

ar-Risalah al-Qayrawani

by

*Imām Abū Muhammad ‘Abdullāh
ibn Abī Zayd al-Qayrawānī* رحمه الله



dār al-Fiqh

ar-Risalah al-Qayrawani

A Treatise on Maliki Fiqh

by

Imām Abū Muhammad ‘Abdullāh

ibn Abī Zayd al-Qayrawānī رحمته الله

310-386 (922-996)

Translated by

al-Hajj Bello Muhammad Daura



Contents

Preface	6
Prologue	8
On that which tongues shall utter and hearts believe of the obligatory religious affairs.....	11
A Chapter on what necessitates minor and major ritual ablutions	17
Chapter on purity of water, clothes and place, and the minimum dress a person should have on while saying Prayers	20
A Chapter on the description of minor ablution and those actions in it which are considered Sunnah and those considered obligatory and some information concerning istinḥa and istijmar	22
A chapter on ghusl, or the major purification.....	27
Tayammum	29
A chapter dealing with rubbing over the boots	32
A chapter on the hours of prayers and the names of the Prayers.....	33
A Chapter on the call to prayer (adhan) and the second call to prayer (iqamah)	36
A Chapter describing the performance of obligatory and voluntary ritual prayers.....	38
Chapter on Imamship	47
A Chapter on various aspects of prayers.....	50
A chapter upon prostrations One Performs as one recites the Qur'an	59
A chapter on Prayer of Travelling.....	62
A Chapter on Friday congregational Prayer	64
A Chapter on the prayer of Fear	66
A Chapter on the Prayer of the two Id Festivals and the Pronouncement of Allahu Akbar on the Days when Pilgrims are in Mina	67
A Chapter on the Prayer on the occasion of an Eclipse	70

A Chapter on the Prayers offered on the Occasion of a drought.....	72
A Chapter on what is to be done to a man about to die and the washing of a dead person and shrouding, embalming, carrying him and burying him	73
A Chapter on the prayer over a dead body and prayer for the dead person	77
A Chapter on the Funeral prayer for an infant the prayer over him and washing him	81
A Chapter of Fasting.....	83
A Chapter of retirement for the purpose of Worship known as I'tikaf.....	89
A Chapter on the periodic alms given out of ready cash, crops, livestock and minerals; and some mention of the Jizyah tribute and the levy from the merchants among non-Muslim citizens in an Islamic state and the merchants from the land of the belligerents	91
Zakat on Livestock	97
A Chapter on Zakat al-Fitr.....	101
A Chapter on Hajj (Pilgrimage) and Umrah (the lesser Pilgrimage).....	103
A Chapter on Sacrifices, the slaughter of animals, naming ceremonies, hunting, circumcision and forbidden foods and drinks	112
A Chapter on Jihad.....	120
A Chapter on Oaths and Vows	123
A Chapter on Marriage, Divorce, remarriage with one's divorced wife, false assimilation, a vow of continence, the oath of imprecation, release and suckling	128
A Chapter on 'iddah', maintenance and the retirement other than 'iddah' which women observe, so that it can be ascertained whether or not they are pregnant, known as istibra.....	144
A Chapter on the law of trading and transactions similar to sales.....	149
A Chapter on wills and various method of setting slaves free	162
A Chapter on pre-emption, gift, alms, endowment, pledge, loan, trust, an article or thing found, and compulsion.....	168
A Chapter on Homicide Cases and other Judgements	175
A Chapter on Judgement and Evidence.....	189

A Chapter on Inheritance	199
A Chapter summarising some aspects of Prayer	208
A Chapter on Good Appearance, Circumcision, Shaving of Hair, Dressing and such things	220
A chapter on Food and Drink	223
A Chapter on greetings, Permission to enter houses, Confiding in a friend, reciting the Qur'an, supplication (du'a), remembrance of Allah, and what to do when embarking on a journey	225
A Chapter of Treatment, a mention of incantation, the evil eye, astrology, castration, tattoo, mention of dogs and leniency to slaves	231
A Chapter on dreams, yawning, sneezing, chess horse-racing, shooting and such other things	233
Epilogue.....	237

Preface

The *Risala* is a Maliki text which consists of the interpretation of Islamic legal and spiritual precepts according to the views generally held by jurists who belonged to the Maliki School of Law, which is one of the four schools of Islamic Jurisprudence. The other orthodox schools of Islamic Jurisprudence are the Hanifi, Shafi'i and the Hanbali. The ultimate sources of the views they held are to be found in the Holy Qur'an, the *Sunnah* of the Prophet ﷺ the consensus of the Muslim jurists and analogical deductions (*Qiyas*).

This work is divided into three distinct parts. The first part deals with rituals exclusively, the second part deals with personal status and the third and the last part deals with cultural aspects. Most Islamic books of jurisprudence follow this pattern.

The full name of the author of this book, the *Risalah*, is Abu Muhammad Abdullah Ibn Abi Zayd al-Qairawani. He lived in al-Qairawani, in the North-Eastern part of Tunisa, in the fourth century of the Islamic era and tenth century of the Christian era. He was born two generations after the death of Imam Malik ibn Anas, the founder of the Maliki School of Law. In his own days he was held in great reverence—as he is today. People referred to him as *Malik al-Asghar* or Junior Malik. May Allah be pleased with him and show his mercy and permit us to benefit from his erudition.

Throughout my translation of the *Risalah*, I remained as far as I could to the text, without totally sacrificing the meaning. This I did in order to facilitate cross-checking for both students and general readers. At this juncture, I feel it is proper for me to borrow a leaf from Sidi Khalil ibn Ishaq al-Jundi, the author of *Mukhtasar*—the famous Maliki text—who appealed to those who would read his work to complete any short-coming, and correct any mistake they might find in the book, by drawing attention to them.

I must close by thanking my colleagues and elders who gave to me freely their valuable encouragement and assistance. These include Al-Haji Abu Bakr Siddiq Abbas of the Centre for Islamic Legal Studies, Al-Haj Ma'aji Shani of the Faculty of Law, Mr. Ahmad Abdullah my Sudanese friend and colleague, at the Centre for Islamic Legal Studies, Professor Abdul Rahman I. Doi, who helped me greatly by making the entire work possible and who undertook to write the introduction.

May Allah reward them all and many others who assisted me in one way or another in this humble effort.

Bello Muhammad Daura

Zaria

15/5/78

Prologue

*In the name of Allah, ar Rahman ar Rahim.
May Allah bless our Prophet Muhammad,
his family and his companions, and give him peace.*

Abu Muhammad Abdullah ibn Abi Zaid al-Qairawani—may Allah be pleased with him and please him said:

Praise be to Allah who created man through His bounty and moulded him in the wombs by His wisdom and brought him out to His mercy and what He facilitated to him of Him sustenance and taught him that which he did not know - indeed, Allah's favour upon him was great.

Allah cautioned him through the signs of His creation, and made an excuse for himself through the tongues of Messengers chosen from amongst His creation. He guided aright those whom He caused to succeed through His bounty, and led astray those whom He forsook through His justice.

He made it easy for the faithful to obey Him, and opened their hearts to His remembrance. So they believed in him by their hearts and tongues. They were sincere at heart in that belief and observed that which His messengers and scriptures commanded. They learnt that which He taught them and kept within His bounds. They were satisfied with that which He made lawful to them and kept away from that which He forbade them.

Now, May Allah aid us all in preserving His charge and preserving that which He has entrusted into our custody - of His *shari'ah*.

You have requested me to write short treatise explaining obligatory religious commands (*wajibat*) regarding those things which tongues should utter, hearts believe, and limbs carry out, as well as those

things which are linked to the obligatory duties of the *sunnah* including those that are imperative, those optional and those desirable.

You have also requested me to include in the treatise some words on good manners and sections on the principles of jurisprudence and its various branches, within the school of Imam Malik Ibn Anas (may Allah, Most High, have mercy upon him), explaining the difficult arguments in the school, according to the commentaries of the learned men and the explanations of the jurists.

So I accepted your request for that which I wished to get for myself and for you, namely the reward given to those who have taught the religion of Allah and those who have invited others to accept it.

Note that the best of hearts and that which is best disposed to do good is that in which evil has not yet taken root. The most important thing to which sincere advisers and those who sought to be rewarded cared for, is to cause good to enter the hearts of the children of the Faithful, so that it might take root in them. Another thing is to awaken in them the principles of the religion, and the limits imposed by the *shari'ah*, so that they might be amenable to them. Yet another thing is to alert them to that which is binding upon their hearts to believe, in respect of religion, and that which their limbs ought to carry out.

It has been narrated that teaching the Book of Allah to young people quenches the wrath of Allah and that learning in youth is like engraving upon a stone.

I have given you an example of that which they will find beneficial, if God wills, through memorising it, and that which they will find ennobling through knowing it, and that through which if they believe and observe they will attain happiness.

It has been narrated that children should be ordered to say prayers at the age of seven and that they should be punished at the age of ten for failure to observe them. Also, boys and girls should be made to sleep separately.

They should thus be taught what Allah has made obligatory upon His servants in words and deeds before they attain puberty so that by the time they attain puberty they are fully conscious of their obligations, their hearts having accepted the duties, their souls having settled down to that, and their limbs being used to the observance of that.

Indeed, Allah - Glorified be He - has made obligatory upon the heart a duty to have faith, and upon the outward limbs a duty to observe religious obligations.

I shall set forth in detail what I have undertaken to do for you. I shall arrange it chapter by chapter, so that those who study it shall find it easy to learn, if Allah Most High wills. We let Allah choose for us, and from Him do we seek aid. There is no power and no strength save in Allah the Exalted and Mighty. May Allah bless our Lord Muhammad, His Prophet ﷺ. May Allah bless his family, his companions and give them much peace.

CHAPTER 1

On that which tongues shall utter and hearts believe of the obligatory religious affairs

1.01 God

That includes having faith at heart and uttering with the tongue that Allah is the one God and that there is no other god apart from Him. There is none similar to Him, and He has no equal. He has no son, father or wife. Besides, He has no associates.

His earlier existence had no beginning and His future existence shall have no end. His true nature cannot be described by anyone, nor can thinkers imagine that nature.

To know Him one considers His signs, but one does not think about His essence. None learns anything about His knowledge, except that which He wills. His throne spreads over the heavens and the earth and the upholding of both the heavens and the earth does not burden Him. He is the Exalted and the Great.

He is the Knower, the Knowing, the Organiser, the Powerful, the Hearing, the Seeing, the Exalted and the Great. He settles upon His glorious throne with His essence. He is everywhere with His knowledge. He created man and knows what his soul is whispering. Allah is closer to a man than the man's jugular vein. A single leaf does not fall down except that He knows of it. Neither would a grain in the dark recesses of the earth nor a wet or dry object exist without being in the Clear Book.

Allah has settled upon the throne and holds sovereignty. He has the most beautiful names and most exalted attributes. He continues with all His attributes and names. He is too Exalted for these attributes to have been created and for his names to have occurred at a given time.

He addressed Moses with His words which are the attribute of His essence, and not a creature from His creation. He appeared before the rock and it became flat because of His Majesty.

1.02 The Qur'an

Surely the Qur'an is the very word of Allah. It was not created and is therefore not susceptible to extinction. Nor is it an attribute to a created being which would necessarily come to an end.

1.03 The Qadar (Deree) of Allah

Another precept is the belief in divine foreordainment, whether it be for good or for evil, and whether it be pleasant or distasteful. All of that has been ordained by Allah our Lord. The beginnings of affairs are in His hand and they take place by His decree. He knows all things before they happen, and they happen in accordance with His knowledge. Neither words nor deeds can proceed from His servants except by His decree. He would also have a prior knowledge of that.

Surely He who creates knows, besides He is the Gentle and Knowing one. He leads astray whom He likes to, and then He forsakes him out of His Justice. He also guides to the right path whom He wishes to and grants him success out of His grace. Everything is facilitated through His aid and takes place in accordance with His prior knowledge and decree as to whether His servant shall be miserable or happy in the Hereafter. He is too exalted to be dispensed with by anyone. Nor should there be any other creator to anything apart from Him - Lord of the servants and the Master of their deeds and the Director of their movements and their fates.

1.04 Messengers and Muhammad ﷺ

He sent Messengers to mankind to establish a plea against them. He completed their mission, admonition and prophethood with His prophet Muhammad—may Allah be pleased with him and please him—whom he made the last of the Messengers, giving glad tidings, warning and calling people to Allah, with His permission. The

Prophet was an illuminating lamp and Allah revealed to him His book, which is full of wisdom. He explained through it His true religion and guided by it along the right path.

1.05 Resurrection and Judgement

Surely the Resurrection will come to pass, there is no doubt about it; and surely Allah will raise to life the dead as He created them before.

And surely Allah shall multiply the reward of His faithful servants, and forgive them their major sins when they repent. He shall forgive them their venial sins when they keep away from the mortal sins. He shall deal with the person who failed to repent from mortal sins, in accordance with His wishes. Allah shall not forgive associating other deities with Him, but shall forgive whom He wills for committing sins which fall short of that.

He would bring out of hellfire the faithful servant He punishes and would cause him to enter paradise. Whoever does good of the size of an atom shall be rewarded for it. Those of the Prophet's community who committed mortal sins shall be taken out of hellfire through the intercession of the Prophet.

1.06 Reward and Punishment

Surely Allah has created paradise as an abiding home for His faithful servants, and honoured them in it by allowing them to gaze at His noble essence. It is the paradise from which He caused Adam, His prophet and deputy upon the earth, to descend. In accordance with His predestined knowledge that this would happen, He has also created hellfire as an abiding home for those who were ungrateful to Him and were heretical to His signs, His scriptures, and His Messengers, and barred them from gazing upon His essence.

1.07 Concomitants of the Resurrection

Surely, Allah—Blessed and Exalted be He—shall come on the day of Resurrection while the angels are in rows, investigating their affairs, rendering their accounts, punishing them and rewarding them. The scales will be set up in order to weigh the deeds of men. Those whose good deeds outweigh their sins shall be the lucky ones. Men shall be given their papers in accordance with their deeds. Those who receive their book by their right hand shall receive a mild treatment. And those who receive their book from behind their back shall burn in hellfire.

It is also incumbent upon a Muslim to believe that the *Sirat* (the bridge over hellfire leading to paradise) is real. The faster a man crosses the hellfire over it the better his deeds are. There shall be people whose deeds shall cause them to perish into hellfire. It is again incumbent upon a Muslim to believe in the cistern of the Messenger of Allah - may Allah bless him and give him peace; his community shall come down and drink of it. Those who drink of it shall never be thirsty; and those who made changes and alterations to the faith shall be driven away from it.

1.08 Faith (*Iman*)

Surely, faith consists of a pronouncement with the tongue, sincerity of heart and deeds with the limbs. It increases through an increase in good works. It decreases through their decrease. A decrease or increase in faith is dependent upon the volume of good works. Mere pronouncement of faith is incomplete except when coupled with the good works. Further, a pronouncement of faith and the good works are incomplete except when they are accompanied with intention. Furthermore, the pronouncement of faith, good works and the intention are incomplete except when they coincide with the *sunnah* (the tradition of the Prophet).

None from amongst Muslims shall be declared infidel on account of committing sins. The martyrs are alive with their Lord who sustains them. The souls of those who shall dwell in paradise remain comfortable until they are again raised to life. The souls of those who

shall dwell in hellfire shall continue to be punished until the day of Resurrection.

The faithful shall be tried and questioned in their graves. Allah shall strengthen those who believe with a firm word in the life of this world and that of the Hereafter.

1.09 Angels

Surely there are keepers upon Allah's servants who record their deeds. Nothing of that record shall escape the knowledge of their Lord.

Surely, the angel of death takes people's lives with the permission of his Lord.

1.10 Authorities

The most honourable generation was that which was contemporaneous with the Messenger of Allah—May God bless him and give him peace. The next in honour was that generation which followed immediately that of the Prophet. Following in honour was the generation which, in its turn, followed that which followed that of the Prophet. The most honourable of the companions of the Prophet were the rightly guided Orthodox Caliphs. They were, in order of priority, Abu Bakr, Umar, Uthman and Ali - May God be pleased with them all. None should speak ill of any of the Prophet's companions and one must refrain from discussing their mutual disagreements, because they deserved more than anybody else to have their action justified. Their opinions on religious matters should be considered the best.

It is incumbent upon the Muslims to obey their Muslim leaders, those in charge of their affairs and the learned amongst them. It is equally incumbent upon Muslims to conform to the practice of their worthy ancestors and follow their footsteps and pray for their forgiveness. It is equally necessary for Muslims to avoid disputes and disagreements over religion. They must keep away from innovations.

May Allah bless our Lord Muhammad His Prophet. May He also bless his family, his wives and his descendants and give them much peace.

CHAPTER 2

A Chapter on what necessitates minor and major ritual ablutions

2.01 Wudu

Minor ablution (*wudu*) becomes incumbent upon a Muslim when he passes out either urine or stool, or when he breaks wind. Minor ablution will also be incumbent when a Muslim passes out of his sexual organ the liquid known as “*madhy*”. Before performing the ablution he is required to wash the whole of the sexual organ. *Madhy* is a white thin liquid which is discharged accompanied with pleasure when the sexual organ becomes erect as a result of romance or recalling it. As for “*wady*”, it is white thick liquid discharged immediately after urinating. It imposes the same duties of ritual purification which urinating does. Semen, on the other hand, is a liquid which comes out with great pleasure during sexual union. Its smell is similar to that of pollen.

The coming of the yellow liquid from women’s private parts necessitates the major ablution in which the whole body is bathed, in much the same way as menstruation will necessitate such a bath. But when bleeding in menstruation persists for an abnormally long period only a minor ablution (*wudu*) will be performed on its account. A woman who bleeds in this manner and the person who cannot control his urine are required to perform fresh ablutions (*wudu*) for each prayer. It is obligatory to perform a fresh ablution also for each of the following conditions: loss of one’s sense through deep sleep; unconsciousness, intoxication or becoming insane. Similarly, an ablution (*wudu*) becomes incumbent as a result of members of the two sexes touching one another in order to find pleasure, or coming physically into direct contact also in order to find pleasure, or kissing one another for pleasure. A minor ablution (*wudu*) is binding upon a

man when he touches his private part with the bare palm. There is a divergence of opinion as to whether a minor ablution becomes binding upon a woman when she touches her private part with the bare palm.

2.02 *Ghusl*

A major ablution becomes incumbent upon both a man or a woman as a result of passing out semen because of pleasure, whether in sleep or awake. Similarly when normal or abnormal menses stops or when bleeding stops after childbirth, a ritual bath becomes obligatory. Again, such a bath is obligatory upon partners in a sexual union when the glans penis of the man is enveloped by the woman's private part, even if he does not ejaculate. Such envelopment of the glans penis by the woman's private part makes a ritual bath obligatory; it also renders a person liable to '*hadd*' punishment. It also entitles a woman to the dower; it renders husband and wife '*muhsans*'; and it renders a woman lawful for remarriage to her former husband who repudiated her three times previously. Yet again such sexual act invalidates the *hajj* (pilgrimage) and fasting.

When a menstruating woman sees the white liquid known as '*qassab*', she must perform the ritual bath; she should also do so immediately when her private part dries up. This is what she must do whether she saw the drying up a day, two days or an hour after beginning to menstruate. If she should start to bleed again or if she should see yellow or impure discharge she must suspend prayers. When such bleeding ceases she must perform the ritual bath and resume prayers. The whole of this is to be considered as one course of menstruation in the assessment of *iddah* and *istibra*. When there is an interval of eight to ten days between one stretch of bleeding and the other, the second such stretch shall be considered as a fresh cycle of menses. If a woman's period should exceed fifteen days, she should be considered as menstruating during only these days. Thereafter the bleeding is regarded as abnormal and she will be required to perform the ritual prayer, fasting and be attended by her husband. When the childbirth bleeding stops, even if this takes place soon after the birth, the mother is required to take the ritual bath and resume normal prayers. But if she should continue to bleed, the bleeding will be

regarded as abnormal after the sixtieth day from that birth. She must then take the ritual bath and begin to perform her normal prayers, observe the fast and be attended by her husband.

CHAPTER 3

Chapter on purity of water, clothes and place, and the minimum dress a person should have on while saying Prayers

3.01 Purity of Water

The person performing prayers is indeed confiding with his Lord. It is therefore necessary for him to prepare for that by making a minor ablution, or the major one if the latter happens to be binding upon him. Such ablutions must be performed with pure water, not mixed with filth. It must not be performed with water the colour of which has changed as a result of being mixed with something filthy or clean, except where the colour has been changed by the nature of the land where it happens to be, such as salty marsh or muddy land or something like that. Rain water, spring water, well water and sea water are all clean, pure and purifying from filth. The water whose colour is changed by the fall into it of something clean is clean in itself but does not cleanse in a minor or major ablution or in cleaning some filth. Water the colour of which has been changed by some filth, is neither clean nor cleanses. A small amount of water is contaminated by a small amount of filth, even if this does not change the colour of the water.

3.02 Amount of Water

Washing the body well using a small amount of water is part of the tradition of the Prophet. Extravagance in the use of water is an innovation.

Indeed, the Prophet ﷺ has performed minor ablution with one ‘*mudd*’ of water, which is equivalent to one and a third pounds in weight. Similarly he performed the ritual bath with one ‘*sa*’, which is equivalent to four *mudds*, of the variety conforming to his standard.

3.03 Purity of Place and Clothes

It is obligatory that the very spot upon which a prayer is to be performed should be clean. Similarly, the clothes in which a person performs a prayer must be clean.

According to an opinion, this obligation of the cleanliness of place and clothes is of the degree of obligation under *fard*. While another opinion holds the view that it is of the degree of obligation under a *sunnah mu’akkadah* (strong *sunnah*).

It is prohibited to perform prayers on the resting place of camels and in the middle of a highway. It is forbidden to perform prayers on the roof of the holy Ka’bah and in the public bath, where one is not sure of the cleanliness of the place. Further it is prohibited to perform prayers at a refuse dump, abattoir, and the cemetery and the place of worship of non-Muslims.

3.04 Clothing Required

The minimum clothing in which a man says his prayers is that which covers his private part such as a gown or a blanket. What is meant by ‘*dir*’ is a gown. It is objectionable for a person to perform prayers without any clothes covering his shoulders. But where a person has performed prayers in such a circumstance, he would not be required to repeat such a prayer. The minimum clothing which is sufficient for a woman to say her prayers in is a thick flowing gown which would cover her body down to her feet, and a veil with which to cover her head. A woman is required to touch the ground with her palms when prostrating, just as a man does.

CHAPTER 4

A Chapter on the description of minor ablution and those actions in it which are considered Sunnah and those considered obligatory and some information concerning istinba and istijmar

4.01 *Istinba* (Washing Private Parts)

The cleansing known as '*istinba*' is not what ought to be considered as part of the minor ablution (*wudu*). It is neither part of the *sunnah* actions nor part of the obligatory actions. It is, however, an act necessary for the removal of filth. Such a removal of filth can also be effected by the act known as '*istijmar*'. This is done so that a man may not pray with the filth on his body. Both *istinba* and *istijmar* can be valid without being preceded by an intention. The same rule applies in washing filthy clothes.

Istinba is performed by first washing the hands followed by washing the opening out of which urine comes, then the anus is rubbed with a clod or something else or with the hand. Then the hand is rubbed on the ground and then washed. This is followed by the performance of *istinba* with water which he continues to pour while his anus is relaxed. He rubs well the anus until he cleanses it. He is not required to wash the interior of the two openings. Nor is he required to perform the *istinba* on account of having broken wind.

4.02 *Istijmar* (Wiping With Stones)

However if a man performs the *istijmar* with three pieces of stone and the third one comes out clean, that would be sufficient for him. But

the use of water is cleaner, more decent and preferred by the learned men.

4.03 Washing Hands Before *Wudu*

Where a man had not urinated nor passed stool but performs the minor ablution because he happens to be in an impure state or has awoken from sleep or for some other reason which necessitates the performance of the minor ablution, it would be obligatory upon him to wash his hands before dipping them into the bowl of water with which he intends to perform the minor or major ablutions.

4.04 *Sunnas* and Obligations of *Wudu*

Washing the hands before dipping them into the bowl is part of the *sunnah* actions of minor ablution.

It is also part of the *sunnah* actions to rinse the mouth, to sniff the water and to blow it out and to rub the ears. Actions other than these in ablution are obligatory.

4.05 How to do *Wudu*

Some learned men have stated that when a man intends to perform a minor ablution after waking from sleep or for some other reason, he should begin by mentioning the name of Allah; while others do not consider this to be part of the injunction to do good. Placing the water bowl on his right hand side makes it easier for him to get to the water. He begins by washing his hands three times before he dips them into the bowl of water. If he had urinated or passed stool he should wash that away. He then performs the ablution. So he dips his hand into the bowl of water, takes some of it and rinses his mouth three times from one handful of water if he likes, otherwise he could do that with three handfuls of water. It would be a good thing if he cleans his teeth with his finger. Then he sniffs the water three times and blows it out, holding his nose as he does when he cleans it of mucus. In the case of rinsing the mouth and sniffing the water it would be sufficient if he did it less than three times. He might do

those actions with a single handful of water. It is however, considered better if he did that with three handfuls of water.

Then he takes water with both hands, or if he likes with the right hand only, and then takes it to his face with both hands and washes from the top of his forehead, the limit of which is where the forehead meets the hair, down to the edge of his chin and the whole of his chin and the whole of his face from the end of the bones of his chin up to his temples. He then passes his hands over the hollow part of the face above the eyelid, and over the wrinkles of his forehead down to the tip of his nose and outside part of his nose. He washes his face in this manner three times. He takes the water to the face and rubs his beard with his palms as he washes the face, so as to allow the water to penetrate it, because of the resistance of hair to take in water. It is not obligatory for him to comb the beard while he performs the ablution, according to Malik. He passes his hands over the beard down to its limit.

He then washes his right hand three times, or two times, he would pour water over it and rub it with the left hand. He then combs the fingers of his hands using the fingers of one hand for the fingers of the other. The same applies to the left hand. The washing of the two hands shall be extended to include the elbows. According to the view of some jurists the washing should be extended to the elbows though it is not obligatory that it should include them. However, it is preferable to include the elbows in the washing of the arms so as to satisfy the views of those who prescribed the need to include them. Then he takes the water with his right hand and pours it on the left palm. He then rubs his head with the two hands. He starts from the upper part of the forehead, that is, where the hair starts, while he brings together the tips of the fingers of his hands and passes them over his head, while placing his thumb on his temples and rubs down to the bottom of the hair of his head, reaching to his nape. Then he returns the two hands to where he started, while he does that he rubs the back part of his ears down to his temples with his thumb.

It is lawful for him to rub the head in which ever way he chooses as long as he soaks the whole of the hair, but the first method is preferable. And even if he immerses his fingers in the vessel and lifts them up in a wet state and then rubs his head with them, that will be

sufficient also. Then he pours water on both his index fingers and thumbs and if he wishes he immerses them into the water and with them he rubs the outer and inner part of his ears. A woman also does the same and rubs down her hair which hangs. She must not rub over her head-tie. However, she inserts her hands beneath her plaits while she brings back her hands after rubbing down the head.

Then he washes his feet, and pours water with his right hand over the right foot, and rubs it with his left hand gently and he does this three times. And if he likes he combs through his fingers in doing that. It is no offence if he declines to do that. But combing the fingers gives greater satisfaction. And then he rubs his soles and tendons and those parts which water does not penetrate easily due to hardening or chapping. One has to rub hard while one continues to pour water with one's hand. One does that because there is a tradition of the Prophet which says, **“Woe unto the heels, which shall be punished by hellfire”**. The word *‘aqib’* refers to the side or the extremity of something. The performer of ablution shall do likewise to the left foot. The injunction that limbs shall be washed three times each is by no means strictly binding.

If one achieves cleaning a limb with less than washing three times that shall be enough, as long as that affords him to wash the limb well. In this regard people differ. Some achieve cleansing earlier than others.

The Prophet—peace and blessing of God be upon him—stated that if a person performs his ablution well and looks up and says, “I bear witness that there is no God but Allah, He is alone and has no partner; and I bear witness that Muhammad is His servant and messenger”, thereupon the eight gates of Paradise shall be opened to him and he shall enter through any one he wishes.

Some learned men prefer that a man should say after finishing ablution, “O God make me one of those who repent and make me one of those who are pure”.

4.06 Intended Purpose of *Wudu*

A man shall perform his ablution in the understanding that it is an act of worship to God, Most High, and in obedience to His command, hoping that God shall accept and reward it, and cleanse him of sins through it. A person shall realise that it is a preparation and purification for confiding to his Lord, and standing before Him to discharge his duty. He humbles himself by bowing and prostrating to Him. A worshipper shall realise that and be wary of it, because for an act of worship to be complete one must have the right motive.

CHAPTER 5

A chapter on ghusl, or the major purification

The major purification or bath is taken as a result of *janabah* or major ritual impurity, menstruation and childbirth. If the person taking such a bath restricts himself to the bath only, that is without combining it with a *wudu* or minor purification that shall be enough.

However, it is preferred that he should perform the *wudu* after having removed from his private parts or his body whatever filth that might be there. He then performs a *wudu*, as he would do when preparing to say prayers. If he likes he can go ahead and wash his feet, otherwise he can delay it and wash them at the end of the bath. Then he would immerse both his hands in the vessel containing water and bring them out without holding any water in them and he would comb the roots of his hair with them. He would then take handfuls of the water to his head three times with which he washes the head. A woman too would do likewise. She presses over her hair but it is not incumbent upon her to undo her plaits. One should then pour water upon the right side of one's body and then upon the left side. He then rubs with both hands as he pours water until he washes his whole body. If he doubts that a part of his body is thoroughly washed he goes over it and washes it well until the whole of his body is thoroughly washed. He pays particular attention of the depth of his navel and bottom of his throat and he combs the hair of his beard and his armpits and between his buttocks and thighs as well as the back of his knees and beneath his feet. He then combs his finger and washes his feet at the end of it all. The washing of his feet is to complete his bath and his ablution. He will do that if he deferred washing them. He pays attention not to touch his penis with the palm of his hand, while washing the thighs. But if he touches it after having completed the bath, he must repeat the *wudu* (*alwalla*). However, if one touches the penis at the beginning of his bath and after washing those parts of his body normally washed in an ablution (*wudu*), all one has to do

is to intend the performance of the ritual and then rub over those parts with his wet hands.

Chapter 6

Tayammum

6.01 When to do it

The performance of *tayammum* becomes necessary when a worshipper on a journey cannot find water, and loses hope of finding it within the prescribed time of a given prayer.

The performance of a *tayammum* also becomes necessary when water is not available or the worshipper cannot touch water whether on a journey or staying at home, due to illness or some other reason which prevents him using water. The performance of *tayammum* is also permissible to a sick man who is able to use water but could not find anyone to bring it to him. Such a dispensation is also extended to a traveller who comes close to water but is unable to go to it for fear of robbers or wild beasts.

Now, if a traveller is certain of finding water in time, he delays performing ablution until the end of the prescribed time. But if he loses hope of finding water, he shall perform the *tayammum* at the beginning of the prescribed time. If a traveller has no knowledge of the availability or lack of water he shall perform his *tayammum* and say his prayers in the middle of the prescribed time. Similarly, if he fears that he will not find water, and at the same time, entertains some hope of finding it, he must perform the *tayammum* and say the prayer in the middle of the prescribed time.

6.02 Validity after finding Water

Now, if a person performs *tayammum* and says his prayers under these circumstances, and later on he finds water, what shall he do?

The answer to this is the following: The sick man who did not find someone to bring water to him shall perform an ablution and repeat the prayer. Similarly the man who was afraid of wild beasts and other dangers, shall perform an ablution and repeat the prayer. Also the traveller who despairs of finding water and at the same time entertains some hope of finding it, shall similarly perform an ablution and repeat the prayer. Nobody other than these shall repeat his prayers.

6.03 Frequency

None of these people mentioned shall perform two prayers with a single *tayammum*, except the sick person who is unable to touch water due to some chronic harm on his body. According to some jurists, however, even the sick man must make a fresh *tayammum* for each prayer.

However, it is reported that Malik said that if a worshipper remembered many prayers he missed, he could perform them all with a single *tayammum*.

6.04 How to do it

Tayammum is to be performed on a clean place, that is, the surface of the earth, such as dust, sand, rock, or on a salt marsh. To perform the *tayammum*, one strikes the earth with one's two palms. If something sticks to them he shakes it off lightly. Then the worshipper rubs his face well with the two palms. He again strikes the earth with his palms. Then he rubs his right hand with the left hand. He places the fingers of his left hand on the extremity of the fingers of his right hand. He then rubs along his fingers over the outer side of his hand and his arms, after having curved his fingers on it, until he reaches his elbows. Then he places his palm on the inner side of his arm, he then rubs it along until he reaches the wrist of his right hand. Then he rubs the inner part of his left thumb over the outer side of his right thumb. Then he rubs the left hand with the right hand in this way repeating on it what he did to the right hand. When he rubs down his right hand down to the wrist of the left hand, he shall then rub the

palm of his right hand with the palm of his left hand down to its limit.

However, if the worshipper rubs the right hand with the left hand and the left hand with the right anyhow but doing it thoroughly, that would be enough.

6.05 After a Major Defilement

If person is under ritual impurity of *janabah* or menses, it will be lawful for them to perform *tayammum* and say prayers. When they find water they can then purify themselves but they do not have to repeat their prayers.

A man is not permitted to have sexual relations with his wife who has just stopped bleeding due to menstruation or childbirth, if she purified herself by a mere *tayammum*. They can only have sexual relations if they find sufficient water to enable the wife to purify herself from the bleeding, and subsequently enough water for the two of them to purify themselves from *janabah*. Moreover in the chapter dealing with prayers we shall discuss other matters relating to *tayammum*.

CHAPTER 7

A chapter dealing with rubbing over the boots

A worshipper is permitted to rub over his boots whether when staying at home or when on a journey, as long as he did not take them off. That shall be so if he wore them after having washed the feet in an ablution which is valid for him to perform a prayer. Now, if such a person does anything which voids the ablution and he then performs a fresh ablution, such a person is then permitted to rub over the boots only. Otherwise such a rubbing shall not be lawful.

Now, this is the way to do the rubbing. The worshipper shall place his right hand over the boot from the very tip of the toes, and he shall place the left hand at the bottom of the foot. Then he rubs along with both hands until he reaches the ankle. He then shall do the same with the left foot. In doing that he shall place his left hand over the boot and his right hand at the bottom. One must not rub over mud or on the dropping of some animal sticking on the bottom of the boots. One must remove or wash away such things before rubbing on the boots.

According to some authorities one must start the rubbing from the bottom. Further, one starts from the ankles to the tips of the toes.

He does this so that he does not take to the soles of the boots the moisture and dirt he collects as he rubs along from the tips of the toes. If it happens that there is some mud on the bottom of the boots he must remove it before he rubs on them.

CHAPTER 8

A chapter on the hours of prayers and the names of the Prayers

8.01 *Subh* (Morning Salat)

The Dawn Prayer is the ‘middle prayer’ according to the inhabitants of Medina. It is the prayer said at daybreak. The hour for saying this prayer starts from the time when light breaks out at the extreme east, coming from this direction which we North Africans face when saying prayers, and going towards the opposite direction. This light then rises up and fills the horizon. This hour of morning prayer then comes to an end when the sun shines up as the edge of its ball comes up. Now, this time is adequate, but the best part of it is its beginning.

8.02 *Zuhr* (Early Afternoon Salat)

The hour for the noon prayer sets in just when the sun passes the middle of the sky. That is the hour the shadow begins to grow longer. However, it is recommended that there should be some delay in saying prayers during the summer time. That is until the shadow of everything is a quarter of its height, after the noon shadow. But according to some jurists, such a delay should only be exercised in mosques, in order to allow the maximum number of people to pray with the imams (prayer leaders).

However for a man who will say his prayers alone, the best time for him is the early part of the time. And, according to some jurists when the heat is great, one should delay saying prayers until the heat cools down, even if one is alone. That shall be so because the Prophet—peace and blessing of God be upon him—said, **“Delay saying your**

prayers until the heat cools down because the intensity of heat is from the flame of Jahanna”. The limit of the time for the noon prayer is when the shadows of things equal their heights, after the noon shadow.

8.03 *Asr* (Late Afternoon Salat)

The beginning of the hour of afternoon prayer (*Salat al-Asr*) is the finish of the hour for the noon prayer (*Salat az-Zuhr*), and this hour remains valid until the lengths of the shadows of things equal twice their heights after the noon shadow. Another way for calculating the end of afternoon prayer is when a person facing the sun finds that his face is at the level of the sun, without lowering or bending his head. Now, if a person can see the sun with his head at that position the hour for the afternoon prayer has started. But if a person cannot see the sun at that level, the time has not yet started. If however it is lower than your eyes, the time has indeed started for quite some time. The limit of the chosen time at this hour, according to Malik—may Allah have mercy on him—is when the sun turns yellow.

8.04 *Maghrib* (Early Evening Salat)

The time for the sunset prayer—which is the “prayer of him who witnesses” i.e. of the man staying at home, it having been given that name because a traveller does not enjoy the dispensation to say less prayers in it, which is the case with other prayers)—is immediately after sunset. As soon as the sun is hidden beyond the horizon, prayers must be performed without any delay. The preferred hour for this prayer is so limited so that there must be no delay at all.

8.05 *Isha* (Late Evening Salat)

As for the time of the prayer of Darkness (*salat al-Atamah*)—by which we mean the Evening prayer (*salat al-Isha*), this second name being more appropriate to it—the hour for it is immediately after the disappearance of the twilight. And what is meant by the twilight is the redness in the sky which appears at dusk in the west. These are the remnants of the rays of the sun. As soon as there is no more yellowness or redness in the west the preferred hour for the Evening

prayer is then due. There is then no need to wait until the whiteness in the west is seen. This preferred hour then extends until the end of the first third of the night. This dispensation is given to those who wish to delay it for some reason or other. However, saying this prayer at an early part of the time is preferred. People who pray in groups in mosques are also permitted to delay it, to allow people to gather. Sleeping before saying this prayer is considered reprehensible, at the same time needless chatting after it is frowned at.

CHAPTER 9

A Chapter on the call to prayer (adhan) and the second call to prayer (iqamah)

9.01 Adhan

In mosques and other usual places where Muslims pray, it is obligatory to herald the hour of prayer by giving the call to prayer in a loud voice. However, an individual who intends to perform his prayers by himself is under no obligation to make a call to prayer, but it is meritorious if he does so. Nevertheless he must recite the second call to prayer (*iqamah*) at the beginning of his prayer. In the case of a woman, reciting the *iqamah* is meritorious, but if she declines to do it there will be no offence.

There must not be a call to a prayer before its hour except for the Dawn prayer. In the case of the Dawn Prayer, there shall be no offence if the call is recited in the last sixth of the night.

Now, this is the adhan or the call to prayer: “Allah is the greatest, Allah is the greatest. I bear witness that there is no god except Allah, I bear witness that there is no god except Allah. I bear witness that Muhammad is the Messenger of Allah. I bear witness that Muhammad is the Messenger of Allah”. Then you go back and recite very loudly, for the first time and you repeat this testimony, by saying “I bear witness that there is no god except Allah, I bear witness that there is no god except Allah. I bear witness that Muhammad is the messenger of Allah, I bear witness that Muhammad is the messenger of Allah. Come to prayer, come to prayer. Come to success, come to success”. Then if the call is for Dawn prayer, you say, at this juncture, “Prayer is better than sleep, prayer is better than sleep”. You must not say this in a call other than the call for the Dawn Prayer. Then

you complete the call by saying, “Allah is the greatest, Allah is the greatest”. Then you say, “There is no god except Allah” once only.

9.02 Iqama

As for the *iqamah* or the call to prayer recited at the beginning of each prayer, the formulas are recited once only, not twice as in the *adhan*. It is as follows :

“Allah is the greatest, Allah is the greatest. I bear witness that there is no god but Allah, I bear witness that Muhammad is the Messenger of Allah, Come to prayer, come to success. Verily prayer has been set up. Allah is the greatest, Allah is the greatest. There is no god but Allah”.

CHAPTER 10

A Chapter describing the performance of obligatory and voluntary ritual prayers

10.01 For Each *Salat*, Especially *Subh*

What is meant by “*ihram*” in prayer is the pronouncement of the phrase “*Allahu Akbar*” which means “*Allah is the greatest*”. Nothing is acceptable other than these words. As you utter these words you raise your hands to the level of your shoulders or a little below that. Having done that, you then begin the recital. If the prayer you are saying happens to be the Dawn Prayer, you recite aloud the *Fatihah* (opening chapter of the Qur’an). You must not start the recital with the *basmalah*, that is, the invocation, “*In the name of God, the Beneficent, the Merciful*”, either before the *Fatihah* or before the Surah, that is, any other chapter which is recited after the *Fatihah*. Again when you come to the end of *Fatihah* and recite, “nor those who go astray”, you should say “*Amin*”. That shall be the case whether you are praying alone or behind an Imam (prayer leader). However, you should say the word “*Amin*” silently. But an Imam shall not say it in a prayer in which he recites aloud, though he should say it in a prayer he recites silently. There are conflicting views of jurists as to whether an Imam should say “*Amin*” in a prayer in which he recites aloud. Having finished the *Fatihah*, the worshipper then recites a Surah from the group known as “*ṭiwal al- mufassal*”, these being the surahs from al-Hujurat (49) to Abasa (80). But if the worshipper recites a longer surah that would be even better, depending on whether daybreak is near or far away. In the Dawn Prayer, you recite the Surah also aloud. On completion of the Surah, you then say, ‘*Allahu Akbar*’ as you bend down to do the “*rukū*”, i.e. the bending posture in which you place your hands on your knees and straighten your back. You do not raise your head up nor lower it. As you do that, you keep your upper arms away from your sides, and you resolve in your mind that you

have bowed and prostrated as a mark of submission to God. You must not address any request to God in your ruku, but if you like you may say “*Glory be to my Lord, the Great One, praise is due to Him.*” There is no limit to how many times you can say this or to how long you must remain in that posture. Then you raise your head while saying “*Allah heard him who praised Him*”, then you say, “*O Allah our Lord, praise is due to You*”. That is what you say if you are praying alone. An Imam does not say “*O Allah our Lord, praise is due to you*”, and those led in prayer by an Imam do not say, “*Allah heard him who praised Him*”, but do say, “*O Allah our Lord, praise is due to You*”.

Then the worshipper stands erect, calm and collected; then he goes down and prostrates. One must not sit before prostrating. You then prostrate saying, “*Allah is the Greatest*” as you go down.

You then place your forehead and your nose on the ground as well as your palms, which you spread towards the “*qiblah*” (the direction a worshipper faces when he performs ritual prayers) in line with your ears or below them. However, there are no hard and fast rules on that. Nevertheless, you must not spread your forearms on the ground nor must you gather your upper arms to your side. Rather you should keep them slightly away from you.

When you prostrate, your feet should stand up on the inner part of their toes. Then if you like you can say when you are prostrating, “*Glory be to you my Lord, I have oppressed my soul and have committed evil, so forgive me*”. You are free to say a prayer (*du'a*) and there is no limit as to the time you can take in doing that. But the shortest time you can take in a “*sujud*” (prostration) is enough time to allow your limbs and the whole of your body to settle and calm down in that posture.

Then you raise your head, saying as you do that, “*Allahu Akbar*”, then you sit up and when you sit up you bend your left foot in a horizontal position and your right foot in a vertical position with the inner part of the toes planted on the ground. Each time you sit up between the two prostrations, you assume that posture and you place your hands on your knees; then you make the second ‘sujud’ as you did the first one. Then you stand up supported by your hands. When you have finished the second ‘sujud’ you do not sit down in order to stand up. But as I have mentioned to you earlier, you say “*Allahu Akbar*” as

you rise up. Then you recite the *Fatihah* and a Surah. But the Surah you recite in the second *rak'ah* should be shorter than the Surah you recited in the first *rak'ah*. (Since this is a Dawn Prayer,) you should recite the Qunut after the ruku, but if you like you can recite it before the ruku, after reciting the *Fatihah* and the Surah.

10.02 The *Qunut*

The text of the Qunut (Submission of God) is as follows: “O God we seek your aid and we seek your forgiveness. We believe in You and we depend on You, we bow to You and obey you. We desert him who is ungrateful to You. O God we worship You and pray to You and prostrate ourselves to You. We exert ourselves in Your worship without delay. We hope for your mercy and fear your grave punishment. Surely your punishment shall overtake the infidels”.

10.03 The Final Sitting (*Julus*), *Tashahhud*, and ‘Assalamu Alaykum’

Having recited the Qunut thus, you then prostrate and sit as we have described. When you sit finally after the two *rak'ahs* of the Dawn prayer, you plant your right foot on the ground with the inner part of your toes on the ground, and you fold the left foot in. You sit on your left buttock and not on your left foot. If you like you can fold the right foot as well, by placing the side of the biggest toe on the ground; all this is permissible.

After having done all this, you then recite the tashahhud. This is the formula known as *Tahiyah*. It is as follows :

“Our worship is for the sake of Allah. Our good deeds are for the sake of Allah. The decent words we utter are for the sake of Allah. Allah shall protect you O Prophet, and is pleased with you. Besides, Allah should have mercy on you and shall bless you. Allah’s protection shall be upon us and upon His good servants. I bear witness that there is no god but Allah. He is alone and has no partner. I also bear witness that Muhammad is His servant and messenger”. If you utter the formula “as-Salamu alaikum”, at this juncture, that will be sufficient; the prayer is thus brought to an end.

If you like you can add the following words, “I bear witness that that which Muhammad brought is true and that paradise truly exists and that Hell truly exists and that the Day of Judgement shall truly come without doubt; and that Allah shall resurrect those who are in graves.

“O God bless Muhammad and bless Muhammad’s family; have mercy upon Muhammad and upon Muhammad’s family; give your benedictions to Muhammad and to Muhammad’s family; in the same manner as you gave benedictions, showed mercy and blessed Abraham and the family of Abraham from among the inhabitants of the world. You are praiseworthy and glorious. O God give your benediction to your angels and those close to you; give your benediction also to your Prophets and Messengers and to all those obedient to you. O God pardon me and my parents and pardon our leaders and those who preceded us in believing in You. Give them an immediate pardon.”

“O God I request from You every good thing of which Your Prophet Muhammad requested you. I also seek refuge in You from every evil thing which Muhammad Your Prophet sought refuge in You against. O God, forgive us our past sins and our future sins; forgive us the sins we committed secretly and those we committed openly. Forgive us also those sins which You know more about than we do.”

“O Lord give us advantage in this world and give us advantages in the next world; protect us from the punishment of hell. I seek refuge in You from the trial of life and the trial of death. I also take refuge in you from the trial of the grave; the trial of the Antichrist and from the punishment of the Fire, and an evil fate. Peace be upon you, O Prophet so also the mercy of God and his blessing. Peace be upon us and upon the good servants of Allah.”

Having said all that, then you say “*as-Salamu alaikum*”, once only to your right and once in front of you. The Imam himself does that, as does a man praying alone. Those who prayed behind an Imam say “*as-Salamu alaikum*” to their right. They say it towards the Imam, i.e. in front of them, and if some one on their left said “*as-Salamu alaikum*” to them, they respond by saying the same thing to such people on their left. But if nobody on their left pronounces the

‘Salaam’ toward them, they do not say “*as-Salamu alaikum*” to their left.

At the time a worshipper recites the tashahhud, that is, the *Tahiyah*, he places his hands on his thighs. He then folds the fingers of his right hand but leaves his index finger unfolded and pointing forward with its side pointing towards his face. There are differences of opinion about the interpretation of the state of the finger. Some believe that keeping the finger still signifies that Allah is one God. Those who shake it consider it a club with which to ward off the Satan. I consider that the interpretation of that is that it reminds the worshipper that he is in the state of prayer, and that moving the finger shall prevent him from forgetting himself. The worshipper then places his left hand on his left thigh with the palm downwards; he must not move it nor point with it.

10.04 Supererogatory Prayer And Salat

It is desirable that a worshipper shall say “Glory be to Allah” thirty-three times, “Praise be to Allah” thirty-three times and “Allah is the Greatest” thirty-three times. He then completes one hundred by saying “There is no god but Allah, He is alone and has no partner. All authority belongs to Him and all praise is due to Him; He has power over all things.

It is also desirable in the case of Dawn Prayer for the worshipper to continue after finishing prayer to mention Allah’s name, to ask for Allah’s forgiveness, to glorify Allah and to pray to Allah, until the sun rises, or at least until it is about to rise. However these additional rituals are not compulsory.

At dawn a worshipper does two *rak’abs* before performing the Dawn Prayer. These two *rak’abs* are known as the “*Rak’atayn al-Fajr*” i.e. two *rak’abs* of daybreak. In such *rak’abs* of the *Rak’atayn al-Fajr*, a worshipper recites the *Fatihah* silently.

10.05 Zuhr

The Chapter of the Qur'an a worshipper recites during the noon prayer should be like those he recites at the Dawn Prayer in length or a little shorter. All the reciting in the Noon Prayer is done silently. In the first two *rak'abs* he recites the *Fatihah* and another surah. All the recitation must be silent. In the third and fourth *rak'abs* he recites the *Fatihah* only. Here also he recites silently. In his sitting after the first two *rak'abs* he recites the *Tabiyyah* up to the words, "I bear witness that Muhammad is His servant and Messenger". Then he rises up without saying "*Allahu Akbar*" until he is erect. This is what an Imam does. It is also what a man praying on his own will do. But people praying behind an Imam shall remain seated until the Imam says "*Allahu Akbar*", then they shall rise and when they are erect they say "*Allahu Akbar*". In the rest of the prayer a worshipper does exactly what has been explained in connection with the *ruku* (bowing), *sujud* (prostration), and *julus* (sitting) in the Dawn Prayer.

After the Noon Prayer a worshipper should perform supererogatory *rak'abs*. For the Noon Prayer four *rak'abs* are recommended, after each two of which he shall bring the prayer to a close by saying "*as-Salamu alaikum*".

10.06 Asr

Such four *rak'abs* are also recommended before the afternoon prayer performed around four o'clock. The worshipper does as we have described in the Noon Prayer except that in the Afternoon Prayer he recites short chapters of Qur'an in the first two *rak'abs*, such as *ad-Duha* (93) and *al-Qadr* (97), and the like.

10.07 Maghrib

In the case of the Dusk Prayer (*Maghrib*) he recites aloud in the first two *rak'abs* the *Fatihah* and a short surah. In the third and final *rak'ab* he recites silently the *Fatihah* only. Then he recites the *Tabiyyah* and finishes the Prayer with "*as-Salamu alaikum*".

It is recommended that he should perform two supererogatory *rak'abs* after the obligatory *rak'abs*. If he performs more than two

rak'abs that is even better. Six supererogatory *rak'abs* after the supererogatory *rak'abs* between the Dusk and After-dusk Prayer (Isha) is highly desirable. Anything else in respect of the Dusk Prayer is the same as in other prayers.

10.08 Isha

The After-dusk Prayer is also known as 'Atamah'. But Isha is its special name. In the first two *rak'abs* of the Isha prayer, the *Fatihah* and a Surah a little longer than the Surahs recited in the afternoon prayer are recited aloud. In the last two *rak'abs* only the *Fatihah* is recited in each *rak'ab*, and that is done silently. In the rest of the activities in the prayer, the worshipper does as described in the case of other prayers. Sleep before the Isha prayer is disliked, so is needless conversation after it.

10.09 Volume of Recitation and Rules for Women

On all occasions where silent recitation is required, the worshipper is supposed to move his tongue; but where recitation aloud is required, it should be loud enough for him to hear what he is saying and for those close to him to hear, even if he is alone.

In the case of a woman she is not expected to recite as loud as a man does. As regards the form a prayer takes, a woman does the same as a man except that she brings her legs closer together and she does not open them wide apart, nor does she open her arms. She brings close together the whole of her body when she sits and when she prostrates. She should be composed.

10.10 Supererogatory Salat in The Night

The worshipper shall then say the *Shaf* and *Witr* prayers, which are two *rak'abs* and a single *rak'ab* respectively. He recites aloud in both cases. (Likewise it is preferred for the worshipper to recite aloud in his night supererogatory prayers but silently in his day supererogatory prayers, though if he recites aloud in day supererogatory prayers there is no harm.) The least number of *rak'abs* for the *shaf* is two *rak'abs*. It is recommended that the worshipper recites the *Fatihah* and *Sabbih*

isma rabbika (surah 87) in the first *rak'ah* of the shaf, and in the second *rak'ah* he recites the *Fatihah* and *Qul ya ayyuha l-kafirun* (surah 109). After this he shall recite the tashahhud and conclude the shaf by pronouncing the formula "*as-Salamu alaikum*". Then he says the witr prayer which consists of a single *rak'ah* in which he recites the *Fatihah* followed by *Qul humwallahu ahad*, *Qul a'udhu bi rabbi l-falaq* and *Qul a'udhu bi rabbi n-nas* (surahs 112, 113 and 114).

If the worshipper chooses to say more than two *rak'ahs* for the shaf, the witr is still placed at the end.

The Prophet, peace and blessing of Allah be upon him, used to perform twelve *rak'ahs* as shaf, then he performed a single *rak'ah* as witr. According to the another view the *rak'ahs* he performed as shaf were ten. then he performed a single *rak'ah* as witr. The best part of the night for the purpose of saying supererogatory prayer is its latter part.

It is thus virtuous for person to delay his supererogatory prayer until the end of the night. In the case of the person who on most occasions does not wake up in the night, he should perform his witr and other supererogatory prayers in the early part of the night. Then if he likes when he wakes up he says his supererogatory prayer towards the end of the night. He shall then perform any number of *rak'ahs* he likes in pairs. But he will not repeat the witr.

If a man is overpowered by sleep and could not perform his night worship (of supererogatory nature) he could still perform that between dawn and sunrise. He will then perform the witr and the Morning Prayer. But after having performed the Morning Prayer, a worshipper is relieved of the duty to perform the Witr.

10.11 On Entering a Mosque

When a person who is purified comes into a mosque, it is desirable that he perform two *rak'ahs*. He shall not sit until he performs them, as long as it is permissible to say prayers at the time of the entry. If a person comes into a mosque without having performed the two supererogatory *rak'ahs* which precede the morning prayer, i.e. *Rak'ata*

l-fajr, there are two conflicting views. Some say he shall still perform two *rak'ahs*, other say does not have to perform them.

After Dawn, there shall be no supererogatory prayers until the rising of the sun, except *Rak'ata l-fajr*.

CHAPTER 11

Chapter on Imamship

11.01 The Office of Imam

This chapter discusses the rules governing leading and following in performing prayers. The most virtuous and the most learned shall lead people in prayer. A woman shall not lead in prayer, whether the prayer is obligatory or supererogatory. She must not lead either men or women. Those who are led in prayer (the “*ma’mums*”) shall recite the *Fatihah* and Surah along with the Imam when he recites silently. They must not recite with him when he recites aloud.

11.02 Late-Comers Making up Missed Salat

Anyone who has performed a single *rak’ah* or more with the Imam is considered to have acquired the merit of praying in congregation. Such a person shall then complete his prayer by performing the portion of the prayer he missed in the order and manner the Imam performed the prayer. But as for his movements (such as standing and sitting etc.), in the prayer, he uses the sequence prescribed for the worshipper who has put right the prayer he had performed wrongly.

11.03 Repeating Privately Done Salat in Community

A person who performs a given prayer alone may, if he likes, repeat the prayer in a congregation, in consideration of the merit that exists in doing so. But this rule does not apply in the case of the Dusk Prayer (*maghrib*). Also the person who performed one *rak’ah* or more in one congregation, shall not repeat the prayer in another congregation.

11.04 Position Behind an Imam

When one man prays with an Imam, such a man shall stand on the right of the Imam. But two or more people stand behind the Imam. If, however, there is a lady amongst the congregation, she shall stand behind the men. If a man prays with his wife, she shall stand behind him. If a child and one man pray with an Imam, the man and child shall pray behind the Imam; that shall be the case if the child is sensible enough not to go away and leave the man.

11.05 An Imam's Single Salat in Community

If a regular Imam says prayers in his mosque, that shall be equivalent of a congregational prayer, and it is reprehensible for a single prayer to be performed twice congregationally in a mosque which has such an Imam. When a person has performed a prayer of any given time whether alone or as an Imam or as a follower i.e. *ma'mum*, he must not lead anyone in that same prayer.

11.06 How to Follow an Imam

Further, when an Imam makes a mistake in his prayer and then prostrates to put right the prayer, those being led in the prayer shall prostrate along with the Imam, even though they had not forgotten anything. Moreover, when worshippers prostrate none should raise up his head before the Imam; in fact, none should do anything before the Imam does it.

The people being led in prayer shall commence their prayers after the Imam has done so. After the tashahhud in the second *rak'ah* those following the Imam in the prayer shall only rise up after the Imam has done so. Similarly the *ma'mum* shall only pronounce "as-salamu alaikum" at the end of the prayer, when the Imam has done so. As for other acts of worship it is permissible to perform them at the same time as the Imam. But even then it is preferable to perform them after him. If a *ma'mum* forgets anything, he shall not have to make any amends by virtue of the Imam, unless this reaches the proportion of a whole *rak'ah* or prostration or the pronouncement of "*Allahu Akbar*" at the beginning of the prayer, or the saying of "*as-*

Salamu alaikum’ to bring the prayer to a close, or the omission of the resolve to perform an obligatory prayer. However as soon as the Imam says, “*as-Salamu alaikum*” to bring the prayer to a close the ma’mum shall do likewise.

The Imam shall go away after the prayer unless he happens to be where he normally sits. Staying there after prayer is permissible.

CHAPTER 12

A Chapter on various aspects of prayers

12.01 Clothing

The minimum dress which is sufficient for a lady to say prayer in is a thick chemise which covers down to the back of her feet; that is a gown and a thick veil. As for a man it is sufficient for him to pray in a single cloth. He must not cover his nose or face in prayer. Nor must he gather his clothes about him or hold back his hair.

12.02 Prostration For a Mistake and Repairing it

Each forgetfulness in prayer which leads to an increment in the items of worship can be rectified by performing two prostrations after bringing the prayer to a close. After performing these two prostrations one recites the tashahhud before saying a second *as-Salamu alaikum* to bring the prayer to a close.

Similarly, each forgetfulness in the prayer which leads to a decrease in the items of worship can be rectified by performing two prostrations before saying *as-Salamu alaikum* to bring the prayer to a close. A fresh tashahhud is performed after the prostrations and then the prayer is brought to a close by saying *as-Salamu alaikum* as usual.

These prostrations in both cases are performed after the tashahhud in the usual manner. Some say a fresh tashahhud is performed after them, others say that is not necessary.

If anyone due to forgetfulness performs acts of worship in his prayer which at the same time amount to an increase and a decrease, he can rectify such a prayer by performing two prostrations before pronouncing the salaam.

If a worshipper forgets to perform the rectifying prostrations after the salaam, he may perform them whenever he remembers, even if this is after a long time. But if a worshipper forgets to perform the rectifying prostrations supposed to be performed before the salaam he should perform them if he remembers soon afterwards. Otherwise he should repeat the whole prayer altogether, except of course if what he omitted was something slight, such as surah (a chapter of the Qur'an other than the *Fatihah*) or the pronouncement of *Allahu Akbar* twice or the recital of two *tashahhuds*, or some other item similar to those. In all these instances he is not required to do anything.

The usual prostrations due to forgetfulness (*sujud as-sahw*), shall not suffice when a whole *rak'ah* or prostration is omitted or for the complete omission of recitation from the Qur'an in the whole prayer or in two *rak'ahs*. Similarly, a *sujud as-sahw* shall not suffice for the omission of recital from the Qur'an in one *rak'ah* in the morning prayer.

There are differences of opinion as to whether the omission of the recital in a single *rak'ah* in a prayer other than Morning prayer can render a prayer void.

According to some jurists, in such a case it will suffice to perform two prostrations before pronouncing the salaam. Others say the worshipper shall discard such a *rak'ah* and perform a fresh one. According to yet others he should perform two prostrations before pronouncing the salaam and perform no *rak'ah*. However, as a matter of precaution if he repeats the whole prayer this is considered better, God willing.

If a worshipper forgets to pronounce a single statement of *Allahu Akbar*, or the statement of *Sami'allahu li-man hamidah*, (Allah has heard him who praised him), once only, or the recital of the Qunut (lit. obedience to God), in all these instances he shall perform no prostrations to rectify the prayer.

If a worshipper goes away after performing a prayer then remembers that he omitted to perform certain acts of worship, he should perform them if he remembers early enough.

The way to do this is to pronounce the words *Allahu Akbar*. He should then perform what remains to be performed. But if a worshipper remembers a major omission after a lapse of time or after having gone out of the mosque, he should repeat the whole prayer. Similarly the worshipper who forgets to perform the salaam and does not know how many *rak'abs* he performed, whether they were three or four, should assume that he performed the lesser number of *rak'abs* and then complete the prayer and prostrate after salaam.

If a worshipper forgets and talks in the midst of his prayer, he shall prostrate after the salaam.

If a worshipper is not sure whether he has pronounced the salaam or not, he should pronounce it, and he does not have to prostrate to rectify the prayer. Anyone who is accustomed to forgetfulness should try to do away with that, but should do nothing to rectify his prayers except that he should always prostrate after the salaam.

The type of person meant here is the one who forgets and doubts a lot whether he had done more or less than required in his prayer and is never sure. Such a person should always prostrate after the salaam. However, when he is sure of having forgotten anything let him prostrate and rectify his prayer. If he does far too much, he should learn to rectify his prayer and does not have to prostrate for any of his acts of forgetfulness.

If a worshipper in prayer tries to stand up before performing the tashahhud in the second *rak'ab*, let him go back and sit, as long as his hands and knees have not parted with the earth. But if his hands and knees have parted with the ground let him go ahead and stand erect; he must not go back and sit down. To rectify his prayer he should perform two prostrations before he pronounces the salaam.

12.03 Making up Missed Salat

If a person remembers a prayer he omitted, he shall perform it the moment he remembers it, in the order it eluded him. Then he repeats the prayers he performed after it, if time permits.

If a person omitted many prayers, he shall perform them at any time of the night and day; he is free to perform part of them even when the sun rises and when it sets. He is free to continue to pay them back in any manner he finds possible. If, however, a person omitted prayers less than the number performed in a day and a night, he must begin by performing them, even when it is time for a new prayer, and even if that will cause the time for the new prayer to pass.

If a man owes many prayers, he begins with the prayer the time for which he fears may elapse.

For anyone who remembers that he did not perform a previous prayer, while performing another prayer, the prayer he is performing automatically becomes void.

Anyone who laughs while praying must repeat that prayer but shall not have to perform a fresh ablution (*wudu*).

But if the person who laughs happens to be behind an Imam he must continue to follow the Imam until the prayer is over, and then he repeats it. There is no offence in smiling in a prayer.

Blowing during a prayer is as reprehensible as talking; anyone who does that deliberately renders his prayer void.

If a worshipper mistakenly fails to face the correct direction for Mecca while performing a prayer he must repeat the prayer if he discovers the right direction before the time of that prayer has elapsed. Other worshippers who must repeat their prayers before the time of the prayer has elapsed are those who prayed in a filthy dress or in a filthy place or those who performed ablution with water suspected of being filthy.

Those who performed ablution with water whose colour or taste or smell has changed must repeat such prayers of necessity; they must also perform fresh ablution.

12.04 Joining Salats

A special dispensation is given to worshippers to perform the Maghrib and the Isha prayers together on a rainy night; so also on a night when there is much mud and darkness.

The procedure for this is for the *adhan* (call to prayer) for maghrib to be called at the beginning of its time, outside the mosque. Then a little time is allowed to pass, according the Malik, founder of the Maliki School of Law. Then the Maghrib prayer is performed inside the mosque. Afterwards the *adhan* for Isha is called within the mosque. It is then performed. People will then go away while there is still some light in the west and before the disappearance of the redness in the west.

Performance of the Zuhr and Asr prayers together is also an obligatory tradition of the Prophet. These are performed a little after noon. And for each one of the two prayers there shall be an *adhan* and an *iqamah*. This is done at Arafat during pilgrimage.

Similarly, the Maghrib and the Isha are performed together at Muzdalifah when the pilgrims arrive there.

This dispensation is extended to a traveller who is travelling under hard conditions. He is permitted two prayers together, such as Zuhr and Asr. In such a case he performs the two prayers at the end of the period for Zuhr and the beginning of the period for Asr. The traveller does the same with the Maghrib and the Isha.

If a traveller starts the journey at the beginning of the time of one prayer, he is permitted to perform the next prayer as well at that time. For instance if he starts at the time of Zuhr (Noon prayer) he is permitted to perform the Asr (Afternoon prayer) as well.

Such performance of two prayers at one time is permitted to a sick man also if he fears that he might become unconscious at noon, and at dusk. If such joining of two prayers at one time is less painful for the ailment in his stomach or some other disease, he is permitted to pray Zuhr and Asr at the middle of the time for Zuhr, and to perform Maghrib and Isha when the redness on the east disappears at dusk.

12.05 Salat Missed Because of an Impediment

If a man becomes unconscious for some time, it shall not be obligatory for him to make amends for prayers he missed in that state, but he shall make amends for prayers he missed after recovering if the time left is enough for him to perform one *rak'ah* or more after the recovery.

If a menstruating woman regains purity around dusk, and if the time left before dusk can allow her to perform five *rak'ahs*, she has to pay back the Zuhr and the Asr for that day. If on the other hand, she gained purity around dawn and the time left in the night is enough to allow her to perform four *rak'ahs*, she has to repay the previous Maghrib and Isha prayers. If, however, the time left in the night or day is less than that she has to perform only the Isha prayer.

If she ceased menstruation for a period long enough to perform four *rak'ahs* or less and which happened to be part of the day time, or for a period long enough to perform one or three *rak'ahs* of the night time, she shall repay the first prayer only.

There are differences of opinion in a case where one menstruated for a period long enough to perform four *rak'ahs* during the night, she would therefore have to repay two prayers. Others say in such a case she does not have to repay them, i.e. the Maghrib and the Isha.

12.06 Defects In *Wudu*

If a man is sure of having performed an ablution but doubts having passed stool or doing anything which spoils ablution, he must perform a fresh ablution.

If a man remembers having omitted any item in his ablution which is obligatory, he must perform that action and perform such items as come after it, normally, in the course of ablution. That is what he should do if he remembers it early enough. Otherwise he performs that item only. If however, he omitted an item which is obligatory deliberately he must repeat the ablution, even if it is after a long time.

But if he had already performed prayers on ablutions having such defects he must repeat his prayer, of necessity, as well as the ablution. If he remembers forgetting such items of ablution as rinsing the mouth and sniffing water or rubbing the ears with wet fingers, he must do all those things if he remembers them early enough, but does not have to repeat those other items which come after them in the order of ablution performance.

If, however, he remembers omitting such items after a long time, he should perform them then to be able to perform future prayers with that ablution; but he shall not have to repeat performance of prayers he said before making such amends.

It is permissible for a worshipper to perform a prayer on a portion of a mat which is clean, while the other portion of the mat is filthy.

There is no harm for a sick man who is on a filthy bed to have a thick clean cloth spread on the bed to say his prayers on.

12.07 Salat Done by the Sick

When a sick man can stand up, he performs his prayers standing up, otherwise he may pray sitting down cross-legged. Otherwise he performs his prayers as best he can. If he cannot prostrate himself, he should make a motion signifying the bending (*ruku*) and another motion signifying the prostration (*sujud*). For the *sujud* he should bend lower than for the *ruku*. If a sick man cannot do that he should pray by signs on his right side. If unable to pray unless on his back he may do that. A sick man must not delay saying his prayers as long as he is in his senses. Moreover he should pray according to his ability.

When the sick man cannot touch water on account of some wound on him, or because he could not find anyone to bring it close to him, he is permitted to perform *tayammum*, that is, rubbing sand or stone and then rubbing the face, the hands and the arms. If a sick man cannot find anyone to bring him some dust, he is permitted to perform *tayammum* by rubbing his hands, against the wall and then rubbing the parts of the body supposed to be rubbed in a *tayammum*.

But that shall not be so if the wall is covered by whitewash or lime; he can not perform *tayammum* on those.

12.08 Salat on a Beast

When the time for a prayer is due while the worshipper is travelling in a muddy area and he cannot find a place fit to perform prayers on, the traveller is permitted to dismount from his beast and perform the prayer in a standing posture. He should make motions signifying *sujud* and *ruku*, the motion for *sujud* being lower than the motion for *ruku*. If however he cannot dismount, let him pray on his beast facing the *qiblah* (the direction of Ka'bah in Mecca).

It is permissible for a traveller to perform supererogatory prayers while riding on his beast no matter what direction it faces with him. But that can only take place on journeys in which it is permissible to shorten prayers, that is, a journey up to 48 miles long. The traveller can even perform the *witr* with a single *rak'ab* if he likes.

A worshipper cannot perform an obligatory prayer while riding on his beast, even if he is sick, except when even if he comes down he will have to pray in a sitting posture, making signs to indicate various motions in the prayer. In such a case he is permitted to pray on his beast. Even then he must have it stopped and get it to face the *qiblah*.

12.09 Impediments of Nosebleed and Minor Defilement

If a worshipper has a nosebleed while being led in a prayer by an Imam (prayer leader), he must go out and wash the blood. Then he will perform the remaining *rak'abs* he missed, as long as he has not talked or walked over some filth. In performing the *rak'abs* he missed he must not exclude a *rak'ab* which he has not completed with both its prostrations. Such a *rak'ab* he casts away and repeats.

A worshipper must not go away on account of a slight bleeding. That he should stop with the fingers except when it pours out or drips.

In the case of vomiting, the worshipper cannot complete his prayer by performing the *rak'ah* he missed. Nor is this also permissible for a person whose ablution has been rendered void.

If a worshipper has a nosebleed when his Imam has pronounced the formula *as-Salamu alaikum*, bringing the prayer to a close, he also shall pronounce the formula and go away.

If, however, the worshipper has the nosebleed before the Imam pronounces *as-Salamu alaikum*, he should go and wash away the blood. Then he comes back, sits and pronounces the formula. The man who has a nosebleed during his prayer is permitted to complete the remaining *rak'ahs* he missed in his own home, if he despairs of the possibility of completing the remainder of the prayer with the Imam, in the case of the congregational prayer he missed in the congregational mosque.

A worshipper should wash away a small amount of blood on his clothes, but does not have to repeat the prayer he performed with blood on his clothes. But if the blood is much he must repeat his prayer. Apart from blood, the paucity or abundance of any filth equally invalidates prayer. It is not incumbent upon a worshipper to wash away the blood of bedbugs except when it becomes abominable.

CHAPTER 13

A chapter upon prostrations One Performs as one recites the Qur'an

13.01 Verses Where Prostration is Made

Prostrations one performs as one recites the Qur'an are eleven in number; these are the ones at which a Muslim is commanded to prostrate when a reciter reaches them. There are none of these prostrations in the shorter surahs towards the end of the Qur'an.

1. The first prostration is in Alif-Lam-Mim-Sad, that is, surat al-A'raf, where God Most High said, *"They glorify Him, and to Him do they prostrate"* (7:206). That is the end of the chapter. If a man happens to be praying and recites this verse, he prostrates, then he stands up and recites from surat al-Anfal or some other surah as best he can, then he makes the ruku and the sujud.
2. The second prostration is in surat ar-Ra'd where God Most High said, *"So do their shadows in the morning and evening"* (13:15).
3. The third prostration is in surat an-Nahl where God Most High said, *"They fear their Lord above them and do what they are commanded"* (16:50).
4. The fourth prostration is in surat Bani Isra'il where God Most High said, *"They fall down on their chins weeping and this increases their fear of God"* (17:109).
5. The fifth prostration is in surat Maryam where God Most High said, *"When the verses of the Merciful are recited to them they fall down prostrate and weep"* (19:58).

6. The sixth prostration is in surat al-Hajj at the beginning of the surah where God Most High said, *“Whoever Allah debased shall have none to honour him. Verily, Allah does what he likes”* (22:18).
7. The seventh prostration is in surat al-Furqan where God Most High said, *“Do we prostrate to that which thou commanded us. This increases their hatred”* (25:60).
8. The eighth prostration is in surat al-Hudhud where God, Most High said, *“Allah besides whom there is no other deity, Lord of the mighty throne”* (27:26).
9. The ninth prostration is in surat as-Sajdah where God, Most High said, *“They glorify the praise of their Lord and they are not arrogant”* (32:15).
10. The tenth prostration is in surat Sad where God Most High said, *“He asked forgiveness of his Lord and fell down bowing and turned to his Lord in repentance”* (38:24). But according to another view the place to prostrate is where God Most High said, *“And indeed he shall be near to us, and shall have a beautiful place to return to”* (38:40).
11. The eleventh prostration is in surat Ha-Mim where God Most High said, *“And prostrate yourselves to Allah who created them both, if it is Him you serve”* (41:37).

13.02 How the Prostration is Done

A man shall not prostrate at any of these places enumerated when he recites the Qur’an except when he has ablution. Before he prostrates he says *“Allahu Akbar”*, but shall not say the formula *as-Salamu alaikum*. It is not necessary for the person who prostrates to say *“Allahu Akbar”* as he rises up from the prostration. But if he does say that is preferred to us (jurists).

13.03 When To Do or Omit the Prostration

The worshipper who recites one of these verses in an obligatory or supererogatory prayer shall prostrate accordingly.

Similarly, one who recites them after the Dawn prayer shall perform the prostration as long as light has not filled the horizon. Likewise one who recites them in the late afternoon shall perform the prostration as long as the sun has not turned yellow.

CHAPTER 14

A chapter on Prayer of Travelling

14.01 Travel Which Requires Shortening Salat

Whoever travels a distance of four *burud*, that is, a distance of forty-eight miles, must shorten his prayers. For each prayer he shall perform only two *rak'abs* except the maghrib prayer. The maghrib prayer must not be shortened. The traveller does not begin to shorten prayers until after having passed the houses of his town in such a way that the houses are all behind him and there are none in front of him or by his sides.

The traveller shall not resume completing his prayers until he comes back to the place at which he started to shorten them, or at least come close to them by less than one mile.

If a traveller intends to stay for four days in one place or a period long enough to perform twenty prescribed prayers, he must begin to complete his prayers until he goes away from that place.

14.02 Leaving and Arriving Towards the End of the Daruri Time of Zuhr and Asr

If a man started a journey without performing the noon and afternoon prayers (Zuhr and Asr) while there still remained of the day a period long enough to perform three *rak'abs*, such a traveller shall perform the Zuhr and Asr in a shortened form as allowed to travellers. But if there remained of the day a time long enough to perform two *rak'abs* only or a single *rak'ab*, he should perform the Zuhr with its normal *rak'abs* as he would do if he was staying at home. The Asr he shall pray in a shortened form.

But if the traveller returned from his journey while there remained of the day a period long enough to perform five *rak'abs*, while he forgot to perform the Zuhr and Asr, he must complete each one of them. But if the period left of the day is long enough to perform four *rak'abs* or less, down to a single *rak'ab*, he shall in such a case perform the Zuhr prayer in a shortened form and the Asr he shall perform normally as if he were staying at home.

14.03 Leaving and Arriving Towards the End of the Daruri Time of The Maghrib and Isha

If however a traveller returned home at night, and the time remaining before daybreak was long enough to perform a single *rak'ab* or more, while such a traveller did not perform the maghrib and the Isha prayer, such a traveller shall perform the maghrib prayer three *rak'abs* and perform the Isha prayer as if he was staying at home, that is he shall complete it.

If he started off on a journey while there remained a period of the night long enough to perform one *rak'ab* or more - in such a case he shall perform the Maghrib prayer while he performs the Isha prayer in a shortened form.

CHAPTER 15

A Chapter on Friday congregational Prayer

It is obligatory to proceed to the congregational prayer on Friday when the Imam has sat on the pulpit and the *mu'adhdhins* start the call to prayer.

The old tradition is for the *mu'adhdhins* to climb on the minaret when the Imam sat on the pulpit; they would then call to the prayer.

When the *mu'adhdhins* call to the prayer while the Imam has mounted the pulpit, it is prohibited to carry on trading or to do anything else which prevents a Muslim from attending the prayer. Now, this second call to prayer was innovated by the members of the Banu Umayyah.

Friday congregation is obligatory in a big city and in large settlements. It is necessary to deliver a sermon in such a congregation before the prayer. The Imam leans upon a bow or a stick and sits at the beginning of the sermon and in the middle of it. Prayer is then started when it is over.

The Imam prays with the people two *rak'abs* in which he recites aloud. In the first *rak'ah* he recites after the *Fatihah* surat al-Jumu'ah (62) or some such surah. In the second *rak'ah* he recites after the *Fatihah* surat al-Ghashiyah (88) or some such surah.

It is obligatory for those living in a city to proceed to it and for those living within a radius of three miles of the city. Congregational Friday prayer is not obligatory upon a traveller nor upon a traveller who comes to Mina during the pilgrimage season to stone the Satan.

Nor is Friday congregational prayer obligatory upon a slave, nor upon a woman or a child. But if a slave or a woman attends it, let

them perform it and let women pray behind the rows of men. A young woman must not attend it.

The audience shall listen to the Imam when he delivers his sermon, and they should face him. It is obligatory to perform the major ablution (*ghusl*) for those intending to attend the congregational prayer. However some jurists point out that it is only a strong *sunnah*. It is meritorious to proceed to it early, though not in the earliest part of the day. It is also good for a worshipper proceeding to the congregational prayer to put on some perfume and wear his best clothes.

What is preferable to us jurists of the Maliki madhhab is that a worshipper should go away immediately after the prayer and should not perform supererogatory prayers in the mosque. But if a worshipper likes he is free to perform supererogatory prayers before the congregational prayer. However, an Imam should not do even that; he should mount the pulpit immediately he enters the mosque.

CHAPTER 16

A Chapter on the prayer of Fear

The prayer of fear is normally performed on a journey when a party of travellers fears enemies. This is the form it takes. The Imam should come forward with a party of his people, and leave a second party to confront the enemy.

The Imam should then pray a single *rak'ab* with the first party. He then remains standing. The first party shall then complete the second *rak'ab* and pronounce the formula *as-Salamu alaikum* to bring their prayer to a close.

The first party should then go and confront the enemy. The second party should then come behind the Imam and make ready to enter into prayer. The Imam should then perform the second *rak'ab* with them. He then performs the tashahhud and brings his prayer to a close. Then this second party should perform the *rak'ab* they missed and then go away. That is how they should perform all the obligatory prayers except the maghrib.

In the case of the maghrib prayer, he should perform with the first party two *rak'abs* and with the second party one *rak'ab*.

If an Imam leads people staying at home in such a prayer due to extreme fear, he shall perform with each group two *rak'abs* for the prayers of Zuhr, Asr and Isha. For each prayer there should be an *adhan* and an *iqamah*.

But if the fear is too intense, they shall pray individually according to their ability whether on foot or mounted, whether walking or running away; and whether they face the *qiblah* or not.

CHAPTER 17

A Chapter on the Prayer of the two Id Festivals and the Pronouncement of Allahu Akbar on the Days when Pilgrims are in Mina

17.01 How to Do the Salat

The prayer of the two Id Festivals is an obligatory *sunnah*. The Imam and the rest of the people come out for it during the forenoon.

They should go out such a time that by the time they arrive at the praying ground the time is ripe for it. For the Id prayer there should be no *adhan* (call to prayer) nor should there be an *iqamah* similar to the *adhan*.

The Imam should pray with the people two *rak'abs*. When reciting he should recite aloud. In the first *rak'ab* he should recite the *Fatihah* and surat al-A'la (87) or surat as-Shams (91) or other such surahs. In the first *rak'ab* he should start by saying *Allahu Akbar* seven times before reciting, and in counting these seven pronouncements of *Allahu Akbar* he should include the *Allahu Akbar* which brings him into the state of ritual consecration. In the second *rak'ab* he should pronounce *Allahu Akbar* five times without counting the *Allahu Akbar* he says on assuming the standing posture. In each *rak'ab* there should be two prostrations. Then he recites the tashahhud or the *Tahiyah* and then says *as-Salamu alaikum* bringing the prayer to a close.

Then the Imam should mount the pulpit and deliver a sermon. He sits at the beginning of the sermon and at the middle of it. Then he goes away, after concluding.

It is meritorious for the Imam to return home from the prayer ground by following a different way from the one he followed when going to the prayer ground. This rule applies to the other worshippers as well.

17.02 On Id Al-Adha

On the occasion of the festival of Sacrifice (Id al-Adha) the Imam goes out with the animal he intends to sacrifice, to the praying ground, where he slaughters it so that other worshippers might know and do the same after him.

17.03 Dhikr on Way to Salat Grounds

On coming out of their homes on their way to the prayer ground, on the occasion of both the Festival of Breaking the Ramadan Fast and the Festival of Sacrifice i.e. Id al-Fitr and Id al-Adha, worshippers should go on mentioning Allah aloud; both the Imam and other worshippers should do that. But when the Imam arrives at the praying ground to lead the prayer, they should stop.

When it comes to the sermon, worshippers should repeat *Allahu Akbar* after the Imam whenever he says it, but apart from that they shall keep quite and listen to him.

17.04 Saying ‘*Allahu Akbar*’ on the Days of Mina

On the occasion of Days of Sacrifice, i.e. which last up to the dawn of the fourth day from the day of sacrifice itself, worshippers must say *Allahu Akbar* after each prayer up to the Dawn prayer of the fourth day. This is the last day pilgrims spend in Mina. They should say *Allahu Akbar* after the dawn prayer of the fourth day and then they stop.

The takbir or *Allahu Akbar* said after prayers takes this form, “*Allahu Akbar, Allahu Akbar, Allahu Akbar*”. It is good for worshippers to include some *tablil* and *tambid* along with takbir. (*Tablil* is the saying

of “*La ilaha illallah*”, that is, there no deity other than Allah. And, *tambid* is the saying of “*Al-hamdu lillah*”, that is, praise be to Allah.)

So if a worshipper likes he can say, “*Allahu Akbar, Allahu Akbar. La ilaha illallah. Wallahu Akbar, Allahu Akbar, wa lillahi l-hamd*”. The meaning of the whole of this is, “Allah is the greatest, Allah is the greatest. There is no deity but Allah. Allah is greatest, Allah is greatest. Praise be to Allah”.

It has been narrated from Malik that both the first and the second formulae are acceptable.

The days known as the Days of slaughter are three, and the days counted as the days of Mina are three days after the first Day of slaughter.

17.05 Preparing for the Salat

It is good to perform the major ritual purification (*ghusl*), on the occasion of the two Festivals. But this is not obligatory. It is also meritorious to put on some perfume and fine clothes.

CHAPTER 18

A Chapter on the Prayer on the occasion of an Eclipse

18.01 On an Eclipse of The Sun

A prayer during an eclipse is an obligatory *sunnah*. *Sunnah* means a tradition of the Prophet ﷺ. When the sun is eclipsed the Imam should come to the mosque and start a prayer leading other worshippers, without an *adhan* (call to prayer) and without an *iqamah*.

The Imam then recites a lengthy passage from the Qur'an silently. He shall recite a long chapter like the chapter of the Cow (surat al-Baqarah (2)). Then he shall make the *ruku* (bowing down) and should remain for a long while in that posture - for as long as it took him to recite surat al-Baqarah. He should then raise up his head and stand erect saying, "*God heard him who praised Him*" as he does so.

After standing up he should recite another passage from the Qur'an shorter than the passage he recited at first. He should then make another *ruku* and should remain in that posture for as long as it took him to recite the second passage. He then raises his head and stands erect saying, as he does so, "*Allah has heard him who praised Him*". Then he makes two complete prostrations.

Then he stands up and recites a passage of the Qur'an shorter than the passage he recited last. He then makes a *ruku* and remains bending for as long as it took him to recite the third passage. Then he stands up as we have mentioned earlier. He then recites a fourth passage shorter than the third. He then makes a *ruku* and remains in that posture for as long as it took him to recite the fourth passage. Then he prostrates in the manner we mentioned earlier. He then recites the tashahhud and brings the prayer to a close by saying *as-Salamu alaikum* (Peace be upon you).

It is permitted to a Muslim to perform such a prayer in his own house in the manner described if he so wishes.

18.02 On an Eclipse of the Moon

However in the event of an eclipse of the moon there shall be no congregational prayer. On such an occasion Muslims shall pray individually. At such a prayer Qur'anic passages shall be recited aloud, like other supererogatory prayers of the night.

18.03 Preaching After the Salat on An Eclipse of The Sun

It has not been regulated that there should be a sermon after the prayer offered on the occasion of an eclipse of the sun. But there is no harm for the Imam to admonish the worshippers and remind them about their duty to God.

CHAPTER 19

A Chapter on the Prayers offered on the Occasion of a drought

The prayer for rain is a *sunnah* i.e. part of the tradition of the Prophet ﷺ which is offered. The Imam and other worshippers come out to perform it just as they come out of the town on the occasion of the two feasts Id al-Fitr and Id al-Adha. The Imam comes out during the forenoon and prays two *rak'ahs* with the people. In both these *rak'ahs* he is required to recite aloud passages of the Qur'an. The chapters he should recite after the *Fatihah* are, in the first *rak'ah* surat al-A'la (87), and in the second *rak'ah* surat as-Shams (91). In each *rak'ah* there should be two prostrations and a single ruku (bowing down). Then he recites the tashahhud and brings the prayer to a close by saying *as-Salamu alaikum* (Peace be upon you).

After finishing he then faces the congregation and sits for a while. When the people are composed, he stands and leans against a bow or a stick and addresses the audience. Then he sits. Next he stands up and again addresses the audience a second time. When he finishes he faces the direction of the Ka'bah (*qiblah*), and turns his blanket inside out. He puts that part of it which is normally on his right shoulder on his left shoulder and that which is normally on the left shoulder on his right shoulder - he does not turn that over.

Other worshippers should do as he did, as they sit while he stood. He then prays (du'a) in that condition. After finishing he then goes away and so do the other worshippers. On this occasion it is not necessary to repeat the takbir as was the case during the Festivals, with the exception of the first takbir which brings the worshipper into a state of ritual consecration, and the takbir which one pronounces when one goes down or comes up during the prayer. In the prayer for rain there should be no *adhan* and no *iqamah*.

CHAPTER 20

A Chapter on what is to be done to a man about to die and the washing of a dead person and shrouding, embalming, carrying him and burying him

20.01 Attendance at Death

A person about to die should be made to face the *qiblah*. When he is finally dead his eyes should be closed for him. On the point of dying he should be made to repeat the words “La ilaha illallah” (There is no deity but Allah). It is better if he is ritually clean and if what he is on is also ritually clean. It is also better that a menstruating woman should not come close to him, so also a person who is in major ritual impurity (*janabah*).

Some learned men permit that the chapter of the Qur’an “Ya Sin” should be recited at his head. However, that has not been the practice of Malik. There is no harm in weeping at death. But bearing with the loss and the exercise of patience is better to those who are able to do so. It is prohibited to scream and to wail at death.

20.02 The Ghusl Bathing

There is no limit to how many times a dead person should be washed. But he must be cleansed. He also must be washed an odd number of times with water to which has been added leaves of the lotus tree. In the last round of washing some camphor should be added to the water. His private parts should remain covered throughout the washing. His finger and toe nails must not be clipped, nor must his hair be shaved. His belly is squeezed gently. It is good if the parts he normally washes during an ablution to say prayers are

washed for him, but this is not obligatory. It is good if he is made to lie on his side during the washing, and it is even permissible to make him sit up. There is no harm in a spouse washing his dead partner even if this has not become necessary.

If a woman dies on a journey without other women with her or a man who is in a degree of consanguinity precluding marriage with her, then let a man rub her face and hands with his palms after rubbing the ground with the palms. She can then be shrouded, prayed upon and buried. If on the other hand the dead person is a man, let the woman rub his face, his hands and arms up to the elbow. This is if there is no man in their midst who would wash him and no woman who is in a degree of consanguinity precluding marriage with the man; but if there is such a woman she should wash him, and cover his private parts.

And if there happens to be with the woman a man who is in a degree of consanguinity precluding marriage (dhu mahram), he shall wash her from above a cloth covering the whole of her body.

20.03 Shrouding

It is meritorious that a dead person should be shrouded with an odd number of clothes, three or five, or seven. The loin cloth, the shirt and the turban are to be included in the number of clothes, which ought to be an odd number. The Prophet - peace and blessing of God be upon him - was shrouded in three white cloths brought from a Yemeni village. He was well wrapped in them - peace and blessings of God be upon him.

There is no harm in putting shirts on a dead person; there is also no harm in turbanning him. It is fitting that a dead person should be embalmed and the embalming drugs should be put on his shroud, on his body and on those parts on his body upon which he prostrated.

20.04 Martyrs, Suicides and Executed Criminals

A person who attained martyrdom on the battlefield should not be washed and should not be prayed upon. He should be buried with his clothes.

But a person who killed himself should be prayed upon. Similarly this applies to the person whom a ruler killed as a *hadd* (prescribed punishment by the shari'ah) or as a retaliation for killing someone else. But it shall not be the ruler himself who will pray upon these.

20.05 Bringing to the Grave

A dead person must not be followed with a brazier. Also walking in front of a bier is more meritorious than walking behind it. A dead man shall be laid to rest in his grave on his right side and then the bricks shall be placed to cover him up. Then this is what should be said:

“O God our Lord, verily our friend has now become your guest and has left the world behind him. He is needy of that which you have. O our Lord, make his tongue firm when he is questioned, and do not try him in his grave with that which is not within his power, and make him join his prophet, Muhammad, peace and blessings of God be upon him”.

20.06 Monuments

It is reprehensible to build upon graves or to whitewash them.

20.07 Burying an Unbelieving Father

A Muslim shall not wash his dead father who was an infidel and shall not put him in his grave. But if he fears that he will decompose he shall bury him.

20.08 Niche in Grave

The type of grave known as “lahd” is preferred by learned men to the type known as “shaqq”. This is how it is dug: the diggers after digging a hole shall then dig another hole at the side of the grave facing the *qiblah* (the direction of Ka’bah). This is done if the ground is solid and does not pour out as is the case with a sandy ground and does not come off in bits and pieces. The Prophet, peace and blessings of God be upon him, was buried in a “lahd”.

CHAPTER 21

A Chapter on the prayer over a dead body and prayer for the dead person

21.01 How To Do the Salat

The formula *Allahu Akbar* i.e. God is greatest is repeated over a dead person four times. One raises up ones hands in the first `takbir' i.e. the first pronouncement of "*Allahu Akbar*". But if one raises one's hands at each `takbir' there will be no harm. If the person praying over the dead person likes he can pray (du'a) after the fourth `takbir'. Then he says "*as-Salamu alaikum*" (and brings the prayer to a close). But if the (Imam) likes he can bring the prayer to a close after the fourth takbir without having to pray (du'a) after it.

(When praying over a dead man) the Imam shall stand (behind him) at the middle. (And when praying over a dead woman) the Imam shall stand (behind her) at her shoulders.

(The formula *as-Salamu alaikum* to bring the funeral prayer to a close) is a single salaam uttered in a very low voice by both the Imam and those he led in prayer.

21.02 Reward For the Salat and Attendance

For prayer over a dead person there is a huge reward; there is also a huge reward in attending the burial. The size of this reward is like the size of Mount Uhud.

21.03 The First Three Prayers (Du'a)

As for supplication (du'a) for the dead, nothing specific is laid down, however the following du'a is considered to be especially meritorious

to be repeated after pronouncing the takbir: “Praise be to Allah who causes death and grants life. And praise be to Allah who revives the dead. Greatness, Grandeur, Authority, Power and Majesty belong to Him. He has power over all things. O God, bless Muhammad, and bless the family of Muhammad, even as you blessed, had mercy and gave Your bounty to Abraham and his family from amongst creatures. Verily, You are praised and glorified. O, God, he, the dead man, is your servant and son of your servant and son of your female servant. You created him and gave him sustenance. It is you who caused him to die and you shall revive him. And you know best his secret and outward deeds. We have come to you to intercede on his behalf. So grant us the intercession. We seek your protection by taking hold of the rope of your protection on his behalf. Verily, you fulfil your promise and undertaking.

“O Allah protect him from the trial of the grave and from the torment of Hell. O Allah, overlook his sins, have mercy on him, forgive him, cleanse him, honour him, and make his resting place spacious. And wash him with water of ice and hail. Cleanse him from sins even as a white cloth is cleansed from dirt.

“Give him a better home than his home and a family better than his family and a wife better than his wife. O Allah, if he is a doer of good deeds, increase his good deeds. And if he is a doer of bad deeds overlook his mistakes. O Allah, he is now your guest and you are the best of hosts. He is needy of your mercy and you can afford not to punish him. O Allah, make firm his tongue when he is being questioned by your Angels, and do not try him in his grave by that which is not within his power.

“O Allah, do not deprive us of the reward of attending to him and do not try us after him”.

21.04 The Fourth Prayer

That is what you say after each takbir. And after the fourth takbir, this is what you say:

“O Allah, forgive those of us who are alive and those of us who are dead. Forgive also those of us who are present and those of us who are absent. Forgive those of us who are small and those of us who are grown up. Forgive our males; forgive our females. Verily, You know what we do and where we stay. O Allah, forgive our parents and those who accepted Islam before us. Forgive Muslims, men and women; believers, men and women, both the living and the dead.

“O Allah, cause those of us whom You spare to live according to the tenets of Islam. And those of us whom You cause to die, cause them to die while still Muslims. O Allah gladden our hearts when we come to meet you. Make us prepared for death, and make death easy for us; and make it a source of rest and happiness to us”. Then you bring the prayer to a close.

21.05 Prayer for a Woman

But if the dead person is a woman you shall say: “O Allah, verily she is your female servant” - and then you continue to refer to her in the feminine gender. But you do not say “O Allah substitute for her a husband better than her husband”, because she is going to be in paradise a wife to her husband in the world. The women, in paradise, shall be retained by their husbands and shall not require any substitutes. And a man in paradise shall have many wives. But a woman shall not have many husbands.

21.06 Salat Over Several Dead at Once

There is no harm in collecting many dead bodies for a single funeral prayer. In such an instance the corpses of men shall be placed nearer to the Imam, if there happen to be women among the dead. But if all dead persons are men, the most virtuous amongst them shall be placed nearest to the Imam. If however there are women and children as well, the women shall be placed next to the men and the children next to the women, towards the *qiblah*. There is no harm also on putting the corpses in a row. Even so, the most virtuous person shall be placed close to the Imam. But when many people are buried in a common grave, the most virtuous amongst them shall be placed against the wall of the *qiblah*. If a person is buried without

being prayed upon, a prayer should then be said over the grave. If a dead person has been prayed upon, no other prayer shall be performed upon him.

21.07 Making up Omitted Salat

In the case of a dismembered corpse a prayer can be performed over most of the body. There are differences of opinion amongst jurists, as to whether a prayer can be performed over a hand or a foot.

CHAPTER 22

A Chapter on the Funeral prayer for an infant the prayer over him and washing him

22.01 The First Three Prayers

You shall begin praising Allah—Blessed and Exalted be He—then you shall bless His Prophet Muhammad (saw). Then you say:

O Allah, verily he is your servant, the son of your servant and son of your female servant. You created him and gave him sustenance. You caused him to die and You shall revive him.

O Allah make him a precursor, an asset, a predecessor and a source of reward to his parents. Cause their good deeds to outweigh their bad deeds on the scale, for his sake. Magnify their rewards through him. Do not, O Allah, deprive us or his parents of the reward for praying over his dead body. Also do not, O Allah, try us or his parents after his passing.

O Allah, make him join the virtuous believers who preceded him in the custody of Abraham. Substitute for him, O Allah, a home better than his home and a family better than his family. Protect him from the trial of the grave and from the chastisement of Hell.

22.02 The Fourth Intercession

You say that after each takbir. But after the fourth takbir you say:

“O Allah, forgive our predecessors and our ancestors and those who embraced the faith before us. O Allah, those of us whom You spare, cause them to live as faithful Muslims. And those of us whom You cause to die, receive their souls while they are still Muslims. O Allah,

forgive Muslims, men and women. Forgive believers, men and women; both the living and the dead.” Then you bring the prayer to a close.

22.03 Still-Borns

Prayers shall not be said over a baby who died without crying out. Such a dead baby shall not inherit not shall he be inherited. It is reprehensible to bury a miscarried foetus in homes.

22.04 Who Should do the Ghusl

There is no harm in allowing women to wash the dead body of a small boy of six or seven years. But men shall not wash the dead body of a girl. However there are differences of opinion amongst jurists over the lawfulness of doing that if the girl has not yet reached puberty and would not arouse sexual passions. But the first view expressed is preferred by us.

CHAPTER 23

A Chapter of Fasting

23.01 Time and Bays Fasting is Obligatory

Fasting during the month of Ramadan is obligatory. The fasting is begun when the crescent is sighted. Fasting shall cease when the next crescent is sighted, whether the next crescent appears after twenty-nine or after thirty days. If the sky is cloudy and the moon cannot be sighted, the Muslims shall then start to fast after counting thirty days from the first day of the month before Ramadan. In the case of ending the fast the Muslim community shall do likewise.

One makes the intention to fast at the beginning of the month. If one makes such intention on the first night, one will not have to make intention on the remaining nights. A Muslim shall keep his fast from dawn until nightfall. It is, besides, part of the practice of the Prophet to break the fast as soon as the sun sets and delay eating the dawn meal until daybreak approaches. But if one is doubtful whether it is daybreak or not, one must not eat anything.

A Muslim must not fast on the Day of doubt (*yaum as-shakk*) in order that there might be a coincidence that the day is the first day of Ramadan. If anyone keeps such a fast and the day happened to be the first day of Ramadan, such a fast shall not be taken into account.

However if a Muslim likes to do a voluntary fast on such a day, he is permitted to do so.

If a Muslim wakes up on a day and abstains from eating and drinking, then becomes aware that the day is one of the days of the month of Ramadan, he cannot keep fast for the rest of the day and count it as one fast. Nevertheless, it is obligatory upon him to abstain from eating, drinking and sexual intercourse for the rest of the day. And,

after the month of the Ramadan he must keep a fast for one day to make up for the fast he missed.

When a traveller arrives home from a journey on which he had not been keeping the fast of Ramadan, or when a woman stops menstruating during the daytime, both are permitted to eat and drink etc. for the rest of the day.

If a man intentionally renders void a fast he has been keeping voluntarily, or if he travels while keeping the voluntary fast and then breaks it on account of the journey, he must make amends by fasting on another day. But if he breaks the fast inadvertently he does not have to pay it back. Now, this is contrary to what happens on an obligatory fast.

23.02 Things Voiding or Not Voiding Fast

There is no harm in a person keeping a fast using a toothpick throughout the day. Nor is blood-letting discountenanced except when it is feared that it may lead to exhaustion.

If a man keeping a fast vomits unintentionally during a day of Ramadan, he does not have to make any amends. But if he intended to vomit and did vomit, he will have to pay back the fast thus broken.

23.03 Pregnant and Nursing Women

If a pregnant woman fears for that which is in her womb, she is excused from fasting. And she will not have to feed the poor for failing to keep the fast. However another authority is of the view that she must feed the poor. Similarly a suckling mother is free not to keep a fast if she fears for her child and cannot find another woman she could hire to suckle the baby; if the baby does not accept the milk of any woman apart from hers, she then does not have to fast, but she must feed the poor for failing to keep the fast.

23.04 The Old

It is recommended that when an old man fails to keep the fast, he should feed the poor. (Feeding the poor, by the way, in all these circumstances is to give a measure of grain or other staple for each day a fast was not kept).

23.05 The Minor Atonement of Food Alms

Similarly, the person who has been negligent in paying back fasts he missed during a previous Ramadan until another Ramadan comes in, shall also feed the poor.

23.06 The Young

Fasting is not obligatory upon children. It is compulsory for them when the boy attains sexual maturity and the girl begins to menstruate.

Upon attaining puberty, it is compulsory for boys and girls to observe all physical forms of worship. Allah, glorified be He, has said, *“When your children attain sexual maturity, let them seek permission before they enter upon you”* (Qur’an 24:59)

23.07 Defilements

If a man wakes up at dawn in a major ritual impurity and does not take a bath, or if a woman who has been menstruating attains purity before dawn but has not been able to take a purifying bath, both of these shall be free to fast on that day.

23.08 On Feast Days

It is not permissible to fast on the day of Id al-Fitr nor on the day of Id al-Adha.

Also it is not permitted to fast on the two days which follow the day of Id al-Adha, except for a man who performs the hajj and umrah in

a tamattu style and who cannot find an animal to slaughter as sacrifice. On the fourth day from the day of Id al-Adha nobody shall keep a voluntary fast. But a person who made a vow to fast on that day can fast on it. Also a person who has been fasting on consecutive days before that day is free to keep a fast on such a day.

23.09 Making up a Fast

If a man eats unintentionally during the day in the month of Ramadan, he must repay that fast only. Similarly, the man who eats during that month due to some necessity arising from sickness has to make amends by keeping another fast.

23.10 A Traveller

If a person undertakes such a journey as makes it lawful to shorten prayers, he is free not to keep a fast even if the keeping of a fast would not cause him hardship. However he has to make amends for the fasts missed. Nevertheless, it is preferable to keep the fast even on the journey.

If he undertakes a journey of less than four *burud* and thought that it was lawful for him not to keep a fast, and so did not keep one, 'kaffarah' penalty is not binding on him, but he should make amends for the fast he missed. In short, whoever did not keep a fast for a good reason shall not be liable to a 'kaffarah' penalty.

23.11 The Greater Atonement

The kaffarah penalty shall be binding only on those who refuse to keep a fast or who break a fast intentionally by such acts as eating, drinking or sexual intercourse. Such people must make amends for the fast not kept or broken and then pay the penalty of kaffarah.

The kaffarah penalty can take the form of feeding sixty poor persons, by giving each poor man a standard measure of the Prophet (peace and blessing of God be upon him) of some staple. And this manner of kaffarah is preferable to us jurists of the Maliki School.

Alternatively, the penalty can be paid by setting free a slave or by fasting for two consecutive months.

A person who breaks a fast he is keeping to make amends for a Ramadan fast he missed intentionally shall not be liable to a kaffarah penalty.

23.12 Unconsciousness at the Beginning of the Day

The person who becomes unconscious during the night and only regains consciousness after the breaking of dawn will have to make amends for the fast due on that day. In a case of prayers however, one does not make amends for prayers missed other than those missed in consciousness.

23.13 Other Prohibitions During a Fast

It behoves a person keeping a fast to refrain from idle talk and reprehensible acts, and to have due reverence in the month of Ramadan for those things in it which Allah, glorified be He, made holy.

A man keeping a fast shall not come close to women and have sexual intercourse, nor shall he attach his person to theirs nor kiss them in order to have pleasure during the day in the month of Ramadan. But these things mentioned are lawful to him at night. There is no harm in a man being in a state of major ritual impurity (*janabah*) resulting from sexual intercourse in a morning he is keeping a fast.

If a man obtained sexual pleasure during the day in the month of Ramadan through embracing a woman or kissing her, and that led him to emit the liquid known as *madhy* from his penis, it is compulsory for him to repeat the fast. But if he went to excess in his dalliance and emitted semen, he shall be liable to a kaffarah penalty.

23.14 The Tarawih Salat

Whoever prays supererogatory prayers during the whole of the month of Ramadan, out of faith and in the hope of Allah's reward, shall be forgiven the sins he committed in the past. And if you perform such voluntary prayers as you are able to, that also shall be grounds for the hope of merit from Allah, and the cleansing of sins.

Voluntary prayers in the month of Ramadan should be performed in mosques where people usually worship together led by an Imam. However, an individual is free to perform such voluntary prayers in his own home. That is even preferred for the worshipper who is bent on worshipping alone.

The early Muslims of great virtue used to perform voluntary prayers during the month of Ramadan in mosques. And they used to perform twenty *rak'abs*, to which they added three more *rak'abs*. Also they would separate the two *rak'abs* known as shaf and the final single *rak'ab* which follows them with a salaam, i.e. the pronouncement of the formula *As-salamu Alaikum*.

Besides that, they would perform another thirty-six *rak'abs* other than the shaf and the witr.

Nevertheless, whichever practice one adopts is good enough. The worshipper who performs voluntary prayers should pronounce the salaam after each two *rak'abs*.

Aishah the prophet's wife—may Allah be pleased with her - stated that the Messenger of Allah ﷺ—did not perform more than twelve voluntary *rak'abs*, which he rounded off with the final single *rak'ab* of witr, whether during the month of Ramadan or at any other time.

CHAPTER 24

A Chapter of retirement for the purpose of Worship known as I'tikaf

I'tikaf is one of the voluntary meritorious acts of Worship. The literal meaning of the word *i'tikaf* is attachment.

I'tikaf is not performed unless accompanied by fasting. Also the number of days during which the *I'tikaf* is observed must be consecutive. Nor is it observed anywhere else other than in mosques, for Allah—glorified be He—stated in the Qur'an, "*You must observe your i'tikaf in mosques*" (2:187).

If the worshipper wishing to observe *i'tikaf* happens to be in a town in which there is a Friday congregational mosque, he or she must observe it in such a mosque, except however where the days during which he vowed to observe the *i'tikaf* do not include a Friday.

The shortest recommended period during which an *i'tikaf* shall be observed in our view (Maliki jurists) is ten days. However if a person vowed to observe an *i'tikaf* for a period of one day or more, it shall be incumbent upon him to fulfil it. If the person vowed to observe an *i'tikaf* for one night, it shall be incumbent upon him to observe a day and night.

If a worshipper observing *i'tikaf* breaks the fast he is keeping intentionally, he must start the *i'tikaf* afresh. The same condition shall be binding upon the person observing *i'tikaf* who had sexual intercourse at night or during the day, due to forgetfulness or intentionally.

If a worshipper observing *i'tikaf* falls ill, let him suspend it and go back to his home. Upon regaining health, he carries on where he left off. A woman who menstruated during *i'tikaf* shall do likewise. The

person whose *i'tikaf* is interrupted by illness or menstruation shall not lose the merit of his act of worship.

When a woman whose *i'tikaf* was interrupted by menstruation regains purity, or a person whose *i'tikaf* was interrupted by illness recovers, whether at night or during the day, let them go back to the mosque immediately and carry on.

A worshipper observing *i'tikaf* shall not go out from the place in which he is observing it, except for such reasons as the call of nature.

A person wishing to start the observance of an *i'tikaf* shall enter the place of retirement from sunset on the night he intends to start the *i'tikaf*. A man observing *i'tikaf* does not visit a sick person nor does he perform a funeral prayer. Nor does he go out for some commercial business. Also a person who observes *i'tikaf* must not stipulate any conditions to that *i'tikaf*.

However, there is no harm if he leads prayers in the mosque in which he is observing the *i'tikaf*. He is also free to get married while observing *i'tikaf*. He is also free to officiate over the contract of the marriage of someone else.

If a worshipper observes an *i'tikaf* at the beginning of a month or at the middle of it, let him leave the place of his retirement after sunset at the end of the *i'tikaf*. If however the number of days a worshipper is observing in his or her *i'tikaf* includes the day of Id al-Fitr, let him spend the night preceding the day of the Festival in the mosque, so that in the morning he shall go straight to the prayer-ground.

CHAPTER 25

A Chapter on the periodic alms given out of ready cash, crops, livestock and minerals; and some mention of the Jizyah tribute and the levy from the merchants among non-Muslim citizens in an Islamic state and the merchants from the land of the belligerents

25.01 Time of Obligation

The issue of zakat or poor rate is obligatory upon ready cash, food crops and certain categories of livestock.

The poor-rate zakat to be issued on food-crops should be given out on the day of harvest. But the zakat to be paid from ready cash and the category of livestock on which it is due should be issued on the completion of each year, once only.

25.02 On Farm Produce

No zakat is paid out of grains or dates of a quantity less than five camel-loads. That is equivalent to six and a quarter of the measure known as “qafiz”. The wasq or camel-load consists of sixty measures known as “sa’i” - measure of the Prophet - peace and blessings of God be upon him. Alternatively, it is equal to four mudd measures of the Prophet - may Allah bless him and give him peace.

Wheat, barley and ‘sult’ (a variety of barley) can be combined as an entity for the purpose of issuing zakat. And if the quantity resulting from such combination reaches the minimum for which a zakat is

due, i.e. *nisab*, the zakat is then issued from any of them. That quantity once again is five wasqs. Similarly, various kinds of legumes and dates are also combined and regarded as one entity for the purpose of zakat. So also many varieties of raisins.

However, rice, sorghum and millet shall each be regarded as a species by itself and are not combined with one another for the purpose of zakat.

When there happens to be within a single farm of date palms, varieties of dates, it is permissible to issue the zakat from the variety of medium quality.

Zakat shall be issued in respect of olives when their seeds reach the weight of five camel-loads or wasqs, but the zakat is issued out of the oil extracted from those seeds. Similarly, zakat is also paid out of the oil of the grains of sesame and radish. But if these grain were sold, the zakat can be issued out of the money realised.

No zakat is given out from fruits and vegetables.

25.03 On Money

In the case of gold, no zakat can be paid from less than twenty dinars. Out of each twenty dinars one pays half a dinar. That is a quarter of a tenth. If the amount is greater than twenty dinars, the fraction, i.e. a quarter of a tenth, shall nevertheless continue to be paid in relation to the new amount even if the increment is small.

There is no zakat on silver if the amount is less than two hundred dirhams. And a dirham is equal to five ounces. And each ounce is equivalent to forty dirhams. I mean that seven gold pieces (dinars) weigh ten dirhams. Now, when these dirhams reach two hundred, a quarter of its tenth is given out as zakat on them. That is five dirhams. If the number should exceed that, the same fraction shall hold true for them as zakat.

Gold and silver can be combined for the purpose of zakat. Now, if a man has one hundred dirhams and ten gold pieces (dinars) let such a person issue out of each a quarter of its tenth.

25.04 On Merchandise

No zakat is due for goods unless they happens to be for the purpose of commerce. If you should sell such goods after one whole year or more from the day you received their value, or from the day you issued zakat over that value, it is over that value zakat is due for one year, whether the goods have remained in stock for a whole year or more.

The exception is where a person remains in continuous transaction in such a way that neither cash nor goods remain in his hands. Such a person shall assess the value of his goods each year and issue zakat on those, along with such cash as might be in his possession.

A profit derived from capital shall be due for the issue of zakat if the capital itself has been in the person's possession for a whole year.

No matter whether at the earlier part of the year the amount of capital itself fell short of *'nisab'* the minimum amount over which a zakat shall be due after the completion of a year.

Similarly, the offspring of livestock on which zakat is issued shall be deemed to have been in possession for a whole year and are therefore due for the issue of zakat if their parents have remained in possession for the year.

25.05 In One Owes a Debt

If a person owns property the value of which is due for zakat, while at the same time he owes a debt of equivalent size to the value of that property; if the amount of the debt renders the value of the property not liable to zakat, then he shall be free from payment of zakat on that property.

The exception however is where he owns such properties as are not liable to zakat, for instance, slaves, certain categories of animals and landed properties in the form of lands and buildings, of the value capable of defraying his debts. In such a case, the person shall be

liable to pay such zakat as is due on the cash, goods and livestock in his possession.

If his property is not of such value as can defray his debts, let him add the credit he has in the hands of others with the rest of the cash and goods in his hands; if these together make up what is liable for zakat, he can then issue the zakat from such a property.

25.06 If One Has Claim to a Debt

But a debt does not exempt anyone from the payment of zakat due from grains, dates or livestock. Also, nobody is liable to pay any zakat over a debt in the hands of those owing him unless he receives it. And even if it remains in their hands for many years, he pays such zakat as is due for only one year, one complete year after receiving payment.

Also, no zakat shall be paid out of goods until they are sold. If the debt or the goods were part of a legacy, those who took them into possession shall wait for a year before they issue zakat from them.

25.07 Minors and Slaves

Minors are also liable to pay zakat out of their property, whether this be in the form of cash, crops or livestock. Zakat al-Fitr, that is the zakat paid on the completion of the Ramadan fast, shall also be paid in respect of them.

Payment of zakat is not binding on a slave or anybody who is not free completely, in respect of all those things which we have mentioned.

Upon regaining freedom a slave must wait for a whole year before he begins to issue zakat on his property.

25.08 Property for Personal Use

Nobody is liable to pay zakat on a slave he owns or a servant or a horse or a house. Similarly, zakat is not binding on anyone over

landed property and merchandise. Nor also is zakat due on those things which are articles of dress and ornaments.

If a man inherits some goods or if the goods were presented to him or he reaps some crops from his farm and issues zakat on them, no other zakat shall be due on them until he sells such and a year passes from the day the price was received.

25.09 Mines

On those things dug from mines, such as gold and silver, zakat shall be due when their weight reaches twenty pieces of gold (dinars) or, in the case of silver, when it reaches five ounces. The amount given out is a quarter of a tenth, on the day the minerals were brought out from the mines. Similarly, that same fraction, a quarter of a tenth, is the amount to be issued as zakat for that amount in excess to the *nisab*, even if it is a small amount.

When no more minerals can be obtained other than a small amount in hand which does not reach the minimum for zakat, and other supplies were not forthcoming, nothing shall be given out unless and until it reaches a *nisab*.

25.10 Levies on Non-Muslims

Jizyah tribute is taken from non-Muslim citizens in an Islamic state, who are freeborn male adults. It is not taken from their women, children and slaves. Similarly, jizyah tribute is taken from Magians, that is Zoroastrians, as well as Christian Arabs.

The amount of jizyah taken from people whose currency is gold is four pieces of gold from each man. And for the people whose currency is silver, forty dirhams. The poor from amongst them are allowed some concession.

Customs duties are taken from their merchants who conduct international commerce. The rate is a tenth of the value of their wares. This is taken from them each time they come, even if they enter the Muslim state many times in a year.

If they carried foodstuffs specially to Mecca and Medina only, one half of one tenth of the value of that is taken from them.

Customs duties taken from the citizens of those nations which are at war with the Muslims states shall be one tenth of the value of their wares except where they agreed to pay more.

In the case of a Rikaz treasure buried by the pre-Islamic people, the finder shall pay a fifth of it to the state.

CHAPTER 26

Zakat on Livestock

26.01 Camels

Zakat on camels, cattle, sheep and goats is obligatory. In the case of camels, no zakat shall be payable on camels whose number is less than five. In respect of these, a young sheep shall be given out which is in its second year. Now the best to be given out can be a sheep or goats depending on whichever are more in number, sheep or goats, in the country. Such a young goat or sheep shall be given out until the number of camels reaches nine. When the number reaches ten camels, two goats or sheep shall be given out. The same number shall continue to be issued until the number reaches fourteen camels. When the number of the camel reaches fifteen three sheep or goats shall be issued, until the number reaches nineteen. When the number of camels reaches between twenty and twenty-four, four sheep or goats shall be given out as zakat.

Then, when the number of camels reaches between twenty-five and thirty-five then either a 'bint labun', a weaned she-camel of between two and five years, or male one of similar age is given out.

When the number of camels reaches between thirty-six and forty-five, a weaned she-camel whose mother is suckling another offspring is given out as zakat - that is, one of three years.

When the number of camels reaches between forty-six and sixty, one 'hiqqah' is given out as zakat, that is, one able to bear a burden and one a male camel can cross. A hiqqah is a she-camel of four years.

From the number sixty-one to the number seventy-five, zakat payable from a herd of camels shall be a jadha'ah, that is, a she-camel of five years.

Between the numbers seventy-six and ninety-two, bint labun are to be given out as zakat.

From the number ninety-one to the number one hundred and twenty, two hiqqahs are to be given out as payment for zakat.

If the number should exceed that mark, then out of each fifty a hiqqah shall be given out as zakat. And for each forty a bint labun.

26.02 Cattle

No zakat shall be paid out in respect of cows for a number less than thirty. When they reach that number a ‘tabi’ or young calf of two years shall be given out. That shall continue to be the payment until the number reaches forty.

When the number of the cattle reaches forty the animal to be paid out shall be a ‘musinnah’, literally a mature one, which must be female of four years. A ‘musinnah’, by the way, is the same as a thaniyah, i.e. a young one.

If the number should exceed forty, for each forty a ‘musinnah’ should be issued, and for each thirty a ‘tabi’.

26.03 Sheep and Goats

No zakat is due in the case of sheep and goats until their number reaches forty. When they reach that number a jadha’ah or thaniyah shall be issued. This rule shall apply until the number reaches one hundred and twenty. When the number reaches one hundred and twenty-one, two sheep or goats shall be issued in respect of the stock. This rule shall apply until their number reaches two hundred.

When they exceed two hundred, even if by one, three sheep or goats shall be given out as zakat in respect of them. This rule shall apply until the number reaches three hundred.

If the number of the beasts in the flock exceeds three hundred, one sheep or goat shall be paid out in respect of each one hundred beasts.

26.04 Computation of Animals Subject to Zakat

No zakat shall be paid out in respect of ‘auqas’, that is, a number falling short of a *nisab* in excess of a larger number out of which a zakat has been issued.

It is permissible to combine a flock of sheep and one of goats for the purpose of issuing zakat. The same thing can be done in respect of buffaloes and cows, Bactrian and dromedary camels. In any such combination each beast shall be regarded as an equal to the other.

No zakat shall be paid out of anything the quantity of which does not reach a *nisab*.

It is not permissible to divide a single flock or herd into two or combine a number of flocks or herds into one in order to acquire some remission in the payment of zakat, when it is about time for zakat to fall due, that is, if a single flock or herd is divided into a number of flocks or herds, or a number of flocks are combined, the exercise would lighten the burden of zakat on the owner or owners. In such an instance, zakat shall be paid out on the condition of the herds or flocks before such an exercise was carried out.

26.05 Prohibited Forms of Payment

In the case of flocks, lambs are not acceptable as payments for zakat. However, each lamb is counted as a unit along with mature beasts for the purpose of zakat. Also, in the case of cattle, calves are not accepted. Nor are newly weaned camels accepted as payment for zakat. Nevertheless, each of them is counted as one. Similarly, neither a kid nor an old goat is accepted as payment for zakat, nor a beast in the throes of giving birth, nor also the ram kept for the purpose of crossing the female beasts. Similarly the law does not demand as payment for zakat a sheep or goat fed specially for fattening. Nor does it demand a suckling mother nor any such other beasts in a flock or herd.

As payment for zakat merchandise and cash are not acceptable, in the case of flocks and herds. But if compelled by the government

representative whose duty it is to collect the zakat, an owner of a flock or herd shall be free to make payment in merchandise or cash.

26.06 If a Debt is Owed

In the case of zakat in respect of grains, dates or livestock, a debt cannot exempt anyone from issuing them when they are due.

CHAPTER 27

A Chapter on Zakat al-Fitr

Zakat al-Fitr, that is, the zakat paid on the occasion of Id al-Fitr, is a compulsory *sunnaḥ*. (Sunnahs are those actions which are part of the tradition of the Prophet ﷺ) The Prophet ﷺ made is obligatory on all Muslims whether they be adults, minors, males or females, freeborn or slaves. The amount to be offered is one ‘sa’ - a standard measure commissioned by the Prophet himself.

Now, this amount is to be given out of the staple food in the locality of a people. It can be wheat, barley, sesame, dates, cottage cheese, dried grapes, pearl millet, a variety of sorghum or rice.

According to the view of some jurists, if ‘alas’ (a grain of small size similar to the wheat in its nature) happens to be the staple of a particular people, such people can then pay zakat al-Fitr out of it.

A master shall pay out zakat in respect of his slave. A child who has no property shall have zakat paid out on his behalf by his parents. A man must also pay out zakat in respect of all those Muslims he falls under an obligation to maintain. Similarly, it is binding upon a man to pay out zakat al-Fitr in respect of a slave of his with whom he has entered into a contract of mukatabah, that is, an agreement whereby the slave regains his freedom in consideration of an amount of money he shall pay the master even if he no longer maintains such a slave. That shall be so because that agreement does not for the time being alter the state of bondage the slave happens to be in.

It is recommended that the zakat al-Fitr shall be paid out at the break of dawn on the day of Id al-Fitr.

Also, it is recommended that a Muslim should eat his breakfast before he repairs to the praying-ground. That, however, shall not be the case in respect of the Id al-Adha (the festival of sacrifice).

However in respect of both festivals it is recommended that a worshipper should proceed to the praying-ground by one route, and return to his home by another.

CHAPTER 28

A Chapter on Hajj (Pilgrimage) and Umrah (the lesser Pilgrimage)

28.01 Obligation of the Hajj Pilgrimage

It is obligatory upon a mukallaf to perform pilgrimage to the Holy Shrine in Mecca, provided he has the means to discharge such a duty. The category of Muslims upon whom it is a duty to perform are adults and freeborn. The number of times it is obligatory to perform such a duty is once in a lifetime.

The requisite means referred to include a safe passage, sufficient provision to carry the pilgrim to Mecca, physical strength to enable the pilgrim to undertake the journey, either mounted on a beast or walking on foot, and good health.

28.02 The Ihram

A pilgrim must undergo the ritual of converting himself into a state of ihram (an inviolate status). There are definite stations for such a ritual.

The station for the people of Syria, Egypt and Maghrib (Tunisia, Algeria, Morocco, Mauritania and parts of Sahara and including Libya) is a place known as al-Juhfah. If pilgrims from these areas mentioned should proceed to al-Madinah without entering the state of ihram at al-Juhfah, it is then preferred that they shall enter the state of ihram at the station of the people of Medina. This is known as Dhul-Hulaifah. The station of ihram for the people of Iraq is called Dhat Irq; that of the people of Yemen is known as Yalamlam;

and that for the people of Nadj is Qarn. Now whoever proceeds to Medina of the people mentioned, must enter the state of ihram from Dhul-Hulaifah. For it is not the practice for pilgrims to bypass Dhul-Hulaifah and go back to their own respective station for ihram to perform the ritual there.

A pilgrim, whether performing hajj (the normal pilgrimage) or umrah (the lesser pilgrimage) shall enter the state of ihram at the station after having performed either an obligatory prayer or a supererogatory one. He then says, "I respond to Your call my Lord, I respond. I respond, You have no partner, I respond. Verily praise belongs to You and benefaction comes from You. Sovereignty belongs to You, You have no partner".

Having said this much, the pilgrim then makes a resolution of what he intends to do - either a normal pilgrimage or the lesser pilgrimage. It is required of him to perform a ritual bath at the time he enters the state of ihram. He then divests himself of all sewn clothes.

It is meritorious for a pilgrim to perform yet another ritual bath upon entering the city of Mecca. Also, he continues to sing out the formula (talbiyah) mentioned above after all prayers, when he comes to a hill, and when he meets a party of fellow pilgrims. It is not expected of him to go to excess in chanting the talbiyah. Upon entering Mecca the pilgrim shall stop chanting the talbiyah for the purpose of performing the tawaf (going round the Ka'bah), and the sa'y (the jogging between the hills of Safa and Marwah). When the pilgrim performs the tawaf and sa'y, he shall revert to the talbiyah and stops only after sunset of the day of Arafah when he goes to its praying-ground.

28.03 Entering Mecca

It is preferred that a pilgrim should enter the city of Mecca through Kada ath-Thaniyyah, which is situated in the upper region of the city. Upon leaving however, it is recommended that he leaves through Kudan. But if he fails to observe this he shall not be liable to any penalty.

Upon entering the city of Mecca, a pilgrim shall proceed to the Holy Mosque with despatch. It is recommended that he enters the Holy Mosque through the gate known as ‘Bab Bani Shaibah’.

28.04 The Tawaf

He shall touch the Black stone (al-hajar al-aswad) with his mouth, if that is possible. Otherwise the pilgrim shall place his hand on the Black stone then place his hand on his mouth, but he is not supposed to kiss the hand.

The pilgrim circumambulates the Ka’bah, keeping the shrine on the his left. This he does seven times, trotting in the first three circuits and walking normally in the remaining four. He touches the stone each time he passes by it, as we have said earlier, and says *Allahu Akbar* i.e. Allah is the Greatest.

The pilgrim is under no obligation to touch the corner known as ar-Rukn al-Yamani with his mouth. But he shall touch it with his hand then put the hand to his mouth without having to kiss it. Upon completing his circumambulation, he then performs two prostrations at Maqam Ibrahim. He shall attempt to touch the stone if that is possible.

28.05 At As-Safa and Al-Marwah

The pilgrim then proceeds to as-Safa hill and stands on it for the purpose of prayer (du’a). Then he proceeds to al-Marwah hill. The pilgrim trots at the place between Safa and Marwah known as Batn al-masil. When he reaches al-Marwah he stands on it and makes a prayer (du’a). He then goes back to as-Safa. He does that seven times. This would make him stand on as-Safa four times and on al-Marwah four times.

28.06 At Mina, 8 *Dhul-Hijjah*

The pilgrim then goes out on Yaum at-Tarwiyah (literally the Day of watering, and this is the eighth of Dhul-Hijjah) to Mina where he performs the Zuhr, Asr, Maghrib, Isha and Subh prayers.

28.07 At Arafat, 9 *Dhul-Hijjah*

He then proceeds to Arafat. Meanwhile he continues to chant the talbiyah all this time until the afternoon of the day of Arafah when he goes to its praying-ground.

Before he goes to the praying-ground he should cleanse himself. He should then perform the prayers of Zuhr and Asr combined, led by the Imam. Then he follows the Imam to a place where they stand on Mount Arafat. He then stands upon it together with the Imam until sunset.

28.08 At Al-Muzdalifah

Then the pilgrim goes along with the Imam to al-Muzdalifah, where he performs with the Imam, at Muzdalifah, the prayers of Maghrib, Isha and Subh. The pilgrim then stands with the Imam beside al-Mash'ar al-Haram at that place, that is, Muzdalifah.

28.09 Back To Mina, 10 *Dhul-Hijjah*

Towards dawn the pilgrim then departs for Mina. The pilgrim shall hasten his mount at a place called Batn Muhassir, (actually a valley).

When the pilgrim arrives at Mina he throws seven pebbles at Jamrat al-Aqabah (one of the three effigies of Satan - the one in the direction of Mecca). The size of each of these pebbles shall be like those normally thrown from a catapult. As he throws each pebble, the pilgrim shall cry out *Allahu Akbar* (Allah is the Greatest). Having done that, he then slaughters a beast if he has to make a sacrifice. Afterwards he shaves.

28.10 Back To Mecca

The pilgrim then proceeds to the Holy Shrine and performs the circumambulations known as *Tawaf al-Ifadah*. This he does by going round the Ka'bah seven times. Having performed the *Tawaf al-Ifadah* the pilgrim then performs some voluntary prayers in the shrine.

28.11 To Mina Again, 11-13 *Dhul-Hijjah*

Then the pilgrim stays at Mina for three days. On each of these days he performs the pebble-throwing ritual in the afternoon.

This time, he throws at the effigy nearest to Mina with seven pebbles. As he throws each pebble he cries out *Allahu Akbar*. He then casts that same number of pebbles at the other two effigies, saying *Allahu Akbar* as he throws each pebble.

As soon as he completes the throwing ritual, he shall stand and pray (*du'a*), first by the side of the effigy closest to Mina Mosque and then by the side of the middle effigy. He shall not stand and pray at the Aqabah effigy, the one nearest to Mecca. He then goes away.

After having thrown stones on the third day, which is the fourth day of the days known as the days of sacrifice (*ayyam an-nahr*), the pilgrim can then go back to Mecca and his pilgrimage is complete. Now if he so chooses, the pilgrim is at liberty to hurry himself and leave Mina after having performed the pebble-throwing ritual on the second day.

28.12 Leaving Mecca

When he finally wishes to leave Mecca, the pilgrim shall perform the farewell circumambulation (*tawaf al-wada*). When he comes to Ka'bah to do that he also performs some voluntary prayers. He then goes away.

28.13 The ‘Umra Pilgrimage

In the case of an umrah, he does as we mentioned at first, as far as the completion of the trotting between Mount Safa and Mount Marwah, then shaves his head and having done that his umrah is complete.

28.14 Hair Cutting To Terminate The Ihram

Complete shaving of the head is more virtuous in the case of both the hajj (normal pilgrimage) and the umrah (the lesser pilgrimage). However, mere shortening of the hair is also acceptable.

A pilgrim shall shorten the hair on his head all over. In the case of women pilgrims however, the prophetic tradition demands only shortening of the hair and never total shaving of it.

28.15 Requirements of Ihram

It is not forbidden for a person in the state of ihram to kill a rat or a snake or a scorpion and something of a similar nature. So also it is lawful for the muhrim to kill a rabid dog and predatory wild beasts such as wolves and lions and the like. A muhrim is also free to kill such birds from whose harm he seeks to be secure, such as crows and kites only.

A Muhrim is to shun, while performing pilgrimage or umrah, women, perfume and sewn clothes, as well as hunting or killing of parasites. He must also not cut his nails or trim his moustache or do any cleansing exercise of a similar nature.

Further a muhrim does not cover his head, nor does he shave it, except where he is forced by necessity. If he should do any of these things he is not supposed to do, he must expiate by observing a fast for three days, or as the alternative, undertake the feeding of six poor men. This he does by giving each of them two of the standard measures of the Prophet (peace and blessing of God be upon him) of the staple of the locality.

Another method of expiation for violating any of those prohibitions is for the pilgrim to slaughter a sheep or goat (of either sex). This he does wherever he likes, that is, while still in the holy land or after returning back home.

A woman pilgrim is free to wear a pair of khuffs as well as sewn clothes when in a state of ihram. She should avoid any other thing a male pilgrim is under an obligation to avoid. The parts of her body a woman pilgrim exposes are her face and her hands, while the parts of his body a male pilgrim exposes are his face and his head. But a male pilgrim may not wear a pair of khuffs upon entering a state of ihram. He can only do so if he is unable to find slippers, but to wear the khuffs he must cut off their backs.

28.16 Combining the Hajj and the ‘Umra Pilgrimages

There are three methods of performing the hajj. First, there is what is known as ‘al-ifrad’, this being the performance of hajj (normal pilgrimage) alone, in a season. Second is the ‘tamattu’, and this consists of performing the umrah - lesser hajj - and the hajj proper within a single season, but performing one after the other, thereby finding an opportunity to withdraw oneself from the state of ihram and thus finding an opportunity to enjoy the liberties other Muslims enjoy when not in a state of ihram. The third type is known as ‘qiran’, that is performing the hajj and umrah concurrently.

Al-ifrad is considered most meritorious to us Maliki jurists. It is better than tamattu and it is better than qiran. And whoever performs a qiran or a tamattu, other than the inhabitants of Mecca, shall be liable to make a sacrifice. The sacrificial victim shall be slaughtered in Mina, if the pilgrim has been with it at Arafah. But if he has not been with it at Arafah he shall be free to slaughter it in Mecca at al-Marwah, after coming in with it from the territory designated ‘Hill’. ‘Hill’, by the way, is the opposite of Haram, the inviolable territory of Mecca and its immediate surrounding where hunting is permanently prohibited. Hill, however, is an area in which it is lawful to hunt.

If a pilgrim is unable to find an animal to sacrifice, he shall be free to perform an alternative method of expiation. This is for him to fast

for three days during the hajj season. That is from the time he enters the state of ihram to the day he stands on Mount Arafah.

Now, if he fails to do that, he shall fast during the days he stays at Mina, and on seven other days when he comes home.

28.17 By Tamattu

The form a tamattu takes is for a pilgrim to enter the state of ihram and perform the umrah, then come out of the state of ihram during the months of hajj. Later on he performs the pilgrimage in the same year before returning to his own country or to some other territory of equal distance.

To perform the umrah, the pilgrim enters the state of ihram in Mecca, if he happens to be there. But any one living in Mecca itself cannot enter the state of ihram in it in order to perform umrah. He must go out of it, in the territory known as 'Hill', and then enter the state of ihram from there.

28.18 By Qiran

The form qiran takes is for the pilgrim to resolve to perform the pilgrimage and the umrah together, and he begins by mentioning the umrah in his resolution. If a pilgrim performs the rituals of hajj upon those pertaining of umrah, before performing the circumambulation and the voluntary prayers, such a pilgrim is to be understood to be performing the qiran variety of pilgrimage.

28.19 Particulars on Tamattu and Qiran

It shall not be incumbent upon the inhabitants of Mecca to sacrifice an animal for having performed the tamattu or the qiran types of pilgrimage. If a man leaves off the ihram state after having performed an umrah, before the months of pilgrimage proper, such a person cannot be said to have performed the tamattu variety of pilgrimage.

28.20 Atonement For Hunting While In Ihram

If a pilgrim kills game, it shall be incumbent upon him to do penance by sacrificing an animal of comparable size. Two men of proven integrity from amongst the jurists of Muslims shall decide what he has to sacrifice. And the place of kill such a sacrifice is Mina, if the pilgrim has been with the beast at Arafah. Otherwise he shall sacrifice it at Mecca. The pilgrim shall enter into Mecca with his victim from the territory outside Mecca, that is, 'Hill'. Further, he is free to choose either to sacrifice an animal or to do the penance by feeding the poor an amount of food the value of which is equal to the value of the game the pilgrim killed. Or he can do the equivalent of it by fasting. The way to do it is for the pilgrim to fast a number of days equal to the number of measures of corn the value of the game will fetch. In doing so, the pilgrim shall fast for a whole day, even for a fraction of a measure of corn.

28.21 Going Home

Umrah - the lesser pilgrimage - in a *sunnah* - a tradition of the Prophet (peace and blessing to God be upon him) of great importance. A Muslim is under an obligation to perform it once in his lifetime. It is considered meritorious for pilgrims leaving Mecca, after having performed the pilgrimage or umrah to say, "We are coming back, we are penitent, we worship and we are grateful to our Lord. Allah has fulfilled His promise and has given victory to His servant, who routed the confederates standing alone".

CHAPTER 29

A Chapter on Sacrifices, the slaughter of animals, naming ceremonies, hunting, circumcision and forbidden foods and drinks

29.01 Animals for Feast Day and Pilgrimage Gift Immolations

Sacrifice of animals during Id al-Kabir is an obligatory *sunnah* upon those who can afford it. The least that shall be sufficient for the sacrifice of animals is, from sheep, a ‘jadha’, that is, a one year old lamb; or according to another view, a lamb eight months old; and according to another view a lamb ten months old. Of kids, the animal considered sufficient is a thani, that is, a kid which completed one year and has entered the second year of its life.

No animal is acceptable for oblation from amongst goats, cattle and camels, other than a thani; and a thani from amongst cattle is a beast which has entered its fourth year of life. In the case of camels a thani is a six year old.

Uncastrated rams are considered better than castrated ones for the purpose of sacrifice, and castrated rams are better than ewes. Ewes, in their turn, are considered better than male goats and female ones while male uncastrated goats are better than for the purpose of sacrifice than female goats. Female goats are better, for the purpose of sacrifice, than camels and cattle.

However, for the purpose of ‘hadaya’, that is, the sacrifice one slaughters to do penance for a fault on his pilgrimage, camels are considered best followed, in order of merit, by cattle, then by sheep and then by goats.

In the case of both the sacrifice one slaughters on the occasion of Id al-Kabir and the sacrifice one offers to expiate an error in the observance of pilgrimage rituals, beasts bearing the following defects are unacceptable: the one-eyed, the sick one, a lame one whose lameness is pronounced, and the emaciated one which has no fat. With regard to animals intended for both the sacrifice during the Id al-Kabir and the sacrifice to atone for a mistake in the observance of pilgrimage rites, all defects must be avoided.

Similarly, an animal having a slit ear is unacceptable except where this is insignificant. Nor is a beast whose ear is cut off acceptable. Also, an animal having a broken horn still bleeding is unacceptable. If however it has ceased bleeding, that is, the wound has healed, such an animal is acceptable.

29.02 Time of Immolation

A man shall undertake the slaughter of a sacrifice victim himself; this he does after the ruler of the Islamic state he lives in has first undertaken the exercise.

The ruler does this on the day of the slaughter, in the forenoon. If anybody slaughters his victim before the ruler slaughters his own, that shall be null and void and he must offer another sacrifice. Those Muslims who do not have a Muslim ruler shall allow such time to pass, on the day of the slaughter in the forenoon, as would satisfy them that the Muslim ruler in the Islamic territory nearest to them must have held the prayer and slaughtered his sacrificial animal.

If a person slaughters a sacrificial animal for the purpose of the sacrifice on the occasion of Id al-Kabir or for the purpose of atonement for an error on the observance of pilgrimage rites during the night, such a sacrifice shall be null and void.

The days of sacrifice in the occasion of Id al-Kabir are three in number. Sacrifice can be offered on these days from the forenoon of the first day until sunset each day. But the day considered of greatest merit for the offering of sacrifice is the first day. And if a person is unable to slaughter his victim in the first day by the afternoon, some

learned men are of the view that he should wait until the forenoon of the second day.

Nothing out of the animal slaughtered for sacrifice should be sold away, not even the skin or any other thing.

29.03 Ritual of Sacrifice

At the time of slaughter, the victim shall be made to face the *qiblah* (the direction of the Ka'bah from any given place in the world). The man who slaughters the animal shall say, "In the name of Allah, Allah is the greatest". But in the case of a beast one slaughters for the purpose of sacrifice there shall be no harm if the man who slaughters adds this prayer: "Our Lord accept from us".

If a man who slaughters an animal for he purpose of sacrifice or any other purpose should forget to pronounce the formula "In the name of Allah", it is permissible for such an animal to be eaten. But if he omitted to pronounce the formula deliberately, the animal thus slaughtered must not be eaten.

Similarly, the hunter who forgets to pronounce the formula "In the name of Allah" at the time he lets loose a falcon or a dog at game, the flesh of such game if killed can be eaten by Muslims. If, however, he omits the pronounce the formula deliberately, the flesh of the game thus killed shall not be eaten.

29.04 Use of Animals For Various Kinds of Sacrifice

An animal killed for the purpose of sacrifice on the occasion of Id al-Kabir, or for the purpose of doing penance for an error in pilgrimage rites, or one slaughtered on the occasion of naming a child, must not have any part of it sold. Neither the meat nor the skin nor the fat nor the sinew should be sold.

A man is permitted to eat the flesh of the beast he slaughters for the purpose of sacrifice on the occasion of Id al-Kabir. But it is better for him to give away part of it as alms. However, it is not obligatory upon a person to give away part of the flesh as alms.

A pilgrim must not eat the flesh of an animal he slaughters for the purpose of making a sacrifice to atone for an error he committed in the pilgrimage rites; nor does he eat of the flesh of the animal he slaughters to compensate for game he kills while in a state of ihram. Nor does he eat of the flesh of an animal he vowed to slaughter for the sake of the poor. Nor also, does he eat of the flesh of an animal he intended to sacrifice voluntarily, as a mark of piety, before such an animal reaches the place it is supposed to be killed. But he is free to eat of the flesh of animals he slaughters in instances other than the ones mentioned here.

29.05 Ritual Slaughtering (*Dhakat*)

The method of slaughtering animals for sacrifice and other purposes is to cut through the gullet and the jugular veins. Anything short of this is not sufficient. If the person who undertakes to slaughter a victim withdraws his hand after cutting only a part of those things mentioned and then applies the knife once again and finishes off the slaughter, the flesh of the animal thus slaughtered shall not be eaten. If, on the other hand, he continues to apply pressure until he cuts off the head completely, what he did is detestable but the flesh of the animal thus slaughtered may be eaten.

If the person who slaughters an animal does so beginning from the nape, the flesh of the animal thus slaughtered shall not be eaten.

Animals can be slaughtered in two ways. The first is by ‘dhabh’, that is, when the gullet and the jugular veins are severed together through applying the pressure of the knife once only. The other method is ‘nahr’, which is more usual with a camel, and consists of spearing it in the hollow of the throat near the backbone. In the Hausa language dhabh is always translated as yanka, while nahr is always translated suka.

Cattle are to be killed, either for the purpose of sacrifice or for the purpose of eating the flesh for food, in the ordinary way by the type of slaughter known as dhabh. But if they are killed by the type of slaughter known as nahr, they are, nevertheless, eaten. Camels, on the other hand, are to be killed by the type of slaughter known as nahr; if

killed by the type of slaughter known as *dhabh*, they are not to be eaten. However, there are conflicting views amongst Muslim jurists about the lawfulness of eating their flesh if killed by the type of slaughter known as *dhabh*.

Sheep and goats are to be killed by the type of slaughter known as *dhabh*. If killed by the type of slaughter known as *nahr* their flesh must not be eaten. Again, there is divergence of views among Muslim jurists about the lawfulness of eating their flesh if killed by the type of slaughter known as *nahr*.

A foetus is to be regarded lawfully slaughtered if its mother is duly slaughtered in the method prescribed by law. Its flesh can therefore be eaten. But that shall be so if it is fully developed, all its features formed and its hair grown.

29.06 Forbidden Foods and Animal By-Products

An animal choked through having a rope or something else wound around its neck, one beaten up with a stick or some other weapon, one having fallen from a height and sustaining some injury, one wounded by the horns of a fellow animal, and finally, an animal which has had a part of its body eaten by a beast of prey - all these animals mentioned here cannot be slaughtered and their flesh eaten by Muslims, if the injuries they sustained in each case are such that they cannot survive.

However, a Muslim in dire need is given a special dispensation to eat the flesh of an animal which died on its own until he is satisfied, and even to take with him a surplus he can use in the case of eventuality, but which he must throw away the moment he no longer needs it. Nevertheless, there is no harm in a Muslim using the skin of these animals (mentioned here), when these are tanned. But he must not pray on such a skin, nor must he sell such a skin.

There is no harm in a Muslim praying on the skins of a beast of prey (such as lion, and so on) if these are slaughtered in the method prescribed by the law. In such an instance, he can even sell such skins.

It is lawful to make use of the wool of a dead animal. It is also lawful to make use of its hair. Similarly, it is lawful to make use of that which is removed from animals while they are alive. But what is considered better, in the Maliki view, is for such things to be washed first before they are used.

It is not lawful to make use of the feathers of a dead bird, nor of the horn of a dead animal, nor its nails or teeth. It is reprehensible to use the tusks of an elephant. However, there are conflicting views with regard to that.

If a mouse should fall into a quantity of butter or oil or honey, all of which are in liquid form, and dies in them, these things must be thrown away and must not be eaten. However there is no harm in using the oil or something of the sort in which a mouse dies as fuel for a lamp to be used in places other than mosques. Mosques must be free from any such things which are mixed up with filth.

If, however, the butter the oil or the honey is in a solid state, the dead mouse and the butter, oil or honey which is around it shall be thrown away, and the remainder can be used for food.

But Sahnun—one of the most famous Maliki jurists—is of the opinion that if the dead mouse had been in the foodstuff for a long time, such liquid foodstuff must all be thrown away.

There is no harm in a Muslim eating the food of the People of the Book (these being the Jews and the Christians). A Muslim is also free to eat the flesh of animals they slaughtered. However, the law frowns at a Muslim using for food the fat taken from animals Jews slaughtered, but this frowning does not reach the degree of prohibition.

A Muslim is not permitted to eat the flesh of an animal slaughtered by a Magian (that is, a Zoroastrian). But other foods prepared by Zoroastrians which do not involve any flesh which would have necessitated a slaughter, are not prohibited to Muslims.

29.07 Hunting

Hunting for the purpose of sport is detestable in the eyes of Islamic law. But hunting for a purpose other than sport is lawful. Every game killed by your trained dog, or your trained falcon which you set upon it, its flesh is lawful as food to you.

Similarly, it is lawful for you to eat the flesh of the game whose death your falcon or your dog has been able to cause before you are able to slaughter it in the normal way. But the flesh of the game you are able to catch before your falcon or your dog is able to kill it must not be eaten unless it is slaughtered in the normal way.

All game you are able to catch through using your arrow or your spear, you are free to eat its flesh. If you are able to take hold of it before it is dead, you can then slaughter it in the normal way. But if it dies of its own before you are able to slaughter it, you are nevertheless free to eat of its flesh if it is indeed killed by your arrow. However, that shall be so as long as the game does not remain dead overnight. But some say that (the prohibition against eating game which has remained dead overnight) is only with regard to that game killed by a falcon or a dog. However, if the hunter finds the game dead already and his arrow having hit a vital spot in the body of the game, there shall be no harm in eating the flesh of such a game. Further, the flesh of a domestic animal cannot be eaten if it is killed in the manner game is killed.

29.08 ‘Aqiqa Immolations

It is part of the recommended *sunnah* or tradition of the Prophet, peace and blessing of God be upon him, that an animal be slaughtered in honour of a baby on its seventh day. The animal to be slaughtered should be a sheep or a goat. The sheep or goat should be of the description we have given with regard to the sheep or goat acceptable for the sacrifice on the occasion of Id al-Kabir. When we come to count the seven days we must wait before killing the sheep or goat for the ceremony of giving a child its name, the day the baby is born should not be counted as one.

The animal to be slaughtered should be slaughtered in the forenoon. The baby should not be smeared with its blood in any way. It is lawful to eat of the flesh of the animal, and part of it should be given out as alms. It is lawful to break the bones of the animals. If the hair of the baby is shaved, it is meritorious to give away as alms gold or silver equal in weight to the hair shaved. If, instead of smearing the head of the baby with blood as was the custom with the pre-Islamic Arabs, some perfume is rubbed on the head, there is no harm in that.

29.09 Circumcision (*Khitan*)

Circumcision is an obligatory part of the Islamic tradition in the case of men, and is a bestowal of honour in the case of women.

CHAPTER 30

A Chapter on Jihad

30.01 How and When Obligatory

Jihad is a duty upon Muslims from which, however, a section of the community can relieve other sections. What is preferable in the Maliki view is that the enemy should not be fought until they are called upon to accept the religion of God, that is, the Islamic faith. But this caution can be ignored when the enemy attacks first.

The choice given by the Muslims to the enemy is for the enemy to either accept the Islamic faith or undertake to pay the periodic tribute known as *jizyah*. If they decline to accept either of these, they are then fought.

Jizyah tribute can only be accepted from them if they are located in a place where the Muslim government can have authority over them. But if they are very far away, *jizyah* tribute shall not be accepted from them until they migrate into the Muslim territory, and if they refuse to do that they are to be fought.

Flight from the enemy in battle is one of the mortal sins in Islam when the enemy are twice the number of Muslims or less. But if they are more than twice the number of Muslims, there shall be no harm in that.

A Muslim is under an obligation to fight the enemy, under the command of the Muslim ruler, whether such a ruler is a devout Muslim or a sinner.

There is no harm in killing the infidels taken captive. But nobody shall be killed after they have been given an assurance of their safety. Nor must there be a violation of a covenant once entered into with them. Women and children are not to be killed. Muslims must avoid

the killing of monks and learned men except where these fight them. Similarly, if a woman fights she can be killed.

It is lawful for a Muslim of humble status to conclude a peace treaty on behalf of the rest of the Muslims. Similarly a woman and a child have permission to do that, but in the case of the child, he has to be able to appreciate the implications of the peace he concludes on behalf of fellow Muslims. However, according to another view, such a peace treaty, that is, one by a Muslim of humble status, a woman and a child, is subject to the ratification of the Muslim ruler.

30.02 Booty (Ghanima)

Spoils taken by Muslims through exertion are to be divided in the following manner: the Muslim ruler himself is entitled to one-fifth of it. The remaining four-fifths is to be distributed to the Muslim army. Further it is considered better to divide the booty on the land where the war is fought.

Only booty taken through exertion of horses and camels, and spoils taken after a battle can be divided in that manner, that is, giving the Muslim ruler one-fifth and the rest of the army four-fifths. There is no harm in consuming foodstuffs and fodder which are part of spoils before these are divided, when a section of the Muslim army feels a need for them.

Only those present in battle are entitled to receive shares of booty, or those left behind to look after the interests of Muslims in connection with their Jihad.

A soldier who falls ill is entitled to receive a share of the booty; so also a horse which develops a disease in its hooves or any other part of its body. Two shares are given in respect of each horse to its rider and a share to the rider. A slave, a woman or a child are not entitled to a share of booty, except in the case of a boy who is not yet sexually mature but who is, nevertheless, possessed of the capacity to fight; and whom further, the Muslim ruler has permitted to fight. In such an instance the boy can then fight and a share of booty is given to him in the normal way.

The man who comes to the battle as a hireling is not entitled to any share in the booty except where he taken part on the fighting.

Anyone who embraces Islam from amongst the enemy while in possession of some property belonging to the Muslim community, such property shall pass into his ownership.

If anyone buys some property, out of the collective property of Muslims from the enemy, the enemy cannot have it back unless he compensates the Muslims who bought it from him by paying the value. And if any part of the collective property of Muslims was allotted to someone else as part of his share, its original owner shall have the right to have it back upon payment of its value. However, any property which has not yet been allotted to anyone, its original owner shall have it back without having to pay its value.

There can be no giving of gifts from spoils except from the one-fifth due to the Muslim ruler, and this shall be in accordance with the discretion of the ruler. Moreover it must not take place before the formal distribution of the booty.

The arms and clothing a soldier takes away from his fallen enemy is regarded part of the gift a ruler allows in a jihad.

30.03 Forts

Ribat, i.e. the manning of a frontier post, is considered to be a deed of great merit. And the magnitude of honour bestowed on those who man such posts is in direct proportion to the anxiety of the dwellers in those regions and the extent to which they dread their enemy.

30.04 Raids

Nobody is permitted to join a raiding expedition except after having secured the permission of his parents, except where the enemy unleashes a surprise attack on a Muslim city. In such an instance it is obligatory to defend the city against them, and no permission need be sought from parents.

CHAPTER 31

A Chapter on Oaths and Vows

31.01 Form of an Oath (Yamin)

Anybody wishing to make an oath, let him swear in the name of God, otherwise he should keep quiet. A man who swears to divorce his wife or manumit his slave, upon doing certain actions, instead of swearing by God must be punished. Further, the divorce or manumission he undertakes to bring about, on failing to do what he swore to do or not to do, shall be binding upon him.

Nobody who swears shall make a proviso by appending at the end of his oath the words, "If Allah wills", or be liable to do penance except those who swear by Allah Most High, or by any of His names or attributes. Anybody who makes such a proviso shall be liable to do (any) penance if he, in fact, did intend that proviso and did say "if Allah wills" and linked that with his oath before he was silent. Otherwise such a proviso shall be of no avail to him.

31.02 Kinds of Oaths

Oaths by God are of four types. Two types of these must be expiated for. One is for the person who takes an oath to say, "I swear by God that if I do such and such a thing I hereby make myself liable to do such and such a thing". The second is for the swearer to say, "I swear by Allah that I shall surely do such and such a thing". But the other two types are not expiated for. One is an invalid oath. An example of this is for a person to swear about a state of affairs he believes to be in a particular condition, then the reverse of this dawns upon him. In such an instance he is under no obligation to do penance nor has he committed an offence.

Yet another type is for the person who swears intentionally in asserting a statement be believed is false or is doubtful about. Now, such a person is a sinner, but he shall not have to do any penance. He must however repent to God, Praised and Exalted be He.

31.03 Atonement (Kaffara)

Penance in this case takes the form of feeding ten poor people belonging to the Muslim faith and who are freeborn. A person does this by giving each poor man a measure of the standard measure of the Prophet - peace and blessing of God be upon him. And what is preferable to us, members of the Maliki school, is for a person doing penance to give something extra, such as a third or a half of a measure. The staple to be given out in one of medium cost. But if he should give only a single measure to each poor person that shall be enough. If, on the other hand, he should choose to expiate by clothing the poor, this he can do by giving a shirt to each poor man, and a shirt and a head-tie for each woman. Conversely, the person doing penance can atone for his sin by setting free a believing slave of either sex. If a person is unable to do that, that is, setting free a slave or feeding the poor, he should fast for three days in a consecutive order. If he allows other days to intervene between the days he fasted, that is nevertheless in order.

A person who has taken an oath placing himself under an obligation to do something, or vouching for the truth of a certain statement, shall be free to atone for his inability to perform the duty or for the perjury he committed before or after that inability has become a reality or the perjury has come to light. However, to expiate after those things have become an established fact is preferable to the jurists of the Maliki school of law.

31.04 Vows (Nadhr)

If a person vowed to obey Allah, let him obey Him. If on the other hand he vowed to be disobedient to Allah, let him refrain from disobeying Him. And by making a mere vow to disobey Allah, he commits no sin. If a person vowed to give away the property of another as alms, or to set free someone else's slave, such a vow shall

not be binding upon him. If a person says, “If I undertake such and such an action the vow to perform such and such a religious act shall be binding upon me”, and he goes ahead and mentions the religious act he has in mind, such as prayer, a fast, performance of normal pilgrimage, a lesser pilgrimage or the giving away of something he mentions as charity, under these circumstances the performances of any of these deeds which he mentioned shall be binding upon him if he fails to keep the vow. Further, he shall be liable to fulfil the vow even if he made it without supporting it by an oath.

If a person makes a vow without mentioning any act of piety he intends to perform, as a way out, in case of his failure to fulfil the vow, and if it turned out that he is, in fact, unable to fulfil the vow, then he shall be liable to the kind of expiation which is binding on anyone failing to fulfil an oath.

31.05 Oaths and Vows To Do Wrong

If a person makes a vow to kill a human being, or to drink wine or to perpetrate some other sinful act, or to do an action which does not constitute either obedience to God or disobedience to Him, such a person commits no offence, but let him seek Allah’s forgiveness.

If, on the other hand, he swears by God that he will surely commit some offence he should expiate his oath and he must not commit the offence. If he is insolent enough to commit it, then he is a sinner but no expiation is binding upon him for his oath.

31.06 Fulfilment or Atonement For Various Oaths and Vows

If a person says when he takes an oath, “I hereby bind myself to the pact and covenant of Allah to perform such and such an action”, and then fails to fulfil the promise, it shall be incumbent upon him to expiate by doing twice the duty imposed on anyone who breaks a single oath. But if a person emphasises his oath by merely repeating it, he shall only be liable to a single act of expiation upon failure to fulfil the oath or upon discovery of perjury.

If anyone says he associates partners with Allah, or asserts that he is a Jew or a Christian if he performs a particular action, he commits no offence. Further, he is under no obligation to atone for anything, but let him seek Allah's forgiveness.

If anyone makes unlawful to himself something God made lawful to him he commits no offence except where the thing he makes unlawful to himself is his wife. In this case, she will be unlawful to him until she marries someone else who consummates the second marriage.

If anyone swears or vows to give away the whole of his property as alms or as a gift, such an oath or vow shall be considered fulfilled if he gives away one-third of the property.

If a person undertakes to slaughter his own son upon failure to fulfil an oath; now, if he mentioned 'Maqam Ibrahim' (the station of Abraham), he has to sacrifice a beast, which he should slaughter at Mecca. A sheep or goat is considered enough to be sacrificed. But if at the time of his oath he did not mention Maqam Ibrahim, it shall not be incumbent upon him to do anything.

31.07 An Oath or Vow to Go to Mecca

If a person swears that if he does, or fails to do, a certain thing, he shall go to Mecca on foot, and it happens that he fails to fulfil this oath, it is binding upon him to go to Mecca on foot from the place at which he swore. He is then free to walk to Mecca for the purpose of a normal pilgrimage or a lesser pilgrimage. If he should fail to complete the journey on foot, he is permitted to ride. Then when he comes back, he should walk those parts of his way he travelled riding, if he is able to do that.

But if he knows that he could not undertake the journey on foot, he may continue to remain at home but shall kill a beast as a sacrifice thereby expiating for his failure to fulfil the vow. But according to the view of Ata - a famous jurist - he does not have to make the homeward journey on foot even if he is able to do so, and the killing of a beast as a sacrifice shall suffice.

But if he happens to be a Muslim who has not yet fulfilled the obligation of performing pilgrimage, he is free to perform only the umrah, that is, the lesser pilgrimage. When he goes round the Ka'bah and completes the jogging between Safa and Marwah, he should then shorten his hair. He may enter the state of ihram from Mecca, with the intention of performing a normal pilgrimage of the tamattu variety, combined with an umrah. Complete shaving of the head is considered of greater merit in something other than an umrah. Mere shortening of hair is preferred in an umrah so that one can remain a little unkempt to have something to remove during a normal pilgrimage.

If anyone vows to travel to Medina or Jerusalem on foot, he shall be free to go there riding if his intention was to perform prayers in their two mosques. Otherwise the vow does not place upon him any obligation. But any mosques other than these three, one does not have to go to them on account of having made a vow to pray in them, for it will suffice for him to pray wherever he happens to be.

31.08 Vow to Service a Fort

But if a man should vow to provide voluntary military services by manning a frontier post contiguous to an enemy territory, the provision of such a service shall remain an obligation upon him.

CHAPTER 32

A Chapter on Marriage, Divorce, remarriage with one's divorced wife, false assimilation, a vow of continence, the oath of imprecation, release and suckling

32.01 Constituents of Marriage (Nikah)

There can be no marriage without a marriage guardian, a dower, and two witnesses of integrity. If these witnesses have not been present at the time the contract was concluded, the groom must not consummate the marriage until they witness it.

The least that can be paid as dower is a quarter of a dinar, that is the standard gold piece in classical Islamic times.

32.02 Power of Matrimonial Guardian

A father has the permission in law to give away in marriage his virgin daughter without her permission, even if she has reached puberty. But if he likes, he can consult her.

But anybody other than a father (in the matter concerning a virgin) such as a testamentary guardian or someone else, has no right to give away a virgin in marriage until she reaches puberty and she gives her consent. And this consent is expressed by silence.

But in the case of a *thayyib* (that is a widow or a divorcee), neither her father nor anyone else can give her hand in marriage to anyone without her consent. And this consent she gives in words. Further, a woman cannot be given away in marriage without the permission of

her marriage guardian, or a respectable member of her family, such as a man belonging to the same clan as her, or the ruler.

There are in respect of this matter conflicting views: in the case of a woman of humble status some jurists are of the opinion that a man not related to her can be a marriage guardian to her.

Now, in the matter of marriage guardianship a son has a stronger claim than a father, and a greater claim than a brother. And in the case of agnates, the closer the blood relationship, the greater the right to officiate as a marriage guardian of a woman. However if a distant relative should undertake to perform the office, such a marriage is to be accorded validity in law.

A testamentary guardian is given the authority by law to give away a child in his tutelage in marriage. However he cannot marry away a young girl unless he is given the instruction to do so by her father.

Men whom women are related to through the maternal line, cannot perform the office of marriage guardianship. Such an office can only be performed by agnates.

32.03 Competition Among Suitors

A man must not ask any woman to marry him, who has received an earlier request for her hand in marriage from another man. Nor must he make a bid over the bid of someone else. However, this prohibition is to take effect when the man and the woman and the two people about to conclude a contract of sale, showed every willingness to accept the proposals offered them.

32.04 Forbidden Types of Marriage

The law prohibits marriage on the basis of an exchange that is the kind of marriage in which one man gives his daughter in marriage to another man in exchange for that other man's daughter whom he takes as a wife.

Similarly, the law prohibits a marriage in which no dower is paid. So also, the law prohibits temporary marriages, that is, marriages contracted to subsist up to a given stipulated time. A marriage with a woman who is observing the *iddah*, that is, the retirement imposed on Muslim women by law following divorce or death of their husbands, is also illegal. A marriage is also invalid if it leads to some uncertainty in connection with the contract or the dower to be paid. So also, a marriage is invalid if the articles given as dower consisted of things it is unlawful for a Muslim to sell.

If a marriage is invalid due to the nature of the dower paid in respect of it, such a marriage shall be judicially dissolved before it is consummated. If, however, the husband consummated the marriage, it should be allowed to continue. In such an instance, a dower to be paid for a woman of similar status and circumstances as the bride, should be paid to her.

If a marriage is rendered void by reason of any defect in the contract, and subsequently rendered void, even after consummation, the specified dower shall be paid in respect of it, and such a marriage shall create a bar to marriage between the spouses and some members of their relations, just as the case would be if the marriage were a sound one. However such consummation does not remove the bar to marriage between the wife and a former husband who divorced her three times before. Nor can it confer upon the spouses the status of having been married (*mubsan*).

32.05 Forbidden Degrees

To all Muslim men, Allah has prohibited the marrying of seven categories of women due to blood relationship, and seven categories of women due to foster relationship and affinity.

God - Mighty and Exalted be He - has made it unlawful for men to marry their mothers, their daughters, their sisters, their paternal aunts, their maternal aunts, their brother's daughters (nieces) and their sister's daughters (nieces) - Qur'an 4:23). Marriage with these is prohibited due to blood relationship.

And those with whom marriage is prohibited due to foster relationship and affinity are those cited by the Most High in the Qur'an (4:23) where it is stated: *“Also your mothers by virtue of suckling you; those who became your sisters by virtue of your suckling milk from the same breasts; the mothers of your wives; your foster-daughters under your care and born by your wives between you and whom a consummated marriage existed, though if the marriage existing between you and the mothers of these wards of yours has not been consummated, then you shall be free to marry the wards if you so wish. The wives of your own sons coming from your loins are also unlawful to you; and you are also prohibited from marrying two sisters concurrently. But after separating from one you marry the other”*.

And Allah Most High stated in the Qur'an (4:22), “Do not marry those women whom your fathers married”.

And the Prophet—peace and blessings of God be upon him—prohibited, on account of foster relationship, what is prohibited due to blood relationship. The Prophet ﷺ disallowed the marrying of a woman if the would-be groom is already married to her paternal or maternal aunt.

And if a man marries a woman, the mere conclusion of the contract, without any sexual relations taking place, renders her unlawful as a wife to his father and his sons, and her mother is also prohibited to him. However, her daughters are not unlawful to him until he consummates the marriage with the mother or derives some pleasure with her on account of a marriage existing between them, or through his owning her as a slave.

Adultery or fornication cannot render a marriage unlawful between a couple, which would have been lawful without taking place.

32.06 Intercourse with Non-Muslim Women

God—Glorified be He—has prohibited sexual intercourse with unbelieving women who do not happen to belong to People of the Book, that is, Christians and Jews, whether this is to take place on account of ownership or marriage. But Muslims can have relations with women belonging to People of the Book through ownership

(that is, as concubines). It is also lawful to have relations through marriage with their freeborn women. But relations with their slave women through marriage is forbidden both to a freeborn Muslim and a Muslim slave.

32.07 Marriage to Slaves and Stepmothers Children

A woman cannot marry her own slave, nor can she marry the slave of her son. Neither can a man marry his slave-woman nor the slave-woman of his son. But a man has the permission in law to marry the slave-woman belonging to either his father or his mother.

Also, a man is permitted in law to marry his step-sister. A woman also has the same kind of permission to marry a step-brother.

32.08 Number and Condition of Wives

Both a freeborn man and a slave have permission in law to marry concurrently a maximum of four freeborn Muslim women or four freeborn women belonging to the People of the Book. Further, a slave has permission to marry concurrently a maximum of four Muslim slave-women.

32.09 A Man's Duties Towards his Wives

A freeborn man can do likewise if he fears committing fornication and does not have the means to marry freeborn women. A Muslim is under an obligation to deal equitably with his wives. It is also incumbent upon him to provide his wife or wives with maintenance and lodging in accordance with his means. When he draws up a roster sharing the nights between his wives, he does not allot any nights to his slave-girls or his slave-woman by whom he has a child, and whom he keeps as a concubine.

He shall not be liable to provide maintenance to a wife until he consummates the marriage or is called upon to do so. Further, the wife must be a person with whom sexual intercourse is possible.

32.10 A *Tafwid* Marriage

Marriage by proxy is lawful. The form this takes is for the husband and the marriage guardian of the woman to conclude the contract without mentioning dower. In such a case the groom must not consummate the marriage until he specifies the dower he intends to pay her. And if he specifies the kind of dower paid to women of her status she will be bound to accept it.

If however it happens to be less, she can then be given the choice of accepting or rejecting. Now, if she rejects the dower, the couple shall then be separated unless they come to some agreement, or he agrees to pay her the type of dower normally paid to women of her status, which it shall then be binding upon her to accept.

32.11 Effects of Change of Religion

If either of a couple apostatises, the marriage shall be judicially dissolved by a divorce. But according to the view of other jurists, such a marriage is to be dissolved without a divorce. If a non-Muslim couple embrace Islam, their marriage shall continue to subsist. But if only one of them accepts Islam, such a marriage is to be dissolved without a divorce. Supposing it is the wife who embraces Islam and the marriage is subsequently so dissolved and she starts to observe the *iddah*, then if the husband follows suit during the *iddah*, he will have claim on her.

If the husband accepts Islam, while the woman is either a Jewess or a Christian, he has the permission to retain her. But if the husband accepts Islam, while the woman was a Magian and she also immediately accepts Islam after him, they can then continue as husband and wife; but if she does not accept Islam immediately then they are separated.

When a polytheist accepts Islam at a time when he is married to more than four wives, he must choose four out of them and separate from the rest of them.

32.12 Various Impediments

Whoever had a *li'an* with his wife she will be permanently unlawful for him to have as a wife. (*Li'an*, by the way, is an oath of imprecation in which a husband accuses his wife of adultery. It leads to a divorce. After such a divorce, a permanent bar to remarriage shall exist between the spouses). The same rule applies to anyone who marries a woman who is still observing the *iddah*, that is, the retirement after divorce or death of husband, and has relations with her during the period.

A slave man or woman cannot marry without the permission of their master. A woman, a slave or a non-Muslim does not have the capacity to officiate over a marriage. Nor is it lawful for a man to marry a woman with the sole purpose of rendering her once again lawful for marriage with a man who divorced her three times earlier. Even if such a marriage did take place, it would not render lawful for remarriage a woman divorced three times, to the husband who repudiated her earlier.

A man in the state of *ihram*, performing the normal or lesser pilgrimage, is interdicted by law from getting married himself or officiating over the contract of the marriage of another.

32.13 Sickness

Also, the marriage of a sick man is unlawful; such a marriage is to be dissolved even after being consummated. But the woman shall be paid the dower. This is to be taken out of one-third of the sick man's property, and this payment shall be given priority over any other financial obligation which must be defrayed out of that one-third of the sick man's property.

However, the wife married by a sick man shall not be entitled to inheritance (if the husband happens to die from his illness). If on the other hand a sick man should repudiate his wife, the repudiation is binding on him. But a wife repudiated under such circumstances shall be entitled to inherit from her husband if the husband happens to die from that illness.

32.14 Repudiation (*Talaq*) and its Revocation (*Raj'a*)

If a husband repudiates his wife three times, it will not be lawful for him to have relations with her either as a concubine or as a wife unless she marries another husband and this second marriage is consummated. A triple divorce pronounced at one time is regarded as an undesirable innovation.

If pronounced, however, it shall remain binding upon the husband. The lawful divorce decreed by the Islamic tradition is for the husband to divorce his wife when she is free from menstruation, and without having any relation with her previous menstruation; and the pronouncement shall be once only. Having done that, the husband must desist from pronouncing another divorce until the period of her retirement (*iddah*) expires.

A husband has the right to take back his wife who still menstruates, as long as she has not yet entered her third menstruation in the course of the *iddah* retirement - third in the case of a free woman, and second menstruation in the case of a slave woman.

Now, if the wife is the type that does not menstruate or has reached menopause, the husband has permission by law to divorce her whenever he likes. A pregnant wife can also be divorced by her husband whenever he likes and he has the right to take her back as long as she has not been delivered of her child. Also, the woman who observes her *iddah* by waiting for three months can be taken back as a wife, after being divorced, as long as that period has not expired.

The meaning of the word '*qur*' is cleanliness, that is, the period coming between two occasions of menstruation. The law prohibits a husband repudiating his wife while she is menstruating. But if he pronounces a repudiation during the period it becomes binding on him. He must however be compelled to take her back into his residence if the period of *iddah* she observes has not yet expired.

But a wife whose marriage he did not consummate he can divorce whenever he likes. And a single pronouncement of repudiation cuts off completely the bond of marriage existing between her and her husband. This means she can contract another marriage immediately.

But if divorced three times or if divorced in a manner intended to sever the three cords in the bond of Islamic marriage, she cannot be taken back as a wife by the husband unless she contracts another marriage with someone else and that second marriage is duly consummated.

If anyone says to his wife, “You are divorced”, that is to be regarded as a single act of divorce, except where more than one was intended.

32.15 Release (*Khul*)

‘Khul’, or release, is a dissolution of marriage in which there cannot be any return to marriage by the couple, according to some view, even though it has not been called a divorce; as long as the wife has given the husband something and he has released her in consideration of that.

32.16 Formulas of Repudiation

If anybody says to his wife, “I divorce you once and for all”, this is considered as triple form of divorce, whether or not he consummated the marriage. Also, if he says to her, “You are quit, or free, or unlawful, or your rein is upon your hump - that is, you are free to go wherever you like”, under such circumstances this is regarded, in the case of a consummated marriage, to be a triple form of divorce. But in the case of a marriage not consummated, the husband is asked to specify how many times he intended to divorce the wife.

32.17 Rights of Repudiated Wives

A wife divorced before the marriage is consummated is entitled to one-half of the dower except where she waived this herself, where she happens to have been married before. But in the case of a virgin the right of waiving one-half of the dower belongs to her father; while in the case of a slave woman the right belongs to her master.

If a man divorces his wife, it shall be fitting for him to give her a present in order to console her, but he is under no obligation to do that. In the case of a wife he divorces without consummating the marriage, and to whom he paid the stipulated dower, no consolation present is to be given. Nor is a husband expected to give a consolation present to a wife from whom he separated under the *khul* or release type of separation.

32.18 Rights of Wives on Death of Husband in Tafwid Marriage

If a husband dies leaving a wife to whom he did not pay the stipulated dower and whose marriage he did not consummate, such a wife shall be entitled to inherit him but shall not be entitled to the dower. But if he consummated the marriage she would be entitled to the dower paid to women of her status. That shall be so if she has not agreed to be paid any known amount.

32.19 Physical Grounds for Dissolution

A bride can be rejected and the groom withdraw from the marriage contract before consummation, on account of her being insane, leprous or suffering from a disease of the vagina (not necessarily a venereal disease). If the groom consummates the marriage unknowingly, he shall pay her the dower and claim it from her father. Similarly, if she was married to the groom by her brother, he shall claim the refund of the dower he paid from the brother.

But if she was married to the groom by a marriage guardian who was not a near relative, the groom cannot claim a refund from such a person. In such an instance, the bride rejected shall be paid only a quarter of a gold piece, the minimum payable as dower.

The wife of a man affected by impotence is to give him a grace of one year within which to resume or start normal intercourse. If he is unable to do so within that year, the couple shall be separated if the wife so wishes.

32.20 A Missing Husband

The wife of a man who disappeared shall wait for a period of four years, beginning from the day she took the matter to court. If the husband does not turn up by the time this period expires, the wife observes the type of *iddah* observed in respect of a dead husband. Then she marries another man if she likes. However, his property may not be inherited until after the passage of such time as it would be impossible for people of his age to remain alive.

32.21 During *Iddah* Period

A woman must not be courted while she is observing an *iddah*. But a prospective suitor is free to intimate his desire to marry a woman observing *iddah* by telling her something which implies the desire.

32.22 Newly Weds

The man who weds a virgin is entitled to stay with her for seven days, during which period he is free to keep away from his other wives. But if he marries a woman who has been married before he stays with her exclusively for three days.

32.23 Forbidden Degrees among Slave Women

It is not lawful for a man to take two of his slave women who happen to be sisters, as concubines. If he should desire making the second one his concubine, then he must separate with the first by setting her free or entering with her into the contract of *kitabah*, whereby he gives her an opportunity to gain her freedom in consideration of a payment of an agreed sum of money, or by setting her free or by some other way like that, so that sexual relations with her become unlawful to him.

If a man had relations with a slave woman he owns, it is unlawful for him to have such relations with her mother or her daughter. Furthermore, she becomes unlawful for such relations to his fathers

and sons, in the same manner a marriage can make such relations unlawful.

32.24 Repudiation by a Slave, a Minor, or a Wife

A slave shall have the right to repudiate his wife. The right to do that does not rest with his master. But a youth is not vested with the capacity to repudiate his wife.

A wife who is given freedom to do whatever she chooses in respect of the marriage subsisting between her and her husband, and one given the option of choosing between divorce and continuous cohabitation, have the right to choose whatever course of action they like as long as the court remains in session, or the husband and the wife have not parted since the time the choice was given.

Under these circumstance, the husband is permitted, by law, to dispute with the wife given freedom to do whatever she likes, in particular if she chose to make the divorce between them double or triple in nature. However, in the case of the wife given an option, she can only choose a triple divorce, and in such an instance the husband has no right to complain.

32.25 An Oath of Abstinence (Ila')

Whoever swears not to have sexual intercourse with his wife for more than four months is to be regarded as having taken vow of continence. No divorce can be imposed upon him except after the period during which he observes continence, and this is four months in the case of a freeborn man, and two months in the case of a slave. It is after this period that the ruler dissolves the marriage.

32.26 Declaring A Wife Forbidden (Zihar)

Anyone who, by false assimilation, compares the back of his wife with that of his mother, shall not have sexual relations with her until after having expiated for the offence by setting free a believing slave who is free from all blemishes and who is entirely owned by him and

does not enjoy partial freedom already. If the offender is unable to do that, he must fast for two consecutive months. And if he cannot do that, he shall feed sixty poor people by giving each of them two mudds (a standard measure). He must not have sexual relations with such a wife during the night or day until he completes the atonement.

But if he does so, he must repent to Allah—Mighty and Exalted be He. But if he had the relations after performing a part of the atonement through feeding or fasting, he must repeat them. Now, in the case of manumission due to false assimilation, there is no harm in setting free a one-eyed slave or one who is illegitimate. A minor is also acceptable. However, in this matter of atonement, jurists of the Maliki school attach greater importance to prayer and fasting.

32.27 Cursing For Adultery (Li'an)

The oath of imprecation takes place between spouses when the husband denies responsibility for the wife's pregnancy which appears after a period when it was established that the wife was not pregnant. This kind of oath also takes place when the husband caught the wife red-handed in the act of committing adultery, and to have seen the sex organ of the man in that of the wife. Besides there are conflicting views as to whether or not mere accusation of adultery by the husband against the wife is sufficient to warrant taking the oath of imprecation.

According to one view, the same oath of imprecation is sworn by the husband, in which he curses himself. However, other jurists are of the view that if the husband did not witness his wife in the act of adultery he must be given the punishment due for slander. If a couple separate on the grounds of the husband accusing the wife of committing adultery, which leads to oath of imprecation, a permanent bar to remarriage shall exist between them.

The form these oaths take is as follows: the husband begins by calling upon Allah Almighty to witness that he is not responsible for the pregnancy. He does that four times. On the fifth occasion he invokes curses upon himself if he be of the liars. The wife then responds by affirming that her husband was indeed responsible for the pregnancy.

She does that four times. On the fifth occasion she calls down upon herself Allah's anger if she be of liars. She does so as Allah—Glorified and Exalted he He—mentioned. And if she should shrink from doing that, she is stoned to death (the charge of adultery being proved against her by that refusal) if she happens to be freeborn and is a woman upon whom the status of being married has been conferred earlier on by sexual relations with this or some other husband. If however she did not enjoy the status of being a married woman, she is given one hundred strokes of the cane. If on the other hand the husband refuses to swear after having brought the charge, he is given the *badd* punishment for slander - *qadhf* - which is eighty strokes of the cane, and the paternity of the child in dispute is attributed to him by court.

32.28 Release (Khul)

A wife is given permission by law to ransom herself from her husband by paying him back the dower he paid to her, or an amount less or more than that. That shall be so if she wants to leave him without suffering from any hardship or being exposed to any difficulties.

But if she wants to leave the husband on account of some hardship she suffers, she takes back from him any amount she happens to have given him. It will then be incumbent on him to separate from her under the arrangement known as *khul* (release). Such a release, however, is a separation of a couple which cannot be revoked. If the husband should require continued cohabitation, it can only take place after a fresh contract of marriage with the consent of the wife.

32.29 Divorce of Slaves

If a bondswoman is granted her freedom while married to a slave, she has the choice of either having their marriage annulled or of allowing it to continue. If a man acquires the ownership of a slave woman to whom he is married, this marriage must be dissolved. (He can, however, have her as his concubine and that is all.) The maximum number of times a slave may divorce his wife, after which a bar to remarriage shall exist, is two. And a slave woman observing

the *iddah* or waiting period after separating from a former husband through death or divorce is required to observe only two menstrual cycles in the event of a divorce.

However, the duties the law imposes on a freeborn person to atone for errors committed in the observance of religious duties, are the same for a slave also. But there are differences in the amount of legal punishment to be awarded for the same kind of offences for which *hadd* punishment is inflicted, depending on whether the offender is freeborn or a slave. Such a distinction also exists in the case of divorce.

32.30 Wet-Nursing Relationship (Rida)

Whatever reaches the stomach of a suckling of milk during its first two years of life, even if a single suck, creates a permanent bar to marriage to any other child of opposite sex who happened to have had himself, or herself, a suck from that same suckling mother, even if the children in question were not related by blood or otherwise, and that marriage between them would have been possible under normal circumstances. But milk suckled after two years, except if shortly afterwards, after, say, a month or so, shall not create such a bar to marriage. According to some view, the bar shall not arise even if the suckling takes place within two months after the lapse of the two years.

But if the child is weaned before it is two years old in such a manner as enables it to do without milk and live on ordinary food, that bar to marriage we have been talking about shall not arise on account of being suckled by some woman afterwards.

Islamic law takes a serious view of this matter of common suckling. So partaking of the milk of a woman, even if a small amount under the tongue ('*wajur*') or perhaps an even smaller quantity snuffed through the nostrils, creates a permanent bar to marriage, later in life of course, to all babies of opposite sex nourished by the milk of a common woman even, as mentioned earlier, when they are not related through blood, and even if the suckling takes place at various intervals.

If a woman suckled a child, her daughters and the daughter of her husband(s), both past ones and future ones, shall have the status of being his sisters as far as marriage is concerned. However, his (i.e. the suckled child's) own brother has permission by law to marry the daughters of such a woman.

CHAPTER 33

A Chapter on 'iddah', maintenance and the retirement other than 'iddah' which women observe, so that it can be ascertained whether or not they are pregnant, known as istibra

33.01 Iddah for Divorcees

In the case of a divorced freeborn woman who is either a Muslim or a follower of an earlier revelation, the length of the period of *iddah* she must observe is one which encompasses three intervals of freedom from menstruation ('quru'). A slave woman or one in whom there is a vestige of bondage, shall observe two such intervals. That shall be so in the case of all the women we mentioned, whether her husband happens to be freeborn or a slave. What is meant by the word 'qur' (of which 'quru' is the plural) is the period intervening from one menstrual cycle to the next, during which the woman is free from bleeding.

If the woman who must observe the *iddah* is one who does not menstruate due to tenderness of age, or one who has despaired of menstruation having reached menopause, the period such a woman shall observe as *iddah* is three months, for both a freeborn woman and a slave woman.

33.02 Iddah for Widows

Iddah in respect of a freeborn or even a slave woman whose menstruating habit is abnormal, is one year in the event of a divorce. But the *iddah* of a pregnant woman, whether this is as a result of the death of her husband or as a result of a divorce, shall last until she is delivered of her child. That shall be so whether the wife happens to

be freeborn, a slave or even a follower of earlier scriptures. A wife divorced without marriage being consummated shall not observe any *iddah*. The *iddah* in respect of a freeborn woman due to the death of her husband shall be four months and ten days no matter whether she happens to be of tender age or an adult, whether the marriage was consummated or not, and whether she is a Muslim or a scripturary, i.e. a follower of earlier scriptures.

But a slave woman or a woman still under a measure of bondage shall observe two months and five nights, as long as, in the case of the full grown woman who normally experiences menstruation, she is not in any doubt as to the menstrual cycle delaying in coming after it is due. If such a situation should arise, she should wait until all doubt is dispelled. But a woman who does not menstruate on account of being of tender age or advanced in age, and whose marriage has been consummated shall not contract a fresh marriage upon the death of her husband until after three months.

33.03 Mourning (*Ihdad*)

A wife mourning the death of her husband and observing the *iddah* prescribed on that occasion shall avoid all decorations with jewellery and make-up using antimony or other things. She must keep away from (wearing clothes of) any colour other than black. She must avoid perfume of all types. Nor should she colour her palms or feet with henna leaves. She must not also use sweet smelling pomades. Nor must she apply anything perfumed to her hair when she combs it.

The observance of this *iddah* of mourning is incumbent upon a slave woman, and a freeborn woman of tender age or full grown. However, there are differences of opinion as to whether such an *iddah* is also binding on a Jewish or Christian woman. But a woman divorced by someone who subsequently dies is under no obligation to observe the mourning *iddah*.

33.04 *Iddah* for a Jewish and Christian Wife

However, a freeborn scripturary woman must observe an *iddah* of mourning upon the death of her husband, or the ordinary *iddah* following a divorce, if she happens to be married to a Muslim.

33.05 *Iddah* for an Umm Walad

The *iddah* for an ‘umm-walad’ - that is, a concubine or a slave woman cohabiting with her master, who has borne him a child, and who, according to Islamic law, becomes free on the master’s death - when the master dies is the observance of one menstrual cycle. Such shall also be the case when he sets her free. But if she has already reached menopause, she waits for three months.

33.06 *Istibra*

The *istibra* or the conditions the law demands to be fulfilled in order to ascertain whether a given adult woman with whom a man had sexual relations or who was exposed to conditions which made sexual relations with a man a possibility - upon alienation - is one menstrual cycle, no matter whether such alienation is brought about through sale, gift, capture or some other means. But if a man should be in possession of a slave woman and she menstruated while in his custody, it will not be necessary for her to observe the conditions imposed by the law for *istibra* when that man subsequently purchases her for himself, as long as she has not been free to go out from time to time.

Istibra in respect of a young girl upon being sold, if old enough to have relations with a man, shall be three months. Also a woman who has reached the menopause shall wait for three months. But one whom a man cannot have relations with is under no obligation to observe the *istibra*.

If a man purchases a pregnant woman that is made pregnant by someone else, or if the ownership passes into his hands without him purchasing her, he must not have any relations with her or have any dalliance with her in any way until she is delivered of her child.

33.07 Lodging (*Sukna*) and Maintenance (*Nafaqa*) of Ex-Wives

It is the duty of the husband to provide accommodation for his divorced wife if he had consummated the marriage. No maintenance is due to a divorced woman, however, except where the number of divorces is less than three. But a pregnant woman, whether repudiated once or thrice, is entitled to maintenance. A woman who separated from her husband under the system known as 'khul' shall not be entitled to maintenance except if she happens to be pregnant. But any woman who separates from her husband through imprecation cannot claim maintenance from that husband, even if she happens to be pregnant.

A wife who is observing the *iddah* of mourning is not entitled to maintenance. But she is entitled to accommodation if the house she happens to be staying in belonged to her late husband or if the deceased had paid rents in advance.

33.08 Confinement During *Iddah*

A wife must not leave her house on account of divorce or the death of her husband until she completes the *iddah* prescribed for the occasion. If however the owner of the house she happens to be living in evicts her, or is not willing to accept rents payable on a house of comparable standard, she can then go out and stay in another place until her *iddah* expires.

33.09 Nursing (*Rada'*) and Custody (*Hadana*) of Children

A woman in wedlock shall suckle her own baby, except where women of her status do not suckle their babies. A divorced woman shall suckle her child at the child's father's expense. And she can take the reward for such suckling if she likes.

The custody of children is the responsibility of the mother after divorce. This condition shall remain in force until a boy becomes

sexually mature, or until a girl is married away and the marriage consummated. If the mother dies or marries another husband, the right of custody passes into the hands of the grandmother; after her comes the maternal aunt. But if there are more of the mother's maternal relations the right shall pass into the hands of sisters and paternal aunts. And if there are none of these, the right passes into the hands of agnates.

33.10 Recipients of Maintenance

A man is not under any obligation to maintain anyone other than his wife. This obligation shall stand whether the wife is well-to-do or needy. A man is also obliged to maintain his parents if they are poor, and his minor children who do not have any property of their own. In respect of male children, the obligation shall last until they are sexually mature, except where they are incapacitated in one way or another. In respect of female children, it shall last until they are married away and the marriage is consummated. Nobody is under any obligation to maintain any of his relations other than these.

33.11 Burial

If a man is rich, it is incumbent upon him to employ a servant for his wife, and he must also maintain his slaves and provide shrouds for them when they die. However, there are divergent opinions amongst jurists as to whether or not he is under an obligation to provide for the shrouds of his dead wife. According to the view of Ibn al-Qasim (a famous jurist), the expenses of such shrouds should be met from the wife's own property. But Abd al-Malik (another jurist) is of the opinion that such expense must come from the property of the husband. Sahnun (yet another famous Maliki jurist) is of the opinion that if the wife is rich, the cost of the shrouds should come from her property, and if she is poor then it must come from the property of the husband.

CHAPTER 34

A Chapter on the law of trading and transactions similar to sales

34.01 Exchange of Money

God made trading and sales lawful but He forbade ‘riba’, i.e. usury. Usury used to be in pre-Islamic times in this manner: a debt is contracted subject to the condition that it be repaid at a specified time; if not, the debtor is to pay the creditor a ratable amount to be added to the principal. If the riba (usury) is not conducted in this form, whereby a delay may earn an increase, it may take the form of bartering silver and gold for gold, in which one of the parties gives more than he received. It is not lawful to exchange silver or exchange gold with gold except in equal quantities in direct and immediate exchange. The exchange of silver with gold shall be considered usury, except when done with immediate effect.

34.02 Exchange of Foodstuffs

In respect of foodstuffs such as cereals, legumes and similar things, which can be stored, all kinds of foodstuffs and condiments, it is unlawful to exchange those of the same type, except by giving quantities and with immediate effect. It is not lawful for one party to delay compliance with these rules. It is not lawful to exchange foodstuff with foodstuff, whether of the same type or not and whether of the type that can be stored or not, when one or both parties are permitted to delay compliance with meeting their obligation.

There is no harm in exchanging fruits and vegetables and other things that cannot be stored, while one party gives more to the other even if they are of the same type, through direct exchange. It is not

lawful for one party to give more to the other in respect of commodities of the same type and which can be stored, such as dried fruits and other condiments, foodstuffs and drinks, except water alone.

As for commodities of different types such as grains, fruits and foodstuffs, there is no harm in one party giving more to the other in direct immediate exchange.

In exchanging commodities of one type it is not lawful for one party to give more than it receives except in respect of vegetable and fruits.

Wheat, barely and huskless barley are considered as one category in respect of lawfulness and unlawfulness. Raisins of all types are considered as one type. Similarly dried dates are all considered one type also. Legumes are considered to consist of many types in respect of trading. But Imam Malik held a different view on this. Imam Malik considered legumes to consist of one type for the purpose of alms-giving. The flesh of quadrupeds, whether tame or wild, is considered to be of the same type. Further, the flesh of all birds is considered to consist of one type. Again, the flesh of all aquatic animals is considered to be of the same type. Any fat extracted from the flesh of animals regarded as one type is considered like the flesh to be of one type. The milk of that type mentioned as well as the cheese and ghee are all considered as one type.

34.03 Selling Goods not yet Possessed

Whoever buys foodstuffs it will not be lawful for him to sell them off before he takes them over, if the purchase is done through weighing measuring or counting. However he is permitted to do that if he bought the foodstuff en bloc. The same rule applies to all foodstuffs, condiments and drinks, with the exception of water alone. Now, if the commodity to be sold happens to be drugs or legumes from which oil cannot be extracted, then it will not be unlawful to be sold before it was received after purchase. In trading such legumes one party can give more than it receives of that same commodity.

There is no harm for foodstuffs bought on credit to be sold before they are taken over. There is no harm in joint purchase or resale at cost price or revocation of a sale of measured foodstuff before it is taken over.

34.04 Selling at a Risk

Every sale or hire or rental contract which involves some hazard or uncertainty in respect of price or the object of sale, or uncertainty as to the time payment shall be due, is not lawful. It is not lawful for a sale to involve uncertainty nor is it lawful to sell an unknown commodity. Besides, it is not lawful to sell a commodity the payment for which is due at an unknown time.

34.05 Selling Goods with Hidden Defects

It is unlawful in trading to swindle, cheat or lie in respect of price or to deceive. Nor is it lawful to hide defects; nor is it lawful to mix a commodity of poor quality with one of good quality. Further it is not lawful for a seller to hide some nature of his commodity, the mention of which might stop the buyer from buying it, or to hide a defect the mention of which might lower the price.

Whoever buys a slave and then finds some defects in him, he has the right to keep him without claiming anything, or he can take him back to the seller and recover the price except where another defect has occurred in the slave while in the possession of the new buyer. The buyer can then claim the value of the old defect from the price. Or he can give him back to the seller and give to the value of the new defect. Now when the buyer rejects a slave whom he exploited due to a defect, he shall be free to enjoy the benefit of any service already given.

34.06 Selling Merchandise on Trial (*Khiyar*), a Slave with a Guarantee (*‘Uhdah*), or a Slave Woman in Seclusion (*Muwada’a*)

It is lawful in a contract of sale to have the right of withdrawal when the contracting parties agree upon a short period, long enough to permit the buyer to examine the commodity, or long enough to enable the buyer to take advice with respect to the commodity. It is not lawful in such a case for the price to be paid promptly. The same applies in the case of an ‘*uhdah*’ of three days. ‘*Uhdah*’ is an agreement for time allowed within which to withdraw from the contract. It is not lawful for the price to be paid promptly while the commodity is a slave girl, who shall be kept for some time to ascertain whether or not she is pregnant.

When the slave girl was thus being kept, the responsibility of maintaining her or bearing any loss in the event of something happening to her, shall be borne by the seller.

The type of slave girl kept to ascertain whether she is pregnant or not is the one kept to go to bed with, in most cases, or one the seller admitted having had sexual intercourse with, even if she is ugly. It is not lawful for a seller of a slave girl to disclaim responsibility for a pregnancy except when such a pregnancy was evident.

It is lawful in the sale of slaves for the seller to disclaim responsibility for defects he did not know of. Again a mother and her child are not separated in a sale until the child begins to cut its second teeth.

34.07 Responsibility (*Daman*) in an Invalid Sale

In the event of a sale contract becoming void, whatever loss is incurred shall be borne by the seller. But if the buyer has taken delivery, then the buyer shall bear the loss from the day he has taken delivery. If the market conditions change or if there are certain changes in the body of the slave, then the buyer shall pay the seller the value of the slave on the day he took him over. But if the object of sale is of the type that can be weighed or measured, the buyer shall

not return it to the seller; however, he can return to the seller the same quantity.

34.08 Capital Loans for Borrowers Profit (*Salaf*)

The right of the buyer to withdraw from a contract of sale in respect of landed property shall continue to exist despite a change in the price of such properties in the market. It is not lawful to give a loan which can lead to a gain by the giver. Further it is not lawful to combine a sale and a loan in a single contract. Similarly it is not lawful to combine a loan with something similar to it such as a hire or rental. It is lawful to give out on loan anything other than slave girls. Also it is not lawful to give silver ore on loan.

34.09 Surrendering Borrowed or Sold Property

Besides this it is not lawful for a lender to give a rebate in order to make the debt fall due earlier. Nor is it lawful to charge an extra amount in order to postpone payment. Again it is not lawful to make the buyer take over the commodity before time, and to give him an extra amount for doing that, in the case of a sale contract. There is no harm in handing over the commodity to the buyer earlier, in respect of a loan, that is, if the increase is in respect of quality only.

There are differences of opinion as to whether a person can give more than what was loaned to him when he comes to pay off a loan, when there was no stipulation or promise or custom making that necessary. Ashhab, a Maliki jurist, permitted that, while Ibn al-Qasim, another Maliki jurist, considered it reprehensible and did not sanction it.

When a person is owing some gold or silver pieces as a result of a contract of sale or some loan which is to take some time before it is due for payment, such a person is permitted to pay off the debt earlier than the stipulated time it shall be due. Similarly, he is permitted to hasten giving a commodity or foodstuff he owes as a result of a loan or a sale contract.

34.10 Some Risky Things Which May Not Be Sold

It is permitted to sell fruit or grains which did not appear to be fully ripe. However it shall be permissible to sell them if at least some of it is fully ripe, even if this happens to be one date palm out of many date palms.

It is not lawful to sell fish while still at large in rivers or pools. Nor is it permissible to sell a foetus while in its mother's womb, nor is it lawful to sell what is in the wombs of other animals, nor to sell the semen of male camels which shall produce young when they cross female ones.

Again it is not lawful to sell a runaway slave while at large, nor a stray camel.

34.11 Dogs

It is also prohibited to sell dogs, but jurists disagree as to the lawfulness of selling those dogs people are permitted to keep. However anybody who kills a dog of the type people are permitted to keep shall pay for it.

34.12 Muzabana Exchange of the Same Kind of Foodstuff, and Usurious Payment

It is unlawful to give meat in exchange for an animal of the same type; nor is it lawful to combine two contracts of sale in a single contract - that can arise when a person buys a commodity at five gold pieces for cash, or ten gold pieces on credit. He can only stick to one price.

It is unlawful to exchange ripe dates with dried ones or raisins with grapes. In this respect neither greater nor equal amounts can be received in the exchange. Nor may ripe juicy ones be exchanged for dried ones of the same type of the rest of fruits. That is prohibited because it involves selling or exchanging a thing in return for something unknown. Commodities, further, are not exchangeable, some measured in return of others en bloc of the same type; nor

some en bloc in exchange of others also en bloc, of the same type: except where it is evident that the quantity of one is greater than that of the other, in respect of a commodity in which it is lawful to exchange unequal quantities in respect of commodities of the same type.

34.13 Selling Absent Goods

There is no harm in selling a commodity which is absent when it is described. But such a contract payment must not be made except where the article of sale is near or of the type that cannot easily change, such as a house or a piece of land or a tree. In such a circumstance payment can be made.

34.14 A Guarantee (Uhda) in Selling a Slave

In the sale of slaves, it is lawful to have an agreement between the contracting parties to allow time within which the buyer can claim his money back if he finds some defects in them. That shall be when the guarantee has been stipulated. A guarantee is also given in respect of a slave girl who is present in town for three days. Liability to bear any loss shall be upon the seller in respect of anything which arises. The period of guarantee in the purchase of a slave shall extend to a whole year in respect of madness or leprosy.

34.15 Sale with Advance Payment (Salam)

There is no harm in respect of forward-buying in the case of commodities, slaves, animals, foodstuffs and condiments, with specific description for a specific time-limit. The price can be paid promptly or it can be deferred for two or three days if it has been made a condition.

It is preferable to us that the commodity bought through forward-buying shall be delivered within fifteen days, or that it shall be received in a different locality, even if the distance of that locality is a two or three days journey.

More than one Maliki jurist has approved that the goods bought in a ‘salam’ should be delivered within three days in the very town in which it is transacted; but some other jurists considered that reprehensible.

It is not permissible that the article given in payment for a ‘salam’ (a ‘salam’, by the way, is forward-buying) should be of the same type as those bought by the salam. The object of salam shall not consist of those given in payment for it or something which closely resembles it. But a person is permitted to receive in payment for a loan something of the same description and quantity. The advantage shall be for the person who made the salam.

34.16 Exchange of Claims

It is not permissible to pay a loan by asking the creditor to receive payment from a third party who is owing the debtor. Nor is it lawful to delay payment of a salam until the time agreed for the delivery of the articles of the salam; nor is it lawful to delay payment for a salam until a period longer than three days has elapsed.

Further it is not lawful to liquidate a debt with another. For instance if someone owes an amount then you agree to forgo it in consideration for something he gives you promptly.

34.17 Sale of Goods Not Yet Had

It is not permissible to sell something you do not have on the understanding that you will buy it and deliver it to the buyer.

34.18 Reversal of Sale on Time

When you sell a commodity at a price to be paid later, you must not buy it back at a lower price as cash, or ask for it to be paid at date earlier than that date fixed first; nor buy it back at a higher price to be paid at a date later than the date fixed for the first agreement. But it is permissible to buy back the property for a price to be paid on the date fixed first, and the affairs shall be settled as the case may be.

34.19 Buying in Undetermined Quantities (Juzaf)

There is no harm in buying a commodity en bloc by giving something measured or weighed, with the exception of gold or silver pieces already minted. But raw gold not minted or silver can be given in exchange of a commodity en bloc.

It is not permissible to buy a group of slaves and a collection of clothes en bloc, nor is it lawful to buy things en bloc which can be counted easily.

34.20 Right to Accessories of Item Sold

If someone sells date palms after they have been pollinated then the fruit shall belong to the seller, except where the buyer stipulates that the fruits shall be his property. This rule applies to other fruits. The word “ibar” means pollination, but in respect of other plants it means their shooting up from the ground. If a person sells a slave who owns some property, that property shall belong to the seller except where the buyer stipulates that the slave’s property shall belong to him.

34.21 Examining Items

There is no harm in buying commodities in a sack when the contents are described and made known. But it is not lawful to buy clothes that cannot be unfolded or described, or at night in the darkness, where people cannot look at it or recognise what is in it. Similarly, it is unlawful to sell an animal at night in the darkness.

34.22 Bidding (Sawm)

A person must not outbid the bid of his brother Muslim, and that is when the contracting parties are about to reach an agreement, not at the beginning of the offer-making. A contract of sale is concluded through speech when the parties are not separated.

34.23 Selling Services by Time (*Ijara*) or by Job (*Ju'*), and Selling the Use of Property (*Kira'*)

The contract of hire is lawful when they agree upon time and the money to be paid.

In a contract to bring back a runaway slave or stray camel, or digging a well or selling clothes and the like, upon which payment will be in the form of a reward, no limit shall be agreed upon. The person thus hired shall not be entitled to payment except upon the completion of the assignment.

If a person is hired to sell something within a given time, upon the completion of the time agreed he shall be entitled to the wage, even if he did not sell the commodity. If he should complete selling the articles within half the appointed time, he shall be entitled to half the wage.

The contract of hire is like that of sale in respect of the rules of lawfulness and unlawfulness.

If a person should hire a specific animal to go to a specific town and the animal dies, the contract lapses for the remainder of the journey. The same rule applies in respect of a person hired who subsequently dies; so also in the case of a house rented which collapses before the period of rent expires.

There is no harm in agreeing with a teacher to teach the Qur'an until the pupils master it, nor in agreeing with a physician to cure a sick person.

The death of a hirer of an animal, or a tenant or a hirer of a flock of sheep, does not cause the agreement to lapse. The rent agreed upon must still be paid.

If in a guarantee hire, the beast hired out dies before reaching the agreed destination, the owner of the beast shall provide a fresh one to complete the journey. And if the rider should die, the contract shall nevertheless remain valid, while the beast is hired out to another rider.

If a man should hire a piece of household implement or something else, he shall not be liable to pay for it if it gets damaged or lost. Besides the man who took the hire is to be believed in what he says about the implement unless it is evident that he is lying.

Craftsmen shall be liable to pay for those things they take away to work on, whether they are going to receive a wage for the work or not.

The proprietor of a public bath is under no liability to pay for any loss or damage incurred by his clients while there. Similarly the owner of the boat is not liable to make good any loss or damage suffered by passengers. But he is not entitled to any fares until upon reaching the destination.

34.24 Partnership (Shiraka) of Labour and Capital

There is no harm in hiring out labour jointly; that shall be when the partners work in one place and undertake the same kind of work or a similar kind. Further it is lawful for two people to form a company through pooling capital, on condition that the profit is shared in proportion to the size of shares held by the partners. The work also shall be shared according to what the partners stipulated in sharing the profit. It is not lawful for the capital contributed by the two partners to be unequal while they share the profit they gain equally.

34.25 Trade Loans (Qard)

Qirad is lawful. It means an arrangement of a partnership where one person furnishes the capital and another works with it, and the profit is shared. It is lawful when gold or silver pieces are advanced. It is also lawful even when irregular pieces of gold and silver are advanced. But it is not lawful when the capital provided consists of commodities; and if it should take place, the status of the seller will be that of a person hired for the sale. And the wage he should be paid should be equal to that realised in a qirad whose capital is the same as the value of the commodity.

A person hired in a qirad shall be given clothing and food if he travels and if the capital is considerable. Usually he should be provided with clothes if the journey is a long one. Partners in a qirad do not divide the profit until the whole capital is reduced to cash.

34.26 Leasing an Orchard (Musaqat)

The contract of irrigation is lawful in respect of trees on the amount the contracting parties agree upon. All the work shall be the responsibility of the man hired to irrigate.

It should not be stipulated that the man who irrigates should carry out any other work besides irrigation. He should not be asked to perform any work connected with the wall surrounding the farm, except very little such as mending the fence and mending the 'dafirah', that is, the junction of the camels. He should not be asked to build fresh dafirahs. The responsibility of pollinating dates palms is that of the irrigator. It is also the responsibility of the person hired to irrigate to clean the bottom of trees and to look after the place where water falls from the bucket. It is also part of his job to deepen the well if need be and to carry out similar jobs.

It is not a part of the responsibility of the irrigator to drive out animals from inside the farm. If any animal he works with dies, it is the responsibility of the owners of the farm to give a substitute. It is also the responsibility of the man hired to feed the animals and other people he works with. Similarly, it is his responsibility to plant trees where they are deficient, but there is no harm if he is relieved of that. That is more lawful for the owner of the farm. But if the area deficient of trees is large, it shall not be made the responsibility of a person hired to irrigate date palms. However, it can be made his responsibility if it is a third of the total area or less.

34.27 Farming Partnership

It is permissible for two people to form a partnership for the purpose of farming where the crops jointly belong to them, whether the land comes from one of them and the labour from the other, or the

labour comes from both of them, and whether they hire land or it belongs to them.

It is not lawful for the seeds to come from one of them and the land from the other and the labour from one of them or from two of them and yet the two divide the yield equally. But they can divide the yield equally when they both hire the land and the seed is from one of them while the other supplies labour, and when the value of the undertakings is not much different. Payment for the hire of a piece of land which is not secure must not be made before the land is watered.

34.28 Liability for Damage to Crops Sold and Not Yet Claimed

If a person bought some fruits while still on the trees and then they were damaged by cold weather or locusts or ice or something else, and if the extent of the fruit damaged reached one third of the total, then one third of the total value is waived for the buyer. But damage of less than one third is borne by the buyer.

There is no damage in respect of crops, nor in respect of fruits already dried when bought. But a loss due to damage in vegetables is to be borne by the seller even when the damage is negligible. But according to some jurists only loss through damage of at least one third of the crop shall be borne by the seller.

34.29 Gift of Fruit Which Can be Dried (‘*Ariyya*)

If a man gives to another as a present the fruits of some of the date palms in his garden, there is no harm if he subsequently buys them from the man to whom he donated them when they ripen and are in accordance to their measure, if they are up to five wasqs or less. It is not lawful for him to buy more than five wasqs except by giving cash or some commodity in exchange.

CHAPTER 35

A Chapter on wills and various method of setting slaves free

35.01 Bequests (Wasiyya, Pl. Wasaya)

It is necessary for those who have a property to bequeath to take all necessary steps to prepare their wills. However there can be no will in favour of an heir. Moreover the amount of property to will away must not exceed one third of the net estate. If this limit is exceeded the will shall not be executed except where the heirs give their consent.

When it comes to executing wills, a will to set a slave free shall receive priority. Also a slave whose master promised manumission upon the master's death shall receive priority if the promise was made in health rather than illness. And it shall be so whether the will involves the setting free of slaves or some other thing. In fact, priority is given to a will by a man who enjoys robust health, over payment of zakat he negligently failed to give out but then made a will to take care of it. Such a payment of zakat shall be defrayed from one third of the net estate. However priority shall be given to fulfilment of a promise of freedom which a master made to his slave while enjoying health.

When one-third of a net estate is insufficient to cater for the various claims from the will, the claimants shall share the one-third, nevertheless, in direct proportion to those claims. But such claims must not be the type given priority. Moreover a person is permitted to go back on his grant of manumission and related matters.

35.02 Freeing a Slave at Death (*Tadbir*) or at a Certain Date (*Ila Ajal*)

What is meant by ‘tadbir’ is for a person to say to his slave “You are a mudabbar”, i.e. “After I am dead you shall be free”. Having done that, it is unlawful for the master to sell that particular slave, but he is permitted to exploit his labour and can take away his property as long as he is not sick. And if it is a slave woman, the master has the right to have sexual intercourse with her. But if she is already set free he must not have intercourse with her until after some time to save her from becoming an Umm Walad; nor can he sell her away; but he is permitted to exploit her labour and take away her property, as long as the appointed time for her freedom is not at hand. If the master should die under these circumstances, the mudabbar shall be free, out of the one-third of the net estate, that is if his market value is not more than one-third of the net estate, while the expense of the total property of the master.

35.03 Freeing a Slave after Instalments Payments (*Kitaba*)

A ‘mukatab’ is a slave who bought his freedom from his master in consideration of a sum of money and has completed payment of the amount. The kitabah is lawful, in accordance with the agreement between the slave and his master over an amount of money to be paid by instalments which can be large or small. If a mukatab should fail to pay the amount stipulated for his freedom, he reverts to slavery and the amount taken from him by the master is lawful for the master to keep. Besides, nobody can have the authority to put into effect the agreement except the ruler, who does so upon petition when the master fails to effect his part of the agreement.

35.04 Children and Property of Slaves

The offspring of slave women share their status as mukatabs, or mudabbars or receivers of a promise of manumission, at some appointed time, or given away as pledge. Also the son of a slave

woman by a person other than her master has the same status as she has.

A slave is permitted to have property except where his master took it away. If he set him free or entered into a mukatabah with him without accepting the property, as one of the things the slave shall enjoy, the master shall have no right to divest the slave of his property. A master has no right to intercourse with his slave woman if a mukatabah agreement exists between them.

Moreover the fortune of the mukatab or mukatabah shall be that of their offspring and they gain their freedom the moment their parents do.

35.05 Freeing a Group by *Kitaba*

It is lawful to enter into an agreement of mukatabah with a group of people. However, such slaves do not attain their freedom except when all the sum agreed upon has been fully paid.

35.06 Restrictions on a *Mukatab*

A mukatab is not free to set his own slaves free, nor is he permitted to waste his property in order to gain freedom. Nor should he get married or go on a long journey without the permission of his master.

35.07 Children of a Deceased *Mukatab*

And if he should die leaving a child, the child shall step into his shoes as mukatab and he will pay immediately, from the property of the deceased, what is left unpaid in the mukatabah agreement. His other children shall inherit what is left of the property. But if the deceased falls short of the debt, his children can then speculate in it and pay the debt by instalments if they are adult. But if they are minor and the estate is such that it could not cater for payment by instalments, they remain slaves.

But if he is not joined in his mukatabah agreement by any of his children, his master shall inherit him.

35.08 A Slave Mother of Her Master's Child (*Umm Walad*)

If a man made his slave woman pregnant, he shall remain free to enjoy sexual relations with her as long as he lives, and she shall be free after his death, whether or not her value is greater or less than one-third of his net estate. Under those circumstances, he shall not be free to sell her, nor it is lawful for him to exploit her labour or seek any other gains from her. But he shall be free to exploit the labour of her child whom someone else fathered. However, such a child enjoys the status of his mother, and becomes free the moment she is set free.

A slave woman acquires the status of *Umm Walad* even if her pregnancy results in abortion. Withdrawal of the penis when about to have orgasm cannot serve as a excuse to reject paternity of her child once he admitted having intercourse with her.

But if he should claim that the slave woman observed an *istibra* and that he did not have intercourse with her afterwards, then the child she gave birth to should not be linked with him.

35.09 Obstacle of Slaves Debt

Further, it is unlawful for a person whose debts exceed the value of his property, to voluntarily set a slave free.

35.10 Freeing Part of a Slave (*Bi-s-Siraya*)

Again if a person grants partial manumission to his slave, the ruler has the right to make it complete compulsorily. And if the slave is jointly owned the value of the other half is assessed, and the master wishing to set free the slave is made to pay up. But if he does not have the money to effect total manumission, the share of the co-

master remains slave. That is, the slave shall remain partly free and partly slave.

35.11 Freeing Because of Mutilation (*Muthla*)

If a master disfigures his slave clearly, such as by cutting off a limb or some other organ, the slave is granted freedom by the ruler compulsorily.

35.12 Freeing Because of Relationship (*Qaraba*)

If by some chance a man becomes the master of his own parents or any of his children or grandchildren, or his grandparents, or his uterine, consanguine or germane brother, then each and every one of them shall be free at his expense.

35.13 Freeing by Concomitance (*Tab'iyya*)

Moreover if a master sets free a woman slave who is pregnant, then the foetus is automatically free as well.

35.14 Freeing Because of an Obligation

When a man is under an obligation to free a slave, he is not to manumit any slave who is about to gain his freedom through *tadbir* or *kitabah* or some other means. Nor is he free to liberate a blind slave or one whose hand has been cut off, or a similar person, nor a slave who is a non-Muslim. Besides, it is not lawful to liberate a minor nor a person interdicted from transactions with his property.

35.15 Patronship (*Wala'*)

Clientage (in Islamic law) goes to the person who sets a slave free. It is not lawful to sell clientage or to give it away. If a person's slave gained freedom at someone else's expense, the clientage nevertheless goes to the original master. If a non-Muslim slave embraces Islam upon gaining freedom, his clientage shall go to the Muslim

community. The clientage of a person set free by a woman shall go to her; similarly the clientage of those who become free the moment she owns them, due to the nature of their relationship to her also the clientage of people she liberated goes to her. A woman cannot inherit a slave who has been set free by someone other than her, such as her father or her son of her husband or someone else.

Moreover, the estate of a man set free in a *sa'ibah* (i.e. let loose) method goes to the whole of Muslim community. But his clientage goes to the closest agnatic kin, the first person to die (the former master, that is).

If the person who held the clientage of a former slave died and left two sons, the clientage shall go to both of them. If, subsequently, one of them died leaving the two sons, the surviving brother shall have the clientage exclusively. But if these sons of the benefactor both died, one leaving a son and the other two sons, the clientage shall be shared by these three grandsons of the benefactor, each holding one-third of it.

CHAPTER 36

A Chapter on pre-emption, gift, alms, endowment, pledge, loan, trust, an article or thing found, and compulsion

36.01 Pre-Emption (*Shuf'a*)

Pre-emption (in Islamic law) exists only in respect of things jointly owned. There can be no right of pre-emption in articles already divided.

There is no right of pre-emption in respect of a neighbour or in a path or the courtyard of a house whose rooms have already been divided; nor in respect of a male date-palm or well, when the palm trees or the land have already been divided. Moreover there can only be a case of pre-emption in respect of lands or what is attached to it, such as buildings or trees. The right to claim pre-emption lapses if it is not exercised for a whole year, if the claimant has been present all the while. But the person who has been away shall continue to have right to pre-emption even if he has been away for a long time. The holder of pre-emption receives his guarantee from the buyer. Besides the pre-emptor is made to choose between exercising his right or abandoning it. The right of pre-emption cannot further be given away or sold. It is divided between the joint owners of it in accordance with the fractions they owned.

36.02 Donations (*Hiba*), Alms (*Sadaqa*), and Foundations (*Hubas*) in General

A gift, alms, or pious endowment are incomplete unless they are taken over by those to whom they are given. If the benefactor should die before such formal taking over is effected, they shall be treated as part of the legacy, except where these are taken over while the deceased is sick. Under such a circumstance they can be executed so long as they do not exceed one-third of the legacy, and if the beneficiaries are not heirs of the legacy.

36.03 Donations and Alms

A gift to a relative or a poor person is like alms. It cannot be withdrawn. Also, if a person gives alms to his son, he cannot take it back. But he is permitted to take back what he gives to his minor son, or even a grown-up son, as long as he did not use the property in getting married or give the money on loan, nor indeed converted the object of the gift into something else. A mother can withdraw her gift as long as the father remains alive. But if the father is dead, she cannot take back the gift she made to her son.

Further, a gift given to an orphan cannot be taken back. Moreover, orphanhood, it should be stated, arises as a result of a father's death. Again, the gift bestowed by a father to his minor son can be taken over on the child's behalf by the father, that is, if the son did not live in that particular house, or did not wear the garment, if the gift is of a dress. In other words, the 'hiyazah' or taking over the articles gifted can be effected by the father on behalf of a minor son, if that article is such that it can be identified. But, as for a son who has attained maturity, his father cannot effect a hiyazah or taking possession of an article gifted on his behalf.

A man cannot withdraw alms after giving it away. Nor can the alms go back to him except through inheritance. There is no harm, in law, for a person who gave alms (of a cow, sheep or goat) to drink of the milk of the beast he has given away as alms. But one cannot buy back such articles he gave away as alms. However if one is given a gift, but the giver expects something in return, the recipient of the gift shall

have the option of either giving to the giver some articles of equal value to the gift or return the gift. But if the article of the gift is consumed or used up, the recipient shall be under an obligation to give back its value. But that shall be so if it can be seen that the donor expects to receive some recompense for the gifts he made. Besides, it is reprehensible for a father to give some of his children all his property. However, he is permitted to give away some of it. Also a man is permitted to give away to poor people the whole of his property.

If a man made a gift which has not been taken over by the person to whom it was given until the donor became sick or was declared bankrupt, it now becomes unlawful for him to take it over. But if the man to whom the gift was given should die, his heirs can claim it from the donor if he has not been declared bankrupt.

36.04 Hubus

If a man made an endowment for a house, it should be used for the purposes he intended if it has been taken over before his death; but if the endowment was made in favour of his minor son, the *hiyazah* by the deceased on behalf of the minor son shall be in order until the son reaches puberty. But let him hire it out and not live in it. But if he did not stop occupying the house until he died, that prolonged stay nullifies the endowment.

If the people for the benefit of whom a house is endowed died out, the house shall be an endowment for the man who is closest to the benefactor on the day the extinction of the original beneficiaries become complete.

36.05 Life Grants ('Umra)

If a man should create an 'Umra' (giving a person or persons the right to dwell in a house free of charge for as long as the person lives, on the understanding that the right shall lapse the moment the beneficiary dies), the house in question shall revert to the original owner the moment the beneficiary dies and the dwelling once again reverts as the property of the owner. Similarly if a man created an

Umra to take effect after his death, the property shall revert to him if the beneficiaries should die out. This is different from pious endowment, for, the moment the creator of Umra dies the property goes back to his heirs.

36.06 More on Hubus

In respect of pious endowment, the moment a beneficiary dies, his share of the endowment goes to those other beneficiaries who survive. And the type of people chosen to enjoy an endowment (hubus) are those who are needy of the benefits accruing from it. Besides, those who already dwell in a house endowed shall not quit in order to make room for others, except where a stipulation in the terms of the endowment allowed for that. In such a circumstance the stipulation is enforced. A house endowed is never sold away even if it has degenerated into ruins. But an endowed horse affected by rabies is sold away, so that another horse can be bought with the proceeds; or at least the proceeds are used to supplement an amount with which to buy a new horse. Muslims jurists disagree as to whether an endowment which is in ruin can be exchanged with another building in good condition.

36.07 Pledges (*Rahn*)

In Islamic law, pawning is lawful. But it is considered incomplete until the article pledged is taken over. Besides, a witness is of no use in respect of it so long as the witness failed to see the transfer of the article pledged. Responsibility for damage or loss of the article pledged shall be borne by the man receiving the pledge. But the receiver of the pledge only makes good what is lost while in his possession. He does not make good what is lost while in possession of others. The fruit of the date palms under pledge is the property of the pledger, so are the proceeds of houses.

A child born to a slave woman while she constitutes a pledge, is also a pledge. The property of a slave cannot be a pledge except where such a thing is stipulated. And in respect of pledges, what is lost while in the custody of a person trusted is borne by the person who made the pledge.

36.08 Loan for Temporary Use (*'Ariyya*)

Articles borrowed are to be taken back to their true owners. A borrower shall be under an obligation to make good what got lost in his possession of consumable articles, but not of things he cannot consume such as a slave or an animal. Of the latter he is only liable to make good what is lost when he exceeded all reasonable limits.

36.09 Deposits (*Wadi'a*)

If a keeper of a depository claimed to have returned the article entrusted to him, he is to be believed. But if witnesses were called to see the articles entrusted to him, then he cannot be free from liability to make good any loss or damage, until he in his turn calls in witnesses to see him return his charge to its rightful owner. If a keeper claims that the articles put under his charge have perished, he is to be believed also, under any circumstances. But if a person borrowed an article and he then claimed to have lost it, he will not be believed if it is of the type that can be consumed. Also, if a man exceeds limits in respect of something placed in his charge, it shall be incumbent upon him to make good any loss or damage. If the trust consisted of gold or silver pieces, which he claimed to have returned to its owner in the actual bag in which the pieces were when entrusted to his care, and the whole or part of it became missing, in such circumstances there are conflicting views as to whether it shall be incumbent upon him to make good any loss or damage.

It is reprehensible for a man to use as capital a property entrusted to him. But if he should do that, any profit acquired there from shall be lawful for him to keep. That shall be so if the property is cash; but if it is merchandise and he sells it, its owner shall have the option to receive the price charged or the value of the merchandise on the day the lapse was committed.

36.10 Found Property (*Luqata*)

Whoever finds an article or thing let him announce it for one complete year at a place such an announcement is expected. If the year lapses and nobody comes forward to claim it, the finder can then

endow it or give it away in alms if he likes. Nevertheless the finder shall be under the obligation to make good any loss or damage if the owner should subsequently turn up. Similarly, if the finder should use the article found, he must pay for that. But if the article found should be missing or destroyed before or after a year, without being moved, the finder shall not be liable to pay for it. If the person who sustains the loss of a find should recognise its container he should then automatically take it.

A man must not take a stray camel from a desert and regard it as a find, but he can take hold of a goat or a sheep which he finds in a desert where there are no buildings.

He is even permitted to eat of its flesh.

36.11 Compensation for Consumption of Another's Property

Moreover if a man should squander the proceeds from some merchandise, he must pay its value. But in respect of things that can be weighed or measured, he must give a quantity equal to what he wasted.

36.12 Usurpation (*Ghasb*)

The misappropriator must pay for what he misappropriated. But if he should return the actual article he took by force, not diminished in quality or quantity, he has committed no offence. But if the article misappropriated underwent some changes while in the usurper's hands, then its rightful owner is given an option of either taking it back with its defect or accepting its value. If the defect in the article is the fault of the usurper, then the owner is given the option of taking it back along with that which had been taken away from it. However there are divergent views on that.

The yield, produce or revenue of property usurped is not lawful to the usurper of the property. Moreover he must make good what he consumed, and pay for the use he made of things such as implements etc. If he had intercourse with a woman he abducted, he receives the

hadd punishment. And if the woman is a slave woman and she conceives, the child shall be a slave to the rightful master of the slave woman. Further a profit accruing from some amount taken away by force shall not be lawful to the person who took it by force until he has taken the capital back to its rightful owner. Giving away such profits as alms is what is recommended by the companions of Malik. However, in the chapter of procedure this discussion is continued.

CHAPTER 37

A Chapter on Homicide Cases and other Judgements

37.01 Conviction For Homicide

Nobody should be killed in respect of a homicide except where men of integrity give evidence, or where the killer makes a confession, or if the relatives of the deceased swear an oath (qasamah) if that should be necessary. The form that qasamah oaths take is for the relatives of the deceased to swear fifty times, and when they have done that they are entitled to have the accused executed. A qasamah oath is sworn by no less than two men in a murder case. And in respect of a qasamah oath, never is more than one person executed. A qasamah becomes necessary if the deceased declares, on being wounded, that so-and-so has my blood, or when one person testifies against the accused, or when two people testify to seeing the deceased being wounded, if he survives all that and is able to eat and to drink.

If the plaintiff fails to swear, the defendant is asked to swear and free himself from liability. He does that fifty times. If the defendant is not able to get some of his kinsmen to swear with him, he swears alone fifty times. If the accusation of homicide is levelled against a group of people, each one of them will have to swear fifty times. But if kinsmen are suing in respect of a murdered kinsman, fifty of them must swear once each. But if they are less than fifty, the surplus oaths are redistributed to them. However, a woman does not swear in the murder case. The heirs shall swear in the event of accidental homicide in direct proportion to the amount they inherit of the blood-wit, whether they are men or women. If the division should present a problem by producing fractions, the person with the biggest share of the blood-wit shall be made to swear the extra oath.

If from the relatives of the deceased person come, (while others do not show up), in respect of an accidental killing, those present shall swear the full number of oaths on a *qasamah*. If afterwards others turn up, they swear in direct proportion to their share of the estate.

In respect of the *qasamah* oaths, the litigants shall swear standing. Moreover, people living in the provinces of Mecca, Medina and Jerusalem are brought there to swear *qasamah* oaths. Nobody is taken to any other places except where the distance involved is a few miles.

Qasamah oaths are not sworn in respect of wounds, nor slaves, nor among the Christians or Jews (People of the Book), nor a person killed between two rows of warring enemies, nor when a dead body is found in the vicinity of some settlement.

37.02 Clemency (*'Afw*)

There cannot be any pardon in respect of a treacherous murder.

A man can pardon in respect of his own murder if it did not involve treachery. But in respect of accidental killing, he can only waive up to one third of the blood-wit. If one of the sons of the victim in a homicide case decides to forgive the killer, the killer cannot be executed. The remaining heirs can then have their shares of the blood-wit. When in a homicide case the heirs comprise sons and daughters, the daughters are not empowered by law to waive this claim for retaliation and grant pardon.

When a homicide is pardoned, he is to be given one hundred strokes of the cane and imprisoned for a year.

37.03 Blood Rate (*Diya*)

The blood-wit in respect of people who have camels is to consist of one hundred camels. In respect of people who have gold, it is to be one thousand pieces.

For the people who have silver, it is to be twelve thousand dirhams. The blood-wit in respect of murder when it is accepted shall consist of twenty-five four year old she-camels and twenty-five five year old she-camels and twenty-five three year old she camels and twenty-five two year old she-camels. And the blood-wit in respect of accidental killing is to consist of five types, that is, twenty of each we have mentioned. And in addition to that, twenty males of the type known as 'banu labun'.

The payment of blood-wit is only made more stringent in the case of a father who throws a piece of iron at his son and then kills him. The father shall not be killed on account of killing his son under these circumstances. He shall however be made to pay thirty *jadha'ab*, thirty *hiqqab* and forty *khalifab*, that is, pregnant ones. But according to some learned men, that payment shall be made by members of his clan. Yet others insist that the payment must come from his own property.

37.04 Blood Rate to other than Muslim Men

The blood-wit for a woman shall be half that of a man. Similarly the blood-wit for a male Christian or Jew is half that of a male Muslim, and the blood-wit for their women is half that of their men. As for a Magian, his blood-wit is eight hundred dirhams. The blood-wit for their women is half that of their men. Similarly, in respect of wounds, compensation given to non-Muslims is half what is given to their Muslim counterparts.

37.05 Blood Rates For Mutilation

Whoever is made to suffer the loss of both his hands is paid a whole blood-wit (as a case of a homicide). Similarly in respect of a loss of both legs or a loss of both eyes, complete blood-wit is paid. If a man is made to suffer the loss one of these, he is paid half a complete blood-wit. In respect of the cartilage separating the base of the nostrils marin a complete blood-wit is paid. The same rule applies when loss of hearing is inflicted, or when loss of mental balance is inflicted, or when the backbone is broken, or testicles are impaired, or when the glans penis is destroyed, or when the tongue is made

useless, or when the power of speech is destroyed. For destroying the two bosoms of a woman or the eye of a one-eyed person a full blood-wit is also paid.

37.06 Indemnification for Lesser Wounds

For a blow to the head resulting in an injury of the type known as ‘mudihah’, five camels are paid. For an injury which results in the lost of a tooth, five camels are paid. For injuries resulting in the loss of a finger, ten camels are paid. And in respect of injuries causing the loss of the tip of either of the thumbs, five camels are paid each. And in respect of injuries of the type known as ‘munaqqilah’ one tenth and half of one tenth is paid.

‘Mudihah’ injuries are injuries to the head which expose the bone. ‘Munaqqilah’ injuries are those which affect the bone itself but do not affect the brain. But injuries to the skull reaching the brain are known as ‘ma’mumah’. In respect of them, one third of the blood-wit is paid.

But for injuries affecting the stomach known as ‘ja’ifah’, no specific remedy is prescribed nor for injuries less serious than a mudihah. Compensation for these therefore shall depend upon the discretion of a judge. Similarly compensation is suggested for wounds inflicted on the body.

The victim of any injuries is not compensated unless and until the wounds are healed. Any injury which heals without leaving a disfiguring scar shall not fetch anything by way of compensation if it is less than a mudihah in seriousness.

37.07 Talion (*Qisas*)

In respect of wounds deliberately inflicted retaliation is prescribed except when it is feared that death may result from such an action, such as ma’mumah, ja’ifah and munaqqilah, or when the retaliation involves the thigh, the testicles and the backbone and some similar vital organs. For each of those a full blood-wit is prescribed.

37.08 Clan's Obligation Regarding Blood Rate

The relative of a homicide if the killing is intentional shall not bear the burden of paying the blood-wit; nor must they be compelled to avow that the killing has been intentional. But they can own accidental injuries, or injuries whose compensation shall not exceed one third of the blood-wit or more. But what less is than one third of the blood-wit shall be borne by the accused himself. However, Malik insisted that a ma'mumah or a ja'ifah, even if intentional, should be settled by the relative of the accused. But Malik on second thoughts also said that, in that respect, the accused shall pay the compensation himself except where he happens to be insolvent. That shall be so because no retaliation is exacted from a ma'mumah or ja'ifah, even if intentional due to the hazards involved.

If a man commits suicide, whether accidentally or intentionally, his relatives shall not have to pay any compensation to anybody.

37.09 Indemnification to a Woman

A woman equals a man in the amount of compensation that shall be paid in respect of her sustaining injuries, up to one-third of his compensation. But after reaching one-third, she goes back to the schedule already allotted to her.

37.10 Cases Where Parties are Unequal

If a group of people kill one person jointly, they shall all be killed on that account. If a person who is drunk kills another person, he is to be killed. But if a madman kills a person, the blood-wit shall be paid by his relatives. An intentional killing or the intentional infliction of injuries committed by a minor are both regarded as accidental, as long as their degree exceeds one-third of a blood-wit, or is equal to one-third. But if the amount to pay as compensation is less than one-third of a blood-wit then it must come from the minor's personal property.

A woman shall be killed for killing a man, and a man shall be killed for killing a woman, and retaliation is exercised in respect of mutual

wounding. A freeborn person shall not be killed for killing a slave. But a slave shall be killed for having killed a freeborn person. A Muslim shall not be killed for having killed a non-Muslim, but a non-Muslim is to be killed for having killed a Muslim. There is no retaliation in the case of a freeborn person wounding a slave. Nor shall there be retaliation for a Muslim wounding a non-Muslim.

37.11 Cases of no Responsibility (*Hadār*)

A driver of an animal or one who leads it, or a rider on it, shall be liable to pay compensation for what their animal trampled on. But the injury or damage an animal inflicts without being incited by anybody shall not be compensated for. If anybody dies as a result of falling down a well or down a mine shaft without anybody causing his fall, that also shall not be compensated for by anybody.

37.12 When and to Whom Indemnities are Due

Compensation shall be paid by relatives by instalments within three years. The compensation of a third of a blood-wit shall be paid in one year, and a compensation of a half a blood-wit is to be paid within two years.

The blood-wit is to be distributed as a legacy according to the schedule in the Qur'an.

37.13 *Ghurra* Indemnification for Causing Miscarriage

In respect of causing the miscarriage of a freeborn woman, a young slave boy or slave girl valued at fifty gold pieces or six hundred dirhams is given as compensation. The value of this young slave is obviously a legacy along the lines drawn up by Allah Most High in the Qur'an.

37.14 Killing a Relative

The person who committed an intentional homicide is not allowed to inherit his victim's property or the blood-wit paid. However an

accidental homicide can inherit his victim's property but not the blood-wit.

37.15 Ghurra Indemnification in Case of a Slave Woman

The amount of money paid for killing the foetus of a slave girl by her own master is equal to the amount to be paid for the foetus of a freeborn woman. But if the foetus is by someone other than the master, one tenth of the slave girl's own value is to be paid.

37.16 Killing a Slave

If anybody kills a slave he must pay, as compensation, the value of the slave.

37.17 Collective Killing

But a group of people shall all be killed if they jointly kill one person in order to rob him, or if they kill him treacherously, even if some perpetrated the actual killing on behalf of others.

37.18 Atonement for Homicide

The atonement in respect of accidental homicide is obligatory. It consists of setting a Muslim slave free. If the person who committed homicide cannot afford to set a slave free, he has the option of fasting for two consecutive months. If a person guilty of wilful homicide is forgiven by the relative of the victim, he is ordered either to set free a Muslim slave or in default, to fast for two consecutive months; that is beneficial to him (in the eyes of God Most High).

37.19 Crimes against Islam

A freethinker (*ẓindīq*) must be put to death and his repentance is rejected. A freethinker is one who conceals his unbelief and pretends to follow Islam. A magician also is to be put to death, and his

repentance also is to be rejected. A apostate is also killed unless he repents. He is allowed three days grace; if he fails to utilise the chance to repent, the execution takes place. This same also applies to women apostates.

If a person who is not an apostate admits that prayer is obligatory but will not perform it, then such a person is given an opportunity to recant by the time of the next prayer; if he does not utilise the opportunity to repent and resume worship, he is then executed. If a Muslim refuses to perform the pilgrimage, he should be left alone and God himself shall decide this case. If a Muslim should abandon the performance of prayer because he disputes its being obligatory, then such a person shall be treated as an apostate—he should be given three days within which to repent. If the three days lapse without his repenting, he is then executed.

Whoever abuses the Messenger of God—peace and blessing of God be upon him—is to be executed, and his repentance is not accepted.

If any dhimmi (by ‘dhimmi’ is meant a non-Muslim subject living in a Muslim country) curses the Prophet - peace be upon him - or abuses him by saying something other than what already makes him an unbeliever, or abuses God Most High by saying something other than what already makes him an unbeliever, he is to be executed unless at that juncture he accepts Islam.

The property of an apostate after his execution is to be shared by the Muslim community.

37.20 Banditry (*Hiraba*)

As for an armed robber—he is not to be granted pardon when he is caught. If he happens to have killed someone, then he must be killed. But if he has not killed anybody, the Muslim ruler shall then use his discretion as to the nature of the punishment to be awarded to him, based on the seriousness of his crimes and the length of the time during which he operated. The Muslim ruler can kill him, or crucify him and later kill him, or he can cut off his right hand and left foot, or left hand and right foot. Alternatively the Muslim ruler can banish

him to another town where he will be imprisoned until he repents. But if he has not been overpowered and caught and he comes on his own to repent, then the Muslim ruler shall forgive him and excuse him from whatever punishment his crime has earned for him in respect of his disobedience to God Most High. Then he shall be liable for any punishment his crime has earned for him in respect of his assault on the property and the persons of other people.

Each member of a band of robbers is liable to pay the total amount they robbed jointly. Moreover a group of people shall be killed in respect of killing a single person treacherously or in order to rob him, even if the actual killing was undertaken by one of them. Also a Muslim shall be killed for killing a scripturary (a Jew or a Christian) if the killing is treacherous or in order to rob.

37.21 Illicit Intercourse (*Zina*) by the Maritally Restricted

If a freeborn Muslim who has been married (*mubsan*) commits adultery or fornication, he is to be stoned to death. What is meant by '*mubsan*' is a man who has married a woman properly and has had sexual intercourse with her in a proper way.

37.22 Illicit Intercourse by the Non-Maritally Restricted

But if he has not been a *mubsan*, he is beaten one hundred lashes and then banished to another town where he should be imprisoned for a year. A slave who commits adultery or fornication is to be beaten fifty lashes. A slave woman is to be treated likewise, even if they are married. Besides, they are not exiled nor is a woman exiled.

37.23 Conviction for Illicit Intercourse

The person who committed adultery does not receive the *hadd* punishment except through confession, or through pregnancy which becomes evident, or through the testimony of freeborn adult men of integrity who witnessed the action like a mirwad in a mukhulah. (A

‘mirwad’ is the little stick for applying kohl or antimony to the eyelids. ‘Mukhulah’ is the container for kohl or antimony). The witnesses must see the action at the same time. And if one of them failed to complete the description, the three should receive *hadd* punishment for *qadhf* (or false accusation of fornication).

37.24 Convicted Minors

There shall be no *hadd* punishment for anybody who is not mature.

37.25 Illicit Intercourse with a Slave Woman

If a man has intercourse with a slave woman belonging to his father, he is to be given *hadd* punishment. But if a man had intercourse with a slave woman belonging to his son, he shall not be given the *hadd* punishment. But she must be valued and he will pay the value and own her, even if she did not conceive. A joint owner of a slave woman who had intercourse with her is to be disciplined and he will pay the balance of her value if he has the money. But if she did not conceive, the joint owner is given the choice of continuing to share the ownership or to permit his partner who had intercourse with her to pay the rest of the value.

37.26 Raped Woman’s Proof of Innocence

If a woman who turns out to be pregnant says, “I was compelled to have sexual intercourse”, she is not to be believed and she shall be given the *hadd* punishment except where there is a witness who testifies that she was carried away until the abductor disappeared with her, or if she comes looking for help at the time of the event, or she comes bleeding.

37.27 A Christian Rapist

If a Christian rapes a Muslim woman he is to be killed.

37.28 Voiding Conviction Based Admission

And if a person who confessed having committed adultery retracts the judgement is repealed and he is to be left alone.

37.29 Executor of Fixed Penalty on Slaves

The *hadd* punishment can be awarded by a master to his slave or to his bondswoman in the case of adultery when a pregnancy becomes evident, or if, apart from him, four people have testified to that effect or if there is a confession. But if that bondswoman has a husband who is either a freeborn person or a fellow slave belonging to somebody other than him, then nobody can award punishment on her other than the Muslim ruler.

37.30 Homosexuality (*Liwat*)

If a man commits sodomy with a male adult who consented, then the two must be stoned to death whether they were muhsans or not.

37.31 Slander (*Qadhf*)

If anybody levels a false accusation against a freeborn person he is to be beaten eighty lashes. But if a slave commits the same offence, he is to be beaten forty lashes. But in respect of committing fornication he is to be beaten fifty lashes. If an unbeliever levels false accusation, he is to be beaten eighty lashes. But there should be no *hadd* punishment in respect of any who levels a false accusation against a slave or an unbeliever. But the person who levels a false accusation against a minor girl should receive the *hadd* punishment if a girl of that age is big enough to go to bed with. But a person who levels a false accusation of adultery against a minor boy should not receive the *hadd* punishment. There shall be no *hadd* punishment in respect of minors either in respect of levelling a false accusation of unchastity or in respect of committing fornication. Anybody who denies the paternity of another, then the former should receive the *hadd* punishment. Accusations of unchastity should always be given the

hadd punishment even if they are veiled in innuendoes. If a man said to another, ‘O you homosexual’, he shall receive *hadd* punishment.

37.32 Multiplication of Penalties

If a man levelled a false accusation against a group of people he shall receive only one *hadd* punishment when all of them demand it. Afterwards he is free and guiltless.

If a man drinks wine repeatedly or commits adultery repeatedly he is to receive only one *hadd* punishment in respect of each of the repeated offences. This rule applies in respect of the person who levels false accusations against a group of people. If a person is liable to receive *hadd* punishment and at the same time liable to be executed, the execution alone is sufficient for all that, except where the *hadd* punishment is in respect of adultery. Under such circumstances the man must receive the *hadd* punishment and then be executed later on.

37.33 Drinking Intoxicants

If a man drinks wine or some intoxicating stuff he should receive eighty lashes whether or not he is intoxicated. He must not be imprisoned.

37.34 Administration of the Fixed Penalty

A person to receive *hadd* punishment must have his clothes removed, except such as may cover his private parts. But a woman shall have clothes on except such as may protect her from the beating. The punishment is to be given to the culprits in a sitting posture. A woman under pregnancy shall not be beaten until she is delivered of her baby. Nor shall a sick man be beaten until he is well again.

37.35 Bestiality

A person who had sexual intercourse with a beast shall not be executed but he must be punished for it.

37.36 The Fixed Penalty for Stealing (*Sariqa*)

If a person steals a quarter of a dinar in gold, or something the value of which on the day of the theft equals three dirhams of property, or something the weight of which represents three dirhams of silver, such a person shall have his hand cut off if the stolen property was in the possession of somebody else when stolen. But there shall be no amputation if the property is stolen surreptitiously. In respect of those amounts mentioned above, the hand of a man or a woman or that of a slave is cut off. Then if the person steals again, he has his foot on the opposite side cut off. If he should steal again he will have his other hand cut off. If he steals for the fourth time, he shall have the remaining foot cut off. If he should steal for the fifth time, he shall be beaten and imprisoned.

37.37 Voiding Conviction Based on Admission

Further, if a person confesses to having stolen, he should have his hand cut off, but if he should retract he shall be pardoned.

37.38 Return of Stolen Goods

But he must return the article in question if he still has it, otherwise it shall be a debt upon him.

37.39 Mitigating Factors

If a person takes an article from where it is being kept, he shall not have his hand cut off until he has taken the article out of the place where it is being kept. Similarly the person who steals the shrouds shall not have his hands cut off until he has taken it away from the grave. The person who steals from a house he is permitted to enter shall not have his hand cut off. Nor shall a person who steals secretly have his hand cut off. The confession of a slave to a crime which results in corporal punishments only is accepted, such as lashes in respect of false accusations or the cutting of a hand.

But his confession of crimes the punishment of which shall result in his death, is not accepted by law. Further there shall be no amputation of hands for taking a fruit which is still on a tree. Nor shall there be amputation of hands in respect of the taking of someone else's palm pith. Nor shall there be amputation of hands in respect of stealing a beast from a flock while out in fields grazing, until they come back to their resting place, at which juncture stealing them should be punished by amputation of a hand. Nor shall there be amputation for stealing dates from a store.

37.40 Intercession (*Shafa'a*)

There shall be no attempt to plead for leniency for a person whose case has reached the Muslim ruler upon the person being convicted of the crime of theft or adultery. But in respect of false accusation, opinions are conflicting.

37.41 Pickpocketing and Stealing Public Property

If a man steals from another man's sleeve, he shall have his hand cut off. If a man steals from a store or treasury or from some booty, he shall have his hand cut off. But according to another authority he can only have his hand cut off if the amount he stole exceeded what would have been his share of that booty by three dirhams.

37.42 Prosecution for Stolen Goods

When the thief has his hand cut off and in returning the amount he stole, the balance shall be a debt on him if he is well-to-do, but if he is poor that balance shall not be a debt on him. However whatever circumstances he is in, the balance shall always be a debt on him if the total amount he stole is such that it is insufficient to warrant his hand being cut off.

CHAPTER 38

A Chapter on Judgement and Evidence

38.01 Court Procedure

The onus of proving an allegation is upon the plaintiff. If the plaintiff fails to prove his allegation and the defendant denies the charge, the defendant must take an oath to clear himself. The taking of an oath cannot be considered until it has been confirmed that some transaction has taken place between the litigants or when there is a strong suspicion that a transaction has taken place between the parties. This is the manner in which the judges of Medina conducted their cases. Umar b. Abd al-Aziz has said, “Problems arise for people in proportion to the amount of sins they committed”. If the defendant should refuse to take the oath to clear himself, judgement cannot be given in favour of the plaintiff unless he (the plaintiff) takes an oath to buttress his allegation. The form the oath takes is, “*Bi-llabi-lladhi la ilaha illa huma*”, meaning, “I swear by Allah besides whom there is no other deity”.

The person taking the oath shall do it standing up at the pulpit of the Prophet ﷺ when the value of the property in dispute is at least a quarter of a dinar. In places other than Medina the litigant takes an oath in respect of such an amount (quarter dinar) in the congregational mosque and at the place most respected in it. A non-Muslim shall swear by Allah in a place he venerates. If the plaintiff should discover some evidence he was not aware before, after the defendant has already taken an oath, judgement is reversed in his favour an account of it. But if he was aware of the evidence and failed to bring it before, it is rejected. But according to another view it can be accepted.

In respect of property, judgement can be given in favour of the plaintiff if he is able to bring only one witness to testify for him and

he himself takes an oath to supplement the witness. But this is not acceptable in respect of a marriage, a divorce, or over a case which carries a *hadd* punishment. Also it is not acceptable in a case of injuries or homicide, except when the latter involves qasamah oaths. Qasamah oaths consists of fifty oaths. According to another authority judgement can be given in favour of the plaintiff in respect of injuries when one witness is produced and this is supplemented by an oath.

38.02 Testimony of Women

Evidence given by women is inadmissible except in respect of property. The weight of evidence given by one hundred women is equal to that given by two women only, which in turn equals that of a single man. Such evidence (of women) can be accepted along with that of one man or accompanied by an oath, so that judgement is then given in favour of the plaintiff over a case which can be established by a witness and an oath.

The evidence of two women only concerning an affair which men cannot be conversant with, such as giving birth, the crying of a baby just born and similar things, is admissible.

38.03 Rejection of Witness Because of Character or Relationship

The evidence of an adversary and a person whose sincerity in his faith is doubted is not admissible.

Only men of integrity can be accepted as witnesses. Also, the evidence of a man who has received *hadd* punishment, or a slave or a child or an infidel, is not permitted.

If a person who received *hadd* punishment on account of committing fornication has repented, his evidence can be accepted except in respect of fornication.

The evidence of a son in favour of his parents is not permissible and vice versa, nor shall the evidence of a husband in favour of his wife

be accepted and vice versa. The evidence of an upright brother in favour of his brother is permissible. The evidence of a person who is known to have lied repeatedly and a person who commits mortal sins openly is not permitted. Nor can the evidence of somebody who will benefit from his evidence or one who will be defending his personal interest be admitted. Further the evidence of a testamentary guardian in favour of his orphan cannot be accepted, but his evidence against the orphan can be accepted.

38.04 Testifying to the Character of a Witness

Women are not permitted to commend people in giving evidence nor are they permitted to discredit people in giving evidence. The only acceptable words in commending a person to give evidence is to say “*Adlun Rida*”, meaning he is a person of integrity. One person is not acceptable whether in respect of commendation or in respect of discrediting.

38.05 Testimony of Minors

The evidence of children is acceptable in respect of injuries before they disperse from the place of an incident or before an adult person comes into their company.

38.06 Sale Disputes

If a seller and buyer disagree concerning the price of the subject matter (commodity), the seller shall be required to take an oath then the buyer is forced to accept the commodity at the price the seller mentioned. Conversely the buyer can take an oath and the contract shall cease to be binding.

38.07 Ownership Disputes

If two litigants disagree over something which they were both holding, they are required to take an oath, each supporting his claim. The commodity is then divided equally between them. And they should produce two evidences supporting the conflicting claims. The

more dependable one is upheld and judgement is given in its favour. But if the strength of the conflicting evidences is equal, the two litigants shall swear each supporting his claim and the commodity is then divided between them.

38.08 Revoked Testimony

If a witness should recant after judgement has been given based on his evidence, he is then ordered to pay damages for the losses incurred through his evidence, that is, if he has confessed he committed perjury. That was what the companions of Malik stated.

38.09 Word of a Deputy (*Wakil*)

If a person alleges that he has returned a commodity over which he has been an agent to the principal, or to sell, or if he claims to have given to the principal its value, or that he has returned a trust (*wadi'ah*) to the person who had given it to him, or if he has claims to have paid the capital advanced to him to trade with, he is to be believed after taking an oath. If a person claims to have delivered a message sent through him to third party and the third party denies receiving the message, he must produce an evidence to support his claim; failing this he is liable to make good the loss.

38.10 Word of a Guardian (*Wali*)

A testamentary guardian claiming to have spent an amount on the maintenance of his orphan, or to have handed over to them their property, must furnish evidence that he has in fact done so. But if they are under his direct custody he is to be believed in his claim to have spent an amount in maintaining them, if that seems likely.

38.11 Amicable Settlements (*Sulh*)

A compromise is lawful except when it leads to something which is unlawful. It can take place upon an admission or a denial.

38.12 Slave Woman Marrying on Impression she is Free

If a slave woman deceives a man, pretending that she is a freeborn woman, and the man marries her on that understanding, then her master is free to take her back and to take the value of any child she may have borne by that husband. This value is to be calculated on the day the judgement is given.

38.13 Vindicating Ownership of a Slave Woman

If a man should claim that a particular slave woman belongs to him (who has given birth to a child) he is entitled to take her value and the value of the child on the day the judgement was given in his favour. But according to another view he takes the slave-woman herself and the value of the child. Yet again according to a third view he is only entitled to her value, unless he prefers the value which he can then take from the person who abducted her and who has sold her away. But if she is still in the hands of the abductor, then the abductor must be given the *badd* punishment for fornication, and their issue shall remain a slave along with the mother to her true master.

38.14 Vindicating Ownership of Land

If a person recovers a piece of land after it has been developed, he shall pay to the developer the value of the development as it stands. If he should refuse to pay the value of the development then the person who bought the land shall pay to him the value of the land without development. If he should reject that then they shall be joint owners of the property, the former owning the value of the property before development and the latter owning the value of development. But if the land was usurped, the usurper is to be ordered to demolish his building or uproot the plants and trees he has planted on the land. But if the usurper likes, he can receive the value of the development he effected as a debris and the trees he planted as they would be when uprooted after the value of the labour of demolishing the building and uprooting the trees has been deducted from value of the

debris and the uprooted trees. The true owner of the land shall pay nothing in respect of those trees which shall have no value after extirpation, or those things which shall have no value after the buildings are demolished (such as engravings or wall decorations).

38.15 Increment of Usurped Goods

Besides, a usurper must return the revenue he realised to the true owner from anything he usurped. But people who acquire ownership of anything through lawful means shall not give back what they gained, if the property turns out to have been usurped.

The offspring of an animal or a slave woman, if in the case of a slave woman the baby was not from the new master, shall be taken over by the true owner, when he recovers the right to take the mother back from the person who bought them or else gained possession of them by some lawful means, but nevertheless lawfully.

If a man abducts a slave woman and then has intercourse with her, if an issue results, the child shall be a slave; moreover, such a man shall receive the prescribed *hadd* punishment for adultery or fornication as the case may be.

38.16 Building Regulations

(In a house of two storeys) it is the responsibility of the person who owns the ground floor to maintain it. It is also his duty to furnish the timber needed for the roof. It is also his responsibility to make the rooms on the ground floor stronger when they become weak and dilapidated so that it will be secured. Further the owner of the ground floor is compelled to maintain his rooms or to sell them to someone else who is willing to keep them repaired. For the tradition of the Prophet ﷺ says, **“Do not harm others; and when you are harmed, do not exceed in retaliation the harm done to you”**. (*La darara wa la dirar.*) So also a person must not harm his neighbour by opening a window in his direction thus depriving him of privacy, or by opening a door opposite to his door, or by digging in a place that can harm his neighbour even if it is within his own property.

In a dispute between neighbours the ownership of a wall is given to the person who provided the timber or stone in it, thus strengthening it.

38.17 Water Supplies

Surplus water should not be denied to others to force them to desert and leave a pasture. Those who dug wells to water their flocks have greater claim to them. They must therefore be given the priority to water their own flocks before others. After that other people shall be equal in the right to use them. Whoever has a spring or well in his land is free to prevent others from using their water, except where the well of his neighbour collapses and the neighbour happens to have plants which he fears will wither. In such an instance he must not deny his neighbour the surplus water. Jurists have differed in their views as to whether he can demand payment for the water.

38.18 Another Building Regulation

It behoves a person not to prevent his neighbour from planting his timber (that is the neighbour) next to on his wall. But a person cannot be forced by law to accept that.

38.19 Damage by Animals

The damage done by animals during the night shall be the liability of their owners. But they shall pay nothing due to damage caused by their animals during the day.

38.20 Bankruptcy Claims

If a person finds his property among the assets of a bankrupt person, he can either take its value in relationship to how it stands in ratio to the assets as against the liabilities, or he can recover his property if he can identify it. But in the event of death he must share the property of his debtor along with other creditors.

38.21 Guarantee of Debts

Anybody who gives a guarantee shall be liable to pay for the loss of or damage to the property on respect of which he gave the guarantee. A guarantor shall be liable to make payment in the event of his failure to bring the person in respect of whom he has given the guarantee unless he stipulated that failure on his part to bring the debtor shall not make him liable to pay the debt.

38.22 Transfer of Debts (*Hawala*)

If a creditor agrees to receive payment of a loan he advanced to someone from a third party, then he cannot go back to the debtor and demand payment, even if the third party becomes bankrupt, except where the third party deceived him.

An assignment shall be in respect of an original loan, otherwise it is a mere guarantee.

38.23 More on Guarantee of Debts and Bankruptcy

A guarantor shall not be liable to pay the debt of a debtor he guarantees, except where the latter is insolvent or absent.

Further, the moment a debtor dies or becomes bankrupt, all debts on him becomes due for payment. But debts others owe him shall not be due for payment.

A slave who is permitted to trade shall not be sold in order to pay his debts with the proceeds, nor will the debt be transferred to his master. A debtor is imprisoned so that his condition might be known, but a person known to be insolvent shall not be imprisoned.

38.24 Apportionment (*Qisma*) of Jointly Owned Property

Anything which can be divided without being damaged shall be divided (and each of its joint owners given his share in the event of a

dispute), such as houses and farms. But a thing which cannot be divided easily shall be left intact. It is unlawful to divide it.

In a joint ownership, if one person calls for the division of the property and another refuses, the court shall have the power to compel the acceptance of division upon the party who rejected it.

Division by lots can only take place if the articles to be divided are of the same type. None of the joint owners shall be given cash as his share (while another receives a share in kind).

When it comes to dividing two articles of unequal value, the joint owners shall agree between themselves that the person to whom the more valuable commodity goes shall compensate the person to whom the less valuable article goes.

38.25 Function of a Testamentary Guardian-Executor (Wasi)

The testamentary guardian of a testamentary guardian is like the original testamentary guardian. The testamentary guardian is permitted to trade with the property of the orphans entrusted to him; he is also permitted to give away in marriage their slave girls. If someone appointed an unreliable person as a testamentary guardian such a person is to be removed.

(In the event of death) the priorities in disposing of the deceased's property are as follows. In the first place, the shrouds are bought, then debts are paid; after wills are executed the rest of the estate is then distributed to those entitled to it as inheritance.

38.26 Squatters Rights

If a person possesses a house in the presence of another for ten years, it shall then be taken as his own property. If the latter person subsequently claims it, and was present and aware of the situation and does not show any genuine reason for his silence, the court shall not give it to the claimant. But 'hiyazah' or the kind of possession

which subsequently confers ownership cannot be valid within ten years in respect of relatives and in-laws.

38.27 Bequests

It is not lawful for a sick person to make an admission that he owes one of his heirs a debt, or to admit that the heir has paid him a certain debt.

If a man made a will that pilgrimage shall be performed on his behalf, such a will is to be executed. But a will for alms to be given is more favourable to Maliki jurists.

If a person hired to perform pilgrimage on behalf of another dies before reaching the holy land, he shall be paid wages in proportion to the distance he covered. The rest of the money is then returned to the rightful owners, and whatever he spent shall be part of his wages.

But if the agreement entered upon with the person hired to perform pilgrimage was that he shall have nothing until after having performed the pilgrimage, then the total amount given to him must be returned to the heirs of the person on behalf of whom the pilgrimage was to be performed. Those who hired him on behalf of the family of the deceased shall be liable to pay that amount. (If the person hired was able to perform the pilgrimage) he shall return the remainder of the money (to the heirs of the person on behalf of whom the pilgrimage was performed).

CHAPTER 39

A Chapter on Inheritance

39.01 List of Heirs

Only ten categories of men may inherit. These are: (1) a son, (2) the son's son, and so on to the youngest generation born; (3) the father; (4) the grandfather and so on to the oldest generation alive; (5) a brother; (6) the son of a brother, and so on to the youngest generation born of that line; (7) the paternal uncle and (8) his son, and so on to youngest generation born of that line; (9) the husband; and (10) the person who set free a slave - in respect of the slave, that is.

In respect of women only seven can inherit: (1) a daughter; (2) the daughter of the son; (3) the mother; (4) the grandmother; (5) a sister; (6) a wife; and (7) a lady who set free a slave.

39.02 Husband

The inheritance of a husband upon the death of his wife, if she did not leave behind a son or the son of a son, shall be one-half of the total estate. But if she leaves behind a son or the son of a son from the husband or someone else, his share shall be one-quarter of the net estate.

39.03 Wife

The wife herself shall inherit from her deceased husband one-quarter of the estate if he did not leave behind a son or the son of a son. But if he has a son or a grandson from her or another wife she shall take one-eighth of the estate.

39.04 Mother

The inheritance of a mother from her son shall be one-third if he did not leave behind a son or a grandson or two brothers or more. This case shall be different under two circumstances, that is, in respect of the wife and parents. Under such circumstances, the wife shall have one-quarter and the mother one-third of what is left and the residue shall go to the father. Under a different circumstance, the mother shall have one-third except where the 'awl' formula diminishes her share or where the deceased has a son or a grandson or two brothers or more. Under such a circumstance the mother shall have one-sixth.

39.05 Father

The share of a father from his son, if the latter happens to be the only child and without issue, shall be the whole property.

But if the deceased has a son or a grandson, the father's share shall be one-sixth of the estate. But if he has no son and grandson, the share of the father shall be one-sixth and, when those who participated with him are given their share, he shall take the rest of the property.

39.06 Son

The share of a son from his deceased father is the whole estate if he is alone, or he can take the whole estate after those entitled to shares are given their share, such as the wife, the two parents, the grandfather and the grandmother. The status of the son's son is the same as that of the son when there is no other son. But if the heirs consist of a son and a daughter, then to the male you give the share of two females. That arrangement shall also be followed when there are numerous daughters as well as when they are small in number. They will inherit the whole estate in this manner, or what is left of it after the share of those who shares has been taken away. The son's son assumes the status of his father when that father is absent, as far as inheritance and the creation of impediments to succession are concerned.

39.07 Daughters

The share of a single daughter of an estate when she is alone is half the estate. When they are two or more, they take two-thirds; no matter what their number is they cannot have anything above two-thirds.

39.08 Son's and Daughter's

The daughter of a son of the deceased has the status of the daughter of the deceased himself, when the deceased left no daughter. Similarly the daughters of a son assume the status of the daughters of the deceased, if the deceased himself lacks daughters. When the deceased is to be inherited his own daughter and the daughter of his son, his own daughter shall have half the estate and the daughter of his son one-sixth of it. And these make up two-thirds. This arrangement shall be followed, no matter how numerous the daughters of the son happen to be; they cannot have more than one-sixth when they are not accompanied by a son. What is left is for the agnates. But if the daughters of the deceased happen to be two in number, the daughter of a son shall have nothing from the estate except when they have in their midst a brother. In that case what is left after the share of the daughters shall be shared between them. And the division shall award the grandson the share of two females. That shall also be the case of the son below them; the estate shall be between him and them. It shall also be the case if the daughters of a son inherited along with the daughter the one-sixth left and beneath them there happen to be the daughters of a son or a son happens to be beneath them. The estate shall be between him and his sisters or between him and those above him, that is, his aunts. And this precludes those who inherited two-thirds that is the daughters of a son.

39.09 Full and Consanguine Sisters

The share of a germane sister shall be one-half of the estate. If they happens to be two or more, they shall take two-thirds of the estate. If there happen to be many brothers and sisters, whether full brothers

and sisters or half brothers and sisters, they shall take the whole of the estate and share it, giving to a male the shares of two females. That shall be the procedure whether they are few in number or numerous. The sisters of the deceased when they inherit along with the daughters, have the status of agnates; they inherit what is left, but they are not given any specific shares when inheriting along with daughters. There shall be no share in an estate for brothers and sisters of the deceased when the father of the deceased himself is present or when a son exists or when the son of a son exists. Half brothers in absence of full brothers have the status of full brothers and sisters.

When in the division of an estate a germane sister or consanguine sister exists, the germane sister shall take half the estate and to the remaining consanguine sisters you give one-sixth of the estate. But if the germane sisters are two in number, the consanguine sisters shall be given nothing, except when they are accompanied by a brother. In such an instance, they take the residue which they share by giving a brother the share of two sisters.

39.10 Uterine Brother's and Sister's

The inheritance of a uterine sister or a uterine brother is equal and shall be one-sixth of each one. But if they are many, they take a third of the estate between them, which they divide equally, the share of the male being equal to that of the female. But the presence of a son or his sons or father or paternal grandfather and a brother shall preclude uterine sisters and brothers from inheriting.

39.11 Full and Consanguine Brothers

A brother shall inherit the whole of the estate if he is alone whether he is germane or consanguine. A brother and a sister or more, whether they are germane or consanguine, take the whole estate which they divide by giving to the male the share of two females. If this is a brother (coexists and) and specific Qur'anic sharer, the share of those with a specific share is taken out first and the rest is given to (the former). Similarly, what is left is taken by brothers and sisters which is divided by giving to the male the share of two females. But

if nothing is left, they cannot have anything, except where those with a prescribed share include uterine brothers who have already taken one-third, and there is left a germane brother or male siblings or male and female with them who are germane. Under such circumstances all the uterine brothers have to share their one-third with the germane siblings, and they share it equally. This kind of case is referred to as the 'mushtarikah'.

But if the siblings who remain are consanguine brothers they do not share with the uterine brothers, since they cannot be said to be sharing the same mother. But if the person who remains is a sister or sisters - germane or consanguine - they will then share the estate in accordance with the principle of 'awl' - that is to say everyone will receive her Qur'anic share. If on the other hand there exists one uterine brother or sister, then this cannot be the case of mushtarikah. Then the residue should go to brothers and sisters whether they are males alone, or males and females. But if they are sisters alone, germane or consanguine, they should receive their normal Qur'anic shares, in which case the doctrine of awl should be applied.

39.12 Nephews

The case of the consanguine brother is exactly the same as that of the germane brother in the absence of the latter, except in the case of mushtarikah. Also the son of a brother is like the brother in the absence of the brother whether he is germane or consanguine.

The son of a uterine brother does not inherit.

39.13 Exclusion of Heirs

A germane brother excludes a consanguine brother, who has precedence over to the son of a germane brother. Similarly the son of a germane brother takes precedence over the son of a consanguine brother. And the son of a consanguine brother excludes a consanguine paternal uncle. Further the consanguine paternal uncle excludes the son of a germane paternal uncle. Further, the son of a germane paternal uncle excludes the son of a consanguine paternal uncle. This is so since the nearer excludes the more remote.

39.14 Non-Heirs

The children of sisters, whatever the strength of the blood-tie, do not inherit, nor do the offspring of daughters. The same rule applies to the daughters of the brother, whatever the strength of the blood-tie, and to the daughters of the paternal uncle. Furthermore, the maternal grandfather does not inherit, nor does the paternal uterine uncle. Similarly, a slave or anyone not completely emancipated cannot inherit.

39.15 More Excluded Heirs

Nor can there be mutual right of inheritance between a Muslim and a non-Muslim. The following persons also do not inherit: the son of the uterine brother, the maternal grandfather, the mother of the mother's father, the father (that is the deceased's father).

Also uterine brothers do not inherit if they coexist with the paternal grandfather, nor can they inherit in the presence of the agnates descendant, male or female. The siblings also do not inherit in the presence of the paternal grandfather.

39.16 Impediment of Crime

The heir who caused the death of the deceased intentionally does not inherit in the estate nor in the blood-wit, nor can he inherit in the blood-wit in the case of an accidental killing, but he can inherit from the estate.

39.17 Effect of Exclusion

Whoever is disqualified from inheriting from an estate cannot himself exclude others.

39.18 Inheritance by Spouse Divorced or Married in Last Illness

A woman repudiated three times by her husband who is in his death sickness shall inherit the husband if he dies in that sickness, but the husband himself cannot inherit her. Similarly she can still inherit him, even if it was a single repudiation, if he happens to die from that illness, and even if she has completed her *iddah* period. In the event of a person in good health repudiating his wife once, there shall be mutual inheritance between them should either of them die before she completes the period of *iddah*. But there can be no mutual inheritance should either of them die after she completed the *iddah* period.

Where a man in his death sickness marries a woman and if either should die, there can be no mutual inheritance.

39.19 Grandmothers

The mother's mother is entitled to one-sixth of the net estate; so is the father's mother. But if they coexist, then they share the one-sixth. But when the mother's mother is nearer in degree then she is given priority, because the share is given to her by the text.

But where the paternal grandmother is nearer in degree, both shall share the one-sixth equally.

According to Malik, more than two grandmothers cannot inherit. He allows only the father's mother and the mother's mother, howsoever high.

However it is reported that Zaid Ibn Thabit allowed three grandmothers to inherit, that is, one from the side of the mother and two from the father's side. They were the mother's mother, the father's mother and the father's father's mother. But it has not been noticed as part of the practice of the rightly guided caliphs to allow more than two grandmothers to inherit.

39.20 Paternal Grandfather

Where the father's father is the sole surviving heir, he takes the whole property. If (there is also) a son or the son's son then he takes one-sixth. Further, if there are sharers other than brothers and sisters, he is entitled to one-sixth; and if there is any residue left he takes it. But if in addition to the sharers there exist siblings, then the father's father is given one of three alternatives, and he is free to take whichever is more advantageous to him. Either he shares with the siblings, or he takes one-sixth of the net estate, or one-third of the residue. But if there are no others with him other than siblings, then he shares along with them as a brother along with two brothers or four sisters. But if they are more in number then he takes one-third where there are siblings, except where it is more advantageous to him if he participates as a brother.

Where there are consanguine brothers the father's father alive in the absence of germane brothers, they are all counted as germane. If all are present then the consanguine brother is counted in the distribution of the estate, and when shares have been apportioned the consanguine brother's share is given to the germane brother, so as to reduce the father's father's share, since the germane brothers have a better right than the consanguine brothers. But where the father's father and a germane sister, a consanguine brother of a consanguine sister or a brother and a consanguine sister are alive, in this case the germane sister will take her one-half from the combined shares of the brothers and sisters, and the residue is shared between the consanguine brothers and sisters. It should be noted here that the presence of the father's father cannot raise the shares of the consanguines, except in the case of 'al-gharra', which will be explained later on.

39.21 Patron (*Mawla*)

The master who has set free a slave is entitled to the whole estate of his freed slave, if he is the only surviving heir, whether the patron is male or female. But if the patron and also the prescribed sharers are alive, then these sharers take their shares and the residue is given to the patron. A patron does not inherit in the presence of an agnates

residual heir. However, he is preferred to the cognates, who are not allotted shares in the Holy Qur'an.

Women patrons cannot inherit their clients, except those they emancipated themselves or through the agency of those they emancipated themselves through birth or emancipation.

39.22 Accommodation by Reduction (*'Awl*)

Where there exist a number of those having prescribed shares, and their fractional shares add up to more than a unit, their shares are reduced proportionately, and the estate is divided by employing the principle of '*awl*'.

The principle of '*awl*' does not allow the share of the sister when she and the father's father are alive except in the case of '*al-gharra*'.

This is where a woman dies leaving her husband, her mother, her germane or consanguine sister and her father's father. In this case the husband is entitled to a half, the mother takes one-third and the grandfather takes one-sixth. Now when the estate is exhausted, through the principle of '*awl*', the sister takes a half which is three; this is added to the share of the father's father. The sum total of the two shares is then divided between the father's father and the sister, giving one-third to the sister and two-thirds to the father's father. Thus, the fractional shares add up to twenty-seven shares.

CHAPTER 40

A Chapter summarising some aspects of Prayer

40.01 Wudu

The minor ritual ablution (*wudu*) for prayer is obligatory, and word *wudu* is derived from *wada'ah* (cleanliness). But rinsing the mouth, sniffing up water and rubbing the ears are all part of the tradition (*sunnah*) of the Prophet ﷺ, while brushing the teeth is highly desirable. But rubbing upon the boots (khuffs) is a dispensation and a concession.

40.02 Ghusl

The taking of a ritual bath (ghusl) on account of *janabah* (a state of ritual impurity), menstruation and parturition are also obligatory, while the ritual bath on account of the Friday congregational prayer is part of the prophetic tradition (*sunnah*). However the ritual bath on the occasion of the two Muslim festival prayers is desirable. A ritual bath on the occasion of a non-Muslim embracing Islam is obligatory, since he was in a state of ritual impurity (*janabah*). Further the washing of a dead Muslim is part of the prophetic tradition.

40.03 The Five Salats

The five daily prayers are obligatory, as is the *takebirat al-ibram* (the saying of *Allahu Akbar*, accompanied by raising the two hands upon the point of starting a prayer). However the other takbirs in a ritual prayer are part of the prophetic tradition. Beginning a prayer coupled with intention is obligatory. The recitation of the *Fatihah* (the first chapter of the Qur'an) in prayer is obligatory, but any addition to that is part of the prophetic tradition and obligatory as well (*sunnah wajib*). Standing erect (*qiyam*), bowing (*ruku*) and prostration (*sujud*) in the

course of ritual prayer are all obligatory. The first sitting after the first two *rak'ahs* is a prophetic tradition, while the second sitting (at the end of the final *rak'ah*) is obligatory. The utterance of “as-salamu alaikum” (literally peace be on you) to bring a prayer to a close is obligatory, but the accompanying act of turning the head to the right is a *sunnah* (prophetic tradition). It is obligatory for a worshipper to avoid uttering any word other than that which is part of the prayer. The two tashahhuds or tahiyyahs (the formula a worshipper utters before closing the prayer) are sunnahs. In the dawn prayer, the Qunut (the formula known as Qunut or obedience to God) is meritorious though not a *sunnah*. Facing the *Qiblah* (i.e. the direction of the Ka'bah in Mecca) is obligatory.

40.04 Other Salats

The Friday congregational prayer and hurrying to the mosque for its performance are obligatory. The ‘witr’ prayer (the one *rak'ah* performed after the Isha prayer) is an obligatory *sunnah*, as are likewise the prayers on the occasions of the Id festivals and an eclipse of the moon, as well as prayers for rain. The prayer of fear is obligatory (*wajib*); God Most High has enjoined it, for it is a deed through which worshippers hope to achieve the virtue which accrues from praying in congregation.

40.05 Ghusl before Entering Mecca

Taking a bath (*ghusl*) upon the occasion of entering the city of Mecca is desirable.

40.06 Joining Salats

A concession is granted to worshippers to perform the Isha prayer immediately after the Maghrib prayer on rainy nights. The orthodox caliphs indeed did so. Such a combination of prayers at Mount Arafat and Muzdalifah is an obligatory *sunnah*. A traveller on a serious journey is also permitted to benefit from this concession of linking together two prayers. A sick person who fears loss of consciousness can also link two prayers. A sick person can also benefit from this

concession for some other impelling reason, to lessen the rigours of his condition.

40.07 Fast and Salat on a Journey

Suspension of the fast is a concession while travelling. But it is obligatory in order to benefit from this concession to perform fewer *rak'abs* while on a journey.

40.08 Supererogatory Salats

The two dawn *rak'abs* known as *rak'ata l-fajr* are desirable, but according to some authorities they rank as *sunnah*. But the forenoon prayer (*salat ad-Duha*) is supererogatory, as likewise are special *rak'abs* performed during Ramadan, which are highly meritorious. Anybody who performs them out of piety and a desire to earn reward from God, shall be forgiven his past sins. *Rak'abs* performed during the nights of Ramadan, as well as other months, are highly recommended supererogatories.

40.09 Burial

Praying over dead Muslims is obligatory, but once performed by certain members of the Muslim community, other members are relieved of the duty. Similarly the disposing of bodies through burial, and washing them are obligatory sunnahs.

40.10 Knowledge

In the same way, the seeking of knowledge is a communal duty (i.e. once attended to by some members, the duty lapses on others), except such knowledge as cannot be dispensed with by the individual in his private life.

40.11 Jihad and Forts

The duty on the Muslim community to fight *Jihad* is a general one. But once attended to by a section of the community, the rest are relieved of the duty. However, when the enemy attack a Muslim settlement, the duty to fight is incumbent upon everybody if the enemy are twice the number of Muslims.

The manning of the frontier posts of the Muslim state in order to block the enemy advance, and taking whatever precautions are necessary for the security of the state, are obligatory. Those who undertake this relieve the rest of the Muslim community of the duty.

40.12 Fasting

Fasting during the month of Ramadan is obligatory. *I'tikaf*, that is, retirement into the mosque for the purpose of worship, is a supererogatory duty. Also voluntary fasts during *i'tikaf* are desirable. Other desirable acts of worship include fasting on the day of Ashura (the tenth of Muharram), fasting during the months of Rajab and Sha'ban, and on the day the pilgrims stand on the Mount Arafat, as well as on the day of Tarwiyah (eighth of Dhul-Hijjah). The merit accruing from observance of a fast on the day of Arafat by worshippers other than pilgrims is greater than the merit pilgrims achieve through the observance of a fast on that day.

40.13 Zakat

The payment of zakat in respect of money, farm produce and livestock is obligatory, while zakat payable at the end of Ramadan fasting is a *sunnah* - it is ordained by the Messenger of God (peace and blessing of God be upon him).

40.14 Pilgrimage

The performance of the pilgrimage is obligatory, while lesser pilgrimage (umrah) is an obligatory *sunnah*. The utterance while on pilgrimage of the *talbiyah* ("I respond to your call O God") is also an

obligatory *sunnah*. Also, making the intention (resolve) to perform the pilgrimage when starting it is obligatory. So also is the *tawaf al-ifadah* (the circumambulation of the Ka'bah performed after Arafat). The jogging between the hills of Safa and Marwah is also obligatory, and the *tawaf al-ifadah* is more important than the latter. *Tawaf al-wada* - that is the farewell *tawaf* - is a *sunnah*. Spending the night at Mina after spending the day at Arafah is a *sunnah*. The linking of the Afternoon and Evening prayers at Arafah is obligatory. Staying at Arafah is also obligatory. It is an obligatory *sunnah* to spend the night at Muzdalifah. Staying at the Mash'ar al-Haram is also enjoined. The pelting with pebbles the effigies of Satan is an obligatory *sunnah*. Similarly, shaving the head and kissing the Black Stone are obligatory sunnahs. Taking a bath upon donning the pilgrim's garb is a *sunnah*. It is also a *sunnah* to perform two *rak'ahs* upon the commencement of the various pilgrimage rituals. It is a *sunnah* to take a bath at Arafah, while taking a bath for the purpose of entering the city of Mecca is recommended.

40.15 Salat in Common

Prayers offered in congregation are twenty-seven times greater in merit than prayers offered alone. The prayer performed by an individual at the Ka'bah or in the Prophet's mosque is of greater merit than prayers performed in any other mosque; however there is a divergence of opinion as to which of the two mosques is of greater merit and by how many times. Nevertheless, there is no disagreement as to the fact that a prayer performed in the Prophet's Mosque is one thousand times more meritorious than prayers performed in any other mosque apart from the Ka'bah. But the people of Medina hold the opinion that prayer in the Prophet's mosque is of greater merit than that performed at the Ka'bah by less than one thousand times. But all this refers to obligatory prayers; as for the supererogatory prayers it is more meritorious to perform them in one's own home.

As far as the people of Mecca are concerned, it is more meritorious for them to perform acts of supererogation through additional *rak'ahs* rather than through circumambulation (*tawaf*) of the Ka'bah. But for non-residents of Mecca it is a preferable to perform acts of supererogation through *tawaf* rather than through additional *rak'ahs*

since the opportunity to perform the *tawaf* is rare as far as they are concerned.

40.16 Looking at Women

It is incumbent upon Muslims to avoid looking at women who are strangers to them. The first look, however, which is inadvertent, is not an offence. Nor is there any offence in looking at a woman, the looking at whom does not excite any passions. Nor is there any offence in looking at a young woman through necessity, such as testifying against her or for a similar reason. But (as far as looking at a woman is concerned) a dispensation is given to those courting them.

40.17 Unjust Speech

It is obligatory that a person should not tell lies, nor commit perjury or lewdness and slander. Neither should a person sow the seeds of dissension nor commit any other indecent act. The Prophet—peace and blessing of God be upon him—said, **“Whoever believes in God and the Last Day, let him utter decent words or else keep quiet”**. The Prophet ﷺ also said, **“It is decent for the faithful person to keep aloof from that which does not concern him”**.

God, glorified be He, has prohibited illegal gain, such as that obtained through extortion, misappropriation, cheating, usury, corruption, gambling, transactions involving risks, adulteration, deceit and duping.

40.18 Taking a Muslim’s Life or Property

God, Glorified be He, has prohibited the shedding of the blood of Muslims; so also has he prohibited assault on their property except for a lawful cause.

It is not lawful to shed the blood of a Muslim except when he commits apostasy, or when he commits adultery, or when he kills a

person and this is not in retaliation, or when he becomes an outlaw, or when he renounces the faith.

40.19 Sexual and Related Restrictions

One must keep away from infringing upon other people's property, person or body. Moreover, you must not allow your legs to carry you to a place which it is unlawful for you to go to. Do not allow your pudenda or any part of your body to come into contact with anything which is unlawful to you.

Allah Most High said, "And those who guard their chastity; except with their wives, and the (captive) whom their right hand possess, for (them) they are not to be blamed. But those who trespass beyond this are transgressors". (Qur'an 70:29-31). Again, God, Glorified be He, has prohibited the committing of indecent acts whether overtly or covertly. God has also prohibited coming into contact with women when they are menstruating or during childbirth. God has also prohibited, in marriage, those categories of women already mentioned.

40.20 Doing Licit and Avoiding Doubtful Things

Further, God has enjoined the eating of lawful foods; it is not lawful to eat anything which is indecent. It is not lawful to wear a dress or ride on anything, or dwell in a house, unless these are lawfully acquired. Besides, anything you use must be lawfully acquired. Apart from these there are acts whose legality is uncertain. Whoever avoids them is safe, but whoever does them is like a shepherd grazing his flock by the side of a prohibited area, which may likely trespass on it.

40.22 Forbidden Meat

God, glorified be He, has forbidden eating the flesh of an animal which died of itself, as well as blood and the flesh of swine. He has also prohibited the eating of an animal dedicated to a deity other than God. Also prohibited is the eating of the flesh of an animal which died due to a fall from a hill, or one which died due to beating with a

stick or some other weapon. So also, an animal which died due to strangulation with a rope or something similar, (all these are forbidden to Muslims) except when compelled by necessity. In such cases, a special dispensation is given to Muslims to eat the flesh of animals which died due to any of the reasons mentioned above, when such animals reached a point beyond which there can be no survival, in which case there can be no formal slaughter of them.

For there is no harm for a person moved by necessity to eat the flesh of an animal which died of itself until he is satisfied, and he can even take some along as provision for future use; when he is no longer in need of such provision he can then throw it away. Moreover, there is no harm in using the skins of such animals when they are tanned. However, he cannot pray upon them nor can they be objects of sale. Further, there is no harm in praying upon the skins of wild beasts when they are formally slaughtered. Such skins can also be sold. It is lawful to make use of the wool and the hair of an animal which died of itself, and that part of it which is removed when alive. But it is preferred that such things be washed. However, feathers of dead birds and horns of dead animals, their claws and teeth must not be used, and it is detestable to use the tusks of elephants. The use of anything coming from a swine is prohibited. However, a dispensation is given in using its hair.

40.23 Forbidden Drink

God, Glorified he He, has forbidden the taking of alcoholic beverages whether in small or large quantities. Also prohibited was drinking by Arabs of fermented dates. Moreover the Prophet (saw) has explained that if any drink is capable of intoxicating when taken in large quantities, then even a small amount of it is prohibited. Any drink which depresses the intellect and causes intoxication is alcoholic. The Prophet (saw) said that **“God who forbids the drinking of alcohol, has also prohibited the sale of it”**. The Prophet (saw) also prohibited two types of mixing of drinks. The first type is to mix (dates and grapes) to ferment (and becomes wine). The second mixing prohibited is for the drinks themselves to be mixed in a gourd or pitcher upon drinking them.

40.24 Other Forbidden Meat

Besides the Prophet ﷺ has prohibited eating the flesh of all those animals which have upper front teeth, from amongst wild beasts. He has also prohibited eating the flesh of domesticated donkeys, and this includes the flesh of horses and mules. And this is in respect of what Allah, Blessed and Exalted be He, said, “..... so that you can mount them and they are ornaments” (16:8). Moreover, they are not slaughtered, with the exception of wild asses. There is no offence in eating the flesh of birds of prey and this includes all those having talons.

40.25 Treatment of Parents

Obedience to parents is part of the obligatory actions. This is so even if they happen to be sinners or polytheists. The offspring must address them gently and live cordially with them. But an offspring shall not obey his parents if they order him to commit acts of disobedience to God, as God—Glorified and Exalted be He—said, “It is the duty of a believer to ask God’s forgiveness for his believing parents and to fraternise with other believers and give them good counsel.

40.26 Treatment of Fellow Muslims

“Moreover, nobody achieves the true essence of faith until he loves for his brother Muslim what he loves for himself”. That was a hadith (a tradition) reported from the Messenger of Allah, peace and blessing of God be upon him. It is also incumbent upon a Muslim to visit his relatives. Also it is part of the duty of a Muslim to a fellow-Muslim to greet him when he meets him, to visit him when he is sick, and to say to him “*Yarhamakallah*”, i.e. “May Allah have Mercy upon you”, when he sneezes. Further, a Muslim shall attend the funeral of a fellow Muslim when the latter dies, and must not backbite him when he is about or absent, whether secretly or openly. He must not keep aloof from him for more than three nights. The mere act of saying “*as-salamu alaikum*” puts an end to your aloofness towards a fellow Muslim. Besides, it is not proper for a Muslim to

ignore a fellow Muslim after having said to him “*as-salamu alaikum*” i.e. peace be upon you.

The only occasion when a person keeping aloof from a fellow Muslim can be lawful is when such a Muslim is an innovator in religious affairs or commits mortal sins openly, while the former is not in a position to punish the culprit or preach to him, or even if the former preached to him the culprit did not accept or utilise the admonition.

In respect of a person who introduces innovations in religious affairs, or a person who commits mortal sins openly, mentioning their characters to a third party shall not constitute a slander. Further it is also not a slander in respect of a person consulted, to reveal their characters to persons who were about to marry them or engage in some social dealings with them or some other similar affairs. Also, it is not slanderous to mention the bad character of a witness in a court of law, in order that the court should refuse to accept the evidence the person gives or for some other similar case.

It is magnanimous for a person to forgive someone who wronged him, and to give to those who denied him, and to visit those who neglected him. The sum total of ethical conduct is derived from four traditions of the Prophet (saw).

(The first tradition) is when the Prophet (saw). said, “Whoever believes in God and the Last Day, let him either speak decent words or keep quiet”. (The second tradition) is where the Prophet said, “It is part of the good qualities of a Muslim’s faith to keep away from that which does not concern him”. (The third tradition) is when someone asked counsel from the Prophet and the Prophet summarised his advice in the following words, “Never lose your temper”. (The fourth tradition) is when the Prophet said, “A Muslim shall wish for a fellow Muslim what he wishes for himself”.

40.27 Things not to Listen to

It is not lawful for a Muslim intentionally to listen to anything not morally sound, nor to enjoy the speech of a woman not lawful to him, nor to listen to amusements, songs.

40.28 Qur'an Recitation

Or to read the Holy Qur'an in a sing-song manner. It is incumbent upon a Muslim to show reverence for the Book of God, i.e. the Holy Qur'an, and to recite it in a calm and sedate manner, that is, a manner one is sure shall please God and bring the reciter closer to Him, while at the same time understanding fully the meaning of the Qur'anic text one reads.

40.29 Commanding the Acceptable

Further it is obligatory upon a Muslim ruler to command those under him to do good and refrain from evil deeds.

Similarly, it is the duty of everybody who is able to command the doing of good and prohibit evil deeds. Those not able to enforce this shall resort to exhortation. In the event of a person's inability even to exhort he shall then uphold good conduct and abhor evils deed.

40.30 Right Intention

It is the duty of every Muslim to make his motive for every good word he utters and every good deed he does the hope of reward from God himself. When words and deeds are not for the sake of God himself, such words and deeds are rejected by God. Moreover, hypocrisy is little short of polytheism.

40.31 Repentance (*Tawba*)

It is also obligatory for a Muslim to repent for all his sins, without going back to them. The word 'israr' means persisting in sinning and determining to go back to it. It is a part of repentance to return

property taken by force to its rightful owners, to shun everything which is forbidden, to resolve never to go back to sinful acts, and to seek the forgiveness of his Lord, i.e. God. A Muslim shall, besides, hope for the mercy of God and dread His punishment. He must also remember His bounty upon him and offer thanks for His kindness to him through the performance of those deeds He made obligatory and the avoidance of those acts He detests. He shall also seek to come closer to his Lord through the performance of supererogatory acts of worship. And all the duties he neglected, let him perform them immediately, and hope that Allah would accept them. He shall also repent for having neglected them. In addition, let him seek refuge in God over his difficulties in the course of his life and his attempts to conduct his affairs, realising that God alone can grant him success and make him prosper. He shall always think along these lines whether in prosperity or adversity. He must never despair of the mercy of God.

40.32 Meditation

Pondering over the power of God is the key to true worship.

Seek God's help through remembrance of death and what shall come after it. Think also over God's bounty upon you. Think also over God's postponement in punishing you, and His punishment upon others for their sins. Think also over your past misdeeds and your fate. Make haste over this, for it is likely that your fate is near.

CHAPTER 41

A Chapter on Good Appearance, Circumcision, Shaving of Hair, Dressing and such things

41.01 Personal Upkeep (Fitra)

Good appearance consists of five things, namely, the clipping of the moustache, that is, trimming of hair surrounding the mouth and not cutting it off - God knows best; the paring of the nails; the plucking of the armpits; and the shaving off of the pubic region. There is no harm, however, in shaving off the hair on other parts of the body. Circumcision for men is a tradition (*sunnah*) of the Prophet ﷺ, while for ladies it is a mark of honour.

41.02 Beards

The Prophet (saw) commanded that beards should be left to grow thick and should not be clipped. According to Malik there is no harm in clipping a little when it is too long.

41.03 Dying Hair

Some other jurists from among the Companions of the Prophet and the generation that came after them said it is reprehensible to colour it black, but this is not prohibited. However, there is no harm in colouring the beard with henna or 'katam' (the latter gives the hair a yellow colour while the former gives it a red one).

41.04 Use of Silk and Gold

The Prophet ﷺ prohibited men from wearing silken clothes, and gold or iron rings. There is no harm in wearing rings decorated with silver

or having sword or Qur'an cases decorated with silver, but this does not apply to bridles, saddles or knives, nor to other things.

However, women are allowed to have golden rings but not iron ones. In the choice of the finger upon which to wear rings, it is narrated that the left hand is preferred, since the right hand is employed in most actions. The wearer of the ring shall take it by the right hand and put it on the left. Opinions of jurists differ as to the lawfulness of the wearing of 'khazz' material (a mixture of silk and wool). Some say it is lawful and others consider it reprehensible. Similarly, it is reprehensible to make designs on cloth with khazz except where these are thin lines.

41.05 Excess and Defect in Clothing

Women are forbidden to wear thin clothes which reveal their shapes when they go out. A man must not wear oversized clothes out of arrogance or some dress out of conceit. A man's clothes must be above his ankles. Doing this keeps his cloths cleaner, and this is a greater mark of piety.

It is prohibited for a person to wrap his body in his blanket in such a way that he joins its two ends on the left shoulder and the dress coming from beneath the right shoulder - this when he has no underwear. Jurists are at variance as to the lawfulness of this when the person is wearing underwear.

41.06 Covering Private Parts

Besides, a Muslim shall be ordered to always cover his private parts. The wrapper of a believing Muslim shall extend to his shins. The thigh, besides, is deemed to be a part of the private parts, although strictly speaking it is not part of the private parts. A man must not enter a public bath without pants on. A woman must not enter a public bath except out of necessity. Two men or two women must not wrap themselves in a single blanket.

41.07 Women Going Out, and Music

A woman must not come out into the public unless moved by necessity, such as attending the funeral ceremonies of her parents or near relatives, or occasions of a similar nature, which are lawful to her. She must not attend a funeral ceremony at which professional mourners scream. Nor is it lawful for her to attend ceremonies where clarinets and lutes or similar musical instruments are played. However, she is permitted to attend weddings where tambourines are played. But opinions of jurists differ as to whether it is lawful for her to go to a wedding ceremony where 'kabar' (a kind of drum) is beaten.

41.08 Seeing Women

A man must not seclude himself with a woman other than one whom between him and her a bar to marriage exists. But there is no harm in him seeing her for a lawful cause such as testifying against her, or other such reasons, or when he courts her. However he is permitted to see the face of an elderly woman, for any reason.

41.09 False Hair and Tattoos

Women are forbidden to attach someone else's hair to their own; they are also prohibited from tattooing their body.

41.10 Putting on Footwear

When a person comes to wear boots and shoes let him start with the right foot. However, there is no harm in putting shoes on in a standing posture. It is however reprehensible to walk about with a single shoe on.

41.11 Images

It is reprehensible to make designs on beds, domes, walls, and rings. There is no harm in drawing numbers on clothes; however it is preferable to leave it.

Chapter 42

A chapter on Food and Drink

42.01 Prayer Before and After

When you eat or drink, it is obligatory upon you to say “In the name of God”, and you shall take the food or drink with the right hand. When you finish you should say, “Praise be to God”.

42.02 Various Details During the Meal

It is preferred that you should lick you hands before you rub it off. It is part of table manners that you should apportion one third of your stomach for food, one third of it for drink and the last third for breathing. When you eat with others you should eat what is in front of you. You must not take a morsel until you have finished with the previous one. You must not breath in the vessel when you drink. When you breathe you should take away the cup from your mouth. Then you bring it back if you like. You must not gulp water but sip it. You must, besides, chew your food well before swallowing it. Further, you must clean your mouth after eating. If you wash your hand after drinking broth or milk, it is proper. You should pick your teeth to remove the bits of food which stick in them. The Prophet - peace be upon him - has prohibited eating and drinking with the left hand. When you drink in turns, you pass the vessel to the person on your right. It is prohibited to blow with the mouth upon food, drink or a book. It is also prohibited to drink out of a gold or silver vessel. However, there is no harm in drinking while standing. It is not proper for a person who has eaten raw leek, garlic or onions, to enter a mosque. Moreover it is reprehensible to eat while reclining. It is reprehensible to start eating from the top of the ‘tharid’ (bread soaked in soup). It is prohibited while eating dates to eat two at a time. According to some views, this rule only applies when you are eating along with others. However, there is no harm in doing that

when eating with your family or some people you are feeding. While eating dates and such like, there is no harm for you to pick the fruit you fancy.

42.03 Washing after Eating

Washing hands before eating is not part of the *sunnah* (tradition of the Prophet), except when they happen to be dirty. One must wash one's hands and mouth after eating broth, and must rinse ones mouth after drinking milk.

It is reprehensible to clean the hand with foodstuff or some leguminous plants, or with husk. But in respect of cleaning with husk, opinions differ.

42.04 Going to a Wedding Feast

You must honour invitations to wedding feasts, unless there happen to be some merriments or something clearly reprehensible. However it is up to you whether to eat or not. But Malik gives a dispensation for those wishing to remain behind if the crowd is too large.

CHAPTER 43

A Chapter on greetings, Permission to enter houses, Confiding in a friend, reciting the Qur'an, supplication (du'a), remembrance of Allah, and what to do when embarking on a journey

43.01 Greeting

It is obligatory to return a greeting, (that is, to acknowledge it and respond). But it is a desirable tradition of the Prophet to greet others first. Greetings shall consist of the following words “*as-Salamu alaikum*” (peace be upon you). And in return one says, “*Wa alaikum us-salam*” (upon you be peace).

Alternatively, the man greeted can say “*Salamun alaikum*” (peace be upon you), as was said to him. On most occasions people end their greetings by invoking God’s blessings. They say in reply, “Peace be upon you as well, and the mercy of God and His blessing”. Do not say when replying to a greeting “God’s peace be upon you”. Moreover, if one member of a group performs the greeting, that is enough and there is no need for the rest of them to say anything. Similarly, if a member of a group replies to a greeting, that shall be sufficient.

When a rider and walker meet, the duty to greet first is upon the rider. When a walker comes upon someone sitting down, the duty to greet first is upon the walker. The shaking of hands is a good thing, but Malik considers embracing in a greeting reprehensible. However, another jurist Ibn Uyainah says that embracing in greeting is permissible. Again, Malik considered reprehensible the kissing of

hands as a mark of respect, besides he disbelieved the hadith narrated in respect of it.

It is not proper for a Muslim to greet a Jew or a Christian first. But if a Muslim greets a non-Muslim, he does not attempt to retrieve it. And if a Jew or a Christian should say “Salamun alaikum” to him, all he says in reply is “alaika”. One can also say “alaika s-silam” (where ‘silam’, with the vowel “i” after “s”, means ‘stone’). That used to be said by them to Muslims.

43.02 Asking Permission to Enter, Visiting the Sick

It is obligatory to seek permission before you enter people’s houses. You do not enter a house in which some people live until you ask for permission up to three times. If permission is given to you then enter, otherwise you go back. It is meritorious to visit and greet sick people.

43.03 Whispering in Another’s Company

In a company of three people, two of them must not exclude the third and speak confidentially to one another. Similarly, in a larger group, one man must not be isolated. According to some jurists, that can only be proper with his permission, that is, the person isolated. Now, as for migration we mentioned why it should take place in a previous chapter.

43.04 *Dhikr* (Recollection of God)

Mu’adh ibn Jabal has narrated that there is nothing any human being can do which can ensure for him protection from God’s chastisement more than the remembrance of Allah. And Umar has stated that it is more virtuous to remember God when you comply with His orders and prohibitions than when you mention Him with the and tongue.

43.05 Morning and Evening Prayer

One of the supplications (du'a) of the Messenger of Allah ﷺ every morning and evening was, "O God we pass through the morning with your permission, we also pass through the evening with your permission. We live with your permission, we also die with your permission".

The Prophet also said in the morning, "By Your permission do we rise". And in the evening he said, "You control our fate". It is also narrated that another supplication of the Prophet ﷺ is as follows, "O God, out of Your servants give me the greatest portion and share of every good You distribute on this day. And after it, give me the greatest share of light with which You guide, and the greatest share of mercy You spread and the greatest share of sustenance You give. Give me the greatest protection from harm and the greatest share of forgiveness from sin. Moreover, give me the greatest protection from hardship as well as the greatest protection from trouble. Give me, again, the greatest share of forgiveness which You bestow by Your mercy. Verily, You have power over all things".

43.06 Prayer Before Sleep

Also, when he came to sleep, the Prophet ﷺ placed his right palm beneath his right cheek and his left palm on his left thigh, and then prayed in the following words, "O God, it is by Your permission that I place my side (on my bed) and it shall be by Your permission that I shall raise it up. O God if You should take my life, forgive me. And if You should release my life protect it by that with which You protect the lives of Your virtuous servants. O God, verily, I submit my life to You. I take refuge in You for my back, and place my affairs into Your hands, and turn my face to You, out of fear of You and hope in You. None can escape You, and there is no better refuge than in You. I seek Your forgiveness and repent for my sins. I believe in Your Book, which You revealed to Your Prophet whom You sent. Forgive me for my past and future wrongs and for wrongs I committed openly and those I committed secretly. You are my Lord, there is no other deity besides You. O Lord, protect me from Your chastisement on the day You raise to life Your servants".

43.07 A Prayer when Going Out

It is narrated that when one comes out of one's house, he said the following prayer, "O God, verily, I take refuge in You lest I mislead or be misled, or lest I should debase or be debased, or lest I should oppress or be oppressed. I also take refuge in You lest I fail to understand or be misunderstood".

43.08 A Prayer after Salat

It is also reported that at the end of each of the five daily prayers, one should immediately glorify God thirty-three times, exalt him thirty-three times, and praise Him thirty-three times, and complete the hundred with the following prayer, "There is but only one God, He has no partner; to Him belongs sovereignty and praise, and He has power over all things".

43.09 A Prayer after Going to the Toilet

When you go to the toilet you should say, "Praise be to God who bestowed upon me His ease and removed from me His discomfort, and left in me His strength". Also, you should take refuge in God from everything you fear.

43.10 Prayers against Danger

When you arrive at a place or when you sit down in a place or when you sleep in a place, you say the following prayer, "I seek refuge in the complete words of God, from the evil of what He has created". Again when taking refuge you say, "I take refuge in the noble face of God, and the complete words of God, beyond which neither the obedient nor the disobedient servant can go. I also seek refuge in the beautiful attributes of God - those of them I know, and those I do not know, from the evil of what He created, fashioned and moulded, and from the evil of that which descends from the heaven and that which ascends to it. I also take refuge from the evil of what God created in the earth and the evil of what comes out of it. Again I seek refuge in God from the trial of night and day, and the day and night

occurrences, except an occurrence that will bring good with it, O Merciful God”. It is also said in a prayer, “O God protect me from the evil of every creature You are in full control of. Verily my Lord is upon a straight path”.

43.11 On Entering a House

It is also considered good for a person entering his house to say, “Thanks be to God, there is no power save in Him”.

43.12 Disapproved Activities in Mosques

It is considered reprehensible to do any job in the mosque, such as tailoring and similar works. None should wash his hands in a mosque or eat in it, except for snacks or something similar. A man must not clip his moustache in it nor pare his nails. But if he should clip his moustache or pare his nails let him do that over his clothes. He must not kill a mouse nor a bedbug. A dispensation is given in respect of strangers to sleep in a village mosque.

43.13 Reciting the Qur’an

It is not fitting for a man to recite the Qur’an in a public bath, with the exception of short verses. Even that should not be overdone.

A rider and someone lying down or walking from one village to another is permitted to recite the Qur’an. But it is considered reprehensible for a man on his way to a market place to do that. However it is said that a learner is permitted to do that. It is considered meritorious for a person to recite the whole of the Qur’an within seven days, but it is considered better to recite in small portions which permits the reader to understand what he recites.

It is reported that the Prophet ﷺ never recited the Qur’an in a period shorter than three days.

43.14 At Prayer at the Beginning of a Journey

It is considered meritorious for a rider to recite, when he is about to mount this beast, “In the name of God, O God You are my companion upon his journey and at the same time the person I leave behind to look after my family. O God I take refuge in You from the fatigue of this journey; I also take refuge in You from any possible disappointment, and the witnessing of detestable scenes in my family or my property”.

43.15 A Prayer after Mounting an Animal

Moreover a rider says this prayer upon mounting his beast securely, “Glory be to Him who made this obedient to us, while in the past we were not able to control it. And surely we shall be going back to our Lord”.

43.16 Foreign Trade

It is reprehensible to go on a trading expedition to the land of enemies of Islam; it is also reprehensible to go to the land of non-Muslims. The Prophet - peace be upon him - is reported to have said that travelling is a portion of chastisement. It is not proper for a woman to travel unaccompanied by a male relative so closely related that marriage between them is prohibited. The prohibition is when the journey can take a day and a night or longer. However, Malik makes an exception in the case of obligatory pilgrimage, or when she is in a company of people of integrity, even if not in the company of a close male relative.

CHAPTER 44

A Chapter of Treatment, a mention of incantation, the evil eye, astrology, castration, tattoo, mention of dogs and leniency to slaves

44.01 Charms and Medical Treatment

There is no harm in seeking a spell to cure the evil eye and similar things. Also, there is nothing wrong in the use of charms, or the use of medicine in the treatment of diseases, or the taking of drugs; blood-letting, cauterizing and cupping are all good treatments. The application of antimony to the eye for men is permissible when done for medical purposes. For women, however, it is part of make-up. Nothing alcoholic, or ritually impure, or a dead body or something God Most High has prohibited can be used for medicinal purposes. There is no harm in cauterization or using the verses of the Qur'an or decent speech for cure of disease. There is no harm in wearing a charm which contains verses of the Holy Qur'an.

If a plague should occur in a land, nobody should come to it, nor should the inhabitants flee from it.

44.02 Portents

The Prophet—peace be upon him—said, on account of evil omens, **“If they exist at all, then it must be in the persons of woman, a horse and a house”**. The Prophet—peace be upon him—detested unpleasant names and used to encourage optimism.

44.03 Curing effect of Evil Eye

The cure for a person upon whom a spell has been cast is as follows: the man who cast the spell shall wash his face, his hands, his elbows, his knees, the side of his feet and the inside of his wrapper in a bowl and this is then poured upon the person upon whom the spell has been cast.

44.04 Stars

Nobody should look at the stars except for seeking guidance to the '*Qiblah*' and the hour of the night. Any other purpose than this should be avoided.

44.05 Dogs

Dogs are not to be kept in houses, whether in sedentary or in nomadic life, except dogs that can guard a farm or accompany flocks of sheep and goats in the desert and then bring them home in the evening. A man is also permitted to keep a dog to hunt for him if he lives by hunting. He can not keep a dog for mere sport.

44.06 Castration

There is no harm in castrating he-goats and rams, for this has the advantage of producing better mutton. Castration in respect of horses is prohibited.

44.07 Tattooing Animals

It is reprehensible to make tattoos on the face, but there is no harm in making them on any other part of the body.

44.08 Kindness to Slaves

A slave is to be treated leniently, and no work shall be imposed upon him which he cannot cope with.

CHAPTER 45

A Chapter on dreams, yawning, sneezing, chess horse-racing, shooting and such other things

45.01 Dreams (Ru'ya)

The Prophet—peace and blessing of God be upon him—said, “A good dream coming from a pious man is one forty-sixth fraction of Prophethood. If one of you should see in his dream what he dislikes, let him spit three times on his left when he wakes up and say, ‘O God, verily, I take refuge in You from the evil of what I saw in my dream, lest it should harm me in my religion and my worldly affairs’”.

45.02 Yawning and Sneezing

If one yawns, let him place his hand over his mouth. And if one sneezes, let him say, “*Praise be to God*”. And it is the duty of those who hear him praising God to say to him, “*May Allah have mercy on you*”. The person who sneezes then says in reply, “*May Allah forgive us and you*”. Or he should say, “*May Allah guide you and increase you in excellence*”.

45.03 Games and Betting

It is not permissible to play backgammon or chess. But there is no harm in saying “*Peace be upon you*” when you come upon those playing the games. It is considered reprehensible to sit and watch those playing these games.

However there is no harm in horse or camel-racing or in a shooting competition. If the participants should fix a prize for the winner, that

shall be lawful. The person who offered the prize shall take it away if he wins the race, but if someone else wins the race then the winner takes the prize. That is the view of Ibn al-Musayyib. But Malik was of the view that it is lawful for a competitor to set a prize and if someone other than the man who set the prize wins the race he takes it. But if the person who set the prize wins, the prize is given to the spectators.

45.04 Killing Snakes and other Animals

A tradition has been reported in respect of snakes which appeared in Medina, that such snakes are requested to leave three times. It is also good if such a request is made to snakes elsewhere. However, snakes appearing in the bush should be killed immediately and no requests are made to them. It is reprehensible to destroy lice and bedbugs by throwing them in fire. But there is no harm in killing ants when they are harmful and cannot be tolerated, but sparing them is preferable to us. A gecko should be killed, but it is reprehensible to kill frogs.

45.05 Against Pride in Ancestors

The Prophet ﷺ has said, “Verily God has expelled from you the folly of pre-Islamic time, and taking pride in ancestors. Whether a man happens to be a pious believer or a dissolute scoundrel, you are all from Adam and Adam is created of dust”.

The Prophet ﷺ said to a man who learned people’s genealogy, **“That is a knowledge which has no benefit; the ignorance of it does no harm”**. Umar (ibn al-Khattab) said, “Know enough of your genealogy to enable you to discharge your duties of your relations”. Malik (ibn Anas) said he detested going back in genealogy beyond the Islamic period.

45.06 Dreams

A good dream is one forty-sixth fraction of prophethood. And if a person should see in his dream something he detests, let him spit three times on his left and take refuge from the evil of what he saw.

It is not proper for a person who has no knowledge of dreams to interpret them. A man must not interpret his dream to mean something advantageous to him, while in fact he dislikes it.

45.07 Poetry

There is no harm in reciting poetry in a singsong manner, and when a Muslim comes to choose poetry let him choose the light-hearted type. But even in this, a person is not expected to read too much of it, to the extent that it becomes a calling for him.

45.08 Religious Learning

The best of education and the most virtuous and closest to God Most High, is the knowledge of His religion and His law, which teaches His commandments and His prohibitions; and besides, those rules which He called upon people to accept and encouraged obedience to them in His Book, through the tongue of His Messenger. Also, the best of knowledge includes a knowledge of His Book, understanding it and being alert in preserving it and applying the knowledge thus gained.

Besides, learning is the best act of worship. And the closest to God of learned men and most acceptable to Him is one who fears Him most and hopes to get that which is in God's possession. Learning is the means through which prosperity is attained. It also leads to it.

Taking refuge in the Book of God—Mighty and Exalted be He—the *sunna* of the Prophet and following the path of pious men as well as the paths of the best of generations created from amongst men, are all paths to success. Security consists of taking refuge in that. Again, following the path of early pious Muslims leads to success also. They are the models upon whom we should base our lives. They are the leaders in interpreting that which they interpreted. They are also to be emulated in evolving rules and regulations to govern the lives of Muslims. Although they differ, their differences do not carry them away from coming to agreement.

Praise be to God who guided us to produce this. We would not have gone straight, but for His guidance.

Epilogue

Abu Muhammad Abdullah ibn Abi Zaid said:

“We have now brought those things which we stipulated to bring in this book of ours. They consist of those things which its reader will find useful, especially children. Adults who need it will also find it useful. Besides, one can find in it those things which will enlighten an ignorant person, with respect to those things he is to believe in as a Muslim, and with respect to one’s duties as a Muslim. The book also enlightens much about sources of Islamic jurisprudence and its branches. It also enlightens about the Sunnah of the Prophet ﷺ - works of supererogation and of an ethical nature”.

“I pray God—Mighty and Exalted be He—to enable us and you to benefit by those things He taught us, and help us and you to serve Him and perform the duties He allotted to us. There is no power and might save in Allah, the Exalted and the Mighty. May Allah bless our Leader Muhammad, His Prophet, and bless his family, and his companions and give them much peace”.