

(1) "Tyrants and the arrogant will be raised on the Last Day as grain strewn underfoot that people will walk upon."

(2) "No one with the slightest particle of arrogance in his heart will enter paradise." A man remarked, "But a man likes his clothes to be nice and his sandals good." The Propeht (Allah bless him and give him peace) said, "verily, Allah is beautiful and loves beauty. Arrogance is refusing to acknowledge what is right and considering others beneath one."

(3) Allah Most High says, "Greatness is My garment and haughtiness My mantle: whoever vies with Me for them I will throw into hell."

(4) Salama ibn al-Akwa' recounts that a man was eating with his left hand in the presence of the Prophett (allah bless him and give him peace). The Propeht told him, "Eat with your right," to which the man replied, "I cannot," though nothing stopped him but arrogance. The Propeht said, "May you not be able to." And the man could never left his right hand to his mouth again.

**p15.3 The wickedest arrogance is that of someone who exalts himself over people because of is learning and gloats to himself about his superiority. The knowledge of such a person is of absolutely no benefit to him. Whoever learns Sacred Knowledge for the sake of the next world is unsettled by his learning, his heart is humbled and his ego lowered. Such a person lies in wait for his selfishness and never gives it free rain. He constantly takes his ego to task and corrects it. Were he to neglect it, it would diverge from the right path and destroy him. the person who seeks knowledge to take pride in it or to gain a position of leadership, looking disdainfully at other Muslims, thinking them fools and making light of them- all this is the most enormous arrogance, and "no one with the slightest particle of arrogance in his heart will enter paradise."**

#### **p16.0 BEARING FALSE WITNESS**

**p16.1 Allah Most High says.**

"Shun the abomination of idols, and shun false testimony" (Koran 22:30).

p16.2 The Prophet (Allah bless him and give him peace) said:

(1) "On the Day of Judgement, the feet of the person who bore false witness will not stir from their place before their own is condemned to hell."

(2) "Shall I tell you of the worst enormities?- worshipping others with Allah, showing disrespect to parents, giving a false statement, and testifying to the truth of a falsehood." And he kept repeating it until we were telling ourselves (N: out of sympathy for him because of the strain of repeating it), "If only he would be silent."

#### **P17.0 SODOMY AND LESBIANISM**

p17.1 In more than one place in the Holy Koran, Allah recounts to us the story of Lot's people, and how He destroyed them for their wicked practice. There is consensus among both Muslims and the followers of all other religions that sodomy is an enormity. It is even viler and uglier than adultery.

p17.2 Allah Most High says:

"Do you approach the males of humanity, leaving the wives Allah has created for you? But you are a people who transgress" (Koran 26:165-66).

p17.3 The Prophet (Allah bless him and give him peace) said:

(1) "Kill the one who sodomizes and the one who lets it be done to him."

(2) "May Allah curse him who does what Lot's people did."

(3) "Lesbianism by women is adultery between them."

#### **P18.0 CHARGING A WOMAN WHO COULD BE CHASTE (def: o13.2) WITH ADULTERY**

p18.1 Allah Most High says:

(1) "Those who accuse believing women, unmindful though innocent, are cursed in this world and the next and shall receive a painful torment" (Koran 24:23).

92) "Those who accuse innocent women without producing four witnesses, scourge them eighty stripes" (Koran 24:4).

p18.2 The Prophet (Allah bless him and give him peace) said,  
"Avoid the seven heinous sins..."

and he mentioned charging believing women, unmindful though innocent, with adultery.

p18.3 As for someone who accuses the Mother of the Faithful 'A'isha of adultery after the revelation from heaven of her innocence (Koran 24:11-12), such a person is an unbeliever (kafir) denying the Koran and must be killed.

#### **P19.0 MISAPPROPRIATING SPOILS OF WAR, MUSLIM FUNDS, OR ZAKAT**

p19.1 Allah Most High says:

"No prophet has been given to misappropriate wealth. Whoever does so shall bring what they have taken on the Day of Judgement" (Koran 3:161).

p19.2 The Prophet (Allah bless him and give him peace) said:

"... By Allah, none of you shall wrongfully take something save that he will meet Allah carrying it on Judgement Day, and I swear I will not recognize any of you who is carrying a grunting camel, lowing cow, or bleating sheep when you meet Allah." Then he lifted his hands and said, "O Allah, have I told them?"

#### **p20.0 TAKING PEOPLE'S PROPERTY THROUGH FALESHOOD**

p20.1 Allah Most High says,

"Consume not one another's property through falsehood, nor proffer it to those who judge (between you)..." (Koran 2:188).

p20.2 The category of taking others' property through falsehood includes such people as those who impose non-Islamic taxes (def: p32), the highwayman who blocks the road, the thief, the idler, the



betrayers of a trust, the cheater or adulterator of trade goods, the borrower who denies having borrowed something, the person who stints when weighing or measuring out goods, the person who picks up lost and found property and does not give notice of having found it, the person who sells merchandise with a hidden defect, the gambler, and the merchant who tells the buyer that the merchandise cost more than it did.

**p20.3 The Prophet (Allah bless him and give him peace) said:**

- (1) "whoever appropriates a hadd of land through falsehood shall be made to carry it, as thick as seven earths, around his neck on judgement Day."
- (2) "For someone to put off repayment of a debt when able to pay is an injustice."
- (3) A man said, "O Messenger of Allah, will my mistakes be forgiven me if I am killed, in steadfastness and anticipating Allah's reward, advancing and not retreating?" He replied, "Yes, except for debts."
- (4) "Flesh nurtured on ill-gotten wealth will not enter paradise. The hellfire has a better right to it."
- (5) "There is a record that Allah will not ignore the slightest bit of. It is the oppression of Allah's servants."

**p20.4 Oppression is of three types. The first is consuming property through falsehood; the second, oppressing Allah's servants by killing, hitting, breaking bones or causing wounds; and the third, oppressing them through spoken abuse, cursing, reviling, or accusing them of adultery or sodomy without proof. The Prophet (Allah bless him and give him peace) said in an address to the people at Mina,**

**"Verily, your blood, property, and reputations are as inviolable to one another as the inviolability of this day, this month, and this city of yours."**

#### **p21.0 THEFT**

**p21.1 Allah Most High says:**

**"Thieves, male or female-cut off their hands in retribution for what they have earned, as an exemplary punishment from Allah. Allah is Almighty and Wise" (Koran 5:38).**

**p21.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "Allah curse the thief whose hand is cut for stealing a rope."
- (2) "If Muhammad's daughter Fatima stole, I would cut off her hand."

**p21.3 A thief's repentance is of no benefit to him until he returns whatever he stole (dis: p77.3). If moneyless, he must have the victim absolve him of financial responsibility.**

#### **p22.0 HIGHWAYMEN WHO MENACE THE ROAD**

**(A: The amount of money they ask makes no difference, and like this, in being money taken through falsehood, are all measures imposed upon travellers without their free choice, such as tariffs, mandatory currency exchange, visa fees, and so forth.)**

**p22.1 Allah Most High says:**

**"The recompense of those at war with Allah and His messenger and who strive for corruption in the land is that they be killed or crucified, or a hand and foot cut off from opposite sides, or banished from the land. That is their humiliation in this world, and an immense torment awaits them in the next" (Koran 5:33).**

**p22.2 Merely making people feel that the way is unsafe is to commit an enormity, so how then if such a person should take money?**

#### **P23.0 THE ENGULFING OATH**

**p23.1 An engulfing oath is one in which there is premeditated lying. It is termed engulfing because it whelms its swearer in sin.**

**p23.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "the enormities are worshipping others with Allah, showing disrespect to parents, killing a human being, and the engulfing oath."
- (2) "A man once said, 'By Allah, Allah will not forgive So-and-so.' Allah said, 'Who is it that swears I must not forgive So-and-so? I forgive him and annul all your works.'"

## **p24.0 THE INVETERATE LIAR**

**p24.1 Allah Most High says:**

- (1) Allah guides not the profligate liar" (Koran 40:28).**
- (2) "May liars perish" (Koran 51:10).**

**p24.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "Lying leads one to wickedness and wickedness leads one to hell. A man keeps lying until Allah records that he is an inveterate liar."**
- (2) "The marks of a hypocrite are three: when he speaks he lies, when he makes a promise he breaks it, and when entrusted with something he betrays the trust."**
- (3) "A believer's natural disposition might comprise any trait other than treachery and untruthfulness."**

## **p25.0 SUICIDE**

**P25.1 Allah Most High says:**

**"Do not kill yourselves, for Allah is compassionate toward you. WHOever does so, intransgression and wrongfully, We shall roast in a fire, and that is an easy matter for Allah" (Koran 4:29-30).**

**p25.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "Of those before you, there was once a wounded man who could not bear it, so he took a knife and cut h is arm, and bled until he died. Allah Most High said, 'My slave has taken his life before I have, so I forbid him paradise.'"**
- (2) "Whoever kills himself with a knife will abide forever in the fire of hell, perpetually stabbing his belly with it. Whoever kills himself with position will abide forever in the fire of hell, poison in hand, perpetually drinking of it."**

## **p26.0 THE BAD JUDGE**

**p26.1 Allah Most High says:**

- (1) "Whoso does not judge by what Allah has revealed, those are the Unbelievers" (Koran 5:44).**
- (2) "Those who conceal the clear explanations and guidance We have revealed, after We have explained it in the Book to people, are cursed by Allah and those who curse" (Koran 2:159).**

**p26.2 The Propeht (Allah bless him and give him peace) said:**

- (1) "One judge shall go to paradise, and two to hell. The judge who knows what is right and judges accordingly shall be in paradise. the one who knows what is right but intentionally judges unjustly will go to hell, and so will the judge who judges without knowledge."**  
**Anyone who judges without knowledge or evidence from Allah and His messenger regarding the matter he gives an opinion on is subject to this threat.**
- (2) "whoever is appointed to judge between people is as though slaughtered without a knife."**

**p26.3 It is unlawful for a judge to rule on a cause when angry, especially at a litigant. When a judge's qualities combine an insufficiency of Sacred Knowledge, unworthy intention, bad disposition, and lack of godfearingness, then his destruction is complete and he must resign and hasten to save himself from hell.**

## **p27.0 PERMITTING ONE'S WIFE TO FORNICATE**

**p27.1 Allah Most High says:**

**"None shall wed a fornicatress but a fornicator or idolator. That is unlawful for believers" (Koran 24:3).**

**p27.2 The Prophet (Allah bless him and give him peace) said,**

**"Three will not enter paradise: he who is disrespectful to his parents, he who lets his wife fornicate with another, and women who affect masculinity."**

**p27.3 Someone who suspects his wife of indecency but pretends not to know because he loves her is not as bad as someone who actually pimps for her. There is no good in a man without jealousy for his rights.**

## **P28.0 MASCULINE WOMEN AND EFFEMINATE MEN**

**p28.1 The Prophet (Allah bless him and give him peace) said.**

**(1) "Men are already destroyed when they obey women."**

**(2) The Prophet (Allah bless him and give him peace) cursed effeminate men and masculine women.**

**(3) The Prophet (Allah bless him and give him peace) cursed men who wear women's clothing and women who wear men's.**

## **p29.0 MARRYING SOLELY TO RETURN TO THE PREVIOUS HUSBAND**

**p29.1 The Prophet (Allah bless him and give him peace) cursed to man who marries a woman after her divorce solely to permit her first husband to remarry her (dis: n7.7) and cursed the first husband.**

## **p30.0 EATING UNSLAUGHTERED MEAT, BLOOD, OR PORK**

**p30.1 Allah Most High Says,**

**"Say: 'I find nothing in what has been revealed to me that is unlawful for a person to eat except Unslaughtered meat, blood outpoured, or the flesh of swine, for all this is filth'" (Koran 6:45).**

**p30.2 Whoever premeditatedly eats these when not forced by necessity is a criminal.**

## **p31.0 NOT FREEING ONESELF OF ALL TRACES OF URINE**

**p31.1 Allah Most High says,**

**"And your raiment purify" (Koran 74:4).**

**p31.2 The Prophet (Allah bless him and give him peace):**

**(1) passed by two graves and said, "The two are being tormented, and not from anything excessive: one of them did not free himself of traces of urine, while the other was a talebearer (def: r3)."**

**(2) And he said, "Take care to remove all vestiges of urine from your persons, because it is the main reason for torment in one's grave."**

**Moreover, the prayer of someone who does not protect his person and clothing from urine is not acceptable (A: which is how scholars interpret the above hadiths, as applying to those who are negligent in removing all traces of urine before they pray).**

## **p32.0 COLLECTING TAXES**

**(A: Meaning to take revenues other than those which are countenanced by Sacred Law such as zakat, the non-Muslim poll tax (jizya, def: o11.4), or the spoils of war (o10).)**

**p32.1 Such people are among those meant by the words of Allah Most High,**

**"The dispute is only with those who oppress people, and wrongfully exceed proper bounds in the land: these will have a painful torment" (Koran42:42).**

**p32.2 And in the hadith of the adulteress who purified herself by voluntarily being stoned to death, there is the Prophet's remark (Allah bless him and give him peace).**

**"She has made a repentance so sincere that if even a tax taker repented with the like of it, he would be forgiven."**

**p32.3 He who imposes taxes resembles a highwayman, and is worse than a thief. But one who burdens the people, imposing over new levies on them, is more tyrannous and oppressive than someone more equitable therein who treats those under him more kindly. Those who gather taxes, who do the clerical work, or who accept the proceeds, such as a soldier, sheikh, or head of a Suficenter (zawiya)-all bear the sin, and are eating of ill-gotten wealth (dis:w49).**

## **p33.0 SHOWING OFF IN GOOD WORKS**

**p33.1 Allah Most High says:**

**(1) "The hypocrites are trying to fool Allah, while it is He who is outwitting them. And when they stand to pray they do so lazily, showing off to people, remembering Allah but little" (Koran 4:142).**

**(2) "O you who believe: do not nullify your charity by reminding recipients of having given it and by offending them, like someone who spends his money as a show for people" (Koran 2:264).**

**p33.2 The Prophet (Allah bless him and give him peace) said:**

**(1) "The first person judged on Resurrection Day will be a man martyred in battle. "He will be brought forth, Allah will reacquaint him with His blessings upon him and the man will acknowledge them, whereupon Allah will say, 'What have you done with them?' to which the man will respond, 'I fought to the death for you.'**

**"Allah will reply, 'You lie. You fought in order to be called a hero, and it has already been said,' Then he will be sentenced and dragged away on his face to be flung into the fire.**

**"Then a man will be brought forward who learned Sacred Knowledge, taught it to others, and who recited the Koran. Allah will remind him of His gifts to him and the man will acknowledge them, and then Allah will say, 'What have you done with them?' The man will answer, 'I acquired Sacred Knowledge, taught it, and recited the Koran, for Your sake.'**

**"Allah will say, "You lie. You learned so as to be called a scholar, and read the Koran so as to be called a reciter, and it has already been said.' Then the man will be sentenced and dragged away on his face to be flung into the fire.**

**"Then a man will be brought forward whom Allah expansively provided for, lavishing varieties or property upon him, and Allah will recall to him the benefits bestowed, and the man will acknowledge them, to which Allah will say, 'And what have you done with them?' The man will answer. 'I have not left a single kind of expenditure You love to see made in Your cause, save that I have spent on it for your sake.'**

**"Allah will say, 'You lie. You did it so as to be called generous, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire."**

**(2) "The slightest bit of showing off in good works is as if worshipping others with Allah."**

**p33.3 (A: When there is an act of obedience the servant intends to conceal but Allah reveals, then it is merely gratitude for His blessings to admit it to others and thank Him for it. When asked if one is fasting, for example, and one is, then one should say "Praise be to Allah" (al-Hamdu lillah).)**

#### **p34.0 BREACH OF FAITH**

**p34.1 Allah Most High says.**

**"Do not betray Allah and His messenger, nor knowingly betray your trusts" (Koran 8:27).**

**p34.2 The Prophet (Allah bless him and give him peace) said:**

**"Someone who cannot keep a trust is devoid of faith. Someone who cannot keep an agreement is devoid of religion."**

**p34.3 A breach of faith in anything is very ugly, but in some matters is worse than others. A person who cheats one for a pittance is not like a person who betrays one concerning one's wife and money, perpetrating outrages.**

#### **p35.0 LEARNING SACRED KNOWLEDGE FOR THE SAKE OF THIS WORLD, OR CONCEALING IT**

**(A: Learning Sacred Knowledge for the sake of this world means that if not for this-worldly reasons, a person would not have bothered to learn (dis: a3.1).)**

**p35.1 Allah Most High says:**

**(1) "Only the knowledgeable of His slaves fear Allah" (Koran 35:28).**

**(2) "Those who conceal what Allah has revealed of the Book and purchase a trifling price thereby, these but fill their bellies with hellfire" (Koran 2:174).**

**(3) "And Allah made a covenant with those given the Book to explain it to people and not keep it from them. But they flung it behind their backs" (Koran 3:187).**

**p35.2 The Prophet (Allah bless him and give him peace) said,**

**"Anyone who seeks Sacred Knowledge to vie with scholars, argue with fools, or win people's hearts will go to hell."**

**p35.3 Hilal ibn al-'Ala' said, "Seeking Sacred Knowledge is arduous, learning it is harder than seeking it, applying it is harder than learning it, and remaining safe from it is even harder than applying it."**

#### **p36.0 REMINDING RECIPIENTS OF ONE'S CHARITY TO THEM**

**P36.1 Allah Most High says.**

**"O you believe: do not nullify your charity by reminding recipients of having given it and by offending them" (Koran 2:264).**

**p36.2 The Prophet (Allah bless him and give him peace) said,**

**"There are three people whom Allah will not speak to, look at, or exonerate on the Day of Judgement, and who will have a painful torment: he who wears the hem of his garment low (A: out of pride). he who reminds recipients of his charity to them, and he who sells merchandise swearing that he paid more for it than he actually did."**

#### **p37.0 DISBELIEVING IN DESTINY (QADR)**

**p37.1 Allah Most High says:**

**(1) "Verily, We have created everything in a determined measure" (Koran 54:49).**

**(2) "Allah has created you and what you do" (Koran 37:96).**

**(3) "Whomever Allah leads astray has no guide" (Koran 7:186).**

**(4) "And Allah knowingly led him astray" (Koran 45:23).**

**(5) "But you will not want to unless Allah wants" (Koran 76:30).**

**(6) "And He inspired it (A: the human soul) its evil and its godfearingness" (Koran 91:8).**

**p37.2 The Prophet (Allah bless him and give him peace):**

**(1) "O Messenger of Allah, what is faith?" And he replied, "To believe in Allah, His angles, His messengers, the resurrection after death, and in destiny (qadr, def: u3.7-8). its good and evil."**

**(2) "There are six whom I curse, Allah curse, and who are cursed by every prophet whose supplications are answered: he who denies Allah's destiny, he who adds anything to Allah's book, he who rules arrogantly, he who considers what Allah has prohibited to be lawful, he who deems it permissible to treat my family in ways Allah has forbidden (A: such as insulting or reviling them), and he who abandons my sunna (A: out of disdain for it)."**

#### **P38.0 LISTENING TO PEOPLE'S PRIVATE CONVERSATIONS**

**p38.1 Allah Most High says.**

**"Do not spy" (Koran 49:12).**

**p38.2 The Prophet (Allah bless him and give him peace) said,**

**"Whoever listens to people who are averse to his listening shall have molten lead poured into his ears on the Day of Judgement."**

**p38.3 This may not be an enormity (A: in some cases (dis:r6.4)).**

#### **p39.0 CURSING OTHERS (dis:r38)**

**p39.1 The Prophet (Allah bless him and give him peace) said:**

**(1) "Cursing a believer is like killing him."**

**(2) "When a servant curses something, the curse rises up to the sky, where the doors of the sky shut it out, and then it falls back to earth, where the doors of the earth shut it out. then it searches right and left and when it does not find anywhere to go it comes back to the thing which was cursed, should it deserve it. It not, it returns upon the person who uttered it."**

**(3) While the Prophet (Allah bless him and give him peace) was on a journey, there was a woman of the Medinan Helpers (Ansar) riding a camel which annoyed her, whereupon, she cursed it. The Prophet heard this and said, "Take off what is on its back and release it, for it has been cursed." And it is as if I can still see it now, walking along among the people, no one stopping it.**

#### **p40.0 LEAVING ONE'S LEADER**

**p40.1 Allah Most High says.**

**"Fulfill covenants, for surely covenants will be asked about" (Koran 17:34).**

**p40.2 The Prophet (Allah bless him and give him peace) said:**

**"He who obeys me obeys Allah, and he who disobeys me disobeys Allah. He who obeys the leader obeys me, and he who disobeys the leader disobeys me."**

(A: The leader referred to in the hadith is the caliph of the Muslims or his authorized representative (dis: 025.5). Whenever there is a group of three or more Muslims, it is sunna for a leader (amir) to be chosen. It is sunna to obey such a leader, and leaving him or not obeying him contravenes what is recommended, but is not unlawful.)

#### **p41.0 BELIEVING IN FORTUNE-TELLERS OR ASTROLOGERS**

**p41.1 Allah Most High says:**

- (1) "Pursue not that which you have no knowledge of" (Koran 17:36).
- (2) "(He is) the Knower of the Unseen, and discloses not His unseen to anyone (dis: w60.1), except to a messenger with whom He is pleased" (Koran 72:26-27).

**p41.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "Whoever goes to a 'psychic' ('arraf) or fortune-teller and believes what he says has disbelieved in what has been revealed to Muhammad."
- (2) "Allah Most High says, 'One of My servants reaches daybreak a believer, another an unbeliever. He who says, "We have received rain by Allah's grace," is a believer in Me and a disbeliever in the planets. But he who says, "We have received rain by the effects of such and such a mansion of the moon," is an unbeliever in Me and a believer in planets (A: if he thinks they have a causal influence independent of the will of Allah (dis: 08.7(17))).'"
- (3) "Whoever goes to a 'psychic,' asks him about something, and believes him, will not have his prayer accepted for forty days."

#### **p42.0 A WIFE'S REBELLING AGAINST HER HUSBAND (def: m10.12)**

**p42.1 Allah Most High says:**

"Men are the guardians of women, since Allah has been more generous to one than the other, and because of what they (men) spend from their wealth. so righteous women will be obedient, and in absence watchful, for Allah is watchful. And if you fear their intractability, warn them, send them from bed, or hit them. But if they obey you, seek no way to blame them" (Koran 4:34).

**p42.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "Allah will not look at a woman who is ungrateful to her husband, while unable to do without him."
- (2) "When a man calls his wife to his bed and she will not come, and he spends the night angry with her, the angels, curse her until morning."
- (3) "It is not lawful for a woman to fast when her husband is present, save by his leave. Nor to permit anyone into his house except with his permission."
- (4) "Whoever leaves her husband's house (A: without his permission), the angels curse her until she returns or repents."

(Khalil Nahlawi:) It is a condition for the permissibility of her going out (dis: m 10.3-4) that she take no measures to enhance her beauty, and that her figure is concealed or altered to a form unlikely to draw looks from men or attract them., Allah Most High says, "Remain in your homes and do not display your beauty as women did in the pre-Islamic period of ignorance" (Koran 33.33).(al-Durar al-mubaha (y99), 160)

#### **p43.0 SEVERING TIES OF KINSHIP**

(A: The opposite, maintaining the bonds of kinship (silat al-rahim), means politeness, kind treatment, and concern for all one's relatives, even if distantly related, corrupt, non-Muslim, or unappreciative.)

**p43.1 Allah Most High says:**

"If you turn back, would you then cause corruption in the land, severing your family ties? Those are the ones whom Allah has cursed and deafened, and blinded their sight" (Koran 47:22-23).

**p43.2 The Prophet (Allah bless him and give him peace) said:**

- (1) "He who severs his family ties will not enter paradise."
- (2) "Whoever believes in Allah and the Last Day, let him maintain the bonds of kinship."

#### **p44.0 MAKING PICTURES**

**p44.1 The Prophet (Allah bless him and give him peace) said:**

- (1) 'Every maker of pictures will go to the fire, where a being will be set upon him for each picture he

made, to torment him in hell."

(2) "Whoever makes an image shall be required (on the Last Day) to breathe a spirit into it, but will never be able to do so."

(n: Other hadith evidence appears at w50, which discusses legal questions relating to the artistic, photographic, and televisual depiction of animate life.)

#### **p45.0 THE TALEBEARER WHO STIRS UP ENMITY BETWEEN PEOPLE (dis:r3)**

**p45.1 Allah Most High says,**

"Obey not every wretched swearer; slanderer, going about with tales" (Koran 68:10-11).

**p45.2 The Prophet (Allah bless him and give him peace) said:**

(1) "He who stirs up enmity among people by quoting their words to each other will not enter paradise."

(2) "You find that among the worst people is someone who is two-faced, showing one face to some and another face to others."

(3) "Do not tell me anything about my Companions, for I want to meet them without disquiet in my heart."

#### **p46.0 LOUDLY LAMENTING THE DEAD**

**p46.1 The Prophet (Allah bless him and give him peace) said,**

"He who slaps his cheeks, ripe his pockets, or calls out the cries of the pre-Islamic period of ignorance is not of us."

#### **p47.0 ATTACKING ANOTHER'S ANCESTRY**

**p47.1 The Prophet (Allah bless him and give him peace) said,**

"Two qualities in people are unbelief: attacking another's ancestry, and wailing over the dead."

(N: The hadith does not mean that these things put one beyond the pale of Islam, but that they are the actions of the Unbelievers.)

#### **p48.0 EXCESSES AGAINST OTHERS**

**p48.1 Allah Most High says,**

"The dispute is only with those who oppress people and wrongfully commit aggression in the land: these will have a painful torment" (Koran 42:42).

**p48.2 The Prophet (Allah bless him and give him peace) said,**

(1) "Allah has inspired to me that you are all to be humble towards each other, such that no one transgresses against or exalts himself above another."

(2) Malik Rahawi said: "O Messenger of Allah, I have been given of beauty that which you see, and I do not like anyone to wear better sandals than I. Is this of presumptuous pride?" He answered, "This is not of presumptuousness, which rather consists of refusing to admit the truth and considering people inferior."

(3) "A woman was tortured for a cat she imprisoned until it died. She went to hell because of it, having neither fed nor watered it, for she confined it; not yet having let it go to forage on the small creatures of the earth."

(4) "Allah will certainly torture those who torture people in this world."

#### **p49.0 ARMED INSURRECTION AND CONSIDERING MUSLIMS UNBELIEVERS**

(A: The early Kharijite sect committed these transgressions.)

**p49.1 Allah Most High says:**

(1) "Do not commit transgressions: surely Allah loves not the transgressors" (Koran 2:190).

(2) "Whoever disobeys Allah and His messenger has gone manifestly astray" (Koran 33:36).

**p49.2 The Prophet (Allah bless him and give him peace) said,**

"If someone says to his Muslim brother, 'You unbeliever,' one of them deserves the name."

#### **p50.0 HURTING OR REVILING MUSLIMS**

**p50.1 Allah Most High says:**

(1) "Those who hurt believing men and women who have done nothing to deserve it shall bear the burden of calumny and open sin" (Koran 33:58).

(2) "Do not spy do not splendor one another "(Koran 49:12).

(3) "Woe to whoever disparages others behind their back or to their face" (Koran: 104:1).

(4) "Those who love that scandal should be spread concerning the believers shall have a painful torment in this world and the next" (Koran 24:19).

p50.2 The Prophet (Allah bless him and give him peace) said:

(1) "The Muslim is the brother of the Muslim. He does not oppress him, hang back from coming to his aid, or belittle him. It is sufficiently wicked for someone to demean his fellow Muslim."

(2) "By Allah, he does not believe. By Allah, he does not believe. By Allah, he does not believe, "Someone asked, "Who, O Messenger of Allah?" And he said, "He whose neighbor is not safe from his evil conduct."

(3) Someone said, "O Messenger of Allah, So-and-so spends her nights praying and her days fasting, but there is something in her tongue that maliciously injures her neighbors." He replied, "There is no good in her, she will go to hell."

(4) "When I was taken up in the Ascent (Mi`raj), I passed by people with fingernails of copper who were raking their faces and chests with them. I asked, `Who are they, Gabriel?' and he said, `They are those who slandered others (lit. "ate people's flesh") and attacked their reputations."

(5) "No man charges another with corruption or unbelief, save that the charge returns against himself if the other is not as he said."

(6) "Do not revile the dead, for they have gone on to what they have sent ahead."

#### p51.0 HARMING THE FRIENDS (AWLIYA') OF ALLAH MOST HIGH

p51.1 Allah Most High says,

"Verily, those who offend Allah and His messenger are cursed by Allah in this world and the next, and He has prepared for them a humiliating torment" (Koran 33:57).

p51.2 The Prophet (Allah bless him and give him peace) said:

(1) "Abu Bakr, if you anger them [some of the poorer Emigrants], you anger your Lord."

(2) "Allah Most High says: `He who is hostile to a friend (wali) of Mine I declare war against. My slave approaches Me with nothing more beloved to Me than what I have made obligatory for him, and My slave keeps drawing nearer to Me with voluntary works until I love him. An when I love him, I am his hearing with which he hears, his sight with which he sees, his hand with which he seizes, and his foot with which he walks. If he asks Me, I will surely give to him, and if he seeks refuge in Me, I will surely protect him."

(n: This hadith is explained in detail at w33, which discusses the friends (awliya') of Allah Most High.)

#### p52.0 DRAGGING THE HEM OF ONE'S GARMENT OUT OF CONCEIT

p52.1 Allah Most High says,

"... Nor walk haughtily through the land"(Koran 31:18)\_.

p52.2 The Prophet (Allah bless him and give him peace) said:

(1) "The caftan of the Muslim comes down to midcalf, there being no harm in what is between this and the anklebones, though any of it below the anklebones is in hell. Whoever lets the helm of his garment drag on the ground out of pride, Allah will not look at him."

(2) "While a man was walking along in a new set of clothes, with a swagger to his step, pleased with himself, and his hair combed down, Allah caused the earth to swallow him, and he will keep sinking until the Last Day."

#### p53.0 MEN WEARING SILK OR GOLD

P53.1 Allah Most High says,

"And the raiment of godfearingness is better" (Koran 7:26).

p53.2 The Prophet (Allah bless him and give him peace) said:

(1) "Only those with no share in the next world wear silk in this one."

(2) "Wearing gold and silk has been made unlawful for the men of my Community but permissible for its women."



#### **p54.0 SLAUGHTERING IN OTHER THAN ALLAH'S NAME**

**P54.1 Allah Most High says,**

**"Eat not of what the name of Allah has not been mentioned over; verily it is disobedience" (Koran 6:121).**

**p54.2 The Prophet (Allah bless him and give him peace) said,**

**"May Allah curse whoever slaughters in other than Allah's name."**

#### **p55.0 SURREPTITIOUSLY CHANGING PROPERTY-LINE MARKERS**

**P55.1 The Prophet (Allah bless him and give him peace) said,**

**"May Allah curse whoever changes the land's property-line markers."**

#### **p56.0 DISPARAGING THE PROPHETIC COMPANIONS (SAHABA)**

**p56.1 The Prophet (Allah bless him and give him peace) said,**

**"The curse of Allah is upon whoever reviles my Companions."**

**p56.2 'Ali ibn Abi Talib (Allah be well pleased with him) said,**

**"By Him who cleaves the seed and creates the soul, it is the solemn word of the Illiterate Prophet to me that none shall love me except a believer, and none hate me except a hypocrite." \**

#### **p57.0 DISPARAGING THE MEDINAN HELPERS (ANSAR)**

**p57.1 The Prophet (Allah bless him and give him peace) said,**

**"The sign of faith is love of the Helpers (Ansar), and the sign of hypocrisy is hatred of the Helpers."**

#### **p58.0 HE WHO INAUGURATES A REPREHENSIBLE INNOVATION (BID'A)**

**(def:w29.3)**

**p58.1 The Prophet (Allah bless him and give him peace) said:**

**(1) "He who calls others to misguidance is guilty of a sin equal to the sins of all who follow him therein without this diminishing their own sins in the slightest."**

**(2) "He who inaugurates a good sunna [custom] in Islam earns the reward of it and of all who perform it after him without diminishing their own rewards in the slightest. And he who introduces a bad sunna is guilty of the sin of it and of all who perform it after him without diminishing their own sins in the slightest."**

#### **p59.0 WOMEN WEARING FALSE HAIR AND THE LIKE**

**P59.1 The Prophet (Allah bless him and give him peace) said,**

**"Allah curse women who wear false hair or arrange it for others, who tattoo or have themselves tattooed, who pluck facial hair or eyebrows or have them plucked, and women who separate their front teeth for beauty, altering what Allah has created."**

**(n: w51 discusses women removing facial hair.)**

#### **p60.0 POINTING A BLADE AT ONE'S BROTHER**

**p60.1 The Prophet (Allah bless him and give him peace) said:**

**"The angels curse whoever points a blade [A: or other weapon] at his brother [until he ceases], even if it be his brother from his mother and father."**

#### **p61.0 FALSELY CLAIMING SOMEONE IS ONE'S FATHER**

**p61.1 The Prophet (Allah bless him and give him peace) said:**

**(1) "Paradise is forbidden to whoever falsely claims someone is his father, knowing he is not."**

**(2) "Do not wish for fathers other than your own. For someone to wish for a different father is unbelief."**

#### **p62.0 BELIEVING THAT SOMETHING PORTENDS BAD LUCK**

p62.1 The Prophet (Allah bless him and give him peace) said,  
"belief in a bad omen ins polytheism (shirk)."

#### p63.0 DRINKING FROM GOLD OR SILVER VESSELS

p63.1 The Prophet (Allah bless him and give him peace) said:

- (1) "Do not wear silk or brocade. Do not drink from vessels of gold or silver or eat from dishes made of them: these are for others [A: i.e. non-Muslims] in this world, and for you in the next."
- (2) "He who eats or drinks from vessels of gold or silver but swallows hellfire into his belly."

#### p64.0 ARGUING, PICKING APART ANOTHER'S WORDS, AND QUARRELLING

p64.1 Allah Most High says:

- (1) "They did not mention him [Jesus] to you as an example except for argument. Rather, they are quarrelsome people" (Koran 43:58).
- (2) "Those who argue about the signs of Allah without authority having been given to them have nothing in their hearts but pride, to which they will never attain" (Koran 40:56).

p64.2 The Prophet (Allah bless him and give him peace) said:

- (1) "The man most hated by Allah is the obstinate arguer."
- (2) "No people went astray after having been guided save that they were afflicted with arguing."
- (3) "Arguing over the Koran is unbelief."
- (4) "He who presses for something he knows is false remains under the hatred of Allah until he gives it up."
- (5) "The thing I fear most for my Community is the eloquent hypocrite."
- (6) "Modesty and being at a loss for words are two components of true faith, while vulgarity and long-windedness are two components of hypocrisy."

#### p65.0 STINTING WHEN WEIGHING OR MEASURING OUT GOODS

p65.1 Allah Most High says:

"Woe to stinters who take their full share when measuring goods from people but skimp when measuring or weighing out for them. Do these not believe they will be raised to a momentous day, a day when people will stand before the Lord of the Worlds?" (Koran 83:1-6).

p65.2 This is a type of theft, a breach of faith, and consuming others property through falsehood.

#### p66.0 FEELING SECURE FROM ALLAH'S DEVISING

p66.1 Allah Most High says:

- (1) "None feels safe from Allah's devising except people who are ruined" (Koran 7:99).
- (2) "...until, when they were exulting in what they had been given, We suddenly seized them" (Koran 6:44).
- (3) "Verily, those who do not hope to meet Us, who enjoy this world and feel at ease with it, and those who are oblivious to Our signs: their refuge is hell for what they have earned" (Koran 10:7-8).

#### p67.0 DESPAIRING OF THE MERCY OF ALLAH AND LOSS OF HOPE

p67.1 Allah Most High says:

- (1) "None despairs of the mercy of Allah except people who disbelieve" (Koran 12:87).
- (2) "It is He who sends down the rain after they have lost hope" (Koran 42:28).
- (3) "Say: `O My slaves who have been prodigal against yourselves, do not despair of the mercy of Allah'" (Koran 39:53).

p67.2 The Prophet (Allah bless him and give him peace) said,  
"Let none of you die except thinking he best of Allah."

#### p68.0 INGRATITUDE TO SOMEONE WHO DOES ONE A KINDNESS

p68.1 Allah Most High says:

"...to show thanks to Me, and to your parents..." (Koran 31:14).

p68.2 The Prophet (Allah bless him and give him peace) said,  
"He who does not thank people is unthankful to Allah,"

p68.3 One of the early Muslims said: "Ingratitude for a kindness is one of the enormities. Gratitude

consists of reciprocating it or supplicating for the person."

#### **p69.0 WITHHOLDING EXCESS WATER FROM OTHERS**

**p69.1** The Prophet (Allah bless him and give him peace) said:

(1) "Whoever denies others his surplus water or pasturage, Allah shall deny him His blessing on the Day of Judgement."

(2) "Do not sell surplus water."

#### **p70.0 BRANDING AN ANIMAL'S FACE**

**p70.1** The Prophet (Allah bless him and give him peace) passed by a donkey whose face had been branded and said, "Haven't you heard that I have cursed whoever brands or strikes the faces of livestock?" -and he forbade it.

**p70.2** The words of the Prophet (Allah bless him and give him peace) "Haven't you heard that I have cursed..." imply that he who has not heard the warning against an act is not guilty of sin by committing it, though whoever has heard and knows is included in the curse. we hold that it is likewise with all these enormities, except those which are necessarily known as being of the religion (def: f1.3(N:)).

#### **p71.0 GAMBLING**

**p71.1** Allah Most High says:

"Wine, gambling, idols, and fortune-telling arrows are but filth of the Devil's handiwork, so shun it, that you may succeed. The Devil only wants to create enmity and hatred between you over wine and gambling, and to prevent you from remembering Allah and from prayer. Will you not then desist?" (Koran 5:90-91).

**p71.2** The Prophet (Allah bless him and give him peace) said,

"Whoever says to his companion, "Come, I will play you for stakes, must expiate by giving charity," If merely saying this is a sin that calls for charity in expiation, what must one suppose about actually doing it? It is a form of consuming others' wealth through falsehood.

#### **p72.0 VIOLATING THE MECCAN SACRED PRECINCT (HARAM)**

**p72.1** Allah Most High says:

"...and al-Masjid al-Haram which We have appointed equally for all people, he who stays therein as well as the desert dweller. Whoever intends to violate it out of wrongdoing, We shall make him taste a painful torment" (Koran 22:25).

(n: The words out of wrongdoing in the above verse mean "by reason of doing wrong through committing an act that is forbidden therein, even if it merely consists of reviling one of the caretakers" (Tafsir al-Jalalayn (y77), 436).)

**p72.2** The Prophet (Allah bless him and give him peace) said,

"Of all people, the greatest in outrage against Allah is he who kills in the Meccan Sacred Precinct, who kills someone who is not trying to kill him, or who kills because of the feuds of pre Islamic times."

#### **p73.0 FORGOING THE FRIDAY PRAYER TO PRAY ALONE**

**p73.1** The Prophet (Allah bless him and give him peace) said:

(1) "I've considered having a man lead people at prayer and going myself to those who hang back from attending the Friday prayer to burn their houses down upon them."

(2) "Going to the Friday prayer is obligatory for every male who has reached puberty."

#### **p74.0 SPYING ON THE MUSLIMS AND REVEALING THEIR WEAKNESSES**

**p74.1** Included in this subject is the hadith of Hatib ibn Abi Balta`a (A: Who sent a secret letter telling of the Muslims' military plans to his relatives in Mecca in hopes that they would not get hurt) whom `Umar (Allah be well pleased with him) wanted to kill for what he had done, but the Prophet (Allah bless him and give him peace) forbade `Umar to , as Hatib had fought at Badr (A: and by accepting Hatib's excuse, left nothing for any Muslim to criticize (dis: p75.3)).

If someone's spying entails undermining Islam and its people, or the killing, captivity, enslavement, or plundering of the Muslims, or anything of the like, then he is one of those who strive for corruption in the land, destroying village and offspring, and his subject to death, and deserves the torment (A: of hellfire), may Allah save us from it. Anyone who spies necessarily knows that if ordinary talebearing is an enormity (dis: p45), a spy's carrying information is far more abominable and heinous.

#### **p75.0 PROBABLE ENORMITIES**

(n: Commentaries by Imam Nawawi and 'Abd al-Ra'uf Munawi have been added by the translator to some of the following hadiths.)

### **ENVY**

p75.1 The Prophet (Allah bless him and give him peace) said:

(1) "Beware of envy, for envy consumes good works as fire consumes wood."

(2) "None of you believes until he loves for his brother what he loves for himself."

(Nawawi:) It is fitter to interpret this hadith as referring to universal brotherhood, including both Muslims and non-Muslims, such that one loves for one's non-Muslim brother what one loves for oneself, i.e. to enter Islam, just as one loves one's Muslim brother to remain in Islam, this being why it is desirable (mustahabb) to pray for the guidance of non-Muslims. The hadith is understood as denying that someone who does not love for his brother what he loves for himself has perfect faith, love meaning to want what is good and advantageous for him, referring to religious love, not individual human love. For one's human nature might well dislike another's attaining the good, or surpassing oneself therein, though it is obligatory for one to resist this human tendency and pray for one's brother and desire for him what one desires for oneself. Someone who does not love for his brother what he loves for himself is envious, and envy, as Ghazali notes, is of three types (A: all of them unlawful). The first is to wish that another person cease to have something good in order to obtain it oneself. The second is to wish that another lose something good, even if one does not obtain it, as when one already has another like it, or does not want it, this being worse than the previous type. The third is when one does not wish that the other cease to have something good, but resents his having surpassed one in attainment or position, accepting his parity with one but not his superiority. And this is unlawful as well, because one thereby objects to Allah's division of His favor among His servants. Allah Most High says:

"Are they the ones who apportion the mercy of your Lord? It is We who have divided their livelihoods between them in this life, and raised some of them in degrees above others" (Koran 43:32). So whoever does not accept this division opposes Allah Most High in His apportionment and His wisdom. One must remedy one's human nature, make it accept destiny, and resist it by praying that one's enemy be given what one's self-interest might prefer him not to have (al-Arba'un al-Nawawiyya wa sharhuha (y103),40).

### **NOT LOVING THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE) MORE THAN ALL PEOPLE**

p75.2 The Prophet (Allah bless him and give him peace) said,

"None of you believes until I am more beloved to him than his wife, child, self, and all people."

(Munawi:) Kirmani says, "Love of the Prophet (Allah bless him and give him peace) means the will to obey him and disobey him, this being one of the obligations of Islam" (Fayd al-Qadir sharh al-Jami' al-saghir (y91), 6.441).

### **CONTENDING WITH WHAT THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE) HAS BROUGHT**

p75.3 The Prophet (Allah bless him and give him peace) said,

"None of you believes until his inclinations conform to what I have brought."

(Nawawi:) This means a person must examine his acts in light of the Koran and sunna, suspending his own inclinations and following what the Prophet (Allah bless him and give him peace) has brought. The hadith resembles the word of Allah Most High,

"When Allah and His messenger have decided a matter, no believer, male or female, has a choice in their affair" (Koran 33:36).

(al-Arba'un al-Nawawiyya wa sharhuha (y103), 74).

### **ACQUIESCING TO DISOBEDIENCE**

p75.4 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever of you sees something wrong, let him change it with his hand (dis: book q). If unable, then let him change it with his tongue. If unable, then with his heart. And that is the weakest degree of

faith."

And in the hadith related by Muslim concerning oppressors:

(2) "Whoever fights them with his hand is a believer, whoever fights them with his tongue is a believer, whoever fights them in his heart is a believer, Beyond that, there is not a mustard grain of faith."

This hadith proves that whoever does not condemn acts of disobedience in his heart or wish they would cease is devoid of faith. Fighting with the heart includes asking Allah Most High to annihilate the falsehood and its perpetrators, or improve them.

(3) "Leaders will be placed over you that some of you will accept and some of you condemn. Whoever dislikes what they do is innocent. Whoever condemns what they do is secure. But not whoever accepts and follows them." Someone said, "Shouldn't we fight them?" And he replied, "No, not as long as the maintain the prayer (dis: o25.3) (a(A:)) among you."

#### HELPING ANOTHER TO WRONGFULLY DISPUTE

p75.5 The Prophet (Allah bless him and give him peace) said,  
"He who helps another to argue without right remains under the hatred of Allah until he gives up."

#### UNDERHANDEDNESS

p75.6 The Prophet (Allah bless him and give him peace) said,  
"Plotting and duplicity are in the hellfire."

#### DISAFFECTING A PERSON'S SPOUSE OR SERVANT FROM HIM

p75.7 The Prophet (Allah bless him and give him peace) said,  
"He who disaffects a person's wife or servant from him is not of us."

#### VULGARITY

p75.8 The Prophet (Allah bless him and give him peace) said:  
(1) "Modesty is of faith, and faith is in paradise. Vulgarity is of rudeness, and rudeness is in hell."  
(2) "Allah detests the foulmouthed, vulgar person."

#### BEING LEADERLESS

P75.9 The Prophet (Allah bless him and give him peace) said,  
"The death of someone who dies without the leader of a group over him is as if he had died in the pre-Islamic period of ignorance (A: leader meaning the caliph (def: 025) or his representative, if the exist (dis: p40.2(A:)),"

#### BENEFITING AT A MUSLIM'S EXPENSE

p75.10 The Prophet (Allah bless him and give him peace) said:  
"Whoever eats food obtained at the expense of a Muslim, Allah will feed him hellfire on Judgement Day. He who gains a prestigious reputation at the expense of a Muslim, Allah will reduce him to the position of the show-offs and boasters (def: p33.2) on Judgement Day. He who wears a garment acquired at the expense of a Muslim, Allah will dress him in a garment of fire on Judgement Day."

#### SHUNNING A MUSLIM WITHOUT RIGHT

p75.11 The Prophet (Allah bless him and give him peace) said,  
"Whoever shuns his brother for a year is as though he had spilled his blood."  
(Munawi:) This means that avoiding him for a year deserves punishment in the hereafter just as spilling his blood does, and that both the person who shuns someone and he who kills someone are involved in sin, though not on the same level, for the use of a simile does not imply the parity of the simile's subject to the thing with which it has been compared. Shafi'i holds it is unlawful to shun a Muslim for three days unless there is a valid reason such as the religious improvement of the person avoiding the other or person being avoided, or when the latter is morally corrupt or involved in reprehensible innovation (bid'a, def: w29.3) (Fayd al-Qadir shah al-Jami' al-saghir (y91), 6.234).

## INTERCEDING FOR THE GUILTY

p75.12 The Prophet (Allah bless him and give him peace) said,  
"He whose intercession comes between a criminal and one of Allah's prescribed penalties has defied Allah in His command."

## SAYING SOMETHING THAT ALLAH DETESTS

p75.13 The Prophet (Allah bless him and give him peace) said:

(1) "A man says something" Allah detests that he does not think twice about, for which he plunges into hell (dis:r1)."

(2) "A man says something pleasing to Allah, not imagining it amounts to what it does, for which Allah records His pleasure in him until Judgement Day. And a man say something that angers Allah, not imagining it amounts to what it does, for which Allah records His wrath against him until the day he meets Him."

## SAYING "MASTER" (SAYYID) TO A HYPOCRITE

p75.14 The Prophet (Allah bless him and give him peace) said,  
"Do not say "master" to a hypocrite, for if he is a master, you have angered your Lord Mighty and Majestic."

## BREAKING A PROMISE

p75.15 The Prophet (Allah bless him and give him peace) said,  
"The signs of a hypocrite are three: when he speaks he lies, when he promises he breaks it, and when entrusted he betray his trust."

(A: If one makes an ordinary promise to another person, it is sunna to keep the promise, though it is strictly unlawful to make a promise that one has no intention to keep, this being how scholars interpret the above hadith.)

Lying and betraying a trust have been mentioned before, while here we are discussing promise breaking. Allah Most High says

"Of them, there is one who promised Allah, "If He bestows of His generosity on us, we shall certainly give charity and be of the righteous"" (Koran 9:75).

(n: Suyuti notes that the person referred to above "is Tha'laba ibn Hatib, who asked the Prophet (Allah bless him and give him peace) to pray that Allah would enrich him, so that he might give everyone their just due. So the Prophet supplicated for him and he became wealthy, but then he stopped coming to the Friday prayer, withdrew from the community, and refused to pay zakat, as Allah Most High says:

"But when He gave to them of His generosity, they hoarded it and turned away in aversion. So He punished them by putting hypocrisy into their hearts until the day they meet Him, because they broke their promise to Allah and lied' (Koran 9:76-77).

Some time after this, he brought the Prophet (Allah bless him and give him peace) his zakat, but the Prophet told him, 'Allah forbides me to accept it from you, 'at which Tha'laba threw handfuls of dust upon his own head. He later (A: in the time of the subsequent caliphate) took his zakat to Abu Bakr, but he would not accept it. Then to 'Umar, but he would not accept it. Then he took it to 'Uthman, but he would not accept it either, and he died in the reign of 'Uthman" (Tafsir al-Jalalayn (y77), 253).)

## NOT TRIMMING ONE'S MUSTACHE

p75.16 The Prophet (Allah bless him and give him peace) said:

(1) "He who does not trim his mustache (def: e4.1(2)) is not one of us."

(2) "Be different from the Zoroastrians: grow your beards and trim your mustaches."

## NOT PERFORMING THE HAJJ WHEN ABLE TO

p75.17 'Umar ibn Khattab (Allah be well pleased with him) said:

"I've considered sending men to these cities to see who has not made the pilgrimage, and collect the non-Muslim poll tax (jizya, def: o11.4) from everyone possessing the means who has not performed it (def:j1.5-10). They are not Muslims. They are not Muslims."

## KEEPING AN INHERITANCE FROM AN HEIR

p75.18 The Prophet (Allah bless him and give him peace) said,  
"Whoever prevents his heirs from receiving their inheritance (dis: w52.1(234-36)), Allah will prevent his inheriting paradise."

## TALKING ABOUT HOW ONE'S WIFE MAKES LOVE

p75.19 The Prophet (Allah bless him and give him peace) said,  
"Among the worst people in Allah's sight on Judgement Day will be the man who makes love to his wife and she to him, and he divulges her secret."

## SODOMIZING ONE'S WIFE

p75.20 The Prophet (Allah Bless him and give him peace) said,  
"He who sodomizes a woman is accursed."

## INTERCOURSE WITH ONE'S WIFE DURING MENSTRUATION

p75.21 The Prophet (Allah bless him and give him peace) said,  
"Whoever has intercourse with a woman during her period, or sodomizes a woman, or who goes to a fortune-teller and believes him, has committed unbelief (A: if he considers an of these permissible)."

## LOOKING INTO ANOTHER'S HOUSE WITHOUT LEAVE

p75.22 The Prophet (Allah bless him and give him peace) said:  
(1) "Were a man to look at you without permission and you threw a rock at him and knocked out his eye, you would not have committed any offense."  
(2) "Whoever peeps into a house without its people's leave, they may put out his eye."

## EXCESSIVENESS IN RELIGION

p75.23 Allah Most High says,  
"Say 'O people of the Book, do not be excessive in your religion'" (Koran 4:171).  
(Qurtubi:) According to exegetes, this refers to the extremism of the Jews concerning Jesus in accusing Mary of fornication, and the extremism of the Christians in considering him a god. For both excessiveness and remissness are evil, and both may be unbelief (al-Jami' li ahkam al-Qur'an (y117), 6.21).  
The Prophet (Allah bless him and give him peace) said,  
"Beware of going to extremes (in religion), for those before you were only destroyed through excessiveness."  
(Munawi:) Ibn Taymiya says, "His saying 'Beware of going to extremes in religion' is a general prohibition applying to all types of extremes, whether in belief or works" (Fayd al-Qadir sharh al-Jami' al-saghir (y91), 3.126).

## NOT ACCEPTING A SWORN STATEMENT

p74.24 The Prophet (Allah bless him and give him peace) said,  
"Whoever is sworn to in Allah's name, let him accept it, for whoever does not has nothing to do with Allah in anything."

## STINGINESS

P75.25 Allah Most High says:  
(1) "Whoever is watchful against the stinginess of his own soul, those are the successful" (Koran 59:9).  
(2) "Here you are, called upon to spend in the Way of Allah, and some of you are being stingy, while whoever is stingy is only ungenerous towards himself. It is Allah who is rich and you who are the poor" (Koran 47:38).  
The Prophet (Allah bless him and give him peace) said:  
(1) "What disease is worse than stinginess?"  
(2) "Three things are deadly: avarice obeyed, caprice yielded to, and opinionated people's pride in their opinions."

## SITTING IN THE CENTER OF A CIRCLE

p75.26 The Prophet (Allah bless him and give him peace) cursed whoever sits in the middle of a circle of people (A: because such a person sees himself as better than they are).

## PASSING IN FRONT OF SOMEONE PERFORMING THE PRAYER

p75.27 The Prophet (Allah bless him and give him peace) said

"If someone passing in front of a person performing the prayer knew of the penalty for it, it would be better for him to wait for forty (n: a variant has, "a hundred years")."

(A: In front means within the length of the person's prostration, or the distance to the barrier he is using (def; f7) if it is not far.)

(Munawi:) Ibn Daqiq al-'Eid says: "A Maliki scholar has distinguished four situations respecting the sin of the person praying and the person who passes in front of him (n: given P, the person praying, and Q, the person passing in front of him):

(1) Q sins but not P when P is praying behind a barrier in a place that is not a commonly used walkway and Q passes in front of him when there is another alternative (A: meaning another route, since to stop and wait is not considered an alternative, though it is superior);

(2) P sins but not Q when P is praying in a commonly used walkway without a barrier, or at a considerable distance from one, and Q has no other alternative but to pass in front of him;

(3) both P and Q sin when P is praying in circumstances like (2) above, if Q has an alternative route but passes in front of P anyway;

(4) and neither P nor Q sin when P is praying in circumstances like (1) above, if Q has no alternative and passes in front of P."

(Fayd al-Qadir sharh al-Jami' al-saghir (y91), 5.338)

## NOT LOVING ONE'S FELLOW MUSLIMS

p75.28 The Prophet (Allah bless him and give him peace) said:

"By Him in whose hand is my soul, none of you will enter paradise until you believe, and none of you will believe until you love each other. Shall I not tell you of something which if you do it will create love among? Increase the custom of greeting each other with 'as-Salamu 'alaykum.'"

(Kitab al-Kaba'ir wa tabyin al-maharim (y36), 35-181)

p76.0 (n: Most of the above enormities are agreed upon by all four schools of jurisprudence. A more comprehensive list by Ibn Hajar Haytami is given below at w52.)

## p77.0 THE CONDITIONS OF A VALID REPENTANCE

p77.1 (Nawawi: (n: with commentary by Muhammad ibn 'Allah Bakri (B:))) Scholars state that repentance is obligatory for every sin (B: there being scholarly consensus (def: b7) that it is Obligatory for both lesser sins and enormities, and for both outward acts and inward ones such as malice or envy).

p77.2 When a person's disobedience is solely between him and Allah Most High, unconnected with another human being's rights, his repentance has three conditions:

(a) to desist from the sin;

(b) to regret having done it (B: because of its being disobedience, since regretting it for some other reason is of no consequence);

(c) and to resolve never to commit it again.

(B: Some hold that after having repented of it, it is also a condition that one abandon the company of whoever committed the act with one, and also that one's repentance be purely for the sake of Allah, a restriction that Ibn Hajar Haytami embeds in the first condition above by saying, "to desist from the sin solely for the sake of Allah, since abandoning it out of fear, ostentation, or other motive besides Allah Most High is not considered desisting.") If any of these conditions is lacking, one's repentance is not valid.

p77.3 If the act of disobedience is connected with the rights of another human being, repentance for it has four conditions; the three mentioned above, plus clearing oneself of the obligation owed to the other



person. If this obligation is property or the like, one must return it (A: by any means, secretly, or openly, even as an ostensible gift) to him (B: i.e to its owner, meaning to return the article itself if it still exists, or if it does not, then a substitute, whether this be its value or an equal amount of it). (N: Becoming a Muslim eliminates all previous sins except those involving rights or property owed to other people. Allah does not pardon these until they are restored or forgiven.)

If the right in question is the penalty for charging someone with adultery when there are not four witnesses (def:o13) or the like (B: such as a victim's right to retaliate (o3) for a homicide or injury) then one must give oneself up to him (B: to permit him to inflict the penalty due) or else ask him to forgive it.

(B: The author's words seem to imply that the validity of repentance depends on performing the above, of returning the property or giving oneself up-i.e. when possible, for otherwise one intends to do so when possible, or asks the victim for amnesty-but the position of the Imam (A: Juwayni), which 'Izz ibn 'Abd al Salam and our author (n: Nawawi) also follow, is that one's repentance is valid regarding the rights of Allah Most High (N: through merely repenting), while the other person's right is an obligation that remains upon one (dis:w53), as does the sin of not discharging it).

If the wrong done to another consists of slander (def: r2), the one must have him pardon it (B: by informing him so he can forgive one, though informing him is only a necessary condition when doing so will not cause even greater harm, though if it will as when one fears the other will kill one, informing him is not obligatory. Both asking for the person's forgiveness and informing him of what one said are only obligatory when he has heard that he has been slandered. If he has not, then asking Allah's forgiveness is sufficient) (Riyad al-salihin (y107), 10-11, and Dalil al-falihin li turuq Riyad al-salihin (y25), 1.88-91).

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## BOOK Q COMMANDING THE RIGHT AND FORBIDDING THE WRONG

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## q0.0 INTRODUCTION

q0.1 (n: The discussion and analysis that follow are Imam Ghazali's, edited by the Hanbali scholar Ibn Qudama Maqdisi from an earlier abridgement of Ghazali's *Ihya' `ulum al-din* by `Abd al-Rahman ibn Jawzi, which Maqdisi shortened to a single volume whose conciseness, if less vivid than the *Ihya'*, better lends itself to the purpose of the present section, which is to discuss the practical implications of an important aspect of Sacred Law.)

q0.2 (Ibn Qudama Maqdisi:) One should know that commanding the right and forbidding the wrong is the most important fundamental of the religion, and is the mission that Allah sent the prophets to fulfill. If it were folded up and put away, religion itself would vanish, dissolution appear, and whole lands come to ruin.

## q1.0 THE OBLIGATION TO COMMAND THE RIGHT

Q1.1 Allah Most High says,

“Let there be a group of you who call to good, commanding the right and forbidding the wrong, for those are the successful” (Koran 3:104).

This verse explains that commanding the right and forbidding the wrong is a communal rather than a personal obligation (dis: c3.2), for He says, “Let there be a group of you...” and not, “All of you command the right.” So if enough people do it (A: meaning that whenever a wrong is seen, one of those who see it corrects it), the responsibility is lifted from the rest, those who perform it being expressly mentioned as the successful. There are many verses in the Holy Koran about commanding the right and forbidding the wrong.

q1.2 The Prophet (Allah bless him and give him peace) said:

(1) "Those who keep within Allah's limits and those who transgress them or allow them to be compromised may be compared to people on a ship, some of whom must stay below deck in the hardest and worst place, while others get passage above. When those below need water, they pass through those on the upper deck, injuring and annoying them until those below reflect, 'If we were to stave a hole in the hull we could get water without troubling those above. 'Were those above deck to leave those below to themselves, all would be destroyed, while if they were to help them, all would be saved."

(2) "Whoever of you sees something wrong, let him change it with his hand. If unable to, then let him change it with his tongue. If unable, then with his heart. And that is the weakest degree of faith."

(3) "The best jihad is speaking the truth to an unjust ruler."

(4) "When you see my Community too intimidated by an oppressor to tell him, 'You are a tyrant,' then you may as well say good by to them."

(5) "Command the right and forbid the wrong, or Allah will put the worst of you in charge of the best of you, and the best will supplicate Allah and be left unanswered."

q1.3 Abu Bakr (Allah be well pleased with him) rose from his place, and after having praised Allah Most High, said, "O people: you recite the verse,  
"O you who believe: you are responsible for yourselves; those who go astray will not harm you if you are guided" (Koran 5:105),  
"while we have heard the Messenger of Allah (Allah bless him and give him peace) say,

**"People who do not change something wrong when they see it are on the verge of a sweeping punishment from Allah."**

## **q2.0 WHO MAY COMMAND THE RIGHT AND FORBID THE WRONG**

### **LEGAL RESPONSIBILITY**

**q2.1 There are four integrals (def: q2-5) in commanding the right and forbidding the wrong, the first of which is that the person doing so be legally responsible (def: c8.1), Muslim, and able to, these being the conditions for it to be obligatory, though a child of the age of discrimination (def: f1.2) who condemns something dishonorable is rewarded for doing so, even if it is not obligatory for him to.**

### **MORAL RECTITUDE IS NOT A CONDITION**

**q2.2 As for requirements of moral rectitude in the person giving the reprimand, some scholars take this into consideration and say that a corrupt person is not entitled to censure, a position for which they adduce the word of Allah Most High, "Do you enjoin piety to others and forget yourselves?" (Koran 2:44), but there are no grounds in the verse for such and inference.**

### **HAVING THE CALIPH'S PERMISSION**

**q2.3 Some scholars stipulate that the person delivering the censure must have permission to do so from the caliph (def: o25) or his regional appointee, and do not grant that private individuals may censure others. This is untrue, for the Koranic verses and hadiths all indicate that whoever sees something wrong and does nothing has sinned. Stipulating that there must be permission from the caliph is mere arbitrary opinion. One should realize that there are five levels of censure: explaining the wrong nature of the act, admonishing the person politely, reviling him and harshness, forcibly stopping the act (such as by breaking musical instruments or pouring out wine), and finally, intimidation and threatening to strike the person or actually hitting him to stop what he is doing. It is the latter level, not the first four, that requires the caliph, because it may lead to civil disorder. The early Muslims' invariable practice of reprimanding those in authority decisively proves by their consensus (def: b7) that there is no need for a superior's authorization. If it be wondered whether a child is entitled to reprove his father, or a wife her husband, or for private citizens to reprove their ruler, the answer is that all are fundamentally entitled to. We have distinguished the five levels: the child is entitled to explain the nature of the act, to admonish and advise his parents politely, and finally may censure at the fourth level by such things as breaking a lute, pouring out wine, and so forth. This is also the sequence that should be observed by a wife. As for private citizens with their ruler, the matter is much graver than a child's reproofing his father, and citizens are only entitled to explain the matter and advise.**

### **BEING ABLE TO CENSURE**

**q2.4 It is a necessary condition that the person condemning something wrong be able to do so. Someone who is unable is not obliged to condemn it except in his heart. The obligation is not only lifted when physically unable, but also when one fears that problems (def: q2.7) will result for one, which also comes under the heading of inability. The obligation to censure the wrong is likewise lifted when one knows that the reproach will be ineffective. Four situations may be distinguished with respect to this.**

**(1) When one knows (def: q2.6) the wrong will be eliminated by speaking or acting without this entailing problems for oneself, one is obliged to censure it.**

**(2) When one knows that speaking will be ineffective and one will be beaten if one does, one is not obliged to.**

**(3) When one knows that one's censure will be ineffective but it does not entail problems for one, it is not obligatory, because of its ineffectiveness, though one is still recommended to censure the act in order to manifest the standards of Islam and remind people of their religion.**

**(A: Hadiths that seem to show the nonobligatoriness of commanding the right and forbidding the wrong are understood by Islamic scholars as referring to specific situations in which censure is ineffectual, and are not global statements about this obligation's inapplicability to a certain era of history, such as our**

own or some future time. Commanding the right and forbidding the wrong will be obligatory until the Day of Judgement.)

(4) And when one knows that it will cause problems for one but the wrong will be eliminated by censuring it, such as with breaking a lute or dumping out wine when one knows one will be beaten for it, then one is not obliged but rather recommended to, as is evident from the hadith, "The best jihad is speaking the truth to an unjust ruler"

There is no disagreement among scholars that it is permissible for a single Muslim to attack battlelines of unbelievers headlong and fight them even if he knows he will be killed. But if one knows it will not hurt them at all, such as if a blind man were to hurl himself against them, then it is unlawful. Likewise, if someone who is alone sees a corrupt person with a bottle of wine beside him and a sword in his hand, and he knows that the person will chop his neck if he censures him for drinking, it is not permissible for him to do so, as it would not entail any religious advantage worth giving one's life for. Such censure is only praiseworthy when one is able to eliminate the wrong and one's action will produce some benefit.

q2.5 If one wants to censure something but knows it will result in one's companions also being beaten with one, it is not permissible for one to do so, because one is incapable of removing one blameworthy thing without its leading to another.

(N: It is not lawful to censure anything reprehensible when doing so will lead to a thing or state that is more reprehensible.)

q2.6 Know only means what one believes will probably result. Someone who thinks that it will create problems for him is not obligated to censure, though someone who does not believe that problems will result is obliged to.

Cowardice does not enter into consideration here, not foolhardy courage, but rather the normal temperament of someone with a sound disposition.

q2.7 Problems means being beaten, killed, robbed, or acquiring a bad name in town. As for being reviled and disparaged, it is not an excuse to remain silent, for someone who commands what is right generally meets with it.

### q3.0 WHAT MAY BE CENSURED

q3.1 The second integral of commanding the right and forbidding the wrong is that the thing censured is something blameworthy that exists at present and is apparent.

Blameworthy means that its occurrence is prohibited by Sacred Law, this being of wider scope than mere disobedience, for someone who sees a child or insane person drinking wine (A: which is not a sin in relation to them) is obliged to pour it out and forbid them.

That exists at present excludes someone who has drunk wine and is now finished, and so forth. It also excludes something which will take place later, as when there is evidence that a person intends to go drinking that night. There is no censure in such cases other than to appeal to the person's conscience.

Apparent excludes someone who conceals his disobedience at home and locks his door. It is not permissible to spy on him. An exception is if something is manifest to another outside the house, such as the sound of pipes and lutes. Someone who hears them may enter and break the instruments. If one smells the odor of wine outside the house, the sounder opinion is that it is permissible to enter and condemn it.

### ONE MAY NOT CONDEMN ANOTHER FOR QUESTIONS INVOLVING DIFFERENCES AMONG SCHOOLS OF JURISPRUDENCE

q3.2 It is a necessary condition that the thing censured be something whose blameworthiness is not merely established by ijtiḥād (n: the independent legal reasoning of a particular Imam). Any question in which there is ijtiḥād may not be a cause for censure. A Hanafi, for example, may not condemn a Shafi'i for eating something slaughtered without the Basmala (dis: j17.5(4)), nor a Shafi'i condemn a Hanafi for drinking some nonintoxicating raisin drunk (N: nor a Muslim condemn a non-Muslim for drinking wine

(dis: o11.5(1))). (A: But if two individuals follow the same school of Sacred Law and one commits an act that is unlawful or offensive in that school or in each of the two's respective schools, it is obligatory for the other person to condemn the act even when it involves the ijthad of their Imam. And the Shafi'i must condemn the Hanafi for eating something slaughtered without the Basmala, as the Hanafi is doing something he believes to be wrong.)

#### **q4.0 THE PERSON DOING THE WRONG**

q4.1 The third integral of commanding the right and forbidding the wrong is the person being reprimanded. It is sufficient that he be a person, and is not necessary that he be legally responsible, as we have previously mentioned (q3.1) in respect to censuring a child or insane person.

#### **q5.0 THE ACT OF CENSURING**

q5.1 The fourth integral is the censure itself, which has various degrees of severity and has rules.

#### **KNOWLEDGE OF THE WRONG ACT**

q5.2 The first degree consists of knowing the wrong act. One should not eavesdrop at another's house in order to hear the sounds of musical instruments, or try to catch the scent of wine, or feel for an object concealed beneath someone's shirt to see if it is a flute, or ask a person's neighbors to see what he is doing. But if two upright witnesses (def: o24.4) come and inform one that someone is drinking, one may enter his house and take him to task.

#### **EXPLAINING THAT SOMETHING IS WRONG**

q5.3 The second degree consists of explaining that an act is wrong, since an ignorant person will often do something he does not know is blameworthy, but will stop when he finds out. So one must explain it politely, saying, for example: "People are not born scholars; we were unfamiliar with many things in Sacred Law until scholars mentioned them to us. Perhaps there are not many in your hometown," and thus lead up to it diplomatically so the person understands without being offended. To avoid the evil of remaining silent when there is something wrong, only to commit the evil of offending a Muslim when able not to, it like washing away blood with urine.

#### **FORBIDDING THE ACT VERBALLY**

q5.4 The third degree of severity is to prohibit the act by admonition, advice, and making the other fear Allah, mentioning the hadiths of divine punishment for it and reminding the person how the early Muslims behaved, all of which should be done with sympathy and kindness, not harshness or anger. The great danger here which one must beware of is that a learned person explaining that something is wrong may be proud of his knowledge and gloat over the lowness of the other's ignorance, which is like saving someone from a fire by casting oneself into it. It is ignorant in the extreme, a deep disgrace, and a delusion from the Devil. The touchstone and test for this is to ask oneself whether one would prefer the censured person to stop at his own or another's behest, or whether one would prefer to forbid him oneself. If reproving him is difficult and weighs upon one, and one would prefer that someone else do it, then one should proceed, for religion is the motive. But if it is otherwise, then one is following mere personal caprice and using the censuring of others as a means to display one's merit, and one should fear Allah and censure oneself first.

#### **CENSURING WITH HARSH WORDS**

q5.5 The fourth degree of severity consists of reviling the person and bearing down on him with sharp, harsh words. One does not resort to this degree unless one is unable to prevent the person by politeness, and he shows he wants to persist or mocks one's admonitions and advice. Reviling him does not mean vulgarity and lies, but rather saying "You degenerate," "You idiot "You ignoramus," "Do you not fear Allah?" and so forth. Allah Most high quotes Ibrahim (upon whom be peace) saying: "Fie on you and what you worship apart from Allah! Can you not think?" (Koran 21.67).

#### **RIGHTING THE WRONG BY HAND**

q5.6 The fifth degree consists of changing the blameworthy thing with one's hand, such as by breaking

musical instruments, pouring out wine, or turning someone out of a house wrongfully appropriated. There are two rules for this degree:

(1) not to do so when one can get the person to do it himself, i.e. if one can get someone to leave the land he has unjustly taken, one should not drag or push him from it;

(2) and to break the instruments, for example, just enough to obviate their being used for disobedience and no more, or to be careful not to break the bottles when pouring out wine. If one cannot manage except by throwing rocks at the bottles or the like, then one may do so and is not obliged to cover the damages.

If it be wondered whether one may break the bottles or drag someone by the foot out of a wrongfully appropriated house to create fear, as an object lesson to others, the answer is that this is for leaders alone and is not permissible for private individuals because of the obscurity of the decision-making criteria in the matter..

## **INTIMIDATION**

q5.7 The sixth degree is threatening and intimidation, such as by saying, "Stop this or I'll-"; and when possible this should precede actually hitting the person. The rule for this level is not to make a threat that one cannot carry out, such as saying "or I'll seize your house," or "take you wife hostage," because if one says this seriously, it is unlawful, and if not serious, then one is lying.

## **ASSAULT**

q5.8 The seventh degree is to directly hit or kick the person, or similar measures that do not involve weapons. This is permissible for private individuals provided it is necessary, and that one confines oneself to the minimum needed to stop the reprehensible action and nothing more. When the action has been stopped, one refrains from doing anything further.

## **FORCE OF ARMS**

q5.9 The eighth degree is when one is unable to censure the act by oneself and requires the armed assistance of others. Sometimes the person being reprovved may also get people to assist him, and a skirmish may ensue, so the soundest legal opinion is that this degree requires authorization from the caliph (def : o25). since it leads to strife and the outbreak of civil discord. Another view is that there is no need for caliph's permission.

## **q6.0 THE ATTRIBUTES OF THE PERSON CENSURING**

q6.1 Having presented in detail the rules for someone condemning the wrong, they may be summarized in three traits needed by the person giving the reprimand:

(1) knowledge of the (A: above-mentioned) appropriate circumstances for censure and their definitions, so as to keep within lawful bounds;

(2) godfearingness, without which one might know something but not apply it because of some personal interest;

(3) and good character, the prime prerequisite for being able to control oneself, for when anger is aroused, ;mere knowledge and piousness are seldom sufficient to suppress it if character is lacking.

## **REDUCING ONE'S DEPENDENCE ON OTHERS**

q6.2 Among the rules for commanding the right and forbidding the wrong is to depend less on others and eliminate desire for what they have, so as not to have to compromise one's principles. A story is told about one of the early Muslims who used to get offal each day from the neighborhood butcher for his cat. He noticed something blameworthy about the butcher, so he returned home and turned out the cat before returning to reprimand the man, who retorted, "From now on. I'm not giving you a thing for your cat," to which he replied, "I did not censure you till I gave up both the cat and any desire for what you have." And this is the fact of the matter. One cannot reprimand others as long as one is anxious for

two things: the things people give one, and their approval and praise of one.

q6.3 As for politeness in commanding the right and forbidding the wrong, it is obligatory. Allah Most High says,

"Speak unto him gentle words" (Koran 20:44)

(A: this being to Pharaoh, the enemy of Allah, so how then with one's fellow Muslims?) (Mukhtasar Minhaj al-qasidin (y62), 123-30).

**BOOK R**

**HOLDING ONE'S TONGUE**

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**r0.0 INTRODUCTION**

**r0.1 (n: Book r has been edited from Nawawi's al-Adhkar al-muntakhaba minkalam Sayyid al-Abrar and from al-Durar al-mubaha fi al-hazr wa al-ibaha, a work on the lawful and unlawful by the Hanafi scholar Khalil Nahlawi.)**

**r0.2 (Nawawi:) Having previously discussed what Allah Most Glorious and Exalted has facilitated of recommended invocation (dhikr) and the like, I wish to add here the expressions which are offensive or unlawful, that the book might fully encompass the rulings on words and explain their categories, mentioning the objects thereof that every religious person needs to know (al-Adhkar (y102), 450).**

**r1.0 THE IMPORTANCE OF HOLDING ONE'S TONGUE**

**r1.1 (Nawawi:) Every legally responsible person should refrain from saying anything except when there is a clear advantage to speaking. Whenever speaking and not speaking are of equal benefit, it is sunna to remain silent, for permissible speech easily leads to that which is unlawful or offensive, as actually happens much or even most of the time - and there is no substitute for safety. The Prophet (Allah) bless him and give him peace) said, "Whoever believes in Allah and the Last Day, let him say what is good or remain silent."**

This hadith, whose authenticity Bukhari and Muslim concur upon, is an explicit legal text indicating that a person should not speak unless what he intends to say is good, meaning that the benefit of it is apparent to him. Whenever one doubts that there is a clear advantage, one should not speak. Imam Shafi'i (Allah have mercy on him) said, "when one wishes to speak, one must first reflect, and if there is a clear interest to be served by speaking, one speaks, while if one doubts it, one remains silent until the advantage becomes apparent."

r1.2 The Prophet (Allah bless him and give him peace):

- (1) "O Messenger of Allah, which of the Muslims is best?" And he said, "He who the Muslims are safe from his tongue and his hand."
- (2) "A servant unthinkingly says something pleasing to Allah Most High for which Allah raises him whole degrees. And a servant unthinkingly says something detested by Allah Most High for which he plunges into hell,"
- (3) "The excellence of a person's Islam includes leaving what does not concern him [def: w54]."
- (4) "Do not speak much without mentioning Allah (dhikr), for too much speech without mentioning Allah hardens the heart, and the hard-hearted are the farthest of all people from Allah Most High."
- (5) "All of a human being's words count against him and not for him, except commanding the right, forbidding the wrong, and the mention of Allah Most High (dhikr)."

r1.3 The Master Abul Qasim Qushayri (Allah have mercy of him) said, "Safety lies in remaining silent, which should be one's basis. Silence at the appropriate time is the mark of men, just as speech at the appropriate time is one of the finest qualities. I have heard Abu 'Ali Daqqaq (Allah be well pleased with him) say, 'He who is silent when something should be said is a tongueless villain'" (ibid., 450-55).

r2.0 SLANDER (GHIBA)

r2.1 (Nawawi:) Slander and talebearing are two of the ugliest and most frequently met with qualities among men, few people being safe from them. I have begun with them because of the widespread need to warn people of them.

SLANDER

r2.2 Slander (ghiba) means to mention anything concerning a person that he would dislike, whether about his body, religion, everyday life, self, disposition, property, son, father, wife, servant, turban, garment, gait, movements, smiling, dissoluteness, frowning, cheerfulness, or anything else connected with him.

Mention means by word, writing, sign, or indicating him with one's eye, hand, head, and so forth.

Body refers to saying such things as that someone is blind, lame, bleary-eyed, bald, short, tall, dark, or pale.

Religion includes saying that he is corrupt, a thief, cannot be trusted, is a tyrant, does not care about the prayer, does not watch to avoid filth, does not honor his father, does not spend zakat on what it should be spent on, or does not avoid slandering others.

Everyday life includes saying that his manners are poor; he does not care about others; does not think he owes anyone anything; that he talks, eats, or sleeps too much; or sleeps or sits when he should not.

Father refers to saying such things as that his father is corrupt, his father is an Indian, Nabatean, African, cobbler, draper, carpenter, blacksmith, or weaver (n: if mentioned derogatorily).

Disposition includes saying that he has bad character, is arrogant, a show-off, overhasty, domineering, incapable, fainthearted, irresponsible, gloomy, dissolute, and so forth.

Clothing means saying such things as that his sleeves are too loose, his garment hangs too low, is dirty, or the like. Other remarks can be judged by the above examples. The determining factor is

mentioning about a person what he would not like.

r2.3 As for talebearing (namima), it consists of quoting someone's words to another in a way that worsens relations between them.

#### THE EVIDENCE THAT SLANDER AND TALEBEARING ARE UNLAWFUL

r2.4 The above define slander and talebearing. As for the ruling on them, it is that they are unlawful, by the consensus (def:b7) of Muslims. There is much explicit and intersubstantiative evidence that they are unlawful from the Koran, sunna, and consensus of the Muslim Community.

r2.5 Allah Most High says:

(1) "Do not slander one another" (Koran 49.12).

(2) "Woe to whomever disparages others behind their back or to their face" (Koran 104:1)

(3) "... slanderer, going about with tales" (Koran 68.11)

r2.6 The Prophet (Allah bless him and give him peace) said:

(1) "The talebearer will not enter paradise."

(2) "Do you know what slander is?" They answered, "Allah and His messenger know best." He said, "It is to mention of your brother that which he would dislike." Someone asked, "what if he is as I say?" And he replied, "If he is as you say, you have slandered him, and if not, you have calumniated him."

(3) The Muslim is the brother of the Muslim. He does not betray him, lie to him, or hang back from coming to his aid. All of the Muslim is inviolable to his fellow Muslim: his reputation, his property, his blood. Godfearingness is here[N: pointing to his heart]. It is sufficiently wicked for someone to belittle his fellow Muslim."

#### MIMICKING ANOTHER'S IDIOSYNCRACIES

r2.7 We have mentioned above that slander is saying anything about a person that he would dislike, whether aloud, in writing, by a sign, or a gesture. Anything by which one conveys a Muslim's (A: or non-Muslim's) shortcomings to another is slander, and unlawful. It includes doing imitations of someone, such as by walking with a limp, with a stoop, or similar posture, intending to mimic the person with such a deficiency. Anything of this sort is unquestionably unlawful.

#### SLANDER IN PUBLISHED WORKS

r2.8 Slander also includes the author of a book mentioning a specific person in his work by saying, "So-and-so says such and such," which is unlawful if he thereby intends to demean him. But if he wants to clarify the person's mistake so that others will not follow him, or expose the weakness of his scholarship so others will not be deceived and accept what he says, it is not slander, but rather advice that is obligatory, and is rewarded by Allah for the person who intends it as such.

Nor is it slander for a writer or other person to say, "There are those [or "a certain group"] who say such and such, which is a mistake, error, ignorance, and folly," and so forth, which is not slander because slander entails mentioning a particular person or a group of specific individuals.

#### SLANDER BY ALLUSION AND INNUENDO

r2.9 When the person being spoken to understands whom one is referring to, it is slander and unlawful to say, for example, "A certain person did such and such," or "A certain scholar," "Someone with pretensions to knowledge," "A certain Mufti certain person regarded as good," "Someone who claims to be an ascetic," "One of those who passed by us today," or "One of the people we saw." This includes the slander of some would-be scholars and devotees, who make slanderous innuendoes that are as clearly understood as if they were plainly stated. When one of them is asked, for example, how So-

and-so is, he replies, "May Allah improve us," "May Allah forgive us," "May Allah improve him," "We ask Allah's forbearance," "Praise be to Allah who has not afflicted us with visiting oppressors," "We take refuge in Allah from evil," "May Allah forgive us for lack of modesty," "May Allah relent towards us," and the like, from which the listener understands the person's shortcomings. All of this is slander and is unlawful, just as when one says, "So-and-so is afflicted with what we all are," or "There's no way he can manage this," or "We all do it."

r2.10 The above are but examples. Otherwise, as previously mentioned, the criterion for slander is that one gives the person being addressed to understand another's faults.

## LISTENING TO SLANDER

r2.11 Just as slander is unlawful for the one who says it, it is also unlawful for the person hearing it to listen and acquiesce to. It is obligatory whenever one hears some one begin to slander another to tell him to stop if this does not entail manifest harm to one. If it does, then one is obliged to condemn it in one's heart and to leave the company if able. When the person who hears it is able to condemn it in words or change the subject, then he must. It is a sin for him not to. But if the hearer tells the slanderer to be silent while desiring him in his heart to continue, this, as Ghazali notes, is hypocrisy that does not lift the sin from him, for one must dislike it in one's heart.

r2.12 Whenever one is forced to remain at a gathering where there is slander and one is unable to condemn it, or one's condemnation goes unheeded and one cannot leave, it is nevertheless unlawful to listen or pay attention to. What one should do is invoke Allah(dhikr) with the tongue and heart or heart alone, or think about something else to distract one from listening to it. When this is done, whatever one hears under such circumstances does not harm one as long as one does not listen to or heed the conversation. And if afterwards one is able to leave the assembly and the people are persisting in slander and the like, then one must leave. Allah Most High says:

"When you see those engaged in idle discussion about Our signs, keep apart from them until they speak of other things. And if the Devil makes you forget, then do not sit with wrong-doing people after being reminded" (Koran 6.68).

r2.13 Ibrahim ibn Adham (Allah be well pleased with him) answered an invitation to come to a wedding feast, where some of those present mentioned that a certain person who did not attend was "unpleasant." Ibrahim said, "I myself have done this by coming to a place where others are slandered," and he left and would not eat for three days.

## SLANDERING ANOTHER IN ONE'S HEART

r2.14 Entertaining bad thoughts about others (su' al-zann) is as unlawful as expressing them. Just as it is unlawful to tell another of the failings of a person, so too it is unlawful to speak to oneself of them and think badly of him. Allah Most High says, "Shun much of surmise" (Koran 49:12).

The Prophet (Allah bless him and give him peace said, "Beware of suspicions, for they are the most lying of words,"

There are many hadiths which say the same, and they refer to an established conviction or judgement in the heart that another is bad. As for passing thoughts and fancies that do not last, when the person having them does not persist in them, scholars concur that they are excusable, since their occurrence is involuntary and there is no way to avoid them. The Prophet (Allah bless him and give him peace) said, "For those of my Community, Allah overlooks the thoughts that come to mind as long as they are not uttered or acted upon."

Scholars say this refers to passing thoughts that do not abide, whether of slander, unbelief (kufr), or something else. Whoever entertains a passing notion of unbelief that is a mere fancy whose occurrence is unintentional and immediately dismissed is not an unbeliever and is not to blame. The reason such things are excusable is that there is no way to take precaution against them. One can only avoid continuing therein, which is why persistence in them and the established conviction of them in one's heart is unlawful.

Whenever one has a passing thought of slander, one is obliged to reject it and summon to mind extenuating circumstances which explain away the appearances that seem to imply the bad opinion Imam Abu Hamid Ghazali says in the Ihya': "A bad thought about someone that occurs in one's heart is a notion suggested by the Devil, and one should dismiss it, for the Devil is the most corrupt of the corrupt, and Allah Most high says, "If a corrupt person brings you news, verify it, lest you hurt others out of ignorance and then regret what you have done' (Koran 49.6).

It is not permissible to believe Satan, and if the appearance of wrongdoing can possibly be interpreted otherwise, it is not lawful to think badly of another. The Devil may enter the heart at the slightest impression of others' mistakes, suggesting that one only noticed it because of one's superior intelligence and discernment, and that "the believer sees with the light of Allah," which upon examination often amounts to nothing more than repeating the Devil's deceit and obscurities. If a reliable witness informs one of something bad about another, one should neither believe it nor disbelieve it, in order to avoid thinking badly of either of them. And whenever one has a bad thought about a Muslim one should increase one's concern and respect for him, as this will madden the Devil and put him off, and he will not suggest the like of it to one again for fear that one will occupy oneself with prayer for the person. "If one learns of a Muslim's mistake by undeniable proof, one should advise him about it in private and not let the Devil delude one into slandering him. And when admonishing him, one should not gloat over his shortcoming and the fact that he is regarding one with respect while one is regarding him with disdain, but one's intention should rather be to help him disengage from the act of disobedience, over which one is as sad as if one had committed it oneself. One should be happier if he desists from it without being admonished than if he desists because of one's admonishment." These are Ghazali's words.

r2.15 We have mentioned that it is obligatory for a person with a passing ill thought of another to dispell it, this being when no interest recongnised by Sacred Law conduces one to reflect upon it, for if there is such an interest, it is permissible to weigh and consider the individual's deficiency and warn others of it, as when evaluating the reliability of court witnesses or hadith transmitters, and in other cases we will mention below in the section on permissible slander.

#### PERMISSIBLE SLANDER

r2.16 Slander, though unlawful, is sometimes permissible for a lawful purpose, the legitimating factor being that there is some aim countenanced by Sacred Law that is unattainable by other means. This may be for one of six reasons.

#### REDRESSING GRIEVANCES

r2.17 The first is the redress of grievances. Someone wronged may seek redress from the Islamic ruler, judge, or others with the authority or power to help one against the person who has wronged one. One may say, "So-and-so has wronged me," "done such and such to me," "took such and such of mine," and similar remarks.

#### ELIMINATING WRONGDOING

r2.18 The second is seeking aid in righting a wrong or correcting a wrongdoer, such as by saying to someone expected to be able to set things right, "So-and-so doing such and such, so warn him not to continue," and the like. The intention in such a case must be to take the measures necessary to eliminate the wrong, for if this is not one's purpose, it is unlawful.

#### ASKING FOR A LEGAL OPINION

r2.19 The third is asking for a legal opinion, such as by saying to the mufti, "My father [or "brother," or "So-and-so,"] has wronged me by doing such and such. May he do so or not?" "How can I be rid of him," "get what is coming to me," "stop the injustice," and so forth. Or such as saying, "My wife does such and such to me," "My husband does such and such," and the like. This is permissible when necessary, but to be on the safe side it is best to say, "What do you think of a man whose case is such and such," or "A husband [or "wife"] who does such and such," and so on, since this accomplishes one's aim without referring to particular people. But it is nevertheless permissible to identify a particular person, as is attested to by the hadith in which Hind said,

"O Messenger of Allah, Abu Sufyan is a stingy man..."  
and the Prophet (Allah bless him and give him peace) did not forbid her.

## WARNING MUSLIMS OF EVIL

r2.20 The fourth reason is to warn Muslims of evil and advise them, which may take several forms, including:

(1) Impugning unreliable hadith transmitters or court witnesses, which is permissible by consensus of all Muslims, even obligatory, because of the need for it.

(2) When a person seeks one's advice about marrying into a certain family, entering into a partnership with someone, depositing something for safekeeping with him, accepting such a deposit, or some other transaction with him, it is obligatory for one to tell the person asking what one knows about the other by way of advising him. If one can accomplish this by merely saying, "Dealing with him is of no advantage to you," "Marrying into the family is not in your interests," "Do not do it," and similar expressions, then one may not elaborate on the individual's shortcomings. But if it cannot be accomplished without explicitly mentioning the individual, one may do so.

(3) When one notices a student of Sacred Law going to learn from a teacher who is guilty of reprehensible innovations in religious matters (*bid'a*, def: w29.3) or who is corrupt, and one apprehends harm to the student thereby, one apprehends harm to the student thereby, one must advise him and explain how the teacher really is. It is necessary in such a case that one intend to give sincere counsel. Mistakes are sometimes made in this, as the person warning another may be motivated by envy, which the Devil has duped him into believing is heartfelt advice and compassion, so one must beware of this.

(4) And when there is someone in a position of responsibility who is not doing the job as it should be done, because of being unfit for it, corrupt, inattentive, or the like, one must mention this to the person with authority over him so he can remove him and find another to do the job properly, or be aware of how he is so as to deal with him as he should be dealt with and not be deluded by him, to urge him to either improve or else be replaced.

## SOMEONE UNCONCERNED WITH CONCEALING THEIR DISOBEDIENCE

r2.21 A fifth reason that permits slander is when the person is making no effort to conceal his corruption or involvement in reprehensible innovation (*bid'a*), such as someone who openly drinks wine, confiscates others' property, gathers taxes uncountenanced by Sacred Law, collects money wrongfully, or perpetrates other falsehoods, in which cases it is permissible to speak about what he is unconcerned to conceal, but unlawful to mention his other faults unless there is some other valid reason that permits it, of those we have discussed.

## IDENTIFICATION

r.2.22 The sixth reason is to identify someone. When a person is known by a nickname such as "the Bleary-eyed," "the Lame," "the Deaf," "the Blind," "the Cross-eyed," or similar, it is permissible to refer to him by that name if one's intention is to identify him. It is unlawful to do so by way of pointing out his deficiencies. And if one can identify him by some other means, it is better.

r2.23 These then, are six reasons Islamic scholars mention that permit slander in the above cases (as-Adhkar(y102), 455-69).

## r3.0 TALEBEARING (NAMIMA)

r3.1 (Nawawi:) Having summarily mentioned that talebearing (*namima*) is unlawful, with the evidence for this and a description of its nature, we now want to add a fuller explanation of it. Imam Abu Hamid Ghazali says, "Talebearing is a term that is usually applied only to someone who conveys to a person what another has said about him, such as by saying, 'So-and-so says such and such about you,' In fact, talebearing is not limited to that, but rather consists of revealing anything whose disclosure is resented, whether resented by the person who originally said it, the person to whom it is disclosed, or by a third party. It makes no difference whether the disclosure is in word, writing, a sign, nodding, or other; whether it concerns word or deed; or whether it concerns something bad or otherwise. The reality of

talebearing lies in divulging a secret, in revealing something confidential whose disclosure is resented. A person should not speak of anything he notices about people besides that which benefits a Muslim to relate or prevents disobedience. Anyone approached with a story, who is told, 'So-and-so says such and such about you,' must do six things:

- (1) disbelieve it, for talebearers are corrupt, and their information unacceptable;
- (2) tell the talebearer to stop, admonish him about it, and condemn the shameful of what he has done;
- (3) hate him for the sake of Allah Most High, for he is detestable in Allah's sight, and hating for the sake of Allah Most High obligatory;
- (4) not think badly of the person whom the words are supposedly from, for Allah Most High says, 'Such much of surmise'(Koran 49.12);
- (5) not let what has been said prompt him to spy or investigate whether it is true, for Allah Most High says, 'Do not spy' (Koran 49.12);
- (6) and not to do himself what he has forbidden the talebearer to do, by relating it to others."(Ibid., 471-72)

#### **r4.0 SAYING "THE PEOPLE HAVE GONE TO RUIN"**

r4.1 The Prophet (Allah bless him and give him peace) said, "When a man says, 'The people have gone to ruin,' he is the most ruined of all."

r4.2 (Nawawi:) Khattabi says the hadith means that a person who continually finds fault with people and mentions their failings is the most ruined of all, i.e. he becomes worse than they are because of the sin he commits in disparaging and attacking them, which may also lead to conceitedness and seeing himself as better than they.

Scholars concur that the condemnation only applies to someone who says the like of this out of contempt for people, considering them inferior and himself superior, despising the way they are because of his ignorance of the divine wisdom in Allah's creating them. But if one says it out of sadness at seeing one's own religious failings and those of others, there is no harm in it, just as there is no blame in saying, "For all I know, every one of the Prophet's Community (Allah bless him and give him peace) performs the prayer." This is how Imam Malik explained the hadith, and others have followed him therein (sahih Muslim bi Sharh al-Nawawi(y93), 16.175-76).

#### **r5.0 INFORMING ON ANOTHER**

r5.1 The Prophet (Allah bless him and give him peace) said, "Let none of my Companions inform me of anything another of them has said, for I wish to come out to you without disquiet in my heart."(al-Adhkar(y102),473)

#### **r6.0 TWO PEOPLE CONVERSING SO A THIRD CANNOT HEAR**

r6.1 The Prophet (Allah bless him and give him peace) said, "When there are only three of you, two of you may not speak together apart from the third unless you join a group of others, lest your doing so sadden him."

r6.2 (Nahlawi:) Nawawi (Allah have mercy on him) says this hadith prohibits two individuals conversing privately when a third is present, and likewise prohibits three or more people from doing so when there is a single person apart from them. The prohibition indicates its unlawfulness, it being impermissible for a group to converse apart from a single individual unless he gives his permission. Imam Malik (Allah have mercy on him), our colleagues, and the majority of scholars hold that the prohibition is applicable at all times, whether one is at home or travelling, though some (A: Hanafi) scholars say that such converse is forbidden only while travelling, not when at home, for when travelling it may portend danger.

r6.3 As for when there are four people and two of them speak privately in low tones apart from the other two, scholars agree that there is no harm in this.

r6.4 The prohibition of listening to the conversation of people who are averse to one's listening likewise means it is unlawful, though only when the conversation does not entail harm to the listener, for if it does, one may listen to protect oneself from them (al-Durar-al-mubaha(y99), 159).

#### r7.0 GIVING DIRECTIONS TO SOMEONE WHO WANTS TO DO WRONG

r7.1 (Nahlawi:) It is not permissible to give directions and the like to someone intending to perpetrate a sin, because it is helping another to commit disobedience. Allah Most High says, "Do not assist one another in sin and aggression" (Koran 5:2).

Giving directions to wrongdoers includes:

(1) showing the way to policemen and tyrants when they are going to commit injustice and corruption;

(2) teaching questions of Sacred Law to those learning it in bad faith (N:i.e. who do not want the knowledge to apply it in their lives, but for some unworthy purpose);

(3) teaching positions in Sacred Law that are rejected (A: meaning those that are not accepted by any of the four schools of jurisprudence (dis:b7.6)) or weak (dis:w12.2), or anything else that informs people of how to commit disobedience to Allah Most High:

(4) and permitting or authorizing a person to do something that entails disobedience, for acceptance of disobedience is disobedience. (bid., 159-60)

#### r8.0 LYING

r8.1 (Nawawi:) Primary texts from the Koran and sunna that it is unlawful to lie (dis:p24) are both numerous and intersubstantiative, it being among the ugliest sins and most disgusting faults. Because of the scholarly consensus of the Community (Umma) that it is prohibited and the unanimity and amount of the primary textual evidence, there is little need to cite particular examples thereof, out only concern here being to explain the exceptions to what is considered lying, and apprise of the details.

#### PERMISSIBLE LYING

r8.2 The Prophet (Allah bless him and give him peace) said, "He who settles disagreements between people to bring about good or says something commendable is not a liar."

This much is related by both Bukhari and Muslim, with Muslim's version recording that Umm Kulthum added,

"I did not hear him permit untruth in anything people say, except for three things: war, settling disagreements and a man talking with his wife or she with him (A:in smoothing over differences),"

This is an explicit statement that lying is sometimes permissible for a given interest, scholars having established criteria defining what types of it are lawful. The best analysis of it I have seen is by Imam Ghazali. If something is attainable through both telling the truth and lying, it is unlawful to accomplish it through lying because there is no need for it. When it is possible to achieve such an aim by lying but not by telling the truth, it is permissible to lie if attaining the goal is permissible (N:i.e. when the purpose of lying is to circumvent someone who is preventing one from doing something permissible), and obligatory to lie if the goal is obligatory. When for example one is concealing a muslim from an oppressor who asks where he is, it is obligatory to lie about his being hidden. Or when a person deposits an article with one for safekeeping and an oppressor wanting to appropriate it inquires about it, it is obligatory to lie about having concealed it, for if one informs him about the article and he then seizes it, one is financially liable(A:to the owner)to cover the article's cost. Whether the purpose is war, settling a disagreement, or gaining the sympathy of a victim legally entitled to retaliate against one so that he will forbear to do so; it is not unlawful to ;lie when any of these aims can only be attained through lying. But is religiously more precautionary (def:c6.5) in all such cases to employ words that give misleading impression, meaning to intend by one's words something that is literally true, in respect to which one is not lying (def:r10.2) while the outward purport of the words deceives the hearer, though even if one does not have such an intention and merely lies without intending anything else, it is not unlawful in the above circumstances.



“This is true of every expression connected with a legitimating desired end, whether one's own or another's. An example of a legitimating end of one's own is when an oppressor intending to appropriate one's property inquires about it, in which case one may deny it. Or if a ruler asks one about a wicked act one has committed that is solely between oneself and Allah Most High (N: i.e. it does not concern the rights of another), in which case one is entitled to disclaim it, such as by saying, 'I did not commit fornication,' or 'I did not drink.' There are many well known hadiths in which those who admitted they deserved punishment were given prompting (A: by the Prophet (Allah bless him and give him peace)) to retract their confessions. An example of a legitimating desired end of another is when one is asked about another's secret and one disacknowledges it. And so on. One should compare the bad consequences entailed by lying to those entailed by telling the truth, and if the consequences of telling the truth are more damaging, one is entitled to lie, though if the reverse is true or if one does not know which entails more damage, then lying is unlawful. Whenever lying is permissible, if the factor which permits it is desired end of one's own, it is recommended not to lie, but when the factor that permits it is the desired end of another, it is not lawful to infringe upon his rights. Strictness (A: as opposed to the above dispensations (rukhsa, def:c6.2)) is to forgo lying in every case where it is not legally obligatory.”

r8.3 The position of Ahl al-Sunna is that lying means to inform another that something is otherwise than it really is, whether intentionally or out of ignorance. One is not culpable if ignorant of it, but only if one lies intentionally, the evidence for which is that the Prophet (Allah bless him and give him peace) made intentionality a condition when he said, “Whoever lies about me intentionally shall take a place for himself in hell.” (al-Adhkar (y102), 510-12)

## r9.0 EXAGGERATION

r9.1 (Nawawi:) Gazali says: “Among the forms of lying that are unlawful but not serious enough to stigmatize their perpetrator as legally corrupt (dis:o24.3) is the customary exaggeration of saying, 'I've told you a hundred times,' or 'asked after you hundred times.' and so forth, since one does not thereby intend to inform the other how many times it has been, but only to indicate that it has been too many. In such cases, if the speaker in fact has only asked after the other but once, he is; lying, though is he has asked after him a number of times considerably more than what is generally accepted, he is not committing a sin by saying it, even if it has not been 'a hundred times.' There are intermediate degrees between these two at which the exaggerator becomes a liar.”

r9.2 The proof that exaggeration is sometimes permissible and not considered lying is the hadith related by Bukhari and a Muslim that the Prophet (Allah bless him and give him peace) said, “.. As for Abul Jahm, his stick never leaves his shoulder, while Mu'awiya does not own a thing,” it being understood that the latter owned the garment he was wearing, and the former set his stick aside when he slept and at other times. And Allah alone gives success (ibid.,515-16).

## r10.0 GIVING A MISLEADING IMPRESSION

r10.1 (Nawawi:) Giving a misleading impression is among the most important topics, being frequently met with and often abused. It befits us to examine the matter closely, and whoever learns of it should reflect upon it and apply it. Having previously mentioned that lying is severely prohibited, and the danger that exists in saying something without any particular intention, what follows below shows a safe alternative to these.

r10.2 Giving a misleading impression means to utter an expression that ostensibly implies one meaning, while intending a different meaning the expression may also have, one that contradicts the ostensive purport. It is a kind of deception.

(A: It often takes the form of the speaker intending a specific referent while the hearer understands a more general one, as when a person asks a householder, “Is So-and-so here?” to which the householder, intending the space between himself and the questioner rather than the space inside the house, replies, “He is not here.”)

r10.3 Scholars say that there is no harm (def: p8.2(A:)) in giving a misleading impression if required by an interest countenanced by Sacred Law that is more important than not misleading the person being addressed, or if there is a pressing need which could not otherwise be fulfilled except through lying. When neither of these is the case, giving a misleading impression is offensive though not unlawful unless used as a means for wrongful gain or suppressing another's right, in which case it becomes unlawful. The

above determine its permissibility. As for the hadith evidence, some of which permits it and some of which does not, it is to be interpreted in the light of the above criteria (al-Adhkar (y102), 514).

#### **r11.0 VERIFYING ONE'S WORDS BEFORE SPEAKING**

**r11.1 Allah Most High says:**

(1) "Pursue not that of which you have no knowledge. The hearing, the eyesight, the heart: all will be asked about" (Koran 17:36).

(2) "He utters not a word save that an observer is present beside him" (Koran 50:18).

**r11.2 The Prophet (Allah bless him and give him peace) said,**  
"It is lying enough for a man to repeat everything he hears."(Ibid., 512-13)

#### **r12.0 SPEAKING OF TAXES AS "THE RULER'S RIGHT"**

**r12.1 (Nawawi:) One of the things most sternly prohibited and needful to warn people against is what the common people say about sales tax and the like (dis: p32), namely that "this is the ruler's right," or "you have to pay the ruler's due," and so forth, of references to "right," "obligation," and so on. This is one of the most objectionable practices and ugliest of reprehensible innovations. Some scholars even hold that anyone who calls these taxes a right thereby becomes an unbeliever, beyond the pale of Islam. But in fact, such a person does not become an unbeliever unless he actually considers it right while knowing it is unjust. The proper way to mention these is to say "the ruler's tax," "revenue," or similar words. And Allah alone gives success (ibid., 499-500).**

#### **r13.0 CONVERSING ABOUT WHAT IS USELESS OR IMMORAL**

**r13.1 (Nahlawi:) Conversing about what is useless or immoral means discussing acts of disobedience, such as stories about drinking sessions and fornicators when there is no legitimate purpose connected with the conversation, which is unlawful because it manifests one's own disobedience or another's without there being any need to. Ibn Mas'ud (Allah be well pleased with him) said,**

"The greatest in sins on the Judgement Day will be the one most given to speaking about the useless and immoral."

#### **SPEAKING ABOUT WHAT DOES NOT CONCERN ONE**

**r13.2 As for speaking about what does not concern one, such as the story of one's travels, and the mountains, rivers, food, and clothes one saw while on them; when it does not contain lies, slander, ostentation, or other things that are unlawful, it is not in itself prohibited. Rather, it may be recommended, as when inspired by a good intention such as preventing others of accusing one of being arrogant or proud of not speaking, allaying another's timorousness, cheering up someone sad or ill, amusing or getting along well with the womenfolk, showing kindness to children, or similar motives. With these intentions it is not considered to be what does not concern one.**

**r13.3 It is recommended and praiseworthy to leave anything that does not concern one (def: 254) because one squanders one's life by involvement in it and in mere amusement. The Prophet (Allah bless him and give him peace) said,**

"The excellence of a person's Islam includes leaving what does not concern him,"

including excess verbiage, meaning to elaborate more than necessary about matters which do concern one, or to ask about things which are of no importance; though it does not include clarifying the details of difficult legal questions, especially to those of limited understanding, or the need to repeat an exhortation, reminder, instruction, or the like, since it might be necessary. But when it is unnecessary to add details, one should express oneself succinctly and with brevity. The Prophet (Allah bless him and give him peace) said,

"Good tidings to him who avoids the excess in his speech and spends the excess of his money."

Ali (Allah ennoble his countenance) said,

"The best discourse is expressive, great, brief, and interesting."

(al-Durar al-mubaha (y99), 135-36)

#### r14.0 EXPLAINING THE KORAN BY PERSONAL OPINION

r14.1 The Prophet (Allah bless him and give him peace) said,  
"Whoever speaks of the Book of Allah from his own opinion is in error."

r14.2 (Nahlawi:) The jurist Abul Layth says in Bustan al-'arifin, "The [above] prohibition only applies to the allegorical parts of it (dis: w6), not to all of it, since Allah Most High says,  
"As for those with deviance in their hearts, they pursue the allegorical of it' (Koran 3:7).

"The Koran came as a proof of moral answerability against all mankind and jinn, while if interpreting it were not permissible, it could not be a decisive proof. Since it is decisive, it is permissible for someone acquainted with the dialects of the Arabs and the circumstances under which various verses were revealed to interpret it. As for would-be exegetes who do not know the dimensions of Arabic, the figurative, literal, and the types of metaphor, it is not permissible for them to explain it beyond what they have heard, by way of reporting and not actual interpretation."

The generality of the prohibition also entails that whoever does not know which verses abrogate others and which are abrogated, the points upon which there is scholarly consensus (def: b7), and the tenets of faith of Ahl al-Sunna, is not safe from error if he interprets the Koran with nothing beyond the implications of the Arabic. Mere linguistic familiarity with the language is insufficient, and one must also know what we have just mentioned. When one knows both, one may interpret the Koran, and is not doing so by mere opinion (ibid., 158).

r14.3 (A: The above is equally true of hadith. Koran and hadith commentaries are of tremendous importance to teachers, speakers, writers, and translators who are preparing materials to present to Muslim audiences. The dictionary is not enough.)

#### r15.0 ASKING ABOUT THE NATURE OF ALLAH MOST HIGH

r15.1 The Prophet (Allah bless him and give him peace) said:  
"People will keep wondering and asking each other until it is said, 'This is Allah's creation, but who created Allah?' Whoever finds anything like this, let him say, 'I believe in Allah and His messengers.' " (Ibid., 140)

#### r16.0 HYPOCRISY

r16.1 (Nahlawi:) Hypocrisy is when a person's outward does not correspond to his inward, or his words to his deeds. It is of two kinds, hypocrisy in belief and hypocrisy in acts. Hypocrisy in belief is another name for concealed unbelief while outwardly professing Islam. It is the very worst form of unbelief. Allah Mighty and Majestic says,

"Verily the hypocrites shall be in the lowest abyss of hell" (Koran 4:145).

And this type consigns its perpetrator to hell forever. As for hypocrisy in act, it is that which does not concern one's faith. It is also termed spoken hypocrisy, and consists of saying what contradicts one's true state. It is one of the greatest of sins. It includes being two-faced, like the person who, when two people are at odds, speaks words to each that confirm their respective sides, or tells each what the other has said, or endorses the enmity of each, praises each, and promises each to help against the other. This is hypocrisy and more. But its blameworthiness applies only to worsening relations between people, for if done to settle their differences, it is praiseworthy.

It is seldom that a person who visits leaders and important people is free of spoken hypocrisy. Someone told Ibn 'Umar (Allah be well pleased with father and son), "We visit our leaders and speak, but when we leave, we say something else." He replied, "In the days of the Messenger of Allah (Allah bless him and give him peace) we considered this hypocrisy."

r16.2 As for assuaging those from whom one apprehends harm (mudara), it is permissible, being done to obviate the damage and evil anticipated from certain people, whether it be a ruler or someone else one has reason to fear (al-Durar al-mubaha (y99), 116-18).

## **r17.0 COMPROMISING ONE'S PRINCIPLES**

**r17.1 (Nahlawi:) Compromising one's principles means religious lassitude and weakness, such as by saying nothing upon seeing acts of disobedience or unlawful things when able to change them without suffering harm. Such silence is unlawful. Its opposite is firmness in religion. Allah Most High says, "They fight in the path of Allah and fear not the blame of whoever may blame them" (Koran 5:54).**

**And the Prophet (Allah bless him and give him peace) said,  
"Speak the truth, even if bitter."**

**But when one's silence is to prevent damage to oneself or others, it is a permissible form of assuaging those from whom one apprehends harm (mudara), and even recommended in some cases, as when it results in being saved from injustice, or is a means to fulfill a right recognized by Sacred Law (ibid., 112-13).**

## **r18.0 RIDICULE AND SARCASM**

**r18.1 (Nahlawi:) Ridicule entails showing disdain, sarcasm, or contempt for another in a way that causes laughter, whether by mimicking another's words or actions, by a gesture or by allusion. It is unlawful. Allah Most High says:**

**(1) "Those who demean believers who voluntarily give charity-ridiculing those who find nothing to give but their own effort-it is Allah who is ridiculing them, and they shall suffer a painful torment" (Koran 9:79).**

**(2) "O you who believe: let not some men deride others who might well be better than they; and let not some women ridicule others who might well be better than they. Do not belittle one another or insult one another with nicknames" (Koran 49:11).**

**The Prophet (Allah bless him and give him peace) said:**

**"A gate in paradise will open to one of those who mock people and a cry will be heard, 'Come here, come here,' and he will come forward in concern and anxiety, but when he reaches it, it will close in front of him. And this will happen again and again, until the gate will open and the cry 'Come here, come here' will be heard as before, but he will not approach because he knows it will only close in front of him."**

**r18.2 Ridicule is only unlawful when it hurts others' feelings. As for someone who purposely makes himself a laughingstock, perhaps such a person enjoys it, and jokes about him are considered mere humor. What is unlawful is the sarcasm that offends the person ridiculed, because of the insult and disdain involved, such as by laughing at his way of speaking, what he does, how he looks, or his physique because of a defect therein. To laugh at any of these is to commit ridicule that is unlawful (ibid., 126-27).**

## **r19.0 JOKING**

**r19.1 (Nahlawi:) The necessary condition for the permissibility of joking is that it does not contain lies or occasion fright to a Muslim or a non-Muslim citizen, because this hurts others, and we are forbidden to do so.**

**r19.2 Excessive joking is blameworthy and forbidden, since it eliminates one's dignity and reserve, and creates resentment in certain situations and people. It also causes immoderate laughter, which kills the heart. The prophet (Allah bless him and give him peace) said to his companions.**

**"Who will take these words and apply them, or knows someone who will?" Abu Hurayra answered, "I will, O Messenger of Allah," whereupon the Prophet (Allah bless him and give him peace) took his hand and enumerated five things saying:**

**"Avoid the unlawful and you will be the most religious of people."**

**"Be satisfied with what Allah has allotted you and you will be the richest of people."**

**"Threat your neighbor well and you will be a believer."**

**“Love for others what you love for yourself and you will be a Muslim.”**

**“Avoid excessive laughter, for too much laughter kills the heart.”**

(al-Durar al-mubaha (y99), 127-28)

## **r20.0 PICKING APART ANOTHER'S WORDS**

**r20.1 (Nahlawi:) Picking apart another's words consists of attacking another's speech by revealing the mistakes in it, whether its weak Arabic, meaning, or the intention of the speaker, as when one says, “This is true, but you do not intend the truth by it,” when such an attack involves no other motive than contempt for the other and displaying one's cleverness. It is unlawful. The Prophet (Allah bless him and give him peace) said:**

**“Whoever forgoes to cavil when he is in the wrong will have a home built for him on the edge of paradise. Whoever forgoes it when in the right will have a home built for him in the middle of paradise. And whoever improves his own character, a home will be built for him in the highest part of paradise.”**

**When a believer hears something true, it befits him to accept it. If it is not true, but is unconnected with religious matters, he should remain silent, though if connected with religious matters, he is obliged to show that it is false and to condemn it if there is a chance that anyone will believe him, because this is forbidding the wrong.**

## **GIVING A POSITIVE INTERPRETATION TO OTHERS' SEEMING MISTAKES**

**r20.2 Nawawi (Allah Most High have mercy on him) mentions, in the section of the introduction of Sharh al-Muhadhdhab about the behavior of teacher and student, that “it is obligatory for a student to give a positive interpretation to every utterance of his brothers that seems to be wrong until has exhausted seventy excuses. No one is incapable of this except a failure.”**

## **READING WORKS THAT ARE BEYOND ONE'S UNDERSTANDING OR CAPACITY**

**r20.3 The Sheikh al-Akbar (A: Muhyiddin ibn al-`Arabi), Allah Most High sanctify his inmost being, writes in his letter about the spiritual station of annihilation in gnostic vision: “When a book falls into a person's hands concerning a subject he knows nothing about [A: knows meaning through having studied in with sheikhs who are masters of it] and has not learned by engaging in it at first hand, he should do absolutely nothing with the book, but rather return it to those whom it concerns. He should not believe, disbelieve, or discuss it at all” (ibid., 131-32).**

## **r21.0 LEARNED DISPUTATION**

**r21.1 (Nahlawi:) Disputation is what relates to clarifying various legal positions and making a case for them. When the intention behind this is to embarrass one's opponent or display one's superiority, it is unlawful or even unbelief according to some scholars. But when disputation is intended to reveal the truth, as is rare, then it is permissible or even recommended. Allah Most High says, “Dispute with them with that which is better” (Koran 16:125), meaning, as Baydawi notes, by the best means of disputation, gently and affably, using the simplest approach and most familiar premises, since this more effectively cools opponents' vehemence and exposes their contentiousness (ibid., 132)**

## **r22.0 ARGUING**

**r22.1 (Nawawi:) Arguing is importunateness in speech to gain one's end, whether monetary or other. It may be initiated by oneself or in response to another. If one objects that a person must argue to obtain his rights, the reply is that the stern condemnation of it applies to those who argue without right or knowledge, or someone who adds abuse to his speech that is not necessary to secure his rights, or is motivated to argue by nothing besides an obstinate desire to win and to finish his opponent. As for someone who has been wronged and makes his case in a way compatible with the Sacred Law, without belligerence, excessiveness, or importunateness, and not intending mere obstinacy and abuse, it is not unlawful, though it is better to avoid it if there is any way to do so, for keeping one's tongue within the limits of fair play during the course of an argument is virtually impossible. Moreover, arguing produces rancor in hearts and causes animosity that can lead to actual hatred between two people, until each comes to be pleased when harm befalls the other and to be displeased at the good, and unleashes his**

tongue against the other's reputation. Whoever argues runs the risk of these calamities. AT minimum, a quarrel comes to preoccupy one's heart so that during the prayer one's thoughts turn to debating and arguing, and one does not remain as one should.

r22.2 A certain person remarked, `` I have not seen anything that impairs one's religion, diminishes one's respectability, ends one's happiness, or preoccupies one's heart like arguing" (al Adhkar (y102),502-3).

### r23.0 ASKING ABOUT ANOTHER'S MISTAKES

r23.1 (Nahlawi:) It is forbidden to ask about another's errors and blunders in order to tell them they have made a mistake or to embarrass them, being unlawful because it entails injury to another and belittling him in front of people. But when one's asking about mistakes is to learn or teach, or to test or sharpen students' minds or make them reflect, then it is recommended and desirable, because it facilitates the comprehension of religious knowledge (al-Durar al-mubaha (y99), 140).

### r24.0 SEARCHING OUT A PERSON'S FAULTS

r24.1 (Nahlawi:) Asking about and searching out the faults of others is spying, which Allah Most High has forbidden by saying, ``Do not spy" (Koran 49.12), meaning to look for the shameful points of Muslims. The Prophet (Allah bless him and give him peace) said:

(1) ``If you search for people's shameful points, you corrupt them..."

(2) ``O you have entered Islam with your tongues but whose hearts faith has not entered: do not slander people, and do not ferret out people's shameful points. Whoever searches out the shameful points of his brother, Allah will search out his own shameful points, and if Allah searches out a person's shameful points, be sure that He will disgrace him even if he should remain in the middle of his house." (Ibid., 145)

### r25.0 DISPLAYING SATISFACTION AT A MUSLIM'S TROUBLES

r25.1 The Prophet (Allah bless him and give him peace) said, `` Do not show joy at the misfortune of your brother, lest Allah have mercy on him and afflict you with misfortune." (al-Adhkar (y102),474)

### r26.0 OBSCENITY

r26.1 The Prophet (Allah bless him and give him peace) said:

(1) ``A believer is not given to reviling, cursing, obscenity, or vulgarity."

(2) ``Whatever contains vulgarity is made ugly by it, and whatever contains modesty is made beautiful by it."

r26.2 (Nawawi:) Obscenity and vulgarity are forbidden, as is attested to by many well-known and rigorously authenticated (sahih) hadiths, obscenity meaning to express ugly or vulgar matters, in plain words, even if they are true and the speaker is being honest. One should instead express such things by alluding to them in a polite way that nevertheless conveys what is meant, as is done by the Holy Koran and authentic noble hadiths. Allah Most High says:

(1) ``It is permitted to you on the nights of the fast to enter unto your wives" (Koran 2:187).

(2) ``How can you take it [the marriage payment] back when you have entered unto one another?" (Koran 4:21).

(3) ``But if you divorce them before you have touched them..." (Koran 2:337).

There are many Koranic verses and authentic hadiths that employ similar words. Scholars say that comprehensible allusions should be used for these and other matters one is hesitant to mention by name. One alludes, for example, to sexual intercourse with a woman as ``going unto," ``lovemaking," ``sleeping with," and so forth, and does not use explicit words such as copulate or the like; and similarly alludes to

urinating and voiding excrement as "answering the call of nature," or "going to the bathroom," and does not simply say "defecate," "urinate," and so forth. The same is true of mentioning personal blemishes such as leprosy, halitosis, underarm odor, and the like, which one should refer to by polite words that indicate what is meant. Other matters should be dealt with as in the above mentioned examples-all of which applies to cases in which there is no need to plainly refer to these things by name. When the need arises to explain or teach, and one fears that the listener may not grasp one's allusion or may misunderstand the meaning, one should plainly say the thing's name so that the real meaning is understood. And this is how one should interpret the hadiths that have reached us which contain such straightforward expressions, as arising from the needs we have mentioned, for communicating clearly is more important than mere decorum. And Allah alone gives success (ibid., (y102),508-9).

## SEVERITY IN SPEECH AND HARSHNESS

r27.1 (Nahlawi:) Severity in speech and harshness are blameworthy when out of place, their proper place being in forbidding the wrong, if gentleness and affability prove ineffective (dis: q5.5), as well as in imposing prescribed legal penalties, and in reprimanding or disciplining those who require it Allah Most High says:

(1) "... And be harsh with them" (Koran 9:73).

(2) "Let them find severity in you" (Koran 9:123).

(3) "Let not pity for them seize you concerning the religion of Allah" (Koran 24:)

r27.2 Other than in the above-mentioned cases, it is praiseworthy for one to use amiable words, have a cheerful expression, and to smile. The Prophet (Allah bless him and give him peace) said: "There is a dwelling in paradise whose outside can be seen from inside [A: from its lucidness and purity]." Abu Malik Ash`ari asked, "Whose shall it be, O Messenger of Allah?" And he said, "He whose speech is fair, who feeds others, and who spends the night standing in prayer when people sleep." (al-Durar al-mubaha (y99)m 144-45)

## r28.0 FRIGHTENING OR COERCING A BELIEVER

r28.1 (Nahlawi:) To make a believer fear other than disobedience or coerce him to do something he is averse to, such as giving a gift, marrying, or selling something-all this is hurting him, and hurting a believer is unlawful. The Prophet (Allah bless him and give him peace) said,

"Whoever frightens a believer, it is incumbent that Allah not protect him from the terrors of Judgement Day as a fitting recompense."

Najm al-Ghazzi says in Husn al-tanabbuh, "Among the works of the Devil is frightening, annoying, or alarming a believer, all of which is unlawful" (ibid., 157-58).

## r29.0 REJECTING A BROTHER'S EXCUSE

r29.1 The Prophet (Allah bless him and give him) said,

"When someone offers an excuse to his fellow Muslim and the latter does not accept it, his sin is like the crime of imposing taxes [dis: p32]." (Ibid 157)

## r30.0 DRIVING AWAY THE POOR, THE WEAK, THE ORPHAN, OR THE BEGGAR

r30.1 Allah Most high says:

(1) "As for the orphan, do not oppress him; and as for the beggar [dis: r39], turn him not away" (Koran 93:9).

(2) "Do not drive away those who call upon their Lord morning and evening, seeking His countenance: you are not responsible for anything of their account, nor they for anything of yours, that you should drive them away and thus become of the wrongdoers" (Koran 6:52).

(3) "Lower your wing unto the believers" (Koran 15:88).(al-Adhkar (Y102), 481-82)

## **r31.0 PUTTING OFF ONE'S FATHER OF MOTHER**

**r31.1 (Nawawi:) It is very sternly prohibited to putt off one's father or mother. Allah Most High says:**

**``Your Lord decrees that you shall worship none but Him and treat your parents well. If one or both of them reach old age while with you, do not say `Uff' to them or put them off, but speak respectfully to them. Lower for them the wing of humbleness, out of mercy, and say, `O Lord, have mercy on them, as they raised me when I was young' " (Koran 17.24-25).(Ibid.,509)**

## **r32.0 CIRCUMSTANCES IN WHICH CONVERSATION IS OFFENSIVE**

**(N: Offensive, when used without further qualification by Hanafis (A: in their books on the lawful and unlawful (al-hazr wa al-ibaha)) means unlawfully offensive (makruh tahriman), and its ruling is the same as the unlawful (A: is in the Shafi`i school).)**

## **INTERRUPTING ONESELF OR OTHERS**

**r32. (Nahlawi:) It is offensive to interrupt someone else's words with one's own when the former consist of teaching Sacred Knowledge. Some scholars hold that to greet a group with ``as Salamu `alaykum" when they are learning religious knowledge is a sin. It is also offensive to interrupt one's own words with speech of a different kind when reciting Koran, supplicating, explaining the Koran, teaching hadith, or addressing people, and while doing this, for example, one turns to someone and tells him to go buy some things needed at home.**

**Conversation is offensive for anyone seated listening to a pious exhortation, or instruction, or in the presence of someone above his own level. It is also offensive for such a person merely to turn to look at something else, or to stir when there is no need, all of which is poor manner,s levity, precipitateness, and thoughtlessness. Rather, the one speaking should set for the what he means to say without irrelevant asides until finished, and the person addressed should heed the speaker, paying attention to him and listening until he finishes, without looking around, stirring, or talking; especially if the speaker is explaining the words of Allah Most High or His messenger (Allah bless him and give him peace). But one is excused if a pressing physical or religious need arises that there is no alternative but to fulfill, since necessity excuses one from any rule whatever (A: but only to the degree demanded by necessity).**

## **DISRESPECT TO THOSE WITH AUTHORITY OVER ONE**

**r32.2 It is offensive to contend against the words of anyone with authority over one (A: countenanced by Sacred Law), or talk back, oppose, rebut, or disobey such a person in anything lawful (A: meaning not unlawful or offensive), the prohibition applying to such people as a follower with his leader, son with his parents, student with his teacher wife with her husband, or unlearned person with a scholar. All of this is very ugly behavior and deserves disciplinary action (def: o17), since each of these is obliged to obey the one over them.**

## **THIS-WORLDFLY WORDS IN A MOSQUE**

**r32.3 It is offensive to speak about this-worldly matters, meaning words that would otherwise be permissible, in a mosque when there is no excuse (A: if one makes a habit of it). (N: the more reliable position is that it is not offensive, but merely better not to (khilaf al-awla)>**

## **SPEAKING DURING THE SERMON OF THE FRIDAY PRAYER**

**r32.4 It is offensive to speak during the sermon on Friday, whether it be to say ``Subhan Allah," the Blessings on the Prophet (Allah bless him and give him peace), or to command the right or forbid the wrong, the reason for the prohibition being that listening to the Friday prayer sermon is obligatory, as it takes the place of two of the rak`as of the noon prayer, so that things offensive during the prayer are offensive while listening to the sermon. The Prophet (Allah bless him and give him peace), said,**

**``When the imam is giving the sermon on Friday, and you tell your companion, `Listen,' you have made an impertinent remark."**

## **SPEAKING WHEN THE KORAN IS BEING RECITED**



r32.5 It is offensive to speak when the Koran is being recited, for listening to it and heeding it are absolutely obligatory, whether one is performing the prayer or not, and whether one comprehends it or not (A: but only if its words are distinctly audible to one). Allah Most High says, "When the Koran is recited, listen and pay heed to it" (Koran 7:204).

#### **SPEAKING WITHOUT NEED TO A MEMBER OF THE OPPOSITE SEX**

r32.6 It is offensive for a male to speak without need to a young woman who is not a member of his unmarriageable kin (def: m6.1). He should not say "Arhamkum Allah" (Allah have mercy on you) if she sneezes, greet her with "as-Salamu `alaykum" (A: which is unlawful in the Shafi'i school) nor return her Salams if she says them (A: which is offensive for Shafi'is). He should not say these aloud, but to himself, all of which likewise holds for a young woman's speaking to a man who is not a member of her unmarriageable kin (m6.2). The prohibition of these is due to the Prophet's having said (Allah bless him and give him peace), "The adultery of the tongue is speech."

#### **SPEAKING WHEN LOVEMAKING OR IN THE LAVATORY**

r32.7 It is offensive to speak while lovemaking, or when in the lavatory or relieving oneself. It is offensive to laugh in circumstances in which speaking is offensive.

#### **SPEAKING AFTER THE COMING OF DAWN BEFORE PERFORMING THE DAWN PRAYER**

r32.8 It is offensive to speak of this-worldly things between dawn and performing the dawn prayer (subh). Some hold this extends until sunrise (al-Durar al-mubaha (y99), 145-49).

#### **CONVERSATION AFTER PERFORMING THE NIGHTFALL PRAYER (ISHA)**

r32.9 (Nawawi:) It is offensive for someone who has prayed the nightfall prayer (isha) to converse about things permitted at other times, meaning permissible words which would otherwise be the same to say or not to. Discourse that is unlawful or offensive at other times is even more sternly prohibited or offensive at this time. As for conversation about what is good, such as teaching Sacred Knowledge, relating the words of the pious, describing noble qualities, or speaking to one's guest, none of these is offensive, but rather they are commendable (al-Adhkar (y102), 504).

#### **r33.0 PEOPLE OFFENSIVE TO GREET WITH SALAMS**

r33.1 (Nahlawi:) It is offensive (def: r32.0) to greet with "as-Salamu `alaykum" anyone who is:

(1) performing the prayer, reciting the Koran invoking Allah (dhikr), reading hadith to others, giving the Friday prayer sermon (khutba), or listening to any of these;

(2) a student of jurisprudence repeating a lesson over to himself to facilitate memorizing it, someone informing ordinary people of legal rulings, or anyone engaged in a lesson of Sacred Knowledge;

(3) giving the call to prayer or call to commence (iqama);

(4) teaching;

(5) seated waiting for the prayer, or saying "Subhan Allah";

(6) eating;

(7) a corrupt person who does not conceal his acts of disobedience;

(8) a young lady who is not a member of one's unmarriageable kin (dis: r32.6);

(9) someone who plays games that are not permissible (dis: k29.5), slanders others, sings, is an old wag, a chronic liar, addicted to profitless conversation, reviles others, or looks at women's faces, all of

whom are offensive to greet unless their repentance from these things is known;

(10) someone who is enjoying his wife, whose nakedness is exposed, who is relieving himself, drowsy, asleep, or someone who is in a bathhouse.

## RESPONDING TO SALAMS

r33.2 It is not obligatory to respond to someone's Salams in circumstances where greeting him is uncalled-for, except for a corrupt person ((7) above), whose Salams it is obligatory to return. It is not obligatory to answer the Salams of someone who is a child, intoxicated, or insane. Nawawi (Allah Most High have mercy on him) says in his commentary on Sahih Muslim, "Scholars disagree about greeting non-Muslims with *as-Salamu `alaykum*' or returning their Salams. We hold that it is unlawful to say it to the first, though it is obligatory to return their greetings by saying *`alaykum*' (and upon you), or simply, *`Alaykum.*" Other scholars hold it is permissible to greet them first with *`as-Salamu `alaykum*' " (al-Durar al-mubaha (y99), 150151).

## r34.0 BOASTING

r34.1 Allah Most High says,

"Do not praise yourselves: He knows best who is godfearing" (Koran 53:32)

r34.2 The Prophet (Allah bless him and give him peace) said,

"Allah has inspired to me that you are all to be humble towards each other such that no one transgresses against or exalts himself above another. (al-Adhkar (y102), 473-74)

## r35.0 REVEALING ONE'S SINS TO OTHERS

r35.1 The Prophet (Allah bless him and give him peace) said:

"All of my Community shall be pardoned, save those who commit sins openly. Committing them openly includes a man who does something shameful at night, and when morning comes, Allah having hidden his act, he says, "O So-and-so, last night I did such and such"; his Lord having concealed it for him at night, while in the morning he pulls away the cover with which Allah had concealed it for him."

r35.2 (Nawawi:) It is offensive for a person who has been afflicted with an act of disobedience or the like to inform another of it. Rather, one should repent to Allah Most High by desisting from it at once, regretting what one has done, and firmly resolving never to do the like of it again. These three things are the integrals of repentance, which is not valid without them. There is no harm in telling about a sin to one's sheikh or other person who may be expected to teach one how to desist from the act or refrain from similar acts, or appraise one of the causes that led to it, or pray for one, and so forth. If such is the case, informing him is commendable. It is only offensive to do so when no such interest can be served (ibid., 498).

## r36.0 REVEALING A SECRET

r36.1 The Prophet (Allah bless him and give him peace) said,

"When a man says something, then glances left or right, his words are a confidence to be kept."

(Ibid., 507)

r36.2 (Nahlawi:) Telling a secret means to inform others of a remark, action, or state which one learns of from someone who wants it to remain hidden, whether it be good or bad. This is hurting him, and hurting others is unlawful.

Whenever people meet, it is obligatory to keep secret any act that occurs, any words spoke, or any state attributable to someone, when these concern something one would normally wish to remain confidential, while not being unlawful. If unlawful, then:

(1) If it is against Allah Most High alone and does not involve legal measures such as prescribed legal penalties or disciplinary action (def: o17), then it must be kept secret.

(2) If it involves legal measures, as do fornication (dis: o12) and drinking (o16), then one has a choice between revealing it or not, though it is superior to conceal it.

(3) If it involves another person's rights, then if concealing it entails harm to anyone, or if it concerns prescribed legal measures such as retaliation for an injury or death (def: o3), or covering the cost of an article destroyed through negligence, then if the person whose rights have been infringed is ignorant of it, one is obliged to make the matter known, and must testify to it if asked to.

(4) If it involves another's rights, but concealing it does not entail harm to anyone and it does not concern prescribed legal measures, or it entails one of these two, but the person concerned already knows of it through another and one has not been asked to testify about it, then one is obliged to conceal the matter. (al-Durar al-mubaha (Y99), 134)

### **r37.0 DISAFFECTING A PERSON'S FAMILY FROM HIM**

r37.1 (Nawawi:) It is unlawful for a person to mention anything to another's servant, wife, son, and so forth that could disaffect them from him, unless one is commanding the right or forbidding the wrong. The Prophet (Allah bless him and give him peace) said, "He who disaffects a person's wife or servant from him is not of us." (al-Adhkar (Y102), 498)

### **r38.0 CURSING**

#### **THE PROHIBITION OF CURSING OTHERS**

r38.1 (Nawawi:) Cursing an upright Muslim is unlawful by unanimous consensus of all Muslims. The Prophet (Allah bless him and give him peace) said, "Cursing a believer is like killing him."

#### **THE PERMISSIBILITY OF CURSING THOSE WHO COMMIT DISOBEDIENCE WHEN THEY ARE NOT PERSONALLY IDENTIFIED OR KNOWN**

r38.2 It is permissible (A: but not rewarded by Allah) to curse those who possess blameworthy characteristics, such as by saying, "Allah curse oppressors," "Allah curse the corrupt," "Allah curse picture makers," and so forth. Well-known and rigorously authenticated (sahih) hadiths verify that the Prophet (Allah bless him and give him peace) said:

(1) "Allah curse her who wears false hair and her who arranges it for another";

(2) "Allah curse him who eats usurious gain (riba)";

(3) "Allah curse those who make pictures";

(4) "Allah curse him who surreptitiously changes property-line markers";

all of these being found in Bukhari, Muslim, or both.

As for cursing a particular person who commits some act of disobedience, such as an oppressor, adulterer, maker of pictures, thief, or one who consumes usurious gain; the hadith evidence seems to suggest it is not unlawful, though Ghazali indicates (A: and it is the most reliable opinion) that it is unlawful unless the person cursed is someone we know has died in a state of unbelief, such as Abu Lahab, Abu Jahl, Pharaoh, Haman, and their likes. This, as Ghazali notes, is "because to curse means to distance another from the mercy of Allah Most High, while we do not know how the particular corrupt person or non-Muslim will end his life. As for those the Prophet (Allah bless him and give him peace) personally cursed, perhaps it was because he knew they would die in unbelief. Praying that evil befalls a person is similar to cursing, even when against a tyrant, such as saying, 'May Allah not heal him,' 'May Allah not keep him safe,' and similar remarks, if of a Muslim]. And likewise for cursing any animals or inanimate objects whatever-all this is objection-able [A: meaning offensive]" (al-Adhkar (Y102), 476-80).

## r39.0 BEGGING

r39.1 (Nahlawi:) It is unlawful to ask for money or other worldly advantage from someone one has no right to ask, unless there is a necessity to. The Prophet (Allah bless him and give him peace) said,

“One of you keeps begging until when he meets Allah Most High, there is not a piece of flesh left on his face,” which is interpreted as referring to anyone who asks when it is not permissible to do so. The degree of necessity that permits begging is when one is unable to earn a living due to illness or weakness and does not have enough food to last one day (al-Durar al-mubaha (y99), 139).

## r40.0 MUSIC, SONG, AND DANCE

### MUSICAL INSTRUMENTS

r40.1 (Ibn Hajar Haytami:) As for the condemnation of musical instruments, flutes, strings, and the like by the Truthful and Trustworthy (Allah bless him and give him peace), who

“does not speak from personal caprice: it is nothing besides a revelation inspired” (Koran 53:3-4), let those who refuse to obey him beware lest calamity strike them, or a painful torment. The Prophet (Allah bless him and give him peace) said:

(1) “Allah Mighty and Majestic sent me as a guidance and mercy to believers and commanded me to do away with musical instruments, flutes, strings, crucifixes, and the affair of the pre-Islamic period of ignorance.”

(2) “On the Day of Resurrection, Allah will pour molten lead into the ears of whoever sits listening to a songstress.”

(3) “Song makes hypocrisy grow in the heart as water does herbage

(4) “This Community will experience the swallowing up of some people by the earth, metamorphosis of some into animals, and being rained upon with stones.” Someone asked, “When will this be, O messenger of Allah?” and he said, “When songstresses and musical instruments appear and wine is held to be lawful.”

(5) “There will be peoples of my Community who will hold fornication, silk, wine, and musical instruments to be lawful....”

All of this is explicit and compelling textual evidence that musical instruments of all types are unlawful (Kaff al-ra`a` an muharramat al-lahw wa al-sama` (y49), 2.269-70).

r40.2 (Nawawi:) It is unlawful to use musical instruments-such as those which drinkers are known for, like the mandolin, lute, cymbals and flute-or to listen to them. It is permissible to play the tambourine at weddings, circumcisions, and other times, even if it has bells on its sides. Beating the kuba, a long drum with a narrow middle, is unlawful (Mughni al-muhtaj ila ma` rifa ma` ani alfaz al-Minhaj (y73)m, 4.429-30).

### SINGING UNACCOMPANIED BY MUSICAL INSTRUMENTS

r40.3 (Ibn Hajar Haytami:) As for listening to singing that is not accompanied by instruments, one should know that singing or listening to singing is offensive except under the circumstances to be mentioned in what follow. Some scholars hold that singing is sunna at weddings and the like, and of our Imams, Ghazali and `Izzi ibn `Abd al-Salam say that it is sunna if it moves one to a noble state of mind that makes one remember the hereafter. It is clear from this that all poetry which encourages good deeds, wisdom, noble qualities, abstinence from this-worldly things, or similar pious traits such as urging one to obey Allah, follow the sunna, or shun disobedience, is sunna to write, sing, or listen to, as more than one of our Imams have stated is obvious, since using a means to do good is itself doing good (kaff al-ra`a` an muhar-ramat al-lahw wa al-sama` (y49), 2.273).

### DANCING

r40.4 (Nawawi: (n: with commentary by Muhammad Shirbini Khatib)) It is not prohibited to dance ((Shirbini:) which is not unlawful because it is only motions made while standing or bowing. Furani and others have expressly stated that neither is it offensive, but rather is permissible, as is attested to by the

hadith related in the sahihs of Bukhhari and Muslim that the Prophet (Allah bless him and give him peace) stood before `Ai'isha (Allah be well pleased with her) to screen her from view so that she could observe the Abyssinians sporting and dancing)-unless it is languid, like the movements of the effeminate (Mughni al-muhtaj ila ma` rifa ma` ani alfaz al Minhaj (y73), 4.430).

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## **BOOK S DELUSIONS**

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## The Means of Ridding Oneself of Delusions s6.1

### s1.0 THOSE DELUDED BY THIS WORLD, ALLAH'S FORGIVENESS, OR THEIR OWN WORKS

s1.1 (Ibn Qudama Maqdisi (dis: q0.1):) There are people misled by this world, saying, "Cash is better than credit: This world is cash while the next world is credit." And it is a point of deception, for cash cannot be better than credit unless the amount of each is equal. Now a person's life, when compared to the hereafter, obviously does not amount to even a thousandth part before he breathes his last, while someone who says that "cash is better than credit" means "provided the credit equals the cash." And this is the delusion of unbelievers. As for those immersed by sin while their faith in eternal truths remains sound, they share this delusion with unbelievers, by preferring the present life to the hereafter, but their lot is easier than the unbelievers' in that their basic faith will keep them from unending punishment.

### THOSE DELUDED BY ALLAH'S FORGIVENESS

s1.2 Other sinners delude themselves by saying, "Allah is generous, we but rely on His forgiveness," while the learned tell us that if one longs for something one pursues it, and if one fears something one shuns it. Whoever hopes for forgiveness while persisting in wrongdoing is deluded. One must know that Allah Most High with His vast mercy, is terrible in retribution, having decreed that unbelievers shall abide in hell forever (dis: w55) even though their unbelief does not hurt Him in the slightest. He has made some of His servants prey to infirmities and trials in this world, though He, Glorious and Exalted, is quite able to eliminate them. Moreover, He has made us fear His punishment. How can we not be afraid? Fear and hope drive and arouse one to action. That which does not spur one to works is deception, as is clear from the fact that the "hope" of most people makes them do nothing at all or prefer disobedience. It is odd that early Muslims both worked and feared, while nowadays, though falling far short, people feel secure and tranquil as though they knew more about the generosity of Allah Most High than the prophets and the righteous. If it could be had by wishing, why did the latter fatigue themselves and weep so much? Does Allah condemn the Jews and Christians for anything besides being this way when He says,

"They grasp at the paltry things of this low life and say, "We shall be forgiven," (Koran 7:169). This delusion resembles that of people who do both good and evil, but more of evil, while imagining their good to be greater. One might see them give a dirham as charity while having wrongfully appropriated many times that amount, or maybe even giving as charity something wrongfully acquired, relying on such a donation, which is like someone putting a dirham in one scalepan, a thousand in the other, and hoping the scale will balance. Or another of them who thinks his good acts are more than his evil ones, the reason for which is that he keeps track of the number of good deeds, but does not take himself to task for the bad ones, nor consider his sins. For example, he says, "Astaghfir Allah" (May Allah forgive me) and "Subhan Allah" (Glory be to Allah) a hundred times a day, but then spends the rest of his day slandering Muslims and making ugly remarks, seeing the virtue of saying "Subhan Allah" and "Astaghfir Allah," but not the punishment for slander forbidden speech.

s1.3 Delusions generally occur among four kinds of people: Islamic scholars, devotees, would-be Sufis, and the wealthy.

### s2.0 THE DELUSIONS OF ISLAMIC SCHOLARS

#### THOSE REMISS IN OUTWARD CONDUCT

s2.1 As for religious scholars, some master the legal and rational sciences but neglect to examine their outward habits and practices, not keeping their external self from sin or making it faithful in obedience. They are deluded by their learning and feel sure they rate high with Allah. If they were to look with the eye of insight, they would see that the whole point of knowing about religious practice is to apply it. Without works, it is useless. Allah Most High says, "He who purifies it [the soul] has succeeded" (Koran 91:9), not, "He who knows how to purify it has succeeded." If the Devil reminds such a person of the virtues of learned people, let the person for his part remember what has reached us about corrupt scholars, such as Allah's saying, "...like a donkey laden with books" (Koran 62:5).

#### THOSE WHO NEGLECT THEIR INWARD FAULTS

s2.2 Others master religious learning and its outward performance, but do not examine their hearts to eliminate the blameworthy traits therein such as pride, envy, ostentation, and seeking exaltation or fame. These have made their exterior seemly while neglecting their interior, forgetting the words of the Prophet (Allah bless him and give him peace),

“Allah does not look at your appearance or property, but only at your hearts and works.”

Such people apply themselves to works but do not apply themselves to hearts, though the heart is the real foundation, since no one is saved

“except he who comes to Allah with a pure heart” (Koran 26:89).

They resemble someone who sows grain that comes up with weeds choking it out, but when ordered to weed it, merely trims away the weeds' twigs and stems, neglecting the roots, which take stronger hold.

Another segment of scholars know that these inner qualities are condemnable, but out of self satisfaction feel they are above them, and they are too good as far as Allah is concerned for Him to afflict them with such traits, that only common people have them and not people at their own level of learning. When symptoms of arrogance or avidness for leadership appear in such people, one of them may say, “This is not arrogance, but only seeking to exalt Islam, display the nobility of religious learning, and to spite those given to reprehensible innovations, Were I to wear clothes less fine or sit with a lower class of people, the enemies of religion would smirk, and gloat at my humiliation, which amounts to humiliating Islam.” And he forgets about delusion, and that it is Satan Who has seduced him with this, which is plain from the fact that the Prophet (Allah bless him and give him peace) and his Companions were humble in manner and preferred the way of poverty and lowliness.

Still other scholars have acquired religious knowledge, purified their exterior actions, making them seemly with obedience, and examined their hearts, purifying them of ostentation, envy, pride, and the like, and yet there remain snares of the Devil and tricks of the ego hidden in the recesses of their hearts which they have failed to notice and this neglected. You might see one of them spending the night and day in learning various religious sciences, organizing them and polishing up their terminology, such a person thinking his motive is the desire to manifest the religion of Allah Most High, while the real motive might be to make a name for himself and enhance his prestige. Perhaps too his published work is not entirely free of self-praise, whether overtly, by wide, sweeping claims, or covertly, by attacks on others, to show by attacking them that he is better than they are and more knowledgeable. Such kinds of behavior and similar ones are hidden faults which few discern but the wisest and strongest. Those as weak as we are have little hope of doing so, but at least a person should be aware of his own defects and wish they were corrected. There is hope for someone whose good acts make him happy and wicked ones make him sad, unlike someone who applauds himself and thinks himself the best of men.

s2.3 The above are the delusions of those who master important branches of Sacred Knowledge. How then for those who content themselves with studying fields not essential to them, neglecting the important ones?

## THEOLOGICAL POLEMICISTS

s2.4 Among them are those who busy themselves with theological polemics against heretical beliefs, and refuting the unorthodox. Scholars engaged in this are of two types, those in the wrong and those in the right, the former advocating something other than the sunna, the latter advocating the sunna. Both are deluded. The misguidedness of those in the wrong is obvious (A: since they have left the Koran and sunna which are divinely protected). As for those in the right, their delusion is in believing that arguing is the most important activity and greatest spiritual work in the religion of Allah Most High. They maintain that one's religion is not complete until one has made lengthy investigations into one's beliefs, and that someone who simply believes in Allah and His messenger without preparing a case for it is deficient in faith. Because of this mistaken presumption, they spend their lives learning how to dispute, conducting in-depth studies of statements of theological controversies until their spiritual insight eventually goes blind. They do not pause to consider that the early Muslims, whom the Prophet (Allah bless him and give him peace) testified were the very best of mankind, and who lived to see many a reprehensible innovation (bid'a) and deviant belief, did not expose themselves and their religion to quarrels and disputation, or busy themselves therein at the expense of their hearts and works. They did not talk about it at all, except under necessity to refute misguidance. And if they saw someone persisting in blameworthy innovation, they had nothing more to do with him, without further debate or argument. The hadith has reached us,

“No people went astray after having been guided save that they were afflicted with arguing.”

## SERMONIZERS

s2.5 Others spend their time in homilies to people, the highest class of whom speak about traits of the self and qualities of the hear such as fear, hope, patience, gratitude, reliance on Allah, abstinence, certainty, and sincerity, thinking that by merely speaking of them, even if they do not have them, they acquire them. Such people call to Allah while they themselves flee from Him. They are among the most deluded. And some of them turn from the proper way of exhorting others to relating baseless tales, adding words that are neither acceptable to Sacred Law nor to human intelligence, in an attempt to say something novel.

#### LEARNING HADITH FOR THE SAKE OF MAKING A REPUTATION

s.26 Others spend their time in listening to hadiths, gathering variants and rare chains of transmission or chains remarkable for having come through but few transmitters of advanced years. The concern of one of them is to go from city to city, seeing sheikhs in order to drop names, saying, "I relate from So-and-so," "I've met So-and-so," or "I know chains of transmission no one else does."

#### ARABISTS

s2.7 Others devote their time to advanced studies in Arabic grammar, lexicography, and poetry, claiming they are the scholars of the Islamic Community, dissipating their lives in subtleties of grammar and diction. If they stopped to think, they would realize that someone who wastes his lifetime in the knowledge of the language of the Arabs is like someone who wastes it in knowledge of the language of the Turks. Arabic is only distinguished above the latter in that the Sacred Law has come in it. As for lexicology, there are only two areas in which it is necessary for one to gain an understanding of rare words: those of the Koran, and those of the hadith. As for grammar, one but needs enough to use the language properly.

s2.8 The really fortunate person is he who takes of each thing the amount that is critical to him and then goes on to apply it, putting his effort behind it and purifying it of imperfection. And this is the real aim.

#### s3.0 THE DELUSIONS OF DEVOTEES

s3.1 Devotees are of various types, including those remiss about obligatory acts while engaging in extra devotions and supererogatory works.

s3.2 Sometimes they are so worried about using water for purification that it reaches the level of obsessive doubt (waswasa) about the validity of their ablution. You might see one of them unsatisfied with water the Sacred Law deems fit for ablution, imagining remote possibilities that it could be affected with something unclean, while not having such concern for the lawfulness of the source of the food he eats. Were he to reverse these two, applying the care he takes for the water instead to his food, he would be closer to the practice of the early Muslims. `Umar (Allah be well pleased with him) performed ablution from the water jar of a Christian despite signs that it might well be unclean, while he used to refrain from many kinds of permissible things for fear of falling into the unlawful.

s3.3 Others are so bedeviled by inner misgivings at their initial Allahu Akbar in the prayer that they may miss a rak`a with the imam. And like them are those with obsessive doubts about the proper pronunciation of the letters of the Fatiha and other spoken elements of the prayer. One of them may take precaution upon precaution in doubling the doubled letters, distinguishing from and so forth, beyond the necessary, until he is finally so concerned about it that he does not think about anything else, neglecting the meaning of the Koran and the lessons he should be taking from it. And this is among the ugliest forms of delusion, for people are not required to pronounce the letters when reciting the Koran with more precision than that with which classical Arabic is normally spoken. Such people are as if delivering a message to a ruler, the messenger fastidiously pronouncing each letter and repeating those he is unsatisfied with, having quite forgotten the purpose of the message and the dignity of the assembly before whom he is delivering it. How richly such a person deserves to be thrown out and taught a lesson.

s3.4 A third group is deluded by reciting the Koran, which they rush through, perhaps finishing twice a day, the tongue of one of them being occupied therein while his heart is wandering through the valleys of daydream, not reflecting on its meanings, heeding its exhortations, or obeying its ordinances and



prohibitions. Such a person is misled, believing the Koran is only intended for reciting. He is like someone to whom his master has written a letter charging him with certain matters and forbidding him others, while the servant does not bother to understand it or carry it out but simply memorizes it and repeats it, thinking that this is the purport of it, while violating the master's commands and prohibitions. Others relish the sound of their own voice in reciting the Koran, disregarding its significance. One should examine one's heart as to whether one is enjoying the meter, the sound, or the meaning (A: though it is not blame worthy to enjoy the meter or sound, unless one is unconcerned with the meaning).

s3.5 Others are deceived by fasting, and frequently practice it, but do not restrain their tongue from slander and useless words, keep their belly from ill-gotten or unlawful food with which to break their fast, or free their heart from ostentation.

s3.6 Others are deluded by going on pilgrimage, departing for it without restoring the rights of people they have wronged (dis: p77.3), meeting their financial obligations, asking the permission of their parents, or obtaining lawfully gotten provision. And this may be after having fulfilled the obligatory hajj, while they neglect obligatory acts of worship enroute, are unable to purify their garments and person, and do not refrain from unpermitted sex or getting into arguments, despite which they think all is well with them, being self deceived.

s3.7 Others command the right and forbid the wrong, while forgetting themselves.

s3.8 Others include the imam who leads the group prayer at the mosque, but when someone more godfearing or knowledgeable is allowed to lead in his stead, it weighs heavily on him. Or the muezzin who calls to the prayer, believing he is doing it for the sake of Allah, but when someone else gives the call in his absence, it annoys him and he says, "He has infringed on my position."

s3.9 Others eschew material possessions, content with poor clothes and food and with living in mosques, thinking that they have reached the rank of the abstinent (zuhhad), while they are avoid for leadership and prestige. In fact, they have given up the lesser of two matters while getting involved in the more deadly.

s3.10 Still others enthusiastically perform supererogatory acts while not being concerned for the obligatory ones. You may see one of them savoring the midmorning or night vigil prayer, but finding no satisfaction in the prescribed prayer, but finding no satisfaction in the prescribed prayer nor hastening to pray it at the first of its time. Such a person has forgotten the Prophet's words (Allah bless him and give him peace) relating that Allah Mighty and Majestic said, "Those near to Me do not approach Me with anything like that which I have made obligatory upon them."

s3.11 There is no spiritual labor without its dangers, and those who do not know them fall prey to them. Whoever wishes to learn them should study the dangers of ostentation that exist in acts of worship, from fasting and prayer to all the rest, in the chapters set forth in this book (A: i.e. Ibn Qudama's source here, Ghazali's *Ihya' ulum aldin*).

#### s4.0 THE DELUSIONS OF WOULD-BE SUFIS

s4.1 The deluded among them are of various types. Some are deluded by the dress, terminology, or demeanor of the Sufis. They imitate the sincere Sufis (dis: w9) externally, but do not tax themselves with spiritual struggle or self-discipline. Rather, they pounce upon and quarrel over wealth that is unlawful, doubtful, or from rulers (dis: p32:3), rending each other's honor whenever they are at cross-purposes. The delusion of these is obvious. They are like an old woman who hears that the names of courageous, valiant soldiers are inscribed in the official roster and they are ceded whole tracts of land. Feeling a longing within herself, she dons hauberk and helmet, learns a few heroic stanzas and the details of their apparel and characteristics, and then sets out for the camp. Her name is duly entered in the lists, but when she reports for inspection, she is ordered to take off the helmet and armor to see what is underneath, and to be tried in combat. When she complies, it turns out that she is a feeble old crone, and she is told, "you only came to mock the king and his court!-Take her away and throw her under the elephant's feet." And she is flung under it to be trampled.

Thus will be the state of pretenders to Sufism on the Day of Judgement, when they stand revealed and are brought before the Supreme Judge, who looks at hears, not patched clothes or Sufi dress.

s4.2 Others claim to have attained to gnosis and contemplative knowledge of the Divine, to have passed

through spiritual stations and states, and to have reached nearness to Allah, while they know nothing of any of this except the words. You might see one of them reiterating these terms, thinking it above the combined learning of the first and last, and looking with condescension upon the scholars of Sacred Law, hadith, and other disciplines, to say nothing of ordinary Muslims. Sometimes a common person will keep their company for many days, picking up these artificial phrases and parroting them as if he were speaking divine revelation, with sneering contempt for scholars and worshipers, saying that they are veiled from Allah (A: which could be true, though saying it by way of self-praise is very wrong) while he has attained to the Truth, and that he is one of those brought near to Allah-while Allah considers him a debauched hypocrite, and the transformed ones know him to be an ignorant fool who has not acquired sound knowledge, perfected his character, or kept watch over his heart, but merely pursued his own fancy and memorized a lot of gibberish.

s4.3 Others roll up and put away the carpet of the Sacred Law, rejecting its rulings and considering the unlawful and the lawful to be equal, saying, "Allah does not need my works, so why should I bother?" One of them may say, "Outward devotions have no value, only hearts mean anything. Our hearts are aflame with the love of Allah Most High, and we have attained to gnosis of Him. If we are bodily immersed in this word, yet our hearts are in worshipful seclusion in the presence of the Divine. Outwardly we may give in to our desires, but not in our hearts." they claim to have surpassed the rank of the common people, beyond the need to school the lower self with physical devotions, and that gratifying bodily lusts does not divert them from the path of Allah Most High because of their firmness therein. They exalt themselves above the level of the prophets (upon whom be peace) who used to weep for years over a single mistake.

s4.4 (n: As no age is without pretenders to Sufism, the following texts will hopefully be useful in letting some principal Sufis describe in their own words the delusions of those who consider themselves "above the Sacred Law.")

s4.5 (Ibn `Ajiba:) Someone said to Junayd, "There is a group who claim they arrive to a state in which legal responsibility no longer applies to them." "They have arrived," he replied, "but to hell" (Iqaz al-himam fi sharh al-Hikam (y54), 210).

s4.6 (Ghazali:) When anyone claims there is a state between him and Allah relieving him of the need to obey the Sacred Law such that the prayer, fasting, and so forth are no obligatory for him, or that drinking wine and taking other people's money are permissible form-as some pretenders to Sufism, namely those "above the Sacred Law" (ibahiyyun) have claimed-there is no doubt that the imam of the Muslims or his representative is obliged to kill him. Some hold that executing such a person is better in Allah's sight than killing a hundred unbelievers in the path of Allah Most High (Hashiya at-Shaykh Ibrahim at-Bajuri (y5), 2.267).

s4.7 (Muhyiddin ibn al-Arabi:) When we see someone in this Community who claims to be able to guide others to Allah, but is remiss in but one rule of the Sacred Law-even if he manifests miracles that stagger the mind-asserting that his shortcoming is a special dispensation for him, we do not even turn to look at him, for such a person is not a sheikh, nor is he speaking the truth, for no one is entrusted with the secrets of Allah Most High save one in whom the ordinances of the Sacred Law are preserved (Jami' karamat al-awliya' (y95), 1.3).

s4.8 (Sheikh Ahmad al-`Alawi:) The friend of Allah (wali) is not divinely protected from error, for which reason he is to be feared for and his word is not to be relied upon when it exceeds what has been conveyed by the sunna concerning matters of the after life, because he is suspended from making any new provisions in the Sacred Law, and in respect to the prophets (upon whom be peace) he is not a guide. He is only entitled to believe what the Lawgiver has informed of.

"Today I have perfected your religion for you and completed My favor upon you, and I please that Islam be your religion" (Koran 5:3).

The gnostic in the first of his states is strongly affected by the initial impact, and will sometimes try to take on a discussion of the affairs of the afterlife, as opposed to the final state, in which he may be so quiescent that an unknowing observer might assume its strength has waned, though this is rather the result of this perfection and firmness in his station. It has been said that they way begins in madness, proceeds to arts, and ends in quietude. So one is obliged, whenever one's rapture subsides, to return to what the Lawgiver has stated, without personal figurative interpretations. This is why our author says, "Faith is incisive," meaning that one cuts the self short whenever it wants eminence and elevation. The gnostic's spiritual will, exalted above all else, must carry him beyond what we have just mentioned. For

he is outside our phenomenal frame of reference and all it contains, and whenever he wants to speak about things of the afterlife his words are high, unintelligible, and a source of trouble to both those who believe him and those who do not, which is why he is forbidden speech about it, and as much as he increasingly forgoes it, he increases in nearness to Allah and in safety. Sufis call this station subsistence (baqa'). Before a disciple is firmly established therein, it is to be feared that he will be overtaken by misfortune because of his lack of a foothold in the state of subsistence, a juncture that has been called "from annihilation to subsistence, or annihilation to perdition" (al-Minah al-quddusiyya fi sharh al-Murshid al-mu'in bi tariq al Sufiyya (y8), 67-68).

s4.9 (Abd al-Karim Jili:) My brother, Allah have mercy on you, I have travelled to the remotest cities and dealt with all types of people, but never has my eye seen, nor ear heard of nor is there any uglier or farther from the presence of Allah Most High than a certain group who pretend they are accomplished Sufis, claiming for themselves a lineal spiritual tradition from the perfected ones and appearing in their guise, while they do not believe in Allah, His messengers, or the Last Day, and do not comply with the responsibilities of the Sacred Law, depicting the states of the prophets and their messages in a manner that no one with a particle of faith in his heart can accept, let alone someone who has reached the level of those to whom the unseen disclosed and who have gnostic insight. We have seen a great number of their luminaries in cities in Azerbaijan, Shirwan, Jilan, and Khurasan, may Allah curse them all (Idah al-maqsud min wahdat al-wujud (Y98), 17-18).

s4.10 The delusions of those "above the Sacred Law" are beyond number, all of its mistakes and inner suggestions with which the Devil has tricked them because of their having taken up spiritual struggle before they mastered the rules of the Sacred Law, and they did not connect themselves with a sheikh of learning and religion worthy of being followed (dis:w9.9-9).

s4.11 Other students of Sufism proceed on the right path, engage in spiritual struggle, begin to actually travel in the way, and the door of gnosis, contemplative knowledge of the Divine, opens to them. But when they sniff the first traces of this knowledge, it surprises them and they exult in it and are pleased by the strangeness of it, until their hearts become fettered with turning to it and thinking about it, and how it was disclosed to them but not others. And all of this is delusion, for the wonders met with in the path of Allah Glorious and Exalted are endless. If one stops with a particular marvel and becomes enamored with it, one's progress falters and one fails to reach the goal. Such a person is like someone going to see a king, who notices a garden at the palace gate with flowers in it, the like of which he has never seen, and who stops to look at them until there is no longer time to meet the king.

## s5.0 THE DELUSIONS OF THE WEALTHY

s5.1 The deluded among the wealthy are of various types. Some of them eagerly build mosques, schools, hospices, aqueducts, whatever people can see, and write their names upon them to perpetuate their memory and keep it alive after their death, while of one of them were called upon to spend a single dinar on something that did not have his name on it, it would be a burden for him. If not for the fact that this aim is other people and not Allah Himself, this would not be so hard for him, as Allah is looking at him whether he writes his name or not.

Others spend money embellishing mosques with ornamentation and bas-reliefs, which are prohibited by Sacred Law and distracting to the people praying in them. The aim in prayer is humble awe and an attentive heart, while this ornamentation spoils the hearts of those praying. And if the money spent on such things is from an unlawful source to begin with, so much greater the delusion. Malik ibn Dinar (Allah have mercy on him) said, "A man came to a mosque, stopped at the entrance, and said, 'someone like me does not enter a house of Allah'-for which he was accorded the rank of those with perfect faith (siddiq)." And this is how we should revere mosques, by seeing them as defiled by our entering them with our self as bad as it is, an affront to them; not by seeing to their defilement with the unlawful and with this-worldly embellishment, trying to outdo Allah Most High. The delusion of someone who does this is in thinking the wrong to be right.

s5.2 Others protect their money, holding fast to it with the tight fist of greed, and then occupy themselves with bodily works of worship that do not cost much, like fasting, prayer, or reciting the whole Koran. They are deluded, for stinginess is deadly (dis: p75.25) and has taken over their heart. They need to rid themselves of it by spending of their wealth, but are too busy with supererogatory works to do so. They are like someone who, when a snake has entered his clothes, sets about cooking up a syrup of vinegar and honey to reduce his bile.

s5.3 There are others whose selfishness will not let them give anything but zakat. One of them may pay out the worst property he has, or give it to those of the poor who are useful to him, vacillating between which of his ulterior motives can best be served, or as to whom he may have use for in the future or is "good for something" in particular. Another may deliver his zakat to a prominent public figure so he will consider him to be someone and later fulfill his needs. And all of this invalidates the intention, the person who does it being deluded by wanting recompense from others for worshiping Allah Most High.

s5.4 Some wealthy people and others are deluded by frequenting circles of dhikr (remembrance of Allah), thinking that merely attending them will take the place of works and of a sober look at the afterlife, though it is not so, for circles of dhikr are only 'commendable in that they motivate one to do good. And anything that is a means to something else is pointless if it does not achieve it. When one of them hears something that creates fear of divine punishment, he says nothing more than. "O Protector, keep us safe," or "I take refuge in Allah," thinking he has done all that is necessary. He is like a sick person who comes to a group of doctors to hear what is happening. Or a hungry person who visits someone who can describe delicious food to him, and then leaves. It does not do him much good. And likewise with hearing acts of obedience described without applying them: every admonition that does not change something within one that affects one's actions is a case against one.

## s6.0 REMEDYING DELUSIONS

s6.1 If it be objected that I have not mentioned a single action which is free of delusion, the reply is that the matter of the afterlife hinges upon one thing alone: "straightening out one's heart. And no one is incapable of it except someone whose intention is insincere. If a person were as concerned about the next world as this one, he would certainly achieve it. The early Muslims did so, and so have those who have followed them in excellence.

Three things can be used to help rid oneself of delusions:

- (1) intelligence, the real light by which a person sees things as they are;
- (2) knowledge, through which a person knows himself, his Lord, his this-worldly life, and the life to come;
- (3) and learning, by which we mean learning how to travel the way to Allah Most High, the pitfall therein, and learning what will bring one nearer and guide one, all of which may be found in this books (dis: s3.11(A:)).

When a person has done all this, he should be wary lest the Devil beguile him and make him desirous for leadership, or lest he feel secure from Allah's devising (def: p66). Fear should never be absent from the hearts of the friends (awliya') of Allah. We ask Allah to protect us from delusion and that we may end our lives well. Truly, He is near and answers supplications (Mukhtasar Minhaj al-qasidin (y62), 237-50).

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## BOOK T A PURE HEART

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t1.0 INTENTION, SINCERITY, AND BEING TRUE

INTENTION

t1.1 (Nawawi:) Allah Most High says,

“Whoever leaves home to emigrate to Allah and His messenger but whom death overtakes: paying his recompense falls to Allah” (Koran 4:100).

The Prophet (Allah bless him and give him peace) said:

“Works are only according to intentions, and man only receives what he intends. Whoever's emigration was to Allah and His messenger has truly emigrated to Allah and His messenger; and whoever's emigration was for worldly gain or to wed a woman, his if for that to which he emigrated.” This is a hadith whose authenticity Bukhari and Muslim agree upon, and there is complete scholarly consensus on the greatness of its rank and majesty. It is one of the cornerstones, fundamental supports, and most important integrals of faith. Imam Shafi'i (Allah have mercy on him) said it enters into seventy chapters of jurisprudence. He also said it constitutes one-third of Sacred Knowledge.

## SINCERITY (IKHLAS)

t1.2 Allah Most High says:

(1) “Nor were they commanded save to worship Him, sincere to Him in their religion” (Koran 98:5).

(2) “So worship Allah with sincerity” (Koran 39:2).

t1.3 The Master Abul Qasim Qushayri (Allah have mercy on Him) said: “Sincerity is to make Allah one's sole aim in acts of obedience, meaning to intend by one's obedience to draw nearer to Allah Most High and nothing else, whether hypocrisy before others, acquiring esteem in their eyes, love of their praise, or anything besides drawing nearer to Allah. One could say that sincerity is purifying the mind from paying attention to one's fellow creatures.”

t1.4 Abu `Uthman (Allah have mercy on Him) said, “Sincerity is to forget to regard men by continuously regarding their Maker.” He also said, “The sincerity of ordinary people is that which is free of self-interest, while the sincerity of the elect is that which comes over them, not from them, for acts of worship appear in them from which they are at a remove, and neither observe nor consider” (al-Majmu' (y108), 1.16-17).

t1.5 (Nawawi:) Abu Yazid (Allah Most High be well pleased with him) said:;

“For twelve years I was the blacksmith of my soul; for five, the mirror of my heart; for one year I observed what was between them, and lo, around my waist I found the girdle of unbelief (zunnar) in plain view. So I worked for five years at cutting it, seeking a way to dis sever it, until at length this was revealed to me and looking at mankind, I saw them as dead and prayed a fourfold Allahu Akbar over them.”

Sufficient to show the subtlety of the hiddenness of ostentation is the difficulty with which this master recognized it, who had few equals in this path. As for his remark “I saw them as dead,” it is of the greatest worth and excellence, words that express this meaning being seldom met with outside those of the Prophet (Allah bless him and give him peace). What it signifies is that when he underwent this spiritual struggle and his lower self became trained and his heart enlightened, when he had mastered the self, subdued it, taken full possession of it, and made it submit in everything, he looked at all creatures and found them as if dead, without discoverable trait. They could not harm or benefit, bestow or keep back, give life or death, join or separate, bring close or make far, save or damn, give sustenance or withhold it; they possessed neither benefit nor harm to themselves, neither life nor death, nor resurrection. Now, the dead are dealt with, regarding these things, as deceased, and they are not feared, nor are hopes placed in them, nor does desire arise for what they have. We do not do anything for their sake, refrain from anything for their sake, or forgo any act of obedience to Allah for their sake, any more than we would to win the praise of the dead. They are not shown-off in front of, their favor is not sought through flattery or compromise of principles, and they do not occupy one's attention. They are not held in contempt or disparaged; their defects are unmentioned, their shameful points unsought out, their mistakes uncriticized; though if penalties prescribed by Sacred Law are incurred, we enforce them. In short, they are as though nonexistent in everything we have mentioned, the decisions of Allah Most High holding sway over them. Whoever deals with them accordingly has attained to the good of this world and the next. May Allah Most Generous give us success in realizing it (Bustan al-`arifin (y104), 131-34).

## BEING TRUE (SIDQ)

t1.6 (Nawawi:) As for being true, Allah Most High says,

“O you who believe, fear Allah, and be with those who are true” (Koran 9:119).

t1.7 Sahl ibn `Abdullah Tustari said, “The servant who compromises his principles, for himself or another, will never catch even a scent of being true.”

t1.8 It is related that Harith al-Muhasibi (Allah have mercy on him) said: “A person who is true would not care if his whole value vanished from the hears of men for the sake of bettering his heart. He does not like people seeing the smallest bit of his good acts, and does not mind their noticing the worst of them, for to be otherwise would show he wants to be more in their eyes, and this is out of character for those of great faith (siddiqin).”

t1.9 Dhul Nun al-Misri (Allah have mercy on him) said: “Truth is the sword of Allah. Whatever it is put to, it cuts” (al-Majmu` (y108), 1.17).

## t2.0 A LETTER TO ONE OF THE BRETHREN

t2.1 (Ibn `Ata' Allah:) I know of nothing more useful to you than four matters: surrender to Allah, to humbly entreat Him, to think the best of Him, and to perpetually renew your repentance to Him, even if you should repeat a sin seventy times in a day.

## SURRENDER TO ALLAH

t2.2 Surrender to Him gives you relief in the present life from having to plan while He does, triumph in the next life through the supreme favor, and safety from the idolatry of contention, for how should you contend with Him for something you do not own with Him? Cast yourself amidst His kingdom, meager in its plentitude and insignificant in its vastness, and He will plan for you as He does for it. Do not leave the slavehood that is yours for claims to a lordship that you have no claim to. To plan and choose for oneself are enormities with respect to hearts and inmost souls, as you find it the Book of Allah Most High where Allah says: “Your Lord creates whatever He wills and chooses, and they do not have a choice. Glory be to Allah above what they associate with Him” (Koran 28:68).

## EARNESTLY ENTREATING ALLAH

t2.3 As for earnestly entreating Allah, in it lies the coming of increase, lifting of hardships, enwrapment in mantles of divine gifts, and safety from affliction. One is repaid for it in times of hardship by the Master's undertaking one's protection, and in times of ease by His seeing to one's gain. It is the greatest threshold and straightest way. It is effectual despite unbelief, so how could it be ineffectual with faith? Have you not heard the words of Allah Most High:

“And when you are touched by affliction at sea, those to whom you pray besides Him are lost, but when He delivers you to shore, you turn away. Surely man is an ingrate” (Koran 17:67)

-meaning that He answers you. Earnest entreaty is the door Allah Most High has placed between Himself and His servants. Gifts come to whomever betakes himself to it, and spiritual favors unceasingly reach whoever stands before it. Whoever enters unto Him by it attains to the reality of divine assistance. And whenever He release unto you through it, He bestows of every good thin in the most lavish gift giving, as is found in the Book of Allah Most High where Allah says,

“If only they had earnestly entreated Us when Our vengeance reached them” (Koran 6:43).

## THINKING THE BEST OF ALLAH

t2.4 As for thinking best of Allah, how tremendous it is for whomever Allah has blessed with it. Whoever has it does not lace the slightest bit of good, and whoever lacks it will never find any. You will never have a better excuse to Allah than it, or one more profitable. Nor anything that better leads you to Allah or is more guidance giving. It informs one what Allah will make of one and gives good tidings the like of whose words no eye has ever read nor tongue given utterance to. This is found in the sunna of the Prophet (Allah bless him and give him peace), where he says, quoting Allah, “I am nigh to what My servant expects of Me.”

## CONTINUALLY RENEWED REPENTANCE

t2.5 As for continually renewing one's repentance to Allah, it is the wellspring of every spiritual rank and station from first to last, inwardly and outwardly. There is no excellence in one who lacks it, and

nothing lacking in one who has it. It is the key to every good, outwardly and inwardly, the very soul of stations of wisdom, and the reason men are made friends of Allah (awliya). If the repentance of the Axis of the World (Qutb) were like that of the ordinary righteous person because of equality in station, the higher of them would not surpass the other for his exaltedness of rank and tremendousness of spiritual certainty. Allah Most Glorious and Exalted has not made any rank below it except that of wrongdoing, as Allah Most High says,

``Whoever does not repent, they are the wrongdoers" (Koran 49:11),

it being required from every messenger and prophet, every great-faithed one (siddiq) and friend of Allah (wali), every godfearing pious person, misguided profligate, and every doomed unbeliever. You may find this is the Book of Allah Most High where Allah Glorious and Exalted says,

``O people: fear you Lord" (Koran 4:1),

Godfearingness being through repentance to Him and regret before Him. The repentance of those who do evil lies in abandoning it, while the repentance of those who do good lies in not halting with their good, whether it consists of spiritual effort or its rewards. The repentance of both is the same: not to stop at it.

``... the faith of your father Ibrahim. He has named you Muslims" (Koran 22:78).

It was of Ibrahim's faith not to halt with what passes away, or fix his regard on existent things. In quoting him to us, Allah Most High says,

``I love not things which pass away" (Koran 6:76).

t2.6 In general, someone's who cannot benefit from a little will not benefit from a lot (A: since a lot of work does not (A: since a lot of work does not avail without sincerity), and someone who cannot profit from a hint will not profit from a plain remark. When Allah gives you understanding, Your hearing will not cease nor you benefiting be restricted to a certain time. May Allah give us and you to understand Him, give us and you to hear Him, dis sever us from everything besides Him, dis sever us from everything besides Him, enter us into His shade and protection, and make us of those to whom He has given spiritual insight, guidance, and a yearning for His nearness. May He not scatter the intention of our hearts but rather center our purpose on Him, and remove our cares by bringing us to our destination. Ameen.

May there be safety for the whole group, and blessing and peace upon the Best of Messengers (al-Hikam al-Ata'iyya wa al-munajat al-ilahiyya (y56), 103-9).

### t3.0 COUNSELS AND MAXIMS

t3.1 (Muhammad Sa'id Burhani:) Do not limit yourself to deep words and profound spiritual allusions but make provision for the afterlife before death comes, when fine words will be lost and the rak'as you prayed by night or day will remain..

t3.2 Give voluntary charity as much as possible, for you owe more than merely the zakat obligatory. Make provision for the afterlife by giving while you have health and want to cling to your money out of fear of poverty, seeing life before you. Allah Most High says, Whoever is watchful against the stinginess of his own soul, those shall be the successful" (Koran 59:9), meaning they shall be saved.

t3.3 Never obey anyone of Allah's servants, even father or mother, in an act of disobedience to Allah, for there is no obedience to a creature in disobedience to the Creator.

t3.4 Do not wrong another person, for wrongs done to others are clouds of darkness on the Day of Judgement. Wronging others includes not doing what Allah has obliged you to do for them.

t3.5 Beware of enmity against anyone who has said, ``La ilaha ill Allah' (There is no god but Allah), for Allah has honored them with faith, and particularly the righteous of them, for Allah Most High says in a rigorously authenticated (sahih) hadith, ``He who makes an enemy of a friend of Mine, I declare war against,"

t3.6 Tell the truth when you speak. It is one of the worst betrayals to tell your brother something he thinks you are being honest about when the matter is otherwise.

t3.7 Be honest in your clothes and dress. It is an outrage against Allah to appear to His servants in the guise of the righteous while secretly contradicting it with the works of the wicked.

t3.8 Recite the Koran and contemplate its meanings. Reflect while reading it on the qualities Allah has praised, with which He describes the people He loves. Acquire these qualities yourself and shun those Allah has condemned. Do your utmost of memorize the Holy Koran by acts as you do by words.

t3.9 Never explain a verse of Holy Koran by your own opinion, but check as to how it has been understood by the scholars of Sacred Law and men of wisdom who came before you. If you comprehend something else by it and what you have understood contradicts the Sacred Law, forsake your wretched opinion and fling it against the wall.

t3.10 Beware lest you ever say anything that does not conform to the Sacred Law. Know that the highest stage of the perfected ones (rijal) is the Sacred Law of Muhammad (Allah bless him and give him peace). And know that the exoteric that contravenes the exoteric is a fraud.

t3.11 Take care to eat lawful food bought with a lawful income, for the entire body of someone who eats what is lawful, his hearing, eyesight, hands, and feet, are disposed to obey Allah whether he wishes to or not; while the whole body of someone who eats the unlawful is disposed to do wrong whether he wants to or not.

t3.12 Keep the thought of Allah Mighty and Majestic ever before you with respect to what He takes from you and what He gives. He takes away nothing except that you may show patience and win His love, for He loves the patient, and when He loves you, He will treat you as a lover does his beloved. And so too, when He gives to you, He bestows blessings upon you that you may give thanks, for He loves the thankful.

t3.13 Do not walk a step, take a bite, or make a move without intending thereby to draw nearer to Allah.

t3.14 Perform the remembrance of Allah (dhikr) silently and aloud, in a group and when alone, for Allah Most High says, "Remember Me: I will remember you" (Koran 2:152). It is sufficient as to its worth that Allah is remembering you as long as you are remembering Him.

t3.15 Give frequent utterance to the axiom of Islam "La ilaha ill Allah" (There is no god but Allah), for it is the greatest invocation (dhikr), as is mentioned in the hadith, "The best things I or any of the prophets before me have said is 'La ilaha ill Allah.'" And in a hadith qudsi, "Were the seven heavens and seven earths placed on one side of a balance scale and 'La ilaha ill Allah' placed on the other, the latter would outweigh them all."

t3.16 Train your children in points of Islamic behavior so they grow up to be Muslims who love Islam and respect the religion of Islam.

t3.17 Do not seek exaltation on earth, but have humility in whatever degree Allah has raised you to. For Allah has brought you forth from the earth, your mother, and it is unseemly to exalt yourself above her. As a hadith says, "Allah has charged Himself to raise nothing in this world, save that He will lower it again." So if you are such a thing, you may expect to be lowered by Allah.

t3.18 Always visit those who are ill, as it helps one reflect and take admonition, for someone ill is close to Allah. One has only to consider that the sick person has no one to call upon but Allah, nothing to reflect on but Allah, and his condition reminds one of the blessing of health (al-Hall al-sadid li ma astashkalahu al-murid (y46), 29-32).

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## BOOK U THE GABRIEL HADITH

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## u.10 THE HADITH TEXT

u1.1 `Umar ibn Khattab (Allah be well pleased with him) said:

`As we sat one day with the Messenger of Allah (Allah bless him and give him peace), a man with pure white clothing and jet black hair came to us, without a trace of travelling upon him, though none of us knew him. He sat down before the Prophet (Allah bless him and give him peace) bracing his knees against his, and resting his hands on his legs, said: `Muhammad, tell me about Islam.' The Messenger of Allah (Allah bless him and give him peace) said: `Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way.' He said: `You have spoken the truth,' and we were surprised that he should ask and then confirm the answer. Then he said: `Tell me about true faith (iman),' and the Prophet (Allah bless him and give him peace) answered: `It is to believe in Allah, His angels, His inspired Books, His messengers, the Last Day, and in destiny, its good and evil." You have spoken the truth,' he said, `Now tell me about the perfection of faith (ihsan),' and the Prophet (Allah bless him and give him peace) answered: `It is to adore Allah as if you see Him, and if you see Him not, He nevertheless sees you.' `Tell me of the Hour,' said the visitor, and he was told: `The one questioned knows no more about it than the questioner.' `Then tell me of its portents,' he said, and the Prophet (Allah bless him and give him peace) replied: `That the slave woman shall give birth to her mistress, and that you shall see barefoot, naked, penniless shepherds vying in constructing high buildings.' Then the visitor left. I waited a while, and the Prophet (Allah bless him and give him peace) said to me, `Do you know, `Umar, who was the questioned?' and I replied, `Allah and His messenger know best.' He said, `It was Gabriel, who came to you to teach you your religion ' " (Sahih Muslim (y92), 1.37-38).

## u2.0 ISLAM

u2.1 `Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way."

u2.2 (Nawawi:) The sheikh and Imam Ibn Salah (Allah have mercy on him) said: ``Being a Muslim is outwardly established by one's saying the two Testifications of Faith (Shahadatayn) (N: even if they are not spoken in Arabic). The Prophet (Allah bless him and give him peace) only added the prayer, zakat, the pilgrimage, and the fast because they are the most patent and greatest of Islamic observances. One's submission (istislam) is perfected through performing them, and neglecting them suggests that one has dissolved or vitiated the terms of one's compliance. Moreover the term faith (iman) encompasses all of the things by which Islam is explained in this hadith, and indeed, all acts of obedience, for they are the fruits of the inner conviction that is the underlying basis of faith, and are what strengthen, complete, and preserve it."

u2.3 The position of Muslim orthodoxy is that no Muslim becomes a non-Muslim through sin. Muslims of heretical sectarian groups and those of reprehensible innovations (bid`a) are not thereby non-Muslims (dis: w47.2).

u2.4 Any Muslim who denies something that is necessarily known (def: f1.3(N:)) to be of the religion of Islam is adjudged a renegade and an unbeliever unless he is a recent convert or was born and raised in the wilderness or for some similar reason has been unable to learn his religion properly. Muslims in such a condition should be informed about the truth, and if they then continue as before, they are adjudged non-Muslims, as is also the case with any Muslim who believes it permissible to commit adultery, drink wine, kill without right, or do other acts that are necessarily known to be unlawful (Sahih Muslim bi sharh al-Nawawi (Y93), 1.147-50).

### u3.0 TRUE FAITH (IMAN)

u3.1 "[True faith] is to believe in Allah, His angels, His inspired Books, His messengers, the Last Day, and in destiny, its good and evil."

### RELIEF IN ALLAH

u3.2 (Muhammad Jurdani:) To believe in Allah means in His existence, His sole godhood (rububiyya, that no one else participates in His attribute of divinity or in the rights He has over His creatures), His oneness and uniqueness (wahdaniyya), and that He is characterized by every perfection and exalted above any imperfection or impossibility (dis:" v1).

### BELIEF IN ANGELS

u3.3 To believe in His angels means in beings with bodies of light who are capable of changing form to assume various appearances. Believe means to be convinced that they exist, and are honored servants who do not disobey what Allah orders them to do, but do whatever they are commanded. Only Allah Most High knows how many there are, but a hadith relates that there is not a foot of space in the seven heavens that does not contain an angel standing in prayer, bowing, or prostrating. We are obliged to know ten individual angels:

- (1) Jibril (Gabriel);
- (2) Mika'il;
- (3) Israfil;
- (4) `Azra'il;
- (5) Munkar;
- (6) Nakir;
- (7) Ridwan;
- (8) Malik;
- (9 and 10) and the two scribes who record one's good and bad deeds, each of who, is called a "present observer."

### BELIEF IN ALLAH'S INSPIRED BOOKS

u3.4 To believe in His inspired Books means those which He revealed to His messengers, believe meaning to be convinced that they are the word of Allah Most High, and all they contain is the truth. (A: The obligation of belief applies to the original revelations, not the various scriptures in the hands of non-Muslims, which are textually corrupt in their present form.)

Scholars differ as to how many Books there are. Some hold they number 104, and some say otherwise. One is obliged to know four particular Books:

- (1) the Tawrah (Torah), revealed to our liegelord Musa (Moses);
- (2) the Injil (Evangel), revealed to our liegelord `Isa (Jesus);
- (3) the Zabur (Psalms), revealed to our liegelord Dawud (David);
- (4) and the Qur'an (Koran), revealed to our liegelord Muhammad (Allah bless them all and give them peace).

### BELIEF IN ALLAH'S MESSENGERS

u3.5 To believe in His messengers means to be convinced that Allah Most High sent them to men and jinn (khalq) to guide them to the path of the Truth, and that they have told the truth about everything they have conveyed from Allah Most High. It is obligatory to know twenty-five particular messengers:

- (1) Adam;
- (2) Idris (Enoch);
- (3) Nuh (Noah);
- (4) Hud;
- (5) Salih;
- (6) Lut (Lot);
- (7) Ibrahim (Abraham);
- (8) Isma'il (Ishmael)
- (9) Ishaq (Isaac);
- (10) Ya'qub (Jacob);
- (11) Yusuf (Joseph);
- (12) Shu'ayb;
- (13) Harun (Aaron);
- (14) Musa (Moses);
- (15) Dawud (David);
- (16) Sulayman (Soloman);
- (17) Ayyub (Job);
- (18) Dhul Kifl (Ezekiel);
- (19) Yunus (Jonah);
- (20) Ilyas (Elias);
- (21) al-Yasa' (Elisha);
- (22) Zakariyya (Zacharias);
- (23) Yahya (John);
- (24) 'Isa (Jesus);
- (25) and Muhammad (Allah bless them all and give them peace).

#### **BELIEF IN THE LAST DAY**

u3.6 To believe in the Last Day means the Day of Resurrection, called the last because it is not followed by night. Believe means to be convinced that it will come to pass with all it implies, including the resurrection of the dead, their reckoning, the weighing of their good deeds against their bad ones, their passing over the high, narrow bridge that spans the hellfire (sirat), and that some will be put in hell out of justice, and some in paradise out of Allah's pure generosity. (n: The eternity of paradise and hell is discussed at w55.)

#### **BELIEF IN DESTINY, ITS GOOD AND EVIL**

u3.7 To believe in destiny, its good and evil means to be convinced that Allah Most High has ordained both good and evil before creating creation, and that all that has been and all that will be only exists through Allah's decree, foreordination, and will. Early Muslims used to answer whoever asked about destiny by saying, 'It is knowing that what hits you was not going to miss, and what misses you was not going to hit' (al-Jawahir al-lu 'lu'iyya fi sharh al-Arba'in al-Nawawiyya (y68), 35-37).

u3.8 (N:) As for Allah's creating acts, we believe that the real doer or everything is Allah. He is the one who burns, not the fire or the person who lighted the fire; He is the one who cuts, nt the knife or the person holding the knife; He is the one who drowns a man, not the water or the person who threw him in, and so forth. Here, people always raise the question that if Allah Most High is the real doer, why are people held responsible? The answer is that Allah Most High does not hold people responsible for creating the act, but rather for choosing the act. One proof of this is that a person who cannot choose is not held responsible, such as someone asleep, insane, a child, forced, unremembering, or someone who makes an honest mistake. The legal responsibility of such people is lifted because they lack full voluntary choice. Another proof is that Nimrod sinned for choosing to burn Ibrahim (upon whom be peace) even though Ibrahim did not burn (koran 21:69); and that Ibrahim (Upon whom be peace) became the Friend of the All-merciful for choosing to sacrifice his son out of obedience to Allah,even though his knife did not cut and his son was not sacrificed (Koran 37:105), all of this showing that the servant is held

responsible for his choice, which scholars of the divine unity (tawhid) term the servant's acquisition (kasb).

As for Allah's eternally preexistent knowledge, we believe that Allah knows everything before, during, and after it is, and knows how it is when it occurs. But does the servant have access to this knowledge? Not at all. So the servant chooses to do acts on the basis of a desire within himself, not because he knows Allah's knowledge, and he is held responsible for his choice even though it corresponds with Allah's eternally preexistent knowledge.

It is clear from the above that belief in destiny means that Muslims believe Allah has destined and ordained matters in past eternity, and that nothing in existence lies outside of His eternal will, and He is the Creator of everything, while the servant is only held responsible for his own choice (Mudhakkirai fi al-tawhid (y113), 41-12).

#### **u4.0 THE PERFECTION OF FAITH (IHSAN)**

**u4.1** "(The perfection of faith) is to adore Allah as if you see Him, and if you see Him not, He nevertheless sees you."

**u4.2** (Muhammad Jurdani:) To adore Allah as if you see Him means to obey Him while sincere in worship, humble, lowly, and fearful, as though one beholds, Him. And if you see Him not, He nevertheless sees you means that if one is not as if beholding Him in worship, but oblivious to this contemplation, one should nevertheless persist in excellence of performance and imagine oneself before Allah Most High and that He is looking at one's inmost being and outward self, to thereby attain to the basis of perfection. Scholars mention that there are three spiritual stations a servant may have in his worship:

(1) to worship in a way that fulfills its obligations, by observing all its conditions and integrals;

(2) to do this while immersed in the sea of gnostic inspiration (mukashafa) until it is as if the worshipper actually beholds Allah Most High, this being the station of contemplative spiritual vision (mushahada);

(3) and to worship as mentioned above, though mainly aware that Allah sees one, this being the station of vigilance (muraqaba).

Allah three of these are of the perfection of faith (ihsan), but the perfection required for the validity of worship is only the first, while perfection in the latter senses is the mark of the elect, and not possible for many (al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya (y68), 37-38).

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#### **BOOK V**

#### **ALLAH AND HIS MESSENGER**

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## v1.0 ALLAH

v1.1 (Ghazali:) Praise be to Allah, who originates all and returns it, who does as He wills, He of the noble Throne and overwhelming force, the Guide of His elect servants to the wisest path and straightest way, who has blessed them, after having had them attest to His oneness, by preserving the tenets of their religion from the darkneses of doubt and misgivings, bringing them through His providence and guidance to follow His chosen Messenger and the example of his noble and honored Companions; He who manifests Himself and His acts to His servants through His sublime attributes, of which none possess knowledge save those who give heed with a present mind.

## HIS ONENESS

v1.2 He is one is being without partner, unique without peer, ultimate without opposite, alone without equal. He is one, preeternal, beginninglessly uncreate, everlastingly abiding, unceasingly existent, eternally limitless, the ever selfsubsisting through whom all else subsists, ever enduring, without end. He is, was and ever will be possessed of all attributes of majesty, unannihilated by dissolution or separation through the passage of eons or terminus of interims. He is the First and Last, the Outward and Inward, and He has knowledge of everything.

## HIS TRANSCENDENCE

v1.3 He is not a body with a form, or a liminary, quantitative substance, not resembling bodies in quantifiability or divisibility, or in being a substance or equalified by substance, or being an accident or qualified by accidents. He does not resemble anything that exists, nor anything that exists resemble Him. There is nothing whatsoever like unto Him, nor is He like unto anything. He is not delimited by magnitude, contained by places, encompassed by directions, or bounded by heavens or earth. He is 'established on the Throne' (mustawin, Koran 20:5) in the way He says and the meaning He intends, 'established' in a manner transcending contact, settledness, fixity, indwelling, or movement. The Throne does not bear Him up, but is borne, up by the subtlety of His infinite power, as are the angels who carry it, and all are powerless in His grasp. He is above the Throne, the heavens, and all else to the farthest reaches of the stars, with an aboveness that does not increase His nearness to the Throne or heavens, or His distance from the earth and what lies beneath it. He is as exalted in degree above the Throne and the heavens as He is above the earth and its depths, though He is near to everything in existence, nearer to a servant than his own jugular vein, and is witness to everything. His nearness no more resembles the nearness of objects to one another than His entity resembles the entities of objects. He does not indwell in anything, nor anything indwell in 'Him. He is as exalted above containment in space as he is above confinement in time. He was, before creating time and space, and is not even as He was. He is distinguished from His creation by His attributes. There is nothing in His entity other than Him, nor is His entity in what is other than Him. He is beyond change and motion :events neither occurs with in Him nor changes befall Him .of majesty exalted above change, and in the attributes of His perfection beyond needing any increase in perfection. The existence of His entity is known by human reason, and in the after life is beheld by the eyesight of the reghteous as a beatitude and favor, to consummate their perfect joy with the sight of His Noble Countenance.

## HIS LIFE AND ALMIGHTY POWER

v1.4 He Most High is living, almighty, overmastering, triumphant, unaffected by inability or weakness; unsusceptible to drowsiness, sleep, annihilatin, or death; possessed of absolute soverignty and might, of irresistible power and force. His is the majesty and sway, the creation and command. The heavens are enfolded in His right hand and all beings are powerless in His grasp. He alone creates, begins, gives existence, and originates. He creates all beings and their acts, ordains their sustenance and terms. Nothing possible is out of His grasp, the disposal ofno matter is beyond His power. The number of

things He can do is limitless, the amount He knows is infinite.

## **HIS KNOWLEDGE**

v1.5 He knows all things knowable, encompassing all that takes place from the depths of the earth to the highest heaven. He knows without an atom's weight in the earth or heavens escaping His knowledge. He knows the creeping of a black ant across a great stone on a lightless night, and the motion in the air of a particle of dust on a windy day. He knows the concealed and the yet more hidden, the buried recesses of hearts, the movement of thought, and the opacities of the inmost soul; with preeternal,

beginningless knowledge that He has always possessed from the limitless reaches of past eternity, not with awareness originating within Him through being imparted or conveyed.

## **HIS WILL**

v1.6 He Most High wills all that exists and directs all events. Nothing occurs in the physical or spiritual world, be it meager or much, little or great, good or evil, of benefit or detriment, faith or unbelief, knowledge or ignorance, triumph or ruin, increase or decrease, obedience or sin; save through His ordinance, apportionment, wisdom, and decision. What He wills is, and what He does not will is not. Neither sidelong glance nor passing thought is beyond His design. He originates all and returns it, does what He wills, and none can repulse His command. There is no rescinding His destiny, no flight for a servant from disobeying Him except through divinely given success therein and mercy, and no strength to obey Him save through His choice and decree. If all mankind, jinn, angels, and devils combined their efforts to move or to still a single particle of the universe without His will and choice, they would be unable to. His will, like His other attributes, exists in His entity and He ever possesses it. He has willed from preeternity the existence of all things at the times He has chosen. They occur at the times which He has destined from beginningless eternity, occurring neither before nor after, but taking place in accordance with His knowledge and will, without substitution or alternation. He directs events without successive thoughts or waiting for time to elapse, which is why nothing divers Him from anything else.

## **HIS HEARING AND SIGHT**

v1.7 He Most High is all-hearing and all-seeing. He hears and sees, no sound however slight eluding His hearing, and no sight however minute escaping His vision. Distance does not obscure His hearing nor darkness hinder His vision. He sees without pupil or eyelids, and hears without ear canal or ears, just as He knows without a heart, seizes without limb, and creates without implement. His attributes no more resemble the attributes of His creatures than His entity resembles the entity of His creatures.

## **HIS SPEECH**

v1.8 He Most High speaks, commands, forbids, promises, and warns, with beginninglessly eternal speech that is an attribute of His entity, not resembling the speech of creatures in being a sound generated by the passage of air or impact of bodies, nor in letters articulated by compressing the lips or moving the tongue. The Koran, Torah, Evangel, and Psalms are His Books, revealed to His messengers (upon whom be peace). The koran is recited with tongues, written in books, and memorized in hearts despite being beginninglessly eternal, an attribute of the entity of Allah Most High, unsubject to dismemberance and separation by conveyance to hearts or pages. Moses (Allah bless him and give him peace) heard the speech of Allah without sound or letter, just as the righteous see the entity of Allah Most High in the afterlife without substance or accident.

Since Allah possesses all of the above attributes, He is living, knowing, omnipotent, willing, hearing, seeing, and seeking by virtue of His life, power, knowledge, will, hearing, sight, and speech, not merely by virtue of His entity.

## **HIS ACTS**

v1.9 Everything besides Him Glorious and Exalted exists through His action, proceeding from His justice in the best, fullest, most perfect and equitable way. He is wise in His acts and just in His decrees. His justice is not comparable to the justice of His servants, since injustice may only be imagined from a servant through his disposal of what belongs to another, while this is inconceivable from Allah Most High, since nothing belongs to anyone besides Him that He should unjustly disclose of 'it. Everything besides Him, be it human, jinn, angel, devil, heaven, earth, animal, vegetable, mineral, substance,

accident, intelligible, or sensory, is contingent, and was brought into existence through His power after not being, created by Him after it was nothing. He alone existed in preeternity, and nothing else. He then originated creation, that His omnipotence might be manifest, His prior decree effected, and His eternal word realized; not from needing or requiring anything in creation. Our origination, beginning, and responsibility are of Allah's generosity, not because of their being obligatory for Him, and His blessings and benefaction exist because of His favor, not because of being due from Him. Everything that exists is indebted to Him for His generosity and goodness, His blessings and benevolence; for He is well able to pour all manner of torments upon His servants and try them with every variety of suffering and illness, and were He to do so, it would be just on His part and not wicked or unfair. He Mighty and Majestic rewards His servants, the believers, for their acts of obedience because of His generosity and in fulfillment of His word, not because of their deserving it or His owing it to them. He is not obliged to anyone to do anything, nor is injustice on His part conceivable, for He does not owe any rights to anyone. The obligation of men and jinn to perform acts of obedience is established by His having informed them of it upon the tongues of the prophets (upon whom be peace), and not by unaided human reason. He sent the prophets and manifested the truth of their messages by unmistakable, inimitable miracles. They have communicated His commands, prohibitions, promises and warnings, and it is obligatory for mankind and jinn to believe in what they have conveyed.

## **v2.0 HIS MESSENGER**

v2.1 Allah Most High sent Muhammad (Allah bless him and give him peace), the Qurayshite unlettered prophet, to deliver His inspired message to the entire world, Arabs and non-Arabs, jinn and mankind, superseding and abrogating all previous religious systems with the Prophet's Sacred Law, except for the provisions of them that the new revelation explicitly reconfirmed. Allah has favored him above all the other prophets and made him the highest of mankind, rejecting anyone's attesting to the divine oneness by saying "There is no god but Allah," unless they also attest to the Prophet by saying "Muhammad is the Messenger of Allah." He has obliged men and jinn to believe everything the Prophet (Allah bless him and give him peace) has informed us concerning this world and the next, and does not accept anyone's faith unless they believe in what he has told us will happen after death.

## **THE TRIAL OF THE GRAVE**

v2.2 The first of these matters is the questioning of Mankar and Nakir, two tremendous, awe-inspiring personages who sit a servant upright in his grave, body and soul, and ask him about the unity of Allah and the messengerhood of the Prophet (Allah bless him and give him peace), saying, "Who is your Lord, what is your religion, and who is your prophet?" It is they who try people in the grave, their questioning being the first ordeal after death. It is also obligatory to believe in the torment of the grave, that it is a fact, is just, and affects both body and soul, in the way Allah wills.

## **THE SCALE**

v2.3 It is obligatory to believe in the scale, which consists of two scalepans and a balance indicator between them and is as great in size as the thickness of the heavens and earth. It weighs a servant's deeds through the power of Allah Most High, and the weights placed on it are as fine as an atom or mustard seed, that justice may be perfectly done. The pages recording one's good deeds will be placed in a form pleasing to behold on the side of the scale for Light, weighing it down according to their rank with Allah through His generosity, while the pages recording one's bad deeds will be placed in an ugly form on the side of Darkness, diminishing the weight of the opposite side through Allah's justice.

## **THE BRIDGE OVER HELL**

v2.4 It is obligatory to believe in the bridge over hell (sirat), a bridge spanning the breadth of hell, sharper than a sword and finer than a hair, which unbelievers' feet shall slip from by Allah's decree and plunge them into hell, and the feet of believers shall be made fast upon by Allah's generosity, and from thence they shall be conducted to the Final Abode.

## **THE WATERING PLACE**

v2.5 It is obligatory to believe in a watering place people will come to, the watering place of Muhammad (Allah bless him and give him peace), which believers will drink from before entering

paradise, after having crossed the bridge over hell. Whoever drinks from it will never thirst again. Its width is month's journey across, its water whiter than milk and sweeter than honey, and there are as many pitchers around it as stars in the sky. Two aqueducts pour into it from Kawthar, a spring in paradise.

## **THE FINAL RECKONING**

v2.6 It is obligatory to believe in the Final Reckoning and the disparity in the way various people are dealt with therein, some made to answer, others pardoned, and some admitted to paradise without reckoning, being the intimates of Allah (muqurrabun). Allah Most High shall ask whomever He wills of the Prophets if they have conveyed their message, ask unbelievers why they denied the messengers, ask those of reprehensible innovation (bid'a) about the sunna, and ask Muslims about their works.

## **BELIEVERS SHALL DEPART FROM HELL**

v2.7 It is obligatory to hold that true believers in the oneness of Allah (N: who follow the prophet of their age (dis: w4.4)) will be taken out of hell after having paid for their sins, through the generosity of Allah Mighty and Majestic. No one who is a true monotheist will abide in the fire forever.

## **THE INTERCESSION OF THE PROPHETS AND RIGHTEOUS**

v2.8 It is obligatory to believe in the intercession of first the prophets, then religious scholars, then martyrs, then other believers, the intercession of each one commensurate with his rank and position with Allah Most High. Any believer remaining in hell without intercessor shall be taken out of it by the favor of Allah, no one who believes remaining in it forever, and anyone with an atom's weight of faith in his heart will eventually depart from it.

## **THE EXCELLENCE OF THE PROPHETIC COMPANIONS (SAHABA)**

v2.9 It is obligatory to believe in the excellence (dis: w56) of the prophetic Companions (Allah be well pleased with them). One must think the best of all of the Companions of the Prophet (Allah bless him and give him peace), and praise them just as Allah Mighty and Majestic (n: e.g., at Koran 3:110) and His messenger have praised them (Allah bless them all and give them peace).

## **v3.0 CONCLUSION**

v3.1 Allah of the foregoing has been conveyed by prophetic hadith and attested to by the words of the early Muslims. Whoever believes it with deep conviction belongs to those of the truth, who follow the sun, and distinguishes himself from the faction who have strayed, the sect adhering to reprehensible innovation (bid'a). We ask Allah through His mercy for perfect certainty and steadfastness in religion, for ourselves and all Muslim; He is the Most Merciful of the Merciful. May Allah bless our ligelord Muhammad, and every chosen serant (Ihya' 'ulum al-din (y39), 79-83).