THE SUBLIME GIFT
بسم الله الرحمن الرحيم
The Sublime Gift

A TEXTBOOK OF ḤANAFĪ LAW

al-Hadiyya al-ʿAlāʾiyya

by Muḥammad ʿAlāʾ al-Dīn ʿĀbidīn (d. 1306/1889)

Translation, commentary and supplementary notes by Azhar Hussain

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Foreword

Picture a boy growing up in the neighbourhood of al-Qanawāt in Damascus, who lost his father at the age of eight. His father, who was the reference point for Ḥanafī fiqh in the wider region, had his library sold to booksellers and scholars of the city, scholars who would in turn nurture the boy to play an instrumental role in arguably the most significant developments in Islamic law for a millennium.

His father had prepared him well for this. Out of his affection for the author of al-Durr al-mukhtār, ¢Alā’ al-Dīn al-Ḥaṣkaﬁ, his father named his son ‘Ala’ al-Dīn, and out of a yearning that his son would one day raise the banner of the faith by the grace (jāh) of the beloved Messenger (Allah bless him and give him peace), he was also named Muḥammad. ¢Alā’ al-Dīn Muḥammad, or more famously ‘Ibn ¢Ābidīnzâde’ (literally, ‘the son of Ibn ¢Ābidīn’) as he would later be known in the Ottoman lands, would embark on an eventful life, at the service of all levels of society, from children to rulers.

He studied at the feet of a generation of scholars who were themselves indebted to his father’s knowledge for their own scholarship. Among these were Muḥammad Hāshim al-Tājī, ¢Abd al-Raḥmān al-Ghuzbarī, ¢Abd al-Raḥmān al-Ţībī and Ĥasan al-Bayţār. The rich learning environment of al-Shām (or the Levant) would have sufficed many in their quest for mastery in the Islamic sciences, but Ibn ¢Ābidīnzâde made a point to benefit from the most notable authorities in the Muslim lands, sitting with the renowned authorities of the Hijaz, including Jamāl al-Marghīnānī, Muḥammad al-Kutubi and the Grand Mufti of Mecca Aḥmad b. Zaynī al-Daḥlān, as well as the Medinan polymath Yūsuf al-Ghazzī. Notable among his teachers in Egypt were the Shaykh al-Azhar Imam al-Bayjūrī, and the Shaykh of the Mālikīs at the time, Muḥammad ¢Ulaysh. In addition to the outward sciences of Islam, he was trained by the spiritual guide (murabbī) Muḥammad al-Mahdī al-Zawāwī in the Khalwati path of sulūk.

During the initial period of Ibn ¢Ābidīnzâde’s scholarship in Damascus, he was assigned the role of verifying fatāwā under the watchful eye of
Mufti Emīn Effendi al-Jundī, who had himself been appointed as a member of the Shura council for the Ottoman state legislature. By this time, Ibn Ābidinzâde had already prepared his father’s encyclopaedic, yet incomplete, ĥāshiya work entitled Radd al-muĥtār on al-Ḥaškafi’s al-Durr al-mukhtār, for publication in Būlāq, Cairo. We may assume that Ibn Ābidinzâde’s scholarly competence and systematic methodology in issuing fatāwā during this period commended him to the relevant officials in the Ottoman state, such that he accompanied Mufti Emīn to the centre of the Ottoman caliphate in 1868. There, he would make the acquaintance of the Minister of Justice Ahmed Cevad Pasha, as a result of which Ibn Ābidinzâde was assigned to work with the drafting committee of al-Majalla al-aĥkām al-¢ adliyya – a monumental project that aimed to produce a code of civil law in a modern article form, based on classical fiqh sources.

Ibn Ābidinzâde’s work in the drafting process of the Majalla shows the importance those steeped in the classical corpus of law gave to stability and continuity in the practice of Islamic law. The difficulty of navigating the oft-times complex legal source texts of a school of law was something that he would have been acutely aware of. In the face of the encroachment of Western legal codes in Muslim lands, standardizing the classical corpus of fiqh would assure that the application of law in the Ottoman lands would be executed in a manner consistent not only with fiqh, but also with the wider maqāṣid of Islam.

Given this wider context, Ibn Ābidinzâde was central to the initial process of drawing up the remit of the Majalla code, contributing substantially to the introduction, covering the pivotal legal maxims, and its first five books, starting with the Book of Commercial Sales (Buyūʿ) to the Book of Pledges (Rahn). More importantly, he worked on the preliminary report presented to the sultan’s chief vizier setting out the utility and purposefulness of the newly envisioned legal code, a report which is required reading for any scholar today.

The Majalla code rulings, furnished with examples where necessary, were ostensibly extrapolated from the Zāhir al-riwāya of the Ḥanafī school. At times, the code also took account of divergent opinions, especially in cases where there was an overriding public interest, an established custom (¢ urf) or where necessity dictated a departure from a given ruling. In such cases, recourse would invariably be made to the Mālikī school of jurisprudence.
Ibn Ābidinzâde was one of a seven-strong initial drafting committee of the Majalla, and though it falls under the wider Tanzimât reforms, the Majalla itself was in many ways an attempt to shift the Ottoman legislature away from Western civil codes. That Ibn Ābidinzâde was convinced of the need for such a ‘radical’ move in reconfiguring fiqh gives us an insight into his deep foresight as a faqih. His involvement is also a telling response to those modernist voices that hide behind the now empty mantra that the Muslim world fell into decline as a result of the ossification of its legal and intellectual tradition, without acknowledging wider socio-economic factors.

Far from a rejection or alteration of the classical corpus of fiqh to the dictates of a reformist agenda, it should be seen as part of the ongoing renewal that the Islamic legal tradition went, and continues to go, through. For discerning students and scholars, Ibn Ābidinzâde’s efforts serve as a notice to similarly apply themselves to addressing the challenges of the age, and at a time when it is the tradition that is being questioned, to look to ways in which it can be reworked, taught and promulgated to ensure its ongoing relevance to the discourse in Muslim societies.

Ibn Ābidinzâde is a scholar who stood at the crossroads of seismic changes in the Muslim umma, with the slow encroachment of reformist trends in scholarly and social circles, as well as the disruption of traditional forms of knowledge transfer in the Muslim world. The Tanzimât reforms that came in the aftermath of the Gülhane Charter of 1839, during the reign of Sultan ʿAbd al-Majīd I, were precipitated largely by the disastrous policies of the previous sultan, Mahmūd II. These reforms were met with attempts from traditional elements in Ottoman society, at the core of which were religious scholars, to rein in the effects of the ill-conceived reforms. The task of undoing them was to prove no simple matter.

After three years of working on the Majalla, Ibn Ābidinzâde asked to be relieved of his responsibilities, and thereafter saw it timely to dedicate himself to work on his father’s magnum opus, first published incomplete in 1856. Interestingly, this came at the request of Ahmed Cevad Pasha, the Ottoman Minister of Justice. The first edition of the work was published in 1873 by the Ottoman state publishers in Istanbul, for which Ibn Ābidinzâde received the highest state accolade, some three years before the ascension of Sultan ʿAbd al-Ḥamīd II. The work, entitled Qurrat ʿuyūn al-akhbār bi takmilat Radd al-muḥtār, covers the sections from the end of the Book of Testimonies to the beginning of the Book of Rent. Thereafter Ibn Ābidinzâde
would be granted official duties in the judiciary in the Greater Levant, as Sultan ¢Abd al-Ĥamīd II attempted to rein back the Tanẓīmāt reforms. These were aimed at strengthening the role of the Shaykh al-Islām under the auspices of the Bâb-ı Meşîhat, the historic entry point to the institution where the Shaykh al-Islām would judge, granting it independence from the Ministry of Justice.

*There are a number of reasons the work in front of us, al–Hadiyya al–¢ Alā’iyya, stands apart from most introductory handbooks in Ĥanafī fiqh. It represents a late synthesis of a large body of legal works, allowing the author to revisit the most widely accepted presentation of the issues covered. In this, he had the advantage of intimate knowledge with his father’s Radd al–muĥtār. As is well known, his father would at times depart from commonly accepted opinions in the school in favour of positions that he argued were more consistent with the methodology of Abū Ĥanīfa, especially where it accorded with local custom or necessity. In such instances, Ibn ¢Ābidīnzâde would usually remark, ‘Were [Abū Ḥanīfa] here [today], he would say the same [on this issue] …’*

This knowledge of the suitability of certain rulings for a particular context came in large part from his first-hand knowledge of people’s lives. It is mentioned of Ibn ¢Ābidīnzâde that his expertise in fiqh derived in part from his own engagement in and observation of his father in trade and commerce. This gave him a keen understanding of the complexities involved in issuing legal rulings that were also practical, a quality no doubt present in his own son. At the bidding of his shaykh in sulūk, al–Zawāwī al–Khalwatī, Ibn ¢Abidinzâde took the pragmatic move to work on the project to modernize the legal norms of the Ottoman state, thereby engendering practical solutions to real-life questions of law, ensuring the relevance and ascendancy of Sharia as a legal code. Far from being wholly innovative, this pragmatism is also noticeable in the prior work of al–Shurunbulālī and ¢Alā’ al-Dīn al–Haškafī, and is indicative of the novel relationship between the Ottoman Empire and later formulations of Hanafī jurisprudence.

Given the novel challenges faced by common folk and state alike, why did Ibn ¢Abidinzâde see it apt to work within the confines of the established schools of Sunni law to promulgate Islam, despite the unprecedented demise of the umma in relation to the West, a decline blamed by some on the stagnation of these very schools? Suffice to say, it is now untenable to lay such
a sweeping charge on traditional scholarship, especially given the multifaceted factors that led to the temporal advancement of the West in relation to the Muslim world. Traditional scholarship outlined its task as ensuring a clear and pristine preservation and codification of Islam itself. I would summarize this in five points, which together provide a sure response to the superficial reading of the development of Islam and its schools of law propagated by its detractors.

First, the scholarship of the established schools of law is representative of those scholars that are universally acknowledged as guardians of the Qur’an and *sunna*. The greatest scholars of Islam, be they Qur’anic commentators or those who explained the hadith collections, adhered to a school of law. Second, the schools codified and preserved the understandings of the Qur’an and *sunna* in keeping with the practice of the early community (*salaf*). This means that the understanding and *fatwās* of the *salaf* exist within these schools. Third, each of the schools has a well-defined methodology (*uśūl al-fiqh*) to arrive at *fiqh* answers. This has ensured high-quality scholarship rather than subjective interpretation. Fourth, the schools have undergone centuries of intense scholarly scrutiny to sift out untenable positions within them. This was done through the constant verifying of proofs and sources, such that only the most rigorous opinions survived in each school. Fifth, following one of the four schools provides stability in practising one’s religion, since solitary opinions narrated from the Companions and early Muslims are notoriously difficult to verify both in terms of their authenticity and context.

* 

The three major works of Ibn ʿĀbidīnzâde – his *al-Hadiyya al-ʿAlāʾiyya*, an introductory work on worship, personal belief and conduct; the completion of his father’s *ḥāshiya*, *Radd al-muḥtār*; and his work on the *Majalla* – give an insight into the adaptability of his scholarship. One would assume that this is the order in which he undertook these scholarly tasks, from the least to the most challenging, yet the opposite is the case. His appointment to the *Majalla* committee took place around 1868, the *ḥāshiya* was completed in 1873, after he stepped down from the drafting committee, and *al-Hadiyya al-ʿAlāʾiyya* was published in 1882. From high-level state involvement in drafting the *Majalla* to a work intended as an introduction to students of *fiqh*, what connects his work into a unified whole is his mastery of the classical corpus of the Ḥanafī school, exemplified best by his work on his father’s *ḥāshiya*, which, upon com-
By the time al-Hadiyya al-ʿAlāʾiyya was written, Ibn ʿAbīdīnzâde had helped establish a charitable endowment in Damascus – al-Jamiyya al-Maqāṣid al-Khayriyya – for the promotion of Islamic education. One unique aspect of this endowment was that some of the most erudite scholars of the city would author bespoke basic introductory works on the Islamic sciences to be taught in its institutes of learning. And so it is that the late ʿAllāma ʿAbd al-Fattāḥ Abū Ghudda notes with a sense of nostalgic wit that such a comprehensive work as al-Hadiyya al-ʿAlāʾiyya, regularly referenced in the West today for its authoritative fatwā positions, was actually penned for the purpose of elementary Islamic education!

Ibn ʿAbīdīnzâde’s life-work underlines the need to study the tradition on its own terms, starting from the very basics of fiqh, graduating towards more challenging works so as to be suitably equipped to address the complexities of modern societies.

* Conceived as a comprehensive introductory textbook, al-Hadiyya al-ʿAlāʾiyya covers the area of fiqh referred to as ʿilm al-ḥāl, which is the ‘knowledge that a mature and responsible adult must know in order to fulfil an individual obligation at the moment it becomes incumbent upon him or her’. This consists of three areas: belief (iʿtiqād), prescribed actions (fiʿl) and proscribed acts (tark).

Arguably the most authoritative presentation of the laws of worship in late Ḥanafī scholarship, one significant aspect of this work is the extensive section dealing with the area of fiqh referred to as ‘The Prohibited and Permissible’ (al-Ḥażr wa-l-Ibāḥa) [Book G in the present translation], covering daily issues, outside those of worship, that may affect people. This part of the work is surprisingly detailed, and provides not only a compendium of the religious rulings related to food and clothing and the like, but also an insight into the socio-religious mores of Muslim societies at the time. The reason for the unusually extensive discussions over what is often covered in basic fiqh primers is given by the author thus, ‘I only extended upon what other esteemed scholars set out in [works] covering essential knowledge (ʿilm al-ḥāl) on account of my knowledge that at the end of their scheduled period of study, it is almost impossible for most students to return back to further study, especially as most have reached beyond the age of legal re-

pletion, was used as a primary source for the ongoing work of the Majalla committee.
sponsibility (taklīf). Anything short of this book would not suffice them, and so I saw [this] as a matter of utmost importance. A person who is not aware of the state of the people of his age, such a person is not a scholar!’

It is important to note that some of the rulings contained in this section were formulated during an age which relied on recognized local social contracts for the administering of justice prior to centrally administered justice systems. With the rise of the modern nation-state, many issues, such as those related to compensation for death (diya) and retaliation (qisāṣ), fall within the realm of siyāsa sharīyya, a broad doctrine of Islamic law which validates the ruler to determine the manner in which the Sharia should be administered in the light of wider concerns understood from the maqāsid. Hence, such issues are subject to additional requirements bound by procedural law. Legislative systems set up in majority-Muslim countries have developed procedural rulings in line with Islamic law that restrict some rulings set out in this book. These include instances which may appear to be extra-judicial in a contemporary legal setting, given their application may be overwhelmingly detrimental to the general public interest. To recall Ibn Ābidinzâde’s maxim above, ‘Were [Abū Hanîfa] here [today], he would say the same [on this issue] …’ A reader of the text should therefore be aided in understanding such issues by referring to a suitably qualified scholar who is aware of such context-specific rulings.

The need for such review underlines the complexities each generation faces, and a hallmark of great scholarship is that it is born out of the needs of the age, needs that can only be met by a faqîh. To be a faqîh in its truest sense is distinct and more elevated than to be a person simply collecting mountains of information without an understanding of the context within which this knowledge is used. As Imam al-Mahallî mentions in his commentary on the Jam’ al-jawâmi’, ‘Being a faqîh entails having knowledge of legal rulings of the Sharia that are arrived at by means of independent juristic reasoning (ijtihād). What is meant by [knowledge of] “legal rulings” is not that one recollect them immediately from memory, but that one have the capacity to arrive at knowledge of the rulings upon focusing on the issue at hand. So when Imam Mālik responded to thirty-six out of forty questions by saying “I don’t know”, it does not mean he was not a faqîh.’ Commenting on this in his ḥāshiya work, ʿAllāma al-Bannâni points out that the process of undertaking ‘fiqh’ is a time-specific, latent capacity ‘primed to undertake the task of arriving at knowledge through reflexive reasoning’.
And so it is fitting that the boy who grew up in the al-Qanawāt neighbourhood of Damascus, and then went on to serve the highest offices in the Ottoman legislature, ended his life in the service of a charitable endowment focused on raising the next generation of ‘Ibn Ābidīnzâdes’. This act on his part, of returning to the roots of education, ensues from his deep firāsa (foresight), and it should not be lost on us that it was this same firāsa that propelled Nūr al-Dīn Zengī into overseeing the proliferation of primary religious seminaries in the Greater Levant. It was this proliferation that was the harbinger to the liberation of Quds from the grip of the Crusaders. And as before, so too today, we are bound by this sunna of Allah to embark on the same journeys as our exemplars.

May Allah make ‘Alā’ al-Dīn’s Gift a means of inspiring such firāsa in our own times, may He alleviate by it some of the suffering of the umma, and may this work become a means to increasing the light in the grave of its author. I commend this work, al-Hadiyya al-‘Alā‘iyya, which I relate on the authority of my teacher the murabbī al-muqri‘ ʿAbd al-Razzāq al-Ḥalabī, from ʿAllāma Muḥammad Śāliḥ al-Farfūr, from Śāliḥ b. Saʿd al-Ḥumṣī, from Bakrī b. Ḥamīd al-ʿAţţār, from Ḥasan b. Ibrāhīm al-Bayṭār, to the author, ʿAlā‘ al-Dīn Muḥammad, also known as Ibn Ābidīnzâde, to discerning student and scholar alike.

May He grant unending felicity to the translator for carrying out such an arduous and challenging task with due meticulousness, and the team at Abu Zahra Foundation who have striven to serve their community with religious education imbued with iḥsān. May their endeavours serve as a blueprint for the many communities in the West working to raise the sons and daughters of this umma as ambassadors of Prophetic iḥsān.

May profuse and endless prayers and blessings be upon the source of all goodness, the master of perfection, the teacher of mankind and its exemplar, Muḥammad (Allah bless him and give him peace), in a manner that befits the debt we owe him. And many times more. Āmin.

SHAYKH RUZWAN MOHAMMED
Scotland
Transliteration Note

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<tr>
<td>اء</td>
<td>(a slight catch in the breath)</td>
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<td>อ</td>
<td>a, ā</td>
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<td>ب</td>
<td>b</td>
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<td>ت</td>
<td>t</td>
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<td>ث</td>
<td>th (should be pronounced as the th in thin or thirst)</td>
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<td>ج</td>
<td>j</td>
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<td>ح</td>
<td>h (tensely breathed h sound)</td>
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<td>خ</td>
<td>kh (pronounced like the ch in Scottish loch with the mouth hollowed to produce a full sound)</td>
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<td>د</td>
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<td>ش</td>
<td>sh</td>
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<td>ص</td>
<td>š (a heavy s pronounced far back in the mouth with the mouth hollowed to produce a full sound)</td>
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<td>ض</td>
<td>ź (a heavy d pronounced far back in the mouth with the mouth hollowed to produce a full sound)</td>
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<td>ط</td>
<td>ṭ (a heavy t pronounced far back in the mouth with the mouth hollowed to produce a full sound)</td>
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<td>ظ</td>
<td>ḵ (a heavy dh pronounced far back in the mouth with the mouth hollowed to produce a full sound)</td>
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<td>ع</td>
<td>ʿ, ʿa, ʿi, ʿu (pronounced by narrowing the passage in the depth of the throat and then forcing the breath through it)</td>
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<tr>
<td>غ</td>
<td>gh (pronounced like a throaty French r with the mouth hollowed to produce a full sound)</td>
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<td>ف</td>
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<td>ق</td>
<td>q (a guttural q sound with the mouth hollowed to produce a full sound)</td>
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<td><strong>d.</strong></td>
<td>died</td>
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<td><strong>def:</strong></td>
<td>defined at another place</td>
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<td><strong>dis:</strong></td>
<td>discussed at another place</td>
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Translator’s Introduction

Following one of the four schools of Islamic jurisprudence is both a practical necessity and a religious obligation upon the layperson. Laq̄ānī concludes in his famous poem, Jawharat al-tauḥīd:

And Mālik, and the other Imams
likewise, Abū al-Qāsim,¹ the guides of the Umma.
It is obligatory to follow a learned man among them,
thus have the scholars related with an intelligible expression.²

However, for those adopting the Ḥanafī school, finding a detailed and reliable English text that expounds the positions of the school is a challenge. Many options available suffer from defects such as poor language, lack of detail and inadequate referencing to sources. These defects are further compounded by the complexity of the Ḥanafī school itself; not only did Abū Ḥanīfa’s Two Companions disagree with him on many points of law, but the school had gained large followings in Central Asia, the Indian subcontinent, the Levant, Turkey, and the countries of the former Ottoman Empire, comprising several historical expressions, and thus determining the adopted position on a particular point of law can be challenging.

What is clear, though, is that no book in the Ḥanafī school has the status of Ibn ¢Ābidīn’s magnum opus, Radd al-muḥtār al-Durr al-mukhtār sharḥ Tanwīr al-abśār. Due to the breadth of issues he covers and his precision as a scholar, it is the most cited reference work amongst Ḥanafī scholars across the world. Not only does it summarize rulings from earlier reference works, but it also often addresses matters not covered by others.

Our text, al-Hadiyya al-¢ Alā’iyya li talāmīz al-makātib al-ibtidā’iyya, is largely drawn from Radd al-muḥtār, hence providing a highly reliable expression of the school and also a level of detail rarely found in other texts in the same

¹ Abū al-Qāsim Muḥammad al-Junayd, the Imam of the Sufis.
² The translation is from an unpublished version of the poem by T. J. Winter (Tuhfat al-murid al-‘alā Jawharat al-tauḥīd (132), 358).
genre. The aim in producing this book is to provide the reader with a comprehensive single-volume study text.

The reader should note the following points in respect of the methodology adopted in this text:

1. I have avoided literal translation. Furthermore, sometimes the word order of the original Arabic is sacrificed so that the English may be rendered into more digestible paragraphs and lists.

2. Footnotes and supplementary notes are referenced to their respective sources, but they typically present a summary of the legal ruling and not a full literal translation. Furthermore, in a very small number of cases, there may be some additional points added by the translator that are not in the referenced sources.

3. Muḥammad Ṣaʿīd al-Burhānī’s footnotes on al-Ḥadiyya al-ʿAlāʾiyya were the starting point for the footnotes and supplementary notes in this volume; however, I have usually referenced Burhānī’s material back to the original sources.

4. Translation of many technical terms and stylistic choices are taken from Shaykh Nuh Keller’s Reliance of the Traveller, which remains unequalled as a manual of Sacred Law since its publication in 1991.

5. Translation of verses of the Qur’ān are taken from Arthur John Arberry’s The Koran Interpreted.

6. References to Majmūʿa, transmitting from Taftāzānī’s Sharḥ al-ʿAqāʾid al-Nasafiyya have relied upon Elder’s A Commentary on the Creed of Islam. Similarly, certain passages from Hidāya have relied upon Charles Hamilton’s The Hedaya or Guide: A Commentary on Mussulman Laws.

7. When referencing a hadith or particular ruling in the Ḥanafī school, multiple references are not provided and I usually sufficed with a single reference.

8. Evidences for rulings from the books of aḥādīth are provided selectively on some points of law that are often debated and where the Ḥanafī school is criticized. In these cases, only the primary evidences of the school are provided; refutations by opponents and counter refutations are not detailed.
9. In Book K, I added biographies of selected, mainly Ḥanafī, scholars mentioned in the book. Scholars who are well known and information about whom is readily available are not included.

10. Rulings in respect of slaves and a limited number of other matters that are irrelevant to the modern world are omitted. Furthermore, as with most historical texts, there are legal rulings that are time and context specific and thus not directly applicable in the modern world or they are matters that have become contentious. Where possible, I have added some commentary but providing comprehensive discussion and guidance is not possible in a text of this size. Accordingly, readers will need to consult relevant experts on the particular matters.

11. In the detailed footnotes, I have attempted to clarify and simplify the text as much as possible. Nevertheless, this book should ideally be studied with an expert teacher.

I would like to express my heartfelt gratitude and thanks to my friend Shaykh Abū Ṭāhir ¢Abd al-Razzāq, who generously helped me clarify certain parts of the Arabic text. Thereafter, Mawlana Hashim Khan reviewed the English text of *al-Hadiyya al-‘Alā’iyya*, my footnotes thereon and the supplementary notes; his highly valuable feedback was incorporated into this volume. Finally, Muhammad Ridwaan meticulously edited the text before Khalid Hussain, Mohammed Majid and Rashid Hussain undertook a final review, making helpful suggestions for improvement.

I am eternally grateful to Shaykh Ruzwan Mohammed for writing a foreword that is highly erudite and beneficial, providing details about Muḥammad ‘Alā’ al-Dīn ¢Ābidīn’s life and career, and important considerations concerning the development and application of Sacred Law in modern times; these observations should be borne in mind when studying historical texts such as *al-Hadiyya al-‘Alā’iyya*. Reading his foreword reminded me that, despite my best efforts to clarify and explain this text, its true value is attained by studying it with the likes of Shaykh Ruzwan who have immersed themselves in the tradition for many years. I pray Allah gives him health, blesses all his endeavours, and English speaking students benefit from his presence in the United Kingdom. Similarly, I must thank Abdal Latif Whiteman who combined all his experience and expertise to typeset this complex text and produce a truly beautiful volume. Muhammad Ansa then diligently produced a detailed index that a book of this size warranted;
I hope readers find this useful when seeking answers to specific queries. Finally, our proofreaders patiently mopped up the inevitable residual errors.

This publication could not have been completed without input from these individuals and I am personally grateful for their support and patience in working through this volume with me. Nevertheless, any residual mistakes are mine and not the responsibility of these contributors.

In addition, other people I must thank include firstly my parents who raised me to love Allah and His Messenger (Allah bless him and give him peace) and serve His religion. Secondly, without the forbearance and sacrifices of my wife and children (Sara and Hudhayfa), it would have been difficult to dedicate the requisite time to this ambitious project. The love, support and encouragement of all these individuals made this work possible. May Allah reward them all abundantly with good in this world and the next.

All the proceeds from this publication will be donated to the Abu Zahra Foundation, a religious institute in Keighley, United Kingdom. I have had the great honour to serve this organization since its inception in June 2001. May Allah bless the Foundation’s activities, its donors, students and Trustees, whose dedication and sincerity in serving the religion of our liegelord (Allah bless him and give him peace) has been a source of constant inspiration in my life.

Finally, I ask the reader to supplicate for my parents, family, friends, and me. May He accept this work from us, benefit the readers through it and it be amongst our good deeds on the Day secrets are revealed, ‘Then as for him who is given his book in his right hand, he shall say, “Here, take and read my book.”’

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3 Qur’an 69:19.
Author’s Introduction

IN THE NAME OF ALLAH, the Merciful, the Compassionate. All praise belongs to Allah, the One who graced us with understanding of the religion and made it easy for us to travel the path of the rightly guided. May blessings and peace be upon His Chosen Prophet, the seal of prophets and an exemplar for the select. And blessings and peace be upon his folk, the liegelords and the purified ones, and upon his noble Companions who are guidance for the perplexed.

To commence: This is a book concerning that which the beginner must know from the study of ritual worship. I have named it ‘The Sublime Gift for Seminary Primary Students’ (al-Hadiyya al-‘Alā‘iyya li talāmīz al-makātib al-ibtida‘iyya) and I ask the Most Exalted One that He benefits readers through it; He is the Most Generous, the Helper.
BOOK A

Introduction to the Ḥanafī School
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Categories of Human Acts

A2.0

Obligatory (fard)

Communal (fard al-kifāya) and personal obligation (fard al-ʿayn)

Practical (fard ʿamalī) or presumptive obligation (fard ẓannī)

Mandatory (wājib)

Emphasized sunna (sunna muʿakkada) and sunna of guidance (sunnat al-hudā)

Desirable (mustaḥabb), recommended (mandūb), decorum (adab), extra sunna (al-sunna al-zāʿida) or supererogatory (nāfila, rawātib)

Permissible (mubāḥ)

Somewhat disliked (makrūh tanzīhan)

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Unlawful (ḥarām)

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**a1.0 DEVELOPMENT OF THE ḤANAFĪ SCHOOL**

**a1.1 DEFINITION OF ISLAMIC JURISPRUDENCE (FIQH)**

Lexically *fiqh* means having knowledge of something, whilst technically it means knowledge of the applied rulings (*furūʿ*) of Sacred Law derived from its particular proofs. During the life of the Prophet (Allah bless him and give him peace), he was the sole legislator; the Qur’ān refers to this as follows, ‘If you should quarrel on anything, refer it to God and the Messenger, if you believe in God and the Last Day; that is better, and fairer in the issue.’

**a1.3 LEGAL RULINGS DURING THE TIME OF THE COMPANIONS AND SUCCESSORS**

During the time of the Prophet (Allah bless him and give him peace), Islamic Law had not yet been put into writing and he did not teach the Companions in the way jurists teach today by detailing the conditions and obligatory and recommended elements of each act. Rather, he simply performed acts such as ablution or hajj and the Companions imitated him; each one saw whatever Allah enabled him to see of the Prophet’s (Allah bless him and give him peace) acts of worship and judgements, then he committed them to memory and reflected upon them.

After the Prophet (Allah bless him and give him peace) left this temporal world, matters arose that required the issuance of a legal ruling and this responsibility fell upon the Rightly Guided Caliphs who applied the following principle exemplified by Abū Bakr al-Ṣiddīq, ‘When a dispute was laid before Abū Bakr al-Ṣiddīq, he looked in the Book of Allah Most High and if he found what he could adju-

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1 This chapter is not a part of the original text of *al-Hadiyya al-ʿĀlīyya* but has been compiled by the translator.

2 Qur’ān 4:59.

dicate with between them, he ruled according to it. If he did not find the matter in the Book but he knew a practice (sunna) from the Messenger of Allah (Allah bless him and give him peace), he judged according to it. If he was unsuccessful in this, he left and asked the Muslims, “Such-and-such matter has come to me; do you know if the Messenger of Allah (Allah bless him and give him peace) made a judgement on this?” Sometimes a group would all recollect a judgement from the Prophet (Allah bless him and give him peace) in this matter and Abū Bakr would thus say, “Praise be to Allah who placed amongst us those who preserved reports of our Prophet (Allah bless him and give him peace).” If he was unsuccessful in finding a practice (sunna) from the Messenger of Allah (Allah bless him and give him peace), he gathered the chieftains and the best of the people and consulted them; if their viewpoints concurred upon a matter, he judged according to this.’

The Muslim community expanded and new matters arose requiring the exercise of expert legal opinion (ijtihād); support for exercising ijtihād was drawn from the famous incident when the Messenger of Allah (Allah bless him and give him peace) intended to send Mu‘ādh b. Jabal to Yemen and asked, ‘How will you judge when a case is presented to you?’ He replied, ‘I will judge by the Book of Allah.’ The Prophet (Allah bless him and give him peace) asked, ‘What if you do not find it in the Book of Allah?’ Mu‘ādh said, ‘Then I will judge by the sunna of the Messenger of Allah (Allah bless him and give him peace).’ The Prophet (Allah bless him and give him peace) then asked, ‘And what if you do not find it in the sunna of the Messenger of Allah (Allah bless him and give him peace) and neither in the Book of Allah?’ He replied, ‘I will make ijtihād to formulate my own judgement and I shall spare no effort.’ The Messenger of Allah (Allah bless him and give him peace) struck Mu‘ādh’s chest and said, ‘Praise be to Allah who has guided the messenger of the Messenger of Allah to that which pleases the Messenger of Allah (Allah bless him and give him peace).’

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4 Muḥammad Şubḥī b. Hasan Hallāq notes that the narrators of this text are reliable (thiqa), although the chain is incontiguous (munqatī) (Munasad al-Dārāmi (l40), 56).
5 Arna‘ūṭ notes this hadith is weak (da‘if) but more than one hadith scholar has inclined
Once the Companions dispersed to different regions, each one became an exemplar for some region and as new legal matters arose, they gave answers according to their recollection of texts and their *ijtihād*. Amongst the Companions, some became prominent reference points on religious matters. The Kufan Successor Masrūq b. al-Ajdā’ noted, ‘I became acquainted with the Companions of the Messenger of Allah (Allah bless him and give him peace) and I found that their knowledge ended with six: ʿUmar, ʿAlī, ʿAbdullāh [b. Masʿūd], Muḥādh [b. Jābal], Abū al-Darda’ and Zayd b. Thābit. Thereafter, I studied the six and found their knowledge ended with ʿAlī and ʿAbdullāh [b. Masʿūd].’

Ibn Masʿūd remained in Kufa for a long period of time and upon leaving, he left behind many scholars who continued his intellectual legacy; the most notable of these were ʿAlqama b. Qays al-Nakhaʾī (d. between 61 and 73 AH), Ḥārith b. Qays (d. c.60 AH), Masrūq b. al-Ajdāʾ (d. 62 AH), Abū Maysara ʿAmr b. Sharḥabīl (d. 63 AH), Ṣubayda b. ʿAmr al-Sulamānī (d. 72 AH) and ʿAswad b. Qays al-Nakhaʾī (d. 75 AH). ʿAlqama took a great deal of knowledge from Ibn Masʿūd and then Ibrāhīm Nakhaʾī (d. 96 AH) did the same with ʿAlqama.

During the time of the Successors, each learned scholar amongst the Successors had his own school and leading scholars emerged in the following major cities:

1. Medina – Saʿīd b. al-Musayyab (d. 94 AH) and Sālim b. ʿAbdullāh (d. 106 AH)
2. Mecca – Muḥammad b. Shihāb al-Zuhrī (d. 124 AH), Yaḥyā b. Saʿīd (d. 143 AH), Rabīʿa b. ʿAbd al-Raḥmān (d. 136 AH) and ʿAtāʾ [b. Abī Rabāḥ] (d. 114 AH)

Towards ruling it to be rigorously authenticated (*ṣaḥīḥ*) (*Abū Dāwūd* 5:443).

Ṭabarānī narrated this report and Haythami opined that the narrators are from the narrators of the rigorously authenticated (*ṣaḥīḥ*) books, except Qāsim b. Muʿīn who is reliable (*thiqā*) (*Majmaʿ al-zawā’id wa manbaʿ al-fawāʾid* (l72), 18:436).

Ḥammād b. Abī Sulaymān, who went on to become the Mufti of Kufa, and studied with ʿIbrāhīm Nakhaʾī. Subsequently, Abū Ḥanīfa studied with Ḥammād and stayed with him for eighteen years until the latter’s death (*al-Madhhab al-Ḥanafī* (l140), 1:82–6).
3. Kufa – ʻIbrāhīm Nakhaʻī (d. 96 AH) and ʻĀmir al-Shaʻbī (d. 103 AH)
4. Basra – Ḥasan al-Baṣrī (d. 110 AH)
5. Yemen – Ţāwūs b. Kaysān (d. 106 AH)
6. Syria – Makḥūl b. ʻAbdullāh (d. 113 AH)

Saʻīd b. al-Musayyab and his associates believed that the people of Mecca and Medina were the most reliable in Islamic jurisprudence and thus they based their opinions on the legal opinions of ʻAbdullāh b. ʻUmar, ʻĀ’isha, Ibn ʻAbbās and the legal verdicts of the judges of Medina. In contrast, ʻIbrāhīm Nakhaʻī and his associates adopted the opinions of ʻAbdullāh b. Maṣʿūd, ʻAlī, Shurayḥ and other Kufan judges. They compiled these opinions, examined them for reliability and scrutinized them; points of agreement they adopted and on points of disagreement, they took the strongest and most preponderant opinion (based upon the number of scholars who held this opinion, agreement with a text of the Qur’an or sunna, or strong legal analogy). Accordingly, within the major centres of learning, on points of difference between the Companions and Successors, there emerged local preferences for the opinions of local scholars as it was easier to distinguish their sound opinions from their weak ones.

As for the emergence of a judicial system, the Rightly Guided Caliphs held their own courts and personally adjudicated cases. Judges appointed in garrison towns of the Muslim conquerors sought guidance from the caliph on difficult matters or sometimes there was unsolicited guidance provided by the caliph himself. Much of caliphal authority rested on the precedent of earlier caliphs, the

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8 A statistical survey of an important early biographical work dedicated to jurists reveals that these centres of legal scholarship generated eighty-four towering figures who are considered the elite of the legally minded in the Islamic tradition. Their distribution between the above centres was as follows: twenty-two from Medina (26.2 per cent); twenty from Kufa (23.8 per cent); seventeen from Basra (20.2 per cent); nine from Syria (10.7 per cent); seven from Mecca (8.3 per cent); five from Yemen (6 per cent); three from Egypt (3.5 per cent); and one from Khurasan (1.2 per cent) (The Origins and Evolution of Islamic Law (157), 65).

Companions and the Prophet (Allah bless him and give him peace) himself. Accordingly, judges were applying the same sources of law as described above; namely, the Qur’an, sunna and the exercise of expert legal opinion (ijtihād).  

The increasing specialization of the judge’s office resulted in the growing dependence of the judge upon legal specialists; this started occurring at the end of the first century. These specialists were people who became scholars of Islamic jurisprudence as a matter of personal piety, although some also served as judges. They, particularly some of the notable ones amongst the Successors, taught in specialized study circles (ḥalaqāt), often held in mosques.

ORIGINS OF THE ḤANAFĪ SCHOOL

Abū Ḥanīfa (d. 150 AH) was the closest to the way of Ibrāhīm Nakha‘ī and his associates and he rarely departed from his rulings. Shāh Walī Allāh writes, ‘Go over the statements of Ibrāhīm [Nakha‘ī] and his contemporaries in the book al-Āthār of Muḥammad [al-Shaybānī] (God have mercy on him), and the Jāmi‘ of ¢Abd al-Razzāq and the Muṣannaf of Abū Bakr b. Abī Shayba; then compare these with his [Abū Ḥanīfa’s] school and you will find that he does not diverge from this procedure except on insignificant occasions and that even then he did not go beyond what the jurists of Kufa did.’

Abū Ḥanīfa’s well-known student was Abū Yūsuf (d. 182 AH), who was chief justice during the reign of Hārūn al-Rashīd and thus instrumental in spreading the school of Abū Ḥanīfa in Iraq, Khurasan and Transoxania. Furthermore, his other famous student, Muḥammad b. al-Hasan al-Shaybānī (d. 187 AH), meticulously compiled the opinions of Abū Ḥanīfa, Abū Yūsuf and Ibrāhīm Nakha‘ī (dis: a1.32.1). Shaybānī also went on to Medina where he studied the Muwaţţa’ with its author, Mālik.

By the middle of the second century, the law became more comprehensive in coverage and scholars started developing their own

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10 The Origins and Evolution of Islamic Law (l57), 43–56.
11 This book is more commonly referred to as Muṣannaf ‘Abd al-Razzāq.
12 The Conclusive Argument from God (l219), 1:431.
legal principles and methodology. The circles of teaching held by jurists were attended by students who did not restrict themselves to one scholar; rather, they even travelled to other cities to learn from multiple scholars and the notion of ‘Travel in the search of knowledge’ became widespread. Nevertheless, followers and students gathered around prominent jurists who began to build a body of arguments in favour of their own methods. A judge who had studied with a prominent jurist was likely to apply his teacher’s doctrine in his court.

During the second century, the term ‘madhhab’ meant a group of students, judges and jurists who adopted the doctrine of a particular prominent jurist such as Abū Ḥanīfa; this is a phenomenon that Hallaq terms a ‘personal school’. The followers of a jurist were typically referred to as his companions. However, as Shāh Wālī Allāh notes, during the first and second centuries, people did not unanimously follow any particular jurist and sometimes adopted opinions from other jurists.13

The corpus of ḥadīth and reports of Companions did not suffice in inferring (istantbāt) answers to all legal cases according to the principles of the People of Hadith. Thus a method of derivation (takhrīj) was adopted whereby a jurist memorized the book of someone who was a spokesman of his associates and the most knowledgeable concerning the group’s pronouncements, and the most correct in examining the preference of opinions (tarjīḥ). When a legal question was raised to the jurist, he sought an answer in the pronouncements of his associates; if he did not find it therein, then he applied several legal methods such as examining the generalization of their sayings, indications implicit in their statements, allusions, logical entailment (iqtīḍāʾ), parallel instances and looked at the ratio decidendi (illa) of other cases and applied it to a new case.

Personal schools that represented the legal doctrine of one jurist developed into ‘doctrinal schools’ that represented the collective doctrine of the original jurist (now termed the ‘founder’ of the school)

13 Ibid. 451.
and other leading jurists who were followers of the founder and applied the principles of *takhrīj* and *tarjīḥ*. In the case of Abū Ḥanīfa, this would mainly encompass the opinions of the Two Companions. Doctrinal schools were distinguished from each other by their distinct principles of Islamic jurisprudence (*uṣūl al-fiqh*) that were not explicitly articulated during the period of personal schools. Post completion of the process of compiling the opinions of the school’s founder and his associates, subsequently refining these compilations, establishing fundamental principles and deducting a further body of law, what emerged was the doctrinal schools (*madhḥabs*) as we know them today. Accordingly, the *madhhab* became the embodiment of the legal doctrine of a school’s founder, his teachers, students and subsequent followers. Doctrinal schools did not fully emerge until the first half of the fourth century, and further developments continued to take place even after this period. Even some major hadith scholars became associated with a certain school as they usually concurred with it; for example, Nasā’ī and Bayhaqī were referred to as Shāfi’īs.¹⁴

Only the personal schools of Abū Ḥanīfa, Mālik, Aḥmad b. Ḥanbal and Shāfi’ī developed into doctrinal schools, whilst the remaining personal schools either perished or were merged into another school. The absence of high-caliber jurists amongst the followers of other personal schools meant there was no process of authority-building that would produce accretive doctrine and methodology.

During the first four centuries, the jurists strove to develop consistent principles of Islamic jurisprudence (*uṣūl al-fiqh*), striking a balance between discretionary opinion (*ra’y*) and the hadith corpus. By the middle of the fourth century, the process of formulating these principles was largely complete and jurists now applied these principles to respond to new cases and also to articulate and detail existing law.

¹⁴ Ibid. 452; and *The Origins and Evolution of Islamic Law* (157), 153–68.
EMERGENCE OF HADITH SCHOLARS

After the schools of Islamic jurisprudence had been formed, there emerged a generation of hadith scholars who set about gathering and opining upon the *ahādīth* which were the basis of the legal schools. Thus emerged the six canonical books of *ahādīth* authored by Abū ‘Abdullāh al-Bukhārī (d. 256 AH), Muslim al-Nisāpūrī (d. 261 AH), Abū Dāwūd al-Sijistānī (d. 275 AH), Abū ʿĪsā al-Tirmidhī (d. 279 AH), Abū ʿAbdullāh Ibn Mājah (d. 273 AH) and Abū ʿAbd al-Raḥmān al-Nasā’ī (d. 303 AH).

Nearly all the Companions narrated *ahādīth*, although a large number did not narrate more than a couple. Others such as ʿAbdullāh b. ʿUmar, Anas b. Mālik, Ibn ʿAbbās, Abū Hurayra, Ibn Masʿūd, ʿUmar b. al-Khaṭṭāb, ʿAlī and ʿUthmān narrated a large percentage of the hadith corpus. Furthermore, as some 188 Companions dispersed geographically from the Two Holy Cities to Iraq, Syria, Egypt and Khurasan, the interest in hadith migrated with them. A survey of the geographical dispersion of hadith traditionists between 80 and 120 AH shows that the distribution of hadith traditionists corresponds with that of legal specialists. Furthermore, whilst Mecca and Medina claimed around a third of both legal specialists and hadith traditionists, Kufa and Basra shared about the same numbers but had a few more of the latter than of the former.15

GEOGRAPHICAL SPREAD OF THE ḤANAFĪ SCHOOL

Upon the death of Abū Ḥanīfa in 150 AH, his school dominated the legal scene in Kufa. Within twenty years of the Abbasids establishing their rule over Iraq, the Kufan Ḥanafīs received full support from the dynasty and they entered Baghdad in 160 AH, which was established as the new Abbasid capital in 145 AH. Around 140 AH, the Ḥanafī school was brought to Basra by the jurist and judge Zufar b. al-Hudhayl, one of the four most distinguished students of Abū Ḥanīfa (the Two Companions and Ḥasan b. Ziyād being the other three).

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15 A statistical survey of an early source – which provides a list of traditionists who flourished roughly between 80 and 120 AH (ca. 700–35 AD) – reveals the following: Kufa claimed 28 per cent of hadith transmitters; Basra 27 per cent; Medina 24 per cent; Syria 12 per cent; Mecca 3 per cent; Egypt 3 per cent; and Khurasan and other locales less than 1 per cent (*The Origins and Evolution of Islamic Law* (l57), 72).
The Ḥanafī school did not penetrate Syria due to its association with the Abbasids who were disliked there, and due to the presence of Awzā‘ī’s personal school. Similarly, the Ḥanafīs experienced limited growth in Egypt and North Africa.

The Ḥanafīs enjoyed most success in the eastern provinces of Islam and by the end of the third century, they were active in most cities of Khurasan, Fārs, Sijistān and Transoxania. In Isfahan, the school was introduced by Ḥusayn b. Ḥafs (d. 212 AH) and Ḥusayn Abū Ja‘far al-Maydānī (d. 212 AH). In Balkh, they virtually monopolized the office of judgeship from around 142 AH. Due to their popularity with the Samanids (who ruled Khurasan and Transoxania from c.280 AH), the Ḥanafīs gained significant strength in these regions.

Whilst the Ḥanafī school spread in the eastern parts of the caliphate, the Mālikī school grew in the Muslim West, first in Egypt and then in the Maghrib and Andalusia. With the decline in scholarship in Medina and transfer of scholars to Egypt, by the second century, Egypt became the new centre of the Mālikī school. The Shāfi‘ī school during the third century was much slower in gaining a following and Shāfi‘ī himself had a limited number of students in Egypt, where he died after having spent six years.16

Legal rulings in the Ḥanafī school are divided into three groups based upon how they were narrated or derived:

1. Manifest transmission (ẓāhir al-riwāya) – these are legal rulings narrated from Abū Ḥanīfa and the Two Companions. Added to this are legal rulings from Zufar al-Hudhayl, Ḥasan b. Ziyād al-Lu’lu’i and others who took knowledge from Abū Ḥanīfa. These legal rulings are narrated in the six books of Muḥammad b. al-Ḥasan al-Shaybānī and known as ẓāhir al-riwāya because they are narrated from Muḥammad by narrators who are reliable (thiqa), via chains that are mass-transmitted (mutawātir) or well-known (mashhūr). The six books are:
   (i) al-Mabsūṭ – this is the first of the six books that Muḥammad authored and it is also called al-ʿAṣl, because it is the

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16 Ibid. 170–6.
most important, longest and most detailed of the books. Muhammad authored individual books on different subjects such as ritual prayer, trade, etc. and then they were gathered in al-Mabsūṭ, a thirteen-volume book. His method is to present legal rulings upon the school of Abū Ḥanīfa and Abū Yūsuf, together with Muhammad’s opinion. The hadith evidence for a ruling is only presented in a limited number of cases if it would be distant from the minds of the majority of scholars of Muhammad’s rank.

(ii) al-Jāmiʿ al-ṣaghīr – Muhammad wrote this book after al-Mabsūṭ upon Abū Yūsuf’s request that he write down what he had memorized from him. The book contains cases not found elsewhere and multiple scholars wrote commentaries upon it, including Ṭahāwī (d. 321 AH), Abū Bakr al-Jaṣṣāṣ (d. 370 AH), Abū ʿAmr al-Ṭabarī (d. 340 AH), Ẓahir al-Balkhī (d. 553 AH), Qāḍī Khān (d. 592 AH), al-Ṣadr al-Shāhīd (d. 536 AH), Abū Layth al-Samarqandi (d. 373 AH), Abū Naṣr al-ʿAttābī (d. 580 AH), Fakhr al-Islām al-Bazdawi (d. 482 AH), Qāḍī al-Isbijābī (d. 480 AH), Abū Jaʿfar Ḥinduwānī (d. 362 AH) and Abū al-Ḥasan al-Karkhī (d. 340 AH). Lakhnawī examined all the aforementioned commentaries and then wrote his own.

(iii) al-Jāmiʿ al-kabīr – apparently this was written after al-Jāmiʿ al-ṣaghīr, and the jurists were astonished by its precision and extensiveness both in legal matters and language. Due to these qualities and its difficulty as a text, many of the premier jurists wrote commentaries on al-Jāmiʿ al-kabīr, including Khāzim ʿAbd al-Ḥamīd b. ʿAbd al-ʿAzīz (d. 292 AH), ʿAlī b. Mūsā al-Qummī (d. 305 AH), Aḥmad b. Muḥammad al-Ṭahāwī (d. 321 AH), Abū ʿAmr al-Ṭabarī (d. 340 AH), Abū Bakr al-Jaṣṣāṣ (d. 370 AH), Abū Layth al-Samarqandi (d. 373 AH), Muḥammad ʿAli b. Jurjānī (d. 374 AH), Shams al-Aʿimmā al-Ḥalwānī (d. 449 AH), Muḥammad b. Aḥmad al-Sarakhshī (d. 483 AH), Fakhr al-Islām al-Bazdawi (d. 482 AH), al-Ṣadr al-Shāhīd (d. 536 AH), Burhān al-Dīn al-Bukhārī (author of al-Muhīṭ al-Burhānī) (d. 616 AH), ‘Alā’ al-Dīn al-Samarqandi (d. 552 AH), Abū Ḥāmid Aḥmad b.
Muḥammad al-ʿAttābī (d. 586 AH), QāḍīKhān (d. 592 AH) and Burhān al-Dīn al-Marghīnānī (d. 593 AH).

(iv) al-Ziyādāt was a completion of al-Jāmiʿ al-kabīr and adds matters omitted therein. He then wrote another book, Zīyādāt al-ziyādāt, which added further rulings. As is the case with the above books, many subsequent jurists wrote commentaries on al-Ziyādāt.

(v) al-Siyar al-ṣaghīr contains the rulings of international law such as conduct of war, international relations, booty, injunctions about apostates and treatment of rebels. Some scholars believe that al-Siyar al-ṣaghīr is a part of al-Mabsūṭ.17

(vi) al-Siyar al-kabīr – this is the last of the six books to be authored by Muḥammad and is also concerned with international law.18

2. Rarities (al-nawādir) – these legal rulings are narrated from the aforementioned scholars but not detailed in the books of ẓāhir al-riwāya and not established by chains that are mass-transmitted (mutawātir) or well-known (mashhūr). Al-Nawādir are contained in:

(a) other books of Muḥammad such as al-Kaysāniyyāt,19 al-Hārūniyyāt, al-Jurjāniyyāt and al-Raqqiyyāt;20

(b) books authored by other than Muḥammad such as al-Mujarrad by Ḥasan b. Ziyād and al-Amālī by Abū Yūsuf. This category also includes singular narrations from the founders of the school.

Formal legal opinion (fatwā) is by default issued according to

17 Mahmood Ahmad Ghazi translated al-Siyar al-ṣaghīr into English under the title The Shorter Book on Muslim International Law.

18 Ḥākim al-Shahīd gathered the rulings of Ẓāhir al-riwāya in al-Kāfī, upon which Sarakhsī wrote his famous thirty-volume commentary, al-Mabsūṭ. This became a central reference point for subsequent scholars (ʿUṣūl al-iftā’ wa ādābuh (l218), 162).

19 The title is a reference to Sulaymān b. Shuʿayb al-Kaysānī who narrated the book (ibid. 165).

20 Muḥammad compiled these books when he presided as a judge in various cities such as Raqqa, Syria (ibid.).
what is found in żāhir al-riwāya, and opinions in al-nawādir that are contradictory are not adopted, except rarely when scholars capable of establishing preference (tarjīḥ) favoured an opinion found therein.

3. Al-fatāwā and occurrences (al-wāqiʿāt) – these are rulings deduced by later scholars qualified to issue expert legal opinion (mujtahid) when they were asked about a case and they did not find a ruling from the early scholars of the school. The early scholars are defined to be the companions of the Two Companions and also the companions of these companions. These new rulings were either derived from the Qur’ān and sunna using Ḥanafī principles of jurisprudence (uṣūl al-fiqh) or by the method of derivation (tahkrij) and analogy from existing rulings in the school. The earliest collection of al-fatāwā and al-wāqiʿāt that has reached us is Kitāb al-nawāzil by Abū Layth al-Samarqandi. Later scholars then wrote books in which rulings from żāhir al-riwāya, al-nawādir and al-fatāwā were documented without differentiation; for example, Fatāwā QādīKhān.21

a1.33 RANKS OF JURISTS

Ibn Kamāl Pāshā divided jurists into seven ranks:

1. Those qualified to issue expert legal opinion (mujtahid) in Sacred Law – for example, the founders of the four schools of Islamic jurisprudence, who laid down the principles of jurisprudence (uṣūl al-fiqh) and derivation of applied rulings (furūʿ) from the sources of Sacred Law, without following (taqlīd) anyone else in the principles or the applied rulings.

2. Those qualified to issue expert legal opinion (mujtahid) in the school – for example, Abū Yūsuf and Muḥammad, and all the other companions of Abū Ḥanīfa who follow his principles (uṣūl al-fiqh) to derive applied rulings, yet they may differ with him in their conclusions in respect of applied rulings.

3. Those qualified to issue expert legal opinion (mujtahid) in respect of rulings where there is no narration from Abū Ḥanīfa

21 Ibid. 134–75; Radd 1:168–70; and Isʿād al-muftī ‘alā sharḥ ‘Uqūd rasm al-muftī (l8), 240.
– for example, al-Khaṣṣāf, Ṭaḥāwī, Abū al-Ḥasan al-Karkhī, Shams al-A’imma al-Ḥalwānī, Shams al-A’imma al-Sarakhsī, Fakhr al-Islām al-Bazdawī, QāđīKhān and others. These jurists were not qualified to disagree with Abū Ḥanīfā in the principles or applied rulings of law but they could derive rulings for new cases by applying his principles.

4. A follower (muqallid) capable of derivation (takhrij) – for example, Abū Bakr al-Jaṣṣāṣ. Such jurists are not qualified to issue expert legal opinion (ijtihād) in principle but they can clarify what is narrated from Abū Ḥanīfā or another mujtahid in the school, though its application is ambiguous and open to interpretation.

5. A follower (muqallid) capable of establishing preference (tarjīḥ) – for example, Qudūrī and Burhān al-Dīn al-Marghīnānī. They are able to compare narrations and opine: ‘This is preferable’, ‘This is the more correct narration’ or ‘This is more apparent’.22

6. A follower (muqallid) capable of differentiation (tamyīz) between the strongest, strong and weak narrations, the manifest transmission (ẓāhir al-riwāya), what is manifest in the school and rare narrations – for example, the authors of the reliable primers (mutūn) such as Kanz al-daqa’iq (Abū al-Barakāt al-Nasafī), al-Mukhtār (ʿAbdullāh al-Mawṣilī), al-Wiqāya (Maḥmūd al-Maḥbūbī) and Majmaʿ al-baḥrayn (Mużaffar al-Dīn b. Sāʿāti).23 Their rank is such that they do not narrate rejected opinions or weak narrations in their texts.24

7. A follower (muqallid) incapable of the aforementioned who simply gathers opinions he finds.

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22 Jurists in the third, fourth and fifth ranks are sometimes also included within the broader meaning of the term mujtahid (Uṣūl al-iftā’ wa ādābuh (l218), 126).

23 In contrast, other scholars deemed the three reliable texts to be Kanz al-daqa’iq, al-Wiqāya and Mukhtasār al-Qudūrī (al-Nāfiʿ al-kabīr ‘alā al-Jāmiʿ al-ṣaḥīḥ (1113), 23).

24 For this reason, as a general rule, what is in the primers (mutūn) is preferable to something contradictory in the books of legal edicts of later scholars (al-fatāwā) or what is in legal commentaries (shurūḥ) unless the opposite is established. The reliable legal commentaries are preferred to the books of legal edicts (Isʿād al-muftī ‘alā sharḥ ‘Uqūd rasm al-muftī (l18), 344; and al-Nāfiʿ al-kabīr ‘alā al-Jāmiʿ al-ṣaḥīḥ (1113), 25).
Ibn Kamāl Pāshā’s above division is narrated by Ibn ʿAbīdīn, Taḥṭāwī and many other scholars, although some researchers criticized it for many reasons. These reasons include the observation that the Two Companions were not followers (muqallīd) of Abū Ḥanīfa in the principles of jurisprudence (uṣūl al-fiqh); rather, they were absolutely independent mujtahids who ascribed themselves to the school of their teacher out of veneration and because they agreed with him in most matters. Accordingly, they are referred to as affiliated mujtahids.25

Abū Ḥanīfa’s Two Companions disagreed with him in some cases, either because they believed Abū Ḥanīfa’s derivation from Nakhaʾī was wrong or because Nakhaʾī and his associates disagreed amongst themselves and the Two Companions and Abū Ḥanīfa disagreed over which opinion is preferable.

How did later scholars handle these differences between Abū Ḥanīfa and the Two Companions? The general rule is that if Abū Ḥanīfa and his Two Companions answer a case and agree upon the ruling, formal legal opinion (fatwā) must be given upon this unless there is a pressing necessity (darūra). However, if the Two Companions disagree with Abū Ḥanīfa, Qāḍī Khān notes that the muftī who is not a mujtahid must opine with Abū Ḥanīfa; as for the mujtahid, he has a choice and opines according to what he deems to be the stronger view according to the relevant proofs. If the muftī who is not a mujtahid does not find Abū Ḥanīfa’s opinion on the matter, he gives preference to the opinion of Abū Yūsuf, then Muḥammad and then the opinion of Zufar and al-Ḥasan b. Ziyād. As for the mujtahid, he decides according to the proofs. There is no difference of opinion that if one of the Two Companions concurs with Abū Ḥanīfa and the other one disagrees, even the mujtahid must adopt the viewpoint of Abū Ḥanīfa and the concurring Companion.26

Ibn ʿAbīdīn writes that a muftī who is a mujtahid (i.e. jurists in the first five categories (dis: a1.34)) no longer exists in our times. If

25 Uṣūl al-ifsā’ wa adābuh (l218), 103–26; and Radd 1:179.
26 Isād al-muftī ʿalā sharḥ Uqūd rasm al-muftī (l8), 297–301; and Radd 1:171.
this were true, it could be argued that Islamic jurisprudence would have no meaning and jurists would be incapable of applying the law, especially to new cases. Şalâh Muḥammad Abū al-Ḥājj argues that perhaps what Ibn Ābidīn meant was that there was no longer jurists of the rank of the Two Companions who were not followers (muqallid) of Abū Ḥanīfa in both the principles of jurisprudence (uṣūl al-fiqh) and applied rulings (furūʿ). Alternatively, he may have meant that there are no longer any mujtahids of the highest calibre such as QādīKhān, Bazdawī, Qudūrī and Burhān al-Dīn al-Marghīnānī; this point is accepted. Otherwise, Ibn Ābidīn himself carried out the functions of a mujtahid in the school such as derivation (takhrīj), establishing preference (tarjīḥ) and differentiation (tamyīz) of legal opinions; this is acknowledged by all, even though he did not reach the rank of the great predecessors.27 Furthermore, Lakhnawī also argues that one cannot opine that the possibility of another absolute mujtahid (i.e a jurist in the first category (dis: a1.34.1)) no longer exists; ijtihād is a mercy from Allah Most High and cannot be restricted to certain times. Nevertheless, it is accepted that no one has arisen after the founders of the four schools about whom the multitude of scholars have agreed that he is an independent and absolute mujtahid in Sacred Law.28

As for Abū Ḥanīfa’s oft-quoted statement ‘If the hadith is rigorously authenticated (ṣaḥīḥ), it is my school (madhhab), it is certainly not an invitation for the layman to issue legal opinions (ijtihād); this statement only applies to the mujtahid capable of reviewing the evidences. Ibn Ābidīn adds that when these scholars of the school deliberate upon the evidence and act upon it, its attribution to the school is sound because it has been issued with the (implied) permission of the founder of the school, since there is no doubt that if he were shown the weakness of his proof, he would rescind it and follow the stronger proof.29 Furthermore, this must be conditioned

27 Isād al-muftī `alā sharḥ `Uqūd rasm al-muftī (l8), 305.
29 Şalâh Muḥammad Abū al-Ḥājj argues that how can we conclude that the evidence of the founder of the school is weak when we do not know what it is. The hadith proofs used by him for each ruling have not been conveyed to us; what has been conveyed to us
by saying that the view must agree with an opinion in the school as they are not permitted to perform *ijtihād* that is entirely outside the school in cases agreed upon by the Imams of the school because the reasoning (*ijtihād*) of the Imams is stronger than that of the scholar of the school. Therefore it is apparent that the Imams saw evidence that is preferable to what the scholar of the school sees and hence did not act upon it.30

**a2.0 CATEGORIES OF HUMAN ACTS**

**a2.1 OBLIGATORY (**FARD**)**

The characteristics of an obligation include that:

1. it be established by a definitive proof (*dalīl qaṭī*);
2. it convey absolutely certain knowledge (*yaqīn*);
3. it be strictly observed;
4. refraining from fulfilling the obligation without a valid excuse warrant punishment;
5. denying the obligation entail unbelief.

Examples of an obligation include the prayer (*śalāt*), almsgiving (*zakāt*), fasting (*śawm*) and pilgrimage (*ḥajj*). In contrast to a practical obligation (*fard ʿamali*) (def: a2.8), this type of *fard* is known as a definitive (*fard qaṭī*) or doctrinal obligation (*fard ʿiṭiqādī*). If the word ‘obligation’ (*fard*, pl. *farāʿid*) alone is used, as a general rule, it refers to a definitive obligation.

The obligatory elements of an act are subdivided into conditions (*sharṭ*, pl. *sharāʿit*) and obligatory integrals (*rukn*, pl. *arkān*). The obligatory integrals are the constituent parts which form the essential elements of an act; for example, the prayer comprises standing, bowing (*rukūʿ*), prostrating (*sujūd*), etc.

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30 Ibid. 290.
31 This section is largely sourced from *al-Madhhab al-Ḥanafī* (l140), 1:289–305.
A condition is that whose existence or occurrence is necessary for the existence of something else. However, a condition is not a constituent part of the act itself; for example, covering one’s nakedness ( לבוש) is a condition of the prayer but not a component of the prayer itself.\(^\text{32}\)

Fulfilling the obligatory integrals and conditions of an act is obligatory and omission invalidates the entire act. Deliberate omission is also sinful.

\(\text{a2.5 COMMUNAL (FARĎ AL-KIFĀYA) AND PERSONAL OBLIGATION (FARĎ AL-¢AYN)}\)

A personal obligation is one that the morally responsible individual must perform in person and cannot be undertaken on another’s behalf; for example, prayer, zakat and fasting.

A communal obligation is one that must be performed by the community of believers, such that if one person performs it, all are absolved of the duty; however, if no one undertakes it, all are sinful for the neglect. Examples include preparation of the body for burial and the funeral prayer.

\(\text{a2.8 PRACTICAL (FARĎ ¢AMALĪ) OR PRESUMPTIVE OBLIGATION (FARĎ ŻANNĪ)}\)

This ruling falls between an obligatory and a mandatory act. It resembles an obligation in terms of performance in that, if one does not perform it, the action becomes nullified. In terms of belief, it resembles a mandatory act in that denying the obligation does not entail unbelief. For example, wiping the whole quarter of the head in ablution is an obligation and leaving it nullifies ablution; however, denying the obligation does not entail unbelief as it is not established by a definitive proof (دلیل قاطع).

\(\text{a2.10 MANDATORY (WĀJIB)}\)

Characteristics of a mandatory ( wājib, pl. wājibāt) act include that:

- it be established by a non-definitive proof (دلیل ضعیف);
- it convey non-definitive knowledge (ضعیف);
- it be strictly observed and thus like an obligation in this respect;

\(^{32}\) Taḥṭāwī 206–7.
4. refraining from its observation without a valid excuse deserve punishment;
5. denying the obligation entail corruption (fisq), not unbelief.

The sin of missing a mandatory act is less than the sin of missing an obligation.\textsuperscript{33}

Omission of a mandatory element does not invalidate an act; rather, the act is valid but deficient and deliberate omission is sinful. If a mandatory element of a prayer is forgetfully omitted, the prostration of forgetfulness (sajdat al-sahw) must be performed.\textsuperscript{34} For a deliberate omission, it is mandatory to repeat a prayer. In both cases, this only applies if the prayer’s prescribed time remains; if it has lapsed, the prayer is not repeated and the obligation has been fulfilled with a deficiency.\textsuperscript{35}

\textbf{EMPHASIZED SUNNA (SUNNA MU’AKKADA) AND SUNNA OF GUIDANCE (SUNNAT AL-HUDA)}

An emphasized sunna is that which the Messenger of Allah (Allah bless him and give him peace) or the Companions performed diligently and did not omit except once or twice; for example, the call to prayer (adhan), call to commence (iqama) and congregational prayer (jama’a).

Occasionally leaving an emphasized sunna without a valid excuse is wrongful (isā’a) (def: 2.27), but persistently leaving it without an excuse may be sinful, depending on how emphasized the particular sunna is. However, the sin is less than that of missing a mandatory or obligatory act.\textsuperscript{36}

\textsuperscript{33} Neglecting a mandatory act is a small sin but the person is not classified as morally corrupt (fāsiq) and no longer upright (¢udūl), unless he persists in this act (Ṭaḥṭāwī 246; and Radd 2:147, 298).

\textsuperscript{34} The expiations for violations (jināyāt) in hajj compensate for the omission of a mandatory element and cannot substitute for the omission of an obligatory element.

\textsuperscript{35} Ibn ¢Ābidīn preferred the position that it is mandatory to make up the prayer both before and after the lapse of the prayer’s prescribed time (Ṭaḥṭāwī 246; and Radd 2:148, 521–2).

\textsuperscript{36} Ṭaḥṭāwī 64; and Radd 1:220.
If the word ‘sunna’ alone is used, as a general rule, it refers to an emphasized sunna.

DESIRABLE (*mustahabb*), RECOMMENDED (*mandūb*), DECORUM (*adab*), EXTRA SUNNA (*al-sunna al-zā’ida*) OR SUPEREROGATORY (*nāfila, rawātib*).

A desirable act is that which the Prophet (Allah bless him and give him peace) or the Companions did not perform routinely, but did it one or more times and then discontinued it.

The legal ruling of all the above terms is the same; to this extent, they may be regarded as synonyms (although there are subtle differences between some). The person who performs these acts is rewarded, although there is neither punishment nor blame for omission.\(^37\)

PERMISSIBLE (*mubāḥ*).

The permissible is that which is neither sought nor prohibited, so the person who performs it or refrains from it is neither rewarded nor punished. Indeed, performing or not performing it are equal.

Permissible acts are rewarded if accompanied by a good intention. Being wasteful in using the permitted is blameworthy and can even become sinful if excessive.

According to the multitude (*jumhūr*) of Hanafi scholars, the primary ruling for all human actions is that they are permissible, unless there is evidence that indicates the act is disliked or unlawful.\(^38\)

SOMewhat disliked (*makrūh tanzīhan*)

It is preferable to avoid the somewhat disliked act, although there is no sin for performing it, even without a valid excuse. The somewhat disliked act is closer to the permissible act than the unlawful act.

It is recommended to repeat a prayer in which a somewhat disliked act occurred.\(^39\)

\(^37\) *Ṭaḥṭāwī* 276.

\(^38\) *Radd* 2:221.

\(^39\) Ibid. 522.
a2.25 PROHIBITIVELY DISLIKED (MAKRŪH TAHRĪMAN)

It is mandatory to abstain from a prohibitively disliked act and one is sinful for performing it without a valid excuse. The same type of proof establishes a ruling of the prohibitively disliked and mandatory acts.

The prohibitively disliked is closer to unlawful than permissible.

When the term disliked alone is used, it usually implies the prohibitively disliked.40

The ruling for repeating a prayer due to the omission of a mandatory act and the performance of a prohibitively disliked act is alike.41

Between the prohibitively and somewhat disliked acts is that which is wrongful (isā’a). No sin is incurred for the wrongful act.42

a2.28 UNLAWFUL (HARĀM)

The unlawful act is a prohibition established by a decisive text (dalil qat‘ī); it is obligatory to avoid and sinful to perform.

a2.30 DEGREES OF LEGAL PROOFS (DALĪL)43

There are four degrees of legal proofs (dalil, pl. adilla or dalā’il):

1. Definitive (qat‘ī) in both:

   (a) transmission, such as verses of the Qur’an and mass-transmitted (mutawātir) aḥādīth; and

   (b) meaning, being texts whose meaning is unambiguous and does not admit of being construed in any other way. For example, verses that establish the obligation for prayer, ‘Verily I am Allah; there is no god but I; therefore serve Me, and perform the prayer for My remembrance.’44

This type of proof establishes a ruling of the obligatory and unlawful.

40 Ibid. 1:385.
41 Ibid. 2:522.
42 Ibid. 308, 510.
43 Ibid. 1:207.
44 Qur’an 20:14.
2. Definitive in transmission but probabilistic (żannī) in meaning, such that it may reasonably be construed in more than one way.

3. Probabilistic in transmission but definitive in meaning; for example, *ahādīth* that are lone-narrator (āḥād) but definitive in meaning.

   The second and third types of proof establish a ruling of the mandatory and prohibitively disliked.

4. Probabilistic in both transmission and meaning; for example, *ahādīth* that are lone-narrator (āḥād) and also probabilistic in meaning. This type of proof establishes a ruling of *sunna* and recommended.

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45 Ibid. 1:442.
BOOK B

كتاب الطهارة

Purification
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**Types of Filth and Purification from Them**
- Heavy (ghalīţa) and light (khafīfa) filth b10.1
- The amount of filth that is excusable b10.4
- Purification from filth b10.7
b1.0 INTRODUCTION

b1.1 Purification is the key to the ritual prayer\(^1\) and is the first matter one will be questioned about in the grave.\(^2\) The legal reason (\textit{sabab}) for performing purification is offering the ritual prayer when in a state of minor ritual impurity.\(^3\)

b2.0 TYPES OF WATER WITH WHICH PURIFICATION IS PERMISSIBLE

b2.1 Ablution (\textit{wuḍū’}) and the purificatory bath (\textit{ghusl}) are permissible with plain water like rainwater,\(^4\) water from valleys, springs, wells,

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1 The Islamic sciences comprise creed (\textit{¢aqīda}), jurisprudence of ritual worship (\textit{¢ibādāt}), etiquette (\textit{adab}), commercial and civil dealings (\textit{mu¢āmalāt}) and penal law (\textit{¢aqūbāt}). Ritual worship includes prayer (\textit{śalāt}), almsgiving (\textit{zakāt}), fasting (\textit{śawm}), pilgrimage (\textit{hajj}) and jihad. The prayer follows creed and its key is purification; Suyūţī narrated in \textit{al-Jāmi¢ al-śaghīr} that the Prophet (Allah bless him and give him peace) said, ‘The key to the ritual prayer is purification; its declaration of prohibition (of that which is unlawful in prayer) is the \textit{takbīr} (the opening \textit{Allāhu akbar}), and its declaration of lawfulness is the \textit{taslīm} (saying “\textit{as-salām}”).’ Ahmad and others narrate this hadith and Nawawī said it is well authenticated (\textit{ḥasan}) (\textit{Burhānī} 11; \textit{Radd} 1:183; and \textit{Tirmidhī} 1:54).

2 The importance of purification is established in the Qur’an itself, ‘They will question thee concerning the monthly course. Say, “It is hurt; so go apart from women during the monthly course, and do not approach them till they are clean. When they have cleansed themselves, then come unto them as Allah has commanded you.” Truly, Allah loves those who repent, and He loves those who cleanse themselves’ (\textit{Qur’an} 2:222); and ‘Stand there never. A mosque that was founded upon God-fearing from the first day is worthier for thee to stand in; therein are men who love to cleanse themselves; and Allah loves those who cleanse themselves’ (ibid. 9:108).

3 That is, any obligatory act that cannot be performed without purification (\textit{Radd} 1:190).

4 ‘When He was causing slumber to overcome you as a security from Him, and sending down on you water from heaven, to purify you thereby, and to put away from you the defilement of Satan, and to strengthen your hearts, and to confirm your feet’ (\textit{Qur’an} 8:11).
seas, melted snow, melted hail and the well of Zamzam.  

Purification is not permissible with juice from plants, even if it emerges by itself; for example, water from grapevines.

Neither is purification permissible with water ‘overcome’ (ghalaba) by something pure. Overcoming is of two types:

1. Complete mingling by being absorbed by plants or by being cooked with something that is not a cleaning agent, such as the case of broth and gravy from broad beans. The water becomes conditioned, regardless of whether one of the characteristics of water changes, and whether or not it remains fluid. However, if water is boiled with a cleaning agent like a mixture of Seidlitzia rosmarinus, soap, etc., it does not become conditioned as long as the agent does not overcome the water and become like mush (sawīq).

2. Being overcome by admixture:
   (a) if a solid substance is added to water, whether the water is overcome is determined by its viscosity, such that it does not flow on the limb. This applies as long as the mixture

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5 It is not disliked (makrūh) in the Ḥanafī school to remove ritual impurity with Zamzam. However, it is prohibitively disliked to remove actual filth with Zamzam (Radd 1:324, 2:52).
6 That is, water that drips out by itself from grapevines (Burhānī 12).
7 The rulings detailed here relate to still water that is not flowing and its quantity is small (def: b2.7) (Radd 1:327).
8 Such that the water is now called ‘gravy water’ and it is no longer plain water (Burhānī 12).
9 The characteristics of water are that it has no taste, colour or smell (Radd 1:327).
10 A perennial-green desert species of saltwort.
11 Sawīq is a type of mush made from cooking wheat and barley. The main ingredient is dried, parched barley or wheat to which certain other ingredients such as nuts and dried dates are added. This dry mixture was often brought on journeys and when it was time to eat, it would be soaked in a liquid (usually water but sometimes milk), resulting in a meal similar to muesli (Burhānī 12; and An Arabic–English Lexicon (l118), 4:1472).
12 That is, a pure solid substance (Ṭaḥtāwī 25).
13 The nature of water is that it is thin and flows. As long as its nature does not change,
b2.4 Purification

continues to be termed water. When it is no longer termed water, it is precluded from being a purifier; for example, when saffron, sulphate or gall-nuts are thrown into water and it becomes a mixture used for inscribing;

(b) if a liquid with all its characteristics differing to water (e.g. vinegar differs in taste, colour and smell) is added to water, the water is overcome if a majority of its characteristics change;

(c) if the liquid has some of the characteristics of water (e.g. milk without smell), the water is overcome by manifestation of one of the characteristics of the liquid (i.e. colour or taste);

(d) if the liquid has the same characteristics as water (e.g. rose water with no smell) and water already used for ritual purity (dis: b2.12), overcoming is determined by fractions: if plain water is greater than a half of the total quantity of the mixture, purification is permissible with all the water; otherwise, it is not.

b2.4 When an Animal Comes into Contact with Water

b2.5 It is valid to lift ritual impurity with the aforementioned types of plain water (dis: b2.1) if a creature without flowing blood dies in it, even if the quantity of water is small (def: b2.7); for example, a wasp, scorpion, bedbug, fly, silkworm and worm. This ruling applies even if the animal is born from filth or exits from the pos-

the addition of a pure solid substance does not prevent one from performing purification with it (ibid.).

14 A type of plant gall that grows on the surface of a plant and resembles a nut.

15 Gall-nuts were historically used as an ingredient in manufacturing ink.

16 The water is overcome if two of the characteristics of vinegar become manifest; the manifestation of one characteristic is of no consequence (Radd 1:327).

17 The term ‘used water’ applies to both scenarios including water used externally and is then poured into a bucket of plain water, and also when one places a limb into a bucket of plain water (ibid.).

18 For example, tapeworms and roundworms.
b2.6 Types of Water With Which Purification is Possible

terior and then falls into water after the organism is washed (even though ablution is nullified by its exiting).

b2.6 It is also valid to lift ritual impurity with plain water if a creature born in water\(^{19}\) dies in it (e.g. fish, crabs, frog, otter and dolphin),\(^{20}\) or if such an animal dies outside water and is then cast into it.

b2.7 A small quantity of water\(^{21}\) becomes impure by the death of a creature that resides in water but is born on land, like a duck or goose.

b2.8 The rulings of water apply to all liquids, both the rulings of a small and a large quantity of water.

b2.9 The change of one characteristic of a large quantity of water\(^{22}\) by contact with filth\(^{23}\) renders it impure, even if the water is running.\(^{24}\) As for a small quantity of water, it becomes impure by the addition of a drop of filth, even if the trace of the filth does not manifest in the water. If the characteristics of water change due to the effect of stagnation for a long period of time, it does not become impure. Similarly, it is valid to lift ritual impurity with water mixed with a pure solid substance without cooking the mixture; regardless of whether it is a substance from the earth or not, or whether it was used for cleaning\(^{25}\) or not; for example, fruit and tree leaves. This applies even if all the characteristics of water change but its fluidity remains and we would still term it water.

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\(^{19}\) That is, its birth and habitation is in water; regardless of whether it has flowing blood or not (*Radd 1:330*).

\(^{20}\) This ruling applies to any sea rodent whose birth and habitat is in water.

\(^{21}\) Small is defined as less than ten-by-ten cubits; a cubit being an arm-length (from the fingertips to the elbow) and equivalent to 45.72 cm, according to one estimate. It is therefore equivalent to 20.9m\(^2\) in surface area (*Ţaĥţāwī 27*).

\(^{22}\) That is, the smell, taste or colour of water changes (*Radd 1:332*).

\(^{23}\) The rulings detailed in b2.3 relate to scenarios where water comes into contact with something pure, whereas the rulings here relate to the addition of an impurity.

\(^{24}\) If filth does not change the ruling of a large quantity of water and it remains pure, one may use the water for purification and drinking purposes (*Radd 1:332*).

\(^{25}\) For example, *Seidlitzia rosmarinus* (def: b2.3.1) was used as a cleaning agent (*Radd 1:334*).
b2.10 It is valid to lift ritual impurity with flowing water\textsuperscript{26} in which filth, whose trace (i.e. taste, colour and smell) is indiscernible, has fallen. Flowing water is what is customarily regarded as flowing, i.e. it enters from one direction and leaves from the other.\textsuperscript{27} This applies even if it is a small quantity of water and it flows unaided.\textsuperscript{28}

b2.11 Stagnant water which is not flowing has the ruling of flowing water if its surface area is \([\text{at least}]\) ten by ten cubits. It is purified after being impure by \([\text{pure water}]\) merely entering from one direction and \([\text{water}]\) leaving from the other, even if that which leaves is small.

b2.12 **USED (\textit{MUSTA’MAL}) WATER**

b2.13 Ablution (\textit{wuḍū’}) and the purificatory bath (\textit{ghusl}) are not permissible with water previously used for:

1. an act of worship, regardless of whether it also lifted minor ritual impurity or fulfilled an obligation, or it did neither of these two;

2. fulfilling an obligation, regardless of whether it was also an act of worship or lifted ritual impurity, or it did neither of these two.\textsuperscript{29}

\textsuperscript{26} Even if the quantity of water is small (\textit{Burhānī} 14).

\textsuperscript{27} Others have said that running water is that which is not used repeatedly (i.e. if he scoops it up once, it will not be the same water upon the second scoop). Some have opined that it can carry away a straw (\textit{Hidāya} 1:55).

\textsuperscript{28} The point being emphasized is that it is not a condition that the water is flowing as a result of the force of the original source of water; for example, if a river is blocked near its source, one may perform ablution at a lower point of the river where the river is still flowing (\textit{Radd} 1:334–5).

\textsuperscript{29} Water becomes used if there is either an intention to undertake an act of worship or an obligation is fulfilled. The matter may be presented in five scenarios:

- lift ritual impurity and one intends an act of worship (e.g. ablution with an intention of performing it);
- lift ritual impurity but no act of worship intended (e.g. performing ablution without an intention);
- an act of worship without fulfilling an obligation (e.g. washing hands before eating which is \textit{sunna}, or performing ablution when one is already in a state of ritual purity);
- fulfilling an obligation but no act of worship intended (e.g. water that drips from the body of one who is required to perform ablution but he did not intend to do so);
- and no act of worship intended and no obligation is fulfilled (e.g. washing hands soiled with earth). Only in the first four scenarios does the water
b2.14 **TYPES OF WATER WITH WHICH PURIFICATION IS POSSIBLE**

Water becomes used immediately after it separates from the limb,\(^{30}\) even before it comes to rest upon something. Used water is pure, even after it has been used by someone in a state of major ritual impurity. Drinking and kneading dough with used water is disliked; it does not remove ritual impurity but it does remove physical filth.

b2.15 **LEFTOVER WATER\(^{31}\)**

If an animal whose meat is permissible to eat\(^{32}\) and its mouth is pure (e.g. a horse, mule, wild ass, cow, sheep, camel), or a human being whose mouth does not contain filth (even if the person is in a state of major ritual impurity, menstruation, postnatal bleeding, a child or adult, a believer or unbeliever,\(^{33}\) a male or female\(^{34}\)) drinks from a small quantity of water, the leftover is pure and purifying.\(^{35}\)

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\(^{30}\) This is the soundest (ṣaḥīḥ) position. If the terms ‘the soundest position (aṣaḥḥ)’ and ‘a sound position (ṣaḥīḥ)’ are both used by a single author to describe two different positions, the position termed ‘aṣaḥḥ’ is stronger. If each term is used by a different author, the scholars of the Ḥanafī school differ as to which term indicates the stronger and preferred opinion (Hidāya 1:61; and Uṣūl al-iftā’ wa ādābuh (l218), 187).

\(^{31}\) The ruling in respect of the purity of an animal’s sweat is the same as the ruling of its leftover water, as both of them are produced from the flesh of the animal (Radd 1:389).

\(^{32}\) The leftover water is pure if the saliva of the drinker is pure and the latter depends on whether the meat of this creature is lawful. The lawfulness of meat depends on whether the creature is a predator as Muslim narrated, ‘The Messenger of Allah (Allah bless him and give him peace) forbade us from eating all fanged predatory animals and all birds with talons’. Some scholars noted that the reason for this prohibition is that the natural disposition of these animals is blameworthy and it is feared that humans may acquire these traits from their meat (Hidāya 1:74; and Fath al-Mulhim bi sharḥ Ṣaḥīḥ al-Muslim (l210), 9:414–15).

\(^{33}\) Muslim and Bukhārī narrated that the Prophet (Allah bless him and give him peace) received a delegation of idolaters in the Mosque in Medina. The meaning of the verse ‘O believers, the idolaters are indeed unclean’ (Qur’an 9:28) is that their beliefs are reprehensible (Radd 1:381; and ‘Umdat 16:328).

\(^{34}\) A man may not drink the leftover water of a female (and vice versa), unless she is his wife or a woman of unmarriageable kin (maḥram). This ruling only applies when the drinker is deriving pleasure from the drinking (Radd 1:381–2).

\(^{35}\) The leftover water of someone drinking alcohol is only unlawful if he drinks water immediately after drinking alcohol. If he waits for a while, and swallows his saliva
b3.0 Purification

b2.17 When a dog, pig, monkey, bear, wild cat and the like from predatory land animals drinks from water, the leftover is impure.

b2.18 If a domesticated cat, uncaged chicken, predatory bird or creatures that roam around houses drink from water, the leftover is somewhat disliked (makrūḥ tanzīhan).

b2.19 The leftover of creatures with no flowing blood who roam around houses is not disliked; for example, scarab, cricket, cockroach or scorpion.

b2.20 When a mule whose mother is a donkey, or a donkey, drinks from water, its purifying nature is doubted. If other water cannot be found, one makes ablution with it followed by dry ablution (tayammum) and then prays.

b3.0 Ridding oneself of urine (istibrā’) and cleaning oneself of filth (istinjā’)

b3.1 Ridding oneself of urine (istibrā’)

b3.2 It is incumbent upon a man to rid himself of filth (istibrā’), that is, thrice after licking his lips with his tongue and saliva, his leftover water is not deemed impure (Radd 1:382–3).

36 Legal analogy (qiyyās) necessitates that the saliva of a cat is impure as its meat is unlawful. However, there are multiple hadith narrations stipulating cats are not impure because they roam around houses, hence protecting containers of water from them necessitates undue hardship. Tirmidhī said this hadith is ḥasan šāhīḥ (def: i1.3) (Radd 1:384).

37 That is, it roams in filth. The saliva of chicken, and hence its leftover too, is pure. However, due to the tendency of these animals to insert their beaks into filth, their leftover becomes disliked. If the animal is caged such that its beak does not enter filth, then its leftover is not disliked (Ṭaḥtāwī 31; and Radd 1:384).

38 This ruling is for creatures with flowing blood like mice and snakes. As for animals with no flowing blood like a scarab, cockroach and scorpion, their leftover water is not impure (dis: b2.19) (Radd 1:384).

39 According to the soundest position (aṣāḥh). Its use is disliked if pure water is available; otherwise, it is not (ibid. 385).

40 As for being pure, this is not doubted (ibid. 387).

41 The word ‘incumbent’ (lāzim) is used as it indicates a stronger obligation than ‘mandatory’ (wājib). The Prophet (Allah bless him and give him peace) said, ‘Beware of urine
to strive for the exit point to be free from traces of urine and faeces until all traces are removed and his heart is content that they will not return. This is done according to his habit and it is not permissible to commence ablution until his heart is content that the trickling of urine has ceased. After he feels safe from any further filth exiting, *istibrā’* is no longer incumbent; rather, it is recommended (*mandūb*) to go beyond this.

### b3.3

As for a woman, she is not required to do what a man does after urinating, such as walking. Rather, after she finishes urinating, she pauses shortly then wipes her front and rear private parts, thereafter cleaning herself with water (*istinjā’*).

### b3.4

Whoever is slow in ridding himself of urine should plait something like paper and place it in the opening of the urethra so that it absorbs the remaining traces of wetness which he fears may exit. He should conceal a part of the paper in the pathway so the wetness does not manifest itself on its external side. If the Devil causes him as it is the first matter a servant is accountable for in the grave’. Ţabarānī narrated this hadith with a chain ‘Abd al-‘Aẓīm b. ‘Abd al-Qawī al-Mundhirī and ‘Alī al-Qārī declared as sound. Bukhārī and Muslim narrated from Ibn ‘Abbās that the Prophet (Allah bless him and give him peace) passed by two graves and said, ‘They are being tormented and it is not for something great. As for one of them, he did not guard himself from being soiled by urine whilst the other went about as a talebearer.’ He then took the fresh twig of a palm tree and broke it in two and thereafter planted one in each grave. They asked, ‘O Messenger of Allah, why did you do this?’ He replied, ‘Perhaps their torment will be lightened as long as the twigs do not become dry’. Ibn ‘Abidin notes, ‘What is derived from this and from the hadith is the recommendation of placing a twig [on a grave], in conformity with the practice of the Prophet (Allah bless him and give him peace). Analogous to this is the customary practice in our times of placing branches of myrtle and the like upon graves … Bukhārī mentioned that Burayda b. al-Ḥašib counselled that two twigs of a palm tree be placed on his grave.’ ‘Alī al-Qārī also quoted a similar opinion to Ibn ‘Abidin’s adding, in this hadith is proof that the person’s torment is lightened through recitation of the Qur’an at the graveside and by the visitation of the righteous (Ṭaḥṭāwī 43; Radd 3:155; Mīrqāt al-mafātīḥ sharḥ Mishkāt al-maṣābīḥ (1158), 2:51–3; Fayḍ al-Qādir (1135), 2:131; and Majmā‘ al-zawā‘id wa manḥā‘ al-fawā‘id (l158), 2:51–3; and Majmā‘ al-zawā‘id wa manḥā‘ al-fawā‘id (l72), 3:42).

42 This is either by walking a few steps, coughing, gently squeezing the penis from the base to the front or something similar (Ṭaḥṭāwī 43).

43 That is, *istibrā’* is not incumbent upon a woman (Radd 1:558).
excessive misgivings, he sprinkles water on his private parts and underwear so that if he has any misgiving, he assumes the wetness is from the sprinkled water (unless he is certain of the contrary).

b3.5 CLEANING ONESELF OF FILTH (ISTINJĀ’)

b3.6 It is an emphasized sunna (sunna mu’akkada) for men and women to clean filth (istinjā’) that exits from the front or rear and has not spread beyond the exit point. This ruling applies regardless of whether or not the filth is something that ordinarily exits from the front or rear, and whether it is an external filth that reaches the exit point. If the filth spreads beyond the exit point (i.e. the meeting point where the buttocks fold together), and that which spreads is greater than the weight of a dirham mithqālī for a solid (which is equal to twenty qīrāţ, one qīrāţ being the weight of five barley-corns) and its surface area for a liquid, washing the filth away is obligatory (fard).

b3.7 If one is performing the purificatory bath after being in a state of major ritual impurity, or after the menstrual or postnatal lochia ceases, washing filth from the exit point is obligatory, even if it is small.

b3.8 One performs istinjā’ with the like of a stone that removes filth, or a worn-out rag or the like that has no value (except for the water)

44 In this case, it fulfils the sunna to wipe the filth with just stones. Using water alone is preferable to just using stones, whilst conjoining between the two is optimal (Tahthawi 45).
45 If blood or vomit exits from one’s front or rear, or an external filth reaches these parts of the body, it may be cleaned using stones as it falls under the rules of istinjā’ (Radd 1:547).
46 This appears to refer to the exterior sphincter.
47 The surface area of a dirham (a silver coin) may be approximated as being the amount of water that is held on the inner concave circle of the palm of an outstretched hand (approximately 3–5 cm in diameter). When estimating whether more than a dirham of filth has exited, only filth that has moved beyond the exterior sphincter is considered (and not the filth inside the buttocks and upon the anus) (Radd 1:522; and Tahthawi 44).
48 It must be washed because it no longer falls under the rules of istinjā’; rather, the general rules of removing impurity apply. Accordingly, water must be used and wiping with stones alone is insufficient (Tahthawi 44).
49 This is due to financial loss and cleaning oneself with it causes poverty (ibid. 50).
and is not venerated or impure; neither must one use bones or animal fodder.\textsuperscript{50} One selects that which is most cleansing and least likely to soil. It is not specified to wipe from front to back in the summer and back to front in the winter.\textsuperscript{51} To wipe using three stones is recommended (mandūb). Body sweat that is upon the exit after wiping is pure and it is permissible to perform the prayer thereafter; even if the sweat flows and more than a dirham in quantum comes into contact with one’s garments and body, it does not obstruct the permissibility of prayer. On the other hand, if [after performing \textit{istinjā’} by wiping only] one sits in a small quantity of water, it becomes impure according to the soundest position (ṣaḥīh).\textsuperscript{52}

\textbf{b3.9} Washing with water during \textit{istinjā’} is preferred. It is optimal at all times to conjoin between water and the like of a stone sequentially so that one first wipes away the filth [with the stone], then one washes one’s hands before gently pouring water onto the soiled area with the right hand, and at the same time washing with the left until one feels cleansed. One continues washing until the offensive odour disappears and if not fasting,\textsuperscript{53} one does the utmost to relax the buttocks.

\textbf{b3.10} After finishing \textit{istinjā’}, one washes the hands for a second time and dries the buttocks before standing upright. In the absence of possessing a cloth, drying may be performed by repeatedly wiping

\textsuperscript{50} The same applies to everything that is beneficial; however, if one does so, it is sufficient whilst being prohibitively disliked (\textit{Radd} 1:551–3).

\textsuperscript{51} Some scholars noted that in summer, the scrotal sac hangs, hence the first and third wipe should be from the front to back to keep filth away from the sac. In contrast, in winter the scrotal sac does not hang, hence one wipes from back to front with the first and third wipes. This method is suggested for practical reasons only and there is no method stipulated in Sacred Law (Ṭaḥtāwī 46–7; and \textit{Radd} 1:548).

\textsuperscript{52} The point being emphasized here is that wiping with stones does not completely remove filth in the same way as washing does; rather, it only reduces the quantum of filth. Accordingly, if someone performing \textit{istinjā’} sits in a small quantity of water, it becomes impure. In contrast, there is scholarly consensus (\textit{ijmā’}) amongst later scholars that sweat flowing over the exit path and onto one’s garments does not render them impure (\textit{Radd} 1:548).

\textsuperscript{53} The drying is to protect the fast as relaxing the buttocks creates a danger that water may enter deep enough into the body to break the fast (Ṭaḥtāwī 48).
with the left hand. Drying is performed even if one is not fasting.\footnote{This is to protect garments from coming into contact with used water. As for someone fasting, performing the drying before standing ensures that when one stands, water is not sucked into the body thus nullifying the fast (ibid.).}

**b3.11** Whilst cleaning, it is unlawful to expose one’s nakedness to onlookers (for whom it is unlawful to look at one’s nakedness),\footnote{This ruling applies when one is in the presence of someone with whom sexual intercourse is unlawful (Radd 1:549).} even if the filth has spread beyond the exit hole and is greater than a dirham (def: b6.2.2(d)).\footnote{If one cannot find cover or the onlookers do not lower their gaze after being requested to do so, the filth is left and one tries to reduce it with the like of a stone and then prays. The most likely view is that the prayer must be repeated later (ibid.).} An exception is when there is a necessity to relieve oneself. To the extent possible, one strives to remove the filth without exposing one’s nakedness.

**b3.12** The following acts are disliked:

1. To urinate or defecate\footnote{Urinating or defecating is prohibitively disliked. However, cleaning oneself of filth (\textit{istinjā’}) in such a manner is not prohibitively disliked; rather, it is against decorum (ibid. 554).} with one’s face or back towards the direction of prayer, even if one is in a building. If one remembers during the act, one turns away if possible.

2. For a woman to hold a child to urinate or defecate\footnote{This is prohibitively disliked (ibid.).} in the direction of prayer.

3. To face the body of the sun or moon.\footnote{It is somewhat disliked to urinate or defecate facing the sun or moon because they are two mighty signs of Allah. As for turning one’s back to them, this is not disliked. The dislike here is in respect of facing the body of the sun and moon, not merely in their direction when one is inside a building (ibid. 555; and \textit{Taḥtāwi} 53).}

4. To urinate or defecate in water, even if it is running,\footnote{To urinate or defecate in a small quantity of stagnant water is unlawful, whilst in a large quantity it is prohibitively disliked. To do so in flowing water is somewhat disliked (\textit{Taḥtāwi} 53).} unless one is aboard a ship on the sea (or something similar).

5. It is disliked to urinate or defecate in the following places:
on the side of a river, pool, well and spring; below a fruit-bearing tree, agricultural land and greenery people benefit from; in the shade during the summer, in areas exposed to direct sunlight in the winter; places where people gather for lawful activities, by the side of a mosque or the Eid prayer area (muṣallā) and on graves; amongst animals, on public pathways, into the wind, in burrows, a place someone traverses and whilst facing uphill.

6. To speak while urinating or defecating, and to urinate whilst standing without a valid excuse.

7. To clean oneself with the right hand without a valid excuse.

b3.13 One should enter the lavatory with the left foot first, seeking refuge in Allah from the accursed Satan before entering; if one is not in a space set aside as a lavatory, such as in the desert, then before beginning to relieve oneself and exposing one’s nakedness.

61 This ruling applies even when the urine does not reach the water itself (Radd 1:556).
62 This is to avoid wastage of fruits, preventing benefit and because it entails disrespect to vegetation (ibid.).
63 To relieve oneself on graves is prohibitively disliked (ibid.).
64 So spray is not blown back upon one (ibid.).
65 That is a hole in the ground or a wall, due to the hadith ‘Let not any of you urinate in a burrow’, i.e. due to the harm to insects. Abū Dāwūd and Nasāʾī narrated this hadith, although there is some discussion about the reliability of one of its narrators, Muʿāth b. Hishām; Ibn Khuzayma classified it as rigorously authenticated (ṣaḥīḥ) (Ṭaḥtāwī 53; Sharḥ Sunan al-Nasāʾī (l136), 1:36; and Abū Dāwūd 1:23).
66 This is more general than public pathways (Radd 1:557).
67 Due to the fear that spray returns back upon one (ibid.).
68 It is prohibitively disliked to speak in the toilet area at all times, not just whilst relieving oneself. If one is compelled to perform ablution in the toilet area itself (and not the area designated for ablution), one refrains from reciting the supplications associated with ablution. The modern bathroom often includes a toilet, wash-basin and a bath in a single room. Whilst washing at the basin or bath, one does not recite supplications unless the toilet area and wash-basin are separated by a barrier or partition (ibid.; and Kitāb al-fatāwā (l170), 2:43).
69 To urinate while standing without a valid excuse is somewhat disliked (Radd 1:557).
70 See the supplication for entering the lavatory (dis: j1.2).
If one forgets the supplication, it is recited in the mind, not with the tongue. One buries the impurity that leaves the body, strives to empty oneself from impurity and conceals one’s nakedness before standing upright. Then one says,71 ‘Your pardon [O Allah]. All praise is due to Allah who rid me of that which harms me and kept for me that which benefits me.’72

b3.14 USING PERSONAL REASONING TO DETERMINE THE PURE FROM THE IMPURE

b3.15 If pure and impure containers of water, garments or slaughtered animals become mixed up, if the majority are pure, one uses personal reasoning to determine what is pure (whether one is being compelled by necessity or not). If a majority or a half is impure, personal reasoning is not used in respect of the aforementioned items unless one is compelled by necessity.73 If one is compelled by necessity,74 personal reasoning is used for all the aforementioned items except containers of water for ablution and the purificatory bath.75

b4.0 ABLUTION

b4.1 CONDITIONS FOR THE OBLIGATION AND VALIDITY OF PURIFICATION

b4.2 The following are the conditions by which purification76 becomes obligatory:

71 This is after leaving the lavatory with the right foot first (Radd 1:559).
72 See the supplication upon leaving the lavatory (dis: j1.1).
73 That is, other sources of water, garments or slaughtered meat are available and one is certain that these other sources are pure. Therefore, one is not compelled to use items where the pure and impure have become mixed.
74 For example, severe hunger and thirst or a need to cover one’s nakedness (Burhānī 22).
75 If a majority of the containers are impure and other water is not available, personal reasoning is not used to determine the pure water for the purposes of ablution or the purificatory bath as a substitute, dry ablution (tayammum), is available. If the water is being used for drinking, or the matter relates to garments or slaughtered meat, personal reasoning may be used as there are no substitutes for garments and food (in respect of covering one’s nakedness and combating hunger, respectively) (Radd 1:563).
76 The term ‘purification’ refers to both minor and major ritual impurity (ibid. 193).