

Min Thimar Al-ilm Wa Al-Hikmah

Fatwas and Benefits

1
Volume

Section on Fiqh

From Purity Section
to Divorce Section

Authored by

Al-Sayyid Al-'Allamah Al-Mujtahid

Muhammad bin Abd Allah Awad

May Allah preserve him and prolong his life



Ahl AlBayt Library (A.S)

***Min Thimār al-'Ilm wa al-Hikmah
(Fatāwā wa Fawā'id)***

***From the Prospects of
Knowledge and Wisdom
(Fatwas and Benefits)***

Part One

Section on Fiqh

From Purity Section to Divorce Section

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Ahl Al-Bait Library (A.s.)

Written, researched, and edited by



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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the Most Gracious, the Most Merciful

Foreword of the Ahl al-Bayt Library (A.S.)

All praise is due to Allah, Lord of the worlds. May blessings and peace be upon our master Muḥammad and upon his pure, immaculate Household. To proceed:

In response to the saying of Allah, Most Sublime:

“O you who have believed, respond to Allah and to the Messenger when he calls you to that which gives you life.”— [al-Anfāl:24]

and His saying:

“And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong; and those will be the successful.”— [Āl ‘Imrān:104]

and His saying: *“Say, [O Muḥammad], I do not ask you for it any payment except goodwill through kinship.”*— [al-Shūrā:23]

and His saying: *“Indeed, Allah intends only to remove from you impurity, O People of the Household, and to purify you with [extensive] purification.”*— [al-Aḥzāb:33]

and His saying: *“Your ally is none but Allah and [therefore] His Messenger and those who have believed—those who establish prayer and give zakāh, and they bow [in worship].”*— [al-Mā'idah:55]

—and in response to the words of the Messenger of Allah (May Allah bless him and his family and grant them peace): *“I am leaving among you that which, if you hold fast to it, you will never go astray after me: the Book of Allah and my progeny, my Household. The Subtle, the All-Aware informed me that they will never separate until they return to me at the Basin [of Paradise].”* And his saying (May Allah bless him and his family and grant them peace): *“The example of my Household among you is like the Ark of Noah: whoever embarks upon it is saved, and whoever stays back from it drowns and perishes.”* And his saying (May Allah bless him and his family and grant them peace): *“My Household are a security for the people of the earth, just as the stars are a security for the people of the sky.”* And his saying (May Allah bless him and his family and grant them peace): *“Whoever is pleased to live my life, die my death, and dwell in the Garden of Eden which my Lord has promised me, let him take ‘Alī as guardian, and [after me] his progeny; let him be loyal to his loyal one; and let him take my Household as his example, for they are my progeny; they were created from my clay and endowed with my understanding and my knowledge”*—and the Messenger of Allah (May Allah bless him and his family and grant them peace) made clear that they are ‘Alī, Fāṭimah, al-

Ḥasan, al-Ḥusayn, and their descendants—when He covered them with *Kisa* (a cloak) and [the Prophet] said: “*O Allah, these are my Household, so remove from them impurity and purify them with a thorough purification.*”

In response to all of the above, the Ahl al-Bayt (‘a) Library was established. In this critical juncture of history—when the madhhab of the Ahl al-Bayt (‘a), represented by the Zaydī school, is subjected to fierce attacks—we deemed it necessary to contribute to disseminating the creed of the purified Household by publishing what their immaculate Imams (*peace be upon them*) and their righteous followers left behind. This proceeds from our trust and conviction that the doctrines borne by the Ahl al-Bayt (*peace be upon them*) are Allah’s intent in His earth, His upright religion, and His straight path. They speak for themselves by their harmony with sound human nature and with what has come in the Book of Allah, Mighty and Majestic, and the Sunnah of His Prophet (*May Allah bless him and his family and grant them peace*).

In obedience to Allah’s commands, and out of compassion for the community of their forefather [the Messenger of Allah], the Ahl al-Bayt consecrated and firmly established these doctrines with their pure, blessed blood—throughout ages and in every land. Whoever reflects on history finds that they sacrificed what is most precious to defend and affirm them, rising against destructive beliefs and calling to tawḥīd and justice—to the oneness of Allah, Mighty and Exalted, to declaring His transcendence, to believing in the truth of His promise and His threat, and to accepting His chosen ones among His creation.

And because their madhhab is Allah’s religion and His law, and the intent and the heritage of the Messenger of Allah (*May Allah bless him and his family and grant them peace*), it remains until Allah inherits the earth and whoever is upon it—just as a confirmation of the Prophet’s saying (*May Allah bless him and his family and grant them peace*): “*The Subtle, the All-Aware informed me that the two [the Book of Allah and the Household of the Prophet] will never separate until they return to me at the Basin.*”

Our father, the Proof-Imam Majd al-Dīn ibn Muḥammad al-Mu’ayyadī (‘a), said: “Know that Allah—majestic is His majesty—has not approved for His servants except a strong religion, a straight path, a single way, an even road. Sufficient is His saying:

‘And, [moreover], this is My path, which is straight, so follow it; and do not follow [other] ways, for you will be separated from His way. This has He instructed you that you may become righteous.’ — [al-An‘ām:153]

And you have known that the religion of Allah is not to follow desires: *‘But if the truth had followed their inclinations, the heavens and the earth and whoever is in them would have been ruined...’* — [al-Mu’minūn:71]

'So what is there after truth except error?' — [Yūnus:32]

'Or have they other deities who have ordained for them of religion that which Allah has not authorized?' — [al-Shūrā:21]

And He addressed the master of His Messengers with His saying—*exalted is He:*

'So remain on a right course as you have been commanded, [you] and those who have turned back with you [to Allah], and do not transgress. Indeed, He is Seeing of what you do. And do not incline toward those who do wrong, lest you be touched by the Fire, and you would not have other than Allah any protectors; then you would not be helped.' — [Hūd:112-113]

—even though he (*May Allah bless him and his family and grant them peace*) and those with him from the people of Badr [were among the addressed]. So reflect and take heed, if you are among those who take heed. When you have encompassed this with knowledge, and understood from Allah and His Messenger what He has made binding upon you in those pathways, you will know that it is incumbent upon you to recognize the truth and follow it, to be loyal to its people and be with them:

'O you who have believed, fear Allah and be with the truthful.' — [al-Tawbah:119]

—and to part from falsehood and its followers, to keep apart from them:

'And whoever is an ally to them among you—then indeed, he is [one] of them.' — [al-Mā'idah:51]

'You will not find a people who believe in Allah and the Last Day having affection for those who oppose Allah and His Messenger, even if they were their fathers or their sons or their brothers or their kindred.' — [al-Mujādilah:22]

'O you who have believed, do not take My enemies and your enemies as allies, extending to them affection...' — [al-Mumtaḥanah:1]

—in verses recited and reports transmitted. And you will not be able to know the truth and its people except by relying upon Allah's manifest proofs and His clear, evident evidences—by which He has guided creation to the truth—without bending to desire, without turning to wrangling or contentiousness, without heed to any [partisan] school or advocacy for position:

'O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives...' — [al-

Nisā':135]."¹

Publications of the Ahl al-Bayt (‘a) Library

By Allah’s grace, the Ahl al-Bayt (‘a) Library has published:

1. **Al-Shāfi** — by the Proof-Imam ‘Abd Allāh b. Ḥamzah (‘a), d. 614 AH; appended with **al-Ta‘līq al-Wāfi fi Takhrīj Aḥādīth al-Shāfi**, by al-Sayyid al-‘Allāmah Najm al-‘Itrah al-Ṭāhirah al-Ḥasan b. al-Ḥusayn b. Muḥammad (*may Allah have mercy on him*) (d. 1388 AH).
2. **Maṭala‘ al-Budūr wa Majma‘ al-Buḥūr fi Tarājim Rijāl al-Zaydiyyah** — by the jurist-historian Qāḍī al-‘Allāmah Shihāb al-Dīn Aḥmad b. Šāliḥ b. Abī al-Rijāl (*may Allah have mercy on him*) (1029–1092 AH).
3. **Maṭālī‘ al-Anwār wa Mashāriq al-Shumūs wa al-Aqmār** — The Dīwān of Imām al-Manṣūr bi-llāh ‘Abd Allāh b. Ḥamzah (‘a), d. 614 AH.
4. **Collected Books and Letters of Imām al-Mahdī al-Ḥusayn b. al-Qāsim al-‘Iyānī (‘a)** (376–404 AH).
5. **Mhāsin al-Azhār fi Tafṣīl Manāqib al-‘Itrah al-Aṭhār** — a commentary on the ode composed by Imām al-Manṣūr bi-llāh ‘Abd Allāh b. Ḥamzah (‘a); by the jurist-scholar and martyr Ḥamīd b. Aḥmad al-Miḥallī al-Hamdānī al-Wādī‘ī (*may Allah have mercy on him*) (d. 652 AH).
6. **Majmū‘ al-Sayyid Ḥumaydān** — by al-Sayyid al-‘Ālim Nūr al-Dīn Abū ‘Abd Allāh Ḥumaydān b. Yaḥyā b. Ḥumaydān al-Qāsimī al-Ḥasanī—may Allah be pleased with him.
7. **al-Safīnah al-Munjiyah fi Mustakhlas al-Marfū‘ min al-Ad‘iyah** — by Imām Aḥmad b. Hāshim (‘a), d. 1269 AH.
8. **Lawāmi‘ al-Anwār fi Jawāmi‘ al-‘Ulūm wa al-Āthār wa Tarājim Uli al-‘Ilm wa al-Anzār** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Manṣūr al-Mu‘ayyadī (‘a) (1332–1428 AH).
9. **Collected Books and Letters of the Greatest Imām, Commander of the Faithful Zayd b. ‘Alī (‘a)** — by the Greatest Imam Zayd b. ‘Alī b. al-Ḥusayn b. ‘Alī b. Abī Ṭālib (‘a) (75–122 AH).
10. **Sharḥ al-Risālah al-Nāṣiḥah bi-al-Adillah al-Wāḍiḥah** — by the Proof-Imam ‘Abd Allāh b. Ḥamzah (‘a), d. 614 AH.

1. (*al-Tuhaf al-Fatimiyah Sharah al-Zulaf al-Imamiyah*) The Fatimid Treasures: Explanation of the Imamite Zulf.

11. **Şafwat al-Ikhtiyār fī Uşūl al-Fiqh** — by the Proof-Imam ‘Abd Allāh b. Ḥamzah (‘a), d. 614 AH.
12. **al-Mukhtār min Şaḥīḥ al-Aḥādīth wa al-Āthār min Kutub al-A’immah al-Aṭḥār wa Shī‘atihim al-Akhyār** — abridged by al-Sayyid al-‘Allāmah Muḥammad b. Yaḥyā b. al-Ḥusayn b. Muḥammad (*may Allah have mercy on him*), from **al-Şaḥīḥ al-Mukhtār** by al-Sayyid al-‘Allāmah Muḥammad b. Ḥasan al-‘Ajrī (*may Allah have mercy on him*).
13. **Hidāyat al-Rāghibīn ilā Madhhab al-‘Itrah al-Ṭāhirīn** — by al-Sayyid al-Imām al-Hādī b. Ibrāhīm al-Wazīr (‘a), d. 822 AH.
14. **al-Ifādah fī Tārīkh al-A’immah al-Sādah** — by Imām Abū Ṭālib Yaḥyā b. al-Ḥusayn al-Hārūnī (‘a), d. 424 AH.
15. **al-Munīr** — on the madhhab of al-Hādī ilā al-Ḥaqq Yaḥyā b. al-Ḥusayn b. al-Qāsim b. Ibrāhīm (‘a); by Aḥmad b. Mūsā al-Ṭabarī (*may Allah be pleased with him*).
16. **Nihāyat al-Tanwīh fī Izhāq al-Tamwīh** — by al-Sayyid al-Imām al-Hādī b. Ibrāhīm al-Wazīr (‘a), d. 822 AH.
17. **Tanbīh al-Ghāfilīn ‘an Faḍā’il al-Ṭālibiyyīn** — by al-Ḥākim al-Jushamī, al-Muḥsin b. Muḥammad b. Karāmah (*may Allah have mercy on him*), d. 494 AH.
18. **‘Uyūn al-Mukhtār min Funūn al-Ash‘ār wa al-Āthār** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Manşūr al-Mu‘ayyadī (‘a) (1332–1428 AH).
19. **Akhbār Fakhkh wa Khabar Yaḥyā b. ‘Abd Allāh (‘a) wa Akhihi Idrīs b. ‘Abd Allāh (‘a)** — by Aḥmad b. Sahl al-Rāzī (*may Allah have mercy on him*).
20. **al-Wāfid ‘alā al-Ālam** — by Imām Najm Āl al-Rasūl al-Qāsim b. Ibrāhīm al-Rassī (‘a), d. 246 AH.
21. **al-Hijrah wa al-Waṣiyyah** — by Imām Muḥammad b. al-Qāsim b. Ibrāhīm al-Rassī (‘a).
22. **al-Jāmi‘ah al-Muhimmah fī Asānīd Kutub al-A’immah** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Manşūr al-Mu‘ayyadī (‘a) (1332–1428 AH).
23. **al-Mukhtaṣar al-Mufīd fīmā Lā Yajūzu al-Ikhlāl bihi li-Kulli Mukallaf min al-‘Abīd** — by Qāḍī al-‘Allāmah Aḥmad b. Ismā‘īl al-‘Alafī (d. 1282 AH).
24. **Fifty Sermons for Fridays and Festivals.**
25. **Risālat al-Thabāt fīmā ‘alā al-Banīn wa al-Banāt** — by the Proof-Imam ‘Abd Allāh b. Ḥamzah (‘a), d. 614 AH.
26. **al-Risālah al-Şādi‘ah bi-al-Dalīl fī al-Radd ‘alā Şāḥib al-Tabdī‘**

- wa al-Taḍlīl** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Maṣṣūr al-Mu‘ayyadī (‘a) (1332–1428 AH).
27. **Īdāḥ al-Dalālah fī Taḥqīq Aḥkām al-‘Adālah** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Maṣṣūr al-Mu‘ayyadī (‘a) (1332–1428 AH).
28. **al-Ḥujaj al-Munīrah ‘alā al-Uṣūl al-Khaṭīrah** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Maṣṣūr al-Mu‘ayyadī (‘a) (1332–1428 AH).
29. **al-Nūr al-Sāṭi‘** — by al-Hādī al-Ḥasan b. Yaḥyā al-Qāsimī (‘a) (1343 AH).
30. **Sabīl al-Rashād ilā Ma‘rifat Rabb al-‘Ibād** — by al-Sayyid al-‘Allāmah Muḥammad b. al-Ḥasan b. al-Imām al-Qāsim b. Muḥammad (‘a) (1010–1079 AH).
31. **al-Jawāb al-Kāshif li-al-Iltibās ‘an Masā’il al-Ifriqī Ilyās** — followed by **al-Jawāb al-Rāqī ‘alā Masā’il al-‘Irāqī**; by al-Sayyid al-‘Allāmah al-Ḥusayn b. Yaḥyā b. al-Ḥusayn b. Muḥammad (‘a) (1358–1435 AH).
32. **Uṣūl al-Dīn** — by Imām al-Hādī ilā al-Ḥaqq Yaḥyā b. al-Ḥusayn (‘a) (245–298 AH).
33. **al-Risālah al-Badī‘ah al-Mu‘linah bi-Faḍā’il al-Shī‘ah** — by Qāḍī al-‘Allāmah ‘Abd Allāh b. Zayd al-‘Ansī, d. 667 AH.
34. **al-‘Aqd al-Thamīn fī Ma‘rifat Rabb al-‘Ālamīn** — by al-Amīr al-Ḥusayn b. Badr al-Dīn Muḥammad b. Aḥmad (‘a) (663 AH).
35. **al-Kāmil al-Munīr fī Ithbāt Wilāyat Amīr al-Mu‘minīn (‘a)** — by Imām al-Qāsim b. Ibrāhīm al-Rassī (‘a), d. 246 AH.
36. **Kitāb al-Taḥrīr** — by the Truth-Uttering Imām (al-Nāṭiq bi-al-Ḥaqq) Abū Ṭālib Yaḥyā b. al-Ḥusayn al-Hārūnī (‘a), d. 424 AH.
37. **Collected Fatwas of Imām al-Mahdī Muḥammad b. al-Qāsim al-Ḥusaynī (‘a)** (1319 AH).
38. **al-Qawl al-Sadīd — a commentary on the poem “Hidāyat al-Rashīd”** — by al-Sayyid al-‘Allāmah al-Ḥusayn b. Yaḥyā b. al-Ḥusayn b. Muḥammad (‘a) (1358–1435 AH).
39. **Qaṣd al-Sabīl ilā Ma‘rifat al-Jalīl** — by al-Sayyid al-‘Allāmah Muḥammad b. ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
40. **Naẓarāt fī Malāmiḥ al-Madḥhab al-Zaydī wa Khaṣā’ishih** — by al-Sayyid al-‘Allāmah Muḥammad b. ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
41. **Ma‘ārij al-Muttaqīn min Ad‘iyat Sayyid al-Mursalīn** — compiled by al-Sayyid al-‘Allāmah Muḥammad b. ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).

42. **al-Ikhtiyārāt al-Mu'ayyadiyah** — fatwas, selections, sayings, and gleanings of the Proof-Imam Majd al-Dīn b. Muḥammad b. Maṣṣūr al-Mu'ayyadī ('a) (1332–1428 AH).
43. **Min Thimār al-'Ilm wa al-Ḥikmah (Fatāwā wa Fawā'id)** — by al-Sayyid al-'Allāmah Muḥammad b. 'Abd Allāh 'Awad (*may Allah preserve him*).
44. **al-Tuḥaf al-Fāṭimiyyah: Sharḥ al-Zulf al-Imāmiyyah** — by the Proof-Imam Majd al-Dīn b. Muḥammad al-Mu'ayyadī ('a) (1332–1428 AH).
45. **al-Manhaj al-Aqwām fī al-Raf' wa al-Ḍamm wa al-Jahr bi "Bismillāh al-Raḥmān al-Raḥīm," wa Ithbāt "Ḥayya 'alā Khayr al-'Amal" fī al-Adhān, wa ghayri dhālik min al-fawā'id allatī bihā al-naḥf al-a'amm** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Maṣṣūr al-Mu'ayyadī ('a).
46. **al-Asās li-'Aqā'id al-Akyās** — by Imām al-Qāsim b. Muḥammad ('a).
47. **al-Balāgh al-Nāhī 'an al-Ghinā' wa Ālāt al-Malāhī** — by the Proof-Imam Majd al-Dīn b. Muḥammad al-Mu'ayyadī ('a) (1332–1428 AH).
48. **al-Aḥkām fī al-Ḥalāl wa al-Ḥarām** — by Imām al-Hādī ilā al-Ḥaqq Yaḥyā b. al-Ḥusayn b. al-Qāsim b. Ibrāhīm ('a) (245–298 AH).
49. **al-Mukhtār min Kanz al-Rashād wa Zād al-Ma'ād** — by Imām 'Izz al-Dīn b. al-Ḥasan ('a), d. 900 AH.
50. **Shifā' Ghalīl al-Sā'il 'ammā Taḥmiluhu al-Kāfil** — by the erudite scholar 'Alī b. Ṣalāḥ b. 'Alī b. Muḥammad al-Ṭabarī.
51. **al-Fiqh al-Qur'ānī** — by al-Sayyid al-'Allāmah Muḥammad b. 'Abd Allāh 'Awad (*may Allah preserve him*).
52. **Ta'lim al-Ḥurūf (Teaching the Letters).**
53. **Series: Teaching Reading and Writing for Beginning Students — Part One: The Alphabetic Letters.**
54. **Series: Teaching the Principles of Arithmetic — Part One: Numerical Numbers (from 11 to 10).**
55. **Tashīl al-Tashīl 'alā Matn al-Ājurrūmiyyah.**
56. **Azhār wa Athmār min Ḥadā'iq al-Ḥikmah al-Nabawiyyah** (upon its possessor and his family be the best blessings and peace) — by al-Sayyid al-'Allāmah Muḥammad 'Abd Allāh 'Awad (*may Allah preserve him*).
57. **Matn al-Kāfil bi-Nayl al-Su'ul fī 'Ilm al-Uṣūl** — by al-'Allāmah Muḥammad b. Yaḥyā Bahrān (d. 957 AH).

58. **al-Maw‘īzah al-Ḥasanah** — by Imām al-Mahdī Muḥammad b. al-Qāsim al-Ḥusaynī (‘a) — 1319 AH.
59. **As’ilah wa Mawāḍi‘ Hammah Khāṣṣah bi-al-Nisā’** — by al-Sayyid al-‘Allāmah Muḥammad ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
60. **al-Mafātīḥ limā Istughliqa min Abwāb al-Balāghah wa Qawā‘id al-Istinbāt** — by al-Sayyid al-‘Allāmah Muḥammad ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
61. **Series: Teaching Reading and Writing for Beginning Students — Part Two: Short Vowels and Word Formation.**
62. **Series: Teaching the Principles of Arithmetic — Numerical Numbers, Part Two.**
63. **al-Murakkab al-Nafīs ilā Adillat al-Tanzīh wa al-Taqdīs** — by al-Sayyid al-‘Allāmah Muḥammad ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
64. **al-Manāhil al-Ṣāfiyah: Sharḥ al-Muqaddimah al-Shāfiyah** — by al-‘Allāmah Luṭf Allāh b. Muḥammad al-Ghayyāth al-Ẓafīrī, d. 1035 AH.
65. **al-Kāshif li-Dhawi al-‘Uqūl ‘an Wujūh Ma‘ānī al-Kāfil bi-Nayl al-Su’ul** — by al-Sayyid al-‘Allāmah Aḥmad b. Muḥammad Luqmān, d. 1037 AH.
66. **al-Anwār al-Hādiyah li-Dhawi al-‘Uqūl ilā Ma‘rifat Maqāṣid al-Kāfil bi-Nayl al-Su’ul** — by the jurist-scholar Aḥmad b. Yaḥyā Ḥābis al-Ṣa’dī, d. 1061 AH.
67. **Majma‘ al-Fawā‘id al-Mushtamil ‘alā Bughyat al-Rā‘id wa Ḍallat al-Nāshid** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Manṣūr al-Mu’ayyadī (‘a) (1332–1428 AH).
68. **Kitāb al-Ḥajj wa al-‘Umrah** — by the Proof-Imam Majd al-Dīn b. Muḥammad b. Manṣūr al-Mu’ayyadī (‘a) (1332–1428 AH).
69. **al-Maṣṭūr fī Sirat al-‘Ālim al-Mashhūr** — by al-Sayyid al-‘Allāmah Muḥammad ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
70. **Ramadan Lectures for Bringing Near the Meanings of Qur’ānic Verses** — by al-Sayyid al-‘Allāmah Muḥammad ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
71. **Zubr min al-Fawā‘id al-Qur’āniyyah wa Nawādir min al-Farā‘id wa al-Qalā‘id al-Rabbāniyyah** — by al-Sayyid al-‘Allāmah Muḥammad ‘Abd Allāh ‘Awaḍ (*may Allah preserve him*).
72. **al-Munta za‘ al-Mukhtār min al-Ghayth al-Midrār (known as the Commentary on al-Azhār)** — by al-‘Allāmah ‘Abd Allāh b. Muftāḥ—*may Allah have mercy on him*.

73. **Matn Ghāyat al-Su’ul fī ‘Ilm al-Uṣūl** — by al-Sayyid al-‘Allāmah al-Ḥusayn b. al-Imām al-Qāsim b. Muḥammad (‘a), d. 1050 AH.
74. **Durar al-Farā’id fī Khuṭab al-Masājid** — by al-Sayyid al-‘Allāmah ‘Abd Allāh b. Ṣalāḥ al-‘Ajrī—*may Allah have mercy on him*.
75. **al-Kāshif al-Amīn ‘an Jawāhir al-‘Aqd al-Thamīn** — by the jurist-scholar Muḥammad b. Yaḥyā Madā’is (d. 1252 AH).
76. **al-Washī al-Mukhtār ‘alā Ḥadā’iq al-Azhār** — by al-Sayyid al-‘Allāmah al-Ḥusayn b. Yaḥyā al-Muṭahhar (‘a) (1358–1435 AH).

There is much else, of goodly works, on its way to the light, if Allah Most High wills. We ask Allah for aid and success.

We also extend, in this brief space, our heartfelt thanks to everyone who helped bring this noble work to light—many they are. We ask Allah to record that for all of them in the balance of good deeds and to grant them ample reward and recompense.

In conclusion, we are honored to dedicate this modest work to the soul of our master, the Proof-Imam Majd al-Dīn b. Muḥammad b. Manṣūr al-Mu’ayyadī—*may Allah’s peace and pleasure be upon him*—the reviver of the treasures and glories of the Household (‘a), and the one with the signal merit in disseminating the heritage of the Ahl al-Bayt (‘a) and their righteous followers (*may Allah be pleased with them*).

I supplicate Allah with what he (‘a) supplicated, saying:

O Allah, bless Muḥammad and his family; complete for us Your favor in both abodes; inscribe for us Your mercy which You write for Your righteous servants. O Allah, teach us what benefits us, benefit us by what You have taught us, and make us guides who are rightly guided.

“Our Lord, forgive us and our brothers who preceded us in faith and put not in our hearts [any] resentment toward those who have believed. Our Lord, indeed You are Kind and Merciful.” — [al-Ḥashr:10]

We hope for Allah’s enabling grace to the most upright path, by His bounty and generosity. I ask Allah to rectify this work so that it may be among the deeds accepted, to envelop us in His mercy on the Day of Resurrection, and to seal for us and for all believers with a good end. Indeed, He is the Guardian of response, and to Him is the utmost hope and attainment.

“My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents and to do righteousness of which You will approve; and make righteous for me my offspring. Indeed, I have repented to You, and indeed, I am of the Muslims.” — [al-Aḥqāf:15]

And may Allah send blessings upon our master Muḥammad and upon his pure, immaculate Household.

Director of the Library

Ibrāhīm b. Majd al-Dīn b. Muḥammad al-Mu‘ayyadī

Verification Introduction

All praise is due to Allah, Lord of the worlds, who says:

"So ask the people of the message if you do not know." — [al-Anbiyā':7].

And blessings and peace be upon our master, our beloved, our leader, and our exemplar, Muḥammad—servant of Allah and His Messenger—who said: *"O Allah, place knowledge and understanding in my progeny and my progeny's progeny, and in my cultivation and the cultivation of my cultivation."* May Allah's blessings and peace be upon him and upon the most select of his Household—the noble, pure ones, stars of guidance, lamps in the darkness, a safeguard from misguidance and ruin. To proceed:

With Allah's help and grace, we present to you, dear reader, this noble tome, entitled **"From the Fruits of Knowledge and Wisdom — Fatwas and Gleanings"**, in its three volumes, by its author, al-Sayyid al-ʿAllāmah al-Ḥujjah Muḥammad b. ʿAbd Allāh ʿAwaḍ al-Muʿayyadī—may Allah support him—in its new printing, with its handsome, singular attire and its beneficial, useful fruits. We ask Allah to make it of benefit to the Muslims—scholars, students of knowledge, and the general public alike. It encompasses most of what a Muslim needs in his practical life—in both worship and transactions. Hardly a single issue will pass you by without finding it, or one like it, or something close to it within its folds. In addition, it resolves many problematic questions, weighty difficulties, and contemporary novelties, in a distinctive scholarly manner, free of affectation and complication—laying bare the face of the proof, highlighting the strength of its source, clarifying the reasons for its issuance and its basis, explaining what is obscure, purging it of every taint—directing the evidence in a way that heals the ailment of every ailing one, and deriving inferences before which thought stands humbled; thus one bows one's head in appreciation and reverence, praising the Lord of Majesty, who bestows abundant gifts upon whom He wills.

It is no wonder—for its author (*may Allah aid and preserve him*) is an imam of eloquence and expression, foremost among its champions in the field, a divinely taught guide of this age and the helmsman of the ship of safety, the remaining remnant of the pleasing lineage. We ask Allah to let us enjoy the span of his days and to increase him in His favor and bounty.

We note here, briefly, that this edition contains many additions. We gathered what the author—may Allah Most High aid him—wrote after the previous editions. Since most of that material was scattered throughout notebooks (as we indicated in his book *Zubr min al-Fawā'id al-Qur'āniyyah*), we added everything under the topic that best suits it

from what had been first printed, so that benefit might be more general and so it would be easier for the researcher to reach what he wants. We re-arranged it: what pertains to fiqh we ordered according to the well-known sequence of fiqh chapters; the miscellaneous gleanings we distributed by subject, then arranged them as best we could after presenting that to the author (*may Allah support him*). Any headings we added we placed between brackets like this [...].

A reader may notice that under some topics there are more than one paragraph or question that are very close in meaning, with only slight differences in wording, and wonder why they were not condensed into a single topic or a single question. The reason is that, being scattered in notebooks, each was written at a different time or on a particular occasion or in answer to a specific inquirer. When they were gathered, we found in some of them additional benefit not found in the others; therefore, we did not content ourselves with one and recorded them all.

Accordingly, we devoted the first and second volumes to fiqh topics: **Volume One** from the beginning of the fiqh chapters to the end of the **Book of Divorce**; **Volume Two** from the beginning of the **Book of Sales** to the end of fiqh. In **Volume Three** we collected the miscellaneous gleanings on various subjects, such as **uṣūl al-dīn**, **uṣūl al-fiqh**, and other important topics.

We ask Allah to benefit us and everyone who reads it by its useful benefits and its unique, precious gems; to reward its author on our behalf and on behalf of Islam and the Muslims with the best of rewards; to be most pleased with him; and to place it in the scale of his good deeds. And may blessings and peace be upon our master Muḥammad and his pure Household.

Department of Verification / Ahl al-Bayt Library —

Muḥarram / 1441 AH

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the Most Gracious, the Most Merciful

[Introduction]

A Study on Ijtihād

Some scholars have said: *Every mujtahid (jurisconsult) is correct in subsidiary issues (furū’).*

Others said: *The truth in subsidiary issues lies with one only, and the one who disagrees is mistaken yet excused.*

I say: The adherents of both positions are agreed on the principle that a mujtahid is obliged to act upon what his ijtiḥād (personal reasoning) leads him to. Thus, no difference appears between the two opinions in meaning or in reality. For the meaning of their statement “*Every mujtahid is correct*” is that it is obligatory for the mujtahid to act upon what his ijtiḥād leads him to, and that it is permissible for a layman to follow that mujtahid in such, and that it is not permissible to overturn his ruling by means of another’s ijtiḥād. All of this is also affirmed by those who say that the truth lies with one only and that the one who errs is excused.

[When may a mujtahid follow another?]

Question: Is it permissible for a mujtahid to imitate (do taqlīd of) another in matters where he has not yet been able to perform ijtiḥād—because its basis is obscure, or its rationale is hidden, or something similar?

Answer (and Allah is the granter of success):

Yes, that is permissible. The evidence is the generality of Allah’s saying:

“So ask the people of the message if you do not know.” — [al-Anbiyā’:7]

The generality here is in the pronouns, and the scope of the pronouns follows the generality of what they refer back to.

What appears to be meant by the statement, “*It is forbidden for a mujtahid to imitate,*” is the one who is able to perform ijtiḥād and has the capacity for it—not every mujtahid absolutely, even if he faces difficulty.

The evidence for what we have said is Allah’s statement:

“So fear Allah as much as you are able.” — [al-Taghābun:16]

Likewise, if an incident arises urgently and he is unable to perform ijtiḥād at the moment, it is permissible for him to follow another, based on Allah’s saying:

“So fear Allah as much as you are able.” — [al-Taghābun:16]

Based on what we have mentioned, the permissibility of *partial ijtiḥād* (tajazzī’ al-ijtiḥād) is derived.

Benefit: (Categories of subsidiary ijtihādī issues)

Subsidiary ijtihādī issues are of several types:

1. Issues where the truth is one only, not subject to multiplicity.

For example: the difference among scholars regarding whether the Prophet (*peace and blessings be upon him and his progeny*) married Maymūnah while in a state of iḥrām, or while not in iḥrām. Such a case cannot have both as true.

Another example: the narration regarding the Prophet’s entering the Ka’bah—whether he prayed two rak’ahs inside it or not.

Another: whether he proclaimed “Ḥayya ‘alā khayr al-‘amal” in the adhān or not; whether he performed the iqāmah as a single call or repeated phrases; whether he glorified [saying: *Subhanallah walhamdulillahi wala ilaha illaallah wallahu akbar*] in the last two rak’ahs of prayer.

All such are matters where one position alone can be correct. However, in some cases, both actions may be correct—such as what was repeated by the Prophet (*peace and blessings be upon him and his progeny*) in his practice, where he did an action at one time and left it at another.

2. Issues where every mujtahid is correct, provided he fulfills the requirements of ijtihād.

This includes matters such as estimating the blood-money (arūsh) in cases of injury, the value of destroyed property, or the penalty for hunting game while in iḥrām. These are matters with no explicit ruling in Qur’ān, Sunnah, or consensus, and are left to the reasoning of the imām or judge—such as disciplinary measures for subjects in certain acts.

3. A third type: where differences arise due to the obscurity and multiplicity of evidences.

This type, in my view, may fall under either of the two: having one truth only, or allowing multiple truths.

An example is the report that when the Prophet (*May Allah bless him and his family and grant them peace*) returned from the Battle of the Trench [*al-Ahzaab*] he said: “*Whoever believes in Allah and the Last Day, let him not pray ‘Aṣr except at Banū Qurayzah*” (or words to that effect). The Companions then set out: some prayed ‘Aṣr on the road, fearing the time would expire; others did not pray until they reached Banū Qurayzah, even though the time had elapsed. When they informed the Prophet (*May Allah bless him and his family and grant them peace*), he did not censure either group.

Differences of the Imāms in rulings on worship and transactions

The differences among the imāms and scholars in issues of purification, prayer, and other acts of worship and transactions are differences that do not impair faith nor blemish piety.

Imām Zayd b. ‘Alī (‘a), when speaking of the differences among the Ahl al-Bayt (‘a) in these juristic matters, said: *“Our differences are a mercy for you.”* He meant thereby that there is no blame upon you, when the Ahl al-Bayt differ, if you take the saying of one of them or of another. Thus, all those differing opinions are valid; whoever acts by one of them, it suffices him. If one takes the opinion of Zayd, it suffices him; if one takes the opinion of al-Hādī, it suffices him, and so on. Thus, the opinion of Zayd is truth and correctness, and the opinion of al-Hādī is truth and correctness, and so on.

And the madhhab of the majority of the scholars of the Ummah of Muḥammad (*May Allah bless him and his family and grant them peace*) is that differences in the issues of this science (*fiqh*) are light and easy matters, in which there is no blame upon those who differ. Every school of thought suffices its adherent, and they have said: *Every mujtahid is correct.*

Therefore, it is not appropriate to censure someone who repeats the phrases in the adhān four times [saying: *Allahu akbar* four times], or who yatawajjah [saying the two invocation of orientation] after the opening takbīr, or who combines between two prayers, or other such matters in which the Imams of Islam have differed.

What is incumbent upon a Muslim is that he exercises utmost care in his religion, not taking it except from the most trustworthy scholars in his view, and that he acts upon their word—without declaring mistaken the one who holds a differing view. It is also not proper for a Muslim to take matters of fiqh directly from books, for understanding from books may be right or wrong; rather, he should take his religion from the scholars—exactly as Allah, Exalted, has said:

“So ask the people of the message if you do not know.” — [al-Naḥl:43]

Yes, the meaning of what we have mentioned is not that it is permissible for a Muslim to wander in his religion between madhhabs—one day Shāfi‘ī, another day Ḥanbalī, another day Mālīkī, and so on—according to his own desire and whim. That is something the scholars have strongly condemned. Rather, what is meant is that a Muslim should take care in his religion, not taking it except from the most trustworthy scholar in his view, and acting upon his word without declaring mistaken those who disagree.

Allah, *Exalted*, has said:

“So give good tidings to My servants who listen to speech and follow the best of it. Those are the ones Allah has guided, and those are the people of understanding.” — [al-Zumar:17-18]

The Imams of the Zaydiyyah do not reproach the followers of other madhhabs in matters such as saying “*āmīn*” or folding the hands in prayer, or similar issues in *ṣalāh*, *zakāh*, *ḥajj*, marriage, divorce, nursing, and the like. They do not censure these nor consider them blameworthy nor see any harm in them. What they do reproach is their opponents’ positions in *tashbīh* (anthropomorphism), *jabr* (determinism), enmity toward the Ahl al-Bayt (‘a), and opposition to them, and the like in the fundamentals of religion (*uṣūl al-dīn*).

A person is not considered Zaydī until he follows Zayd (‘a) in three matters:

1. Belief in **tawḥīd** (Divine Unity) and **‘adl** (Divine Justice), which are expressed as the principles of religion (*uṣūl al-dīn*).
2. Belief in the superiority of ‘Alī (‘a) and giving him precedence over the Companions, and giving precedence to the Ahl al-Bayt (‘a).
3. Upholding enjoining good and forbidding evil.

As for the rest of the rulings of Islam, the Zaydī is at liberty: he may follow the opinion of al-Hādī or of other Imams and scholars. It is not said of one who follows someone other than Zayd that he has opposed Zayd; rather, he is in agreement with Zayd, for Zayd (‘a) said, as we mentioned earlier: *“Our differences are a mercy for you.”* Thus, Zayd (‘a) permitted his followers to imitate other scholars of the Ahl al-Bayt in cases of difference, considering that a mercy for the people, a facilitation, and a latitude.

Even though the Imams of the Ahl al-Bayt (‘a) differed in some subsidiary juristic matters, they were unanimous on the matters of creed (*uṣūl al-dīn*)—the issues of *tawḥīd* and *‘adl*, prophethood, succession, and the matters of Allah’s promise and threat. They saw no harm in differing outside these areas of creed.

So, if a Muslim professes the oneness of Allah Most High and His justice, affirms the precedence of ‘Alī (‘a) and of his Household, and upholds enjoining good and forbidding evil in the way that Zayd (‘a) and the rest of the Ahl al-Bayt upheld, then he is Zaydī—even if he follows the madhhab of al-Nāṣir, al-Qāsim, al-Ṣādiq, al-Hādī, or other Imams and mujtahid scholars.

A Benefit: (On the Change of a Mujtahid’s Ijtihād)

If a mujtahid’s *ijtihād* changes due to his obtaining a conclusive proof, he must inform those who had imitated him so that they may act upon

the second opinion. But if that is not the case, rather another proof appears stronger to him, then—as al-Mu’ayyad bi-llāh, Abū Ṭālib, and Shaykh Aḥmad al-Raṣṣāṣ said—he is not obliged to inform those to whom he had given the first fatwā.

This is the end of what is cited in the marginalia of Sharḥ al-Azhār.

[Do Circumstances Have an Effect in Ijtihādī Matters?]

Question: Can circumstances and conditions play a role in some ijtihādī issues—for example, what is related about al-Nāṣir al-Uṭrūsh concerning *ṭalāq bid’ī* (innovative divorce), combining between washing and wiping in purification, or some inheritance issues? Can certain circumstances and conditions be a basis for preference?

Answer: Circumstances and conditions, as they appear to me, are of various types:

1. **Circumstances that are a cause and rationale for rulings**—such as the state of travel, fear, or illness. These are made by the Lawgiver an excuse for concessions in leaving off some religious obligations.
2. **When a scholar-mujtahid is in a community that follows a particular madhhab**—such as the Shāfi’ī madhhab, or that of Mālik, or Abū Ḥanīfah, or the Imāmiyyah. That community sees its madhhab as truth and correctness. In such a case, it is permissible for the mujtahid in that community to issue fatwās to the people according to their madhhab, and to judge among them according to their madhhab. This serves as a reason for preference, because opposing what the people are accustomed to in madhhabs is strongly rejected by the common folk, and may lead to hostility and great harm. The scholars of madhhabs have said: “*A layman is to be given fatwā according to the madhhab of his locality.*”

As for the mujtahid, in what pertains to himself and his close ones, he may act upon his own madhhab in private. In what appears to people: if he feels safe from corruption, he acts upon his own madhhab; but if he fears harm—such as that people turn away from him, accuse him, or refuse to accept from him—he leaves his own madhhab and follows theirs. This is in the case where the scholar in that society is a model and an exemplar whom people refer to, take from, and benefit from his knowledge.

But if that community already has another exemplar whom they follow, and they do not accept from him nor take from him, and he is not in the position of inviting and guiding them, then it is not appropriate for him to abandon his own madhhab in deference to theirs. What we have mentioned here pertains to subsidiary ijtihādī issues.

The Effect of Society

It is difficult for a person legally responsible (*mukallaḥ*) to depart from the madhhab in which he was raised, and in which his family, neighbors, brothers, and people of his land were raised.

The scholar-mujtahid continues to hold to the madhhab in which he was brought up until proofs and evidences overwhelm him and force him to turn aside to another. This is clear.

The clearest example is that the polytheists who worshiped idols did not abandon their superstitious madhhabs for the light of Divine guidance except after great struggle and long striving. Based on this, there is no doubt that one who grows up among the people of a madhhab must be influenced by some of their ways.

[A Benefit: On the Permissibility of a Follower Transferring to Another Imām’s Madhhab]

It is stated in *al-Muhadhdhab*: “It is not permissible for the follower of a madhhab to take the fatwā of another muftī, and it is [considered] leaving the religion.” End quote in meaning.

I say: This should apply to the one who moves about from one madhhab to another out of whim, play, or chasing after concessions, without concern for what he had previously bound himself to. But if the transfer is not of this kind, and there arises a reason calling for transfer, then it appears there is no impediment to transferring and acting upon the new fatwā.

An example: a follower holds to the madhhab of those who require prayers to be performed in their fixed times (*tawqīt*). Then he happens to accompany a mujtahid who permits combining the prayers. Here there is no harm in him combining with this mujtahid, because opposing him outwardly would bring reproach upon him. Likewise, a committed follower may fall into straits he cannot bear; in such a case, there is no harm in his moving to the madhhab of another Imām equal in rank to his own, in order to free himself from such straits. This is provided he believes that the new Imām is equal in knowledge and standing to his former Imām, or superior. But if he sees the new Imām as lower, then it is not appropriate to transfer—for following the less sound is not permissible, neither rationally nor legally.

A Benefit [from the Words of Imām al-Manṣūr bi-llāh (‘a) Concerning Differences in Subsidiary Issues]

1. *It is not permissible to censure a matter that is open to possibility until the situation is clarified; for it is obligatory to carry the actions of Muslims upon soundness as far as possible.* This is the meaning of the words of Imām al-Manṣūr bi-llāh (‘a) in *al-Majmū‘*.

2. In it, after mentioning certain subsidiary issues in which differences occurred among the Imāms, he said: *"These rulings, as you see, differ among the Ahl al-Bayt. Differences occurred also among the Companions (may Allah be pleased with them) and the Followers after them, and remain among the people of knowledge to this day. One is not declared sinful or unbelieving for them; rather, it is breadth and mercy."* End quote.

A Benefit [from the Words of Imām Zayd (‘a) on the Consensus of the Ahl al-Bayt (‘a)]

In the book *Tathbīt al-Waṣīyyah* of Zayd b. ‘Alī (‘a): *"Our differences are a mercy for you. But if we agree upon a matter, then the people must not oppose it."* End quote.

A Benefit: Explaining the Words of Imām al-Manṣūr bi-llāh and Zayd b. ‘Alī (‘a)

The words of Imām al-Manṣūr bi-llāh and of Imām Zayd b. ‘Alī (‘a) which have preceded show that the Ahl al-Bayt (‘a) differed in some speculative issues, and that differing in them was allowable, and was a breadth and a mercy for the Ummah.

The meaning of "breadth and mercy" is that it is permissible for the follower (*muqallid*) to choose from the sayings of the Imāms whichever is easier and lighter, and that every statement of the Imāms is a true and correct statement.

From this is derived an indication supporting the authenticity of the ḥadīth reported from the Prophet (*peace and blessings be upon him and his progeny*): *"The differences of my Ummah are a mercy."*

However, this ḥadīth must be interpreted as referring to differences in speculative matters, not fundamentals. From it may also be derived the permissibility of moving between the madhhabs of the Imāms (*peace be upon them*), for that is the meaning of breadth and mercy.

If it is said: *They have said that pursuing concessions (tatabbu‘ al-rukhaṣ) is heresy (zandaqah).*

We reply: What is meant is the one who seeks to escape obligations by chasing after the concessions of scholars. There is no doubt that following desires leads astray. As for the one whose intention is not that, but rather to seek Allah’s pleasure, then he is in the enclosure of mercy—whether he follows the opinion of al-Hādī or that of other Imams of guidance.

[A Benefit: On the Layman’s Adherence to the Madhhab of a Mujtahid]

In the marginalia of *Sharḥ al-Azhār*: “If a layman commits himself to a madhhab, it is either that he has known the conditions of taqlīd or not. If he has not known them, then his taqlīd is not considered taqlīd, and his ruling is that of one who has no madhhab”. End quote.

[The Ruling on Followers When the One They Follow Slips]

Question: If a scholar slips, and his followers imitate him in his slip in good faith—such that, had they known, they would not have followed him in his error—what is the ruling on them?

Answer (and Allah grants success):

If the slip is in matters pertaining to justice and Divine unity—such as determinism (*jabr*) and anthropomorphism (*tashbīh*)—then the scholar and his followers are destroyed, by proof of Allah’s saying:

“Indeed, Allah does not forgive association with Him.” — [al-Nisā’:48]

and the like. The scholars of the madhhab are nearly agreed on this.

But if the slip is in some derivative of the fundamentals, or in subsidiary issues, then there is no blame upon them all, based on Allah’s saying:

“And there is no blame upon you for that in which you erred, but [only for] what your hearts intended.” — [al-Aḥzāb:5]

[Issues in Ijtihād and Taqlīd]

Q1: *Since it is not permissible for the mujtahid to imitate another, and he must act upon what his own reasoning leads him to—must he teach his students his own ijtiḥād and give them fatwās upon it? Or may he teach them something other than his own choice?*

Answer: It is not obligatory for the mujtahid to teach his students his personal ijtiḥād. It is permissible for him to teach them the curriculum known among them, even if it contains what contradicts his own choice.

The students are of two categories:

1. Those who have advanced and know ijtiḥād and taqlīd, what may be subjected to ijtiḥād, what may be followed in taqlīd, what is open to disagreement, and what is not—there is no harm for the mujtahid in presenting his ijtiḥād to this group.
2. Those who have not advanced beyond layman status—it is not appropriate for the mujtahid to present to them from his ijtiḥād what contradicts what they are accustomed to, because that may cast doubt upon them in their religion and confuse them.

The mujtahid must also leave the laypeople upon the madhhab in which they were raised. He must not teach them from his own ijtiḥād what would confuse and bewilder them in their religion.

Indeed, it is not permissible for him even to practice his own ijtihād in front of them if he knows that this will lead them to doubt him, revile him, or fall into perplexity.

Q2: *Is every mujtahid correct, even if his evidence proves weak compared to what others see as stronger and weightier?*

Answer: Every mujtahid is correct—even if his evidence is shown to be weak—meaning that the mujtahid who acts upon his ijtihād is correct in acting upon what he saw as valid, and likewise his followers are correct in following him; there is no blame upon them before Allah. If we come to know the weakness of that mujtahid’s evidence and it becomes clear to us that he erred, this does not affect the validity of his madhhab nor the correctness of his followers.

The proof of this issue is Allah’s saying:

“And there is no blame upon you for that in which you erred, but [only for] what your hearts intended.” — [al-Aḥzāb:5]

However, it is not permissible for a follower who has come to know the weakness of that mujtahid’s reasoning to continue imitating him in that issue.

Q3: *Is the truth in matters of ijtihād with one side only, while the others are mistaken?*

Answer: The scholars differ. Some say the truth in ijtihādī matters is one; others say it is multiple. They are all agreed, however, that sin and blame are lifted from the mistaken mujtahid, that he must act upon his ijtihād, and that his followers are excused.

Accordingly, we may say: What the mujtahid’s reasoning leads him to is correct, and his followers are correct in following him—whether or not that ijtihād accords with truth in reality, and whether or not we say that *every mujtahid is correct*.

Thus Imām Zayd b. ‘Alī (‘a) said, as in his collected letters: *“Our differences are a mercy for you. But if we agree upon a matter, it is not permissible for you to oppose us.”* Or words to that effect.

The meaning of his statement (‘a) is that the differences among the scholars of the Ahl al-Bayt are a mercy and an opening for the people, since it contains facilitation for them and choice in following one or another opinion.

Q4: *Do the jurisprudential curricula that are generalized for teaching entail uniformity of opinion, teaching a single methodology, issuing fatwas based on it, ruling based on it, and limiting other interpretations to their proponents? How is this methodology, which should be generalized, chosen?*

Answer: As we mentioned earlier, opposing ijtihādāt should remain

confined to their own adherents and should not be spread among the general public, because of the corruption that may result from spreading them. There is no harm, however, in presenting them to advanced students, since no corruption results from that.

In Yemen, the Zaydiyyah have a general, comprehensive curriculum, just as is the case in the four madhhabs. After the year 250 AH, the Zaydiyyah followed Imām al-Qāsim b. Ibrāhīm, and a group among them followed Imām al-Nāṣir al-Uṭrūsh, due to the prominence, fame, and lofty standing of these two Imams. Then, after some time, a group of the great scholars of the Ahl al-Bayt (*peace be upon them*) wanted to establish a complete curriculum encompassing all juristic rulings, to be the reference for the Zaydiyyah in all lands across time.

They saw that the madhhab of al-Qāsim (‘a) was the one relied upon by most of the Zaydiyyah, so they made it the foundation upon which they built this curriculum. They added to it the opinions of his sons—such as Muḥammad b. al-Qāsim and al-Hādī (‘a) and his sons—making those opinions the bases, then building upon them and branching out from them.

This work was completed at the hands of Abū al-‘Abbās al-Ḥasanī, al-Mu’ayyad bi-llāh, Abū Ṭālib, and others.

Likewise, the followers of Imām al-Nāṣir al-Uṭrūsh (‘a) relied upon his opinions, built upon them, branched out from them, and produced for the Nāṣiriyyah a complete curriculum in all fields, encompassing everything they needed. The Nāṣiriyyah continued upon it until it disappeared entirely after the year 900 AH. Its heritage, however, remains preserved today in the manuscript libraries here in Yemen.

As for the madhhab of al-Qāsim and al-Hādī—which is *the madhhab* as we call it today—it remains and will remain, as do its followers and supporters, until today and until the Day of Resurrection. For this reason, there is no need to establish a new general curriculum in this regard, since that earlier curriculum is sufficient.

- It is not possible to explain in full detail to the common masses the issues of ijtihād and taqlīd—what admits of ijtihād and what does not, whether every mujtahid is correct or excused, what are the issues of ijtihād, and that disagreement therein is easy and does not cause deficiency in religion—for they are incapable of grasping this, their understanding being too limited to comprehend such matters. This is possible only for advanced students who have traversed stages in the pursuit of knowledge.
- The Imām of truth has the right to impose what he sees as correct in ijtihādī matters upon the people of his state. But this pertains only to public laws, not to private rulings. He has no right to

compel individuals in their personal practice to follow his madhhab; rather, it is obligatory that mujtahids be left free to choose for themselves in matters that pertain to them.

- We say that the Imām may compel the people to his madhhab in public rulings because he is bound to judge among them with truth, and to enforce among them what he sees as truth. Allah the Exalted has said:

"And judge between them by what Allah has revealed." — [al-Mā'idah:49]

"...so that you may judge between the people by what Allah has shown you." — [al-Nisā':105]

"...so judge between the people in truth." — [Ṣād:26]

Thus, if the Imām holds that *ṭalāq bid'ī* (innovative divorce) takes effect, he must enforce that upon the people. If he holds that it does not, he must likewise enforce that upon them.

- The opinion of the Imām of the time—or others—may change even in a single day: he may issue one fatwā at the beginning of the day, and another, contrary to it, at the end of the day, regarding the very same case. We have seen Imām al-Hādī (‘a) take one position in some issues of *al-Muntakāb* and another in *Masā'il al-Aḥkām*. All of this is correct, for it arises from the reasoning of a mujtahid.

Who Are the People of the Madhhab?

Question: There is discussion about the sayings of the people of the madhhab in *al-Azhār*, *al-Sharḥ*, *al-Bayān*, and other works—what is your opinion on that?

Answer (and Allah is the granter of success):

The sum of the matter is this: the madhhab consists of the sayings of five Imams:

- Imām al-Qāsim b. Ibrāhīm,
- his son Muḥammad b. al-Qāsim,
- his grandson al-Hādī Yaḥyā b. al-Ḥusayn,
- the two sons of al-Hādī: Aḥmad al-Nāṣir and Muḥammad al-Murtaḍā—*peace be upon them all*.

These are called *the Imams of the Texts (A'immat al-Nuṣūṣ)*.

Then came after them the *Imams of Compilation and Derivation*—Abū al-‘Abbās al-Ḥasanī, al-Mu‘ayyad bi-llāh, and Abū Ṭālib. They compiled the madhhabs of the five Imams, systematized them, elaborated upon them, branched out from them, and derived rulings—all in accordance with what the words of the earlier Imams [the five Imams] entailed.

However, their derivations differed in some details and branches,

according to their different understandings. This constitutes the second stage of the madhhab.

Then came the third stage: rigorous scrutiny and examination of the soundness of what the people of the second stage had established in every branch and derivation, from the beginning of fiqh to its end. Whatever they found to accord with the principles, foundations, and texts of the earlier Imams, they marked with the well-known symbol¹. Whatever did not accord, they left unmarked.

Through the past centuries, scholars have continued to verify the soundness of what their predecessors established. Whatever they found in agreement with the texts of the five Imams, they confirmed and marked as part of the madhhab. Whatever was not so, they attributed to its author, saying: “*al-Sayyid al-Mu’ayyad bi-llāh said,*” “*Abū Ṭālib said,*” “*Abū al-Abbās said,*” or “*such-and-such jurist said.*”

Objection: *We find in the books of the madhhab that sometimes the madhhab is reported in one issue, and then a contrary opinion is attributed to al-Hādī. How then do you say that the madhhab is that of al-Hādī, his grandfather, his two sons, and Muḥammad b. al-Qāsim?*

Response: When the compilers and derivators studied the sayings of those five Imams and examined them thoroughly, they extracted from them principles and foundations. They then built upon these principles and foundations and made them the basis for the derivations. Whenever they found a statement from one of the five Imams that contradicted these principles and foundations, they did not adopt it or establish it.

If you say: How could they attribute to the madhhab what they established as the madhhab of al-Hādī, when al-Hādī himself disagreed with it in some places?

We say: They deemed it permissible because they saw that al-Hādī, after a thorough study of his words, relied upon principles and foundations which he built upon—such as the principle that the default state is purity. If they found him making a statement contrary to the principles he relied upon, they adopted the principle and foundation that he had built upon.

[The Preferable Course Is to Follow the Stronger Opinion]

- As it appears to me, it is permissible for a follower to move between the madhhabs of the scholars and Imams of the Ahl al-Bayt. Indeed, Zayd b. ‘Alī (‘a) said in his printed collected letters: “*Our differences are a mercy for you.*” This means that the differences of the scholars of the Ahl

1- Like this: 

al-Bayt in a matter are a breadth for the followers: no one of them is bound to a single opinion, but has latitude and freedom to move between them.

- Even so, it is preferable for the follower to imitate the scholar he sees as weightier. If the scholars appear equal to him, he takes the opinion that seems stronger in his view. This is something a rational person is guided to by the innate light of his reason.

[The Meaning of Their Statement: *In Matters of Ijtihād There Is No Fixed Ruling of Allah*]

In *al-Intiṣār*: What we deem correct is what our scholars have said, along with the Mu'tazilah, and what the verifiers among the Ash'arīs and jurists have also said: that a given case has no specific ruling from Allah in itself. Rather, its ruling is determined by the reasoning and opinion of the mujtahid.

When an incident befalls him, and he applies his reasoning, exerts his mind, asks Allah for guidance and success to the truth, and is qualified with the sciences of ijtiḥād, possessing them with their necessary conditions, then ... (and so forth).

I say: It is clear that the mujtahid scholars base their establishment of ijtiḥādī rulings on the Qur'ān, the Sunnah, and analogy (*qiyās*). Deriving rulings from these may be from the outward text of a verse or ḥadīth, from its indication, from its implication, or from its understanding. The outward texts may conflict among themselves, or implications may conflict with texts, or with ḥadīths, or with analogy. From here differences arise.

All such evidences must be examined by the mujtahid, who then takes what appears strongest to him. The strongest may differ among mujtahids—or even for the same mujtahid at different times—so that at one time he favors one evidence, at another time he favors another.

It is clear that each piece of evidence points to a ruling. The mujtahid is charged with examining those evidences and taking what appears strongest. Since this is the case, taking the strongest in each instance is correct and true for every mujtahid.

It is correct and true because each mujtahid has fulfilled what is required of him.

The meaning of their statement "*There is no fixed ruling of Allah*" is that Allah, Exalted, has not charged the scholars-mujtahids with more than what we have described: to examine, reflect deeply, and then take what appears strongest.

Yes, it may be said that Allah Most High has a definite ruling in every case: whoever reaches it has attained it, and whoever misses it has erred.

But the one who errs is excused. Therefore, all ijtihāds are correct—from the standpoint of examination, reflection, and taking what appears strongest. And Allah does not burden a soul beyond its capacity.

[How does a seeker of knowledge issue fatwas to the general public?]

Question: Guides (*murshidūn*) go out to instruct people in the countryside and elsewhere, at the request of the scholars (*may Allah preserve them*). The people of these villages must ask the guide about certain matters—such as prayer, zakāt, and similar issues. Is it permissible for the guide to give them fatwās according to what he studied with the scholars from *Matn al-Azhār* and the like? Or must he refer them to a scholar to issue the fatwā?

And if it is not permissible for him to issue fatwās according to his knowledge, does that mean his study is only for himself until he reaches the rank of ijtihād and then assumes the position of giving fatwā?

Answer (and Allah grants success): If *istiftā* (seeking fatwā) concerns well-known issues, and the guide is confident in his knowledge of the matter, then there is no problem—in fact, that is part of the important duties for which the guide was sent. The madhhab of the majority of the lay Zaydīs is based upon the madhhab.

However, the guide must know that whatever the layman has done in the past is valid, so long as it accords with the opinion of any mujtahid. He must not issue fatwā declaring it invalid on the basis of what he understood from *al-Azhār*, thereby obliging him to make it up.

That said, the guide is often asked about matters not mentioned in *al-Azhār* or its commentaries such as *al-Tāj*. In such cases he must exercise caution and refer the fatwā to scholars who have the ability of derivation, analogy, and ijtihād.

How Should a Pure Layman Be Given Fatwā?

Question: If a pure layman—who knows nothing of taqlīd, commitment, or its conditions—comes asking fatwā in matters relating to divorce, marriage, transactions, or acts of worship, how should he be given fatwā? Should he be answered according to the madhhab of the muftī or otherwise?

Answer (and Allah grants success):

The correct approach here is detailed:

- If the layman is asking about something that has already occurred, he should be given fatwā of its validity and permissibility, so long as it does not contradict consensus.
- If he is asking about something in the future, it is incumbent upon the muftī to give him fatwā according to what he himself

believes to be the ruling in the matter.

The Ruling on Giving a Layman Fatwā Outside the Madhhab

Question: Is it permissible to give a layman fatwā outside the madhhab, or outside the madhhab of the muftī—such as when the muftī gives him fatwā according to the madhhab of one of the Imams of the Ahl al-Bayt (‘a), for the sake of ease and facilitation to the layman?

Answer (and Allah grants success):

Islam is built upon ease, facilitation, and relief—just as Allah the Exalted has said:

“...and He has not placed upon you in the religion any hardship—the way of your father Abraham. He named you Muslims...” — [al-Ḥajj:78]

“Allah intends for you ease and does not intend for you hardship.” — [al-Baqarah:185]

“Allah wants to lighten [the burden] for you; and man was created weak.” — [al-Nisā’:28]

And in the narration: *“Make things easy and do not make them difficult.”*

On this basis, there is no harm in giving the layman fatwā outside the madhhab, or outside the madhhab of the muftī, from among the madhhabs of the Imams of the Ahl al-Bayt (‘a), so long as it entails ease and facilitation. The condition is that the madhhab of that Imam is authentic.

We have restricted ourselves with our saying “correctly” from of some madhhabs that are attributed to the Imams through *takhrīj* (derivation) and branching upon their madhhabs, but these do not actually constitute their madhhabs. Derivation may or may not be valid, and an Imam may or may not have intended it. If we give a layman fatwā on such a basis, it may be that we have given him what is not permissible.

Objection: The layman’s question to the muftī is itself a commitment to the madhhab of the muftī, as indicated by Allah’s saying: *“So ask the people of the message if you do not know.” — [al-Anbiyā’:7]*

Response: The verse indicates that it is obligatory on the layman to act upon what the muftī has given him fatwā with, but it does not indicate that the muftī must issue fatwā only according to his own madhhab, or any specific madhhab.

Objection: The layman chose this muftī among the scholars in order to receive fatwā in his madhhab, not another.

Response: The layman chooses the muftī out of trust and good opinion of him—because he sees him as more knowledgeable, or more ascetic and pious, or due to his worship and chastity—and because he is confident that he will give him only a correct madhhab by which he is

excused before Allah Most High.

Indeed, within the madhhab of the Imams of the Ahl al-Bayt (‘a) is what suffices for their followers to be excused before Allah, as the Prophet (*May Allah bless him and his family and grant them peace*) said: *“My Ahl al-Bayt are like the stars—whenever one sets, another rises.”* And he (*May Allah bless him and his family and grant them peace*) said: *“Learn from them, and do not teach them.”* And he said: *“My Ahl al-Bayt are like the Ark of Noah: whoever boards it is saved, and whoever lags behind it is drowned and ruined.”* And he (*May Allah bless him and his family and grant them peace*) said: *“I leave among you that which, if you hold fast to it, you will never go astray after me: the Section of Allah and my progeny, my Ahl al-Bayt. The Subtle, the Aware has informed me that they will never separate until they return to me at the Ḥawḍ.”* And other ḥadīths, too numerous to be counted.

Section of Ṭahārah [Purity]

Chapter on Najasat [Impurities]

[The Default Ruling on Animals: Purity]

Impure animals are three: the dog, the pig, and the unbeliever. All other animals are pure.

The proof is that the default ruling concerning animals and other things is purity. Thus, whatever there is no evidence for its impurity is pure. Evidence has established the impurity of the pig, the dog, and the unbeliever.

[A Note on the Purity of Every Living Animal Except the Dog, Pig, and Unbeliever]

According to the madhhab: every living animal is deemed pure, except the dog, pig, and unbeliever. End quote from *al-Tāj*

[The Impurity of Dogs]

Dogs are impure, by proof of the ḥadīth about lapping (*al-wulūgh*), and the Prophet (*May Allah bless him and his family and grant them peace*) warned, as in the ḥadīth, against keeping dogs except for hunting or livestock.

The scholars agreed on killing a vicious dog, but differed regarding others. They also differed concerning the impurity of dogs that are permissible to keep—such as hunting dogs and shepherd dogs. It was said: the Prophet's (*May Allah bless him and his family and grant them peace*) permission to keep them is proof of their purity, because keeping them while avoiding them would involve severe hardship, and full benefit from them and keeping them is not possible except if they are pure. Their purity, then, would be among the necessities of keeping them, while declaring them impure would be tantamount to prohibiting them.

Objection: The Lawgiver's ruling that something is impure indicates that avoiding it contains a benefit, and engaging with it entails harm. For He is All-Wise, and does not legislate rulings for His servants except for benefits returning to them. Modern science has established that dogs carry harmful microbes which pass to humans through contact. On that basis, hunting dogs and others are alike, and it is not appropriate to differentiate between them—declaring some pure and some impure.

Response: Hunting and shepherd dogs, in general and in most cases, are raised by their owners in their homes from a young age, and they are not allowed to mingle with other dogs or with carrion or other polluted foods. Thus, they are not contaminated with the microbes that

contaminate other dogs. Perhaps this is the wisdom behind Allah’s allowing consumption of the game caught by a trained dog, but not by an untrained one.

This is in addition to the necessity and urgent need of keeping hunting and guard dogs, and it is well known in the Sharī‘ah that necessity has its own rulings.

Yes, precaution is to hold them impure.

[The Ruling of a Drop from an Impure Vessel Falling into Another Vessel or on Clothing]

Question: If a drop of blood falls into a vessel of water, that water becomes impure. If then a drop from this impure vessel falls into another vessel or onto clothing, does that render the water or clothing impure?

Answer (and Allah grants success):

If a drop of blood falls into a vessel of water, the vessel becomes impure; it is not permissible to use it or to purify oneself with it.

If then a drop from that vessel falls into another vessel containing water, the impurity is weakened, and that water becomes *majāwir thānī* (second-level contact), meaning: pure, but not *mutahhir* (purifying).

If then a drop from this second vessel falls into a third vessel, that water becomes *majāwir thālith* (third-level contact), meaning: pure and purifying.

Accordingly:

- If a drop falls on clothing from the first vessel, the clothing is impure.
- From the second vessel: pure.
- From the third: also pure.

This can be supported rationally: the second vessel is further removed from the impurity than the first, and the third vessel further removed than the second. The same applies if a drop of urine falls into a vessel.

So stated some scholars of the madhhab, as in *Sharḥ al-Azhār*¹.

The Purity of Cologne (*al-Kālūnyā*)

Question: It is said that cologne is impure. Is that true or not?

Answer: Those who say cologne is impure have attached it to wine (*khamr*) and compared it to it. What I hold is that cologne is not impure. The proof of impurity applies only to *khamr*, whether from grape juice, dates, or other fruits—based on the ḥadīth: “Every intoxicant is wine.”

1- *Sharḥ al-Azhār* (5/51)

But intoxication is not itself the cause of impurity, for substances like hashish and the like—which intoxicate by nature—are pure by consensus, though they are intoxicants.

Therefore, impurity is a property of *khamr*, which is the fermented intoxicant juice. The cause of impurity is the combination of fermentation and intoxication. Thus, the mere presence of one element of wine's composition does not prove impurity. Impurity, therefore, is the attribute of wine, not of cologne—since cologne is not wine.

[A Note on the Milk of Animals Whose Meat Is Not Eaten]

In *al-Majmū' al-Manşūrī*, section two, volume two, Imām al-Manşūr bi-l-lāh (‘a) was asked about the milk of animals whose meat is not eaten—whether it is permissible or not, and whether it is pure or impure.

He answered: It is pure, but not permissible to consume. Not because it is impure, but because it is among the *khabā'ith* (repulsive things), and Allah has forbidden them. It is pure, because its separation does not harm the animal, so it is like sweat and the like. End quote.

[The Ruling on One Unable to Avoid Impurity Due to Old Age and Weakness]

Question: An elderly, bedridden man cannot avoid impurity due to his old age and weakness. If he removes his trousers at prayer time, he suffers greatly from the air—even in summer—his leg joints hurting him. What is required of him?

Answer (and Allah grants success): He must avoid impurity as much as he is able, and is not required to do more than that. He should dry himself after relieving himself as much as he can, and he is not at fault regarding what comes after that on his body or clothing. It suffices him to change his soiled trousers for clean ones once a week, for example, or every five days, and to wash the soiled areas of his body if doing so causes him no harm.

The proof is Allah's saying:

“Allah does not burden a soul beyond its capacity.” — [al-Baqarah:286]
“So fear Allah as much as you are able.” — [al-Taghābun:16]
“Allah intends for you ease and does not intend for you hardship.” — [al-Baqarah:185]

and other such verses.

The scholars of the madhhab have also said about one afflicted with incontinence of urine: it suffices him to wash his garment once every four days or so.

[On the Ruling of Prayer for One Bearing a Urine Bag]

Question: A man afflicted with a urinary tract illness had tubes inserted by doctors through his abdomen, so that urine flows into a

pouch strapped to his thigh. What is the ruling of his prayer in such a state?

Answer: The scholars of the madhhab, as mentioned in the marginal notes of *Sharḥ al-Azhār*, stated: *“If one were to devise an apparatus to collect urine, his prayer would not be valid, for he is carrying an impurity. He is not obligated to bind or to stuff it.”* End quote.

I say: The stronger view is that the prayer of such a man carrying a pouch collecting urine is valid, due to the necessity of his condition. What is obligatory upon the mukallaf is to minimize impurity to the extent possible, in light of Allah’s saying:

“So fear Allah as much as you are able.” — [al-Taghābun:16] and the ḥadīth: *“When I command you with a matter, do of it as much as you are able.”*

If the patient were to abandon the pouch and allow the tubes to leak over his thigh, the impurity would spread to his body and clothes far more than by carrying the pouch wherein the urine is contained.

[A Note on Istihālah (Transformation) and the Purity of Animal Feed]

The scholars of the madhhab said: *“That which is impure, or contaminated with impurity, is purified by transformation (istihālah) into what is ruled pure—like wine transformed into vinegar.”*

In the marginal notes of the madhhab: *“Among this is soap if made from carrion.”*

The reality of *istihālah* in the madhhab is: “the change of a substance into a state other than its original, such that it cannot revert to its former condition if intended”. End quote.

I say: Based on this, animal feed manufactured with blood and bones is pure—due to *istihālah*.

[A Note on Mind-Altering Substances That Are Not Impure for Medicine]

In al-Muḥadhdhab: *“What removes the intellect but is not impure, like henbane and anise, may be used in medicine.*

And it is permissible for the ill to drink snake broth out of necessity.

The milk of the horse is pure, but may not be drunk except for medicine or dire need.” End quote.

A Proof for Requiring the Purity of the Body in Prayer

One may adduce as proof the verse in *al-Mā'idah*, after mentioning the command of wuḍū' and ghusl for janābah at the time of standing for prayer:

“...Allah does not intend to place upon you hardship, but He intends to

purify you..." — [al-Mā'idah:6]

Here, Allah has informed us of the cause (*'illah*) for which He prescribed ablution and bathing when rising to prayer: it is purification (*tahārah*). Thus, purification is a condition for the validity of prayer.

On the Validity of Prayer in Impure Clothing

The scholars of the madhhab stated: If a pure garment is unavailable, one prays naked, at the end of the prayer time, seated cross-legged, gesturing with minimal indication, whether in private or in public.

I say: The stronger view is that he should pray in the soiled garment, for reasons:

1. The one who prays naked forfeits many pillars:
 - Standing.
 - Bowing.
 - Upright posture after bowing.
 - Both prostrations.
2. In addition, he commits the reprehensible act of exposing the *'awrah*. Reason rejects its exposure in public, as do people of dignity, honor, and nobility, to the extent that some would prefer death to such exposure.

One who wears an impure garment and prays therein forfeits only a single condition: the purity of his clothing—a matter disputed among jurists. It was said: purity of the garment is not required. Indeed, the scholars of the madhhab said: *If one prayed in an impure garment and only discovered the impurity after the time had passed, he is not obligated to repeat it*, for the requirement of pure clothing is a point of disagreement.

3. Their legal maxim states: *Leaving an obligation is preferable to committing a prohibition*.

Yet in this issue, the madhhab's position contravenes this maxim, for praying naked entails both abandoning an obligation (covering) and committing a prohibition (exposing the *'awrah*), while also forfeiting several pillars.

Whereas praying in an impure garment involves leaving one obligation due to necessity, and it is impossibility of purifying it and the absence of pure substance.

On Blood Transfusions and the Permissibility of Medicating with Donkey's Milk

Allah, *Exalted*, says:

"He has only forbidden you carrion, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is compelled,

neither desiring it nor transgressing, there is no sin upon him. Indeed Allah is All-Forgiving, Most Merciful.” — [al-Baqarah:173]

From this noble verse, it is derived that it is permissible to transfuse blood from one person to another when necessity requires. By extension, it is permissible to medicate with donkey’s milk for certain types of cough—out of necessity.

Objection: It is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “Allah has not placed your cure in that which He has forbidden you.”

Response: This ḥadīth is to be understood of medicating with the unlawful in the absence of dire necessity, in order to reconcile the verse with the ḥadīth.

Thus, by analogy, it is also permissible, in necessity, to transplant an organ, part of an organ, or flesh from one person to another out of necessity.

In such cases, it is permissible to buy and sell blood.

Objection: Is it not narrated: “When Allah forbids a thing, He forbids its price”?

Response: It is not forbidden when necessity permits its use, but lawful. If lawful, then its price is also lawful.

Some of the Ahl al-Bayt (‘a) narrated what supports this, for they ruled the price of dogs forbidden, citing reports from the Prophet (*May Allah bless him and his family and grant them peace*), yet made an exception for the hunting dog or the Bedouin’s guard dog, whose price was lawful due to need.

Supporting evidence also lies in the practice of scholars in our lands and others: they did not object to blood transfusion or its sale.

Moreover, a Muslim may be compelled by a judge to compensate a dhimmī for a pig he killed, or for wine he spilled. This too supports what we have said.

It is further supported by the fact that eating the flesh of donkeys and mules is prohibited, but benefiting from them by riding and carrying is lawful, and their purchase, sale, and profits are lawful by consensus. If their sale and purchase for consumption are unlawful, then it should be all the more so.

Similarly, they ruled against selling grapes to one who will turn them into wine, or selling weapons to an enemy or rebel. Thus, the permissibility of selling blood for medical necessity is strengthened.

And all praise belongs to Allah, Lord of the worlds.

A Note on Impurity (Najāsa)

Impurity is of two types:

1. **Apparent impurity** (*najāsah ṣāhirah*) — that which the human disposition naturally detests and recoils from even before Allah Almighty revealed Islām, such as excrement and similar filth.
2. **Hidden impurity** (*najāsah ghayr ṣāhirah*) — that which most minds and natural dispositions do not recognize as filthy until Allah Almighty revealed Islām and pointed out their impurity, such as flowing blood and urine.

As for pus and discharge (*qih, ṣadīd*), they are impure, for they are blood transformed into a more repugnant state. Likewise, semen, pre-ejaculate (*madhī*), and post-urine discharge (*wadhī*): the ḥadīth established the command to wash the penis from *madhī* and *wadhī*; thus, it is more fitting that semen, also necessitates washing, because *madhī*, is a precursor to sermen, and *wadhī* is a companion to sermen.

Other impurities include: vomit if expelled in a mouthful, carrion, substances that intoxicate through chemical process, the dog, the pig, and the unbeliever.

On Handling Dung, and the Purity of Books, Muṣḥafs, and Phones

In the marginal notes of *Sharḥ al-Azhār* and in *al-Burhān*: "it is permissible to use dung (*sargin*) to plaster walls" End quote.

Among them: "as for books and muṣḥafs: they are purified by drying. Though in reality, they fall under what is impossible to wash. This was mentioned by al-Manṣūr bi-llāh al-Qāsim ibn Muḥammad (‘a)".

Others said: "they are in fact impossible to purify". End quote.

"Nevertheless, one may benefit from them like a soiled garment, but the prayer of one carrying a defiled muṣḥaf is invalid". End quote.

In the marginal notes, from Imām al-Mahdī (‘a): "the ruling of children’s clothes is like their bodies—that they are purified by drying". End quote.

I say: if a phone or similar device that would be ruined by water becomes defiled, its ruling is that of books and muṣḥafs—benefit from it is allowed, but the prayer of one carrying it is invalid.

The Section of Waters

[The Ruling of Large Pools When Their Odor Changes]

Question: There are wide pools in many mosques in Yemen, where the people perform wuḍū’ throughout the year. Often the odor changes due to long standing water and little rainfall, with no water for them but rainwater. Is it permissible to perform wuḍū’ with such water despite its odor?

Answer (and Allah grants success): I found in *Sharḥ al-Majmū’* known as *al-Minhāj al-Jalī* by Imām Muḥammad ibn al-Muṭahhar (may Allah have mercy on him) the following meaning: “It is permissible to perform wuḍū’ with odorous water by consensus of the Ahl al-Bayt (‘a).”

Accordingly, purification with such odorous water is valid, as long as it still retains the name “water.” Its change of odor does not harm so long as it remains *mā’*.

This may be supported by Allah’s words:

“And We sent down water from the sky in measure, and settled it in the earth. And indeed, We are able to take it away.” — [al-Mu’minūn:18], and His words:

“And We sent down from the sky purifying water.” — [al-Furqān 25:48]

Allah Almighty informs us that He sent down purifying water from the sky, and settled it in the earth. Thus, the water that Allah settled in ponds, pools, and valleys remains purifying (*ṭahūr*). Otherwise, the divine favor of sending and settling it would not be complete.

It is known that water, when long settled in the earth, changes in odor due to the growth of creatures within it, fallen leaves, roots, animals, humans, exposure to the sun, and the winds.

Yes, if water changes to the extent that its very nature is altered—becoming milk, coffee, or the like—it can no longer be called water, and purification with it is invalid, for *ṭahūriyyah* (purifying capacity) is a quality specific to water and earth.

Hence, changes short of this do not prevent purification.

The criterion for “little water” according to the scholars of the madhhab: that which one presumes impurity upon contact with filth. “Much water”: that which one does not presume impurity upon contact with filth.

[The Ruling of Water that not affected by Impurity]

If a drop of urine, for example, falls into one, two, or even five liters of water, it becomes impure by a drop of urine falling into it or by something similar from impurities falling into it —whether or not it changes. They cited as evidence the ḥadīth of a dog lapping, the ḥadīth of

waking from sleep, and the ḥadīth: *“None of you should urinate in standing water, then wash in it.”*

This is supported by modern medicine: small amounts of water become contaminated even by a drop of urine, and this can be detected by laboratory instruments. If contamination is established, the Sharī‘ah has commanded us to avoid it.

Yet many scholars held that water, whether little or much, is not rendered impure by filth unless its smell, color, or taste changes. They cited the ḥadīth: *“Water was created pure; nothing renders it impure except what changes its smell, color, or taste.”*

The reply: this ḥadīth is general, while those they are mentioned are specific. Reconciliation between general and specific is obligatory in case of apparent conflict.

On Water

If water is mixed with something that alters it:

- If altered to the extent that it loses its essential nature, becoming broth, milk, juice, or something else not called “water,” this changes prevent the validity of purification with it is wuḍū’, ghusl, or removing impurity.
- If altered but still called “water,” purification with it is valid—whether for wuḍū’, ghusl, or removing impurity.

The evidence: Allah called water *ṭahūr*, saying:

“And We sent down from the sky purifying water.” — [al-Furqān:48]

Allah commanded the believers to perform wuḍū’ for prayer, and ghusl from janābah, with water. He commanded that if water is not found, then tayammum is the substitute. This proves the obligation to use water, and that one may not shift to tayammum as long as water exists under the name “water.”

If the change in water does not change its nature or name, then we are obligated to use it for wuḍū’, ghusl, and it is not permissible to resort to tayammum while it is available.

However, an exception is when water changes due to contact with impurity. Any such change, even slight—in smell, color, or taste—renders it corrupt, even if it remains under the name “water,” whether little or much.

The proof: the Wise Lawgiver forbade contact with impurity and commanded keeping away from it.

Chapter: On Relieving Oneself

A benefit for the one relieving himself

According to *al-Zaidy Madhhab*: it is recommended for the one relieving himself to spit into his clothes, so that if he later senses moisture he will not decisively judge that it is urine. (فَرِي) (*Taqrīr for Zaidy madhahb*)

A question about drying the traces of urine

Question: What people commonly do today—drying off from urine in ordinary bathrooms—does it have any basis in a narration from the Messenger of Allah (*May Allah bless him and his family and grant them peace*), or from any of the Imams of the People of the House, or is it a bad habit?

And is it sufficient for a person, while in the lavatory, to wipe his penis with earth until the trace of urine disappears, with any moisture that emerges after he stands being excused?

If it is not excused, then why does a person not need such exertion in water bathrooms—given that it is possible that what comes after standing up in an ordinary (dry) latrine might also come there, but the water does not leave one an opportunity to notice the moisture because the organ has not dried?

And what is meant by what has been reported—that the Companions would sprinkle their garments after urination, or what is the meaning of that?

And on what basis did the scholars determine that urine is a severe impurity about which even a small amount is not excused? Such moisture that appears after much wiping in the lavatory and comes seconds after standing may be something natural for everyone, and something that cannot be fully avoided except by the hardship of holding the penis—an act not transmitted from the Messenger of Allah (*May Allah bless him and his family and grant them peace*) or from any of the Imams. Can it be deemed a necessity like urinary incontinence (*sals al-bawl*) or the case of a woman with chronic bleeding (*al-mustaḥāḍah*)? And what is most in keeping with the ease of Islam and its teachings?

Answer:

- What people are accustomed to—taking hold of the penis with the left hand together with a clod of earth or a stone when leaving the place of relieving oneself—there is no report for it from the Prophet (*May Allah bless him and his family and grant them peace*), nor from any of the righteous predecessors.

- It is an uncommendable habit, because drying the urine is possible while seated for the one relieving himself; if he dries his urine then he can leave without needing to hold his penis.

- Know that nothing of urine is excused, and it is obligatory upon the one relieving himself to be thorough in removing and cutting off the urine. The Sunnah has come to that effect in multiple sound ḥadīths.

Al-Hādī (*peace be upon him*) said: Water cuts off urine—meaning that when a man urinates and then washes his private part with water, the outflow of urine ceases completely. Accordingly, drying cannot be analogized to washing, for washing cuts off its trace and prevents its outflow, whereas drying does not prevent outflow.

- If a man performs wuḍū' and wants to cut off whispers (obsessive doubts), then let him sprinkle a handful of water between his thighs; the whispers will cease, because it will be impossible for the man to know whether anything of urine has exited—due to the abundance of moisture. The default is that nothing has exited, and one does not depart from this default except with certainty—which is not possible amid the abundance of moisture between the thighs.

- The scholars—despite their differing schools—are unanimous that urine and feces are severe impurities from which no amount is excused; they agreed that the ruling of their impurity is definitive. And the Sunnah has transmitted the command to perform *natr* three times—that is: after finishing urination, a man places his penis between his middle finger and thumb, then with his middle finger wipes/sweeps from the lower part of the penis upward to the upper part, then continues wiping along the underside of the penis until he reaches its tip; this wiping is accompanied by firm squeezing. The one who has urinated does this three times.

- The one relieving himself can avoid anything coming out after leaving the lavatory by being thorough in extracting what remains of urine—first by wiping, then by *natr* three times or more. If a small amount emerges after he leaves the lavatory, that indicates he was not thorough in extracting what remained of the urine. I have tried that in my own case.

But if a man is thoroughly and fully diligent as we have described, doing all that is reasonably possible, and then something comes out after leaving the lavatory: if it is something that does not stop for the whole time of the prayer, then it is urinary incontinence, and it takes its rulings; but if it does stop, then the worshiper must wash it from his body and from his garment—given what is known of the condition for prayer of the purity of the body, the garments, and the place.

[Keeping away from people when defecating]

From *ash-Shifā'*: "Chapter on specifying the places prohibited for relieving oneself": *When the Prophet (May Allah bless him and his family and grant them peace) intended to relieve himself, no one would see him,*

narrated by al-Mughīrah.

Al-Mughīrah also narrated: *When the Prophet (May Allah bless him and his family and grant them peace) went to the place of relieving himself—or he said: when he came out of it—he would go far away and screen himself from people’s eyes, etc.*

I say: There is no need to adduce these two reports, for the innate sound intellect finds it repugnant to defecate in full view of onlookers; the matter is innate—just as exposure of nakedness in public, and lifting up the garment all at once in people’s sight when relieving oneself—all of that is rejected by innate nature and shunned by natural disposition. Likewise the report about facing the qiblah, and indeed all that has been used as evidence in this chapter, is not in need [of citation]; for Allah, Exalted is He, commanded the veneration of the Ka‘bah, and commanded that the worshipers face it in their prayer in honor and exaltation of it. On that basis, anything that conflicts with honoring and exalting it is disliked; facing it with urine and feces conflicts with venerating and exalting it.

And praising Allah upon leaving the place of relieving oneself is called for by the blessing.

The Chapter of Wuḍū'

A Note on the Intention (*Niyyah*) of Wuḍū'

There is a difference of opinion regarding wuḍū': does the one performing wuḍū' pray whatever prayers he wishes with it, or is he limited only to the prayer for which he made wuḍū'?

From the apparent words of the scholars of the madhhab: intending wuḍū' alone is not sufficient; rather, he must specify in his intention the prayer for which he performed wuḍū', or generalize it to all prayers and the like. It has also been said: intending wuḍū' for lifting the state of ritual impurity (*ḥadath*) which prevents prayer is sufficient.

Indeed, if we reflect on the verse of wuḍū', it becomes clear from it and from what was said about it:

1. That wuḍū' was legislated by Allah Almighty for prayer, as in His saying:
"When you rise for prayer, wash your faces..." — [al-Mā'idah:6]
 meaning: wash your faces *for it* (i.e., for prayer), just as it is said: "If so-and-so the scholar or the imām arrives, then stand," meaning: stand *for him*.
2. His saying in the same verse:
"Allah does not intend to place hardship upon you, but He intends to purify you." — [al-Mā'idah:6]
 shows that purification itself is an intended purpose.
3. The cause (*‘illah*) for the obligation of purification is the occurrence of ritual impurity.
4. It was said in the tafsīr of this verse: it is an address to those in a state of ritual impurity.
5. The disputants agreed that the intention of *ghusl* from janābah is to lift impurity.
6. Wuḍū' is a condition for the validity of prayer.
7. The ḥadīth states: *"Wuḍū' is half of faith."*
8. It is recommended to renew wuḍū' after wuḍū' for one who has engaged in a permissible act or the like.

Thus, based on what has preceded, the intention in wuḍū' may be:

- to remove the state of ritual impurity resulting from its causes mentioned in the verse, as with the intention for janābah;
- to attain purification itself, for that is the ultimate purpose mentioned in His saying:
"...but He intends to purify you." — [al-Mā'idah:6];
- to fulfill the condition commanded by Allah for prayer;

- or for the specific prayer for which he stood.

Based on this, he prays with that wuḍū’ the prayer he stood for. When another prayer time arrives, he may—out of recommendation—renew wuḍū’ lightly, as narrated from ‘Alī (*peace be upon him*). If he prefers, he may pray without renewing purification, for he has not invalidated it, and the verse addresses those in a state of impurity, as narrated.

A Second Proof:

Wuḍū’ combines two aspects: it is an independent act of worship, and it is a condition for prayer.

- As an independent act of worship, the proof is the ḥadīth: “*Wuḍū’ is half of faith.*”
- As a condition for prayer, the proof is the ḥadīth: “*There is no prayer without purification.*”

Thus, from the perspective that wuḍū’ is an act of worship, its intention suffices as in all acts of worship. And from the perspective that it is a condition for prayer, no intention is required, just as with the other conditions of prayer such as covering the ‘awrah or removing filth.

Further Clarification

What also indicates that wuḍū’ is an independent act of worship is Allah’s saying:

“Indeed, Allah loves those who repent and loves those who purify themselves.” — [al-Baqarah:222]

and His saying in the verse of wuḍū’:

“...but He intends to purify you.” — [al-Mā’idah:6]

Thus, the command to purify oneself, as in the verse of wuḍū’, together with Allah’s declaration that He intends it and loves those who do it, all show that it is an act of worship in itself.

As for wuḍū’ being a condition for prayer, there is no disagreement.

Objection: Covering the ‘awrah is similar, for Allah commanded it in His saying:

“Take your adornment at every masjid.” — [al-A’rāf:31]

and there is no disagreement that He loves and intends it. Thus, it too would be an independent act of worship requiring intention, as well as removing filth and using the siwāk.

We said: There is a distinction:

1. Wuḍū’ is a *ritual purification* (ṭahārah ḥukmiyyah shar’iyyah), whereas washing away najāsah is a *physical purification* (ṭahārah ḥissiyyah ‘aqliyyah). That is, reason (‘aql) itself required and imposed it even before Sharī‘ah. Similarly, covering the ‘awrah is a rational obligation. The requirement concerning tangible

impurity is that both reason and Sharī'ah demand the removal of its substance. Once the impurity itself is removed, both the rational and the legal requirement are fulfilled. Likewise, covering the 'awrah is sought by both intellect and Sharī'ah—namely to conceal the private parts. If that is achieved, the requirement is fulfilled.

As for wuḍū', it is—as we said—a ritual purification decreed by Sharī'ah; the desired aim intended by Allah, Exalted is He, cannot be achieved except in the exact manner He prescribed.

2. Wuḍū' has an added distinction connected to ṣalāh, as indicated by the Prophet's (*May Allah bless him and his family and grant them peace*) words: "*The key to prayer is purification (ṭahūr) ...*" (ḥadīth). Thus, it is not equal to the other conditions of ṣalāh. For this reason, Allah commanded it explicitly in the Qur'ān, explained it in detail, and the Messenger of Allah—*may Allah bless him and his family and grant them peace*—emphasized it and enjoined it. None of the other conditions of ṣalāh received such status.

Commentary

The statement of the Prophet (*May Allah bless him and his family and grant them peace*): "*The key to prayer is purification ...*" (ḥadīth):

This ḥadīth was narrated by Imām Zayd ibn 'Alī (*peace be upon him*) in *al-Majmū'* from the Prophet (*may Allah bless him and his family and grant them peace*). It is a sound ḥadīth, attested by the innate disposition of reason. For filth, impurity, and defilement upon a person's body or garments cause inner unease and mental distraction. When one cleanses himself from such impurities, removes janābah from body and clothing, and wears clean garments—the anxiety and distraction vanish, the mind clears, and the soul experiences serenity and tranquility.

This is the meaning of Allah's words in the verse of wuḍū':

"Allah does not intend to make difficulty for you, but He intends to purify you and complete His favor upon you ..." [al-Mā'idah:6].

Indeed, the author of *al-Rawḍ* said: The disagreement in this issue stems from their differing views on whether wuḍū' is *non-substantial* ('adamī) or *substantial* (wujūdī). Whoever says it is substantial (wujūdī) holds that one may not pray with a wuḍū' except for the ṣalāh intended specifically or generally at the time of ablution. Whoever says it is non-substantial ('adamī) maintains that one may pray whatever ṣalāh he wishes with that wuḍū', even if he did not intend them at the time of starting it.

This is the meaning of his words.

The term 'adamī means: purification is the absence of the state of

ritual impurity preventing ṣalāh.

The term *wujūdī* means: purification is a positive quality beyond the mere absence of impurity.

I say: The apparent truth is that wuḍū’ combines both aspects. The evidence that it is a substantial quality is experiential—indeed, the person who performs wuḍū’ perceives within himself the effects of purification: relief of the soul and clarity of thought. He remains in that state until something nullifies it.

Thus, once this ritual purification is achieved, the state of ritual impurity preventing ṣalāh is necessarily lifted.

[Ruling on Mentioning Allah in a Clean Bathroom]

Question: If a man performs wuḍū’ inside a “foreign-style” (flush) bathroom, is it disliked for him to mention Allah there? And if a man or woman performs ghusl in a covered and clean place, is it disliked for them to mention Allah during it?

Answer: It is recommended that whoever wishes to perform wuḍū’ in a flush bathroom first pour some water into the toilet so that the trace of excretion is removed. Once its trace is gone, there is no dislike (*karāhah*) in mentioning Allah near the toilet when performing wuḍū’ or ghusl.

- And if a man or woman performs ghusl in a covered and clean place, then there is no dislike in mentioning Allah during ghusl. This accords with Allah’s praise for those *“who remember Allah while standing, sitting, and lying on their sides”* [Āl ‘Imrān:191].

[If One Sees Blood on His Companion’s Garment During Ṣalāh]

In the *Fatāwā* of al-Sayyid al-‘Allāmah ‘Alī al-‘Ajrī, from al-Bāqir (*peace be upon him*):

“If you see something of blood on your companion’s garment while he is in prayer, do not inform him until he has finished his prayer.”

From this, it is understood—according to the school of Imām al-Bāqir (*peace be upon him*):

1. It is not obligatory for one who prayed with blood upon his garment—without knowledge of it until after finishing his prayer—to repeat it, even if the time remains.
2. But if he becomes aware of the blood while in prayer, then his ṣalāh is invalidated.

Yes, this ruling may be specific to blood according to al-Bāqir (*peace be upon him*), either because the impurity of blood is deemed light, or because it is considered a presumptive impurity (*ẓanniyyah*).

It may also be that the ruling is general for blood and other certain and presumptive impurities, given that the requirement of a pure

garment for prayer is itself presumptive—or that the purity of the garment is obligatory but not a condition.

It is also possible that one does not typically notice impurities on another's garment except for blood, whereas other possible impurities are not as visible. Thus, the ruling for other impurities would be like that of blood.

This is further supported rationally by the principle affirmed by the scholars of Uṣūl: that imposing obligations upon what the mukallaf cannot know is an absurdity unbefitting Allah, Exalted is He. Hence, a worshipper is not held accountable for removing impurity from his garment until he knows of it. Therefore, if he only discovers it after completing his ṣalāh, his prayer remains valid.

[Ruling on one who prays and then finds at the end of the prayer that water has not reached a spot on his forearm]

Question: If a Muslim performs wuḍū' and is careful to wash all his limbs, then prays and—at the end of the time—sees something like a small spot of dough or the like on his forearm, is he required to repeat the prayer because water did not reach the place of that spot?

Answer (and Allah is the One who grants success): If a Muslim performed wuḍū' as Allah, Exalted is He, commanded, then prayed and—at the end of the time—saw something like a small spot of dough or the like on his forearm under which water had not reached, what appears to me is that he is not required to wash that and repeat the prayer. That is because:

1. The scholars of the madhhab and others did not require a woman to remove what she places on her face for beautification, even though it prevents water from reaching what is beneath it; rather, they validated her prayer, adducing as evidence the customary practice of the Muslims.
2. It is not within human capacity to be completely free of error and forgetfulness. Hence Allah, Exalted is He, said: *"And there is no blame upon you for that in which you erred, but [only for] what your hearts intended."* [al-Aḥzāb: 5].

If it is said: The legally responsible person does not exit the obligation due to forgetfulness; rather, he must perform the act in order to be discharged of the obligation.

We say: In the case before us, the legally responsible person did what he was commanded to do; he traced the effects of dough and the like on his limbs and removed them, and a speck eluded him such that he did not discover it until the end of the time—so his ruling is not that of one who forgot to do what he was

commanded altogether. He has, in fact, complied with the command, taken care, and been thorough, and thus he has been discharged of the obligation; there is no blame upon him beyond his capacity.

3. It is said of one who acted thus that he “washed his hands up to the elbows” in both language and custom; hence we say that such wuḍū’ is valid.
4. It is narrated from some scholars that washing *most* of the limb suffices—on the basis that, in the usage of the linguists, the majority of a thing is treated as the whole of it.

If it is said: It is narrated that when the Prophet (*may Allah bless him and his family and grant them peace*) saw a man praying in the mosque, the Prophet said to him: “O man, I see the back of your heel dry; if you have touched it with water, then complete [your ablution],” so ‘Alī (*peace be upon him*) said to the Prophet (*may Allah bless him and his family and grant them peace*) — whose meaning is: “If this man prayed like this, would his prayer be valid?” He said: “No.”

We say: The one who leaves the back of his heel dry is negligent in purification—careless and remiss; unlike the case before us, in which none of that occurred.

[The ruling on one who prayed for a long time without wuḍū’ out of ignorance]

Question: A woman used to perform wuḍū’ for prayer, then offer as many supererogatory prayers as Allah willed; then urine would come to her, so she would urinate and cleanse herself, but not perform wuḍū’ again, thinking that the first wuḍū’ sufficed her. She remained thus for a long time until one of her relatives noticed and alerted her. What is required of her in that?

Answer—and Allah is the One who grants success: What appears to me—and Allah knows best—is that she is not required to make up [those prayers], because ignorance can be an excuse in subsidiary matters; as evidence, His saying, Exalted is He: *“And Allah would not mislead a people after He has guided them until He makes clear to them what they should avoid.”* [al-Tawbah:11], and His saying, Exalted is He: *“So whoever has received an admonition from his Lord and desists—then he may have what is past, and his affair rests with Allah.”* [al-Baqarah:275], and the Prophet’s (*May Allah bless him and his family and grant them peace*) saying to the one who prayed alone behind the rows: *“May Allah increase you in eagerness, but do not repeat [that].”*

[Does drawing blood with a medical needle nullify wuḍū’?]

Question: Does drawing blood with a medical needle nullify wuḍū’?

Answer: Taking blood with a needle does not nullify wuḍū'. The scholars of the madhhab¹ said likewise regarding the leech and mosquitoes and the like: if they suck more than a drop from the body of one in wuḍū', it does not nullify wuḍū'.

The permissibility of performing wuḍū' in one mosque and praying in another

Question: Is it permissible for a person to perform wuḍū' in a mosque, then pray with that wuḍū' in another mosque?

Answer—and Allah is the One who grants success: As it appears to me, there is no objection to that, because wuḍū' is an independent act of worship, as evidenced by His saying, Exalted is He: *"Indeed, Allah loves those who repent and loves those who purify themselves."* [al-Baqarah222], and his saying (*may Allah bless him and his family and grant them peace*): *"Wuḍū' is half of faith."*

This—and perhaps what prompted the questioner to ask this question is that the one who set the water in the mosque intended it for those praying in that mosque; thus, one who performs wuḍū' and then prays in another mosque has used the water for other than what it was set for, and that is not permissible.

We say regarding that: wuḍū' is an independent act of worship, as we mentioned. Therefore, one who uses that water set in a particular mosque for wuḍū' and removal of major ritual impurity is not overstepping what the donor designated it for; indeed, the donor set it for that very purpose.

That which is not permissible is to use the water for purposes other than that for which it was provided—such as diverting it to houses or watering fields. As for when the water is so scarce that, as a rule, it suffices only for the worshipers in that mosque, then it is not proper for others to come merely for ghusl or wuḍū'. However, if someone comes for wuḍū' and prayer, he has a right to that water, because the one who placed the water in that mosque intended thereby to keep that mosque alive.

A note on dropping wuḍū' and switching to tayammum.

The jurists of the school said: "It is obligatory for the sick person to seek someone to perform wuḍū' for him—either for a wage, or without a wage where there is no condescension—within the distance of a mile". (فر) (Taqrīr for Zaidy madhahb).

That is the end of what is in the marginalia to the commentary.

1- Sharḥ al-Azhār 1/97.

I say: When illness in a person reaches the point that he is unable to perform wuḍū’ by himself, then wuḍū’ falls from him and he turns to tayammum; as evidenced by the saying of the Exalted: “...and if you are ill ... then seek clean earth and wipe your faces and your hands [with it] ...” [An-Nisā’:43]. And as evidenced by His saying, “Allah does not charge a soul except [with that within] its capacity.” [Al-Baqarah:286].

If it be said: The sick person has two states—one in which using water harms him, and one in which using it does not harm him. In the first state, it is permissible for him to turn to tayammum and he is not obliged to use water; while in the second state he must use water, since there is then no justification for turning to tayammum.

We say: Allah, Exalted is He, has made the permissibility of tayammum dependent upon illness and has made it the cause for turning to tayammum; so there is no basis for singling out some of the sick to the exclusion of others, when they share in the hardship and difficulty entailed by using water—hardship which Allah, Glorious is He, has negated concerning them in His saying: “Allah does not intend to make difficulty for you, but He intends to purify you ...” [Al-Mā’idah:6].

There is no doubt that obligating a sick person to perform wuḍū’ while he is unable to do so because of severe illness imposes hardship and difficulty upon him, and Allah has informed us that He does not intend that. So reflect. And Allah knows best. All praise is for Allah, Lord of the worlds. And may Allah bless him and his family and grant them peace—Muḥammad and his pure family.

The infirm (al-‘alīl)

(“and someone else performs wuḍū’ for him”). In the marginalia: al-Manṣūr bi-llāh said: It is obligatory for the sick person to seek someone to perform wuḍū’ for him—for a wage that is not burdensome, and without a wage where there is no condescension—within a mile. (فرز)

(Taqrīr for Zaidy madhahb)¹.

(“and his spouse performs istinjā’ for him”). Al-Mu’ayyad bi-llāh [said so]; and the woman has the right to refuse, because serving the husband is not obligatory upon her except by way of what is customary. (فرز)

(Taqrīr for Zaidy madhahb). And it is related from Abū Ṭālib that he must marry for the sake of istinjā’, or purchase a female slave; then, if that is not possible, someone of his own sex assists him—wrapping a cloth around his hand and washing his private parts. This is from the

1- Sharḥ al-Azhār, 1/261.

commentary and its marginalia¹.

I say: If the sick person is unable to use water, the obligation to use it falls from him and he turns to tayammum; and Allah, Exalted is He, has explicitly stated in His Noble Book that illness is an excuse in the verse of wuḍū' whereby, on its account, the sick person turns to tayammum.

If it be said: His saying, *Exalted is He, "So fear Allah as much as you are able"* [At-Taghābun:16], and the like, support what the jurists of the school said; because if the sick person has surplus wealth with which he can hire someone to perform wuḍū' for him and cleanse him, then by that he is "able" with respect to wuḍū' and purification.

We say: Wuḍū' and purification for prayer are individual obligations upon the sick person; yet the Qur'anic evidence has indicated that the obligation to do so is lifted in the case of illness. Therefore, obligating wuḍū' and purification upon him conflicts with the specific Qur'anic evidence regarding the sick person; whereas His saying, *Exalted is He, "So fear Allah as much as you are able"* [At-Taghābun:16], is general, and the verse of wuḍū' is specific.

Omitting triple-washing in wuḍū'

And in the marginalia as well: It is obligatory to omit triple-washing when the time is too tight to catch the whole prayer within it, and because of scarcity of water. Thus, if he finds water that does not suffice him, it is forbidden to use it for any of the Sunnahs; and it is recommended to omit triple-washing in order to catch the congregation—so long as he does not expect another congregation while the first half of the preferred time remains².

[Triple-washing in wuḍū']

Question: If performing triple-washing (at-tathlith) in wuḍū' would cause one to miss the congregational prayer or some of its rak'ahs, whereas washing the limbs of wuḍū' once each would enable him to catch the congregational prayer—wholly or without missing any part of it—then which is preferable and weightier: triple-washing in wuḍū', or catching the congregation (all of it or most of it)?

Answer: What is preferable for the legally responsible person, when Sunnah acts come into conflict, is to preserve the more important of them. The congregational prayer is more important than triple-washing; for triple-washing in wuḍū' is Sunnah by agreement of the scholars, whereas as for the congregational prayer, among the scholars of the

1 - Sharḥ al-Azhār, 1/261–262.

2- Sharḥ al-Azhār, 1/91.

Ummah are those who say it is Sunnah, those who say it is a communal obligation (farḍ kifāyah), and those who say it is an individual obligation (farḍ ‘ayn)—and each of the three views rests upon evidence that indicates it.

Likewise with respect to any conflicting religious obligations that face the legally responsible person: he gives precedence to the more important over what is lower in importance. Thus, an individual obligation takes precedence over a communal obligation; a definitive obligation takes precedence over a presumptive obligation; an obligation agreed upon as obligatory takes precedence over an obligation disputed in its obligatoriness—and so on. Obedience to the mother takes precedence over obedience to the father in cases of distressing conflict; obedience to Allah takes precedence over obedience to one’s parents; fulfilling the need of a near kinsman takes precedence over the need of a stranger; likewise, reconciliation between disputants takes precedence over judging between them. Averting harms takes precedence over procuring benefits; the superior act takes precedence over the less-excellent; and some evils are lighter than others—so repelling the greater evil is prioritized over the lesser.

Grades of wuḍū’ nullifiers

The nullifiers of wuḍū’ are: the exiting of urine, feces, wind, semen, pre-ejaculatory fluid (madhī), post-urination discharge (wadhī), and intercourse. These nullifiers are of the first degree in authenticity.

Second degree: the exiting of blood or pus from any part of the body (a drop or more), vomiting, sleep, and loss of consciousness.

Third degree: committing a major sin—short of persistence upon it.

We have ordered them in this way in accordance with the ranks of the soundness of the evidences and the clarity thereof: the evidences for the first degree are clearer, sounder, and stronger; then come those of the second degree, then the third.

[Ruling on minor lying that entails no harm]

Question: What is your view concerning minor lying that entails no harm—such as in jest—and about lying for a benefit; and does it nullify wuḍū’? Also, what is the meaning of Allah’s sayings: *“Rather, this—his largest—did it”* [Al-Anbiyā’:63], *“Indeed, I am ill”* [Aṣ-Ṣāffāt:89], and *“Indeed, you are thieves”* [Yūsuf:70]?

Answer: The reality of lying is that you promote your statement to the listener such that the listener believes its truth and correctness. On this basis, speech made in jest is not described as lying, because the report is not thereby promoted to the listener nor does he believe it to be true—

the jest itself is an indicator that prevents that.

As for His saying—relating the words of Abraham (*peace be upon him*): *“Rather, this—his largest—did it”* [Al-Anbiyā’:63]—it is speech intended to expose the ignorance of idol-worshippers and to proclaim the feebleness of their minds, followed by arguing against them and compelling them: whoever cannot even break idols, how could he do anything greater than that? There is nothing in Abraham’s words that even suggests a lie, let alone constitutes one; rather, it is a kenning (kināyah) for what we have mentioned, and it contains lofty eloquence—since a kināyah can be more forceful than plain speech, in addition to the many meanings it conveys with few words. Therefore, this sentence is not among instances of lying, contrary to what is in some narrations—that Abraham (*peace be upon him*) told three “lies,” of which this was the last and the second was *“Indeed, I am ill,”* etc.

As for His saying: *“Indeed, I am ill”* [Aṣ-Ṣāffāt:89], it is not lying, as has been related concerning Abraham (*peace be upon him*). Rather, the meaning is: “I am sick at heart because of your worship of idols—dissatisfied with it, not agreeing to it, indeed utterly detesting it—since you have abandoned worship of the Lord of the worlds and turned to worshipping idols.”

The proof for what we have stated in this interpretation is that Allah, *Exalted is He*, said after *“Indeed, I am ill”*: *“So they turned away from him, departing.”* [Aṣ-Ṣāffāt:90] Allah related that they turned away from Abraham and rejected his idea and his call. Had it been—as in some narrations—that Abraham informed them of bodily illness, it would have sufficed for Allah to say *“So they turned away,”* and then *“departing”* would not add benefit. And Allah knows best. Thus the speech is figurative, its relation being the resemblance between the ailments of hearts and those of bodies.

As for His saying: *“Indeed, you are thieves”* [Yūsuf:70], it has been said that the brothers of Joseph (*peace be upon him*) had indeed committed a theft before; so Joseph called them “thieves” on that account, and this statement was not a lie.

As for the question, “Is lying permissible for a benefit?”—we say: If telling the truth entails a harm, then lying is permissible in that case—indeed, it may be obligatory. For example, a tyrant asks you about a believing man whom he wants to kill or torment with imprisonment, beating, or humiliation. It is obligatory for you to say, “I do not know where he is,” even if you do know his location. Indeed, if the tyrant makes you swear regarding what you say, you should swear that you do not know, and in that case you are truthful in your oath and not taken to task for it. The scholars, however, have mentioned that in such a case it is

recommended for the one swearing to intend an internal interpretation (ta’wīl) of his oath—such as intending, “I do not know where he is—whether at the head of the gathering, or in the middle, or at the end,” or the like—so that he is truthful in his statement and his oath. What the scholars mentioned is fine and good; it contains prudence and safety. Yet such ta’wīl may not be feasible for common people, especially at moments of distress and pressure from the tyrant and the like.

If the speaker or the one swearing is able to employ such a ta’wīl, then it is better that he do so; otherwise there is no blame upon him, if Allah wills. This is an example of a situation in which lying is permissible.

Another example: where telling the truth would produce a greater harm than that of lying—such as a man engaged in reconciling two parties. He is asked about something and finds no escape from answering; yet if he answers truthfully it will intensify and inflame the discord, whereas if he answers contrary to the truth it will be more conducive to reconciliation. In this case, it is not permissible for him to tell the truth; rather, lying is the determinate course—if no indirect wording (ma‘ārīḍ al-kalām) is feasible for the speaker.

As for lying without any motive other than (personal) benefit, it is not permissible merely for the sake of benefit. Yes: lying in cases like the two examples above is good and does not nullify wuḍū’; but lying for mere (personal) benefit does nullify wuḍū’—this according to the position of the school and those who agree with them.

[Does wuḍū’ break if a man kisses his wife or sees her private parts (or those of another man)]?

Question: Is wuḍū’ nullified if a man kisses his wife, or sees her private parts, or touches her private parts, or if a man sees another man’s private parts?

Answer: Wuḍū’ is not nullified by any of that.

Chapter: Ghusl (Major Ritual Bath)

A note on the essence of ghusl

The school's position is that the reality of ghusl is: water contacting the skin together with flowing and rubbing. Thus ghusl is not realized except with all three.

As for an-Nāṣir, Zayd ibn 'Alī, and Abū 'Abd Allāh ad-Dā'ī: they held that water merely contacting the skin suffices.

And the majority of the imams and jurists said: water contacting the skin with flow suffices. End quote. This is mentioned in *al-Masā'il an-Nāfi'ah*.

I say: Allah, Exalted is He, says at the end of the verse of wuḍū': "*Allah does not intend to make difficulty for you, but He intends to purify you ...*" [Al-Mā'idah:6]. In this verse Allah makes clear that what is meant by washing is purification, and purification is cleanliness. But merely having water touch the skin without flowing does not remove any filth whatsoever, nor does it achieve cleanliness.

The report from Imām Zayd ibn 'Alī is weak, since the contrary is found in *al-Majmū'*.

Moreover, evidence has come that supports the first view—the view of the school. Among it is what occurs in part of a ḥadīth from the Prophet (*May Allah bless him and his family and grant them peace*): "... they are like two hands, each of which washes the other," which clearly points to rubbing.

Also among it is what has been narrated that the Prophet (*May Allah bless him and his family and grant them peace*) *tamassah* (wiped of) in the sense of "perform wuḍū'," which supports the school's wording; and *at-tamassuḥ* means rubbing.

And among it is what Imām al-Hādī (*peace be upon him*) narrated from the Prophet (*May Allah bless him and his family and grant them peace*) regarding the description of ghusl, in which it says: "*And rub from your body whatever your hands can reach.*"

And among it is the well-known linguistic usage that when a man inserts his hand into water people say: "he dipped (ghamasa) his hand," not "he washed it." Hence the ḥadīth: "... he must not dip his hand into the vessel until he washes it three times ..."

And among it is what is in *al-Majmū'*: "Zayd ibn 'Alī narrated to me, from his father, from his grandfather, from the Commander of the Faithful 'Alī (*peace be upon them*): *If a man has grievous sores such that he cannot perform ghusl with them, then let him perform wuḍū' as for prayer and pour water over them by pouring.*"

And therein: From ‘Alī (*peace be upon him*) regarding a man who has sores, wounds, or smallpox, he said: “He pours water over them by pouring.”

From this it is taken that pouring is not ghusl, and that rubbing is included in the very reality and essence of ghusl.

This is a proof for the weakness of the first report from Zayd ibn ‘Alī (*peace be upon him*), as we have stated.

As for what they adduced as proof from the wording of the Prophet (*May Allah bless him and his family and grant them peace*): “... if you have caused water to touch [it], then proceed...” (ḥadīth)—this is a kenning for ghusl, as indicated by what we have mentioned.

They also adduce what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “The believer’s wuḍū’ is like his anointing (oiling).”

We say: the ḥadīth is open to possibilities, for the point of resemblance is not specified. In the end it appears to be evidence for those who require rubbing in ghusl; the likeliest reading is that the believer’s wuḍū’, in encompassing the limb and rubbing it, is like anointing with oil. No other interpretation is valid in this context, as it is not logical to estimate a quantity based on another quantity—for no one says that three or four drops suffice for washing the face.

A note on saying the basmalah in ghusl from janābah and menstruation

In the marginalia to *Sharḥ al-Azhār* it says: “In *az-Zanīn*: As for pronouncing Allah’s Name over food and the like, and dhikr that includes some Qur’ānic words without intending recitation, the sound view in the school is that it is permissible.” End quote.

And the wording of *al-Bayān*: “And reciting anything from the Qur’ān—except what is customary in people’s speech, such as the basmalah, al-ḥamdalah, al-‘awdhah (seeking refuge), tasbīḥ, tahlīl, and takbīr—provided that it is not intended as tilāwah (recitation). (قرئ) (Taqrīr). Likewise, saying *al-istirjā’* (Innā lillāh...) at a calamity.” That ends the quotation from *al-Bayān* (Taqrīr) (قرئ).¹

I say: Based on this, the basmalah ought not to be omitted in ghusl from janābah and in the ghusl of menstruation; and it would have been proper for the scholars of the school not to omit mentioning the

1- *Sharḥ al-Azhār*: 1/106.

basmalah in ghusl from janābah and menstruation.

If they say: Even though we deem it permissible here, what we mean is permissibility with dislike—

I say: Then at the very least Allah's Name should be mentioned in the heart at the beginning of ghusl, and one should not fully neglect in ghusl what has come from the Prophet (*May Allah bless him and his family and grant them peace*), such as his saying: "Every matter of consequence that is not begun with 'In the Name of Allah' is cut off," and what has come from him (*May Allah bless him and his family and grant them peace*) in the ḥadīth: "There is no wuḍū' for one who does not mention Allah's Name."

Ghusl is analogized to wuḍū', both being purifications intended for prayer. If the qiyās holds, then naming (tasmiyah) in ghusl is obligatory—though opposed by the claim of dislike; but the side of obligation outweighs the side of dislike, as is discussed in its proper place. And what we mentioned—dhikr within oneself at the start of wuḍū'—reconciles the two views.

This is on the assumption of those who deem all dhikr disliked. Otherwise, the sound view in the school is that non-Qur'ānic dhikr is not disliked according to al-Hādī (*peace be upon him*) for he ruled the slaughter of one in a state of janābah valid—and the basmalah is indispensable for it; and he said that the menstruating woman remembers Allah, and says the tahlīl and takbīr. It is related from some of the People of the House (*peace be upon them*) something to this effect: *Our women, during menstruation, were commanded at the times of prayer to perform purification and to say the tahlīl, tasbīḥ, and remembrance of Allah, Exalted is He.*

On this basis, remembering Allah is not disliked; what is disliked is reciting the Qur'ān. Hence, we see no reason for one in janābah or a menstruating woman to omit the basmalah at the start of ghusl from janābah and from menstruation.

Moreover, the scholars of the school have made tasmiyah the first obligation of tayammum, even for one in janābah; therefore there is no basis for their neglecting to mention it in the ghusl from menstruation and janābah. And in the marginalia to *Sharḥ al-Azhār* according to the school: tasmiyah is recommended, because the evidence for tasmiyah has come specifically regarding wuḍū', and so on. End quote¹.

1- *Sharḥ al-Azhār*: 1/114.

Writing the Qur’an by one in janābah via telephone and computer

Question: Is it forbidden for a person in a state of janābah (major ritual impurity) to write the Qur’an on a telephone or computer, or not?

Answer (by Allah’s enabling): Janābah or menstruation is a cause for the prohibition of reciting the Qur’an, touching it, and directly handling it. The scholars have assimilated writing the Qur’an with a pen and the like to recitation, for the pen is one of the two tongues.

As for writing the Qur’an by means of a computer or telephone, this is among newly arising issues for which no fatwā was issued by earlier scholars.

- Therefore, we could attach it to pen-writing by way of analogy (qiyās), or include it under the general prohibition of writing for one in janābah or a menstruating woman.
- And we could say: it is permissible for the menstruating woman and the person in janābah to write the Qur’an by means of the computer or telephone, because the alphabetic letters are already present in the device; the menstruating woman and the person in janābah merely cause one letter to join another on the screen of the computer or telephone, without either of them directly handling the letters or the screen.
- From this it appears that writing via computer/telephone differs from writing with a pen: the one writing with a pen is the very person who brings the writing into existence with his pen, whereas the one “writing” by means of the computer does not bring the writing into existence; rather, the writing exists in the computer in potential, and what the user does is only to prompt the computer to write and to assemble the letters.

On this basis, it is permissible for the person in janābah and the menstruating woman to send what is written of the Qur’an from the computer to a printer, and to copy and transfer that from one device to another—because there is no direct handling by them: it is the computer that writes, transfers, copies, and prints, while the menstruating woman and the person in janābah merely prompt it with electronic commands. The mechanism that writes, copies, transfers, and prints is inside the computer and is not directly handled by them.

Accordingly, we say—and we choose—the permissibility of writing the Qur’an on the telephone and the computer for the menstruating woman and the person in janābah.

Likewise, it is permissible for the menstruating woman and the person in janābah to open a Qur’ān recitation on the mobile phone or computer, listen to it, and carry the devices while the recitation is

playing; this is like a man carrying another man who is reciting the Qur'an.

Likewise, it is permissible for the menstruating woman and the person in janābah to open the muṣḥaf stored in the mobile phone or computer and to carry that, due to their not directly handling the muṣḥaf—given the presence of the glass barrier and the outer casing.

Chapter : Tayammum (Dry Ablution)

A note on the invalidity of performing tayammum with water

An elderly shaykh of very advanced age and extremely weak body asked me: “*Should I perform tayammum with earth even though I am able to do tayammum with water? He had been told that tayammum with water suffices.*”

I answered him: Allah, Exalted is He, says: “*So fear Allah as much as you are able.*” [At-Taghābun:16]

If istinjā’ is difficult for you, then wash your hands and face in a vessel, and wipe your head and your feet. This is something that may not be difficult. If part of the acts is difficult and part is possible, then do what is possible and leave what is difficult.

The jurists of the school have said: If you rinse the mouth, draw water into the nose, and wash your face and forearms, then—when the remainder is impossible or too difficult—your ruling is the ruling of one who has performed wuḍū’. Accordingly, it suffices you to pray with that one wuḍū’ two prayers or more.

As for tayammum with water: if by it is meant *wiping* as in wiping the head, then it is not legislated; but if what is meant is a light washing, then there is no harm.

When do the sick person and one without water perform tayammum?

Question: It has been said that a sick person does not perform tayammum except at the end of the prayer time, and likewise one who lacks water. Is this the case or not?

Answer (and Allah is the One who grants success): It has been said so, and this is what the later scholars of the school determined. Others—both within the school and outside it—said: If the sick person has no hope of his ailment disappearing within the prayer time, he may perform tayammum and pray whenever he wishes within that time; but if he expects the ailment to be removed at the end of the time, he waits to pray until the end of the time. This school of thought is closer to truth and correctness, because saying that it is obligatory to delay the prayer absolutely entails:

1. imposing severity and constraint upon the sick person—which contravenes ease;
2. the sick person may fall asleep at the end of the time—especially before Fajr—and thus miss the prayer;
3. his illness may worsen and thus he misses the prayer.

All of that conflicts with the obligation to maintain the prayers, known

from His saying: *“Maintain with care the [obligatory] prayers and [in particular] the middle prayer.”* [Al-Baqarah:238]

Moreover, praying at sunset is strongly disliked; so it is not fitting to delay the prayer to that time.

Yes: one who lacks water—if he thinks that by delaying his prayer he will find water—should wait to pray, but not so long as to enter a time in which the Messenger of Allah (*May Allah bless him and his family and grant them peace*) forbade praying. If the one lacking water despairs of finding it, he may pray whenever he wishes within the time.

A follow-on benefit to what has preceded

The scholars of the school say: It is obligatory for one performing tayammum to delay the prayer to the end of the time, whether the tayammum is due to illness or lack of water.

What appears to me is a distinction:

- A sick person whose ailment is not expected to disappear within the time may perform tayammum and pray at the beginning of the time.
- A sick person who expects his ailment to disappear within the time must delay the prayer.
- Likewise, one who lacks water: if he expects to find water, he delays; if he does not expect to find it within the time, he prays whenever he wishes within the time.

We say this because Allah, Exalted is He, has obligated the prayer with wuḍū' using water; if using water is impossible due to illness or lack of water, then the worshiper prays with tayammum.

Thus, a sick person who expects recovery near the end of the time is—in his estimation—able to perform the prayer in its time with wuḍū'; therefore, it does not suffice him to pray with tayammum at the beginning of the time. This is per His saying: *“So fear Allah as much as you are able,”* [At-Taghābun:16] and the ḥadīth: *“When I command you to do something, do of it what you are able.”*

As for the sick person who is not expected to recover at the end of the time—or is not expected to recover at all—there is no basis for obligating him to delay the prayer to the end of the time; delaying was only required where there is hope of recovery or of finding water. When there is despair of recovery at the end of the time, or of finding water, there is no benefit in delaying the prayer.

If it be said: It is obligatory for one who lacks water to seek it until the end of the time; when only enough time remains to perform the prayer, he performs tayammum and prays—because he cannot be certain that he truly lacks water unless he does so.

We say: We only permitted one lacking water to perform tayammum at the beginning or middle of the time when he despairs of finding water within the time of the prayer currently due—such as a traveler in the deserts of the Empty Quarter or similar lands in which no water is found.

If it be said: One who lacks water in such deserts cannot despair of finding it—perhaps Allah will send rain during the prayer time.

We say: If he has hope of rain, he delays the prayer—such as when it is a season of rainfall and signs of it appear, like winds and gathering clouds. If there is none of that, then he is not obligated to delay.

Yes: If a man prays with tayammum—due to illness or lack of water—at the beginning of the time, in a state of despair of recovery or of water within that time, and then he recovers at the end of the time or finds water, what is the ruling?

Answer: What appears to me preferable is the view that repeating the prayer is obligatory; for the Muslim is addressed to establish the prayer with all its conditions except when excused. Here it has become clear that part of the time remains, the sick person is recovered, the water is present, and the excuses have been lifted.

If it be said: He already prayed with tayammum while genuinely despairing of recovery or water; he did what Allah commanded him to do. And in the ḥadīth: “*No two Ṣuhrs in one day.*” How then do you obligate him to perform Ṣuhr twice in one day?

We say: We conditioned the validity of praying at the beginning of the time upon despair; here it has become clear that such despair of recovery or of finding water was invalid. Therefore, the first prayer is invalid: in the case of the one lacking water—because water existed within the time; and in the case of the sick person—because he was able, without hardship, to use water within the time.

[Is one who can pay the price of water deemed to have found water?]

The scholars of Madhab said: It is obligatory to purchase water for wuḍū’ provided that doing so is not unduly burdensome. The limit of “burdensome” is: if he is traveling, that the purchase would diminish the provisions by which he reaches his destination; and if he is resident, that he would be left destitute like a bankrupt person.

I say: What appears to me is that one is not obliged to purchase it except at its customary price, or at an increase that water may reach in certain locales and for which it is commonly purchased, or at a slight markup people typically tolerate. Something to this effect is related from al-Manṣūr bi-llāh in the commentary.

If the price of water exceeds that, then purchasing it is not obligatory.

If it be said: “Whoever possesses the price of water is considered as one who possesses water; hence tayammum is not permitted,”

We say: Even though he is, in one sense, a “finder” of water by possessing its price, this case is excepted by the evidences of removing hardship and seeking ease, such as His saying:

“And He has not placed upon you in the religion any hardship.” [Al-Ḥajj:78] and His saying: *“Allah intends for you ease and does not intend for you hardship.” [Al-Baqarah:185]*

The high price of water casts a person into straitness, constraint, and hardship—just like the high price of food.

Moreover, the scholars of the school stated that the obligation of ḥajj falls due to charging travel costs (ar-rusd) beyond the customary rate; thus, they ought here to say that the obligation of wuḍū’ falls when water is above the customary price, since the two issues are analogous.

Chapter on Menstruation

Some Rulings on Menstruation (*Aḥkām al-Ḥayḍ*)

Praise belongs to Allah, Lord of the worlds; and may Allah bless him and his family and grant them peace—our master Muḥammad—and his good, pure Household. To proceed:

These are several issues concerning menstruation that a Muslim woman should know:

1. The minimum duration of menstruation is three days; its maximum is ten days; and the minimum period of purity is ten days.
2. What is common among women is that menstruation lasts one week, and purity three weeks.
3. A woman must know what her habit (‘ādah) is in menstruation and how many days her purity lasts.
4. If her menses comes sometimes seven days and sometimes eight, then her habit is seven; and if it is sometimes six and sometimes seven, then her habit is six.
5. A woman should know when in the month her period comes: at the beginning, around the tenth, the middle, or at some other time.
6. Menstruation has signs: pain in the back, and the color of menstrual blood is dark and has a distinct odor.
7. Yellowish discharge (ṣufrah), brownish/earthy tint (ghubrah), and dusky brown (kudrah)—if they occur during the time of her habit—are menstruation.

[What should a woman do if bleeding continues?]

Question: A woman has had continuous bleeding for six months, stopping only a day or two. With Ramaḍān approaching, what should she do?

Answer: This woman must look to the time she was accustomed to menstruate and leave prayer and fasting during that time. When the customary time ends, she performs ghusl, fasts, and prays, and everything permitted to the pure becomes permitted to her—entering the mosque, reciting the Qur’an, and so forth.

If the woman forgot the time she used to menstruate, and forgot how many days it lasted, then she should distinguish (*tastadill*) menstrual blood, for it has signs reported from the Prophet (*May Allah bless him and his family and grant them peace*): dark color and a distinct odor known to women. When she finds these descriptions, she leaves prayer and fasting and treats it as menses; when they cease, she performs ghusl

and prays, etc.

If she cannot distinguish menstrual blood from the blood of istiḥāḍah (non-menstrual bleeding), then she must revert to the habit of her womenfolk; this is on account of the ḥadīth from the Prophet (*May Allah bless him and his family and grant them peace*) in which he ordered the mustaḥāḍah to do so, saying: “*Menstruate as (other) women menstruate.*” The scholars understood “women” to mean her female relatives on her father’s side.

What is more persuasive is that she reverts to the prevailing habit among women: that menstruation comes once a month and its number of days is a week. Hence what is related from the Prophet (*May Allah bless him and his family and grant them peace*) in the ḥadīth of the mustaḥāḍah: “*Menstruate six or seven (days).*”

Yes, there is no universal habit among women regarding which part of the month the menses begins—whether the beginning, middle, or end. In the ḥadīth of the mustaḥāḍah, the Prophet (*May Allah bless him and his family and grant them peace*) said to her: “*Menstruate six or seven days—as Allah knows.*” It may be inferred that she counts six or seven days from whichever part of the month, for the Prophet (*May Allah bless him and his family and grant them peace*) so commanded her; and there is no way for her to know what is in Allah’s knowledge, and Allah does not charge a soul except [with that within] its capacity. She should also act upon indications to determine the time of menses, even weak ones.

Yes: if blood comes and then continues, she counts seven days from its beginning as menstruation, then performs ghusl; when three weeks pass, she counts menstruation again—and so on.

If the period becomes prolonged for her and the reckoning is confused, let her revert to reasonable judgment and indications. She may remember, for example, seeing the moon in a certain phase or position, and the like; she may take that as the time of menstruation, and so forth.

She should not—and it is not permitted for her to—abandon two pillars of Islam, prayer and fasting, on account of her confusion about their timing and number—especially given what has come in the ḥadīth of the mustaḥāḍah: that she is commanded to pray and to purify herself, that she menstruates six or seven days as Allah knows, and that she menstruates as women menstruate. At most, she may end up praying and reciting the Qur’an while actually menstruating—and that is lighter than abandoning the prayer.

The proof for this is that Allah, Exalted is He, repeats the command to pray in His Noble Book and commands maintaining it, and He has emphasized that to the utmost in numerous verses beyond counting. As for the menstruant’s leaving the prayer, even though it is well known,

it is not mentioned in the Qur’an even once; and prayer without ritual purity has been permitted in cases of necessity.

Yes: What appears is that the reason for the menstruant leaving prayer is lack of purity. Thus, if the confused woman counts a week from the beginning of the month, then performs ghusl and prays, her prayer is possibly valid and possibly invalid; the possibility of invalidity is less likely, because the days of purity are, on average, three times the days of menstruation. Therefore, abandoning prayer and fasting given such a possibility is neither fitting nor permitted.

If it be said: “On this basis you must require her to always pray and never treat herself as menstruating.”

We say: Had the command to count days of menses not come from the Prophet (*May Allah bless him and his family and grant them peace*), we would have required that.

Indeed, the detail we have mentioned is supported by:

1. The ḥadīth of the Prophet (*May Allah bless him and his family and grant them peace*), transmitted among the Zaydīs and Ahl al-Sunnah;
2. The ease and facilitation inspired by His sayings:
“And He has not placed upon you in the religion any hardship.” [Al-Ḥajj:78] *“Allah intends for you ease and does not intend for you hardship.”* [Al-Baqarah:185] *“Allah does not charge a soul except [with that within] its capacity.”* [Al-Baqarah:286]
3. Maintaining the prayers and fasting—for “there is no good in a religion without prayer.”

Furthermore, the mustahāḍah must perform wuḍū’ for each prayer; if she is able to perform ghusl for each prayer, that is better; otherwise, one ghusl suffices upon the end of the days of menstruation.

She should pack the outlet of the blood with cotton or the like and bind it firmly, as has come in the ḥadīth of the mustahāḍah.

[Some Rulings on Menstruation]

Question: People frequently ask about irregular menstrual bleeding—that it comes in its usual time and outside its time; sometimes there is blood, and sometimes brownish (*ghubrah*) or yellowish (*ṣufrah*) discharge, whether in time or out of time. When I ask about the cause, they say it is due to using a contraceptive treatment.

Answer (and Allah grants success): If blood exits from a woman because of taking a medication, or due to an illness, and the like, then it is not menstruation unless it comes at the time of her habit; in that case it

is menstruation. Whatever comes before her usual time or after it is not menstruation, and she must pray and fast.

The proof is the well-known report that the Prophet (*May Allah bless him and his family and grant them peace*) instructed the woman who complained to him of continuous bleeding to leave off prayer and fasting during the time in which she used to have her menses; then, when that time ended, to perform ghusl, pray, and fast, and so on. He (*May Allah bless him and his family and grant them peace*) also said to her: “*That is but a kick from Satan, so do not abandon prayer and fasting.*”

Accordingly, this sound report shows that when blood exits from a woman for a reason or due to an ailment, it is not menstruation; rather, she must pray and fast until the time arrives in which she used to menstruate—then, in that time, she leaves prayer and fasting, and her husband may approach her.

If the menses does not come at its usual time because she used a contraceptive treatment, and then comes ten days after her usual time and continues for seven, nine, or ten days, then—according to the school—that is not menstruation.

And if the number of her days increases because of using the treatment, the excess is not menstruation.

Likewise, brownish or yellowish discharge after the time of her habit—when caused by the treatment—is not menstruation.

[Ruling on brownish/yellowish discharge before the time of the habit]

Question: A woman’s monthly habit is seven days, but before those seven days there comes a little of yellowish or brownish discharge on the two days preceding the seven; then her known habit comes, accompanied by the usual pains and copious blood, and she becomes pure after seven days. What is the ruling of the brownish/yellowish discharge in the two days preceding the time of the habit—bearing in mind it does not occur every month, only some months?

Answer: What appears to me is that the yellowish and brownish discharge on those two days is not menstruation; the woman’s ruling is purity, so she fasts and prays. Such discharge has the ruling of menstruation only if it occurs in the time of the habit; outside the time of the habit, it is not ruled as menses.

Evidence for this:

1. Menstrual blood is dark and recognizable—as narrated from the Prophet (*May Allah bless him and his family and grant them peace*).
2. Menses is accompanied by pains known among women.

A note on blood that appears due to contraceptive treatment

In the school it is said: If a woman ingests something that alters her vaginal condition, then it is not menstruation—even if it comes in the time of her habit. (فرو) (Taqrīr) “Consistent with cases where distinguishing signs are absent.” (فرو) (Taqrīr, from the marginalia to *Sharḥ al-Azhār*)¹

I say: On this basis, a woman using contraceptive treatment—which often alters the vaginal state—must pray and fast, and she should not leave them merely on account of seeing blood unless it becomes clear to her that it is menstrual blood.

Menstruation is distinguished from istiḥāḍah by the pain women feel at the onset of the period, as well as by the color and odor.

[Carrying items that contain the remembrance of Allah by a menstruant or one in janābah]

Question: Is it permissible for a person in janābah or a menstruant to carry a paper inscribed with the remembrance of Allah, supplications, and Qur’ānic verses—for preservation and healing? And is it permissible to carry that into the bathroom when relieving oneself?

Answer: If the item carried is in a plastic pouch or the like, then there is no harm in a menstruant or one in janābah carrying it; for what is forbidden is a menstruant’s or one in janābah directly handling the muṣḥaf, whereas when it is encased there is no direct handling—and this is when there is a need, such as for healing or protection.

If there is no need, it is preferable that the menstruant or one in janābah avoid carrying it.

- As for bringing it into the lavatory: if keeping away from items bearing Allah’s remembrance would cause hardship—such as when it is under the clothes, or there is fear of loss or forgetfulness—then there is no harm and no blame in entering the lavatory with it. If none of that applies, then it is preferable not to bring it into the lavatory.

[When is the ruling of nifās (postpartum bleeding) established?]

"The ruling of nifās is established by the expulsion of a pregnancy—even if a miscarriage—when followed by blood, on condition that the expelled tissue is formed (mutakhalḥiq)". The scholars of Zaidi school said.

Their wording indicates that by “formed” they mean that it has developed from blood to a muḍḡhah (a “chewed-like lump”). If it is unclear whether it has transformed or not, place the tissue in hot water:

1- *Sharḥ al-Azhār* 1/153.

if it disintegrates and returns to blood, then nifās does not apply; if it does not disintegrate, then nifās applies.

One may adduce for this the likes of His saying:

"...until they deliver their burdens." [At-Talāq:6]

"She carried him with a light burden and continued with it; then when she grew heavy..." [Al-A'rāf:189]

It is known in the Sacred Law that menstrual blood is not a pregnancy. Thus, even if the drop (*nutfah*) transforms into a blood clot (*'alaqah*) and then exits with menstrual blood, it is not said that the woman has delivered her pregnancy; rather, it is said that she has menstruated. But when the clot transforms into a *mudghah*—that is, a piece of flesh in the shape of a morsel chewed between the eater's teeth—then it is true of it that it is a pregnancy, and the woman thereby is at the beginning of pregnancy, i.e., the stage of light pregnancy. The *mudghah* then develops from state to state until it becomes a heavy pregnancy ... then

If she delivers the pregnancy, whether light or heavy, and blood comes out immediately after delivery, the rulings of nifās (postpartum bleeding) apply to her. If no blood comes immediately after delivery, the rulings of nifās do not apply; she must purify herself and pray, and *ghusl* is not obligatory upon her.

If a woman feels labor pains and blood exits before the child—while it is prayer time—she must pray, because that is not nifās; nifās is the blood after the child exits.

[The ruling on intermediate purity during nifās]

Question: A woman gave birth; after seven days the blood of nifās stopped, so she prayed and fasted for about twenty days, then she saw blood again. Are those twenty days considered nifās, or are they considered purity? And if they are nifās, must she make up her fasts or not?

Answer: According to the school, as in *Sharḥ al-Azhār*, if the cessation of blood continues for ten full days—from time to time— it is purity and not nifās. Based on that, the woman's fasting during the twenty days—which were a time of cessation—is valid fasting, so it is not obligatory upon her to make it up [sic]. Moreover, some scholars say that it is nifās if it occurs within forty days, but what is established in the school is as we have stated.

What indicates the soundness of what the scholars of the school mentioned is that ten days constitute valid purity, which is their minimum purity. Therefore, if the blood of nifās ceases for ten days or more, the necessary ruling is that it is purity.

[A woman who gives birth by abdominal incision—is she considered a nufasā’?]

Question: If a woman’s pregnancy is expelled by an abdominal incision, is she thereby considered to be in nifās or not?

Answer: The scholars of the school—per the marginalia of *Sharḥ al-Azhār*—mentioned that this is not nifās, and the woman is not thereby a nufasā’. However, the waiting period (‘iddah) of a divorcee does end by the delivery of the pregnancy in this way as well, because it is truly a delivery (*wad‘ al-ḥaml*).

I say: On that basis, if blood exits from the womb after the operation and abdominal incision to remove the pregnancy, that blood is not considered nifās.

Delivery by cesarean section is not called nifās

Question: What is the proof of the school for negating nifās in the case of a woman whose child is delivered by a cesarean operation—even though postpartum blood may then exit from its proper place (the vaginal orifice) as well as other post-delivery discharges?

Answer: One can argue on their behalf that what is customary in the Sharia is that the rulings of nifās are predicated upon two successive matters:

1. the exit of the child from the specified orifice; and
2. the exit of blood immediately after it.

There is no doubt that these two together are the cause and sign for the rulings of nifās. Neither the exit of blood alone, nor the exit of the child alone, is a cause; rather, the combination is the cause.

The proof is that blood exiting from the vaginal orifice in the period before delivery does not entail any of the rulings of ḥayḍ or nifās—for it has been related that menses does not co-exist with pregnancy, as it was made provision for the fetus (*or as is narrated from the Commander of the Faithful*).

And the exit of the child alone is not called nifās nor does it entail the rulings of nifās.

Moreover, the textual evidence concerns blood exiting from the specified orifice immediately after the child exits from that same orifice. Therefore, when the child exits by a cesarean operation, and then blood exits from the vagina afterward, this would require evidence establishing that it carries the same ruling as the first case; no such evidence exists, and analogy (qiyās) in such matters does not avail. Do you not see that it is invalid to analogize the blood of istiḥāḍah to menstrual blood, or blood before delivery to blood after delivery? Many scholars of legal theory have prohibited analogy with respect to legal causes (*asbāb*).

Book of Prayer

The ‘Awrah and its covering

- Covering the ‘awrah is something that innate nature (fiṭrah) makes imperative; fiṭrah finds it repugnant that the ‘awrah be exposed among people.

The ‘awrah is the front and back private parts and what is connected to them. What is connected to them is the buttocks and what lies beneath them down to the knees, and what lies above them up to near the navel.

We say this because people have always been emphatic about covering the front and back private parts, the buttocks, the pubic area, the upper thighs, and the testicles—both the religiously observant and the irreligious, the believer and the unbeliever alike. As for what lies above that up to near the navel, and what lies below that to the knees, the custom of humankind since ancient and modern times has been to cover that as well.

A note on statues [from *at-Tāj*, in the marginalia]

On this basis, if the body of a statue is so small that the like of it does not live, it is not obligatory to alter it—since it is not a complete, independent form. End of citation¹.

Question: Animal statues are widespread nowadays. It has been said that the prayer of one who prays with a statue within a mīl (mile) while he is able to denounce it is invalid—until he changes it and denounces it, etc. Is that correct?

Answer (and Allah grants success): What appears to me is that statues fall into two categories:

1. Statues prohibited unequivocally;
2. Statues prohibited presumptively.

Unequivocally prohibited statues and images are those taken for worship, like those the idolaters used to make from stone and other substances to worship, calling them lords. Such statues must be denounced, smashed, and prohibited—there is no disagreement about the obligation to denounce them. In the Noble Book, and in what Allah has related about His Prophets (*may Allah bless them*), are countless indications of what we have said.

Allah relates that Abraham (*peace be upon him*) said to his people: *“What are these statues to which you are devoted?”* [Al-Anbiyā’:52] Then he (*may Allah bless him*) went to the idols of his people and set

1- *at-Tāj*, 4/465.

about striking them and breaking them with his right hand, *"And he made them into fragments, except a large one for them, that they might return to it"* [Al-Anbiyā':58]

As for presumptively prohibited statues, they are animal statues not intended for worship but for other purposes. Denouncing these is not like denouncing the first category, because the proof for prohibiting and forbidding them is not unequivocal but probabilistic.

Thus, what is required here is guidance and sincere counsel; it is not permissible to denounce them by smashing, striking, or fighting—for people's reputations, lives, and property are unequivocally inviolable, and one may not abandon what is unequivocal on the basis of a solitary probabilistic proof.

In addition, that probabilistic proof may be intended to prohibit only those statues meant for worship. It may also be that the prohibition of statues in the ḥadīths came because people were newly removed from idol- and image-worship: if they saw them, their souls would gleam for them and their hearts incline to them, because of a long familiarity, a deep-rooted love, and close ties with them. Thus when Allah sent the Prophet (*May Allah bless him and his family and grant them peace*) with Islam, and idolatry was forsaken and people entered the religion, the Prophet (*May Allah bless him and his family and grant them peace*) wished to sever those ties completely, to wean people from what they were accustomed to, and to extinguish the love their souls had known and grown used to. So he (*May Allah bless him and his family and grant them peace*) forbade images and statues, and taking them into homes—blocking the means (sadd adh-dharī'ah) and as a precaution against the hearts being touched by longing for the familiar, and yearning for the old era. Human souls, by their nature, weaken at the sight of what reminds them, and grow tender.

How much in Arab poetry and tales revolves around remembering the days of youth, or seeing the abodes of friends and loved ones, or the traces they left—this is something experiential that a person recognizes.

Yes: we interpret the reported prohibition accordingly because it has not become clear to us that the prohibition is for statues as such, but rather for what they may lead to of being worshiped.

Moreover, matters today are not as they were then, and people are not those people; no consequences like those once feared follow from the existence of animal statues. The commands and prohibitions of the Law are founded on considering interests and harms. Parallels to what we have said exist in the Law. Among them is the command to wash for Jumu'ah: Ibn 'Abbās said, *"it was only because of the odors that would arise when people gathered and crowded in the mosque. When people*

expanded and Allah expanded their means, the ruling differed and washing for Jumu'ah was not obligatory"—thus did Ibn 'Abbās say and give fatwā: he tied the obligation to the presence of its cause, namely emitted odors; when the cause is not present, the obligation is not present. Another example is the matter of hospitality: scholars restricted the obligation to cases of need; if there is in the locale a restaurant or bakeries where food is sold, and places where the traveler may lodge, then hospitality is not obligatory. Thus scholars qualified the obligation and did not impose it absolutely.

[Ruling on passing in front of those praying around the Ka'bah]

Question: What is the ruling on passing in front of worshipers around the Ka'bah?

Answer: Based on what I have seen there of crowding and massive numbers during Ḥajj and 'Umrah, it appears to me that passing in front of worshipers there is permissible due to necessity. When the necessity disappears, a believer ought to avoid doing so.

Chapter on Mosques

It is not valid to dedicate endowments (*waqf*) to the mosques of the anthropomorphists and the predestinarians; this was stated by Abū Ṭālib and al-Manṣūr bi-llāh (*peace be upon them*). (End of *Bustān*.)

In *al-Muhadhdhab*: “The mosques of the Muṭrafiyyah, the Bāṭiniyyah, the anthropomorphists, and the predestinarians have no legal standing and no sanctity; for they were established upon a crumbling bank, and they are mosques of harm (*maṣājīd ḍirār*).” End.

I say: One may adduce for this several points:

1. They are unbelievers, and no act of devotion is accepted from an unbeliever—according to those who deem them disbelievers.
2. The saying of the Exalted: “*The mosques of Allah are only to be maintained by those who believe in Allah ...*” [At-Tawbah:18].
3. Analogy with the Mosque of Ḍirār.

A note on locking mosques

Question: Is it permissible to lock the mosque outside the times of prayer out of fear of theft?

Answer: It is obligatory to protect the mosque’s property; it is not permissible to expose it to thieves or to be negligent regarding it. There is no objection—so far as appears to me—to locking the mosque for that reason outside the customary prayer times. As for during them, it is not permissible, due to His saying, *Exalted is He*: “*And who are more unjust than those who prevent the name of Allah from being mentioned in His mosques and strive toward their ruin.*” [Al-Baqarah:114]

If it be said: The apparent sense of the verse indicates that locking mosques is not permissible at all—neither in prayer times nor outside them—

we say: Locking the mosque after the first third of the night until pre-dawn is not a “prevention,” for no one generally frequents mosques at that time; thus it is not a prevention of the remembrance of Allah therein, but rather a prevention of thieves taking the mosque’s property. If, on rare occasion, someone comes to pray at that time and finds it locked, there is no blame upon the overseer for locking it, since he did not intend to prevent and did not will it. Allah, *Exalted is He*, has said: “*There is no blame upon you for what you did by mistake, but [only] for what your hearts intended.*” [Al-Aḥzāb:5]

Yes: if the mosque is well-funded and worshipers do not cease frequenting it—like the Mosque of Imām al-Hādī (*peace be upon him*) in Ṣa’dah—then the overseer must open it as need dictates and arrange for a guard to protect it from thieves.

This is what appears in this matter; it reflects due care to safeguard the mosque's property and to serve those who frequent the mosques—to the extent possible.

[Permissibility of building bath facilities from a mosque's rubble]

Question: A small mosque was expanded and rebuilt anew. Is it permissible to build bathhouses and the like for the mosque using its demolition rubble?

Answer (and Allah grants success): There is no objection to that; for no sanctity remains in the rubble once detached. Sanctity pertains to the place. As for walls, roofs, and doors, their sanctity is only due to their connection to and inclusion within the place; when they are removed, their sanctity ceases, and selling them upon being surplus is valid. Were they to retain the mosque's ruling, such a sale would not be valid. The rubble has no sanctity in itself and is not described as a "mosque" when separate; hence, the evidences for the inviolability and honor of mosques do not apply to it.

Accordingly, there is no objection to building bathrooms and facilities with the surplus rubble. Allah knows best; praise belongs to Allah, Lord of the worlds.

[A mosque with bathrooms beneath it]

Question: There is a mosque with bathrooms underneath for relieving oneself, wuḍū', and ghusl, and a person in janābah enters them. Must this be denounced or not? Is relieving oneself there and entrance by one in janābah permissible?

Answer (and Allah grants success): It is established in legal maxims that "*the layman's school is the school of the one he follows.*" On this basis, denunciation is not required. In the marginalia to *al-Azhār* it is mentioned that the author of *al-Wāfī* said: "*It is valid for there to be something endowed to Allah beneath the mosque.*"

Al-Kāfī states: "*If the benefit returns to the mosque—such as wash areas and the like. And it is said that Bayt al-Maqdis has wash areas beneath it.*" End.

As for entry by one in janābah and relieving oneself: if the founder placed the mosque upon the site of a previous mosque, expanded it, and then built toilets beneath it—that is not permissible. But if the founder established the site from the start, first building the bathhouses, and then constructing the mosque above them—it is permissible to enter those facilities for one in janābah and for relieving oneself; for the lower level was made only for that and was not intended as a mosque. And "the layman's school is the school of the one he follows," so there is no objection.

A note on the mosque's wall

From a marginal note to *Sharḥ al-Azhār*: If the plot (*‘arṣah*) was endowed, and [the wall] was built within it, then it is part of the mosque. If it was built outside the endowed plot, it is not part of the mosque. If it was built before the endowment, or the matter is ambiguous, then it is not part of the mosque. End (فرج) (*Taqrīr*)¹.

A note on lending a mosque's surplus

Imām Yahyā (*peace be upon him*): “The overseer may lend the mosque's surplus, since its purpose is religious interests, provided the borrower is solvent and trusted to repay.” End (فرج) (*Taqrīr*)—from the marginalia.

Also: if it serves a benefit, such as when the surplus is in danger of worms or dampness. End from the marginalia².

The ruling on artifacts belonging to mosques and shrines

Question: There are artifacts in some shrines or mosques that the overseer—being unaware of their worth—has discarded outside among refuse. Is it permissible for a Muslim to take such an item for himself?

Answer (and Allah grants success and aid): He must inform the mosque's guardian that such pieces have value; he only threw them away and turned from them because he thought they were worthless. Had he known their high value, he would not have thrown them away but would have kept them most carefully.

We say this because of the established obligation to cooperate in righteousness and piety, per His saying, *Exalted is He: “And cooperate in righteousness and piety, but do not cooperate in sin and aggression.”* [Al-Mā'idah:2]—and due to the obligation of sincere counsel for all Muslims, commoners and elite.

If the pieces belong to the shrines of the righteous, the ruling is as we have stated. If they belong to the shrines of the unrighteous, then they should be taken and allocated to the public interests of the Muslims.

A note on decorating mosques

Some scholars said: ornamenting mosques is not permissible, based on the report: “Among the signs of the Hour are the ornamentation of mosques and the lengthening of minarets,” and the ḥadīth: “The Hour will not be established until people vie with one another in (building) mosques.”

1- *Sharḥ al-Azhār* 1/202.

2- *Sharḥ al-Azhār* 3/175.

In another ḥadīth: the Anṣār came to the Prophet (*May Allah bless him and his family and grant them peace*) and said to him, “Adorn your mosque.” He said, “Adornment belongs to churches and synagogues; whiten your mosques.”

The scholars of the school and others said: ornamentation is permissible, for therein lies exalting and honoring them: “*And whoever honors the sacred ordinances of Allah—it is best for him in the sight of his Lord.*” [Al-Ḥajj:30]

I say: The stronger view is that ornamentation is permissible, proven by the consistent practice of Muslims over the ages, in all lands, without mutual repudiation. As for the ḥadīths the prohibitors adduce, they do not prove prohibition. The fact that something is among the portents of the Hour does not entail that it is forbidden; there is no necessary connection between the signs of the Hour and prohibition.

And his words, “Adornment belongs to churches and synagogues,” is information from the Prophet (*May Allah bless him and his family and grant them peace*) about what is the case—for the People of the Book used to adorn them, and perhaps they even believed it obligatory; so the Prophet (*May Allah bless him and his family and grant them peace*) answered the Anṣār that obligation pertains—in the religion of the Jews and Christians, as they claim—to their places of worship.

If we interpret the ḥadīth in this way, no prohibition of decorating mosques is understood from it.

The proof for this interpretation is that the lām in his saying “for churches” (*li’l-kanā’is*) is the lām of entitlement, which conveys obligation, like the lām in His saying, *Exalted is He: “Zakah expenditures are only for the poor ...”* [At-Tawbah:60]. In that case, there is no proof for prohibiting the decoration of mosques. And Allah knows best. All praise is for Allah, Lord of the worlds. And *may Allah bless him and his family and grant them peace*—Muḥammad and his family.

A note on delivering a vowed offering to a trustee who will not spend it properly

In the marginalia it says: The Sayyid muftī said: *If someone makes a vow for a particular or righteous mosque, and the vow-maker knows that the trustee will not spend it (properly), but will consume it—then it does not suffice to hand it to him. It remains a liability upon him until he is able to pass it to someone known to spend it in its proper channel, or he spends it himself, or he bequeaths it. It does not suffice to do a recitation with the intention of (benefiting) the righteous one.*

He may disburse it to the poor if the mosque is already provided for, or hand it to the imām, etc. al-Shāmī affirmed this.

[May I take possession of a mosque of which only the foundation remains?]

Question: Between my house and my neighbor's is an old mosque, of which only the foundation remains. People have no need of this mosque. My neighbor wants to enclose this mosque and take it for himself. Is it permissible for me to take something of the mosque—bearing in mind that, most likely, if I do not take some of it, my neighbor will take all of it, and the people of the quarter are not thinking about this mosque nor in need of it, and it is a small mosque?

Answer (and Allah grants success): It is not permissible for you nor your neighbor to take anything from the mosque. It is Allah's property; it is not permissible for anyone to dispose of it. You and your neighbor can restore the mosque and benefit from it, or make it a women's prayer area. If you do that, you must open a door from it to the street. It is obligatory upon you to advise your neighbor that it is not permissible for him to own the mosque.

A note encouraging the building of mosques and giving charity

"Whoever builds for Allah a mosque—even like the nesting place of a sand-grouse (mifḥaṣ qaṭāh)."

"Give charity—even with a charred hoof."

"Protect yourselves from the Fire—even with half a date."

It is known that a sand-grouse's nest cannot actually serve as a mosque, nor is there benefit in giving a charred hoof in charity; and half a date barely suffices. Therefore we say: Such speech is based on emphatic encouragement to build mosques and to give charity—so that no one belittles or turns away from giving a small amount, or from building a small mosque—without there being any legislative intent or will for the charred hoof itself or the exact measure of a sand-grouse's nest, for it is known that there is no benefit in that.

As for His saying, *Exalted is He*: *"So whoever does an atom's weight of good will see it, and whoever does an atom's weight of evil will see it."* [Az-Zalzalah:7-8]—it may be that this is of the same tenor, namely hyperbolic emphasis: the aim is to encourage good and warn against evil, and that a person should not belittle any deed of good or evil, however small. It may also be that what is meant is what is measurable of good and evil by a weight. An example of good: it is written for the farmer—with righteous intention—the reward for what birds, humans, and animals eat from his field, as in the ḥadīth: *"No one plants a crop but that whatever is eaten from it by a person, an animal, or a bird is charity for him,"* or as he said; a bird may eat a grain or two, and a grain is approximately an atom's weight.

An example of evil: that one deprives an ant of its grain, or the like. One may also exemplify with removing a thorn from the road, the good word, guiding the lost, and the like—deeds whose cost is small and performance is easy. On either construal, the meaning is that every morally responsible person will have written for and against him what he has done of evil and good—even if it reaches the furthest degree of smallness.

[The ruling on smoking in the mosque]

Question: What is the ruling on smoking in the mosque?

Answer:

- Smoking, in itself, is permissible and not prohibited, due to the absence of a proof indicating prohibition.
- If smoking in the mosque leads to harming the people of the mosque—or some of them—then it is not permissible.
- If smoking in the mosque does not cause harm to anyone in the mosque, then there is no sin upon the smoker in it.
- If smoking in the mosque leads to people's denunciation, reviling the smoker, blaming him, and tearing away his cover, then it is not permissible—for a believer must guard his reputation. It has been related from 'Alī (*peace be upon him*): "Leave what people denounce—even if you have your excuse for it."

[The ruling on praying at home when the imām is not acceptable]

Question: If the imām of the central mosque is not acceptable, is praying at home better, or in the mosque? And does this apply equally to the Two Sanctuaries and to other mosques?

Answer (and Allah grants success): If it is possible in that situation to pray in the mosque without suffering harm, then praying in the mosque is better—based on His saying, *Exalted is He: "In houses which Allah has permitted to be raised and in which His Name is mentioned—glorifying Him therein in the mornings and the evenings are men whom neither commerce nor sale distracts from the remembrance of Allah ..."* [An-Nūr:36-37]. This applies equally to the Two Sanctuaries and to other mosques.

[Sleeping in the mosque while waiting for the prayer]

Question: If a man goes to the mosque before Ṣuḥr, for example, and lies down there until the time of the adhān—intentionally—because if he lay down at home he might miss Ṣuḥr: is that permissible?

Answer: If that is the case, then it is permissible—indeed, it is preferable—because it helps to maintain the congregational prayer. It has come that "*Waiting for prayer is [counted as] prayer,*" and the Exalted

says: *"Maintain with care the [obligatory] prayers and the middle prayer ..."* [Al-Baqarah:238].

Chapter on Prayer Times

Benefits from the marginalia of *Sharḥ al-Azhār* concerning prayer and time

- Whoever ^{فear} fears missing the prayer time if occupied with the adhān or iqāmah may omit them¹.
- Hastening the prayer ^{does} does not conflict with first taking care of: relieving oneself, siwāk, purification, one's customary supererogatory prayers before the obligatory prayer, and waiting for the congregation up to half of the preferred time, except for Maghrib. (فري) (Taqrīr)².

[A note about the times of Fajr and 'Aṣr]

In the ḥadīth: “Whoever catches a rak‘ah of Fajr before the sun rises has caught it,” and: “Whoever catches a rak‘ah of ‘Aṣr before the sun sets has caught it.”

The apparent sense is evidence for the view of the school: that to “catch” the prayer one must catch a full rak‘ah with its recitation, etc., for the ḥadīth conditions catching a rak‘ah, and the word *rak‘ah* names the unit inclusive of recitation, etc.—that is the plain, immediate sense.

It may be said, however: Following the school's own phrasing would entail not requiring that the rak‘ah be with the full recitation, because recitation is not uniquely obligatory in the first rak‘ah.

[By what is the entry of Maghrib known?]

Question: By what is the beginning of Maghrib known? And when does its preferred time end?

Answer: The entry of Maghrib is known by:

1. the appearance of a night star—known to be “night” by being seen in the northern half of the sky;
2. the emergence of darkness in the places of the sun's rising;
3. the light of the moon appearing—i.e., a shine on its face.

There is no disagreement that the first time of Maghrib is immediately after sunset; but we do not ascertain that it has set except by such signs—for it may be concealed by a mountain, a height, or clouds. In Jābir's ḥadīth on the Prophet's Ḥajj (*May Allah bless him and his family and grant them peace*), it is reported that he (*May Allah bless him and his*

1- *Sharḥ al-Azhār* 1/225.

2- *Sharḥ al-Azhār* 1/211.

family and grant them peace) departed from ‘Arafah when the sun had set and its yellow glow had diminished a little; thus he (*May Allah bless him and his family and grant them peace*) did not depart at the very moment of sunset, but delayed until the yellow glow had slightly faded. From this it is inferred that what is meant by sunset is the setting of the sun and its rays, not its mere concealment behind a mountain and the like.

The preferred time of Maghrib ends with the disappearance of the red twilight. Some scholars have estimated it as the time sufficient for Maghrib, its regular Sunnah, the two rak‘ahs of Maghrib, and the two rak‘ahs of al-Furqān.

[How should one act when time is tight and several obligations conflict?]

Question: If time becomes tight and multiple obligations collide for a Muslim—such as an obligatory prayer, forbidding an evil, rushing a patient to the hospital, and the like—what should he do? What takes precedence and what is deferred?

Answer: A Muslim ought not delay the prayer if he expects tasks to pile up near the end of the time. If he does delay until the end and a case like the question arises, then aiding the patient takes precedence if the illness is severe and there is fear of death or grave harm if help is not immediate—such as hemorrhage. If he fears missing the prayer while giving aid, he should pray however he can: perform tayammum, gesture for bowing and prostration, and pray even not facing the qiblah: *“So fear Allah as much as you are able.”* [At-Taghābun:16]

The proof is His saying, *Exalted is He: “Maintain with care the [obligatory] prayers and [in particular] the middle prayer, and stand before Allah devoutly obedient. And if you fear (an enemy), then [pray] on foot or riding.”* [Al-Baqarah:238-239] Allah, Exalted is He, permitted in this verse that when believers are arrayed against an enemy, they pray however possible—this is called the prayer of engagement (*ṣalāt al-musāyafah*). The fighter prays mounted on his horse while fighting, or on foot while engaged, gesturing for bowing and prostration; turning, moving, striking, etc., do not harm the prayer.

Thus the verse indicates that preserving life takes precedence over some obligations; accordingly, preserving the life of a believing patient takes precedence over some obligations of the prayer—except that nothing of the prayer’s obligations that can be performed alongside aiding the patient should be dropped, as noted above.

Benefits regarding combining two prayers

In the marginalia to *Sharḥ al-Azhār*: It is stated in al-Dharī‘ah by Qāḍī Muḥammad ibn al-Ḥasan al-Maghribī, from Qāḍī Sulaymān ibn Yaḥyā,

Sahib Sha‘ālal, with his chain to Zayd ibn ‘Alī, that he used to combine the two prayers at the beginning of the earlier one, saying: “This is my school and the school of my fathers and forefathers before me.” End of the marginal note¹.

And in al-Ṭabarī’s History, to the effect that when Hārūn al-Rashīd was informed about Yaḥyā ibn ‘Abd Allāh (*peace be upon him*), among what was mentioned was: that he combined Ṣuḥr and ‘Aṣr. Hārūn said: “That is the custom of that Household.” End of the paraphrase.

Question: If the imām combines the two prayers, is that an excuse to combine with him? And is combining with him better, or praying each at its time individually?

Answer (and Allah grants success): When the Prophet (*May Allah bless him and his family and grant them peace*) combined between Ṣuḥr and ‘Aṣr, and between Maḡrib and ‘Ishā’, the Muslims combined with him, as in the well-known ḥadīth of Ibn ‘Abbās. On that basis, the best guidance is the guidance of Muḥammad (*May Allah bless him and his family and grant them peace*).

Moreover, al-Amīr al-Ḥusayn—as in *Yanābī‘ an-Naṣīḥah*, upon the school of al-Hādī (*peace be upon him*)—mentioned that combining the two prayers in congregation is better than praying each at its time individually.

And in the marginalia to *Sharḥ al-Azhār*: “My father (*May Allah have mercy on him*) said: Rather, it is conceivable that the interest of the congregation is an excuse for combining if the imām has an excuse, or if the prayer would be missed by praying each at its time—such as the busy person who fears missing it by separating them.” End of *Bustān*; the muftī affirmed this².

[Ruling on one who performed wuḍū’ or ghusl and missed the time]

Question: A man wakes up when the sun is about to rise. He knows that if he performs wuḍū’ (or ghusl, if required) the prayer time will end with sunrise; but if he performs tayammum he will catch the prayer within its time. Which should he do? And should he give the adhān and iqāmah though he fears the time will end, or omit them to catch the time?

Answer (and Allah grants success): The one who wakes up must perform wuḍū’, or ghusl if ghusl is due, and pray.

If it is said: “That will make him miss the time,”

1- *Sharḥ al-Azhār*, vol. 1, p. 213.

2- *Sharḥ al-Azhār*, vol. 1, p. 214.

We reply: The time is not considered missed for such a person. In the well-known report from the Prophet (*May Allah bless him and his family and grant them peace*): “Whoever sleeps through a prayer or forgets it, let him pray it when he remembers it.” It is not permissible to leave wuḍū’ or ghusl except where using water is difficult due to illness or its absence.

The proof is the verse of wuḍū’: “*O you who have believed, when you rise to [perform] prayer, wash your faces ...*” [Al-Mā’idah:6], and His saying: “*So fear Allah as much as you are able.*” [At-Taghābun:16]

As for the adhān and iqāmah, they are omitted if one fears missing the time by performing them. This may be inferred from the fact that the time has become exclusively for performing the prayer itself, and because neither adhān nor iqāmah is a condition for the prayer’s validity.

[The superiority of praying Fajr at the beginning of its time]

Question: Which is better: to pray Fajr at the start of its time and then return to bed, or to delay within the time—to the middle or last third—pray Fajr, and then remain seated in one’s place of prayer until the sun rises?

Answer: Praying at the beginning of the time is better, given the many virtues reported for that—if nothing else, then the Prophet’s (*May Allah bless him and his family and grant them peace*) consistent practice of praying at the beginning of the time, especially Fajr.

Even if the prayer in the last third is accompanied by remaining seated until sunrise—which has great merit—the merit of that does not equal what is lost by delaying the prayer beyond its earliest time, as evidenced by:

1. The ḥadīth: “*The best of your deeds is prayer at its earliest time,*” or words to that effect.
2. The report: “*Those who draw near have not drawn near to Allah with anything like fulfilling what He has made obligatory upon them.*”
3. The Prophet’s (*May Allah bless him and his family and grant them peace*) lifelong consistency in praying at the beginning of the time—and the best guidance is the guidance of Muḥammad (*May Allah bless him and his family and grant them peace*), while the worst of matters are their innovations.

Since prayer is the best of deeds and one of the pillars of Islam, that entails that what Allah has legislated within the prayer—its acts, remembrances, and qualities—is better than that legislated outside it. Thus, every Sunnah and recommendation within the prayer is preferable to recommended acts other than prayer.

[Ruling on those who pray Maghrib at sunset before a night star appears]

Question: In some mosques and lands, people pray Maghrib at sunset before a night star appears and before darkness. Some therefore doubt praying behind them for ‘Ishā’ and other prayers and impugn the validity of their prayers. What is correct here?

Answer (and Allah grants success): The matter is one of ijtihād. Al-Hādī (*peace be upon him*) and the scholars of the school have a known view; Imām Zayd ibn ‘Alī, Aḥmad ibn ‘Īsā, ‘Alī ibn Mūsā, the jurists, and Imām Yaḥyā ibn Ḥamzah have another view: that the first chosen time of Maghrib is the setting of the sun’s disk, known by its disappearing behind the veil. This is related from those imāms in *Sharḥ al-Azhār* ¹.

It has been established among the scholars of the school and others that every mujtahid is correct. Thus, whoever follows the scholars of the school is correct, and whoever follows Zayd ibn ‘Alī, Aḥmad ibn ‘Īsā, and others is also correct.

On that basis, it is not permissible to slander or wound reputations over this, nor should one avoid praying behind such imāms—except in Maghrib itself: one should not pray Maghrib behind them—not due to any flaw in their uprightness or piety, but due to the difference regarding the entry of the time; for whoever believes the time has not yet entered may not pray Maghrib. As for ‘Ishā’, it is permissible to pray behind such a person.

[Which is better: taking the concession (*rukhsah*) or the strict ruling (‘*azīmah*)?]

One may ask: Which is better, to take the *rukhsah* or the ‘*azīmah*’?

Answer: Each has its merits. Taking the *rukhsah* is preferred by considerations such as:

1. Allah Most High legislated concessions for His servants—out of ease, relief, and mercy for them.
2. The Prophet (*May Allah bless him and his family and grant them peace*), on his journeys, would avail himself of concessions, combining between the two prayers—either at the beginning of the earlier time or in the time of the later one.

1- *Sharḥ al-Azhār*, vol. 1, p. 207.

Chapter: The Adhān and the Iqāmah

[Which is better: leading the prayer or calling the adhān?]

Question: Which is superior—the imām or the mu’adhdhin? In other words, is imāmah better, or the adhān?

Answer (and Allah grants success): Some have preferred the imām, and others have preferred the mu’adhdhin. What appears to me—Allah knows best—is that the adhān is superior to leading the prayer, because of the many aḥādīth on its virtue, whereas nothing comparable has been narrated regarding imāmah. Among them is the famous ḥadīth: *“The mu’adhdhins will come on the Day of Resurrection with the longest necks,” calling out with the testimony that there is no god but Allah ...*; the phrase *“longest necks”* is a kenning for eminence and honor, so the mu’adhdhins will be among the people of highest rank on that Day.

It has also been said about His saying, *“And who is better in speech than one who calls to Allah, does righteous deeds, and says, ‘Indeed, I am of the Muslims’,”* [Fuṣṣilat:33] that it was revealed concerning the mu’adhdhins.

If it be said: Imāmah in prayer is among the virtues Allah granted to Prophets and Imāms when present, while the adhān is not so;

It was said to him: Imāmah has great merit, and it is not far-fetched—Allah knows best—that imāmah is a reward hastened in this world for people of virtue, as indicated by His saying: *“And We made from among them leaders guiding by Our command when they were patient and [when] they were certain of Our signs.”* [As-Sajdah:24]

As for imāmah in ṣalāh, it is narrated from the Prophet (May Allah bless him and his family and grant them peace): *“Let the one who is most versed in Allah’s Book lead the people ...”*

There is no dispute that general leadership and leading the prayer are deserved on the basis of merit, which points to their being a hastened reward.

What clarifies this is that imāmah is an apparent honor, elevation, and exaltation—and there is no reward for imāmah from that aspect; rather, reward is for the works entailed by imāmah.

A benefit regarding the adhān

In the marginalia to *Sharḥ al-Azhār*: It is recommended for one who prays after another has already called the adhān and given the iqāmah to give adhān and iqāmah quietly for himself, so as not to encroach upon the first. This is mentioned in *al-Intiṣār*. End¹.

1- *Sharḥ al-Azhār*, vol. 1, p. 220. That is the school position.

A benefit about a solitary person's adhān

From *al-Bayān* and its marginalia: Al-Qāsim, Abū al-ʿAbbās, and al-Manṣūr bi-llāh (*peace be upon them*) say that the adhān of a solitary person who has no one else with him is recommended, not obligatory ¹.

1- *Al-Bayān ash-Shāfi*, MS 1/61.

Chapter: The Description of the Prayer

[A benefit concerning intention (*niyyah*)]

In *Miftāḥ as-Sa‘ādah* by the learned master ‘Alī b. Muḥammad al-‘Ajri (may Allah have mercy on him): As for one who intends by worship (i.e., by worship and prayer) the earning of reward and safety from punishment—the scholars of the school said: if he does not intend it as an obligation, it does not suffice ... etc. End.

I say: What one should intend by worshipping Allah Most High includes:

1. Gratitude to Allah Most High, by His saying: *“Work, O family of David, in gratitude.”* [Saba’:13]
2. Compliance with the command of the Lord of the worlds—He who created and proportioned, measured then guided, and brought forth pasture—by His saying: *“Worship your Lord who created you and those before you that you may become God-fearing; [He] who made for you the earth a bed and the sky a canopy and sent down from the sky water ...”* [Al-Baqarah:21-22]. The meaning is: you worship Allah because He deserves worship, obedience, and compliance.
3. Seeking reward and safety from punishment, by His saying: *“Indeed, it is difficult except for the humble—those who are certain that they will meet their Lord and that to Him they will return.”* [Al-Baqarah:45-46] And His saying: *“We feed you only for the Face of Allah; we desire from you neither recompense nor thanks. Indeed, we fear from our Lord a grim, distressful Day.”* [Al-Insān:9-10]

If the worshiper combines these in his intention, that is best; if he limits himself to one of them, that suffices—as indicated by what is narrated from the Commander of the Faithful (*peace be upon him*) when he divided worship into three types:

- The worship of the free: to worship Allah because He deserves to be worshiped;
- The worship of traders: to worship Allah seeking reward;
- The worship of slaves: to worship Allah seeking safety from punishment.

Yes: the statement of the school bears consideration; for the meaning of obligation is that whose performance deserves reward and whose abandonment incurs punishment. Thus, if the worshiper intends by his prayer earning reward and safety from punishment, he has intended it as an obligation; and intending it as an obligation necessarily includes intending reward and safety from punishment.

On intention (*further points*)

The scholars of the school—per the marginalia—said: Uttering the intention aloud in prayer is disliked, due to the dislike of speaking after the iqāmah; uttering it is recommended in ḥajj, and one has choice in other acts of worship.

They then said: If the worshiper cannot form the intention except by uttering it, then uttering it is not disliked in that case¹.

What is recommended in niyyah is to intend the obligation for its obligatoriness and its cause—in magnifying Allah, seeking closeness to Him, complying with His command, and exalting the Book of Allah and the Sunnah of the Messenger of Allah (*May Allah bless him and his family and grant them peace*).

For the intention of prayer, advancing it, coinciding it, or intermixing it are all permitted; they set advancing as the amount of “the two invocations of orientation.” By contrast, the intentions for wuḍū’, ghushl, and ḥajj must coincide (*muqāranah*).

Coinciding means: the first part of the takbīrah coincides with the last part of the intention. Intermixing means: the intention overlaps the takbīrah from beginning to end.

They said regarding the intention for Ramaḍān fasting, a specified vow, and supererogatory fasting: it is permissible to advance or delay the intention.

Regarding make-up fasts, an unspecified vow, and expiations: the intention must be advanced.

Regarding zakāh: one may advance it or coincide it. End of the marginalia².

I say: Niyyah is among the acts of the heart and its obligations; its meaning is resolve and firm determination to do the act. On that basis, there is no legal weight to what the tongue pronounces as intention—this is the principle. They merely permitted the doubtful or obsessive person to assist his heart’s intention by uttering what he intends.

[Ruling on Combining the Intention of Commitment to Leading Prayer with the Intention of Prayer]

Question: A man performs the five daily prayers and maintains them, and he prays in congregation as an act of religion and worship of Allah, with no worldly taint in his intention. Then he is chosen to lead the prayer, which results in his committing to attend and lead people at the

1- *Sharḥ al-Azhār*, vol. 1, p. 227.

2- *Sharḥ al-Azhār*, vol. 1, p. 227.

beginnings of the prayer times. Thus, when he leaves for the mosque he has two aims in his heart:

1. worshipping Allah by performing the prayer; and
2. not failing in his commitment—so that he is not blamed by the worshipers or accused of being lax about the prayer. Does any of this conflict with sincerity in this tremendous act of worship?

Answer (and by Allah is success): The question contains two matters that should be clarified:

1. The intention regarding the preliminaries of the prayer—namely: leaving one’s house, arriving at the mosque at the start of the time for prayer, and committing oneself to that.
2. Then comes the intention for the prayer itself, which is made at the takbīrat al-iḥrām.

As for the intention concerning the preliminaries, it is not harmed by mixing it with another intention—such as intending to go out for the prayer, to please the worshipers, and to ward off blame, censure, and suspicion.

But as for the intention of the prayer itself, which occurs at the opening takbīr, nothing should be mixed with it.

We say this because leaving the house, going to the mosque, and committing to do so are not independent acts of worship; they are preliminaries to an act of worship. They are described as “worship” by reason of leading to the prayer; thus, their intention is not harmed by being accompanied by another motive. So it is permissible that you intend your going out for the prayer and to drive away dogs, to answer someone’s call, to settle a debt or to collect it, to discipline your children, and so on.

And it is permissible to attend the mosque for the prayer and to see someone who will be there, to inquire about something, to deliver a message, or to look for a child, friend, or guest, and the like.

There is no doubt that both the imām and the worshipers who are constant in praying in congregation acquire energy, drive, and heightened concern for attending the mosque and praying at the appointed times. Without the mutual commitment of the imām and the worshipers to attend the congregational prayer, such energy, concern, and constancy in attendance would not arise; rather, each person would pray whenever it happened to be easy, at any part of the time.

And even if a believer’s increased energy for the prayer and his commitment to attend stem partly from regard for the worshipers, he nevertheless finds ease in his heart because he recognizes the virtue of praying in congregation at the start of the time, and he keeps his

intention in the prayer itself pure—untainted by any worldly motive.

- Keeping oneself away from doing—or omitting—what people blame a person for, whether small or great, is required by the Law; the proof is what Allah, Exalted is He, and His Messenger (*may Allah bless him and his family and grant them peace*) commanded regarding covering one's own faults and those of others, and the many reports forbidding the pursuit of the private matters of Muslims.

- A believer is not required to hate praise and commendation for his steadfastness in congregational prayers and his commitment to piety and worship—because human nature is built upon loving praise, finding it pleasant, and feeling one's chest expand with it, and upon disliking blame, shrinking from it, and feeling anger and constriction when hearing it. It has been related that the Prophet—*may Allah bless him and his family and grant them peace*—was pleased to hear praise of him from poets.

- Because of the place that praise and commendation hold in human souls—how they find repose, expansion, and joy in them—Allah made it a kind of hastened reward in this world for His friends and elect ones, saying: *“And We granted them among later generations a goodly mention.”* [Maryam:50] And Abraham—*peace be upon him*—asked Allah for this reward, as Allah relates: *“And grant me a reputation of honor among later generations.”* [Ash-Shu‘arā:84]

The true danger, however, is that love of praise and commendation becomes the motive and driver for a person's act of worship—or that the motive is something other than obedience to Allah. Or that two motives jointly drive him: love of praise and obedience to Allah, or some other aim and obedience to Allah—this is what is prohibited.

Allah, Exalted is He, said—condemning a people—*“and they love to be praised for what they did not do.”* [Āl ‘Imrān:188] One may understand—if only distantly—from this verse that a person's liking praise for his good deeds carries no blame, nor is there any sin in it.

Therefore, when a believer performs an act of worship moved by obedience to Allah and compliance with His command, then there is no harm if—afterwards—he likes to be praised and commended for it; human nature cannot be rid of that. The danger lies only where the act of worship is performed driven by love of praise and commendation.

[Ruling on forgetting which prayer one is in after entering it with intention and takbīr]

Question: A man enters a congregational prayer with intention and takbīr, then becomes absent-minded during the prayer. When he regains his attention, he has forgotten which prayer he is in—Is it ‘Ishā’, Maghrib, or Fajr? A pillar or two (or more) of the prayer then passes

while he still does not recall; after that he remembers which prayer it is. Is his prayer invalid or not?

Answer: The prayer is valid. Our scholars—and others—have stated that the intention at the beginning of the prayer suffices; it is not required to maintain (consciously “carry”) the intention throughout every part of the prayer. Our scholars—and others—have detailed what invalidates and corrupts the prayer, and they have not listed the case described in the question among its invalidators.

The Obligatory Remembrances within Prayer

1. The opening takbīr (takbīrat al-iḥrām).
2. Reciting the Mother of the Book (al-Fātiḥah) and whatever is easy along with it—namely, a sūrah or three verses.
3. The final tashahhud and prayers upon the Prophet Muḥammad—*May Allah bless him and his family and grant them peace.*
4. The taslīm to the right and to the left.

These are the obligatory remembrances according to the school and other scholars as well. There are also remembrances that I deem closer to obligation than to sunnah, namely:

1. The takbīr during movements (transitions) and saying “samī‘a Allāhu liman ḥamidah” (tasmi‘).
2. The tasbīḥ in bowing and prostration.

That is because:

- Prayer was legislated to establish the remembrance of Allah. Allah says: *“Remember Allah with much remembrance, and glorify Him morning and evening.”* [Al-Aḥzāb:41-42] — *“And glorify your Lord with praise when you rise; and in the night glorify Him, and at the fading of the stars.”* [At-Tūr 52:48-49] — *“So glorified is Allah when you enter the evening and when you enter the morning.”* [Ar-Rūm:17] — *“Those who remember Allah while standing, sitting, and [lying] on their sides ...”* [Āl ‘Imrān:191].
- The Qur’an mentions the command to glorify (tasbīḥ) in many places, and they interpreted it as prayer. When *“So glorify the name of your Lord, the Mighty”* [Al-Wāqī‘ah:74], was revealed, he said: *“Put it in your bowing.”* And when *“Glorify the name of your Lord, the Most High”* [Al-A‘lā:1], was revealed, he said: *“Put it in your prostration,”* or as he said.
- When Mu‘āwiyah omitted the takbīr of transition, the people of the Prophet’s Mosque raised a clamor in denunciation—among them were remnants of the Companions—and no one offered a justification for Mu‘āwiyah’s action; otherwise it would have been

transmitted.

- And the Messenger of Allah—*May Allah bless him and his family and grant them peace*—used to say the takbīr in his rising and his sitting, and after him the Commander of the Faithful did likewise.

If it be said: The Prophet—*May Allah bless him and his family and grant them peace*—did not mention to the man who prayed poorly either the takbīr of transition or the tasbīḥ of bowing and prostration; had they been obligatory, he would have mentioned them, for he was then clarifying the law, and delaying clarification beyond the time of need is impermissible—so that indicates that what he (*May Allah bless him and his family and grant them peace*) did not mention to the man is not obligatory.

We say: Perhaps he left off mentioning and clarifying that to the man because it was known to him and to every Muslim.

If it be said: Were that the case, he (*May Allah bless him and his family and grant them peace*) would not have clarified the obligation of al-Fātiḥah, since its obligation is known.

We say: The obligation of reciting it could be obscure, because they used to pray behind the Prophet (*May Allah bless him and his family and grant them peace*) and behind others, with the imām being the one who recites on behalf of those following; a simpleton might think that recitation is only obligatory for the imām who is leading the people.

If the ḥadīth can bear the explanation we have given, then it does not serve as proof against the obligation of what it did not mention.

[Benefit in prayer: showing the importance of the remembrances]

In the marginalia to *Sharḥ al-Azhār*: “If he is able to recite but not perform the pillars, then the pillars fall away, because the remembrances follow the pillars, not the reverse.” End.

I say: What is preferable is to say that they do not fall away in such a case—just as they did not fall away for the one in battle-prayer—and due to His saying: “*So fear Allah as much as you are able.*” [At-Taghābun:16]

As for the statement, “because the remembrances follow the pillars, not the reverse,”¹

The answer is: Were we to say the reverse—that the pillars follow the remembrances—there would be evidence for it. Among it His saying, *the Exalted*: “*Those who remember Allah standing, sitting, and on their sides ...*” [Āl ‘Imrān:191]; “*Establish the prayer for My remembrance.*” [Tā Hā:14]; “*Recite what is easy of the Qur’an.*” [Al-Muzzammil:20]; “*Do not raise your*

1- *Sharḥ al-Azhār* 1/259.

voice in your prayer nor lower it, but seek a way between that.” [Al-Isrā’:110]; “... and magnify Him with great magnification.” [Al-Isrā’:111]; “O you who believe, remember Allah with much remembrance, and glorify Him morning and evening.” [Al-Aḥzāb:41–42]; “And glorify your Lord with praise when you rise; and in the night glorify Him, and at the fading of the stars.” [At-Tūr:48–49], and so on—where Allah expressed prayer by remembrance and glorification, and did so only because that is the most important element in it—so much so that it is as though He named prayer by remembrance, as we have mentioned. And Allah knows best.

[How should the Qur’an be recited in prayer?]

Question: Must Qur’anic recitation in prayer be performed in the same style as that used by professional Qur’an reciters and on the radio?

Answer (and Allah grants success): The Qur’an came in the language of the Arabs, as He, *Exalted is He*, says: “*A Qur’an in Arabic, without any crookedness.*” [Az-Zumar:28]. On this basis, it is necessary that the Qur’an be recited in prayer in the manner characteristic of Arabic speech in their dialogues, addresses, orations, and poetry. Beyond that, forms of beautification are supererogatory—namely: articulating the letters from their points of articulation, and pronouncing the words properly inflected without departing from the rules of the language. As for lengthening the vowels (madd), idghām, and ikhfā’, they are not required.

[Ruling on the Prayer of One Who Cannot Distinguish Between Ḍād (ض) and Zā’ (ظ)]

Question: Is the prayer valid for someone who cannot properly distinguish between ḍād and zā’, pronouncing ḍād from the point of articulation of zā’ in “*al-maghdūbi ‘alayhim wa-lā ḍ-ḍāllīn*” [al-Fātiḥah]—bearing in mind that “there is no prayer without the Opening of the Book”? If it is valid, is the prayer of those behind him valid? And are the prayers of laypeople with obvious mistakes (laḥn) valid?

Answer (and Allah grants success): Pronouncing ḍād perfectly is not easy for many—earlier and later generations alike. Al-Jāḥiẓ mentions in his book *al-Bayān wa-t-Tabayīn* matters concerning pronouncing ḍād and those who mastered it, from which one gathers evidence that pronouncing it as it ought is not widely attainable. On that basis, the prayer is valid, for “*Allah does not burden a soul beyond its capacity.*” [Al-Baqarah:286]

Indeed, I have seen reported from one of the masters of Arabic that some Arabs did not distinguish between ḍād and zā’, putting zā’ in place of ḍād, and he adduced a line of their poetry; perhaps the variant

readings in (*ḍanīn/ḡanīn*) in Sūrat *at-Takwīr* also support this—reports that would reduce the weight of treating such utterance as an error.

Imām al-Mahdī examined our companions’ statement that one’s prayer is invalid if he puts *ḡā* in place of *ḍād* in “*al-maghdūbi ‘alayhim wa-lā ḡ-ḍāllīn*,” and he said: their points of articulation coincide; their case is not like that of *ḡā* and *khā*.

Imām Yaḥyā ibn Ḥamzah and al-Ghazālī said that exchanging one for the other does not invalidate the prayer; their wording—as in *al-Baḥr* “*al-Imām Yaḥyā*: “...except *ḍād* and *ḡā*, due to their closeness.” End. This is transmitted in *al-Bayān* and its marginalia¹.

In *Miftāḥ as-Sa‘ādah* it is related that Imām Yaḥyā, Imām ‘Izz ad-Dīn, and ar-Rāzī said: no, due to the strong similarity between them: both are voiced, soft (*riḡwah*), and emphatic (*muṭbaqah*); and the *ḍād*, because of its softness, spreads such that it approaches the articulation of *ḡā*.

They said: Because of this similarity, distinguishing between them is difficult, and only select experts and Qur’ān readers perceive it. Allah says: “*He has not placed upon you in the religion any hardship.*” [Al-Ḥajj:78] And the Prophet (May Allah bless him and his family and grant them peace) said: “*I was sent with a ḡanīf, easy religion.*”

What also supports this is the report, “*I am the most eloquent of those who pronounce ḍād*,” which indicates the variance among people in pronouncing it from its proper articulation. End.

What further reduces the weight of treating it as error is that, for example, the dialect of the people of Yemen does not distinguish between *ḍād* and *ḡā*; changes arising from dialectal differences are overlooked when transmitting others’ speech—this is undisputed in human speech.

As for the speech of Allah, the apparent sense of the canonical readings shows toleration of such matters; the Arabs recited the Qur’ān each in his dialect and tongue, and this was not denounced.

It also lessens the severity that if *ḍād* is replaced with *ḡā*, only the trained ear usually notices—given the two letters’ similarity—so the meaning is not impaired. This differs from replacing *ḍād* with *dāl* or *qāf* in *ad-ḍāllīn*, saying *al-qāllīn* or *ad-dāllīn*, which does shift the listener’s mind to a different meaning.

I have seen someone who read the Qur’ān well and mastered it yet did not bring *ḍād* from its precise articulation—while thinking he did. This too reduces the severity of counting it as error.

1- *al-Bayān ash-Shāfi*, MS vol. 1, p. 76.

Therefore, the prayer behind someone who cannot perfectly distinguish the two letters is valid.

As for the laypeople's prayer with obvious laḥn: the school holds—as in the marginalia—that if the layperson has not bound himself to a school, his prayer is valid, for it coincides with some ijtihād¹.

Elsewhere in the marginalia the scholars said: If a layperson does not know the conditions of taqlīd, his taqlīd is no taqlīd, and his ruling is that of one with no school. End.

In the marginalia for the school: If the layperson has adopted a school and knows the conditions for valid taqlīd, and then matches the school he follows—there is no issue. If he does not match it: If he knows of the contravention, the prayer is no prayer—he repeats it within the time and makes it up after. If he is ignorant of the contravention, he repeats within the time but not after².

I say: Their statement—“If he knows of the contravention, he repeats within the time and makes up after”—should be limited to one who can rid himself of the laḥn. As for one who cannot, Allah does not burden a soul except [*with that within*] its capacity.

Among what the scholars of the school tolerated, they said does not invalidate the prayer: adding tanwīn at a pause, omitting tanwīn in liaison, not fully lengthening the vowels (*the correct is: the ḥarakāt*)—so in the marginal note; likewise shortening where lengthening is due and vice versa; likewise cutting a hamzat al-waṣl, but if he joins a hamzat al-qatʿ, the prayer is invalid. End of what is in the marginalia for the school³.

[The imām was only appointed to be followed ...]

“The imām was only appointed to be followed; so when he says the takbīr, say the takbīr; when he prostrates, prostrate; and when he rises, rise ...” hadith [Muslim]

Some people adduce this ḥadīth as proof for the validity of praying Ṣuḥr behind an imām who is praying ‘Aṣr. In my view, there is no proof in it for that. The meaning of the ḥadīth is that the imām was made an imām so that the follower should follow him and take him as an example: when he says the takbīr, then say the takbīr, etc. Some imagined that merely following the imām in takbīr, bowing, prostrating, etc., suffices for the prayer's validity regardless of whether the prayer types coincide

1- *Sharḥ al-Azhār*, vol. 1, p. 273.

2- *Sharḥ al-Azhār*, vol. 1, p. 273.

3- *Sharḥ al-Azhār*, vol. 1, p. 273.

or differ.

What is clear to me is that the restriction (innamā—“only”) here was used because the Companions had contravened the Prophet (*May Allah bless him and his family and grant them peace*) when he prayed sitting and they stood behind him. The restriction is a rhetorical one (elliptical for emphasis): the Companions thought it permissible not to follow the imām and yet still follow him; the Prophet (*May Allah bless him and his family and grant them peace*) then said, “Only ...,” etc.

Since the restriction is not literal, the ḥadīth does not indicate what they claim. And it cannot be literal, for then the meaning would be that the imām was made an imām for this purpose alone—to be followed—and not for any other purposes; that is incorrect. It is known that the imām is appointed for other aims as well: to obtain the virtue of congregation, to multiply the reward of prayer, and to manifest a symbol of Islam.

In the people of one town gathering multiple times daily there are religious and worldly benefits that are manifest: strengthening the sense of brotherhood in faith, reviving affection among the community, providing occasions for consultation on matters that concern them, facilitating mutual counsel among them, and opportunities for teaching and edification.

[A Note on Tasbīḥ (Glorification)]

“*Subḥān Allāh al-‘Azīm wa bi-ḥamdih, Subḥān Allāh al-‘Alā wa bi-ḥamdih.*” The sense that one should summon to heart when saying this—whether in prayer or outside it—is: “*I glorify Allah with the very glorification by which He glorified Himself, and I praise Him with the very praise by which He praised Himself.*” This remembrance, said in bowing and prostration, comprises both the oneness of Allah and gratitude to Him.

[The meaning of “*Subḥān Allāhi wa bi-ḥamdih*”]

Az-Zajjāj was asked about the phrase “*Subḥānaka Allāhumma wa bi-ḥamdik.*” He said: “*Subḥānaka wa bi-ḥamdik—sabbaḥṭuka (I have glorified You).*” (End from *ar-Rawḍ*.)

I say: What appears to me is that this expression is glorification of Allah and praise of Him, with the underlying sense: “*and by Your praise, I have praised You.*” This applies when the conjunction *wāw* is present. But if there is no conjunction, as in His saying, “*So glorify the praise of your Lord*” [Al-Ḥijr:98], then—so it seems to me, and Allah knows best—the meaning may be: Declare Allah transcendent by devoting praise to Him alone. Thus, whoever says, “[All] praise is due to Allah, Lord of the worlds,” has glorified Allah by singling Him out for praise, to the exclusion of all others.

It is also possible that *fa-sabbih* has been made to carry the sense of a verb that governs with *bāʾ* (like *ishtagala*, “to busy oneself with”); on this reading, what is commanded are two things: glorifying Allah Most High, and occupying oneself with His praise—so the command is not fulfilled except by doing both.

[Supplications for Qunūt from the Qur’an]

In the Name of Allah, the All-Merciful, the Especially Merciful.

- *“Our Lord, give us in this world [that which is] good and in the Hereafter [that which is] good and protect us from the punishment of the Fire.” [Al-Baqarah:201]*
- *“Our Lord, pour upon us patience and plant firmly our feet and give us victory over the disbelieving people.” [Al-Baqarah:250]*
- *“The Messenger has believed in what was revealed to him from his Lord, and [so have] the believers. All of them have believed in Allah and His angels and His books and His messengers, [saying], ‘We make no distinction between any of His messengers.’ And they say, ‘We hear and we obey. [We seek] Your forgiveness, our Lord, and to You is the [final] destination.’ Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned. Our Lord, do not impose blame upon us if we forget or make a mistake. Our Lord, and lay not upon us a burden like that which You laid upon those before us. Our Lord, and burden us not with that which we have no ability to bear. And pardon us; and forgive us; and have mercy upon us. You are our protector, so give us victory over the disbelieving people.” [Al-Baqarah:285–286]*
- *“Say, ‘We have believed in Allah and in what has been revealed to us and what has been revealed to Abraham and Ishmael and Isaac and Jacob and the Descendants, and in what was given to Moses and Jesus and [what was given] to the prophets from their Lord. We make no distinction between any of them, and we are Muslims [in submission] to Him.’” [Al-Baqarah:136]*
- *“Our Lord, let not our hearts deviate after You have guided us and grant us from Yourself mercy. Indeed, You are the Bestower. Our Lord, surely You will gather the people for a Day about which there is no doubt. Indeed, Allah does not fail in His promise.” [Āl ‘Imrān :8–9]*
- *“Our Lord, indeed we have believed, so forgive us our sins and protect us from the punishment of the Fire.” [Āl ‘Imrān:16]*
- *“My Lord, grant me from Yourself a good offspring. Indeed, You are the Hearer of supplication.” [Āl ‘Imrān:38]*
- *“Our Lord, we have believed in what You revealed and have*

- followed the Messenger, so register us among the witnesses.” [Āl ‘Imrān:53]*
- *“Say, ‘We have believed in Allah and in what was revealed to us and what was revealed to Abraham, Ishmael, Isaac, Jacob, and the Descendants, and in what was given to Moses, Jesus, and the prophets from their Lord. We make no distinction between any of them, and we are Muslims [in submission] to Him.’” [Āl ‘Imrān:84]*
 - *“Our Lord, forgive us our sins and the excess [committed] in our affairs and plant firmly our feet and give us victory over the disbelieving people.” [Āl ‘Imrān:147]*
 - *“Indeed, in the creation of the heavens and the earth and the alternation of the night and the day are signs for those of understanding—who remember Allah while standing or sitting or [lying] on their sides and give thought to the creation of the heavens and the earth, [saying], ‘Our Lord, You did not create this aimlessly; exalted are You [above such a thing]; then protect us from the punishment of the Fire. Our Lord, indeed whoever You admit to the Fire—you have disgraced him, and for the wrongdoers there are no helpers. Our Lord, indeed we have heard a caller calling to faith, [saying], ‘Believe in your Lord,’ and we have believed. Our Lord, so forgive us our sins and remove from us our misdeeds and cause us to die with the righteous. Our Lord, and grant us what You promised us through Your messengers and do not disgrace us on the Day of Resurrection. Indeed, You do not fail in [Your] promise.” [Āl ‘Imrān:190–194]*
 - *“Our Lord, we have believed, so register us among the witnesses.” [Al-Mā’idah:83]*
 - *“Our Lord, we have wronged ourselves, and if You do not forgive us and have mercy upon us, we will surely be among the losers.” [Al-A’rāf:23]*
 - *“Praise be to Allah, Who has guided us to this; and never could we have been guided if Allah had not guided us.” [Al-A’rāf:43]*
 - *“Our Lord, do not place us with the wrongdoing people.” [Al-A’rāf:47]*
 - *“Upon Allah we have relied. Our Lord, decide between us and our people in truth, and You are the best of those who give decision.” [Al-A’rāf:89]*
 - *“Our Lord, pour upon us patience and let us die as Muslims [in submission to You].” [Al-A’rāf:126]*
 - *“You are our protector, so forgive us and have mercy upon us; and You are the best of forgivers. And decree for us in this world [that which is] good and [also] in the Hereafter. Indeed, we have turned back to You.” [Al-A’rāf:155–156]*
 - *“Upon Allah we have relied. Our Lord, make us not [objects of] trial*

- for the wrongdoing people.” [Yūnus:85]*
- *“Our Lord, indeed You know what we conceal and what we declare, and nothing is hidden from Allah on the earth or in the heaven.” [Ibrāhim:38]*
 - *“My Lord, make me an establiher of prayer, and [many] from my descendants. Our Lord, accept my supplication. Our Lord, forgive me and my parents and the believers the Day the account is established.” [Ibrāhim:40–41]*
 - *“Our Lord, grant us from Yourself mercy and prepare for us from our affair right guidance.” [Al-Kahf:10]*
 - *“My Lord, expand for me my breast. And ease for me my task.” [Ṭā Hā:25–26]*
 - *“My Lord, increase me in knowledge.” [Ṭā Hā:114]*
 - *“My Lord, then do not place me among the wrongdoing people.” [Al-Mu’mīnūn:94]*
 - *“And say, ‘My Lord, I seek refuge in You from the incitements of the devils, and I seek refuge in You, my Lord, lest they be present with me.’” [Al-Mu’mīnūn:97–98]*
 - *“Our Lord, we have believed, so forgive us and have mercy upon us, and You are the best of the merciful.” [Al-Mu’mīnūn:109]*
 - *“My Lord, forgive and have mercy, and You are the best of the merciful.” [Al-Mu’mīnūn:118]*
 - *“Our Lord, avert from us the punishment of Hell. Indeed, its punishment is ever adhering; indeed, it is evil as a settlement and residence.” [Al-Furqān:65–66]*
 - *“Our Lord, grant us from our spouses and our offspring comfort to our eyes and make us an example for the righteous.” [Al-Furqān:74]*
 - *“My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents and to do righteousness of which You approve, and admit me by Your mercy into [the ranks of] Your righteous servants.” [An-Naml:19]*
 - *“Our Lord, upon You we have relied, and to You we have turned in repentance, and to You is the destination. Our Lord, make us not [objects of] trial for those who disbelieve and forgive us, our Lord. Indeed, it is You who are the Exalted in Might, the Wise.” [Al-Mumtaḥanah:4–5]*

A benefit on the virtue of Qur’ān in prayer

It is reported in a sound ḥadīth: *“Recitation of the Qur’ān in prayer is better than recitation outside prayer; recitation outside prayer is better*

than remembrance; remembrance is better than charity; charity is better than fasting; and fasting is a shield."

A benefit on purification

The ḥadīth collected in *al-Majmūʿ*: *"The key to prayer is purification; its sanctifying opening is the takbīr; and its concluding release is the taslīm."*

The prayer is likened—by way of metaphorical allusion—to a locked house; its clue-word is "key." One cannot ordinarily enter a locked house except with a key; thus the ḥadīth indicates that purification is a condition for the validity of prayer.

A benefit (on supplication after prayer)

Ibn al-Amīr, in *Subul as-Salām*, criticized the manner commonly practiced—after the taslīm—where the imām remains facing the qiblah while the followers behind him supplicate aloud, noting (citing Ibn al-Qayyim) that such was not from the guidance of the Prophet—*May Allah bless him and his family and grant them peace*—and is not authentically or soundly reported from him. End.

I say: Allah Most High commanded supplication and remembrance in His Book unrestrictedly—not confining it to a particular posture, state, time, or place. He left it open for His servants, saying: *"Those who remember Allah while standing, sitting, and [lying] on their sides ..."* [Āl 'Imrān:191]; *"Remember Allah with much remembrance, and glorify Him morning and evening."* [Al-Aḥzāb:41-42]; *"Call upon Me; I will respond to you."* [Ghāfir 40:60]. So remembrance and duʿā' are sought in every state and posture.

Were it obligatory to restrict the commands to what the Prophet—*May Allah bless him and his family and grant them peace*—personally practiced, then duʿā' would only be allowed in Madīnah in the Prophet's Mosque (*May Allah bless him and his family and grant them peace*), and one would have to wear an izār and ridā' for duʿā'—since the Messenger of Allah (*May Allah bless him and his family and grant them peace*) and his Companions were so attired. That is clearly not the intent.

Ruling on spreading the left foot between the two prostrations

In *Sharḥ al-Azhār*: "Spreading the left foot." Al-Manṣūr bi-llāh, Ibn Dā'ī, and Abū Ja'far said: Spreading the left and erecting the right is not obligatory. End in the marginalia: Rather, it is a posture (hay'ah) with them. End¹.

I say: The school's proof for erecting the right foot on the toes and spreading the left is what is narrated that the Prophet—*May Allah bless*

1- *Sharḥ al-Azhār* 1/240.

him and his family and grant them peace—did so, and he (*May Allah bless him and his family and grant them peace*) said, “Pray as you have seen me pray.”

Those siding with al-Manşūr and others may argue: erecting and spreading are postures, and there is no disagreement that the postures of prayer are not obligatory.

Erecting and spreading (*an-naşb wa-l-farsh*) in prayer

Question: Erecting the right foot and spreading the left is obligatory in the school; is it likewise obligatory in supererogatory prayers? If so, can an obligatory element be part of a nafl?

Answer (and Allah grants success):

Supererogatory prayers are built upon ease and facilitation; hence they are valid on a mount, valid sitting without excuse, and for the traveler without facing the qiblah.

What I think they intend by “obligatory” here is not “what earns reward if done and incurs punishment if left,” but rather that it is required for validity: if omitted, the prayer is invalid—but if a nafl prayer is invalidated, making it up is not required.

There is another view: once a morally responsible person enters a supererogatory prayer, it becomes obligatory for him to proceed in it, per His saying: “*And do not invalidate your deeds.*” [Muḥammad:33]. Accordingly, he must perform erecting and spreading and anything else without which the prayer is not valid. Thus the nafl becomes obligatory by entering it, similar to the supererogatory ḥajj.

[Holding the Muşḥaf and Reading from It During Prayer]

Question: Is it permissible for a worshiper to take the muşḥaf in his hand while in prayer and read from the Qur’an?

Answer (and with Allah is success and right guidance): The closer view—regarding an obligatory prayer—is that this is not permissible. Carrying the muşḥaf in the hand is an act not from the acts of prayer, and every act that is not of the prayer is not permissible, as indicated by the ḥadīth: “*Its sanctifying opening is the takbīr, and its concluding release is the taslīm.*”

If, however, the muşḥaf is not in the worshiper’s hand but is open in front of him, then there is no harm in his reading from it while praying, because in that case reading does not require any (additional) action.

Yes: it may be said that supererogatory prayers are eased, as it has been reported that they may be performed on a mount, in whatever direction it turns—even other than the qiblah, and sitting even without necessity.

A Benefit: (Practical Sunnahs Upon Which There Is Consensus)

There are practical sunnahs that Muslims have agreed upon and transmitted, such that proving them does not require (*fresh*) evidence:

1. The times of the five prayers.
2. The legislation of the adhān and iqāmah for each prayer in general, with disagreement confined to matters like: affirming or omitting “*Ḥayya ‘alā khayr il-‘amal*” in adhān/iqāmah; affirming or omitting “*aṣ-ṣalātu khayrun min an-nawm*” in Fajr; and whether the iqāmah is doubled or single.
3. The legislation of congregational prayer, with disagreement over whether it is sunnah, a communal obligation, or an individual obligation.
4. That Fajr is two rak‘ahs, Ṣuḥr, ‘Aṣr, and ‘Ishā’ are four, and Maghrib is three; the obligation of standing, bowing, and prostrating; the legislation of reciting al-Fātiḥah and (some) Qur’an
5. with it, tasbīḥ, tasmi‘, takbīr, tashahhud, and taslīm.

It appears that those who denied the remembrances (adhkār) have died out in these later centuries; thus the obligation of recitation is now a point of agreement, and they are almost agreed on the obligation of the tashahhud and taslīm.

Evidence That Folding the Hands (placing one hand upon the other) Is a Later Practice

Al-Tirmidhī narrated in his *Sunan*—and said, “This ḥadīth is ḥasan ṣaḥīḥ”—from Abū Ḥumayd as-Sā‘idī, who was with ten of the Companions of the Prophet (*May Allah bless him and his family and grant them peace*), describing the prayer of the Prophet (*May Allah bless him and his family and grant them peace*) from the opening takbīr to the taslīm. He did not mention placing one hand upon the other while standing. They said, “You have told the truth; thus did the Prophet (*May Allah bless him and his family and grant them peace*) pray.”

I say: From this it is inferred that placing one hand upon the other while standing in prayer is a later introduction.

If it is said: It has been narrated that the Prophet (*May Allah bless him and his family and grant them peace*) would take his left hand with his right when he prayed—

We reply:

1. The ḥadīth of Abū Ḥumayd as-Sā‘idī—in the presence of ten Companions—is sound, related by the leading ḥadīth scholars, who authenticated it; whereas the report about placing the right

upon the left is not of that standing.

2. A narration from eleven well-known Companions is stronger and more numerous than the narrations of those who report folding.

A Benefit: Reflection in Prayer and Supplication After It

In the marginalia to *al-Azhār* is the wording: “Note: Reflection (tafakkur) during prayer does not invalidate it—even if about worldly matters—though it is disliked. Al-Manṣūr bi-llāh said: Committing this disliked matter does not call for sujūd as-sahw.” (تقريب) (*Taqrīr*)

Among what is disliked is leaving off supplication after prayer, due to His saying: “*So when you have finished [your duties], then stand up [for worship].*” [Āsh-Sharḥ:7] It is recommended to supplicate quietly, not loudly. If you wish to depart (the prayer place), then say the supplication for departure; for the Prophet (May Allah bless him and his family and grant them peace), when he wished to depart from the prayer, would wipe his forehead with his right hand and then say: “O Allah, to You belongs all praise; there is no god but You, Knower of the unseen and the seen. O Allah, remove from me worry, grief, and trials—what is apparent of them and what is hidden.” (End of *al-Irshād* verbatim.) End of the marginal note.

[Khushū‘ (Devout Humility) in Prayer]

Question: A Muslim may desire to attain khushū‘ in prayer yet cannot achieve it. How can he obtain it? What brings it about?

Answer (and Allah grants success): Khushū‘ in prayer is the result of preliminaries and qualities that precede it; it does not come about as it should except when these are present:

1. Firm, settled knowledge of Allah. When knowledge of Allah—majestic is His Glory—takes root in the heart, the awe and greatness of Allah dominate a person; he is filled with fear and reverence. When such a knower of Allah comes to the prayer and enters it, the greatness of Allah is awakened in his heart, awe and reverence are stirred, and bodily khushū‘ follows—generally and in detail.
2. Among the completions and perfections of khushū‘—without which it does not come as it ought—is that the worshiper know the meanings of the remembrances, and what is intended in bowing and prostration.

Proof for what we have mentioned:

- “Only those fear Allah, from among His servants, who have

knowledge.” [Fāṭir:28]

- *“O you who have believed, do not approach prayer while you are intoxicated until you know what you are saying.” [An-Nisā’:43]*

[The path leading to knowledge, understanding, memorization, khushū‘ in prayer, etc.]

Question: Students of knowledge frequently ask about the path that leads to knowledge, understanding, and memorization, about the path that leads to khushū‘ (*devout humility*) in prayer, and about how to get past obstacles that face the seeker of knowledge—such as parents preventing him from traveling to seek knowledge. What is the way forward?

Answer: The path that leads to attaining knowledge, understanding, and memorization is:

1. Adhering to taqwā of Allah—privately and publicly: *“If you fear Allah, He will grant you a criterion ...” [Al-Anfāl:29]*
2. A sincere desire for seeking knowledge.
3. Perseverance in seeking knowledge, and patience upon that.
4. Do not break yourself or let your hope be cut off if your understanding and memorization are weak: *“And do not despair of relief from Allah. Indeed, none despairs of relief from Allah except the disbelieving people.” [Yūsuf:87]*
5. Let seeking knowledge be your greatest and most important preoccupation.

The path that leads to **khushū‘** in prayer is:

1. That the worshiper bring to heart the abundance of Allah’s favors upon him.
2. That he bring to heart his intense poverty to Allah and his great need of Him; when he recalls these two realities, his soul turns to thanking Allah and humbles itself, imploring before Him because of its great need.
3. A student of knowledge must know that he will face obstacles and problems that may push him to abandon seeking knowledge. He must also know that what he faces is a trial, a test, and a tribulation by which the truthfulness of his intention and determination in seeking knowledge—or their falsity—becomes apparent: if he is truthful in intention and determination, he stands firm, and no hinderer will turn him back from seeking knowledge; if his determination is not truthful, he abandons it.

A student whose parents prevent him from traveling to seek knowledge can seek knowledge without being undutiful to them: treat

them with excellence, gentleness, and softness, and seek to win their satisfaction through people of goodness and piety. If he must leave them to migrate for knowledge, let him keep in frequent contact—by phone and letters—reassure them of his safety and well-being, supplicate much that Allah assist him in honoring them and winning their pleasure, and wait for relief, for He, *Exalted*, said: “*And whoever fears Allah—He will make for him a way out.*” [At-Ṭalāq:2]

[Benefit: Showing that the prayer is not waived from one for whom water and earth are harmful]

In the marginalia to *Sharḥ al-Azhār*: If water and earth harm the one who touches them, prayer falls away from him. And it is not said that he prays as he is, for this is textually stated. End.¹

I say: The stronger view—guided by His saying, “*So fear Allah as much as you are able,*” [At-Taghābun:16]—is that prayer remains obligatory in one’s present state, for that is what one is able to do; and by the Prophet’s saying (*May Allah bless him and his family and grant them peace*): “When you are commanded to do something, do of it what you are able.” By analogy to one without water and earth, he prays as he is.

As for the statement “for this is textually stated,” if what is meant is that there is a text from al-Hādī or al-Qāsim, I do not think such a text exists; nor from the Messenger of Allah (*May Allah bless him and his family and grant them peace*), nor in the Qur’ān, nor consensus. And the verse in *Al-Mā’idah* that mentions purification with water or earth does not indicate that prayer falls away from one who is unable.

If it is said: It is related from the Prophet (*May Allah bless him and his family and grant them peace*): “There is no prayer without purification,” and the valid intent of prayer is meant; thus prayer without purification by water or earth is no prayer—and what is thus is not obligatory, for Allah only commanded the valid prayer—

We reply: What you mention is for the general case; there are exceptional cases, among them the case at hand, for which there is evidence establishing its obligation, namely His saying: “*So fear Allah as much as you are able,*” [At-Taghābun:16] and what has preceded. Reconciling the evidence is obligatory whenever possible—acting by all of it rather than discarding some. And Allah knows best.

Benefit: Concerning those from whom prayer is said to fall away

The scholars of the school said—per the marginalia to *Sharḥ al-Azhār*:

1. If water and earth harm the one who touches them, prayer falls

1- *Sharḥ al-Azhār*, 1/259 (Ṭ. Ghamdān).

away from him.¹

2. It falls away from the sick person who is unable to gesture with his head while lying down.²

I say: What appears to me—Allah knows best—is that in both cases the prayer does not fall away entirely; for He, *Exalted*, said: *“So fear Allah as much as you are able,”* [At-Taghābun:16] and it is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “When you are commanded to do something, do of it what you are able.” This entails that what the sick person is unable to do falls away, but not what he is able to do. Accordingly, the one for whom water and earth are harmful due to illness does not have prayer fall away if he is capable of performing it; and remembrances do not fall away from one unable to gesture, for he is able to perform them.

Moreover, the scholars of the school said: one who finds neither water nor earth prays as he is³. Thus, as you see, they distinguished between inability to use water and earth due to illness and due to absence: they said prayer falls away for the sick but not for the one who lacks them. There is no basis for this distinction—unless there is a text specifically concerning the sick.

[Why the scholars of the school did not mention sending salām upon the Messenger of Allah within the prayer]

Question: Why did the scholars of the school not mention sending salām upon the Prophet (*May Allah bless him and his family and grant them peace*) within the prayer, but they did mention sending ṣalāh upon him—though the command came for both together in His saying, *“Indeed, Allah and His angels send blessings upon the Prophet. O you who have believed, send blessings upon him and greet him with peace.”* [Al-Aḥzāb:56]?

Answer (and Allah grants success): What appears to me—Allah knows best—is that salām has contexts and settings in which it is said: he is greeted with salām in his gatherings, in his house, and whenever Muslims encounter him; likewise he is greeted at his grave, and salām is sent to him in life and after death. These are the settings in which salām upon him is especially affirmed.

Prayer (ṣalāh) is not among the settings in which salām is especially affirmed; thus, the prayer includes ṣalāh upon him, for that is emphasized for those present and absent. Salām is a greeting, and greetings are not for the absent and those in his ruling.

1- *Sharḥ al-Azhār*, 1/258.

2- *Sharḥ al-Azhār*, 1/259.

3- *Sharḥ al-Azhār*, 1/129.

Yes, the scholars of the school did mention sending salām upon the Prophet—*may Allah bless him and his family and grant them peace*—and that is in the wording of the tashahhud narrated by al-Hādī (*peace be upon him*) namely:

“All salutations, prayers, and pure words are for Allah. Peace be upon you, O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon the righteous servants of Allah. I bear witness that there is no god but Allah, alone with no partner; and I bear witness that Muhammad—may Allah bless him and his family and grant them peace—is His servant and His Messenger.” ... etc.

It may be said that mentioning ṣalāh (sending blessings) can suffice in place of salām, and vice versa. It is well known from the Companions that when they approached the Prophet—*may Allah bless him and his family and grant them peace*—they would say, *“Peace be upon you, O Messenger of Allah,”* and in other contexts they would say, *“The matter is such-and-such, O Messenger of Allah—may Allah send blessings upon you,”* sufficing with one of the two.

Likewise, in the ḥadīth of Jibrīl: *“Whoever I am mentioned before him and he does not send ṣalāh upon you ...”*—and salām is not mentioned there.

What we have said is supported by the fact that the Commander of the Faithful, ‘Alī—*peace be upon him*—when the Prophet—*may Allah bless him and his family and grant them peace*—was mentioned in his sermons, would say: *“May Allah send blessings upon him and his family.”* The same is found in the Ṣaḥīfah of Zayn al-‘Ābidīn, and likewise in the speech of the earlier Imams—such as al-Hādī, his grandfather, and those before them—who would often suffice with one of the two for the other; this was most common.

Moreover, what is transmitted from the Prophet—*may Allah bless him and his family and grant them peace*—regarding how to send ṣalāh upon him in the prayer is what the scholars of the school have cited, and it contains no salām: *“O Allah, send blessings upon Muhammad and upon the family of Muhammad, and bless Muhammad and the family of Muhammad.”* This wording is well known among both the Shī‘ah and the Sunnah.

[Lengthening bowing (rukū‘) or recitation to allow a latecomer to catch the prayer]

Question: May the imām, upon sensing that someone has entered (the mosque) to join the prayer, lengthen the bowing so the latecomer can catch the prayer, or lengthen the recitation?

Answer: This is permissible according to the school. As for the statement in *al-Azhār*, *“The imām should not add beyond what is*

customary in waiting,” the marginal note comments: “Meaning: it is recommended that he not add.”¹

They generalize this ruling to recitation and bowing, saying that adding beyond the customary amount is disliked, but does not invalidate the prayer; they explain the lack of invalidation by saying that even if it is a lengthy addition, it is still in its proper place.²

I say: What is preferable is that waiting for the latecomer so he may attain the congregation should not be deemed disliked; rather, it is recommended and legislated. Waiting occurs in the prayer of fear (*ṣalāt al-khawf*), which Allah commanded in His saying: “*And let another group come forward that has not prayed, and let them pray with you.*” [An-Nisā’:102] This verse entails a command to the Prophet—*may Allah bless him and his family and grant them peace*—to lengthen the second rak‘ah so that the second group could catch the prayer with the Prophet *may Allah bless him and his family and grant them peace*; and it is authentically related that he (*may Allah bless him and his family and grant them peace*) did just that in *ṣalāt al-khawf*. There is no doubt that his lengthening in that prayer was so the other group might attain the virtue of congregation.

They have also adduced—supporting this—what is related in *ash-Shifā’* and elsewhere: that the Prophet—*may Allah bless him and his family and grant them peace*—would lengthen the recitation when he sensed someone entering to join the prayer; he would stand in the first rak‘ah of *Zuḥr* so long that the placing of a foot could not be heard.

What we have mentioned is further attested by His saying: “*Help one another in righteousness and piety, and do not help one another in sin and transgression.*” [Al-Mā’idah:2]

If it is said: The imām is commanded to lighten the prayer, as in the ḥadīth concerning Mu‘ādh—

We reply: In other than what we have stated—this reconciles the evidences; and reconciling them is better than acting by some and abandoning others.

Indeed, what we have stated—that lengthening is recommended—is the view of Imām al-Mu‘ayyad bi-llāh and Imām al-Manṣūr bi-llāh—

1- *Sharḥ al-Azhār* vol.1, p 305, and the wording of the marginal: meaning: it is recommended. (end from *Hidayah* and *Bahar*). And it was said; it is obligatory if he fears missing the preferred time. (تأقیر). (Taqirir).

2 -The marginal of *Sharḥ al-Azhār* vol.1, p305.

peace be upon them—as in *Sharḥ al-Azhār*.¹

It also says therein: al-Manṣūr bi-llāh held that his tasbīḥ may reach twenty.

[Ruling on a woman who prayed Fajr as four rak‘ahs out of ignorance]

Question: A woman had been praying Fajr as four rak‘ahs, and continued upon that for a long time, believing it to be so. Then it became clear to her that this was an error. What should she do? Must she make up the past prayers—spanning many years—or what is required of her?

Answer (and Allah grants success): What appears to me is that she is not required to make up the prayers mentioned in the question, for several reasons:

1. It is related from the Prophet—*may Allah bless him and his family and grant them peace*—that Allah does not punish for an inadvertent increase. The Prophet (*may Allah bless him and his family and grant them peace*) once prayed one of the four-rak‘ah prayers as five by forgetfulness, then performed sujūd as-sahw. This woman added in the prayer by mistake, and mistake is akin to forgetfulness; their ruling is one.
2. In the ḥadīth: the Prophet—*may Allah bless him and his family and grant them peace*—saw ‘Ammār wallowing in dust as a donkey wallows (in tayammum). The Prophet (*may Allah bless him and his family and grant them peace*) said to ‘Ammār: “It would have sufficed you ...” etc., and he did not command him to make up what he had prayed with that (excessive) wallowing. Had making up been obligatory, the Prophet—*may Allah bless him and his family and grant them peace*—would have commanded him to make up the past prayers he had performed in that manner—if any.
3. The Prophet—*may Allah bless him and his family and grant them peace*—did not command those who had prayed in a direction other than the qiblah after doing their due diligence to repeat the prayer.
4. Uṣūl principles support what we have said: (a) Obligating the heedless is repugnant; (b) Obligating with what is unknown is repugnant. This woman was heedless of the fact that Fajr is two rak‘ahs and unaware of it, believing she was correct and that Fajr is four. Had she had any doubt of her error, she would have hastened to ask.

1- *Sharḥ al-Azhār* vol.1, p 306..

Accordingly, she is not taken to account for the past mistake, and making up those prayers is not obligatory, due to her heedlessness of that and ignorance of it. Allah, *Exalted*, has said: *“Allah does not burden a soul beyond its capacity.”* [Al-Baqarah:286]; *“So fear Allah as much as you are able.”* [At-Taghābun:16]; and *“There is no blame upon you for what you err in, but [only] for what your hearts intended.”* [Al-Aḥzāb:5]

If it is said: Ignorance is no excuse—

We reply: Ignorance is of two types:

1. A type for which the morally responsible person is not excused: namely, he is ignorant of the description of what he has been charged with, knows that he is ignorant of it, and knows he is charged with that matter.
2. A type for which he is excused: namely, he is ignorant of the description of what he has been charged with, and does not know that he is ignorant—as in the case of the woman in the question. She believed she was correct in her act and not ignorant of the description of the prayer. This ignorance is not deliberate, unlike the first type, which is deliberate.

This may be supported by His saying: *“There is no blame upon you for what you err in, but [only] for what your hearts intended.”* [Al-Aḥzāb:5]

The Ruling on One Who Gives Salām Before Completing the Prayer—Should He Repeat or Build Upon What He Prayed?

Question: What do you say about someone who forgot one rak‘ah of Ṣuḥr and gave salām after three? We do not see the strength of the school’s view that he must repeat the prayer in light of the famous ḥadīth of Dhu ‘l-Yadayn—that the Prophet (*May Allah bless him and his family and grant them peace*) gave salām after one rak‘ah of Fajr and then added another—narrated in *Amālī Aḥmad ibn ‘Īsā*. It is in my mind that its chain is sound; and some of our scholars said that grammarians and rhetoricians have adduced it as evidence for the expression, *“kullu dhālika lam yakun”* (“none of that took place”).

And the reply of some of our Imams is that the report is *mudṭarib* (*variant*), for it is narrated concerning Fajr and concerning other prayers. Yet we do not see how this weakens it, since such variation would impugn many reports—like the ḥadīths about the abrogation of *mut‘ah*, whose occasions were multiple, as mentioned in the gloss on *at-Tāj* and elsewhere. Please clarify for us what you deem preponderant and its proof.

Answer: I uphold the wording of the school on this. The ḥadīth of Dhu ‘l-Yadayn, even if sound, is abrogated. The evidence for its abrogation is what Zayd ibn ‘Alī narrated in *al-Majmū‘* from ‘Alī (*peace be upon him*):

The Messenger of Allah (*May Allah bless him and his family and grant them peace*) returned during the first ‘umrah he performed. A man came to him and offered salām while he was in prayer, and he did not return it. When he completed the prayer and turned away he said, “*Where is the one who offered salām a short while ago? I was in prayer, and Gabriel (peace be upon him) came to me and said: Indeed it has been prohibited for my community to return salām while in prayer.*” End.

This report is also narrated outside *al-Majmū‘* with the wording that he (*may Allah bless him and his family and grant them peace*) said to the one who greeted him: “*Indeed Allah introduces in His command whatever He wills; and He has now introduced that you are not to speak in the prayer.*”

The first ‘umrah the Prophet (*May Allah bless him and his family and grant them peace*) performed was al-Ḥudaybiyyah; the second was ‘Umrat al-Qaḍā’; the third al-Ji‘rānah; and the fourth with his Ḥajj. ‘Umrat al-Ḥudaybiyyah was in year six.

In sum, the ḥadīth we cited is authentic with the Zaydīs and with Ahl al-Sunnah, and it indicates that the prohibition of speaking in the prayer came after the incident of Dhu ‘l-Yadayn, which had indicated the permissibility of speaking.

This is in addition to the caution and safety found in the school’s position.

There are further grounds for preference:

- The report of Dhu ‘l-Yadayn is a narration of an act, while its opponent is a statement; and the indication of statement is stronger and weightier.
- That report indicates permissibility of speech, while the opposing evidence indicates its prohibition—another reason to prefer the latter.
- The ḥadīth prohibiting speech is stronger and more widely known, with more narrators, and without disagreement—unlike the Dhu ‘l-Yadayn report which, though sound, has differences, as you mentioned.

Yes: what we mentioned earlier shows that the prohibition of speech came after the incident of Dhu ‘l-Yadayn, whether Dhu ‘l-Yadayn is the same person as Dhu ‘sh-Shimālayn or someone else, since Dhu ‘sh-Shimālayn was killed at Badr.

This is what I incline to and deem strong. Praise belongs to Allah, Lord of the worlds.

A Note on Repeating the Tashahhud and Takbīr

Al-Mahdī (*peace be upon him*) said: *Whoever repeats the tashahhud*

and the takbīr is an **innovator**, astray, and has obeyed Satan.

Al-Ghazālī said: That is a **deficiency** in religion and a **frivolity** of mind. End of the marginalia on *al-Azhār*.¹

[Must a Worshiper Answer His Parents' Call While He Is Praying?]

Question: If one of the parents calls their child while he is praying, should he continue his prayer, or cut it off to answer them and fulfill what they ask?

Answer (and from Allah is success): The parents have a tremendous right. Allah has commanded excellence toward them. The least rank of excellence is that nothing hurtful issue from the child toward them or cause them distress. If the praying child knows that continuing in the prayer when one of them calls him will cause constriction in the parent's chest, anger, or agitation, then it is not permissible for him to continue; rather, he should end the prayer.

It is not permissible for the child to be the cause of what angers, distresses, or troubles them.

If, however, he knows that none of that will occur if he continues, then let him continue, because his continuing does not cause them harm.

This is what accords with what Allah has commanded of excellence toward them.

As for others whom Allah commanded us to treat well—relatives, neighbors, companions, and so on—the same does not apply to them; for although Allah commanded excellence toward them, they do not have the same right over a person as his parents. Allah singled the parents out for additional injunctions, care, compassion, mercy, and tenderness, and that nothing should issue from the child that hurts them, even if slight:

"Whether one of them or both reach old age with you, say not to them 'uff,' nor repel them, but speak to them a noble word. And lower to them the wing of humility out of mercy and say, 'My Lord, have mercy upon them as they brought me up when I was small. Your Lord knows best what is within yourselves. If you are righteous—then indeed He is ever, to the oft-returning, Forgiving.'" [Al-Isrā':23-25]

And He, *Exalted*, said:

"But if they strive against you to make you associate with Me that of which you have no knowledge, then do not obey them; but accompany them in [this] world with appropriate kindness ..." [Luqmān:15]

And He, *Exalted*, said:

"...His mother carried him with hardship and gave birth to him with

1- *Sharḥ al-Azhār* vol.1, p 323.

hardship, and his gestation and weaning [period] is thirty months ..." [Al-Aḥqāf:15]

—among other verses.

[The ruling when the time for prayer becomes tight while a reprehensible act (*munkar*) is present]

The scholars of the school said: Prayer is not valid—even if its time has become tight—when there is a *munkar* present and the conditions for forbidding the *munkar* are fulfilled; for in that case the worshiper is committing a prohibited act, namely omitting to forbid the *munkar*. This is based on the principle that omissions are (counted as) acts.

I say: This issue is not like the issue of praying in a usurped house. In the usurped house two contradictory matters come together: it is commanded insofar as it is prayer, and it is forbidden insofar as it is the use of something usurped—so it is invalid due to the prohibition of using what is usurped.

As for when the obligation of prayer and the obligation of forbidding the *munkar* both become tight upon the morally responsible person, the preponderant view is that he begins with whichever he sees as more important and more deserving, and this judgment will vary from person to person according to his assessment. If he sees prayer as more important and more deserving, he prays; if he sees forbidding the *munkar* as more deserving and more important, he gives it precedence.

We say this because two obligations whose time has narrowed have converged upon him—performing the prayer and forbidding the *munkar*—whether we say that omissions are acts or not.

If we say; omissions are acts, then whichever of the two constricted obligations he begins with, leaving the other entails committing a prohibited matter. If he begins with forbidding the *munkar*, he is committing the prohibited by leaving the prayer; and if he gives prayer precedence, he is committing the prohibited by leaving the forbidding of the *munkar*. From this angle, the two are the same.

And if we say; omissions are not acts, then performing one of the two does not entail committing a prohibited act by omission of the other.

Therefore we have said: the accountable person should give precedence to what he judges most important, and each person according to his judgment.

The evidence for what we have stated is rational: people of sound reason give precedence to what is more important over what is less; they deem one who does the opposite weak in mind and judgment.

The Revealed Law has come with giving precedence to the more important. In the famous ḥadīth it was said: “Who among people is most

deserving of my good companionship, O Messenger of Allah?" He said, "Your mother." He said, "Then who?" He said, "Your mother." He said, "Then who?" He said, "Your mother." He said, "Then who?" He said, "Your father." And in another narration: He said, "Then who?" He said, "The nearest to you, then the next nearest."

And the Exalted said: *"They ask you what they should spend. Say, 'Whatever you spend of good is for parents and relatives ...'"* [al-Baqarah:215].

And He said in Sūrat an-Nisā': *"Worship Allah and associate nothing with Him, and do good to parents,..."* [an-Nisā':36].

Thus Allah, *Exalted*, arranged in these verses the more important, then the next. And it is reported in the ḥadīth: "Begin with what Allah began with." There is much like this in the Book and the Sunnah.

So, if the accountable person judges one of the two obligations to be more important, yet gives precedence to the less important and leaves the more important, he is blameworthy for leaving the more important—but his prayer is valid. Were he to leave both—both the prayer and the forbidding of the munkar—he would deserve blame for leaving both.

If he leaves the more important and performs the less important, he deserves blame for leaving the more important, but he does not deserve blame for performing the less important. This is what the indications of reason require.

On the school's analogy—namely, that prayer is invalid when a munkar is present and the conditions are fulfilled—the worshiper would deserve blame and censure for two things: for leaving the forbidding of the munkar, and for performing the prayer—since by performing it he would be committing a prohibited act.

We said that the accountable person should give precedence to what he sees as more important and more deserving because munkarāt differ: some are grave, some graver and graver; some minor, others more minor. They differ relatively in magnitude and smallness: looking at a non-maḥram is minor compared to embracing, kissing, and fondling; and embracing and kissing are minor compared to fornication. Likewise, scolding a believer is less than striking him; striking him is less than [killing him]. Harming one's mother is greater than harming one's father; harming the father is greater than harming a brother; harming a brother is greater than harming someone who is not a brother; harming a neighbor is greater than harming one who is not a neighbor—the examples are many.

As for prayer, it has tremendous importance; after belief, it is the greatest, best, and most important of deeds. Its importance and status in Islam are not hidden; the command to perform it is repeated in the

Qur’ān often, and its mention and virtue abound in Allah’s verses.

For all that we have mentioned, we said: each accountable person gives precedence to what he sees as more important and more deserving.

An example of a minor munkar:

If the time for prayer has narrowed and you are in the mosque, and a man is sitting waiting for the next prayer, then another man comes and forces him up from his spot and sits there; and if you were to get up to prevent the second man from coercing the one seated, the time of prayer would elapse—then the prayer is more important than forbidding and preventing him.

Chapter: Congregational Prayer

The Ruling on Congregational Prayer

The scholars have differed regarding congregational prayer (*ṣalāt al-jamā'ah*): is it an individual obligation (*farḍ 'ayn*), a collective obligation (*farḍ kifāyah*), or a highly-emphasized sunnah (*sunnah mu'akkadah*)? Each group adduced proofs from the Sunnah.

Yes, what is beyond doubt is that the Prophet, *may Allah bless him and his family and grant them peace*, constantly observed congregational prayer in travel and at home. He would have the call made for the five daily prayers at their times and continued upon that until Allah took him to Himself. The Muslims after him did likewise, and the Prophet—*may Allah bless him and his family and grant them peace*—would not leave congregational prayer except due to an excuse. Such was his sunnah and habit. He (*may Allah bless him and his family and grant them peace*) also said, as in the narration in *al-Majmū'*: “My community will continue to be spared affliction so long as they do not manifest certain traits: dealing in usury, openly taking bribes, severing kinship ties, cutting off the congregational prayer, and abandoning this House that it be led ...” (*ḥadīth*).

It is narrated: “There is no prayer for the neighbor of the mosque except in the mosque,” and in some versions: “... for the one who hears the call.” And in another narration: “No three (people), in desert or town, among whom congregational prayer is not established, except that Satan overcomes them,” or as he said. It is also narrated that the Prophet—*may Allah bless him and his family and grant them peace*—almost resolved to burn the houses of people who did not attend the prayer, etc.

These evidences—together with what is established of the Prophet's (*may Allah bless him and his family and grant them peace*) constant observance of congregational prayer even in a time of fear—all indicate obligation. Groups have thus said it is obligatory: some holding it to be *farḍ 'ayn*, others *farḍ kifāyah*.

Others said it is a highly-emphasized sunnah, and they adduced as proof the Prophet's—*may Allah bless him and his family and grant them peace*—saying: “Prayer in congregation exceeds the prayer of a man alone by twenty-five degrees,” or as he said; his approval of the people of the market of Madīnah remaining behind from attending his congregation (it is said that the market was in *al-Baqī'*); the account in *al-Majmū'* of the two brothers disputing before the Prophet—*may Allah bless him and his family and grant them peace*—about sharing profit, one of them maintaining the prayers with the Prophet (*may Allah bless him and his family and grant them peace*) and the other maintaining the marketplace, whereupon he said to the one who maintained the marketplace: “Perhaps

you are provided for because of your brother's observance of the prayer." They also cited his forbidding the one who had eaten garlic from approaching the mosque; and what is understood from His saying, *"O you who have believed, when the call is made for the prayer on the day of Friday, then proceed to the remembrance of Allah and leave trade; that is better for you, if you only knew."* [al-Jumu'ah:9] and other proofs—all of which, they say, indicate that it is not obligatory.

Thus, they divert the foregoing evidences away from indicating obligation—so say the adherents of this view.

Yes: Allah, *Exalted*, said, *"Those who, if We establish them in the land, establish the prayer and give the zakāh ..."* [al-Ḥajj:41]. From this verse may be inferred the reason why the sayyids gathered in the house of Muḥammad b. Maṣṣūr al-Murādī left congregation for Ḍuhr but held it for ‘Aṣr—namely, that at the time of Ḍuhr they had no imam to gather behind; then they pledged allegiance to one of them, and he led them in ‘Aṣr in congregation.

It has also come in the biographies of the Imams from the Prophet's Household—*may Allah bless them*—that when they gained authority, among the first things they would establish was the prayer. They would command the mu'adhḥins to include in the adhān *"Ḥayya ‘alā khayri ‘l-‘amal"* and would themselves—or whomever they appointed and deemed suitable to lead the Muslims—advance to lead the congregational prayer.

What appears is that prayer in the mosques, in congregation, with adhān and iqāmah is among the greatest—indeed the greatest—of the symbols (sha‘ā’ir) of Islam.

The proof is that this is the distinguishing marker between Muslims and others. For this reason it is narrated that the Messenger of Allah—*may Allah bless him and his family and grant them peace*—would command raiding parties not to attack villages by night until morning; if they heard the adhān therein, they refrained, and if not, they attacked, etc.

And His saying, *"In houses which Allah has permitted to be raised and wherein His Name is mentioned ..."* [an-Nūr:36], may support and attest to what we have said. For prayer is the manifest distinction and the clear sign; in it is the display of humility to Allah and the proclamation of servitude to Him, with an audible call to it five times each day and night. Hence the encouragement to build and populate the mosques in Book and Sunnah.

Indeed, gathering the people behind a single imam to lead them generally does not stand except by a governing authority. Thus it is narrated that the Prophet—*may Allah bless him and his family and grant*

them peace—would instruct delegations to pray in congregation behind an imam he appointed for them, and he would instruct the fighters and the governors to establish congregations for the people. So did the Commander of the Faithful ‘Alī—*peace be upon him*—and the Imams after him, and so have the rulers and caliphs of the Muslims. This symbol was among the most important of the works of the Imams and caliphs; the verse we cited supports that.

Yes: what is meant by His saying “*establish the prayer*” is congregational prayer in the mosques, as evidence shows that the believers did not abandon prayer before being established in the land. The Messenger (*may Allah bless him and his family and grant them peace*) and the Muslims prayed in Makkah; then when they migrated to Madīnah they established the Friday and congregational prayers, called to them with the adhān, and built the congregational mosques. The Prophet—*may Allah bless him and his family and grant them peace*—built his mosque in Madīnah; the people of Qubā’ built their mosque; they called to prayer therein and congregations were held.

The first act the Prophet—*may Allah bless him and his family and grant them peace*—performed upon arriving in Madīnah was to lay out and build his mosque—on the spot where his she-camel alighted on the day he entered the city.

Yes: what we have presented may explain why the aforementioned sayyids left off gathering for Ṣuḥr but gathered for ‘Aṣr. In the words of Muḥammad b. Maṣṣūr—*may Allah be pleased with him*—to those Imams is an indication of that; for he said to them, in meaning: “*It befits you to establish allegiance to one among you so that he may establish Friday and congregational prayers ...*”

From this there may be derived that the congregation—that is, the congregation—is what is held behind the Imam of Truth or behind the one he appoints to that task; and on this it would be like the Friday prayer.

There is no doubt that rulers—past and present—are the ones who appoint imams in the congregational mosques, except for those who have departed from Islam and sought to resemble the lands of unbelief.

Al-Hādī Yaḥyā b. al-Ḥusayn—*peace be upon him*—mentioned regarding one who comes to the mosque after the congregational prayer has been completed: “If they wish, they may pray individually; and if they wish, they may pray in congregation.” In this is support for what we have stated—that the congregation which is *the* congregation is that which is held behind those appointed to it by the authority of the Muslims.

It may be objected to this by what is narrated in *al-Majmūʿ*: that two men entered the mosque after the congregational prayer had been

completed, and the Prophet—*may Allah bless him and his family and grant them peace*—said to them: “One of you should lead the other in prayer ...” (ḥadīth), or as he said.

However, it is possible to interpret the words of al-Hādī—*peace be upon him*—as intending thereby to inform that the *emphasis* in the sunnah of congregation after the main congregation has fallen away, not the general recommendation (of praying together).

A note on choosing the imām

“Choose your imāms, for they are the envoys who go forth with you to Allah, Mighty and Majestic”—a ḥadīth narrated by Imām Zayd in *Risālat al-Ḥuqūq*.

I say: He meant imāms of prayer; therefore, it is obligatory that the Muslims put forward the best of people to lead the prayer. In another ḥadīth: “If it pleases you that your prayer be purified, then put forward your best.” The general imamate (political-religious leadership) is not intended here, because Allah has chosen the imāms for that and did not leave the choice to people.

It is also possible that “imāms” in the ḥadīth includes both: the imamate of prayer and the general imamate—so that what is intended is the obligation to choose whom Allah has chosen for the general imamate.

[Ruling on being led in prayer by one who is not the most entitled]

Question: If what is entailed by the ḥadīth “Let the people be led by the one most versed in the Book of Allah ...” is contravened, does the prayer become invalid or not? And does the permission of the one most entitled, allowing someone else to advance, justify the contravention?

Answer: The ḥadīth is phrased as information but means a command. However, necessity and excuses have their rulings, as indicated by His saying, “... *except for that to which you are compelled*.” [al-An‘ām:119] and His saying, “... *except if you fear from them a threat (taqiyyah)*.” [Āl ‘Imrān:28], among many other texts.

Accordingly, if there is an excuse, there is no harm in departing from what the ḥadīth entails. If there is no excuse, what appears to me is that the prayer does not become invalid; what is invalidated in this case is the virtue of congregation, not the essence of the prayer.

The proof is that the ḥadīth came to clarify who is worthy to lead the people, and that if they put him forward they attain the virtue of congregational prayer and its multiplied reward. If the Muslims comply with this guidance of their Prophet—*may Allah bless him and his family and grant them peace*—by putting forward the worthiest, they obtain the multiplied reward; whereas if they do not adhere to that guidance but

contravene it, they miss the virtue of congregation and its multiplied rewards.

As for the permission of the one most entitled to another to advance to lead: if it is for an excuse, there is no problem—such as putting forward the father, the uncle, the shaykhs of knowledge, or putting forward an elder brother or an elder among the righteous. There are clear excuses of this kind; for if the worthiest did not put such people forward, he would be accused of ill manners, would open the door to people's talk against him, and the ignorant would find an opening to attack his honor and harm him.

But if the most entitled puts another forward without excuse, we ought first to clarify whether his precedence and his right to be put forward is a right belonging to him, or a right belonging to others.

What appears is that precedence is the right of the imām, due to His saying, *"We made from among them leaders guiding by Our command when they were patient."* [as-Sajdah:24] In this verse Allah clarifies that He granted them leadership as a reward for their patience; thus, leadership is their right: if they wish, they take it; and if they wish, they leave it.

Moreover, Imām al-Hādī Yaḥyā b. al-Ḥusayn—*blessings of Allah be upon him*—put his uncle Muḥammad b. al-Qāsim—*peace be upon them*—forward to lead the prayer, and likewise did others.

I have seen in our own time many scholars put others forward without any apparent excuse.

But does the permission of the most entitled for another to advance preserve the virtue of the congregation or not?

Answer: Based on what we have stated—that imamate is the right of the most entitled, which he may take up or forgo—this does not detract from the virtue of the congregation, on condition that the one authorized to advance be the most entitled among the remaining; for the virtue is only attained by following the guidance of the Messenger—*may Allah bless him and his family and grant them peace*.

Question: Does putting forward one who is not the most entitled, without excuse and without permission, justify leaving attendance at that congregation?

Answer (and Allah grants success): If his being put forward was after consultation and ijtihād by the righteous people, then the congregation has its virtue, and that does not diminish it—because the opinions of the righteous in a town may differ regarding who is most entitled to lead; in such a case, one should not leave that congregation.

But if he was put forward without excuse, without permission, and without the deliberation of the righteous and their appointment—then

that congregation has no virtue, and there is no blame in leaving it.

There has come a threat from the Prophet—*may Allah bless him and his family and grant them peace*—against one who leads a people while they dislike him; and in another ḥadīth: “*If it pleases you that your prayer be purified, then put forward your best.*” And in another: “*Your imāms are your envoys to Allah, so look with whom you send (yourselves).*” And in another: “*No word, no deed, and no intention (is accepted) except with conformity to the Sunnah.*”

[What should a person do when someone unacceptable steps forward to lead?]

Question: If a person is present in the mosque and the prayer is established, and a man steps forward to lead whom he does not accept, what should he do? Should he leave the prayer, despite what may befall him because of that? Or should he pray and then repeat? Or should he intend to pray individually while outwardly following the imām?

Answer: The solution is that he intends to pray individually (furādā), recites for himself, and stands and sits with them; his outward following of the imām and waiting for him does not harm him. When the imām gives salām, he gives salām with him, and his prayer as an individual is valid.

This is mentioned in the marginal notes on *Sharḥ al-Azhar* according to the school, except that they stipulated that his praying along with them must not amount to suggesting and misleading others into thinking that the imām is someone whose leadership is acceptable. If such deception occurs, then the prayer is not valid—unless he is able to remove the deception before the time (for that prayer) ends. This is the meaning found in the marginalia.¹

I say: Dispelling the deception ought to be with respect to those who prayed behind that imām following this worshiper’s example—such that were he not to pray with them, they would not have prayed behind him.

[Ruling on someone beginning his prayer alone, then another joins him]

Question: If a man begins his prayer alone, then another man comes and joins him, praying along with his prayer—is that valid?

Answer: If the first man intends imamate when the second joins him, the prayer is valid in congregation. But if the first man does not intend imamate at that point, then the prayer of the second man who intended to follow is not valid. This is what is stated in the marginal notes on

1- *Sharḥ al-Azhar*, 1/293.

Sharḥ al-Azhar according to the school.¹

I say: This can be supported by what is narrated of the Prophet's approval—*may Allah bless him and his family and grant them peace*—of Ibn 'Abbās and Anas b. Mālik when they came and prayed along with him while he was in prayer; and by analogy to the substitute imām (*al-mustakhlaf*), who intends imamate after having been a follower, and his intention is valid and the prayer behind him is valid.

The follower's prayer when he bows as the imām is rising from bowing

Question: If the imām raises his head from bowing, and while he is raising his head the follower bows, how is the follower's prayer judged?

Answer: The scholars of the school said: if the imām precedes the follower by two successive, substantive pillars, the follower's prayer is invalid. Their statement accords with the famous ḥadīth: "*The imām is only appointed to be followed ... so when he bows, bow ...*" and so on. If the imām raises his head from bowing before the follower has bowed, then the follower has failed to do what that ḥadīth commands—namely, following. However, the follower's prayer may still be valid—that is, if he bows before the imām becomes fully upright from bowing. And Allah knows best. All praise is for Allah, Lord of the worlds, and may blessings and peace be upon our master Muḥammad and his pure family.

[Distress at missing the congregation due to fear of people's blame]

Question: A man becomes upset when he misses congregational prayer, for example because of an excuse for which Allah will excuse him—not because it was missed (for he knows his excuse with Allah), but because believers may suspect him of carelessness and neglect. Is such distress a sign of ostentation (*riyāʾ*)? And how can he be rid of it, if it is a sin or an indication of one?

Answer (with Allah's enabling): It is a trait of the believer—indeed, of every person—to ward off accusations from himself. He dislikes becoming known among people—or some of them, or even a single one of them—for a false charge, or even for a true fault. This is human nature: anyone who belongs to this human reality loves perfection and honor and dislikes whatever mars that, and turns away from it; he is unable to rid himself of this nature. The Messenger of Allah—*may Allah bless him and his family and grant them peace*—was keen to avert what might lead to accusation against him.

It is narrated that two Anṣārīs passed by while he (*may Allah bless him*

1- *Sharḥ al-Azhar*, 1/292.

and his family and grant them peace) was standing with one of his wives, conversing; he (*may Allah bless him and his family and grant them peace*) called them and said, “*She is Ṣafīyyah.*” They said, “Glory be to Allah, O Messenger of Allah! How could we accuse you?” He (*may Allah bless him and his family and grant them peace*) replied, “*Satan flows through the son of Ādam like blood in the veins.*” (This is the meaning of the report, not its exact wording.)

From this it becomes clear that distress at the possibility of people’s suspicion is not ostentation, nor a sign of it. A believer must avoid the places of suspicion; indeed, there are reports from the Prophet—*may Allah bless him and his family and grant them peace*—forbidding and warning against standing in situations that invite suspicion.

[Leading prayer with dental prosthetics]

Question: If a man or woman has artificial teeth fitted, is their purification deficient, such that they may only lead someone like themselves?

Answer (and Allah grants success): What appears to me—and *Allah knows best*—is that fitting artificial teeth does not contradict the completeness of purification. If the fitted teeth (or tooth) are fixed, they take the ruling of original teeth: they must be washed, and food caught between them must be removed. If the fitted piece is not fixed, then if it prevents water from reaching its place it must be removed; otherwise, removal is not obligatory.

This is indicated by what is narrated: that the Prophet—*may Allah bless him and his family and grant them peace*—ordered a man whose nose had been cut off to take a silver nose; then, when the place became infected, he ordered him to take a gold nose instead of silver. It is not reported by the Prophet—*may Allah bless him and his family and grant them peace*—that any rulings of purification or otherwise were entailed by that; had there been rulings that followed from it, the Prophet—*may Allah bless him and his family and grant them peace*—would have clarified them for the man who took first a silver nose and then a gold one.

[Ruling on Praying Behind People of Corrupt Beliefs]

Question: Is the prayer valid behind an imām who folds his hands (overlapping the arms in standing) and says “āmīn,” or not?

Answer (and Allah grants success): Whoever’s creed is sound in Divine Oneness, Divine Justice, Prophethood, and what pertains to these foundations of religion—the prayer is valid behind him if he is among the God-fearing.

As for one who holds corrupt beliefs, the prayer is not valid behind

him—whether he folds his hands or not, and whether he says “āmīn” or not.

Likewise, the prayer is not valid behind one who brazenly defies Allah by sinning and persists in it, whether by neglecting an obligation or committing a prohibition.

As for folding the hands and saying āmīn themselves, they do not, in and of themselves, prevent praying behind one who does them and believes them to be lawful; however, they suggest that there may be corrupt beliefs behind them, since they have become emblems of the anthropomorphists (*al-mushabbihah*), the compulsionists/predestinarians (*al-mujabbirah*), and the nāṣibīs. Therefore, a religiously observant person should not pray behind one who does them until it becomes clear that none of those deviant beliefs lie behind them.

It is stated in *al-Majmūʿ*: “One does not pray behind the Ḥarūriyyah (Kharijites), nor behind the Murjiʿah, nor the Qadariyyah, nor one who has taken up enmity against the family of Muḥammad—may Allah bless him and his family and grant them peace.”

And in the ḥadīth narrated from the Prophet—may Allah bless him and his family and grant them peace: “Let not a wicked man lead a believer, and a Bedouin lead a migrated (in prayer),” and from him: “Do not let one who is brazen in his religion lead you (in prayer).”

This is also supported by what Abū Dāwūd and Ibn Ḥibbān in his *Ṣaḥīḥ* narrated from Abū Sahlāh, one of the Companions of the Prophet—may Allah bless him and his family and grant them peace—that a man led a people and spat toward the qiblah while the Messenger of Allah—may Allah bless him and his family and grant them peace—was looking on. When he finished, the Messenger of Allah—may Allah bless him and his family and grant them peace—said: “Let this man not lead you in prayer.” Later he wanted to lead them again, but they prevented him and told him what the Messenger of Allah—may Allah bless him and his family and grant them peace—had said. He mentioned that to the Messenger of Allah—may Allah bless him and his family and grant them peace—who replied, “Yes [that is so],” and (I think) he said, “You have offended Allah and His Messenger.”

A similar report is narrated by al-Ṭabarānī in *al-Kabīr* with a good chain, from ʿAbd Allāh b. ʿUmar, from the Prophet—may Allah bless him and his family and grant them peace. (As cited in a marginal note on *al-Minḥah*.)

As for what is reported from the Prophet—may Allah bless him and his family and grant them peace—that he said, “Pray behind every righteous and every wicked person,” and, “Pray behind whoever says ‘Lā ilāha illā Allāh.’” al-Jalāl said in *Ḍawʿ an-Nahar*: all of their routes are weak and

unsound.

It is also known in the religion of Islam that the sinner (*fāsiq*) must be humiliated, boycotted, and treated with enmity until he repents and returns to Allah. Accordingly, it is impermissible to honor him and elevate him by appointing him to lead the prayer, since that contradicts what is known—namely, the duty to humiliate him and show enmity toward him.

As for Ibn al-Amīr’s statement that “*Whoever’s prayer is valid for himself, his imamate is valid,*” and his adducing as proof the texts encouraging congregation—that is incorrect, for the proofs we have presented; and it is refuted by counter-examples: a woman’s prayer is valid for herself, yet her imamate over men is not valid; and those who are seated, or using dry ablution (*tayammum*), or deficient in purification, or deficient in their prayer—their prayer is valid for themselves, yet their imamate is valid only over their likes, according to many scholars from the Prophet’s Household and others.

Moreover, the encouragement of congregation does not indicate the permissibility of praying behind transgressors.

[From the ḥadīth “No harm and no reciprocating harm”]

The ḥadīth, “*There is to be no harm and no reciprocating harm in Islam,*” is well-known among the scholars. Jurists use it across many chapters of worship and transactions. From it they deduce:

1. It is impermissible for the imām to lengthen the prayer such that some of those behind him are harmed.
2. They also said: it is obligatory to demolish a minaret that exposes the private spaces of surrounding homes.

The ruling on a child’s interposing in the row—and on one with cognitive impairment

A child does not complete the wing (side) of the front row. If a child stands in the first row, the prayer of those who knew of his standing there and prayed next to him is invalid—this is in the first row, due to the report from the Prophet—*may Allah bless him and his family and grant them peace*: “*Let those among you who possess maturity and understanding stand nearest to me.*” As for the second row, every pair constitutes a row; if a child interposes between each pair, it does not harm the prayer. What we have mentioned is the view of the school.

It may happen that in the first row there are some men who have some cognitive impairment, while maintaining purification and prayer; such a person’s interposing in the first row does not harm [the prayer], because removing him from the first row would wound his feelings, aggravate his condition, and lead him to harbor resentment and enmity

toward whoever attempts to remove him. His presence in the row is therefore an excuse.

[The ruling on praying Ṣuḥr behind one praying ‘Aṣr (and vice-versa)]

Question: Is the prayer of Ṣuḥr valid behind an imām praying ‘Aṣr—and likewise the reverse?

Answer (and Allah grants success): The scholars have differed on this; the school’s position is that it is not valid. Several points may support the school’s view:

1. From calling one of them an imām and the other a follower (mu’tamm) there is an implication of agreement in intention, aim, and the same obligatory prayer, along with outward following. If this agreement is absent, neither is an imām nor the other a follower—this is what the wording of “imām” and “follower” requires outwardly.

From this it follows that one who fights alongside the Prophet—*may Allah bless him and his family and grant them peace*—out of tribal zealotry is not counted as following him nor as truly imitating him.

2. Allah, Exalted, said regarding the Prophet—*may Allah bless him and his family and grant them peace*: *“Follow him that you may be guided.”* [al-A’rāf:158] The command to follow in this verse is to be understood as including the intention, because guidance is not attained without it.

Moreover, the command to follow is unrestricted, encompassing both outward acts and inward states.

If it be said: what you have mentioned is specific to the Prophet—*may Allah bless him and his family and grant them peace*—and not to the imām of a prayer,

We say: the verse concerns the Prophet (*may Allah bless him and his family and grant them peace*), but it is general regarding following him in the imamate of prayer and otherwise. If following the Prophet—*may Allah bless him and his family and grant them peace*—in the intention of prayer is obligatory upon those praying behind him, then it is likewise obligatory upon those praying behind others and there is no doubt about this.

3. Praying Ṣuḥr behind one praying ‘Aṣr (or vice-versa) contradicts what is well-known from the Sunnah of the Prophet—*may Allah bless him and his family and grant them peace*—and the Muslims after him. The best guidance is the guidance of Muḥammad—*may Allah bless him and his family and grant them peace*—and the

worst of matters are innovations.

4. Precaution accords with what the scholars of the school have mentioned.

Those who disagreed cite evidences for validity, such as the Prophet's—*may Allah bless him and his family and grant them peace*—instruction regarding emirs who delay the prayer (to its end or beyond), in which he said: “*Let your prayer with them be supererogatory*”; and the ḥadīth of the man who had prayed at home and then came to the Prophet's mosque, where the Prophet—*may Allah bless him and his family and grant them peace*—ordered him to pray with the Muslims even though he had already prayed; and another ḥadīth in which a man came to the mosque after the Prophet (*may Allah bless him and his family and grant them peace*) and the Muslims had prayed, and he said (in meaning): “*Who will give charity to this man and pray with him?*”

Benefit: Regarding a Structural Column (du‘āmah)

In *al-Bayān*: a structural column “fills the wing (side of the front row).” It has also been said: it does not. In the marginal note: if the space at its location fits one person. End. Meaning: the space occupied by the column—then it counts.

Benefit: Praying behind one who is shackled or missing limbs

In *al-Bayān* there is what indicates that the prayer is valid behind a shackled person, or one whose hand or foot has been amputated, or one with paralysis, if he completes the pillars. End of the citation from *al-Bayān*.

In the marginal note: Judge ‘Abd Allāh al-Duwwārī commented: “It is only valid behind someone like him.”

I say: According to the school, prayer behind a shackled person is valid if he completes the conditions and pillars. As for those with an amputated hand or foot, their prayer is deficient, since they do not complete prostration on the seven body parts, nor the required postures of erecting (the right foot) and spreading (the left), so prayer behind them is not valid except for someone like them, just as al-Duwwārī mentioned. And praise belongs to Allah, Lord of the worlds.

Benefit: Followers praying outside the mosque

If the imām prays inside the mosque while some followers—or another row—are outside it, their prayer is valid so long as they do not distance themselves from the mosque by more than a man's height. As for the followers inside the mosque, the distance from the imām does not harm—even if great. This is the school's position, as in *al-Bayān*.

Chapter: Prostration of Forgetfulness (Sujūd al-Sahw)**Sujūd al-Sahw**

In the marginal notes on *Sharḥ al-Azhār*—commenting on his statement, “It is made obligatory in the obligatory prayer in five cases; the first is leaving a recommended act”—if it be said:

If it is a branch, and recommended, how can the branch exceed its root?

The reply is what Imām al-Ḥasan b. ‘Alī b. Dāwūd (*peace be upon him*) indicated: We do not consider this a matter of “root and branch,” nor “replacement and replaced.” Rather we say: sujūd al-sahw is an obligation the Law has indicated; its cause is the cause of what makes an obligation obligatory, for the failure in a recommended act is the *condition* for it becoming obligatory—just as travel is the condition for shortening to be obligatory, and residence the condition for completing to be obligatory. This is a fine answer, and al-Najjarī alluded to it in his *Mi’yār*. (Copied from the hand of Judge Shams al-Dīn Aḥmad b. Ṣāliḥ b. Abī al-Rijāl.) End of the marginalia on *Sharḥ al-Azhār*.¹

It also says there:

A ^{corollary}: Whoever habitually performs sujūd al-sahw as a precaution is an innovator, and his innovation is worse if others follow him in that.²

About sujūd al-sahw:

Sujūd al-sahw is not required in the following:

1. If a follower joins the congregational prayer in the second rak‘ah, he is not required to perform sujūd al-sahw for omitting the middle tashahhud.
2. If a follower steps back from beside the imām or from a closed row to make room for a latecomer, he is not required to perform sujūd al-sahw.
3. If a follower omits some recommended dhikr in order to follow the imām, he is not required to perform sujūd al-sahw.

This is because the follower’s duty is to follow the imām; thus the follower must leave a recommended act to follow the imām, so the “recommended” is no longer recommended in his case.

And stepping back to accommodate a latecomer is recommended and

1- *Sharḥ al-Azhār*, 1/316.

2- *Sharḥ al-Azhār*, 1/316.

encouraged by the Wise Lawgiver; this does not call for prostration—just like other recommended acts encouraged within the prayer.

Issue: If a follower arrives and the imām has already begun the recitation, the follower should leave the opening supplication (tawajjuh), because listening to the imām’s recitation is more important than the opening supplication; no sujūd al-sahw is required for that.

If a follower does not complete three tasbīhāt in bowing or prostration because of following the imām, he is not required to perform sujūd al-sahw—since following the imām is obligatory.

[Additional points on sujūd al-sahw (according to the school)]

- One does not perform sujūd al-sahw except with certainty of its cause; conjecture does not suffice.
- Raising the gaze does not necessitate sujūd al-sahw.
- Stillness of the limbs is among the postures (hay’āt), and thus does not necessitate sujūd al-sahw.

Benefit: (On doubt)

Imām al-Hādī (*peace be upon him*) said in al-Aḥkām: It is obligatory upon one to whom doubt presents itself in his affair to reject it, cast it away, and distance it from himself, and not to act upon it in any matter. Leaving action based on it is more cautious and safer, for it is of the whispers of Satan—*may Allah curse him*—by which he makes a person imagine that what he is upon is mistaken, out of (false) caution and scrupulosity; and in it there is sin none knows but Allah Most High—so that the sin upon the one who indulges the doubt is more than what he fears from leaving it.

[Obsessive thoughts during prayer]

Question: What is the state of a legally responsible person who keeps up the five prayers, but when he enters the prayer, obsessive thoughts and inner talk take hold of him, so he leaves the prayer as he entered it, with nothing of Allah’s majesty and awe or fear having entered his heart—and thus are all his prayers? As for the intention, he prays each prayer for Allah, driven by fear of Him.

Answer (and Allah is the Patron of success): Such a prayer is valid if it fulfills the conditions and obligations; by performing it he discharges the command. However, its reward is deficient to the degree that humility (khushū‘) and mindful remembrance are deficient. Perhaps he will be written the reward of his firm resolve to keep the prayers at their times, his intention to keep congregation in the mosque, and the reward of the preliminaries.

[Thinking and obsessive thoughts in prayer]

Question: Do thinking and obsessive thoughts about worldly matters diminish the prayer? Is the prayer complete despite them? And if we are negligent and falling short, what is our duty regarding our prayer?

Answer (and Allah grants success): Thinking and obsessive thoughts are among the human traits upon which Allah created people; thus one cannot completely rid himself of this human nature. The worshiper must strive against obsessive thoughts and worldly preoccupations, and must focus on the meanings of the prayer—its remembrances and pillars. It has been reported: “A person has from his prayer only that of which his heart is present.”

Allah Most High praised those described thus: *“Surely the believers have succeeded—those who are humble in their prayers.”* [al-Mu’minūn:1-2] Consequently, a prayer into which obsessive thoughts and inner talk have entered is deficient, and its deficiency is according to the amount of obsessive thoughts that entered it.

The meaning of deficiency here is deficiency in reward: its reward is diminished in proportion to the extent of the obsessive thoughts—little or much. Such a prayer is not complete, yet it is a valid prayer if it fulfills the conditions, obligations, and pillars. By its validity we mean: it suffices the one who prayed it; he is not required to repeat it nor make it up; by performing it he has lifted the obligation and discharged the command—but he does not deserve from its reward except what corresponds to how present his heart was therein.

Know that presence of heart is indispensable at the entry into it; by that we mean the intention (*niyyah*).

Chapter: Making Up Missed Prayers

[The ruling on making up the prayer for one who abandoned it deliberately]

Someone asked me about a man who grew up among ignorant people who paid no attention to the laws of Islam. From the time he reached the age of legal responsibility he would leave the prayer; he would not fast the month of Ramadan, nor give the zakāt due on his wealth, and he remained so until guidance reached their area—then he repented and turned back to Allah. What is required of him regarding what he left in the past years?

Answer—and Allah grants success: Whoever is in that state is, more likely than not, included under the ruling of the unbeliever and the apostate. Accordingly, he is not required to make up what has passed of prayer, fasting, and zakāt.

Proof for this: Allah Most High says regarding the polytheists: *“But if they repent, establish prayer, and give zakah, then they are your brothers in religion ...”* [At-Tawbah:11] Allah, the Exalted, has made in this verse the establishment of prayer and the giving of zakah a condition for the polytheists to enter into the jurisdiction of Islam.

And in the well-known ḥadīth of the Prophet —*May Allah bless him and his family and grant them peace*—: *“Islam is built on five: bearing witness that there is no god but Allah and that Muḥammad is the Messenger of Allah, establishing the prayer, giving the zakāt, fasting Ramadan, and pilgrimage to the House for whoever is able to find a way to it,”* or as he said.

There are analogous texts that support what we have stated; among them His saying in the verse about usury: *“So whoever has received an admonition from his Lord and desists may have what is past ...”* [Al-Baqarah:275].

He did not obligate, in this verse, those who consumed usury to return what they had consumed.

And among them His saying in the verse regarding the highway robber:

“Except for those who repent before you apprehend them—then know that Allah is Forgiving, Merciful.” [Al-Mā'idah:34].

Imām al-Hādī—*peace be upon him*—and others used this verse as evidence that if the highway robber repents, everything he committed during his brigandage—blood, wealth, and other matters—falls from him.

What Allah Most High mentioned in these two verses about those who consumed usury and about the highway robbers is from His facilitation

of the path of repentance and encouragement toward it—something evident to all. He, *exalted is He*, says:

“Allah intends for you ease and does not intend for you hardship.” [Al-Baqarah:185].

And in the ḥadīth: *“Make things easy and do not make them difficult.”*

Yes, all of this supports what we advanced. And in another ḥadīth of the Prophet —*May Allah bless him and his family and grant them peace*—: *“Islam wipes out what came before it, and repentance wipes out what came before it.”*

Reason likewise supports what we mentioned: the intellect perceives the benefit in this ruling, for imposing make-up of long-neglected duties repels people from repentance—especially if the neglect spans decades—or if it would require stripping all one’s wealth to pay back past zakāt.

Further support comes from what is established in uṣūl al-fiqh: making up (qaḍā’) is not entailed by the original command; rather, it requires a new command. They have adduced evidences for this that are set out in the books of legal theory.

In this matter we only find a command to the forgetful and the sleeping person to pray, not to the one who deliberately left it.

As for fasting, there is a command to make it up for the sick, the traveler, and the pregnant and nursing, but there is no text obligating make-up for the deliberate breaker; and *“your Lord is never forgetful.”* [Maryam:64].

It may be that Allah Most High only mentioned the forgetful, the sleeping, the sick, the traveler, the pregnant and nursing women, the menstruant, and those with excuses because it is not conceived of nor expected from a Muslim that he leave an obligation except out of excuse or error/forgetfulness; as for leaving it deliberately in defiance of Allah, that is not among their attributes—it is among the attributes of the unbelievers and the openly disobedient. Allah says: *“And woe to the polytheists—those who do not give the zakah, and in the Hereafter they are disbelievers.”* [Fuṣṣilat:6–7].

And He says about the people of the Fire:

“What landed you in Saqar?” They will say: ‘We were not of those who prayed, nor did we feed the poor; we used to indulge with those who indulge, and we used to deny the Day of Recompense.’” [Al-Muddaththir:42–46].

From here, Allah mentioned the rulings of the believers, obligating them—when they miss something—to make it up, then He mentioned the rulings of the unbelievers and the openly disobedient, calling them to

repentance and urging them toward it: *“Say to those who disbelieve that if they cease, what has previously occurred will be forgiven for them ...”* [Al-Anfāl:38].

And in the ḥadīth: *“Repentance wipes out what came before it.”*

[A note on disagreement in the issue and when make-up falls]

A benefit;

In the marginal notes it is stated: If the disagreement lies in the act itself, that drops the obligation to make up the act after its time; but if the disagreement lies only in the obligation to make up, it does not drop it—like one who eats in the daytime of Ramadan forgetfully: they agree that eating is prohibited, and the disagreement is whether make-up is required or not.

[Expiation (Kaffārah) for Prayer]

Question: If a deceased person stipulated in a will twenty expiations for prayer, what is the amount of that expiation?

Answer—and Allah grants success: If the deceased did not specify the amount for each expiation or for the total, then the executor must pay what the people of that land customarily recognize as the amount for a “prayer expiation”—if such a custom exists. If there is no local custom, then the executor must follow what the scholars of the school have set: one-half of a ṣā‘ for each day and night; thus for twenty expiations the due amount is ten ṣā‘.

Yes: Prayer expiation is recommended (*mandūb*) in this school.¹ It is not obligatory upon the deceased to bequeath it. They reasoned that it never became attached to the estate during life—whereas the expiation for fasting does transfer to the estate in case of incapacity. According to Imām Zayd b. ‘Alī—*peace be upon him*—(as in the marginal notes), it is obligatory.

I say: The expiation for fasting is indicated in the Qur’an and Sunnah, unlike the expiation for prayer; perhaps the scholars of the school analogized prayer to fasting.

One may, however, infer a general basis for expiation of prayer from His saying: *“Indeed, good deeds do away with misdeeds.”* [Hūd:114].

Thus one may infer the recommendation of expiating by charity, but without specifying a fixed amount.

So, if a deceased person bequeaths an expiation for prayer (or more), the executor should set the amount by reference to the nearest recognized expiation in the law—namely, the fasting expiation—

1- *Sharḥ al-Azhār*, 1/342.

provided there is no local custom for “prayer expiation”; otherwise, the custom is followed as noted above.

Accordingly, if a deceased person bequeaths an expiation (kaffārah)—or more than one—for a sin he committed, it should be taken to mean the least expiation, namely the fasting expiation, which is a half-ṣāʿ, provided there is no contrary local custom, as stated earlier.

If, however, the deceased had a known personal custom regarding the amount of expiation, then it should be carried according to his custom. Thus, if he was accustomed in his lifetime to expiate with twenty ṣāʿs for neglecting prayer or for committing a sin, that custom must be followed in his case, and the executor must pay twenty ṣāʿs for each expiation.

Scholars of the school have mentioned something similar in oaths: they said that the interpretation of an oath is referred to the custom of the one swearing, and so on.

Yes: in this school, “the expiation for prayer” is not a true expiation, so it is permissible to give it to the Banū Hāshim, since it is not the discharge of a debt-like obligation attached to one’s liability; it therefore resembles other acts of pious charity. (End from the marginalia.)¹

[The ruling on Sunnah of Fajr after prayer]

Question: If a person misses the two rakʿahs of Fajr because the congregation has already begun, should he perform them after the Fajr prayer? And if he does, is that performance or make-up?

Answer—and Allah is the One who grants success and aid: The time for the two rakʿahs of Fajr is before the obligatory Fajr prayer; this is the time in which the Messenger of Allah—*May Allah bless him and his family and grant them peace*—used to pray them.

It is related from him that he (*May Allah bless him and his family and grant them peace*) said about them: “Slip them into the night, slipping.” In another narration: “*Pack them into the night, packing.*”

And in *al-Majmūʿ* from the Prophet—*May Allah bless him and his family and grant them peace*: “Do not leave the two rakʿahs of Fajr, for they are [what Allah meant by] ‘*and at the retreat of the stars*’ ”²—and thus Imām Zayd b. ʿAlī—*peace be upon them*—explained it in his Tafsīr. Therefore, the time of the two rakʿahs of Fajr is before the obligatory Fajr, not after it.

1- *Sharḥ al-Azhar*, 1/342.

2- *al-Majmūʿ*, p. 131 (Dār Maktabat al-Ḥayāh ed.). Its wording there: “Do not neglect two rakʿahs after the break of dawn before you pray the obligatory prayer, in travel or at home; for they are His saying, exalted is His Name ...,” etc.

Evidence that after the obligatory Fajr is not a time for the two rak‘ahs:

1. What is narrated in the *Majmū‘* of Imām Zayd b. ‘Alī—*peace be upon him*—from ‘Alī—*peace be upon him*—regarding disliking prayer after Fajr.¹
2. The report that a man prayed two rak‘ahs after the Fajr prayer, so the Prophet—*May Allah bless him and his family and grant them peace*—said to him: “What are these two rak‘ahs?” He replied: “O Messenger of Allah, the two rak‘ahs of Fajr passed me by ...” and so on. This narration indicates what we stated, for had that time been a time of performance, the Prophet—*May Allah bless him and his family and grant them peace*—would not have expressed disapproval.

Thus, whoever misses the two rak‘ahs of Fajr should delay making them up until after sunrise, due to the *Majmū‘* narration about the dislike of praying after Fajr and the Prophet’s—*May Allah bless him and his family and grant them peace*—disapproval in the other report.

Further supporting this is what is narrated from the Commander of the Faithful—*peace be upon him*—that he said to his orphaned children (*peace be upon them*), to the effect: “I do not forbid you from prayer and thereby be among those Allah, Most High, said, *‘Have you seen the one who forbids a servant when he prays?’* [al-‘Alaq:9-10]—but I dislike for you to contravene the Messenger of Allah.” *May Allah bless him and his family and grant them peace.*

[Meaning: he did not forbid prayer, but disliked opposing the Prophet’s practice.]

1- *al-Majmū‘*, p. 100.

Chapter: The Friday Prayer

[The ruling on Jumu‘ah in a time of “intermission” (*fatrah*)]

Question: What is the stronger view regarding the obligation of Jumu‘ah during a time of intermission?

Answer—and Allah is the Guardian who grants success: The stronger view is that of those who say it remains obligatory during such a period. It does not appear that an Imām (*ruler*) is a condition for its obligation, nor a purpose-built mosque, nor a town. What does appear is that only the following are conditions:

1. Congregation;
2. That those establishing it be believers.

If the one leading it is not righteous, or is a caller to innovation, or is partisan toward flagrant sinners, then it is not proper to attend it—indeed, it is not permissible to attend. This is what appears to me, and Allah knows best.

As for what is narrated: “*Four matters rest with the rulers: the Friday prayer, the zakāt ...*” and so forth—we accept its purport: when there is a ruler, it is incumbent upon him to establish Jumu‘ah for the people and to appoint those who conduct it. But if there is no ruler, then it is obligatory upon the believers to establish it, just as with zakāt: it pertains to the rulers, but if there are none, then those possessing wealth must pay it to those entitled to it.

- It is established in narration that Jumu‘ah is not obligatory upon the woman, the slave, the traveler, and the sick; this is established by sound transmission.

As for what is narrated from the Imāms of the Prophet’s Household—*peace be upon them*—regarding the Friday prayer: what appears is that by their saying “*it is not obligatory except with a rightful Imām,*” they intended to repel those who imagined it obligatory under tyrannical rulers.

To clarify, as appears to me: the circumstances under the Umayyads and the ‘Abbāsids were severe, with their complete domination of the scene; they were the ones who established the Friday congregations. The circumstances simply did not permit establishing a Jumu‘ah outside the control of the kings at all; it was inconceivable then to establish it except under a state that would protect it. In line with that, Ahl al-Bayt—*peace be upon them*—issued the fatwās they did regarding Jumu‘ah.

If they had had circumstances like ours today—full freedom to establish the Friday prayer without the state ordering, forbidding, or controlling it, but with complete control in the hands of those

establishing it—had they enjoyed that, they would have declared it obligatory and valid. This follows from the Almighty’s words: *“Those who, if We establish them in the land, establish the prayer...”* [al-Ḥajj:41], and: *“He will surely establish for them the religion He has approved for them”* [al-Nūr:55].

It is as though our Imams said what they said about Jumu‘ah because they believed that the ability to establish it could only exist under the aegis of an Imām-ruler, and they could not conceive of its being held outside such a state—an understanding that sprang from the long, successive eras they lived through in which rulers held complete sway over Muslim lands.

Accordingly, the ability to establish Jumu‘ah is a condition for its obligation: whenever that ability exists, establishing it is obligatory—whether that ability comes with an Imām or without one.

It has not become clear to me that an Imām is a condition for its validity, for the proofs for that are not clear. Ibn Ḥariwah—*may Allah have mercy on him*—argued for the school’s position by saying the Companions held the Friday prayer in which the Messenger of Allah (*may Allah bless him and his family and grant them peace*) died—on its fourth [Friday] [sic].

The reply: the Messenger of Allah—*may Allah bless him and his family and grant them peace*—was ill, and the authority to establish it belonged to him; he (*may Allah bless him and his family and grant them peace*) was the Jumu‘ah and congregational Imām in his mosque, and he did not command them to hold it. They were not permitted to establish it except with his leave.

- On this basis, the Friday prayer is like the other prayers except that it is distinguished by requiring congregation and two sermons—and what we have stated is preferable as a matter of precaution.

Allah, Exalted, gave Friday prayer special care and emphasized it with an additional command: *“O you who believe, when the call is proclaimed for prayer on Friday, hasten to the remembrance of Allah and leave off trade...”* [al-Jumu‘ah:9], and: *“Maintain with care the prayers and the middle prayer”* [al-Baqarah:238]. The middle prayer is the Friday prayer on Friday, and on the other days it is zuhr, according to the stronger report—related from al-Hādī, *peace be upon him*.

Yes: making an Imām-ruler a condition for Jumu‘ah is only in order to provide security for the worshippers, to guarantee freedom to speak the truth in the two sermons, and to select a qualified, sound person in religion and creed to lead it. These are indispensable; otherwise it does not become obligatory. Thus, security for worshippers, freedom to proclaim the truth, and the uprightness of the one establishing it in creed

and religion—all of that is a condition for its obligation. If all of that is available without an Imām, then it should not be left; indeed, it is impermissible to leave it—because in that case it is a pure benefit unmixed with harm.

- Leaving it, however, will lead to harms:

1. Slander from the enemies of the school—and even from some of its followers—who will seize on its abandonment to denounce the Zaydīs for not praying Jumu‘ah.
2. The school’s opponents will find an open opportunity to invite people to their Friday gatherings and to their falsehood.
3. A great emblem of Islam will be lost.
4. Friday is a venue to call people to the truth and its people, for admonition, guidance, encouragement and warning, and so on; if Jumu‘ah is not held, this great benefit is lost.

[A mistake by the Friday preacher]

Question: If the Friday preacher errs in his sermon—such as mentioning a report about people “coming out of the Fire”—and he does not yet know that this is false, because he was raised outside Yemen, then he returns to Yemen and adopts the school of Ahl al-Bayt (*peace be upon them*), believing they are upon the truth, that “there is nothing like unto Him,” and that Allah is innocent of His servants’ sins—in short, he follows Ahl al-Bayt (*peace be upon them*) and grounds his religion in them—does such a mistake invalidate the Friday prayer? Is it permissible to leave the Jumu‘ah and walk out of the mosque because of it? What is required?

Answer, and Allah grants success: When such a thing occurs, the preacher must be alerted to his mistake—if possible during the sermon without causing commotion and shouting, or between the two sermons. If the listener cannot do that, then immediately after the prayer and before the worshippers disperse, so they do not leave with a mistaken belief.

Yes, a mistake like this does not invalidate the sermon or the prayer, due to the Almighty’s words: *“There is no blame upon you for what you err in, but only for what your hearts intend”* [al-Aḥzāb:5], and: *“Allah would not misguide a people after He has guided them until He makes clear to them what they should avoid”* [al-Tawbah:115]. This preacher has not yet become clear that what he said is among the things to be avoided; he therefore cannot be judged astray.

Walking out of the mosque and abandoning the Friday prayer for this reason is not appropriate—except where one is unable to correct the wrong.

Here, the preacher’s error is of the sort that, were he to know it, he would not have said it; correcting such an error is feasible and the return to what is right is near at hand.

Indeed, I was asked this very question by a group of those worshippers on that Friday itself, in the presence of many in that mosque and of their preacher; many benefits in the fundamentals of religion—and clarification of their proofs—followed from ‘Aṣr until just before sunset. Many a harm turns out beneficial.

A note for the school regarding replying to salām

If someone greets (*says salām*) upon entering while the Imām is delivering the Friday sermon, it is forbidden for the congregation to reply—except the preacher, who must reply.¹

Likewise, it is forbidden to reply for one performing an obligatory prayer. As for one praying a supererogatory prayer, he must reply if he fears the opportunity will be lost in that same gathering. (End from *al-Bayān*.)

¹- Mentioned also in the marginalia to *Sharḥ al-Azhar*, 1/225.

Chapter: Prayer During Travel

[The superiority of combining the two prayers for the traveler]

Question: Is it better for a traveler to combine two prayers, or to perform each at its appointed time (without combining)?

Answer—and Allah is the granter of success: What is transmitted from the Prophet (*may Allah bless him and family and grant them peace*) regarding travel is combination (jam‘) in travel. The best guidance is the guidance of Muhammad (*may Allah bless him and family and grant them peace*), and the Exalted has said: *“Indeed, in the Messenger of Allah you have an excellent example for whoever hopes for Allah and the Last Day ...”* [al-Aḥzāb:21].

And in the report: *“Allah loves that His concessions (rukhaṣ) be taken just as He loves that His resolutions (‘azā’im) be observed.”* And in the ḥadīth: *“Pray as you have seen me pray.”*

This is what can be adduced to show that combining in travel is preferable to praying each at its set time.

Someone might say: combining in travel is a concession, whereas praying at the set times is a resolution—and a resolution is superior to a concession.

We reply: It is not far-fetched that the concession here be superior due to certain factors: the Prophet’s continuous practice, attaining emulation of him in the prayer of the traveler, and his saying: *“Pray as you have seen me pray.”*

There is another factor supporting what we have said: what is related from the Prophet (*may Allah bless him and family and grant them peace*) that *“Prayer is the best theme,”* and *“The best of your deeds is prayer.”* We saw him combine the prayers on the Day of ‘Arafah and on the Night of Muzdalifah—among the greatest nights and days and noblest places. His choosing to combine in those situations indicates that combining is superior in travel.

The “Abode of Residence” (*Dār al-Iqāmah*)

What is meant by *dār al-iqāmah* is the place to which a person relocates in order to reside for a fixed period not less than ten days, whether the overall stay ends up long or short.

The stronger view is that the ruling of residence is not cut off by traveling one barīd or more so long as the traveler intends to return there after his trip to complete his residence. On this basis, the *abode of residence* is like the home town (*dār al-waṭan*) in this ruling.

If a person has a job in a town at a distance permitting shortening (*masāfat qaṣr*) from his home, and he goes to his workplace intending to

stay there on workdays then return on Fridays to his homeland, family, and spend the night there every week—and his intention is formed on that basis—then he shortens throughout the year and is not deemed a resident; because the minimum for residence is ten days, and he did not intend a ten-day stay—rather, he intended to stay six days of each week.

[The difference between the Abode of Residence and the Home Town]

What appears to me—*Allah knows best*—is that the *abode of residence*, in ruling, is like the home town, and that the ruling of residence is not cut off except by leaving it with the intention of discontinuing residence there.

The proof is that shortening the prayer and the dispensation to break the fast in Ramaḍān are legislated for the traveler.

One who is living in a town with his family for a year—less or more—is not called a traveler, even if he goes out from it for certain needs a barīd or more and returns to it and to his family.

The difference between *dār al-waṭan* (home town) and *dār al-iqāmah* (abode of residence) is that the home town’s ruling remains even while residing elsewhere, whereas the abode of residence’s ruling does not remain when one departs from it to take up residence somewhere else.

The evidence: the home town continues to be called a man’s home town even if he moves away to reside elsewhere; unlike the abode of residence, which is not ascribed to the one who has left it to reside in another place.

[Ruling for one who makes an exception in his resolve to reside while traveling]

Question: If a traveler resolves to reside ten days in a place, but makes an exception in that resolve, saying: “Unless I get bored, or some need arises,” does he shorten or complete the prayers?

Answer—and Allah grants success: The scholars of the school have said—as in the marginalia to *Sharḥ al-Azhar*—that if a traveler resolves to stay ten days except if the caravan sets out, or the like, then that is not a firm resolve, so he shortens.¹

What the questioner mentions is close to this, but there is a difference between the two cases: the case cited by the school, as it appears to me, is based on the traveler’s resolve being dependent on someone else’s resolve—namely, the caravan—and whenever that is the case, his resolve carries no legal weight.

1- *Hāshiyat Sharḥ al-Azhar*, vol. 1, p. 363.

As for the case mentioned in the question, the traveler's resolve is not dependent on another's resolve; rather, it is his own resolve. On that basis, the closer view is that he should complete the prayers.

Notes on Qasr (*Shortened Prayer*)

1. If one intends to make a given town his homeland (waṭan) for one day every year, it becomes a waṭan for him. This is mentioned in *Ta'liq al-Ziyādāt* by the jurist Yūsuf. Concluded (قرئ) (*Taqrir*). End of the citation from the marginalia to *al-Bayān*.¹
2. Whoever intends to travel to a distant town and the villages along his route are contiguous, he shortens—according to the *Ḥudawīyyah*. End of the citation from *al-Bayān*.²
3. Distance is reckoned by the route. If to the town there are two routes—one a barīd and the other less than that—the traveler shortens if he takes the longer of the two. End of the citation from *al-Bayān* in brief.³
4. If a person intends to reside for a year in a town, but goes out each week to a town beyond a mile, he should shorten⁴, because he did not intend ten consecutive days of residence. End of the citation from *al-Bayān*.

It is also said: Rather, he completes, for he would not be called a traveler. The marginal note adds that this was strengthened by our master al-Mu'ayyad bi'llāh Muḥammad b. al-Qāsim, al-Mutawakkil 'alā Allāh, the shaykhs of Dhamār, Ibrāhīm Ḥathīth, our master 'Āmir, and al-Mu'ayyad bi'llāh Muḥammad b. al-Mutawakkil 'alā Allāh; and the same is in *Sharḥ al-Athmār*. End of the marginalia on *al-Bayān*.

[One who traveled and, out of forgetfulness, prayed in full (*tamām*)]

Question: A man traveled a distance at which prayer may be shortened, but he forgot and prayed in full, serving as imam. He then returned to his home and, after returning, remembered that he should have shortened. What is required of him?

Answer: What appears to me is that nothing is required of him and his

1- Also cited in the marginalia to *Sharḥ al-Azhār* 1/368.

2- Also cited in the marginalia to *Sharḥ* 1/362.

3- Ḥāshiyat *Sharḥ al-Azhār* 1/362.

4- See similar in *Sharḥ al-Azhār* 1/365.

prayer sufficed, because he did not remember until the time for shortening had effectively lapsed—his arrival home is tantamount to the expiration of the time. Matters of juristic dispute are not made up nor repeated once their time has passed.

Question: If a traveler led a four-rak‘ah prayer and forgot to shorten it, then remembered after the prayer while still on his journey, what is required of him?

Answer: He must repeat the prayer as shortened, and he need not inform the followers. Their ignorance is likely an excuse for them in following the imam in the last two rak‘ahs—just as the Prophet (*may Allah bless him and family and grant them peace*) did not command the followers to repeat when they followed him in a fifth rak‘ah which he (*may Allah bless him and family and grant them peace*) had added out of forgetfulness.

Chapter: The Two 'Īd Prayers

The 'Īd Prayer

In *Sharḥ al-Azhār*: “If someone who holds it to be sunna leads one who holds it to be obligatory, it is possible that it does not suffice him—like an obligor praying behind one performing a voluntary prayer.”¹ End.

I say: The preferable view is that it does suffice him, because it is one prayer with one intention—unlike an obligor praying behind a volunteer, for the obligor’s prayer is not the same as the volunteer’s prayer and their intentions differ.

The difference regarding the ruling of the 'Īd prayer is like the difference over reciting a sūrah after al-Fātiḥah, or over reciting al-Fātiḥah in every rak‘ah, or over the tasbīḥ.

[Note on the obligation of the two 'Īd prayers]

Al-Azhār says: “There is disagreement over the obligation of the two 'Īd prayers.” End. That is: scholars of the school differed—some said they are obligatory, others said they are not.

Points that may support non-obligation:

1. No adhān or iqāmah was legislated for them.
2. It is not narrated that the Prophet (*may Allah bless him and family and grant them peace*) prayed the 'Īd prayer the year of his Farewell Ḥajj, despite the narrators’ evident keenness in the ḥajj reports to transmit everything he (*may Allah bless him and family and grant them peace*) said and did in that pilgrimage.
3. The two sermons are delayed and recommended (*not required*).
4. The purport of the ḥadīth: “Five prayers Allah prescribed in the day and night.”

Yes, those who obligate adduce His saying, “*So pray to your Lord and sacrifice*” [al-Kawthar:2].

The reply: what is meant is devoting prayer and sacrificial offering to Allah in every setting.

[The schools on the ruling of the two 'Īd prayers]

There are three views:

1. **Individual obligation** (*farḍ 'ayn*) on men and women—reported from al-Qāsim, al-Hādī, and Abū al-‘Abbās.
2. **Collective obligation** (*farḍ kifāyah*)—from al-Qāsim and al-Hādī;

¹- *Sharḥ al-Azhār* 1/378.

favored by Abū Ṭālib; one of al-Shāfi‘ī’s two positions.

3. **Sunna**—held by al-Mu‘ayyad bi’llāh, Zayd b. ‘Alī, al-Nāṣir, Imām Yaḥyā, and a view of al-Shāfi‘ī favored by most of his companions. (End from *Ḍaw’ al-Nihār*.)

Those of the first view cite: *“So pray to your Lord and sacrifice”* [al-Kawthar:2], the report about the mounted group whom he ordered to go early to their prayer-ground, his constant performance of it—never once neglecting it—and his command that women, including young women and those in seclusion, go out to the prayer-ground, with menstruating women keeping apart from the place of prayer. (End from *al-Minḥah*.)

Al-Baḥr argues for obligation because it dispenses with Jumu‘ah; were it merely supererogatory, it would not do so.

I say: None of that establishes obligation. As for the verse, the meaning is devoting prayer and sacrifice to Allah Most High, not—as the idolaters do—sacrificing to idols and worshiping them. It is general for every prayer and every sacrifice.

As for the ḥadīths, such a great obligation is not established by reports like these. The best evidence here is the Prophet’s consistent practice, which does not prove obligation.

There are indicators for non-obligation:

1. No adhān was legislated for it, unlike Jumu‘ah and the other obligatory prayers.
2. Nothing in the Qur’ān indicates its obligation, unlike the other prescribed prayers.
3. The Prophet (*may Allah bless him and family and grant them peace*) did not perform it at Minā on the Day of Sacrifice.

If it be said: likewise he did not perform Jumu‘ah at ‘Arafāt.

We reply: true—he did not perform Jumu‘ah at ‘Arafāt, but he (*may Allah bless him and family and grant them peace*) did pray zuhr, which substitutes for Jumu‘ah.

Indicators that suggest obligation are:

1. The assembling for it.
2. The Prophet’s consistent practice of it.

[Section: Regular Sunnas and Other Supererogatories]

[The ruling on the two rak'ahs after Maghrib and the two of Fajr]

Question: It is authentically reported that the Prophet (*may Allah bless him and family and grant them peace*) said to 'Alī (*peace be upon him*): “The two rak'ahs after Maghrib—[do not omit them] in travel or at home ...,” etc. It is also authentic that the Prophet (*may Allah bless him and family and grant them peace*) did not pray the two rak'ahs after Maghrib at Muzdalifah, and did not pray the two rak'ahs after zuhr at 'Arafāt; and it is narrated that he (*may Allah bless him and family and grant them peace*) did not pray the two after Maghrib nor the two after zuhr when he combined prayers in Madīnah. How is this to be understood?

Answer (and Allah grants success): There is no doubt that the command regarding the two rak'ahs after Maghrib is for recommendation, and the prohibition against leaving them is for dislike—and likewise for the two of Fajr and the two after zuhr. The Prophet's leaving the two after Maghrib and after zuhr at 'Arafāt and Muzdalifah was to prevent people from imagining they are obligatory during ḥajj—especially in light of his words, “Take your rites from me.” Hence it is not narrated that he (*may Allah bless him and family and grant them peace*) prayed the night prayer (*nafl*) at Muzdalifah, nor the witr, in the descriptions of his ḥajj as in Jābir's long ḥadīth.

Accordingly, their omission at 'Arafāt and Muzdalifah is specific and outside the general purport of, “Do not leave them in travel or at home,” so there is no conflict between the general and the specific.

As for his leaving the two after zuhr and after Maghrib when he (*may Allah bless him and family and grant them peace*) combined in Madīnah, that may have been to show they are recommended (not required), distinguishing between what is obligatory and what is recommended.

For this same purpose he combined zuhr with 'aṣr and Maghrib with 'ishā'—to demonstrate that strict timing is not obligatory.

It may also be that his leaving the two after zuhr and after Maghrib was to indicate that they are not recommended when combining, which is why he did not pray them at 'Arafāt or Muzdalifah.

Some scholars of the school indeed said the two after zuhr and after Maghrib are not recommended for one who combines two prayers; hence *al-Azhār* states: “Supererogatory prayer between them is valid.”

Thus, the recommendation of the two rak'ahs after Maghrib and after zuhr applies to one who separates the two prayers in town or on a journey; as for one who combines them, they are not recommended for him—whether combining on a journey or at home.

Accordingly, the general statement “*Do not leave them in travel or at home*” is specified for the case of one who combines the two prayers, whether resident or traveling; thus there is no contradiction among the reports.

If someone says: the evidence for performing the two rak‘ahs is verbal, while the evidence for their omission is practical, and verbal proof is—without dispute—stronger than practical proof when they conflict.

We reply: One does not resort to weighing proofs except when they conflict in every respect. Here, the verbal proof is general, and the practical proof is specific; there is therefore no conflict, for we can act on the specific in what it covers, and on the general in what remains.

[Are the regular sunnahs (rawātib) recommended during travel and when combining prayers?]

Question: Are the regular sunnahs attached to the obligatory prayers recommended in travel and when two prayers are combined?

Answer: What is reported from the Prophet’s practice is that when he combined two prayers—whether in travel or at home—he did not perform supererogatory prayer between them.

There is also a report that the Prophet (*may Allah bless him and family and grant them peace*) urged performing the two rak‘ahs of Maghrib and of Fajr in both travel and residence.

Yes, the two reports can be reconciled by restricting the hadith by reference to his practice: the meaning would be, “Do not leave the two rak‘ahs of Maghrib in travel or at home unless you are combining.” And Allah knows best. On this basis, the regular sunnahs are recommended if the worshiper is not combining two prayers; if he is combining, then they are not recommended—whether the combining is in travel or at home.

As for the two rak‘ahs of Fajr being a sunnah in travel and residence—there is nothing opposing that, and the Messenger of Allah (*may Allah bless him and family and grant them peace*) prayed them on a journey the day he and the Muslims overslept Fajr and were not awakened except by the heat of the sun.

Likewise, the night prayer and witr: the Prophet (*may Allah bless him and family and grant them peace*) used to pray them while traveling on his mount, as is well known.

The real point of discussion is the two rak‘ahs after Ṣuḥr and after Maghrib.

[Supererogatory prayer after ‘Aṣr]

Question: If I have prayed ‘Aṣr in congregation and then someone who has not yet prayed ‘Aṣr comes and asks me to pray it with him, is it

disliked for me to pray with him because of the report that nafl after ‘Aṣr is disliked?

Answer (and Allah grants success): What appears to me—Allah knows best—is that “giving charity” by praying with one who missed ‘Aṣr is not disliked, on condition that this not occur at the time when the sun has yellowed and is nearing setting, due to the Prophet’s prohibition of prayer at that time.

[Sitting in one’s prayer place after Fajr]

Question: It is related from the Prophet (*may Allah bless him and his family and grant them peace*) regarding the virtue of remaining seated in one’s place of prayer after Fajr until sunrise that it is like a ḥajj, or like an ‘umrah, or like both ḥajj and ‘umrah. How do you explain that?

Answer (and Allah grants success): There is nothing far-fetched in that. In the hadith: “*Ḥajj is ‘Arafah, and ‘Umrah is circumambulation of the House.*” The exertion of remaining after Fajr resembles the exertion of standing at ‘Arafah; indeed, the effort and burden on the soul of sitting after Fajr until sunrise may be greater for a person than ṭawāf and sa’y.

Thus the meaning would be: the reward for sitting in one’s place of prayer equals and matches the standing at ‘Arafah and staying there, or equals ṭawāf and sa’y, or equals both.

This is the soundest way to understand it. It should not be taken to mean that the virtue of sitting equals the reward of an entire ḥajj with all its preliminaries—long travel, large expenditures, loading and unloading, fatigue, thirst, fear, hunger, leaving family, children, and homeland, exposure to heat and cold, and the like—and all that accompanies it. And in the report: “*The reward is commensurate with the hardship.*”

It should also be understood as referring to voluntary ḥajj, not the obligatory one, for in the report: “*Those who draw nearest to Allah have not drawn near by anything like performing what He has made obligatory upon them,*” or as he said.

[Note on supplication at Maghrib]

A marginal note states: “It is disliked to make supplication after Maghrib before its sunnah.” (Najrī) (فِر) (*Taqrir*), citing: “*Whoever prays two rak’ahs after Maghrib before speaking, they will be placed in the Highest Abodes (‘Ilīyyīn).*” End, *I’tiṣām*¹.

I say: The preferable view is to recommend dhikr after Maghrib as with the other prayers, due to the reports enjoining remembrance generally after every prayer and especially after Maghrib—and this is

1- *Sharḥ al-Azhār* 1/225.

the Muslims’ practice.

[Note on the best deeds]

In the marginalia on *Sharḥ al-Azhār*: “Supererogatory prayer is the best of the supererogatories, and its obligatory form is the best of the obligations after Islam, due to his saying (*may Allah bless him and family and grant them peace*): ‘*Know that the best of your deeds is prayer,*’ and *similar texts.*” End form the marginalia¹.

I say: There are deeds that can be better than that—namely striving in Allah’s path with wealth and selves, as in His saying, *‘O you who believe, shall I guide you to a trade that will save you from a painful punishment? Believe in Allah and His Messenger and strive in Allah’s path with your wealth and yourselves...’* [al-Ṣaff:10].

Likewise, the Imām al-Hādī Yaḥyā b. al-Ḥusayn (*peace be upon him*) said so in *al-Aḥkām*, expanding on this topic, and the Exalted said: *‘Allah has given the strivers precedence over those who sit by a tremendous degree’* [al-Nisā’].

There are also deeds for which the Prophet (*may Allah bless him and family and grant them peace*) extolled such merit that they point to being better than nafl prayers, among them:

his saying, “A Muslim man reaches, by good character, the rank of one who fasts by day and stands by night”; and his saying: “Fulfilling a Muslim’s need is better with Allah than fasting a month and spending it in retreat.” And in the report: “The reward is according to the hardship.” The hardship of fasting and ḥajj is greater than that of supererogatory prayers, and spending wealth on oneself is harder than nafl prayer—generally speaking.

We can also say: the obligatory prayer is better than jihād in the sense that during the time the obligatory prayer occupies, praying it is better than being engaged in fighting—hence His saying, *‘Maintain the prayers and the middle prayer, and stand before Allah devoutly. And if you fear, then [pray] on foot or mounted’* [al-Baqarah:238].

Allah commanded the establishment of prayer even in battle and legislated the Prayer of Fear, not permitting them to abandon prayer even in the tightest moments.

Or the meaning of “prayer is better than jihād” is that prayer takes precedence over standing in the battle lines, as in the Prayer of Fear.

This may also be what is meant by the superiority of prayer over the other obligations: it is repeated five times each day and night for the

1- *Sharḥ al-Azhār* 1/393.

span of a lifetime, unlike fasting, ḥajj, zakāt, and jihād—fasting recurs only once a year, ḥajj once or twice or three times in a lifetime, and jihād and expedition may occur only once or twice in a person's life, or perhaps not at all; and if it does occur, one may be exposed to tribulation therein, as actually happened to the Companions of the Prophet (*may Allah bless him and family and grant them peace*) on the days of Badr and Hunayn. On this understanding, prayer is therefore superior.

Accordingly, a year's worth of prayer is better than fasting a month; and a person's prayer over the span of his accountable life is better than a single ḥajj and also better than one or two expeditions in a lifetime—because the good deeds accrued by prayer are continuous throughout life, unlike the others.

On this basis, we can also say regarding voluntary prayers: the supererogatory prayers that continue over one's lifetime are better than a voluntary ḥajj and better than the reported supererogatory fasts, since the reward of those other acts is discontinuous whereas the reward of nafl prayers continues.

Moreover, there is an inquiry here: the obligations, the supererogatories, and everything by which one draws near to Allah—such as avoiding sins, patience, good character, and so on—each class of act has its own class of reward, and so on. The reward for prayer is one kind, and the reward for fasting is another kind, different from the reward for prayer.

Likewise, zakāt and voluntary charity have a reward of yet another kind; and the same holds for all acts of devotion—each class opens a door and a path to stations and degrees that cannot be reached except through that door and by that path.

The reward, stations, and degrees of the charitable cannot be attained by fasting and its supererogatories, nor by prayer and its supererogatories, no matter how strenuously one exerts oneself in them. Likewise with punishments for sins: every class of sin has its own kind of torment.

Yes, this inquiry can be supported by the following:

1. His saying, regarding one who fails to discharge Allah's due in gold and silver: *"On the Day when it will be heated in the Fire of Hell and their foreheads, sides, and backs will be branded with it: 'This is what you hoarded for yourselves, so taste what you used to hoard'"* [al-Tawbah:35].
2. His saying: *"Whoever is blind in this [life] will be blind in the Hereafter and farthest astray from the path"* [al-Isrā':72].
3. His saying regarding the martyrs: *"Do not think of those who are*

killed in Allah's path as dead; rather, they are alive with their Lord, provided for, rejoicing in what Allah has given them of His bounty, and they rejoice for those who have not yet joined them from behind them, that there shall be no fear upon them, nor shall they grieve" [Āl ‘Imrān:169].

And in the hadith: *"Be dutiful to your fathers and your children will be dutiful to you; and be chaste regarding other people's women and your women will be chaste."* And it is related: *"Whoever unsheathes the sword of aggression will be killed by it."*

4. What has come concerning Ja'far ibn Abī Ṭālib—*may Allah be pleased with him*—namely: *"two wings with which he flies in Paradise wherever he wishes"*; this was granted to him when he was killed at the Battle of Mu'tah after both his hands were cut off.
5. The hadith reported from the Prophet (*may Allah bless him and family and grant them peace*): *"Whoever feeds a hungry person, Allah will feed him; whoever clothes a naked person, Allah will clothe him on the Day of Resurrection; and whoever gives drink to a thirsty person, Allah will give him drink on the Day of Resurrection,"* or as he said.

And in the hadith: *"Whoever sends one blessing upon me, Allah sends ten blessings upon him."*

6. And in a hadith: *"Fasting is a shield from the Fire, and charity extinguishes the Lord's anger."*
7. And in a hadith with this meaning: *"In Paradise there is a gate called al-Rayyan; none will enter it but those who fast."*
8. And in the report: *"The recompense matches the deed."*

There are countless hadiths from the Prophet (*may Allah bless him and family and grant them peace*) in this chapter; we have only cited what was readily at hand to point beyond it and to remind of what lies besides it.

A close reader of the verses on reward and punishment may find indications of what we have mentioned, such as His saying: *"Give glad tidings to the patient—those who, when calamity strikes them, say, 'Truly we belong to Allah and to Him we return.' They are the ones upon whom are blessings from their Lord and mercy, and they are the guided"* [al-Baqarah]; and His saying: *"So remember Me; I will remember you"* [al-Baqarah:152]; and His saying: *"If you are grateful, I will surely increase you; but if you are ungrateful, My punishment is indeed severe"* [Ibrāhīm:7]; and His saying: *"They forgot Allah, so He forgot them"* [al-Tawbah:67]; and His saying: *"They forgot Allah, so He made them forget themselves"* [al-Ḥashr 19]; and His saying about Joseph (*peace be upon him*): *"When he reached*

maturity, *We granted him judgment and knowledge; thus do We recompense the doers of good*” [Yūsuf]. The Qur’an contains much that points to what we have mentioned.

If it is said: What you have said seems to be challenged by His statement, *“Allah has given the strivers precedence over those who sit by a tremendous reward—degrees from Him, and forgiveness and mercy ...”* [al-Nisā’].

We reply: Allah preferred the strivers over those who sit by that preference and those degrees because they combined prayer and jihād, whereas the one who sits has only the merit of prayer and its degrees.

[Benefit concerning the last Friday of Ramadan (“the Friday of restitution”)]

In the margin of the glosses on *Sharḥ al-Azhār* is the following: “Benefit regarding the hadith by the Prophet (*may Allah bless him and his family and grant them peace*): ‘Whoever makes up five missed prayers on the last Friday of Ramadan, it will compensate for every prayer missed in his life up to seventy years, and for whatever was deficient in his prayers due to misgivings, purification, forgetfulness,’” end quote.

And in the handwriting of the jurist, ḥadīth scholar, and ḥāfiẓ Ibrāhīm b. ‘Umar al-‘Alawī (*may Allah have mercy on him*): it is reported that he said, “Whoever prays five of the obligatory prayers on the last Friday of Ramadan, they will be a compensation for every prayer he has missed in his life up to seventy years, and for whatever deficiency has afflicted his prayer due to misgivings or otherwise from lack of care in purification and the like,” end quote from *Iḍāḥ*. That is the end of what is in the margin¹.

I say: These five prayers have become widespread among the common folk in our lands; they call the last Friday of Ramadan “the Friday of restitution.” It is not clear to me whence this hadith cited in the margin of the commentary was taken; it is not found in the well-known ḥadīth books among the Zaydis such as *al-Shifā’*, *Uṣūl al-Aḥkām*, *Sharḥ al-Tajrīd*, *al-Majmū’*, the *Amālī*, and others. Nor have we seen the scholars pay attention to it or mention it—an indication that the hadith has no basis.

[The Prophet’s Supererogatory Prayer of Eight Rak‘ahs]

It is related—as in Sunan Abī Dāwūd from ‘Ā’ishah—that the Prophet (*may Allah bless him and family and grant them peace*) would pray eight rak‘ahs without sitting until the last of them.

Abū Dāwūd narrated it through several chains from ‘Ā’ishah.

He also narrated other descriptions of the night prayer.

1- *Sharḥ al-Azhār* 1/342.

And he narrated: “The night prayer is two by two.”

[Praying One Thousand Rak’ahs in a Single Night]

Question: What do you say about what is reported of some righteous people—that they might pray one thousand rak’ahs in a single night?

Answer (and Allah grants success): This has been reported through solitary (āḥād) chains, and there is no obligation upon us that hinges on whether it is sound or not. There is no impediment to it: a long winter night could accommodate that amount if one enters with the opening takbīr and does not give salām until the end, abbreviating the recitation and the glorifications. On that basis, each minute would hold a rak’ah or part of one—especially with Allah’s blessing upon some of His righteous friends.

Still, the report may contain error, or it may be hyperbolic; the Arabs, when intending to exaggerate a great number, would express that multitude with “a thousand,” intending mere abundance rather than a precise count.

Yes, what has been narrated about Zayn al-‘Ābidīn (*peace be upon him*) in *al-Majmū‘* is that he might pray a thousand rak’ahs over the course of a day and a night.

This could be because supererogatory prayers are lightened: they are valid from a sitting position, by gesture (imā’) for bowing and prostration, and with shortened glorifications and recitation.

[The Ruling on Supererogatory Prayer in a Car]

Question: May a driver—and likewise a passenger—perform nafl prayers in a car, gesturing for bowing and prostration?

Answer: Yes. By analogy with one riding a mount: he says the takbīr, recites, and gestures for bowing and prostration; facing the qiblah is not required here.

[Some Rulings on Reciting the Qur’an and Remembering Allah Most High]

Question: Does a person sin by not reading the Qur’an, though able to read it—or by reading it only in the month of Ramadan?

Answer: A Muslim does not sin merely by leaving off study of the Noble Qur’an, and nothing of its recitation is obligatory upon him except what he recites in his prayer. What is obligatory for Muslim is to act by the rulings of the Qur’an.

The threats reported regarding abandoning or “forsaking” the Qur’an refer to forsaking its rulings and leaving off guidance by its teachings.

Question: Is one rewarded who “reads” the Qur’an in his heart without his tongue, or who remembers Allah Most High inwardly

without voicing it—i.e., running the words of the Qur'an or of dhikr across his heart without moving his tongue?

Answer: What appears to me is that he is rewarded, for the essence of remembrance is the remembrance of the heart, and the tongue is its interpreter. In the hadith: "*Taqwā is here,*" and he pointed to his heart". And the Exalted said: "*Say: Whether you conceal what is in your breasts or disclose it, Allah knows it*" [Āl 'Imrān:29], and: "*Whether you reveal what is within yourselves or conceal it, Allah will call you to account for it; He forgives whom He wills and punishes whom He wills; and Allah is powerful over all things*" [al-Baqarah:284]. And in the hadith, he (may Allah bless him and family and grant them peace) said to the one who praised Allah after sneezing in prayer: "*Praise Allah within yourself ...*"

However, Remembrance of Allah and recitation merely in the heart do not suffice *within prayer*, due to the proof indicating that (i.e., articulation is required there).

Question: What is the best form of *dhikr*?

Answer: The best and most beloved remembrance to Allah Most High is the remembrance He legislated within the prayer—which is the best of acts of worship before Allah—namely: the takbīr, the recitation of the Opening of the Book (*al-Fātiḥah*), recitation of other Qur'an, the tasbīḥ and taḥmīd, the testimony that there is no Allah but Allah and that Muḥammad is the Messenger of Allah (may Allah bless him and family and grant them peace), and sending blessings upon the Prophet and his Family—Allah's prayers and peace be upon him and them.

Question: What is the best supplication (du'ā')?

Answer: The best supplication is the supplication found in the Opening of the Book: "*Guide us to the Straight Path—the path of those upon whom You have bestowed favor, not of those who incur wrath nor of those who go astray,*" because Allah Most High has made it obligatory to invoke with it in every prayer, and He has not made any other supplication obligatory upon those legally responsible within the prayer. Undoubtedly, what is obligatory in supplication is superior to what is merely recommended.

If it is said: It has been narrated that seeking forgiveness (*istighfār*) is the best supplication.

We reply: Yes, seeking forgiveness is the best supplication except for the supplication we mentioned in *al-Fātiḥah*.

[Chapter on Issues That Follow the Prayer]

[A Benefit Concerning Commanding One’s Parents and Wife to Pray]

What is obligatory is to command one’s parents to perform the prayer, and likewise to command one’s wife to perform the prayer. All of this is because of the saying of the Exalted: *“And enjoin prayer upon your family and be steadfast therein.”* [Tā Hā:132], and His saying: *“O you who have believed, protect yourselves and your families from a Fire ...”* [al-Taḥrīm:6], and the like.

All of that applies so long as commanding them does not lead to undutifulness toward one’s parents or to a wife’s rebellion. If it leads to that, then commanding the parents or the wife is not obligatory. This is the school’s position, as in the marginalia to *Sharḥ al-Azhar*¹. They adduce as evidence that in such a case the command becomes a cause of an evil—namely, undutifulness and a wife’s rebellion.

I say: There is no good in a woman who does not pray. As for the parents, the child must be gentle with them in giving advice—just as Abraham, *peace be upon him*, did with his father—and must not be harsh on his father, but rather choose times of his ease; likewise a husband with his wife. Indeed, this is incumbent in dealing with all people, for gentleness and soft speech are closer to gaining acceptance. And Allah knows best.

[What Is Required of a Woman Whose Husband Does Not Pray and Denies Paradise and Hell]

Question: A woman said: her husband does not pray and denies Paradise and Hell, and he does not spend on her or on their children. What is required of her in this situation?

Answer—and Allah is the One who grants success: It is incumbent upon this woman to keep away from this man and to withhold herself from him, due to his explicit disbelief. Allah, Exalted is He, said: *“Do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them.”* [al-Mumtaḥanah:10] She should call her husband to repent, to abandon disbelief, and to establish the prayer. If he refuses to return and repent, she should bring two just witnesses to that effect and then take the matter to the judge so that he may annul the marriage. If the judge annuls it, the woman observes the waiting period (‘iddah). When her waiting period ends, it is permissible for her to marry. If he repents while she is still in her waiting period, then she

1- *Sharḥ al-Azhar*, vol. 1, p. 170.

remains his wife.

Yes, as we stated earlier, she must refrain from marital relations with him even if the judge has not yet annulled [the marriage], due to the verse cited above.

Furthermore, this person's repentance from his disbelief is not complete except by establishing the prayer, as Allah, Exalted is He, said concerning the polytheists: *"But if they repent, establish prayer, and give zakah, then they are your brothers in religion."* [al-Tawbah:11].

This ruling applies if she is able to do what we mentioned—keeping away from him and taking the case to the judge. If she is not able due to fear of the husband or the family, or due to weakness or incapacity—then there is no blame and no sin upon her, for *"Allah does not charge a soul except [with that within] its capacity."* [al-Baqarah:286].

[Living Together with One Who Abandons the Prayer]

Question: A man has a brother who does not pray. Is it permissible for him to live with him in one house, sit with him, and eat with him, or not?

Answer—and Allah is the One who grants success: Keeping a distance from one who abandons the prayer is better and more fitting, due to Allah's saying: *"The believing men and believing women are allies of one another."* [al-Tawbah:71] and *"The hypocrite men and hypocrite women are of one another."* [al-Tawbah:67]—and due to what has come in the Sunnah and in the words of the Commander of the Faithful, *peace be upon him*, and others, warning against befriending the openly sinful, the evil companion, and the hypocrite, and encouraging sitting with and befriending the righteous.

Poets have spoken about this; among what has been said:

*Do not ask about a man; ask about his companion
for every companion follows the way of his mate.*

That said, a person may be tested with an evil companion or a sinful neighbor, and so on. In such a case, he is not obliged to rid himself of that companionship or proximity if that cannot be achieved except by leaving the house or by something unduly burdensome. There is no harm in showing him kindness and accompanying him in what is right, for Allah, Exalted is He, has commanded kindness toward relatives and neighbors.

[The Ruling on Alerting Those Asleep for the Prayer]

Question: If a Muslim wakes up at dawn, for example, is he required to alert those asleep for the prayer? And if he leaves them sleeping until the sun rises, does he incur sin?

Answer: One who is awake is not obligated to alert those asleep to perform (*for example*) the Fajr prayer, and he does not incur sin if he

leaves them asleep until the sun rises. However, he has left what is virtuous and recommended, and he has missed out on much good.

The proof that alerting the sleeper for prayer is not obligatory is what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): *“The pen is lifted from three: from the child until he reaches puberty; from the insane person until he regains his reason; and from the sleeper until he awakes,”* or as he said. Thus, prayer is not obligatory upon the sleeper while he is asleep; and if it is not obligatory upon him, then commanding him to it is not obligatory.

As for it being recommended to awaken the sleeper for prayer: it is due to what is narrated of the Prophet’s (*May Allah bless him and his family and grant them peace*) practice—namely, that on the night when he and his companions slept in the valley, he appointed someone to keep watch and wake them for Fajr; the watchman fell asleep, and the Prophet (*May Allah bless him and his family and grant them peace*) and his companions were not awakened except by the heat of the sun.

And due to what is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) used to pass by the door of ‘Alī and Fāṭimah, *peace be upon them both*, and awaken them for the dawn prayer, saying: *“Prayer, O People of the House—‘Indeed, Allah intends only to remove from you the impurity [of sin], O People of the [Prophet’s] Household, and to purify you with [extensive] purification.’”* [al-Aḥzāb:33].

And due to what is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) used to say: *“So-and-so gives the call to prayer at night ... to awaken your sleepers and to have those standing (in night prayer) return [to rest],”* or as he said.

And because of His saying, *Exalted is He: “And cooperate in righteousness and piety, but do not cooperate in sin and aggression.”* [al-Mā’idah:2]

Question: We often hear a hadith attributed to the Prophet (*May Allah bless him and his family and grant them peace*) that says: *“Whoever awakens a sleeper, it is as if he killed him,”* or: *“Whoever startles a sleeper, it is as if he killed him.”* Is this hadith authentic or not?

Answer—and Allah is the One who grants success: Harming a believer is a major sin, as evidenced by His saying, *Exalted is He: “And those who harm believing men and believing women for [something] other than what they have earned have certainly borne upon themselves a slander and manifest sin.”* [al-Aḥzāb:58] Whether that specific hadith is authentic or not, it is not permissible to harm or frighten a believer—whether he is asleep or awake—except for awakening the sleeper for the prayer, for the Lawgiver has permitted awakening him for it; indeed, it is

recommended to awaken him for the prayer, even if he feels some annoyance at being awakened, as has preceded in the answer to the previous question.

A Benefit on Awakening the Sleeper and on an Imam Informing the Congregants of Impurity on His Garment

The school's position is that it is not obligatory to awaken a sleeper even when one fears that he will miss the prayer. This is stated in the marginalia to *al-Bayān*. And based on that, it is branched out, they further ruled that it is not obligatory for the imam to inform the congregants that there is an impurity on his garment—whether they have dispersed or not—since there is no obligation upon them in the absence of their knowledge of it. This is the end of the marginal note in meaning, and he counted this as the position of the school. At the end of the marginal note it says: “In the handwriting of our teacher, the erudite scholar al-Ḥasan b. Aḥmad al-Shibībī—*may Allah have mercy on him*.”¹

A Benefit on the Types of Sleep

In the marginalia to *Sharḥ al-Azhār* there is a benefit: The jurist Yūsuf said: “Sleep is of six kinds: the sleep of heedlessness, the sleep of wretchedness, the sleep of curse, the sleep of punishment, the sleep of license, and the sleep of rest.

The sleep of heedlessness is in a gathering of remembrance (of Allah); the sleep of wretchedness is at the time of the prayer; the sleep of curse is at the time of the dawn prayer; the sleep of punishment is after the dawn prayer; the sleep of license is after the night prayer; and the sleep of rest is before zenith (*zuwwāl*). He (*may Allah bless him and family and grant them peace*) said: ‘*The midday nap (qaylūlah) begets [wealth], and sleep after the dawn prayer begets poverty.*’” End.²

Also in *al sharḥ*: A benefit—Abū al-‘Abbās said: “According to the Imams of the Family (Āl al-Bayt), it is disliked to sleep after the dawn prayer until sunrise, and after the afternoon prayer until sunset.”

In *al-Intiṣār*: The Prophet (*may Allah bless him and family and grant them peace*) disliked sleeping before the night prayer (*‘Ishā’*) and talking after it—except in good.

And in the marginal note to his statement (*may Allah bless him and family and grant them peace*): “(No) late-night conversation (*samar*) except in three cases: a seeker of knowledge, entertaining a guest or a

1- Also mentioned in the marginalia to *Sharḥ al-Azhār*, 1/188.

2- *Sharḥ al-Azhār*, 1/398.

bride, or a traveler.”¹ He singled out the traveler as a concession to him.

It is related from the Prophet (*May Allah bless him and his family and grant them peace*) that he passed by Fāṭimah while she was sleeping after dawn, so he nudged her with his foot and said: “*Rise and witness the provision of your Lord, and do not be among the heedless; indeed Allah apportioned the provision of the servants from daybreak until sunrise.*”

It was said: From this is taken the permissibility of awakening a sleeper for non-obligatory benefits; as for obligatory matters—like fear that he will miss the prayer—al-Manṣūr bi’llāh said; it is obligatory, and to this al-Mu’ayyad bi’llāh alluded. I say: regarding awakening the sleeper for the prayer, there is a fine point—unless a text or consensus establishes it—because the sleeper, while asleep, is not legally charged with the prayer. This concludes the excerpt from the marginalia to *Sharḥ al-Azhār*.²

I say: As for its being legislated, it is indicated by the practice of the Prophet (*May Allah bless him and his family and grant them peace*): he would stand at the door of Fāṭimah and ‘Alī, knock on their door and say, “Prayer, O People of the House—*‘Indeed, Allah intends only to remove from you the impurity [of sin], O People of the [Prophet’s] Household, and to purify you with [extensive] purification.*” [al-Aḥzāb:33] And in another ḥadīth: “*Indeed Bilāl gives the call [to prayer] at night to awaken your sleepers and to have your ones standing [in night prayer] return [to rest]; so eat and drink until Ibn Umm Maktūm gives the call,*” or as he said.

[If the Worshipper Finds No Place to Pray Except a Grave]

If the worshipper finds no place except a grave, his prayer is valid upon it, and it is to be performed by gesturing while seated, resting on his feet (i.e., kneeling). Thus have the scholars of the school stated, as in the marginalia to *Sharḥ al-Azhār*.³

[The Ruling on Prayer and Fasting in Lands Where the Night Becomes Extremely Short]

Question: In the northern regions of the globe, the night may become so short that the sun sets and Maghrib enters, then the sun rises before ‘*Ishā*’ enters and before the red twilight disappears. In that case, does the ‘*Ishā*’ prayer fall away because its time—which is the cause of its obligation—never enters? If it does not fall away, what should a Muslim do? And what should one do about the Fajr prayer? And if the month of

1- *Sharḥ al-Azhār*, 1/398–399.

2- *Sharḥ al-Azhār*, 1/398.

3- Marginalia to *Sharḥ al-Azhār*, vol. 1, p. 183.

Ramaḍān begins while the times are like that, how should a Muslim fast?

Answer: The ‘*Ishā*’ prayer does not fall away in such a circumstance. What is obligatory upon the Muslim in that case is to perform Maghrib after sunset, then perform ‘*Ishā*’ immediately thereafter, then perform Fajr before sunrise; and he performs Ṣuḥr in its time and likewise ‘Aṣr. This is due to His saying, *Exalted is He*: “*Maintain with care the [obligatory] prayers ...*” [al-Baqarah:238], and other verses.

And in the Sunnah: “*Five prayers Allah has prescribed in the day and the night.*” There is no disagreement about this among the Muslims. What we have mentioned concerning the detailing of the times of Maghrib, ‘*Ishā*’, and Fajr is the utmost that the legally responsible person can manage, and He, *Exalted is He*, has said: “*So fear Allah as much as you are able.*” [at-Taghābun:16].

Based on that, a portion from the *beginning* of the time is designated for Maghrib and ‘*Ishā*’ sufficient for both of them; and a portion from the *end* of the time is designated for Fajr sufficient for it; and whatever remains is a time shared between the three prayers.

This applies when the light of the sun at its setting and at its rising is not distinct. But if the observer can distinguish the sun’s light at sunset and sunrise—such that its light weakens little by little at sunset and then increases little by little—then the time for Fajr is designated from the start of that increase until sunrise, and what precedes that is designated for Maghrib and ‘*Ishā*’.

As for fasting: the fasting person must fast from Fajr until sunset. If he cannot do so because of the length of the day, he breaks his fast and then makes up what he broke at another time when he can fast. It is not permissible for him to break the fast merely due to hardship; rather, it is not permissible for him to break it except if fasting leads to health harm.

All that we have mentioned is the better and more precautionary course.

It may also be said: The night of that land is to be estimated by the night of the nearest land to it; so Maghrib is prayed at sunset, ‘*Ishā*’ is prayed at the (estimated) disappearance of the red twilight, and Fajr is prayed at the (estimated) appearance of the widespread dawn—by estimation.

This view has a supporting preference in that it allows the fasting person to take the night-meal (‘*ishā*’), the pre-dawn meal (ṣuḥr), engage in marital relations, and pray the night supererogatories, while still being able to fast.

This view is further supported by what is related that the Prophet (*May Allah bless him and his family and grant them peace*) ordered the

woman with continuous non-menstrual bleeding (*mustahāḍah*)—whose number of menstrual days had become confused for her—to menstruate as women menstruate; that is, he (*May Allah bless him and his family and grant them peace*) referred her, in determining the number of her days, to the norm of other women when it was impossible for her to act by her own habit.

If it be said: Allah, Exalted is He, commanded that Fajr be prayed before sunrise, whereas in what you have mentioned it would be after sunrise; and the fasting person would not be fasting the entire day?

We say: The times we have mentioned for Fajr and for fasting are times whose consideration is called for by necessity—and there are parallels to this in the Law:

Among them: Fajr is prayed in the daytime, as performance (*adā’*), due to the excuse of sleep or forgetfulness, as in the ḥadīth: “Whoever sleeps through his prayer or forgets it, then its time is when he remembers it.”

Among them: what the scholars have established—that if the pilgrim stands at ‘Arafah on the tenth day by mistake, after due diligence, his standing is valid and his ḥajj is valid; likewise his overnight stay at Muzdalifah and his stoning of the pillars—all of that is valid and counted as in its time for that pilgrim.

Close to this is what Allah permitted to the sick and the traveler of breaking the fast in Ramaḍān, then making it up at another time; and the like of that is many.

In all of this is evidence that an act fixed to a specific time can have another time in which it is performed in cases of necessity—either as performance (*adā’*), as with the prayer of the sleeper and the forgetful and the pilgrim’s standing on the tenth at ‘Arafah; or as make-up (*qaḍā’*), as with making up the days of Ramaḍān. This is, in general, proof for what we have stated.

Furthermore, if there is a place where the sun does not set, the night and day are to be estimated there by the nearest land to it that has both night and day, as we have mentioned.

And if there is a place where the sun does not rise, the night and day are to be estimated there by the nearest land to it that has both night and day; and the times of the prayers and fasting are determined accordingly.

We have said that the times are to be determined according to the times of the *nearest* land rather than the times of all lands, because the nearer land has greater specificity due to its nearness; and the Law has considered nearness in its rulings.

Among them: when the *mustahāḍah* is confused about the number of her days, she refers in that to her female relatives on her father’s side.

Thus have the scholars established it in the books of jurisprudence.

[A Response to One Who Says That by Establishing a Single Prayer He Has Fulfilled the Qur'an]

Question: How do we answer someone who says: "Allah, Exalted is He, only commanded those legally responsible to establish *the* prayer without specifying five prayers; thus it suffices for the legally responsible person to perform one prayer in the day and night, and thereby he would be complying with the commands of the Qur'an and fulfilling what the All-Merciful has made obligatory"?

Answer—and Allah is the One who grants success: The Qur'an; the five prayers in their set times; the prescribed amounts of zakāh on each type of wealth; ḥajj in its time; and matters like these—all of it has been transmitted among Muslims, generation after generation, with unanimous agreement upon it.

Those who transmitted to us that the prayers are five are the very ones who transmitted to us that the Qur'an is from the Prophet of Allah (*May Allah bless him and his family and grant them peace*) and that it is the Speech of Allah, and so on. If doubt is allowed to creep in concerning the five prayers, it would likewise creep into the Qur'an.

Ruling for One Who Prayed Zuhr and 'Aṣr and Then Traveled by Plane

Question: A man prayed zuhr and 'aṣr in Indonesia during Ramaḍān while fasting, then traveled by plane to Ṣan'ā'. He arrived in Ṣan'ā' after the sun's zenith—at the time of zuhr—still fasting. He looked at his watch and found that it was Maghrib time in Indonesia, i.e., the time to break the fast there. Will his fast be complete if he breaks his fast in Ṣan'ā' at that time? And must he repeat zuhr and 'aṣr in Ṣan'ā'?

Answer—and Allah is the Guardian of success:

As for the prayers: if he reached Ṣan'ā' after the entry of the time for zuhr and 'aṣr, and he had already prayed zuhr and 'aṣr in Indonesia, he is not required to pray them again. But if he reached Ṣan'ā' before the entry of zuhr and then zuhr entered after his arrival, the obligation of zuhr and 'aṣr is renewed for him upon the sun's passing the meridian. It is as if the zenith that occurred in Ṣan'ā' were the zenith of another day, different from the zenith that occurred in Indonesia. This is preferable in my view.

As for fasting: while he is in Ṣan'ā', it does not suffice for him to base his breaking of the fast on Indonesia's sunset.

Yes: if Maghrib entered in Indonesia and the fasting person there broke his fast, and then the plane took off for Ṣan'ā' and arrived before sunset there, his fast for that day nonetheless suffices. And in the reverse case—if the plane departed from Ṣan'ā' at dawn to Indonesia and arrived

there at sunset—the passengers break their fast when the sun sets, even if they have fasted only six hours, for they have fasted from dawn until night.

Likewise, if the plane left Indonesia before sunset bound for Ṣan‘ā’ and the sun did not set from the passengers’ view throughout the six-hour flight and they arrived in Ṣan‘ā’ before sunset—then whoever intends to fast must not break his fast until the sun sets in Ṣan‘ā’. When it sets, he breaks his fast; and Maghrib and ‘Ishā’ are not obligatory upon him until the sun sets in Ṣan‘ā’.

The Book of Funerals and What Pertains to It

[When Is a Sick Person Obligated to Seek Treatment?]¹

Question: Is a sick person obligated to seek medical treatment?

Answer:

- If the sick person knows—by common experience, or because a physician has informed him—that his illness ordinarily leads to death, and he also knows—by common experience or the physician’s word—that treatment for that illness ordinarily results in recovery, then seeking treatment is obligatory. The proof is the rationally established principle that warding off harm from oneself is obligatory.
- If the sick person knows—by common experience or the physician’s word—that treatment for that illness does not ordinarily help (as with some cancers and some heart diseases), then treatment is not obligatory.
- If the sick person knows that treatment will not benefit due to extreme old age, treatment is not obligatory; here the consideration is the patient’s own preponderant judgment.
- If the patient does not fear the illness—because it is known by custom that such an illness is not life-threatening, or because a physician has indicated as much—then treatment is not obligatory.
- The guardian of a minor is obligated to obtain treatment for him when needed; likewise, a husband is obligated to obtain treatment for his wife when she needs it.

A Benefit: What to Prompt the Dying Person With

The dying person is prompted with what is related in *Sharḥ al-Aḥkām*—that the Prophet (*May Allah bless him and his family and grant them peace*) prompted some of the Banū ‘Abd al-Muṭṭalib with the words:

“Lā ilāha illā Allāh al-Ḥalīm al-Karīm; subḥān Allāh Rabb al-samāwāti al-sab‘i wa Rabb al-‘arsh al-‘aẓīm; al-ḥamdu lillāhi Rabb al-‘ālamīn; lā ilāha illā Allāh.”

[What Is Obligatory upon the Executor When the Deceased Wrote His Debts in His Own Hand]

Question: If the deceased wrote in a notebook what he owed and what was owed to him—debts, injustices, claims, and deposits—clearly

1- Seeking treatment will also be mentioned later under the ruling of omitting ḥajj due to an excuse.

laying it out in his own handwriting, known to his heirs and others, but did not have witnesses—must his heirs and executor carry that out, or not?

Answer—and with Allah is success: If the heirs and the executor verify and recognize the handwriting, then it is obligatory upon them to carry out what is in the deceased’s written statement. What the deceased set down in his own hand counts as an acknowledgment of its contents and a confession to what it comprises.

[A Benefit on the Signs of the Dying Person]

In the ḥadīth from the Prophet (*May Allah bless him and his family and grant them peace*): “Observe the dying person at three moments: if his forehead perspires, his eyes shed tears, and his lips contract—then hope good for him. But if his face reddens, froth appears at the corners of his mouth, and he emits the groaning of a young camel—then fear for him,” or as he said. (End from the marginalia to *Sharḥ al-Azhār*.)

[Washing One Killed by Mistake]

Question: Is one who is killed by mistake—or by a stray bullet—washed?

Answer—and Allah is the One who grants success: The scholars of the school have said that whoever is killed in such a way is to be washed¹. The proof is that the obligation to wash the deceased Muslim is established in general; one may not depart from this general ruling without evidence.

The evidence concerns only those killed in battle—that they are not washed, as in what is related about the martyrs of Uḥud and other battlefields of the Prophet (*May Allah bless him and his family and grant them peace*), those whom the disbelievers killed.

And likewise what is related about the martyrs of al-Jamal and Ṣiffīn, whom the transgressing party killed. To this may be attached one killed unjustly or killed while defending his property or another, due to the shared effective cause indicated in what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “Wrap them in their bloods, for they will be raised on the Day of Resurrection with their jugular veins gushing blood ...,” and in it: “They will say: ‘Our Lord, ask them why they killed us,’” or as he said.

Accordingly, one killed by mistake or by a stray shot is washed—maintaining the original rule that the Muslim is to be washed.

[The Ruling on Washing One Killed by Mistake, and on the

1- Marginalia to *Sharḥ al-Azhār*, 1/406.

Funeral Prayer for the Martyr and the Open Transgressor]

Issue: One killed by mistake is to be washed, for the original rule is that the deceased Muslim is washed, except where evidence indicates otherwise—and evidence of non-washing exists only for the martyr of battle.

- As for the funeral prayer: the funeral prayer is performed for the martyr. This is the agreement of our Zaydī scholars—*may Allah be pleased with them*.

Our school holds that the funeral prayer is not performed for one who openly flaunts his sin. The proof is what is in the two Ṣaḥīḥs: that the Prophet (*May Allah bless him and his family and grant them peace*) prayed over the woman who had committed adultery and was stoned, and when some of the Companions objected—saying, in effect, “Shall we pray over her when she did such and such?”—the Messenger of Allah (*May Allah bless him and his family and grant them peace*) said: “*She has indeed repented a repentance which, if divided among the people of Madīnah, would suffice them.*” This indicates that the funeral prayer is legislated for the repentant among the dead, not for the unrepentant, defiant sinners.

As for the Muslim of concealed state (whose condition is not publicly known), the funeral prayer is performed for him.

[The Ruling on Washing One Killed in Self-Defense]

Question: A man attacked another and killed him without right, though there had been quarrel and dispute between them. Is the slain person to be washed or not?

Answer—and Allah is the One who grants success: The original rule is the obligation to wash the deceased Muslim. Exempted from this are the martyrs, by his saying (*May Allah bless him and his family and grant them peace*) regarding the martyrs of Uḥud: “*Wrap them in their garments with their blood, for there is no wound inflicted in the path of Allah but that it will come on the Day of Resurrection with the color of blood and the fragrance of musk,*” and the like. There is no disagreement about this—meaning one killed in battle—except from al-Baṣrī and Rabīʿah.

In *al-Majmūʿ* from the Prophet (*May Allah bless him and his family and grant them peace*): “*If the martyr dies the same day or the next, bury him in his clothes; but if he remains for days until his wounds change, then he is washed.*”

Once this is understood, know that the evidences for not washing the martyr indicate non-washing for the martyr slain while striving in the path of Allah. As for one killed in a town wrongfully, or while defending

his person or property, no evidence has come for not washing them except by analogy with the battle martyr—and that analogy is invalid. This is because his saying (*May Allah bless him and his family and grant them peace*), “for there is no wound inflicted in the path of Allah, but will come on the Day of Resurrection ... etc,” indicates that the effective cause is being killed in the path of Allah. One killed defending himself or another, whether in a town or elsewhere, is not killed in the path of Allah (in the specific legal sense of combat); rather, he is killed in the path of defending himself, his property, or another. The effective cause is not merely his being termed a “martyr”; otherwise the ruling would extend to the one who dies of abdominal illness (*al-mabṭūn*), the woman who dies in childbirth, and others whom the Messenger (*May Allah bless him and his family and grant them peace*) named as martyrs—yet the ruling does not extend to them.

[Is One Washed If He Is Killed, or Kills Himself, by Mistake?]

Question: Is one who kills himself by mistake, outside of battle, washed? And likewise one killed by mistake?

Answer: The school’s view is that one whose death was by mistake is washed—whether he himself caused it or another caused it.

The proof is that the original rule is the obligation to wash the deceased Muslim, except where a specific proof removes him from the generality (as with the one killed in battle). No proof has come for those mentioned in the question; thus one must remain upon the original rule until a contrary evidence comes. And Allah knows best, and praise be to Allah, Lord of the worlds. May Allah bless Muhammad and his family and grant them peace.

[Benefit: [The Ruling on Washing and Praying over One Whose Uprightness Is Impugned]

As for one who is in the ruling of a sinner—whose integrity (*‘adālah*) is wounded—he must be washed and the funeral prayer performed over him. This concludes the excerpt from the marginalia.¹

[Shrouding by the Husband for a Revocably Divorced Wife]

Shrouding a revocably divorced woman and preparing her for burial is upon the husband. That is because, in legal ruling, a revocably divorced woman is like a wife: she inherits from him and he from her so long as she is in her waiting period (*‘iddah*); her maintenance and clothing are upon him; she adorns herself; and she does not go out except with his permission. Thus, shrouding and preparation for burial

1- *Sharḥ al-Azhār*, 1/425.

are to be attached to that, and there is nothing indicating that this would not be obligatory upon the husband. What we have mentioned may be indicated by His saying, *Exalted is He*: “*And live with them in kindness.*” [al-Nisā’:19].

[The Ruling on Washing and Praying over One Who Died While Being an Anthropomorphist—and What to Do]

A questioner asked me: his father is ill and near death, and he has persisted in corrupt beliefs—anthropomorphizing Allah, Exalted is He, hating the People of the Household (*Ahl al-Bayt*) and showing enmity toward them, and showing allegiance to the enemies of Allah. What should he do with his father if he dies? Should he wash him, pray over him, and call people to that—or what should he do?

The answer: What is incumbent upon you, O questioner, is to advise your father and urge him to repent and leave those corrupt beliefs; he is the most entitled of people to sincere counsel, admonition, and guidance. Repeat that to him with gentleness and forbearance—not with rebuke and censure—for that is among the greatest forms of dutifulness and connection. Do not despair, even until the end of his life.

If he does not respond, does not repent, and dies persisting in his creed, then bury his carcass without washing and without prayer. This is because of His saying, *Exalted is He*, regarding the hypocrites: “*And do not pray [the funeral prayer] over any of them who has died ever, nor stand at his grave.*” [al-Tawbah:84] And His saying, Exalted is He: “*It is not for the Prophet and those who have believed to ask forgiveness for the polytheists—even if they were relatives—after it has become clear to them that they are companions of the Blaze. And the request of Abraham for forgiveness for his father was only because of a promise he had made to him; but when it became clear to him that he was an enemy to Allah, he disassociated himself from him ...*” [al-Tawbah:113–114].

If the heirs of this deceased—those who share his beliefs—are present, then do not come between them and him if they wish to wash him and pray over him; they have a greater right to him than you do, O questioner. The hypocrites are allies of one another; he is of them and they are of him.

Yes: if you fear and think that, should you refrain from washing your father and praying over him, you will be met with people’s blame—censure, reproach, and violation of your honor—and that this would become a means of harm to you, then such anticipation and fear is an excuse for washing your father, shrouding him, and praying over him.

In doing so, intend to avert harm, not to honor or exalt the deceased, and do not seek forgiveness for him. Al-Ḥusayn b. ‘Alī, *peace be upon them both*, prayed over the governor of Madinah, who was unjust; that

was to be safe from the harm of Banū Umayyah. Zayd b. ‘Alī, *peace be upon them*, said—as in *al-Majmū‘*: “Do not pray over the Murji’ah, nor the Qadariyyah, nor over one who declared war against the Household of Muḥammad—unless you find no way out of it.”

A Benefit Regarding Pronouncing *Tahlīl* over the Bier

Sayyid, the learned imām Jamāl al-Dīn ‘Alī b. Ibrāhīm, the master of al-Shāhil from the lands of al-Ashrāf (*may Allah gave mercey on him*), transmitted from Imām al-Qāsim b. Ibrāhīm and al-Hādī—*peace be upon them both*—that pronouncing the *tahlīl* (*lā ilāha illā Allāh*) aloud over the bier is not permissible. Al-Duwwārī narrated it in his marginal notes on *al-Luma‘*. And it is mentioned in *al-Luma‘* that raising the voice with remembrance is disliked, while in the marginalia to *al-Hidāyah* it is [termed] a “praiseworthy innovation.” This concludes what is in the handwriting of our master, Sayyid Ṣalāḥ b. ‘Alī al-Salāmī (*may Allah gave mercey on him*)—taken from the marginalia to *Sharḥ al-Azhār*.

And in another marginal note: the preferred view is that there is no dislike—because of his saying (*May Allah bless him and his family and grant them peace*): “Whatever the Muslims deem good is good with Allah.”¹

I say: Mentioning Allah, *Exalted is He*, at times of alarm is legislated in general, as in His saying, *Exalted is He*: “O you who have believed, when you meet a company [of the enemy], then stand firm and remember Allah much that you may be successful.” [al-Anfāl:45] And the Muslims used to abundantly pronounce *takbīr* when the two forces met and the ranks intermingled.

A Benefit: Making Five *Takbīrs* over Funerals

In *al-Amālī*: “The Family of the Messenger of Allah (*May Allah bless him and his family and grant them peace*) unanimously agreed upon reciting aloud ‘In the Name of Allah, the Most Merciful, the Bestower of Mercy,’ performing *qunūt* with Qur’ān, making five *takbīrs* over the funerals, and on drawing out the deceased by his feet [from the grave] ...” “...and on making the grave four-sided, and on preferring ‘Alī b. Abī Ṭālib, *peace be upon him*, after the Prophet (*May Allah bless him and his family and grant them peace*).” End from the marginalia.²

I say: What appears in the collection of Imām Zayd, *peace be upon him*, that the *takbīrs* over funerals are four, is to be understood as **not** counting the opening *takbīrah* (*takbīrat al-iḥrām*).

[Five *Takbīrs* Over the Bier — as Narrated by al-Tirmidhī]

1- *Sharḥ al-Azhār*, 1/423.

2- Marginalia to *Sharḥ al-Azhār*, 1/429.

Al-Tirmidhī narrated, in the chapter “What Has Come Regarding the Takbīr Over the Bier,” with his chain from Zayd b. Arqam: that he pronounced five takbīrs over a funeral. We asked him about that, and he said: “The Messenger of Allah (*May Allah bless him and his family and grant them peace*) used to pronounce them.” Abū ʿĪsā al-Tirmidhī said: “The ḥadīth of Zayd b. Arqam is ḥasan ṣaḥīḥ.”

The Ruling on Lowering the Voice in the Funeral Prayer

The scholars of the school— as in *al-Azhar* and its commentaries— said: lowering the voice in the funeral prayer is recommended.

And in the marginalia: “If he recites aloud, it suffices for those following him.” And it was said: “It does not suffice, because reciting aloud is not legislated”—and this second view is preferable, and *al muftī* affirmed it.¹

I say: This is supported by His saying, *Exalted is He*: “*Call upon your Lord in humility and privately.*” [al-Aʿrāf:55] and His saying, *Exalted is He*: “*And remember your Lord within yourself in humility and fear without loudness in speech...*” [al-Aʿrāf:205]

And from the Sunnah: what al-Shāfiʿī narrated in his *Musnad* concerning the description of the funeral prayer from the ḥadīth of Abū Umāmah: “*Then he recites the Opening of the Book (al-Fātiḥah) silently within himself.*”

In a marginal note on *Ḍawʿ al-Nahār*: Ibn ʿAsākir also transmitted it with the addition: “So the Sunnah is that he do so, and that the people do as their imām does.” Al-Ḥākim also transmitted it in the *Mustadrak* and said: “Ṣaḥīḥ on the conditions of the two Shaykhs.”

- This is further supported by the consensus practice of the scholars— Zaydīs and others—on reciting silently in the funeral prayer generation after generation; they have known no other way.

- Moreover, a number of ḥadīth scholars narrated the report: “*When you pray over the deceased, be sincere in supplication for him.*”

And among the supplications of Imām al-Ḥusayn, *peace be upon him*, in his funeral prayer over Saʿīd b. al-ʿĀṣ was: “*O Allah, curse him with a grievous curse, and hasten his spirit to Hellfire with all haste.*” The man beside him said, “Is this how you pray over your dead?” He replied, “*No—this is for our enemies.*” This is mentioned in *al-Shifāʾ*. Thus ends the excerpt from the marginalia.

It is inferred from this that the one following the imām in the funeral prayer supplicates; and had it been recited aloud, al-Ḥusayn would have

1- *Sharḥ al-Azhar*, 1/431–432.

remained silent.

[A Benefit Regarding Prayer Over the Martyr]

In al-Bukhārī: the Prophet (*May Allah bless him and his family and grant them peace*) went out one day and prayed over the people of Uḥud his prayer over the dead, then he turned to the pulpit... (ḥadīth).

I say: In this is evidence for the legislation of praying over the martyr.

[Prayer Over the Juhaniyyah Woman Who Confessed to Adultery]

In Muslim: from the ḥadīth of the Juhaniyyah woman who confessed to adultery before the Prophet (*May Allah bless him and his family and grant them peace*). He ordered that she be stoned, then he prayed over her. ‘Umar said to him, “Do you pray over her, O Prophet of Allah, when she has committed adultery?” He (*May Allah bless him and his family and grant them peace*) replied: “*She has indeed repented a repentance which, if divided among the people of Madīnah, would suffice them. And have you found a repentance better than that she offered up herself to Allah, Exalted?*” End of report.

I say: In this ḥadīth is clear proof that the people of grave major sins (*ahl al-kabā’ir*) are not to be prayed over—this accords with the Qur’an, for Allah, *Exalted is He*, says: “*It is not for the Prophet and those who have believed to ask forgiveness for the polytheists—even if they were relatives—after it has become clear to them that they are companions of the Blaze.*” [al-Tawbah:113] Although this verse concerns the polytheists, its close indicates the impediment to seeking forgiveness for them—His saying, *Exalted is He*: “*after it has become clear to them that they are companions of the Blaze.*” Thus, whoever it becomes clear to us is among the companions of the Blaze, it is not permissible to pray the funeral prayer over him—and the people of major sins are among the companions of the Blaze.

A Benefit: Prayer Over the Open Sinner (al-Fāsiq)

In al-Muntakhab concerning the funeral prayer: “*Then he supplicates for the deceased with whatever is facilitated—asking pardon and good pleasure—if he is a believer in agreement with the religion.*” I (the author) said: “*What if he is an opponent—an enemy of Allah, known for that?*” He said: “*One should implore against him with curse and eternity in the Fire,*” and so on. End quote.

I say: In this is an indication that it is permissible to pray over the open sinner even without necessity—only that one should not supplicate for his forgiveness and the like, but rather supplicate against him.

And in al-Majmū‘ah al-Fākhirah there is that which indicates that one does pray over the open sinner.

[Ruling on Praying over One Accused of Drinking Poison]

Question: A woman married and was steadfast upon piety. Then she died suddenly, and people began circulating talk that she had drunk poison. Before her death, she had asked some of her relatives for forgiveness. Is it permissible to supplicate for her and seek forgiveness for her—and to perform the funeral prayer over her?

Answer—and Allah is the One who grants success: What is obligatory is to remain upon loyal solidarity (*walāʾ*)—and that entails the permissibility, recommendation, and desirability of supplicating and seeking forgiveness for her. It is impermissible to depart from this except by clear, decisive proof. The Exalted says: *“O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin.”* [al-Ḥujurāt:12] And He, Exalted is He, says: *“O you who have believed, fear Allah and speak words of appropriate justice.”* [al-Aḥzāb:70] And He, Exalted is He, says: *“And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart—about all those [one] will be questioned.”* [al-Isrāʾ:36]

The spread of the claim among people that she drank poison is not a clear proof, for falsehood often circulates among them—as Allah related in the story of the slander: *“When you received it on your tongues and you said with your mouths that of which you had no knowledge ...”* [al-Nūr:15]. Her request for forgiveness is not proof either.

[Praying over a Deceased Person Who Was Lax about Some Sins]

Question: Is it permissible to pray over a deceased person who used to be lax about insulting others and exposing the thigh?

Answer—and Allah grants success: The school’s position, as in the marginalia upon *al-Azhār*, is that the funeral prayer and washing are obligatory for one who is in the ruling of a sinner (*fāsiq*)—one whose integrity (*ʿadālah*) is compromised. Ended with its meaning.¹

I say: What appears to me is that “one in the ruling of a sinner” means someone who is lax regarding sins for which there is no decisive proof that they are major sins. The proof is their established principle: “It is impermissible to declare someone an unbeliever or a sinner except with decisive proof.”

Accordingly, the funeral prayer and washing are obligatory for any Muslim who dies without it being known that he died persisting upon a major sin.

This may also be inferred from Allah’s saying to His Prophet (*May Allah bless him and his family and grant them peace*): *“So it was by mercy from Allah that you were gentle with them. Had you been harsh and hard-*

1- Marginalia to *Sharḥ al-Azhār*, 1/425.

hearted, they would have dispersed from around you. So pardon them, ask forgiveness for them, and consult them about the matter.” [Āl ‘Imrān:159] Allah, Exalted is He, commanded His Prophet (*May Allah bless him and his family and grant them peace*) to pardon and seek forgiveness for Muslims from whom some acts of disobedience and contraventions issued.

Muslims were not all at one level of knowledge of Allah, His rulings, and His etiquettes. Among them were a few whose knowledge was firm; others below that; coarse desert dwellers; the ignorant; and those of weak faith. Their degrees of piety differed; therefore, contraventions and sins were bound to occur among them—an inevitable result in any society marked by such differing traits, whether in the time of the Prophet (*May Allah bless him and his family and grant them peace*) or otherwise. Thus Allah commanded His Prophet to meet those outcomes with pardoning and seeking forgiveness—and then with consultation, which signals approval, desire, love, and closeness.

However, we say that such noble conduct is conditioned and limited by His saying about the hypocrites in Sūrat al-Tawbah: *“And never pray [the funeral prayer] over any of them who dies, and do not stand at his grave. Surely they disbelieved ...”* [al-Tawbah:84], and by His saying in the same sūrah: *“It is not for the Prophet and those who have believed to ask forgiveness for the polytheists—even if they were relatives—after it has become clear to them that they are companions of the Blaze. And the request of Abraham for forgiveness for his father was only because of a promise he had made to him; but when it became clear to him that he was an enemy to Allah, he disassociated himself from him ...”* [al-Tawbah:113].

Thus, it is impermissible to seek forgiveness or to pray over one who has become clear to be among the companions of the Blaze, or who has become clear to be an enemy of Allah, Exalted. Whoever is established with certainty to be among the companions of the Blaze, it is impermissible to pray over him; and the people of major sins are among the companions of the Blaze with certainty.

By “major sins” here we mean: those for which there is certain threat of the Fire—such as associating partners with Allah, killing a soul forbidden [to be killed], fleeing from battle, falsely accusing a chaste woman, fornication, consuming usury, and the like—matters about whose gravity there is unanimous agreement.

As for matters about whose being a major sin there is disagreement among the scholars of Islam, such disagreement does not prevent praying over the deceased, even if in our view it is a major sin. That is due to what has preceded of His saying, Exalted is He: *“after it has become clear to them that they are companions of the Blaze,”* [al-Tawbah :113] and His saying: *“When it became clear to him that he was an enemy to Allah,*

he disassociated himself from him." [al-Tawbah:114] "Becoming clear" (*tabayyun*) only applies where knowledge has become firmly established and clarified to the utmost. From this is derived the proof for their statement: that it is impermissible to declare someone an unbeliever or a sinner except with decisive evidence.

If it is said: There is a ḥadīth reported from the Prophet (*May Allah bless him and his family and grant them peace*) commanding prayer over anyone who says "Lā ilāha illā Allāh," and to pray behind anyone who says "Lā ilāha illā Allāh."

We say: The ḥadīth is not authentic according to the ḥadīth scholars, as al-Jalāl indicated in *Ḍaw' al-Nahār*. Then we further say: even if we assumed it authentic, it is a general text specified by what has preceded. Its sense would then be: "Pray behind and over whoever says 'Lā ilāha illā Allāh'—except one who has become clear to be among the companions of the Blaze, or one who has become clear to be an enemy of Allah; do not pray over him nor behind him."

If it is said: What you have cited of verses concerns polytheists; that is not our discussion. Our discussion is about sinful monotheists, who are not mentioned in the verses.

We say: The reasoning (*ta'līl*) in the two verses—namely, "*after it has become clear to them that they are companions of the Blaze*" [al-Tawbah :113] and "*When it became clear to him that he was an enemy to Allah, he disassociated himself from him*" [al-Tawbah:114]—indicates the generality of the ruling for anyone in whom this effective cause is realized, even if the initial ruling is about a specific group. This is like a physician saying to a patient: "Do not drink honey because of its sweetness." The patient—and any rational person—understands from such wording that the patient ought not to eat sugar or drink sweet juices. Usul scholars differ here on two statements:

- One group says: the prohibition of sugar, sweet juice, and any other sweet thing is encompassed by the generality of the 'illah (the effective cause); thus every sweet thing is prohibited by the text, not by analogy.
- The second group says: the prohibition in such a case is specific and does not encompass every sweet thing; it applies only to honey. When we judge sugar, sweet juices, and the like to be prohibited, that is by analogy—we have analogized every sweet thing to honey, the unifying cause being sweetness.

A Benefit [Regarding Wages for Washing the Deceased and Digging the Grave]

Whatever is obligatory as an act of devotion, it is not lawful to take wages for it—such as washing the deceased. Whatever is obligatory out

of necessity, it is permissible to take wages for it—such as digging the grave, for digging is not required if a digger is found (to do it without charge). (قُرِرَ) (*Taqrir*.) This concludes the excerpt from the marginalia.¹

The Ruling on Bequeathing Burial in a Specific Place

Question: If the deceased bequeathed that he be buried in a particular place, or that a particular man should perform the funeral prayer over him, must his heirs fulfill his bequest? Is it permissible for them to contravene it by virtue of their guardianship?

Answer: In *al Sharah* and its marginalia: The relative is, according to the apparent position of the school, more entitled than the executor to perform the prayer over him—because the deceased bequeathed concerning the right of another. The same applies to washing, lowering (into the grave), preparation, and shrouding. Concluded (قُرِرَ) (*affirmed*).

This is the view of the jurists.

In *al-Yāqūtah* it is said: the executor is more entitled than anyone else—and this is the view of Aḥmad, Ishāq, Anas b. Mālik, and Zayd b. Arqam. This is conveyed in *Sharḥ al-Azhār*.²

I say: Burial in a particular place follows the same difference of opinion.

What appears to me is the view of the school: for in his lifetime, the person himself had the greatest right over his own person; in his death, his relatives have the greater right—unless his relatives are not righteous or not acceptable in their religion, and the deceased has bequeathed one of the aforementioned matters to some righteous person. In that case, the executor takes precedence over the relatives. This is supported by His saying, *Exalted is He*: “*The believing men and the believing women are allies of one another.*” [al-Tawbah:71] and the like.

[Concerning the Place of Burial]

His saying, *Exalted is He*: “*Those upon whom death was decreed would certainly have gone forth to their places of rest.*” [Āl ‘Imrān:154] may be taken to indicate that the martyr is to be buried where he was killed. It is related that some of the relatives of the martyrs of Uḥud took their dead to bury them in Madīnah, and the Prophet (May Allah bless him and his family and grant them peace) commanded them to return them to where they had been killed and to bury them there.

1- Marginalia to *Sharḥ al-Azhār*, 1/262.

2- *Sharḥ al-Azhār*, 1/428.

Upon this Sunnah the Muslims acted after the Prophet (*May Allah bless him and his family and grant them peace*), including the People of the House—*peace be upon them*.

Yes: a related issue branches from this concerning one who is not a martyr.

We say: it is fitting that he be buried where he died, for several reasons:

1. What is known in the Law about urging the hastening of burial;
2. Making an attachment to the martyrs and emulating them;
3. Emulating the prophets and attaching (one's practice) to theirs.

However, something may arise that prevents burial at the place of killing or the place of death—such as fear of a disbelieving enemy, a rebellious aggressor, or someone of an opposing sect. In that case, it is good to transfer the deceased to a place where he will be safe. Some of the People of the House—*peace be upon them*—did that.

[A Benefit on the Permissibility of Moving a Grave]

Here is an issue: there are many mountain villages with numerous graveyards that people may turn into thoroughfares for their cars, beasts, men, and women—either due to pressing need or due to lack of concern. They may find no path to their mosques, homes, and fields except over the graves; graves may even appear in house courtyards and pathways that were not previously known. In such a case we say:

It is obligatory upon the righteous to forbid the degradation of graves and the trampling upon them, due to His saying, *Exalted is He: "Why do the rabbis and religious scholars not forbid them ..."* [al-Mā'idah:63].

If they do not desist—either because they have no route free of graves, or due to the multitude of people and passersby, with a different set of people passing each day—then it is appropriate to remove only those graves that must be removed, restricting it to the measure of necessity.

The grave is then moved to a place where it will be protected from degradation and the trampling of feet. Some of the People of the House moved their dead from one grave to another.

Yes: it may happen that a man builds a house, and it later becomes apparent that there is a grave—or graves—within, or at its door, or in its path. In that case, the homeowner would be obliged either to abandon his house, or to remove the building from over the graves, or to move the graves. We say: Allah, *Exalted is He*, says: *"Allah intends for you ease and does not intend for you hardship."* [al-Baqarah:185] and *"He has not placed upon you in the religion any difficulty."* [al-Ḥajj:78] Therefore, transferring the graves to an honorable place is more considerate and easier for the

Muslim. And Allah, *Exalted is He*, says: “*There is no blame upon you for what you err in.*” [al-Aḥzāb:5] The house was erected over the graves by mistake, and the graves were not uncovered until after the building.

Moreover, moving a grave from one place to another does not constitute an insult—otherwise the Imams from the People of the House, *may Allah bless them*, would not have done it.

A Benefit Regarding Transferring the Deceased

The scholars of the school said—as in the marginalia: **Issue:** It is permissible to transfer the deceased from his grave to another place for a benefit (*maṣlaḥah*) pertaining to him or to someone else, living or dead—meaning a religious benefit. End quote.¹

Al-Mukhtār b. Aḥmad b. al-Hādī was transferred from Raydah to Ṣa’dah; al-Manṣūr bi’llāh, *peace be upon him*, was transferred from Kawkabān to Ṣan‘ā’ and then to Zafār; Imām al-Shahīd Aḥmad b. al-Ḥusayn, the master of Dhībīn, was transferred from Shawābah—after three years—to Dhībīn, beside the noble lady Zaynab bt. Ḥamzah b. Abī Hāshim; and Imām Muḥammad b. al-Muṭaḥhar was transferred from Dhī Marmar to the Great Mosque of Ṣan‘ā’. Thus ends the excerpt from the marginalia.

It is argued in the marginalia for the permissibility of this by reference to the law of those before us—namely, the bequest of Ya‘qūb (Jacob), *peace be upon him*, to Yūsuf (Joseph), that when he died in Egypt he should be transferred to al-Shām and buried beside his father Ishāq (Isaac), *peace be upon them* ... etc.²

I say: One may also argue for its permissibility as follows: if transferring the deceased entails a religious benefit (*maṣlaḥah dīniyyah*), then the mere existence and realization of that benefit constitutes proof—provided it does not conflict with any evidence nor is opposed by a preponderant or equal harm. The Lawgiver has indeed taken into account such benefits, as is well established in the principles of jurisprudence.

It is further supported by the fact that this practice was carried out in the midst of Zaydī scholars without objection.

Moreover, general worldly public interests can be included among religious interests. Scholars of the school have counted among “*the way of Allah*” the repair of roads, watering-places, and the like. On this basis, general worldly public interests are deemed religious interests.

1- Marginalia to *Sharḥ al-Azhār*, 1/441–442.

2- Marginalia to *Sharḥ al-Azhār*, 1/442.

I was asked by some people of a village in Ḥajjah Governorate. They said: their land is entirely graves; they find no spot of ground free of a grave on which to set foot. For that reason they were forced to build their homes over graves, and they built their mosque over graves, and all their facilities are upon graves. I was perplexed as to how to answer them and gave them no response at the time. Later it became clear to me that it is permissible for them to build a mosque and whatever the mosque needs of facilities and lavatories—provided they remove what is in the ground of bones and the soil from the burial niches, then dig for each set of grave bones and soil its own pit in a place befitting the dignity of the grave, and mark it with a sign by which it is known to be a grave. They should not mix the bones and soil of different graves together. This is because the Prophet (*May Allah bless him and his family and grant them peace*) used to command that each deceased be given a grave separately, and he forbade burying multiple dead in one grave—except on the day of Uhud, when he permitted burying two or three in a single grave due to their weakness and wounds.

The evidence for building a mosque in a case like the one mentioned is what the scholars of the school have stated concerning the permissibility of transferring the deceased for a religious benefit for the living or for the dead—and building mosques is among the general religious interests.

As for building dwellings over graves: if extreme necessity requires it, then it is permissible on condition that the graves be relocated to another place as mentioned first. Likewise, graves that lie on the route to the mosque or to the residences are to be moved to another place befitting the sanctity and dignity of graves; and construction should be limited to the measure of need and necessity.

If it is said: There is no necessity here. The villagers could build a mosque and houses in the qat fields and grain fields, or they could leave their village and emigrate to other lands—“Allah’s earth is spacious.”

We say: The villagers necessarily need their fields; they are their greatest source of livelihood, and they cannot dispense with them. Leaving one’s homeland is a matter extremely difficult for souls; Allah, *Exalted is He*, paired it with killing in His saying: *“And if We had decreed for them: ‘Kill yourselves’ or ‘Leave your homes,’ they would not have done it except for a few of them ...”* [al-Nisā’:66]. Allah, *Exalted is He*, has only charged His servants with ease, as evidenced by His saying: *“Allah intends for you ease and does not intend for you hardship,”* [al-Baqarah:185] and His saying: *“He has not placed upon you in the religion any difficulty,”* [al-Ḥajj:78] and many similar texts.

Thus, the evidence permitting the construction of dwellings over

graves is necessity and need; and the proof that necessity and need permit this is His saying, *Exalted is He*: *“But whoever is forced by severe hunger with no inclination to sin—then indeed, Allah is Forgiving and Merciful.”* [al-Mā'idah:3] It is well known among scholars and laypeople alike that necessity permits the prohibited.

Furthermore, based on what the scholars of the school have mentioned about the permissibility of transferring graves for a religious interest, it is permissible to transfer graves for the widening of public roads for Muslims—as happens today when major roads are cut and leveled from land to land. There may be cemeteries that obstruct the expansion and routing of the road, and it may be impossible to reroute it elsewhere. In such a case, the graves may be transferred to another location.

It is not permissible to run the road over the graves without moving them, because that entails insulting and belittling the dignity of the graves—and that is not permitted in Islam. Indeed, the dignity of graves is respected in every religion. Allah, *Exalted is He*, says in the story of the People of the Cave: *“They disputed among themselves about their affair, and said, ‘Build over them a structure; their Lord knows best about them.’ Those who prevailed in their matter said, ‘We will surely take over them a place of worship.’”* [al-Kahf:21] And the Exalted mentions His favor upon man: *“From a drop He created him and proportioned him; then He eased the way for him; then He caused him to be buried; then when He wills, He resurrects him.”* [‘Abasa:19–22] And He says: *“Have We not made the earth a container—of the living and the dead?”* [al-Mursalāt:25–26]

[On Transferring Graves for Public Interests]

Question: A highway passed through a valley between two mountains. The engineers plotted its course through a cemetery. After we tried to divert the route from over the cemetery, the engineers shifted it slightly but were forced to pass over the edge of the cemetery. Is it permissible to transfer those graves to another place? Or may the public route pass over them while we leave them in place? Please advise. Peace.

Answer—and Allah is the One who grants success: If it is unavoidable that the route pass there, then exert your utmost to divert it away from the cemetery. If you are unable to do so, then transfer the graves over which the route would pass to another place—and you will, Allah willing, have a reward in that.

When you transfer the graves, do so while preserving their sanctity: bury each grave separately, do not mix them; gather the bones and soil of each grave and bury them; do not excavate them with a backhoe or loader, due to the lack of reverence entailed in that.

(This question came from some students of Wādī ‘Alāf.)

We add a further benefit:

The evidence for the obligation to preserve the sanctity of a Muslim believer’s grave is as follows:

1. Presumption of continuity of the sanctity due to the believer in life; the default is the persistence of that sanctity, and there is no evidence that it lapses at death.
2. His saying, *Exalted is He*: “*We will surely take over them a place of worship,*” [al-Kahf:21] which plainly indicates honoring the believer and observing his sanctity in death.
3. Muslims, generation after generation, have observed this sanctity.
4. The Sunnah has come commanding the observance of this sanctity.

On this basis, any act that contravenes the sanctity of the deceased is prohibited—such as treading on the grave with one’s feet and taking it as a pathway, placing shoes upon it, or dumping refuse and sweepings upon it, or sitting on it, and anything of that nature that signals contempt and belittlement.

[Ruling on Elevating Graves and Placing Plaques upon Them]

Question: What is your view on raising graves with construction, and on placing marble plaques inscribed with the deceased’s name on the grave? We have heard much talk about this.

Answer—and Allah is the One who grants success: There is no objection to raising the graves of scholars and virtuous people with additional construction—in order to distinguish them from other Muslims—and likewise to writing upon stones and placing them over their graves so the living may recognize and distinguish them.

This may be adduced from His saying, *Exalted is He*: “*Allah will raise those of you who have believed and those who were given knowledge in degrees.*” [al-Mujādilah:11]

A Muslim ought to observe this elevation which the Lord of servants has decreed for the scholars; and there is no doubt that a scholar’s elevation does not cease with his death.

Thus, observing that elevation after death does not fall outside the laws of the religion and the rulings of the Lord of the worlds.

If it is said: Observing that great elevation pertains to the belief of the heart, and then to good mention—this with respect to those morally responsible, whether the scholar is alive or dead.

We say: When the heart believes in the loftiness of the scholar and the elevation of his rank, bodily actions and the tongue will manifest traces

and signs of that belief—whether the scholar be alive or not.

It is known in Islam that there is no objection to manifesting a true belief—whether by word or by deed: one may praise the scholar, extol him, honor him by service, courtesy, lowering the voice, and so forth. All of that is a translation of what is in the heart of esteem, reverence, and elevation.

What we have mentioned—raising the grave and inscribing the name—is nothing more than a translation of what is in the heart of reverence for the scholar in his grave. It is established in the report: *“The sanctity of a Muslim when dead is like his sanctity when alive.”*

As for everything cited to prohibit this, it is only what is narrated in their Ṣaḥīḥ collections: *“Do not leave a raised grave without leveling it.”* They have no proof therein for what they claim, because what is meant by a “raised” grave is one with parapets/projections, and what is meant by “leveling it” is leveling its parapets.

If the intended meaning were as they interpret, then the grave would have to be leveled with the earth entirely, and it would be forbidden to raise it even a handspan—or less—above the ground.

[Ruling on Passing over Graves in Case of Necessity]

Question: Guides also encounter in some areas graves by house doorways, and the residents have no route except across those graves. They ask the guides about this—what should they answer? Should those graves be relocated to empty places? Should the residents leave their homes? Or is it permissible to pass over those graves?

Answer—and Allah is the One who grants success: The answer differs according to the situation:

1. If the homeowner built the house and only discovered the graves after construction, then what is closer to gentleness is to transfer the occupant of the grave to a clean, suitable place.
2. If the homeowner built knowing he would have no path except over the graves, and knowing that passing over them is forbidden, then he regretted his deed and sought a fatwā—he must be referred by the guide to one of the senior scholars.
3. If the houses are old and the graves are old, then as we said at the start (case no. 1).

The proof for permissibility of transfer on the basis of interest is the practice of many from the People of the House—*peace be upon them*—who transferred their dead from one place to another for a benefit, without objection. Here there is benefit for both the living and the dead: the graves are protected from insult and people’s passing over them, and transferring them is an

honoring of them and a keeping them from the trampling of feet; while there is also a great benefit for the living—safety from sin, and the ability to utilize their homes, which are only obtained with long toil and the expenditure of much wealth.

[A Benefit: Walking upon Graves]

In *Sharḥ al-Azhār* and its marginalia it is stated—in *al-Intiṣār*: “If a grave lies in the pathway, there is no dislike (meaning for treading upon it and walking over it).” Thus ends the quote from the commentary.

The companions of al-Shāfi‘ī said: the dislike is removed for an excuse—such as visiting a grave that cannot be reached except by walking over other graves; one who is compelled should intend the visit. In *al-Muwattaʿ* it is related that ‘Alī, *peace be upon him*, used to use graves as a pillow and would recline upon them.

In al-Bukhārī it is related that ‘Umar used to sit upon them. It has also been said: it is permissible absolutely, just as it is permissible to walk upon a roof beneath which there is a Muṣḥaf—and a Muṣḥaf’s sanctity is not exceeded by anything. This is the school of a group of relied-upon scholars.

Al muftī chose the permissibility of treading so long as it is not in a manner of disdain—and likewise from al-Qāsim b. Muḥammad, and from the judge Sa‘īd concerning the graves of the openly sinful. Thus ends the marginal note.

[A Benefit: Exhuming the Deceased]

In *al-Azhār*: “The deceased is not exhumed—for a usurped grave, or a usurped shroud, nor for washing, shrouding, orienting to the qiblah, or prayer.” End quote.

I say: What is preferable regarding a usurped grave or usurped shroud is to come to terms with the owners of the grave and the shroud: if they agree to take compensation or they waive it, then so be it; if they do not consent, they have the stronger right to their right, and the deceased’s relatives must lift their dead and return the shroud—unless prevented by some hindrance.

Except if the shrouds have been fouled by the decomposition of the deceased such that no one would desire them, then compensation of their value is required, for they are in the ruling of what has been consumed.

Moreover, transferring or exhuming the deceased for the sake of the shroud is not a violation of his sanctity—unless the corpse has decomposed, burst, and putrefied; in that case exhumation is not fitting and is impermissible, due to the violation of his sanctity and the exposure of his nakedness—and concealing that is obligatory.

Likewise for washing, shrouding, orienting to the qiblah, and prayer: if that is before the deceased's decomposition and putrefaction and the emergence of odor, then he may be exhumed for that purpose. But if he has decomposed and putrefied, then it is not fitting and is impermissible, due to the exposure of his nakedness.

A Benefit on Interpreting “Elevating” with Respect to the Grave of One Who Is Not Eminent

In *al-Azhār*: “and elevating (*al-ināfah*) at the grave of one who is not eminent.”

Ibn al-Jalāl and Ibn al-Amīr objected, saying: that is prohibited for the eminent and the non-eminent alike. They adduced as evidence the ḥadīth of Jābir: that the Prophet (*May Allah bless him and his family and grant them peace*) forbade plastering the grave, building upon it, and writing upon it; the ḥadīth, “*May Allah curse the Jews—they took the graves of their prophets as places of worship*”; and the ḥadīth, “*Do not leave a raised grave without leveling it.*”

I say: Opposing this are the following:

1. The practice of Muslims in the East and the West—including the People of the House, *peace be upon them*—that they elevate the graves of the righteous, build them with plaster, erect domes over them, and inscribe their names upon them—without denunciation—throughout successive ages.
2. The Companions buried the Messenger of Allah (*May Allah bless him and his family and grant them peace*) inside his roofed house—then Abū Bakr and ‘Umar after him. If that were objectionable, they would not have done so.
3. Allah, Exalted is He, related in the story of the People of the Cave that the Muslims built a mosque over them in His saying, *Exalted is He: “We will surely take over them a place of worship.”* [al-Kahf:21]
4. The Prophet (*May Allah bless him and his family and grant them peace*) ordered that he be buried in his house, and his house adjoined the mosque—indicating the permissibility of building mosques adjacent to the graves of prophets and righteous people, and the permissibility of praying around graves.

As for the ḥadīth, “*May Allah curse the Jews—they took the graves of their prophets as places of worship*,” its meaning is: they used to pray and prostrate upon the grave itself, or they would take it as a qiblah, doing so as an act of aggrandizement toward it. But aggrandizement by prostration is not befitting except for Allah, Lord of the worlds. Thus the ḥadīth does not indicate what they claimed—neither closely nor remotely.

As for the ḥadīth, “He forbade plastering the grave, building upon it, writing upon it, and treading it,” then—if the report is authentic—its meaning is: forbidding the plastering of the inside of the grave; and forbidding that it be degraded and its sanctity violated by building over it; and forbidding that it be trodden upon with feet.

And the meaning of “*he forbade writing upon it*” is: piling things upon it and placing items on top of it, for that impairs the dignity of the grave.

As for writing with a pen (inscribing the name), there was nothing calling for a prohibition then, since people in that time did not use to write upon graves; the practice of inscribing the name on the grave only appeared many ages later.

[The Presence of Several Graves at Great Depths]

Question: A man found several graves in his farm when he dug deep with a loader. What should he do with them?

Answer: He should leave them as they are: not cultivate that area, not traverse it, and preserve their sanctity—if this is possible without harming the landowner. If leaving them in that place harms the owner, or the location is such that preserving the graves’ sanctity is not feasible, then it is permissible to relocate them to a place where their sanctity will be preserved and where there is no harm upon the owner.

We say this because it is related from many of the People of the House—*peace be upon them*—that they moved their dead from one place to another for interests similar to what we have mentioned.

[Consoling the Openly Sinful]

Question: If the family of the deceased are openly sinful, is it permissible to offer them condolences?

Answer: The school’s position is that it is permissible, as in *al-Azhār* and its commentary.¹

Then it was said in *al Sharah*: Sayyid Yaḥyā said it should not be done except for an interest, or out of precaution (*taqiyyah*), or reciprocation, or neighborhood.

[Attending the Condolences of an Open Sinner]

Question: An openly sinful person may die and people gather for condolences. We sometimes refrain from attending to avoid reciting over the sinful deceased. However, those of an opposing madhhab may exploit our absence by attending and preaching. What do you think? Should we attend—for the benefit in attending—or should we refrain despite the detriment? Please advise. Peace.

1- *Sharḥ al-Azhār*, 1/445.

Answer—and Allah is the One who grants success and aid: It befits the preacher-guide to attend gatherings of condolence, for there is in that the benefit of guiding people and calling them to good, as well as closing the door to opponents and mischief-makers.

Moreover, even if the deceased was sinful, offering condolences is legislated—even to dhimmīs. He should employ interpretation in what customarily occurs of reciting al-Fātiḥah if the deceased was sinful; for example, he may say: “al-Fātiḥah for the soul of the deceased”—with a kasrah on the *fā’* in “*al-mutawaffī*,” meaning the One who takes souls, i.e., the Angel of Death—“Say, *The Angel of Death will take you who has been entrusted with you.*” [al-Sajdah:11]—or: “for the soul of the one transferred to the mercy of Allah.” In such a situation the preacher should indicate, after urging the establishment of prayer and repentance, that whoever dies as a sinner without repenting—neither supplication nor Qur’an recitation benefits him; that it is not permissible to supplicate for him nor to recite Qur’an for him—so as to remove any confusion that may arise.

[What a Student of Knowledge Should Do If Compelled to Attend the Condolences of One Who Abandoned Prayer]

Question: A student of knowledge may face a problem: he is often compelled to attend condolence gatherings, and the deceased may be one who abandoned prayer. Customarily, the student is the one who recites and supplicates at such gatherings and is asked to read al-Fātiḥah “to the soul of the deceased.” If the student refrains either from attending or from performing the condolence rites, people shun him strongly and disparage him. What should he do? What is the solution?

Answer: There is no harm in offering condolences and attending their gatherings—even if the deceased was sinful. What is forbidden is supplicating for the good of the Hereafter for sinners whom Allah has judged to be people of the Fire, because of His saying, *Exalted is He: “It is not for the Prophet and those who have believed to ask forgiveness for the polytheists—even if they were relatives—after it has become clear to them that they are companions of the Blaze. And the request of Abraham for forgiveness for his father was only because of a promise he had made to him; but when it became clear to him that he was an enemy to Allah, he disassociated himself from him ...”* [al-Tawbah:113–114].

Thus the student of knowledge should attend condolence gatherings, while avoiding supplicating for the sinful deceased. If he is pressed to recite al-Fātiḥah “for the deceased,” he must intend by his heart “the deceased among the believers,” or say: “for the soul of the deceased—if Allah wills.” This last phrasing is better, for it places a condition upon those present.

[Upon Whom Are the Expenses of Condolence Tents?]

Question: In our land, when someone dies, it is customary that the heirs erect a tent to receive those offering condolences. The heirs must incur expenses for coffee, dates, and meat for guests among kin, friends, and relatives—this is unavoidable. If some heirs take care of these expenses, may they demand reimbursement from the rest of the heirs?

Answer: All the heirs are obligated to share the aforementioned expenses of the tent and the condolence—provided they remain within customary bounds. They are not obligated for what exceeds that. We say this because the present heir who bore the expenses of condolence was compelled to fulfill what custom requires for condolences; had he not done so, people would have censured and belittled him and looked down upon him—and the first to censure him would be the kin who came to offer condolences and the friends.

[Ruling on Whether Charity Reaches the Deceased]

Question: If a person dies and his brothers and their children wish to give charity on his behalf, will that charity reach the deceased and benefit him by its reward, or not?

Answer—and Allah is the One who grants success: It will reach the deceased, and its reward will benefit him. The evidence for this is:

1. It is related that the Prophet (*May Allah bless him and his family and grant them peace*) heard a man pronouncing the talbiyah on behalf of Shubruma. He (*May Allah bless him and his family and grant them peace*) said to him, “Who is Shubruma?” The man replied, “A brother of mine.” The Prophet (*May Allah bless him and his family and grant them peace*) said, “Perform ḥajj for yourself, then perform ḥajj on behalf of Shubruma,” or as he said.
2. It has come in the reports that the Prophet (*May Allah bless him and his family and grant them peace*) offered a sacrifice on behalf of his community.
3. In the *Ṣaḥīfah* of ‘Alī b. Mūsā al-Riḍā—on the authority of the Prophet (*May Allah bless him and his family and grant them peace*)—it is mentioned that whoever passes by cemeteries and recites Sūrat al-Ikhlāṣ eleven times, then gifts its reward to the inhabitants of the cemetery ... and so on.
4. Al-Bukhārī and Muslim relate that a man said to the Prophet (*May Allah bless him and his family and grant them peace*), “My sister vowed to perform ḥajj, and she has died.” He said to him, “If she had a debt, would you pay it off for her?” He replied, “Yes.” He said, “Then pay Allah’s right—He has more right to be paid.” (As cited in *al-I’tiṣām*.)

All of this indicates that the reward of charity reaches the deceased in absolute terms—whether from a child or from someone else.

Yes, what we have mentioned specifies the generality of His saying, *Exalted is He: “And that there is not for man except that [good] for which he strives.”* [al-Najm:39]

If it is said: It is related from the Prophet (*May Allah bless him and his family and grant them peace*), “When the son of Ādam dies, his deeds are cut off except from three: a righteous child ...,” etc.

We say: There is no contradiction between what we have stated and this ḥadīth. What we have cited does not pertain to the deceased’s own actions; rather, it pertains to the actions of others whose reward and benefit reach him by way of connection and charity—not by way of his own deeds, for those have indeed ceased.

Likewise, there is no contradiction between the verse and what we are discussing here, for the meaning in our case is that what reaches the deceased does so not by entitlement through his striving, but by way of connection, charity, and gracious bestowal—not by means of his own striving. Reflect upon this.

There is also the ḥadīth narrated from Ibn ‘Abbās: a man came to the Messenger of Allah (*May Allah bless him and his family and grant them peace*) and said, “O Messenger of Allah, my sister vowed to perform ḥajj, and she has died.” He said, “If she had a debt, would you pay it off for her?” He replied, “Yes.” He said, “Then pay Allah’s right—He has more right to be paid.” This supports what we have mentioned. And Allah knows best.

[Concerning the Punishment of the Grave]

Question: How can there be punishment in the grave when it is known that the body decays and disintegrates until it becomes dust? Likewise, how can there be bliss for the believer if that is the case?

Answer—and Allah is the One who grants success: The body is a vessel for the spirit; the spirit is the essence. As for the body without the spirit, it is but inanimate—neither sensing nor feeling pain nor tasting bliss.

On this basis, it is the spirit that experiences bliss or pain.

What supports this is that a sleeper finds, in sleep, terrors and troubles—things he sees and hears and by which he is pained—all while asleep and apart from his waking body and senses; likewise he finds bliss that he enjoys during sleep. In this is an indication that the spirit alone may be punished or enjoy bliss; it can see, hear, perceive, feel pain, be overtaken by joy and delight or worry and grief; it speaks and is spoken to, and so on.

Allah, Exalted is He, says—arguing against the idolaters for their

disbelief in Allah and the Last Day: *"We will show them Our signs in the horizons and within themselves until it becomes clear to them that it is the truth."* [Fuṣṣilat:53]

Question: His saying, *Exalted is He*, *"They will say, 'Woe to us! Who has raised us from our sleeping place?'"* [Yā Sīn:52]—does this verse contradict the affirmation of punishment in the grave and the life of the barzakh? How do you explain it?

Answer—and Allah is the One who grants success: The life of the barzakh is soundly established: the believer enjoys bliss and the wrongdoer is punished. This is due to His saying, *Exalted is He*, concerning the people of Pharaoh: *"The Fire—they are exposed to it morning and evening. And the Day the Hour is established [it will be said], 'Admit the people of Pharaoh to the severest punishment.'"* [Ghāfir:46]; and by his saying (*May Allah bless him and his family and grant them peace*), *"The grave is either a garden from the gardens of Paradise, or a pit from the pits of the Fire"*; and by what is related that the Prophet (*May Allah bless him and his family and grant them peace*) passed by two graves and said, *"They are being punished, and they are not being punished for something great (in people's eyes): as for one of them, he used to carry tales between people; and as for the other, he did not guard himself from (the impurity of) urine."*

It is also indicated by His saying, *Exalted is He*, regarding the martyrs: *"And never think of those who have been killed in the way of Allah as dead. Rather, they are alive with their Lord, receiving provision, rejoicing in what Allah has bestowed upon them of His bounty, and they receive good tidings about those after them who have not yet joined them ..."* [Āl 'Imrān:169].

Reconciliation between this and the verse mentioned in the question may be made by saying: the life of the barzakh is purely spiritual. The spirit of the believer enjoys bliss through what it sees of that which Allah has prepared for the believers, and it attains thereby such joy and happiness as cannot be measured.

As for the spirit of the sinner, it is harmed and pained by what it sees of kinds of punishment, by the humiliation, abasement, and disgrace that befall it, and by the regret that overtakes it as it makes the rounds over what Allah has prepared for it of that punishment.

Then, when Allah raises the bodies together with the spirits at the second blast of the trumpet, the criminals will say, *"Woe to us! Who has raised us from our sleeping place?"* [Yā Sīn:52]. They will say that out of regret when their bodies are resurrected—those very bodies for which that punishment was prepared, which they had learned of and witnessed, and which will taste and sense the punishment of burning.

The punishment of the barzakh does not involve the sensation and

tasting of the fire’s heat; rather, it is a punishment of terrors, fear, disgrace, and regrets.

Likewise, the bliss of the Godfearing in the barzakh life is not bodily bliss—wherein the body enjoys food, drink, marital relations, and the like—but rather purely spiritual bliss: the spirit enjoys what it sees, beholds, and is shown of that which Allah has prepared for His believing allies, and that there is no fear upon them, nor do they grieve.

If it is said: Allah, *Exalted is He*, said regarding the martyrs, “*with their Lord they are provided for.*” [Āl ‘Imrān:169]

We say: This may be specific to the martyrs; and it may be that what the spirits find of joy and happiness from what Allah has prepared for them is termed “provision.” This is what appears strongest.

Yes—supporting what we have said is His saying, *Exalted is He*: “*So when the trumpet is blown, that Day will be a difficult day—for the disbelievers—not easy.*” [al-Muddaththir:8–10]. And there are many verses indicating that bodies are not punished in the barzakh, but rather the spirits—such as His words: “*You did not remain except a day,*” and “[*You remained*] *only ten.*” [Tā Hā:103–104].

Furthermore, reconciliation may be made by saying: among the sinful are those who are punished in the barzakh—the tyrants who spread much corruption on earth, such as the people of Pharaoh—and among them are those who are not punished.

On this reading, His saying, *Exalted is He*, “*Woe to us! Who has raised us from our sleeping place?*” [Surah Yā Sīn 36:52] is the speech of those who were not punished in the barzakh.

Another reconciliation is that the spirits die at the first trumpet-blast; then when Allah restores the spirits at the second blast, they say, “*Woe to us! Who has raised us from our sleeping place?*”—they say it out of regret for what they missed of rest and safety between the two blasts, even if prior to the first blast they had been in punishment.

Showing Filial Piety to One’s Parents After Their Death

Question: Is it valid for a person to show filial piety to his parents by offering a voluntary prayer and intending to gift its reward to their souls?

Answer—and Allah is the One who grants success: That is valid and there is no objection to it. The scholars of the school, as in the marginal notes to *Sharḥ al-Azhār*, said: the worshipper must intend the gifting of the reward at the beginning of his prayer and his recitation.

Evidence for the soundness of this includes what is related from the Prophet (*May Allah bless him and his family and grant them peace*) concerning the revelation of His saying, *Exalted is He*: “*And that there is*

not for man except that [good] for which he strives." [Surah al-Najm:39]—that he said: "Indeed, a man's child is part of his striving (earnings)."

And His saying, *Exalted is He: "Indeed, We will record what they have put forth and their traces."* [Yā Sīn:12] If the child is righteous, the reward of his righteous deed reaches his parents—by virtue of their having caused his upbringing and education.

Yes, the reward of a righteous act can reach the deceased—whether from the child or from someone else—as indicated by what is narrated in the *Majmū'* of Imām Zayd b. 'Alī, from his forefathers, from 'Alī, *peace be upon them all*: that the Messenger of Allah (*May Allah bless him and his family and grant them peace*) heard a man pronouncing the talbiyah on behalf of Shubruma. He said to him, "Who is Shubruma?" He replied, "A brother of mine." The Prophet (*May Allah bless him and his family and grant them peace*) said, "If you have already performed ḥajj (for yourself), then pronounce the talbiyah on behalf of Shubruma; but if you have not performed ḥajj, then pronounce the talbiyah for yourself."

The Prophet (*May Allah bless him and his family and grant them peace*) did not inquire whether Shubruma had bequeathed that or not; rather, he commanded him to perform ḥajj for himself and then to perform ḥajj for Shubruma.

The scholars of legal theory say: "Omitting further inquiry where multiple possibilities exist has the force of generality in the wording." Therefore, this ḥadīth indicates that righteous acts performed by others can reach the deceased—whether from a child or from someone else.

A Benefit: What Reaches the Deceased

It is related that a man came to the Prophet (*May Allah bless him and his family and grant them peace*) and said: "O Messenger of Allah, my mother died suddenly and did not make a bequest; I think that had she spoken she would have given charity. Will she have a reward if I give charity on her behalf?" He said, "Yes." Agreed upon; the wording is Muslim's. (End from *Bulūgh al-Marām*.)

I say: In this is proof that rewards reach the deceased from other than the three mentioned in the ḥadīth, "When the son of Ādam dies, his deeds are cut off except from three," etc. Reconciliation between the narrations may be made by saying that what reaches the deceased is of two kinds:

1. A kind that reaches him by entitlement.
2. A kind that reaches him not by entitlement but by gracious bestowal.

The reward to which the deceased is entitled, which is due to him as an obligation and does not cease with his death, is three: knowledge he taught, a continuing charity, or a righteous child who prays for him—and

this is what the Sunnah established.

As for the reward that reaches him not by entitlement, it does not cease with his death, because life and death are the same with respect to his receiving it; he attains it without acting, so such reward does not cease at death. Examples are many: this ḥadīth [what it has mentioned in the first of this benefit]; the report of the talbiyah on behalf of Shubruma; believers seeking forgiveness for one another; and supplicating for a believer with the good of the Hereafter.

This is supported by what is related from the Prophet (*May Allah bless him and his family and grant them peace*) in the supplication of the sacrificial animal: “O Allah, accept from Muḥammad and the family of Muḥammad, and from the Ummah of Muḥammad”—which indicates that reward reaches others even without a bequest.

Similarly, al-Dāraqutnī relates from Jābir that a man said: “O Messenger of Allah, I had two parents whom I treated dutifully during their lives; how may I show dutifulness to them after their deaths?” He (*May Allah bless him and his family and grant them peace*) said: “Indeed, among dutifulness after dutifulness is that you pray for them along with your prayer, and that you fast for them along with your fasting.”

[Visiting Graves, and the Rulings on Seeking Blessing from Them, Touching Them, and Praying Near Them]

Question: What is the manner of visiting graves? And what is the ruling on seeking blessing (*tabarruk*) from graves and on touching them? And what is the ruling on praying near them?

Answer—and Allah is the One who grants success: In summary, visiting graves should be like visiting the living: the visitor stands or sits facing the deceased, does not raise his voice, and observes proper etiquette, as a visitor does with the living—with courtesy and dignity. He greets the deceased, then after the greeting he supplicates for him, asking forgiveness and mercy. It is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) used to say when visiting graves: “Peace be upon you, O abode of a believing people. Indeed we, if Allah wills, will join you ...,” and so on.

Ruling on seeking blessing (*tabarruk*): Seeking blessing from the graves of the prophets and the righteous is permissible. Abū Bakr and Omar bequeathed that they be buried next to the Prophet (*May Allah bless him and his family and grant them peace*), seeking blessing by being near the Prophet (*May Allah bless him and his family and grant them peace*), and none of the Companions objected.

Ruling on touching graves: Touching the graves of the prophets and the righteous is permissible. What is prohibited is worship of graves; touching is not worship.

Ruling on praying near graves: The ruling is detailed:

1. Praying on top of a grave is prohibited. As for the grave of a Muslim, because that entails violating the sanctity of the grave; and as for the grave of a disbeliever, because prayer requires avoiding impurity.
2. Praying among graves is forbidden.
3. Praying beside a grave is permissible.

The prohibition of praying among graves may be due to harm caused to other visitors, or because it may suggest worship of graves.

As for praying beside graves—if the worshipper is not facing the grave—there is no objection. Muslims, from the time of the Companions until today, have prayed beside the grave of the Prophet (*May Allah bless him and his family and grant them peace*) without anyone objecting.

The meaning of *tabarruk* is: seeking blessing and an increase of good in this world and the Hereafter. Worldly blessing includes: soundness of bodies, safety from afflictions, increase of lifespans, rectitude of crops, increased fertility, increased profits, reconciliation between people, the righteousness of spouses and children, and so on.

Otherworldly blessing includes: forgiveness of sins, expiation of misdeeds, increase of good deeds, multiplication of reward, and the like.

In the ḥadīth: “*A prayer in this mosque of mine is worth a thousand prayers in other mosques ...*,” and that is only due to the blessing of the Messenger of Allah (*May Allah bless him and his family and grant them peace*).

Allah, *Exalted is He*, urged His Messenger (*May Allah bless him and his family and grant them peace*) to pray in Masjid Qubā’—for the auspiciousness and blessing of its people—and He warned him against praying in Masjid al-Ḍirār—of ill omen are its people.

And by the auspiciousness and blessing of the Messenger of Allah (*May Allah bless him and his family and grant them peace*), Allah blessed Madīnah: He lifted from it the epidemic, made it a sacred sanctuary, and so forth of the virtues that accrued to Madīnah by the blessing and auspiciousness of the Messenger of Allah (*May Allah bless him and his family and grant them peace*).

Yes, there is a general blessing and particular blessings. The general blessing is what Allah placed in the earth when He created it: “*And He blessed it and determined therein its sustenance in four days ...*” [Fuṣṣilat:10]. The particular blessings include what He placed in the land of al-Shām: “*the land which We have blessed for the worlds,*” [al-Anbiyā’:71], and: “*to al-Masjid al-Aqṣā whose surroundings We have blessed.*” [al-Isrā’:1]

Allah caused Nūḥ and those with him to alight from the Ark with

peace and blessings upon them and upon nations of those with them.

And in the story of Ibrāhīm (*May the blessing of Allah be upon him*) and his family: “[*The angels said,*] *‘The mercy of Allah and His blessings be upon you, O people of the House. Indeed, He is Praiseworthy, Glorious.’*” [Hūd:73]

And in the formula of sending prayers upon the Prophet (*May Allah bless him and his family and grant them peace*): “*O Allah, send prayers upon Muḥammad and upon the family of Muḥammad, and bless Muḥammad and the family of Muḥammad, as You sent prayers and blessings upon Ibrāhīm and the family of Ibrāhīm; indeed You are Praiseworthy, Glorious.*”

Friday is a blessed day—and likewise the night of Friday. Ramaḍān is a blessed month; Laylat al-Qadr; the Day of ‘Arafah and its night; the first ten days of Dhū al-Ḥijjah; the days of the two ‘Ids and of al-Tashrīq; Monday and Thursday; and the last hour remaining of the night. “*Indeed, We sent it down during a blessed night.*” [al-Dukhān:3]

And the supplication of the Messenger of Allah (*May Allah bless him and his family and grant them peace*) for Yemen and al-Shām for blessing—his supplication is answered—along with more than what we have mentioned of things in which Allah placed blessing.

Allah, *Exalted is He*, placed blessing in what we have mentioned so that His servants may benefit thereby. He explicitly stated some of this, as in His saying: “*the land which We have blessed for the worlds.*” [al-Anbiyā’:71].

Thus Allah wants us to seek blessing, to pursue it, and to obtain it. What has come of encouragement to seek out Laylat al-Qadr in the last ten nights, to supplicate in the last part of the night and on the Day of ‘Arafah, and so on—all testifies to that.

A Benefit on the Virtue of Visiting Graves and What to Say There

From *al-Bayān* and its marginalia: it is narrated from al-Amīr al-Nāṣir li’l-Ḥaqq al-Ḥusayn b. Muḥammad—*peace be upon him*—raising it to the Prophet (*May Allah bless him and his family and grant them peace*), that he said: “Whoever stands at the grave of a Muslim and says: ‘*Praise be to Allah, Who alone remains; none endures but His dominion. I bear witness that there is no god but Allah alone, without partner—one God, the One, the Unique, the Self-Sufficient, Who has not taken a consort nor a child; and I bear witness that Muḥammad is His servant and His Messenger. May Allah reward Muḥammad on our behalf with the best of rewards, and may Allah bless him and his pure, goodly, chosen, righteous Household—those from whom Allah has removed impurity and purified with thorough purification*’—for the deceased there is forgiveness of fifty years’ worth of sins, and for the one who says it there are forty-five thousand good

deeds recorded and he is raised forty-five thousand degrees.” End quote.

And it is narrated from the Prophet (*May Allah bless him and his family and grant them peace*) that when the visitor recites *Qul Huwa Allāhu Aḥad* (Sūrat al-Ikhlāṣ) three times, drawing a line on the grave with each recitation, mercy does not cease descending so long as that line remains.

End quote.¹

[Ruling on Visiting the Grave of an Open Sinner and Supplicating for Him]

Question: A man who was openly sinful died; on the day of his death he had not prayed the dawn prayer. His son asks: is it permissible for him to visit him?

Answer—and Allah is the Guardian who grants success: There are two matters here—visitation and supplication.

As for supplicating for the father with mercy, forgiveness, and the rewards of the Hereafter, that is not permissible, due to His saying, *Exalted is He: “It is not for the Prophet and those who have believed to ask forgiveness for the polytheists—even if they were relatives—after it has become clear to them that they are companions of the Blaze. And the request of Abraham for forgiveness for his father was only because of a promise he had made to him; but when it became clear to him that he was an enemy to Allah, he disassociated himself from him. Indeed, Abraham was most compassionate, forbearing.”* [al-Tawbah:113–114]

As for visiting bereft of supplicating for the father, it is permissible for a purpose—such as fearing people’s blame were he to abandon the visit, or lest they say, “Look at this ‘religious’ person—his religiosity leads him to abandon visiting his own father,” which could cause people to be alienated from listening to him and accepting from him.

Furthermore, there is no doubt that visiting a disbelieving or sinful father during his lifetime is permissible, due to His sayings, *Exalted is He: “Accompany them in the world with appropriate kindness,”* [Luqmān:15] and *“and to parents, good treatment.”* [al-Baqarah:83] When the father dies, the default is that visiting remains permissible, by continuation of the prior ruling; nothing has appeared to us that would change this default. The verse only forbids seeking forgiveness for the enemies of Allah.

As for the report that the Prophet (*May Allah bless him and his family and grant them peace*) said, *“I sought permission from my Lord to visit my mother’s grave ... and He only permitted me for an hour,”* or to that effect: it may be that this was at the beginning of the matter, for he had first

1- *al-Bayān al-Shāfi*, 1/126.

forbidden visiting graves, then commanded it thereafter: “*So—visit them, for they remind of the Hereafter.*” This report is a solitary narration among the Sunnis, and it does not appear in Zaydī ḥadīth collections.

- Visiting graves for admonition and reflection is permissible absolutely, whether the occupants are Muslims or not. This may be indicated by His saying, *Exalted is He*, concerning Pharaoh: “*So today We will save you in your body that you may be for those after you a sign.*” [Yūnus:92] What appears to me to be prohibited is that one’s motive for visiting a grave be the person’s being an enemy of Allah; if that is the motive, then the visit is not permissible.

It is permissible to visit the grave of an open sinner or an oppressor for the purpose of taking heed—or to supplicate against him. It is related that Imām ‘Izz al-Dīn b. al-Ḥasan—*peace be upon him*—when he stood at the grave of Nashwān al-Ḥimyārī, recited lines of poetry noting his station in knowledge—*were it not for hostility (against the Prophet’s Household)*.

As for visiting graves seeking reward and merit from Allah, this is only with respect to the righteous servants of Allah, for visiting them carries reward and merit. The Prophet (*May Allah bless him and his family and grant them peace*) used to visit the people of al-Baqī‘, standing there for a long time and supplicating for them; and he visited the martyrs of Uḥud eight years after their killing and prayed over them as he would over the deceased.

Fāṭimah (*peace be upon her*) used to visit the grave of her uncle Ḥamzah b. ‘Abd al-Muṭṭalib at Uḥud every week.

Muslims, in all eras, have continued to visit the grave of the Prophet (*May Allah bless him and his family and grant them peace*), and the graves of the martyrs of Uḥud and the people of al-Baqī‘. The adherents of all Islamic schools—both Shī‘ī and Sunnī—seek nearness to Allah by visiting the Prophet (*May Allah bless him and his family and grant them peace*), the people of Uḥud, the people of al-Baqī‘, and by visiting the graves of the Imāms, scholars, and devoted worshippers.

The first to denounce this was Ibn Taymiyyah; however, the Muslims paid no heed to his words nor acted upon them. Centuries later Muḥammad b. ‘Abd al-Wahhāb arose, and his standing grew strong; he revived Ibn Taymiyyah’s doctrine after his death. Allah is the One from Whom help is sought.

The Book of Zakāh

Question: A man—on whom the signs of piety and righteousness appear—sought a ruling, saying: he is a trustworthy agent for a people from whom zakāh is collected for the state. If he gives up this post, someone else will replace him who will take from the people many times what he takes; and if he does not give it up, the people will only be subject to a small amount. Which of the two courses is preferable in the religion and safer with the Lord of the worlds?

Answer—and Allah is the One who grants success: Averting great harm by means of lesser harm is permissible according to sound intellects, and the Prophet (*May Allah bless him and his family and grant them peace*) was on the verge of proposing to the polytheists during the Battle of the Trench a third of the date harvest of Madinah in return for their withdrawal from their attack.

And in the words of Imām al-Hādī—*peace be upon him*—to the effect that: it is permissible for the imām, when there is need, to take from the subjects what he uses to repel the enemy from the lands of the Muslims—even by coercion.

If the matter is as the questioner has described, it is permissible for him to remain; rather, that is preferable.

This may be indicated by His saying, *Exalted is He: “except when taking precaution against them in prudence.”* [Āl ‘Imrān:28] What the questioner has mentioned is a form of prudent precaution (*taqiyyah*) accompanied by righteous intention.

Yes—what we have mentioned is specific, and thus it specifies the general evidences forbidding assisting the unjust and the disbelievers.

Some scholars have said that it is permissible to pay a bribe in order to extract a *definitive* right, even though it is impermissible for the recipient to take it; and they mentioned that it is permissible to aid the *lesser* wrongdoer against the *greater* wrongdoer.

All that we have mentioned indicates that averting great harm by means of small harm is permissible; this is imprinted in the very nature of reason, as we have said.

Among the supports for this innate principle is what is known of the permissibility of bloodletting, amputating a gangrenous hand, and cauterization with fire. Our calling the lesser harm “harm” is a figurative usage (by naming it after what it would otherwise be); otherwise, in this situation it is not harm at all, but pure good.

[Zakāh Issues]

He, *Exalted is He*, says: *“And He is the One Who produces trellised and untrellised gardens, date palms and crops of different kinds of food, and olives and pomegranates—similar and dissimilar. Eat of its fruit when it ripens, and give its due on the day of its harvest.”* [al-An‘ām:141] Does the verse imply that what is eaten up to the point of harvest is not subject to zakāh?

And why is zakāh not guaranteed except after harvest—so that if the wealth perishes before it, there is no liability?

And is there a text obligating zakāh on what is consumed before harvest, or a strong proof—given that, with other zakātable assets, zakāh is not due on what the owner consumes, such as sheep, trade-goods, and the like?

– And is it permissible to pay zakāh in advance, before harvest or before the obligation falls, on the assumption that it will become due on that year’s crop (or another)?

– And is it permissible that I give a poor person cash as a *loan* on condition that he appoint me as his agent to receive zakāh on his behalf and settle his debt—so that, whenever zakāh becomes due on me, I receive it by the poor man’s agency and take it against what he owes me?

– And if a man has gold belonging to his wife (not as her dowry) such that, were he to wish to take it back, he could—and he himself also owns silver, even if only a ring—does he appraise the gold together with the silver and pay zakāh, since both are in his ownership? Or is what is a woman’s jewelry distinct from what he himself wears as a ring?

Answer:

Zakāh is not due on what the earth brings forth until the time of its harvest. Before the time of harvest, there is no zakāh due. The time of harvest is when the fruit becomes fit for eating, or when the grain shows readiness for harvesting. At that point, zakāh is due—even if it has not yet been reaped.

Once the fruit is fit for eating, zakāh becomes due—even if it has not been picked. If the fruit then perishes on the trees after having become fit for eating, it is guaranteed (liable) if its loss was due to the owner’s negligence; but if it perishes before the time of its fitness for eating, then it is not guaranteed, because at that point zakāh had not yet become due.

– As for zakāh on sheep, cattle, and trade-goods: zakāh is only due when a lunar year (*ḥawl*) has elapsed. The elapsing of the year is analogous to the harvest. Thus, when the year has elapsed—or when the time of harvest arrives (namely, the fruit’s fitness for eating)—zakāh becomes due. There is no difference between the two matters—so

reflect.

It is not valid to pay in advance the zakāh due on what the earth brings forth before its obligation—i.e., before its harvest time—even if one thinks it will become due.

There is no objection to a poor person appointing you as his agent to receive zakāh on his behalf so that you settle what he owes—whether to you or to someone else.

– The scholars of the school have said: silver is combined with gold (for the niṣāb). What I see, however, is that gold is one genus and silver is another; one is not combined with the other. This is the view of some of our scholars—may Allah be pleased with them.

[Delegation in Financial Acts of Worship]

Financial acts of worship are, by their nature, open to delegation—such as zakāh—because the wisdom and interest in their legislation is to assist the poor and meet their need, together with what results from that of the purification, blessing, and growth of wealth. That purpose is realized whether the owner gives it himself or appoints someone to pay it from his property and distribute it to the poor.

[The Ruling on Zakāh When It Is Taken by Force]

Question: Some tribal shaykhs may possess power and authority, and they take the zakāh of people's wealth by force and threats. It appears that they do not place it in its proper channels; rather, we strongly suspect they consume it. Are we required by Allah's ruling to pay zakāh again and place it in its proper channels? Or is what the shaykh takes sufficient for us?

Answer: The obligation is to give zakāh to those whom Allah has commanded it be given to—namely, just rulers. If such rulers do not exist, the owner is obliged to distribute it to its eligible recipients, or to some of them.

If someone with no right to take zakāh comes—men of might, such as the shaykhs the questioner mentioned—then the owner of the wealth must evade them as much as he can, and turn them back with the least possible portion of the zakāh, keeping the rest and placing it in its proper channels.

If he does so, then what I hold is that he is not required to pay in place of what the shaykh took. This can be analyzed within the school's framework: the scholars said that a depositary and the like are not liable for what is overcome by irresistible force—such as thieves and overpowering oppressors—and they only held them liable if there was misconduct or negligence.

Among what constitutes misconduct or negligence with them is that a

depository, common carrier, or the like could have avoided the thieves with the deposit, or hidden it, but did not; in a case like that, they are liable due to negligence in safeguarding.

Likewise with zakāh: if the owner could have avoided the one taking it, or could have hidden it, but did not—he is liable; but if he could not, then there is no liability upon him.

If it is said: What the thieves took does not become *determined* as zakāh.

We say: The one who takes zakāh by force takes it as zakāh, and the giver hands it over as zakāh. If that is the case, then what was taken is the zakāh.

[Mixing Obligatory Zakāh with Voluntary Charity]

Question: A man had an obligatory zakāh amount mixed with a voluntary charity, and he is the agent responsible for distributing all of it. The obligatory portion is no longer distinguishable from the voluntary. What should he do?

Answer: His way out is to distribute all of it to the poor who are eligible recipients of zakāh. By doing so, the zakāh will have reached its rightful recipients, and the voluntary charity will also have reached its rightful recipients.

- He may, even after the mixing, distinguish the zakāh from the voluntary charity if he remembers the amount of each. His mixing them is a culpable act toward those funds; by that culpability he becomes liable for them. Owing to that liability, he must pay out the amount of zakāh and the amount of the voluntary charity—from what is mixed, or from other funds—because by mixing them the zakāh amount and the voluntary amount have transferred to his personal liability. And Allah knows best. Praise be to Allah, Lord of the worlds. May Allah bless Muḥammad and his family and grant them peace.

[Remitting a Poor Person's Debt with the Intention that It Counts as Zakāh]

The scholars of the school said: It is not valid for a payer of zakāh to remit the debt of a poor person who owes him—intending that this remission counts as the payer's zakāh.

And it is related in *al-Zawā'id* from al-Musfir, al-Murshid, al-Bustī, and Abū al-Faḍl al-Nāṣir, and likewise in *al-Intiṣār*, that it does suffice. Thus in *Ḍaw' al-Nahār* and *Sharḥ al-Azhār*.

I say: What supports the second view (that it suffices) is His saying, *Exalted is He: "And if someone is in hardship, then [let there be] postponement until [a time of] ease. And if you remit it as charity, it is*

better for you.” [al-Baqarah:280] Here Allah calls remitting a poor debtor’s obligation a charity.

And it is narrated in the exegesis of His saying about the contracted slaves: *“And give them from the wealth of Allah which He has given you...”* [al-Nūr:33] that the master reduces a quarter of the contract price; in such a case the remission is called both charity and giving. Thus it is true of the remitter that he has “given” and “bestowed.” This is what is taken from the outward sense of the Qur’an, and the default in such expressions is literalness.

Moreover, Allah has assigned a share of zakāh to debtors (*al-ghārimīn*)—which is only in order to release them from the bonds of debt and clear their liability. That is achieved by remitting the debt, or by the remitter saying, “I give you as charity the debt you owe me,” and the debtor saying, “I accept.” This wording is even better than simply saying “I remit.”

A Note on Specifying the Niṣāb

- The niṣāb of silver is the weight of 8,400 medium barley grains.
- The niṣāb of gold is the weight of 1,200 medium barley grains.
- One mithqāl equals 60 barley grains, which equals 15 qīrāts; one qīrāt equals 4 barley grains. The niṣāb of gold is 20 mithqāls (i.e., 8 and 4/3 *qaflah*).

[Paying Monetary Value Instead of the Item Itself in Zakāh]

Al-Mawlā al-Ḥujjah ‘Alī b. Muḥammad al-‘Ujrī adduced as proof for the permissibility of paying value in zakāh (instead of the item itself) the report about Mu‘ādh when the Prophet (*May Allah bless him and his family and grant them peace*) sent him to Yemen as a collector. Mu‘ādh said: “Give me—or bring me—a *khamīs*¹ or *labīs* (garments) that I will take from you in place of maize and barley in the charity, for it is easier for you and more beneficial for the Emigrants in Madinah.”

It is narrated in *al-Shifā’*, where it is said to be well-known; it is in *Uṣūl al-Aḥkām*; and al-Bukhārī also recorded it. Mu‘ādh’s return to Madinah, though after the Prophet’s death (*May Allah bless him and his family and grant them peace*), was approved by the Companions—for there is no report of their objecting to it—thus it amounted to consensus. End.

A Note on the Categories of Zakāh and Their Niṣābs

1. Zakāh is obligatory in six categories: wheat, barley, maize (dhurah), gold, silver, and the three classes of grazing livestock.
2. There is no disagreement that the niṣāb of gold is twenty

1- A *khamīs* is a type of clothing worn by the People of Yemen, its length if five cubits.

mithqāls, and that of silver is two hundred dirhams, and that no zakāh is due on what is less than that.

3. The niṣāb of camels is five head of grazing stock; no zakāh is due on what is less than five.
4. The niṣāb of cattle is thirty; at that there is one tabīʿ; no zakāh is due on less.
5. The niṣāb of sheep/goats is forty; no zakāh is due on what is less than that.
6. Zakāh on trade goods is one quarter of a tenth (2.5%).

[The Definitive and the Probable Types of Zakāh]

Zakāh is of two types:

1. Definitive zakāh: zakāh on wheat, barley, maize, dates, raisins, camels, cattle, sheep/goats, gold, silver, and trade goods.
2. Probable zakāh: in everything other than that.

Each type has its own ruling: for the first type, whoever denies it disbelieves, and whoever neglects it is sinful.

As for the second type: its denier does not disbelieve, nor is its neglecter deemed sinful; however, one should be especially careful with the first type and be meticulous about its eligible recipients.

So if a man has zakāh of the first type and zakāh of the second type, he should seek out believing poor people for the first type and not spend it on mosques or public interests.

[Zakāh on a Recoverable Debt]

Question: A man has with his brother a sum of money as a debt. He wants to release his brother from that debt—so how should he handle the zakāh for the past years? Both men are poor, though each still owns money equal to more than the niṣāb.

Answer: The man should calculate the zakāh due on that debt for the past years. Once he knows the amount, he should release his brother from what remains after deducting the zakāh amount. As for the zakāh itself, it remains a debt—and no further zakāh is due on it thereafter. If the man forgives his brother and releases him from all of it, then the one who pardoned must pay the zakāh; it transfers to his liability.

If these two brothers wish to avoid the zakāh burden, it is permissible for them—given their poverty—to pass a small amount back and forth between some of their family with the intention of zakāh, until their liability is cleared. The scholars of the school have permitted such a

device for two poor persons to discharge obligations¹ (not for one who is rich).

A Note on Who Is “Rich”

Linguistically, the rich person is one who is self-sufficient with what is in his hand, without needing what is in people’s hands. End.

One who is self-sufficient by his trade is not (legally) rich; zakāh is permissible for him. End (*affirmed*).² (فرض)

Legally, the rich person is: one who owns a niṣāb—of any genus—either in his possession or recoverable, even if the wealth itself is not subject to zakāh. End, *al-Azhār*.

A Benefit Regarding One Whose Wealth Cannot Be Sold

It is related from al-Mutawakkil ‘alā Allāh, with the meaning: whoever possesses much wealth whose value reaches the niṣāb, but when he offers it for sale he finds no buyer—he does not thereby become “rich.” His ruling is the ruling of the wayfarer (*ibn as-Sabil*) whose wealth is not at hand; it is therefore permissible for him in that case to take zakāh. The same applies to one whose wealth has been overpowered so that he cannot access it; even if there is hope of recovery, he does not thereby become “rich,” for this reason. Concluded from the marginalia.³

[Zakāh on a Woman’s Dowry If She Does Not Receive It Until After Years]

Question: A woman received her dowry after several years; how many years of zakāh are due upon her?

Answer—and Allah is the One who grants success: Among the scholars are those who hold that there is no zakāh on the dowry if it was a debt upon the husband, among them Imām al-Manṣūr bi’llāh al-Qāsim b. Muḥammad—*peace be upon him*—and other Imāms—*peace be upon them*.

Accordingly we say: she pays zakāh for one year—one quarter of a tenth—and she is not required to pay for any other years. This may be evidenced by several points:

1. What Imām al-Qāsim b. Muḥammad—*peace be upon him*—mentioned: that the dowry is a grant (*niḥlah*), and a grant is a gift; there is no zakāh on a gift.
2. That with the passing of years, the time for zakāh has lapsed; and

1- *Sharḥ al-Azhār* 1/541.

2- *Ḥāshiyat Sharḥ al-Azhār* 1/506.

3- *Sharḥ al-Azhār* 1/506–507.

the issue is one of scholarly disagreement.

3. What the jurists of the school said: the madhhab of a layperson is the madhhab of whomever she follows; thus the madhhab of that woman, regarding the years whose time has lapsed, is the madhhab of al-Qāsim b. Muḥammad.
4. What is narrated from some scholars of the Prophet's Household—*peace be upon them*—that a layperson may follow whomever he wishes among the scholars of the Prophet's Household—*may Allah exalt them*—without distinction between one already committed (to a jurist) and one who is not.

If it is said: Why did you oblige her to pay zakāh for one year only and not for the remaining years?

We say: We only obliged her for one year because the time for zakāh of that year has not lapsed; and we dropped the zakāh of the other years because the time for their zakāh has lapsed.

A Benefit Regarding One Who Was Unaware of the Obligation of Zakāh on Her Jewelry and Dowry

The school's position, as in the marginalia to *Sharḥ al-Azhār*, is that if a woman was unaware of the obligation of zakāh on jewelry and dowry and believed it not to be obligatory, then after years learned that it is obligatory in her madhhab: this is like issues of ijtihād; there is no zakāh upon her—analogueous to lapse of time in disputed matters.

The marginal note then says: ¹ this holds where she had no fixed madhhab, for she has coincided with the view of those who do not obligate zakāh therein—such as Zayd b. ‘Alī—*peace be upon him*—and others, for they say: there is no zakāh on jewelry. End.¹

I say: The madhhab of Imām al-Qāsim b. Muḥammad—*peace be upon them*—is that there is no zakāh on the dowry before the woman receives it; thus she is not required, upon receiving it, to pay zakāh for the years that have passed. He reasoned that the dowry is a grant (*niḥlah*), and a grant is a gift. The purport of this is mentioned in *al-I’tisām*. Praise be to Allah, Lord of the worlds.

The Ruling When a Woman Was Unaware of the Obligation of Zakāh on Dowry and Jewelry for Several Years

Question: If a woman was unaware of the obligation of zakāh on the dowry and on jewelry, then after several years was informed of the obligation—what is required of her?

1- *Sharḥ al-Azhār* 1/473.

Answer—and Allah is the One who grants success: Nothing is required of her for the years that have passed, because the elapsed years are like lapse of time in disputed issues. And this is the school's position, as in the marginalia to *Sharḥ al-Azhār*.

A Benefit Regarding One Who Buys in Order to Sell the Offspring/Produce (*nataj*)

It is mentioned in the marginalia to *Sharḥ al-Azhār*, according to the school, that if a man purchases a mare intending to sell her offspring, zakāh is due upon her; likewise a cow and the like, if he purchases it intending to sell its offspring, or its milk, or its ghee. Similarly, a tree purchased intending to sell its fruit—zakāh is due upon it. Thus ends, in meaning.¹

I say: This is sound regarding one who buys in that way—like owners of cattle farms who purchase for profit and gain, and like poultry farmers who purchase in order to sell eggs.

In that case, the zakāh is one quarter of a tenth, which is the zakāh of trade-goods.

Moreover, the scholars of the school have also said regarding one who purchases, for example, a cow in order to benefit from her milk and sell the surplus, and likewise to sell her offspring—so it is stated in the school's marginalia.²

We say: In this issue there are considerations from several aspects, namely:

- 1 - The purpose of trade is to seek gains and profits in excess of the principal capital. Yet here, in our lands, that is not ordinarily intended. Rather, when one buys, for example, a cow, the aim is to benefit from its milk and its ghee; this is what is intended first and foremost at the time of purchase. Thereafter, a further intention may follow: selling the surplus of its milk and selling its offspring. Thus, the intention to sell is not what motivates the purchase; rather, the motive is to benefit from the cow's milk. The buyer does not even consider selling the calf or some of its milk until after that, nor does he intend it; at most, he may hold the thought of selling such things within himself as an encouragement that spurs him on to buy.
- 2 - We have not seen the scholars—despite their large number in our lands—mention zakat in this context, even though many pasturing

1- *Sharḥ al-Azhār* 1/475.

2- *Sharḥ al-Azhār* 1/477.

livestock are purchased for this purpose from among cattle and sheep.

3 - One who sells some of the milk of his cow or who sells its offspring is not called a “trader,” nor is he said to be “engaged in trade.”

4 - The jurists of the madhhab do not obligate zakat upon one who does the like of this with a cow that came into his ownership through inheritance, gift, or the like.

Yes, in our time the purchase of saplings and their planting—while the owner intends [profit] upon fruiting—has become common. According to the madhhab, it is then obligatory with respect to those trees to pay one quarter of one-tenth (2.5%) when a lunar year completes over them; then zakat of the fruit is due upon harvesting it.

Thus, on their view that zakat is due from the asset (the ‘ayn) itself, it becomes necessary to give some of the trees themselves to the poor—so the owner would uproot them and give them to the poor.

And if the owner of the trees purchased the land with this intention, then he must give out a portion of the land every year, in addition to the zakat of the trees and the zakat of the fruit.

However, the scholars—despite their number and their knowledge of this—did not speak about this zakat that the jurists of the madhhab mentioned regarding land and trees purchased with the aim of selling the fruit. Their silence, along with their knowledge of it, constitutes an implicit acknowledgment for landowners that it is not obligatory. None of the scholars paid heed to this statement of the madhhab.

This being said, what al-Hādī—*peace be upon him*—mentioned in this chapter pertains to the mare. He said, as in the marginalia of Sharḥ al-Azhār: Whoever purchases a mare in order to sell its offspring whenever they are born, then zakat is obligatory upon its value and the value of its foals. End quote.¹

What al-Hādī—*peace be upon him*—mentioned applies to trade alone. As for the cow we mentioned earlier, it is not the same, for the primary intention with it—as noted—is to benefit [from its milk].

Yes, one quarter of one-tenth (2.5%) is obligatory on trees intended for trade—such as apple, orange, tangerine, and other trees planted for the purpose of sale—because their owner buys and plants them for trade. If they bear fruit and the value of the fruit reaches the nisāb, then zakat of the fruit is due: one-tenth (10%) or half of one-tenth (5%).

[On the Zakat of Income-Generating Assets]

Question: Concerning the zakat of income-generating assets (al-mustaghallāt)... etc.?

Answer—and Allah grants success: The middle opinion regarding the zakat of income-generating assets—such as mills, cars, tractors, houses, shops, and the like—is that the nisāb is reckoned from the yield, which is the rent. If their annual hire and rent reaches two hundred dirhams in the year, then one quarter of one-tenth (2.5%) is due. This is what is mentioned in the marginalia of *Sharḥ al-Azhār* from the author of *al-Ḥāṣir ‘alā Madhhab al-Nāṣir*. This view is a position between two positions, for the scholars hold two opinions in this matter:

The first: According to the jurists of the madhhab—following Imām al-Hādī *may Allah be pleased with him*—they said zakat is obligatory on income-generating assets. Thus, in a rented house and the like, one quarter of one-tenth (2.5%) of its value is, according to them, due when the year completes; the house is appraised at the end of the year, then its owner pays one quarter of one-tenth of its value.

And others outside the madhhab said: There is no zakat at all on income-generating assets.

[Zakat of Rented Shops]

Question: A man has shops that he rents out, but their annual rent does not reach the amount of zakat, which is one quarter of one-tenth (2.5%) of the value of the shops. What is the ruling in that?

Answer—and Allah is the Grantor of success and aid:

This issue is among the matters of ijtihād regarding which the scholars say: “Every mujtahid is correct.” Imām al-Hādī Yaḥyā b. al-Ḥusayn—*may Allah be pleased with him*—gave an opinion in it that the scholars of the Hādawī madhhab, *may Allah be pleased with them*, followed—and he was right and they were right—namely: that zakat is obligatory on such income-generating assets. They expressed this ruling absolutely, without consideration of whether the rent is small or great.

Another group of scholars said: There is no zakat at all on income-generating assets.

I have been informed of one of the contemporary scholars that he would guide those who asked about such cases to give either one-tenth (10%) of the rent or one quarter of one-tenth (2.5%) of what was obtained in rent for the entire year; and I think he offered this as guidance and counsel, not as a fatwa of obligation.

This guidance is a middle solution between the two preceding opinions—namely, the view of al-Hādī that obligates zakat on the principal (the shops themselves), and the view of the others who say there is no zakat at all on income-generating assets.

In this solution, its proponent considered the position of al-Hādī—*peace be upon him*—and preserved the sanctity of his madhhab. As we said earlier, the matter is one of ijtihād, and every mujtahid in it is correct. These are three approaches, and the best of affairs is the middle way.

The third approach to which some contemporary scholars guided is a dispensation that suffices whoever adopts it, and it is adequate for him. Such middle-way solutions may suffice in ijtihādī issues for which no proof has come from the Wise Lawgiver—when sound reasoning calls for them, as here. For in what we cited from some scholars there is guidance to what they said:

1 - It accords with the saying of the Exalted: *“O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth.”* [al-Baqarah:267].

The owner of the shops has, in his year, earned the rent of that year; and what is meant in the verse is to give out a portion of what a person has earned. The Messenger—*May Allah bless him and his family and grant them peace*—has clarified that this portion is one quarter of one-tenth (2.5%) in trade goods and the like, or one-tenth (10%) or half of one-tenth (5%) in what the earth yields, etc.

If the owner of the shops gives one quarter of one-tenth (2.5%) of what he earned, he has complied with the command mentioned in the verse; and if he gives one-tenth (10%), then likewise.

2 - It preserves the sanctity of the madhhab of the Imām of the Imāms, al-Hādī ila al-Haq, Yaḥyā b. al-Ḥusayn—*may Allah be pleased with him*—and then preserves the madhhab of those scholars who followed him in this.

3 - It provides ease, facilitation, and a dispensation for owners of income-generating assets, in accordance with His saying, *Exalted is He: “and He has not placed upon you in the religion any hardship,”* [al-Ḥajj:78], and His saying, *Exalted is He: “Allah intends for you ease and does not intend for you hardship,”* [al-Baqarah:185], and in accordance with what came from the Prophet—*May Allah bless him and his family and grant them peace*—such as his saying, *“I was sent with the upright, easygoing religion,”* and his saying, *“Make things easy and do not make them difficult...”* (hadith).

4 - It takes into account the general welfare—namely, that of the poor and the needy, and so on.

[Zakat on Vegetable]

Question: Is it permissible to pay the monetary value (instead of the produce itself) for the zakat of vegetables? If you say it is permissible,

what is your response to one who says: asserting the permissibility of that comes close to contravening consensus; for the one who holds the zakat of vegetables to be obligatory maintains that zakat must be taken from the very commodity itself specifically, whereas whoever permits paying the monetary value does not hold that zakat is due in vegetables?

Answer—and Allah is the Granter of success and aid: Your statement, “it comes close to contravening consensus,” and so forth, is not conceded. For the view that permits paying the monetary value in zakat is opposed by the view that disallows paying the monetary value in vegetables.

The proof for what we have said is that both parties agree zakat is obligatory, then they differed as to whether it is obligatory from the very commodity itself specifically, or whether paying the monetary value suffices. This disagreement arose between the two parties without regard to the particular thing to which the zakat is attached.

Moreover, the obligation of zakat in vegetables is, without doubt, a disputed issue; therefore its particulars must also be a matter of dispute, following the root of the issue.

Also, the view that permits paying the monetary value in the categories which are agreed upon entails, a fortiori, permitting that in what they hold carries no zakat at all.

[Shifting to the Madhhab of Imām Zayd Regarding the Non-Obligation of Zakat in Vegetables]

Question: May a man shift to the madhhab of Zayd—*peace be upon him*—holding that zakat is not obligatory in vegetables? And is the ruling the same if the man is a trustee (waṣī) or the guardian of a minor?

Answer—and from Allah is unceasing success: The Imams of the Prophet’s Household (Ahl al-Bayt), *peace be upon them*, and their scholars—they are the people of truth and the ships of salvation; whoever follows their guidance is saved. What appears to me—and Allah knows best—is that it is permissible for any of their followers who are muqallids (adherents in taqlīd) to adopt the madhhab of any one of them he wishes, and to take in one time the madhhab of some of them and at another time the madhhab of another.

Imām Zayd b. ‘Alī—*peace be upon him*—said, as in his *Collected Epistles*: “Our differences are a mercy for you,” meaning that the differences of the scholars of Ahl al-Bayt in a given issue are an expansion for their followers, not a constriction—so a follower is not restricted to one of the two madhhabs that he must remain with; rather, he may take this one and, after a while, take the other.

This is what has appeared to me for the following reasons:

- 1 - The default is the permissibility of moving between views, and there is nothing to forbid it; whoever claims it is forbidden bears the burden of proof.
- 2 - It is presumed that each of the Imams has fulfilled the conditions of being qualified to be followed in taqlīd. If that is so, then each of them is fit to be followed; and in that case, what objection is there to the muqallid taking the view of one of them and then the view of another, given that they are equal in eligibility to be followed?

If it be said: They have stated that “pursuing concessions (tatabbu‘ al-rukhaṣ) is heresy.”

It is said in reply: What is meant by that is pursuing the slips of the mujtahids and their anomalous ijtihādī judgments that are repudiated. Hardly any Imam among the followed madhhabs is free of an anomalous, disapproved ijtihād—or more than one.

[Ruling on Selling Fodder Before Harvest]

Question: A man sold a plot of fodder maize that had not been harvested. What is required of him?

Answer—and Allah is the Granter of success: It is preferable that the seller pay the zakat from the price received if it reaches the niṣāb or more.

There is no zakat on the buyer unless he leaves it until harvest; if he leaves it until harvest, then zakat is due upon him, due to His saying, *Exalted is He: “And give its due on the day of its harvest.”* [al-An‘ām:141].

[Ruling on the Zakat of the Qaṣab, the Shariyāf, and the Ḥamāṭ]

Question: Is zakat obligatory on the grain (ḥabb), the qaṣab, the shariyāf, and the ḥamāṭ?

Answer: If the crop—*dhurah*—is harvested and it yields grain, then he pays the zakat of the grain. It has not appeared to me that, upon paying the zakat of the grain, he must also pay zakat on anything else.

The jurists of the madhhab have said that three dues are required in that case: zakat of the grain, zakat of the qaṣab¹, and zakat of the ḥamāṭ, if the value of each of the qaṣab and the ḥamāṭ reaches the niṣāb for each of them.

It has not appeared to me that this is obligatory, for the proofs concerning zakat of grains speak of taking the grain, and the proofs do not address the qaṣab and the ḥamāṭ. Had that been obligatory, the proofs would have mentioned it.

However, if the farmer’s intention in planting *dhurah* (corn/sorghum)

1- *Sharḥ al-Azhār* with its marginalia, 1/502.

was fodder and not grain, and he cuts the *dhurah* once its growth is complete, before grain appears in it, then he must pay zakat on the fodder, due to His saying, *Exalted is He: "And give its due on the day of its harvest."* [al-An'ām:141]. In that case, the ruling of the crop is the ruling of vegetables.

[Ruling on Zakat for One Who Purchases a Qāt Plantation]

Question: If a man purchases a qāt plantation, irrigates it and tends it, then harvests the qāt, is zakat obligatory upon him or not?

Answer: The jurists of the madhhab, as in *al-Bayān*, said: Whoever purchases a crop that has not yet ripened, and it then ripens while in his ownership (i.e., the buyer's), the tithe (‘*ushr*’) is due from the buyer.¹

They also said, as in *al-Bayān*: Whoever purchases fresh dates or grapes after most of them have ripened—if he cuts them immediately after the purchase, nothing is due from him; but if he leaves them until they are fully complete, the tithe is due upon him.²

As for the seller of a plot of qāt, he must pay zakat; for the jurists of the madhhab said regarding one who sells a crop intending it for fodder or for sale that he must pay its zakat, as in *al-Bayān*.³ And qāt is a crop that is, in most cases, planted with the aim of sale.

This may be supported by His saying, *Exalted is He: "And give its due on the day of its harvest."* [al-An'ām:141].

[How One Pays Zakat When He Sold for a Fixed Sum but the Buyer Did Not Pay Him in Full]

Question: It often happens that a man sells from his orchard—qāt, pomegranates, or apples—for a fixed sum. The buyer takes the produce and sells it, then comes to the seller to pay him the remainder of the price—since at the time of sale he only took the deposit—and he reduces some of the price on the pretext that he did not profit on that transaction, or that he incurred a loss; so the seller waives it for him. Must the seller pay zakat on the agreed price, or only on what he actually received?

Answer: What appears to me is that he is not obliged to pay zakat except on the amount he actually received. This is because, from the moment of contracting, the seller knows that the buyer will inevitably reduce the amount—such is the prevalent custom in this matter. Also, the seller did not reduce it by his own free choice, but because the buyer

1- *al-Bayān al-Shāfi*, 1/147 (manuscript).

2- *al-Bayān al-Shāfi*, 1/147 (manuscript).

3- *al-Bayān al-Shāfi*, 1/145 (manuscript).

refused to pay that amount in full. Such is the customary practice.

[When the Owner May Delay Disbursing Zakat]

Question: If a man has a large amount of zakat, is he required to distribute it all at the end of the zakat year? Is it permissible for him to disburse it gradually throughout the year, since many poor people come to him over the course of the year?

Answer: If the best interest of the poor is served by distributing zakat to them gradually over the year, then such gradual disbursement is permissible—indeed, it is preferable—because it meets the needs of the poor throughout the year. Allah the Exalted legislated and made zakat obligatory in order to meet the needs of the poor.

It is neither fitting nor permissible for the wealthy person to withhold the zakat of his wealth while there are needy poor in his presence. Nor is it permissible for him to withhold it so as to profit from it in trade while needy poor exist.

He may, however, hold it back with the aim of allocating it to believing poor students of knowledge who are dignified in their self-restraint, even if there are needy poor present who are not of that kind; and likewise, he may hold it back in order to allocate it to a needy relative.

[Important Issues in Zakat and Khums]

- 1 - What appears to me is that if the zakat-payer does not find an appropriate avenue for disbursement (maṣraf), he may “borrow” the zakat (i.e., take it as a loan upon himself), mingle it with his wealth, make use of it, and buy and sell with it until the proper avenue becomes available.
- 2 - If a man segregates his zakat, awaiting the availability of a proper avenue, it is permissible for him to lend it to someone else until that avenue appears. When it does, he retrieves it from the borrower and pays it to the due recipients. If he does not find repayment with the borrower, then the zakat-payer must pay it from his own wealth.
- 3 - If the zakat is lost before it reaches the avenue of disbursement, the liability is upon the owner of the wealth; he must pay its replacement.
- 4 - If a scholar—or someone similar—collects zakat from people of means to spend it on students of knowledge, or to aid an insolvent debtor, or to meet the needs of believing poor people, and it is then lost without negligence or wrongdoing on his part, he is not liable for it; nor are the wealthy obligated to pay a replacement.

We say this because the scholar (or the like) resembles the ruler of the Muslims in that, once zakat reaches his hand, it leaves the

liability of the owner.

- 5 - If zakat is lost while in the hand of an agent due to negligence or wrongdoing, he must replace it; and when he has replaced it, he may disburse the replacement without needing a new authorization. If it was lost without negligence or wrongdoing, and he nonetheless replaces it, then the closer view is that he does need authorization from the zakat-payer.

The distinction between the two cases is that, with negligence or wrongdoing, the agent must provide a replacement, and the replacement takes the ruling of the original. Without negligence or wrongdoing, the agent is not obliged to provide a replacement; if he does so, he is volunteering, and no one's volunteering on behalf of another is valid in zakat without authorization.

- 6 - If a wealthy person gives his agent Saudi paper currency to distribute to the poor, it is permissible for the agent to exchange it into Yemeni currency to distribute to the poor; no special authorization is required for that.
- 7 - If a man's state of poverty is known, zakat may be given to him without requiring that he be asked whether he is a valid recipient; nor is it obligatory to inform him that what he is receiving is zakat, because many people feel reluctant to accept zakat.
- 8 - The insolvent debtor (al-ghārim) is given from zakat an amount that covers his debts, however large they may be; it is not required that he be given it in installments—one lump sum suffices.
- 9 - If a poor person must travel abroad for medical treatment, he is given what he needs for his travel and treatment, however much that may be, without extravagance or stinginess; then he returns whatever exceeds his need.
- 10 - It has not appeared to me that zakat is obligatory upon owners of trees whose branches are cut for roofing, for firewood, for fodder, or the like—and by this we mean trees such as those in our region of Ṣa'dah: al-ʿalab¹, al-ṭalḥ², and al-athl³.

However, if a farmer plants his farm with athl, or ṭalḥ, or ʿalab as a commercial plantation, as one plants apples, qāt, or pomegranates, then the closer view is that zakat is obligatory.

We say this because, although our scholars have mentioned the obligation of zakat in such cases, throughout history they have not

1- Loti tree.

2- Acacia tree.

3- Tamarisk tree.

demanded zakat for that, nor urged it, nor reproved the general populace for neglecting to pay its zakat.

- 11 - It has not appeared to me that khums is obligatory on firewood and herbage (al-ḥashīsh), even though the jurists of the madhhab have mentioned it; for, so far as we know, we have not seen the scholars reproving the common folk for leaving the zakat of that.
- 12 - What appears—*Allah knows best*—is that the obligation of khums pertains only to what is taken as spoils from the wealth of disbelievers or rebels, to minerals that Allah the Exalted has placed in the earth, and to what is found buried (rikāz) of the wealth of the pre-Islamic period in Muslim lands.

Those who hold that khums applies to herbage, firewood, locusts, bees, and so forth, have adduced the general purport of His saying, *Exalted is He: “And know that whatever you obtain as spoils—then indeed, for Allah is one fifth of it ...”* [al-Anfāl:41].

And the answer may be:

- The verse was revealed in connection with the spoils of war.
 - It is not related that the Prophet—*May Allah bless him and his family and grant them peace*—mentioned the obligation of khums upon the expedition to which the sea cast a great fish, nor is it related that he mentioned the obligation of khums upon fishermen, or upon woodcutters and grass-gatherers; had he clarified its obligation, it would have been transmitted to us.
 - The scholars, throughout history, have not reproved people for leaving the zakat of firewood, herbage, and the like.
- 13 - Zakat is one of the five pillars of Islam; a Muslim’s Islam is not complete without it. The proof is His saying, *Exalted is He: “But if they repent, establish prayer, and give zakah, then they are your brothers ...”* [al-Tawbah:11]. Thus Allah conditioned the entry of the polytheists into the brotherhood of the Muslims and the sanctity of Islam and the sanctity of the religion upon three conditions:
 - 1 - Repentance from shirk.
 - 2 - Establishing the prayer.
 - 3 - Giving the zakat.

It follows from this that the one who rebels against giving zakat and persists in leaving it—if he repents after its time has passed—is not obliged to make it up, even for many years. But if he repents while the time of zakat remains, then he must pay it.

- 14 - What appears to me is that the time of the obligation to pay the zakat of trade goods and the like extends from when the zakat

year completes until the zakat year completes a second time; and the time for the zakat of what the earth produces extends from the time of harvest until the time of the second harvest of that crop.

The obligation to pay zakat becomes constricted (i.e., immediate) if the Muslim authority demands it, or upon the presence of a needy poor person.

We say this because:

- 1 - By analogy with negligence in prayer: negligence in prayer occurs at the entry of the time of the next prayer.
 - 2 - Allah the Exalted legislated zakat for the need of the poor and to fill their lack; and the need and lack of the poor extend from harvest to the second harvest. Their need is thus to be met between the two harvests, and between the two zakat-years in trade goods. Therefore, if the farmer does not pay the zakat of his farm until after he has harvested it a second time, he has been negligent by not giving the poor their due during the period between the two harvests.
- 15 - The preferable course in the zakat of grain, raisins, dates, camels, cattle, and sheep is that the poor be given from the items themselves—grain from grain, and so on—because that is in the best interest of the poor and most beneficial to them.

As for the zakat of cucumbers, qāt, and the types of melons (ḥabbah, shammām, kharbuz), and of kūṣah (zucchini), dubbā' (pumpkin), and the like—the poor are to be given money, because that is in their interest and benefit; for a poor or weak person may not benefit from, for example, cucumbers, nor know how to sell them.

Likewise for the zakat of vegetables and fruits; all of this is for the reason mentioned—namely, the interest and benefit of the poor.

Benefit: When the monetary value must be paid

Likewise, paying the monetary value (i.e., the cash value of the zakat) is required when the ruler requests it; and if the owner offers the goods themselves, it is not obligatory to accept them from him. End. (From the marginalia of *Sharḥ al-Azhār*¹).

Benefit: On discharge (ibrā') from a dowry or a debt

In *al-Muhadhdhab*: If a woman absolves (ibrā') her husband of her dowry, zakat is not due upon her, because she has not received anything;

1- *Sharḥ al-Azhār* with its marginalia, 1/531.

nor is anything due upon her husband either. End.

And therein also: If a man has over another one thousand dinars for many years, and he dies before receiving it—he is not obliged to make a bequest to cover the zakat, because the obligation only attaches upon receipt, whether he was able to collect it or not. End.

I say: One corollary of what Imām al-Manṣūr bi-llāh mentioned in these two issues is that if a man absolves another of a debt, zakat is not due upon him. This view is better than what the jurists of the madhhab stated—that zakat is obligatory in such a case—for two reasons:

- 1 - It is nearer and more conducive to the act of absolution (ibrā’). For if the creditor knows that if he absolves the debtor, the zakat of the debt for past years would become obligatory upon him, this would prompt him not to absolve; whereas if he knows that nothing is due upon him, it encourages absolution.
- 2 - The obligation of zakat only attaches to the legally responsible person—the creditor—upon his receipt of the debt. If he receives it, he must pay the zakat due for the past years. But if the creditor absolves the debtor and pardons him, the obligation does not attach to him. This is the proof adduced by Imām al-Manṣūr bi-llāh—*may Allah have mercy on him*.

This proof may be detailed and clarified as follows:

The obligation of zakat relates to wealth. When the wealth that is of a kind on which zakat is due is actually obtained, and the time at which zakat is due in that wealth arrives, then the zakat must be paid.

At that point, the debt is neither obtained nor present; it is not possible to pay zakat from it due to its nonexistence and absence. *“Allah does not burden a soul beyond its capacity.”* [al-Baqarah:286].

And it is related from the Commander of the Faithful, *peace be upon him*, that the time to pay zakat on a debt is upon its receipt.

If it be said: The obligation of zakat has arisen with the completion of the year, but paying it does not become constricted (i.e., immediately due) except upon receipt; thus the obligation to pay exists prior to receipt.

We say: That is so; however, if the debt is not received, paying the zakat does not become constricted, and there is no blame for leaving what has not become constricted.

If it be said: Absolution (ibrā’) of the debt is tantamount to receipt; therefore, when he absolves, he must pay zakat.

We say: The reports narrated from ‘Alī, *peace be upon him*, indicate—by implication—that the effective cause for the obligation to pay zakat on a debt is receipt, and absolution is not receipt.

Analogizing absolution—and the like, such as vows (*nadhr*) and endowments (*waqf*)—to receipt is invalid, for several reasons:

- 1 - Because it is an analogy of causes; and analogy of causes is weak, and the consideration of it is a matter of great controversy.
- 2 - There is a difference between receipt and absolution: receipt is a qualifying attribute pertinent to the payment of zakat, whereas absolution is not.
- 3 - If paying zakat did not become constricted before absolution, then all the more so it does not become constricted after absolution.

Moreover, Allah said concerning debt: *"And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you ..."* [al-Baqarah:280]. He thus guided to what is better—namely, absolution—and He called it "charity."

Yet He did not mention—while in the mode of clarification—the obligation of zakat in the case of absolution; nor has anything of that been related from the Prophet—*May Allah bless him and his family and grant them peace*—in the explanation of this verse. Had the matter been as the jurists of the madhhab stated, absolution would not be better and preferable, and the charity would not be valid—since the poor have a share in what is given as charity, and it is neither valid nor permissible to give charity from their share.

[Ruling on Delaying Zakat, and On What Price It Is Calculated]

Question: Does one sin by delaying zakat beyond its time? And if a trade commodity whose zakat was delayed fluctuates in price, on which price is the zakat calculated?

Answer—and Allah is the Granter of success: It is not permissible to delay zakat beyond its time except for an excuse, as indicated by His saying, *Exalted is He: "And give its due on the day of its harvest."* [al-An'ām:141].

As for the second part of the question: it is obligatory to appraise the commodity at the prevailing price at the time zakat is paid—whether its price had previously increased or decreased.

The proof for this is that zakat relates to the commodity itself; if the commodity remains, the poor are entitled only to one quarter of one tenth (2.5%) of it, whether the commodity has become cheaper or not.

[The Reason for the Abundance of Poor People]

If the wealthy were to pay the zakat of their wealth as Allah has made obligatory and place it in its proper channels among the poor and needy, no poor person would remain there.

The abundance of poor and needy people in the midst of the Muslims results from the wealthy neglecting the zakat of their wealth. This neglect occurs by placing it in improper channels and by failing to be thorough in paying zakat.

[Ruling on Giving the Poor the Monetary Value of Zakat]

Question: Is it permissible to give a poor person the monetary value of the zakat for cucumbers, qāt, pomegranates, tomatoes, and the like?

Answer: The preferable course is to give the poor what is more beneficial for them—either the cash value or the goods themselves. There is no doubt that the cash value of cucumbers and the like is more beneficial and more suitable for the poor; for many of them may not benefit from cucumbers themselves if given to them, and they may not be able to sell them—likewise if they are given a large quantity of tomatoes or qāt.

In our view, the owner of wealth, during the interim period (*al-fatrah*), has authority over the zakat of his wealth; therefore, he must look out for the poor, considering what is more beneficial and suitable for them. He ought not give a weak poor person, a widow, or an orphan a quantity of cucumbers, for there is no benefit or advantage for them in that; rather, their benefit lies in its cash value—likewise for tomatoes, qāt, and similar items.

Thus, the owner of cucumbers should sell all the cucumbers in the markets where they are customarily sold, then pay out the poor's share thereafter.

[Is Zakat Paid Before or After Selling Expenses?]

The questioner added: Is zakat paid before deducting the selling expenses, or after?

Answer: Based on what we set forth—that the owner of wealth has authority over the zakat of his wealth during the interim period, and that it is for him to consider the poor's best interest—he should pay zakat on what remains after deducting the expenses attached to the goods for the purpose of sale, such as the hire for transporting them, the broker's commission, and the like—because the poor's benefit from the zakat of cucumbers is not realized except thereby.

In the marginalia of *Sharḥ al-Azhār*, from Imām al-Qāsim b. ‘Alī al-‘Aiyānī: “Zakat is after deducting the expenses.”¹

As for grain and grapes, the preferable course is to give the poor their share of them, for that is more beneficial to them in the immediate and

1- *Hāshiyat Sharḥ al-Azhār*, 1/494.

the long term, and in accordance with His saying, *Exalted is He: "Take from their wealth a charity..."* [al-Tawbah:103]. This should not be contravened.

Yes, paying the monetary value categorically is the madhhab of many of the Imams and scholars of the Prophet's Household in their discourse.

[Do the Heirs Build on the Deceased's Zakat Year?]

Question: A man had one hundred sheep, then died before a zakat year was completed, leaving two sons. How should they act with respect to zakat when the year falls due?

Answer: Each of the two sons must pay one sheep when a year has passed over the flock—that is, when a full lunar year has elapsed from the day their father died. They are not obliged to pay zakat on the flock at the zakat date their father used to pay for that flock, for the father's zakat year was cut off by his death, and the flock passed into the ownership of others.

[When a Poor Person Appoints as Agent a Man to Whom Zakat Is Not Lawful and Authorizes Him Regarding It]

Question: A poor person may appoint as his agent a man to whom zakat is not lawful and authorize him regarding what he takes of zakat; this man then takes a great deal of zakat as an agent and appropriates it for himself, and so on. Is that permissible or not?

Answer—and Allah is the Granter of success: Allah the Exalted said, *"Zakah expenditures are only for the poor and the needy ..."* [al-Tawbah:60]. Thus, zakat is not lawful for anyone other than those whom Allah has mentioned in this verse, *"except for a man who purchases it with his own wealth ..."* (hadith).

And Allah the Exalted said, *"Cooperate in righteousness and piety, but do not cooperate in sin and aggression."* [al-Mā'idah:2]. What is mentioned in the question is not cooperation in righteousness and piety; rather, it is cooperation in consuming the wealth of the poor and needy, and in depriving them of the zakat that Allah has made obligatory for them.

Such agency is not valid; indeed, it is a void agency, for it entails that the poor person has appointed the wealthy person to consume from zakat what Allah has forbidden to him.

In reality, the poor person sells to the rich man the mere semblance of an agency for a fixed or unknown price—or the rich man contrives a stratagem for the poor person until he fashions for him the semblance of an agency.

Benefit: Concerning one who spent something that was not incumbent upon him

In the marginalia of *al-Azhār*, the meaning is: Whoever spends some wealth thinking he is obliged to spend it, then later it becomes clear to him that it was not obligatory upon him—he has the right to reclaim it from the one who took it, and likewise the heirs have the right to reclaim it.

This differs from zakat: if one paid it on the basis that it was incumbent upon him, then it turns out it was not incumbent upon him, he does not have the right to reclaim it from the poor. End of the sense.¹

[Is There a Right in Wealth Besides Zakat?]

Question: Is there any obligatory right in wealth besides zakat, or not?

Answer—and Allah is the Granter of success: The apparent conclusion is that there are obligatory rights in wealth other than zakat; however, they are neither quantified by a set amount nor limited by a fixed time. Rather, they are rights that become obligatory when their causes arise—such as the maintenance of one’s children and indigent parents, likewise indigent relatives, saving a Muslim from starvation, and feeding a guest when he descends upon people of tents (ahl al-wabar, i.e., desert dwellers) and the like. There are also rights that are compelled by innate disposition, and reason judges the one who neglects them to be base and deserving of blame.

It may be that the All-Wise—*blessed and exalted*—did not explicitly mention them, relying upon what sound human nature has settled upon of their obligation and imperative force.

[The Amount to Be Given to a Poor Person from Zakat]

Question: How much is a poor person to be given from zakat?

Answer—and Allah is the Granter of success: He is given according to his need; likewise, the stranded wayfarer is given what will enable him to reach his homeland; likewise, the insolvent debtor is given what will settle his debt; and likewise, the combatant in the path of Allah is given what he needs for jihad.

It is permissible to give each of these according to the measure of the need—even if it reaches the nisab or exceeds it—for zakat was legislated and made obligatory for them on account of their need and to fill their lack; thus they are given what will fill that.

This is the madhhab of many scholars from among the People of the House (*Ahl al-Bayt*) and others.

1- (Paraphrase of) *Ḥawāshī al-Azhār*, (2/219) published by Justice Ministry.

Al-Hādī Yahyā b. al-Ḥusayn—*may Allah have mercy on him*—and those of the madhhab who follow him said: The poor person does not complete a nisab, and it is not permissible for him to take a full nisab in a single payment, nor that which completes a nisab. This view is the more precautionary.

An Issue Concerning the Prohibition of Zakat for the Zakat-Payer's Ascendants and Descendants

Zakat is not lawful for the zakat-payer's ascendants or his descendants, nor for those whose maintenance is obligatory upon him—this is the madhhab, and it is strong.¹

If it be said: If those mentioned are poor, they are encompassed by His saying, *Exalted is He, "Zakah expenditures are only for the poor ..."* [al-Tawbah 9:60]; the generality of the verse appears to include those mentioned.

It is said in reply: Those mentioned in this issue—although they are outwardly included in the generality of the verse—have been excepted by reason and inference. This is because one who gives his zakat to his poor children and his poor parents, or to relatives whose maintenance is obligatory upon him, is—in reality—not a payer of zakat; rather, the zakat-payer himself is the one who has benefited from the zakat, for he has benefited by using it to feed his own children.

[The Ruling on Giving to Beggars]

Question: Begging has greatly increased in our time, and it is possible that many of those people have taken begging as a profession, and that he takes zakat and begs for it while being well-off. Is it permissible to give them from zakat when one suspects, doubts, or deems it possible that this is the case—or not?

Answer—and Allah is the Granter of success: Allah the Exalted has made zakat obligatory and designated it for the poor, and it is not properly placed among the poor except after they are known. Thus, based on this, a person must ascertain the truth of their poverty if that is feasible; otherwise, a preponderant assumption (ẓann) of their poverty suffices.

Assumption may be formed by indicators. Hence Allah the Exalted said to His Prophet—*May Allah bless him and his family and grant them peace: "[Give] to the poor who are restricted for the cause of Allah, unable to move about in the land. An ignorant person would think them self-sufficient because of their restraint, but you will know them by their [characteristic] sign. They do not ask people persistently."* [al-Baqarah:273].

1- Sharḥ al-Azhār, 1/524–525.

Yes, the beggar has a right in one's wealth if he is poor, Allah, Exalted is He, said: *"And those within whose wealth is a known right—for the petitioner and the deprived."* [al-Ma'ārij:24-25]; and, *"And as for the petitioner, do not repel [him]."* [al-Ḍuḥā:10]; and, *"[Righteousness is] ... to give wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask, and for freeing slaves; [and] to establish prayer and to give zakah ..."* [al-Baqarah:177].

However, it is necessary to verify and be certain of the beggar's poverty. It has been related that two men asked the Prophet—*May Allah bless him and his family and grant them peace*—for zakat, so the Messenger of Allah scrutinized them, looked them over carefully, and questioned them and sought clarification.

As for giving the beggar from zakat without verification, it is not appropriate—because of people's great greed and the paucity of uprightness.

[May a Man Spend from His Zakat on a Foundling in His Care?]

Question: May a man spend from his zakat on a foundling (laqīṭ) who is under his care?

Answer—and Allah is the Granter of success: There is no impediment to that, for he is poor or needy. And if he has property—however unlikely—that is akin to the case of the stranded wayfarer cut off from his homeland and his wealth; indeed, the effective cause (‘illah) with respect to the foundling is even more complete and clearer than for the wayfarer.

[Purchasing Books with Zakat Funds and Distributing Them to Students Among Whom Are Those to Whom Zakat Is Not Lawful]

Question: Is it permissible to purchase books of knowledge with zakat money and distribute these books to students—among whom are the children of the wealthy and among whom are Hāshimites?

Answer: Such a thing is permissible for the rulers of the Muslims and for those who act in their stead; for others, it is not permissible. If a guide (*murshid*) needs something of this sort for his guidance, he must first disburse the zakat to a poor person; after disbursing it to the poor person, it is then permissible for the guide to purchase with it the instructional books and distribute them to his students and to those who will benefit from them.

[The Ruling on Taking Zakat for One Who Owns Books Whose Value Exceeds the Nisab]

Question: A poor student of knowledge owns books; given that, is it permissible for him to take zakat or not?

Answer—and Allah is the Granter of success: They have stated that

an allowance is made for the scholar and the student of knowledge with respect to books he needs.

Based on that, the matter differs from person to person: the beginner's need for books is limited; then the student who has passed the initial stage has a need for books greater than one below him.

Moreover, a scholar or a student may be passionate about research and reading, with a strong desire and inclination to expand in a particular kind or kinds of sciences—so an allowance is made for him in what he needs for that.

As for books that the student or the scholar does not need: they are not to be excepted for the poor person; if their value reaches the nisab or more, then they are counted against his wealth.

[A Man Has an Inheritance Withheld by a Person, and He Himself Holds Some Farmland]

Question: Two men: one of them has an inheritance belonging to the other and refuses to hand it over; the other has a small amount of cultivated land.

This latter man wishes to hand over what he has from the farmland to clear his liability, but the first refuses to accept it. What is then required? And is it permissible for him to consume from the proceeds (al-ghulūl) knowing that the other is consuming multiples of that from the inheritance he holds?

Answer—and Allah is the Granter of success: If this man who wishes to clear his liability cannot obtain his right from what is under the other's hand through litigation and legal process—either due to a lack of fairness in the courts or for some other reason—then it is permissible for him, in this case, to consume the yield of what is under his hand; and he is not obliged, in this state, to hand over what is under his hand from the farmland, nor to surrender those proceeds. This is due to His saying, *Exalted is He: "And the retribution for an evil act is an evil one like it."* [al-Shūrā:40], and His saying: *"And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed."* [al-Nahl :126].

[A Woman Receiving Zakat While Owed a Large Dowry by Her Husband]

Question: A man had been giving a woman from the zakat of his wealth for a long time. Then a rift occurred between her and her husband, at which point it became clear to this man that the woman is owed, by her husband, a dowry amounting to thirty thousand Saudi riyals. The woman is religious and did not know that her dowry prevents her from taking zakat. What is the way forward?

Answer—and Allah is the Granter of success: So long as the matter is as stated in the question, what has passed is valid; neither the giver nor the recipient bears any liability for that.

This is because zakat need not be redone except if it was disbursed to a non-eligible recipient, by consensus. This woman is not such a case. According to Imām al-Qāsim b. Muḥammad—*may Allah have mercy on him*—as in *al-I’tiṣām*: the woman does not own the dowry until she actually receives it. He adduced as proof that Allah the Exalted called it a “gift” (niḥlah), and a gift is that which is given; and, based on what we have mentioned, she is not obligated to pay zakat on the dowry for the years that have passed.

[Ruling on Spending Zakat on a Water Source]

Question: There is a well from which all the people of a village benefit—for their drinking, purification, and watering their animals only—and they were unable, collectively, to cover the cost of a pump. Is it permissible to spend zakat on that water source so they can obtain a pump and piping?

Answer—and Allah is the Granter of success: If the pump is for the benefit of the people of the village in general, and for whoever comes to that water source, then there is no harm in that—provided the poor of the town are already sufficiently provided for; if there are poor in need, then they have priority. What is meant by “sufficiently provided for” is that their need is covered at the time of disbursement.

This is on the condition that the zakat payers are not the only beneficiaries of it, nor the predominant group in the village. It is not permissible to spend zakat on something whose benefit returns to the one disbursing it—such as spending it on his son, one whose maintenance is obligatory upon him, or his slave. The same applies here: the majority of beneficiaries must not be the zakat payers themselves. There is, however, no problem if the zakat payers also benefit along with others in the ordinary sense—i.e., he benefits from the water just as others do: he drinks as they drink, purifies himself, waters his animals, and the like.

All of this clarifies what the jurists of the madhhab meant when they said: zakat may be spent on the public interests of the Muslims when the poor are sufficiently provided for.

The proof for what we have said is that when Allah, *Exalted is He*, mentioned the categories of zakat, He included “in the path of Allah,” saying: *“Zakah expenditures are only for the poor and for the needy and for those employed to collect [zakat] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler—an obligation [imposed] by*

Allah." [al-Tawbah:60].

[Taking More than a Nisab by a Poor Person]

Question: A poor man wishes to marry. He has taken from zakat less than a nisab, then refrained from taking more. In this case, is it permissible for him to take more than a nisab—enough to cover the costs of marriage: clothing, adornments, wedding feast, and what follows from that—or what should he do?

Answer—and Allah is the Granter of success: As the jurists of the madhhab have stated, as in the marginalia¹, exceptions are made for the poor with respect to clothing, the dowry, and the like—even if they exceed a nisab.

On this basis, it is permissible for this man to take from zakat what will cover the expenses of marriage, even in a single payment. This is among what is excepted for the poor and does not render him “wealthy,” due to his pressing need—just as with a shelter that protects him from heat and cold, clothing that covers his nakedness, a sufficient amount of food, arms for combat, and the like. Allah the Exalted said: *“And let those who cannot find [the means to] marry keep themselves chaste until Allah enriches them from His bounty.”* [al-Nūr:33].

[The Ruling on Taking Zakat for One Who Owns Farmland That He Cannot Cultivate]

Question: A man owns two plots measuring forty ḥablahs. Years may pass in which he is unable to plant them—due to scant rainfall or the like. He has nothing in hand and has a family. If he were to sell the two plots, people’s blame and censure would befall him. Is it permissible for him to take zakat or not?

Answer—and Allah is the Granter of success and aid: Wealth (ghinā) is of two types: legal (shar‘ī) and customary (‘urfī).

The “wealthy” person in the law is one who owns the amount upon which zakat is due—namely, a nisab or more—of gold, silver, grain, or the three categories of pasturing livestock; or who owns what equals a nisab in value of what the earth produces; or who owns trade goods whose value reaches that amount. If what we have mentioned is not realized for him, then he is not “wealthy” in the legal sense.

As for one who owns two plots as the questioner described—he is not considered “wealthy” in customary usage, even if the value of a single plot equals a nisab or more.

On the basis of what we have mentioned, it is permissible for such a

1- *Sharḥ al-Azhār* with its marginalia, 1/509.

person to take from zakat, for he is not wealthy—neither legally nor customarily. And Allah knows best.

[One Whose Plots Do Not Yield Enough for His Needs]

Question: A man owns three small plots whose yield does not suffice him until the next harvest. Is it permissible for him to take zakat—even though, were he to sell these plots, their value would exceed a nisab—or not?

Answer—and Allah is the Granter of success: It is mentioned in the marginalia of *Sharḥ al-Azhār*, citing al-Murtaḍā and Abū Ṭālib, as follows: “Whoever’s land-yield does not suffice him for a year—even if, when appraised, it amounts to a nisab—zakat is lawful for him, for he is poor, and the capital value carries no weight.”

This is also related from Imām Aḥmad b. al-Ḥusayn, al-Manṣūr bi-llāh, and the jurist Yaḥyā, and our Imām al-Mutawakkil ‘alā Allāh strengthened it; it was transmitted from him by Judge Aḥmad b. Ṣāliḥ b. Abī al-Rijāl. End of citation.¹

I say: Selling off plots, in the customary view of many people, is among those actions for which a person is reproached, and by which he exposes himself to blame, belittlement, and contempt. Since Allah—*Exalted is He*—dislikes that a servant expose himself to such, as in His saying: “*Allah intends for you ease and does not intend for you hardship.*” [al-Baqarah:185], and there are many proofs for this—such small plots do not render a person “wealthy,” due to the impediment to selling them; this is especially so given his acute need for those plots.

Moreover, the scholars have permitted the wayfarer whose wealth is not at hand to take from zakat, even if he is wealthy in his own town. From this it is understood that the effective cause for the permissibility of taking zakat is need; and this cause is present in both the wayfarer and the owner of such plots.

If it be said: The wayfarer is unable to reach his wealth.

We reply: The owner of the plots is likewise unable to benefit from the capital value of his wealth, due to a customary impediment.

Moreover, al-Azraqī transmitted from al-Hādī—*peace be upon him*—as in the *Sharḥ* and its marginalia: that whoever owns an amount equal to a nisab in houses, estates, and all other non-zakatable goods is not thereby prevented from taking zakat. This is based on al-Hādī’s saying—*peace be upon him*: “Whoever has no zakat due upon him, zakat is lawful for him.”

1- *Hāshiyat Sharḥ al-Azhār*, 1/507. The wording in *al-Baḥr* is: “al-Murtaḍā and Abū Ṭālib [said]: Whoever’s land-yield does not suffice him for the year ... etc.”

What has been certified as the madhhab, however, is that he is prevented from taking zakat—derived from al-Hādī’s statement *peace be upon him*: “The poor man owns nothing but a dwelling, a servant, and the clothing on his body.”

And in the marginalia: the first derivation is the stronger.¹

The jurists of the madhhab also said: Whoever owns less than a nisab of every category other than gold and silver—even if he is deemed “wealthy” by common custom—it is lawful for him to take zakat. Al-Amīr ‘Alī b. al-Ḥusayn said: it is not lawful for him to take zakat,² and this is the closer view; for zakat was ordained to meet the needs of the poor and the needy. And Allah knows best.

[A Poor Man Who Does Not Pray, and He Has Young, Frail Children and a Wife]

Question: A poor man does not pray; he has young, frail children and a wife. Is it permissible to disburse zakat to this man?

Answer: Zakat should be given to this man’s children and his wife if they are in need; the zakat-payer should place it in the mother’s hand to spend on her children if she is trustworthy, or in the father’s hand if he is trustworthy. There is no harm in his eating with his children from the zakat that is in their hands.

[Disbursing Zakat and the Like to One Suspected of Secret Disobedience]

Question: Is it permissible to disburse zakat, or expiation (kaffārah), or fiṭrah to one who is suspected of secretly disobeying Allah, or to one whom we do not see maintaining the prayers in the mosque, or the like?

Answer: What appears to me is that it is permissible to disburse zakat, expiations, and fiṭrah to those mentioned in the question. The proof:

- 1 - The hadith: “*I have been commanded to take it from your rich and return it to your poor.*” It is no secret that, in the time of the Prophet—*May Allah bless him and his family and grant them peace*—there were among the Muslims those who disobeyed Allah in secret, and those who did not assiduously attend the prayers in the mosque, and among them were ... and ...; yet the Messenger of Allah—*May Allah bless him and his family and grant them peace*—did not exclude any of the poor among the Muslims, even though among them were hypocrites and sinners.

1- *Sharḥ al-Azhār* with its marginalia, 1/507.

2- *Sharḥ al-Azhār* with its marginalia, 1/507.

From this it is understood that outward Islam suffices without probing and investigation, and that the justice (*uprightness*) of the poor person is not a condition. We have not seen anyone requiring in the poor the same uprightness that is required in a witness, a judge, a prayer leader, or a guardian of an orphan, etc.—except that the jurists of the madhhab did not permit disbursing to an open sinner (*fāsiq*), meaning one whose sinfulness is known or notorious.

- 2 - Zakat is taken from the wealthy among the Muslims—whether sinners or not—and it is disbursed to their poor—whether sinners or not.

[The Ruling on Taking Zakat for One Who Has an Inheritance He Has Not Received]

Question: A man's father died; he is the youngest of his brothers and is engaged in seeking knowledge, yet his brothers give him nothing to help him in seeking knowledge. He possesses nothing. He gave away what he owned to some of his relatives so that he might be able to take from zakat what would help him in that—knowing they would later return his property to him. Is it lawful for him to take the charity or not?

Answer—and Allah is the Granter of success: It is permissible for that man to take from zakat what will aid him in seeking knowledge, if matters are as stated in the question. His ruling then is that of a wayfarer cut off from his wealth.

[The Best Places to Put Charity]

Question: A man wishes to give a charity and wants to place it in the best places in the sight of Allah the Exalted. What are the best places for it with Allah?

Answer—and Allah is the Granter of success: The best places for charity differ with times and circumstances. If, in a given time, there is a call to Allah the Exalted, a propagation of the religion, enjoining right and forbidding wrong—then in that case placing charity there is among its best placements and earns the greatest reward.

The proof: His saying, *Exalted is He*, *"The example of those who spend their wealth in the way of Allah is like a seed [of grain] that sprouts seven ears; in every ear are a hundred grains. And Allah multiplies [His reward] for whom He wills."* [al-Baqarah:261] and His saying, *Exalted is He*, *"O you who have believed, shall I guide you to a transaction that will save you from a painful punishment? [It is that] you believe in Allah and His Messenger and strive in the cause of Allah with your wealth and your lives ..."* [al-Şaff:10-11], and other texts in which Allah mentions striving with wealth in His path.

If nothing of what we have mentioned is present, then let the giver place his charity upon the parents, then upon relatives, then upon those whom Allah has mentioned in this verse in Sūrat al-Nisā': *"Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the distant neighbor, the companion at your side, the wayfarer, and those whom your right hands possess."* [al-Nisā':36]. This pertains to voluntary charity.

[Ruling on Zakat for One Who Pardons a Despaired-of Debt]

Question: If a man has a debt that is despaired of (ma'yūs), then he absolves the debtor of it, is he obliged to pay zakat for the past years or not?

Answer—and Allah is the Granter of success: He is not obliged to pay zakat on what is of that kind. This is the madhhab, as in *al-Azhār* and its commentary, wherein it says: "And whoever collects a hoped-for debt"—i.e., not despaired of—"or absolves (ibrā') a debt of that sort ..." etc.¹.

If it be said: Is the one who absolves a despaired-of debt rewarded?

We say: Yes. Allah the Exalted has made absolving the debtor and remitting the debt a charity. He, *Exalted is He*, said: *"And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you."* [al-Baqarah:280]. And in the supplication of Zayn al-Ābidīn—peace be upon him—in the *Ṣaḥīfah* is what indicates what we have said.

Benefit: On the Amount a Poor Person May Take

- 1 - The jurists of the madhhab said: It is not permissible for a poor person to complete a nisab from zakat, whether in a single payment or in multiple payments.
- 2 - Imām al-Qāsim, Imām al-Mu'ayyad bi-llāh, and the Ḥanafīs said: It is permissible for him to take a nisab or more than a nisab, for it coincides with (the state of) poverty.
- 3 - Abū Ṭālib and al-Murtaḍā—and it is one of the two opinions of al-Nāṣir and one of the two opinions of al-Shāfi'ī—said: What is considered is sufficiency for a year, even if he takes many portions; if he already has what suffices him, it is not permissible for him to take, even if it is less than a nisab.

These views are mentioned in the commentary and its marginalia.

I say: What seems strongest to me is the third view, for Allah the Exalted intended, by legislating zakat, to meet the needs of the poor; and

1- *Sharḥ al-Azhār*, 1/472.

the third view is nearer to meeting their needs, whereby the poor person is given what suffices him from season to season. The season of zakat's obligation is the completion of a lunar year—this regarding trade goods; and the agricultural season runs from one yield to the next. Accordingly, he should be given what suffices him from yield to yield.

This is the view by which the needs of the poor will be regularly met and their want filled.

The second view supports and strengthens this view, except that it does not set a limit as is done here; and there is no justification for taking more than what suffices for a year.

Moreover, what I have cited—that the effective cause for legislating zakat is meeting the need of the poor—may be supported by His saying, *Exalted is He: “Zakah expenditures are only for the poor and for the needy ...”* [al-Tawbah:60]. Allah thus indicated that zakat is deserved by the poor on account of poverty, and poverty is need.

If it be said: When a poor person is given a nisāb or more, he becomes “wealthy,” and the wealthy may not receive zakat.

We say: He only becomes “wealthy” after coming to possess it—and that is precisely the Lawgiver's intent. Allah, Exalted is He, has ordained zakat for the poor so that by it they may be sufficed from asking people, preserve their dignity from abasement, and have their need and poverty repelled.

This is further strengthened by the statement of the jurists of the madhhab: “It is permissible for the Imām to give the poor person even many portions, even if it is known to be zakat,” as in the marginalia.¹

An objection to what we have stated arises from what is narrated from the Commander of the Faithful, ‘Alī—peace be upon him—that the poor person is not to be given more than two hundred dirhams; and in another narration, not more than fifty dirhams.

It may be said in response: As for the narration that he is not to be given more than fifty dirhams—many scholars have said the intent concerns the petitioner who asks for zakat; he is not given more than fifty. The reason for that—and Allah knows best—is that one accustomed to begging should not be given more than fifty, because his habit of asking itself repels his need; with habitual begging he does not fall into dire want, and thus that amount suffices him and meets his lack.

As for the narration that he is not to be given more than two hundred dirhams—perhaps that amount, together with what the poor person

1- *Sharḥ al-Azhār*, 1/510.

would also receive in those times from zakat of dates, camels, cattle, sheep, and other kinds, afforded him sufficient provision. If the poor person took two hundred dirhams in cash, and also a share of dates, livestock, and grains, then all of that together might well suffice him for the year.

Today, however, the poor person receives almost only cash; zakat in grains and livestock and the like is scant, and the equivalent of two hundred dirhams suffices only a few days.

[Ruling on Purchasing Grain or Flour with Zakat for the Poor]

Question: Some merchants take out the cash of their zakat and purchase with it sacks of grain or flour, then distribute them to the poor, saying: “If we give our zakat in cash, the poor would waste it on what does not benefit them, like qāt and tobacco, whereas grain and flour bring great benefit to them and their families.” Is that permissible and correct?

Answer—and Allah is the Granter of success: What appears to me is that there is no impediment to that with respect to the zakat of trade goods, since the jurists of the madhhab have said it is permissible to pay the monetary value in the zakat of trade commodities; and since they have also said that dedicating (waqf) or vowing the yield of land as an offset against wrongs (maẓālim) and the rights of Allah the Exalted is valid.

It is known that wrongs and the rights of Allah the Exalted vary in their kinds: a wrong may be in cash, in clothing, in animals, etc.; likewise, the rights of Allah may be the zakat of trade goods, or of livestock, or of grain, and so forth. They said that if a person dedicates the yield of land with the intention of clearing himself of some such obligation, it is valid.

Thus the jurists of the madhhab have treated the grain yielded by endowed or vowed land as a valid “value” (qīmah) offsetting what is owed in the liability (dhimmah), whether that liability was cash or something else.

If it be said: The jurists of the madhhab only permitted and validated that on the basis that such rights must be delivered in their very items to their recipients; if those items are destroyed before delivery, delivering them in their very form becomes impossible, and thus the obligation becomes delivering the monetary value. In what you have mentioned, however, there has been no destruction and no impossibility.

We say: What we seek from their words is that they recognized grain as a valid “value”; our adducing their statement is only to establish that point.

Benefit: On Giving Zakat to the Children of Those Who Ascribe

Tashbīh (*Anthropomorphism*)

Imām al-Manṣūr bi-llāh ‘Abd Allāh b. Ḥamzah—*peace be upon him*—said in *al-Muhadhdhab*: “It is permissible to give zakat to the minor children of the mushabbihah (anthropomorphists), and to their women and daughters from whom no tashbīh has been heard.” End.

I say: This may be supported by saying: As for the children, they were born in the abode of Islam upon the fiṭrah (*innate disposition*). They are not assigned the ruling of disbelief by following their fathers, because the disbelief of their fathers is akin to that of the apostate: the mushabbihah uttered the two testimonies and undertook the obligations of Islam, then they nullified that by asserting tashbīh.

As for the women and daughters from whom no tashbīh has been heard: their affirmation of the testimony of faith and undertaking of the obligations has admitted them into Islam, and there is no basis for excluding them.

[Ruling on Spending Zakat on Public Interests]

Question: Is it permissible to spend zakat on a mosque or the like among public interests, or not?

Answer—and Allah is the Granter of success: The jurists of the madhhab have said that it is permissible to spend what remains of the share of combatants (al-mujāhidīn) on public interests; however, they stipulated for this the presence of the Imām and that the poor be sufficiently provided for.

I say: “In the path of Allah (sabīl Allāh)” is one of the eight categories of disbursement. From the words of the jurists of the madhhab it is understood that “in the path of Allah” is a general term under which public interests—such as mosques, watering places, and roads—fall.

On this basis, if there is no Imām in a given time, then the share of “in the path of Allah” is entirely surplus, due to the absence then of combatants; that surplus is to be spent on public interests, provided the poor are sufficiently provided for, since there is no hindrance to that. However, the permissibility of doing so requires a fatwa from a learned scholar for each particular public interest.

It may be that building a mosque in a village is in the public interest, and it may not be—because something else suffices in its place. It may be that expanding a mosque is in the public interest, and it may not be; likewise for repairing watering places and roads. The people of the village may be poor and in need of a mosque—or they may not be. It may be that building a mosque entails a harm—or it may not. For this reason we have said: the permissibility of spending zakat on public interests depends upon a scholar’s fatwa.

If it be said: “In the path of Allah” is a term for jihad alone.

We say: Rather, it also includes whatever brings a general benefit whose advantage returns to the community of Muslims.

The proof for that is that there is no doubt that the Imāms may build prisons, infirmaries, and mosques from the public treasury (Bayt al-Māl) and from zakat; likewise they may assign stipends for judges and the like from the public treasury, and similar public interests. This is how the Commander of the Faithful ‘Alī b. Abī Ṭālib, *peace be upon him*, and the Imāms from his progeny acted: they did not restrict zakat to jihad alone; rather, they associated with it other matters like those we have mentioned.

Yes: what ought to be reserved to the Imām, to the exclusion of others, is spending zakat on implements of war, mustering armies, building prisons, appointing judges and governors, and the like of what is specific to the Imām. It is not permissible for anyone other than the Imām to spend zakat on any of that, by agreement that such matters belong to the Imāms alone.

As for repairing roads, building infirmaries, mosques, watering places, and the like among public interests that do not require the presence of an Imām to be carried out—there is no impediment to spending zakat on them after the consideration and fatwa of a mujtahid, as mentioned first; without that, it is neither appropriate nor permissible.

It is fitting to mention here that calling to Allah and guiding (people) is the first matter upon which the share of “in the path of Allah” should be spent in a time like this; attention should not be given to other public interests until that is sufficiently provided for—even though all of them are public interests, they nonetheless differ: among them are general religious interests and general worldly interests, and the religious are given precedence over the worldly.

General religious interests are of ranks: foremost among them are jihad, calling to the religion of Allah and guiding, enjoining right and forbidding wrong, and disseminating knowledge—all of these are of one standing.

Thereafter, the remaining public interests are to be arranged according to need, under the supervision and judgment of the mujtahid and in accordance with his fatwa.

If it be said: It follows, according to what you have stated, that zakat should not be disbursed to a poor person except after the scholar’s consideration and fatwa—since poor people differ and vary in their need.

We say: Although the poor differ in their degree of need, they are

equal in the validity of placing zakat among them, for they deserve it on account of poverty; and “poverty” is a term that encompasses them all, and it is a clear attribute.

This is unlike public interests: building a given mosque may be a public interest, while building another mosque may not be; likewise for watering places and repairing roads. A microphone (*loudspeaker*) may be a public interest—if the village is large; and it may not be—if the village is small, or there are microphones in other mosques in the village. And so it is with the rest of public interests.

Hence we have said: zakat may not be spent on public interests except under the fatwa of a learned mujtahid, and according to what his judgment requires in assessing the need of the particular interest.

[The Ruling When the Madhhab of the Zakat Disburser Differs from That of the Recipient]

The madhhab: If the madhhab of the one disbursing zakat differs from that of the one to whom it is disbursed, consideration is given to the madhhab of the disburser—here (with expiations), and likewise in zakat and the like. End. (From *al-Tāj*).

[Exegesis of the ḥadīth: “*This charity is but the refuse of people’s wealth*”]

Question: What is the meaning of: “*Indeed, this charity is the refuse (awsaakh) of people’s wealth, and it is not lawful for Muḥammad nor for the family of Muḥammad*”?

Answer—and Allah is the Granter of success: The Prophet—*May Allah bless him and his family and grant them peace*—called charity (zakāt) “the refuse of people’s wealth” in view of the fact that Allah the Exalted described zakāt as a purifier in His saying: “*Take from their wealth a charity by which you purify them ...*” [al-Tawbah:103]. Since zakāt purifies its payers from impurities, the Prophet—*May Allah bless him and his family and grant them peace*—was justified in describing charity as the “refuse” of people’s wealth.

Calling zakāt a “purifier” is figurative usage, and the Prophet’s describing it as “the refuse of people’s wealth” is an extension of that metaphor; for the speech of the Messenger—*May Allah bless him and his family and grant them peace*—here follows and explains the speech of Allah, such that the two statements are as though connected, and the rhetorical relation in this figurative usage is simile.

Now, because zakāt is a due upon the wealthy that they are obligated to pay, the time comes when divesting themselves of it becomes immediate, and harm and detriment befall them if they do not pay it—therefore it is apt to liken it to filth, which one’s innate disposition

requires casting off and keeping away from, the remaining of which and failure to cast off bring harm and detriment.

This metaphor has benefits:

- 1 - Increasing the exhortation of the wealthy to rid themselves of zakāt and dissuading them from withholding it.
- 2 - Dissuading people from consuming zakāt and turning back the gaze of those who look toward zakāt though they are not its rightful recipients.
- 3 - Indicating that it is more fitting for the poor to show restraint in taking it.

As for his saying, "*It is the refuse of people's wealth*," this is not, in truth, the effective cause ('illah) for its being unlawful to him and to his family, *May Allah bless him and his family and grant them peace*. If that were the cause of it being unlawful to him and his family, *May Allah bless him and his family and grant them peace*, it would be unlawful to all people, since consuming what is foul is forbidden to everyone.

The true cause for its being unlawful to the Prophet—*May Allah bless him and his family and grant them peace*—and to the People of his House is that taking it is a locus for suspicion and for the entry of doubt concerning his Prophethood. Hence the Qur'an reports from many prophets words to the effect of: "*Say, 'I do not ask you for it any payment.'*" [al-An'ām:90].

If it be said: How do you depart from the stated cause in the text—his saying—*May Allah bless him and his family and grant them peace*— "*It is but the refuse of people's wealth*"—to a cause for which there is no explicit proof?

We say: The cause mentioned in the text is expressed by way of metaphor; zakāt is not literally the refuse of people's wealth, but rather it was likened to refuse. The unifying rationale appears to be this: had the Prophet—*May Allah bless him and his family and grant them peace*—consumed zakāt, his reputation would have been sullied by suspicion, a defilement akin, in its offensive nature, to tangible filth. Thus what we have mentioned as the cause is, in essence, the very cause indicated in the text.

[What of the Rights that Are Lawful for the People of the House (peace be upon them)]

In *al-Majmū' al-Manṣūrī*, in the discussion of what rights are lawful for the People of the House—*peace be upon them*—it states: "What is lawful for the People of the House—*peace be upon them*—[are things] such as assistance (ma'ūnah) and what is taken when it is less than a nisāb ..., etc.

I say: It follows from this, according to Imām al-Manṣūr bi-llāh, that consideration is given to the madhhab of the one who takes zakāt, not the madhhab of the giver. On that basis, zakāt of vegetables and fruits—if the farmer’s madhhab deems zakāt obligatory in them, while the Imām’s or the recipient’s madhhab does not—would be included in what the Imām, *peace be upon him*, mentioned as permissible for the People of the House.

What appears to me, however, is that this is not permissible, for two reasons:

- 1 - Because of the suspicion that would attach to the People of the House through consuming zakāt.
- 2 - If the farmer holds, following one of the Imāms who said so, that zakāt is obligatory below the nisāb, then that is a true and correct obligation—for “every mujtahid is correct.” In that case, it takes the same ruling as zakāt upon which there is consensus, namely, that it must be paid and disbursed to its designated categories, etc.

Perhaps what Imām ‘Abd Allāh b. Ḥamzah mentioned pertains specifically to the Imāms, for they have precedence over the people with respect to themselves, and they possess general authority over the interests of the servants and the lands.

[Paying Zakat to One Unfit to Administer It]

Question: If someone comes to me asking for the zakāt of my wealth, and I do not consider him fit to administer it, yet he is powerful and will take it whether we will or not—if I give him a small portion of the zakāt, about one-tenth of it, to turn him away, may I count that toward my zakāt, or must it be counted from my personal wealth, even though in myself I intended it as zakāt?

Answer—and with Allah is success:

— The jurists of the madhhab have said that what an unjust person seizes by usurpation is not counted. On that basis, the questioner may not count what he gave from zakāt to one who is not among its rightful recipients, even if he intended it as zakāt.

This is supported by the fact that Allah has designated zakāt and made it obligatory for eight categories and confined it to them, and has vested the authority to distribute it in the rulers of the Muslims, if present, or else in the owner of the wealth. Accordingly, the owner does not discharge the obligation of zakāt unless he gives it to its rightful recipients—those eight; and he remains liable for it if he does not deliver it to its rightful recipients.

— That said, it may also be said: The owner of the wealth is obligated to safeguard the zakāt in his possession until he gives it to those entitled

to it; it is a trust with him, and he may not be negligent regarding it. He must defend it against those who covet it and repel them to the extent he is able. If matters reach the point that he fears harm from the covetous person to himself, his property, or his child, then there is no blame upon him if he repels their harm and greed with a portion of the zakāt, and he may count it toward his zakāt with appropriate intention.

Evidence for this includes:

- 1 - He has done what was possible and within his capacity in safeguarding and defending the zakāt. *“Allah does not burden a soul beyond its capacity.”* [al-Baqarah:286]. Allah will not take him to task for what was beyond his capacity, nor obligate him to guarantee what is of that kind—this is the ruling for all trusts; nor is he obliged to protect another’s wealth at the expense of his own.
- 2 - It is not related that the Commander of the Faithful—*peace be upon him*—ordered anyone to repay zakāt when he assumed the caliphate; likewise with the other Imāms—*peace be upon them*. This indicates a dispensation in what a covetous usurper seized.

If it be said: Zakāt is not specified—even if the owner “specifies” it—and it is not specified as zakāt until it reaches the hand of the poor person or the official collector. On that basis, what the covetous person seized is not zakāt, even if the owner intended it as such.

It is said in reply: There is no doubt that the covetous person who seeks the zakāt intends to take the zakāt itself, not to take some other part of the zakāt-payer’s property; and the threats, trouble from the usurper, scheming against the owner, and the fear of him that befell the owner were on account of what he had ...

Benefit concerning the ṣā‘ (alms measure)

The madhhab, as in the marginalia, is that the ṣā‘ for the fiṭrah is four double-handfuls (scoops) with the cupped hands of a man whose hands are neither very large nor very small.¹

This was weighed in the presence of a group of scholars, and it amounted to three pounds and three ounces; the pound is sixteen ounces.

[From where are the expenses of distributing zakat to be paid?]

Question: A man was given a large amount of zakat that needed to be loaded and transported in a large vehicle, and he was appointed to distribute it to those entitled to it. He is a wealthy man. He hired a large

1- *Sharḥ al-Azhār*, 1/492. Its wording: “The ṣā‘ which does not vary is four ...,” etc.

truck to carry it, then distributed it to the rightful recipients bit by bit using a small car; he needed, for this distribution, to pay vehicle hire and to spend on himself. He took what he needed for that from the zakat itself. Is there any blame upon him for this, or not?

Answer: The default is that the expenses of distributing zakat are upon the zakat-payer; for Allah the Exalted has commanded the wealthy to give the zakat of their wealth to the poor, and whatever is necessary to fulfill that obligation likewise becomes obligatory by virtue of it. If zakat cannot be delivered to the poor except with an expense, then that expense is obligatory upon the zakat-payer. That is what is required.

If you volunteered to the merchant to distribute it without compensation, then it is not permissible for you to take anything from it, and you must bear whatever expenses are incurred in distributing it.

If you did not commit yourself to anything with him, then what you took for expenses is permissible and there is no blame upon you for it, but you must inform the merchant of the amount that was deducted from the zakat.

— It may also be said: The zakat-payer is obliged to distribute his zakat to the poor of his own town, and to pay the distribution costs from his personal wealth, not from the zakat. However, if the poor are outside the bounds of his town or in another country—for example, the zakat-payer is in Saudi Arabia and wishes to disburse the zakat of his wealth to the poor in Yemen who have been overwhelmed by poverty—then there is no impediment to making the costs of transporting and distributing it from the zakat; for the zakat-payer is not obliged to disburse his zakat outside his country.

This may be supported by what is well-known: that the Prophet—*May Allah bless him and his family and grant them peace*—used to send zakat-collectors to the regions outside Madinah, and he did not command the zakat-payers to bear the cost of transporting zakat to them. The Prophet—*May Allah bless him and his family and grant them peace*—would give the zakat-collectors who collected zakat a portion from the zakat as compensation for their work. Allah the Exalted has explicitly stipulated a right and a share in zakat for those who work to collect and administer it. This view is not far-fetched; indeed, spending from zakat for this purpose is considered placing zakat in its proper channels, for it is spending “in the path of Allah,” or—as we have noted—expenditure upon those who work over it.

[The ruling on an agent borrowing zakat or expiation funds]

Question: If a man is an agent over zakat or expiation (kaffārah), may he borrow from it for a term and then replace it? What is due upon him if he does so?

Answer: If a man is an agent over zakat or expiation, it is not permissible for him to consume it and then replace it—unless he has been authorized to dispose of it. This is the meaning of their statement: “except if he is *mufawwad* (explicitly empowered).” If he borrows from it without being empowered to dispose of it, then he must replace it, and then seek authorization from the zakat-payer to disburse it.

[Miscellaneous issues regarding zakat and other matters]

Question: Regarding stall-fed sheep and their zakat; and regarding the zakat of a crop intended for fodder from the first day; and regarding sheep that are sometimes pastured and sometimes stall-fed; and regarding sheep that graze among *quḍub* (bersim/alfalfa)—are they considered pastured (*sā'imah*) or stall-fed?

And regarding oranges treated with a substance called “carbon,” by which the oranges turn from green to the familiar orange color—is that permissible or not?

Answer—and Allah is the Granter of success and aid:

Stall-fed sheep have no zakat due—unless they are for trade, in which case one quarter of one-tenth (2.5%) is due. As for a crop intended for fodder, zakat is due upon its owner—one-tenth (10%) or half of one-tenth (5%). Regarding sheep that are sometimes pastured and sometimes stall-fed, consideration is given to whichever predominates: if pasturing predominates, zakat is obligatory; if stall-feeding predominates, no zakat is due; if the two are equal, then no zakat.

As for sheep that graze among *quḍub* (bersim/clover), the implication of the jurists' words in the madhhab—as in the marginalia of *Sharḥ al-Azhār*—is that zakat is obligatory. They said: if a man purchases a place for pasturing, the settled ruling is that [his animals] are considered *sā'imah* (pasturing). And if they eat another's crop with his permission, then zakat is due—though he has sinned by what he did—because pasturing has in fact taken place.

As for using “carbon” so that the green color of oranges turns to the familiar orange color—there is no impediment. In some regions, such as al-Jawf and Ma'rib, the orange ripens and is good while its peel is still green, and it does not take on the orange color except by means of this substance.

[The Book of Khums]

[Is Khums Obligatory on Stones That Are Sold?]

Question: Is khums obligatory on white and green stones and other high-priced stones used in building houses and the like; likewise on stones cut into tiles; and likewise on gravel and soil when these two come to have value and market demand?

Answer—and from Allah is success: What has come from the Prophet—*May Allah bless him and his family and grant them peace*—in this chapter is his saying: “... *and in buried treasure (al-rikāz) there is one-fifth (khums).*” The scholars have explained this as meaning what Allah the Exalted deposited in the earth of the minerals of gold and silver.

And it is related from ‘Alī—*peace be upon him*—that a man found a quantity of gold in a ruin, and he commanded him to pay one-fifth of it.

And He, *Exalted is He*, said: “*And know that whatever you obtain as spoils of anything—then indeed, for Allah is one fifth of it and for the Messenger ...*” [al-Anfāl:41]. On the basis of these foundations we say:

First: It is necessary to consider and identify the effective cause that brings about the obligation of khums in rikāz. It is possible that the cause is: that the wealth has been embedded (marqūz) in the earth since the day Allah created it. This is an instance of assigning a ruling to a descriptive attribute, like: “A deliberate killer does not inherit.”

On this basis, khums is due on everything a person extracts from the treasuries of the earth that counts as significant wealth—such as the various kinds of iron, copper, aluminum, glass, petroleum, gemstones, and the like.

As for water, soil, gravel, and building stones—if their prices rise—khums is not due on them. Likewise, the stones from which tiles are made carry no khums—except that there are stones for which khums is due, such as the variously colored agates (‘aqīq), and some clear quartz stones (marw) from which beads are made to adorn garments and necks.

We have excluded water, soil, and stones because they are the very substance of the earth; khums is established only in what Allah the Exalted has embedded in the earth of *wealth* since He created it.

Moreover, the dearness in price of water, soil, gravel, and stones is incidental. They may have no value in their place, and only acquire value when transported to a land far from their source. It may be that the price for which any one of them is sold covers nothing beyond the cost of transport, laborers’ wages, and their provisions.

As for firewood, herbage, and game—of land or sea—these do not fall under the term *rikāz*.

— As for the gems extracted from the sea, khums is due on them, for they have been created in the earth since the earth was created.

— As for His saying, *Exalted is He: "And know that whatever you obtain as spoils of anything—then indeed, for Allah ..."* [al-Anfāl:41], it may be interpreted as follows: the term *ghanimah* (spoils) potentially carries two meanings:

- 1 - That it is, in the Sacred Law, a term for what is taken as spoils from the wealth of enemy combatants. If so, then khums would be specific to that.
- 2 - That it remains upon its linguistic meaning, thus encompassing what is taken as spoils from enemy combatants, and also what is taken from game—land and sea—firewood, herbage, and the like.

[Is There Khums or Zakat on the Trees of *al-ʿAlab* and *al-Ṭalḥ*?]

Question: As is well-known in the lands of Ṣaʿdah and elsewhere, farmers own trees such as *sidr*—that is, *al-ʿalab*—and *al-ṭalḥ*. Some own them from after their fathers and grandfathers, and they do not know whether the latter had purchased them or had improved them when they sprouted on their property. Is khums obligatory on these trees? If khums is not obligatory, is zakat due on them—bearing in mind that the owner only cuts them every three or four years? That is if the owner inherited them from his father or grandfather.

And if a tree of *ʿalab* or *ṭalḥ* sprouts in a man's field and he prunes it, what is due upon it—khums, zakat, or nothing?

Answer—and Allah is the Granter of success: Whatever of the aforementioned trees a person owns after his father, he is not obliged to pay khums on it nor to pay zakat on behalf of his father or grandfather—because it is possible that they did not do so; and the default regarding the original owner is ignorance of the obligation of khums and zakat in that. The ignorant person's ruling follows that of whomever he agrees with; the matter is disputed, and its time has passed—therefore the heir is not obliged to pay zakat or khums on behalf of the deceased.

As for zakat on *al-ʿalab*: it is due if *al-ʿalab* and the like are owned property, and that is when the time of cutting arrives—for that is tantamount to the time of harvest—so one-tenth (*ʿushr*) or half of one-tenth is paid.

But if *al-ʿalab* and the like sprout—on one's land or elsewhere—and he trains (*propagates*) and trims them, then zakat is due on them at the time of cutting, as we have mentioned above.

The Book of Fasting

[Notes on fasting by sighting the crescent]

It is reported in the ḥadīth: *“We are an unlettered community; we neither write nor calculate. Fast upon seeing it, and break the fast upon seeing it.”*

From this the scholars understood that fasting and breaking the fast by calculating the lunar phases is not a legally prescribed method; therefore, it is not permissible to rely on it. They said: the legally prescribed method is what the Prophet—*May Allah bless him and his family and grant them peace*—indicated in his words: *“Fast upon seeing it and break the fast upon seeing it; and if it is obscured from you, then complete the number [of days] as thirty.”*

Astronomical calculation today is precise. Through the media we hear them determine the moon’s position relative to the sun, that it sets after it by a number of seconds or minutes, or that it sets before it; they determine this by their unanimous agreement due to the precision of their instruments. However, their agreement, for example, that the crescent set, or did not set, after the sun by a few seconds or minutes is not, in itself, a legal basis that obligates fasting or breaking the fast.

If it be asked: Is it permissible to rely, in fasting and breaking the fast, on sighting the crescent by means of an astronomical telescope?

It is said: That is permissible. This is because, as the astronomers themselves say, it cannot be seen through the telescope unless it has separated from the sun and moved away from its rays by a defined amount; and nothing can be seen through the telescope except what could, in principle, be seen with the naked eye. When the crescent is close to the sun, it cannot be seen through the telescope due to the overpowering of the sun’s rays and their preventing it from being seen—by telescope or otherwise.

[The ruling on sighting the crescent with magnifiers]

Question: Is sighting the crescent by magnifying devices considered valid?

Answer—and Allah is the Granter of success: Sighting the crescent by magnifying and imaging devices is a sighting that is legally valid for fasting and breaking the fast, for magnifying/imaging equipment are merely instruments by which the presence of the crescent and its sighting become apparent. The instrument has no role in the existence or non-existence of the crescent, and it is not an instrument that *creates* the crescent’s existence.

[Note on the crescent’s rising and setting]

If the crescent rises before dawn, it belongs to the twenty-seventh [night]; if it rises after dawn, it belongs to the twenty-eighth; and if it is not seen, it belongs to the twenty-ninth.

It sets, on the thirteenth day, before dawn; on the fourteenth, before sunrise; and on the fifteenth, after sunrise.

[Note for the madhhab when months are obscured to the fasting person]

According to the madhhab: if months are obscured to the fasting person, and he does not attain a preponderant assumption that there was a deficient month among them, he builds on completeness and counts from the nearest month whose beginning is known. End (from the marginalia).

[The ruling concerning common believers in their fasting, breaking the fast, and standing at ‘Arafah, and how they are to be guided]

Question: How is the ruling for common believers who fast and break the fast with the people, without investigation or scrutiny—and likewise in their standing at ‘Arafah? Is that sufficient for them with Allah absolutely, or is it not sufficient unless it later becomes clear that they were correct? Must they afterwards ascertain whether they were right or not?

Answer—and Allah is the One who grants success: The jurists of the madhhab have said: the madhhab of the layperson is the madhhab of whichever mujtahid he has agreed with, if he entered the matter believing in its correctness.

On that basis, some mujtahids held that: the fast is the day on which the people fast; the breaking of the fast is the day on which the people break the fast; and ‘Arafah is the day on which the people stand at ‘Arafah. They adduced a ḥadīth narrated to that effect. Thus the layperson who fasts, breaks the fast, and stands with the people—without investigation or scrutiny—has agreed with the view of some mujtahids; what he has done is therefore judged valid and sufficient.

He is not required thereafter to look into whether he was right or not; there is no basis for obligating him to investigate after we have already ruled the act valid—except that, if it becomes certain to him that he erred in fasting or breaking the fast, then he must act in accordance with what has become certain to him. As for the standing at ‘Arafah, that cannot be corrected except in some cases—namely, if it becomes certain to him that he stood on the eighth day while there still remains some of the ninth day in which he can stand; then it is obligatory for him to stand.

[On differing days for fasting, breaking the fast, and the sacrifice]

From the fatwas of our master, *Al-Mawla Al-Hujjah*, ‘Alī b. Muḥammad al-‘Ajrī:

It is related that ‘Ā’ishah asked the Prophet—*May Allah bless him and his family and grant them peace*—saying: “O Messenger of Allah, the people of this land fast today while others fast tomorrow; the people of this land break the fast today while others break it tomorrow; and the people of this land sacrifice today while others sacrifice tomorrow—and there is disagreement in this.” The Messenger of Allah—*May Allah bless him and his family and grant them peace*—said: “*This is not disagreement; rather, it is a mercy. The fast is the day the people fast; breaking the fast is the day the people break the fast; and the sacrifice is the day the people sacrifice.*” It is narrated in *al-Jāmi‘ al-Kāfī*.

The ḥadīth, “*Breaking the fast is the day the people break the fast, and the sacrifice is the day the people sacrifice,*” has multiple routes with the ḥadīth scholars. Imām ‘Izz al-Dīn—*peace be upon him*—was asked about this and answered in this sense. End.

[Benefit in explaining the ḥadīth “Sha‘bān is my month”]

It is narrated from the Prophet—*May Allah bless him and his family and grant them peace*—that he said: “*Sha‘bān is my month; Rajab is your month, O ‘Alī; and Ramaḍān is Allah’s month.*”

In *Sharḥ al-Azhār* it says: “The meaning is: fasting Sha‘bān was made beloved to him, and fasting Rajab was made beloved to ‘Alī—*peace be upon him*—and Allah made fasting Ramaḍān beloved to His servants.” End.

Al-Dawwārī, in the marginalia, critiqued this interpretation, saying: “It is not fitting that the Messenger—*May Allah bless him and his family and grant them peace*—love something more intensely than what Allah makes beloved to His creation; nor that ‘Alī—*peace be upon him*—love something more intensely than what Allah and His Messenger love ...” etc.

I say: ‘Alī’s love for fasting Rajab does not entail that he does not love fasting Sha‘bān and Ramaḍān; likewise, the Messenger of Allah—*May Allah bless him and his family and grant them peace*—loving the fast of Sha‘bān does not entail that he does not love fasting Ramaḍān. The Prophet’s fasting of Sha‘bān and his love for that was—as some narrations indicate—a form of welcoming, honoring, and preparing for the fast of Ramaḍān; and ‘Alī’s fasting of Rajab and his love for that may likewise have been out of honoring, welcoming, preparing for, and exalting the fasts of Sha‘bān and Ramaḍān. Allah knows best. And praise be to Allah, Lord of the worlds—abundant, good, and blessed praise.

Tasbīḥ of Rajab

“Glory be to the Majestic King; glory be to the Mightiest, the Most Noble; glory be to the One for whom glorification is not proper except for Him; glory be to the One who has clothed Himself in might, and He is worthy of it.” End.

Benefit clarifying that some acts of devotion are not invalidated by a secondary intention

In the marginalia of *Sharḥ al-Azhār*: “Likewise, the adhān is not invalidated by combining the intention of teaching; nor the ḥajj by seeking of Allah’s bounty [i.e., lawful trade]; nor fasting by the aim of safeguarding the body from the residues of food; nor zakat because the poor person is a friend or a benefactor. If one combines another devotional purpose, that is better—such as combining with zakat the tie of kinship, or the right of neighborhood.” (and so in *al-Qarīr*). End.¹

[The ruling on one who broke his fast, then boarded a plane and saw the sun]

Question: If a fasting person broke his fast at sunset, then after breaking his fast boarded a plane; when the plane ascended and headed westward, the fasting person saw the sun—what is required of him?

Answer: The fast of the person mentioned is valid. He fasted the entire day and only broke his fast after completing it. Seeing the sun afterwards does not invalidate his fast, because in the town where he fasted and broke his fast the sun had set, the day had ended, and Allah had permitted him to break his fast. Allah the Exalted said: “*Then complete the fast until the night.*” [al-Baqarah:187]. This fasting person did what Allah commanded.

The scholars of legal theory said, in defining “valid”: it is “that which accords with the command of the Lawgiver.”

If it be said: Should he pray Maghrib while the sun has not set?

We say: If that man who broke his fast in his town had prayed Maghrib before the plane took off, then his prayer is valid, because he prayed it in its time. But if the plane took off before he prayed Maghrib, then he should not pray it so long as the sun has not yet set; for Maghrib is only valid within its time, and its time is after the sun has set.

If it be said: If he had prayed Maghrib before the plane took off, then it took off and he saw the sun—must he pray Maghrib again?

We say: He is not required to pray Maghrib again. What Allah has prescribed upon the Muslim is five prayers in the day and night; and in the ḥadīth: “*There are no two zuhrs in a day.*” There is no disagreement

1- *Sharḥ al-Azhār*, 1/82.

about that.

[Is the pampered fasting person rewarded?]

Question: Is a pampered fasting person—who sleeps from after the dawn prayer until the time of ‘Aṣr or after it, such that only two hours remain until the call to Maghrib—rewarded, even though he feels neither hunger nor thirst?

Answer: He is rewarded, so long as he has a righteous intention. Fasting is abstaining from the nullifiers of the fast together with intention; whoever intends the fast for the sake of Allah and abstains from the nullifiers until Maghrib is a fasting person—whether he sleeps or not—for sleep is neither among the nullifiers nor among the disliked matters. Rather, it is among the permitted things in the daytime of Ramaḍān and otherwise.

If it be said: “It has been reported that the reward is in proportion to the hardship; and one who fasts while sleeping, as described, experiences no hardship.”

It is said in reply: The one who sleeps while fasting has not impaired any aspect of his fast, nor done anything disliked or forbidden—so there is no cause, then, for a reduction in the reward of his fast. However, we say: the fasting person who is taxed by hunger and thirst throughout the day—such that, when the time of breaking the fast arrives, this has taken its full toll upon him—his reward will be greater, while he and the sleeper are equal in the reward of the fast itself. The increase in his reward is in consideration of the pain of hunger and thirst and his patience upon that.

On what we have mentioned we may also say: fasting in the days of summer carries more reward than in the days of winter, due to the severity of fasting in summer and its lightness in winter—while the two are equal in the reward of the fast itself—with the increase in reward being in consideration of the pain and the patience upon it.

[Using medication to prevent menstruation in Ramaḍān and during Ḥajj]

Question: Is it permissible for a woman to use a treatment that prevents menstruation in Ramaḍān so that she may fast the entire month? Likewise during Ḥajj, so that menstruation does not hinder her from performing some rites?

Answer: That is permissible; her fasting is valid, and likewise her circumambulations; she is judged to be pure. This is understood from the evidences in this chapter, such as His saying, *Exalted is He: “And they ask you about menstruation. Say, ‘It is harm, so keep away from wives during menstruation and do not approach them until they are pure ...’”* [al-Baqarah

:222]. In this verse, menstruation is the harm that issues from the womb; if no such harm issues from the womb, the woman is pure.

[The ruling on a fasting person's use of an asthma inhaler]

Question: Does the use of a spray (inhaler) for shortness of breath break the fast or not?

Answer—and Allah is the Granter of success: What appears is that using the inhaler for asthma does not invalidate the fast when used in a case of necessity and need. This is indicated by several points:

- 1- It is a subtle treatment, of the genus of smoke and vapor—and even subtler than dust; concessions have come regarding these because avoiding them causes hardship and difficulty, and the hardship of need here is greater than the hardship of mere exposure to dust and smoke.
- 2- The asthma treatment (the inhaler) does not run along the path of food and drink; rather, it runs along the path of air—the trachea and the lungs. The prohibited things that invalidate the fast are eating, drinking, and intercourse.

What runs along the path of air is not termed “eating” or “drinking.”

- 3- Allah the Exalted said: *“Allah intends for you ease and does not intend for you hardship,”* [al-Baqarah:185] and, *“And He has not placed upon you in the religion any hardship.”* [al-Ḥajj:78].

If it be said: Among the ease in our upright religion is that the sick person may break his fast and then make it up, as He said, Exalted is He: *“And whoever is ill or on a journey—then [fast] a number of other days. Allah intends for you ease and does not intend for you hardship.”* [al-Baqarah:185].

We say: Asthma is a chronic illness from which a sufferer seldom recovers fully; he often cannot make up the fasts because the illness attends him continually. The better course is that the sufferer fast and use the inhaler. Allah the Exalted said: *“So fear Allah as much as you are able,”* [al-Taghābun:16], and, *“Allah does not burden a soul beyond its capacity.”* [al-Baqarah:286].

If it be said: Feeding the needy (fidya) stands in place of fasting for one from whom recovery is not expected.

We say: Fasting is preferable for the asthma sufferer, because he is able and capable of abstaining from food, drink, and intercourse—which is the very reality of fasting—and by fasting he attains the benefits and wisdoms for which Allah legislated fasting.

[Injections, IV drips, and the asthma inhaler in Ramaḍān]

Question: People frequently ask about injections during the day in Ramaḍān, about IV drips, and about the use of the inhaler for asthma sufferers.

Answer: The use of any of these does not invalidate the fast. However, none of them should be used except in case of medical need or necessity. I have already answered this more than once in expanded form.

[Benefit concerning fasting]

In *al-Mukhtār* from the narrations of al-Murshid bi-llāh from the Prophet—*May Allah bless him and his family and grant them peace*: “Your breaking the fast for your Muslim brother and bringing joy to him is more rewarding than your fasting.”

And therein also from al-Murshid bi-llāh from him—*May Allah bless him and his family and grant them peace*: “There is no blame upon a man if his Muslim brother has prepared food for him, invites him, and he is fasting—that he be ordered to break his fast, so long as his fast that day is not an obligation or a vow he has specified, and so long as the day has not tilted.”

And in the *Amālī* of Aḥmad b. ‘Īsā, from Salmān, who said: I entered upon the Messenger of Allah—*May Allah bless him and his family and grant them peace*—then he invited me to food. I said, “O Messenger of Allah, I am fasting.” He said: “O Salmān, a day in place of a day; and for you, along with that, is a good deed for bringing joy to your brother.”

Al-Hādī—*peace be upon him*—also narrated this in *al-Aḥkām*.

And al-Hādī also narrated from the Prophet—*May Allah bless him and his family and grant them peace*: “Among the most obligatory causes of forgiveness is your bringing joy to your Muslim brother.”

The first ḥadīth indicates that answering your Muslim brother’s invitation to his food is better than (*voluntary*) fasting—without distinguishing between the start or the end of the day. The proof is the cause upon which the report is built: bringing him joy by your breaking the fast.

The second ḥadīth restricts the permissibility of breaking the fast by his saying: “so long as his fast that day is not an obligation or a specified vow, and so long as the day has not tilted.” It is known that it is not permissible to break the fast during the day of Ramaḍān for those without an excuse, and likewise in a specified vow.

His saying “so long as the day has not tilted” means: so long as the sun has not declined from the middle of the sky toward the west (i.e., before the zenith).

Benefit: mentioning some principles of the madhhab

Among the principles of the madhhab: “Disagreement beyond the core

issue does not benefit the ignorant.”

I say: Perhaps an example is what the jurists of the madhhab say about one who eats forgetfully during the day of Ramaḍān: the scholars agree upon forbidding it, but they then differed over whether making up (qadāʾ) is obligatory. The jurists of the madhhab said: making up is obligatory.

Likewise they said concerning speaking forgetfully during the prayer: everyone agrees that speaking in prayer is forbidden, then they differed regarding that which occurs out of forgetfulness—so such disagreement does not drop the obligation to make up.

That said, it may be said to them: among the principles of the madhhab also is that “disagreement regarding an issue renders it presumptive (ẓannī).” In our example, making up for forgetful eating during the day of Ramaḍān is a disputed (ẓannī) issue, whereas the forbiddance of eating—according to everyone—is another, separate issue; this in the first example.

And in the second example there are two issues: one is agreed upon, namely the forbiddance of speaking in the prayer; the other is disputed, namely whether making up after the time is obligatory upon the ignorant person or not.

Among their principles: “If the time of a disputed issue has passed, making up is not obligatory; and the madhhab of the ignorant person in it is the madhhab of whomever he agreed with.” According to these principles, making up in our two examples would not be obligatory.

It is as if the scholars of the madhāhib agree that the ignorant person is not obliged to make up what he omitted out of forgetfulness or ignorance among presumptive obligations. This may be supported by His saying, *Exalted is He: “And there is no blame upon you for that in which you have erred,”* [al-Aḥzāb:5] and *“Allah does not burden a soul beyond its capacity,”* [al-Baqarah:286] and *“Our Lord, do not take us to task if we forget or err.”* [al-Baqarah:286].

And as for what is narrated from the Prophet—*May Allah bless him and his family and grant them peace*—such as his saying: *“My community has been absolved of [liability for] error and forgetfulness,”* it is understood from this that there is no sin upon a person for what he falls short of among the obligations by way of error, forgetfulness, and the like. The outward purport of this encompasses both what is definitive (qaṭʿī) and what is presumptive (ẓannī), what has passed its time and what has not.

Except that whatever still has its time remaining is excluded from that generality, due to the continuing, sound, and complete address to perform the obligation. Also excluded from that generality are the

definitive obligations, by what is narrated from the Prophet—*May Allah bless him and his family and grant them peace*: “Whoever sleeps through his prayer or forgets it—its time is when he remembers it,” and in another narration: “Let him pray it when he remembers it.”

Thus, by analogy, the definitive obligation is to be made up outside of its time, while the presumptive obligations whose time has elapsed remain under that generality.

[On fasting and travel]

In the *Amālī* of Aḥmad b. ‘Īsā, with his chain, from al-Ḥasan b. Sa‘īd from his father, who said: I went out with ‘Alī—*peace be upon him*—in the month of Ramaḍān from an estate of his. He mounted a donkey, and I walked behind him. He fasted and ordered me to break my fast, so I broke it. He entered Madinah by night, and we passed by the house of ‘Uthmān while he was reciting [Qur’ān]. He stood listening to his recitation, then said: “He is reciting from Sūrat al-Naml.” End.

And therein also, from Wakī‘: In this report there are nine reports:

1. That ‘Alī—*peace be upon him*—had an estate.
2. That he traveled in Ramaḍān.
3. That he rode a donkey while a man walked behind him.
4. That the rider fasts, and that the walker breaks his fast—two reports in this.
5. That he came to his family by night.
6. That when ‘Uthmān recited in his house, his voice could be heard in the street.
7. That ‘Alī stood listening to his recitation.
8. That he said, “from Sūrat al-Naml,” and did not say, “from the sūrah in which the ant is mentioned.” End of his wording.

I say: *It may be inferred from this:*

1. That fasting in Ramaḍān is better for one who is not harmed by it and upon whom it entails no hardship.
2. That breaking the fast is better for one who would be harmed and upon whom it entails hardship.
3. That the scholar ought to guide the unlearned person to what is best in his case.
4. That breaking the fast while traveling is a concession (rukhsah), not an obligatory determination (‘azīmah), as the Zāhirīs say.
5. That fasting while traveling is valid and suffices, lifting the requirement to make it up.
6. That a believer should preserve his dignity and self-sufficiency—

- by farming, trade, or the like—so as not to need people.
7. That engaging in agriculture and the like does not contradict reliance upon Allah.
 8. That engaging in agriculture and the like is something sought by the Wise Lawgiver; a believer can trade or farm without neglecting the worship of his Lord, His remembrance, gratitude, and obedience—he can do all that in addition to seeking and spreading knowledge, etc.
 9. That this indicates the intense humility of the Commander of the Faithful, *peace be upon you*, in that he rode a donkey on his journey with only one companion, and in that he stopped to listen to ‘Uthmān’s recitation; this shows his deep humility, for people of high station often deem such actions beneath them.

[Benefit: Making up the fast and the prayer]

Making up the prayer (qaḍā’) is mentioned concerning the sleeper and the forgetful.

Making up the fast is mentioned concerning the sick person, the traveler, and the menstruating woman.

As for one who deliberately abandons the prayer, and likewise one who deliberately abandons fasting—no proof has come obligating them to make it up; and making up is not obligatory except with proof. For that reason, some scholars have chosen the view that making up is not obligatory upon them; rather, repentance is obligatory upon them.

Evidence may be adduced for this from several angles:

Among them: that one who abandons the prayer or fasting has neglected a pillar among the pillars upon which Islam is built, as comes in the well-known ḥadīth. His ruling, then, is the ruling of an apostate; and if the apostate repents, he is not obliged to make up what he had neglected before and during his apostasy among the obligations.

Among them: His saying, Exalted is He, regarding the polytheists: *“But if they repent, establish prayer, and give zakah, then they are your brothers ...”* [al-Tawbah:11]. He conditioned the entry of the polytheists into the brotherhood of the Muslims upon repentance from shirk, establishing the prayer, and giving zakah; for that reason the Companions fought those who withheld the zakah, took their women captive, and called them apostates.

If it be said: It is narrated that the Prophet—*May Allah bless him and his family and grant them peace*—commanded the Bedouin who said, “I am ruined and burned!” He said: “*What have you done?*” He said: “I had intercourse with my wife during the day of Ramaḍān.” The Prophet—*May Allah bless him and his family and grant them peace*—then ordered

him to fast a day in its place. And this Bedouin was deliberate, by his saying: “I am ruined and burned!”

It is said in reply: The lust for women—especially for one in the throes of youth—is a frenzied lust; one’s power of patience collapses before it and reason slips, so what issues from it is not treated as brazen defiance and deliberateness. Hence His saying, Exalted is He, regarding what issued from some of the Companions in the earliest fasting: *“Allah knew that you were betraying yourselves, so He accepted your repentance and pardoned you. So now, have relations with them ...”* [al-Baqarah:187].

We only said it is not treated as brazen defiance and deliberateness because he had no intent or resolve to break the fast; rather, his intention was fasting, complying with Allah’s command, and obedience. Thus he is not equated, in ruling, with the one who intended to break the fast with no regard for obeying Allah, having no intention for fasting nor any concern for it.

It is this latter whom we intended by saying that making up is not obligatory upon him—because he has become a disbeliever.

Yes: a believer does not commit sins except by way of error and forgetfulness. Hence Allah the Exalted, describing the faith of the earliest believers, said: *“The Messenger has believed in what was revealed to him from his Lord, and [so have] the believers ...”* up to His saying, *“And they say, ‘We hear and obey ...’”* [al-Baqarah:285], up to His saying: *“Our Lord, do not take us to task if we forget or err.”* [al-Baqarah:286].

However, a believer may be overwhelmed by desire and Satan may cast him into sin—without his having an intention to sin nor a prior resolve to commit it; then he regrets and repents after falling into sin. Such as this and the like are those intended in His saying, Exalted is He: *“Race to forgiveness from your Lord and a Garden as wide as the heavens and the earth, prepared for the Godfearing—those who spend in ease and hardship ...”* up to His saying, *“And those who, when they commit an indecency or wrong themselves, remember Allah and seek forgiveness for their sins—and who forgives sins but Allah?—and they do not persist in what they have done while they know.”* [Āl ‘Imrān:133–135].

And His saying, Exalted is He: *“Indeed, those who are Godfearing—when an impulse from Satan touches them, they remember [Allah], and then, behold, they have insight.”* [al-A‘rāf:201].

Thus, when a believer does wrong, he repents, seeks forgiveness, and regrets what he has fallen short in, and he does not persist in what he has done. As for one who deliberately commits sins and does not repent from them nor seek forgiveness, but rather persists—unconcerned with disobeying Allah the Exalted, paying no heed to His prohibitions—such a one is liable to disbelief for his making light of Allah’s commands and

prohibitions and his contempt for obedience. This and the like are intended in His saying, *Exalted is He: "Have you seen he who takes as his god his [own] desire ..."* [al-Jāthiyah:23].

The jurists of the madhhab have said: Whoever breaks the fast in Ramaḍān without an excuse, deeming it lawful or making light of it, making up is not obligatory upon him. This is mentioned in *Sharḥ al-Azhār* and its marginalia.¹

I say: One who deliberately breaks the fast without excuse is, in most cases, making light of it; for what is understood from "making light of it" is taking fasting lightly and showing little concern for it.

[Ruling on One Who Vows to Fast an Unspecified Month]

Question: A man vowed to fast a month that is not specified—neither in wording nor in intention—and at the time of the vow nothing occurred to his mind regarding consecutiveness or non-consecutiveness. Is he required to fast the days consecutively, or not?

Answer—and Allah is the Granter of success: He is not obligated to observe consecutiveness; the default is that one's liability is free of the obligation to join fast-days consecutively.

If it be said: The unqualified word "month" (*shahr*) denotes consecutive days,

We say: In this vow the man intended by "month" fasting thirty days; he paid no heed to whether they were consecutive or not. His intention attached to fasting that number of days, and he did not intend consecutiveness in his vow.

Moreover, even if the word "month" in the language commonly denotes consecutive days, in vows what is determinative is the *vower's* intention, not the language.

Yes: what we have mentioned may be given some support by Allah's saying: "*then fasting two consecutive months*" [al-Nisā':91]. The apparent restriction to consecutiveness here indicates that, when left unqualified, the wording is open to either: consecutiveness or non-consecutiveness. In that case, the default is that one's liability is free of the added obligation of consecutiveness.

There is also a report mentioned in the books of legal theory: that a woman vowed to fast a month (or two months), then died before fulfilling that. Her daughter sought a ruling from the Messenger of Allah—*May Allah bless him and his family and grant them peace*—asking whether she could fast a day or two on behalf of her mother. The

1- *Sharḥ al-Azhār*, 2/62.

Messenger of Allah—*May Allah bless him and his family and grant them peace*—said: “*What do you think: if a debt were upon your mother and you paid a dirham or two toward it, would that benefit her? ...*” and so forth, as narrated.

[One Fasting Two Consecutive Months in Expiation for Accidental Killing Eats by Mistake—Does He Resume Anew or Continue?]

Question: A man was fasting as expiation for accidental killing. One night he was awakened for suḥūr; he rose and ate. When he got up from his suḥūr, it became clear to him that his suḥūr—or part of it—was after daybreak. He completed his fast that day and continued fasting thereafter. Must he start over, or not?

Answer—and with Allah is success: What appears to me—and Allah knows best—is that the required consecutiveness has not been broken. The fasting person must withhold for the remainder of the day in which he ate by mistake or forgetfulness, it is not counted for him, and he continues fasting until he completes sixty days.

We say this for several reasons:

- 1- Allah the Exalted has lifted blame for mistakes, and its outward sense is general.
- 2- It is not within a responsible person’s capacity never to err or forget: “*Allah does not charge a soul except [with that within] its capacity.*” [al-Baqarah:286].
- 3- The questioner continued fasting the two months to the best of his ability: he refrained from food and drink on the day in which he broke his fast by mistake or forgetfulness, did not count that day, and continued fasting until he completed sixty days. This is what is within his capacity and power.

If it be said: He is able—in his power and capacity—to start over and fast two consecutive months anew,

It is said: Error and forgetfulness may recur each time he starts over, especially for one prone to forgetfulness. That would entail severe hardship if we were to say that he must start over each time he slips by error or forgetfulness. Yet Allah said: “*And He has not placed upon you in the religion any hardship,*” [al-Ḥajj:78] and “*Allah intends for you ease and does not intend for you hardship.*” [al-Baqarah:185].

If it be said: Fasting two consecutive months is a disciplinary fast with which Allah disciplined the unintentional killer and the one who declared ḡihār; hardship in it should not be found strange,

It is said: Even if it is a disciplinary fast, it is not made more stringent than Ramaḍān—except that no concession is given in it unless one fears harm if he fasts. As for error and forgetfulness, these are excuses from

which it is impossible to be completely safe or to guard oneself altogether.

[Explanation of: “*The Night of Decree is better than a thousand months.*”]

Question: What is the explanation of Allah’s saying: “*The Night of Decree is better than a thousand months*”? [al-Qadr:3]

Answer—and Allah is the Granter of success: Its explanation is clear: the sūrah, from beginning to end, speaks about the virtue of the Night of Decree and the virtue of the Qur’an.

The meaning of its being “better” is that obedience to Allah the Exalted therein—and worship of Him—is better than worshipping Him for a thousand months other than it. That is, Allah knows best, the good deed therein is multiplied manifold. If, outside the Night of Decree, a good deed is [rewarded] tenfold; and a thousand months are approximately thirty thousand nights; and a good deed on each night is [rewarded] tenfold; the total would be three hundred thousand good deeds.

On this basis, a single good deed on the Night of Decree is better than three hundred thousand good deeds. And Allah knows best. Praise be to Allah, Lord of the worlds; and may Allah bless Muḥammad and his family and grant them peace.

[Which is superior: the Night of Decree, or the night of ‘Arafah for those standing at ‘Arafah, or the night of Friday?]

Question: Which is superior—the Night of Decree (*Laylat al-Qadr*), or the night of ‘Arafah for the people at ‘Arafah, or the night of Friday?

Answer: What appears to me—and *Allah knows best*—is that the Night of Decree is superior, then the night of ‘Arafah, then the night of Friday.

The proof: Allah the Exalted revealed a whole sūrah of the Qur’an regarding its virtue, and in other verses too Allah clarified the virtue of the Night of Decree from several angles:

- 1- Allah sent down the Qur’an in it because of its blessing and virtue. He said, clarifying the Qur’an’s excellence: “*Indeed, We sent it down during the Night of Decree.*” [al-Qadr:1]; “*Indeed, We sent it down during a blessed night.*” [al-Dukhān:3]; “*On that [night] is made distinct every precise matter.*” [al-Dukhān:4].
- 2 - Allah magnified the Night of Decree by His saying: “*And what can make you know what is the Night of Decree?*” [al-Qadr:2].
- 3 - He clarified its excellence by His saying: “*The Night of Decree is better than a thousand months.*” [al-Qadr:3].

- 4 - The angels descend therein, and among them is Jibrīl, in honor of its virtue. [cf. al-Qadr 97:4]
- 5 - On it every wise decree is apportioned. [cf. al-Dukhān 44:4]
- 6 - It is a night of peace until the break of dawn. [al-Qadr 97:5]
- 7- Allah commanded the fast of Ramaḍān because the Qur’an was sent down therein—that is, on the Night of Decree in Ramaḍān.

After the Night of Decree in virtue comes the night of ‘Arafah for those at ‘Arafah; it is superior to the night of Friday. The proof:

- 1 - Allah, upon the tongue of His Messenger—*May Allah bless him and his family and grant them peace*—made the ḥajj to be ‘Arafah; thus Allah chose the evening of ‘Arafah, over other evenings, for the greatest pillar of the ḥajj.
- 2 - Reports have come that the best supplication is the supplication made at ‘Arafah—and that is only due to the abundant bounty and immense virtue with which this evening has been singled out over others.
- 3 - The reports extolling the merit of this evening are widespread.

As for the virtue of Friday, it pertains to the *day*, evidenced by the ḥadīth: “*The best day upon which the sun rises is Friday: on it Adam was created; on it he was admitted to the Garden; on it he was expelled from it; and the Hour will not be established except on a Friday.*” And in another ḥadīth: “*And within it is an hour that no Muslim servant happens upon while praying and asks Allah for something except that He grants it to him.*” There are reports on the merit of the night of Friday too, that the gates of heaven are opened from the beginning of the night to its end.

Reports have also come regarding Monday and Thursday, among them the ḥadīth narrated by al-Tirmidhī—who declared it sound: “*The gates of the Garden are opened on Mondays and Thursdays ...*”

To sum up: The virtue of a time becomes manifest by what Allah the Exalted has placed within it of noble events, rulings, or rites. Thus Ramaḍān is ennobled by the Qur’an’s being sent down in it, by the legislation of fasting therein and the recommendation of night-prayer, and by the Night of Decree and what Allah has placed in it—as we set out above.

Indeed, what Allah the Exalted has placed of virtue in those nights, days, and times is a grace and bounty from Allah returning to the legally responsible: their profits and gains are multiplied therein, and they are granted expansive forgiveness and entry into His vast mercy.

[The best acts of devotion for a layperson on the nights of Ramaḍān]

Question: What is best for a layperson among devotional works on the nights of Ramaḍān?

Answer: If there is someone who undertakes teaching the common folk—as is the case in the Āl ‘Āmirī Mosque [*Sa’ada*—then what is most fitting for the layperson is to learn with him to recite some short sūrahs and al-Fātiḥah with sound recitation, and to learn the prayer. When the admonition in the mosque is given, he should listen to it; then, thereafter, he should ask about the matters of his religion he needs regarding purification, prayer, zakat, and fasting. If he is a tradesman, he should ask about transactions that are dubious to him, etc.

When the admonisher has finished his admonition and the teacher his instruction, he should perform wuḍū’ and pray the night supererogatory prayer—eight rak’ahs, with salām after each two—then pray witr, three rak’ahs. When he has finished that, he should remember Allah the Exalted with *tasbīḥ* (saying “Subḥān Allah”), *taḥmīd* (“al-ḥamdu li-llāh”), *tahlīl* (“lā ilāha illa-llāh”), *takbīr* (“Allāhu akbar”), sending blessings upon the Prophet—*May Allah bless him and his family and grant them peace*—and his family, and seeking forgiveness.

[On Zakāt al-Fiṭr]

It says in *al-Minḥah*: “It is established in al-Bukhārī that they used to give it a day or two before the Fiṭr (‘Īd).” End.

And in *al-Azhār*, regarding Zakāt al-Fiṭr: “It is only obligatory upon one who owns, for himself and for each person [he supports], provisions for ten [days] besides it.” End.

I say: Reports have come that Zakāt al-Fiṭr is due upon both the wealthy and the poor, etc. On that basis, it is due upon whoever possesses—for himself and for those he supports—what suffices them on the day of Fiṭr; if he possesses more than that, he pays it.

We say this because the ḥadīth contains the command to spare the needy from begging on that day; this indicates that those who go about seeking alms—who do not find what will suffice them that day—do not have Zakāt al-Fiṭr obligatory upon them, even if, on that day, they should happen to find what suffices them therein.

[The poor person upon whom Zakāt al-Fiṭr is not obligatory]

Question: Who is the poor person upon whom Zakāt al-Fiṭr is not obligatory? And who is the poor person upon whom it is obligatory?

Answer—and Allah is the Granter of success: The poor person who possesses only the expense of the Day of ‘Īd has no Zakāt al-Fiṭr due upon him. The proof is the Prophet’s—*May Allah bless him and his family and grant them peace*—saying, “Spare them from begging on this day,” which indicates that whoever has only the expense of the ‘Īd day for

himself and those he supports does not have the charity due.

The jurists of the madhhab said: The poor person who does not possess, beyond the provisions of ten days for himself and those he supports, anything more—does not have Zakāt al-Fiṭr obligatory upon him. Whoever possesses more than that has it obligatory upon him; and he is not obligated to pay the charity except from what exceeds the expense of ten days.

The Book of Ḥajj and ‘Umrah and the Rulings Attached to Them

Benefit (Does a woman need a maḥram?):

It is mentioned in *Sharḥ al-Azhār* and its marginalia that al-Manṣūr bi-llāh said: If a woman has attendants and maidservants, it is permissible for her to go out for Ḥajj, as ‘Ā’ishah did.¹

Likewise in *al-Yāqūta* from the scholars of the madhhab. Al-Shāfi‘ī said: A maḥram is not a condition for the journey of Ḥajj—the intent being that she travel with trustworthy women or men. End.²

And therein: If a *muḥrim* (one in the state of iḥrām) has intercourse with a woman unrelated to him, he does not owe her what would be owed in the case of a wife. That is because the ḥadd-penalty is due upon him; if we were also to obligate upon him the expense of repeating [the rite], we would be burdening him with two liabilities. Thus it is conveyed in the marginalia according to the madhhab.³

Travel of a woman more than a *barīd* without a maḥram

Question: Is it permissible for a woman to travel more than a *barīd* with women while she has no maḥram other than the women (i.e., the other women have a maḥram with them)?

Answer—and Allah is the Granter of success: It has come in the ḥadīth from the Prophet—*May Allah bless him and his family and grant them peace*—“It is not lawful for a woman who believes in Allah and the Last Day to travel a *barīd* except with a kinsman who is a maḥram.” This is the wording of the ḥadīth—or its meaning. In another narration: “*that she travel three days ...*” etc.

The apparent sense of this narration is that it is not permissible for a woman to travel a *barīd* without a maḥram, even with a group of women.

What appears to me, however, is permissibility—if there is safety from temptation (*fiṭnah*). The proof is what is narrated: that the Commander of the Faithful ‘Alī b. Abī Ṭālib—*peace be upon him*—sent

1- It has been related from the Commander of the Faithful—*peace be upon him*—that he sent ‘Ā’ishah, after the Battle of the Camel, from Baṣrah to al-Madīnah al-Munawwarah with a group of women, whom he dressed in men’s garments and girded with swords. When they reached Madinah, ‘Ā’ishah said to those who had accompanied her, in substance: “Ibn Abī Ṭālib was not satisfied until he violated my privacy—he sent me with foreign men!” Whereupon they removed their clothing—and behold, they were women ... etc.

2- *Sharḥ al-Azhār*, 2/65–66.

3- *Sharḥ al-Azhār*, 2/164. Its wording: “If he has intercourse with an unrelated woman, is he liable—if he coerced her—for what is due upon the husband? He, *peace be upon him*, said in the commentary: There is some consideration here, for he is liable ...,” etc.

‘Ā’ishah, after the Battle of the Camel, to Madinah with a caravan carrying swords and spears. When ‘Ā’ishah reached Madinah with the caravan, she said to them, in substance: “Does ‘Alī b. Abī Ṭālib feel no shame—he has violated my privacy by sending me with unrelated men!” When the caravan heard her words, they removed their garments and turbans—and behold, they were women ... etc. This story is well known regarding the Commander of the Faithful—*peace be upon him*.

Moreover, a woman’s journey of a *barīd* or more is not prohibited in itself, but due to another matter—namely, fear of temptation and exposure to prohibited things. If the woman is safe from that in her journey with a number of women, then there is no impediment to permitting travel beyond a *barīd*.

If it be said: The Wise Lawgiver tied the ruling to travel and made it contingent upon it, and did not tie it to what you have mentioned—so as to block the means to temptation and close the doors to crime; travel without a maḥram is among the likely contexts of temptation. If the matter is thus, then it is not permissible to attach the ruling to the *wisdom* (which the theorists call the *indicator*), such that the ruling is established with its presence and falls with its absence. Upon this the scholars, past and present, have proceeded: they adduce as the reason for the shortening of the four-unit prayers, or its permissibility, the very fact of travel—not hardship, whether or not hardship occurs with travel; and likewise regarding permissibility of combining prayers and of breaking the fast.

We say: The matter is as you have mentioned, were it not for the presence of what attests to what we said—namely, what was just cited from the Commander of the Faithful, for it indicates the permissibility of a woman’s traveling with trustworthy, reliable women.

[Is a maḥram a condition of obligation or of performance?]

The conditions:

1. A condition of demand/obligation (*sharṭ al-ṭalab* / *sharṭ al-wujūb*)—these two expressions are synonymous. Such a condition need not be procured, and there is no dispute about this, whether or not the condition is within the mukallaf’s power. An example is the sun’s passing the zenith, which is a condition for *ḡuhr* becoming obligatory; and the attainment of the *niṣāb* in ownership, which is a condition for *zakaṭ* becoming obligatory.

The sun’s zenith and the attainment of the *niṣāb* are called a “cause,” an “effective reason,” and a “sign” that the prayer has become obligatory upon the mukallaf and that *zakaṭ* has become obligatory. This is what is meant by their statement in the principles: “Procuring the condition of an obligation in order for it

to become obligatory is not itself obligatory.”

2. A condition of performance (sharṭ al-maṭlūb). This must be procured, and it is only of what is within one's capacity. This is what is meant by their statement: “What an obligation cannot be fulfilled without is itself obligatory by virtue of it,” such as purification for prayer.

With this understood: there has been disagreement about whether a woman's maḥram for Ḥajj is of the first type—so that Ḥajj would not be obligatory upon her if she does not find a maḥram—or of the second type—so that Ḥajj would be obligatory upon her even if she does not find one. The scholars of the madhhab said it is of the second type, and thus obliged her, if she does not find a maḥram, to make a bequest that Ḥajj be performed on her behalf.

What appears to me is that stipulating a maḥram is neither of the first nor the second type in the specific sense above; rather, stipulating a maḥram for a woman is a condition for all her journeys. With respect to travel, it is of the first type—i.e., a condition of obligation—so travel, whether for Ḥajj or otherwise, is not obligatory upon her unless she has a maḥram available.

A discussion on intention

Allah the Exalted says regarding those who strive in His path: *“That is because they suffer neither thirst, nor fatigue, nor hunger in the path of Allah, nor do they tread any step that enrages the disbelievers, nor do they inflict upon an enemy any injury, but that it is recorded for them as a righteous deed ...”* [al-Tawbah:120]; and the Prophet—*May Allah bless him and his family and grant them peace*—said: *“No act [is valid] except with intention.”*

From this it is understood that maintaining the intention throughout every part, extension, and branch of the act is not required—for it is far-fetched that the mujahid keeps renewing intention through all of that.

This is supported by what is narrated from ‘Alī—*peace be upon him*—in *al-Majmū‘*: in substance, “If you circumambulate the House eight circuits out of forgetfulness, then add to that six circuits ...,” etc.

Explanation: The one performing ṭawāf intends seven circuits. This person performed eight; yet that eighth circuit was not included in his intention, for he only intended seven. The validity of the eighth circuit entails that the ruling of the initial intention for seven extends to the eighth. Were the ruling of the intention not to extend, it would not be valid, and the Commander of the Faithful—*peace be upon him*—would not have issued a fatwa to add six circuits to it.

The ruling on performing Ḥajj during the waiting period (‘iddah)

Question: A woman has met the conditions that make Ḥajj obligatory, except that a number of days remain from her waiting period after her husband's death such that, if she waits to complete it, she will be unable to perform Ḥajj. Is Ḥajj obligatory upon her in this case, or is completing the ‘iddah obligatory? She is eager to perform Ḥajj and has grown old.

Answer—and Allah is the Granter of success: Here two obligations conflict for the woman in a way that she cannot combine them. What appears to me—and Allah knows best—is that it is permissible for her to perform Ḥajj even if some of the waiting period remains. The reasons:

1. The obligation of Ḥajj is a pillar among the five pillars of Islam; the obligation of ‘iddah is not of that rank.
2. The obligation of Ḥajj is a right of Allah the Exalted, whereas ‘iddah is a right of a human being; and Allah's right has priority and precedence. Proof: *“The debt owed to Allah has greater right to be discharged.”*
3. There is no disagreement about the obligation of Ḥajj when its causes are present; it is a definitive obligation. By contrast, the requirement that the widow remain in a specific dwelling is a presumptive ruling.
4. It is narrated that the Commander of the Faithful—*peace be upon him*—performed Ḥajj with one of his daughters while she was in her waiting period due to her husband's death.
5. The scholars of the madhhab have permitted the widow to go out for her needs—indicating that the occurrence of a need is an excuse for her going out; and there is no greater excuse than performing a pillar of Islam.

If it be said: The time for Ḥajj is expansive—the whole of one's lifetime—so Ḥajj is not constricted to that year, unlike ‘iddah,

We say: The view that obligations are to be performed immediately is the stronger—especially regarding Ḥajj—because of the long interval between its seasons. It is far-fetched for one who delays Ḥajj to presume he will live until the next year—or years—particularly for one advanced in age, as mentioned.

What indicates immediacy in Ḥajj is the ḥadīth, *“Perform Ḥajj before you are unable to perform Ḥajj,”* and the saying of Allah the Exalted: *“Race to forgiveness from your Lord ...”* [Āl ‘Imrān:133]. Delaying it exposes one to the threat and ruin mentioned in the ḥadīth: *“Whoever dies without having performed Ḥajj—let him die, if he will, as a Jew or as a Christian,”* and in His saying, Exalted is He: *“And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way. And whoever disbelieves—then indeed, Allah is free of need of the worlds.”* [Āl

ʿImrān:97].

There is no doubt that one who was able to perform Ḥajj and yet did not, and then died, is exposed to threat and ruin—unless he meets Allah with a clear excuse.

If it be said: The occurrence of ʿiddah for the woman is a clear excuse to delay Ḥajj,

We say: ʿIddah is not an excuse to delay or leave Ḥajj. The Law has established that a husband is not permitted to prevent his wife from performing her obligatory Ḥajj, nor from an obligatory fast, and the like—even if that would deprive the husband of many of his rights or cause him hardship. This is evidence that the husband’s rights fall away when the obligations of Allah are at hand; and the waiting period due to death is of the same genus as the husband’s rights.

If it be said: The right implicated in the waiting period after death may be greater than the husband’s normal rights, so it is invalid to analogize it to those rights,

We say: It is not greater—proof being that it branches from, and is predicated upon, the husband’s rights; the branch cannot exceed the root. Nor is the sanctity of the dead greater than the sanctity of the living.

Yes: the widow’s obligations in ʿiddah due to death are:

1. Intending the ʿiddah;
2. Waiting for four months and ten days;
3. Observing mourning by refraining from adornment;
4. Remaining in the place where the news [of the death] reached her.

If she performs Ḥajj, only the last of these is missed; the first three are not incompatible with traveling for Ḥajj.

Moreover, in *al-Shifāʾ* it is reported from the Commander of the Faithful—*peace be upon him*—that he would have the widow transported to her home whenever she wished; and from him—*peace be upon him*—also: “*The widow in her waiting period may observe her ʿiddah wherever she wishes—her home or her husband’s home.*”

And from al-Qāsim, raising it to the Commander of the Faithful, likewise; and from Ibn ʿAbbās, likewise; and from ʿĀʾishah—that she moved her sister when her husband Ṭalḥah b. ʿUbayd Allāh al-Khuzāʾī was killed—and none of the Companions objected. All of this is cited in *al-Shifāʾ*.

[The ruling on Ḥajj for a young woman in times like these]

Question: Is Ḥajj obligatory upon a young woman in times like these, when there is severe crowding at the Kaʿbah and between al-Ṣafā and al-

Marwah?

Answer—and Allah is the Granter of success: If the crowding reaches a point where the young woman cannot perform ṭawāf and sa‘y except by jostling with unrelated men, then what appears to me is that performing Ḥajj falls from her—though not its obligation—exactly as they said regarding a maḥram for a woman: if she does not find a maḥram, performing Ḥajj falls from her, though not its obligation.

The reason is that a young woman’s traveling without a maḥram is a sin the Prophet—*May Allah bless him and his family and grant them peace*—prohibited, and likewise her jostling with unrelated men is a sin.

Among the well-agreed principles is that leaving a duty is lighter than committing a prohibition, for disobedience is a corruption and obedience a benefit—and warding off harms is given priority, among people of sound reason, over procuring benefits.

That said: if a young woman cannot perform ṭawāf and sa‘y except by jostling with men, she may perform ṭawāf from the second floor, and it suffices for her—because she is excused; the same applies to sa‘y. Likewise, anyone who fears for himself due to the intensity of the crowd may perform ṭawāf and sa‘y from above.

We say this for several reasons:

1. The ḥadīth: “When you are commanded to do something, do of it what you are able,” and the verse: *“Allah does not burden a soul beyond its capacity.”* [al-Baqarah:286]
2. *“Do not throw yourselves, by your own hands, into destruction.”* [al-Baqarah:195]
3. The sanctity of the House—from the soil to the Pleiades.

If it be said: It is obligatory to keep ṭawāf pressed to the House, due to His saying: *“and let them circumambulate the Ancient House,”* [al-Ḥajj: 22] and the preposition “bi-” indicates adhesion,

We say: Yes—and those we mentioned have adhered as closely as they are able. *Allah does not burden a soul beyond its capacity.* [al-Baqarah :286]

What we have stated is preferable to delaying Ḥajj or leaving it.

Yes, it may be said: The young woman or the weak person can delay ṭawāf and sa‘y until the crowd thins—even if the Days of Tashrīq pass; delaying ṭawāf for an excuse is permissible. The proof is what came from the Messenger of Allah—*May Allah bless him and his family and grant them peace*—regarding one of his wives: “Are we being detained by her?” They said: “She has performed ṭawāf.” He said: “Then not [detained],” or as narrated.

But which is preferable for the excused person: to perform ṭawāf and

sa'y from the second floor, or to delay them?

By analogy, it is not permissible to delay an act of worship beyond its time when it is possible to perform it in a deficient manner; one may not delay the prayer beyond its time if one can perform it with earth (*tayammum*) or seated. Accordingly, performing ṭawāf from the second floor during the Days of Tashrīq is preferable to delaying it.

A third solution remains: Is deputizing another to perform ṭawāf and sa'y valid due to this excuse?

Answer: The scholars of the madhhab have permitted the excused person to appoint a proxy for stoning the pillars. By analogy with their view: if the excuse persists for the whole time of ṭawāf and one fears the time will end before he is able to perform it, then deputizing is permissible. However, the ḥadīth “*Are we being detained by her?*” indicates that the excused person delays ṭawāf until the excuse is removed—even if the Days of Tashrīq pass.

Yes: if the excused person has companions who will not wait for the removal of his excuse, then in that case he may deputize—for that is the utmost he can do; and Allah does not burden a soul beyond its capacity.

If it be said: Ṭawāf al-Ziyārah is the greatest pillar of Ḥajj, so deputizing in it is not valid except for a hopeless (*incurable*) excuse,

We say: The excused person has already performed iḥrām and the standing [at 'Arafah]; and in the ḥadīth: “Ḥajj is 'Arafah.”

Delaying Ḥajj despite being able

Question: A man upon whom Ḥajj is obligatory—does he have an allowance to forgo it or delay it on the pretext that Ḥajj is only possible for him by paying a great deal of money to the two states?

Answer—and Allah is the Granter of success:

- If what is taken from the pilgrim is for what the pilgrim needs—lodging and its concomitants in Makkah and Madinah—and nothing beyond what he needs is taken from him there, then he should neither forgo Ḥajj for that reason nor delay it. The proof is His saying, *Exalted is He: “And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way.”* [Āl 'Imrān:97]. This man from whom this is requested is “able to find a way” to Ḥajj by the wealth Allah has given him.

- But if what is demanded of this pilgrim exceeds what we mentioned by many multiples—taken from him without right—then that is an excuse for him to delay Ḥajj and put it off until it becomes feasible.

- **Yes:** a *supererogatory* Ḥajj which cannot be completed except by paying a great sum of money to the two states is not recommended in such a person's case; he should preserve his wealth from being spent in

an improper place. Allah the Exalted said: *“And He has not placed upon you in the religion any hardship,”* [al-Ḥajj:78] and: *“Allah intends for you ease and does not intend for you hardship.”* [al-Baqarah:185].

Indeed, if an act of obedience cannot be completed except by committing a sin, then leaving that act of obedience becomes obligatory—thus they established in legal theory: warding off corruption takes precedence over procuring benefit; and the obligation to ward off corruption is even more emphatic when the harm is general and the benefit particular.

Similarly is what some people do—traveling to visit certain righteous people in Iraq or elsewhere, while knowing or assuming what they will encounter of evils and witness of sins during their travel and moving about there, and in their lodging as well.

Yes: if the visitor believes he will be able to make the visit without witnessing those evils, then there is no harm.

[Leaving Ḥajj due to an excuse, the ruling on medical treatment, and the ruling on wishing for death]

Question: There is an elderly woman who is able to perform Ḥajj in terms of money and bodily health, but when she rides in a car she experiences vertigo and continual retching, then falls ill. Is that an excuse to forgo Ḥajj, and may someone perform Ḥajj on her behalf?

Answer—and Allah is the Granter of success: There is no doubt that illness is among the legal excuses by which it is permitted to omit obligations or delay them. The jurists of the madhhab said among the conditions for Ḥajj’s obligation is: “health by which one can remain steady upon the mount.” Thus, if one who possesses provisions and a mount is afflicted with an illness such that he cannot remain steady upon the mount, Ḥajj is not obligatory upon him. Accordingly, if what befalls the elderly woman mentioned in the question upon riding reaches a degree where she cannot keep herself seated upon the mount, then the performance of Ḥajj falls from her—or if it reaches a degree equal to that in severity and hardship.

What I deem appropriate for such a woman is that she may delay, and that the obligation of Ḥajj does not fall from her. The vertigo and retching caused by riding in the car is a transient illness that has a treatment; therefore, because the illness is present we said: she may delay, and because treatment is possible we said: the obligation does not fall.

If, however, the woman despairs of ever being able to perform Ḥajj due to a persistent illness, then she may hire someone to perform Ḥajj on her behalf. If thereafter she becomes able and the ailment is removed, then it is obligatory for her to perform Ḥajj herself, provided she possesses the funds required for Ḥajj. It has been said that it would not

be obligatory upon her; however, what is preferable and more cautious for her is that she perform it herself.

If it be said: Is it obligatory upon one who suffers such an illness when riding in a car to take treatment so as to be able to perform Ḥajj?

We say: From His saying, *Exalted is He, "And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way"* [Āl 'Imrān:97], it is understood that treatment is obligatory; for the sick person who is able to treat the vertigo is thereby able to reach the Sacred House.

It may also be said: Illness is a legal excuse—Allah has excused the sick—since He said: *"There is no blame upon the blind, nor is there blame upon the lame, nor is there blame upon the sick."* [al-Nūr:61], and He said: *"And whoever among you is ill or on a journey—then [let him fast] a number of other days."* [al-Baqarah:184], and other verses wherein Allah the Exalted grants concession to the sick.

We have neither seen nor heard that any scholar obligates medical treatment upon the sick for the sake of fasting, or for the sake of completing purification and prayer, or for jihād, or for attending Jumu'ah, or the like.

If it be said: Treatment is not obligatory for performing obligations, but it is obligatory because it repels harm from oneself,

We say: Treatment is unquestionably legislated; as for its obligatoriness, there is—as appears to me—detail: If the illness afflicting the patient is feared to lead to death, or to the loss of a faculty such as blindness or deafness or insanity, or the like, and the patient expects recovery through treatment, and is able to undergo treatment—then treatment is obligatory upon him.

But if the illness is of those that are not feared to cause any of that, and only involve a slower recovery—then treatment is not obligatory. All of this returns to the patient's own considered judgment. The proof for this is His saying, *Exalted is He: "And do not throw yourselves, by your own hands, into destruction"* [al-Baqarah:195], and what sound reason has settled upon regarding the obligation to repel harm from oneself.

If it be said: Allah, Exalted is He, has called to patience and contentment when affliction descends, and encouraged it in His saying: *"And give glad tidings to the patient—those who, when calamity strikes them, say, 'Indeed we belong to Allah, and indeed to Him we will return.' Those are the ones upon whom are blessings from their Lord and mercy; and those are the rightly guided."* [al-Baqarah:155–157], and He did not mention treatment; rather He called to entrusting matters to Allah, patience, contentment, and the like—much indeed.

We say: Treatment and seeking remedies do not contradict patience, contentment, and entrusting matters to Allah. A patient can combine those qualities with seeking treatment; the Messenger of Allah—*May Allah bless him and his family and grant them peace*—used to seek treatment, and so did the Companions and the scholars up to this very day.

Yes—what is fitting to mention here is this: Some people upon whom affliction and the use of treatment is prolonged may grow weary and feel severe constriction, so they wish for death and refuse treatment. Does that contradict patience, contentment, and entrusting matters to Allah?

We say: Weariness, vexation, and constriction are human traits from which one cannot be completely free. If the afflicted person becomes weary, is vexed by the prolongation of the affliction, and therefore wishes for the coming of death—then, as appears to me, there is no sin in that; nor does it contradict patience, contentment, and entrusting matters to Allah. The believer, in such severe circumstances, only wishes for death because of the relief it contains for him: he is freed thereby from intense pains; it relieves his family from the burden of nursing him; and it brings him to the meeting with Allah and His reward. The Commander of the Faithful—*peace be upon him*—as in some of his sermons in *Nahj al-Balāghah*—would voice complaint over what he faced from his subjects, show vexation toward them, wish to part from them, and supplicate accordingly—saying, in substance: “O Allah, replace them for me with those worse than me, and replace me for them with one better than them.” He would show impatience for the coming of “the wretch of the ummah”¹, and so forth. None of that—such as his saying, “O Allah, I have grown weary of them and they have grown weary of me”—was a deficiency in patience, contentment, or entrusting matters to Allah; and likewise is what we have mentioned.

As for the Prophet’s—*May Allah bless him and his family and grant them peace*—saying: “*Let none of you wish for death due to harm that has befallen him,*” the discussion of it is as follows: Wishing for death is of two types:

The first type is what we mentioned regarding the believer: he wishes for death because of the relief and rest it brings, the meeting with reward, and the easing of the burden upon his family when he senses they are weighed down by the length of his nursing—this together with his good opinion of Allah’s pardon and mercy, strong hope in that, and contentment with Allah regarding what He has decreed.

1- Ibn Muljam—may Allah curse him.

The second type is that the afflicted one wishes for death out of panic at the shock and severity of the affliction, without considering anything beyond that—merely to escape the affliction. This is the type concerning which the prohibition has been narrated.

If you say: The two types are close to each other, for in both cases wishing for death is to escape affliction,

I say: In the first type, wishing for death is for several matters that make such a wish praiseworthy when present: (1) relief and mercy; (2) his sense that his family is weighed down by the length of his nursing; (3) meeting the reward, together with strong hope for forgiveness and mercy.

As for the second type, wishing for death is only to escape the affliction, with no consideration of anything else.

We say this second type is what the prohibition addresses—because seeking death upon the arrival of harm contains grumbling and dislike for Allah’s decree and measure in place of patience and contentment with what Allah the Exalted has decreed and measured.

Among examples of this is what we hear from many people, when something upsetting occurs, of cursing themselves with death.

[Ruling on Delaying Ḥajj Despite Ability]

Question: A man has four adult sons, and all of them are wealthy. Is it permissible for them to outfit one of them for Ḥajj this year, then the second in the following year, the third in the third year, and the fourth in the fourth year—bearing in mind that they are able to all perform Ḥajj this very year without hardship?

Answer—and with Allah is success: What I see, by way of sincere counsel, is that they should all perform Ḥajj, for several reasons:

1. Allah the Exalted has commanded hastening to His forgiveness: *“And hasten to forgiveness from your Lord.”* [Āl ‘Imrān:133]
2. Many scholars have said that obligations are to be performed immediately (‘alā al-fawr); this is the adopted view of the madhhab.
3. One who delays Ḥajj while able may be confronted by preoccupations, illnesses, travel restrictions, poverty, or death—thus, by delaying, depriving himself of tremendous good. The means to Ḥajj may not come together for him again before he dies. It is narrated from the Prophet—*May Allah bless him and his family and grant them peace*—“Perform Ḥajj before you become unable to perform Ḥajj.”

If it be said: How is the ruling for one who delays Ḥajj, though able and without excuse, while intending, determined, and resolved to

perform Ḥajj the next year or after, but then dies before performing it?

It is said in reply: The time for Ḥajj relative to the legally responsible person is the span of his lifetime; there is no disagreement about this among the scholars. Whoever among the legally responsible performs Ḥajj within his lifetime has discharged what is upon him—whether that be at the outset of his life, its middle, or its end.

Accordingly: if the person is young, sound, and strong; security is stable such that he does not fear being killed; and, due to that, he judges it likely that his life will extend—then it is permissible for him to delay Ḥajj to another year.

But if he has reached the latter years of life; weakness overcomes him; and he finds illnesses and ailments recurring now and again—then it is not permissible for him to delay Ḥajj, because he cannot reasonably expect to reach the next year.

Likewise, if a youth at the beginning of his life is afflicted with serious diseases, yet is able to perform Ḥajj, it is not permissible for him to delay it—such as with some liver diseases, cancers, and the like.

Likewise, if a youth lives in a land where he fears for his life due to lack of security, chaos, and fighting—yet is able to perform Ḥajj—it is not permissible for him to delay it.

To summarize: if the person has a reasonable presumption of surviving until the following year, it is permissible [to delay]; if he does not—due to old age, illness, or fear—then it is not permissible for him to delay Ḥajj. Thus have some scholars stated.

If it be said: An elderly man—however weak and oft-sick—does not lose hope in life and longevity; indeed, it is reported: “*The son of Adam grows old, and two traits grow old with him: greed and long hope.*” On this basis, it would be permissible for him to delay, since he presumes survival to the next year.

It is said in reply: That is a corrupt presumption and a false hope, of no legal consideration. Were the holder of such a corrupt presumption and false hope to be counseled and reminded, the falsity of what he hopes and presumes would become apparent to him. Such a notion, then, is not considered; rather, what counts is a sound presumption and true hope—i.e., what is built on recognized causes and indications.

What prudence and due caution call for is hastening to perform Ḥajj upon capability. Scholars have differed whether unrestricted obligations are immediate or may be deferred; although Ḥajj is a time-bound obligation—its “time” being one’s lifetime—in ruling it is akin to unrestricted obligations, and the stronger view is that unrestricted commands in the Sacred Law are for immediate performance.

[Must one repeat Ḥajj if, afterward, he was negligent about prayer?]

Question: A man performed his obligatory Ḥajj. Years passed thereafter during which he was remiss in his prayers: sometimes he prayed, sometimes he did not—i.e., he was careless about prayer. After those long years he came to his senses and repented to his Lord. Must he perform the obligatory Ḥajj a second time?

Answer—and with Allah is success: What appears to me—and Allah knows best—is that he is not obliged to perform Ḥajj again; for the question of whether one who deliberately abandons prayer is a disbeliever is disputed. One group of scholars said the deliberate abandoner of prayer disbelieves, while another said he does not. Matters that are thus disputed cannot be relied upon to pass judgment of unbelief.

[The obligation to complete a voluntary Ḥajj or ‘Umrah once one has entered into it]

Allah Most High said: *“And complete the Ḥajj and ‘Umrah for Allah.”* [al-Baqarah:196] It is adduced from this verse that it is obligatory to complete a voluntary Ḥajj or ‘Umrah once one has entered into it. This runs contrary to analogy with other supererogatory devotions, for completing a supererogatory act one has begun is generally not obligatory.

It may be said regarding this: the obligation in the verse is directed to the qualifier—the prepositional phrase *“for Allah”*—so the intended meaning is the obligation of sincerity to Allah in Ḥajj and ‘Umrah, associating none with Him therein, unlike the Ḥajj and ‘Umrah of idolaters. This is a known rule.

By way of clarification: “Pray the supererogatory prayer *for Allah*; do not pray it for other than Allah.”

What appears is that this rule is not absolute; rather, it is conditioned upon the addressee already knowing that the qualified act is supererogatory—as in the example just given, since the addressee knows a nafl prayer is not obligatory. But if a qualifier occurs in something whose legal status is unknown, it indicates the obligation of the qualified act.

With this understood: the command to “complete the Ḥajj and ‘Umrah *for Allah*” came regarding what the addressees knew: that Ḥajj is not obligatory except once in a lifetime, and that ‘Umrah is not obligatory at all. This inference would be even clearer had the command been “Perform Ḥajj *for Allah* and perform ‘Umrah *for Allah*.” Therefore, it may be said: the command addresses completing what one has already entered into of Ḥajj and ‘Umrah.

[When are the rites of Ḥajj performed?]

Question: Some say it is valid to perform *all* the rites of Ḥajj in the month of Shawwāl, or during the days of Dhū al-Qa‘dah, or Dhū al-Ḥijjah, adducing Allah’s saying: “*Ḥajj is [during] well-known months.*” [al-Baqarah:197]. What is the reply?

Answer—and Allah is the Granter of success: A group called al-Bid‘iyyah—one sect of the Khawārij—have said something like this: they permit Ḥajj in all the months of the year; they say prayer is two units in the evening and two in the morning; and they hold anomalous views. See *al-Durra al-Yatimah* and its marginalia.

The proof of this claim’s invalidity is the consensus of the Muslims that the rites of Ḥajj—*other than iḥrām*—are performed on the ninth of Dhū al-Ḥijjah and the nights and days that follow, until the end of the Days of Tashrīq.

From their first day in the Farewell Pilgrimage with the Prophet—*May Allah bless him and his family and grant them peace*—and thereafter, the Muslims have consistently observed that specific time for performing Ḥajj, right up to our day. “*And whoever opposes the Messenger after guidance has become clear to him and follows other than the way of the believers—We will turn him to what he has [turned to] and burn him in Hell, and evil it is as a destination.*” [al-Nisā’:115]

Such a matter requires no elaborate proof; it is among those known necessarily as part of the religion.

As for His saying: “*Ḥajj is [during] well-known months,*” the meaning is that the *obligating* of Ḥajj—i.e., entering into iḥrām for it—has a time: Shawwāl, Dhū al-Qa‘dah, and the first ten days of Dhū al-Ḥijjah. Whoever intends to enter iḥrām for Ḥajj and make it incumbent upon himself, let him not enter iḥrām except during this time. Hence He said thereafter: “*So whoever has made Ḥajj obligatory upon himself therein, there is [to be for him] no sexual relations, no disobedience, and no disputing during Ḥajj ...*” [al-Baqarah:197].

With this understood, know that the pillars of Ḥajj are three: first, iḥrām, and the whole of the months of Ḥajj are its time; second, the standing at ‘Arafah, whose time is the ninth day of Dhū al-Ḥijjah and the night that follows; and third, circumambulation of the House (Ṭawāf al-Ziyārah), whose time is the tenth day and the remaining Days of Tashrīq and their nights. These days are also the time for stoning the pillars (jamrāt), the time for the rite of staying and overnighting in Minā, the time for Ṭawāf al-Qudūm and sa‘y when the pilgrim arrives in Makkah—whether he arrives before the Day of ‘Īd or after—and the time for Ṭawāf al-Wadā‘ when the pilgrim departs Makkah, which is the last of the rites.

Those who transmitted to us the delineation of the times of the rites

are the very ones who transmitted the Qur'an to us. If doubt could breach *that*, it would breach the Qur'an itself.

An Issue: [that Ḥajj is an Act-Based Obligation]

Ḥajj is among the obligations consisting of actions; nothing verbal of the remembrance of Allah is obligatory therein except the talbiyah and the remembrance of Allah at al-Mash'ar al-Ḥarām.

A sequential outline of the acts of Ḥajj

1. Entering iḥrām by refraining from wearing sewn garments, etc.
2. The *miqāts* from which one must enter iḥrām.
3. The standing at 'Arafah—demarcated by known boundaries—on the ninth day of Dhū al-Ḥijjah, from after the sun's decline until sunset.
4. Departing from 'Arafah after sunset to al-Muzdalifah, combining the two evening prayers there, and spending the night there.
5. Departing from Muzdalifah after daybreak to Minā, and stoning the Major Jamrah on that day.
6. After stoning the Major Jamrah, the state of iḥrām is released except with regard to women.
7. Among the acts of that day is circumambulation of the House; when one has circumambulated it, women become lawful, hence it is called "Ṭawāf al-Nisā'."
8. Spending the nights in Minā and stoning the three jamarāt during the Days of Minā; after completing that, Ṭawāf al-Wadā'.

The pillars of Ḥajj

The pillars without which Ḥajj is not complete are three:

iḥrām, the standing [at 'Arafah], and Ṭawāf al-Ziyārah. The Commander of the Faithful—*peace be upon him*—called it, in the narration of Zayd b. 'Alī, "the obligatory circumambulation," in his exegesis of His saying, *Exalted is He: "Then let them remove their untidiness, fulfill their vows, and circumambulate the Ancient House."* [al-Ḥajj:29]¹

Some scholars said: Ṭawāf al-Qudūm and Ṭawāf al-Wadā' are not obligatory.

And some said: spending the nights in Minā is recommended, not obligatory—and these are most of the Ḥanafīs.²

And some—al-Shāfi'ī—said: spending the night in Muzdalifah is

1- *al-Majmū'*, p. 229.

2- *al-Ḥajj wa-l-'Umrah by Imām by al-Ḥujjah Majd al-Dīn al-Mu'ayyidī* ('a).

Sunnah only, and likewise combining the two evening prayers there.¹

According to Imām al-Manşūr bi-llāh—*peace be upon him*—there is no sacrificial penalty upon one who did not set out [from Muzdalifah] before sunrise.²

Passing by al-Mash‘ar, according to Abū Ḥanīfah and al-Shāfi‘ī, is recommended.³

And shaving, according to the scholars of the madhhab, is not obligatory in Ḥajj.⁴

The pillars of Ḥajj—again

The pillars of Ḥajj are three:

1. entering into iḥrām;
2. the standing at ‘Arafah;
3. Ṭawāf al-Ziyārah.

As for iḥrām, one cannot enter into Ḥajj except by it. As for the standing [at ‘Arafah], it is because of the well-known statement from the Prophet—*May Allah bless him and his family and grant them peace*—: “*Ḥajj is ‘Arafah.*” And as for Ṭawāf al-Ziyārah (Ṭawāf al-Ḥajj / Ṭawāf al-Nisā’), it is because it is the greatest purpose of Ḥajj; the iḥrām, the standing, and the other rites are merely preliminaries to ṭawāf. Hence His saying, *Exalted is He: “And [due] to Allah from the people is a pilgrimage to the House...”* [Āl ‘Imrān:97], and the pilgrimage to the House is to visit it, and visiting it is to circumambulate it.

What also indicates that the remaining rites of Ḥajj are not like iḥrām, the standing, and Ṭawāf al-Ziyārah is the following:

1. Concerning sa‘y, He, *Exalted is He*, said: “*So there is no blame upon him for walking between them.*” [al-Baqarah:158], [regarding al-Şafā and al-Marwah]
2. As for spending the night in Muzdalifah, the Prophet—*May Allah bless him and his family and grant them peace*—granted concession to the weak among his family to depart from it after most of the night had passed; and there is the ḥadīth: “*Whoever catches up with us for this prayer and had already stood before that ...*”
3. And regarding spending the nights in Minā, the Prophet—*May*

1- Ibid.

2- Ibid.

3- Ibid.

4- Sharḥ al-Azhār, 2/133.

Allah bless him and his family and grant them peace—granted al-‘Abbās a concession to forego the overnight stay on account of [his duty of] supplying water, and he granted a concession to the camel-herders.

4. And he—*May Allah bless him and his family and grant them peace*—granted a concession to menstruating women to omit Ṭawāf al-Wadā‘.

The condition [of stipulation] in Ḥajj

In *Uṣūl al-Aḥkām* it is related from ‘Alī—*peace be upon him*—‘Umar, ‘Uthmān, Ibn Mas‘ūd, ‘Ammār, Ibn ‘Abbās, Umm Salamah, and ‘Ā’ishah that they deemed the stipulation (al-shart) in Ḥajj valid. End.

I say: The stipulation is that one says: “*Labbayka Allāhumma labbayk, and my place of release is wherever You detain me.*” According to those who deem the stipulation valid in Ḥajj: if something befalls the muḥrim—illness, an enemy, or any impediment preventing him from completing the Ḥajj—he exits iḥrām and nothing is due from him. This is if he stipulated at the time of entering iḥrām. If he did not stipulate, then he may not exit iḥrām until he sends a sacrificial animal which is slaughtered; when it is slaughtered, he exits iḥrām.

It has been said—and this is the madhhab¹—that making the stipulation at iḥrām is something said devotionally; thus if an impediment to Ḥajj occurs to the muḥrim—whether he stipulated or did not stipulate—he may not exit iḥrām until he sends a sacrificial animal and it is slaughtered, due to His saying, *Exalted is He: “And if you are prevented, then [offer] whatever can be obtained with ease of sacrificial animals, and do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah:196]

One who holds the stipulation valid in Ḥajj may say: the verse is specified or qualified by the ḥadīth² of Ḍubā‘ah bint al-Zubayr, in which the Messenger of Allah—*May Allah bless him and his family and grant them peace*—taught her how to word the stipulation.

If it be said: that is a particular incident concerning Ḍubā‘ah bint al-Zubayr and carries no generality, then it remains confined to where it was narrated,

It can be answered: the Messenger of Allah—*May Allah bless him and*

1- *Sharḥ al-Azhār* 2/74.

2- Namely, that Ḍubā‘ah bint al-Zubayr b. ‘Abd al-Muṭṭalib said: “O Messenger of Allah, I intend to perform Ḥajj—should I stipulate?” He said: “Yes.” She asked: “How shall I say it?” He replied: “Say: ‘*Labbayka Allāhumma labbayk, and my place of release from the land is wherever You detain me.*’” Imām al-Mu‘ayyad bi-llāh narrated it in *Sharḥ al-Tajrīd* (al-Ḥajj wa-l-‘Umrah).

his family and grant them peace—is a legislator; his ruling upon one is a ruling upon the multitude. Whoever claims particularity bears the burden of proof; otherwise, the apparent sense of legislation is generality.

A note concerning the muḥrim’s saying: “*and my place of release is wherever You detain me*”

Issue: If a person enters iḥrām for Ḥajj or ‘Umrah while fearing that he may be prevented from proceeding with what he entered iḥrām for—such as being a fugitive without a passport—and he made an exception at the time of iḥrām by saying, “*and my place of release is wherever You detain me,*” then if he is detained or prevented from proceeding with what he entered iḥrām for, it is permissible for him to release himself from iḥrām, and nothing is due from him.

The Messenger—*May Allah bless him and his family and grant them peace*—directed the woman who feared that something might obstruct her from proceeding with what she entered iḥrām for, to say at the time of iḥrām and intend: “*and my place of release is wherever You detain me.*”

No proof has appeared indicating that this guidance from the Messenger—*May Allah bless him and his family and grant them peace*—to the woman who asked him was exclusive to her; the ḥadīth is authentic, so the verse—His saying, *Exalted is He: “And if you are prevented, then [offer] whatever can be obtained with ease of sacrificial animals, and do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah:196]—may be specified by it.

This said, it may be that acting upon the verse is an obligation, while what came in the ḥadīth is a concession. For the woman complained to the Messenger of Allah—*may Allah bless him and his family and grant them peace*—of old age and weakness, and that this might hinder her from completing the Ḥajj and proceeding with it; so he directed her to say ... etc.

It has also been said that uttering that phrase at the time of iḥrām is merely a devotional formula.

We say: this is not sound, for the wording has an intelligible meaning that pertains to the rulings of iḥrām, and it contains no remembrance or glorification of Allah Most High.

Moreover, it has been narrated from the Prophet—*may Allah bless him and his family and grant them peace*—: “*Actions are only by intentions...*,” which supports what we have stated. One who enters iḥrām intending in his heart that if an impediment arises he will be released and that, at that point, iḥrām will no longer bind him—then when the condition is realized, the conditioned ruling takes effect. Thus, upon the occurrence of the impediment he is not in iḥrām, acting in accordance with this

ḥadīth. On this basis, no blood (*sacrificial penalty*) is due for being prevented (iḥṣār); it is only due from one who did not make the stipulation at the time of his iḥrām.

Yes, what we have said here is the view of al-Shāfi'ī, as related from him in the marginalia on *Sharḥ al-Azhār*.

And in *al-Sharḥ* it is stated that Imām al-Mahdī strengthened the view of the scholars of the madhhab, then said in the marginal notes: he later retracted this in *al-Baḥr*. End.

Furthermore, what we have mentioned accords with removing hardship and with facilitation; indeed, many pilgrims do not find the price of a sacrificial animal, or paying it would be onerous for them—*"Allah does not burden a soul beyond its capacity."* [al-Baqarah:286]

There are analogues of this dispensation: it is narrated that the Prophet—*may Allah bless him and his family and grant them peace*—granted his uncle al-'Abbās b. 'Abd al-Muṭṭalib a concession to spend the nights outside Minā on account of the watering duty, and he likewise granted a concession to the camel-herders to spend the nights outside Minā.

Some scholars—such as al-Amīr al-Ḥusayn in *al-Shifā'* and Imām Yaḥyā—attached to them everyone with an excuse: anyone occupied with a public interest of the Muslims, or with a private matter like seeking a lost property, or illness, and the like; they classed them with the herders in permitting the overnight stay outside Minā.

Likewise, the Prophet—*may Allah bless him and his family and grant them peace*—granted the weak among his family a concession to depart from Muzdalifah after midnight; and he—*May Allah bless him and his family and grant them peace*—said to the one who asked him, having missed standing with the Prophet—*May Allah bless him and his family and grant them peace*—by day at 'Arafah: "Is there Ḥajj for me, O Messenger of Allah?" He replied (in meaning): "*Whoever prayed this prayer with us*"—i.e., the dawn prayer at Muzdalifah—"*and had stood at 'Arafah for an hour of the night or the day has caught the Ḥajj*," and so on, or as he said. He—*May Allah bless him and his family and grant them peace*—also granted a concession to one without a mount to ride his sacrificial animal.

And he—*May Allah bless him and his family and grant them peace*—granted a concession to menstruating women to omit Ṭawāf al-Wadā'.

It has not been related that the Prophet—*may Allah bless him and his family and grant them peace*—commanded any of those to whom he granted the aforementioned concessions to shed blood (i.e., offer a compensatory sacrifice), and he—*May Allah bless him and his family and grant them peace*—was in a position of teaching and directing.

All of this has been for the sake of removing hardship and facilitating ease; it is borne out by His saying, *Exalted is He: “Allah intends for you ease and does not intend for you hardship.”* [al-Baqarah:185], and His saying: *“He has not placed upon you in the religion any hardship.”* [al-Ḥajj:78], and His saying: *“...except for that to which you are compelled.”* [al-An‘ām:119].

And among the widely agreed general maxims: “Necessities permit the prohibited.”

[The ruling on a woman who entered ihrām for ‘Umrah but was too weak to complete it]

Question: A woman entered ihrām for ‘Umrah, then was too weak to perform ṭawāf and sa‘y due to her old age, frailty, and the severe crowding. Is it valid for her to appoint a proxy to perform ṭawāf and sa‘y on her behalf, then cut her hair afterward?

Answer: There is no objection to deputizing (*appointing a proxy*) for that where there is an excuse. Accordingly, the ‘Umrah is complete and valid, and she is not obliged to remain in Makkah until the crowds of pilgrims and ‘umrah performers abate if that would entail hardship for her and her company—*“Allah intends for you ease and does not intend for you hardship.”* [al-Baqarah:185]; *“He has not placed upon you in the religion any hardship.”* [al-Ḥajj:78]. If, however, delaying ṭawāf and sa‘y until the crowding eases would not entail hardship or difficulty for her or her companions, then she must wait until she is able to perform ṭawāf and sa‘y, in light of His saying, *Exalted is He: “And complete the Ḥajj and ‘Umrah for Allah.”* [al-Baqarah:196]. Similarly, if she is able—without unduly affecting her provisions—to pay the fee for someone to carry her for ṭawāf, then that is obligatory upon her in view of the verse just cited.

The same applies to Ṭawāf al-Wadā‘: she may appoint a proxy to perform it on her behalf due to an excuse other than menstruation and postnatal bleeding; as for those two, Ṭawāf al-Wadā‘ falls away from them, and such is established by authentic Sunnah.

The evidence for what we have stated regarding the validity of deputization for an excuse is that it is established that deputization in Ḥajj and ‘Umrah is valid; it follows that deputization in their components is valid as well. The scholars of the madhhab, however, said—as in the marginalia on *Sharḥ al-Azhār*—that deputization is only [permitted] for the stoning and the nights of Minā and the night of Muzdalifah, because these rites are time-bound: whoever fears missing them deputizes due to the excuse; as for the other rites, there is no deputization because they are not time-bound in a way that one fears missing them. End.

The preferable view is what we have stated, for the evidences mentioned above.

[Stipulation when pronouncing iḥlāl for Ḥajj]

The ḥadīth: Ḍubā'ah bint al-Zubayr b. 'Abd al-Muṭṭalib came to the Messenger of Allah—*may Allah bless him and his family and grant them peace*—and said: “I am a heavy (ailing) woman, and I intend to perform Ḥajj; what do you command me?” He said: “*Enter iḥrām for Ḥajj and make a stipulation: that my place of release is wherever You detain me.*” End.

I say: This ḥadīth is well-known among us and among the ḥadīth scholars. The jurists have said: if a pilgrim is prevented from Ḥajj by an enemy or illness, he must slaughter whatever sacrificial animal is feasible, then he *must* exit iḥrām—whether or not he stipulated at the time of entering iḥrām.

What I hold—and Allah knows best—is that the stipulation suffices in place of the sacrificial animal for one whose situation is like that of Ḍubā'ah—namely, those with verified excuses at the time of iḥrām, such as weakness, old age, or illness. To these we add one who, at the very moment of binding iḥrām, lacks a passport or permit, and the like of verified excuses at the time of binding iḥrām—such people benefit from making the stipulation when entering iḥrām.

As for the one who enters into iḥrām for Ḥajj or 'Umrah while having no excuse at the time of entering it, the stipulation does not benefit him even if he makes it.

We have said this in accordance with the two evidences: the verse on being prevented (iḥṣār) is general for all circumstances, while the ḥadīth of Ḍubā'ah came specifically concerning Ḍubā'ah on account of a verified excuse in her case; for she said to the Prophet—*May Allah bless him and his family and grant them peace*—in one narration: “I find myself only in pain,” and in another: “I am ill,” and in another: “I am heavy,” all of which are in Muslim. So the Prophet—*May Allah bless him and his family and grant them peace*—commanded her, on account of that excuse to which she appealed, to perform Ḥajj and make the stipulation.

Thus those who have verified excuses at the time of entering iḥrām are grouped with Ḍubā'ah.

If it is said: the stipulation is particular to Ḍubā'ah,

We say: there is no proof for restricting it to Ḍubā'ah, and the narration has come soundly with the effective cause on account of which the Prophet—*May Allah bless him and his family and grant them peace*—ordered her to make the stipulation; therefore, whoever has an excuse like hers is included with her. This is what appears—Allah knows best.

[Clarification of who is permitted to annul iḥrām]

In the marginalia of *Sharḥ al-Azhār* it says: Those for whom annulling

(i.e., breaking) iḥrām has been legislated are: the husband, the master (owner of a slave), the imām (authority), and the one who has hired [the pilgrim]; likewise, it is for the muḥrim to annul it for himself where another has the right to annul if that other prevents him from completing the Ḥajj or ‘Umrah. End of *Dibājj*.

And there is a marginal note on this marginal note: as for the imām, the hirer, and the creditor, they have [the right of] preventing, not annulling. Concluded. (*Affirmed*). (قرئ)

I say: It is obligatory upon the muḥrim to complete what he has entered into of Ḥajj or ‘Umrah, whether what he entered iḥrām for is an obligation or a supererogatory act; due to His saying, *Exalted is He*: “**And complete the Ḥajj and ‘Umrah for Allah.**” [al-Baqarah:196]. Therefore, the muḥrim may not exit what he has entered into except in situations for which Allah, Most High, has granted a dispensation to exit upon their occurrence, namely:

1. That the muḥrim is prevented from completion—whether by imprisonment, an enemy, illness, a governmental ban, or the like—due to His saying, *Exalted is He*: “**And if you are prevented, then [offer] what can be obtained with ease of sacrificial animals...**” [al-Baqarah:196].
2. If a woman enters iḥrām for a supererogatory Ḥajj or for a supererogatory ‘Umrah without the husband’s permission—and similarly a slave if he enters iḥrām without his master’s permission—the husband or the master may annul the iḥrām; if he annuls it, it is annulled. This is because Allah—majestic is His glory—has granted the husband a right over his wife, namely: that she not leave her husband’s house except with his permission.

This right is obligatory for the husband over his wife by Allah’s imposition, and there is no disagreement about that among the scholars of Islam. However, the right of Allah is weightier; thus the husband has no right to prevent her from Ḥajj al-Islām if she is able to perform it and has a maḥram to accompany her.

Likewise, he has no right to prevent her from the obligatory prayers and from fasting the month of Ramadan, or making it up. As for supererogatory acts of worship, he may prevent her from them—among these are a supererogatory Ḥajj and ‘Umrah, supererogatory prayers, and supererogatory fasts.

And the slave is like the wife in that—except in Ḥajj: the master may annul the slave’s iḥrām in Ḥajj al-Islām and otherwise, because Ḥajj is not obligatory upon the slave, as he is owned and owns nothing; Ḥajj is

obligatory only upon one who owns the wealth by which he can go and return, etc.

3. If a debtor possesses enough to reach Ḥajj and then enters iḥrām on that basis, and afterward the creditor comes to demand his due—he must pay his due immediately and is not permitted to delay with the demand; from the standpoint of the law, however, he is obliged to complete the Ḥajj.

The wisdom in wearing the two garments of iḥrām

Question: What are the secrets of the wisdom in wearing the two garments of iḥrām when entering iḥrām? And in forbidding the muḥrim from women, perfume, etc.?

Answer: What occurs to me is that the wisdom in forbidding the muḥrim from wearing stitched garments and in obligating him to wear the cloak and waist-wrap—garments devoid of adornment—is:

1. Manifesting humility and destitution: when the muḥrim dons the two garments of iḥrām, he is diminished in his own sight and in the sight of onlookers; the onlooker, when he looks upon those in iḥrām, does not distinguish between great and small, nor between master and subject, etc.
2. Restraining the soul from pretension, self-aggrandizement, and arrogance; for in that attire is what turns the soul back from its caprice and from aspiring to its desires.
3. The muḥrim's soul is too humbled to boast as the people of Jāhiliyyah used to do—they prided themselves and recounted the glories of forefathers and descendants and exaggerated in mentioning exploits and virtues, etc.
4. In prohibiting perfume for the muḥrim there is the completion of manifesting humility and destitution and the feeling thereof; for when the muḥrim is in that simple attire and the odors of sweat and grime emanate from him, his humility and destitution are increased. In the report describing pilgrims, they are “disheveled and dusty-smelling (al-shu‘th al-tafal)¹.”
5. Perfume is among the things that help stir desire toward women; prohibiting it for the muḥrim distances his soul from desire for women and severs its causes, so that the pilgrim may devote himself to the worship of his Lord.

Here, He, *Exalted is He*, said: “*So there is to be no sexual relations and*

1- *Tafal*: his odor has altered; it is said: “So-and-so became *tafal*”—he left off perfume and his odor changed, so he is *tafal*. Also said of the masculine and feminine: *mutafāl*. (*al-Mu‘jam al-Wasīṭ*)

no disobedience and no disputing during Ḥajj." [al-Baqarah:197]. And the Sunnah has come with the prohibition of concluding a marriage contract for one in iḥrām.

6. Intercourse with women is prohibited because of the preoccupation it causes, diverting from performing the rites of Ḥajj as they ought to be performed; by prohibiting women, the muḥrim's heart turns to the remembrance of Allah and the performance of the obligations of his Ḥajj or ‘Umrah.
7. It may also be said: the gathering of pilgrims—all in that modest white attire, disheveled and dusty—reminds one of their gathering for judgment; for they will be resurrected in a like state.

Yes, benefits follow from what we have mentioned of wisdoms and secrets—foremost among them restraining the soul from self-aggrandizement and arrogance, and strengthening the motives of humility and lowliness; and that is among the greatest causes of mutual affection, mercy, and brotherhood.

8. Muslims gather from every place for Ḥajj and ‘Umrah in that attire through which the distinctions among them are effaced: no superiority of one nation over another, nor of one people over another, nor tribe over tribe, nor person over person—no, and no, etc.

Instead, brotherhood appears among them and unity in servitude to Allah Most High, and in His obedience and magnification, and in complying with His command to gather at ‘Arafāt, then depart from it all at once, then spend the night together at Muzdalifah and remember Allah there, then depart from it at dawn to Minā to stone the Major Jamrah, then ... then ... and so on.

All of that reminds the Muslim and instills within him that Muslims—though their lands be far apart, and tongues and hair and lineages and complexions differ—are nonetheless brothers, one community: not divided by the remoteness of regions, nor by racial impulses, nor by the features of complexions and hair, nor by differing languages. What unites them is Islam and its laws, and servitude to the Lord of the Worlds.

Analogizing a woman's feet to her hands regarding non-coverage

In *Sharḥ al-Tajrīd* there is the ḥadīth of Ibn ‘Umar: he heard the Prophet—*May Allah bless him and his family and grant them peace*—prohibit women in their iḥrām from wearing gloves and the niqāb, and from garments that have touched *al-wars* or saffron; and he said they may wear thereafter whatever colors of clothing they wish—dyed (*mu‘aṣfar*), or *khazz*, or trousers, or a shirt. End quote from *Kitāb al-Ḥajj wal-‘Umrah*.

The two gloves (*al-quffāzān*) are coverings for the hands (what is now called “gloves”).

I say: it is possible to analogize a woman’s feet to her hands, so she should not wear socks. The rationale is what is indicated by the ḥadīth: “*Come to me disheveled and dusty,*” for socks preserve the softness of the feet—just as gloves do—from dishevelment, dust, and dryness. And in a ḥadīth: the Prophet—*May Allah bless him and his family and grant them peace*—was asked, “Who is the pilgrim?” He said, “*The disheveled, dusty-smelling one (al-sha‘ith al-tafil).*” He was asked, “Which ḥajj is best?” He said, “*Raising the voice with the talbiyah (al-‘ajj) and the flowing of the sacrificial blood (al-thajj).*”

A muḥrim wearing eyeglasses

Question: Is it permissible for a muḥrim to wear eyeglasses, knowing that if he removes them he will be harmed?

Answer (and Allah grants success): The author of *al-Bayān al-Shāfi* transmits from Imām al-Qāsim ibn Ibrāhīm—*peace be upon him*—and Imām Abū Ṭālib—*peace be upon him*—that it is permissible for a muḥrim to bind his forehead with a cloth back to his nape. What has been authenticated for the madhhab is that he should not bind it; and if he does, a fidyah is due upon him, because he has covered part of the head.¹

I say: there is no disagreement that covering the head during iḥrām is not allowed, nor covering any part of it. The first view is built on the notion that what the band covers is not of the head, while the second view is built on the notion that what the band covers of the nape and sides enters into the concept of “head.”

Know that the term head applies to what is mounted above the neck; hence the ḥadīth, “*Protect the head and what it contains,*” meaning guarding the tongue, hearing, and sight from falling into the unlawful and falsehood. It is said, “A man’s head was cut off,” intending what we have mentioned.

The term “head” is also used for the places of hair growth, or the hair that grows on the head—one says, “He shaved his head” or “trimmed it.” This latter sense is what is intended in the chapter on iḥrām.

Accordingly, there is nothing upon the wearer of eyeglasses, for the eyes are not part of what is meant by “head” in this chapter, and the temples through which the arms of the glasses pass are of the face according to the people of the madhhab. The temple is what lies between the eye and the ear; and the ears, as it appears to me in this chapter, are not of the head—evidenced by His saying, *Exalted is He, “with your heads*

1- *Al-Bayān al-Shāfi* 1/194.

shaved and [your hair] shortened” [al-Fath: 27]. The ears are not a place for shaving or trimming. On this basis, no part of the glasses rests upon the [legally relevant] head.

On killing lice

The scholars of the madhhab said—as in the *Sharḥ*—that a fidyah is due for killing lice (*al-qaml*) absolutely, whether he killed it deliberately or by mistake.

And they said regarding lice (*al-qommal*): it is permissible for a muḥrim to kill them; and the difference between *al-qaml* and *al-qommal* is that *al-qaml* [lice] are from the body’s offcasts and are in his custody as a trust, so it is not permissible to kill them—unlike *al-qommal*, for it is from the earth. End quote from the *Sharḥ* and its marginalia.¹

I say: by their statement “*al-qaml* is from the body’s offcasts,” they mean it is like a tooth, hair, or nail. Yet it does not appear that it is created from bodily offcasts; rather, like other creeping things and small creatures, the louse lays eggs which then hatch into lice. On that basis, no difference appears between *al-qaml* and *al-qommal*.

And if what they intend is that lice (*al-qaml*), due to their strong association with the human being, are *as if* created from his bodily offcasts—then the distinction does not stand.

Moreover, in the well-known report that the Prophet—*May Allah bless him and his family and grant them peace*—when the verse was revealed, “*And whoever among you is ill or has an ailment of the head [making shaving necessary must offer] a ransom of fasting or charity or sacrifice*” [al-Baqarah:196], ordered Ka‘b ibn ‘Ujrah to give a fidyah of a sheep, or to fast three days, or to give charity to six needy persons, he—*May Allah bless him and his family and grant them peace*—did not command him any expiation for killing the lice (*al-qaml*) that were falling onto his face due to their abundance. The moment was one of instruction; had expiation been required, the Prophet—*May Allah bless him and his family and grant them peace*—would have ordered it.

Therefore, the apparent ruling is that no expiation is due for discarding or killing lice, due to the lack of evidence for it—and by analogy with *al-qommal*, *al-kittān* [*al-kittān*: an expression appearing in the source], the flea, and all other harmful things.

And we can counter them by saying: they have permitted cupping and draining of boils². So discarding and killing lice (*al-qaml*) —*even on the*

1- *Sharḥ al-Azhār* 2/93–94.

2- *Sharḥ al-Azhār* 2/94.

assumption that they are from the body's offcasts—may be analogized to expelling blood and pus from boils, since both are harmful offcasts of the body.

Furthermore, as they have imagined it, lice arise from the perspiration and filth that exit the body—and there is no disagreement that removing perspiration and filth from the body is permissible; therefore, removing what is generated from them—namely lice—is likewise permissible.

[The ruling on a person in 'umrah who covered his head due to harm from fans]

Question: A man, while performing the sa'y between al-Ṣafā and al-Marwah for 'umrah, was harmed by the wind from the fans, so he covered his head because of that—what is required of him?

Answer: The person performing 'umrah remains bound by the sanctity of iḥrām until he finishes his sa'y between al-Ṣafā and al-Marwah; this is the madhhab, as in the marginalia of *Sharḥ al-Azhār*. On that basis, a fidyah is due from him: either fasting three days, or charity—feeding six needy persons, each a half ṣā'—or slaughtering a sheep.

[Some violations in ḥajj by a layperson]

Question: A layman left 'Arafah after sunset, passed through Muzdalifah and left it without spending the night there. What is required of him?

Answer: Based on the principle that “the madhhab of the layperson is the madhhab of the one he follows,” nothing is required of this uninformed person. One may adduce as evidence His saying, “*And there is no blame upon you for that in which you have erred, but [only] for what your hearts intended.*” [al-Aḥzāb:5], and His saying, “*Allah intends for you ease and does not intend for you hardship.*” [al-Baqarah:185], and His saying, “*And He has not placed upon you in the religion any difficulty.*” [al-Ḥajj:78].

If it is said: the jurists of the madhhab obligate multiple blood-sacrifices upon one who did such things—why, then, do you drop them here?

We say: they obligated them upon other than the *pure* layperson. As for the pure layperson, they ruled the validity of what he performed while believing it to be correct, so long as he did not violate consensus—and this layman we mentioned did not violate consensus, for there are recognized madhhabs that do not require spending the night in Muzdalifah, nor ... etc.

Involuntary Arousal (Taḥarruk al-Sākin)

Question: A young man in the prime of his youth, of full build and

sound body, performed ḥajj, and during his iḥrām involuntary arousal occurred frequently, without any deliberate cause on his part for that arousal. What is required of him?

Answer—and Allah is the Guide to success: The scholars of the madhhab said—as in *al-Azhār*—“For movement of what is dormant (taḥarruk al-sākin) a sheep [is due].” In the *Sharḥ* it adds: that is when it is stirred by desire through touching, kissing, or looking; he, *peace be upon him*, or by speech, or by deliberate reflection.¹

On this basis, nothing is due from the questioner so long as no cause for the arousal issued from him—namely touching, kissing, looking, or deliberate reflection.

I say: a muḥrim often finds his gaze falling upon women due to their abundance in those places, and he may be forced into jostling with them at some congested points. In such cases, if involuntary arousal occurs, nothing is due upon him—unless he persists in staring or in jostling while he is able to avoid it.

Moreover, Imām al-Hādī ilā al-Ḥaqq—*peace be upon him*—interpreted “the minor offenses (*al-lammam*)” in His saying, “*Those who avoid the major sins and immoralities—except for the lesser [offense]. Indeed your Lord is vast in forgiveness.*” [al-Najm:32] as akin to a man’s unintended pressing against a woman at the Ka‘bah.

And Allah Most High said, “*And there is no blame upon you for that in which you have erred, but [only] for what your hearts intended.*” [al-Aḥzāb:5]. Thus, when looking and jostling are not deliberate, there is no blame upon the muḥrim for that, nor for any involuntary arousal resulting from it. Allah Most High also said, “*Allah does not charge a soul except [with that within] its capacity.*” [al-Baqarah:286]

Likewise is the ruling on thoughts: if the muḥrim deliberately entertains erotic thoughts, then a sheep is due for the ensuing arousal. But if the thoughts were not intended—arising without his willing them—then nothing is due for the arousal; for Allah does not burden a soul beyond its capacity, and a person is not able to rid himself entirely of the mind’s whisperings. What is within his ability is to push the thoughts away: if he does not push them away but follows them and takes pleasure in the whisperings, then his ruling is that of the deliberate doer; but if he resists, nothing is upon him. All of this is indicated by the two verses cited.

Question: The scholars of the madhhab have said that for movement of what is dormant a sheep is due for the muḥrim; and often this

1- *Sharḥ al-Azhār* 2/87.

movement occurs during iḥrām—especially with the young. How, then, do you speak about that?

Answer—and Allah is the Guide to success: As it appears to me, if the arousal occurs **without** a deliberate cause, nothing is due upon the muḥrim—and likewise if it occurs with no cause at all—by the proof of His saying, *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah:286] and, *“And there is no blame upon you for that in which you have erred...”* [al-Aḥzāb:5]. Involuntary arousal often occurs without a cause—merely due to the body’s natural state—and it is not within a person’s capacity to prevent that. Arousal may also arise from inner talk, and one cannot rid himself of much inner talk. If the arousal arises from such inner talk which the legally responsible person cannot ward off, then nothing is due.

What does require a sheep is arousal that results from a deliberately chosen cause by the muḥrim—such as looking with desire, kissing with desire, embracing with desire, or deliberately provoking lustful thoughts. This, it seems, is what the scholars of the madhhab intended. The proof for the prohibition of that in ḥajj is His saying, *“So whoever has made ḥajj obligatory upon himself therein, there is to be no sexual relations (rafath), nor disobedience, nor disputing during ḥajj.”* [al-Baqarah:197]. Rafath is the sexual speech that preludes intercourse between spouses; to it are analogically attached the other preludes to intercourse—kissing, fondling, embracing, and lustful staring—because they all invite to intercourse and stir desire.

The evidence for considering this shared cause is inductive: we observe that the Lawgiver forbids, for the muḥrim, every cause that invites to intercourse—so He forbade adornment and perfume, the contract of marriage, rafath, and so on as is detailed in this chapter.

[When a Sheep Is Due for Involuntary Arousal]

Question: The scholars say in the chapter of iḥrām that for movement of what is dormant a sheep is due. Is that required every time such movement occurs?

Answer—and Allah knows best: What appears—Allah knows best—is a distinction: the movement that occurs at times of fatigue, relaxation, and the like does not require anything, because warding it off lies outside a person’s power: *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah:286]

As for the movement that does require a blood-sacrifice, it is that which arises from deliberately procuring its causes, and not otherwise. Thus, if arousal occurs without a deliberate cause, nothing is due—per His saying, *“And there is no blame upon you for that in which you have erred, but [only] for what your hearts intended.”* [al-Aḥzāb:5].

The proof for the matter is His saying, *“So whoever has made ḥajj obligatory upon himself therein, there is to be no sexual relations (rafath), nor disobedience, nor disputing during ḥajj.”* [al-Baqarah:197]. Rafath is intercourse and its preludes; so if arousal occurs because of those preludes, a sheep is due.

Those preludes are: looking with desire, kissing, fondling, embracing, and the special speech that occurs only between spouses. If arousal occurs for some other reason, then nothing is due.

This is what has appeared to me. Allah knows best, and praise belongs to Allah, Lord of the worlds.

[Points Concerning the Sacred Sanctuary (al-Ḥaram al-Muḥarram)]

- Ṭawāf around the House is to be performed from the sun-lit courtyard. If the courtyard fills and the congestion becomes severe, there is no harm in performing ṭawāf from the roofed portion of the Mosque.
- Good deeds within the Sacred Sanctuary are multiplied one hundred thousand times. This is what has weighed stronger with me. There are two other views: that this multiplication is confined to the Masjid al-Ḥarām proper, not the entire ḥaram; and a second view that the intent is the Ka‘bah itself—so that the good deed there is worth one hundred thousand.

What we mentioned is favored by several points:

1. What has been narrated regarding the pilgrim’s expenditures: that a single dirham [spent] counts as one hundred thousand dirhams—and the pilgrim’s expenditures are made outside the Masjid al-Ḥarām.
2. Allah Most High named the Sacred Sanctuary a Masjid. He said: *“Have they not seen that We have made [Makkah] a secure sanctuary?”* [al-‘Ankabūt:67]; and He said: *“And [concerning] al-Masjid al-Ḥarām, which We have made for mankind—equal are the resident therein and the visitor; and whoever intends therein a deviation by wrongdoing—We will make him taste of a painful punishment.”* [al-Ḥajj:25]. In the second verse Allah named the Sacred Sanctuary “al-Masjid al-Ḥarām.”

The Sacred Sanctuary (al-Ḥaram al-Muḥarram)

It is said in *Ḍaw’ al-Nahār*: “There is no proof for anything beyond what the name ‘Makkah’ encompasses.” End quote.

I say: The Noble Qur’an has explicitly indicated Muzdalifah and named it “al-Mash‘ar al-Ḥarām,” for He, *Exalted is He*, said: *“Then when you depart from ‘Arafāt, remember Allah at al-Mash‘ar al-Ḥarām.”* [al-

Baqarah:198]. And Quraysh used to stand at Muzdalifah and not stand with the people at 'Arafāt so as not to leave the Sacred Sanctuary.

And it is established, in the sermon that the Prophet—*May Allah bless him and his family and grant them peace*—delivered at Minā, that among its words were: *“And which town is this?”* They said, “The Sacred Town...”.

[Merits of the Sacred Sanctuary (al-Ḥaram al-Muḥarram)]

The good deed performed within the Sacred Sanctuary counts as one hundred thousand good deeds. This is the view that seems strongest to me. Two other views exist: (1) that this multiplication is confined to the Masjid al-Ḥarām itself, not the entire Sanctuary; and (2) that it pertains specifically to the Ka'bah—so that a deed there equals one hundred thousand.

What supports the broader view:

1. Reports about a pilgrim's expenditures state that a single dirham counts as one hundred thousand dirhams—while the pilgrim spends outside the Masjid al-Ḥarām.
2. Allah named the Sacred Sanctuary a “mosque.” He said: *“Have they not seen that We made a secure sanctuary?”* [ʿAnkabut :67], and: *“And the Sacred Mosque which We made for the people—equal are the resident therein and the visitor—and whoever intends therein deviation by wrongdoing, We will make him taste a painful punishment.”* [al-hajj:25]. In the second verse He refers to the Sacred Sanctuary itself as al-Masjid al-Ḥarām.

The Prohibition of Hunting in the Haram of Mecca

Hunting within the Haram of Mecca is forbidden. In *Ḍaw' al-Nahār* it is said there is no proof beyond what the name “Mecca” encompasses; al-Amīr affirmed this in *al-Minḥah*. (Abridged from *al-Ḥajj wa-l-'Umrah*.)

I say: Their intent is that what is prohibited is hunting in Mecca, not in the entire Sanctuary, since the proofs mention Mecca—e.g., *“My Lord, make this a secure town”* [al-Baqara:126]; *“This secure city”* [al-at-Tin:3]; *“Indeed the first House established for mankind was that at Bakkah, blessed and a guidance for the worlds ... and whoever enters it shall be safe”* [al-aal-i-Imraan:97], and the like.

The reply: The Qur'anic proof also comes in a form broader than Mecca, namely the sanctification of the entire Ḥaram in His saying: *“Have they not seen that We made a secure sanctuary?”* [al-Ankabut:67].

Ruling on Entering Ihṛām for Two

In *al-Azhār*: “Whoever enters ihṛām for two ḥajjs or two 'umras, or inserts one rite into another, continues with one of them, rejects the other, performs it at its time, the 'added' rite is the one to be rejected,

and a blood-sacrifice is due for the rejection.” End.

I say: Entering iḥrām for two ḥajjs at once or two ‘umras at once is invalid—as is authentically narrated from the Prophet, *May Allah please him and his family and grant them peace*, “... *There is no utterance, no action, and no intention that is acceptable except in conformity with the Sunnah*”, “*Whoever’s deed is not in accordance with our affair, it is rejected*,” and the uṣūl rule that “the valid act is what accords with the Lawgiver’s command.” One who enters iḥrām for two rites simultaneously is not in accord with the command; thus the iḥrām is invalid, carries no legal effect, and nothing follows from it—so he does not “continue with one and reject the other,” etc.

If he then wishes to perform a rite, he must intend a valid form of iḥrām: either ḥajj, or ‘umrah, or qirān (ḥajj with ‘umrah together). No blood is due.

Objection: Ḥajj and ‘umrah—unlike other acts—must be completed once entered, even if corrupted, due to *“Complete the ḥajj and ‘umrah for Allah.”* [al-Baqara:196].

Response: The person in question never truly “entered” iḥrām, because his intention was invalid from the outset; his iḥrām did not occur in a valid manner.

The madhhab’s statement presumes the validity of entering iḥrām for two rites at once—yet there is no proof for its validity; rather, the evidence indicates invalidity.

If, however, someone enters iḥrām for a single ḥajj and then enters another, there are cases:

1. He first intends ifrād (single ḥajj), then decides qirān is preferable and pronounces talbiyah for ḥajj and ‘umrah together: no problem and nothing is due; reports indicate the Prophet (May Allah bless him and his family and grant them peace) did likewise, and he said, “Take your rites from me.”
2. He first intends ḥajj on behalf of someone else, then decides to perform his own obligatory ḥajj and pronounces talbiyah for himself: no harm, per the report of Shubrumah—“Perform ḥajj for yourself, then for Shubrumah.”

From these two cases we learn: moving from an initial iḥrām to a better configuration is allowed without any “blood for rejection.”

Supporting this is the Prophet’s instruction, *May Allah please him and his family and grant them peace*, to the Companions who had entered iḥrām with him to convert their iḥrām to ‘umrah; he did not order sacrifices for rejecting the first intent, though they had entered iḥrām for ḥajj (per Jābir’s report).

He also instructed ‘Ā’ishah, when she menstruated, “*Undo your hair, comb it, enter iḥrām for ḥajj, and leave the ‘umrah,*” which she did. After ḥajj he sent her with ‘Abd al-Raḥmān ibn Abī Bakr to al-Tan‘īm to perform ‘umrah, saying, “This is in place of your (*missed*) ‘umrah” (*agreed upon*).

It is not reported that he required any blood of her, nor that he obliged her to make up what she had “left,” since he only gave her that ‘umrah after she returned to him, wept, and lamented missing it.

3. He enters iḥrām for a single ḥajj for his father, then (ignorantly, thinking it valid) enters a second iḥrām for his mother. The first iḥrām—for his father—is valid, and he must proceed with it, per “*Complete the ḥajj and ‘umrah for Allah.*” [al-Baqara:196]. The second iḥrām is invalid, for he only made it assuming such duplication was permissible; had he known it was not, he would not have entered it—so it is effectively contingent on an invalid assumption. And Allah said, “*There is no blame upon you for what you err in.*” [al-Ahzab:5]. The Prophet (*May Allah bless him and his family and grant them peace*) excused the ignorant in ḥajj and did not require blood for their procedural errors.
4. He enters iḥrām for ḥajj, then—thinking the first iḥrām invalid, corrupt, or doubtful—enters another. This resembles the previous case in ruling.
5. He enters iḥrām for ḥajj, then decides to convert it to ‘umrah, with or without excuse. There is disagreement: the Prophet (*May Allah bless him and his family and grant them peace*) ordered the pilgrims with him to place their iḥrām on ‘umrah.

Some said this was specific to that caravan; others said it is general. Thus: if a person did this ignorantly, his act is valid and nothing is due (the layperson’s madhhab is that of the jurist he followed). If he did it as a mujtahid, there is no censure.

6. He enters iḥrām for ‘umrah, then enters iḥrām for ḥajj—as ‘Ā’ishah did by the Prophet’s order (*May Allah bless him and his family and grant them peace*). If with an excuse, nothing is due, for the Prophet (*May Allah bless him and his family and grant them peace*) did not require a “blood for rejection” from ‘Ā’ishah as noted.

In sum: one who enters iḥrām for two ḥajjs, or two ‘umras, or “adds a rite onto a rite” is only doing so out of ignorance or forgetfulness—both are excused in this chapter. The Prophet (*May Allah bless him and his family and grant them peace*) said to the man who asked him [about iḥrām while scented and wearing a sewn garment]: “*Wash off the traces of the perfume and remove the robe,*” and he did not order a sacrifice—despite being in a context of clarification.

From the *Ḥawāshī ‘alā Sharḥ al-Azhār*: If someone is hired to perform ḥajj for another, then diverts the iḥrām to himself, thinking it will transfer, the ḥajj counts for the hirer, and the hired person still deserves the wage—since the objective was attained; he is entitled to the stipulated amount, on the stronger view.¹

From the marginalia on Sharḥ al-Azhār

If a hired proxy (*agent*) forgets the name of the person on whose behalf he was contracted to perform ḥajj, then if he says, “I have entered iḥrām on behalf of the one I was hired for,” it suffices. And if he says, “on behalf of Zayd,” then it turns out the person was ‘Amr—the preferred view is that it still suffices, for consideration is given to the intention, even if the wording differs, as mentioned earlier. End. (*Taqirir*). (فرج)²

The ten obligations (farā’id) of ṭawāf

1. Intention (*niyyah*)—and the intention for ḥajj can suffice.
2. Purity (ṭahārah) like that required for prayer.
3. Garment/covering (al-libās).
4. Keeping the House on one’s left.
5. Beginning at the Black Stone—the jurists of the school hold this is *recommended*.
6. That the ṭawāf be inside the mosque.
7. That the ṭawāf be outside the Ḥijr (al-Ḥijr/Ḥijr Ismā’īl) and the shādhrawān (the base ledge of the Ka’bah).
8. Completing seven circuits, in sequence.
9. Continuity (*without lengthy breaks*).
10. Two rak’ahs, prayed individually, obligatory after every ṭawāf that is incumbent by iḥrām, and recommended otherwise. They are to be recited aloud; they have no fixed time or place, though it is recommended to pray them behind the Station of Abraham. If they are left—deliberately or out of forgetfulness—then they are prayed wherever one remembers them, even at home. No blood (*penalty*) is due for omitting them according to the school, since they are not themselves a rite. (Abridged from *Kitāb al-Ḥajj wa-l-‘Umrah*.)

[Purity (ṭahārah) in ḥajj]

1- *Sharḥ al-Azhār* 2/181.

2- *Sharḥ al-Azhār* 2/179.

Purity is not required for any of the rites of ḥajj except ṭawāf; for it is required for ṭawāf—because he (the Prophet, *May Allah bless him and his family and grant them peace*) instructed women in postpartum bleeding and menstruation to perform all the rites except ṭawāf around the House.

And because whenever he *May Allah bless him and his family and grant them peace*, intended to perform ṭawāf he *May Allah bless him and his family and grant them peace*, performed the same purification as for prayer, and he said: “Take your rites from me.”

Tawāf without ritual purity

Question: A man performed ṭawāf for 'umrah, then did the sa'y and shaved. Some time later he remembered that, at the time of ṭawāf, he did not have ritual purity. What is the ruling?

Answer - And Allah grants success: The jurists of the school say that purity in ṭawāf is a rite (*nusuk*), not a condition for validity.¹ On that basis the 'umrah is valid, but he owes a blood-expiation (*dam*), due to the report: “Whoever leaves a rite owes a blood [sacrifice].”

This liability only applies if he does not repeat the ṭawāf. If he repeats the ṭawāf in a state of purity, no blood is due, and he does not have to repeat the sa'y after this ṭawāf.

That is what appears to me—Allah knows best. We say this by analogy with one who forgets zuhr and only remembers at night: he makes up zuhr and is not required to pray 'aṣr again after it.

[The ruling on purity for one performing ṭawāf of the House]

- Scholars have also differed over the purity of the one circling the Ancient House: is it a rite or a condition? All agree it is obligatory.

Yes, what is reported in this chapter from the Prophet (*May Allah bless him and his family and grant them peace*) is that he instructed menstruating and postpartum women to perform all the rites of ḥajj except ṭawāf of the House—he barred them from ṭawāf.

It is also reported from him that he, *May Allah bless him and his family and grant them peace*, forbade the menstruating woman, the postpartum woman, and the one in major ritual impurity (*junub*) from entering the mosque. There is no disagreement that purity is required for the one doing ṭawāf—purity like that of the one praying.

It is further reported that when 'Ā'ishah menstruated before performing her 'umrah, he told her (*sense of the report*): “Put your 'umrah off until after the Days of Tashrīq; then bathe and enter iḥrām for ḥajj.”

1- *Sharḥ al-Azhār* 2/134.

Given that, the Prophet’s forbidding, *May Allah bless him and his family and grant them peace*, a menstruant from ṭawāf can be understood in one of two ways:

1. The prohibition was because of entering the mosque, since the menstruant is barred from entering, and ṭawāf can only be done in the mosque.
2. The prohibition was because ṭawāf is [like] prayer, as in the ḥadīth, “*Ṭawāf of the House is prayer*,” and it is known there is no prayer without purity.

It is also possible the ban was for both reasons.

- On the first possibility, purity is not a condition for the validity of ṭawāf; rather, it is an independent obligation.
- On the second, purity is a condition without which ṭawāf is invalid—like prayer.
- And likewise on the third (both reasons).

The jurists of the school proceeded on the first possibility. They said: if a menstruating woman performed ṭawāf and then departed with her group, her ṭawāf is valid but she owes a dam for the lack of purity. If she did not depart, then she must repeat the ṭawāf.

What seems closer to correct is that the prohibition was for both reasons: the unlawfulness of a menstruant entering the mosque, and the nature of ṭawāf itself.

- The first point is well-known and undisputed. The Prophet’s forbidding, *May Allah bless him and his family and grant them peace*, the menstruant from ṭawāf indicates that such a ṭawāf is invalid.

- Our view is strengthened by the side of precaution.

- The school’s view is strengthened by its leniency, and by the principle that, originally, purity is not a condition for ṭawāf.

- As for likening ṭawāf to prayer: it suffices for a valid analogy that they resemble one another in some respect; it is not necessary that they be identical in all respects and attributes.

In truth, the issue is obscure; however, precaution favors the first view we mentioned. Praise be to God, Lord of the worlds.

[Ruling on someone who placed his hand on the Ḥijr during ṭawāf out of ignorance]

Question: A man performed ṭawāf of the House, and when he passed by the Ḥijr he put his hand on the structure surrounding it, unaware of what the jurists of the madhhab say—that this invalidates the ṭawāf. He only learned of this after returning home. What is required of him?

AnswerAnd Allah grants success: The jurists of the madhhab say this

corrupts the ṭawāf, on the grounds that the circumambulator did not circle the House with his entire body, whereas the obligation is to circumambulate with the whole body, as is apparent from His saying: *"and let them circumambulate the Ancient House"* [al-Ḥajj:29].

Based on that, their ruling varies:

- If this occurred in ṭawāf al-ziyārah, he must return to Mecca to perform a complete ṭawāf, and owes a blood-expiation (dam) for delay. He does not owe a dam for "division" if he repeats the whole ṭawāf. He remains prohibited from marital relations until he performs ṭawāf al-ziyārah.
- If it was in ṭawāf al-wadā' or ṭawāf al-quḍūm, he owes a dam if he did this in every circuit of the seven, or in four of them; if in fewer than that, then a charity for each circuit—thus say the jurists of the madhhab.

As for me: I hold that this does not impair the ṭawāf, so nothing is due and the ṭawāf is valid, whether in ṭawāf al-ziyārah or otherwise, because:

1. The doer was ignorant, and the Exalted said: *"There is no blame upon you for what you err in, but [only] for what your hearts intended"* [al-Aḥzāb 5].
2. The hand follows the body: if the body is outside the Ka'bah, the hand is deemed outside for the ruling. Evidence is the report that the Prophet (*May Allah bless him and his family and grant them peace*) asked one of his wives to hand him the khumrah (small prayer mat) while he was in the mosque. She excused herself due to menstruation, and he, *May Allah bless him and his family and grant them peace*, said to the effect: *"Your menstruation is not in your hand,"* permitting the menstruant to extend her hand into the mosque though entering it is prohibited for her—showing the hand takes the body's ruling. Thus if the body is outside the mosque, the hand is likewise, even if the hand is physically inside.
3. One who completes seven circuits around the House is said to have performed ṭawāf whether or not he placed his hand atop the wall of the Ḥijr. The Ḥijr existed in the Prophet's time, and nothing is reported from him, *May Allah bless him and his family and grant them peace*, warning against placing the hand on its wall during ṭawāf, despite the commonality of such a situation. It is related: *"What He kept silent about is a pardon."* Allah, *Exalted is He*, has laid out the rites of ḥajj and their rulings in His Book and on the tongue of His Messenger, *May Allah bless him and his family and grant them peace*, and there is no mention of placing the hand on the Ḥijr's wall during ṭawāf—indicating no ruling attaches to it. *"And your Lord is never forgetful"* [Maryam:64].

A note (on ṭawāf)

In *al-Azhar*: “The arrival tawaf counts for tawaf al-Ziyarah if he delays it, and the farewell tawaf without intention- i.e. the arrival and farewell ṭawāf count for ṭawāf al-ziyārah even without intention.” End from *al-Sharah*. And from its marginalia: the point of dispute is with a specific intention; without a specific intention, they count for the ziyārah by agreement—i.e., if one performed a supererogatory ṭawāf it would fulfill the obligation. End.¹

I say: One may also infer this from His saying: *“and let them circumambulate the Ancient House”* [al-Ḥajj:29] Whoever circumambulates for arrival or farewell has done what was commanded.

If it is said: “Actions are only by intentions,” and, “No act [counts] except with an intention”.

We answer: Intending ṭawāf of the House suffices; the one doing the arrival or farewell ṭawāf intended ṭawāf of the House.

Note: (Does ṭawāf al-quḍūm suffice for ṭawāf al-ziyārah?)

A discussion arose about the jurists’ statement that if someone delays ṭawāf al-quḍūm, it can count for ṭawāf al-ziyārah.

I said: the school has a rationale for this—analogy with prayer. The intention (*niyyah*) at the start of the prayer suffices; you don’t need a fresh intention for each component of the prayer. If, midway through, the worshipper were to re-intend it as a supererogatory prayer after having intended it as obligatory, that new intention would not be valid. They therefore analogized ḥajj to prayer: the initial niyyah at iḥrām is sufficient.

The jurists proceeded on this basis and said: if someone loses consciousness due to illness, his companion may station him at the required stops and perform ṭawāf on his behalf, and that suffices for him.

They can also be supported by saying: what is obligatory is circumambulating the House during the days of tashrīq, and this man did in fact circumambulate; he “performed ḥajj of the House,” fulfilling the import of *“and let them circumambulate the Ancient House”* [al-Ḥajj:29]. If the time then elapsed and he returned home, or he was already in route and a return journey would be far:

- If he did that deliberately, knowing (*the rule*), he sins for falling short of what was required, but it still counts, because the time has passed and this is a matter of ijtihād.

- If he did not know, then there is no sin, his ḥajj is valid, and both

1- *Sharḥ al-Azhar* and its marginalia 2/130–131.

cases¹ require a dam (*blood-offering*) for leaving a rite.

If it is said: The Prophet (*May Allah bless him and his family and grant them peace*) said, “No act (is valid) except with an intention,” and the like is reported in many texts.

We reply: the intention of ḥajj at the moment of iḥrām is enough, so the ignorant person or the forgetful one is not harmed by omitting a fresh intention at each component—just as in prayer. Even so, one should not neglect renewing the intention and attending to it at each rite and at every standing and sitting. Thus the analogy to prayer qualifies the generality of that ḥadīth and similar ones. And people are liable to forget and to be ignorant; most pilgrims are common folk—hardly ten scholars in a million—while God says, “*God intends ease for you and does not intend hardship*” [al-Baqarah:185], and, “*He has not placed upon you in the religion any hardship*” [al-Ḥajj:78]. It is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) said, “I was sent with the easy, lenient religion,” and, “Make things easy and do not make them difficult,” and on the Day of Sacrifice, as he stood on his she-camel, he answered the questioners repeatedly, “Do it—no harm,” as related by the scholars of reports.

This man intended ḥajj, entered iḥrām, stood at ʿArafah, and performed ṭawāf; the jurists’ position is thus supported by the general proofs of the Sharīʿah that call for ease and facilitation, and it does not contravene the report “No act except with an intention,” because this pilgrim did intend.

Alternatively, we may say: the analogy between ḥajj and prayer *qualifies* the generality of the ḥadīth—and in any case this is a discretionary (ijtihādī) issue whose time has already passed.

This applies if the jurists’ statement “the arrival ṭawāf counts for the ziyārah” is meant in cases of ignorance, where the person only realized after traveling and the time had elapsed.

But if a pilgrim deliberately omits the intention of ṭawāf al-ziyārah on purpose and performs ṭawāf with the intention of arrival, then he is sinful and must perform the required ṭawāf so long as its time remains and he is present at the Sacred House.

If the time passed and he returned home, his ḥajj is valid, as stated above, though he is sinful.

One may support this by analogy with the ʿĪd prayer when it coincides with Friday, and likewise by analogy to the case of those excused from Jumuʿah, with the attendant rulings regarding ṣuḥr.

1- i.e., on the knowing and the unknowing alike.

In *al-Minḥah* it is stated: Mālik said it is not valid for one to enter iḥrām on behalf of another; if he entered iḥrām intending ḥajj, every act within ḥajj suffices without a fresh intention.

Abū Ḥanīfah and al-Shāfi‘ī said: all the acts of ḥajj suffice without separate intentions; they said that if someone who has never performed ḥajj goes and intends only supererogatory ḥajj, it suffices for his obligatory ḥajj.

One may also argue from the Prophet’s (*May Allah bless him and his family and grant them peace*) ordering his Companions—when they reached Mecca—to set aside the iḥrām they had intended for ḥajj alone and make it an ‘umrah: the iḥrām for ḥajj took the place of iḥrām for ‘umrah. The rites of ḥajj appear to be built upon facilitation, so an ambiguous intention is valid—just as is narrated from ‘Alī (*Peace be upon him*): a person saying, “An iḥrām like the iḥrām of the Messenger of Allah, *May Allah bless him and his family and grant them peace*,” and likewise from other Companions, and he, *May Allah bless him and his family and grant them peace*, approved them.

The jurists of the school and others have details and branches concerning ambiguous iḥrām—whether it is for ḥajj or ‘umrah, or *tamattu’*, *qirān*, or *ifrād*—what follows in each case, and how to act, etc. What indicates the facilitation underlying it are things like the validity of deputizing due to an excuse, the validity of substitution, options in fidya and penalties, choices among their types, and dissolving ḥajj into ‘umrah.

[Supererogatory ṭawāf of the House]

I heard someone claim that supererogatory ṭawāf of the House is not prescribed, because it is not reported that the Prophet (*May Allah bless him and his family and grant them peace*) circumambulated it except as part of a ḥajj or ‘umrah.

Answer: The biographers relate that before the Hijrah, whenever the Prophet (*May Allah bless him and his family and grant them peace*) entered Mecca, the first thing he would begin with was ṭawāf of the House. This became well-known about him before the Hijrah. It was likewise well-known from many of the Imams of the Prophet’s Household (*Peace be Upon them*). The scholars of the Islamic schools agree on the legitimacy of supererogatory ṭawāf of the House; it is among their settled points.

Al-Tirmidhī narrates from Ibn ‘Abbās that the Prophet (*May Allah bless him and his family and grant them peace*) said: “Whoever circumambulates the House fifty times comes out of his sins as on the day his mother bore him.”

And in Sunan Ibn Mājah, from the Prophet (*May Allah bless him and his family and grant them peace*): “Whoever circumambulates the House and

then prays two rak'ahs, it is as (meritorious as) freeing a slave."

[The Two Rak'ahs of Ṭawāf]

If the open courtyard around the Ka'bah is so crowded that the two rak'ahs of Ṭawāf cannot be performed as they should, then it is permissible to perform them inside the roofed part of the mosque, facing the Station of Abraham (Maqām Ibrāhīm).

[The Ruling on One Who Omitted Audible Recitation in the Two Rak'ahs of Ṭawāf out of Ignorance]

Question: If a pilgrim omitted audible recitation (*al-jahr*) in the two rak'ahs of Ṭawāf out of ignorance of its obligation, or out of forgetfulness, and only remembered that after the Days of Tashrīq had passed, or after he returned to his homeland?

Answer—and with Allah is success: nothing is required of him. Indeed, even if he left the two rak'ahs themselves out of ignorance or forgetfulness until he returned to his homeland, nothing is required of him, due to the difference of opinion regarding their obligation. However, if he remembered—or was reminded—that he had not recited aloud in them after finishing them, or during the Days of Tashrīq, then it is incumbent upon him to repeat them, for the Days of Tashrīq are a time for them. The evidence for the obligation of audible recitation in the two rak'ahs of Ṭawāf is that the Prophet Muhammad (*May Allah bless him and his family and grant them peace*) recited aloud in them, and he said: "*Pray as you have seen me pray.*"

[Jabal al-Ṣafā]

Our master, the erudite scholar Ḥasan ibn 'Abd al-Raḥmān al-Ghālībī, reported—according to what his son 'Abd al-Raḥmān related—that he identified Jabal al-Ṣafā and that it extends to a point opposite the new Sa'ī route.

Time of Standing at 'Arafah

Question: What is the clarification of the time for standing at 'Arafah?

Answer—and Allah grants success: The time for standing, according to the madhhab, is from noon (zawāl) on the ninth day of Dhū al-Ḥijjah until the dawn of the Day of Sacrifice. Whoever stands at any time within this interval has caught the Hajj and his standing is valid; whoever misses it has missed the Hajj.

Some scholars said: The time for standing is from the beginning of the day of 'Arafah until the break of dawn on the Day of Sacrifice, and they adduced as evidence his statement, *May Allah bless him and his family and grant them peace*: "*And he came to 'Arafāt before that, by night or by day.*"

It is answered that consensus has been established that the time for

standing begins at noon; thus the ḥadīth is to be understood in light of that.

I say: The preponderant view is that the standing begins from noon, for the Prophet (*May Allah bless him and his family and grant them peace*) did not come to the standing place except after noon, as in the ḥadīth of Jābir describing his Hajj, *May Allah bless him and his family and grant them peace*. It is not far-fetched, however, that the early part of the day be a time for one in necessity, just as the night is a time for him; in this there is a reconciliation between the evidences.

[The Ruling on a Pilgrim Who Is Doubtful about the Day of ‘Arafah]

Question: If the Saudi state announces that the Day of ‘Arafah is a given day, and some pilgrims hesitate regarding the correctness of that announcement and suspect that the Day of ‘Arafah is the next day, and this hesitant person intends to stand on both the first and the second day as a precaution—but the soldiers prevented entry into ‘Arafah on the second day—what is the ruling concerning that?

Answer—and Allah grants success: The Hajj of such a hesitant person, as described, is valid, for several reasons:

- 1 – He performed what he was able with respect to standing, and there is no certainty of error: *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah: 286]
- 2 – The scholars of the madhhab said: if an error becomes evident after due diligence (taḥarrī), it suffices; and so said the scholars of the other madhāhib. This indicates that nothing is required of the one standing except to strive to achieve the standing to the extent of his ability—whether he was correct or mistaken
- 3 – It has come in the transmitted report: *“And your ‘Arafah is the day you are made to recognize it (‘Arafatukum yawma tu‘arrafūn),”* which indicates that the Day of ‘Arafah is the day on which people recognize (are made to know) it; thus the hesitant person should not give weight to his hesitation.
- 4 – Before the Farewell Pilgrimage, Muslims used to perform Hajj, and the Hajj occurred at other than its proper time due to the naṣī (postponement). In that period, the Prophet (*May Allah bless him and his family and grant them peace*) sent ‘Alī (*peace be upon him*) as commander over the pilgrims, having sent before him Abū Bakr.
- 5 – In the eras of the Umayyads and the ‘Abbāsids, and throughout history, the Hajj was under the authority of kings and caliphs, and they controlled the determination of the Day of ‘Arafah and the

Hajj rites. None of the scholars impugned the validity of people's Hajj; rather, it has been reported: "Indeed, the injustice of a tyrant does not invalidate the Hajj."

If it be said: Why have you ruled it valid, whereas all other acts of worship—if it becomes apparent that they were performed outside their proper time—are invalid and must be made up (as qaḍā')?

We say: Other acts of worship can be repeated and made up by the legally responsible person, unlike Hajj: he cannot make it up except with great financial loss and severe hardship; it may even be impossible for him altogether, and Hajj may only be feasible for him once in his lifetime. For that reason, it differs from the other acts of worship.

Based on what we mentioned under number five, the ruler's determination of the Day of 'Arafah—together with the prohibition of standing before or after it—constitutes justification for standing with the people and suffices.

The earlier report is: "*Al-Fiṭr is the day when the people break the fast, and al-Aḍḥā is the day when the people offer sacrifice.*" It was narrated by al-Tirmidhī from 'Ā'ishah, who said it is ḥasan; and he also narrated it from Abū Hurayrah, and said: ḥasan; and it was narrated by Abū Dāwūd and Ibn Mājah. Al-Tirmidhī also narrated it from the ḥadīth of 'Ā'ishah and authenticated it; and it was narrated by al-Dāraqutnī and Abū Nu'aym in *al-Ma'rifah*.

And it was said in *Subul al-Salām*: likewise in Hajj, for it has been transmitted: "*And your 'Arafah is the day you are made to recognize it (wa 'arafātukum yawma tu'arrafūn).*"

If it be said: What you mentioned pertains to the one who is uncertain about the day of standing; what is the ruling on the Hajj of one who is certain of the Day of 'Arafah while the people stand on a different day, and the state prevents those who wish to stand on other than the day it announced?

We say: The prevention by the authorities is an excuse by which it is valid to stand with the people. The proof is His saying, "*Allah does not charge a soul except [with that within] its capacity*" [al-Baqarah:286]. This pilgrim, certain of the Day of 'Arafah, has expended what he could in expenses and travel for Hajj, stood with the people, and was prevented from repeating the standing; what he was prevented from and barred from falls from his obligation. He must complete the rites that are within his capacity.

If it be said: It has come that "*Hajj is 'Arafah,*" and there is no disagreement that standing at 'Arafah is a pillar of Hajj without which it is not complete; and the scholars have said that whoever misses the standing at 'Arafah has missed the Hajj and must exit his iḥrām by

performing an ‘Umrah—so how have you excluded the person mentioned from this ruling and judged his Hajj valid?

We say: Because the person we mentioned has done what he could; he did not miss the standing due to a matter returning to his own capacity and ability, but rather he missed it due to something external to his capacity, power, and ability. Thus his ruling differs from that of one who missed the standing for other reasons.

If it be said: Then this should also apply to the sick person.

We say: It is possible for the sick person to stand, even if unconscious; his companions may cause him to stand—unlike the one we have mentioned.

What we have stated is supported by the previous report; and it is mentioned in *Subul al-Salām* from Muḥammad ibn al-Ḥasan al-Shaybānī that one must conform to the people even if that conflicts with his personal certainty.

The scholars of the madhhab said: If an error becomes evident after due diligence, the standing is valid.

I say: Due diligence (taḥarrī) is to look at the indications and signs, such as the waxing and waning of the new moon and its setting—this is for those who know the lunar stations. As for one who does not know them, it suffices him to ask those who do.

Clarification of the second matter: the scholars of the madhhab—and likewise the scholars of the other Islamic madhāhib—said that whoever stood after due diligence and then the error became evident afterwards, his standing is valid, and they did not require him to stand on two days. Rather, they ruled that the standing and the Hajj are valid, because he fulfilled what was in his capacity in trying to hit the correct day for standing; and Allah Most High has said: *"Allah does not charge a soul except [with that within] its capacity"*. [al-Baqarah: 286]

The proof of the soundness of what the scholars of the madhāhib have said in this regard is what has been transmitted concerning the reason for the revelation of His saying, *"And to Allah belong the east and the west; so wherever you turn, there is the Face of Allah. Indeed, Allah is All-Encompassing, All-Knowing"*. [al-Baqarah: 115]—that it was revealed about people to whom the direction of the Ka‘bah became confused on a dark night. One group said: the direction of the Ka‘bah is this way; another said: rather, it is this way; and yet another said: here. So each group prayed toward a direction and drew a line on the ground toward which they had prayed. When morning came, they found the lines not toward the qiblah. This verse was revealed concerning their prayer, and Allah accepted their prayer toward other than the qiblah because they had exerted their utmost in seeking out the direction of the qiblah.

And the scholars of the other madhāhib said: the one who is uncertain stands with the people, and that suffices him even if the error later becomes evident; and upon this they interpreted the ḥadīth: *“And your ‘Arafah is the day you are made to recognize it (wa ‘arafātukum yawma tu‘arrafūn).”*

One Who Stands with the People Without Due Diligence

The one who stands with the people without due diligence and without examining indicators and signs—his standing is valid even if the error later becomes evident, and this is clear with respect to common people according to the view of the madhhab; for they said: the madhhab of the layperson is the madhhab of whomever he follows, and this layperson has followed the view of those who act upon the ḥadīth: *“Your ‘Arafah is the day you are made to recognize it.”*

As for the statement of the scholars of the madhhab that if error becomes evident regarding one who stood without due diligence, then his standing is invalid—what appears to me is that what they intend is the person who possesses discernment, insight, and knowledge of indicators and signs, and who is capable of weighing between conflicting evidences. As for the pure layperson, that is not intended by the statement, due to their principle in the madhhab: the madhhab of the layperson is the madhhab of whomever he follows.

From the Perspective of Reasoning

As for the pilgrim whose error in the standing at ‘Arafah becomes evident for any reason, it is preferable—upon consideration—to deem his standing valid, because the pilgrim does not complete Hajj except with considerable financial costs and great hardships, during which he is exposed to risks and even destruction, especially in earlier times before the advent of modern means of transport, and most people are not able to perform Hajj nor find it facilitated throughout their lifetime.

If we were to rule that his standing and Hajj are invalid, while he has borne great financial expense, left his family and wealth, and risked himself, responding to the call of Allah—then when, by Allah’s permission, he reached the sacred sites of Hajj, stood with the multitudes at ‘Arafah, departed from it with the pilgrims, and completed the rest of the rites—if we were to say to him: “Your Hajj, O man, is invalid, because an error in the people’s day of standing later became apparent,” there is no doubt this pilgrim would repudiate such a ruling, find it exceedingly harsh, and feel wronged by it. He would have lost substantial sums, exposed himself to dangers, and so on, to no benefit, and would return to his family brokenhearted for having missed Hajj.

The pilgrim might then ask himself:

Who is responsible for the invalidity of the Hajj?

Is it the state and its scholars who issued the fatwā to stand?

Or the clouds of the sky that prevented sighting the new moon?

And how could the pilgrims collectively be mistaken?

Whoever hears such a thing would repudiate it and find it extremely harsh.

It is known that the religion of Islam has come with laws and rulings grounded in what sound minds recognize and innate nature finds familiar, as evidenced by His saying: *“the unlettered prophet whom they find written [about] in the Torah and the Gospel, who enjoins upon them what is right and forbids them from what is wrong, and makes lawful for them the good things and prohibits for them the impure...”* [al-A‘rāf:157].

Likewise, it has come with the negation of hardship, with ease, and with the removal of blame for mistakes, and with a tolerant, upright monotheism in obligations. He, Most High, said: *“Allah does not intend to make difficulty for you.”* [al-Mā‘idah: 1]. And He said: *“Allah intends for you ease and does not intend for you hardship.”* [al-Baqarah: 185]. And He said: *“There is no blame upon you for what you have done by mistake, but [only] for what your hearts intended.”* [al-Aḥzāb:5]. And He said: *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah: 286]. And He said: *“Allah does not charge a soul except [with that within] what He has given it.”* [al-Ṭalāq]. And He said: *“And We have not sent you except as a mercy to the worlds.”* [al-Anbiyā’:107]. And He said: *“So fear Allah as much as you are able.”* [al-Taghābun: 16].

Therefore, for one who is uncertain about the day of standing—whether, for example, it is Sunday or Monday—it suffices him, to prefer one of the two, that:

1. The state that controls the sacred sites has had its judges determine one of them.
2. The pilgrims stand on one of the two days “Your ‘Arafah is the day you are made to recognize it”.
3. The massive throngs of pilgrims gathered in the plain of ‘Arafah, proclaiming the talbiyah for Hajj and imploring Allah with remembrance and supplication, are more likely to receive Allah’s mercy than one or two individuals in the plain of ‘Arafah, as evidenced by the ḥadīths on the virtue of the Day of ‘Arafah, which came concerning the multitudes of pilgrims.

If there is an error in determining the day of standing—whether the error is from the state’s judges or from the pilgrim—he proceeds with the rites of Hajj as though no error had occurred.

Means of Due Diligence for Determining the Day of Standing

1. Returning to the default and completing the count to thirty, as

narrated: *"If it is obscured from you, then complete the number as thirty."* In the same way, if the crescent of Dhū al-Qa'dah is obscured, its month is completed as thirty.

2. Examining the size of the crescent—whether it appears large or small.
3. As it appears to me, the gathering of the pilgrims at 'Arafah.
4. The rulings of the judges of the Two Sanctuaries.
5. Calculating the lunar mansions—although what is legally considered is reliance upon actual sighting, due to necessity, and because it has come in the report: *"If the crescent is obscured, then estimate for it."*

[The Ruling on Sunrise Occurring Before the Pilgrim Leaves Muzdalifah]

The scholars of the madhhab said: If the sun rises before the pilgrim departs from Muzdalifah, he is liable for a sacrificial blood (dam).

I say: In our times, departing before sunrise may be difficult or even impossible due to intense crowding. I myself have tried to do so, but it was not facilitated for me and my companions, for we pray Fajr at its time of dawn, then proceed to the Sacred Monument (al-Mash'ar) after the prayer, spending the night near it, then we remember Allah upon it for some time, then we set out without delay to Minā—yet the sun rises while we are still in Muzdalifah because of the severe congestion on the roads.

Therefore, in such a case no sacrificial blood is required, due to the absence of delay or negligence. Allah, Most High, has said: *"Allah does not charge a soul except [with that within] its capacity."* [al-Baqarah: 286].

The scholars of the madhhab also said: A sacrificial blood is required from one who did not spend most of the night in Muzdalifah.

I say: In these times, the vehicle carrying its passengers may not reach Muzdalifah until after midnight because the roads are congested with cars. Accordingly, if the passengers are unable to walk from 'Arafah to Muzdalifah due to old age, weakness, fear of the crowds on the pedestrian routes, fear of getting lost, or similar excuses—such as accompanying women, or assisting the elderly, the weak, or the sick—then no sacrificial blood is required. They have done what they were able to do, and they are not obliged to do what they were unable to do: *"Allah does not charge a soul except [with that within] its capacity,"* and it was not narrated that the Prophet (May Allah bless him and his family and grant them peace) commanded 'Urwah ibn Muḍarris to offer any sacrificial blood for not spending most of the night in Muzdalifah.

However, if the passengers are able to walk and have no excuse

preventing them from doing so, yet they did not walk and thereby missed spending most of the night in Muzdalifah—then they are required to offer sacrificial blood, for having omitted spending most of the night in Muzdalifah.

[The Ruling on Spending the Night Outside Minā Due to Expulsion by Security Forces]

Question: Today Minā has become constricted because of the camps and roads, and the security personnel in Minā prevent pilgrims from sitting in the streets and thoroughfares and expel them outside Minā on the pretext that the muftis there have issued a fatwā permitting spending the night outside Minā due to severe congestion and the great number of pilgrims. What is required of the one expelled?

And if a pilgrim is able to spend the night in Minā standing on his feet or walking, is he required to do so?

Answer—and with Allah is success:

- The Messenger of Allah, *May Allah bless him and his family and grant them peace*, granted a concession to those with valid excuses to omit spending the night in Minā. He granted a concession to al-‘Abbās because of providing water to the pilgrims, and He granted a concession to the camel herders, and it has not been narrated that he required any sacrificial blood (dam) from them; and had it been obligatory upon them, he would have clarified that to them.

Therefore, we say: Whoever is expelled by the Minā security on account of congestion, and on the basis of the muftis’ fatwā for them permitting that, is excused; the obligation of spending the night in Minā falls from him due to that excuse, and he is not required to spend the night outside Minā where the expelled are spending the night. Rather, he may spend the night in Makkah or wherever he wishes.

If the pilgrim is able to spend most of the night in Minā standing on his feet without incurring harm or excessive hardship, then he is required to spend the night in that manner.

By “harm and excessive hardship” we mean what would amount to self-torment. If that is the case, then he is not required to spend most of the night [in Minā]; rather, he fulfills of it what he is able, and he is excused regarding what remains of spending the night. All of this is due to His saying: *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah: 286].

Moreover, it has not been narrated that the Prophet Muhammad (*May Allah bless him and his family and grant them peace*) required any sacrificial blood from those with valid excuses.

[The Ruling on Ignorance Concerning Some Acts of Hajj]

We can say: A pilgrim is excused by his ignorance for omitting Maghrib and ‘Ishā’ in Muzdalifah, for omitting spending most of the night in Muzdalifah, for omitting spending most of the night in Minā, for departing from Muzdalifah after sunrise, for leaving ‘Arafāt before sunset, for omitting Ṭawāf al-Wadā’ and Ṭawāf al-Qudūm, for omitting shaving or trimming (ḥalq or taqṣīr) in Hajj, and the like of these matters that are disputed regarding their obligation, or matters for which the Prophet Muhammad (*May Allah bless him and his family and grant them peace*) granted a concession to those with valid excuses.

The matters for which neither the ignorant nor the forgetful person is excused are:

1. Iḥrām.
2. Standing at ‘Arafah.
3. Ṭawāf al-Ziyārah is [to be performed] during the Days of Minā, and delaying it beyond those days without an excuse necessitates a sacrificial blood (dam).

[The Time of Stoning (Ramy)]

The time for stoning on the Day of Sacrifice extends until the dawn of the second day thereafter. This is the position of the madhhab, and it is also the position of the Imams of the Prophet’s Household, *peace be upon them*.

This is attested by the ḥadīth of Ibn ‘Abbās in al-Bukhārī: The Prophet (*May Allah bless him and his family and grant them peace*) was not asked on the Day of Sacrifice at Minā about anything [done out of order], a man said to him, “I stoned after nightfall,” and he said, “*There is no harm.*”

A group of the ḥadīth scholars—including al-Bazzār, al-Ḥākim, and al-Bayhaqī—narrated from Ibn ‘Umar with a ḥasan isnād that the Prophet (*May Allah bless him and his family and grant them peace*) granted a concession to the herders to stone at night and at any hour they wished of the day. And it is narrated in the sound collections that the Prophet (*May Allah bless him and his family and grant them peace*) granted the herders permission to stone on the first day, and then to stone on the day of departure for the two days.

I say: What appears to me is that it is permissible to delay the stoning until the night due to an excuse, and it should not be delayed without an excuse. Among the excuses is severe crowding, as is the case in our time.

Spending the Night in Minā

In *Kitāb al-Ḥajj wa al-‘Umrah*: it is—according to the ‘itrah, and al-Shāfi‘ī, and Mālik—obligatory, and according to most of the Ḥanafīs, recommended.

Concerning the Land of Minā

Al-Tirmidhī narrated—and he said: a ḥasan ḥadīth—from ‘Ā’ishah: She said, “We said: O Messenger of Allah, shall we not build you a shelter to shade you in Minā?” He said, “No; *Minā is the encampment of whoever arrives first.*” End.

I say: It is inferred from this that it is not permissible for anyone to fence off or claim ownership of any portion of the land of Minā, and that its ruling is like the ruling of a mosque: whoever arrives first to a place is more entitled to it until he rises from it.

Benefit: [Concerning the Remembrance of Allah at the Sacred Monument]

His saying, *Exalted is He, “Then when you have proceeded from ‘Arafāt, remember Allah at the Sacred Monument.”* [al-Baqarah:198]: al-Mash‘ar al-Ḥarām is a small hill in Muzdalifah; on its southern side there are buildings, and on its eastern side there is a mosque. Many of our scholars (*may Allah be pleased with them*) said: All of Muzdalifah is [considered] Mash‘ar.

I say: This is an explanation and delimitation of the “at” (‘inda) mentioned in the verse; whoever remembers Allah Most High in Muzdalifah has remembered Him at the Sacred Monument. And perhaps the remembrance commanded in the verse is the prayers of Maghrib, ‘Ishā’, and Fajr, as indicated by the Prophet’s (*May Allah bless him and his family and grant them peace*) saying, “*The prayer is ahead of you,*” when the mu’adhdhin said to him, “The prayer, O Messenger of Allah,” intending the prayers of Maghrib and ‘Ishā’. From here our Imams, *peace be upon them*, considered performing Maghrib and ‘Ishā’ in Muzdalifah to be a ritual act (*nusuk*).

The proof for [including] the Fajr prayer is what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): when a questioner said to him, “I did such-and-such; do I have a Hajj?” he said, “*Whoever has caught with us this prayer*”—meaning the Fajr prayer—“*and had stood at ‘Arafah for an hour, by night or by day, has caught his Hajj...*” or as he said.

This interpretation is supported by the fact that the acts the Prophet (*May Allah bless him and his family and grant them peace*) performed on the night at Muzdalifah were the prayers of Maghrib, ‘Ishā’, and Fajr; and that it is narrated that after the Fajr prayer he, *May Allah bless him and his family and grant them peace*, went to al-Mash‘ar al-Ḥarām and remembered Allah there until the sun nearly rose. However, his statement in the aforementioned ḥadīth, “*and [whoever] has caught with us this prayer,*” indicates that the remembrance of Allah after Fajr at al-Mash‘ar al-Ḥarām is not itself a ritual act (*nusuk*).

If it is said: The concession of the Prophet (*May Allah bless him and*

his family and grant them peace) for women, children, and the weak among his family to depart from Muzdalifah at the last part of the night indicates that the Fajr prayer in Muzdalifah is not from the remembrance commanded in the verse.

We say: The general wording of the concession for these [groups] indicates the obligation of the default rule, namely, remaining in Muzdalifah until the end of the night.

Yes, the ḥadīth granting a concession to those mentioned to depart in the last part of the night indicates that spending the night in Muzdalifah is a mandatory ritual act.

[What the Pilgrim Should Do If He Finds No Place to Spend the Night in Minā?]

Question: In these recent years, a pilgrim does not find a place in Minā to spend the night, and if he intends to sit, the soldiers make him get up; they do not permit spending the night in Minā except for the people of the camps, and the camps are restricted to the official pilgrims who perform Hajj through the agencies. What should the pilgrim do—should he spend the night outside Minā as thousands of pilgrims do by a fatwā issued there, or should the pilgrim spend the night in Minā standing on his feet, not allowed to sit?

Answer—and with Allah is success: If the pilgrim does not find a place where he can sit and rest, it is permissible for him to spend the night outside Minā, in al-Ma'ābidah or elsewhere. The evidence for this is what is well-known—that the Prophet (*May Allah bless him and his family and grant them peace*) granted a concession to al-'Abbās and to the camel herders to spend the night outside Minā.

[Delay of Car Riders Entering Muzdalifah Due to Congestion]

Question: If a pilgrim rides by car from 'Arafāt to Muzdalifah and does not reach Muzdalifah until after midnight due to severe congestion, and he cannot get out of the car and walk on foot because he is accompanied by an elderly woman for whom walking is difficult, so he is compelled to remain with her in the car—does a sacrificial blood (dam) become required in this case of the elderly woman and her companion for not spending most of the night in Muzdalifah?

Answer—and Allah grants success: What appears to me—and Allah knows best—is that nothing is required of the elderly woman or her companion, due to the presence of an excuse and the absence of negligence. Sacrificial blood, as it appears, is only required of one who has no valid excuse in such a case.

The evidence for what we have mentioned is his permitting, *May Allah bless him and his family and grant them peace*,—on the night at

Muzdalifah—women, children, and the weak among his family to depart early, while he himself remained until he stood there after Fajr, as in *al-Majmū‘*.

And in it also—from ‘Alī (peace be upon him): “Whoever misses the standing at ‘Arafah with the people, then comes to it at night and then catches up with the people at Jam‘ (Muzdalifah) before the imām departs, has caught the Hajj.” End quote.

Thus, in this report nothing is required in sacrificial blood of one who missed most of the night, and likewise in the first report nothing of sacrificial blood is mentioned concerning the women and the weak among his family, *May Allah bless him and his family and grant them peace.*

(Ṭawāf al-Ziyārah)

The scholars of the madhhab said that Ṭawāf al-Qudūm (the arrival circumambulation) or Ṭawāf al-Wadā‘ (the farewell circumambulation) counts for Ṭawāf al-Ziyārah if the latter was omitted out of forgetfulness.¹

Others said: they do not count for it, due to his saying, *May Allah bless him and his family and grant them peace: “Actions are only by intentions, and every person shall have only what he intended...”*

I say: The view of the madhhab may be supported by several considerations.

- Among them that the rites of Hajj are founded upon facilitation and ease. The evidence for this includes:

1. That it was legislated in three forms.
2. That its shortfalls are compensable by sacrificial blood.
3. The concession for the weak and for women on the night of Muzdalifah.
4. The concession for camel herders to omit spending the night in Minā.
5. His statement, *May Allah bless him and his family and grant them peace*, on the Day of Sacrifice to those asking who had inverted the prescribed sequence: “No harm, no harm...”
6. The validity of deputization (performing on behalf of another) in the Hajj and in some of its parts.

- Among them also is his saying, *May Allah bless him and his family and grant them peace*, to ‘Ā’ishah: “Your circumambulation of the House

1- Sharḥ al-Azhār 2/130.

suffices you for your Hajj and your ‘Umrah,” when she said to him: “Do my companions return with both a Hajj and an ‘Umrah while I return with Hajj only?”—or as she said.

- And among them: that the prior intention of Hajj suffices for the intention of its remaining rites.

The evidence for this is what is mentioned among the people of knowledge: if the pilgrim becomes ill and unconscious, his companion performs Ṭawāf on his behalf, causes him to stand [at the stations], and proceeds with him.¹

If he regains consciousness thereafter, that suffices for him.

- Among them also is His saying, *Exalted is He: “And [due] to Allah from the people is a pilgrimage to the House.”* [Āl ‘Imrān:97]. And “pilgrimage to the House” is circumambulation of it, so the intention to circumambulate the House in its time suffices.

[The Place of Ṭawāf]

Ṭawāf around the House is to be performed from the open (sunlit) courtyard. If the courtyard is filled and congestion is intense, there is no harm in performing Ṭawāf from the roofed portion of the mosque.

[The Ruling on Performing Ṭawāf, Sa‘y, and Stoning from the Second Level and Above]

Question: What is your view regarding performing Ṭawāf around the Ka‘bah from the second or third level? And likewise, stoning the jamarāt from atop the bridge? And performing Sa‘y between al-Ṣafā and al-Marwah from the second level?

Answer—and Allah grants success: What is superior is to perform Ṭawāf around the House from the ground level. It is not appropriate to perform Ṭawāf from the second or third level of the Ḥaram except in cases of necessity.

I consider among the necessities the severe intermingling of women with men such that a woman cannot avoid it due to the intensity of the crowd. In such a case, there is no harm in a woman performing Ṭawāf from the second level of the Ḥaram.

If it be said: One who performs Ṭawāf from the second or third level is not circumambulating the House itself, but rather the sky above the Ancient House—with the House beneath him.

We say: The ruling of the space above the Ka‘bah is the ruling of the Ka‘bah itself—evidenced by the validity of praying atop the high mountain peaks surrounding Makkah and other lofty mountains, without

1- i.e., from Muzdalifah.

any notable disagreement among the scholars of the Muslims.

And in *al-Sahrah* and marginalia: “His Ṭawāf is from within the mosque even if upon its roofs.” End quote. (*Adopted*) (قرير).

As for stoning the jamarāt from atop the bridge, this is not called “stoning” in the sense described by the scholars of the madhhab and others. That is because one throwing from above merely *drops* the pebble so that it descends to the bottom, or he throws it and it strikes the entryway and is then propelled into the target area. There is, however, a way of stoning from above that may be valid: that the thrower stands above the jamarāt and throws directly at the stoning area such that the pebble reaches the target *by the force of the throw itself*, not by the assistance of the pebble’s downward momentum. Yet this case only occurs for one standing at the aperture that overlooks the jamarāt.

Moreover, there is no necessity in stoning the jamarāt [at peak times]. The weak person and the woman can stone the jamarāt at night, for the crowding at night is light. This differs from Ṭawāf around the House, where crowding is inescapable by night and by day—except on the Day of ‘Arafah, when it is somewhat lighter.

As for Sa’y between al-Ṣafā and al-Marwah, we say regarding it what we said concerning Ṭawāf: performing Sa’y from the second or third level is not appropriate except in cases of necessity.

If it be said: It has not been established that the ruling of the space above al-Ṣafā and al-Marwah is like their own ruling, as it has been established concerning the Ka’bah—so why have you analogized al-Ṣafā and al-Marwah to the Ka’bah?

We say: True, that has not been established. However, we affirm the validity of Sa’y between them from another angle, namely: that what is obligatory is *Sa’y between al-Ṣafā and al-Marwah*, and this “betweenness” is realized on the second and third levels.

If it be said: If the ruling of the space above the Ka’bah is its ruling, and the ruling of the space above the route between al-Ṣafā and al-Marwah is its ruling, then why do you not permit Ṭawāf and Sa’y from above absolutely? Why do you permit it only in cases of necessity?

We say: Ṭawāf and Sa’y from the ground level are known to be valid without doubt or ambiguity. As for Ṭawāf and Sa’y from the second or third level, their validity is not definitively known; rather, it is presumed. It is not permissible to act upon what is presumed in such matters while one is able to act upon what is certain. This is a matter well-established by reason. The Prophet (*May Allah bless him and his family and grant them peace*) said: “Leave what makes you doubt for what does not make you doubt.” And the scholars of legal theory said: “It is not permissible to

act upon conjecture when one is able to act upon knowledge.” And He, *Most High*, said: *“And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart—about all those [one] will be questioned.”* [al-Isrā’:36]. And He, Glorified is He, censured conjecture and acting upon it in general, saying: *“You follow not except assumption...”* [al-An‘ām:148], and other verses in this regard. Therefore, acting on conjecture is a concession relied upon only when acting upon knowledge is difficult.

From here we said: it is not appropriate to perform Ṭawāf and Sa‘y from above except in cases of necessity, and we have illustrated necessity by the severe intermingling of women with men such that a woman cannot free herself from the crowding during her Ṭawāf.

It is suitable here to clarify the rationale of necessity. We say: A woman’s intermingling with men [in such crowding] is disobedience, while Ṭawāf around the House is an obligation entailed by entering ihrām and must be performed in both Hajj and ‘Umrah. The scholars have said: leaving an act of obedience is preferable to committing an act of disobedience. Indeed, they have said: it is obligatory to leave an obligation if performing it entails disobedience—such as praying in a usurped house.

From here, the woman is excused from performing Ṭawāf amidst the men—rather, she is prohibited from crowding them. For that reason we said: she should perform Ṭawāf from the second level, where there is no crowding. That is permitted for her due to the necessity we have mentioned, and likewise for Sa‘y.

If it be said: Does the obligation of performing Hajj fall from a woman if she cannot complete Hajj except with severe crowding during Ṭawāf and Sa‘y?

We say: The preferable view is that the obligation of performing Hajj does not fall from her for that reason. She can avoid the sin of crowding. She may perform Ṭawāf and Sa‘y of arrival (qudūm) on the Day of ‘Arafah, or from the second level. She can also perform Ṭawāf al-Ziyārah from the second level, and likewise Ṭawāf al-Wadā‘ and the ‘Umrah.

[Doubtful about Ṭawāf al-Ziyārah]

Question: A man performed Hajj twenty years ago, and today he is uncertain whether he performed Ṭawāf al-Ziyārah or not; what is required?

Answer—and Allah grants success: It is unlikely that a legally responsible person would perform Hajj and not circumambulate the House during the Days of Sacrifice while seeing the people going repeatedly to perform Ṭawāf of the House in those days. And Ṭawāf al-Wadā‘ counts in place of Ṭawāf al-Ziyārah if we suppose that he did not

perform Ṭawāf al-Ziyārah.

Moreover, a doubt that has persisted for a long time, as in the question, is not given any weight, for a person does not remember in detail the specifics of what he did twenty years ago.

[On the Circumambulations That Count for Ṭawāf al-Ziyārah]

Ṭawāf al-Qudūm counts for Ṭawāf al-Ziyārah if it is delayed—this is in the case of one who forgot Ṭawāf al-Ziyārah until he had reached his family.

Ṭawāf al-Wadā‘ counts for Ṭawāf al-Ziyārah immediately, and it is not a condition that he have reached home. (*Adopted.*) (فري)

And performing a supererogatory ṭawāf counts for Ṭawāf al-Ziyārah. End.

I say: Perhaps the reason for this—and Allah knows best—is that what is considered in intention is the intention to perform ṭawāf.

Or we may say: there has come facilitation regarding intention in the details of Hajj after the intention for entering iḥrām, as evidenced by:

1. What has come regarding one who said, “I enter iḥrām as the iḥrām of the Messenger of Allah (*May Allah bless him and his family and grant them peace*).”
2. The statement of the Prophet (*May Allah bless him and his family and grant them peace*) in the Farewell Pilgrimage—after he and his companions had performed ṭawāf and sa‘y—“*Make it an ‘Umrah.*” The Companions had performed ṭawāf and sa‘y intending Hajj, and it may be said that intending Hajj at iḥrām suffices, and the detailed rites of Hajj do not require distinct intentions as in the prayer.

Shaving or Trimming (Ḥalq or Taqṣīr) in Hajj

The scholars differed concerning the ruling of shaving or trimming in Hajj: some said it is a ritual act (nusuk) among the rites of Hajj, while others said it is merely a means of release from a prohibition and not itself a ritual act.

The view that it is a ritual act is preferable, for the following reasons:

1. The Prophet (*May Allah bless him and his family and grant them peace*) shaved his head after stoning and sacrificing, in the presence of the generality of the pilgrims as they looked on, and he, *May Allah bless him and his family and grant them peace*, commanded the barber to distribute the hair among the pilgrims. The story is well-known and shows that he, *May Allah bless him and his family and grant them peace*, intentionally undertook the

act of shaving as an intended rite—beyond merely removing a prohibition, as is clear—nor did he, *May Allah bless him and his family and grant them peace*, explain to the pilgrims that there was any blame upon one who neither shaved nor trimmed. And he, *May Allah bless him and his family and grant them peace*, said: “Take your rites from me.”

2. His saying, *Exalted is He, “And do not shave your heads until the offering reaches its place of sacrifice”* [al-Baqarah:196], indicates that shaving is among the acts of Hajj which the pilgrim intends in his Hajj. If shaving were merely a mechanism of releasing a prohibition, it would not have been singled out for mention apart from the other prohibitions of iḥrām.
3. Indeed, the evidences indicate that shaving or trimming are among the symbols of Hajj and ‘Umrah, by virtue of the verse just cited—*“And do not shave your heads”* and His saying, *“You will surely enter al-Masjid al-Ḥarām, if Allah wills, in safety, with your heads shaved and [hair] shortened, not fearing”* [al-Fath:27].
4. The command to complete the unkemptness “*at-taḥṭh*” is found in His saying, *“Then let them remove their untidiness and fulfill their vows and perform ṭawāf around the Ancient House”* [al-Ḥajj:29]. The scholars explained “their untidiness” (*taḥaṭṭhum*) as shaving the head, plucking the armpit hair, and trimming the nails, and a command indicates obligation.

If it is said: Plucking the armpit hair and trimming the nails are not obligatory in Hajj, so likewise shaving.

It is said: It has been related from the Prophet (*May Allah bless him and his family and grant them peace*) that “the iḥrām of a man is [manifest] upon his head,” which indicates that the head has a ruling distinct from that of the armpit and the nail. Therefore, one is not analogized to the other due to the presence of a differentiating factor.

5. Shaving or trimming is a ritual act in ‘Umrah, and this lends weight to the view that it is a ritual act in Hajj as well.

Moreover, shaving and trimming were among the rites of Hajj before Islam, and Islam came and affirmed this rite in Hajj and ‘Umrah, just as it affirmed the other rites: entering iḥrām and proclaiming the talbiyah, circumambulating the House and performing sa‘y between al-Ṣafā and al-Marwah, offering sacrificial animals and garlanding them, slaughtering and sacrificing, standing at ‘Arafah, spending the night in Muzdalifah, stoning during the Days of Stoning, and spending the nights in Minā.

- Islam did not alter any of that; rather, it addressed the impurities and accretions that had been attached to the rites of Hajj but were not part of it - such as the addition “except a partner for You; You own him

and what he owns,” and the proscription of the calendar manipulation (nasī’) practiced in the Jāhiliyyah, and the like.

Shaving or Trimming in Hajj and ‘Umrah

Shaving or trimming are among the symbols of Hajj and ‘Umrah, and shaving is superior to trimming. What the Messenger of Allah (*May Allah bless him and his family and grant them peace*) did was shaving. There are rulings and benefits that result from shaving, among those that have become apparent to me are:

1. It is an indication of the humility and submissiveness of those who shave, for hair is an adornment and beauty for men, and they dislike removing it; indeed, the Arabs used to consider shaving the head as a form of disfigurement and humiliation.
2. On the scalp there accumulate dirt and microbes that soap and water do not remove; only shaving removes and eradicates them.
3. It indicates that Allah Most High loves cleanliness and wills health, safety, and well-being for His servants; for that reason He said, *“Then let them remove their untidiness”* [al-Ḥajj:29]. They explained “untidiness” as shaving the head, plucking the armpit hair, shaving the pubic hair, and trimming the nails; therefore this was legislated for them.

Shaving is to be performed in Minā on the Day of Sacrifice, after stoning and slaughtering.

The Rites of ‘Umrah

1. Entering iḥrām from the appointed miqāt for one coming from outside the Ḥaram.
2. Performing ṭawāf—seven circuits.
3. Performing sa’y between al-Ṣafā and al-Marwah—seven circuits.
4. Then shaving or trimming.

[The Pillars (Arkān) of ‘Umrah]

The pillars of ‘Umrah are: iḥrām, ṭawāf, sa’y, and shaving or trimming. None of the four is compensable by a sacrificial blood, for they are pillars. Nor is deputization valid in any of them except for an irremediable excuse, because they are pillars—as we have stated. This is the madhhab.

I say: It may be said that the two pillars of ‘Umrah are iḥrām and ṭawāf of the House only, as indicated by His saying: *“So whoever makes Hajj to the House or performs ‘Umrah...”* [al-Baqarah:158].

Iḥrām is a pillar because the Hajj to the House, or the ‘Umrah thereof, depends upon entering iḥrām by consensus and agreement. The verse also indicates that these two would be the pillars of Hajj, were it not for

what consensus and agreement established from the ḥadīth of the Prophet (*May Allah bless him and his family and grant them peace*): “Hajj is ‘Arafah.” No proof has come establishing sa’y of ‘Umrah, or shaving or trimming, as pillars. Rather, what has come is, “*there is no blame upon him for walking between them*” [al-Baqarah:158]. This was not used as proof for their being pillars in Hajj, so it does not indicate that they are pillars in ‘Umrah.

It has been narrated that ‘Umrah is ṭawāf of the House; in that case, sa’y and shaving or trimming would be among the obligations and rites of ‘Umrah, not among its pillars. If that is so, then deputization in sa’y is valid for an excuse in all cases—whether the excuse is irremediable or not.

Repeated Entering into Ihṛām for ‘Umrah

Question: Some people, if they perform Hajj or ‘Umrah, seize the opportunity to go out from Makkah to the miqāt to enter ihṛām for an ‘Umrah; then, when they complete that ‘Umrah, they go out again to enter ihṛām for another ‘Umrah, and so on. Is this practice legislated and recommended?

Answer—and Allah grants success: What is superior for one who has reached Makkah and wishes to perform voluntary worship after his Hajj and after his ‘Umrah is to perform voluntary ṭawāf of the House, and to pray two rak‘ahs after every seven circuits, and to repeat that as much as he wishes. It has come from the Prophet (*May Allah bless him and his family and grant them peace*)—in meaning—that ‘Umrah is ṭawāf of the House.

What we have mentioned is most likely what is legislated. Before his mission and after it, when the Prophet (*May Allah bless him and his family and grant them peace*) entered al-Masjid al-Ḥarām, he began with ṭawāf of the House, as is mentioned in the books of sīrah. This is what the early generations used to do, as it appears.

As for what is mentioned in the question, it has not been transmitted that the Prophet (*May Allah bless him and his family and grant them peace*) did it, nor the Muslims after him.

[Regarding ‘Umrah]

If a resident of Makkah enters ihṛām for ‘Umrah from within Makkah, the madhhab holds that it suffices—but that a sacrificial blood is required.

The jurist Yahyā said that going out to the ḥill (the area outside the Ḥaram) is merely recommended, so no sacrificial blood is required.

In the marginalia on *al-Sharah*, the lack of any requirement for sacrificial blood was argued by analogy from ‘Umrah to Hajj: a pilgrim

residing in Makkah enters iḥrām for Hajj from Makkah and is not required to offer sacrificial blood, and the default is that Hajj and ‘Umrah are equal with respect to the miqāts. This is the sense of what is in the marginal note we mentioned.

The scholars of the madhhab adduced as evidence that the Messenger of Allah (*May Allah bless him and his family and grant them peace*) sent ‘Ā’ishah with ‘Abd al-Raḥmān ibn Abī Bakr to al-Tan‘īm to enter iḥrām for ‘Umrah.

It may be said in reply: What is inferred from the story of ‘Ā’ishah is that taking her out to al-Tan‘īm was on the basis of recommendation.

This is because the wives of the Prophet (*May Allah bless him and his family and grant them peace*) had performed ‘Umrah before Hajj, but ‘Ā’ishah began menstruating upon arriving in Makkah, and the time of Hajj came while she was menstruating. The Prophet (*May Allah bless him and his family and grant them peace*) therefore ordered her to abandon the ‘Umrah and enter iḥrām for Hajj. When the Prophet (*May Allah bless him and his family and grant them peace*) and his companions intended to depart from Makkah to al-Madīnah, ‘Ā’ishah wept and said—approximately—“Do my companions return with both a Hajj and an ‘Umrah while I return with only a Hajj?” ‘Ā’ishah wanted to be equal in this regard with the other wives of the Messenger of Allah (*May Allah bless him and his family and grant them peace*), so that none would have virtue over another in this matter.

The Prophet (*May Allah bless him and his family and grant them peace*) understood her intent—that she wished to return with an ‘Umrah from the ḥill just as the other wives of the Prophet (*May Allah bless him and his family and grant them peace*) had come with ‘Umrans from the ḥill—so he sent her there with her brother ‘Abd al-Raḥmān.

[He Performed Ṭawāf for ‘Umrah but Did Not Perform Sa‘y]

Question: A man entered iḥrām for ‘Umrah, then performed ṭawāf of the House and prayed two rak‘ahs, then shaved but did not perform sa‘y—thinking that sa‘y was not required. He then committed acts prohibited in iḥrām. What is required of him?

Answer—and Allah grants success: The scholars of the madhhab have said: the madhhab of the layperson is the madhhab of the one he follows. Some scholars have held that ‘Umrah is ṭawāf of the House; thus whoever among those performing ‘Umrah performs ṭawāf of the House has exited iḥrām.

On this basis, nothing is required of the questioner. And Allah knows best. Praise be to Allah, Lord of the worlds, and may Allah bless Muhammad and his pure family, and grant them peace.

[The Ruling on One Who Entered Iḥrām for ‘Umrah at the End of the Days of Tashrīq out of Ignorance]

Question: A man entered iḥrām for ‘Umrah before sunset on the last of the Days of Tashrīq, out of ignorance. What is required of him?

Answer—and Allah grants success: He acted improperly thereby; however, the legally responsible person may be excused for ignorance and mistake, in His saying: *“There is no blame upon you for what you have done by mistake, but [only] for what your hearts intended.”* [al-Aḥzāb:5].

On that basis, his ‘Umrah is valid and nothing is required of him. The scholars of the madhhab have said: “The madhhab of the layperson is the madhhab of the one he follows.” And al-Shāfi‘ī said: it is not disliked at any time.

The Ruling on One Who Had Intercourse with His Wife before Shaving or Trimming in ‘Umrah

Question: A man performed ‘Umrah, but after ṭawāf and sa‘y—and before shaving or trimming—he had intercourse with his wife out of forgetfulness. What is due upon him?

Answer—and Allah grants success: The scholars of the madhhab said that a camel (*badnah*) is required of him. Imām al-Hādī (*peace be upon him*) said: the most that is required is a sacrificial blood (dam). And from Imām al-Qāsim ibn Ibrāhīm (*peace be upon them*): the most that is required of him is a sacrificial blood; and if he does not shed a blood, I hope there is no harm upon him. Thus it is related in the *Manasik* of al-Mawlā Majd al-Dīn—*may Allah be pleased with him*.

I say: The most equitable of these statements is that of Imām al-Hādī (*peace be upon him*), because it is related from some of the Imams and scholars—including Imām al-Qāsim (*peace be upon him*)—that shaving or trimming in ‘Umrah is not itself a ritual act (nusuk), but rather a means of releasing a prohibition.

The Ruling on One Who Forgot Shaving or Trimming

Question: A man entered iḥrām for ‘Umrah, then performed ṭawāf and sa‘y and forgot shaving or trimming. He then went out to the ḥill and entered iḥrām for another ‘Umrah, for which he performed ṭawāf and sa‘y, then shaved or trimmed. Thereafter he remembered that he had not shaved or trimmed for the first ‘Umrah. What is required of this forgetful person?

Answer—and Allah grants success: Entering iḥrām before shaving or trimming for ‘Umrah is not “introducing one rite into another,” and nothing is required for it according to the madhhab, because he had exited iḥrām by sa‘y.

How Pilgrims from Yemen Should Enter Iḥrām

It is valid for the pilgrim coming from the land of Yemen to enter first into iḥrām for ‘Umrah, enter Makkah to perform its rites, and when he exits from that ‘Umrah, to head to al-Madīnah to visit the Prophet Muhammad (*May Allah bless him and his family and grant them peace*), then return to Makkah to perform Hajj—entering iḥrām from Dhū al-Ḥulayfah with a single (mufrad) Hajj.

Whoever does this is not a *mutamatti‘* (enjoying the combination), so neither a sheep nor fasting—if unable to offer the sacrifice—is due upon him. That is because *tamattu‘* applies only to one whose Hajj and ‘Umrah are combined in a single journey, as indicated by His saying: “*So whoever performs ‘Umrah [during the Hajj months] followed by Hajj—then [let him offer] whatever is easy of sacrificial animals.*” [al-Baqarah:196]

Whoever goes out to al-Madīnah after his ‘Umrah, or passes beyond the miqāts in his going out, has thereby nullified the ruling of *tamattu‘* for himself.

Moreover, what is said regarding the dislike of ‘Umrah in the Months of Hajj is refuted by what is established from the Messenger of Allah (*May Allah bless him and his family and grant them peace*): that most of his ‘Umrahs were in the Months of Hajj.

Here, by our statement we intend that the ‘Umrah be *mufradah* (separate). As for the ‘Umrah of *tamattu‘*, the scholars of the madhhab said: The ruling of *tamattu‘* is not nullified except by returning to the homeland or going out beyond the miqāt with the intention of residence.¹

The Best Type of Hajj

Question: Which type of Hajj is best for one who has not yet performed Hajj?

Answer—and Allah grants success: What is best for one who has not performed Hajj is to perform a single (mufrad) Hajj. This is the madhhab, and the proof is His saying: “*And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way.*” [Āl ‘Imrān:97]. When the *mufrid* has finished the acts of Hajj, he should follow his Hajj with an ‘Umrah after the Days of Tashrīq. What we have mentioned is most in accord with—and most fitting to—the indication of the verse, for the verse made obligatory the Hajj alone, separate from ‘Umrah. Preoccupying oneself with Hajj at that time is thus more suitable to the verse and more in keeping with its meaning than to make talbiyah for an ‘Umrah in *tamattu‘* to Hajj or to combine ‘Umrah with Hajj. Moreover, occupying oneself with what is more important and then what

1- Sharḥ al-Azhār 2/141.

follows it requires what we have said: giving precedence to the obligation is more fitting than giving precedence to the recommended act.

A Note on Qirān (Combining Hajj and ‘Umrah)

The scholars of the madhhab stipulated, for the validity of *qirān*, that one must drive a sacrificial camel (*badnah*) from the place of entering iḥrām. If one entered iḥrām as a *qārin* (combining Hajj and ‘Umrah) without driving [a sacrificial animal], then the *qirān* is invalid, and his iḥrām is placed upon an ‘Umrah, with neither make-up (*qaḍā’*) nor sacrificial blood (*dam*) due. When he releases from that ‘Umrah, nothing is due upon him. And if he places that iḥrām upon a Hajj, the Hajj is valid, except that it does not suffice for the obligatory Hajj of Islam.¹

This is the statement of the scholars of the madhhab concerning one who entered iḥrām as a *qārin* without driving a sacrificial animal.

I say: The basis upon which the scholars of the madhhab built this issue is what the Messenger of Allah (*May Allah bless him and his family and grant them peace*) did in the Farewell Pilgrimage and what he commanded his Companions. For he, *May Allah bless him and his family and grant them peace*, either entered iḥrām for Hajj and ‘Umrah together, or for Hajj alone without ‘Umrah along with it—according to the differing narrations—and he, *May Allah bless him and his family and grant them peace*, drove the sacrificial animals. Then, when the Prophet (*May Allah bless him and his family and grant them peace*) reached Makkah, he ordered those who had not driven sacrificial animals to place their iḥrām upon an ‘Umrah. The people hesitated somewhat, so he said: “*If I had known beforehand what I came to know later, I would not have driven the sacrificial animals, and I would have made it an ‘Umrah,*” or as he said.

Thus the Prophet (*May Allah bless him and his family and grant them peace*) commanded those who had not driven sacrificial animals to place their iḥrām upon an ‘Umrah. And there is nothing in the narration to indicate that he addressed only those combining [Hajj and ‘Umrah] to the exclusion of those performing a single Hajj; rather, he addressed “those who had not driven sacrificial animals.” It is known that driving sacrificial animals is not specific to those combining ‘Umrah with Hajj; rather, it is legislated for everyone visiting the Sacred House—whether *qārin*, *mufrid* (single Hajj), or performing a separate ‘Umrah.

And as appears to me, most of the Muslims were in iḥrām for a single Hajj, because previously they did not know *qirān* nor *tamattu’* (‘Umrah

1- *Sharḥ al-Azhār* 2/151.

followed by Hajj in one journey); rather, what they knew was that ‘Umrah was not permissible in the Months of Hajj. He, *May Allah bless him and his family and grant them peace*, willed to abolish that long-held custom, so he, *May Allah bless him and his family and grant them peace*, commanded those who had not driven sacrificial animals to place their iḥrām upon an ‘Umrah, and he, *May Allah bless him and his family and grant them peace*, said: “‘Umrah has entered into Hajj until the Day of Resurrection,” or as he said.

The scholars of the madhhab then restricted this ruling to one who had entered iḥrām as a *qārin* without driving sacrificial animals. But the apparent sense of the narration is general—for both the *mufrid* and the *qārin*—indeed, it is more apparent regarding the *mufrid* for the reason we mentioned: that people previously did not know *qirān* nor *tamattuʿ*, but rather knew the Hajj of *ifrād* (singleness).

As for their statement, “If he places his iḥrām upon a Hajj, the Hajj is valid but does not suffice for the Hajj of Islam,” there is room for consideration; for if it is valid, it suffices for the Hajj of Islam with the proper intention, and the doer has fulfilled what Allah commanded in His saying: “*And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way.*” [Āl ‘Imrān:97]

What we have mentioned is further supported by the fact that the Prophet (*May Allah bless him and his family and grant them peace*) did not command the menstruating women—those who did not convert [their iḥrām] to ‘Umrah—to perform another Hajj for Islam, nor did he clarify such an obligation, even though the situation was one that called for clarification.

What appears—and Allah knows best—is that driving the sacrificial animals is not a condition for the validity of *qirān*.

If it be said: The Prophet (*May Allah bless him and his family and grant them peace*) performed Hajj as *qirān* and drove the sacrificial animals, and he said: “*Take your rites from me,*” therefore driving [the sacrificial animals] is a condition for the validity of *qirān*.

We say: Driving the sacrificial animals is a virtue in ‘Umrah and in every type of Hajj, not an obligation. The proof is that the Muslims who performed Hajj with the Prophet (*May Allah bless him and his family and grant them peace*) made talbiyah as he did and followed him in the acts of that Hajj, and most of them did not drive sacrificial animals to the House.

For that reason, the Prophet (*May Allah bless him and his family and grant them peace*) commanded those who had not driven sacrificial animals to convert to ‘Umrah; this indicates that driving [the animals] is neither a condition nor an obligation of Hajj. Rather, the proof that

whoever has driven the sacrificial animals may not convert to ‘Umrah, but must remain in iḥrām until the sacrificial animal reaches its place, is in His saying: *“And do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah: 196]

And in the story of ‘Alī (*peace be upon him*) entering iḥrām is what indicates that driving [the animals] is not a condition. He (*peace be upon him*) arrived that year from Yemen and entered iḥrām upon arriving by saying he was in iḥrām “with an iḥrām like the iḥrām of the Messenger of Allah (*May Allah bless him and his family and grant them peace*).” When he reached Makkah, the Prophet (*May Allah bless him and his family and grant them peace*) ordered him to remain in iḥrām; and in that story the Prophet (*May Allah bless him and his family and grant them peace*) shared his sacrificial animals with ‘Alī (*peace be upon him*). He did not say to him: “Your *qirān* is invalid due to not driving [the animals],” but rather approved his iḥrām and shared with him in his sacrificial animals.

From this authentic story we understand that what is required for the validity of *qirān* is the *hady* (sacrificial animal) itself, not the act of driving it—this on the assumption that the Prophet (*May Allah bless him and his family and grant them peace*) performed *qirān*. And this alongside the possibility that the *hady* was not obligatory because he was *qārin*, but because those animals had become designated as *hady*; in which case the obligation upon the Prophet (*May Allah bless him and his family and grant them peace*) would be on that account. On this obligation, the *mufrid*, the *qārin*, the *mutamatti‘*, and the one performing a separate ‘Umrah would all be alike.

And the obligation of the *hady* upon ‘Alī (*peace be upon him*) would have been because he obligated himself—by entering iḥrām like the iḥrām of the Prophet (*May Allah bless him and his family and grant them peace*)—and in the iḥrām of the Prophet there was *hady*, so *hady* became due upon ‘Alī (*peace be upon him*) for that reason.

As for the statement of the scholars of the madhhab, “Whoever enters iḥrām as a *qārin* without driving a sacrificial animal must convert his iḥrām to an ‘Umrah”—this is a sound statement, the proof of which is the Prophet’s command, *May Allah bless him and his family and grant them peace*, that whoever had not driven sacrificial animals should place his iḥrām upon an ‘Umrah.

And their statement, “Whoever converts to ‘Umrah does not owe a sacrificial blood,” is also correct; its proof is that the Prophet (*May Allah bless him and his family and grant them peace*) did not command those who did so to offer a sacrificial blood.

If it be said: Apparently, whoever converts to ‘Umrah thereby becomes a *mutamatti‘* and thus owes what a *mutamatti‘* owes—and He,

Most High, said: *“So whoever performs ‘Umrah [during the Hajj months] followed by Hajj—then [let him offer] whatever is easy of sacrificial animals. And whoever cannot find [or afford one]—then a fast of three days during Hajj and of seven when you have returned; those are ten complete [days].”* [al-Baqarah:196]

We say: That would have been the apparent case, were it not for the presence of the proof we have mentioned indicating that one who converts to ‘Umrah does not owe what a *mutamatti‘* owes.

On this basis, one does not become a *mutamatti‘* until he enters iḥrām for an ‘Umrah from the *miqāt*, intending by it to “enjoy” [release] until Hajj. As for one who entered iḥrām for Hajj and then converted it—placing his iḥrām upon an ‘Umrah—he does not become a *mutamatti‘*, even if outwardly he resembles one.

If you say: Does one sin who enters iḥrām for Hajj and ‘Umrah together without driving [a sacrificial animal], knowing that driving a *badnah* from the place of iḥrām is stipulated for that, but he does so only in order to convert to an ‘Umrah—thus being like a *mutamatti‘* without owing what is easy of *hady*, and so on?

I say: If that is the case, then the person in iḥrām is a *mutamatti‘*, and he owes what a *mutamatti‘* owes; because his intention, from the moment of iḥrām, is to perform an ‘Umrah upon arriving in Makkah and then to “enjoy” [release to normal life] until the time of entering iḥrām for Hajj.

If you say: He made talbiyah for Hajj and ‘Umrah together—how then is he a *mutamatti‘*?

I say: Mere wording carries no weight if it contradicts what the heart contains of intention and purpose. And in the ḥadīth: *“Actions are only by intentions, and every person shall have only what he intended; so whoever’s migration is to Allah and His Messenger, then his migration is to Allah and His Messenger; and whoever’s migration is for a woman to marry or for some worldly gain to attain, then his migration is to what he migrated for.”*

Now, *al-Sharah* and marginal notes did not mention this last issue. What appears is that whoever combines Hajj—absolutely—whether ignorant of the [alleged] stipulation of driving [a sacrificial animal] or knowing of it, and did so only for the sake of converting [to ‘Umrah], then he places his iḥrām upon an ‘Umrah and owes neither a sacrificial blood nor its substitute as a *mutamatti‘* would, nor does he owe a sacrificial blood for impropriety. The correct view is one of detail, and Allah knows best. All praise is due to Allah, Lord of the worlds; and may Allah bless Muhammad and his family, and grant them abundant peace.

On Committing Fornication (Zinā) During Hajj

Question: A man performed Hajj, and on the night at Muzdalifah he committed zinā (fornication/adultery) with a woman there. After that heinous act, he put on his clothes—believing that his Hajj had been invalidated—and returned to his country without completing the remaining rites of Hajj. What is required of this man?

Answer—and Allah grants success: This man must repent and feel remorse for what he has done. As for the Hajj, it has been corrupted by the act of intercourse. It was obligatory upon this man to complete the remaining rites, in His saying: *“And complete the Hajj and 'Umrah for Allah.”* [al-Baqarah:196]

Accordingly, he must:

1. Make up the Hajj in the following year, if he is able, performing a complete Hajj.¹
2. Perform Ṭawāf al-Ziyārah, intending it as a completion of the Hajj of the first year.
3. Slaughter a camel (*badnah*) as expiation for what he committed during that invalid Hajj.
4. A sacrificial blood (*dam*) is due² for every rite he omitted in that year when the Hajj was corrupted by intercourse.
5. A *dam* is due for every prohibition he committed after the act of zinā, because he remained in a state of iḥrām—this is based on what is mentioned in *al-Azhar* and its commentary.

I say: The preferable view is that the aforementioned Hajj was nullified by *rafḍ* (renunciation). For when the man committed zinā, he believed the Hajj had been invalidated, so he exited the Hajj and his iḥrām, renouncing them on the basis of what he believed.

Renunciation in Hajj and 'Umrah is permissible in general, as evidenced by what is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) ordered his wife 'Ā'ishah to renounce her 'Umrah and make it a Hajj—this was because when she reached Makkah her menses began. And by what is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) ordered those who had entered iḥrām for Hajj to make it an 'Umrah.

And by what is narrated that the Prophet (*May Allah bless him and his family and grant them peace*) said to the woman who complained to him of weakness while wanting to perform Hajj: *“Say: My place of release is wherever I am held back (wa-maḥillī ḥaythu ḥabastanī)”*, and the scholars

1- The madhhab does not stipulate ability (istiṭā'ah) for making up [the Hajj].

2- Except Ṭawāf al-Wadā' (farewell circumambulation).

of the madhhab have said, as in *al-Azhar* and its commentary: Whoever combines one rite with another must necessarily renounce one of them.

The people of al-Ḥudaybiyyah were released from their ihrām of the ‘Umrah whose sanctity they had entered when the idolaters prevented them from entering Makkah—about which He, *Exalted*, said: *“They are the ones who disbelieved and hindered you from al-Masjid al-Ḥarām, and [prevented] the sacrificial animals from reaching their place of sacrifice.”* [al-Fath:25]. And He, *Glorified*, said: *“Then if you are prevented—[offer] whatever can be obtained of sacrificial animals, and do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah:196]

From here we say: Renouncing Hajj and ‘Umrah is permissible in general.

On that basis, this man committed a tremendous crime which blood-sacrifices do not expiate; then he committed a lesser one, namely exiting Hajj and renouncing it. He, *Most High*, said: *“O you who have believed, Allah will surely test you through something of the game that your hands and spears can reach—that Allah may make evident those who fear Him unseen. And whoever transgresses after that—for him is a painful punishment.”* [al-Mā'idah:94]. No expiation was mentioned for the transgressor other than a painful punishment.

This man has committed a crime greater than the crime of one who transgresses against game. The proof that it is greater is that zinā is forbidden before ihrām and after it—whereas hunting is forbidden only during ihrām, not before it nor after it. We further support this by His saying: *“And whoever intends therein [i.e., in the Ḥaram] deviation by wrongdoing—We will make him taste of a painful punishment.”* [al-Hajj:25] Thus He mentioned that the sin committed within the Sanctuary incurs a painful punishment, and He did not mention an expiation.

And He, *Exalted*, said: *“And let not the hatred of a people for having obstructed you from al-Masjid al-Ḥarām lead you to transgress. And cooperate in righteousness and piety, but do not cooperate in sin and aggression; and fear Allah. Indeed, Allah is severe in penalty.”* [al-Mā'idah:2]

And His majestic saying: *“Whoever has made Hajj obligatory upon himself therein—then there is to be no sexual relations, no disobedience, and no disputing during Hajj. And whatever good you do—Allah knows it. And take provisions, but indeed, the best provision is piety. And fear Me, O possessors of intellect.”* [al-Baqarah:197]

What we have stated may also be supported by His saying: *“And do not invalidate your deeds.”* [Muḥammad:33] They explained this as referring to committing major sins, and they said: major sins are what invalidate deeds.

And He, *Exalted*, said: *"Indeed, Allah accepts only from the righteous."* [al-Mā'idah:27]

Therefore, the man mentioned in the question must repent to Allah with a sincere repentance and increase in seeking forgiveness and remorse. He has committed a great, compounded sin; for besides the major sin of zinā, he violated the sanctity of iḥrām, the sanctity of the Sanctuary, and the sanctity of the sacred time; he disobeyed Allah Most High by nullifying the Hajj—while Allah has forbidden nullifying deeds in His saying: *"And do not invalidate your deeds."* [Muḥammad:33]. He disobeyed Allah Most High by failing to complete the obligation of Allah which He commanded to be completed in His saying: *"And complete the Hajj and 'Umrah for Allah."* [al-Baqarah:196]. These are multiple violations which nothing expiates except a sincere repentance. As for sacrificial bloods, they do not expiate such a matter.

Then, after repentance, he must perform another Hajj in place of that Hajj—if he is able to find a way—since He, *Exalted*, said: *"Allah does not charge a soul except [with that within] its capacity."* [al-Baqarah:286]. And: *"Allah does not charge a soul except [with that within] what He has given it."* [al-Ṭalāq:7]. And He, *Exalted*, said: *"So fear Allah as much as you are able."* [al-Taghābun:16]

Moreover, what we have mentioned of this fatwā concerning this ignorant man is due to his ignorance, and due to what the scholars have mentioned—that the uninformed layperson has special rulings, among them what they stated: that his actions, which he performed believing them to be permitted, are carried upon validity so long as he has not contravened consensus. They said: he is like a *mujtahid*, and so on, as they mentioned.

And in the ḥadīths of Hajj, the Messenger (*May Allah bless him and his family and grant them peace*) said to many of those asking: *"No harm, no harm,"* in answer to those who said, "I advanced [a rite] or delayed [it] out of ignorance."

And in accord with what Allah Most High has directed to of ease and lightening, in His saying: *"Allah intends to lighten [the burden] for you"* [al-Nisā':28]. And: *"Allah intends for you ease and does not intend for you hardship."* [al-Baqarah:185]. And: *"And He has not placed upon you in the religion any difficulty."* [al-Ḥajj:78]. And in the ḥadīth: "Make things easy and do not make them difficult," or as he said.

If we were to issue a fatwā for such a man strictly according to the madhhab and exactly as they stated, we would have made the path of repentance difficult for one who desires it.

What further strengthens what we have said is what has come in the ḥadīth from the Prophet (*May Allah bless him and his family and grant*

them peace): “*Repentance wipes out what came before it.*” And what is reported: “The penitent from sin is like one who has no sin.” Likewise, what has come in the Qur’ān concerning Allah’s ruling upon the intentional killer and the accidental killer: He, Glorified, differentiated between them—placing an expiation in the case of accidental killing, while in the case of intentional killing He mentioned only the recompense of Hell, Allah’s wrath upon him, and His curse, and He did not prescribe an expiation therein.

Similarly with the false, immersing oath (*al-yamīn al-ghamūs*) and the committed oath (*al-yamīn al-mu‘aqqadah*): He placed an expiation for the latter, but not for the former. All of this supports what we have stated.

In conclusion, the matter is one of juristic reasoning, for there is no decisive proof regarding the rulings that have been mentioned concerning the muḥrim who has intercourse with his wife—of corruption [of Hajj], the requirement of one or two camels, then the obligation of completion and of making up [the Hajj] the following year. And even if we suppose definitiveness, it pertains to one who had intercourse with his wife—not to one who committed the crime of zinā.

If it is said: The one who commits zinā is to be analogized to the one who has intercourse with his wife.

We say: Such analogy is invalid for several reasons:

1. Analogizing the more severe case to the lighter one is invalid according to many scholars.
2. It is analogy in causes, which many scholars have prohibited.
3. What we previously mentioned of evidences and indications—refer back to them.

What appears is that major acts of disobedience are incompatible with acts of obedience; they do not coexist. This is a general principle in all acts of obedience.

Concerning Hajj specifically is His saying: “*There is to be no sexual relations, no disobedience, and no disputing during Hajj.*” [al-Baqarah:197]. It has been established that intercourse with one’s wife corrupts the Hajj, with the obligation to proceed with that invalid Hajj. Zinā is a greater crime than intercourse with one’s wife; thus it corrupts the Hajj with a corruption greater than the first—namely, the invalidation of the Hajj entirely. That is because zinā renders its perpetrator deserving of the Fire, categorically—by the proof of the verse in al-Furqān and others. Whoever commits zinā has departed from faith, categorically, and deserves the Fire, categorically; accordingly, his deed is nullified, categorically. In the ḥadīth: “*The adulterer does not commit adultery*

while he is a believer.” And in Sūrat al-Nūr: *“The [male] fornicator does not marry except a [female] fornicator or a polytheist, and the [female] fornicator—none marries her except a [male] fornicator or a polytheist; and that is forbidden to the believers.”* [al-Nūr:3]

On a Muḥrim Who Is Prevented from Entering Makkah

Question: If a man has entered iḥrām for Hajj or 'Umrah and then is prevented from entering Makkah, what should he do and what is required of him?

Answer—and Allah grants success: If it becomes impossible for him to reach Makkah and he finds no way to do so, he must send a sacrificial animal (*hady*) to be slaughtered in Minā during the Days of Sacrifice if he is in iḥrām for Hajj, then he releases from iḥrām after it is slaughtered. If he is in iḥrām for 'Umrah, it is to be slaughtered in Makkah.

The proof is His saying: *“Then if you are prevented—[offer] whatever can be obtained of sacrificial animals; and do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah: 196]. If the *muḥṣar* (the one prevented) does not find a sacrificial animal nor its price, then he fasts three days and thereafter releases from iḥrām after completing them, and he must fast seven more days after the three. If he is unable to fast, al-Manṣūr Billāh, *peace be upon him*, said: it is permissible for him to release from iḥrām, and the *hady* remains a debt upon him. Imām al-Mutawakkil 'alā Allāh strengthened this. This is mentioned in the marginalia of *Sharḥ al-Azhār*.¹

Then the *muḥṣar* must make up that for which he was prevented from completing.

The Meaning of “Then Let Them Remove Their Untidiness (Tafath)”

In *al-Minḥah* by Ibn al-Amīr: It is permissible for the person in iḥrām to trim all his nails and to shave hair other than that of the head, and there is no expiation upon him for that; this is reported from al-Maḡyallī and Dāwūd—due to the absence of proof from the Qur'ān and the Sunnah. End—by meaning.

I say: The Qur'ān indicates otherwise. He, *Most High*, said: *“Then let them remove their untidiness, and fulfill their vows, and perform ṭawāf around the Ancient House.”* [al-Ḥajj:29]. The exegetes mentioned that what is meant by removing the “*tafath*” is shaving the hair of the head and the pubic region, plucking the armpit hair, and trimming the nails on the Day of Sacrifice.

1- *Sharḥ al-Azhār* 2/171.

As for the Sunnah: Abū Dāwūd, al-Tirmidhī, and al-Nasā’ī narrated from Umm Salamah, from the Prophet (*May Allah bless him and his family and grant them peace*): “When you see the new moon of Dhū al-Hijjah and one of you intends to offer a sacrifice, let him refrain from [cutting] his hair and his nails until he offers his sacrifice.” His words “his hair” include the hair of the head and of the rest of the body.

Moreover, the continuous practice of the Muslims—early and later generations alike—has been to avoid shaving hair altogether during iḥrām, whether of the head or elsewhere on the body, and likewise to avoid trimming the nails.

What has been a continuous Sunnah among the successive generations of Muslims needs no additional proof—like the numbers of rak‘ahs, or that bowing is performed singly while prostrations are two by two, and similar matters that are known by the necessity of the religion.

The Ruling on Iḥrām for One Who Went Out from Makkah to Jeddah

Question: A man performed Hajj and then ‘Umrah after Hajj. He then went to Jeddah for a need and returned to Makkah where he resides, with no intention of ‘Umrah—only to take his belongings and return to his companions. Is he required to enter iḥrām or not?

Answer—and Allah grants success: The closer view is that he is not required to enter iḥrām, because:

1. He is in the ruling of a resident. If a resident intends to stay in a place for ten days, then goes out during that period for a need—one mile or one *barīd*—and returns to complete his stay, that does not cut off the ruling of residence. Thus said the scholars of the madhhab. By analogy, the resident in Makkah who goes outside the *miqāt* limits and then returns to complete his residence is treated likewise.
2. He had no intention of Hajj or ‘Umrah when returning to Makkah.
3. Many scholars—from Ahl al-Bayt (*peace be upon them*) and others—hold that iḥrām is only obligatory upon one who intends one of the two rites, and this is preferable due to the ease it entails, which is a hallmark of this upright, gentle religion.

Question: A man performed Hajj or ‘Umrah and, after releasing from iḥrām, went out to Jeddah for a need. Is he required to enter iḥrām for an ‘Umrah to enter Makkah?

Answer: What appears to me is that he is not required to enter iḥrām, because he is in the ruling of a resident in Makkah, and the resident is not obligated to do so. The one who went out to Jeddah after his Hajj or ‘Umrah did so for a need that arose while he was in Makkah, then

returned to Makkah to complete his residence—even if brief.

What the scholars mentioned is that this requirement pertains to the non-resident (*Afaqī*).

[The Ruling on One Who Passed the Miqāt without Iḥrām and Then Returned to His Family]

Question: The scholars of the madhhab stated that one who intends Hajj or ‘Umrah and passes the *miqāt* without entering iḥrām, then returns to his family, must make up what he had intended—Hajj or ‘Umrah—and that it does not count for his obligatory Hajj of Islam.

I say: What appears to me—and Allah knows best—is that making up [a rite] is not obligatory, because the Qur’ān only obligated completing what a Muslim has entered into of Hajj or ‘Umrah, in His saying: “*And complete the Hajj and ‘Umrah for Allah.*” [al-Baqarah:196]. Entering into Hajj and ‘Umrah is by iḥrām, and the person mentioned in the question had not entered iḥrām. The default is that one’s liability is free of obligation.

If One Exceeded the Miqāt without Iḥrām Due to an Excuse

Question: How should a man act who intends Hajj, but if he wears the two garments of iḥrām he will be turned back and prevented from entering Makkah; whereas if he is not wearing the two garments of iḥrām he will be permitted to enter Makkah? Should he make talbiyah for Hajj at the *miqāt* even if he does not wear the two garments of iḥrām? Or should he pass the *miqāt* without iḥrām, then, once past the checkpoints, enter iḥrām from there?

And is it valid, if he fears being turned back and prevented from entering Makkah, to make a stipulation in his iḥrām by saying, for example: “*O Allah, I enter iḥrām for such-and-such—if they do not prevent me and turn me back; labbayk ...,*” etc.?

Answer—and Allah grants success and aid: Wearing sewn clothing while in iḥrām is a violation of the sanctity of iḥrām, and passing the *miqāt* without iḥrām is a violation of the sanctity of the Ḥaram.

In such a circumstance, it is permitted for the pilgrim to make talbiyah for Hajj without wearing the garments of iḥrām. When he passes the checkpoints, he must immediately remove his sewn clothes—without pulling them off over his head. For that, he owes an expiation: fasting, or giving charity, or offering a sacrificial animal.

If he prefers to pass the *miqāt* without intending iḥrām, he may do so; then, once past the checkpoints, he enters iḥrām, makes talbiyah, and dons the garments of iḥrām—and he owes a *dam*.

If he wishes to make a stipulation in his iḥrām due to fear of being turned back and prevented, he may stipulate as in the wording

mentioned in the question, and there is no objection to the validity of such a stipulation.

Issue: [Concerning One Who Enters Makkah without Intending Either of the Two Rites]

In *al-Sharah*: Abū Ja‘far reported from al-Nāṣir (and al-Ṣādiq) that it is permissible to enter Makkah without iḥrām if one does not intend entry for either of the two rites, and this is one of the two positions of Abū al-‘Abbās and the latter of the two positions of al-Shāfi‘ī. End.

I say: This is the view supported by the evidence—namely, the ḥadīth that the Messenger of Allah (*May Allah bless him and his family and grant them peace*) designated the *mawāqīt* (appointed stations) for one who intends Hajj or ‘Umrah.

This is the import of the authentic ḥadīths regarding the appointment of the *mawāqīt* for Hajj.

[The Ruling on Passing through Makkah When Coming from al-Madīnah after Hajj]

Question: A man performed Hajj or ‘Umrah, then went to al-Madīnah for a visit. After that he wished to return to his country, and he has no route except through Makkah because he is with companions in a car and all of them want to perform ‘Umrah. This man is elderly and weak, and ‘Umrah is extremely taxing for him. Is it permissible for him not to enter iḥrām even if he passes through the Ḥaram—or what should he do?

Answer: If the matter is as described in the question, it is permissible for the man mentioned—so long as he has no intention of ‘Umrah—to pass the *miqāt* without iḥrām and to enter the Ḥaram without iḥrām, for the following reasons:

1. By analogy with those who have valid excuses for whom the Sunnah granted concessions; what they share in common is the excuse due to which ‘Umrah is burdensome.
2. The Messenger of Allah (*May Allah bless him and his family and grant them peace*) appointed the *mawāqīt* “for whoever intends Hajj or ‘Umrah”—so the narration states. Therefore, the one who does not intend Hajj or ‘Umrah, together with an excuse, may pass the *mawāqīt* without iḥrām even if he enters the inviolable Ḥaram—on account of his excuse.
3. Many scholars—among Ahl al-Bayt (*peace be upon them*) and others—held that iḥrām is not obligatory except upon one who intends one of the two rites; not upon one who does not intend them, even if he enters the inviolable Ḥaram.
4. There are general evidences supporting what we have stated:

“Allah intends for you ease and does not intend for you hardship.”
 [al-Baqarah:185] *“And He has not placed upon you in the religion any difficulty.”* [al-Hajj:78]

And in the Qur’ān there is what indicates dispensation in many obligations: the concession for the traveler to break the fast during travel and in illness, and the concession to lay down arms in rain, in His saying: *“And let them take their precaution and their weapons. Those who disbelieve wish that you would neglect your weapons and your baggage so they could come down upon you in one attack. But there is no blame upon you, if you are troubled by rain or are ill, to lay down your weapons; but take precaution. Indeed, Allah has prepared for the disbelievers a humiliating punishment.”* [al-Nisā’:102]

The Sunnah has likewise come with many such concessions, including matters in Hajj: waiving Ṭawāf al-Wadā’ for a menstruating woman; waiving some of the rites of the night of Muzdalifah for the weak among the pilgrims; waiving the overnight stay in Minā for al-‘Abbās because of supplying water; and likewise for the camel herders, for whom a concession was granted to omit the overnight stay and to stone one day and leave another.

Accordingly, we say: it is permissible to omit iḥrām when passing the *miqāt* due to an excuse.

Yes: if the excused person omitted iḥrām at the *miqāt* and then, upon reaching the boundary of the inviolable Ḥaram, felt able to perform ‘Umrah, he should enter iḥrām before entering the Ḥaram. If he knows himself to be unable, it is permissible for him to enter the inviolable Ḥaram and then enter al-Masjid al-Ḥarām—all of this due to the presence of the excuse.

Converting Hajj to ‘Umrah (Faskh) Is Specific to the Prophet's Companions

In the ḥadīth of Jābir in the two Ṣaḥīḥs, Abū Dāwūd, and al-Nasā’ī: Suraqah ibn Mālik said, “O Messenger of Allah, is our *mut‘ah* for this year only, or forever?” He, *May Allah bless him and his family and grant them peace*, said, “Rather, forever.” End.

I say: There is a difference of interpretation regarding this:

Some said: What is meant is that *faskh* (converting Hajj to ‘Umrah) is permissible forever; thus, converting Hajj to ‘Umrah is not specific to the Companions of the Prophet (*May Allah bless him and his family and grant them peace*).

Others said: What is meant is whether this ‘Umrah suffices for the legislated ‘Umrah, or whether one must still perform the known ‘Umrah?

Others said: What is meant is the question about *mut‘ah* in general—

whether its legislation is restricted to that year or forever?

It has been narrated, however, that converting Hajj to ‘Umrah was specific to the Companions of the Prophet (*May Allah bless him and his family and grant them peace*): this was narrated by a group of ḥadīth scholars from Abū Dharr and from al-Ḥārith ibn Bilāl, from his father. In the wording found in al-Nasā’ī: He said, “I said: O Messenger of Allah, is converting Hajj [to ‘Umrah] for us specifically, or for all people generally?” He said, “*Rather, for us specifically.*”

On this basis, what is meant in the question of Suraqah is the legitimacy of the ‘Umrah enjoyed up to Hajj (*‘umrah al-tamattu’*), not the *faskh* of Hajj to ‘Umrah—because of what has come indicating that the act of *faskh* was specific to the Companions of the Prophet (*May Allah bless him and his family and grant them peace*).

The Ruling on Re-Initiating Ihṛām for Hajj after It Has Been Corrupted

Question: If Hajj is corrupted by intercourse—whether before standing at ‘Arafah or on the day of ‘Arafah—does it suffice to re-initiate ihṛām (performing ghusl and making talbiyah for Hajj) and then go to ‘Arafah such that his Hajj is valid?

Answer—and Allah grants success: The scholars of the madhhab and others said: That is neither valid nor permissible, due to what is reported from ‘Alī (*peace be upon him*) and others—namely, the obligation to proceed and complete [the rites], then to perform Hajj the following year, and to slaughter a camel (*badnah*).

But for that text, analogy would suggest the validity of re-initiation if possible—just as in the prayer: when it is corrupted, one must exit it and then re-initiate it.

With us, the statement of ‘Alī (*peace be upon him*) is authoritative and must be followed; it is supported by His saying: “*And complete the Hajj and ‘Umrah for Allah.*” [al-Baqarah:196]—which indicates the obligation to complete what a Muslim has entered into of Hajj or ‘Umrah, whether it became corrupted or not.

It may be said: Although the statement of ‘Alī (*May Allah be pleased with him*) is authoritative and must be followed, it is opposed by analogy with the prayer.

If it be said: The textual proof takes precedence over analogy.

We say: Analogy—although weaker than the text—is reinforced here by the facilitation and ease it entails.

Furthermore, it may be said: One can avoid having to proceed with a corrupted Hajj—if the corruption occurred before standing at ‘Arafah—by either of two lawful stratagems:

First: Converting the Hajj to an 'Umrah, as the Companions did in the Farewell Pilgrimage; then he declares iḥrām for Hajj thereafter, and his Hajj is valid in that case; then he makes up the 'Umrah after the Days of Tashrīq. This is a legitimate stratagem.

Second: Renouncing (*rafḍ*) what he entered into of iḥrām; a *dam* is due for renunciation, then he re-initiates iḥrām for Hajj anew. A *badnah* remains obligatory whether he converts the Hajj to an 'Umrah or renounces the iḥrām.

However, renunciation is prohibited and not permissible, due to the earlier statement of 'Alī (*peace be upon him*) obligating proceeding with the corrupted Hajj.

The Ruling on One Who Omitted a Required Rite of Hajj Other Than the Three Pillars

They said: Whoever leaves a required rite (*wājib*) of Hajj—other than the three pillars—owes a sacrificial blood (*dam*), and they adduced as proof the ḥadīth: “Whoever leaves a rite owes a *dam*,” which is related in *al-Shifā'* and *al-Intiṣār*, and Mālik transmitted it from Ibn 'Abbās as a mawqūf report; this report has been declared weak. Al-Mu'ayyad Billāh argued for this issue by consensus.

I say: It is also possible to adduce as proof the ḥadīth of the woman who vowed to perform Hajj on foot. Al-Mu'ayyad Billāh related it with a sound chain to Imām Zayd ibn 'Alī (*peace be upon him*), from his forefathers, from the Commander of the Faithful 'Alī (*peace be upon him*): that the Prophet (*May Allah bless him and his family and grant them peace*) was approached by a woman who said, “I have obligated upon myself walking to the House of Allah, and I am not able to do that.” He said, “Do you find something to carry you?” She said, “Yes.” He said: “Walk as you are able, and ride if you are unable—and offer for that a *hady* (sacrificial animal).”

Something to this effect is in *al-Majmū'* from 'Alī (*peace be upon him*). End of citation from *al-Ḥajj wa al-'Umrah*.¹

The reason this ḥadīth indicates what we mentioned is that the Prophet (*May Allah bless him and his family and grant them peace*) required that woman to offer a *hady* in lieu of the obligation that became binding upon her by her vow. The required rites of Hajj are attached to that by analogy; the common rationale is the omission of a required act of Hajj.

The ḥadīth also contains benefits:

1- *Kitāb al-Ḥajj wa al-'Umrah* by Imām al-Ḥujjah Majd al-Dīn al-Mu'ayyadī, *peace be upon him*.

1. His saying, *May Allah bless him and his family and grant them peace, "Do you find something to carry you?"* indicates that the one who vows Hajj while lacking what will transport him is not obligated to fulfill it—since Allah does not charge a soul except [with that within] its capacity.
2. Hajj is not dropped from one who cannot walk so long as he is able to ride.

On the Ruling Concerning a Pilgrim Who Lost Consciousness

The scholars of the madhhab said: A companion may pronounce iḥrām on behalf of his companion who has lost his mind due to illness, for example—if he knows that his intention was Hajj or ‘Umrah—and he may strip him of his sewn clothes, perform ṭawāf with him and sa‘y, pray the two rak‘ahs of ṭawāf on his behalf, stone on his behalf, cause him to stand at all the standing places, and so on. If he regains consciousness, he continues from what has already been done.¹

According to Abū Yūsuf, Muḥammad, Imām al-Nāṣir, and al-Shāfi‘ī: there is no deputization on behalf of one who had not yet entered iḥrām—and, according to al-Shāfi‘ī, not before the standing [at ‘Arafah].

I say: It is possible to adduce proof for the correctness of the madhhab’s position as follows: the one who lost consciousness after leaving his home as a traveler intending Hajj or ‘Umrah has already intended Hajj or ‘Umrah, and this intention is valid because it coincides with the preliminary step without which Hajj is not completed—namely, travel. Travel, then, is among the acts of Hajj.

If it be said: They stated that the intention for Hajj occurs at iḥrām, together with talbiyah or garlanding.

We say: That is the intention of iḥrām, and what we have mentioned is the intention of Hajj itself. The one who lost consciousness had intended Hajj, aimed for it, and commenced its preliminaries; thus that intention necessarily included that he would enter iḥrām upon reaching the *miqāt*, remove his sewn clothes, perform ghusl, and so forth.

Accordingly, the intention is concomitant, since the journey for Hajj is among the acts of Hajj—by the proof of His saying: *“And whoever leaves his home as an emigrant to Allah and His Messenger, then death overtakes him—his reward has already become incumbent upon Allah.”* [al-Nisā’: 100]. They have also argued here by analogy with performing Hajj on behalf of the deceased.

I say further: The Lawgiver has come with facilitation in Hajj—

1- *Sharḥ al-Azhār* 2/157 and following.

distinct from other bodily acts of worship—in several respects:

1. The validity of deputation therein on behalf of the living and the dead—from a son or a brother—whether by bequest or without bequest, as the sound reports indicate.
2. When Ḥajj is obligatory upon a Muslim, he is given a choice among three types of Ḥajj.
3. The rites of Ḥajj—except for the three pillars—are compensable by sacrificial bloods if missed.
4. Many concessions have been granted in its rites for those with valid excuses.

Two Benefits Concerning Ḥajj

1. In *al-Jāmiʿ al-Kāfī*: Muḥammad said: “Whoever departs from Minā without bidding farewell to the House—there is nothing upon him. The Farewell Ṭawāf is only due when he reaches Makkah, meaning: then leaves it.” This is due to the saying of the Prophet Muḥammad (*May Allah bless him and his family and grant them peace*): “Whoever intends to depart from Makkah, let his last act be at the House.” End of citation from *al-Ṣaḥīḥ al-Mukhtār*.

In the *Amālī* of Aḥmad ibn ʿĪsā—with his chain to Abū Jaʿfar—there is a long ḥadīth; at its end: “Then ʿAlī took the hand of Umm Kulthūm and transferred her to him, then ordered her, and she performed Ḥajj during her waiting period.” End of citation from *al-Ṣaḥīḥ al-Mukhtār*.

In the *Amālī* of Aḥmad ibn ʿĪsā it is related: Muḥammad said, “I asked ʿAbd Allāh ibn Mūsā about a person in iḥrām who undergoes cupping.” He said: “He may undergo cupping and must offer expiation.” And others from Ahl al-Bayt (*May Allah be pleased with them*) mentioned that the Prophet (*May Allah bless him and his family and grant them peace*) underwent cupping and offered a redemption. End of citation from *al-Ṣaḥīḥ al-Mukhtār*.

2. In *al-Jāmiʿ al-Kāfī*, from al-Ḥasan (*peace be upon him*): “We have transmitted from the Prophet Muḥammad (*May Allah bless him and his family and grant them peace*) and from ʿAlī (*peace be upon him*) that both permitted Ḥajj on behalf of the deceased, and on behalf of one too weak to perform the saʿy—that Ḥajj be performed on his behalf.” End of citation from *al-Ṣaḥīḥ al-Mukhtār*.

I say: In this there is a clarification of the threshold of an elder’s weakness which permits deputation in Ḥajj—namely, weakness specifically regarding saʿy. What appears to me is that the intended saʿy is the walking between al-Ṣafā and al-Marwah. Whoever knows of himself that he is incapable of performing the saʿy may appoint a proxy.

Yes—what has been authentically established is that the “way” (*sabīl*)

intended in His saying, *“And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way”* [Āl ‘Imrān:97], is “provision and mount,” and it appears that what is intended thereby is one whose body is sound.

The Ruling on Performing Hajj as a Supererogatory Act on Behalf of a Capable Man

Question: Is it valid for a man to perform Hajj or ‘Umrah on behalf of another, while the one on whose behalf it is performed is capable—but has already performed Hajj for himself—and this man only wishes to offer it as a supererogatory act on his behalf?

Answer—and Allah grants success: That is valid and permissible, because Hajj and ‘Umrah are among the acts of worship in which deputization is valid. In a voluntary act, the stringent conditions of the obligatory Hajj—such as despairing of being able to perform it oneself—are not required. Allah *Most High* obligated the capable person to perform Hajj himself in His saying: *“And [due] to Allah from the people is a pilgrimage to the House—for whoever is able to find thereto a way.”* [Āl ‘Imrān:97]. Therefore, deputization is not valid nor sufficient in the obligation except upon lack of capacity and despair of attaining it.

This rationale does not exist in supererogatory acts; thus the one on whose behalf it is done is not obliged to perform it himself.

Moreover, the norm in the Sharī‘ah is lenience in supererogatory acts in ways not allowed in obligations—such as performing nāfilah while mounted wherever it faces, performing nāfilah seated, and the nāfilah of charity, which is valid beyond the eight zakāh categories and even for a non-belligerent disbeliever.

Further, what appears to me is that a Muslim may donate the reward of any supererogatory act—prayer, fasting, charity, Hajj, ‘Umrah, remembrance, Qur’ān recitation, teaching knowledge, guiding the lost, fulfilling a believer’s need, and other forms of righteousness—to whomever he wishes among the believers: a parent, child, brother, relative, or distant person, or to the souls of the Prophet (*May Allah bless him and his family and grant them peace*) and his family (*peace be upon them*). He does so by intending—before commencing the act—that he donates its reward to so-and-so as an act of dutifulness and charity. It suffices to intend: “These two rak‘ahs are on behalf of so-and-so.”

This may be indicated by what has come in the Qur’ān and Sunnah encouraging seeking forgiveness for believing men and women. Allah *Most High* related of the angels: *“Those [angels] who carry the Throne and those around it exalt [Allah] with praise of their Lord and believe in Him and ask forgiveness for those who have believed, [saying], ‘Our Lord, You have encompassed all things in mercy and knowledge, so forgive those who*

have repented and followed Your way and protect them from the punishment of Hellfire. Our Lord, and admit them to gardens of perpetual residence which You have promised them, and [admit] whoever was righteous among their fathers, their spouses, and their offspring. Indeed, it is You who are the Exalted in Might, the Wise. And protect them from the evil [consequences of their deeds]. And he whom You protect from evil that Day—You will have given him mercy. And that is the great attainment.” [Ghāfir: 7-9]

This indicates that a believer benefits from the supplication of others—his sins are expiated and he attains good deeds thereby. Righteous works such as prayer and others fall under the category of supplication in meaning—or are even more emphatic. One who, for example, prays two rak‘ahs on behalf of so-and-so is, in effect, beseeching Allah and seeking from Him to increase so-and-so’s good deeds, expiate his sins, and raise his ranks.

There is no difference between supplication and seeking forgiveness, on the one hand, and performing prayer and other acts, on the other—except that the former is a verbal expression while the latter is a practical expression. Both share the essence of seeking nearness to Allah and pleading with Him to forgive so-and-so and increase his good deeds.

This is clarified by the fact that Allah Most High has called worship “*supplication*” in many verses, such as His saying: “*So do not invoke with Allah anyone.*” [al-Jinn:18]. And His saying: “*Call upon Me; I will respond to you. Indeed, those who disdain My worship will enter Hell [rendered] contemptible.*” [Ghāfir:60]

Yes—whatever a believer donates of his acts of worship to the soul of his believing brother, nothing is diminished from his reward—by the proof of what has come regarding one who performs Hajj on behalf of another: that three Hajj are written—one for the pilgrim, one for the deceased, and one for the executor. Indeed, it appears that he is written the reward of dutifulness and kinship, and “a good deed is [rewarded] tenfold,” so that, instead of a single Hajj, ten Hajj are written—this, if accepted—and Allah Most High multiplies beyond that for whom He wills.

This applies when the act is performed as an act of dutifulness, kinship, and charity. As for Hajj performed for a fee, only one Hajj is recorded for him, as in the report—because he did not do it as charity, but for remuneration; he took his wage in the world, and Allah Most High writes for him one Hajj out of bounty and mercy.

As for bodily obligations, their scope is narrower: none may perform a bodily obligation, such as the prayer, on behalf of another—except for Hajj, in which deputization has been authentically permitted in the

reports from the Prophet (*May Allah bless him and his family and grant them peace*).

The scholars have differed regarding fasting: some permitted deputization, others did not.

As for obligations involving wealth and transactions, deputization therein is valid. The scholars said: whatever a legally responsible person is permitted to do himself, he is permitted to appoint an agent to do it for him. Some exceptions to this principle have been mentioned—such as reviving dead land, hunting, and the like—but what appears preferable to me is that agency in this is permissible, by the proof of what is narrated: that some of the Companions shared among themselves what would accrue to them of spoils on the Day of Badr.

[On Requiring the Homeland as the Starting Point for Performing Hajj on Behalf of the Deceased]

In *Ḍawʿ al-Nahār*: Requiring the homeland as the point of initiating Hajj on behalf of the deceased is invalid—due to the absence of a legal proof. This is supported in *al-Minḥah*, where it is said to be the truth. End.

I say: A deceased person who bequeathed the Hajj of Islam and then died in his homeland—if he had been capable, were it not for the barrier of death—would have been obligated to travel from his homeland to perform Hajj, for Hajj cannot be accomplished except by that. Traveling from the homeland is among the preliminaries of Hajj, without which the Hajj of the deceased would not be completed. Thus, traveling from the homeland is something that had been obligatory upon the testator as a corollary of the obligation of Hajj, and he must therefore bequeath accordingly.

This requires no explicit proof, for it is among the matters without which Hajj cannot be completed.

[The Ruling on Performing Hajj from Makkah or al-Madīnah on Behalf of a Man from Yemen]

Question: Is it valid for a man to perform the Hajj of Islam on behalf of a man from Yemen, starting from al-Madīnah, for example, or from Makkah?

Answer—and Allah grants success and aid: When Hajj becomes obligatory upon a legally responsible person, its preliminaries also become obligatory upon him. Thus, if the man is in Yemen, it is obligatory upon him to leave his home and traverse the long stages of travel until he reaches the *mawāqīt*; when he reaches them, he begins the rites of Hajj.

If Hajj became obligatory upon him but he failed to perform it until he

was unable to perform it himself, then he must appoint a proxy to carry out what had been obligatory upon him—he hires someone to leave his home on his behalf, traverse the stages of travel until reaching the *miqāt*, enter *ihrām*, and so on.

This is how one fulfills what has become obligatory upon him of the Hajj obligation.

As for hiring someone to perform Hajj on his behalf from among the people of the *miqāt* or the people of Makkah, then he has not fulfilled everything that was obligatory upon him; he has only fulfilled part of what was obligatory.

If it is said: According to what you have mentioned, two things were obligatory upon him—first: Hajj, and second: its preliminaries. On that basis, the Hajj would be valid while its preliminaries remain in his liability?

We say: What is correct is that which accords with the command of the Lawgiver. We have explained that the one upon whom Hajj is obligatory is, by the Sharī'ah, commanded to leave his home and traverse the stages of travel until he reaches the *miqāt*, and so on.

Hajj from Makkah has a particular description; Hajj from al-Madīnah has a different description; Hajj from Yemen has yet another description distinct from the first two; and Hajj from China has a description different from those.

Nevertheless, we say: The Hajj is valid in any case—but it does not discharge the Hajj of Islam. With acceptance, the hired proxy is written his wage and reward; however, as we have said, it does not discharge the Hajj of Islam.

- If the Hajj is supererogatory, then the one commissioning it may hire whomever he wishes, from wherever he wishes.

- Hajj may become obligatory upon a person; he then makes a bequest, or he leaves insufficient funds to perform the obligation that had become due upon him. After his death, his guardians or executor wish to perform Hajj on his behalf, but what the deceased left does not suffice—because the costs of Hajj have multiplied greatly—and his children are unable to cover the costs due to poverty, yet they wish to hasten to perform the Hajj. In such a case, there is no harm upon them to hire someone to perform Hajj on behalf of their deceased from wherever is feasible; nothing more is required of them: *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah:286]

If, however, the estate of the deceased is large, then it is obligatory upon his guardians to fulfill the Hajj from the estate.

[The Ruling on One Who Died without Bequeathing Hajj]

The scholars of the madhhab said: “It is not obligatory to have Hajj performed on behalf of the deceased except from one-third [of the estate], if he had bequeathed Hajj. If he did not bequeath it, then having Hajj performed is not obligatory—neither from the one-third nor otherwise.”¹

I say: The preferable view is one of detail:

1. If the deceased deliberately left off bequeathing what was obligatory upon him of Hajj, while able to make a bequest, and while one-third of what he left would suffice for Hajj, and while the remainder of the estate would suffice for his heirs—in sum, he deliberately and negligently failed to bequeath Hajj—then in such a case it is not obligatory to have Hajj performed on his behalf.
2. If the legally responsible person dies suddenly, or in a car accident, or the like, and Hajj had been obligatory upon him—and we know or think, based on his condition, that he was keen to perform Hajj due to his religiosity and his observance of piety, and that had he been able to make a bequest he would have done so (based on the apparent)—and he left an estate whose one-third suffices for Hajj, then it is obligatory upon the heirs to have Hajj performed on his behalf.

We say this because:

1. The believing deceased who was overtaken by death before performing Hajj has a right in the wealth he left—namely, the settlement of what was upon him of Allah’s rights or the rights of His creatures.

If it is said: Hajj is among the obligations due upon one’s person, not among those established upon his wealth.

We say: That is so; however, the obligation transfers from the body to the wealth when Hajj becomes impossible upon the body. The one who dies suddenly—by his death it becomes apparent to us that the obligation had transferred to his wealth, for Allah knew that Hajj had become impossible for that man prior to his death. In that case, the obligation became attached to the wealth before the man’s death.

2. No distinction has become evident to us between financial obligations whose origin of obligation is bodily and then transfer to wealth, and those whose origin is financial from the outset.
3. There is a transmitted report in this chapter: “The debt owed to Allah is more deserving of being fulfilled.”

1- *Sharḥ al-Azhār* 2/172 and after.

4. It may be said: When Hajj becomes obligatory upon the legally responsible person and he does not perform it, the obligation transfers to his liability (*dhimmah*). He is not absolved before Allah except by discharging what is in his liability—and discharging what is in the liability occurs only by the person performing Hajj himself or by another performing Hajj on his behalf.

[On Performing Hajj on Behalf of the Deceased without a Bequest]

Al-Nasā'ī narrated—with his chain—from Ibn 'Abbās: A woman vowed to perform Hajj, then died. Her brother came to the Prophet (*May Allah bless him and his family and grant them peace*) and asked him about that. He said: "*What do you think—if [your sister] had a debt, would you pay it?*" He said: "Yes." He said: "*Then fulfill Allah's right, for He is more deserving of fulfillment.*"

Al-Nasā'ī also narrated that a woman asked the Prophet (*May Allah bless him and his family and grant them peace*) about performing Hajj on behalf of her mother, and the answer was similar to that.

And it is narrated that a woman asked the Prophet (*May Allah bless him and his family and grant them peace*) about performing Hajj on behalf of her father, and he said: "*Perform Hajj on behalf of your father.*"

These are three narrations from the Prophet Muhammad (*May Allah bless him and his family and grant them peace*); from them it cannot be taken that performing Hajj on behalf of the deceased—without a bequest—by a son or a brother is valid.

[Hajj on Behalf of a Sinner (Fāsiq) and Reciting the Qur'an for Him]

Question: Is it permissible to perform Hajj on behalf of a sinner, and to recite the portion of Qur'an he bequeathed for a fee?

Answer—and Allah grants success: Performing Hajj as a proxy on behalf of a sinner is permissible, for nothing prevents it except his sinfulness, and that is not an impediment to performing it but rather to its acceptance, in His saying: "*Indeed, Allah only accepts from the righteous.*" [al-Mā'idah:27]

Therefore, if the sinner bequeaths that Hajj be performed on his behalf, there is no objection to performing Hajj for him for a fee, for he has only bequeathed obedience to Allah and a righteous deed, and the most that can be said is that it might not be accepted from him.

Likewise, if the sinner bequeaths that charity be distributed to the poor, it is permissible for a believer to distribute it on his behalf as a proxy to the poor. Similarly, if he orders a mosque to be built or the like

among types of righteousness, it is permissible for a believer to act as his proxy in that. These and similar acts are deeds of goodness, and the most that can be said is that Allah Most High might not accept them from him.

As for the one striving to carry that out, he has the reward for his deed and his striving, in His saying: *“So their Lord responded to them, ‘Indeed, I do not allow to be lost the work of [any] worker among you, whether male or female.’”* [Āl ‘Imrān:195]. And His saying: *“For it [i.e., every soul] is what it has earned, and against it is what it has incurred.”* [al-Baqarah: 286]

Yes—there has come a prohibition on seeking forgiveness for the polytheists, on the grounds that they are enemies of Allah and inhabitants of Hellfire, in His saying: *“It is not for the Prophet and those who have believed to ask forgiveness for the polytheists—even if they were relatives—after it has become clear to them that they are companions of the Hellfire. And the request of Abraham for forgiveness for his father was only because of a promise he had made to him; but when it became clear to him that he was an enemy to Allah, he disassociated himself from him ...”* [al-Tawbah: 113-114]

From this verse it has been taken that it is not permissible to supplicate for Allah’s enemies with good of the Hereafter. Accordingly, a believer regarding the sinner should not seek forgiveness for him nor supplicate for him with the good of the Hereafter.

As for reciting the Qur’an, it has two considerations:

If by its recitation one intends to seek nearness to Allah on behalf of the deceased sinner—asking mercy for him, pardon for him, forgiveness of his sins, and the like of the good of the Hereafter—then it is not permissible to recite it with that intention, due to the cited evidence prohibiting supplication for Allah’s enemies.

If, however, one intends by recitation merely the execution of the bequest, then apparently there is no objection to that, for reciting the Qur’an is obedience to Allah. And the most that can be said—as previously mentioned—is that the deceased sinner’s act which he commissioned and bequeathed may not be accepted from him.

If it be said: The deceased bequeathed the recitation intending thereby nearness to Allah and seeking by it forgiveness and mercy, etc.

We say: The deceased has his intention, seeking of nearness, and will. As for the reciter, he neither sought nearness nor supplicated nor sought forgiveness for the sinner; he only recited the Qur’an with the sinner’s intention in mind. Thus the intention and seeking of nearness are from the sinner, while the recitation is from the reciter—so the prohibited matter has not occurred, and what did occur is obedience to Allah.

Yes—there is a third case: that the recitation of the Qur’an be directed

“to the soul” of the sinner. Reciting the Qur’an with this intention is not permissible, because its purpose in that case is to seek good for the sinner and to supplicate on his behalf—and that, as stated, is prohibited.

It is proper to avoid what appears to magnify and show allegiance to a sinful deceased person. Such acts include following his funeral, praying over him, gathering to recite the Qur’an “to his soul,” and building over his grave—due to His saying regarding the hypocrites: *“And do not ever pray over any of them who has died, nor stand at his grave. Indeed, they disbelieved in Allah and His Messenger and died while defiantly disobedient.”* [al-Tawbah:84]

It is permissible to take a fee for reciting the Qur’an, by the proof of the report of the expedition in which they performed ruqyah for the chief of a people with the Qur’an for a flock of sheep; they informed the Messenger of Allah (*May Allah bless him and his family and grant them peace*), and he approved them. This story is well-known.

Also, this story indicates the permissibility of treating a sinner with ruqyah from the Qur’an—as well as a dhimmī—and taking a fee for that.

Furthermore, in the marginal notes on *Sharḥ al-Azhār* it is stated: As for the sinful, if the recitation is at his grave or “to his soul,” it is not permissible to take a fee for that. But if it is “to the soul” of the Prophet (*May Allah bless him and his family and grant them peace*) or the People of the Cloak (Ahl al-Kisā’) or other virtuous ones, that is permissible and taking a fee is lawful—analogous to performing Hajj on behalf of another. End.¹

[The Ruling on Performing Two Ḥajj in One Year on Behalf of a Deceased Person]

Question: Is it valid to have Hajj performed on behalf of a deceased person with two Hajj in one year—one obligatory and the other supererogatory?

Answer—and Allah grants success: There is, as it appears to me, no objection to that. If two persons perform two Hajj for a single man, that is valid. What is prohibited is for a single person to perform two Hajj in one year—whether for himself or for someone else. It is valid for a single person to enter iḥrām for Hajj and ‘Umrah together in one iḥrām.

The Hajj legislated in the Sharī‘ah is of three types:

1. Entering iḥrām for Hajj alone.

1- *Sharḥ al-Azhār* 3/252.

2. Entering iḥrām for ‘Umrah, then enjoying it up to Hajj (*tamattu’*).
3. Entering iḥrām for Hajj and ‘Umrah together.

[When Deputization (Istinābah) in Hajj Is Valid]

According to the madhhab, as in *Sharḥ al-Azhār*, a legally responsible person deputizes for Hajj when there is an irremediable excuse—as well as due to fear, incapacity, and the absence of a maḥram in the case of a woman. End (*Adopted*). (قرئ)

If he has someone perform Hajj on his behalf before achieving certainty of the excuse’s permanence, it is invalid—even if later he does become certain—according to what the two authorities authenticated for the madhhab.

Abū Ḥanīfah and the two sons of al-Hādī (*peace be upon them*) said: Rather, it suffices. End.

I say: Among the excuses that occur to many people is that when they ride in a car and it moves, they experience dizziness and nausea, then vomit, and this continues with them. This occurs frequently among elderly women, and less so among others.

What I see is that this is an excuse permitting deputization when the legally responsible person is convinced that it will persist and not go away.

If it is said: The one with this ailment could seek treatment in order to perform Hajj.

We say: Most elderly women—or nearly all of them in our lands—know full well that this ailment arises from riding in a car, and that the only “treatment” to be cured of it is to refrain from riding. Accordingly, they are not obligated to seek medical treatment, since they have no knowledge of the possibility of treatment for it by means of medicines.

Yes—if the elderly woman is among those who know that treatment is possible, such as city-dwellers, and she knows that using the medication will not harm her—then she is obligated to seek treatment.

As for the women of the deserts, they know nothing of that. If told that treatment is possible for that ailment, they may not believe it. Many elderly Bedouin women have never known hospitals nor taken a single pill in their lives, and they may fear taking pills.

I have myself seen some elderly women among my relatives refuse to take pills and syrups entirely; they never used any of that throughout their lives. They are convinced of the lack of benefit—or even of the harm—of medications, and such people are not obligated to use treatment.

I also see in the statements of the two sons of Imām al-Hādī (*peace be upon him*) and of Abū Ḥanīfah lenience and ease that befit the lenience and ease of Islam. On that basis, if the legally responsible person had despaired (to the best of his judgment) and then had someone perform Hajj on his behalf—and later it became clear that his despair had been mistaken—then the Hajj is valid and he is not required to perform Hajj anew, because:

1. The despair occurred by strong presumption.
2. One must hasten to fulfill an obligation—on the basis that Hajj had already become obligatory before—and Allah does not charge a soul except [with that within] its capacity.

[Is Hajj Valid on Behalf of an Elderly Sick Woman Who Tires from Walking?]

Question: There is an elderly woman who suffered a stroke that paralyzed her arm and leg. She is able to walk only weakly, with hardship and fatigue, due to old age and paralysis. Is it valid to equip someone to perform the Hajj of Islam on her behalf?

Answer: If the matter is as described, it is permissible to appoint someone to perform Hajj on her behalf. One whose arm and leg are paralyzed—especially alongside advanced age and weakness—cannot manage ṭawāf and sa'y amidst the severe crowds. Indeed, it is not permissible for such a person to endanger herself in the crowd: *"Allah does not charge a soul except [with that within] its capacity."* [al-Baqarah]

If it is said: There are wheelchairs/carts by which ṭawāf and sa'y can be done for a fee.

It is said to him: That is not required—even if such chairs are available—because the excuse remains: paralysis of an arm and a leg together with the weakness of old age.

Moreover, what appears to me—and Allah knows best—is that a very elderly woman, and likewise a very elderly man whose strength has been sapped by age, may validly have Hajj performed on their behalf during their lifetime, on condition that they acquire a strong presumption and conviction that they cannot perform Hajj. When that presumption of incapacity is attained, it is permissible for them to commission someone to perform Hajj on their behalf.

[One Who Bequeathed the Hajj of Islam, Then Hajj Costs Rose]

Question: A man bequeathed that the Hajj of Islam be performed on his behalf, but the costs of Hajj have risen, and his heirs are poor; they do not have from his estate what covers the costs. Is it permissible for them to hire someone to perform Hajj for him from within Saudi Arabia?

Answer: If the matter is as stated, then it is permissible for them to

have Hajj performed for him from within Saudi Arabia; indeed, it is obligatory upon them, and it is valid on behalf of the deceased. Allah Most High said: *“Allah does not charge a soul except [with that within] its capacity.”* [al-Baqarah:286]. And: *“So fear Allah as much as you are able.”* [al-Taghābun: 16]. And in the ḥadīth: *“If you are commanded to do something, then do of it what you are able.”*

Know that initiating the travel of Hajj on behalf of the deceased should be from the homeland in which he died. If the initiation from the homeland is left, and it is initiated for his Hajj from al-Ṭā’if or from Jeddah, the Hajj is valid and discharges the deceased’s Hajj of Islam. If it was the testator himself who stipulated that [shorter route] while being wealthy, then he sins; likewise the executor, if the one-third was sufficient to cover his Hajj from the deceased’s homeland.

[Where to Disburse the Pilgrim’s Charity]

Question: If a pilgrim owes charities in the form of food, is it permissible to disburse them outside the inviolable Ḥaram?

Answer—and Allah grants success: The scholars of the madhhab said: Everything that becomes due in Hajj—be it *dam* (blood sacrifice), charity, or monetary value—the place of its disbursement is the inviolable Ḥaram (except fasting), if it is due as a *fidyah*, expiation (*kaffārah*), compensation (*jazā’*), or the like; and the *dam* for sa’y may be [slaughtered] wherever he wishes—except for the three days’ fast in the case of the *mutamatti’*.¹

I say: One can argue for the madhhab’s view by noting that the charity or monetary value due from the pilgrim takes the ruling of a substitute for the *dam*, and so it should be disbursed where blood-sacrifices are disbursed.

As for fasting: although it is a substitute for the *dam*, no benefit of it accrues to the people of the Ḥaram.

Moreover, a substitute is not restricted to the location of what it substitutes for except by proof—as in the fast of the *mutamatti’*. Specification of place has come only regarding blood-sacrifices, not regarding food and fasting—just as in His saying concerning the compensation for killing game: *“...as an offering delivered to the Ka’bah, or an expiation: feeding the poor, or the equivalent thereof in fasting—so that he may taste the consequence of his deed.”* [al-Mā’idah:95]. And His saying: *“...and do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah:196]. And His saying: *“Then its place of removal is at the Ancient House.”* [al-Ḥajj:33]. The apparent sense of the

1- Sharḥ al-Azhār 2/194.

Qur'anic proof is the permissibility of charity and fasting outside the Ḥaram.

[Benefit: No Blood Due for Renunciation (Rafḍ), and the Validity of Deputization Even without a Bequest]

The ḥadīth in *al-Majmūʿ*: The Prophet (*May Allah bless him and his family and grant them peace*) heard a man making talbiyah on behalf of Shubruma, so he said: “*This [Hajj] is for yourself,*” or: “*Perform Hajj for yourself, then for Shubruma,*”—or as he said. This indicates that no *dam* is due for *rafḍ*, because the Prophet (*May Allah bless him and his family and grant them peace*) did not command the one making talbiyah on behalf of Shubruma to offer a *dam* for renunciation—and he (*May Allah bless him and his family and grant them peace*) was in a context of teaching.

It also indicates the validity of deputization in Hajj even without a bequest—from a brother, a son, and others—for in this ḥadīth he said, “*And who is Shubruma?*” He replied, “A brother of mine,” etc. The context is instructional, and had a bequest been a condition, he (*May Allah bless him and his family and grant them peace*) would have clarified it.

[A Man Owed a Blood-Sacrifice in Hajj, Then Bought a Ram and Gave It Away before Slaughtering It]

Question: A man owed a *dam* in Hajj. He bought a ram and gave it to a poor person before slaughtering it, being ignorant that giving the *dam* to the poor is not valid except after slaughter. He only realized this mistake some time later. What is required of him?

Answer—and from Allah is success: What I incline to is that this suffices for him:

1. Because the Prophet (*May Allah bless him and his family and grant them peace*) excused mistakes in some partial acts of Hajj; and “*There is no blame upon you for what you have done by mistake, but [only] for what your hearts intended.*” [al-Aḥzāb:5]
2. Ignorance is often a cause of pardon in many legal rulings.
3. The issue is speculative and juristic; error in such matters is pardoned—both for the jurist and the ignorant.

Benefit: [On the Times of Blood-Sacrifices in Hajj]

The scholars of the madhhab said: The time for the blood-sacrifices of *qirān*, *tamattuʿ*, *iḥṣār* (being prevented), *ifsād* (corruption), and voluntary [offerings] in Hajj is the Days of Sacrifice by choice, and after them by necessity—so a *dam* for delay becomes due. End.

I say: The preferable view regarding the time of the *dam* for *tamattuʿ* is that it extends from the moment the *mutamattiʿ* finishes his ‘Umrah until the end of the Days of Sacrifice.

If it is said: The time has been fixed as the Days of Sacrifice in His saying: *“And do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah:196]

We say: That concerns the *dam* of *qirān*, *iḥṣār*, and voluntary [offerings]. The *mutamatti‘* is not included by that proof, because he shaves or trims after completing the acts of ‘Umrah.

The scholars of the madhhab argued—as in *al-Baḥr*—that the Prophet (*May Allah bless him and his family and grant them peace*) slaughtered the camels of his *qirān* during the Days of Sacrifice, and he said: *“Take your rites from me.”* And there is no disagreement that the *dam* of *tamattu‘* is like it.

One may answer them:

First: by His saying: *“So whoever performs ‘Umrah [during the Hajj months] followed by Hajj—then [let him offer] whatever is easy of sacrificial animals.”* [al-Baqarah:196]. The apparent sense of the apodosis particle (*fa-*) indicates immediate sequence without delay.

Second: that what is due upon those *mutamatti‘ūn* who do not find a sacrificial animal is to fast three days during Hajj in lieu of the *hady*, the last of them being the Day of ‘Arafah. If these days pass, the *mutamatti‘* fasts during the Days of Sacrifice. From this it is inferred that the time for the *dam* runs from the completion of the ‘Umrah until the end of the Days of Sacrifice.

Third: by analogy with expiatory bloods, *fidyah*, and compensations. This analogy appears stronger than the analogy of the madhhab because of the clear common rationale: the *dam* of *tamattu‘* was instituted on account of concession.

This is indicated and alluded to by His saying: *“So whoever performs ‘Umrah [during the Hajj months] followed by Hajj—then [let him offer] whatever is easy of sacrificial animals.”* [al-Baqarah:196]

On what we have mentioned, both Makkah and Minā are places for slaughtering the *dam* of *tamattu‘*. If the *mutamatti‘* slaughters before the Days of Sacrifice, he slaughters in Makkah; and if he slaughters during the Days of Sacrifice, he slaughters in Minā.

Yes, *qirān* is a kind of *tamattu‘*; but the *qārīn* does not shave or trim upon completing the acts of ‘Umrah. Thus, he must delay slaughtering the *hady* until he shaves or trims, and the *qārīn* may not shave or trim except on the Day of Eid—by His saying: *“And do not shave your heads until the sacrificial animal reaches its place of sacrifice.”* [al-Baqarah:196].

[Benefits from the 1433 AH Hajj Journey]

In the Name of Allah, the Most Merciful, the Bestower of Mercy

And the prayers, peace, mercy, and blessings of Allah be upon our master Muḥammad and upon his pure family.

Today is the nineteenth day of Dhū al-Ḥijjah of the sacred year 1433 AH. It is the second day since my return from the journey of Hajj. I did not have a notebook available at the time I wrote these lines, so I took this guide¹ and ran my pen across its blank margins. It became active and at ease, it ran and raced, went and returned, brought relief and took its rest, and in its running it began to display all kinds of motions and images of inventions.

Praise be to Allah for the abundant favors He has bestowed upon us—never withholding them from us for the blink of an eye since our descent into this abode. We ask Him, Exalted, to include us in His mercy among those upon whom He has mercy, and to grant us success and right guidance until He takes us in death as sincere Muslims—by the right of His trustworthy Messenger (*May Allah bless him and his family and grant them peace*), and by the right of his chosen Household—may Allah’s prayers, mercy, and blessings be upon them—and by the right of every one who has a right among the angels brought near, the prophets and messengers, the martyrs and the righteous, and all the obedient to Allah from the first and the last. And may Allah’s prayers and peace be upon His angels, His prophets, and His messengers. Peace be upon us and upon the righteous servants of Allah. After this:

Several violations of the madhhab occurred during this year’s Hajj at the hands of many common Zaydis, among them:

1. A number of people spent the night of Muzdalifah outside the boundaries of Muzdalifah, thinking they had reached it. When morning came, they saw the “Muzdalifah” signs that mark its boundaries, and realized they had spent the night outside it.
2. Many pilgrims leave ‘Arafāt in cars and buses: some reach Muzdalifah at midnight, some in the last third of the night, some in the first third, and some not until dawn.
3. Many Zaydi pilgrims depart from Muzdalifah to the Ka‘bah and perform Ṭawāf al-Ziyārah before stoning.
4. Some left ‘Arafāt and walked with the people until reaching Minā at the Major Jamrah. They did not spend the night in Muzdalifah nor stand there, and they stoned the Jamrah in the last third of the

1- It is a user guide for an electronic device shaped like a notebook; in its blank spaces the author—may Allah support and preserve him—recorded these words.

- night and exited iḥrām along with those who exited—etc.
5. Some of those hastening (al-muta‘ajjilūn) perform the Farewell Ṭawāf on the night of the twelfth of Dhū al-Ḥijjah, then stone the Jamrāt at sunrise, and then proceed to their families.
 6. Many of our pilgrims leave Makkah to visit the Messenger (*May Allah bless him and his family and grant them peace*) before performing the Farewell Ṭawāf. Upon returning from the visit, they enter iḥrām for an ‘Umrah; when they arrive in Makkah, they perform two ṭawāfs—one for their ‘Umrah and the other as Farewell—then they perform sa’y and trimming, and return to their families.
 7. Some delay shaving or trimming until they reach their home country, then shave or trim there.
 8. A car driver puts on his sewn clothes and removes his iḥrām garments at the entry to Makkah so that his car will not be impounded. Is that considered an excuse permitting wearing [sewn clothes] and [only] a fidyah?
 9. Some pilgrims entered Makkah without iḥrām in Dhū al-Qa‘dah, intending to perform Hajj when the people perform it—this was done out of ignorance. What is required?
 10. He entered iḥrām for an ‘Umrah on the third of the Days of Tashrīq, performed ṭawāf, sa’y, and trimming. What is the ruling required?
 11. Some were occupied on the night of the eleventh with Ṭawāf al-Ziyārah, and did not reach Minā until after midnight—having spent less than half the night in Minā.
 12. The sun rises upon those departing from Muzdalifah before they have crossed its boundaries, even though they did not fall short in setting out after the Fajr prayer and a little remembrance. What is required?
 13. Some inadvertently apply a bit of perfume, or wash their hands with perfumed shampoo, or cover their heads by mistake. What is the ruling in that?
 14. It was difficult for many elders and elderly women to reach the Jamrāt on the second and third days, as access could only be achieved by walking on foot. They appointed proxies to stone on their behalf for the two days. What is required?
 15. Some entered iḥrām for Hajj or ‘Umrah, then something arose and he removed his iḥrām garments and went about his business. What is due upon him?
 16. A man entered iḥrām for a single Hajj. When he arrived in Makkah

he performed Ṭawāf al-Qudūm and sa'y. Some people then instructed him to trim and exit iḥrām, so he trimmed and put on his clothes—being a layman. What is due upon him?

[Answers to the Above, in Order]

1. Two blood-sacrifices (*dam*) are required: one for omitting the overnight stay in Muzdalifah, and one for omitting the combining of Maghrib and 'Ishā' there. If those who spent the night outside Muzdalifah entered it after Fajr, remembered Allah there, and departed from it before sunrise, the *dam* for passing by al-Mash'ar and the *dam* for departing before sunrise fall away. If they did not do that, then two *dams* are also due.

The proof is what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “Whoever leaves a rite owes a *dam*.”

What I hold is that these blood-sacrifices fall away due to the ḥadīth of the man from the mountains of Ṭay'—this ḥadīth is well known.

Moreover, al-Shāfi'ī's madhhab is that the overnight stay in Muzdalifah and what it contains of rites is Sunnah. So if the questioner is a layperson, his madhhab is the madhhab of the scholar he follows.

2. Whoever misses most of the night's stay in Muzdalifah owes a *dam*—in any case, whether due to an excuse or not. This is the madhhab.

What I prefer is that whoever misses it due to traffic congestion and is unable to walk—or finds walking hard due to advanced age, illness, or the like—the *dam* is waived for him. As for one who misses most of the night while able to walk with ease, the *dam* is not waived.

The proof of what we have stated is that the Prophet (*May Allah bless him and his family and grant them peace*) did not command the man from Ṭay' with any blood-sacrifice. He had asked the Prophet (*May Allah bless him and his family and grant them peace*) and mentioned his excuse; that indicates that the bloods of Muzdalifah are waived for excuses.

It is not hidden that in Muzdalifah there are four rites; omitting any one of them entails a *dam*: spending most of the night there, combining the two night prayers there, remembering Allah at al-Mash'ar al-Ḥarām after the Fajr prayer, and departing from it before sunrise.

3. The Sunnah is that the pilgrim depart from Muzdalifah to Minā to stone Jamrat al-ʿAqabah. This is what the Prophet (*May Allah bless him and his family and grant them peace*) did. Departing from Muzdalifah to Makkah for Ṭawāf al-Ziyārah is contrary to the Prophet's Sunnah and customary practice.
4. The scholars said: the madhhab of the layperson is that of the scholar he follows. The person mentioned followed al-Shāfi'ī's

madhhab; thus nothing is due from him.

5. The Sunnah is that Ṭawāf al-Wadā‘ be the last rite of Hajj. This is how the Prophet (*May Allah bless him and his family and grant them peace*) and the Muslims did in the Farewell Pilgrimage, and he (*May Allah bless him and his family and grant them peace*) commanded the pilgrims that their last act of the rites of Hajj be ṭawāf of the House. One should not contravene the established Sunnah of the Prophet (*May Allah bless him and his family and grant them peace*).
6. The Prophet (*May Allah bless him and his family and grant them peace*) stoned the Jamrāt on the twelfth day after the sun had passed the meridian, together with the Muslims who performed Hajj with him. Whoever wishes to hasten on this day may do so; nothing then remains upon him except Ṭawāf al-Wadā‘. He should perform ṭawāf after stoning. Doing ṭawāf before stoning is contrary to the established Sunnah, and contravening and neglecting the Sunnahs is not proper nor permissible. Nor should Ṭawāf al-Wadā‘ be delayed until returning from the visit to the Prophet (*May Allah bless him and his family and grant them peace*). Rather, the Sunnah is to perform the Farewell ṭawāf, then travel to al-Madīnah or elsewhere.
7. The Sunnah is that the pilgrim shave his head after stoning Jamrat al-‘Aqabah on the Day of Eid—or after he stones and slaughters if he has a *hady* or an uḍḥiyah. It should not be delayed beyond the Days of Tashrīq, nor until one reaches his homeland—this is to emulate the Prophet (*May Allah bless him and his family and grant them peace*) in the works of Hajj. He said to the pilgrims: “*Take your rites from me.*”
8. If impounding the car would cause hardship and harm to the owner or to one of his companions, it is permissible for him to wear sewn clothes. If only fatigue and financial cost would result, then it is not permissible to wear sewn clothes; prohibitions are only permitted in cases of necessity.
9. A *dam* is due upon one who passed the *miqāt* without iḥrām until he entered the inviolable Ḥaram—this is the *dam al-isā’ah* (penalty for wrongful conduct). If he then wishes to enter iḥrām for Hajj, then if he is able to return to the *miqāt* he must return and enter iḥrām from there. If he is unable, he goes out of the Ḥaram to al-Tan‘īm or to ‘Arafāt, enters iḥrām from there, then, if he wishes, enters Makkah to perform Ṭawāf al-Qudūm and sa‘y; or, if he wishes, he goes to ‘Arafāt and delays his Ṭawāf al-Qudūm and sa‘y until the Day of Eid, after which he performs Ṭawāf al-

Ziyārah.

10. Whoever performed ʿUmrah in the Days of Tashrīq owes a *dam*—the *dam al-isāʾah*.
11. What appears to me—and Allah knows best—is that nothing is due upon him, because he was not negligent, seeing that he did only what he was commanded of Ṭawāf al-Ziyārah.
12. What appears to me—and Allah knows best—is that nothing is due, because the one departing from Muzdalifah did what he was able. I myself experienced this: I departed from Muzdalifah (from the hill of al-Mashʿar) near the mosque shortly after the Fajr prayer, and I walked briskly; yet the sun rose before I exited Muzdalifah’s boundaries. The reason was the congestion of pedestrians and cars. Allah does not charge a soul except [with that within] its capacity.
13. If the person in iḥrām applies perfume, he must wash it off immediately, and nothing is due upon him. He is sinful if he deliberately applies it. If the person in iḥrām deliberately covers his head, a *fidyah* is due—fasting, charity, or a sacrifice.
14. Deputization is valid in stoning the Jamrāt for those with excuses. With an excuse, nothing is due upon the one who appoints a proxy to stone on his behalf; it has not been narrated that the Prophet (*May Allah bless him and his family and grant them peace*) commanded the camel herders with anything for spending the night outside Minā.
15. Whoever annulled his iḥrām and renounced it has erred, and owes a *dam*—the *dam* of renunciation. Then he must make up what he renounced—whether Hajj or ʿUmrah.
16. Whoever did that owes a *fidyah*—fasting, charity, or a sacrifice. He must remove his clothes, put on the two garments of iḥrām, and his “release” is no release at all.

Book of Marriage and Related Matters

[Shaking Hands at the Marriage Contract and Covering the Hands]

Question: Is there any basis for shaking hands with both hands and covering them at the time of the marriage contract, or not?

Answer—and Allah grants success: It is mentioned in the marginalia of *Sharḥ al-Azhār* as follows: “Benefit: It is mentioned in *al-Fā’iq*, from the Prophet— *May Allah bless him and his family and grant them peace* — that he said: ‘*There is blessing in handshaking at the marriage contract.*’” As for the manner of handshaking, some said: it is like the handshake of allegiance (*bay’ah*), not as people commonly do by setting the open palm upright. End.

Then at the end of this marginal note he said: “Covering [the hands] is recommended,” as mentioned in the Tafsīr of al-Tha’labī. End of the marginal note to *Sharḥ al-Azhār*.¹

I say: Shaking right hands at contracts, covenants, pledges, and oaths is something about which doubt should not intrude; hence contracts, covenants, and pledges are called *aymān* (“oaths”), named after the *yad al-yamīn* (right hand) with which one strikes into the other hand at the time of contracts and pledges.

[What Should a Man Do Who Wants to Marry but the Wedding Custom Involves Women’s Singing Parties?]

Question: A religious student of knowledge wants his family to marry him off. However, the people of that land have a bad custom: the women hold singing parties at weddings, apart from the men. What should this student do? Should he forgo marriage despite his strong need for it? Or should he denounce the wrong with his hand and tongue—though the first to stand against him would be his father? What should he do?

Answer—and Allah grants success: The student in question should marry; he should not leave marriage because of what he mentioned. It is incumbent upon this student to denounce the wrong in the best way—with gentleness, softness, and forbearance. If that has an effect and the wrong is abandoned, then what a blessing; otherwise he has conveyed the proof to them.

He should not then confront his father with harshness and severity. However, he must shun gatherings of amusement and not attend them. Allah Most High said: *“But if they strive to make you associate with Me*

1- *Sharḥ al-Azhār* 2/202.

that of which you have no knowledge, then do not obey them; but accompany them in the world with appropriate kindness.” [Luqmān:15]

[Concluding a Marriage Contract for a Boy to a Girl]

Question: A marriage contract was concluded marrying a boy to a girl. Then the girl reached puberty and the time for her marriage came, while the boy is still young and not yet at the time of marriage. Waiting for the boy to reach the age of marriage harms the girl and exposes her to temptation, and when the boy does reach the age of marriage he may not accept her due to her being older than he.

The boy’s guardian knows all this, acknowledges it, and wishes to relieve the girl from her predicament, and even testifies that the girl is harmed by waiting and exposed to temptation. What is the solution and way out?

Answer—and Allah grants success: The girl’s guardian or agent and the boy’s guardian should go to the judge and lay out their case before him. If the judge recognizes the harm to the girl, he must remove that harm by dissolving the marriage, or by issuing a divorce on behalf of the boy.

[Concluding the Marriage by Messenger and by Writing]

The madhhab holds: The marriage contract—offer and acceptance—is valid by messenger and by writing.

The witnesses must know that the letter is from so-and-so, and the letter containing the offer or the acceptance must be read to them.

Likewise, the witnesses must be present with the messenger and hear from him what he has been sent to convey of the request for marriage or of acceptance. So stated the scholars of the madhhab, as in *al-Sharḥ* and *al-Tāj*.

On that basis, marriage by telephone is valid on condition that the witnesses recognize the caller’s voice.

[A Form of Marriage in Our Land That Is Not Shighār]

It often happens in our land that two men each marry the other’s sister. A mahr is named for each woman, she is clothed as other brides are clothed, and she is adorned with gold jewelry. This happens in some regions frequently because the guardian stipulates upon the suitor hundreds of thousands of riyals and imposes large expenses; so if each marries the other’s sister, they are spared those onerous stipulations.

As for our nearby regions, marrying each one to the other’s sister does not lighten anything, because the guardian among us does not stipulate anything for himself; rather, he contributes from his own wealth to his daughter’s wedding. In that case, such an arrangement is not the *shighār* that is prohibited.

[The Ruling on One Who Married Another to What Is in His Wife's Womb, If It Is a Female]

Question: A man married another man to what his wife was carrying—she was pregnant—on condition that if it is female she is his wife, with a contract and witnesses. She then gave birth to a girl. Is the marriage valid or not?

Answer—and Allah grants success: The marriage is valid according to the madhhab, and the condition included in the contract does not invalidate it, because it is not in fact a future non-existent.

We say it is valid because the contract of marriage was concluded from the guardian to the husband in the presence of the witnesses over the guardian's daughter, and she existed at the time of the contract; her being in her mother's womb does not prevent the validity of the contract, due to the absence of a proof to that effect.

However, something may arise that prevents the validity of the contract—namely, if her father married her off for purposes that do not serve her interests; such a marriage would not be valid, because the guardian's authority over a minor is confined to those dispositions that serve the minor's interests—whether pertaining to her person or her property—and any other dispositions in which there is no benefit to the minor, neither to her person nor to her wealth, are not lawful or valid. Allah Most High said concerning guardianship over the orphan: *"And they ask you concerning the orphans. Say, 'Improvement for them is best.'"* [al-Baqarah:220]

The father's guardianship over his child and others' guardianship are the same in this: for the guardian's act to be valid, the benefit returning to the minor must be observed; otherwise, the act is invalid.

[The Ruling on the Son's Wife through Breastfeeding]

In *Ḍiyā' Dhawī al-Abṣār*: The son's wife through breastfeeding is forbidden—whether consummation occurred or not—by consensus. His saying, *"...from your loins"* [al-Nisā':23] is only to exclude the adopted son.

I say: Al-Hādī (*peace be upon him*), in *al-Aḥkām*, *al-Mukhtār*, and *al-Funūn*, said: The wife of a son through breastfeeding is permissible, and adduced the verse. End, abridged.

I say: It is authentic from the Prophet (*May Allah bless him and his family and grant them peace*)—with the Zaydīs and among the ḥadīth scholars—his statement, as in *al-Majmū'* and elsewhere: *"Do you not know that Allah has prohibited by suckling what He has prohibited by lineage?"* And in the wording among the ḥadīth scholars: *"Indeed, what is unlawful due to suckling is unlawful due to lineage."* Thus, the son through breastfeeding is like the son by lineage in the rulings of marriage.

Al-Hādī (*peace be upon him*) adduced the verse: “...and the wives of your sons who are from your loins” [al-Nisā’:23], relying on the *mafhum al-ṣifah* (implication of the qualifying attribute), and thereby specifying the generality of the ḥadīth. Others besides al-Hādī (*peace be upon him*) did not rely on the implication of the attribute here, holding that the attribute came only to exclude the adopted son.

Each of the two positions has supporting arguments. Favoring the position of al-Hādī (*peace be upon him*):

1. The apparent sense of the qualifying attribute is to restrict to the son by adoption and the son by suckling; one may not depart from the apparent except by proof—and the only proof is the generality of the aforementioned ḥadīth.
2. The implication of the attribute is in conflict with the generality opposing it; in such a case, the implication of the attribute is stronger than the opposing generality of the ḥadīth for two reasons:
 - a) The Qur’ān is of certain transmission.
 - b) It is obligatory to act on the Qur’ān; if a Qur’ānic proof is not found, then one acts on the Sunnah—so came in the ḥadīth of Mu‘ādh ibn Jabal.

Favoring the other view:

1. It accords with consensus, as mentioned in *al-Baḥr*.
2. It entails precaution.

Benefit: Refraining from Marrying the Sister of a Revocably Divorced Woman or a Fifth Wife while There is a Right of Return

His saying, *Exalted is He*, “*And their husbands have more right to take them back in that period*” [al-Baqarah:228], and “*Perhaps Allah will bring about after that a matter*” [al-Ṭalāq:1], indicate the prohibition of marrying the sister of a woman under a revocable divorce, and of marrying a fifth wife for one who has four wives and has revocably divorced one of them—because such a marriage conflicts with the *raj‘ah* (right of return) that Allah has granted to the husband.

[A Man Married an Infant Girl, Then His Brother’s Wife Breastfed Her—Upon Whom Is the Dowry Due?]

Question: A man concluded a marriage contract to an infant girl, then permitted—or ordered—his brother’s wife to breastfeed her, and she did so. The husband had fixed a dowry for this infant. By that suckling the marriage was annulled. Upon whom, then, is the dowry due? Is the named dowry due in full or only half? The intention from the outset in both the marriage and the suckling was to establish kinship between the said husband and the wet nurse—what is the ruling?

Answer—and Allah grants success: The dowry is due upon the husband, not upon his brother's wife. His permission and order to his brother's wife to breastfeed—while knowing that such suckling is a cause for dissolving the marriage—counts as a dissolution from his side, not from the side of his brother's wife. She has committed no transgression—near or far; rather, her action was pure beneficence, for she carried out the husband's purpose. Allah Most High says: *"There is no blame upon the doers of good."* [al-Tawbah:91]. And He says: *"Is the reward for excellence anything but excellence?"* [al-Raḥmān:60]

Thus, the husband owes her full dowry, because the annulment did not come from the wife. What appears to me is that halving the dowry applies in divorce, not in annulment.

The proof is His saying: *"Then if you know them to be believers, do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them. And give them [the disbelievers] what they have spent."* [al-Mumtaḥanah:10]. And His saying: *"And if any of your wives has gone from you to the disbelievers, and then you retaliate, then give those whose wives have gone the like of what they spent."* [al-Mumtaḥanah:11]

As for the scholars of the madhhab—as in the section on suckling in the *Sharḥ* and its marginal notes—they obligate, in this very scenario, only half the dowry.¹

[Combining Prohibited Kin in Marriage]

Question: A man married a woman and lived with her for some time and had children with her. It was then discovered that the marriage contract between them was invalid because there existed between this woman and the man's other wife a kinship that makes it impermissible to combine them in marriage. The man did not discover the invalidity of the marriage until after he had separated from the first wife. What should this man do?

Answer—and Allah grants success: The man may not approach this woman until her guardian concludes a new marriage contract for him to her, and a new dowry is due for her. The first marriage is invalid; however, lineage is established due to the ignorance (of the ruling), and the dowry is owed to her. She does not need to observe an *istibrā'* [waiting period to ensure the womb is clear] for the new contract, because the discharge is the husband's; it is permissible for him to have intercourse with her.

1- In his saying in *al-Azhār* "And only half of it, in the case of divorce—or if a dissolver (cause of annulment) before that was from his side alone." *Sharḥ al-Azhār* 2/265–266.

There is a difference between this case and that of a man who committed *zinā* with a woman and then married her, for he must in that case observe *istibrā'* of her womb, because the first discharge—though from him—does not belong to him, in light of the saying of the Prophet (May Allah bless him and his family and grant them peace): “The child belongs to the [lawful] bed, and for the fornicator is the stone.”

[Is it Permissible for a Man to Marry His Daughter Born of Fornication?]

Question: Is it permissible for a man to marry his daughter born of fornication?

Answer—and Allah grants success: It is not permissible for a man to marry his daughter born of fornication. Even if she is not his daughter in the legal (Shar‘ī) sense, she was created from his semen and is therefore a part of his flesh.

What is meant by saying that she is not his daughter “in the Sharī‘ah” is that there is no mutual inheritance between them, no legal lineage, and no maintenance—this is in the legal ruling. As for reality, she is his daughter; only, in the ruling of Allah one does not say: “So-and-so is the daughter of so-and-so.”

The evidence that she is his daughter in reality:

First: It is established that all people are called “the children of Adam,” and among them are many born of fornication, and none of the earlier or later scholars ever said that the children of fornication are not of the children of Adam.

Second: Allah Most High addressed the Jews collectively, saying, “O Children of Israel,” and fornication had later appeared among them.

This being so, the madhhab is as we have stated—prohibition. For it says in *al-Azhar*, in the course of listing those prohibited [to marry]: “and his descendants (faṣūluhu),” and in the marginal notes: “even if through fornication (*Adopted*).” (فرو) End.

And therein also: “She is prohibited to his son and his brother and the like.” And therein as well: “The ruling of descendants through fornication is the ruling of descendants through lineage with respect to the prohibition of marriage—by lineage, affinity, and suckling. This applies only to the prohibition of marriage; it does not extend to what branches from it—such as permissibility of looking, seclusion, traveling with her, and the like—so those are not permissible, giving precedence to the side

of prohibition.” End. (*Adopted*) (قرئ).¹

And in the *Sharḥ*: this is the view of Abū al-‘Abbās and al-Mu‘ayyad bi-llāh.

And in the marginalia: a similar view is reported from al-Hādī. End.²

And in the marginalia: “They agree on the absence of guardianship, inheritance, and maintenance, and on the establishment of *qisās* (retaliation).” Al-Faqīh ‘Alī said: “The criterion in ascertaining that she is from him is strong presumption along with intercourse.” End.³

[The Ruling on Marrying a Brother’s Daughter Born of Fornication]

Question: Is it permissible for a man to marry his brother’s daughter who was born of fornication?

Answer—and Allah grants success: If a man fornicates with a woman and that woman bears a daughter from the semen of that very man, it is not permissible for that man—nor for his brother—to marry that daughter. For, in truth and reality, she was created from his semen, even if her lineage is not established in the Sharī‘ah. Believers halt at doubtful matters; and in the ḥadīth: “*Leave what causes you doubt for what does not cause you doubt.*”

And in the ḥadīth from the Prophet (*May Allah bless him and his family and grant them peace*): “*The child belongs to the [lawful] bed, and for the fornicator is the stone.*” Its meaning is that the fornicator does not, by fornication, have the lineage of the child established for him, nor does he acquire any right to the child; rather, what he deserves is stoning with the stone.

Nevertheless—though this is so—the legal rulings are built upon outward appearances. If a person is certain that that girl was created from his semen, then it is not permissible for him to marry her, nor for his brother to marry her, nor for anyone to marry her who would be prohibited to him were she his daughter in the legal sense.

What we have stated is what is nearer to the truth, more rightly guided, safer in the religion, and more precautionary for believers

[One Whose Husband Has Been Absent for a Long Period]

Question: A woman’s husband has been absent from her for a long period during which all news of him has completely ceased. What should

1- *Sharḥ al-Azhār* 2/204–205.

2- *Sharḥ al-Azhār* 2/204.

3- *Sharḥ al-Azhār* 2/205.

this woman do?

Answer—and Allah grants success: The scholars have differed on this.

The scholars of the madhhab say that this woman waits until her husband's natural lifespan has passed, then she observes the waiting period (*ʿiddah*) of widowhood; thereafter, if she wishes, she may marry.¹

Imām Yaḥyā ibn Ḥamzah (*peace be upon him*), as in *al-Sharḥ* said that: al-Mukhtār, one considers the matter: if the wife has what she needs, the marriage remains in force—because only intercourse has failed her, and that is his right; but if she does not have what she needs, the marriage is annulled—by His saying: *“And live with them in kindness”* [al-Nisā':19], and *“Either retention in an acceptable manner or release with good treatment”* [al-Baqarah:22], and *“Do not harm them.”* [al-Ṭalāq:6]

Others said: She waits four years, then observes a waiting period of four months and ten days.

Imām al-Mahdī Aḥmad ibn al-Ḥusayn (*peace be upon him*) said: She waits one year by analogy to the impotent husband, then the judge annuls her marriage to ward off necessity. End of the citation of these views from *Sharḥ al-Azhār* and its marginal notes.²

I say: The matter should be entrusted to the Muslim judge, or—failing that—to those scholars who stand in his place. If the wife is young and temptation for her is feared, the marriage contract is annulled. If no temptation is feared for her—due to her advanced age or the like, such that she will not be harmed by temptation—then the marriage remains.

The proof for what we have said is what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*) in the well-known report: *“There is to be neither harming nor reciprocating harm in Islam.”* There is no harm greater than falling into the sin of fornication.

Yes, the reasoning of Imām Yaḥyā is strong, except that he excluded intercourse; yet the sounder view is that the loss of intercourse harms the wife, and what befalls her by its absence is greater than what befalls her by the loss of maintenance. Moreover, the “living together in kindness” that Allah has commanded entails intercourse, as do “retention in an acceptable manner” and the prohibition of harming her—so there is no basis for excluding intercourse.

Furthermore, annulment is only by the judge or by one who stands in his place, for he is the one who looks to the interests of the Muslims etc.

1- *Sharḥ al-Azhār* 2/215.

2- *Sharḥ al-Azhār* 2/214.

Benefit: A Woman Married by Her Guardian Who Then Died before She Knew

In *al-Muhadhdhab* by Imām al-Manṣūr bi-llāh ‘Abd Allāh ibn Ḥamzah (*peace be upon him*): If a guardian married off a woman while she was of age, then she died before knowing of the marriage—neither the marriage nor its rulings and attachments are established (inheritance, maintenance, or dowry). Likewise, if the husband died first, so long as she had not consented before his death. End.

I say: The validity of the marriage contract is contingent upon the woman’s consent: if she consents, the contract is valid and the marriage established; if she does not, then there is no marriage. Therefore, if the woman dies before learning of the marriage, the marriage is not established—because its establishment depends on her consent, and her consent has not occurred. This is in the case where the woman dies. As for the case where the man dies before she learns of the marriage and before her consent: since her consent to the man’s marriage contract has not occurred, the marriage is not established—and her consent after the man’s death does not validate nor establish the marriage, because in reality it no longer pertains to the man’s marriage itself, but only to the dowry, maintenance, and inheritance. And Allah knows best.

The Elder of Two Brothers Concluded the Contract, Though He Is Not the Guardian

Question: Two brothers—the elder of them concluded the marriage contract for their sister, although he is not the guardian; rather, the guardian is the younger brother. After a long time, doubt arose concerning the validity of the contract. What is the solution?

Answer—and Allah grants success: The custom and common practice in these lands is to give precedence to the elder brother in such matters, and that is tantamount to permission. If the husband wishes to remove doubt entirely, let him request from the younger brother an approval of the contract; there is no need to renew the contract.

The scholars of the madhhab have said that approval (*ijāzah*) may be by word—such as: “I approve,” “I consent,” or the like—or by deed, such as demanding the dowry. Accordingly, the younger brother’s arranging of the wedding, inviting neighbors and relatives, attending the banquet, receiving the guests, and the like—constitute a *de facto* approval of the marriage contract.

Benefit (On Marrying a Minor)

From the marginal notes on *Sharḥ al-Azhār*: The words of the scholars of the madhhab may appear to suggest that the guardian of marriage is

not required to consider the minor's best interest, unlike the guardian of property. It is transmitted from the author that there is no difference and that whoever possesses general guardianship—once guardianship in marriage devolves to him—must seek the minor girl's best interest, as must her male agnates.

This is reported from al-Manṣūr bi-llāh and Abū Maẓar. Al-Duwārī explicitly stated this in his commentary on *al-Luma'*, saying: "If there is no best interest, the contract is invalid, and the judge may annul it and forbid it—just as he may not dispose of her wealth by selling ... etc."¹

Concluding the Marriage Contract with a Minor

The scholars of the madhhab—per the marginal notes on *Sharḥ al-Azhār*—said: It is valid to conclude a marriage contract for a minor girl, whether or not there is a best interest.

The marginal notes report from al-Manṣūr bi-llāh and other scholars of the madhhab that the contract is not valid unless there is a best interest for the minor girl; otherwise it is invalid. This latter view is the worthier of acceptance, for guardians—great or small in scope—are charged to observe benefits and avert harms in whatever they oversee, and strong presumption suffices. They are not permitted to act within their guardianships in any manner that lacks benefit or entails harm.

The proof is His saying: *"And they ask you concerning the orphans. Say, 'Improvement for them is best; and if you mix your affairs with theirs—they are your brothers. And Allah knows the corrupter from the reformer.'"* [al-Baqarah:220]

If it is said: Concluding a marriage contract for a minor is a right of the guardian, so he may exercise his right absolutely.

It is said to him: The guardian's right to conclude a marriage contract for a minor is established only together with the child's best interest—by the preceding verse.

- As for concluding a contract for a minor merely to lift the barrier (*ḥijāb*) [of prohibition between the spouses], there is no objection, since the one contracted for may later divorce, and no harm befalls the child.

[When a Woman's or Minor's Guardian's Authority Lapses]

According to the madhhab: The guardian's authority to conclude a woman's marriage lapses due to an "intermittent absence" of exactly one month—no more, no less—beginning from the time the contract is sought. The "month's distance" is reckoned as the time of going and returning. If the guardian had appointed an agent, then his authority

1- *Sharḥ al-Azhār* 2/221–222.

lapses by such absence, the agency also lapses. This is the madhhab. End of citation from the *Sharḥ* and its marginal notes.

It is said: The intermittent absence is the distance of *qaṣr* (travel-shortening). This is the view of Abū Ḥanīfah and al-Shāfi‘ī, and it was strengthened by al-Ḥusayn ibn al-Qāsim, the Muftī, Ibrāhīm Ḥathīth, al-Soḥūlī, Ibn Ḥābis, and al-Shāmī. End of the marginal notes—each according to his own standard of *qaṣr*-distance. End.

The scholars of the madhhab likewise said: The guardian’s authority lapses if it is impossible to reach him—such as if he is imprisoned, or in a place to which the road is unsafe, or his whereabouts are unknown so that none knows in which direction he is. End.

I say: The rationale for the lapse of a woman’s guardian’s authority in such cases is that the essence of guardianship—whether in a woman’s marriage or over an orphan or minor—is to rise promptly to secure interests, care for them, and attend to them when needed without delay, except for a reason that is weightier and more beneficial. So if the guardian is absent with an intermittent absence and the woman’s, the minor’s, or the orphan’s need arises, it becomes incumbent upon the other present guardians to secure those interests; otherwise the wards will be lost, harmed, and their rights diminished. And in the ḥadīth: “*There is to be neither harming nor reciprocating harm in Islam.*”

[Marriage of a Woman Who Has No Guardian]

Question: We found a woman being pursued by some foolish men, so she sought refuge with us and we granted her protection. We asked about her situation and she said she is from Marān, that her father was killed in the war, and that she has no relatives. We searched for about a month for her family and found no trace. Some of our household wish to marry her, and she also wishes that. But we fear that if we take her to the authorities there will be problems of investigation and inquiry, since the war is still ongoing. What is the solution?

Answer—and Allah grants success: If the matter is as stated and there is fear in taking her to the authorities, let her appoint a Muslim man as her agent to conclude the marriage for her. “The believers are allies/guardians of one another.”

If a guardian later appears, no approval of his nor renewal of the contract is required, because he had been intermittently absent, and waiting for the possibility of a guardian’s appearance—or for safety from the woman’s detention and that of her escorts for investigation—would all cause her harm, given that she is young and exposed to temptation in a land where she has no *maḥram*.

[Ruling on One Who Claimed to Have No Family, Then After Marriage It Turned Out She Did]

Question: A woman fled her family to a distant land. A man proposed to her person, and she agreed. He asked her about her family, and she said she was cut off, having no family, and swore to that. She then appointed a man from that land as her agent, and he concluded the marriage for that man, and he consummated the marriage. After a time it became clear that she did have family. What is the ruling?

Answer—and Allah grants success: The man must refrain from intimate relations with her until her family are informed of what occurred. If they ratify the marriage, there is no problem. If they refuse to ratify it, the matter is thereafter referred to the judge.

The difference between this case and the previous one is that in the present case she practiced deception by claiming to have no guardian despite his existence and her knowledge of his whereabouts, whereas in the first case the guardian was absent and neither the woman nor the suitor knew his whereabouts.

[On the Guardianship of Marriage and When It Transfers]

A woman's marriage guardian may be absent in, say, Saudi Arabia, while his daughter is in Yemen and has reached marriageable age, with suitors desiring to marry her, and she too agrees and desires it, while—as said—her guardian is in Saudi Arabia. If he can be reached by telephone, by messengers, or by writing—or if the suitors can reach him because they hold passports allowing entry to Saudi Arabia—then they must request from him the marriage and contract. If he refuses without valid reason, his guardianship lapses, and the guardianship of her marriage passes to the closest of her male agnates after her father. She then is proposed to through him, and he concludes the contract.

If he refuses, it passes to whoever follows him among her agnates, and so on. If none of her agnates are in Yemen, but her maternal grandfather or maternal uncles are there, then she may appoint them as her agents in marrying her off—they are more entitled than others, for: *“And those of [blood] relationship are more entitled to one another in the Book of Allah.”* [al-Aḥzāb:6]

If none of those exist, then the ruler is the guardian of one who has no guardian, and the suitor proposes to her through the local judge.

Moreover, if her father cannot be contacted by telephone because he does not carry one or his number is unknown, nor by messenger or writing; and the suitor cannot reach him for lack of a visa or because of the great expense—as is the case today—then by that his guardianship lapses and transfers to whoever follows him, as we have detailed.

This elaboration accords with what the scholars of the madhhab have stated. All praise is for Allah, Lord of the worlds. And may Allah bless and grant peace to Muḥammad and his pure family.

[On Contracting by Telephone]

Question: Is it permissible to conclude a marriage contract by telephone?

Answer—and Allah is the One who grants success: It is valid if the witnesses are present, hear both the offer and the acceptance, and know the voice and its owner with certain knowledge.

This is based on what the scholars of the madhhab stated: the testimony of a blind person is accepted if he recognizes the voice and that recognition yields certainty—then his testimony is accepted.

[A Man Contracted for His Minor Son but Said in the Contract: “I Accepted the Contract for Myself”]

Question: A man married off his minor son and undertook the marriage contract on his behalf. At the time of contracting, the officiant said to the father: “Say: I accept the marriage contract for myself.” The father hesitated and said: “The contract is for my son.” The officiant said, “Say it anyway, for the contract for your son is only valid if you say: I accept the marriage contract for myself.” So the father accepted in that manner. Later the boy grew up and married that woman with whom the contract had been concluded, and now he has children. Then someone came and cast doubt for us about the validity of the contract. What is the ruling?

Answer—and Allah grants success and aid: Based on the rule that “Muslims’ contracts must be construed as valid wherever possible,” we say: the contract is valid.

If it is said: The father accepted the marriage contract for himself, so the woman contracted becomes the wife of the father, not of the son—

We say: The father only accepted in that wording on the basis that his son’s contract would not be completed unless he accepted in that way. The father believed that that wording of acceptance was necessary for the validity of his son’s contract, and he accepted on the strength of that belief, which the officiant had confirmed to him. Since that is so, the contracted woman does not become the wife of the father, because the father’s “acceptance for himself” was not intended—neither by the officiant nor by the one accepting. The outward wording carries no weight when all parties understand that the acceptance—by that wording—is on behalf of the son.

Likewise with all contracts and declarations concluded in this manner: their outward form is not decisive. For example, someone who intends to enter iḥrām for a standalone Hajj asks another how to enter; he is told: “Say: O Allah, I enter iḥrām for Hajj and ‘Umrah together,” or “for ‘Umrah enjoying it until Hajj,” so he says it thus, then proceeds to

perform the rites of the standalone Hajj—his Hajj is valid, and he is not bound by what he uttered while ignorant. The same applies to all contracts and declarations learned by rote by a layman.

[Witnesses Considered at the Marriage Contract]

Question: In some communities, the conditions of full uprightness (*‘adālah*) may not be readily found, or the truly upright are few. What is the status of their marriage contracts? And how should a person act if the people of that land appoint him to judge in a case wherein some of those individuals testify?

Answer—and Allah grants success: It is necessary to rule the marriage contracts of such people valid, for several reasons:

1. Necessity, which has rulings that differ from those of choice. Thus Allah permitted the testimony of *dhimmīs* in the verse on bequests in Sūrat al-Mā’idah.
2. Ignorance. The scholars of the madhhab said: the madhhab of the ignorant person is that of the scholar he follows, so long as he does not violate consensus. Based on this, what is mentioned in the question does not violate consensus; indeed it accords with those who validate marriage without witnesses.
3. What appears to me is that the uprightness required of witnesses differs with madhhabs, religions, and societies. What counts as “upright” among the Zaydīs differs from the Ash‘arīs, and vice versa; what is upright among Jews differs from Christians, and vice versa; what is upright for one people or state differs from another, etc.

Accordingly, due to this variance, the contracts of marriage of those mentioned in the question are judged valid if the witnesses are considered upright in that society—even if they would not be considered upright in another society or by the adherents of another madhhab.

The proof for this third matter: When the Messenger of Allah (*May Allah bless him and his family and grant them peace*) came to Madīnah, he carried out the *ḥadd* of fornication upon two Jews, on the basis of testimony given by Jewish witnesses to their fornication.

As for the second part of the question—how should a person act if the people of that land appoint him to judge ... etc.?—the answer follows from the third point above. It should be known here that it is not permissible to accept the testimony of members of certain sects against other sects, nor of members of one party against another party.

[Benefit: On Stipulations in the Marriage Contract]

In *al-Azhār*, its commentary, and marginal notes, the madhhab states: “A stipulation that contradicts the effect of the contract is void,” such as

saying in the contract, “I marry you on condition that the right of divorce is in her hand,” or “that she has no dowry,” or “no inheritance,” or anything else that the contract itself entails and requires, such as maintenance, clothing, lodging, etc.

This is if the stipulation is brought in the form of a clause within the contract, as we have exemplified. But if it is brought in the form of a suspensive condition, it invalidates the contract—e.g., “I marry you if the right of divorce is in her hand,” or “if such-and-such,” and the like.

One case is commonly excepted: if he says, “I marry you on condition that you will not have intercourse with her,” the contract is invalid.¹

[Ruling on a Stipulation Contrary to the Effect of Marriage or Sale]

According to the madhhab, in marriage a stipulation that contradicts its effect is void—such as: “that the divorce is in her hand,” “that she has no dowry,” “that her maintenance is upon herself,” “that intercourse is at her discretion,” and the like—if it is inserted as a clause in the contract. But if it is inserted as a suspensive condition, it invalidates the contract.

In sales: if a clause contradicting the effect of the contract is included, the sale is void—such as: “I sell to you on condition that you may not sell,” or “on condition that you may not benefit.”

The marginal notes to the commentary explain the difference between the two chapters.

The objective of marriage is sexual access (*al-buḍʿ*), and that is not impaired by such a clause; whereas in sale, the objective is the sold item and the price, and these are impaired by the condition.

[A Man Married a Woman on the Condition That He Would Have No Inheritance from Her]

Question: A man married a woman, and her brothers stipulated that he would have no inheritance from her. Is the contract valid? If she dies, does he inherit from her and the condition is nullified, or not?

Answer—and Allah grants success: The contract is valid and the condition is void. If she dies, he does inherit from her.

The proof is the ḥadīth of Barīrah: her owners sold her and stipulated the right of *walāʾ* for themselves; the Messenger of Allah (*May Allah bless him and his family and grant them peace*) validated the sale and invalidated the condition. This applies as long as the condition is not made as a suspensive condition attached to the very formation of the marriage contract. If it is attached as such a condition, the contract is

1- *Sharḥ al-Azhār* 2/240.

void—e.g., “I marry you to my daughter if the right of divorce is in her hands,” as the scholars of the madhhab have stated.

If, however, the condition is inserted merely as a clause within the contract—e.g., “I marry you to my daughter on condition that the right of divorce is in her hands”—then the condition is null and the marriage contract is valid.

The evidence for the invalidity of a contract suspended upon such a condition is that a contract dependent on a condition is not valid unless the condition occurs—yet vesting the right of divorce in the wife is neither valid nor effective; therefore the contract does not occur and is not sound.

[A Wife’s Stipulation That the Husband Not Remove Her from Her Town]

Question: If a man marries a woman and, before the contract, she stipulates that he not remove her from her town or from such-and-such place, and she confirms the condition, and the husband emphatically agrees—so the contract is concluded on that basis—may the husband thereafter remove her from her town, or not?

Answer—and Allah grants success: He is not permitted to remove her from that town; rather, he is obliged to fulfill what he committed himself to, by His saying: *“O you who have believed, fulfill [all] contracts.”* [al-Mā'idah:1]. And likewise the other verses that command fulfilling covenants and compacts; and in the ḥadīth: “The signs of a hypocrite are three: when he speaks, he lies; when he promises, he breaks his promise; and when he is entrusted, he betrays the trust.”

Allah praised His Prophet Ismā'īl, *peace be upon him*, in His saying: *“And mention in the Book, Ishmael. Indeed, he was true to his promise, and he was a messenger and a prophet. And he used to enjoin on his people prayer and zakāh and was to his Lord pleasing.”* [Maryam: 54–55]. In this verse Allah praised Ismā'īl with several praises, the first of which is truthfulness in promise—and for a reason Allah made that the first attribute mentioned.

Yes: the statement of the scholars of the madhhab—“the contract is valid and the condition is void”—means that failure to fulfill such a condition does not invalidate the contract; thus, if a man fails to honor a condition he undertook, that failure does not affect the marriage contract itself, since it is not among the obligations entailed by the contract.

A Note on the Dowry (Ṣadāq)

Al-Shāfi'ī said: “If the ḥadīth of Burū' bint Wāshiq is authentic, I say by it.” Al-Ḥākim said: “I said: It is authentic—so say by it.” End, from *Subul al-Salām*.

The ḥadīth of Burū‘ states: She married a man, no dowry having been fixed for her, and he died before consummating the marriage; the Prophet (*May Allah bless him and his family and grant them peace*) ruled for her the like of the dowry of her peers, for her the inheritance, and upon her the waiting period.

I say: The scholars of the madhhab, and al-Shāfi‘ī, and others, say: she has the inheritance and must observe the waiting period, but she has no dowry.

Moreover, al-Shāfi‘ī is an imām in ḥadīth and fiqh; even if a report is declared authentic by al-Ḥākim or other masters of ḥadīth, al-Shāfi‘ī is not thereby bound to accept it, for—as we said—he is an imām in ḥadīth and fiqh, and one who is such does not resort to taqlīd.

On Dowries (Mahrs)

Question: Two men agreed that each would marry the other to his sister. Each fixed a dowry for his sister of three hundred *qirsh* (French coin). In the minds of the two men, if one sister would not remain with her husband, then the other man—whose son’s wife remained—would pay the three hundred to enable his in-law to marry. As for the dowry in the case the marriages proceed normally, their view is that it is the dowry of equals (*mahr al-mithl*). Their custom is that a woman does not demand her dowry except in anger or upon divorce.

If both women—or one of them—now demand the dowry, must the full three hundred be paid? Or only *mahr al-mithl*? Does their intention at the time of contract—though unspoken in the contract—have any effect? Or must an oath be taken? What should they do? And does a man sin if his wife demands the dowry and he does not give it—given that three hundred today might reach six hundred thousand Yemeni riyals and could lead to family strife? Please give us a ruling—may you be rewarded with the best of both abodes.

Answer—and Allah grants success: If the two men both acknowledge, or it is known from their circumstances at the time of the contract, that their real intent was that the dowry was twenty-four *qirsh*, and that the figure of three hundred mentioned in the contract was meant to cover the wedding expenses of the one whose wife did not remain—then the husband, if his wife now claims her dowry, is liable only for *mahr al-mithl*.

If the two men—or the husband and his wife—do not concur regarding what was intended at the time of the contract, nor is that known from their circumstances; and the husband claims that the true dowry was twenty-four, and the excess was for another purpose (the marriage expenses of the other man if his wife did not remain), while the other man or the wife denies it—then if the husband brings proof for his

claim, judgment is rendered accordingly. Otherwise, the oath is upon the denier; if the denier swears, the wife is entitled to the entire amount. Better than this is reconciliation between the two sides: *“And reconciliation is best.”* [al-Nisā’:128]

[On a Guardian’s Demanding Money for Himself Apart from the Dowry]

Question: Among the Yemeni tribes it is customary for the bride’s father to stipulate money for himself apart from the bride’s dowry; the amount varies by region. What is your view regarding a man who married off his daughters and stipulated money for himself in addition to each daughter’s dowry, and many years have passed—must he return what he took to his daughters’ husbands?

Answer—and Allah grants success: If the guardian’s stipulation stays within what is needed for hospitality, and what customarily pertains to clothing and jewelry for his daughter, and the like—there is no problem.

But if his stipulation is for himself, apart from the dowry and beyond what we have mentioned, it is not permissible for him to take it except if the payer willingly grants it—because he is taking it without any countervalue other than consenting to the marriage contract, and that consent is an obligation upon the guardian; taking payment for what is obligatory is forbidden.

The man who took such monies in exchange for marrying off his daughters ought to gently seek from their husbands pardon and release for what he took during his heedlessness and ignorance—doing so with kindness and gentleness so that their souls are pleased to forgive and excuse.

This is what should be advised and people encouraged toward—since a person may be unable to repay what he took, especially in these times when livelihoods are scarce.

Question: Two men, each of whom has a son and a daughter, agreed that each would marry his daughter to the other’s son, with the dowry for each girl specified—i.e., this is not *shighār*. They wrote an agreement between them that if the son of either of them and the daughter of the other could not get along and he divorced her, then the other man—whose son did not divorce—would bear a sum of money to help the one whose son divorced to marry another woman.

In fact, one of them divorced the other’s daughter, so he required him to bear about forty thousand riyals, and several years have passed. Must he return the forty thousand to its owner? Or is their stipulation valid since they both consented?

Answer—and Allah grants success: It appears he need not return that forty thousand, because the two men entered into this undertaking willingly; and it is obligatory upon one who undertakes something for another to fulfill what he undertook, as mentioned in the marginalia appended to *Sharḥ al-Azhār* for the madhhab. Allah Most High has said: *“O you who have believed, fulfill [all] contracts.”* [al-Mā'idah:1]

[A Woman's Entitlement to What Is Mentioned in the Contract—even if Intended for Someone Else]

Question: A marriage contract was concluded for a woman, and her guardian stipulated for her a dowry, gold jewelry, clothing, etc. The husband accepted and married her. After some time he came to dislike his wife and divorced her. A dispute arose: the husband said, “The gold is mine,” while the guardian said, “You are the one who dislikes her; the gold belongs to the woman and you may not take it.” What is required?

Answer—and Allah grants success: According to the madhhab, the woman is entitled to everything mentioned in the contract—even if it was originally intended for someone else. They excluded from this what is mentioned in the contract for a known purpose—such as hospitality expenses—for she does not become entitled to that even if written into the contract. They also said: Whatever is stipulated before the contract counts as a permissive grant (*ibāḥah*). One may retract it so long as it remains, or reclaim its value after it is consumed if, by custom, it is of things expected to remain like clothing. If it is of things customarily consumed like livestock or food, then after it is consumed there is no claim—provided it was consumed in the customary time of consumption—except that if they then refuse the marriage, its value is reclaimed in all cases. After the contract, such items are treated as a gift or present according to the circumstances—or a bribe if they would hand them over only for that. So stated the scholars of the madhhab in the marginalia on *Sharḥ al-Azhār*.

I say: It is as though by their words “whatever is stipulated before the contract ...” to the end of the discussion, they intend what is stipulated for other than the bride.

Yes: What appears to me is that the woman is entitled to—and owns—the gold, whether it was stipulated for her in the contract or stipulated for her before the contract and the contract was then concluded on the basis of that prior stipulation.

Thus, if the guardian and the groom agreed that the groom must give his intended wife such-and-such amount of gold jewelry, such-and-such number of garments, a wristwatch, and on the wedding night such-and-such a *fattishah* (as they call it), and the contract was then concluded on the basis of those agreed terms and the husband consummated the

marriage—then she is entitled to all that was stipulated for her, whether it was labeled “dowry,” “*fattishah*,” or any other name.

The proof is His saying: “*And if you have given one of them a great amount, then do not take back from it anything ...*” [an-Nisā’:20]. And this is apparent.

It may be said: Jewelry and clothing are given to the wife so she may beautify herself for her husband; therefore she is entitled to them only so long as she remains in his bond. If he divorces her, he may reclaim all of it.

We reply: The purpose of the jewelry and clothing is adornment; that is why the guardian stipulates them for the woman. But the fact of that purpose does not mean the items remain the husband’s property. Analogous cases indicate the contrary: whoever clothes another, by default the clothing departs his ownership.

If it is said: Custom dictates that the gold and clothing belong to the husband. People have long proceeded on that basis—that if the husband divorces his wife he reclaims the gold, even if he is the party who dislikes (her).

Indicating this is that, if the wife were to sell some of her jewelry or clothing, her husband and her guardian would object.

We reply: If the custom is truly thus, and both wife and husband are aware that the gold is understood to belong exclusively to the husband, then matters follow that custom. Yet a difficulty remains: were the husband to take the gold from his wife and dispose of it without her permission, she would object and demand its return—and the woman’s family would likewise object and demand the gold, perhaps even keeping her from him until he returned it. If the gold were the husband’s, such objection would not arise.

If it is said: The objection arises only, because he has breached what he undertook—namely that she be adorned so long as she is his wife.

We reply: Once she is entitled, by virtue of the marriage, to what was stipulated for her, that becomes her property, akin to the dowry. By “her ownership of the gold,” we mean precisely this.

In conclusion, the safest and most prudent course is to leave the gold with the wife if the husband divorces her and he is the one who dislikes (her).

[Benefit: What Is Customarily Given to the Wife on the Wedding Night (*Laylat al-Ṣabāḥ*)]

From the marginal notes on *Sharḥ al-Azhār*:

Benefit: “As for what is customary to give the wife on the wedding night called *Laylat al-Ṣabāḥ*: the woman acquires ownership of it by

mere receipt—even if it is real estate such as land or houses—without any need for offer and acceptance.” (*Taqrir.*) (قرير)

[Ruling on a Woman Retracting What She Had Remitted of the Dowry]

Question: If a husband asks his wife for, say, some of her gold, and she gives it to him and waives her claim; then he later divorces her and she demands the gold back—he says, “You absolved me and waived it.” She replies, “May Allah not absolve you, nor do I waive it.” What is required?

Answer—and Allah grants success: As a general rule, a wife’s soul rarely feels truly content to part with something in favor of her husband. If she gave him, for example, her gold and waived her claim, it was only to maintain his affection and good companionship. Therefore, if she waived and permitted him to dispose of it, then he divorced her and she came demanding it, the husband is obliged to return what he took from her.

This is indicated by His saying: *“But if they, of their own good pleasure, remit to you anything of it, then consume it in satisfaction and ease.”* [an-Nisā’:4]. The indication here is that the conditional particle “if” conveys, as rhetoricians note, the rarity of the condition’s occurrence; and the wording *“they, of their own good pleasure, remit to you anything of it”* makes lawful consumption contingent upon that inner contentment—suggesting that when a wife demands from her husband what she had given, she is not content.

Moreover, His saying *“anything of it”* suggests that a wife is unlikely to remit to her husband all of her dowry or all of her gold.

If it is said: Contentment is an inward matter known only to the wife. If she expresses what indicates it—such as a gift, waiver, or release or something similar indicating satisfaction and acceptance—then it should be acted upon for the lawfulness of consuming it; otherwise, none of a wife’s dowry would ever be lawful to consume.

We reply: What you mentioned is the apparent rule and may be acted upon—so long as nothing appears from her that contradicts it.

[Is It Permissible for a Husband Who Finds His Wife Not a Virgin to Ask Her Why?]

From *Kitāb al-Ash‘athiyāt*:

A man came to ‘Alī (*peace be upon him*) with a woman and said: “O Commander of the Faithful, I married my wife as a virgin, then I consummated the marriage and found her not a virgin.” He, *peace be upon him*, said: “Woe to you! The hymen can be lost from a jump or leap, from menstruation, from ablution, and from prolonged breath—in

another copy: prolonged celibacy)."

Here is the question: If a husband finds his wife not a virgin, is it permissible for him to press her with questions, to query her insistently and argue, or is that impermissible?

Answer—with Allah's enabling: It is obligatory upon a Muslim, when he sees from his brother what invites suspicion, to carry it to the best possible construction, not the worst, so long as a good construction is available.

The proof is His saying: *"Why, when you heard it, did not the believing men and believing women think well of themselves ..."* [an-Nūr:12]; and His saying: *"O you who believe, avoid much suspicion; indeed, some suspicion is sin. And do not spy ..."* [al-Ḥujurāt:12].

It is no secret that harming a believer is forbidden in Islam; and there is no doubt that the wife would suffer a shock that deeply affects her, shakes her to her core, and may cause her to collapse—perhaps the greatest shock she will face in her life. If interrogating her would lead to such harm, then interrogating her is forbidden.

[A Man Consummated the Marriage and Found His Wife Not a Virgin]

Benefit: A dispute came before me between a man and his son-in-law. In his claim, the husband said he found the girl not a virgin and wanted her father to reimburse him for the "wedding outlay." He complained to some people that he had not found his wife a virgin, leading to accusations being cast upon wives, resentment among fathers of brides, and ensuing problems.

So I admonished husbands about such accusations—that casting them is a grave sin before Allah, deserving His wrath and punishment. I informed them that scholars have said: some women may, by original creation, not be virgins; and they also said: virginity can be lost by a leap (i.e., jumping), by carrying something heavy, by riding a donkey or horse, or it may be lost due to inflammations or illness. Therefore, it is not permissible for a husband to accuse his wife if he does not find her a virgin, nor to besmirch the honor of her family and disgrace them among people. Let him beware Allah, for recompense is of the same nature as the deed: as you judge, so shall you be judged.

Nor is it permissible for a husband, upon finding his wife not a virgin, to interrogate her with embarrassing questions aimed at establishing that she committed immorality.

Benefit: [On Annulment Due to a Defect in Marriage]

In *al-Bayān*, annulment (revocation) on account of a marital defect

may be exercised without haste (i.e., it is not time-barred) so long as no acceptance of the defect has occurred, nor anything that counts as acceptance—such as her enabling him to have marital relations after learning of his defect. In the margin: “And she knew that she had the option.”¹

I say: Insanity is a defect—whether it existed before the marriage or occurred after it.

[Annulment of Marriage on Account of Insanity]

Insanity is a defect in marriage. The husband or the wife may annul the marriage because of it. This option is not time-barred. If one spouse learns of the other’s insanity, the right to annul remains and may be exercised whenever they wish, even if a long time passes—unless there appears an indication of acceptance.

The indications of acceptance are:

1. That the husband contracts the marriage while knowing of her defect, or that the wife consents while knowing of his insanity.
2. That he learned of the defect after the contract and then said, “I accept,” or that she learned of the defect and then said, “I accept it.”
3. That he has marital relations with her after learning of her defect and knowing he has the right to annul; or that the wife enables her husband while knowing of his defect and knowing that she has the right to annul. This was stated in *Sharḥ al-Azhār*.²

[A Woman Whose Husband Became Insane, and She Did Not Annul—Then, When She Despaired, She Annulled]

Question: A woman was married for years. Then the husband fell into insanity. She remained with him, enabled him (sexually), and tended to his needs—doing so because she hoped for his recovery, expected he would get better, and assumed that with treatment and care the illness would pass, as happens with other patients who use medication. She cared for him and pursued his treatment and recreation, yet he did not recover; in fact, his condition worsened. At that point she left him and annulled the marriage.

Does her enabling him at the beginning of his illness, and her treating him in the hope that it was a passing condition, count as acceptance of the defect that would prevent annulment?

1- *al-Bayān al-Shāfi* 1/262.

2- *Sharḥ al-Azhār* 2/294.

Answer—with Allah's enabling: The foundation in this chapter is the story of Barīrah. When she was emancipated, she left her husband and sought to be rid of him. Her husband followed after her, but she did not respond; she rejected him. The Prophet (*May Allah bless him and his family and grant them peace*) approached her and said, "*He is your husband and the father of your child.*" She asked, "O Messenger of Allah, are you commanding or interceding?" He (*May Allah bless him and his family and grant them peace*) replied, "*Rather, I am interceding.*" She said, "I have no need of him." Then the Prophet (*May Allah bless him and his family and grant them peace*) said to her, "*You remain at liberty of choice so long as you do not enable him [to have relations with you].*" This is the gist of the report.

This is on the basis that Barīrah's husband was a slave. If he had been free, then the cause of annulment would not have been the occurrence of a defect in either spouse, but rather Barīrah's ownership of herself by virtue of emancipation.

[On a Woman Annuling the Marriage of an Impotent Husband ('Annīn)]

In the commentary and marginal notes: al-Mu'ayyad bi-llāh, Zayd ibn 'Alī, al-Ṣādiq, al-Bāqir, al-Nāṣir, Abū Ḥanīfa, al-Shāfi'ī, Mālik, al-Nafs al-Zakiyya, Aḥmad ibn 'Īsā, and Abū 'Abd Allāh al-Dā'ī said that a woman may annul the marriage of an impotent husband.

They differed regarding the period of deferment. Al-Nāṣir said: "A period sufficient to make his state clear," and he did not set it at a year.

Mālik said: "Less than a year."

Al-Mu'ayyad bi-llāh said: "One solar year."

Their proof is his saying (*May Allah bless him and his family and grant them peace*): "*The impotent man is deferred for one year; if he attains his wife, [well and good]; otherwise, the judge separates them.*"

Al-Qāsim, al-Hādī, the two sons of al-Hādī, Abū al-'Abbās, and Abū Ṭālib held that the impotent husband is not cause for annulment.

Their proof is the statement of the Commander of the Faithful 'Alī (*peace be upon him*) to a man whom his wife complained about to him. He asked: "Do you have anything [i.e., ability]?" He said, "No." He said, "Not even at dawn?" He replied, "No." 'Alī (*peace be upon him*) said: "You have perished and caused another to perish!" The woman said, "O Commander of the Faithful, look into my case." He (*peace be upon him*) said: "I cannot separate between you; be patient."

Among the supporting arguments for this latter view:

1. Impotence is an ailment whose removal is hoped for, like a patient who is unable to have intercourse due to illness; marriage

is not annulled on account of illness, so likewise it should not be annulled on account of impotence.

2. Intercourse is a right that belongs specifically to the husband, not to the wife; thus intercourse is not obligatory upon him—except in the case of *īlāʾ* (oath of sexual abstention).

I say: Yes, intercourse is indeed a right peculiar to the husband, made so because he paid the dowry to the wife—Allah has called it a wage for the woman. However, a woman—especially a young one—does not enter marriage for the dowry and maintenance alone. She has another purpose: to safeguard her chastity through a husband who will preserve her purity and quell her desire by marital relations, protecting her from temptation so that her religion and modesty are preserved.

The Lawgiver acknowledged this, as He says: *“Do not compel your slave-girls to prostitution if they desire chastity ...”* [an-Nūr:33]. A woman’s desire for chastity is thus a purpose she seeks in marriage, as the verse states.

Therefore, if a woman finds her husband impotent, unable to reach her, she has the option: if she wishes she may remain with him, and if she wishes she may annul the marriage—because the specific purpose of marriage has not been achieved.

One may answer the report cited by the proponents of the second view (the view of the madhhab) by saying that the Commander of the Faithful (*peace be upon him*) understood from the case that the man had grown old and had become incapable after previously being capable. Such a case is not annulled. Annulment pertains to a husband whom the woman married and found to be impotent from the outset. As for a husband who had marital relations for a time and then later became incapable, there is agreement that no annulment is granted.

[What Should a Woman Do If Her Husband Does Not Pray and Is Unconcerned with Sinning?]

Question: A woman has a husband who does not pray and is unconcerned about committing sins. She has children from him and she is a believer. What is obligatory upon her? Must she separate from him and leave him?

Answer: The wife is not harmed—legally—in her faith by the wickedness of her husband. What is obligatory upon her is to maintain her duties and the consciousness of her Lord. Her husband’s sinfulness does not diminish her faith or her righteous deeds. Allah has set forth the wife of Pharaoh as an example for the believers whose husband was a wicked tyrant, saying: *“And Allah presents an example for those who have believed: the wife of Pharaoh, when she said, ‘My Lord, build for me near You a house in Paradise, and save me from Pharaoh and his deeds, and*

save me from the wrongdoing people.’ ” [at-Tahrim:11].

- If she can advise her husband without being harmed, let her advise him—gently and patiently—day after day, from time to time. With perseverance her counsel may have effect, for one’s companion influences his companion.

- She must also devote herself to the religious upbringing of her children, teaching them the religion, and not neglecting their education lest they assume the manners of their father.

[What Should the Wife of a Man Who Denies Life After Death and Rejects Heaven and Hell Do?]

Question: There is an irreligious man whom his wife sometimes hears denying life after death and rejecting Paradise and Hell; sometimes his children hear him as well. He sometimes prays as a mere formality in front of people. What is obligatory upon his wife? And how is his estate treated after his death?

Answer: The marriage between this man and his wife is not dissolved except by the ruling of the lawful judge.

- His estate is inherited by his Muslim heirs. The proof is that the Prophet (*May Allah bless him and his family and grant them peace*) treated the hypocrites as Muslims in matters of marriage and inheritance, despite what reached him about them of statements that necessitate disbelief—whether by revelation from Allah or by transmission of trustworthy Companions.

[What Is Obligatory upon a Husband If His Wife Is Disobedient and Persistently Sins]

Question: If a wife is disobedient to Allah and persists in her disobedience, what is obligatory upon the husband?

Answer: If a wife is disobedient to Allah and persists in her disobedience, if her sin is adultery, then divorce her and be rid of her, as He says: *“The adulterer does not marry except a female adulterer or a polytheist, and the adulteress—none marries her except an adulterer or a polytheist; and that is forbidden to the believers.”* [an-Nūr:3]. And His saying: *“Wicked women are for wicked men, and wicked men are for wicked women ...”* [an-Nūr: 26].

If her sin is other than that, what is obligatory is to guide her, admonish her, and remind her of Allah and His punishment, treating her gently in all of that.

If her sin concerns the rights of her husband, Allah has directed how to address it: *“As for those [wives] from whom you fear arrogance, admonish them; [then] leave them in their beds; and [lastly] strike them [lightly]. But if they obey you, then seek no means against them.”* [an-

Nisā':34].

Divorce is not obligatory if her disobedience is other than adultery.

Allah has also set forth an example in His Book: *"Allah has set forth an example for those who disbelieve: the wife of Noah and the wife of Lot. They were under two of Our righteous servants, but they betrayed them, so they [their husbands] availed them naught against Allah; and it was said, 'Enter the Fire with those who enter.'"* [at-Taḥrīm:10].

[Ruling on Marriage to a Flagrantly Sinful Person, a Hypocrite, or Someone of a Different Madhhab]

Question: What is the ruling on a Sunni marrying a Shi'ī and vice-versa; a Makramī marrying a Zaydī and vice-versa; a flagrantly sinful person (fāsiq) marrying a believing woman and vice-versa; and a hypocrite (munāfiq) marrying a believing woman and vice-versa?

Answer—with Allah's help:

- It is not permissible for the guardian (walī) of a believing woman to marry her to a flagrantly sinful man, a hypocrite, or someone opposed to her in madhhab. He may only marry her to someone aligned with her madhhab.
- If he marries her to a man of outwardly upright conduct who is aligned in madhhab, and later the man's madhhab changes to one that opposes hers, or his hypocrisy becomes manifest, etc., then what is obligatory upon the wife is to safeguard her religion and creed. There is no sin upon her in remaining with her husband, nor is any blame attached to her, and the marriage is not dissolved except by a judge's ruling.

The proof for this is the agreed principle that a guardian must consider the best interests of the one under his guardianship in all his dispositions, indeed the most beneficial when interests conflict. Hence the ḥadīth: *"Each of you is a shepherd, and each of you will be questioned about his flock."*

- Allah only legislated public and private forms of guardianship to preserve the interests of those under guardianship and ward off harms to their religion and worldly life. He said: *"They ask you about the orphans. Say, 'Improvement for them is best; and if you mix with them, they are your brothers. Allah knows the corrupter from the reformer ...'"* [al-Baqara: 220].
- Thus, if a guardian marries a believing woman to a fāsiq, a hypocrite, or someone of an opposing madhhab, he has been negligent in his guardianship, betrayed the trust, and failed what Allah entrusted to him—disobeying Allah Most High. However, the marriage is valid, because the only condition for the validity of

marriage is the outward profession of Islam.

- As for a believing man, there is no harm in his marrying a woman who opposes him in madhhab, or a hypocrite, etc., provided she is chaste—though marrying a believing woman is better and purer.

We said this in contrast to the reverse case, because the common pattern is that a wife follows her husband's religion without strain, and marriage to such a woman may become a cause for her rectification. In the ḥadīth: *"O 'Alī, that Allah guides a single person by your hand is better for you than whatever the sun rises upon."*

[Marrying One Whose Religion Is Not Acceptable]

Question: May a man marry his noble daughter to someone of corrupt creed—whether his creed is deviant or otherwise?

Answer—with Allah's help: That should not be done. In the ḥadīth: *"If there comes to you one whose religion and character you are pleased with, then marry [your ward] to him ..."*

One of corrupt creed is not someone whose religion is acceptable. Allah, Exalted is He, said: *"Impure women are for impure men, and impure men are for impure women; and pure women are for pure men, and pure men are for pure women."* [an-Nūr:26].

Accordingly, a guardian should only marry his ward to someone who matches her in religion and standing. This is the position of the majority of the scholars of the Ummah of Mohammad (*May Allah bless him and his family and grant them peace*)—early and later.

[What to Do When a Wife Cannot Bear Life with Her Husband]

Question: If a wife detests her husband to the point that she cannot bear conjugal life, what is the lawful remedy?

Answer -with Allah's help: If the judge verifies the wife's truthfulness about the intensity of her aversion and her inability to live with him, he compels the husband to divorce her. If the husband refuses except on condition that she return what she took from him, he may have that; the judge then asks her to return what she took so he will divorce. If he still refuses after her offer, the judge compels him to divorce and may imprison him for it. If he persists in refusal, the judge or the imām pronounces the separation on his behalf—since the purpose of appointing a judge is to remove injustice, grant redress, and resolve disputes.

This is pursued after reconciliation efforts have failed; when it becomes clear there is no way to harmonize them except separation, the judge may separate them ...etc.

This may be inferred from His saying: *"Retention in kindness or release with good treatment."* [al-Baqara:22], and *"Do not retain them to harm*

them so that you transgress.” [al-Baqara:23], and “Their husbands have more right to take them back during that period if they desire reconciliation.” [al-Baqara:228].

Allah has clarified the process, addressing judges and guardians: *“If you fear a breach between them, appoint an arbiter from his family and an arbiter from her family; if they both desire reconciliation, Allah will bring about harmony between them.” [an-Nisā’:35].*

Many scholars said in interpreting this verse: If the two arbiters see that separation is best, they separate them; and if they see otherwise, they act accordingly.

A Wife’s Defiance When She Is with Her Son

Question: A man’s wife fled to the house of their son. The father asked his son to return his mother to her husband. The son tried, but the mother adamantly refused. May the son force his mother to return to his father?

Answer—with Allah’s help: What is due from the son toward his father is that he exert his utmost to persuade his mother to return—admonishing her, instilling fear of Allah, reminding her of the husband’s rights—and to exhaust his efforts in that. But threatening or striking is not permissible, for Allah commanded excellence toward the parents and repeated and emphasized this in the Qur’an, and He commanded the child to accompany his parents with kindness. Threatening, intimidation, and striking them contradict that.

May a Woman Be Prevented from Seeking Knowledge?

Question: A woman has acquired a measure of knowledge and has a desire to seek more. She is also her parents’ only child. May her family confine her? If they do, is the obligation to seek knowledge lifted from her? Must she obey them despite their ignorance of the obligatoriness of seeking knowledge?

Answer—with Allah’s help: If a woman has attained knowledge of what she must know—first and foremost the prayer, after a general knowledge of Allah the Exalted—and has affiliated herself in her religion with the scholars of the Household of the Messenger of Allah (*may Allah bless him and his family and grant them peace*) and follows what they hold in general, then she is not required to leave her home to seek further knowledge. Allah says to the wives of the Prophet (*May Allah bless him and his family and grant them peace*): *“Remain in your homes, and do not display yourselves ...” [al-Aḥzāb:33].* And in the ḥadīth from the Prophet (*May Allah bless him and his family and grant them peace*): *“Women are [prone to] error and [are] private; cover their errors with silence, and their private parts with homes.”*

Yes, if her family permit her to go out to seek knowledge, she may not go out except with a maḥram relative. If she has a maḥram, she may not listen to or receive knowledge from non-maḥram men except under these conditions:

1. She does not address the scholar face-to-face but from behind a screen.
2. She does not soften her speech or make it endearing.
3. She lowers her gaze, her voice, and her adornment.

It may be said: What you listed as sufficient knowledge is in truth insufficient, for there are rulings that must be known due to their general applicability.

We reply: As you said—however, such matters do not require going out to seek them because they are well-known among the people: the prohibition of wine, adultery, cheating, deception, lying, injustice, backbiting, tale-bearing, etc.; likewise the rights of parents, relatives, and neighbors; the amount of zakāt; the obligation of fasting from dawn to sunset—all are known ...etc.

Therefore, once she has attained what we mentioned, it is obligatory for her to remain in her home and obey her parents; in this situation—where obedience to parents is at stake—she may not go out to seek knowledge.

If a Man Marries Another Wife, Must He Give the First the Same Jewelry and Clothing?

Question: If a man has a wife and marries another, must the first be given what the second was given of gold (jewelry), clothing, and related items? And what about the dowry?

Answer—with Allah's help: What is obligatory in living with women is what is established by people's customs and usages, as in His saying: *"Live with them in kindness."* [an-Nisā':19]. The custom in our lands is that when a man marries another wife, he gives the first wife clothing and the like equal to what he gave the new wife.

As for gold: if he gave the second wife jewelry, he should give the first its like—if he had not already given her its like earlier. If what he gave her previously was less than what he gave the other, he should make it up to her.

As for the dowry, he owes the first nothing beyond her original dowry.

I have observed in many villages customs different from ours in Ḍaḥyān: they do not give the first wife what they give the new one of clothing and the like. As we said, what is binding is to follow the local custom.

Benefit (Justice Between Wives)

His—*Exalted is He*—saying: "*So do not incline completely [toward one] and leave another hanging.*" [Al-Nisā':129], from which is inferred the permissibility of a slight inclination, and that what is obligatory in justice between co-wives is justice in overnight turns and maintenance. It has been narrated that ‘Ā’ishah said: "The Messenger of Allah (*May Allah bless him and his family and grant them peace*) would allot among his wives and act justly, and he would say: ‘O Allah, this is my division concerning what I control, so do not blame me for what I do not control.’" "Complete inclination" can be interpreted as the husband's failure to be just in: allotment of nights, spending, and affection; and if he is just in the overnight turns and spending but not in affection, then he has not inclined with all inclination.

[On Justice in the Overnight Turn Among Co-Wives]

It is well-known that Sawdah bint Zam‘ah (*May Allah be pleased with her*), a wife of the Messenger of Allah (*May Allah bless him and his family and grant them peace*), gave her day with the Messenger of Allah (*May Allah bless him and his family and grant them peace*) to ‘Ā’ishah, for she had grown elderly and advanced in age and feared that the Messenger of Allah (*May Allah bless him and his family and grant them peace*) might divorce her. Thus he would allot to ‘Ā’ishah two shares: her own and that of Sawdah. They said that regarding this was revealed His—*Exalted is He*—saying: "*And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement; and settlement is best...*" [Al-Nisā':128], meaning: and reconciliation is better than divorce.

If it be asked: What is the ruling if a wife constricts her husband concerning the division of nights and demands it, while the husband is severely distressed by spending the night with her due to her old age and other qualities and reasons, in addition to a psychological illness—though she has sons and daughters by him who are all adults—and the husband knows that she loves to remain in his house near her children and that she is greatly distressed if she spends the night elsewhere among her relatives' homes? The husband, in such a case, is in hardship and cannot allot her an overnight turn; yet divorce would bring her many harms that she does not wish to incur, nor would divorce benefit her; for because of her old age and illness men are not desirous of the like of her. Is it therefore incumbent upon the man either to allot her a turn, or to divorce her, or to reconcile as Sawdah did?

And if none of these three options is attainable, is there a fourth solution by which the husband is safe from falling into sin for his inclination toward another wife?

The answer: What is incumbent upon the husband is justice in the

overnight turns, maintenance, clothing, and so forth. If the husband dislikes his wife and turns away from her, then there are solutions:

(1), (2) as mentioned, either divorce or reconciliation like what Sawdah did,

(3) and for the husband, in a case like that mentioned previously in the question—where divorce is not a solution and reconciliation does not come to pass—is to fulfill of her rights what he is able in spending, clothing, honoring her, esteeming her, showing her continual kindness, and being dutiful toward her. Allah—*Exalted is He*—said: "*And do not forget graciousness between you.*" [Al-Baqarah:237]. What he is unable to do—namely, spending the night with her—falls from him in such a case; and we say this because of His—*Exalted is He*—saying: "*Allah does not burden a soul beyond its capacity.*" [Al-Baqarah:286]. We say this despite the possibility of resolving the problem through divorce—by which the husband would exit the liabilities of the wife's rights—because a wife who has children and grandchildren has reached the age of those who are past desire for marriage; thus divorcing her in this condition, removing her from her husband's home and from among her children and grandchildren, would be a form of neglect and estrangement, along with her being distanced from her children and grandchildren, falling into the desolation of loneliness, the gloating of enemies, and so on; in such a circumstance, divorce is not a solution.

If it be said: If the wife from whom the man's need has departed and from whom his aversion has intensified is foolish, of poor judgment, nearly like one bereft of reason—if she urges her husband to divorce her, is it incumbent upon the husband to divorce her, and does he sin if he divorces her?

It is said: If the husband knows, and her children know, that by divorce she will be in a worse state—such as being far from her children and grandchildren and from the home in which she has spent her life, falling into the desolation of loneliness, being gloated over, and so on—then in such a case it is not fitting for the husband and the children to comply with her request for divorce, nor to consent to her poor choice.

On Justice and Equality Between Wives

The scholars of the madhhab said: What is obligatory therein is equality between wives in the overnight turn and the midday rest, and in obligatory maintenance and clothing. What is meant by the overnight turn is that he spend the night with the wife in a private place; sharing a bed or intercourse is not a condition. Equality in love and in intercourse is not obligatory, and he may travel with whichever of his wives he wishes.

And in Uṣūl al-Aḥkām: there is no disagreement that a man may travel

with any of them he wishes and that he may single out for intercourse whomever he wishes. As for that which is beyond the obligatory maintenance and clothing, equality therein is not required—thus said the scholars of the madhhab—so he may favor whom he wishes with what he wishes, privately, so as not to stir the other's resentment.

The basis for what the scholars of the madhhab said is that what is obligatory upon the husband for his wife is her maintenance and clothing according to what is customary, as has come in the ḥadīth; and the default is that one's liability is free concerning what is beyond that.

In al-Majmū': from 'Alī (*peace be upon him*), regarding Allah's saying, *Exalted is He*: "*And you will never be able to be equal [in feeling] between wives, even if you should strive, so do not incline completely [toward one] and leave another hanging.*" [Al-Nisā':129], he said: This concerns love and intercourse; as for maintenance, clothing, and spending the night, justice in that is indispensable.

Evidence that justice is not required in love and intercourse is as follows:

— As for love, the husband does not possess it, and it does not fall under his power or ability. Allah—*Exalted is He*—said: "*Allah does not burden a soul beyond its capacity.*" [Al-Baqarah:286]. Accordingly, no legal charge is directed at the husband concerning it.

— As for intercourse, it is a right of the husband; therefore he may fulfill his right or leave it. The proof that it is a right of the husband is that the husband pays a dowry (mahr) to his wife, and Allah has called it in the Qur'ān "compensation": "*And give them their due compensation.*" [Al-Nisā':25]. Likewise, a wife is not entitled to refuse intercourse; and if she is recalcitrant regarding it, her right to maintenance falls.

A Continuation Concerning Justice Between Wives

Allah—*Exalted is He*—said: "*And live with them in kindness.*" [Al-Nisā':19]. The meaning, and Allah knows best, is that what is obligatory upon husbands toward their wives is that a husband treat his wife in the manner of conduct known and customary among people between spouses. What is customary among people is that a husband houses his wife either in a private home or in his father's or brother's home; he provides her maintenance and clothing according to his capacity and ability; he does not strike her, revile her, or demean her; nor does he abandon her. Rather, he shows her good conduct in his speech to her and spends the night with her in her home. This is what is customary among upright spouses.

[Ruling on Coitus Interruptus and the Use of Contraceptive Treatment]

Question: Concerning coitus interruptus (al-‘azl) and the use of contraceptive treatment—are these permissible or not?

The answer—and Allah is the One who grants success: The apparent ruling is that this is permissible, for the evidences that came in the Qur’ān prohibited the killing of children and the burying of newborn girls alive; and a sperm-drop is not called a “child,” nor is its spoiling called “killing.”

This is indicated by His—*Exalted is He*—saying: *"And indeed We created man from an extract of clay. Then We placed him as a sperm-drop in a firm lodging. Then We developed the sperm-drop into a clinging clot, then We developed the clot into a lump [of flesh], then We developed the lump into bones, and We covered the bones with flesh; then We produced him as another creation. So blessed is Allah, the best of creators."* [Al-Mu’minūn:12–14].

If the spirit has not yet been breathed into it, then spoiling it is permissible and is not called “killing”—this being while it is a sperm-drop, a clinging clot, or a lump of flesh.

Killing is the taking of the soul of one who possesses a soul, and in what we have mentioned there is no soul. In the ḥadīth: that the Prophet (*May Allah bless him and his family and grant them peace*) forbade coitus interruptus with a free woman except with her permission. This is the conclusion in al-Shifā’ and Uṣūl al-Aḥkām.

And in Uṣūl al-Aḥkām: that the Messenger of Allah (*May Allah bless him and his family and grant them peace*) permitted coitus interruptus.

On this subject there are many ḥadīths, mentioned in Tatimmat al-Ītiṣām.

And it is mentioned in a narration from ‘Alī (*peace be upon him*) about coitus interruptus: “It is hidden infanticide; so do not approach that.” This is mentioned in the Amālī of Aḥmad ibn ‘Īsā.

And another narration from the Prophet (*May Allah bless him and his family and grant them peace*), reported by the Six except al-Bukhārī, in which they said: they asked the Prophet (*May Allah bless him and his family and grant them peace*) about coitus interruptus, and he (*May Allah bless him and his family and grant them peace*) said: “That is hidden infanticide.”

The author of the Tatimmah said: I say—and with Allah is success—these reports, some prohibiting and some permitting—when in apparent contradiction—are carried upon dislike (karāhah) as a reconciliation between them; and Allah knows best.

A Benefit Concerning Medical Treatment That Prevents Pregnancy

If a woman undergoes medical treatment that prevents pregnancy, the madhhab holds absolute permissibility—whether the husband gives permission or not—because he acquires no right concerning a pregnancy until after it exists. This is the upshot of *al-Bayān* and its marginalia in meaning.¹

On Preventing Pregnancy

Question: Is it permissible for a woman to use the intrauterine device (IUD) to prevent pregnancy, given that if she becomes pregnant she will be harmed to the utmost at delivery and would require surgery?

The answer—and Allah is the One who grants success: It appears that using an IUD to prevent pregnancy requires the woman, in using it, to uncover the most private part (*al-‘awrah al-mughhallazah*), since it is placed inside the vagina. Therefore, a woman should use for preventing pregnancy a medication that does not require uncovering the private part. If, however, using such medication is harmful and necessity compels the use of an IUD, then there is no harm in using it.

What we have said is indicated by His—*Exalted is He*—saying: *"...except what you are compelled to [consume]."* [Al-An‘ām:119], and by His saying: *"Allah intends for you ease and does not intend for you hardship."* [Al-Baqarah:185], and *"He has not placed upon you in the religion any hardship."* [Al-Hajj:78]; and by the well-known report: *"In cases of necessity, the prohibited becomes permissible."*

As for using medications that do not require uncovering the private part—these may be used without necessity, whether the husband permits or not. This is the madhhab, as in *al-Bayān*.

[Ruling on Removing the Fetus When the Mother’s Death Is Feared]

Question: What is your view regarding a woman six months pregnant who fell ill and was taken to the hospital? The doctors said: "If you want the mother to live, the pregnancy must be removed." They removed it while the fetus was alive; it kept crying until it died. The husband consented to its removal. What is required in this case? Peace.

The answer—and Allah is the One who grants success: If the matter is as described, then nothing is required. The evidence for this is:

1. In removing the child lies the mother’s safety, while leaving it in her womb leads to her destruction and the destruction of what is in her womb.
2. By analogy with amputating a limb afflicted with cancer: the child

1- *al-Bayān al-Shāfi* 1/249.

in her womb is like a limb of her.

And the scholars of the madhhab have said: There is no expiation due from one who causes the death of the fetus in its mother's womb—even if it emerges alive and then dies—there is no expiation in that. They also said: If the husband permits his wife to abort a living pregnancy, its full blood-money is not required of her.

[Does the Wife Have a Right to Intercourse?]

A juristic issue: The statement of the scholars of the madhhab that intercourse is a right of the husband—he may take it or leave it, etc.¹

This can be evidenced by saying: The husband becomes entitled to intercourse with his wife by reason of what he paid as the dower (mahr) and its concomitants; and Allah—*Exalted is He*—has called it “compensation,” and it is clear that compensation corresponds to benefit, and the intended benefit is intercourse. Therefore the husband is entitled to intercourse from his wife: if he wishes to take his right, he takes it; and if he wishes to leave it, he leaves it.

As for the wife, she is unlike her husband in this ruling, for the reason we have mentioned—that she receives compensation in exchange for intercourse. This is the ruling entailed by the nature of an exchange.

If it is said: His—*Exalted is He*—saying, “*And live with them in kindness*” [Al-Nisā’:19] obligates a husband to treat his wife according to what is recognized among people as good conduct; among what is recognized is intercourse for the wife, so she is entitled to intercourse from her husband.

- And it has been narrated that a wife may annul the marriage if the husband is impotent or *majboob*² ... etc.—and in that is an indication that she has a right to intercourse.

- And Allah—*Exalted is He*—obligated the one who has sworn to abstain from his wife (al-mūlā) to return (al-fay’) after four months or to divorce; and al-fay’ is intercourse. In that is an indication that she has a right to intercourse.

We say: The wife does not deserve intercourse on the basis of exchange (mu’āwadah); rather, she deserves it for another reason, and that reason is:

1. That the wife is harmed by her husband's leaving off intercourse with her; in that case it is not permissible for the husband to

1- *Sharḥ al-Azhār* 2/198.

2- *Al-majboob* is one whose entire penis has been cut off. And in some contexts, it is used for one whose penis has been partially cut off.

cause her harm, so he must either remove the harm from her by intercourse, or release her. In the ḥadīth: *"There is to be neither harming nor reciprocating harm in Islam."* And He—Exalted is He—said: *"Then [there must be] retention in kindness or release with good treatment; and do not retain them to harm [them] so that you transgress... so do not incline completely [toward one] and leave another hanging."* [Al-Nisā':129].

2. That a woman marries for what women generally marry for; so if a woman finds her husband other than as men are—such as being impotent or majboob, etc.—she has the choice: either to remain with him, or to annul the marriage. For she married him so that he would fulfill his desire with her when he wished to reside with her and leave her when he wished, and for what results from that of children, etc. Thus she is entitled to annulment due to the lack of what Allah—Exalted is He—wills of fulfillment of desire and the obtaining of offspring. The wife has a right that her husband be like [other] men; so if she finds him deficient as compared to his peers among men, she deserves annulment.

In summary: A woman accepts marriage to a man upon a dower, on the basis that the man has desire to have physical contact with her, and that she will have from him as other women have from their husbands of intercourse and children. The marriage contract was concluded between them on this basis, and she consented to marry him upon this foundation; were it not for that, she would not have consented. It is as if, by the marriage contract, the husband undertook that for her—without specification—so she deserves annulment because the husband did not fulfill, for her, what he implicitly undertook in the contract.

Marriage and Wealth

His—Exalted is He—saying: *"If they are poor, Allah will enrich them from His bounty."* [Al-Nūr:32]. **If it is said:** A man may marry and yet not become well-off?

The answer: It has been said that the statement is unrestricted (muḥmalah), and an unrestricted statement is in the force of a particular (partial) one—i.e., some of those who marry become enriched.

It may also be said: What is meant is that Allah will fill their lack, satisfy their hunger, and cover their nakedness; and that is achieved by little or much, as we observe today: the poor eat and are satisfied and dress as the rich do, though the quality of food and clothing differs.

Masturbation

Question: What is the ruling on masturbation if a physician requests a semen sample from a patient?

The answer—and Allah is the One who grants success: If the patient's treatment cannot be completed except by a semen sample and there is otherwise no hope for a cure, then there is no objection. This is indicated by His—*Exalted is He*—saying: "...except for that to which you are compelled." [Al-An'ām:119], and "In cases of necessity, the prohibited becomes permissible." The scholars of the madhhab did not exclude from this general rule except fornication, and harming or killing a human being. Nor do we see today any scholar objecting to uncovering the private part when injections are administered, or in treating hemorrhoids and the like; this is measured by that.

What we have mentioned is supported, to some extent, by the fact that the issue of masturbation is a speculative (ẓannī) one, because disagreement has occurred therein. As reported in the marginalia on *Sharḥ al-Azhār*, Aḥmad ibn Ḥanbal, Mālik ibn Dīnār, and Ibn 'Umar differed regarding its prohibition and said it is permissible; and speculative issues do not cause a person to be deemed defiantly sinful (fāsiq).

And the reason for this supporting point is that speculative matters carry a lighter ruling than categorical ones.

A Benefit (The Wife's Rights)

A ḥadīth concerning the wife's rights: *"Feed her when you eat; clothe her when you clothe yourself; do not strike the face; do not revile; and do not abandon [her] except in the house..."*

His statement: "Do not revile (lā tuqabbih)"—they said its meaning is: do not say, "May Allah make you ugly," and the like. In my view it has another meaning beyond that: that one say, "You are not beautiful; your face is ugly," or "hideous," or similar expressions that relate to the ugliness of her face—such as describing her eyes, nose, mouth, lips, or cheeks with ugliness of form and deformity. Such a thing is like striking the face in the harm it causes—or even more severe.

And in a ḥadīth: *"Treat women well, for woman was created from a bent rib..."* It is taken from the ḥadīth that men should excuse their wives for some of what issues from them of bad manners, for Allah—*Exalted is He*—created them upon that nature.

The meaning of "Treat [them] well (istawṣū)": accept the counsel concerning them, or let some of you counsel others concerning them.

And in the ḥadīth: *"The best of you are the best to their families, and I am the best of you to my family."*

[The Rights Owed by the Woman and the Rights Owed to Her]

A woman has rights and upon her are rights. Before setting out the rights, it is necessary to know the nature of woman. Know that the

nature of woman is weakness in body, intellect, patience, judgment, endurance, management, and other matters. He—*Exalted is He*—said, in reference to the weakness of woman: "*Or one brought up in adornments and, when disputing, not clear?*" [Al-Zukhruf:18].

Because of her weakness, Allah—*Exalted is He*—lightened for her some obligations and obligated men to support their women and meet their needs. He—*Exalted is He*—said: "*Men are caretakers over women by [right of] what Allah has given one over the other and what they spend from their wealth.*" [Al-Nisā':34]:

1. It befits a woman that, if she differs in opinion and management with her husband, she should follow his opinion and obey his command—even if she is certain that her view is correct and that her husband's view is wrong.

It is not permissible for her to multiply requests and importune her husband to accept her opinion. She should know that Allah—*Exalted is He*—has favored the man over the woman with a stated favor in His Noble Book: "*Men are caretakers over women by [right of] what Allah has given one over the other and what they spend from their wealth.*" So she must submit to and accept this favor; and this is among the rights that are due from her to her husband.

2. A wife may be displeased with her husband's kindness to his relatives, neighbors, and friends; she often lets her tongue loose in hurting her husband because of that, and the husband may leave off doing good to be safe from his wife's harm; and if he does good, he does it secretly. A woman should know that it is not permissible for her to prevent her husband from doing good to his kin—even if they are resentful, hurtful, and severing ties—and she should not deem excessive what the husband gives to his relatives. For Allah—*Exalted is He*—has commanded maintaining kinship ties and doing good to them in His Book and upon the tongue of His Messenger (*May Allah bless him and his family and grant them peace*). So let the wife not be an aid to Satan in preventing her husband from complying with the command of Allah and the command of His Messenger (*May Allah bless him and his family and grant them peace*); rather, by doing so she would be among the devils who turn people away from Allah's command and from righteous deeds, and by such an act she would be among those from whom Allah commanded seeking refuge, and she would be a she-devil from the devils of humankind.

— There is no sin upon a woman to be inwardly displeased and pained by her husband's kindness, and for her heart to feel constricted

because of it; but she must guard her tongue, not comply with what is within herself, and not incline with her whim.

And she should know that in resisting her whim she has reward and recompense. He—*Exalted is He*—said: "*But as for he who feared standing before his Lord and restrained himself from [his] desire, then indeed, Paradise will be [his] refuge.*" [Al-Nāzi'āt:40–41].

— A woman may let loose her tongue against her husband, son, or any of her relatives, increasing in rebuke, reproach, and disparagement, and repeating that over a long period due to a mistake that occurred from the man intentionally, unintentionally, or out of forgetfulness—often for a trivial cause that does not warrant denunciation. Such behavior is not pleasing to Allah; rather, He hates it and punishes for it. He—*Exalted is He*—said: "*And those who harm believing men and believing women for [something] other than what they have earned have certainly born upon themselves a slander and manifest sin.*" [Al-Aḥzāb:58].

[The Husband's Rights and the Parents' Rights]

Question: A woman may be confused about which to prioritize when there is a conflict between the husband's rights and the parents' rights: which takes precedence? Please clarify.

The answer—and Allah is the One who grants success: What appears is that the parents' rights are more deserving of precedence. This is because Allah—*Exalted is He*—reiterated in His Book the emphasis upon their rights and stressed that emphasis to the utmost, coupling obedience to them with obedience to Him. As for the husband's rights, He did not mention them in the Qur'ān except by way of indication, as in His saying: "*So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance—[first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them.*" [Al-Nisā':34]; and His saying: "*And due to the wives is similar to what is expected of them, according to what is reasonable; but the men have a degree over them.*" [Al-Baqarah:228].

[A Husband Preventing His Wife from Visiting Her Parents]

Question: If a husband prevents his wife from visiting her parents, is it permissible for her to visit them without his permission or not?

The answer—and Allah is the One who grants success: Allah—*Glorified and Exalted*—referred the reciprocal rights of spouses to what is customary, saying: "*And due to the wives is similar to what is expected of them, according to what is reasonable.*" [Al-Baqarah:228]. What is "reasonable" (ma'rūf) is what people recognize and customarily practice. On that basis, if what is customary among the people of a given town or

village is that a wife visits her parents—or either of them—once every day, or once every two days, or once every three days, then it is permissible for her at that point to visit them even without the husband's permission.

If a woman wishes to visit her parents more frequently than what the people of her town customarily do, then that is not permissible for her except with his permission. This detail is derived from the verse: *"And due to the wives is similar to what is expected of them, according to what is reasonable; but the men have a degree over them."* [Al-Baqarah:228].

[Chapter: The Marriage Bed]

[He Married a Woman and She Gave Birth After Five Months]

Question: A man married a woman, and five months after his marriage his wife gave birth to a boy. We asked the physicians about the newborn, and they said: a full-term natural birth. The woman's husband did not realize that the minimum gestation is six months. Are we required to alert him, or not?

The answer—and Allah is the One who grants success: Here interests and harms (maṣāliḥ and mafāsīd) are in conflict. In remaining silent there are interests and harms. Among the interests: concealing the wife's matter—which the Lawgiver emphatically exhorted—maintaining and continuing the marriage between the spouses, blocking the door to discord and strife between the husband and the wife's family, and concealing the newborn from being ascribed to other than his father.

As for the harms: they include bequeathing to one who is not an heir, and the boy—upon reaching maturity—entering upon unrelated women, along with other expected harms that come from children of fornication.

What appears stronger to me is: that the husband should be alerted, while finding a way to do so that does not expose or disgrace the woman or her family. Thus, the husband must be alerted, and the husband must conceal (the matter of) the woman.

We say this because sincere counsel (naṣiḥah) is obligatory for all Muslims in general and specific cases, and because the cohabitation of a believing, chaste man with a fornicatress is forbidden by the explicit text of the Qur'ān: *"The [unmarried] male fornicator does not marry except a [unmarried] female fornicator or polytheist, and the [unmarried] female fornicator—none marries her except a [unmarried] male fornicator or polytheist; and that has been forbidden to the believers."* [Al-Nūr:3].

[A Benefit: If a Man Knows He Did Not Have Intercourse with His Wife and She Bore a Child]

In al-Tāj: A benefit: If a man knows that he did not have intercourse with his wife, yet she bore a child and the Sacred Law nevertheless attributed the child to him, then it is permissible for him—in what is between him and Allah Most High—to withhold the inheritance from him; indeed, it is obligatory upon him to do so, and obligatory upon him to prevent his daughters from appearing unveiled before him, etc.

I say: As for when he merely suspects—due to indications—that the child is not his, then it is not permissible for him to withhold the inheritance from him; but he may prevent his daughters from appearing unveiled before him, due to the ḥadīth: *"Observe hijab from him, O*

Sawdah,” and because of the precaution and giving precedence to the side of prohibition.

We only said that it is not permissible to withhold the inheritance for several reasons:

1. Indications (qarā’in) are not relied upon in this chapter, due to what is narrated that when a man asked the Prophet (May Allah bless him and his family and grant them peace) about a newborn whose paternity he doubted, he said to him: “Do you have camels...,” etc.
2. Allah—*Exalted is He*—said: *"Indeed, assumption avails not against the truth at all."* [Yūnus:36], and other verses forbidding following mere conjecture.
3. Because of the severe warning that came in Sūrat al-Nūr regarding accusation (of adultery) without clear proof.

[A Man Married a Divorced Woman Who Did Not Menstruate, and She Gave Birth After Two Years]

Question: A man married a woman, and she gave birth to a daughter two years after he married her. She had previously been married to another man, but she had not menstruated from the time her first husband divorced her until she gave birth, though she is among women who menstruate; then after giving birth her menses returned to normal. To whom is the child ascribed in the Sacred Law?

The answer—and with Allah is success: It appears they married her while she was still in her waiting period (‘iddah), out of their ignorance. Accordingly, the answer is: If the latter husband and the wife both acknowledge that intercourse occurred, the child is ruled to belong to him—that is, to the latter husband. If the two spouses do not both acknowledge that intercourse occurred, then the child is attributed to the first husband if she gave birth before four years had passed since the first husband divorced her. All of this is according to the madhhab.

[Test-Tube Children]

Question: Physicians have recently undertaken to take from a man’s semen and from a woman’s (i.e., ova), then place that in test tubes, where the child is formed and grows; then the child is transferred from the tube and placed in his mother’s womb. Is such a procedure permissible if the mother does not conceive due to an impediment?

The answer—and Allah is the One who grants success: What appears is that the means by which this is achieved are prohibited, and it does not, as seems, come about except through acts of disobedience:

1. The man disobeys Allah—*Exalted is He*—by exposing his private parts without necessity.

2. Extracting semen by other than what Allah has made lawful is disobedience.
3. The woman likewise exposes her private parts without necessity, and what is in her womb is extracted in an unlegislated way; all of that is disobedience to the One, the Subduer.
4. Then, when transferring the embryo to the womb, this is not done except by the woman uncovering herself to the utmost. Such things are not permissible in Islam except in the most extreme necessity; as for the situation described in the question, it is not permissible and not lawful.

That said, if a husband wishes to have children and be one with offspring, then let him pursue that through the means which Islam has permitted—namely, marrying a second wife.

Furthermore, a person is not safe, if he does such a thing, from their placing in his wife's womb another, foreign embryo—due to causes and possibilities.

Artificial Insemination

Artificial insemination is the placing of a man's sperm in a woman's womb in pursuit of offspring. They have tried that either through the woman's husband: the physician takes semen from a man and places it in the urethra of the sterile husband; then the sterile husband goes and has intercourse with his wife, depositing in her womb what the physician had placed in his urethra—by this, the wife is inseminated, conceives, and gives birth. I myself saw a young man who came to be by this insemination.

Or the woman is inseminated by placing semen in her womb without the mediation of her husband; rather it is discharged directly into her womb, and insemination occurs and she gives birth. The requested matter is to clarify the legal ruling on whether insemination is permissible or impermissible, and to whom the child resulting from insemination is attributed.

The answer—and with Allah is success:

Both types of insemination mentioned in the question are impermissible in the ruling of Allah Most High.

The proof is what is known from our upright religion: that Allah Most High obligated the woman to guard her chastity absolutely. He said—Exalted is He: "*And tell the believing women to lower their gaze and guard their private parts...*" [Al-Nūr:31]. This encompasses guarding against others' looking at, enjoying, or placing a sperm-drop in her private part; Islam has permitted none of that to anyone except their husbands.

Nor does the husband's permission for inseminating his wife—

whether by his mediation or another’s—justify or render lawful what is forbidden.

- And from what is known is that Allah Most High commanded men to guard their chastity. He said—*Exalted is He: "Tell the believing men to lower their gaze and guard their private parts..."* [Al-Nūr:30]; thus Allah—Exalted is He—by this verse forbade a man to place his sperm in the private part of a woman who is neither his wife nor his legal bondwoman.

- And if we consider what Allah has legislated in the chapter of chastity, we find that the intended end is preserving lineages and their purity, safeguarding them from mixing and being lost; in insemination there is mixing and loss of lineages, and so on.

Moreover, a sound perspective perceives the ugliness of that, recoils from it, and is repulsed by it.

- As for the child resulting from insemination: he is the child of the woman, not of her husband—whether the insemination was by the husband’s intercourse with her or not—for he was not created from the husband’s fluid; rather, he was created from the fluid of another man.

If it be said: sound Sunnah has come that “the child is [attributed] to the [marriage] bed,” and the marriage bed belongs to the woman whose child came by insemination—as the authentic report indicates.

It is said: In this case the husband and the wife both acknowledge that the child was not created from the husband’s fluid, but was created from the sperm of another man.

- This case is like what the scholars mentioned: if a husband denies what his wife has given birth to at the time of delivery or before delivery and disavows it, and then his wife concurs with him or mutual imprecation (li‘ān) occurs between them, the lineage is negated from him, and the newborn is the child of his mother, not of the husband.

[Ruling on Injecting a Sterile Man with the Semen of a Healthy Man to Beget a Child]

Question: A sterile man strongly desires a child. He went to a physician, who took some semen from another man and injected it into the sterile man’s testicle. He then said: “Go and have intercourse with your wife.” The man had intercourse; his wife conceived and gave birth to a child. What is the ruling?

The answer—and Allah is the Patron Who grants success: The child’s lineage is not established for the sterile man; he is not his son. Nor is lineage established for the owner of the semen, for he has no marriage bed with the child’s mother. As for the sterile husband, [the child is not his] because he was created from fluid other than his. As for the mother,

the child's lineage is established from her.

What the sterile man did is forbidden; no Muslim may enter into it. It is likewise impermissible for a Muslim to give a dose of his semen to another man or to a woman. Allah Most High said: "*And those who guard their private parts—except from their spouses or those their right hands possess.*" [Al-Ma'ārij:29–30]. Whoever gives his semen to a man or to a woman for insemination is not guarding his chastity.

If a child comes to a person by that aberrant method and he raises him until he grows up—the legal ruling concerning that child is that he is not a son of that man; he does not inherit from him; it is not permissible for him to enter upon the man's unmarriageable kin (maḥārim); nor may he be attributed to him—so it must not be said: "So-and-so, son of So-and-so."

It is neither appropriate nor permissible to say that he is a child of fornication; for the one who placed [the semen] placed it in a private part by a legal marriage, but erred in that he irrigated his tillage with water other than his own.

[Book of Divorce and What Relates to It]

A Benefit on the Importance of Pronouncing Divorce

His—*Exalted is He*—saying: "*It is all the same to Him whether any of you conceals speech or declares it openly.*" [Al-Ra‘d:10], may be taken to indicate that a condition that is hidden is like an expressed condition in transactions.

And His—*Exalted is He*—saying: "*Allah does not burden a soul beyond its capacity.*" [Al-Baqarah:286], may be taken to mean that a person is not taken to task for inner thoughts; for it is not within a person’s capacity to rid himself of them. On that basis, divorce, emancipation, vows, and endowments do not take effect by mere inner thoughts.

It may also be inferred therefrom that if someone vows to do what he cannot—such as one hundred pilgrimages—the vow does not bind. And in *al-Minhāj* it is related from the Prophet (*May Allah bless him and his family and grant them peace*): "(All of it) is a whisper of the heart; when the veil of whispering is torn and the tongue speaks it, the servant is taken to task for it; but if it is not torn and the tongue does not speak, there is no blame." End.

Yes: divorce and the like only occur upon the occurrence of their cause, and the cause by which divorce takes effect is the utterance of explicit wording of divorce, attributed to a wife—such as, "So-and-so is divorced"—or the occurrence of a euphemism for that. Its examples are many and mentioned in the books of fiqh.

If the husband mentions the word "divorce" stripped of attribution to his wife, the apparent ruling is that it amounts to nothing. The proof is His—*Exalted is He*—saying: "*And when you divorce women...*" [Al-Baqarah:231], and the like, for He mentioned divorce as attributed to women and occurring upon them.

Another proof is that when the scholars mentioned examples of divorce in the books of fiqh—such as *Sharḥ al-Azhār*—they mentioned it as attributed to the wife in both explicit wording and euphemism; they did not include among their examples mention of "divorce" alone without the wife, nor mention of the wife alone without "divorce" along with the intention of the other.

Moreover, the apparent sense of the madhāhib of the Muslims is that the *intention* of divorce does not effect a divorce—except what is narrated from Abū Ḥanīfah, as Ibn al-Amīr mentioned in *Subul al-Salām*.

On that basis, what is commonly heard from laypeople—such as, "ḥarām wa ṭalāq," or "‘alayya al-ṭalāq (I swear by divorce)"—does not make the wife divorced, even if he intended by that the divorce of his

wife; for intention has no effect in the chapter of divorce, marriage, emancipation, and the like. These rulings are contingent upon the occurrence of their *causes*, and their causes are verbal, as noted.

What we have presented—that intention does not affect this chapter—is borne out by the ḥadīth narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “Three things, their seriousness is serious and their jest is serious: divorce, marriage, and emancipation,” or as he said.

If it is said: It has been narrated from the Prophet (*May Allah bless him and his family and grant them peace*): “Actions are only by intentions.”

We say: In what we are discussing, the cause is *verbal*, so the intention required is the intention to utter the wording, not the intention of divorce—per the proof we have set forth. Thus, his saying (*May Allah bless him and his family and grant them peace*) “Actions are only by intentions” excludes the divorce of a child, the insane, and the sleeping, and one whose tongue ran ahead in error to divorce without intending it.

[The Ruling on Divorce and an Oath by a Word When It Is Uttered but Meant with a Meaning It Cannot Bear]

In a ḥadīth narrated by al-Nasā’ī and others: “Observe how Allah turns away from me the abuse and curses of Quraysh; they abuse Mudhammam and curse Mudhammam, while I am Muḥammad.” End.

I say: It is taken from this that if a word is uttered while intending by it a meaning it cannot bear, no ruling is entailed by it and nothing becomes due thereby.

Our intent is not that Quraysh were not accountable for that abuse—they were accountable. Rather, the point is like someone saying, for example: “By Allah, I will harm *the book*,” intending by it a certain man; such an oath entails no ruling, because the word “book” is not applied to a man—neither literally nor figuratively. Likewise, if a man says, “The book is divorced,” intending by “book” his wife; no divorce ruling attaches, because “book” is not applied to a woman or a wife—neither literally nor figuratively.

Two Benefits Concerning Confession (Acknowledgment)

(1) The confession of one under duress is invalid. The threshold of coercion is the fear of harm; and likewise for all unilateral legal declarations. Under coercion with fear of such harm, obligations fall away; but committing prohibitions is not permitted on account of such harm.

The threshold of harm at which prohibitions become permissible is that the coerced person fears for himself killing or the cutting off of a limb, or what is on a par with that—except killing and fornication, which

are not permitted even under coercion; likewise, harming a human being and insulting him. This is the madhhab.¹

The Commander of the Faithful, ‘Alī (*peace be upon him*), permitted his followers to revile him under coercion; he (*peace be upon him*) said: “As for reviling, then revile me—for it is salvation for you and purification for me.” Reviling a human being is not greater than committing shirk against Allah and reviling Him by ascribing to Him a son or a consort—yet even that was permitted under coercion.

(2) If the spouses both confess and agree that their marriage took place without a guardian or without witnesses, the madhhab is that they are left upon their marriage and are not interfered with, if that accords with their madhhab or they were ignorant at the time of contract. If they bring the matter before a judge, he rules between them according to *his* madhhab—whether to separate them or not.

[The Ruling on Divorce and Revocation Without Intention]

Question: An ignorant man wished to divorce his wife and took with him another man to the wife’s family. When they arrived, the companion coached his friend to pronounce the divorce, saying: “Say: she is divorced,” so he said, “She is divorced.” Then he said to him: “Say: I have borne witness and taken her back,” then said to him: “Say: she is divorced,” and he said that. Then he said to him: “Say: I have borne witness and taken her back,” then said to him: “Say: she is...” and he said that. This is what happened, while the divorcer was ignorant and did not intend to divorce her three times; he only wished to issue the divorce people customarily do, then take her back if they later so choose.

Does this divorcer incur the ruling of three pronouncements—so that she is not lawful for him until she marries another husband—or is he bound only by what he intended?

The answer—and Allah is the One who grants success: If the divorcing man had *no intention* regarding the revocation, but merely repeated the revocation after his companion, and then the divorce—without having an intention of revocation nor a will for it—then such revocations are of no consequence and are not counted; this is as between him and Allah Most High. As for the outward ruling, the divorce and the revocation are recognized; and if the revocation is invalid, then the subsequent divorce does not occur. On this basis, what occurred from the aforementioned man is *one* pronouncement of divorce—and, as we said, this is as between him and Allah Most High. If there is no disputant against the husband, then he is not to be opposed; but if the

1- *Sharḥ al-Azhār* 4/305, Ministry of Justice.

guardian or the wife accuses him, he swears that he did not intend by those words a revocation, and that he only uttered them by prompting.

The proof for what we have mentioned is what is narrated: that the Prophet (*May Allah bless him and his family and grant them peace*) put under oath the man who came to seek a ruling concerning his thrice-pronounced divorce of his wife, that he (*May Allah bless him and his family and grant them peace*) had intended only one; so the Prophet (*May Allah bless him and his family and grant them peace*) counted it as one.

Supporting what we have stated are the ḥadīths: “There is no deed except with intention,” and “Actions are only by intentions, and every person shall have only what he intended.”

[Intention in Divorce]

In *Uṣūl al-Aḥkām* by Imām Aḥmad ibn Sulaymān—*peace be upon him*—it states that intention is a condition for divorce, and he cited as evidence the ḥadīth: “*My community has been absolved of error, forgetfulness, and what they are coerced into,*” and the ḥadīth: “*Actions are only by intentions.*” He then said, in sum: these reports indicate that it is not permissible for one who did not *intend* divorce and *mean* it to divorce... etc.

I say: This should be regarded as what is *between a person and his Lord*. As for outward judgment, the judge is obligated to rule by the *apparent*. Thus, if a sane, choosing person pronounces divorce upon his wife, the divorce is ruled effective against him; for the apparent state of one who is adult and sane is that he had intention and purpose. It has been narrated from the Prophet (*May Allah bless him and his family and grant them peace*) that he said: “*We judge only by the outward,*” or words to that effect. Therefore, if the judge rules the divorce effective, it becomes effective—whether or not the divorcer *in fact* intended it—because rulings in speculative matters take effect both outwardly and inwardly.

[Pronouncing Divorce by an Ignorant Person Who Does Not Intend It]

Question: An ignorant man frequently divorces his wife verbally, yet he does not *want* to divorce her; and she pays no heed to his words of divorce, knowing her husband’s habit of not intending divorce. Later, after receiving guidance and hearing admonitions, this man became alert to what he had been doing and regretted it. What is the legal ruling?

The answer—and with Allah is success: If the wife concurs with the husband regarding his *lack* of intention, then they are not to be opposed, and divorce does *not* occur if the husband neither intended nor willed divorce—due to the ḥadīth: “*No deed [is valid] except with intention.*”

Question: A young man would often swear by divorce, saying: “It is ḥarām and divorce from my wife that I did (such-and-such) / or that I did not do it,” while he was lying. He did that out of carelessness with divorce and scant religiosity, and it occurred from him beyond count. He later had children; when he heard admonitions, he feared the consequences of what had passed and asked for a way out. How is that?

The answer—and Allah is the One who grants success: The *unaffiliated layman* who has no fixed madhhab has his past actions borne upon the *best* construals—namely, that they be treated according to the madhhab of whichever mujtahid they accord with.

(Retention in Kindness)

His—*Exalted is He*—saying: “*Then [there must be] retention in kindness or release with good treatment.*” [Al-Baqarah:229] is taken to mean: it is obligatory to divorce one’s wife if retaining her *in kindness* proves impossible. Hence the Prophet (*May Allah bless him and his family and grant them peace*) ordered in the case of the woman who said: “I do not fault Thābit in character or religion, but I dislike ingratitude within Islam.” He (*May Allah bless him and his family and grant them peace*) said to her: “*Will you return his garden [i.e., the dowry]?*” She said: “Yes.” So the Messenger of Allah (*May Allah bless him and his family and grant them peace*) said to him: “*Accept the garden and divorce her one pronouncement,*” and in another narration, he ordered him to divorce her.

If a wife comes to hate her husband, fails to fulfill what is due to him, and attempts at reconciliation bear no fruit, then if she asks for divorce it is obligatory upon him to divorce her—either on the basis that she returns to him what she took of the dowry, or gratuitously.

Yes: It is taken from the aforementioned ḥadīth that an agreement to return the dowry in exchange for divorce renders the divorce a *khulʿ*.

If the husband balks at divorcing his wife, the judge may dissolve the marriage—*after* employing means and exhausting efforts to reconcile.

We say this because companionship and conjugal life cannot be attained where one spouse detests the other; he recoils from her, feels constricted at the sight of her, by being near her, or when sharing a sitting—like one’s aversion and discomfort toward a person afflicted with leprosy. Direct experience attests to this. And the Prophet (*May Allah bless him and his family and grant them peace*) said in the well-known ḥadīth: “*There is to be neither harming nor reciprocating harm.*”

[Ruling on Reclaiming the Dowry and Withholding Maintenance When a Father Prevents His Daughter from Returning]

Question: If a man prevents his daughter from returning to her

husband, a dispute arises between the husband and the father, and matters culminate in divorce—while the wife was pregnant and then gave birth—does the wife, in this case, deserve maintenance for the waiting period? Is it permissible to reclaim the dowry and gold at divorce?

And may the husband take the newborn from his mother on the pretext of *nushūz* (defiance), though she desires that the child remain with her without wage? Note that the marital relationship between the spouses had been sound, with no ill-treatment or defiance; what happened came solely from the father, and nothing else... etc.

The answer—and Allah is the One who grants success and aid: If the father is as described, then he has transgressed and wronged *both* spouses. Yes: in such a case it is permissible for the husband to take back some of the dowry and the like, and she has *no* maintenance—by analogy with the *nāshizah* (defiant wife) and with the woman who embraced Islam while married to a disbelieving husband.

As for the child: what appears is that it is *not* permissible for the husband to take the child from its mother, for she is not, in reality, *nāshizah*; she is rather being detained by her father.

If it be said: Why did you permit the husband to take back the dowry but not the child?

We say: We permitted him to reclaim the dowry for the enjoyment that was lost to him with his wife; and it is not just that both the wife *and* the wealth be lost to him. The child is not analogous: it is not permissible to drive the mother to distraction over her child without any cause issuing from her or brought upon herself. If the father wronged his daughter by detaining her from her husband, it is not permissible for the husband to *compound* her misery. Allah—*Exalted is He*—said: "*And cooperate in righteousness and piety, but do not cooperate in sin and aggression.*" [Al-Mā'idah:2]; and He—*Exalted is He*—said: "*And do not forget graciousness between you...*" [Al-Baqarah:237]. This latter verse is an address to husbands who have divorced their wives: that even if they divorced them, it remains obligatory to observe the prior marital bonds.

(Important Benefits Concerning Divorce)

1. According to al-Nāṣir, al-Ṣādiq, and al-Bāqir—and in the derivation of al-Mu'ayyad Billāh and *al-Wāfi*—*explicit* divorce wording requires the *intention* of divorce; otherwise it does not take effect.
2. If a man reports that he divorced his wife "yesterday" or in the past, and the report is *false*, then divorce does *not* occur—as *between him and Allah*. But if a dispute arises and witnesses testify to his report, then she is considered divorced in the

outward ruling. This is the madhhab.

3. The acknowledgment of a *joking* person (one jesting) regarding divorce is *not* valid, according to the madhhab.¹
4. “You are divorced *yesterday*,” “You are divorced *first*”—none of that takes effect, according to the madhhab.²

[What Is the Ruling on a Man Saying: “It Is Your Divorce”]

Question: A man says to his wife: “It is your divorce if you do such-and-such,” and then she does it. What is the ruling? This question came from al-Jawf.

The answer—and Allah is the One who grants success: What appears to me from the construction of this statement is that no divorce falls upon the woman by her doing the act mentioned in the condition. The clarification is: the husband has made the act mentioned in the condition *the divorce itself*, whereas the act itself is neither an explicit formula of divorce nor a euphemism for it.

So if a man said to his wife, “Your divorce is your entering the house,” or “Your entering the house is your divorce,” that would not be a divorce. Divorce has known expressions—some explicit and some euphemistic.

[Ruling on Saying: “If You Do Such-and-Such, Then It Is Your Divorce,” and the Like]

Question: In some regions one hears phrases like: “Do not enter so-and-so’s house; and if you enter, then your entering is your divorce,” and like: “If I do not sell such-and-such by Thursday, then it is your divorce.” What is the ruling on such phrases?

The answer—and Allah is the One who grants success and aid: Divorce is of two types: explicit and euphemistic, and each has specific expressions which the jurists have listed in their books, such as *Sharḥ al-Azhār*, *al-Baḥr al-Zakhkhār*, and the like. Both explicit wording and euphemism may be conditioned or unconditioned. What is mentioned in the question is not among the expressions they have listed for explicit wording or euphemism.

Accordingly, what appears to me is that what is mentioned in the question does not constitute a divorce—whether conditioned, as in the example given, or unconditioned. So if a man were to say to his wife, “Your standing is your divorce,” saying this to her while she is standing or the like, it would not be a divorce—neither explicit nor euphemistic—for standing and sitting, their absence, and similar acts and omissions do

1- *Sharḥ al-Azhār* 2/384.

2- *Sharḥ al-Azhār* 4/405, 4/458.

not constitute explicit or euphemistic divorce.

If it be said: In the two examples the explicit word “your divorce” occurs, and he has attributed divorce to the wife—so that should be explicit divorce.

We say: The explicit word of divorce in the question has been made by the speaker as *a predicate about* the entering and the like; and it is invalid to make any act or omission *itself* a divorce. As noted earlier, divorce is explicit or euphemistic, and none of the acts or omissions is an explicit or euphemistic divorce.

Yes, such “divorces” are common in al-Jawf; likewise, “Ḥarām wa ṭalāq—I will not do such-and-such.” All of that is not a divorce, because a valid explicit wording or euphemism of divorce must fall upon the woman *by verbal expression*, not by intention. If one mentions the word “divorce” stripped of mentioning the woman, it is not a divorce—even if he intended the woman.

(Giving the Wife a Choice Between Divorce and Something Else)

Question: A man said to his wife, “If you leave the house, I will break your leg—or you are divorced,” giving a choice between breaking her leg or divorce. What is the ruling?

The answer—and Allah is the One who grants success: What appears to me—and Allah knows best—is that divorce does not take effect, because the *optioning* (takhyīr) has corrupted the divorce. The clarification is that divorce here is doubtful due to the optioning, while the marriage is certain; the certain is not set aside by the doubtful. The scholars of the madhhab have stated that if a man says to his wife, “You are divorced—or not,” divorce does not occur; rather, the divorce is nullified, as in *Sharḥ al-Azhār*.¹

[The Ruling on Divorce in a State of Anger]

From *Al-Mqasid Al-Saliha*: the madhhab of al-Nāṣir is that divorce does not fall in a state of anger. This is narrated in *al-Kawāḍib*. End.

I say: Anger divides into two categories:

1. A category in which the intellect is absent, or is weakened to the extent that the angry person loses control over his actions, does not care what he does, and feels no shame at saying or doing what the rational deem shameful. In such a state, his divorce does not take effect, for he is in the state of insanity.
2. The second category of anger: the angry person does not lose control over his actions, and the anger does not reach the point

1- *Sharḥ al-Azhār* 2/458.

that he does what is shameful. In such a case, his divorce *does* take effect, and all of his legal acts are valid.

We say this because the legal acts of one bereft of intellect are invalid by consensus. The loss of the angry person's intellect is known by indications; among them is that he does or says what rational people are ashamed to do or say—such as exposing his private parts in public.

We have mentioned this example because of its clarity; for one who does that leaves people in no doubt that he has lost his mind.

Other examples: the angry person raises his voice among people to an excessive degree, raving with blameworthy insults and abuse, such that rational people avoid such behavior.

If it be said: A rational person might do such things while still in possession of his intellect.

We say: A rational person may become angry to the point of committing some errors—without realizing, then promptly leaving off the error; when advised, he retracts; and when others are present, he feels shame and refrains from his wrongdoing. As for one who has lost his mind: he insists he is right and does not admit his error until his anger subsides; when admonished during his anger, he does not relent; and when others are present, he feels no shame.

Divorce by One Afflicted with Diabetes or the Like

Question: A man afflicted with diabetes, hypertension, and an enlarged heart divorced his wife—first, then second, then third. Is there any solution to this, bearing in mind that were we not to “break the hazelnut's shell,” he would kill whichever of his sons opposed him?

The answer—and Allah is the One who grants success: If diabetes and hypertension have taken away his intellect, then his divorce at that time carries no legal effect, for he is in the ruling of the insane.

The loss of his intellect is known by matters:

1. A physician's determination that that degree of diabetes and hypertension removes the intellect.
2. That the afflicted person does actions which rational people customarily are ashamed to do.

The proof of this sign's validity is that the intellect, as has been said, is so named because it *restrains* its possessor from venturing upon what ought not be done.

What ought not be done falls into two categories: one that rational people may do in anger and sharp temper—such as striking and breaking household items and the like; and a second that only the insane do—such as murder and exposing the private parts in public.

Our concern is the second category, which only the insane do—like murder and exposing the private parts in public—and similar acts or statements. If the diabetic or hypertensive reaches this level, his intellect has departed; at that point, neither his divorce nor any of his legal acts has effect.

If it be said: Hypertension and diabetes are not insanity; they are the uprising and intensification of the bodily humors, without a defect in the intellect.

We say: If the uprising of the humors reaches the point that the intellect is lost, it takes the ruling of insanity; but if the intellect retains authority, it does not take the ruling of insanity. Concerning what we have mentioned, there is the ḥadīth: “*There is no divorce in ighlāq*,” narrated by a group of ḥadīth scholars. *Ighlāq* has been explained as: that a person’s heart is shut such that he does not intend the speech, or is unaware of it; it has been said: constricted breast and little patience; it has been said: anger; it has been said: insanity; and it has been said: coercion.

I say: These explanations revolve around a single meaning—namely, that *ighlāq* is when a person speaks without intent and without awareness of what he is saying.

Question: What is the ruling on the divorce of a man afflicted with diabetes?

Answer—and Allah is the One who grants success: Allah Most High said: “*But man, against himself, will be a witness, even if he presents his excuses.*” [Al-Qiyāmah:14–15]. Diabetes has varying degrees; if the disease surges and overwhelms to the point that the intellect is lost and his essential cognitions—most or some—become confused, then divorce does not occur at that time, for he has entered the category of the insane. In the ḥadīth: “*The pen has been lifted from three: from the child until he reaches puberty, and from the insane person until he regains his reason ...*,” etc.

In such a case, diabetes is a kind of insanity; indeed, it has been said: “Madness has many forms.”

This state becomes evident when the patient does not know what he is saying, does not understand what is said to him, or does not remember what he said nor what was said to him.

As for anger and its intensity—while his awareness of what he says and what is said to him remains, and while he still discerns necessary knowledge—this does not prevent the occurrence of his divorce.

If a man divorces in a state of psychological agitation a thousand times, then declares *ẓihār*

Question: A man, in a state of psychological agitation, said that his wife is divorced a thousand times, and that she is to him “like the back of his mother.” What is the ruling?

Answer—and Allah is the One who grants success: Pronouncing a thousand divorces upon one’s wife is a sin and a transgression of the bounds Allah has set for His servants in His Noble Book. He must repent and seek forgiveness. His wife is deemed divorced *one* pronouncement, and he may take her back if this does not complete three. If this pronouncement completes three—i.e., he had previously divorced her twice—then he has no right of return to her, and she is not lawful for him until she marries another husband.

As for the *ḡihār* after the divorce, it does not take effect and carries no consequence, as the scholars of the madhhab have said, and there is no expiation due for it. One may adduce as evidence His saying, *Exalted is He: “Those among you who declare their wives unlawful to them [by ḡihār] ...”* [Al-Mujādilah:2], and His saying: *“And He has not made your wives whom you declare [by ḡihār] to be like your mothers your [actual] mothers.”* [Al-Aḡzāb:4]. A divorced woman is not a “wife.”

If it be said: A revocably divorced woman (in ‘iddah) has the rulings of a wife; thus it is forbidden for the divorcer to marry his wife’s sister or a fifth wife, and maintenance is due to her, and the like.

We say: She is not called a “wife” in the law; she is called a “divorcee.” Maintenance during the waiting period is due by proof, such as His saying: *“And if they are pregnant, then spend on them until they deliver their burden.”* [At-Ṭalāq:6]—not because she is a wife.

The prohibition of marrying the sister and a fifth wife is also by proof, namely: that Allah, Glorified, has granted the husband the right to take back his wife so long as she is in the waiting period of a revocable divorce. He said: *“And their husbands have more right to take them back in that [period].”* [Al-Baqarah:228], and He said: *“Perhaps Allah will bring about after that a [different] matter.”* [At-Ṭalāq:1].

From this we know that it is not permissible for the husband to marry the sister or a fifth wife, because that would nullify the *revocation* which the Qur’ān has affirmed. If the sister or the fifth were permissible, revocation would be nullified; yet it is known—as the Qur’ān indicates—that revocation is the husband’s right so long as the revocably divorced woman remains in her waiting period. Therefore the sister and the fifth are forbidden due to their contravention of revocation, not because the divorcee is a “wife.”

Hence they said that a *fifth* wife is permissible for one whose wife has been divorced three times—and likewise the sister.

Moreover, divorce is the *undoing* of the knot of marriage; thus Allah

called it “release.” Allah legislated and obligated the waiting period (‘iddah) for great benefits to people, among them what He mentioned: *“Perhaps Allah will bring about after that a [different] matter.”* [At-Ṭalāq:1]. A husband may regret the divorce, so Allah granted him time and choice—He set a term for him to review his soul and consider his affairs; perhaps the divorce issued in anger, over a trivial matter, or by weak judgment.

Among the benefits is preserving lineages from mixing. If a divorcee were to remarry immediately after divorce, lineages would be confused, due to the possibility of conception from the first husband. For this reason Allah forbade contracting marriage with the divorcee until she completes her waiting period: *“And do not resolve on the tie of marriage until the decree reaches its term.”* [Al-Baqarah:235]. Thus the divorcee during her waiting period is *not* a wife; rather, she is released from the husband’s bond and set free from his tie. The link that remains after divorce is only for the benefits mentioned—not because she is still a wife.

Maintenance is due to her from the husband during the waiting period because the waiting period is imposed upon her for interests that pertain to the husband—namely, preserving his lineage from being lost and awaiting his choice to take her back.

The proof that the waiting period was legislated to prevent the mixing of lineages is His saying, *Exalted is He*, regarding a woman divorced before consummation: *“Then you divorced them before you had touched them—then there is not for you any waiting period to count against them.”* [Al-Aḥzāb:49].

[Divorce of One Afflicted with Obsessive Misgivings]

Question: A man who appears to have some obsessive misgivings said: What is incumbent upon one who says: “I will say later: ‘She is divorced’”?

Answer—and Allah is the One who grants success: Such a statement is *not* a divorce; it is merely information about what he will say in the future. Informing about divorce is not a divorce—whether about the past or the future. However, if someone informs that he *has* divorced his wife, then the necessary ruling is to judge the divorce as having occurred—not because his report *is itself* a divorce, but because a person is held to and bound by what he admits and acknowledges upon himself.

Yes: If a person acknowledges that he divorced his wife, then claims that at the time of divorce his intellect was impaired, and he proves that with evidence, then his acknowledgment and admission of divorcing his wife in such a state is *not* a divorce. Thus it becomes clear to us that reporting a divorce is not, in itself, a divorce.

Divorce of the Intoxicated

Question: A man divorced his wife while intoxicated from consuming both hashish and wine. What is the ruling on his divorce? The manner of his divorce was that he addressed a group of men among whom was his wife, and said: “All of them—divorce,” imagining at the time that they would all become divorced if he “divorced them.”

Answer—and Allah is the One who grants success: According to the madhhab, the divorce of one intoxicated by wine *takes effect*; but intoxication from hashish and the like of other intoxicants does *not* cause divorce to take effect. So it is in the *Sharḥ* and its marginalia. Then in the marginalia of *Sharḥ al-Azhār* for the madhhab it states: if it is unclear whether his intellect departed due to wine or due to *āl-jawz* (nutmeg), then it does not take effect.¹

I say: The proof for the correctness of the scholars of the madhhab in this issue is that the proof for the effectiveness of the drunkard’s divorce came *contrary to analogy* (qiyās). By analogy, his divorce would not take effect—since his intellect is absent—just as the divorce of the insane or one whose intellect has departed due to illness or an episode does not take effect. Therefore, it is affirmed where it is textually reported—namely concerning intoxication from wine. As for intoxication from other than wine, one must remain upon the default, for there is no proof that divorce takes effect therein; and when there is ambiguity, the default is the persistence of the marriage, which is not removed by doubt. Allah knows best.

If it be said: Ḥadīths have come *unrestrictedly* concerning the drunkard’s divorce; is the divorce of the drunkard valid—so why have you restricted it to drunkenness from wine to the exclusion of other substances?

I say: Perhaps the scholars of the madhhab restricted it to drunkenness from wine because the term “drunk” (sukrān) is applied to one whose intellect has departed *by wine*, and “sukr” (drunkenness) comprises two matters: loss of intellect *and* exhilaration. Other narcotics remove the intellect without exhilaration; thus, one whose intellect departs without exhilaration is not called “drunk.”

[A Benefit on Analogizing Those with Psychological and Neurological Illnesses to the Intoxicated]

In *al-Tāj* for the madhhab: “The drunkard is one whose intellect has changed such that he confuses his speech—even if his intellect has not

1- *Sharḥ al-Azhār* 2/382–383.

departed entirely. When he becomes shameless after modesty, and loquacious after silence—that is the departure of the intellect.”

I say: From this statement one may infer the threshold at which the legal acts of those with psychological and neurological illnesses are not effective. If such a person divorces his wife, his state is considered: should he reach that threshold—becoming shameless after modesty and loquacious after silence—then neither his divorce nor any of his legal acts is recognized. Likewise, if the diabetic patient becomes such after formerly not being so, that is a sign of the departure of his intellect; at that point, neither his divorce nor any of his legal acts is considered for as long as he remains in that state.

[Ruling on One Who Divorced While Apparently Sane, Then His Insanity Appeared]

Question: A man divorced his wife and, outwardly, he appeared free of insanity; then afterward insanity appeared in him. We feared that the divorce may have occurred at the onset of the illness, and doubt arose for us concerning the occurrence of the divorce. What is the ruling?

Answer: The necessary course when doubting in such a case is to revert to the default state. The default concerning the man mentioned is soundness; thus, he is ruled sound of illness and the divorce valid. This contrasts with the case where the man is *usually* insane and only rarely regains his senses. If he pronounces divorce and it is not known whether he pronounced it in a lucid interval or in a state of insanity, then the necessary course is to revert to the default—namely, insanity.

The scholars of the madhhab have analogous discussions in purity and impurity, fasting and breaking the fast, and many other matters wherein they return judgment to the default.

Divorce of One Who Consumed Narcotics and Thereby Had His Intellect Altered

Question: A man consumed some narcotic pills and his intellect was altered; he divorced his wife in that state, and this was the *third* pronouncement. Does that divorce take effect or not?

Answer—and Allah is the One who grants success: That divorce does *not* take effect; the woman remains his wife. This is the madhhab, as in *Sharḥ al-Azhār* and its marginalia.

They ruled that the divorce of one whose intellect is altered by *wine* takes effect—to the exclusion of hashish, henbane, and the like.

The proof for the correctness of the scholars of the madhhab is that the default is the invalidity of the legal acts of one who lacks intellect. Whoever has his intellect altered by consuming hashish, narcotic pills, or the like—neither his divorce nor his contracts and the like take effect for

as long as his intellect is altered.

This is what sound human disposition (fiṭrah) supports; rational people do not give heed to the acts of the insane and children, nor do they take them into account. The Sacred Law has endorsed this fiṭrah; in the report: *“The pen has been lifted from three: from the child until he comes of age, from the insane until he regains his senses, and ...,”* etc.

[The Degree of Insanity That Lifts the Ruling of Divorce]

Question: What is the least degree of insanity such that, if it occurs in a person, the ruling of divorce and the like is lifted from him?

Answer—and Allah is the One who grants success: Insanity has many forms. In some, the insanity pertains to his wife in particular; in others, it pertains to his brother or some relative or friend rather than others. If the insanity pertains to the wife and he pronounces divorce, his case is examined: if he reports about her that which reason does not admit, and accuses her of what the intellect does not accept—then such a person is insane for this purpose, and his divorce is not judged valid, even if his dealings with other people proceed according to the standards of reason. This type of illness is common in our time; physicians call it a “psychological illness.”

If it be said: Do *all* rulings fall from him?

We say: They fall from him with respect to that which his insanity pertains to, but not otherwise, until the insanity takes full possession of him. When it does, then all rulings fall from him. Illness progresses in a person little by little: it may begin regarding the wife, then—if it persists—it extends beyond her, then ... and so on.

[Ruling on the Divorce of One Compelled by His Wife to Divorce]

Question: A man’s wife entered upon him and compelled him to divorce her. This man is a commoner; he divorced her while *not wanting* to divorce, believing that the divorce he pronounced was valid. What is the ruling?

Answer—and Allah is the One who grants success: The divorce of the one *compelled* does not take effect if he had no intention to divorce. This may be supported by His—*Exalted is He*—saying: *“Except for one who is compelled while his heart is secure in faith.”* [Al-Naḥl:106], and by what is narrated from the Prophet (*May Allah bless him and his family and grant them peace*): *“My ummah has been absolved of error, forgetfulness, and what they are compelled to do.”*

The commoner’s belief that divorce has occurred does not alter our statement that it has *not* occurred. It is narrated that when ‘Ammār (*May Allah be pleased with him*) spoke the word of disbelief when the idolaters *compelled* him to utter it, he was greatly distressed and thought he had

impaired his faith. Then the verse we have cited was revealed—His saying, *Exalted is He*: "*Except for one who is compelled while his heart is secure in faith; but whoever opens his breast to disbelief...*" [Al-Nahl:106]—clarifying that there is no sin upon one who speaks the word of disbelief with his tongue under compulsion, without acceptance of disbelief and without intention. Allah—Glorified is He—thus nullified the ruling that would normally follow from uttering the word of disbelief when under compulsion; and there is no doubt that uttering the word of disbelief is weightier and graver than uttering divorce.

If it be said: This compelled commoner *thought* his divorce had occurred; the “divorced” wife also thought it had occurred, as did her guardian; after her waiting period elapsed, the woman remarried; thereafter, her *first* husband sought a legal opinion and the muftis ruled that the divorce had *not* occurred. What should be done? What is required of all involved—the guardian, the woman, and the husband?

We say: In such a case, all must return to a just judge—if one exists—or to a sound, upright scholar whose judgment all agree to accept. All parties should litigate before him, present whatever they have concerning the case, and then *all* must act upon and adhere to what the judge or scholar rules.

[Ruling on Marriage If the Husband Goes Insane After Some Time of Marriage]

Question: A man married a woman, and after three or four years insanity occurred to the husband. His family took him for treatment, and the wife hoped for his recovery; with treatment his insanity would lessen. His family took him a second time and it lessened somewhat, and his family continued treating him. The woman, in the hope of his recovery, did not leave him during that period; she helped his family in treating him, in calming him, easing his agitation, and reassuring him psychologically. Then, when she despaired of his recovery, she left her husband’s house for her family’s home. Today—after losing hope in his recovery—she seeks release from him, pressing for that either by annulment or by divorce if possible. What is the solution?

Answer—and Allah is the One who grants success: The scholars of the madhhab have said: the wife has the right to [seek] annulment due to insanity that *occurred after* the marriage in her husband, and such annulment is *not* invalidated by delay.

- This annulment is invalidated by the wife’s *consent* to remain with the insane husband. The consent that invalidates annulment is either a *statement* from the wife indicating consent—such as her saying, “I am content with him”—or an *act* indicating consent, such as allowing him conjugal access to herself.

If it be said: If the wife allowed her husband conjugal access at the *beginning* of his insanity, thinking that the insanity would pass with treatment, but after a time her expectation failed and she despaired of his recovery, then she refused him, left him, and sought annulment—does that count from her?

It is said: Yes, her annulment is valid if the matter is as described. Her consent at the onset of her husband's insanity and her allowing him access does *not* invalidate her later annulment. That is because it later became clear to her of the defect in her husband what had not previously become clear to her when she first consented. Her initial consent at the onset of his insanity was consent to an *accidental defect* that had befallen her husband and would soon pass; when it later became apparent to her that it was a *settled* illness, she did not consent to it. That is like a buyer in whom a defect appears in what he purchased and he consents to it, but later another defect appears; he may annul on account of the *second* defect, for he had not consented to that.

If it be said: Insanity is a single genus; her consent to the initial insanity prevents annulment later, since it is one genus?

It is said: Yes, insanity is one genus; but consent to a *certain measure* of it does not entail consent to *more than that measure*. One who consents to twenty is not thereby bound to consent to thirty.

A Useful Discussion on Innovated Divorce (Ṭalāq Bid‘ī)

Question about divorce during menstruation and post-partum bleeding: does it take effect or not?

Answer—and Allah is the One who grants success: Divorce during menstruation and during post-partum bleeding is prohibited and is called “innovated divorce (ṭalāq bid‘ī).” They adduced as evidence His—*Exalted is He*—saying: *"So divorce them at [the commencement of] their waiting period."* [At-Talāq:1], and the ḥadīth of Ibn ‘Umar, in which it is [reported that the Prophet (May Allah bless him and his family and grant them peace)] said: *"This is not how your Lord commanded you; He commanded you to face the period of purity."* Ibn ‘Umar had divorced his wife while she was menstruating, so the Prophet (May Allah bless him and his family and grant them peace) ordered him to take her back, then keep her until she became pure, then she menstruated once more with him, then keep her until she became pure a second time with him; then, if he wished to divorce her, he should divorce her when she becomes pure—before having intercourse with her. That is the waiting period for which Allah commanded that women be divorced.

As for whether innovated divorce takes effect or not, the scholars differed: the majority held that it does take effect.

Al-Nāṣir, al-Bāqir, al-Ṣādiq, the Imāmiyyah, and many others held that

it does not take effect. What may indicate the soundness of their view includes the following:

1. The statement reported from Ahl al-Bayt (*May Allah bless them*), from the Prophet (*May Allah bless him and his family and grant them peace*): “*There is no word nor deed except with intention; and there is no word, nor deed, nor intention except by conformity to the Sunnah.*”
2. His statement (*May Allah bless him and his family and grant them peace*) as reported by the ḥadīth scholars: “*Whoever’s matter is not in accordance with our affair is rejected.*”
3. The Ummah’s agreement on calling that divorce “*innovated (bid’ī)*,” and the well-known ḥadīth: “*Every innovation is misguidance, and every misguidance is in the Fire.*”
4. Innovated divorce is forbidden; and a command to do something entails a prohibition of its contrary. It is established in uṣūl that “a prohibition of a thing implies its invalidity.”
5. If a man appoints another to divorce his wife with a *legally valid* divorce, and the agent pronounces an *innovated* divorce, it does not take effect—so said the jurists. The case at hand is analogized to that.

If it be said: It is established that the Prophet (*May Allah bless him and his family and grant them peace*) commanded Ibn ‘Umar to take his wife back, keep her until she menstruates and becomes pure, then if he wishes he may divorce her during that period of purity without intercourse... as he (*May Allah bless him and his family and grant them peace*) said. This ḥadīth is well-known.

The Prophet’s (*May Allah bless him and his family and grant them peace*) order to Ibn ‘Umar to “take her back” indicates that divorce had occurred.

We say: What is meant is *linguistic* “taking back”—i.e., “restore her to yourself”—not that she had exited the bond of marriage. The evidence:

1. Sin is not remedied by *revocation*, but by *repentance*.
2. It is far-fetched that the Prophet (*May Allah bless him and his family and grant them peace*) would order him to take her back merely so that her husband could inflict upon her a *second* divorce in accordance with the Sunnah—given the report: “*The most detestable of lawful things to Allah is divorce,*” and His—Exalted is He—saying: “*But perhaps you dislike a thing and Allah makes therein much good.*” [Al-Nisā’:19].
3. Ibn ‘Umar’s objective had already occurred, and cannot be undone.

Hence, what is more likely is that what is meant by “take her back” is: restore to her what is due to her of provision and conjugal rights until the time arrives in which Allah has permitted that women be divorced.

Moreover, “revocation (murāja‘ah)” in the language is *returning to something*, whether after a divorce or not.

If it be said: Some narrations of the ḥadīth of Ibn ‘Umar state that the Prophet (*May Allah bless him and his family and grant them peace*) counted that pronouncement as a divorce.

We say: There are also narrations of the ḥadīth of Ibn ‘Umar stating that the Prophet (*May Allah bless him and his family and grant them peace*) did *not* regard it as anything.

Al-Mu‘ayyad Billāh narrated in *Sharḥ al-Tajrīd*, with his chain to Ibn ‘Umar: “I divorced my wife while she was menstruating, so he returned her to me until I divorced her while she was pure.”

Yes, this may receive some corroboration from what occurred regarding *ḡihār*: *ḡihār* was a form of divorce in the Jāhiliyyah. Aws ibn al-Ṣāmit performed *ḡihār* against his wife Khawlah based on that pre-Islamic custom; she came to seek a ruling from the Prophet (*May Allah bless him and his family and grant them peace*) regarding that matter, and Allah Most High revealed the rulings of *ḡihār* at the beginning of Sūrat al-Mujādilah.

The point of corroboration is that Allah Most High did *not* treat that pre-Islamic form of “divorce” as a divorce in Islam; rather, He made expiation obligatory for it, due to the sin involved in the repugnant and false statement.

This also finds general corroboration in what the Noble Qur’ān relates concerning divorce: when Allah Most High mentioned divorce and the rulings consequent upon it, He intended thereby the *legislated divorce* which He permitted. Hence the Prophet (*May Allah bless him and his family and grant them peace*) became angry with Ibn ‘Umar when he contravened that, and ordered him to restore his wife until the time in which Allah has permitted that women be divorced—if he so wished.

Had the divorce of Ibn ‘Umar had binding legal effect in the Prophet’s (*May Allah bless him and his family and grant them peace*) law, he would have acknowledged it, obliged him to repent and seek forgiveness, and there would have been no benefit in commanding “revocation”: such a command would either be to *effect* a divorce (and that had already occurred), or to *nullify* it (which would not be valid), or to *repeat* it in a more perfect form—something that applies only in acts of worship, whereas divorce is not an act of worship. Nor is it fitting for the Messenger (*May Allah bless him and his family and grant them peace*) to compel him to effect a second divorce, given the established dislike of

divorce in the Sacred Law.

Al-Hādī (*peace be upon him*) adduced a similar line of reasoning for the invalidity of temporary marriage (*mut'ah*) and the invalidity of marrying a woman of the People of the Book, based on the verse of inheritances.

What we have set forth is also corroborated by His—*Exalted is He*—saying: "*And their husbands have more right to take them back in that [period] if they intend reconciliation.*" [Al-Baqarah:228]. The purport is that Allah Most High conditioned the husband's priority in revocation upon *intending reconciliation*.

Accordingly, the husband has no right to revocation if his intent by it is to *double* the divorce; thus it is far-fetched that the Prophet (*May Allah bless him and his family and grant them peace*) would command Ibn 'Umar to "take her back" for the sake of divorcing her.

What is then more likely is that the "revocation" intended in the ḥadīth is revocation in the *linguistic* sense.

Yes: the contextual indications in the ḥadīth of Ibn 'Umar point to what we have said, namely:

1. The Prophet (*May Allah bless him and his family and grant them peace*) stood up and became angry.
2. His statement: "*Is he playing with the Book of Allah while I am present?*" or words to that effect.
3. His statement: "*Order him to take her back, then leave her until... then if he wishes, let him divorce her...*" etc., or words to that effect—this all but states explicitly what we have said: that what is intended is *linguistic* revocation; that his "divorce" was frivolous and not to be regarded; and that the valid divorce is that to which the Prophet (*May Allah bless him and his family and grant them peace*) guided.

As for what is narrated from 'Alī (*peace be upon him*): "Whoever divorces according to the Sunnah does not regret," and his statement: "If people took Allah's command in divorce, no man would ever pursue a woman [after her]; he divorces her one pronouncement, then leaves her until she menstruates three times; whenever he wishes, he takes her back"—it may be understood from the first that whoever divorces *in an innovated way* will regret, which might imply that the divorce occurs; likewise the other narration might imply the same.

We say: What you have cited relies upon *implication*, while it is also open to other interpretations—as in the second narration, where "what Allah commanded" is explained as divorcing her *one* pronouncement, then leaving her, etc. Our case here concerns divorce during

menstruation and post-partum bleeding.

The Arguments of Those Who Hold That It (Bid‘i Divorce) Takes Effect

In *Sharḥ al-Aḥkām*, with its chain, from ‘Alī (*peace be upon him*), that he used to say: “Divorce within the waiting period is as Allah commanded; whoever divorces not according to the waiting period has disobeyed and separated from his wife.”

Al-Hādī (*peace be upon him*) narrated in *al-Aḥkām* from al-Qāsim (*peace be upon him*) that he was asked about one who divorced a menstruating woman; he said: “He missed his portion, and what he bound upon himself is binding upon him.” Among that is the ḥadīth of Ibn ‘Umar, in which: “*Then let him take her back,*” and also: “*and that counts as one.*”

And in *al-Aḥkām*: “Know—may you be guided—that divorce takes effect in all cases for every woman whose marriage bond is possessed by her husband, if the one who holds her bond utters her divorce—even if the divorcer has erred against the discipline of his Lord and deviated from what He directed him to of right guidance. That is the statement of my forefather, the Chosen One (the Prophet—*May Allah bless him and his family and grant them peace*), and the statement of ‘Alī ibn Abī Ṭālib, my grandfather, and the statement of my forefathers before me, and my own statement.”

And in the *Amālī* of Aḥmad ibn ‘Īsā: from ‘Alī (*peace be upon him*) concerning a man who divorces his wife while she is menstruating: “She does not count that menstruation; rather, she begins (a new count of) three menstruations.”

Everything cited in this discussion from the Prophet (*May Allah bless him and his family and grant them peace*) is the ḥadīth of Ibn ‘Umar, and His saying—*Exalted is He*: “*So divorce them for [the commencement of] their waiting period.*” [At-Talāq:1], as in *al-Baḥr* and its transmission from Ibn Bahrān, and in *al-I’tiṣām* and the *Amālī* of Aḥmad ibn ‘Īsā and its transmission in *Ra’b al-Ṣad*, and what is narrated from ‘Alī (*peace be upon him*) in *Sharḥ al-Aḥkām*, and what al-Hādī (*peace be upon him*) mentioned, as above, and what is in the *Amālī* of Aḥmad ibn ‘Īsā.

And it appears that the principal proof therein is what came from the Prophet (*May Allah bless him and his family and grant them peace*) in the ḥadīth of Ibn ‘Umar. Hence al-Hādī (*peace be upon him*) narrated from his grandfather al-Qāsim ibn Ibrāhīm (*peace be upon him*) concerning a woman divorced while menstruating: “Her divorce binds her; then he (the husband) takes her back until he separates from her with the Sunnah-separation, in a purity from her without intercourse or approach.” It is as if this is an explanation of the ḥadīth of Ibn ‘Umar, and

al-Hādī narrated it, as in the Yaḥyāwī chains. Thus it becomes clear to us that the main reliance is the ḥadīth of Ibn ‘Umar.

As for the ḥadīth in *Sharḥ al-Aḥkām* from ‘Alī (*peace be upon him*), and the ḥadīth of Ibn ‘Umar, there is in them what we have previously mentioned of possibility, along with the evidencing of it; and, as we have also mentioned, there is disagreement among narrators over whether the Prophet (*May Allah bless him and his family and grant them peace*) counted his pronouncement as a divorce or not—this variance is mentioned in *Minḥat al-Ghiffār*.

And there is also, as in the transmission of *al-Baḥr*, that Ibn ‘Umar divorced his wife three times, so the Prophet (*May Allah bless him and his family and grant them peace*) commanded him to take her back... etc.

As for the report from ‘Alī (*peace be upon him*), it may have a sound chain among the Zaydīs; but the ḥadīth scholars do not judge such a chain to be sound.

Yes: the view of those who hold that divorce (*bid‘ī*) takes effect—like al-Hādī (*peace be upon him*) and the majority of Ahl al-Bayt (*peace be upon them*) and others—is strengthened by *precaution*, especially concerning private parts. Hence the Prophet (*May Allah bless him and his family and grant them peace*), when a questioner asked him—having wished to marry a woman—saying: “A black bondwoman has claimed that she suckled me and her; and I think she is lying,” the Prophet (*May Allah bless him and his family and grant them peace*) said: “What of it, given that it has been *said*?” (or as he said).

And it is strengthened by the fact that it is the *madhhab* of most of the ‘itrah and of the Ummah.

As for the statement of the minority among the ‘itrah and the Ummah—those who hold that it does *not* take effect—their statement is bolstered by accepted and agreed-upon principles: such as the ḥadīth reported among Ahl al-Bayt (*peace be upon them*): “...*there is no word, nor deed, nor intention except by conformity to the Sunnah*,” and the ḥadīth reported among Ahl al-Sunnah: “*Whoever’s matter is not in accordance with our affair is rejected*,” and by the agreement of the disputants on calling it “*innovated divorce*,” that it is forbidden divorce, that its doer is sinful and disobedient, and that the default—according to all—is the *continuance of the marriage*.

The uṣūlīs say: a *prohibition* indicates the *invalidity* of the prohibited act—in the sense that the effects intended from it do not attach to it—meaning that it is not to be given legal consideration. Among its examples in the Qur’ān is His saying—*Exalted is He*: “*And do not resolve on the tie of marriage until the decree reaches its term.*” [Al-Baqarah:235], and many others. And in the Sunnah are many examples, such as: “*The*

muḥrim does not marry, nor is he married,” “A woman is not to be married over her paternal or maternal aunt,” and “Do not sell wheat for wheat except equal-for-equal, hand to hand,” and many others.

Yes: it is established that the laws are (set for) benefits, as the scholars of uṣūl have stated. So when a prohibition comes in the Sharī‘ah, it is only because the prohibited matter entails some harm; such harms Allah Most High does not want nor approve—by His proof: *“Allah intends for you ease and does not intend for you hardship.”* [Al-Baqarah:185]. From this, the prohibition of innovated divorce is due to the harm it entails; therefore bid‘ī divorce and what ensues from it are not what Allah intends—namely, the lengthening of the waiting period or the like, such as harm to the spouses. If that is not intended by Allah, how would He obligate it? It is established among the people of truth that Allah does not command what He does not will.

Now, divorce is a *legal cause* to which legal rulings are attached. The proof that divorce is a legal cause is that, in the Jāhiliyyah, divorce had causes—among them ṣihār, and among them divorce itself; and a man in the Jāhiliyyah would divorce, then take back, then divorce, then take back—without limit. When Islam came, it *invalidated* divorce by ṣihār, placed in the husband’s hand three pronouncements of divorce, and *forbade* divorce during menstruation or during a purity in which the woman had been cohabited with, etc.

Yes: the ruling of divorce pronounced upon a woman during a purity in which she was cohabited with is the ruling of divorce during menstruation; there is no disagreement that it is innovated. Likewise, pronouncing triple divorce at once is an innovated divorce. Thus, if a man says to his wife, “You are divorced *three* (times),” divorce takes place and separation occurs.

If it be said: Why then do you rule that the divorcer who pronounces *three*—which is an innovated divorce—has effected divorce?

We say: Divorce took effect by his saying, “You are divorced,” while his saying, “three,” is futile speech; thus one pronouncement takes effect. This is the madhhab upon which the evidences stand and are consistent. Here is its explanation and clarification:

Allah—Glorified is He—has placed in the husband’s hand *three* pronouncements of divorce, without dispute, as indicated by the Noble Book.

And divorce is the *untying* of the marriage bond. When a man divorces his wife, he has untied the marriage bond. Allah Most High has granted the husband that he may untie this bond *three times*. So if a man says to his wife, “You are divorced *three* (times),” he has untied this bond *once*, releasing his wife from his confinement *once*. He has not untied—by that

statement—except *one* bond, while Allah Most High has granted him three *separate* untyings; and there is no untying except after there has been a (new) tying.

Hence, the *innovation* in a man's saying to his wife, "You are divorced *three* (times)," lies in the "three"; thus his mention of "three" is an invalid innovation, with no ruling and no effect to its mention; and it is not permissible for the husband to mention it—due to its contravention of the discipline of Allah Most High and His Messenger, and due to what results from that of confusion, obfuscation, dispute, disagreement, supposition, and illusion. The spouses then fall into bewilderment; the muftīs differ concerning them; and perhaps the situation leads to strife and even fighting and outcomes whose end is not praiseworthy. The woman's family might marry her off while the husband insists that she is still his wife by virtue of the fatwā he has received—then discord ensues. All of this follows from contravening the etiquettes of Islam and the law of the Qur'ān.

If it be said: Many narrations have been transmitted—as in the *Amālī* of Aḥmad ibn 'Īsā and others—indicating that *all three* take effect.

We say: Many narrations have also been transmitted indicating that *only one* divorce takes effect by the triple pronouncement, as is mentioned in *al-I'tiṣām* and its supplement—along with the Qur'ān's corroboration of that, as we have set forth.

[Ruling on Moving from a Fatwa that Holds Bid'ī Divorce Takes Effect]

Question: If a man divorces his wife with an innovated (bid'ī) divorce while, at the time, he believes it takes effect—being unaware that it is bid'ī and forbidden—and this man is a beginner in seeking knowledge and, in general, a muqallid of the madhhab, is it permissible for him to seek a fatwa from one who holds that bid'ī divorce does not take effect and to leave aside the words of the people of the madhhab, or not?

Answer—and Allah is the One who grants success: Moving to the madhhab of a learned, upright scholar who fulfills the conditions of taqlīd is unobjectionable.

The proof for that is the saying attributed to the Prophet (*May Allah bless him and his family and grant them peace*): "My Household are like the stars: whenever one star sets, another rises," and his saying (*May Allah bless him and his family and grant them peace*): "My Household are like Noah's Ark...," and similar reports are many.

And it is related that a group sought a fatwa from 'Alī (*peace be upon him*) regarding a matter—I think it was the breaking of ostrich eggs during ihrām—and the Commander of the Faithful issued them a fatwa that weighed upon them; whereupon the Prophet (*May Allah bless him*

and his family and grant them peace) said: “Come to the concession,” and issued them a fatwa other than the fatwa of ‘Alī (peace be upon him).

One may also infer this from what Allah—*Exalted is He*—related of the judgment of Dāwūd and Sulaymān concerning the field when the sheep of some people strayed into it.

What also supports what we have said is the statement of the people of the madhhab: that imitating the living is superior to imitating the dead.

And, in general, it is supported by His—*Exalted is He*—saying: “*Allah intends for you ease and does not intend for you hardship.*” [Al-Baqarah:185], and “*He has not placed upon you in the religion any hardship.*” [Al-Ḥajj:78]. What may also indicate it, in general, is His—*Exalted is He*—saying to Ayyūb: “*And take in your hand a bundle [of grass] and strike with it and do not break your oath.*” [Ṣād:44]—from which is taken the permissibility of exiting some straits of obligation, and that Allah wills this for His believing servants.

And what has come in the report from the Prophet (May Allah bless him and his family and grant them peace): “*Indeed Allah loves that His concessions be taken just as He loves that His determinations be taken.*”

Yes: this is not a matter of playing games or recklessness in religion. What concerns us here is the desire to escape major predicaments. As for playing games and recklessness, that is seeking out excuses in order to reach the unlawful—such as consuming usury, listening to song, drinking intoxicants, and the like.

If a Layman Pronounces an Innovated Divorce

Question: If a layman who does not understand taqlīd and adherence pronounces an innovated divorce while believing it binding and valid, then later it becomes clear to him that there are scholars who give fatwa that it does not take effect—may the muftī give him a fatwa that it did not take effect, or must he give a fatwa that it did take effect based on the rule that “the madhhab of the pure layman is the madhhab of whomever he accords with,” and that what the layman did while believing it valid is valid so long as it does not contravene consensus?

Answer—and Allah is the One who grants success: What the pure layman did while believing it valid—and not contravening consensus—is valid. This can be supported by His—*Exalted is He*—saying: “*And there is no blame upon you for that in which you erred, but [only] for what your hearts intended.*” [Al-Aḥzāb:5]. On the basis of this rule, his past actions are judged valid. Thus, if this layman seeks a fatwa concerning an innovated divorce he pronounced in the past, and the wife’s waiting period therefrom has ended, the muftī must give a fatwa for its validity and admonish him not to return to the like of it. If he seeks a fatwa about a

future matter, the muftī gives him a fatwa according to the muftī's madhhab, paying no heed to the layman's belief. And if he seeks a fatwa about a divorce he has pronounced while the divorcee is *still* in her waiting period from that divorce, the mujtahid gives a fatwa according to what he holds, of occurrence or non-occurrence. This is not called "transition," for transition presupposes adherence. This detail is of the madhhab, as mentioned by Imām Muḥammad ibn al-Qāsim al-Ḥūthī, *may Allah have mercy on him*.

Yes: what appears of the common folk among Muslims in our lands is that they are not bound to a madhhab; rather, they rely upon scholars. Each one of them, in what befalls him of religious matters, relies upon one scholar—or more—whom he believes to be learned and righteous, whether the one being imitated is a mujtahid or not.

Moreover, the statement of the people of the madhhab¹ is that the adherence of laymen carries no weight, and is no adherence at all; what is considered of adherence is only what issues from one who knows the conditions of taqlīd.

A Layman's Triple Divorce in Successive Pronouncements

Question: Regarding a layman who divorces his wife with *three* successive pronouncements, without an intervening revocation, believing that to have taken effect?

Some scholars answered: it is obligatory to inquire of the layman and ask what he *intended* at the time of pronouncement; he is then given a fatwa according to what he intended, and his intention counts as his "madhhab." End.

We say: This answer issued from some scholars on the basis of the established rule that what the layman does while believing it valid is valid. Therefore they made the *pure layman* like an *absolute mujtahid*, and his madhhab is the madhhab of whomever he accords with; hence they answered as above.

What appears to me—and *Allah knows best*—is that the layman is *left upon* what he believed and is judged valid for him so long as he has *not asked*. If he asks about the ruling of what he did, he is not to be given a fatwa based on what he believes; rather, he must be given a fatwa according to the muftī's madhhab—whereupon it is obligatory upon the layman to act in accordance with the fatwa. The proof for what we have said is His—*Exalted is He*—saying: "*So ask the people of the reminder if you do not know.*" [Al-Anbiyā':7].

Thus, if the *pure layman* divorced his wife three times while believing

1- Sharḥ al-Azhār 1/19.

that to have taken effect and been valid, it is not permissible for him to marry her nor to take her back. If he *asks* and learns that only *one* revocable divorce has taken effect, then at that point he may take her back or marry her.

What is not intended—as it appears to me—is that the layman is like an absolute mujtahid in *every* respect; rather, he is so *before* asking. As for *after* asking, it is incumbent upon him to act upon the fatwa, and it is not permissible for him thereafter to pay heed to what he had believed. Likewise, the muftī should not pay heed to what the layman had believed; for what the layman had believed was only valid on account of an excuse—namely, ignorance. When ignorance is removed, the layman has no excuse to act upon it.

[A Man Divorcing His Wife, Then Revoking It, Then Divorcing Again]

Question: It happens that when a husband divorces his wife, he immediately revokes her, then divorces her, then revokes her and divorces her—his intent or the intent of the intermediary being to prevent the divorcer from being able to take back the divorcee. This may come about by the compulsion of those mediating between the spouses, or by an arbiter. What is the ruling?

Answer: This is an important question. What appears to me—and Allah knows best—is that the husband’s revocation of his wife after divorcing her, as described in the question, is an invalid revocation; and if it is invalid, then any divorce that follows upon it does not take effect. The reason is:

— The revocation (rujū‘) that Allah Most High has legislated and intended is that whose motive and driver is the desire to resume conjugal life with the divorced wife: either because the husband loves her, or for the sake of her children, or due to friendship with her family, or due to people’s reproach, or the like.

— But if what is intended by the revocation is what is mentioned in the question—namely, the aim of preventing the husband from taking his wife back—then it is not valid. This is when it is known from the husband’s situation, or he states it explicitly, or the intermediary compels him to revoke and divorce, then revoke and divorce, and he complies with their command.

— Moreover, if the divorce occurs from the husband by compulsion from arbiters (muḥakkamūn), or by compulsion from a judge, or by compulsion from those acting in the capacity of ḥisbah to set right the spouses’ affair and look into what is between them of discord and dispute—then it is an *irrevocable* (bā’in) divorce. For the two arbiters whom Allah Most High has ordered to be sent to judge between

disputing spouses—when they look into what is between the spouses and see that there is no path to reform except separation and divorce—they judge accordingly. If they judge so and the husband divorces, he may not thereafter revoke; for the ruling has obliged the husband to separate from her so long as their condition remains as it was before the divorce. In that case, the husband's revocation would be a nullification and invalidation of the ruling, due to the incompatibility between a ruling of divorce/separation and a revocation.

Likewise is the ruling when it is the judge who has ruled for separation between the spouses—or a judge-arbiter.

Those intermediaries who intervene as an act of *ḥisbah* are analogous to them: their compelling the husband to divorce stands in the place of a judicial ruling. The people of the *madhhab* have said: "Whoever is qualified for a function, and there is no *Imām*, may carry it out."

By what we have set forth, it becomes clear that a husband's revocation after being ruled to divorce is invalid—likewise whatever divorces are purported to follow it.

— As for when a husband divorces his wife without there being any serious cause between them, then *revokes* in the session of divorce, then *follows it with a divorce*, then *revokes*, then *follows the revocation with a divorce*, intending by this procedure to block himself from being able to take his wife back—we say: the revocation is invalid. Its clarification, in addition to what has preceded, is:

There is in the *ḥadīth*: "*No deed [is valid] except with intention,*" and, "*Actions are only by intentions.*" There is no disagreement about this. There is no doubt that the person we have described has no intention to take his wife back, no aim toward that, no inner motive to her return; rather, he "revokes" his wife after divorce with wording *empty* of the meaning of revocation—by his own admission and acknowledgment.

If it be said: The scholars have not stipulated intention and purpose for the validity of revocation; they have attached it to the wording without considering any qualification.

We say: That is so. Revocation is established by wording without qualification, and judgment is made accordingly without looking to anything else.

This is based on the *outward*; for one who bears witness to his revocation and effects it by wording—his revocation is valid, because his outward state indicates his desire and intention for his wife's return and his truthfulness in reversing his divorce.

However, what we have stated pertains to the case in which we *know* of the man divorcing his wife that he does *not* wish to take her back at all,

has no desire for her whatsoever, and—by his own admission—only intends by the wording of revocation another matter, namely *major irrevocability* (al-baynūnah al-kubrā) alone. When we *know* and *ascertain* that regarding the husband’s condition, it is not valid for us to judge the revocation sound.

— This is *in addition* to the fact that such conduct nullifies what Allah Most High intends from revocation and entails trifling with His rulings and making light of them.

This is what appears to me regarding that. Allah knows best. All praise is due to Allah, Lord of the worlds. And may Allah bless prophet Muhammad and his family and grant them peace.

[Bare Divorce [“Ḥarām and Ṭalāq”]]

Question: A question reached me about a man who said: “Ḥarām and ṭalāq—I will not do such-and-such.” How is the ruling if he does it?

Answer—and with Allah is success: I have not seen, in the books of the madhhab available to me, explicit discussion of this. What appears to me is that this statement of the man necessitates neither divorce nor expiation, for two reasons:

1. This statement has not been applied to his wife in respect of divorce, nor to any specified thing in respect of declaring it unlawful (ḥarām).
2. The default is the continuance of the marriage and clearance of liability from any expiation.

If it be said: Such a statement normally implies something in the speaker’s intention.

I say: Divorce and declaring something unlawful must be attached to something explicitly mentioned—verbally or by clear legal implication, as when it occurs in answer to a question or the like. There is no legal weight to what the tongue has not uttered, due to his saying (*May Allah bless him and his family and grant them peace*): “Allah has overlooked for my community what their souls whisper to them, so long as they do not say it or do it.”

As for *writing*, its ruling is the ruling of utterance—but *with* intention and purpose to divorce, as the scholars of the madhhab have mentioned, and that is due to specific evidence concerning it. *And Allah knows best.*

What this oath might be “intending” to supply is something like: “Upon me is ḥarām, and upon me is ṭalāq,” or “Some thing—or *everything*—is ḥarām upon me, and my wife is ṭalāq,” or “I swear by ḥarām and ṭalāq.” However the supplementation is imagined, there is no legal weight to mere intention.

In sum: the *mere* words “ṭalāq” and “ḥarām,” each in isolation, carry

no ruling. One must state both the predicate and the subject; hence it is said: pointing to divorce does not suffice from one capable of speech; it suffices only from one *incapable* (like a mute) out of necessity.

Yes: circumstantial clues do not suffice in divorce. For example, if a husband, during a quarrel and anger, says to his wife, “*You...*,” intending divorce in his heart, without uttering it—no divorce occurs.

In *al-Baḥr*: “According to the ‘itrah and tow [Hanafis and Shafi’is] groups (of scholars), divorce does not occur by mere intention,” adducing the ḥadīth: “*My community has been absolved of what their souls whisper to them so long as they do not say it or do it.*” End.

Likewise, if in that state he says “ṭalāq” or “ṭāliq” while intending in his heart “*you*” or “*so-and-so*,” nothing occurs, because there is no weight to inner whisperings, as noted. Both *parts* of the sentence must be spoken; intending them—both or either—does not establish divorce.

A Benefit (Bare Divorce)

In the marginalia of *Sharḥ al-Azhār*, commenting on his words in divorce—“intending to effect the wording,” *with attribution to her*—by saying: “I have divorced *you*,” or “I have divorced *so-and-so*,” or “*So-and-so* is divorced,” or the like. *But if he did not attribute the divorce to her*—e.g., he merely says: “I have divorced”—it does not take effect, *even if he intended it*. End of Bahrān’s words.

And it was said: this would be a *kināyah* (Taqrir) (فري).

[Among the Rulings of Revocable Divorce]

Of the madhhab’s rulings in *revocable* divorce: the revocably divorced woman *switches* to the waiting period of *death* if her husband dies; and she must *begin a new waiting period* if he revokes her and then divorces her—unlike in an *irrevocable* (bā’in) divorce, where she does not switch to the waiting period of death, nor does she begin anew if he contracts a fresh marriage with her and then divorces her *before consummation*. End.¹

I say: During the waiting period of revocable divorce, the husband may *take back* his wife without a new contract, without the guardian’s or wife’s consent, and without a new mahr—indicating that the ruling of *marriage* remains during the waiting period.

This contrasts with a divorce by *khul’* (for compensation), in which the marriage bond is fully severed by the divorce. If the husband wishes to restore her, the wife’s consent, the guardian’s contracting, two witnesses, and a *new mahr* are all required—indicating the marriage

1- *Sharḥ al-Azhār* 2/383.

bond has been fully severed.

Must One Censure a Man Who Has Divorced Yet Still Resides with His Divorcee?

Question: A man has a neighbor married to a wife whom—so it appears—he has divorced *three times*, yet he still resides with her. Is it permissible for me to share a house with him? Must I denounce what he is upon?

Answer—and Allah is the One who grants success: What appears—and Allah knows best—is that you must *alert* him to his error, explain divorce and its rulings, admonish and warn him. Nothing further is incumbent upon you.

It is not permissible to *categorically* declare him an open sinner (fāsiq). There are possibilities that open the door to interpretation: divorce is of the Sunnah and of innovation; some scholars have said the *innovated* does not take effect. Perhaps this man’s “three” were in a *single* phrase; or one of the three was during his wife’s menstruation, or during a purity in which he had cohabited with her. On such grounds, his divorce would not take effect according to some scholars. They have said: “The madhhab of the pure layman is the madhhab of whomever he accords with.”

And in *al-Muhadhdhab* by Imām al-Manṣūr Billāh (*peace be upon him*): “If one acknowledges that he divorced his wife three times, then retracts his acknowledgment: if she does not dispute with him and he claims he was mistaken, or he adduces a proof whose occurrence is plausible, and the woman does not dispute him before his retraction—then it is permissible for him to cohabit with her *privately* between him and Allah Most High.”¹

And in the marginalia upon *al-Muhadhdhab*: “This is like what our companions said about one who said to his wife, ‘You are divorced,’ then claimed he *intended* by it other than its apparent meaning, and the woman did not dispute him: the Muslims are not obliged to denounce him, nor to bring him before the judge.” End.

[When the Spouses Appoint an Arbiter Between Them]

Question: If the spouses appoint an arbiter—or two—and after reviewing and ascertaining what lies between the spouses, the arbiters know that there is no solution to their discord except divorce; they *compel* the husband to divorce; he refuses; they threaten and warn him; then he divorces—will the husband’s later claim of *coercion* be heard, so that the divorce not bind him?

1- *Sharḥ al-Azhār* 2/468–469.

Answer—and with Allah is success: What appears to me—and Allah knows best—is that his later claim of coercion is *not* to be heard in order to escape the binding effect of the divorce. By appointing the arbiters and accepting their judgment, he bound himself to what they ruled—whether pleased or displeased. So it is in every judgment upon a person: he is bound to execute it. If he refuses to execute it, and the judge—or guarantors/sureties—threaten him, and he then acts, his act is executed; his later claim that he was coerced is not heard, for he was threatened to perform what he had obligated himself to execute and had accepted.

How a Divorcer Can Avert a Conditional Divorce

Question: If a man says to his wife, “If you enter So-and-so’s house, you are divorced,” then later regrets it and consents to her entering—does averting this condition become valid? How can he rid himself of it? Is there any avenue besides the divorce taking place?

Answer—and Allah is the One who grants success: If we say that divorce does not fall upon the woman *until after the entry*—i.e., upon the occurrence of the condition—then averting it may be valid through *tahbīs* (a “holding/waqf device”).

But if we say that the divorce has already *issued* from the husband, and the condition merely restricts its *settling upon* the woman, then it cannot be averted by *tahbīs*.

Yes: reliance should not be placed upon *tahbīs* and *al-dawr* (circular legal stratagems), nor should they be employed. They should not stand as a barrier against the separation Allah—Glorified is He—has legislated when there is need for it, for He—*Exalted is He*—says: “*Then [there must be] retention in kindness or release with good treatment.*” [Al-Baqarah:229], and “*Do not keep them, injuring them, so that you transgress.*” [Al-Baqarah:231].

Yes: in the *Sharḥ* it says: “If the *waqif* (endower) made a waqf upon a condition—such as saying, ‘I dedicate such-and-such if Zayd comes,’ or the like—the apparent view is that such conditions cannot be revoked by wording, but only *by an act* like sale and the like.” In the marginal notes of the jurist ‘Alī, he made it a point of disagreement between al-Mu’ayyad Billāh and al-Qāḍī Zayd: al-Mu’ayyad Billāh says he may revoke *by act or by speech*; al-Qāḍī [Zayd] says *by act*.

And in *al-Azhar*: “Whoever dedicates (a waqf) *after his death*—he has, *before* his death, the right to revoke it.” And in *the Sharah* thereon: “The apparent sense of his words implies that he may revoke by act or by

speech.”¹

And they said regarding one who *manumits* his slave *after his death*: he may revoke it *before* his death *by act*, not by speech.²

I say: In this is an indication that it is valid—on the view of al-Mu’ayyad Billāh—to avert dispositions suspended upon conditions *by act and by speech*; and the people of the madhhab are bound to that—since they say that one who dedicates a waqf *after death* has, *before death*, the right to revoke *by speech and by act*.

And in the *Amālī* of Aḥmad ibn ‘Īsā (*peace be upon him*): from ‘Alī (*peace be upon him*), concerning one who says to his wife: “You are thrice divorced if I do not fast on the Day of Sacrifice”—he (*peace be upon him*) said: “If he fasts it, his wife is not divorced.” And in it: that a man swore by the divorce of his wife if he did not have intercourse with her in the daytime of Ramaḍān; so ‘Alī (*peace be upon him*) said: “Travel to the *Mada’in*, then have intercourse with her in the daytime—thereupon food, drink, and intercourse are lawful for you.”

From these two narrations it may be inferred that *retraction by speech* is not valid in an oath by divorce or in a divorce by suspension.

[Conditional Divorce upon a Doable Act]

Question: A man said to his wife: “If you do not enter the house *today*, you are divorced.” She was at her family’s home, so she immediately got up and went to her husband’s house. The husband, however, had locked the house and gone out, forgetting he had done so. The woman arrived to find the house closed and locked; she returned to her family’s home. The husband came to his house at Maghrib, found the door locked, remembered the matter, and went to his wife; he learned she had come intending to return, and that the locking of the door had prevented her. The husband regretted what occurred. What is the ruling?

Answer—and Allah is the One who grants success and aid: What appears to me is that *divorce does not take effect*, for several reasons:

1. The husband intended from his wife only that she *do what was in her power*. This is unlike the divorce of one who says to his wife: “If you do not *ascend to the sky* today, you are divorced”—for that one has suspended divorce upon what is *impossible* for his wife, and divorce takes effect there, unlike the first case.
2. The people of the madhhab said: a person does not break his oath unless the time elapses while he is *able* to fulfill or break it. Here,

1- *Sharḥ al-Azhar* 3/507.

2- *Sharḥ al-Azhar* 3/585.

the woman was *not able*.

3. They said: oaths are carried upon intention and are interpreted by it—even if their outward wording is general.

If the husband was angry with his wife for her desire to remain with her family and spend the night there, and he swore by divorce, “If you do not enter my house today [you are divorced],” then his oath in that circumstance was because of *her insistence on spending the evening* with her family. If she *leaves* that insistence, departs her family’s home intending to return to the house, but then finds it locked due to her husband’s absence the whole day—then divorce does not fall upon her in that case, because the husband did *not* will divorce in that state, nor intend it.

Thus, his intention was directed toward the *purpose* upon which he suspended divorce, and that purpose did *not* occur. In the ḥadīth: “Actions are only by intentions, and every person shall have only what he intended...” and “No act [is valid] except with intention...”

Yes: what we have stated is the madhhab, as in *al-Azhar*. There it says, in the course of discussing divorce suspended upon a condition: “A time-bound oath is broken by the elapsing of its end while one is able to fulfill or break it and did not do so.” And in the marginal notes: “The preferred view is that *ability is necessary*.”

His words in *al-Azhar*—“able to fulfill and break”—revert to the *one who suspends* and to the *one time-bounding*; there is no impediment to their reversion to both... (*it has been established*) (فرد). End of the marginal note.

Question: A man said to his wife: “If you do not go to the farm for such-and-such need, you are divorced.” The wife went to the farm but did not find that item, after thoroughly searching for it, then returned to her husband. What is the ruling?

Answer—and Allah is the One who grants success: The wife *has done* what the condition entailed—she went to the farm for that need; therefore the conditional divorce does not fall upon her.

And had the husband said to her: “If you do not go to the farm *and bring me that item*, you are divorced,” then she went to the farm and did not find that item, returning to her husband—she would *not* be divorced; for divorce here is suspended upon the *combination of two things*. She performed one of them and did not perform the other; divorce would not fall upon her unless she failed to do *both*.

Conditional Divorce Stipulated for a Cause, Then the Cause Ceases

Question: A man said to his wife: “If you enter So-and-so’s house, you are divorced.” This was due to a *cause*—the husband disliked his wife’s entering that house. After some time, that cause disappeared and the husband consented to her entering; up to now she has not entered. Will the divorce that was suspended on that condition occur if she enters that house or not? And is it valid to forestall such a thing?

Answer—and Allah is the One who grants success and aid: A divorce suspended on a condition takes effect upon the condition’s occurrence; and the *implicit* conditions in one’s mind and the *qualifying* restrictions are also taken into account in this chapter—and in oaths, vows, and the like. Thus they have said.

Accordingly, if the conditional divorce issued only for a *particular purpose* in the husband’s mind—namely, his dislike of his wife’s entering that house—then the divorce is *restricted* by that purpose.

An example similar to this: a man says to his companion, “Enter my house for lunch,” and the companion replies, “By Allah, I will not enter your house.” He swore off entering his friend’s house due to a motive in himself—for example, because in the house there is a profligate man or an enemy. In that case, he does *not* break his oath if he enters *after* the profligate or enemy has left his friend’s house. Likewise one who swore, “I will not eat,” when his friend invited him to eat his food—he swore because he was satiated at that time, or because he saw the food to be scarce and swore out of consideration for his friend—if he eats at another time, he does not break his oath.

In the *Sharḥ* it states: “If one swore that his wife would not go out; she intended to go out, then paused for a while and went out—if it was her *habit* to go out, he does *not* break his oath; but if her habit was *not* to go out, he *does* break it.” End—by meaning.¹

And in the books of fiqh is what amounts to this: it is permissible for a seller to retract *after* offering (*ijāb*) and *before* acceptance.²

On the basis of what has preceded: if this questioner suspended his wife’s divorce upon her entering So-and-so’s house, and that suspension was due to a matter like what we mentioned above, then her entering that house *after the disappearance* of the matter on account of which the divorce was uttered will *not* cause the divorce to take effect.

But if the suspension of divorce upon entering So-and-so’s house was *absolute*, without any intention or purpose besides the mere entering of that house, then divorce *does* fall upon the wife whenever she enters that

1- *Sharḥ al-Azhar* 4/23, Ministry of Justice ed.

2- *Sharḥ al-Azhar* 3/7.

house, at *any* time she enters it.

Another example falls under what has preceded: one says to his wife, "If you enter So-and-so's house, you are divorced," suspending her divorce upon a condition for a *motive* in himself—namely, that in that house there is an unvirtuous man given to harassing women. He did not suspend his wife's divorce upon entering that house except because of that man who harasses women; nothing else occurred to him; nothing prompted what he said except that man's presence; and he has no independent motive regarding the house itself—he only tied the divorce to it because of that man's presence there. If that man *dies*, or *moves* from that house, or *sells* it and leaves, then the wife *enters* that house—the *divorce does not* fall upon her.

As for the answer to the *last* question—namely: is it valid to *forestall* a suspended divorce before its condition occurs?

We say: What I have seen in the scholars' words about this is that retraction is valid *by act*, not *by speech*—such as *selling the slave* before the condition of his manumission (or a vow of it or a waqf upon him) takes effect.

A Benefit: [Getting Rid of Conditional Divorce]

In the marginalia of *Sharḥ al-Azhār* comes the wording: "Benefit: Whoever has pronounced a *conditional* divorce, the stratagem is to say: 'You are divorced *thrice* just before my conditional divorce falls upon you.'

And likewise to be rid of *conditional* *ilā'* and *ẓihār* he says: 'You are divorced just before my *ilā'*,' or: 'just before my *ẓihār*.'" End.¹

And in a marginal note: "If he said to his wife: 'Whenever you do such-and-such, you are divorced,' and the matter mentioned is something she inevitably must do, then the stratagem to lift it is to employ *al-dawr al-qaylī* by saying: 'You are divorced just before the conditional divorce falls upon you'—thereby preventing the *conditional* while not preventing the *immediate*. And if he wishes to prevent *both*, he says: 'You are divorced just before an *immediate* or *conditional* divorce falls upon you.'

Completed (*it has been established*)."² (قرئ)

[On Conditional Divorce]

In the *Sharah*: If a man saw a bird and said, "If this is a raven, then my wife is divorced," and the bird flew away and he did not know whether it

1- *Sharḥ al-Azhār* 2/409.

2- *Sharḥ al-Azhār* 2/409.

was a raven or something else—then the divorce does not take effect, by analogy with the statement of Yaḥyā (*peace be upon him*); for he explicitly stated that a marriage known with certainty is not overturned by doubt.

[Ruling: “You are divorced on condition that you do not marry So-and-so”]

If a husband says to his wife, “You are divorced on condition that you do not marry So-and-so,” then if she *accepts*, she is divorced immediately, because that is a *contract*, and the divorce is revocable. This is the madhhab, as in the marginalia of *Sharḥ al-Azhār*; and she may marry whomever she wishes—thus said the scholars of the madhhab.¹

- And in a marginal note: If he made it a *real* condition, circularity would result—no divorce would occur until she *marries*, and she would not *marry* until she is *divorced*. End.

And in a marginal note: The stronger view is that what is in the book is correct—that divorce occurs upon *acceptance*. End.

And in a marginal note: If he said, “*bi-sharṭ al-barā’* (on condition of disavowal),” this is a contract in the legal sense—due to the additional preposition *bā’*—but it has come to be used in custom with the meaning of *condition* in most cases, because they intend a condition. Divorce does not occur except by the condition being fulfilled *in the same session* or in the session when the news reaches her—unless he intends, “whenever the condition occurs, near or far,” which would make it a pure condition. End (*established*). (قرئ)²

I say: If he says, “You are divorced on condition that you do not marry So-and-so,” there is no doubt that what is *not* intended here is the technical meaning of *condition*—i.e., suspending divorce upon *not* marrying So-and-so. What is intended in matters like this—which is common in the Sufyān region—is the *execution* of divorce *immediately*. After that, the wife observes her waiting period; when it ends, she may marry whomever she wishes without objection. But if she marries that specific man—or intends to marry him—then that *first* husband claims a right of objection; for with respect to the *new* husband, she is *not* considered divorced—meaning, as I understood from their explanations—she is divorced with respect to *everyone* except that person; with respect to *him* she is not considered divorced.

1- *Sharḥ al-Azhār* 2/434.

2- *Sharḥ al-Azhār* 2/434.

The upshot, on this understanding, is that the husband divorced his wife while *reserving* for himself the right to prevent her from marrying So-and-so; because his “right” regarding So-and-so remains over the wife, she is considered, with respect to him, as still married—even if she is divorced with respect to others.

This is what I understood from some of the people of Sufyān after extensive inquiry.

They do *not* intend by this the *technical* condition of suspension; rather, they *initiate* divorce on the spot and then *except* for themselves a “right,” as mentioned. In that case, the exception is *invalid*, because divorce is a *whole* and does not admit partition; exception within it is not valid.

Similar to this is what occurred in the story of Barīrah: her owners sold her and *stipulated for themselves* the right of *walāʾ* (allegiance). The Prophet (*May Allah bless him and his family and grant them peace*) invalidated the condition and upheld the sale.

Moreover, a husband’s right over his wife exists only *so long as she is his wife*. Once he divorces her and her waiting period ends, *all* his rights over her cease, and he retains, by Allah’s ruling, *no* right over her. To establish any right over her thereafter contravenes and opposes Allah’s ruling.

[Ruling on a Divorce Conditioned That She Not Marry So-and-so and So-and-so]

Question: A man divorced his wife and stipulated that he has *al-nuqt*; and *al-nuqt* is: that she not marry So-and-so, or So-and-so, or So-and-so—specific men named; and that if she marries one of them, *then there is no divorce* and she remains his wife. Witnesses testified to this. What is the ruling in such a case? Peace.

Answer—and Allah is the One who grants success and aid: The divorce has *occurred*, and the *condition is void*; thus, she may marry whomever she wishes. This may be evidenced by the ḥadīth of Barīrah: her owners sold her and *stipulated for themselves* the *walāʾ*; the Prophet (*May Allah bless him and his family and grant them peace*) approved the sale and invalidated the *condition*, then he (*May Allah bless him and his family and grant them peace*) said: “*What is the matter with people who stipulate conditions that are not in the Book of Allah...*” etc.

The reason the condition is void in the ḥadīth of Barīrah is that her owners stipulated something *contrary to what the contract of sale entails*. From this, the scholars of the madhhab said—as in *al-Azhār* concerning marriage: “Nullify a condition contrary to what it entails...”—such as saying: “*with the authority over her divorce in her hand*,” or “*with no mahr for her*,” or “*that he shall not take her away from near her family*,” or “*that*

her maintenance is upon her,” or “that authority over intercourse is in her hand.”

The ḥadīth of Barīrah is authentic—narrated by our Imāms (*peace be upon them*) and Ahl al-Sunnah—so it may be reliably used in such important matters.

Indeed, what we have stated is closest to justice, kindness, and *ma‘rūf* (good conduct), which Allah, *Exalted is He*, has urged in His Book. We judged the divorce valid and invalidated the condition because of the harm it entails, which Allah, *Exalted is He*, and His Messenger (*May Allah bless him and his family and grant them peace*) have forbidden. He said—addressing husbands in particular: *"Do not harm them..."* (the verse) [At-Ṭalāq:6], and: *"Then [there must be] retention in kindness or release with good treatment."* [Al-Baqarah:229]; and in the well-known ḥadīth: *"There is to be neither harming nor reciprocating harm."*

If we were to judge the *condition* valid, the divorcee might never be able to marry until she dies; for it could be that at the end of her life she would wish to marry a man among those stipulated against her; the harm therein is obvious, and it conflicts with Allah’s Book in His Most High saying: *"Then [there must be] retention in kindness or release with good treatment."* [Al-Baqarah:229]. To validate such a condition is in stark conflict with that.

A husband who stipulates such a condition is disobedient to Allah, contravening what Allah Most High has legislated, trifling with the Book of Allah, and transgressing the counsel of the Messenger of Allah (*May Allah bless him and his family and grant them peace*). Hence the Messenger of Allah (*May Allah bless him and his family and grant them peace*) said in the report of Barīrah: *"What is the matter with people who stipulate conditions that are not in the Book of Allah nor in the Sunnah of His Messenger? The Book of Allah is more binding, and the Sunnah of His Messenger more reliable; and walā’ belongs to the one who sets free."*

What we have stated is further supported by the known ḥadīth: *"Whoever’s matter is not in accordance with our affair is rejected."* Based on this report, the condition mentioned in the question is rejected upon its proponent, due to its contravention of the Sharī‘ah of Islam.

If it be said: The scholars of the madhhab and others judged *innovated divorce* valid, despite its contravention of the religion of Islam; they did not reject it upon the one who pronounced it.

We say: They did so in the matter of divorce *due to evidences and indications* that led them to its occurrence and validity; were it not for those, they would have judged it invalid and not occurring. The condition mentioned in the question has no proof for its consideration or validity; thus we have included it under the established principle in uṣūl: “A

prohibition indicates the invalidity of the prohibited.” This is *in addition* to what we have already cited as evidence for not considering it.

[Imprisoning Divorce (Ṭalāq al-Taḥbīs)]

Question: A man had previously divorced his wife *twice*, and finally he suspended the *third* divorce on the passing of two years. Now the two years are almost up and the spouses regret it. Is there a way out of this predicament?

Answer—and Allah is the One who grants success: The way out of the divorce predicament is *imprisoning divorce (taḥbīs)*. Its form is that he says: “You are divorced *just before* my conditional divorce falls upon you.” If he says that, the occurrence of either of the two divorces is prevented.

[Cyclical Divorce (al-Dawr) and Imprisoning Divorce (al-Taḥbīs)]

Question: Regarding *cyclical divorce* and *imprisoning divorce*, etc.?

Answer—and Allah is the One who grants success and aid: The scholars of the madhhab have said: *no divorce* takes effect by *taḥbīs* itself. So if a man says to his wife, “Whenever my divorce falls upon you, you are divorced *three* before it,” that is not a divorce.

They then said: that *taḥbīs* does not prevent divorce from occurring *after it*. Whoever divorces his wife after *taḥbīs*, his divorce is valid. That is because *taḥbīs* is invalid due to its construction: the *answer* in it precedes the *condition*—which is an impossibility that sound minds do not accept; and when it is invalid rationally, no legal rulings attach to it. Hence in *al-Azhār* it is stated: “*Taḥbīs* is not valid ...”

As for *al-dawr* (the circular arrangement), the scholars of the madhhab said: it *introduces* divorce ... The preferred view—as held by many jurists of the madhhab and many Imāms of Ahl al-Bayt (*peace be upon them*)—is that *al-dawr* is invalid and does not prevent an *immediate* (nājiz) divorce.

We departed to this view for several reasons:

1. *Cyclical divorce* is an innovated practice in Islam. In the ḥadīth: “*The worst of matters are the newly invented ones; every innovation is misguidance, and every misguidance is in the Fire.*”

2. Allah Most High commanded separation when there is harm and ill-conduct between spouses. He—*Exalted is He*—said: “*Then [there must be] retention in kindness or release with good treatment.*” [Al-Baqarah:229], “*So retain them in kindness or separate from them in kindness.*” [At-Ṭalāq:2], and “*Do not keep them, injuring them, so that you transgress; and whoever does that has certainly wronged himself.*” [Al-Baqarah:231].

And Allah legislated for the wife to *ransom herself* from the husband’s

bond if she dislikes his companionship and cohabitation. If *al-dawr* stands as a barrier preventing what Allah Most High has legislated and conflicts with it, then it must be rejected, invalidated, and removed from obstructing what Allah has legislated.

3. Allah Most High says: “*And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people; if they both desire reconciliation, Allah will cause it between them.*” [Al-Nisā’:35]. With *al-dawr*, acting upon the purport of this verse does not come about.

Yes: there may be a case in which *al-dawr* has a legally justified face for its validity—namely, when someone employs it, for example, *out of fear of outbursts of anger*, to serve as a barrier preventing divorce in a state of rage. In such a case, even though it is an innovation, it may be a *dispensation* for the rash and quick-tempered; in that state they may be akin to one *compelled* to avert separation and divorce by that stratagem—and “necessities permit the prohibited.”

Moreover, the stratagem of *al-dawr* in such a case does not conflict with Allah’s rulings nor does it obstruct them; rather, it *helps* preserve the marriage that Allah loves and intends, and it averts the divorce that Allah dislikes.

If *al-dawr* is of this description, we hope it is *good*. The evidence for our stating a *dislike* of *al-dawr* in one circumstance but not in another is that it is disapproved in the first case because of the *harmful consequences* it entails; it is not intrinsically repugnant—neither rationally nor legally. If none of those harms ensue, then one should not rule it repugnant; and if it is not repugnant in that case, it is valid to rule it *permissible*.

[Ruling on Swearing by “Ḥarām and Ṭalāq”]

Question: What is your view regarding what has become common among the public—swearing by “ḥarām and ṭalāq,” as in: “By ḥarām and ṭalāq, I will not do / I will surely do such-and-such”? Is this merely an oath? Or does it constitute divorce if he breaks it while intending, by that oath, to suspend the matter upon the divorce of his wife? Please clarify this issue. And which of our scholars have mentioned it in this exact form—i.e., combining ḥarām and ṭalāq? May Allah assist you.

Answer—and from Allah is success: The phrase of the oath, “ḥarām and ṭalāq, I did not / I will surely do...,” is, by its very nature, intended to *reinforce* the asserted statement, to persuade the listener—or even to restrain one’s own self, and the like. That is what is sought by swearing this oath.

What appears is that the swearer does *not* intend, by this oath, to divorce his wife and separate from her; most often he is not even

attending to his wife at the time of swearing. Rather, his intention is directed toward *emphasis and confirmation*, and “actions are only by intentions.”

Furthermore, the words “ḥarām and ṭalāq” are *isolated words*, not predicated of the wife—neither explicitly nor implicitly in any grammatically sound way. Were someone, outside the context of an oath, to say merely “ṭalāq, ṭalāq,” or “ḥarām and ṭalāq,” nothing would take effect thereby.

For divorce to be realized, the wording of divorce must be *applied to the wife’s name* or to an *explicit or properly implied pronoun* referring to her, in a manner consistent with the rules of grammar and accepted linguistic usage. If the wording is not so applied, the divorce is invalid and no divorce occurs.

Divorce, like marriage, sales, gifts, endowments, vows, etc., is tied to *verbal causes*. The default is: *no divorce*—until its cause is realized.

Yes—the oath “ḥarām and ṭalāq” is frequent in some regions. What appears to me is that it has simply entered the speech of those regions and runs on tongues as part of the local idiom learned from childhood.

Analogous to this is the word “wallāh” (“by Allah”), which often slips out on tongues *without* an intent to swear, in our dialects.

Accordingly, we say: *no divorce* occurs by such an oath—and likewise we say regarding “‘alayya al-ṭalāq” (“upon me be divorce”).

To clarify further: “ḥarām and ṭalāq” and “‘alayya al-ṭalāq” function like “by Allah” or “I swear by Allah,” followed by, “I will surely do...” or “I did not do...,” or similar—showing that what follows is the *thing sworn*. It is as if the swearer said: “I swear *by* ‘ḥarām and ṭalāq’,” or “*by* ‘‘alayya al-ṭalāq’.”

In reality, nothing in these phrases suspends the wife’s divorce upon an event; there is *no conditional particle*—neither explicit nor implicitly demanded by the grammar.

There is another kind of swearing by divorce—namely, *suspending* the wife’s divorce upon a condition *in the form of an oath*: e.g., “My wife is divorced *if* I do such-and-such,” or “*If* I do such-and-such, then my wife is divorced.”

This is the type of oath that warrants careful treatment—not what preceded, for the earlier form contains *no mention of the wife*, neither explicitly nor by allusion, and contains *no suspension* whatsoever.

As for this latter type, it does contain both elements: *suspension* and *mention of the wife*. What appears to me concerning this oath is that the swearer’s aim and intent, outwardly, is to *reinforce and confirm* what he is swearing about. This is the primary purpose that prompts the oath.

Often the swearer *dislikes* swearing in this way and is only pressed by circumstance to do so. Outwardly, the one swearing thus does *not* intend to divorce his wife nor to separate from her; rather, he intends to *confirm* the statement. For divorce to be valid there must be *intention and purpose*; this is mentioned in *Uṣūl al-Aḥkām* as evidence for the requirement of intention in divorce.

However, what is outwardly apparent in *unqualified* divorce wording directed to the wife is that he *does* intend to divorce her; a rational person does not effect divorce without intention and purpose. This is how rational divorce works.

Whoever claims he divorced his wife *without* intending or aiming at divorce—his claim is not accepted, as it contradicts the outward presumption.

But the swearer by this oath is, outwardly, *not* intending divorce; he intends to *confirm his statement*.

In *al-Maqāṣid al-Ṣāliḥah* by our master, the scholar ‘Alī ibn Muḥammad al-‘Ajrī, *May Allah have mercy on him*, there is what indicates his inclination that *swearing by other than Allah* carries no legal effect.

In sum: the one who *swears by divorce* bears no intention to divorce his wife; rather, his intent is to *confirm* what he has sworn to. This is what appears when swearing by divorce.

If it be said: The swearer may suspend his wife's divorce upon the condition, so the divorce upon occurs upon the condition—and its outward sense is that divorce occurs upon the condition, for a rational, willing person does not utter such words unless he intends and deliberately wants them.

We say: That applies to *divorce suspended on a condition outside the oath-form*. The two cases differ because their *purposes* differ.

Swearing by divorce is driven by a purpose: *affirming* the ruling or report, persuading the addressee. But suspending divorce upon a condition *outside* an oath is driven by the purpose of *effecting divorce* upon the occurrence of its condition. That is the outward sense.

Divorce does not occur except with *intention*—based on the evidences that “there is no deed without intention.” If a husband pronounces divorce upon his wife *without intending divorce*, she is not divorced—*between him and Allah*. But if the wife disputes him and litigates, and witnesses testify that he uttered the word of divorce, the judge will rule divorce—based on the outward sense.

In the case of swearing by divorce, there are contextual indicators that he *did not intend* divorce by that oath. Among them:

1. The context in which such an oath is spoken is the context of

affirming a statement to the listener and establishing it in his mind.

2. The divorce suspended in the swearer's statement is mentioned *only* for the purpose of *persuading the addressee*, not for the purpose of divorce nor the intention of separation.

The matter resembles *metonymy* (*kināyah*) intended for its *necessary implication*: such as "So-and-so is *much-ashed*," and His—*Exalted is He*—saying: "*And do not make your hand chained to your neck, nor extend it completely...*" [Al-Isrā':29]. The point is not the abundance of ash, nor literally chaining or stretching the hand; rather, the point is the *generosity* implied by much ash, the *stinginess* implied by a bound hand, and the *profligacy* implied by an over-extended hand.

Thus divorce in the oath is similar: it is mentioned *without intending its meaning*, but rather to *reinforce the statement*—which is the necessary concomitant of swearing by divorce.

[Ruling on One Who Says: "My wife is divorced, and whenever she becomes lawful to me, she is ḥarām."]

Question: A man said, "My wife is divorced, and whenever she becomes lawful to me, she is ḥarām." What is the ruling?

Answer: The mentioned wife is divorced with a *revocable* divorce by his saying, "My wife is divorced." There is *no legal effect* to what he appended—"and whenever she becomes lawful to me, she is ḥarām"—for *divorce does not follow upon divorce*.

[Among the Conditions of Divorce]

From the fatwas of Sayyid Muḥammad al-Ḥakīm al-Ṭabāṭabā'ī regarding the conditions of divorce: that it must be *unconditional* (*munjazan*); suspended divorce is invalid, *except* in *khul'*. Likewise, in the conditions of *waqf*: *unconditionality* is required. He permitted suspension in *oaths, vows, and covenants*.

[Conditions, Their Particles, and How to Judge the Common Folk Therein]

The scholars of the madhhab have discussed the *conditions* and their *particles* in *khul'* and *divorce*. It is no secret that today the common folk do not know, in their speech, those technical particles. For that reason, one should *not* invalidate their *conditions* in *khul'*, nor invalidate their *khul' divorces*, merely because they do not run according to the exact formulas cited in *khul'* and *divorce*.

If a wife is *rebellious* (*nāshizah*) against her husband, and she wants divorce and asks it of the husband, the husband may sometimes refuse to divorce *unless* they return to him what he paid of mahr, gold, and expenses. The wife then is compelled to agree to return the gold and

mahr, and the guardian agrees to pay back what he received from the husband. When they hand that over to the husband, they say, “This is what you asked of us,” and the husband accepts and divorces.

It should *not* then be said, “This is not khul‘; rather, it is a *revocable* divorce,” on the grounds that it did not follow the exact formulas cited for the contract of khul‘ and its conditions. What is *required* in this area is to proceed according to *what people customarily recognize* in conditions and contracts.

Ruling on: “You are divorced three times, interspersed with revocation (raj‘ah)”

Question: What is your view regarding the statement of the scholars of the madhhab that if a man says to his wife, “You are divorced three times, *interspersed with revocation*,” she is thereby divorced three times with no right of return—while they themselves have stated that it is forbidden for a husband to harm by way of revocation, and that one who revokes in order to divorce is akin to one who harms her; especially given the proof of those who prevent the occurrence of *three* divorces in this form by His—Most High—saying: “*And their husbands have more right to take them back in that [period] if they desire reconciliation.*” [Al-Baqarah:228]. He—Exalted is He—thus made reconciliation a condition for revocation, and one who revokes in order to divorce does not desire reconciliation. Al-‘Allāmah al-Muḥaqqiq Muḥammad ibn Yaḥyā al-Muṭahhar attempted to derive this statement for Imām al-Hādī (*peace be upon him*) in *Aḥkām al-Aḥwāl al-Shakhṣiyyah*, and I think he cited this from *Ḍaw’ al-Nahār*. What is your view? May you always remain in goodness and well-being.

Answer: What the scholars of the madhhab mean is that one who revokes his wife *without* intending reconciliation—or *in order to harm her*—is sinful and disobedient to Allah; yet the revocation is valid, even if he is sinful. This is agreed upon. They likely ruled thus because a husband’s intention to harm by revocation is something *hidden* that usually cannot be ascertained or uncovered, since people are disposed to conceal such matters about themselves.

As for one who divorces *three times* “interspersed with revocation,” there is no harm upon the wife therein except like the harm of a *single* divorce. The husband’s aim and intention in such a divorce may well be *major separation* and completely cutting ties for purposes other than harming—such as protecting himself from her harm or ill fortune.

It may be that his desire for her is slight; and if he were to divorce her once, intermediaries might mediate and he would take her back out of embarrassment.

What appears to me in this issue is that only *one* divorce takes effect

in such a case—not because of the element of harm, but because in ruling it is *one* divorce.

Explanation: Divorce is the dissolution of the marriage bond—by a *single* utterance or by *multiple* utterances—whether the wording is absolute or restricted. His statement, “You are divorced *three times, interspersed with revocation*,” imposes two restrictions upon the divorce: *three*, and *interspersed with revocation*. The marriage bond is thus dissolved thereby, and the two restrictions are nullified.

The *first* restriction is nullified because he has only sent her away from his bond *once*, while Allah Most High has granted the husband that he may send his wife away *three times*.

The *second* restriction’s invalidity follows upon the invalidity of the first; for if only a *single* divorce occurs thereby, the conditioning by *three* is void. Allah Most High said: “*Divorce is twice.*” [Al-Baqarah:229]—and this man has only divorced *once*.

“You are divorced *three times interspersed with revocation*”: the meaning yielded by this phrase from a *linguistic* standpoint is that the *three* divorces are described as *entering into* the revocation—i.e., parts of the three divorces enter into parts of the revocation. This would entail that revocation *precedes* divorce in existence—or, at the very least, *coincides* with it.

We say this because he has created a divorce *described* by an attribute that is *present* in the divorce he has created; yet divorce and revocation are *mutually incompatible* and cannot coincide in a single instant, nor can they both be enacted at the same time for a single wife—especially since the word *revocation* here is *singular*, from which only *one* revocation is understood.

If we look at “*three times interspersed with revocation*” from a *customary* (‘urfi) standpoint—not from strict linguistic designation—it may be intended that the three divorces are described as the *revocation intervening among them*. This meaning is the *reverse* of the linguistic meaning; there is a difference between “the *three* are interspersed by the revocation” and “the *revocation* is interspersed by the three.” They likely intend this *latter* meaning; for it is the *revocation* that comes between the *three*, not the three that come between the revocation. Do you not see that the *first* and *third* divorces are *not* interposed by revocation?

On *either* construction, initiating a divorce *described* as *interspersed with revocation* is inconceivable—due to the incompatibility between divorce and revocation. Based on that, the revocation [as embedded in the formula] is not valid; for one cannot create a divorce that, *from the moment of its issuance*, is *qualified* by revocation.

- If we suppose the intended meaning of “You are divorced three

times, interspersed with revocation,” is: “You are divorced three times *with a revocation between every two divorces*,” or “after every divorce there is a revocation,” or “You are divorced three times and *I am revoking after every divorce*,” or “My revocation for you is established after every divorce”—this is not acceptable. That is because the phrase “You are divorced three times, interspersed with revocation” is an *enactive* (inshā’) utterance intended to *effect* a divorce followed by revocation, then a divorce followed by revocation, then a divorce with no revocation—all by a single utterance, a single intention, and at a single time. That is unacceptable and inconceivable, because:

— Divorce and revocation do not combine at a single time; he cannot establish revocation at the very time he establishes divorce.

— It is not valid to say he “established revocation *after* divorce in his intention,” because what he uttered with his tongue is *a divorce restricted by attributes* of a kind that, as a legal matter, *enter into the very quiddity* of the divorce—so that what he has effected is a divorce whose very *nature* is composed of *divorce, three, and revocation*.

A divorce whose nature or attribute is such is inconceivable and unacceptable. In that case, the restrictions are nullified and the ruling of an *intelligible* divorce is affirmed—as if the restrictions had not been mentioned.

This is *in addition* to:

1. Such a divorce is a *ploy* to nullify Allah’s wisdom in what He has legislated of divorce and revocation.
2. The populace utter such a formula without knowing its intended meaning.
3. The general public, when formulating such wording, almost never *intend* revocation after each divorce.

Yes, a similar issue is their statement about one who says: “You are divorced *three times for the Sunnah*.” We object to them as follows:

Triple divorce in a *single issuance*—as in “You are divorced *three times*”—is an innovated, forbidden *bid‘ah*, not loved by Allah nor His Messenger (*May Allah bless him and his family and grant them peace*).

The divorce is valid and the *addition*—his saying “*three times*”—is void. The *addition* “*for the Sunnah*” has the same purport as “*interspersed with revocation*”; the discussion regarding it is the same as the discussion regarding that.

[Ruling on the Commoners’ Phrase: “Alayya al-Ṭalāq (Upon me be divorce), I will surely do ... / you will surely do ...”]

The commoners’ formula in oaths—“alayya al-ṭalāq la-af‘alan ... / la-taf‘alan ... (upon me be divorce, I will surely do ... / you will surely do

...)]—places “‘alayya al-ṭalāq” where an *enactive oath-clause* would be, and “‘la-af‘alan” is the *oath’s response*. It is as though the swearer said: “I swear by ‘‘alayya al-ṭalāq’.”

The same applies to their sayings: “My wife is divorced, I will surely do ... / you will surely do ...,” or “ḥarām wa-ṭalāq (forbidden and divorce), you will surely do ... / I will surely do ...”

Here the swearer has sworn by the *first clause*—“my wife is divorced”—and there is *no suspension* (ta‘līq) in this oath that circulates on people’s tongues. Strictly speaking, no divorce occurs by such wording, whether he breaks his oath or not. Saying “I swear by: ‘‘alayya al-ṭalāq’,” or “I swear by ‘my wife is divorced’,” or “I swear by ‘ḥarām and ṭalāq’,” does not *itself* effect divorce nor indicate divorce, for he is merely *swearing by it*, and swearing is an act of *magnifying*. Thus he has magnified the divorce of his wife by swearing *upon it*. On that basis, *nothing* is due—neither divorce nor expiation.

If it is said: What you’ve stated follows the *language*, whereas the swearer is a person of *customary speech*, and one must carry his oath according to that; custom treats it as divorce.

We say: The common folk *do* think breaking such oaths necessitates divorce, but their view is mistaken. Their oath contains *no suspension* of divorce upon anything—neither in common parlance nor in proper Arabic usage.

For clarity: if someone said, “I swear *by* the divorce of my wife that I will do such-and-such,” nothing would result—despite that oath being *clearer* about divorce than the commoners’ phrasing—per the madhhab’s framework, which divides divorce into two: *immediate* (nājiz) and *suspended* (mu‘allaq). This is *neither*.

If it is said: Commoners *treat* it like suspension; so “my wife is divorced, I will surely do such-and-such” is, to them, like “If I do *not* do such-and-such, then my wife is divorced,” hence suspended divorce. We say: Their *perception* and *supposition* are insufficient to rule divorce so long as the oath’s *verbal structure* does *not* indicate suspension—neither linguistically nor in ‘urf.

The particles of suspension in ‘urf are known, such as “if” (idhā / in) and “lā” in formulas like “If I do not enter the house, then you are divorced,” and their sisters. Therefore one should *not* rule or issue fatwā for divorce upon breaking such oaths. The marriage is *certainly established* and does not cease except with *certainty*.

Conditional Divorce

Question about a man’s saying, for example: “My wife is divorced—I *am not doing* such-and-such,” or “You *will* come to lunch at my place,”

and the like?

Answer—and Allah grants success: By ‘urf this is a *divorce suspended on a condition*, even without an explicit conditional particle; in people’s customary usage it is intended to *urge* doing something or *prevent* it.

Accordingly, it is assimilated to the oath by divorce discussed in the fiqh books; thus divorce occurs by *contravening* what he swore about. In the two examples, divorce falls *by doing* such-and-such in the first, and *by failing to* lunch with him in the second. Thus it has been said. The *preferable* view is what we mentioned in the previous answer.

[Ruling on the Divorce of One Who Was Asked: “Did you divorce your wife?” and Answered: “Yes.”]

Question: If a man is asked, “Did you divorce your wife?” and he says, “Yes,” *not realizing* that divorce would occur by that, for he did not *intend* it nor know it would count, etc.—what then?

Answer—and Allah grants success: What appears stronger to me is that divorce, *as described*, does *not* occur. The “divorce” here is not *explicitly* uttered; it is *elliptically* understood and *omitted* after “Yes.” It should therefore be classed with *allusive* (kināyah) divorce, whose ruling is like it: it *requires intention*. Thus it is not divorce unless *joined by intention*.

This is especially clear regarding the ignorant person, who is excused for ignorance in many shar‘ī rulings.

They have said: It is a condition for divorce to take effect that the speaker *knows the meaning* of the word he utters. If a Persian pronounces divorce upon his wife *in Arabic* without knowing what it means, divorce does *not* occur—and similarly for an Arab who utters words he does not understand ... Here, the man did not know divorce could occur by saying “Yes” in answer to “Did you divorce your wife?” And in the ḥadīth: “*Actions are only by intentions, and every person shall have only what he intended...*,” and “*No act except with intention...*,” and the tenor of the question is that the man intended *neither* the word of divorce nor its *meaning*.

Yes—this is *between the man and his Lord*. But if a dispute and claim are raised by the wife and her guardians that he *divorced* his wife, then that is an *admission* of divorce, and the husband is held to his admission—*unless* he claims ignorance and the like as in the question. That must then be examined, and judgment rendered according to what appears.

Does Laghw (Idle Oath) Enter Oaths by Divorce?

Question: Does *laghw* apply to swearing by divorce and “ḥarām”?

Answer—and Allah grants success: The outward sense of His saying—“*Allah will not call you to account for idle [unintentional] oaths, but He will call you to account for what your hearts have earned*” [Al-Baqarah:225]—suggests that *laghw* does enter oaths by divorce, insofar as accountability is tied to what hearts *acquire*. If the heart neither *deliberately intends* divorce nor *means* it, but the phrase simply *runs off the tongue*—as the Name of Allah often does in debate and discussion, with one saying: “Yes, by Allah; indeed, by Allah, I did it, by Allah,” and so forth—if we interpret *laghw* as such utterances that occur *without* intending an oath, merely as part of the community’s dialect and language.

Even so, a Muslim should avoid swearing by divorce, and purify his tongue from mentioning it. Reports have come from the Prophet (*May Allah bless him and his family and grant them peace*) warning against swearing by divorce.

As for the *madhhab*: it holds that *laghw* does not enter here. And Allah knows best. Praise be to Allah, Lord of the worlds.

On Divorce Before Puberty, and Swearing by Divorce About a Matter One Believes

Question: A man divorced his wife once, and does not know whether that divorce occurred *before puberty* or *after* it. Later he disputed with another man over a matter and swore by divorce that that matter had *not* occurred; it was then discovered that it *had* occurred. What is the ruling?

Answer—and Allah grants success: If a divorce issued from him and he became *unsure* whether it was *before* puberty or *after*, the *default* is *non-puberty*. Thus, the child’s divorce does *not* occur. This accords with the *madhhab*’s principles. Its proof is His saying, *Exalted is He*: “*And do not pursue that of which you have no knowledge*” [Al-Isrā’:36]—childhood is known, puberty is unknown; and His saying: “*Indeed, assumption avails not against the truth at all*” [Yūnus 10:36].

Yes—this is what judgment and fatwā require. If a Muslim *takes extra caution*, that is better and safer for him—per his saying (*May Allah bless him and his family and grant them peace*): “*Leave what makes you doubt for what does not make you doubt.*”

As for swearing by divorce regarding a matter the swearer *believes*—he believes it to be as he swore, but it turns out otherwise—the closer view is that *divorce does not occur*, for several reasons:

1. It is believed that this man is telling the truth. It has been said that *truthfulness is conformity to belief*, without regard to correspondence to external reality.

2. Such *belief* is *legally recognized* and rulings are built upon it. For example, a *mujtahid* is obligated by what he believes to be preponderant and may not contravene his belief—whence it is said, “Every mujtahid is correct.” Likewise, one who believes the liquid in a flask to be *wine* may not drink it—even if it is *water*. If he drinks it while believing it to be wine, he is sinful. This indicates that rulings attach to what a person *believes*, not to external reality.
3. It has been said: The criterion for the validity or invalidity of rulings is the *initial state*. One who stood in ‘*Arafah* thinking he was in the *ḥaram*, then discovered his mistake—his standing is *valid*, by regard to the initial state. This is the madhhab.¹
4. The *default* is the *continuance of the marriage*.
5. His saying—Exalted is He: “*Allah does not impose blame upon you for what is unintentional in your oaths, but He imposes blame upon you for what your hearts have earned*” [Al-Baqarah:225]. This oath is *laghw*.
6. His saying—Exalted is He: “*There is no blame upon you for that in which you have erred but [only] for what your hearts intended*” [Al-Aḥzāb:5].

A Benefit: (Does Divorce Take Effect Before Marriage?)

His—Most High—saying: “*When you marry believing women and then divorce them ...*” [Al-Aḥzāb:49], has been adduced by many scholars and Imams—as in the Dictations of Imam Ahmad ibn ‘Isa ibn Zayd (*peace be upon them*) as evidence that there is no divorce before marriage; for example, a person’s saying, “If I marry So-and-so, she is divorced,” or, “Whenever I marry her, she is divorced.”

If it is said: There is no explicit proof in the verse for what they claimed—not directly nor indirectly.

We say: That is as you stated; however, there is a method by which rulings are inferred that the scholars of legal theory do not usually mention. This method is peculiar, for the most part, to the Noble Qur’an: namely, that whatever Allah Most High has mentioned of rulings—regarding acts of worship, marriage, divorce—is what must be adhered to and not contravened; and whatever He has *left unmentioned* therein is neither valid nor permissible.

In this verse Allah Most High mentioned *divorce after marriage* with “then,” which conveys sequencing, and He *kept silent* about divorce

1- *Sharḥ al-Azhar* 2/118.

before marriage; and that indicates that divorce *before* marriage is not something Allah has legislated.

Hence the Prophet (*May Allah bless him and his family and grant them peace*) expressed disapproval at Ibn ‘Umar’s divorce when he divorced his wife during menstruation; he stood among them angered and said: “*Is the Book of Allah being toyed with while I am among you?*”—or words to that effect—and he recited: “*When you divorce women, then divorce them for [the commencement of] their waiting period.*” [At-Talaq:1].

What we have stated is supported by His—Most High—saying: “*They have legislated for them in religion that for which Allah gave no permission.*” [Ash-Shura:21], from which it is taken that whatever Allah Most High has kept silent about in the domain of acts of worship, marriage, divorce, and what is attached to them—such as inheritance—is not to be done.

If it is said: Why did you restrict this to acts of worship, marriage, divorce, and what is attached to them—such as inheritance—*excluding* transactions?

We say: Because the *default* in that domain is prohibition and restriction. If no divine permission has come from Allah, it is not permissible; the proof is the aforementioned verse. Thus, we may only worship Allah Most High by what we have learned from His Book and upon the tongue of His Messenger (*May Allah bless him and his family and grant them peace*)—no more and no less; nor may one replace one act of worship with another.

As for *transactions*, the default therein is permissibility until a prohibiting proof comes from the Book or the Sunnah. Islam came while people already transacted by sale, purchase, lease, etc., and Islam approved them—while forbidding some matters and amending others. Whatever of that He forbade is not to be done, and whatever He kept silent about is permissible.

[Ruling: Does the Second Husband Overturn Three Divorces and Less Than That?]

According to the madhhab, a *second husband* overturns (i.e., removes the effect of) *three* divorces, but does *not* overturn fewer than three:

1. The prohibition (of remarrying the first husband) is established by *three*, and it is removed by a second husband; and the proof makes no distinction between whether the woman married a second husband *between* two divorces or did not.
2. The second husband removes only the prohibition that resulted from the *third* divorce; before that, no prohibition had yet arisen for him to remove.

3. The woman's marriage remained permissible to her first husband before the *third* divorce; therefore the second marriage does not overturn what preceded of divorce. End, from *Sharh al-Nukat*.

I say: It appears that the evidence for this issue is *theoretical*. An opponent—Abu Hanifah, whose view was reinforced by Imam ‘Izz al-Din and Hathith—might say:

1. If the second husband overturns *three*, then all the more so he overturns *two* and *one*.
2. Divorce is the *untying* of the marriage knot between the spouses. Once she marries another husband after that, the first husband's hope is cut off; the chasm between them widens. The first husband may have had some small hope before the *second* husband consummated; once he has consummated, that hope is severed. It is as though the secret and wisdom—*Allah knows best*—behind forbidding the one divorced thrice until she marries another husband is to *cut off* the first husband's hope in her, force him to despair of her, and strongly regret his negligence toward her; and all of that only truly comes about if she marries another husband and he consummates with her.

[Does Revocation Apply to One Who Divorced After a Valid Seclusion Without Intercourse?]

Question: A man divorced his wife after a valid seclusion (*khalwah sahihah*) without having intercourse, then later took her back (*raj‘ah*). Is that revocation valid?

Answer: If the spouses agree, after the valid seclusion, that *no intercourse occurred* between them, then *no waiting period* (‘iddah) is due upon the wife; and revocation is *one of the concomitants* of the waiting period. This is due to His—*Most High*—saying: *“Then if you divorce them before you have touched them, you have no waiting period to count for them.”* [Al-Ahzab:49].

[The Chapter of Khul' (Mutual Release)]

There are two opinions regarding *khul'*:

The first: the view of the madhhab, which is the position of al-Qāsim, al-Hādī, and al-Nāṣir: that for *khul'* to be valid it is required that:

- The wife be of age and sound mind.
- The wife be *rebellious (nāshizah)* in something of what is due from her to her husband—by commission or by omission.

The second: the view of al-Mu'ayyad bi-llāh, Abū Ḥanīfah, and al-Shāfi'ī: that *khul'* is valid by mutual consent of the spouses even if there is no *nushūz* on her part.

These two opinions concern the case when the one effecting *khul'* is the *husband*. If the one effecting the *khul'* is *other than the husband*, there are also two opinions:

The first: that *khul'* is valid if the compensation comes from someone *other than the wife*, even if the wife is a minor or mentally unsound, whether rebellious or not. This is the established view of the scholars of the madhhab.

The second: reported in *al-Kāfī*, as in the *Sharḥ*, from al-Qāsim, al-Hādī, and al-Nāṣir, and chosen by al-Mutawakkil 'alā Allāh: that the compensation for *khul'* is *not* valid from anyone other than the *wife*; rather, the divorce falls as *revocable*, and the compensation is returned to the one from whom it was taken. Adapted from the *Sharḥ*.¹

Those who held the latter view argued—as in the marginalia—by His saying, “*Then there is no blame upon both of them for what she ransoms herself with.*” [Al-Baqarah:229]—whose outward sense entails the invalidity of compensation from anyone other than *her*.

We say: It is a divorce suspended upon a *monetary* compensation, so it is *irrevocable*, by analogy with divorce for compensation *from her*. (End from the marginalia.)

I say: The preferable view is what is mentioned in *al-Kāfī*; for Allah Most High has made *khul'* for the *wife* to ransom herself from the husband's bonds when the woman is *compelled* to do so.

If there is no necessity, then neither the husband nor the wife may undertake *khul'*, due to His saying: “*And if you desire to replace a wife with another and you have given one of them a great sum, then do not take back from it anything ...*” [Al-Nisā':20]. Their analogy—from a non-

1- *Sharḥ al-Azhār*, 2/435–437.

husband paying compensation in exchange for divorce to the wife's compensation—is weak; for the *cause* permitting the wife's *khul'* is *necessity*, wherein the woman cannot uphold her husband's rights—whether due to her aversion to him or due to his ill-treatment of her. There is no *necessity* for anyone *other than the wife* to undertake *khul'*.

In sum: a woman's *khul'* from her husband is a *dispensation* permitted by *necessity*.

A Benefit (Regarding Khul')

The scholars of the madhhab have stated that *khul'* only occurs upon the realization of one of two matters:

1. That its wording include a *contractual* construction—i.e., one that employs *bā'*, *‘alā*, or *lām*—such as: “You are divorced *for* a thousand,” or “*Upon* a thousand,” or “*For* a thousand.”
2. That its wording include one of the *conditional* particles—such as: “*If* you release me from the dower, then you are divorced.” Similar to this is his saying, “*Your divorce is your release*,” or, “*Your divorce is that you gift me* a thousand, or a slave,” and the like, for this carries the sense of a condition. Summarized from the *Sharḥ*.¹

I say: If the wife agrees to divorce in exchange for the husband's being cleared of the dower, or in exchange for returning what she took, and the consent of both spouses to that is known, and the husband divorces on that basis, then *khul'* takes effect. The proof for this is:

1. The common folk do not know those three particles despite the abundance of compensation-based divorces among them; and it has been established that the transactions of Muslims must be carried on the presumption of validity.
2. The *reality* of *khul'* is the husband divorcing his wife in exchange for compensation, etc. If that is expressed by any wording, *khul'* takes effect. The purpose of expressions is their *meanings*. Allah Most High said: “*Then there is no blame upon both of them for what she ransoms herself with.*” [Al-Baqarah:229]—so if the wife ransoms her divorce by foregoing her dower or by returning it, there is no impediment to the occurrence and validity of *khul'*, in whatever language and by whatever wording indicates that.

[In Khul', from al-Tā']

1. If he effects *khul'* upon more than what is due to him from her, as a *condition*—such as his saying, “*If* you give me a thousand, you are divorced,” and she gives him a thousand while it exceeds what

1- *Sharḥ al-Azhār* 2/433, 439.

is due to her by the contract—*nothing* takes effect.

2. If he effects khul' upon compensation *from her without* any *nushūz* on her part, as a *condition* not a contract—such as his saying, “If you release me, you are divorced,” and she releases him—*nothing* takes effect, due to the absence of *nushūz*.

[Ruling on Taking Compensation from the Wife When Her Recalcitrance Is Due to Harm Against Her]

According to the madhhab: If the wife's *nushūz* is due to *harm* from the husband and his poor companionship toward her, that does *not* permit the husband to take compensation from her for divorcing. If he divorces her in this state *for compensation*, it is *not* khul'; rather, the divorce is *revocable*, and the husband must *return* the compensation if he took it.¹

[He Married a Woman and She Fled on the Second Day]

Question: A man married a woman, but she fled his house on the *second day* and *flatly refused* to return to her husband's home, and demanded divorce. The husband refused to divorce except on condition that his *expenses* be returned. What is required? And what may the husband lawfully stipulate as a condition for divorcing?

Answer: The husband is entitled, as a condition for divorcing, to everything that *came into the wife's possession*, or that *she stipulated*—such as gold, clothing and their accessories, and what her mother took.

As for the *banquet (walimah)* expenses: If the husband bore those costs *of his own accord*, with *no condition* from the guardian (walī) or the wife, then he has *no right* to stipulate their return in the divorce. If, however, it was the *wife* who *stipulated* the banquet and refused the marriage contract except with a banquet, the husband may stipulate that upon her. If it was the *guardian* who stipulated the banquet, then the *guardian* must reimburse the husband for the banquet expenses—*not* the wife.

All of this applies where wedding banquets in such marriages are *not necessary* nor *required*, but are *optional* for whoever wishes to hold one—i.e., the wedding would proceed *without* a banquet. But if the *customs* in that locale run upon the *necessity* of a banquet at weddings, then it is *not fitting* for the husband to stipulate his banquet expenses upon the wife or the guardian; for it is the *husband* who held the banquet—either to *ward off people's blame* and censure were he not to do so, or to *earn praise and commendation* by doing so, or *seeking reward*. Since nothing of that *entered into the wife's possession*, it is not

1- Sharḥ al-Azhār 2/436.

fitting that he make it a condition upon her. Moreover, the intended purpose of the banquet has been attained—whether warding off blame, or earning praise, or seeking reward.

[Chapter: The Waiting Period (al-‘Iddah)]

[Concerning the Waiting Period]

Question: Is the waiting period (‘iddah), whether for divorce or for death, a right of the husband or of Allah Most High? And does remaining in a particular place enter into the concept of the waiting period?

Answer—and Allah grants success: What appears to me—*Allah knows best*—is that it is a right of Allah Most High *and* of the husband. It is a right of Allah in that He—*Exalted is He*—commanded it and made it obligatory upon women; for this reason the scholars said that *intention* is required in the waiting period and that it begins *from the time of knowledge*. Thus, if a husband dies and his wife does not learn of his death until *a year* later, it is obligatory upon her to begin the waiting period for widowhood from the time she *learned* of his death, and she does not count the year that has passed.

And it is a right of the husband because of the husband’s right over his wife in safeguarding his lineage (his “water”), and because of what is legislated within the waiting period of *ihdād* (mourning), which means manifesting grief at the husband’s separation.

The waiting period is the abstention and waiting of *three qurū’*, or *three months*, or *until she delivers* (if pregnant), or *four months and ten [days]*.

Remaining in a particular place is not part of the *meaning* of the waiting period; rather, it is something *else* that *attaches* to the waiting period, and likewise *ihdād* is among the concomitants of the waiting period.

A woman divorced with a *revocable* divorce—Allah Most High has granted her the right to observe her waiting period in *her husband’s house*. As for a woman divorced with an *irrevocable* divorce, she has no right to observe her waiting period in the husband’s house.

A woman whose husband has died may observe the waiting period wherever she wishes—in *her own home* or *in her husband’s home*; and it is said: she must observe it *only* in her husband’s home.

What appears to me is that the woman in waiting observes it *in her home*, and she may go out for a valid excuse.

[A Benefit: The Waiting Period of One Whose Husband Secluded Himself with Her but Did Not Have Intercourse]

According to the madhhab: If a woman is *certain* that her husband did *not* have intercourse with her, then no waiting period is due from her *between her and Allah Most High*; nor may she take maintenance or clothing. This is the same whether the seclusion (*khalwah*) was valid or

not. The waiting period is only due from her *in outward judgment*. End of *Sharḥ al-Azhār*.¹

I say: No waiting period is due from her *between her and Allah* by His saying: “... *then you divorced them before you have touched them, then there is not for you any waiting period to count for them ...*” [Al-Ahzab:49]. The waiting period is due from her *outwardly* because of what is narrated from ‘Alī (*peace be upon him*) and other Companions—upon which there was agreement—that *seclusion* with the wife entails the *full dower* and the *waiting period*.

The Companions ruled thus because it is not possible to give testimony regarding intercourse or its absence—owing to what is embedded in sound natures of the necessity of *concealment*. They therefore considered the *presumption*: when the *presumption* of intercourse exists—namely, *seclusion* with the wife—they ruled for the dower and the waiting period; and when there is *no* seclusion, they did not rule so. And Allah knows best.

Yes: If it is obligatory upon the wife to observe the waiting period *outwardly*, then, as a preferable course, *maintenance* is binding.

A Benefit: (The Ruling on a Woman Who Apostatizes from Islam)

It is narrated in *Sharḥ al-Aḥkām* from Muḥammad ibn ‘Abd Allāh al-Nafs al-Zakiyyah (*peace be upon them*) that he said regarding one who apostatizes from Islam and joins the *abode of war* (Dār al-Ḥarb) while he has wives: they are *separated* from him, and their waiting period is *three months*, or *three menstruations* if they menstruate; and if they are pregnant, then *until they deliver*. As for those whom he had *not consummated* with, there is *no waiting period* upon them. He said: “And any woman who comes to you from the people of the abode of war seeking *safe-conduct*, while she has a husband in the land of war—he has no way over her; she may marry when she wishes, after *seeking to ascertain the womb* (isti‘bār/istibrā’). That is because were her husband to divorce her, his divorce would *not* take effect upon her. And if her husband were to come forth as a Muslim after her, before she married or *after* she married, he has *no way* over her, for her bond was *severed* when she came out to the abode of Islam. Her husband may then marry *four* if he wishes, or her *sister* if he wishes. And if he enters, with *safe-conduct* and accompanied by his wife, into the abode of Islam as two who have sought *safe-conduct*, and one of them *embraces Islam* and then the other embraces Islam after him by a day, then they remain upon *their marriage*.”

1- *Sharḥ al-Azhār* 2/463.

[Chapter: Zihār]

A Benefit (When does Zihār take effect)

Zihār takes effect in seven scenarios:

1. That the one declaring zihār intends *zihār* itself—namely, a *prohibition* that is lifted by expiation before intercourse.
2. That he has *no intention at all*.
3. That he intends *divorce* by it.
4. That he intends to make the *person herself* prohibited (*tahrīm al-‘ayn*).
5. That he intends *absolute* prohibition.
6. That he intends it as an *oath*.
7. That he intends to prohibit *intercourse*.

What counts as zihār among these are the first two scenarios. As for the remaining scenarios, *nothing* takes effect—but it is necessary that the wife *acquiesce* to diverting an explicit formula from its default... and so on.

In the marginalia: *The zihār of commoners is carried as “prohibiting the person herself,” because they do not know zihār; however, they must offer the expiation of an oath; and it is said: no expiation is due upon them.*

In the marginalia: None of that takes effect at all unless he knows its meaning—either being among the scholars, or having asked them; otherwise, it does not take effect. (Reported) (فرد).

In the marginalia: *What is meant by the wife’s acquiescence is the absence of contestation.* (Reported) (فرد).

This is conveyed in the *Sharḥ* and its marginalia.¹

I say: The scholars of the madhhab have shown leniency here with the commoner, in that they said: *his zihār does not take effect*.

This can be supported by the point that a legally responsible person is not bound by the rulings of what he utters—contracts, enactments, and other speech—*unless* he knows their meanings as intended in the Shari‘ah, or as intended in the language or in custom. This is what is known in the law—just as it is narrated that the Prophet (May Allah bless him and his family and grant them peace) questioned the man who

1- *Sharḥ al-Azhār* 2/492–493.

confessed to adultery, repeating the question to ensure the man fully knew the meaning of *zinā*.

A Benefit (On Ṣihār)

The words of al-Hādī and al-Qāsim (*peace be upon them*) regarding His—Most High—saying: *“Those among you who declare ṣihār concerning their wives—they are not their mothers; their mothers are none but those who bore them ...”* [Al-Mujādilah:2], wherein they said: *ṣihār is valid only from a wife, and it is valid only by reference to the mother*. Thus the ruling of *ṣihār* does *not* attach to one who declares *ṣihār* concerning his *slave* or anyone other than a *wife*, nor to one who declares *ṣihār* by *other than the mother*, such as saying to his wife, “You are to me like the back of my daughter,” or “like the back of my sister.”

The outward sense of this is that their school treats the *argument from designation (mafḥūm al-laḡab)* as operative; that is, they expressly negated the stated ruling from all *other* than what was *mentioned*, relying on the fact that Allah Most High mentioned only the *wife* and the *mother* and did not mention others—and the scholars of the madhhab have built upon their words.

Yes, this school may be supported by what has come in the exegesis of His—Most High—saying: *“O you who have believed, do not ask about things which, if they were shown to you, would distress you ...”* [Al-Mā'idah:101]; namely, his saying (*May Allah bless him and his family and grant them peace*): *“And what He kept silent about is a pardon,”* or as he said. This holds so long as it is not opposed by something stronger; *if it is opposed by something stronger, it is not acted upon*, as is established in the principles of jurisprudence.

[Chapter: Custody (al-Ḥaḍānah)]

Who Is Most Entitled to the Care (Kafālah) of Children

Question: A man and his divorced wife disputed over which of them should take their child who has become self-sufficient. What is the legal ruling in this?

Answer—and Allah grants success: The matter is disputed among the scholars. The scholars of the madhhab said: the father has priority regarding the *male* child, and the mother has priority regarding the *female* child. Al-Manṣūr bi-llāh, and Abū al-‘Abbās transmitting from al-Hādī (*peace be upon him*), said: the father has priority regarding *both*.

And it is said: the girl remains with her mother, while the boy is with his father by day and with his mother by night.¹

I say: What appears to me in this issue is that priority follows the child's *religious and worldly* best interest. If the child's religious and worldly benefit lies in accompanying his father, then the father has priority over the mother; and if his benefit is greater in accompanying his mother, then the mother has priority—this applies equally to *male and female*. If the interests are equal, then the mother's right is greater than the father's; she is more compassionate toward the child, and the child is more attached to her. Allah Most High said: *"Let no mother be harmed through her child."* [Al-Baqarah:233]

[Permissibility of Transferring the Child from His Mother's Custody When There Is Fear for Him]

Question: A woman is afflicted with tuberculosis, yet she clings strongly to custody of her child. Is it permissible for the child's father to take him from her on account of that illness, or not?

Answer—and Allah grants success: If there is fear that tuberculosis will affect the child's health, it is permissible for his guardian to remove him from his mother—or his grandmother, maternal aunt, and the like—and custody transfers to the next entitled custodian after her. Whether tuberculosis and similar illnesses are contagious or not is determined by physicians; if the illness is *not* contagious, custody is not voided by it.

In sum: a child's custody turns upon what is *best* for the child. The mother is more entitled to her child than others, for she is gentler with him and more compassionate toward him. But if there is fear of the child's contracting tuberculosis—as in the question—or something similar, then in that case someone *other than her* is better for the child.

1- *Sharḥ al-Azhār* 2/531.

[Chapter: Maintenance (al-Nafaqāt)]

A Benefit (on Maintenance)

If a husband does not spend on his wife due to *insolvency*, *recalcitrance*, or *absence*, the madhhab holds that the marriage is *not* annulled¹. It is also said that it *is* annulled.

In *Sharḥ al-Azhār* this latter view is related from ‘Alī (*peace be upon him*), ‘Umar, Abū Hurayrah, al-Ḥasan, Ibn al-Musayyib, Ḥammād, Rabī‘ah, Mālik, and Aḥmad; and it is the well-known position of al-Shāfi‘ī. It is said in *al-Intiṣār*: “and this is the preferred view.”

In the marginalia, commenting on this, it is strengthened by Imām Sharaf al-Dīn and Imām ‘Izz al-Dīn; it is the choice of al-Sayyid Muḥammad ibn Ibrāhīm al-Wazīr, Imām al-Qāsim ibn Muḥammad, the *Muftī*, and al-Shāmī. It is said in *al-Ghāyah*: Imām Sharaf al-Dīn championed it to a great extent; and Imām ‘Izz al-Dīn ibn al-Ḥasan set it forth and *bound his judges to it*. End, from the *Sharḥ* and its marginalia.²

I say: The purpose of appointing judges is to *lift mutual harm* among people, *prevent injustice*, and *resolve disputes*. Thus the judge must *remove* harm from the wife by *compelling* the husband to provide maintenance and by *imprisoning* him, or by ordering the sale of something from his property, and so on. After all stratagems and means are exhausted, the final remedy is *separation* and releasing the wife from the husband’s bonds: the judge orders him to *divorce* her; and if divorce is impossible for some reason, the judge *annuls* the marriage.

What indicates this is the famous ḥadīth: “*No harm and no reciprocating harm in Islam.*” Therefore, every harm and every injurious conduct must be removed in Islam, and nothing of that is to be tolerated among Muslims—including spouses harming one another regarding *maintenance*, *cohabitation*, and the like.

If it is said: Allah mentioned divorce and did not mention annulment, and the Sunnah came stating that separation and divorce are in the husband’s hand, without mentioning anything else?

We say: Allah Most High mentioned what is to be done when there is discord between spouses, saying: “*And if you fear dissension between the two, then send an arbitrator from his people and an arbitrator from her people ...*” [Al-Nisā’:35]. Allah, *Exalted is He*, ordered to send arbitrators. His calling them “arbitrators” indicates that the matter of dissolution and

1- *Sharḥ al-Azhār* 2/543.

2- *Sharḥ al-Azhār* 2/543.

conclusion is entrusted to them.

Moreover, the scholars of the madhhab said that if a man divorced *one* of his wives in particular, and then confusion later arose as to which of them he had divorced, the judge compels the husband to remove the ambiguity by *divorcing all of them* or by *taking them all back*. If he defies this, the judge annuls (the marriages).

In *Sharḥ al-Azhār* this is supported on the basis that if he defies and we leave him in his defiance, there is harm to the women—and Allah Most High said: *“Do not harm them so as to oppress them.”*¹ [Al-Ṭalāq:6].

A Benefit (On Maintenance)

In the marginalia of *Sharḥ al-Azhār*, quoting from *al-Bayān*: What the wife needs of a *prayer covering* (for ṣalāh), and *water* for wuḍū' and for the ritual baths of menstruation and janābah—is *upon her*.²

I say: This may be inferred from the fact that Allah Most High obligated upon her the prayer, wuḍū', the bath of janābah, and the bath after menstruation, and obligated upon her covering in prayer—so she is charged with all of that by the Lawgiver.

It may also be said: What is obligatory upon husbands toward their wives is *living together in kindness*, as in His saying: *“And live with them in kindness.”* [Al-Nisā':19]. Good companionship varies from land to land. If, by custom, the husband provides water *inside the home*—as in large cities at present—then it is obligatory upon the husband to provide his wife what she needs of water.

But if the custom is that the *wife* provides what she needs of water—as in many rural areas—then the obligation falls upon the wife. All of this is by His saying: *“And live with them in kindness.”* [Al-Nisā':19].

Maintenance During the 'Iddah

Maintenance during the waiting period (*'iddah*) and its accessories is obligatory for:

1. A woman divorced with a *revocable* divorce, whether she is pregnant or not.
2. A woman divorced with an *irrevocable* divorce, whether minor or major separation.
3. A widow.

Maintenance during the 'iddah is binding for those mentioned,

1- *Sharḥ al-Azhār* 2/412–413.

2- *Sharḥ al-Azhār* 2/311.

according to the madhhab.¹

As for *lodging*, it is due to a woman divorced *revocably*, and it is *not* obligatory for one divorced *irrevocably* nor for a widow.²

[Ruling on a Needy Father or Mother Taking from Their Child's Wealth]

In *al-Tāj*: A father who is needy and unable to earn—not the mother, except by order of the judge—may take from the wealth of his minor child, or his insane child, or his absent child, the specific items he needs such as food, clothing, and coins, and he may spend from them for his own needs in a reasonable manner, and he does not need the judge's permission ... etc.

I say: It ought to be made permissible for the *mother* as well, because her right is greater than the father's right, and she is weaker than the father.

This is supported by what is narrated: "Who is most entitled to my good companionship, O Messenger of Allah?" He (*May Allah bless him and his family and grant them peace*) said: "Your mother." He said: "Then who?" He said: "Your mother." He said: "Then who?" He said: "Your mother ..." etc. And it is narrated that the Messenger of Allah (*May Allah bless him and his family and grant them peace*) said to Hind, the wife of Abū Sufyān: "Take for yourself and your children from his wealth what is customary," or as he said. This is a *fatwā* from the Prophet (*May Allah bless him and his family and grant them peace*), not a judicial ruling; for a ruling only comes after a claim, and a response, and admission or denial, and evidence or oath.

Accordingly, it is understood from this that *the wife and minor children* may eat from the wealth of their guardian without his permission and without a judge's ruling. The mother is *even more entitled* to this, because her right is greater than that of the wife and children.

[Explanation of Extravagance (Isrāf), Wastefulness (Tabdhīr), and Miserliness (Taqtīr)]

- "*And eat and drink, but do not be excessive. Indeed, He does not like the excessive.*" [Al-A'rāf:31]:

Allah Most High granted His servants permission to eat and drink, made that lawful for them, bestowed it upon them, and forbade them from *extravagance* in eating and drinking.

1- Sharḥ al-Azhār 2/473.

2- Sharḥ al-Azhār 2/469–470.

- Extravagance (*isrāf*) may be explained in two ways:

1. That extravagance is *exceeding what Allah has made lawful* to what He has *forbidden*—He permitted them to eat and drink what is *ḥalāl*, and forbade them to eat and drink what is *ḥarām*.
2. That it is *within the ḥalāl*: that they overdo lawful eating and drinking to the point that it *harms* their health and well-being.

His saying, Exalted is He, “*And do not squander wastefully. Indeed, the wasteful are brothers of the devils.*” [Al-Isrā’:26–27] may also be explained in two ways:

1. That *wastefulness (tabdhīr)* is spending wealth in *disobedience* to Allah Most High and in what He has forbidden His servants.
2. That *wastefulness* means *spending* or *giving out* wealth without need, or *beyond* need, or *squandering* it on what is unnecessary while there is pressing need for it.

His saying, Exalted is He, “*And [they are] those who, when they spend, are neither extravagant nor miserly, but hold a medium way between them.*” [Al-Furqān:67] is explained in two ways:

1. *Extravagance* is spending *beyond* need, and *miserliness (taqtīr)* is spending *below* what need calls for, despite having means.
2. *Extravagance* is spending on what is *ḥarām*, and *miserliness* is *falling short* in the obligatory expenditures.

Obligations of Maintenance

Maintenance is obligatory for:

1. Minor children.
2. Poor parents.
3. The wife—or wives.
4. Slaves.
5. Poor relatives from whom a well-off person would inherit were they to die.

On Nushūz (Recalcitrance)

It is said in *al-Baḥr*: Nushūz occurs by *leaving the house* or by *preventing marital enjoyment*, not by *insults* or by doing what he dislikes. End of the marginalia.

I say: Evidence may be adduced that insulting the husband and doing what he dislikes is *not* nushūz, because women’s natures and temperaments—by which Allah created them—are like that; as indicated by the ḥadīth: “*Indeed, the woman was created from a rib—or he said: like the crooked rib—if you try to straighten it you will break it, and if you leave it you will benefit from it though there is crookedness in it,*” and the

Prophet (*May Allah bless him and his family and grant them peace*) said this in his counsel regarding women. In it: “*Treat women well,*” and he commanded them to fear Allah regarding them—this is the meaning of the narration.

This indicates the obligation to treat them kindly and live with them honorably despite what is in them of crookedness—and *crookedness* is their deviating from what is right in words and deeds. Supporting this is the ḥadīth: “*Women are given to slips of the tongue (‘iy) and are a private part (‘awrah), so conceal their slips with silence and their private parts with the homes.*”

And the ḥadīth: “*Women are deficient in intellect and religion.*”

And the Prophet of Allah (*May Allah bless him and his family and grant them peace*) used to encounter much hurt from his wives, to the extent that he swore to *forsake* them for a full month; and he (*May Allah bless him and his family and grant them peace*) would not have done that—despite his great patience, his strong forbearance, and his magnificent character—except because he encountered from his wives’ hurt that which even his vast chest could not bear.

[Chapter: Breastfeeding (al-Riḍāʿ)]

[A Man Married a Woman, Then It Became Clear They Had Been Breastfed by the Same Woman]

Question: A man married a woman, and it later became clear to the spouses that they were milk-siblings. He separated from her while she was pregnant. When she gave birth, his brother married her—all of this occurring after they had asked some students of knowledge. Was there any wrongdoing in what happened, or not?

Answer—and Allah grants success: In such a matter they should have referred to *mujtahid* scholars, for there is disagreement among scholars in some questions of breastfeeding; and when that is so, annulment requires the ruling of a judge.

However, since the annulment did in fact take place, and the subsequent marriage did take place, we say: the fatwa of that student to the couple—annulling the marriage from its root and declaring it void—takes the place of a judge's ruling. That is because, as appears, this student was the religious reference for the people of that region; they trusted him; his word was accepted among them; and his fatwa was decisive.

Moreover, it was he who ordered separation; therefore we have treated him as standing in the place of a judge. This is our carrying the actions and transactions of Muslims upon validity. Accordingly, the woman's marriage—after her womb was cleared by delivering—was valid, and the prior annulment was valid; based on that, there is no harm in what occurred.

Yes: in the marginalia of the madhhab it is stated that if the two spouses mutually agree to annulment, believing the marriage to be invalid, they may annul without needing a judge's ruling.¹

[Is It Valid for a Man to Marry a Girl Who Was Breastfed by the Daughter of a Wife He Has Divorced?]**Question:**

- (1) Is it valid for a man to marry a girl who was breastfed by the *daughter* of a wife of his whom he has divorced?
- (2) Is it valid for a man to marry a woman while his *son* marries her *daughter* from another husband?
- (3) Is it valid for a man to marry a woman while his *father* marries her *daughter*?

1- *Sharḥ al-Azhār* 2/301.

Answer—and Allah grants success:

As for the first question: It is not valid and not permissible for a man to marry a woman who was breastfed by his wife's daughter. The proof is His saying Most High: *"And your stepdaughters who are under your guardianship [born] of your wives unto whom you have gone in—but if you have not gone in unto them, there is no blame upon you"* [Al-Nisā':23]. Thus Allah the Exalted forbade the stepdaughter—that is, the daughter of the woman—if he has consummated with her mother; and the daughter of the stepdaughter has the same ruling, downward through her line. And *breastfeeding* carries the ruling of *lineage*; so the daughter through breastfeeding is like the daughter through lineage in this chapter.

As for the answer to the second and the third questions: There is no objection to what is mentioned therein. It is valid for a man and his son to marry a woman and *her daughter*: the younger to the younger and the elder to the elder—or the reverse.

The proof is His saying, *Exalted is He*, after listing the prohibited degrees in Sūrat al-Nisā': *"And lawful to you are [all others] beyond these."* [Al-Nisā':24]

[A Note on the Major Wife Breastfeeding the Minor Wife]

The scholars of the madhhab said: If a man has two wives, one of them a little girl, and the major wife breastfeeds the minor from milk belonging to a former husband, the marriage to the major wife is annulled, and the major wife becomes permanently forbidden to him; as for the minor wife, she becomes forbidden if he had already consummated with the major wife, or had touched her or looked at her with desire—otherwise, she does not become forbidden. End. (Affirmed). (رضي)¹

I say: this is because, by that breastfeeding, the major wife becomes the mother of his minor wife, and the minor thereby becomes his stepdaughter (*rabībah*).

If the milk belonged to the husband of the major wife (i.e., the current husband), then the marriages to both the major and the minor are also annulled: the major—because she became the mother of his wife; and the minor—because she became his daughter.

If it is said: this is clearly a basis for annulling the minor's marriage, since through breastfeeding she becomes his daughter; but as for the major, there appears to be no clear basis for annulling her marriage, since the major did not become the mother of the minor until after the

1- Sharḥ al-Azhār 2/563.

marriage had been annulled, so at that moment the major was not yet the mother of his wife.

We say: It is likely the scholars of the madhhab considered that the dissolution of the marriage is consequent upon the establishment of daughterhood—meaning that the ruling of daughterhood is established first, and once established, the annulment of the marriage follows. On this reckoning, the girl is his wife and his daughter in a single instant—along with what there is in that of precaution.

It could be said: daughterhood and spousal status are mutually exclusive and contradictory in the law; they cannot coexist—as you mentioned—even for an instant!

The reply: they are sequential, like cause and effect.

[A Woman Breastfed Her Husband's Minor Wife]

Question: A woman breastfed her husband's minor wife. What follows from that?

Answer: The minor wife, by that breastfeeding, becomes the man's daughter, and the major wife becomes the mother of his minor wife. Thus, the marriage to the major is dissolved, because she became the mother of his wife, and the marriage to the minor is dissolved, because she became his daughter.

[The Ruling on a Grandmother Offering Her Breast to Soothe an Infant]

Question: Many questions have reached me—still they come—about a grandmother who takes her grandchild in her lap and offers her breast to quiet the child's crying; the infant sucks the grandmother's breast. What is the ruling of this nursing?

The answer I gave was: the nursling becomes the grandmother's child, and so it is not permissible for him thereafter to marry his cousin-girl and the like. This is because a woman, even in advanced age, may, upon suckling, excrete milk or serum. If the grandmother—or anyone else—knows that something of that entered the child's stomach, the matter is clear; and if she does not know, then believers are cautious in doubtful matters—especially where private parts (marriageability) are concerned. And in the hadith: "How is it with him when it has been said?"

Question: An old woman played with two infants and calmed them by giving them her breasts; later one of the two wished to marry the other. Is what she did considered breastfeeding or not?

Answer—and Allah grants success: If the old woman's breasts are dry and nothing comes out, that is not considered breastfeeding, and it is not forbidden for one of the two to marry the other. But if, when she played with the two and calmed them in that way, there was any fluid

issuing from her breasts, then that counts as breastfeeding, and it is forbidden for one to marry the other.

In sum: if anything from the woman’s breasts entered the stomach of each of the two children, then the old woman thereby becomes the mother of both, and the two become milk-siblings. If it entered the stomach of one but not the other, they do not become siblings and one may marry the other—*unless* the old woman is their grandmother (i.e., both are her grandchildren). In that case, nursing even one of the two prevents their marrying each other, because the one nursed would then become an uncle or an aunt.

[A Couple Who Believed the Milk Belonged to the Mother Alone]

Question: A man married a woman, and his father and the woman’s guardians believed that the milk of breastfeeding pertains to the mother alone. They remained long upon that view until old age; then they heard that the milk pertains to both the mother and the father. The man and woman became disturbed about their case. Is there a way out?

Answer—and Allah grants success: If the matter is as stated, the scholars of the madhhab have said: the doctrine of the unlearned layperson follows whomever he conformed with. On that basis, the couple are not to be reproached. This issue—whether the milk is attributed to the mother alone or to both parents—is a matter of scholarly disagreement. Some of the Companions and others held that the milk is the mother’s alone, with no share to the father; others held that it pertains to both.

[Ruling for One Who Learned Later of a Breastfeeding Tie with His Wife]

Question: A man married a woman and had several children by her. Later it became clear that he was her paternal uncle through breastfeeding. After investigation it appeared the nursing was fewer than five sucklings, and the husband then sought a fatwa and was told the marriage was permissible. Yet his heart was unsettled and he remained anxious and perplexed. What is your view?

Answer—and Allah grants success: The fatwa he received suffices, for this topic of breastfeeding is a matter of *ijtihād* and disagreement. The nursing described in the question is disputed from two angles:

First: “Milk of the sire” (*laban al-fahl*). Some held that the nursling is the child of the nursing woman only, not of her husband; accordingly, the nursling would be lawful to the children of the husband and to his brother.

Second: counting the number of sucklings. Some scholars required five distinct sucklings; others did not consider a specific number, but made

the ruling turn on the occurrence of breastfeeding in general.

Yes: if the questioner's heart is at ease with such a fatwa, we deem it sufficient. If he is not at ease but remains anxious and perplexed, then let him separate from his wife and divorce her so she becomes lawful to other husbands with certainty. Separation is more precautionary, for in the hadith: *"Leave that which causes you doubt for that which does not."* And the Most High said: *"So give good tidings to My servants—those who listen to the word, then follow the best of it. Those are the ones whom Allah has guided, and those are the people of understanding."* [Al-Zumar:17–18]

[A Couple Who Reached Old Age, Then Were Informed of a Breastfeeding Relationship Between Them]

Question: There is a couple with children who themselves are married. A woman informed them that she had breastfed them both, and after this report—coming after a long companionship and their having reached old age—they were thrown into extreme confusion. What is the solution for their case? They are in great bewilderment; please advise. Peace.

Answer—and Allah is the One who grants success and support: If the couple attain a preponderant assumption (*ẓann ghālib*) of the truthfulness of the woman who informed them of the breastfeeding, then it is obligatory upon them to separate.

What is meant by the preponderant assumption is that which is above fifty percent. If what they have is fifty percent that her statement is true—or forty percent—then separation is preferable for them, but not obligatory. This is how the scholars of the madhhab have set it forth.¹

The proof for what we have mentioned is that a preponderant assumption takes the place of certain knowledge in many legal matters where certainty cannot be reached.

The proof that separation is not obligatory in the state of mere doubt or suspicion is that the default is the non-occurrence of breastfeeding, and one may not depart from this default without evidence; and what yields only doubt is not evidence. The wisdom—Allah knows best—may be the mutual cancellation of the two possibilities due to their equal weight, which leads to both of them falling away, like two opposing sets of testimony: if they are equal, they are both set aside.

As for the fact that separation is preferable in such a case, it is due to the element of precaution.

If it is said: It has been related, in meaning, that a man said to the

1- *Sharḥ al-Azhar* 2/565.

Prophet (May Allah bless him and his family and grant them peace): “I wish to marry a woman, and a Black woman told me that she breastfed me and her; yet I think she is lying.” He (*May Allah bless him and his family and grant them peace*) said: “*How will it be with him, once it has been said?*”—this indicates something contrary to what the scholars of the madhhab state.

We say: That report concerns entering into a marriage, whereas what the scholars of the madhhab mention concerns exiting from a marriage. There is a difference between the two—ponder it.

If it is said: This answer does not stand, for the narration establishes that the man had already married; then the response is: The Prophet’s (May Allah bless him and his family and grant them peace) instruction to the man to separate from his wife was in the mode of recommendation and precaution; the proof is the following narration:

It is related in *Sharḥ al-Aḥkām* that a woman came to a man who had married a woman, claiming that she had breastfed them both. He then went to ‘Alī (*peace be upon him*) and asked him. He said: “She is your wife; no one renders her unlawful to you. Yet if you choose to be scrupulous, that is better.”

By Allah’s aid, Volume One is complete.

Following it is Volume Two.

[Table of Contents]

Foreword of the Ahl al-Bayt Library (A.S.)	3
Verification Introduction	13
[Introduction]	15
A Study on Ijtihād	15
[When may a mujtahid follow another?]	15
Benefit: (Categories of subsidiary ijtihādī issues)	16
Differences of the Imāms in rulings on worship and transactions	17
A Benefit: (On the Change of a Mujtahid's Ijtihād)	18
[Do Circumstances Have an Effect in Ijtihādī Matters?]	19
The Effect of Society	20
[A Benefit: On the Permissibility of a Follower Transferring to Another Imām's Madhhab]	20
A Benefit [from the Words of Imām al-Manṣūr bi-llāh ('a) Concerning Differences in Subsidiary Issues]	20
A Benefit [from the Words of Imām Zayd ('a) on the Consensus of the Ahl al-Bayt]	21
A Benefit: Explaining the Words of Imām al-Manṣūr bi-llāh and Zayd b. 'Alī ('a)	21
A Benefit: On the Layman's Adherence to the Madhhab of a Mujtahid	21
The Ruling on Followers When the One They Follow Slips	22
Issues in Ijtihād and Taqlīd	22
Who Are the People of the Madhhab?	25
The Preferable Course Is to Follow the Stronger Opinion	26
The Meaning of Their Statement: In Matters of Ijtihād There Is No Fixed Ruling of Allah	27
How does a seeker of knowledge issue fatwas to the general public?	28
How Should a Pure Layman Be Given Fatwā?	28
The Ruling on Giving a Layman Fatwā Outside the Madhhab	29
Section of Ṭahārah [Purity]	31
Chapter on Najasat [Impurities]	31
The Default Ruling on Animals: Purity	31
A Note on the Purity of Every Living Animal Except the Dog, Pig, and Unbeliever	31
The Impurity of Dogs	31
The Ruling of a Drop from an Impure Vessel Falling into Another Vessel or on Clothing	32
The Purity of Cologne (al-Kālūnyā)	32
A Note on the Milk of Animals Whose Meat Is Not Eaten	33
The Ruling on One Unable to Avoid Impurity Due to Old Age and Weakness	33
On the Ruling of Prayer for One Bearing a Urine Bag	33
A Note on Istihālah (Transformation) and the Purity of Animal Feed	34
A Note on Mind-Altering Substances That Are Not Impure for Medicine	34
A Proof for Requiring the Purity of the Body in Prayer	34
On the Validity of Prayer in Impure Clothing	35
On Blood Transfusions and the Permissibility of Medicating with Donkey's Milk	35
A Note on Impurity (Najāsa)	36
On Handling Dung, and the Purity of Books, Muṣḥafs, and Phones	37
The Section of Waters	38

The Ruling of Large Pools When Their Odor Changes	38
The Ruling of Water that not affected by Impurity	38
On Water	39
Chapter: On Relieving Oneself	40
A benefit for the one relieving himself	40
A question about drying the traces of urine	40
Keeping away from people when defecating	41
The Chapter of Wuḍū’	43
A Note on the Intention (Niyyah) of Wuḍū’	43
Further Clarification	44
Commentary	45
Ruling on Mentioning Allah in a Clean Bathroom	46
If One Sees Blood on His Companion’s Garment During Ṣalāh	46
Ruling on one who prays and then finds at the end of the prayer that water has not reached a spot on his forearm	47
The ruling on one who prayed for a long time without wuḍū’ out of ignorance	48
Does drawing blood with a medical needle nullify wuḍū’?	48
The permissibility of performing wuḍū’ in one mosque and praying in another	49
A note on dropping wuḍū’ and switching to tayammum	49
The infirm (al-‘alīl)	50
Omitting triple-washing in wuḍū’	51
[Triple-washing in wuḍū’]	51
Grades of wuḍū’ nullifiers	52
Ruling on minor lying that entails no harm	52
Does wuḍū’ break if a man kisses his wife or sees her private parts (or those of another man)	54
Chapter: Ghusl (Major Ritual Bath)	55
A note on the essence of ghusl	55
Writing the Qur’an by one in janābah via telephone and computer	58
Chapter : Tayammum (Dry Ablution)	60
A note on the invalidity of performing tayammum with water	60
When do the sick person and one without water perform tayammum?	60
A follow-on benefit to what has preceded	61
Is one who can pay the price of water deemed to have found water?	62
Chapter on Menstruation	64
Some Rulings on Menstruation (Aḥkām al-Ḥayḍ)	64
What should a woman do if bleeding continues?	64
Some Rulings on Menstruation	66
Ruling on brownish/yellowish discharge before the time of the habit	67
A note on blood that appears due to contraceptive treatment	68
Carrying items that contain the remembrance of Allah by a menstruant or one in janābah	68
When is the ruling of nifās (postpartum bleeding) established?	68
The ruling on intermediate purity during nifās	68
A woman who gives birth by abdominal incision—is she considered a nufasā’?	70
Delivery by cesarean section is not called nifās	70
Book of Prayer	71
The ‘Awrah and its covering	71

A note on statues [from at-Tāj, in the marginalia]	71
Ruling on passing in front of those praying around the Ka'bah	73
Chapter on Mosques	74
A note on locking mosques	74
Permissibility of building bath facilities from a mosque's rubble	75
A mosque with bathrooms beneath it	75
A note on the mosque's wall	76
A note on lending a mosque's surplus	76
The ruling on artifacts belonging to mosques and shrines	76
A note on decorating mosques	76
A note on delivering a vowed offering to a trustee who will not spend it properly	77
May I take possession of a mosque of which only the foundation remains?	78
A note encouraging the building of mosques and giving charity	78
The ruling on smoking in the mosque	79
The ruling on praying at home when the imām is not acceptable	79
Sleeping in the mosque while waiting for the prayer	79
Chapter on Prayer Times	81
Benefits from the marginalia of Sharḥ al-Azhār concerning prayer and time	81
A note about the times of Fajr and 'Aṣr	81
By what is the entry of Maghrib known?	81
How should one act when time is tight and several obligations conflict?	82
Benefits regarding combining two prayers	82
Ruling on one who performed wuḍū' or ghusl and missed the time	83
The superiority of praying Fajr at the beginning of its time	84
Ruling on those who pray Maghrib at sunset before a night star appears	85
Which is better: taking the concession (rukhsah) or the strict ruling ('azimah)?	85
Chapter: The Adhān and the Iqāmah	86
Which is better: leading the prayer or calling the adhān?	86
A benefit regarding the adhān	86
A benefit about a solitary person's adhān	87
Chapter: The Description of the Prayer	88
A benefit concerning intention (niyyah)	88
On intention (further points)	89
Ruling on Combining the Intention of Commitment to Leading Prayer with the Intention of Prayer	89
Ruling on forgetting which prayer one is in after entering it with intention and takbīr	91
The Obligatory Remembrances within Prayer	92
Benefit in prayer: showing the importance of the remembrances	93
How should the Qur'an be recited in prayer?	94
Ruling on the Prayer of One Who Cannot Distinguish Between Ḍād and Zā'	94
The imām was only appointed to be followed	96
A Note on Tasbīḥ (Glorification)	97
The meaning of "Subḥān Allāhi wa bi-ḥamdihi"	97
Supplications for Qunūt from the Qur'an	98
A benefit on the virtue of Qur'ān in prayer	100
A benefit on purification	101
A benefit (on supplication after prayer)	101

Ruling on spreading the left foot between the two prostrations	101
Erecting and spreading (an-naṣb wa-l-farsh) in prayer	102
Holding the Muṣḥaf and Reading from It During Prayer	102
A Benefit: (Practical Sunnahs Upon Which There Is Consensus)	103
Evidence That Folding the Hands (placing one hand upon the other) Is a Later Practice	103
A Benefit: Reflection in Prayer and Supplication After It	104
Khushū' (Devout Humility) in Prayer	104
The path leading to knowledge, understanding, memorization, khushū' in prayer	105
Benefit: Showing that the prayer is not waived from one for whom water and earth are harmful	106
Benefit: Concerning those from whom prayer is said to fall away	106
Why the scholars of the school did not mention sending salām upon the Messenger of Allah within the prayer	107
Lengthening bowing (rukū') or recitation to allow a latecomer to catch the prayer	108
Ruling on a woman who prayed Fajr as four rak'ahs out of ignorance	110
The Ruling on One Who Gives Salām Before Completing the Prayer—Should He Repeat or Build Upon What He Prayed?	111
A Note on Repeating the Tashahhud and Takbīr	112
Must a Worshiper Answer His Parents' Call While He Is Praying?	113
The ruling when the time for prayer becomes tight while a reprehensible act (munkar) is present	114
Chapter: Congregational Prayer	117
The Ruling on Congregational Prayer	117
A note on choosing the imām	120
Ruling on being led in prayer by one who is not the most entitled	120
What should a person do when someone unacceptable steps forward to lead?	122
Ruling on someone beginning his prayer alone, then another joins him	122
The follower's prayer when he bows as the imām is rising from bowing	123
Distress at missing the congregation due to fear of people's blame	123
Leading prayer with dental prosthetics	124
Ruling on Praying Behind People of Corrupt Beliefs	124
From the ḥadīth "No harm and no reciprocating harm"	126
The ruling on a child's interposing in the row—and on one with cognitive impairment	126
The ruling on praying Ṣuḥr behind one praying 'Aṣr (and vice-versa	127
Benefit: Regarding a Structural Column (du'āmah)	128
Benefit: Praying behind one who is shackled or missing limbs	128
Benefit: Followers praying outside the mosque	128
Chapter: Prostration of Forgetfulness (Sujūd al-Sahw)	129
Sujūd al-Sahw	129
About sujūd al-sahw	129
Additional points on sujūd al-sahw (according to the school)	130
Benefit: (On doubt)	130
Obsessive thoughts during prayer	130
Thinking and obsessive thoughts in prayer	130
Chapter: Making Up Missed Prayers	132
The ruling on making up the prayer for one who abandoned it deliberately	132

A note on disagreement in the issue and when make-up falls	134
Expiation (Kaffārah) for Prayer	134
The ruling on Sunnah of Fajr after prayer	135
Chapter: The Friday Prayer	137
The ruling on Jumū‘ah in a time of “intermission” (fatrah)	137
A mistake by the Friday preacher	139
A note for the school regarding replying to salām	140
Chapter: Prayer During Travel	141
The superiority of combining the two prayers for the traveler	141
The “Abode of Residence” (Dār al-Iqāmah)	141
The difference between the Abode of Residence and the Home Town	142
Ruling for one who makes an exception in his resolve to reside while traveling	142
Notes on Qasr (Shortened Prayer)	143
One who traveled and, out of forgetfulness, prayed in full (tamām)	143
Chapter: The Two ‘Īd Prayers	145
The ‘Īd Prayer	145
Note on the obligation of the two ‘Īd prayers	145
The schools on the ruling of the two ‘Īd prayers	145
Section: Regular Sunnas and Other Supererogatories	147
The ruling on the two rak‘ahs after Maghrib and the two of Fajr	147
Are the regular sunnahs (rawātib) recommended during travel and when combining prayers	148
Supererogatory prayer after ‘Aṣr	148
Sitting in one’s prayer place after Fajr	149
Note on supplication at Maghrib	149
Note on the best deeds	150
Benefit concerning the last Friday of Ramadan (“the Friday of restitution”)	153
The Prophet’s Supererogatory Prayer of Eight Rak‘ahs	153
Praying One Thousand Rak‘ahs in a Single Night	154
The Ruling on Supererogatory Prayer in a Car	154
Some Rulings on Reciting the Qur’an and Remembering Allah Most High	154
[Chapter on Issues That Follow the Prayer]	156
A Benefit Concerning Commanding One’s Parents and Wife to Pray	156
What Is Required of a Woman Whose Husband Does Not Pray and Denies Paradise and Hell	156
Living Together with One Who Abandons the Prayer	157
The Ruling on Alerting Those Asleep for the Prayer	157
A Benefit on Awakening the Sleeper and on an Imam Informing the Congregants of Impurity on His Garment	159
A Benefit on the Types of Sleep	159
If the Worshipper Finds No Place to Pray Except a Grave	160
The Ruling on Prayer and Fasting in Lands Where the Night Becomes Extremely Short	160
A Response to One Who Says That by Establishing a Single Prayer He Has Fulfilled the Qur’an	163
Ruling for One Who Prayed Ṣuḥr and ‘Aṣr and Then Traveled by Plane	163
The Book of Funerals and What Pertains to It	165
When Is a Sick Person Obligated to Seek Treatment?	165

A Benefit: What to Prompt the Dying Person With	165
What Is Obligatory upon the Executor When the Deceased Wrote His Debts in His Own Hand	165
A Benefit on the Signs of the Dying Person	166
Washing One Killed by Mistake	166
The Ruling on Washing One Killed by Mistake, and on the Funeral Prayer for the Martyr and the Open Transgressor	166
The Ruling on Washing One Killed in Self-Defense	167
Is One Washed If He Is Killed, or Kills Himself, by Mistake?	168
Benefit: [The Ruling on Washing and Praying over One Whose Uprightness Is Impugned]	168
Shrouding by the Husband for a Revocably Divorced Wife	168
The Ruling on Washing and Praying over One Who Died While Being an Anthropomorphist—and What to Do	169
A Benefit Regarding Pronouncing Tahlīl over the Bier	170
A Benefit: Making Five Takbīrs over Funerals	170
Five Takbīrs Over the Bier — as Narrated by al-Tirmidhī	170
The Ruling on Lowering the Voice in the Funeral Prayer	171
A Benefit Regarding Prayer Over the Martyr	172
Prayer Over the Juhaniyyah Woman Who Confessed to Adultery	172
A Benefit: Prayer Over the Open Sinner (al-Fāsiq)	172
Ruling on Praying over One Accused of Drinking Poison	172
Praying over a Deceased Person Who Was Lax about Some Sins	173
A Benefit [Regarding Wages for Washing the Deceased and Digging the Grave]	175
The Ruling on Bequeathing Burial in a Specific Place	176
Concerning the Place of Burial	176
A Benefit on the Permissibility of Moving a Grave	177
A Benefit Regarding Transferring the Deceased	178
On Transferring Graves for Public Interests	180
Ruling on Elevating Graves and Placing Plaques upon Them	181
Ruling on Passing over Graves in Case of Necessity	182
A Benefit: Walking upon Graves	183
A Benefit: Exhuming the Deceased	183
A Benefit on Interpreting “Elevating” with Respect to the Grave of One Who Is Not Eminent	184
The Presence of Several Graves at Great Depths	185
Consoling the Openly Sinful	185
Attending the Condolences of an Open Sinner	185
What a Student of Knowledge Should Do If Compelled to Attend the Condolences of One Who Abandoned Prayer	186
Upon Whom Are the Expenses of Condolence Tents?	187
Ruling on Whether Charity Reaches the Deceased	187
Concerning the Punishment of the Grave	188
Showing Filial Piety to One’s Parents After Their Death	190
A Benefit: What Reaches the Deceased	191
Visiting Graves, and the Rulings on Seeking Blessing from Them, Touching Them, and Praying Near Them	192
A Benefit on the Virtue of Visiting Graves and What to Say There	194

Ruling on Visiting the Grave of an Open Sinner and Supplicating for Him	195
The Book of Zakāh	197
Zakāh Issues	198
Delegation in Financial Acts of Worship	199
The Ruling on Zakāh When It Is Taken by Force	199
Mixing Obligatory Zakāh with Voluntary Charity	200
Remitting a Poor Person's Debt with the Intention that It Counts as Zakāh	200
A Note on Specifying the Niṣāb	201
Paying Monetary Value Instead of the Item Itself in Zakāh	201
A Note on the Categories of Zakāh and Their Niṣābs	201
The Definitive and the Probable Types of Zakāh	202
Zakāh on a Recoverable Debt	202
A Note on Who Is "Rich"	203
A Benefit Regarding One Whose Wealth Cannot Be Sold	203
Zakāh on a Woman's Dowry If She Does Not Receive It Until After Years	203
A Benefit Regarding One Who Was Unaware of the Obligation of Zakāh on Her Jewelry and Dowry	204
The Ruling When a Woman Was Unaware of the Obligation of Zakāh on Dowry and Jewelry for Several Years	204
A Benefit Regarding One Who Buys in Order to Sell the Offspring/Produce (nataj)	205
On the Zakat of Income-Generating Assets	206
Zakat of Rented Shops	207
Zakat on Vegetable	208
Shifting to the Madhhab of Imām Zayd Regarding the Non-Obligation of Zakat in Vegetables	209
Ruling on Selling Fodder Before Harvest	210
Ruling on the Zakat of the Qaṣab, the Sharīyāf, and the Ḥamāt	210
Ruling on Zakat for One Who Purchases a Qāt Plantation	211
How One Pays Zakat When He Sold for a Fixed Sum but the Buyer Did Not Pay Him in Full	211
When the Owner May Delay Disbursing Zakat	212
Important Issues in Zakat and Khums	212
Benefit: When the monetary value must be paid	215
Benefit: On discharge (ibrā') from a dowry or a debt	215
Ruling on Delaying Zakat, and On What Price It Is Calculated	217
The Reason for the Abundance of Poor People	217
Ruling on Giving the Poor the Monetary Value of Zakat	218
Is Zakat Paid Before or After Selling Expenses?	218
Do the Heirs Build on the Deceased's Zakat Year?	219
When a Poor Person Appoints as Agent a Man to Whom Zakat Is Not Lawful and Authorizes Him Regarding It	219
Benefit: Concerning one who spent something that was not incumbent upon him	219
Is There a Right in Wealth Besides Zakat?	220
The Amount to Be Given to a Poor Person from Zakat	220
An Issue Concerning the Prohibition of Zakat for the Zakat-Payer's Ascendants and Descendants	221
The Ruling on Giving to Beggars	221
May a Man Spend from His Zakat on a Foundling in His Care	222

Purchasing Books with Zakat Funds and Distributing Them to Students Among Whom Are Those to Whom Zakat Is Not Lawful	222
The Ruling on Taking Zakat for One Who Owns Books Whose Value Exceeds the Nisab	222
A Man Has an Inheritance Withheld by a Person, and He Himself Holds Some Farmland	223
A Woman Receiving Zakat While Owed a Large Dowry by Her Husband	223
Ruling on Spending Zakat on a Water Source	224
Taking More than a Nisab by a Poor Person	225
The Ruling on Taking Zakat for One Who Owns Farmland That He Cannot Cultivate	225
One Whose Plots Do Not Yield Enough for His Needs	226
A Poor Man Who Does Not Pray, and He Has Young, Frail Children and a Wife	227
Disbursing Zakat and the Like to One Suspected of Secret Disobedience	227
The Ruling on Taking Zakat for One Who Has an Inheritance He Has Not Received	228
The Best Places to Put Charity	228
Ruling on Zakat for One Who Pardons a Despaired-of Debt	229
Benefit: On the Amount a Poor Person May Take	229
Ruling on Purchasing Grain or Flour with Zakat for the Poor	231
Benefit: On Giving Zakat to the Children of Those Who Ascribe Tashbīh (Anthropomorphism)	231
Ruling on Spending Zakat on Public Interests	232
The Ruling When the Madhhab of the Zakat Disburser Differs from That of the Recipient	234
Exegesis of the ḥadīth: “This charity is but the refuse of people’s weal”	234
What of the Rights that Are Lawful for the People of the House (peace be upon them	235
Paying Zakat to One Unfit to Administer It	236
Benefit concerning the ṣā’ (alms measure)	237
From where are the expenses of distributing zakat to be paid?	237
The ruling on an agent borrowing zakat or expiation funds	238
Miscellaneous issues regarding zakat and other matters	239
[The Book of Khums]	240
Is Khums Obligatory on Stones That Are Sold?	240
Is There Khums or Zakat on the Trees of al-‘Alab and al-Ṭalḥ?	241
The Book of Fasting	242
Notes on fasting by sighting the crescent	242
The ruling on sighting the crescent with magnifiers	242
Note on the crescent’s rising and setting	242
Note for the madhhab when months are obscured to the fasting person	243
The ruling concerning common believers in their fasting, breaking the fast, and standing at ‘Arafah, and how they are to be guided	243
On differing days for fasting, breaking the fast, and the sacrifice	243
Benefit in explaining the ḥadīth “Sha’bān is my month	244
Benefit clarifying that some acts of devotion are not invalidated by a secondary intention	245
The ruling on one who broke his fast, then boarded a plane and saw the sun	245
Is the pampered fasting person rewarded?	246
Using medication to prevent menstruation in Ramaḍān and during Ḥajj	246

The ruling on a fasting person's use of an asthma inhaler	247
Injections, IV drips, and the asthma inhaler in Ramaḍān	247
Benefit concerning fasting	248
Benefit: mentioning some principles of the madhhab	248
On fasting and travel	250
Benefit: Making up the fast and the prayer	251
Ruling on One Who Vows to Fast an Unspecified Month	253
One Fasting Two Consecutive Months in Expiation for Accidental Killing Eats by Mistake—Does He Resume Anew or Continue?	254
Explanation of: "The Night of Decree is better than a thousand months"	255
Which is superior: the Night of Decree, or the night of ‘Arafah for those standing at ‘Arafah, or the night of Friday?	255
The best acts of devotion for a layperson on the nights of Ramaḍān	256
On Zakāt al-Fiṭr	257
The poor person upon whom Zakāt al-Fiṭr is not obligatory	257
The Book of Ḥajj and ‘Umrah and the Rulings Attached to Them	259
Benefit (Does a woman need a maḥram?)	259
Travel of a woman more than a barīd without a maḥram	259
Is a maḥram a condition of obligation or of performance?	260
A discussion on intention	261
The ruling on performing Ḥajj during the waiting period (‘iddah)	261
The ruling on Ḥajj for a young woman in times like these	263
Delaying Ḥajj despite being able	265
Leaving Ḥajj due to an excuse, the ruling on medical treatment, and the ruling on wishing for death	266
Ruling on Delaying Ḥajj Despite Ability	269
Must one repeat Ḥajj if, afterward, he was negligent about prayer?	271
The obligation to complete a voluntary Ḥajj or ‘Umrah once one has entered into it	271
When are the rites of Ḥajj performed?	272
An Issue: [that Ḥajj is an Act-Based Obligation]	273
A sequential outline of the acts of Ḥajj	273
The pillars of Ḥajj	273
The pillars of Ḥajj—again	274
The condition [of stipulation] in Ḥajj	275
A note concerning the muḥrim's saying: "and my place of release is wherever You detain"	276
The ruling on a woman who entered iḥrām for ‘Umrah but was too weak to complete it	278
Stipulation when pronouncing iḥlāl for Ḥajj	279
Clarification of who is permitted to annul iḥrām	279
The wisdom in wearing the two garments of iḥrām	281
Analogizing a woman's feet to her hands regarding non-coverage	282
A muḥrim wearing eyeglasses	283
On killing lice	284
The ruling on a person in ‘umrah who covered his head due to harm from fans	285
Some violations in ḥajj by a layperson	285
Involuntary Arousal (Taḥarruk al-Sākin)	285

When a Sheep Is Due for Involuntary Arousal	287
Points Concerning the Sacred Sanctuary (al-Ḥaram al-Muḥarram)	288
The Sacred Sanctuary (al-Ḥaram al-Muḥarram	288
Merits of the Sacred Sanctuary (al-Ḥaram al-Muḥarram)	289
The Prohibition of Hunting in the Haram of Mecca	289
Ruling on Entering Iḥrām for Two	289
The ten obligations (farā'id) of ṭawāf	292
Purity (ṭahārah) in ḥajj	292
Tawāf without ritual purity	293
The ruling on purity for one performing ṭawāf of the House	293
Ruling on someone who placed his hand on the Ḥijr during ṭawāf out of ignorance	294
(A note (on ṭawāf	296
Supererogatory ṭawāf of the House	298
[The Two Rak'ahs of Ṭawāf]	299
The Ruling on One Who Omitted Audible Recitation in the Two Rak'ahs of Ṭawāf out of Ignorance	299
[Jabal al-Ṣafā]	299
Time of Standing at 'Arafah	299
The Ruling on a Pilgrim Who Is Doubtful about the Day of 'Arafah	300
One Who Stands with the People Without Due Diligence	303
From the Perspective of Reasoning	303
Means of Due Diligence for Determining the Day of Standing	304
The Ruling on Sunrise Occurring Before the Pilgrim Leaves Muzdalifah	305
The Ruling on Spending the Night Outside Minā Due to Expulsion by Security Forces	306
The Ruling on Ignorance Concerning Some Acts of Hajj	306
The Time of Stoning (Ramy)	307
Spending the Night in Minā	307
Concerning the Land of Minā	307
Benefit: [Concerning the Remembrance of Allah at the Sacred Monument]	308
What the Pilgrim Should Do If He Finds No Place to Spend the Night in Minā?	309
Delay of Car Riders Entering Muzdalifah Due to Congestion	309
(Ṭawāf al-Ziyārah)	310
[The Place of Ṭawāf]	311
The Ruling on Performing Ṭawāf, Sa'y, and Stoning from the Second Level and Above	311
Doubtful about Ṭawāf al-Ziyārah	313
On the Circumambulations That Count for Ṭawāf al-Ziyārah	314
Shaving or Trimming (Ḥalq or Taqṣīr) in Hajj	314
Shaving or Trimming in Hajj and 'Umrah	316
The Rites of 'Umrah	316
[The Pillars (Arkān) of 'Umrah]	316
Repeated Entering into Iḥrām for 'Umrah	317
[Regarding 'Umrah]	317
He Performed Ṭawāf for 'Umrah but Did Not Perform Sa'y	318
The Ruling on One Who Entered Iḥrām for 'Umrah at the End of the Days of Tashrīq out of Ignorance	319
The Ruling on One Who Had Intercourse with His Wife before Shaving or	319

Trimming in ‘Umrah	
The Ruling on One Who Forgot Shaving or Trimming	319
How Pilgrims from Yemen Should Enter Iḥrām	319
The Best Type of Hajj	320
A Note on Qirān (Combining Hajj and ‘Umrah)	321
On Committing Fornication (Zinā) During Hajj	324
On a Muḥrim Who Is Prevented from Entering Makkah	329
The Meaning of “Then Let Them Remove Their Untidiness (Tafath)”	329
The Ruling on Iḥrām for One Who Went Out from Makkah to Jeddah	330
The Ruling on One Who Passed the Miqāt without Iḥrām and Then Returned to His Family	331
If One Exceeded the Miqāt without Iḥrām Due to an Excuse	331
Issue: [Concerning One Who Enters Makkah without Intending Either of the Two Rites]	332
The Ruling on Passing through Makkah When Coming from al-Madīnah after Hajj	332
Converting Hajj to ‘Umrah (Faskh) Is Specific to the Prophet’s Companions	333
The Ruling on Re-Initiating Iḥrām for Hajj after It Has Been Corrupted	334
The Ruling on One Who Omitted a Required Rite of Hajj Other Than the Three Pillars	335
On the Ruling Concerning a Pilgrim Who Lost Consciousness	336
Two Benefits Concerning Hajj	337
The Ruling on Performing Hajj as a Supererogatory Act on Behalf of a Capable Man	338
On Requiring the Homeland as the Starting Point for Performing Hajj on Behalf of the Deceased	340
The Ruling on Performing Hajj from Makkah or al-Madīnah on Behalf of a Man from Yemen	156
The Ruling on One Who Died without Bequeathing Hajj	342
On Performing Hajj on Behalf of the Deceased without a Bequest	343
Hajj on Behalf of a Sinner (Fāsiq) and Reciting the Qur’an for Him	343
The Ruling on Performing Two Hajj in One Year on Behalf of a Deceased Person	345
When Deputization (Istinābah) in Hajj Is Valid	346
Is Hajj Valid on Behalf of an Elderly Sick Woman Who Tires from Walking?	347
One Who Bequeathed the Hajj of Islam, Then Hajj Costs Rose	347
Where to Disburse the Pilgrim’s Charity	348
Benefit: No Blood Due for Renunciation (Rafḍ), and the Validity of Deputization Even without a Bequest	349
A Man Owed a Blood-Sacrifice in Hajj, Then Bought a Ram and Gave It Away before Slaughtering It	349
Benefit: [On the Times of Blood-Sacrifices in Hajj]	349
[Benefits from the 1433 AH Hajj Journey]	351
Book of Marriage and Related Matters	356
What Should a Man Do Who Wants to Marry but the Wedding Custom Involves Women’s Singing Parties?	356
Concluding a Marriage Contract for a Boy to a Girl	357
Concluding the Marriage by Messenger and by Writing	357
A Form of Marriage in Our Land That Is Not Shighār	357
The Ruling on One Who Married Another to What Is in His Wife’s Womb, If It Is a	358

Female	
The Ruling on the Son’s Wife through Breastfeeding	358
Benefit: Refraining from Marrying the Sister of a Revocably Divorced Woman or a Fifth Wife while There is a Right of Return	359
A Man Married an Infant Girl, Then His Brother’s Wife Breastfed Her—Upon Whom Is the Dowry Due?	359
Combining Prohibited Kin in Marriage	360
Is it Permissible for a Man to Marry His Daughter Born of Fornication	361
The Ruling on Marrying a Brother’s Daughter Born of Fornication	362
Benefit: A Woman Married by Her Guardian Who Then Died before She Knew	364
The Elder of Two Brothers Concluded the Contract, Though He Is Not the Guardian	364
Benefit (On Marrying a Minor)	364
Concluding the Marriage Contract with a Minor	365
When a Woman’s or Minor’s Guardian’s Authority Lapses	365
Marriage of a Woman Who Has No Guardian	366
Ruling on One Who Claimed to Have No Family, Then After Marriage It Turned Out She Did	366
On the Guardianship of Marriage and When It Transfers	367
On Contracting by Telephone	368
A Man Contracted for His Minor Son but Said in the Contract: “I Accepted the Contract for Myself”	368
Witnesses Considered at the Marriage Contract	369
Benefit: On Stipulations in the Marriage Contract	369
Ruling on a Stipulation Contrary to the Effect of Marriage or Sale	370
A Man Married a Woman on the Condition That He Would Have No Inheritance from Her	370
A Wife’s Stipulation That the Husband Not Remove Her from Her Town	371
A Note on the Dowry (Ṣadāq)	371
On Dowries (Mahrs)	372
On a Guardian’s Demanding Money for Himself Apart from the Dowry	373
A Woman’s Entitlement to What Is Mentioned in the Contract—even if Intended for Someone Else	374
Benefit: What Is Customarily Given to the Wife on the Wedding Night (Laylat al-Ṣabāḥ)	375
Ruling on a Woman Retracting What She Had Remitted of the Dowry	376
Is It Permissible for a Husband Who Finds His Wife Not a Virgin to Ask Her Why?	376
A Man Consummated the Marriage and Found His Wife Not a Virgin	377
Benefit: [On Annulment Due to a Defect in Marriage)	377
Annulment of Marriage on Account of Insanity	378
A Woman Whose Husband Became Insane, and She Did Not Annul—Then, When She Despaired, She Annulled	378
On a Woman Annuling the Marriage of an Impotent Husband (‘Annīn)	379
What Should a Woman Do If Her Husband Does Not Pray and Is Unconcerned with Sinning?	380
What Should the Wife of a Man Who Denies Life After Death and Rejects Heaven and Hell Do?	381
What Is Obligatory upon a Husband If His Wife Is Disobedient and Persistently Sins	381

Ruling on Marriage to a Flagranly Sinful Person, a Hypocrite, or Someone of a Different Madhhab	382
Marrying One Whose Religion Is Not Acceptable	383
What to Do When a Wife Cannot Bear Life with Her Husband	383
A Wife's Defiance When She Is with Her Son	384
May a Woman Be Prevented from Seeking Knowledge?	384
If a Man Marries Another Wife, Must He Give the First the Same Jewelry and Clothing?	385
Benefit (Justice Between Wives)	386
On Justice in the Overnight Turn Among Co-Wives	386
On Justice and Equality Between Wives	387
A Continuation Concerning Justice Between Wives	388
Ruling on Coitus Interruptus and the Use of Contraceptive Treatment	388
A Benefit Concerning Medical Treatment That Prevents Pregnancy	389
On Preventing Pregnancy	390
Ruling on Removing the Fetus When the Mother's Death Is Feared	390
Does the Wife Have a Right to Intercourse?	391
Marriage and Wealth	392
Masturbation	392
A Benefit (The Wife's Rights)	393
The Rights Owed by the Woman and the Rights Owed to Her	393
The Husband's Rights and the Parents' Rights	395
A Husband Preventing His Wife from Visiting Her Parents	395
[Chapter: The Marriage Bed]	397
He Married a Woman and She Gave Birth After Five Months	397
A Benefit: If a Man Knows He Did Not Have Intercourse with His Wife and She Bore a Child	397
A Man Married a Divorced Woman Who Did Not Menstruate, and She Gave Birth After Two Years	398
[Test-Tube Children]	398
Artificial Insemination	399
Ruling on Injecting a Sterile Man with the Semen of a Healthy Man to Beget a Child	400
[Book of Divorce and What Relates to It]	402
A Benefit on the Importance of Pronouncing Divorce	402
The Ruling on Divorce and an Oath by a Word When It Is Uttered but Meant with a Meaning It Cannot Bear	403
Two Benefits Concerning Confession (Acknowledgment)	403
The Ruling on Divorce and Revocation Without Intention	404
[Intention in Divorce]	405
Pronouncing Divorce by an Ignorant Person Who Does Not Intend It	405
(Retention in Kindness)	406
Ruling on Reclaiming the Dowry and Withholding Maintenance When a Father Prevents His Daughter from Returning	406
Important Benefits Concerning Divorce	407
[What Is the Ruling on a Man Saying: "It Is Your Divorce"]	408
Ruling on Saying: "If You Do Such-and-Such, Then It Is Your Divorce," and the Like	408
Giving the Wife a Choice Between Divorce and Something Else	409

The Ruling on Divorce in a State of Anger	409
Divorce by One Afflicted with Diabetes or the Like	410
If a man divorces in a state of psychological agitation a thousand times, then declares ṣihār	411
Divorce of One Afflicted with Obsessive Misgivings	413
Divorce of the Intoxicated	414
A Benefit on Analogizing Those with Psychological and Neurological Illnesses to the Intoxicated	414
Ruling on One Who Divorced While Apparently Sane, Then His Insanity Appeared	415
Divorce of One Who Consumed Narcotics and Thereby Had His Intellect Altered	415
The Degree of Insanity That Lifts the Ruling of Divorce	416
Ruling on the Divorce of One Compelled by His Wife to Divorce	416
Ruling on Marriage If the Husband Goes Insane After Some Time of Marriage	417
A Useful Discussion on Innovated Divorce (Ṭalāq Bid‘ī)	418
The Arguments of Those Who Hold That It (Bid‘ī Divorce) Takes Effect	422
Ruling on Moving from a Fatwa that Holds Bid‘ī Divorce Takes Effect	425
If a Layman Pronounces an Innovated Divorce	426
A Layman’s Triple Divorce in Successive Pronouncements	427
A Man Divorcing His Wife, Then Revoking It, Then Divorcing Again	428
Bare Divorce [“Ḥarām and Ṭalāq”]	430
A Benefit (Bare Divorce)	431
Among the Rulings of Revocable Divorce	431
Must One Censure a Man Who Has Divorced Yet Still Resides with His Divorcee?	432
When the Spouses Appoint an Arbiter Between Them	432
How a Divorcer Can Avert a Conditional Divorce	433
Conditional Divorce upon a Doable Act	434
Conditional Divorce Stipulated for a Cause, Then the Cause Ceases	436
A Benefit: [Getting Rid of Conditional Divorce]	437
[On Conditional Divorce]	437
Ruling: “You are divorced on condition that you do not marry So-and-so”	438
Ruling on a Divorce Conditioned That She Not Marry So-and-so and So-and-so	439
Imprisoning Divorce (Ṭalāq al-Taḥbīs)	441
Cyclical Divorce (al-Dawr) and Imprisoning Divorce (al-Taḥbīs)	441
Ruling on Swearing by “Ḥarām and Ṭalāq”	442
Ruling on One Who Says: “My wife is divorced, and whenever she becomes lawful to me, she is ḥarām”	445
Among the Conditions of Divorce	445
Conditions, Their Particles, and How to Judge the Common Folk Therein	445
Ruling on: “You are divorced three times, interspersed with revocation (raj‘ah)”	446
Ruling on the Commoners’ Phrase: “‘Alayya al-Ṭalāq (Upon me be divorce), I will surely do ... / you will surely do...”	448
Conditional Divorce	449
Ruling on the Divorce of One Who Was Asked: “Did you divorce your wife?” and Answered: “Yes”	450
Does Laghw (Idle Oath) Enter Oaths by Divorce?	450
On Divorce Before Puberty, and Swearing by Divorce About a Matter One Believes	451
A Benefit: (Does Divorce Take Effect Before Marriage?)	452
Ruling: Does the Second Husband Overturn Three Divorces and Less Than That?	453

Does Revocation Apply to One Who Divorced After a Valid Seclusion Without Intercourse?	454
[The Chapter of Khul' (Mutual Release)]	455
A Benefit (Regarding Khul')	456
[In Khul', from al-Tāj]	456
Ruling on Taking Compensation from the Wife When Her Recalcitrance Is Due to Harm Against Her	457
He Married a Woman and She Fled on the Second Day	457
[Chapter: The Waiting Period (al-'Iddah)]	459
Concerning the Waiting Period	459
A Benefit: The Waiting Period of One Whose Husband Secluded Himself with Her but Did Not Have Intercourse	459
A Benefit: (The Ruling on a Woman Who Apostatizes from Islam)	460
[Chapter: Ṣihār]	461
A Benefit (When does Ṣihār take effect)	461
A Benefit (On Ṣihār)	462
[Chapter: Custody (al-Ḥaḍānah)]	463
Who Is Most Entitled to the Care (Kafālah) of Children	463
Permissibility of Transferring the Child from His Mother's Custody When There Is Fear for Him	463
[Chapter: Maintenance (al-Nafaqāt)]	464
A Benefit (on Maintenance)	464
A Benefit (On Maintenance)	465
Maintenance During the 'Iddah	465
Ruling on a Needy Father or Mother Taking from Their Child's Wealth	466
Explanation of Extravagance (Isrāf), Wastefulness (Tabdhīr), and Miserliness (Taqtīr)	466
On Nushūz (Recalcitrance)	468
[Chapter: Breastfeeding (al-Riḍā')]	469
A Man Married a Woman, Then It Became Clear They Had Been Breastfed by the Same Woman	469
Is It Valid for a Man to Marry a Girl Who Was Breastfed by the Daughter of a Wife He Has Divorced?	469
A Note on the Major Wife Breastfeeding the Minor Wife	470
A Woman Breastfed Her Husband's Minor Wife	471
The Ruling on a Grandmother Offering Her Breast to Soothe an Infant	471
A Couple Who Believed the Milk Belonged to the Mother Alone	472
Ruling for One Who Learned Later of a Breastfeeding Tie with His Wife	472
A Couple Who Reached Old Age, Then Were Informed of a Breastfeeding Relationship Between Them	473
[Table of Contents]	475



Majd Al-Din bin Muhammad bin Mansour Al-Mua'yydi,
Al-Imam Al-Hujjah, Al-Mujadded Lidin
(the Renewed of Religion) said,

"I swear by Allah, Most Highest, Most Greatest, an Oath that Allah, the All-Knowing, the Acquainted knows its truth that we have no purpose or inclination other than coming down at Allah's Judgment, and standing on the requirements of His command. And if we knew the truth in the side of the most extreme of creations whether Arabic, non-Arabic, Qurashi or Habashi, then we would accept it from him, and we would not refuse to follow him, and we will be among his helpers on it, and his followers. So, let the beholder say what he wants, and monitor only his Lord, and fear nothing but his sin. The Judge is Allah, and the appointment is the Day of Judgment, and all matters go back to Allah"



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