TAḤRĪR AL-VASĪLĀH
(VOL. IV)

TRANSLATED INTO ENGLISH
BY
Dr. Sayyid Ali Reza Naqavi

Institute for Compilation & Publication
Of
Imām Khomeinī’s (R.A.) Works
TEHRAN. (I.R.I.).
1390 A.H. / 2011 A.D.
TRANSLITERATION

The following System of Transliteration has been followed in the present English Translation:

<table>
<thead>
<tr>
<th>Arabic Letter</th>
<th>Roman Equivalent</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ت</td>
<td>t</td>
<td>th</td>
</tr>
<tr>
<td>س</td>
<td>s</td>
<td></td>
</tr>
<tr>
<td>ز</td>
<td>z</td>
<td>h</td>
</tr>
<tr>
<td>خ</td>
<td>kh</td>
<td></td>
</tr>
<tr>
<td>غ</td>
<td>gh</td>
<td>dh</td>
</tr>
<tr>
<td>ق</td>
<td>q</td>
<td></td>
</tr>
<tr>
<td>ض</td>
<td>ḍ</td>
<td></td>
</tr>
<tr>
<td>ع</td>
<td>b</td>
<td></td>
</tr>
<tr>
<td>ح</td>
<td>h</td>
<td></td>
</tr>
<tr>
<td>خ</td>
<td>kh</td>
<td></td>
</tr>
<tr>
<td>ض</td>
<td>ḍ</td>
<td></td>
</tr>
<tr>
<td>ض</td>
<td>ḍ</td>
<td></td>
</tr>
</tbody>
</table>

aw as “ow” in “cow”
ay as “ay” in “day”
aí as “a” in “cash”
ä long “a” as in American pronunciation of “all”, “call”
ì long “i” as “ee” in “seen”
ù long “u” as “oo” in “noon”
<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>12</td>
</tr>
<tr>
<td><strong>Section Forty-Four – Inheritance</strong></td>
<td>17</td>
</tr>
<tr>
<td><strong>Chapter One – Causes of Inheritance</strong></td>
<td>17</td>
</tr>
<tr>
<td><strong>Chapter Two – Impediments to Inheritance</strong></td>
<td>17</td>
</tr>
<tr>
<td>First Impediment: Infidelity (Kufr)</td>
<td>19</td>
</tr>
<tr>
<td>Second Impediment: Homicide (Qatl)</td>
<td>25</td>
</tr>
<tr>
<td>Third Impediment: Entitlement by Slavery (Riqq)</td>
<td>29</td>
</tr>
<tr>
<td>Fourth Impediment: Birth by Fornication (Zina')</td>
<td>29</td>
</tr>
<tr>
<td>Fifth Impediment: Li'an or Mutual Imprecation</td>
<td>29</td>
</tr>
<tr>
<td>Some More Impediments</td>
<td>31</td>
</tr>
<tr>
<td><strong>Chapter Three – Shares</strong></td>
<td>37</td>
</tr>
<tr>
<td>Attention! TA' SIB &amp; 'AWL</td>
<td>43</td>
</tr>
<tr>
<td><strong>Discourse One – Inheritance of Heirs by Nasab</strong></td>
<td>45</td>
</tr>
<tr>
<td>First Class - Father and mother, and their children, how so ever low.</td>
<td>45</td>
</tr>
<tr>
<td>Second Class - Brothers and Sisters and their children, called Kalalah, and Grandparents</td>
<td>43</td>
</tr>
<tr>
<td>Third Class - Paternal and Maternal Uncles and Aunts</td>
<td>65</td>
</tr>
<tr>
<td><strong>Discourse Two – Mutual Rights of Inheritance of the Spouses</strong></td>
<td>77</td>
</tr>
<tr>
<td>Addenda to Section Forty-Four</td>
<td>83</td>
</tr>
<tr>
<td><strong>Chapter One – Inheritance of a Hermaphrodite (Khunthā)</strong></td>
<td>83</td>
</tr>
<tr>
<td><strong>Chapter Two – Inheritance of Persons Drowned or Overwhelmed in Ruins</strong></td>
<td>85</td>
</tr>
<tr>
<td><strong>Chapter Three – Inheritance of the Majūsīs and other Infidels</strong></td>
<td>87</td>
</tr>
<tr>
<td><strong>Section Forty-Five – Administration of Justice (QADĀ)</strong></td>
<td>93</td>
</tr>
<tr>
<td><strong>Chapter One – Qualifications of a Judge</strong></td>
<td>97</td>
</tr>
<tr>
<td><strong>Chapter Two – Duties and Functions of a Judge</strong></td>
<td>101</td>
</tr>
<tr>
<td><strong>Chapter Three – Conditions for Hearing the Dispute</strong></td>
<td>103</td>
</tr>
<tr>
<td><strong>Chapter Four – Answer of the Defendant</strong></td>
<td>111</td>
</tr>
<tr>
<td><strong>Chapter Five – Answer by Acknowledgement</strong></td>
<td>111</td>
</tr>
<tr>
<td><strong>Chapter Six – Answer in the Negative</strong></td>
<td>117</td>
</tr>
<tr>
<td><strong>Subsidiary Cases</strong></td>
<td>127</td>
</tr>
<tr>
<td><strong>Chapter Seven - Witness and Oath</strong></td>
<td>129</td>
</tr>
<tr>
<td><strong>Chapter Eight – Silence in Answer</strong></td>
<td>131</td>
</tr>
<tr>
<td>Section Forty-Six – Deposition of Testimony</td>
<td>161</td>
</tr>
<tr>
<td>Chapter One – Qualifications of A Witness</td>
<td>161</td>
</tr>
<tr>
<td>Chapter Two – What makes a Witness a Witness?</td>
<td>167</td>
</tr>
<tr>
<td>Chapter Three – Kinds of Rights</td>
<td>171</td>
</tr>
<tr>
<td>Appendages to the Laws of Evidence</td>
<td>177</td>
</tr>
</tbody>
</table>

<p>| Section Forty-Seven - ḤUDŪD | 185 |
| Chapter One - ZINĀ’ | 185 |
| I - Causes of Ḥadd of Zinā’ | 185 |
| II – What Establishes Zinā’ | 193 |
| III - Ḥadd for Zinā’ | 199 |
| III - Ḥadd for Zinā’ | 199 |
| Part Two – Procedure of Execution of Ḥadd | 205 |
| Appendages to Ḥadd for Zinā’ | 207 |
| Chapter Two – Sodomy, Tribadism And Panderism | 209 |
| (Lawwāt, Sahq &amp; Qiyādah) | 213 |
| Tribadism or Lesbianism (Sahq or Musāhaqah) | 213 |
| Qiyādah or Panderism | 213 |
| Chapter Three - ḤAdd For Qadhf or Slander | 215 |
| I - Cause of Ḥadd for Qadhf or Slander | 215 |
| II - Rules concerning Qādhif (Slanderer) and Maqdhūf (Slandered) | 219 |
| III – Laws concerning Qadhf (Slander) | 221 |
| IV - Laws subsidiary to Qadhf or Slander | 223 |
| Chapter Four – ḤAdd For An Intoxicant (Muskir) | 225 |
| I – Causes and Conditions of the Ḥadd for an Intoxicant (Muskir) | 225 |
| II-Laws concerning Ḥadd for Intoxicant and a few Appendages | 229 |
| Chapter Five – Ḥadd For Theft or Sariqa | 233 |
| I-Rules concerning the Thief | 233 |
| II-Laws relating to the Stolen Property | 237 |
| III-Mode of Establishing a Theft | 243 |
| IV-Detail for the Execution of the Ḥadd for Theft | 245 |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
</table>
| V- Appendages  | to the 
| Chapter Six    | 
| Conclusion     | 
| I-Chapter      | 
| II-Chapter     | 
| Supplement     | on laws relating to the ahl al-dhimma (dhimmīs)                     | 261  |
| I-Chapter      | on Those who are levied Jizya                                        | 261  |
| II-Chapter     | on Quantum of Jizya                                                  | 263  |
| III-Chapter    | concerning Conditions for being a Dhimmi                           | 267  |
| IV-Chapter     | on Laws concerning Construction of Buildings                        | 273  |
| V-Subsidiary   | Appendage to the Laws concerning Dhimmi                            | 277  |
| QIṢĀṢ        | First Kind : Qisāṣ for Life                                         | 281  |
| Chapter one    | Cause of Qisāṣ                                                      | 281  |
| Chapter Two    | on Conditions required in Qisāṣ                                      | 299  |
| Appendages to  | this Chapter – Secondary Laws                                       | 303  |
| Chapter Three  | on what establishes Qisāṣ                                            | 309  |
| First          | Confession for having committed Murder.                             | 309  |
| Second         | Legal evidence                                                      | 311  |
| Third          | Qasāma [or Taking oath up to the number required by law].           | 315  |
| First Discourse| concerning Lawth                                                    | 315  |
| Second Discourse| concerning the Quantum of Qasāmah                                  | 317  |
| Third Discourse| concerning the Laws of Qisāṣ                                       | 321  |
| Chapter Four   | on the Procedure of Execution of Qisāṣ                              | 327  |
| Second Kind    | Qisāṣ for Less than Loss of Life                                    | 337  |
| Subsidiary Rules| relating to Qisāṣ for Parts of Body                                 | 355  |
| DIYĀT          | Chapter One : Kinds of Murder                                       | 361  |
| Chapter Two    | Quantum of Diyat                                                    | 361  |
| Chapter Three  | Causes for the Liability [for Offence]                              | 363  |
| First Discourse| Liability for Personal Commitment of Offence                        | 373  |
| Second Discourse| Offence by an Intermediate Cause or Means                           | 381  |
| Third Discourse| Combination of Causes                                              | 389  |
| Chapter Four   | Offences against the Parts of Human Body                            | 389  |
| First Discourse| Diyāt for Parts of Human Body                                       | 391  |
| First          | The Diyat for the Hair                                              | 391  |
| Second         | The Diyat for the Two Eyes                                          | 395  |
Third : The Diyat for the Nose 395
Fourth : The Diyat for the Ear 395
Fifth : The Diyat for the Two Lips 399
Sixth : The Diyat for the Tongue 399
Seventh : The Diyat for the Teeth 403
Eighth : The Diyat for the Neck 405
Ninth : The Diyat for both the Jawbones (Lihyatayn) 405
Tenth : The Diyat for both the Hands 407
Eleventh : The Diyat for the Fingers 409
Twelfth : The Diyat for the Back 409
Thirteenth : The Diyat for the Medulla (Nukhā ’) 411
Fourteenth : The Diyat for both the two Female Breasts (Thadyān) 411
Fifteenth : The Diyat for the Penis (Dhakar) 413
Sixteenth : The Diyat for both the Testicles (Khusyatān) 415
Seventeenth : The Diyat for the Female Organ (Farj) 415
Eighteenth : The Diyat for both the Buttocks (Alyatayn) 417
Nineteenth : The Diyat for both the Feet (Rijlān) 417
Twentieth : The Diyat for the Ribs (Aštā’) 419
Twenty-first : The Diyat for the two Clavicles (Tarqūwatayn) 421

CONCLUSION 421
Subsidiary Rules relating to Diyat for Parts of Body 421
Second Discourse – Offences against Human Senses (Manāfi ’) 423
First : The Diyat for the Loss of Human Reason 423
Second : The Diyat for the Loss of Sense of Hearing 423
Third : The Diyat for the Loss of Sight 427
Fourth : The Diyat for the Loss of Power of Smelling (Shamm) 429
Fifth : The Diyat for the Loss of Sense of Taste 431
Sixth : [Diyat for Loss of Capacity related to Sex] 431
Seventh : [Diyat for Causing Incontinence of Urine] 431
Eighth : The Diyat for the Loss of Sound [and Speech, etc.] 433
Third Discourse – Injury to Head & Face (al-Shijā j va al-Jirā h) 133

Appendages 441
First : Concerning the Foetus 441
Second : concerning the Āqilah 443
Third : Concerning the Offence against Animals 451
Misc. Subsidiary Laws 453
Fourth : Expiation for Murder 457

Section Forty-Nine - Discourse concerning Modern Problems 459
1 - Insurance 459
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>II - Bill of Exchange <em>(Saftah)</em></td>
<td>465</td>
</tr>
<tr>
<td>III - Good-will</td>
<td>469</td>
</tr>
<tr>
<td>IV - Banking Transactions</td>
<td>473</td>
</tr>
<tr>
<td>V - Lottery Tickets</td>
<td>479</td>
</tr>
<tr>
<td>VI - Artificial Insemination and Procreation</td>
<td>483</td>
</tr>
<tr>
<td>VII - Post-Mortem Examination and Transplantation of Limbs</td>
<td>487</td>
</tr>
<tr>
<td>VIII - Change of Sex</td>
<td>491</td>
</tr>
<tr>
<td>IX - Radio, Television, etc.</td>
<td>495</td>
</tr>
<tr>
<td>X - Problems relating to Prayers, Fasting, etc.</td>
<td>499</td>
</tr>
<tr>
<td><strong>Conclusion</strong></td>
<td>513</td>
</tr>
<tr>
<td><strong>Glossary</strong></td>
<td>521</td>
</tr>
</tbody>
</table>
INTRODUCTION

Imām Rouhollāh Khomeini, May his soul rest in Peace, as a consequence of strict adherence to the principles and teachings of the holy Prophets and Imāms, was blessed with a personality of variegated and multifarious splendour and glory. On the one hand, he was among the most outstanding teachers and highly reputed Mujtahids of the Islamic Seminary, known for their erudition in the field of Islamic Jurisprudence and Principles of Jurisprudence who have to their credit the honour of injecting fresh blood in the veins of Islamic belief and guiding the caravan of the traditional jurisprudence to newer goals. On the other hand, he was an exquisite moral teacher who focused all his attention to fostering spiritual and intellectual training to the people.

In the field of philosophy, he is universally recognized as a great thinker, having his individual and unique ideas and views. He not only relieved the Islamic philosophy of its inertia, but also resuscitated the indolent and languid Islamic seminars by infusing in them fresh activity and valour. In this mission, he had to endure untold trials and tribulations, whose pain pricked him incessantly in life, and which is to some extent reflected in his famous epistle: “The Spiritual Manifesto”. At the same time, he enjoys a leading position in the field of theoretical and practical gnosticism, and is known as “The Father of Gnostics” of his time. His great works are a living evidence of his mastery over the various branches of Islamic learning.

As regards his relentless struggle in the field of practical politics and his crusade against the Toghoots of the time through his clarion call for rising in defence of Truth, and his stupendous perseverance, dauntless courage and manliness and unflinching chivalry, they form a part of the revolution-evoking chapter which has already been acknowledged throughout the four corners of the world.

Imām Khomeini’s perfect grasp of the Islamic and human problems of today, his serious efforts, his dauntless policy and sincere leadership for their solution are self-evident truths and need no further proof. He conquered the hearts of all the people through exposing the satanic designs of their enemies and making prophetic campaign for materialization of the divine plans to frustrate them.

Unfortunately the depth and vastness of his knowledge and erudition has still not been fully introduced to the world. The stormy waves of his revolutionary struggle have touched even the farthest shores. His admirers have peeped into the mysteries of his personality, but
 alas! only a limited horizon has come in sight, and they have failed to have a profound comprehension of its hidden spheres. It has, therefore, been found necessary to introduce to all the segments of human society the thoughts and works of this conqueror of the hearts of the people, as he is the one who has inherited his pure personality by following in the footsteps of the prophets and the saints, whose powerful and pure ideas are considered to be a humanizing element for the society. This is one of the many steps taken for the fulfilment of the duties and functions of the Institute for Compilation and Publication of Imām Khomeinī’s works through scholarly and cultural endeavours.

The present English translation of Imām Khomeinī’s well-known book: “Ṭaḥrīr al-Vasīlah”, consisting of his juristic verdicts, occupies an important place in the program for translating his works into English. At the time of embarking on this Herculean and arduous but at the same time a valuable venture, we have had the following objectives before us:

- We are earnestly eager to make accessible to the present and future English knowing scholars the Imām’s valuable verdicts in the field of Islamic jurisprudence.
- A large number of the English knowing people still follow the Imām in their daily pursuits of life. This book will fulfill their need of having detailed verdicts of the Imām on various problems of daily life.

It is an important fact that some of the exquisite individual judgements (Ijtihāds) of the Imām have left an indelible and far-reaching mark on the world of Ijtihād. The way he has given a new life to Jurists’ Rule theoretically and practically is quite obvious for all the intellectuals. Nevertheless, the Imām has always desired that this caravan of thoughts and views must march forward in conformity with the requirements of Time and Place, and this process should go on for ever. The conditions he has enumerated for a jurist and a Mujtahid, though difficult to fulfill, are yet indispensable. His attitude towards the safeguard and exploitation of the great treasure of the predecessors, in view of its being balanced, shall always receive laurels by the pioneers of this field and those having a true understanding of Islam. In this regard, the following summary of his views incorporates some very important points:

“I believe in the traditional jurisprudence and the Jawāhirī Ijtihād, and do not consider its violation to be permissible. This is the only correct way of Ijtihād. But it does not mean that there is no room for further development in the Islamic Jurisprudence. In Ijtihād, Time and Place occupy a decisive (fundamental) position. A Mujtahid should have all the problems of his time before his view. An intelligent, wise and sagacious Mujtahid should have the competence to guide a great Islamic society, rather even a non-Muslim society. Sincerity, piety and abstinence which are the signs (or basic qualifications) of a Mujtahid should also be accompanied by the qualities of an administrator and an efficient manager.
“A true Mujtahid should have before him the whole corpus of Jurisprudence for judgement that comprehends all the sides of the practical philosophy.

“We should stand up to present the practical jurisprudence of Islam without being influenced by the deceitful West, transgressor East and the prevailing world diplomacy; otherwise, as long as it is concealed in the books and the hearts of the Ulemā, it shall not pose any danger to the robbers.

“`Ijtihād, as used in today’s technology, is not sufficient for administration of the society. The (Islamic Research) Centres and Ulemā should always feel the pulse of the society’s thinking and its future requirements, and should be ready to react, taking a few steps forward before the occurrence of the events.

“It is not far from likelihood that the prevailing systems for the administration of the society may change, and the human societies may need the modern system of Islam for the solution of their problems. The great Ulemā of Islam should be on the look-out for it right from now.”

The English translation of Taḥrīr al-Vasīlah, Vol.IV, that is now being published, has been accomplished by Dr. Sayyid Ali Reza Naqavi, former Professor of Shi‘ah Jurisprudence, International Islamic University, Islamabad. Dr. Naqavi who holds a Doctorate in Persian Language and Literature from Tehran University has studied in the said discipline for about ten years and has attended the classes of a number of prominent Professors of the University, such as Professors Forouzānfar, Jalāl Homā‘ī, Pour-e Dā‘oud, Modarres Rezavi, Dr. Moqaddam, Dr. Khānlarī, Dr. Mo‘in, Dr. Yār Shāter, and Dr. Kiyā. During his stay in Iran, he has also worked as a Sub-Editor in some of the leading English newspapers and magazines of Tehran. After his return to Pakistan, he has translated into English and published a number of important legal and juristic texts like Family Laws of Iran, Constitution of the Islamic Republic of Iran, Islamic Penal Laws of Iran, Interest Free Banking Laws of Iran, etc. He has compiled and published, single-handedly, the voluminous Farhang-e Jāme‘ of Persian into English and Urdu. He has also translated Iqtiṣādūnā, (Vol. II), a monumental work on Islamic economic system by the late ‘Allāmah Bāqir Ṣadr for Pakistan Institute of Development Economics, Quaid-i-Azam University, Islamabad. He has also translated from Arabic into Urdu Āthār al-Bāqiyah, one of the well-known great works of Al-Berūnī, published by the National Language Authority of Pakistan, Islamabad. In view of these facts, there is no need to emphasize the competence, sincerity and commitment of Dr. Naqavi. Besides, his full command over English, Arabic, Persian and Urdu, his vast experience in research and teaching in the field of Shi‘ah Jurisprudence together with his special love and devotion for the late Imām Khomeinī, R.A., have served as the main stimuli for embarking on the colossal task of
translating the works of the Imām into English. We pray to the Almighty Allāh for the success in his important mission of introducing the valuable works of the Founder of the Islamic Republic of Iran to the universities and research centres and scholars of the English knowing world.

In the end, we request the honourable readers to let us benefit from their valuable views and suggestions for the collection, safeguard, compilation, translation and publication of the works of the Imām, particularly with regard to the present English translation of his Taḥrīr al-Vasīlah, as it is quite likely that even a single remark or opinion may serve as a source of guidance to a large number of people for time immemorial.

Sayyid Sirajuddin Mousavi,

Incharge-in-Chief,
International Affairs Wing,
Institute for Compilation and Publication of Imām Khomeini’s Works.
Tehran, Islamic Republic of Iran.
CORRIGENDUM

Dear Readers!

In this Book "The English rendering of the Arabic Text on each page of the book should have followed the Arabic Text but it has been done otherwise due to printing mistake. You are requested to read it accordingly.

The error is regretted.
SECTION FORTY-FOUR

INHERITANCE

This Section comprises some Introductory Chapters, two Discourses and some Appendages.

Following are the Introductory Chapters.

CHAPTER ONE – Causes of Inheritance

The causes of Inheritance are: Consanguinity (Nasab) and Special Connection (Sabab).

Consanguinity (Nasab) has the following three Classes: Firstly, both Parents and Children, how so ever low. Secondly, the Grandfathers and Grandmothers, how so ever high, Brothers and Sisters, and their Children, how so ever low. Thirdly, the paternal and maternal Uncles and Aunts, how so ever high, and their Children, how so ever low, provided they are confirmed by the custom.

Special Connection (Sabab) is of two kinds: Marital tie (Zowjiyat) and Patronage or Dominion (Walā’).

Walā’ has three Groups: Walā’ for Manumission (‘Iq), Walā’ for Guarantee against Offences, and Walā’ for the Entitlement of the Imamate (Imāmat).

CHAPTER TWO – Impediments to Inheritance

There are several Impediments to Inheritance. They are either Impediment to the entire Inheritance, called Impediment entailing Entire Exclusion (Hajb al-Ḥirmān), or Impediment to Part of the Inheritance, called Impediment entailing Partial Exclusion (Hajb al-Nuqšān).

Following are the Causes that lead to Entire Deprivation from inheritance.
كتاب المواريث

و في مقدمات و مقصدان ولواحق، أما المقدمات فأمور:

الأول في موجبات الارث

وهي نسب و سبب، فالأول ثلاث مراتب: الأولى، الأبوان والأولاد و إن نزلوا، والثانية، الأجداد والجدات و إن علوا والأخوة والأخوات و أولادهم و إن نزلوا، والثالثة، الأعمام والعمات والأخوال والخالات و إن علوا و أولادهم و إن نزلوا بشرط الصدق عرفًا، والثاني قسمان: الزوجية والولاء و هو ثلاث مراتب: ولاء العتق ثم ولاء ضمان الجزيرة ثم ولاء الامامة.

الأمر الثاني في مواطن الارث

وهي كثيرة، منها ما يمنع عن أصله، وهو حجب الحرمان، ومنها ما يمنع عن بعضه، وهو حجب النقصان، فما يمنع عن أصله أمور:
First Impediment: Infidelity (Kufr) of all its Descriptions

Infidelity (Kufr) may be original or as a result of apostasy (Irtidād).
So an infidel does not inherit from a Muslim, even if he is a close relative, and the inheritance of a Muslim shall go exclusively to a Muslim (heir), even if he is a distant relative. So if a person has an infidel son, he shall not inherit from him, even if he has no close relative by consanguinity (Nasab) or special connection (Sabab), except the Imam, (A.S.). So his inheritance shall go exclusively to the Imam and not to his infidel son.

Problem # 1. If an infidel, by origin or by apostasy, whether born of Muslim parents or otherwise, dies leaving behind a Muslim and an infidel heir, the Muslim heir shall inherit from him, as already explained. If he has left no Muslim heir and all his heirs are infidels, they shall inherit from him according to the Laws of Inheritance, except when the heir left by him is an apostate, irrespective of his being born of Muslim parents or otherwise, in which case his inheritance shall go to the Imam, (A.S.), and not to the infidel (or apostate) heirs.

Problem # 2. If the deceased was a Muslim or an apostate, born of Muslim parents or otherwise, having no heirs except a spouse and the Imam, (A.S.), his/her inheritance shall go to the spouse and not to the Imam, (A.S.) If the sole surviving heirs are the wife and the Imam, one-fourth of the inheritance (of the deceased husband) shall go to the wife and the rest to the Imam, (A.S.)

Problem # 3. If a Muslim or infidel dies, survived by an infidel and a Muslim heir, other than the Imam, and his infidel heir embraces Islam after the death of the deceased, then if the Muslim heir is single heir, the inheritance shall exclusively go to him, and the heir embracing Islam shall not benefit by embracing Islam. Of course, if the single heir is the wife, the heir embracing Islam before the division of inheritance between the wife and the Imam or his successor shall benefit. If, however, there are several Muslim heirs, and the heir embraces Islam after the division of the inheritance, embracing Islam shall be of no benefit to him. If he embraces Islam before the division of the inheritance, he shall share the inheritance with others, provided they are equal in degree (of relationship with the deceased), and the inheritance shall go exclusively to him, and he shall exclude the others, if he occupies a preferable degree, as when he happens to be the son of the deceased, while the others are brethren.

Problem # 4. If the (infidel) heir has embraced Islam after the division of part of the inheritance leaving still part of it undivided, it shall be more cautious to reach a compromise.

Problem # 5. If a Muslim dies leaving behind infidel heirs having no Muslim among them, and some of them embrace Islam after the death of the deceased, his inheritance shall go exclusively to him, without the others having any share in it including the Imam, (A.S.).
الأول: الكفر بأصنافه

الأصلية كان أو عن ارتداد، فلا يرث الكافر من المسلم وإن كان قريباً، و
يختص إرثه بالمسلم وإن كان بعيداً، فلو كان له ابن كافر ليرته ولم يكن له
قراءة نسباً وسبيباً إلا الإمام عليه السلام، فيختص إرثه به دون ابنه الكافر.

مسألة 1 - لومات الكافر أصلية أو مرتدة عن فطرة أو ملة ولا يرثه المسلم و
كافر ورثه المسلم كمر، وإن لم يكن له ورث مسلم بل كان جميع وراثه كفأراً
يرثه عليه قواعد الأرث إلا إذا كان مرتدة فطرياً أو ملياً فان ميراثه للإمام عليه
السلام دون وراثه الكافر.

مسألة 2 - لو كان الميت مسلمًا أو مرتدة فطرياً أو ملياً ولم يكن له وراث إلا
الزوج، وعند الإمام عليه السلام كان إرثه لزوج لا الإمام عليه السلام، ولو كان
وراثة منحصراً بالزوجة والإمام عليه السلام يكون ربع تركته للزوجة والبقية
للإمام عليه السلام.

مسألة 3 - لومات مسلم أو كافر، وإن كان له ورث كافر، وورثه مسلم غير
المسلم إلا الإمام عليه السلام وأصل وراثة الكافر بعد موته فان كان وراثه المسلم واحداً
اختص بالرث ولم ينفع من أصل إسلامه، نعم لو كان الواحد زوجة ينفع
إسلام من أصل قبل قسمة التركة بينه وبين الإمام عليه السلام أو نائبه، ولو
كان وراثه المسلم متعدداً فان كان إسلام من أصل بعد قسمة الأرث لم ينفع
إسلامهما، وإذا لو كان قبلها فبشر كهم فيه والسراهم في المرتبة، وختص به و
حجبه إن تقدم عليهم كأ إذا كان ابناً للجميع وهم إخوة.

مسألة 4 - لو أسلم الورث بعد قسمة بعض التركة دون بعض فالأحيط
التصالح.

مسألة 5 - لومات مسلم عن ورثة كفأر ليس بينهم مسلم فأسلم بعضهم بعد

التصالح.
Similar shall be the case if an apostate dies, leaving behind infidel heirs, and some of them embrace Islam after his death.

**Problem # 6.** If an infidel, by origin, dies leaving infidel heirs having no Muslim among them, and some of them embrace Islam after his death, apparently his Islam shall be of no effect, and the law shall be the same as before his embracing Islam, so that the inheritance shall go exclusively to him if he happens to occupy a preferable degree (of relationship with the deceased), while, in case otherwise, the other(s) shall have it exclusively, and he shall share it with them in case all of them occupy an equal degree (of relationship). There is likelihood of his sharing it with others in the last case, when he has embraced Islam after the division of the inheritance between him and others. If, however, it was prior to its division, the inheritance shall go exclusively to him. Likewise, in the latter case, the inheritance shall go to the class of heirs having a preferable degree (of relationship), if the person occupying the preferable degree is single or numerous, but the heir has embraced Islam after the division of the inheritance among them, while, if he has embraced Islam prior to the division, the inheritance shall go exclusively to him.

**Problem # 7.** By a Muslim or infidel heir, propositus (or one inherited by others), one excluding another or the one excluded by another is meant one who is such in fact, independently, by law, or pursuant, so that every child one of whose parents was a Muslim at the time of conception of its foetus shall be deemed a Muslim by law and adherently, and shall be governed by Islamic Law. If subsequently either of its parents happens to apostatize, the child shall not thereby be governed by the consequences of the subsequent apostasy. Of course, the child shall be governed by the consequences if either of its parents embraces Islam prior to his attaining adulthood after both of them had been infidels at the conception of the child’s foetus. Every child both of whose parents were infidel by origin, apostate, or one infidel and the other an apostate at the time of the conception of the child’s foetus, shall be considered an infidel unless either of its parents embraces Islam before its attaining adulthood, or subsequently the child announces adherence to Islam. Therefore, if an infidel dies leaving behind infidel children and the children of a Muslim brother or sister, the latter shall get his inheritance to the exclusion of his own children. If he has an infidel son and the child of a Muslim son, the latter shall receive the inheritance to the exclusion of his own infidel son. If a Muslim dies leaving a child who also subsequently dies, without leaving any heir from among all the classes of heirs, his inheritance shall go to the Imām, as is the case in the event of the death of a Muslim. If the child dies among infidels leaving behind some property, while all his heirs happen to be infidels, its inheritance shall go to the infidel heirs, according to what has been ordained by Allāh, to the exclusion of the Imām, (A.S.) This is the case when both of his parents were infidels by origin. If, however, they were apostates, shall the child be governed by the law relating to apostate infidels so that the child’s inheritance would go to the Imām, (A.S.), or it shall be governed by law relating to an infidel by origin, so that its inheritance would go to its (infidel) heirs, is a question having two alternatives, the latter not being devoid of force.
مولته اختصر هو بالآرث ولا يرث الباقون ولا الإمام عليه السلام وكذا الحال لموات مرتدة وخلف ورثة كفاراً وأسلم بعضهم بعد مولته.

مسألة 6- لمات كافر أصلي وخلف ورثة كفاراً ليس بينهم مسلم فأسلم بعضهم بعد مولته فالظاهر أنه لا أثر لإسلامه، وكان الحكم كما قبل إسلامه، فيختصر بالآرث مع تقدم طباقته، ويتصف غيره به مع تأخرها، وشاركهم مع المساواة، ويتصل أن تكون مشاركته مع الباقين في الصورة الأخيرة فيما إذا كان إسلامه بعد قسمة التركية بينه وبينهم، وأما إذا كان قبلها اختصر بالآرث، وكذا اختصاص الطبقة السابقة في الصورة الثانية إذا هو في إذا كان من في الطبقة السابقة واحداً أو متعدداً أو كان إسلام من أسلم بعد قسمة التركية بينهم، وأما إذا كان إسلام قبلها اختصر الآرث.

مسألة 7- المراد بالمسلم والكافروان كافروا وحاجباً ومجو بأم منهما حقيقة ومستقلًا أو حكماً وتباعاً فكل طفل كان أحد أبوه مسلمًا حال انعقاد نطفته فهو مسلم حكماً وتباعاً، فيلحقه حكماً، وإن ارتدد بعد ذلك المتبوع فلا يتيحه الطفل في الارتداد الطاريء، نعم يتيحه في الإسلام لو أسلم أحد أبوه قبل تبلغه بعد ما كانا كافرين حين انعقاد نطفته، و كل طفل كان أبوه معاً كافرين أصليين أو مرتدين أو مختلفين حين انعقاد نطفته فهو يحكم الكافر حتى أسلم أحدهما قبل تبلغه أو أظهر الإسلام هو بعده، فعلى ذلك لمات كافرون له أولاد كافرون وأطفال أخ مسلم أو أخت مسلمة ترثه تلك الأطفال دون الأولاد، ولو كان له ابن كافر و طفل ابن مسلم يرثه هو دون ابنه، ولو لمات مسلم وله طفل ثم مات الطفل ولم يكن له وارث مسلم في جميع الطبقات كان وارث الإمام عليه السلام كما هو الحال في الميت المسلم، ولو مات طفل بين كافرين وله مال و كان ورثه كلههم كفاراً ورثة الكافر على ما فرض الله دون الإمام عليه السلام، هذا إذا كان أبوه كافرين أصليين، وأما إذا كانا مرتدين فهل هذا الطفل حكم الكافر الارتدادي حتى يكون وارثه الإمام عليه السلام أو حكم الكافر الأصلي حتى ترثه ورثه.
There is, however, hesitation in the application of the law by pursuance as mentioned under the case of grandmother. The same is the case of a grandfather in the presence of an infidel father, although the absolute application of the law in that case is not devoid of sense.

**Problem # 8.** Muslims inherit from one another, even if they belong to different sects, principles and beliefs. So a Muhiq, or one who treads the true path of Islam, inherits a Mubtil, or one who treads the wrong path, and vice versa, and those belonging to the latter group shall inherit from the others belonging to their group. Of course, the Ghais are condemned as infidels, while the Kharijis, Nasibis (whose definitions are given in the Glossary), as well as those who reject the essential doctrines of the faith in view of the consideration and necessity of adherence to them are either infidels or fall under their category, and so a Muslim shall inherit from them, but they shall not inherit from a Muslim.

**Problem # 9.** Infidels inherit from one another, even if they belong to different groups and denominations. So a Christian shall inherit from a Jew, and vice versa. Rather a Harbi shall inherit from a Dhimmi, and vice versa, provided there exists no Muslim among his heirs, as already mentioned.

**Problem # 10.** An apostate, or one who apostatizes from Islam and embraces infidelity, is of two kinds: Fitri and Milli. The former is he/she one of whose parents was a Muslim at the time of the conception of his/her foetus, and after attaining adulthood, he/she announced to be a Muslim, but subsequently forsook Islam. The latter is one both of whose parents were infidels at the time of the conception of his/her foetus, and after attaining adulthood, he/she declared to be an infidel, thus becoming an infidel by origin, and subsequently embraced Islam, and again returned to infidelity, as, for instance, a Christian by origin embraces Islam and then returns to his/her Christian faith.

Now, if a Fiti apostate is a man, his (Muslim) wife shall be separated from him and his marriage shall be dissolved without a divorce. She shall observe ‘Iddah for (husband’s) death, and may marry, if she so desires. The property belonging to him at the time of his apostasy shall be distributed among his heirs, after payment of his debts, like a deceased person. It shall not be delayed until his death, and his repentance and return to Islam shall be of no avail, as far as it concerns the return of his wife and property to him. Of course, his repentance shall be accepted implicitly and also explicitly in relation to some of the consequences of apostasy. He shall undergo physical purification, his worship shall be deemed valid, and he shall be allowed to own the properties earned by the professions adopted by him like business or occupation of land as well as by mandatory sources as inheritance, and he shall be allowed to marry a Muslim woman, but not to contract a fresh marriage with his former wife.

If the Fiti apostate is a woman, she shall continue to be the owner of her property, and it shall not be transferred to her heirs except after her death, but she shall be immediately separated from her Muslim husband without observing ‘Iddah, in case there has been no
لا يخلو من وجه.

مسألة 8: المسلمون يتوارثون وإن اختلفوا في المذاهب والأصول والعقائد، فيثرب الحق منهم عن المبطل والمعنى ومبتلهم عن مبطلهم، نعم الغلاة المكونين بالكفر والخروج والناصبة و من أنكر ضرورياً من ضروريات الدين مع الالتزام والإلتزام بلازمه كفار أو بحكمهم، فنثر المسلم منهم وهم لا يرثون منه.

مسألة 9: الكفار يتوارثون وإن اختلفوا في الملل والنحل، فنثر النصراني من اليهودي والمعكس، بل يرث الحرفي من الدمى والمعكس لكن يشترط في إثر بعضهم من بعض فقدان الوراثة المسلم كأمر.

مسألة 10: الرماد وهو من خرج عن الإسلام وختار الكفر على قسمين: فطري و ملي، والأول من كان أحد أبوه مسلمًا حال انعقاد نطفته ثم أظهر الإسلام بعد بلوغه ثم خرج عنه، والثاني من كان أباه كافرين حال انعقاد نطفته ثم أظهر الكفر بعد البلوغ فصار كافراً أصلياً ثم أسلم ثم عاد إلى الكفر كنصرياني بالأصل أسلم ثم عاد إلى نصرانيته مثلاً.

فالطري إن كان رجلاً تبين منه زوجته، و ينفسغ نكاحها في طلاق، و تعتد عدة الوفاة ثم تتزوج إن أرادت، وتقسم أموالها التي كانت له حين ارتداه بين ورثه بعد أداء دينه كالكليت، ولا ينتظر موته ولا تفيد توبته ولا توجه إلى الإسلام في رجوع زوجته وماله إليه، نعم تقبل توبته باطناً وأهراً أيضاً بالنسبة إلى بعض الأحكام، فيظهر بنه وتصبح عبادته وملك الأموال الجديدة بأسباب الاختيار كالتجارة والحيازة، و القهرية كالارث، ويحمل له التزويج بالمسلمة، بل له تجديد العقد على زوجته السابقة، وإن كان امرأة بقيت أموالها على ملكها، ولا تنقل إلى ورثها إلا بموتها، و تبين من زوجها المسلم في الحال.
consummation. However, in case there has been consummation, if she repents before the expiry of the ‘Iddah, that will be an ‘Iddah for divorce, her marriage shall subsist as before. Otherwise, the dissolution and separation shall be deemed to have taken place since the beginning of the time of apostasy.

In case of an apostate man, irrespective of the apostate being a man or woman, his/her property shall not be transferred to his/her heirs except after his/her death. The marriage between an apostate man and a Muslim woman shall be dissolved. Likewise, the marriage between an apostate woman and a Muslim husband shall also be dissolved immediately after her apostasy without the necessity of observing ‘Iddah in the absence of consummation. In case there has been consummation, the dissolution shall be suspended till the expiry of the ‘Iddah. If the husband or wife, (as the case may be), return (to Islam) before the expiry of the ‘Iddah, the woman shall be the wife of that husband; otherwise, she shall be deemed to have been separated from him since the time of his apostasy.

There are also other kinds of cases in whose affiliation to the Fitrī or Millī apostasy there is difference of opinion. They shall be mentioned in their proper place.

Second Impediment: Homicide (Qatl)

Problem # 1. A murderer does not inherit to a murdered person, if the homicide were willful and unjust. However, he inherits to him if the homicide was just, as when it was by way of Qisas or retaliation, infliction of Hadd, in defence of his own life, honour or property. Similar is the case when it was by sheer mistake, as when he targets a bird but misses it and it hits someone close to it, in which case he shall inherit to the victim. Of course, according to the stronger opinion, he shall have no share in the victim’s diyat or blood-money borne by his ‘Āqilah or clan. As regards a semblance of willful murder, or a culpable homicide not amounting to murder (Qatl-i shibh-i ‘amdi), it is when a person intends to hit another without intending to murder him, so that the act is such that does not usually result in murder, as when a person hits another a slight blow for chastisement, but it leads to his murder. Whether such act would be an impediment to inheritance as a willful homicide or a homicide not amounting to murder, is a question on which there are two opinions, the stronger being in favour of the latter.

Problem # 2. There is no difference in an unjust willful homicide in being an impediment to inheritance, whether it is committed personally, as when the murderer kills another by slitting his throat or shooting him by a bullet, or it was performed with an intermediate means (tasbih), as when he throws the victim in a place infested by beasts and the victim is devoured by the beasts, or he confines the victim in a place for a long time without food or drink, and the victim dies of hunger or thirst, or supplies him a poisoned food without knowledge of its being poisoned and the victim eats it (and consequently dies), or by any other means that are considered as established means the use of which attributes murder to its user. Of course, there are some means resulting in the loss of another’s life, but they are not considered established means whose adopter is not held responsible for the loss, as digging a well or throwing slippery or stumbling objects on the roads and public highways, etc. which though entail
بلا اعتداء إن كانت غير مدخل بها، ومع الدخول بها فان تابت قبل تمام العدة وهي عدة الطلاق بيقت الزوجة، ولا انكشف عن الانسخ والبيونة من أول زمن الارتداد.

وأما اللي سواء كان رجلا أو امرأة فلا تنتقل أمواله إلى ورثه إلا بالموت، وينفسخ النكاح بين المرتد وزوجته المسلمة، وكذا بين المرتدة وزوجها المسلم بمجرد الارتداد بدون اعتداء مع عدم الدخول، ومعه وضع الفسخ على انقضاء العدة، فان رفع أو رجعت قبل انقضائها كانت زوجته ولا انكشف أنها بانت عنه عند الارتداد، ثم ان هنا أقساماً آخر في إلحاقها بالفطري أو اللي خلاف موكول إلى ممله.

الثاني: القتل

مسألة 1 - لا يرث القاتل من المقتول لو كان القتل عمدأ وجملأ، ويرث منه إن قتله بحق كما إذا كان قصاصاً أو حداً أو دفاعاً عن نفسه أو عرضه أو ماله، وكلما إذا كان خطاً محضاً كما إذا رمي إلى مكان فاختُلأ وأصاب قربه فإن كان برثه، نعم لا يرث من ديته التي تتحملها العاقبة على الأقوي، واما شره العمد وهو ما إذا كان قاصداً لا يقاع الفعل على المقتول غير قاصد للقتل وكان الفعل ما لا يرتبط عليه القتل في العادة، كما إذا ضربه ضرباً خفيفاً للتأديب فأدي إلى قتله، فهي كونه كالعمد المحض منعاً عن الارث أو كالخطأ المحض قولان، أفهما ثانياً.

مسألة 2 - لا فرق في القتل العمدي ظلما في مانعنيه من الارث بين ما كان بالباشرة كما إذا ذبحه أو رماه بالرصاص وبينما كان بالتسبب كما إذا ألقاه في مسحة فافترسه السبع أو حبسه في مكان زماناً طولاً بلا قوت فات جوعاً أو عطشاً أو أحضر عنده طعاماً مسموماً بدون علم منه فأكله إلى غير ذلك من
liability and diyat on those responsible for it, yet they are not considered impediments to inheritance. So the digger of a well in a public road inherits to his close relative who falls into it and dies.

**Problem #3.** As a murderer is excluded from inheriting the murdered person, in the same way he does not serve as an excluding agent for one who occupies a degree (in relationship) lower than him or a position after him in the class (of relatives), so that he is treated as a nonentity.

So if a person kills his father, and he has a son, while the murdered person has no children except the murderer, the murderer’s son shall inherit to his grandfather (murdered by his father).

Likewise, if the murdered person has left his murderer son as his only son, but he has also left some brethren, his brethren shall inherit to him to the exclusion of his murderer son. Rather even if the murdered person has no heirs except the Imām, (A.S.), the Imām shall inherit to him to the exclusion of the murderer son.

**Problem #4.** There is no difference in the impediment to inheritance whether the murderer is a single person or several persons, and whether all of them are heirs or only some of them to the exclusion of others.

**Problem #5.** A diyat, or blood-money is considered a property of the murdered person, and so his debts are paid out of it, and his legacies are deducted from it initially before treating it as his inheritance, and subsequently it is to be divided (among his heirs) like the other property left by him, irrespective of the homicide being willful, when the heirs have reached a compromise by accepting diyat in stead of Qisāṣ, or it is a culpable homicide not amounting to murder or a homicide by (sheer) mistake, and whether while reaching the compromise they would receive more or less than the (actual) diyat or equal to it, and whether what is received by them belongs to the category of diyat or not?

The diyat goes to every person related closely to the murdered person by consanguinity (nasab) or Special Connection (sabab), including the husband and wife, in case of a willful murder, even if they are not entitled to Qisāṣ, but once a compromise has been reached and a diyat agreed upon, the husband and wife shall also receive their share from it.

Of course, a close relative connected solely through the mother shall not receive anything from the diyat, like a brother or sister related (solely) through the mother. Rather all the other close relatives connected through the mother as the maternal uncles and aunts and maternal grandfathers and grandmothers (shall also get nothing out of it), although it is more cautious to reach a mutual compromise in case of the relatives other than the brothers and sisters (solely related through the mother).
التسبيبات التي ينسب و يستند معها القتل إلى المسبب، نعم بعض التسبيبات التي قد يترتب عليها التلف مما لا ينسب ولا يستند إلى المسبب كحفر البئر و إلقاء المالزق و المعائر في الطرق و المعابر و غير ذلك و إن أوجب الضمان والدية على مسببها إلا أنها غير مانعة من الارث، فيرث حافر البئر في الطريق عن قربه الذي وقع فيها و مات.

مسألة 3 - كأ أن القاتل ممنوع عن الارث من المقتول كذلك لا يكون حاجباً عمن دونه في الدرجة و متأخر عنه في الطبقة، فوجوده كعمده فلو قتل شخص أباه و كان له ابن ولم يكن لأبيه أولاد غير القاتل يرث ابن القاتل عن جده، و كذا لو أصغر أولاد المقتول في ابنه القاتل و له إخوة كان ميرائه لهم دون ابنه، بل لاحق ذلك له ورث إلا الأمام عليه السلام ورثه دون ابنه.

مسألة 4 - لا فرق في مانعية القتل بين أن يكون القاتل واحداً أو متعدداً، و على الثاني بين كون جميعهم ورثاً أو بعضهم دون بعض.

مسألة 5 - الدية في حكم مال المقتول يقضى منها ديوانه، و يخرج منها وصايا أولاً قبل الارث ثم يورث الباقية كسائر الأموال، سواء كان القتيل عمداً و صدقاً عن القصاص بالدية أو شهبة عمداً و خطأ، و سواء كان في مورد الصلح ما يأخذونه أزيد من الدية أو أضيق أو مساوياً، و سواء كان الأخذ من جنس الدية أم لا، و يرث الدية كل من يتقرب إليه بالنسب و السبب حتى الزويين في القتل العمد. و إن لم يكن لها حق القصاص، لكن إذا وقع الصلح و التراضي بالدية ورثا نصيبيها منها، نعم لا يرث المتقرب بالأم وحدها من الدية شيئاً كالأخ و الأخت للأم، بل سائر من يتقرب بها كالمخولة و الحدود من قبلها و إن كان الأحوج في غير الأخ و الأخت التصالح.
Third Impediment: Entitlement by Slavery (Riqa)

Its relevant rules are explained in the books containing detailed laws.

Fourth Impediment: Birth by Fornication (Zina')

Problem #1. If the fornication has been committed by both the parents, there shall be no mutual inheritance between the child and the parents, nor between the child and those related through the parents. If, however, it is committed by one of them to the exclusion of the other, as when it was by way of semblance of right by one of them, there shall be no mutual inheritance between the child and the fornicator (or fornicatress), nor between the child and those related through him (or her, as the case may be).

Problem #2. There shall be no impediment to mutual inheritance between the child born of fornication and those related to him otherwise than by fornication, as his son, or wife, and others.
Likewise, there shall be no impediment to mutual inheritance between the child and one of the parents who has not committed fornication, as well as between the child and those related through such parent.

Problem #3. A child born of an intercourse under a semblance of right is like a legitimate child, there being mutual inheritance between him and his close relatives connected through the father or the mother or other than them from among the classes and degrees of relationship.

Problem #4. There shall be no impediment to mutual inheritance in case of a child born of an unlawful intercourse other than fornication as an intercourse during menses, the month of Ramađan or the like.

Problem #5. The marriage contracted by other religions and faiths is not an impediment to mutual inheritance if it were in accordance with their respective religion or faith, even if it against the Islamic law, even in case he child were born of marriage between prohibited degrees provided it were justified according to some of the respective religions or faiths.

Problem #6. The marriage contracted by sects other than the Ithnā ‘Asharites shall not be an impediment to mutual inheritance if it has been in accordance with the respective sects, although it were void according to our sect, as in case the woman contracted in marriage were one divorced by a Bid‘ divorce.

Fifth Impediment: Li‘ān or Mutual Imprecation

Problem #1. A Li‘ān shall be an impediment to mutual inheritance between the (disowned) child and his (disowning) father, as also between the child and the close relatives connected
الثالث من الموانع: الرق على مفصل في المفصلات

الرابع: التولد من الزنا

مسألة ١ - إن كان الزنا من الأبوين لا يكون التورث بين الطفل وبينها ولا بينه وبين المنتسبين اليه، وإن كان من أحدهما دون الآخر كأن كان الفعل من أحدهما شبه لا يكون التورث بين الطفل والزاني ولا بينه وبين المنتسبين اليه.

مسألة ٢ - لا منع من التورث بين المولد من الزنا وأقربائه من غير الزنا كولده ورجلته ونحوها، وكذا بينه وبين أحد الأبوين الذي لا يكون زانياً و بينه وبين المنتسبين اليه.

مسألة ٣ - المولد من الشبه كالمولد من الخلال يكون التورث بينه وبين أقاربه أبا كان أو أبا أو غيرهما من الطباعات والدرجات.

مسألة ٤ - لا منع من التورث التولد من الوطء الحرام غير الزنا كالوطء حال الحيض وفي شهر رمضان ونحوها.

مسألة ٥ - نكاح سائر المذاهب والملل لا منع من التورث لو كان موافقاً لمذهبهم وإن كان خالقاً لشيع الإسلام حتى لو كان التولد من نكاح بعض المخاليم وفرض جوازه في بعض النحل.

مسألة ٦ - نكاح سائر المذاهب غير الاثنين walkthrough لا منع من التورث لو وقع على وقع مذهبهم وإن كان باطلًةً بحسب مذهبنا، كما لو كانت المكولة مطلقة بالطلاق البدعي.

الخامس: اللعان

مسألة ١ - يمنع اللعان عن التورث بين الولد والوالد وكذا بينه وبين أقاربه من قبل الولد، وأما بين الولد وأمه وكذا بينه وبين أقاربه من قبلها فيتحقق
through the father. However, mutual inheritance shall be established between the child and his mother as well as between the child and his close relative connected through her, and Li‘ân shall not entail any impediment to their mutual inheritance.

**Problem # 2.** If some of the relatives are connected through the father and some through the mother, only those connected through the mother shall inherit equally due to their connection through her, while the connection through the father shall have no effect. However, a brother connected by both the father and mother shall be deemed as if connected through the mother.

**Problem # 3.** If, after going through the process of Li‘ân, the father says the child belongs to him, the child shall be affiliated to him in whatever is against the father but not in what is in his favour. So the child shall inherit to the father, but the father and those who are related through him shall not inherit to the child. Rather the child shall not inherit to the relatives connected through the father even after the father’s acknowledgement.

**Problem # 4.** After going through the process of Li‘ân, the acknowledgement by the child or other relatives shall have no effect in the mutual inheritance. Rather what is effective is the father’s acknowledgement and that too merely in the child’s inheritance to the father.

**Some More Impediments**

Here are some more impediments, though there has been some indulgence in their case.

**Firstly,** a foetus as long as it is in the mother’s womb shall not inherit, even if there is knowledge about his being alive, but it shall exclude the one who follows it in degree or class. If a deceased person has left behind a foetus, and also some grandchildren and brethren, they shall be excluded and shall not receive anything until the position of the foetus becomes clear. If the foetus is born alive, the inheritance shall go exclusively to it, but if he is born dead, they shall inherit.

**Problem # 1.** If there is another heir to the deceased equal in the degree and class with the foetus, as when the deceased is survived by some children, a share of two males shall be set aside, and the rest shall be distributed among the others. If the foetus is born dead, the portion set aside shall be given to the other heir, and if there are several heirs, it shall be divided among them according what has been allotted to them by Allâh.

**Problem # 2.** If the surviving heir has an allotted share that does not change due to the existence of a foetus, as the share of one of the spouses or parents when the deceased is survived by a child, he/she shall be given his/her maximum portion. If, however, it is reduced even if due to some reasons, he/she shall be given the minimum allotted portion in consideration of the supposed birth of the child, as is the case with both the parents n case there is no child left by the deceased other than the foetus.

**Problem # 3.** If the position of the child is ascertained by modern machines, its share shall be set aside. If it were a single male, a share of a single male shall be set aside, and if it were a single female, her share shall be set aside. If it were more than two, their share shall be set aside.
المسألة 2 - لو كان بعض الأقارب من الأبوين وبعضهم من الأم فقط يرثون بالسوية للانتساب إلى الأم، ولا أثر للانساب إلى الأب، فبالأخ للأب والأم بحكم الأخ للأم.

المسألة 3 - لو اعترف الرجل بعد اللعان بأن الولد له حق به فيما عليه لا فيما له، فإن رثه الولد ولا يرث الأب إياه ولا من يتقرب به، بل لا يرث الولد أقارب أبيه بقراره.

المسألة 4 - لا أثر لقرار الولد ولا سائر الأقارب في التورث بعد اللعان، بل ما يؤثر هو إقرار الأب فقط في إرث الولد منه.

وهيهما أمور يعدت من الموائع، وفيه تسامح.

الأول - الحمل مما دام حالا لا يرث وإن علم حياته في بطن أمه، لكن يوجب من كان متأخراً عنه في المرتبة أو في الطبقة، فلو كان للموت حق. وله أحفاد وأخوه يجبون عن الآرث، ولم يعطوا شيئاً حتى تبين الحال فإن سقط حقاً اختص به، وين سقط ميتاً يرثوا.

المسألة 1 - لو كان للميت وارث آخر في مرتبة الحمل وطبقته كما إذا كان له أولاد يعزل للحمل نصيب ذكرتين ويدفع الباقي للباقيين ثم بعد تبين الحال فإن سقط ميتاً يعطى ما عزله للوراث الآخر، ولو تعدد وزع بينهم على ما فرض الله.

المسألة 2 - لو كان للوارث الموجود فرض لا يتغير وجود الحمل وعده كنصيب أحد الزوجين والأبوين إذا كان معه ولد يعطى كمال نصيبه ومن ينقصه ولو على بعض الوجوه يعطى أقل ما ينصبه على تقدر ولادته على وجه تقضيه كالأبوين لوم يكن هناك ولد غيره.

المسألة 3 - لو علم بالآلات المستحيلة حال الطفل يعزل مقدار نصيبه فلو علم أنه واحد وذكر يعزل نصيب ذكر واحد، أو أثنت واحدة يعزل نصيبها، ولو علم أن الحمل أكثر من إثنين يعزل نصيبهم.
Problem # 4. If the share of two children is set aside, and the rest is distributed among the heirs, but more children are born, the inheritance up to the excess shall be taken back.

Problem # 5. A foetus inherits and is inherited if it is born alive, even if it dies instantly. If there is knowledge about his being alive after birth, and it dies later, it shall inherit and shall be inherited. Its crying is a condition after there is knowledge about its being born alive by its clear movement, etc.

Problem # 6. It is not a condition that soul must be infused in it before the death of the propositus; rather it is sufficient if it was conceived before his death.

If a person dies and the existence of a foetus come to light after his death, in case it can legally be affiliated to him, it shall inherit to him if it is born alive.

Secondly, the existence of a precedent class, as it excludes the following class, except when it is also excluded from inheritance due to some cause.

Thirdly, the existence of a precedent degree in the classes, as it excludes the following degree in case it is not excluded from inheritance as a child excluding a grand child or a brother excluding a brother’s son.

As regards partial exclusion, where one is excluded from part of the inheritance, it is as follows.

Firstly, homicide by mistake or culpable homicide not amounting to murder, in which case the culprit is deprived of a share in diyat, but not excluded from the rest of the inheritance.

Secondly, the eldest of the male children excludes other heirs from Hubvah. If there is only a single son, he shall also exclude others from Hubvah.

Thirdly, a child in general, male or female, single or several, direct or indirect, who also excludes one of the spouses from his/her maximum share of half or one-fourth.

Fourthly, an heir in general, by consanguinity or special connection, male or female, single or several, who excludes one of the spouses from more than his/her allotted share of half, one-fourth or one-eighth. In case of a surplus, it is returned to heirs other than the spouses.

Of course, if the husband and the Imām, (A.S.), are the sole heirs, the husband shall inherit half of the allotted share and the other half shall be returned, contrary to the case when the wife and the Imām are the sole heirs, in which case the wife shall have a fourth and the rest shall go to the Imām, (A.S.).
مسألة 4 - لو عزل نصيب إثنين وقسمت بقية التركية، فتولدت أكثر استرخأت التركية بمقدار نصيب الزائد.

مسألة 5 - الحمل يرث و يورث لون انفصل حياً وإن مات من ساعته فلو علم حياته بعد انفصاله فاتا بعده يرث و يورث، ولا يعتبر في ذلك الصباح بعد السقوط لون علم سقوته حياً بالحركة البينة وغيرها.

مسألة 6 - لا يشترط ولوج الروح فيه حين موت المرث، بل يكفي انعقاد نطفته حينه، فإذا مات شخص وتبين الحمل في زوجته بعد موتته و كان بحيث يلحق به شرعاً يرثه لانفصل حياً.

الثاني - يوجد طبقة مقدمة، فإنها مانعة عن الطبقة المؤخرة إلا أن تكون متنوعة بنوعية عن الارث.

الثالث - يوجد درجة مقدمة في الطبقات، فإنها مع عدم ممنوعيتها عن الارث مانعة عن الدرجة المتأخرة كالولد عن ولد الولد و كالأخ عن ولد الأخ.

وأما حجب النقصان أي ما يمنع عن بعض الارث فأما:

الأول - قتل الخطا وشبه العمد، فإنه يمنع القاتل عن إرث خصوص الديبة دون غيرها من التركية.

الثاني - أكبر الأولاد الذكور، فإنه يمنع باقي الورثة عن خصوص الحبولة ولو كان الولد الذكر واحداً يكون مانعاً عنها أيضاً.

الثالث - الولد مطلقًا ذكرًا كان أو أثي منفردًا أو متعدداً، فلا يمكن أحد الزوجين عن النصيب الأعلى أي النصيب و الربع.

الرابع - الوارث مطلقاً النسبي و السبي ذكرًا كان أو أثي منفردًا أو متعدداً، فإنه يمنع أحد الزوجين عن الزيادة عن فريقهم أي النصيب أو الربع أو الثمن، فع замيزان التركية عن الفريق تزمة إلى غير هما، نعم لو كان الوارث منحصرًا بالزوج و الإمام عليه السلام يرث الزوج النصيب فريقية و يرث عليه النصيب الآخر، خلاف ما لو كان منحصرًا بالزوجة و الإمام عليه السلام، فإن الربع
Fifthly, the inheritance falling short of the allotted shares, that excludes a single daughter or a single sister by both the father and mother or by the father from her allotted share, which is a half, and likewise it excludes several daughters or several sisters by the father and mother or by the father from their allotted shares, which is a two-third.

If the deceased is survived by a single daughter, both parents and husband, or several daughters, both parents and husband, the deficit falls upon the daughter or daughters. The same law applies in case of all other allotted shares.

Sixthly, a sister by both parents or by the father excludes the brothers and sisters by the other from the return of the surplus from their allotted shares. Similarly, several sisters by both parents or by the father exclude a single brother or sister by the mother from the return of the excess from their allotted shares. Likewise, one of the grandfathers or grandmothers by the father excludes the brothers and sisters by the mother from the excess of their allotted shares.

Seventhly, a child, how low so ever, single or several, excludes both the parents from the surplus of one-seventh as an allotted share and not by way of return.

Eighthly, brothers and sisters and not their children exclude the mother from more than a sixth as an allotted share as well as by way of return on the following conditions:

Firstly, that there should be not less than two brothers or less than four sisters, though it is sufficient if there are a single brother and two sisters.

Secondly, that the brothers and sisters must be living at the time of the death of the propositus, as a dead person or a foetus does not exclude (others from inheritance).

Thirdly, the brothers and sisters must be by both father and mother or by the father, but not by the mother only.

Fourthly, that the father of the deceased must be alive at the time the death of the deceased.

Fifthly, that the brothers and sisters and the father should not be excluded from inheritance due to infidelity, slavery or by the birth of the excluding brothers and sisters by illicit intercourse, or by the father being the killer of the propositus, because it the excluding brothers and sisters were killers of the propositus, there shall be difficulty (in their excluding others from inheritance). So caution must not be given up.

Sixthly, there should be absence of relationship between the excluder and the excluded, as absence of such condition may be imagined in case of an intercourse under a semblance of right.
السادس: الأخوة من الأبوين أو الأب، فإنها تمنع الأخوة من الأم عن
رد ما زاد على فرضتهم، كذا الأخوات المتعددة من الأب أو الأب فاً
تمنع الأخ الواحد الأمي أو الأخت كذلك عن رد مازاد على فرضتهم و كذا أحد
الجديدة من قبل الأب، فاً، فإنها تمنع الأخوة من قبل الأم عنا زاد عليها.
السابع: الولد و إن نزل واحداً كان أو متعدداً، فإنه يمنع الأب أوين عنا زاد
على السدس فرضة لا ردًا.
الثامن: الأخوة وأخوات لا أولادهم، فإنهم يمنعون الأم عن زيادة على
السدس فرضة و ردًا بشروط: أولاً: أن لا يكون الأخ أقل من إثنين أو الأخت
أقل من أربع، و يكفي الأخ الواحد والأخوات. ثانياً: أن تكون الأخوة حياً في
الدنيا حين فوت المرث، فلا يكون الميت والحمل حاجباً. ثالثاً: أن تكون
الاخوة مع الميت من الأب والأم أو من الأب، فلا يجحب الأمي فقط. رابعاً:
أن يكون أب الميت حياً حين موتته. خامسها: أن لا يكون الأخوة و الأب
ممنوعين من الارث بكفر و رقية و تولد الأخوة الحاجبين من الرجال، و كون الأب
فاتل للمورث و لو كان الأخوة الحاجبين قاتلين للمورث ففيه إشكال، فلا يترك
الاحتكاط. سادسها: أن يكون بين الحاجب و الحجاب مغاثة، و يتصور عدها
في الوطء بالشيبة.
CHAPTER THREE - Shares

An heir inherits either by way of Qur'anic allotment of share (Fard) or Kinship (Qarābat). By Fard is meant the prescribed share or fixed fraction mentioned by Allāh, the Exalted in his Holy Book (Qur’ān). The prescribed shares are six, and their holders are thirteen.

Firstly, a Half. It goes to a single daughter when she is not accompanied by a child, who is not excluded from inheritance. This condition is applicable to all the following classes and degrees of relationship. It also goes to a single sister by both parents or by father, when she is not accompanied by a similar brother; and to a husband, if the wife has no child (from him), how so ever low.

Secondly, a Fourth. It is the share of a husband if the wife has a child (from him), how so ever low; and the share of a wife if the husband has no child, how so ever low.

Thirdly, an Eighth. It is the share of a wife if the husband has a child, how so ever low.

Fourthly, a Third. It goes to the mother provided the deceased is not survived by a child in general, how low so ever, and the deceased should not have several brethren as already mentioned along with its conditions; and to the brothers and sisters by the mother when they are several.

Fifthly, a Two-Third. It is the share of two or more daughters provided there is no son of the deceased, and of two sisters by both parents in the absence of a brother by both the parents. It is also the share of the father in the absence of a brother by father.

Sixthly, a Sixth, and that goes to the father when there is a child in general, and to the mother when accompanied by a person excluding the mother from a third, and they are a son and brethren as already mentioned. It is also the share of a brother or sister by the mother provided they are not several.

Thus the prescribed shares are: a Half, a Half of a Half, a Half of its Half, Two-thirds and its Half and Half of its Half.

Problem # 1. It has become clear from what has already been mentioned that those belonging to the Third Class from among the relatives on the paternal side have no prescribed shares and they inherit by way of Kinship (Qarābat) only, and that the husband and wife inherit absolutely by way of Fard except in one case, when the heirs are confined to the Imām, (A.S.), and the husband.
الأمر الثالث في السهام

الوارث إما يرث بالفرض أو بالقرابة، والمراد بالفرض هو السهم المقدر والكسر المعين الذي سماه الله تعالى في كتابه الكريم، والفرض ستة، وأربابها ثلاثة عشر.

الأول - النصف، وهو لبنت واحدة إذا لم يكن معها ولد غير ممنوع عن الارث، ويعتبر هذا القيد في جميع الطبقات والدرجات الآتية، ولأخت واحدة لأبوين أو لأب إذا لم يكن معها أخ كذلك، وللزوج إن لم يكن للزوجة ولد وإن نزل.

الثاني - الربع، وهو للزوج إن كان للزوجة ولد وإن نزل، والزوجة إن لم يكن للزوج ولد وإن نزل.

الثالث - الثمن، وهو للزوجة إن كان للزوج ولد وإن نزل.

الرابع - الثلث، وهو للأم بشرط أن لا يكون للميت ولد مطلقًا وإن نزل، وأن لا يكون له إخوة متعددة كما تقدم بشرائه، ولاخ الأخت من الأم مع التعدد.

الخامس - الثلثان، وهو للبنتين فصاعدا مع عدم وجود الإبن للميت، ولاخ الأختين فصاعدا لأبوين مع عدم وجود الأخ لأبوين، أو لأب مع عدم وجود الأخ لأب.

السادس - السدس، وهو للأب مع وجود الولد مطلقًا، وللأم مع وجود الحاصل من الثلاث أو الولد، والأخ أو الأخ الأخت للأم مع عدم التعدد من قبلها، فالفرض نصف ونصف نصف، ونصف نصف، وثلثان ونصفها، ونصف نصفها.

مسألة 1 - قد ذكر بما ذكر أن أهل الطبقة الثالثة من ذوي الأنساب لا
As regards the First and Second Classes, some of them have no prescribed shares at all, as a son and a brother by both parents or by the father, while some of them absolutely inherit by way of *Fard* as the mother, while some of them inherit by *Fard* in one case but not in another, as the father, who inherits by *Fard*, when accompanied by a child of the deceased, and has no prescribed share in his absence.

Similar is the case of a sister or two sisters by the father or both parents, they have a prescribed share if not accompanied by a male (heir), but have no prescribed share in the absence of a male (heir).

**Problem # 2.** It has also become clear from what has already been explained that those having a prescribed share are of two kinds.

Firstly, those who have no more a single prescribed share, and his prescribed share is neither reduced nor increased with the change of circumstances, as the father, who has a prescribed share when accompanied by a child, and that is absolutely a sixth.

So is a single, two or more daughters when not accompanied by a son, or one or two sisters by the father or by both parents in the absence of a brother, as their prescribed share is absolutely a half or two-third.

All of them inherit by *Fard* in one case and do not inherit by *Fard* in another case but their prescribed share is neither reduced nor raised with the change in circumstances.

Then there are some heirs who have a prescribed share in all circumstances and his prescribed share does not change with the change in circumstances.

They are like a brother or a sister by the mother, whose prescribed share when single is a sixth and a third when several, but it is neither reduced nor raised in all circumstances.

Secondly, those heirs whose prescribed share changes with the changes in circumstances, as the mother, whose share is sometimes a third and at times a sixth.

So also the husband and wife, whose share is a half and a fourth when not accompanied by a child, and a fourth and an eighth when accompanied by a child.

**Problem # 3.** Besides the categories of the sharers (*Dhavi al-Furud*) mentioned above, there are the heirs who inherit by virtue of kinship (*Qarabat*).

**Problem # 4.** If both or either of the grandfather and grandmother on the mother’s side are combined with those on the father’s side as the brethren and sisters by the father and mother or by the father, or the grandfather and grandmother on the father’s side, he/she shall be entitled to a third of the total estate, and if there is any deficiency it shall fall on the sharer (*Dhu Fard*).
لا يمكنني قراءة النص العربي الذي طرحته
If the heirs are the husband and grandfather or grandmother on the mother’s side and the sister by the father and mother, the husband shall have a half and third shall go to the grandfather on the mother’s side, whether single or several, and the residue, that is a sixth shall go to the single sister by the father although her prescribed share is a half, and though the grandfather and grandmother inherit by virtue of kinship and not Fard.

Problem # 5. The six Furūd in view of their combination and different cases arising out of it come to thirty-six by multiplying six by six, and when the repeated cases amounting to fifteen are dropped there remain twenty-one cases.

Problem # 6. Of the above unrepeated cases some can be lawfully combined, while others cannot, even if their cancellation is due to ‘Awl.

So those that cannot be combined are eight, namely, the combination of half with two-third, a fourth with another fourth or eighth, an eighth with another eighth and with a third, a two-third with another two-third, a third with another third and a sixth.

The rest can be lawfully combined, so that a half is combined with another half as a husband combined with a single sister by the father or both parents, or with a fourth as a single daughter combined with a husband, or with an eighth as a single daughter combined with a wife, or with a third as a husband combined with the mother in absence of a Hājib, or an excluder, or with a sixth as a husband and one of the mother’s Kalālah.

So also a half is combined with the six sharers except one due to the cancellation of Awl, so that two sisters if combined with a husband inherit by virtue of Qarābat and not Fard, and the deficiency falls on both of them.

A fourth is combined with two-third, as a husband combined with two daughters, or with a third, as a wife combined with several of the mother’s Kalālah, or with a sixth, as a wife combined with the mother’s Kalālah.

An eighth is combined with two-third as a wife combined with two daughters, or with a sixth, as a wife combined with one of the parents in the presence of a child.

A two-third is combined with a third as two or more sisters by the father combined with brethren by the mother, or with a sixth, as two daughters combined with one of the parents.

A sixth is combined with another sixth, as both the parents in the presence of a child.
السمس للأخت الواحدة من قبل الأب مع أن فريضتها النصف، ومع ذلك إرث
الحدودة بالقرابة لا الفرض.

مسألة 5 - الفروض السنة مع ملاحظة اجتماعها والصور المتصورة منه سنة و
ثلاثون حائطة من ضرب السنة في مثلاها، وإذا سقطت الصور المتكررة وهي
خمس عشرة بقيت إحدى وعشرون صورة.

مسألة 6 - الصور المتقدمة غير المتكررة منها ما يصح اجتماعها، ومنها ما يتمتع
ولو لبطلان العول، فالممتنع ثمانية، وهي اجتماع النصف مع الثلاثين، والربع
مع مثله، ومع الثمن، والثمن مع مثله، ومع الثلاث، والثلثين مع مثلها، والثلث مع
مثله، ومع السدس، الصحيح هو البقية، فان النصف يجتمع مع مثله كزوج و
أخت واحدة لأب أو لأبى، ومع الربع كبتت واحدة و الزوج، ومع الثمن
كبتت واحدة مع الزوجة، ومع الثلث كالزوج والأم مع عدم الحاجة، ومع
السدس كالزوج و واحد من كلالة الأم، فالنصف يجتمع مع الفرائض السنة
إلا واحدة منها لبطلان العول، فالاختتان لو اجتمعتا مع الزوج تراث بالقرابة لا
بالفرض، و يكون النقص و اردا عليها و الربع يجتمع مع الثلاثين كزوج و
ابنتين، ومع الثلاث كزوجة و المتعدد من كلالة الأم، ومع السدس كالزوجة و
المتعدد من كلالة الأم، و الثمن يجتمع مع الثلاثين كالزوجة و ابتنتين، ومع
السدس كزوجة وأحد الأبوين مع وجود الولد، والثلثين يجتمع مع الثلاث
كأختين فصاعدا لأب و إخوة من الأم، ومع السدس كبتتين و أحد الأبوين،
و السدس يجتمع مع مثله كالابوين مع وجود الولد.

...
ATTENTION!

Ta'sīb and 'Awl are both null and void (in Shī'ah Law).

Problem # 1. If the surviving heirs of a deceased inherit by Fard, they shall inherit in one of the following ways.

Firstly, if the inheritance of the deceased is equal to the prescribed shares without any surplus or deficiency, as when the heirs are the parents and several daughters, then two-thirds shall go to the daughters and a third to both the parents, a sixth going to each of them.

Secondly, if the inheritance exceeds the amount of the shares, the surplus shall return to the sharers, and it shall not go to the 'Asabah of the deceased, that means every male who is related to the deceased directly or indirectly through males.

If the heirs are confined to a single daughter and the mother, the daughter shall get a half by Fard and the mother a sixth by Fard, and the surplus shall revert to both of them in fourths in proportion to their shares.

If the heirs are confined to several daughters and the mother, the daughters shall get two-thirds by Fard, and the mother a sixth by Fard, and the surplus shall revert to the daughters and the mother in fifths in proportion to their shares, and the 'Asabah shall get dust (i.e., nothing).

Thirdly, if the inheritance falls short of the amount of shares, and that happens by the inclusion in the heirs of one or two or more daughters or one or two or more sisters by both father and mother or by the father, the deficiency shall fall on them, and it shall not be subjected to 'Awl in proportion to all due to their inclusion. If the heirs of the deceased are confined to a daughter, husband and both parents, the prescribed shares of the husband and both the parents shall be given to them, and the deficiency, that is half of the sixth (of the estate) shall fall on the daughter. If there are several daughters having prescribed shares, the deficiency, which is a fourth of the estate, shall fall on them. The same shall happen in other similar cases as well.

Problem # 2. The surplus shall not revert to the following sharers.

I. The Wife in general. So she shall be given her prescribed share, and the residue shall revert to the other classes including even the Imām, A.S.
تنبيه:

التصغيب والؤول باتلان

مسألة 1 - الوراث الموجودين للملت إن كانوا وراثاً بالفرض فهو على صور:

الأوّل - ما إذا كانت تركا الميت بقدر السهم المفروضة بلا زيادة ونقصة

كما إذا كان الوراث أبوبين وبنات متعددة، فالثلثان للبنات والثلث للأبوين،

لكن سدس.

الثانية - ما لو كانت الترك أزيد من السهم فترالزيادة على أرباب

الفرض أو لا تعطي لصعبة الميت. وهي كل ذكر ينتسب إليه بلا وسط أو

بواطة الذكور، فلو كان الوراث منحصراً بنت واحدة وأمّ يعطى النصف

البنت فرضها والسدس الأم فرضها، ويردة الثلث الباقي عليها أرباعاً على نسبة

سهمها، ولو انحصر بنات متعددة وأم يعطى الثلثان البنات فرضها والسدس

الأم فرضها، والسدد الباقي يردة عليها أخاساً على نسبة السهم، والصعبة في

فيها التراب.

ثالثة - ما إذا كانت الترك أقل من السهم، وذلك بدخول بنت أو بنتين

فصاعداً، أو أخت من قبل الأبوين أو الأب، أو أختين كذلك فصاعداً في

الوراثة، فيرد النقص عليهن ولا يعول بوروده على الجميع بال نسبة. فلو كان

الوراث بنتاً و زوجاً وأبوبين يرى فرض الزوج والأبوين، ويرد النقص - وهو

نصف السدس - على البنت ولئون كانت في الفرض بنات متعددة يرد النقص - و

هو الربع - عليهن، وكذا في الأمثلة الأخرى.

مسألة 2 - لا تترة الزيادة على طوائف من أرباب الفروض: منها - الزوجة
2. The Husband. He shall be given his prescribed share, and the residue shall go to the other heirs, except when the heirs of the deceased are confined to him and the Imām, A.S., in which case a half of the estate shall revert to him in addition to his own prescribed share.

3. The Mother, when there is some one excluding her from the return, as has already been mentioned.

4. The brothers or sisters by mother in all circumstances in the presence of any one of the paternal grandfathers or grandmothers, or any one of the brothers or sisters by both parents or by the father, as already mentioned.

**Problem # 3.** The male children or the female children accompanied by male children inherit by virtue of Qarābat. Same is the case with a father provided the deceased has left no child. The same is the case with the grandfathers and grandmothers in general, or the brothers or sisters by both parents or by father provided there are some males among them. The same is the case with all the groups belonging to the Third Class from among the paternal uncles and aunts and their children, who inherit by Qarābat, and not by Fard.

**Problem # 4.** If an heir inheriting by Fard is combined with one inheriting by Qarābat, then the sharer shall get his prescribed share and the residue shall go to the heir inheriting by Qarābat. If both the parents are combined with the male or female children, both the parents shall get their prescribed shares, that is, two-sixths, and the residue shall go to the children by Qarābat. If both the parents are sole heirs, then the mother shall get a sixth if combined by a Ḥājib and a third by Fard in his absence, and the residue shall go to the father by Qarābat. If one or several sisters by both the parents combine the maternal grandfather or grandmother, then the sister or sisters shall get the prescribed share, and the residue shall go to the grandfather or grandmother by virtue of Qarābat. Similar is the case with others than those mentioned.

**Discourse One – Inheritance of Heirs by Nasab**

There are three Classes of heirs who inherit by Nasab or Consanguinity.

**First Class** - Father and mother, and their children, how so ever low

Among the children the nearer precedes the remoter.

**Problem # 1.** If the sole heir is the father, he shall inherit the estate by Qarābat. If the sole heir is the mother, she shall get a third of the estate by Fard, and the residue by reversionary right. If both the parents are combined, the mother shall get a third by Fard, and the residue shall go to the father if there is no Ḥājib (excluder), for the mother; otherwise, she shall get a sixth
مطلقًا، فتعطى فرضها ويردة الباقي على غيرها من الطلبات حتى الإمام عليه السلام، ومنها الزوج، فتعطى فرضه ويردة الباقي على غيره إلا مع اختصار الوراثه به و بالإمام عليه السلام، ف,'#الله عليه النصف مضافًا إلى فرضه، ومنها الأم مع وجود الحاجب من الرضي كا تقدم، ومنها الاخوة من الأم مطلقًا مع وجود واحد من الجدودة من قبل الأب أو واحد من الأخوة من قبل الأبوين أو الأب كا تقدم.

مسألة 3. الذكور من الأولاد وكذا الإناث مع وجود الذكور يرثون بالقربة، وكذا الاب بشرط عدم وجود الولد للمنبت، وكذا الجدودة مطلقًا والاخوة من قبل الأبوين أو الاب بشرط وجود ذكور فيهم، وكذا جميع أصناف الطبقة الثالثة من العمومة والخوائنة وأولادهم، فهؤلاء يرثون بالقربة لا بالفرض.

مسألة 4. لو اجتمع الوراث بالفرض مع الوراث بالقربة فالفرض للوراث بالفرض، والباقي للوراث بالقربة. ولو اجتمع الاب مع أولاد الذكور والإناث يعطي فرض الأبوين وهو السدسان والباقي لأولاد السدس والباقي للاب يعطي في الباقي السدس مع وجود الحاجب و الثلث مع عدم فرض فرض، والأب للباقية، ولو اجتمعت الأخوات أو الأخوات من الأبوين مع الجدودة من قبل الأم فالفرض للأخت أو الأخوات والباقي للجدودة بالقربة، وهكذا غير ما ذكر.

المقصد الأول في ميراث الأنساب

وهم ثلاث مراتب: الأولين الأبوين بلا واسطة والابن والابنة و إن نزلوا الأقرب فالأقرب.

مسألة 1. لو انفردت الأب فالمال له قرابة، أو الأم فلها الثلث فرضاً والباقي يرد عليها، ولو اجتمعا فلألما الثلث فرضاً والباقي للأب إن لم يكن للأب حاجب، ولا فلها السدس والباقي للأب، ولا ترث الأخوات في الفرض شيئاً و
and the rest shall go to the father. The brothers and sisters get nothing by Farḍ, although they shall act as the excluders.

**Problem # 2.** If a son is the sole heir, he shall inherit the estate by Qarābat. If there are several sons, they shall get equal share. If a daughter is the sole heir, she shall get a half by Farḍ, and the rest by reversionary right. The ‘Aṣabah shall have share, and there shall be dust in their mouth! If there are two or more daughters the sole heirs, they shall get two-thirds by Farḍ, and the rest by reversionary right. If the males and females are combined, they shall inherit the (entire) estate, the males getting twice as much as females.

**Problem # 3.** If the children are combined with one of the parents, then if the child is a daughter, a half shall return by Farḍ, while the single parent shall get a sixth by Farḍ, and the rest shall revert to them in fourths. If there are two or more daughters, the daughters shall get four-fifths by Farḍ and by reversionary right, while the single parent shall get a fifth by Farḍ and by reversionary right. If there is a male child [or a son], irrespective of being single or several, the single parent shall get a sixth by Farḍ and the rest shall go to the (male) child.

**Problem # 4.** If the children are combined with both parents, then if it was a single daughter, and there is no Ḥājib for the mother for return, the daughter shall get three-fifths by Farḍ and reversionary right, and two-fifths shall go to both the parents, divided between them equally, by Farḍ and reversionary right. If there is a Ḥājib for the mother for return, the mother shall get a sixth, and the rest shall be divided between the daughter and the father in fourths by Farḍ and reversionary right. If there are several female children [or daughters], or a single or several male children [or sons], or female and male children [or daughters and sons], two sixths shall go to both the parents, and the rest shall go to the children, to be divided equally among them in case of their being of the same gender, and the males getting twice as much as females in case they are of different genders [i.e., sons and daughters being combined].

**Problem # 5.** If a single parent is combined with a single spouse, the single spouse shall get his/her highest share, and the residue shall go to the single parent, the father taking the share by Qarābat, while the mother getting her share by Farḍ and reversionary right.

**Problem # 6.** If the parents are combined with a single spouse, the single spouse shall take his/her highest share, the mother a third from the entire estate in case there is no Ḥājib for her, and a sixth by Farḍ in case there is a Ḥājib, and the residue shall go to the father by Qarābat.

**Problem # 7.** If the children are combined with a single spouse, the single spouse shall take his/her lowest share, and the residue shall go to the children, irrespective of their being a single or several, the males getting twice as much as females.

**Problem # 8.** If a single parent is combined with children and a single spouse, then if the child were a single daughter, the single spouse shall take his/her lowest share, and the residue divided
إن حجيواً

مسألة 2 - لو انفرد ابن فالمال له قرابة، ولو كان أكثر فهم سواء ولو انفردت البنت فلها النصف فرضاً والباقي رداً، والعصبة لا نصيب لها وفيها التراب، ولو كانت بناتاً فصاعداً فلها أو لهن الثلاث فرضاً والباقي رداً، ولو اجتمع الذكور والإناث فالمال لم للذكر مثل حظ الأنثين.

مسألة 3 - لو اجتمع الأولاد مع أحد الأبوين فكان الولد بنتاً واحدة يرداً عليها النصف فرضاً وعلى أحد الأبوين السدس فرضاً والباقي يرداً عليها أرباعاً، ولو كان بنين فصاعداً يرداً على البنات أربعة أخماس فرضاً ورداً وعلى أحد الأبوين الخمس فرضاً ورداً، ولو كان ذكراً سواء كان واحداً أو متعدداً فلا أحد الأبوين السدس فرضاً والباقي لولد.

مسألة 4 - لو اجتمع الأولاد مع الأبوين فكان الولد بنتاً واحدة ولم يكن للأم حاجب من الرد فثلاثة أخماس للبنت فرضاً ورداً وخمس للأبوين بالمناصفة فرضاً ورداً، وإن كان للأم حاجب من الرد فالسنس لها ولبقية تقسم بين البنت وال الأب أربعاً فرضاً ورداً، وإن كان أثناً متعدداً أو ذكراً واحداً أو متعدداً أو إناثاً أو ذكاراً فالسنس للابنين والباقي لالأولاد تقسم بينهم بالتساوي مع وحدة الجنس، و للذكر ضعف الأنثى مع الاختلاف.

مسألة 5 - لو اجتمع أحد الأبوين وأحد الزوجين فالأول ذكور نصيبه الأعلى والباقي لأحد الأبوين، للأب قرابة، وللأم فرضاً ورداً.

مسألة 6 - لو اجتمع الأبان وأحد الزوجين فلا أحد الزوجين نصيبه الأعلى و للأم الثالث من جميع التركبة مع عدم الحاجب، والباقي منه فرضاً، والباقي للأب قرابة.

مسألة 7 - لو اجتمع الأولاد مع أحد الزوجين فلا أحدهما نصيبه الأدنى و الباقى للأولاد متحداً أو متعدداً للذكر ضعف الأنثى.

مسألة 8 - لو اجتمع أحد الأبوين والأولاد وأحد الزوجين فلو كان الولد
among the rest of the heirs in fourths: a fourth to the single parent, and the residue to the
daughter. If there are two or more daughters, and the single spouse were the wife, she shall
take her lowest share, and the residue shall be divided among the rest of the heirs in fifths. If it
were the husband, he shall take his lowest share, and the single parent shall have a sixth, and
the residue shall go to the daughters. If the child were a single male [or son] or several males
[or sons], or males and females [or sons and daughters], then the single child shall receive
his/her lowest share, a sixth out of the original estate to the single parent, and the residue to
the rest of the heirs. In case they are of different genders, the males shall get twice as much as
females.

Problem # 9. If the parents re combined with the children and a single spouse, then if the
child were a single daughter, the husband shall take his lowest share, and the parents two-
sixths of the estate, and the residue shall go to the daughter, and the deficiency shall fall on
her; the wife shall receive her lowest share, and the residue shall be divided among the rest of
the heirs in fifths, in case there were no Hajib for the mother; otherwise, she shall take a sixth,
and the residue shall be divided between the father and the daughter in fourths. If there were
two or more daughters, the single spouse shall take his/her lowest share, and two-sixths of the
original estate shall go to the parents, and the residue to the daughters, the deficiency falling on
them. If there was a single or more male children or the males and females combined, the
single spouse shall get his/her lowest share, parents taking two-sixths of the original estate, and
the residue shall go to the children, the males getting twice as much as females.

A Few Points to be noted

Here are a few points to be noted.

Firstly, the children’s children, how low so ever, stand in the place of the children along with
the parents at the time of the division of the inheritance, and reduce the shares of the parents
from the highest to the lowest, and serve as impediments to other close relatives other than the
parents [in sharing the inheritance], regardless whether the parents of the deceased being alive
or not, every generation preceding the posterior one.

Secondly, each of the children inherits the share of the relative through whom he is connected
with the deceased.

So a daughter’s child, irrespective of being a male or female, inherits his/her mother’s share,
which a half in case of being sole heir or accompanied by the parents, and it shall revert to
him, even in case of his being a male, as it would revert to his/her mother if she were alive.

The son’s child, whether male or female, shall inherit his/her father’s share.
بنائنا واحدة فلا أحد الزوجين نصيبه الأدنى، والباقي يقسم بين الباقى أرباعاً.

لأحد الأبوين والباقي للبنت، ولو كان بنتين فصاعداً فإن كان أحد الزوجين هي الزوجة فله نصيبهم الأدنى والباقي يقسم بين الباقى أخاساً، وإن كان هو الزوج فله نصيبه الأدنى وأحد الأبوين السدس و البقية للبنتين فصاعداً، وإن كان ذكراً واحداً أو متعدداً أو ذكوراً و إناثاً فلأحدهم نصيبه الأدنى، والسدس من أصل التركه لأحد الأبوين، والباقي للباقى، ومع الاختلاف فللذكور مثل حظ الأثنيين.

مسألة 9 - لو اجتمع الأبان والأولاد وأحد الزوجين فان كان الولد بنائاً واحدة فللزوج نصيبه الأدنى والابنين سدسان من التركه، والباقي للبنت، والنفعير يرد عليها، وللزوجة نصيبها الأدنى، وتقسم البقية بين الباقى أخاساً إن لم يكن للأم حاجب عن الرد، ولا فلاناً السدس، والباقي يقسم بين الأب والبنت أرباعاً، ولو كان الولد بنائين فصاعداً فلا أحد الزوجين نصيبه الأدنى، والسدس من أصل التركه للأبوين، والباقي للبنتين فيرد النفعير عليها، ولو كان ذكراً واحداً أو متعدداً أو ذكوراً و إناثاً فلا أحد الزوجين نصيبه الأدنى، والابنين سدسان من الأصل، والباقي للأولاد للذكور مثل حظ الأثنيين.

وهي النص:

الأول - أولاد الأولاد وإن نزلوا يقومون مقام الأولاد في مقاسة الأبوين، وجهم بن فيل السهمين إلى أدنىهما ومنع من عداهم من الآثار، سواء كانا والدا البيت موجودين أم لا، ويقدم كل بطن على البطن المتاخر.

الثاني - يرث كل واحد منهم نصيب من يتقرب به، فيرث ولد البنتنصيب أمه ذكراً كان أو أنثى، وهو النصف مع انفراده أو كان مع الأبين، ويرث عليها وإن كان ذكراً كما يرث على أمه لو كانت موجودة ويرث ولد الأنثى.
If he/she is the sole heir, the entire estate shall go to him/her. If a Dhu Faridhah (or a sharer) accompanies him, he or she shall receive what is left out of the prescribed share.

Thirdly, if the children of a son are combined with those of a daughter, the former shall take two-thirds being the share of their father, while the latter a third, being the share of their mother. In case a single spouse accompanies them, the spouse shall receive his/her lowest share, and the residue shall go to those mentioned, two-thirds going to the children of the son and a third to the children of the daughter.

Fourthly, the children of the daughter are like the children of the son, of that they shall divide the inheritance equally among themselves if they are of the same gender, and their males shall get twice as much as their females if they are of different genders.

Fifthly, out of the father’s inheritance, the eldest son [besides his share] shall get the clothes worn by the father, his ring, sword and copy of the Mushaf (or the Qur’an).

Problem # 1. The Hubvah is exclusively meant for the eldest among the male children, so that there must be no other male child older than him. If, however, there are two eldest sons, so that they are equal in age and there is no other male child older than them, the Hubvah shall be divided equally between them. The same shall be the case if they happen to be more than two. If there is a single male child, the Hubvah shall go to him. The same shall be the case if he is accompanied by a female child, even if she happens to be older than him.

Problem # 2. It makes no difference whether the clothes are used or stitched to be worn, even if they have not been used. Nor will it make any difference if the clothes are single or several, as there shall be no difference if there are several copies of the Mushaf (or the Qur’an) and several finger rings and swords if they have been used [by the deceased] or prepared for his use.

Problem # 3. According to the stronger opinion, the Hubvah does not include arms other than the sword, the riding animal and its saddle. Caution by reaching a compromise is most desirable.

Problem # 4. If there is no Hubvah or part thereof in the inheritance left by the deceased, nothing shall be paid [to the eldest son] as its price.

Problem # 5. It is not a condition for the Hubvah to be part of the inheritance, so that if the inheritance is confined to the Hubvah, it shall be given to the eldest son, according to the stronger opinion, though caution is better.

Problem # 6. Neither Bulugh (legal majority or adulthood) is a condition [for the son to receive Hubvah], nor his being born alive at the time of the father’s death, according to the stronger opinion. Hubvah shall be kept aside for him, as his share in the inheritance is to be kept aside. If he is born alive after the father’s death, he shall be given the Hubvah.
نصيب أبيه ذكرًا كان أو أنثى، فانفرد فله جميع المال، ولو كان معه ذو
فريضة فله ما فضل عن حرص الفريضة.
الثالث - لو اجتمع أولاد الأبن و أولاد البنت فالأولاد الابن الثلاثة نصيب
أبهم، ولأولاد البنت الثلاثة نصيب أمهم، ومع وجود أحد الزوجين فله نصيبه
الأدنى، والباقي للممكرون، الثلاثة لأولاد الابن و الثلاث لأولاد البنت.
الرابع - أولاد البنت كأولاد الابن لو كانوا من جنس واحد يقسمون
بالسوية، ومع الاختلاف للذكر مثل حض الأُثنيين.
الخامس - يحيي الولد الأكبر من تركه أبيه بثاب بده و خاتمه و سيفه و
مصحفه.

مسألة 1 - تختص الحبوة بالأكبر من الذكور بأن لا يكون ذكر أكبر منه، ولو
تعدد الأكبر بأن يكونا بين واحد و لا يكون ذكر أكبر منها تقسيم الحبوة بينها
بالسوية، وكذا لو كان أكثر من إثنين، ولو كان الذكر واحدًا يحيى به، وكذا لو
كان معه أنثى و إن كانت أكبر منه.

مسألة 2 - لا فرق في الثواب بين أن تكون مستعملة أو خيطة لللباس و إن لم
يستعملها، ولا بين الواحد المتعدد، كما لا فرق بين الواحد المتعدد في
المصحف و الحاتم و السيف لو كانت مستعملة أو معدة للاستعمال.

مسألة 3 - الأقوى عدم كون السلاح غير السيف و الرحل و الراحة من
الحبوة، و الاحتياط بالتصالح مطلوب جداً.

مسألة 4 - ليلم تكن الحبوة أو بعضها في تركه لا يعطي قيمتها.

مسألة 5 - لا يعتبر في الحبوة أن تكون بعض الترك، فلو كانت الترك
منحصرة بما يحيى الولد الأكبر على الأقوى، و الاحتياط حسن.

مسألة 6 - لا يعتبر بلوغ الولد، ولا يكون منفصلًا حيا حين موت الأب على
الأقوى، فتعزل الحبوة له، كما يعزل نصيبه من الأثر. فلو انفصل بعد موت
الأب حيا يحيى، ولو كان الحمل أنثى أو كان ذكرًا و مات قبل الانفصال
If the child happens to be a female, or a male who dies before being born alive, then apparently the *Hubvah* shall go to the eldest among the existing sons.

**Problem # 7.** According to the stronger opinion, it is not a condition for the [eldest] son to be sensible and discreet. There is hesitation in the condition for his belonging to one of the non-opponent Muslim sects, though it is not far from likelihood for him to adhere to his belief in case he does not believe in *Hubvah*.

**Problem # 8.** The expenditure on the burial and payment of the debts of the deceased have precedence over the *Hubvah* in case of their clash when the deceased has not left anything other than the *Hubvah*, or when what is left by the deceased is not sufficient to meet the expenditure on his burial and payment of his debts. In case there is no clash between the two, as when what is left by the deceased other than the *Hubvah* is sufficient [to meet the expenditure on the burial and payment of the debts of the deceased], it is more cautious for the eldest son to pay something proportionately for the two items.

**Problem # 9.** If the deceased has left some will out of the inheritance itself, then in case the will relates to the *Hubvah*, the will shall be executed, except when it exceeds one-third of the inheritance, in which permission of the eldest son shall be required, and he shall not get anything out of the inheritance against the *Hubvah*. If the will is of a general nature, or it relates to the *Hubvah* and other than it, then in case the will does not exceed one-third of the inheritance, it shall be executed. In case of its being general, it shall be accounted for from the entire inheritance including the *Hubvah*. In case otherwise, it shall be reckoned out of the *Hubvah* and other than the *Hubvah*, according to the will. In case the will exceeds one-third of the inheritance, the permission of the master of the *Hubvah* shall be required, and in case of other than the *Hubvah*, permission of all the heirs shall be required [for its execution]. If the deceased has made a will for a specified amount as a thousand or fraction of an undivided property, the same rule shall apply.

Sixthly, the grandfather or grandmother by the father or the mother does not inherit where either of the parents exists. It is approved for each of the parents to give a sixth of the original estate if his/her share exceeds a sixth. If the deceased has left behind his parents, a grandfather and a grandmother by the father or the mother, it is approved for his mother to give her father and mother a sixth to be divided equally between them, that is half of her share, and for the father of the deceased to give a sixth of the original estate, that is a fourth of his share. If the deceased is survived by one of the parents a sixth of the estate shall go to him/her.

**Second Class -** Brothers and Sisters and their children, called *Kalālah*, and Grandparents

None of them inherit in the presence of any one belonging to the preceding Class.

**Problem # 1.** If a brother by the father or the mother is the sole heir, he shall inherit the estate by *Qarābat*. If he is combined with a brother or brothers of the same degree, the estate shall be
فالظاهر أن الحيوة لا أكبر الموجودين من الذكر.

مسألة 7 - الاقوى عدم اشتراط كون الولد عاقلاً رشيداً. وفي اشتراط كونه غير الخالف من سائر فرق المسلمين تأمل و إن لا يبعد إلزامه بمعتقد إن اعتقد عدم الحيوة.

مسألة 8 - يقدم تجهيز البيت وديونه على الحيوة مع تراحمها بأن لا تكون له إلا الحيوة، أو نقص ما تركه غير الحيوة عن مصرف التجهيز والدين، و مع عدم التراحم بأن يكون ما تركه غيرها كافية فالأحوط للولد الأكبر أن يعطي لها منها بالنسبة.

مسألة 9 - لو أوصى بعين من التركة فان كان ما أوصى هي الحيوة فالوصية نافذة إلا أن تكون زيادة على الثالث، فيحتاج إلى إجازة الولد الأكبر، وليس له شيء من التركة في قبال الحيوة، ولو أوصى مطلقًا بالحبوة وغيرها فكانت الوصية غير زيادة على الثالث تنفذ، و في صورة الاعتقال يحسب من جميع التركة حتى الحبوة، و في الصورة الثانية يحسب منها و من غيرها حسب الوصية، ولو زادت على الثلث تحتاج في الحبوة إلى إذن صاحبها، وفي غيرها إلى إذن جميع الورثة، ولو أوصى بمقدار معلوم كألف أو كسر مشاع فكذلك.

السادس - لا يرت الجد ولا الحدة لأب أو لأم مع أحد الأبين لكن يستحب أن يطعم كل من الأبين أبوه سدس أصل التركة لو زاد نصيبه من السدس، فلو خلف أبوه ودعا وجدة لأب أو لأم يستحب للأم أن تطعم أباها وأمها السدس بالسونية، و هو نصف نصيبها، وللأب أن يطعم أباه و أمه سدس أصل التركة، و هو بع نصيبها، و لو كان الموجود واحداً منها كان السدس له المرتبة الثانية - الاخوة وأولادهم المسمون بالكلاة والاجداد مطلقا ولا يرت واحد منهم مع وجود واحد من الطبقية السابقة.

مسألة 1 - لو انفرد الأخ لأب و أم فال المال له قرابة، ولو كان معه أخ أو أخوة كذلك فهو بينهم بالسونية، لو كان معهم إناث أو أئتي كذلك فلذلك أكثر حظ
divided among them equally. If they are accompanied by one or more sisters of the same
degree, then the males shall get twice as much as the females.

Problem #2. If a sister by the father or the mother is the sole heir, she shall get a half by
\textit{Fard}, and the residue shall revert to her by way of \textit{Qarābat}. If there are more such sisters, they
shall get two-thirds by \textit{Fard}, and the residue shall revert to them by way of \textit{Qarābat}.

Problem #3. In the absence of the \textit{Kalālah} by the father and mother, the \textit{Kalālah} by the father
shall succeed them. The law relating to the former shall apply to the latter in case of they are
single or more than one, so that if the brother were single, the [entire] estate shall go to him. In
case, however, there are several brothers, the estate shall be equally divided among them. If
there is a sister among them, then the males shall get twice as much as females. If there is a
single sister as sole heir, she shall get half [of the entire estate] by \textit{Fard}, and the residue by
reversionary right. If there are several sisters, they shall get a two-thirds by \textit{Fard}, and the
residue by reversionary right.

Problem #4. A brother or sister by father alone shall not inherit if accompanied by a brother
or sister by both the father and mother.

Problem #5. If there is a single child of the mother qualified to inherit from her, he/she shall
get a sixth by \textit{Fard} and the residue by \textit{Qarābat}, irrespective of his/her being a male or female.
If there are two or more children, they shall get a third by \textit{Fard} and the residue by way of
\textit{Qarābat}, to be divided equally among them, even if they belong to different genders.

Problem #6. If the brothers and sisters have different positions, some of them by the father
and others by the father and mother, those by the mother shall get a sixth by \textit{Fard} in case of
being single and a third in the event of being several, to be divided equally despite their being
of different genders. Those by the father and mother shall get the remaining five-sixth or two-thirds
to be divided equally among them [in case they are all of the same gender], but in case of
belonging to different genders, the males shall get twice as much as females.

Problem #7. In the absence of the brothers and sisters by the father and mother, when those
by the father are combined by those by the mother, the same rule shall apply as mentioned in
the preceding Problem, as the latter shall succeed the former.

Problem #8. If the sole heir is a grandfather, he shall get the [entire] estate, irrespective of his
being paternal or maternal or both paternal and maternal. Likewise, if a grandmother is the sole
heir, the same law shall apply.

Problem #9. If the maternal grandfather and grandmother are combined with the paternal
grandfather and grandmother, the maternal ones shall get a third to be divided equally among them,
and the paternal ones shall receive two-thirds, the males getting twice as much as the females.
الإثنتين.

مسألة 2 - لو انفردت الأخت لأب و أم كان لها النصف فرضاً و الباقى يردة.

Upon reading it naturally, the text reads:

 SQ 2 - When the mother and father are present, the daughter is excused from the half of the inheritance and the remaining becomes testamentary.

 SQ 3 - If the daughter is alone, the remaining son and father are present, she is excused from the half of the inheritance, as a testament.

 SQ 4 - A son and a daughter are present, if the father is present, the daughter will be excused from the half of the inheritance, and the remaining goes to the son.

 SQ 5 - A son and a daughter are present, if the father is absent, if the daughter is older, she is excused from the half of the inheritance, and the remaining goes to the son.

 SQ 6 - If the father is absent, the daughter is excused from the half of the inheritance, and there is no difference between the sex.

 SQ 7 - If the father is absent, the daughter is excused from the half of the inheritance, and there is no difference between the sex.

 SQ 8 - If the father is absent, the daughter is excused from the half of the inheritance, and there is no difference between the sex.

 SQ 9 - If the father is absent, the daughter is excused from the half of the inheritance, and there is no difference between the sex.

 SQ 10 - If the father is absent, the daughter is excused from the half of the inheritance, and there is no difference between the sex.
Problem # 10. If both or one of the maternal grandparents is combined with the maternal brethren, the grandfather shall be at par with an agnate brother and the grandmother like an agnate sister, and their share shall be divided equally between them in all circumstances.

Problem # 11. If both or one of the paternal and maternal or paternal grandparents is combined with similar brothers and sisters, the grandfather shall be at par with similar brother and the grandmother at par with similar sister, a male getting twice as much as a female.

Problem # 12. If the consanguine or cognate brothers and sisters are combined with both or one of the maternal grandparents, a third of the estate shall go to the grandfather.

In case of several grandfathers, it shall be divided equally among them in all circumstances, and two-thirds shall go to the brothers and sisters, and in case there are several and of different genders, a male shall get twice as much as a female.

Of course, if there is a single sister combined with the maternal grandparents, then she shall receive a half by Fard and the grandparents a third.

As regards the sixth, there is hesitation as to its return to the sister alone or to the sister and the grandparents both. So caution must not be given up, although it is more preferable to give a two-third to the sister and a third to the grandparents, as is the case with all prescribed shares.

Problem # 13. If the paternal grandparents are combined with agnate sisters and brothers, in case of a single brother or sister a sixth shall go to him or her, and in case of there being several they shall take a third to be divided equally among them despite their being of different genders, and in both supposed cases the residue shall go to the grandparents, a male getting twice as much as a female.

Problem # 14. If the consanguine or cognate brothers and sisters in the absence of consanguine ones are combined with the paternal grandparents and agnate brothers and sisters, a sixth shall go to the agnate brothers and sisters in case of there being one and a third in case of there being several to be divided equally among them, and the residue shall go to the consanguine or cognate brothers and sisters and the grandparents, in case of different genders a male getting twice as much as a female.

Problem # 15. If the consanguine or cognate brothers and sisters are combined with paternal grandparents and maternal grandparents, the maternal grandparents shall take a third, and in case of their being several it shall be equally divided among them, and a two-third shall go to the rest of them, a male getting twice as much as a female, grandfather’s share being equal to that of a brother and the grandmother’s share being equal to a sister.
مسألة 10 - لو اجتمع جد و جدة أو أحدهما من قبل الاب مع الأخوة من قبلها كان الجد كالاخ منها و الجدة كالاخت منها، و يقسم بينهم بالسوية مطلقأ.

مسألة 11 - لو اجتمع جد و جدة أو أحدهما من قبل الاب أو الاب، مع الإخوة من قبله فالجد بنزلة الأخ من قبله و الجدة بنزلة الاخت من قبله، فللذكر مثل حظ الشقيقين.

مسألة 12 - لو اجتمع الإخوة من قبل الاب أو الاب أو من قبل الاب أو الجدة أو هما من قبل الام فالثالث من الشركة للجد، و مع التعدد يقسم بالسوية مطلقأ، والثلاثان للأخت، و مع التعدد و الاختلاف للذكر ضعف الإخت.

نعم لو كانت أخت واحدة مع الجدودة من الاب فالنصف للأخت فرضأ و الثالث للجدودة، وفي السدس إشكال من حيث إنه هل يرد على الاخ أو عليها و على الجدودة؟ فلا يترك الاختياظ و إن كان الإرجل أن للأخت الثلاثين و للجدودة الثالث كسائر الفرض.

مسألة 13 - لو اجتمع الجدودة من قبل الاب أو الإخوة من قبل الاب لع وحدة الاخ أو الاخ فالسادس له أوثأ، و مع التعدد فالثالث لهم بالسوية ولو مع الاختلاف، والباقي في الفرضين للجدودة للذكر مثل حظ الشقيقين.

مسألة 14 - لو اجتمع الإخوة من قبل الأبين أو الأب مع عدم الإخوة من قبلها و الأجدود من قبل الأب و الإخوة من قبل الام فالسادس مع الاتحاد والثالث مع التعدد للإخوة من قبل الام بالسوية، و الباقي للاخوة من قبلها أو قبله والجدودة، و مع الاختلاف في الجنس للذكر ضعف الاخت.

مسألة 15 - لو اجتمع الإخوة من قبل الأبين أو الاب مع الجدودة من قبل الاب فالثالث للجدودة من قبل الاب، و مع التعدد يقسم بالسوية، والثلاثان للباقي للذكر مثل حظ الشقيقين و نصيب الجد كالاخ و الجدة...
Problem # 16. If the maternal grandparents are combined with the consanguine or cognate and agnate brothers and sisters, a third shall go to the agnates to be divided equally among them, and two-third to the [consanguines or] cognates, a male getting twice as much as a female.

Problem # 17. If the paternal grandparents are combined with the maternal grandparents and the agnate brothers and sisters, a third shall go to those connected by the mother, a two-third to those by the father, a male getting twice as much as a female.

Problem # 18. If the paternal grandparents are combined with the maternal grandparents, the consanguine or cognate brothers and sisters and the agnate brothers and sisters, a third shall go to those connected though the mother to be divided equally among them, and two-third shall go to those connected through the father, a male getting twice as much as a female.

Problem # 19. If either of the spouses is combined with the consanguine or cognate brothers and sisters or with the paternal grandparents, the single spouse shall take his/her maximum share, and the residue shall go to the rest in both cases a male getting twice as much as a female. If one of the spouses is combined with any one of the two groups connected through the mother, the single spouse shall receive his/her maximum share, and the residue shall go to the rest of them, in both cases a male getting twice as much as a female.

Problem # 20. If either of the spouses is combined with the consanguine or cognate brothers and sisters and agnate brothers and sisters or the paternal grandparents combined with agnate brothers and sisters, the single spouse takes his/her maximum share, those connected through the mother shall receive a sixth in case of there being one of them and a third in case of their being several to be divided equally among them in all circumstances, and the residue shall go to those connected through the father or both parents, a male getting twice as much as a female.

Problem # 21. If either of the spouses is combined with the consanguine or cognate brothers and sisters and he maternal grandparents or the parental grandparents combined with the maternal grandparents, the single spouse shall take his/her maximum share, a third shall go to those connected through the mother to be divided equally among them in case of their being several in all circumstances, and the residue shall go to those connected through the father or both parents, a male getting twice as much as a female.

Problem # 22. If either of the spouses is combined with the consanguine or cognate and agnate brothers and sisters and the maternal grandparents, the single spouse shall receive his/her maximum share, and third out of the whole estate shall go to those connected through the mother to be divided equally among them.
كالاخت.

مسألة ۱۶ - لو اجتمع الجدودة من قبل الأم و الأخوة من قبل الأبوين أو الأب و الأخوة من قبل الأم فالتلث للمقرب بالأم بالسوية، و الثلاثان للمقرب بال الأب للذكر ضعف.

مسألة ۱۷ - لو اجتمع الجدودة من قبل الأب مع الجدودة من قبل الأم و الأخوة من قبل الأم فالتلث للمقرب بالأم بالسوية، و الثلاثان للمقرب بال الأب للذكر ضعف الأثني.

مسألة ۱۸ - لو اجتمع الجدودة من قبل الأب مع الأبوين أو الأب و الأخوة من قبل الأبوين فالتلث للمقرب بالأم بالسوية، و الثلاثان للمقرب بال الأب للذكر ضعف الأثني.

مسألة ۱۹ - لو اجتمع أحد الزوجين مع الأخوة من قبل الأبوين أو الأب أو مع الجدودة من قبل الأب فالأحد الزوجين نصيبه الأعلى، و الباقى للباقي في الصورتين للذكر ضعف الأثني، ولو اجتمع أحدهما مع إحدى الطائفتين من قبل الأم فلاحدهما نصيبه الأعلى، والباقي للباقي في الصورتين بالسوية مطلقا.

مسألة ۲۰ - لو اجتمع أحدهما مع الأخوة من قبل الأبوين أو الأب و الأخوة من الأم أو مع الجدودة من قبل الأب و الأخوة من قبل الأم فلاحدهما نصيبه الأعلى، و للمقرب بالأم السدس من التركية مع الانفراد و الثلاث مع التعدد بالسوية مطلقا، و للمقرب بالاب أو الابين الباقى للذكر ضعف الأثني.

مسألة ۲۱ - لو اجتمع أحدهما مع الأخوة من قبل الأبوين أو الأب و الجدودة من قبل الأم أو مع الجدودة من قبل الأب و الجدودة من قبل الأم فلاحدهما نصيبه الأعلى، و الثلاث من مجموع التركية للمقرب بالأم يقسم بالسوية مع التعدد مطلقا، و الباقى للمقرب بالأب أو الابين للذكر ضعف الأثني.

مسألة ۲۲ - لو اجتمع أحدهما مع الأخوة من قبل الأبوين أو الأب و الأخوة
The residue shall go to the consanguine or cognate brothers and sisters, a male getting twice as much as a female.

The same shall be the rule in case one of the spouses of the deceased is combined with the paternal grandparents, the agnate brothers and sisters and the maternal grandparents.

Problem # 23. If either of the spouses is combined with the consanguine or cognate brothers and sisters and the paternal grandparents, the single spouse shall have his/her maximum share, and the residue shall go to the rest of them, a male getting twice as much as a female. If the brothers and sisters are connected through the mother and so are the grandparents, they shall take the residue to be divided equally among them.

Problem # 24. If either of the spouses is combined with the consanguine or cognate and agnate brothers and sisters and the maternal grandparents, the single spouse shall get his/her maximum share, a sixth shall go to out of the estate to the agnate brothers and sisters in case of there being single and a third in case of their being several to be divided equally among them in all circumstances, and the residue shall go to the rest of them, a male getting twice as much as a female.

Problem # 25. If either of the spouses is combined with the consanguine or cognate and agnate brothers and sisters, the paternal grandparents and the maternal grandparents, the single spouse shall receive his/her maximum share, a third of the estate shall go to the maternal grandparents to be divided equally in all circumstances, and the residue shall go to the rest of them, a male getting twice as much as a female.

Problem # 26. If either of the spouses is combined with the consanguine or cognate and agnate brothers and sisters and the maternal as all as paternal grandparents, the single spouse shall receive his/her maximum share, a third shall go to those connected through the mother to be divided equally among them, and the residue to the rest of them, a male getting twice as much as a female.

A Few Further Points to be noted

There are the following further points to be noted.

Firstly, the children of the brothers and sisters are to be treated as the children's children [of the deceased], in so far as if the deceased is survived by cognate or agnate brother or sister, irrespective of being a female, the children of the brothers and sisters shall not inherit, even if they are connected through both the father and mother.

Secondly, the children of the brothers and sisters inherit the share of those through whom they are connected to the deceased. So if one of the agnate brothers and sisters has left an heir, he/she shall receive his/her entire share by Fard or by reversionary right in case of being the sole heir, and in case of being several, the share shall be divided equally among them. If the deceased is survived by one of the cognate brothers and sisters, he/she shall inherit the whole estate in case of being single,
من قبل الأم و الجزء من قبلها فالأحدما نصيبه الأعلى، و الثالث من جميع
التركة للمتقارب بالأم يقسم بالسوية، و الباقى للاخوة من قبل الأب أو
الأب للذكر ضعيف، وكذا الحال لو اجتمع أحدهما مع الجدولة من قبل الأب
و الاخوة من قبل الأم والجديدة من قبلها.

مسألة ۲۳ - لو اجتمع أحدهما مع الاخوة من قبل الأب أو الأم أو الأب و
الجديدة من قبل الأب فالأحدما نصيبه الأعلى، و الباقى للباقي للذكر ضعيف
الأثني، ولو كان الارخوة من قبل الأم وكذا الجدولة فباقى لهم بالسوية.

مسألة ۲۴ - لو اجتمع أحدهما مع الاخوة من قبل الأب أو الأم أو الأب و
الجديدة من قبل الأب و الاخوة من الأم فلا أحدما نصيبه الأعلى، والسدس من
التركة للاخوة من قبلها مع الانفراد، و الثالث مع التعدد بالسوية مطلقا، و
الباقي للباقي للذكر ضعيف الأثني.

مسألة ۲۵ - لو اجتمع أحدهما مع الاخوة من قبل الأب أو الأم و
الجديدة من الأب و الجديدة من الأم فلا أحدما نصيبه الأعلى، و الثالث من
التركة للاخوة من الأم بالسوية مطلقا، و الباقى للباقي للذكر مثل حظ
الأثني.

مسألة ۲۶ - لو اجتمع أحدهما مع الاخوة من قبل الأب أو الأم و الاخوة
من قبل الأم و الجديدة من قبلها و الجديدة من الأب فلا أحدما نصيبه الأعلى، و
الثالث للمتقارب بالام بالسوية مطلقا، و الباقي للباقي للذكر ضعيف الأثني.

هيهام أمور:

الأول - أولاد الاخوة بحكم أولاد الأولاد في أنه مع وجود أحد من الاخوة
من الأب أو الأم ولو كان أثني لا يرث أولاد الاخوة ولو كانوا من الأب والام.

الثاني - يرث أولاد الاخوة إثر من يتقر بون به، ولو خلف أحد الاخوة من
and in case of there being several of them, the estate shall be divided among them, a male getting twice as much as a female.

If there are several children of the agnate brothers and sisters, it shall be indispensable to suppose the first intermediaries (or brothers and sisters) as alive, and divide the estate equally among them, and then the share of each of them shall be divided among their children equally. If the children belong to two or more consanguine or cognate sisters, in the absence of consanguine ones, they shall be governed by the above-mentioned rule, but a male shall get twice as much as a female.

If, however, the children belong to the consanguine or cognate males, or to consanguine or cognate males and females, then it shall be indispensable to suppose the intermediaries as alive and divide the estate among them, a male getting twice as much as a female, and then divide the share of each of them among their children, a male getting twice as much as a female.

Thirdly, the matter relating to the children of several intermediaries is the same as mentioned in the preceding Problem as regards the inheritance of those who are connected to the deceased through them and the procedure of its division.

Fourthly, the children of the cognate brothers and sisters do not inherit in the presence of the children of consanguine brothers and sisters in case of all the intermediaries provided they belong to the same degree [of relationship].

Fifthly, the indirect grandparents shall not inherit in the presence of a single direct grandparent. So if the deceased is survived by a single grandparent from the four types of direct grandparents, the indirect grandparents of the deceased shall not inherit. Likewise, if a relative connected through a single intermediary survives the deceased, he/she shall deprive another relative connected through several intermediaries, and so every closer relative shall deprive the remoter.

Sixthly, a highest ancestor of the deceased related through whichever intermediary shall inherit along with the deceased’s brothers and sisters in the absence of any other closer than him, in the same way as the brothers and sisters and their children through whichever intermediary shall inherit along with the deceased’s grandfather, provided that there is no one closer than them in their set or stirpe. If the grandfather’s grandfather, how high so ever, is combined with a brother he shall inherit not to speak of when he is accompanied by his son. The same shall be the rule when a child of a brother or sister, how low so ever, is combined with a direct grandfather, not to speak of an indirect one. In short, every closer relative shall have precedence over the remoter one in this stirpe or set, not over one belonging to another stirpe.

Seventhly, if the grandparents of eight categories are combined, i.e., the paternal and maternal grandfathers and grandmothers, caution must not be given up by reaching a compromise and
المقدّم الأول في مبرات الإسلام

الإمام وارثًا فالمال له فرضًا وردًا مع الوحدة، ومع التعدد يقسم بالسوية، ولو كان من أحد الأخوة من الابن فلما للاختيار، ومع التعدد يقسم بينهم للذكر ضعف الإيراني، ولو كان الأولاد من الأخوة المتعددة من الابن فلا بد من فرض حياة الوسائط والتسيير بينهم بالسوية، ثم يقسم قسمة كل بين أولادهم بالسوية، ولو كان الأولاد من الابن لأبتي أو زادتهم لأب أو الأب وابنه، فقد كان الابن والأب من الذكور الابنين وأباً أو كانا من الذكور والإناث من الابن أو الأب، ولهما من الاب فلا بد من فرض الوسائط حياً والقسمة بينهم للذكر ضعف الإيراني، ثم قسمة نصيب كل منهم بين أولاده للذكر ضعف الإيراني.

الثالث - الكلام في الأولاد مع الوسائط المتعددة كالكلام في المسألة السابقة في إرث من يتبرعون به وكيفية التقسيم.

الرابع - لا يرث أولاد الأخوة من الابن فقط مع وجود أولاد الأخوة للأب والأم في جميع الوسائط بشرط أن يكونا في درجة واحدة.

الخامس - لا يرث الجدودة مع الوسطية مع وجود واحد من الجدودة بولاية، ولو كان واحد من الجدودة الأربعة بولاية موجوداً لا يرث الجدودة مع الوسطية، ومع وجود واحد من ذي وسط واحد لا يرث ذو وسائط متعددة، ولهذا كل أقرب مقدم على الإباع.

السادس - الجدود لبأي وسطية كان يرث مع الأخوة إذا لم يكن في صنف أقرب منه، كما أن الأخوة وأولادهم من أي وسطية يثرون مع الجد بشرط أن لا يكون في صنفهم أقرب منهم، فلو اجتمع جد الجد ونحول، فإنا مع الأخ يرث فضلاً عليه إذا كان مع ولده، وكذا لو اجتمع ولد الأخوة ونحول، فإنا مع الجد بولاية وسط يرث فضلاً عن كونه مع الوسط والجملة الأقرب من كل صنف مقدم.

على الإبعد من هذا الصنف لا الصفح الآخر.

السابع - لو اجتمع الابن الثانية من أب الابن وأب الأم وم
mutual agreement, regardless of their being combined with others or not.

**Third Class** - Paternal and Maternal Uncles and Aunts

None of those belonging to Class Three inherit in the presence of any single relative belonging to the preceding Class.

**Problem # 1.** If the heirs of the deceased are confined to the full paternal and maternal uncles or aunts or those on the father’s side alone, they shall take the whole estate. In case of belonging to different genders, their males shall have twice as much as females.

**Problem # 2.** If the half paternal uncles and aunts on the mother’s side alone are the sole heirs, they shall receive the whole estate, to be divided equally among them in case of their being several and belonging to the same gender. In case of their belonging to different genders, caution must not be given up by reaching a compromise and mutual agreement.

**Problem # 3.** If the full paternal uncles and aunts or those on the father’s side alone are combined with uncles and aunts on the mother’s side alone, the paternal uncles and aunts on the mother’s side alone shall get a sixth if single, and a sixth if they are several, to be divided equally in case of belonging to the same gender, and in case of belonging to different genders, caution must be adopted by reaching a compromise. The residue shall go to the full paternal uncles and aunts or on the father’s side alone, a male getting twice as much as a female in case of their belonging to different genders.

**Problem # 4.** If the full maternal uncles and aunts or those on the father’s side alone are the sole heirs, they shall have the whole estate, and in case of their being several, it shall be divided equally among them in all circumstances. The same shall be the rule in case of the maternal uncles and aunts on the mother’s side alone.

**Problem # 5.** If the full maternal uncles and aunts or those on the father’s side alone are combined with the maternal uncles and aunts on the mother’s side alone, the maternal uncles and aunts on the mother’s side alone shall get a sixth if single, and a third in case of their being more than one, to be divided equally among them in all circumstances. The residue shall go to the full maternal uncles and aunts, and in their absence, to the paternal uncles and aunts on the father’s side alone, and in case of their being several it shall be divided equally generally.

**Problem # 6.** If the full paternal uncles and aunts or those on the father’s side alone are combined with the full maternal uncles and aunts or those on the father’s side alone, a third shall go to the paternal uncles and aunts, to be divided equally in case of their being several, and two-third shall go to the paternal uncles and aunts, a male getting twice as much as a female in case of their being more than one and of different genders.

**Problem # 7.** If the paternal and maternal uncles and aunts of the same kind are combined, a third shall go to the paternal uncles and aunts and in case of their being more than one it shall
المقدض الأول في مبادئ الأناس

أم الأب وأم الاب فلا يترك الاحتياط بالتصالح والتراضي سواء كانا معهم غيرهم أم لا.

المرتبة الثالثة: الأعمام والأخوال.

ولا يترك واحدهما مع وجود واحد من الطبقة السابقة.

مسألة 1: لو كان الورث منحصرًا بالعمومة من قبل الاب والأم أو من قبل الاب فالتركة لهم، ومع اختلاف الجنس للذكر مثل حض الأنثيين.

مسألة 2: لو كان الورث منحصرًا بالعمومة من قبل الأم فالتركة لهم، ومع التعدد والاتحاد الجنس يقسم بالسويته، ومع الاختلاف لا يترك الاحتياط بالتصالح والتراضي.

مسألة 3: لو اجتمع العمومة من قبل الأبوين أو من قبل الاب مع العمومة من قبل الأم فالمست.department لعمومة الأم مع الانفرد، والثلث بالسويته، ويفتح بالصحيح مع الاختلاف، والباقي للعمومة من قبل الأب أو الاب فالتركة لهم، ومع التعدد تقسم بينهم بالسويته مطلقًا، وكذا الحال في الحوزة من قبل الأم.

مسألة 4: لو تشوهد الورث منحصرًا بالحوزة من قبل الأب أو الأب فالتركة لهم، ومع التعدد تقسم بينهم بالسويته مطلقًا، وفقهما للحوزة من قبل الأب، ومع التعدد يقسم بالسويته مطلقًا.

مسألة 5: لو اجتمع الحوزة من قبل الأب والأم أو الأب مع الحوزة من قبل الأم فالسواية بالأمي مع الانفرد، والثلث بالسويته مطلقًا، والباقي للحوزة من قبل الأب والأم، ومن فقودهم للحوزة من قبل الأب، ومع التعدد يقسم بالسويته مطلقًا.

مسألة 6: لو اجتمع العمومة من قبل الأبوين أو الأب فالثلث للحوزة، ومع التعدد يقسم بالسويته، والثلثان للحوزة للذكر ضعف الأنثي مع التعدد والاختلاف.

مسألة 7: لو اجتمع العمومة من قبل الأم وحوزة كذلك فالثلث للحوزة، و
be divided equally among them, and a two-third shall go to the paternal uncles, and in case of their being more than one it shall be divided equally among them if they are of the same gender, and in case otherwise it shall cautious to reach a compromise.

**Problem # 8.** If the full paternal uncles and aunts are combined with similar maternal uncles and aunts and paternal uncles and aunts on the mother's side alone, the maternal uncles and aunts shall receive a third, to be divided equally in case of being more than one generally, a sixth out of the two-third shall go to the paternal uncles and aunts on the mother's side if alone, and in case being several a third to be divided equally, and in case of belonging to different genders it would be cautious to reach a compromise; the residue out of the two-third shall go to the full paternal uncles and aunts, or those on the father's side alone, a male getting twice as much as a female in case of their being more than one and belonging to different genders.

**Problem # 9.** If the full paternal uncles and aunts or those on the father's side alone are combined with the paternal and maternal uncles and aunts on the mother's side, a third shall go to the maternal uncles and aunts on the mother's side to be divided equally in case of their being more than one generally, a sixth out of the two-third to the paternal uncles and aunts on the mother's side only in case of being single and a third in case of their being more than one, and caution must be taken in case they are several and belong to different genders; the residue shall go to the rest, a male getting twice as much as a female in case of their being several and of different genders.

**Problem # 10.** If the full paternal uncles and aunts or those on the father's side are combined with similar maternal uncles and aunts and the maternal uncles and aunts on the mother's side only, a third shall go to the maternal uncles and aunts generally, a sixth out of the third going to those connected by the mother in case of being single, and third out it in case of being several to be divided equally among them generally, the residue going to the full maternal uncles and aunts or those on the father's side to be divided equally among them generally, and a two-third of the estate shall go to the paternal uncles and aunts, and in case of their being several and of different genders a male receiving twice as much a female.

**Problem # 11.** If the full maternal uncles and aunts or those on the father's side are combined with the paternal and maternal uncles and aunts on the mother's side, a third shall go to the maternal uncles, a sixth of this third to the maternal uncles and aunts on the mother's side if alone, and a third if they are more than one, to be divided equally in all circumstances, and the remainder out of the third to the full maternal uncles and aunts or those on the father's side to be divided equally generally, and two third of the estate to the paternal uncles and aunts on the mother's side [if alone], and in case of being more than one and of different genders it shall be cautious to reach a compromise.

**Problem # 12.** If all the kinds of uncles and aunts are combined, a third shall go to the maternal uncles and aunts, a sixth of this third to the maternal uncles and aunts on the mother's
في صورة التعدد يقسم بالسوية مطلقًا، والثلثان للعمومة، ومع التعدد يقسم بالسوية مع عدم الاختلاف، ومعه يختص بالتصالح.

مسألة 8 - لو اجتمع العمومة من الأبوين أو الأب والخؤولة كذلك والعمومة من قبل الأم فالثالث للخؤولة بالسوية مع التعدد مطلقًا، والسدس من الثلاثين للعمومة من قبل الأم مع الاختلاف، والثلث مع التعدد بالسوية، ومع الاختلاف الجنس يختص بالتصالح، والباقي من الثلاثين للعمومة من قبل الأبوين أو الأب، ومع التعدد والاختلاف للذكرين مثل حظ الأثنتين.

مسألة 9 - لو اجتمع العمومة من قبل الأبوين أو الأب مع العمومة والخؤولة من قبل الأم فالثالث للخؤولة من قبل الأم يقسم مع التعدد بالسوية مطلقًا، والسدس من الثلاثين في صورة الاختلاف والثلث في صورة التعدد للعمومة من قبل الأم، ويختص في صورة التعدد والاختلاف، والباقي للذكرين والذكور ضعف الأثنتين مع التعدد والاختلاف.

مسألة 10 - لو اجتمع العمومة من قبل الأبوين أو الأب مع الخؤولة كذلك والخؤولة من قبل الأم فالثالث للخؤولة مطلقًا، والسدس من الثلاثين مع الاختلاف والثلث منه مع التعدد للأمي منهم يقسم بينهم بالسوية مطلقًا، وبقيته للخؤولة من الأبوين أو الأب بالسوية مطلقًا، والثلثان من التركية للعمومة، ومع التعدد والاختلاف للذكرين مثل حظ الأثنتين.

مسألة 11 - لو اجتمع الخؤولة من قبل الأبوين أو الأب مع العمومة والخؤولة من قبل الأم فالثالث للخؤولة، والسدس هذا الثالث مع الاختلاف، والثلث مع التعدد للخؤولة من قبل الأم بالسوية مطلقًا، والباقي من الخؤولة من قبل الأبوين أو الأب يقسم بالسوية مطلقًا، والثلثان من التركية للعمومة من قبل الأم، ومع التعدد والاختلاف يختص بالتصالح.

مسألة 12 - لو اجتمع الأصناف الأربعة فالثالث للخؤولة، والسدس هذا الثالث مع الاختلاف، وثلثه مع التعدد للخؤولة من قبل الأم بالسوية مطلقًا.
side when alone, and a third of it in case of their being more than one to be divided equally in all circumstances and the remainder out of this third to the full maternal uncles and aunts or on the father's side to be divided equally as well, and a sixth of two-thirds of the estate to the paternal uncles and aunts on the mother's side if alone, and a third in case of being more than one, and in case of being of different genders it shall be cautious to reach a compromise. The remainder out of the two third shall go to the full paternal uncles and aunts or those on the father's side, a male getting twice as much as a female in case of being more than one and of different genders.

Problem # 13. If one of the spouses is combined with the full paternal uncles and aunts or those on the father's side and on the mother's side, he/she shall have his/her maximum share, and the remainder shall go to the rest of them, a male getting twice as much as a female. If the spouse is combined with similar maternal uncles and aunts, the division shall be the same except that the remainder shall be divided among the rest of them equally in all circumstances. It shall be the same even if the maternal uncles and aunts on the mother's side accompany him/her. Again, it shall be the same if the paternal uncles and aunts accompany him/her, except when they belong to different genders when caution must not be given up by reaching a compromise.

Problem # 14. If the spouse is accompanied by the full paternal uncles and aunts or those on the father's or mother's side, he/she shall have his/her maximum share, and the paternal uncles and aunts on the mother's side shall take a sixth of the remainder if alone and a third if more than one to be divided equally in case of belonging to the same gender, and caution must be taken [to reach a compromise] in case of belonging to different genders, and the remainder shall go to the full paternal uncles and aunts or those on the father's side, a male getting twice as much as a female. If the spouse is combined with the full maternal uncles and aunts or those on the father's side and maternal uncles and aunts on the mother's side, he/she shall take his/her maximum share, a sixth of the remainder shall go to the maternal uncles and aunts on the mother's side if alone, and a third of it when more than one, to be divided equally in all circumstances, and the remainder shall go to the rest of them to be divided equally likewise.

Problem # 15. If the spouse is combined with the full paternal uncles and aunts or those on the father's side and similar maternal uncles and aunts, he/she shall take his/her maximum share, a third of the entire estate shall go to the maternal uncles and aunts to be divided equally in all circumstances, and the residue shall go to the rest of them, a male getting twice as much a female. If in the supposed proposition, the spouse is combined with the maternal uncles and aunts on the mother's side without those being full or on the father's side, he/she shall have his/her maximum share, and a third of the estate shall go to the maternal uncles and aunts and the residue to the rest of them, a male getting twice as much as a female.

Problem # 16. If the spouse is combined with the paternal uncles and aunts on the mother's side and the full maternal uncles and aunts or those on the father's side, she/she shall have his/her maximum share, a third of the whole estate shall go to the maternal uncles and uncles to be divided equally in all circumstances, and the residue to the rest of them, but caution is to be observed in
المقصد الأول في ميراث الأسنان

الباقي من هذا الثلث للخوؤلة من قبل الأبوين أو الأب بالسوية أيضاً، و
السدس من ثلثي التركية مع الاتحاد والثالث مع التعدد للعوامة من قبل الأم. و
مع الاختلاف يختط بالتصالح، والباقي من الثلاثين للعوامة من قبل الأب أو
الأبين للذكر ضعف الأنثى مع التعدد واختلاف.

مسألة 13 - لو كان أحد الزوجين مع العمومة من قبل الأبوين أو الأب فله
نصيبه الأعلى، والباقي للباقي للذكر ضعف الأنثى، ولو كان مع الخوؤلة من قبلهما
أو قبل فكذلك إلا أنه يقسم الباقي بين الباقي بالسوية مطلقًا. وكذا لو كان مع
الخوؤلة من قبل الأم، ولو كان مع العمومة من قبلهما فكذلك إلا مع الاختلاف في
الجنس، فلا يترك الاختيان بالتصالح.

مسألة 14 - لو كان أحدهما مع العمومة من قبل الأبوين أو الأب والعمومة
من قبل الأم فله نصيبه الأعلى. وللعوامة من قبل الأم السدس من البقية مع
الانفراد والثالث مع التعدد يقسم بالسوية مع وحدة الجنس، يختط مع
الاختلاف، والباقي للعوامة من قبل الأب أو الابن للذكر مثل حظ الأنثيين،
ولو كان مع الخوؤلة من الأبوين أو الأب، والخوؤلة من الأم فله نصيبه الأعلى، و
السدس من البقية مع الانفراد والثالث منها مع التعدد للخوؤلة من الأم يقسم
بالسوية مطلقًا، والباقي للباقي بالسوية كذلك.

مسألة 15 - لو كان أحدهما مع العمومة من قبل الأبوين أو الأب والخوؤلة
كذلك فله نصيبه الأعلى، وثلث مجموع التركية للخوؤلة يقسم بالسوية مطلقًا، و
الباقي للباقي للذكر ضعف الأنثى، وكذا في الفرض الخوؤلة من قبل الأم لا
الاب أو الابن فله نصيبه الأعلى، والثالث من التركية للخوؤلة بالسوية، و
الباقي للباقي للذكر مثل حظ الأنثيين.

مسألة 16 - لو كان مع أحدهما العمومة من الأم والخوؤلة من الأبوين أو
الأب فله نصيبه الأعلى، وثلث من المجموع للخوؤلة يقسم بالسوية مطلقًا، و
الباقي للباقي، ويفتتح مع الاختلاف، ولو كان في الفرض الخوؤلة من الأم لا
case of their belonging to different genders. If in the supposed proposition the maternal uncles and aunts on the mother’s side accompany the spouse and not the full or those on the father’s side, the division shall be similar to the preceding case, but caution is to be taken in case of the paternal uncles and aunts.

**Problem # 17.** If the spouse is accompanied by the full paternal uncles and aunts or those on the father’s side and similar maternal uncles and aunts, he/she shall have his/her maximum share, and a third of the estate shall go to the maternal uncles and aunts to be divided equally in all circumstances, a sixth of the residue to the paternal uncles and aunts on the mother’s side when alone, and a third when more than one, to be divided equally [if they belong to the same gender], while caution is to be taken by reaching a compromise in case of their belonging to different genders. The residue shall go to the rest, a male getting twice as much a female. If the spouse is combined with the full paternal uncles and aunts or those on the father’s side and the paternal and maternal uncles and aunts on the mother’s side, he/she shall have his/her maximum share, a third of the estate shall go to the maternal uncles and aunts on the mother’s side to be divided equally in general, a sixth of the residue to the paternal uncles and aunts on the mother’s side if alone, and a third when more than one, to be divided equally, except in case they belong to different genders when caution is to be observed, and the residue shall go to the rest, a male getting twice as much a female.

**Problem # 18.** If the spouse is combined with the full paternal and maternal uncles and aunts or those on the father’s or mother’s side, he/she shall have his/her maximum share, a third of the estate shall go to the maternal uncles and aunts, a sixth of this third to the maternal uncles and aunts on the mother’s side when alone and a third of it when more than one, to be divided equally in general. The residue of it shall go to the full maternal uncles and aunts or those on the father’s side to be divided equally in all circumstances, while the remainder of the estate shall go to the rest, a male getting twice as much a female.

**Problem # 19.** If the full maternal uncles and aunts or those on the father’s side and the maternal and paternal uncles and aunts on the mother’s side accompany the spouse, he/she shall have his/her maximum share. A third of the estate shall go to the maternal uncles and aunts, a sixth of it to the maternal uncles and aunts on the mother’s side when alone and a third of it when more than one to be divided equally in general, and remainder of the third to other maternal uncles and aunts to be divided equally in general. The residue of the estate shall go to the paternal uncles and aunts, to be divided equally, except in case they belong to different genders when caution must be taken by reaching a compromise.

**Problem # 20.** If the spouse is combined with the full paternal and maternal uncles and aunts or those on the father or mother’s side, he/she shall have his/her maximum share. A third of the estate shall go to the maternal uncles and aunts, a sixth of this third to the maternal uncles and aunts on the mother’s side when alone, and a third of it when more than one, to be divided equally, while the remainder of the third to the full maternal uncles and aunts or those on the
الابن أو اللام فالحال كما تقدم في التقسيم والاحتياط في العمومة.

مسألة 17 - لو كان مع أقحها العمومة من الأبين أو الأب أو الحوؤلة كذلك و العمومة من الأم فله نصيبه الأعلى، والثلث من التركية للحؤولة بالسويه مطلق، والسدس من الباقى مع الانفراد والثلث مع التعدد للعمومة من قبل الأم يقسم بالسويه، ومع الاختلاف يحتاط بالتصالح، والباقي للباقى للذكر ضعف الأثين، ولو كان مع أقحها العمومة من الأبين أو الأب أو الحوؤلة من الأم فله نصيبه الأعلى، والثلث من التركية للحؤولة من الأم يقسم بالسويه مطلق، والسدس من الباقى مع الانفراد والثلث مع التعدد للعمومة من قبل الأم يقسم بالسويه إلا مع الاختلاف في الجنس، فيحتاط كما تقدم، والباقي للباقى للذكر ضعف الأثين.

مسألة 18 - لو كان مع أقحها العمومة من الأبين أو الأب أو الحوؤلة كذلك والحؤلة من الأم فله نصيبه الأعلى، والثلث من التركية للحؤولة، والسدس هذا الثلاث مع الانفراد وثليث مع التعدد للحؤولة من قبل الأم بالسويه مطلق، والباقي من هذا الثلث للحؤولة من الأبين أو الأب بالسويه مطلق، والباقي من التركية للعمومة للذكر ضعف الأثين.

مسألة 19 - لو كان مع أقحها الحؤولة من الأبين أو الأب أو الحوؤلة من الأم و العمومة منها فلا نصيبه الأعلى، والثلث من التركية للحؤولة، والسدس هذا الثلث مع الانفراد وثليث مع التعدد للحؤولة من الأم بالسويه مطلق، والباقي للثلث لسائر الحؤولة بالسويه مطلق، والباقي من التركية للعمومة يقسم بالسويه إلا مع الاختلاف، فيجب الاحتياط بالتصالح.

مسألة 20 - لو كان مع أقحها مع العمومة من الأبين أو الأب أو من الأم و الحؤولة من الأبين أو الأب أو من الأم فله نصيبه الأعلى، والثلث من التركية للحؤولة، والسدس من هذا الثلث مع الانفراد وثليث مع التعدد للحؤولة من الأم يقسم بالسويه، والباقي الثلث للحؤولة من الأبين أو الأب يقسم بالسويه.
father's side to be divided equally in general, and the residue to the paternal uncles and aunts, a sixth of it going to the paternal uncles and aunts on the mother's side when alone and a third when more than one, to be divided equally, except in case their belonging to different genders when caution must be taken as already mentioned, and the residue shall go to the full paternal uncles and aunts or those on the father's side, a male getting twice as much a female.

Problem # 21. The paternal uncles and aunts on the father's side do not inherit in the presence of the full ones. The rule shall be the same in case of maternal uncles and aunts.

A Few Points to be noted

Here are the following points to be noted.

Firstly, The children of the paternal and maternal uncles and aunts do not inherit in the presence of any of the paternal and maternal uncles and aunts. For instance, neither the children of the paternal uncles nor those of the maternal uncles and aunts inherit in the presence of a single maternal aunt on the mother's side absolutely, except in a single case, except when there is a paternal uncle on the father's side and the son of a full uncle, in which case the latter precedes the former, provided they are neither accompanied by a full paternal uncle or one on the mother's side nor a paternal aunt absolutely or a maternal uncle or aunt absolutely, regardless of the full paternal uncle on the father's side or the son of the full paternal uncle being alone or more than one. In such case, the inheritance shall go to the son of the paternal uncle and neither to the paternal uncle, nor to the sons of the paternal or maternal uncles and aunts, irrespective of their being either of the spouses or not. This rule does not apply in other cases. Of course, if there is an heir to the paternal aunt on the father's side and a son of the full paternal uncle, caution is to be taken by reaching a desirable compromise.

Secondly, the children of the paternal and maternal uncles and aunts succeed them in their absence and in the absence of any one of their degree, the closer enjoying precedence, even if he has the same cause of connection with the deceased as the remoter, even if he has two causes of connection with the deceased, except in the single preceding case. The children of the paternal and maternal uncles and aunts inherit the shares of hose through whom they are connected with the deceased.

Thirdly, those related to the deceased belonging to this degree of relationship shall have an equal share in all circumstances no matter whether they are the maternal uncles or aunts or their children, and whether they are full or those on the father's side, while those related to the deceased on his/her father's side, i.e. the paternal uncles and aunts or their children, have a different share, a male getting double of a female's share.
مطلقًا، والباقي للعمومة، وسدسه مع الانفرد وثلاثه مع التعدد، للعمومة من الام يقسم بالسوية إلا مع الاختلاف فيجب الاحتياط المذكور والباقي للعمومة من الأبين أو الأب للذكر ضعف الانتي.

مسألة 21 - لا يرث العمومة من قبل الاب مع وجودها من قبل الأبين، و"

وهيهنآموم:

الأول - لا يرث أحد من أولاد العمومة والخزولة مع وجود واحد من العمومة أو الخزولة، فعن وجود خالة من قبل الأم مثلا لا يرث أولاد العمومة ولا أولاد الخزولة مطلقًا إلا في مورد واحد، وهما إذا كان عم من قبل الأب وابن عم من قبل الأبين فيقدم الثاني على الأول بشرط أن لا يكون معهما عم من قبل الأبين ولا من قبل الأم ولا العممة مطلقة ولا الخال والخالة مطلقة، ولا فرق بين كون العم من الأب واحدا أو متعددا، وكدما بين كون ابن العم من قبل الأبين واحدا أو متعددا، فحينئذ يكون الارث لابن العم أو لا عم ولا أبناء الأمام والعمات والأخوين والخالين، ولا فرق في ذلك بين وجود أحد الزوجين وعده، ولا يجري الحكم المذكور في غير ذلك، نعم مع كون الوارث اثنا من قبل الأب وابن العم من قبل الأبين فالاحتياط بالتصالم مطلوب.

الثاني - أولاد العمومة والخزولة يقومون مقامهم عند عدمهم وعدم من هو في درجتهم، وأن الأقرب مقدم و إن اتخذ سببه على الأب و إن تقرب بسببين إلا في مورد واحد تقدم آنفا، ويرث أولاد العمومة والخزولة إرث من يتقر بون به.

الثالث - المنتسبون بأم الميت في هذه الطبقة سواء كان الخال أو الخالة أو أولادها و سواء كانوا من قبل الأبين أو الأب يرثون بالسوية مطلقة، و
Of course, in case of the paternal uncles and aunts on the mother’s side and their children it is indispensable to observe caution by reaching a compromise.

**Fourthly,** if the children of the paternal uncles and aunts on the father’s side are combined with the children of the full paternal uncles and aunts, the former shall have no share in the inheritance. The same shall be the rule in case of the children of the maternal uncles and aunts. But in the presence of the children of the full paternal uncles and aunts, the children of the maternal uncles and aunts on the father’s side shall inherit in the absence of the children of the full maternal uncles and aunts. Likewise in the presence of the children of the full maternal uncles and aunts the children of the paternal uncles and aunts on the father’s side shall inherit in the absence of the children of the full paternal uncles and aunts.

**Fifthly,** it has already been mentioned that the children of the paternal and maternal uncles and aunts inherit their parents. In case of there being several paternal and maternal uncles and aunts at the time of the distribution of the inheritance it is likewise indispensable to suppose that the intermediaries are living, and so in case of distribution among those related through mother, the inheritance is distributed equally, while in case of those related through the father a male takes twice as much as a female. Then the distribution of the share of each of them among their children also takes place like that between the intermediaries, and as mentioned before in case of the children of the paternal uncles on the mother’s side caution is to be observed by reaching a compromise. The same is the rule in case of the intermediaries being several.

**Sixthly,** the consanguine relatives who are the marginal consanguines of the deceased are also considered his/her heirs. So his/her paternal uncles and aunts as well as their children, how low so ever if considered as relatives by custom, as also his/her maternal uncles and aunts have a better right to inherit than the full paternal and maternal uncles and aunts.

Of course, in the absence of the first set or stripe the following one succeeds them, the closer having precedence over the remoter, and in their absence the paternal and maternal uncles and aunts of the deceased’s grandparents and their children shall stand heir to the deceased in order of their closeness and remoteness.

**Seventhly,** when two or more causes of inheritance combine in an heir, he/she shall inherit by virtue of each of them provided any of them is not an obstruction in the other, as one of them being closer than the other, in which case he/she shall inherit by virtue of the obstructing one, as an uncle’s son who is the mother’s brother, regardless of the cause being by nasab or sabab.

If two causes combine, or both by nasab and sabab, in case one of them is an obstruction in the other, he/she shall inherit by one to the exclusion of the other, as an emancipator and a guarantor for an offence (*Dhāmin al-Jarīrah*), otherwise by both as, for example, a husband who is also the son of the paternal uncle.
المقدّس الأول في مبادئ الإنساب

المستحسن بأن يكون أحد أعينه وأولادهم يرثون بالتفاوت للذكر مثل حظ الأثنيين، نعم في العتمة من قبل الأم وأولادهم لابد من الاحتياط بالتصالح.

الرابع - مع وجود أولاد العتمة من الأبوين لا يرث أولادهم من الأب فقط، و كذا في أولاد الحولوة، لكن مع وجود أولاد العتمة من قبل الأب يبرث أولاد الحولوة من قبل الأب مع عدم أولاد الحولوة من قبل الأب، و كذا مع أولاد الحولوة من قبل الأب يبرث أولادهم من قبل الأب مع فقد أولادهم من الأبوين.

الخامس - قد مر أن أولاد العتمة و الحولوة يقومون مقامهم، وإذا كانوا من العتمة المتعددة و الحولوة كذلك لابد في كيفية التقسيم من فرض حياة الوساط و التقسيم بالسوية في المتضمين بالأم، للذكر مثل حظ الأثنيين في المتضمين بالأب، ثم تقسيم كل بن أولادهم كالتقسيم بين الوساط، و يحتفظ في أولاد الأم من قبل الأم بالتصالح كما مرّ، و هكذا الكلام في الوساط المتعددة.

السادس - ترتيب الأرحام الذين هم من حاولي نسب الميت، فأعطاه و علمته و أولاده و إن نزلوا مع الصدق العربي و كذا أخواله و خلاله أحق بالمرات من الأم و الأم وأموتهما وأخوالهما و خلالاتها، نعم مع فقد الطائفة الأولى تقوم الثانية مقامهم مرتبين الأقرب منهم مقدم على الأبعد و مع فقدهم عمومه بجد الميت وجدته و خوؤلتها و أولادهم مرتبون بحسب القره و البعد.

السابع - لو اجتمع لوارث موجبان للثرث أو الزيادة يرث جميعها إن لم يكن بعضهما منعًا عن الآخر كون أحدهما مثلًا أقرب من الآخر و إلا يرث من جهة المنع دون المنع مثل ابن عم هو أخ لأم، ولا فرق بين كون الموجب نسبةً أو سبأ، فلو اجتمع السبナン أو نسبة و سبأ فان كان أحدهما مانعاً يرث به دون الآخر كالمعتق و ضامن الجرية، و إلا بها كالزوج و ابن العم مثلًا، و
The mode of inheritance in case of combination shall be similar to that in case of being individual. The caution to be observed in case of paternal uncles on the mother’s side as mentioned in previous Problem is also to be observed here.

**Discourse Two – Mutual Rights of Inheritance of the Spouses**

**Problem # 1.** Neither of the spouses shall inherit the entire estate by virtue of matrimony except in one case, and that is when the husband and the Imām, (A.S.), are the sole heirs, in which case the husband shall inherit by Fard and reversionary right, as mentioned before. It has also been mentioned before that the prescribed share of the husband is sometime a half and at another a fourth, while the prescribed share of a wife is sometime a fourth and at another an eighth. The share of either of them is not increased or reduced due to his/her combination with any Class or degree except in case of the previous proposition.

**Problem # 2.** It is a condition in the mutual inheritance by virtue of matrimony that the contract must be permanent. There is no inheritance in case of a temporary marriage, neither on the side of the husband nor on that of the wife in the absence of a stipulation to that effect without any hesitation. In case of a stipulation by one or both parties there shall be mutual inheritance with great difficulty. So caution must not be avoided by giving up such stipulation, while in case of a stipulation, caution must not be avoided by reaching a compromise. It is also a condition that the wife must be in the husband’s wedlock, even if no consummation has taken place, so that the spouses shall inherit each other even when there has been no consummation. A wife divorced revocably is treated as a wife during the currency of her ‘Iddah, contrary to an irrevocably divorced wife. So if either of the spouses happens to die during the currency of an ‘Iddah for a revocable divorce, the other shall inherit him/her, contrary to the case when he/she dies during the currency of an ‘Iddah for an irrevocable divorce. Of course, if the husband has divorced the wife during his illness, even if irrevocably, and dies of that illness, the wife shall inherit him until a year since the time of the divorce, provided the divorce has not been given on her demand. So a woman who has been divorced by way of Khul’ or Mubārāt shall not get anything from the husband’s inheritance. It is also a condition that the woman should not have married another husband. So if the husband divorces her during his illness, and the woman marries another husband after the expiry of the ‘Iddah, and then the husband dies before the expiry of a year, she shall not be entitled to inherit. It is also a condition that the husband should not have recovered from the illness during which he had divorced the woman. So if the man recovers from the illness and again falls ill, even if the illness is of the same kind, she shall not be entitled to inherit. If the woman dies during the illness of the husband before the expiry of a year, the husband shall not be entitled to her inheritance, except in case of an ‘Iddah for a revocable divorce.

**Problem # 3.** If a sick person marries a woman during his illness, then if consummation takes place, or he has recovers from that illness, the spouses shall inherit each other. If the husband
كيفية الارث عند الاجتماع كالكيفية عند الانفراد، والاحتياط المتقدم في الأعمام من قبل الأم جارٍ في المقام.

المقدمة الثانية في الميراث بسبب الزوجية

مسألة 1 - لا يرى أحد الزوجين جميع المال بسبب الزوجية إلا في صورة واحدة، وهي اختصار الوراث بالزوج والامام عليه السلام، فيرث الزوج جميع المال ورضاً ورضاً كما تقدم، وقد ظهر مرس فرض الزوج نصف تارة وربع أخرى، وفرض الزوجة ربع تارة وثمن أخرى، ولا يزيد نصيبهما ولا ينقص مع اجتماعهما بأي طبقات أو درجة إلا في الفرض المتقدم آنفاً.

مسألة 2 - يشترط في التورث بالزوجة أن يكون العقد دائمًا، فولا توثر في الانقطاع لا من جانب الزوج ولا الزوجة بلا اشتراط بلا إشكال، ومعه من جانب أو جانبين في غاية الإشكال، فلا يترك الاحتياط بترك الشرط، ومعه لا يترك بالتصالح، وأن تكون الزوجة في حبال الزوج وإن لم يدخل بها، فيتوارثان ولومع عدم الدخول، والمطلقة الرجعية بحكم الزوجة ما دامت في العدة بخلاف البائنة فلما تأبهما في زمان العدة الرجعية يرثه الآخر بخلاف ما لوماتها في العدة البائنة، نعم لو طلقها في حال الموت وولو بانتها ومات بهذا الضرر ترته إلى سنة من حين الطلب بشرط أن لا يكون الطلب بالتناسم منها، فلا ترت الاحتتالة والمباراة، وأن لا تتزوج، فلو طلقتها حال الموت وترتبت بعد انقضاء عدتها ثم مات الزوج قبل انقضاء السنة لم ترته، وإن لا يبرأ الزوج من المرض الذي طلقها فيه، فلو برأمه ثم مرض ولو مثل هذا المرض لم ترته، ولوماتها هي في مرضا قبل تمام السنة لم ترته إلا في العدة الرجعية.

مسألة 3 - لو نكح المريض في مرضه فان دخل بها أو برأ من ذلك المرض يتوارثان، وإن مات في مرضه ولم يدخل بطل العقد ولا مهر لها ولا ميراث، و
dies during his illness without consummation having taken place, the contract shall be terminated and the woman shall be entitled to neither any dower nor inheritance.

Likewise, if she dies during his illness contiguous with his death before consummation having taken place, the husband shall not be entitled to inherit her. If the woman marries, when she is ill and not the husband, and either of them dies, they shall be entitled to inherit each other. It shall make no difference if the consummation has taken place naturally or unnaturally, as apparently the condition is his death during that illness before his recovery and without the consummation taking place naturally or unnaturally. If the husband dies due to some other reason, the spouses shall not be entitled to mutual inheritance.

Apparently it makes no difference whether the illness is long or short. If the illness is like one occurring periodically in a way that it cannot be called his recovery during the interregnum, apparently there shall be no mutual inheritance between them if he dies during such illness, though it is more cautious to reach a compromise.

**Problem # 4.** If there are several wives, then the eighth portion in the presence of a child or a fourth in the child’s absence shall be equally distributed among them, and they shall be entitled to the fourth or eighth of the deceased’s estate.

There shall be no difference in obstructing her from her maximum share whether the child is born to her or to another wife, and whether the child was born of a permanent or temporary wife, and whether related with or without an intermediary. A wife divorced during the husband’s illness shall have her share in the fourth or eighth of the deceased’s estate with the conditions mentioned before.

**Problem # 5.** The husband shall inherit from the entire estate of the wife including both the mobile and immobile properties. However the wife shall inherit from the mobile property of the husband itself or its price, but she shall not be entitled to inherit from the land itself or its price, regardless of there being any agricultural farm, trees or a building etc. or not, but she shall be entitled to inherit from the price of the construction material as the girders, timber, wood, or the like, as well as in the price of the trees and date palm, without any difference in the kind of the buildings as the grindmill, public bath, shop, stable, etc. and in the trees being small or big or the dried ones ready to be felled but have not yet been felled, as well as the dry branches of trees and date palm if they are still not separated from the trees.

**Problem # 6.** The property from whose price the wife is entitled to inherit is the property that existed at the time of the husband’s death.

If there has taken place any growth or increase in it since the death of the husband until the time of its division, the wife shall not be entitled to anything from that growth or increase.

**Problem # 7.** The criterion for the price shall be at the time of its payment and not at the time of the husband’s death. If there has been an increased in the price since the husband death, the wife shall be entitled to share it. Likewise, if there has been any fall in the price, her share shall also be reduced accordingly.

Of course, it is more cautious to reach a compromise in case of the fluctuation in the two prices.
كذا لومانت في مرضه ذلك المتصل بالموت قبل الدخول لا يرثها، ولو زوجت و هي مريضة لا الزوج فانت أو مات يتوارثان، ولا فرق في الدخول بين القبل والدبر، كما أن الظاهر أن المعتبر موطى في هذا المرض قبل البرء لا يذهب، فلومات فيه بعلا أخرى لا يتوارثان أيضاً، و الظاهر عدم الفرق بين طول المرض وقصره، ولو كان المرض شبه الأدوار بحيث يقال بعدم برئه في دور الوقوف فالظاهر عدم التوثر لومات فيه والاحوط التصالح.

مسألة 4 - إن تعددت الزوجات فانتين مع وجود الولد فا ربع مع عدمه يقسم بينين بالسوية، فلهن البيع أو الثمن من الشرك، ولن فرق في منع الولد عن نصيبها الأعلى بين كونه منها أو من غيرها، أو كان من دامتعاً أو متقطعة، ولا بين كونه بلا واسطة أو معها، وزوجة المطلقة حال مرض الموت شريكة في البيع أو الثمن مع الشرافات المتقدمة.

مسألة 5 - يرث الزوج من جميع تركه زوجته من مرتين أو غيره، و ترث الزوجة من المركولات مطلقاً، ولا ترث عن الأراضي مطلقاً لا عيناً ولا قيمة سواء كانت مشغولة بالزرع والشجر والبناء وغيرها أم لا، و ترث القيمة خاصة من آلات البناء كالجذوع والحبوب والطبوب وغيرها، وكذا قيمة الشجر والنخل من غير فرق بين أقسام البناء كالرحي والمحم و الدكان والاصبط وغيرها، و في الأشجار بين الصغيرة والكبيرة والحبوب التي معدة للقطع ولم تقطع و الأعوان البشرية، و السفم كذلك مع اتصالها بالشجر.

مسألة 6 - المراد من الأعيان التي ترث الزوجة من قيمتها هي الموجودة حال الموت، فإن حصل منها نماء و زيادة عينية من حين الموت إلى حين القسمة لا نرث من تلك النماء و الزيادة.

مسألة 7 - المدار في القيمة يوم الدفع لا الموت، فلو زادت القيمة على القيمة حين الموت ترث منها، ولو نقصت نقصت من نصيبها، نعم الأحوصت مع تفاوت القيمتين التصالح.
Problem # 8. The method of evaluation of the (immovable) property is that the infrastructure and material of the building, the trees and date palms have to be evaluated until their demolition or destruction, and the woman is to be paid her share out of the evaluated price. If there is an increase in their value when they are intact until their demolition or destruction, she shall receive the surplus.

Problem # 9. The criterion is that the infrastructure and material must be intact at the time of the husband’s death. If the building has already been demolished and the trees felled before his death and they have remained in that position till the time of his death, the woman shall inherit from them like other movable property.

The movable property includes the fruits of the trees, the crop, and the seeds for sowing. So is the kettle fixed in the shop for cooking in it, as apparently it is also considered part of the movable property, while the wheel [for pulling water from the well] and the rod on which the vine rests are considered to be immovable property.

Problem # 10. According to the stronger opinion, the widow is entitled to the price, and she is allowed not to accept the articles themselves, as she is also not entitled to claim the articles themselves.

Problem # 11. The widow cannot without the consent of other heirs bring any change in the articles whose price she is entitled to receive, and it is more cautious for the heirs not to bring any change in them without her permission before the payment of their price [to her].

Problem # 12. If the father or paternal grandfather of a minor girl marries her to her equal (kuft) against a proper dower or more, the husband and wife shall inherit each other.

The same shall be the rule in case two minors {male and female] are married by their fathers or paternal grandfathers, rather even in case the girl is married to her equal without a proper dower while there is no ostensible harm in it not to speak of the case when there lies her interest in it.

The same is the rule when the judge marries them where he is allowed to do. Some of the suitable cases have already been mentioned under the Section on Marriage.

Problem # 13. Nowadays there is no system of inheritance by virtue of Walâ’ except by virtue of Imāmat. So if a person dies leaving behind none of the heirs from among the four Classes of heirs or any heir by virtue of Walâ’ of Emancipation, or of Guarantee for an offence, and not leaving behind the husband, the Imām, A.S., shall inherit him. If the sole heir is the widow, the residue after payment of a fourth to her shall go to the Imām, A.S. The authority for it, like other matters, during the period of Disappearance of the Waliyy al-Amr, [i.e., the Twelfth Imām], may Allāh, the Exalted hasten his Appearance, lies with a qualified and competent jurist.
مسألة 11 - لا يجوز للزوجة التصرف في الأعيان التي تستحق قيمتها بلا رضا سائر الورثاء، و الأحوط لسائر الورثاء عدم التصرف فيها قبل أداء قيمتها بغير إذنها.

مسألة 12 - لو زوجة صغيرة أو جدها لأبها بالكفو بمعاملة أو الأكبر يرثها الزوج وترثه، و كذا لو زوج الصغيرين أبوهما أو جدهما لأبيهما، بل لو كان الزوج بالكفو بدون مهر المثل مع عدم المفسدة فضلاً عا كان فيه الصلاح، و كذا لو زوج الحاكمة في ورد جاز له الزوج، وقد مر بعض ما يناسب المقام في النكاح.

مسألة 13 - الارت بسبب الولاء غير مبين إلا بسبب الامامة فن مات و ليس له وارث من الطبقات المتقدمة ولا بولاء العتق وضمان الجريرة ولم يكن له زوج يرثه الامام عليه السلام، ولو كان الورث الزوجة فقط بالقبيعة بعد الربع له عليه السلام، وأمره في عصر غيبة وفيما الأمر عجل الله تعالى فرجه كسائر ما للامام عليه السلام بيد الفقية الجامع للشرائط.
Addenda to Section Forty-Four

This Part has the following Chapters.

Chapter One- Inheritance of a Hermaphrodite (Khunthā)

**Problem # 1.** If an heir of the deceased is a Hermaphrodite, having the male and female organs, in case it is possible to determine by means of the specified or unspecified probabilities whether the heir is a man or a woman, there shall be no problem, and action shall be taken accordingly. If, however, it is not possible to do so, it shall be a difficult problem.

**Problem # 2.** The specified probabilities are as follows:

*Firstly*, that the person urinates always or mostly through one of the two passages in a way that urination through the other has been rare, almost like non-existent; otherwise, it shall be a difficult problem. He shall inherit according to passage of the organ through which he urinates. So if he urinates through the passage of the male organ, he shall have a share of a male, and if he urinates through the passage of the female organ he shall receive the share of a female.

*Secondly*, there is precedence of urination through the passage of one of the two organs always or mostly in a way that if he urinates through the passage of the other organ, it may be considered to be nothing. So if the urination through the passage of the male organ precedes that through the other one, he shall be entitled to the share of a male, while if the urination through the passage of the female organ precedes that through the other, he shall be entitled to the share of a female.

*Thirdly*, it is also said that if the urination has stopped first from one of the passages of the two organs always or mostly with the absence of the second indication, though there is some difficulty in deciding such a case, and so caution is not to be given up by reaching a compromise in the absence of other indications.

*Fourthly*, his ribs must be counted, so that if the number of his right ribs is more than that of the left one, he shall be declared to be and shall be entitled to the share of a male, but if the number of the ribs on both sides is equal, he shall be entitled to the share of a female.

**Problem # 3.** If there is absence of the specified indications, in case there are in him indications specially found in females, as having courses as experienced by females, or indications specially found in males as, for example, growth of beard, in case certainty is obtained, he shall be declared accordingly; otherwise, the problem shall be a difficult one.

**Problem # 4.** In case of a difficult hermaphrodite, that is, when the specified probabilities or
وأما اللواحق ففيها فصول:

الأول

في ميراث الحنفي

مسألة 1: لو كان بعض الوراث خنثى بأن كان له فرج الرجال والنساء فالمشروع أن تعيين كونه رجلاً أو امرأة بأحدى المرجحات المنصوبة أو غير المنصوبة فهو غير مشكل، ويعمل على طبقها، وإلا فهو مشكل.

مسألة 2: المرجحات المنصوبة أمرت: الأول أن يبول من أحد الفرجين دائماً أو غالباً بحيث يكون البول من غيره نادراً كالمعدوم، وإذا فحل إشكال، فبرث على الفرج الذي يبول منه، فان بال من فرج الرجال يبرث بيراثات الذكر، وإن بال من فرج النساء يبرث بيراثات الأنثى. الثاني: سبق البول من أحد الفرجين دائماً أو غالباً بنحو ما أعادته كالمعدوم لو بال منها، فان سبق مما للرجال يبرث بيراثات الذكر، وإن سبق مما للنساء يبرث بيراثات الأنثى. الثالث: قيل تأخر الانقطاع من أحد الفرجين دائماً أو غالباً مع فقد الأمارة الثانية، وفيه إشكال لا يترك الاحتياط بالتصالح مع فقد سائر الأمارات. الرابع: عند الأضلاع، فإن كان أضلاع جنبي الأنثى أكثر من الأيسر فهو من الرجال ويرث إثر الذكر، وإن كانتا متساويتين يبرث إثر الأنثى.

مسألة 3: لو فقدت العلامات المنصوبة فكان فيها علامات خاصة بالنسبة كرؤية الدم حسب ما ترى النساء أو خاصة بالرجال كأنبات اللحية مثلًا فإن حصل منها الاطمئنان يحكم بحسبه، وإلا فهو من المشكل.

مسألة 4: الحنفي المشكل أي الذي لا تكون فيه المرجحات المنصوبة ولا
the indications that may lead to certainty are not found in him, he shall take half of the male share and half of the female share.

Problem # 5. If a person has neither a male organ nor a female one, and he urinates through some other passage, as through his anus, then according to the stronger opinion, the matter shall be decided by casting lots.

Problem # 6. If a person has two heads on a single breast, or two bodies on a single loin, then the method for ascertainment is to waken one of them. So if he wakes up while the other does not, they shall be considered to be two persons, and so they shall take the shares of two persons. If, however, both of them wake up, he shall be entitled to the share of a single person. There are several offshoots of this case spread in the chapters on jurisprudence with some of them mentioned in the detailed books [of jurisprudence].

Chapter Two – Inheritance of Persons Drowned or Overwhelmed in Ruins

Problem # 1. If two persons entitled to inherit each other die at the same time, in a way that there is certainty about the coincidence of their death, there shall be no mutual inheritance between them, irrespective of the death of both of them being a natural death or that of one of them being natural death and that of the other being some other cause, or both of them dying due to the same cause or each of them dying due to separate causes. So the inheritance shall go to the person from among the heirs who has survived at the time of the death of the propositus. The same shall be the rule in case of the death of more than two persons.

Problem # 2. If two persons die a natural death or due to some other cause, and there is doubt about the coincidence or non-coincidence of their deaths, or when despite certainty about the non-coincidence there is doubt as to which of them died first and who died later, then if the date of the death of one of them is known, the other whose date of death is not known shall inherit him and not otherwise.

The same rule shall apply in case of there being more than one person, there being no difference in case of different in causes of their deaths, as already mentioned.

Problem # 3. If two persons die and there is doubt about there being coincidence, precedence or subsequence, without the knowledge of the dates of their death, if the cause of both of them was being drowned or overwhelmed in ruins, there would be no difficulty in their inheriting each other.

If, however, there was some other cause of their death, what so ever, or it was natural death, or there were different causes of their death, as to whether their case shall be decided by casting lots, or reaching a compromise, or it would be that of one drowned or overwhelmed in ruins, is a question that has several alternatives, the strongest being the last one, though caution by reaching a compromise shall be desirable, particularly when the death of both or one of
العلامة المؤيدة للأطفالن يرث نصف نصيب الرجال ونصف نصيب النساء.
مسألة 5 - لوم يكن لشخص فرح الرجال ولا النساء وخرج بوله من حل آخر كدب عنه الفلاقؤعمل بالقرعة.
مسألة 6 - لكان لشخص رأسان علي صدر واحد أو بدنا على حقو واحد فطريق الاستعلام أن يوقظ أحدهما فان انتبه دون الآخر فهل إن يورثن ميراث الاثنين، وإن انتبه يورث إرث الواحد، ثم إن هذا الموضوع فروعًا كثيرة جدا سبالة في أبواب الفقه مذكور بعضها في المفصلات.

الفصل الثاني

في ميراث الغرق والمهدوم عليهم

مسألة 1 - لومات إنثنان بينهما توارث في آن واحد بحيث يعلم تقارن موتاها فلا يكون بينهما توارث، سواء ماتا أو مات أحدهما حتيف أنف أو بسوب، كان السبب واحداً أو لكل سبب، فرث من كل منها الحي من وراثه حال موته، وذا الحلال في موت الأكبر من إنثنين.
مسألة 2 - لومات إنثنان حتيف أنف أو بسوب وشك في التقارن وعده أو علم عدم التقارن وشك في المتقدم و المتأخر فان علم تاريخ أحدهما الميعين يرث الآخر أي مجهول التاريخ منه دون العكس، وكذا في أكثر من واحد، ولا فرق في الأسباب كما تقدم.
مسألة 3 - لومات إنثنان وشك في التقارن والتقدم والتأخر ولم يوجد التاريخ فنكان سبب موتها الغرق أو الهدم فلا إشكال في إرث كل منها من الآخر، وإن كان السبب غيرهما أي مسب كان أو كان الموت حتيف أنف أو اختلفا في الأسباب فهل يحكم بالقرعة أو التصالح أو كان حكمه حكم الغرق والمهدوم عليهم؟ وهما، أفواها الآخر، وإن كان الاحتياط بالتصالح مطلوبًا سيا فيما كان
them had been natural death. The same rule shall apply in case of there being more than two persons.

Problem # 4. If two persons die, and there is certainty about the death of one of them being prior to the other, but there is doubt as to whose death was prior to the other's, and there is ignorance about the dates of their deaths, according to the stronger opinion, the matter is to be decided by casting lots, irrespective of the cause of their death being drowning or overwhelming in ruins, or some cause other than these two causes, or that of one of them being natural death.

Problem # 5. The manner of inheritance of both the parties is to suppose each of them to be alive at the time of the death of the other, taking the inheritance as it was at the time of the death of the other person. Then the inheritance received shall go to his surviving heir.

Of course, neither of them shall inherit out of what the other has inherited from him. If a son or a father dies, but it is not known as to which of them died first and who died later nor whether they died at the same time, the father having left a daughter other than the son who died with him, and he inheritance left by him is nine hundred [Dinārs], the dying son having left a son, and the inheritance left by him is seven hundred [Dinārs], then it shall be supposed that the father died first, the son having survived him, he shall inherit seven hundred [Dinārs] from the father, being two-third of his estate, and that shall go to his son, or the son's son of the deceased, and residue shall go to the daughter.

Again, it shall be supposed that the son died first, and the father survived him, the father shall inherit a hundred [Dinārs], being a sixth of the son's estate, that will be given to his daughter, the residue going to his son's son.

Problem # 6. It is a condition in the inheritance of both the parties that there must be no one obstructing in the inheritance of each of them.

If one of them is obstructed from inheritance, the other shall inherit him, in the same way as when one of them has no share or right in the inheritance, the one who is entitled shall inherit, so it is not a condition for the inheritance of one that the other should also be entitled to inherit him.

Chapter Three – Inheritance of the Majūsīs and other Infidels

Problem # 1. The Majūsīs and other groups of infidels marry persons who are prohibited among us (Muslim Shi‘as) in accordance with their own religion on the basis of what has been said. They also marry women who are allowed among us. So they have valid and invalid nasab and sabab.

Problem # 2. A Majūsī or other than him does not inherit a person with whom he has no valid
الفصل الثالث

في ميراث المجوس وغيرهم من الكفار

مسألة 1 - المجوس وغيرهم من فرق الكفار قد ينكحون الخمرات عندنا بقصد مذهبهم على ما قالوا، وقد ينكحون الخمرات عندنا، فلم نسب وسبب صحيحان وفاسدان.

مسألة 2 - لا يرث مجوس ولا غيره من لا يكون بينه وبينه نسب أو سبب
connection by *nasab* or *sabab* according to his own religion.

**Problem # 3.** If there is a valid *nasab* or *sabab* according to them and it is invalid among us, as when any of them marries his mother or daughter, and a child is born to them, whether there shall be absolutely no mutual inheritance between the child and its parents as well as between the husband and wife, as among us mutual inheritance is created by valid *nasab* or *sabab*, or the mutual inheritance is created by *nasab* even if it is invalid or by valid but not invalid *sabab*, or it is created in both cases when both *nasab* and *sabab* are valid or invalid, there are alternatives and opinions in this regard, the strongest being in favour of the latest alternative.

**Problem # 4.** If two or more causes of inheritance are combined in a person, he/she shall inherit by virtue of all of them, as when mother is also the wife of a person, she shall inherit her share of a fourth or an eighth for being a wife as well as the share of being a mother. If she dies, her husband shall take the share of a husband and a son.

**Problem # 5.** If two causes of inheritance are combined in a person, one of them obstructing the other, he/she shall inherit by virtue of the obstructing one only, as when there is a daughter who is also a sister on the mother's side, she shall have the share of a daughter but not of a sister. In case there is a daughter who is also the daughter's daughter, she shall take the share of a daughter only.

**Problem # 6.** If a woman has two or more husbands, and it is allowed in their religion, and suppose she dies, apparently the half or fourth being the share of a husband shall be divided equally between or among the husbands, as would be the case when a man has several wives. If one of the husbands dies, the woman shall take her share of a fourth or eighth. If both the husbands die, she shall receive her share of a fourth or eighth from each of them.

**Problem # 7.** If they marry by *sabab* that if invalid among them, but valid among us, it shall not be far from the application of the rule of valid *sabab* in the case, but what they have made obligatory for themselves shall be applied when it is against their interest.

**Problem # 8.** A Muslim does not inherit by an invalid *sabab*. If he marries any of the women from among the prohibited degrees, they shall not inherit each other by such marriage, even if it is supposed to be due to a semblance of right. If a man marries his foster mother or his mother by *Zināʾ*, they shall not inherit each other.

**Problem # 9.** A Muslim inherits by a valid *nasab* as well as an invalid *nasab* if it is due to a semblance of right. If a man believes that his mother is a stranger and he marries her, and a child is born to them, the child shall inherit him and both the husband and wife shall inherit the child. In case of Muslim having semblance of right some subsidiary rules are mentioned that are imagines in case of Majūṣīs as well.

There is no difference in a semblance of right whether it occurs with regard to the subject or the law.
صحيح في مذهبه.

مسألة 3 - لو كان نسب أو سبب صحيح في مذهبه و باطل عندها كأنها لو نكت أحدهم بأمه أو بنته أو أولدها فهل لا يكون بين الولد وبينها و كذا بين الزوجة و الزوج مطلق، ويفها التوثر بالنسب و السبب الصحيح عندنا، أو يكون التوثر بالنسب ولو كان فاسداً و بالسبب الصحيح دون الفاسد، أو يكون بالأمرين صحيحهما و فاسدهما؟ وجوه و أقوال أقوالهم الأخرى.

مسألة 4 - لو اجتمع موجبان للزلة أو أكثر لأحدهم يرث بالجميع مثل أم هي زوجته، فهل نصيب الزوجة من الربع أو الثلث و نصيب الأمومة، ولومانة فله نصيب الزوج والابن.

مسألة 5 - لو اجتمع مبان و كان أحدهما مانعاً من الآخر و رث من جهة المانع فقط مثل بنت هي أخت من أم، فهل نصيب البنت لا الأخت، و بنت هي بنت بنت، فله نصيب البنت فقط.

مسألة 6 - لو كان لأمارة زوجان أو أكثر و صبح في مذهبه فانت فالظاهر أن إرث الزوج أي النصف أو الربع يقسم بينهم بالإسراع كارت الزوجات منه، ولو مات أحد الزوجين فله من نصيبها من الربع أو الثلث، ولومانة فله من كل منها نصيبها من الربع أو الثلث.

مسألة 7 - لو تزواجوا بالسبب الفاسد عندهم و الصحيح عندنا فلا يعد جربان حكم الصحيح عليه، و لكن ألزموا فيها عليهم بما ألزموا به أنفسهم.

مسألة 8 - المسلم لا يرث بالسبب الفاسد، فلو تزوج أحد مهاربه لم يتورثا بهذا النزوج و إن فرض كونه عن شيبة، فلو تزوج أمه من الرضاع أو من الزنا فلا يتورثا به.

مسألة 9 - المسلم يرث بالنسب الصحيح و كذا الفاسد لو كان عن شيبة، فلو اعتقد أن أمه أجنبية فتزوجها أو أولد منها يرث الولد منها و هما منه، فيأتي في المسلم مع الشبه الفروع التي تنتصر في المجوس. ولا فرق في الشبه بين الموضوعة
Problem # 10. If the *Ijtihād* of two jurists differ relating to the validity or invalidity of a marriage, as the marriage of a man with a woman with whose mother he has had an illicit intercourse, or with a woman who is the product of the semen of a fornicator. In case a man in whose opinion it is valid or his follower marries such a woman, another person in whose opinion it is valid shall not declared it valid, and no mutual inheritance shall be created between the husband and wife in whose opinion such marriage is invalid.
مسألة 10- لو اختلف اجتهاد قييين في صحة تزويج وفساده فتنزويج أم المزني بها أو المتعلقة من ماء الزاني فتنزوج القاتل بالصحة أو مقادمه ليس للقاتل بالفساد ترتيب آثار الصحة عليه، فلا توارث بينهما عند المبطل.
SECTION FORTY – FIVE
ADMINISTRATION OF JUSTICE (QADĀ)

Qadā means issuing judgment on people for the settlement of their dispute on the following conditions. The office of a judge is an honourable position confirmed by Allāh the Exalted for the Prophet, Peace be upon him and his Descendants, and by the Prophet for the impeccable Imāms, Peace be upon them, and by them for the jurists possessing the following qualifications.

It is not a secret that this office is of a great risk. So it has come down in a Tradition that a judge occupies a position on the precipice of the Hell.

It has been reported that the Amīr al-Muminīn (‘Ali), A.S., has said (to one of his judges): “O Shurayh, you have occupies a seat where no one sits except a prophet or the successor of a prophet or a miserable person.”

So also it has been reported that Abū ‘Abbālāh (Imām Ja‘far al-Ṣādiq), A.S., has said: “Beware of the position of a ruler, because it is certainly meant for an Imām who should be fully conversant with administering justice among the Muslims, for a prophet or a successor of a prophet.” It has come down is a report that “one who issued a judgment in a case involving a small amount of) two Dirhams without reference to what has been sent down by Allāh the Mighty and Glorious, committed an act of infidelity.” Another report says: “The tongue of a judge lies between two smoldering embers of fire until he issues a judgment in a dispute between the people. Either he is blessed with a place in the Paradise or condemned with a place in the Hell.”

It has been reported that Abū ‘Abbālāh, (Imām Ja‘far al-Ṣādiq), A.S., has said: “The judges are of four categories. Three of them occupy a place in the Hell, while of them occupies a place in the Paradise. If a person gives his judgment based on injustice willfully, he occupies a place in the Hell. If a person gives his judgment based on injustice unwittingly, he also occupies his place in the Hell. If a person gives his judgment based on justice unwittingly, he is also destined with a place in the Hell. (Finally) if a person gives his judgment based on justice with the knowledge of its being based on justice, he shall be blessed with a place in the Paradise.”

If the judgment of a person involves a juristic verdict (fatwā), it shall also include the punishment for a (wrong) juristic verdict. So there is an authentic report from Abū Ja‘far, (Imām Bāqir), A.S., saying: “Whosoever gives a juristic verdict to the people without knowledge and guidance from Allāh, he is cursed by the Angels of Blessing and the Angels of Torment, and it will be followed by the burden of punishment for the act of the person who acts upon his juristic verdicts.”
كتاب القضاء

وهو الحكم بين الناس لرفع التنافع بينهم بالشرائط الآتية، ومنصب القضاء من المناصب الجليلة الثابتة من قبل الله تعالى للنبي صلى الله عليه وآله ومن قبله للائمة المعصومين عليهم السلام، ومن قبلهم للفقيه الجامع للشرائط الآتية. ولا يعني أن خطره عظيم، وقد ورد «أن القاضي على شفير جهنم» وعن أمير المؤمنين عليه السلام أنه قال: «يا شريح قد جلست مجلساً لا يجلسه إلا نبي أو وصي نبي أو شقي» وعن أبي عبد الله عليه السلام «انتقوا الحكومة فإن الحكومة إنما هي للعالم العالم بالقضاء العادل في المسلمين لنبي أو وصي نبي» وفِي رواية (من حكم في در همّين بغير ما أنزل الله عزوجل فقد كفر» وفِي أخرى لسان القاضي بين جرتين من النار حتى يقضي بين الناس فاما في الجنة وما في النار» وعن أبي عبد الله عليه السلام قال: «القضاء أربعة: ثلاثة في النار وواحد في الجنة، وجل قطر بجروح وهو يعلم فهو في النار، وجل قطر بجروح وهو لا يعلم فهو في النار، وجل قطر بالحق وهو لا يعلم فهو في النار، وجل قطر بالحق وهو يعلم فهو في الجنة» ولو كان موقعاً على الفتوى يلبثه خطر الفتوى أيضاً، ففي الصحيح قال أبو جعفر عليه السلام: «من أفق الناس بغير علم ولا هدى من الله لعنه ملكة الراحة وملائكة العذاب، وله ورث من 94»
Problem # 1. It is forbidden for person to give judgment among the people even in cases involving trivial things when he is not competent to do so. If he does not find in himself competence of a just Mujtahid possessing all the qualifications for issuing juristic verdict and judgment, it is forbidden for him to hold such office, even if the people consider him competent for it. It is the collective duty obligatory on the people. Sometimes its obligation is determined, and that in a case when in a locality or nearby where bringing a case of dispute is not cumbersome, there is no competent person to adjudicate it.

Problem # 2. The duty of acting as a judge is not assigned to a jurist when there is a person possessing competence, even if both the parties to the dispute or the people (of the locality) select him.

Problem # 3. It is approved to assign the duty of a judge to a person who is himself satisfied that he can perform the duty, and it is better to give him up when there is a person possessing competence in view of the risk and suspicion in it.

Problem # 4. It is forbidden to refer cases to persons who issue judgment based on injustice, i.e., to persons who do not possess all the qualifications of a judge. If a case is referred to such persons, it would amount to insubordination (of law), and whatever is received by such judgment shall be unlawful if it were a debt, but there is hesitation if it were a capital asset except when the fulfillment of the right depends on reference of the dispute to them, in which case it is not far from being permissible, specially when there is harm for the interested person. Likewise, it shall be lawful if it depends on a false oath.

Problem # 5. It is permissible to provide sustenance to a person who has not been assigned the duty of acting as a judge, even if he is able to support himself. However, in case he is able to support himself, it is better for him not to receive it. If, however, the duty is assigned to him, it would be permissible for him in case he needs it. But in case he does not need it, there would not be free from objection, although according to the stronger opinion, it would be permissible. It is more cautious to give up the receipt of wages from one or both the parties to a dispute, even in case he has not been assigned the job of a judge. If, however, he were needy, he may receive some wages or remuneration for some of the preliminary work of judgment.

Problem # 6. Taking and giving bribes is prohibited if it is meant to obtain a judgment based on injustice, but if the fulfillment of one's right depends on giving bribe, it is permissible for the person giving the bribe, though it is prohibited for the person taking it. Whether it is permissible to pay bribe when a person is in the right, but the fulfillment of the right does not depend on the payment of the bribe, or not, is a question that is replied by some jurists in the affirmative, but it is more cautious to give up its payment, rather this latter opinion is not free from strength, and it is obligatory on its recipient to return it to the briber. In all these cases there is no difference whether the bribe is in the form of bribe, or free gift, donation (hadiya), or considerate sale (bay'-i mahābātī), or the like.
عمل بفتياه».

مسألة ۱ - يحرم القضاء بين الناس ولو في الأشياء الحقيقة إذا لم يكن من أهله، فلو ل يرتفع به جهداً عادلاً جامعاً لشروط الفتيا وحكم حرم عليه تخديه، وإن اعتедак الناس أهليته، ويجب كفاية على أهله، وقد يتعين إذا لم يكن في البلد أو ما يقرب منه ولا يتعذررفعه إليه من بالكفية.

مسألة ۲ - لا يتعين القضاء على القيبي إذا كان من بالكفية ولو اختار الترافع أو الناس.

مسألة ۳ - يستحب تصدي القضاء من يثق بنفسه القيام بوظائفه، والأول تركه مع وجود من بالكفية، لا فيه من الخطر أو الربمه.

مسألة ۴ - يحرم الترافع إلى قضاة الجور، أي من لم يجتمع فيهم شرائح القضاء، فلو ترافع إليه كان عاصياً، وما أخذ بحكمهم حرام إذا كان ديناً، وفي العين إشكال إلا إذا توقف استفاء حقه على الترافع إليه، فلا بعد جوازه.

سيا إذا كان في تركه حرج عليه، وكذا لو توقف ذلك على الحلف كاذباً جاز.

مسألة ۵ - يجوز لم يتعين عليه القضاء الارتقاء من بيت المال ولو كان غنياً، وإن كان الأولي الترك مع الغني، ويجوز مع تعمية عليه إذا كان محتاجاً، ومع كونه غنياً لا يتخلو من إشكال وإن كان الأقوى جوازه، وأما أخذ الجمل من المحتاجين أو أحدهم فالأحوز الترك حتى مع عدم التعين عليه، ولو كان محتاجاً يأخذ الجمل أو الأجر على بعض القدمات.

مسألة ۶ - أخذ الرشوة ويعطاؤها حرام إن توصل بها إلى الحكم له بالباطل، نعم لو توقف التوصيل إلى حقة عليها جاز للدفع وإن حرمه على الآخذ، وله يجوز الدفع إذا كان عقفاً ولم يتوقف التوصيل إليه عليها، قال: نعم. والأحوز الترك بل لا يخلو من قوة، يوجب على المرتشي إعادته إلى صاحبه من غير فرق في جميع ذلك بين أن يكون الرشوة بعنوانه أو بعنوان الهدية أو الهمة أو البيع المحادي ونحو ذلك.
Problem # 7. Some jurists are of the opinion that in case of a person in whose favour or against a testimony is not entertained, the judgment in his case is also not enforced, as the case of the testimony of a child against his father or of an enemy against his enemy. However, according to the stronger opinion it is enforced, although we have held against the acceptance of his testimony.

Problem # 8. If two disputant parties refer their dispute to a qualified jurist, and he considers the facts of the case, and issues judgment according to the judicial standards, it is permissible for them to refer their case to another judge, and the other judge is not authorized to consider the case and reverse the previous judgment. Rather even if both the parties to the dispute agree to the subsequent judgment, according to the guiding principle it is not permissible. Of course, if one of the disputants claims that the first judge was not qualified, as when he claims that he did not possess the qualification of a Mujtahid or soundness of character (‘adālat) at the time of giving the judgment, his claim shall be entertained, and it is permissible for the second judge to consider it. If his incompetence for acting as a judge is established, his judgment shall be reversed, as it is also permissible to reverse the judgment if it did not fulfill the requirements of law in a way that the invitation of attention of the first at the very moment refers to the existence of his negligence. But the reversal of the judgment shall not be permissible in case it was based on his individual judgment (ijtihād), the claim of the disputant shall not be entertained, even if he claims that he has been wrong in his individual judgment. As regards the reversal of the judgment in case which is based on an opinion involving individual judgment (ijtihād), it is not permissible, and the claim of the plaintiff shall not be entertained even if he claimed a mistake in the individual judgment of the judge.

Problem # 9. If the judge needs an interpreter to hear the plaint or the reply of the defendant or the testimony, it shall be necessary that there should be two witnesses of sound character.

Chapter One – Qualifications of a Judge
And their Adjuncts

Problem # 1. The necessary qualifications of a judge are majority (bulūgh), sound mind (‘aql), integrity of character (‘adālat), absolute independence of judgment, masculinity, cleanness of birth (legitimacy of birth) and better knowledge than others in the locality or its neighbourhood, according to the more cautious opinion. Moreover, according to the most cautious opinion he should possess a memory that is not subject to amnesia. Rather if his forgetfulness is such as deprives him of confidence, according to the stronger opinion, it shall not be permissible for him to act as a judge. As regards giving judgment in writing (by a judge suffering from amnesia), there is difference of opinion on its being a condition, and according to the more cautious opinion, it is a condition that a judge must have a sound eye-sight, although its absence is also not devoid of permissibility.

Problem # 2. The established qualifications in a judge include a passion and adherence beneficial for knowledge, certainty and just evidence and a proof of individual judgment and
مسألة ٧ - قبل من لا يقبل شهادته لشخص أو عليه لا ينفذ حكمه كذلك كشهادة الولد على والده و الخصم على خصمه، و الأقوى نفوذه وإن قلنا بعدم قبول شهادته.

مسألة ٨ - لو رفع المدعيان اختصاصهما إلى فقيه جامع للشريعة فنظر في الواقعة و حكم على موالين القضاء لا يجوز لهما الرفع إلى حاكم آخر، وليس للحاكم الثاني النظر فيه ونقضه، بل لو تراضى الخصمان على ذلك فماتجه عدم الجزاء، نعم لو ادعى أحد الخصمين بأن الحاكم الأول لم يكن جامعاً للشريعة - كأن ادعى عدم اجتهاده أو عدلته حال القضاء. كانت مسموعة يجوز للحاكم الثاني النظر فيها، فإذا ثبت عدم صلواه للقضاء نقض حكمه كما يجوز النقض لو كان مخالفاً لضرورة الفقه بحيث لو تبته الأول يرجع بجرده لظهور غفلته، وأما النقض فإ岼 يكون نظرياً اجتهادية فلا يجوز. ولا تسمع دعوى المدعى ولو ادعى خطاها في اجتهاده.

مسألة ٩ - لو افتقر الحاكم إلى مترجم لسماع الدعوى أو جواب المدعى عليه أو الشهادة يعتبر أن يكون شاهدين عدلين.

المقول في صفات القاضي
وما يناسب ذلك

مسألة ١ - يشترط في القاضي البصق و العقل و الإيان و العدالة و الاجتهاد المطلق و الذكورة و طهارة المولد و الأعالية من في البلد أو ما يقربه على الأحوات، و الأحوات أن يكون ضابطاً غير غالب عليه النسيان، بل لو كان نسيانه بحيث سلب منه الاطمئنان فالأقوى عدم جواز قضايته، وأما الكتابة في اعتبارها نظر، و الأحوات اعتبار البصر و إن كان عدمه لا يخلو من وجه.

مسألة ٢ - تثبت الصفات المعتبرة في القاضي بالوجود و الشهاب المفيد للعلم.
possession of best knowledge being indispensable, and that he must be one of the experienced persons (ahl-i khibrah).

Problem # 3. It is also indispensable that qualifications required in a judge must be established before each of the litigants, and it is not sufficient to be established before one of them. 

Problem # 4. It is difficult for a judge to give his judgment according to the juristic verdict (fatwā) of another Mujtahid. It is indispensable for him to give the judgment according to his own opinion and not according to another’s opinion, even if the other one possesses better knowledge.

Problem # 5. If each of the plaintiff and the defendant select a separate judge for the settlement of the dispute, it is not far from being justified to give preference to the selection of the plaintiff when both the judges possess equal knowledge. Otherwise, it is more cautious to give preference to the one possessing better knowledge. If each of them claim preference from one aspect and are denied preference from another aspect, then apparently in case of equality of knowledge, recourse shall be had to casting lots.

Problem # 6. If one of the members of the community (ra‘iyyat) has a claim against a judge, and he files a suit against him before another judge, the other judge shall admit the claim and summon the (defendant) judge, and the latter shall be obliged to comply with the summons, and the adjudicating judge shall observe a behaviour with him equal to the one with the plaintiff as contained in the following procedure.

Problem # 7. It is permissible for the other ruler to enforce the judgment issued by the judge; rather it is obligatory to do so. Of course, if there is doubt in the judge’s being qualified, or possessing integrity of character or other qualifications required in a judge, it is not permissible to do so except after attaining full satisfaction, as it is not permissible to reverse his judgment due to doubt or suspicion in the issuance of his judgment according to the law. In case of his knowledge about his lack of competence, his judgment shall be reversed.

Problem # 8. It is permissible for a judge to give judgment in case relating to the rights of the subject or the public (huqūq al-nās) on the basis of his personal knowledge without any clear evidence, admission or oath. The same rule applies to the case relating to the divine rights (huqūq –Allāh, the Exalted).

Rather it is not permissible for him to give his judgment on the basis of the legal evidence (bayyina) when it is contrary to his own knowledge, or on the basis of the oath that is false in his opinion. Of course, it is permissible for him not to take up the case for adjudication in such case when the duty to hear the case is not assigned to him.

Problem # 9. If the suit of two disputants is brought before him in a case in which he had previously given judgment, it is permissible for him to give his judgment according to the present facts of the case even when he remembers his previous judgment, although he may not recollect the ground on which he gave his previous judgment, even if he does not remember his judgment and evidence is adduced before him, it is permissible for him to give his judgment.
أو الاطمئنان والبيئة العادلة، والشاهد على الإجهاد أو الأعلامية لأبد وأن يكون من أهل الخبرة.

مسألة 3 - لابد من ثبوت شرائط القضاء في القاضي عند كل من التراقبين، ولا يكفي الثبوت عند أحدهما.

مسألة 4 - يكفي للقاضي القضاء بفتوح المجتهد الآخر، فلا يلزم له من الحكم.

مسألة 5 - لو اختار كل من المدعى والمنكر حاكماً لرفع الخصوم، فلا يعد قديم اختيار المدعى له كان القاضيان متساويين في العلم، ودلال الأدلة، ولو كان كل منهما مدعياً من جهة ومنكراً من جهة أخرى.

مسألة 6 - إذا كان لأحد من الرعية دعوى على القاضي فرفع إلى قاضي آخر سمع دعواه وأجيبه، يجيء على القاضي إجابته، ويعمل عليه الحكم في قضية معاملته من مدعية تساوي في الآداب الآنية.

مسألة 7 - يجوز للحاكم الآخر تنفيذ الحكم الصادر من القاضي، بل قد يجيب، نعم لوسن كان اجتهاده أو عدلته أو سائر شرائطه لا يوجد إلا بعد الإحراز كنا لا يجوز نقص حكمه مع الشك واحتمال صدور حكمه صحيح، ومع علمه بعدم أهليته ينقض حكمه.

مسألة 8 - يجوز للقاضي أن يحكم بعلمه من دون بيئة أو أقر أو حلف في حقوق الناس، وكذا في حقوق الله تعالى، بل لا يجوز له الحكم بالثقة إذا كانت مخالفة لعلمه، أو إهلاً من يكون كاذباً في نظره، نعم يجوز له عدم التصدي للقضاء في هذه الصورة مع عدم التبين عليه.

مسألة 9 - لو ترافعا إليه في إقامة قد حكم فيها سابقًا يجوز أن يحكم بها على طبقاً فعلًا إذا تذكر حكمه وإن لم يذكر مستنده، وإن لم يتذكر الحكم فتميل البيئة عليه جاز له الحكم، وكيما لو رأى خطأ وخلفه وحصل منها القطع أو
The same shall be the case when he sees his own hand and stamp and obtains full satisfaction and confidence about it. If he gives his latest opinion contrary to the previous one, it shall be permissible to enforce it, except when there is knowledge to the contrary, as when his latest judgment is contrary to the essential judgment or final consensus, in which case his latest judgment shall be reversed.

**Problem # 10.** It is permissible for a judge to ratify the judgment of one who has the competence to act as a judge without making any enquiry about the ground or authority on which it is based. It is not permissible for him to judge the actual facts despite having no knowledge about his agreement with his opinion. Whether he has the authority to judge if he has such knowledge or not? Apparently there is no effect on his judgment after the judgment of the first judge according to the actual facts, although it may have effect in enforcement, which is also ineffective in the actual facts, although it is sometimes effective in the ratification. There is no difference in the permissibility of the ratification whether the judge issuing the judgment is alive or dead, and whether he continues to be competent (to issue the judgment) or not, provided his ratification is not meant to deceive others by showing that he is still competent.

**Problem # 11.** It is not permissible to ratify the judgment issued by one who is not competent to do so irrespective of the fact whether he is non-Mujtahid and other than one having integrity of character, or the like, even if he knows that it is in conformity with the rules; rather is it obligatory to annul it in case it is brought before him under any circumstances.

**Problem # 12.** It is permissible for a later judge to ratify the previous judgment of another judge when he knows that it was issued either orally or repeatedly or the like, but there is difficulty in its permissibility in the admission of the person sentenced. It is sufficient neither to notice his own handwriting and signatures nor adducing evidence in its favour. Of course, if evidence is adduced in order to prove that he has given judgment to that effect, then apparently it is permissible.

**Chapter Two – Duties and Functions of a Judge**

This Chapter comprises a few matters.

**First.** It is obligatory to observe equality in the behaviour with the parties to litigation, even if they differ in nobility or inferiority of their position, as regards salutation, and its response, seating, looks, speech, asking to keep quiet, cheerfulness of the countenance, and other etiquettes and various respects, and to observe justice in the issuance of judgment.

As regards observation of equality in inclination of the heart, it is not obligatory.
الطامخانة به، ولو تبدل رأيه فعلاً مع رأي سابقه الذي حكم به جاز تنفيذ حكمه إلا مع العلم بخلافه، بأن يكون حكمه خالقاً لحكم ضروري أو إجماع قطعي، فيجب عليه نقضه.

مسألة 10 - يجوز للحاكم تنفيذ حكم من له أهلية القضاء من غير الفحص عن مستندته، ولا يجوز له الحكم في الواقعة مع عدم العلم بموافقته لرأيه، وهل نه الحكم مع العلم به؟ الظاهر أنه لا أثر لحکمه بعد حكم القاضي الأول بحسب الواقعة، وإن كان قد يؤثر في إجراء الحكم كالتنفيذ فانه أيضاً غير مؤثر في الواقعة وإن يؤثر في الاجراء أحياناً، ولا فرق في جواز التنفيذ بين كونه حياً أو ميتاً، ولا بين كونه باقياً على الأهلية أم لا بشرط أن لا يكون إمضاءه موجباً لاغراء الخير لأنه أهل فعلاً.

مسألة 11 - لا يجوز إمضاء الحكم الصادر من غير الأهل سواء كان غير مجهذ أو غير عادل و نحو ذلك وإن علم بكونه مواقفاً للقواعد، بل يجب نقضه مع الرفع إليه أو مطلقاً.

مسألة 12 - إذا يجوز إمضاء حكم القاضي الأول للثاني إذا علم بصدور الحكم منه إما بنحو المشافهة أو التواتر نحو ذلك، وفي جوازه بقرار الحكم عليه إشكال، ولا يكفي مشاهدة خطه و إمضاءه، ولا قيام البيعة على ذلك، نعم لو قامت على أنه حكم بذلك فالظاهر جوازه.

القول في وظائف القاضي

وهي أمور: الأول - يجب التسوية بين الخصوم، و إن تفاوتاً في الشرف و الضعة، في السلام، الرد، الاجلاء، النظر، الكلام، و الانتصات، و طلاقة الوجه، و سائر الآداب، وأنواع الأكرام، والعدل في الحكم، و أما التسوية في الميل بالقلب فلا يجب، هذا إذا كنا مسلمين، و أما إذا كان أحدهما غير مسلم.
This is the case when both the parties are Muslims. But when one of them is a non-Muslim, it is permissible to pay more respect to the Muslim than his opponent. But as regards the observation of justice in issuance of judgment, it is obligatory in all circumstances.

Second. It is not permissible for a judge to suggest either of the parties to a suit anything that may help him against his opponent, as when that person claims out of presumption but the judge suggests to him to claim out of certainty so that his claim may be entertained, of that person claims the discharge of his trust or payment of his debt and the judge suggests to him to deny it. Likewise, it is not permissible for a judge to inform the person the procedure for protest and the method of overcoming his opponent.

This is the case when he does not know that he is on the right, otherwise it will be permissible, as it is permissible for him to give judgment based on his knowledge. But it is permissible (to do so) for a person other than a judge with the knowledge of the legality of the party’s claim, but it is not permissible with the knowledge to the contrary, and in case of his ignorance it is more cautious for him to give it up.

Third. If the parties to a suit enter (the courtroom) one after another, the judge shall start hearing the case from the one who entered first except when the first to enter agrees to be heard later, without there being any difference on the ground of nobility or inferiority of position or masculinity and femininity. If, however, they enter simultaneously or there is no knowledge as to who entered first and there is no way to determine it, recourse shall be had to casting lots in case there is dispute between on the issue.

Fourth. If the defendant interrupts the claim of the plaintiff by another claim, the judge shall not pay any heed to it until the defendant answers to the claim of the plaintiff, and the judgment on it is finalized. Then the defendant shall commence his claim anew, unless the first plaintiff agrees with the precedence of hearing the defendant’s claim.

Fifth. If any of the parties to a suit takes initiative in submitting his claim, he shall have precedence over the other. If both of them take the initiative simultaneously, the person on the right of his opponent shall be heard first. If the parties to a suit happen to belong to another place while the other belongs to the same place where the court is situated, they shall be treated at par, except when there is apprehension that the delay would be harmful to one of them, so he shall be given precedence in order to avoid the harm. But there is hesitation in it.

Chapter Three – Conditions for Hearing the Dispute

It may be understood that the determination of the plaintiff and defendant in the common law is like all the other issues of the common law, and there are no particular terms for them in the sacred Shari’ah Law, and it is understood by the closer definitions, and the bulk of the definitions are related to the determination of the situation, as they have said: He is one who if he abandons, it is abandoned, or one who claims against the principles, or he one in the position of proving something against his opponent. It is better to make it dependent on the common law or usage. According to the common law or usage the plaintiff and defendant are
يجوز تكريم المسلم زائداً على خصميه. و أما العدل في الحكم فيجب على أي حال.

الثاني - لا يجوز للقضاة أن يلقن أحد الخصمين شيئاً يستظهر به على خصميه كأن يدعى بنحو الاحتمال فيلقنه أن يدعى جزأ حتى تسمع دعوته أو يدعي أداء الأمانة أو الدين فيلقته الانكار، وكذا لا يجوز أن يعلمه كيفية الاحتجاج و طريقة الغلبة، هذا إذا لم يعلم أن الحق معه و إلا جاز كيا جاز له الحكم بعلمه، و أما غير القاضي فيجوز له ذلك مع علمه بحصة دعوته، ولا يجوز مع علمه بعدمها، ومع جهله فالأخوة الترك.

الثالث - لو ورد الخصوم مترتين بدأ الحكم في سماح الدعوى بالأول فالأول إلا إذا رضي المتقدم تأديبه، من غير فرق بين الشريف و الوضع و الذكر و الأنثى، و إن وردوا معاً أو لم يعلم كيفية ورودهم ولم يكن طريق لاثبتته يقر ببينهم من التشاو.

الرابع - لو قطع الدعوى عليه دعوى المدعى بدعوتي لم يسمعها حتى يجب عن دعوى صاحبه، و تنتهي الحكومة ثم يستأنف هو دعوته إلا مع رضا المدعى الأول بالتقدم.

الخامس - إذا بدأ أحد الخصمين بالدعوتي فهو أولى، و لو ابتدا معاً يسمع من الذي على يمين صاحبه، ولو اتفق مسافر و حاضر فيها سواء لم يستضرب أهدها بالتؤدي، فقدم دفعاً للضرر، وفيه ترد.

الفقر في شروط سماح الدعوى

و لعلم أن تشخيص المدعى و المنكر عرف كسائر الموضوعات العرفية، و ليس للشعار الأقداس اصطلاح خاص فيها، وقد عرف بعارف متقاربة و التعاريف جلها مربوطة بتشخيص الموردن، كقولهم: إنه من لو ترك ترك، أو
distinguished according to the nature of the suit and the party who suffers by it, and it is like challenging each other in order of the discomfort or suffering.

Problem # 1. There are several conditions for hearing the suit filed by a plaintiff, some of which are related to the plaintiff, while the others relate to the plaint, the defendant and the subject of the plaint.

First: Attainment of adulthood or majority (bulūgh). A plaint is not heard from a minor even if he is an adolescent (murāhiq). Of course, if discreet minor files a suit before a judge for oppression done to him, then if he has a guardian (wali), the judge shall call him to file the suit; otherwise, he shall summon the defendant acting as the guardian of the minor, or shall appoint an administrator (Qayyim), or authorize an agent (vakil) for the plaint, or act himself as the guardian of the minor, and ask the defendant to take an oath if there is no evidence. If the defendant forwards the oath to the minor, the oath of the minor has no legal value. If the agent or the guardian has knowledge about the legality of the plaint, it shall be permissible for them to take oath.

Second: Soundness of Mind. A suit filed by an insane person shall not be entertained, even if the insanity is periodical when the suit is filed in a state of insanity.

Third: Absence of Interdiction due to idiocy, when the suit is meant for enjoyment of the right of financial disposal. As regards an idiot before imposition of interdiction, a suit filed by him shall be entertained absolutely.

Fourth: Should not be a stranger to the suit, so that if a person files a suit for the recovery of a debt of a stranger from another person, it shall not be admitted. So it is indispensable for a person filing a suit to have some connection with subject of the plaint like guardianship or agency of the master of the plaint or the subject of the plaint has a connection with a right of that person.

Fifth: The plaint should have some role if the judgment is given in accordance with it. If a person claims that the land is shifting (mutaharrik) and the other party denies it, the suit shall not be entertained. To the same category belongs the case if the plaintiff claims that the property belongs to a trust or a free gift with the capitulation that there shall be no transfer of possession, or there is a claim for difference in sale or its absence with the capitulation of the cancellation of the sale in case of presumption of its execution, as when the plaintiff claims that the sale has been usurious but the other party denies the execution of the actual transaction, or when the plaintiff claims something impossible, or claims that the grapes in possession of another person belong to his garden, and that he has no claim but this, the plaint shall not be entertained, because after it is proved by evidence, it shall not be taken from another due to absence of proof of its belonging to him.
يدعي خلاف الأصل، أو من يكون في مقام إثبات أمر على غيره، أو الأول الايكال إلى العرف، وقد يختلف المدعو و المنكر عرفًا بحسب طرح الدعوى و مصبه، وقد يكون من قبيل التدابير بحسب المصب.

مسألة 1 - يسترط في سماع دعوى المدعو أمر بعضها مربوط بالمدعو، وبعضها بالدعوى، وبعضها بالمدعو عليه، وبعضها بالدعوى به.

الأول - البلوغ، فلا تسمع من الطفل ولو كان مراهقًا، نعم لرفع الطفل المميز ظلاته إلى القاضي فكان له ولي أحضره لطرح الدعوى، ولا فاحضر المدعو عليه ولاية، أو نصب قيماً له أو وكل وكيل في الدعوى أو تكفل بنفسه أو أنكى المنكر لم تكن بينة، ولورد الحلف فلا أثر لحلف الصغير، ولو علم الوكيل أو الوالي صحة دعوى جاز لها الحلف.

الثاني - العقل، فلا تسمع من الجنون ولو كان أدوارياً إذا رفع حال جنونه.

الثالث - عدم الحجر لسنه إذا استلزم منها التصرف المالي، أو آما السفيه قبل الحجر فتسمع دعوى مطلقاً.

الرابع - أن لا يكون أجنبياً عن الدعوى، فلو ادعى بدين شخص أجلبي على الآخر لم تسمع. فلا بد فيه من نواعله به كالولاية والوكالة أو كان المورد متعلق.

حق له.

الخامس - أن يكون للدعوى أثر لو حكم على طبقها، فلو ادعى أن الأرض متحركه وأنكرها الآخر لم تسمع، ومن هذا الباب مالو ادعى الوقف عليه أو الهبة مع التسالم على عدم القبض، أو الاختلاف في البيع و عدمه مع التسالم على بطلانه على فرض الوقوع، كمن ادعى أنه باع ربوياً وأنكر الآخر أصل الوقوع، ومن ذلك ما لو ادعى أمرًا حالياً، أو ادعى أن هذا العنب الذي عند فلان من بستاني وليس لي إلا هذه الدعوى لم تسمع. لأنه بعد ثبوتته بالبيئة لا يؤخذ من الغير لعدم ثبوت كونه له، ومن هذا الباب لو ادعى ما لا يصح تملكه، كما لو ادعى أن هذا الخنزير أو الخميسي، فإنه بعد النيب لا يحكم بردته إلى إلا فيما
To the same category belongs the case when the plaintiff claims something which cannot be legally owned, as when he claims that this pig or wine belongs to him, as after the claim is proved, the pig or wine cannot be returned to him except when he has a better title to it. To the same category belongs the claim against some unidentified person, as when the plaintiff claims that he has a debt against one of the dwellers of this town.

Sixth: The subject of the plaint must in any way be something known, so that a plaint for an absolutely unknown thing shall not be admitted, as when a plaintiff claims that such person has something belonging to me, because there is hesitation whether a plaint such case may be admitted or not. But if a plaint says that such person has a horse or a beast of burden or a piece of cloth belonging to me, then apparently it may be admitted, as after the judgment in favour of the claim, the defendant shall be asked to give description of the subject of the plaint. If the defendant gives its description, but the plaintiff does not confirm it, then it shall be another suit. If the defendant fails to give its description, for example, due to his ignorance, then if the subject of the plaint is something definite, according to the stronger opinion, recourse shall be had to casting lots. If the defendant admits that the thing is destroyed, and it is not disputed by the plaint, then if they agree on its price, [well and good], otherwise, another suit regarding the claim for a higher price shall be admitted.

Seventh: There must be a party against whom the plaintiff should have a dispute. If a person has some claim without there being any person with whom he has a dispute at present, the plaint shall not be admitted, as when he wants the issuance of a juristic decree (fatwa) from a jurist which may finally settle a probable dispute, such a suit shall not be entertained even if the judge has issued a judgment after hearing it. If his judgment belongs to the category of a juristic verdict, then it would be a verdict in favour of the so and so trust (waqf) or so and so sale, so it shall have no effect on the settlement of the dispute, if it is supposed that there exists one. If it belongs to the category of debt of one person on the other without there being any dispute between them, then it would not a judgment that entails settlement and forbids reversal of a sentence; rather it belongs to the category of testimony.

If the matter is referred to the court of another judge, he shall hear the dispute, and that judge shall be like one of the witnesses. If the suit is filed in the court of that judge, and rests with his knowledge about the actual fact, it shall be permissible for him to issue judgment according to his knowledge.

Eighth: Taking a definite stand in a dispute is on the whole. Its detail is that there is no problem in hearing a suit when it is filed with full confidence. If a person files a claim based on presumption or probability, it shall either be heard absolutely or shall not be heard absolutely, or there will be elaboration between the cases of slander or otherwise for hearing at first or there should be an elaboration between the cases about which there is difficulty in getting information like theft, or the like, so that it should be heard at first or there should be elaboration between what is known as dispute about it, - as when an executor or heir gets hold of a document or register wherein the dispute is mentioned or about which a person who is not
يكون له الأولى فيه، ومن ذلك الدعوى عل غير عصور كون ادعى أن لي على واحد من أهل هذا البلد دينأ.

السادس - أن يكون المدعى به معلوماً بوجه، فلا تسمع دعوى المجهول المطلق كأن ادعى أن لي عمده شيئاً، للتشرد بين كونه مما تسمع فيه الدعوى أم لا، وأما لو قال: "إن لي عمده فرساً أو دابة أو ثوباً" فالفاظر أنه تسمع، فبعد الحكم فيبهره يطالب المدعى عليه بالتفسير، فان فسر ولم يصدقه المدعى فهو دعوى أخرى، وإن لم يفسر به مثلاً فان كان المدعى به بين أشياء محدودة يقع على الأقوى، وإن أقرر بالتفصيل ولم يتفق على الطرف فان اتفقا في القرية وإلا في الزيادة دعوى أخرى مسموعة.

السابع - أن يكون للمدعى طرف يدعى عليه، فلو ادعى أمرًا من دون أن تكون على شخص ينازعه فعلاً لم تسمع، كما لو أراد إصدار حكم من فقيه يكون قاطعاً للدعووى المحتملة، فإن هذه الدعوى غير مسموعة ولو حكم الحاكم بعد سماعها فان كان حكمه من قبيل الفنوى كان حكم بصحبة الوقف الكذلي أو البيع الكذلي فلا أثر له في قطع المنازعات لفرض وقوعها، وإن كان من قبل أن لفظ على فلان ديناً بعد عدم النزاع بينهما فهذا ليس حكاً يتزاب عليه الفصل وحرة النقض، بل من قبل الشهادة، فإن رفع الأمر إلى قاض آخر يسمع دعوى، ويكون ذلك الحاكم من قبل أحد الشهداء، ولو رفع الأمر إليه ولي على علمه بالواقعة له الحاكم على طبق علمه.

التاسع - وجزم في الدعوى في الجملة، والتفصيل أنه لا إشكال في سماع الدعوى إذا أوردها جزماً، وأما لو أدعى دعاً أو احتمالاً في سماعها مطلقاً أو عدمه مطلقاً أو التفصيل بين موارد التهمة و عدمها بالإسماع في الأول أو التفصيل بين ما يعتبر الاطلاع عليه كالسرقة وغيره فتسمع في الأول أو التفصيل بين ما يعرف الخصومة به - كما لو وجد الوصي أو الوارث سنداً أو دفراً في ذلك أو شهد به من لا يوثقه به - و بين غيره فتسمع في الأول أو التفصيل بين موارد التهمة.
a reliable source gives evidence — and other things, so that it should be heard at first, or there should be elaboration between the cases of slander or what is known as dispute about it, or other than both of them, so that both of the cases are heard at first, there are some alternatives, the most well founded of them is the latest one. At that time if the defendant admits or evidence is adduced in its favour, then the judgment on it is apparent. But if the defendant takes oath, each case shall be dropped. If he forwards the oath to the plaintiff, it shall not be permissible for the plaintiff to take oath. So the dispute shall be suspended. If subsequently the person puts up his claim with full confidence or discovers some evidence, returns with the claim, his claim shall be entertained.

Ninth: Determination of the Defendant. If a person has claim against one of two persons or a definite number of persons, according to one opinion, his case shall not be entertained. But apparently it shall be entertained, because it is not devoid of advantage, so that there is possibility of admission by either of them at the time of the litigation between them. Rather if, for sample, evidence is adduced in favour of one of them, the judge may give judgment to the effect that one of them is under debt to the other, thereby after one of them is released of the burden, the other may be judged as under debt to the other. Rather it is also not far from being probable that after the judgment recourse would be had to casting of lots. So there is difference between the case when one or both of them has knowledge about the liability of either of them which will have no effect in it and the judgment of the judge for the settlement of the dispute, when it is said that in order to find out who is under debt to the other, recourse should be had to casting of lots.

Problem #2. It is not a condition for the hearing of a dispute to mention that the party is one the right. It is sufficient to admit the suit absolutely without mentioning its reason, irrespective of the subject of dispute being a real estate, a debt or any agreement or contract ('aqd). Of course in a lawsuit of murder, it is a necessary condition to mention whether the murder was willful or a homicide by misadventure or mistake, committed personally or through the agency of another, and whether the accused t committed the murder singly or jointly with others.

Problem #3. In case the plaintiff is not definite about his claim, and he intends to file a suit against another. It would be indispensable for him to express the claim in a way that it was based on assumption or likelihood, and it is not permissible for him to express the claim in a way that he is definite about it due to the fact that a claim which is not based on certainty is not entertained (by the court of law).

Problem #4. If two persons file a plaint against each other, for example, both claiming liability of one against the other, the suit shall be admitted, and if it is proved that there is doubt as to which of them is liable to the other, recourse shall be had to casting lots.

Problem #5. It is not a condition that the defendant should present at the place where the suit has been filed. So if a person files a suit against a person who is absent from that place, regardless whether he is on journey or belongs to another place, close or distant, the suit shall be admitted. If the plaintiff adduces evidence, the judge shall give his judgment against the person in absentia, and whatever is claimed by the plaintiff shall be returned to him in case it is a capital asset ('ajn), and it shall be purchased out of the property of the absent person, and in case it is a debt, it is shall be paid
و ما يتعرف الخصومة به وبين غيرها فتسمع فيها ووجه، الأوجه الأخرى، فحينئذ لو أقر المدعى عليه أو قامت البيئة فهو، وإن حلف المدعى عليه سقطت الدعوى، ولو ردها الين لا يجوز للمدعى الحلف، فتتوقف الدعوى، فلو ادعى بعده جزءاً أو عثر على بينة ورجع إلى الدعوى تسمع منه.

النازع - تعيين المدعى عليه، فلو ادعى على أحد الشخصين أو الأشخاص المحكومين لم تسمع على قول، وظاهرة سماعها، لعدم خلوها عن الفائدة، لإمكان إقرار أحدهما لدى المحاصلة، بل لو أقيمت البيئة على كون أحدهما مديوناً مثالاً فحكم الحاكم بأن الدين على أحدهما، فثبت بعد براءة أحدهما، يحكم بمدونية الآخر، بل لا يبعد بعد الحكم الرجوع إلى القرعة، فيفرق بين ما علما أو علم أحدهما باشتقاق ذمة أحدهما فلتأثر فيه، وين حكم الحاكم لفصل الخصومة فيقال بالاقتراض.

مسألة 2 - لا يشترط في سمع الدعوى ذكر سبب استحاقته، فتكتفي الدعوى بنحو الاطلاق من غير ذكر السبب، سواء كان المدعى به عيناً أو ديناً أو عقداً من العقود، نعم في دعوى القتل اشترط بعض لزوم بيان أنه عن عمد أو خطأ، بباشرة أو تسبب، كان هو قاتلًا أو مع الشركة.

مسألة 3 - لو لم يكن جازماً فأراد الدعوى على الغير لابد أن يبرزها بنحو ما يكون من الظن أو الاحتمال، ولا يجوز إبرازها بنحو الجزم ليبيل دعوا بناء على عدم السماع من غير الجزم.

مسألة 4 - لو ادعى إثناً مثلًا بأن لأحدهما على أحد كذا تسمع، وبعد الابتثات على وجه الترديد يقر بينهما.

مسألة 5 - لا يشترط في سماع الدعوى حضور المدعى عليه في بلد الدعوى، فلو ادعى على الغائب من البلد سواء كان مسافراً أو كان من بلد آخر، قريبًا كان أو بعيدًا. تسمع، فذا أقام البيئة حكم القاضي على الغائب ومرة عليه ما ادعى إذا كان عيناً، ويباع من مال الغائب ويدى دينه إذا كان ديناً. ولا
to him, and it shall not be paid to him except with protecting the defendant from being harmed if he happens to present himself while judgment is given in his favour, the plaintiff being wealthy or having legal guardian (kaфаf). Whether it is permissible to give judgment in absence of the other party when he is absent but can be summoned easily, or when he is present in the same place but is unable to present himself before the judge, is a question in which there is hesitation. There is no difference in hearing the suit against an absent person whether the plaintiff claims denial by the defendant or otherwise. Of course, if the plaintiff says: “He (i.e., the defendant) has acknowledged (his liability), and there is no dispute between us”, then apparently his claim shall not be entertained, and no judgment shall be given in the case. It is more cautious not to give judgment against an absent person except adding an oath (yamîn), (by the plaintiff). Moreover, the absent person has the right of protest (against the judgment given in absentia). If he presents himself and intends to examine the witnesses or adduces counter evidence, it shall be allowed on his part, if we accept that it is permissible to entertain evidence adduced by him.

Problem # 6. Apparently the permissibility of giving judgment against an absent is confined to cases relating to the offences against the people’s rights (huqûq al-nâs), but it is not permissible to give judgment against an absent person in cases relating to rights belonging to Allâh (huqûq –Allâh) like adultery or fornication (zînâ). If it is case of an offence against the rights of the people as well as of rights belonging to Allâh, as theft (sarihâ), in which we give the punishment of amputation of hands that belongs to an offence against the rights of Allâh, and stealing the property (of others) punished by returning the property to its master which is an offence against the rights of the people, it is permissible to give judgment in a case of offence against the rights of the people but not in a case against an offence against the rights of Allâh. So if the plaintiff adduces evidence (in favour of his claim), the judge shall give the judgment and the property shall be taken back from the thief (and returned to its master), in the way already mentioned.

Problem # 7. If the suit of the plaintiff is finalized, and he requests he judge to summon the defendant, he shall summon him, and it is not permissible to delay it in an unusual way. In case the plaintiff does not request the judge to summon the defendant, and there is no indication of the plaintiff’s intention (to request the judge to summon the defendant), then summoning the defendant shall depend on the request to be made by the plaintiff for summoning the defendant.

Chapter Four – Answer of the Defendant

The Defendant would either keep quiet in answer or acknowledge the claim of the plaintiff or deny it, or would say: “I do not know”, or would say: “I have paid (the debt)”, or the like, that may repudiate the allegation by the plaintiff.

Chapter Five – Answer by Acknowledgement

Problem # 1. When the Defendant acknowledges the right (of the Plaintiff) whether concerning a capital asset (‘ayn) or a debt, and his acknowledgement fulfills all the conditions
يدفع إليه إلا مع الأمين من تضرر المدعى عليه لو حضر و قضى له بأن يكون المدعى ملياً أو كان له كفيلة، و هل يجوز الحكم لو كان غائباً و أمكن إحضاره بسهولة أو كان في البلد و تذكر حضوره بدون إعلامه؟ فيه تأمل، ولا فرق في سماع الدعوى على الغائب بين أن يدعى المدعى جهود المدعى عليه و عدمه، نعم لوقال: "إنه مقرولاً مخاصصة بيننا" فاظهره عدم سماع دعوى، وعدم الحكم، والأحوط عدم الحكم على الغائب إلا بضم التيمين، ثم إن الغالب على حجته، فإذا حضروا وأراد جرح الشهود أو إقامة بينة معروضة يقبل منه لوقلنا بسماع بينته.

مسألة 6 - الظاهر اختصاص جواز الحكم على الغائب بحقوق الناس فلا يجوز الحكم عليه في حقوق الله تعالى مثل الزنا، ولو كان في حاجة حقوق الناس و حقوق الله كما في السرقة فإنها القطع والمكان على حقوق الله وأخذ المال وردته إلى صاحبه وهو من حقوق الناس جاز الحكم في حقوق الناس دون حقوق الله، فلو أقام المدعى البينة حكم الحاكم، و يؤخذ المال على ما تقدم.

مسألة 7 - لم تتم الدعوى من المدعى فان الناس من الحاكم إحضار المدعى عليه أحضره، ولا يجوز التأخر غير المتعارف، ومع عدم التماسه وعدم قرونة على إرادته فاظهرا توقفها إلى أن يطلب.

فصل في جواب المدعى عليه

المدعى عليه إما أن يسكت عن الجواب أو يقر أو ينكر أو يقول: "لا أدرى" أو يقول: "أديثت" و نحو ذلك مما هو تكذيب للمدعى.

القول في الجواب بالافقرار

مسألة 1 - إذا أقر المدعى عليه بالحق عيناً أو ديناً و كان جامعاً لشروط
of an acknowledgement, and the judge issues his judgment, it shall be binding on the
defendant, and the dispute shall be disposed of, it shall entail the liabilities of the judgment
upon him, like absence of permissibility of violation of the judgment or referring the case to
another judge and lack of permissibility of another judge to entertain his suit, etc. If a
defendant acknowledges the right of the plaintiff but the judge does not give a judgment, the
defendant shall still be bound by his acknowledgement. So it shall not be permissible for him
to make any change in what is in his possession already acknowledged by him except with the
permission to the person to whom he has acknowledged. It is permissible for another person to
compel him to abide by his acknowledgement; rather it is his duty to do so by way of enjoining
upon him what is lawful or good. The same shall be the case when evidence has been adduced
in his favour as regards the action on the evidence and the absence of permissibility for any
change except with the permission of the person in whose favour evidence has been adduced.
Of course, there is hesitation in compelling him to comply with the evidence or its obligation
to do so after the evidence has been adduced, by way of enjoining upon him what is lawful or
good, due to the possibility that according to him the right is not proved and the evidence in his
opinion is not based on justice, and therefore it is not permissible to enjoin upon him what is
lawful or good or forbidding what is evil or wrong, contrary to the case when the person makes
an acknowledgement.

Section 2. After the acknowledgement by the defendant, apparently the judge is not bound to
give judgment except on the request of the plaintiff. So when the plaintiff requests the judge,
according to the stronger opinion, the judge shall be bound to give his judgment on what
depends the fulfillment of the plaintiff’s right, and in case the fulfillment of the plaintiff’s right
is not dependent on it, even then according to the more cautious opinion, the judge must give
his judgment; rather it is in keeping with the guiding principle. If the plaintiff does not request
the judge, or requests him not to do so, but the judge issues the judgment, there shall be
hesitation in the settlement of the dispute thereby.

Problem # 3. A judgment is the expression of the proof of something or the proof of a thing
for which another person is indebted or the obligation for something, or the like. There is no
condition of a special term, but what is necessary is the expression in whatever words carrying
the intended sense, as when one says “I have adjudicated”, or “I have given judgment”, or “I
have made it obligatory”, or “You are under the debt of such and such person”, or “This thing
belongs to such and such person, or the like in any language whatsoever when expression of a
sense is intended and the words used denote that sense seemingly even if by content.

Problem # 4. If the plaintiff requests the judge to give a copy in writing of the judgment or the
acknowledgement of the acknowledge, apparently it is not obligatory, except when the
recovery of his right depends on it. At that time is it permissible for the judge to charge some
remuneration or not? According to the more cautious opinion, it is so, even if it is not far from
being permissible, as there is no objection in the permissibility of demanding the price of the
paper and ink. However in case the recovery of his right does not depend on it, there is no
doubt about anything like that. The judge shall not write it unless he knows the name and
parentage of the person sentenced in a way that may avoid any confusion. If the judge has no
الإقرار و حكم الحاكم أمره به، وانفصلت الحضومة، و يترتب عليه لوازم الحكم كعدد جواز نقضه و عدم جواز رفعه إلى حاكم آخر و عدم جواز سماع الحاكم دعوته و غير ذلك، ولو أقر و لم يحكم فهو مأخوذ بإقراره فلا يجوز لأحد التصرف في عنده إذا أقر به إلا باذن المقر له، و جاز لغيره إلزامه، بل وجب من باب الأمر المعروف، وكذا الحال لو قامت البيئة على حقه من جواز ترتيب الأثر على البيئة، و عدم جواز التصرف إلا باذن من قامته على حقه، نعم في جواز إلزامه أو وجوه مع قيام البيئة من باب الأمر المعروف إشكال، لاحتمال أن لا يكون الحق عنده ثابتاً و لم تكن البيئة عنده عادلة، ومعه لا يجوز أمره و نهيه، بخلاف الشروط بالإقرار.

مسألة 2 - بعد إقرار المدعى عليه ليس للحاكم على الظاهرة الحكم إلا بعد طلب المدعى، فإذا طلب منه يجب عليه الحكم فيما يتوقف استيفاء حقه عليه على الأقوى، و مع عدم التوقف على الأحوض بل لا يخلو من وجه، وإذا لم يطلب منه الحكم أو طلب عدم فحكم الحاجم في فصل الحضومة به تردة.

مسألة 3 - الحكم إنشاء ثبوت شيء أو ثبوت شيء على دمه شخص أو الإلزام بشيء، و نحو ذلك، و لا يعتبر فيه لفظ خاص، بللازم الإنشاء بكل مادل على المقصود كأن يقول: قضيت أو حكمت أو ألزمت أو عليك دين فلان أو هذا شيء لفلان و أمثال ذلك من كل لغة كان إذا أريد الإنشاء ود لل štoظاء عليه وله مع القرينة.

مسألة 4 - لو التمس المدعى أن يكتب له صورة الحكم أو إقرار المقر فالظاهرة عدم وجوهه إلا إذا توقف عليه استنفاد حقه، و حينئذ يجوز له طالبة الأجر أم لا؟ الأحوض ذلك و إن لا يبعد الجواد، كملا إشكال في جواز مطالبة قيمة القروطس والمداد، و أما مع عدم التوقف فلا شبهة في شيء منها، ثم إنه لا يكتب حتى يعلم اسم الحاكم عليه و نسبه على وجه يخرج عن الاشتراع والإباحة وله يعلم لم يكتب إلا مع قيام شهادة عدلين بذلك، و يكتب مع الشخصرات النافية.
knowledge about the name and parentage of the person sentenced, he shall not give a copy of the sentence in writing except with the testimony of two persons of sound character testifying it. The judge shall give in writing the particulars that may avoid confusion and fraud. If there is no need of mentioning the parentage of the person and it would be sufficient to give his own particulars, it shall be sufficient to do so.

Problem # 5. If the person acknowledging the debt is financially sound, he shall be obliged to pay his debt. If he is recalcitrant, the judge shall compel him. If he delays in payment, and persists in delaying, it would be permissible for the judge to use a stronger language according to the dictates of enjoining upon him to do what is good. Rather it is permissible for others too to take a similar action. If the person makes inordinate delay, the judge shall imprison him until he makes the payment of his debt. The judge may also dispose of his property if it is not possible to compel him to dispose of his property. If the subject of the acknowledgement is a real estate, the judge shall take possession of it. Rather a person other than the judge may also do so by way of enjoining upon him to do what is good. If the subject of acknowledgement is a debt, the judge shall get the possession of something similar to it out of the similar things or its price out of the things having price after observing the exceptions allowed in debts. There is no difference between a male and female in the cases mentioned.

Problem # 6. If the person acknowledging debt claims to be indigent while the plaintiff repudiates it. If he was financially sound in the past, but claims to have become indigent, then the word of the person repudiating it shall be entertained. If he was indigent in the past, his word shall carry. If the judge does not know about his being indigent or financially sound in the past, then there is hesitation in challenging each other or giving preference to the person claiming to be indigent, even it is not far from giving preference to his word.

Problem # 7. If the indigence of the person claiming to be indigent is established, then if he has no business or capability to work, there shall be no objection in waiting for his regaining financial competence. If such is the case, will the judge surrender him to the creditor to engage him in some work, or give him on hire, or give him some time or oblige him to do some job to be able to pay his debt. It is obligatory for him to do some job for that purpose. The creditor may grant him time and not compel him to work, in which it would not be obligatory for him to do some job for that purpose. Rather in case he obtains some money, will it be obligatory for him to pay his debt, is a question on which there are several opinions, the better founded being the middle one. Of course, if the only way to oblige him to work is to surrender him to his creditor, the judge shall surrender him to the creditor so that he may engage him in some work.

Problem # 8. If the judge doubts whether the acknowledger is indigent or affluent, and the plaintiff demands that he should be imprisoned until his condition becomes clear, the judge shall imprison him. When his indigence becomes clear, the judge shall set him free, and shall act with him as mentioned before. There is no difference in the case or other cases between a man and a woman. So a protracting woman shall be treated like a protracting man, and the judge shall imprison her as a man until her real condition becomes clear.

Problem # 9. If the debtor is sick and it is harmful for him to imprison him, or he was an employee of some one else before he was sentenced to imprisonment, then apparently it shall not be permissible to imprison him.
لا يجت إلى ذكر النسب ولكن ذكر مشخصاته كتبت به.

مسألة 5 - لو كان المقر واجباً أن يكون بالتأدية، ولو امتنع أجهزته الحاكم، وإن ماطل وأصر على المطالبة جازت عقوبته بالتعليم بالقول حسب مراتب الأمر بالمعروف، بل مثل ذلك جائز لسائر الناس، ولو ماطل حبشه الحاكم حتى يؤدي ما عليه، وأنا أن بيع ما له إن لم يكن إزامه بيعه، ولو كان المقر به عيبًا يأخذها الحاكم بل وغيره من باب الأمر المعروف، ولو كان دينًا أخذ الحاكم مثله في المثليات وقيمته في القيميات بعد مراعاة مستويات الدين، ولا فرق بين الرجل والمرأة فإن ذكر.

مسألة 6 - لو أدعى المقر الاعسار وأنكر المدعى فإن كان مسبقاً باليسار فادعى عروض الاعسار فقول قول منكر العسر، فإن كان مسبقاً بالعصر فالقول قوله، فإن جهل الأمران في كونه من التدعي أو تقديم قول مدعى العسر تردد وإن لا يوجد تقدم قوله.

مسألة 7 - لو ثبت عسره فإن لم يكن له صنعة أو قوة على العمل فلا إشكال في إنكاره إلا يساره، وإن كان له نحو ذلك فهل يسلم الحاكم إلى غريه ليستعمله أو يؤجره أو أشره بالكاسب لتؤدي ما عليه ويبه عليه الكسب لذلك أو أنظره أو لم يلزم بالكاسب ولم يجب عليه الكسب لذلك بل لو حصل له ما يجب أداء ما عليه؟ ووجه، لعل الأوجه أوسطها، نعم لو توقف إزامه بالكاسب على تسليمه إلى غريه يسلمه إليه ليستعمله.

مسألة 8 - إذا شك في إعساره ويساره وطلب المدعى حبشه إلى أن يبين الحال حبشه الحاكم، وإذا تبين إعساره خلي سبيله وعمل معه كما تقدم، ولا فرق في ذلك وغيره بين الرجل والمرأة، فالمرأة الماطلة يعمل معه نحو الرجل الماطل ويبهها الحاكم كما يحب الرجل إلى تبين الحال.

مسألة 9 - لو كان المديون مريضاً يضرب الحبص أو كان أجبرًا للغير قبل حكم الحبص عليه فالظهر عدم جواز حبصة.
Problem # 10. What we have said about the judges compelling the debtor to do some work in order to earn something provided he has the capacity to so, it applies to a case when doing work by himself is not harmful for him or against his position or when the work that is possible for him is not up to his position in a way that it is disadvantageous for him.

Problem # 11. Neither a woman is not compelled to marry and get her dower and pay her debt, nor is it obligatory for a man to divorce his wife in order to pay her maintenance for the payment of the debt. If the man makes the payment as a free gift, and there is no disgrace or objection for him, it would be obligatory to accept it for the payment of his debt.

Chapter Six – Answer in the Negative

Problem # 1. If the defendant gives his answer in the negative, and repudiates what is claimed by the plaintiff, then if he does not know that he is required to adduce evidence or is under the impression that it is not permissible to adduce evidence unless it is demanded by the judge, it would be obligatory upon the judge to make him understand it by asking him whether he has some evidence in his favour. If he has no evidence in his favour, and does not know that he has the right to take oath of a repudiator (munkir), the judge shall inform him about it.

Problem # 2. It is not permissible for a judge to ask the defendant to take oath except when demanded by the plaintiff, and the defendant is also not allowed to voluntarily take oath before the plaintiff demands it. If the defendant or the judge to take the initiative, the oath shall have no legal value, and it shall be indispensable to repeat it after the question put up by the plaintiff. Likewise, the plaintiff shall also not be allowed to make the defendant take oath without the permission of the judge, so that if he does, it shall have no legal value.

Problem # 3. If the plaintiff has no evidence in his favour, and demands that the defendant repudiating his claim should take oath, and the defendant takes oath, the claim of the plaintiff against the defendant shall drop according to ostensible requirement of law. So the plaintiff shall have no right to demand his right from the defendant or demand any set-off (muqāssah) from the defendant, or file a suit before the judge, and his suit shall not be entertained by the judge. Of course, the defendant shall not be absolved of his liability, and the property in question shall not be cease to be the property of its owner by mere oath by the defendant, and it shall be obligatory upon him to return the oath to the plaintiff, and be absolved of his liability, even if it is not permissible for the owner to get hold of the property nor demand any retaliation from the defendant, and likewise it shall not be permissible for the owner to dispose of the property or give it to some one as a free gift or make any changes in it. Of course, it is permissible for a person under debt to be absolved of his debt, though there is hesitation in accepting this opinion. If the plaintiff adduces evidence after the defendant has taken oath, no heed shall be paid to it. If the judge is negligent in the matter, or the plaintiff refers his case to
مسألة 10 - ما قلنا من إلزم المعسر بالكسيب مع قدرته عليه إما هو فيما إذا لم يكن الكسيب بنفسه حرجاً عليه أو منافياً لشأنه أو الكسيب الذي أمكنه لا يليق بشأنه بحيث كان تحمله حرجاً عليه.

مسألة 11 - لا يجب على المرأة التزويج لأخذ المهر و أداء دينها، ولا على الرجل طلاق زوجته لدفع نفقاتها لأداء الدين، ولو وهبه ولم يكن في قبولها مهانته و حرج عليه يجب القبول لأداء دينه.

القول في الجواب بالانكار

مسألة 1 - لو أجاب المدعى عليه بالانكار فأنكر ما ادعى المدعي فان لم يعلم أن عليه البيئة أو علم وظن أن لا تجوز إقامتها إلا مع مطالبة الحاكم وجب على الحاكم أن يعرف ذلك بأن يقول ألك بيئة؟ فإن لم تكون له بيئة ولم يعلم أن له حق إخلاف المنكر يجب على الحاكم إعلامه بذلك.

مسألة 2 - ليس للحاكم إخلاف المنكر إلا بالتاس المدعي، وليس للمنكر التبوع باللف في التاسة، فلو تبوع هو أو الحاكم لم يعتمد بتلك التاسة، ولابد من الإعادة بعد السؤال، و كذا ليس للمدعي إخلافه بدون إذن الحاكم، فلو أخلافه لم يعتمد به.

مسألة 3 - لو لم يكن للمدعي بيئة و استحلف المنكر فحمل سقطت دعوى المدعي في ظاهر الشرع، فليس له بعد اللخف مطالبة حقه، ولا مقاصته، ولا رفع الدعوى إلى الحاكم، ولا تسمع دعاه، نعم لا تبرأ ذمة المدعي عليه، ولاحصر العين الخارجية باللف خارجاً عن ملك المالك فيجب عليه ردها وإفراغ دمته و إن لم يجز للمالك أخذها ولا التثقيف منه، ولا يجوز بيعها وهبها وسائر التصرفات فيها، نعم يجوز إبراء المدين من دينه على تأمل فيه، فلو أقام المدعي البيئة بعد حلف المنكر لم تسمع، ولو غفل الحاكم أو رفع الأمر إلى حاكم آخر...
another judge, and he gives his judgment on the ground of the plaintiff’s evidence, his judgment shall have no legal value.

**Problem # 4.** If it transpires before the judge after he has given judgment that oath was false, it is permissible for the judge, rather it is obligatory upon him, to annul his judgment. In that case it shall be permissible for the plaintiff the demand (the fulfillment of his right) and retaliation and all the rights to which he is entitled. If the defendant acknowledges that the property (in question) belongs to the plaintiff, it shall be permissible for the latter to occupy the property and demand retaliation and the like, whether he repents or acknowledges or not.

**Problem # 5.** Is the oath (by the defendant) at the very moment a cause for devolution of the plaintiff’s right absolutely or after the permission of the judge or when he pursues the judgment of the judge, or the judge’s judgment causes the devolution of the plaintiff’s right in case of the oath being authentic? Apparently the oath itself is not a cause (for the devolution of the plaintiff’s right), even if it with the permission of the judge; rather after the judge’s judgment the right devolves, in the sense that the oath with the condition of obtaining the judgment causes the devolution (of the plaintiff’s right) in the form of an affiliated (maqārin) condition (relating to the subsequent return of the oath by the plaintiff).

**Problem # 6.** It is obligatory upon the repudiating defendant to forward the oath to the plaintiff. If the plaintiff takes oath, his claim shall be established; otherwise, it shall drop. The rule relating to the devolution of the plaintiff’s right at the very moment of absence of oath and his recalcitrance or by the judge’s judgment is the same as mentioned in the preceding Problem. The plaintiff shall have no right to file another suit after the devolution of his claim, even in the next session of the court, whether he has some evidence in his favour or not. After the oath is forwarded to him, and he claims that he has evidence in favour of his claim, his evidence shall be entertained. Likewise, when the plaintiff delays in taking oath, his right shall not devolve. The plaintiff shall not be allowed to return the oath to the repudiating defendant after it is forwarded to him; rather he shall have either to take oath or refuse to do so. The defendant shall be allowed to retract from forwarding the oath to the plaintiff before the plaintiff takes oath.

Likewise, the plaintiff shall also be allowed to retract from demanding the oath from the defendant before the defendant’s taking oath.

**Problem # 7.** If the repudiator refuses to take oath, he shall neither take oath nor forward it to the plaintiff. Then will judgment be given at the very moment of his refusing to take oath, or the judge shall forward the oath to the plaintiff, so that if he takes oath, his claim shall be established; otherwise it shall devolve? There are two opinions, the more reasonable being the second.

**Problem # 8.** If the refusing repudiator retracts from his refusal, then if it happens after the issuance of the judge’s judgment against him or after the plaintiff’s oath forwarded to him, no heed shall be paid to it, and the right against him shall be established with the first supposition, and he shall be bound by the judgment in the second instance regardless of his knowledge or otherwise about the judgment of the retraction.
مسألة 4 - لو تبين للحاكم بعد حكمه كون الحلف كذبًا يجوز بل يجب عليه نقض حكمه، فحينئذ يجوز للمديع المطالبة والمقاصة وسائر ما هو أثار كونه محتقًا، ولو أقر المديع عليه بأن المال للمديع جاز له التصرف والمقاصة ونحوها، سواء تاب وأقر أم لا.

مسألة 5 - هل الحلف بجرده موجب لسقوط حق المديع مطلقًا أو بعد إذن الحكم أو إذا تعقبه حكم الحاكم أو حكم الموجب له إذا استند إلى الحكم؟ الظاهر أن الحلف بنفسه لا يوجبه ولو كان بذن الحكم، بل بعد حكم الحاكم يسقط الحق، يعني أن الحلف بشرط حصول الحكم موجب للسقوط بنحو الشرط المقرر.

مسألة 6 - للمنكر أن يرد اليمين على المديع، فان حلف ثبت دعوته وإلا سقطت، والكلام في السقوط بجرد عدم الحلف ونكس النكول أو بحكم الحكم كمسالة السابقة، وبعد سقوط دعوته ليس له طرح الدعوى ولوي في مجلس آخر، كانت له بنيته أولاً، ولو ادعى بعد الرده عليه بأن لي بنيهة يسمع منه الحكم، وكذا لو استملح في الحلف لم يسقط حقه، وليس للمديع بعد الرده عليه أن يرد على المنكر، بل عليه إما الحلف أو النكول، وللمنكر أن يرجع عن رده قبل أن يخلف المديع. وكذا للمديع أن يرجع عنه لو طلب من المنكر قبل حلفه.

مسألة 7 - لو نكل المنكر فلم يحلف ولم يرد فهل يحكم عليه بجرد النكول أو يرد الحكم اليمين على المديع فان حلف ثبت دعوته وإلا سقطت؟ قولان، والأشبه الثاني.

مسألة 8 - لو رجع المنكر الناكيل عن نكوله فان كان بعد حكم الحكم عليه أو بعد حلف المديع المردد عليه الحلف لا يلتقت إليه، ويثبت الحق عليه في الفرض الأول، وألزم الحكم عليه في الثاني من غير فرق بين علمه بحكم النكول أولاً.
Problem # 9. If the repudiating defendant demands delay in taking oath or forwarding it to the plaintiff while considering what is advisable for him, the delay shall be allowed to the extent that it does not become harmful for the plaintiff and does not cause cancellation of the plaintiff's right or inordinate delay. Of course, if the plaintiff gives permission, it shall be allowed exactly to the extent of his permission.

Problem # 10. If the plaintiff claims that he has evidence (in favour of his claim), it is not permissible for the judge to compel him to produce it. The plaintiff has the right to adduce it, or demand the oath (of the defendant), or abandon his claim. Of course, it is permissible for the judge to guide him in the matter or announce his judgment, without being any difference in both the cases between his knowledge and ignorance.

Problem # 11. Despite the plaintiff having evidence, it is permissible for him not to adduce it even if it is readily available, and demand the repudiator's oath. So he is not assigned to produce the evidence. If he knows that it is acceptable by the judge, he shall have the option to produce it or demand the repudiator's oath. This option is valid up to the repudiator's oath, after that time the right to produce evidence extinguishes if the judge has not ordered him to produce it. If the plaintiff addsuce reliable evidence and the judge approves it, whether the option extinguishes or it is permissible to turn away from it to resorting to the repudiator's oath, is a question in which there are two alternatives, the more reasonable being in favour of its extinction.

Problem # 12. If the plaintiff addsuce evidence, then if the judge comes to know or the circumstances testify that the plaintiff after having adduced evidence did not want to adduce it, the judge shall not ask him to adduce it. But if the judge comes to know or the circumstances testify to his intention to adduce evidence, the judge shall ask the plaintiff to adduce the evidence. If, however, the judge does not know the actual position and has doubt about it, the judge shall not be allowed to examine the witnesses. He shall, however, be allowed to ask the plaintiff whether he intends to adduce evidence or not.

Problem # 13. If the evidence has been adduced, and the judge recognizes the two witnesses to be morally depraved, he shall reject their testimony. Same shall be the case if the judge knows that they lack some of the qualifications of a witness. If the judge knows about the moral integrity of both the witnesses and fulfillment of all the required conditions required in a witness, he shall accept their testimony. If he is ignorant of their position, he shall wait and enquire about it and act, as he deems suitable.

Problem # 14. If he comes to know of the moral depravity of both the witnesses or of the lack of qualifications of a witness in them, he shall reject both of them without waiting for their clearance. But if the witness claims that the judge is mistaken in his opinion (about the witnesses), he shall be heard. If he succeeds in proving his claim, (well and good); otherwise, he shall be entitled to reject the testimony of both the witnesses. Likewise, if their moral integrity and possession of all the required qualifications of a witness are established, there shall be no need to wait for their clearance, and the judge shall act according to his own knowledge. If the repudiating defendant demands to cross-examine one or both of the witnesses, he shall be allowed to do so. If his claim (about them) is proved, the judge shall
مسألة 9 - لو استمهل المذكى في الحلف والرد ليلاحظ ما فيه صلاحه جاز إهماله بقدر لا يضر بالمذكى ولا يوجب تعطيل الحق والتأخير الفاحش نعم لو أجاز المذكى جاز مطلقًا بقدر إجازته.

مسألة 10 - وقلم المذكى لي بيئة لا يجوز للحاكم إزامها باحضارها، فله أن يحضرها أو مطالبة به أو ترك الدعوى، نعم يجوز له إرشاده بذلك أو بيان الحكم، من غير فرق في الموضوعين بين علمه وجهله.

مسألة 11 - مع وجود البيئة للمذكى يجوز له عدم إقامتها ولو كانت حاضرة أو إخلاف المنكر، فلا يعين عليه إقامتها، ولو علم أنها مقبولة عند الحاكم فهو مخير بين إقامتها وإخلاف المنكر، ويستمر التخدير إلى يمين المنكر فيسقط حينئذ حق إقامة البيئة ولو لم يحكم الحاكم، ولو أقام البيئة المعتبرة وقبل الحاكم فهل يسقط التخدير أو يجوز العدول إلى الحلف؟ و جهان، أو جهها سقوطه.

مسألة 12 - لو أحضر البيئة فإن علم أو شهدت القرائن بأن المذكى بعد حضورها لم يرد إقامتها فليس للحاكم أن يسألها، وإن علم أو شهدت الأحوال بارادة إقامتها فلا أن يسألها، ولو لم يعلم الحاكم وشك في ذلك فليس للحاكم سؤال الشهود، نعم له السؤال من المذكى بأنه أراد الإقامة أولا.

مسألة 13 - إذا شهدت البيئة فإن عرفها الحاكم بالفسق طرح شهادتها وكذا لو عرف بفقيدها بعض ش رائط الشهاداة ولو عرفها بالعدالة وجماعيتها الشرائط قبل شهادتها، وإن جهل حاكمه توقف واستكمف من حاكمها، وعمل بما يقضيه.

مسألة 14 - إذا عرفها بالفسق أو عدم جامعتها للشروط طرحها من غير انتظار التركية، لكن لو أدعى المذكى خطا الحكم في اعتقاده تسع منه، فإن أثبت دعواه و إلا فعلي الحكم طرح شهادتها، وكذا لو ثبت عدلتها وجامعتها للشروط لم يعجب إلى التركية ويعمل بعلمه، ولو أدعى المنكر جرحها أو جرح أحدهما قبل، فإن أثبت دعاه أسوقها و إلا حكم ويجوز للحاكم التعويل على
cancel their testimony; otherwise, he shall give judgment. As regards the moral integrity or depravity (of the two witnesses), it is permissible for the judge to act upon *Istishâb.*

**Problem # 15.** If the judge is ignorant about the position of the two witnesses, it is obligatory upon him to inform the plaintiff that he has the right to get the clearance of both of them through witnesses due to his ignorance about them. If he gets clearance through acceptable evidence, it is obligatory upon him to inform the defendant that he has the right to challenge the reliability of the two witnesses if he is ignorant about them. If the defendant declares that he does not want to challenge their reliability, the judge shall give his judgment accordingly. If, however, the defendant produces acceptable evidence in favour of probity, the evidence of the plaintiff shall be set aside.

**Problem # 16.** In case of the ignorance of the judge and his demand for the clearance by the plaintiff, the plaintiff replies that he has no way (to arrange it), or that he does not comply with it, or that it is difficult for him, and asks the judge to make enquiry, the judge is not bound to do so, even if he has the right to do so; rather he has a better right to do so. If the judge asks the defendant to cross-examine the acceptable witnesses, and the defendant does not comply and in reply says that he has no way (to do so), or that it is difficult for him to do so, the judge shall not be bound to make investigation, and he shall give his judgment according to the evidence (adduced before him). If the defendant asks for sometime for one to cross-examine (the witnesses), then is it obligatory upon the judge to grant a respite of three days or so much as may enable him to arrange for it, or he is not bound to do so, and he has the right to give his judgment, or he is bound to give judgment, so that the person to cross-examine comes, he may cancel the judgment? There are several options. It is not far from being obligatory to grant time until the usual extent. If the defendant asks for a long time for producing the person (who may cross-examine the witnesses), the judge shall give his judgment according to the evidence (adduced by the plaintiff before him).

**Problem # 17.** If the plaintiff adduces evidence in his favour, but the judge does not know whether both the witnesses possess moral integrity, and the plaintiff asks the judge to imprison the defendant until he proves the moral integrity of both the witnesses, some jurists have held that the defendant shall be imprisoned, though according to the stronger opinion, it shall not be permissible; rather it is not permissible for the judge to demand surety from the defendant, or the surety of the subject of the claim or mortgage against the subject of the claim.

**Problem # 18.** If it transpires at the time of the production of evidence that one or both of the witnesses are morally depraved, the judgment shall be cancelled. But if it transpires after the issuance of the judgment, the judgment would not be annulled. The same shall be the rule according to the opinion more analogous case, if the moral depravity of the witnesses comes to light after the evidence has been adduced but before the issuance of the judgment.

**Problem # 19.** Apparently the challenge of reliability and the settlement (*ta‘dîl*) in a general way will be sufficient, and it is not a condition to mention the reason with the knowledge of the reasons and their religious agreement with the religion of the judge; rather it is not far from being sufficient in case of knowledge of the difference of religion between both of them. It is sufficient to use any words denoting the sense of testimony by both of them, and it is not a
المماطة 15 - إذا جهل الحاكم حالها وجب عليه أن يبين للمدعى أن له تزكية بالشهود مع جهله، فإن زكاها بالبينة المقبولة وجب أن يبين للمدعى عليه أن له الحرج إن كان جاهلًا به. فان اعترف بعدم الجراح حكم عليه، وإن أقام البينة المقبولة على الجرح سقطت بيئة المدعى.


المماطة 17 - لو أقام البينة على حقه ولم يعرفها الحاكم بالعدالة فالتسم المدعى أن يجيب المدعى عليه حتى يثبت عدلتها قبل: يجوز حبسه، والأقوى عدم الجوانب، بل لا يجوز مطالبة الكفيل منه ولا تأمين المدعى به أو الرهن في مقابل المدعى به.

المماطة 18 - لو توبي فقس الشاهدين أو أحدهما حال الشهادة انتقض الحكم، وإن كان طارئًا بعد الحكم لم ينتقض، وكذا لو توبي فقسها بعد الشهادة وقبل الحكم على الأشبه.

المماطة 19 - الظاهرة كفاية الاطلاق في الجراح وتعديل، ولا يعتبر ذكر السبب فيها مع العلم بالأسباب وموافقة مذهبه لمذهب الحاكم، بل لا يعد الكفاية إلا مع العلم بالاختلاف مذهبها، ويكون فيها كل لفظ دال على الشهادة بها، ولا يشترط ضم مثل أنه مقبول، الشهادة أو مقبولها لي وعلى و نحو ذلك في
condition to add words like that it is acceptable for testimony or "acceptable for or against me", or the like, in settlement or challenging the reliability.

Problem # 20. If there is conflict in the evidence between the challenge of reliability and settlement, as one of them says: "He is morally sound", while the other says: "He is morally depraved", or one of them says: "It was such and such day when he was drinking wine in such and such place", while the other says: "On such and such day he was in a different place", both the testimonies shall be rejected, and the repudiating defendant shall be required to take oath. Of course, if he was in the former position as regards moral uprightness or depravity, it shall be accepted accordingly. If it was moral integrity, the judgment shall be given according to the testimony, and if it was moral depravity, his testimony shall be rejected, and the repudiator shall be required to take oath.

Problem # 21. In a testimony of moral integrity, there is a condition of knowledge about it either according to the prevalent notoriety (shi'āt) or a continuous stay that may give information about the inner habits. In testimony, the desirable outward appearance is not sufficient, though it is helpful in forming a (good) opinion. Likewise, dependence on evidence or Istiṣḥāb is also not sufficient. Similarly in a testimony of adjustment, knowledge about the moral depravity of a witness is inevitable, and a testimony based on trusting evidence or Istiṣḥāb is not permissible. Of course, the proof taken for granted like the proof by evidence or Istiṣḥāb or desirable outer appearance is sufficient for reaching conclusions. So it is permissible for a judge to give judgment depending on the testimony of one whose moral integrity is proved by Istiṣḥāb or desirable outer appearance revealing what is taken for granted or evidence.

Problem # 22. If two witnesses testify to the desirable outer appearance of a person, apparently the judgment based on its testimony is permissible after the desirable outer appearance reveals what is taken for granted as moral integrity.

Problem # 23. It is not permissible to testify declaration of a witness unreliable (jarh) as soon as seeing the commission of a great sin or offence unless it is known that it is way of disobedience or sin, and that it has no excuse. If it is possible that its commission has an excuse, I would not be permissible to declare a witness unreliable, even if suspicion arises about it due to the circumstances that lead to the suspicion.

Problem # 24. If the defendant agrees with the testimony of two morally depraved witnesses or of a single person of upright character, it shall not be permissible for the judge to give his judgment. If he gives judgment it will have no legal value.

Problem # 25. It is not permissible for a judge to give his judgment on the testimony of two witnesses whose integrity of moral character is not established before him, even if the defendant has acknowledged them as possessing soundness of character, but considers them unfit for giving evidence.

Problem # 26. If there is a conflict between the person challenging the reliability of the witnesses and the one making settlement, both of them shall be rejected even if the witnesses of one of them are two and those of the other four. There is no difference if two of them testify to the jarh and four of them testify to ta'dīl (settlement) together, or two of them testify to
التعديل ولا مقابلاته في الجرح.


مسألة 21 - يعتبر في الشهادة بالعدالة العلم بها إما بالشياع أو ببعشيرة باطنة متقادمة، ولا يكفي في الشهادة حسن الظهر ولو أفاد الظن، ولا الاعتماد على البيئة أو الاستصحاب، وكذا في الشهادة بالجرح لا بد من العلم نفسه، ولا يجوز الشهادة اعتماداً على البيئة أو الاستصحاب، نعم يكفي الشبوة التعبدية كالثبوت بالبيئة أو الاستصحاب أو حسن الظهر لترتب الآثار، فيجوز للحاكم الحكم اعتماداً على شهادة من ثبت عدلته بالاستصاح أو حسن الظهر الكافش تعبداً أو البيئة.

مسألة 22 - لو شهد الشاهدان يحسن ظاهره فالظاهرة جواز الحكم بشهادته بعد كون حسن الظهر كافشاً تعبداً عن العدالة.

مسألة 23 - لا يجوز الشهادة بالجرح بجرد مشاهدة ارتكاب كبرى ما لم يعلم أنه على وجه المعصية ولا يكون له عذر، فلو احتمل أن ارتكبه لعذر لا يجوز جرحه ولو حصل له ظن بذلك بقرائن مفيدة له.

مسألة 24 - لو رضي المدعى عليه بشهادته الفاسقين أو عدل واحد لا يجوز للحاكم الحكم، ولو حكم لا يترتب عليه الكسر.

مسألة 25 - لا يجوز للحاكم أن يحكم بشهادته شاهدين لا يجز عدالتهم عندئذ وله اعتراف المدعى عليه بعذابها لكن أخطاءها في الشهادة.

مسألة 26 - لو تعارض الجرح والعدل سقطاً وإن كان شهود أحدهما إثنين.
ta‘dil, then two others testify to it, because the excess in the numbers of witness makes no difference in jārī and ta‘dil.

**Problem # 27.** It is not a condition for acceptance of the testimony of two witnesses that the judge must know their names and parentage after the establishment of the acceptability of their testimony, as when a group of persons give evidence and the judge knows that among them there are two persons of sound character, it shall be sufficient for him to give judgment, and it is not a condition for the judge to recognize themselves.

**Problem # 28.** It is not a condition to append the oath of the plaintiff in the judgment on evidence. Of course, the suit against a dead person is an exception in which case it is a condition to adduce legal evidence along with a supportive oath. So if the plaintiff adds evidence without appending oath, his right shall be dropped. According to the stronger opinion, a child, lunatic, absent person and the like to a dead person due to their resemblance with a dead person should not be associated with a dead person because it is not possible for such persons to defend themselves, and so a claim against them is established by adding evidence without appending oath. Is appending oath to evidence confined to the suit of debt, or it also includes other cases like those of real assets, benefits and rights? There are two options, the second one is not far from being close (to acceptance).

Of course, there is no objection in including the case of real estate that is under the security of the dead when it is destroyed while under the security of the deceased.

**Subsidiary Cases**

**First.** If the claimant against a dead person is an heir having a title, then apparently the proof of his right requires appending oath to evidence, so that in case oath is not appended to evidence, his right shall extinguish.

If there are several heirs, it is indispensable that each of them should take oath to the extent of his right. If some of them take oath and others refrain from it, the right of those who take oath shall be established while that of those who refrain shall extinguish.

**Second.** If the evidence testifies to the acknowledgement of the person before his death up to a time within which fulfillment of the right is not usually possible, then is it obligatory to append oath or not? There are two options, the more reasonable being in favour of its being obligatory. Same is the rule in each case where it is known that with the supposition of the proof of debt in the past, it has not been fulfilled by the deceased.

**Third.** If there are several heirs of the deceased, and a person files a claim against him, and
و الآخر أربعة، من غير فرق بين أن يشهد إثنان بالجرح وأربعة بالتعديل معا أو إثنان بالتعديل ثم بعد ذلك شهاد إثنان آخرين به، ومن غير فرق بين زيادة شهود الجرح أو التعديل.

مسألة 27 - لا يشترط في قبول شهادة الشاهدين علم الحاكم باسمها ونسبها بعد إحراز مقبولة شهادتها، كما أنه لو شهد جامع يعلم الحاكم أن فيهم عدلين كني في الحكم، ولا يعتبر تشخيصها بعينها.

مسألة 28 - لا يشترط في الحكم بالبينة ضم بين المدعى، نعم يستثنى منه الدعوى على الميت، فيعتبر قيام البيينة الشرعية مع بين الاستثماري، فإن أقام البيينة ولم يخفف سقوط حقه، وأقوى عدم إلحاق الطفل والجنون والغائب وأشابهم من له نحو شاهدة بالميزان في عدم إمكان الدفاع لهم به، فثبتت الدعوى عليهم بالبينة من دون ضم بين، و هل ضم بين البيينة، منحصر بالدين أو يشمل غيره كالعين والمحفوظات و الحق؟ و جهان لا يختلثماها عن قرب، نعم لا إشكال في لحوق العين المضمونة على الميت إذا تلفت مضمونه عليه.

فروع:

الأول - لو كان المدعى على الميت وارت صحاب الحق فالظاهرة أن ثبوت الحق يحتاج إلى ضم اليمين إلى البيينة، ومع عدم الحلف يسقط الحق و إن كان الوارث متعدداً لابد من حلف كل واحد منهم على مقدار حقه، ولو حلف بعض ونكل بعض ثبت حق الحلف و سقط حق الناكل.

الثاني - لو شهدت البيينة بأقراره قبل موتة بدة لا يمكن فيها الاستفاء عادة فهل يجب ضم اليمين أو لا؟ و جهان أعجوبة و جربه، و كذا كل مورد يعلم أنه على فرض ثبوت الدين سابقاً لا يحصل الوفاء من الميت.

الثالث - لو تعددت ورثة الميت فادعى شخص عليه و أقام البيينة تكفي من بين.
also adduces evidence, a single oath shall be sufficient for all the heirs of the deceased, as already mentioned.

**Fourth.** It is indispensable that a supportive oath be taken before the judge. When evidence has been adduced before the judge and the plaintiff also takes the oath, his right is established, but his oath by himself or before an heir shall have no legal value.

**Fifth.** A supportive oath is not subject to extinction. If an heir of the deceased drops it, it shall not extinguish, but the right of the plaintiff shall not be established without appending oath.

**Chapter Seven - Witness and Oath**

**Problem # 1.** There is no objection in the permissibility of adjudication in debts obtained against a single witness and oath of the plaintiff, as also there is no objection in non-issuance of judgment and adjudication against these two (namely, a single witness and oath) in matters relating to rights of Allāh, (Ḥuqūq Allāh) the Exalted like the proof of the sighting the moon and the Ḥudūd Allāh. Is it permissible to adjudicate against the two in all matters relating to the rights of the people (Ḥuqūq al-Nās) even in matters concerning parentage, birth, agency, or is it permissible in matters relating to property and what relates to property like usurpation, loan, deposit, and likewise sale, compromise (Ṣūlq), tenancy (Ijāra), or the like? There are several alternatives, the more reasonable being in favour of particularization for loans. It is permissible to adjudicate in cases relating to debts against testimony of two women accompanied by the oath of the plaintiff.

**Problem # 2.** By debt is meant any financial right due from a person by whatever reason. So it includes any loan, price of the subject of sale (mabī'), subject of hire, indemnity paid for crimes (wadyah), dower of the wife when it is related to contractual obligation, her maintenance, surety against loss and destruction, etc., If the litigation relates to these cases or their causes for the establishment of the debt or what follows it so that it is part of the debt, even if it relates to its causes when they are meant, though they are not part of the claim for debt.

**Problem # 3.** It is more cautious to produce the witness and establishment of integrity of his character and then taking oath. If oath is taken first and then the witness is produced, then according to the more cautious opinion it will not prove the case, even though the absence of the condition for production of the witness is not without strength.

**Problem # 4.** If the property that is subject of the plaint is jointly held by a group as a unit like legacy or the like, and anyone of the group produces witness against the claim and also takes oath, it will not establish anything by his share and the establishment of the shares of the other
القول في الشاهد واليمين

مسألة 1 - لا إشكال في جواز القضاء في الدين بالشاهد الواحد ويبين المدعى، كيا لا إشكال في عدم الحكم والقضاء بها في حقوق الله تعالى كثبات الهلال وحدود الله، و هل يجوز القضاء بها في حقوق الناس كلها حتى مثل النسب والولاية والوكالة أو يجوز في الأموال أو يجوز في الغصب والقرض والوديعة وكذا البيع والصلح والإجارة ونحوه؟ ووجه أشبهها

الخصوص بالديون، ويجوز القضاء في الدين بشهادة أمرأتم مع يمين المدعى.

مسألة 2 - المراد بالدين كل حق مالي في الخدمة بأي سبب كان، فيشمل ما استقرضه، ومن البيع، ومال الإجارة، ودية الجنایات، ومهر الزوجة إذا تعلق بالعهد، ونفقها، والضمان بالتأليف، والتف، إلى غير ذلك، فذا تعلقت الدعوى بها أو بأسبابها لأجل إثبات الدين واستباعها ذلك فهي من الدين.

إن تعلقت بدائل الأسباب وكأن الغرض نفسها لا تكون من دعوى الدين.

مسألة 3 - الأحوط تقديم الشاهد وإثبات عدلته ثم اليمين، فإن قدم اليمين ثم أقام الشاهد فألاحتوظ عدم إثباته وإن كان عدم اشتراط التقديم لا يخلو من قوة.

مسألة 4 - إذا كان المال المدعى به مشتركاً بين جماعة بسبب واحد كارث ونجو فأقام بعضهم شاهداً على الدعوى ولحرف لا يثبت به إلا حصنه وثبوت سائر الحصص موقف على حلف صاحب الحق، فكل من حلف ثبت حقه مع
shareholders shall depend on their taking oath. So the right of every one who takes oath shall be established against a single witness.

**Problem # 5.** The establishment of right against the production of a witness and taking oath takes place when it is not possible to do so by adducing evidence. But if there is possibility to do so by adducing evidence, according to the more cautious opinion, it cannot be done otherwise.

**Problem # 6.** If, after the testimony of the witness, the oath of the plaintiff and the issuance of the judgment, the witness retracts, he shall be liable to pay half of the cost of the property.

**Chapter Eight – Silence in Answer**

Keeping silence or in answer saying: “I do not know”, or “It does not belong to me”, or the like.

**Problem # 1.** If the defendant keeps silence when required to answer by the judge, then if it were due to some excuse as dumbness, deafness or lack of understanding the language or fear or strangeness, the judge shall try to remove the excuse by whatever means he deems fit. If, however, the silence is not due to any excuse, but the defendant has kept silence due to finding fault and obstinacy, the judge shall order him to answer kindly and gently, then harshly and strongly. If he insists, then according to the more cautious opinion, he will tell him to reply or he would be considered recalcitrant. It is better to repeat it thrice. If the defendant insists, the judge shall forward the oath to the plaintiff. If the plaintiff takes oath, his right shall be established.

**Problem # 2.** If the defendant keeps silence due to some excuse like dumbness, deafness or lack of understanding the language, he shall seek the help of signs or a interpreter to understand his answer. In such case, it is indispensable that there should be two witnesses of sound character and one witness shall not be sufficient.

**Problem # 3.** If the defendant claims to have some excuse, and asks more time for delay, the judge shall grant him more time as he deems fit.

**Problem # 4.** If the defendant replies by saying: “I do not know”, then if the plaintiff confirms his statement, will his claim drop due to absence of evidence in its favour or will he ask the defendant to take oath or will the judge forward the oath to the plaintiff so that if the plaintiff takes oath, his claim shall be established, and if he refuses, his right shall drop, or will the claim of
الشاهد الواحد.

مسألة 5 - ثبوت الحق باشاد و من اما هو فهي لا يمكن إثباته بالبيئة و مع إمكانية بها لا يثبت بها على الأحوط.

مسألة 6 - إذا شهد الشاهد و حلف المدعى و حكم الحاكم بها ثم رفع الشاهد ضمن نصف المال.

القول في السكتة.

أو الأجواب بقوله: "لا أدري" أو "بمس لي" أو غير ذلك.

مسألة 1 - إن سكت المدعى عليه بعد طلب الجواب عنه فان كان لعذر كصمم أو خرس أو عدم فهم اللغة أو لدهشة و وحشة أزله الحاكم بما يناسب ذلك، وإن كان السكتة لا لعذر بل سكت تعنتا و لجاجا أمره الحاكم بالجواب باللطف و الرفق ثم بالغلوة والشدة، فان أصر عليه فالأحوط أن يقول الحاكم له أجب و إلا جعلتك ناكلا و الأولى التكرار ثلاثا، فان أصر رد الحاكم اليمين على المدعى، فان حلف ثبت حقه.

مسألة 2 - لو سكت لعذر من صمم أو خرس أو جهل باللسان توصل إلى معرفة جوابه بالإشارة المفهومة أو المترجم، و لا بد من كونه إثنين عدليين، و لا يكفي العدل الواحد.

مسألة 3 - إذا ادعى العذر و استعمل في التأخير أمله الحاكم بما يراه مصلحة.

مسألة 4 - لو أجاب المدعى عليه بقوله: "لا أدري" فان صدقه المدعى فهل تسقط دعوته مع عدم البيئة عليها، أو يكلف المدعى عليه برد الحلف على المدعى، أو يرد الحاكم الحلف على المدعى، فإن حلف ثبت حقه، و إن تكل
the plaintiff stay by claiming that he would adduce evidence or repudiate the claim of the defendant? There are several options, the best-founded being the last one (namely, that he should repudiate the claim of the defendant. If, suppose, the plaintiff does not confirm the statement of the defendant, and says that the defendant knows that he is on the right. Then the defendant shall be asked to take oath. If he takes oath, the claim of the plaintiff that he knows, (that he is on the right), shall drop. But if he returns the oath to the plaintiff, and he takes oath, his right shall be established.

Problem # 5. The oath of the defendant to the effect that he does not know finishes the suit regarding defendant's knowledge (of the claim). So the claim of the plaintiff or his evidence in favour of his claim (in repudiation of the defendant's statement) shall not be heard. But as regards his actual right, that right is not dropped, so that if the plaintiff intends to adduce evidence in favour of his claim, it shall be accepted; rather he shall be entitled to demand retribution of his right. Now if the suit relates to a real estate in his possession transferred to him from is possessor. We have said that it is permissible for him to take oath on the basis of actual possession. So once he takes oath, the dispute is over, and the oath remains in relation to his right. No evidence shall be heard from him, and it is not permissible for him to demand retribution.

Problem # 6. If the defendant says in answer to his statement: "It does not belong to me. It belongs to other than you." If he acknowledges that it belongs to a person who is present, and the latter confirms his statement, the latter shall become the defendant, and he shall have the right to file a suit for what has been acknowledged to belong to him. If the case is finalized, and what belongs to the plaintiff is returned to him, well and good. Otherwise, he shall have the right to file a suit against making acknowledgement, because he has been the cause of damage to him, and so he has the right to start his suit against the acknowledgment. If his right is established, he shall receive the damage from him. At that moment he shall have the right to file a suit for the recovery of the actual thing about which acknowledgement has been made. If his claim about the thing in question is established, he shall return the damage to the acknowledgment.

If the acknowledgment makes acknowledgement in favour of an absent person, the suit shall return to the absent person. If he says: "It belongs to an unknown master, and its case rests with the judge". If we say that the claim of the person claiming the ownership is accepted, when there is no one to oppose it, it shall be returned to him; otherwise, he shall be bound to adduce evidence. In case of absence of evidence, it is not far from the judge returning the oath to him. If he says: "It does belong to me, rather it is a trust," then if he claims that its caretaker, the dispute against himself is over, and it assumes a suit regarding his claim for being a caretaker. If the oath is demanded from him, and we approve permissibility of oath by a caretaker, and he takes oath, the dispute is over. If he denies being a caretaker, then his case rests with the judge.

Similar shall be the case if the defendant says: "It belongs to a minor or a lunatic", and denies being a caretaker.

Problem # 7. If the defendant in reply says that the plaintiff has absolved him of his liability or that the plaintiff has already taken the thing claimed, or has gifted it him, or has sold it to him, or
سُقط، أو توقفت الدعوى والمدعى على إدعائه إلى أن يقيم البيينة أو أن يذكر دليلاً للمدعى عليه؟ وجها، أوجهها الأخرى، وإن لم يصرّه الدعوى في الفرض وعده أنه عالم بآي ذي حق فله عليه الحلف، فإن حلف سقطت دعوائه بأنه عالم، وإن رد على المدعى فحلف ثبت حقه.

مسألة 5 - حلف المدعى عليه بأنه لا يدري يسقط دعوى الدراسة، فلا تسمع دعوى المدعى ولا البيينة عندها، وأها حقه الواقعية فلا يسقط به، ولو أراد إقامة البيينة عليه تقبل منه، بل له القاضي بقدر حقه، نعم لو كانت الدعوى متعلقة بعين في يده مباشرة إليه من ذي يد، فلما يجوز له الحلف استناداً إلى اليد على الواقع فحلف عليه سقطت الدعوى وذهب الحلف بحقه، ولا تسمع بيئة منه، ولا يجوز له المقاضاة.

مسألة 6 - لو أجاب المدعى عليه بقوله: «ليس لي و هو لغيرك» فإن أقرّ الحاضر وصدقة الحاضر كان هو الدعوى عليه، فحينئذ له إقامة الدعوى على المقر له، فإن تمت وصار ما له إليه فهو، وإذا له الدعوى على المقر به صار سبباً للغرامة، وله البداية بالدعوى على المقر، فإن حلف حقه أخذ الغرامة منه، وله حينئذ الدعوى على المقر لأخذ عين ما له، فإن حلف دعوته عليه رد غرامة المقر، وإن أقر لاغني بلحق حكم الدعوى على الغائب، وإن قال: «إنه مجهول المالك وأمره إلى الحاكم» فان قلنا إن دعوى مدني الملكية تقبل إذا لم يعارض له يرد إليه، وإذا فعله البيينة، ومع عدمها لا يعهد إرجاع الحكم الحلف عليه، وإن قال: «إنه ليس لك بل وقف» فإن ادعى التولية ترتفع الخصومة بالنسبة إلى نفسه وتتوجه إليه لكونه مدني التولية. فان توجه الحلف إليه وقلنا بجوز حلف المتولي فحلف سقطت الدعوى، وإن نفى عن نفسه التولية فأمره إلى الحكم، وكذا لو قال المدعى عليه: «إنه لصبي أو مجنون» ونفى الولايتهن نفسه.

مسألة 7 - لو أجاب المدعى عليه بأن المدعى أب أمه، أو أخذ المدعى به مني
compromised with him, or the like, the dispute shall be changed, and the defendant shall become the plaintiff, and the plaintiff the repudiator. This dispute is to be decided in the light of what has already been said.

Chapter Nine – Laws Concerning Oath (Half)

Problem # 1. An oath by Allāh is neither valid, nor has it the legal effects like the forfeiture or establishment of right except when one swears by Allāh, the Exalted, or His special Attributes like the Merciful (Al-Rahmān), the Eternal (Al-Qadim), the First and Foremost (Al-Awval) who is preceded by none, and similarly the Attributes which are common and also applied to Him like Sustainer (Al-Raʾīq), and the Creator (Al-Khāliq), rather even Attributes that are not applied to him except when something which makes it specially applicable to Him is added to them, according to the more cautious opinion it is not sufficient confine to the latter, and it is more cautious not to suffice except with the words; “Glorious”. Swearing by any one or anything except Allāh, the Exalted, like the prophets, their Successors, the Revealed Books, and the Holy Places like the Kaʿbah, etc. is not valid.

Problem # 2. There is no difference whether the person swearing or against whom swearing is taking place are Muslims, infidels or having beliefs different from each other; rather not even between an infidel who believes in Allāh and one who does not. It is obligatory at the time of swearing by a Majūs (a Zoroastrian) to add: “Creator of the Light and Darkness” after the words: “Allāh”. If the judge is of the opinion that swearing by a Dhimmi (a non-Muslim subject of a Muslim state) by what is required by his own belief is more deterrent (from falsehood), is it permissible to suffice with it as swearing by Torah revealed upon Prophet Moses (Peace be upon him)? Some jurists have responded it in the affirmative, while according to the opinion more in conformity with the principles of law it is not valid. There is no objection in adding something to what is mentioned as the Attribute of Allāh when it is not something nugatory (bāṭil).

Problem # 3. A swearing by someone or something other than Allāh the Exalted shall have no legal effect even if both the parties to a dispute agree with swearing without naming Allāh, as also it will have no legal effect if something other than the Attribute of Allāh the Exalted is added to the swearing. If a person swears by Allāh, it is sufficient, even if he adds or does not add any of the Attributes of Allāh, as also it is sufficient to swear by one of the special Attributes of Allāh, whether anything else is added to it or not.

Problem # 4. There is no objection in the absence of legal effect for swearing without naming Allāh the Exalted. Is swearing by any one or thing other than Allāh as is prevalent among the people prohibited as regard the establishment or invalidating anything? According to the stronger opinion, it is not prohibited. Of course, it is disapproved (makrūḥ), particularly when
الفول في أحكام الحلف

مسألة 1 - لا يصح الحلف ولا يتورب عليه أثر من إسقاط حق أو إثباته إلا أن يكون بالله تعالى أو بأسمائه الخاصة به تعالى كالرضا والإحسان والقديم والأول الذي ليس قبله شيء، وكذا الأوصاف المشتركة المنصرفة إليه تعالى كالرازق والخالق، بل الأوصاف غير المنصرفة إذا ضم إليها ما يجعلها مخصصة به، والأحور عدم الاكتفاء بالأخر، وأحور منه عدم الاكتفاء بغير الجلالة ولا يصح بغيره تعالى كالأنبياء والأولياء والكتب المنزلة والأماكن المقدسة كالكعبة وغيرها.

مسألة 2 - لا فرق في لزوم الحلف بالله بين أن يكون الحالف والمستحلف المسلمين أو كافرين أو مخلصين، بل ولا بين كون الكافر ممن يعتقد بالله أو يسجده، ولا يجب في إلحاق المجوس ضم قوله: "خالق النور وظلمة" إلى الله ولو رأى الحاكم أن إلحاق الذمي بما يقتضيه دينه أرد عه هل يجوز الاكتفاء به كالأحاف بالكتاب التي أنزلت على موسى عليه السلام؟ قيل: نعم، والأشبه عدم الصحة، ولا يتأس بضم ما ذكر إلى اسم الله إلا لم يكن أمراً بطلما.

مسألة 3 - لا يتورب أثر على الحلف بغير الله تعالى وأي رضي الخصم الحلف بغيره، كما أنه لا أثر لضم غير اسم الله تعالى إليه، فإذا حلف بالله كني ضم إليه سائر الصفات أو لا، كما يقتن الواحد من الأسماء الخاصة، ضم إليه شيء آخر أو لا.

مسألة 4 - لا إشكال في عدم تورب أثر على الحلف بغير الله تعالى، فهل
it becomes a cause for giving up swearing by Allah the Exalted. But if someone says: “I have asked you by the Qur’ân or by the Prophet, PBUH, to do so”, there is no objection in it.

**Problem # 5.** A dumb person performs swearing by signs carrying the required sense. There is no objection if an oath is written on a plate and it is washed and he is asked to drink it, then if he drinks it, he shall be considered to have sworn, otherwise he shall be liable for the right. Probably after the pronouncement it may be treated as a sign, but it is more cautious to add both of the ways.

**Problem # 6.** It is not a condition to swear in Arabic language. Rather it is sufficient to swear in any language if it is made by Allah or any of His special Attributes.

**Problem # 7.** There is no objection in the validity of swearing if it is confined to naming Allah, as when one says: “By Allah I am indebted to such and such person this much”, and it is not obligatory to make it binding by any more words as saying: “By Allah the Subduing (ghâlib), the Overcoming (qâhir), the Annihilator (muhlik); or making it binding by time as Friday or Eid, or making it binding by place as Holy Places, or making it binding by acts as standing with face towards the Qiblah and holding the Qur’ân in his hand. It is generally recognized that making binding is approved for the judge, and there is reason for it.

**Problem # 8.** It is not obligatory for a person swearing to accept (the condition of) making it binding, and it is not permissible to compel him to do so.

If he is willing to accept it, he shall not be considered to be one refusing to comply with the order of the court (nâkil). Rather it is preferable for him to reject making it binding, even if making his judgment binding is approved for the judge by way of caution in cases concerning the property of the people.

It is preferable to resort to making binding in cases concerning all the rights except those relating to property, as it is not done in that in cases under the required limit of certainty.

**Problem # 9.** Appointment of an agent or deputy for swearing is not permissible. If a person appoints an agent or deputy and he swears as an agent or deputy, it will have no legal value, and no dispute shall thereby be settled.

**Problem # 10.** It is indispensable to make swearing in a court of law. It is not permissible for a judge to appoint a deputy in it except for a due excuse as illness or menstruation when the proceeding is to take place in a mosque or when the women swearing happens to be Hijâb observing woman and she will be hurt by appearing an open court, or the like.
اللفة بغيره محرم تكليفاً في إثبات أمر أو إبطاله مثلاً كيا هو المعترف بين الناس؟ الأقوى عدم الحلف، نعم هو مكره، سيا إذا صار ذلك سبباً لترك الحلف بالله تعالى، وأما مثل قوله سألتك بالقرآن أو بالنبي صلى الله عليه وآله أن تفعل كذا فلا إشكال في عدم حرمته.

مسألة 5 - حلف الآخرين بالإشارة المفهومة، ولا أقم بأن تكتب fflush في لوح ويفضل ويثبت له بعد إعلامه، فإن شرب كان حافلاً، ولا أنظم بالحلف، ولق لعلم العلم كان ذلك نحو إشارة، والأحور جمع بينها.

مسألة 6 - لا يشترط في الحلف العربية، بل يكفي بأي لغة إذا كان باسم الله أو صفاته المخصصة به.

مسألة 7 - لا إشكال في تحقيق الحلف إن اقتصر على اسم الله كقوله: "والله ليس لل فمن عليّ كذا" ولا يجب التغليظ بالقول مثل أن يقول: "والله الغالب القاهر المهل وكأنما كيوم الجمعة والعيد. ولا بالمكان كالآمنة المشرفة، ولا بالأعمال كالقيام مستقبل القبلة. أخذ المصحح الشريف بيده، و المعروف أن التغليظ مستحب للحاكم، وله وجه.

مسألة 8 - لا يجب على الحلف قبل التغليظ. ولا يجوز إجباره عليه، ولو امتنع عنه لم يكن ناكلاً، بل لا يعد أن يكون الأرجح له ترك التغليظ، وإن استحب للحاكم التغليظ اجتناباً على أموال الناس، ويستحب التغليظ في جميع الحقوق إلا الأمور فانه لا يفظ نفعاً بما دون نصاب القطع.

مسألة 9 - لا يجوز التوكيل في الحلف ولا النية فيه، فللو كل غيره وحلف عنه بوكالته أو نياته لم يترتب عليه أثر، ولا يفصل به خصومة.

مسألة 10 - لا بد وأن تكون الحلف في مجلس القضاء، وليس للحاكم الاستناد فيه إلا عذر كمرض أو حيض أو الجلسة في المسجد، أو كون المرأة غير صحيحة حضورها في المجلس، نقش عليها أو غير ذلك، فيجوز الاستناد. بل الظاهر عدم جواز الاستناد في مجلس القضاء وحضور الحكم، فما يترب عليه الأثر في
So in such a case it is permissible to appoint a deputy. Rather apparently it is not permissible to appoint a deputy in a court of law in the presence of a judge.

So what makes it legally effective except in case of a due excuse is that swearing should take place by the order of the judge and he should demand a person to swear.

Problem # 11. It is obligatory to make swearing definitely, regardless whether it is made concerning one’s own act or another’s act, and whether it is nugatory or affirmative. It is permissible to swear with the knowledge about the facts of the case, and in case of lack of knowledge it is not permissible to swear except to affirm lack of knowledge.

Problem # 12. It is not permissible for a person to swear concerning another’s property or right establishing it or negating it, when he is a stranger in the case, as when Zayd swears concerning the lack of liability of ‘Amr. In case of a compulsory guardian or an administrator of a minor or a caretaker of a trust there is hesitation, and according to the opinion more in conformity with the principles of law, it is not permissible.

Problem # 13. A swearing is established in disputes regarding financial and other matters like marriage, divorce, and murder, but it is not established in case of Hudūd, as it is not established except by acknowledgement or evidence with the conditions required for its respective position. There is no difference in non-establishment of swearing whether the case concerns solely rights of Allāh like adultery or fornication (Zina’), or it is a case common with the rights of Allāh and the rights of the people as slander (qadhf).

So if a person files a case against another that he has accused him of committing adultery or fornication, and he repudiates it, it shall not admit of swearing. If the claimant swears, it shall not establish Ḥadd for slander.

Of course, if it is a composite case of rights of Allāh and rights of the people like theft or robbery, then to the extent of the rights of the people swearing shall be established, short of amputation (of hand) that relates to the right of Allāh the Exalted.

Problem # 14. It is approved for the judge to exhort the person before swearing and persuade him to give up swearing for the glory of Allāh the Exalted even if he is truthful, and frighten him of the Punishment by Allāh if he swears falsely, as there is a tradition saying: “Whosoever swears by Allāh falsely, becomes an infidel.” In another tradition it is said: “Whosoever swears with the knowledge that he is liar, he certainly fought against Allāh”, and “A false oath leads to the devastation of the inhabitants of the place.”

Chapter Ten – Laws Concerning Possession

Problem # 1. Everything that is under the occupation and in possession of a person in whatever way, it is considered to be in his ownership and to belong to him, regardless whether
 المسألة 11 - يجب أن يكون الحلف على البئر سواء كان في فعل نفسه أو فعل غيره، وسواء كان في نفي أو إثبات، فعلى علمه بالواقعة يجوز الحلف، ومع عدم علمه لا يجوز إلا على علم العلم.

 المسألة 12 - لا يجوز الحلف على مال الغير أو حقه إثباتاً أو إسقاطاً إذا كان أجنبياً عن الدعوى، كما لو حلف زيد على براءة عمر، وفي مثل الولي الإجباري أو القمي على الصغير أو المتولي للفقرة تردد. والأشياء عدم الجواز.

 المسألة 13 - تثبت اليمين في الدعاوي المالية وغيرها كالنكاح والطلاق والقتل، ولا تثبت في الحدود فانها لا تثبت إلا بالاقرار أو البيئة بالشرائط المقررة في مملكة، ولا فرق في عدم ثبوت الحلف بين أن يكون المورد من حق الله عضنا كاذباً أو مشتركاً بينه وبين حق الناس كالذيفان، فإذا أدعى عليه أنه قذفه بالزنا فأناك لم يوجه عليه عينين، ولو حلف المدعي لم يثبت عليه حد الذيفان، نعم لو كانت الدعوى مركبة من حق الله وحق الناس كالسمرة فإن نسبة إلى حق الناس تثبت اليمين، دون القطع الذي هو حق الله تعالى.

 المسألة 14 - يستحب للقاضي وعظ الحلف قبله، وترغيبه في ترك اليمين إجلاً لله تعالى ولو كان صادقاً، وأخذه من عذاب الله تعالى إن حلف كاذباً، وقد روي أنه «من حلف بالله كاذباً كفر»، وفي بعض الروايات «من حلف على يمين وهو يعلم أنه كاذب فقد بارز الله» و«أن اليمين الكاذبة تدع الديار بلاقع من أهلها».

 القول في أحكام اليد

 المسألة 1 - كل ما كان تحت استيلاء شخص و في يده بنحو من الأخوان فهو مكون بلكيته وأنه له، سواء كان من الأعيان أو المنافع أو الحقوق أو غيرها، فلو
it is a real estate, benefit, right or anything else. If it is an agricultural land of a trust, and he claims to be its caretaker, he shall be treated as holding that position.

It is not a condition for proving possession of a property or the like to make changes that are conditional for ownership of the property. So by mere possession of the property it shall be considered that he is its owner, even if he does not presently make any changes in it. It is also not a condition that the person possessing a property should claim to be its owner. If a property was in a person's and he dies, but he did not know that it belonged to him, nor he ever claimed to be its owner, judgment shall be given in favour of his ownership of the property that will be inherited by his heirs. Of course, it is a condition that he should acknowledge that he is not the owner of the property. Apparently judgment shall be given in favour of his ownership of the property in his possession, even if he does not know that it belongs to him. So if he acknowledges that he does not know whether the property in his possession belongs to him or not, judgment shall be given in favour of his ownership in a case between himself and another person.

Problem # 2. If a property is in possession of his agent, trustee or client, it shall be adjudged to be in his ownership. So their possession means his possession. But if a property is in possession of a usurper who has admitted of having usurped it from Zayd, will be adjudged to be in the possession of Zayd or not? If some one claims ownership of the property, and the usurper repudiates his claim by admission (that it does not belong to him), shall it be adjudged to belong to the person who is acknowledged by the usurper to be its real owner or it shall be adjudged not to be in his possession, so that the dispute shall be similar to a case in which neither of them has possession of it? There is difficulty and hesitation in it, even if the first option is not devoid of strength. Of course, apparently when he does not admit of its usurpation, or his possession is not the result of usurpation and he has acknowledged that it belongs to Zayd; judgment shall be given in favour of his possession.

Problem # 3. If a property is in possession of two persons, the possession of each of them being half, it shall be adjudged to be in the ownership of both of them. Some jurists have held that it is possible be in the total possession of both; rather it is possible that a single object may have two owners independently, but this opinion is weak.

Problem # 4. If there is a dispute between two persons over a real estate, for example, when it is in possession of one of them, then the word of the possessor shall carry if accompanied by his oath, while the other one not having possession shall be required to adduce evidence in favour of his claim. If it is in possession of both, then each of them shall be a claimant half of it and a defendant in relation to another half, as each of them has possession of half of it. If each of them claims to be the owner of the whole, he shall be asked to adduce evidence concerning half of it, and his word shall be entertained regarding half of it. If it were in possession of a third person, if he confirms the claim of one definite claimant, he shall become like a possessor. So he shall become the repudiator (of the claim of the other) and the other shall become the plaintiff. If the third person confirms the claim of both of them, confirming that the whole belongs to each of them, his confirmation shall become void, and it shall become a case of the thing belonging to neither of them. If the confirmation means that it belongs to both of them in the sense that both of them share its
كان في يده مزرعة موقوفة ويدعي أنه المتولي يحكم زكائه كذلك، ولا يشترط في دلالة اليد على الملكية ونحوها التصرفات الموقوفة على الملك، ولو كان شيء في يده يحكم بأنه ملكه، ولو لم يصرف فيه فعلاً، ولا دعوى ذي اليد الملكية، ولو كان في يده شيء فالمماطلة، ولم يعلم أنه له ولم يسمع منه دعوى الملكية يحكم بأنه له وهو لوارثه نعم يشترط عدم اعترافه بعدهما، بل الظاهر الحكم الملكية ما في يده، ولم يعلم أنه له، فان اعتراف بأن ي لا علم أن ما في يدي لي أم لا يحكم يكون له بالنسبة إلى نفسه وغيره.

مسألة 2 - لو كان شيء تحت يد و كله أو أمنية أو مستأجره فهو محكوم بملكية فيدهم يدها، وأما لو كان شيء بعيد غاصب معترف به بغضبه من زيد فهل هو محكوم بكونه تحت يد زيد أو لا؟ فلو ادعى أحد ملكيته، وأذبح الغاصب في اعترافه يحكم بأنه من يعترف الغاصب أنه له أم يحكم بعدم بده عليه فتكون الدعوى من الموارد التي لا يد لأحد هما عليه؟ فيه إشكال وتأمل و إن لا يخلو الأول من قوة، نعم الظاهر في إذا لم يعترف بالغاصبة أو لم تكن يده غصباً واعتروف بأنه لزيد يصير محكوم ثم يهوى عليه.

مسألة 3 - لو كان شيء تحت يد إثين فيد كل منها على نصفه، فهو محكوم بمثل كيت لها، وأثر: يمكن أن تكون يد كل منها على تمامه بل يمكن أن يكون شيء واحد لمالكيين على نحو الاستقلال، وهو ضعيف.

مسألة 4 - لو تنازع في عين مثلاً: فان كانت تحت يد أحدها فالقول قوله بيمه، و على غير ذي اليد البيينة، و إن كانت تحت يدها فكل بالنسبة إلى النصف مدع من منكر حيث إن يد كل منها على النصف، فان ادعى كل منها نماه يطالب بالبيينة بالنسبة إلى نصفها، و القول قوله بيمه بالنسبة إلى النصف، و إن كانت بيد منهما فان صدق أحدهما المعين يصير بنزلة ذي اليد، يكون منكرًا و الآخر مدعياً، ولو صدقها ورجع تصديقه بأن تمام العين لكل منها يبلغ في تصديقه و يكون المورد ما لا يد لها، و إن رفع إلى أنها لها بمعنى...
ownership, it shall become as if both of them have its possession. If he confirms the claim of one of them but not definitely, it shall not be far from having recourse to casting lots. Then the person in whose favour it is cast shall be required to take oath. But if he falsifies the claim of both of them, and says that it belongs to himself, it shall remain in his possession, and both them shall be required to take an oath. If it is in possession of both of them, nor in the possession of another person, and there is also no evidence (in favour of their claim), then according to the opinion closer to the traditional authority, recourse shall be had to casting lots.

**Problem # 5.** If a person claims to be the owner of a real estate in possession of another, and adduces evidence in favour of his claim, the property shall be expropriated from him by the order of the judge. Then the defendant adduces evidence in favour of his claim that the property belongs to him. If he claims that at present the property belongs to him and adduces evidence in favour of his claim, the property shall be expropriated from the previous owner and returned to the second claimant. If the previous owner claims that at the time of filing his suit the property belonged to him, and adduces evidence in favour of his claim. Then will the latest judgment be quashed and the real estate shall be returned to the previous owner or not? There are two opinions in this respect, and the non-cancellation of the latest judgment shall not be far from likelihood.

**Problem # 6.** If a wife and husband have a dispute on the ownership of household chattels, regardless whether it happens during the subsistence of marital tie between them or after its breach, there are several opinions in this case. According to the more preferable, it is not the property of men, as usually what belong to men are things like sword, arms and men’s clothes. It also does not belong to women, as what belong to women are ladies clothes and the sewing machines on which the women work, or the like. What belongs neither to men nor to women are things that are jointly held by both. If the husband claims to be the owner of what is meant for women, then the wife shall be the defendant, and she shall be required to swear, even if the husband has no evidence to adduce in favour of his claim. If the wife claims to be the owner of what belongs to men, then she shall be the claimant and she shall be required to adduce evidence in favour of her claim and the husband shall be required to swear. What both jointly hold, in case there is no evidence to be adduced and no oath to be taken by both, it shall be divided between them. This is when it transpires that the property is in possession of neither of them. Otherwise, if it is supposed that the chattels belonging to ladies is lying in the box of the husband and in his possession, or otherwise, judgment shall be given in favour of the person in whose possession the chattel is, and the other party shall be required to swear.

It is not a condition in respect of what concerns men and what relates to ladies that each of them should have knowledge about having used or having benefited from every article relating to them respectively, nor is it a condition that each of them should have obtained possession of whatever belongs especially to men or women respectively. Does this rule also applies in respect of two partners in a house one of whom belongs to the group of learning and jurisprudence and the other to that of trades and business, so that judgment be given that whatever belongs to the group of the learned should go to the one belonging to that group and whatever relates to the group of traders should go to the one belonging to that group so that the plaintiff and defendant in each case may be distinguished? There are two options in this case, but it is not far from being reasonable for them to unite with each other.

**Problem # 7.** If the present occupation is contrary to the past or the past ownership precedes the present one, then if the object is at present in the possession of Zayd and it was formerly in the
اشتراكتها فيها يكون منزلة ما تكون في يدهما، وإن صدق أحد هم لا يعينه لا تبعد القيادة، فإن خرجت له حلف، وإن كانها وقال: هي ليست في يده و لكل منها عليه النبينا، ولم تكن في يدهما ولا يدعها ولا لم تكن بيئة فالإحساس بالاقتراح بينهما.

مسألة 5: إذا أدعى شخص عيناً في يد آخر وأقام بينة وانتزعتها منه بحكم المحاكم ثم أقام المدعى عليه بينة على أنها له فان أدعى أنها فعلاً له و أقام البينة عليه تنتزع العين وترد إلى المدعى الثاني، وإن أدعى أنها له حين الدعوى و أقام البينة على ذلك فهل يتدخل الحكم و ترد العين إليه أو لا؟ قولان، ولا يبعد عدم النقض.

مسألة 6: لو تنازع الزوجان في متنا العين سواء حال زوجيتها أو بعدها ففيه أقوال: أرجح أنها أن ما يكون من المتنا للرجال فهو للرجل كالمسيف والسلاح وللبسه الرجال، وما يكون للنساء فالمراة كأبسة النساء ومكينات الخياطة التي تستعملها النساء و نحو ذلك، وما يكون للرجال والنساء فهو بينهما، فإن أدعى الرجل ما يكون للنساء كانت المرأة مدعى عليها، وعليها الحلف لم يكن للرجل بيئة. وإن أدعى المرأة ما للرجال فهي مدعية، عليها البينة وعلى الرجل الحلف. وما بينها عهد البينة و حلفها يقسم بينها. هذا إذا لم يبين كون الأمتعة تحت يد أحدهما. ولا فرض أن المتنا الخاص للنساء كان في صندوق الرجل و تحت يده أو العكس يحكم بلدية ذي اليد، وعلى غيره البينة. ولا يعتبر في ما للرجال أو ما للنساء العلم بأن كل منها استعمل ما له أو انتفع به. ولا إحراز أن يكون لكل منها يد متحصلة بالنسبة إلى مفاهيم الطائفتين، وهل يجري الحكم بالنسبة إلى شريكين في دار أحدهما من أهل العلم وألفتهما و الثاني من أهل التجارة والكسب فيحكم بأن ما للعباء للعالم و ما للتجار للتجار فيستكشف المدعى من المدعى عليه؟ و هجان، لا يبعد الاحلاق.

مسألة 7: لو تعرضت اليد الحالية مع اليد السابقة أو الملكية السابقة تقدم.
possession of 'Amr, or it was his property, it shall be adjudged that it belongs to Zayd. 'Amr would be required to adduce evidence in favour of his claim. If there is no evidence, Zayd will be required to swear. Of course if Zayd acknowledges that what is in his possession was in possession of 'Amr, and it has been transferred through conveyance (nāqil), when the nature of the dispute is changed, as Zayd in this case becomes plaintiff, and the word of 'Amr will carry if supported by his oath. Likewise if he acknowledges that it belonged to 'Amr or in his possession, but keeps silence regarding its transfer to himself. If transfer of the object is necessary to establish the claim, and such cases it is difficult to make him repudiator due to his possession. Now if he adduces evidence to the effect that previously it belonged to 'Amr, or the judge knows about it, possession shall be strong, and the possessor becomes the repudiator, and his word shall be received. Of course, if he adduces evidence to the effect that Zayd's possession of the object was a usurpation from 'Amr, or a temporary transfer ('Āriyah) or a deposition in trust (amānat) or the like, then apparently it will result in the extinction of the possession, and word of the person having evidence in favour of his claim shall carry.

Problem # 8. If there is a conflict of evidences in respect of an object, then if it was in possession of one of two parties to the dispute, then the rule requires preference of the internal evidence and rejection of the external evidence, even if the latter is greater in number, more judicious or more in conformity with the criteria of justice (a'dal) and preferable (arjah). If it were in possession of both, judgment shall be given in favour of dividing it between them as required by the external evidence and absence of value for the internal evidence. If it were in possession of a third person, or in possession of none of them, then apparently both the evidences shall be terminated, and recourse shall be had to oath, or division into two halves, or casting lots, but the case is extremely difficult due to sprouting of reports and opinions, and it is difficult to prefer any opinion, even if in the first instance it may not be far from what we have already mentioned

CONCLUSION

It comprises the following two Chapters:

Chapter one – Note of One Judge to Another

Problem # 1. No judgment is enforced and no dispute is settled except by expressing in words. An expressing in writing has no legal value. If one judge writes a note to another in the form of an order intending expression in writing, the other judge shall not enforce it, even he knows that it is written by that judge himself and also knows the purpose of his note.
اليد الحالية. فلو كان شيء في يد زيد فعلاً، وكان هذا الشيء تحت يد عمرو سابقاً أو كان ملكاً له يحكم بأنه لزيد، وعلى عمرو إقامة البينة، ومع عدمها فله الحلف على زيد، نعم لو أقر زيد بأنه ما في يده كان لعمرو وانتقال إليه باقل انقلبت الدعوى وصار زيد مدعاً، والقول قول عمرو بيمينه، وكذا لو أقر بأنه كان لعمرو أو في يده وسكت عن الانتقال إليه، فإن لازم ذلك دعوى الانتقال، وفي مثله يشكل جعله منكرًا لأجل يده، وأما لو قامته البينة على أنه كان لعمرو سابقاً أو علم الحاكم بذلك فألبد معكه، ويتكون ذو اليد منكراً والقول قوله، نعم لو قامته البينة بأن يد زيد على هذا الشيء كان غصبًا من عمرو أو عارية أو أمانة ونحوها فالظاهرة سقوط يده، والقول قول ذي البينة.

مسألة 8. لو تعارضت البيانات في شيء فإن كان في يد أحد الطرفين فقبضى القاعدة تقديم بيئة الخارج ورفض بيئة الداخل وإن كانت أكثر أو أعدل وأرجح، وإن كان في يدهما فيحكم بالتصنيف بالتخصيص ببيئة الخارج وعدد اعتبار الداخل، وإن كان في يد ثالث أو لا يد لأحد عليه فالظاهرة سقوط البيانين والرجوع إلى الحلف أو إلى التنصيف أو القرعة، لكن المسألة بشفوعها في غاية الاشكال من حيث الأخبار وأقوال، وترجيح أحد الأقوال مشكل وإن لا يعد في الصورة الأولى ما ذكرناه.

خاتمة فيها فصلان:

الأول في كتاب قاض إلى قاض

مسألة 1. لا ينفذ الحكم ولا تفصل الحصومة إلا بالانشاء لفظاً، ولا عبرة بالانشاء كتاباً، فلو كتب قاض إلى قاض آخر بالحكم وأراد الإنشاء بالكتابة لا يجوز للثاني إنشاؤه وإن علم بأن الكتابة له وعلم بقصده.
Problem # 2. The communication of the order of the judge, after supposing the expression in words, to another judge takes places by writing, or in speech or in the form of testimony. If it were in writing so that he writes to another judge in the form of an order, it has no legal value even if the judge knows that it is his writing and he means what it contains. If it were in the form of verbal statement, then if it were a testimony to his former expression, it is also not accepted except when accompanied by the testimony of another person of sound character. It is better that he should say: “It has been proved before me that ...”. If the expression has been made in the presence of the other person so that the other person were present in the session of the court where the former judge has given his judgment, then it is beyond discussion, but its enforcement is obligatory. As regards the testimony of an evidence for his order, in case the testimony is acceptable (when fulfilling the required conditions for it), its enforcement is obligatory upon the other judge. Same shall be the case if the other judge knows it by continuous judgment or convincing circumstances or acknowledgement of both the parties to the dispute.

Problem # 3. Apparently the enforcement of the order of a stranger judge takes place by a judicial order by the second judge on the actual facts of the case, because the settlement of the dispute is realized by the first judicial order, and the other judge has simply enforced or endorsed it so that action may be taken on it by the executive authorities and officers, but it has no effect on the actual facts of the case, because its implementation or non-implementation after the accomplishment of the judicial standards in the first instance are equal, and so the second judge has no authority to give judgment on the actual facts of the case due to his lack of knowledge and the absence of accomplishment of the judicial standards before him.

Problem # 4. There is no difference in what we have mentioned between the rights of Allāh and the rights of the people except in the establishment by evidence, so that its influence on them is a cause of hesitation, and according to the more reasonable opinion, it has no influence.

Problem # 5. It is not a condition for the permissibility of testimony of evidence or its acceptance here other than what conditions are there for both of them in other places. So their testimony on its judgment and its execution has no value in its strength. Likewise, their testimony on the judicial order is their presence in the session of the dispute and their listening to the testimony of the witnesses has no legal value; rather what has legal value is their testimony that the judge has given such judgment. Rather their knowledge about it is sufficient.

Problem # 6. Some jurists have said that if the two witnesses in a dispute fail to be present, and the judge presents the actual facts of the case and the form of his judgment and mentions the names, parentage and other details of the two parties to the prosecution, and makes them witness to his judgment, then it is better for them to accept it, as his notification is effective like his judgment. But its non-acceptance is more reasonable except with the addition of
مسألة 2 - إنهاء حكم الحاكم بعد فرض الانشاء لفظاً إلى حاكم آخر إما بالكتابة أو القول أو الشهادة، فإن كان بالكتابة بأن يكتب إلى حاكم آخر بحكم فأ لعدة بها حتى مع العلم بأنها له و أراد مفادها، وأما القول مشافهة فإن كان شهادة على إنشائه السابق فلا يقبل إلا مع شهادة عادل آخر، وأولى بذلك ما إذا قال: ثبت عندي كذا، وإن كان الانشاء بحضور الثاني بأن كان الثاني حاضراً في مجلس الحكم فقضى الأولى فهو خارج عن محط البحث لكن يجب انفاذه، وأما شهادة البيئة على حكم فقبولة يجب الانفاذه على حاكم آخر، وكدنا لو علم حكم الحاكم بالتوات أو قرائن قطعية أو إقرار المتخاصمين.

مسألة 3 - الظاهر أن إنفاذ حكم الحاكم أجنبي عن حكم الحاكم الثاني في الواقعة، لأن قطع الخصومة حصل بحكم الأول وإنما أنفذه وأمضاه الحاكم الآخر ليبرع الوتلة والأمراء، ولا أثر له بحسب الواقعة، فإن إنفاذه و عدم إنفاذه بعد تمامية موازين القضاء في الأول سواء، وليس له الحكم في الواقعة لعدم علمه وعدم تحقق موازين القضاء عنده.

مسألة 4 - لا فرق في ذكرناه بين حقوق الله تعالى و حقوق الناس إلا في الشروط بالبيئة، فإن الإنازه بها فيها محل إشكال وأشبه عدمه.

مسألة 5 - لا يعتبر في جواز شهادة البيئة ولا في قبولها هنا غيرما يعتبر فيها في سائر المقامات، فلا يعتبر إشهادهما على حكمه وقضاياه في التحمل، وكدنا لا يعتبر في قبول شهادتهما إشهادهما على الحكم ولا حضورهما في مجلس الخصومة وسماعها شهادة الشهود، بل يعتبر شهودهما أن الحاكم حكم بذلك، بل يكفي علمهما بذلك.

مسألة 6 - قول إن لم يحضر الشهادان الخصومة فحكم الحاكم لها الواقعة وصورة الحكم وصلى المتحاكمين بأسمائها وأبنائها وصفاتها وآشدها عليها الحاكم، فإن الأولى القبول، لأن إخباره كحكمه ماض، وأشبه عدم القبول إلا بضم عادل آخر، بل لو أنشأ الحكم بعد الانشاء في مجلس الخصومة فجواز الشهادة
another person of sound character. Rather if he announces the judgment after announcing it in the session of the dispute, the permissibility of testimony of the judgment in general is difficult, rather forbidden, and the testimony in a restricted way that it was not the same as announced in the session of the dispute nor an announcement for removing it is permissible, but communicating it to another judge is not free from objection, rather it is forbidden.

**Problem # 7.** In what has been mentioned above there is no difference whether the judgment of the judge regarding the two parties to a dispute is issued in their presence or it is issued in absentia after the plaintiff has adduced evidence. The assumption (of burdens) in both of them, the testimony and the conditions of its acceptance are the same. It is imperative for both the witnesses to preserve all the characteristics of the plaintiff and defendant in a way that clears them of confusion and preserve the subject of the claim that may clear it of confusion, and safeguard the two witnesses and their characteristics in the same way in whatever safeguard is required, as the judgment in absentia and that it is issued on the competent authority.

**Problem # 8.** If the matter becomes doubtful for the second judge due to non-registration of the testimony of the thing that removes confusion, the issuance of the judgment shall be detained till the matter is cleared by the two witnesses recollecting it or by the testimony of other than the two witnesses.

**Problem # 9.** If the condition of the first judge changes after the issuance of the judgment by his death or insanity, it shall not have any bad effect on the act of issuance of the judgment and the necessity of its implementation by the other judge, even if the fulfillment of the right on it. If it changes by the judge’s depravity (*fisq*), it is said by some jurists that action will not be taken on his judgment, or it will be considered whether the depravity has appeared before its enforcement in which case action shall not be taken on it, or its appearance subsequently in which case the judgment shall be enforced. It is more reasonable to act upon it in all circumstances like all the other analogous conditions and the permissibility of its implementation or the obligation of its implementation.

**Problem # 10.** If the defendant admits before the second judge that judgment has been given against him (by the first judge), and testimony has been produced against him, the (second) judge shall enforce the sentence. If he repudiates it, then if the testimony of the witnesses concerned his self, it shall not be heeded and the sentence shall be made binding.

The same shall be the rule if the testimony is such as does not apply except to him. The same shall be the rule in case it does not apply to him except in rare cases, so that the intellectuals do not pay heed to its likelihood, while its application to him was satisfactory. If the testimony is such as may be applicable to a person other than him and against him, then his word shall carry when accompanied by his oath. The plaintiff shall be required to adduce evidence to the effect that he is himself the person. In such case there is probability of the judgment not being sound, as it belongs to the category of adjudication on something that is dubious, but there is hesitation in such case.
بالحكم بنحو الاطلاق مشكل بل ممنوع، والشهداء بنحو التقيد بأنه لم يكن إنشاء مجلس الخصومة ولا إنشاء الرافع لها جائزة، لكن إنجازه للحاكم الآخر مشكل بل ممنوع.

مسألة 7: لا فرق في جميع ما مر بني أن يكون حكم الحاكم بين المتخصصين مع حضورهما وبين حكمه على الغائب بعد إقامة المدعى البينة، فالتحمل فيها والشهادة وشرائط القبول واحد، ولا بد للشاهدين من حفظ جميع خصوصيات المدعى والملصى عليه بما يخرجهما عن الإبهام، وحفظ المدعى به بخصوصياته المفرجة عن الإبهام، وحفظ الشاهدين وخصوصياتهما كذلك فيما يحتاج إليه، كالحكم على الغائب وأهو على حجته.

مسألة 8: لو أشتهى الأمر على الحاكم الثاني لعدم ضبط الشهود له ما يرفع به الإبهام أوقف الحكم حتى يتضح الأمر بتذكرة أو بشهادته غيرها.

مسألة 9: لو تغيرت حال الحاكم الأول بعد حكمه بموت أو جنون لم يحدد ذلك في العمل بحكمه، وفي هذه الزوم إنجازه على حاكم آخر لو توقف استيفاء الحق عليه، ولو تغيرت نفس فق، فقد يقال: لم يعمل بحكمه أو يفصل بين ظهور الفسق قبل إنجازه فلم يعمل أو بعده فيعمل، والأشبه العمل مطلقا كسائر العوارض وجاوز إنجازه أو وجوهه.

مسألة 10: لو أقر المدعى عليه عند الحاكم الثاني بأنه المحكوم عليه وهو المشهود عليه ألزم الحاكم، ولو أنكر فإن كانت شهادة الشهود على عينه لم يسمع منه وألزم، وكذا لو كانت على وصف لا ينطبق إلا عليه، وكذا إذا ينطق عليه إلا نادراً بحيث لا يعني باحتماله العقلاء، كأن الاكتتاب عليه ما يطمبه، وإن كان الوصف على وجه قابل للانطباق على غيره وعليه فالقول قوله بنية، وعلي المدعى إقامة البينة بأنه هو، ويجتثل في هذه الصورة عدم صحة الحكم لكونه من قبل القضاء بالمهم، وفيه تأمل.
Chapter Two – Exercising Set-off (Muqāṣṣah)

Problem # 1. There is no objection in permissibility of a set-off in absence of denial or protraction and payment on demand by the claimant, as also there is no objection in its permissibility when a person has a right against another for a capital asset, debt, benefit or right and the other party denies or protracts its payment. If a person denies it in case of belief in being right (muḥiq), or when he does not know that the plaintiff is in the right, there is objection in permissibility of the demand for set-off rather lack of permissibility is more compatible with the principles of law (ashbāh). But if he was a usurper and denies it due to forgetfulness, then apparently the set-off shall be permissible.

Problem # 2. If the capital asset belonging to him is in the possession of another person, then if it is possible to get it back without any trouble and without resorting to something forbidden, the exercise of setting off of his right with the property of the other person shall not be permissible. If it is not possible to get it back from him at all, it would be permissible for him to set off his right with the other property belonging to the defendant. If it were of the same kind as his property, it would be permissible to take as much as his property. If it is not of the same kind as his property, it would be permissible to take as much as the price of his property. If it is not possible without disposing it off, it is permissible to dispose it off and take as much as the price of his property and return the surplus.

Problem # 3. If the property in question is replaceable, and it is possible to replace it with a property of the same or another kind, then is it permissible for him to take something of another kind in replacement to the extent of the price of his property, or is it obligatory to take something of the same kind as his property? Likewise, is it possible to take the same kind as his property or another kind to the extent of the price of his property? For example, if the commodity demanded was wheat, and it is possible to take wheat belonging to the defendant to the extent of his wheat and take an amount of lentils up to the price of his wheat, then is it obligatory for him to take only wheat or is it permissible for him to take an amount of lentils? It is not far from being permissible to set off his right unrestrictedly in case it is not binding to dispose off the property of a usurper and take the price of his property from it. In case of its being binding and there is possibility of setting off his right with something for which it is not binding, then it is according to the more cautious, rather stronger opinion. to confine oneself to it; rather according to the more cautious opinion he should confine himself to take the same kind as his commodity when it is possible to do so without any trouble or resorting to something forbidden.

Problem # 4. If it is possible to take his property back with some trouble, then apparently it is permissible to set off his right. If it were possible by resorting to something forbidden, as entering the house of the defendant without his permission or breaking open his lock, or the like, then there is difficulty in permissibility of setting off his right. It is possible to do so when it is permissible to resort to something forbidden and take back his property, even if it is harmful for a usurper. But in case of absence of permissibility, as when the object demanded from the other person is not usurped, and the other person has denied it due to some excuse. Then apparently there shall be
الفصل الثاني في المقاصلة

مسألة 1 - لا إشكال في عدم جواز المقاصلة مع عدم جهود الطرف ولا مماطلته وأدائه عند مطالبه، كما لا إشكال في جوازها إذا كان له حق على غيره من عين أو دين أو منفعة أو حق و كان جاحدا أو مماطل، وأما إذا كان منكراً لاعتقاد الحقية أو كان لا يدري حقية المدعي في جواز المقاصة إشكال، بل الأشبه عدم الجزء، ولو كان غاصباً و أنكر لنسيانه فالظاهر جواز المقاصة.

مسألة 2 - إذا كان له حق عند غيره فإن كان يكين أخذها بلا مشقة ولا ارتكاب مخالفة فلا يجوز المقاصلة من ماله، وإن لم يكن أخيله أنه أصلاً جاز المقاصة من ماله الآخر، فإن كان من جنس ماله جاز الأخذ بمقداره، وإن لم يكن جاز الأخذ بمقداره، وإن لم يكن إلا ببيعه جاز بيعه و أخذ مقدار قيمة ماله ورة الزائد.

مسألة 3 - لو كان المطلب مثلاً و أمكن له المقاصلة من ماله المثل وغيره فهل يجوز له أخذ غير المثل تقاساً بقدر قيمة ماله أو يجب الأخذ من المثل، و كذا لو أمكن الأخذ من جنس ماله و من مثلاً آخر بقدر قيمة مثلاً لو كان المطلب حنطة و أمكنه أخذ حنطة منه بقدر حنته و أخذ مقدار من العدس بقدر قيمةها فهل يجب الاقتصار على الحنطة أو جاز الأخذ من العدس؟ لا يبعد جواز التقاص مطلقاً فإذا لم يلزم منه بيع مال الغاصب و أخذ القيمة، ومع لزومه و إمكان التقاس بشيء لم يلزم منه ذلك فالأحوض بقانونية الاقتصار على ذلك، بل الأحوض الاقتصار على أخذ جنسه مع الإمكان بلا مشقة و مخالفة.

مسألة 4 - لو أمكن أخذ ماله بشقية فالظاهر جواز جواز التقاس، ولو أمكن ذلك مع مخالفة كالدخل في داره بلا إذنه أو كسر قفله و نحو ذلك في جواز المقاصة إشكال، هذا إذا جاز ارتكاب المخالفة و أخذ ماله ولو أصر ذلك بالغاصب، وأما
permissibility for setting off his right with the other person’s property if in our opinion it is permissible to resort to set-off in case of the defendant’s denial due to some excuse.

**Problem # 5.** If the right is in respect of a debt, and the debtor denies or protracts its payment, it shall be permissible for the creditor to set off his right with the property belonging to the debtor, even if it is possible to take it back by filing a suit before a judge.

**Problem # 6.** If the fulfillment of his right depends on the occupation of something more than his right, it shall be permissible, and the surplus shall be returned to the person with whom the set-off has taken place. If the surplus is destroyed while in his possession without any omission or commission or delay in its return on the part of the plaintiff, the plaintiff shall not be liable for it.

**Problem # 7.** If the fulfillment of his right depends on disposing of the property with which the set-off has taken place, it shall be permissible to dispose of the property, and its sale shall be valid, but it shall be obligatory on him to return what is in excess of his right. If, however, it does not depend on disposing of the property, as when the price of the property with which the set-off is to take place is equal to his right, then there is no objection in his occupation of the property as set-off. But there is objection in the permissibility of the sale of the property and taking its price as set-off, or in the permissibility of its sale and purchase of something of the same kind as his property, and then taking it as a set-off. According to the opinion more compatible with the principles of law, it is not permissible.

**Problem # 8.** There is no objection in the case when the right of a person was a debt against another who had been protracting its repayment, and so he takes something from him by way of set-off to the same extent as the price of his property, so that the other person shall be acquitted of his liability, particularly when what has been taken is identical with what was owed by him, as when the other person was liable for an amount of wheat, and the claimant receives wheat to the extent of his claim by way of set-off. Similar is the rule concerning non-fungible things when the claimant takes the price to their extent. If they were capital assets, then if there are things of the same kind, and the claimant receives things of the same kind by way of set-off, it is not far from the receipt of the exchange by compulsion, though there is hesitation in this rule. If it were something non-fungible as, for example, a horse, and it is taken by way of set-off to the extent of its price, will it be according to the rule mentioned before concerning exchange by way of compulsion or it would be a case of set-off like an artificial exchange? So when a person is able to take the same thing, it is permissible rather obligatory to take the same thing back, and it is obligatory for the other person to return what he had occupied. Likewise, is it obligatory on the usurper to return the usurped thing after his property has been taken by way of set-off? There is some difficulty and hesitation in accepting it, though it is not far from applying the rule of artificial exchange in it.

**Problem # 9.** According to the stronger opinion, it is permissible to exercise set-off with the property placed before him as a trust, though there is disapproval in it, and according to the more cautious opinion, the set-off should not take place.

**Problem # 10.** There is difficulty in the permissibility of exercising set-off in case of his lack of knowledge about the right. If he owes a debt, and it is possible to pay it, there is difficulty in exercising set-off. According to the more cautious opinion, he should refer the case to a judge,
مع عدم جوازه كا لو كان المطلوب منه غير غاصب و أنكر المال بهذ الفاظر

جواز النقاص من ماله إن قالنا جواز النقاص في صورة الانكاك لعذر.

مسألة 5 - لو كان الحق دين و كان المدين جاحداً أو ماطلاً جازت النقاصة

من ماله و إن أمكن الأخذ منه بالرجوع إلى الحاكم.

مسألة 6 - لو توقف أخذ حقه على التصرف في الأزيد جاز، والزائد يرد إلى

المقص منه، ولو تلف الزائد في يده من غير إفراط و فرقية ولا تأخير في رده لم

يضمن.

مسألة 7 - لو توقف أخذ حقه على بيع مال النقصة منه جاز بيعه و صح، و

يجب رد الزائد من حقه، و أما لو لم توقف على البيع بأن كان قيمة المال بمقدار

الحق، فلا إشكال في جواز أخذه مقاصة، و أما في جواز بيعه و أخذقمته مقاصة أو

جواز بيعه و اشتراء شيء من جنس ما له ثم أخذه مقاصة إشكال و الآبه عدم

الجواز.

مسألة 8 - لا إشكال في أن ما إذا كان حقه ديناً على عهدة الماطلا فاقتصر

منه بمقداره برأت ذمتة سيا إذا كان الأخوذ مثل ما على عهده، كا إذا كان

عليه مقدار من الحنطة فأخذ بمقدارها مقاصة، و كذا في ضمان القييمات إذا

اقتصر القيمة بمقدارها، و أما إذا كان عيناً فان كانت مثلية و اقتص مثلها فلا

يجب حصول المعاوضة فهي أ على تأمل، و أما إذا كانت من القييمات كفراس

مثلاً و اقتص بمقدارقمته فهل كان الحكم كما ذكر من المعاوضة القهرية أو

كان الاقتصاد بمنزلة بدل الحيلولة، فذا تمكن من العين جاز أخذها بل

وجب، و يجب عليه رد ما أخذ، وكذا يجب على الغاصب ردا بعد الاقتصاد

و أخذ ماله؟ في إشكال و ترد و إن لا يعبد جيران حكم بدل الحيلولة فيه.

مسألة 9 - الأقوى جواز النقاصة من المال الذي جعل عنه و ديعة على

كرابة، و الأحوز عده.

مسألة 10 - جواز النقاصة في صورة عدم علمه بالحق مشكل، فلو كان عليه
as there is difficulty in case of ignorance about the debtor, even if the creditor is known; rather it is forbidden, as mentioned earlier. So it is indispensable to refer the case to a judge.

**Problem # 11.** A set-off is not permissible with the property held jointly by the debtor and another person except with the permission of his partner. But if he takes it, the set-off shall take place, even if he shall be considered to have sinned. If he exercises set-off from the jointly held property, he shall become a partner of the other partner, if the property were to the extent of his right or was less than his right; otherwise he shall become a partner of the debt and his partner. Then is it permissible for him to take his right and separate it without the permission of the debtor? Apparently there is permissibility to do so with the consent of the other partner.

**Problem # 12.** If a person has right, but shyness or fear, etc., preclude him from demanding it, then the set-off shall not be permissible. Similar is the rule when he is afraid that the debtor is recusant or protractor, the set-off shall not be permissible.

**Problem # 13.** A set-off is not permissible with the property belonging to the right of a stranger as the right of a mortgager or the creditors’ right in the property of an interdicted person or in the property of a deceased whose property is not sufficient to meet his debts.

**Problem # 14.** A set-off is not permissible to be exercised by a person other than one who is entitled to do so, except when such person is a guardian or agent authorized by the person having the title. So a father is entitled to exercise a set-off on behalf of his minor, insane or idiot son in a case when he is legally entitled to act as a guardian. The same right belongs to do so in case of guardianship of such persons.

**Problem # 15.** If there is a debt owed to a recusant or protracting debtor, it is permissible to defray it against what he owes as set-off if it was to the extent of or less than the debt owed by him; otherwise, he shall be released from his liability to its extent.

**Problem # 16.** The poor and Sayyids are not entitled to exercise set-off with the property of a person on whom Zakāt or Khums is due or with his property itself except with the permission of the legal authority. A Judge, however, is entitled to exercise set-off with the person or property of a person under such obligations in case of his recalcitrance or protraction. Likewise in case there is some property of a trust for public purposes or general titles without any caretaker, a set-off is not permissible for it by any one except a judge. There is no objection in the permissibility of a judge exercising a set-off for the benefit of (such) a trust.

Is it permissible to exercise a set-off to the extent of its capital asset, when its usurper is ignorant or protractor, so that it is not possible to take back (the usurped capital asset) from him, and to make it a trust due to the said conditions? There are two options. With the supposition of its being permissible, if the man retracts from recalcitrance and protraction, will the capital asset return to the trust and what has been made a trust returned to its owner, or it
ال?= لم يجوز النقاص من المال المشترك بين المدين وغيره إلا بإذن شريكه، لكن لو أخذ وقع النقاص وإن أتم، فذا اقتضى من المال المشاع صار شريكه لذللك الشريك إن كان المال بقدر حقه أو ألقسه منه، وإلا صار شريكًا مع المدين وشريكه، فهل يجوز له أخذ حقه وإن فراؤه بغير إذن المدين؟ الظاهرة جوازة مع رضا الشريك.

الۍ 12: لو كان له حق ومنعه الحياء أو الحنف أو غيرها من المطالبة فلا يجوز له النقاص، وكذا لو شكل في أن الغريم جاحد أو ممات على لا يجوز النقاص.

الۍ 13: لا يجوز النقاص من مال متعلق به حق الغير كحق الرهاة وحق الغرام في مال المحرر عليه وفالي الميت الذي لا تنفعه بديونه.

الۍ 14: لا يجوز لغير ذي الحق النقاص إلا إذا كان ولياً أو وكيلًا عن ذي الحق، فلا يجوز النقاص لولده الصغير أو المجنون أو السفيه في مورد له الولادة وللحاكم أيضًا ذلك في مورد ولادته.

الۍ 15: إذا كان للغرم الجاحد أو الممات عليه دين جائز احتسابه عوضًا عيا عليه مقاصة إذا كان بقدره أو أقل، وإلا فبقدرته وتيار دمته بقداره.

الۍ 16: ليس للفراء أو السادة مقاصة من مال من عليه الزكاة أو الحنف، أو في ماله إلا إذا باذن الحاكم الشرعي، وله الحكم النقاص من عليه أو في ما له نحو ذلك وجد أو ممات، وكسدا لو كان شيء وقفاً على الجهات العامة أو العناوين الكلية وليس لها مثول لا يجوز النقاص لغير الحاكم، وأما الحاكم فلا إشكال في جواز مقاصته منافع الوقف، وهل يجوز المقاصلة بقدار عينه إذا كان الغاصب جاهلًا أو ممات ولا يمكن أخذها منه وجعل المأخوذ وفقاً على تلك العناوين؟ وجهان، وعلى الجواز لرجع عن المجود والماتهه فهل ترجع العين
will remain a trust and will the trust turn into a property of the usurper? According to the stronger opinion, the former option should be adopted, and apparently the trust belongs to the category of the trust that terminates at the end, and so it is valid until its return.

**Problem # 17.** A set-off does not take place by mere intention without taking and occupying the property of the debtor. Of course, it is permissible to calculate the debt for setting off, as mentioned earlier. If the property of the debtor is in possession of the creditor or some one else, and the creditor intends to become its owner by way of set-off, it does not become his property (merely by his intention). Likewise, it is not permissible to dispose the property in possession of another person by way of exercising a set-off from the debtor.

**Problem # 18.** Apparently a set-off does not depend on the permission of the judge. Likewise, if it depends on the sale and partitioning (the property of the debtor), all of this is permissible without the permission of the judge.

**Problem # 19.** If after the exercise of set-off it transpires that the plaintiff was wrong in his plaint, it shall be obligatory on him to return what he has taken, or return, for example, its substitute or price if it has perished, and he shall be liable for the payment of damages to the defendant, without there being difference in the fault in the judgment or the subject. If it transpires that what he had taken was the property of some one other than the debtor, it shall be obligatory to return it or return its substitute if it has perished.

**Problem # 20.** It is permissible to make a set-off with a capital asset, a benefit or a right against one’s right, of whatever nature it might be. If the subject of the demand is a capital asset, it is permissible to set it off with a benefit if he hits across it, and similarly with a right or otherwise.

**Problem # 21.** A set-off is permissible when it is not referred to the judge who asks him to take oath; otherwise it is not permissible after the oath has been taken. If he exercises the set-off from the person after the oath, he shall not become owner of the property (taken by way of set-off).

**Problem # 22.** It is approved for the person exercising the set-off to say at the time of exercising the set-off: “O Allāh, I am taking this property in place of my property that the defendant has taken from me, and whatever I am taking is not by way of treachery or injustice”.

Some jurists have held that making such a statement is obligatory, and this opinion is more cautious.

**Problem # 23.** If a person usurps the property jointly held by two partners, each of them is entitled to exercise a set-off to the extent of his share. Similar shall be the case if a debt
وفقاً و ترد ما جعله وقفاً إلى صاحبه أو بقي ذلك على الوقفية و صار الوقف ملكاً للواقص؟ الأقوى هو الأول، و الظاهر أن الوقف من منقطع الآخر، فيصبه إلى زمن الرجوع.

مسألة 17 - لا تتحقق المقاصية ب مجرد اليومنية بدون الأخذ و التنسل على مال الغرم، نعم يجوز احتساب الدين تقاساً كامًّا من، فلو كان مال الغرم في يده أريد غيره فنوى الغرام تملبه تقاساً لا يصير ملكاً له، و كذا لا يجوز بيع ما بيد الغرم منه بنعوان التقاس من الغرم.

مسألة 18 - الظاهر أن التقاس لا يوقف على إذن الحاكم، وكذا لو توقف على بيعه أو إفرازه يجوز كل ذل ذلك بلا إذن الحاكم.

مسألة 19 - يتبين بعد المقاصية خطأه في دعوه يجب عليه ردة ما أخذه أو رد عوضه مثلًا أو قيمة لو تلف، و عليه غرامه ما أضره من غير فرق بين الحاكم أو الموضع، ولو تبين أن ما أخذه كان ملكاً لغير الغرم يجب رده أو رد عوضه لو تلف.

مسألة 20 - يجوز المقاصية من العين أو المنفعة أو الحق في مقابل حق من أي نوع كان، فلو كان المطلوب عيناً يجوز التقاس من المنفعة إذا عثر عليها أو الحق كذلك و بالعكس.

مسألة 21 - أما يجوز التقاس إذا لم يرفعه إلى الحاكم فحلله، و إلا فلا يجوز بعد الحلف، ولو اقتض منه بعده لم يملكه.

مسألة 22 - يستحب أن يقول عند التقاس: «أَلَهُم إِنَّي أَخْذْهُ هذَا الَّذِي أَخْذْتَهُ خِيَانَةً وَلَا ظَلْمًا» وقيل يجب، و هو أحوط.

مسألة 23 - لو غصب عيناً مشتركاً بين شريكين فلكل منها التقاس منه بقدر حصته، و كذا إذا كان دين مشتركاً بينهما، من غير فرق بين التقاس بحصة أو بغير جنسه، فإذا كان عليه ألفان من زيد فات و ورثه ابنان فان جحد
belongs jointly to two persons, without there being any difference whether the set-off is made in the same kind as the debt or otherwise. So if a person has a claim of two thousand (Dirhams) from Zayd, and dies, leaving behind two sons as his heirs. If Zayd denies the right of one of the heirs to the exclusion of the other, there is no problem in it, as he shall have the right to exercise set-off to the extent of his right. If he denies the rights of both, each of them shall be entitled to exercise set-off to the extent of his share. After the receipt, the other shall not be a partner in it. Rather it shall not be permissible for one of them to exercise set-off for the right of his partner.

Problem # 24. There is no difference in the permissibility of set-off between the different kinds of financial rights. If a person had a deed (as a proof) for his debt and another person usurps it. It shall be permissible for the person (who has been deprived of his deed) to occupy the capital asset belonging to the person who has usurped his deed so that it maybe a surety for the deed of his debt and to dispose it off in order to get his right by the sale. Likewise, thee is no difference between the debts obtained from loan, guarantees or diyāt (pl. of diyat=blood-money or indemnity for bodily injury), so that a set-off is permissible in all of them.
حق أحدهما دون الآخر فلا إشكال في أن له النقاص بقدر حقه، وإن جدد حقهما فالظاهرة أنه كذلك، فكل من ها النقاص بقدر حقه، ومع الأخذ لا يكون الآخر شريكًا، بل لا يجوز لكل المقاصة حق شريكة.

مسألة ٢٤ ـ لا فرق في جواز النقاص بين أقسام الحقوق المالية، فلو كان عنده وثيقة لديه فغضبها جاز له أخذ عين له وثيقة لديه وبيعها لأخذ حقه في مورده، و كذا لا فرق بين الديون الحالية من الاقتراض أو الضمانات أو الديات فيجوز المقاصة في كلها.
SECTION FORTY-SIX
DEPOSITION OF TESTIMONY

Chapter One – Qualifications of a Witness

This Chapter comprises details of Qualifications of a Witness. 

First: Adulthood. Testimony of a minor who is not discreet has no legal value at all. Likewise, testimony of a discreet child has also no legal value in cases concerning other than Murder and Injury, and even in cases relating to these two, testimony of a discreet minor who has not attained Ten years of age shall have no legal value. If a minor who has reached Ten years of age testifies in a case of injury or murder, there will be hesitation in admitting it. Of course, there is no ambiguity in the non-admission of evidence of a female child absolutely.

Second: Sanity. Testimony of a lunatic, even if his lunacy is periodical, is not acceptable when given in a state of insanity. But in a state of sanity and soundness of mind, it is acceptable when the judge knows about his malady and his test of presence of mind and maturity of understanding; otherwise it will not be accepted. To this cause of non-acceptance of testimony is affiliated the case of one who is overpowered by absent-mindedness, amnesia, negligence and idiocy. In such condition, it is obligatory to declare before the judge so that he may confirm what they testify about. It is necessary to abstain from their testimony except in matters of great importance in which their lack of absent-mindedness, amnesia and mistake in bearing and communication is known.

Third: Īmān or Shi‘ah Faith, as the testimony of a person who is not a Mu‘min, or having Shi‘ah faith, let alone a non-Muslim, absolutely against a Mu‘min, or other than him, or in favour of both. Of course, testimony of a Dhimmi, or a non-Muslim subject of a Muslim state, having moral integrity shall be accepted in a case of one belonging to his faith concerning a proprietary will when there is no Muslim having moral integrity to testify in the case. It is not a condition that the testator should be away from home.

If he was in his hometown, and no Muslim having moral integrity is available, the testimony of a Dimmi shall be entertained. To a Dhimmi is not affiliated a profligate Mu‘min. Is a non-Mu‘min Muslim who is staunch in his own faith affiliated to a Mu‘min? It is not far from being so. The testimony of a Mu‘min possessing all the required conditions (of Īmān) shall be accepted in all cases of people of all faiths.
كتاب الشهادات

القول في صفات الشهود

وهي أمور: الأول، البلوغ، فلا اعتبار بشهادة الصبي غير المميز مطلقًا ولا
بشهادة المميز في غير القتل والجرح، ولا بشهادة فيها إلا لمبلغ العشر، وأما لو
بلغ عشراً و شهد بالجرح و القتل ففية تردد، فهم لا إشكال في عدم اعتبار
شهادة الصبية مطلقاً.

الثاني - العقل، فلا تقبل شهادة المجنون حتى الأدواري منه حال جنونه و
أما حال عقله و سلامته فتقبل منه إذا علم الحاكم بالابلاء و الامتحان حضور
ذهنه و كمال فطنته، و إلا لم تقبل، و يلحق به في عدم القبول من غلب عليه
السهو أو النسيان أو الغفلة أو كان به البله، و في مثل ذلك يجب الاستظهرار على
الحاكم حتى يستحب ما يشهدون به، فاللازم الإعراض عن شهادتهم إلا في
الأمور الجليلة التي يعلم بعدم سهوهم ونسیانهم و غلطهم في التحمل و النقل.

الثالث - الإيمان، فلا تقبل شهادة غير المؤمن فضلاً عن غير المسلم مطلقاً
على مؤمن أو غيره أو له، فهم تقبل شهادة النمي العدل في دينه في الوصية
بالمال إذا لم يوجد من عدول المسلمين من يشهد بها، و لا يعتبر كون الوصي في
غربة، فلو كان في وطنه و لم يوجد عدول المسلمين تقبل شهادة النمي فيها، و لا
يلحق بالذي القاسم من أهل الإيمان، و هل يلحق به المسلم غير المؤمن إذا
كان عدلاً في مذهبه؟ لا يبعد ذلك، و تقبل شهادة المؤمن الجامع للشروط على

١٦٣
Testimony of a Ḥarbi (a citizen of a non-Muslim state at war with a Muslim state) is not accepted absolutely. Is testimony of all non-Muslim believers accepted in cases concerning all non-Muslim believers? According to a tradition, it is so, and the Shaykh (Ṭūsī) has acted upon it.

Fourth: (‘Adālah) or Moral Integrity. That is a quality that keeps away from disobedience to Allāh the Exalted. So testimony of a profligate (fāsiq) is not accepted. He is one who commits a grave offence (kabīrah), or persists in the commitment of a minor offence (ṣaghirah); rather, according to the more cautious, though not a stronger, opinion, one who commits a minor offence. So testimony of a person who has committed minor offence shall not be accepted except on his repentance and manifestation of moral integrity.

Problem # 1. Testimony of every Mukhālif, or a Sunnī, (a person having a faith contrary to or against Shi‘ah faith) shall not be accepted in any matter concerning the principles of faith; rather testimony of one who does not believe in an Imperative (Darūrī) Command of Islam, as one who disbelieves in Salāt (Prayers) or Hajj (Pilgrimage to Mecca) or the like, will not be accepted, even if we declare that he is not an infidel when he is labouring under some misunderstanding. Testimony of a Mukhālif is accepted in matters concerning the Furū‘ (Non-fundamental beliefs of Islam), even if he opposes Ijmā‘ (Consensus of opinion of the Learned) due to some misunderstanding.

Problem # 2. Testimony of a slanderer shall not be accepted in the absence of Li‘ān or legal evidence or the admission of the person slandered, except when the slanderer repents. Ḥadd for his repentance is that he must repudiate himself before the person he has slandered or before a group of Muslims and both. If he were actually telling the truth, he must dissimulate himself in his repudiation. When he has repudiated himself and repented, his testimony will be accepted if he is competent to do so.

Problem # 3. Keeping pigeons for love (of birds), sending messages, or hatching pigeons or flying them for sport is not forbidden. Of course, sporting with pigeons is disapproved. However testimony of a person keeping pigeons or sporting with them is acceptable. But sporting with pigeons against betting is forbidden as it is gambling. Testimony of a person who does it shall not be accepted.

Problem # 4. Testimony of those engaged in disapproved trades and professions like money changing, sale of shrouds, cupping or weaving and knitting, or the like shall not be rejected, nor testimony of those suffering from malignant diseases like black or white leprosy.

Fifth: Legitimate Birth. So testimony of a person who is born of fornication is not accepted even if he professes Islam and possesses moral integrity. Is his testimony acceptable in cases of trivial value? According to the opinion of some jurists, the answer in the affirmative, but according to the opinion in conformity with the principles of law, the answer is in the negative. If the actual position is not known, but he was affiliated with bed (firāsh), his testimony will be accepted, though the statement of some persons may affiliate him. If his position is quite ambiguous, and he is not affiliated with any bed, it would be difficult to accept his testimony.
جميع الناس من جميع الملالي ولا تقبل شهادة الحربي مطلقاً أو هل تقبل شهادة كل ملة على ملتهم؟ به رواية وعمل بها الشيخ قدم سره.

الرابع: العدالة، وهي الملكة الرادعة عن معصية الله تعالى، فلا تقبل شهادة الفاسق، وهو المرتكب للكبيرة أو المصر على الصغيرة، بل المرتكب للصغيرة على الأحوت فإن لم يكن الأقوى، فلا تقبل شهادة المرتكب الصغيرة إلا بالوبة وظهور العدالة.

مسألة 1 - لا تقبل شهادة كل مخالف في شيء من أصول العقائد، بل لا تقبل شهادة من أنكر ضروري من الإسلام، كمن أنكر الصلاة أو الحج أو نعهما و إن قلنا بعدم كفره فإن كان لشبهة، و تقبل شهادة المخالف في الفروع وإلا خالف الإجماع لشبهة.

مسألة 2 - لا تقبل شهادة القاذف مع عدم اللعان أو البيئة أو إقرار المقدون إلا إذا تاب. و حد توبته أن يكاتب نفسه عند من قذف عنه أو عند جمع من المسلمين أو عنده، وإن كان صادقاً واقعاً يوري في تكذيبه نفسه، فذ كتب نفسه وتاب تقبل شهادته إذا صلح.

مسألة 3 - اخترذ الحمام للأذن. و إنفاذ الكتب والاستفراغ والتطير واللعب ليس بحرم، نعم اللاعب بها مكره، فتقبل شهادة المتحذ و اللاعب بها، و أما اللاعب بالرمان فهو قرار حرام لا تقبل شهادة من فعل ذلك.

مسألة 4 - لا ترد شهادة أرباب الصنائع المكرهة، كبيع الصرف وبيع الأكفان وصناعة الحجامة والحياكة ونحوها، ولا شهادة ذوي العاهات الحبئية كالأجذم والأبرص.

الخامس: طيب المولد، فلا تقبل شهادة ولدالزنط، وإن أظهر الإسلام وكان عادلاً، و هل تقبل شهادته في الأشياء اليسيرة؟ قيل: نعم، والايشة لا، وأما لوجهته حاله فإن كان ملحقاً بفراش تقبل شهادته وإن أثقاله الأهلين، وإن جهلت مطلقاً ولم يعلم له فراش ففي قبوها إشكال.
Sixth: Removal of Accusation. This removal of accusation is not general, but concerns special grounds, which are as follows:

First: the case of a person by whose testimony some benefit accrues for him, in the form of material gain or benefit or right, like testimony for a partner with whom he is a partner. But in case otherwise, his testimony will be accepted, or a creditor when he testifies in favour of an interdicted person concerning a property connected with his debt, contrary to the case of other than an interdicted person, and contrary to the property with which his interdiction is not connected; an executor or an agent, who would get more remuneration with the increase in the property; rather, the same applies to what is under the guardianship of both of them, and both of them are claimant of the right of guardianship, but there is hesitation in the absolute non-acceptance of their testimony; or like the testimony of a partner in the sale of a share he has right of pre-emption in it, and so on in cases where the witness draws some benefit for himself therefrom.

Second: the case when a person prevents some damage to himself by the testimony, as the testimony of 'Áqila by declaring unreliable the witnesses of an offence by misadventure or mistake, or the testimony of an agent or an executor by challenging the witnesses against their client or against the testator in cases like the preceding ones.

Third: the case of testimony of the person having worldly enmity against his enemy, but his testimony in his favour will be accepted when the enmity is not a necessary corollary of profligacy. As regards the testimony of a person having religious enmity, it will not be rejected whether against or in favour of him even if he hates him due to his profligacy and has filed a lawsuit against him due to it.

Fourth: the case of a beggar, by which is meant a person who is a beggar in the markets and on he doors of houses, and when begging is his profession and practice. But asking for help when in need does not preclude acceptance of one’s testimony.

Fifth: the case of voluntary testimony concerning rights of the people, as it is an obstacle in acceptance (of the testimony) according to the general saying, but there is hesitation in accepting this opinion. However, in a case concerning the rights of Allāh, as drinking wine, committing Zinā’ and for public interests, it is more in conformity with the principles of law to accept the testimony.

Problem # 5. Paternity is not an obstacle in the acceptance of testimony, as the testimony of the father against or in favour of his son, or that of the son in favour of his father, or of a brother against or in favour of his brother, or that of other relatives against or in favour of their relatives. Is the testimony of a son against his father acceptable? There is hesitation in it. Likewise, the testimony of the husband is accepted against or in favour of his wife, or that of the wife against or in favor of his husband. There is no condition of a supplement in the testimony of a husband. But as regards such a condition in the testimony of a wife, there is some reason, but its absence is more
السادس - ارتفاع التهجة لا مطلقًا بل الحاصلة من أسباب خاصة، وهي أمور:

منها - أن يخرج بشهادته نفعًا له عينًا أو منفعة أو حقًا كالشريك في حضوره للمحجور عليه بال...

وأما في غيره فقليل شهادته، وصاحب الدين إذا شهد للمحجور عليه بال يتعقل دينه به، بخلاف غير المحجور عليه، وخلاف مال لم يتغلق حجره به، والوصي والوكيل إذا كان لهما زيادة أجر زيادة المال، بل وكدفنا كان لهم الولاية عليه وكانا مدعرين بحق ولايتها، وأما عدم القبول مطلقًا منها ففيه تأمل، و كشهدت الشريك لبيع الساق الذي فيه له الشفعة، إلى غير ذلك من موارد جر النفع.

ومنها - إذا دفع بشهادته ضررًا عنه، كشهدت العاقبة بجر شهود الجناية خطأ، وشهدت الوكيل والوصي بجر الشهود على الوكيل والوصي في مثل الوردين المتقدمين.

ومنها - أن يشهد ذو العداوة الدنيوية على عدوه، وقبل شهادته له إذا لم تستلزم العداوة الفسق، وأما ذو العداوة الدنيوية فلا ترده شهادته له أو عليه حتى إذا أبغضه لفسقه واختصمه لذلك.

ومنها - السؤال بكفه، و المراد منه من يكون سائلاً في السوق وأبواب الدور وكان السؤال حرفةً وديناً له، وأما السؤال أحياناً عند الحاجة فلا يمنع من قبول شهادته.

ومنها - التباع بالشهاده في حقوق الناس، فإنه يمنع عن القبول في قوله معروف، وفيه ترد، و أما في حقوق الله كشرب الحمر والزنا للمصالح العامة فالأشبه القبول.

مسألة 5 - النسب لا يمنع عن قبول الشهادة، كالأب لولده و عليه، و الوالد لوالده، والأخ لأخاه و عليه، وسائر الأقرباء بعضها البعض و عليه، و هل تقبل شهادة الوالد على والده؟ فيه ترد، و كذا تقبل شهادة الزوج لزوجتها و عليها و شهادة الزوجة لزوجها و عليه، ولا يعتبر في شهادة الزوجة الضمنية، وفي اعتبارها
reasonable, because the benefit is apparent in a case when a wife testifies in the case of a will. So in case of an opinion in favour of the condition (of a supplement), it is not established, but in case of an opinion in favour of the absence of the condition, a fourth is established.

**Problem # 6.** Testimony of a friend against his friend is entertained. Similarly testimony of a friend in favour of his friend is also accepted, even if there is a close friendship and strong love between them. Testimony of a guest is also accepted, even if he is inclined towards the person in whose favour he has testified. Is testimony of a hired person in favour of the person who has hired him also accepted? There are two opinions concerning such a testimony, the opinion closer to the traditional authority is in favour of forbidding it. If he puts up with it during the hire, and testifies after the termination of the hire, it will be accepted.

**Problem # 7.** If it is not permissible for a person to testify due to minority, profligacy or infidelity, and he comes to know of something during that position, and later the obstacle is removed, and the conditions for permissibility of his testimony are fulfilled, and he gives his testimony, it will be accepted. Same shall be the case if he testifies during the imposition of the obstacle, and it is rejected, then he repeats it after the removal of the impediment, without there being any difference whether the profligacy or infidelity are manifest or not.

**Problem # 8.** If a person listens, for example, to acknowledgement and becomes a witness, even if the person in whose favour or against whom he testifies does not ask him, his testimony does not depend on testifying a testimony or doing so when asked. So in such circumstances, if the fulfillment of the right does not depend on his testimony, he shall have the option either to testify or keep silence. If the fulfillment of the right depends on his testimony, it shall be obligatory upon him to testify in favour of the right. Same shall be the case, if two persons listen to the conclusion of a contract, like sale, or the like, or were witness to usurpation or commission of an offence, and one or both of the adversaries ask him not to testify against them, and he listens what necessitates judgment, in all such cases, he shall become a witness.

**Problem # 9.** Testimony of a person who is notorious for being a profligate, his testimony shall be entertained if he repents. His testimony shall not be accepted unless his continuance on integrity and achievement of the habit refraining him from the commission of sin. The same is the rule for one who commits a grave offence, or even a venial offence. The amount of acceptance of a testimony is the integrity expressed by the appearance of soundness of character. So if a person repents and soundness of character appears in him, he shall be treated as one having moral integrity and his testimony shall be entertained.

**Chapter Two – What makes a Witness a Witness?**

**Problem # 1.** The regulation for making a witness a witness is the definite knowledge and conviction about the case. Is it obligatory that the knowledge should be based on the external senses in cases where it is possible, as sight in case of what can be seen, or hearing in case of
بمساءلة 6 - تقبل شهادة الصديق على صديقه و كذا له، وإن كانت الصداقة بينها أكيدة والموادا شديدة، و تقبل شهادة الضيف وإن كان له ميل إلى المشهود له، وهل تقبل شهادة الأجر من آخرين؟ قولان أقربهما المنع، ولو تعمل حال الإجارة وأداها بعدها تقبل.

بمساءلة 7 - من لا يجوز شهادته لصغر أو فسق أو كفر إذا عرف شيئاً في تلك الحال ثم زال المانع واستكمال الشروط فأقام تلك الشهادة تقبل، و كذا لو أقامها في حال المانع فردت ثم أعادها بعد زوالها، من غير فرق بين الفسق و الكفر الظاهرة وغيرها.

بمساءلة 8 - إذا سمع الأقرار مثلًا صار شاهداً و إن لم يستدعه المشهود له أو عليه، فلا يتوقف كونه شاهداً على الاشهاد والاستدعاء، فحينئذ إن لم يتوقف أخذ الحق على شهادته فهو بالخيار بين الشهادة و السكتة، و إن توقف وجبت عليه الشهادة بالحق، و كذا لو سمع إثنين يوقعان عقدًا كاليبع و نحوه أو شاهد غصباً أو جناية، و لو قال له الغريان أو أحدهما: لا تشهد علينا فسمع ما يوجب حكماً في جميع تلك الموارد يصير شاهداً.

بمساءلة 9 - المشهور بالفسق إن تاب لتقبل شهادته لا تقبل حتى يستبان منه الاستمرار على الصلاح و حصول الملكة الرايدة، وكذا الحال في كل مرتكن للكبيرة بل الصغيرة، فيزيز قبول الشهادة هو العدالة المرزية بظهور الصلاح، فإن تاب و ظهر منه الصلاح يحكم بعدالته و تقبل شهادته.

القول فيا به يصير الشاهد شاهداً

بمساءلة 10 - الضابط في ذلك العلم القطعي و اليقين، فهئي يجب أن يكون العلم
what is heard, or tasting in case of what can be tasted, and so on. When a definite knowledge is obtained about a thing through rudiments other than of senses even in what can be seen through hearing conveying definite knowledge is testimony not permissible, or a definite knowledge through whatever source it is obtained is sufficient like knowledge that is obtained through continuance or notoriety? There are two alternatives, the one more in conformity with the principles of law being the latter. Of course, there is difficulty in permissibility of a testimony in case where knowledge is obtained through unusual sources like Jafr or arithmomanic, or Raml or geomancy, even if it is an authoritative source for a person having knowledge.

Problem # 2. Tasāmu’ (interesting public narration or story) and Istifāda (a phase of notoriety), if they are useful for knowledge, testimony through them, not solely for a phase of notoriety, but rather for obtaining knowledge is permissible. At that time it is not confined to particular subjects like trust, matrimony, parentage, patronage (wulā‘), guardianship (wilāyah), or the like, but rather it is also permissible in things seen and things heard when definite knowledge is obtained through them, even if they do not convey knowledge, they are helpful in gaining assumption (or forming an opinion), even if close to knowledge, they are not permissible for a testimony through causative factor. Of course, testimony by a cause is permissible, when one says: This is prevalent as obtained by notoriety, or “I assume that”; it is the result of what is gained through notoriety.

Problem # 3. Is testimony permissible as required by possession, legal evidence, Istishāb or the like, based on legal clues and principles? So, as it is permissible to purchase what is in one’s possession, or what evidence or Istishāb has been adduced concerning one’s property, in the same way, testimony is permissible concerning ownership and on the whole is it permissible to depend on what is apparently legal proof concerning the property, so that one testifies that it is the property, intending thereby ownership as is legally evident? There are two aspects, the more reasonable being absence of permissibility, except in case of definite indications leading to certainty.

Of course, testimony is permissible concerning apparent ownership with elucidation to that effect, so that one says: “It is his property as required by his possession or as required by Istishāb, not absolutely. A tradition has come down about permissibility of testimony on the basis of possession and also on the basis of Istishāb.

Problem # 4. It is permissible for a blind or deaf person to be subjected to testimony or give it when they know about the actual fact, and it is accepted from them. If a deaf person gives testimony concerning acts, his testimony is allowed concerning them. There is a tradition says: “A deaf person’s testimony is accepted in murder by his first statement but not by the second.” But this report has been rejected. If a blind person listens and recognizes the master of the sound through his knowledge, his testimony will be allowed. Likewise, a dumb person can be subjected to testimony as well give it. If the judge understands his signs, he will give his
مستنداً إلى الحواس الظاهرة فيا يمكن كالبصر في البصراة والسمع في السموعات الذوق في المذوقات وهكذا، فالذا حصل العلم القطعي بشيء من غير البادية الحسية حتى في المصراة من المصراة المقدمة للعلم القطعى لم يجز الشهادة أم يكن العلم القطعى بأي سبب كان العلم الحاصل من التواتر والاشتراك؟ و جهان، الأشبه الثاني، نعم يشكل جواز الشهادة في إذا حصل العلم من الأمور غير العادلة كالجفوة والرمل وإن كان حجة للعالم.

مسألة 2 - التسامع والاستفادة إن أفادا العلم يجوز الشهادة بها لا تجرد الاستفادة بل لحصول العلم. وحينئذ لا ينحصر في أمور خاصة كالوقف والزوجة والنسب والولاء والولاء ونحوها، بل تجوز في المصراة والسموعات إذا حصل منها العلم القطعى، وإن لم يفيدا علمًا وإن أفادا ظناً ولو متناخاً للعلم لا يجوز الشهادة بسبب، نعم يجوز الشهادة بالسبب بأن يقول: إن هذا مشهور مستفيض، أو إن أظن ذلك أو من الاستفادة.

مسألة 3 - هل يجوز الشهادة بمقضي اليد والبيئة والاستضاحب ونحوها من الأمور والأسائل الشرعية، فكذا يجوز شراء ما في يده أو ما قامت البيئة على ملكه أم الاستضاحب كذلك تجوز الشهادة على الملكية و بالجملة يجوز الاكتال على ما هو حجة شرعية على الملك ظاهرة فيشهد بأنه ملكٍ برد. هل الملكية في ظاهر الشرع؟ و جهان، أوجهها عدم الجواز إلا مع قرائن قطعية توجب القطع، نعم تجوز الشهادة بالمملكية الظاهرة مع التصريح به، بأن يقول: هوملك له بمقضي يده أو بمقضي الاستضاحب لا بنحو الاطلاق، وردت رواية بجواب الشهادة مستنداً إلى اليد وكذا الاستضاحب.

مسألة 4 - يجوز للأعمى والأصم تحمل الشهادة وأداؤها إذا عرفاً الواقعة، وقبل منها، فلو شاهد الأصم الأفعال جازت شهادته فيها، و في رواية «يؤخذ بشهادته في القتل بأن قوله لا الثاني» وهي مطروحة ولو سمع الأصم وعرف صاحب الصوت علماً جازت شهادته، وكذا يصح للأخرس تحمل الشهادة و
judgment on it. If he is ignorant of his signs, he will rely on two interpreters of moral integrity. His testimony is principal, and judgment will be given on his testimony.

Chapter Three – Kinds of Rights

Problem # 1. Although there are a large number of rights, yet, [generally speaking,] they are of two kinds: rights belonging to Allāh, the Exalted [Huqūq Allāh] and rights belonging to human beings [Huqūq al-‘ibād]. As regards rights owed to Allāh, the Exalted [Huqūq Allāh], we have mentioned them under the Section on Ḥudūd that some of them are established by [the testimony of] four men or three men and two women, others are established by [the testimony of] two men and four women, while some are established by [the testimony of] two witnesses. So refer to that Section [i.e., Section on Ḥudūd for details].

Problem # 2. Rights belonging to human Beings [Huqūq al-‘ibād] are of several kinds. For the establishment of some of them, it is a condition that the witness must be male, so that they are not established except by the testimony of two male witnesses as a divorce. So the testimony of women is not accepted in such kind of rights, individually or in combination [with men]. Is this law also applicable to the kinds of divorce as Khul‘ and Mubārāt? According to the opinion closer to the traditional authority, it does apply to the kinds of divorce as well, in case the dispute relates to divorce [or separation]. But it does not apply to a case relating to the amount of badhīl [excluding the payment of dower to the wife by the husband]. In case of Khul‘ and Mubārāt, there will be no difference whether the plaintiff is the wife or the husband, although there is some difference opinion in case the husband is the plaintiff.

Problem # 3. Some of the jurists are of the opinion that in case of rights belonging to human beings [Huqūq al-‘ibād] other than those relating to financial rights where the rights do not concern property, the testimony of women is not entertained individually as well as in combination [with men]. They have mentioned the example of Islam, adulthood, waļa‘, jařḥ [challenging the reliability of testimony] and ta‘dīl [settlement], excusing or pardoning qisās, wakālah [agency], bequests, recall, blemishes in women, paternity and hilāl. Some jurists have also included khums, zakāt, nadhr [vow or votive offering]. The regulation mentioned is not free from reasoning, although there is hesitation in including some of the examples in it. According to the opinion closer to the traditional authority, the evidence of women is to be entertained in case of fosterage.

Problem # 4. Among the rights belonging to human beings there are some matters that are established by [the testimony of] two [male] witnesses, or by [the testimony of] one man and two women, or by [the testimony of] one [male] witness and oath of the plaintiff, or by [the testimony of] two women and oath of the plaintiff. They are matters relating to property or those that concern property as debts in the general sense, so that the debts include a loan, the price of a merchandise sold or purchased, salaf [a forward purchase] or the like that is owed [by some
أداها، فإن عرف الحاكم إشارته يحكم، و إن جهلها اعتمد فيها على مترجين
عدلين، و تكون شهادته أصلا، و يحكم بشهادته.

القول في أقسام الحقوق

مسألة 1 - الحقوق على كثرتها قسمان: حقوق الله تعالى و حقوق الأدميين،
أما حقوق الله تعالى فقد ذكرنا في كتاب الحدود أن منها ما يثبت بأربعة رجال
أو يثبت بثلاثة رجال و أمراةين، ومنها برجلين و أربع نساء، ومنها ما يثبت
بشهادين فليراجع إله.

مسألة 2 - حق الأدمي على أقسام: منها ما يشترط في إثباته الذكرية فلا
يثبت إلا شهادين ذكرين كالطلاق، فلا يقبل فيه شهادة النساء لا منفردات و
لا منضمات، و هل يعم الحكم أقسامه كالخلع و المباراة؟ الأقرب نعم إذا كان
الاختلاف في الطلق، و أما الاختلاف في مقدار البذل فلا، ولا فرق في الخلع
و المباراة بين كون المرأة مدعية أو الرجل على إشكال في الثاني.

مسألة 3 - قبل ما يكون من حقوق الأدمي غير المالية ولم يقصد منه المال لا
تقبل شهادة النساء فيها لا منفردات و لا منضمات، مثل لذلك بالإسلام و
البلوغ و الولاء و الحج و التعليل و العفو عن القصاص و الوكالة و الوصايا و
الرجعة و عيوب النساء و النسب و الهلال، و ألقح بعضهم الخمس و الزكاة و
النذر و الكفارة، و الضابط المذكور لا يخلو من وجه و إن كان دخول بعض
الأمثلة فيها عل تأمل، و تقبل شهادتهما على الرضاع على الأقرب.

مسألة 4 - من حقوق الأدمي ما يثبت بشاهدين، وشاهد و أمراةين و
شاهد و مدين المدعى، و بمرأتين و مدين المدعى، و هو كل ما كان مالًا أو
القصود من المال كالديون بالمغني الأعم، فيدخل فيها القرض و ثم المنبع و
السلف وغيرها ما في الندة، و كالحبس و عقود المعاوضات مطلقا و الوصية له.
one], as also usurpation, agreements for the payment of compensations absolutely, a bequest concerning property, an offence involving liability for the payment of *diyat* [blood-money], as homicide by misadventure or mistake, semblance of willful murder, murder of a son by his father, murder of a *dhimmī* [a non-Muslim subject of a Muslim state], a *ma‘ūmah* [an injury that penetrates into the *āmma* or the pouch-like thin skin containing the brain or meninx or *dura mater*], a *jā‘ifah* [an injury that penetrates in the interior of the body] or breaking bones, etc. in which case the lawsuit concerns some property or in which what is intended is property. All of them are established by what has already been mentioned, even by the testimony of two women and oath, according to the more evident opinion. The testimony of women is also entertained in a case of *nikāb* combined with the testimony of a man.

**Problem # 5.** There is some ground in accepting the testimony of two women in a case of a *waqf* [trust or endowment], but it is not free from objection. Their testimony is acceptable in the rights relating to property as the case of *ajal* [appointed time or respite], option, pre-emption, revocation of agreement relating to property, or the like belonging to the rights of human beings. But their testimony is not entertained in a case entailing *Qisās*.

**Problem # 6.** Among the rights of human beings, there are some that are established by [the testimony of] men or women individually or combined with men. Its general rule is that [the testimony of] women is accepted in case of] everything the availability of whose information is mostly difficult for men as delivery of a child, virginity, menstruation, and the internal blemishes of women as *qarn* [fleshy protuberance or a bone growing in the womb that prevents coition], *ratq* [narrowness of the female organ so much as only to allow a passage for the urine] or a *qarḥ* [ulcer] in the female organ, to the exclusion of the visible or external blemishes as *‘araj* [lameness] or *‘amā* or *‘aman* [blindness].

**Problem # 7.** In all cases where the testimony of women is entertained, it is not established by [the testimony of] less than four women. Of course, the testimony of a single woman is accepted without oath in a case concerning a fourth of the inheritance of a *mustahil* [an infant who cries after its birth, a sign of its having born alive, and hence being entitled to its share in the inheritance of its parents], and a fourth of a bequest [concerning property], that of two women in a case relating to half of the estate, that of three women in a case relating to a three quarter of the estate and that of four women in a case relating to the whole estate. [The testimony of] a single man is not combined with that of a woman [in any of such cases] and it is not established thereby.

**Adjuncts or Subsidiary Rules**

**First.** Testimony is not a condition in any of the agreements or unilateral obligations except a divorce and *zihar*.

**Second.** The order of a judge follows the evidence [in a case]. So if a case is established by evidence, his judgment shall be executed ostensibly and in reality, and in the absence of evidence his judgment shall be executed ostensibly but not in reality. It is not *mubāh* [legitimate] for the person in whose favour a judgment is given by a judge with the knowledge of the testimony
والجناية التي توجب الدية كالखطا، وله شهادتان في السلب وقتل الأب وله شهادتان في السلب، وله شهادتان في الخيانة، وله ضرب العظام، وله منشور الدعوة فيها مال أو مقصوده منها المال، فجمع ذلك، فتثبت بها ذكرى تثبت بها شهادة التنمية، وعده على الأظهار، وتقبل شهادتهما في النكاح إذا كان معهن الرجل،

مسألة 5 - في قبول شهادتين في الوفيق، فجه لا يخلو عن إشكال، وتقبل شهادتهما في حقوق الأموال كالأجل والخيار والشفعة، ونسخ العقد المتعلق بالأموال، ولكن ذلك ما هي حقوق آدمي، ولا تقبل شهادتهما فيما يوجب القصاص.

مسألة 6 - من حقوق الآدمي ما يثبت بالرجال و النساء منفردات، ومنضمات، وضابطه كل ما يعسر إبلاغ الرجال عليه غالبًا كالأولادة والعذرة، والهجر وعوب النساء الباطنة كالقرن والرقة، والبر، دون الظاهرة كالعرج والعمي.

مسألة 7 - كل موضوع تقبل شهادة النساء منفردات لا يثبت بأقل من أربع، وتقبل شهادة المرأة الواحدة بلا يمين في ربع ميراث المستاهل وربع الوصية، والثانيتين في النصف، والثالث في ثلاثة أرباع، والأربع في الجمع، ولا يلحق بها رجل واحد، ولا يثبت به أصلاً.

فروع:

ال أول - الشهادة ليست شرطاً في شيء من العقود والإيقادات إلا الطلاق.

والظهار.

الثاني - حكم الحاكم تبع للشهادة، فإن كانت محقة نفذ الحكم ظاهراً وواقعاً، وإلا نفذ ظاهراً لا واقعاً، ولا يباح للمشتهي له ما حكم الحاكم، له مع علمنه ببطلان الشهادة، سواء كان الشاهدان عالمين ببطلان شهادتهما، أو معتقدين.
being false, irrespective of whether both the witnesses were aware of the falsehood of their testimony or believed in its veracity.

Third. It is obligatory for a person capable of giving evidence to give evidence when he is invited to do so. Giving evidence in a case is a collective obligation. It is not obligatory on a person to give evidence except in case there is no other person but he having the capability of giving evidence [in the case]. There is no hesitation in his obligation to give evidence when he is asked to do so, but in this case too his obligation is a collective one.

Chapter One: Testimony upon Testimony

Problem # 1. Acceptance of testimony upon testimony takes place in cases of rights belonging to the human beings whether relating to punishment like Qisāṣ or other cases relating to a divorce or nasab (paternity), and, likewise, in cases relating to pecuniary obligations like debts, loans, usurpation and agreements for compensations and, likewise, in cases in which men mostly have no knowledge like the internal female blemishes, birth of children and istihlāl (or appearance of an infant who cries after birth, a sign of its having born alive and hence being entitled to its share in the inheritance of its parents) and other cases involving rights of human beings.

Problem # 2. A testimony upon testimony is not accepted in cases relating to Ḥudūd. According to the more cautious opinion even though not being stronger, the cases relating to Taʿzirāt are also affiliated to the same category. If two witnesses testify to the testimony of two witnesses in a case relating to theft, the hands of the convict shall not be amputated. It is indispensable in cases relating to Ḥudūd for an evidence to be a principal one, irrespective of whether it involves solely rights belonging to Allāh like the Ḥadd for Zina' (or fornication) or Lawāt (or sodomy), or those common to the rights of Allāh and the rights of human beings like the Ḥadd for Qadhf (or slander) and theft.

Problem # 3. A testimony upon testimony is not accepted in Ḥudūd in the execution of a Ḥadd, but in case of all other relevant cases falling under Ḥudūd it is accepted. When a secondary evidence is given upon a principal evidence in a case relating to theft, the hands of the convict shall not be amputated, but the [stolen] property shall be taken back from him. Likewise it is effective in establishing prohibition (of matrimonial relation) between the person committing sodomy and the mother, sister and daughter of the person subjected to sodomy. Likewise all the consequences of the incident on which evidence is adduced shall be applicable except the Ḥadd.

Problem # 4. A secondary evidence shall be accepted in all the rights belonging to Allāh except in the case of Ḥadd, like Zakāt, Khums and the endowments belonging to mosques or public purposes, rather also in case of appearance of new moon.

Problem # 5. A secondary evidence upon a secondary evidence like a testimony upon testimony upon testimony and so on shall not be entertained.

Problem # 6. It is a condition that a testimony upon a testimony must possess all the qualities of number and other characteristics of the principal testimony. So a claim shall not be established by the testimony of a single witness. So if two witnesses give evidence in favour of
الثالث - الأحوط ووجب تحمل الشهادة إذا دعي إليه من له أهليه لذلك، و
الوجب على فرضه كفأ لا يعين عليه إلا مع عدم غيره من يقوم بالتحمل، ولا
إشكال في وجب أداء الشهادة إذا طلبت منه، و الواجب هي هنا أيضاً كفأ.

القول في الشهادة على الشهادة

مسألة 1 - تقبل الشهادة على الشهادة في حقوق الناس عقوبة كانت
كالقصاص أو غيرها كالطلاق و النسب، و كذا في الأموال كالدين و القرض
و النصاب و عقود المعاوضات. و كذا ما لا يطلع عليه الرجال غالباً كعبوب
النساء الباطنة و الولادة والاستللال، و غير ذلك مما هو حق آدمي.

مسألة 2 - لا تقبل الشهادة على الشهادة في الحدود، و يلحق بها التعريضات
على الأحوط ولم يكن الأقوى، ولوشهد شاهدان بشهادة شهدين على السرقة لا
تقطع، ولا بذ في الحدود من شهادة الأصل سواء كانت حق الله محضاً كحد الزنا
واللواء أو مشتركة بينه تعالى و بين الآدمي كحد القذف و السرقة.

مسألة 3 - إذا لا تقبل الشهادة على الشهادة في الحدود لأجراء الحد و أما في
سائر الآثار فقبول، فإذا شهد الفرع بشهادة الأصل بالسرقة لا تقطع لكن يؤخذ
المال منه، و كذا يثبت بها نشر الحمرة بأم الموطإ و أخته و بنته، و كذا سائر ما
يترتب على الواقع المشهود به غير الحد.

مسألة 4 - تقبل شهادة الفرع في سائر حقوق الله غير الحد كالمكاهة و
الخمس و أوقاف المساجد و الجهات العامة بل والأهل أيضاً.

مسألة 5 - لا تقبل شهادة فرع كالشهادة على الشهادة على الشهادة و
هكذا.

مسألة 6 - يعتبر في الشهادة على الشهادة ما يعتبر في شهادة الأصل من العدد
a single witness or two witnesses give evidence upon the evidence of a single witness, it will be accepted. Likewise, (the same rule shall apply) if a principal witness gives evidence and another witness upon another principal evidence accompanies him, and similarly when two witnesses give evidence upon the evidence of a woman in a case where the evidence of a woman is accepted (by law).

**Problem # 7.** Testimony upon testimony of women is not accepted in cases where their testimony is not acceptable (by law) solely as well as in conjunction with men. Is their testimony accepted in cases where it is acceptable (by law)? There are two opinions on this point; according to the opinion more compatible with the principles of law, the answer is in the negative.

**Problem # 8.** According to the stronger opinion, a secondary evidence is not accepted except in case of an excuse that prevents the principal witness from adducing it due to some illness or hardship that drop the obligation of his personal appearance [to adduce evidence], or due to his absence so that presence would cause distress and hardship. Imprisonment is also an impediment in presence of the witness.

**Problem # 9.** If a secondary witness gives evidence upon principal testimony, and then the principal witness declines it, in case it takes place after the issuance of the judgment of the judge, no notice shall be taken of the denial. If it were before the issuance of the judgment, shall the secondary evidence be rejected, or action shall be taken according to the more equitable of them, and in case of their being equal in fairness, will the (secondary) evidence be turned down? There are two alternatives [in this case].

### Appendages to the Laws of Evidence

**Problem # 1.** It is a condition for the acceptance of the testimony of the two witnesses that their evidence should agree on a single matter. If both of them agree, judgment shall be given according to their testimony. The extent of agreement should be in meaning not only in words. So if one of them testifies that the accused has usurped (the thing), while the other says that it was forcibly snatched from the plaintiff, or one of them testifies that the plaintiff has purchased [the thing], while the other says that he came to own it by way of compensation, their respective testimony shall be entertained. But if they disagree in meaning, their respective testimony shall not be accepted, so that if one of them testifies to the sale, while the other testifies to his acknowledgement of sale, or when one of them testifies to usurping the object from Zayd, while the other testifies that the object is owned by Zayd, these two testimonies shall not be deemed to carry the same sense, as the usurpation of an object presupposes that it was owned by him [i.e., the plaintiff].

**Problem # 2.** If one of the two witnesses testifies to one thing, while the other to something else, then if they accuse each other of lying, the testimony of both of them shall extinguish, and there shall be no chance of adding the oath of the plaintiff. But if they do not accuse each other of lying, and an oath is added to each of their testimony, the plaintiff's stand shall be established. Some jurists are of the opinion that in case each of them accuses the other of lying,
الأوصاف، فلا تثبت بشهادة الواحد، فلوشهد على كل واحد إثنا أوان أو شهد إثنا على شهادة كل واحد تقبل، وكذا لوشهد شاهد أصل وهو مع آخر على شهادة أصل آخر، وكذا لوشهد شاهدان على شهادة المرأة فما زالت شهادتها مسألة 7 لا تقبل شهادة النساء على الشهادة فإن لا تقبل فيها شهادتهن منفردات أو منضمة، فهل تقبل فيها تقبل شهادتهن كذلك؟ فيه قولان أشبهها المع.

مسألة 8 الأقوى عدم قبول شهادة الفرع إلا لغرض يمنع حضور شاهد الأصل لاقامتها لمرض أو مشقة يسقط بها ووجب حضوره، أو لغيبة كان الحضور معها حرجةً ومشقة، ومن المنع الحجش المائع عن الحضور.

مسألة 9 لو شهد الفرع على شهادة الأصل فانكر شاهد الأصل فكان بعد حكم الحاكم فلا يلتفت إلى الاكتبار، وإن كان قبله فهل تطرح بيئة الفرع أو يعمل بأعدها ومع التساوي تطرح الشهادة؟ وجهان.

القول في اللواحق

مسألة 1 يشرط في قبول شهادة الشاهدين تواردهما على الشيء الواحد، فإن اتفقا حكم بهما، وmezan اتخاذ المعني لا اللفظ، فإن شهد أحدهما بأنه غضب و الآخر بأنه انزع منه قهرأ، أو قال أحدهما: باع و الآخر ملكه بعوض تقبل، ولو اختلفا في المعني لم تقبل فان شهد أحدهما بالبيع و الآخر بقراره بالبيع، و كذا لو شهد أحدهما بأنه غصب من زيد و الآخر بأن هذاملك زيد لم ترد على معنى واحد، لأن الغصب منه أعم من كونه ملكا له.

مسألة 2 لو شهد أحدهما بشيء و شهد الآخر بغيره فإن تكاذابا سقطت الشهادات، فلا مجال لضم مين المدعى، وإن لم يتكاذابا فإن حلف مع كل واحد يثبت المدعى و قبل يصح الحلف مع أحدهما في صورة التكاذب أيضاً، و
it will also be legal to have one of them take an oath, but what has already been stated by us is more in conformity with the principles of law.

**Problem #3.** If one of the two witnesses testifies that the accused has committed the theft up to the *niṣāb* [i.e. the minimum amount of property liable to be governed by the laws of *Hudūd*] in the morning, while the other testifies that he committed the theft up to the *niṣāb* in the evening, neither the hands of the accused shall be amputated nor the property shall be returned [to the claimant]. The same shall be the result if the other witness says that the accused committed theft of exactly the same property up to the *niṣāb* in the evening.

**Problem #4.** If the two witnesses in a case agree to the commission of an act, but differ as to its times, place or description leading to the dissimilarity in the two acts, their testimony shall not be considered complete [and effective], as when one of them says that the accused stole a cloth in the market, while the other says that the accused stole the cloth in the house, or when one of them says that the accused stole an Iraqi Dinār, while the other says that he stole a Kuwaiti Dinār; or when one of them says that the accused stole a Dinār in the morning, while the other says that he stole it in the evening. In all these cases, neither the hands of the accused shall be amputated nor the liability [of the offence] be established. If, however, the plaintiff takes an oath on the testimony of each of the witnesses, all of them shall be held liable. If the testimonies of both of them contradict each other, the case shall be dropped, and nothing shall be proved by both the testimonies, even if they are followed by an oath [of the plaintiff]. Likewise, if the two legal evidences (*bayyaninah*) contradict each other, both shall be dropped, according to the opinion more in conformity with the principles of law, as when one of the two witnesses testifies that the accused stole the cloth at the beginning of the *zawāl* (setting of the sun or noon) on Friday in Najaf, while the testifies that he stole the exactly same cloth at the beginning of exactly the same day in Baghdad, both the evidences will neither establish anything leading to the amputation of the hands nor any liability (or offence, of the accused).

**Problem #5.** If one of the two witnesses testifies that the plaintiff purchased the cloth at the beginning of the *zawāl* on such day for a Dinār, while the other testifies that he bought it at the beginning of the *zawāl* for two Dinārs, the testimonies shall not prove anything and both shall be dropped. Some jurists hold the opinion that the plaintiff may demand either of the witnesses he likes to take oath, but there is weakness in this opinion. If another witness gives evidence in favour of the plaintiff along with each of the two witnesses, some jurists say that the claim for two Dinārs shall be established, but according to the opinion more in conformity with the principles of law, both the testimonies shall be dropped. Likewise, if one of the witnesses testifies to the acknowledgement of one thousand, while the other testifies to that of two thousand relating to the same time, both the testimonies shall be dropped. According to some jurists, both the testimonies shall establish the claim for one thousand, while according to the other opinion it shall be established by adding an oath to the second testimony, but this opinion is weak. The rule is that in every case where conflict takes place, both the conflicting testimonies shall drop, irrespective of whether both of them legal evidence or a single testimony, and in the absence of a conflict, action shall be taken according to the legal evidence, and the claim shall be established by a single testimony and the oath of the plaintiff in the dispute.

**Problem #6.** If the two witnesses testify before a judge, but before he issues a judgment on both the testimonies, both the witnesses happen to die or become insane or faint, judgment shall be given on their testimonies. Likewise, when both the witnesses have given their evidence, then they are
الأشهاب ما ذكرناه.

مسألة 3 - لو شهد أحدهما بأنه سرق نصاباً غدوة و الآخر بأنه سرق نصاباً عشياً لم يقطع ولم يحكم برده، وذلك لو قال الآخر: سرق هذا النصاب بعينه عشياً.

مسألة 4 - لو اتفق الشهدان في فعل و اختلفا في زمانه أو مكانه أو وصفه بما يوجب تباين الفعلين لم تكن شهادتهما، كما لو قال أحدهما: سرق ثوباً في السوق والآخر: سرق ثوباً في البيت، أو قال أحدهما: سرق ديناراً عرقياً وقال الآخر: سرق ديناراً كوبياً، أو قال أحدهما: سرق ديناراً غدوة و الآخر: عشية، فأنه لم يقطع ولم يثبت الغرم إلا إذا حلف المدعى مع كل واحد فأنه يفر جميع، وله تعارض شهادته تسقط، ولا يثبت بها شيء ولا مع الحلف، وله لو تعارضت البينتان تسقطاً وتثبت ملائمة يكون له إذا حلف المدعى، كما لو شهدت إحداهما بأنه سرق هذا النوبة أول زوال يوم الجمعة في النجف وشهدت الأخرى بأنه سرق هذا النوبة بعينه أول زوال هذا اليوم بعينه في بغداد، ولا يثبت شيء منها القطع ولا الغرم.

مسألة 5 - لو شهد أحدهما أنه باع هذا النوبة أول الزوال في هذا اليوم بدينار وشهد آخر أنه باع أول الزوال بدينارين لم يثبت وسقطتا، وقيل كان له المطالبة بأنها شاء مع الليين، وفيه ضعف، ولو شهد له مع كل واحد شاهد آخر قيل ثبت الدنانير، و الآشبة سقطتا، وقيل يثبت بها الألف و الآخر بتأليف في زمان واحد سقطتا، وقيل يثبت بها الألف و الآخر بانضمام الليين إلى الثاني، وهو ضعيف، فالنصاب أن كل مورد وقع التعارض سقط المتضاربان بينة كانا أو شهادة واحدة، و مع عدم التعارض عمل بالبيئة وثبت مع الواحد و أوين المدعى الدعوى.

مسألة 6 - لو شهدا عند الحاكم و قيل أن يحكم بها ماتا أو وجدتا أو أغمي عليها حكم بشهادتهما، و كذا لو شهدوا ثم زكيا بعد عروض تلك العوارض حكم بها بعد التركية، و كذا لو شهدوا ثم فسقاً أو كفرًا قبل الحكم حكم بها، بل لا
subjected to tazkiyah (attestation of the moral integrity of the witnesses), after suffering from these maladies, judgment shall be given on the testimonies of both after the tazkiyah. Likewise, if they turn profligate or infidel before the issuance of the judgment, judgment will still be given on their testimonies, rather it is not far from being so in case the principal witness has given evidence and the secondary witness has endorsed it, while the principal witness possessed moral integrity, and then turned profligate, and then the secondary witness gave evidence. There is no difference whether the case related to the rights of Alläh the Exalted or the human beings except in case of moral depravity (jisq) and infidelity, so that in both these cases, their testimony shall not be established in cases relating exclusively to rights of Alläh as Ḥadd for Zinā’ or Lawkī. In cases relating to those common between the rights of Alläh and the human beings like Qadhf (slander) or theft there is hesitation in accepting the rule; according to the opinion more in conformity with the principles of law there shall be no Ḥadd. But as regards Qisās, apparently it will be established.

Problem #7. The jurists say: If two witnesses give evidence in favour of a person from whom they are expected to inherit, but he dies before the issuance of judgment so that the property about which they had given evidence is transferred to them, judgment shall not be given in its favour on the ground of their evidence. But there is hesitation and ambiguity, and more ambiguous than it is the opinion that their evidence shall also not establish the share of their partner in the inheritance. But it is reasonable to say that the partner's share shall thereby be established.

Problem #8. If one or both the witnesses repudiate themselves before the issuance of the judgment, but after the evidence has been adduced, judgment shall not be given on the evidence and there shall be no liability. If they admit to have lied deliberately, they shall be declared profligate, otherwise not. If they contradict their repudiation in the latter case, will their evidence be entertained? There is ambiguity in its answer. If the case on which evidence is given relates to Zinā’, and the witnesses admit of having lied deliberately, they shall be put to Ḥadd for Qadhf. If they say that they had been under suspicion, they shall not be put to Ḥadd for Qadhf.

Problem #9. If the two witnesses repudiate themselves after the issuance of judgment and its execution, and the object on which the testimony has been given is destroyed, the judgment shall not be rescinded and they shall be liable for the penalty. Likewise, what was common like Ḥadd for Qadhf and Ḥadd for theft, non-invalidation of the judgment shall be more in conformity with the principles of law with regard to the consequences other than Ḥadd like the prohibition of the mother, sister and daughter of the person subjected to sodomy, prohibition to eat the meat of the animal subjected to bestiality, distribution of the property of the convict for apostasy and observation of 'Iddah by his wife. According to the stronger opinion, judgment shall not be withdrawn on other cases relating to the rights already mentioned. According to the stronger opinion, if the two witnesses repudiate themselves after the execution of the judgment in a case relating to people's rights, the judgment shall not be repealed, even if the object is intact.

Problem #10. If the case on which the witnesses have given evidence relates to murder or injury entailing Qisās that has been executed, and then the witnesses repudiate themselves. If they say that they had done so deliberately, they shall be put to Qisās, and if they say that they had erred, they shall be liable to pay diyat out of their property. If some of them says that they done so deliberately and others say they have erred, then one who admits to have done so deliberately shall be put to Qisās, while the one admitting to have erred shall be liable to pay diyat to the extent of his share.
بعد ذلك لو شهد الأصل وحمل الفرع وكان الأصل عادة ثم فسق ثم شهد الفرع، ولا فرق في حدود الله تعالى وحقوق الناس في غير الفسق وكفر، واما فيها فلا يثبت الحد في حقوق الله عضما كحد الزنا ولواط وفي المشتركة بينه وبين العباد كالقذف والسرقة تردد، والأشبه عدم الحد، وأما في القصاص فالظاهرة ثبته.

مساءلة 7 - قالوا: لو شهدنا فوات قبل الحكم فانتقل المشهود به إليها لم يحكم به لما بشهادتها، وفيه تردد وشكال، وأشكل منه ما قيل: إنه لم يثبت بشهادتها لشريكها في الأثر، والوجه في ذلك ثبوت حصة الشرك.

مساءلة 8 - لو رجع الشهادان أو أحدهما عن الشهادة قبل الحكم وبعد الاقامة لم يحكم بها ولا غرم، فان اعترجا بالتمدد بالكذب نفسا، وإذا فلا فسق، فلو رجعوا عن الرجوع في الصورة الثانية فهل تقبل شهادتها؟ فيه إشكال، فلو كان المشهود به الزنا واعترف الشهود بالتمدد حدوا للقذف، ولو قالوا: أوهما فلا حد على الأقوي.

مساءلة 9 - لو رجعا بعد الحكم والاستيفاء وتفت المشهود به لم ينقص الحكم، وعليها الغرم، ولو رجعا بعد الحكم قبل الاستيفاء فان كان من حدود الله تعالى نقص الحكم، وكذا ما كان مشتركاً نحو حد القذف وحد السرقة، والأشبه عدم النقص بالنسبة إلى سائر الآثار غير الحدة كحمرة أم الموطوع وأخته وبنه، وحمرة أكل لهم البيعة الموطنية، وقسمة مال المحكوم بالردة، واعداد زوجته، ولا ينقص الحكم على الأقوي في ما عدا ما تقدم من الحقوق، ولو رجعا بعد الاستيفاء في حقوق الناس لم ينقص الحكم وإن كانت العين باقية على الأقوي.

مساءلة 10 - إن كان المشهود به قتلا أو جرحًا موجباً للقصاص واستو في ثم رجعوا فان قالوا: متمدنا قتص منهم، وإن قالوا: أخطأنا كان عليهم الدية في أوامهم، وإن قال بعضهم: متمدنا وبعضهم: أخطأنا فعل المقر بالتمدد القصاص والمقترح بالخطأ الدية بقدر نصيبه، ولو الدم قتل المقر بالعمد
The wali al-dam, or the legal heir of the person murdered shall have the right to kill all those who have admitted to do so deliberately and pay the residue of the diyat to the heirs of those whom he has killed. He has also the right kill some of them and let the rest pay to the extent of their offence.

**Problem # 11.** If the case in which the witnesses have given evidence is such that entails Hadd of Rajm (or stoning to death) or killing, then if the Hadd has been executed, then one of the witnesses after the rajm says that he had lied deliberately and the others confirm his statement and say that they had done so deliberately, the heir to the person murdered shall have the right to kill them after returning the residue of the diyat of the person put to rajm, or if he likes he may kill one of them and let the rest pay the complement of his diyat out of the shares after deducting the share of the person killed, or if he likes he may kill more than one of them and let the legal heirs return the residue of the diyat of their relative, and let the rest of them complete what is left from the blood-money after deducting the share of the person murdered. If the other witnesses do not endorse the statement of the person, his admission shall be confined only to himself, and the legal heir of the person murdered shall have the right to kill him after returning the residue of the diyat due from him, and he shall be entitled to receive the diyat from him out of his share.

**Problem # 12.** If it is established that the witnesses have given false evidence, the judgment shall be rescinded, and the property shall be returned if it is possible, otherwise the witnesses shall be liable to do so. If the case in which the witnesses have given evidence concerns a murder, Qisās shall be established against them, and they shall be governed by the rule concerning the witnesses who repudiate themselves and admit of having done so deliberately. If the legal heir of the person killed executes the Qisās and admits of the false evidence, he and not the witnesses shall be liable to undergo Qisās. If the witnesses also admit of the evidence being false, then in such a case all of them shall be liable to undergo Qisās. But the first opinion is more in conformity with the principles of law.

**Problem # 13.** If two persons give evidence against a person of having committed theft and in consequence his hand is amputated, and later it is proved that their evidence was false, then the legal heir of the victim shall have the right to execute Qisās on them after returning half of the diyat to both of them, or put one of them to Qisās and let the other pay one-fourth of the diyat to his partner. If, suppose, both of them repudiate themselves, and admit of having lied deliberately, then it will be like a case of false evidence. If both of them say that they had been under a wrong impression and the actual thief was such a person other than the one against whom they had given evidence, they shall be liable to pay the diyat for amputation of hand, and their evidences shall not be accepted against any other person.

**Problem # 14.** If two witnesses give evidence in case of divorce, and then repudiate themselves after the issuance of judgment, the judgment shall not be rescinded. If the repudiation has taken place after consummation of the marriage, they shall not be liable for anything, but if it happens before the consummation of marriage, they shall be liable for the payment of half of the prescribed dower. But there is hesitation in accepting this opinion.

**Problem # 15.** It is obligatory to announce the falsehood of the witnesses in their locality or tribe in order that others may abstain from their evidence and prevent themselves from such an act, and the judge may give them punishment according to his discretion. Their evidence shall not be accepted unless they offer repentance and reform themselves and exhibit moral uprightness. This rule does not apply to the case where the mistake comes to light or where the evidence is rejected due to conflict with the other legal evidence or the appearance of profligacy except falsehood.
لا يوجد نص يمكن قراءته بشكل طبيعي.
SECTION FORTY – SEVEN

HUDŪD

This Section comprises several Chapters.

CHAPTER ONE - ZINĀ'

This Chapter deals with the causes of Ḥadd of Zinā' and what leads to its establishment and its Appendages.

1 - Causes of Ḥadd for Zinā'

Problem # 1. A Zinā' that entails Ḥadd takes place by the penetration of the actual penis of a man into the prohibited female organ of a woman without having contracted a permanent or temporary marriage with her, or without the subject of the act being a property of the person doing the act, nor having been legalized (by her owner), nor the act having been performed under a semblance of right.

Problem # 2. A Zinā' does not take place by the penetration of unreal penis of a hermaphrodite into the female organ of a woman prohibited unreally as by penetration during menstruation, fasting or Ḥtikāf or under a semblance of right in the light of the subject or rule.

Problem # 3. Penetration takes place by the disappearance of the glans penis in the front or back organ of a woman, while in case of a person having no glans penis it is sufficient that penetration should take place in the customary way even if it is not to the extent of a glans penis.
كتاب الحدود

وفي فصول:

الأول في حد الزنا

والنظرفيه في الموجب وما يستببه والحدود واللوائح.

القول في الموجب

مسألة 1 - يتحقق الزنا الموجب للحد بادخال الإنسان ذكره الأصلي في فرج امرأة محمرة عليه أصالة من غير عقد نكاح دانياً أو منقطعًا ولا ملك من الفاعل للقابلة ولا تحليل ولا شهية مع شرائط يأتي بيانها.

مسألة 2 - لا يتحقق الزنا بدخول الحنثي ذكره الغير الأصلي، ولا بالدخول الحرم غير الأصلي، كالدخول حال الحيض والصوم والاعتكاف ولا مع الشيبة موضوعًا أو حكماً.

مسألة 3 - يتحقق الدخول بغيوبة الحشفة قبلًا أو دبراً، وفي عادم الحشفة

186
It is more cautious for the execution of Ḥadd of Zinā’ that the penetration should take place to the extent of a glans penis, rather the Ḥadd must be averted in case there had been no penetration to the extent of a glans penis.

Problem # 4. It is a condition for establishing Ḥadd against a fornicator and fornicatress that they should be adult, so that there is no Ḥadd against a minor male or female, and sane, so that there is, no doubt, no Ḥadd against an insane fornicatress. According to the more authentic opinion, there is no Ḥadd against an insane fornicator as well. The parties to the act must have knowledge about the prohibition of the act at the time of committing the offence, whether the knowledge is based on Ijtihād or Taqlīd, so that there is no Ḥadd against a person who is ignorant of the prohibition [of the act]. If the person has forgotten the law [of prohibition of the act], the punishment of Ḥadd shall be averted from him [or her]. Likewise, the same shall be the rule in case the person forgets the law [of prohibition of the act] at the time of committing the offence. They should also have free will, so that there is no Ḥadd against a male or female doing the act under coercion. There is no doubt in the establishment of coercion in case of a male as in case of a female.

Problem # 5. If a man marries a woman prohibited to him as the (real) mother, or a foster mother, or a woman having a husband, the wife of his father or his son, so that he performs the sexual intercourse due to ignorance of the prohibition [of the act], he shall not be liable to undergo the Ḥadd [for fornication]. Likewise, there shall be no Ḥadd if he performs the act with the belief that it was lawful, but, in fact, it was not so; or in case he was ignorant of the actual position when he would be forgiven due to ignorance, as when he was informed by the woman that she was free from marital bondage, while in fact she had a husband, or legal evidence has been adduced in favour of the death of her husband or divorce by her husband; or when he doubts about the occurrence of the fosterage inducing prohibition, while the occurrence was there. There is hesitation to treat an unreliable assumption as doubt let alone a mere likelihood, so that if he is ignorant of the law, but realizes that there is likelihood of incurrence of prohibition but at the same time does not ask [others about the law of prohibition], then apparently it will not be treated as doubt. Of course, if the ignorant person was a legal minor, neglectful, neither careful about the relevant law nor asking others about the law, then apparently it will be a case of doubt averting Ḥadd.

Problem # 6. If a man marries a woman prohibited to him like those within the prohibited degrees or the like with the knowledge of its being unlawful, Ḥadd not be dropped. Similar shall be the case if he hires a woman for having sexual intercourse with her with the knowledge of its being unlawful, then Ḥadd shall be established contrary to what has been reported by those who oppose this opinion. Likewise, it is not a condition that there should be Ḥijmā’ (or consensus of opinion of the jurists) on the matter. If it is a matter on which there is difference of opinion (among the jurists), but as a result of Ijtihād or Taqlīd it leads to prohibition, Ḥadd shall be established. If the Ijtihād of the ruler differs from that of the person committing the offence, and the ruler rules against the prohibition, will it be lawful for him to inflict the Ḥadd, the latter alternative shall be in accordance with the opinion in conformity with the principles of law, as when the case be reverse, he shall not be liable to undergo Ḥadd.

Problem # 7. The Ḥadd shall drop in case there is suspicion of lawfulness of an act, as when a man finds a woman in his bed and suspects her to be his wife and has sexual intercourse with her.
يكفي صدق الدخول عرفًا ولو لم يكن بقدار الحشفة، والأحوط في إجراء الحد. حصوله ببقدرها، بل يبدأ بما دونها.

مسألة 4 - يشترط في ثبوت الحد على كل من الزاني والزانية البلوغ فلا حد على الصغير والصغيرة، ولا عقل، فلا حد على المجنون بلا شهبة، ولا على المجنون على الأصح، والعلم بالتحريم حال وقع الفعل منه اجتهد أو تقليداً، فلا حد على الجاهل بالتحريم، ولن nisi الحكم يدأ عنه الحد، وکذا لو غفل عنه حال العمل، والاختيار، فلا حد على المكره والمكرهة ولا شهية في تحقيق الاكرام في طرف الرجل كما يحقق في طرف المرأة.

مسألة 5 - لو زوج امرأة محمرة عليه كل الأيام والمرضى وذات البيل وزوجة الأب والابن فوّطاً مع الجهل بالتحريم فلأحد عليه، وكذا لأحد مع الشيبة بأن اعتقدها الحواجز ولم يكن كذلك، أو جهل بالواقع جهالة مغترة كما لو أخبرت المرأة بكونها خليّة و كانت ذات بيل، أو قامت البنية على موت الزوج أو طلاقه، أو شك في حصول الرضاع الحرم و كان حاصلاً، بأشكال حصول الشيبة مع ظن غير المعترف مصيراً عن مجرد الاحتمال فلوجل الحكم و لكن كان ملتفناً واحتمل الحرة ولم يسأل فالظاهر عدم كونه شهية، نعم لو كان جاهلاً قاصراً أو مقصراً غير ملتفة إلى الحكم والسؤال فالظاهر كونه شهية دارئة.

مسألة 6 - لو عقد على محمرة عليه كالخيار ومعها مع علمه بالحرمة لم يسقط الحد، وكذا لو استأجراه اللوّط مع علمه بعدم الصحة، فالحد ثابت خلافاً للمحكّي عن بعض أهل الخلاف، وكذا لا يشترط في الحد كون المسألة إجازية، فلو كانت اختلافية لكن أدى اجتهد أو تقليده إلى الحرة ثبت الحد، ولو خالف اجتهد الوالي لاجتهد المرتكب وقال الوالي بعدم الحرمة فهل له إجراء الحد أم لا؟ الأشبه الثاني، كما أنه لو كان بالعكس لا حد عليه.

مسألة 7 - يسقط الحد في كل موضع يتوجه الحد كمن وجد على فراشة امرأة فتوهم أنها زوجته فوطأها، فلو تثبت امرأة نفسها بالزوجة فوطأها فعلها الحد.
Then if the woman likened herself to be his wife and in consequence he has had sexual intercourse with her, then the woman shall be liable to undergo Ḥadd to the exclusion of the man having sexual intercourse with her. A report says that Ḥadd shall be inflicted on her in public but on him secretly (or in camera), but it a weak report that is not acted upon.

**Problem # 8.** Ḥadd shall be set aside in case of a claim about an act that can rightly be treated to have been done with doubt. If one or both the parties to the act claim to have done it with doubt with its possibility in case of one of them, Ḥadd is set aside in his or her case but not in case of the other. Ḥadd shall also be set aside in case of claim of a wedlock where there is no knowledge of its falsehood. There shall be no recourse to taking oath or adducing legal evidence.

**Problem # 9.** Ihšān entailing Ṣalāḥ (stoning to death) is established by the combination of the following conditions:

First, sexual intercourse with one’s wife performed naturally, but when performed in unnatural course, according to the more cautious opinion, no Ihšān shall be induced. If a man contracts a marriage and retires with his wife completely or performs sexual intercourse with her between the thighs, or without the penetration of the glans penis or less than to its extent in case where it is chopped off, along with doubt about the performance of penetration, neither the man shall thereby be treated a Muḥṣan, nor the woman a Muḥṣanah. Apparently there is no condition of discharge of semen. If the organs of the man and woman meet together, Ihšān shall thereby be induced. There is also no condition of the testicles being intact.

Second, the person having sexual intercourse with his wife must be an adult, according to the more cautious opinion, so that no Ihšān shall be induced by the penetration of a child even if he is an adolescent. So also no Ihšān of the woman shall thereby take place. If a male who is not an adult has sexual intercourse with a woman, and then fornicates with her after attaining adulthood, according to the more cautious opinion, he shall not thereby become Muḥṣan, even if the marital relation persists continuously.

Third, according to the more cautious opinion, the man should be sane at the time of having penetration with his wife. If he marries her in a sound condition but does not have penetration with her until he turns insane after which he performs sexual intercourse with her, according to the more cautious opinion, it shall not induce Ihšān.

Fourth, the sexual intercourse must be performed into the female organ of a woman belonging to the man by a valid permanent marriage or a slave-girl possessed by him. No Ihšān is induced by illicit intercourse or an intercourse performed under a semblance of right. So also it is not induced by temporary marriage. If a man has a temporary wife throughout the morning and evening, he shall not thereby become a Muḥṣan.

Fifth, the man must be able to perform sexual intercourse whenever he likes in the morning or evening, so that if he is away or absent and is not able to perform sexual intercourse with her (his wife), he shall be a non-Muḥṣan. Similar shall be the case if he is present, but is not able to perform sexual intercourse due to his or her imprisonment or when due to her illness the performance of
سؤال 8: يسقط الحد بدعوى كل ما يصلح أن يكون شهية بالنظر إلى المدعى لها، فلو ادعى الشهية أحدهما أو هما مع عدم إمكانها إلا بالنسبة إلى أحدهما سقط عنه دون صاحبه، ويسقط بدعوى الزوجية ما لم يعلم كذبه، ولا يكلف اثني ولا البينة.

سؤال 9: يتحقق الإحسان الذي يجب معه الرجح باستجماع أمور: الأول: الوطء بأهله في القبل، وفي الدبر لا يوجبه على الأحوط، فلوقع وخلال بها خلوة تامة أو جامعها فيما بين الفحشتين أو بما دون الخشية أو مادون قدرها في المقطوعة مع الشك في حصول الدخول لم يكن محصناً ولا المرأة محصنة، وظهر عدم إشتراع الانزال، فلو النقي الحنانان تحقق ولا يشترط سلامة الخصيتين.

الثاني: أن يكون الوطيء بأهله بالغاً على الأحوط، فلا إحسان مع إبلاج الطفل وإن كان مراهقاً، كما لا تحصين المرأة بذلك، فلو وطأها وهو غير بالغ ثم زنى بالغاً لم يكن محصناً على الأحوط ولو كانت الزوجية باقية مستمرة.

الثالث: أن يكون عاقلاً حين الدخول بزوجته على الأحوط فيه، فلو تزوج في حال صحته ولم يدخل بها حتى جن ثم وطأها حال الجنون لم يتحقق الإحسان على الأحوط.

الرابع: أن يكون الوطء في فرج مملوك له بالعقد الدائم الصحيح أو ملك الينين، فلا يتحقق الإحسان بوطء الزنا ولا الشبهة، وكذا لا يتحقق بالمعتعا، فلو كان عنده متعة يروح ويغدو عليها لم يكن محصناً.

الخامس: أن يكون متملكاً من وطء الفرج يقود عليه ويروح إذا شاء فلو كان بعيداً وغالباً لا يتمكن من وطئها فهو غير محصن، وكذا لو كان حاضراً لكن غير قادر لانع من حبه أو حبس زوجته أو كونها مريضة لا يمكن له وظها.
sexual intercourse is not possible, or he is prevented from contacting his wife by a tyrant (ruler, etc.), he shall not be a Muḥṣan.

Sixth, the man must be free (and not slave).

Problem # 10. There are the same conditions in Ḥisān of a woman as in Ḥisān of a man. So a woman is also not inflicted Ṭalq if she passes her morning and evening with her husband. She is also not inflicted Ṭalq if her husband has not consummated marriage with her, nor if she is not an adult, or if she is insane or a temporary wife.

Problem # 11. A revocable divorce does not entail deprivation from Ḥisān. If a man or woman commit adultery during [the ‘Iddah for] a revocable divorce, she shall be liable to undergo Ṭalq. Likewise, if a woman contracts a marriage [during the ‘Iddah of a revocable divorce] with the knowledge [of its prohibition], she will be liable to be inflicted Ṭalq, and so will her second husband be liable to undergo Ṭalq, if he has knowledge about its prohibition and the currency of the ‘Iddah. However, if he is ignorant of the law or the currency of ‘Iddah, he shall not be liable for Ḥadd. If only one of them has knowledge, he or she shall be liable for Ṭalq to the exclusion of the other ignorant party. If one of them claims to be ignorant of the law before the other party, then if ignorance is possible from him, or he claims to be ignorant of the currency of ‘Iddah before the other, [there shall be no Ḥadd].

Problem # 12. A man or a woman is deprived of Ḥisān as a result of an irrevocable divorce as given in case of Khul‘ or Mubārāt. If the husband giving Khul‘ falls back on the Khul‘ [given by him], he shall not be liable to Ḥadd except after performance of sexual intercourse [with the wife separated from him by Khul‘].

Problem # 13. It is not a condition for Ḥisān that either of them should be a Muslim, so a Christian husband gets the status of Ḥisān with a Christian wife and vice versa, and a Christian with a Jewish wife and vice versa.

If a non-Muslim consummates marriage with his permanent wife, and then commits fornication [with any woman], he shall be inflicted Ṭalq. The validity of their marriage contract is not a condition except among themselves. So if it is valid among them and invalid among us, it is sufficient for the application of the law of the liability for Ṭalq.

Problem # 14. If a man born of Muslim parents apostatizes, he shall be deprived of Ḥisān [status of being married] due to separation of his wife from him.

If, however, one born of non-Muslim parents, apostatizes and commits adultery after the completion of the ‘Iddah of his wife, he shall not be treated as a Muḥṣan: otherwise he shall be treated as a Muḥṣan.

Problem # 15. In case of a blind person, both Ṭalq and Jahl (flogging) are inflicted. If he claims doubt where its possibility exists in his favour, then, according to the stronger opinion, it will be accepted. Others say that his claim will not be accepted, or it will not be accepted except when he possesses moral integrity, or it will not be accepted except with the circumstantial evidence in favour of his claim, but all these opinions are weak.

Problem # 16. There will be Ta‘zir and not Ḥadd in case of kissing, Muḍāja‘ah (lying together), Mu‘ānaqah (embracing), or other enjoyments excluding (the use of) the female organ, as also there is no limit of (punishment by) Ta‘zir, and it depends on the discretion of the judge, according to the opinion more in conformity with the principles of law.
أو منعه ظالم عن الاجتماع بها ليس محصناً.
السادس. أن يكون حراً.

مسألة 10. يعتبر في إحصان المرأة ما يعتبر في إحصان الرجل، فلا ترجم ولم يكن معها زوجها يغدو عليها و يروح، ولا ترجم غير المدخل بها ولا غير البالغة ولا الجنونة ولا المتعبة.

مسألة 11. الطلاق الرجعي لا يوجب الخروج عن الاحصان، فلو زنى أو زنت في الطلاق الرجعي كان عليها الرجم، ولو تزوجت عامة كان عليها الرجم، وكذا الزوج الثاني إن علم بالتحريم والعدة، ولو جهل بالحكم أو بالموضوع فلا حد، ولو علم أهدها فعله الرجم دون الجاهل، ولو أدعى أحدهما الجهل بالحكم قبل منه إن أمكن الجهل في حقه، ولو أدعى الجهل بالموضوع قبل كذلك.

مسألة 12. يخرج الرجل وكذا المرأة عن الاحصان بالطلاق البائن كالحلع والمباراة، ولو راجع المتاح ليس عليه الرجم إلا بعد الدخول.

مسألة 13. لا يشترط في الأحصان الإسلام في أحد منهما، فيحن النصارى النصرانية و باعص، و النصارى اليهودية و باعص، فلو وتأ غير مسلم زوجته الدائمة ثم زنى يرجم، ولا يشترط صحة عقدهم إلا عندهم. فلو صح عندهم ويطل عندنا كف في الحكم بالرجم.

مسألة 14. لو ارتد المحسن عن فطرة خرج عن الاحصان، لبينونة زوجته منه، ولو ارتد عن ملة فإن زنى بعد عدة زوجتها ليس محصناً و إلا فهو محصن.

مسألة 15. يثبت الحد رجأ أو جلد على الأعمى، ولو أدعى الشبهة مع احتمالها في حقها الفقيرة القبول، وقيل لا تقبل منه أو لا تقبل إلا أن يكون عدلاً أو لا تقبل إلا مع شهادة الحال بما ادعاه، والكل ضعيف.

مسألة 16. في التقبيل والمضاجعة والمعانفة وغير ذلك من الاستمتاعات دون الفرج تعزير ولا حداً، كما لا تحديد في التعزير، بل هو منطوب بنظر الحاكم.
II – What Establishes Zinā'

Problem # 1. A Zinā' is established by confession, in which it is a condition that the person confessing must be an adult, sane, having free will and intention. So there is not legal value for a confession by a child, even if he is an adolescent, and so also a confession by a lunatic in a state of lunacy, nor a confession made under coercion, or confession by an intoxicated person, or through an error or by a negligent person or one while asleep, or made by joke or the like.

Problem # 2. It is indispensable that the confession must be clear or express, but with it no mental assumption shall be accepted. It is also indispensable that it must be repeated four times. Now whether it is a condition that the repetition of confession must be made four times in four sittings or it is sufficient repeat it four times even if it is made in single sitting; there is different of opinion. According to the opinion closer to the traditional authority, it is established [by repetition four times in a single sitting, though it is more cautious to repeat it in four sittings. If the confession is made less than three times, Hadd shall not be established, and apparently it is up to the judge to inflict Ta'zir upon the accused. In what has been mentioned, male and a female [accused] shall be treated equally. The signs made by a dumb person conveying the sense shall stand in place of speech. If there is a need for two interpreters, two witnesses having moral integrity will be sufficient.

Problem # 3. If a man says, “I have committed adultery with such and such chaste woman”, it will not establish Zinā' punishable by Hadd by him except when he repeats it four times. Will Qadhf against the woman thereby be established? There is hesitation in it.

According to the opinion more in conformity with the principles of the law, the answer is in the negative. Of course, if he says, “I have committed adultery with her, and she has also participated with me in the adultery”, he shall be liable for Hadd of Qadhf.

Problem # 4. If a man confesses himself having committed what entails Hadd, but does not nominate [the victim], he shall not be compelled to nominate [the victim]. Rather he shall be flogged till he himself asks to stop.

There is an authentic tradition reported about it. There is no objection in complying with it. Some jurists have declared that he should not be flogged more than one hundred, while others have opined that the flogging must not for less than eighty times.

Problem # 5. If a man makes a confession entailing Rajm, and then declines, Rajm shall be averted. If he makes confession that does not lead to Hadd, it shall not drop by his repudiation. It is more cautious to associate murder with Rajm, so that if a person confesses of having committed murder and then declines, he shall not be adjudged to have committed murder.
المقال في مثبت به

مسألة ١ - يثبت الزنا بالاقرار، ويُشترط فيه بلوغ المقر وعقله واختياره وتصده، فلا عودة بالاقرار الصبي وإن كان مراهقاً، ولا بالاقرار الجنون حال جنونه، ولا بالاقرار المكره، ولا بالاقرار السكران والساهي والعاقل والناائم والهازل ونظوءهم.

مسألة ٢ - لا بد وأن يكون الاقرار صريحاً أو ظاهراً لا يقبل معه الاحتمال العقلائي، ولا بد من تكرره أربعًا، وهل يعتبر أن يكون الأربع في أربعة مجالس أو يكون الأربع وله كان في مجلس واحد؟ فيه خلاف، أقر به الثبوت، والأحوط اعتبار أربعة مجالس، ولو أقر دون الأربعة لا يثبت الحد. وظاهر أن للمحاكم تزويجه، ويعتبر في كل ما ذكر الرجل والمرأة، وإشارة الأخرين المفهمة بالمقصود تقوم مقام النطق، ولو احتجت إلى الترجيح يجب فيه شهدان عادلان.

مسألة ٣ - لو قال: "زينت بفثلان العفيفة" لم يثبت الزنا الموجب للحد في طرفه إلا إذا كررها أربعًا، وهل يثبت القذف بذلك للمرأة؟ فيه ترد، والأشهي عدم، نعم لو قال: "زينت بها وهي أيضاً زانية بزنانى" فعليه حد القذف.

مسألة ٤ - من أقر على نفسه بماوجب الحد ولم يعين لا يكلف بالبيان، بل يحدد حتى يكون هو الذي يبني عن نفسه، به وردت رواية صحيحة، ولا بأي سباق بالعمل بها، وقيده قوم بأن لا يزيد على المرة، وبعض بأن لا ينقص عن ثمانين.

مسألة ٥ - لو أقر بما يوجب الرجم ثم أنكر سقط الرجم، ولو أقر بما لا يوجب له سقط بالانكار، والأحوط إلحاق القتل بالرجم، ولو أقر بما يوجب القتل ثم أنكر
Problem # 6. If a man confesses to have committed what entails Hadd, and then repents, it will up to the Imam wither to acquit him or inflict Hadd on him, irrespective of its being Rajm or any other category. Such option is not far from being likely for other than the Imam in person from among his successors.

Problem # 7. If a woman who has no husband conceives, she shall not be inflicted Hadd unless she makes confession of Zinâ’ four times or adduces evidence to that effect. No one has the right to ask her questions or make investigation about the incident.

Problem # 8. If a man confesses four times that he committed adultery with a woman, he shall be inflicted Hadd to the exclusion of the woman, even if the man clearly declares that he had joined her in the commission of the adultery. Likewise, if a woman confesses four times that a man committed adultery with her and she joined him in the commission of the act, she shall be inflicted Hadd to the exclusion of the man. If a man claims to have had sexual intercourse with a woman without admitting to have committed adultery, Hadd shall not be established in his case, even if it is proved that the woman was not his wife. If, suppose, he claims that she is his wife, while the woman declines the commission of adultery as well as being his wife, neither Hadd shall be established against him nor dower. If the woman claims that she was compelled for Zinâ’ or has created a semblance of right before her, neither shall be liable for Hadd.

Problem # 9. A Zinâ’ is established by adducing legal evidence, for which it is a condition that it should be adduced by four men or three men and two women, but the evidence of women alone or that of one man and six women shall not be accepted in Zinâ’, nor that of two men and four women in a case of Rajm, but the Hadd shall thereby be established but not Rajm, according to the stronger opinion. If less than four men give evidence or what is treated equal to four men, neither Hadd for Rajm shall thereby be established nor that of flogging; rather the witnesses shall be inflicted Hadd for false accusation.

Problem # 10. It is indispensible for the evidence adduced by the witnesses in a case of Zinâ’ that it must be clear and ambiguous based on their personal observation of the penetration [of the male organ] into the female organ like the bodkin into the collyrium or antimony box or its withdrawal from it, without a contract (of marriage), the (right of) ownership, semblance of right or coercion. Is it sufficient for the witnesses to declare that they have no knowledge about any ground of legalization (of the sexual act) between the two parties (i.e., the man and the woman)? The jurists have answered it in the affirmative, but according to the opinion in conformity with the principles of law the answer should be in the negative. There is some substance in the sufficiency of the evidence based on certainty even if without its person observation that is not free from suspicion in this case.

Problem # 11. An evidence in general terms is insufficient, so that witnesses testify that the man committed Zinâ’ or performed penetration like a bodkin into a collyrium box without mentioning the time or place, etc. But if they mention details but their evidence differs in details as when one of them testifies that the man committed Zinâ’ on Friday and the other testifies that he committed it on Saturday, or some of them testify that the man committed Zinâ’ in such a place while the others testify that he committed it in another place, or when some of them testify that he committed the act with such a woman while the others testify that
لا يحكم بالقتل.

مسألة 6 - لو أقر بما يوجب الحد ثم تاب كان للإمام عليه السلام عفوه أو إقامة الحد عليه رجأ كان أو غيره، ولا يبعد ثبوت التخلي لغير إمام الأصل من نواه.

مسألة 7 - لو حملت المرأة التي لا بعل لها لم تجد إلا مع الإقرار بالزنا أبداً أو تقوم البيئة على ذلك، وليس على أحد سؤالها ولا التفتيش عن الواقعة.

مسألة 8 - لو أقر أبداً أنه زنى بامرأة حدة دونها وإن صرح بأنها طاعته على الزنا، وكدا لو أقرت أبداً بأنه زنى بي وأنا طاعته حدة دونه، ولو ادعى أبداً أنه وطاً أمرأة ولم يعرف بالزنا لا يثبت عليه حدة وإن ثبت أن المرأة لم تكن زوجته، ولو ادعى في الفرض أنها زوجته وأنكرت هي الوطء الزوجية لم يثبت عليه حد ولا مهر، ولو ادعت أنه أكرره على الزنا أو تشبّه عليها فلأحد على أحد منها.

مسألة 9 - يثبت الزنا بالبيئة، ويعتبر أن لا تكون أقل من أربعة رجال أو ثلاثة رجال وأمرأتين. ولا تقبل شهادة النساء منفردتات ولا شهادة رجل وست نساء فيه، ولا شهادة رجلين وأربع نساء في الرجم، وثبت بها الحد دون الرجم على الأقوى، ولو شهد مادون الأربعة وما في حكمها لم يثبت الحد رجأً ولا جلداً، بل حدوا للفرية.

مسألة 10 - لا بد في شهادة الشهود على الزنا من التصريح أو نحوه على مشاهدة الولوج في الفرج كمال في المكلفة أو الاخراج منه من غير عقد ولا ملك ولا شبهة ولا إكراه، ولا يمكن أن يقولوا لا نعلم فيها سبباً للتحليل؟قيل: نعم، ولا الأشبهه لا، وفي كفاية الشهادة مع اليقين وإن لم يبصر به وجه لا يخلو من شهية في المقام.

مسألة 11 - تكفي الشهادة على نحو الإطلاق بأن يشهد الشهود أنه زنى وأولج كمال في المكلفة من غير ذكر زمان أو مكان أو غيرهما، لكن لو ذكروا
he committed the act with another woman, neither their evidence shall be entertained nor shall
the man be inflicted Hadd, but the witnesses shall be liable for Hadd for Qadhf (or slander).
If some of them mention details while others testify in general terms, will it be sufficient, or it
is indispensible that if one of them mentions a detail the others should also mention it? There
is some ambiguity in its answer, but according to the more cautious opinion, it is necessary.
**Problem # 12.** If some of the witnesses present themselves and testify to Zinā’ in the absence
of the other witnesses, those who testify shall be inflicted Hadd for false accusation, the arrival
of the remaining witnesses shall not be awaited for the completion of the evidence. If three of
them testify to Zinā’ and say that their fourth will be coming soon, they shall be liable for
Hadd [for Qadhf].
Of course, it is not obligatory for all of the witnesses to be present at the same time, so that if
one of them comes and testifies and then the other one comes without interval and testifies;
thus Zinā’ is established and the witnesses are not liable for Hadd.
It is not a condition that the witnesses should know one another in the case of evidence [for
Zinā’]. So if four witnesses testify without having knowing about the evidence of one another,
the number of witnesses required to establish Zinā’ shall be completed, and the Zinā’ shall be
established. If some of the witnesses testify after having assembled together, and the other
refuses to testify, those who have testified shall be liable for Hadd.
**Problem # 13.** If four witnesses testify to Zinā’, some or all of them are not propitious or
acceptable, as profligates, they shall be liable for Qadhf. Some jurists are of the opinion that if
the rejection of the evidence is due to some obvious disability as blindness or ostensible
profligacy, they shall be liable for Hadd.
If the rejection of the evidence is for a secret disability as a secret profligacy, no one shall be
inflicted Hadd but a witness whose evidence has been rejected. If the witnesses are of an
unknown character, whose moral integrity or profligacy is not established, they shall not be
liable for Hadd due to doubt.
**Problem # 14.** The evidence of four witnesses shall be acceptable against two or more
persons. If they say that such person and such person have committed Zinā’, it shall be
accepted, and both the persons [against whom they have testified] shall be put to Hadd.
**Problem # 15.** When the evidence is accomplished, the Hadd shall be established, and it shall
not be set aside the confirmation of the person against whom evidence has been adduced once
or twice, less than four times, contrary to the opinion of some who possess a different faith
(ahl-i khilāf or Sunnis). Likewise it shall not be set aside by their denial.
**Problem # 16.** The Hadd, whether of rajm or flogging, shall be set aside if the convict repents
before the legal evidence (bayyina) is adduced, but it shall not be set aside if he/she repents
after the evidence has been adduced.
The lmām (or the ruler) has no authority to pardon [a convict] after the legal evidence has been
adduced. He has, however, the authority to pardon the convict [even] after his/her confession,
as already mentioned. If the accused repents before making confession, the Hadd shall be set aside.
المستحيلات و اختلاف شهادتهم فيها كأن شهد أحدهم بأنه زنى يوم الجمعة و الآخرين بأنه يوم السبت أو شهد بعضهم أنه زنى في مكان كذا و الآخر في مكان غيره أو بخلافة و الآخرين بغيرها لم تسمع شهادتهم ولا يوجد و يجد السهول للإفادة، ولو ذكر بعضهم بخصوصية و أطلق بعضهم فهل يكفي ذلك أو لا يد مع ذكر أحدهم الخصوصية أن يذكرها الباقون؟ في شكل و الأحوال لزومه.

مسألة 12 - لو حضر بعض الشهود و شهد بالزنا في غيره بعض آخر حد من شهد للفرقة، و لم ينتظر يعنيت البقية لا تمام البيئة، فلو شهد ثلاثة منهم على الزنا وقالوا: لنا رأينا سبغيء حدو، نعم لا يجب أن يكونوا حاضرين دفعة، فلو شهد واحد وجاء الآخر بلا فصل فشهد و هكذا ثبت الزنا و لا حد على الشهود، ولا يعتبر تناظرهم على الشهادة، فلو شهد الأربعة ولا علم منهم بشهاده السائرين ثم النصاب و ثبت الزنا، ولو شهد بعضهم بعد حضورهم جميعًا للشهاده و نقل بعض يد من شهد للفرقة.

مسألة 13 - لو شهد أربعة بالزنا و كانوا غير مرضيين كلهم أو بعضهم كالفساق حدوا للقذف، و قال: إن كان رد الشهادة لأمر ظاهر كالعمى و الفسق الظاهر حدوا، و إن كان الرد لأمر خفي كالفسق الخفي لا يجب إلا المردود، ولو كان الشهود مستورين ولم يثبت عدلتهم و لا فسقهم فلا حد عليهم للشبهة.

مسألة 14 - تقبل شهادة الأربعة على الاثنين فازاد، فلما قلنا: إن فلانا و فلانا زننا قبل منهم و جرى عليها الحد.

مسألة 15 - إذا كملت الشهادة ثبت الحد، ولا يسقط بتصديق المشهور عليه مرة أو مرات دون الأربع، خلافًا لبعض أهل الخلافة و كذا لا يسقط بتكذيبه.

مسألة 16 - يسقط الحد لوتاب قبل قيام البيئة رجأً كان أو جلداً ولا يسقط لوتابة بعده، وليس لللام عليه السلام أن يعفو بعد قيام البيئة، و له العفو بعد
III - Hadd for Zinā’

This Chapter comprises two Parts.

Part One – Categories of Hadd for Zinā’

There are several Categories of Hadd for Zinā’.

First Category of Hadd – Death: It is compulsory (wājib) on the man who commits Zinā’ with a relative within prohibited degrees (mahram) due to consanguinity (nasab) as (his) mother, daughter, sister and the like. To this category is not affiliated a relative within prohibited degrees of consanguinity by fosterage, according to the more cautious opinion, even if it is so according to the stronger opinion. Are the mother, daughter and such relatives as a result of Zinā’ affiliated with the legally related persons? There is hesitation in accepting them, and it is more cautious not to affiliate them. It is also more cautious not to affiliate the relatives within prohibited degrees as a result of affinity (sabab) as the daughter of one’s wife (by another husband) or her mother with the relatives within prohibited degrees by consanguinity. Of course, according to the stronger opinion one’s father’s wife (or step mother) is to be affiliated to the former category, so that a man committing Zinā’ with her shall be condemned to death. So also a Dhimmi [a non-Muslim subject of a Muslim state] shall also be condemned to death if he commits Zinā’ with a Muslim woman with her willingness or by coercion, irrespective of his fulfilling the conditions of being a Dhimmi or not. Apparently the rule shall be applied to the infidels in general. If an infidel embraces Islam, shall he be excused from Hadd or not? There is vagueness in the answer, although the rule is not far from being in favour of absence of setting aside the Hadd. Likewise, any man who commits Zinā’ with a woman by coercion shall be condemned to death.

Problem # 1. Iḥšān [having the status of a married man] is not a condition in the application of the preceding cases, but a convict shall be given death sentence whether he is a muḥšan or a non-muḥšan. So also an old man and a young man, a Muslim and an infidel, and a free man and a slave are to be treated equally [in applying the law relating to Zinā’]. Whether a person accused of committing Zinā’ who is condemned to death in the preceding cases shall be given flogging before the infliction of death so that the punishments of flogging and death shall be combined in his case, is a question in which the non-combination of the two punishments is more reasonable, although there is hesitation in the rule itself in some cases.

Second Category of Hadd – Rajm alone. It is compulsory in case of a muḥšan when he commits Zinā’ with an adult, sane woman, and in case of a muḥšana when she commits Zinā’ with an adult, sane man, provided both are young. According to the generally accepted opinion in case of a young man and woman the punishments of flogging and rajm shall be combined, although according to the opinion closer to the traditional authority there shall be rajm alone.
الإقرار كيا مره ولو تاب قبل الإقرار سقط الحد

القول في الحد

وفيه مقامات:

الأول في أقسامه

للحد أقسام: الأول – القتل، فيجب على من زنى بذات محرم للنسب كالأم و البنت والأخوات وشبيها، ولا يلحق ذات محرم للرضاع بالنسب على الأحول لولم يكن الأقوى، و هل تلحق الأم و البنت و نحوها من الزنا بالشرعية منها؟ فيه تردد، و الأحول عدم الالحق، و الأحول عدم إلحاق الحارج السببية كتب الزوجة و أمها بالنسبية، نعم الأقوى إلحاق امرأة الأب بها، فيقتل بالزنا بها، و يقتل النمي إذا زنى بمسلمة مطاوعة أو مكرهة سواء كان على شرائط الدمعة أم لا، و الظاهرة جريان الحكم في مطلق الكفار فلو أسلم هل يسقط عنه الحد أم لا؟ فيه إشكال و إن لا يبعد عدم السقوط و كذا يقتل من زنى بأمرأة مكرهاً لها.

مسألة ١: لا يعتبر في المواضع المتقدمة الاحسان، بل يقتل محصنا كان أو غير محصن، و يتساوي الشيخ و الشاب و المسلم و الكافر و الحر و العبد و هل يلد الزوجي المحكوم بقتله في الورود المتقدمة ثم يقتل فيجمع فيها بين الجلد و القتل؟

الأوجه عدم الجمع وإن كان في النفس تردد في بعض الصور.

الثاني – الرجم فقط، فيجب على المحصنة إذا زنى بالغة عاقلة، و على المحصنة إذا زنت بالغة عاقلة إن كانا شابين، وفي قول معروف يجمع في الشاب و الشابة بين الجلد و الرجم، و الأقرب الرجم فقط.
Problem # 2. If an adult, sane muḥsan commits Zinā' with a minor or lunatic woman, shall he be punished by rajm or a Hadd short of rajm, is a question on which there two alternatives. The punishment of rajm is not far from being established in his case. If an insane man commits Zinā' with a sane, adult woman with her consent, she shall be given full Hadd of rajm or flogging, while, according to the stronger opinion, the insane man shall not be given Hadd.

Third Category of Hadd - Flogging alone: It is established in case of a non-muḥsan who commits Zinā' when he has no wife, i.e., he is not married, and in case of sane and adult woman who commits Zinā' with a (minor) boy, irrespective of her being a muḥsana or not, and in case of a non-muḥsana who commits Zinā'.

Fourth Category of Hadd - Flogging and rajm combined: These are the punishments for old men and women when they are muḥsana and muḥsana. They shall be flogged first and then inflicted rajm.

Fifth Category of Hadd - Flogging, banishment, and shaving of head (jazz): These are the punishments for a virgin who is married but with whom her husband has not consummated the marriage, according to the opinion closer to the traditional authority.

Problem # 3. Jazz means shaving the head. It is not permissible to shave the beard (of the convict) or his mustaches. Apparently it means the shaving of the whole head, and shaving the hair of forehead is not sufficient.

Problem # 4. The Hadd for banishment is to keep away for one year from the place where the convict has been flogged. The selection of the place of banishment rests with the judge. If the place of Hadd is other than his homeland, it is not permissible to banish the convict to his homeland, and it has to be some place other than his homeland. If the convict has been inflicted Hadd in an open space, the punishment of banishment shall not be set aside, so that he shall be banished to a place other than his homeland. There is no difference between the place being a town or a village.

Problem # 5. In case Zinā' is committed twice or more in a single day or several days with a single woman or several women, there shall be a single Hadd if no Hadd has already been inflicted in between. This is the case where the repeated Zinā' entails a single type of Hadd, as, for example, flogging. If, however, the repeated acts entail different types of Hadd, as, for example, some of the acts entail flogging alone, while the other acts entail flogging and rajm combined or rajm (alone), then obviously the punishments will be repeated with the repetition of their causes.

Problem # 6. If a non-Muḥsan free person repeats the commission of Zinā', if it happens to be a woman, she shall be inflicted Hadd three times, but shall be condemned to death on the fourth time. Some jurists are of the opinion that she shall be condemned to death on the third time after the infliction of the Hadd for a second time. But this opinion is disapproved.
مسألة ۱ - لو زنى البالغ العاقل المحصن بغير البالغة أو بالجنبة فهل عليه الرجم أم الحد دون الرجم؟ و جهان، لا يوجد ثبوت الرجم عليه، ولو زنى المجنون بالعاقلة البالغة مع كونها مطاوعة فعليها الحد كاملة من رجم أوجلد، وليس على المجنون حد على الأقوى.

第三节 - الجلد، خاصة، وهو ثابت على الزاني غير المحصن إذا لم يملك أي لم يزوج، وعلى المرأة العاقلة البالغة إذا زنى بها طفل، كانت محصنة أولا، وعلى المرأة غير المحصنة إذا زنت.

رابع - الجلد والرجم معًا، وهو حد الشيخ و السيدة إذا كانا محصنيين فيجلدان أولا ثم يرجمان.

خامس - الجلد والتغريب والجز، وهي حد البكر، وهو الذي تزوج ولم يدخل بها على الأقرب.

مسألة ۲ - الجز حلق الرأس، ولا يجوز حلق حليته ولا حلق حاجبه الظاهر لزوم حلق جميع رأسه، ولا يكني حلق شعر الناصية.

مسألة ۳ - حدد التني سنة من البلدة التي جند فيها، وتعيين البلد مع الحاكم. ولو كانت بلدة الخديغوطن لا يجوز التني منها إلى دنه، بل لا بد من أن يكون إلى غير دنه، ولو حده في فلالة لا يسقط التني، فينبغي إلى غير دنه، ولا فرق في البلد بين كونه مصرًا أو قرية.

مسألة ۴ - في تكزير الزنا مرتين أو مرات في يوم واحد أو أيام متعددة بامرأة واحدة أو متعددة حدد واحد مع عدم إقامة الحد في خللالها هذا إذا اقتضى الزنا المتكرر نوعًا واحدًا من الحد كالأصل، وأما إذا اقتضى حدودًا مختلفة كان يقتضي بعضه الجلد خاصة وبعضه الجلد والرجم أو الرجم فالظاهرة تكرهه بتكرار شبه.

مسألة ۵ - لو تكرر من الحر غير المحصن ولم كان امرأة فأقيع عليه الحد ثلاث مرات قتل في الربع، وقيل قتل في الثالثة بعد إقامة الحد مرتين، وهو غير
Problem # 7. Some jurists have held that it is up to the judge either to inflict Hadd on a Dhimmī or hand him over to the people of his tribe and community to inflict Hadd according to their belief. But it is more cautious to inflict Hadd on him. This is the case when he commits Zinā’ with a Dhimmiyyah or an infidel woman; otherwise, he shall be inflicted Hadd without any hesitation.

Problem # 8. A pregnant woman shall not be inflicted Hadd of rajm or flogging, even if the pregnancy is the result of Zinā’, until she is delivered of the child and is released of her puerperal blood (nifās) in case of apprehension of harm to her (newly born) child by inflicting flogging, and she would also suckle her child if there is no other woman to suckle the child even if the Hadd is of flogging provided there is apprehension of harm to her suckling. But if some person is found to look after the child, it shall be compulsory to inflict Hadd on her when there is no apprehension of harm to her child.

Problem # 9. It is compulsory to inflict Hadd on a sick person and likewise on one suffering from ulcer or a mustahādah if the Hadd is of rajm or death, but none of them shall be given flogging, in case the execution of death sentence or rajm is not compulsory, for fear of spreading of the disease, and it will be delayed until the disease is cured. If there is no hope of the cure, or the judge considers early flogging beneficial. Flogging shall be done by a bunch of the required number of whips or twigs of palm tree or the like. It is not a condition that each of the twigs or whips should reach the body of the convict, but it is sufficient to be deemed flogging with the collection of the twigs. If the convict regains health before the flogging by the bunch of twigs, he/she shall be given flogging as a sound person. But if he is cured after the flogging by the bunch of twigs, he/she shall not be flogging subsequently. The infliction of Hadd on a woman her courses shall not be delayed, but it is more cautious to delay the infliction of Hadd in case of a woman having puerperal blood.

Problem # 10. A Hadd shall not be set aside due to the occurrence of insanity or apostasy. If a person commits an act entailing Hadd for him while he is sound without there being any reason for the occurrence of insanity, and then he suffers insanity, Hadd shall be inflicted on him, irrespective of its being lashes or rajm. If a person suffering from a periodical insanity commits an act that entails Hadd if committed during his period of recovery and soundness, he shall be inflicted Hadd even if it is his period of insanity, and it shall not be delayed till his recovery. It makes no difference whether he feels the pain during insanity or not.

Problem # 11. If a Hadd is to be executed by flogging, it shall not be inflicted when it is extremely hot or extremely cold. It must be executed in winter during midday and in summer during cool hours due to apprehension of the loss of life of the convict or an injury beyond its unavoidable limit during the infliction. It is not executed in an enemy territory or in a place where the convict has sought asylum, but he shall be put to the shortage of food and drink so that he may come out of the place of asylum.
مسألة 7 - قالوا: الحاكم بالخيار في الذمي بين إقامة الحد عليه وتسليمه إلى أهل نفعته وملته لقيموا الحد على معتقدهم، وأحوزت إجراء الحد عليه، هذا إذا زني بالدعيمة أو الكافرة، وإن فجري عليه الحد فلا إشكال.

مسألة 8 - لا يقام الحد رجأ ولا جلدًا على الحامل ولو كان حمله من الزنا حتى تضع حلمها وتخرج من نفسها إن خفي في الجلد الضرر على ولدها، وحتى ترضع ولدها إن لم يكن له مرفضة - ولو كان جلدًا إذا خفي الاضرار برضاعها، ولو وجد له كافل يجب عليها الحد مع عدم الخوف عليه.

مسألة 9 - يجب الحد على المريض ونحو كصاحب القروح والمستحاضة إذا كان رجأ أو قتالاً، ولا يجد أحدهم إذا لم يجب القتل أو الرجم خوفًا من السرايا، وينتظر البراء، ولو لم يتوقع البراء أو رأى الحاكم المصحة في التعجيل ضربهم بالضغط المشتمل على العديد من سياط أو شماريخ ونحوها، ولا يعتبر وصول كل سوط أو شماريخ إلى جسده، فيكون التأثير بالاجتماع وصدق مسمى الضرب بالشماريخ مجتمعاً، ولو برأ قبل الضرب بالضغط حد كالصحيح، وأما لو برأ بعدهم لم يعد ولا يؤخر حد الحائض، والأحوز التأخير في النساء.

مسألة 10 - لا يسقط الحد باعتراض الجنون أو الارتداد، فإن أوجب على نفسه الحد وهو صحيح لا علاقة له من ذهاب عقل ثم جن أقيم عليه الحد رجأ أو جلدًا، ولو ارتكل الجنون الأدواري ما يوجهه في دور إفائه وصحته أقيم عليه الحد ولو في دور جنونه، لا ينتظر به الإفائه، ولا ينتظره بالألم حال الجنون أولًا.

مسألة 11 - لا يقام الحد إذا كان جلدًا في الحر الشديد ولا البرد الشديد، فتئوي به في الشتاء وسط النهار، وفي الصيف في ساعة بردته خوفًا من الهلاك أو الضرر زائدًا على ما هو لازم الحد، ولا يقام في أرض العدو ولا في الحرم على من التجأ إليه، لكن يضيق عليه في المطعم والشراب ليخرج، ولو أحدث موجب
If he commits an act entailing Ḥadd in the place of asylum, he shall be inflicted Ḥadd in the same place.

Part Two – Procedure of Execution of Ḥadd

Problem # 1. If a person is liable to be executed several types of Ḥadd, start should be made with the Ḥadd that may not cause loss of another Ḥadd. So if flogging and rajm are combined in one’s case, start shall be made with the execution of flogging and he shall be put to rajm after it. If the convict has to undergo the Ḥadd of a virgin and a mubšan, then obviously rajm shall be executed after banishment, though there is some hesitation in it. In case of combination of flogging and rajm, it is not necessary to wait till the amelioration of the wounds of lashes; rather it is more cautious to avoid delay.

Problem # 2. A man shall be buried up to his hips for executing rajm and not more, while a woman shall be buried up to the middle of her body above her hips below her chest. If the man or woman escape from the pit, they shall be brought back if Zinā’ is established by legal evidence. If Zinā’ is established by confession and if both the convicts escape after being attacked even by a single stone, they shall not be brought back; otherwise they shall be brought back. According to the generally accepted opinion, if Zinā’ is established by confession, the convicts shall not be returned absolutely, and this opinion is more cautious. This is the case in rajm. But in case of flogging, escape shall be no avail, and the convict shall be brought back and inflicted the Ḥadd in all circumstances.

Problem # 3. If a mubšan who has committed Zinā’ makes confession, the first to throw the stone on him shall be the Imām (or the judge) and then the public. If legal evidence has been adduced against him, the first to throw stones shall be the witnesses and then the Imām (or the judge) and then the public.

Problem # 4. A man who has committed Zinā’ shall be flogged while standing after having been stripped of clothes except those covering his private parts, and shall be given hardest lashes, and struck from the highest part to the lowest part of his body, leaving his head, face and sexual organ. A woman shall be flogged in a sitting posture with her clothes on. If the man or woman dies as a result of flogging, there shall be no liability.

Problem # 5. The judge while intending to execute Ḥadd should make a public announcement inviting them to assemble; rather he should order them to come out to be present at the execution of Ḥadd. It is more cautious that a group of believers (muminin) numbering three or more should be present there. The stones should small; rather it is more cautious. But it is not permissible to use what is not considered a stone as pebbles, or big stones one or two of which may kill the convict. It is more cautious that a person who has been subjected to Ḥadd should
المقام الثاني في كيفية إيقاعه

مسألة 1. إذا اجتمع على شخص حدود بديء بما لا يفوت معه الآخر فلو اجتمع الجلد والرجم عليه جلد أولاً ثم رجم، ولو كان عليه حد البكر والمخص فالأظهر وجوب كون الرجم بعد التغريب على إشكال، ولا يجب توقع برء جلده فما اجتمع الجلد والرجم، بل الأحوض عدم التأخير.

مسألة 2. يفتن الرجل للرجم إلى حقوقه لا أزيد، و المرأة إلى وسطها فوق الحفوة تحت الصدر، فان فر أو فرت من الحفوة رداً إن ثبت الزنا بالبينة، وإن ثبت بالقرار فان فر بعذاب الخجر ولو واحداً لم يردا، و إلا رداً، و في قول مشهور إن ثبت بالقرار لا يرد مطلقاً، وهو أحوط، هذا في الرجم، و أما في الجلد فالقرار غير نافع فيه، بل يرد و يرد مطلقاً.

مسألة 3. إذا أقر الحزاني المحصن كان أول من يرجه الإمام عليه السلام ثم الناس، وإذا قامت عليه البيينة كان أول من يرجه البيينة ثم الإمام عليه السلام ثم الناس.

مسألة 4. يجلد الرجل الحزاني قائماً مجدداً من ثيابه إلا ساتر عورته و يضرب أشد الضرب، و يفرق على جسده من أعالي بدنه إلى قدمه، ولكن يتقي رأسه ووجهه وفرجه، وضرب المرأة جالسة، و يربط عليها ثيابها، ولو قتله أو قتله الحد فلا ضمان.

مسألة 5. ينبغي للمحاكم إذا أراد إجراء الحد أن يعلم الناس ليجتمعوا على حضوره. بل ينبغي أن يأمرهم بالخروج لحضور الحد، والأحوض حضور طانية من المؤمنين ثلاثة أو أكثر، و ينبغي أن يكون الأحجار صغيرة، بل هو الأحوض ولا يجوز ما لا يصدق عليه الحجر كالخصي، ولا بصخرة كبيرة تقتله واحداً أو
shall be allowed to participate, though there is absolute repugnance in his participation. It makes no difference whether Zinā' has been established by confession or legal evidence.

Section 6. When a convict is to be inflicted rajm, he shall be ordered by the Imām or the judge to take a bath as given to a dead body with the water of lotus tree (sadr), then water of camphor and then pure water (qarāḥ), then he should be shrouded as a dead body and wear all the pieces of the shroud. He should be applied camphorating (ḫuniṭ) like a dead body before his death. Then he is to be inflicted rajm. Then prayers should be offered on his dead body and he is to be buried without washing (ghusl) in the graveyard of Muslims. It is not necessary to clean the blood from his shroud. If he has dropped excrement before his death, it is not necessary to rewash him. The niyyat for the washing is to be expressed by the one ordered (ma'mūr), but it is more cautious that the person ordering (āmir) should also do it.

Appendages to Ḥadd for Zinā'

This comprises several problems.

Problem # 1. When the witnesses to the required number (niṣāb) have testified against a woman of having committed Zinā' in the natural order, and the woman claims to be still a virgin, and four women of reputed integrity testify in favour of her claim, their testimony shall be accepted, and Ḥadd shall be averted from her. Rather apparently if the witnesses have testified to Zinā' without determining whether it was committed in the natural or unnatural order, and the women testify to her being still a virgin, Ḥadd shall be averted from her. Now, whether the witnesses shall be inflicted Ḥadd or not, according to the principles of law the answer shall be in the negative. Likewise, Ḥadd shall be set aside from a man, if in his case the [required number of] witnesses testify that he has committed with such woman, irrespective of testifying to Zinā' having been committed in the natural order or testifying general terms, and then the women [of reputed integrity testify to her being still a virgin.

Of course, if they testify that the man has committed Zinā' (with the woman) in an unnatural order, Ḥadd shall be established, and it shall not be set aside on the testimony of her still being a virgin. If her being a virgin is established by uninterrupted knowledge or the like, while the witnesses have testified to her having allowed Zinā in the natural order, or that the man has committed Zinā' her in the natural order, then apparently Ḥadd for false accusation shall be established, except in case of likelihood of fresh virginity and its possibility. If it is established that the organ of the man has been cut off (jubb) against whom it is testified that he has committed zinā at a time after which there is no possibility of the occurrence of jubb, Ḥadd shall be averted from him and from the woman about whom the witnesses have testified that the man has committed Zinā with her, while the witnesses shall be inflicted Ḥadd for false accusation if the jubb is established by knowledge, otherwise not.
إنهن، والأحوزة أن لا يقيم عليه الحد من كان على عنقه حد سيا إذا كان ذنبه
مثل ذنبه، ولو تاب عنه بينه و بين الله جاز إقامته، وإن كان الأقوى الكراهية
مطلقاً، ولا فرق في ذلك بين ثبوت الزنا بالاقترار أو البيئة.

مسألة 6 - إذا أريد رجح بأمر الإمام عليه السلام أو الحاكم أن يغتسل غسل
الميت بباء السدر ثم ماء الكافر ثم القراح، ثم يكفن كتكفين الميت يلبس جميع
قطعها و يحتفظ قبل قتله كحتره الميت، ثم يرحيم فيصل عليه و يدفع فلا تغسيل في
قبر المسلمين، ولا يلزم غسل الدم من كفنه، ولو أحدث قبل القتل لا يلزم
إعادة الغسل، ونية الغسل من الأمور، وأحواض نية الآخر أميراً أيضاً.

الفقه في اللواحي

وفي مسائل:

مسألة 1 - إذا شهد الشهود بمقدار النصاب على امرأة بالزنا قبل فادعت أنها
بكراً، وشهد أربع نساء عدل بذلك يقبل شهادتهن و يدرأ عنها الحد، بل الظهر
أنه لو شهدوا بالزنا عن غير قيد بالقابل ولا الدبر فشهدت النساء بكونها بكرأ
يردأ الحد عنها، فهل تдум الشهود للفرية أم لا؟ الأشبه الثاني، وكذا يسقط الحد
عن الرجل لو شهد الشهود بزناه بهذه المرأة سواء شهدوا بالزنا قبلأ أو أطلقوا
فشهدت النساء بكونها بكرأ، لتوثبت علماً بالتوارد و نحوه كونها بكرأ، و قد شهد الشهود
بزناها قبلأ أو زناها معها كذلك فالظاهر ثبوت حد الفرية إلا مع احتمال تبديد
البكارة و إمكانه، ولو تجب الرجل المشهود عليه بالزنا في زمان لا يمكن
حدوث الجبن بعده دريء عنه الحد و عن المرأة التي شهدوا أنه زنى بها، و حد
الشهود للفرية إن ثبت الجبن علماً، و إلا فلا يجد.
Problem # 2. The presence of witnesses is not compulsory at the time of the execution of the Ḥadd, whether by way of rajm or flogging. The Ḥadd shall not be set aside in case of the death or absence of the witnesses. If they escape, setting aside the Ḥadd is not far from likelihood due to the possibility of the Ḥadd to be averted. The presence of the witnesses at the place of execution of rajm is rationally compulsory as a prelude to the start of the rajm by them being compulsory, in the same way as the presence of the Imām or the judge is compulsory for starting the rajm in case it is established by the convict’s confession and to perform it after the witnesses in case it is established by legal evidence.

Problem # 3. If four witnesses including the husband have testified to the commission of Zinā’, whether their testimony would be accepted and the woman inflicted rajm, or the husband would subject her to Li‘ān and the other [three] witnesses shall be inflicted flogging for false accusation, is a question about which there are two opinions or two traditions; the second option not being far from being preferred, though with some hesitation.

Problem # 4. It is up to the judge to give judgment on the ground of his knowledge in case relating to the rights of Allāh and the rights of human beings. It is obligatory on him to establish the limits (ḥudūd) of Allāh, the Exalted if he has the knowledge about the reason, and inflict Ḥadd on the fornicator as it is obligatory on him to do so when legal evidence has been adduced or confession made (by the accused), without waiting for any one’s claim. As regards the rights of the human beings they are established when claimed, whether relating to Ḥadd or Ta‘zīr. In case of a claim for it, it is up to the judge to act according to his knowledge.

Problem # 5. If a person subjects a free virgin to Ifdā’ with his finger, he shall be liable to pay her the women’s dower, and the judge shall punish the person by way of Ta‘zīr according to his discretion.

Problem # 6. If a person commits Zinā’ during a sacred period of time as the month of Ramadān, Friday or the Eids, or at a holy place as a mosque, Haram or the holy shrines, he shall be sentenced to a punishment more harsh than the Ḥadd, that depends on the discretion of the judge, in which consideration shall be made to particulars of the times, places or the combination of the sacred periods of time and the holy places, as when a man commits [Zinā’], God forbid, on Lailat al-Qadr coincident with Friday, in a mosque, or in the mausoleums of the holy shrines.

Problem # 7. There is no room for bail (kafālat) or delay in a Ḥadd in the absence of an excuse as pregnancy or ailment, nor for intercession (shafā’al) for setting it aside.

CHAPTER TWO – SODOMY, TRIBADISM AND PANDERISM

(LAWĀṬ, SAHQ & QIYĀDAH)

Problem # 1. Sodomy (Lawāṭ) is the sexual intercourse between two males by penetration etc. of the male organ. It is not established except by the confession made four times by the person
مسألة 2 - لا يشترط حضور الشهود عند إقامة الحد رجاءً أو جلداً، فلا يسقط الحد لو ماتوا أو غابوا، نعم لو فروا لا يبعد السقوط للشهبة الدارثة، ويجب عقلاً على الشهود حضورهم موضع الرجم مقدمة لوجب بذلهم بالرجم، كما يجب على الإمام عليه السلام أو الحاكم الحاضرون ليدأ بالرجم إذا ثبت بالإقرار يأتي به بعد الشهود إذا ثبت بالبيينة.

مسألة 3 - إذا شهد أربعة أحدهم الزوج بالزنا فله تقبيل وترجم المرأة أو يلعن الزوج ويجلد الآخرون للفرية قولان وروايتان، لا يبعد ترجيح الثاني على إشكال.

مسألة 4 - للحاكم أن يحكم بعلمه في حقوق الله وحقوق الناس. فوجب عليه إقامة حدود الله تعالى لو علم بالسبب، فيجد الزاني كما يجب عليه مع قيام البيينة والإقرار، ولا يتوقف على مطالبة أحد، و أما حقوق الناس فتتوقف إقامتها على المطالبة حداً كان أو تمزيراً، فع المطالبة له العمل بعلمه.

مسألة 5 - من افتتح بكراً مرة باصبعه لزمه مهرنيساتها: ويعزه الحاكم بما رأى.

مسألة 6 - من زي في زمان الشريف كشهر رمضان و الجمع والأعياد أو مكان الشريف كالمسجد و الحرم و المشاهد المشروفة عزبة زيادة على الحد. وهو بنظر الحاكم، و تلاحظ الحضوصيات في الأزمنة والأمكنة أو اجتماع زمان الشريف مع مكان الشريف، كمن ارتكب و العزا بالله في ليلة القدر المصادفة للجمعة في المسجد، أو عند الضرائب المعظمة من المشاهد المشروفة.

مسألة 7 - لا كفالة في حد ولا تأخير فيه مع عدم أذر كحيل أو مرض، ولا شفاعة في إسقاطه.

الفصل الثاني في اللوات والسحق والقيادة

مسألة 1 - اللوات وطاء الذكران من الآدمي بايقاب و غيره، و هو لا يثبت
committing sodomy or the person with whom it has been committed, or the evidence of four men, of ocular demonstration, possessing the conditions required for its acceptance.

**Problem # 2.** It is a condition in the confessor whether he is the person committing sodomy or the person with whom it is committed that he must be an adult, free, having sound sense, free will and intention, so that there is no legal value of confession made by a child, a lunacy, a slave, one making confession under duress (mukrih) or one making it by way of joke (hāzil).

**Problem # 3.** If the confessor makes confession less than four times, shall not be liable for Hadd, and it shall be up to the judge to give him Ta'zir punishment according to his discretion. If less than four witnesses testify to the offence, it shall not be established; rather they shall be liable to Hadd for false accusation. It is not established by the testimony of women alone or in conjunction with men. A judge may give judgment based on his personal knowledge, whether he is an Imām or some one else.

**Problem # 4.** If a man commits sodomy resulting in penetration, the punishment by death shall be established in his case as well as the person with whom sodomy is committed, when each of them is an adult, sane and having free will. In such case a Muslim, an infidel and a muḥṣan and a non-muḥṣan shall be treated equally. If an adult and sane man commits sodomy with a minor boy resulting in penetration, the adult shall be given death sentence while the minor boy shall be given chastisement. The same shall be the rule if an adult and sane man commits sodomy with a lunatic. If the lunatic has sense, the judge shall give him chastisement according to his discretion. If a minor body commits sodomy with another minor boy, both shall be given chastisement. If a lunatic commits sodomy with a sane man, the sane man shall be inflicted Hadd to the exclusion of the lunatic. If a minor boy commits sodomy with an adult, the adult shall be subjected to Hadd and the minor shall be given chastisement. If a Dhimmī commits sodomy with a Muslim, he shall be given death sentence, even if no penetration has taken place. If a Dhimmī commits sodomy with another Dhimmī, the judge shall have the authority wither to subject the Dhimmī to Hadd or hand him over to the people of his community to punish him according to their law. But it is more cautious, even not according to the stronger opinion, to inflict Hadd on him.

**Problem # 5.** The judge shall have the option to execute the convict [of sodomy] by cutting off his head with a sword, throw him from a high place as a mountain [top] or the like after fastening his both hands and both legs, throw him into fire, or subject him to rajm, or, according to an opinion, to throw a wall on him, irrespective of his being one committing the sodomy or one with whom sodomy is committed. It is also permissible to combine all the punishments and burn him in fire by first killing him and then burning him in fire.

**Problem # 6.** If the sexual act is performed short of penetration, as taḵkhdh (or masturbation through rubbing the male organ between the thighs of another, or masturbation by rubbing the male organ between the hips, the convict shall be given one hundred lashes, without there being any difference between a muḥṣan and a non-muḥṣan, an infidel and a Muslim, in case the man committing sodomy is not an infidel and the person with whom it is committed a Muslim; otherwise, he [i.e., the man committing sodomy] shall be given death sentence, as already mentioned. If a man repeats the act with intervening punishment of Hadd, he shall be given death sentence if he commits the act a fourth time, or after the third time, according to an opinion; but the first opinion is more in conformity with the principles of law.
إلا بقرار الفاعل أو المفعول أربع مرات، أو شهادة أربعة رجال بالمعاينة مع جامعتهم لشروط القبول.

مسألة 2 - يشترط في المقر فاعلاً كان أو مفعولاً البلوغ وكمال العقل وحرية الاختيار وقصده. فلا عبرة بقرار الصبي وجنون العبد والمكره وハウス.

مسألة 3- لو أقر دون الأربعة لم يجد، وللحارك تعزيره بمايرى، ولو شهد بذلك دون الأربعة لم يثبت، بل كان عليهم الحد للفرية، ولا يثبت بشهادة النساء منفردات أو منضمامات، والحاكم يحكم بعلمه إماً كان أو غيره.

مسألة 4 - لو أوقف فأوين بثبت عليه القتل وعلى المفعول إلا إذا كان كل منها بالغاً عاقلاً مختاراً، ويستوي فيه المسلم والكافر والمحصن وغيره ولولاط البالغ العاقل بالصبي موقعاً قتل البالغ وأدب الصبي، وكذا ولولاط البالغ العاقل موقعاً بالجمن، ومع شعر المجنون أده الحاكم ما يراه، ولولاط الصبي بالصبي أدباً معاً، ولولاط بجانب بعاقل حد العاقل دون المجنون، ولولاط الصبي بالبالغ حد البالغ وأدب الصبي، ولولاط النزيمي بسلامة قتل وإن لم يوقب، ولولاط ذمي بنمي قبل كان الإمام عليه السلام مخيراً بين إقامة الحد عليه وبين دفعه إلى أهل ملته ليقيموا عليه حدهم، وأحرون ولم يكن الأقوى إجراء الحد عليه.

مسألة 5- الحاكم خرر في القتل بين ضرب عنقه بالسيف أو إلقائه من شاهق كجبل ونحوه مشدود اليدين والرجلين أو إحراقه بالنار أو رجه وعلى قول أو إلقائه جدار عليه فاعلاً كان أو مفعولاً، ويجوز الجمع بين سائر العقوبات والأحراق بأن يقتل ثم يرق.

مسألة 6 - إذا لم يكن الاتهام إيقاباً كالتفخيخ أو بين الالتيتين فحده مأله جلدة، من غير فرق بين المحصن وغيره والكافر والمسلم إذا لم يكن الفاعل كافراً ومفعولاً مسلماً، إلا قتل كما مر، ولو تكرر منه القتل وتخلله الحد قتل في الرابعة، وقيل في الثالثة، وأول أشبه.
Problem # 7. If two men are found under a single cover, both shall be subjected to Ta’zir, if both they are naked, and not close relatives, without any exigency demanding such situation. The amount of Ta’zir shall depend on the discretion of the judge. In case of Hadd, it is more cautious to fix the Hadd short by one lash. The same punishment in the form of Ta’zir shall be given a person who lasciviously kisses a boy, or, a male or female, whether a minor or adult.

Problem # 8. If a man committing sodomy, whether resulting in penetration or not, repents before the legal evidence is adduced, the Hadd shall be set aside. But if he repents after the legal evidence has been adduced, the Hadd shall not be set aside. If the offence has been established by the confession of the sodomite, and subsequently the man repents, it shall be up to the Imam (or the judge) to acquit him or execute the Hadd. The same authority obviously rests with the deputy of the Imam.

Tribadism or Lesbianism (Sahq or Musāhaqah)

Problem # 9. Tribadism or Lesbianism (Sahq or Musāhaqah) means sexual act of a woman with another woman of her own sex. It is established with what establishes lawât, or sodomy. Its Hadd is one hundred lashes [to each of the women] provided they are adult, sane and have free will, no matter whether they are muhsana or not. According to some jurists, in case of the convict being a muhsana, she shall be given death sentence, but the former opinion is more in conformity with the principles of law. There is no difference between the active and passive, or an infidel and a Muslim.

Problem # 10. If the musâhaqah, or mutual Tribadism or Lesbianism, is repeated with intervening Hadd, the convict(s) will be given death sentence. The Hadd shall be set aside if the convict repents before the legal evidence is adduced, but it will not be set aside after the legal evidence has been adduced. If it is established by confession (of the convict), and she repents, the Imam shall have the option similar to that in lawât, and obviously his deputy shall also have the same authority.

Problem # 11. If two women who are not related are found under a single cover stripped off clothes, each of them shall be given Ta’zir punishment and not Hadd, which according to the more cautious opinion is one hundred lashes short of one [i.e., ninety-nine lashes].

Problem # 12. If both repeat the act, and they are given Ta’zir twice, they shall be inflicted Hadd [at the third time]. If they repeat the act after having undergone Hadd, then it is more cautious to give them Ta’zir twice and Hadd on the third. Some of the jurists are of the opinion that they shall be given death sentence. According to another opinion, they are to be given death sentence after ninth or twelfth time, but what has already been mentioned is more in conformity with the principles of law.

Problem # 13. If a man has sexual act with his wife, and then his wife commits mutual Tribadism with a virgin, and as a result the virgin conceives, the child shall belong to man who had sexual act with the woman and to whom the sperm belongs, and the girl shall be given a hundred lashes after the delivery of the child if she had been willing, and the child shall also be affiliated to her, and after she has been deflowered she shall be entitled to her proper dower. As regards the woman, it has already been mentioned that she shall be inflicted rajm, but there is hesitation in accepting this opinion, and it is more cautious and more in conformity with the principles of law that she should be given one hundred lashes.

Article 14. Qiyâdah or Panderism means uniting and bringing together a man and a woman or a minor girl for Zinâ’ or a man and another man or a boy for sodomy. It is established by making
مسألة 7 - المجتمع تحت إزار وحيد يعتران إذا كانا مجردين ولم يكن بينهما رحم ولا تقتضي ذلك ضرورية، والتعزير بنظر الحاكم، والأحوط في المقام الحد إلا سوطاً، وكذا يعزر من قبل غلاماً بشهوة، بل أو رجلًا أو امرأة صغيرة أو كبيرة.

مسألة 8 - لو تاب اللائط إيقاباً أو غيره قبل قيام البينة سقط الحد ولو تاب بعده لم يسقط، ولو كان الشوبت بالإقرار فتات فلا لم شام عليه السلام العفو والإجراء، وكذا لنائبه على الظاهر.

مسألة 9 - يثبت السحق وهو وطء المرأة مثلها بما يثبت به اللوات، وحده مأة جلدة بشرت البلوغ والعقل والاختيار محصنة كانت أم لا، وقيل في المخصصة الرجم، والأشبه الأول، ولاقرب بين الفاعلة والمفعولة، ولا الكافرة والمسلمة.

مسألة 10 - إذا تكررت المساحقة مع تخليل الحد قلت في الرايقة، وسقط الحد بالنتوبة قبل قيام البينة، ولا يسقط بعده، ولو تثبت بالإقرار فتات يكون الإمام عليه السلام مخيراً كما في اللوات، وظاهر أن نائبه مخير أيضاً.

مسألة 11 - الأجنبيتان إذا وجدتا تحت إزار واحد مجردتن عزرت كل واحدة دون الحد، والأحوط مأة إلا سوطاً.

مسألة 12 - إن تكرر الفعل منها والتعزير مرتين أقيم عليها الحد، ولو عادتا بعد الحد فالأحوط التعزير مرتين والحد في الثالثة، وقيل تقتلان، وقيل تقتلان في التاسعة أو الثانية عشر، والأشبه ما تقدم.

مسألة 13 - لو وطأ زوجته فسافقت بكر فحملت البكر فالولد للواطء صاحب الماء، وعلى الصبي الجلد مأة بعد وضعها إن كانت مطاعرة والولد يلحق بها أيضاً، وله بعد رفع العذرة مهر مثل نسائها، واما المرأة فقد ورد أن عليها الرجم، وفيه تأمل، والأحوط الأشبه فيها الجلد مأة.

مسألة 14 - تثبت القيادة وهي الجمع بين الرجل والمرأة أو الصبية للزنا أو الرجل بالرجل أو الصبي للوات بالالتزام مرتين، وقيل مرت، وأول أشبه، ويعتبر...
confession twice, and according to an opinion once, the first opinion being more in conformity with the principles of law. In a confession it is a condition that the confessor must be an adult, sane and having free will and intention, so that there shall be no legal value of a confession made by a boy, lunatic, one subjected to coercion, or confessing by way of a joke, or the like. It is also established by the testimony of two witnesses of reputed integrity.

Article 15. A panderer shall be given seventy-five lashes, three-fourth of the Hadd of a fornicator and shall be banished from his homeland. It is more cautious that he should be banished on the second time. According to the generally received opinion his head shall be shaved and he shall be put to public proclamation (ishhār). In a case of panderism, a Muslim and an infidel and a man and a woman shall be treated equally, except that in case of a woman she is given lashes without shaving her head, banishing or putting to public proclamation. It is not far from likelihood that the banishment must be left to the judge’s discretion.

CHAPTER THREE - ḤADD FOR QADHF OR SLANDER

This Chapter deals with the Cause of Ḥadd for Slander, the Slanderer (Qādhīf), the Slandered (Maqđūf) and their relevant laws.

1 - The Cause of Ḥadd for Qādhīf or Slander

Problem # 1. The cause of Ḥadd for Qādhīf or Slander is (falsely) accusing another of Zinā or Lawāt or sodomy. As regards accusing another of Sabq or tribadism and other vile acts, it does not entail Ḥadd for Qādhīf. Of course, it is up to the Imām to decide about the Taʿzīr for the accuser.

Problem # 2. It is a condition in Qādhīf that it should be done in explicit and clear words accepted by all, as when one says: ‘You have committed Zinā‘, ‘You have committed sodomy’, ‘You are a fornicator’, or ‘Yūd are a sodomite’, ‘You have been subjected to sodomy’, or ‘You have been sexually enjoyed from your backside’, or ‘O fornicator’, or ‘O sodomite’, or the like that carries the meanings clearly and obviously as generally understood, and the speaker also has knowledge for what the word has been formed and its purport in the language spoken. If a non-Arab uses one of the words mentioned without the knowledge of its meanings, he shall not be considered a slanderer, and shall not be liable to Ḥadd, even if the addressee has the knowledge. On the contrary if a speaker having the knowledge of the language says something to a person who has no knowledge about it, he shall be treated as a slanderer and shall be liable to Ḥadd.

Problem # 3. If a man says to his who is established to be son by his own acknowledgement or on legal ground: “You are not my son”, he shall be liable to Ḥadd. Likewise, if a man says to
الفصل الثالث في حد القذف

في الأقرار بلوغ المقر وعقله واختياره وقصده، فلا عبرة بأقرار الصبي والمجنون والمكره والهازل ونحوه، وثبت أيضاً بشهادة شاهدين عدلين.

مسألة 15 - يعد القواد خمس وسبعون جلداً ثلثاً أرباع حج الزاني وينفي من البلد إلى غيره، والأحوط أن يكون النبي في السنة الثانية، وعلى قول مشهور يخلق رأسه ويشه، ويستوي فيه المسلم والكافر والرجل والمرأة إلا أنه ليس في المرأة إلا الجلد، فلا حلق ولا نن ولا نزرة عليها، ولا يعد أن يكون حد النبي بنظر الحاكم.

الفصل الثالث في حد القذف

والنظر في الموجب والقاذف والمزوذ والمذكور والأحكام.

الفقول في الموجب

مسألة 1 - موجب الحد الرملي بالزنا أو اللواط، وأما الرمي بالسحق وسائر التواحم فلا يوجب حد القذف، نعم للإمام عليه السلام تعزير الرامي.

مسألة 2 - يعتبر في القذف أن يكون بلفظ صريح أو ظاهر معتمد عليه كقوله: «أنت زنيت» أو «...لدت» أو «أنت زان» أو «الائت» أو «الطب بك» أو «أنت منكوح في دبك» أو «يازاني» (بالاطيء) و نحو ذلك مما يؤدي المعنى صريحاً أو ظاهراً معتمداً عليه، و أن يكون القائل عارفاً بما وضع له اللفظ ومفاده في اللغة التي يتكلم بها، فلو قال عجمي أحد الألفاظ المذكورة من عدم علمه بعناها لم يكن قاذفاً، ولا حد عليه، ولو علم الخطاب، وعلى العكس لو قاله العارف باللغة لم يكن عارفاً فهو قاذف وعلى الحد.

مسألة 3 - لو قال لولده الذي ثبت كونه ولده باقرار منه أو بوجه شرعي:
another who on legal ground is established to be the son of Zayd: “You are not Zayd’s son”, or “You are son of ‘Amr, [the same rule shall apply]. Of course, if in such cases the context even in the common parlance testifies that the speaker did not intend slander, the man shall not be liable to Hadd. If a man says [to his son], “You are not my son”, meaning thereby that his son does not have what the father expected in him, or [to ‘Amr’s son], “You are not ‘Amr’s son”, intending thereby that he has not, for example, the courage of ‘Amr, he shall not be liable to Hadd, and it will not amount to Qadhf.

**Problem # 4.** If a man says to another, “O husband of a fornicatress”, or “O sister of a fornicatress”, or “O son of a fornicatress”, or “Your mother has committed Zinā’”, or the like, the Qadhf shall not be meant for the addressee, but to the person to whom Zinā’ is related.

Likewise, if a man says to another, “O son of a sodomite”, or “O son of one subjected to sodomy”, or “O brother of a sodomite”, or “O brother of one subjected to sodomy”, for example, then the Qadhf shall concern the person to whom it is openly related not to the addressee.

Of course, he shall be liable to Ta’zir in relation to the offense to the addressee and his insult in what was not proper for him.

**Problem # 5.** If a man says to another: “Your mother has given birth to you through Zinā’; apparently no Hadd shall be established, as the addressee would not be subject of the Qadhf, and the father or mother [of the addressee] might have individually committed Zinā’, so the subject of Qadhf is not clearly defined, and in such case there exists doubt averting Hadd. Hadd, however, may be established on the claim made by the parents [of the addressee].

The same rule shall apply if a person says to another, “Either of you is a fornicator”, in which case there is likelihood of the Hadd being averted, and the Hadd to be established on the claim by the parents [of the addressee].

**Problem # 6.** If a man says to another, “You have committed zinā’ with such a woman”, or “You have committed sodomy with such a man”, then the Qadhf shall be against the addressee to the exclusion to the person connected, according to the opinion in conformity with the principles of law. Some jurists are of the opinion that the man shall be liable to two Ḥadds.

**Problem # 7.** If a man says to the son of a woman subjected to Liʾān, “O son of a fornicatress”, or to her: “O fornicatress”, he shall be liable to Hadd for her.

If a man says to a woman: “I have committed Zinā’ with such a woman”, or “I have committed zinā’ with you”, then according to the opinion more in conformity with the principles of law, there shall be no Hadd, but if he confesses four times in this way he shall be inflicted the Hadd of a fornicator.

**Problem # 8.** Every vituperation like “O cuckold”, or indication which is abhorrent for the addressee, but is not considered a slander in the common parlance or customary usage, it shall establish Ta’zir but not Hadd, as a man says to another: “You are an illegitimate offspring”, or “O illegitimate offspring”, “O offspring of Ḥayd”, or when a man says to his wife: “I have not found you virgin”, or says to another “O profligate”, or “O debauch”, or “O drinker of wine”,
لفظ "ولد بولدي" فعليه الحد، وكذا لو قال لغيره الذي تثبت بوجه شرعي أنه ولد زيد: "لست بولد زيد" أو "أنت ولد عمرو" نعم لو كان في أمثال ذلك قرينة على عدم إرادة القذف ولو للتعارف فليس عليه الحد، فقوله: "أنت لست بولد بولدي" مزيدًا به ليس فيك ما يتوقع منك أو "أنت لست بابن عمرو" مزيدًا به ليس فيك شجاعته مثلاً فلا حد عليه ولا يكون قذفاً.

مسألة 4: لو قال: "يا زوج الزانية" أو "يا أخت الزانية" أو "يابن الزانية" أو "زنوت أمك" أو أمثال ذلك فالقذف ليس للمخاطب، بل لن نسب إليه الزنا، وذكر لو قال: "يابن الطلب" أو "يابن الملوط" أو "يا أخ اللطفي" أو "يا أخ الملوط" مثلاً فالقذف من نسب إليه الفاحشة لا للمخاطب، نعم عليه التعزير بالنسبة إلى إبادة المخاطب وحتهما فلا لا يجوز له ذلك.

مسألة 5: لو قال: "ولدتك أمك من الزنا" فالظاهرة عدم ثبوت الحد، فإن المواجه لم يكن مقدوضًا. ويفشل انفراد الأب بالزنا أو الأم بذلك، فلا يكون القذف لعين، في مثله تحصل الشهبة الدارئة، ويفشل ثبوت الحد مع مطالبة الأبوين، وذكر لو قال: "أحد كها زان" فله يحتمل الدرء ويفشل الحد بطالبيها.

مسألة 6: لو قال: "زينت أنت بفلانة" أو "الطت بفلان" فالقذف للمواجه دون المنسوب إليه على الأشبه، وقيل: عليه حدان.

مسألة 7: لو قال لابن الملاعنة: "يابن الزانية" أو لها "يابانية" فعليه الحد لها ولو قال لامرئة: "زينت أنا بفلانة" أو "زينت بك" فالأشبه عدم الحد لها، ولو أقر بذلك أربع مرات يعد حد الزاني.

مسألة 8: كل فحش نحو "باديوث" أو تعريض بما يكرهه المواجه ولم يفد القذف في عرفه وله ثبوت به التعزير لا الحد، كقوله: "أنت ولد حرام" أو "يا ولد الحيض" أو يقول لزوجته: "ما وجدت عذراء" أو "يا ولد الحرام" أو "يا ولد الحيض" أو يقول لزوجته: "ما وجدت عذراء" أو "يا ولد الحيض" أو يأكل للزوجة: "ما وجدت عذراء" أو "يا ولد الحيض" أو يأكل للزوجة: "ما وجدت عذراء" أو "يا ولد الحيض" أو يأكل للزوجة: "ما وجدت عذراء" أو "يا ولد الحيض" أو يأكل للزوجة: "ما وجدت عذراء" أو "يا ولد الحيض" أو يأكل للزوجة: "ما وجدت عذراء".
or the like, intending thereby to degrade another person who does not deserve such vilification, there shall be Ta‘zir in such case and not Hadd.

If the addressee deserves such abuse, there shall be no offence.

II - Rules concerning Qādhif (Slanderer) and Maqdhūf (Slandered)

Problem # 1. A Qādhif or slanderer is required to be an adult and sane, so that if a minor boy slanders any person he shall not be liable to Hadd even if he slanders a Muslim adult and sane person. Of course, if he is discreet it shall entail chastisement according to the discretion of the judge. Likewise, the same rule shall apply in case of an insane person (slanderling some one). Likewise, the slanderer is required to have fee will, so that if he slanders under duress, he shall have no liability. He should also have intention, so that if he slanders inadvertently, ignorantly or by way of joke, he shall not be liable to Hadd.

Problem # 2. If a sane person or a person suffering from periodical insanity commits slander during the period of sanity and then the sane person becomes insane by the resumption of the periodical insanity, Hadd shall be established in his case, and he shall be inflicted Hadd during the state of insanity.

Problem # 3. It is a condition that a maqdhūf must have ḥṣān that in his case means adulthood, sanity, status of a free man, Islam and chastity (Iffat), so that if a person fulfills all these conditions, any person slandering him shall be liable to Hadd, but if a person fails to fulfill these conditions or some of them, and any one slanders him/her, he shall not be liable to Hadd, but shall be liable to Ta‘zir. If some one slanders a minor boy or girl or a slave or an infidel, he shall be liable to Ta‘zir. As regards an unchaste person, if he openly commits Zinā’ or Lawāt, he shall have no respect and if some one slanders him, he shall be liable neither to Hadd nor Ta‘zir, but if he does not openly commit Zinā’ or Lawāt and any person slanders him, he shall be liable to Hadd. If a person openly commits one of the two vices, then if some one slanders him for what he openly commits, he shall be liable to neither Hadd nor Ta‘zir, but if some one slanders him for what he commits openly, according to the stronger opinion, he shall be liable to Hadd. If a person openly commits a vice other than the two, and some one slanders him, the slander shall entail liability for Hadd.

Problem # 4. If a person says to a Muslim: “O son of a fornicatress”, or “Your mother is a fornicatress”, and his mother happens to be an infidel, according to a Tradition, the slanderer shall be liable to Hadd, because the infidel women is under the shelter of the Muslim, according to the more cautious opinion, he shall be liable to Ta‘zir and not Hadd.

Problem # 5. If a father slanders his son for what entails Hadd, he shall not be liable to Hadd; rather he shall be liable to Ta‘zir for the sake of honour and for the sake of the son. Likewise, he shall not be liable to Hadd if he slanders his deceased wife who has no heir but his son. If
الفصل الثالث في حد القذف

يقول: "يا فاسق" "يا فاجر" "يا شارب الحمرة" و أمثال ذلك مما يوجب الاستخفاف بالغير ولم يكن الطرف مستحقاً ففيه التعزير لا الحد، ولو كان مستحقاً فلا يوجب شيئاً.

القول في القاذف والمقدم

مسألة 1 - يعتبر في القاذف البلوغ والعقل، فلو قذف الصبي لم يجد وإن قذف المسلم البالغ العاقل، نعم لو كان مميزاً يؤثر فيه لتأديبه أبدع على حسب رأي الحاكم، وكذا المجنون، وكذا يعتبر فيه الاختيار، فلو قذف مكرهاً لا شيء عليه، والقصد، فلو قذف ساهياً أو غافلاً أو هزلناً لم يجد.

مسألة 2 - لو قذف العاقل أو المجنون أذوارة في دور عقله ثم جن العاقل وعاد دور جنون الأذوارة تثبت عليه الحد ولم يسقط، ويدعو حال جننه.

مسألة 3 - يشترط في المقدم الاحسان، وهو في المقام عبارة عن البلوغ والعقل والحرية والإسلام والوعفة، فمن استکملها وجب الحد بقذفه، ومن فقدها أو فقد بعضها فلا حد على قاذفه، و عليه التعزير، فلو قذف صبياً أو صبيأ أو ملوكاً أو كافراً يعزر، و أما غير اللفيف فان كان متظاهراً بالزنا أو اللوط فلا حمرة له فلا يوجد على القاذف ولا تعزير ولو لم يكن متظاهراً بها فلذقه يوجب الحد، ولو كان متظاهراً بأحدهما ففياً يتظاهر لا حد ولا تعزير، و في غيره الحد.

مسألة 4 - لو قال للمسلم: "يابن الزانية" أو "أمك زانية"، وكانت أمه كافرة في رواية يضرب القاذف حداً، لأن المسلم حصنها، والأحوط التعزير دون الحد.

مسألة 5 - لو قذف الأب ولده يوجب الحد لم يجد، بل عليه التعزير للحمرة لا للولده، وكذا لا يجد لو قذف زوجته ابنته ولا وارث لها إلا ولده، ولو كان لها
she has a son from another husband, he shall be liable to Hadd. The same rule shall apply if the deceased wife has an heir other than the son. Apparently the grandfather enjoys the status equal to that of a father, and so he shall also not be liable to Hadd by slandering his son's son. But a son shall be liable to Hadd if he slanders his father how so ever high. The mother shall be liable to Hadd if she slanders her son, and so the relatives shall be liable to Hadd one of them slanders another.

Problem # 6. If a group of persons slanders another group one by one, each of them shall be liable to Hadd, no matter whether they demand Hadd together or separately. If they slander by a single word, as when saying: “They are fornicators”, then if they separate in their claim for Hadd, then for every one of them there shall a Hadd, but if they demand it together, then there shall be a single Hadd for all of them. If a person says: “Zayd, ‘Amr and Bakr, for example, are fornicators”, then apparently he has slandered by a single word. Similar shall be the case, if a person says: “Zayd has committed Zina” and ‘Amr and Bakr”. But if he says: “Zayd committed Zina”. ‘Amr committed Zina’. Bakr committed Zina”, then there shall be Hadd for every one of them, no matter whether they have made a demand for Hadd together or not. If a person says: “O son of two fornicators”, then there shall be Hadd for both of them. But as the slander contains a single word, then there shall be a single Hadd if they demand Hadd together, but if they demand it one after the other, there shall be two Hadds.

III – Laws concerning Qadhf (Slander)

Problem # 1. Qadhf or Slander is established by confession [of the culprit], and it is condition that it should be repeated twice, and it is not devoid of reason. It is a condition that the confessors must be an adult, sane and have free will and intention. It is also established by the testimony of two witnesses of reputed integrity, but it is not established by the testimony of women alone or in conjunction with men.

Problem # 2. The Hadd for Qadhf is eighty lashes, irrespective of the culprit being a male or female. The convict is inflicted medium type of strikes not as hard as the strikes in case of Zina, and they are inflicted on the ordinary clothes, while the man is not required to be stripped of the clothes. The lashes are struck on all the parts of the body except the head, face and the private parts of the convict. According to an opinion, the slanderer is publicly proclaimed, so that people may abstain from his testimony.

Problem # 3. When the Hadd is repeated with the repetition of the slander, then it is more cautious to give him death sentence if he slanders for the fourth time. If a man slanders and after he has been inflicted Hadd he says: “Whatever I had said was certainly true”, he shall be liable to Ta’zir for slandering for a second time.

So if a man slanders for ten times for a single reason, so that he repeats by saying: “You are a fornicator”, she shall not be liable for more than one Hadd. But if there are several persons slandered, the Hadd shall also be as many. If there are several causes of slander, as when he says:
الفصل الثالث في حد القذف

ولد من غيره كان له الحد، وكذا لو كان لها وارث آخر غيره، وظاهر أن الجد والد فلا يجد بذف ابن ابنه، وبذف الولد لوقذف أباه وإن علا، وتحت الأم لو قذفت ابنها، والأقارب لوقذفو بعضهم بعضًا.

مسألة ٦ - إذا قذف جامعًا واحدًا بعد واحد فكلك واحد حد، سواء جاؤوا لطببه مجتمعين أو متفرقين، ولو قذفو بلحظة واحد بأن يقول: "هؤلاء زناة" فإن افترقوا في المطالبة فكلك واحد حد، وإن اجتمعوا بها فكلك حد واحد، ولو قال: "زيد وعمرو وبكير - مثلًا - زناة" فإنظاهر أنه قذف بلحظة واحد، وكذا وقال: "زيد زان وعمرو وبكير" وأما لو قال: "زيد زان وعمرو زان وبكير زان" فكلك واحد حد اجتمعوا في المطالبة أم لا، ولو قال: "يابن الزانيين" فالحد لما، والقذف بلحظة واحد فيجد حداً واحدًا مع الاجتماع على المطالبة، وحدين مع التعاقب.

القول في الأحكام

مسألة ١ - يثبت القذف بالاقرار، ويعتبر على الأحوال أن يكون مرتين، بل لا يخلو من وجه، ويشترط في المقر البلوغ والعقل والاختيار والقصد، ويبت أيضاً بشهادة شاهدين عدلين، ولا يثبت بشهادة النساء منفردة ولا منضمة.

مسألة ٢ - الحد في القذف ثمانون جلدة ذكراً كان المفتري أو أنثى ويضرب ضربًا متوسطًا في البدلة لا يبلغه الضرب في الزنا، ويضرب فوق ثيابه المتعددة، ولا يجرد، ويضرب جسمه كله إلا الرأس والوجه والمذاكر، وعلى رأي يشهر القاذف حتى تثبت شهادته.

مسألة ٣ - لو تكرر الحد يتكرر القذف فالحالات أن يقتل في الرابعة ولو قذف، فحد فقال: "إن الذي قلت حق" وجب في الثاني التعزيز ولو قذف شخصًا بسبب واحد عشر مرات بأن قال: "أنت زان" وكره ليس عليه إلا
“You are a fornicator and you are a sodomite”, there is hesitation in multiplying the Ḥadd, though the opinion closer to the traditional authority is in favour of multiplying the Ḥadd.

**Problem # 4.** If the slander is established its Ḥadd shall not be set aside except by the confirmation of the person slandered, even if done once, or by legal evidence that establishes Zinā’, or by pardon. If a slandered person pardons the slanderer, and later withdraws pardon, it shall have no legal effect. In case of a person slandering his wife, the Ḥadd for slander is also set aside by going through the process of Li‘ān.

**Problem # 5.** If two persons slander each other, the Ḥadd shall be set aside and they will given Ta‘zir, no matter whether the type of slander of one is the same of the other, as when each of them slander the other for having the active or passive role in sodomy, or it may differ as when one of them accuses the other of having committed Zinā’, while the other slanders the other party of having committed sodomy.

**Problem # 6.** The Ḥadd for a slander is inherited [by the heirs] if the person slandered has not redeemed or pardoned it. It is inherited by the person who inherits the property (of the deceased), whether male or female except a husband or a wife. But it is not divided like the property inherited, and each of the heirs is entitled to claim the whole Ḥadd even if it is pardoned by the other heir (or heirs).

### IV - Laws subsidiary to Qadhf or Slander

**First.** If, God forbid, a person vituperates the Prophet, PBUH, it is obligatory on the listener to kill that person, if he does not apprehend the loss of his own life, honour or the life or honour of another believer, and in such case it is not permissible [to kill that person]. If he apprehends the loss of a considerable amount of property belonging to him or his brother, it shall, likewise, be permissible for him not to resort to killing that person. It does not depend on obtaining permission of the Imām or his deputy. The same shall be the case if the person vituperates any of the Imāms. There is a reasonable ground for a affiliation of the Pure and Truthful Lady (i.e., Ḥadrat Fāṭimah) to these (holy) persons. Rather if the culprit withdraws his vituperation of the Prophet, (PBUH), even then, he shall be condemned to death without any hesitation.

**Second.** If a person claims to be a prophet, he shall compulsorily be given death sentence, and his assassination is permitted for every one who listens to his claim of prophethood from him except due to the apprehension mentioned before. If a person is ostensibly a follower of Islam, but says: “I do not know whether Muḥammad b. ‘Abdillāh, PBUH, is true (prophet) or not”, shall be condemned to death.

**Third.** If a person practices magic, he shall be condemned to death if he is a Muslim, and shall be chastised in the event of his being an infidel. It is established by the confession of the
حد واحد، ولو تعدد المقدوف يتعدد الحد، ولو تعدد المقدوف به بأن قال: «أنت زان و أنت لائط» ففي تكرر الحد إشكال، والأقرب التكرر.

مسألة 4- إذا ثبت الحد على القاذف لا يسقط عنه إلا بتصديق المقدوف ولو مرة، و بالبينة التي يثبت بها الزنا، وبالعفو، ولو عفا ثم رجع عنه لا أثر لرجوعه، وفي قذف الزوجة يسقط باللعان أيضاً.

مسألة 5- إذا تفاوت أئذان قضت الحد و عزرا، سواء كان قذف كل ما يقذف به الآخر كا لوقف كل صاحبه باللواط فاعلاً أو مفعولاً أو اختلف.

كان قذف أحدهما صاحبه بالزنا و قذف الآخر إياه باللواط.

مسألة 6- حد القذف موريث إن لم يستوهق المقدوف ولم يعف عنه ويرته من بير المال ذكراً و وإناثاً إلا الزوج ول الزوجة، لكن لا يورث كا يورث المال. من التوزيع، بل لكل واحد من الورثة المطالبة به تاماً وإن عفا الآخر.

فروع:

الأول - من سبب النبي صلى الله عليه و آله و العياف بالله وجب على سامعه قتله ما لم يخفف على نفسه أو عرضه أو نفس مؤمن أو عرضه، ومعه لا يجوز، ولو خاف على ماله المعتد به أو مال أخيه كذلك جاز ترك قتله، ولا يتأت مثلك ذلك على إذن من الإمام عليه السلام أو نائبه، وكذا الحال لو سبب بعض الأئمة عليهم السلام، وفي إلقاء الصديقة الطاهرة سلام الله عليها بهم وجه، بل لو رجع إلى سبب النبي (ص) يقتل بلا إشكال.

الثاني - من ادعى النبوة يجب قتله، و دم مباح لمن سمعها منه إلا مع الخوف كا تقدم، و من كان على ظاهر الإسلام وقال: «لا أدرى أن محمد بن عبد الله صلى الله عليه و آله صادق أو لا» يقتل.

الثالث - من عمل بالسحر يقتل إن كان مسلماً، ويؤدب إن كان كافراً و
culprit, to be more cautious twice, or by legal evidence. If a person learns magic in order to thwart the claim of prophethood, there shall be no objection, rather it is obligatory [to do so].

Fourth. Every offence belonging to the category of the rights of Allāh the Exalted in which punishment is by way of Taʿẓīr, it shall be established by the confession of the culprit, which is more cautious and preferable to be repeated twice, or by the testimony of two witnesses of reputed integrity.

Fifth. Every one who gives up the performance of an obligatory act or commits what is forbidden, the Imām or his deputy shall have the authority to give him Taʿẓīr punishment provided the prohibited act belongs to the category of the major or mortal offences or sins (kabāʿir). The Taʿẓīr shall be milder than Ḥadd, and its amount is to be fixed according to the discretion of the judge. It is more cautious for him not to exceed the least amount of Ḥadd in a case where there is no argument in favour of the fixation of it amount.

Sixth. Some jurists have held that it is repugnant to exceed the chastisement of a boy from ten lashes. Apparently his chastisement depends on the discretion of the authorized chastiser and his guardian. Sometimes it is advisable to fix the minimum amount of the punishment, while at another time what is required is the maximum amount of punishment. It is not permissible to exceed the limit; rather it is not permissible to fix it beyond the Taʿẓīr of an adult person; it is better that it should be lower than the amount of his Taʿẓīr; and it is more cautious to suffice with five or six [lashes].

CHAPTER FOUR – ḤADD FOR AN INTOXICANT (MUSKIR)

This Chapter deals with its Causes, Conditions and Laws.

1 – Causes and Conditions of the Ḥadd for an Intoxicant (Muskir)

Problem # 1. A Ḥadd for an intoxicant shall be applicable to a person who takes an intoxicant or beer even if it is not intoxicant, provided he is an adult, sane, having free will and has knowledge about the law [prohibiting it] and the matter [being an intoxicant], so that there shall be no Ḥadd on a minor boy, a lunatic, performing the act under duress (mukriḥ) and one who is ignorant of the law and the matter, or of either of the two, when ignorance of law goes in his favour.

Problem # 2. There is no difference between the various kinds of the intoxicant whether it is made of grapes and that is wine, or of dates and that is date wine (nabidhi), or of currants or raisins (cabib) and that is wine made of the dried fruits soaked in water (nuqiʿ), or of honey and that is honey wine (batʿ), or of barley and that is (a kind of) beer (mizar), or of wheat, or
الفصل الرابع في حد المسكر
والنظر في وجوهه وكيفيته وأحكامه.

القول في وجوهه وكيفيته

مسألة 1 - وجب الحد عل، من تناول المسكر أو الفقاع و إن لم يكن مسيراً بشرط أن يكون المتناول بالغاً عاقلاً، عالماً بالحكم، و الموضوع فلما حد على الصبي، والمجون، والجاهل بالحكم، و الموضوع أو أحدهما إذا أمكن الجهل بالحكم في حقه.

مسألة 2 - لا فرق في المسكر بين أنواعه كالتخذ من العنب: وهو الحمر، أو التمر: وهو النبيذ، أو الزبيب: وهو النقيع، أو العسل: وهو البيع، أو الشعر: و
maize (or corn), etc. To the category of intoxicants is affiliated beer (ṣuqāʾ) even if it is supposed to be a non-intoxicant. If an intoxicant is made with mixing two or more (categories of intoxicants), its drinking shall entail Ḥadd.

Problem #3. There is no hesitation in the prohibition of grape-juice, whether it becomes fomented by itself, or is boiled on fire or in the sun except when two-thirds of it evaporates or it changes into vinegar, [in which case it is not prohibited], but it is not established that it is an intoxicant, and there is hesitation in affiliating it with intoxicants for establishing the liability of Ḥadd even when it is not intoxicant, rather the application of Ḥadd in such a case should be prevented, particularly when it is fomented on fire or in the sun. The juice of currants or raisins and dates is neither affiliated with intoxicants as regards prohibition or liability for Ḥadd.

Problem #4. There is no hesitation in that drinking an intoxicant whether in a small or large quantity is treated equal in establishment of the liability for Ḥadd even if it were a drop of the intoxicant though it may not be an intoxicant at that time. So what is intoxicant when in a large quantity, its small quantity also entails Ḥadd, as there is not hesitation when an intoxicant is mixed with another drink when the name of intoxicant applies to it, and when the other drink becomes consumed in it, as there is no hesitation when mixed with another liquid while it was an intoxicant but the mixture does not lead to removing its quality of intoxicant. In all these cases, [when taken], there shall be the liability for Ḥadd. If, however, an intoxicant is mixed with some food or medicine in a way that the thing mixed is consumed in it, and the name of intoxicant is no more applicable to it, and the mixture is no more intoxicant, then there is hesitation in establishment of Ḥadd in its case, even if it would be prohibited due to the mixture being defiled (najis). If even a drop of the intoxicant is consumed with a [pure] liquid, there is no doubt in the mixture being defiled, but there is hesitation and difficulty in the establishment of Ḥadd of an intoxicant in its case, but the verdict of Ḥadd has been generally accepted among our companions.

Problem #5. If a person in a state of emergency has the necessity to drink an intoxicant for saving himself from death or for the treatment of a serious disease, and he drinks it, he shall not be liable to Ḥadd.

Problem #6. Whenever a person drinks an intoxicant with the knowledge of its being prohibited, it shall be mandatory (wājib) to sentence him to Ḥadd, even if he is ignorant that drinking it entails the liability for Ḥadd. If a person takes a liquid with the impression that it is prohibited without being an intoxicant, but it transpires that it is intoxicant, the liability for Ḥadd shall not be established on him. But if a person knows that it is intoxicant, but thought that the cause for Ḥadd is what makes a person drunk presently, and so he takes a small quantity of it, then apparently there shall necessarily be the liability for Ḥadd.

Problem #7. Drinking an intoxicant is established by confession made by the culprit twice. It is a condition that the confessor must be an adult, sane, and having free will and intention. It is also a condition in a confession that it should not be accompanied by something that when accompanied may possibly make drinking the intoxicant permissible, as when a person says: "I
الفصل الرابع في حد المسكر

هو المزر، أو الحنطة أو الذرة أو غيرها، ويحلق بالمسكر الفقاع والآف، فإنه يظهر غير مسكر، ولو عمل المسكر من شيءين فازاد في شيء واحد.

مسألة 3 - لا إشكال في حرمة العصر العيني سواء على نفسه أو بالنار أو بالشمس إلا إذا ذهب ثلاثين أو ينقلب خلالة، ولكن لم يثبت إسكانه، وفي البقاء بالمسكر في ثبوت الحد ولو لم يكن مسكرًا إشكال، بل منع سيا إذا غلى بالنار أو بالشمس، والعصر الزربيبي والتمري لا يرتد بالمسكر حرمة ولا حدة.

مسألة 4 - لا إشكال في أن المسكر قليله وكان دهسًا في ثبوت الحد بتناوله ولو كان قطرة منه ولم يكن مسكرًا فعلًا، فالأمر الذي ينظر فيه يقلبه مسكرًا يكون في قليله حدة، كما لا إشكال في المتمثل بغيره إذا صدق إسمه عليه وكان غيره مستلقيا فيه، كما لا إشكال في المتمثل بغيره إذا كان مسكرًا ولم يخرج بامتزاجه عن الاستكر، وفي كل ذلك حدة، وأما إذا امتزج بغيره كالعذبة والأدوية بنحو استلنا فيه ولم يصدق اسمه ولم يكون المتمثل مسكرًا ففي ثبوت الحد به إشكال، وإن كان حرامًا لأجل نجاسة المتمثل، فلو استلقى قطارة منه في مائع فلا شبهة في نجاسة المتمثل، ولكن ثبوت حد المسكر عليه بحل تأمل وإشكال، لكن الحكم بالحيد معروج بين أصحابنا.

مسألة 5 - لو اضطر إلى شرب المسكر لحفظ نفسه عن الهلاك أو من المرض الشديد فشرب ليس عليه الحد.

مسألة 6 - لو شرب المسكر مع عالمه بالحرمة وجب الحد ولو جهل أنه موجب للحد، ولو شرب مائناً يتخيل أنه محرم غير مسكر ففاضح أنه مسكر لم يثبت الحد عليه، ولو علم أنه مسكر وتخيل أن الموجب للحد ما أسكر بالفعل فشرب قليله فالظاهر وجب الحد.

مسألة 7 - بثبت شرب المسكر بالإقرار مرتين، ويشترط في الفكر البلوغ والعقل والحرية والاختيار والقصد، ويعتبر في الإقرار أن لا يذكر بشيء يحتمل معه جواز الشرح كقوله: شرب للتدوين أو مكرهاً، ولو أقر بنحو الإطلاق وقامت
have drunk it as a medicine or under duress.” If a man makes a confession in general terms and the circumstances lead to the assumption that he has drunk the intoxicant under compulsion, no Hadd shall be established. If a person makes a confession in general terms, and then forwards an excuse, the excuse shall be accepted from him, and the Hadd shall be averted from him, if there is possibility in his favour. Smell of the breath and fragrance is not sufficient for the establishment of Hadd when there is possibility of an excuse.

Problem # 8. The Hadd for taking an intoxicant is established by the testimony of two witnesses of reputed integrity. The testimony of women is not acceptable in it whether alone or in conjunction with men. If two witnesses of reputed integrity testify in general terms, it shall be sufficient for the establishment of the Hadd. If the witnesses differ in details, as when one of them says: “He has drunk beer (fuqā’),” while the other says: “He has drunk wine”, or when one of them says: “He has drunk in the house”, drinking shall not be established, and so there shall be no Hadd. Similar shall be the case, if one of the witnesses testifies that the culprit drunk [the intoxicant] with the knowledge of its law, while the other testifies that he drunk it ignorantly, and so on with the differences [in details]. If one of the witnesses testifies in general terms, saying: “He has taken an intoxicant”, while the other determines its nature, saying: “He has drunk wine”, apparently the Hadd shall be established.

Problem # 9. The Hadd for drinking an intoxicant is eighty lashes, whether the drinker is a man or a woman. If an infidel drinks an intoxicant in public, he shall be liable to Hadd, but if he drinks it under cover, he shall not liable to Hadd. So also if he drinks the intoxicant in his synagogues or churches, he shall not be liable to Hadd.

Problem # 10. The convict shall be struck the lashes on his back and shoulders and all the parts of his body, leaving his face, head and private parts. A man shall be given lashes uncovered except covering his private parts, in a standing posture, while a woman shall be given lashes while sitting and clad in her clothes. No Hadd shall be inflicted on them unless they have recovered from their state of inebriety.

Problem # 11. The Hadd is not set aside in case a man suffer insanity or apostatizes, and is inflicted Hadd even in a state of insanity and despite apostasy.

Problem # 12. If a man repeats drinking while he has not been inflicted Hadd in between, it shall be sufficient to inflict a single Hadd for all the times. If he repeats drinking [after the infliction of each Hadd], he shall be given death sentence after repeating it for the third time, and according to an opinion, after the fourth time.

II-Laws concerning Hadd for Intoxicant and a few Appendages

Problem # 1. If a witness of reputed integrity testifies to the act of drinking [an intoxicant] and another to his vomiting it, he shall necessarily be sentenced to Hadd without mentioning the
الفصل الرابع في حد المسكر

قرينة على أن نشره معذوراً لم يثبت الحد، ولو أقر بنحو الإطلاق ثم ادعى عذراً قبل منه، ويدأ عن الحد لو احتمل في حق ذلك، ولا يكني في ثبوته الرائحة ونكهة مع احتمال العذر.

مسألة 8 - وثبت بشاهدين عادلين، ولا تقبل شهادة النساء منفردات ولا منضماً، ولو شهد العدلان بنحو الإطلاق كني في الثبوت، ولو اختلفا فيخصوصيات كان يقول أحدهما: "إن شرب الفقاع"، والآخر: "إن شرب الحمر" أو قال أحدهما: "إن شرب في السوق"، والآخر: "إن شرب في البيت" لم يثبت الشرب، فلا حد، وكذا لو شهد أحدهما بأنه شرب عالياً بالحكم، والآخر بأنه شرب جاهل، وغيه من الاختلافات، ولو أطلق أحدهما وقال: "شرب المسكر"، وقد الثاني وقال: "شرب الحمر" فالظاهرة ثبوت الحد.

مسألة 9 - الحد في الشرب ثمانون جلدة كان الشراب رجلاً أو امرأة أو الكافر إذا تظاهر بشربه يحدث، وإذا استمر لم يحدث، وإذا شرب في كنائسمهم وبيعهم لم يحدث.

مسألة 10 - يضرب الشراب على ظهره، وكتفه، وسائر جسده، ويتقي وجهه ورأسه وفرجه، والرجل يضرب عرياناً ما عدا العورة قاماً، والمرأة تضرب قاعدة مربطة في ثيابها، ولا يقام عليها الحد حتى يفية.

مسألة 11 - لا يسقط الحد بعروض الجنون ولا بالارتداد، فيجد حال جنوه وارتداده.

مسألة 12 - لو شرب كراً ولم يوجد خلاها كني عن الجميع حد واحد، ولو شرب مفرد في الثالثة، وقيل في الرابعة.

القول في أحكامه وبعض اللواحق

مسألة 1 - لو شهد عدل بشربه وآخر بقيه وجب الحد، سواء شهاد من غير
date or mentioning the date while both the acts [of drinking and vomiting] are likely to take place on the same date. But in case it is not likely for both acts to take place at the same time, he shall not be liable to **Hadd**. Whether he shall be liable to **Hadd** if both the witnesses testify to his act of vomiting, is a question in whose answer there is confusion or ambiguity (ishkal).

**Problem # 2.** If a man drinks an intoxicant with the impression that in fact it is permissible (balāl), although he is a Muslim, he shall be asked to repent. If he repents, he shall be inflicted **Hadd**. If he does not repent, and his refusal amounts to denial of the prophet of the holy Prophet, (p.b.), he shall be given death sentence, without any difference whether he is *milī* (born of non-Muslim parents), or *fitri* (born of Muslim parents). Some jurist are of the opinion that his case is to be treated like an apostate, so that he shall not be asked to repent if he is born of Muslim parents; rather, he shall be given death sentence without asking to repent, but the former opinion is more compatible with the principles of law. A person who considers drinking intoxicants other than wine to be absolutely permissible shall not be given death sentence: rather he shall be inflicted **Hadd** whether he considers drinking it to be permissible or forbidden. A seller of wine shall be asked to repent absolutely. If he repents, his repentance shall be accepted. If he does not repent, and his considering it to be permissible amounts to denying the prophethood of the holy Prophet, (p.b.), he shall be given death sentence. The seller of intoxicants other than wine shall not be given death sentence, whether he sells them considering it to be lawful and does not repent.

**Problem # 3.** If a person drinking intoxicants repents before the evidence against him testifying to his drinking is adduced, his **Hadd** shall be set aside, but if he repents after the evidence has been adduced, the **Hadd** shall not be set aside, and it shall be inflicted on the culprit. If the culprit repents after making confession, it is not far from the Imam having the option either to inflict the **Hadd** or pardon him, though it is more cautious for him to inflict the **Hadd**.

**Problem # 4.** Whenever a person considers to be lawful any of the prohibited things about whose prohibition there is consensus among the Muslims as the flesh of a dead animal, blood, pork and usury, if he is born of Muslim parents, he shall be given death sentence provided his refusal [to accept the consensus of the Muslims] amounts to the denial of the prophethood of the holy Prophet, (p.b.), and the Shari'a (the Islamic canon law), otherwise he shall be given *Ta'zir* punishment. If his refusal is due to some doubt that is justified in his case, he shall not given even *Ta'zir* punishment. If, however, his doubt is removed, but he insists on considering the prohibited thing to be lawful, he shall be given death sentence due to his refusal being tantamount to the denial of the prophethood of the holy Prophet, (p.b.). If a person commits something from among the forbidden things other than what the Islamic law provides **Hadd** for it if committed with the knowledge of its being unlawful without considering it lawful, he shall be given *Ta'zir* punishment, irrespective of the forbidden things being major or minor offences.

**Problem # 5.** If a person is killed as a result of the execution of a **Hadd** or *Ta'zir*, he shall not be entitled to any blood-money (*diyat*) unless there has been transgression of the law.

**Problem # 6.** If the judge executes the **Hadd** of death, and subsequently the prolifiqcy of two or more witnesses comes to light, the *diyat* shall be paid from the *bayt al-māl* (state treasury) and its payment shall be the liability neither of the judge nor of the 'āqilah (the clan who is committed according to the tribal law to pay the bloodwithe for each of its members) of the convict. If the judge orders the execution of **Hadd** on a pregnant woman, or she utters something that induces the
تاريخ أو بتاريخ يكمن الاتحاد، ومع عدم إمكانه لا يجد، وهل يجد إذا شهد
بقية؟ فيه إشكال:

مسألة 2 - من شرب الخمر مستحلاً لشربها أصلاً، وهو مسلم استثني فان
تاب أقيم عليه الحد، وإن لم يتب ورجع إنكاره إلى تكذيب النبي صل الله عليه
وآلهُ قيل، من غير فرق بين كونه ملياً أو فطرياً، وقيل حكم حكم المرتد لا
يستثني إذا ولد على الفطرة، بل يقتل من غير استثنياً الأول أشبه، ولا يقتل
مستحل شرب غير الخمر من المسركات مطلقاً، بل يقتل بشره خاصة مستحلاً
كان له أو محرم، وбанع الخمر يستثني مطلقاً، فان تاب قبل منه، وإن لم يتب
ورجع استثناه إلى تكذيب النبي صل الله عليه وآلهُ قيل، وبارع ما سواها لا
يقتل وإن باعه مستحلاً ولم يتب.

مسألة 3 - لوثاب الشرب عنه قبل قيام البيئة عليه بشربه سقط عنه الحد،
ولوثاب بعد قيامهما لم يسقط وعليه الحد، ولوثاب بعد الاقرار فلا يبعد تخير
الإمام عليه السلام في الإقامة والعنو، والأحوش للاقامة.

مسألة 4 - من استحل شيئاً من المنحرات المجمع على تحريها بين المسلمين
كالمتيا و الدم ولحم الخنزير والربا فإن ولد على الفطرة يقتل إن رفع إنكاره
إلى تكذيب النبي صل الله عليه وآله او إنكار الشرع، و إلا فيعجز، وولو كان
إنكاره لشبه من صحت في حقه فلا يعز، نعم لو رفعت شهته فأصر على
الاستحال قتل لرجوعه إلى تكذيب النبي صلى الله عليه وآله، ولو ارتكب شيئاً
من المنحرات غير ما قرر الشارع فيه جداً عالماً بتحريرها لا مستحلاً عجز، سواء
كانت المنحرات من الكبائر أو الصغير.

مسألة 5 - من قتله الحد أو التعزير فلا دية له إذا لم يتجاوزه.

مسألة 6 - لآقام الحاكم الحد بالقتل فظهر بعد ذلك فسق الشاهدين أو
الشهود كانت الديبة في بيت المال، ولا يضمنها الحاكم ولا عاقلته، ولو أنفذ
الحاكم إلى حامل لاقيمة الحد عليها أو ذكرت بما يوجب الحد فأحضرها للتحقيق
liability for *Hadd*, so the judge summons her for enquiry, and the woman aborts the foetus out of fear, according to the stronger opinion the *diyat* for the foetus shall be payable from the *bayt al-māl* (or state treasury)

CHAPTER FIVE – *HADD FOR THEFT OR SARIQA*

This Chapter deals with the Thief, the Property stolen, what establishes it and its *Hadd*, and Appendages.

1 - Rules concerning the Thief

*Problem # 1.* Following are the conditions for inducing the liability of *Hadd* (for theft).

*First.* Adulthood, so that if a minor body commits theft, he shall not be inflicted *Hadd*, but shall be given chastisement as deemed advisable by the judge, even if he repeats the theft for five or more times. Some jurists hold that he shall at first be pardoned. If he repeats theft, he shall be chastised. If he repeats it, his fingers shall be scratched till they start bleeding. If he commits the theft again, his fingers shall be cut off. If he again commits theft, his hands shall be amputated as in the case of an adult person. There are several Traditions about theft. One them says: "The holy Prophet, (pbuh), and I have given punishment for theft", that is, Amir al-Mu'minin ('Ali, A.S.). What we have mentioned before is more in conformity of the principles of law.

*Second.* Sanity, so that the hands of a person suffering from insanity, though periodical, shall not be amputated, if he has committed the theft during the period of insanity, even if he has repeated the theft. He shall be given chastisement if he feels it and if there is any possibility of its being effective.

*Third.* Free will, so that the hands of a person committing the offence under duress shall not be amputated.

*Fourth.* Absence of exigency, so that the hands of a person committing theft in an emergency for fulfilling the exigency shall not be amputated.

*Fifth.* The thief should have broken into the *birz*, or a guarded place alone or with the participation of others. If a person other than the thief breaks into the guarded place and the thief commits theft without there being any hindrance, the hands of neither of them shall be amputated, even if they would have come together for committing theft and cooperating in it. The person who breaks into the guarded place shall be responsible for what is destroyed by him and the thief for what he steals.

*Sixth.* The thief should have taken away the property from the guarded place himself or with the participation of another. The removal of the property takes place when it is done personally as when the puts its on his shoulders and takes it away or by means of something, as when he binds it with a rope and then draws it out of the guarded place, or puts it on the back of an
فخافت فسقط حملها فالأقوى أن دية الجنين على بيت المال.

الفصل الخامس في حد السرقة

والنظرية في السارق والمسروق وما يثبت به والحدود والواقح.

القول في السارق

مسألة 1 - يشترط في وجوه الحد عليه أمور:
الأول - البلوغ، فلو سرق الطفل لم يجد، ويؤدب بما يراه الحاكم ولو تكررت السرقة منه إلى الخامسة فقاً فقاً، وقيل يعني عنه أولاً فان عاد أدب فان عاد حكت أمانه حتى تدمي، فان عاد قطعت أنامله فان عاد قطع كي يقطع الرجل، و في سرقته زوايات، وفيها "لم يصنعه إلا رسول الله صلى الله عليه و آله و آله" أي أمير المؤمنين عليه السلام، فالأشياء ما ذكرنا.
الثاني - العقل، فلا يقطع الجنين ولو أدوا إذا سرق حال إدواره وإن تكررت منه، ويؤدب إذا استشعر بالتأديب وأمكن التأثير فيه.
الثالث - الاختيار، فلا يقطع المكره.

رابع - عدم الاضطرار، فلا يقطع المضطر إذا سرق لدفع اضطراره.
خامس - أن يكون السارق هاتكاً للحرز منفردأ أو مشاركأ، فلو هتك غير السارق و سرق هو من غير حرز لا يقطع واحد منها وإن جاءا معاً للسرقة و التعاون فيها، ويضمن الهاتكا ما أتلفه و السارق ما سرقه.

سادس - أن يخرج المتن من الحرز بنفسه أو بمشاركة غيره، ويحقق الإخراج بالباشرة كما لو جعله على عاته و أخرجه، و بالتسبب كما لو شده بجل ثم يجدبه من خارج الحرز، أو يضعه على دابه من الحرز و يخرجها، أو على
animal and takes it out of the guarded place, or places it on the wings of a bird which usually brings it back to him, or orders a lunatic or non-discreet boy to take it away. If the boy is discreet, even then there shall be hesitation in amputating his hands, rather it is forbidden.

Seventh. The thief should not be the father of the person whose property has been stolen, so that the hands of the father shall not be amputated for stealing the property of his son. However the hands of the son shall be amputated if he steals the property of his father. So also the hands of the mother shall be amputated if she steals the property of her son. Likewise, the hands of the relatives shall also be amputated if they steal the property of one another.

Eighth. The thief should have stolen the property secretly, so that if he breaks into the guarded place forcibly openly and takes away the property, his hands shall be amputated. Rather the same law shall apply even if he breaks into the guarded place secretly but takes away the properly openly and forcibly.

Problem # 2. If two persons participate in breaking into [the guarded place], and a single person commits theft, the hands of the person who participated in breaking into the guarded place and also committed theft shall be amputated. If both of them participated in both the stages of the theft, the hands of both of them shall be amputated after the fulfillment of all the conditions.

Problem # 3. Removal of the doubt about the law and the matter is a condition in theft etc. that entail the liability for Hadd. If a partner takes away jointly held property under the presumption of lawfulness of the act without the permission of the partner, his hands shall not be cut off, even if what he took away was more than his share and it reached the amount of the stolen property entailing the amputation of hands. The same shall be the law if the person takes away the property with the knowledge of prohibition, but not with the intention of theft but for apportionment and subsequent permission, his hands shall not be amputated. Of course, if he takes it away with the intention of theft with the knowledge of the law, his hands shall be cut off. Likewise, if a person takes away a property belonging to another under the impression that it belongs to him, his hands shall not be amputated, as it will not be treated as theft. If a man steals from jointly held property to the extent of his share, his hands shall not be amputated. If it exceeds the amount of stolen property entailing Hadd, his hands shall be cut off.

Problem # 4. In case of theft from the booty, there are two Traditions, one of which forbids amputation of hands, while the other allows the amputation of hands if the person steals more than his share that is up to the quantity entailing amputation of hands.

Problem # 5. There is no difference between a male and female in the application of the Hadd for theft, so that the hands of a female shall also be amputated in a case where the hands of a male are amputated by law. Likewise, there is no difference between a Muslim and a Dhimmi [in the application of the Hadd for theft]. So the hands of a Muslim shall be cut off if he steals the property of a Dhimmi, and the hands of a Dhimmi shall be amputated if he steals the property belonging to a Muslim or a Dhimmi.

Problem # 6. If a trustee betrays his trust, his hands shall not be amputated, and he shall not be treated as a thief. Likewise if a mortgager steals the property mortgaged, his hands shall not be cut off. The same law shall apply if a landlord steals the property of a lessee.
الفصل الخامس في حد السرقة

جناح طائر من شأنه العود إليه، أو أمر ممنوناً أو صبياً غير مميز بالإخراج، وأما إن كان مميزاً في القطع إشكال بل منع، السابع - أن لا يكون السارق والد المسروق منه، فلا يقطع الوالد المال ولده، و يقطع الولد إن سرق من والده، وأم إن سرت من ولدها، والأقراء إن سرق بعضهم من بعض.

الثامن - أن يأخذ سراً، فلو هكذا الزهر قهراً ظاهراً وأخذ لا يقطع، بل لو هكذا سراً وأخذ ظهراً قهراً فكذلك.

مسألة 2 - لو اشتركا في المال والنزد أهدهما بالسرقة يقطع السارق دون الهبات، ولو انفرد أحدهما بالمال و اشتركا في السرة قطع الهبات السارق، ولو اشتركا فيها قطعاً مع تحقيق سائر الشرائف.

مسألة 3 - يعتبر في السرة وغيرها بما فيه حد ارتفاع الشهية حكاً و موضوعاً، فلو أخذ المال المال المشترك بظل جواب ذلك بدون إذن الشريك لا يقطع فيها ولو زاد ما أخذ على نصيبه ما يبلغ نصاب القطع، وكذا لو أخذ مع علمه بالحرية لكن لا للسرقة بل للتقسيم والاذن بعده لم يقطع، نعم لو أخذ بقصد السرة مع علمه بالحكم يقطع، وكذا لا يقطع لو أخذ المال الغير بتوهم ماله، فإنه لا يكون سرة، ولو سرق من المال المشترك بمقدار نصيبه لم يقطع، وإن زاد عليه بمقدار النصاب يقطع.

مسألة 4 - في السرة من المغنم روايتان إحداهما لا يقطع، والأخرى يقطع إن زاد ما سرقه على نصيبه بمقدار نصاب القطع.

مسألة 5 - لا فرق بين الذكر والأثنا، فتقع الألم في يقطع الذكر، وكذا المسلم والذمي فيقطع المسلم وإن سرق من الذمي، وهو كذلك سرق من المسلم أو الذمي.

مسألة 6 - لو خان الأمين لم يقطع ولم يكن سارقاً، ولو سرق الراهن الرهن لم يقطع، وكذا لو سرق المؤجرين المستأجرة.
Problem # 7. If an employee steals the property of his employer, then if he had been appointed a trustee over the property, his hands shall not be cut off. If he gives the property to be guarded by another, and then breaks into the guarded place and steals the property, his hands shall be cut off. Likewise, the hands of a husband or wife shall be amputated if either of them steals the property that he/she is required to guard, but if they are not required to guard the property, his/her hands shall not be cut off. Of course, if the wife steals something out of the property belonging to her husband in lieu of the maintenance due from the husband that has not been paid by him to her, her hands shall not be amputated provided the amount stolen does not exceed the amount of maintenance to the extent entailing the Hadd for theft. Likewise the hands of a guest shall be cut off if he is required to guard the property of his host, otherwise not.

Problem # 8. If a person takes away some property from a guarded place, and its owner claims that he has stolen, but the person taking away the property says that it has been donated to him by the owner, or that he had permitted him to take it away, the Hadd shall be set aside, except when the owner adduces legal evidence to establish theft. The same law shall apply if the person taking away the property says that it belongs to him, but the owner of the house denies the claim, then although the word of the owner shall carry provided it is followed by his oath, and the property shall be taken back from the person who had taken away after the oath, but his hands shall not be amputated.

II-Laws relating to the Stolen Property

Problem # 1. The [minimum] amount of stolen property that entails the amputation of hands is one-fourth of a Dinār coin of pure gold or what is equivalent to the value of one-fourth of a Dinār from garments, minerals, fruits and foodstuff, fresh or otherwise, whether it is free for all the people or not, or from what is spoiled soon as vegetables, fresh fruits or the like or otherwise, in short, everything that is legally allowed to be owned by a Muslim, so that when their value reaches the limit of the [minimum] amount it entail the punishment of amputation of hands, including even birds and marble stone.

Problem # 2. There is no difference whether the gold is in the form of coined money, etc. If the value of the gold not in the form of coined money reaches one-fourth Dinār, it shall be punishable by amputation of hands. If, however, its weight is equivalent to the weight of one-fourth of a Dinār, but its value is not equivalent to that of one-fourth of a Dinār, it shall not be punishable by amputation of hands. If the case is reverse, so that its value is equivalent to that of a one-fourth Dinār, but its weight is not equivalent to that of minimum one-fourth Dinār, it shall be punishable by amputation of hands.

Problem # 3. If suppose there are two coins of Dinārs in the form of current coined money, but their value is different, not due to some defect or alloy in one of them, but due to their form of coin, then it is more cautious not to punish the criminal by amputation of hands except when its value
مسألة 7 - إذا سرق الأجير من مال المستأجر فإن استأمنه عليه فلا يقطع، وإن أحرز المال من دونه فهتك الحرز و سرق يقطع، وكذا يقطع كل من الزوج و الزوجة بسرعة مال الآخر إذا أحرز عنه، ومع عدم الأحرز فلا، نعم إذا أخذ الزوجة من مال الرجل سرقها عوضاً من النفقة الواجبة التي منعها عنها فلا قطع عليها إلا إذا لم يزيد على النفقة بقدار النصاب، وكذا الضيف يقطع إن أحرز المال عنه وإلا لا يقطع.

مسألة 8 - لو أخرج متاعاً من حرز و ادعى صاحب الحرز أنه سرقه وقال المخرج: "و هو حني" أو "أذن لي في إخراجه" سقط الحد إلا أن تقوم البيئة بالسرقة، وكذا لو قال: "المال لي" و أنكر صاحب المنزل فقال قول وإن كان قول صاحب المنزل بيمينه و أخذ المال من المخرج بعداليين لكن لا يقطع.

قول في المسروق

مسألة 1 - نصاب القطع ما بلغ ربع دينار ذهباً خالصاً مضروباً بأيام السكة أو ما بلغ قيمته ربع دينار كذائي من الألبسة و المعادن و الفواكه و الأطعمة رطبة كانت أو لا، كان أصله الاباحية لجميع الناس أولاً، كان مما يسع إليه الفساد كالخضراوات والفواكه الرطبة و نحوها أو لا، و بالجملة كل ما يملكه المسلم إذا بلغ الحد فيه القطع حتى الطير و حجارة الرخام.

مسألة 2 - لا فرق في الذهب بين المسكوك و غيره، فلو بلغ الذهب غير المسكوك قيمة ربع دينار مسكوك قطع، و لوط بلغ وزنه و ربع دينار مسكوك لكن لم تبلغ قيمة الربع لم يقطع، لنو انعكس و بلغ قيمته قيمة و كان وزنه أقل يقطع.

مسألة 3 - لو فرض رواد دينارين مسكوكين بسكتين وكانت قيمتهما مختلفة ل أجل النقص أو الغش في أحدهما بل لأجل السكة فالأخوط عدم القطع إلا
reaches the maximum limit, though according to the opinion more in conformity of the principles of law, it is sufficient if it reaches the minimum limit.

Problem # 4. By coin here is meant a coined currency currently in circulation. If suppose there is a coin not currently in circulation, it shall have no value with regard to the required one-fourth of its value. If the stolen property reaches one-fourth of a Dinār but its value is not equivalent to the value of one-fourth of the coined currency, his hands shall not be amputated.

Problem # 5. If a person steals something and considers it not reaching the minimum limit entailing the liability for Ḥadd, as when he steals a Dinār under the impression that it is a Dirham, then apparently it shall induce amputation of hands. On the contrary, if he steals something lower in value that the minimum limit required for the liability of the Ḥadd under the impression that it is equivalent to the minimum limit, his hands shall not be cut off.

Problem # 6. One-fourth of a Dinār or what is equivalent to one-fourth of a Dinār is the minimum limit required for the liability inducing amputation of hands. If he steals more than that limit, his hands shall be amputated as in the case a thing equivalent to one-fourth of a Dinār in value how so ever high the value of the stolen property may be no additional punishment for the extra amount.

Problem # 7. It is a condition for the stolen property that it must be in a guarded place as a locked or a bolted place, or buried or that its owner must have concealed it from the eyes of other under a carpet or within a book or the like that may be usually called to be in a guarded place, if the case is not so, the hands of its thief shall not be cut off, even if there is no admission in the place without the permission of its owner. If a person steals something out of the visible things in an open shop, his hands shall not be amputated, even if there is no admission without the permission of its owner.

Problem # 8. If different things are kept in a guarded place in the belief of people, and a place is considered guarded for one thing, shall it be considered guarded for all things? If a Dinār drops from the pocket of the owners in a stable, and a thief breaks the lock and enters for stealing, for example, the horse and he finds the Dinār and he steals it, then will it be sufficient for amputating his hands or not due to not having taken it away from a guarded place? The second alternative shall be more in conformity with the principles of law and more cautious. Of course, if the owner conceals his Dinār in the stable and the thief steals it from there, his hands shall be amputated.

Problem # 9. If a thing is not kept in a guarded place, the hands of its thief shall not be cut off, as the theft from caravanserais, public baths and houses whose gates remain open for the public or a group of people. And, likewise, mosques, holy shrines and public institutions, and, in short, every place that is open for the public or a group of people. Whether the observation, etc. by the owner or his watchfulness of the property shall be treated as guarding it, as when an animal is let loose in an open land, and the owner is watching it, will the hands of its thief be amputated or not. Is question whose answer, according to the stronger opinion, shall be the second alternative. Shall the hands of a thief of the curtain of the holy Ka‘bah be amputated? Some jurists answer it in the affirmative, but according the stronger opinion, its answer shall
مسألة 4 - المراة بالمسكوك هو المسكوك الرأيق، فلو فرض وجود مسكوك غير رأيق فلا اعتبار في ربع قيمته، فلو بلغ ربع قيمته ولم يكن قيمة ربع بمقدار قيمة ربع الدارج لم يقطع.

مسألة 5 - لو سرق شيئاً و تخيل عدم وصوله إلى حد النصاب كان سرق ديناراً بتحيل أنه درهم فالظاهرة القطيع، ولو انعكس وسرق مادون النصاب بتخيل النصاب لم يقطع.

مسألة 6 - ربع الدينار أو ما بلغ قيمة الربع هو أقل ما يقطع به، فلو سرق أكثر منه يقطع كقطعه بالربيع بلغ ما بلغ، وليس في الزيادة شيء غير القطيع.

مسألة 7 - يشترط في السروق أن يكون في حرز ككونه في مكان مغلق أو مفتوح، أو كان مدنياً أو أخوان المالك عن الأشياء تحت فرش أو جوف كتاب أو نحو ذلك مما يعد عرفاً محزوراً، وما لا يكون كذلك لا يقطع به وإن لا يجوز الدخول إلا باذن المالك، فلو سرق شيئاً عن الأشياء الظاهرة في دكان مفتوح لم يقطع و إن لا يجوز دخوله فيه إلا باذنه.

مسألة 8 - لما كان الأشياء مختلفة في الحرز في تعارف الناس فلو كان موضوع حرزاً لشيء من الأشياء فهل يكون حرزاً لكل شيء فلو سقط من جيب المالك دينار في الاصطبل و السارق كسر القفل و دخل لسرقة الفرس مثلاً فعمر على الدينار فسرك كني في لزوم القطيع إلا لا عدم إخراجه من حرزاً؟ الأشياء والاحوط هو الثاني، نعم لو أخيف المالك ديناره في الاصطبل فأخرجه السارق يقطع.

مسألة 9 - ماليس بحرز لا يقطع سارقه كالسرقة كالسرقة من الحانات والحمامات والبيوت التي كانت أبوابها مفتوحة على العموم أو على طائفة، و نحو المساجد والمدارس والمضايف المشتركة والمؤسسات العامة، و بالجملة كل موضع أذن للعموم أو لطائفة، و هل مراعاة المالك و نحوه ومراقبته للمال حرز فلو كانت دابته
be in the negative. Similar shall be the case of one who steals something from the holy harem, porch or veranda or courtyard of holy shrines.

**Problem # 10.** If person steals from the pocket of another, then if the stolen article was in a guarded place, as when it was in the pocket under the garment or it was guarded by one of the modern equipments at the entrance of the pocket, then apparently his hands shall be cut off. But if the article was placed in the pocket that was open in the upper part of his garment, the hands of his thief shall not be cut off. But if the pocket was in the interior of the upper part of his garment, then apparently the hands of its thief shall be cut off. So the criterion is what is treated as a guarded place.

**Problem # 11.** There is no hesitation in the application of the law relating to the amputation of the hands in the theft of fruits after they have been plucked from the trees and kept in a guarded place, and also in non-application of the law of cutting hands when the fruits were still on the trees when the trees were left unguarded. But if they were well-guarded as when they were in a garden duly locked, then shall the hands of thief of their fruits be amputated or not? According to the more cautious, rather stronger, opinion, they shall not be amputated.

**Problem # 12.** The hands of a thief shall not be amputated in the year of famine, if the stolen object is a foodstuff *in posse* [or in potentiality] as grains, and the thief was in dire need of it, but in case of its being other than foodstuff or in case of a foodstuff when there is no emergency, there is hesitation in the application of exemption of the rule, though non-amputation of the hands is more cautious; rather if a needy person steals something other than foodstuff, the exemption from the rule is not far from being likely.

**Problem # 13.** If a free man, whether adult or minor, and whether male or female commits theft, his hands shall not be amputated by way of *Hadd*. But whether they shall be cut off for the sake of warding off the spread of corruption? Some jurists have replied it in the affirmative, and there is a Tradition in favour of the opinion, but it is more cautious to give up amputation, leave its punishment by *Ta'zir* according to the discretion of the judge.

**Problem # 14.** If a person gives, for example, a house temporarily, and breaks into it and steals from it some property belonging to the person to whom he had given it temporarily, his hands shall be amputated. Likewise, if a man gives, for example, a house on rent, and steals some property from it belonging to the client, his hands shall be cut off. If the guarded place was usurped, the hands of its owner shall not be cut off on its theft by its owner. Even if the property was in a guarded place, and its owner breaks into it takes away his property, his hands shall not be cut off, even if the property was mixed with usurped property and he takes away to the extent of his own property or more than that but less than the *niṣāb* [minimum limit liable to *Hadd* for theft].

**Problem # 15.** If the stolen property belongs to an endowment, the hands of its thief shall be cut off, if we declare that it is the property of endower, as sometimes is the case, or the property of the beneficiary of the endowment. But if we say that endowment is meant for severing ownership
في الصحراء و كان له مراعيا يقطع بسرقه أو لا؟ الأقوى الثاني، و هل يقطع
سارق ستارة الكعبة؟ قيل: نعم، و الأقوى عده، و كذا سارق ما في المشاهد
المشرفة من الحرم المطهر أو الرواق و الصحن.

مسألة 10 - لو سرق من جيب إنسان فان كان المسروق محرزاً كان كان في
الجبل الذي تحت النوب أو كان على درب جبهه آللة كالآلات الحديثة تخزوه
فالظاهر ثبوت القطع، و إن كان في جبهه المفتوح فوق ثيابه لا يقطع، ولو كان
الجبل في بطن ثيابه الأعلى فالظاهر القطع، فالميزان صدق الحزد.

مسألة 11 - لا إشكال في ثبوت القطع في أنامير الأشجار بعد قطفها و
حرزها، ولا في عدم القطع إذا كانت على الأشجار إن لم تكن الأشجار محرزة،
و أما إذا كانت محرزة كان كانت في بستان مفقل فهل يقطع بسرقة ثمرتها أو
لا؟ الأحوط بل الأقوى عدم القطع.

مسألة 12 - لا قطع على السارق في عام مجاعة إذا كان المسروق ماكولاً ولو
بالقوة كالحطب و كان السارق مضطرًا إليه. و في غير المأكل و في المأكل في
غير مورد الاضطرار مجل إشكال، والأحوط عدم القطع بل في المنتظر إذا سرق غير
المأكل لا يخلو من قوة.

مسألة 13 - لو سرق حراً كبيراً أو صغيراً ذكراً أو أنثى لم يقطع حداً، فهل
يقطع دفعاً للفساد؟ قيل: نعم، و به رواية، و الأحوط ترك القطع و تعزيره بما
يراه الحاكم.

مسألة 14 - لو أعار بيتاً مثلاً فهتك الماء حرجه فسرقه منه مالاً للمستأجر قطع،
ولو آخر بيتاً مثلاً و سرق منه مالاً للمستأجر قطع، ولو كان الحزد مغصوباً لم
يقطع بسرقة مالكه، ولو كان ما له في حرجة فهتهك و أخرج ما له لم يقطع و إن
كان ما له مخلوطةً مال العاصب فأخذ بمقدار ما له أو أزيد بما دون النصاب.

مسألة 15 - لو كان المسروق وفقاً يقطع لو قلنا بأنه ملك للواقف كباً في بعض
الصور أو للموقف عليه، ولو قلنا إنه فك ملك لدر المنفعة على الموقف عليه لم
so that the benefit may accrue to the beneficiary, the hands of its thief shall not be amputated. If a person steals something meant for the public benefit as Zakāt, if we accept that Zakāt is not the property of any individual, his hands shall not be cut off. If a person steals what belongs to the Imām, as half of Khums, on the ground that it is the property of the Imām, then whether his hands shall be cut off on the claim by a competent jurist or not, is a question in which there is some hesitation, and on the ground that it is not his property, the Imām being the wali al-amr, master of authority, his hands shall not be amputated, according to the more cautious opinion.

Problem # 16. The gate of the guarded place, and so whatever is built on the gate and enclosing wall from outside is not considered a guarded place. so [in case of theft from them] hands of the thief shall not be cut off. Of course, apparently the internal gate is considered something different from the (outside) gate of the guarded place being guarded by the (outside) gate of the guarded place, so if someone steals something from it, his hands shall be amputated. Similar is the case of the internal wall, so that if a person breaks into the gate and enters the guarded place and takes away some thing from parts of the internal wall, his hands shall be cut off.

Problem # 17. A person who steals the shroud when he digs open the grave and steals the shroud, even though confined to some of its detached parts, provided the value of the stolen thing reaches the nisāb [the minimum limit entailing liability for Hadd]. If he digs open the grave, but does not steal the shroud, his hands shall not be cut off, but he shall be given Ta’zīr punishment. The grave is not considered a guarded place except for the shroud. If something is placed in the grave along with the dead body, and a person digs the grave open and takes it away, his hands shall not be cut off, according to the more cautious opinion. If he digs the grave again without taking away the shroud, and escapes out of fear of the ruler [or police], some jurists are of the opinion, that he shall be given death sentence, but there is some hesitation in it.

III-Mode of Establishing a Theft

Problem # 1. A Hadd for a theft is established by confession made by the culprit twice in a way that entails its liability or by the testimony of two witnesses of reputed integrity, but if he makes the confession only once his hands will not be amputated, but the stolen property shall be recovered from him. The hands of the culprit will not be cut off by the testimony of women, whether alone or accompanied by men or by oath along with the testimony of a single witness.

Problem # 2. It is a condition that the confessor must adult, sane, having intention and free will. So the hands of a (minor) boy shall not be amputated on his confession even on the sure opinion of his having committed theft. Likewise on the confession of a lunatic during the period of lunacy, of a person made under duress, or by way of joke, or of a negligent person, or of one made while asleep, or by mistake or while in a stupor. So if a person makes confession under duress or without intention, his hands shall not be cut off nor shall the theft of the property be established.

Problem # 3. If a person is forced to make confession by heating, etc., and later he produces the
فصل الخامس في حد السرقة

يعتقد، ولو سرق ما يكون مصرفه أشخاصاً كالزكاة بناء على عدم الملك لأحد لم يقطع، ولو سرق مالاً يكون للأمام عليه السلام كنصف الخمس بناء على كونه ملكاً له عليه السلام فهل يقطع ببطلان الفقيه الجمع للشريعة أم لا؟ فيه ترد، وبناء على عدم الملك وكونه عليه السلام ولا الأمر لا يقطع على الأحوط.

مسألة 16 - باب الحزز و كذا ما بني على الباب والجدار من الخارج ليس عرزاً، فلا قطع بها، نعم الظاهر كون الباب الداخل وراء باب الحزز عرزاً باب الحزز فيقطع به، و كذا ما على الجدار داخلاً، فذا كسر الباب ودخل الحزز وأخرج شيئاً من أجزاء الجدار داخل يقطع.

مسألة 17 - يقطع سارق الكفن إذا نشب القبر و سرقه ولو بعض أجزائه المندوبة بشرط بلعوه حد النصاب، ولنتبس و لم يسرق الكفن لم يقطع و يعز، و ليس القبر حززاً لغير الكفن، فلو جعل مع الميت شيء في القبر فتبس و أخرجه لم يقطع به على الأحوط، ولو تكرر منه النشب من غير أخذ الكفن و هرب من السلطان قبل يقتل، وفيه ترد.

قول في يثبت به

مسألة 1 - يثبت الحد بالقرار بوجبة مرتين و بشهادة عدلين، ولو أقر مرة واحدة لا يقطع، ولكن يؤخذ المال منه، ولا يقطع بشهادة النساء منفصلات ولا منفردات، ولا شاهد وعين.

مسألة 2 - يعتبر في القر البلوغ والعقل واختيار القصد، فلا يقطع بقرار الصبي حتى مع القرار يقطعه بالسرقة، ولا بالأقرار المجنون ولو أدراراً دور جنونه، ولا بالكره ولا بالمال و الفاق ول النائم والساهي والمغمي عليه، فلو أقر مكرهاً أو بلا قصد لم يقطع، ولم يثبت المال.

مسألة 3 - لو أكره على القرار بضرب و نحو فأقر ثم أتي بالمال به عينه لم يثبت
stolen property, the liability for cutting of hands shall not be established unless there are circumstances that prove the theft of the thing entailing the liability for cutting of hands.

Problem # 4. If a person makes confession of theft twice but later repudiates himself, shall his hands be amputated or not? The second alternative shall be more cautious and preferable. If he repudiates himself after making confession once, the stolen property shall be seized from him, but his hands shall not be amputated. If he repents or denies after legal evidence has been adduced, his hands shall be cut off. But if he repents before the legal evidence is adduced or before making confession, the Hadd shall be set off from him. If, however, he repents after making confession, his hands shall certainly be amputated. Some of the jurists are of the opinion that the Imam has the authority either to pardon the culprit or amputate his hands.

IV-Detail for the Execution of the Hadd for Theft

Problem # 1. The Hadd for theft, when committed for the first time, shall be cutting off four fingers of the right hand from their end, leaving the thumb and the palm of the hand. If he commits theft for the second time, half of his left foot and part of portion meant for mash (drawing of wet fingers of hands on the bisection of the hair on the forehead and from the fingers of the feet to the ankle of the feet, as part of ablution, or wud lions, before the prayer or salat) may be left intact. If he commits the theft for the third time, he shall be sentenced for life. If he is indigent, his expenses shall be borne by bayt al-mal (or the state treasury). If he repeats the theft for the fourth time, even if in the prison, he shall be condemned to death.

Problem # 2. If the thief has committed theft several times without intervening execution of Hadd, a single Hadd shall be sufficient. If he repeats the theft after the execution of Hadd, his foot shall be amputated [in the manner explained above]. Then if he commits the theft again, he shall be imprisoned (for life). If he repeats the theft, he shall be condemned for death.

Problem # 3. The left hands of the culprit shall not be cut off if his right hand is intact, whether his right hand is crippled while his left hand is intact, or the case is reverse, or both the hands are crippled. Of course, if there is risk of death on the amputation of the crippled hand, based on a reasonable ground, as on medical report about it, it shall not be amputated by way of caution for the safety of his life. Whether, in case of such supposition, his left hand which is intact shall be cut off or the crippled left hand due to the risk in cutting the right hand excluding the left hand, is a question the answer according to the principles of law is in favour of not cutting it.

Problem # 4. If the thief has no left hand, even then, according to the generally accepted opinion, his right hand shall be cut off, but according to the authentic Tradition it shall not be cut off, though action is taken according to the generally received opinion. If at the time of the commitment of the theft, the thief's right hand is in tact, but later it is lost, his left hand shall not be amputated [in place of his right hand].
القطع إلا مع قيام قرائن قطعية على سرقتها ما يوجب القطع.

مسألة 4 - لو أقر مرتين ثم أنكر فهل يقطع أو لا؟ الأحوط الثاني، والأرجح الأول، ولو أنكر بعد الاقرار مرة يؤخذ منه المال ولا يقطع، ولو تاب أو أنكر بعد قيام البيئة يقطع، ولو تاب قبل قيام البيئة وقبل الاقرار سقط عنه الحد، ولو تاب بعد الاقرار يتحتم القطع وقيل: يتخير الإمام عليه السلام بين العفو وقطع.

الفعل في الحد

مسألة 1 - حد السارق في المرة الأولى قطع الأصابع الأربعة من مفصل أصولها من اليد اليمنى، وترك له الراحة والإبهام، ولو سرق ثانيا قطعت رجله اليمنى متحت قبة القدم حتى يبقى له النصف من القدم ومقدار قليل من محل الملح، وإن سرق ثالثا حبس دائم حتى يموت، ويجري عليه من بيت المال إن كان فقيراً، وإن عاد و سرق رابعاً ولو في السجن قتل.

مسألة 2 - لو تكررت منه السرقة ولم يتدخل الحد كني حد واحد، فلو تكررت منه السرقة بعد الحد قطعت رجله ثم لو تكررت منه حبس ثم لو تكررت قتل.

مسألة 3 - لا تقطع اليسار مع وجود اليدين سواء كانت اليدين شلاء و اليسار صحية أو العكس أو هما شلاء، نعم لو خفي الموت بقطع الشلاء لاحتمال عقلاني له منشأ عقلاني كأخبار الطبيب بذلك لم تقطع احتياطا على حياة السارق، فهل تقطع اليسار الصحيحة في هذا الفرض أو اليسار الشلاء مع الخوف في اليدين دون اليسار؟ الأشبه عدم القطع.

مسألة 4 - لم يكن للسارق يسار قطعت يدته على المشهور، وفي رواية صحية لا تقطع، و العم على المشهور، ولو كان له بين حين ثبوت السرقة فذهبت بعده لم تقطع اليسار.
Problem # 5. If a person commits theft, and he has no right hand, some jurist are of the opinion that, if it had been cut off by way of Qīsās, etc, and his left hand is intact, his left hand shall be cut off. If he has no left hand, his left foot shall be cut off. If he has no left foot, his maximum punishment shall be imprisonment. According to the opinion in conformity with the principles of Law, in all these cases, the Ḥadd shall be set aside, and it shall be shifted to Tauzir.

Problem # 6. If the executor of Ḥadd (ṣaḥallā or one inflicting the Ḥadd] cuts off the left hand of the culprit despite the knowledge of the law and the matter, he shall be liable for Qīsās, but cutting of the right hand for the theft shall not be set aside. If he amputates the left hand due to misunderstanding the law or the matter, he shall be liable for diyat. Whether cutting of the right hand shall thereby be set aside; according to the stronger opinion, the answer is in the affirmative.

Problem # 7. If the Ḥadd results in spread of infection, there shall be no liability on the judge or the executor of Ḥadd, irrespective of the Ḥadd being inflicted in summer or winter. Of course, it is approved to inflict the Ḥadd in summer in the morning or evening and in winter at the midday in order to abstain from the extremity of heat and cold.

V- Appendages to the Ḥadd for Theft

Problem # 1. If two persons commit theft [of property] reaching nisāb [the minimum quantity entailing the liability for Ḥadd] or more, but without the share of each of them reaching the nisāb, whether in such a case the hands of each of them shall be cut off or the hands of none of them shall be cut off, is a question the answer to which according to the opinion in conformity with the principles of law is in favour of the second alternative.

Problem # 2. If a person commits theft, but is not caught, and commits it again and is caught, and evidence is adduced once at a time against him for both times he committed theft, or he makes confession of having committed theft both times, for the first theft his [right] hand shall be cut off, but his [left] foot shall not be cut off for the second. Rather it is not far from being likely that the law shall be the same even if the witnesses for both the thefts are different, so that there are two witnesses testifying for the first and then two witnesses testifying for the second theft before the execution of the Ḥadd, or the culprit himself makes confession twice for the commitment of the first theft and twice for the commitment of the second theft before the execution of the Ḥadd. If the proof (ḥujjat) of first theft is finalized and the finalization of the proof of the second theft is stayed until the execution of Ḥadd for the first theft. Then his right is amputated [by way of execution of Ḥadd for the first theft], and then the proof for the theft is finalized. Then his (left) foot shall be cut off [by way of the execution of the Ḥadd for the second theft].

Problem # 3. If the legal evidence is adduced before the judge, or he confesses before the judge of having committed the theft, or the judge has the knowledge about [the commission of] the theft, the hands or feet of the thief shall not be cut off until the person whose property has been stolen demands it. If the owner of the property does not file a suit before the judge, the hands or feet of the thief shall not be amputated. If he excuses the thief before filing a suit before the judge, the Ḥadd shall be set aside. The same shall be the case if the owner of the property gifts it to the thief before filing the complaint before the judge. But if he files the suit before the judge, the Ḥadd shall not be
القول في اللوائح

مسألة 5 - من سرق وليست له اليمنى فإن كانت مقطوعة في القصاص أو غير ذلك وكان له اليسرى قطعته يساره، فإن لم تكون له أيضا اليسرى قطعت رجله اليسرى، فإن لم يكن له رجل لم يكن عليه أكثر من الحبس، والأشبه في جميع ذلك سقوط الحد والانتقال إلى التعزير.

مسألة 6 - لوقطع الحداد يساره مع العلم حكماً ووضوعاً فعلبه القصاص، ولا يسقط قطع اليمنى بالسرقة، ولو قطع اليسرى لاشتباه في الحكم أو الموضوع فعلبه الديبة. فهل يسقط قطع اليمين به؟ الأقوى ذلك.

مسألة 7 - سراية الحد ليست مضمونة لا على الحاكم ولا على الحداد وإن أقيم في حر أو برد، نعم يستحب إقامته في الصيف في أطراف اليهور وفي الشتاء في وسطه لتوقي شدة الحر والبرد.

مسألة 1 - لو سرق إثنا نصاباً أو أكثر بما لا يبلغ نصيب كل منها نصاباً فهل يقطع كل واحد منها أو لا يقطع واحد منها؟ الأشبه الثاني.

مسألة 2 - لو سرق ولم يقدر عليه ثم سرق ثاني فأخذ وأقيمت عليه البيئة بها جميعاً معاء دفعة واحدة أو أقر بها جميعاً كذلك قطعته بالأولى يده، ولم تقطع بالثانية رجله، بل لا يعد أن يكون الحكم كذلك لو تفرق الشهود فشهد إثنان بالسرقة الأولى ثم شهد إثنان بالسرقة الثانية قبل قيام الحد، أو أقر مرتين دفعة بالسرقة الأولى ومرتين دفعة أخرى بالسرقة الثانية قبل قيام الحد، ولو قامت الحجة بالسرقة ثم أمسكت حتى أقيم الحد وقطع يمينه ثم قامت الأخرى قطعته رجله.

مسألة 3 - لو أقيمت البيئة عند الحاكم أو أقر بالسرقة عنده أو علم ذلك لم يقطع حتى يطالبه السروق منه، فلولا رفعه إلى الحاكم لم يقطعه ولو عفا عنه قبل الرفع سقط الحد، وكذا لو وجبه المال قبل الرفع، ولو رفعه إليه لم يسقط الحد، و
set aside. The same shall be the case if he gifts the property to the thief after filing the suit before the judge. If a person steals some property, then before the filing of the suit and proving the case, the thief becomes the owner of the property through its purchase, or the like, the Hadd shall be set aside. But its takes place after that [the suit is filed and the case is established], the Hadd shall not be set aside.

Problem # 4. If a thief take away a property from its guarded place, and returns it to its place, then if it comes in the possession of the owner even though among his other belongings, the hands of the thief will not be amputated. If the thief returns it to its guarded place, but it does not come under the possession of its owner, as when it is destroyed before coming in the possession of the owner, then shall the hands of the thief be amputated? According to the opinion in conformity with the principles of law, the answer is in affirmative, though it is not free from confusion.

Problem # 5. If a group of persons break into the guarded place and one of them takes away some property from it, then the hands of that person alone shall be cut off. If one of them brings the property close to the gate and another takes it out, then the hands of the one who takes its out shall be cut off. If the person inside places it in the middle of the part broken into and another takes it away, then apparently the hands of the person inside shall be cut off. But if he places it in the midst of the gate that is the guarded place of the house, and that part is usually called neither inside nor outside the house, apparently hands of neither of them shall be cut off. If, however, he places the property in a way that half of it lies outside and another half inside, then if each of the halves reaches the minimum amount entailing Hadd, hands shall be cut off for each of the halves, if the outer part reaches the minimum limit entailing Hadd, hands of the insider shall be cut off, and if the internal half reaches the limit, the hands of the outsider shall be cut off.

Problem # 6. If a thief takes out a property in several parts the total reaching the minimum limit entailing Hadd, it is considered a single theft. For example, there is a heavy article having several parts and a thief takes it out in parts but without a long distance that may exclude it usually from being a single theft, his hands shall be cut off. If he takes away one part of it one night and another the next night, both combined reaching the minimum limit entailing the Hadd, his hands shall not be cut off. If he steals property equivalent to one half of the minimum limit from one guarded place and another half from another, according to the more cautious opinion, if not stronger, his hands shall not be cut off.

Problem # 7. If a man enters a guarded place and takes up property equivalent to the minimum limit entailing Hadd, but before he takes it out he is caught, his hands shall not be cut off. If in the property lying inside equivalent to the minimum limit, he does something that it reduces from the minimum limit entailing Hadd, and then takes it out, his hands shall not be cut off, as when he slaughters a sheep inside the guarded place or tears a cloth in pieces.

Problem # 8. If a person swallows something equivalent to the minimum limit entailing Hadd within the guarded place, and it is consumed within his stomach, as some food, his hands shall not be cut off. But if it is not consumed, but taking it out is difficult, neither his hand shall be cut off nor shall it be treated a theft. If, however, taking it out is not difficult, but for his own
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
habit, and he comes out while the thing is still inside his stomach, there are two alternatives relating to the amputation or non-amputation of his hands, the one in conformity with the principles of law being in favour of cutting his hands, in case swallowing in this way is to be treated a theft; otherwise, it shall not liable to amputation of hands.

CHAPTER SIX - HADD FOR A MUĦÂRIB

Problem # 1. A Muĥārib is one who displays his arms or prepares them in order to harass the people with the intention of creating disorder on earth, whether in the land or sea, in the city or elsewhere, in the day or at night, and after possessing what has been mentioned, it is not a condition that he must be one of the doubtful people, whether male or female. If a person with the intention mentioned here takes up arms while he is a weak person, and by his frightening no harassment is created, in treating him a muĥārib there is hesitation rather it is forbidden. If a person is weak, but not to the extent that by his frightening no one is harassed, but harassment is created some times and in some people, apparently he shall be treated to belong to such category.

Problem # 2. This does not apply to a ‘talî’, who is a person that is vigilant of the caravans and the like to inform his companions from among the highway robbers. Likewise, it does not apply to a ‘rad’ who is a person that assists in confiscation of property. Similarly it does not apply to a person who displays his sword or prepares his arms for frightening a muĥārib or ward off his depravity or prevent a person from one who has evil intentions against him that is hindering from depravity and not creating viciousness. It also does not apply to a minor, insane person or to a sportsman.

Problem # 3. If a man attacks another without arms to seize his property or to assassinate him it is permissible rather obligatory upon the other to defend himself even if it results in his assassination, but the law of muĥārib shall not apply to him. If a person frightens people with a whip, stick and stone, there shall be hesitation in the application of the law of muĥārib to him, rather its non-application in case of the first two is closer to the traditional authority.

Problem # 4. Muĥāraba is established by the confession made by the culprit once, and according to the more cautious opinion twice or by the testimony of two witnesses of reputed integrity. The evidence of women alone or in combination with men is not accepted in a case of muĥāraba. nor the evidence of the thieves and muĥārib ibs against one another, nor the evidence of those whose property has been stolen in favour of one another so that all of them may say: “These thieves confronted us and seized our property”. If some of them testify against others by saying: “They confronted us and took the property from those persons, not from us”, their testimony shall be accepted according to the opinion more in conformity with the principles of law.
الفصل السادس في حد المحارب

مسألة 1. المحارب هو كل من جرد سلاحه أو جهوزه لاحقة الناس و إرادة الافساد في الأرض، في بر كان أو في بحر، في مصر أو غيره ليلة أو نهارا، ولا يشرط كونه من أهل الريف مع تحقيق ما ذكر، ويستوي فيه الذكر والأنثى، و في ثبوت للمجرد سلاحه بالقصد الزنبر من كونه ضعيفا لا يحقق من إخافةه خوفا لأحد إشكال بل منع، نعم لو كان ضعيفاً لكن لا يكاد لا يحقق الخوف من إخافةه بل يحقق في بعض الأحيان و الأشخاص فالظاهر كونه داخلاً فيه.

مسألة 2. لا يثبت الحكم للطمع، وهو المراقب للقوافل و نحوها ليخبر رفيقه من قطاع الطريق، ولا للردة، وهو المعين لضبط الأموال، ولا من شهر سيفه أو جهوز سلاحه لاحقة المحارب و لدفع فساده أو لدفع من يقصده بسوء و نحو ذلك مماه و قطع الفساد لا إلا فساد، ولا للصغير و المجون، ولا للملاعيب.

مسألة 3. لو حمل على غيره من غير سلاح لأخذ ما له أو قتله جاز، بل وجب الدفاع في الثاني ولو أثير إلى قتله، لكن لا يثبت له حكم المحارب ولو أخاف الناس بالسوط و العصا و الحجر في ثبوت الحكم إشكال، بل عده أقرب في الأولين.

مسألة 4. تثبت المحاربة بالإقرار مرة، و الأحويز مرة، و بشهادة عدل، و لا تقبل شهادة النساء منفردة ولا منضمتة، ولا تقبل شهادة اللصوص و المحاربين بعضهم على بعض، ولا شهادة الأخذ منهم بعضهم لبعض بأن قالوا جميعا: تعرضوا لنا وأخذوا منا، و أما لو شهد بعضهم لبعض و قال: «عرضوا لنا و أخذوا من هؤلاء لا منا» قبل على الأشهاد.
Problem # 5. According to the stronger opinion, at the time of execution of the Ḥadd the judge may opt to give death sentence to the culprit, crucify him, cut his opposite organs or banish him. It is not far from better for him to keep in view the crime and opt what he deems suitable for it. If the culprit has murdered some one he may give him death sentence or crucify him. If the culprit has seized property, he may cut his hands. If he has displayed sword [or arms] and only harassed the people, he may banish him. The statements of the jurists and Traditions are quite confusing, but what we have mentioned is better.

Problem # 6. We have mentioned in the preceding Problem that the muḥārib shall be inflicted Ḥadd, irrespective of whether he has murdered a person or not, and whether the wālī al-dam [or the heir who is entitled to receive the blood-money for murder] has referred the case to a judge or not. Of course, in case of a murder the culprit shall be given death sentence by way of Qiṣāṣ provided the person murdered was an equal of the murderer. In case the culprit has been pardoned [by the heir of the person murdered], the judge may opt one of the following four punishments, no matter whether the murder was for demand of property or not. The same law shall apply if the culprit has committed injury and not murder, his wālī [or guardian] shall be entitled to have Qiṣāṣ. If the wālī wants to take Qiṣāṣ, the judge shall be authorized to opt any of the punishments mentioned above by way of executing Ḥadd. The same shall be the case if the wālī pardons the culprit.

Problem # 7. If the muḥārib repents before being arrested, the Ḥadd shall be set aside excluding the rights of people, namely, death, injury and property. If he repents after his arrest, his Ḥadd shall not be set aside.

Problem # 8. If a thief is proved to be a muḥārib, he shall be governed by the law mentioned before; otherwise, he shall be governed by the laws mentioned under the Section on ‘Enjoining what is good and forbidding what is abominable’.

Problem # 9. A muḥārib shall be crucified alive, and it is permissible to leave the dead body of the crucified person for more than three days. His dead body shall then be given funeral wash, wrapped in shroud, offered prayer and buried. If the culprit is alive, the judge shall make hurry in killing him by way of Ḥadd, according to the opinion of some jurists, but there is hesitation in accepting this opinion. Of course, it may be said that he shall be crucified in a way that consequently he dies, but this opinion is also not free from objection.

Problem # 10. When a muḥārib is banished from his homeland to another land, the ruler shall write to all the places where he seeks refuge to forbid mutual dinner, social contact, sale and purchase, wedding and consultation, according to more cautious opinion, it should not be for less than a year, even if he repents. If he does not repent, his banishment shall continue unless he repents. If he intends to go to the land of the polytheists, he shall be forbidden to do so. Some jurists are of the opinion that if the polytheists agree to let him enter their land and provide shelter to him, they must be fought against until they throw him out of their land.

Problem # 11. It is not a condition for the cutting of the hands of a muḥārib that he should have committed theft, let alone there should be condition of niṣāb or that of [stealing from] a
مسألة 5. الأقوى في الحد تخير الحاكم بين القتل والصلب والقطع خلفاً وائيماً، ولا يبعد أن يكون الأولى له أن يلاحظ الجناية ويختارها مناسبة، فلوقت اختيار القتل أو الصلب. ولو أخذ المال اختيار القطع ولو شهر السيف وأخوف فقط اختيار النفي، وقد اضطرت كلمات الفقهاء والروايات، والأولى ما ذكروا.

مسألة 6. ما ذكرنا في المسألة السابقة عن الحد المحارب سواء قتل شخصًا أو لا، سواء رفع ولي الدم أمره إلى الحاكم أو لا، نعم مع الرفع يقتل قصاصًا مع كون القتل كفواً، ومع عفوه فالحاكم يختار بين الأمور الأربعة، سواء كان قتله طلباً للمال أو لا، وكذا لو جرح ولم يقتل كان القصاص إلى الوالي، فلو أقصى كان الحاكم يختار بين الأمور المتقدمة حداً وكذا لو عفا عنه.

مسألة 7. لوتاب المحارب قبل القدرة عليه سقط الحد دون حقوق الناس من القتل والجرح والمال، ولوتاب بعد الظرف عليه لم يسقط الحد أيضاً.

مسألة 8. اللص إذا صدق عليه عوان المحارب كان حكمه ما تقدم إلا أنه أحكام تقدمت في ذيل كتاب الأمر بالمروف والنبي عن المنكر.

مسألة 9. يصب المحارب حياً، ولا يجوز البقاء مصلةً أكثر من ثلاثة أيام، ثم ينزل فإن كان ميتًا يفسل ويكفن ويلق عليه ويدفن، وإن كان حياً قبل يهتز عليه، وهو مشكل، نعم يمكن القول بجواز الصلب على نحوهم، فهو وأيضًا لا يخلو من إشكال.

مسألة 10. إذا نفي المحارب عن بلده إلى بلد آخر يكتب الوالي إلى كل بلد ينوي إليه بالمنع عن مؤاكلاه ومعاصرته ومباعته ومتاكحته ومشاركته، وأحوط أن لا يكون أقل من سنة وإن تاب، ولو لم يتب استمر النبي إلى أن ينوب، ولو أراد بلاد الشرك يمنع منها، قالوا: إن مكنوه من دخولها قزحوا حتى يخرجوه.

مسألة 11. لا يعتبر في قطع المحارب السرقة فضلاً عن اعتبار النصاب أو
guarded place (Hirz); rather the Imam [or the judge] shall have the authority [to execute the Hadd] immediately after the establishment of the crime of muhārib. If the hands and feet of the culprit are to be cut off, it is more cautious to begin with cutting his right hand and then cut his left foot. After cutting his right hand, it is better to wait till the bleeding stops, [after which his left foot is to be amputated]. If the culprit has no right hand or the right hand and the left foot both, the Imam [or the judge] may opt for some other punishment instead of cutting his right hand and left foot.

Problem # 12. If a culprit seizes property in a way other than muhārabah, he shall not be governed by the law of muhārabah, as when he seizes the property and escapes, or he seizes the property forcibly without displaying arms, or adopts some tricks in occupying the property as by means of forging the documents or letters, or the like. In such cases, the Hadd of mukhabah shall not be executed, nor the Hadd of theft, but he shall be liable to undergo Ta‘zir according to the discretion of the judge.

CONCLUSION RELATING TO OTHER PUNISHMENTS

1-Chapter on Irtidād or Apostasy

Problem # 1. Under the Section on Inheritance, we have already mentioned the two categories of an Apostate and some relevant laws. So Islam of a Murtad al-Fitri [an Apostate born of Muslim parents] shall apparently not be accepted [after he has once apostatized], and he shall be condemned to death if he is a male, but a woman shall not be condemned to death even if she is a Murtada al-Traina [woman born of Muslim parents], but shall be kept in life imprisonment, and she shall be given beating at the times of prayer, and she shall be subjected to tightening or scarcity of food. Her repentance shall be accepted. So if she repents, she shall be set free. A Murtad al-Milli [an Apostate born of non-Muslim parents] shall be asked to repent. On his refusal, he shall be condemned to death. According to more cautious opinion, he shall be asked to repent for three days, and on the fourth day he shall be condemned to death.

Problem # 2. It is a condition for the enforcement of law of apostasy that the apostate must be adult, sane, and having free will and intention. So the apostasy of a minor body has not legal value, even if he is an adolescent, nor of a lunatic, even if has periodical lunacy, nor of one under duress (mukreh), or one acting without intention as one acting as a joke, by mistake, out of negligence and in a state of stupor. If a person becomes apostate in a state of anger in which he has lost control on himself, he shall not be governed by the law of apostasy.

Problem # 3. If some indications appear in a person that lead to apostasy, and he claims to be acting under duress with the existence of its likelihood, or lack of intention or slip of tongue with the existence of its likelihood, such excuses shall be accepted from him. If some evidence
القول في الارتداد

القول في الارتداد

خاتمة في سائر العقوبات

مسألة 1 - ذكرنا في المبارات المرتد بقسامه وبعض أحكامه، فالرازي لا يقبل إسلامه ظاهراً، ويفت قاتل إن كان رجلاً، ولا تقتل المرأة المرتدة ولو عن فطرة، بل تسحب دائماً وتضرن في أوقات الصلاوات، ويصبر عليها في الفيضة، وتنقل توبتها، فإن تابع أخرجت عن الحبس، ولمدة الملي يستنبات، فإن امتنع قتل، والأحوزة استنابته ثلاثة أيام، وقتل في اليوم الرابع.

مسألة 2 - يعتبر في الحكم بالارتداد البلوغ والعقل والاختيار والقصد فلا عبرة بردة الصبي وإن كان مراهقاً، ولا المجنب وإن كان أدرارياً ولا المكره، ولا مما يقع بليغ قد كاهنان الساهي والنافل والاعلم عليه، ولو صدر منه حال غضب غالب لا يملك مع نفسه لم يحكم بالارتداد.

مسألة 3 - ونظر منه ما يوجد بالارتداد فادعى الأكراه بعموم القصد وسبق اللسان مع احتماله دفع منه، ولو قامت البيعة على صدور كلام
is produced about some utterance by him leading to apostasy, and he brings forth the excuses mentioned before, his claim shall be accepted.

Problem #4. A child born to a Murtad al-Millī before his apostasy shall be treated as a Muslim. If he becomes an infidel after attaining adulthood, he shall be asked to repent. If he repents, (well and good), otherwise he shall be condemned to death. Likewise, the son of a Murtad al-Fitrī born before his apostasy shall be treated as a Muslim. If he becomes an infidel after attaining adulthood, and similarly the son of a Muslim who becomes an infidel after attaining adulthood before announcing their Islam, apparently both of them shall not be treated as a Murtad al-Fitrī, but shall be asked to repent, [if they repent, well and good, but if they refuse] they shall be condemned to death.

Problem #5. If a Murtad al-Millī repeats apostasy [after once having repented], he shall be condemned to death after he apostatizes for a third time, and according to some jurists, for the fourth time, and this is a more cautious opinion.

Problem #6. If a Murtad al-Millī becomes insane after apostasy but before he is asked to repent, he shall not be condemned to death. But if he becomes insane after having been asked to repent and after his refusal leading to the permissibility of shedding his blood, he shall be condemned to death, as a Murtad al-Fitrī is condemned to death when he suffers insanity after apostasy.

Problem #7. If a person kills a Murtad al-Millī subsequent to his repentance under the impression that he has still been apostate, some jurists are of the opinion that the killer shall be liable to undergo Qiṣāṣ. But according to the stronger opinion, he shall not be liable to Qīṣāṣ. Of course, he shall be liable to pay Diyar from his property.

Problem #8. If an apostate kills a Muslim deliberately, his wali (or guardian shall be entitled to kill the murderer by way of Qiṣāṣ. That will be precedent to his death sentence for apostasy. If the wali [of the Muslim killed by the apostate] pardons him or compromises on payment of money, the killer shall be condemned to death due to apostasy.

Problem #9. An apostasy is proved by the testimony of two witnesses of reputed integrity and by the confession of the apostate. It is more cautious that the apostate must confess twice. But it is not established by the testimony of women alone or accompanied by men.

II-Chapter on Coition with Animals (Bestiality) and Dead Bodies

Problem #1. The punishment for coition with animals is Taʿzīr that depends on the discretion of the judge. In it is a condition that the culprit must be an adult, sane and having free will and without any doubt in case there is likelihood for it. So there is no Taʿzīr for a minor boy even if he is discreet and whom the judge shall give chastisement according to what he deems advisable provided chastisement is effective in him.

So also there shall be no Taʿzīr for a lunatic even if periodical when he commits the crime during the period of lunacy. Similarly, there shall be no Taʿzīr for one acting under duress, or for one
منه موجب للارتداد فادعى ما ذكر قبل منه.

مسألة 4 - ولد المرتد الملي قبل ارتداده بحكم المسلم، فلبلغ واختار الكفر استتب، فإن تاب و إلا قتل، وكذا ولد المرتد الغزلي قبل ارتداده بحكم المسلم، فإذا بلغ و اختار الكفر و كذا ولد المسلم إذا بلغ و اختار الكفر قبل إظهار الإسلام فالظهار عدم إجراء حكم المرتد فظرياً عليها، بل يستتابان، و إلا فيقتلان.

مسألة 5 - إذا تكرر الارتداد من الملي قبل: يقتل في الثالثة، وقيل يقتل في الرابعة، وهو أحوط.

مسألة 6 - لجن المرتد الملي بعد ردته و قبل استتابته لم يقتل، و لو طرأ الجنون بعد استتابته و امتناعه المباح لقتله يقتل، كما يقتل الفطري إذا عرضه الجنون بعد ردته.

مسألة 7 - لو تاب المرتد عن ملة قتله من يعتقد بقاءه على الردة قبل عليه القود، و الأقوى عدهم، نعم عليه الديبة في ماله.

مسألة 8 - لو قتل المرتد مسلماً عمداً فللولي قتله قوداً، و هو مقدم على قتله بالردة، و لو عفا الوالي أو صالحه على مال قتل بالردة.

مسألة 9 - يثبت الارتداد بشهادة عدلين و بالادرار، و الأحوط إقراره مرتين، ولا يثبت بشهادة النساء منفردات ولا منضماً.

القول في وطاء البهيمة والميلت

مسألة 1 - في وطاء البهيمة تعزير، و هو منوط بنظر الحاكم، و يشترط فيه البلوغ و العقل و الخيار و عدم الشبهة مع إمكانها، فلا تعزير على الصبي و إن كان مميزاً يؤثر فيه التدبير أديب الحاكم بما يراه، ولا لجلون و لو أدوراً إذا فعل في دور جنونه، ولا على المكره ولا على المشتبه مع إمكان الشبهة في حقه.
labouring under some doubt in case there is likelihood of doubt in his favour as regards the law and
the matter.

Problem # 2. This crime is established by the testimony of two witnesses of reputed integrity,
but not by the testimony of women, alone or in combination with men. It is also established by
the confession of the culprit if the animal [subjected to the act] belongs to him, otherwise there
shall be liability for Taʿzir by his confession, but the law shall not apply to the animal
[subjected to the act] except when it is confirmed by the owner.

Problem # 3. If a person repeats the act, and there has been no intervening Taʿzir, he shall not
be given any punishment other than Taʿzir, but if there has been an intervening Taʿzir, then
according to the more cautious opinion, the culprit shall be condemned to death after he
commits the act for the fourth time.

Problem # 4. The Ḥadd for coition with a dead body of a woman is like the Ḥadd for coition
with a living woman, namely, rajm in case of Ḵişān, [i.e., in case of his being a muḥṣān, or
married], and Ḥadd in case otherwise according to the details already mentioned under the
Section on Zināʾ. But in this case the sin and crime is more atrocious and of greater
significance, and so he shall be liable to Taʿzir according to the discretion of the judge in
addition to Ḥadd, though there is some hesitation in accepting this opinion. If a person has
coition with his dead wife, he shall be liable to Taʿzir without Ḥadd. In case of sodomy with a
dead body, the culprit shall be liable to the Ḥadd for Sodomy with a living person, and shall be
given Taʿzir due to the atrocity of the crime, though there is some hesitation in accepting this
opinion.

Problem # 5. For the establishment of Ḥadd for coition with a dead body, there are the same
conditions as required [for Zināʾ] with a living person, namely, adulthood, sanity, free will and
absence of doubt.

Problem # 6. The Zināʾ with a dead woman and sodomy with a dead body are established by
the testimony of four men, and according to the opinion of some jurists by the testimony of
two witnesses of reputed integrity, but the first opinion is more in conformity with the
principles of law. They are not proved by the testimony of women, alone or in combination
with men, nor by the testimony of three men and two women in case of coition with a dead
woman, according to the more cautious opinion, in case of a dead man, according to the
stronger opinion. They are also established by the confession made by the culprit four times.

Subsidiary Law: If a person performs masturbation with the help of his hand or other organs
of his body, he shall be inflicted Taʿzir, the amount of which shall be determined according to
the discretion of the judge. It is established by the testimony of two witnesses of reputed
integrity, or confession of the culprit. But it is not established by the testimony of women,
alone or in combination with men.
As regards the punishment for the sake of defence, we have already mentioned its problems
under the Section on ‘Enjoining what is good and forbidding what is abominable’.
عكراً أو موضوعاً

مسألة 2 - يثبت ذلك بشهادة عدلين، ولا يثبت بشهادة النساء لا منفردات ولا منظمات، وبالإقرار إن كانت البيعة له، وإن لم يثبت التعزير باقراره ولا يجري على البيعة سائر الأحكام إلا أن يصدقه المالك.

مسألة 3 - لو تكرر منه الفعل فان لم يتخلله التعزير فليس عليه إلا التعزير، ولو تخللته فالأحوث قتله في الرابعة.

مسألة 4 - الحد في وطأ المرأة الميتة كالحد في الحية رجاً مع الاحسان وحداً مع عدمة بفصل مر في حد الزنا، والام والجناية هنا أفحس و أعظم، وعليه تعزير زائداً على الحد بحسب نظر الحاكم على تأمل فيه، ولو وطأ امرأته الميتة فعليه التعزير دون الحد، وفي اللواط بالميت حد اللواط بالحي ويعزز تغليظاً على تأمل.

مسألة 5 - يعتبر في ثبوت الحد في الوطأ بالميت ما يعتبر في الحي من البلوغ والعقل والاختيار وعدم الشهبة.

مسألة 6 - يثبت الزنا بالميتة، واللواط بالميتة أربعة رجال. وقيل يثبت بشهادة عدلين، والأول أشبه، ولا يثبت بشهادته النساء منفردات ولا منظمات حتى ثلاثة رجال مع أمر أثين على الأحوث في وطأ الميتة، وعلي الأقوى في الميت، وبالإقرار أربع مرات.

فع: من استمتن بيده أو بغيرها من أعماله عزر، ويقدر بنظر الحاكم وثبت ذلك بشهادة عدلين والإقرار، ولا يثبت بشهادته النساء منظمات ولا منفردات.

وأما العقوبة دفاعًا فقد ذكرنا مسائلها في ذيل كتاب الأمر بالمعروف و الني عن المنكر.
SUPPLEMENT ON LAWS RELATING TO THE AHL AL-DHIMMA (DHIMMIS)

I-Chapter on Those who are levied Jizya

Problem # 1. Jizya is levied from the Jews, Christians from among the Ahl al- Kitāb [‘People of Scriptures’; Followers of the Prophets on whom Divine Scriptures have been revealed] and likewise those who are resembling Ahl al-Kitāb who are Majūs (Zoroastrians), whether they belong to different sects, like Catholics and Protestants, etc., though they may have differences in the non-fundamental and some fundamental beliefs but after all belonging to one of the sects.

Problem # 2. Jizya is not levied on other categories of the infidels and polytheists other than the above [three] categories, like the idolators, or worshippers of the stars, etc., whether Arabs or non-Arabs, without there being any difference between those who are attached to the Prophets who have a divine scripture like Abraham and David (A.S.) and other than them. Except for the above three categories nothing will be accepted but Islam or death sentence. Likewise nothing shall be accepted from those who claim to attribute themselves to Jews, Christians or Majūsis subsequent to the rejection of their Scriptures by Islam. All those who attribute themselves to the warring tribes shall be equal whether they are polytheist or other discarded sects.

Problem # 3. The above three categories [of Ahl al-Kitāb] may stick to their faith if they fulfill the conditions of being Dhimmi mentioned hereunder, irrespective of their being Arab or non-Arab, or those belonging to their descendants, so that they may continue to stick to their faith with the conditions prescribed for them, and Jizya shall be accepted from them.

Problem # 4. If a person changes his faith belonging to other than the three categories [of ahl al-Kitāb] to one of the sects, if it was prior to the cancellation of their shari‘at, they may continue to stick to their sect, and if it was subsequent to that, they shall not continue to stick to their sect, and Jizya shall not be accepted from them, and they shall be treated like the infidels other than the Ahl al-Kitāb. If a Muslim abandons Islam and professes a faith other Islam, he shall be an apostate whose laws have been mentioned under the chapter on Apostasy.

Problem # 5. If the Muslims besiege some polytheists and they claim to belong one of the three categories of Ahl al-Kitāb, their claim shall be accepted if they agree to pay Jizya, and
تتمة فيها أحكام أهل الذمة

القول فيمن تؤخذ منه الجزية

مسألة 1 - تؤخذ الجزية من اليهود و النصارى من أهل الكتاب ومن له شهبة كتاب، وهم المجوس، من غير فرق بين المذاهب المختلفة فيهم كالفاضلية و البروتستانتية وغيرهما وإن اختلفوا في الفروع و بعض الأصول بعد أن كانوا من إحدى الفرق.

مسألة 2 - لا تقبل الجزية من غيرهم من أصناف الكفاح والمرتكبين كعباد الأصنام والكواكب و غيرها، عرباً كانوا أو عجمياً، من غير فرق بين من كان منتصباً إلى من كان له كتاب كابراهم و داود وغيرهما عليهم السلام و بين غيره، فلا يقبل من غير الطوائف الثلاث إلا الإسلام أو القتال، وكذا لا تقبل من تنصر أو تهدّد أو تمجس بعد نسخ كتبهم بالإسلام، ففلما خلق في الطوائف حربي سواء كان مشرك أو من سائر الفرق الباطلة.

مسألة 3 - الفرق الثلاث إذا النزموا بشرائط النذمة الآتية أقرروا على دينهم سواء كانوا عرباً أو عجماً، وكذلك من كان من نسلهم، فانه يقرّ على دينه بشرعته، و تقبل منهم الجزية.

مسألة 4 - من انتقل من دينه من غير الفرق الثلاث إلى إحدى الطوائف فان كان قبل نسخ شرائعهم أقروا عليه، وإن كان بعده لم يقرأو ولم تقبل منهم الجزية، فحكمهم حكم الكفاح غير أهل الكتاب، ولو انتقل مسلم إلى غير الإسلام فهو مرتد ذكرنا حكمه في بابه.

مسألة 5 - لو أباح المسلمون بقوم من المشركين فادعوا أنهم أهل الكتاب من
they may continue to stick to the faith they have adopted without there being any necessity for them to produce evidence [in favour of their claim]. If some of them claim to belong to Ahl al-Kitāb, while others repudiate their claim, the statement of the claimant shall be endorsed and the statement of the repudiator against them shall not be accepted. If subsequent to the agreement for the payment of Jizya it is proved by their admission or legal evidence, etc., that they do not belong to Ahl al-Kitāb, the agreement shall be rescinded.

Problem # 6. No Jizya shall be charged from children, lunatics and women. Whether Jizya shall be excused from decrepits, paralytics, blind persons and miserable persons, is a question in whose answer there is confusion; and according to the opinion in conformity with the principles of law, Jizya shall not be excused from such persons. Jizya shall be charged from all persons except those who have been granted exemption, including even the monks [rather, ascetics] and poor persons, but it shall be delayed until the poor persons become capable to pay Jizya.

Problem # 7. It is not permissible to include in the agreement for Dhimmis the stipulation for Jizya or part thereof from women, and if any such stipulation is incorporated in the agreement, it shall be cancelled. If the Muslims besiege a fort of Ahl al-Kitāb and kill their men prior to concluding the agreement, and then their women ask to let them continue to stick to their faith by paying Jizya, it shall not be valid. The same shall be the rule if they ask to continue to stick to their faith subsequent to the conclusion of the agreement.

Problem # 8. There is no Jizya on a perpetual lunatic. If he recovers for a year, he shall be liable for the payment of Jizya. If he recovers for some time and becomes insane for some time, some jurists are of the opinion that action shall be taken according to his condition most of the time, but there is some hesitation in it, and there is also hesitation and ambiguity in the establishment of jizya on him.

Problem # 9. Every child from among the Ahl al-Kitāb attains adulthood shall be asked either to embrace Islam or pay Jizya. If he refuses [to do either], he shall be declared one at war (with the state). It is indispensable for the children [of Ahl al-Kitāb] after attaining adulthood to conclude agreement [for the payment of Jizya], and the agreement concluded with their ancestors concerning them is not sufficient.

If they enter into an agreement, they shall be charge Jizya after the start of their year and their year shall not be included in the year of their ancestors. If they attain adulthood in a state of idiocy, then apparently their agreement shall depend on the permission of their guardians.

Problem # 10. If a person [from Ahl al-Kitāb] opts for being at war [with the state] by refusing to embrace Islam or pay Jizya, he shall be sent back to his place of shelter, and it is not permissible to condemn him to death, as his security is included in the peace granted to his father.

II - Chapter on Quantum of Jizya

Problem # 1. There is neither any prescribed quantum of Jizya nor any limit for it. Rather it is up to
الثلاث يقبل منهم إذا بذلوا الجزية، ويقرأوا على ما ادعوا، ولم يكثفوا البنية، ولواحد يعنى أن أهل الكتب و أنكر بعض يقر المدعى ولا يقبل قول غيره عليه، ولو تثبت بعد عقد الجزية بقرار منهم أو بنية أو غير ذلك أنهم ليسوا أهل الكتاب أنتقض العهد.

مسألة 6 - لا تؤخذ الجزية من الصبيان والأجانين والنساء، وهل تسقط عن الشيخ القاني والمقعد والأعمى والمتعوه؟ فيه ترد، ولا يشبه عدم السقوط. و تؤخذ من عدا ما استثنى، ولو كان وهابا أو فقراء، لكن ينبغي ما يسر الفقراء.

مسألة 7 - لا يجوز في عقد الدّنّة اشتراط تجارة الجزية في بعضها على النساء، ولو اشتراط بطل الشرط، ولو حاصر المسلمون حصنًا من أهل الكتاب فقلوا الرجال قبل العقد فسألت النساء إقرارهن ببذل الجزية لا يصح و كذا لو كان سؤال الإقرار بعد العقد.

مسألة 8 - لا جزية على الجنون مطبيقًا، فلا أفق أحولًا، ولا أفق وقتًا، ولا جبر على ولو أفاق وقتًا و جن وقتًا قبل يعمل بالأغلب، وفيه اشكال، وفي ثوبها عليها إشكال و ترد.

مسألة 9 - كل من بلغ من صبيانهم يؤمر بالاسلام أو الجزية، فإن امتنع صار حربيا، ولا يد في الصبيان بعد البلوغ من العقد معهم، ولا يكفي العقد الذي مع آبائهم عنهم، ولو عقدوا أخذت الجزية منهم بحلول الحول لا يدخل حولهم على حول آبائهم، ولو بلغوا سفهًا فالظاهر أن العقد موقوف على إذن أولائهم.

مسألة 10 - إذا اختار الحرب و امتنع عن الإسلام و الجزية رد إلى مأمنه، ولا يجوز اغتياله، فإنه داخل في أمان أبيه.

القول في كمية الجزية

مسألة 11 - لا تقدير خاص في الجزية ولا حد لها، بل تقديرها إلى الوالي
the ruler to prescribe its amount according to what he deems advisable in consideration of the interests of time and place and present requirements.

It is better that he should not fix any amount in the agreement for Dhimmis and leave it to the Imām to face the humiliation and affront (mentioned in the Qur’ān).

**Problem # 2.** It is permissible for a ruler to fix the Jizya per head or per amount of land or both. Rather he is authorized to impose Jizya on cattle, trees and landed property as he deems advisable.

**Problem # 3.** If, in the agreement of the Dhimmis, the ruler prescribes Jizya per head, he shall not be authorized to charge anything on their lands, etc. Likewise, if he prescribes Jizya on the lands, it shall not be permissible to charge it per head. So also if he prescribes Jizya on both, it shall not be permissible for him to transfer it to one of them. In short, it is indispensable to act according to the conditions [provided in the agreement].

**Problem # 4.** If he prescribes an amount of Jizya in a year per head or on lands, etc., it shall be permissible for him to raise or reduce it next year, or prescribe it on one of them excluding the other or prescribe it on all the items.

**Problem # 5.** If the ruler has not determined Jizya and has left it to the Imām (or judge), the latter is authorized to prescribe it in whatever way and to whatever extent and on whatever items.

**Problem # 6.** It is permissible for him to stipulate something in addition to Jizya for providing food for the Muslim wayfarers, whether soldiers or the like. Apparently it is necessary to fix the time for providing the food, for one or three days.

It is also permissible to leave the mode of providing food to the prevailing custom and usage of the people of the community excluding the people of the other community who are considered impure (najis).

**Problem # 7.** Jizya is like Zakāt (Poor-rate) and Kharāj (land tax) and it is also collected every year. Apparently it is permissible to stipulate its payment at the beginning or the year or at the end or middle of the year.

If it is left unconfined, then apparently it shall be payable at the end of the year. If in the meantime the Dhimmi embraces Islam before the beginning of the year, or after it before the payment of Jizya, or before its payment when it is prescribed to be paid at the beginning of the year, its payment shall be set aside.

**Problem # 8.** If the Dhimmi embraces Islam, irrespective of whether his embracing Islam may be due to the motive of exemption from payment of Jizya or not, apparently it shall be set aside. The opinion that it shall not be set aside for the former motive is weak.
لا يقرأها في عقد الذهب و يجعلها على نظر الإسلام عليه السلام تحقيقًا للصغار و الذل.

مسألة 2 - يجوز للوايلي وضعها على الرؤوس أو على الأراضي أو عليها معاً، بل له أن يضعها على المواشي والأشجار والمستغلات بما يراه مصلحة.

مسألة 3 - لو عين في عقد الذهب الجزية على الرؤوس لا يجوز بعده أخذ شيء من أراضيه و غيرها، ولو وضع على الأراضي لا يجوز بعده الوضع على الرؤوس، ولو جعل عليها لا يجوز النقل إلى إحداها، و بالجملة لا بد من العمل على طبق الشرط.

مسألة 4 - لو وضع مقداراً على الرؤوس أو الأراضي أو غيرها في سنة جاز له تغييره في السنين الآخر بالزيادة والنقصة أو الوضع على إحداها دون الأخرى أو على الجمع.

مسألة 5 - لو طرح التقدير و جعل على نظر الإمام عليه السلام فله الوضع أي نحو و بآي مقدار و بأي شيء شاء.

مسألة 6 - يجوز أن يشترط عليهم زائداً على الجزية ضيافة مارة المسلمين عسكراً كانوا أم لا، و الظهر لزوم تعين زمان الضيافة كيوم أو ثلاثة أيام، و يجوز إيكال كيفية الضيافة إلى العرف و العادة من ضيافة أهل غرب أهلها من يرى نجاستهم.

مسألة 7 - الجزية كالزكاة و الخراج تؤخذ كل حول، و الظهر جواز اشترط الأداء عليهم أول الحول أو آخره أو وسطه، ولو أطلق فالظهر أنها تجب في آخر الحول، فحينئذ إن أسلم الذمي قبل الحول أو بعده قبل الأداء أو قبل الاداء إذا شرط عليه أول الحول سقطت عنه.

مسألة 8 - الظهر سقوطها بالإسلام سواء كان إسلامه لداعي سقوتها أولاً، و التقول بعده في الأول ضعيف.
Problem # 9. If a Dhimmi dies after a year, the Jizya shall not be set aside and it shall be deducted from the property left by him. If he dies in the midst of the year, then if it is stipulated that he is required to pay the Jizya at the beginning of the year, the same action shall be taken. If it is stipulated to be paid in the midst of the year and he dies after the maturity of the period, the same action shall be taken. If it is to be charged monthly, it shall be collected according to the monthly amount. If it is stipulated to be charged at the end of the year, that means that the debt shall be repaid at the end of the year, but he dies before it, he shall not be charged anything. If stipulated to wait until the end of the year, it shall be charged. Is his heir entitled to delay it till the end of the year or not, is a question in whose answer there is hesitation, though it is not far from likely to make hurry in its collection like other debts.

Problem # 10. It is permissible to levy Jizya on the value of the forbidden things as wine, pigs, mayta (meat of an animal not slaughtered according to the ritual requirements of Islam), or the like, irrespective of whether they have paid it or left it to be paid by the customer when he happened to be from among their community. It is not permissible to receive the original prohibited things by way of Jizya.

Problem # 11. Apparently the Jizya in the present time is to be spent like the tax on lands. It is not far from being likely that the Jizya as well as the tax on lands and other taxes are to be spent in the interest and benefit of Islam and Muslims, though some of the items are prescribed to be spent for definite purposes.

Problem # 12. The conclusion of agreement for the Dhimmis rests with the Imam and in his absence with his deputy if he has the power to do so. In the present time if the agreement is concluded by a tyrant ruler, it is our duty to arrange it properly and receive the Jizya from him as we receive the prizes and money for some expenditures, and as a result of the agreement concluded with him the Dhimmis shall be excluded from the list of those at war [with the state].

Problem # 13. The property on which Jizya is levied according to the agreement shall be according to the discretion of the judge including cash money or other unessential material like articles meant for decoration and pomp and show (hasham), etc.

III-Chapter concerning Conditions for being a Dhimmi

First. Acceptance of Jizya according to the discretion of the Imam or the ruler of the Muslims per head or on the lands or both or other articles, or all of them.
Second. The Dhimmis must not do anything against the assurance of protection (amân) like intention to wage war against the Muslims and support the polytheists.
مسألة 9 - لومات النمي بعد الحول لم تسقط وأخذت من تركته ولومات في أبنائه فإن شرب عليه الأداء أول الحول فكذلك، وإن شرب في أبنائه وأمط بعد تحقيق الشرط فكذلك أيضاً، وإن وزعت على الشهر فتؤخذ بمقداره، وإن وضعت عليه آخر الحول يعني أن يكون حصول الدين في آخره فاقت عليه لم تؤخذ شيئاً، وإن وضعته عليه وشرط التأخير إلى آخره تؤخذ، فهل لوارثه التأخير إلى آخره أو لا؟ فيه تأمل، وإن لا يبعد تعجيلها كسائر الديون.

مسألة 10 - يجوز أحد الجزية من أثمان المحرومات كالحمض والخنزير والميتة ونحوها، سواء أدوها أو أحالوا إلى المشترى منهم إذا كان منهم، ولا يجوز أخذ أعيان المحرومات جزية.

مسألة 11 - الظاهر أن مصرف الجزية الآن هو مصرف خراج الأراضي، ولا يبعد أن يكون مصرفها وكذا مصرف الخراج وسائر الماليات مصالح الإسلام والمسلمين وإن يعى مصرف بعض الأصناف في بعض الأموال.

مسألة 12 - عقد النذمة من الإمام عليه السلام في غبيته من نائيه مع بسط يده، وفي الخال لو عقد الجائر كان لنا ترتيب آثار الصحة وأخذ الجزية منه، كأخذ الجوائز والآجرة، وخرجوا بالعقد معه عن الحربي.

مسألة 13 - المال الذي يجعل عليه عقد الجزية يكون بحسب ما يراه الحاكم من النقود أو العروض كالخليط أو الأحشام وغيرها.

القول في شرائط النذمة

الأول - قبول الجزية بما يراه الإمام عليه السلام أو والي المسلمين على الروؤس أو الأراضي أو هما أو غيرها أو جميعها.

الثاني - أن لا يفعلوا ما ينافي الأمان مثل العزم على حرب المسلمين وإمداد المشركين.
Problem # 1. Contravention of these two conditions entails expulsion from the status of a Dhimmī. Rather the first of the two conditions is the basis of the agreement for being a Dhimmī, while the other is one of the requirements of peace and security. It would be better if these two are not counted among the conditions. If the Dhimmīs act in contravention of assurance of protection (amān), they shall be considered violators of the agreement and expelled from the list of Dhimmīs, whether such conditions are incorporated in the agreement or not.

Third. They should not publicly display what is repugnant among us (Muslims) as drinking wine, committing Zinā’, eating pork and marrying women within prohibited degrees.

Fourth. Acceptance of enforcement of the laws of Muslims on them as the fulfillment of the duty and abandoning the prohibited acts and enforcement of the limits (Hudūd) of Allāh, the Exalted, and the like. It is more cautious to impose such conditions on them.

Problem # 2. If such conditions are incorporated in the agreement of Jizya and they oppose them, the agreement shall be considered broken and they to be expelled from the status of Dhimmīs. Rather it is likely that the violation of these two conditions may induce cancellation of the agreement itself absolutely, and they shall be expelled from the status of Dhimmīs due to their denial and opposition of the agreement, even if they are not stipulated [in the agreement].

Fifth. They should not molest the Muslim as by committing Zinā’ with their women and sodomy with their sons and theft of their property, harbouring the spies of the polytheists and spying for them. It is not far from being likely that the last two acts particularly the second of them may be repugnant to assurance of protection (amān) and the necessity of abandoning them among its requirements.

Sixth. They should not build churches and synagogues, should not blow church-bells and should not raise the height of buildings. If they violate these conditions, they should be given Ta’zīr.

Problem # 3. These two conditions are also like conditions numbers third and fourth, and it is likely that their violation by them may be considered tantamount to absolute breach of the agreement and violation of its conditions, and some jurists have raised the possibility that the violation of what has been stipulated as something on which assurance of protection (amān) depends nor as a condition incorporated in the agreement, and there is no doubt in the breach of the agreement with such supposition.

Problem # 4. If the Dhimmīs commit some crime entailing Ḥadd or Ta’zīr, action will be taken against them as required by law. If they vituperate the Prophet, pbuh, or the Imāms, (A.S.), or (Ḥadrat) Fāṭimah, (S.A.), which is not very far from likelihood, the vituperator shall be condemned to death. If, however, they condemn them by using words less than abuse, they shall be given Ta’zīr. If abstention from it is stipulated in the agreement, according to an
مسألة 1 - مخالفة هذين الشرطين مستلزمة ل الخروج عن النزوة، بل الأول منها من مقومات عقد الجزية والثاني منها من مقتضيات الأمان، ولو لم يعد شرطاً كان حسنًا، ولو فعلوا ما ينافي الأمان كانوا ناقضين للنزوة ب خارج عن النزوة، اشترط عليهم أم لم يشترط.

الثالث - أن لا يظهروا بالمنكرات عندنا كشرب الخمر و الزنا و أكل لحم الخنزير و نكاح الخمرات.

الرابع - قول أن تجري عليهم أحكام المسلمين من أداء حق أو ترك حرم أو إجراء حدود الله تعالى و نحوها، والأحوضة اشترط ذلك عليهم.

مسألة 2 - لو شرط هذان القسمان في عقد الجزية فخلالفوا نقض العهد و خرجوا عن النزوة، بل يحتتم أن يكون مخالفة هذين أمراً موجبة لنقض العقد مطلقًا، فخيرجرون عنها بالامتناع و المخالفة وإن لم يشترط عليهم.

الخامس - أن لا يؤذوا المسلمين كالزنا بنائاتهم و اللواط بأنانيتهم و السرقة لأموالهم و إيواء عين المشركين و التجسس لهم، و لا يعد أن يكون الأخيران سواء الثاني منها من مقدسات الأمان و لزم تركهما من مقتضياته.

السادس - أن لا يجدوا كنيسة و لا يضردوا ناقوساً و لا يطيعوا بناءً، ولو خالفوا عزروا.

مسألة 3 - هذين الشرطين أيضاً كالثالث و الرابع يحتتم أن يكون مخالفتهم فيها ناقصاً للنزوة مطلقًا، و يحتتم أن يكون ناقصاً مع الاشترط، و احتتم بعضهم أن يكون النزوة فإذ اشترط بنحو تعليل الأمان لا الشرط في ضمن عقده، ولا شيء في النقض على هذا الفرض.

مسألة 4 - لو ارتكبوا جناية توجب الحد أو التتعزير فعل بهم ما يقتضيه، ولو سبوا النبي صلى الله عليه و آله و أمة عليهم السلام أو فاطمة الزهراء سلام الله عليها على احتمال غير بعيد قتل السب كغيرهم من المكلفين، ولو نالوه بحادث السب عزروا، ولو اشترط في العقد الكف عن نقض العهد على قول، ولو عنق
opinion, it may be tantamount to breach of the agreement. If the assurance of protection has been made dependent on abstention from it, its violation shall be treated as breach of the agreement.

**Problem # 5.** If the incorporation of the provision of Jizya in the agreement [of Dhimmis] has been forgotten, the agreement shall be declared invalid. As regards the invalidation of the agreement due to the non-incorporation of the four conditions mentioned above, there is hesitation. If it is said that the agreement shall not be invalidated, it would be better, but it shall be necessary for them to comply with the laws of Islam even if its stipulation has not incorporated in the agreement and in case of their abstention from it, it shall most probably be tantamount to the breach of the agreement. The second condition is one of the requirements of the assurance of protection, as already mentioned, but the agreement is not declared invalid due to its non-incorporation in the agreement. As regards the other things not mentioned in the agreement, their non-incorporation in the agreement shall not invalidate it.

**Problem # 6.** In case of every condition abstention from and contravention of which entail absolute expulsion from the status of Dhimmis, irrespective of whether they stipulated in the agreement or not, if contravened and abstained from by the Dhimmis even now shall turn them into those at war [with the Muslim state] and expulsion from the status of Dhimmis. In all the cases where we have stated that the expulsion from the status of Dhimmis depends on its stipulation [in the agreement] and there is ambiguity whether its contravention entails breach of agreement and their expulsion from the status of Dhimmis in case of their opposition, and if we have declared that all of them mentioned by us as among the conditions of being a Dhimmi, whether stipulated in the agreement or not, shall entail the expulsion of the contraver of even one of them [from the status of a Dhimmi] and turn him one at war [with the Muslim state].

**Problem # 7.** Every thing in which there is benefit and elevation of the position of the Muslims and what is necessary for the Dhimmis’ entering the fold of Islam through persuasion or fear must be stipulated in the agreement of being a Dhimmi. Among those conditions is the distinction between the Muslims [and non-Muslims] in dress, distinctive features, means of transport (or vehicles) and titles mentioned in detailed books.

**Problem # 8.** If some Dhimmis break the agreement of being a Dhimmi in Dār al-Islām [a Muslim state] and contravene it in the cases mentioned by us entailing the breach of the agreement with them, then the ruler [of the Muslim state] may send them to their place of shelter. Then has the Muslim ruler the authority to condemn them to death or enslave them or accept some ransom from them? Apparently he has such authority, though there is some hesitation [in following this rule], whether their belongings shall be return to them after their return to their place of shelter after the breach of the agreement of being a Dhimmi or not? According to the opinion more in conformity with the principles of law, their belongings shall be returned to their place of shelter.

**Problem # 9.** If a Dhimmi embraces Islam after enslavement or payment of ransom due to breach of the agreement of being a Dhimmi, his enslavement shall not be removed, and he shall continue as a slave, nor shall his ransom be returned to him. If he embraces Islam before the occurrence of the two events and condemnation to death, all of them and other punishments for which he was liable during the period he was an infidel shall be set aside to the exclusion of the debts and Qīṣāṣ in case he has committed a crime entailing it, and the property belonging to another shall be seized from him if he happens to possess it, suppose, by way of usurpation. As regards the Hudūd, the Shaykh
الأمان على الكف نقض العهد بالمخالفة.

مسألة 5 - لو نسي في عقد الزمة ذكر الجزية بطل العقد، وأما رابع المذكرات فهي بطلانه بعدم ذكره وعدهم ترد، ووقبل بطلان البطلان كان حسنًا، ولزم عليهم مع عدم الشرط الالتزام بأحكام الإسلام ومع الامتناع نقض العهد على احتمال، والثاني من مقتضيات الأمان كما مرت ولا يبطل العهد بعدم ذكره، وغير ما ذكر أيضاً لا يجب عدم ذكرها بطلان العقد.

مسألة 6 - كل مورد يوجب الامتناع والمخالفة الخروج من الزمة مطلقاً شرط عليهم أم لا. لو خالف أهل الزمة الآن وامتنع منه يصير حربياً ويخرج عن الزمة، و كل مورد قلنا بأن الخروج عن الزمة موقوف على الامتثال والمخالفة يشكل الحكم بانتقاض العهد وخروجهم عن الزمة لو خالفوا، ووقلنا بأن جميع المذكرات من شرائط الزمة شرط في العقد أم لا يخرج المخالف في واحد منها عنها و يصير حربياً.

مسألة 7 - ينبغي أن يشرط في عقد الزمة كل ما فيه نفع ورفعة للمسلمين وضعة لهم وما يقتضي دخولهم في الإسلام من جهته رغبة أو رهبة، ومن ذلك إشترط التمتع العثماني في اللباس والشعر والركوب والكنس بما هو مذكور في الفصول.

مسألة 8 - إذا خرقوا الزمة في دار الإسلام و خالفوا في مواز قلنا ينقص عهدهم فيها فلوالي المسلمين ردهم إلى مأمنهم، فهل له الخيار بين قتلهم و استرقاقهم ومفاداتهم؟ الظاهر ذلك على إشكال، و هل أموالهم بعد خرق الزمة في أمان يرد إليهم مع ردتهم إلى مأمنهم أم لا؟ الأشياء الأمان.

مسألة 9 - إن أسلم النمط بعد الاسترقاق أو المفاداة خرق الزمة لم يترفع ذلك عنه، و بقي على الرق و لم يرد إليه الفداء، وإن أسلم قبلها وقبل القتال سقط عنه الجمع وغيرها مما عليه حال الكفر عدا الديون و القدو ل أتى بوجه، و يؤخذ منه أموال الغير إذا كان عنده غصباً مثالياً، وأما الحدود فقد قال الشيخ في
[Ṭūsī] has stated in Mabsūt that our jurists have declared that his embracing Islam shall not cause the exemption from the liability for Ḥadd from him.

Problem # 10. It is abominable to initiate in saluting [or greeting] a Dhimmi. According to the opinion of some jurists, it is forbidden, and this opinion is more cautious. When a Dhimmi initiates saluting [or greeting], one should make a short reply by saying “‘alayk”, and it is disapproved to complete the phrase. If it is necessary for a Muslim to salute [or greet] a Dhimmi or complete the reply to his salute [or greeting], it is permissible without disgust. As regards saluting [or greeting] some [infidel] other than a Dhimmi, it is more cautious to abstain from it except when necessary, though it is permissible with disapproval. One should say on meeting the Dhimmis: “Peace be upon him who follows the guided path”. It is approved to compel the Dhimmis to tread the narrowest passage.

IV-Chapter on Laws concerning Construction of Buildings

Problem # 1. It is not permissible for Ahl al-Kitāb and those falling under their category to build their places of worship in Muslim countries as churches, synagogues, monasteries, fire-temples, etc. If they build them, it would be obligatory on the ruler of Muslims to demolish them.

Problem # 2. As regards prohibition of construction [of religious buildings by Ahl al-Kitāb] and the indispensability of their demolition [by the rulers of Muslims, if they build them], there is no difference whether the town was built by Muslims as Baṣra, Kufa, Baghdad and Tehran and all the other towns of Iran that have been built by Muslims, or they have been conquered by the Muslims by force as most of the towns of Iran, Turkey, Iraq, etc., or by peace treaties with the condition that the land would belong to Muslims, in all such cases it is obligatory [on the Muslim rulers] to demolish whatever [places of worship] are built [by the non-Muslims], and it is forbidden to let them exist as it is forbidden to build fresh [places of worship], and it is the duty of the rulers, even if they are tyrants, to forbid them to build fresh [places of worship] and demolish whatever has already been built by them, particularly despite what we witness tremendous religious and political and great risks for the Muslim youth and their countries.

Problem # 3. If a land is conquered by settlement on that the land would belong to one of the Ahl al-Dhimma (or Dhimmi people), without any stipulation that they would not build their places of worship, they shall be at liberty to build them in the land, and if they have been demolished they would be allowed to build or renovate them. AGR with their places of worship that existed before the conquest and had not been demolished by the Muslims, they
المبسط: إن أصحابنا روا أن إسلامه لا يسقط عنه الحد.

مسألة 10 - يكره السلام على الديمي ابتداءً، وقيل يحرم، وهو أحوط: ولو
بدأ الديمي بالسلام ينبغي أن يقتصر في الجواب على قوله (عليك)، ويكرر إتمامه
ظاهراً، ولو اضطر المسلم إلى أن يسلم عليه أو يتم جوابه جاز بلا كراهية، وأما
غير الديمي فالأحوط ترك السلام عليه إلا مع الاضطرار و إن كان الأوجه الجواز
على كراهية، و ينبغي أن يقول عند ملائاتهم: السلام على من اتبع الهدى، و
يستحب أن يضطركم إلى أضيق الطرق.

المقول في أحكام الأئمة:

مسألة 1 - لا يجوز إحداث أهل الكتاب ومن في حكمهم العابد في بلاد
الإسلام كالببيض والكنائس والصوامع وبيوت النيران وغيرها، ولو أحدثوها
وجبت إزالته على والي المسلمين.

مسألة 2 - لافرق في ما ذكر من عدم جواز الأحاديث ووجوب الإزالة بين ما
كان البلد مما أثبته المسلمون كالبصرة والكوفة وبغداد وطهران، وجملة من
بلاد إيران وما مشربها المسلمون أو فتحها المسلمون عنوة كثير من بلاد إيران و
تركيا والعراق وغيرها أو صلحاً على أن تكون الأرض للمسلمين، ففي جميع ذلك
تجب إزالته ما أحدثوها، و يحرم إبقاءها كما يحرم الأحاديث، و على الوالدة - ولو
كانوا جائرين - من علمهم عن الأحاديث، وإزالة ما أحدثوها، سياً مع ما نرى من
الفاسق العظيمة الدينية والسياسية والخطر العظيم على شبان المسلمين و
بلادهم.

مسألة 3 - لفتحت أرض صلاحاً على أن تكون الأرض لواحد من أهل الدنيا
و لم شرط عليهم عدم إحداث المعابد جاز لهم إحداثها فيها، ولو انتهمت جاز
لهم تعميرها وتجديدها، والمعابد التي كانت لهم قبل الفتح ولم يهدموها المسلمون.
will be allowed to remain intact, though there is some hesitation and object in accepting this opinion.

Problem # 4. If a Dhimmi intends to renovate a building or build it afresh, it is not permissible to build it higher than the buildings of the Muslims in the neighbourhood. Whether it is allowed to build them equal in height [with those of Muslims nearby], there is hesitation in it. If a Dhimmi buys from a Muslim a building that is magnificent in its height and grandeur, it shall be allowed [to be owned by him], and it shall not be ordered to be demolished. If an originally high building or the part that makes it high is demolished, it shall not be allowed to rebuild as it was before, and it must not be higher the buildings belonging to Muslims, and according to the most cautious opinion it must be confined to a height lower than them, though it is not far from likely to be allowed in equal height.

Problem # 5. If a building purchased from a Muslim by a Dhimmi gets a crack or bends but is not razed to the ground, it will be allowed to repair and restore.

Problem # 6. If a Muslim builds a structure lower than that belonging to a Dhimmi, the latter shall not be ordered to be demolished and made equal to the structure belonging to the Muslim. The same rule shall apply if a Muslim purchases from a Dhimmi what is lower in height than the one belonging to him.

Problem # 7. If a house of a Muslim is situated in a depression, shall a Dhimmi be allowed to build a structure in the land in the higher altitude when its wall is equal than the wall belonging to the Muslim or lower than that, is a question that has two alternatives, with the lack of permissibility not being far from likely. If the case is reverse, even there are two alternatives, the permissibility of the Dhimmi’s wall being likely to be allowed longer when it is not higher than that belonging to the Muslim in view of its being in depression.

Problem # 8. Apparently the prohibition of the height [of a Dhimmi’s building] is among the Islamic laws, having nothing to do with the consent of the neighbour or its absence, as it is not among the laws relating to the agreement of being a Dhimmi, it is rather among the laws concerning a Dhimmi and a Muslim, so its criterion does not lie in whether it has been stipulated in the agreement of being a Dhimmi or not.

Problem # 9. It is not permissible for infidels to enter Masjid al-Harâm, without there being any ambiguity in it, irrespective of their belonging to the Dhimmis or not, nor in any other mosque in case there is degradation of the mosque in it; rather it is an absolute restriction according to the more cautious if not a stronger opinion. The Muslims are not allowed to give them permission to do so, and if they do, the permission shall not be valid.

Problem # 10. It is not permissible for the Dhimmis to stay in the mosques, or pass from there, or enter them for taking food or any other thing. Is their entry into the Harem allowed with a view to stay, or pass or to take anything from there, is question that has been answered in the negative, as what is meant by Masjid al-Harâm in the holy verse is Harem. There is also a Tradition on this point, and it is according to the more cautious opinion. Some of the jurists have expressed the possibility of its affiliating the Harem of the Imāms, AS, as well as the sacred courtyard of the mosques, and the same applies to the degradation [of the Harem and
ifference in conclusion:

Question 4: Can one build on the earth and have ownership? Must one have ownership on the earth? If yes, then one can build on the earth and have ownership. If not, then one cannot build on the earth and have ownership. In this case, one cannot build on the earth and have ownership.

Question 5: Can one build on the earth and have ownership? Must one have ownership on the earth? If yes, then one can build on the earth and have ownership. If not, then one cannot build on the earth and have ownership.

Solution:

Question 6: Is ownership legitimate for a Muslim? And are there any differences in ownership between Muslims.

Question 7: Was a certain property owned by a Muslim? And is ownership legitimate for a Muslim? If yes, then one can own the property. If not, then one cannot own the property.

Question 8: Is it possible to be a Muslim and own property? If yes, then one can own property. If not, then one cannot own property.

Question 9: Is it possible to enter the mosque without permission? And are there any differences in permission between Muslims.

Question 10: Is it possible to eat food in the mosque without permission? And are there any differences in permission between Muslims.
have expressed the possibility of its affiliating the Harem of the Imāms, AS, as well as the sacred courtyard of the mosques, and the same applies to the degradation [of the Harem and mosques], and so it is more cautious to disallow absolutely entry [of the non-Muslims in the Harem and mosques].

Problem # 11. According to the widely accepted opinion, it is not permissible for the non-Muslims to settle down in Hijāz. The Shaykh al-Ṭāʾīfa [Shaykh Ṭūsī] has claimed that there is consensus of opinion of the jurists on this point. There is also a Tradition reported by both the sects [of Shiʿa and Sunnis], and there is no objection on action on it. Hijāz is what it means today and it is not confined to Mecca and Medina, but according to the stronger opinion it is allowed [for the non-Muslims] to pass and take something from there.

V-Subsidiary Appendage to the Laws concerning Dhimmis

First. Every Dhimmi who changes his faith to another faith that his fellow-believers do not accept and do not allow any one to continue in that faith, as when a Christian becomes an idolater or a Jew becomes a Bahāʾi, his change of faith shall not be acceptable except to Islam or he shall be condemned to death. If he returns to his original faith will it be accepted and allowed to continue it or not? There is some problem in it, though its acceptance is not far from being likely. If a man changes his faith to another faith which his fellow-believers allow to remain, as when a Jew becomes a Christian or vice versa, whether such change of faith shall be acceptable and he will be allowed to remain in the new faith or not? His change of faith and remaining in the new faith are not far from being likely. Some jurists are, however, of the opinion that the change of faith by him shall not be accepted except to Islam, or he shall be condemned to death.

Second. If some Dhimmis perform an act that is lawful in their canonical law (Sharʿ), but not in the canonical law of Islam, they shall not be objected to unless they do it in public. If they do it in public, action shall be taken against them as is required according to the canonical law of Islam in the form of Hadd or Taʿzir. If they commit what is not lawful in their canonical law, action shall be taken as is required in the canonical law of Islam. Some jurists are of the opinion that if the judge considers it advisable, he may hand them over to the people of their community so that they may inflict punishment on them as is required in their canonical law. It is, however, more cautious to enforce the Hadd on him according to our canonical law. In such case there is no difference between a person who commits the act in public or otherwise.

Third. If a Dhimmi makes a will for the construction of a synagogue, church or a fire-temple as a place of worship for his fellow-believers, and a place for offering their false prayers, and the matter is referred to us, it shall not be permissible for us to allow the execution of the will. The
الصحن الشريف بالمسجد، وهو كذلك مع الهتك، وأوحيت عدم الدخول مطلقًا.

مسألة 11 - لا يجوز استياء الحجاز على قول مشهور، وأدعي شيخ الطائفة الإجاع عليه، وله وردت الرواية من الفريقين، ولا ينصح بالعمل بها، والحجاز هو ما يسمى الآن به، ولا يختص ببكة ومدينة، والأقوى جواز الاجتياز والامتياز منه.

وتنحق بالمقدم فروع:

الأول - كلذي انتقل عن دينه إلى دين لا يقر أهله عليه لم يقبل منه البقاء عليه ولا يقر عليه، كالنصراوي يصري وثنياً، واليهودي يصري بهانياً فلا يقبل منه إلا الإسلام أو القتل، ولو رجع إلى دينه الأول قبل يقبل منه ويرفع عليه أم لا؟ فيه إشكال وإن لا يعد القبول، ولو انتقل من دينه إلى دين يقر أهله عليه كاليهودي يصري نصرانياً أو العكس قبل يقبل منه ويرفع عليه أم لا؟ لا يعد القبول والأقرار، ولا يقبل منه إلا الإسلام أو القتل.

الثاني - لو ارتكب أهل النذمة ما هو سانع في شرعهم وليس بسائغ في شرع الإسلام لم يعترضوا ما لم يتزاحوا به، ولو تجاوزوا به عملهم ما يحتضن الجناية بوجوب شرع الإسلام من الحد أو التعزير، ولو فعلوا ما ليس بسائغ في شرعهم يفعل به ما فهو مقتضى الجناية في شرع الإسلام قيل وإن شاء الحاكم دفعه إلى أهل علمه ليقيموا الحد عليه بمقتضى شرعهم والأحوت إجراء الحد عليه حسب شرعنا، ولا فرق في هذا القسم بين المتزاحه وغيرهم.

الثالث - لو أوصى النذمي بناء كنيسة أو بيعة أو بيت نار معبداً لهم، وعلا لعبادتهم الباطلة ورجع الأمر إلينا لم يجوز لنا إنفاذها، وكذا لو أوصى بصرف شيء في كتابة التوراة والإنجيل وسائر الكتب الضالة المعرفة وطبعها ونشرها.
same shall be the rule if a *Dhimmī* makes a will for the composition of Torah, Gospel or other misleading and distorted books, and their printing and publication. The same rule shall be applied if a *Dhimmī* endows something for such purpose as mentioned before. If the matters is not referred to us, but the building to be constructed is such as its construction or repair is not allowed, it shall be indispensable to prevent it, otherwise we shall have no objection except when they intend thereby to propagate their false religions and misguide their children, it shall be indispensable to prevent and force them by whatever suitable means.

*Fourth.* The infidels, whether they are *Dhimmīs* or not, are not allowed to propagate their vicious or unsound religions, publish their misleading books and invite Muslims and their children to their false religions in the countries of Muslims, and it is indispensable to punish them and it is the duty of the rulers of the Muslim states to prevent them from doing so whatever means suitable. It is obligatory on the Muslims to keep themselves away from their books and meetings and prevent their children from such practice. If some of their misleading books and pamphlets reach them from them, it is obligatory on them to destroy them, as their books are nothing but distorted and dishonourable. May Allāh the Exalted protect the Muslims from the evil acts and intentions of the outsiders and raise the ascendancy of Islam.
وذكر لو وقع شيئاً على شيء مما ذكر، ولم يرجع الأمر إلينا فإن كان الجنء لما لا يجوز إحداثها أو تعميرها يجب المنع عنه، وإن ليس لنا الاعتراض إلا إذا أرادوا بذلك تبليغ مذاهبهم الباطلة بين المسلمين وضلائل أبنائهم، فإنَّه يجب منعهم ودفعهم بأية وسيلة مناسبة.

الرابع - ليس للكفار ذمياً كانوا أولاً تبليغ مذاهبهم الفاسدة في بلاد المسلمين، ونشر كتبهم الضالة فيها، ودعوة المسلمين وأبنائهم إلى مذاهب الباطلة، وجب تعزيزهم، وعلى أولياء الدول الإسلامية أن يمنعهم عن ذلك بأية وسيلة مناسبة، وجب على المسلمين أن يحتزوا عن كتبهم ومجاسهم وينعوا أبناءهم عن ذلك، ولو وصل إليهم من كتبهم والأوراق الضالة منهم شيئاً يجب مواصلة، فإن كتبهم ليست إلا معرفة غير محترمة، عصم الله تعالى المسلمين من شروق الأجانب وكيدهم وآله تعالى كلمة الإسلام.
SECTION FORTY-SEVEN

QIŠĀS

Qiṣās (or Retaliation) is of two kinds: Qiṣās for Life and Qiṣās for less than Life.

First Kind: Qiṣās for Life

The First Kind of Qiṣās includes discussion on the Cause of Qiṣās, Conditions effective in it, what establishes it and the Procedure of its Execution.

Chapter one – Cause of Qiṣās

The Cause of Qiṣās is putting an end to the inviolable soul willfully under the conditions detailed below.

Problem # 1. A willful murder (qatîl-i ‘amîd) is ascertained by simply by the intention to commit murder by some thing that kills even if rarely, and or by doing some act by which mostly murder takes place, even if there is no intention to kill.

We have mentioned the details of these kinds of acts in the Section on Diyāt.

Problem # 2. A willful murder is sometimes committed personally as slaughtering, strangulation by hand, striking a sword or knife, sharp stone, or wounding for killing, or the like, by which a personal act is committed in usual custom and usage.
كتاب القصاص

هو إما في النفس وإما فيهما دونها.

القسم الأول في قصاص النفس

والنظر فيه في الموجب، والشروط المتурّبة فيه، وما يثبت به، وكيفية الاستفاء.

القول في الموجب

وهو زهق النفس المعصومة عمداً مع الشرائط الآتية:

مسألة 1: يتحقق العبد خصاً بقصد القتل بما يقتل ولو نادراً، وقصد فعل يقتل به غالباً، وإن لم يقصد القتل به، وقد ذكرنا تفصيل الأقسام في كتاب الديات.

مسألة 2: العبد قد يكون مباشرة كالذبح و الخنق باليد ولا يضرب السيف والسكين والحجر الغامز والجرح في القتل وغيره بما يصدر بفعله المباشر عرفً.
In all such cases there is liability for *Qisās*. Sometime it is committed in a way with the help of some means. This has several forms that will be mentioned under the coming issues.

**Problem # 3.** If a person shot another with an arrow or a bullet and he died, it would be a willful murder, and entail the liability for *Qisās*, even if he did not intend to kill him. Likewise, if he strangled another with a rope and did not leave him until he died, or drowned another in water or the like and did not let him come out till he died, or placed the head of another in a vessel of lime until he died, and so on, where a culprit individually adopted means that caused death of another, all of these cases would be willful murder.

**Problem # 4.** In the case of strangulating with a rope and the other cases mentioned above, if the culprit takes the victim out in a state of having lost breath or not having yet lost breath but breathing in a disorderly manner, and dies in consequence of what has been done to him, it shall be a willful murder, and the culprit shall be liable for *Qisās*.

**Problem # 5.** If a person commits any of the acts mentioned before to the extent in cases similar to it mostly a person like him is not killed, and then leaves him and in consequence he dies, then if he intended to kill him even if by hope, he shall be liable for *Qisās*, otherwise he shall be liable for *Diyat*. Similar shall be the rule if a person pushes something into the stomach of another that mostly does not kill him, or presses the testicles of another and he dies, or he leaves him in a state of powerlessness and he dies.

**Problem # 6.** If a person is weak due to illness, minority, old age or the like, and some behaves with him in the way mentioned in the preceding Problem, apparently he shall be liable to *Qisās*, although the culprit did not intend to kill the victim despite the knowledge about his weakness; otherwise, there is the same detail as mentioned before.

**Problem # 7.** If a man hits another, for example, with a stick and does not withdraw the stick until he dies, or continues hitting him in a way that a person like the victim’s body would not tolerate it as when the victim was weak, minor in relation to the hitting he had to bear while the hitter is strong, or in relation to the time as, for example, when it was extreme cold, and consequently the victim dies, it shall be a case of willful murder.

**Problem # 8.** If a man hits another in a way that I would not cause death, but it is followed by illness due to the hitting and the victim dies during the illness, apparently it has happened without the hitter’s intention to kill the victim, and so it would neither be treated as a willful murder nor would there be *Qisās*, but if the hitter had the intention to kill the victim, he would be liable to *Qisās*.

**Problem # 9.** If a man does not let another eat or drink until a time that a person like the victim would not remain alive, it would be a willful murder, even if culprit did not intend to kill the
ففيه القود، وقد يكون بالتسبيب بنحو، وفيه صور نذكرها في ضمن المسائل الآتية.

مسألة 3 - لو رماه بسهم أو بندقة فات فهو عمد عليه القود، ولو لم يقصد القتل به، وكذا لو خنقه بجل و لم يزج عنه حتى مات، أو غمسه في ماء و نجحه ومنعه عن الخروج حتى مات أو جعل رأسه في جراب النورة حتى مات، إلى غير ذلك من الأسباب التي انفرد الجاني في التسبيب المتلف، فهي من العمد.

مسألة 4 - في مثل الخنق وما بعده لو أخرجه منقطع النفس أو غير منقطع.

لكن متردد النفس فات من آخر ما فعل به فهو عمد عليه القود.

مسألة 5 - لو فعل به أحد المذكورات بمقدار لا يقتل مثله غالباً مثله ثم أرسله فات بسببه فإن قصد ولو رجاء القتل به ففيه القصاص، وإن فلم solicitud، وكذا لو داس بينه بما لا يقتل به غالباً أو عصر خصيته فات أو أرسله منقطع القوة.

مسألة 6 - لو كان الطرف ضعيفاً لمرض أو صغر أو غير و نحوها فعل به ما ذكر في المسألة السابقة فالظاهر أن في القصاص ولو لم يقصد القتل مع علمه بضمه، و إلا فهي التفصيل المتقدم.

مسألة 7 - لو ضرب به بعض مرة فلم يقلع عنه حتى مات أو ضرب به مكرراً ما تتحمله مثله بالنسبة إلى بدنه ككونه ضعيفاً أو صغيراً أو بالنسبة إلى الضرب الورد ككون الضرب قوياً أو بالنسبة إلى الزمان كفصل البرودة الشديدة مثلًا.

فاته فهو عمد.

مسألة 8 - لو ضرب به بما لا يوجب القتل فأعقبه مزراً بسببه و مات به فالظاهر أنه مع عدم قصد القتل لا يكون عمداً ولا قود، ومع قصد قائمة القود.

مسألة 9 - لو منعه عن الطعام أو الشراب مدة لا يتحمل مثله البقاء فهو عمد و إن لم يقيد القتل، وإن كان مدة يتحمل مثله عادة ولا يموت به لكن افتقر الموت أو أعقبه بسببه مرضه فات فهي التفصيل بين كون القتل مقضيًا و لو
kill the victim. If the duration was such as a person like him would usually tolerate it and would not die, but the victim happened to die, or it was followed by illness due the culprit’s act, and the victim dies, then there is some detail between the murder being intentional even if it was expected, or not.

**Problem # 10.** If a person threw another into fire and the victim could not come out of it until he died, or he did not let him come out of it until he died, the culprit would be liable to *Qisās*. But if the victim did not come out of the fire deliberately or due to negligence, there would be liability neither to *Qisās* nor a *diyat* for murder.

**Problem # 11.** If a person threw another into a river or the like, and the victim could not come out until he died, or the culprit did not let him come out until he died, he would be liable to *Qisās*. In case the victim did not come out deliberately or due to carelessness, or there is some doubt in it, the same rule would apply as in the preceding case. If the culprit were under the impression that the victim is able to come out due to his being a swimmer, and so he threw him, but later the reverse transpires and the thrower could not save him, it would not be a willful murder.

**Problem # 12.** If a person cuts the vein of another, and does not let him to bandage it and the bleeding continues till he dies, the culprit shall be liable to *Qisās*. If, however, the victim able to bandage it, but he gives it up deliberately or carelessly until he dies, there shall be no liability either to *Qisās* or *diyat* for life, but the culprit shall be liable to the *diyat* for cutting the vein. But if the victim was not able to bandage it, and the culprit knew it, he shall be liable to *Qisās*. If the culprit did not know it, but he cut the vein of the victim deliberately to kill him even if by expectation, and the victim died, the culprit would apparently be liable to *Qisās*. If the culprit did not intend [to kill the victim], but he did it with hope that the victim would bandage it, he would not be liable to *Qisās*, but he would be liable to *diyat* for manslaughter or semblance of willful murder [*qatl-i shibh-i ’āmd].

**Problem # 13.** If a man throws himself from a high place on another deliberately, if it was a case in which a man is mostly killed, though due to the weakness of the victim for old age or minority or illness, the culprit shall be liable to *Qisās*, otherwise if he intended to kill the victim even though by hope, even then it would be a willful murder and the culprit would be liable to *Qisās*. If he did not intend to kill the victim, it would be manslaughter or semblance of willful murder. In all these cases, the culprit’s blood will be allowed to shed [by way of *Qisās*]. If a man slips and fall upon another who dies, he shall be liable to nothing, *diyat* or *Qisās*. Likewise, the person whom he falls shall also not liable to nothing.

**Problem # 14.** If a man practices magic on another and the man dies due to his magic, it shall be a willful murder if the culprit intended thereby to kill the victim, otherwise it shall not be a willful murder, but manslaughter or semblance of willful murder, without there being difference between whether magic is something real or not. If such type of magic is that kills, it shall be a willful murder, even if the culprit did not intend to kill the victim.

**Problem # 15.** If a person commits a crime with another and it becomes infectious and the victim dies, if the crime was such as mostly cause’s contagion, it shall be a willful murder. If the culprit
مسألة 10 - لو طرحه في النار فعجز عن الخروج حتى مات أو منعه عنده حتى مات قتل به، ولو لم يخرج منها عمداً وتخاذلاً فلا قود ولا دية قتل، وعلى دية جناية الالقاء في النار، و لو لم يظهر الحال واحتل الأمران لا يثبت قود ولا دية.

مسألة 11 - لو ألقاه في البحر و نحوه فعجز عن الخروج حتى مات أو منعه عنه حتى مات قتل به، ومع عدم خروجه عمداً و تخاذلاً أو الشك في ذلك فحكمه كالمسألة السابقة، ولو اعتُعد أنه قادر على الخروج لكونه من أهل فن السباحة فألقاه ثم تبين الخلاف ولم يقدر الملقي على نجاته لم يكن عمداً.

مسألة 12 - لو فصده و منعه عن شدة فنزف الدم و مات فعليه القود ولو فصده و تركه فنان كان قادرًا على الالتحم فتكره تعمدًا و تخاذلاً حتى مات فلا قود ولا دية النفس، و على دية الفصد، ولو لم يكن قادرًا فان علم الجاني ذلك فعليه القود، ولو لم يعمل فان فصده بقصد القتل ولو رجاء فعاله القود ظاهرًا، وإن لم يقصده بلفصده برجاء شده فليس عليه القود، و على دية شبه العمد.

مسألة 13 - لو ألقى نفسه من علو عل عينه عمداً فان كان ذلك مما يقتل به غالباً ولو لضعف الملقي عليه لكبر أو صغر أو مرض فعليه القود إلا فان قصد القتل به ولو رجاء فكذلك هو عمد عليه القود، وإن لم يقصده فهو شبه عمد، و في جميع التقدير دم الجاني هدير، لو عثر فوق على غيره فعاله فلا شيء عليه لا دية ولا قوداً، وكذا لا شيء على الذي وقع عليه.

مسألة 14 - لو سحره فقتل و علم سببية سحره له فهو عمد إن أراد بذلك قتل، و إذا فليس بعدم بل شبه، من غير فرق بين القول بأن للسحر واقعية أو لا، ولو كان مثل هذا السحر قاتلاً نوعاً يكون عمداً و لو لم يقصده القتل به.

مسألة 15 - لو جنى عليه عمداً فسرت فات فان كانت الجناية ممارسية غالباً فهو عمد، أو قصد بها الموت فسرت فات فكذلك، و أما لو كانت مما لا
intended thereby to kill the victim and it caused contagion and the victim died, even then it shall be a willful murder. If it was of a kind that causes contagion, but mostly does not kill, and the culprit also did not intend to kill the victim, then there shall be [in treating it to be a willful murder]; rather there would be no Qisās or a proof of manslaughter.

**Problem # 16.** If a person offers another poisoned which mostly kills persons like him, or when the culprit intends to kill the victim by it, if the victim does not know the position and eats the poisoned food and dies, the culprit shall be liable to Qisās. The personal contribution of the victim has no effect in it. The same shall be the position if the victim is indiscreeet, irrespective of the fact whether the culprit mixes poison with his own food, or offers it to the victim or mixes the poison in the food of the person eating it.

**Problem # 17.** If a person offers a poisoned food to another who has the knowledge that it has a fatal poison in it and eats it deliberately and with free will, then the former shall be liable neither to Qisās nor diyat. If the culprit falsely tells the victim that the food has a non-fatal poison that cures such and such disease, and the victim eats it and dies, the culprit shall be liable to Qisās. But if the accused says to the victim that the food has poison and does not specify whether it is fatal or non-fatal, and the victim eats it, then the former shall not be liable to Qisās or diyat.

**Problem # 18.** If a person offers another food containing poison that is mostly non-fatal, then if the culprit intends to kill the victim even if by merely hoping it, then it shall be a willful murder, even if the person eating the food has no knowledge about it, but if he does not intend to kill the victim, he shall not be liable to Qisās.

**Problem # 19.** If a person offers another poisoned food under the impression that the victim’s blood has been declared free, neither shall it be a willful murder nor it would have the liability for Qisās.

**Problem # 20.** If a person puts poison in the food of the landlord (owner of the house), who eats it without the knowledge of its being poisoned, and dies, the person putting poison in it shall be liable to Qisās if he intended to kill the victim. But if he put the poison in the food with the intention to kill, for example, the victim’s dog, but the victim eats it, there shall be no liability for Qisās and apparently no liability even for diyat. If, however, the culprit knew that the landlord will eat it, then apparently he shall be liable to Qisās.

**Problem # 21.** If there was poisoned food in the house of a person, and another entered the house without the permission of the owner, and at it and died, there shall be no liability for Qisās or diyat. If the owner had invited him to his house not for eating food, and he ate the poisoned food without the permission of the owner and by trespass, there shall be no liability for Qisās.

**Problem # 22.** If a person digs a well that would kill a man who falls into it, and invited another, who was ignorant of the existence of the well, in a way that he would fall into it as soon as he comes. The latter comes and falls into and dies, the former (digger of well) shall be liable to Qisās. If the well lies away from his passage, and the digger invites another not in a way that he would fall into it, and the comer out of his way and falls into it, there shall be no liability for Qisās or diyat.
مسألة 16 - لو قدم له طعاماً مسموماً، بما يقتل مثله غالباً أو يقتله قطنه به فلؤم بعلم الحلال فاكئ ومائة فعليه القود، ولا أثر لباشرة المجني عليه، وكذا الحال لو كان المجني عليه غير منيف، سواء خلطه بطعم نفسه وقدم إليه أو أهداه أو خلطه بطعم الآكل.

مسألة 17 - لو قدم إليه طعاماً مسموماً مع علم الآكل بأن فيه سماً قاتلاً فاكئ متعمداً، وعن اختيار فلا قود ولا دية، ولوقال كذباً أن فيه سماً غير قاتل وفيه علاج فلؤم فأكله فمات فعليه القود، ولققال فيه سم وأطلق فأكله فلا قود ولا دية.

مسألة 18 - لو قدم إليه طعاماً فيه سم غیر قاتل غالباً فان قصد قتله ولو رجاء فهو عمداً لوجه الآكل، ولو لم يقصد القتل فلا قود.

مسألة 19 - لو قدم إليه المسموم بتحيل أنه مهدور الدم فيان الخلاف لم يكن قتل عمداً ولا قود فيه.

مسألة 20 - لو جعل السم في طعام صاحب المنزل فأكله صاحب المنزل من غير علم به فات فعليه القود لو كان ذلك بقصد قتل صاحب المنزل، وأما لو جعله بقصد قتل كلب مثلًا فأكله صاحب المنزل فلا قود بل الظاهر أنه لا دية أيضاً، ولو علم أن صاحب المنزل يأكل منه فالظاهر أن عليه القود.

مسألة 21 - لو كان في بيتة طعام مسموم فدخل شخص بلا إذنه فاكئ ومات فلا قود ولا دية، ولو دعاه إلى داره لا لأكل الطعام فأكله بلا إذن منه وعدواً فلا قود.

مسألة 22 - لو حفر بئراً بما يقتل بوقوعه فيها ودعا غيره الذي جهلها بوجه يسقط فيها بجيته فراجع فقط ورماه فعليه القود، ولو كانت البئر في غير طريقه ودعاه لا على وجه يسقط فيها فذهب الجاني على غير الطريق فوقها لا قود و
Problem # 23. If a person injures another and treats him with such a poisonous medicine that his death may be attributed to it and not to injury, there shall be no liability for Qisās for life, but if the injury is of a nature entailing Qisās, there shall be Qisās; otherwise there shall be arsh a fine to be determined by the judge when no diyat is specified by Shari‘ah for the crime.

Problem # 24. If a person throws another in the abode of beasts as the hunting place of a lion or the like and the beasts kill him, he shall be liable for willful murder and condemned to Qisās. Same shall be the law if a person throws another before a rapacious lion and the lion devours him, while there is no chance for defence against him in any way even by escape. If, however, it is possible for him (to defend himself or escape), but the victim gave it up carelessly or deliberately, there shall be no liability for Qisās or diyat. If the lion is not rapacious, and so the person throws him before him without intending to kill him, but incidently the lion killed him, it shall not be a willful murder. But if he hopes that the lion would kill him, and the lion kills him, then it shall be a willful murder entailing the liability for Qisās. If, however, the person throwing another was ignorant about the nature of the lion, and throws him before the lion, and the lion kills him, then it shall be a willful murder if he intended to kill the victim. Rather apparently it shall be a willful murder even if he did not intend it.

Problem # 25. If a person throws another in a land of wild beasts after fastening his hands. If he knew about the passing of the beasts from there, it shall without any hesitation be a willful murder. Rather is shall be a willful murder if there is likelihood of the beasts passing from there, and the man throws the victim with the intention of being devoured by the beasts, even if there is a mere hope of it. Of course, despite the knowledge about it, or satisfaction that the beasts would not pass from there, but it happens like that, it shall not be a willful murder; apparently the liability for a diyat shall be established.

Problem # 26. If a person throws another before a beast and he bites him in a way that a man does not die due to it, but it becomes infectious and the man dies, it shall be a willful murder, entailing liability for Qisās.

Problem # 27. If a man throws upon another a fatally poisonous snake for biting him, for example, by catching the snake and throws part of the body of the other person into the mouth of the snake, it shall be a willful murder entailing the liability for Qisās. The same shall be the law if a man throws a fatally poisonous snake upon another and it bites him and he dies. Likewise, the same shall be the law if a person confines another with a fatally poisonous snake in a narrow place from where escape is not possible for him, or confines a fatally poisonous snake with some one who is not able to escape due to weakness, as a sick person or a minor or an old man, and in all these cases and also in such other cases, there shall be the liability for Qisās.

Problem # 28. If a person seduces against another a fatal dog that mostly kills a man, and the dog kills him, the seducer shall be liable to Qisās. The same shall be the law if a man intends thereby to kill the other, even if the dog mostly does not kill a man, or when he did not know the nature of the dog, but intends to kill the other man, even if by mere hope, it shall be a willful murder.
لا دية.

مسألة 23 - لو جرحه فداوى نفسه بدأو سمى مجتز حيث يستند القتل إليه لا إلى الجرح لا قود في النفس، وفي الجرح قصاص إن كان مما يوجب، ولا فأرش الجناية، ولم يكن مجتزًا لكن انتقى القتل به فبالجرح معاً سقط ما قابل فقل الجروح، فلالق قتل الجار بعد رح نصف دينه.

مسألة 24 - لو ألقاه في مسيبة كزبة الأسد ونحو قتله السبعة فهو قتل عماد عليه القود، وكذا لو ألقاه إلى أسد ضار فافترسه إذا لم يكن الاعتراض منه بنحو وله بالفرار، ولو أمكنه ذلك وترك تخاذلًا وتعماً لا قود ولا دية، ولو لم يكن الأسد ضارًا فألقاه لا بقصد القتل فمات أنه قتله لم يكن من العماد، ولو ألقاه برجاه قتله فهو عماد عليه القود، ولو جهل حال الأسد فألقاه عنده فقتله فهو عماد إن قصد قتله، بل الظاهر ذلك لا يقتضيه.

مسألة 25 - لو ألقاه في أرض مسيبة مكتفياً، فع علمه بتردد السباع عنده فهو قتل عماد بلا إشكال، بل هو من العماد مع احتمال ذلك وإلقائه بقصد الافتراس ولو رجاه، نعم مع علمه أو اطمنانه بأنه لا يتردد السباع فاقتض ذلك لا يكون من العماد، والظاهر ثبوت الدية.

مسألة 26 - لو ألقاه عند السبع فقصه بما لا يقتل به لكن سرى فات فهو عماد عليه القود.

مسألة 27 - لو أنهشمه حية لها سم قاتل بأن أخذها وألقهمها شيئاً من بدنه فهو قتل عماد عليه القود، وكذا لو طرح عليه حية قاتلة فتشته فهلك، وكذا لو جمع بينه وبينها في مضيق لا يكينه الفرار أو جمع بينها ومين من لا يقدر عليه لضعف كمرض أو غير أو كفران في جميعها وكذا في نظرائها قواد.

مسألة 28 - لو أجرى به كلباً عقوراً قاتلاً غالباً فقتله فعله القود، وكذا لو قصد القتل به ولو لم يكن قاتلاً غالباً أو لم يعلم حاله وقصد ولو رجاه القتل فهو عماد.
Problem # 29. If a man throws another before a large fish and the fish swallows him, he shall be liable to Qisāṣ. Likewise, if a man throws another into the sea and a large fish swallows him after he reaches the sea, the culprit shall be liable to Qisāṣ, even if he did not intend to kill him by being swallowed by the fish, but intends to drown him. If a person throws another into sea, but before reaching the sea, he strikes against a stone, or the like and he dies, the culprit shall be liable to pay diyat. If, however, a fish swallows the victim before reaching the sea, apparently the culprit shall be liable to Qisāṣ.

Problem # 30. If a man injures another, and then a beast bites him, and both of the wounds become contagious, the culprit shall be liable to Qisāṣ but after returning half of the diyat. If the wali (guardian or heir) of the victim compromises on a diyat with the culprit, he shall be liable to pay half the diyat. But if the culprit has caused the animal to bite the victim, he shall be liable to Qisāṣ without returning half the diyat. If the wali of the victim excuses the Qisāṣ, the culprit shall be liable to pay full diyat.

Problem # 31. If a person injures another, the some beast bites him, then a snake also bites him, the person injuring him shall be liable to Qisāṣ after payment of two-third diyat to him. If compromise is made with him [by excusing the Qisāṣ], he shall be liable to pay one-third diyat. The same law shall apply to all cases where an animal shares with a human being in a murder.

Problem # 32. If a person digs a well, and another throws some one in it, the person throwing shall be liable for murder not the digger of the well. The same shall be the law if a person throws another from a high place, but before the victim reaches the ground, another person hits him, for example, with a sword and cuts him into two pieces, or a person throws another into the sea, and after reaching the sea, before he dies and while he was still alive, another person kills him, the killer and not the thrower shall be liable for killing him.

Problem # 33. If a person grips another, and a third person kills him, yet another guarded them, the killer shall be liable to Qisāṣ not the one who gripped him, but the person who had gripped him shall be given life imprisonment till his death, while the eyes of the guard shall be gouged with a burning bodkin or the like.

Problem # 34. If a person compels another to kill a third person, the person compelling shall be liable to Qisāṣ, provided he is adult and sane, and not the person compelled. If a person orders another under threat to kill a third person, the person ordering shall be given life imprisonment till his death. If the person compelled is a lunatic or an indiscreeet boy, then the person ordering shall be liable to Qisāṣ. If a person orders a discreet boy to kill a third person, and he kills him, neither shall be liable to Qisāṣ, while the diyat shall be payable by the boy’s Āqilah [close relatives on the father’s or father’s and mother’s side, such as the father, paternal grandfather, paternal uncles or his sons]. If the person compels the boy to do so, then will the compeller be liable to Qisāṣ or confinement for life? He shall be sentenced to the second [punishment, i.e., confinement for life].

Problem # 35. If a person says to another adult and sane person: “Kill me or I will kill you”, it is not lawful for the other person to kill the first, nor shall thereby the prohibition [of the killing] be set aside. If, however, after the second disobeys the first, the first attacks the second
مسألة ۲۹ - لو القام إلى الحوت فاللقمه، فعليه الققود، ولو ألقاه في البحر ليقتنع فاللقمه الحوت بعد الوصول إلى البحر فعليه الققود وإن لم يكن من قصده القتل بالناقم الحوت بل كان قصده الغرق، ولو ألقاه في البحر وقبل وصوله إليه وقع على حجر ونحوه فقتل فعليه الدية، ولو التقمه الحوت قبل وصوله إليه فالظاهر أن عليه الققود.

مسألة ۳۰ - لو جرحه ثم عضه سبع وسارت فعله الققود لكن مع رد نصف الدية، ولو صالح الوالي على الدية فعليه نصفها إلا أن يكون سبب عض السبع هو الجراح فعليه الققود، ومع العفو على الدية عليه تمام الدية.

مسألة ۳۱ - لو جرحه ثم عضه سبع ثم نئسته حية فعليه الققود مع رد ثلثي الدية، ولو صالح بها فعليه نصفها وهكذا، وما ذكر يظهر الحال في جميع موارد اشتراك الحيونات مع الإنسان في القتل.

مسألة ۳۲ - لو حفر بئرأ ووقع فيها شخص بدفع ثلث الفقائل الدافع لا الحارف، وكذا لو ألقاه من شاهق وقبل وصوله إلى الأرض ضربه آخر بالسيف مثلًا فقتله نصفين أو ألقاه في البحر وبعد وقوعه فيه قبل موتته مع بقاء حياته المستقرة قبله آخر، فإن الفقيلة هو الضارب لا الملق. 

مسألة ۳۳ - لو أمسكه شخص وتقله آخر وكان ثالث عيناً لهم فالقود على القاتل لا المسكن، لكن المسكن يجب أبداً حتى يموت في الحبس والربطة نسمل عيناه بيل معمي ونحوه.

مسألة ۳۴ - لو أكره على القتل فالقود على المباشر إذا كان بالغاً عاقلاً دون الكره وإن أوعده على القتل، وبحسب الآمر به أبداً حتى يموت، ولو كان الكره بجود أو طفلاً غير مراة فالقصاص عن الكره الآخر، ولو أمر شخص طفلاً مميزاً بالقتل فالتيم ليس على واحد منها الققود، والدية على عاقلة الطفل، ولو أكره على ذلك فاهل على الرجل الكره الققود أو الحبس أبداً؟ الأحوط الثاني.

مسألة ۳۵ - لو قال بالغ عاقل لآخر: «اقتني و لا تقتلني» لا يجوز له القتل.
to kill him, it shall be permissible for the second to kill the first in his own defence, rather it
shall be obligatory on him [to do so], and he shall have liability for nothing. If the second kills
the first immediately after threatening him, he shall be a sinner. Will the second be liable to
Qiṣāṣ? There is hesitation in its answer, though it is preferable to declare that he shall not be
liable to Qiṣāṣ, as the absence of liability for diyat is also not far from being likely.

Problem # 36. If a person says to another: “Kill yourself”, then if the person ordered is sane and
discreet, then the person ordering him shall have no liability. Rather the same shall be the rule even
if the person ordering compels him to do so. There is likelihood of life imprisonment where
compulsion is established, as when he says to the other: “Kill yourself, otherwise I shall kill you in
the worst way”.

Problem # 37. Coercion but for life is valid, as when a person says to another: “Cut the hand of this
person or I will kill you”, the coerced person may cut the hand and he shall have no liability for
Qiṣāṣ, the liability shall rather be on the person coercing him. But if he orders him without applying
coercion, and he cuts the hand, the Qiṣāṣ shall lie on the doer of the act. If a persons compels
another to cut one of the two hands, and he selects one of the two hands, or to cut the hands of one
of two men and he selects the person [whose hands is to be cut], he shall have no liability, but the
liability shall be on the person ordering accompanied by coercion.

Problem # 38. If a person compels another to climb a high place, and his foot slips and he falls
down and dies, apparently the person ordering shall be liable to diyat and not Qiṣāṣ. Apparently the
law shall be the same if the climbing like that would mostly cause falling down, though there is
some hesitation in accepting it.

Problem # 39. If two persons testify to what entails death sentence as, for example, apostasy, for
four persons testify to what entails the punishment for rajm as Zina’, and later it is established that
they had testified falsely after the execution of the Ḥadd or Qiṣāṣ, the judge shall have no liability
nor the person who is ordered by him to execute the Ḥadd. The witnesses shall be liable to Qiṣāṣ,
after returning diyat according to the number of the witnesses. If the wali [of the victim] demands
Qiṣāṣ falsely and the witnesses testify falsely, then will the Qiṣāṣ be on all of them, or on the wali
or on the witnesses, is a question in which there are several alternatives, the one closer to the
traditional authority is the last one, [i.e., the witnesses shall be liable for the Qiṣāṣ].

Problem # 40. If a person oppresses another to the extent that the victim becomes like one
slaughtered, without leaving any sign of life in him, and another person slughters him, the
person who oppressed him first shall be liable to Qiṣāṣ, and he is the willful murderer, while
the second shall be liable for diyat for committing a crime with the dead body. If, however, a
person oppresses another, and he is still living, but another person slughters him, the second
shall be liable to Qiṣāṣ, while the first shall be sentenced to punishment for injury by way of
Qiṣāṣ or arsh, regardless whether the injury was of the type that does not kill the victim or it
mostly kills the victim.
ولا ترفع الحزوة، لكن لو حصل عليه بعد عدم إطاعته ليقتله جاز قتله دفاعًا بل وجب، ولا شيء عليه، ولو قتلته بمجرد الإيعاد كان آثمًا، وهل عليه القود؟ فيه إشكال و إن كان الأرجح عدمه، كما لا يعد عدمن الدية أيضاً.

مسألة 36 - لقال: "اقتيل نفسك" فكان الأمور عاقلاً ممياً فلا شيء على الآخر، بل الظاهر أنه لو أكرهه على ذلك فكذلك، ويعتمد الخمس أبداً لإكرهه إما صدق الابراهة، كما لو قال: "اقتيل نفسك و إلا قتلت كشر قتلة".

مسألة 37 - يصح الابراهة بدان النفس، فلقال له: "اقطع يد هذا و إلا قتلتك" كان له قطعها و ليس عليه قصاص، بل القصاص على المكره ولو أمره من دون إكراه فقطعها فالقصاص على البشير، ولو أكرهه على قطع إحدى البدين فاختار إحداهما أو قطع يد أحد الرجلين فاختار أحدهما فليس عليه شيء، و إنا القصاص على المكره الآخر.

مسألة 38 - لو أكرهه على صعود شاهق فلزم رجله وسقط فات فالأزهر أن عليه الدية لا القصاص، بل الظاهر أن الأمر كذلك لو كان مثل الصعود موجباً للسقوط غالباً على إشكال.

مسألة 39 - لو شهد إثنان بما يوجب قتلاً كالارتداد مثلًا أو شهد أربعة بما يوجب رجلاً كالزنادا ثم ثبت أنهما شهدوا زورًا بعد إجراء الحد أو القصاص ليفضن الحاكم و لا الأمور من قبله في الحد، و كان القود على الشهود زورًا مع ردالة على حساب الشهود، ولو طلب الوالي القصاص كذباً و شهد الشهود زورًا فهل القود عليهم جميعًا أو على الوالي أو على الشهود؟ و جوه ظرهما الأخرى.

مسألة 40 - لو قص عليه قصيرة في حكم المذبح بحيث لا يبقى له حياة مستمرة فذبح آخر فالقود على الأول، وهو القاتل عمداً، و على الثاني ذية الجناية على البيت، و لو قص عليه و كانت حيته مستمرة فذبح آخر فالقود على الثاني، وعلى الأول حكم الجرح قصاصاً أو أرشاء، سواء كان الجرح مما لا يقتل مثله أو يقتل غالباً.
Problem # 41. If two persons inflict injury to another, the wound caused by one of them is healed, but that caused by the other becomes infectious, and the person dies. The person whose injury has healed shall be liable to *diyat* or *Qisās* for the injury, while the other shall be liable to *Qisās*. Whether he will be killed after the return of the *diyat* for the healed wound or killed without return of *diyat*, is a question in whose answer there is confusion, though according to the opinion closer to the traditional authority, there shall be no return.

Problem # 42. If a person cuts the hands of another from the wrist and some one else from the elbow resulting in his death. If the infection of the first cut remained after the second cut, as the weapon of the first cut was poisoned and its poison spread in his blood and he died due to it and the second cut, both of them shall be liable to *Qisās*, so that if the victim’s death was due to the fatal poison in the cut and there was no infection in the cut, the first was the killer, and so he is liable to *Qisās*, and if the infection of the fist cut ended with the second cut, the second would be liable to *Qisās*.

Problem # 43. If the culprit in the preceding supposition was single, the *diyat* of the part of the body shall become a part of the *diyat* for life due to the hesitation that exists in some of the suppositions. Does the *Qisās* of a part of the body become part of the *Qisās* for life absolutely or not, or it becomes so when the offence or offences took place by a single stroke. If a person gives a stroke and the eyes of the victim come out and his head is also broken, as a result he dies, the *Qisās* of a part of the body becomes part of the *Qisās* of life. But if the offences took place by several strokes, it does not, or there shall be difference in respect of the several offences being continuous, as when the person takes a sword and cuts the body of the victim into pieces until he dies, in which case its *Qisās* becomes part of the *Qisās* of life. If, however, the offences were difference, as when the culprit cuts the hand of the victim one day and his foot the next day, and so on, until the victim dies, their *Qisās* would not be part of that of life, in which there are several alternatives, it is not far from being likely to treat the last alternative to be better founded. Nevertheless the problem is difficult to solve. Of course, there is no objection in non-incorporation if the difference were due to the healing of some of the injuries. So if a person cut the victim’s hand, but the victim did not die and his wounds healed up, then he cut his foot and that too healed up, then he killed him. So he shall be inflicted *Qisās* for the first injuries and then he shall be put to death.

Problem # 44. If two or more take part in the murder of a single person, they shall be inflicted *Qisās* when the victim’s *wali* desires, and surplus out of the *diyat* of the victim shall be returned to them, so that each of them receive the surplus out of his *diyat*.

If two persons have killed the victim, and the victim’s *wali* intends to inflict *Qisās* on them, he shall pay each of them half the *diyat* for murder.
مسألة 41 - لو جرح إثنان فاندل جراحة أحدهما وسرت الأخرى قات فعلى من أنملت جراحتهما دية الجراح أو قصاصها، وعلى الثاني القود فهل يقتل بعد ردية الجرح المن德尔 أم يقتل بلا ردة؟ فيه إشكال، وإن كان الأقرب عدم الرد.

مسألة 42 - لو قطع أحد يده من الزند وآخر من المرفق فقات فكان قطع الأول بنحو بقية سرايته بعد قطع الثاني كما لو كانت الآلة مسمومة وسري السم في الدم، فيقال به، ونال القطع الثاني كان القود عليها، كما أنه لو كان القتل مستنداً إلى السم القاتل في القطع ولم يكن في القطع سراية كان الأول قاتلاً، فالتود عليه، وإذا كان سراية القطع الأول انقطع بقطع الثاني كان الثاني قاتلاً.

مسألة 43 - لو كان الذي في الفرض المتقدم واحداً دخل دية الطرف في دية النفس على تأمل في بعض الفروض، وقيل يدخل قصاص الطرف في فصال النفس مطلقاً أو لا مطلقاً أو يدخل إذا كانت الجناية أو الجنايات بضربة واحدة، فلو ضربه ففقهت عيناه وشج رأسه فأتى فدخل قصاص الطرف في قصاص النفس، وأما إذا كانت الجنايات بضربات عديدة لدخل في قصاصها، أو يفرق بين ما كانت الجنايات العديدة متوالية كمن أخذ شيئًا وقطع الرجل إرباً إرباً حتى مات، فيدخل قصاصها في قصاص النفس، وين ما إذا كانت متفرقة كمن قطع يده في يوم وقطع رجله في يوم آخر وهكذا إلى أن مات، فلم يدخل قصاصها في قصاصها؟ ووجه، لا بعد أو وجهية الأخرى، ومسألة بعد مشكلة، نعم لا إشكال في عدم التدخل لو كان التفريق بوجه أنمل بعض الجراحات، ففي قطع يد رجل فلم يمت وانملت جراحتها ثم قطع رجله فاندلعت ثم قتله يقتل منه ثم يقتل.

مسألة 44 - لو اشتركت إثنان فا زاد في قتل واحد أقص منهم إذا أراد الولي، فبرد عليهم ما فضل من دية المقتول، فأخذه كل واحد ما فضل عن ديته، فقولته
If the killers are three, each of them shall receive one-third, and so on. It is up to the victim’s wali to inflict Qisāṣ on some of them and let the rest of them return diyat who have been inflicted Qisāṣ.

If there is some surplus left for the victim or victims returned by their partners, the wali shall arrange its return to those from whom it had been received, as if there are three partners, two of whom are inflicted Qisāṣ, the remaining one shall pay the diyat for his offence tht is a third, and the wali shall return the surplus to those two, which is full diyat, as a result each of them shall receive two-third.

Problem # 45. Abetment in homicide takes place when each of the abettors commits an act that had he been alone it would have caused the death of the victim, as all the abettors to an offence grip the victim and throw him into fire or a sea or from a high altitude, or inflict him injuries had they been alone they would have caused the victim’s death singly. Likewise it takes place when a person shares in infection with the intention to kill the victim, so that if a number of persons join in attacking a person and each of them inflicts such injury upon him as had it been inflicted by each of them alone, it would not have killed the victim, but all the injuries spread to one another, as a result of which the victim dies, and therefore each of them is liable to Qisāṣ in the manner mentioned before. It is not a condition that the abettors should be equal as regards the quantum of the offence. So if one of them strikes a single stroke, second several strokes and the third a large number of strokes, and so on, and the victim dies as a result of all the strokes, each of them shall be liable to an equal Qisāṣ and an equal diyat.

Likewise, it is not a condition that there should be equality in the nature of the offence. So if one of them inflicts on the victim, for example, a jāʿifa [i.e., an injury penetrating into the interior of the body], while the other a müdiḥa [or an injury affecting the whole flesh, penetrating through the thin skin covering the bone, and making the bone visible], or one of them inflicted an injury on the victim, while the other beats him, each of them shall be liable an equal Qisāṣ, they shall also be liable to an equal diyat if there has been a collective infection by the acts of both of them.

Problem # 46. If two persons or a group of persons join in the commitment of an offence on the parts of body [of a person], they shall be inflicted Qisāṣ as they would be inflicted Qisāṣ for life. If two persons join cutting the hand of a man, then if he desires to cut their hands he shall have to pay them diyat for a hand that they may divide between themselves, and then cut the hand of both of them, or, if he likes, he may receive diyat for hand from both of them. If he cuts the hand of one of them, the one whose hand has not been cut should pay one-fourth of diyat of hand to the one whose hand has been cut, and so on with the joining of a group of abettors.

Problem # 47. Abetment takes place with the joining of several persons in the commitment of an offence entailing the cutting of a part of the body of the culprit. For example, if some
إبناء وأراد القصاص يؤدي لكل منها نصف دية القتل، ولو كانوا ثلاثة فكل
ثلا ث ديه و هم، وللولي أن يقتضى من بعضهم و يردة الباكون المتروكون دية
جنايتهم إلى الذي اقتضى منه، ثم لو فصل للمقتول أو المقتولين فضل عهه
شراكمهم قام الوالي به، و يرد إلينه كما لو كان الشركاء ثلاثة فاقتضى من
إبناء، فرد المتركو دية جنايتهم، وهي الثالثة إليها و يرد الوالي البقية إليها، و
هي دية كامنة، فيكون لكل واحد ثلثها الدية.

مسألة 45 - لتتحقي الشقة في القتل بأن يفعل كل منهم ما يقتضى لو انفرد
كأن أحدهم جياعاً فألقوه في النار أو البحر أو من شاهق، أو جرحوه بجراحات
كل واحدة منها قاتلًا لوانفردت، وكذا تتحقي بما يكون له الشركة في السراية
مع قدش الجناية، فلو اجتمع عليه عدة فجره كله واحد بما لا يقتل منفردًا لكن
سارت جميع فَلَهُم القوَّاد بمنحهم ولا يعتبر التساوي في عدد الجناية، فلو
ضرب أحدهم ضربة و الآخر ضربات والثالث أكثر و هكذا فات بالجميع
فالقاصص عليهم بالسواه، و الدية عليهم سواء، وكذا لا يعتبر التساوي في
جنس الجناية، فلو جرحه أجردها جائحة و الآخر موضحة مثلاً أو جرحه أجردهما
وضربه الآخر يقتضي منها سواء، و الدية عليها كذلك بعد كون السراية من
فعلها.

مسألة 46 - لو اشترك إبناء أو جاعة في الجناية على الأطراف يقتضى منهم
كما يقتضي في النفس، فلو اجتمع رجلان على قطع يد رجل فان أحب أن
قطعه أدى البحادة يد يقتضموا ثم يقطعها، وإن أحب أحدهما دية يد، و
إنه يقطع يد أحدهما رد الذي لم يقطع يده على الذي قطعته يده ربع الدية، و
على هذا القياس اشترك الجماعة.

مسألة 47 - الاشترك فيها يحصل باشراكهم في الفعل الواحد المنتقبي
لقطع بأن يكرروا شخصاً على قطع اليد أو يضعوا خنجراً على يده و اعتمدوا عليه
أعم حتى تقطع، و أما لو انفرد كل على قطع جزء من يده فلا قطع في يدهما، و
persons compel a person to cut the hand, or they place a dagger on his hand and join in pressing it till it is amputated. But if each of them cuts a part of the hand of a victim individually, the hand of both of them shall not be amputated.

Likewise, if a person places his weapon on the hand of the victim and the other under his hand, and each of them cut a part of the victim’s hand until the weapons of both of them meet and the victim’s hand is amputated, then neither they joined in the commitment of the offence nor shall be punished by cutting their hand, rather each of them has committed offence separately, and, therefore, each of them shall be liable for the Qisas or diyat of his individual offence.

Problem # 48. If two women join in killing a man, both of them shall be condemned to death without returning them anything. If they are in a larger number, the wali of the victim shall be entitled to kill them and return the residue of the diyat of the victim for being divided equally among them. If they are three women and the wali decides to put them to death, he shall return to them the diyat of one woman to be divided equally among them. If they are four, the wali of the victim shall return the diyat of two women, and so on. If the wali opts to put to death some of them and [excuses the rest], he shall return to the rest what is left from the [the diyat] of her offence. If the wali puts to death two-thirds of them, he shall return the one-third diyat to be distributed equally among those to be put to death by him. If the wali opts to put to death a single woman, the remaining two women shall pay to the woman to be put to death by the wali one-third of her diyat and to the wali half the diyat of a man.

Problem # 49. If one man and one woman join in killing a man, each of them shall be liable for the payment of half the diyat. If the wali opts to put to death both of them, he shall have to pay half the diyat to the man, and nothing to the woman. If the wali opts to put to death the woman, he shall not be required to pay anything in return to [the heirs of] the woman, while the man [not put top death by the wali] shall be liable to pay half the diyat. If the wali opts to put to death the man, the woman shall pay half the diyat of a man to the man and not of a woman.

Problem # 50. The jurists have declared that in every case entailing return [of the diyat or part thereof] it is obligatory first to pay the return [of the diyat] and then execute the punishment [of the Hadīr or Qisas], and this opinion is more reasonable. Then they have declared that in all the preceding cases the person supposed is a free Muslim man and woman.

Chapter Two on Conditions required in Qisas

There are a number of conditions in Qisas. They are as follows:

First. The culprit and the victim must be equal in their status of been free and slave. So a free man shall be given a death sentence for the death of a free man or woman but by the return of the remaining diyat, and that is half the diyat of a free man. So also a free woman is to be put to death for an offence against a free woman or a free man, but no residue of the diyat of a man is payable by her wali or her inheritance.
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
Problem # 1. If the wali of the murdered woman declines to pay the residue of the diyat or he may be poor, or the murderer is not willing to pay the diyat, or he poor, the infliction of the Qisāṣ shall be postponed till the time of payment of the diyat and affluence.

Problem # 2. A woman shall be inflicted Qisāṣ for the parts of body of a man, and likewise a man shall be inflicted Qisāṣ for the parts of body of a woman without the return of diyat. The diyat of parts of the body of both a man and a woman shall be equal as long as the injury to the woman does not reach one-third of the diyat of a free man. When it reaches that limit, it shall be equal to half of the diyat of parts of body of a man. Therefore, in such case Qisāṣ shall not be inflicted on a man for a woman without the payment of the surplus of the diyat.

Second. Both should be equal as regards faith. A Muslim shall not be put to death for killing an infidel, unless the Muslim has the habit of killing infidels.

Problem # 1. There is no difference in the various categories of infidels whether they are Dhimmis, barbīs [those at war with the Muslim state] or musta’mīn [one who has sought refuge in a Muslim state], etc. If the murder of the infidel is prohibited, as in the case of a Dhimmi or mu‘āhid [a person with whom there is treaty of peace], his murderer shall be inflicted Ta‘zīr, and the Muslim shall pay the diyat of a Dhimmi for them.

Problem # 2. If a Muslim has the habit of killing the Dhimmis, it shall be permissible to inflict Qisāṣ on him after returning the surplus of his Diyat. Some jurists are of the opinion that it shall be a Hadd and not Qisāṣ, but this opinion is weak.

Problem # 3. A Dhimmi shall be put to death for the murder of a Dhimmi or a Dhimmiya after the return of his diyat. A Dhimmiya shall be put to death for killing a Dhimmiya or a Dhimmi, without the return of the surplus as in the case of Muslims, without there being any difference in case of both belonging to the same community or different communities. So a Jew shall be put to death for killing a Christian and vice versa, and a Majusi for killing either of them, or vice versa.

Problem # 4. If a Dhimmi kills a Muslim deliberately, he and his property shall be placed at the disposal of the walis of the victim, and they shall be at liberty to opt for putting him to death or enslave him, without any difference between the property being a capital asset ['ayıncı] or a da焉 [a financial claim], movable or immovable property, nor between its being equal to or more than the surplus of the diyat of a Muslim, or equal to or more than the diyat.

Problem # 5. The children of the Dhimmi who has committed murder are free and none of them shall be enslaved for the commission of murder by their father. If the Dhimmi who has committed murder embraces Islam before being enslaved, the walıs of the victim are allowed only to put him to death and nothing else.

Problem # 6. If an infidel kills an infidel, and then embraces Islam, he shall not be put to death for killing the infidel. He shall rather be liable to diyat provided that the victim happens to be one entitled to diyat.
مسألة ١: لو امتنع ولي دم المرأة عن تأدية فاضل الدينية أو كان فقيراً ولم يرض القاتل بالدية أو كان فقيراً يؤخر القصاص إلى وقت الأداء والمسرة.

مسألة ٢: يقتضى للرجل من المرأة في الأطراف، وكذا يقتضي للمرأة من الرجل فيها من غير رد وتتماوي ديتها في الأطراف ما لم يبلغ جرائه المرأة ثلثة الحر، فاذا بلغته ترجع إلى النصف من الرجل فيها. فحينذا لا يتقص من الرجل لها إلا مع رد التفاوت.

الثاني: التساوي في الدين، فلا يقتل مسلم بكافر مع عدم اعتياده قتل الكفار.

مسألة ١: لا فرق بين أصناف الكفار من الذمي والحربي والمستأمن وغيره، ولو كان الكافر عمرا القتل كالذي و المعاهد يعزز لقتله، ويغمر المسلم دية الذمي لهم.

مسألة ٢: لو اعتاد المسلم قتل أهل الذمة جاز الاقتصاص منه بعد رد فاضل ديه، وقيل إن ذلك حد لا قصاص، وهو ضعيف.

مسألة ٣: يقتل الذمي بالذمي وبالذمية مع رد فاضل الدينية، والذمية بالذمية و بالذي من غير رد الفاضل كالمسلمين، من غير فرق بين وحدة ملتها، وخلافاً، فيقتل اليهودي بالنصري والنصري والمجري بهما وبالعكس.

مسألة ٤: لو قتل ذمي مسلاماً عمدًا دفع هو وماله إلى أولياء الدنيا وهم غيرون بين قتله و استرقاته، من غير فرق بين كون المال عيناً أو ديناً منقولاً أو لا، ولا بين كونه مساواً يا لفاضل دية المسلم أو زائداً عليه أو مساواً يا للذمة أو زائداً عليها.

مسألة ٥: أولاد الذمي القاتل أحرار لا يسترق واحد منهم لقتل ودهم، ولو أسلم الذمي القاتل قبل استرقاته لم يكن لأولياء الدنيا القتل غير قتله.

مسألة ٦: لو قتل الكافر كافراً وأسلم لم يقتل به، بل عليه الدنيا إن كان القتل ذا دية.
Problem # 7. A legitimate son shall be put to death for killing an illegitimate son after he has attained to maturity and having been explained Islam and having accepted it, though still not having attained adulthood. There is hesitation and objection in putting him to death for murder, while he is still a minor and before attaining to maturity or after it, but before embracing Islam.

Appendages to this Chapter – Secondary Laws

1. If a Muslim cuts the hand of a Dhimmi deliberately, and the Dhimmi embraces Islam, and due to infection in his wound he dies, there shall be neither Qisās for part of the body nor shall be put to death for loss of life, but the Muslim culprit shall be liable to a complete Diyat for life. Likewise, if a child cuts the hands of an adult and attains adulthood, and his offence may result in the death of the victim, he shall neither be liable to Qisās for part of the body, nor to being put to death for loss of life, but his ‘āqila or close relatives shall be liable to diyat for loss of life.

2. If a person cuts the hand of a harbi infidel or an apostate and then embraces Islam, and the victim dies, according to the stronger opinion, the culprit shall be liable to neither Qisās nor to diyat. According to one juristic opinion, he shall be liable to diyat, as the time when he inflicted the injury shall be taken into consideration, but the first opinion is stronger. If a person throws an arrow and it hits a person after his embracing Islam, there shall be no liability for Qisās, but he shall be liable to diyat. There is also the likelihood of no diyat in consideration of the time the arrow was thrown, but this opinion is weak. The same law shall apply if a person throws an arrow on a Dhimmi and after his embracing Islam this his, there shall be neither Qisās nor diyat on him.

3. If an apostate kills a Dhimmi, he shall be put to death for killing the Dhimmi. If after killing the Dhimmi, he again embraces Islam, he shall not be liable to Qisās, but he shall be liable to diyat for the Dhimmi. If a Dhimmi kills an apostate, whether the apostate is fitri [i.e., born of Muslim parents], the Dhimmi shall be put to death for killing the apostate. If a Muslim kills an apostate, he shall not be liable to Qisās, and apparently he shall not be liable to diyat as well. But the Imam can impose the liability for Ta’ziron him.

4. If a Muslim owes the liability of Qisās and someone besides the ‘wali’ of the victim, the culprit shall be put to death. If a person owes the liability of being put to death due to Zinā’ or sodomy, and some one other than the Imam puts him to death, according to a juristic opinion, he shall be liable to neither Qisās nor diyat, but there is some doubt in it.

Third (Condition). The killer must not be the father of the person killed. If the father kills his son, he shall not be put to death. Apparently the grandfather, how high so ever, shall also not be put to death for killing his grandson.

Problem # 1. If a father kills his son, the payment of kaffāra (expiation) by the father for killing his son and the diyat shall not be set aside. He shall pay the diyat to heirs of the victim excluding himself, and he shall not have a share in the diyat.
مسألة ٧ - يقتل ولد الرشيدة بولد الزينة بعد وصفه الإسلام حين تميزه ولم يبلغ، وأما في حال صغره قبل التميز أو بعده وقبل إسلامه ففي قتله به وعده تأمل وشكال.

ومن لواحق هذا الباب فروع:

منها - لو قطع مسلم يد ذمي عمداً فأسلم وسرت إلى نفسه فلا قصاص في الطرف ولا قود في النفس، وعليه دية النفس كاملة، وذر كلو قطع صبي يد بالغ فبلغ ثم سرت جنايته لا قصاص في الطرف ولا قود في النفس وعلى عاقلته دية النفس.

ومنها - لو قطع يد حرري أو مرتز فأسلم ثم سرت فلا قود، ولا دية على الأقوى، وقيل بالدية اعتباراً بالاستقرار والذين أقوى، ولو رمياً فأصابه بعد إسلامه فلا قود ولكن عليه الدية، وربما يحتل العدم اعتباراً بالرمي، و هو ضعيف، وكذا الحال لورمي ذميًا فأسلم ثم أصابه فلا قود، وعليه الدية.

ومنها - لو قطع مرتز ذميًا يقتل به، وإن قتله ورجع إلى الإسلام فلا قود وعليه دية الذمي، ولو قطع ذمي مرتزًا ولو عن فطرة قتل به، ولو قتل مسلم فلا قود، وظاهر عدم الدية عليه وللامام عليه السلام تعزيره.

ومنها - لو وجب على مسلم قصاص قتله غير الوالي كان عليه القود ولو قتله بالزنا أو اللواط فقتله غير الإمام عليه السلام قبل لا قود عليه ولا دية، وفيه تردد.

الشرط الثالث - انتفاع الأبوة، فلا يقتل أب بقتل ابنه، وظاهرة أن لا يقتل أب الأب وهمدا.

مسألة ١ - لا تسقط الكفارة عن الأب بقتل ابنه ولا الديه، فيؤدي الدية إلى غيره من الوراث، ولا يرث هو منها.
Problem # 2. A father shall not be put to death for killing his son, even if he is not equal in (religious) status to his son. So an infidel father shall not be put to death for killing his Muslim son.

Problem # 3. A son shall be put to death for killing his father. Likewise, a mother, how high so ever, shall be put to death for killing her son, and a son shall be put to death for killing his mother. The same law shall apply to the near relatives like maternal grandfathers and grandmothers and the brothers and sisters from both sides, and paternal and maternal uncles and aunts.

Problem # 4. If two persons claim the parentage of a son of unknown parentage, and one of them kills him before casting lots, he shall not be liable to Qiṣṣā. If both the claimants join in killing him, whether the law shall be the same due to the continuance of the likelihood of his parentage to be attributed to each of them, or shall the matter be decided by casting lots? According to the stronger opinion, the matter shall be decided by casting lots, that is the second option. If after both of them have claimed the parentage of the son, then one of them withdraws his claim, then both of them kill the son, the Qiṣṣā shall be inflicted on the person who has withdrawn his claim of parentage of the son, after returning the surplus of (the diyat of) his offence, while the other culprit shall be liable to pay half the diyat after Qiṣṣā has been set aside from him. If the person withdrawing his claim kills the victim solely, the Qiṣṣā shall be inflicted on him exclusively. But if the other has killed him, he shall not be inflicted Qiṣṣā. If, however, both of them withdraw their claim of paternity, the victim’s heir shall be entitled to inflict Qiṣṣā on both of them after returning the diyat for loss of life. The same shall be the law if one or both of them withdraws his claim of parentage after killing him. Apparently the same law shall apply, if the person in whose favour the lot is drawn withdraws his claim of parentage, regardless of whether the other stands with his claim or not.

Fourth & Fifth (Conditions): are sanity and adulthood of the culprit. So a lunatic shall not be put to death irrespective of his killing a sane or insane person. Of course the diyat shall be payable by his Āqīla or near relatives. So also a minor is not to be put death for killing another minor or an adult, even if he may have attained the age of ten years or reached five spans of the hand. His willful murder shall be treated as a homicide by misadventure of mistake until he reaches the limit of men in age or other signs. His diyat shall be payable by his Āqīla, or near relatives.

Problem # 1. If a sane person kills another, then he suffers mental disorder and loses sense, Qiṣṣā is not set aside in his case, regardless of whether the murder has been established by legal evidence or his confession while in a state of sanity.

Problem # 2. Maturity in the usual sense is not a condition in the application of Qiṣṣā. So if an immature adult person kills a person, he shall be liable to Qiṣṣā.

Problem # 3. If difference takes place between the wali [of the victim] and the culprit after his attaining to adulthood or after recovery of sanity, so that the wali says: “You have killed the
مسألة 2 - لا يقتل الأب بقتل ابنه ولو لم يكن مكافئاً له، فلا يقتل الأب الكافر بقتل ابنه المسلم.

مسألة 3 - يقتل الولد بقتل أبيه، وإنما الأم وإن علبت بقتل ولدها، والولد بقتل أمه، وكذا الأقارب كالجذات من قبل الأم، والأخوة من الطرفين، والأعمام والعمات والأخوال والخالات.

مسألة 4 - لو أدعى إثنان ولداً مجهولاً فان قتله أحدهما قبل القرعة فلا قود، ولو قتله معاً فهل هو كذلك لبقاء الاحتمال بالنسبة إلى كل منهما أو يرجع إلى القدر؟ الأقوى هو الثاني، ولو أدعيا ثم رجع أحدهما وقتيه توجه القصاص على الراجل، بعد رد ما يفضل عن جنايته، وعلى الآخر نصف الدية بعد انقضاء القصاص عنه، ولو قتله الراجل خاصه اختص بالقصاص، وقوته الآخر لا يقتضي منه، ولو رجع معاً فلله أثر أن يقتضي منها بعد ردية نفس عليها، ولهذا الحال لو رجع أو رجع أحدهما بعد القتل، بل الظاهرة أنه لو رجع من أخريه كفره كان الأمر كذلك بقي الآخر على الدعوى أم لا.

مسألة 5 - لو قتل رجل زوجته يثبت القصاص عليه لولاها منه على الأصح، وقيل لا يقتضي من والده و هو غير وجيه.

الشرط الرابع والخامس - العقل والبلوغ، فلا يقتل المجنس سواء قتل عاقلاً أو مجنوناً، نعم تثبت الديه على عاقليه، ولا يقتل الصبي بصي ولا ببالغ وإن بلغ عشرأً أو بلغ خمسة أشوا، فعمده خطاً حتى يبلغ حد الرجال في السن أو سائر الأمارات، والديه على عاقليه.

مسألة 1 - لو قتل عاقل ثم خولط وذهب عقله لم يسقط عنه القدر سواء ثبت القتل بالبينة أو بأقراره حال صحته.

مسألة 2 - لا يشترط الرشد بالمعنى المعهود في القصاص، فلو قتل بالغ غير رشيد فعليه القدر.

مسألة 3 - لو اختلف الولي والجاني بعد بلغه أو بعد إفراجه فقال الولي: قتله.
victim while you were adult and sane, while the culprit declines it, then the word of the culprit shall be accepted followed by his oath. But the liability of the payment of diyat is to be made from his property is establishment by the confession of the culprit and the diyat shall not be payable by his āqila, or near relatives, without any difference whether the dates of the murder by the minor and lunatic are not known, or whether the date of one of them is known to the exclusion of the other. This is the case when there is difference regarding the adulthood. But as regards the difference regarding the start of insanity, there may be difference regarding the murder whose date is known, but there may be doubt in the date of the start of insanity, in which case the word of the wali shall carry. In all the other cases, the word of the culprit shall be accepted. If insanity is not usual with the culprit, apparently the word of the wali shall be accepted.

Problem # 4. If the culprit claims he is presently a minor, and it may be true in his case. If it is possible to prove that he is an adult, well and good; otherwise, his word followed by his oath shall be accepted. If he makes confession of having committed murder, it shall have no legal effect except after having knowledge about his adulthood and his stay on his confession.

Problem # 5. If an adult person kills a minor boy, he shall be liable to be put to death for it according to the opinion more compatible with the principles of law, though it is cautious that the wali of the victim should not opt to put the culprit to death, but should rather make a compromise with him for the payment of diyat. A sane person shall not be put to death for killing an insane person, even if his insanity is periodical and the murder having been committed during his insanity. Diyat shall be established on the culprit if it were a willful murder or manslaughter. If it were merely a homicide by misadventure or mistake, the diyat shall be payable by his āqila, or near relatives. If the lunatic attacked him and he defended himself against him, he shall be liable neither to Qisās nor to any diyat, but his heirs shall be paid the diyat from Bayt al-Māl of Muslims [the state treasury].

Problem # 6. There is doubt in the establishment of Qisās against intoxicated sinner on taking an intoxicant drink if he is considered to have lost intention and be out of control, and according to the more cautious opinion closer to the traditional authority there should be no Qisās. If there is some doubt about the suspension of intention and control due to intoxication, he shall be treated as one having intention. The same is the law in all cases of suspension of intention and control, if it is supposed that by taking hashish or drinking narcotic syrup the result is similar to intoxication. In case of doubt, action shall be taken in such case similar to one having intention. If the intoxication, etc. is not as a result of a sin, there shall be no doubt in non-liability for Qisās. There is no liability for Qisās on one who is asleep or has swooned. However, there is hesitation [regarding liability for Qisās] in case of a blind person. [This is the case when such persons are accused of committing murder].

Sixth (Condition). The person killed must be one whose life is legally assured. If a person kills one who is legally free to be killed, as one who vituperates [God forbid] the Prophet, Peace be upon him and his Descendants, when the killer shall not be liable to Qisās. Likewise, there shall be no liability for Qisās with a right to do so as one killing by way of Qisās or in self-defence. There is hesitation and doubt in case of the liability for Qisās on a person who is liable to be put to death by way of Ḥadd for the commitment of sodomy, Zinā', apostasy by a person born of Muslim parents after he
حالة بلوغك أو عقلك فأنكره الجنائي فالقول قول الجاني بيمينه. ولكن تثبت الدية في مسألة بقرارها لا العاقلة، من غير فرق بين الجن ذي باريخها أو باريخ أحدهما دون الآخر. هذا في رفض الاختلاف في البلوغ، وأما في الاختلاف في عروض الجنون فيمكن الفرق بين ما إذا كان القتل معلوم التاريخ وشك في تاريخ عروض الجنون فالقول قول الولي، وبين سائر الصور فالقول قول الجناني، ولم يعهد للقاتل حال جنون فالظاهر أن القول قول الولي أيضاً.

مسألة 4: لو ادعى الجنائي صغره فعلًا وكان مكناً في حقه فان أمكن إثبات بلوغه فهو، وإلا فالقول قوله بلا مين، ولا أثر لقراره بالقتل إلا بعد زمان العلم ببلوغه وقائه على القرار فيه.

مسألة 5: لو قتل البالغ الصبي قتل به على الأشيء، وإن كان الاحتياط أن لا يختار ولي المقتول قتله، بل يصالح عنه بالدية، ولا يقتل العاقل بجنون، وإن كان أدوياً مع كون القتل حال جنونه، وتثبت الدية على القاتل إن كان عمداً أو شبه، و على العاقلة إن كان خطأً محضاً، ولو كان الجنون أرادة فدفعه عن نفسه فلا شيء عليه من فدية ولا دية، ويعطي ورثه الدية من بيت مال المسلمين.

مسألة 6: في ثبوت القود على السكراك الآثم في شرب المسكر إن خرج به عن العمد و الاختيار ترد، وأقرب الأحوزة عدم القود، نعم، لو بات في زوال العمد و الاختيار منه يلحق بالعامد، وكذا الحال في كل ما ي السل العمد و الاختيار، فلو فرض أن في البنج و شرب المزدق حصول ذلك يلحق بالسكراك، و مع الشك يعمل مع معاملة العمد، ولو كان السكر و نحوه من غير إثم فلا شبهة في عدم القود، ولا قود على النائم و المغمى عليه، وفي الأعمى ترد.

الشرط السادس - أن يكون المقتول محنون الدم، فقلت من كان مهدور الدم كالسما بكلي الله عليه و آله و سلم عليه القد، وكذا لا قود على من قتل بحق كالقصص و القتل دفاعاً، و في القود على قتل من وجب قتله حداً.
had repented. There is no liability for Qisāṣ in the case of a person who dies as a result of infection due to the infliction of Qisāṣ or Ḥadd.

Chapter Three  on what establishes Qisāṣ

There are a few things that establish the liability for Qisāṣ.

First: Confession for having committed Murder

It is sufficient to make confession once of having committed murder. There are some jurists who are of the opinion that the confession must be made twice. But there is no reason for it.

Problem # 1. A person making confession of murder must be free, adult, sane, and having free will and intention. So a confession made by a minor boy has no legal value, even if he is an adolescent. So also a confession made by a lunatic, or made under duress, or by mistake, or while asleep, or by a negligent person or an intoxicated person who has lost his sense and control [due to intoxication].

Problem # 2. A confession of a willful murder made by an interdicted person on account of idiocy or insolvenacy shall be accepted, and he shall be arrested and inflict Qisāṣ without waiting for lifting of his interdiction.

Problem # 3. If a person makes confession of having committed a willful murder of another and a third person makes confession of having committed homicide by misadventure or mistake, the wali of the victim shall be at liberty either to accept the word of the person confessing of having committed willful murder and inflict Qisāṣ on him, or accept the word of the other having confessed of committing homicide by misadventure and receive diyat from him, but he is not entitled to accept the word of both persons making confession.

Problem # 4. If a person accuses another of committing murder and he makes confession of having committed willful murder, and then another person appears and confesses that he is the person who has committed the murder, and the first person withdraws his confession, the Qisāṣ and diyat shall be averted from both, and the diyat of the victim shall be paid from the Bayt al-Māl [state treasury] of the Muslims, according to a Tradition that has been acted upon by our companions, and there is nothing objectionable in it, but it must be confined to the case and made sure of the situation of the fatwā of the companions. If the first confessor does not withdraw his confession, action shall be taken according to the relevant rules. If there is no Bayt al-Māl of the Muslims, it is not far from likely that one or both of the confessors should be compelled to pay the diyat. In case they have no property, there shall be hesitation in inflicting Qisāṣ.
القول في يثبت به القول

وهو أمر:

الأول الأقرار بالقتل:

ويكون فيه مرة واحدة، ومنهم من يشترط مرتين، وهو غير وجوه.

مسألة ۱ - يعتبر في المقر البلوغ والعقل والاختيار والقصد والحرية، فلا عبرة بأقرار الصبي وإن كان مراهقاً، ولا المجنون، ولا المكره، ولا الساهي و النائم والغافل والسكران الذي ذهب عقله واختياره.

مسألة ۲ - يقبل أقرار الحجر في منسوبه أو فلس بالقتل العمدي، فيؤخذ بآواره، ويقتض منه في الحال من غير انتظار لفك حجره.

مسألة ۳ - لو أقر شخص بقتله عمداً وأخر بقتله خطأ كان للولي الأخذ بقول صاحب العمد يقتض منه، والأخذ بقول صاحب الخطأ، فيلزم بالدية، و ليس لأخيه بقولهما.

مسألة ۴ - لو لم يأتهم رجل بقتله و أقر المتهم بقتله عمداً فجاء آخر وأقر أنه هو الذي قتله و رفع المقر الأول عن أقراره، درى عنها القصاص والدية لو تأدي نية القتل من بيت المال على رواية عمل بها الأصحاب، ولا بأمر، ولكن يقتصر على موردها و المتين من مورد فتوى الأصحاب، فلو لم يرجع الأول عن أقراره عمل على القواعد، ولو لم يكن بيت المال للمسلمين فلا يعد إلزامهما أو
Second: Legal Evidence

What entails the liability for Qisās, whether for life or a part of body, is not established except by the testimony of two witnesses of reputed integrity. In such case, neither the testimony of women shall have any value whether alone or combined by the testimony of a man, nor shall their testimony entail the liability for the payment of di yat where there is the liability of Qisās. Of course, their testimony is allowed in cases entailing the liability for di yat as a homicide by misadventure or mistake or a semblance of willful murder, or in case of injuries not entailing Qisās, as hāshima, an act causing fracture of bone, but not creating suppuration, or above. But what entails the liability of Qisās is not established by the testimony of a single witness and oath of the plaintiff, according to the opinion generally received.

Problem # 1. It is a condition for the acceptance of a testimony in a case of murder that the testimony must be sāriḥ [or unequivocal and unambiguous] or like sāriḥ, as when he says: ‘He killed him with a sword’, or ‘He struck him with a sword and he died’, or ‘He shed his blood and he died by it’. If there is brevity or uncertainty in a testimony, it shall not be accepted. Of course, apparently there is no value for the rational probabilities that are not repugnant to appearance or unambiguity according to the custom and usage, as when a person says: “He struck him with a sword and he died”, where it is possible that the death might have been without striking with the sword. Rather apparently the rational appearance must have value, and it is necessary that the clarity must be such in which there should be no touch of probability rationally.

Problem # 2. It is a condition for the acceptance of a testimony that the testimony of both the witnesses should concern the same subject and the same description. If one of the witnesses testify that the culprit killed the victim in the morning, while the other testifies that he killed him in the evening, or one of them testifies that the culprit killed the victim by poison, but the other testifies that he killed with a sword, or one of them says that the culprit killed the victim in the market, and the other says that he killed the victim in the mosque, the statement of both of them shall not be accepted. Apparently it is also not a case of lawth (or suspicion of involvement in an offence). Of course, if one of them testifies that the culprit confessed of committing the murder, and the other testifies to his observation, their testimony shall not be accepted, but it is a case of lawth.

Problem # 3. If one of the two witnesses testifies to the confession of the murder in general terms [by the culprit], while the other witness testifies to the confession of willful murder [by the culprit], the actual act of murder is established on which both the witnesses have agreed. In such case the culprit is legally bound to give his statement. If he denies the actual act of murder, it shall not be accepted. If he makes confession of having committed willful murder, it shall be accepted. If he denies having committed willful murder, while the wali of the victim claims it, the word of the culprit shall be received provided it is followed by his oath. If the culprit claims to have committed homicide by misadventure or mistake, while the wali denies it, it is said by
لا يثبت ما يوجب القصاص سواء كان في النفس أو الطرف إلا بشاهدين عدلين، ولا اعتبار بشهادة النساء فيه منفردات ولا منضماة إلى الرجل، ولا توجب شهادتي الدية في يوجب القصاص، نعم تجوز شهادتي فما يوجب الدية كالقتل خطأ أو شبه عم، وفي الجراحات التي لا توجب القصاص كالهاشمة و ما فوقها، ولا يثبت ما يوجب القصاص بشهادة شاهد وبين المدعى على قول مشهور.

مسألة 1. يعتبر في قبول الشهادة بالقتل أن تكون الشهادة صريحة أو كالمصرحة تقولوها (قتله بالسيف) أو (ضربه به فئات) أو (أرافق دمه فات منه) ولو كان فيه إجمال أو احتمال لا تقبل، نعم الظاهر عدم الاعتباط بالاحتمالات العقلية التي لا تنافي الظهور أو الصرامة عرفًا، مثل أن يقال في قوله: (ضربه بالسيف فئات): حمل أن يكون الموت بغير الضرد، بل الظاهر اعتبار الظهور العقلاني، ولا يلزم التصرح بما لا يتخلل فيه الاحتمال عقلًا.

مسألة 2. يعتبر في قبول الشهادة أن ترد شهادتها على موضوع واحد ووصف واحد، فلو شاهد أحدهما أنه قتله غدًا و الآخر عشيًا أو شهد أحدهما أنه قتله بالسم و الآخر أنه بالسيف أو قال أحدهما: أنه قتله في السوق وقال الآخر في المسجد لم يقبل قولهما، و الظاهر أنه ليس من اللوث أيضًا، نعم لو شهد أحدهما بأنه أقر بالقتل والآخر مشاهده لم يقبل شهادتها، ولكنه من اللوث.

مسألة 3. لو شهد أحد الشاهدين بالإقرار بالقتل مطلقًا و شهد الآخر بالإقرار عمداً ثبت أصل القتل الذي اتقا عليه، فحينئذ يكلف المدعى عليه بالبيان، فان أدرك أصل القتل لا يقبل منه، وإن أقر بالعمد قبل منه، وإن أدرك العمد و
some jurists that the word of the culprit shall be accepted provided it is followed by his oath, but there is some confusion in accepting it. Rather apparently the word of the wali must be accepted. If the culprit claims that he has committed homicide by misadventure or mistake, but the wali of the victim claims that it was willful murder, then apparently it is a case of tadāʾī [or challenging the veracity of the statement of each other].

Problem # 4. If one of the witnesses testifies to witnessing of willful murder, while the other testifies to the murder in general, but the culprit denies having committed willful murder, while the wali claims it, the testimony of one of them shall create lawth [suspicion of being involved in the offence]. If the wali intends to establish his claim, qasāma or taking oath [to the number required by law] shall be indispensable.

Problem # 5. If two witnesses testify that the murderer is suppose Zayd, and two other witnesses testify that it is ʿAmr and not Zayd, the jurists say that Qiṣāṣ shall be set aside, and both shall be liable to pay half the diyat provided the murder about which testimony has been given is a willful one or a manslaughter or semblance of willful murder, but it is homicide by misadventure or mistake, the diyat by the aqilah of both. Some of the jurists are of the opinion that it is up to the wali [of the victim] to accept the statement of either of them as true as he likes, as would have been the case had each of the two had testified individually. It is more reasonable to say that both the Qiṣāṣ and the diyat shall be set aside.

Problem # 6. If two witnesses testify that the victim has been killed willfully, while another person confesses that he is the murderer and the person against who testimony has been given is not involved in the murder, then according to the Tradition on which action has been taken if the walis of the victim intend to kill the person who has confessed against himself [in Qiṣāṣ], they can kill him, but they shall not be entitled to anything against the other. Moreover, the heirs of the person who has confessed shall not be entitled to anything against whom testimony has been given. If they intend to kill the one against whom testimony has been given, they may do so, but they shall not be entitled to anything against the one who has confessed. Then the confessor shall pay half the diyat to the heirs of the person against whom testimony has been given. If they intend to kill both of them together [in Qiṣāṣ], they may do so, but they shall have to pay half the diyat exclusively to the heirs of the one against whom testimony has been given, and then they may kill both of them [in Qiṣāṣ]. If they intend to get the diyat, each of the accused shall be liable to pay half the diyat.

The problem is really very difficult, and it is necessary to exercise caution in it and not to rush to kill both the accused [in Qiṣāṣ].

Problem # 7. If it is supposed in the preceding case that the heirs of the victim make a claim against one of the accused and not against the other, the other shall be absolved.

If they make a claim from the accused against whom testimony has been given, the confession by the confessor shall be se aside. If, however, they make a claim against the confessor, the testimony shall be set aside.
ادعاه الوالي فالقول قول الجاني مع يمينه، وإن ادعى الحطا وانكر الولي قبل يقول الجاني بيمينه، وفيه إشكال، بل الظاهر أن القول قول الولي، ولو ادعى الجاني الحطا وادعى الولي العمد فالظاهر هو التداعي.

مسألة 4 - لو شهد أحدهم بمشاهدة القتل عمداً والآخر بالقتل المطلق وأنكر القاتل العمد وأدعاه الوالي كانت شهادة الواحد لوثاء، فإن أراد الولي إثبات دعواه فلابد من القياس.

مسألة 5 - لو شهد إثنان بأن القاتل زيد مثلاً وآخرين بأنه عمو رابعه قبل: يسقط القصاص، ووجب الدية عليها نصفين لو كان القتل المشهود به عمداً أو شبهًا، وعلى عاقلتها لو كان خطاً، وقيل إن الولي متخير في تصديق أنها شاه، كما لو أقر إثنان كل واحد بقتله منفرداً، والوجه سقوط القد والدية جميعاً.

مسألة ٦ - لو شهد بأن القاتل عمداً فأقر آخر أنه هو القاتل وأن المشهود عليه بريق من قتله في رواية صحية معمل بها إن أراد أولياء المقتول أن يقتلوه الذي أقر على نفسه فلقبتهما، ولا سبيل لهما على الآخر، ثم لا سبيل لورثة الذي أقر على نفسه على ورثة الذي شهد عليه، وإن أرادوا أن يقتلوه الذي شهد عليه فلقبتهم، ولا سبيل لهم على الذي أقر، ثم ليؤد الذي أقر على نفسه إلى أولياء الذي شهد عليه نصف الدية، وإن أرادوا أن يقتلوهما جمعاً دون صاحبهم ثم يقلبناهما، و إن أرادوا أن يأخذوا الدية فهي بينها نصفان، والمسألة مشكلة جداً يجب الاحتياط فيها وعدم التهمج على قتلها.

مسألة ٧ - لو فرض في المسألة المتقدمة أن أولياء الميت ادعوا على أحدهما دون الآخر سقط الآخر، فإن ادعوا على المشهود عليه سقط إقرار المقر، وإن ادعوا على الفرطقين البينة.
Third: Qasāma [or Taking oath up to the number required by law].

The discussion under it consists of several Discourses.

First Discourse: concerning Lawth [or suspicion of involvement in an offence].

Lawth means the presumptive indication or cue that is brought before the judge about the veracity of the plaintiff as a single witness or two witnesses without having the qualifications for acceptance.

The same is the case when the accused is found soaked in the blood of the victim and beside him there is a person having a weapon with blood on it, or something like it is found in a house of some persons, or a place isolated from the rest of the town in which no one enters except its own people, or he is found in the battlefield in front of the enemy after the shower of arrows. In short, every presumptive cue before the judge produces lawth, or suspicion of involvement in an offence, without there being difference between the means leading to the suspicion.

So a suspicion is created by the information supplied by a discreet and trustworthy boy, or a profligate who is reliable in his information, or an infidel of the same quality, or a woman, some one like them.

Problem # 1. If a victim is found in a village where there is frequent traffic or in an isolated locality where there is public passage, there shall be no lawth except when there is some enmity, then lawth shall be established.

Problem # 2. if a murdered person is found between two villages, then lawth shall be ascribed to the closer of the two to the victim, and in case they lie on equal distance, they shall be equal in lawth too. If there is enmity in one of them, then lawth shall belong to that one even if it farther in distance.

Problem # 3. If no lawth is found, then the law shall apply as in other cases, so that there shall be neither Qasāma nor a binding or sacred oath. The plaintiff shall have to adduce legal evidence, while the defendant shall take oath. In case there is no legal evidence available, the wali of the victim shall demand the repudiator to swear [by Allāh] once.

Problem # 4. If a person is killed in a crowd of people assembled on Friday or a festival, or is found in a desert, market or on a bridge, and there is no knowledge about his murderer, his diyat shall be paid from the Bayt al-Māl (state treasury) of Muslims.
المقدمة أبو الوليد الباجي

المقدمة

الثالث القسمة:

والبحث فيها في مقاصد:

الأول في اللوث

والمراد به أمارة ظنية قامت عند الحاكم على صدق المدعو كالشاهد الواحد أو الشاهدين مع عدم استجتا مه شرائع القبول، وكذا لو وجد متشحطاً بدمعه وعنده ذو سلاح عليه الدم أو وجد كذلك في دار قوم أو في محلة منفردة عن البلد لا يدخل فيها غير أهلها أو في صف قتال مقابل الخصم بعد المرامة، وعلي كل

أمارة ظنية عند الحاكم توجب اللوث، من غير فرق بين الأسباب المفيدة للظن، فيحصل اللوث باختصار الصبي المميز المعتمد عليه، والفاسق الموثوق به في إخباره، والكافر كذلك، والمرأة ونحوهم.

مسألة 1 - لو وجد في قرية مطروفة فيها الآياب والذهاب أو محلة منفردة كانت مطروفة فلا لوث إلا إذا كانت هناك عداوة فينثبت اللوث.

مسألة 2 - لو وجد قتيل بين القرنين فاللوث لأقرها إليه، وومو النسوي فينها سواء في اللوث، نعم لو كان في إحداها عداوة فاللوث فيها، وإن كانت بعدها.

مسألة 3 - لو لم يحصل اللوث فالحكم فيه كغيره من الدعاوي، فلا قсадة ولا تفظظة، والبينة على المدعو وأيام على المدعو عليه، فللولي مع عدم البيئة إخلاف المتكربين واحداً.

مسألة 4 - لو قتل شخص في زحام الناس ليوم جمعة أو عيد أو وجد في فلابة أو سوق أو على جسر ولم يعلم من قتله فدنه من بيت مال المسلمين، نعم لو كان
Of course, if in the cases mentioned there is some presumptive indication of the murder being the act of, suppose, a particular person, *lawth* shall be obtained.

**Problem # 5.** If there is some conflict in the presumptive indications, *lawth* shall be cancelled, as close to the murdered person another person is found with a weapon soaked in blood and a beast who is wont to kill human beings, while there is no indication as to which of the two have committed the murder, and in every direction there is mere doubt, it is indispensable in such a case to adopt the usual course other than Qasāma for solving the dispute.

**Problem # 6.** In a *lawth*, according to the stronger opinion, it is not a condition that there must be some vestige of murder after the presumptive indication of the actual murder, in a Qasāma it is not a condition that the defendant must also be present, as is the requirement in other cases according to the most authentic opinion.

**Problem # 7.** If the *wali* of the victim claims that such a person from among the dwellers of the house is the murderer when the murdered person is found in it, *lawth* is obtained, and the claim is established by Qasāmah provided there is a proof of the accused being present in the house at the time the murder had been committed; otherwise there shall be no *lawth* in relation to him. If the accused denies having been present in the house at the time the murder was committed, his word shall be accepted provided he swears [by Allāh].

**Second Discourse:** concerning the Quantum of Qasāmah.

The quantum of Qasāmah is fifty oaths [by Allāh] in a case of willful murder, and twenty-five oaths [by Allāh] in a case of homicide by misadventure or mistake and a semblance of willful murder or manslaughter, according to the most authentic opinion.

**Problem # 1.** If the accused has a people of his tribe whose number equals that required in a Qasāmah, each of them shall swear [by Allāh] once. If, however, their number falls short, they shall repeat the oath until they complete the number required in a Qasāmah. But if there is more than required in a Qasāmah, they shall be at liberty to appoint from among themselves fifty in a case of willful murder and twenty-five in other cases.

**Problem # 2.** If the accused has no Qasāmah, or he has Qasāmah, but some or all of the people of his tribe refuse to swear [by Allāh], the accused and those who agree to swear shall swear [by Allāh] and repeat the oath till the number required in Qasāmah is completed. If none of his people agree to swear, the accused shall swear [by Allāh] until the number required in Qasāmah is completed.

**Problem # 3.** If the number of the people of his tribe falls short of the required number, shall it be obligatory to divide the oaths among them equally, so that if their number is ten, each of
لا تضمن هذه النسخة الترجمة الدقيقة للنص العربي الأصلي. يرجى الرجوع إلى النص العربي الأصلي للحصول على النسخة الصحيحة.
them should swear five times, or each of them shall swear once and the deficit shall be completed by the wali of the victim, or after each of them having sworn once, they shall be free to distribute the deficit among themselves as they like? The last mentioned system is not far from being likely to be accepted, though it would be better to divide the deficit equally among themselves. Of course, if there is some deficit in the division, as when their number is seven and after division there remains a deficit of one, they shall be free to adopt the method as they like. It is better that in the supposed case, the wali of the victim should swear. If it is said that the wali of the victim or his heirs shall complete the deficit in all cases, it shall not be far from being likely. If the number is nine and the remainder is five, the wali or the walis shall swear to complete the remaining number. If there is a deficit at the time of the division of the oaths among the heirs, they shall be free to adopt the manner they like. If there is a dispute among the heirs relating to the oaths, then it is not far from being likely to resort to casting lots. It is shall not be considered tantamount to refusal to swear.

Problem # 4. Is it a condition in Qasāmah that the present heirs should swear or he may be any one from among the degrees of heirs even if he is not an heir presently, or it is sufficient for him to belong to the tribe of the plaintiff or he may belong to his tribe according to the custom, even if he is not from among the near relatives of the victim? Apparently there is no condition of being one of the present heirs of the victim. Of course, it is a condition in the plaintiff. But as regards the others, it is sufficient for them to belong to the family or tribe of the victim but not distant. It is more apparent that they should be from among the males and close relatives of the victim. It is also a condition in Qasāmah that the swearing persons should be males, but as regards the plaintiff in it, it is not a condition in it, even if he is one of the male plaintiffs. In case the number of males is not sufficient, then will it be sufficient for the females to swear? There is hesitation and objection in it. So it is indispensable for the males to repeat their oaths. In case of absence of men, it is sufficient for the plaintiff to swear up to the total number required, even if the plaintiff is one of the females.

Problem # 5. If the number of the plaintiffs is more than one, then fifty oaths will be sufficient. But if the number of the defendants is more than one, then there is objection in the sufficiency or insufficiency of fifty oaths, and it is more reasonable to raise the number of the oaths according to the number of defendants. If there are two defendants, each of them shall swear fifty times in order to repudiate the claim of the plaintiff, though the sufficiency of fifty oaths is not from being reasonable though the former opinion is more reasonable.

Problem # 6. If the plaintiff or he and his tribesmen fail to swear, he may forward the oath to the defendant who is also required to swear fifty times. So he must present fifty persons from among his tribesmen to swear that he is guiltless, and each of them should swear that the accused is guiltless. If they are in less than fifty in number, they shall repeat their oath till it completes the required number, and judgment may be given for his acquittal from Qisās and diyat. If there is no one from among his tribesmen to swear, he shall swear fifty times. If he swears [fifty times], judgment shall be given for his acquittal from Qisās and diyat. If the
عددهم عشرة يخلف كل واحد خمسة، أو يخلف كل مرة و يتمولي الدم النقيصة، أو لهم الخبرة بعد بين كلي واحد، فلهم التوزيع بينهم بآي نحو شؤوا؟ لا يعد الآخر و إن كان الأولى التوزيع بالسوية، نعم لو كان في التوزيع كسر كيا إذا كان عددهم سهبة بعد التوزيع بقي الكسر واحدا فلهم الخبرة، و الأولى حلف ولي الدم في المفروض، بل لو قيل إن النقيصة مطلقة على ولي الدم أو أوليائه فليس بعيدا، فذا كان العدد تسع في فل ول cipher خمسة خلفه إبلية الأولى أو الأولياء، فان كان في التوزيع بين الأولياء كسر فهم بالخير، ولو وقع فيهم تشاح فلا يبعد الرجوع إلى القرعة، و ليس هذا نكولا.

مسألة 4 - هل يعتبر في القسمة أن تكون من الوراث فعلاً أو في طبقات الأثر ولو لم تكن وارتناً فعلاً أو يكفي كونها من قبيلة المدعى و عشيرته عرفنا وإن لم تكن من أقرابه؟ الظاهرة عدم اعتبار الوراثة فعلاً، نعم الظاهرة اعتبار ذلك في المدعى، و أما سائر الأفراد فالأكفاء بكونهم من القبيلة و العشيرة غير بعيد، لكن الأظهر أن يكونوا من أهل الرجل وأقرابه، و الظاهرة اعتبار الرجولية في القسمة، و أما في المدعى فلا تعتبر فيه و إن كانت أحد المدعين، و مع عدم العدد من الرجال ففنة كفية حلف النساء تأمل و إشكال، فلا بد من التكرير بين الرجال، و مع الفقد يخلف المدعى تمام العدد ولو كان من النساء.

مسألة 5 - لو كان المدعى أكثر من واحد فالظاهرة كفية خمسين قسمة، و أما لو كان المدعى عليه أكثر ففنة كفية خمسين قسمة و عددها إشكال، و الأوجه تعدد القسمة حسب تعدد المدعى عليه - فلو كان إثنين يخلف كل منها مع قومه خمسين قسمة على ردة دعوى المدعى - و إن كان الاكتفاء بالخمسين لا يخلو من وجه لكن الأول أوجه.

مسألة 6 - لولا يخلف المدعى أو هو و عشيرته فلا أن يرد الخلف على المدعى عليه فعليه أيضاً خمسن قسمة، فليحضر من قومه خمسن يشهدون ببرائه، و خلف كل واحد ببرائه، ولو كانوا أقل من الخمسين كررت عليهم الأيمان حتى يكلموا
defendant has no one to swear and he also refuses to swear, he shall be bound to pay the fine, and at this stage, he cannot return the oath to the other party [i.e., his adversary].

**Problem # 7.** In a case of Leweth, Qasāmah is established in parts of body. Shall there be fifty oaths in a case of willful murder and twenty-five in other cases in which the offence entails the liability for diyat, as in case of cutting the nose or penis (dhakar). Otherwise, if the offence does not entail the liability for diyat, shall the oaths be proportionate to the offence out of fifty oaths in a willful murder and twenty-five in a homicide by misadventure or mistake and manslaughter or semblance of willful murder, or sixty oaths [by Allāh] in a case entailing diyat for life and in a case where the liability is for less than diyat, shall the oaths be proportionate to the offence out of six oaths? The more cautious opinion is in favour of the first alternative, while the opinion more compatible to the principles of law is in favour of the second alternative.

The culprit shall be liable to swear [by Allāh] three times in a case of cutting a single hand or a single foot or in all the offences entailing half diyat. In case of an offence entailing one-third diyat, the culprit shall swear [by Allāh] twice, and so on. If there is a deficit in an oath, it shall be completed by a single oath, as an oath cannot be divided into pieces. So in a case of cutting a single finger the culprit shall swear [by Allāh] once, and for cutting a single finger-tip, the culprit shall swear [by Allāh] once. The same rule shall apply to the case of injury, in which six oaths are sufficient in proportion to the offence, while the deficit is to be completed by a single oath.

**Problem # 8.** It is a condition in Qasāmah that the person taking oath must be sure and his oath must be based on surety and certainty, as mere suspicion is not sufficient in it.

**Problem # 9.** Is Qasāmah of an infidel acceptable in his claim against a Muslim for the commission of a willful murder or a homicide by misadventure, or in other cases? There is difference of opinion on this point. According to the rational opinion, it is not acceptable.

**Problem # 10.** It is indispensable in an oath to mention details that may exclude the subject and the matter from ambiguity and suspicion by mentioning the murderer and the person murdered, their parentage and description that may remove ambiguity and suspicion, as well as the type of the murder as to its being a willful one, or one committed by misadventure or semblance of willful murder or manslaughter, as also to mention whether it was committed singly or in partnership with others, and such other particulars.

**Third Discourse : concerning the Laws of Qiṣāṣ**

**Problem # 1.** Qiṣāṣ is established by Qasāmah in a willful murder, and the murderer is liable to pay the diyat in case of homicide by misadventure [or] manslaughter or semblance of willful
المقصد الثالث في أحكامه

العدد، وحكم براته قصاصاً ودية، وإن لم يكن له قسامة من قومه يخلف هو خمسين يميناً، فإذا حلف حكم براته قصاصاً ودية، وإن لم تكن له قسامة ونكل عن اليمين ألزم بالغرامة، ولا يرده في المقام اليمين على الطرف.

مسألة 7 - تثبت القسامة في الأعضاء مع اللوث، وقيل القسامة فيها خمسون في العمد وخمس وعشرون في غيره. في بلغت الجناية الدية كالأنف والذكر إلا فنسبتها من خمسين يميناً في العمد وخمس وعشرين في الخطا، وشبه أو ستة أيان في فيه دية النفس والجنس من السنت فيا فيا، دين دين؟ الأحوط هو الأول، والأشبه هو الثاني، وعلى فيه اليد الواحدة أو الرجل الواحدة وكل ما فيه نصف الديه ثلاث أيان، وفي فيه ثلاثاً اثنان وهكذا وإن كان كسر في اليمين أجمل بعينين. إن لا تكسر اليمين، فحينئذ في الأسع الواحدة يمين واحدة، وكذا في الأمثل الواحدة، وكذا الكلام في الجرح، فيجي الست بحسب النسبة وفي الكسر يكل بعينين.

مسألة 8 - يشترط في القسامة علم الحالف، ويكون حلفه عن جزم وعلم، ولا يكفي الظن.

مسألة 9 - هل تقبل قسامة الكافر على دعوى على المسلم في العمدة والختأ في النفس وغيرها؟ فيه خلاف، والوجه عدم القبول.

مسألة 10 - لا بد في اليمين من ذكر قيود يخرج الموضوع ومورذ الحلف عن الالهام والاحتمال من ذكر القاتل والمقتل ونسبيها ووصفها وما يزيل الالهام والاحتمال، وذكر نوع القتل من كونه عمداً أو خطاً أو شبه عمداً، وذكر الانفراد أو الشريكة و نحو ذلك من القيود.

المقصد الثالث في أحكامها

مسألة 1 - يثبت القصاص بالقسامة في قتل العمد، والدية على القاتل في
murder, while in a homicide by sheer misadventure or mistake the diyat is payable by the āqila, or the near relatives, [of the murderer]. Some of the jurists say that in a homicide by sheer misadventure the diyat shall be paid by the murderer and not the āqila, but this last opinion is not agreeable.

Problem # 2. If a wali [of a person murdered] files a suit against two persons, and he has lawth against one of them, then in relation to the person having lawth, the law shall be the same as mentioned earlier that in it murder shall be established by fifty Qasāmah, and in relation to the other the law relating to the suit shall be the same as in such other cases, i.e., the accused shall be liable to swear [by Allāh] but there shall be no Qasāmah. If the accused swears [by Allāh] the suit against him shall be set aside, but if he forwards the oath to the plaintiff, he shall swear [by Allāh]. However, this oath shall not be included in the required fifty oaths, rather, according to the stronger opinion, it is indispensible in lawth that there must be fifty oaths excluding this oath.

Problem # 3. If a wali [of a person murdered] intends to put to death [by way of Qisās] the person being murdered has been established against the murderer by Qasāmah, he shall return half his diyat to him. The same shall be the law if the murder is established against the other by the oath forwarded to him [by the first accused] and the wali intends to put him to death, he shall return half the diyat to him.

Problem # 4. If there is lawth and some of the heirs [of the person murdered] are absent, and the heir who is present files a suit before a judge, his claim shall be entertained, and he shall be asked to present fifty Qasāmah, and in case of failure, he shall be asked to swear [by Allāh] fifty times in a case of willful murder, and half the number in other cases according to what has already been explained, and then his right shall be established, and there shall be no need to wait for the presence of the other heirs, and he shall be entitled to fulfill his claim even if it is for inflicting Qisās. If the other heir also presents himself and intends to fulfill his claim, the jurists have said that he shall be required to swear [by Allāh] to the number of his share. If he is single, he shall be required to swear [by Allāh] twenty-five times in a case of willful murder, but if they are two, each of them shall be required to swear for one-third of the number, and so on. In case of fractions, they shall be completed by a single oath. It is probable that the right of the absent heir will be established by the Qasāmah of the present or by his oath(s). It is also likely to treat both the cases differently. So it is said that if the present heir has Qasāmah, the right of the absent heir shall also be established by it, but in case otherwise when he has no Qasāmah, and he himself swears fifty times, the right of the absent heir shall not be established. It is also likely that the right of the absent heir will be established by the addition of one to the number of Qasāmah, and in the absence of Qasāmah, the share of the oaths of the absent heir may be included in the oath(s) of the present heir. It is also likely to say that the claim of the absent heir will not be established except by fifty Qasāmah, and in case of failure, he must also swear [by Allāh] fifty times like the present heir. If the number of the absent heirs is more than one, and all of them have filed their suit, fifty Qasāmah or fifty oaths by all of them shall be sufficient to establish their claim. The stronger opinion is in favour of the last probabilities, particularly when his right is established by his fifty oaths. The same probabilities apply to the case when some of the heirs are short.

Problem # 5. If one of the heirs refutes the claim of his companion, it shall have no adverse effect on the lawth in a case when there are indications in favour of the commission of the murder. Of
المقدس الثالث في احكامها

المادة 324

الخطأ شبه العمّد، وعلى العاقلة في الخطأ المجّع، وقيل: تثبت في الخطأ المجّع، على القاتل لا العاقلة، وهو غير مرضي.

مسألة 2 - لو أدى على المجّع، وله على أحدهما لوط في النسبة إلى دين اللوح. كان الحكم كما تقدم من إثباته بخمسين قسمة، و بالنسبه إلى غيره كانت الدعوة كسائر الدعاوى، أي على المدعي عليه. ولا قسمة، فلو حلف سقطت دعوة بالنسبة إليه، فإن رد المجّع على المدعي حلف، وهذا الحلف لا يدخل في الحمسين، بل لا بد في اللوح من خمسين، غير هذا الحلف على الأقوى.

مسألة 3 - لو أراد قتل ذي اللوح بعد الشبوة عليه بالقسمة يرد عليه نصف ديه، وكذا لو ثبت على الآخر بالمجّع المردودة وأراد قتله يرد عليه نصف الديبة.

مسألة 4 - لو كان لوط وبعض الأولياء غائب ورفع الحاضر الدعوى إلى الحاكم، تسمع دعاوه، ويطالب به خمسين قسمة، ومع الفقد يخلفه خمسين يميناً في العمّد، وفي غيره نصفها حسب ما عرفت، وثبت حقه، ولم يجب أنتظار سائر الأولياء، وله الاستيفاء، ولن قدماً، ثم لو حضر الغائب وأراد استيفاء حقه قالوا حلف بقدر نصيبه، فإذا كان واحداً في العمّد خمساً وعشرون، وإن كان إثناً فكل ثلاث و هكذا، وفي الكسور يجري باحده و يحتل ثبوت حق الغائب بقسمة الحاضر أو يمينه، ويحتل التفصيل بين قسمة الحاضر فيقال بثبوت حق الغائب بها ويتمّ خمسين يميناً مع فقد القسمة فيقال بعدم ثبوت بيا، ويتمّ ثبوت حق الغائب بضم يمين واحدة إلى عدد القسمة، ومع فقداً وبين الحاضر، ضم حصة من الأمين، ويحتل عدم ثبوت دعوى الغائب إلا بخمسين قسمة، ومع فقداً يخلف خمسين يميناً كالحاضر، ولو كان الغائب أزيد من واحد و ادّى الجميع كفاه خمسين قسمة أو خمسين يميناً من جميعهم، أقوى الاحتمالات الأخيرة سياً إذا ثبت حق خمسين يميناً منه، ويأتي الاحتمالات مع قصور بعض الأولياء.

مسألة 5 - لو كتب أحد الأولياء ساحبه لم يقعد في اللوح فيها إذا كانت
course, the *lawth* shall be adversely affected in case, suppose, there is a single witness. Of course, there are different situations.

**Problem # 6.** If the *wali* [of the person murdered] dies before the fulfillment of the *Qasāmah* or before his oath, his heir shall stand in his shoes, and he shall have to produce *Qasāmah* if he intends to establish his claim, and in its absence to swear [by Allāh] fifty times or twenty-five times [as the case may be]. If the *wali* dies during giving the oath, then apparently the process of giving oath shall be fulfilled *ab initio*.

If the *wali* dies after the completion of the number, the right of his heir shall be established without his oath.

**Problem # 7.** If the plaintiff swears [by Allāh] on the basis of *lawth* and receives *diyat*, then two witnesses testify that the murderer was absent and therefore he was not able to murder, or he was imprisoned and so he was not able to commit murder, will the *Qasāmah* be cancelled thereby, and the accused shall be entitled to demand the payment of the *diyat* back or there is no ground for adding legal evidence after the settlement of the dispute by oath? There is hesitation in it, the second alternative being more preferable.

Of course, if the fact comes to light by psychic forces, the *Qasāmah* shall be cancelled and the *diyat* shall be returned. If the *wali* has inflicted *Qisās* on the basis of the *Qasāmah* or his oath, he shall be liable to pay the *diyat* if he does not confess having lied deliberately, otherwise he shall be liable to undergo *Qisās*.

**Problem # 8.** If the *wali* fulfills his right by *Qasāmah*, and then another person says: “I have killed the victim singly”, then if the *wali* has sworn [by Allāh] singly or with *Qasāmah*, he shall not be entitled to file a suit against the confessor except when he repudiates himself and confirms the confessor, and shall not be entitled to act on the ground of *Qasāmah*, and it shall be indispensable for him to return what he had receive through the settlement. If he has not sworn [by Allāh], in case we have declared that there is no necessity of his oath, and the oath of his people is sufficient. If he persists in his claim, he shall not be entitled to file a suit against the confessor except by repudiating himself. If he files his suit on the basis of mere assumption, and we have declared that his claim must be entertained, he shall be legally allowed to file a suit against the confessors and to take action according to the *Qasāmah*. Apparently his right to option shall be established if he does not repudiate himself and giving up persistence returns to admitting action on the ground of doubt and mere assumption.

**Problem # 9.** If a person is accused of murder, and the *wali* [of the victim] requests the judge to imprison him until he adduces legal evidence, apparently there is legal ground for accepting his request, except when the accused is one of those who are trusted not to escape. If the *wali* delays the production of legal evidence till six days, the accused shall be acquitted.
آمارات على القتل، نعم لا يبعد القدح إذا كان اللوث بشاهد واحد مثلاً، و
القائمات مختلفة.

مسألة 6 - لومات الولي قبل إقامة القسمة أو قبل حلقه قام وارثه مقامه في
الدوعى، فعليه إذا أراد إثبات حقه القسمة، ومع فقدها خسون أو خس و
عشرون يميناً، وإن مات الولي في أثناء الأيام فالظاهر لزوم استئناف الأميان،
ولومات بعد كمال العدد ثبت للوارث حقه من غير يمين.

مسألة 7 - لو حلف المدعى مع اللوث واستوفى الدية ثم شهد إثنان أنه كان
غالباً غيبة لا يقدر معها على القتل أو محبوساً كذلك فهل بطل القسمة بذلك و
استعيدت الدية أم لا مجمال للبيئة بعد فصل الحصومة بالبيينين؟ فيه ترد، و
الأرجح الثاني، نعم لو علم ذلك وجدناً بطلت القسمة واستعيدت الدية، ولو
اقتصر بالقسمة أو الحلف أخذت منه الدية لم يعترف بتعمد الكذب، و إلا
اقتصر منه.

مسألة 8 - لو استوفى حقه بالقسمة فقال آخر: "أنا قلتنه منفرداً" فكان
المدعى حلف وحده أو مع القسمة فليس له الرجوع إلى المقر إلا إذا كتب نفسه
وصدق المقر، و حينئذ ليس له العمل بمقتضى القسمة، ولابد من رد ما
إستوفاه، وإن لم يخلف و قلتنا بعدم لزوم حلقه و كني حلف قومه فإذا ادعى
جزمًا فكذلك ليس له الرجوع إلى المقر إلا مع تكذيب نفسه، وإن ادعى ظناً و
قلنا بسماع دعواه كذلك جاز له الرجوع إلى المقر، و جاز العمل بمقتضى القسمة،
و الظاهر ثبوت الخيار لم يكذب نفسه و رجع عن جزمه إلى الترديد أو الظن.

مسألة 9 - لو أتم رجل بالقتل و النص الولي من الحاكم حبسه حتى يحضر
البيئة فالظاهر جواز إجابته إلا إذا كان الرجل من يوقع بعدم فراره، ولو أخر
المدعى إقامة البينة إلى ستة أيام يقل سبيله.
Chapter Four on the Procedure of Execution of \textit{Qis\=as}

**Problem # 1.** A willful murder entails corporeal \textit{Qis\=as} and does not entail \textit{diyat} corporeal or elective or optional.

If the \textit{wali} excuses \textit{Qis\=as}, it is set aside, but he is not entitled to claim \textit{diyat}. If the culprit offers himself for \textit{Qis\=as}, the \textit{wali} shall have no alternative but to inflict \textit{Qis\=as}.

If the \textit{wali} excuses the culprit on the condition of payment of \textit{diyat}, the culprit shall be at liberty to accept it or reject it.

\textit{Diyat} is not established except with the consent of the culprit. If he agrees, the \textit{Qis\=as} is set aside, and the \textit{diyat} is established.

If the \textit{wali} excuses the culprit on the condition of payment of \textit{diyat}, it shall be lawful according to the more authentic opinion. If it is contingent, then if it is accepted, the \textit{Qis\=as} shall be set aside. If the condition relates to the payment of \textit{diyat}, the \textit{diyat} shall not be set aside except by its payment.

The culprit is not bound to pay \textit{diyat} for saving his life. Some jurists are of the opinion that it is obligatory due to saving one’s life being obligatory.

**Problem # 2.** A settlement of \textit{diyat} as to more or less than it is lawful. If the \textit{wali} does not agree except on doubling the amount of \textit{diyat}, it is lawful, and it is up to the culprit to accept it [or not]. If he accepts it, it shall be lawful, and he is bound to fulfill it.

**Problem # 3.** It is not lawful for a judge to give his judgment for \textit{Qis\=as} unless it is proved that the loss of life has taken place due to the offence of the culprit. If there is confusion in this respect for the judge and neither has any legal evidence been adduced in its favour, nor is it established by the confession of the culprit, he shall confine his judgment to \textit{Qis\=as} or \textit{arsa} or fine for the offence and not for life.

If the hand of a person has been cut, and it is not known by legal evidence or confession of the accused that the death has occurred as a result of the offence of the accused, it is not lawful to
give death sentence to the accused.

**Problem # 4.** A person who inherits the property [of the deceased] also inherits the right to \textit{Qis\=as} except the husband and wife because they are not entitled to \textit{Qis\=as}. There are some jurists who hold the opinion that \textit{Qis\=as} is not inherited by the brothers and sisters on the mother’s side or those who are related through her. It is also said by the jurists that women are entitled to \textit{Qis\=as} or pardon the culprit even if they are related through the father, but the first opinion is more in conformity with the principles of law.

**Problem # 5.** A \textit{diyat} is inherited by one who inherits the property [of the deceased] including even the husband and wife. Of course, it is not inherited by the brothers and sisters on the mother’s side; rather, by all those related through her, according to the stronger opinion, but it is better to exercise caution in case of other than the brothers and sisters.
القول في كيفية الاستيفاء

مسألة 1 - قتل العمد يوجب القصاص عيناً، ولا يوجب الدية لا عيناً ولا تقييماً، فلو عفا الولي القود يسقط وليس له مطالبة الدية، ولو بذل الجاني نفسه ليس للولي غيرها، ولو عفا الولي بشرط الديتا للجاني القبول وعدمه، ولا تثبت الديتا إلا برضاه، ولو عفا الولي بشرط الديتا، ولو عفا بشرط الديتا صح على الأصح، ولو كان يحول التعليق فادعا قبل سقط القود؛ ولكان الشرط إعطاء الديتا لم يسقط القود إلا بإعطائه، ولا يجب على الجاني إعطاء الديتا لخلاص نفسه، وقيل يجب لوجود حقطها.

مسألة 2 - يجوز التصالح على الديتا أو الزائد عليها أو الناقص، فلو لم يرض الولي إذا أضعف الديتا جاز، ولجاني القبول، فإذا قبل صح، وقيل عليه الوفاء.

مسألة 3 - لا يجوز للحاكم أن يقضي بالقصاص ما لم يثبت أن التلف كان بالجناية، فإن اشتته عنده ولم يقم بينة على ذلك ولم يثبت بأقرار الجاني اقتصر على القصاص أو الأرش في الجناية لا النفس، فإذا قطع يد شخص ولم يعلم ولو بالبينة أو الأقرار أن القتل حصل بالجناية لا يجوز القتل.

مسألة 4 - يرث القصاص من يرث المال عدا الزوجة و الزوجة فانها لا يستحقان قصاصاً، ومنهم من قال: لا يرث القصاص الأخوة والأخوات من الأم ومن يتقرب بها، وقيل ليس للنساء قود ولا عفو وإن تقربن بالأب، والأول أشبه.

مسألة 5 - يرث الديتا من يرث المال حتى الزوجة والزوجة، نعم لا يرث منها الأخوة والأخوات من قبل الأم، بل مطلق من يتقرب بها على الأقوى، لكن الاحتياط في غير الأخوة والأخوات حسن.
Problem # 6. According to the more cautious opinion it is not lawful for the wali to hurry in the infliction of the Qisâs when he is alone, particularly in the Qisâs of parts of body except with the Permission of the ruler of the Muslims. Rather it is not free from force if the wali hurries [in the infliction of the Qisâs], the ruler may inflict Ta’zîr on him, but he is liable neither to Qisâs nor to diyat on account of it.

Problem # 7. If the walis or heirs of the person murdered as more than one, then, according to the stronger opinion, it is not lawful to settle the right [of Qisâs] except by the collection of all of them and the permission of the judge, not in the sense that each of them should strike him to death, but in the sense that all of them should permit one of themselves or appoint him as their agent. It has been declared by a group of jurists that each of them is entitled to hurry [in the infliction of Qisâs] and it does not depend on the permission of the other heirs, but he shall be liable for the fulfillment of the share of others who have not given permission, but the first opinion is stronger. Of course, if heir hurries up and commits transgression, there shall be no Qisâs, rather he shall be liable for the shares of others who have not given permission, and the Imam shall have the authority to inflict Ta’zîr on him.

Problem # 8. If there is a dispute among the heirs as to whom should inflict the Qisâs and take permission of all the heirs, they shall cast lots. If there is some one among them who cannot put the culprit to death, but intends to be included in casting lots in order to authorize another having capability to inflict Qisâs as his agent, it is obligatory to include him in casting lots.

Problem # 9. The ruler of Muslims or his deputy should by way of caution arrange the presence of two witnesses of reputed integrity, sagacious, cognizant of the situation and conditions at the time of inflicting Qisâs to testify in the event of a dispute between those inflicting the Qisâs and the heirs of the person inflicted Qisâs, to examine the weapon used for inflicting Qisâs so that it should not be poisonous causing decomposition of the body of the person inflicted Qisâs, and it should not be cut into pieces entailing disgrace to the dead body at the time of its washing and burial. If it is known that the weapon is poisonous that may entail disgrace [to the dead body] it is unlawful to use it in the Qisâs of a mu‘min, so that whosoever uses it shall be inflicted Ta’zîr.

Problem # 10. It is not permissible to use a poisonous weapon in the Qisâs of parts of body that may entail infection to the other parts of the body, so that if the wali of the victim personally uses it, he shall be held responsible for it. If he knows about it and the poison be one that is mostly fatal, or if he intends to kill him even if the poison is not mostly fatal, if he dies as a result of it he shall be inflicted Qisâs after returning half of his diyat. If the man is killed unintentionally half of the diyat of the person killed shall be returned. If the poison infects another part of the body but does not lead to his death, he shall be liable for what it entails, a diyat or a Qisâs with the relevant conditions.

Problem # 11. It is not permissible to inflict Qisâs for loss of life or part of body with a blunt weapon and what causes more torture than striking with a sword, as cutting with a saw or the like, so that if the wali does it, he shall be considered to have sinned and shall be liable to
مسألة 6 - الأحوز عدم جواز المبادرة للولي إذا كان منفرداً إلى القصاص سيا في الطرف إلا مع إذن ولي المسلمين، بل لا يخلو من قوة ولو بادر فللوالي تعزيره، ولكن لا قصاص عليه ولا دية.

مسألة 7 - لو كان أولياء الدم أكثر من واحد فالأقوى عدم جواز الاستفادة إلا باجتماع الجميع وإذن الولي، لا يمنع ضرب كل واحد إياهم، بل يمنع إذنهم لأحد منهم أو توكيلهم أحداً، وعن جمع أنه يجوز لكل منهم المبادرة، ولا يتوقف على إذن الآخر، لكن يضمن حصص من لم يأت، وأول أقوى، نعم لو بادر واستبد فلا قود، بل عليه حصص البقية مع عدم الإذن، وللامام عليه السلام تعزيره.

مسألة 8 - لنشا الأولياء في مباشرة القتل وتحصيل الاذن يقع بينهم، ولو كان بنيهم من لا يقدر على المباشرة لكن أراد الدخول في القرعة ليوكول قادراً في الاستفادة يجب إدخاله فيها.

مسألة 9 - ينبغي لولي المسلمين أو نائبه أن يحضر عند الاستفادة شاهدين عدلين فطنين عارفين بواقعه ومراقبة احتياطهما، ولازمة الشهادة إن حصلت منازع بين القتيل أو أولياء القتيل منه، وأن يعتبر الآتية لثلا تكون مسمومة موجبة لفساد البند وتقطعه وهتكه عند الغسل أو الدفن، فلعل مسموميتها بما يوجب الهتك لا يجوز استعمالها في قصاص المؤمن، ويزعزع فاعله.

مسألة 10 - لا يجوز في قصاص الطرف استعمال الآلة المسمومة التي توجب السرابة فإن استعملها الولي المباشر ضمن، فلعل بمثله يكون السم ما يقتل به غالباً أو أراد القتل ولو لم يكن قاتلاً غالباً يقتضي منه بعد رده نصف ديه إن مات بها، فلو كان القتل لأعن عبد يرد نصف ديه المقتل، ولو سرى السم إلى عضو آخر ثم يؤد إلى الموت فإنه يضمن ما جنى دية وقصاصاً مع الشراث.

مسألة 11 - لا يجوز الاستفادة في النفس وطرف بالآلة الكالة وما يوجب تعذيباً زائداً على ما ضرب بالسيف، مثل أن يقطع بالمشار ونحوه، ولو فعل أثم و
Taʿẓir but nothing else. He may inflict the Qiṣāṣ with a sword, or the like, and it is far from being permissible to use something that is easier than a sword, as to shoot at the head with a gun or to connect with the electric current. If the Qiṣāṣ is to be inflicted with a sword, it should be sufficient to strike it at the neck of the culprit, even if his offence requires a harsher punishment like drowning, burning or crushing with a stone. It is not lawful to mutilate the body parts of the culprit.

Problem # 12. Payment of remuneration to the person hired for inflicting judicial punishments (Ḫudūd) shall be made out of the bayt al-māl [state treasury], while the remuneration of the person inflicting Qiṣāṣ shall be payable by the wali of the person murdered provided it is a Qiṣāṣ for loss of life, and it shall be payable by the person subjected to offence in case it is a Qiṣāṣ for a part of body. If they are unable to pay, the money shall be borrowed with their liability to pay it, and in case it is not possible to do so, it shall be paid out of the bayt al-māl (state treasury). It may be payable initially out of the bayt al-māl. In case there is no bayt al-māl or there is some more urgent business, then it shall be payable by the wali of the victim or the person subjected to the offence. Some jurists have declared that it shall be payable by the culprit.

Problem # 13. A person inflicting Qiṣāṣ shall not be responsible for infection in case of Qiṣāṣ for part of the body except in case of transgression in Qiṣāṣ. If it is deliberate, he shall be liable for Qiṣāṣ for the excess if possible. In its absence, he shall be liable for diyat or arsh (fine). If the person inflicted Qiṣāṣ claims deliberate transgression by the person inflicting Qiṣāṣ, but he denies it, the word of the person inflicting Qiṣāṣ shall carry provided it is followed by his oath. If the wali of the victim claims that the offence was a homicide by misadventure or mistake, but the person to be inflicted Qiṣāṣ denies it, apparently the word of the person inflicting Qiṣāṣ shall be accepted provided it is followed by his oath according to one reason. If the wali claims that the excess has been due to the restlessness of the person inflicted Qiṣāṣ or anything from his side, the word of the person inflicted shall be entertained.

Problem # 14. Those who are inflicted Qiṣāṣ for loss of life shall also be inflicted Qiṣāṣ for loss of part of body, and those who are not inflicted Qiṣāṣ for the loss of life shall also not be inflicted Qiṣāṣ for the loss of part of body. So the hand of the father shall not be amputated for cutting the hand of his son, nor the hand of a Muslim for cutting the hand of an infidel.

Problem # 15. If the person for whom Qiṣāṣ is being inflicted has several heirs sharing in the infliction of the Qiṣāṣ, then if some of them are present while some other are absent, then it has been declared by Shaykh (Ṭūsī) those who are present are allowed to implement Qiṣāṣ on the condition that they shall be responsible for the shares of the rest out of the diyat. It is more compatible with the principles of law to say that if the absence is short, those present shall wait till those who are absent may come and join them. Apparently it is allowed to imprison the culprit till the arrival of those who are absent if there is apprehension of his escape. If the absence of those who are absent is continuous and long, the case of those who are absent rests with the ruler [or judge], so that he may act as he deems desirable up to him or what is in the interest of those who are absent. If some of them are insane, their matter shall rest with the wali [of the victim]. If they are minor, then, according to a Tradition, those who have killed their father shall wait until the minors attain adulthood. When they have attained adulthood, they shall have the option. If they like they may put the culprits to death, excuse them or make a settlement with them.
عذر لكن لا شيء عليه، ولا يقتصر إلا بالسيف و نحو، ولا يبعد الجواز ما هو أسهل من السيف كالبندقة على المخ، بل بالتصل بالقوة الكهربائية، ولا كان بالسيف يقتصر على ضرب عنقه ولا كانت جنايته بغير ذلك كالغرق أو الحرق أو الرضخ بالحجارة، ولا يجوز التشييل به.

مسألة 12: أجرة من يقيم الحدود الشرعية على بيت المال، وأجرة المقصط على ولي الدم لو كان الاقتصادي في النفس، وعلى المجني عليه لو كان في الطرف، ومع إعارهما استدعي عليها، ومع عدم الأمكان فثن بيت المال، ويجمل أن تكون ابتداء على بيت المال، ومع فقده أو كان هناك ما هو أهم فعل الولي أو المجني عليه، وقيل هي على الجاني.

مسألة 13: لا يضمن المقصط في الطرف سراية القصاص إلا مع التعدي في اقتصاصه، فلو كان متعمداً اقتصر منه في الزائد إن أمكنه، ومع عدمه يضمن الدية أو الأرش، ولو اعترف المقصط منه تمعد المقصط وأنكره فالقول قول المقصط يبينه، بل لو اعترف الخطاً وأنكر المقصط منه فالظاهرة أن القول قول المقصط يبينه على وجه، ولو اعترف حصول الزيادة باضطراب المقصط منه أو شيء من جهته فالقول قول المقصط منه.

مسألة 14: كل من يجري بينهم القصاص في النفس يجري في الطرف ومن لا يقتصر له في النفس لا يقتصر له في الطرف، فلا يقطع يد والد لقطع يد ولده، ولا يد مسلم لقطع يد كافر.

مسألة 15: إذا كان له أولياء شركاء في القصاص فان حضر بعض وغاب بعض فعن الشيخ (قده) للحااضر الاستيفاء بشرط أن يضمن حصص الباقين من الدية، و الأشبه أن يقال: لو كانت الغيبة قصيرة يصير إلى مغيء الغائب، و الظاهرة جراس حبس الجاني إلى مجيبه لو كان في معرض القرار ولوكان غير منقطعة أو طويلة فامرأ الغائب بيد الوالي، فيعمل بما هو مصلحة عنده أو مصلحة الغائب، ولو كان بعضهم بجنوناً فامرأه إلى وليه، ولو كان صغيراً في رواية انتظروا الذين

Problem # 16. If some of the heirs [of the victim] opt for the payment of *diyat* in stead of *Qisās*, and the culprit pays it, the liability for *Qisās* is not set aside if the other heirs so demand. The other heirs shall be entitled to inflict *Qisās* after having returned to the culprit the share of the heir to whom *diyat* has been paid, without difference between what has been paid to him, or settled by him to be equal to, less or more than the amount of *diyat*. Whatever the case the amount of his share shall be returned to him. If the amount of his share is one-third, one-third shall be returned to him although the culprit might have returned less or more than that amount. If the heir has excused him or settled on some amount and the culprit refuses to get back substitute, it shall be permissible for those who intend to inflict *Qisās* to do so after returning the share of their partner. Of course, if he has confined his demand to payment of *diyat*, and the culprit has refused to pay it, it shall not be lawful to inflict *Qisās* except with the permission of all the heirs. If some of them excuse it gratuitously, the *Qisās* shall not be set aside, and the other heirs shall be entitled to inflict *Qisās* after returning the share of the heir who has excused the culprit.

Problem # 17. If the father and a stranger have joined in killing his son, or a Muslim or a *Dhimmī* in killing a *Dhimmī*, the partner shall be liable to *Qisās*, but the other partner shall return half the *diyat* or the *wali* should return half the *diyat* to him and demand it from the other partner. If one of them has joined in the murder deliberately and the other by mistake, the one who has joined deliberately shall be liable to *Qisās*, but half the *diyat* shall be returned to the person to be inflicted *Qisās*. If it was a homicide by sheer misadventure or mistake, half of the *diyat* shall be payable by the *āqīla*. If it were a semblance of willful murder, the culprit shall be liable to return the *diyat*. If some beast etc., has joined the person committing willful murder, it shall be inflicted the *Qisās* after returning half of his *diyat*.

Problem # 18. A person interdicted for insolvency or idiocy shall not be prevented from inflicting *Qisās*. So an interdicted person is entitled to inflict *Qisās*. If a person interdicted for insolvency excuses the culprit against payment of property, and the culprit also agree to it, it shall be divided among the creditors like the other property acquired by him, but the judge impose fresh interdiction on him and the last interdiction shall not be sufficient in this case. An interdicted person is authorized to excuse the culprit gratuitously or for less than the amount of *diyat*.

Problem # 19. If a person is killed and he is under debt, then if his heirs receive his *diyat*, it shall be expended on the payment of the debts and legacies of the victim like the other property belonging to him. There is no difference whether it is a *diyat* for homicide by misadventure or mistake or a semblance of willful murder or a willful murder in which settlement has been reached, whether its amount is equal to, less or more than his *diyat*, and whether it belongs to the kind of his *diyat* or otherwise.

Problem # 20. Are the heirs [of the person murdered] allowed to inflict *Qisās* on the debtor without guarantee of payment of *diyat* to the debtors, is a question on which there are two opinions, the more cautious being in favour of non-infliction of the *Qisās* except after the
قتل أبوهم أن يكبروا، فاذا بلغوا خبرهم، فان أحبوا قتلوا أو عفوا أو صالحوا.

مسألة 16 - لو اختار بعض الأولياء الديه عن القود فدفعه القاتل لم يسقط القود لو أراد غيره ذلك، فللآخرين القصاص بعد أن يردوا على الجاني نصيب من فاداه من الديه، من غير فرق بين كون ما دفعه أو صالح عليه بمقدار الديه أو أقل أو أكثر، ففي جميع السور يريد إليه مقدار نصيبه فلو كان نصيبه الثالث يرده إليه الثالث ولو دفع الجاني أقل أو أكثر، ولو عفا أو صالح بمقدار وامتنع الجاني من البديل جاز من أراد القوم أن يقص بعدئذ نصيب شريكه، ثم لو اقتصر على مطالبة الديه وامتنع الجاني لا يجوز الاقطاص إلا بذان الجمع، ولو عفا بعض بجانا لم يسقط القصاص فلما بقين القصاص بعد رد نصيب من عفا على الجاني. مسألة 17 - إذا اشرك الأب والأجنبي في قتل ولده أو المسلم والذمي في قتل ذمي فعل الشرك القود، لكن يرد الشرك الآخر عليه نصف ديته أو يرد الولي نصفها ويطالب الآخر به، ولو كان أحدهم عامدا وآخر خاطئا فالت Alvود على الامام بعد رد نصف الديه على القصاص منه، فان كان القتل خطأ محضا فالنصف على العاقلة، و إن كان شبه عمد كان الرده من الجاني، ولو شارك الأعمد سبع ونحوه يقتضي منه بعد رد نصف ديته.

مسألة 18 - لا يمنع الحجر لفلس أو سنه من استيفاء القصاص، فللمحجوز عليه الاقطاص، ولو عفا المحجوز عليه لفلس على مال ورضي به القاتل قسمه على الغرام كغيره من الأموال المكتسبة بعد حجر الحاكم جديدًا عنه، و الحجر السابق لا يغني في ذلك، و للمحجوز عليه العفو جمانا و بأقل من الديه.

مسألة 19 - لو قتل شخص و عليه دين فقد أخذ الورثة ديته صرفت في دون القتول ووصاياه كباقي أمواله، ولا فرق في ذلك بين دية القتل خطأ أو شبه عمد أو ما صلح عليه في العمد، كان بمقدار ديته أو أقل أو أكثر، بجعله ديته أو غيره.

مسألة 20 - هل يجوز للورثة استيفاء القصاص للمدينون من دون ضمان الدية
guarantee for payment of the diyat: rather it is more cautious that there should be guarantee for the payment of the diyat in case the heirs of the person murdered intend to excuse the murderer from payment of blood-money.

**Problem #21.** If a single person kills two or more persons deliberately one after another or together, he shall be put to death on account of their murder, but they [i.e., the heirs of the persons murdered] shall have no right on the property of the culprit. If the heirs of some of the victims excuse the murderer without receiving anything from him, the heirs of the other victims may demand Qisās without returning anything [to him]. If the heirs of the victims agree to excuse the culprit against payment of diyat, each of them shall be entitled a full diyat. Whether the heir of each of the victims is authorized to kill the culprit without the consent of the heirs of the other victims or not, or is it allowed in case the culprit has killed all of the victims together, but in case he has killed them one after another, then shall the right of the heir of the first precede that of the subsequent one, and so on, and if suppose the culprit has killed ten persons one after another, shall the wali of the first have a preferable right over others and shall he be allowed to put the culprit to death without the permission of the heirs of the other victims, and if he excuses the murderer, shall the right to put him to death go to the heir of the subsequent victim, and so on? There are several alternatives, the more rational being against the permissibility of the preferential right to the heir of the first victim and in favour of the necessity of obtaining permission of heirs of all the victims. If, however, the heirs of the first victim puts the culprit to death, he shall not be liable to anything, but shall be considered to have sinned, and the judge shall be authorized to inflict Ta’zir on him, but neither he shall be liable to anything, nor shall the culprit have any liability in his property. If the heirs have dispute relating to the infliction of the Qisās, and it is not possible to reach an agreement on the issue, recourse shall be made to casting lots. If one of them inflicts Qisās on the culprit through casting lots or without it, the right of the rest of the heirs shall be forfeited.

**Problem #22.** Appointment of an agent is allowed in infliction of Qisās. If the agent is dismissed before the execution of the Qisās and he executes the Qisās despite having knowledge of his dismissal, he shall be liable to Qisās, but if he has no knowledge about his dismissal, he shall be liable neither to Qisās nor to diyat. If the client excuses the culprit from Qisās before the execution of the Qisās, then if the agent comes to know about it, and [despite its knowledge] executes Qisās, he shall be liable to Qisās. If, however, he had no knowledge about it, he shall be liable to diyat, and shall be entitled to have recourse against the client after its payment.

**Problem #23.** A pregnant woman shall not be inflicted Qisās until she is delivered of the foetus in her womb, even if she has become pregnant after committing the offence, and even if the pregnancy is the result of Zinā’. If a woman claims that she is pregnant and four midwives testify in favour of her claim, her pregnancy shall be established. If there is only her claim [without being testified by four midwives], according to the more cautious opinion the execution of the Qisās must be delayed till the matter is fully manifested. If the woman delivers the child, it shall not be permissible to put her to death if the life of the child depends on her. Rather even if there is fear of the child’s death, it is not permitted to inflict Qisās on the mother, and it is obligatory to delay it, but if something is found by means of which the child may live, then apparently the heir shall be allowed to execute Qisās. If the woman is put to death as a result of execution of Qisās, and then it transpires that she was pregnant, the wali shall pay her diyat.

**Problem #24.** If a person cuts the hand of another and then kills a man, then first his hand shall be cut and then he shall be put to death regardless whether he had first cut the hand or committed
للغرماء؟ في قولان، و الأحوط عدم الاستيقاء إلا بعد الضمان بل الأحوط مع
هيبة الأولياء دمه للقاتل ضمان الديمة للغرماء.

مسألة 21 - لوقت أحد رجلين أو أكثر عمداً على التعاقب أو معًا قتل بهم،
ولا سبيل لهم على ما له، فلو عفا الأولياء بعض لا على مال كان للباقيين
القصاص من دون ردة شيء، وإن تراضي الأولياء مع الجاني بالهبة فكل منهم
ديمة كاملة، فهل بكل واحد منهم الاستيقاء بقتله من غير رضا الباقين أو لا، أو
يجوز مع كون قتل الجميع معاً وأما مع التعاقب فإنه حق السابق فالسابق، فلو
قتل عشرة متمناً يقدم حق أول فجاز له الاستيقاء بقتله بلا إذن منهم،
فلعفا فالمقتفي للمتأخر منه وهكذا؟ ووجه، فعل أوجهها عدم جواز الاستيقاء و
لزم الأذن من الجميع، لكن لوقت له ليس عليه إلا الامت، والحاكم تعزيره ولا
شيء عليه و لا على الجاني في ماليه، ولو اختلفوا في الاستيقاء ولم يكن
الاجتماع فيه فالمراجع القرعة فان استويا أحدهم بالقرعة أو بلا قرعة سقط حق
الباقيين.

مسألة 22 - يجوز التوكل في استيقاء القصاص، فلو عزله قبل استيقائه فكان
علم الوكيل بالعزل فعليه القصاص، وإن لم يعرف فلا قصاص ولا دية، ولو عفا
الوكيل عن القصاص قبل الاستيقاء فان علم الوكيل و استويا فعليه القصاص،
وإن لم يعرف فعليه الديمة، و يرجع فيها بعد الأداء على الوكيل.

مسألة 23 - لا يقتضي من الحامل حتى تضع حملها ولو تبعد الحمل بعد
الجناية، بل ولو كان الحمل من زنا، ولو أدعت الحمل وشهدت لها أربع قوابل
ثبت حملها، وإن تجردت دعاها بالأحوط التأخير إلى إفصاح الحال، ولو وضعت
حملها فلا يجوز قتلها إلا توقف حياة الصبي عليها، بل لو خيف موت الولد لا يجوز
ويجب التأخير، ولو وجد ما يعيش به الولد فالظاهرة أن له القصاص، ولو قتلت
المرأة قصاصاً فبانت حاملة فائدة على الولي القاتل.

مسألة 24 - لقطع يد رجل و قتل رجلاً آخر تقطع بده أولاً ثم يقتل، من غير
murder. If the wali of the person murdered puts the culprit to death before cutting his hand, he shall be considered to have sinned, and the judge shall be authorized to inflict Ta’zir on him, but he shall have no other liability. If the wound of cutting hand of the culprit becomes infected before the execution of the Qisās, his wali and the wali of the person murdered shall be entitled to execute Qisās. If, however, it becomes infected after the execution of the Qisās, then apparently there shall be no liability for the payment of anything from the inheritance of the culprit. If the culprit’s hands are amputated, then he is inflicted Qisās, and then the wound of the victim becomes infected, his wali shall be entitled to Qisās for life.

Problem # 25. If the person committing willful murder is killed, the Qisās shall be set aside, rather even the diyat. Of course, if the culprit escapes, and is not arrested until he dies, then according to a Tradition acted upon, if he has some property, the diyat shall be paid from it, or it shall be paid by his closer relative. There is no objection on acting upon the Tradition, but it must be confined only to the case.

Problem # 26. If the wali beats the murderer and leaves him under the impression that he has died. But he recovers. Then according to the opinion compatible with the principles of law, the strike shall be examined. So if it is such that it would be lawful for him to put him to death and execute Qisās, the wali shall not be liable to Qisās; rather it shall be lawful for him to kill the culprit by way of Qisās. If, however, the strike was such that does not legalize Qisās for it, as when the strike was by a stone or the like, the culprit shall be entitled to put him to Qisās. The the wali shall be entitled to put the murderer to death by way of Qisās or both of them give up Qisās.

Problem # 27. If a person cuts the hand of another, and the person whose hand is cut off excuses the culprit, then the person who had cut the hand murders him, the wali shall be entitled to Qisās for life. Whether it will be after returning the diyat for the hand or the Qisās shall be executed without the payment of the diyat, is a question for which the opinion more compatible with the principles of law is in favour of the second alternative. The same shall be the law if a sound man kills another whose hand has been amputated, he shall be put to death. According to a Tradition if a person cuts the hand of another due to the crime committed against him, or he cuts his hand and receives its diyat, the diyat for his hand shall be returned to him, and then he shall be put to death. But if he has cut his hand without any crime, and he has not received the diyat, he shall be put to death without any payment of fine. The problem has some confusion and hesitation, and it is more cautious to act upon it. The same is the case with the other problem on which there is a Tradition that if a person cuts the hand having no fingers, his hand shall be cut after payment of the diyat for the fingers. This is also a difficult problem.

Second Kind: Qisās for Less than Loss of Life

Problem # 1. The cause of this kind of Qisās is the same as in the case of Qisās for loss of life, and that is committing a deliberate offence personally or by mediate causation (tasbīhan), as
لا مسألة ٢٥ـ لو هلك قاتل العمد سقط القصاص بل والدية، نعم لو هرب فلم يقدر عليه حتى مات ففي رواية معمول به وإن كان له مال أخذ منه، وإلا أخذ من الأقرب فالأقرب، ولا يتأس به لك يقتصر على موردها.

لا مسألة ٢٦ـ لو ضرب الوالي القاتل وتركه ظنناً منه أنه مات فبرأ فالأشياء أن يعتبر الضرب، فإن كان ضربه مما يسوعه للقتل القصاص به لم يقتض من الوالي، بل جاز له قتله قصاصاً، وإن كان ضربه مما لا يسوع القصاص به كان ضربه بالحجر وتحو كان للجاني الاقتصاص، ثم للولي أن يقتله قصاصاً أو يتجاركان.

لا مسألة ٢٧ـ لو قطع يده فعفا المقطع ثم قتله القاطع فللولي القصاص في النفس، وهل هو بعد ردية اليد أم يقتض بلارد؟ الأشبه الثاني، وكذا لو قتل رجل صحيح رجلًا مقطع اليد قتل به، وفي رواية إن قطعت في جناية جناها أو قطع يده وأخذ ديته ترة عليه دية يده، ويرتئوه، ولو قطعت من غير جناية ولا أخذ لها دبة قتلها بلا غرم، ومسألة مورد إشكال وتردد، والأحوزة العمل بها، وكذا الحال في مسألة أخرى بها رواية، وله لو قطع كفاً بغير أصاب قطعت كنه بعد ردية الأصابع، فإنها مشكلة أيضاً.

القسم الثاني في قصاص مادون النفس

مسألة ١ـ الواجب له هيهما كالروجب في قتل النفس، وهو الجناية العمدية
has already been explained. If a person commits an offence that causes loss of a part of body generally, whether he intended it or not, it shall be a deliberate offence. If, however, he commits an offence that does not cause loss of a part of body generally but with such intention even if by hope.

Problem # 2. For the justification of Qisās in this kind of Qisās there are the same conditions as in the Qisās for loss of life like equality in Islam, freedom, absence of the offence by the father, and sanity and adulthood in the culprit. So there shall be no Qisās for loss of parts of human body in a case where there is no Qisās for loss of life.

Problem # 3. There is no condition of equality of gender, so that a man shall be inflicted Qisās for [the loss of parts of body of] a man and woman without any additional payment. Likewise, a woman shall be inflicted Qisās for [the loss of parts of body] of a man and woman, but after returning the difference in a case where the diyat amounts to one third, as mentioned before.

Problem # 4. Besides what has already been mentioned, there is condition of equality of soundness and paralisation etc., as follows, the condition of the person subjected to Qisās being of an inferior status, as well as equality of being principal and extra, and so also equality of place, as follows. So, for example, a sound hand shall not be amputated in Qisās for a paralised one, even if the culprit agrees to it, but a paralysed hand shall be amputated in Qisās for a sound one. Of course, if the expert persons declare the wound of the amputated part of body is apt to be infected or or there is such apprehension, the Qisās shall be replaced by diyat.

Problem # 5. By paralysization is meant the drying up of the hand in a way that it loses control and power of its use, even if there is still feeling and involuntary movement in it. Its determination rests with the custom and usage like other cases. If a hand with some paralyzed fingers is amputated, there shall be hesitation in amputation of a sound hand by way of its Qisās. There is no effect in the difference of strength, etc., so that a strong hand shall be amputated in Qisās for a weak hand, and a healthy hand in Qisās for a leprous or wounded hand.

Problem # 6. There is the condition of equality of the place and situation where it exists. So a right hand shall be amputated in Qisās for a right hand, and a left hand in Qisās for a left hand. If the suprises has no right hand and he cuts the right hand of another, his left hand shall be amputated in Qisās for the right hand. If the culprit has no hand at all, his foot shall be amputated, according to a Tradition that is acted upon, being no objection in acting on it. Whether amputation of right foot shall precede the amputation of the left foot in case the culprit has cut the right hand, and the left foot in case of cutting the left hand, or both the hands would be equal, is a question in which there are two alternatives. If the culprit cuts the left [hand] but he has no left hand [to be amputated in its Qisās], then apparently his right hand shall be amputated [in Qisās for cutting the left hand], but there is some hesitation in this rule.
مسألة 4 - يشترط في المقام زائدًا على ما تقدم التساوي في السلامة من الشلل ونحوه على ما يجPie أو كون المنتصف منه أخفض، و التساوي في الأصالة وزيادة، وكذا في المكان على ما يأتي الكلام فيه، فلا تقطع اليد الصحيحة مثلاً بالشلاء ولو بذلها الجاني، وقطع اليد بالصحيحة، نعم لو حكم أهل الخير بالسراية بل خيف منها يعدل إلى الديمة.

مسألة 5 - المراد بالشلل هو يبس اليد بحيث تخرج عن الطاعة ولم تعمل عملها ولو بقي فيها حس وحركة غير اختيارية، و التشخيص موكول إلى العرف كسائر الموضوعات، وقطع بيد بدأ بعض أصابها شلاء فهي قصاص اليد الصحيحة تردد، ولا أثر للتلفاوت بالبطش ونحوه، فيقطع اليد القوية بالضعيفة، واليد السالمة باليد البصراء والمجريحة.

مسألة 6 - يعتبر التساوي في المكان مع وجوده، فقطع اليمين باليمن، واليسار باليسار، ولن لم يكن له يمين وقطع اليمن قطعت يساره، ولم يكن له يدي أصلاً قطعت رجله على رواية معلوم بها، ولا أسب، وهل تقدم الرجل اليمن في قطع اليد اليمني والرجل اليسرى في اليد اليسرى أو هما سواء؟ و جهان، ولو قطع اليسرى ولم تكن له اليسرى فالظاهرة قطع اليمني على إشكال، ومع عدمها
If, however, he has neither, his foot will be cut [in Qisās for cutting the hand of another]. If a person having no foot cuts the foot of another, whether his hand shall be amputated instead of his foot [in Qisās for cutting the foot of another], it is reasonable, though it is not free from objection. There is hesitation in extension of the rule to other parts of body like the eyes, ears, eye-brows, etc., though it is not free from reasonability, especially the replacement of the left of them for each of their right one.

Problem # 7. If a person cuts the hands of a group of persons one after another, both his hands and feet shall be amputated in Qisās for one after the other, and he shall be liable to pay diyat for the rest. If a person having no hands or feet cuts the hand or foot of another, he shall be liable for diyat.

Problem # 8. In case of Qisās for injuries it is a condition that there must be equality in respect of their length and breadth, but, according to what has been said by the jurists, there is no condition of equality in their depth and sinking, but what is required is the name of injury to it, but there is hesitation and objection to this rule, and it is more reasonable to have equality in this respect too, if possible. If there is some indeliberate excess while inflicting Qisās, he shall be liable for the payment of arsh (fine). If it is not possible to inflict Qisās without injuring a little, establishment of payment of arsh for excess is not from being likely, though with some hesitation. This is the rule in case of ħārisah*, dāmiyah* and mutalāhhimah*. But in case of simhāq* and mūdīlah*, apparently there is no condition of equality of depth, so that a lean person shall inflict Qisās to a plump person for simhāq* and mūdīlah*.

Problem # 9. No Qisās is established in a case where Taʿzir is prescribed for the loss of life or a part of body. The same rule shall apply to case where it is not possible to execute Qisās without excess or deficiency as in case of jāʿifah* and maʿmūmah*. In every injury where no Taʿzir for loss of life or a part of body is prescribed, and safety of life is mostly ensured, the Qisās for injury is established. So Qisās is established in case of ħārisah*, mutalāhhimah*, simhāq* and mūdīlah*, but not in case ħāshimah* and munaqqilah* or or fracture of bones. According to an authentic Tradition, Qisās is established in case of breaking of a tooth or an arm if it is done deliberately, but very few persons have acted upon it.

[Note: For meanings of terms marked with asterisk (*), see Glossary at the end].

Problem # 10. Is it lawful to inflict Qisās before the injury is healed, is a question that has been replied in the negative because there is no surety of the non-infection of the injury of a part of body into loss of life, but according to the opinion more in conformity with the principles of law it is allowed, and according to a Tradition saying that no Qisās shall be inflicted before the healing of any wound until it is healed, but there is hesitation in its justification, and it is more cautious to wait especially where there is no surety of non-infection of the wound. If a number of parts of the body have been amputated by misadventure or mistake, is it lawful to charge their diyats even if they are greater by far than the diyat for loss of life, or it will be confined to the amount of diyat for loss of life until the position is cleared, so that if the wounds are healed, rest of the diyats may be charged, otherwise the victim may have what he has received due to the penetration of the offence of part of the body into the offence of loss of life? According to the stronger opinion, it is permissible for the
قطع الرجل، ولو قطع الرجل من لا رجل له فهل تقطع يده بدل الرجل؛ فيه وجه لا يخلو من إشكال، و التعدى إلى مطلق الأعضاء كالعينين والأذنين والحجاب وغيرها مشكل، وإن لا يخلو من وجه سيا اليسرى من كل بالشني. مسألة 7 - سألتي أبني جامع على التعاقب قطعت يدها و رجلاه بالأول فالأول، و عليه للباقيين الدية، وقطع فأخذ اليدين والرجلين يد شخص أو رجله فعليه الدي.
victim to receive it and obligatory upon the culprit to pay it. Of course, if the wounds become infectious, the victim shall return what is in excess than the diyat for loss of life.

**Problem # 11.** Before the execution of the Qisāṣ, the hair from the place of Qisāṣ shall be shaved if they obstruct in the easy execution of the Qisāṣ or in the extent of its execution, and the culprit shall be fastened to a piece of wood or the like so that he may not be restless, then with the help of a thread or the like the two sides of the intended area of the part to be subjected to Qisāṣ shall be measured and marked, then the part from one mark to the other shall be cut. If the wound caused by the culprit has also breadth, its breadth shall also be measured. If it is troublesome for the culprit to be inflicted Qisāṣ all at once, it may be inflicted in parts. Whether it is permissible to do so despite the disagreement of the culprit, there is hesitation in it.

**Problem # 12.** If the culprit becomes restless and in consequence the quantum of Qisāṣ becomes excessive, the person inflicting the Qisāṣ shall not be liable for it. But if there is excess in the quantum of Qisāṣ without the restlessness of the culprit and without making it an excuse for the excess, then if it were deliberate, the executor of the Qisāṣ shall be held liable to Qisāṣ for it; otherwise, he shall be liable to diyat or arsh. If the culprit claims that the excess has been deliberate, while the person executing Qisāṣ it, his word shall carry. If the executor of the Qisāṣ claims that the excess has been by mistake, but the culprit denies it, the jurists have held that the word of the executor of Qisāṣ shall be accepted, but there is hesitation in accepting it.

**Problem # 13.** The execution of the Qisāṣ for a part of body shall be delayed due to extreme heat or cold compulsorily when there is risk of the wound becoming infectious, and as an act of kindness to the culprit in case otherwise. If the victim does not agree with such arrangement, then there is hesitation in delaying the execution of the Qisāṣ.

**Problem # 14.** A Qisāṣ shall be executed with a sharp iron that is not poisoned or blunt and suitable for executing Qisāṣ from persons like the culprit, and it is not lawful to cause pain to him more than he has caused. If the culprit has pulled out the victim’s eye with an easy weapon, it would not be lawful to pull out the culprit’s eye with a more painful weapon. It is allowed to pull out the culprit’s eye with hand if the culprit has pulled out the victim’s eye with his hand, or when pulling the eye with hand if easier. It is better for the person subjected to offence to adopt easiness, and he is allowed to treat the culprit in an equal manner. If he transgresses and executes the Qisāṣ in a way causing more pain than he was subjected to, the ruler [or the judge] shall be authorized to subject him to Ta’zir without any responsibility for it. If he transgresses to the extent causing Qisāṣ, he shall be liable to Qisāṣ. If he transgresses the extent causing arsh or diyat, he shall be held liable to the payment of the arsh or diyat.

**Problem # 15.** If the wound takes the whole of the part of body of the culprit while it does not do so with the victim due to the largeness of his head, for example, as when the length of the
النفس؟ الأقوى جوزة الأخذ و وجوب الاعطاء نعم لو سرت الجراحات يجب إرجاع الزائد على النفس.

مسألة 11 - إذا أريد الاقتصاد حلقة الشرم عن المحل إن كان يمنع عن سهولة الاستفادة أو الاستفادة بحده، و ربط الجاني على خشبة أو نحوها بحيث لا يتمكن من الاضطراب، ثم يقاس بخط و نحوه و يعلم طرفه في محل الاقتصاد، ثم يشق من إحدى العلامتين إلى الأخرى، ولو كان جرح الجاني ذا عرض يقاس العرض أيضاً. وإذاشق على الجاني الاستفادة دفعة يجوز الاستفادة بدفعات، و هل يجوز ذلك حتى مع عدم رضا المجنّ عليه؟ فيه تأمل.

مسألة 12 - لو اضطراب الجاني فوراد المقتض في جرحه لذلك فلا شيء عليه، ولوزاد بلا اضطراب أو بلا استناد إلى ذلك فإن كان عن عمّد يقتض منه، إلا فعلية الدنيا أو الأثر، ولو ادعى الجاني العمد وأنكره المباشر فالقول قوله، ولو ادعى المباشر الخطأ وأنكر الجاني قلّوا: القول قول المباشر، وفيه تأمل.

مسألة 13 - يؤخر القصاص في الطرف عن شدة الحر و البرد وجوباً إذا خيف من السرايا، و إرفاقاً بالجاني في غير ذلك، و لو لم يرض في هذا الفرض المجنّ عليه في جواب التأخير نظر.

مسألة 14 - لا يقتض إلا بحاجة جادة غير مسمومة ولا كالة مناسبة لاقتصاص مله، ولا يجوز تعذّبه أكثر مما عذبه، ف لو قلل عينه بالآلة كانت سهلة في القلع لا يجوز قلعها بالآلة كانت أكثر تعذيباً، و جاز القلع بالبيذ إذا قلغ الجاني بيه أو كان القلع بها أسهل، و الأول للمجنّ عليه مراعاة السهولة، و جاز له المالة، ولو تجاوز و اقتض بما هو موجب للتعذيب، و كان أصعب مما فعل به فللولي تعزيره، ولا شيء عليه، ولو جاز ه، بوجب القصاص اقتض منه، أو بما يوجب الأرض أو الدنيا أخذ منه.

مسألة 15 - لو كان الجرح يستوعب عضو الجاني مع كونه أقل في الجاني عليه لكبر رأسه مثلناً كان يكون رأس الجاني شيراً و رأس المجنّ عليه شبرين. وجبت عليه
culprit's head is equal to the span of the hand, while that of the victim is equal to the span of two hands, and the culprit's offence has been to the extent of the span of one hand, the culprit shall be subjected to Qisās for the span of one hand even if it covers the whole of his head. If the culprit's offence has been to the extent of the span of two hands, the Qisās shall not extend from one part of the body, and it shall not include the neck or face [of the culprit], but in the supposed case, the Qisās shall not extend to more than the span of one hand, and for the rest of the length diyat shall be charged in relation to the area if a diyat is prescribed for that part of the body, otherwise the arsh shall be determined by an Islamic government. Likewise, it is not lawful to complete the deficiency of a part of the body to the other part. If the case is reverse, so that the victim's part of body is smaller than that of the victim, and the offence has been to the span of one hand that covers his whole head, for example, while executing the Qisās the whole head of the culprit shall not be covered, but it shall cover only to the span of one hand, even if it is equal to half of the culprit's head.

Problem # 16. If an injury reaches the whiteness of the bone of the whole head in a way scratching the skin and flesh of the entire head, the victim shall be allowed to inflict the Qisās on the culprit if the area of the heads of both of them is equal, and he shall have the option to begin from whichever side he likes.

The same shall be the rule if the head of the victim is smaller, but he shall be allowed to charge for the excessive amount by dividing it in proportion to the area of the mūdihih*.

If the victim's head is bigger, he shall inflict the Qisās to the extent of the area of his offence, and shall not scratch the culprit's entire head. If the culprit breaks the victim's head scratching the skin and flesh of part of his head, he shall be liable for the diyat of mūdihih*.

If the victim intends to inflict Qisās, he shall inflict the Qisās for the mūdihih* and also inflict the Qisās for the rest.

[Note. For the meanings of the term marked with asterisk, see the Glossary at the end].

Problem # 17. In a Qisās for parts of body, besides what has already been mentioned, in case of each part that is divided into left and right, as the two eyes, two ears, two testicles, two nostrils and the like, one of them shall not be subjected to Qisās for another, so that if the culprit pulls out the victim's right eye, the culprit's left eye shall not be subjected to Qisās for it, and so is the case with the other parts of body.

In case of the parts lying up or down, their position shall be kept in consideration while inflicting Qisās, so that the lower part shall not be subjected to Qisās for the higher one, as the two eyelids or the two lips.

Problem # 18. In a Qisās for the ear, the right ear shall be subjected to Qisās for the right one, and the left one for the left. The large and small ears shall be treated as equal, and the ear having a hole and the one without it shall also be treated equally provided the hole is usual, and so is the case with small or large, deaf and sound, and fleshy and lean.

Whether a sound ear shall be subjected to Qisās for an ear with a cut, or a sound one for one having an unusual hole that is considered blemished, or will it be subjected to Qisās up to the extent of cut or hole, or will fine be paid for the rest or with the return of diyat for the hole? There are several alternatives, the latter being nfor far from being likely. If a culprit cuts part of the ear, it is lawful to inflict Qisās for it.
بشري يقتص الشرب، وان استوعبه. وإن زاد على العضو كأن جنبي عليه في الفرض بشرين لا يتجاوز عن عضو بعضاً آخر، فلا يقتص من الرقبة أو الوجه، بل يقتص بقدر شبر في الفرض، ويأخذ للباقي نسبة المساحة إن كان للعضو مقدر وإلا فالحكومة، وكذا لا يجوز تتميم الناقص بوضع آخر من العضو، ولو انعكس وكأن عضو الجني عليه صغيراً فجني عليه بمقدار شبر وهو مستوعب لرأسه مثلًا لا يستوعب في القصاص رأس الجاني، بل يقتص بمقدار شبر وإن كان الشر نصف مساحة رأسه.

مسألة 16 - لو أوضح جميع رأسه بأن سلمج الجلد و اللحم من جلبة الرأس فللجني عليه ذلك مع مساواة رأسهما في المساحة، وله الخيار في الابتداء بأي جهة، وكذا لو كان رأس الجني عليه أصغر، لكن له الحرامة في القدر الزائد بالتقيض على مساحة الموضح د، ولو كان أكبر يقتص من الجاني بمقدار مساحة جنايته، ولا سلمج جميع رأسه، ولو شجه فأوضح في بعضها فله دية موضح، ولو أراد Ads الاقتـص في الموضحة والباقي.

مسألة 17 - في الاقتـص في الأعضاء غير ما مر كل عضو ينقسم إلى يمين و شمال كالأعين والأنف والأنف و المنخور و نحوها لا يقتصر إحدهما بالأخرى، فلو فقى عينه اليمني لا يقتصر عينه اليسرى، وكذا في غير هما، وكل ما يكون فيه الأعلى والأسفل يراعي في القصاص المحلي، فلا يقتصر الأسفل بالأعلى كالجفني والشفتين.

مسألة 18 - في الأذن قصاص تقتص اليمن باليمن واليسرى باليسرى و تسوى أذن الصغير والكبير، والمنحوة والصحبة إذا كان الثقب على المثارف، والصغيرة والكبيرة، والصغيرة والسامة والسيئة والهزمة، وهل توخ الصحابة بالمخرومة وكذا الصحوة بالمنتجوعة على غير المتعارف بحيث تعد عيباً أو يقتصر إلى حد الحرم والثقب والحكومة فيها النبي أو يقتصر مع ردية الحرم؟ ووجه لا يبعد الآخر، ولو قطع بعضها جاز القصاص.
Problem # 19. If a person cuts the ear of another, and the victim sticks it and it becomes duly stuck, then apparently the liability for Qisāṣ shall not be set aside. If the victim inflicts Qisāṣ, and the culprit sticks his ear and it becomes duly stuck, then, according to a Tradition, the other ear of the culprit shall be cut so that the blemish may exist. Some jurists have held that the judge shall order it to be separated, as the ear would be considered a dead and unclean (najis) thing. But there is weakness in the Tradition. Becomes living like the other parts of the body, it shall not be dead, and prayers may be offered with it, and the judge or any other person shall not be entitled to separate it. Rather if any other person separates it, he shall be liable to Qisāṣ, provided he does it deliberately and with the knowledge of its being unlawful; otherwise it shall be liable to payment of diyat. If a person cuts a part of another’s ear, but it is not separated from the ear, then if it is possible to inflict Qisāṣ for equal extent, it will be established, otherwise not. The victim shall be allowed to inflict Qisāṣ even if the part of the ear that has been cut is duly stuck.

Problem # 20. If a person cuts the ear of another and consequently the victim loses power of hearing, then there shall be two offences committed. If he has a shabby and paralysed ear, then there shall be difficulty in the liability for Qisāṣ for it. Rather it is not far from being liable to impose the liability for one-third of the diyat.

Problem # 21. Qisāṣ is established for the eye, and it is inflicted observing equality of the situation, so that the left eye shall not be subjected to Qisāṣ for the right one, or vice versa. If the culprit is one-eyed, he shall be inflicted the Qisāṣ even if it results in blinding him, as the fulfillment of the right has blinded him. Nothing shall be paid to him. If its diyat is equal to that of loss of life when the blindness is by birth or due to some act of God. There is no difference whether his blindness is by birth or as a result of an offence or an act of God or execution of an act of God. If a one-eyed man pulls the sound eye of another one-eyed man, he shall be inflicted the Qisāṣ.

Problem # 22. If a person having both two sound eyes pulls out the eye of a one-eyed man, one of his eyes shall be pulled out in the execution of the Qisāṣ. Then shall he still be entitled to the payment of half of the diyat? The jurists have replied the question in the negative, but according to the stronger opinion, payment of half of the diyat shall be established. Apparently the victim shall have the option either to receive full diyat or execute Qisāṣ and also receive half of the diyat, as it is apparent that the law is established that there shall be full diyat for the eye of a one-eyed man, as when he is one-eyed by birth or by an act of God, not in any other case as when his eye has been pulled out in execution of a Qisāṣ.

Problem # 23. If a person pulls out a blind eye, he shall not be subjected to Qisāṣ, but he shall be liable to pay one-third of the diyat.

Problem # 24. If a person does not pull out the pupil of the eye but causes the loss of eyesight, the culprit shall be inflicted Qisāṣ if it is possible to cause the loss of eyesight without pulling the pupil of the eye. The matter shall be referred to medical experts to do what has been said. It is said that its method is to put wet cotton on his eyelids, then a mirror shall be heated and placed before the sun.
مسألة 19 - لو قطع أذنه فأصلقها المجني عليه والتصقت فالظاهر عدم سقوط القصاص، ولو اقتضى من الجناني فأصلق الجناني أذنه وتصقت في رواية قطعت ثانية لبقاء الشين، وقيل يأمر الحاكم بالإبقاء لحمله الميتة والنجس، وفي الرواية ضعف، ولو صارت بالالصاق حية كسائر الأعضاء لم تكن ميتة، وتصح الصلاة معها، وليس للحاكم ولا يهير إبانتها، بل لو أبانه شخص فعليه القصاص لو كان عن عم وعلم، وإلا فالدية، ولو قطع بعض الأذن ولم بنوها فان أمكنت المماثلة في القصاص ثبت ونلا فلان، وله القصاص ولو مع الإصاقها.

مسألة 20 - لو قطع أذنه فازال سمعه فيها جنايتان، ولقعطاء أذناً مستحشفة شلاء في القصاص إشكال، بل لا يبعد ثبوت ثلاث الدية.

مسألة 21 - يثبت القصاص في العين، و تقضي مع مساواة المثل، فلا تقليع الينب باليسير ولا بالعكس، ولو كان الجناني أعور اقتض منه وإن عم، فإن الحق أعماء، ولا يرد شيء إليه ولو كنت دينه دابة النفس إذا كان العور خلقة أو بقعة من الله تعالى، ولا فرق بين كونه أعور خلقة أو جائحة أو آفة أوقصاص، ولو قطع أعور العين الصحيحة من أعور يقتض منه.

مسألة 22 - لوقع ذوي عينين أعور اقتض له بين واحدة، فهل له مع ذلك الرد بنصف الدي؟ قبل لا، و الأقوى ثبوت، و الظاهر تغيير المجني عليه بين أحد الدي كاملاً و بين الاقتضاع و أخذ نصفها، كما أن الظاهر أن الحكم ثابت في نكون لعين الأعور دية كاملة، كما كان خلقة أو بقعة من الله، لا في غيره مثل ما إذا قل عينه قصاصاً.

مسألة 23 - لوقع عينياً عمياء قائمة فلا يقتض منه، و عليه ثلث الديه.

مسألة 24 - لو أذهب الضوء دون الحدقة اقتض منه بالمماثل بما أمكن إذاب الضوء مع بقاء الحدقة، فيرجع إلى حذاق الأطباء ليجعلوا به ما ذكر و في طريقه يطرح على أقفائه قطن مبلول ثم تخمي المراة و تقابل بالشمس ثم
His eyes should be opened and he should be compelled to look at it until he loses eyesight, while the pupil of the eye remains intact. If the loss of eyesight is not possible except by another offence like pulling out the eye or the like, the Qisās shall be set aside, and the culprit shall be liable to pay diyat only.

Problem # 25. A sound eye shall be inflicted Qisās for a blind, squinting, day-blind (hemeralopic), or a sunblind eye or an eye suffering from nycatalopia (that cannot see in the night).

Problem # 26. There is hesitation in the establishment of Qisās for the loss of hair of the eyebrows, head, beard (and mustache), the eyelids and the like, though it is not devoid of reason. Of course, if a person injures their place, Qisās shall be inflicted for it, if possible.

Problem # 27. Qisās is established for the loss of hair of the eyelids with the observation of equality of the situation. If the culprit has no hair in his eyelids, then there are two alternatives in the infliction of Qisās. It is not far from being set aside, but the culprit shall be liable to pay diyat.

Problem # 28. There is Qisās for nose, and a sound nose shall be inflicted Qisās a nose having no power of smelling. So also a sound nose shall be inflicted Qisās for a leprous nose if no part of it has been dropped [as a result of leprosy]; otherwise, Qisās shall be inflicted for the undropped part of the nose. Small, large, flat, long, sensitive and curved noses with narrow nostrils are treated at par in Qisās. A sound nose shall not be inflicted Qisās for a dried nose that is like a paralysed one. There shall be Qisās for the soft or supple part of the nose or part thereof. If a person cuts the supple part with the lower section, then whether the whole part shall be inflicted Qisās, or there shall be fine for the lower part, there are two alternatives. There one more alternative here, and that relates to Qisās in case the lower part does not reach the bone, in which case there shall be Qisās for the cartilage along with the supple part of the nose, but there shall be no Qisās for the bone.

Problem # 29. A nostril shall be inflicted Qisās for a nostril by observing equality of the situation, so that the right nostril shall be inflicted Qisās for the right one, and the left nostril for the left nostril.

The dividing wall of the nose shall be inflicted Qisās for the dividing wall of the culprit’s nose. If a part of the nose is chopped off, the chopped off part shall be measured out of the original and Qisās shall be inflicted from the culprit according to the measurement. If part of the supple one is chopped off, it shall be measured out of the whole. If it is half, half of the culprit’s supple part shall be chopped off, and if it is one-third, one-third of the culprit’s supple part shall be chopped off.

There shall be no consideration for the largeness or smallness of the culprit’s nose. Or the whole nose shall be measured and it shall be chopped according to the measurement, so that if the culprit’s nose is small, the Qisās should not cover the whole.
كتيب

المتابع

لا يستطيع النظر إلى النسيج الوردي في الوردة وتعلق في القفص، ويجب أن يذكر النص في النفق، حتى يذهب النظر ويتم مهارة الحدقة، وهو ما يُطلق عليه "الإنهاء".

المقالة 25 - تكثف العين الصحيحة بالعِمْشاء والحَوْلاء والقَفَّاء والجَهَراء والعَشَياء.

المقالة 26 - في ثبوت القصاص لشعر الحاجب والرأس واللحية والأهداب، ونحوها، فإن لا يخلو من و، حيث يُ وإن لوجين على العمل بجرح ونحوه يقتصر مِنِه مع الامكان.

المقالة 27 - يثبت القصاص في الأجانب مع التساوي في المحل، ولو خلت أجيال المُنْتَج عليه عن الإهداب ففي القصاص وجهان، لا يعد عَمْل ثبوتة.

المقالة 28 - في الأنف قصاص، ويثبت الأنف الشام بعده، وقصاص.png

المقالة 29 - يقتصر المُتَنِّع بالنظر في النسيج الوردي في الوردة، ويتم مهارة الحدقة، ويجب أن يذكر النص في النفق، حتى يذهب النظر ويتم مهارة الحدقة، وهو ما يُطلق عليه "الإنهاء".
Problem # 30. A lip shall be inflicted Qiṣāṣ for a lip by observing equality of its position, so that an upper lip shall be inflicted Qiṣāṣ for the upper one, and the lower for the lower one. The long and short, large and small and sound and unsound when it does not reach the limit of being paralysed, as well as the thick and thin lips are treated at par in Qiṣāṣ. If a part of the lip is chopped off, the culprit’s (corresponding) lip shall be chopped off according to the measurement, as explained earlier. We have mentioned Ḥadd for [chopping off] a lip under the Section on Diyyats.

Problem # 31. Qiṣāṣ of tongue for the tongue is established and so part of it for a part thereof, on the condition of observation of equality of speaking power. So a tongue having power of speech shall not be chopped off for a dumb one, but a dumb one shall be chopped off for a tongue having power of speech or for a dumb one. An eloquent tongue shall be chopped off for a non-eloquent one, and a light for a heavy one. If a person cuts the tongue of a child, the culprit’s tongue shall be inflicted Qiṣāṣ except in case of establishment of the child’s dumbness. If there are signs of dumbness in the child, in such case there shall be the liability for the payment of diyyat.

Problem # 32. There is Qiṣāṣ for the breast of a woman and its teat [or nipple]. If a woman cuts the breast of another woman or its teat, she will be subjected to Qiṣāṣ. Likewise there is Qiṣāṣ for the teat of a man, so that if a man cuts the teat of another man, she shall be subjected to Qiṣāṣ observing the equality of situation, so that the right teat shall be subjected to Qiṣāṣ for the right one and the left for the one. If a man cuts the terat of the breast of a woman, she shall be entitled to Qiṣāṣ from him without any payment from her.

Problem # 33. There is Qiṣāṣ for the teeth observing equality of their situation, so that the upper teeth shall not be subjected to Qiṣāṣ for the lower, and vice versa, nor the right teeth for the left ones, and vice versa. So also the middle incisors shall not be pulled off for the quadruplets, the molar, canine, fore-teeth [which become visible at the time of laughing], or the original for the extra, or vice versa, or extra for extra differently situated.

Problem # 34. If the pulled tooth is one that grows after the falling of the milk-tooth it shall entail Qiṣāṣ. Whether there is Qiṣāṣ, diyyat or arsh (fine) in case of breaking such a tooth; there are two alternatives, the former being according to the opinion closer to the traditional authority. But in case of Qiṣāṣ, it is indispensible to break it to obtain similar amount of loss with the help of modern implements and not by striking something to break it usually due to inability to obtain a similar amount of loss.

Problem # 35. If before the execution of the Qiṣāṣ the pulled tooth grows again, shall the Qiṣāṣ be set aside or not? The latter alternative is according to the opinion in conformity with the principles of law, while the former is according to the prevalent opinion. There is no alternative but to exercise caution by not resorting to Qiṣāṣ. In case the newly grown tooth is defecting and different, it shall entail fine to be fixed by the judge. If it gows as it was before, then there shall be nothing by Taʿzir, except in case there is some defect in it, in which case there shall be arsh in it.
مَسَألَة ٣٠ - تقتص الشفة بالشفة مع تساوي المحل، فالشفة العليا بالعليا و السفل بالسفل، و تستوي الطولية أو القصيرة، و الكبيرة أو الصغيرة، و الصحيحة أو المريضة ما لم يصل إلى الثلث، و الغليظة و الرقيقة، و لوقعت بعضها في حساب المساحة كما مر، وقد ذكرنا حد الشفة في كتاب الديات.

مَسَألَة ٣١ - يثبت القصاص في اللسان وبعضه ببعضه بشرط التساوي في النقط، فلا يقطع الناطق بالأخرس، و يقطع الأخرس بالناطق و بالأخرس، و الفصيح بغيره، و الخفيف بالثقيل، و لوقعت لسان طفل يختص به إلا مع إثبات خرسه، و لو ظهر فيه علامات الخرس ففيه فدية.

مَسَألَة ٣٢ - في ثدي المرأة و حلمته قصاص، فلو قطعت امرأة ثدي أخرى أو حلمة ثديها يختص منها، و كذا في حلمة الرجل القصاص، فلو قطع حلمته يختص منه مع تساوي المحل، فالمزاحي باليسرى و الباليد في اليسرى، و لوقعت الرجل لحلمة ثدي المرأة فلها القصاص من غير رد.

مَسَألَة ٣٣ - في السن قصاص بشرط تساوي المحل، فلا يقلع ما في الفك الأعلى بما في الأسفل ولا العكس، ولا ما في الباليد باليسار و بالعكس، ولا يقلع الثنية بالرباعية أو الطاحن أو الناب أو الضاحك و بالعكس، ولا تقلع الأصلية بالزاليدة، ولا الزائد بالأسلوب، ولا الزائد بالزاليدة مع اختلاف المحل.

مَسَألَة ٣٤ - لو كانت المقلوبة سن مثير أي أصلي نبت بعد سقوط أسنان الرضاع ففيها القصاص، و هل في كسرها القصاص أو المدينة و الأرش؟ و جهان، الأرب الأول، لكن لا بد في الاقتصاص كسرها ما يصل به المماثلة كالآلات الحديثة، ولا يضرب بها إلها العدود حصولها نوعاً.

مَسَألَة ٣٥ - لو عادت المقلوبة قبل القصاص فهل يسقط القصاص أم لا؟ الأشبه الثاني، و المشهور الأول، و لا محيط عن الاختيارات بعدم القصاص، فهيند لو كان العائدة ناقصة متغيرة ففيها الحكومة، و إن عادت كما كانت، فلا شيء غير التعزير إلا مع حصول نقش، ففيه الأرش.
Problem # 36. If the tooth appears after the execution of the Qīṣāṣ, the victim shall be liable to pay fine (gharāmat) to the culprit due to the setting aside of the Qīṣāṣ except when the culprit’s tooth also grows up, and the diyyat shall be returned to the culprit if the victim has received it as a result of compromise. If after the execution of the Qīṣāṣ, the culprit’s tooth reappears, the victim shall not be allowed to remove it, and, likewise, if the victim’s tooth grows again, the culprit shall not be entitled to pull it out.

Problem # 37. If a person pulls out the tooth of a child, the victim should wait till the time it takes usually to reappear. If it reappears, it shall entail arsh, according to the prevalent opinion. It is not far from likely that there should be payment of one camel for each of his teeth. If it does not reappear, there shall be Qīṣāṣ in it.

Problem # 38. Qīṣāṣ is established in a case of cutting the penis. In it a minor, though a suckling, and an adult how old ever as well as a healthy and sound man and a person whose both testicles have been pulled out provided he has not been paralysed in that respect, and a circumcised and a non-circumcised person are treated at par [at the time of Qīṣāṣ]. The penis of a potent person shall not be cut in Qīṣāṣ for an impotent person or one whose penis is paralysed, but the penis of an impotent person shall be chopped off in Qīṣāṣ for a potent person or one whose penis is paralysed. Likewise, Qīṣāṣ is established in case of cutting glans penis, so that a glans penis is cut off in Qīṣāṣ for glans penis. If a small or large part of glans penis is chopped off, a similar amount of the culprit’s penis shall be chopped off considering it to be the whole, half for half and one-third for one-third, and so on.

Problem # 39. There is Qīṣāṣ in case of both testicles, and so in case of a single testicle observing equality of its situation, so that the right testicle shall be removed in Qīṣāṣ for the right one, and the left for the left one. If there is risk of the loss of use of the other one, diyyat shall be charged. It is not lawful to execute Qīṣāṣ except when the act of the culprit has led to the loss of its use, in which case Qīṣāṣ shall be executed. If the use of the testicle is not lost by the execution of Qīṣāṣ, in case it has been lost by the culprit’s act, Qīṣāṣ shall be permissible if the loss of the use is caused with the preservation of the actual one, otherwise he shall be liable to diyyat. If a person has cut the penis and both testicles of another, he shall be subjected to Qīṣāṣ for them, whether he has cut them one after another or not.

Problem # 40. There is Qīṣāṣ for [cutting] both shafir or labia. Shafir or labium means the flesh surrounding the female organ as the two lips surround the mouth. Likewise, there shall be Qīṣāṣ in case of cutting one of them. They shall be treated at par whether the victim is a virgin or a non-virgin, a minor or an adult, healthy and sound or one suffering from ratq*, qarn*, ‘afal*, circumcised or non-circumcised, and one subjected to iflā* or a sound one. Of course, a healthy and sound one shall not be subjected to Qīṣāṣ for a paralysed one. A Qīṣāṣ for both labia is established in case a woman commits the offence. If a man commits the offence, he shall not be subjected to Qīṣāṣ, but he shall be liable for the payment of diyyat. According to a report not relied upon if the man fails to pay diyyat to the woman, his organ shall be cut for it.
مسألة ۲۶ - لو عادت بعد القصاص فعليه غرامتها للجاني بناءً على سقوط القصاص إلا مع عود سن الجاني أيضاً، وتستعاد الدية لو أخذها صلحاً، ولو أقص وعادت سن الجاني ليس للمجني عليه إزالتها، ولو عادت سن المجني عليه ليس للجاني إزالتها.

مسألة ۲۷ - لو قتل سن الصبي ينتظر به مدة جرت العادة بالأشواط فيها. فان عادت فيها الأرض على قول معروف، ولا يبعد أن يكون في كل سن منه بعير، وإن لم ت تعد فيها القصاص.

مسألة ۲۸ - بثت القصاص في قطع الذكر، ويتساوي في ذلك الصغير ولو رضيماً وكبير بلغ كبره ما بلغ والفحل والذي سلت خصيته إذا لم يؤد إلى شلل فيه، والأغلف والخنثون، ولا يقطع الصحيح بذكر العنين ومن في ذكره شلل، ويطع ذكر العنين الصحيح والمشلوب به، وكذا بثت في قطع الحنشية، فقطع الحنشية بالحنشية، وفي بعضها أو الزائد عليها استوفي بالقياس إلى الأصل، وإن نصفها فنصفاً وإن ثلثاً فثليماً ونحوه.

مسألة ۲۹ - في الخصيين قصاص، وكذا في إحداهما مع التساوي في الملل، فتقصي البني بالبلى والبلى بالبلى، ولو خشي ذهاب منفعة الأخرى تؤخذ الديبة، ولا يجوز القصاص إلا أن يكون في عمل الجاني ذهاب المنفعة فهو يقصو قلولاً تذهب بالقصاص منفعة الأخرى مع ذهابها بفعل الجاني فإن أمكن اذهابها مع قيام العين يجوز القصاص، ولا فعليه الديبة، وقطع الذكر والخصيين.

مسألة ۳۰ - في الشفرين القصاص، ومراد به اللحم المحيط بالفرج الحادة الشفرين بالفم، وكذا في إحداهما، وتساوي في البكر والثيب. والصغيرة وكبرى، والصحيحة والرتناء، والعلاء والخنثون، وسائرها، فنعز لابط البصر في الشفرين إذا هوفى جلت عليها المرأة، ولو كان الجاني عليها رجلاً فلا قصاص عليه، ولا فعليه الدية.
Likewise, if a woman cuts the penis of a man or both his testicles, she shall not undergo Qisāṣ, but shall be liable for payment of diyat.

[Note. For the terms marked with asterisk [*], refer to the Glossary at the end].

Problem # 41. If a woman removes the virginity of another, then obviously she shall be liable to Qisāṣ. However, some jurists have said that she shall be liable to pay diyat. In case equality is not practicable, it shall be reasonable. Likewise, payment of diyat is established in every case where identical and equal treatment is not practicable.

Subsidiary Rules relating to Qisāṣ for Parts of Body

First. If a man whose hand is short of one or more fingers cuts completely sound hand of another, the victim shall be entitled to execute Qisāṣ. After cutting the culprit’s [defective] hand, shall the victim be entitled to receive diyat for what was deficient in the culprit’s hand? Some jurists have answered the question in the negative. Some other jurists have answered the question in the affirmative in case his fingers have been cut as a result of an offence and he has received diyat for it or is entitled to receive it. But if the deficiency was by birth or as a result of an act of God, the victim shall not be entitled to receive any thing extra. According to the opinion more compatible with the principles of law, the victim is entitled to diyat in all circumstances. If a person having completely sound hand cuts the hand of another short of one or more fingers contrary to the previous case, then whether the culprit’s hand shall be cut after payment of the diyat for what was deficient in the victim or he shall not be inflicted Qisāṣ but shall be liable to pay diyat, or what exists is subjected to Qisāṣ and for the rest there shall be fine fixed by the judge? There are several alternatives, and the problem is a difficult one as there was another previously.

Second. If a person cuts the fingers of another, the wound infects the palm of his hand in a way that it was amputated, then it became healed, Qisāṣ shall be established for both, so that the culprit’s hand shall be amputated from the wrist. If the victim’s hand was amputated from the joint of the forearm, the Qisāṣ shall be established accordingly. If some of the victim’s arm was also cut, the Qisāṣ shall be executed from the joint of the forearm, and in case of excess the culprit will likely be liable for the fine to be fixed by the judge, or it is likely to be cut after measurement of the area. If it is amputated from the elbow, it shall be inflicted Qisāṣ accordingly. In case of excess, action will be taken according to what has been mentioned previously. The law for the foot is similar to that of the hand. In case of cutting from the joint, the Qisāṣ shall be executed accordingly. In case of excess, action shall be taken according to what has already been mentioned.

Third. In a Qisāṣ equality of the real and excessive parts is to be observed, so that the real part shall not be cut for an extra one, even if their position is identical, nor the extra part for the real one despite difference in position. The real part shall be cut for the real one, and the extra for
في رواية غير معتمد عليها إن لم يؤد إليها الديانة قطع لها فرجه، وكذا لقطعت المرأة ذكر الرجل أو خصيته لاقصاص عليها، وعليها الديانة.

مسألة 41 - لو أزالت بكار بشارة أخرى فالظاهر القصاص، وقيل بالدية، و هو وجه مع عدم إمكان المساواة، وكذا تثبت الديانة في كل مورد تعذر المساواة والمساواة.

وهنافروع:

الأول - لو قطع من كان يده ناقصة باصبع أو أزيد بدأ كاملة صحيحة.
فللمجني عليه القصاص، فهل له بعد القطع أخذ دية مننقش عن يد الجاني؟
قيل: لا، وقيل: نعم، فلا يكون قطع إصابعه بجنيا، وأخذ دتياه أو استحقاقها، وأما إذا كانت مفقودة خلقية أو بأقنا لم يستحق القصاص شيئا، والأشبه أن له الديانة مطلقا، ولقطع الصحيح الناقص عكس ما تقدم فهله تقطع بجان، بعد أداء دبة ما نقص من الجاني عليه أو لا يقصص وعليه الديانة أو يقصص ما وجد في الباق

الثاني - لو قطع إصبع رجل فسرت إلى كنه بحيث قطعت ثم اندملت ثبت
القصاص فيها، فقطع كنه من المفصل، ولو قطعت به من فصل الكوع ثبت القصاص فيها، ولو قطعت معها بعض الذراع اقتص من فصل الكوع، وفي الزائد يحمل الحكومة ويجمل الحساب بالمسافة، وقطعها من المرفق فالقصاص وفي الزادة ما مر، وحكم الرجل حكم اليد، ففي القطع من المفصل قصاص، و في الزادة ما مر.

الثالث - يشرط في القصاص التساوي في الأصلية والزيادة، فلا تقطع أصلية بزائدة ولوم مع اتحاد المال، ولا زائدة بأصلية مع اختلف المال، وتقطع الأصلية بالأصلية مع اتحاد المال، والزائدة بالزائدة كذلك، وكذا الزائدة
extra. Likewise, an extra part shall be cut for a real one due to the identical position and absence of the real one. However, neither the right excessive part shall be cut for the left extra one, or vice versa. Nor shall the right extras part cut for the real left one, or vice versa.

Fourth. If a person cuts the palm of another’s hand, then if both culprit and the victim have extra fingers at the identical position, as an extra thumb in their right hand, and the culprit has cut the right hand from the palm of the hand, he shall be inflicted the Qīṣās accordingly. If the extra finger was exclusively in the culprit’s hand, so if it was separate from the palm of his hand, he shall be inflicted Qīṣās, leaving the extra finger. If it was in the side of the fingers separately, then shall the palm of his hand be amputated and the diyat for the extra finger shall be paid, or only the five fingers shall be cut leaving the extra one and the palm of his hand, and the diyat of the palm of his shall be charged as fixed by the judge? There are two options, the one closer to the juristic opinion is the latter. If the victim has exclusively an extra finger, he shall have the Qīṣās for the palm of his hand, and shall be entitled to the diyat for the extra finger, which is one-third of the diyat of the real one. If they reach a compromise, the victim shall be entitled to have the diyat for the palm of his hand and his extra finger. If the victim has four real fingers and the fifth unreal, the completely sound hand of the culprit shall not be amputated, and the victim shall be entitled to execute Qīṣās for four fingers, diyat for the fifth and arsh for the palm of his hand.

Fifth. If a person cuts the upper fingertips of one person and the middle ones of the other person, then if the master of the former ones demands Qīṣās, he shall inflict Qīṣās for his fingertips, while the other shall be entitled to inflict Qīṣās for the middle ones. If the master of the middle fingertips demands Qīṣās before the master of the upper fingertips, his turn shall be delayed until the position of the other becomes clear. Once the master of the upper fingertips has executed Qīṣās, the master of the middle ones shall be allowed to execute Qīṣās. If the former excuses the culprit or receives diyat [for the upper fingertips], then half of the middle fingertips be entitled to execute Qīṣās after payment of the diyat for the upper fingertips, or he shall not be entitled to execute Qīṣās but it is shall be indispensable for him to receive diyat? There are two alternatives, the more reasonable being in favour of the latter. If the master of the middle fingertips hastens to execute his Qīṣās, he shall be considered to have mistaken, and he shall be liable for the payment of the diyat for what is in excess to his right, and the culprit shall be liable to pay the diyat for the upper fingertips.

Sixth. If a person cuts, for example, the right hand of another, and offers his left hand for Qīṣās, and the victim cuts it without knowledge that it was the left hand, then shall the Qīṣās be set aside or there shall the Qīṣās be still due? The stronger opinion is in favour of the latter. If there is risk of the wound becoming infectious, the Qīṣās shall be delayed until the wound of the left hand is healed. If the culprit has offered his left hand deliberately with the knowledge of the law and the subject, there shall be no diyat. Rather it is not far from being in favour of absence of the diyat even if the culprit has offered his left hand due to ignorance of the law or the subject. If the victim has cut the hand with the knowledge of its being the left hand, he shall be held responsible provided the culprit was
القسم الثاني في قصص مدون النفس

بالأصلية مع اتخاذ المنحل، وفقدان الأصلية، ولا تقطع اليد الزائدة اليمين بالزائدة البصرية والعكس، ولا الزائدة اليمين بالأصلية البصرية، وهذا العكس.

الرابع - لو قطع كنه فان كان للجاني و المجني عليه إصبعاً زائدة في محل واحد كالإبهام الزائدة في يمينها وقطع اليمين من الكف أقصى منه، ولو كانت الزائدة في الجاني خاصة فان كانت خارجه عن الكف يقصى منه وتبقي الزائدة، وإن كانت في وسط الأصابع منفصلة فهل يقطع الكف يبقى دية الزائدة أو يقص الأصابع الخمس دون الزائدة ودون الكف؟ و في الكف الحكمة؟ و جهان، أقربها الثاني، ولو كانت الزائدة في المجني عليه خاصة فله القصاص في الكف، وله دية الأصبع الزائدة، وهي ثلث دية الأصلية، ولو صالح بالدية مطلقًا كان له دية الكف و دية الزائدة، ولو كان للمجني عليه أربع أصابع أصلية وخمسة غير أصلية لمقطع يد الجاني السالمة، ولمجني عليه القصاص في أربع ودية الحكمة وأربع الكف.

الخامس - لوقطع من واحد الأصلة العليا و من آخر الوسطي فان طالب صاحب العليا يقصى منه، و بالآخر اقتصاص الوسطي، وإن طالب صاحب الوسطي بالقصاص سابقاً على صاحب العليا أخر حقه إلى اضحاج حال الآخر، فإن أقص صاحب العليا أقصى لصاحب الوسطي، وإن عفا أو أخذ الديه فهل لصاحب الوسطي القصاص بعد رد دية العليا أو ليس له القصاص بل لا بد من الديه؟ و جهان، أو جهانها الثاني، ولو بادر صاحب الوسطي وقطع قبل استيفاء العليا فقد أساء، و عليه دية الزائدة على حقه وعلى الجاني دية أصلة صاحب العليا.

السادس - لوقطع بيناً مثلًا، فبُذل شمالاً للقصاص فقطعها المجني عليه من غير علم بأنها الشمال فهل يسقط الود أو يكون القصاص في اليمين باقياً؟ الأقوى هو الثاني، ولو خيف من السراة يؤخر القصاص حتى يندمل اليسار ولا دية لو بذل الجاني عالماً بالحكم و الموضوع عامداً، بل لا يعد عدمها مع البذل جاهلاً بالوضع أو الحكم، ولوقطعها المجني عليه مع العلم بكونها اليسار ضمنها مع جهل
ignoreant; rather he shall be liable to undergo Qisās. If, however, the culprit has acted knowingly by offering his left hand, there shall be no doubt in his having committed a sin, but there shall be difficulty in accepting his liability for Qisās and diyat.

Seventh. If a person cuts, for example, the finger of the right hand of another and then the right hand of a third person, first the Qisās for the first shall be inflicted, and the finger of the culprit’s right hand shall be cut, and then his hand shall be amputated, and the second victim shall have recourse to the culprit for the payment of diyat for the finger. If the person cuts the right hand of another and then cuts the finger of the right hand of a third person, first the Qisās shall be inflicted for the first and the culprit’s right hand shall be amputated, and he shall be liable for the payment of the diyat for the second.

Eighth. If a person cuts the finger of another who forgives him before healing of the wound. If the wound is healed, the culprit shall not be liable to Qisās if he had done it willfully, and no diyat in case it was done by mistake or by semblance of willful act. If the victim says [to the culprit], “I have forgiven you the offence”, it shall be so. If in case of a willful act, the victim says [to the culprit], “I have forgiven you the diyat”, it shall have no effect. But if he says, “I have forgiven you the Qisās,” the Qisās shall be set aside, and the diyat shall also not be established, and the victim shall not be entitled to demand it. If the victim says, “I have forgiven for the act of amputation’ or “the offence”, then the infection of the wound spreads exclusively to the palm of his hand, the Qisās for the finger shall be set aside. Shall he be entitled to inflict Qisās for the palm of his hand after paying the forgiven diyat of the finger, or it shall be indispensable to have recourse to the diyat for the palm of his hand? The second alternative is more according to the principles of law and it is also more cautious. If the victim says [to the culprit], “I have forgiven you the Qisās,” and then the infection of the wound spreads to the loss of life, the wali of the victim shall be entitled to Qisās for the loss of life. Then shall he be liable to return the forgiven diyat for the finger? Here is some difficulty in accepting it; rather it has been forbidden, even if it is more cautious. If the victim says, “I have forgiven the offence”, and then the infection of the wound spreads resulting in the loss of life, the same shall be rule. If the victim says, “I have forgiven the offence and the spread of the infection of the wound, there shall be no doubt in its healing up to the time he had forgiven, but there is difference relating to the spread of the infection of the wound that is not yet established. It is more reasonable to consider it to be healed as well.

Ninth. If one or more heirs of the victim excuse the culprit from the liability of Qisās, it shall be set aside without compensation, and none of the heirs shall be entitled to diyat whether the culprit agrees to it or not. If the victim says, “I have forgiven [Qisās] for one month or for one year, the Qisās shall not be set aside, and he shall be entitled to execute Qisās. If the victim says, “I have forgiven half of you “or “your foot”, that may be considered an allusion to excusing Qisās for loss of life, it shall be valid, and Qisās shall be set aside; otherwise there shall be difficulty in setting the Qisās aside; rather it shall be forbidden. If the victim says, “I have forgiven all your parts except, for example, your foot”, he shall not be allowed to cut the culprit’s foot, and this setting aside [of Qisās] shall not be valid.

Tenth. If the victim says, “I have for given you on the condition of payment of diyat, and the culprit agrees with it, payment of the diyat of the person murdered shall be obligatory and not the diyat of the murderer.
القسم الثاني في قصاص مادون النفس

الجابري، بل عليه القدوم، و أما مع علمه و بذله فلا شبهة في الامتن، لكن في القود و
الدية إشكال.

السابع - لقطع إصبع رجل من يده اليمنى مثلا ثم اليد اليمنى من آخر اقتص
الأول، فيقطع إصبعه ثم يقطع يده للآخر، و رفع الثاني بدية إصبع على الجاني،
ولقطع اليد اليمنى من شخص ثم قطع أصبعا من اليد اليمنى لأخر اقتص للأول،
فقطع يده، و عليه دية إصبع الآخر.

التاون - إذا قطع إصبع رجل فاعنا عن القطع قبل الاندكال فان اندملت فلا
قصاص في عمده، ولا دية في خطنه و شبه عمده، و لو قال: عفوت عن الجنابة
فذلك، و لو قال في مورد العمد: عفوت عن الديبة لا أثير له، و لو قال: عفوت
عن القصاص سقط القصاص و لم يثبت الديبة وليس له مطالبته، و لو قال:
عفوت عن القطع أو عن الجناية ثم سرت إلى الكف خاصة سقط القصاص في
الاصبع. و هل له القصاص في الكف مع رد الديبة الإصبع المفعومة أو لا بد من
الرجوع إلى دية الكف؟ الأشبه الثاني مع أنه أحوط، و لو قال: عفوت عن
القصاص ثم سرت إلى النفس فقلو القصاص في النفس، و هل عليه رد دبة
الاصبع المفعومة؟ فيه إشكال بل منع و إن كان أحوط، و لو قال: عفوت عن
الجناية ثم سرت إلى النفس فذلك، و لو قال: عفوت عنها و عن سرايتها فلا شبهة
في صحته فيها كان ثابتا، و أما فإيا لم يثبت فيه خلاف، و الأوجه صحته.

الثاني عشر - لو عفا الوارث الواحد أو المتعدد عن القصاص سقط بلا بد فلا
يستحق واحد منهم الديبة رضي الجاني أو لا، و لو قال: عفوت إلى شهر أو إلى
سنة لم سقط القصاص و كان له بعد ذلك القصاص، و لو قال: عفوت عن نصفك
أو عن رجلك فان كن عفوت عن الديبة النفس صح و سقط القصاص، و إلا في
سقوطه إشكال بل منع، و لو قال: عفوت عن جميع أعضائه إلا رجلك مثلا لا يجوز
له قطع الرجل، ولا يصح الإسقاط.

العاشر - لو قال: عفوت بشرط الديبة و رضي الجاني وجب دية المقتول لادية القاتل.
SECTION FORTY-EIGHT

DIYĀT

Diyat is the money due to be paid for an offence against a free man for loss of life or less than that [loss of or injury to parts of body], regardless whether it is prescribed or not; sometimes the non-prescribed is called Ārsh or Ḥukūmah and the prescribed Diyat.

This Section deals with the Kinds of Murder, Quantum of Diyat, Causes of Liability, Offence against the Parts of Body and Appendages.

Chapter One: Kinds of Murder

Problem # 1. A murder is either a Willful Murder, or Semblance of Willful Murder (or Manslaughter), or Homicide by Sheer Misadventure (or Mistake).

Problem # 2. A willful murder is committed without any objection by the intention of murder by an act that usually results in killing, and likewise by the intention of an act that usually kills even if there is no intention to kill, rather it takes place by an act that mostly does not kill but there is hope to kill, as when a person strikes another with a stick with the hope of killing him and incidentally it occasions murder.

Problem # 3. If a person intends to act what mostly does not result in death and he also not intend to put him to death, as when a person beats another with a tender whip or hits a piece of stone or the like, but it results in death, then shall it be a willful murder or not? There are two opinions in such case, the one more in conformity with the principles of law is in favour of the second, i.e., it shall not be a willful murder.

Problem # 4. If a person hits another with a stick and does not leave him till he dies, it shall be a willful murder, even if he did not intend to kill him.
كتاب الديات

وهي جمع الدية بتخفيف الياء، وهي المال الواجب بالجناية على الحر في النفس أو ما دونها، سواء كان مقدراً أولاً، وربما يسمى غير المقدر بالأرض وحماية، ويريده بالدية، ونظر فيه في أقسام القتل ومقادير الديات وموجبات الضمان والجناية على الأطراف واللواحق.

القول في اقسام القتل

مسألة 1. القتل إما عمدمعض أوشيبه عمداً أوخطأً عض.

مسألة 2. يتحقق العمد بلا إشكال بقصد القتل بفعل يقتل بيئته نوعاً، ودائم كما يقصد فعل يقتل به نوعاً، وإن لم يقصد القتل، بل الظاهرة تحققه بفعل لا يقتل به غالباً رجاءً تحقق القتل كمن ضر به العصا برجاء القتل فاتفق ذلك.

مسألة 3. إذا قصد فعلًا لا يحصل به الموت غالباً، ولم يقصد به القتل كيا لو ضربه بسويت خفيف أو حصاة نحو هما فاتفق القتل فهله عمداً أولاً؟ فيه قولان، أشبهما الثانية.

مسألة 4. لو ضربه بصا ولم يقلع عنه حتى مات فهو عمد، وإن لم يقصد به
Likewise, if a person does not let another have food or drink till a time a person cannot remain alive, or if a person throws an arrow at another person and it kills him, it shall be a willful murder, even if he did not intend it.

**Problem # 5.** A manslaughter or semblance of willful murder takes place when a person intends to act that does not mostly kill without the intention to kill, as when a person beats another with a whip or the like by way of chastisement but it incidentally kills him. To the same category belongs the treatment personally by a medical doctor when death of the patient takes place during the treatment, as also when during circumcision the circumciser transgresses the limit, or when a person strikes another out of enmity in a way that does not mostly result in death also without the intention to kill him.

**Problem # 6.** If a person kills another under the impression that he is one whose blood may be shed with impunity or for Qisāṣ, but it transpires that it was no a fact, or under the impression that it is a prey but it turned out to be a human being, it shall fall under semblance of willful murder.

**Problem # 7.** A homicide by sheer misadventure or mistake is interpreted as one by sheer mistake when there is no doubt about it. This is when the culprit intends neither to do an act nor the murder as when a person throws an arrow on a prey or a stone and it hits a human being and kills him, or, likewise, it shall fall under a homicide by sheer mistake if a person shoots a person under the impression that he is one whose blood may be shed with impunity, but it hits some other person and kills him.

**Problem # 8.** To the category of a homicide by sheer mistake belongs an act of a minor or lunatic according to law.

**Problem # 9.** The same three kinds apply to the offence against the parts of human body. There is a willful murder, a semblance of sheer murder and a homicide by sheer mistake.

**Chapter Two : Quantums of Diyat**

**Problem # 1.** In a case of willful murder in general when its diyat is determined or a compromise is reached between the parties on it, it would be a camel, two hundred cows, one thousand sheep, one thousand garments, one thousand Dinārs or ten thousand Dirhams.

**Problem # 2.** It is a condition in the camel that it must be a musannah that means one that has completed five years and has entered the sixth year. As regards the cow, there is no condition of age, or its being a male or female. The same is the case with the sheep. It is sufficient to be one that may be called a cow and a sheep. In case of the camel, to be more cautious it should be a fahl or a male, though the absence of this condition is also not free from force.

**Problem # 3.** A garment consists of two pieces, and to be more cautious it should be made of Yemenese burd. A Dinār and a Dirham are both [current] coins, and one thousand mithqāl [=...
المسألة 5 - شبه العمد ما يكون قاصداً للعمل الذي لا يقتل به غالباً غير قاصد القتل، كما يضره تأديباً بسقوط و نحوه فاتحقق القتل، ومنه علاج الطبيب إذا اتفق منه القتل مع مبادئه العلاج، ومنه الختان إذا تجاوز الحد ومنه الضرب عدواناً بما لا يقتل به غالباً من دون قصد القتل.

المسألة 6 - يلحق بشبه العمد لو قتل شخصاً باعتقاد كونه مهدور الدم أو باعتقاد القصاص فإن الخلاف أو بظن أنه صيد فبان إنساناً.

المسألة 7 - الحنظل الخص العبر عنه بالخطأ الذي لا شبه فيه هو أن لا يقصد العمل ولا القتل كمن رمي صيداً أو ألقى حجرًا فأصاب إنساناً فقتله، ومنه ما لوم إنساناً مهدور الدم فأصاب إنساناً آخر فقتله.

المسألة 8 - يلحق بالخطأ مخالفة فعل الصحي المجنون شرعاً.

المسألة 9 - تجري الأقسام الثلاثة في الجناية على الأطراف أيضاً، فإنها عمداً، ومنها شبه عمداً، ومنها خطاً مخالفاً.

القول في مقدمة الديبات

المسألة 1 - في قتل العمد حيث تعين الدية أو يصلح عليها مطلقًا مأة إبل أو مأة بقرة أو ألف شاة أو مائتان حلة أو ألف دينار أو عشرة آلاف درهم.

المسألة 2 - يعتبر في الإبل أن تكون مسنة، وهي التي كملت الخامسة ودخلت في السادسة، و أما البقرة فلا يعتبر فيها السن ولا الذكورة والأنوثة وذا الشاة، فيه ما يسمى البقرة أو الشاة، والأحوظ اعتبار الفحولة في الإبل وإن كان عدم الاعتبار لا يخلو من قوة.

المسألة 3 - الحلة ثوابان، والأحوظ أن تكون من برود البنين، والدينار و
18 mukhud, one mukhud = 1/5 grams; in Egypt, 24 qirāt = 4.68 grams] of gold or ten thousand mithqāls of silver shall not be sufficient.

Problem # 4. Apparently there are six items to be chosen, and the culprit can choose any of them, and the wali [of the victim] is not allowed to reject the item offered by the culprit. Nor is there a restriction of multiplicity or modification in it, so that it may be obligatory upon one having camels to pay in camels and one having sheep to pay in sheep, and so on. Those living in deserts may pay the diyat in the form of any item from among the six items, and so is the case with others, although to be cautious there should be multiplicity.

Problem # 5. Apparently the six items are independent in themselves, and one of them is neither substitute of another, nor one of them conditional for the absence of another. It is not a condition that they should be equal in value or price, or there should be agreement of both the parties, so that the culprit is free to pay in any of the items he likes.

Problem # 6. It is a condition in the three cattles mentioned here and in case of a semblance of willful murder and a homicide by sheer mistake that these cattles should be free from all defects and diseases. It is not a condition that they should be copulent. Of course, to be more cautious they should not be very lean and against the normal conditions; rather it is not devoid of force. The other three items should also be free from defects, so that the garments are neither allowed to be defective, nor the Dinārs and Dirhams allowed to be alloyed or broken. In a garment it is a condition that it should be short to be worn, so that it is not allowed to be shorter than that to be worn, so that if each of its parts can only cover the two privy parts, it shall not be sufficient.

Problem # 7. The diyat for a willful murder shall have to be paid within a year, and it cannot be delayed except with the mutual agreement of both the parties. The culprit may pay it during the year or at the end of the year. The wali [of the victim] shall not refuse to accept it during the currency of the year. The diyat for the willful murder is more stringent as regards the age of a camel and its payment as compared to manslaughter and homicide by sheer mistake, as their details will follow.

Problem # 8. It is up to the culprit to pay the camel of the place or otherwise, or pay from among his own camels or buy some other of lower or higher quality fulfilling the conditions of soundness and age, so that the wali [of the victim] shall not be allowed to demand the best quality of camels or one from among those already in his possession.

Problem # 9. It is not obligatory on the wali [of the victim] to accept the market price of the items already in his possession, nor on the culprit to pay it if demanded by the wali [of the victim] when they are already in possession of the culprit.

Of course, if none of the items is in possession of the culprit and the wali demands their price, it shall be obligatory on the culprit to pay the price of one of the items, and it shall be up to the
الدرهم هما المسوككان، ولا يكفي ألف مثال ذهب أو عشرة آلاف مثال فضة غير مسوككن.

مسألة 4 - الظاهر أن السنة على سبيل التخيير، والجاني مخير بينها، وليس للولي الامتناع عن قبول بذله، لا التنوع بأن يجب على أهل الابل الأبل وعلى أهل الغنم الغنم وهكذا، فلا أهل البوادي أداء أي فرد منها، وهكذا غيرهم، وإن كان الأحوض التنوع.

مسألة 5 - الظاهر أن السنة أصول في نفسها، وليس بعضها بدلًا عن بعض ولا بعضها مشروطًا بعدم بعض، ولا يعتبر التساوي في القيمة ولا التراضي، فالجاني مخير في بذل أباه شيئًا.

مسألة 6 - يعتبر في الأشعار الثلاثة هنا وفي قتل شبه العمد والخطأ المخض السلمة من العيب والصحة من المرض، ولا يعتبر فيها السمن، نعم الأحوض أن لا تكون مهزولة جدًا وأعلى خلف المتعارف، بل لا يخلو ذلك من قوة، وفي الثلاثة الآخر السلمة من العيب، فلا تجزي الحالة المعنيه، ولا الدينار و الدرهم المغشوشان أو المكسوران، ويعتبر في الحالة أن لا تقصر عن الثوب، فلا تجزي الناقصة عنه بأن يكون كل من جزئها بمقدار ستة العورة، فإنه لا يكفي.

مسألة 7 - تستأذى دية العمد في سنة واحدة، ولا يجوز له التأخير إلا مع التراضي، وله الاداء في خلال السنة أو آخرها، وليس لولي عدم القبول في خلافها، فدي العمد مغلظة بالنسبة إلى شبه العمد وخطأ المخض في السن في الأبل والاستيافة كما يأتي الكلام فيها.

مسألة 8 - للجاني أن يبذل من أبل البلد أو غيرها، أو يبذل من إبله أو يشترى أدون أو أعلى مع وجدان الشرائط من الصحة والسلامة والسن فليس للولي مطالبة الأعلى أو مطالبة الابل المملوك له فعلاً.

مسألة 9 - لا يجب على الولي قبول القيمة السوقية عن الأصناف لو بذلها الجاني مع وجود الأصول، ولا على الجاني أداءها لو طالها الولي مع وجودها.
culprit to choose any of them, and the vali shall not be allowed to demand the price of any definite item.

Problem # 10. Apparently it is not lawful to exercise piecing together, so that the culprit may pay half of the prescribed diyat in Dinârs and the other half in Dirhams, or half in camels and half in some other item.

Problem # 11. Apparently it is allowed to shift to the prices of the prescribed items with mutual agreement of the parties, as it is also apparently allowed to have recourse to piecing together by paying half of the prescribed diyat in the original items and the other half in another prescribed item in the form of its price and in its original form.

Problem # 12. This diyat is payable by the culprit and not on his ãqila nor on the baitul mâl (or state exchequer regardless whether both of them have reached a compromise on diyat and have agreed on its payment or it has been payable from the beginning, as in case of the son’s murder by his father or the like in which the diyat is prescribed.

Problem # 13. The diyat in case of semblance of willful murder or manslaughter is also payable in the form of items mentioned earlier, and so is the diyat for the homicide by (sheer) mistake. It is exclusive with the diyat for willful murder that it is more stringent in age of the camel and its payment, as already mentioned.

Problem # 14. There are different Tradition and opinion about the diyat for manslaughter or semblance of willful murder. It is reported in a Tradition that the culprit shall have to pay forty khilfah or pregnant, one thaniyyah or one having entered the sixth year, thirty huqqah or those that have entered the fourth year and thirty bint-i labûn or those that have entered the third year, while in another Tradition it is reported that the culprit shall have to pay thirty-three huqqah, thirty-three jidh’ah or those that have entered the fifth year, thirty-four thaniyyah are all türûqah or those that should be apt to conceive or who as a result of copulation with male have conceived. In a third Tradition instead of ‘all türûqah’ there is ‘all khilfah’ or pregnant. In a fourth Tradition both have been combined and it says ‘all of them must be khilfah or pregnant türûqah or through the male’, and so on.

The opinion in favour of giving option of choice among them for the culprit is not far from likely, but it is not free from objection. Therefore it is more cautious to reach a compromise, and the culprit should choose only what is more cautious.

Problem # 15. The payment of this diyat shall also be from the property of the culprit and not of the ãqila.
If he has no property, he should try [to be able to pay it] or he may be given time till he attains affluence, as is the case with the payment of other debts.
If he is unable to pay the diyat, there is likelihood of its payment by the baitul mâl or state treasury.
نعم لو: ذكر جميع الأصناف و طالب الولي القيمة تجب أداء قيمة واحدة منها، و
الجاني غير في ذلك، وليس للولي مطالبة قيمة أحدها المعين.

مسألة 10 - الظاهر عدم إجهاز التلفيق بأن يؤدي مثلاً نصف المقدر ديناراً و
نصفه درهماً، أو النصف من الابن والنصف من غيرها.

مسألة 11 - الظاهر جواز النقل إلى القيمة مع تراضيها، كما أن الظاهر جواز
التلفيق بأن يؤدي نصف المقدر أصلاً وعن نصفه الآخر من المقدر الآخر قيمة
 عنه لا أصلاً.

مسألة 12 - هذه الديه على الجاني، لا على العاقلة ولا على بيت المال سواء
تجالها على الديه وتراضي بها أو وجبت أبداء كيا في قتل الوالد ولده ونحوهما
تبيعت الديه.

مسألة 13 - الدية شبيه العمد هي الأصناف المتقدمة، و كذا دية الخطا،
و يخص العمد بالتفليز في السن في الاب وألاستفاء كما تقدم.

مسألة 14 - اختفت الأخبار و الآراء في دية شبيه العمد، ف فيها رواية أربعون
خلفة أي الحامل، وثمانية، وهي الدائمة في السنة السادسة، وثمانون حقة، وهي
الداخلة في السنة الرابعة، وثمانون بنت لبون، وهي الدائمة في السنة الثالثة،
وفي أخرى ثلاث وثمانون حقة وثلاث وثمانون جذعة، وهي الدائمة في السنة
الخامسة وأربع وثمانون نبي كلها طويلة، أي البالغة ضراب الفحل أو ما
طرقها الفحل فحملت، و في ثالثة بدل كلها طويلة كلها خلفة، و في رابعة جمع
بينها فقال كلها خلفة من طويلة الفحل إلى غير ذلك، فالقول بالتخدير للجاني
بينها غير بعيد، لكن لا يجلو من إشكال، فالأخوات التصالح، و للجاني الأخذ
بأخواتها.

مسألة 15 - هذه الديه أيضا من مزج الجاني لا العاقلة، فلو لم يكن له مال
استعم أو أنهل إلى الميسر كيا في صار الدين، ولو لم يقدم عليها فهي كونها على
بيت المال احتمال.
Problem # 16. It is more cautious for the culprit that he should not delay payment of this *diyat* for more than two years. It is also more cautious for the *wali* [of the victim] to grant him respite for two years. It is also not far from likely to say that the *diyat* must be paid in two years.

Problem # 17. If we declare that it is necessary to pay pregnant cattles, then if there is a dispute between the *wali* [of the victim] and the one who owes the *diyat*, then the matter shall be referred to the experts for whom there is no condition of possessing reputed integrity ('*adālat*), and reliability is sufficient, and the condition of their being several is more cautious and preferable. If their error comes to light, it is necessary to make amends. If there is abortion or delivery or some defect taking place that is necessary to be amended, then if it occurs before giving possession, it shall be obligatory to replace it, otherwise not.

Problem # 18. In case of *diyat* for (homicide by) mistake, there are two Traditions, the more preferable of the two being in favour of payment of thirty *huqqa*, thirty *bint-i labūn*, twenty *bint-i makhād* or those that have entered the second year and twenty *ībn-i labūn*. The other Tradition favours payment of twenty-five *bint-i makhād*, twenty-five *bint-i labūn*, twenty-five *huqqa* and twenty-five *jidhā*. It is not far from like to prefer the first Tradition. It is also probable to make choice, but it is more cautious to reach a compromise.

Problem # 19. The *diyat* for (homicide by) sheer mistake is less stringent than the willful (murder) and semblance (of willful murder) as regards the age and description of the camel, if we impose the condition of pregnancy in semblance (of willful murder) and also as regards its fulfillment, as its payment is made in three years, one-third of it every year. In case of other items than the camel mentioned earlier, there is no difference in them and others than them.

Problem # 20. A *diyat* is to be in one, two or three years with the difference of the kinds of murder, regardless whether the *diyātis* complete as the *diyat* for a free Muslim, or deficient as the *diyat* for a woman, *dhimmī* or foetus or the *diyat* for the parts of human body.

Problem # 21. It has been said by the jurists that if the *diyat* for a part of body is to the extent of one-third, it shall be payable in one year in case of (homicide by) mistake. If it is more than that payment of the one-third shall become due after the passage of one year, and if the residue is one-third or less its payment shall become due by the end of the second year.

If it is more than one-third, the payment of one-third of it shall become due by the end of the second year while the residue shall become due by the end of the third year, but there is some hesitation and difficulty [in accepting this rule]; rather according to opinioin closer to the traditional authority it should be divided into three years.

Problem # 22. The payment of the *diyat* for homicide by (sheer) mistake is to be made by the *āqila*, details of which, God willing, shall come later. It shall not be at all the liability of the
مسألة 16 - الأحوض للجاني أن لا يؤخر هذه الدينة عن سنينين، والأحوض للولي أن يملأ إلى سنينين، وإن لا يبعث أن يقال تستاؤد في سنينين.

مسألة 17 - لو قلنا بلزووم إعطاء الحوامل لاختلاف الولي ومن عليه الدينة في الحمل فلرجل أهل الخبرة، ولا يعتبر فيه العدالة، وتكفي الوثيقة واعتبار التعدد أحوط وأولى، ولو تبين الخطأ لزم الاسترداد، ولسو سقط الحمل أو وضع الحمل أو تطيب ما يجب أداءه فإن كان قبل الإجبار يجب الإبدال، وإلا فلا.

مسألة 18 - في دية الخطأ روايتان: أولى هما ثلاثة حصة وثلاثون بنت لبون وعشرون بنت مهار - وهي الداخلة في السنة الثانية - وعشرون ابن لبون، و الأخرى خمس وعشرون بنت مهار وخمس وعشرون بنت لبون وخمس وعشرون حصة وخمس وعشرون جذعة، ولا يبعد ترجيح الأولى ويجعل التخير، والأحوض التصالح.

مسألة 19 - دية الخطأ المحض مخففة عن العمد وشبهه في سن الإبل وصفتها لمعبرنا الحمل في شبهه، وفي الاستفادة فإنها تستاؤد في ثلاث سنين في كل سنة ثلثها، وفي غير الإبل من الأصناف الأخرى المتقدمة لا فرق بينها وبين غيرها.

مسألة 20 - تستاؤد الدينة في سنة أو سنين أو ثلاث سنين على اختلاف أقسام القتل، سواء كانت الدينة تامة كدية الخر المسلم، أو ناقصة كدية المرآة و النمي والحنين أو دية الأطراف.

مسألة 21 - قبل: إن كانت دية الطرف قدر الثلث أخذ في سنة واحدة في الحظ، و إن كان أكثر حل الثلث بانسلاخ الحول، و حل الزائد عند انسلاخ الثاني إن كان ثلثاً آخر فذا دون، وإن كان أكثر حل الثلث عند انسلاخ الثاني و الزائد عند انسلاخ الثالث، وفيه تأمل و إشكال، بل الأقرب التوزيع إلى ثلث سنين.

مسألة 22 - دية قتا الحاجة في الطاعة، تفصين، فأذن، إن شاء الله تعالى.
murderer, and the Āqilah shall not have recourse against the murderer.

**Problem # 23.** If a person comits murder in the holy months of Rajab, Dhil Qaʿd, Dhil Hijjah and Muharram, he shall be liable to pay one diyat and one-third out of any of the prescribed items by way of harshness. The same rule shall apply if he commits the murder in the Haram of holy Mecca, without including the Haram of Madina and other holy shrines. There is also no severity in the [loss of, or injury to] the parts of body or in murder of close relatives.

**Problem # 24.** If a person, while still in the Hill [the restricted area of holy Mecca], throws an arrow or the like on another who is in Haram [of Mecca] and kills him, he shall be governed by the rule of severity [of diyat]. If a person who is in the Haram [of Mecca] throws an arrow or the like on another who is in Hill [of Mecca] and kills him, apparently the rule of severity shall not apply to him. Likewise, if a person throws an arrow etc. on a person in the Hill and he enters the Haram [of Mecca] and dies there, or vice versa, there shall no severity [in diyat] on him, regardless whether the person throwing the arrow et. Is in Hill or Haram.

**Problem # 25.** If a person kills another and takes refuge in the Haram [of Mecca], he shall not be subjected to Qisās within the Haram, but food and drink shall be tightened on him until he leaves the limits of Haram, when shall be inflicted Qisās. If a person commits an offence within the Haram, he shall be executed Qisās within the limits of Haram. According to an opinion, [an offence committed in] the holy shrines is also applied the same rule.

**Problem # 26.** The quantum of diyat mentioned earlier apply to a free Muslim man. But the diyat of a free Muslim woman shall be half of all the quantum mentioned, so that the culprit shall be liable to pay fifty camel or five hundred Dinars, and so on.

**Problem # 27.** A man and a woman are equal in respect of Qisās and diyat in case of injuries until it reaches one-third of the diyat of a free man when the diyat of a woman shall be half of it. As long as the diyat does not reach one-third, each [of the man and woman] shall execute Qisās on one another without any return [of the excess amount]. But the woman shall be entitled to Iidiat] from a man with the return [of the excess amount]. But a hermaphrodite shall not be affiliated to this category.

**Problem # 28.** All the sects of Muslims, the rightful and otherwise, are equal as regards diyat except those who are treated at par with the infidels like the nāsibs, the khārijis and the ghālis when their exaggeration reaches the limits of infidelity.

**Problem # 29.** The diyat of a child born of zināʾ when he embraces Islam on attaining adulthood or becoming discreet shall be like the diyat of all other Muslims, but there is hesitation before reaching such stage.

**Problem # 30.** The diyat of a free dhimmī is eight hundred Dirhams irrespective of his being a Jew, a Christian or a Zoroastrian, and the diyat of a free woman from among them shall be half
يضمن الجنائي منحاً، ولا ترجع العاقلة على القاتل.

مسألة 23 - لو ارتكب القتل في أشهر الحرم: رجوب وذي القعدة وذي الحجة والحرم فعليه الدنيا وثلث من أي الأجناس كان تغلظاً، وهذا لو ارتكبه في حرم مكة المعطمة، ولا يلحق بها حرم المدينة المنورة ولاسائر المشاهد المشرفة، ولا تغلظ في الأطراف ولا في قتل الأقارب.

مسألة 24 - لوري وهو في الحرم شخص ونحوه من هو في الحرم فقتله فيه لزمه التغلظ، والوري وهو في الحرم إلى من كان في الحرم فقتله فيه فلم يلزمه، وكذا لو راح في الحرم فذهب إلى الحرم وبات فيه أو العكس لم يلزمه، كان الرامي في الحرم أو الحرم.

مسألة 25 - لو قتل خارج الحرم ونجل إلى أن يقتضى منه فيه، لكن ضيق عليه في المأكل والمشرب إلى أن يخرج منه، فيقاد منه، ولوجني في الحرم أقتضى منه فيه، ويلحق به المشاهد المشرفة على رأي.

مسألة 26 - ما ذكروا من التقديرية الرجل الحر المسلم، وأما المرأة الحرمة المسلمة فعلى النصف من جميع التقدير المتقدمة، فإن الإبل خمسون ومن الدنيا خمسة، وهكذا.

مسألة 27 - تسواني المرأة والرجل في الجراح قصاصًا ودية حتى تبلغ ثلث دية الحرم، فينتصف بعد ذلك دينها، فلا لم تبلغ الثلث يقتضى كل من الآخر بلا رد، فإذا بلغته يقتضى للرجل منها بلا رد، ولهام الرجل مع الرد، ولا يلحق بها الخئف المشكل.

مسألة 28 - جميع فرق المسلمين الحقة والملطية متساوية في الدنيا إلا المحكم، لهم بالكفر كالنصاب والخوارج وغلاة مع بلوغ غلؤهم الكفر.

مسألة 29 - دية ولد الزنا إذا أظهر الإسلام بعد بلوغه بل بعد بلوغه حذ القصر، ورغم المسلمين، وفي دينه قبل ذلك تردد.

مسألة 30 - دية الذمي الخرج من أتاه درهم يهودياً كان أو نصرانياً أو موسياً، و
of the diyat of a man. Rather apparently the diyat of their parts of body and their injuries is like the diyat of the parts of body and injuries of a Muslim, as apparently the diyat of a man and woman among them is equal until its reaches one-third like that of a Muslim.

Rather it is also not far from likely that the rule of severity of the diyat among them is also the same as that of a Muslim.

Problem # 31. There is no diyat on others than the Dhimmis from among the infidels, regardless whether they belong to those having treaty with the Muslim state or not, and whether the invitation to embrace Islam has reached them or not.

Rather apparently there shall be no diyat on a Dhimmi who has left the fold of Dhimmis. Likewise there shall be no diyat on one who has apostatized from his religion to a faith other than that of the Dhimmis.

If a Dhimmi gives up his faith and embraces another Dhimmi faith, there shall be hesitation in the establishment of diyat in his case, although its imposition is not far from being likely.

Chapter Three – Causes for the Liability [for Offence]

In this Chapter there are several Discourses.

First Discourse: Liability for Personal Commitment of Offence

Problem # 1. By liability for personal commitment of a person is meant an act whether its source is he personally without the help of any means as strangulating another person by his hand or hitting another person by his hand or his foot resulting in the death of that person or with the help of an implement as throwing an arrow or the like or slaughtering another by a knife or when the act is attributed to him usually without any interpretation as by his throwing another into the fire or drowning him in a river or throwing him from above or any other means in which its attribution is to the culprit.

Problem # 2. If the murder has taken place willfully, a Qisās is established in it. But here we are concerned with the case where it does not take place deliberately, as when a person throws an arrow towards a target but it hits a human being, or he beats another by way of chastisement but incidentally it results in his death, or similar other cases as have been mentioned under the section on the semblance of willful murder and homicide by sheer mistake.

Problem # 3. If a person beats another by way of chastisement but incidentally its results in his death, then he shall be responsible [for his death], regardless whether it is the husband [beating his wife] or the wali of a child, or the executor of a wali or a teacher of children. In such case, the liability of the person shall be confined to his property [from which the diyat shall be paid].
المبحث الأول في المباشر

مسألة 1 . المراد بالمباشرة أعم من أن يصدر الفعل منه بلا آلة كخنقه بيده أو ضربه بها أو برجله فقتله به أو بالآلة كرميه بسهم وثوهو أو ذبحه بمطأاق أو كالقتل منسوبًا إليه بلا تأويل عمراً كقمانه في النار أو غرقه في البحر أو إلقائه من شاهق إلى غير ذلك من الوسائط التي تصدح نسبة القتل إليه.

مسألة 2 . لو وقع القتل عمداً يثبت فيه القصاص، وكلام لها هنا فليس يقع عمداً، نحو أن يرمى غرضاً فصاص إنساناً أو ضرنه تأديباً فاتفق الموت أو أتى بذلك مما مر الكلام فيها في شبيه العبد والخطأ المخص. 

مسألة 3 . لو ضرب تأديباً فاتفق القتل فهو ضامن، زوجاً كان الضارب أو ولياً للطفال أو وصياً للوليد أو معلماً للصبيان، والضمان في ذلك في ما له.

القول في موجبات الضمان

وفي مباحث:

المبحث الأول في المباشر

ديه المرأة الحرة منهم نصف دية الرجل، بل ظاهر أن دية أعضائها وعراحاتها من دينها كدية أعضاء المسلم وعراحاته من دينه، كأنا ظاهر أن دية الرجل والمرأة منهم تتساوي حتى تبلغ الثلاث مثل المسلم، بل لا يبعد الحكم بالتغليظ عليهم بما يغليظ به على المسلم.

مسألة 31 . لا دية لغير أهل الذمة من الكفار، سواء كانوا ذوي عهد أم لا، وسواء بلغتهم الدعوة أم لا، بل ظاهر أن لا دية للذمي لو خرج عن الذمة، ولهذا لا دية له لو ارتد عن دينه إلى غير أهل الذمة، ولو خرج ذمي من دينه إلى دين ذمي آخر في ثبوتها إشكال وإن لا يبعد ذلك.
Problem # 4. A physician shall be held responsible for the loss of life of a person by his treatment if he falls short in knowledge or performance even if he is permitted [to treat the patient], or when an unqualified person treats another without the permission of his wali, or treats an adult person without his permission, even if he is certainly qualified for the treatment. If the patient or his wali gives permission to a person who is expert in knowledge and performance, it is said by the jurist that he shall not be held responsible, but according to the stronger opinion he shall be held responsible up to his property. The same rule is applied to a veterinary doctor. All this applies to cases where the physician acts personally. But it he prescribes a medicine, and he says that it is useful for the ailment of such person, or says to the patient, “Such is your medicine,” but without ordering him to drink it, then, according to the stronger opinion, he shall not be held responsible. Of course, the liability is not far from being likely in case of treatment taking place in the usual manner.

Problem # 5. If a circumciser transgresses the limits, he shall be held responsible, even if he is an expert. But in case he does not transgress the limits, as when the circumcision proves injurious to the boy as a result of which he dies, there is hesitation in holding the circumciser responsible [for his death], and according to the opinion in conformity with the principles of law, he is not responsible.

Problem # 6. Apparently there is impunity for the physician and likewise for the veterinary doctor or circumciser if they are held immune before the treatment. Apparently the impunity granted by a patient who is adult and sane is valid in case not resulting in death of the patient, and the impunity granted by the wali in a case resulting in death of the patient is also valid. The impunity granted by the owner of the property in case of a veterinary doctor and the impunity granted by the wali in case of a minor. The impunity granted by a patient possessing sound reason is not far from being sufficient even in a case resulting in death of the patient, but it is more cautious to demand the impunity from both.

Problem # 7. If a sleeping person causes of life or part of the body of another by changing the side or other movements in a way that the loss is attributed to him, the liability shall rest with the property of the Āqilah. In case of a wet nurse who kills a child while changing his side [in sleep], there is a Tradition saying that she shall be liable for the whole diya payable exclusively from her property if she has accepted to act as wet nurse for the sake of acquiring respect and honour, but if she has taken up to act as wet nurse on account of her poverty, her liability shall rest with her Āqilah. But there is hesitation in action on the Tradition. If she has taken up to act as wet nurse on account of her poverty as well as acquiring dignity together, then apparently the liability shall fall on the Āqilah. But the case of the mother (causing death to her child by changing side) shall not be treated at par with at similar case of a wet nurse.

Problem # 8. If a husband forcibly performs sexual intercourse with his wife, resulting in her death, he shall be held liable for diya payable from his property. The same shall be the rule if he hugs and presses her forcibly [resulting in her death], or the wife hugs the husband and presses him with force, or if a stranger man or woman performs such act, without the intention of killing the victim.

Problem # 9. If a person carries some load that hits another, he shall be liable to pay the diya for his offence out of his own property.
مسألة 4 - الطبيب يضمن ما يكلف بعلاجه إن كان قاصراً في العلم أو العمل ولو كان نادراً، أو عالج قاصراً بدون إذن وليه أو بالغاً بلا إذن و إن كان عالماً منتقداً في العلم، ولو أذن المريض أو وليه الحاذق في العلم والعمل قبل: فلا يضمن. وإن الأقوى ضمانه في ما له، وكذا البيطار هذا كله مع مباشرة العلاج نفسه. وإذا لم يوصف دواءً وقال: إنه مفيد للمرض الفعلي، أو قال إن دواءك كذا من غير أمر بشبه الفائق أو عدم الضمان. نعم، لا يبعد الضمان في التطبيق على النحو المتعارف.

مسألة 5 - الختان ضامن إذا تجاوز الحد وإن كان ماهلراً، وفي ضمانه إذا لم يتجاوز كيا إذا أضر الختان بالولد فلات شكال، و الآشية عدم الضمان.

مسألة 6 - الظاهرة براءة الطبيب و نحوه من البيطار، و الختان بالإبرة قبل العلاج، والظاهرة اعتبار إبرة المريض إذا كان بالغاً عاقلاً فإلا لا ينتهي إلى القتل، والولي في ينتهي إليه، وصاحب المال في البيطار، والولي في القاضي، ولا تعد كفاءة إبرة المريض الكامل العقل حتى فإلا ينتهي إلى القتل، و الأحوال الاستثناء منها.

مسألة 7 - النائم إذا أتلف نفسه أو طرفًا بانقلابه أو سائر حركاته على وجه يستند الاتلاف إليه فضمانه في مال العاقلة، وفي الظرر إذا انقلب فقتلت الطفل رواية بأن عليها الدية كاملة من مالها خاصة إن كانت أما ظارت طلياً مع الفخور، وإن كانت لنا ظارت من الفقر فكان الضمان على عاقلتها، و في العمل بها ترد، ولو كان ظرها للفقر والفخور معًا فالظاهرة أن الدية على لعقيلة، والأمر لا تلحق بالظرر.

مسألة 8 - لو أعنف الرجل بزواجه جامعاً فإن كانت يضمن الدية في ماله، كذا و أعنف بها ضمأ، وكذا الزوجة لو اعنفت بالرجل ضماً، وكذا الأجنبي و لأجنبة مع عدم قصد القتل.

مسألة 9 - من حال شيئاً فاصاب به إنساناً ضمن جنايته عليه في ماله.
Problem # 10. If a person shouts at an adult and (insane or) unconscious person, who as a result dies, or falls down and dies, then he shall not be liable for diyat, except in case of his knowledge that the death shall be attributed to him. In such case if he has intended to kill him, it shall be a willful murder and he shall be held liable for Qisās for it; otherwise he shall be held liable for manslaughter or semblance of willful murder and he shall be liable for diyat to be paid out of his own property. If a person shouts at a child, a patient, a coward or an unconscious person, resulting in his death, then apparently the diyat shall be established, except when its attribution to him is not established. In case it is done with the intention to kill the victim, then it shall be a willful murder, otherwise it shall be semblance of willful murder in case usually it does not have such result or he was unaware of it. Every act to which the murder can be attributed belongs to this category, the details of which have already been mentioned, as a person who draws the sword in front of another, or sends his dog towards him and so frightens him, or adopts other ways of frightening.

Problem # 11. If a person frightens another who runs away and throws himself from height or into a well and dies, then if he loses his sense and control on account of the frightening, then apparently the person frightening him shall be held responsible [for his death]; otherwise, there shall be no responsibility. If while running away he confronts a beast that kills him, then there shall be no responsibility [on the person who had frightened him].

Problem # 12. If a man falls on another from a height and kills him, then if he intended to kill him, then it shall be a willful murder and he shall be liable to Qisās. If he had no such intention, but he intended to fall on the other, and this act was such that mostly does not cause death, then it shall be a manslaughter or semblance of willful murder, so that he shall be liable to pay diyat out of his own property. The same rule shall apply if he falls out of compulsion or in an emergency with the intention of falling. If, however, it was the wind or slip that caused his fall in a way that the act cannot be attributed to him, then he shall not be held responsible, nor the liability shall be upon his āqilah. If the person on whom he has fallen dies, his death shall go waste in the light of all considerations.

Problem # 13. If a person pushes another down, and he dies, then there shall be Qisās if it is supposed to be a willful murder or a diyat on the person who has pushed him down in case it is supposed to be manslaughter. If a person pushes another down and he falls on a third person who dies in consequence, then too the liability for Qisās or diyat shall be on the person who had pushed him down. In an authentic Tradition it is said that the liability shall be on the person who falls so that the heirs of the person killed shall be authorized to kill him, and the person dropped shall have recourse for diyat against the person who pushed him down. It is also possible to interpret it that the push compelled him to fall down in a way that the act may be attributed to him in a way.

Problem # 14. If a person dashes against another as a result of which he dies, then if he intended to kill him, or the act was such that usually kills the other, then it shall be a willful murder, and he shall be liable to Qisās. But if he intended to dash against him without killing him, and he is not to be considered a killer, then his diyat shall be on the property of the person dashing him. If the person dashing another dies, his death shall go waste if the person dashed against was in his land or a public place or a wide road. If he was standing on a narrow street, and the other person dashes against him undeliberately, he shall be entitled to diyat from the person against whom he has dashed. The same shall be the rule if a person sits in that narrow street and another person stumbles
مسألة 10 - من صاح يبلغ غير عاقل فات أو سقط فات فلادية إلا مع العلم باستناد الموت إليه، فحينئذ إن كان قاصداً لقتله فهو عمدة يقتضي منه، و
لا شبهه عمدة فلادية من ماليه، فلو صاح بطل أو مريض أو جبر أو عاقل فات فلادية
ثالثاً ثبت الدية إلا أن يثبت عدم الاستناد، فع قصد القتل بفعله فهو عمدة
و لا فشبيه مع عدم الرتب نوعاً أو عقله عنه، ومن هذا الباب كل فعل يستند
إلى القتل، ففيه التفصيل المتقدم، كمن شهر سيقه في وجه إنسان أو أرسل
كلبه إليه فأخافه إلى غير ذلك من أسباب الاختفاء.

مسألة 11 - لو أخفاف فهرب فأوقع نفسه من شاهق أو في بدرجات فان زال
علقه و اختياره بواسطة الاختفاء فالظاهر ضمان المنخف، و إلا فا ضمان، ولو
صادفه في هرره سبع فجاهه فلا ضمان.

مسألة 12 - لو وقع من علول على غيره فجاهه مبع قصد قتله فهو عمدة و عليه
القول، و إن لم يقصده وقصد الوقوع و كان ما لا يقتضي به غالباً فهو شبهه عمدة
يلزم الديبة في ما له، و كذا لو وقع إجاء واضطراراً مع قصد الوقوع، ولو ألقته
الريح أو زلقت بنحو لا يسند الفعل إليه فا ضمان عليه ولا على عاقته، ولومات
الذي وقع فهو هدر على جميع التقادير.

مسألة 13 - لو دفعه دافع فات فالقود في فرض العمدة الدية في شبهه على
الدائع، ولو دفعه فوقي على غيره فات فالقود أو الدية على الدائع أيضاً، و في
رواية صحيحة أنها على الذي وقع على الرجل، فقتله لأولاء المقتل، و يرجع
المدفع بالدية على الذي دفعه، و يمكن حملها على أن الدفع اضطره إلى الوقوع
بيت كان الفعل منسوباً إليه بوجه.

مسألة 14 - لو صدمه فات المصدم فإن قصد القتل أو كان الفعل مما يقتل
غالباً فهو عمدة يقتضي منه، و إن قصد الصدم دون القتل ولم يكن قاتلاً غالباً
فديته في مال الصدام، ولو مات المصدم فهدر لكان المصدم في ملكه أو كل
مباح أو طريق واسع، ولو كان واقفاً في شارع ضيق فصدمه فلا قصد يضمن
against him. Of course, if he did it intentionally, and he has some alternative, his blood shall go waste, and he shall be held responsible for the death of the person against whom he has dashed.

**Problem # 15.** If two free, adult and sane persons dash against each other and die, then if they intended to kill each other, it shall be a willful murder, and if they did not intended to kill each other, and the act was one that mostly results in death, then it shall be a manslaughter or semblance of willful murder, and the heirs of each of them shall be entitled half of his *diyat*, while the other half shall be extinguished. Both of them shall be at par in both cases regardless whether both of them were on foot or riding on a horse, or one was riding on a horse and the other was on foot; each of them shall be liable to pay half of the price of the riding animal of the other if it has been killed due to their dashing against each other, without there being no difference whether they belonged to the same kind or were of different kind and even if they differed in respect of strength and weakness, and without any difference in respect of one being faster in movement than the other, or being equal in this respect provided the dashing against each other is a reality. Of course, if one of the riding animals was slower in movement to the extent that dashing with the other would not apply to it, but it would be said that the other dashed against it, there shall be no responsibility on the one against whom the other has dashed. If a small car collides with a larger one, the same rule shall apply as mentioned in the preceding case, the settlement of account (*taqāṣṣ*) shall take place in *diyat* and price, and the owner of the excess, if any, shall have the right of recourse against the inheritance of the other.

**Problem # 16.** If there was no intention in the collision with each other, so that it took place due to the darkness of the way, or because both of them were negligent or blind, then half of the *diyat* of each of them shall be payable by the Āqilah of the other. The same shall be the rule if both of them were minors or insane, or one minor and the other insane, in case both of them rode the mount themselves or by means of their *wali* as it was lawful for him, or by means of a stranger without any legal right, i.e., being a heinous act, then the *diyat* in each case shall be payable wholly by the person by means of whom they rode the animal. The same shall be the rule in respect of the riding animals of both of them if they have been killed [as a result of their collision with each other].

**Problem # 17.** If two free persons collide with each other, resulting in the death of one of them, and it was manslaughter of semblance of willful murder, the person still alive shall be liable to pay half of the *diyat* of the one whose life is lost. According to a Tradition the person still alive shall be liable to pay the whole *diyat* of the deceased, but there is weakness in this Tradition. If two pregnant women collide with each other, resulting in abortion and death of both of them, half of the *diyat* of each of them shall drop and the other half shall be established, and half of the *diyat* of the foetus [of each of them] shall be payable out of their respective property provided it was a manslaughter of semblance of willful murder. If, however, it was homicide by misadventure or mistake, the *diyat* of each of them shall be payable by their respective Āqilah.

**Problem # 18.** If a person calls another and takes him out of his house at night, he shall be held responsible for him until his return to his house. If he is lost and his position is not known, he shall be liable to pay *diyat*. If he is found killed, and the man accuses another and adduces evidence in favour of his claim, he shall be acquitted. In the absence of evidence, he shall be
المبحث الأول في المباشر

الصادم دهته، وكذا لو جلس فيه فعَّر به إنسان، نعم لو كان قاصداً لذلك وله مندحة فده هدر، وعلى ضمان الصدام.

مسألة 15 - إذا اصطدم حران بالغان عاقلان فانما فنان قدما القتل فهو عم، وإن لم يقصد ذلك ولم يكن الفعل ما يقتل غالباً فهو شبه العمد يكون لورثة كل منها نصف دهته، ويسقط النصف الآخر، ويستوي فيها الرجلان وفاساسن والفارس والراجل، وعلى كل واحد منها نصف قيمة مركوب الآخر لولئف بالتصادم، من غير فرق بين اتحاد جنس المركوب واقتلاعه، وإن تفاوتا في القوة والضعف، ومن غير فرق بين شدة حركة أحدهما دون الآخر أو تساوياً في ذلك إذا صدق التصادم، نعم لو كان أحدهما قليل الحركة بحيث لا يصدق التصادم بل يقال صدها الآخر فن ضمان على الصدام، فللو صادمت سيارة صغيرة مع سيارة كبيرة كان احكم كما ذكر، فيقع التقاضي في الدية وقيمة، ويرفع صاحب الفضل إن كان على تركه الآخر.

مسألة 16 - لوتعمد الاصطدام بأن كان الطريق مظلمًا أو كانا عاقلان أو أعليمين فنصف ديه كل منها على عاقلة الآخر، وكدأ لو كان المتصدمان صبن أو جملي أو أحدهما صبة والآخر بجنة لو كان المركوب منها أو من ولها في إذا كان سائناً له، ولو أركبه أجنبى أو الولي في غير مورد الجواز أي مورد الفسدة قنده كل منها تمامًا على الذي ركبها، وكذا قيمة دابتها لولفتا.

مسألة 17 - لو اصطدم حران فانما أحدهما وكان القتل شبه عمد يضمن الحي نصف دية التالف، وفي رواية ي ضمن الباقى تمام دية الميت، وبها ضعف، ولوتصدم حاملان فأسقطتا، ومانينا سقط نصف دية كل واحدة منهما وثبت النصف، وثبت في مالها نصف دية الجنين مع كون القتل شبه العمد، ولو كان خطاً فعل العاقلة.

مسألة 18 - لو دعا غيره فأخرجه من منزله ليلاً فهو له ضمان حتى يرجع إليه، فإن فقد ولم يعلم حاله فهو ضامن له، وإن وجد مقتولاً وادعى على
liable to pay the diyat, but he shall not be liable to Qisāṣ, according to the most authent

cionic. Likewise, if he does not confess of the murder, nor accuses another for it, then if the

man is found dead and it is known that he has died a natural death or has been bitten by a

serpent or scorpion, but there is no likelihood of the person having killed him, he shall not be

held responsible, but if there is likelihood of the person having killed him, he shall be held

responsible for his death, according to the most authentic opinion.

Second Discourse: An Offence by an Intermediate Cause or Means (Ashab̲a̲b̲)

By ‘means’ here is meant every act that leads to loss [of life] due to some cause other than the

act itself in a way that had it not been there, the loss would not have taken place, as digging a

well, fixing a knife, placing a stone, or slippery things, etc.

Problem #1. If a man places a stone in his property or in an ownerless land (mubāh), digs a

well, fixes a peg, or places a slippery thing, or the like, he shall not be responsible for [the loss

sustained by] person who stumbles against any of these things. But if any of these things is

placed in a public highway or in the property belonging to another without his permission, he

shall be liable [for the loss] to be paid from his property. If he digs [a well, or pit] in the

property belonging to another with the permission of its owner, then apparently the

responsibility shall drop from the digger. If he does so in the interest of the passers-by, then

apparently there shall be no responsibility [on him], as when a person sprays water on the road

in order to repel heat or prevent the spreading of dust, or the like.

Problem #2. If a man digs, for example, a well in his property, and then invites some one

who has no knowledge about it, as a blind man, or the way happens to be dark, then apparently

he shall be responsible [for the loss sustained by another]. But if a person enters the place

without his permission, or with his permission given prior to digging the well, but without

informing the person giving the permission, then he shall not be responsible [for any loss

sustained by the person entering].

Problem #3. If a flood brings a stone, no one shall be responsible [for the loss caused by it],
even if it was possible to remove it. If a person removes the stone and puts it in another place,
as in its first place or a more harmful place, then there shall be no difficulty in holding the

person responsible [for the loss caused by it]. If, however, he removes it from the middle of the

highway to a side in the interest of the passers-by, then apparently he shall have no

responsibility.

Problem #4. If he digs a well in the property belonging to another by way of trespass, and a
third person enters there as a trespass, and falls into the well, the person digging the well shall
be held responsible.

Problem #5. It would be construed as damaging the public highway if a person keeps some
beasts of burden in it or throws some articles on it for sale. Similar is the case of stopping
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
vehicles [on the highway] except in the interest of the passers-by to the extent required for their boarding and travelling [to another place].

Problem # 6. The damage [to the public highways] includes the creation of the downpipes in a way that it would damage the public highway, as apparently it would entail responsibility. In case of absence of damage to the highway, if it falls accidentally on another person and kills him, then apparently there shall be no responsibility. The same rule applies to the building of windows and balconies. Probably the regulation applying to fixing the responsibility may be the permission of the legislator (shāri‘) or absence of it, so that whatever is permissible by law, there shall be no responsibility for the loss caused by it, as the building of harmless balconies and creation of such rain pipes, while whatever is not [legally] permissible, there shall be responsibility in it, as the damage done to the public highway in whatever way, so that if a loss is caused due to it, then the responsibility shall be established, through a general rule in both the cases if nto free from doubt and hesitation.

Problem # 7. If two ships collide with each other, resulting in the loss of life and property of those on board, if it occurs deliberately by their caretakers [or captains], then it would be a willful murder. But if it has occurred without their intention and the collision taken place by the commission or omission of both of them in spite of the absence of their intention to kill [those on board], and mostly the collision would not cause it, then it shall be a case of manslaughter or semblance of willful murder, or among the causes that entail responsibility. In each of the two cases there shall be a half diya for the loss sustained in them. If the caretakers [or captains] were others than the owners, as usurpers or hired [or employees], they shall be held responsible for the loss of the two ships and what was on board, and their liability shall be borne by their respective property regardless whether there has been loss of life or property. If the collision has occurred without their commission or omission, as due to the force of winds, then there shall be responsibility [on their shoulders]. If one of them top the exclusion of the other has been responsible for excess, then the person responsible for the omission shall be held responsible. If one of the two ships was standing or like one standing, and its caretaker [or captain] was not responsible for any excess, he shall not be held responsible.

Problem # 8. If a person builds a wall in his property or an ownerless land or property on a foundation the like of which usually remains intact, but it falls without any declivity or breaking down, rather unusually, as its destruction by earthquake, etc., its owner shall not be responsible for the loss caused by it, even if it falls on the public road or another’s property. The same rule shall apply if a person builds the wall inclining towards his own property. If, however, he builds it inclining towards another’s property or the public highway, he shall be held responsible [for any loss caused by it]. The same rule shall apply if he builds it in the property of another without his permission. If he builds it straight in his own property, but it gradually becomes inclined towards the property of another. If it falls down before he is able to repair it, but if he could repair it, then his responsibility shall be based on reason. It some one
لبيع، وركوبهم وقف عليهم، ونقول:

مسألة ۶ - من الاضرار، إخراج الميازيب بنحو يضرك بالطريق، فإن الظاهرة فيه الضمان، ومع عدم الاضرار، لو اتفق إيقاعها على الغير فأهلته فالظاهرة عدم الضمان، وكذا الكلام في إخراج الرواشن والاجنحة، وعلل الضابط في الضمان، وعده إذن الشائع وعده، فكلما هو مأذون به شرعاً ليس فيه ضمان ما تلف لأجله، كإخراج الرواشن غير المضرة ونصب الميازيب كذلك، وكلما هو غير مأذون فيه ففيه الضمان، كالأضرار بطريق المسلمين بأي نحو كان، فلولا تلف بسببه فالضمان ثابت وإن لا تخلو الكلية في الموضوعين من كلام وإن شاء الله.

مسألة ۷ - لو اصطدم سفينتان فهلك ما فيها من النفس والمال فإن كان ذلك بتعبد من القيمتين لها فهو عمد، وإن لم يكن عن تعبد و كان الاصطدام بفعلها أو بتفريق منها مع عدم قصد القتل و عدم غلبة التصادم للتسبب إليه فهو شبه عمد أو من باب الأسباب الموجبة للضمان، فكل منهما على صاحبه نصف قيمة ما أتلفه، و على كل منها نصف دية صاحبه لو تلفقا، و على كل منها نصف دية من تلف فيها، ولو كان القيميان غير مالكين كالواصب و الأجير ضمن كل نصف السفينتين، و ما فيها، فالضمان في أمثالها نفساً كان التالف أو مالاً، ولو كان الاصطدام بغير فعلهما أو من غير تفريق منها بأن غلبتها الرياح فلا ضمان، لسوف أهدهما دون الآخر فالفرق ضامن، ولو كان إحدى السفينتين واقفة، أو كالواقفة ولم يفرط صاحبها لا يضمن.

مسألة ۸ - لو بني حائطاً في ملكه أو ملك مباح على أساس يثبت مثله عادة، فسقط من دون ميل ولا استهدام بل على خلاف العادة كسقوطه بزلزلا وتقوها لا يضمن صاحبه ما تلف به وإن سقط في الطريق أو في ملك الغير، و كذا لو بناء مالاً إلى ملكه، ولو بناه مالاً إلى ملكه، أو إلى الشارع ضمن، و كذا لو
else caused it to incline, that person shall be held responsible if the owner could not repair it. If he could repair it, even then its responsibility shall not be taken away from the person who has caused it into incline. Does the responsibility rest with the owner, so that the heirs of the person [who happens to die under the debris of the fallen wall] have recourse to him, and he has recourse to the person causing the declivity, or there shall be no responsibility except on the person causing the declivity? The latter alternative, [i.e., holding the person causing the declivity responsible] shall not be far from being more likely.

**Problem # 9.** If a person kindles fire in his own property as much as he needs it without the likelihood of its spreading, he shall not be held responsible without any doubt if incidentally it spreads causing any loss of life or property, as also he shall be held responsible without any doubt if he kindled the fire more than he needed with the knowledge that it would spread. Apparently he shall be held responsible if he knew that the fire would spread even he kindled as much he needed it. Rather apparently he shall be held responsible if the fire would usually spread provided there is negligence from it, let alone its absence. If he kindled the fire more than he needed, and usually it would not spread, but incidentally due to some other factor it did spread unusually, while there was no apprehension of its spreading, then apparently there shall be no responsibility [on the person who kindled it]. If the fire spread due to his act, he shall be held responsible, even if the fire was as much as he needed.

**Problem # 10.** If a person kindled fire in another’s property without his permission or in the public highway without the interest of the passers-by, he shall be held responsible for the loss of life or property that took place in it, even if he did not intend it.

Of course, if some one else throws some property or person into the fire, the person who kindled shall not be held responsible for it, but the responsibility shall lie with the one who threw the property or the person into it. If the offence takes place due to the initiation of his act, as when he kindles fire and it spreads to the place where there are some persons and property, he shall be held responsible for the loss of the property. As regards the loss of lives, in case there was his intention [to kill] and inability of the persons to escape, then [it shall be a case of willful murder and] the person kindling the fire shall be held liable to Qisās, and if it is a case of manslaughter or semblance of willful murder, the diyat shall be borne by his property, and if it is a case of homicide by sheer misadventure or mistake, the diyat shall be borne by the Āqilah. If a person opens a flood of water, the same rule we have mentioned under the case of kindling fire shall also be applicable to it.

**Problem # 11.** If a person throws the slippery garbage of his house as the peels of melon on the public highway or sprays water on his gate in an usual way and not in the interests of the passers-by, as a result of which a man slips [and falls down], the person spraying water shall be held responsible for it.

Of course, if a sane passer-by deliberately steps on it, then the absence of responsibility [on the person spraying water] shall be more reasonable. If, however, if an animal or an insane or indiscreet person dies by slipping on it, the person [spraying water] shall be held responsible.
بناء في غير ملكه بلا إذن من المالك، ولو بناه في ملكه مستويًا فوال إلى غير ملكه فان سقط قبل تمكينه من الإزالة فلا ضمان وإن تمكين منها فللضمان وجه ولو أماله غيره فالضمان عليه إن لم يتمكن المالك من الازالة، وإن تمك ان فالضمان لا يرفع عن الفير، فهل عليه ضمان فيرجع الورثة إليه وهو يرجع إلى المعدي أو لا ضمان إلا على المعدي؟ لا يعد الثاني.

مسألة 9 - لو أجج نارًا في ملكه بمقدار حاجته مع عدم احتمال المعدي لم يمضن لو اتفق المعدي فتألفت نفسيًا أو مالًا بلا إشكال، كما لا إشكال في الضمان لو زاد على مقدار حاجته مع علمه بالمعدي، والظاهر ضمانه مع علمه بالمعدي وإن كان بمقدار الحاجة، بل الظاهر الضمان لو اقتضت العادة التعدي مع الغلفة عنه فضلاً عن عدمها، ولو أجج زائداً على مقدار حاجته فلو اقتضت العادة عدم المعدي فاتفق بأمر آخر على خلاف العادة ولم يظن المعدي فالظاهر عدم الضمان، ولو كان المعدي بسبب فعله ضمن ولو كان التأجيج بمقدار الحاجة.

مسألة 10 - لو أججها في ملك غيره بغير إذنه أو في الشارع لا لمصلحة المارة ضمن ما يلفت بها وقوعها فيها من النفوس والأموال وإن لم يقصد ذلك، نعم لو ألقى آخر مالًا أو شخصًا في النار لم يمضن مؤجحها، بل الضمان على الملقى، ولو وقعت المجاينة بفعله التوليدي كما أججها وسرت إلى محل في الأنس والأموال يكون ضامناً للأموال، وأما الأنس ففع العمد وتدحر القرار فعلمه القصاص، ومابه البضاعة في ما له، ومع الخطا الحض على العاقبة، ثم إنه يأتي في فتح الماء ما ذكرناه في إضرام النار.

مسألة 11 - لو ألقى فضولات منزله المزلفة كتدوير البطيخ في الشارع أو رش الدرب بالماء على خلاف المتعارف لا لمصلحة المارة فلزم به إنسان ضمن، نعم لو وضع النار العاقل متعمداً رجله عليها فالوجه عدم الضمان، ولو تلف به حيوان أو بعثون أو غير مميز ضمن.
Problem # 12. If a person places a vessel, etc., on his wall, and it falls down, causing loss of life or property, he shall not be held responsible for it except when he had placed it declining towards the public highway or in a way that would usually lead to its fall on the highway, in which case he shall be held responsible.

Problem # 13. It is the duty of the master to take due care of his wild animals like a lustful camel, mordacious horse, voracious dog if he has kept them. If he is negligent in taking care of them, he shall be liable for the damage done by them. If he is ignorant about their position and has knowledge about them but is unable to control them, and is not responsible for any excess, he shall not be held responsible. If one of the animals attacks a person, and he defends himself as much as required, and in consequence the animal dies, or he suffers any damage or injury, he shall not be held responsible for it, rather if he protects his dear life or property, he shall not be held responsible. If, however, he exceeds the limits in his defence, causes some damage or injury to the animal despite the possibility of getting ride of him without the damage or injury and causes damage or injury for other than defending himself, he shall be held responsible. The same rule shall apply in harmful birds and cats including his responsibility in case of exceeding the limits from defending himself.

Problem # 14. If one animal attacks another and causes damage or injury to it, then if the master has failed to protect the victimized animal, he shall be held responsible. If the animal attacked causes some damage or injury, it shall go without any liability.

Problem # 15. If a person enters the house of another and the dog of the owner of the house bites him, the master of the dog shall be held responsible provided he entered with the permission of the landlord. If he entered the house without permission of its owner, there shall be no responsibility, without any difference whether the dog was already present in the house or it entered it after the entry of the victim, and without any difference whether the owner of the house knew that the dog bites or did not know it.

Problem # 16. If the animal causes harm with both its forelegs, even if he has not exceeded the limits even with his two hind legs, then the rider on the animal shall be held responsible. If the animal causes damage or injury with its head or front parts of its body, responsibility shall not be at all likely. If it rides opposite of what is usual [i.e., he sits facing the tails of the animal], then there is some reason for the responsibility in case the animal causes damage or injury with its hind legs and not his forelegs, though it is not always from objection. If both his legs are on one side, then the the responsibility for damage caused by the forelegs of the animal shall not be far from likely, but there shall be doubt as to the responsibility for the damage caused by its hind legs. Is negligence or excess a condition for the responsibility? There is some sense in it though it is not free from objection. Of course, if the animal is out of his control without his knowledge of the situation and that the animal is restless, then the sense shall be in favour of absence of responsibility for the damage caused by the hind legs, or forelegs or front parts of the body of the animal. The same rule shall apply in case of holding the reins, the details of which have already been given, i.e., he shall be responsible for the damage caused by the forelegs, or front parts of the body or hind legs. If he halts the animal, he shall be responsible for the damage cause by its forelegs, front part of the body or hindlegs, even if there is no negligence on his part. Apparently it makes no difference whether the way is
مسألة 12 - لو وضع على حائطه إناة أو غيره فسقط وتفلف به نفس أو مال لضمن إلا أن يضعه مائلا إلى الطريق أو وضعه بنحو تقتضي العادة سقوطه على الطريق، فانه يضمن حينئذ.

مسألة 13 - يجب حفظ دابته الصائلة كالبعير المغشوم والفرس العضوض والكلب العورق لو اقتناه، فلو أهل حفظه ضم جنايتها ولو جهل حالها أو علم و لم يقدر على حفظه ولم يفرط فلا ضمان، ولو صارت على شخص فدفعها بقدار يقتضي الدفاع ذلك فائت أو وردت عليها جناية لم يضمن بل لو دفعها عن نفس المحرمة أو مال كذلك لم يضمن، فلو أفرط في الدفاع فجرى عليها مع إمكان دفعها بغير ذلك أو جنى عليها لغير الدفاع ضمن، و الظاهر جريان الحكم في الطور الضاربة والاهرة كذلك حتى في الضمان مع التعدي عن مقدار الدفاع.

مسألة 14 - لو هجمت دابة على أخرى فجنت الداخلة فان كان بتفرط المالك في الاحتفاظ ضمن، وإن كانت المدخل عليها كان هدراً.

مسألة 15 - من دخل دار قوم فعقره كلهم ضمقوا إن دخل باذنهم، وإن فلا ضمان، من غير فرق بين كون الكلب حاضرا في الدار أو دخل بعد دخوله، و من غير فرق بين علم صاحب الدار بكونه يعقرو و عمه.

مسألة 16 - راكب الدابة يضمن ما تجنيه بديها وإن لم يكن عن تفرط ببرجلها، ولا يبعد ضمان ما تجنيه برأسها أو بمقامد بدنها، ولو ركبه على عكس التعارف فهي ضمان ما تجنيه ببرجلها دون يديها ووجه لا يخلو من الأشكال، وإن كان كلها رجلها إلى ناحية واحدة لا يبعد ضمان جناية يديها، وفي ضمان جناية رجلها ترد، و هل يعتبر في الضمان التفرط؟ فيه لا يخلو من إشكال، نعم لو سلطت الدابة اختيارها مع عدم علمه بالواقعة و عدم كون الدابة شمساً فالوجه عدم الضمان لا ببرجلها ولا بيدها و مقامد بدنها، و كذا الكلام في القائد في التفصيل المتقدم أي ضمان ما تجنيه بديها و مقامدها و رجلها، ولو وقف بها ضمن ما تجنيه بديها و مقامدها و رجلها وإن لم يكن عن تفرط.
narrow or wide. Likewise, the driver is responsible in general for the damage caused by the animal. If he hits the animal and it causes damage due to that, he shall be responsible absolutely. If a stranger hits the animal, and it causes some damage due to that, that stranger shall be held responsible for it, except when the blow has been by way of self-defence, in which case neither the master nor the stranger shall be held responsible.

**Problem # 17.** If an animal has a rider, driver and one holding the reins, or two of them, then apparently in whatever they share, they shall share in its responsibility, and in whatever they do individually, they shall be individually responsible, without any difference between the owner or any other. It is said by some jurists that if the owner of the animal accompanies it, he shall be responsible not the rider. This is so even if the rider has erred.

**Problem # 18.** If two persons ride an animal, both shall be held equally responsible, except one of them is weak due to some illness or minority, in which case the responsibility shall lie solely on the other.

**Third Discourse : Combintion of Causes**

**Problem # 1.** If the source of an act and one doing it in person combine together, then if they are equal or when the actual doer of the act is stronger, the one doing it personally shall be held responsible, as one who pushes another [to fall into a well] and the one who has dug it, one having slippery things and one who fixes a knife and the pusher, or one who kindles the fire and the one throws another into it, the builder of a reclining wall and the one who fells it. If the person doing the act personally be weak and the the one causing it strong, then the latter shall be held responsible, as when if a person digs a well on a highway and covers it up, and another pushes a third person without the knowledge of the position, and the third person falls into the well, then the responsibility shall fall on the digger of the well.

**Problem # 2.** If two causes are combined, apparently the responsibility shall lie on the one that is precedent in effect, even its occurrence may be subsequent, as when a person digs a well on a highway and another person places a stone on its side, and a person stumbles against the stone and falls into the well, in which case the responsibility shall lie on the person who places the stone beside the well.

If a person fixes a knife in a well, and another person falls on the knife in the well, the responsibility shall lie on the person who had dug the well. If a person places a stone and other places another stone behind it, and a third person stumbles against the first stone and falls on the second, the responsibility shall lie on the person who had laid the first stone against which the third person stumbled.

This is the case where the act of exceeding the proper limits has been equal. In case, however, one of them has exceeded the limits, then the responsibility shall lie on him exclusively, as
المبحث الثالث في تراحم الموجبات

واظهر عدم الفرق بين الطريق الضيق والواسع، وكذا السائق يضمن ما تجنيه مطلقاً، ولو ضرربها فجنب لأجله ضمن مطلقاً، وكذا لو ضرربها غيره فجنب لأجله ضمن ذلك الغير إلا أن يكون الضرب دفاعاً عن نفسه فإنها لا يضمن حينئذ الصاحب ولا غيره.

مسألة 17 - لو كان الدراسة راكب وسائق وقائد أو إثنان منها فالظاهرة الاشتركة فيها الاشتراك والانفراد فيها كذلك، من غير فرق بين المالك و غيره، وقيل لو كان صاحب الدراسة معها ضمن دون الراكب، وهو كذلك لو كان الراكب قاضراً.

مسألة 18 - لو ركبها رفيقان تساوياً في الضمان إلا إذا كان أحدهما ضعيفاً لرض أو صغير، فالضمان على الآخر.

المبحث الثالث في تراحم الموجبات

مسألة 1 - إذا اجتمع السبب والمبشر فع مساوتها أو كان المباشر أقوى ضمن المباشر، كاجتماع الدافع والحافر، واجتماع واضح العناصر وناصب السكن والدافع، واجتماع مؤجج النار مع الملقى، واجتماع الباني لفائز مائل مع مسقته، ولو كان المباشر ضعيفاً والسبي قوياً فالضمان على السبب، كما لو حفر بئراً في الشارع وغطاه فدفع غيره ثالثاً مع جهله بالواقعة فسقط في البئر فالضمان على الحافر.

مسألة 2 - لو اجتمع السبيان فالظاهرة أن الضمان على السابق تأثيراً وإن كان حدوثاً متأخراً كما لو حفر بئراً في الشارع وجعل آخر حجاراً على جنبها فسقط العائر بالحجور في البئر فالضمان على الواضع، ولو نصب سكيناً في البئر فسقط في البئر على السكين فالضمان على الحافر، ولو وضع حجاراً ووضع آخر حجاراً خلفه فعثر بحجور وسقط على آخر فالضمان على الواضع الذي عثر بحجور، و
when a person places a stone in his property, and another exceeding the limits digs a well, and a third person stumbles against the stone and falls into the well, the responsibility shall lie on the person who exceeded the limits and dug a well.

Problem # 3. If a person digs a shallow well and another deepens it, then whether the responsibility shall lie on the first to have proceeded, or on the second, or on both? There are probabilities, the more preferable being the first.

Problem # 4. If two or more persons have joined in placing, for example, a stone, then the responsibility shall lie on all of them, and apparently they shall share it equally, even if they differ in strength.

Problem # 5. If two persons fall into a well, and both of them are killed by colliding against each other, the responsibility shall lie on the digger of the well.

Chapter Four – Offences against Parts of Human Body

This Chapter consists of several Discourses.

First Discourse: Diyat for Parts of Human Body

Know that in each case where there is no prescribed amount of punishment, there is an arsh (or a fine) called Hukūmah. So it is supposed that a free man is a slave whose price can be estimated, and the price of one who is sound as well as one who is blemished is estimated, and a fine is charged [accordingly]. It is indispensable to keep in view the peculiarities of the sound and blemished ones, even what is blemished for a period of time, as hair of the head that grows within some time.

As regards the calculation of the amount of diyat, following are the cases.

First: The Diyat for Hair

Problem # 1. In case of the hair of the head of a male, regardless whether he is a minor or an adult, thick or thin, there shall be a full diyat if the hair do not grow [again], as when a person pours hot water on the head of another, resulting in the loss of the hair that do not grow [again], or
هكذا. هذا مع تساویها في العدوان، ولو كان أحدهما عادياً فالضمان عليه خاصة، كما لو وضع حراً في ملكه و حفر المعتدي برأفاً فرع بالحجر وسقط في البر فالضمان على الخافر المعتدي.

مَسَأْلَة ٣ - لو حفر برأفاً قليل العمق فعمقها غيره فهل الضمان على الأول للسبق أو على الثاني أو عليها؟ إجوانبها الأول. 

مَسَأْلَة ٤ - لو اشترتا إثنان أو أكثر فوضع حراً مثلًا فالضمان على الجميع، والظاهرة بالسورة وان اختلاف قواهم.

مَسَأْلَة ٥ - لو سقط إثنان في البر فهلك كل منها باصطدام الآخر فالضمان على الخافر.

القول في الجناية على الأطراف.

وفي مقصد:

المقصود الأول في دياب الأعضاء

إعلم أن كل ما لا تقدر فيه شرعاً ففيه الأرض المسمى بالحكومة، فيفرض المرة اعتداء القبلة للتدور، و يفكر صحيحة ومعبة و يؤخذ الأرض، ولا بد من ملاحظة خصائص الصحيح والمعيب حتى يكون معيناً في أهد كنا في شعر الرأس الذي يثبت في مدة، و أما التقدير في موارد:

الأول: الشعر

مَسَأْلَة ١ - في شعر رأس الذكر صغيراً كان أو كبيراً كثيراً أو خفيفاً، الدنيا
causes the loss of hair of another in whatever manner. Similar is the case of the beard, when it is shaved or is pulled, but does not grow [again], in which there shall be a full diyat. If in both cases if the hairs grow again, then in case of a beard there shall be a third diyat, according to the stronger opinion, and in case of the hair of the head, there shall be an arsh. As regards a female, in case of (causing loss of her hair, there shall be a full diyat if they do not grow again. If they happen to grow again, she shall be entitled to dower of women like her, irrespective of her being a minor or an adult.

Problem # 2. If some of the hair grow again, but others do not, then whether there shall be arsh in it or diyat according to the calculation, so that the amount of the hair that do not grow shall be calculated in proportion to the whole, and half of the diyat shall be charged if it is half and one-third if it is one-third, and so on. Will there be no consideration for the thick or thin hair? The second shall be more preferable in case of the hair that do not grow. But in case of the hairs that grow again, apparently arsh shall not be set aside.

Problem # 3. The diagnosis of the hair that would not grow again always rests with the medical specialists. If they diagnose that the hair would not grow again, diyat shall be charged. If the hairs grow again subsequently, apparently recourse shall be made to what is left in excess of the diyat.

Problem # 4. If the proper dower (mahr al-mithl) of the woman exceeds her sunnah dower (mahr al-sunnah), her proper dower shall be charged. Of course, if it exceeds the amount of whole diyat, she shall not be entitled to receive anything except the diyat. It is probable to have recourse to arsh.

Problem # 5. In case of [loss of] the hair of both the eyebrows together [the diyat] is five hundred dinars, and in case of single only half of it, and in case of part of it according to its calculation.

This is the rule when the hairs do not grow again; otherwise, there is arsh in it. If part of the hairs grows again and part of it does not, then in case of those which do not grow again, the diyat shall be according to the calculation, and in case of those that grow again apparently there shall be arsh.

Problem # 6. In case of [the loss of] hairs on the eyelids, there are several opinions, according to the opinion closer to the traditional authority there shall be arsh, while according to the more cautious opinion there shall be full diyat in case the hairs do not grow again.

Problem # 7. There is no prescribed amount [of diyat] in case of the hairs other than what has been mentioned here, but arsh is established in case a single hair is plucked. In case, however, the hairs are attached with a part of the body, there shall be nothing in case it is cut, or when it is attached to the skin when it is scratched. So there shall be nothing for the hairs when the eyelids are cut off; and nothing in addition to the diyat of the part of the hairs of the arm or shin if they are chopped off.

Problem # 8. Arsh is established in case of the different beard of a hermaphrodite and likewise in case of the beard of a female if it is supposed to be a blemish, and in every case where the diyat is not ascertained.
كاملة إن لم ينبت، كما لو صب على رأسه ماء حاراً فسقط شعره ولم ينبت أو أذهب شعره بأتي و جه كان، وكذا في اللحية إذا حلقت أو نفت مثل، ولم تنبت، الدية كاملة، وإن نبتا ففي اللحية ثلاث الدية على الأقوى وفي شعر الرأس الأرش، وأما الأثنى في شعرها دئبها كاملة إن لم ينبت، ولو نبت ففيه مهر نسائهما، من غير فرق بين الصغيرة والكبيرة.

مسألة 2 - لو نبت بعضه دون بعض فهل فيه الأرش أو أخذ من الدية بالحساب فيلاحظ نسبة غير النبات إلى الجميع فيؤخذ نصف الدية إن كان نصفاً وثلثها إذا كان ثلثاً و هكذا ولا يلاحظ خفة الشعر وكثافته؟ الثاني أرجع في غير النبات، وفي النبات لا يسقط الأرش على الظاهرة.

مسألة 3 - تشخيص عدم نبات الشعر أبداً موكول إلى أهل الخبرة فآن حكم أهل الخبرة بعدم النبات تؤخذ الدية، ولو نبت بعد ذلك فالظاهرة رجوع ما فضل من الدية.

مسألة 4 - لو زاد مهر مثل المرأة على مهر السنة يؤخذ مهر المثل، نعم لو زاد على الدية الكاملة فيليس لها إلا الدية، و يحتمل الرجوع إلى الأرش.

مسألة 5 - في شعر الحاجين معًا خمسة دينار، وفي كل واحد نصف ذلك، وفي بعض منه على حساب ذلك، هذا إذا لم ينبت، وإلا ففي الأرش، فلو نبت بعض ولم ينبت البعض في غير النبات بالحساب، وفي النبات الأرش ظاهراً.

مسألة 6 - في الأهداب الأربعة أي الشعور النابتا على الأجنان أقوال أقرها الأرش، وأحويها الدية كاملة مع عدم النبت.

مسألة 7 - لا تقدير في غير ما تقدم من الشعر، لكن يثبت له الأرش إن قلع منفرداً، ولا شيء فيه لو انضم إلى العضو تو انضم إلى الجلد إذا قطع أو إلى الساق إذا قطع زائداً على دبة العضو.

مسألة 8 - يثبت الأرش في سألة الحديث المشكل و كذا في سألة المرأة لوفرض
If it is supposed that the removal of the hairs in a slave or slave-girl shall raise their value or it does not reduce their value, there shall be nothing on the culprit except Ta'zir. In case it is supposed that it would cause some blemish, there shall be a compulsory arsh.

Second: The Diyat for the Two Eyes

Problem # 1. In case of [loss of] both the eyes together there is diyat, and in case [of loss] of each of them half of the diyat. A bleary-eyed, one having squint, day-blindness or night-blindness or one suffering from ophthalmia shall be treated like one having sound eyes. If there is whiteness in the black part of the eye, then if the eyesight is intact in a way that the whiteness has no effect on eye-ball with which he sees, then there shall be full diyat [in case of the loss or damage to such eye], otherwise it shall be set aside out of the diyat according to the calculation, if it is possible to diagnose; otherwise there shall be arsh.

Problem # 2. In case of [loss or damage to] the sound eye of a one-eyed man, there shall be full diyat, if the blindness in one eye is in him by birth or by an act of God.

If the culprit deprives a person of one eye, and he is entitled to diyat for it, in case of [damage or loss of] the sound eye, there shall be half diyat, regardless whether he has received the diyat or not, and whether he is able to get the diyat or not, rather likewise it shall be half if the deprivation of one eye has been as a result of the infliction of Qisās.

Problem # 3. In case of [loss or damage to] the dye affected by the one-eyedness, there shall be one-third diyat if it has been sunk down or has been pulled out, regardless whether the one-eyedness is by birth or as a result of infliction of offence by a culprit.

Problem # 4. There is diyat in case of [loss or damage to] the eyelids, but there is difference of opinion in case of a single eyelid.

Some of the jurists say that there shall be one-fourth diyat in case of a single eye-lid, others say that in case of the higher one it shall be two-third and in case of the lower one it shall be one-third diyat; while some say that there shall be one-third diyat in case of the higher one and in case of the lower one it shall be half diyat. This latest opinion is not devoid of preference, but caution must not be given by reching a compromise.

Third : The Diyat for the Nose

Problem # 1. In the case of nose when it is chopped off from the source there shall be a full diyat. The same is the case with the supple part of the nose that is lower than the cartilaginous and osseous tube, so that if a person chopped it off or part thereof all at once, there shall be a full diyat.
نقص و في كل مورد مما لا تقدير فيه، ولو فرض أن إزالة الشعر في العبد أو
الأمة تزيد في القيمة أو لا ينقص منها لا شيء عليه إلا التعزير، ولو فرض
التعبيب بذلك ووجب الأشرا.

الثاني: العينان

مسألة 1 - في العينين معاً الديبة، و في كل واحدة منها نصفها، و الأعشش
والأخيل والأخفش والأعشش و الأومد كالصحيح، ولو كان على سواه عينه
باض فان كان الإبصار باقياً بأن لا يكون ذلك على الناظر فالمدية تامة، و إلا
سقطت بالحساب من الديبة لو أمكن التشخيص، و إلا ففي الأشرا.

مسألة 2 - في العين الصحيحة من الأعور الديبة كاملاً إن كان العور خلقة أو
بأقة من الله تعالى، ولو أعورها جان و استحق ديتها منه كان في الصحيحة نصف
الديبة، سواء أخذ ديتها أم لا، و سواء كان قادرًا على الأخذ أم لا، بل ووذا
النصف لو كان العور قصاصةً.

مسألة 3 - في العين العوراء ثلث الديبة إذا خسفها أو قلعها، سواء كانت
عوراء خلقة أو بجتية جان.

مسألة 4 - في الأجفان الديبة، و في تقدير كل جفن خلاف، فن قائل في كل
واحد ربع الديبة، و من قائل في الأعلى ثلثها و في الأسفل الثلث، و من قائل في
الأعلى ثلث الديبة و في الأسفل النصف، و هذا لا يخلو من ترجيح، لكن لا يتراك
الحتياط بالتصالح.

الثالث: الأنف

مسألة 1 - في الأنف إذا قطع من أصله الديبة كاملاً، و كذا في مارنه، و هوما
If, however, he cuts the supple part and then some of the cartilage, then there shall be full diyat for the supple part and arsh for the cartilage. If he cuts the supple part and then the whole of the cartilage, then there shall be diyat for the supple part, but whether there shall be diyat or arsh for the cartilage, there is hesitation in it. If he cuts some of the supple part, it shall be calculated according to the diyat of the supple part.

Problem # 2. If the nose becomes defective and is lost as a result of being chopped off or being burnt, or the like, there shall be full diyat. If it is repaired in a way that it does not cause any defect, then the diyat shall be one hundred Dinārs, according to a widely received opinion.

Problem # 3. If a person paralyses the nose, there shall be two-third of the diyat of a sound nose. If a person chops off a paralysed nose, he shall be liable to pay one-third diyat.

Problem # 4. In case of [loss or damage to] ‘rowtha’ there is half of the diyat when it is chopped off. Whether it is the side of the nose, or the cartilage between the two nostrils or the junction of the supple part of the nose, there are probabilities in this respect, and it is likely that all the probabilities converge to a single thing, and that is the side of the nose from which blood trickles down and that the junction of the supple part or the place of the diaphragm. If a person cuts the cartilage in a way that the highest part to the lowest part becomes visible, it means he has cut the side of the nose, and that the supple part of the nose, although it is not free from hesitation.

Problem # 5. In case of [loss or damage to] one of the nostrils, there is one-third of a diyat, and according to what is said by some jurists, it is half diyat, but the first opinion is more preferable.

If a person pierces some thing penetrating like a lance or arrow in a way that the nose is not spoiled, but both the nostrils and the cartilage between the nostrils should be torn, there shall be the liability for one-third diyat. The same shall be the rule if they become perforated. If they are repaired and restored to the sound condition, there shall the liability for one-fifth diyat, according to the more cautious opinion.

Fourth : The Diyat for the Ear

Problem # 1. In case of [loss or damage to] the two ears entirely, when there is left nothing of them, there shall be the liability of full diyat, and in case of the eburnation of one of them, there shall be a half diyat, while in case of part thereof according to the calculation, so that if half of it has been chopped off, there shall the liability for half diyat, and one-third of it has been chopped off, there shall be one-third diyat, and so on.

Problem # 2. In case of cutting the earlobe, there shall be the liability for one-third diyat of an ear, and in case of a part thereof, the diyat shall be according to the calculation. Tearing off the ear entails the liability of one-third diyat, according to the more cautious opinion, rather according to the more obvious opinion.
لا أن منه ونزل عن قصبتة، ولوقعت المارن وبعض القصبة دفعة فالديه كاملة، ولوقعت المارن ثم بعض القصبة فالديه كاملة في المارن والأرش في القصبة، ولوقعت المارن ثم ققطع جميع القصبة ففي المارن الدنيا، فهل للقصبة الدنيا والأرش، فيه تأمل، ولوقعت بعض المارن فيحساب المارن.

مسألة 2: لوفسدا الأنف وذهب بكسر أو إحرق أو نحو ذلك ففيه الدنيا كاملة، ولوجر على غير عيب فاة دينار على قول مشهور.

مسألة 3. في شلل الأنف ثلثا دينه صحيحًا، وإذا قطع الأشل فعليه ثلثها.

مسألة 4. في الروحة نصف الدنيا إذا قطعت، فهل هي طرف الأنف أو الحاجز بين المنخررين أو مجمع المارن؟ احتمالات، ويحمل أن ترجع الاحتمالات إلى أمر واحد، وهو طرف الأنف الذي يقطر منه الدم وهو مجمع المارن وهو على الحاجز فإذا قطع الحاجز من حيث يرى من الأعلى إلى الأسفل قطع طرف الأنف، وهو مجمع المارن وإن لا يخلو من تأمل.

مسألة 5. في أحد المنخررين ثلث الدنيا، وقيل نصفها، والأول أرجح، ولو نفدت في الأنف نافذة على وجه لا تفسد كرم أو سمهم فخروقت المنخررين و الحاجز فثلث الدنيا، وكدنا لو نفدت، فإن جبر وصل فخم الدنيا على الأحوص.

الربع: الأذن

مسألة 1. في الأذنين إذا استوصلنا الدنيا كاملة، وفي استيصال كل واحدة منها نصفها، وفي بعضها نسب دينه إذا كان نصفًا فنصاف أو ثلثًا فثلث و هكذا.

مسألة 2. في خصوص شحمة الأذن ثلث دينه الأذن، وفي بعضها فيحسابها، وفي خرم الأذن ثلث دينه على الأحوص بل الأظهر.
Problem # 3. If a person hits the ear of another, and it becomes dried up, he shall be liable to two-third of the diyat for the ear. If he cuts it after paralyzing it, then there shall be the liability of one-third of the diyat in both the cases; rather it is not free from being close to the traditional authority.

Problem # 4. In all the cases mentioned before, a deaf ear year shall be treated at par with a sound year. If a person chopp off the ear of another, and it infects the power of hearing and turns it useless or defective, then its liability shall be in addition to the diyat ear. The diyat of the ear shall not be inclusive of that of the usufruct of the ear. Likewise if a person chops off the ear in a way that its bone becomes visible, he shall be liable to pay the diyat of the mūṭiḥah* in addition to that of the ear, the latter not being inclusive of the former.

[Note. For the explanation of the terms marked with asterisk, refer to the Glossary at the end].

Fifth: The Diyat for the Two Lips

Problem # 1. In case of [cutting of] both the lips, there is the liability of full diyat, and in case of one of half diyat, according to the stronger opinion. According to the more cautious opinion, in case of the lower lip the diyat shall be six hundred Dinār. In case of cutting part of ti the liability is to be calculated in proportion to its area in length and breadth.

Problem # 2. The limit of the higher lip is that in width it is detached from the gum while it is attached with both the nostrils and the cartilege, and its length is the length of the mouth, while the limit of the lower lip is that in width it is detached from the gum and its length is the length of the mouth. The edges on both sides of the mouth are not included in both the lips.

Problem # 3. If the lips are subjected to an offence by which they contract and as a result they cannot cover the teeth, then it shall entail the liability of fine to be determined by the judge. If both the lips are subjected to an offence which causes slackness in them in a way that they do not distance themselves from the teeth at the time of laughing, etc., in which case there shall be liability of two-third diyat, according to the more cautious opinion. If they are chopped off after have paralyzed, then there shall be liability of one-third of the diyat.

Problem # 4. If a person splits both the lips in a way that it causes the teeth to be visible, he shall be liable one-third diyat. If they are repaired, then there shall be liability of one-fifth diyat. In case one of the lips is subjected to offence, there shall liability for one-third diyat, if it is not repaired. If it is repaired, the culprit shall be liable to one-fifth of the diyat, according to the well-known opinion in all these cases.

Sixth: The Diyat for the Tongue

Problem # 1. Cutting off a sound tongue entirely shall entail the liability for a full diyat. Cutting the whole tongue of a dumb person shall entail the liability for one-third of the [full] diyat.
مسألة 3 - لو ضربوا فاستحتشفت أي يبست فعليه ثلثا ديتها ولو قطعها بعد الشلل فثلثها على الأحورط في الموضعين، بل لا يخلو من قرب
مسألة 4 - الأصم في ما كالصحيح، ولو قطع الأذن مثلًا فسیرى إلى السمع فأبطله أو نقص منه ففيه مضافًا إلى دية الأذن دية المتفعة من غير تداخل، وکذا لو قطعها بنحو أوضح العظم وجب مع دية الأذن دية الموضحة من غير تداخل.

الخامس: الشفتان

مسألة 1 - في الشفتين الدية كاملة، وفي كل واحدة منها النصف على الأقوى، والأحورط في السفلي ستماة دينار، وفي قطع بعضها بنسبة مساحتها طولاً وعرضًا.
مسألة 2 - حد الشفة في العليا ما تحاكي عن اللثة متصلة بالمنخرتين و الحاجر عرضًا، وطولها طول الفم، وحد السفلي ما تحاكي عن اللثة عرضًا وطولها طول الفم، وليست حاشية الشدقين منها.
مسألة 3 - لو جنى عليها حتى تقليصت فلم تنطبق على الأسنان ففيه الحكومة، ولو استرخت بالجنبة فلم تتفصلا عن الأسنان بيضحك و نحوه فثلا دية على الأحورط، ولو قطعت بعد الشلل فثلتها.
مسألة 4 - لو شب الشفتين حتى بدلت الأسنان فعلبه ثلث الدية، فإن برأت فخمس الدية، وفي إحداهما ثلث ديتها إن لم تبرأ. وإن برأت فخمس ديتها على قول معروف في الجمع.

السادس: الألسن

مسألة 1 - في لسان الصحيح إذا استولى الدية كاملة، وفي لسان الأخرس
Problem # 2. If a person cuts part of the tongue of a dumb person, then the liability shall be calculated according to the area of the chopped tongue. In case of a sound tongue, its liability shall be assessed according to the [ability to pronounce the] letters of the alphabets, and the diyat shall be distributed on all of the trumpets equally, without any difference between the light and hard and the six letters to be pronounced by the tongue, etc., If the ability to pronounce all the letters is lost, then shall be full diyat. If it is partly affected, the liability shall be restricted in respect of those particular letters.

Problem # 3. There are twenty-eight letters in Arabic language, so the diyat would be distributed among them. In case of letters of non-Arabic language, if they are similar to the Arabic letters, they shall be accounted for in the same way. If they are less or more than the Arabic letters, apparently the diyat for them shall be distributed equally according to the letters of that language.

Problem # 4. The criterion for the soundness of the language is the loss of the ability for pronouncing letter and not the area of the language. If a person cuts half of the tongue of another resulting in the loss of ability to pronounce four letters, there shall be liability for one-fourth diyat, but if he cuts one-fourth of the tongue resulting in the loss of ability to pronounce half of the number of letters in the language, then there shall be liability for half diyat.

Problem # 5. If the ability to pronounce the letters of the language is not lost, but the tongue has changed in a way that is considered a blemish, as when the victim becomes hard of the tongue or quick in speech that is counted among blemishes, the pronunciation of one letter is replaced by that of another, even if the latter is correct, but it is considered a blemish, then recourse shall be made to the fine prescribed by the judge (hukûmah).

Problem # 6. If a culprit cuts the tongue of another, resulting in the loss of part of his power of speech, then a third person cuts another part of his tongue resulting in the loss of the rest, the diyat shall be charged in proportion to what has been lost after the first offence for what is been left subsequent to it. If half of the power of speech is lost as a result of the first offence, its culprit shall be liable to half diyat, and if the remaining half is lost as a result of the second offence, the second culprit shall be liable to half of the half diyat, or one-fourth diyat.

Problem # 7. If a person causes the loss of power of speech of another by a blow on his head or the like without cutting his tongue, he shall be liable to pay the diyat. If a defect is caused in the speech of the victim, then the liability shall be proportionate to the defect, as already mentioned before. If a third person cuts the tongue of the victim that due to the previous offence has become dumb, he shall be liable to one-third diyat, regardless whether the power of taste and the ability to chew are intact or not and without any difference whether the victim has the ability to pronounce the labial and guttural sounds or not.

Problem # 8. If a person cuts the tongue of a child before reaching the stage of speech, he shall be liable to full diyat. If the child has reached the stage of speech, but he has not spoken,
ثالث الدية مع الاستيصال.

مسألة 2 - لقطع بعض لسان الآخر في حساب المساحة، واذا الصحيح
فيعتبر قطعه بحرف المعجم، وتضبط الدية على الجمع بالسوية، من غير فرق بين
خفيفها وثقيلها، واللسنية وغيرها، فإن ذهب جمع فالدية كاملة، وإن ذهب
بعضها وجب نصب الذاهب خاصة.

مسألة 3 - حروف المعجم في العربية ثمانية وعشرون حرفاً، فتجعل الدية
مؤذية عليها، واذا غير العربية فإنها موالياً لها في باقي الحروف، وله كان حروفه
أقل أو أكثر فالظاهر التقييم عليها بالسوية كل بحسب لغته.

مسألة 4 - الاعتبار في صحيح اللسان بما يذهب الحروف لا بساحة اللسان،
فلقطع نصف فذهب ربع الحروف غريب الدية، ولقطع ربعه فذهب نصف
الحروف فنصف الدية.

مسألة 5 - لول يذهب الحروف بالجناية لكن تغير ما يوجب العبب اسعار
الحساب أو سريع النطق بما يعد عيباً أو تغير حرف بحرف آخر ولو كان الثاني
صحيحاً لكن يعد عيباً فالرجع المكثمة.

مسألة 6 - لقطع لسانه جان فذهب بعض كلامه ثم قطع آخر بعضاً فذهب
بعض الباقى أخذ نسبة ما ذهب بعد جناية الأولى، إلى ما بقي بعدها. فلوزه
بجناية الأولى نصف كلامه فعليه نصف الدية، ثم ذهب بجناية الثاني نصف ما
في فعليه نصف هذا النصف أي الربع ويكذا.

مسألة 7 - لا أعدم شخص كلامه بالضرب على رأسه ونحوه من دون قطع
فعليه الدية، ولو نقص من كلامه فبالنسبة كما مر، ولقطع آخر لسانه الذي
أخرس بفعل السابق فعليه ثلث الدية وإن بقيت لسانه فائدة الذوق وعوو
بعمل الطحن، من غير فرق بين قدرة الجني عليه على الحروف الشفوية والهلبية
أم لا.

مسألة 8 - لقطع لسان طفل قبل بلوغه حد النطق فعليه الدية كاملة، ولو
then by cutting his tongue nothing shall be established except one-third of the diyat. But if the reverse transpires, the culprit shall be charged what is left due.

**Problem # 9.** If a person commits an offence with another without cutting his tongue, resulting in the loss of his power of speech, and subsequently the power is restored, then apparently he shall be entitled to demand the retrun of the diyat for the loss of the power of speech.

**Seventh : The Diyat for the Teeth**

**Problem # 1.** In case of [causing loss to] teeth there is full diyat, which is distributed among twenty-eight teeth [in the following manner]. There are twelve teeth in the forefront of the mouth: the foreteeth, quadruplets and the canine-teeth one pair of each of which is up and one down, the diyat for each of them shall be fifty Dinārs whose total comes to six hundred Dinārs.

There are sixteen hind-teeth which are on all the four sides of the ends, up and down, each having four ḍāḥik [fore-tooth which becomes visible at the time of laughing] and three ḏīrṣ[molar tooth], the diyat for each of them being twenty-five Dinārs whose total comes to four hundred Dinārs. The wisdom teeth (nawājid) and the extra teeth are not accounted for [in diyat].

**Problem # 2.** If there are less than twenty-eight teeth, the diyat shall be reduced in lieu of, regardless whether the deficiency is by birth or the result of some ailment.

**Problem # 3.** There is no diyat prescribed for a tooth in addition to twenty-eight teeth, and apparently recourse shall be made to the diyat for it, regardless whether it is extra like the wisdom teeth in the row of the teeth or it has grown extra in the internal or external side.

If there is no effect caused by pulling it, or it adds to beauty, there shall be no fine, although the person pulling it out shall be considered an oppressor and a sinner, and it is up to the judge to inflict Taʿzir on him.

**Problem # 4.** There is no difference between white, yellow or black teeth, when the colour is original and not due to some disease or blemish. If they have turned black as a result of an offence, and do not fall, their diyat of two-third shall be the correct one, according to the stronger opinion.

If a person pulls out a black tooth by way of an offence or due to some disease, he shall be liable to one-third diyat, according to the more cautious opinion; rather it shall not be devoid of closeness to the traditional authority.

In case a crack is caused in a tooth without its being pulled out, according to the stronger opinion, its diyat shall be determined by the judge.
مسألة 9 - لو بني عليه غير قطع فذهب كلما ثم عاد فالفظاهر أنه تعود الدية، وأما لو قطع سنه فعادت فلا تعود ديبها.

السادع: الأسان

مسألة 1 - في الأسنان الدية كاملة، وهي موزعة على ثمان وعشرين سنة، إثناء عشرة في مقام المثلثتين ورباعيتين ونابات من أعلى ومثلها من أسفل، فهي كل واحدة منها خمسة دينارات، فالمجموع ستمائة دينار، وست عشرة في آخر المثل، في كل جانب من الجوانب الأربعة أربعة ضواحك وأضراس ثلاثية، في كل واحدة منها خمسة وعشرون ديناراً، فالمجموع أربعمائة دينار، ولا يلاحظ النواجد في الحساب ولا الأسنان الزائدة.

مسألة 2 - لو نقصت الأسنان عن ثمان وعشرين نقش من الديبة بازائه، كان النقص خلقه أو عارضاً.

مسألة 3 - ليس للسائر على ثمان وعشرين دية مقدرة، وظهور الرجوع إلى الحكومة، سواء كانت الزيادة من قبيل النواجد التي هي في ردف الأسنان أو نبت الزائد عنها داخلاً أو خارجاً، ولو لم يكن في قلبه نقص أو زاد كمالاً فلا شيء، وإن كان الفاعل ظالماً آثماً، وللحاكم تعزيزه.

مسألة 4 - لا فرق في الأسنان بين أبيضها وأغصانها وأسودها إذا كان اللون أصلياً لا لعارض وعين، ولو أسودت بالجناية ولم تسقط فديتها ثلاثاً ديبيها صحيحة على الأقوى، ولو قطع السن السوداء بالجناية أو لعارض فئته فثت الديبة على الأقوى، بل لا يعلو من قرب، وفي أنسلاخ السن بلا سقوط الحكومة على الأقوى.
Problem # 5. If a person breaks that part of a tooth that is visible from the gum with its root remaining intact, he shall be liable to diyat for an uprooted tooth. If a person breaks that part of a tooth that is visible from the gum, and then another person pulls out the remaining part of the tooth from its root, its fine shall be determined by the judge, irrespective of whether the person pulling the remaining part of the tooth from its root is the same who had broken the visible part of the tooth or another.

Problem # 6. If a person pulls out the milk tooth of a child, the matteer shall be delayed till a time when usually it grows again, so that if it grows again, according to an opinion, there shall be liability for an arsh. It is not far from likely that the diyat for every tooth be a camel. If it does not grow then its diyat shall be equal to that of an adult.

Problem # 7. If a tooth is pulled out and another is placed in its place and it becomes as it was before, then it grows again as it was before, the diyat for pulling out shall be a full one. If a tooth is placed in its place and it becomes like the original living grown tooth, then if it is pulled out, then, according to the more cautious opinion, there shall be the liability for the full original one; rather it is not devoid of reason.

Eighth: The Diyat for the Neck

Problem # 1. If a person breaks the neck of another in way that he become smaller in height, i.e., his neck bends and it leans to one side, according to the more cautious opinion, there shall be the liability for a full diyat. Likewise, [the same rule shall apply], if the person commits an offence with another in a way that causes his neck to bend and become smaller. Likewise, [the same rule shall apply], if the person commits an offence with another in a way that it obstructs swallowing, and the man is compelled to live in that way by providing him food through another channel. It is said by some jurists that in both the cases the diyat shall be determined by the judge, and this opinion is not far from being acceptable.

Problem # 2. If the defect, namely the bending of the neck and the obstruction in swallowing, disappears, there shall be no liability for diyat, and he shall be liable for an arsh. The same shall be the rule if in any way it becomes possible for him to swallow and straighten his neck though with some difficulty.

Ninth: The Diyat for both the Jawbones (Liyyatayn)

Problem # 1. If a person pulls out both the jawbone of another, there shall be liability for a full diyat, and in case of a single jawbone, it shall be half, that is, five hundred Dinârs. They are two bones that are linked with the chin, and on the higher side each of them unites with the ear on both sides of the face, and the lower teeth grow on both of them.
مسألة 5 - لو كسر ما برز عن اللثة خاصة، وبقي السنج أي أصله المدفون فيها فالأدية كالسن المقلوبة، ولو كسر شخص ما برز عنها ثم قلع الآخر السنج فالحكومة للسنجة، سواء كان الجاني شخصين أو شخصاً واحداً في دفعتين.

مسألة 6 - لو قلع سن الصغير غير المثغر انتظر إلى مضي زمان جرت العادة بنباتها، فإن نبتت فالاشرع على قول، ولا يبعد أن تكون دمة كل سن بعيراً، وإن لم نبت فديتها كسن البالغ.

مسألة 7 - لو قلعت سن فثبتت في محلها فثبتت كما كانت ففي قلعها الدمة كاملة، ولو جعلت في محلها من فصارت كالسن الأصلية حية نابضة فالااحوط في قلعها دية الأصلية كاملة، بل لا يخلو من وجه.

الثامن: العنق

مسألة 1 - في العنق إذا كسر فصار الشخص أصغر، أي مال عنقه وثبت في ناحية الدمة كاملة على الأاحوط، وكدنا لو جننا عليه على وجه يثبت عنقه وصغير، وكذا لو جننا عليه ما يمنع عن الأحتراد وعاش كذلك بياض ألاصح الغذاة إليه بطريق آخر، وقيل في الموردين بالحكومة، ولا يبعد هذا القول.

مسألة 2 - لو زال العيب - أي تمثال العنق وبطلان الأزادراد فلا دية، وعليه الأشرع، وكذا لو صار بنحو يكونه الأزادراد وإقامة العنق والالتفات بعض.

الناعم: اللحبان

مسألة 1 - في اللحبين إذا قلعا الدمة كاملة، وفي كل واحد منها نصفها خمسة دينار، وهما العظام اللذان ملقاهمما الذقن، وفي جانب الأعلى يتصل طرف كل واحد منها بالأذن من جانبي الوجه، وعليها نبات الأسنان السفلي.
Problem # 2. If a part of both the jaws are pulled, or of one of them, then the diyat shall be determined according to the area calculated. If one of the jaws and part of another are pulled out, then half of the diyat shall be charged for the one jaw pulled, and according to the area calculated for the part of the other jaw.

Problem # 3. What we have mentioned about the case where both the jaws are pulled separately from the teeth is like a person who has no teeth. But if they are pulled with the teeth, then the diyat for the teeth shall be added, and they shall not be inclusive of each other.

Problem # 4. If an offence is committed against both the jaws, resulting in causing difficulty in chewing, or some defect in both of them, then the fine shall be determined by the judge.

Tenth : The Diyat for both the Hands

Problem # 1. Causing loss of both the hands entails the liability for full diyat. In case of each of them there shall be a half of the diyat, without any difference whether it is the right or the left hand [that is lost or damaged]. If a person has one hand by birth or due to some accident, there shall be a half diyat in his case.

Problem # 2. The limit for the hand owing diyat is the joint between the palm and the forearm. If one of them is cut from the joint, there shall be half diyat. If there are the fingers in the hand, no diyat shall be charged for the fingers in such supposition. But if the fingers are cut separately, there shall be a liability for five hundred Dinārs, that is, half diyat.

Problem # 3. In case of cutting the hand where there are no fingers, the fine shall be determined by the judge, regardless whether the hand was without fingers by birth or by act of God or as a result of an offence of a culprit.

Problem # 4. If the palm of a person having fingers with some excess out of the wrist is chopped off, then there shall be a diyat of five hundred Dinārs for the hand. The same shall be the rule if a person cuts the hand with an excess out of the forearm. Whether there shall be fine to be determined by the judge according to the area calculated? There is hesitation in it.

Problem # 5. If a person cuts the hand from the elbow, he shall be liable for the payment of five hundred Dinārs, regardless whether there was a palm in the hand or not. The same rule applies to [the loss of] of shoulder, regardless whether it has an elbow or not. If it is cut from above the elbow, then in case of excess there is likelihood of the fine being determined by the judge, and also that it shall be determined according to the area calculated.

Problem # 6. If a person has two hands on his wrist, elbow or shoulder, then in case of [loss of] the real one there shall be the full diyat, but in case of [the loss of] the extra one, it shall be determined by the judge. The determination as to which of the hands is real and which is the
مسألة 2 - لو قلع بعض من كل منها أو من أحدهما فبالحساب ساحة، ولو قلع واحد منها و بعض من آخر فنصف الديمة للمثل، فبالحسب للبعض الآخر.

مسألة 3 - ما ذكرنا ثابت فيه إذا قلعت منفردين عن الأسنان، كقلعتها عمن لا سهل، وأما لو قلعتا مع الأسنان فترد دية الأسنان ولا تندخل.

مسألة 4 - لو جني عليها و نقص الضغ أو حصل نقص فيها فهي الحكومة.

العابر: اليدان

مسألة 1 - في اليدين الدينة كاملة، وفي كل واحدة نصفها، من غير فرق بين اليمين واليسار، ومن كانت له يد واحدة خلقة أو لعارض فلكها نصف الدينة.

مسألة 2 - حبة اليد التي فيها الدينة المعصم - أي المفصل الذي بين الكف و الذراع. فلو قطعت إحداها من المفصل ففيها نصف الدينة، وإن كانت فيها الأصابع فلا دية للأصابع في الفرض، ولوقعت الأصابع منفردة فهي خمسة دنانار نصف الدينة.

مسألة 3 - في قطع الكف مع فقد الأصابع الحكومة، سواء كان بلا أصابع خلقة أم بآفة أم بجاية جان.

مسألة 4 - لو قطعت الكف ذات الأصابع مع زيادة من الزند ففي اليد خمسة دنانار، وكذا لو قطعتها مع مقدار من الذراع، فهل في الزيدا حكومة أو الاعتبار بحساب الساحة؟ فيه ترد.

مسألة 5 - في قطع اليد من المرفق خمسة دنانار كان لها كف أولا، و من اللحوم كذلك كان لها مرفق أو لا، ولو قطعت من فوق المرفق فيحتمل في الزيدا حكومة ويرجع الحساب الساحة.

مسألة 6 - لو كانت له عيان على زند أو على مرفق أو على منكب في الأصلية.
extra depends on the custom or rests with the opinion of the experts. In case of doubt or lack of distinction, if a single person cuts both of them together, he shall be liable to the *diyat* and the *arsh*.

If several persons cut both the hands, apparently the *diyat* of each of them shall be prescribed by the judge. If the person cutting the hands is one and the same person, but the second hand is cut after the payment of the fine determined by the judge, then he shall be liable for the payment of the full *diyat*.

**Eleventh**: The *Diyat* for the Fingers

**Problem # 1.** There shall be a full *diyat* for [cutting] the fingers of both the hands, and, likewise, for [cutting] the fingers of both the feet.

For [cutting] each of the fingers, there shall be one-tenth *diyat*, without any difference between the thumbs and other fingers.

**Problem # 2.** The *diyat* for [cutting] every finger is divided into three knuckles, for each knuckle there shall be one-third of the *diyat*; in case of the thumb, divided into two knuckles, for each knuckle there shall be half of the *diyat*.

**Problem # 3.** In case of an extra finger, when it is cut from the real one, there shall be one-third of the [diyat of the] real one. It is not far from likely to apply this rule to the extra knuckles of the fingers.

**Problem # 4.** If among some of the tribes the number of fingers and knuckles of the fingers are extra than the usual, it is not far from likely to divide the *diyat* according to their number.

**Problem # 5.** In case of paralyzing each of the fingers there shall be one-third *diyat*, and for cutting each finger after paralyzing it, the *diyat* shall be one-third of it.

**Problem # 6.** In case of pulling out a nail in a way that it does not grow again, or grows again in a black and defective shape, according to the more cautious opinion, the amount of *diyat* shall be ten Dinārs, and if it grows white, the *diyat* shall be five Dinārs.

**Twelfth**: The *Diyat* for the Back

**Problem # 1.** For breaking the back of a person, there is the liability for full *diyat*, if it is not cured by treatment or bonesetting.
الجواب: الأصابع

مسألة 1: في أصابع اليدين الديبة كاملة، وكذا في أصابع الرجلين، وفي كل واحدة منها عشرة دنانير من غير فرق بين الإبهام وغيره.

مسألة 2: ديمة كل إصبع مقسومة على ثلاث عقد في كل عقدة ثلثها، وفي الابهام مقسومة على أثنتين في كل منها نصفها.

مسألة 3: في الأصابع الزائدة إذا قطعت من أصلها ثلاث الأصلية، ولا يبعد جراين الحكم بالنسبة إلى الأصلة الزائدة.

مسألة 4: لو كان عدد الأصابع الأصلية في بعض الطوائف وكذا عدد أناملهم الأصلية زائداً على القدر المتعارف لا يبعد أن يكون التقسم على حسماً.

مسألة 5: في شلل كل واحدة من الأصابع ثلثاً ديتها، وفي قطعها بعد الشلل.

مسألة 6: في الظهر إذا لم ينتبه أو نبت أسود فاسداً عشرة دنانير على الأحمر، وإن نبت أبيض فخمسة دنانير.

الجواب: الأصابع

مسألة 1: في كسر الظهر الديبة كاملة إذا لم يصح بالعلاج والمجبر، وكذا لو
The same shall be the rule if as a result of an offence the back becomes curved, so that it protrudes and rises from the surface, or loses the ability to sit or walk.

**Problem # 2.** If after treatement the curvature of the back remains unaffected, and so also if some of the effects of the fracture also persist so that the victim is not able to walk without the help of a stick, or it results in the loss of his sexual power or his semen, or suffers from incontinence of urine or the like.

**Problem # 3.** If after the treatment the victim becomes cured and no trace of the offence is left, the culprit shall be liable to pay one hundred Dinārs.

**Problem # 4.** By back is meant the bone having spinal column extending from the upper part of the back (kāhīl) to the rump [or the end of the backbone], and that is the loins, braking it entails liability for payment of diyat.

**Problem # 5.** Whenever breaking the back causes both the legs to be paralysed, there shall be full diyat for breaking the back and two-third of the diyat for paralyzing both the legs.

**Thirteenth :** The Diyat for the Medulla (Nukhā’)

**Problem # 1.** Cutting the medulla incurs the liability for a full diyat, while the diyat of cutting part of it shall be proportionate to the area.

**Problem # 2.** Whenever cutting the medulla causes another limb to become defective, in case a diyat is specified for [the loss of damage to] that limb, its diyat shall be added to that of cutting the medulla.

In case no diyat is specified for it, its diyat shall be specified by the judge.

**Fourteenth :** The Diyat for both the two Female Breasts (Thadayān)

**Problem # 1.** There is a [specified] diyat for [cutting] both the female breasts, and for [cutting] each of them half of her diyat.

**Problem # 2.** For cutting both the breasts [of a woman] or one of them with some of the skin of the chest, there shall be a Diyat for the breast as mentioned before, and the [diyat] for the skin shall be determined by the judge.

If an injury penetrating into the interior of the chest (jā'īfa) is caused, its diyat shall also be added [to the diyat of the breast].

**Problem # 3.** If the female breast is damaged in a way that its milk is discontinued though the breast has remained intact or the flow of the milk despite being in the breast becomes difficult,
الثالث عشر: النخاع

مسألة ١. في قطع النخاع دية كاملة، وفي بعض الحساب بنسبة المساحة.

مسألة ٢. لو قطعت النخاع فيب، به عضو آخر فكان فيه الدية المقدرة يثبت مضافة إلى دية النخاع دية أخرى، وإن لم تكن فيه الدية فالحكومة.

الرابع عشر: الثديان

مسألة ١. الثديان من المرأة فيها ديتها، وفي كل واحدة منها نصف ديتها.

مسألة ٢. لو قطعتا أو قطعت واحدة منها مع شيء من جلد الصدر في الثدي ديتها بما مرت، وفي الجلد الحكمة، ولو أجاب الصدر لزم مع ذلك دية الجائفة.

مسألة ٣. لو أصب الثدي وانقضع لبها مع بقائها أو تعذر نزول اللبن مع
or there is difficulty in the flow of the milk at its time though presently it is not there, or the amount of the milk has been reduced, or it has become defective as when it becomes mixed with blood or pus, then its diiyat shall be determined by the judge.

Problem # 4. Cutting both the teats or nipples [of the breast] of a woman, it is said by the jurists that there shall be liability for diiyat, but there is some hesitation in accepting it, and there is likelihood of its determination by the judge, or its determination proportionate to its area, and the last opinion is not devoid of preference.

Problem # 5. Cutting the the nipple of a male breast entails the liability for one-eighth of the diiyat, that is one hundred twenty-five Dinârs, while cutting both the nipples [of a male breast] entails the liability for one-fourth of the diiyat. According to an opinion, there shall be the liability for a [full] diiyat for cutting both the nipples [of a male breast], but the former opinion is stronger.

Fifteenth : The Diyat for the Penis (Dhakar)

Problem # 1. For [cutting] the glans penis (hashafa) there is the liability for a full diiyat even if nothing is left out of it when it is chopped by a single stroke, without difference between the case of a young or old, minor or adult, or a eunuch (khasy) by birth, or one whose both testicles have been pulled out or crushed, etc., in case there is no reason for paralysis.

Problem # 2. If a part of the glans penis is chopped off, the diiyat for the part chopped off shall be proportionate to the area of the glans penis and not of the area of the the whole penis.

Problem # 3. If rupture is caused in the urinal passage without cutting it, its fine shall be fixed by the judge.

If a part of the glans penis is chopped off, and it should result necessarily in the rupture of the urinal passage, then there shall be nothing but the diiyat specified for cutting the glands penis.

If it is not a necessary outcome of cutting the glans penis, and the rupture is an additional offence, then its diiyat shall be determined by the judge, while the diiyat for the glans penis shall be what has already been mentioned.

Problem # 4. If a person chops off the glans penis and another or the same person by another stroke chops of the remaining part of it, there shall be a diiyat for cutting the glans penis, while the diiyat for cutting the rest of it shall be determined by the judge.

If a person cuts a part of the glans penis and another what is left of it, the liability of each of them shall be determined in proportion to the area of the glans penis chopped by them individually.

Problem # 5. If a person cuts a part of the glans penis and the other cuts the penis without leaving anything out of it, the diiyat for cutting a part of the glans penis shall be determined proportionate to the area chopped off, while there are alternatives for the diiyat of cutting the rest, namely, determination by the judge or its calculation proportionate to the glans penis and determination of the liability for what is left or full diiyat, the first being more compatible with the guiding principles and the last being according to the more cautious opinion.

Problem # 6. Cutting the penis of an impotent person entails one-third of the diiyat.

The same rule applies to cutting a paralysed penis. In cutting part of it, the liability shall be determined proportionate to its area.
لا يمكنني قراءة النص العربي من الصورة.
It is not far from likely to calculate the liability in proportion to the entire organ and not confined to the glans penis.

**Problem # 7.** If a person cuts half of the penis of another in length, without resulting in any defect in the other like paralysis or the like, there shall be a liability for half diyat. If some paralysis is caused in the rest of the penis, then there shall be liability for half of the diyat for cutting half of the penis and two-third of the diyat for the paralysis of the other half of the penis, thus being liable for a total of five-sixth of the diyat.

**Problem # 8.** In a case of cutting the penis of a mushakkal hermaphrodite or whose effeminacy is established, its diyat shall be fixed by the judge.

**Sixteenth : The Diyat for both the Testicles (Khusyatan)**

**Problem # 1.** Cutting both the testicles entails a full diyat. Whether the diyat shall be half in cutting one of the testicles, two-third for the left testicle and one-third for the right one? The second alternative is more compatible with the guiding principles, while according to the more cautious opinion, there shall two-third diyat in case of cutting the left testicle, and half in case of cutting the right one, provided both of them are chopped off in two [separate] strokes.

**Problem # 2.** There is no difference in the application of the rule between the cases of minor and adult, osld or young, one whose penis has been chopped off or otherwise, one whose penis is paralysed or otherwise, and an impotent person or otherwise.

**Problem # 3.** Causing inflammation of both the testicles entails the liability for payment of four hundred Dinars. If the inflammation causes the space between the legs to expand so that he is not able to walk, there shall be a liability for the payment of eight hundred Dinars, four-fifth of the diyat in loss of life.

**Seventeenth : The Diyat for the Female Organ (Farj)**

**Problem # 1.** Cutting the two shafrs, the two pieces of flesh surrounding the female organ as the two lips surrounding the mouth, there is the liability of its full diyat, and in case of one of them there shall be half of the diyat, irrespective of the woman being adult or minor, past child-bearing age or virgin, circumcised or otherwise, suffering from qarn*, ratq* or sound, subjected to ifdā* or otherwise.

**Problem # 2.** If the offence paralyses both the shafrs, there shall be apparently liability for two-third of its diyat. If a person cuts part of the two paralysed shafrs, he shall be liable to one-third of the diyat.

[Note. For the explanation of the terms marked with asterisk, see the Glossary at the end].

**Problem # 3.** Cutting the rākb, which is in the place of pubes [or pubic region] of a man, entails
السادس عشر: الخصيتان

مسألة 1. في الخصيتين الدية كاملة، فهل لكل واحدة نصفها أو لليسرى للثاني والليمين الثلث؟ الأوجه الثلاثين، والأحوز الثلاثين في اليسر، والنصف في اليمنى لوقعتا دفعتين.

مسألة 2. لا فرق في الحكم بين الصغير والكبير وشيخ الشاب، ومقطوع الذكر وغيره، وأصله وغيره، والعين وغيره.

مسألة 3. في أدرة الخصيتين وهي انتفاحهما أربع مئة دينار، فان فحح فلم يقدر على مشي ينفعه ففي ثمانية دينار أربعة أخماس دية النفس.

السابع عشر: الفرج

مسألة 1. في شفري المرأة أو اللحم المحيط بالفرج إحاطة الخفتين بالقمديت كاملاً، وفي إحداهما نصفها، سواء كانت كبيرة أو صغيرة، ثبًا أو بكرًا، مخلوطة أو غيرها، قرناء أو رقية أو سليمة، مفية أو غيرها.

مسألة 2. لو شلتا بالجناية فالظاهر ثلثا ديتها، ولو قطع ما بها الشلل ففيه الثالث.

مسألة 3. في الركاب وهن في المرأة وضع العانة من الرجل الحكومية قطعه
diyat to be determined by the judge, whether it is cut separately or together with the female organ. Likewise, cutting of male pubes entails diyat to be prescribed by the judge.

Problem # 4. In case of ḥumō, or 'utrumque manum naturae in altero coalescere faciens impetuos congressus', that is causing the urinal and menstrual passages to become one, there shall be the liability for her full diyat. The same shall be the diyat in causing the passage of menses and feces to become one in the same way, without there being difference in the criminal is a stranger or the husband, except in one case, and that is when it is perpetrated by the husband by performing sexual intercourse [with the wife] after her attaining adulthood, but if perpetrated before her attaining adulthood, he shall be liable to her diyat together with her dower.

Problem # 5. If the woman was forced [to have sexual intercourse] with a person other than her husband, she shall be entitled to her diyat together with her proper dower (mahr al-mithl).

If she has allowed the sexual intercourse willingly, she shall be entitled to the diyat without dower.

If she was forced while still a virgin, whether she shall compulsorily be to arsh for deflowering her in addition to the dower and diyat, is a question in which there is hesitation, and according to the more cautious opinion it is so.

Problem # 6. The dower and arsh as well as the diyat shall be payable out of the property of the culprit.

Eighteenth: The Diyat for both the Buttocks (Alyatayn)

Problem # 1. Cutting both the buttocks entails full diyat, and in case of cutting one of them there shall be the liability for half diyat.

Likewise, in case of [cutting the buttocks of] a woman, there shall be her diyat, while in case of [cutting] one of the two buttocks, there shall be the liability for half of her diyat. In case of [cutting] a part of the buttock, the diyat shall be proportionate to its area.

Problem # 2. Apparently a buttock (alyah) consists of the flesh rising between the thigh and the back ending at the bone.

If the injury does not reach the bone, then the diyat shall be proportionate to the area injured, although, according to the more cautious opinion, there shall be full diyat if the buttock is cut in a way that the cut ends at the region equidistant from the back and the thigh, although it does not reach the bone.

Nineteenth: The Diyat for both the Feet (Rijlān)

Problem # 1. Cutting both feet entails full diyat, and in case of cutting one of them there shall be the liability for half diyat. The limit of both the feet is the shin.
منفرداً أو منضماً إلى الفرج، وكذا في عاية الرجل الحكومة.

مسألة ٤ - في إفشاء المرأة ديتها كاملة: و هو أن يجعل مسلكي البول و الحيض واحداً، وكذا لو جعل مسلكي الحيض و الغائط واحداً على الأحوض في هذه الصورة، من غير فرق بين الأجنبي و الزوج إلا في صورة واحدة وهي ما إذا كان ذلك من الزوج بالوطء بعد البلوغ، و أما قبل البلوغ فعليه ديتها مع مهرها.

مسألة ٥ - لو كانت المرأة مكرهة من غير زوجها فلها مهر مثل مع الدية، ولو كانت مطاوية فلها الدية دون المهر، ولو كانت المكرهة بكراً هل يجب لها أرس البكارة زائدة على المهر والدية؟ فيه تردد، والأحوض ذلك.

مسألة ٦ - المهر و الأرش على القول به في ما له، و كذا الدية.

الثامن عشر: الألبان

مسألة ١ - في الألبان الدية كاملة، وفي كل واحدة منها نصفها، و كذا في المرأة ديتها، وفي كل واحدة منها نصف ديتها، وفي بعض كل منها بحساب المساحة.

مسألة ٢ - الظاهرة أن الألبان عبارة عن اللحم المرتفع بين الفخذ و الظهر حتى انتهى إلى العظم، فلو لم يبلغ العظم فالظاهرة الحساب بالمساحة، و إن كان الأحوض الدية في القطع بتحوينتها إلى مساواة الظهر و الفخذ و إن لم يصل إلى العظم.

التاسع عشر: الرجلان

مسألة ١ - في الرجلين الدية كاملة، وفي كل منها نصفها، و حدها مفصل الساق.
Problem # 2. The discussion here is the one in case of [cutting] both the hands whether the cut should be accounted for from the joint of the pubic region or from the root of both the thighs, as well as the diyat in case of cutting one of them, and cutting part of the shin with its joint.

The same rule shall apply in case of cutting from the joint of the shin in one person and cutting a part of the shin in another. In both the cases the rule shall be the same.

Problem # 3. In [cutting] the fingers of both the feet separately, there shall be the liability for full diyat, and in cutting each of them its one-tenth.

The diyat of each finger is divided equally into three knuckles, except in case of the toe that is divided into two knuckles.

Problem # 4. The rule in case of an extra foot is similar to that of an extra hand, as also in case of the fingers.

Twentieth : The Diyat for the Ribs (Aḍlāʾ)

Problem # 1. It has been said in Ŗārif b. Nāṣih’s book: “The diyat for breaking each of the ribs linked with the heart shall be twenty-five Dinārs’ until where he says: “in case of the ribs adjacent to the two upper arms the diyat for [breaking] each of them shall be ten Dinārs.”

The (Shi’a) jurists have given their verdict according to contents of this opinion, and there is no objection in it.

It is, however, not clear what he means by it, whether he means the ribs lying between the side adjacent to the heart and the side adjacent to the upper arm, or between the rib covering the heart and other than it, or the distance between the ribs in the side of the chest and the fore part and other than it which lies adjacent to the two upper arms up to the back.

It is likely that there has been some distortion, and the original words were: “in case of what covers the heart”, meaning what protects and guards it, or the original words were: “the ribs that surround the heart”.

According to the stronger opinion, in case of the ribs that surround the heart on the left side the diyat for [breaking] each of them shall be twenty-five Dinārs.

In case of others, however, caution for reaching a compromise must not be given up, particularly in respect of those that are adjacent to those surrounding the heart on the right side, though to declare that [diyat of] more than ten Dinārs is not necessary in case of other than the surrounding rib is not devoid of closeness to the traditional authority.
مسألة 2: البحث هنا كالبحث في اليدين في القطع من مفصل الركبة أو من أصل الفخذين، وفي كل واحدة منها، وفي قطع بعض الساق مع مفصله، وكذا في قطع شبه القاطع من مفصل الساق وآخر بعض الساق، فالكلام فيها واحد.

مسألة 3: في أصابع الرجلين منفردة ذية كاملة، وفي كل واحدة منها عشرة، وديّة كل إصبع مقسمة على ثلاث أنابيب بالسوية إلا الابناء فإنها مقسمة فيها على اثنين.

مسألة 4: الكلام في الرجل الزائدة كالكلام في اليد الزائدة، وكذا في الأصابع.

العشرون: الأضلاع

مسألة 1: عن كتاب ظريف بن ناصح: "و في الأضلاع فيا خالط القلب من الأضلاع إذا كسر منها ضلع فديته خمسة وعشرون ديناراً. إلى أن قال: و في الأضلاع مابلي العضدين دية كل ضلع عشرة دنانير إذا كسر" و بضمونه أفي الأصحاب، ولا بأسب ذلك، لكن لم يظهر الراد منه، فهل التفصيل بين الجانب الذي يلي القلب و الجانب الذي يلي العضد أو التفصيل بين الضلع الذي يحيط بالقلب وغيره أو التفصيل بين الأضلاع في جانب الصدر والقدم وغيرها ممايلي العضدين إلى الخلف؟ و يحتل التصحيف و كان الأصل "في حاط القلب" من حاطه يحوطه: أي حفظه وحرسه، أو كان الأصل "في أحاط بالقلب" إلا الأقوال في الأضلاع التي تحيط بالقلب من الجانب الأيسر في كل عنها خمسة وعشرون، وأما في غيرها فالاحياء بالصلح لا يترك سيا بالنسبة إلى ما يجاور المحيط بالقلب في جانب الأيمن، وإن كان القول بعدم وجوب الزائد على عشرة دنانير في غير الضلع المحيط لا يخلو من قرب.
Twenty-first: The Diyat for the two Clavicles (Tarqūwatayn)

Problem # 1. [Breaking] both the Clavicles, or collar-bones (tarqūwah), entails the liability for diyat. In case of breaking one of them and then repairing it in a way that there is no defect left in it, there is the liability for payment of forty Dinārs.

Problem # 2. [Breaking] one of the clavicles, or collar-bones, when it is not repaired, apparently entails half diyat. If, however, it is repaired but still there is defect left in it, even then, according to the more cautious, though not stronger, opinion, the same shall be the liability. It is said by some jurists that in both cases the diyat is to be determined by the judge.

CONCLUSION

Subsidiary Rules relating to Diyat for Parts of Body

First. If the coccyx (‘usus or ‘usus), [triangular bone of the vertebral column of a person is broken in a way that he loses the control of the excretion of feces, the culprit shall be liable to the payment of full diyat. Coccyx is the hip bone or ‘usus, that is, the tail bone or the tender bone around the anus. In case, as a result of the offence], the victim is able to control the excretion of feces, but is not able to control the emission of fart, then apparently its diyat shall be determined by the judge.

Second. If a person hits the perineum (‘ajān), [the lower part of the body between the genital organs and the rectum], of another as a result of which he is not able to urinate or excrete feces, he shall be liable to full diyat. Perineum lies between both the testicles and the circle of anus. If he is able to either of them, but not the other, the liability of the diyat is not far from being likely in it too. There is also likelihood of the determination of the diyat by the judge, but it is more cautious to reach compromise. If the person hits other than the perineum as a result of which the victim loses the ability to urinate and excrete feces, apparently he shall be liable to the diyat. If the victim loses the ability of one of them, there shall be likelihood of determination of the fine by the judge and the payment of the diyat, though it is more cautious to reach compromise.

Third. In case of breaking the bone of any limb the diyat of which is prescribed, the culprit shall be liable for the payment of one-fifth of the diyat of that limb. If it is cured without leaving any defect, he shall be liable to pay four-fifth of the diyat for breaking that limb. In case of Mūdiha, [or an injury affecting the whole flesh, penetrating through the thin skin covering the bone, and making the bone visible], there shall be alibility for one-fourth of the diyat of breaking it. In case of crushing the limb, the culprit shall be liable to pay one-third of the diyat of that limb if it is not cured. In case, if he is cured without leaving defect, then the culprit shall be liable to pay four-fifth of the diyat of crushing that limb. In case of separating it from the limb in a way that it ceases to work, there shall be two-third of the diyat of that limb. If it is cured without leaving any defect, the culprit shall be liable to pay four-fifth of the diyat of that limb. All that has been mentioned here is according to the prevalent opinion, though in such cases it is more cautious to reach compromise.
الواحد والعشرون: الترقية

مسألة 1 - في الترقوتين الدية، وفي كل واحدة منها إذا كسرت فجبرت من غير عيب أربعون ديناراً.

مسألة 2 - لو كسرت واحدة منها ولم تبرأ فالظاهر أن فيها نصف الدية، ولو برأت معيوباً فكذلك على الأحوط، لو لم يكن الأقوى، وقيل فيها بالحكومة.

خاتمة وفيها فروع:

الأول - لو كسر بخصوص شخص فلم يملك غائطه ففه الدية كاملة وهو إما عظم الورك أو العصعص: أي عجب الذنب أو عظم دقيق حول الدبر، وإذا ملك غائطه ولم يملك ريحه فالظاهر الحكومة.

الثاني - لو ضرب عجبنه فلم يملك بوله ولا غائطه ففه الدية كاملة، وعمج ما بين الخصيتين وحلقة الدبر، ولوملك أحماها ولم يملك الآخر فلا يبعد فيه الدية أيضاً، ويجمل الحكومة، والأحوط التصالح، ولو ضرب غير عجبنه فلم يملكها فالظاهر الدية، ولم يمل أحماها فيحمل الحكومة والدية، والأحوط التصالح.

الثالث - في كسر كل عظم من عضوه لمقدر خمس دية ذلك العضو، فإن جبر على غير عيب فأربعة أخاس دية كسره، وفي موضحته ربع دية كسره، وفي رضه ثلاث دية ذلك العضو إلا لم يبرأ، فإن بأ على غير عيب فأربعة أخاس دية رضه، وفي فكه من العضو حيث يتعطل ثلاثة دية ذلك العضو، فإن جبر على غير عيب فأربعة أخاس دية فكه، كل ذلك على قول مشهور، والأحوط فيها التصالح.
Fourth. If a person exercises pressure, [by a foot, etc.], on the belly of another until the victim urinates or excretes feces, the belly of the culprit shall be brought under pressure till he urinates or excretes feces or the culprit shall be liable to pay one-third of the diya\textsuperscript{t}. Apparently it is the liability in case the victim urinates or excretes feces, but in case he emits fart, the fine for it shall be prescribed by the judge.

Fifth. Breaking the hymen (\textit{iḍlā‘}) of a virgin with the help of a finger, that causes laceration of her vesica [or urinal bladder] as a result of which she loses the control of urination, there shall be the liability for payment of her diya\textsuperscript{t} and her proper dower (\textit{mahr al-mīthl}).

Second Discourse – Offences against Human Senses (\textit{Manāfī‘})

This offence takes place in the following cases.

First: The Diya\textsuperscript{t} for the Loss of Human Reason

In case of an offence against the human reason, there shall be the liability for full diya\textsuperscript{t}. In case of damaging it there shall be the liability for arsh, but there shall beno liability for Qisās in case of the loss of reason or damaging it.

Problem \# 1. In case of causing loss of or damage to the reason, there shall be no difference between its cause in both cases being a blow on the victim’s head or some thing else or between those causes. So if a person terrifies another until it causes loss of the victim’s reason, the culprit shall be liable to full diya\textsuperscript{t}. So also in case the person brings the victim under the spell of magic.

Problem \# 2. If a person commits an offence against another, as when he breaks the victim’s head, or cuts his hand, resulting in the loss of the victim’s reason, the diya\textsuperscript{t} of both the offences shall not be included in that of each other. An authentic Tradition says that in case it happens by a single blow, the diya\textsuperscript{t} of both the offences shall be included in each other, but our jurists have discarded it. In spite of that caution is better by reaching compromise.

Problem \# 3. If the loss of reason is caused by an offence, and the payment of the diya\textsuperscript{t} has been made, then the reason is restored, there is hesitation in returning the diya\textsuperscript{t} to the culprit, though it is more compatible with justice to refer the matter for the determination of the fine by the judge.

Problem \# 4. If the culprit and the victim’s vali differ on the loss or damage to reason, then the matter shall be referred to the medical experts, and, according to the more cautious opinion, it is a condition that they must be several in number and must also possess moral integrity. He may also be tested for getting knowledge about his condition at the time of his solitude and inattentiveness. If the derangement is established, well and good. But if the matter does not become clear neither by the medical experts due to their difference, for example, nor by the test or examination, then the word of the culprit shall be entertained, when followed by his oath.

Second: The Diya\textsuperscript{t} for the Loss of Sense of Hearing

In case of causing the loss of the sense of hearing from both the ears together, there shall be the liability of payment of full diya\textsuperscript{t}, and in case of loss of sense of hearing from one ear, there shall be half diya\textsuperscript{t}. 
الملخص الثاني في الجناية على المنافق

وهي في موارد:

الأول - العقل، وفيه الدابة كاملة، وفي نقصانه الأرش، ولا قصاص في ذهابه ولا نقصانه.

مسألة 1 - لا فرق في ذهابه أو نقصانه بين كون السبب فيها الضرب على رأسه أو غيره و بين غير ذلك من الأسباب، فلو أفزعه حتى ذهب عقله فعليه الدية كاملة وكذا لو سحره.

مسألة 2 - لو جنى عليه جنابة كا شج رأسه أو قطع يده فذهب عقله لم تدخل دية الجنایتين، وفي رواية صحيحة إن كان بضربة واحدة تداخلت، لكن أعرض أصحابنا عنها، ومع ذلك فالاختياف بالتصالح حسن.

مسألة 3 - لو ذهب العقل بالجناية و دفع الدنيا ثم عاد العقل في ارجاع الدية تأمل، وإن كان الارجاع والرجوع إلى الحكومة أشبه.

مسألة 4 - لو اختلف الجاني و ولي المجنى عليه في ذهاب العقل أو نقصانه فالمراجع عاهل الخبرة من الأطباء، يعتبر التعدد والعدالة على الأحوزة و يمكن اختباره في حال خلوته ومعقلته، فإن ثبت اختلاله فهو، وإن لم يتضح لا من عاهل الخبرة لاختلافهم مثلًا ولا من الاختبار فقل قول الجاني مع اليمين.

الثاني - السمع، وفي ذهابه من الأذنين جميعاً الدنيا، وفي سمع كل أذن
Problem # 1. There shall be no difference in the establishment of the half diyat whether one of the two ears is sharper than the other or not. If the power of hearing one of the ears has been lost due to Act of God, offence, ailments, etc., in case of loss of power of hearing of the other ear there shall be half of the diyat.

Problem # 2. If it comes to knowledge that the power of hearing shall not return or it is proved by the testimony of the medical experts, the liability for payment of diyat shall be established. If the medical experts hope that it shall return after the usual time, the victim should wait till the expiry of the expected time, then if [after the expiry of the expected time], it does not return, the diyat shall be confirmed. If it is restored before the payment of diyat, then there shall be liability for arsh. But if it is restored after payment of diyat, then, according to the stronger opinion, the diyat shall not be returned [to the culprit]. If the victim dies before receiving the diyat, then, according to the opinion closer to traditional authority, the culprit shall have to pay the diyat [to the heirs of the victim].

Problem # 3. If a person cuts both the ears of another, resulting in the loss of the sense of hearing, the culprit shall be liable to two diyats. If the culprit commits another offence resulting in the loss of power of hearing, he shall be liable for diyat of the offence and the loss of power of hearing. If he cuts one of the ears, resulting in the loss of entire power of hearing from both the ears, he shall be liable for one and a half diyats.

Problem # 4. If the medical experts testify that there has been no loss of hearing, and some defect has occurred in its passage which obstructs hearing, apparently diyat shall be established, not fine to be determined by the judge. When a child becomes dumb as a result of becoming deaf, then apparently the culprit shall be liable to the fine to be determined by the judge in addition to the diyat [for causing the loss of hearing].

Problem # 5. If the culprit denies the loss of victim's hearing, or says that he does not know that the victim is truthful in his claim [of loss of hearing], the victim's position shall be at the time of loud sound, strong thunder or by shouting when he is not attentive. Then if the victim claims is established, he shall be given the diyat. It is also possible to refer the matter to the experts and medical speciast in hearing if they are reliable. It is more cautious that they should be numerous and having integrity of character. If the [actual] position does not become clear, the victim shall be asked to go through the process of Qasama [the required number of oaths] due to lawth, and judgement shall be given in his favour.

Problem # 6. If a victim claims the loss of hearing of one of the ears, it is shall be tested with the help of the other ear, and the diyat shall be determined in proportion to the difference. The method of testing is that the defective ear shall be closed tightly and the sound ear shall be left fully open, a bell, for example, shall be rung before him, and he shall be asked to listen to it. The place from where he is not able to hear, it shall be marked out. Then it shall be rung behind him, until the place from where it is not heard, which is also marked out. If the distance between both the places marked is equal, he shall be declared truthful, otherwise a liar. The more cautious and better method is the repetition of the same act on his left and right sides. Then the sound ear is to be closed tightly and the defective ear is to be let fully open. Then the bell shall be rung from his front and find out the place from where the sound is not heard by
نصف الديئة.

مسألة ١ - لا فرق في ثبوت الديئة بين كون إحدى الأذنين أخذ من الأخرى أم لا، ولو ذهب سمع إحداهما بسبب من الله تعالى أو جناية أو مرض أو غيرها في الأخرى النصف.

مسألة ٢ - لو علم أحد السمع أو شهد أهل الخبرة بذلك استقرت الديئة، وإن أهل الخبرة العود بعد مدة متعارةفة يتوقع انقضاؤها فإن لم يسع الاستقرت، ولو عاد قبل أخذ الديئة فالأركش، وإعاف بعده فالأقوى أنه لا يرتعج، ولو مات قبل أخذها فالأقرب الديئة.

مسألة ٣ - لو قطع الأذنين ذهب السمع به فعليه الديتان، ولو جنى عليه بجناية أخرى ذهب سمعه فعليه دية الجناية و السمع، ولو قطع إحدى الأذنين ذهب السمع كله من الأذنين فديئة ونصف.

مسألة ٤ - لو شهد أهل الخبرة بعدم فساد القوة السامة لكن وقع في الطريق نقص حجبها عن السماء فالظاهرة ثبوت الديئة لا الحكومة، وإن ذهب بسمع الصبي فتعطل نطقه فالظاهرة بالنسبة إلى تعطل النطق الحكومة مضافاً إلى الديئة.

مسألة ٥ - لو أنكر الجاني ذهب سمع المجني عليه أو قال لا أعلم صدقه اعتبرت حاله عند الصوت العظيم والرد العظيم وصيحه بعد استغفاله، فإن تحقق ما أدعاه أعطي الديئة، ويمكن الرجوع إلى الحذاقة والمختصمين في السمع مع الثقة بهم، والأحوال المتعددة والعدالة، وإن لم يظهر الحال أحلف القصامة للوث وحكم له.

مسألة ٦ - لو ادعى نقص سمع إحداهما قيس إلى الأخرى، وترمز الديئة بحساب التفاوت، وطريق المقايضة أن تسد الناقصة سداً شديداً وتطلق الصحية وضربه بالحواس مثل حياً وجهه ويعال له: اسمع فإذا ذكر الصوت عليه علم مكانه ثم يضرب به من خلفه حتى يحكي عليه فيعلم مكانه، فإن تساوي السافتان فهو صادق و إلا كاذب، والأحوال الأولى تكراز العمل في
him, and the same act shall be repeated as was previously done with the sound ear. Then the proportion between the sound and defective ears shall be determined, and the *arsh* shall be paid accordingly. It is indispensable for pursuing the method that the wind should not be blowing fast and the calculation should not be made in strong wind. So also the exercise must be done in temperate places.

**Third:** The *diyat* for the Loss of Sight

In case of causing the loss of sight of both the eyes, there shall be liability for the full *diyat*, and in case of the loss of sight of one of them, it shall be half.

**Problem # 1.** There is difference [in the liability of the *diyat*] in persons having various kinds of eyes, whether having a sharp sight or otherwise, even he is a squinting one, or nyctalopic [or night-blind], or one having whiteness in his eyes without obstructing his sight, or *'amshā* [one suffering from the disease in which the patient’s eye waters most of the time] but able to see.

**Problem # 2.** If a person pulls out the eye-socket of another, he shall be liable to a single *diyat*, and the sight shall be inclusive. If the culprit has committed some other offence too, as when he has broken the victim’s head resulting in the loss of the victim’s sight, the culprit shall be liable to the *diyat* of the offence [of breaking the head] as well as the *diyat* for causing the loss of sight.

**Problem # 3.** If the eye is [apparently] intact, but the victim claims to have lost sight, but the culprit denies it, the matter shall be referred to the medical experts. If two of them having integrity of character or one man and two women testify [to what is claimed by the victim], the *diyat* shall be established. If they say that there is hope of restoration of the sight, the *diyat* shall be confirmed. If they express the hope of restoration of the sight, without specifying its period, the *diyat* shall be paid [to the victim]. If they claim that its restoration shall take place in the usually specified time, but it also elapses, but the sight is not restored, the *diyat* shall be established.

**Problem # 4.** If the victim expires before the expiry of the prescribed period, the *diyat* shall be duly established. The same shall be the case if some other person pulls out the victim’s eye. Of course, if the restoration of the victim’s eye-sight is established, and then his eye is pulled out, then apparently there shall be the liability for the payment of *arsh*, as when the eye-sight is restored before the payment of the *diyat*, there shall be the liability for the payment of *arsh*. But if it takes place after the payment of the *diyat*, it shall not be returned [to the culprit].

**Problem # 5.** If both the parties differ as to the restoration of the eyesight, the word of the victim shall be accepted.

**Problem # 6.** If the victim claims to have lost the eyesight, while his eye is [apparently] intact, but there is no evidence of the medical experts [in its favour], the judge shall ask the victim to go through the process of *Qasamāh*, and give judgement in his favour.

**Problem # 7.** If the victim claims that the sight of one of his eyes has become weak, it shall be compared with that of the other, and the *diyat* shall be paid proportionately after the victim has gone through the process of *Qasāma* for the sake of clearance or confirmation. If the victim claims that the
المقصد الثاني في الجناية على المنافع
العين واليسار أيضاً، ثم تسد الصحيحا سداً جيداً وتطلق الناقصة فيضرب
بالجرب من قدمه ثم يعلم حيث يخفي الصوت يصنع بها كما صنع بأذنه
الصحيفة أولاً، ثم يقس يمن الصحيحا والمعتلة فيعطي الأشرب يحسبه ولا بد
في ذلك من توخي سكون الهواء ولا يقس مع هوب الرياح، وكذا يقس في
المواضع المعتدلة.
الثالث - البصر، وفي ذهاب الابصار من العينين الدنيا كاملة، ومن
إحداهما نصفها.

مسألة 1 - لا فوق بين أفراد العين المختلفة حديثها وغيره حتى الحولاء و
الطعوة والذي في عينه يياض لا يمنع عن الابصار والعمشاء بعد كونها باصرة.

مسألة 2 - لو قل الحدقة فليس عليه إلادية واحدة و يكون الابصار تبعا لها،
ولو قل عليه بغير ذلك كما لو شج رأسه فذهب إبصاره عليه دية الجناية مع دية
الابصار.

مسألة 3 - لو قامت العين بحالها و أدعى المجني عليه ذهاب البصر وأنكر
البيني فالرجع أهل الخبرة، فان شهد شاهدان عدلان من أهلها أو رجل و
امرأة تثبت الدنيا، فان قال لا يرجى عوده استقرت، ولوقال يرجى العود من
غير تبين زمان تؤخذ الدنيا، وإن قال بعد مدة معينة متعارفة فانقضت ولم يعد
استقرت.

مسألة 4 - لومات قبل مضي المدة التي أجلت استقرت الدنيا، وكذا لو قل
آخر عيبه، نعم لو ثبت عوده فقلعت فالظاهر الأشرب، كما أنه لو عاد قبل استيفاء
الديه عليه الأشرب، وأما بعده فالظاهر عدم الارتجاع.

مسألة 5 - لو اختفت في عوده فالقول قول المجني عليه.

مسألة 6 - لو أدعى ذهاب بصره وعينه قابلة ولم يكن بيئة من أهل الخبرة
أحلف بالحاكم القسمة وقضى له.

مسألة 7 - لو أدعى نقصان إحداهما قيسا إلى الآخرين و أخذ الدنيا بالنسبة
sight of both his eyes has become weak, it shall be compared with that of his equals in age, and the culprit shall be bound to pay the difference after the victim has gone through the process of Qasāmah for the sake of confirmation, except when there is knowledge about the veracity of the victim's claim, in which case the condition of going through the process of Qasāmah shall be set aside.

**Problem # 8.** The method of comparison here is the same as it was in case of the loss of hearing. So the sound eye is tightly closed, and a person holds an egg, for example, and goes farther until the victim says that he ceases to see the egg. The place shall be marked out. The same shall be done in the other direction or all the four directions. If the distance is found equal, he shall be declared truthful, otherwise a liar. Supposing him to be truthful, the injured eye shall be tightly closed and the sound eye shall be left wide open. It shall also be tested from two directions or all the four directions, and the diyat shall be charge in proportion to the difference between the sight of the two eyes. This same method shall be applied even in case the victim claims that his both eyes have been affected and says that both of them have become weak, but then the eyes of the victim shall be tested in comparison with the sound eye of his equals in age.

**Problem # 9.** At the time of test and comparison the directions shall be taken into consideration as regards the high or low amount of light and the land as regards its height or depth. It shall not take place where the position is not known. Nor shall it take place on a cloudy day.

**Fourth : The Diyat for the Loss of Power of Smelling (Shamm)**

In case of causing the loss of the power of smelling of both the nostrils, there shall be liability for full diyat, and in case of one of the nostrils, it shall be half, though there is hesitation in case of the latter. So caution must not be given up.

**Problem # 1.** If the victim claims loss of the power of smell and the culprit denies it, it shall be tested unawares by means of strong and burning [or stringing] odours. If truth is established, diyat shall be charged [from the culprit]; otherwise, the victim shall have to go through the process of Qasāima for the sake of clearance of the position, and the judgement shall be given in favour of the victim's claim. In our present time, if it is possible to establish the position by means of modern implements, the matter shall be referred to the experts with the condition of their being numerous and having integrity of character by way of precaution. After their evidence has been adduced, action shall be taken accordingly.

**Problem # 2.** If the victim claims that his power of smell has become weak, then if it is possible to establish the actual position by means of the modern implements and the testimony of two witnesses having integrity of character from among the medical experts, well and good. Otherwise, it is not far from resorting to confirming or clearing the position by going through the process of oaths, and the judge shall give the judgement as he deems advisable for imposing fine.

**Problem # 3.** It is possible to establish the amount of defect by test and comparison with the power of smell of the victim's equals in age, as already mentioned under the loss of sight and hearing, it shall not be far from following it.

**Problem # 4.** If the power of smell is regained before the payment of the diyat, there shall be fine to be determined by the judge. But if it is regained after the payment of the diyat, then there shall be
بعد المسأله استظهراً، و لو ادعى نقصانها فليستاً إلى من هو من أبناء سنه، و ألمز الجاني التفاوت بعد الاستظهار بالأيمان إلا مع العلم بالصحة، فسقط الاستظهار.

مسألة 8 - طريق المقايسه ها هنا كما في السمع، فتشدد عينه الصحيحة و يأخذ رجل ببيضة مثلاً، و يبدع حتى يقول الجنين عليه ما أبصرها فيعلم عنده ثم يعتبر في جهة أخرى أو الجهات الأربع فان تساوت صدقه، و إلا كذب، و في فرض الصدق تشدد المصابه و تلقع الصحيحة فتعتبر بالجهتين أو الجهات و يخذ من الدية بنسبة التقصان، و هذه المقايسة جارية في إصابة العينين و دعوى نقصانها، لكن تعتبر مع العين الصحيحة من أبناء سنه.

مسألة 9 - لا بد في المقايسة من ملاحظة الجهات من حيث كثرة النور و قلته و الأراضي من حيث الارتفاع و الانخفاض، فلا تقاس مع ما يمنع عن المعرفه، و لا تقاس في يوم غيم.

الربع - الشم، و في إهابه عن المنخرتين الدية كاملة، و عن المنخر الواحد نصفها على إشكال في الثاني، فلا يترك الاحتياط بالتصالح.

مسألة 1 - لو ادعى ذهابه و أنكر الجاني امتحن بالروائح الحادة و الحرقه في حال غفلته، فان تحقق الصدق تؤخذ الدية، و إلا فليست yok على القياس و يقضى له، و إن أمكن الاستكشف في زماننا بالوسائل الحديثة يرجع إلى أهل الخبرة مع اعتبار التعدد و العدالة احتياطاً، فمع قيام البيئة يعمل بها.

مسألة 2 - لو ادعى نقص الشم فان أمكن إثباته بالآلات الحديثه و شهادة العدل من أهل الخبرة فهو، و إلا فلا يعد الاستظهار بالأيمان، و يقضي بما يراه الحاكم من الحكومة أو الأرش.

مسألة 3 - لو أمكن إثبات مقدار النقص بالامتحان و المقايسة بشامة أبناء سنه كما في البصر و السمع لا يعد الصلاح.

مسألة 4 - لو عاد الشم قبل أداء الدية فالحكومة، و لو عاد بعد ففيه إشكال.
hesitation, which can be removed by reaching a compromise. If the victim expires before the expiry of the period and restoration of the power of smell, the diyat shall be established.

Problem # 5. If a person cuts the nose of another resulting in the loss of smell as well, then the culprit shall be liable to two diyats. The same shall be the case if he commits an offence resulting in the loss of power of smell. The culprit shall be liable to the diyat for the offence in addition to the diyat for the loss of power of smell. In case there is no diyat for it, then the culprit shall be liable to a fine to be determined by the judge.

Fifth : The Diyat for the Loss of Sense of Taste

It has been said by the jurists that there is the liability of [full] diyat in causing the loss of the sense of taste. Although it is not far from being likely, yet according to the opinion closer to the traditional authority, in it there is the liability for fine to be determined by the judge.

Problem # 1. If it is possible to diagnose it by means of the modern implements, the matter shall be referred to two witnesses having integrity of character from among the medical experts; otherwise, if the two parties differ, and there is no sign indicating lawth, then the word of the culprit shall be entertained, and in case it is acquired, his word shall be followed by going through the process of oaths for the sake of confirmation.

Problem # 2. If the loss of the sense of tastes is established, the matter shall be referred to the judge so that he may root out the bone of contention by means of compromise or his judgement, though it is more cautious for both the parties to reach a compromise.

Problem # 3. If a person cuts the tongue of another, there shall be nothing but the liability for the diyat for cutting the tongue. and the loss of sense of taste shall be attached to it. If a person commits some offence against another resulting in the loss of taste as well, then the liability for causing the loss of taste is already understood, but there shall also the diyat for committing the offence, and in case its diyats is not prescribed, its fine shall be prescribed by the judge.

Problem # 4. If a person commits an offence at the place of growth of the beard resulting in his loss of ability to chew anything, then the fine shall be prescribed by the judge, though some jurists are of the opinion that there shall be the liability for the payment of diyat.

Problem # 5. If the sense of taste is regained, the diyat shall be turned to the culprit, though it is more cautious to reach a compromise.

Sixth : [Diyat for Loss of Capacity related to Sex]

It is said by some jurists that if a person is subjected to an offence resulting in the loss of capacity of seminal discharge, there shall be the liability for diyat. The same shall be the case if the victim loses the capacity to make a woman pregnant. Likewise, the same shall be the case if the victim loses the capacity for enjoyment of sexual intercourse. But there is hesitation in all these cases, and according to the opinion closer to the traditional authority, there shall be liability for a fine to be determined by the judge. Of course, in case of loss of capacity to have sexual intercourse, caution must not be given, that is in case of the offence being a cause for inducing the loss of capacity of performance of actual sexual intercourse and non-elevation of the male organ.

Seventh : [Diyat for Causing Incontinence of Urine]

In case of causing incontinence of urine, according to the stronger opinion, there shall be liability for full diyat provided the blemish is of a permanent nature. According to the more cautious opinion it
لا بد من التخلص بالتصالح، ولموات قبل انقضاء المدة ولم يعد فالدلية ثابتة.

مسألة 5 - لو قطع الأنف فذهب الشم فديتان، وكذا لو جني عليه جنية ذهب بها الشم فعله مع دية ذهابه دية الجنياية، ولو لم يكن لها دية مقدمة فالفحكومة.

الخامس - الذوق، قيل: فيه الدية، وهو وإن لم يكن بعيداً لكن الأقرب في الفاحكومة.

مسألة 1 - لو أمكن التشخيص بالوسائل الحديثة يرجع إلى شاهدين عدلين من أهل الخبرة، وإلا فإن أخطأ و لا أمانة توجب اللوث فالقول قول الجاني، ومع حصوله يستهان بالآي، والآي.

مسألة 2 - لو تحقق النقصان يرجع إلى الحاكم ليحسم مادة النزاع بالتصالح أو بالحكم والأحوص منها التصالح.

مسألة 3 - لو قطع لسانه ليس إلا الدية لللسان، و الذوق تبع، ولو جني عليه جنية أخرى ذهب بذوقه في الذوق ما عرفت وفي الجنياية ديتها، ولو لم يكن دية مقدمة فالسومة.

مسألة 4 - لو جني على مغرس حبيته فلم يستطيع المضد فالسومة، وقيل بالدية.

مسألة 5 - وعاد الذوق تستعاد الدية والأحوص التصالح.

السادس - قيل: لو أصيب بنزاع فتعذر عليه الالزاح ففي الدية، وكذا لو تعرض عليه الإجاح، وكذا لو تعذر عليه الالزاح بالجماع، وفي الجميع إشكال، والأقرب السومة، فنعم لا يترك الاحتفاظ في انقطاع الجموع أي تكون الجنياية سبباً لانقطاع أصل الجموع وعدم نشر الآية.

السابع - في سلس البول الدبة كاملة إن كان دائمًا على الأقوى، والأحوص ذلك إن دام تمام اليوم كأ أن الأحوص فياً كان إلى نصف النهار ثلثاً الدية و إلى ارتفاعه ثلاثة، وفي سائر أجزاء الزمان السومة، والمراد من الدوام أو تمام اليوم
shall entail the liability for full diyat if the incontinence continues throughout the day, as there shall be the liability for two-thirds of the diyat in case it continues half of the day, and if it continues till the dawn of the day, there shall be the liability for one-third of the diyat. In case of continuance of incontinence in other divisions of time, there shall be liability for fine to be determined by the judge. By continuance, or throughout or part of the day is meant its being so in all the days. If it is so in a few days and subsequently it is cured, there shall be the liability for fine to be determined by the judge.

Eighth : The Diyat for the Loss of Sound [and Speech, etc.]
In case of causing the loss of sound entirely there shall be the liability for full diyat. When a defect is caused in the sound, as speaking through the nose or the sound becoming hoarse or husky. By loss of sound is meant the inability of a person to speak loudly. It does not negate his ability to speak slowly.

Problem # 1. If a person commits an offence against another causing his total loss of sound and speech, he shall be liable to two diyats.

Problem # 2. If a person loses the ability to pronounce some alphabets, but is able to pronounce others, there may be the likelihood of liability for fine to be determined by the judge, and there is also likelihood of distributing the fine [among the letters that he cannot pronounce] as has already been mentioned under the loss of the speech itself, and it is more cautious to reach compromise.

Problem # 3. In case of an offence causing loss of some gifts of nature for which no diyat has been specified, its fines shall be determined by the judge, as sleep, sense of tough, occurrence of fear, tremour, thirst, hunger, unconsciousness or various kinds of diseases.

Problem # 4. Arsh and hukūmah meaning arsh take place only in cases where there is deficiency in the price when the damaged part is compared with the sound one, so the amount of difference between the two is called arsh and hukūmah in the same meaning. If it is supposed to be used in a case where the offence does not cause a deficiency in this meaning, nor its fine is prescribed by law, as when a person cuts the extra finger of another, or commits an offence against another causing deficiency in his sense of smell, while there is no difference in evaluation between the subject of offence and otherwise, in such case it is indispensible for hukūmah to carry a different meaning and that is hukūmah of the judge by which he removes the bone of contention by bringing about compromise between the parties or determine something in view of the exigency or imposing some taʿzir.

Third Discourse – Injury to Head & Face (al-Shijāj wa al-Jirāh)
Al-Shijāj is the plural of shujja meaning an injury especially to the head; it is said that it is also applied to the injury to the face. When head and face are governed by the same law, there is no use in the difference of meaning.
أو بعضه هو كونه كذلك في جميع الأيام، وإن صار كذلك في بعض الأيام ورأى
فيه الحكومة.

الثامن - في ذهاب الصوت كله الدية كاملة، وإذا ورد نقش علي الصوت
كما غن أو يع ففالظاهر الحكومة، والمراد بذهاب الصوت أن لا يقدر صاحبه على
الجهر، ولا ينأ في قدرته على الاخفات.

مسألة 1 - لو جنى عليه فذهب صوته كله ونطقه كله فعليه الديتان.
مسألة 2 - لو ذهب صوته بالنسبة إلى بعض الخروج ونقي بالنسبة إلى بعض
يحمل فيه الحكومة، ويعمل التنزيع كما مر في أصل التكلم، والأحوز
الصالح.

مسألة 3 - في ذهاب المنافع التي لم يقدر لها دينية الحكومة، كالنوم ولبس
وحصول الخوف والرعشة والجوع والعشوة وحصول الأمراض على
أصنافها.

مسألة 4 - الأشر والحكومة التي يعنه أنما يكون في موارد لو قيس المعيب
بالصحيح يكون نقش في القيمة، فقدار التفاوت هو الأشر والحكومة التي
بمعبده، وألما لو فرض في مورد لا توجب الجناية نقشًا بهذا المعنى ولا تقدير له في
الشرع كما لو قطع إصبعه الزائدة أو جنى عليه ونصب شمه ومكان في التقوم
عين مورد الجناية وغيره ففرق فلابد من الحكومة بمعنى آخر، وهي حكومة القاضي
ما يجمع مادة النزاع إذا بالأمر بالتصالح أو تقديره على حسب المصالح أو
تغزيره.

المقصد الثالث في الشجاعة والجراح

الشجاعة بكسر الشين جمع الشجة بفتحها، وهي الجراح المخصصة بالرأس و
قبل نطق على جراح الوجه أيضاً، ولا ثمرة بعد وحدة حكم الرأس والوجه، و
There are several kinds of *al-Shijāj.*

**First – Al-Ḥāriṣah.** It is an injury in which the skin is scratched without the flow of blood, entailing the liability for a camel. According to the stronger opinion, it is an injury other than *al-Dāmiyah,* as regards the subject and the law. This kind of injury and the other similar injuries are treated at pari in case of a male and female as well as as a minor and an adult.

**Second – Al-Dāmiyah.** It is an injury that penetrates slightly into the flesh and results in the flow of blood, in small or large quantity after there has been a slight penetration into the flesh, entailing the liability for two camels.

**Third – Al-Mutalāhimah.** It is an injury that penetrates into a large quantity of flesh, but does not reach the last stage called *al-Simhāq.* This injury entails the liability for three camels. It is also called *Bādi‘ah.*

**Fourth – Al-Simhāq.** It is an injury that breaks the flesh and reaches the thin skin covering the bone, entailing the liability for four camels.

**Fifth – Al-Mūdībah.** It is an injury that makes the whiteness of the bone visible, entailing the liability for five camels.

**Sixth – Al-Hāshimah.** It is a blow that smashes the bone and fractures it, and its law is applicable particularly in case of fracture, even if it does not cause a wound. It entails the liability for ten camels. According to the more cautious opinion regarding the condition of age here it should be one-fourth in case of homicide by misadventure or mistake and one-third in case of manslaughter or semblance of willful murder. The difference in the Traditions relating to the *diyat* of homicide by misadventure or mistake and manslaughter or semblance of willful murder has already been mentioned, where we have expressed the likelihood of choice and have emphasized the exercise of caution. If we declare in *diyat* of homicide by mistake twenty *bint-i mukhād,* twenty *ibn-i labūn,* thirty *bint-i labūn* and thirty *huqqāh,* here it is more cautious that it must be two *bint-i mukhād,* two *ibn-i labūn,* three *bint-i labūn* and three *huqqāh.* It is indispensable to accept this supposition leaving the other suppositions. It is more cautious in case of manslaughter or semblance of willful murder that there should be four two-year-old camels, three *huqqāh* and three *bint-i labūn.*

**Seventh – Al-Munaqqilah.** According to the interpretation of a group of jurists, it is an injury that requires the transportation of the [injured] bone from its place to another place, entailing the liability for fifteen camels.

**Eighth – Al-Ma’mūmah.** It is an injury that penetrates into the *dura mater* or meninx, or the pouch-like thin skin that envelops the brain, entailing one-third of the *diyat* [of human being], according to the more cautious opinion, even if it is a camel [prescribed in the *diyat.*]

According to the stronger opinion, thirty-three camels shall be sufficient.
للشجاج أقسام.

الأول - الحارصة بالمهمات المعبر عنها في النص بالحرصة، وهي التي تقشر الجلد شبه الحدش من غير إدماج، وفيها ببر، والأقوى أنها غير الدامية موضوعاً وحكاً، والرجل والمرأة سواء فيها وإلا أعوانها، وكذا الصغير والكبر.

الثاني - الدامية، وهي التي تدخل في اللحم يسراً ويخرج معه الدم، قليلاً كان أم كثيراً بعد كون الدخول في اللحم يسراً، ويفيه بغيران.

الثالث - المتلاجة، وهي التي تدخل في اللحم كثيراً لكن لم تبلغ المرتبة المتأخرة، وهي السمحاق، وفيها ثلاثة أبيرة ونهضكية هي المتلاجة.

الرابع - السمحاق، وهي التي تقطع اللحم وتبلغ الجلدة الرقيقة المغشية للعظم، وفيها أربعة أبيرة.

الخامس - الموضعية، وهي التي تكشف عن وضع العظم: أي بياض ويفيه خمسة أبيرة.

السادس - الهششة، وهي التي تحم العظم وتكره، والحكم مخصوص بالكسر وإن لم يكن جرح، وفيها عشرة أبيرة، والأحوص في اعتبار الأسنان، هاها أرباعاً في الخطا واثلاً ثامناً في شبيه العظم، وقد مر اختلاف الروايات في دية الخطا وشبه العظم، واحتمالا التخدير وقنلا بالاحتفاظ، فقولنا في دية الخطا عشرون بنت ضخاء وعشرون ابن لبون وثلاثون بنت لبون وثلاث حقق، والأحوص هاها بنتاً ضخاء وابناء لبون وثلاث بنات لبون وثلاث حقق، ولا يبد من الأخذ بهذا الفرض دون الفروض الآخر، والأحوص في شبيه العظم أربع خلفية ثانية وثلاث حقق وثلاث بنات لبون.

السابع - المنقلة، وهي على تفسير جماعة، التي تتخو إلى نقل العظام من موضع إلى غيره، وفيها خمسة عشر ببيرة.

الثامن - الأمومة، وهي التي تبلغ أم الرأس أي الخريطة التي تجمع الدماغ، وفيها ثلاث الديك حتى في الأمل على الأحوص، وإن كان الأقوى الاكتفاء في
Some More Relevant Problems

There are some more problems relating to this Discourse.

Problem # 1. Al-Dâmighah: It is an injury that tears open the dera mater or meninx, [the pouch-like thin skin that envelops the brain], and penetrates into the brain, so that it is far-fetched to remain alive, and if, suppose, the victim remains alive, the fine to be determined by the judge shall be added to the prescribed diyat of this injury.

Problem # 2. Al-Jâ’ifah: It is an injury that penetrates into the interior of body from any side, whether it is the stomach, chest, back, or the side [of the victim], entailing, according to the more cautious opinion, the liability for one-third [of the diyat]. It is said by some jurists that this type of injury relates exclusively to the head, and so belong to al-shijûj, but according to the more distinct or manifest opinion, the fact is to the contrary. If one person injures the interior of one side of the victim’s body and another pieces, suppose, a knife in the wound, without adding anything to it, the second shall be liable only to Ta’zîr, but if he adds an injury whether internally or externally, the culprit shall be liable to a fine to be determined by the judge. If he adds to the wound internally and externally in a way that it becomes a separate injury of the interior of the victim’s body, the culprit shall be liable to one-third diyat of jâ’ifah. If the culprit hits an arrow to the victim in a way that it pierces into the victim’s body from one side and comes out from the other, as when he hits an arrow to the victim’s chest and it comes out of his back, then, according to the more cautious opinion, the culprit shall be liable to several [rather two] diyats. In jâ’ifah, there is no difference between the implements, even if it were a long needle, let alone a bullet.

Problem # 3. If a person pierces something in any part of another’s body as his foot or hand, the culprit shall be liable to pay one hundred Dinârs. This law exclusively relates obviously to the case where the diyat exceeds one hundred Dinârs. In case of piercing anything in any part of the body of a woman, apparently there shall be liability for fine to be determined by the judge.

Problem # 4. In an offence committed by slapping or the like which only blackens the face without any injury or fracture, its arsh shall be six Dinârs. In case the slap turns the face to green and not black, the culprit shall be liable to three Dinârs. If the face turns red, then the culprit shall be liable to one and a half Dinârs. In case of slapping the body the fine shall be half, in case of blackening it three Dinârs, in turning it green one and a half Dinârs and in turning it red three-fourth of a Dinâr. There is no difference in case the victim is male or female, a minor or an adult, or between the different parts of body, whether its diyat has been prescribed or not, or whether the colour of the whole face is changed or otherwise, and whether the effect remains for some time or not. Of course, if the culprit slaps the victim’s head, then he shall be liable to a fine to be determined by the judge. If the offence causes inflammation
الدليل بكثرة وثلاثين بعيراً.

هناك أسئلة:

مسألة 1 - الدامة، وهي التي تفتقر الخريطة التي تجمع الدماغ وتصلى إلى الدماغ، فالسلامة منها بعيدة، وعلى تقديرها تزيد على الموميزة بالحكمة.

مسألة 2 - الجائزة، وهي التي تصل إلى الجفون من أي جهة سواء كانت بطنًا أو صدرًا أو ظهراً أو جنباً جنبًا فيها الثلث على الأحوط، وقيل تختصر الجائزة بالرأس، فهي من الشجاع، والأظهر خلافاً، ولو أجفاه واحد ودخل آخر سكينه مثلك في الجرح ولم يزدهريًا فعل الثاني التميز حسب، وإن وسعها باطناً أو ظاهراً فنبي الحكم، وإن وسعها فيها بحيث يحدث جائزة فعلية الثلث: دبة الجائزة، ولو طعنهم من جانب وأخرى من جانب آخر كما طعن في صدره فخرج من ظهره فالاحوط التعدد، ولا فرق في الجائزة بين الآلات حتى نحو الابرة الطويلة فضلاً عن البندية.

مسألة 3 - لو نفذت نافذة في شيء من أطراف الرجل كرجله أو بداء ففيهما دينار، ويتغير الحكم ظاهراً بما كانت ديه أكثر من مأة دينار، وأما المرأة فالأظهر أن في النافذة في أطرافها الحكومة.

مسألة 4 - في الجناية بلطم ونحوه إذا أسود الوجه بها من غير جرح ولا كسر أرشهاستة دنانير، وإن اخضر ولم يسود ثلاثة دنانير، وإن احرد دينار ونصف، و في البند النصف، فهي أسوداده ثلاثة دنانير في اخضرارة دينار ونصف، و في احراراً ثلاثة أربع الدينار، ولا فرق في ذلك بين الرجل والأنثى و الصغير والكبيرة، ولا بين أجزاء البند كانت لها دية مقررة أولاً، ولا في استيعاب اللون تمام الوجه، وعمدهم، ولا في بقاء الأثر مدة وعمده، نعم إذا كان اللطم في الرأس فالاظهر الحكم، وإن أحدث الجناية تورماً من غير تغيير لون فالحكومة،
without changing the colour, then the culprit shall be liable to a fine to be determined by the judge. If it causes both inflammation and change in colour, then apparently the culprit shall be liable to the prescribed fine as well as a fine to be determined by the judge.

**Problem # 5.** Every part of the body whose diyat is prescribed when subjected to paralysation the culprit shall be liable to one-third of its diyat, as both hands and both feet. In cutting it after paralysation there-shall be liability of one-third of its diyat.

**Problem # 6.** As already mentioned, the diyat of al-shijāj or wounding the head or the face shall be equal. According to the prevalent opinion, the diyat of causing similar injuries on the body in relation to the diyat of the part subjected to the injury shall be the diyat of the head, i.e., life if there is a prescribed diya for that part.

So in case of hārisah of the hand, it shall be half of a camel or five Dinār, while in case of hārisah of one of the two knuckles of the toe the diyat shall be half of the tenth of a camel or half of a Dinār, and so on. If there is no prescribed diyat, then it shall be a fine to be determined by the judge.

**Problem # 7.** A female is equal to a male as regards the diyat of parts of body and the injuries until it reaches one-third of the diyat of a male, when it becomes half, regardless whether the culprit is a male or female, according to the stronger opinion. So the diyat of cutting one finger of a female is one hundred Dinār, for two fingers it is two hundred Dinārs, for three fingers it is three hundred Dinārs, but for four fingers it is two hundred Dinārs. In a case of [cutting] parts of body and injuries a male shall be subjected to Qisās for a female, and vice versa, without any resturn until it reaches one-third, when a female shall be subjected to Qisās if she commits an offence against a male, but a male shall not be subjected to Qisās if he commits an offence against a female.

**Problem # 8.** In all cases where there is a diyat for the parts of body of a male, as both hands and both feet, and the gifts of nature and injuries, there is also a [similar] diyat of a female. Likewise, there is a [similar] diyat of a Dhimmī as well as a Dhimmihayah.

**Problem # 9.** In every case where it is said that there is arsh or hukūmah, both are one and the same. It means that the injured shall be valued once in sound condition if he happens to be a slave and at another with the offence, and shall be compared with first price, and find out the difference between the two, and the diyat for life shall be charged accordingly.

We have already said that if there is no difference between the prices, or when after the offence the price is found higher, as when his extra finger is cut off which is a defect, and after its is cut off his price increases, it is indispensable for hukūmah to carry another meaning, and that is the order of judge to reach compromise, and in case no compromise is reached his determination of the Ta'zir etc. as he deems fit for settling the dispute.

**Problem # 10.** If a person has no wali, then the judge shall be his wali nowadays. So if a person commits homicide by mistake or a manslaughter or semblance of willful murder, it is shall be upto him to settle it. Has he the authority to pardon the culprit? It is a question that has two alternatives. According to the more cautious opinion, he has no such authority.
ولو أحدثها فالظاهر التقدير والحكومة.

مسألة 5 - كل عضو ديه مقدرة في شلله ثلثا ديته، كاليدين ورجليه.

في قطبه بعد الشلل ثلث ديته.

مسألة 6 - دية الشجاع في الرأس والوجه سواء كا مره، والمشهور أن دية شيشه من الجراح في البدن بنسبه دية العضو الذي يتفق فيه الجراح من دية الرأس أي النفس إن كان للعضو دية مقدرة، ففي حارصة اليد نصف بير وأرخصة دنانير، وفي حارصة إحدى أثاثي الإباحة نصف عشر بير أو نصف دينار وهكذا، وإن لم يكن له دية مقدرة فالحكومة.

مسألة 7 - المرأة تساوي الرجل في ديات الأعضاء و الجراحات حتى تبلغ نصف دية الرجل ثم تنصير على النصف، سواء كان الجاني رجلا أو امرأة على الأقوى، ففي قطع الأعض منها مئة دينار، وفي ثلاثين ماثان في الثلاثة ثلاثمئة، وفي الأربع ماثان، ونقص من الرجل للمرأة وبالعكس. في الأعضاء والجراح من غير رد حتى تبلغ الثالث، ثم ينقص مع الردع لوجبة هي عليه لا هو عليها.

مسألة 8 - كل ما فيه دية من أعضاء الرجل كاليدين ورجليه ونافع و الجراح فيه من المرأة ديتها، وكذا من الذمي ديته، ومن الذمية ديتها.

مسألة 9 - كل موضوع يقال فيه بالأرض أو الحكومة فهما واحد، و البراد أنه يقسم الجروح صحيح أئ كان مملوكاً تارة و يقوم مع الجناية أخرى و ينسب إلى القيمة الأولى، و يعرف اللفاوت بينهما و يأخذ من دية النفس بحسبه، وقد قلينا: إنه لم يكن نفاوت يحسب القيمة أو كان مع الجناية أزيد كا لوقطب إصبعه الزائدة التي هي نقص و بقطعها تزداد القيمة فلافيد من الحكومة بمعنى آخر، وهو حكم القاضي بالتصالح، ومع عدهم بما يراه من التعزير وغيره حساساً للنزاع.

مسألة 10 - من لا ول في حالكم وليه في هذا الزمان، فلقوتل خطا أو شبيهه عندله استنفار، فهل له العفو؟ و جهان، الأحوج عنه.
Appendages

There are a few issues brought under discussion here.

First: concerning the Foetus

If life is infused in a foetus, then there shall be a full diyat of one thousand Dinârs in case of its loss, provided it has the position of a free Muslim and a male, while in case of a female it shall be half.

If it is a complete creature with the growth of flesh, there shall be liability for one hundred Dinârs, regardless of its being a male or female. If it is in the form of a bone that is not covered with flesh, there shall be liability for eighty Dinârs, and in case of a lump of flesh (mudghah) there shall be sixty Dinârs, in case of a blood clot (’alaqah) forty Dinârs, and in case of sperm when it is settled in the womb twenty Dinârs, without there being difference in all of them whether it is male or female.

Problem # 1. If the foetus is a Dhimmi, then whether it shall have the one-tenth of its father’s diyat or one-tenth of its mother’s diyat, there is hesitation in it, though the opinion closer to the traditional authority is in favour of the first option.

Problem # 2. There is no liability of expiation on the culprit in case of [loss of] the foetus before life is infused in it.

There is neither obligation for full diyat nor for expiation except after the knowledge about the life [of the foetus], if it is supported by the evidence of two medical experts possessing integrity of character. There shall be no importance of movement except when it is known to be voluntary. After there is knowledge about the life [of the foetus], diyat shall be obligatory provided the offence against the foetus is committed personally by the culprit.

Problem # 3. According to the stronger opinion, there shall be nothing between each stage mentioned and the subsequent stage, and what has been said that between the two stages there shall be something is not agreeable.

Problem # 4. If a woman is killed, and whatever is in her womb also dies, there shall be a full diyat for the woman and another diyat for the death of her child [in the womb]. If it is known to be a male, there shall be diyat for male, while if it is known to be a female, there shall be a diyat of a female. In case there is some doubt, there shall be half of the two diyats.

Problem # 5. If a woman aborts her foetus, she shall be liable to the diyat for the aborted foetus, and she shall have no share in the diyat of the foetus.
الفول في اللواحق

وهي أمور:

الأول في الجنين

الجنين إذا ولج فيه الروح ففخمه الدية كاملة ألف دينار إذا كان بحكم المسلم الحر وكان ذكرًا، وفي الأنثى نصفها، وإذا اكتسب اللحم وتمت خلقته ففخمه مائة دينار ذكرًا كان الجنين أو أنثى، ولو لم يكتسب اللحم و هو عرض ففخمه ثمانون دينارًا، وفي المضغة ستون، وفي العقلة أربعون، وفي النطفة إذا استقرت في الرحم عشرون، من غير فرق في جميع ذلك بين الذكر والأنثى.

مسألة 1 - لو كان الجنين ذمياً فهل ديته عشر دية أبه أو عشر دية أمه؟ فيه ترد، وإن كان الأول أقرب.

مسألة 2 - لا كفارة على الجناني في الجنين قبل ولوج الروح، ولا تجب الدية كاملة ولا الكفارة إلا بعد العلم بالحياة ولو بشهادة عادلين من أهل الخبرة، ولا اعتبار بالحركة إلا إذا علم أنها اختيارية، ومع العلم بالحياة تجب مع مباشرة الجناية.

مسألة 3 - الأقوى أنه ليس بين كل مرتبة ما تقدم ذكره والمرتبة التي بعدها شيء، فا قيل بينهما شيء بحسب ذلك غير مضري.

مسألة 4 - لو نقلت المرأة فاتما في جوفها فدية المرأة كاملة و دية أخرى لوت ولدها، فان علم أنه ذكر فديته، أو الأنثى فديته، ولو اشتهي فنصف الدية.

مسألة 5 - لو أبتلت المرأة حلمها فعلها دية ما ألقته، ولا نصيب لها من هذه
Problem # 6. If there are several foetuses, the **diyats** shall also be several. If the fetuses are male and female, there shall be **diyats** for males and females, as the case may be. In the case, mentioned earlier, if it is known that there are several fetuses, their **diyats** shall also be several.

**Problem # 7.** The **diyat** for the [loss of] parts of body of the foetus and their injuries shall be calculated in proportion to the **diyats** of those parts [to the **diyat** of the whole part], that is, out of one hundred Dinārs, [being the **diyat** of the whole body]. So the **diyat** for one hand shall be fifty Dinārs, and for both the hands it shall be one hundred Dinārs. The **diyat** for the injuries and scratches shall also be calculated in the same proportion. This is the case when life is not infused in the foetus; otherwise in case life is not infused in it, its **diyat** shall be at par with that of other live human beings.

Problem # 8. If a person frightens another having intercourse [with his wife], as a result of which he withdraws, the person frightening him shall be liable for the loss of the semen that is ten Dinārs.

Problem # 9. If it is not known to the midwives and those having knowledge that what is aborted is a human in the making, then if its abortion has caused some damage, the culprit shall be liable to a fine to be determined by the judge. If its mother is subjected to some offence, the culprit shall be liable to her **diyat**.

Problem # 10. The **diyat** for [the loss of] the foetus, in case it is willful or semblance of willful [murder], shall be paid out of the property of the culprit. In case it is a homicide by sheer mistake, the **diyat** shall be payable by the 'Āqilah of the culprit provided life is infused in the foetus. In case otherwise when life is not infused in it, there shall be hesitation, though according to the opinion closer to the traditional authority, it shall be payable by the 'Āqilah of the culprit.

Problem # 11. The **diyat** for cutting the head of the dead body of a free Muslim shall be one hundred Dinārs. In case of cutting the parts of his body it shall be charged according to his **diyat**. In case of other offences committed with the dead body the **diyat** shall be calculated proportionately. In case of cutting one hand [of the dead body], the **diyat** shall be fifty Dinārs, while for cutting both the hands [of the dead body], it shall be one hundred Dinārs, and for cutting his finger ten Dinārs. Similar is the case in subjecting the dead body to injuries or scratches. This **diyat** is not to be paid to the heirs of the dead body, but it shall belong to the dead body that will be spent on charitable purpose. The rule shall be applicable equally to a male or female and a minor or an adult. Is the debt of the dead person payable from his **diyat** is a question whose answer apparently is in the affirmative.

Second: concerning the 'Āqilah

In this Appendix, there are two issues under discussion.

**Firstly,** Determination of those to whom it applies. They are the 'āsabah, emancipator, surety for offences and the Imām. The term 'āsabah means relatives connected through both the
مسألة 6 - لو تعدد الولد تعددت الديّة، فلو كان ذكراً و أثني فدية ذكر و أثنت.

و هكذا، وفي المرات المتقدمة كل مورد أحرز التعدد دية المرتبة متعددة.

مسألة 7 - دية أعضاء الجنين و جراحاته بنسبة ديته أي من حساب المأة، ففي يده خمسة ديناراً، و في يده مئة، و في الجراحات و الشجاج على النسبة، هذا فألا تلجه الروح، و إلا فكِّره من الأحياء.

مسألة 8 - من أفعَّل ماجعاً فعزل فعل المفعَّل عشرة دنانير ضياع النطفة.

مسألة 9 - لو خُفي على القوابل و أهل المعرفة كون الساقط مبدأ نشوء إنسان.

فان حصل بمسقوطه نقص ففيه الحكومة، ولو وردت على أمه جناية فديتها.

مسألة 10 - دية الجنين إن كان عمداً أو شبه في مال الجاني، و إن كان خطأ فعل العاقلة إذا ولج فيه الروح، و في غيره تأمل و إن كان الأقرب أنها على العاقلة.

مسألة 11 - في قطع رأس الميت المسلم الحر مئة دينار، و في قطع جواربه و جس ديه، و بهذه النسبة في سائر الخُنَّايات عليه، ففي قطع يده خمسة ديناراً، و في قطع يده مئة، و في قطع إصبعه عشرة دنانير، و إذا الحال في جراحه و شجاجه، و هذه الدية ليست لورثه بل للميت، تصرف في وجه الجاني، و ينساوي في الحكم الرجل و المرأة و الصغير و الكبير، و هل يؤدي منها دين الميت؟ الظاهر نعم.

الثاني من اللواحق في العاقلة

والكلام فيها في أمرين:

الأول - تعين المثل، وهو العصبة ثم المعتنق ثم ضمان الجريدة ثم الامام عليه.
parents or through the father, as the brothers and sisters and their children, howsoever low, (paternal and maternal) uncles and aunts and their children, howsoever low.

**Problem # 1.** As regards the inclusion of the father and grandfathers, howsoever high, and the sons and grandsons, howsoever low, in 'asabah, there is difference of opinion, though according to the stronger opinion, they are included in 'asabah.

**Problem # 2.** A wife is not included in āqilah without any doubt, nor apparently a minor or insane person, although they share in the inheritance of diyat.

Members of administration (ahl-i divān) and the fellow-citizens are also not included if they are not ‘asabah.

A murderer of ‘asabah is not allowed to share in the security. However, young and old, weak and sick are included in āqilah if they are ‘asabah.

**Problem # 3.** Whether a poor person shall also be required to pay something at the time of demand that takes place at the end of the year or not, is a question in whose answer there is hesitation, though according to the opinion closer to the traditional authority, he shall not be required to pay anything due to his inability to bear the burden.

**Problem # 4.** Āqilah are bound to bear the diyat for müdiha and above. According to the stronger opinion, they are not bound to bear the diyat for less than that.

**Problem # 5.** Āqilah are liable for the diyat for [homicide by sheer] mistake.

It has already been mentioned that during three years one-third of the diyat shall be charged at the end of every year, without there being any difference between the diyat of a male and female. According to the opinion closer to the traditional authority, the rule of dividing the diyat into three years is applicable in the absolute diyat for [homicide by sheer] mistake in case of offence against life and other offences.

**Problem # 6.** As already mentioned, āqilah has no right of recourse to the culprit for the diyat paid by them. The opinion in favour of recourse against the culprit is weak.

**Problem # 7.** Āqilah have no liability in a case that is established by confession. It is indispensable to establish it by legal evidence.

If the actual murder is established by legal evidence and the murderer claims that the homicide has been committed by sheer mistake, and the Āqilah denies it, the word of the Āqilah shall be preferred provided it is followed by their oath. In case of absence of proof by legal evidence of the homicide by sheer mistake, the diyat shall be borne by the culprit’s property.

**Problem # 8.** As already mentioned, in case of willful murder or semblance of willful murder, the āqilah are not bound to pay the diyat.

Likewise, the Āqilah are not liable to pay the diyat agreed by mutual compromise in a willful murder or semblance of willful murder. Likewise, in all the other offences, like hāshimah and ma’mūmah, committed willfully or semblance of willful murder, they are not concerned with the Āqilah.

**Problem # 9.** If a person commits an offence against himself by sheer mistake, regardless whether it is murder or less than that, his blood can be shed with impunity, and Āqilah are not liable for it.
السلام، وضابط العصبة من تقرب بالأبوين أو الأب كالأخوة وأولادهم وإن نزلوا وعمومتهم وأولادهم كذلك.

مسألة 1 - في دخول الآباء وإن علما الأبناء وإن نزلوا في العصبة خلاف، والأقوى دخولها فيها.

مسألة 2 - لا تعقل المرأة بلا إشكال، ولا الصبي ولا الجبن على الظاهر وإن ورثها من الديبة، ولا أهل الديوان إن لم يكونوا عصبة، ولا أهل البلد إن لم يكونوا عصبة، ولا يشارك القاتل العصبة في الضمان ويعقل الشهب والشيخ والضعفاء والمرضى إذا كانوا عصبة.

مسألة 3 - هل يتحمل الفقير حال المطالبة وهو حول الحول شيئاً أم لا؟ فيه تأمل وإن كان الأقرب بالاعتبار عدم تحمله.

مسألة 4 - تحمل العاقلة دية الموضحة فا زاد، والأقوى عدم تحملها ما نقص عنها.

مسألة 5 - تضمن العاقلة دية الخطا، وقد مر أنها تستأدي في ثلاث سنين كل سنة عند انسلاخها ثلثاً، من غير فرق بين دية الرجل والمرأة، والأقرب أن حكم التوزيع إلى ثلاث سنين جار في مطلق دية الخطا من النفوس وجنائز أخرى.

مسألة 6 - لا رجوع للعاقلة بما تؤديه على الجاني كما مر، وقول بالرjawf ضعيف.

مسألة 7 - لا تعقل العاقلة ما يثبت بالقرار بل لابد من ثبوت بالبيينة فلو ثبت أصل القتل بالبيينة وادعى القاتل الخطا وأكررت العاقلة فالقول قولها بعينه، فع عدم ثبوت الخطا بالبيينة فعلي الم جاني.

مسألة 8 - لا تعقل العاقلة العمد وشبه كا مر، ولا ما صولج به في العمد وشبه، ولا سائر الجنايات كالهاشمة والمأومة إذا وقعت عن عمد أو شبه.

مسألة 9 - لو جنى شخص على نفسه خطأ تقلا أوما دونه كان هدرا ولا تضمنه.
Problem # 10. There is no system of āqilah among the Dhimmis in case an offence of murder and injury is committed, and the diyat is to be paid from the property of the culprit. If the culprit has no property, the diyat shall be referred to the Muslim ruler for payment provided the Dhimmis are paying Jizyah.

Problem # 11. No one shall pay the diyat unless his position as a member of the Āqilah of the murderer is known. So it is not sufficient for such person to be a member of such tribe until it is known that he is one of the ‘asabah of the murderer. Once it is established by legal evidence that he is an ‘asabah of the murderer, his denial shall not be accepted.

Problem # 12. If a father commits willful murder or semblance of murder of his son, he shall be liable for the payment of diyat, and he shall have no shre in it. If there is no heir to the son other than the father, the diyat go to the Imām. If the father commits homicide of his son by sheer misadventure or mistake, the diyat shall be paid by the Āqilah that will be inherited by the son’s heirs. With regard to the father having share in the diyat in such case, there are two opinions, according to the opinion closer to the traditional authority, he shall no share in the diyat in this case. If there is no heir to the son other than the father, the inhereitance shall go to the Imām.

Problem # 13. A willful murder or a semblance of willful murder committed by a minor or a lunatic shall be treated as a homicide by sheer mistake, in which case the diyat shall be paid by the āqilah.

Problem # 14. The āqilah shall not be liable for the offence committed by an animal due to the negligence of its owner or any other person, nor shall they be liable for the loss of any property. If the property of a stranger is lost by mistake or it is lost by a minor or a lunatic, the Āqilah shall not be liable for it. The liability of the Āqilah is confined exclusively to the offence committed by a human being against another human being in the manner mentioned before. [After mentioning the cases relating to the liability of Āqilah], there is no use in mentioning other cases, relating to the emancipator, surety for offence and the Imām.

Secondly, the Manner of Division. There are several opinions concerning it. According to one of them, a wealthy person shall pay ten Qirāt or half Dinār, while a poor person shall pay five Qirāt.

According to another, the Imām or his deputy shall divide it as he deems fit, keeping in view the position of the āqilah, in a way that injustice is not done to any one of them. According to another, the poor and rich are equal, so they shall share the liability for the diyat [equally]. The last opinion is closer to the principles of law provided the poor are held liable for the diyat.

Problem # 1. Is the method of distribution of the liability among the members of āqilah according to the method of distribution of inheritance, so that the diyat shall be charged by preferring the closer to the remoter according to the classes of inheritance. So the diyat shall be charged first from the father and grandfather [howsoever high] and the sons and grandsons
المسألة 10 - ليس بين أهل الذمة معاقلة فيها يجوز من قتل أو جراحة وأما يؤخذ ذلك من أموالهم، فإن لم يكن لهم مال رجعت الجناية على إمام المسلمين إذا أدوا إليه الجزية.

المسألة 11 - لا يعقل إلا من علم كيفية انسابه إلى القاتل، وثبت كونه من العصبة، فلا يَكِن كونه من قبيلة فإن حتى يعلم أنه عصبه، ولو ثبت كونه عصبة بالبيئة الشرعية لا يسمع إنكار الطرف.

المسألة 12 - لو قتل الأب ولده عمداً أو شبه عمدة فاندية عليه، ولا نصيب له منها، لو لم يكن له وارث غيره فالدية للإمام عليه السلام، ولو تقله خطا فاندية على الامامة يرثونه وراث، وفي تورث الأب هنا قولان أقرهما عمده، فلما لم يكن له وارث غيره يرث الإمام عليه السلام.

المسألة 13 - عمدة الصبي واجتنب في حكم الخطأ، فالدية فيه على العاقبة.

المسألة 14 - لا يضم العاقبة جنابة بهيمة لو جنت بتفريط من المال أو بغيره، ولا تضم إثلب المال، لو أتلف مال الغير خطأً أو أتلفه صغير أو أجهزه فلا تضمن العاقبة، فضماهنما خصوص بالجنابة من الآدمي على الآدمي على نحو ما تقدم، ثم إنه لا ثمرة مهمة في سائر الحال: أي المعتق وضامن الجريئة والإمام عليه السلام.

الثاني - في كيفية التقسيط، وفيها أقوال: منها على الغني عشرة قراريب: أي نصف الدينار، وعلى الفقير خمسة قراريب. ومنها يقسمها الإمام عليه السلام أو نائب على ما يراه بحسب أحوال العاقبة بحسب لا يخفف على أحد منهم، ومنها أن الفقير والغني سواء في ذلك، فهي عليها، وآخر أشبه بالقواعد بناء علي تحمل الفقير.

المسألة 1 - هل في التوزيع ترتيب حسب ترتيب الأثر فيؤخذ من الأقرب فأقرب على حسب طبقات الارث فيؤخذ من الآباء وأولاد ثم الأجداد و
[howsoever low], then from the brothers and sisters on the father’s side and their children, howsoever low, and then from the paternal uncles and their children, howsoever low, and so on in relation to the other classes of inheritance, or the closer and remoter relatives shall be put together among the Āqilah, and the liability for the diyat shall be divided on the father and son, grandfather and brethren and their children, and so on from among the surviving relatives at the time the offence is committed? There two alternatives, though it is not far from likely to treat the first closer to reason.

**Problem #2.** Is the division of the liability of the diyat among the classes of heirs governed by the position of the inheritance, so that if the heirs in the first class, for example, confined to the father and son, so a sixth of the diyat shall be charged from the father and five-sixths from the son, or they shall be charged equally? There are two alternatives. If one of the heirs excluded from inheritance, shall he be charged his share among the members of Āqilah or not? Again, there shall be two alternatives.

**Problem #3.** If there is none in the classes of inheritance, nor are there any one from among the wulā’ of emancipation or surety for offence, then the liability of Āqilah shall devolve on the Imām to be paid from the Bayt-ul Māl, or the State Exchequer. If there is some one from the former, but has no property, the same shall be the action.

If he has some property but it is not possible to charge the diyat on it, shall the action be the same? There is hesitation in it.

**Problem #4.** If there is an heir belonging to one of the classes of heirs, and he is single, the diyat of the āqilah shall not be charged from the Imām, but it shall be charged from that heir.

**Problem #5.** The beginning of counting the deadline for the payment of the diyat in case of homicide by misadventure or mistake is from the time of death of the victim, an in case of offence against the parts of body from the time of the commitment of the offence, and in case of infection of the wound from the time of the end of the infection, according to the opinion more in conformity with the principles of law, and it is possible to count it from the time of its healing. The determination of the deadline for the payment of the diyat does not depend on the order of the judge.

**Problem #6.** The diyat shall be demanded on the change of the year from the person who is liable to pay it. If the person dies after the deadline, the liability shall not be set aside, and it shall be paid from the property left by him.

If he dies during the currency of the deadline, there shall be doubt and hesitation in its liability to fall on the property left by him like the one who dies after the maturity of the deadline, or its excuse from him and transfer to another person.

**Problem #7.** If a person has no āqilah except the Imām or is unable to pay the diyat, it shall be paid by the Imām and not by the murderer.

Some jurists are of the opinion that the diyat shall be charged from the murderer, but in case of his absence, it shall be paid by the Imām. The first opinion is, however, according to the more distinct opinion.

**Problem #8.** It has already been mentioned that the diyat for the willful murder and semblance of willful murder shall be paid out of the property of the culprit, but if he escapes and cannot be arrested, it shall be charged from his property if he has some property.
اختواء من الأب وأولادهم وإن نزلوا، ثم الأعمام وأولادهم وإن نزلوا، وهكذا بالنسبة إلى سائر الطبقات، أو يجمع بين القريب و البعيد في العقل في نوع على الأب والابن والجد والاخوة وأولادهم وهكذا من الموجودين حال الجناية؟ و جهاز لا يعد أن يكون الأول أوجه.

مسألة 2: هل التوزيع في الطبقات تابع لكيفية الإرث فلو كان الورث في الطبقة الأولى مثلًا منحصراً بأب وابن يؤخذ من الأب سدس الندية ومن الابن خمسة أسداس أو يؤخذ منها على السواء؟ و جهاز، ولو كان أحد الوراثيين متنوعاً من الوراثة فهل يؤخذ منه العقل أم لا؟ و جهاز.

مسألة 3: لو لم يكن في طبقات الإرث أحد ولم يكن ولا العتق وضمان الجريمة فالعقل على الإمام عليه السلام من بيت المال، ولو كان ولم يكن له مال فكذلك، ولو كان له مال ولا يمكن الأخذ منه فهل هو كذلك؟ فيه تردد.

مسألة 4: لو كان في إحدى البقاعات وورث وإن كان واحداً لا يؤخذ من الإمام عليه السلام العقل، بل يؤخذ من الوراث.

مسألة 5: ابتداء زمن التأجيل في دية القتل خطأً من حين الموت وفي الجناية على الأطراف من حين وقوع الجناية، وفي السراية من حين انتهاء السراية على الأشتبه، ويحتم أن يكون من حين الاندمال، ولا يقف ضرب الأجل إلى حكم الحاكم.

مسألة 6: بعد حلول الحوال يطالب الدنيا من تعلقت به، ولو لمات بعد حلوله لم يسقط ما له، وثبت في تركته، ولو مات في أثناء الحوال فعلى تعلقه بتركته كمن مات بعد حلوله أو سقوطه عنه وتعليقه بغيره إشكال وتردد.

مسألة 7: لو لم تكن له عاقلة غير الإمام عليه السلام أو عجزت عن الدنيا تؤخذ من الإمام عليه السلام دون القاتل، وقيل تؤخذ من القاتل ولا يملك له أرباح من الإمام عليه السلام، و-FIRST OBLIGATION

مسألة 8: قد مر أن دية العمدة وشبه العمدة في مال الجاني، لكن لو هرب فلم
Otherwise, it shall be charged from his closer relative and then from the remoter one. If he has no close relative, it shall be paid by the Imām, so that the blood of a Muslim should not go in vain.

**Third : Concerning the Offence against Animals**

In view of the animal against whom an offence is committed, there are three kinds:

*Firstly*, animals whose meat is usually eaten, as the three edible animals, [i.e., cows, sheep and goats], etc. If a person destroys any of them by slaughtering them, he will be liable to pay the difference between the live and slaughtered one.

If there is no difference between the two, he shall not be liable for anything, although he shall be considered a sinner. If he destroys it without slaughtering it, he shall be liable to pay its market price as on the day it was destroyed.

According to the more caution opinion he shall pay comparatively higher price as it was on the day of its destruction and on the day of the payment.

If something of it is left that is useful as the wool and soft hair, etc. of a dead animal that can be used, it will belong to the owner of the animal, and its price shall be deducted from the price of the destroyed animal indemnified.

**Problem # 1.** The owner of the animal shall not be allowed to return the slaughtered animal and demand its substitute or price; rather he shall be entitled to the difference between a live and a slaughtered animal.

**Problem # 2.** Suppose if due to slaughter, the animal loses its value, the person slaughter it shall be liable to indemnify it as he would have been liable without slaughtering it.

**Problem # 3.** If the person has chopped off some parts or broken some bones of the animal, leaving it alive, its owner shall be entitled to *arsh* or a fine. If the animal is not alive, the man shall be liable for its loss.

If he pulls the eyes of a quadruped animal, he shall be liable to pay the *arsh* and one-fourth of its price as on the day its eyes were pulled out whichever is higher, as according to the more cautious opinion in case a person causes abortion of the foetus of an animal, he shall be able to pay the *arsh* or one-tenth of the animal as on the day its eyes were pulled out whichever is greater.

*Secondly*, animals whose meat is not eaten, but they are slaughtered, as the beasts. If a person destroys such animal by slaughtering it, he shall be liable to pay the *arsh* or fine.

The same rule shall apply if a person chops off its parts of body and breaks its bones by leaving it alive. If he destroys the animal without slaughtering it, he shall be liable to pay its price as on the day of its destruction.
يقترف عليه أخذت من ماله إن كان له مال، ولا في الأقرب إلى الأقرب، فإن لم تكن له قرابة أدعها الإمام عليه السلام، ولا يبطل دم أرءى مسلم.

الثالث من اللواحق في الجناية على الحيوان

وهي باعتبار المجنى عليه ثلاثة أقسام:

الأول - ما يؤكل في العادة كالأنعام الثلاثة وغيرها، فلن تلق إلى شيئاً بالذكاة لزمه التفاوت بين كونه حياً وذكياً، وله لم يكن بينها تفاوت فلا شيء عليه وإن كان آنماً، وله أن يلق إلى من غير تذكية لزمه قيمة يوم إلتهالها، وأحل عمر قيمي يوم التلف والأداء، وله بقي فيه ما ينفعه كالصوف والبرSER وخبرها ما ينفعه من الزيت فهو للمالك، ويوضع من قيمة التالف التي يغمهها.

مسألة 1 - ليس للمالك دفع المذوح لذبح ذكاة ومطالبة المثل أو القيمة، بل له ما به التفاوت.

مسألة 2 - لو فرض أن بالذبح خرج عن القيمة فهو مضموم كالتالف بلا تذكية.

مسألة 3 - لو قطع بعض أعضائه أو كسر شيئاً من عظامه مع استقرار حياته فللمالك الأرش، ومع عدم الاستقرار فضمان التالف، لكن الأحوال فيها إذا فقت عين ذات القوائم الأربع أكثر الأمرين من الأرش وربع ثمنهما يوم فقت، كما أن الأحوال في إلقاء جنين البهجة أكثر الأمرين من الأرش وعشرين ثمن البهجة يوم ألقته.

التالي - لا يؤكل لحمه لكن تقفع عليه التذكية كالسبع، فان ألقته بالذكاة ضمن الأرش، وkusو لو قطع جواربه كسر عظامه مع استقرار حياته.

وإن أنفعته بغير ذكاة ضمن قيمته حياً يوم إلتهالها، وأحل عمر أكثر الأمرين من
According to the more cautious opinion, he shall be liable to pay the higher of the prices as on the day of its destruction and the day of payment of its price, but the price of whatever is useful out of the dead body of the animal like the tusk of an elephant shall be deducted from the price.

**Problem # 4.** If what has been destroyed is something that is allowed to eat, but it is not usually eaten, as a horse, a mule or a tame donkey, it shall be treated as an animal that is not allowed to eat, but in case of pulling out its eyes, the same rule shall apply as mentioned under the preceding Problem.

**Problem # 5.** In case of what is not usually eaten, and if it is destroyed by slaughtering, its meat is not counted among what is useful, so it is not deducted from what is indemnified.

If, suppose, it has some value, as the tusk of an elephant, it shall be deducted from it.

**Thirdly,** what is not slaughtered. In case of [loss of] a hunting dog, the diyat shall be forty Dirhams. Apparently there is no difference between a greyhound and other dogs, or between a trained dog and others.

In case of [loss of] a sheep-dog, the diyat shall be twenty Dirhams, though what is mentioned in the relevant Tradition is ram. According to the more cautious opinion, what is greater of the two diyats shall be charged. According to the more cautious opinion, in case of [loss of] a domestic dog, the diyat shall be twenty Dirhams. In case of [loss of] a farm dog, according to the prevalent opinion as reported, it shall be a cafiz [a dry measure, about 496-640 pounds], while according to another Tradition it is a bag of wheat, and this opinion is more cautious. A Muslim does not own dogs other than these dogs, and so there is no liability for their loss.

**Problem # 6.** In case of what is not owned by a Muslim, as wine and pigs, there is no liability if a person causes its loss. In case of a thing about which there is no argument in favour of its being incapable to be owned [by a Muslim], can be owned, if here is some reasonable benefit in its ownership, and in case of its loss, there shall be liability for its loss as is the case other things.

**Problem # 7.** What is permissible to be owned by a Dhimmi, as a pig, shall have liability for its price among those who consider it permissible to be owned, and there shall be the liability for payment of arsh in case of an offence against its parts [of body].

**Misc. Subsidiary Laws**

**First.** If a person destroys wine, entertainment instruments, or the like, that are allowed by the faith of a Dhimmi to be owned by him, he shall be liable for it, even if he is a Muslim, but it is a condition for the application of the liability that the Dhimmi must be fulfilling the conditions for being a Dhimmi.

One of the conditions required is to keep such things hidden. If he displays it publicly and contravenes the conditions of being a Dhimmi, no regard shall be had for those things. If any of
المادة الثالثة من اللواحق في الجناية على الحيوان

القيمة يوم إتفاله و يوم أديها، وأستثنى من القيمة ما ينتفع به من الميتة كعظم الفيل.

مسألة 4: إن كان المتلف ما يجل أكله لكن لا يؤكل عادة كالخيل والبغال و الحمير الأهلية كان حكمة كغير المأكل، لكن الأحوط في فقه عينها ما ذكرنا في المسألة الثالثة.

مسألة 5: فلا لا يؤكل عادة لو أتلفه بالذذكية لا يعتبر لحمه مما ينتفع به فلا يستثنى من الغرامه، نعم لو فرض أن له قيمة ك nama المجاعة تستثنى منها.

المثلث ما لا تقع عليه الذكاة، ففي كلب الصيد أربعون درهماً، و الظاهر عدم الفرق بين السلوقي وغيره، ولا بين كونه معلماً و غيره، و في كلب الغنم عشرون درهماً، و في رواية كبش، و الأجوط الأخذ بأكثرها، و الأحوط في كلب الحائط عشرون درهماً، و في كلب الزروع أربع من برع عند المشهور على ما حكي، وفي رواية جريب من بر وهواحوط، ولا يملك المسلم من الكلاب غير ذلك، فلا ضمان باتلافه.

مسألة 6: كل ما لا يملكه المسلم كالخمر والحنزير لا ضمان فيه لو أتلفه و ما لم يدل دليل على عدم قابليته للملك يملك لوكأن له منفعة عقلانية، وفي إتفاله ضمان الإتلاف كما في سائر الأموال.

مسألة 7: ما يملكه النمي كالخنزير مضمون بهمته عند مستحليه، و في الجناية على أطرافه الأثر.

فروع:

الأول: لو أتلف على النمي خراً أو آلة من اللهو و نحوه مما يملكه النمي في مذهب أمنها المتلف ولو كان مسلمأً، ولكن يشترط في الضعنة قيام النمي بشرط النعة، و منه الاستوار في نحوها، فلو أظهراها و نقص شرائط النعة فلا
those things belongs to a Muslim, the culprit shall not be liable for its loss, whether it is kept hidden or displayed in public.

Problem # 1. Wine that is distilled for preparing vinegar is to be given regard and it is not permissible to spill it away, and whosoever destroys it shall be held liable for it. Likewise, the material and instruments for entertainment and gambling are to be given due regard, and only their image is not worthy of regard, and its effacement does not entail any liability except that the prerequisite for its effacement is the destruction of the material, in which case there shall be no liability.

Problem # 2. The bottle of wine as well all that contains it is to be given regard. So breaking and destroying them entails liability. Similar is the case with the places and means of entertainment and where they are placed.

Problem # 3. If a herd damages a farm during night, the shepherd shall be liable to indemnify the loss, but if it takes place during the day he shall not be held liable for it. This is the case when the herd commits the offence according to its nature. If the shepherd let them loose during the day to destroy the farm, he shall be liable for it, as his liability is established when occurring during the night. In case otherwise when it takes place against the usual system, as when when the wall of the place or the herd is demolished by earthquake and the herd comes out of it, or a thief takes it out, and the herd commits the offence, therefore apparently in such cases the shepherd shall not be held liable for the damage caused by his herd.

Thirdly, the diyat [for the loss of] dogs. As you have come to know, the diyat [for the loss] of dogs is prescribed by law, and not that it was the price of the dogs at the time of prescribing the diyat of dogs. Therefore even if the prices of dogs happen to be less or more than their diyat, they shall not exceed the amount of their diyat.

Problem # 3. If a person usurps a dog, and after usurping kills it, he shall be liable for he payment of the prescribed diyat, and the probability that he will pay the diyat or its market price whichever is greater has no reasonable ground.

If it is lost during the possession and guarantee of a person, then he shall be liable for the payment of its market price and not its diyat, though there is some doubt in it, in the same way as if it is subjected to some damage or defect, the usurper shall be liable for the payment of arsh.

Problem # 4. If some one commits an offence on a dog having a prescribed diyat, apparently he shall be liable for the payment of its diyat. But the ratio between the market price of a defective and sound dog shall be kept in view, and only that much shall be charged out of its diyat. So if the market price of a sound dog is one hundred Dinârs, while that of a defective one ten Dinârs, one-tenth of the prescribed diyat shall be reduced, and the culprit shall be liable for the payment of the rest.
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
Fourth: Expiation for Murder

Problem #1. In case of a murder of a Mu'min willfully and unjustly there shall be obligatory collective expiation, and that is freeing a slave, along with fasting for consecutive two months and feeding sixty poor persons.

Problem #2. In a homicide by sheer misadventure and homicide by mistake resembling a willful murder there shall be an obligatory sequential expiation, and that is freeing a slave, in case of inability to free a slave fasting for consecutive two months, and in case of inability to fast for consecutive two months to feed sixty poor persons.

Problem #3. An expiation becomes obligatory on a person when murder is committed personally in a way that it is attributed to him without any aid and without any intermediary, as when he places a stone, digs a well or ram a peg on the way tread by Muslim, so that a person stumbles and dies, in which case there shall be liability as mentioned before, but there is no expiation in that case.

Problem #4. An expiation becomes obligatory by killing a Muslim, male or female, minor or lunatic who are treated as Muslims; rather in case of killing a foetus in whom life has been infused.

Problem #5. There is no obligatory expiation in murdering an infidel, a harbi [a citizen of a country at war with Muslim state or commonwealth], a dhimmi, or a mu'ahid [one belonging to non-Muslim state having Treaty of Peace with a Muslim state or commonwealth, or one having entered into an agreement of freedom with his owner], regardless whether the murder is willful or not.

Problem #6. If a group of persons join in murdering a single person willfully or by misadventure, each of them shall be liable to expiate.

Problem #7. If a person orders another to kill a third person, and he kills him, the murderer shall be liable to expiation. If a person who has committed willful murder pays diyat, or has reached a compromise on a lesser or higher amount or has pardoned the murderer, the expiation shall not be set aside.

Problem #8. If a murderer surrenders himself, and is killed by way of Qisas, will it be obligatory to arrange expiation out of his property? There are two alternatives, the more reasonable being against the expiation out of his property.

Note. We have explained the laws relating to the present situations in the Section on Expiations and what concerns them.
الرابع من اللواحق في كفارة القتل

المسألة 1 - تجب كفارة الجمع في قتل المؤمن عمداً وظلماً، وهي عتق رقبة مع صيام شهرين متتاليين و إطعام ستين مسكيناً.

المسألة 2 - تجب الكفارة المرتبة في قتل الخطايا المحضة وقتل الخطايا شبه العمد، وهي العتق، فإن عجز صيام شهرين متتاليين، فإن عجز فاطعماً ستين مسكيناً.

المسألة 3 - أما تجب الكفارة إذا كان القتل بالعباءة بحيث ينسب إليه بلا تأويل، لا بالتبسيط كما لو طرح حجراً أو حفر بئراً أو أوقتي، أو نكاً في طريق المسلمين فعذر عائر فهلك، فان فيه الضمان كمام، وليست فيه الكفارة.

المسألة 4 - تجب الكفارة بقتل المسلم ذكراً كان أو أثناً، صيماً أو مجنوناً.

المسألة 5 - لا تجب الكفارة بقتل الكافر، حربياً كان أو ذميأً أو معاهداً، عن عمداً كان أو لا.

المسألة 6 - لو اشترك جماعة في قتل واحد عمداً أو خطأ فعلي كل واحد منهم كفارة.

المسألة 7 - لو أمر شخص بقتله فقتله فعل القاتل الكفارة، ولو أدى العامل الدية أو صالح بأقل أو أكثر أو عندها لم تسقط الكفارة.

المسألة 8 - لو سلم نفسه قتل قدوأ فهل تجب في ما له الكفارة؟ و جهان، أوجهها عدم.

وقد ذكروا في كتاب الكفارات ما يتعلق بالمقام.
Section Forty-Nine

Discourse concerning Modern Problems

I – Insurance

Problem # 1. Insurance is a contract between an Insurer and Insured, according to which the Insurer undertakes to indemnify the Insured against any loss sustained by him, while the insured promises to pay to the insurer a definite amount of money as agreed upon.

Problem # 2. Like all other contracts, Insurance also required Declaration and Acceptance. Declaration may be made by the Insurer and Acceptance by the Insured, so that the Insurer says: “I undertake to indemnify such loss of the Insured against so much payment”, or “I am liable to indemnify such loss of the Insured against so much payment”, while the Insured accepts it.

Or it may be vice versa, so that the Insured declares: “I undertake to pay so much against indemnifying so much loss”, while the Insurer accepts it, or he may say in reply, “[Against so much payment], I promise you to indemnify your loss”, or it may be expressed in any other words.

Problem # 3. As in case of all other contracts, the Insurer and the Insured must be mature, sane, free from interdiction, having free will and intention.

So it is not valid if entered into by a minor, lunatic, an interdicted person, under duress, by way of joke, or the like.

Problem # 4. In a contract of insurance, besides what has been mentioned above, there are following conditions to be observed:

First, specification of the subject of insurance, as life, property, sickness, or the like.

Second, identification of both the parties of the contract of insurance, as, for example, individual persons, companies or governments.

Third, fixation of the amount the Insured promises to pay to the Insurer.

Fourth, specification of the risk insured as fire, theft, sickness, death, or the like.
البحث حول المسائل المستحدثة
منها التأمين

مسألة 1 - التأمين عقد واقع بين المؤمن و المستأمن (المؤمن له) بان يلتزم المؤمن جبر خسارة كذائية إذا وردت على المستأمن في مقابل أن يدفع المؤمن له مبلغًا أو يتعهد بدفع مبلغ يتفق عليه الطرفان.

مسألة 2 - يحتاج هذا العقد كسائر العقود إلى إجاب وقبول، و يمكن أن يكون الموجب المؤمن و القابل المستأمن، بان يقول المؤمن: عليّ جبر خسارة كذائية في مقابل كذا أو أنا ملتزم بجبر خسارة كذائية في مقابل كذا فيقبل المستأمن، و بالعكس بأن يقول المستأمن: عليّ أداء كذا في مقابل جبر خسارة على كذا فيقبل المؤمن، أو في مقابل عهودت كجزء، و يقع بكل لفظ.

مسألة 3 - يشترط في الموجب و القابل كل ما يشترط فيها في سائر العقود كالبلوغ و العقل وعدم الحجر والاختيار والقصد، فلا يصح من الصغير و المجنون والمجرور عليه و البكاء و الهازل و نحوه.

مسألة 4 - يشترط في التأمين مضافًا إلى ما تقدم أمور:
  
  الأول - تعيين المؤمن عليه من شخص أو مال أو مرض و نحو ذلك.
  
  الثاني - تعيين طرف في العقد من كونه شخصًا أو شركة أو دولة مثلًا.
  
  الثالث - تعيين المبلغ الذي يدفع المؤمن له إلى المؤمن.
Fifth, fixation of the amount of premium, if the amount is to be paid in instalments, as well as the mode of payment [i.e., monthly, six-monthly, or annually].

Sixth, fixation of the total period of insurance, its date of beginning and the date of maturity.

As regards the fixation of the sum insured, as, for example, one thousand Dinârs, it is not necessary. If the subject of insurance is mentioned in the contract, so that the Insurer undertakes to indemnify any loss sustained by the Insured by saying, "I undertake to indemnify any loss sustained by the Insured", it will be sufficient.

Problem # 5. Apparently a contract for insurance shall be valid provided it fulfills the conditions mentioned before without any difference in the various kinds of insurance for life, automobiles, aeroplanes, ships, etc., or insurance for movables of land, air and sea; rather even for the employees of accompany or-governement or members of a family, village or villager itself, a town and its inhabitants, where the insured shall be the shareholders or the chief of the company or the head of the government, or family or village; rather the governments are entitled to insure the inhabitants of the town, or region or the country.

Problem # 6. Apparently a contract for insurance is an independent contract, and what is currently in practice is undoubtedly neither conveyance, nor a gift against compensation (hibah mu‘awwadah).

It may be a guarantee against compensation (damân bi-‘iwâd). It is more distinct that it is independent not belonging to the type of guarantee of undertaking.

It is, rather, a form of commitment for indemnifying the loss or damage, and if possible a unilateral obligation by way of conveyance, gift against compensation or a guarantee against compensation. With all these suppositions, according to the stronger opinion, it shall be valid.

A contract for insurance is binding and neither of the parties have the right to dissolve it except when stipulated in the contract, and both of them are entitled to conclude a bargain.

Problem # 7. Apparently insurance by mutual guarantee is lawful, and that is where a group agrees at the creation of an organization in which thee a joint capital for indemnifying the loss or damage incurred by any of its members. This is also lawful, according to the more distinct opinion.

It is also an independent transaction based on the commitment to indemnify the loss or damage from the joint capital against indemnifying such loss or damage.
التامين

الرابع - تعيين الخطر الموجب للخسارة كالحرق والغرق والسرقة والمرض والوفاة و نحو ذلك.

الخامس - تعيين الأقساط التي يدفعها المؤمن له لو كان الدفع أقساطاً، وكذا تعيين أرممائها.

السادس - تعيين زمان التأمين ابتداءً وانتهاءً، وأما تعيين مبلغ التأمين بأن يعين ألف دينار مثلاً فغير لازم، فلو عين المؤمن عليه والالتزام المؤمن بأن كل خسارة وردت عليه فعلية أو أنه ملتزم بدفعها كلي.

مسألة 5 - الظاهرة صحة التأمين مع الشرائح المتقدمة من غير فرق بين أنواعه من التأمين على الحياة أو على السيارات والطائرات والسفن و نحوها، أو على المتفقات براً وجواً وبحراً، بل على عمالة شركة أو دولة أو على أهل بيت أو قرية أو على نفس القرية أو البلد أو أهلها، وكان المستأمن حينئذ الشركاء أو رئيس الشركة أو الدولة أو صاحب البيت أو القرية، بل للدول أن يستأمنوا أهل بلد أو قطر أو مملكة.

مسألة 6 - الظاهرة أن التأمين عقد مستقل، وما هو الرائع ليس صلاحاً ولا هبة معوضة بلا شبهة، ويعمل أن يكون ضماناً بعوض، والأظهر أنه مستقل ليس من باب ضمان العهدة، بل من باب الالتزام بجبران الخسارة وإن أمكن الإيقاع بنحو الصلح والهبة المعوضة والضمان المعوض، و يصح على جميع التقادير على الأقوى، وعقد التأمين لازم ليس لأحد الطرفين فسخه إلا مع الشرط، وله التقابل.

مسألة 7 - الظاهرة صحة التأمين بالتقابل، وذلك بأن تنفق جمعة على تكوين مؤسسة فيها رأس مال مشترك لجبر خسارة ترد على أحدهم، وهذا أيضاً صحيح على الأظهر، وهو معاملة مستقلة أيضاً. مرجعه الالتزام بجبر خسارة من المال المشترك في مقابل جبر خسارة كذلك، و يمكن أن يقع العقد بنحو عقد الضمان، بأن يضمن كل خسارة شركائه بالنسبة في مقابل ضمان الآخر، إلا أن الأداء
The contract may also be concluded by way of a contract of guarantee, so that all the loss or damage of its partners may be guaranteed in relation to mutual surety for another guarantee, except that payment is to be made from the joint capital.

It is more distinct that there is commitment for indemnifying the loss or damage against indemnifying in proportion to what they have in that joint capital. This contract is binding.

It may be a contract of partnership in which all the members make commitment for guaranteeing the loss or damage of each of its partners, in which case it shall be lawful but not binding.

Problem # 8. Apparently a combined contract of insurance is lawful with sharing the profits accruing to the partnership by investing the money collected from the partners, regardless whether the insurance is for life so that the amount insured is to be paid in the event of the death of the insured or the maturity of the period of insurance, in which case the insured shall be entitled to share the profits according to the agreement, so that the share of each of the partners out of the profits is added to the sum insured, or to the indemnity of the loss or damage by sharing the profits, as mentioned. It is a contractual partnership with legal stipulation or stipulations.

If some of the partners are required to manage the affairs of the partnership while others contribute money, and the agreement is for the type of sleeping or silent partnership (muḍārābah), in my opinion it shall also be lawful, as there is no condition of what is contributed in the capital of the sleeping or silent partnership to be gold or silver coins; rather it may be money against commodity. Such a contract is binding, even if it is not based on sleeping partnership.

If there is a contract for sleeping partnership, and, in between, there is insurance, it shall be lawful from both the sides.

Problem # 9. If the insurer undertakes to pay something in addition to the sum insured, apparently there shall be no objection in it.

For example, if a person gets his life insured with an insurance company for a prescribed period and a prescribed sum, and the insurance company has received the monthly insurance instalments, and the insurance company undertakes to pay more than the sum insured in order to persuade more persons to get themselves insured, this surplus money shall not be treated as the interest on loan, due to the absence of the payment of instalments being a loan.

Insurance is an independent transaction in which, by the way, the stipulation for the payment of the instalments has been incorporated, and this stipulation is lawful and its enforcement is binding.

Problem # 10. There is no objection in the underwriting of insurance, where a [smaller] insurance company asks larger and more extensive companies to insure the insurance policies of its customers.
من المال المشترك، ولكن الأظهر فيه الالتزام بgium الحسارة في مقابل جبر بنسبة ما لهم المشترك من ذلك المال، وهذا العقد لازم، ويجمل أن يكون عقد شركة التزم كل في ضمه خسارة كل واحد منهم، وحينئذ يكون جائزًا لا لازمًا.

مسألة 8: الظاهرة صحة التأمين المختلط مع الاشتراك في الأرباح التي تحصل للشركة من الاستفادة بالاتجار بتلك المبالغ المجتمعية من المشتركين سواء كان التأمين على الحياة بأن يدفع مبلغ التأمين عند وفاة الموتى عليه أو عند انتهاء مدة التأمين، وللمؤمن الحق في الاشتراك في الأرباح حسب القرار، فيضاف نصيب كل من الأرباح إلى مبلغ التأمين، أو على جبر الحسارة مع الاشتراك في الأرباح كما ذكر، فإن ذلك شركة عقدية مع شرط أو شرائح سائحة، ولو كان من بعضهم العمل ومن بعضهم النقود وكان القرار نحو المضاربة صح أيضاً عندي، لعدم اعتبار كون المدفع في مال المضاربة الذهب والفضة المسكوكين، بل المعتبر كونه من النقود في مقابل العروض، وهذا العقد لازم إن لم يرجع إلى المضاربة، وإن كان عقد مضاربة في ضمه التأمين فجائز من الطرفين.

مسألة 9: لا التزم المؤمن بدفع إضافة على مبلغ التأمين فالظاهرة أنه لا بأس به، كمن أمكن على حياته عند شركة التأمين لمدة معلومة على مبلغ معلوم واستوفى الشركة أقساطاً شهرية مقدرة في حق التأمين وتلتزم الشركة بدفع مبلغ إضافة على مبلغ التأمين ترغيباً لأهل التأمين، فإن تلك الزيادة ليست من الربا القرضي، لعدم كون أداء الأقساط قرضاً، بل التأمين معاملة مستقلة اشترط في ضمها ذلك، والشرط ساين لا يلزم العمل.

مسألة 10: لا يتأسس باعادة التأمين بأن طلب بعض شركات التأمين لدى شركات عظيمة أوسع منها التأمين لشركته التأمينية.
II - Bill of Exchange (Saftah)

There are two kinds of Bill of Exchange or Promissory note (saftah).

First. What denotes the existence of a real loan, as when a person has a debt due from another, as, for example, one hundred Dinârs, for a prescribed period, so the creditor gets a document (indicating the debt) from the debtor.

Second. What denotes a supposed debt, called “mujâmalah” [a friendly bill of exchange]. It is not a debt on anybody.

Problem # 1. In case of the first kind, when a person obtains a documents against the debt, and cashes it with a third party for a sum of money less than what is owed by the debtor, there shall be no objection in it, when the both the exchanges are not subject to weights and measures, as Iranian currency, Iraqi Dinâr, dollars and other negotiable instruments, as they are not subject to weights and measures, and the backing by their respective has given them monetary value. Their likes are not valued by gold or silver; rather their capability of being changed into gold and silver is the base of their value, and in fact the transaction is made on them. The bills of exchange or promissory notes are considered negotiable instruments. After the transaction on the liability of the debtor, he becomes indebted to the third party. This is the case when both the parties intend thereby to transact an actual sale and not to escape from the interest on loan. This is not permissible when it is based on usurious transaction even if both the parties intend to transact an actual sale. If the creditor has obtained a loan from a third party, and has entrusted it to the financial obligation of the debtor for more than what he has received from him, that is absolutely forbidden regardless whether it is subject to weights and measures or not, and even if the loan is lawful.

Problem # 2. A transaction based on the supposed bill of exchange termed as mujâmalah (or friendly bill of exchange), except when it is based on one of the following ways:

First, when it is said that if the creditor forwards its to another to get it cashed with a third party, and the third party on the scheduled date has recourse to the supposed debtor, it shall in fact turn into his agent or representative who may make the transaction with a third party with the financial obligation of the supposed debtor.

So after the transaction has been made on his behalf the supposed debtor, in fact, becomes indebted to the third party, and as the supposed transaction is a sale of non-usurious commodities, their sale or purchase by less or more is lawful.
ومنها الكميالات (سفته)

وهي على قسمين:

أحدهما ما يعبر عن وجود قرض حقيقي بأن كان لشخص على آخر دين.
كما دينار على مدة معلومة فيأخذ الدائن من المدين الورقة.
ثانيهما ما يعبر عن قرض صوري. و يسمى بالمجملة، فلا يكون دين على
شخص.

مسألة 1: في النوع الأول إذا أخذ الورقة لينزلها عند شخص ثالث مبلغ أقل
بأن يبيع ما في ذمة الدين بأقل منه لا إشكال فيه إذا لم يكن العوضان من
المكيل و الموزون كالآسكتاس الإيراني والدينار العراقي والدلار و سائر الأوراق
ال النقدية، فإنها غير مكيلة ولا موزونة، والاعتبار من الدول جعلها أثناهما، و
ليست أمثالها معتبرة عن الذهب و الفضة، بل قابلتها للتبديل بها موجبة
إعدادها، ومعاملة تعق بنفسها، و الكميالات معتبرة عن الأوراق النقدية، و
بعد المعاملة على ذمة الدين يصير هو مديوناً للشخص الثالث، هذا إذا قصدًا بذلك
البيع حقيقة لا الفرار من الربا القرصي، ولا يجوز ذلك إذا كانت ربوية وإن
قصدا به البيع حقيقة، وأما إذا أخذ الدائن عن الشخص الثالث قرضًا و حوّله على ذمة
المدين أكثر مما أخذ فهو حرام مطلقاً سواء كان من المكيل أو الموزون أولاً و إن
كان الهر صحيحاً.

مسألة 2: لا تجوز المعاملة بالكميالات الصورية المعبر عنها بالمجملة (سفتة
دوستانه) إلا أن ترجع إلى أحد الوجه الآتية:

منها: أن يقال: إن دفع الورقة إلى الآخر لينزلها عند شخص ثالث و يرجع
الثالث في الموعد المقرر إلى المدين الصوري يرجع في الحقيقة إلى توكيله بأن يوقع
Also this act is tantamount to permitting the supposed creditor in obtaining a loan for himself for what he obtains, but there should be no condition of interest [or usury], and the surplus is given either gratuitously or by acting on the legal approval, while the payer has the right of recourse to the supposed creditor as he has an implied decision and because he has not done it as a donation or gift.

Second, that forwarding the promissory note or bill of exchange to him for encashing it and the recourse of the third party to him is due to following two things.

One of them is the supposed creditor becoming creditable to the third party (bank, etc.) to the extent of the amount of the promissory note, and therefore the transaction is made on the financial obligation of the supposed creditor, and so he becomes a debtor to the third party.

The second of them is the commitment of the supposed debtor for the payment of the sum mentioned if the supposed creditor who has become the actual debtor to the third party fails to make payment.

This is an implied commitment due to the promised recourse to him in the event of failure of payment by the debtor. It is permissible for the payer to have recourse to the person to whom payment has been made if the payment was not made as a gift to donation, and it was also binding in the arrangement mentioned.

Apparently the transaction shall be lawful after it is declared to be one not based on interest [or usury], and the validity of the commitment mentioned, as it is attachment of an obligation to obligation, and is lawful according to the rules, even if according to the true faith [i.e. Shi'ah faith], it is not based on guarantee.

Third, that the preceding position may remain as it is, except that the supposed creditor by his act becomes a guarantor on the supposition of non-payment by his companion, in the sense of transfer of the obligation to an obligation in supposing the non-payment. This also has a ground for its validity, even if it is not free from objection.

Again, if the supposed debtor forwards his liability or what he has guaranteed to the third party, he shall be entitled to have recourse to the supposed creditor and receive what payment he has made on his behalf.

Problem # 3. In view of the usual practice of the banks, etc. to have recourse to the party who sells the bill of exchange and to every one who has endorsed it in the event of non-payment of its payer due to the current laws, and this is what is pledged among all of them, it shall be an implied commitment by them for the liability of payment on demand.

This is also an implied stipulation in the agreement and its observation is binding.

Of course, in case of absence of knowledge about it and absence of pledge, it is not be a part of the agreement and no payment shall be obligatory.
المعاوضة مع الثالث في دمّة الدين المصري، فيصير الدين المصري بعد المعاملة بوكالته مديوناً حقيقة للثالث، ولما كان المفروض بيع غير الأجناس الروبية صحت المبايعة بالأقل والأكثر، وأيضاً ذلك العمل إذن له في اقتراع الدائن المصري ما يأخذه لنفسه، ولابد من عدم اشتراط الربح، ويدفع الزيادة مجاناً أو عملاً بالاستحباز الشرعي، ودلاع الرجوع إلى الدائن المصري للقرار الضمني، وعدد كونه مثيراً

ومنها أن: دفع الورقة إليه ليست و يرجع الثالث إليه موجب لأمرين

أحدهما: صيرورة الدائن المصري ذا اعتبار بمقدار الورقة لدى الثالث (البنك أو غيره) ولذلك يعامل على دمّة الدائن المصري فيصير هو مديوناً للشخص الثالث.

ثانيهما: التزام من المدين المصري بأداء المقدار المذكور لم ي يؤد الدائن المصري الذي صار مديوناً حقيقة للشخص الثالث، وهذا التزام ضروري لأجل معهودية الرجوع إليه عند عدم دفع المدين، ويجوز للدافع الرجوع إلى المدين عنه ولوم يكن مثيراً و كان ذلك أيضاً لازم القرار المذكور، وظاهرة صحة المعاملة بعد عدم كونه روبية وصحة الالتزام المذكور، فانه من قبيل ضمّ الدمّة إلى الدمّة، ويصبح بحسب القواعد، إن لم يرجع إلى الضمان على المذهب الحق.

ومنها: الصورة السابقة مالها إلا أن الدائن المصري بعمله يصير ضامنًا على فرض عدم أداء صاحبه، يعني نقل النسبة إلى الدمّة في فرض عدم الأداء، وهذا أيضاً له وجه صحة وإن لا يخلو من إشكال، ثم لو دفع المدين المصري إلى الثالث ما التزمه أو ضمّه فله الرجوع إلى الدائن المصري وأخذ ما دفع عنه.

مسألة 3: بعد ما كان المتأعرف في عمل البنك، و نحوها الرجوع إلى بائع الكبالة و إلى كل من كان توقيعه عليها لدى عدم أداء دافعها لأجل القوانين الجزائرية، وكان هذا أمرًا معهودًا عند جميعهم كان ذلك التزاماً ضمنياً منهم بعدها الأداء عند المطالبة، وهنا أيضًا شرط في ضمن القرار وهولام الرعاية، نعم مع عدم العلم بذلك و عدم معهودته لم يكن قرارًا ولم يلزم بشيء.
**Problem # 4.** Whatever is charged by the bank, etc. from the debtor at the time of delay in the payment after the arrival of the scheduled date and failure on the part of the supposed debtor in paying the required sum of money is forbidden and it is not permissible to charge it, even if it is done with the mutual consent both the parties to the transaction.

**Problem # 5.** Promissory notes and all other negotiable instruments have no financial value and they are not considered cash, and the transactions made with them do not take place by themselves, but by the cash value these instruments are considered to possess, and by their delivery to the creditor does not absolve the debtor of his liability, and if some of them are destroyed or lost while in the hands of a usurper, etc., or they are destroyed by anybody, he shall not be liable for the destroying it or causing its destruction by another.

The cash instruments (notes) are like currency notes, Dinârs, Dollars, etc. and they have financial value, and they are cash like Dinârs and Dirhams coins of gold and silver, and their payment to the creditor absolves the liability of the debtor, and he is responsible in case they are lost by him or he causes their loss as in case of the loss of other valuable documents.

**Problem # 6.** It has already been mentioned that in case of cash instruments (notes) no interest [or usury] takes place for non-loan transactions, so it is permissible to exchange some of them with others for less or more, regardless whether they are cash notes of two countries like exchanging Dinâr with other currency notes [of other denominations], like exchanging currency notes with other notes of the same denomination or Dinâr for Dinâr, without any difference whether their backing is gold, silver or any other mineral as precious stones or petrol.

If it is supposed in a case that the instruments mentioned are like negotiable instruments, they shall be treated as such, and it shall be a mere supposition.

This is the case when the intention thereby is sale and not loan, otherwise it shall not be permissible.

**Problem # 7.** No Zakât is charged on cash notes, and bay' sarf also does not take place with them. Of course, according to the stronger opinion, there is permissibility for Mudâ'arabah with them.

---

**III - Good-will**

**Problem # 1.** Leasing out a rental property, whether it is a shop or a house or the like, does not create any right to the lessee in it so that the lessor has no right to eject him after the expiry of the period of lease.
مسألة 4 - ما يأخذه البنك أو غيره من المديون عند تأخر الدفع بعد حوالي الأجل وعدم تسليم المبلغ من قبل المدين الصوري حرام لا يجوز أخذه وإن كان بمراضا المتعاملين.

مسألة 5 - الكبليات وسائر الأوراق التجارية لا مالية لها، ليست من النقود، ومعاملات الواقعة بها لم تقع بذاتها بل بالنقد والوقوع التي تلك الأوراق معبرة عنها، ودفعها إلى الدائن لا يسقط ذمة المدين، ولو تلف شيء منها في يد غاصب ونحوه أو أتلفه شخص لم يضمنه ضمان التلف أو الاتفاق، وأما الأوراق النقدية كالاسكناس والدينار والدلال وغيرها فلها مالية اعتبارية، وهي نقود كالدينار والدرهم المسكونين من الذهب والفضة، فدفعها إلى الدائن مسقط لدمته، وفي تلفها وإتقافها ضمان كسائر الأموال.

مسألة 6 - قد تقدم أن الأوراق النقدية لا يجري فيها الربا غير القرضي فيجوز تبديل بعضها بعض بالزيادة والنقصة، سواء كان المتبادل من نقد ملكتيين كتبديل الدينار بالاسكناس أولاً، كتبديل الاسكناس بمثله، والدينار بمثله، من غير فرق بين كون معتمداً (بشتوانه) ذهباً وفضة أو غيرهما من المعادن كالأشكال الورقية والدلال، فنعم لو فرض في مورد تكون الأوراق المذكورة كالاوراق التجارية كان حكمها كتلك الأوراق لكنه مجرد فرض، هذا إذا قدض بذلك البيع دون القرض، وإلا فلا يجوز.

مسألة 7 - الأوراق النقدية لا تتعلق بها الزكاة، ولا يجري فيها حكم بيع الصرف، نعم الأقوى جواز المضاربة بها.

ومنها السرتفانية

مسألة 1 - استئجار الأعيان المستأجرة دقة كانت أو داراً أو غيرهما لا يوجب حدوث حق للمستأجر فيها بحيث لا يكون للمؤجر إخراجه بعد تمام الإجارة، و
Likewise, with the prolongation of the time of stay or business in the place of his business or trade, or, when, as a result of his reputation and business dealing the number of his customers to his business center may increase, neither of them shall cause the creation of his right on the leased property. So when the lease period expires, he is bound to vacate the place and hand it back to its owner.

If he stays in the said property without the permission of its owner, he shall be deemed a usurper and sinner.

He shall be responsible for any loss or damage to the property, even if by an Act of God, as also he shall be liable to the proper rent of the property as long as it is in his possession and as long as he has not paid its rent to its owner.

**Problem # 2.** If such person leases out the usurped property, the lease shall be invalid, and if he receives anything as the rent, it shall be unlawful.

If he loses it or causes its loss, he shall be answerable to its payer, as the payer shall be answerable to the owner of the property after he takes its possession, and he shall be liable to pay its proper rent to him.

**Problem # 3.** The good-will received by the usurper in such case shall be unlawful, and if he loses it or causes its loss, he shall be answerable to its owner.

**Problem # 4.** If a person hires a property for a long period as twenty years, and the tenant is entitled to lease it out to another.

In the meantime the proper rent of the property happens to rise, the tenant shall be entitled to the amount of rent for which he has rented and to receive an amount as good-will as agreed upon by the two parties so that he may rent it out to the third party.

**Problem # 5.** If a person rents, for example, a shop, an stipulates with the lessor that he shall not increase the amount of rent, suppose, for a long time, and also stipulates that if the tenant hands over the place to another, he to another, and so on, the lessor shall act as he has done with the first tenant.

Incidentally the rent of the shop increases. The tenant shall be entitled to lease it to another so that the lessor should act as he had done with him and charge an amount as good-will as he is handing over the shop to another. In such case the good-will shall be lawful.

**Problem # 6.** If the lessee stipulates in the lease-deed that the lessors shall not increase the amount of rent as long as the lessee is there, and shall have no right to eject him and the tenant shall pay the rent mentioned in the lease deed every year, the tenant shall be entitled to receive an amount as good-will from the lessor or any other person in order to give up his right or to vacate the rented place.
كذا طول مدة بقائه وتجاربها في محل الكسب أو كونه وجاشه وقدرته التجاري الموجبين لتوجه النفس إلى مكسب لا يوجب شيء منها حدوث حق له على الأعيان، فإذا تمت مدة الإيجار تجب عليه تخلية المكان وتسليمها إلى صاحبه، فلو بقي في المكان المذكور مع عدم رضا المالك كان غاصباً عاصياً، وعليه ضمان المكان لو تلف ولو بآفة سماوية، كما عليه أجرة مثل المكان مادام كونه تحت يده وعدم تسليمه إلى مالكه.

مسألة 2 - لو آجر هذا الشخص ذلك المكان المغصوب كانت الإيجارة فاسدة، ولو أخذ شيئاً بعنوان مال الإيجار فهو حر، فان تلف أو أتلفه كان ضامناً للدافع، كما أن الدافع إذا قضى المخل صار ضامناً لمالكه، وعلى أجرة مثله.

مسألة 3 - السرقة فلو كانت أخذها الغاصب في هذه الصورة حر، ولو تلف ما أخذته عنده أو أتلفه فهو ضامن مالكه.

مسألة 4 - لو استأجر محلاً للتجارة في مدة طويلة كعشرين سنة مثلاً وكان له حق إيجاره من غيره واتفق ترقي أجرة مثل المحل في أثناء المدة فله إيجارته بالمقدار الذي استأجره وأخذ مقدار بعنوان السرقة فلأن يؤجره منه على حسب توافرها.

مسألة 5 - لو استأجر دكية مثلاً وشرط على المؤجر أن لا يزيد على مبلغ الإيجارة إلى مدة طويلة مثلاً وشرط أيضاً أنه لو حوَّل المحل إلى غيره وهو إلى غيره ولهذا يعمل المؤجر معه معاملته ثم اتفق ارتفاع أجرته فله أن يحوَّل المحل إلى غيره ليعمل المؤجر معه معاملته معه وياخذ مقداراً بعنوان السرقة ليوحَّل المحل إليه، ومنجل السرقة بهذا العنوان.

مسألة 6 - لو شرط على المؤجر في ضمن عقد الإيجارة أن لا يزيد على مبلغ الإيجارة ما دام المستأجر فيه ولا يكون له حق إخراجه وعليه إيجاره كل سنة بالمقدار المذكور فله أخذ مقدار بعنوان السرقة من المؤجر أو من شخص آخر لينقطع حقه أو تخلية المحل.
Problem # 7. If the lessee stipulates in the lease-deed that the lessor shall not rent out the property to another and rent it out to him every year on the usual rent, he shall be entitled to receive an amount as good-will for giving up his right or to vacate the rented place.

Problem # 8. The owner of the property is entitled to receive any amount as good-will from any person to rent out the property to him, as the tenant shall also be entitled to receive an amount as good-will during the period of lease from a third party in order to lease it out to him in case he has the right to rent it out [to a third party].

IV - Banking Transactions

Problem # 1. There is no difference in the banks and their various kinds from the local, foreign, government and others as regards the laws that follow, as also in whatever is obtained from them is lawful and can be lawfully possessed, like whatever is obtained from their owners from among the proprietors of trades and industries, etc., except with the knowledge about the prohibition of whatever is obtained and containing what is prohibited.

The knowledge about the existence of prohibitions in banks or such other organizations has no effect on whatever is taken from them, even if there is likelihood of its being prohibited.

Problem # 2. All the lawful transactions that take place with one of the Muslims are valid or declared as valid even if they take place with the banks absolutely regardless whether they belong to the government or not, and whether they are local or foreign.

Problem # 3. There is no objection in the deposits or trusts that are placed with the banks by their owners in case they are in the form of loan or giving their ownership to the bank against securities.

It is permissible for the bank to use them, but to regulate any profit or interest on them is unlawful, as it is forbidden to give those profits and interests.

In case of loss or damage to such profits or causing such loss or damage the recipient shall be held responsible, even if the loan was valid.

Problem # 4. There is no difference in the condition of profit whether it is clarified at the time of loan or whether it is made dependent on it.

If the banking law allows giving profit on loan and it gives loan on that condition, it shall be unlawful.
مسألة 7 - لو شرط على المؤجر في ضمن العقد أن لا يؤجر المحل من غيره و يؤجر منه سنوياً بالإيجارة المتعارفة في كل سنة فله أخذ مقدار بعنوان السرقفية لاسقاط حقه أو تخلية المحل.

مسألة 8 - للمالك أن يأخذ أي مقدار شاء بعنوان السرقفية من شخص ليؤجر المحل منه، كما أن للمستأجر في أثناء مدة الإيجارة أن يأخذ السرقفية من ثالث للإيجار منه إذا كان له حق الإيجار.

ومن أعمال البنوك

مسألة 1 - لا فرق في البنوك وأنواعها من الداخلية والخارجية والحكومية وغيرها في الأحكام الآتية، ولا في أن ما يؤخذ منها محل يجوز التصرف فيها، كسائر ما يؤخذ من ذوي الأيدي من أرباب التجارات والصناعات وغيرها إلا مع العلم بجرمة ما أخذه أو اشتهائه على حرام، وأما العلم بأن في البنك أو في المؤسسة الكذائية محرومات فلا يؤثر في حركة المأخوذ وإن احتمل كونه منها.

مسألة 2 - جميع المعاملات المحللة التي لو أوقعتها مع أحد المسلمين كانت صحيحة. محكومة بالصحة لو أوقعتها مع البنوك مطلقاً حكومية كانت أو لا خارجية أو داخلية.

مسألة 3 - الأمانات والودائع التي يدفعها أصحابها إلى البنوك إن كانت بعنوان القرض والتمليك بالضمان لا مانع منه، ويجاز للبنك التصرف فيها، ويجبر قرار النفع والفائدة، كما يلزم إعطاء تلك الفوائد وأذىها، ومع الاشتفاء أو التلف يكون الآخر ضامناً للفوائد وان صح القرار.

مسألة 4 - لا فرق في قرار النفع بين التصريح به عند القرض و بين إيقاعه مبنياً عليه، فلو كان قانون البنك إعطاء النفع في القرض و أقرضه مبنياً على ذلك كان محرمًا.
Problem # 5. If it is supposed that giving and taking loan is not based on the condition of profit it shall be permissible to charge something extra without any precondition.

Problem # 6. If what is paid to the bank in the form of a deposit or pledge without allowing the bank to use it, the bank shall not be entitled to bring any change in it, and if he brings it in its use, it shall be responsible for it. If, however, he is allowed to do so, it shall be permissible for it to do so. The same shall be the case, if it is assented to. Whatever is paid to him by the bank is lawful in both cases except when the permission to use is based on giving ownership by guarantee, as any excess in whatever is taken with the condition of profit is unlawful, even if the loan is lawful. Apparently whatever is kept in the bank as deposit fall under such category, so whatever is called deposit or trust is actually a loan, but with the condition of benefit, the profit shall be unlawful.

Problem # 7. The prizes given by the bank in order to encourage customers to deposit their money in it or take loan from it or the like by casting prescribed lots in whose favour they may fall are lawful, there being no restriction on them. The same is the case with the prizes given by firms and organizations by casing lots in order to encourage and attract customers. The same is the case with whatever the owners of some organization grant for the purchase of some of their commodities for encouraging and raising the number of their customers. They are all lawful and there is no restriction on them.

Problem # 8. It is said that one of the functions of the bank is the issuance of confidence certificates, which means that after the conclusion of a contract about a commodity between a trader and a company, for example, of a foreign country, and after the conclusion of the transaction in respect of all its aspects, the trader goes to a bank and applies for opening credit with the bank and deposits a part of the price of the commodity, and the bank proceeds to pay the whole price of the commodity to the company and takes possession of the commodity which is considered to belong to the bank from the date of issue of the confidence certificate. On the arrival of the commodity at its destination, the bank informs its owner about its arrival, and the change of the name of the bank to that of its owner after the payment of the money the bank had paid the balance of the price of the commodity to the company, and the bank demands final commission in lieu of its service in addition to the balance between the date of the delivery of the commodity to the company and the date of its delivery by its owner.

If the trader makes payment of the balance of the price and the commission demanded by the bank, the bank delivers the commodity to him, otherwise the bank takes the charge of the sale of the commodity and gets its right settled.

Now, is the commission charged by the bank is lawful and permissible or not? Or is whatever it charges against the issuance of the confidence certificate and receiving and delivering the commodity, etc. is lawful, but whatever it charges for the delay in the payment of its price is unlawful? Apparently the second case is right, in case whatever the bank pays to the company
مسألة 5 - لو فرض في مورد لا يكون الاقتراض و ال والسند بشرط النفع جاز.
أخذ الزيادة بقرار.

مسألة 6 - لو كان ما يدفعه إلى البنك بعنوان الوثيقة والأمانة فان لم يتأذن في التصرف فيها لا يجوز للبنك ذلك، و لو تصرف كان ضامناً، و لو أذن جاز، و كذا لو رضي به، و ما يدفعه البنك إليه خلاً. على الصورتين إلا أن يرفع الآذن في التصرف الناقل إلى التملك بالضمان، فان الزيادة المأخوذة مع قرار النفع حرام و إن كان الاقتراض صحيحاً، و الظاهرة أن الوعد في البنك من هذا القبيل، فما يسمى ودية وأمانة قرض واقع، ومع قرار النفع تحرر الفائدة.

مسألة 7 - الجوائز التي يدفع البنك تشريعاً للإيداع و الاقتراض و نحوها إلى من تضييف القروة المقررة ملحة لا منع منها، و كذا الجوائز التي تعظمها المؤسسات بعد إصابته القروة التشكيل و جلب المشتري، و كذا ما يجعله صاحب بعض المؤسسات ضمن بعض أمتية تشريعاً و تكثيراً للمشتري، فان كل ذلك خلال لا منع منه.

مسألة 8 - قبل من أعمال البنك الاعتمادات المستندية، و المراد منها أن يتم عقد بين تاجر و شركة مثلًا في خارج البلاد على نوع من البضاعة، و بعد تفاصيل العلاقة من الجهات المدخلة فيها يتقيد التاجر إلى البنك و يطلب (فتح اعتماد) و يدفع إلى البنك قيمة من قيمة البضاعة، و يقوم البنك بعد ذلك بدفع القيمة تامة إلى الشركة و يتسلم البضاعة، و تسجل باسم البنك من حين التصدير، و عند وصولها إلى الميناء يخطر البنك ملكها بالوصول و تحو البضاعة من اسم البنك إلى اسم ملكها بعد أن يدفع ما دفعه الاقتراض إلى الشركة مما بقي من قيمة البضاعة، و يتقاضى البنك عن هذه العملية عمولة مقطوعة إزاء خدماته و فائدة.

على المبلغ الباقى طيلة الفترة الواقعة بين يوم تسلمه إلى الشركة إلى يوم تسليمه من صاحب البضاعة، ثم إن دفع التاجر ما بقي من القيمة و ما يتقاضى البنك بسلميها ياه، و إلا فيتصدى لبيع البضاعة و استيفاء حقه، فهل ما يأخذه البنك
for the debt of the owner of the commodity is in the form of a loan to him, in the same way as it is outwardly so.

The same shall be the case if whatever the bank pays is in the form of payment of his debt, so the owner of the commodity is indebted to the bank, but whatever it charges for the delay in the payment of the debt is unlawful.

As regards the assumption of the charge for the sale of the commodity, it has no objection, provided it is incorporated in the agreement, because ultimately it turns into its capacity as the agent of the owner of the commodity, and in this respect it is permissible to purchase the commodity from the bank.

**Problem # 9.** One of the functions of banks and such other organizations is provision of guarantee for another person for the performance of his undertaking, as, for example, construction of a bridge. The bank or such other organization pledges on behalf of its client to guarantee that the party shall pay a sum of money if, suppose, it fails to stick to its commitment, and in lieu of such guarantee it demands a commission from the client.

Apparently such pledge by the bank relating to the payment of fine in case of failure by its client to stick to its commitment is valid and it is permissible for it to charge a commission in lieu of such guarantee or other actions for confirmation of the guarantee, etc.

If the guarantee has been given by the bank, etc. with the consent of the client, it shall be permissible for it to have recourse to the party [or client] for paying [the fine, etc.] paid by it to the third party, and the client shall not be allowed to refuse it.

**Problem # 10.** One of the functions of the banks is issuing drafts, which sometimes means exclusively travellers cheques. If a person pays to a bank or a businessman a specified money in a place and the bank issues, for example, a draft payable at a bank in another place, and charges a commission from the party in lieu of issuing such draft, there shall be no objection in it, regardless whether it is a sale or a loan.

The same shall be the case if the commission is by way of remuneration.

If a party intends to receive a specified amount from a bank or such other organization and the bank issues a draft to receive such amount from a bank in another place, and the bank charges a specified commission, then if the transaction is in the form of a sale of an amount for an extra amount to be paid by him to the bank, it shall be lawful, and there shall be no objection in it, provided it should not be a means for escaping from interest on loan. The same shall be the case if it was a loan but with the condition of an extra payment by way of fee, provided it is not a means of escape from the interest [on loan].
من الزيادة جائز حلال أم لا؟ أو ما يأخذه بإذن خدمته من التسجيل والتسليم و نحو ذلك جائز وما أخذه ببعوان الفائدة لتأخير ثمنه حرام؟ الظاهر الآخير إذا كان ما يدفع البنك إلى الشركة أداءً لدين صاحب البضاعة قرضاً له، كأن الظاهر كذلك في الخارج، وكذا لو كان ما يدفعه البنك أداءً لدينه، ففيصير صاحب البضاعة مدينًا له و يأخذ مقداراً لأجل تأخير دينه فانه حرام، وأما تصدي البنك لبيع البضاعة مع الشرط في ضمن القرار فلا مانع منه، لرجوع ما ذكر إلى توكيله لذلك، فيجوز الشراء منه.

مسألة 9 - من أعمال البنوك، و نحوها الكفالة بأن يتعهد شخص لآخر بالقيام بعمل كبناء قنطرة مثلًا، و يتعهد البنك ارائه أو غيره للمتعهد له بكفالة الطرف أي المتعهد. و ضمانه بأن يدفع عنه مبلغًا لفقر عدم قيامه باتخاذ المتعهد له، و يتقاضي الكفيل ممن يكلفه عمولة ب بازار كفالتها، و الظاهر صحة هذه الكفالة الرافعة إلى عهدة الأداء عند عدم قيام المتعهد بما تعهد، و جواز أخذ العمولة بازار كفالتها أو بازار أعمال أخرى من ثبت الكفالة و نحوها، و إذا كانت الكفالة باذن المتعهد جاز له الرجوع إليه لأخذ ما دفعه، وليس للمتعهد أن يتنفع منه.

مسألة 10 - من أعمالها الحوالات، وقد يطلق عليها صرف الربات، فان دفع شخص إلى البنك أو التاجر مبلغًا معيناً في بلد يحوله البنك مثلًا إلى بنك بلد آخر و يأخذ البنك منه مبلغًا معيناً بازار تحويله فلا إشكال فيه بيعًا كان أو فرضًا، و كذا لو كان الأخذ بعنوان حق العمل، و إن أراد أن يأخذ من البنوك أو نحوه مبلغًا معيناً و يحوله البنك على تسليم المبلغ من بنك في بلد آخر و يأخذ البنوك منه مبلغًا معيناً فكان ذلك القرار بيع مبلغ ب맵 بارتفاع ليحوله إلى البنك صائق، ولا إشكال فيه بشرط أن لا يكون هذا وسيلة للفرار من الربا القرضي، و كذا إن كان قروضاً لكن لم يشترط الزيادة بل أخذها بعنوان حق العمل مع عدم كونه فرار من الربا، وأما إن كان قروضاً بشرط الزيادة فهو حرام وإن كان القرض مبينًا.
If it is a loan with the condition of extra payment, it is shall be unlawful, even if the loan depends on the payment of the extra money, and the condition is an undeclared support, but the loan shall be lawful.

**Problem # 11.** The bank cheques like other negotiable instruments have no monetary value, but they indicate a specified amount of money in the bank, and it is not permissible to sell or purchase them. Of course, the cheques known in Iran as the guaranteeing cheques, as like cash or currency notes as Dinār and currency notes, and it is permissible to sell or purchase them, and whosoever loses them is responsible to their owner like other goods, and their for extra money is permissible, and there is no interest in its transaction, except when the sale is made a means for absolving oneself from the interest on loan.

**Problem # 12.** The functions of banks relating to mortgage shall be lawful if they are in the form of a loan for a period with a specified profit and receiving mortgage against it along with the condition of sale of the mortgaged goods and get one’s capital in case the mortgagee fails to pay the sum mortgaged within the scheduled period as in such case the actual debt and mortgage shall be valid, but the condition of payment of profit and extra money is not lawful and it is not permissible to receive them.

Of course, it is permissible to receive them if they are service charges, provided it is not a means for absolving oneself from the interest [on loan].

If it is in the form of forward sale, so that a person sells two hundred as forward sale [or future debt] against current one hundred and the buyer stipulates writing a deed even if the condition is implied supporting the deed and that he shall be entitled to act as attorney for the sale of the goods in case of contravention and receive [out of the sale proceeds] upto what he is entitled, such sale, mortgage or agency shall not be lawful.

**V - Lottery Tickets**

**Problem # 1.** In some countries there is a prevailing system of lottery tickets issued by some companies and their sale in lieu of a specified amount of money, in which the proprietor of the company undertakes to cast lots and pay a specified money to the person who wins by casting lots, but such sale is invalid and receiving money in exchange for tickets entails liability. Likewise, receiving money after the lot fell upon the winner is forbidden entailing his liability for the actual owner.

**Problem # 2.** There is no difference in the prohibition of the money of the lottery ticket whether the person purchasing the ticket buys it for the possibility of the lot falling upon him without sale or purchase or its sale and purchase for such purpose. In both cases the money
مسألة 11 - الصكوك (チェック) البنكية كالأوراق التجارية لا مالية لها، بل هي معبأة عن مبلغ معين في البنك، ولا يجوز بيعها وشروطها في نفسها، نعم الصك الذي يسمى في إيران بالصك التصميمي (チェック تضميني) يكون من الأوراق النقدية كالدينار والاسكناس فيصبح بيعه وشروطه، ومن أثناه ضمن ما يحمله كسائر الأموال، ويجوز بيعه بالزيادة، ولا ربا فيه إلا إذا جعل البيع وسيلة للتخلص عن الربا الضربي.

مسألة 12 - أعمال البنوك الراهنة إن كانت إقراراً إلى مدة بالنفع المعين و أخذ الربح مقابله وشرط بيع المرهون، أخذ ماله لولم يدفع المستقرض في رأس أجله يصح أصل الضربي و الربة، ويظل اشتراط النفع و الزيادة، ولا يجوز أخذها، نعم يجوز الأخذ لو كان بعنوان حق العمل إذا لم يكن حيلة للجائز من الربا، وإن كانت من قبل بيع السلف، بأن باع الطالب مأتين سلفاً بثأر، واسترخ المشتري عليه ولو بنحو الشرط التضمني الارتكازي وثيقة وكونه وكيلًا في بيعه عند التخلف، وأخذ مقدار حقه فلا يصح البيع ولا الربة ولا الوكالة.

ومن بطاقة البنك بخت آزماني

مسألة 1 - قد شاع في البلاد من قبل بعض الشركات نشر بطاقة البنك بخت آزماني وبيعها بازاء مبلغ معين وتعهد صاحب الشركة بأن يرفع فن أصابته القرعة بطاقة برفقة مبلغًا معيناً، وهذا البيع باطل، وأخذ المال بازاء البطاقة موجب للضمان، وكذا أخذ المال بعد إصابة القرعة حرام موجب لضمان النهوض للمالك الراهي.

مسألة 2 - لا فرق في حرومة شراء البطاقة بين أن يدفعه الطالب لاحتمال
received is unlawful and receiving whatever is paid for the sake of the lot falling upon oneself is forbidden.

Problem # 3. Some proprietors of lottery tickets have changed the name of the lottery tickets to aid to charitable institutions in order to mislead the religious and believing persons, although externally the act is the same without any difference in its nature that may cause legality.

So the money collected in such denomination is forbidden as well as the money received after casting lots that fall upon some persons.

Problem # 4. If it is supposed, though far-fetched, that a company is established for issuing lottery tickets for the actual aid of charitable institutions and payment of the whole money accrued by the sale of the lottery tickets for such legal purpose, and the company paying or spending all that is received by it for such purpose, and donating an amount out of its receipts to those upon whom the lots fall by way of a gift and reward as encouragement, there shall be no objection in the permissibility of both the cases.

The same shall be the rule if out of the money receives from the buyers of the tickets a prize is given with their consent. But it is a mere supposition but is not a reality.

So the sale and purchase of the lottery tickets in the present system is not lawful, and whatever is received after the lot falls upon somebody is also forbidden.

Problem # 5. If the lot is cast and the money of the lottery is to be paid, then if the actual owner of the money is know, it is obligatory to pay it to him; otherwise it shall be considered to belong to unknown owner, and it shall be obligatory to distribute it in charity on behalf of its actual owner. It is more cautious to obtain the permission of the judge for distributing it in charity.

Problem # 6. It is not permissible, by way of being more cautious, though not according to the stronger opinion, for the person in whose name the lot has fallen to own it and distribute it in charity on behalf of its actual owner, even if he is poor. Rather he is bound to distribute it among the poor.

Problem # 7. If a person donates to a poor person a large sum that has fallen by lot in his name with the condition that he take a part of it for himself and return the rest to him, apparently it shall not be permissible for him or for the poor.

Of course, if the poor person pays something suitable for his position without any precondition, there shall be no objection in it.

This is, in short, concerning modern transactions.

There are, however, a large number of other modern problems and those that shall arise in future times that are discussed in several chapters in jurisprudence that are difficult to cover, but we are mentioning in brief some of them that have cropped up or that are on the threshold of emergence.
إصابة القرعة بأسمه من غير بيع وشراء وبن بيعها وشرائها هذا الغرض، في الصورتين أخذ المال حرام، وأخذ ما يعطي لأجل إصابة القرعة حرام.

مسألة 3 - قد بدأ أرباب الشركات عنوان اليا نصيب بعنوان الإعانة للمؤسسات الخيرية لاغفال المتدينين ومؤمنين. وعمل خارجاً هو العمل بلا فرق جوهر ليوجب الحيلة. فالمأخوذ بهذا العنوان أيضاً حرام، ولهذا المأخوذ بعد إصابة القرعة.

مسألة 4 - لو فرض بعيداً قيام شركة بنشر بطاقات للاعانة حقيقة على المؤسسات الخيرية ودفع كل من أخذ بطاقة مالاً لذلك المشروع ودفع أو صرف الشركة ما أخذ فيها، وتحيي من مالها مبناً من إصابة القرعة هبة ومجاناً للتشويق فلا إشكال في جواز الأمور، وكذا لو أعطى الجائزة من المال المأخوذ من الطالبين برضا منهم، لكنه مجرد فرض لا واقعية له، فالاوراق المباعة في الحال الفعلي بيعها وشراؤها غير جائز، والمأخوذ بعنوان إصابة القرعة حرام.

مسألة 5 - لو أصيبت القرعة وأخذ المبلغ فان عرف صاحب الأموال يجب الدفع إليه، وإلا فهي من جهول المال يجب الصدقة بها عن مالكها الواقعي، والأخطار الاستثناء من الحاكم الشرعي في الصدقة.

مسألة 6 - لا يجوز على الأحوال لولم يكن الأقوى في أخذ المال الذي أصابته القرعة صرفه وتملكه صدقة عن مالكها ولو كان فقيراً، بل عليه أن يتصدق به على الفقراء.

مسألة 7 - إذا أعطى ما أصابته القرعة من المال الكثير فقيراً وشرط عليه أن يأخذ لنفسه بعضاً ويرد الباقي إليه فالظاهر عدم جوازه، وعند جوازه للفقير أيضاً، نعم لو أعطاه الفقير مايناسب حاله بلا إشتراء لا إشكال فيه.

هذه جملة من المعاملات المستحدثة، وأما المسائل المستحدثة الآخر وما مستحدثها الأعصار الآتية فكثيرة جداً، وتجري في كثير من أباب الفقه، وقد صعب استقصاؤها، ولكن نذكر جملة حادثة منها أو في أهبة الحدوث.
VI - Artificial Insemination and Procreation

Problem # 1. There is no objection in the artificial injection of the husband's semen into the [womb of the] wife, though it is obligatory to abstain from the forbidden preliminaries as the appointment of a stranger for the artificial injection or its performance that necessitates looking at the parts of body that are not allowed to be seen [by a stranger]. If it is supposed that the semen has been discharged in the lawful manner and it is injected by the husband into [the womb of] the wife, and a child is begotten thereby, the child shall belong to both the husband and wife, as when it is born as a result of [natural] intercourse. Rather even if the injection of the husband's semen into [the womb of] the wife takes place in an unlawful manner, as when it is injected by a stranger, or it has been obtained in an unlawful way, the child shall, [nevertheless], belong to the husband and wife, though by committing a sin.

Problem # 2. It is not permissible to artificially inject the semen of other than the husband, regardless whether the woman has a husband or not, whether the wife and husband have agreed with it or not, and whether the woman belonged to the category of the prohibited degrees of relatives like his mother or sister or not.

Problem # 3. If the process or artificial injection of the semen of other than the husband has been accomplished and the woman has a husband, and it is known that the child is the product of an artificial insemination, there shall be no difficulty in the non-affiliation of the child to the husband, as there shall be no objection in affiliating the child to the man to whom the semen belongs and the woman if the artificial insemination is doubtful as is the case in a semblance of intercourse with the woman.

If a man injects his semen under the impression that the woman is his wife and that the semen belongs to him, and it transpires otherwise, the child shall belong to the man o whom the semen belongs and the woman. If, however, it has been done with the knowledge and deliberately, then there shall be difficulty in the child's affiliation, though it shall be in conformity with the principles of law, but the problem is difficult and it is indispensable to observe caution. The matters relating to inheritance in a case of semblance of artificial insemination shall be similar to those of semblance of intercourse. In case of prohibited deliberate acts, it is indispensable to exercise caution.

Problem # 4. It is not permissible to marry the child if the child is the product of the man to whom the semen belongs, nor for the child to marry the male child to the man's mother, sister or other close relatives of the prohibited degrees. In short, if the child is born in the lawful manner its marriage shall be prohibited with those with whom it is not lawful to marry.

Problem # 5. It is more cautious to abstain from looking at each other for those who are allowed to look at each other in case they are born in the lawful way, though it shall be in conformity with the principles of law to look at each other.
مسألة 1 - لا إشكال في أن تلقح ماء الرجل زوجته جائز وإن وجب الاحتراس عن حصول مقدمات عرفة ككون الملحق أجنبياً أو التلقح مستلزمًا للنظر إلى ما لا يجوز النظر إليه، فلو فرض أن المنطقة خرجت بوجه مخل ولقحها الزوج بوجه فحل من فئها ولد كان ولدًا، كما لو تولد بالجماع، بل لو وقع التلقح من ماء الرجل بوجهه بوجه محرم كما لو لقح الأجنبي أو أخرج المي بوجه محرم كان ولدًا ولدها، وإن أنها بارتکاب الحرام.

مسألة 2 - لا يجوز التلقح بماء غير الزوج، سواء كانت المرأة ذات بعل أو لا، رضي الزوج أو الزوجة بذلك أو لا، كانت المرأة من محارم صاحب الماء كأمها و أخته أو لا.

مسألة 3 - لو حصل عمل التلقح بداء غير الزوج و كانت المرأة ذات بعل و علم أن الولد من التلقح فلا إشكال في عدم خروج الولد بالزوج كما لا إشكال في خروج صاحب الماء و المرأة فإن كان التلقح شبة كما في الوطء شهبة، فلو لقحها بتوهم أنها زوجته وأن الماء له فبان الخلاف يلحق الولد بإثبات الماء و المرأة، وأما لو كان مع العلم و العبد ففي الخلاف إشكال، و إن كان الأشبه بذلك، لكن المسألة مشكلة لابد فيها من الاحتياط و مسائل الارث في باب التلقح شبة كسائله في الوطء شهبة. و في العمدي المحرم لابد من الاحتياط.

مسألة 4 - لا يجوز تزويج المولود لو كان أنثى من صاحب الماء، ولا تزويج الولد أنه أو أخته أو غيرهما من المحارم، بل بالجملة لا يجوز نكاح كل من لا يجوز نكاحه لو كان التولد بوجه شرعي.

مسألة 5 - الأحوال ترى النظر إلى من جاز النظر إليه لو كان المولود بطريق شرعي و إن كان الأشبه الجوان، هذا فاعلاً إذا لم يحصل التلقح شهبة، و إلا فلا...
This is the case when the product is not the result of a doubtful artificial insemination; otherwise, there shall be no objection in its permissibility.

Problem # 6. There are several varieties of artificial insemination and procreation, that may emerge in future. They are as follows.

First, the male semen that produces a child may be obtained from fruits and grains, etc., and through the process of artificial insemination into [the womb of] the woman it may result in the procreation of the child, and it is known that such a child is not affiliated but to its mother, and its affiliation to the mother is weaker than the problem in the case of artificial injection of the husband’s semen [into the womb of the wife].

Second, the man’s semen may be obtained and it is developed in an artificial womb as the artificial production of the foal, in which case it shall be affiliated to the man and none else.

Third, the semen may be obtained from the fruits, etc., and placed in the artificial womb, resulting in procreation of the child. If such kind of process is supposed, there shall be no problem in it, but the child so produced shall not be affiliated to any person.

Problem # 7. If children produced by the semen of a man in an artificial womb are male and female, they shall be brother and sister from the father’s side, without both of them having any mother. Their marriage to each other shall not be allowed, nor their marriage to those who are prohibited to them from the father’s side, if the procreation has been in the usual way.

If children born of artificial semen in the womb of a woman are male and female, they shall be brother and sister from the mother’s side and both of them shall have no father. They shall not be allowed to marry each other or those prohibited to them from the mother’s side.

Problem # 8. If male and female children are born of artificial semen in an artificial womb, then apparently they shall have no relation with each other, and so their marriage to each other shall be allowed, but there be no inheritance between them, even if their semen is obtained, suppose, from a single apple.

Problem # 9. If a child is born before the minimum period of gestation by medical treatment, as when its natural process of development is accelerated by means of radiation, or after the maximum period of gestation due to hindering its natural process of development and rendering it slower, it shall be affiliated to his father after the knowledge that it is the product of his semen. If it has been naturally due to the weakening of the sunrays and change in cosmic nature, the child shall be affiliated to the wife even if there is some doubt in it. Likewise, if in some of the natural regions the maximum or minimum periods of gestation are different from our region, the affiliation of the child [to the mother, father or none] shall take place in consideration of its possibility to whomsoever it may be, and it shall not be in accordance with our region.

Problem # 10. If the foetus while still in the form of a blood clot or a lump of flesh or after infusion of life in it is transferred from the womb of its mother to that of another woman, in
إشكال في الجواز.

مسألة 6 - للتوفيق والوليد أنواع يمكن تحققها في المستقبل:

منها - أن تؤخذ النطفة التي هي منشأ الولد من الأثار و الحبوب و نحوها و بعمل التلقيح بالمرأة تتصير منشأً للولد، ومعلوم أنه لا يلحق بغير أمها، وإلقاءه بها أضعف إشكالاً من تلقيح ماء الرجل.

ومنها - أن يؤخذ ماء الرجل ويربي في رحم صناعي كتوليد الطيور صناعياً، فيلحق بالرجل ولا يلحق بغيره.

ومنها - أن تؤخذ النطفة من الأثار و نحوها فتجعل في رحم صناعية فيحصل التوليد، وهذا القسم لوفرض لا إشكال فيه بوجه، ولا يلحق بأحد.

مسألة 7 - لو حصل من ماء رجل في رحم صناعية ذكر وأنثى يكونان أحناً و أختاً من قبل الأب، ولا أمهما، فلا يجوز نكاحهما ولا نكاح من حرم نكاحه من قبل الأب لو كان التوليد بوجه عادي، ولو حصل من نطفة صناعية في رحم امرأة ذكر وأنثى فيها أح و أخت من قبل الأم، ولا أب لها، فلا يجوز نزويجهما ولا تزويجها.

مسألة 8 - لو توليد الذكر وأنثى من نطفة صناعية ورحم صناعية فالظاهرة أنه لا نسبة بينهما، فجاز تزويج أحدهما بالآخر، ولا توارث بينهما وإن أخذت النطفة من تقاحا واحدة مثلاً.

مسألة 9 - لو توليد الطفل بواسطة العلاج قبل مدة أقل الحمل كما لو أسرع عن سيره الطبيعي بواسطة بعض الأشعة أو تولد بعد مدة أكثر الحمل للمنع عن سيره الطبيعي و الابطاء به يلحق الطفل بأنه بعد العلم بكونه من مائه، ولو صار ذلك طبيعيًا لأجل ضعف أشعة الشمس و تغير طبيعة الأرض يلحق الولد بالفراش مع الشك أيضاً، وكذا لو كان في بعض المناطق طبيعي أكثر الحمل أو أفله على خلاف مناطقنا يحكم بالحلاق الولد مع إمكانه، ولا يقاس بمناطقنا.

مسألة 10 - لو انتقل الحمل في حال كونه علقة أو مضغة أو بعد وفج الروح
which it develops and is born, then whether it shall belong to the former or latter woman? There is no doubt that it shall belong to the former woman when it is transferred after the completion of its creation and infusion of life, as there shall be no difficulty in its affiliation to her if it is taken out from its mother's womb and placed in an artificial womb in which it develops. If, however, it is taken out [before the infusion of life] while still in the form of, suppose, a lump of flesh, then there shall be hesitation [in its affiliation to its mother]. Of course, if it is established that the semen of the husband and wife are the source of creation of a child, then apparently it is to be affiliated to both of them regardless whether it is transferred to the womb of [another] woman or an artificial womb.

VII - Post-Mortem Examination and Transplantation of Limbs

Problem #1. It is not permissible to carry out post-mortem examination of a dead body of a Muslim. If it is done, then here shall be a diyat mentioned under the section on Diyats for cutting its head or parts of the body. But it is permissible to perform the examination if the dead body belongs to a non-Muslim regardless whether he is a Dimmi or any other, and it shall not entail the liability for diyat nor shall be a sin.

Problem #2. If it is possible to carry out the post-mortem examination on the dead body of a non-Muslim for the sake of medical knowledge, it shall not be permissible to perform it on the dead body of a Muslim, even if the life of a Muslim or a group of Muslims depends on it. If it is carried out [on the dead body of a Muslim] despite possibility of its performance on the dead body of a non-Muslim, it shall be a sin and shall entail the liability for diyat.

Problem #3. If the protection of the life of a Muslim depends on carrying out post-mortem examination of the dead body of a Muslim, and it is not possible to perform it on the dead body of a non-Muslim, then apparently it shall be permissible to do so. However merely for the sake of obtaining knowledge, it shall not be permissible to do so unless the life of a Muslim depends on it.

Problem #4. There is no hesitation in the imposition of diyat in a case where the post-mortem examination is carried out for the sake of obtaining knowledge. However in case of necessity and dependence mentioned before, it is not far from likely to set aside diyat.

Problem #5. It is not permissible to cut a limb of a dead body to be transplanted in place of a limb of a living person, when the dead body belongs to a Muslim, except when the life of that person depends on it. If, however, the life of the limb of that person depends on it, then apparently it shall not be permissible to do so. If the limb is chopped off, it shall be a sin, and it shall entail the liability for diyat. This is the case when the deceased has not given his consent for it [before death], but if he had given his consent for it [before death], there is no hesitation in its permissibility, and if the deceased had given his consent [before death], there shall be no liability for diyat, even if we believe in its prohibition. If the deceased had not given consent [before death], whether his heirs are entitled to give consent or not, is a question whose reply is apparently in the negative. So if it is done with the consent of the heirs of the deceased, it shall be a sin, and there shall be liability for diyat.
من رحم امرأة إلى رحم امرأة أخرى فنشأ فيها و تولد هل هو ولد الأولي أو الثانية؟ لا شبهة في أنه من الأولي إذا انتقل بعد تمام الخلقية و ولج الروح، كما أنه لا إشكال في ذلك إذا أخرج و جعل في رحم صناعية و ربي فيها، و أما لو أخرج قبل ذلك حال مضغته مثلاً ففي إشكال نعم لو ثبت أن نفقة الزوجين منشأ للطفل فالاظاهر إلحاقه بها سواء انتقل إلى رحم المرأة أو رحم صناعية.

وممها التشريح و الترقيق

مسألة 1 - لا يجوز تشريح الميت المسلم، فلو فعل ذلك ففي قطع رأسه و جوارجه دبة ذكرناها في الديات، و أما غير المسلم فيجوز ذيماً كان أو غيره، ولا ديد و لا إثم فيه.

مسألة 2 - لو أمكن تشريح غير المسلم للفعلات الطبية لا يجوز تشريح المسلم و إن توقفت حياة مسلم أو جمع من المسلمين عليه، فلو فعل مع إمكان تشريح غيره أثم، و عليه الدية.

مسألة 3 - لو توقف حفظ حياة المسلم على التشريحة لم يكن تشريح غير المسلم فالاظاهر جوازه، و أما لمجرد العلم فلا يجوز ما لم توقف حياة المسلم عليه.

مسألة 4 - لا إشكال في وجب الدية إذا كان التشريحة مجرد العلم و أما في مورد الضرورة و التوقف المتقدم فلا يعد السقوط على إشكال.

مسألة 5 - لا يجوز قطع عضو من الميت لترقيق عضو الحي إذا كان الميت مسلمًا إلا إذا كان حيته متوفرة عليه، و أما إذا كان حيته متوفرة عليه فالاظهر عدم الجواز، فلو قطعهم أثم، و عليه الدية. هذا إذا لم يذكرون قطعهم، و أما إذا أذن في ذلك ففي جوازه إشكال، لكن بعد الإجازة ليست عليه الدية و إن قلنا لجنه، و لو لم يذكرون الميت فهل لأوليائيه الأذن؟ الاظهر أنه ليس لهم ذلك، فلو قطعه باذن الأولياء عصى و عليه الدية.
Problem # 6. There is no objection in cutting the limb of the dead body of a non-Muslim for transplantation, but after it there occurs the problem of uncleanness (najāsat). as being a limb of a dead body it is not allowed to offer prayers with it. It is is possible to say that when it is a lawful to be alive with it when it has been obtained from a dead body and it has become a limb of a living person, it has become clean when alive, and so it is allowed to offer prayer with it. The same is the case when a limb is cut from an animal, even if the animal happens to be incapable of being cleaned (najis al-‘ayn), and it is transplanted and becomes alive with the life of a Muslim.

Problem # 7. If in our opinion it is permissible to cut a lamb and transplant it with the permission of its owner during his life, then apparently there must be permissibility for its sale to be used after the death of its owner, and it is but indispensable to utilize its price for the deceased either for the payment of his debt or spend it for charitable purpose on his behalf, and his heirs shall have no share in it.

Misc. Subsidiary Rules

First. According to the stronger opinion, it is allowed to utilize blood except for eating, and it is also allowed to sell it except for eating. As is usual to sell blood for the sick and others, there is no objection in it, let alone when there is mutual agreement on it and its exclusive right has been transferred.

It is allowed to transfer blood from the body of one person to that of another and charge price for it after determination of its weight by modern implements. In case of ignorance about it, there is no objection on what has been mutually agreed by the parties. It is more cautious to charge some money absolutely for strengthening the donor after the donation of his blood and not for the blood, and as far as possible caution should not be given up.

Second. According to the stronger opinion, it is unlawful to eat the meat of an animal slaughtered by modern machines, even if all the conditions required for slaughter have been fulfilled, let alone in case the animal has been slaughtered from the back of neck and without facing the Qiblah.

An animal slaughtered by machines is like a dead animal and unclean, its meat is not allowed to for eating nor is it lawful to sell it, and its seller is not allowed to own the price obtained for selling it, and he is answerable to the buyer for it.

Third. What is called “right of printing” [reserved] is not a lawful right. It is not permissible to deprive the people of their control over their property without concluding a contract or mutual stipulation.
مسألة ٦ - لا منع من قطع عضو ميت غير مسلم للترقيع، لكن بعده يقع الاشكال في نجاسته وكونه ميتة لا تسح الصلاة فيه، ويمكن أن يقال في إذا حل الحياة فيه خرج عن عضوية الميت وصار عضواً للحي فصار طاهرة حياً، وست حرر الصلاة فيه، وكذا لو قطع العضو من حيوان ولو كان نحس العين ورفع فصار حياً بحياة المسلم.

مسألة ٧ - لو قلنا بجواز القطع والترقيع، وباشر من صاحب العضو ممان حيائه فالظاهر جواز بيعه لينفقه به بعد موتاه، و لو قلنا بجواز إذن أولاهه فلا يبعد أيضاً جواز بيعه للانتقاع به، ولا بد من صرف الثمن للميت إما لأداء دينه أو صرفه للخيرات له، و ليس للوارث حق فيه.

فروع:

الأول - الأقوى جواز الانتقاع بالدم في غير الأكل و جواز بيعه لذلك، فا تعارف من بيع الدم من المرضي وغيرهم لا منع منه فضلاً عنا إذا صاحب عليه أو نقل حق الاختصاص، و يجوز نقل الدم من بدن الإنسان إلى آخر وأخذ ثمنه بعد تعيين وزنه بالآلات الحديثة، و مع الجهل لا مانع من الصلح عليه، و الأحواط أخذ المبلغ للتمكين على أخذ دمه مطلقاً لا مقابل الدم، ولا يترك الاحتياط ما أمكن.

الثاني - الأقوى حرمة البيحة التي ذكرت بالمكانات الحديثة وإن اجتمع في الذيين جميع شرائطها فضلاً عنا إذا كان البيحة من القفا أو غير مستقبل القبة، فالبيحة بالمكانات ميتة نجسة لا يجوز أكلها ولا شراؤها، ولا يملك البائع الثمن الأخذ بما فيها، وهو ضمان للمشتري.

الثالث - ما يسمى عند بعض بيع الطبع ليس حقاً شرعياً، فلا يجوز سلب تسلط الناس على أموالهم بلا تعاقد وتشارك، فجرد طبع كتاب وتسجيل فيه.
Therefore by mere printing a book and writing that the right of printing or imitation is reserved for its owner does not create any right, and it is not considered a lawful ban for others and its printing and imitation by others would be allowed, and no one shall have the right to deny it.

Fourth. What has become the practice of registration of an invention for its inventor and banning its imitation and reproduction has no legal effect, and no one has the right to deny others from its imitation and sale and purchase or to deprive others from control over their person or property.

Fifth. What has become a practice of reservation of trade of something or some things for an organization or a traders, etc., has no legal effect, and it is not lawful to ban others from the trade and production of lawful commodities and reserving them for some persons.

Sixth. The stabilization of rates of commodities and preventing their owners from selling them for more is not lawful.

Seventh. It is up to the Imâm and the ruler of Muslims to make arrangements as they deem necessary in the interest of the Muslims for controlling the rates and production of commodities or reserving their trade, etc. that concern the administration and interest of the society.

VIII - Change of Sex

Problem # 1. Apparently it is not prohibited to change the sex of a male to female through surgical operation, or vice versa.

Likewise, a surgical operation of a hermaphrodite is not prohibited for his final attachment to either of the sexes. Is it obligatory in case a woman finds in herself inclinations of the kind of male urges or some male symptoms, or a male finds in himself inclinations of the opposite sex and some of its symptoms? Apparently it is not obligatory when person really belongs to one sex but it is possible to change it into the opposite sex.

Problem # 2. If it is supposed that there is knowledge about the person’s entering into an opposite sex, and the surgical operation will not change his/her sex into another, but will only expose what is hidden, then undoubtedly it is obligatory to act according to the symptoms of actual sex and prohibition of the symptoms of apparent sex.

So if it is known that he is a male, it shall be obligatory upon him to observe all that is required of him as a man, and abide by all that is forbidden to him as a man, and vice versa.
ابة حق الطبع والتقليد محفوظ لصاحبها ولا يعد قراراً مع غيره.
فجاز لغيره الطبع والتقليد، ولا يجوز لأحد منعه عن ذلك.
الرابع - مما تعارف من ثبت صنعة مخترعها ومنع غيره عن التقليد والتكرر
لا أثر له شرعاً، ولا يجوز منع الغير عن تقليدها والتجارة بها وليس لأحد سلب
سلطنة غيره عن أمواله ونفسه.
الخامس - مما تعارف من حصر التجارة في شيء أو شيء مؤمنة أو تجار
ونحوها لا أثر له شرعاً، ولا يجوز منع الغير عن التجارة وصناعة المخللات و
حصرها في أشخاص.
السادس - لا يجوز تثبيت سعر الأجنس ومنع ملاكها عن البيع بالزادة.
السابع - للاحام عليه السلام وولي المسلمين أن يعملما هو صلاح للمسلمين من تثبيت سعر أو صنعة أو حصر التجارة أو غيرها مما هو دخيل في
النظام وصلاح للجمعية.

وهنا تغيير الجنس

مسألة 1 - الظهير عدم حرمة تغيير جنس الرجل بالمرأة بالعمل وبالعكس، و
كذا لا يحرم العمل في الحنثي ليصير ملبقاً لأحد الجنسين، وله يجب ذلك لو
رأت المرأة في نفسها تماثلات من سنج تماثلات الرجل أو بعض آثار الرجولة
أو رأى الرجل في نفسها تماثلات الجنس المخالف أو بعض آثار ظاهرة عدم
وجوهه إذا كان الشخص حقيقة من جنس ومكن تغيير جنسه بما
يخالفه.

مسألة 2 - لو فرض العلم بأنه داخل قبل العمل في جنس مخالف وعملية
لا تبدل جنسه بآخر قبل تكشف عنها هو مستور فلا شبهة في وجوب ترتيب آثار
الجنس الواقعي وحرمة آثار الجنس الظاهرة، فلو علم بأنه رجل يجب عليه ما
It is, however, not obligatory to change his appearance and expose what is hidden, except when performance of the religious duties or some of them depend on them, and abstinence from the divine prohibitions is not possible without them, in which case they shall be obligatory.

**Problem # 3.** If a person married a woman, but subsequently her sex is changed and she becomes a man, their marriage shall be dissolved since her change of sex, and the husband shall be liable to pay her full dower, if he has had connubial intercourse before the change of sex. Whether he shall be liable to pay half or full of her dower, there is hesitation in its answer, though according to the opinion in conformity with the principles of law, he shall be liable to pay full dower. Likewise, if a woman marries a man, and subsequently his sex is changed, the marriage shall be dissolved since the change of his sex, but the man shall be liable to pay her dower, provided he has had connubial intercourse with her. In case other, he shall not be liable according to the stronger opinion.

**Problem # 4.** If the sex of both the spouses is changed to the opposite sex, so that the the man becomes a woman and vice versa, then if the change has not been simultaneous, then the law shall be the same as mentioned in the previous problem. If, however, the change has been simultaneous, then whether the marriage shall be dissolved, or the marriage of both of them shall intact, though their rights and obligations shall change, so that the present husband shall be liable to maintenance of his wife and the present wife shall have to be obedient to her present husband, it is more cautious for them to renew their marriage contract, and the present woman shall not be allowed to marry a man other than the present husband except after divorce by mutual consent, though it is not far from being likely that their marriage shall subsist.

**Problem # 5.** If the change of sex of the woman takes place during the subsistence of her 'Iddah, her 'Iddah shall discontinue, including even an 'Iddah for the death of her husband.

**Problem # 6.** If the sex of the man changes to the opposite, then apparently he shall be deprived of the right of guardianship of his minors. If, on the other hand, the sex of the woman is changed, her right of guardianship of the minors shall not thereby be established, and the guardianship in such case shall devolve on the paternal grandfather, and in his failure on the judge.

**Problem # 7.** If the sex of each sister and brother is changed to the opposite, their relation shall not be discontinued, but the sister shall become brother and the brother sister. The same shall be the rule in case of the change of sex of two brothers or two sisters. If the sex of the paternal uncle is change, he shall become paternal aunt and vice versa, and the maternal uncle to maternal aunt, and vice versa, and so on. If the new son or daughter happens to die, the present male shall get twice as much as the present female. The same rule shall apply to the other degrees of relatives, but there shall remain difficulty in the inheritance of the father, mother, gransfather and aunt. If the sex of the father is changed to the opposite he ceases to be a father or mother. The same shall be the case if the change of sex of the mother, as the present man is neither a father nor a mother. Now, whether they shall inherit in their capacity at the time of birth or in the capacity of being closest and most preferable, or shall not inherit at all, is a
يجب على الرجال و يحرم عليهما ما يجري عليهم و بالعكس، وأما وجوب تغيير صورته و كشف ما هو باطن فلا يجب إلا إذا توقف العمل بالتخلية الشرعية أو بعضها عليه و عدم إمكان الاحتراس عن المجارحات الإلهية إلا به فيجب.

مسألة 3 - لو تزوج امرأة فتغيرة جنسها فصارت رجلاً بطل التزويج من حين التغيير و عليه المهر تماماً لو دخل بها قبل التغيير، فهل عليه نصفه مع عدم الدخول أو تمامه؟ فيه إشكال، والأشياء التي، وكذا لو تزوجت امرأة برجل فغير جنسه بطل التزويج من حين التغيير، و عليه المهر مع الدخول، وكذا مع عدمه على الأقوي.

مسألة 4 - لو تغيير الزوجان جنسهما إلى المخالف فصار الرجل امرأة و بالعكس فإن كان التغيير غير مقارنة فالحكم كما مر، وإن قارن التنايراً فهله بطل النكاح أو بقي على نكاحها، و إن اختفت الأحكام، فيجب على الرجل الفعلي النفقة و على المرأة الاطعاء؟ الأحوال تعيد النكاح وعدم زواج المرأة الفعلية بغير الرجل الذي كان زوجته إلا بالطلاق بائدة و إن لا ي يعد بقاء نكاحها.

مسألة 5 - لو تغيير جنس المرأة في زمان عدتها سقطت العدة حتى عدة الوفاة.

مسألة 6 - لو تغيير جنس الرجل إلى المخالف فالظاهرة سقوط ولايته على صغاره، و لو تغيير جنس المرأة لا يثبت لها الولاية على الصغار، فولايتها للجد للاب، و مع فقه المحاكم.

مسألة 7 - لو تغيير جنس كل من الأخ و الأخت الباختلاف لم يقطع انسابهما، بل يصير الأخ أختاً و بالعكس، وكذا في تغيير الأخين أو الأختين، و لو تغيير العمارية و بالعكس، و الخلاف خالة و بالعكس وكذا، فلو مات عن ابن جديد و بنت جديدة للذكر الفعلي ضعف الأئذى الفعلية، و وكذا في سائر طبقات الأثر، لكن يبقى الاشكال في إرث الأب و الأم و الجد و الحدة، فلو تغيير جنس الأب إلى المخالف لا يكون فعلًا أباً ولا أمًا، وكذا في تغيير جنس الأم، فان الرجل الفعال لا يكون أباً ولا أمًا، فهل يرثان بل حفظ حال التوليد أو
question in whose answer there is hesitation, according to the opinion more in conformity with
the principles of law, they shall inherit. Apparently their difference in inheritance shall be in
consideration of their position at the time of their conception, so that the father at the time of
conception shall get two-thirds and the mother one-third, though it is more cautious to reach
compromise.

Problem # 8. If the sex of the mother changes, then after becoming a male will the new father
be a mahram for his son’s halalah as a father or not, it is not far from being likely, though with
some hesitation. If the sex of the father changes, then after becoming a female whether the new
mother shall be be a mahram for the son, even if he will no more be his mother, apparently it
shall be so. If the sex of the wife of the son changes, and she becomes a male, whether in the
new position she will be within the prohibited degrees for the mother of her former husband, it
is not far from being so, though with some hesitation.

Problem # 9. What we have mentioned about the relatives connected by nasab (affinity) shall
also apply to those related by fosterage, as the foster mother, foster father, foster sister, foster
brother, and so on.

Problem # 10. Whatever we have mentioned here applies in case there has been a sex change
in reality, but if the surgical operation merely exposes what was already hidden, and one who
has become a man was in fact a man already even before the surgical operation as is exposed
by it, then what rules shall apply to the supposed male or supposed female will naturally create
some other problems as well.

IX - Radio, Television, etc.

Problem # 1. These modern instruments have some lawful rational advantages and some
prohibited unlawful advantages, and each of them there are separate laws. So it is lawful to
enjoy the lawful advantages like the news and sermons and such other programs from the
radio, and watching prohibited pictures for teaching or training lawful trades and professions,
or show prohibited material or the strange creatures of the sea and land, but it is not
allowed to enjoy the prohibited advantages like listening to or broadcasting music and
broadcasting what is in repugnance to the clean shari‘ah as the material issued by the immoral
soures that are against the clean shari‘ah that are repugnant to Islam, and show what is against
the canon law and a source of corruption of the beliefs of the society and its morality.

Problem # 2. As mostly the use of these instruments has been for unlawful purposes and in our
countries here use for lawful purpose has been rare, we neither allow their sale except to those
with whom we have satisfaction that they shall not use them except for the lawful purposes and
shall absain from the forbidden purposes and shall not transfer them in possession of those
لا أعرف الأقلية والالأولوية أو لا يباثان في تردد، و الأشدية الأثر، و الظاهر أن اختلافها في الارث بمحاز حال انعقاد النطفة، فلا أب حال الانعقاد الثالث، و للأم الثالث، و الأحَوص التصالح.

مَسألَة 8: لو تغير جنس الأم فهل تكون بعد الرجولية محسّنة للخليلية إنها كالأب أم لا؟ لا يبعد على إشكال، ولو تغير جنس الأب فهل يكون في حال أنواعية محسّنة لابنه وإن لم يكن أماً له، الظاهر ذلك، ولو تغيرت زوجة الابن وصارت حريماً على أم زوجها السابق لا يبعد ذلك على إشكال.

مَسألَة 9: ما ذكرناه في الأقراء نسباً يأتي في الأقراء رضعاً كالأم و الأب الرضاعين والأخت و الأخ و هكذا.

مَسألَة 10: يثبت ما ذكرناه في إذا غير جنساً فيما واقع وما لو كان العمل كافياً عن واقع مبسط ول أن من صار رجلاً بعد العمل كان رجلاً من أول الأمر يستكشف منه ما ربط على الرجل الصوري و المرأة الصورية ربط على غير موضوعه فتحدث مسائل أخرى.

ومها الراديو والتلفزيون و نحوها

مَسألَة 1: هذه الآلات الحديثة مثيرة للحالة عقلانية و منافع عقلانية غير مشروعة، وكلا حكمه، فتجاوز الإنتاج من الأخبار و المواعظ و نحوهما من الراديو، وإقراء الصور للحالة لتعليم صنعة مهنة أو عرض متاع الحالة أو إقراء عجائب الحالة بشكل و براً و لا يجوز الإنتاج الحرم كسماع الغناء و إذاعته و إذاعة ما هو خلاف للشريعة الظاهرة، كالأخلاق الصادرة من المصادر غير الصالحة المخالفة لأحكام الإسلام، و إقراء ما هو خلاف للشرع و مفسد لعقائد الجامعة و أخلاقها.

مَسألَة 2: لما كان أكثر استعمال تلك الآلات في أمور غير مشروعة بحيث بعد
who would use them for forbidden purposes, nor allow their purchase except for those who
shall not use them except for lawful purposes and prevent others from their use for purposes
other than lawful purposes.

Problem # 3. It is not obligatory to reply to the salutation in the radio [or television], but it is
obligatory to reply to the salutation of one saluting by telephone.

Problem # 4. If a person listens to the recitation of the āyat-i sajdah on radio or such other
instrument, then if it is broadcast by the recitation of a person directly, prostration shall be
obligatory, but if it is broadcast through recorded tapes, it shall not be obligatory.

Problem # 5. The repetition of Adhān and Iqāmat shall be set aside if they are listened to from
radio or such other instrument, provided it is broadcast directly, but if it is listened to by
cassettes, it shall not be set aside. It is not approved to recite them by radio [or such other
source] in fard prayers, and their repetition is not set aside if recited by radio or such other
source.

Problem # 6. It is forbidden to listen to music or such other forbidden programs from radio or
such other sources, regardless whether they are broadcast directly or after having been
recorded on a tape.

Problem # 7. Listening to ghahat [speaking ill about an absent person] when it is broadcast
directly is forbidden; otherwise, listening to ghahbat as such is not forbidden. Of course, it may
be forbidden from other aspects, as, for example, disclosure of the secrets of a believer or his
dishonour.

Problem # 8. It is more cautious to refrain from looking at what is not allowed to look at in
television and such other sources, as the body of a stranger woman or her hair or the private
parts of a man.

Problem # 9. It is not far from permissibility to divorce through radio or loud-speaker, when it
is heard by two witnesses of integrity of moral character, and it is not obligatory for them to be
present in the assembly of divorce, and the contrary of it is more cautious, when the divorce is
performed through radio [or loud-speaker] directly and not by a casette. The rule for zīhār is
similar to that of a divorce.

Problem # 10. There is no doubt in the obligatory application of the consequences of an
admission or acknowledgement (iqrār) made on a telephone, loud-speaker, radio, or such other
source, when it is known that it is the voice of the person making admission or acknowledgement, and it is made directly by the person and not by a casette, regardless whether it is made in favour of a right of another, even if it is made about what entails Qisās or Ḥadd, in the same way as there is no doubt in listening to the legal evidence in favour of a
لا يجب جواب سلام من يسلم بواسطة الإذاعة، و يجب جواب من سلم تلفونًا.

مسألة 4 - لو سمع آية السجدة من مثل الراديو فإن أذيعت قراءة شخص مستقيمة وجبت السجدة، وإن أذيعت من المسجلات لا تجب.

مسألة 5 - يسقط الأذان والأقامة إذا سمعها من مثل الراديو بشرط إذاعتها مستقيمة. وإن أذيعت من المسجلات ليمكن سماعها، ولا يستحب حكايتها في الفرض، ولا يسقطا بحكايتها.

مسألة 6 - يحرم استماع الغناء ونحوه من المحرومات من مثل الراديو، سواء أذيعت مستقيمة أو بعد الضبط في المسجلة.

مسألة 7 - استماع الغيبة إذا أذيعت مستقيمة حرام، ولا فليس بحرم من حيث استماع الغيبة، نعم يمكن التحريم من جهات أخرى ككشف سر المؤمن مثلاً و إهانته.

مسألة 8 - الأحروف ترك النظر إلى ما لا يجوز النظر إليه في مثل التلفزيون كبدن الأجنبية وشعرها وعورة الرجل.

مسألة 9 - لا يجوز جوال الطلاق بواسطة الإذاعة و الكبيرة إذا سمعه شاهدان عدلان، ولا يجب حضورهما في مجلس الطلاق، والأحروف خلافه هذا إذا أجري الطلاق في الإذاعة مستقيماً لا بواسطة المسجلة، والحكم في الظهار كالطلاق.

مسألة 10 - لا إشغال في وجوب ترتيب الآثار على الأقرار بواسطة التلفون أو الكبيرة أو الراديو و نحوه إذا علم بأن الصوت من المقر و كان ذلك مستقيماً لا من المسجلات، سواء كان الأقرار بحق غيره حتى بما يوجب القصاص أو ما يوجب
right or Ḥadd, when it is expressed directly and not by a recorded tape, and it is known that it is the voice of the two witnesses possessing integrity of moral character. Likewise, there shall be an obligatory application of the consequences of a judgment of a judge and the establishment of the right by it. Similar is the case of [testimony about the appearance of] a new moon, and such other matters on the fulfillment of the condition mentioned before.

Apparently there is permissibility for taking oath by Allāh by a judge [or Qādir] from a person who is liable to give such oath, through a loud-speaker or telephone, and the oath is made on a loud-speaker or telephone with the fulfillment of the condition mentioned before.

Apparently the same rule shall apply to all other cases where the rule is applied to the initiation or information like Qadhf, Liʾan, Ghaibat, slander, abuse or other cases that are subject of a judgment, provided there is knowledge about the speaker being such and such or it has been proved by evidence.

Problem # 11. Whether the rules and consequences apply to the admissions and acknowledgements; there is no doubt that the consequences do not apply to whatever is in the form of cassettes.

So announcement of what is contained in a cassette shall neither be tantamount to admission or acknowledgement, nor a testimony, Qadhf [or slander], or judgment, or any other thing.

If, however, it known that what is recorded in the cassette is the admission or acknowledgement recorded from such and such person, it shall be accepted as telling about his admission or acknowledgement, but not as the admission itself, and as displaying testimony to legal evidence, judgment of the judge, slander of a slanderer.

Likewise, when it is known that whatever has been recorded is something really recorded, and with the possibility of the voice having resemblance with that of the person to whom it has been ascribed, yet it shall not have any legal effect, regardless whether it is whatever has been broadcast by the recorded message or whatever is broadcast directly without any intermediary source.

X - Problems relating to Prayers, Fasting, etc.

Problem # 1. Offering prayers in an aeroplane is allowed, provided the condition of facing the Qiblah is fulfilled. If the worshipper starts his prayers facing the Qiblah, and then the aeroplane turns right or left, and the worshipper changes his direction towards the Qiblah after ending recitation and dhikr, his prayer shall be valid, even if his change of direction gradually turns opposite his intial direction. If, however, he turns his back towards Qiblah, and then changes the direction, his prayer shall become void. If a person offers prayers in an aeroplane flying above Mecca or holy Kaʿbah, it shall become void due to the impossibility of fulfilling
حذراً من حدود الله، كما لا إشكال في سماع البينة على حق أو حاق إذا أُقيمت مستقيلة لا من المسجلة وعلم أن الصوت من الشاهدين العدلين، وكذا يجب ترتيب الآثار على حكم الحاكم وثبوت الحق به وكذا الهلال وغير هما من موارد الحكم مع الشرط المذكور، وظهور جواز استلحاق القاضي من عليه الخلف بواسطة المكبرة أو التلفون وحلفه من ورائها بالشرط المذكور، وظهور جرمان الحكم في سائر الموارد التي رتب فيها الحكم على إنشاء أو إخبار كالذكفاء واللعن والغيبة والتهية والفحش وسائر ما يكون موضوعاً للحكم.

بشرط العلم يكون المتكلم به فلالةً أو قامته البينة على ذلك.

مسألة 11: هل تتزلف الأحكام والآثار على الأقارب وغيرهما إذا كانت مرتبطاً في المسجلات؟ لا شيء في أن ما في المسجلات لا تتزلف عليها الآثار، فلا يكون نشر ما في المسجلة إقراراً ولا شهادة ولا قذفاً ولا حكمة ولا غيرها، لكن لو علم أن ما سجل في المسجلات هو الإقرار المضبوط من فلان يؤخذ بالإقرار من باب الحكايته عن إقراره لا من باب كون هذا إقراراً و من باب الكشف عن شهادة البينة وحكم الحاكم وقذف القاذف، وهكذا إذا علم أن ما هو المضبوط ضبط وسجل من الواقع المعقق ومع احتمال كون هذا الصوت مشابهاً لما نسب إليه لا يتزلف عليه أثر لا على ما أذيع من المسجلات ولا على ما أذيع مستقيماً بغير وسط.

ومنها مسائل الصلاة والصوم وغيرهما

مسألة 1: تجوز الصلوة في الطائرات مع مراعاة استقبال القبلة، ولو دخل في الصلاة مستقبلاً فاخرفة الطائرة يميناً أو شمالاً فحول المصل إلى القبلة بعد السقوط عن القراءة والذكر صح حكم صلاتها وإن التحويل تدريجاً إلى مقابل الجهة الأولى، وأما لو استدرب ثم تحول بطلت صلاتها فلوصل في طائرة.
the condition of facing the Qiblah. But if the aeroplane flies around Mecca and the worshipper changes the direction of his face gradually towards the Qiblah, it shall be all right.

**Problem # 2.** If a person embarks the aeroplane, and the plane covers four farsakhs [unit of distance equal to 6 kilometres] vertically [or horizontally?], his prayers and fasting shall be subjected to Qasr. If the aeroplane covers two farsakhs, and scientifically it goes out of the gravity of earth, and the earth makes a round, and the aeroplane remains in the position of not making round, and then the aeroplane returns to the earth, suppose, after half round, the prayer and fasting of the worshipper shall not be subjected to Qasr.

For example, if the aeroplane is in Baghdad and it flies vertically [or horizontally (?)] and remains in the air without making round following the earth, and after a few hours, it returns and turns, suppose, towards London, his prayers shall be full and he shall not be treated as a passenger.

**Problem # 3.** If the passenger misses the morning prayer, suppose, in Tehran, and embarks a plane that covers the distance between Tehran and Istanbul in an hour, and reaches Istanbul half an hour before the sunrise, his prayer shall become ada' [proper time for offering prayer] after it had elapsed. Whether it is obligatory on him to travel in order to offer prayer at its proper time, when there is no difficulty or distress; apparently it is so.

The same rule shall apply to all other prayers. If he missed a prayer, suppose, in Tehran, and travelled by that plane and started offering his prayer as elapsed, and reaches a place where the proper time of the prayer has not elapsed, and he offers the last part of his prayer on its proper time. So if he offers one rak'at, apparently it shall be treated as having been offered on proper time. If the proper time is for less than one rak'at, then there is hesitation.

If he starts offering his prayer for Maghrib as elapsed, but he reaches the proper time in the second rak'at, and then the plane makes a round, and the proper time elapses during his performance of prayer, so that the middle of his prayer has been offered on time but the other two sides of his prayer have been offered after the time, then apparently it shall be considered all right, but there is hesitation as to its being offered on its proper time or after the lapse of the proper time. It is not far from being treated as having been offered on proper time, if he had offered one rak'at on the proper time.

If he embarks the plane, then he starts the 'asr [evening] prayer of the same day after the sunset, and then the plane flies above vertically [or horizontally?], and his eyes fall on the sun during the prayer, and then the plane comes down and the sun disappears, and again the plane goes up and again his eyes fall on the sun, and so on, his prayer shall be all right, and it is not far from being treated as having been offered on proper time, if he has offered a whole rak'at continuously on the proper time. But if it was less than that, or to that extent but not continuously, then there is hesitation in treating as one offered on proper time or after the lapse of the proper time.

**Problem # 4.** If a person offers the Zuhrayn [Zuhr and 'Asr] prayers at the initial time at Tehran and embarks a plane and reaches Istanbul before noon the same day, then whether it
ماة على مكة أو الكعبة المكرمة بطلت لعدم إمكان حفظ الاستقبال، وأما لو طارت حول مكة وحول المصلي تدريجياً وجهه إلى القبلة صحت.

مسألة 2 - لو ركب طائرة فطرت أربع فراسخ عمودياً تقصر صلاته وصومه، ولو طارت فرسخين مثلًا عمودياً فأبلغت جاذبة الأرض بطرق علمي فدارت الأرض وبيقت الطائرة غير دائرة فرجعت إلى الأرض بعد نصف دور مثلًا لم تقصر صلاته ولا صومه، مثلًا لو فرض كون الطائرة في بغداد فطرت عمودياً وبيقت في القضاء غير دائرة بتبع الأرض وبعد ساعات رجعت وكان المرجع لندن مثلًا كانت صلاته تامة ولم يكن مسافرًا.

مسألة 3 - لو فاتت صلاة صبحه في طهران مثلًا وركب طائرة تقطع بين طهران وإسلامبول ساعة ووصل إليه قبل طلوع الشمس بنصف ساعة كانت صلاته أداءً بعد ما صارت قضاءً، وهل يجب عليه مع عدم العصر والحرج أن يسفه لتحصيل الصلاة الأدانية؟ الظاهر ذلك، وهكذا بالنسبة إلى سائر صلواته، ولو فاتت صلاته في طهران مثلًا وسافر مع تلك الطائرة وشرع في صلاته قضاءً ووصل إلى مكان لم يفعل فيه الوقت فأدرك منه آخر صلاته فان أدرك ركعة فالظاهر أنها تقع أداءً، وإن أدرك أقل منها فهي إشكال ولو شرع في المغرب قضاءً فأدرك الركعة الثانية في الوقت ثم رجعت الطائرة فخرج الوقت بين صلاته فيكون وسطها في الوقت وطريفاً خارجه. صحت، لكن في كونها أداءً أو قضاءً تأملًا، ولا يوجد مع إدراك ركعة كونها أداءً، ولو ركب طائرة فدخل في قضاء صلاة العصر من يومه بعد الغروب فصعدت عمودياً ورأى الشمس بين صلاته ثم هبطت وغربت الشمس ثم صعدت فراها، وهنا صحت صلاته، ولا يوجد كونها أداءً إذا أدرك من الوقت ركعة متصلة، وأما إذا أدرك الأقل أو مقدارها لكن لا متصلة ففي كونها أداءً أو قضاءً تأمل.

مسألة 4 - لو صلي الظهرين أول الوقت في طهران وركب الطائرة ووصل إسلامبول قبل زوال هذا اليوم فهل تجب عليه الظهران المتقيبة عند الزوال؟
shall be obligatory on him to offer the *Zuhrayn* prayers that he had offered at Tehran at noon; apparently it is not obligatory on him to do so.

**Problem # 5.** If a person beholds the new moon on the night of *Fiṭr* [First of the month of Shawwāl] in Istanbul, and travels to Tehran, where it is the last night of fasting, whether it is obligatory on him to fast; apparently it is not; rather apparently it shall be obligatory on him to fast even if he has already kept fast for thirty days in Istanbul. In this respect, there is difference between the rules relating to fasting and prayer. If he keeps fast, for example, in Tehran until the sunset, and but does not break the fast [in Tehran] and travels to Istanbul and reaches there before sunset the same day, whether it shall be obligatory not to break fast until sunset or not; apparently it is not obligatory on him to abstain from breaking fast [until the sunset], although it would be more cautious to do so. If he keeps fast in Istanbul and two hours before sunset he travels to Tehran, and the night falls on the way, but he does not break the fast, and returns to Istanbul before sunset the same day, whether he shall be bound to abstain from breaking fast until sunset; according to the more cautious opinion it is so, although it is not obligatory on him to do so according to the opinion more in conformity with the principles of law.

The same shall be the rule if he keeps fast at one place until sunset, and embarks a plane that rises above vertically until his eyes fall on the sun. If he travels after the midday from Tehran without the intention of keeping fast, and reaches Istanbul before noon the same day, apparently he shall be allowed to have intention to keep fast, if he has not taken anything that breaks the fast. In such case, it is better to observe caution.

If the last of the month of *Shābān* in Tehran is the 1st of *Ramaḍān* in Istanbul, and a person stays in Tehran until the fall of night, and then goes to Istanbul and reaches there on the night of the second of the month and the month had twenty-nine days in Istanbul. So he keeps fast, his fast being for the twenty-eighth day, then whether he shall be bound to keep a compensatory fast for the elapsed one; according to the more cautious opinion, he shall have to, rather it is not far from being close [to the traditional authority].

If a person travels by an aeroplane, and if there is night throughout the month in relation to him, apparently he shall be bound to keep compensatory fast. The same shall be the rule for a man who has been in the Poles and has missed fasting for the month of *Ramaḍān* due to the difficulty it has. If a person gets up in the morning in Tehran in a state of fast, and breaks the fast deliberately, then he travels to Istanbul, reaching there before dawn, and keeps fast for the same day, whether he shall be bound to expiate and compensate for the elapsed fast; it is undoubtedly not obligatory on him to keep fast in compensation for the elapsed one. As regards the obligation for expiation, there is hesitation in it; according to the more cautious opinion, it is obligatory on him to expiate, rather it is according to the opinion closer to the traditional authority.

**Problem # 6.** If a person offers the prayer for Eid al-Fiṭr in Istanbul and travels to Tehran before noon on the last day of the fasting month, then if he has not yet broken his fast, whether
الظاهرة عدم الوجوب.

مسألة 5 - لو أثرت هلال ليلة القدر في إسلامبول وسافر إلى طهران وكان فيه ليلة آخر الصيام فهل يجب عليه الصوم ؟ الظاهرة ذلك، بل الظاهرة وجبهه ولو صام في إسلامبول ثلاثين يوماً، فقرر بين الصوم والصلاة في الحكم، ولو صام في طهران مثلاً إلى غروب الشمس ولم يفطر سافر إلى إسلامبول ووصل إليه قبل الغروب من هذا اليوم فهل يجب عليه الإمساك إلى الغروب أم لا ؟ الظاهرة عدم الوجوب، وإن كان أحوط، ولو صام في إسلامبول وسافر قبل الغروب ساعتين إلى طهران وأدرك الليل في أثناء الطريق ولم يفطر ورجع إلى إسلامبول قبل غروب الشمس في هذا اليوم فهل يجب الإمساك إلى الغروب ؟ الأحوط ذلك، وإن كان عدم الوجوب أشبه، وكذا لو صام في محل إلى الغروب ثم ركب طائرة فصعدت عمودياً حتى رأى الشمس، ولو سافر بعد الزوال من طهران بلا نية الصوم ووصل إسلامبول قبل زوال هذا اليوم فالظاهرة جوازية الصوم لم يأت بفطر، ومراعاة الاحتياط حسن، ولو كان آخر شعبان في طهران أول رمضان في إسلامبول فبقي في طهران إلى الليل فذهب إلى إسلامبول ووصل إليه الليلة الثانية من الشهر وكان الشهر في إسلامبول تسمة وعشرين يوماً فصام فيه وكان صومه ثمانية وعشرين يوماً فهل يجب عليه قضاء يوم الأحوط ذلك بل لا يخلو من قرب، ولو سافر مع طائرة، ويدرك الشهر ليلًا بالنسبة إليه يجب عليه القضاء ظاهراً، وكذا من كان في القطب وفيات منه شهر رمضان على إشكال، ولو أصبح في طهران صائماً فأفطر عمداً ثم سافر إلى إسلامبول ووصل إليه قبل الفجر فصوم اليوم بعثه فهل تجب عليه الكفارة وقضاء ؟ لا إشكال في عدم وجوب القضاء، وفي وجوب الكفارة إشكال، والأحوط ذلك، بل هو الأقرب.

مسألة 6 - لو صل صلاة عيد القدر في إسلامبول وسافر إلى طهران ووصل إليه قبل الزوال من آخر شهر الصيام ودوم لم يفطر فهل يجب الصوم عليه كمن
he shall be bound to keep fast like one who reaches his homeland before noon on fasting day; apparently it is obligatory on him, and his fast is not combination of forbidden and obligatory one, as it would not have been the case if he had come after a journey in which keeping fast is forbidden. But according to the more cautious opinion, hr must break the fast before reaching Tehran. Whether he is bound to keep fast in compensation for the day it was Eid al-Fitr for him in Istanbul and in Tehran a fasting day for him; there is hesitation in it, but according to the opinion more in conformity with the principles of law, fasting is compulsory for him, provided that he has reached early that day, rather, according to the more cautious opinion, even if he has reached before noon.

Problem # 7. If a person elebrates Eid al-Fitr in Istanbul, and pays the Zakat al-Fitr ah, and reaches Tehran before the sunset on the night of Eid al-Fitr, whether he shall be bound to pay Zakat al-Fitr ah a second time as he overtakes the sunset of Eid al-Fitr; apparently it is not obligatory to pay it a second time, though it is more cautious to do so. Of course, if he has not paid it in Istanbul, it shall be obligatory to pay it in Tehran. If he has offered the prayer for Eid al-Fitr in Istanbul, apparently it shall not be obligatory or approved a send time [in Tehran].

Problem # 8. If it is the day of Eid al-Fitr in Istanbul, it is forbidden to fast. If he travels to Tehran and the next day it is Eid al-Fitr, it shall be forbidden for him to fast. The same shall be the rule in case of Eid al-Adray. There are four days in a year when keeping fast is forbidden.

Problem # 9. If a person travels by an aeroplane whose speed is equal to the rotation of earth, and his journey is against the rotation of the earth from east towards west, then inevitably if he travels early at the sunrise, his journey shall be constantly early at the sunrise even if he travels for a thousand hours. Then whether it shall be forbidden for him to travel with tht plane due to the obligation to miss the prayer, or he is permissible to travel by it, but he shall not be bound to offer the prayer at its proper time or as elapsed, or he shall be bound to offer the prayer as elapsed only; apparently it is not permissible for him to travel by it. If, however, it is declared to be permissible, then he shall not be bound to offer prayer at its proper time or as elapsed. Likewise, he shall not be bound to keep fast at its proper time or as elapsed if he travels before the rise of dawn, but if he travels after it, whether it shall be obligatory on him to offer it as elapsed for that day only; there is hesitation in it, though according to the more cautious opinion, he must offer it as elapsed. If he travels by the plane at noon, he shall be bound to offer the Zuhran prayer, even if all the rak’ats are offered in early noon. If he vows to keep fast, suppose, on Friday during journey, so he expresses the intention for keeping fast at one place and then travels early at the sunrise, and his whole day continues during early at the sunrise, and then he accelerates his journey, then inevitably he will enter the time of tuli’ ayn. Then he will enter the night, that is morning, and he keeps fast for Friday until night in this manner, it shall not be far from being all right and will lead to the fulfillment of his vow. Of course, if he accelerates after an hour or a few hours before the end of the day in relation to us, and enter the night of Friday according to its speed, apparently his vow shall not be fulfilled because he has not kept the fast throughout the day.
وصل إلى وطنه قبل زوال يوم الصوم، ظاهر وجهه وليس صومه مركباً من حرام وواجب كما لم يكن كذلك لو حضر من السفر مع حزمة الصوم فيه، والأحوال له الافطار قبل الوصول إلى طهران، وهل يجب عليه قضاء هذا اليوم الذي كان يوم عيد له في إسلامبول و يوم صوم في طهران؟ في إشكال، والأشبه وجهه إذا حضر اليوم من آخره بل من قبل الزوال على الأحوط.

مسألة 7 - لو عيّد في إسلامبول وأدى زكاة الفطرة ووصل إلى طهران قبل غروب ليلة الفطر فهل يجب عليه زكاة الفطرة ثانيةً؟ باذاك غروب العيد؟ الظاهر عدم الواجب وإن كان أحواله، نعم لو لم يؤدها في إسلامبول يجب أداءها في طهران، ولو صلي العيد في إسلامبول فالظاهر عدم وجوبها أو استحبابها ثانياً.

مسألة 8 - لو كان يوم الفطر في إسلامبول يحرم عليه الصوم، ولو سافر إلى طهران وكان عيداً يوم العيد يحرم عليه، وكذا الحال في الأضحى فكان الصوم يحرم عليه أربعة أيام في السنة.

مسألة 9 - لو سافر مع طائرة تكون حركتها متساوية لحركة الأرض و كان سيرها مخالفاً لسير الأرض من الشرق إلى الغرب فلا مسألة لو سافر أول طلوع الشمس كان سيرها دائماً أول الطلوع ولو سارت ألف ساعة، فهو يحرم السفر معها للزوم ترك الصلاة أو يجوز ولا صلاة عليه أبداً ولا قضاء أو عليه القضاء فقط؟ الظاهر عدم جواز السفر معها، ولو قبل بجاوزته فالظاهر عدم صلاة عليه أبداً ولا قضاء، وكذا لا صوم عليه أبداً ولا قضاء، لو سافر قبل طلوع الفجر، ولو كان بهدف فهل يجب قضاء هذا اليوم فقط؟ في إشكال، والأحوال القضاء، ولو سافر عند زوال الشمس معها يجب عليه الظهور و إن وقع جميع الركعات في أول الزوال، ولو نذر صوم يوم الجمعة مثلما سافر فنوى الصوم في محل ثم سافر أول طلوع الشمس فكان تمام يومه أول الطلوع ثم أسرعت بسبيها فلا مسألة يدخل فيها بين الطلوعين ثم الليل أي السحر فصم يوم الجمعة إلى الليل بهذا النحو، فلا تبعد صحته والوفاء بنذره، نعم لو أسرعت بعد ساعة أو ساعات قبل
Problem # 10. If a person travels by an aeroplane whose speed is more than the rotation of the earth, traveling from east towards west, then inevitably the sun shall rise against him from the west of the earth contrary to that of the people of the earth.

Then whether he shall observe the sunrise and sunset in relation to himself in offering prayers and not in relation to the people of the earth, so that he will offer his morning prayer before the sunrise or, for example, the sunset of the people of the earth, and ‘Ishā’ayn [Maghrib and ‘Ishā’] after the sunset in the eastern horizon, or will follow the earth to be at the sunrise from the west upto four rak’ats exclusively for the ‘Asr prayers, and then joins between the Zuhr and ‘Asr prayers upto four rak’ats until noon, exclusively for the Zuhr and offers morning prayers after the sunset that is between the Tulū’ayn in relation to the people of the earth.

Then after it he enters the time exclusive for ‘Ishā’, and then Maghrib and ‘Ishā’ and then exclusive for Maghrib; there is hesitation, though it is not far from being necessary to follow the people of the earth, offering his prayer at their times.

Problem # 11. If a person travels by the (artificial) satellite and reaches the outer space, inevitably he shall have no weight in it.

Then if it is possible for him to stand on the internal surface in a way that both his feet are towards the earth, he shall offer his prayers facing the Qiblah; otherwise, he shall offer his prayers suspended between the space.

If it is possible in such condition to place both his feet towards earth, he shall offer prayers in that position, otherwise in whatever position it is possible, but he shall not miss the prayers in any condition, and in all circumstances he shall observe facing Qiblah or nearest to its direction, and in case of ignorance of its direction, he shall offer prayers on all the four directions.

Problem # 12. If a person embarks on the (artificial) satellite, and makes round the earth ten times in a day and night, covering a night and day in each round, whether he shall be bound to offer five times prayers in each of its round or it is not obligatory except five times in all the rounds that is equal to one day and night of the earth, apparently he shall have to adopt the second option, but it shall be indispensable to observe the sunrise and sunset in relation to himself.

So he shall offer his morning prayer before one of the sunrises, and Zuhrayn after the noon one of the days and the Maghribayn one of the nights.

He may offer the Zuhr prayers in the noon one day and ‘Asr prayers the next day after noon, and Maghrib prayers in one of the nights and ‘Ishā’ in the next.
تمام اليوم بالنسبة إليها فدخل ليلة الجمعة بسيرها فالظاهرة عدم الوفاء بنذره لعدم صوم تمام اليوم.

مسألة 10 - لوسافر مع طائرة تكون سريعتها أكثر من وركا الأرض وسارت من الشرق إلى الغرب فلا حالا تطلع الشمس عليه من غرب الأرض عكس الطول واللأرض فهل الاعتبار في الصلاوات بطلولو وغروب بالنسبة إليه لا إلا أهل الأرض فيصل الصبح قبل طلوع الشمس من المغرب الذي هو وقت غروب أهل الأرض مثلًا، والعنائيين بعد غروبها في الأفق الشرقي أو يكون تابعا للأرض فيكون عند طلوع الشمس من المغرب بقدر أربع أربع ركعتين مخصصة بصلاة العصر ثم يشترك بين الظهر والعصر إلى مقدار أربع ركعتين إلى زوالها، فيصبه بالظهر ولا يصلي الصبح بعد غروب الشمس الذي هو بين اللابتين بالنسبة إلى أهل الأرض ثم بعد ذلك يدخلا وقت الاختصاصي للعشاء ثم المغرب والعشاء ثم الاختصاصي للمغرب؟ فيه إشكال والإن لا يبعد لزوم التبعة لأهل الأرض فيصل لي أوقاتها.

مسألة 11 - لوسافر مع القمر الصناعي موصل إلى خارج الجاذبية فلا حالا ووزن له فيه فإن أمكن الوقوف على السطح الداخلي بحيث تكون رجلاه إلى الأرض صلى مراعيا جهة القبلة، إلا صلى معلقا بين الفضاء، فإن أمكن مع ذلك أن تكون رجلاه إلى الأرض صلى كذلك، إلا فتاي وجه أمكنه، ولا تترك الصلاة مجال، وفي الأحوال يراعي القبلة أو جهة الأقرب إليها، ومع الجهل بها صلى أربعاً على الجهات.

مسألة 12 - لو ركب القمر الصناعي فدار به في اليوم والليل عشر مرات حول الأرض فهي كل دور له ليل ونهار، فهل يجب عليه الصلاوات الشمس في كل دور منه أو لا تجب إلا الشمس في جميع أدواره التي توافق يوما وليلة من الأرض ؟ الظاهرة هو الثاني، لكن لا يبد من مراعاة الطلوع والغروب بالنسبة إلى نفسه. فيصل الصبح قبل أحد الطلوعات، وظهورين بعد زوال أحد الأيام.
Whether he is bound to offer the Zuhr prayers at noon and then Maghrib prayers at the sunset, then the Asr prayers at another noon and 'Ishā' in another night, so that the Zuhrān and 'Ishā'ān may penetrate into each other; it is not far from being so, but it is more cautious to give up such method; rather it is more cautious to offer Zuhrayn on one day and 'Ishā'ayn on one night, if possible.

Problem # 13. If a woman embarks on an aeroplane that makes round equal to the rotation of the earth, and its movement was against the movement of the earth, and the woman starts having menses and it continues for three days according to our system, but that time was in relation to her, for example, from early sunrise, then apparently it shall be governed by the rules of menstruation.

The criterion is the amount of menstruation and not the number of days for which it continues. So if the woman was in Qaṭar where her day is equal to, suppose, a month, and she starts menstruating, and it continues for three days according to our horizon, it shall be governed by the rules of menstruation. If she embarks an (artificial) satellite, and the day and night were one hour in relation to her, it is indispensable to continue for three days according to our horizon and not in relation to her.

If the menstrual blood that naturally continues for three days is taken out by an instrument in a single day, it shall not be governed by the rules of menstruation, as when something is entered into her womb that absorbs the blood for three or more days and it does not come out but all of a sudden, it shall not be governed by the rules of menstrual blood.

Problem # 14. As the criterion in menstrual blood is its amount to the extent of continuing for three months and not the period of three days, and that is why the days are pieced together, this is the case in 'Iddah absolutely, the intention of thirty days stay and continuing it by frequentation in one place, the minimum and maximum period of gestation, so the periods of menstrual and puerperal bloods, option of three days for animal [after its sale or purchase], option for the delay in payment of the price [of a commodity after its sale or purchase], a day and night required [for inducing prohibition] in fosterage, one year period for exiling the adulterer, waiting for three months in Zihār, oath by Allāh for more than four months in 'Ilā', and waiting for four months in it, a year, or two years when diyats become due to be paid on their scheduled time, the limit of adulthood and past child-bearing age or menopause, fixation of four years of waiting time for the wife of a missing husband, grant for one year time in impotency, one year period in an option of blemish, the mother's right of two or seven years of custody of a child, one year period that is the condition required in case of a luqāṭah (foundling, a little child found deserted), four months that a husband is forbidden to give up sexual intercourse with his wife for more than that period, period of one year that is the condition required for the inheritance of the wife if her husband divorces her during his illness, condition of one year for a foundling in case a foundling cannot remain for a year.
والمغرين في إحدى الليالي وله إتيان الظهر في زوال يوم والعصر في يوم آخر بعد الزوال، والمغرب في إحدى الليالي والعشاء في الأخرى، فهل له إتيان الظهر عند الزوال ثم المغرب عند الغروب ثم العصر عند زوال آخر والعشاء في ليلة أخرى فيتشابك الظهوران والعشاءان؟ لا يبعد ذلك، لكن الأحوزة ترك هذا النحو، بل الأحوزة الإتيان بالظهرين في يوم والعشاءين في ليلة مع الامكان.

مسألة 13 - لو ركبت المرأة في طائرة تدور مساوية لحركة الأرض وكان سيرها مختلفاً لسير الأرض فروت الدم واستمر ببحق قدر ثلاثين يوماً من أيامنا لكن كانت تلك المدة بالنسبة إليها أول طلوع الشمس مثلًا فالظاهرة أن دماً صمام بالحيض، فالميزان استمرار هذه المدة لا يباض الأيام، وكذا لو كانت المرأة في قطر يكون يومه شهراً مثلًا ورأيت الدم واستمر ببحق قدر ثلاثين يوماً من آفاقنا يحكم بكونه حيضًا، ولو ركبت قرأ صناعياً وكان النهار والليل بالنسبة إليها ساعة لأبداً لاستمر مدة ببحق قدر ثلاثين يوماً من آفاقنا لا بالنسبة إليها، ولو أخرج دم الحيض الذي يستمر بطبعه الثلاثين يومًا بآفاقنا في يوم واحد لم يحكم ببحيضيه. كنا لو أدخل في رحمها شيء يذيب الدم الثلاثة أيام أو أكثر ولم يخرج الالخارجي إلا دفعة فلأ يحكم ببحيضية الدم.

مسألة 14 - كنا أن الميزان في الدم استمراره لا يباض الأيام، ولهذا تلفق الأيام كذلك الميزان ذلك في العدة مطلقاً وقصد الإقامة والبقاء في محل ثلاثة يوماً مرتدةً، وأكثر الحمل وأقله، وكذا الحيض والنفاس، وخيار الحيوان الثلاثة أيام، وخيار تأخير الثين، واليوم والليلة في مقدار الرضاع، وسنة تغريب الزاني وإتسار ثلاثة أشهر في الظهر، والخلف على أزيد من أربعة أشهر في الإيلاء وإتتسار أربعة أشهر فيه، والسنة والستين والستين التي تستأدى الديات عند حلولها، وحد البلوغ والياسر، وتأجيل أربع سنين للمرأة المفقود زوجها وتأجيل سنة في العزن، وأحداث السنة في باب خيار العيب، وحق الحضانة للأمم ستين أو سبع سنوات، والسنوية المتبتة في تعريف اللقطة، و
Apparently the same rule applies in case of division of nights [by the husband] among the wives, reservation of seven first nights after the marriage of a virgin and three nights of a non-virgin, although it is not free from objection relating to the division [of nights of the wives] and the two reservations mentioned here, as in both cases the word ‘nights’ has been mentioned, but the necessity of the division, for example, according to the two poles and likewise condition of seven nights of marriage in case of both the poles is not possible.

It is, therefore, indispensable either to set aside the law in both case of both the poles or their like, or their assessment according to the ordinary nights.

According to the opinion closer to the traditional authority, it should be the second option, as also in other similar cases, as the criterion in them is the passage of the extent of days, months and years according to our horizon.

If a person divorces his wife in any of the two poles, she shall be relieved of the ‘Iddah in one-fourth of the day and night, and the maximum period of gestation that is required to be one year shall be a day and night, and it shall not be permissible for a husband to give up sexual intercourse with the wife for one-third of a day and night.

Of course, if the maximum period of gestation in the poles is by nature more than a day and night, it shall be followed accordingly and it shall not be assessed according to our horizon.

**Problem # 15.** As it is obligatory on the people of the poles to adapt the number of days, months and years to their own days in the cases mentioned, then if suppose there exist some people in some or other planets, man from the earth travels to one of them and its rotation round itself is ten times the number of our days.

So the option of an animal there shall be thirty days, and the minimum menstrual period thirty days and the waiting period for the wife of a missing husband forty years, and so on.

**Problem # 16.** As we have mentioned that in every case [in menstrual and puerperal discharge] the criterion is the amount of blood and not the number of days [for which the discharge of the blood continues], and that is why the days in it are pieced together.

As in fasting the condition of abstention is from the beginning of dawn till sunset, and piecing together does not take place in it, so the criterion here is not the amount.

Likewise, the same rule applies in case of prayer, in which there are prescribed times that are the criterion. So it is not right to offer prayer for Zuhrayn at night, even if it agrees with the time of noon in our horizon.

Similarly, it is not right to keep fast in part of the day or night even if it is equal to period of time of our day.
الأشهر الأربعة التي يحرم للزوج ترك وطأ زوجته أكثر منها، والسنة المعتبرة في إرث الزوجة عن زوجها لو طلقها في مرضاها، والسنة التي تعتبر فيها لا تبقى القطة في السنة، و الظرض أن الأمر كذلك في باب القسم بين النساء، وخصاص البكر أول عرسها بسبع ليال وكان البيض بثلاث وان لا يخلو في باب القسم و الاختصاص المذكورين من أشكال من حيث أخذ الليالي بتناولها فيها، و الالتزام بكون القسم حسب ليل القطبين مثلما و كذا السبع في العرس سبع ليال فيها غير ممكن، فلا بد إما من القول بسقوط الحكم فيها و في مثلها أو التقدير حسب الليالي المتعارفة، والأقرب الثاني إلى غير ذلكما هو من هذا القبيل، فإن الإبحار فيها مضي مقدار الأيام والشهور والسنين حسب آفاقنا، فلو طلق زوجته في أحد القطبين تخرج من العدة في ربع يومه وليلته، وأكثر الحمل بناء على كونه سنين يوم وليلة، ولا يجوز ترك وطأ الزوجة أكثر من ثلاث يوم وليلة، فنعم لو كان أكثر الحمل في القطب بحسب الطبع أكثر من يوم وليلة يتع و لا يقاس بآفاقا.

مسألة 15 - كما يجب على أهل القطب تطبيق مقدار الأيام والأشهر والسنين على أيامهم في المذكرات أو فرض وجود أهل في بعض السيارات أو سافر البشر من الأرض إلى بعضها و كأنه حركته حول نفسه في مقدار يومنا عشر مرات و كان يومه و ليلته عشر يوما لا بد له من تطبيق أيامه على مقدار أيامنا، فيكون خيار الحيوان هناك ثلاثين يوما، وأقل الحيض ثلاثين يوما، و تأجيل المرأة المفقود زوجها أربعين سنة، و هكذا.

مسألة 16 - ما ذكرناه إما يجري في كل مورد يعتبر فيه المقدار لا بياض اليوم، و لهذا تفق الأشياء فيها، وأما مثل الصوم يعتبر فيه الامساك من طلع الفجر إلى الغروب و لا يأتي فيه التلفيق فلا اعتبار بالمقدار، و كذا لا يجري ما ذكر في الصلاة، فإن أوقاتها مضبوطة معتبرة، فلا تصح صلاة الظهر في الليل وإن انطبق على زوال آفاقنا، ولا يصح الصوم في بعض الأيام أو الليل و إن كان
Problem # 17. If suppose the rotation of the earth becomes slow and the day becomes several times more than our [present] day, even then it shall be indispensable for the legality of the fasting to observe abstention for the whole day, if possible. In case of its being impossible, the obligation [for fasting] shall be set aside.

It shall, however, not be obligatory to offer more than the five times prayers in a day and night.

As regards the amount of time, not the light of the day and the darkness of night, but the passage of the amount of time, it is indispensable fro the passage of the amount of time that is required in the horizon of our time.

So the minimum menstrual period in that time that is three days in our time shall be equal to one day and two nights or two days and one night, when the time shall be double. The same shall be the ratio if the rotation changes.

Similar shall be the case if suppose the rotation of the earth is faster in a way that one day and night becomes half of the present time, then it shall be indispensable to observe abstention for one day, and it shall be obligatory to observe prayer fives times in a day and night.

Problem # 18. There is no value of sighting the new moon with the help of modern instruments. So if the new moon is seen by the magnifying or approximative instruments, as, for example, the telescope, while the new moon is not visible without the instrument, it shall not be declared first of the month.

The criterion is the sighting of the new moon by [naked] eye without the help of an approximative of magnifying instrument.

Of course, if the new moon is seen with the help of an instrument, and subsequently it is seen by [naked] eye without the help of any instrument, it shall be declared the first of the month. The same rule applies to the non-reliance on the instruments in case of solar or lunar eclipse. If the solar eclipse is not clear except with the help of instruments, and it is not visible by [naked] eye without the help of instruments, it shall have no legal effect.

CONCLUSION

If man succeeds in traveling to some planets and spheres, a large number of problems shall emerge. It is expected that the jurists shall solve them. May Allāh raise their authority [or importance]. It does not matter if a brief hint is made to some of them.

Problem # 1. It is right to clean major and minor impurities by their water and dust if water, dust, and stones and the like are applicable to them, and it is allowed to prostrate on their earth and what grows in them.
مسألة 17 - لو فرض صيورة حركة الأرض بطيئة وصار اليوم ضعف يومنا لا بد في صحة الصوم من إماسك يوم تام مع الامكان، ومع عدمه يسقط الواجب، ولا يجب عليه أكثر من الصلاوات الخمس في يوم وليلة، وأما ما يعتبر فيه المقدار لا بياض النهار وسواد الليل فلا بد من مضي مقدار ما يعتبر في أفق عصرين، فأقل الحيض في ذلك العصر مقدار ثلاثة أيام. أفقنا المطبق على يوم وليلتين أو على يومين وليلة إذا كان اليوم ضعفاً، وهذه النسبة إذا تغيرت الحركة، وكذا الحال لو فرض صيورتها أسرع بحيث كان اليوم وليلة نصف هذا العصر، فلا بد في الصوم من إماسك يوم، ونjab في كل يوم وليلة خمس صلوات.

مسألة 18 - لا اعتبار بروية الهلال بالآلات المستحدثة، فلو رأى بعض الآلات الكبيرة أو المقربة أو تكسوك مثلاً ولم يكن الهلال قابلاً للروية بلالآله لم يحكم بأول الشهر، فالميزان الرؤية بالبصرا من دون آلة مقربة أو مكبرة، نعم لو رأى بالآلة ولم يكن معلماً ثم رأى بالبصرا، بلآله يحكم بأول الشهر، وكذا الحال في عدم الاعتبار بالآلات في الحنسوف وكسوف، فلو لم يتضح الكسوف إلا بالآلات ولم يره البصر غير المسلح لم يترتب عليه أثر.

خاتمة:

لوفق البشرين السفر إلى بعض السيارات والكاثوليك تحديد عند ذلك مسائل شرعية كثيرة سيأتي الفقهاء أعلى الله كلمتهم بكشف معضلاتها، ولا بأس باشارة إجابة إلى بعض منها.

مسألة 1 - يصبح التطهير حدثاً وخلوًا بعدها وصعدها بعد صدق الماء و
Problem # 2. The weights shall differ considerably according to the weakness and strength of their gravitation and force. In the sphere of moon, as the gravitation is weaker than the gravitation of the earth, the bodies despite being identical in area become different in both the spheres. A kur [the area or amount of water required for cleaning things] according to the area required on the earth agrees almost in prescribed weight, but in the sphere of moon the area shall become less than one-tenth of the specified weight.

If we consider weight as criterion in the sphere of moon, its area shall be several times more than the specified area. There the criterion shall be the area and not weight. If comparison is made between the area and weight in a sphere where the gravity is several times more than that on earth, possibly two spans of the hand of water may be equal to the specified weight. The criterion in it shall be area and not weight. Therefore the water shall become unclean whose weight is equal to a kur on earth. There the criterion may be weight, but it shall be weighed according to the kilowatts of the earth according to the gravity of that sphere. So both may almost agree as regards areas.

Where only weight is the criterion, as the nisāb [prescribed limit] for the four grains, it is possible that it may also change without any change in their areas. So in wheat its prescribed nisāb shall be observed, even if one kayl [dry measure for grains] of it may become several kayls of earth in the sphere of moon.

In Jupiter, for example, it may be one-tenth of the kayl on earth. If sometime it is brought on the earth where its gravity is weakened, the conclusion shall be what we have already described. It is possible to make the criterion Kilowatts or Maunds of earth, but with the gravity of those spheres or of the earth after weakening of its gravity.

Problem # 3. If there some of the things related to Zakāt and Khums are discovered as the four grains, the three quadruped animals, the two precious metals [namely, gold and silver], other minerals, hidden treasures, and the like, they shall be governed by the laws of Shari'ah. If some minerals and hidden treasures of different kinds than those on earth are found there, khums shall be levied on them. If, however, grains and quadruped animals different from those existing here on earth are found there, no Zakāt shall be levied on them. If, however, things on which Zakāt is levied there or here [on earth] are discovered that are produced in an unnatural way, as some quadruped animals begotten in artificial [or unnatural] way, or the artificial grains and the two precious metals produced artificially, Zakāt shall be levied on them, after such denominations are applied to them.

Problem # 4. If human beings are found there, they shall be treated like the human beings on earth, even if the creatures there have different shapes, but they are rational beings, having human feelings. So they shall be treated like human beings, to the extent that even intermarriage with them shall be allowed, and they shall be governed by all the obligations of the Shari'ah and the divine laws.
التراب والحجر و نحوها عليها، وتصبح السجدة على أرضها وما يثبت منها.

مسألة 2 - تختلف الأوزان فيها اختلافاً فاحشاً حسب ضعف الجاذبية و قوتها، ففي القرم لما كانت الجاذبة أضعف من جاذبة الأرض تكون الأجسام مع الاتصال في المساحة مختلفة في الوزن في الكرتين، فالكر بحسب المساحة يكون في الأرض مواقعاً للوزن المقدر تقريباً، وفي كر القرم تكون تلك المساحة أقل من عشر الوزن المقدر، فلو اعتبرنا في القرم الوزن تكون مساحته أضعاف المساحة المقدرة، فهناك يكون الاعتبار بالمساحة لا الوزن، وليقيس بين المساحة والوزن في كر تكون جاذبته أضعف الأرض بربما يكون شيران من الماء بقدر الوزن المقدر، فالاعتبار بالمساحة فيها لا الوزن، فينفعل الماء الذي وزنه بقدر الكر في الأرض، ويمكن الاعتبار هناك بالوزن، لكن يوزن بالكيولات الأرضية حسب جاذبة تلك الكرة، ويتفاوت مع المساحات تقريباً، وفي يعتبر فيه الوزن فقط كالمقصود في الغلات الأربع يتحتم أن لا يتغير حجمه ولو تغيرت مساحته، فالخطة بلاحظ نسباً المقدر ولوصور كيلها في كر القرم أضعاف كيلها في الأرض و في المشتري مثلاً عشر كيلها في الأرض، ولو أتي زمان على الأرض ضعفت جاذبته فالحكم كما ذكر، ويتعمد أن يكون الاعتبار بالكيولات أوالأمنيات الأرضية لكن جاذبة تلك الكرات أوالأرض بعد ضعف جاذبتها.

مسألة 3 - لو وجد هناكما تعلقت به الزكاة والخمس كالغلات الأربع والأنعام الثلاثة والنقد والمعادن والكنوز وأشباهها جرت عليها الأحكام الشرعية، ولوجدت معادن وكنوز من غير جنس ما في الأرض تعلقت بها الخمس، وأما لو وجدت حبوب أو أنعام غير ماهيّّها لم تتعلق بها الزكاة، ولو وجد ما تعلقت به الزكاة هناك أو هما بغير الطريق العادي كما لو وجدت الأنعام بطريق الصناعة وكذا الغلات المصنوعية و النقدان المصنوعين تعلقت بها الزكاة بعد صدق العناوين.

مسألة 4 - لو وجد هناك إنسان يعامل معه معاملة الإنسان في الأرض ولو
If their spans of hands are different from those of ours, the Kur shall be measured according to our spans of hands. The same shall be the case with the measurement by arms (dhirā'). In case of difference in the number of hands, feet and fingers with ours, their laws relating to ablution, diyat, Qisās, etc., shall be different.

**Problem # 5.** It is obligatory to face the earth at the time of offering prayer even there, and by facing the Earth, the condition of facing the Qiblah shall be fulfilled. When it is in the state of making round in rotation sometimes towards the earth and at times on the other side, their prayer shall also be different, so that some times their Zuhrayn prayers shall be towards the east and at others Maghribayn shall be towards the west, and vice versa.

As regards the burial of their dead, it may be said that it shall be obligatory on them to face the Qiblah for the present, though it may change every day.

As regards the obligation of keeping fast on the moon and other spheres, it has problems. It is not far from being obligatory to keep fast for a month every year, if possible, and if it is possible to make its month agree with the month of Ramadān on earth, according to the more cautious opinion, it shall be obligatory.

If there is a solar eclipse with the earth or another, offering the prayer of Āyāt shall be obligatory. Whether it shall be obligatory to offer such prayer at the time of the lunar eclipse as well, there is hesitation in it, apparently it is obligatory to offer the prayer for all dreadful calamities including quake.

The daily prayer in these spheres depends on the midday and the sunset in them, and fasting from the dawn to the sunset, if possible.

**Problem # 6.** If the children become adult, for example, in one year, then if they become adult by having nocturnal falls and growth of hard hair in the pubic region, there shall not be any objection in treating them as adults and applying all the relevant laws to them.

It is difficult to set aside the condition of age, though it is not far from its application, if it is known that they have attained the limit of manhood.

If they do not attain adulthood but after reaching thirty years of age, when it is known that they are children who have not reached the stage of manhood, apparently they shall not be declared to have reached adulthood.

Likewise, if it is supposed that the children born artificially are such on both sides of minority and majority. Likewise, if there is a time when their natural development, growth and maturity are slowed down due to natural factors as weakness of the heat of the sun and its rays, or they are accelerated due to the natural or artificial factors, and other several cases that do not
كان الموجودات هناك بأشكال أخرى لكن كانوا عاقلتين مدركين فكذلك يشمل معهم معاملة الإنسان حتى جازت المناكحة معهم، وجرت عليهم جميع التكاليف الشرعية والأحكام الادبية، ولو كان أشخاصاً على خلاف أشخاصاً يكون الميزان في مساحة الكر أشنع، وكذا في الذراع، ومع اختلافهم في عدد الأيدي والأرجل والأصابع معنا تختلف أحكامهم في باب الوضوء والدراويت والقصاص وغيرهما.

مسألة 5 - يجب في الصلاة هناك استقبال الأرض، وكثيراً ما يكون في حركتها الدورية تارة في جانب من الأرض واتجاهها تارة في جانب آخر منها تختلف صلواتهم، فهما تكون صلاة الظهرين إلى الشرق والغرب، والمرجع إلى الغرب بالأمسك، وأما كيفية دفع ركوبهم فيمكن أن يقال يكون الاستقبال حدوثاً ولو يبدأ في كل يوم وأما تكليف الصيام في القمر أو سائر الكرات فشكل، ولا يبعد وجوده في كل سنة شهراً مع الأمكان، ولو أمكن اتباع شهرها مع شهر رمضان في الأرض يجب على الأحيان، ولو انكسفت الشمس بالأرض أو بغيرها وجبت صلاة الآيات، ركوب الجوال في اتخاذ الأرض أيضاً صلاة؟ فيه إشكار، والظاهر وجودها للآيات المخولة حتى الزلزلة، والصلاة المفروضة في تلك الكرات تابعة للزوال والغروب فيها، والصوم من طلوع الفجر إلى الغروب مع الأمكان.

مسألة 6 - لو بلغ الأطفال هناك حد الرجال في سنة مثلًا فإن بلغوا بالاحتلال أو إناث الشعر الحشن على العانة فلا إشكار في الحكم بالبلاغة وترتب أثارهم، وأما سقوط اعتبار السن فشكل و إن لا يبعد إن علم أنه بعد الرجال، ولو لم يبلغوا حد الرجال إلا بعد ثلاثين سنة بحيث علم أنه طالر غير بالبلغ حد الرجال، فالظاهرة عدم الحكم بالبلاغة، وكذا لو فرض أن الأطفال المصنوعة كذلك في طرف القلعة والكثيرة، وكذا لو أتي زمان أبطأ السير الطبيعي والرشد والبلاغة بحالة الطمعة كضعف حياة الشمس. أشتملت أمهات معتنات طبوعة أه
concern us presently, or when a time comes when the moon is destroyed before the earth, then other cases shall emerge.

Similarly if the rotation of the earth becomes slow and consequently the day and night and seasons are subjected to change, a large number of problems of jurisprudence shall arise. Likewise, if what is said about the telepathy between the bodies is correct, due to it some other problems shall also emerge.
صناعة إلى غير ذلك من الأحكام الكثيرة التي ليست الآن على ابتلائنا، ولو أتى زمان اندفع القمر قبل الأرض تحدث مسائل أخرى، وكذا لو أبطأت حركة الأرض فتغير النهار والليل والفصل تحدث مسائل في كثير من أبواب الفقه، ولو صبح ماقبل من إمكان غمارة الأجسام تحدث لأجلها أحكام أخرى أيضاً.
GLOSSARY

'A'dal: More judicious; more in conformity with the criteria of justice.
'Adālat: Moral integrity.
'Ādil: A person of reputed integrity.
'Adl (pl. 'Udūl) (= 'Ādil): A person of reputed integrity.
Āfat min Allāh: An Act of God.
Āfīf: Pardon; excuse; forgive.
Āhl-i Kitāb: ‘People of Scriptures’; followers of the prophets on whom divine Scriptures have been revealed.
Ājal: Appointed time or respite.
Ājān: Perineum; lower part of the body between the genital organs and the rectum.
Ālaqa: Blood clot; (coagulated) blood.
Ālātu mukabbirah: Magnifying instruments.
Ālātu muqarrabah: Approximative instruments.
Āl-Shijāj (pl. of Shajjah): Head wound that lays open the skull; skull fracture; also wound of the face.
Al-yād: Possession.
Alyāh: Buttock; the hip.
'Āmā (aman): Blindness.
Amārah: Sign; indication.
Amr bi'l ma'rūf: Enjoining what is good.
Amshā': A woman affected by a disease in which the patient’s eye waters most of the time; blear-eyed.
'Ānāh: Pubes; pubic region.
Anmulah (pl. Anāmil): Fingertip; knuckle.
Āqilah: Close relatives on the father’s, or father’s and mother’s side, as father, paternal grandfather, paternal uncle or his sons; a clan committed by unwritten law to pay the bloodwite for each of its members.
'Aqīd al-jārah: Lease-deed.
'Aql: Human reason; intellect.
'Aqm: Sterility; barrenness.
Aqrab: (A juristic opinion) closer to the Traditional authority.
Aqwā: A stronger (juristic opinion).

'Araj: Lameness.
'Ard: Occurrence; befalling.
'Ariyah: Temporary transfer.
Arjāh: A more preferable (juristic opinion).
Arsh: A fine to be determined by the Judge where no Diyat is specified by the Shari'ah.
'Asābah (pl. 'Āṣābah): Residuaries; paternal male relations who are one's 'Āqilah, responsible for payment of all fines for offences committed by him by mistake.
Asad-i ādār: A rapacious lion.
Asbāb-i qahriyah: Mandatory sources or means.
Ashbah: (A juristic opinion) more in conformity with the principles of law.
'Āshwā': A woman having night blind or nyctalopic eye.
Āṣāf (pl. of Šīf): Kinds; descriptions; categories.
Awā'ird: Analogous conditions.
Awd: Return; resumption; restoration.
Awjah: (A juristic opinion) more compatible with guiding principles or reason; best founded (juristic opinion).
Awliyā' al-dam (pl. of Wāli ...): Heirs of a person killed or murdered; persons entitled to receive the blood-money or execute Qīsās.
Awraaq al-naqdiyah: Bank notes.
Awraaq-i Qardah: Credit or loan documents.
'Ayn: Capital asset; real estate; object of material value.
Āzhar: A more manifest, distinct or clearer (juristic opinion).
Bahh: Become hoarse or husky (sound).
Bāligh: Adult; major; mature; puberty.
Bātil: Discarded; cancelled; untrue.
Bay' al-muhabāt: Considerate sale.
Bayād al-Ayyām: Blank days (in menses or menstrual period).
Bayt al-Māl: State Treasury; State Exchequer.
Bayyīnah: Legal evidence; clear evidence.
B. dākhil: Internal evidence.
B. khārij: External evidence.
B. sārihah: Unequivocal evidence.
Bi‘ah: Church; synagogue.
Bulūgh: Adulthood; majority; maturity; puberty.
Dāhik: Fore-teeth; teeth that become visible at the time of laughing.
Dā‘in (=mudīn): Creditor; donor.
Dāman-i māli: Financial liability; monetary compensation.
Dāmīghah: Injury that breaks the pouch-like thin skin containing the brain.
Dāmin al-jarīrah: Surety or responsibility for offences.
Dāmiyah: A scratch that penetrates into the skin and enters the flesh and results in the flow of blood in a small or large quantity.
Darajāt (pl. of darajah): Degrees (of heirs).
Dās: Exercise pressure on; tread; trample.
Davan (pl. Duvān): Debt; financial liability or claim.
Dhahreh: Tomb; mausoleum; grave.
Dhimni: Implied; implicit; hidden.
Dhīrā: Forearm; arm.
Dhmīni: A non-Muslim subject of a Muslim state.
Diyāt (pl. Dīyāt): Monetary compensation prescribed by the Shari‘ah for an offence against the life or body; blood money.
Dubur: Backside; anus.
Far‘ (pl. Furū‘): Branch; secondary; Subsidiary (rule, law, or section); Adjunct.
Furah (= Ifirā): False accusation.
Fusid: Corrupt; foul; depraved; vicious; false; vain; unsound.
Fāsiq: Depraved, debauch or profligate.
Fisq: Depravity; debauchery; profligacy.
F.-al-khaft: Secret profligacy.
F.-al-jalīzāhir: Ostensible or open profligacy.
Furū‘ (pl. of fur‘, q.v.): Secondary or non-
fundamental beliefs (of Islam).
Fatwā: Verdict; juristic opinion.
Fuhsh: Vituperation; abuse.
Ghā‘it: Excrete feces.
Ghann: Speaking through the nose; nasal pronunciation.
Gharājah: Fine; penalty; indemnity; compensation.
Ghīb: Ritual wash; a compulsory bath after major uncleanness (Hadath, q.v.).
Hadar: One whose blood can be shed with impunity.
Hadath: Dropping excrement: major uncleanness entailing obligatory bath; major impurities.
Hadd (pl. Hudūd): Punishment whose nature and amount has been prescribed by the Shari‘ah.
Haddiyah (pl. hadāyā): Free gift; donation.
Hājib: Moustache; excluder from inheritance.
Hulf: Swear by Allāh.
Haqīq al-ra‘is: Shaving the head, a compulsory rite during Hajj.
Hürūm: Prohibited; forbidden.
Harbi: A citizen of a non-Muslim state at war with a Muslim state.
Hārisah: A scratch on the skin without any flow of blood.
Hashafah: Glans penis.
Hāshimah: An act causing fracture of bone, but not creating suppuration.
Hatq: Break into; degradation.
Hilmah: Nipple; teat (of woman’s breast).
Hirz (pl. Ahrāz): A guarded place; a place where property is kept in order that it may be away from the sight of others and safe from being taken away.
Hizāmah: (Right of) custody of children.
Hubwah: Exclusive right of the eldest son.
Hukm (pl. Ahkām): Verdict; judgment; law; rule; command; order.
Hukūmah: A fine to be fixed by the judge.
Hullah-i Yemen: Garment made of Yemenese cloth.
Hunūṭ: Camphorating.
Idā: Deposit (money in the bank).
Idā’ah: Radio or Television service; a source of broadcasting; broadcasting.
Idrāk: Overtake; catch; arrive.
‘Iddah: The prescribed period after divorce or husband’s death before which the wife is not allowed to marry another husband.
Ifāqah: Recovery (of sanity).
Ifāda: The two passages of nature of a woman becoming utrumque meatum in altero coælecere faciens impetus congressus.
Ifīrās: Devour; tear to pieces.
Iḥsān: The state of being a muḥsān or muḥsana, q.v.
Iḥtiyāk: Likelihood; probability.
I-i ‘aqlā ’i: Rational or logical likelihood or Probability.
Iḥtisāb: Calculation; assessment.
Ijārah: Tenancy; hire; rent.
Ijābah: Compulsion.
Ijmā’: Consensus of opinion of the learned.
Ijrā’-i hukm: Execution of a judgment.
Ikhrah: Ejection: withdrawal.
Ikhwah (pl. of Akh): Brethren.
I. min al-abb: Cognate brethren.
I. min al-ahavān: Consanguine b.
I. min al-umm: Agnate brethren.
Ikrāh: Coercion; repugnance; duress.
Ilghā’-i mujāzāt: Annulment of sentence of punishment.
Ilzām: Commitment; obligation; liability.
Imā’-i hukm: Approval or confirmation of a judgment.
Inkhīfaż al-arādi: Depth of land.
Iqā’: A unilateral obligation or operation.
Iqālah: Conclude a bargain.
Iqdāmāt-i taha’i: Secondary measures.
- takmilī: Supplementary measures.
- ta’mini: Security measures.
- tarbiyāt: Reformatory measures.
Iqrār: Admission; acknowledgement.
Iqdż ‘am: Discard; abandon.

Irtidād: Apostasy (especially from Islam).
Irtifā’ al-arādī: Height of land.
Īsār (=yusr): Affluence; luxury; prosperity.
Ishkāt: Objection; hesitation.
Ishṭirāk fi’l jināyat: Abetment to a crime or offence.
Istdrāk: Repairation; amendment.
Istihādah: Excessive flow of menstrual blood.
Iṣfā’: Discharge; completion; redemption; fulfillment; payment.
I-i Qisās: Execution or infliction of Qisās.
Istifāḍah: A phase of notoriety.
Istihlāl: Appearance of an infant from the mother’s womb who cries after birth, a sign of its having been born alive, and hence being entitled to its share in the inheritance of its parents.
Istihmāl: Demand delay or respite.
Istimag: (Sexual) enjoyment.
I’tikāf: (Sitting in) an uninterrupted seclusion or isolated place like a mosque or a shrine.
Jabr: Bone setting.
Jādd bi lā wāsitah: Direct grandfather.
J. ma’ al-wāsitah: Indirect grandfather.
Jādhibah: Gravitation; gravity.
Jahd: Recusance; refusal; denial.
Jāl: Forgery; counterfeiting.
Jald (pl. Ajlād): Flogging; whipping; lash; Stripe.
Jānī: Culprit; criminal; offender.
Jānīn: Foetus; embryo.
Jārāḥat: Injury.
Jārūd: Strip (of clothes).
Jārū: Invalidate (testimony); declare unreliable (a witness); challenge the reliability (of a witness).
J. –ī ‘amd: Willful or intentional injury.
J. –ī khaṭṭā: An injury by mistake or misadventure.
J. –ī shīhī ‘amd: Semblance of willful or
intentional injury.

Jaula': A woman with a squinting eye.

Jazz (= Ḥalq al-ra's): Shaving the head; a compulsory rite during Hajj.

Jizyah: Head tax on free non-Muslims, esp.

Ahl-i Kitāb in a Muslim state.

Jubb: Cutting of male organ.

Junūn: Insanity; lunacy.

J.ī advārī: Periodical or occasional insanity or lunacy.

J.ī muthiq: Perennial or perpetual lunacy.

Kabīrah (pl. kabā 'ir): Atrocious crime; major, grave or fatal offence or sin.

Kafālah: Bail.

Kaffārah: Expiation; atonement.

Kafil: Legal guardian.

Kāhil: Upper part of the back.

Kalimah: Authority; ascendancy; words; utterance; speech; prescribed formula of declaration of Islam.

Kanisah: Synagogue; church.

Khābah: Minor uncleanness or impurities.

Khamr: (Drinking or sale of) wine.

Khatā: Mistake or misadventure.

K.ī mabhā: Sheer mistake or misadventure.

Khisārat: Loss.

Khusūmat: Dispute; lawsuit; controversy.

Lavā: Sodomy; sexual intercourse of a male with a male.

Lawth: Suspicion of involvement in an offence.

Liʿān: Imprecation (subsequent to disavowal disavowal of the parentage of one’s child born to one’s wife).

Luqātah: Foundling; a little child found deserted.

Mādyūn (= mādīn): Debtor; indebted.

Mafāsid (pl. of mafsādah): Evils; means of corruption.

Maghrībayn: Maghrīb and ‘Ishā prayers offered consecutively.

Mahārim (pl. of mahramah): Persons within the prohibited degrees of marriage.

Mahdīr al-dam: One whose blood may be shed with impunity (for being sentenced to death).

Mahjūr: A person interdicted (due to idiocy, insolvency, etc.).

Makhīm: A convict; a convicted person; sentenced.

Mahr: Dower; bridal money.

M. al-mithl: Proper dower.

M. al-musammā: Specified dower.

Maḥūd: Committed; pledged; promised.

Majniyy ṣalayh: One against whom an offence has been committed.

Maḥūd-i muḥālah: An ownerless place that is open to all and sundry.

Ma’mūmah: Injury that penetrates into the (āmmah) pouch-like thin skin containing the brain (or menix, or dura mater).

Man': Forbid; prevent.

Manāfi (pl. of manfa ‘at): Human senses.

Man': Obstruction; preclusion; ban.

M-i ta’qib: Staying of prosecution.

Maqadīf: A person subjected to Qadī, q.v.

Maṣāb: Discomfit; suffering.

Mash: Drawing wet fingers on the bisection of hair on the forehead and from the fingers of the feet to the ankles as a part of ablution (Wudū).

Masbūra: Prevalent opinion.

Maṣlahah (pl. masālih): Benefit; interest.

Masmū ‘āt (pl. of masmū‘ah): Things heard.

Ma’sūm: Protected by the laws of vendetta, impeccable; infallible; inless.

Mawīd-i al-koliyi muskīr: An alcoholic intoxicant.

M. –i mukhaddirah: Narcotics; n. drugs.

M. –i mufrajirah: Explosives.

Maytah: Meat of an animal not slaughtered according to the ritual requirements of Islam.

Mich: Bodkin.

M. fi’l mihkalah: Bodkin in a collyry or antimony box.

M. –i mahmū: A burning bodkin.

Milk-i muḥālah: An open or ownerless land or property.

Mizān (pl. Mawāzin): Criterion; standard; Measure.

Mu‘ānaqa: Embracing each other.
Mubāh: Permitted; lawful; permissible.
Mubahāratūn: Directly; personally (and not through the agency of another).
Mubahīr-i jurm: A person committing an offence personally (without the agency of another).
Mubsarāt (pl. of Mubsarah): Things seen.
Mudāja‘ah: Lying down together.
Mudā‘arah: Sleeping or silent partnership.
Mudda‘a ‘alayh: Defendant.
Mudda‘i: Plaintiff; claimant.
Mudghah: A shapeless lump that has formed into flesh.
Mudīhah: An injury affecting the whole flesh, penetrating through the skin covering the bone, and making the bone visible.
Muhārib: Everyone who in order to create alarm and harassment and disturb public freedom and security takes up arms; an armed dacoit or a highway robber who with the help of arms disturbs the public and highway security.
Muhṣan: A man having a permanent wife whom he has sexually enjoyed and whom he can enjoy sexually any time he wants.
Muhṣarah: A woman having a permanent husband by whom she has been enjoyed sexually and she always has the opportunity of sexual enjoyment with that husband.
Mujazāt-i ashab: Enhanced or more rigorous punishment.
Mujirim-i hifī i: Professional or confirmed criminal.
Mukabbirah: Loud-speaker.
Mukhābirah bāyn al-aqṣām: Telepathy or intercommunication between bodies.
Mukhālīf: One having a faith contrary to or against Shi‘ah faith; a Sunnī.
Mukhāsamat: Litigation; hostility.
Mukhtalīf: Mixed; combined.
Mumāqalah: Protraction; delaying; putting putting off.
Mumayyiz: Discreet.
Mu’min: A believer in Shi‘ah faith.
Munaaqīlah: An injury that cannot be cured except by transplantation of the bone.
Muqāssah: Set-off.
Muqassir: Negligent; neglectful; guilty.
Murāhiq: Adolescent; one approaching adulthood or majority.
Murtad: An apostate; one who apostatizes from Islam.
Musabbib: Causative factor.
Musādarah: Attachment; seizure of property; confiscation of property.
Musāhaqah: Tribadism or Lesbianism; a sexual act between two women by rubbing (sahq) their sexual organs.
Musajjilah: Tape (-recorder); a recorded tape; cassette.
Mustahil: One who considers a prohibited act to be lawful.
Musta‘min: One who seeks refuge in a Muslim state.
Mutalāhimah: An injury affecting a large quantity of flesh, but not penetrating into the thin skin covering the bone.
Muthlah: Mutilate.
Nadhīr: Vow; vocative offering.
Nafy: Negation; denial; exile.
Nahy ‘an al-munkar: Preventing others from doing what is wrong.
Naqd-i ʿamm: Breach of peace.
N. -i ʿuhkam: Rescind, annul, repeal or reverse judgment; rescission of judgment.
Naqil (=ṣulh): Conveyance.
Nasab: Paternity; consanguinity.
Nawajid: Wisdom teeth.
Niṣāb: Minimum amount of property liable to be governed by Zakāt; minimum number of witnesses required to establish Zinā‘.
Nukhā : Medulla.
Nukūl: Retraction; refusal to testify in court.
Nufah: The sperm (that has settled in the womb).
Qadhif: Slander; false accusation of adultery or sodomy.
Qādhif: Slanderer.
Qamar-i maṣnī i: (Artificial) satellite.
Qurāh: Kinship; close relationship.

Qurāh: Pure, limpid, clear (water).

Qurā‘īn (pl. of qarīnāh): Context; indications.

Qarāh (pl. qirāh): Ulcer; abscess; sore.

Qarn: A fleshy protuberance or a bone growing in the womb that prevents coition.

Qāsāmah: Taking oath (up to the number required by law).

Qāsir: A legal minor.

Qāsr: Reduction of the rak’ats in prayer and postponement of fasting for another day not subject to Qasr.

Qat’ al-yad: Amputation of hand.

Qat’ al-tariq: Highway robbery.

Qatl: Murder; homicide.

Q. –i ‘amā: Willful murder; intentional murder.

Q. –i khāṭā: Homicide by misadventure or mistake.

Q. –i k. -i mahd: Homicide by sheer mistake or misadventure.

Q. –i sabāb: Homicide by an intermediate cause.

Q. –i shibh-i ‘umād: Manslaughter; semblance of willful murder.

Qaw-l-i ma’rūf: Generally accepted opinion.

Qawwādī= Qiyādah, q.v.

Qayḥ: Pus; dirt; matter.

Qayām al-bayyinah: Adducing evidence.

Qayyīm: Administrator; caretaker; custodian.

Qīmī: Non-fungible things.

Qiyādah: Panderism; uniting and bringing together two or more persons for Zinn’ or sedomy.

Qiyās: Retaliation; the punishment given to an offender that is equivalent to his offence.

Rad: A person who assists in confiscation of property.

Radād: Crush; trample.

Rajm: Stoning (a Zāni or Zanīyah) to death.

Rakhāh (= ‘Anāh, q.v.)

Ratāq: Female organ’s so narrowness as only to allow a passage for the urine.

Rujūţ: Return; retraction.

R. ‘an qawl: Fall back on; go back on one’s words.

R. ila’l qur’ah: Recourse to casting lots.

R.-i Shāhīd: Retraction of witness.

Sabab: An intermediate cause; affinity; special connection.

Sadr: Lotus tree.

Ṣadr: Chest, breast.

Saftah: Bill of exchange; promissory note.

Ṣaghiraḥ (pl. ṣaghā‘ir): A minor offence or sin; venial offence or sin.

Ṣāhī: One labouring under some error or mistake.

Ṣahq: Tribadism; Lesbianism.

Ṣalaf: A forward purchase.

Ṣalāḥ: Advisability.

Ṣalās al-bawl: Incontinence of urine.

Ṣall: Pull out.

Ṣam: Sense of hearing.

Ṣanāt al-majā‘ah: Year of famine.

Ṣāq: Shin; shank.

Ṣar qubūr: Key money; goodwill.

Ṣhāfā‘at: Intercession; mediation.

Ṣhaf: The two pieces of flesh surrounding the female organ.

Ṣhahādat: Testimony.

Ṣ. al-farr: Secondary testimony.

Ṣ.-i hālī: Circumstantial testimony.

Ṣ.-i sara‘īnah: Unequivocal or unambiguous testimony.

Ṣhaykh-i thālith: Third party.

Ṣhamūs: Mulish, restive (horse).

Ṣharī‘ah: Canon Law of Islam.

Ṣhār: Condition; stipulation.

Ṣ. al-maqārīn: Affiliated condition.

Ṣhibr (pl. ashbūr): Span of the hand.

Ṣubḥ: Semblance of right.

Ṣhuqūq al-akhbār va aqīwāl: Sprouting of reports and opinions.

Ṣimhāq: An injury affecting the whole flesh penetrating into the thin skin covering the bone.

Ṣinn al-ra‘dāţ (pl. Asnān ...): A milk tooth.

Ṣiqṣ al-janīn: Miscarriage: abortion.
Sīrāyat: Contagion; infection; permeation.
Ṣulḥ (pl. ṣaḥāḥ): Backbone; loins.
Ṣuqūṭ: Drop; set aside.
S.-i Ḥadd: Setting aside of Ḥadd.
S.-i Ḥaq: Devolution of a right.
Taʿaddud-i jīnāyat: Plurality of offences.
Ṭabaʾiyyat: Subordination; pursuance.
Ṭabaqāt (pl. of ṭabaqāh): Classes (of heirs).
Ṭabʿi: Transportation; exile; banishment.
Ṭadāʾir: Challenging the veracity of each other’s statement.
Ṭaʿdīb: Correctional punishment; chastisement.
Ṭaʿdīl: Settlement; probity.
Ṭakhkhirh: Masturbation through rubbing the male organ between the thighs of another.
Ṭaghliq: Severity; harshness; take a binding or sacred oath.
Ṭahlīl: Legalization; legality.
Ṭahrīf: Distortion; perversion.
Ṭajāwuz: Trespass; transgression.
Ṭakhlīb: Repudiation; denial.
Ṭakhlīf-i mujāzāt: Remission in the sentence of punishment.
Ṭaʾkhir: Delay.
T. al-fāhish: Inordinate delay.
Ṭakkhiliyah: Vacation.
Ṭakrār-i jīnāyat: Recommission of an offence.
Ṭakhthir: Reproduction.
Ṭalīf: Piecing together.
Ṭalī: A person who is vigilant of the caravan, etc., to inform his companions from among the highway robbers.
Ṭaʾliq-i mujāzāt: Abeyance or suspension of the execution or enforcement of a sentence.
Ṭalqin: Prompt; suggest.
Tansidh-i hukm: Confirm or ratify judgment.
Taʿannut: Fault finding.
Ṭaqābul: Mutual guarantee, or surety, or responsibility.
Ṭaqāy: Retribution; counter stroke; counter measure; requital.
Ṭaqbil: Kissing.
Taraddud: Hesitation; doubt.
Taraddud: Frequentation; frequent coming and going.
Ṭarīḥ: Reject; throw away.
Ṭaʿrīḍ: Allusion; hint; indication.
Ṭasāʾir: Interesting public narration.
Ṭasbīḥ: An intermediate cause; through the agency of another.
Ṭashhir: Public announcement; public proclamation of a convict (on a donkey’s back); public identification.
Ṭaqībiq: Collating; adapting (to).
Ṭawaḥṣūn: Settle down.
Ṭawbikḥ: Reprimand.
Ṭawriyah: Concealment; hypocrisy; equivocation.
Ṭayyin: Determination; specification.
T.-i muddaʿāʾ ‘alayh: Determination of the defendant.
Ṭaʿzir: Chastisement or punishment whose nature and amount has not been prescribed by the Shariʿah and it has been left to the discretion of the judge.
Ṭazkhiyah al-shahādah/shāhid: Attestation of the moral integrity of witness.
Ṭhādī: Female breast; udder.
Ṭuhma: Slander; accusation.
‘Uṣāw (pl. aʾḏāʾ): A limb; a part of human body.
‘U.-i Aṣlī: Real limb or part of human body.
‘U.-i zāyid: An extra limb or part of human body.
‘Uhdah: Contractual obligation.
‘Umad: Period; time.
Umūlah (z. haqq al-ʿamal): Brokerage; commission; remuneration; fee.
‘Uqdat al-asbaʿ: Knuckle of a finger.
‘Usr va ḥavrāʾ: Difficulty and distress.
‘Uṣūs (pl. ʿasās): Coccyx; triangular bone of the vertebral column.
Wadayah: Indemnity; payment of blood wite.
Wāḥb: Donate; give as a free gift.
Wahn: Suspicion; supposition; assumption.
Wa in ʿalā: How so ever high.
Wa in nazala: How so ever low.
Wajh: Sense; rational ground.
Wājib: Obligatory; incumbent; necessary. Wakil
Ya’s: Menopause; past child-bearing age.
Yasīran: Slightly; insignificantly; shortly.
Zabīb: Currants; raisins.
Zabyat al-asad: Hunting place of a lion.
Zand: Wrist.
Zann: Presumption; supposition; speculation; doubt; uncertainty.
Zannī: Presumptive; speculative; supposed.
Zarūrī min al-Islām: An imperative command of Islam.
Zinā’: Unlawful sexual act.
Z. bi al-mahārim: Incest.
Z.-i muḥsan/muḥsanah: Adultery.
Z.-i ghayr-i muḥsan/muḥsanah: Fornication.
Ziyādah: Extra; surplus.
Zuhrān (or Zuhrayn): Zuhr and ‘Asr prayers offered consecutively.
esential; enjoined.
: Agent.
Wali: Guardian; heir.
W. al-dam: Legal heir to the person killed or murdered; a person entitled to receive the blood wite or execute qiṣāṣ.
W. al-ṭifl: Guardian of a child.
Waqq: Trust; endowment.
Waqqi’ah: Actual event, incident or situation; facts of the case.
Wāsiṭah: Intermediary; intermediate.
Wilāyat: Guardianship.
Wuḍū’: Ablution.
Wujūh (pl. of wajh): Aspects; circumstances.
Wulā’: Patronage.
Wulūj: Penetration.
Yā’isah: A woman subject to menopause.
command of Islam.
Zinā’: Unlawful sexual act.
Z. bi al-mahārim: Incest.
Z.-i muḥsan/muḥsanah: Adultery.
Z.-i ghayr-i muḥsan/muḥsanah: Fornication.
Ziyādah: Extra; surplus.
Zuhrān (or Zuhrayn): Zuhr and ‘Asr prayers offered consecutively.
esential; enjoined.