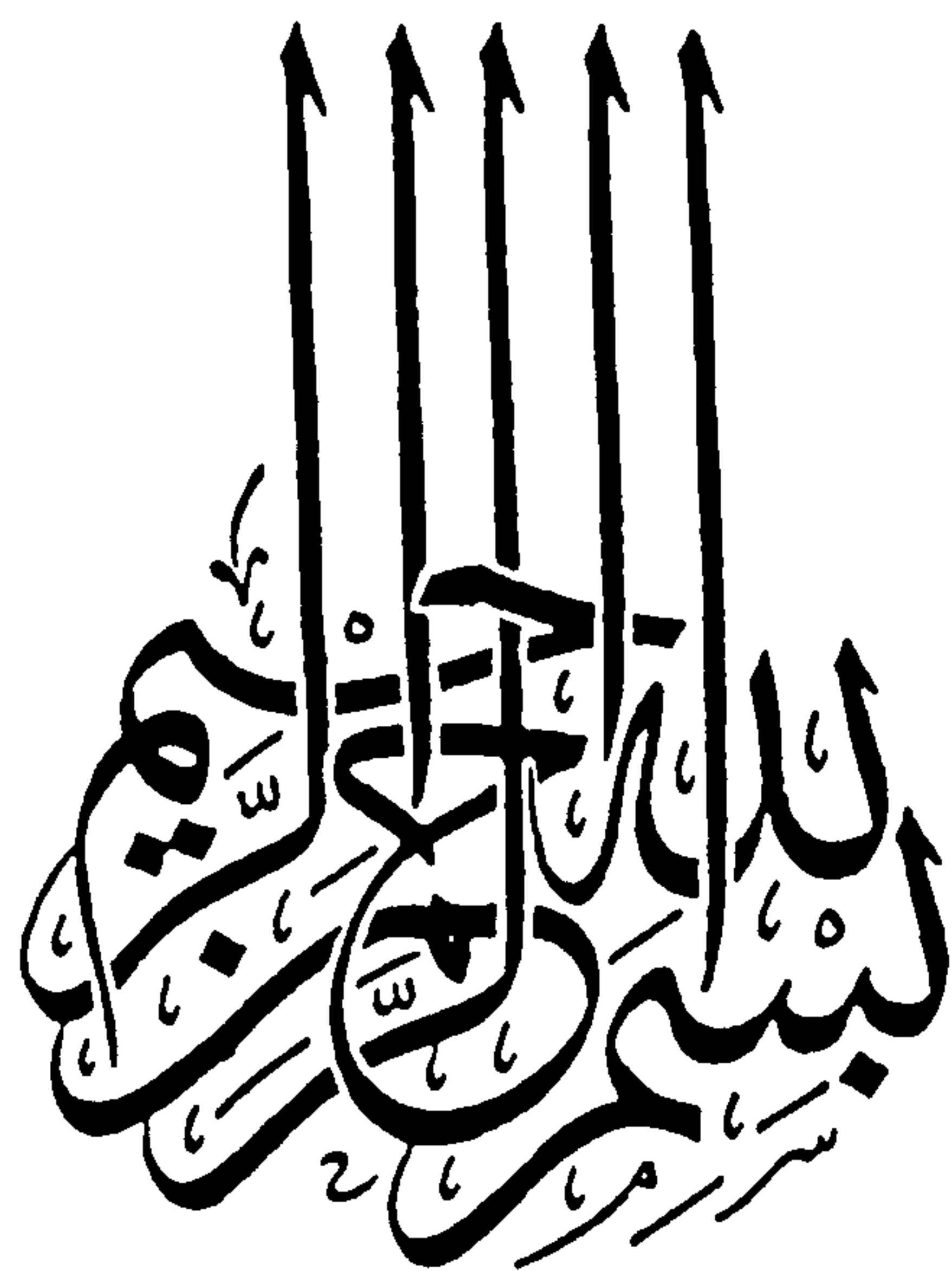


KITĀB AL-TANBĪHĀT
BY
QĀḌĪ 'IYĀḌ 'IBN MŪSĀ
A CRITICAL STUDY AND ANNOTATION OF
THE MARRIAGE CHAPTER

SAIF AL-MARRI

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Dedication

To My Mother,
My Dear Wife & Children.

Acknowledgements

I would like to thank all those who have assisted me in the completion of this thesis, especially my academic supervisor Dr. Mawil Izzi Dien and the department of Theology and Religious Studies and Islamic Studies at the University of Wales, Lampeter. Also the librarians at Lampeter; the Inter-Library Loan; the librarians at SOAS, London; the British Library; the librarians at the University of Imam Muhammad 'Ibn Saud, Riyadh, Saudi Arabia; The King Fahd Library, Riyadh, and the librarians at the Juma al-Majid Centre for the Revival of Islamic Culture, in Dubai, U.A.E.

Last but not least, I will not forget Mr. Dhahi Khalfan Tamim, Commander of Dubai Police Force for offering me the scholarship to do this research.

Abstract

This thesis attempts a commentary and critical study of the *kitāb al-Tanbīhāt* of Qādī ‘Iyāḍ ‘Ibn Mūsā, with an annotation therein, under the two subjects of Divorce (via *‘ilā’*) and Mutual Imprecation (*li‘ān*).

A personal biography of ‘Iyāḍ is provided in chapter one, covering his education and his intellectual and religious influences. Chapter two provides an economic, political and religious overview of the period during which ‘Iyāḍ was active, as a means of placing his work in a historical context. Chapter three offers a critical study of the *Tanbīhāt*, defining its content and style, and a commenting on its formative influences, in particular with regard to the *Mudawwanah* of Saḥnūn, which the *Tanbīhāt* seeks to abridge, as well as listing the commentaries this work has spurned.

Chapter four discusses the methodology employed by ‘Iyāḍ in the *Tanbīhāt*, as illustrated by a number of examples. Chapter five deals with the sources invoked by ‘Iyāḍ for the *Tanbīhāt*, and chapter six discusses the nature of the *fiqh* terminology employed therein. Chapter seven and eight offers translations of the *‘ilā’* and *li‘ān* chapters by way of illustrating style and methodology employed in the *Tanbīhāt*. We conclude with a bibliography and relevant appendices.

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Method of Transliteration

All transliterated words (except proper names) are printed in italics.

Consonants

ا	'	ز	z	ق	q
ب	b	س	s	ك	k
ت	t	ش	<u>sh</u>	ل	l
ث	<u>th</u>	ص	ṣ	م	m
ج	j	ض	ḍ	ن	n
ح	ḥ	ط	ṭ	هـ	h
خ	<u>kh</u>	ظ	ẓ	و	w
د	d	ع	‘	ي	y
ذ	<u>dh</u>	غ	<u>gh</u>		
ر	r	ف	f		

Vowels

Short	Long	Doubled (final form)	iyy
’ a	آ ā	(final form)	ī
’ u	و ū	Diphthongs	و = aw
’ i	ي ī		ي = ay

Introduction

The introduction covers background to the research in the first part and a detailed account of the content of the thesis in the second part.

Whilst researching the Mālikite school of law and its jurisprudence (*fiqh*) I realised how little had been written about this subject by modern scholars. Almost all the ancient works on Mālikite *fiqh* remain either in manuscript form or are discussed in commentaries.

The germ of this thesis was my visit to Saudi Arabia, where I was assisting a colleague who was studying Mālikite doctrine for his postgraduate degree. Then I became aware of the potential of Mālikite manuscripts as a possible source for study for the degree of Ph.D.

I began my research by studying manuscripts available at the King Faisal Education Institute, Riyadh, K.S.A. I was fortunate to come across the '*Tanbīhāt*' by the great Mālikite *faqīh* and advocate, Qādī 'Iyād. I obtained microfilm copies of two different copies of the manuscript.

One microfilm copy of the manuscript of the '*Tanbīhāt*' was kept at the Khizānah al-'Āmmah Institute in Rabat, with the ref. no. (*Hā' Lām*, 333),

which itself was a copy of the original kept at the Khizānah Jāmi' (mosque) al-Qarawiyyīn, under the ref. no. (333). However, the condition of the copy was so poor that some 70-75 pages were barely legible, and in some places the pointing of the consonants was missing.

The second copy, under the ref. (Hā' Lām, 336), contained the *fiqh* issues (*masā'il*) from the section on delayed sale (*Buyū' al-'Ājāl*) to the end of the book, but did not include the section on marriage (*Nikāh*) to the oath of condemnation (*Li'ān*).

On account of this unfortunate omission, of what is considered a vital aspect of Mālikite *fiqh*, I could not rely on this copy for my thesis. I was therefore obliged to visit Rabat, Morocco, in search of a complete, surviving copy of the '*Tanbīhāt*'. I obtained a microfilm copy from the Khizānah al-'Āmmah, under the ref. no. (543). I also obtained a print out of the manuscript on microfilm already mentioned as ref. no. (Hā' Lām, 333). Therefore I obtained my master copy from the Khizānat Jāmi' al-Qarawiyyīn, Fez.

I obtained a further copy (in microfilm), from the Escorial library in Madrid, Spain, under the ref. no. (992).

Thus, with these copies from three different locations, Rabat, Fez and Spain

which varied in condition and content, I had enough material to produce a complete and fully legible edition of the '*Tanbīhāt*' with which to work.

The Importance of the '*Tanbīhāt*'

One observation that can be made, from studying the '*Tanbīhāt*', is that 'Iyāḍ was innovative in his presentation of Mālikite *fiqh*. Namely, he synthesised two methodologies to form one concise and exact model. He married the method of the Iraqi Mālikites, best exemplified in the works of Qāḍī 'Abd al-Wahhāb, with that of the Mālikīs in *Qayrawān*.

In addition he studied and examined closely the narratives (*riwāyāt*) in the '*Mudawwanah*', with regard to their degree of authenticity and their reliability. This represents a very important and difficult task, given the bulk of evidence (*dalīl*) which confirmed existing '*aḥkām*' largely derived from these narrations. 'Iyāḍ undertook this work so that he might distinguish between two narrations which appeared to cover a *fiqh* issue from similar angles but which, on closer inspection, were found to differ, one from the other; or where, two narrations appeared to contradict one another but which on closer inspection, were found to uphold the same opinion or decision. 'Iyāḍ hoped that his work would assist scholars by clarifying issues.

This is one reason why the '*Tanbīhāt*' is considered to be one of the important

works on Mālikite *fiqh*.

As for the '*Mudawwanah*' of Saḥnūn, the subject of the '*Tanbīhāt*': The '*Tanbīhāt*' is an abridgement (*mukhtaṣar*) and commentary (*sharḥ*) on the '*Mudawwanah*'. I could find no commentary in English on this latter important work, a lacuna I intend to fill by means of this thesis.

Material on 'Iyād

One of the many difficulties that I faced in my search for sources was the general lack of information about 'Iyād or the '*Tanbīhāt*', particularly in the universities in the *Maghrib*. In one particular university, the Jāmi'ah/University of Muḥammad al-Khāmis V, in Rabat I trawled through every relevant MA and Ph.D. thesis, yet failed to find a mention of the '*Tanbīhāt*' of Qādī 'Iyād.

I was, therefore, confined to the texts that he himself composed. One of the most important of these was the '*Tartīb al-Madārik*', and another the '*Ghunyah*', an index of his *shaykhs*.

The '*Tartīb*', in effect, offers approximately sixty percent coverage of the biographies of the eminent Mālikite *fuqahā*' mentioned in the '*Tanbīhāt*', whilst the '*Ghunyah*' offers valuable information about those teachers (*shaykhs*) who had a profound influence on 'Iyād in the field of Mālikite *fiqh*,

with regard to his intellectual development. These *shaykhs* were said to number some one hundred in total.

Modern sources, such as the '*Fixed Bibliography of 'Iyād*' by Ḥasan al-Warākly, along with '*Azhār al-Riyād Fī 'Akhbār 'Iyād*', and a number of learned magazines published in the *Maghrib*, guided me.

This thesis is comprised of eight chapters and a conclusion which are laid down as follows:

In the first chapter the Author's Life is discussed including:

- (1) His biographical detail, the formation of his intellectual temperament, his appointment as judge (*qāḍī*) by the Almoravids (*al-Murābīṭūn*), the ascendancy of the Almohads (*al-Muwaḥḥidūn*) and the political situation affected thereby.
- (2) 'Iyād's intellectual standing: To study this aspect of 'Iyād's life is to bring into the discussion the leading lights of Mālikite *fiqh* ('Iyād's *shaykhs*) active during the *Murābīṭūn* era, both in the *Maghrib* and al-'Andalus.
- (3) A sub-section then follows which introduces the '*Tanbīhāt*' to the readers, i.e.:

- a) A definition of the '*Tanbīhāt*' and a comment on the sources contained therein.
- b) Ascription of the '*Tanbīhāt*' to 'Iyād, as confirmed by evidence derived from ancient and modern sources.
- c) The importance of the '*Tanbīhāt*' within the canon of Mālikite *fiqh* literature.
- d) A description of the three manuscripts used in this thesis, their place of lodgment, description of condition in detail, and so on.
- e) Comparison of the copies (*nusakh*) and style of editing.

In chapter two, The Almoravids, there is a description of the political atmosphere which prevailed during the Murābīṭūn era, during which 'Iyād was at his most active. The Murābīṭūn were champions of the Mālikite school of law, and 'Iyād, in turn, proved an ardent supporter of the Murābīṭūn regime (by way of returning the compliment). However, the activities of the Mālikite judges (*quḍāt*) and jurists (*fuqahā'*) were severely restricted under this regime, particularly in the intellectual sphere, both in North Africa and al-'Andalus.

This is followed by a description of the decline of the Murābīṭūn and the ascendancy of their ideological enemies, the Almohads (Muwaḥḥidūn), and subsequent effect this political change had on the career of 'Iyād.

The third chapter, the Study of the '*Tanbīhāt*' is devoted to a detailed study of the '*Tanbīhāt*' and the '*Mudawwanah*'. It describes the various stages of their development, from the early days of Mālik and his pupil, 'Ibn al-Qāsim, through to that of 'Asad, and finally to the era of Saḥnūn who applied the final editing and revision to produce the '*Mudawwanah*' with which 'Iyāḍ would have been familiar.

The '*Mudawwanah*' spawned a considerable number of commentaries, annotations, prefaces and so on.

This chapter concerns itself with a study of the '*Tanbīhāt*' which is a superb example of this particular genre of Mālikite *fiqh* literature, with regard to its style, its mode of presenting the juridical issues (*masā'il*) and prevailing characteristics.

Chapter four is about the Methodology employed in the '*Tanbīhāt*'. It covers the methodology and general characteristics employed in the '*Tanbīhāt*' to present the issues of Mālikite *fiqh* (*masā'il fiḥiyyah*). Here there is discussion of how 'Iyāḍ offers a critique of the narrations (*riwāyāt*) which are contained in the '*Mudawwanah*' having been related by the prominent Mālikite transmitters (*ruwāt*). It is observed how 'Iyāḍ seeks to sift through the evidence and establish the degree of the narration's authenticity with regard to its chain of

authorities (*'asānīd*) and how he seeks to confirm reliability where there appears to be a divergence in opinion on a particular issue between the narrations of the *'Mudawwanah'*. These narrations might be between narrations indigenous to *Qayrawān*, or between the narrations pertaining to al-'Andalus. 'Iyād also covers, in the *'Tanbīhāt'*, subjects such as the principles and tenets of Islamic jurisprudence and provides an index of all the Mālikite scholars mentioned therein.

Chapter five entitled The Author's Sources for his Book the *'Tanbīhāt'* represents a discussion about the sources in *'Tanbīhāt'* from which 'Iyād deduces his evidence (*'adillah*), whether it be considered reliable or received through allusion. The majority of *fiqh* sources in the *'Tanbīhāt'* are derived either from the *ḥadīth* (traditions) of the Prophet Muḥammad (P.B.U.H.), from the narrations (*riwāyāt*) of the Mālikite *fuqahā'* or from the main body of the Mālikite manuals (*furū'*), as well as from the Qur'ān and linguistic sources.

Chapter six, Terminology (*'Iṣṭilāḥāt*) in the *'Tanbīhāt'*, provides an examination of the terminology of the *'Tanbīhāt'* employed by 'Iyād and pertaining to Islamic jurisprudence in general but Mālikite *fiqh* in particular. Here I discuss the methods of deduction (*'istidlāl*) of evidence derived either from the texts (*naqliyyah*) or from rational sources (*'aqliyyah*).

In chapter seven and eight extracts of the *'Tanbihāt'* text are translated from

the Arabic into the English language, in order to convey to the reader an idea of ‘Iyāḍ’s style and the method he employed in the ‘*Tanbihat*’. More importantly, perhaps, I hope these extracts will reveal the author’s breadth of learning and depth of analysis, and indeed his flexibility. As an Islamic judge himself he would have been required (in a given case) to adapt Mālikite practice (which may have been the norm in an earlier era and in an entirely different region with regard to its prevailing socio-political outlook) to suit the conditions which obtained in his particular era and regime. The subjects of the extracts are ‘*’ilā*’ (annulment of a marriage after the husband fulfilling a condition for divorce – the sworn testimony to have refrained from marital intercourse for a period of at least four months) and ‘*li’ān*’ (an oath of condemnation i.e. – an allegation of adultery against a husband or wife). From this translation one will be able to discern, reading for example the extract on ‘*’ilā*’, how Islam, according to the Mālikite rite, protected women/wives from any abuse by their husbands, and how husbands were required to provide for divorced wives, and so on. This provision or, rather, legal requirement extended even to Jewish and Christian wives at a time when Europe was living in the Dark Ages. Likewise, we are given an insight into the rights of the accuser and the accused in *li’ān*.

Conclusion

In the conclusion I shall provide a summary of the thesis and attempt to deduce from the findings any general or specific trends or insights that might enable

illuminating the age of 'Iyāḍ and his contemporaries.

There will be one index provided, namely, the Index of Proper Names
Mentioned in The '*Tanbīhāt*'.

Chapter One

Author's Life

1.1 The Author

1.2 His *Shaykhs*

1.3 The Students of 'Iyād

1.4 The Author's Books other than the *Tanbīhāt*

1.5 The Book of the *Tanbīhāt*

Chapter One

Author's Life

1.1 The Author

His full name was 'Abū al-Faḍl 'Iyād 'Ibn Mūsā 'Ibn 'Iyād 'Ibn 'Amrūn al-Yaḥṣubī al-Sabtī al-Qāḍī.¹ 'Ibn al-'Abbār referred to him (in the *Mu'jam*) as 'Amr (rather than 'Amrūn)², whilst 'Ibn Khallikān designated him as 'Umar (again, in place of 'Amrūn).³ But his full name as above is confirmed by his son, Muḥammad 'Ibn 'Iyād, in al-Maqqarī's *'Azhār al-Riyād* (The Flowers of the Gardens)⁴ also by several of his contemporary students, not least by 'Ibn Bashkuwāl in *al-Ṣilah* (The Link), 'Ibn al-Khaṭīb in *al-'Iḥāṭah Fī 'Akhbār Gharnāṭah* (News of Granada) and 'Ibn Farḥūn in *al-Dībāj* (The Golden Badge).⁵

'Iyād 'Ibn Mūsā was one of the most celebrated Mālikite figures in the Muslim

¹ *Al-Ta'rīf bi-al-Qāḍī 'Iyād*, 4.

² *Al-Mu'jam fī 'Aṣḥāb 'Abī 'Alī al-Ṣadafī*, 294.

³ *Wafīyyāt al-'A'yān*, 3: 54.

⁴ *'Azhār al-Riyād Fī 'Akhbār 'Iyād*, 1: 23-24; *Al-Ta'rīf*, 5; *Wafīyyāt al-'A'yān*, 3: 54.

⁵ For more 'Iyād's biography see also: *Tadhkirat al-Huffāz*, 4:96; *al-Dībāj al-Mudhahhab*, 168-169; *Shadharāt al-Dhahab*, 4: 138; *al-Ṣilah*, 2: 429-430 ; *al-Nujūm al-Zāhirah*, 5: 284; *Tabaqāt al-Huffāz*, 468; *al-Mu'jam Fī 'Aṣḥāb al-Ṣadafī*, 294; *Tārīkh al-'Islām*, 13: 768-769 (manuscript); *Bughyat al-Multamis*, 425; *Qalā'id al-'Iqyān*, 222.

West. He was for the most part active during the rule of the Almoravids (*al-Murābiṭūn*) whose policies he supported unstintingly. 'Iyād was first and foremost a traditionist (*muḥaddith*) and jurist (*faqīh*), although he was not without literary talent in the field of letters (*'adab*).

Of Yemeni origin through the *Yaḥṣub* tribe⁶, his family finally settled in Ceuta (*Sabtah*)⁷, having first resided in *Baṣṭah* (Andalusia)⁸ and later Fez.⁹ His birth, into a family of legal scholars, occurred in *Sabtah* 476 A.H./1088 A.D.¹⁰ as confirmed by 'Ibn Bashkuwāl.¹¹ 'Ibn Khaldūn described *Sabtah* as an ancient pre-Islamic capital city of some importance, once the court of King Ghamārah, but was conquered by the Muslim armies during early Islam under the leadership of Mūsā 'Ibn Nuṣayr.¹²

As was the custom with the middle classes in Islamic medieval society 'Iyād

⁶ *'Azhār*, 1: 23-24.

⁷ A city of North Central Morocco, North East of Casablanca.

⁸ A city famous for its waters and gardens, about 126 kilometres, North East of Granada.

⁹ *Al-Ta'rif*, 4-5.

¹⁰ *Al-Dibāj*, 177; *Tadhkirat al-Ḥuffāz*, 4: 96; *Shadharāt al-Dḥahab*, 4: 138; *al-Mukhtaṣar Fī 'Akhbār al-Baṣṭah*, 732; *al-Nujūm al-Zāhirah*, 5: 784.

¹¹ *Al-Ṣilah*, 2: 42

¹² *Al-'Ibar wa-Diḥwān al-Mubtada' wa al-Khabar*, 6: 11.

received his formal education from his immediate family. His grandfather was a noted Qur'ānic reciter, as was his father, and 'Iyād's education in the Qur'ānic sciences would have been initiated by them.

His Muslim education would have been augmented through contact with the local *Sabtah* scholars (*shuyūkh*), particularly in the fields of traditions (*ḥadīth*) and jurisprudence (*fiqh*).¹³ These included judge 'Abū 'Abdullāh 'Ibn 'Īsā al-Tamīmī and the *faqīh* 'Ishāq 'Ibn Ja'far al-Lawātī (better known as 'Ibn al-Fāsī).¹⁴ In addition, as *Sabtah* was a centre of academic scholarship, 'Iyād would have met many scholars passing through it during their travels and benefited from their learning.

In 507 A.H. 'Iyād embarked on a *riḥlah* (the so-called *ṭalab al-'ilm* journey) that was to last for one year. Contrary to common belief 'Iyād never visited the East (*Mashriq*), even for the pilgrimage (*al-ḥajj*)¹⁵. 'Iyād first made for *Qurtubah*, the principal city of *al-'Andalus*, renowned for its Islamic scholarship.¹⁶

¹³ 'Azhār, 2: 257.

¹⁴ *Al-Ta'rif*, 8; *Fahras al-Fahāris wa al-'Athbāt*, 2: 184; 'Azhār, 3: 8.

¹⁵ "*Bil-Mashriq*" (see the *Ṣilah* of 'Ibn Bashkuwāl, 1: 446, No. 972) refers to the East of Spain and not to the Orient.

¹⁶ *Al-Dībāj*, 169; *Al-Ta'rif*, 9; 'Azhār, 3: 8.

There he met such notable teachers (*shuyūkh*) as 'Ibn Ḥamdīn¹⁷ (439/1047-508 /1115) the vitriolic critic of the “*Iḥyā'*” of al-Ghazālī, 'Ibn 'Attāb¹⁸, 'Ibn Ruṣhd¹⁹, 'Abū al-Ḥusayn 'Ibn Sirāj 'Ibn Muḡhīth²⁰ and 'Abū al-Qāsim 'Ibn al-Nakhkhās²¹. From *Qurtubah* 'Iyād journeyed towards the East (of *al-'Andalus*) reaching *Mursiyyah* in 508 A.H., where he met the renowned traditionist (*muḡaddith*) 'Abū 'Alī al-Ṣadafī who was to exert a significant influence on him.²²

On his return to Ceuta (*Sabtah*) in 508 A.H. 'Iyād was raised to the rank of *shūrā* (Consultative Counsel) and eventually in 515 A.H. was appointed *qādī* (judge) of *Sabtah* by the *Murābiṭūn* ruler, 'Alī 'Ibn Yūsuf (500/1107-537/1143).²³ 'Iyād became *qādī* of Granada in 531 A.H. By this time he had carved out for himself an

¹⁷ *Al-Ta'rif*, 7, His name was: Muḡammad 'Ibn 'Alī, 'Abū Muḡammad 'Ibn Ḥamdīn. See also: *al-Ṣilah*, 2: 529; 'Azhār *al-Riyād*, 3: 95; *al-Ghunyah*, 45; *Buḡhyat al-Multamis*, 103.

¹⁸ *Al-Ghunyah*, 162; *Al-Dibāj*, 476; *Al-Ṣilah*, 2:348, no. (749).

¹⁹ *Al-Ghunyah*, 54.

²⁰ *Al-Ta'rif*, 6-7; *al-Dibāj*, 196; 'Azhār, 3: 8.

²¹ *Al-Ta'rif*, p. 122. His full name was: Khalaf 'Ibn 'Ibrāhīm, known as 'Ibn al-Nakhkhās, 'Abū al-Qāsim. See also: *al-Mu'jam* for 'Ibn al-'Abbār, 72; *Buḡhyat al-Wu'āt*, 1: 513; *al-Ghunyah*, 77-81.

²² 'Azhār, 3: 10

²³ *Al-Ta'rif*, 10.

excellent reputation as a *muḥaddith* and Mālikite *faqīh*. He was removed from his post, however, by the Granada Governor Tāshafīn 'Ibn 'Alī, who thought him too censorious in his judgements.²⁴

'Iyāḍ was restored to his position of *qāḍī*, this time for Ceuta, by 'Ibrāhīm 'Ibn Tāshafīn in 539/1145²⁵, wherein he played a political role of some importance, paradoxically at the time of *al-Murābiṭūn* decline.

A strict Mālikite, 'Iyāḍ, opposed the rise of the Almohads (*al-Muwaḥḥidūn*), who exiled him to *Tādlā*, and thence to *Marrākish*, where he died in 544/1149.²⁶ A comment on the political situation in North Africa and Spain and the *Murābiṭūn* and *Muwaḥḥidūn* administrations (during which 'Iyāḍ was active) and their respective religious (Islamic) orientations, would not go amiss as this particular juncture.

The *Murābiṭūn* dynasty, of *Berber* origin, ruled North Africa and Spain during the second half of the fifth/eleventh century and the first half of the sixth/twelfth century, before being replaced by *Muwaḥḥidūn*.

²⁴ 'Azhār, 3: 10; *Al-Ta'rif*, 10.

²⁵ *Al-Dibāj al-Mudhahhab*, 19; 'Azhār al-Riyāḍ, 3: 11; *al-Ta'rif*, 11.

²⁶ *Muqaddimat 'Ibn Khaldūn*, 6: 230; *Fahras al-Fahāris wa al-'Athbāt*, 121; *al-Ta'rif*, 112.

The *qādī* 'Iyād described a *Murābiṭūn* ruler, 'Abdullāh 'Ibn Yāsīn as a strict Mālikite. All were obedient to him and to the faith he followed in the way he conducted his affairs there. His recorded decisions were well known and remembered, and they memorised his *fatāwā* and his answers (to legal opinions).²⁷

Under the *Murābiṭūn* the study of the Qur'ān and *ḥadīth* were relegated to second place in favour of the manuals of Mālikite applied *fiqh* (*furū'*), which al-Ghazālī vehemently denounced in (*'Ihyā' 'Ulūm al-Dīn*).²⁸ The basis of Mālikite law was the recognition of the effective and unanimous practice of *Madīnah*, (*'amal 'ahl al-Madīnah*), which Mālik 'Ibn 'Anas established as an organised judicial system. His treatise, the *Muwatta'*, is a code of legislation drawn up according to a description of law, statute and dogma, as practiced according to the consensus and the tradition (*sunnah*) of *Madīnah*, augmented by the 'Imām's personal remarks.

Of more importance to my thesis is the Mālikite treatise, the *Mudawwanah al-Kubrā*, by the *Qayrawānī* Saḥnūn (160-240/776-854), in effect a collection of Mālikite *fiqh*. The *Mudawwanah* in particular illustrates the connection between religion and trade. It has been the object of numerous commentaries²⁹, and its influence was decisive in the crystalization and diffusion of the *madhhab* (school

²⁷ *Tartīb al-Madārik*, 4: 781.

²⁸ *Al-Mu'jib Fī Talkhīṣ 'Akhbār al-Maghrib*, p. 237.

²⁹ EI₂, *Mālikiyyah*, v VI, at 278b.

of law) of Mālik throughout the Muslim West.

The *Muwaḥḥidūn* (Almohads) were adherents of a reformist movement, of which the principal element was divine unity (*tawḥīd*). They ruled during the sixth/twelfth century and the seventh/thirteenth century over North Africa and Spain. I the founder of the movement and originator of the *Muwaḥḥidūn* doctrine was Mahdī 'Ibn Tūmart. The official religious policy was to replace Mālikism with *tawḥīd*, thus restoring the true orthodoxy based on the Qur'ān, the *sunnah* of the Prophet (P.B.U.H.) and consensus (*'ijmā'*). As we mentioned the most renowned victim of Muwaḥḥidūn policy was the subject of my thesis, 'Iyād 'Ibn Mūsā.

1.2 His *Shaykhs*

'Iyāḍ had a hundred *shuyūkh* to whom he dedicated his *Ghunyaḥ*.³⁰ The *shuyūkh* of 'Iyāḍ, in terms of the influence they exerted on him, can be divided into four groups:

1. Those with whom he forged a long-lasting, fruitful relationship through shared scholastic interests. The traditionist 'Abū 'Alī al-Ṣadafī fits this description.
2. Those whose knowledge contributed to his educational progress, such as 'Ibn al-'Arabī.
3. Those who had some measure of influence on 'Iyāḍ, such as al-Ḥusayn 'Ibn Muḥammad al-Ḡhassānī.
4. Those with whom contact was restricted to correspondence, such as 'Abū Ṭāhir al-Silafī.

1.2.1 'Abū 'Alī al-Ṣadafī³¹

His full name was 'Abū 'Alī al-Ḥusayn 'Ibn Muḥammad 'Ibn Fīrruh³² al-Ṣadafī, born in *Saraqustah*³³, in 454 A.H. He was raised there, learnt the Qur'ānic

³⁰ *Al-Ghunyaḥ*, 227. See also, *Al-T'rif*, 119-133.

³¹ *Shajarat al-Nūr*, 128; *Al-Dībāj*, 104; *Al-Ṣilah*, 1:143.

³² *Takmilat 'Ikmāl al-'Ikmāl*, 101.

³³ *Mu'jam al-Buldān*, 3: 212.

sciences from the local *shuyūkh*, such as Sulaymān 'Ibn Khalaf al-Bājī³⁴ and then journeyed to the great *ḥadīth* centres of *al-Mariyyah* where under al-'Andalus, he augmented his knowledge of *ḥadīth* science (*'ilm al-ḥadīth*).

In 481 A.H. al-Ṣadafī embarked on a *riḥlah* to *Makkah*, to perform *ḥajj*, where he met the celebrated *muḥaddith* 'Abū Bakr al-Ṭartūshī.³⁵ From *Makkah* he journeyed in 482 A.H. to Baghdad, one of the leading centres of Islamic scholarship in the East.

He remained in Baghdad for five years, sitting at the feet of such renowned *muḥaddithūn* as al-Mubārak 'Ibn 'Abd al-Jabbār al-Ṣayrafī and 'Abū al-Faḍl 'Aḥmad 'Ibn al-Ḥasan 'Ibn Khayrūn, as well as attending lectures delivered by the leading Mālikite scholars (*fuqahā'*) of the day.³⁶ It was in Baghdad that al-Ṣadafī composed his great *ḥadīth* commentary entitled *Mu'jam*, which was well received, and which, as a consequence, helped carve out for him a reputation as a leading *muḥaddith*.³⁷ Al-Ṣadafī left Baghdad in 487 A.H. for Damascus, and then for Egypt where he met the celebrated compiler of the *masānīd* traditionist 'Abū

³⁴ *Al-Dibāj*, 1:377-385; *Tartīb al-Madārik*, 8: 117.

³⁵ *Al-Dibāj*, 244-248; *Nafḥ al-Ṭīb*, 2: 85-90; *Al-Fikr al-Sāmī*, 2: 220.

³⁶ *Al-Dibāj*, 105.

³⁷ *Ibid.*

'Ishāq al-Ḥabbāl.³⁸

Al-Ṣadafī returned to *al-'Andalus* in 490 A.H. as a fully qualified transmitter (*rāwī*) of *ḥadīth*³⁹. On his return, al-Ṣadafī undertook narration of *ḥadīth* in the local mosque. His reputation growing, students came from far and wide including, according to 'Ibn Farḥūn, the subject of our thesis, 'Iyād 'Ibn Mūsā.⁴⁰

Al-Ṣadafī appeared in demand as a mediator (between colleagues) and was apparently politically astute, as implied here by 'Ibn 'Asākir, “He delivered his lectures on *ḥadīth* with aplomb, his cause being supported by the Kings (*'Umarā' al-Murābiṭīn*) of this time, and he mediated in disputes between colleagues, and proved a boon to the education of their children”. 'Ibn Bashkuwāl remarked, apropos the figure of al-Ṣadafī, “Although I never met him, I know (from his reputation) that he had a prodigious memory (for *ḥadīth*) and was fully in command of the various categorisations and the value of the chain of authorities (*'isnād*).⁴¹ He is the most reverend of our *shaykhs*”.

³⁸ *Ṭabaqāt al-Muḥaddithīn*, p. 147, no. (1530). His full name was: 'Abū 'Ishāq 'Ibrāhīm 'Ibn Sa'id al-Nu'mānī al-Ḥabbāl.

³⁹ *Al-Ghunyah*, 8.

⁴⁰ *Al-Dibāj*, 105.

⁴¹ *Al-Ṣilah*, 1: 144.

Al-Ṣadafī is reported, by ‘Iyād, to have said to some of his scholars: “Take the (sound) *ḥadīth* and ask me about any source you want and I will inform you about its support (*’isnād*).

The work of al-Ṣadafī eventually came to the attention of the authorities in *Mursiyyah* and he was appointed judge (*qādī*) there in 505 A.H. However, after three years in the post he, for some reason, fell foul of the authorities and fled the town. But his students missed him, such was his charismatic personality, and they lobbied the governor for his return. As a consequence al-Ṣadafī was pardoned and his position restored. He did not stay in *Mursiyyah* for long, however, choosing to journey to *’Ishbīliyah* (Seville). His faithful students followed there.⁴²

Al-Ṣadafī’s influence on the scholastic development of ‘Iyād was significant, conveying to ‘Iyād his vast learning (in *ḥadīth* science), as manifest in ‘Iyād’s narration of the two great *Ṣaḥīḥayn* of al-Bukḥārī and Muslim, the *Jāmi’* of al-Tirmidhī, the *Mushtabah al-Nisbah* of ‘Abd al-Ghanī, the *Nāsikh Wa al-Mansūkh* of Hibat ‘Allāh, the *Shamā’il al-Rasūl* of al-Tirmidhī, the *’Istidrākāt ‘Alā al-Bukḥārī Wa Muslim* of al-Dāraqutnī, and so on.⁴³

‘Iyād Ibn Mūsā derived his (*ḥadīth*) methodology from such above described

⁴² *Al-Ṣilah*, 1: 144; *Al-Gḥunyah*, 8.

⁴³ *Al-Mu’jam Fī ‘Aṣḥāb al-Ṣadafī*, 295.

instruction and example, his emphasis being on *'ilm al-rijāl*, the science devoted to the study of the narrators (*ruwāt*) who figure in *'isnāds* with the purpose of establishing their moral qualities, their biographical details and their exact identification⁴⁴. Al-Ṣadafī met his death on the field of battle at *Qatandah* in 514 A.H., as confirmed by 'Abū Bakr 'Ibn al-'Arabī.⁴⁵

1.2.2 'Abd al-Raḥmān 'Ibn 'Attāb⁴⁶

His full name is Muḥammad 'Abd al-Raḥmān 'Ibn Muḥammad⁴⁷ 'Ibn 'Attāb 'Ibn Muḥsin al-Judhāmī⁴⁸. He was born in 433 A.H. into a family of legal scholars in the city of *Qurtubah*. His father, a leading *muḥaddith* of the time, took 'Ibn 'Attāb with him to his lectures, wherein the young child must have absorbed much material and instruction and honed his skills in memorisation. Later he received instruction from the leading *shuyūkh* of the city, including al-Qādī 'Abdullāh 'Ibn Samāḥ al-Ghāfiqī and 'Abū 'Umar 'Ibn 'Abd al-Barr al-Namirī.⁴⁹ In addition to *ḥadīth* studies he became a proficient reciter of the Qur'ān (*qārī*) and interpreter (*mufassir*). Like his father, 'Ibn 'Attāb held the position of *muḥaddith* in

⁴⁴ *Al-Ṣilah*, 1: 144.

⁴⁵ *Al-Ghunyah*, 8.

⁴⁶ *Al-Ghunyah*, 162; *Al-Ṣilah*, 2: 348; *Bughyat al-Multamis*, No.(986); *al-Dibāj*, 476.

⁴⁷ For Muḥammad 'Ibn 'Attāb (d. 462 A.H.), see: *Tartīb al-Madārik*, 4: 810, (Beirut edn.).

⁴⁸ *Al-Ṣilah*, 1: 332.

⁴⁹ *Al-Ghunyah*, 104.

Qurṭubah.

'Ibn Baṣḥkuwāl described him as virtuous, humble and knowledgeable. He was known to have composed a work on asceticism which became a standard textbook on those subjects, and was noted in particular for his reliable sources and skill in narration.⁵⁰

'Iyād learnt both *fiqh* and *ḥadīth* from 'Ibn 'Attāb, in particular *ḥadīth* in the form of the narration of the *Jāmi' al-Ṣaḥīḥ* of al-Bukhārī⁵¹ and the *Mulakhkhas* of al-Qābisī⁵², absorbing the rudiments of *fiqh* through the study of the *Muwatta'* of Mālik (or the Mālikite treatise *al-Mudawwanah al-Kubrā*).

According to 'Ibn Baṣḥkuwāl, 'Ibn 'Attāb died on Sunday the 5th of *Jumādā al-Awwal*, 520 A.H. He was buried in *Rabad, Qurṭubah*⁵³, as confirmed by 'Iyād himself in the *Ghunyah*.⁵⁴

⁵⁰ *Al-Ṣilah*, 1: 332.

⁵¹ *Al-Ghunyah*, 162.

⁵² *Ibid.*

⁵³ *Al-Ṣilah*, 1: 332.

⁵⁴ *Al-Ghunyah*, 164.

1.2.3 'Ibn Rushd⁵⁵

His full name was Muḥammad 'Ibn Aḥmad 'Ibn Ruḥd al-Mālikī, born in 540 A.H. He was one of the leading *fuqahā'* of his day and was able, with his prodigious memory, to absorb long tracts of *fiqh*. Steeped in the knowledge of the principles of Islamic law (*'uṣūl al-fīqh*) and the science of obligatory duties (*'ilm al-farā'id*) he made an excellent advocate of Mālikite *fiqh*.

The works of 'Ibn Ruḥd include (*Al-Bayān Wa Al-Taḥṣīl Limā Fī Al-Mustakhrajaḥ Min Al-Tawjīh Wa Al-Ta'līl Fī Sharḥ Al-'Utbiyyah Al-Mustkhrajaḥ Min Al-'Asmi'ah*).

This is a huge classification and commentary on *fiqh* consisting of some 20 volumes.⁵⁶ Other publications include the (*Muqaddimah*) and (*'Ikhtisār al-Mabṣūṭah*).⁵⁷ Works on *hadīth* included a commentary on Ṭaḥāwī's *'Ikhtisār Muḥkil al-'Āthār*.⁵⁸ 'Ibn Baḥkuwāl described 'Ibn Ruḥd as a pioneering *faqīh*⁵⁹, and 'Ibn Farḥūn, found him religious, retired and shy, but a man who

⁵⁵ 'Azhār al-Riyād, 3: 59-60; *Al-Ṣilah*, 1: 546.

⁵⁶ 'Azhār al-Riyād, 3: 59.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Al-Ṣilah*, 1: 546.

enjoyed a good relationship with the ruler (*'amīr al-mu'minīn*)⁶⁰ of the time.⁶¹ He might have described 'Ibn Ruṣḥd as an ardent (Mālikite) *faqīh* who religiously performed extra prayers, even during travel.

Undoubtedly 'Iyād augmented his knowledge of *fiqh* by sitting at the feet of 'Ibn Ruṣḥd, where he was inducted in the mysteries of *fiqh* methodology, as related in the *Ghunya*.⁶² 'Ibn Ruṣḥd died in 520 A.H. Many people gathered round the graveside and wept for the loss of this revered *qāḍī* and outstanding *fiqh* scholar.

1.2.4 'Abū Bakr 'Ibn Al-'Arabī

His full name was 'Abū Bakr Muḥammad 'Ibn 'Abdullāh 'Ibn Muḥammad 'Ibn 'Abdullāh 'Ibn Aḥmad 'Ibn al-'Arabī al-Ma'āfirī al-'Ishbīlī, an advocate of the *madhhab* of Mālik.⁶³ As the *nisbah* (origin) suggests 'Ibn al-'Arabī hailed from *'Ishbīliyah* (Seville). He was born in 468 A.H. His father was a Qur'ān reciter and *faqīh*. At the age of 17 'Abū Bakr journeyed, with his father to the East, reaching *al-Shām* (Syria) in 485 A.H. There he sat at the feet of such eminent *muḥaddiths* as 'Abū Bakr Muḥammad 'Ibn al-Walīd al-Ṭartūshī⁶⁴. Likewise in Baghdad he sat

⁶⁰ Refers to the Ruler of Almorsvids, see Chapter Three for more details.

⁶¹ *Al-Dibāj*, 279.

⁶² *Al-Ghunya*, 54.

⁶³ *'Azhār al-Riyād*, 3: 62; *Al-Ṣilah*, 1: 558; The Introduction of *'Aḥkām Al-Qur'ān*, 4.

⁶⁴ *Al-Ṣilah*, 1: 558.

at the feet of 'Abū al-Husayn al-Mubārak 'Ibn 'Abd al-Jabbār al-Ṣayrafī.

From Baghdad 'Abū Bakr journeyed, independent of his father, to *Makkah*, in 489 A.H. to perform the *ḥajj*, then returned to Baghdad where he became a pupil of the eminent Islamic scholar, al-Ghazālī, whose '*Ihyā*' 'Abū Bakr reputedly introduced to Morocco.

On his return to *al-'Andalus* he passed through Alexandria where he met, amongst other *shuyūkh*, the celebrated *faqīh* and *muḥaddith* al-Ṭūsī.⁶⁵ 'Abū Bakr's *riḥlah* (*fī ṭalab al-'ilm*) journey in all consumed eight years of his life. Linguist, poet, *faqīh*, *muḥaddith*, 'Abū Bakr was above all an ascetic. As a consequence, 'Ibn al-Zubayr informs us, he lost much of his wealth. He was appointed Mālikite judge of '*Ishbīliyah* in 528 A.H.⁶⁶ He proved a stern adjudicator ordering the court, on one occasion, to pierce the cheeks of a certain *zāmir* for singing with *mizmār*, the musical instrument.⁶⁷

'Abū Bakr was a prolific author. His works on *tafsīr* included '*Anwār al-Fajr*, which reputedly took him twenty years to write, amounting to some 80 volumes⁶⁸,

⁶⁵ *Al-Ṣilah*, 1: 558.

⁶⁶ '*Azhār al-Riyād*, 3: 64.

⁶⁷ *Ibid.*

⁶⁸ '*Azhār al-Riyād*, 3: 88.

'*al-Qānūn Fī Tafsīr al-Qur'ān*, which deals with the methodology of *tafsīr* and *Al-Nāsikh Wa al-Mansūkh* on abrogation.⁶⁹ 'Abū Bakr also wrote commentaries on *ḥadīth*, notably his accessible commentary on the '*Jāmi'*' al-Tirmidhī', and *Al-Qabas*, in effect an introduction to the *Muwatta'* of Mālik, in addition to his commentary on the *Muwatta'* under the title *Al-Maṣābīh Fī Sharḥ Muwatta'* Mālik.⁷⁰ His works on *fiqh* include *Al-Maḥṣūl Wa al-Khilāfiyyāt*, *Al-Kāfī Bi 'Anna al-Dalīl 'Alā al-Nafī* and *Malja'at al-Mutafaqqihīn*. Commentaries include *Al-Subā'iyyāt Sharḥ Gharīb al-Risālah*, *Talkhīṣ al-Talkhīṣ* and many others. His *Al-'Awāṣim Min al-Qawāṣim* covers the events which occurred following the death of the Prophet (P.B.U.H.) up until the *fitnah*, the conflict which resulted in the division of the *sunnī* and the *shī'ah*.⁷¹

'Abū Bakr was 'Iyāḍ's contemporary and although the former was only eight years older than the latter, the relationship was nevertheless indubitably that of *shaykh* and student, as 'Iyāḍ testifies below:

"He ('Abū Bakr) passed through *Sabtah* and I arranged a meeting (with him). He handed me (for instruction) the *Kitāb al-Mu'talaf Wa al-Mukhtalaf* of al-Dāraqutnī. We discussed the *Kitāb al-'Ikmāl* of 'Abū Naṣr 'Ibn Mākūlā and (then)

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

I narrated to him his work, the *Mas'alat al-'Aymān al-Lāzimah* and he accordingly congratulated me on the narration. I met him also in *'Ishbīliyah*, and *Qurṭubah* (Cordoba) when he referred me to his commentary on the *Rubā'īyyāt* of al-Bukhārī".⁷²

We can glean from this passage the eclectic nature of the works of 'Abū Bakr which must have exerted a decided influence on the impressionable 'Iyād. 'Abū Bakr died and was buried in the city of Fez in 543 A.H.⁷³

1.2.5 Muḥammad 'Ibn 'Īsā Al-Tamīmī

His full name was 'Abū 'Abdullāh 'Ibn 'Īsā Ḥusayn al-Tamīmī al-Sabtī. He was born in Fez in 428 or 429 A.H. but his family moved when he was at a very young age to Sabtah, hence the *nisbah*⁷⁴:

After receiving his formal education in *Sabtah* 'Ibn 'Īsā moved to *al-'Andalus* in order to augment and extend the range and breadth of his knowledge. In *Mursiyyah* he met his mentor, 'Abū 'Abdullāh 'Ibn al-Murābiṭ, and also became a pupil of 'Abū Marwān 'Ibn Sirāj.

⁷² *Al-Ghunyah*, 34.

⁷³ *'Azhār al-Riyād*, 3: 64-65.

⁷⁴ *Al-Ṣilah*, 2: 572.

'Ibn 'Īsā returned to *Sabtah* in 490 A.H., reputedly with an academic reputation, for he was soon offered the post of *qāḍī* for the town, which he accepted. He fulfilled this function for six years but relinquished the post in 496 A.H.⁷⁵ The governor then conferred on 'Ibn 'Īsā the post of *qāḍī* for Fez, but he refused (presumably for political reasons) and was imprisoned, only for him to relent and hold the post until 503 A.H.⁷⁶

'Iyāḍ refers to his *shaykh* 'Ibn 'Īsā in *al-Ghunyah* as having a prodigious memory (*ḥāfīz*), as an excellent *fāqīh* and calligraphist, and considered knowledgeable in orthography.⁷⁷

'Iyāḍ appears to have spent some time in the company of 'Ibn 'Īsā, discussing with him the *Mudawwanah*, and the *Mawwāziyyah*⁷⁸. In the field of *ḥadīth* 'Iyāḍ mentions the narration by 'Ibn 'Īsā of the *Ṣaḥīḥ* of ['Abū al-Ḥusayn] Muslim ['Ibn al-Ḥajjāj] during which 'Iyāḍ pointed out some discrepancies with regard to *gharīb ḥadīth* (strange *ḥadīth*), and *'Islāh al-Ghalaṭ* (corrected *ḥadīth*) and his *shaykh* congratulated him on his industry and insight. They also discussed together the *'Ulūm al-Ḥadīth* by al-Ḥākim, the *Ṭabaqāt* of Muslim 'Ibn al-Ḥajjāj,

⁷⁵ *Al-Ghunyah*, 3.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Al-Ghunyah*, 33.

and *al-Du‘afā’ Wa al-Matrūkīn* (the weak and abandoned *Rāwis*) of ‘Abū ‘Abd al-Raḥmān al-Nasā’ī.⁷⁹

All of this suggests the extent of the influence of ‘Ibn ‘Īsā’s scholarship on ‘Iyāḍ with regard to his subsequent development as a Mālikite *faqīh* and *muḥaddith*.

‘Ibn ‘Īsā al-Tamīmī died in 503 A.H.⁸⁰

1.2.6 Al-Ghassānī

His full name was ‘Abū ‘Alī al-Ḥusayn ‘Ibn Muḥammad ‘Ibn Aḥmad al-Ghassānī.⁸¹ His family settled in Cordoba, after having some time in the past resided in *Jayyān*, hence the *nisbah* *Jayyānī*, by which appellation al-Ghassānī was often addressed, to his intense dislike, “those who call me al-Jayyānī, may the Lord be in favour of outlawing them”.⁸² He was born in 427 A.H., as confirmed by ‘Ibn Bashkuwāl (in *al-Ṣilah*)⁸³ and ‘Iyāḍ in *al-Ghunyah*.⁸⁴

Al-Ghassānī received his formal education in Cordoba, after which period he specialised in the study of *ḥadīth*. He was the pupil of such eminent *muḥaddithūn*

⁷⁹ *Ibid.*

⁸⁰ *Al-Ghunyah*, 33; *Al-Ṣilah*, 2: 572.

⁸¹ *Al-Ghunyah*, 87; *Al-Ṣilah*, 1: 141.

⁸² *Al-Ṣilah*, 1: 141.

⁸³ *Ibid.*

⁸⁴ *Al-Ghunyah*, 78.

as 'Abū 'Umar 'Ibn 'Abd al-Barr al-Namirī al-Qurtubī, 'Abū 'Abdullāh Muḥammad 'Ibn 'Attāb, 'Abū al-Walīd al-Bājī and 'Abū Marwān 'Ibn Sirāj, to mention but a few.⁸⁵

Al-Ghassānī was an eminent *ḥāfiẓ* and *musnid* (reliable source). The process of evaluating the soundness of *ḥadīth*, which is sometimes criticised for its narrow formalism, required a wide knowledge of scholastic disciplines, language in particular. In this latter respect al-Ghassānī was predominant, being particularly knowledgeable of syntax and morphology.⁸⁶

'Iyāḍ, his pupil, described him as meticulous with regard to *ḥadīth* sources and '*asānīd* (chain of authorities).⁸⁷ 'Abū al-Ḥasan 'Ibn Muḡhīth regarded them as perceptive and blest with a vast knowledge of '*ilm al-rijāl* (the science of assessing narrators), as displayed in his work on the *Rijāl al-Ṣaḥīḥayn*, entitled *Taqyīd al-Muḡmal Wa Tamyīz al-Muḡkil*.⁸⁸

There are a number of methods by which *ḥadīth* could be received. Hearing (*samā'*) directly from the *shaykh*'s mouth is considered superior to other methods.

⁸⁵ *Al-Gḥunyah*, 78; *Al-Ṣilah*, 1: 141.

⁸⁶ *Al-Ṣilah*, 1: 141.

⁸⁷ *Al-Ṣilah*, 1: 142.

⁸⁸ *Ibid.*

Nevertheless, a licence (*'ijāzah*) could be granted to students by a *shaykh*, allowing them to transmit the *shaykh's* traditions, through the method of correspondence (*mukātabah*). This is the method which defined the relationship between Al-Ghassānī and his student, 'Iyād. "He wrote to me", remarks 'Iyād, "about his biography *al-Fihrist al-Kubrā*, and referred (me) to the narrations contained therein, on more than one occasion.⁸⁹ Al-Ghassānī died in *al-Mariyyah* on the 12th of *Sha'bān*, 498 A.H.⁹⁰

⁸⁹ *Al-Ghunyah*, 78-88.

⁹⁰ *Al-Ṣilah*, 1: 142; *'Azhār al-Riyād*, 3: 150.

1.3 The Students of 'Iyād

As a *shaykh* in *Sabtah* 'Iyād was noted, amongst many other things, for initiating a debate among his students on the *Mudawwanah*.⁹¹ His students in Cordoba invariably concluded their visits to him by enquiring about his most celebrated work, *Al-Shifā Bi Ta'rīf Ḥuqūq al-Muṣṭafā* (P.B.U.H.), which enjoyed a huge success at the time, and was used by students (at the 'Azhār) well into the nineteenth century.⁹²

'Iyād's students valued not only his scholastic expertise and opinion, but his humility, tolerance and piety.

1.3.1 'Aḥmad 'Ibn 'Abd al-Raḥmān 'Ibn Maḍḍā'

His full name was 'Aḥmad 'Ibn 'Abd-Raḥmān 'Ibn Muḥammad 'Ibn Maḍḍā' 'Ibn Muḥammad 'Ibn 'Umayr al-Lakḥmī, better known as 'Abū al-'Abbās. He was born in *Qurtubah*, 511 A.H. Al-Lakḥmī was primarily a grammarian and linguist, and it was these disciplines which primarily informed his study of the Qur'ān, *ḥadīth* and *fiqh*. He was a pupil of 'Iyād whilst the latter was active in *Sabtah*, imbibing from his *shaykh* the mastery of narration, in both scope and reliability.⁹³

'Ibn Farḥūn described him in *Al-Dībāj* as “good company, trustworthy,

⁹¹ *Tadhkirat al-Ḥuffāz*, 4: 94.

⁹² Al-'Aṭṭār, *Al-'Inshā'*, Cairo, Muḥammad Tawfīq, 1936 pp. (62-66).

⁹³ *Al-Dībāj al-Mudḥahhab*, 47.

dependable, a man who held no grudges”.⁹⁴ He died in 593 A.H., having held the posts of *qādī* at Fez and *Marrākish*.⁹⁵

1.3.2 ‘Abd Al-Raḥmān ‘Ibn Al-Qaṣīr Al-Gḥarnātī

His full name was ‘Abd al-Raḥmān ‘Ibn ‘Aḥmad ‘Ibn ‘Aḥmad⁹⁶ ‘Ibn Muḥammad al-‘Azdī, but better known, as confirmed by al-Maqqarī⁹⁷. According to ‘Ibn Farḥūn his correct name was ‘Abd al-Raḥmān ‘Ibn ‘Aḥmad ‘Ibn Muḥammad.⁹⁸

‘Ibn al-Qaṣīr was raised in a family of legal scholars. He was a pupil of ‘Iyād’s in Granada where ‘Iyād was *qādī*. He excelled as a *faqīh*, a man of letters (*‘adīb*) and *muḥaddith*, and was eventually appointed *qādī* for the town of the *Taqyūs*⁹⁹, near *Tawz*¹⁰⁰. One of his more notable compositions was his summary of ‘Ibn Khāqān’s *Al-Ḥiyāl*. ‘Ibn al-Qaṣīr died (576 A.H.) a martyr’s death, on his way to the *ḥajj*, in an attack launched against the pilgrims in Tunis harbour by Byzantine

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ There is no repetition (‘Ibn ‘Aḥmad ‘Ibn ‘Aḥmad) as al-Maqqarī said in *‘Azhār al-Riyād*, 3: 15.

⁹⁷ *‘Azhār al-Riyād*, 3: 15.

⁹⁸ *Al-Dībāj al-Mudḥahhab*, 152.

⁹⁹ *Mu‘jam al-Buldān*, 2: 37.

¹⁰⁰ *Mu‘jam al-Buldān*, 2: 57-58.

forces.¹⁰¹

1.3.3 Khalaf 'Ibn Bashkuwāl

His full name was Khalaf 'Ibn 'Abd al-Malik 'Ibn Mas'ūd 'Ibn Mūsā 'Ibn Bashkuwāl, better known by his *kunyah* (surname), 'Abū al-Qaṣīr. He was born in Cordoba, 511 A.H. Probably he is the best known of all 'Iyaḍ's students. He received a conventional Islamic education at the hands of his father, and the leading *shaykhs* of the day, 'Abū Muḥammad 'Abd al-Raḥmān 'Ibn 'Attāb, 'Abū al-Walīd 'Ibn Ruṣhd, 'Ibn Muḡhīth¹⁰² and 'Ibn al-'Arabī.¹⁰³ 'Ibn Bashkuwāl was primarily a *muḡaddith*, who excelled in narration and the science of *ḡadīth*. "He came to us", 'Ibn Bashkuwāl writes of his teacher, "To Cordoba in 531 A.H. and one day he related to us the narration of *qāḡī* 'Abū al-ḡusayn 'Ibn Muḡammad al-Ṣadafī, related on the authority of the 'Imām 'Abū Muḡammad al-Tamīmī al-Baḡhdādī who said: 'You hear our narrations and benefit from them, yet you fail to petition 'Allāh so that He might bless us. May the Lord bless and forgive all our *shaykhs*, from whom we have benefitted'.¹⁰⁴

¹⁰¹ *Al-Dībāj al-Muḡhahhab*, 152; *'Azhār al-Riyād*, 3: 16.

¹⁰² 'Aḡmad 'Ibn Muḡhīth al-Ṭulayṭilī, had the *kunyah* of 'Abū Ja'far. He was a leading *faqīh* of his time in Toledo. (d. 459 A.H.) or possibly (406 A.H.). See, *al-Dībāj*, 40.

¹⁰³ *Al-Dībāj al-Muḡhahhab*, 14.

¹⁰⁴ *Al-Ṣilah*, 2: 430.

His most notable compositions include the *Kitāb al-Ṣilah*, a voluminous history of Andalusian scholars. Considered a scholar, extrovert, humble, above all he was deemed trustworthy,¹⁰⁵ 'Ibn Bashkuwāl died in 598 A.H.

1.3.4 'Aḥmad 'Ibn 'Abd Al-Raḥmān 'Ibn Al-Ṣaqr Al-'Anṣārī Al-Khazrajī

He is better known by his *kunya* 'Abū Al-'Abbās. He was born in *Mariyyah*¹⁰⁶ in 492 A.H.¹⁰⁷ He excelled in the Qur'ān.¹⁰⁸ He augmented his knowledge of *fiqh* and *ḥadīth* under the tuition of a number of *shaykhs*, 'Iyād being one of the most influential.¹⁰⁹

'Ibn Farḥūn relates that 'Ibn al-Ṣaqr was the subject of an attempted bribe (as 'Ibn al-Ṣaqr felt it) by a rich man from *Lamtūnah*. The offered price was one thousand of *Murābiṭūn* gold *dīnārs*. The offer to 'Ibn al-Ṣaqr was to join the rich man as his personal assistant in his travels. 'Ibn al-Ṣaqr, with an ascetic nature refused this fortune and added : "By God, even if you were to pay me sufficient to swamp the earth itself, I would not abandon my way of life and (forsake) my mission of

¹⁰⁵ *Al-Dībāj al-Mudḥahhab*, 14.

¹⁰⁶ *Mu'jam al-Buldān*, 3: 367.

¹⁰⁷ *Al-Dībāj al-Mudḥahhab*, 48-49, 50-51.

¹⁰⁸ *Al-Dībāj al-Mudḥahhab*, 48.

¹⁰⁹ *Ibid.*

serving the seekers of knowledge”.¹¹⁰

When the Muwaḥḥidūn gained control of the region they appointed 'Ibn al-Ṣaqr to the office of chamberlain, but he gave away most of his salary to the needy and poor. He died in *Marrākish*, 569 A.H.¹¹¹

¹¹⁰ *Al-Dībāj al-Mudḥahhab*, 50.

¹¹¹ *Ibid.*

1.4 The Author's Books other than the *Tanbīhāt*

1.4.1 Printed Books

- (1) *Kitāb al-Ghunyah Fī Dhikr Shuyūkhīhī.*
- (2) *Al-Shifā Bi Ta'rīf Huqūq al-Muṣṭafā (P.B.U.H.).*
- (3) *Al-'Ilām Biḥudūd Wa Qawā'id al-'Islām.*
- (4) *Mashāriq al-'Anwār 'Alā Ṣiḥāḥ al-'Āthār.*
- (5) *Al-'Ilmā' Fī Dabṭ al-Riwāyah Wa Taqyīd al-Samā'.*
- (6) *Bughyat al-Rā'id Limā Taḍammanahū Ḥadīth 'Umm Zar' Min al-Fawā'id.*
- (7) *Tartīb al-Madārik Wa Taqrīb al-Masālik Li Ma'rifat 'A'lām Madhhab Mālik.*
- (8) *'Ikmāl al-Mu'lim Bi Fawā'id Muslim.*

1.4.2 Manuscript Books

There is no more left except the unexamined part of the *Kitāb al-Tanbīhāt*.

1.4.3 Missing Books

- (1) *Al-'ajwibah al-Muḥabbarah 'An al-Masā'il al-Mutakhayyirah.*
- (2) *'Ajwibatihī Fī Mā Nazal 'Ayyām Qadā'ihī Min Nawāzil al-'Aḥkām.*
- (3) *'Ajwibat al-Qurtubiyyīn.*
- (4) *Maṭāmi' al-'Afhām Fī Sharḥ al-'Aḥkām.*
- (5) *Nazm al-Burhām 'Alā Ṣiḥḥat Jazm al-'Adhān.*
- (6) *Mas'alat al-'Ahl al-Muṣhtaraf Baynahum al-Tazāwur.*

(7) *'Ikhtisār Sharaf al-Muṣṭafā* (P.B.U.H.).

1.5 The Book of the *Tanbīhāt*

1.5.1 Introduction to the *Tanbīhāt*

This is known also as the *Kitāb al-Mustanbaṭah Fī Sharḥ Kalimāt Mushkilah Wā 'Alfāz Mughlaṭah Mimmā Waqā'a Fī Kitāb al-Mudawwanah Wa al-Mukhtaḷiṭah*. The title '*Tanbīhāt*', however, prevailed in North Africa, where it was published in ten parts. At least, this is according to the statement of his son, Muḥammad 'Ibn 'Iyād. Copies located in the public *Khizānah* (manuscript library) such as *al-Khizānah al-'Āmmah* in Rabat.

Designation

Al-Maqqarī in *'Azhār al-Riyād* designated it the '*Kitāb al-Mustanbaṭah Fī Sharḥ Kalimāt Mushkilah Wa 'Alfāz Mughlaṭah Mimmā Waqā'a Fī al-Mudawwanah Wa al-Mukhtaḷiṭah*', reflecting the significant influence of the latter on the development of the *Tanbīhāt*. The title *Tanbīhāt*, however, prevailed in the region of North Africa.¹¹²

Fu'ād Sizgin designated it the *Kitāb al-Tanbīhāt al-Mustanbaṭah Fī Sharḥ Mushkilāt al-Mudawwanah Wa al-Mukhtaḷiṭah*¹¹³, while another variation is *Kitāb al-Tanbīhāt 'Alā al-Kutub al-Mudawwanah Wa al-Mukhtaḷiṭah*.¹¹⁴

¹¹² *'Azhār al-Riyād*, 4: 347.

¹¹³ *Tārīkh al-Turāth al-'Arabī*, 1st vol. 3: 151

¹¹⁴ *Al-Ta'rīf Bi al-Qāḍī 'Iyād*, 116.

1.5.2 Qādī 'Iyād and the *Tanbīhāt*

a. Mention of the *Tanbīhāt* in the works of Islamic Scholars / literary references

- (1) *Kashf al-Zunūn*, (1: 493). A comprehensive work with an encyclopaedic reference to Islamic scholarship, composed by Ḥājī Khalīfah, Istanbul, edn., 1360 A.H. / 1941 A.D.
- (2) *Hadiyyat al-‘Ārifīn Li ‘Asmā’ al-Muṣannifīn*, (1: 805). By ‘Ismā‘īl Bāshā al-Baḡhdādī, Istanbul edn. 1951.
- (3) *‘Azhār al-Riyād Fī ‘Akhbār ‘Iyād*, (2: 237). By Shihāb al-Dīn ‘Aḥmad ‘Ibn Muḥammad al-Maqqarī al-Tilmisānī (d. 1041 A.H.). 1st, 2nd, and 3rd parts. The *Lajnat al-Ta’līf*, , Cairo, 1st edn. 1383/1964.
- (4) *Al-Mu‘jam Fī ‘Aṣḥāb al-Qādī ‘Abī ‘Alī al-Ṣadafī*, (p. 308). ‘Ibn al-‘Abbār al-Qudā‘ī Muḥammad ‘Ibn ‘Abdullāh. *Dār al-Kutub al-‘Arabī Li al-Tibā‘at Wa al-Nashr*, Cairo, 1387/1967.
- (5) *Al-Ta’rīf Bi al-Qādī ‘Iyād*, (p. 118). By his son, Muḥammad ‘Ibn ‘Iyād, (tā’:dāl). Ed., Muḥammad ‘Ibn Sharīfah, *Manshūrāt Wazārat al-‘Awqāf Wa al-Shu‘ūn al-‘Islāmiyyah, Al-Maḡhrib. n.d.*

b. Author's Ascription

There is no doubt that 'Iyād is the author of the *Tanbīhāt*, as confirmed by 'Ibn al-'Abbār in *Mu'jam*, (p. 308), as well 'Ibn Farḥūn in *al-Dībāj*, (2: 49), and Brockelmann, C., *Geshichte der Arabischen Litteratur*, (1: 369).

c. The *Tanbīhāt* of Qādī 'Iyād Literary Allusion

The first scholar to draw the attention of the public to the *Tanbīhāt* was 'Iyād's son, Muḥammad 'Ibn 'Iyād in his work *Al-Ta'rīf Bi al-Qādī 'Iyād*, edited by Dr. Muḥammad 'Ibn Sharīfah. His son also mentioned *Tanbīhāt* also in the *Kitāb Madhāhib al-Ḥukkām Fī Nawāzil al-'Aḥkām*, pertaining to the judicial cases (*nawāzil*) that 'Iyād presided over, about which 'Iyād kept a diary, and from which Muḥammad composed the book. (p. 22), which was also edited by Dr. Sharīfah, published by *Dār al-Gharb al-'Islāmī*, 1st edn., 1990.

'Imām al-Qarāfī in *Al-Dhakhīrah*, made constant reference to the *Tanbīhāt* (1: 202, 232, 264), (4: 118). Al-Maqqarī in 'Azhār al-Riyāḍ said 'there has not been a work written like it (*Tanbīhāt*) before', (4: 347).

'Ibn Farḥūn in *Al-Dībāj al-Mudhahhab* (2: 49). Al-Dhahabī in *Siyar 'A'lām al-Nubalā'*, (20: 215).

Brockelmann, in *Tārīkh al-'Adab al-'Arabī*, (1: 369)¹¹⁵ first volume.

1.5.3 The Importance of the *Tanbīhāt*

According to the introduction to the *Tanbīhāt*, 'Iyād's objective was to provide a commentary on difficult (rare) expressions (*'Alā Sharḥ Kalimāt Mushkilah ...*). described by the author of *'A'lām al-Fikr al-Sāmī* as a “commentary on the *Mudawwanah*, in which two methodologies are combined: the Iraqī, which relies on analogy (*qiyās*), genealogy (*ta'sīl*), investigation of the issues and establishment of the evidence (*dalā'il*), and that of the Qayrawānis, which relies an authentication of the *'isnād*, (chain of transmission) analysis of the issues (*masā'il*), deduction, and separation of the issues, (*furūq*)”.

'Ustādh Muḥammad Ṣālīḥ described the style of the *Tanbīhāt* as fluid, constructed and written to facilitate easy comprehension, based (as it is) on the style of the preceding Mālikite *fuqahā'* who were keen to illumine the text rather than obscure it.

Although predominantly a Mālikite *faqīh*, 'Iyād (in the *Tanbīhāt*) does not confine himself to issues of fiqh alone, but rather extends his vast learning to cover these issues from a linguistic and traditionist aspect, or as a keen student of the Prophetic and Medinan (*'āthār*) traditions. In the latter case he pays particular

¹¹⁵ This refers to the German (European) Edn., *Geshichte der Arabischen Litteratur*.

attention to the authentication of the narratives' chain of authorities (*'asānīd*) and the classification and indexation of the narrators themselves (*ruwāt*), with regard to the integrity of their character. In addition he comments on those difficult and rare expressions not dealt with adequately in the *Mudawwanah*, all within the context of the debate which centres on the manifold issues which engaged the intellect of the Mālikite *Fuqahā'* during the Middle Ages.

1.5.4 The Manuscripts of the *Tanbīhāt*. Description of the Manuscripts: their state, size and place of storage.

The Manuscripts of the *Tanbīhāt* According to Sezgin.

Sezgin lists the manuscripts as follows:

- (1) *Al-Tanbīhāt al-Mustanbatah Fī Sharḥ Mushkilāt al-Mudawwanah Wa al-Mukhtalīḥ* by Qādī 'Iyād al-Yaḥsubī, (d. 544 A.H./ 1149 A.D.). See Brockelmann, v i, p. 369.
- (2) The Escorial MS under reference no. (922), paper (143), 7th century *Hijrī*. See, Vaidis, Andalus, 28/ 65-67.
- (3) *Al-Qarawīyyīn. bi-Fās*, under reference no. (333), (786 A.H.), Schacht, *etal.*, or (1: 281).
- (4) *Marrākīsh*, (189).
- (5) *Miknās*, (132), (280).

- (6) Several copies of the manuscript are located in the *Khizānat al-Qarawiyyīn* library, under reference nos. (334), (335), (336), (1191). Also *Fihris Makhtūtāt Khazānat al-Qarawiyyīn*. v 1, pp. 327-329; v 3, p. 269.
- (7) Copies of the manuscript in *Al-Khizānah al-‘Āmmah Wa al-Malakiyyah, al-Maghrib*.

Manuscripts of the *Tanbīhāt* in Detail

[1] MSS at the *Khizānat Jāmi‘* (mosque) *al-Qarawiyyīn, Fās*. (five copies).

- (1) MS ref. no. (333): by ‘Iyād ‘Ibn Mūsā ‘Ibn ‘Iyād al-Yaḥsubī al-Qādī ‘Abū al-Faḍl, under the title of *Kitāb al-Tanbīhāt al-Mustanbatah Fī Sharḥ Mushkilāt al-Mudawwanah Wa al-Mukhtaliḥah*. One book, written in *Maghribī* script. Complete, but pages fading. Copyist, one ‘Ibn ‘Aḥmad ‘Ishāq al-Sūmātī, completed in 687 A.H. The opening commences thus: “Praise be to Allāh Who has blessed us with His beneficence and Divine guidance towards the Straight Path ... in the knowledge that our juridical colleagues have a desire for (someone to) comment on those difficult words and amend those erroneous expressions, as contained in the *Mudawwanah* ...”, (196) pages, (53) lines, 21/27.
- (2) MS ref. no. (334): one part, complete, *Maghribī* script All but faded, practically obliterated towards the end. Transcribed by Muḥammad ‘Ibn ‘Abd al-‘Azīm al-Mu‘īṭī in 687 A.H., (127) pages, (38) lines, gauge 23/32.

- (3) MS ref. no. (335): One part '*Maghribī* script' faded. Names of key scholars written in red ink. Moth eaten, with small gaps in MS. No date and no reference as to the identity of the transcriber. (90) pages, (41) lines, gauge 21/28.
- (4) MS ref. no. (336): two books, in 'Andalusian (clear script). The first book: ink fading. Religious requests, (*taḥbīs*). Recorded, in 819 A.H. but transcriber not identified. Second book: Begins with the *Kitāb al-'Ājāl*. Transcribed in 687 A.H. by 'Ibn Sa'īd al-Burkānī. The two transcriptions differ, the handwriting is not uniform.
- (5) MS ref. no. (1191): one heavy volume, 'Andalusian script. Transcriber unidentified, but completion dated as 811 A.H. Begins with chapter on commercial guarantees (*taḍmīn al-ṣunnā*) and ends with a chapter on felony (*jināyāt*).

[2] MSS at the *Khazānat al-Qaṣr al-Malakī*, Rabat

- (1) MS ref. No. (534): One large volume, Maghribī script. This copy complete from the chapter "*kitāb al-wuḍū*" (ritual ablution before prayer) to the chapter "*kitāb al-jināyāt*" (felony). First five pages are blank. The remainder (of the copy) contains small gaps from time to time. Known as the Farmūj copy as sponsored by Farmūj al-Ṣanhājī. Transcription completed in 1286 A.H.

(2) MS ref. no. (9818): One volume, beginning and end parts missing. *Maghribī* script legible. A number of gaps. Approximately (200) pages.

[3] MSS in the *Maktabat al-Jāmi‘* in *Miknās*

(1) MS ref. no. (280 *mīm*).

[4] MSS in the *al-Khizānah al-‘Āmmah*, Rabat.

(1) MS ref. no. (384 *qāf*).

[5] MSS in the *Maktabat al-‘Iskūryāl* in Madrid. (Escorial).

(1) MS ref. no. (992).

1.5.5 Methodology adopted in the verification of the *Tanbīhāt* Manuscripts

a. Methodology in the *Tanbīhāt*

The methodology adopted by ‘Iyāḍ in the *Tanbīhāt* was largely derived from that of the *Mudawwanah*, in which his principal remit would be to comment on and analyse the difficult and rare expressions to be found therein, since the narrations in the *Mudawwanah* often differed, one from the other, with regard to the interpretation of these terms.

‘Iyāḍ saw his task as the clarification of such terms, whose prior misinterpretation by Mālikite scholars and the *muḥaddīthūn* sometimes led to violence between those of different opinions. Men, ‘Iyāḍ claims, were generally deficient in the

Islamic sciences, and in the science of *ḥadīth* in particular.¹¹⁶

Thus, ‘Iyāḍ first identifies the issues in which these terms feature, and compares the various opinions of the *fuqahā’* so expressed in the *Mudawwanah*. Then he enumerates them, weighing one opinion against another, until he identifies the element of confusion. Whereupon, his vast knowledge-of *ḥadīth* in particular serves as a criterion for his sure process of elimination. He clarifies what had previously been obscure.

Secondly, he points out the textual differences between the several versions of the *Mudawwanah*.

Thirdly, he considers and analyses similar and parallel cases in order to identify what is homogeneous about them, in both theme and form, and what is irregular. He does this by separating that which appears similar but which is not similar in essence, and identifying similar characteristics in issues which, on the surface, appear (in legal terms) to be irreconcilable.

Fourthly, he seeks to clarify those terms deemed to be obscure, both in their literal and technical meanings.

¹¹⁶ *Fihris Makḥūṭāt Khazānat al-Qarawīyyīn*, 1: 328.

Fifthly, he seeks to provide comprehensive biographies of the scholars and the *muḥaddithūn* who appear in the *Mudawwanah*, with regard to the provision of an accurate indexation of their names.

An example of 'Iyād's methodology is his definition of the term *ṣadāq* (bridal dower), in which he provides both the literal (linguistic) and technical meaning. The term, he says, has its linguistic origin in the nouns *ṣidq* (sincerity) and *ṣiḥḥah* (integrity).

The legal meaning of the term pertains to the establishment of a contract (*'aqd*) legitimising sexual relations between the man and the woman.¹¹⁷

Another example of this method is manifest in 'Iyād's treatment of *qarār* (stillness), in order to distinguish the difference between one *Mudawwanah* text and another vis-a-vis an interpretation of the term's meaning. In this context *qarār* is taken by 'Iyād to denote the lack of expression on the bride's face when she is asked if she wants to marry a certain man (before her). The lack of expression on her face denotes here acceptance, without an actual verbal confirmation.

On the other hand discomfort, the belief that she finds the man repugnant and does not really desire to marry him, may show on her face. This, in some legal

¹¹⁷ *Maṭbū'*, pp 3-4.

circles, amounts to a rejection of the man, although no verbal confirmation to that effect is supplied.

The Baghdādī *fuqahā'* say that this facial expression alone, be it benign or malign, is sufficient to indicate the true wish of the bride and that the ruling, as to whether the marriage (*nikāḥ*) be legitimised or not, should be based on this evidence. However, 'Abū Muḥammad 'Ibn Naṣr, related a narrative on the authority of Mālik himself, stating that acceptance or rejection of the partner must be confirmed verbally before the marriage is legitimised or not, as confirmed by the majority of the notaries (*muwaththiqīn*) who officiate at the wedding ceremony.

Chapter Two

The *Murābiṭūn* (Almoravids)

1. Introduction
2. Consolidation of the Almoravids
3. The Decline of the Almoravids / Achievements

Chapter Two

The *Murābiṭūn* (Almoravids)

2.1 Introduction

In this chapter I provide a politico-religious and economic and cultural background to the life of Qāḍī 'Iyād (d. 544 A.H) whose "*Tanbīhāt*" constitutes the subject of this thesis.

I shall cover the rise of the *Murābiṭūn* state under 'Abdullāh 'Ibn Yāsīn (d. 450 A.H.) and then its consolidation under the rule of Yūsuf 'Ibn Tāshafīn (d. 500 A.H.). Thereafter I shall comment in detail on the subsequent decline of the regime during the latter part of the rule of 'Alī 'Ibn Yūsuf (d. 537 A.H.) and that of 'Ibrāhīm 'Ibn Tāshafīn (d. 541 A.H.), when Qāḍī 'Iyād was most active as an apologist of the Mālikite Almoravid regime. It is during this period that he produced his most formative works that, by common consensus, constitute a significant contribution to the culture of the period.

The *Murābiṭūn* were of Berber origin. They ruled North Africa and Spain during the second half of the 5th/11th century and the first half of the 6th/12th century. The term "*murābiṭ*" is said to denote a "warrior" who inhabited a *ribāṭ*

i.e. a fortified building on the borders of (North African) Islam.¹

The dwellers of the (*rubāṭ*), according to 'Ibn Ḥawqal and al-Ya'qūbī, were said to be flourishing along the African coast². The function of the *ribāṭ* was once purely military, serving to defend the *Dār al-'Islām* (The region of Islam). But, by the beginning of the 11th century, these *ribāṭ* had become centres of Islamic propagation, particularly in response to *shī'ite du'āt*.

The founder of the *Murābiṭūn* was reputedly 'Abdullāh 'Ibn Yāsīn (d. 450 A.H.) In fact he was charged by Wajāj Ibn Zallū al-Lamtī (the real founder of the *Dār al-Murābiṭīn*) to defend the Muslims against the tyrannous amīr of Sijilmāsa, as 'Ibn Khaldūn confirms in the (*Muqaddimah*).³ Later, 'Abdullāh 'Ibn Yāsīn was despatched by Yaḥyā 'Ibn 'Ibrāhīm⁴ as a missionary to Ṣanhājah, a confederation of tribes (from whom the *Murābiṭūn* army was drawn) in order to teach them the true tenets of Islam, following 'Ibn 'Ibrāhīm's discovery that the practice of Islam in the Maghrib had become

¹ See, E. Doutté, *Les Marabouts*, extract from RHR, xl-xli (1904, 29ff).

² Al-Ya'qūbī, *Kitāb al-Buldān*, p. 350 (II, 13-15), Weit trans., p. 213. 'Ibn Ḥawqal, p73 (II, 1-9), trans., p. 69.

³ P. 237, (I-15) trans., II, 69-70.

⁴ See, al-Bakrī, p.134 (I. 23). P.165 (I. 5) / trans., p. 59.

deficient.⁵

Under ‘Abdullāh ‘Ibn Yāsīn a militant Mālikīte orthodoxy arose to counter such heterodox groups as the Barghawātah, whose doctrine contained Shī‘ite and Khārijite influences.⁶ It was against the heretical group the Barghawāt that ‘Ibn Yāsīn was to lose his life in battle.⁷

According to ‘Ibn Khaldūn, ‘Ibn Yāsīn led “an ascetic life”.⁸ Al-Bakrī, seeing it differently, claimed ‘Ibn Yāsīn was inclined, on the one hand, to be dissolute with women, and on the other to be extreme in the implementation of his policies, particularly with regard to the *ḥudūd*.⁹

Al-Bakrī ultimately described ‘Ibn Yāsīn’s teachings as rigid and excessive.¹⁰

⁵ ‘Ibn ‘Abī Zār, *al-‘Anīs al-Muṭrib Bi Rawḍ al-Qirtās Fī ‘Akhbār Mulūk al-Maghrib Wa Tārīkh Madīnat Fās*, ed. C. J. Tornberg. Vppsala, 1843-66, p. 76, (II, 1-3,) p. 89. See also, ‘Ibn Khaldūn, p. 238 (II, 1-4), trans., (II, pp. 68-9).

⁶ ‘Ibn Ḥawqal.

⁷ Al-Bakrī, p. 168.

⁸ *Muqaddimah*, p. 238 (I. 1).

⁹ Al-Bakrī, p. 169 (II. 7-9); p. 170 (II. 3-10) trans., pp. 63-4.

¹⁰ See, Al-Nuwayrī, *Nihāyat al-‘Irb*, Granada, 1919, xxii, p. 176.

Qāḍī 'Iyāḍ relates of 'Ibn Yāsīn (in *Tartīb al-Madārik*):

“He made them all perform the Friday prayers, and punished any backslider with ten lashes for every *rak'ah* missed”.¹¹

An indication of the extent of 'Ibn Yāsīn's strict application of the Shari'ah is evident in his words to the Ṣanhājah tribesmen, about to join the Murābitūn army: “you have committed many reprehensible acts, so that you will be subjected to punishment stipulated by the law, in order that you may be purified of your transgressions”.¹²

Thus, whilst 'Ibn Yāsīn attempted to rid the region of a debased, heretic Islam, he replaced it with a militant Mālikism, in what amounted to a synthesis of *fiqh* and *zuhd* (asceticism). By doing so he established the ideological basis of *jihād* that first required a spiritual conversion to precede the military one against the infidel, reforming (in the latter case) the traditional Berber military technique and replacing it with the type of *jihād* as revealed in the Qur'ān.¹³

¹¹ *Madārik*, ed. Békir, iv, p. 781. Beirut, 1965.

¹² Al-Bakrī, p. 169 (II. 12-14). trans., pp. 63-4.

¹³ Farias P. F. de Moares, *The Almoravids*, Bulletin De P.I.F.A.N. xxix, sér B, nos 3-4, p. 861.

In Sijilmāṣah, for example, he ordered the destruction of musical instruments and houses where wine had been sold.¹⁴ Also in Sijilmāṣah he abolished extra taxes which he considered heretical (*bid'ah*)¹⁵, namely the (*mukūs*) and (*maghārim*) taxes, which 'Ibn Khaldūn declared, caused the price of commodities to rise¹⁶. 'Ibn Yāsīn levied in their place the legally prescribed alms tax (*ṣadaqah*)¹⁷ which, along with the tithe and the booty tax (*ghanā'im*), constituted the monies for the treasury (*bayt al-māl*) which financed the army.¹⁸

¹⁴ *Rawḍ al-Qirtās*, p. 81 (II. 19-20) trans., p. 176.

¹⁵ *Ibid*, 79. 14.

¹⁶ *Muqaddimah*, p. 216-218, a.

¹⁷ *Rawḍ al-Qirtās*, p. 82 (12-13) trans., p. 178.

¹⁸ *Ibid*, p. 80. (II. 8-11); p. 81 (II. 17-19) trans., pp 173-76.

2.2 Consolidation of the Almoravids (*Murābiṭūn*)

On 'Ibn Yāsīn's death in 450 A.H. the Almoravid leadership split into two wings, one led by 'Abū Bakr 'Umar, the supreme leader in the Saharan South, and the other led by his deputy, Yūsuf 'Ibn Tāshafīn (d. 530 A.H.).¹⁹

The turning point for the Almoravids movement was Yūsuf's marriage to the wealthy, ambitious Zaynab. She presented him with a large fortune to finance an army. Yūsuf purchased with it some two thousand Sudan slaves and two hundred and forty Christian slaves from Spain. The Almoravid army, previously solely consisting of veiled Ṣanhājah, was now heterogenous in character. 'Abū Bakr, for his part, preferred to remain in the Sahara South where he felt most at home.²⁰ Yet until the 480's A.H. 'Abū Bakr's name appeared as *'amīr* on coins, for it appears he remained the supreme leader of the movement, with allegiance from the other wing led by Yūsuf.²¹

¹⁹ See, Muḥammad 'Anān, *'Aṣr al-Murābiṭīn Wa al-Muwaḥḥidīn*, 1:273, Cairo, 1st edn., 1964.

²⁰ Al-Nāṣirī, *Kitāb al-'Istiḳṣā'*, p.19. See also, *al-Ḥulal al-Mawshīyyah*, p.15 ed. I. S. Allouche. Rabat, 1936. (trans). A. H. Miranda in *Collección de crónicas Arabes de la reconquista, tomo I. Tetuan*, 1952.

²¹ H. W. Hazard, *The Numismatic History of the Late Medieval North Africa*, New York, 1952, pp 61-2.

Yūsuf, with his army accordingly reorganised, began the conquest of northern and eastern Morocco. The conquest of Fez took place in 462 A.H./1069 A.D. By the end of the 5th/11th century the Western Maghrib, from the Sahara to the Mediterranean, lay under the single political authority of the Almoravids, in both the military and religious sphere. The *Murābiṭūn* (Almoravid) army, the foundation of the state, now headed north to al-'Andalus. This was at the invitation of al-Mu'tamid, 'amīr of Seville, requesting the help of Yūsuf towards combatting Christian incursions in to *Mulūk al-Ṭawā'if* territory, particularly by the Castilian troops of Alphonso VI.

The *Mulūk al-Ṭawā'if* states were obliged to pay tribute to the gradually encroaching Christians who were aware of the Muslims' weaknesses. The reconquest of Toledo by the Christians in 1085 A.D. sent panic through the ranks of the Arabo-Andalusian aristocracy who were more deeply attached to poetry and belle letters than religion. For this reason alone Yūsuf viewed them as dissolute and immoral tyrants.

Despite his low opinion of the situation Yūsuf responded to al-Mu'tamid's call, the latter addressing Yūsuf in his letter as "*muḥyī da'wat al-khilāfah al-'imām*,

'*amīr al-mu'minīn*' restorer of the 'Abbāsīd *da'wah* in 'Andalus.²² One petty king, who may have been al-Mutawakkil, amīr of Badajoz, placed under great pressure from the demands of Christian tribute to stave off the seizure of his capital by the *Murābīṭūn* army, despatched an anonymous letter to Yūsuf virtually blackmailing him into²³ some kind of response:

“ They (the *mulūk al-tawā'if*) will soon have relinquished the rest of the Muslim lands to the *Rūm*. You are the one who will be held responsible, if this occurs, before God Almighty ”.²⁴

Yūsuf despatched his troops to Zallāḥqah, famously defeating the Christians there in 479/1086, with a hundred thousand cavalymen drawn from the Saharan tribes²⁵, infantry, archers and lancers, and a praetorian guard of some

²² M. Van Berchem, “Titres Califiens”, p. 273, n .1 to 271 (cont). I' Occident, á Propos de quelques in onnaies Mérinides et Zīyanides; J. A. 10e Série, 9, 1907, 245-335.

²³ 'Ibn al-Kardabūs, *Kitāb al-'Ikhtifā' Fī 'Akhbār al-Khulafā'*, ed. A. M. al-'Abbādī, in RIEEI, 13, 1965-66, p. 107.

²⁴ Ibid, p. 107.

²⁵ *Rawḍ Al-Qirtās*, p. 89.

two thousand men from Ghana²⁶. Yūsuf occupied Granada in 483 A.H.²⁷. He then conquered Cordoba and Seville in 1091 A.D., making the latter named as his capital. Badajoz followed in 1094 A.D. and Valencia in 1102 A.D. Thus, was the south of Spain incorporated into the Almoravid empire at the expense of the Mulūk al-Ṭawā'if.

But to remove the Arab princes from power required sanction from Baghdād and the approval of the Andalusian Mālikite *fuqahā'*. In addition Yūsuf's own honorific (*laqab*) – he chose '*amīr al-Muslimīn* and *Nāṣir al-Dīn* – had to be sanctioned and approved by the same authorities.

According to 'Ibn Khaldūn Yūsuf professed allegiance (*bay'ah*) to the 'Abbāsīd Caliph in Baghdād in 545 A.H.²⁸. The *fatwā* legitimising the removal of the Mulūk al-Ṭawā'if arrived from the pen of al-Ghazālī via the Spanish traditionist and *faqīh*, 'Abū Bakr 'Ibn al-'Arabī (468/1076-543-1148) who had

²⁶ *Al-Ḥulal Al-Muwashshayah*, pp 13, 20.

²⁷ See, 'Ibn al-Khaṭīb, *Kitāb 'A'māl al-'A'lām*, ed. E. Lévi-Provencal, Beirut, 1956, p. 236.

²⁸ See, *Kitāb Al-'Abrāj*, 6: p. 184.

studied under al-Ghazālī in Damascus²⁹. It appears that 'Ibn al-'Arabī approached al-Ghazālī, explaining to him the corruption widespread among the Mulūk al-Ṭawā'if which necessitated their sanction of Yūsuf as the Islamic leader in al-'Andalus. Yūsuf himself refused the honorific 'amīr al-Mu'minīn which he believed belonged to the 'Abbāsīd Caliph alone and, instead, chose the above mentioned title in 466 A.H.³⁰ Almoravid gold coins were consequently altered to contain Yūsuf's new title 'amīr al-Muslimīn after the victory at Zallāqah in 479/1086.³¹

Almost immediately Yūsuf set about abolishing the extra taxes imposed by the *mulūk* on the suffering Andalusian populace. At first he was able to abide by this *Sharī'ah* guided tax policy, namely, the levied alms tax (*zakāh*) and tithes (*'ushūr*) on Muslims³². But with the growing army and administration these (holy) taxes proved insufficient to finance the running of these two important

²⁹ For contents of the *fatwā*, see. MS Ref 1275 K in Rabat library under ref 28/129, under title, "*Majmū' 'Awwaluhū Kitāb al-'Ansāb*".

³⁰ See, *Rawḍ al-Qirṭās*, p. 88. See also, 'Ibn al-Khaṭīb, *al-'Iḥāṭah Fī 'Akhbār Gharnāṭah*, MS Escorial, Madrid, ref 1673 al-Ghazīrī, slate ref 393. Also, Muḥammad 'Anān, op cit, v1, p. 39. See, *Kitāb al-'Ibar*, v6, pp 187-188.

³¹ *Rawḍ al-Qirṭās*, pp 88, 92 / trans. pp 193, 201.

³² *Rawḍ al-Qirṭās*, p 88 / trans. pp 191-192.

departments. Thus, Yūsuf was obliged to impose tribute taxes (*'itāwāt*) on the Andalusian natives, with the Jews notably suffering³³.

Yūsuf referred all judgements to the *quḍāt*. The *de facto* religious authority, however, lay with the Mālikite *fuqahā'*. They received salaries, served in the *'amīr's* council and accompanied him on his trips to the provinces. The *fuqahā'* were empowered to review sentences handed down by the local judges. They guided the *'amīr* and ensured Mālikite law was implemented at local level. Their juridico-political role was the key to their contribution to the organization of public life³⁴. The *'amīr* relied on them for guidance and advice on religious matters affecting the state. Yūsuf also sought the opinions from such leading *'ulamā'* as al-Ghazālī, 'Abū Bakr 'Ibn al-'Arabī and al-Ṭartūshī.

According to the *ḥisbah* manual of 'Ibn 'Abdīn, Yūsuf made highly equitable arrangement for legal matters. The *qāḍī* of Seville, for example, had ten assistants, but of those only four were Berber, the rest being Andalusian. The Berber assistants dealt exclusively with the Almoravids and others who wore

³³ Muḥammad 'Anān, op cit, v1, p 420.

³⁴ *Rawḍ al-Qirtās*, p 88 / trans. pp 191-192.

the veil (*mulaththamūn*).³⁵

Yūsuf was described in *al-Ḥulal al-Muwashshayah* as just and pious and honest, not likely to compromise himself by associating with rabble³⁶. Al-Ḡhazālī and 'Abū Bakr 'Ibn al-'Arabī described him as a man of integrity and pious.³⁷

'Alī 'Ibn Yūsuf

On the eve of Yūsuf 'Ibn Tāshafīn's death (d. 500 A.H.) one notices a sea-change in the native Andalusians' attitude towards their Almoravid rulers. The political emphasis in Almoravid policy had, by 'Alī 'Ibn Yūsuf's time (reg. 500-537 A.H.), changed from one of conquest (*jihād* providing the key motive) to one of protecting Almoravid gains and interests, at a time when the native Andalusians (*muwalladūn*)³⁸ were beginning to tire of the Almoravid administration, not least due to the imposition of burdensome taxes.

³⁵ 'Ibn 'Abdūn, *Risālah Fī al-Qaḍā' Wa al-Ḥisbah*, (trans.) Lévi-Provencal, 19f "Un document sur la vie urbaine et les corps des métiers á Seville au début du XIIe siècle: JA, 224, edn. 1934, ", pp 177-299.

³⁶ Ibid. p. 59.

³⁷ Ibid. p. 105.

³⁸ See, EI², vI, p. 491.

Yūsuf's tax reforms had encouraged trade which brought prosperity to the cities of Andalusia. However, the conquest of Spain and the subsequent defensive war against the Christians – the (*raison d'etre*) of Almoravid policy in the region – yielded no booty (*ghanā'im*). It was therefore necessary to invoke non-Qur'ānic taxes, to fill the treasury's empty coffers. We have seen how Yūsuf 'Ibn Tāshafīn was forced to invoke tribute taxes (*'itāwāt*) towards the end of his reign in order to replenish the treasury's coffers. Now, his son, 'Alī 'Ibn Yūsuf, for the same reason imposed commercial taxes (*qabālāt*) on the Andalusian populace. Namely, on commercial transactions involving merchandise such as soap, scents, copper, yarn and bulk purchases³⁹. 'Alī 'Ibn Yūsuf even imposed a *qabālah* on locusts, a delicacy which the inhabitants of Murrākish particularly enjoyed, as well as on doughnuts⁴⁰.

Christians soldiers were used to collect the taxes⁴¹, particularly in the Maghrib where they acted as guards, securing the safety of tax escorts from the attacks

³⁹ Al-'Idrīsī, *Nuzhat al-Mushtāq*, African and Spanish extracts, ed. And trans. Dozy and De Goeje: Description de l' Afrique et de l' Espagne, (Leiden 1866), p. 70.

⁴⁰ Ibid, p. 69 penult.

⁴¹ *Al-Ḥulal al-Muwashshayah*, p. 61 (pub. In Tūnis).

of recalcitrant tribes.⁴²

When *Qādī* 'Iyād entered Cordoba in 507 A.H. in his quest for knowledge (*fī ṭalab al-'ilm*) he would have found an Almoravid state dominated by the Mālikite *fuqahā'*, and Mālikism itself crystalised into an inflexible doctrine opposed to any attempt at innovation (*bid'ah*), where the study of the Qur'ān, the *ḥadīth* and *'ijtihād* was suppressed in favour of study of the Mālikite manuals (*furū'*).

From henceforth the daily juridical process would revolve entirely around religious worship (*'ibādāt*) and general law (*mu'āmalāt*).

'Alī bin Yūsuf, who was entirely in thrall to the Mālikite *fuqahā'*, never implemented a policy until he had consulted them first⁴³. The poet of the era, 'Ibn al-Bannā, described their doctrinal influence as devious and grasping:

“*Fa malaktum al-dunyā bi madhhab Mālik*”⁴⁴ ‘For they have aggrandized (all the wealth of) the world through the (good) offices of the Mālikite school

⁴² 'Ibn 'Adhārī, ed. Lévi-Provencal, MS 50.8 copied by the Ḥulal, 68-69.

⁴³ *'Aṣr al-Murābitīn Wa al-Muwaḥhidīn*, op cit, vI, p. 411. Also, Mālikī, *Riyāḍ al-Nufūs*, ed., Ḥusayn Mu'nis, Cairo, 1951 (part 1 only), p. 275.

⁴⁴ *Al-Mu'jib*, p. 95.

of law’.

Scholastic theology (*‘ilm al-kalām*) was condemned as a system of thought. Thus debate was stifled knowledge and learning restricted to the *furū‘* alone.⁴⁵

The traditionist and *ṣūfī*, ‘Ibn al-‘Arīf, who was based in Almeria, the focal point of opposition to the Almoravid *fuqahā’*, was summoned to Murrākish by ‘Alī ‘Ibn Yūsuf to be examined by his *fuqahā’*, not least for his pantheistic ideas and, beliefs. He was apparently reprieved, but died soon after in somewhat suspicious circumstances, possibly by poison.⁴⁶

The most celebrated domestic incident of the *Murābiṭūn* rule, however, must surely be the banishment of al-Ghazālī and subsequent burning of the *‘Ihyā’ ‘Ulūm al-Dīn* (Revival of the Religious Sciences) in 503 A.H. in Cordoba, some four years before Qādī ‘Iyād’s arrival there. This was at the prompting of the *Qādī* of Cordoba, ‘Abū ‘Abdullāh Muḥammad ‘Ibn Ḥamdīn, the traditionist ‘Ibn Ḥamdīn under whom *Qādī ‘Iyād* studied *ḥadīth* in Granada.⁴⁷ The *‘Ihyā’* was thence forth declared by ‘Alī ‘Ibn Yūsuf to be forbidden reading. One was

⁴⁵ *‘Aṣr al-Murābitīn Wa al-Muwaḥhidīn*, op cit, vI, p. 412.

⁴⁶ EI², v3, p. 712.

⁴⁷ *Al-Mu‘jib*, pp 95-96.

classed as a *kāfir* if caught reading it and faced execution and confiscation of property.⁴⁸

Al-Ghazālī directed the *'Iḥyā'* against the *'ulamā'* of his day to whom, he believed, religious knowledge had become a means of worldly advancement, thereby echoing the above sentiments of 'Ibn al-Bannā. That al-Ghazālī should describe the Mālikite *fuqahā'* as buffoons (*mujjān*) did not exactly endear him to them.⁴⁹

In short, the Almoravids had, under the leadership of 'Alī 'Ibn Yūsuf, turned away from the asceticism of the early period, best represented in the conduct of 'Ibn Yāsin and Yūsuf 'Ibn Tāshafīn. The latter's diet consisted purely of barley, camel meat, and milk from which the Berber yogurt (*laban*) was produced. He wore clothes of wool only.⁵⁰

By rejecting both theology and mysticism (al-Ghazālī offered a synthesis of the two) the Almoravids exposed themselves intellectually to derision and

⁴⁸ Ibid, p. p6.

⁴⁹ *Al-Mu'nis Fī 'Akhbār 'Ifrīqiyyah Wa Tūnis*, p. 106. See also, Goldziher, Mohamed Ibn Toumert et la Théologie de l' Islam dans le Maghrib au XI eme Siècle, pp 35-36.

⁵⁰ *Rawḍ al-Qirtās*, op cit, 85.11.

vilification. S. Lane-Poole described the Almoravid rule as the reign of the puritans, without a Milton to soften its austerity. The Andalusian poets and men of the court were disgusted with the savage Berbers who could not understand their refinements. The Mālikite *fuqahā'*, rabidly "opposed to philosophy" tended to read their Qur'ān through the spectacles of a single commentator⁵¹. In short the Almoravids were branded by the Arabists and Orientalists of the 19th century as uncouth, legalistic, intolerant barbarians. This argument, to me, appears too one sided and simplistic.⁵²

As the student of Mālikite jurisprudence is well aware *'amal* (the customary practice of Madīnah) prevailed in the East over the best attested doctrine but was usually ignored by Islamic jurisprudence. In the relative isolation of the Maghrib, however, *'amal* did not so much constitute customary law as an alternative doctrine that continued to be upheld as long as the conditions made it necessary. In short, it was better to control the practice (through the *fuqahā'*) than to abandon it completely. This was merely real-politic, a policy which al-Ghazālī, who condemned the role of the *fuqahā'* in political life, denounced in *'Ihyā'*, stating that the Mālikism of the Almoravids no longer bore any

⁵¹ S. Lane-Poole, "The Moors in Spain", London, 1887, p. 181.

⁵² See, A. González Palencia, "Historia de la Espâna Musulmana", Madrid, 1945, pp 96-98. See also, Dozy, 'Reserches', edn., 1881, v1, p. 340.

relationship to the doctrine that had developed in Medina under Mālik.

The Potential conflict between *qāḍī* and the state had exercised the minds of theologians as early as the 9th century, particularly in the case of Saḥnūn (160/776-240/854) who established Mālikism as a formal sect in the Maghrib.

Initially he refused the position of *Qāḍī* of Qayrawān because it was perceived as potentially impious, the function of the *qāḍī* serving the needs of the ruler rather than that of Allāh. Thus the *qāḍī* and was suspected of being a man of easy conscience and doubtful integrity.

When Saḥnūn accepted the post under coercion⁵³ he later entered his daughter's house and said to her, 'Your father has been slaughtered without a knife'⁵⁴. When asked by a petitioner to promptly arrive at a decision to a particular case he was considering, Saḥnūn, refusing to hurry, replied, 'I am not giving any flesh and blood to Hell-fire for anything you may say'⁵⁵.

Some three hundred years later we find 'Iyāḍ, as *qāḍī* of Granada (531 A.H.)

⁵³ See, *Mishkāt al-Maṣābiḥ*, Delhi, 1932, p. 273.

⁵⁴ Ibid., p. 324.

⁵⁵ Mālikī, *Riyādh al-Nufūs*, ed., Ḥusayn Mu'nis, Cairo, 1951 (part 1 only), p. 256.

similarly intransigent, but as a militant Mālikite apologist for the Almoravid regime. Indeed, it appears 'Iyād was too militant and too rigorous in the application of the law for 'Alī 'Ibn Yūsuf. By this time he had carved out for himself a huge reputation as a *muhaddith* and *faqīh*, was considered very popular, pious and a man of integrity⁵⁶.

Nevertheless, he left his post of *qādī* (or was pushed), marking his way back to Ceuta where he was re-appointed *qādī* there in 539 A.H. during the short lived reign of 'Ibrāhīm 'Ibn Tāshafīn (539-541 A.H.)⁵⁷, when he was to play a political role of some importance in defending, albeit unsuccessfully, the Almoravid regime against the encroachment of the Muwaḥḥidūn (Almohads).

⁵⁶ See, MS under title "*Kitāb Fī al-Ta'rif Bi 'Iyād*" under ref no 553, Rabat Library, plate nos 7-14.

⁵⁷ He originally became *Qādī* of Ceuta in 515/1121-1122.

2.3 The Decline of the Almoravids / Their Achievements

The Al-Muwaḥḥidūn, fired by the ideology of their founder, 'Ibn Tūmart, whose objective was the restoration of orthodoxy based on the Qur'ān, the *ḥadīth* and '*ijmā'* al-'*ummah* (consensus of the Islamic community)⁵⁸, had made incursions into Spain as early as 539 A.H., under the leadership of 'Abd al-Mu'min (d. 559/1163)⁵⁹ who was to implement the Almohad doctrine of unicity (*tawḥīd*) in both the Maghrib and al-'Andalus regions. (The conquest of Spain was equally guided by the desire to control the trade route between the Atlas mountains and the Mediterranean). The most renowned victim of this policy was Qādī 'Iyāḍ himself. As a Mālikite *qādī* and leading apologist of the Almoravid regime he constituted the centre of resistance to the Almohad regime from his base in Ceuta. But, with the death of Yaḥyā 'Ibn Ghāniyah al-Massūfī, the Almoravid governor of Spain in 543/1148, the authority of the Almoravids finally fell. Qādī 'Iyāḍ set out to Salā to pledge allegiance to the new Almohad ruler, 'Abd al-Mu'min (after decades of vociferous defence of

⁵⁸ 'Ibn al-'Athīr, al-Kāmil, ed. Tornberg. x. pp 400-407. Also, *Wafayāt al-'A'yān*, Būlāq, 1299 A.H., v1, p 469; v2, pp 48-49. Also, al-Zarkashī, *Tārīkh al-Dawlatayn al-Muwaḥḥidūn Wa al-Ḥafaṣiyyah*, Tunis, 1289 A.H.

⁵⁹ *Wafayāt al-'A'yān*, op cit, v1, pp 390-391. Also, *Muqaddimah*, v6, 229.

the Almoravids) and ‘Abd al-Mu‘min is said to have received him cordially⁶⁰.

But no sooner had ‘Iyāḍ returned when the residents of Ceuta rebelled against the Almohad governor, Yūsuf ‘Ibn Makhlūf al-Taynamlilī who, as a result, was slain⁶¹. ‘Abd al-Mu‘min despatched a force to subdue and overthrow the rebels but ‘Iyāḍ intervened, renewing his pledge of allegiance to the Almohad ruler, thus saving the town from destruction⁶². Ultimately, however, he was to be held responsible for the town’s continual opposition⁶³. The walls of Ceuta were ordered to be destroyed by ‘Abd al-Mu‘min and ‘Iyāḍ himself was exiled in 543 A.H., first to Tādlā then to Murrākish, where he died exhausted and disillusioned in 544/1149⁶⁴. Pre-eminently a Mālikite traditionst and *faqīh*, for him there existed only one single truth: that which had been taught by the Mālikite school and his school.

⁶⁰ See, ‘Ibn al-Khaṭīb, “*al-‘Iḥāṭah*”, MS in the Escorial, Madrid, plate no 350. See also, *‘Aṣr al-Murābiṭūn*, op cit, v2, p. 273.

⁶¹ See, ‘A‘izzmā Yutḷab, “*‘Akhbār al-Mahdī ‘Ibn Tūmart*, Algiers, 1903 AD., p. 107”

⁶² Ibid, p. 108.

⁶³ See, MS “*Kitāb Fī al-Ta‘rīf Bi ‘Iyāḍ*”, op cit, slates 7-14.

⁶⁴ *Rawḍ al-Qirṭās*, op cit, p. 134.

Reasons for the decline of the Almoravids

The position of the Almoravids in Spain, the locus of Qāḍī 'Iyāḍ's juridical and intellectual activity, was considered that of an illiterate, military caste controlling, but apart from, the native but highly cultured Andalusian society.

Fired by the *jihād* of their founder 'Ibn Yāsīn, the Almoravids swept northwards and swept aside the effete and corrupt Mulūk al-Ṭawā'if, who were being also squeezed by the Christians in the North. Exactly a hundred years later the Almoravids themselves suffered a similar fate.

Namely, on the military side they could not sustain their struggle on two fronts, against the Christians in Andalusia – the decline in this respect set in with the loss of Saragossa in 1118 A.D. to Alphonso the First of Aragon – and the Maṣmūdah confederation of tribes in Southern Morocco. In addition they faced increasing internal dissension and chaos in the Andalusian territories under their control, as a result of the imposition of burdensome taxes to boost state expenditure (discussed above) and a general dissatisfaction among the Andalusian populace derived from the cultural alienation that characterised the relationship between rulers and ruled, not least in the religious sphere of life.

The Almoravids were desert dwellers who were driven by purely religious motives. It was only a matter of time before they would succumb to and be

corrupted by a life of luxury, when they began to consider their own personal interests above all else.

We hear of their delegation of administrative duties to the urbane, Andalusian secretaries under Yūsuf's reign. Yūsuf, for example, did not speak Arabic, only Berber. His secretary in the early years of his reign was one 'Abd al-Raḥmān 'Ibn 'Asbāt who was described as an outstanding rhetorician and poet⁶⁵. There is no doubt that intellectually and culturally the Almoravids were indebted to the infinitely more educated and sophisticated Andalusians. Not least to 'Abū Bakr 'Ibn al-'Arabī, one of Qāḍī 'Iyād's shayks, an outstanding *muḥaddith* and *faqīh*, who was despatched by Yūsuf as an emissary to the 'Abbāsīd Caliph al-Mustazhir in search of the Caliph's legitimisation of his title, discussed earlier on in this chapter⁶⁶.

In short the Almoravids became effete. Once Saharan bedouin who lived off (rapine and booty), then fashioned into a military machine by 'Ibn Yāsīn, when then settled in al-'Andalus they predictably succumbed to the life of luxury.

⁶⁵ *Wafayāt al-'A'yān*, op cit, v2, p. 482.

⁶⁶ *'Aṣr al-Murābiṭīn*, op cit, v1, p. 456.

Yūsuf 'Ibn Tāshafīn even employed slaves⁶⁷ in his army because his conferral of 'iqṭā' lands on his Berber soldiers, in recognition of their service, had rendered them militarily useless, 'so that most of them found themselves obliged to hire out their horses'⁶⁸. 'Alī 'Ibn Yūsuf was the first Almoravid ruler to employ Christian mercenaries in the army, not without good cause.

Then there was the corruption and the depravity (*fasād*) widespread among the Almoravid hierarchy, which alienated them from the Andalusians, led by 'Alī 'Ibn Yūsuf himself.

Al-Murrākishī, although a propagandist of the Almoravids, relates how 'Alī 'Ibn Yūsuf neglected his duties, and allowed women of ill-repute to run his administration.⁶⁹

Financial difficulties and the arrogant behaviour of the Berber soldiery, served only to produce more disaffection amongst the ordinary citizens of al-'Andalus. This descent into effeteness, corruption and depravity among the

⁶⁷ See, Cairo MS. 22031, of 'Ibn al-'Arabī's, *al-Qawāsim Wa al-'Awāsim*, folio 7b, reproduced by Badawī, op cit 546.

⁶⁸ Bay (Ḥaqī), 'Adhārī ed. Lévi-Provencal MS 50.7.

⁶⁹ *Al-Mu'jib Fī Talkhīṣ 'Akhbār al-Maghrib*, Cairo, 1332 AH., pp 98-99, 103.

Almoravid administration perhaps more than any other factor explains, or at least offers an insight into, the pious Qāḍī 'Iyāḍ's decision to relinquish his position of Qāḍī of Granada in 531 A.H. and return to Ceuta.

At the same time Mālikism failed as an ideology to unite the Almoravid subjects. Mālikism, as a juridico-social system, was sufficient to meet the needs of a rudimentary society only. Furthermore, the policy of commutation tolerance, the foundation of the Sunnite policy in the East under the Seljūks, contemporaries of the Almoravids, was totally lacking in Almoravid Spain.

In short, whilst the Almoravids were able to control the machinery of government, they were not able to control the intellectual trends directed against them. Ultimately, it was their inability to consolidate a political community on the foundations of city states, to combat local oppositionist forces, which secured their downfall.

The Almohads, on assuming power, crushed the strictly Mālikite regime of the Almoravids, making them suspect of anti-Mālikism. Yet the (later) *quḍāt* appointed during the Almohad era included such figures as 'Aḥmad 'Ibn

Maḍḍā'⁷⁰ and 'Aḥmad 'Ibn Yāzīd 'Ibn Baqiyy 'Ibn Maḥḥlad⁷¹. That these men were affirmed Mālikites suggests that the discrimination of Mālikites did not survive the reign of 'Abd al-Mu'min and the last days of 'Iyāḍ. In short, the Almohads, lacking vitality, appeared to have relied on the support of the Mālikite *fuqahā'*, that no revision of the judicial code was undertaken to accommodate the new Almohad doctrine, and that Mālikite law continued to regulate not only the lives of the Andalusians but those of the Berber stronghold in the Maghrib also.

The achievements of the Almoravids

Despite the negative picture of Almoravid rule painted largely by the European Arabists and orientalists of the 19th century (whose colonial attitudes towards the Arabs and Islam has been skilfully exposed by Edward Sa'īd in 'Orientalism'), the achievements of the Almoravids, given the religio-political conditions of the time, were of no small importance, especially in the area of Islamic scholarship.

This is the case not least in the political sense. Morocco, for example, hitherto split by petty tribal principalities, became unified under the Almoravids.

⁷⁰ *Dībāj al-Dībāj al-Mudḥahhab (Fī Ma'rifat 'A'yān Al-Madḥhab)*, Cairo, 1932.

⁷¹ Al-Nabāhī, *Tārīkh Qudāt al-'Andalus*, ed., Lévi-Provencal, Cairo, 1948, v1, 117.

Cultural progression during Almoravid rule in Spain was registered through the rapid assimilation of Andalusian civilisation. The Almoravid rulers employed engineers and architects. 'Alī 'Ibn Yūsuf employed a number of great Andalusian prose writers, notably 'Ibn 'Abdūn. Although, by way of qualification, what the historian notices about the annals of the Murābiṭūn era is a conspicuous lack of poetry celebrating the rule or lives of the Murābiṭūn rulers.⁷²

Among the architectural achievements of the Almoravids one must include the construction of the great mosque in Tilimsān, built in 530/1136, and modelled on the great mosque of Cordoba.

But it is in the area of jurisprudence that the Almoravids will be best remembered. It was under their rule that the dominance of Mālikism in *fiqh* spread and endured throughout the whole of West African Islam. And apropos of this Mālikite dominance, it is a hypothesis of some substantial weight that literacy in the Arabic script was introduced to West Africa during the era of the Murābiṭūn.⁷³

⁷² 'Aṣr al-Murābiṭūn, op cit, v1, p. 427.

⁷³ See, A. D. H. Bivar and M. Hiskett, 'The Arabic Literature of Nigeria to 1804: a provisional account. In BSOAS, 1962, pp 105-106.

In the above respect Qāḍī 'Iyāḍ is the foremost, leading historian and Islamic scholar of the period. It was principally through his works that the high standards of Islamic scholarship in al-'Andalus were maintained, following the examples set earlier by the Zāhirite 'Ibn Ḥazm (994-1064), a Mālikite by training, and then the great Andalusian *muḥaddith*, 'Ibn 'Abd al-Barr (978-1071).⁷⁴

Of the surviving works Qāḍī 'Iyāḍ composed we must include his (*ṭabaqah*) work, "*Tartīb al-Madārik Wa Taqrīb al-Masālik*", one of the principal sources for the knowledge of Mālikism and its disciples. It provides biographies of eminent Eastern and Western Mālikites, and contains a lengthy study of the life of Mālik, his work, the essence of his doctrine, the course of its expansion and coverage of the expansion itself.

His work, entitled "*Tanbīhāt*" (awakenings) is singled out by the commentators for the depth and breadth of learning, not least by the Andalusian historian, Shihāb al-Dīn al-Maqqarī, in his work, '*Azhār al-Riyāḍ Fī 'Akhbār al-Qāḍī 'Iyāḍ*'.⁷⁵

The work which, above all, raised Qāḍī 'Iyāḍ above the level of the average

⁷⁴ See, GAL, i, 453f; GAL, i, 628f.

⁷⁵ See, *Wafayāt al-'A'yān*, op cit, v1, p. 469.

scholar and secured his reputation as probably the greatest *muḥaddith* of his day, the *al-Shifā Bi Ta'rīf Ḥuqūq al-Muṣṭafā*⁷⁶, enjoyed a huge success. This work, in praise of the Prophet (P.B.U.H.), which marks a significant step forward in the development of the theological doctrine of the person of Muḥammad, shows that Mālikite scholars of the stature of Qādī 'Iyād included in their scope-much more than the practical details associated with Mālikite manuals (*furū*). The *Shifā*, indeed, was studied as a text well into the 19th century by students of theology in the schools throughout al-'Andalus.⁷⁷

⁷⁶ See, GAL, i, 455f; i, 630-632.

⁷⁷ Al-'Attār, *Al-'Inshā*, Cairo, Maḥmūd Tawfīq, 1936, pp 62-66.

Chapter Three

Study of the *Tanbīhāt*

- 3.1 Definition of The *Mudawwanah*
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Chapter Three

Study of the *Tanbīhāt*

3.1 Definition of The *Mudawwanah*

"*Mudawwanah*" a record, a note, a body of laws. It is the past participle deriving from the verb (2nd form) "*dawwana*", to record, to put down in writing. Namely, a record of a *dīwān* (body of laws)¹ or a series of works is termed a "*Mudawwanah*".²

The technical meaning of "*Mudawwanah*", with regard to Mālikite *fiqh*, derives from the collection of Mālikite *fiqh* and its subsequent recording (*tadwīn*). It contains corrections and responses given by the *qayrawānī fiqh* scholar, Saḥnūn (d 240/854) and by 'Ibn al-Qāsim al-'Utaqī (d191/807), a disciple of Mālik.

Properly speaking the *Mudawwanah al-Kubrā* contains replies by 'Ibn al-Qāsim according to the school of Mālik, or according to the opinion (*ra'y*) of 'Ibn Wahb (D. 197/813).

¹ *'Asās al-Balāghah*, 139.

² *Al-Miṣbāḥ al-Munīr*, 1: 204. See also, *Nūr al-Baṣar*, for 'Abū 'Abbās al-Hilālī, 197.

The *Mudawwanah al-Kubrā* of Saḥnūn is also called the "*Mukhtaṭiḥ*", since it completed and improved upon the "*'Asadiyyah*" of 'Ibn al-Furāt (D. 213/823), a work based on the teaching of Mālik and the Ḥanafites of Iraq. Both 'Ibn al-Furāt and 'Ibn al-Qāsim were disciples of Mālik.

It was said that the 'Imām Muḥammad 'Ibn al-Ḥasan al-Shaybānī, disciple of 'Abū Ḥanīfah, and 'Ibn al-Furāt, conducted a debate in which they disputed on the central juridical issues of the day put to them by the Iraqi fuqahā', focusing their debate (by way of analogy) on Mālik's interpretation of the said issues. This discussion was continued between 'Asad 'Ibn al-Furāt and another leading disciple of Mālik, 'Ibn al-Qāsim, who was eventually to help establish and disseminate Mālikite doctrine in North Africa.

From this vantage point 'Ibn al-Furāt composed his '*Asadiyyah*. On his return to *al-Qayrawān*, 'Ibn al-Furāt met Saḥnūn who accordingly acquired a copy of this '*Asadiyyah*.

With the said copy in his luggage Saḥnūn travelled to Iraq and presented on his way, via Egypt, the copy to 'Ibn al-Qāsim to edit, the latter confirming (as Mālik's disciple) the nature of the transmissions from Mālik (i.e. the nature of the '*isnād*).

The work, however, was not well received by the Iraqi *fuqahā'*. Thus, when Saḥnūn returned to *Qayrawān* he revised it, arranged the juridical issues (to be discussed) in a disciplined order, divided it into chapters, added the conflicting views of prominent disciples of Mālik hitherto omitted from the argument, and reinforced the text with *ḥadīth*. Thus, Saḥnūn, as mentioned above, using the *'Asadiyyah* of 'Ibn al Furāt as a basis, managed to present in the *Mudawwanah* and the *Mukhtalīḥ*³ a bona fide collection of Mālikite *fiqh*, the practical interest of which rests with the pertinent connections it makes between religion and trade, describing, as it does, the mercantile practices that ensue therefrom.

³ *Muqaddimāt* 'Ibn Ruṣhd, 1:27-28. See also, *Tartīb al-Madārik*, 3:292-299.

3.2 Designation of the *Mudawwanah*

As mentioned above the *Mudawwanah* was considered the bible of Mālikite *fiqh* on which the *Tanbihāt* is so strongly based. For this reason I provide here a brief sketch of its development, describing the extent of its influence, in turn, on the development of the Mālikite school of law in North Africa and al-'Andalus.

a. First Stage:

The composition of the *Mudawwanah* passed through several stages of development. The first stage is attributable to 'Asad 'Ibn al-Furāt, a perspicacious and sagacious scholar. He initially studied *fiqh* with Mālik in Medina; or, rather, absorbed from him the Mālikite point of view with regard to the dispensation of juridical cases. Then he journeyed to Iraq where he studied under the Ḥanafite *faqīh*, Muḥammad 'Ibn al-Ḥasan whose juridical emphasis was on (Ḥanafite) hypothesis of cases (*qaḍāyā*), a methodology which had a due influence on 'Asad. Then the learned 'Asad returned to Medina in order to present before Mālik his version of juridical interpretation, heavily modified by the Iraqi experience, but to his dismay, on arrival in Medina, he discovered Mālik had passed away.

b. Second Stage:

His next step was to journey to Egypt (Cairo) where he presented his work

before some of Mālik's most notable pupils and adherents, 'Ibn al-Qāsim, 'Ibn Wahb, 'Aṣḥhab and 'Ibn 'Abd al-Ḥakam in particular. There followed a vigorous debate between 'Asad and the pupils of Mālik as to the correct interpretation of the Mālikite view of a particular issue (*mas'alah*). Then 'Asad made his way to *Qayrawān* and presented his work before Saḥnūn, a jurist who was thoroughly familiar with the subtle issues that inform Mālikite *fiqh*. Saḥnūn immediately recognised the Ḥanafite influence in 'Asad's presentation, with its notable absence of evidence (*'adillah*) upon which the Mālikite school rely to legitimise their derivation of new legal judgements (*'aḥkām*) or confirm existing ones.

Although Saḥnūn was courteous to 'Asad he refused 'Asad's request to evaluate and edit the *Mudawwanah* because it appeared under 'Asad's authorship. 'Asad returned to 'Ibn al-Qāsim and discussed the work with him, the latter suggesting that the work be modified to suit Mālikite taste, but 'Asad refused.

'Asad, faced with rejection, compromised and allowed Saḥnūn to modify his work accordingly, in which was retained the emphasis on the issues hitherto covered but this time supported by evidence (*adillah*), and enhanced with the insertion of opinion on the said issues voiced by the pupils of Mālik.

Thus was completed the *Mudawwanah* (of Saḥnūn), upon which the *Tanbīhāt* is, in part, a commentary.⁴

⁴ *Tartīb al-Madārik*, 3: 367; *Al-Dibāj*, 161; *Tārīkh al-Madḥhab al-Mālikī*, 166.

3.3 Works on the *Mudawwanah* prior to the *Tanbīhāt*

Mālikite scholars paid close attention to the *Mudawwanah* of Saḥnūn, commenting on it, abridging it and deriving sources from its pages. In particular the *Mudawwanah* gave rise to the science of *furūq*, that is, the differentiation between similar *fiqh* issues and '*ashbāh* separation / distinction between issues of a similar nature.

In this respect the *Mudawwanah* proved to be the bible of Mālikite *fiqh* to which all aspiring Mālikites referred and which they desired to own⁵. 'Ibn Ruṣḥd described the *Mudawwanah* as *the* text book for Mālikite *fiqh*, much in the same way as Sībawayh's work constituted *the* text book for Arab grammarians.

One of the most prominent works on the *Mudawwanah* was the '*Asmi'ah* of Muḥammad 'Ibn 'Aḥmad al-'Utbī (d. 255 A.H.), who supplied lost narratives related on the authority of Mālik, that were recitations at which the narrator was present. Hence the title. Its interest lay in its coverage of narrations previously repudiated by the *fuqahā'*, and its treatment of issues (*masā'il*) hitherto considered irregular (*shādhah*).⁶

⁵ *Mawāhib al-Jalīl*, 34.

⁶ '*Iṣṭilāḥ al-Madhhab 'Ind al-Mālikiyyah*, 1: 81.

Another notable work was that of 'Ibn 'Abī Zayd al-Qayrawānī (d. 386 A.H.), under the self explanatory title, of *Al-Nawādir Wa al-Ziyādāt*, which sought to fill in a lacuna in the *Mudawwanah*, by drawing from other sources, namely, the *Mawwāziyyah* and the *Wāḍiḥah*⁷. It was praised by Muḥammad 'Ibn al-Fuḍayl 'Ibn 'Āshūr.⁸

In a list of the most prominent abridgements of the *Mudawwanah* one must include that of 'Ibn 'Abī Zayd al-Qayrawānī (d. 386 A.H.), simply entitled, *Mukhtaṣar al-Mudawwanah* in which he added (despite the abridgement) a number of issues new to the *Mudawwanah*.⁹

This was followed by the abridgement of Khalaf 'Ibn 'Abī al-Qāsim Sa'īd al-Barādhī'ī (d. 438 A.H.), entitled. *Al-Tahdhīb*. The work engaged the attention of Mālikite scholars so much with its erudite scholarship and skilled editing that some called it "The *Mudawwanah*".¹⁰

Other abridgements include the *Ta'rif* of Khalaf Mawlā Yūsuf 'Ibn Bahlūl al-

⁷ See the *Muqaddimah* of 'Ibn Khaldūn, 254.

⁸ 'A 'lām al-Fikr al-'Islāmī, 450.

⁹ *Al-Fihrist* of 'Ibn al-Nadīm, 201.

¹⁰ See, *Nūr al-Baṣar* of al-Hilālī, 192; *Al-Dibāj*, 250.

Balansī, (d. 444 A.H.)¹¹. That of ‘Abdullāh ‘Ibn Muḥammad al-Faradī (d. 460 A.H.) and that of the ‘Imām Sulaymān ‘Ibn Khalaf al-Bājī (d. 474 A.H.), in a work entitled, *Al-Muḥadḥḍhab*.

Notable commentaries on the *Mudawwanah* included that of ‘Imām Muḥammad ‘Ibn Yaḥyā ‘Ibn Lubābah (d. 336 A.H.), entitled *Al-Muntakhabah*, the like of which, according to ‘Ibn Farḥūn, Mālikite scholarship had not witnessed before¹². And also that of Khalaf Mawlā (client of) Yūsuf ‘Ibn Bahlūl al-Balansī (the Valencian).¹³

Annotations of the *Mudawwanah* include that of ‘Umar ‘Ibn Muḥammad al-Tamīmī, better known as ‘Aṭṭār, the Tunisian¹⁴, that of ‘Uṭhmān ‘Ibn Mālik, a notable *faqīh* of Fez and later the head of the Mālikite *fuqahā’* in the Maghrib (d. 444 A.H.), and that of ‘Abd al-Raḥmān ‘Ibn Muḥriz al-Qayrawānī (d. 450 A.H.), entitled *Al-Tabṣīrah*.¹⁵

¹¹ See, *Tartīb al-Madārik*, 8: 164.

¹² *Al-Dibāj*, 251.

¹³ *Tartīb al-Madārik*, 8: 164.

¹⁴ *Tartīb al-Madārik*, 8: 78.

¹⁵ *Tartīb al-Madārik*, 8: 68.

Last, but not least among these annotations, we must include that of 'Imām 'Abd al-Ḥamīd 'Ibn al-Ṣā'igh (d. 486 A.H.), perhaps the most comprehensive of all the annotations noted above¹⁶. In addition to the commentaries, abridgements and annotations there were those works which sought to link the issues of Mālikite *fiqh* to those treated by the other three great schools of law. In this respect we think of such works as the *'Utbiyyah*, the *Mawwāziyyah* and the *Wāḍiḥah*. Typical of this genre was the *Jāmi'* of 'Imām 'Abū Bakr Muḥammad 'Ibn 'Abdullāh 'Ibn Yūnus al-Ṣiqillī (the Sicilian), which came to be known as the *Muṣḥaf*, (the Qur'ān) of the Mālikite school of law.¹⁷

Then there existed those derivative opinions developed by comparing similar cases with a view to differentiating between them and, conversely, considering issues which, although on the surface appeared irreconcilable with regard to the nature of their legal import, on further scrutiny revealed remarkable similarities. This genre was designated the *Al-Jam' Wa al-Farq Bayna al-Nazā'ir Wa al-'Ashbāh*, its most adept practitioner being 'Abd al-Ḥaqq al-Ṣiqillī (d. 466 A.H.), in a work entitled *Al-Nukat Wa al-Furūq Li Masā'il al-Mudawwanah Wa al-Mukhtalīḥah*.

¹⁶ *Ma'ālim al-'Imān*, 3: 201.

¹⁷ *Al-Madḥhab al-Māliki*, 204.

Al-Ṣiqillī apparently composed this work in response to a need for a handbook for the students of *fiqh* (*mubtadi*), which would clarify for them the confusions that tended to arise in the deduction of new legal rulings from (two) issues which appeared irreconcilable, or where they appeared similar but were actually not, or where it was difficult to ascertain the nature of the deduction itself.¹⁸

¹⁸ *Al-Majmūʿ, Lām*, 184.

3.4 The Chain of Authenticity for 'Iyād in The *Mudawwanah*

3.4.1 Narrations from The *Mudawwanah*

The narrations related on the authority of the Mālikite *shaykhs* in the *Mudawwanah* are dealt with by 'Iyād in the *Tanbīhāt* in conjunction with those sources separate from the *Mudawwanah* which either provide a direct comment on Saḥnūn's text itself or provide a parallel comment on the *fiqh* issues concerned. One such work is the *kitāb* of Walīd 'Ibn 'Attāb *al-'atīq*, a pupil of 'Abū Muḥammad. Another is the *kitāb* of 'Ibn Murābiṭ and the *kitāb* of 'Ibn Sahl, in addition to the accounts (*riwāyāt*) of the Qayrawānīs and their commentaries.

One thinks here of the narratives of Wahb 'Ibn Masarraḥ 'Abū 'Imrān al-Fāsī, as related on the authority of al-Qābisī. In particular 'Iyād participates in vigorous debate with 'Abū 'Ishāq al-Qāḍī 'Ibrāhim 'Ibn 'Aḥmad al-Baṣrī and Qāḍī 'Abū 'Abdullāh 'Ibn Muḥammad 'Ibn 'Ibrāhim 'Ibn Qāsim 'Ibn Manṣūr al-Lakḥmī, both of whom studied *fiqh* under al-'Aṣbagḥ 'Ibn Sahl.

A printed copy of the *Mudawwanah* appeared for the first time in Cairo in (1364 A.H.), written in Maghribī script on the (treated) hide of a gazelle. In its margins is an ascription¹⁹ to 'Ibn Ruṣḥd and 'Iyād, in the following formula,

¹⁹ *Al-Ghunya*, 191, 216.

"'Abd al-'Azīz 'Ibn 'Āmir who sat at the feet of 'Abū Marwān Mūsā while he recited his narration, relating on the authority of 'Abū al-Ḥasan al-Qābisī, relating on the authority of 'Abū al-Ḥasan 'Alī 'Ibn Masrūr al-Dabbāgh, on the authority of 'Aḥmad, on the authority of Saḥnūn etc".

'Iyād in particular relied (in his composition of the *Tanbīhāt*) on the abridgements of the *Mudawwanah*, as indicated by his often repeated refrain, "*wā 'alā hādihā 'ikhtaṣarahā al-mukhtaṣirūn*" (and so this text was abridged). In particular he was indebted to two abridgements, the *'Ikhtīṣār* of 'Ibn 'Abī Zayd and that of 'Ibn 'Abī Zamanīn, the latter being especially crucial with regard to the authentication (*taṣḥīḥ*) of the narratives' chain of authorities (*'isnād*), and the correct indexing of Mālikite scholars.

Thus equipped, 'Iyād, with his profound knowledge of Medinan *ḥadīth* (*'āthār*), skilfully edited the *Mudawwanah*, removing ambiguities by thorough checks on morphology, syntax and diacritical pointing (*tanqīḥ*). These deficiencies may have arisen from the likes of 'Ibn Waḍḍāḥ who was said to have lacked a basic grounding in Arabic grammar, and 'Ibn Bāz, said to have a weak grounding in the science and practice of *fiqh*.

3.4.2 Transmission of the Narratives in The *Mudawwanah*

‘Iyāḍ studied the *Mudawwanah* under his teachers (*shuyūkh*), the most important of whom could claim their narratives went right back (in the chain of authorities) to Saḥnūn ‘Ibn Sa‘īd. ‘Iyāḍ adopted two paths/*sanad* in the transmission of these narratives, one from ‘Abd al-Raḥmān ‘Ibn ‘Attāb, and the other from Muḥammad ‘Ibn ‘Īsā al-Tamīmī, both prominent mālikī *shaykhs*, as mentioned in his introduction to the *Tanbīhāt*.

In the following is a description about ‘Iyāḍ’s paths in his narrations for the *Mudawwanah*. These paths had originally been illustrated by Muḥammad al-Mukhtār in his book *Al-Madkhal*²⁰. But on comparison with the introduction of ‘Iyāḍ in his *Tanbīhāt*, where he describe his paths of narrations, I found one narration to be missing.

I assumed the missing path (*sanad*), so as to complete the table.

I used the numerical system in the table, to represent the name of the persons. In the table you may notice each person linked with his own number which is used to describe the paths of narration.

²⁰ The whole title is: *Al-Madkhal Li Dirāsāt ‘Uṣūl al-Fiqh ‘Alā al-Madhhab al-Mālikī*.

- (See [table one] on the next page)

[1] The path according to 'Ibn 'Attāb

[a] (22)-(19)-(15)-(12)-(7)-(2,3,4)-(1).

[b] (22)-(19)-(16)-(13)-(7)-(2,3,4)-(1).

[c] (22)-(19)-(16)-(8)-(4)-(1).

[2] The path according to 'Īsā al-Tamīmī

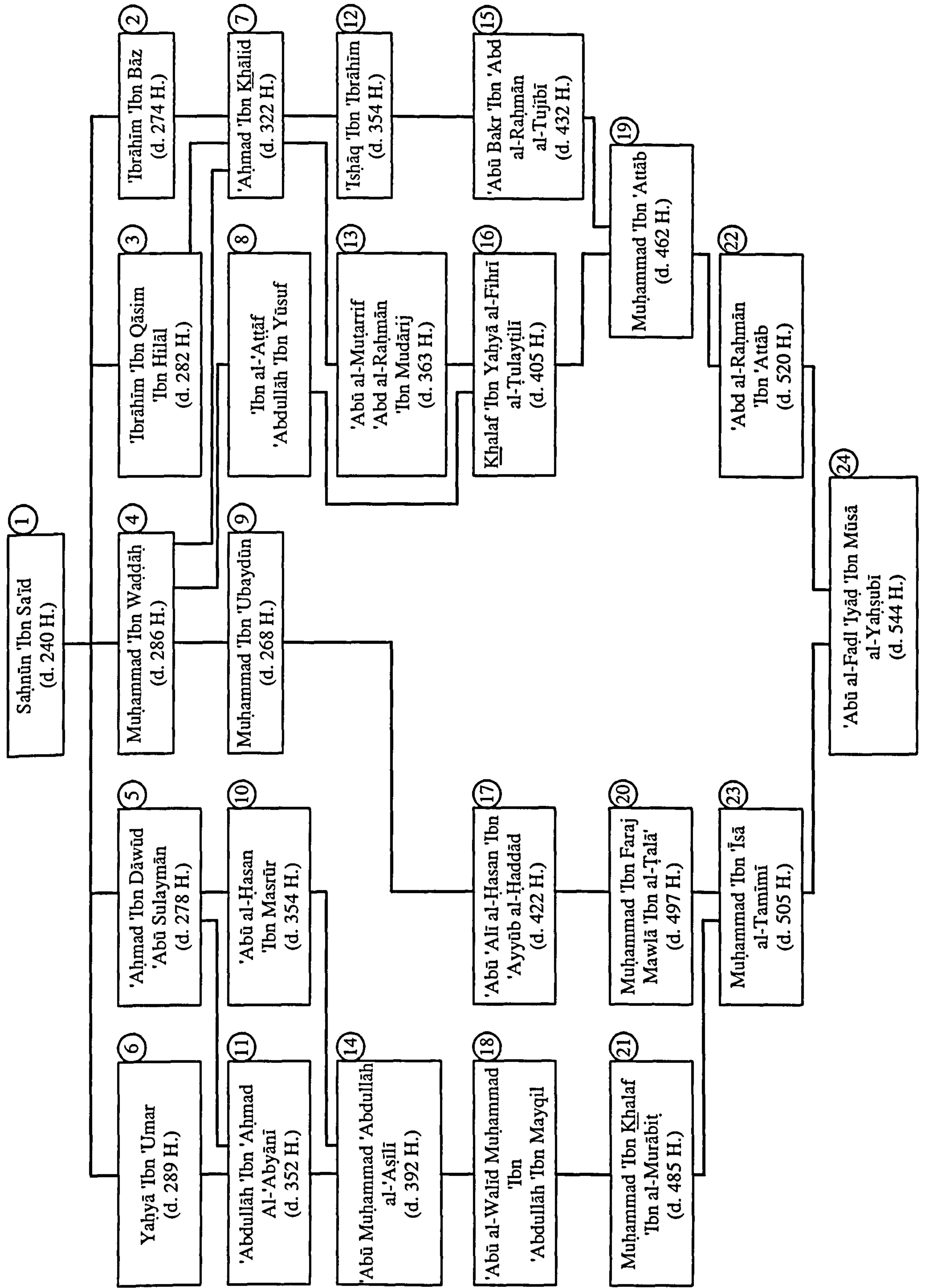
[a] (23)-(20)-(17)-(9)-(4)-(1).

[b] (23)-(21)-(18)-(14)-(10)-(5)-(1).

[c] (23)-(21)-(18)-(14)-(11)-(5,6)-(1).

On the above 'Iyād says, "I heard many recitals of the works on the *Mudawwanah* in Qurtubah, related on the authority of *shaykh* Faqīh 'Abū Muḥammad 'Abd al-Raḥmān 'Ibn Muḥammad 'Ibn 'Attāb (d. 507 A.H.). And I compared my book '*Tanbīhāt*' to the *Mudawwanah*, as related on the authority of 'Abū Bakr 'Ibn 'Abd al-Raḥmān 'Ibn ... al-Tujībī, on the authority of 'Abū 'Ibrāhīm 'Ibn 'Ishāq 'Ibn 'Ibrāhīm, on the authority of 'Aḥmad 'Ibn Khālid, on the authority of Muḥammad 'Ibn Waḍḍāḥ"

Table. (1)



3.5 The Importance of the *Mudawwanah* and its Commentaries

We referred to the importance of the *Mudawwanah* in the first section of this study, in terms of its linguistic and technical definitions, and as compiled, revised and edited by Saḥnūn from the account to 'Ibn al-Qāsim (as related on the authority of Mālik).

Underpinned as it was by the addition of the opinions of the pupils of Mālik and evidence (*'adillah*) derived from the *ḥadīth* of the Prophet (P.B.U.H.) and the *'āthār* (traditions) of Medina, the *Maghribī* Mālikite *fuqahā'* considered the *Mudawwanah* to be indispensable as a juridical guide in their everyday life. They did, however, rely as much on its abridgements (*mukhtaṣarāt*) its commentaries (*shurūḥ*) and its annotations (*tanābīh*) as on the text itself, testifying to the overall importance of the *Mudawwanah* in the field of Mālikite law. As Qāḍī 'Iyāḍ himself expressed, "The *Mudawwanah*, as the principal source of Mālikite law, remains unchallenged. It has been constantly commented on and abridged and (to this day) remains the fulcrum of Mālikite *fiqh*'²¹.

Qāḍī 'Ibn 'Abd al-Rafī' al-Tūnisī said: "The *Mudawwanah* is the most exalted of all the works on (Mālikite) *fiqh*, as it is derived from the dictation of 'Ibn al-

²¹ *Tartīb al-Madārik*, 3: 299.

Qāsim, the most learned, accomplished and splendid of all Mālik's pupils".²²

Another Islamic scholar described the *Mudawwanah* as the prime source of Mālikite *fiqh* and the foundation stone of the Mālikite school of law. Such was the prominence of the *Mudawwanah* among the Mālikite *fuqahā'* that 'Ibn Yūnus was constrained to remark that the *Mudawwanah* constitutes the most authoritative source of Mālik.²³

For further commentaries: See Appendix [3].

²² *Nayl al-'Ibtihāj Bi Taṭrīz al-Dibāj*, 43.

²³ *Mawāhib al-Jalīl*, 1: 34.

3.6 The Importance of Fine Points (*Nukat*) in the Field of *Fiqh*

The literary genre *nukat* (epigrams) has served as an effective vehicle for identifying and clarifying issues in this case of the *fiqh* nature. On the efficacy of this genre the renowned *faqīh* 'Abū Ḥayyān remarks:

"With *nukat* we can unlock obscure meanings or interpretations, so that we might view a ruling (*ḥukm*) from a new angle, as indeed I strive to do in my work, entitled "*Al-Nukat al-Ḥisān Fī Sharḥ Ghāyāt al-'Iḥsān*".

For titles on the *Nukat*, see Appendix [4].

3.7 The Importance of *Furūq* (Distinctions) in the Field of *Fiqh*

In Islamic science (especially in the field of *fiqh*) and other areas of Islamic scholarship, i.e. the natural sciences, cases may arise which might be similar with regard to facts, yet different as to their legal implications.

The science of "differentiation", or "of discovering discrepancies in cases", is considered an important adjunct to the Qur'ānic Sciences. On this point 'Abū Hilāl al-'Askarī remarks in his introduction to his work on linguistic differentiation:

"I have noticed the difference in meaning between two words (seemingly) synonymous in meaning and would ask the student of *fiqh* or *kalām* (scholastic theology) to consult my work in order to assist them in this respect, the work

being neither too short nor too long but sufficient for their purposes”.²⁴

On the importance of *‘ilm al-furūq* (the science of differentiation) to an understanding of the obscure issues in *kalām* and *fiqh* ‘Abū ‘Abdullāh al-Māzarī remarks:

“If the *muftī* wishes to be competent in his field then he must master (this science) in order to interpret (i.e. clarify) obscure works, and to distinguish between that which is obvious (i.e. literal texts) and that which might be given a metaphorical interpretation (*majāzī*), and to distinguish between the interpretations (of *fiqh* issues) which may vary according to the particular *madhhab* (school of law). Namely, to compare issues, which in the past seemingly have shared no similar characteristics but which, (given the passing of the time, the change in circumstances) might now, on comparison, have something in common or, conversely, where issues which seemingly agreed with each other, might now show differentiation”.²⁵

On this matter the renowned *faqīh* Badr al-Dīn al-Zarkashī remarks:

“*‘Ilm al-jam‘* (the collection and identification of issues sharing common characteristics) and *‘ilm al-furūq* (differentiation) are essential tools for

²⁴ *Ḥusām al-Dīn al-Qudsī*, pub., by *Dār al-Kutub al-‘Ilmiyyah*, Beirut, 1981.

²⁵ *Mawāhib al-Jalīl*, 6: 97.

comprehending *fiqh*"²⁶

The renowned *faqīh* al-Ṭūfī al-Ḥanbalī adds:

“The ability to differentiate (between issues which seemingly appear to share common characteristics) constitutes one of the pillars of *fiqh*.”²⁷

²⁶ Publ. in *al-Qawā'id*, 1:69. Fā'iq 'Aḥmad Maḥmūd, pub. *Wazārat al-'Awqāf al-Kuwaytiyyah*, 1983.

²⁷ *'Ilm al-Jadal Fī 'Ilm al-Jadal*, p. 71.

3.8 The *Furūq* in *Fiqh*

We might differentiate between two *fiqh* issues which appear to be similar in facts, yet different as to their legal implications, via two methods.

Method one: By consulting texts of a literal (*zāhir*) and unequivocal nature (*qaṭ'ī*)²⁸ from both the Qur'ān and the *Sunnah* (of the Prophet P.B.U.H.), indicating thereby a discrepancy in meaning between two similar issues.

In the case of the Qur'ān we have the following from *Sūrat al-Baqarah*: “ That is because they say: Trade is like usury, whereas Allah permits trading but forbids usury ”²⁹ This distinction between trade and usury, a vague one, is made clearer by the Prophet (P.B.U.H.) in a *ḥadīth* narrated on the authority of 'Abū Sa'īd al-Khudrī who related that “We shall sell two (units of goods) for one”. The Prophet replied: “To sell two (units of goods) for one is not permitted” (for it is usury).³⁰

Then we have the *ḥadīth* narrated on the authority of 'Alī 'Ibn 'Abī Ṭālib, the fourth (Rightly Guided) Caliph, in which he deals with issues of purity.

²⁸ *Furūq* 'Abū Muḥammad al-Juwaynī. MS microfilm under ref. no. 35 in the *Markaz 'Ihyā' al-Turāth al-'Islāmī*, University of 'Umm al-Qurā, Paper 2B.

²⁹ Qur'ān, 2: 275.

³⁰ Al-Bukhārī, *Kitāb al-Buyū'*, ch. 20, *Bay' al-Khalīf Min al-Tamr*, 3: 10.

Namely, the urine of a baby boy suckling his mother, when discharged through leakage or whatever method, does not result in the baby having to be washed, whereas with a baby girl (*jāriyah*) the opposite case applies.³¹

Method Two: In the case of a (derived) meaning, where one differentiates between two similar issues to explain a discrepancy, say, in the matter of a ruling (*ḥukm*) or an *'illah* (*qiyās*), especially in the field of applied *fiqh* (*furūʿ*).

For example, note the observation (supported by bona fide evidence) “that no sin in continuation (*'istidāmah*) is forgivable, i.e. when the sinner is ignorant of his sin, but the act itself which gives rise to the sin, e.g. illegal marriage, is not necessarily forgivable from the beginning. Namely, in the case of marriage, if it is illegal (*ḥarām*) then the marriage and contracts associated with the marriage up to discovery of its illegality, become null and void.³²

The *faqīh*, for example needs to identify and differentiate between causative agents (*'ilal*) using analogy (*qiyās*), so that one might arrive at a bona fide ruling (*ḥukm*), discarding those *'ilal* unsuitable under the said conditions; considering, in short, the general characteristics which make these *'ilal* binding

³¹ Al-Tirmidhī, *Kitāb al-Ṭahārah*, p. 610.

³² *'Idāḥ al-Dalīl*, 1: 414, no. 328.

(*jāmi'*) while identifying those that do not (*tafrīq*).

Or take the case of expiation (*kaffārah*) for having consumed food during *Ramadhān*. The sinner if he committed the sin in general terms he will be required by way of expiation to perform certain religious acts deemed of a sufficient value to nullify the sin. Whereas if the sin is deemed to be less generalised in nature i.e. where it is specified (*takhṣīṣ al-'āmm*), then the ruling (*ḥukm*) regarding punishment cannot be confirmed until the differences (*furūq*) regarding the case between *'āmm* (general) and *khāṣṣ* (specific) have been resolved.

Another example concerns the matter of payment of *zakāt*. Is a youth (*ṣabī*) required to pay it, as a mature adult is? There are those *fuqahā'*, who in general believe he has to pay it (where he is shown to possess the minimum amount of property liable to payment of *zakāt*). Then there are those who differ as to his liability. On this matter, al-Ṭūfī argues, the issues (regarding the legal consequences) of analogous cases should be considered for the general characteristics that they share and for the differences (*furūq*) which set them apart. Some of the differences remain hidden until discovered, whilst others offer themselves up for closer examination.³³

³³ *'Ilm al-Jadal Fī 'Ilm al-Jadal*.

In differentiating between issues of a similar nature al-'Āmidī advises, in cases of contradiction, to look (in the case of analogy) at the old case (*'aṣl*) or the new case (*far'*) rather than to the causative agent (*'illah*).³⁴

For works on *Furūq*, see Appendix [5].

³⁴ *'Ilām al-Muwaqqi'in*, 2: 75.

Chapter Four

The Author's Methodology in His Book the *Tanbīhāt*

1. General View.
2. The Issue of Controversy.
3. The Opinions of the Mālikite *Fuqahā'*.
4. Points of Agreement.
5. Narratives of the Mālikites.
6. Critical Comment in Mālikite Opinion.
7. 'Iyād's Concerns about the Differences Between the Versions of the *Mudawwanah*.
8. The Repetition of Issues.
9. The Treatment of Primary Legal Issues.
10. The Indexation of Scholars.
11. Qāḍī 'Iyād: His Juridical Endeavour, His Deductions, His Preferences.

Chapter Four

The Author's Methodology in His Book *Tanbīhāt*

4.1 General View

Qāḍī 'Iyāḍ was not afraid, in the '*Tanbīhāt*', to tackle the problem of those odd or rare expressions ('*alfāz gharībah*) found in the '*Mudawwanah*', but addresses them keenly with a view to clarifying them and thus, by doing so, expedite comprehension of the *fiqh* arguments conducted thereby. 'Iyāḍ, in this respect, followed the structure of the *Mudawwanah*.

'Iyāḍ covers the central debates of the Mālikite *fuqahā'* (*munāẓarāt*), drawn from all four of the schools of Islamic law – with an obvious bias towards the Mālikites – from a linguistic as much as a juridical stance. 'Iyāḍ compares the opinion of one *faqīh* with that of another, the one supported by the more convincing evidence (*dalīl*) being considered the most correct.

At times 'Iyāḍ weighs the pros and cons of two opinions, or considers two narratives on the same theme, choosing the more authentic of the two with regard to the validity of the *'isnād* (chain of authorities), to support an opinion on a juridical point. Or he dwells on the semantic meaning of a particular term which has in the past proved controversial in debate, invoking the gist of the argument hitherto before adding his own opinion in terms of a grammatical,

linguistic or juridical explanation, the former two but serving to clarify and enhance the latter.

In the *Tanbīhāt* we see how ‘Iyāḍ displays his vast learning in the field of Mālikite *fiqh*, not only from the point of the jurist but also through a thorough linguistic and grammatical analysis. He displays his knowledge of analogy (*qiyās*), presenting the issues of *fiqh* (*masā’il fihiyyah*) in a lucid fashion through skilful citation (*’istishhād*) and exemplification (*tamthīl*), using to the full the linguistic and grammatical evidence (*shawāhid*) to illustrate his arguments.

The style of ‘Iyāḍ in the *Tanbīhāt* is simple and concise, rendering the text easy to understand. Combining clarity with insight ‘Iyāḍ remains aloof from the ambiguous, providing a lucid, logical argument for the reader. A discerning critic, ‘Iyāḍ gradually dissects, analyses and uncovers the often subtle nuances of a *fiqh* debate conducted by the great Mālikite *fuqahā’*.

4.2 The Issue of Controversy

Dispute amongst the Mālikite *Fuqahā’*

The discussion by ‘Iyāḍ of issues (*masā’il*) of dispute between the Mālikite *fuqahā’*, is both skilful and illuminating. After describing the issue in question he leads the reader gradually to the core of its dispute, wherein, with no little

literary skill, he invokes the evidence (*'adillah*) both for and against the argument (*ḥujjah*), particularly with regard to arguments (*jidāl*) involving Mālik, 'Ibn al-Qāsim and himself. He concludes with a summary which is sufficiently non-judgemental to allow the reader a degree of freedom to draw his own conclusions from the ensuing debate.

For example, 'Iyād would begin his argument thus:

The Mālikite *shaykhs* differ in their opinion as to whether 'Ibn al-Qāsim declared the imposition of the dowry (*ṣadāq*) on the father (of the son to be married) to be legal before divorce takes place or when the marriage has yet to be consummated. And if he did so was this in contradiction to the view of Mālik on this issue?

One might divide each of the following debates into the following stages:

Stage one: The occasion and place of the debate.

Stage two: The nature of the debate, the consensus of agreement over it, then a description of the difference of opinions expressed by the Mālikite *fuqahā'*. For example, on the causative agent (*'illah*) forbidding *shighār* (marriage by compensation).

Stage three: The debate itself and how it evolved.

Thus the first issue:

Dispute (1)

'Iyād differed from 'Ibn al-Qāsim on the matter of the oath of *zihār* (a pre-Islamic form of divorce). If, according to the dispute, the husband issues a *zihār*, but breaks the vow, then he must do penance (*kaffārah*), and until he does so then his renunciation remains invalid.

According to the book of Muḥammad 'Ibn al-Mawwāz (*al-Mawwāziyyah*), it said that if the oath taker undertakes the *zihār* immediately on pronouncing it, and if he does not break his oath, then his renunciation of marriage remains valid.

Dispute (2 a.)

The dispute between the Qur'ānic interpreters (*mufassirūn*) and the commentators (*mukhtaṣirūn*) centres on the reputed correct occasioning factor (*'illah*) in analogy (*qiyās*) which forbids *shighār*. (*Shighār* was a pre-Islamic concept, recognised as a form of "marriage of exchange" in which one man would give his daughter or sister in exchange for taking in marriage the other man's daughter or sister, neither paying a dowry (*ṣadāq*).

Shighār was forbidden by the Prophet Muḥammad (P.B.U.H.), because it deprived the woman of her dowry¹. His proscription, shows that a woman's dowry is a right (*ḥaqq*) of which a wife cannot be deprived under any circumstances.

According to *shaykh* 'Abū Muḥammad 'Ibn 'Abī Zayd al-Qayrawānī, either the daughter(s) or sister(s) to be married in an exchange situation, are entitled under Islamic law to a full bridal gift fixed by the *qādī* according to the circumstances of the bridegroom(s). This is called *ṣadāq al-mithl*.

More specifically *ṣadāq al-mithl* pertains to the case of a woman whose husband has died before a dowry has been fixed and the marriage has been consummated. She should be paid a dowry according to the dowry of women of like status with herself – the *mahr* or dowry of those like her (*mithlahā*).

'Imām Mālik demanded payment of the *Ṣadāq* at the point of marriage (in contrast to the Ḥanafis who treated it more or less as a debt).

¹ Bukhārī, 67: 29.

Dispute (2 b.)

Still regarding *shighār*, it is said that 'Ibn al-Qāsim declared it to be permissible, except in cases where abuse of the woman by the man is involved. Then such an arrangement becomes null and void. 'Iyād asks if this opinion contradicts that of Mālik. There are some Mālikite *fuqahā'* who say it does, among them, Saḥnūn.

Saḥnūn said that a *shighār* marriage is not permissible where abuse is involved, but is permissible in the case of poverty, which is a form of abuse, this despite the fact that the husband has clearly failed in his vow to provide for his wife as stipulated by the Qur'ān. Saḥnūn is supported in this respect by 'Ibn Ḥabīb.

The husband alone has to bear the expense of maintaining the household, and is obliged to support his wife in a style befitting her station (*nafaqah*). If he is not in a position to do so she may seek a divorce by *faskh* (annulment of the marriage through neglect).

Dispute (6)

With regard to the right of pre-emption (*shuf'ah*) in a marriage contract. Where the future wife to be is offered a share in a house as part of her dowry, she is granted the right of pre-emption (*shuf'ah*). I.e. should the property be sold

without her approval to a third party, then she has the privilege to purchase the property, even against the will of the new owner, who should be reimbursed with the price paid.

Some Mālikite *fuqahā'* say on this issue that if the wife-to-be foregoes her nuptial gift before consummation of the marriage, then the above principle is valid. If she does not renounce the gift, once the marriage is consummated the husband can reclaim back the nuptial gift.

As for 'Abū Muḥammad he quotes, by way of analogy (*qiyās*), the case of a father who marries off his youngest son, guaranteeing him provision for a dowry. But this marriage cannot be validated until the father's death, since the dowry contract is cast in the form of an inheritance. However, if the marriage vow itself is not announced before hand (that is before the father's death) then the offer of a dowry perishes, notwithstanding the juridical maxim, "There shall be no perishing of the property of a man that is a Muslim".

The analogy to be drawn here between the two cases is the supererogatory profit to be made by the husband when he reclaims his dowry. The husband in the first case would reclaim against the value of his share of the house initially divided between the husband and the wife, whilst the youngest son (in the second case), if the marriage were to be annulled, would receive upon the death

of his father, the full value of the dowry (*ṣadāq*) laid down by his late father.

Some *fuqahā'* claim that such dowries are not permissible, and derive from marriages based on deception. Mālik himself finally declared such arrangements null and void, although he initially permitted them.

Dispute (7)

Then there is the issue related by Ziyād, on the authority of Mālik, centring on the validity of a dowry settled on a competent son, but who becomes incompetent at a later date, related on the authority of 'Īsā on the authority of *al-'Utbiyyah*. In the contracting of a debt the Qur'ān states:

“But if he who owes the debt is unsound in understanding (*safīh*) ... then let his guardian (*walī*) dictate with fairness”².

Persons who, on account of weakness of intellect, mismanage their property should be deprived of its control thereafter, control being handed over to the *walī*. This is known as a restriction (*ḥajr*) on the disposal of property, as supported by the narrative of Ziyād on the authority of Mālik. But 'Abū al-Walīd (Muḥammad 'Ibn 'Aḥmad) relates that the dispute on this issue is provided by 'Ibn Ḥabīb and 'Īsā, as they dispute the *ṣadāq al-mithl* i.e on the

² Qur'ān: 2: 282.

death of a husband prior to settlement of a dowry. Namely, that the legal process must be overseen in court, by the *qādī*, as is evidenced in the *kitāb al-tafwīd* (the book of authorisation). Namely, that the father must consent, after the consummation of the marriage, and in the event of a divorce, to losing a part of the *ṣadāq al-mithl* when his son is declared incompetent (*safīh*). Unless, that is, the two parties, guided by their respective guardians (*walī*), come to an agreement before the consummation of the marriage. Whereby, in that case, the dowry ceases to be *ṣadāq al-mithl*. This argument, it is claimed, goes back to Mālik's reference to the treatment of a deflowered but unmarried woman or a divorcee with respect to the settlement of a dowry for her. This opinion was shared by 'Ibn Yūnus. Some Mālikites concluded thereby that such women, who suffered marriages to incompetent men, would, on divorce, receive a greater sum in value to the *ṣadāq al-mithl*. Namely, she would be compensated over and above the stipulated value of the *ṣadāq al-mithl*.

Dispute (8)

Marriage (*nikāḥ*) may be constructed on the model of *bay'* (sale) or contract of sale, and is sometimes even defined as kinds of *bay'*. The Mālikite *fuqahā'* debated the validity of such marriages, some deeming them legal, others illegal or null and void (*faskh*). For example, the *fuqahā'* debated the case of a marriage based on sale in which the capital assets of the partner(s) would act as loans, set against the value of the dower, in which case a woman would not

take possession of her dowry until her assets were lost or had run out.

'Ibn 'Abī Zamanīn said, on this point, that no definitive ruling (*ḥukm*) had been given, not even by Mālik. 'Ibn 'Abī Zamanīn expressed the view that the wife could not call for her dowry as long as the capital assets of the husband, upon which the marriage was based, maintained their value.

The *fuqahā'* looked in particular here at the date of the announcement of the dowry and whether it coincided with the day the marriage contract was signed. In the event of the dates being the same then the dower is classed as an inheritance and is not considered revocable.

In the event of the marriage not being consummated, as with the legal concept of *hibah al-thawāb* (credit arising from a pious deed), the dowry is deemed irrevocable.

The *fuqahā'* also disputed the dowry of the woman vis-a-vis marriage to a sick man. If the marriage is consummated, claimed 'Ibn al-Qāsim, then the woman (on divorce) is entitled to retain a third of its value. In the case of a *ṣadāq al-mithl* this ratio might well favour the woman, although, according to the interpretation (*ta'wīl*) of the case by 'Abū 'Imrān, it may well be less. However, Saḥnūn in the *Mudawwanah* disputes this claim, stating the true

share of dowry retention to be one third, as initially opined by 'Ibn al-Qāsim.

As for the account by 'Alī 'Ibn Ziyād narrated on the authority of Mālik, he maintained that the woman, once divorced, should retain the full value of the dower as if the husband had died before fixing the dowry and consummating the marriage, as endorsed by 'Ashhab in an account narrated on the authority of Mālik, and by 'Ibrāhīm 'Ibn Muḥammad.

There are many other types of disputes on various topics the details of which may be found in the *Tanbīhāt*, viz:

- 1) They differed by supplying argument and counter argument.
- 2) The narrators (*ruwāh*) in the *Mudawwanah* disputed such and such a case, and what follows is our account.
- 3) Saḥnūn disputed with so and so on this particular principle (regarding its validity etc.).
- 4) He challenged so and so as to the authentic appellation of his father.
- 5) He disputed with 'Ibn al-Qāsim on the issue of the oath of *zihār* (in company with Muḥammad).
- 6) They disputed (amongst themselves) the meaning of the oath of emancipation which reputedly becomes null and void with an ill-defined oath.

- 7) They disputed on the Muslim status of an adopted son.
- 8) They disputed on the school of 'Ibn al-Qāsim (as a Mālikite *faqīh*), wherein 'Abū 'Ishāq proffers his opinion.
- 9) The question of impurity following sexual intercourse is discussed and disputed here.
- 10) Referring to the immediate case above (10) again, the *fuqahā'* dispute as to whether this judgement (*ḥukm*) might apply to the majority of cases of to all, but could not arrive at a definitive opinion.
- 11) In which the *fuqahā'* discuss and dispute the case of a Muslim accused of necrophilia.
- 12) In which is disputed the technical and linguistic meaning of the two terms, *'athār* (purity) and *ḥiyāḍ* (menstruation).
- 13) In which the leading Mālikite jurists of the day dispute the validity of revocation (*'irjā'*) following a separation between a man and wife. Namely, is it correct (*ṣaḥīḥ*) or incorrect (*fāsid*).
- 14) Here the jurists dispute the validity of a judgement declaring a marriage null and void.
- 15) Our *shaykhs* disputed, says 'Iyād, the validity of the "occasioning factor" (*'illah*) in determining (via the process of *qiyās*) the impermissibility of a *shighār* marriage.
- 16) In which the issue of impurity related to the woman's pudendum, is discussed.

- 17) Some *shaykhs* said, apropos issue no. 16 That although there exists scope for contradiction, none is to be found in the *Kitāb al-Takhyīr Wa al-Tamlīk*.

4.3 The Opinions of the Mālikite *Fuqahā'*

The Ascription of Mālikite Opinion

Qādī 'Iyād ascribes the juridical opinions covered in the *Tanbīhāt* to their rightful owners in several modes:

- 1) He refers directly to the person himself, thus: i.e. 'Ibn Bāz and 'Ibn Waḍḍāḥ.
- 2) He names the source (from which the opinion springs), thus: mentioned in the *Mudawwanah*.
- 3) He refers to the thinkers generically, thus: a group from the '*ulamā'* or a number of *shaykhs*.

These modes of ascription will now be now covered in detail, by way of providing examples, viz:

- 1) This opinion is ascribed to 'Ibn Bāz and 'Ibn Waḍḍāḥ and a group of transmitters (*ruwāt*). In it the *fuqahā'* concerned debated the timing of a girl's first menstruation relative to her reaching the age of maturity (*bulūgh al-rushd*), as cited in the *ḥadīth* of 'Ibn al-Musayyib, related on the authority of 'Ibn Lahī'ah.
- 2) 'Iyād related the following, with regard to the '*iddah* (waiting period)

required to be observed by a wife following the death of her husband and prior to her proposed marriage to another man. If she was *mustahāḍah* (a woman continuing to have a flow of blood after her days of menstruation) then her *'iddah* must be extended to four months and ten days from the death of her first husband, or a year, should she be embarking on her third marriage (after the death of her second husband).

- 3) The *shaykhs*, cites, 'Iyāḍ, say, that the Mālikite *fuqahā'* disputed the meaning of the expression, "I declare it to be lawful (*jā'iz*) unless abuse of the woman is involved, in which case it is prohibited". Does this expression reflect the meaning of that proffered by Mālik on the same subject? Some (*shaykhs*) said it did. Among them, Saḥnūn, who, specifying the general (*takḥṣīṣ al-'āmm*), states that while this might apply in the case of physical abuse of the woman it does not apply to poverty, where a husband fails in his duty to make provision for his wife.

4.4 Points of Agreement

In this section we concentrate on 'Iyāḍ's discussion of those issues (*masā'il*) on which there is common consensus between the Mālikite *fuqahā'*. 'Iyāḍ feels no obligation to extend the discussion, to include the other three great schools on the said issues, other than in a general sense. The discussion can be divided into four sub-sections.

- (1) Where ‘Iyāḍ in a general sense, discusses, debates, and comments on issues upon which the four schools share widespread agreement, eg.:
- The consensus of the ‘*ulamā*’ on the proscription of a *shighār* marriage (see 4.2 for its legal definition).
 - The need to proscribe *shighār* marriages from the outset.
 - The relevance of these proscriptions particularly when the male parties are brothers.
- (2) Where *qāḍī* ‘Iyāḍ introduces an element of dispute into the proceeding, contrasting, as he does, the narratives of Mālik with those of ‘Ibn al-Qāsim on certain issues, carefully weighing one against the other. Given this apparent contradiction, the consensus among the Mālikite *fuqahā*’ seems all the more impressive.
- The Mālikite *fuqahā*’ were at one in condemning *shighār* marriage, but were at variance as to how to act once a *shighār* marriage had actually taken place.
- (3) Where the *qāḍī* seeks to unravel and explain interpretations (*ta’wīlāt*) of a given issue that seemingly indicate a plurality of opinion but which, on

closer inspection, offer a consensus. 'Iyād remarks:

- The difference of opinion concerning such and such an issue emerged in the *Mudawwanah*.

(4) Where 'Iyād concentrates on those narratives (*riwāyāt*) deemed reliable (with regard to their *'isnād* or chain of authorities).

Namely:

- There is a concordance with regard to the account of 'Ibn 'Abd al-Ḥakam and that of 'Alī 'Ibn Ziyād.

Below I provide examples of all four discussion types.

- (1) Where the four schools agree.

With regard to Mālik's interpretation of a case in which a woman's menstrual periods appear to have stopped. In this case an *'iddah* (the legally prescribed period of waiting before contracting a new marriage) has to be observed in order to ascertain if the woman to be married might in fact be pregnant from her previous marriage. The debate centred around the length of the *'iddah* to be observed, and whether it should commence from before after the appearance of the new moon. If the *'iddah* commences before or after the appearance of the new moon, then it was to be observed for a period of three months, each month containing thirty days. This interpretation was accepted by the majority of the Mālikite *fuqahā'*. But according to the narrative of 'Ibn Shihāb, the first months would constitute thirty days, whilst during the remaining one month the *'iddah* would be observed according to the appearance of the new moon, which might be less than thirty days.

- (2) Where 'Iyāḍ contrasts Mālik and 'Ibn al-Qāsim.

In the matters of shortening, or lengthening, the *'iddah* period, to benefit either the husband, wife or both: In such a case, should the marriage which follows on completion of the *'iddah* be declared null and void? If the marriage contract did not respect the *'iddah* period then the marriage

is null or void and the two parties involved might be proscribed from marrying each other again in the future.

(3) Where 'Iyād attempts to explain a contradiction.

This issue revolves around the dowry set aside for the woman, in the case where the husband divorces his wife before the marriage is consummated. The Qur'ān urges the husband in this case to pay her at least half of the dower value arrived at, unless she agrees to forego it. Mālik is of the opinion, (not shared by 'Ibn al-Qāsim) that the husband should pay at least half of the agreed dowry so stipulated to the woman he has divorced, so as to abide by the concept of *'ihsān* (the performance of good deeds) but more practically so as to provide her with a means of living.

(4) Where 'Iyād concentrates on reliable narrations.

In the case where a master or lord cannot reclaim the full dowry or the mortgage (*al-rahn*) of a slave girl (*'amah*), as evidenced in the *Kitāb* of 'Ibn 'Attāb. There it is stated, in relation to the reclamation of a dowry, that the husband is not obliged to provide the divorced wife with accommodation, on which point there exists a common consensus among the Mālikite *fuqahā'*, referred to in the *Tanbīhāt*.

4.5 Narratives of the Mālikites (Narrative *Ḥadīth* in the *Tanbīhāt*)

Nearly all the narratives related in the '*Tanbīhāt*' revolve around issues covered in the '*Mudawwanah*' of Saḥnūn. Very rarely does 'Iyāḍ step outside this context. 'Iyāḍ notes the differences (*furūq*) in Arabic between the various 'Andalusian narratives, and those pertaining to the Maghrib.

Those narratives which have been discussed in detail would have cropped up in 'Iyāḍ's meetings with the great '*ulamā*' and *fuqahā*' that he encountered on his *riḥlat talab al-'ilm* (seeking for knowledge journey) and from whom he would have received some indication as to the authenticity of such narratives. In this respect the *Mudawwanah* plays a crucial role in the composition of the *Tanbīhāt*.

'Iyāḍ did not distinguish between or divide the themes of the narratives of the *Mudawwanah* into specific sections, as the student of his methodology will note. I, therefore, have made this requisite division, in order to simplify comment on his methodology.

Namely:

- (1) Those narratives in which 'Iyāḍ explains the terminology of *ḥadīth*.
- (2) The differences between the 'Andalusian and Qarawiyyīn (*Maghribiyyah*) narratives.

- (3) Those narratives related on the authority of Mālik and 'Ibn al-Qāsim.
- (4) Narratives that are in the *Mudawwanah* not dealt with by 'Iyāḍ in the *Tanbīhāt*.
- (5) Those narratives (*riwāyāt*) dealt with by 'Iyāḍ.

4.5.1 *Ḥadīth* Terminology

Example: (1)

In which the content (*matn*) of the *ḥadīth* of 'Umar 'Ibn al-Khaṭṭāb (related on the authority of the second Rightly Guided Caliph) is questioned. Namely, on the following expression: “*La-’amna’anna dhawāt al-’ḥsāb tazwījahunna ’illā min al-’akfā’*.” “Let no noble woman marry, except her equal”. Then the above narrative is compared, with 'Iyāḍ, with the Prophet’s friendly admonition, “*’Idhā jā’akum man tarḍawna dīnahū wa ’amānatahū fa ’ankihūhū*”. (“If a man of good standing and religion approaches you, then marry him”)³.

Example: (2)

With regard to the expression: “*’a-fatakūn taṭlīqah, qāla na’am, yakūn taṭlīqan*”. 'Iyāḍ is of the opinion that such an expression is to be found in

³ See, *Nayl al-Awṭār*, 6: 261.

the narrative of certain copies of the *Mudawwanah*. Although in some other copies the meaning is reversed, i.e: “*lā-takūn*”.

Said by Saḥnūn, and 'Ibn Waḍḍāḥ who mentioned having seen it (in the *Mudawwanah*).

Example: (3)

Discussion of the *ḥadīth* of Ghaylān al-Thaqafī which 'Ibn Shihāb narrated on the authority of 'Uthmān 'Ibn Muḥammad 'Ibn 'Abī Suwayd. 'Iyāḍ points out 'Ibn 'Īsā's remark, that in some copies (*nusakh*) the “'Abī ” is missing.

Example: (5)

On the narration of 'Ibn Lahī'ah, 'Iyāḍ comments that such a narration is included in the *Tanbīhāt*.

4.5.2 The 'Andalusian and *Qarawiyyīn* Narratives in the *Mudawwanah*

Example: (1)

On the matter (*mas'alah*) of a man who marries his daughter to his nephew prior to his death. 'Iyāḍ says this issue may be found amongst the *Qarawiyyīn ḥadīth* but not amongst the 'Andalusian, whilst admitting that he has not seen it himself. Apparently, 'Abū Bakr 'Ibn Yūnus mentioned

seeing it in the Qarawiyyīn literature (citing the *Mudawwanah*) as did 'Abū Muḥammad al-Sūsī. It was reputed that 'Ibn Mughīth al-Ṭulayṭilī cited it, but not in the *Mudawwanah*. The actual words were thought to be, “*'in mittu min marādī fa qad zawwajtu 'Ibnatī min 'Ibn 'akhī'*”. Wherein the *fuqahā'* desired to know whether this was permitted or not. And if it was permissible, what degree of permissibility would be accorded it.

Example: (2)

On the matter of conciliation (*musālamah*). The letter *mīm* takes the vowel (*ḍammah*). However, 'Aḥmad 'Ibn Khālid maintained that the first *mīm* should take the *fathā* vowel, and (we think) he is correct.

Example: (3)

With regard to the issue of a man said to have approached a woman at the behest of, say, a Mr X, who wanted to marry her. She initially appeared pleased with this arrangement because the man delegated to arrange the marriage brought with him the guarantee of a dowry to be arranged in this manner. Her guardian (*walī*) was also satisfied. This narration of marriage arrangement was related in the *Mudawwanah* but 'Iyād claims he had not seen it. In some copies of this narration, it is related that such a marriage might be permissible should a *bona fide* contract, based on an

oath, be drawn up later. 'Iyād claimed that such a narration exists in the *'Asadiyyah*.

Example: (4)

On the narration which deals with the protection of the chastity of a mentally ill woman (as confirmed by 'Ibn 'Attāb, but in which the chain (*sanad*) of 'Ibn 'Īsā is omitted) in which the term *raddah* is used instead of *raj'ah* (revocation), but both having the same meaning.

Example: (5)

With regard to the narration which deals with the following issue. A woman denies that she has been unfaithful to her husband, who has made such an allegation. Wherein the couple dispute the amount of dowry (*takhyīr*). Saḥnūn, in the *Mudawwanah*, says the burden of proof of innocence falls on the wife and until that is furnished by herself she cannot have any claim to the dowry, as supported by the majority of the Mālikite *fuqahā'*. This narration also finds mention in the *Kitāb 'Irkhā' al-Sutūr* (Letting Down the Veil), whereby the woman was ostensibly undergoing a period of ritual seclusion (*khalwah*) when the reputed adultery took place. If she told the truth and was innocent then the husband would be forced relinquish (on divorce) the dowry to the value of her daily needs, in a manner befitting her station (*nafaqah*). As

mentioned by 'Ashhab and 'Ibn al-Qāsim in some copies (of the narration) located in the *Mudawwanah*.

Example: (6)

A narration was related by 'Ibn Wahb on the authority of Mālik pertaining to the issue of a husband who attempts to remarry his ex-wife even though he divorced her on an irrevocable basis. Saḥnūn passes comment on this narration in relation to his comment on the issue covering the avowal of paternity (*'istilhāq*).

Example: (7)

It is said in a narration of 'Ibn al-Qāsim that if a Muslim renounces an oath of emancipation and he is already under the oath of *zihār* (improper comparison) at the time, then he cannot later have recourse to revocation (*'irjā'*).

4.5.3 Narrative related on the authority of Mālik and 'Ibn al-Qāsim

Example: (1)

A narrative concerning the inviolability of a step-daughter (*rabībah*), wherein it is stated that a man, while participating in a sexual relationship with the mother, is forbidden to marry the step-daughter, as narrated by 'Ibn Wahb on the authority of Mālik. Thus, the latter deems marriage

between the man and the step daughter in the circumstances described above, as reprehensible.

Example: (2)

On a narrative concerning the matter of the number of menstrual periods (*'iddah*) to be observed following a divorce, in the case of young maidens (*'imā'*). The question is: how many periods of waiting should she undergo in the knowledge that she does not (as of yet) produce menstrual periods? It is discussed by 'Ibn 'Īsā, covered in the narration related by 'Ibn 'Attāb on the number of periods of waiting to be undergone by a divorced slave girl (*'amah*). As for Rabī'ah he said sexual intercourse with the slave girl should be delayed until she has menstruated once at the new husband's abode and then she has become purified, as narrated on the authority of 'Aṣḥhab on the authority of al-Laith.

Example: (3)

Concerning a narration [in para. [336] on the matter of a woman of seventy or eighty years of age who experiences blood in the pudenda. It is the general ruling (*'āmm*) that this is not a menstrual period on account of her age. Therefore, she may pray and fast without undergoing the major ritual ablution (*ghuṣl*), as related in *Kitāb Muḥammad*. In short, she is not subject to the ruling of purity (*ṭuhr*) as a *mustaḥāḍah* (a woman

continuing to have a flow of blood after her days of menstruation) would be, the *'iddah* for her being four months and ten days, as narrated on the authority of 'Ibn al-Qāsim.

4.5.4 Narrations in the *Mudawwanah* not covered by 'Iyāḍ in the *Tanbīhāt*

Example: (1)

The narration regarding conduct towards a Jewish or Christian woman omitted from many copies, including that narrated on the authority of 'Ibn 'Attāb. Although, 'Ibn Nāfi' confirms he has seen it and that it has been abridged by 'Abū Muḥammad.

4.5.5 The narrations in the *Mudawwanah* covered by 'Iyāḍ

Example: (1)

Pertaining to the narration in which the verb, *ḥaḍana* (to raise a child) features. 'Iyāḍ says: "He raised you (*ḥaḍanak*) well", which ('Iyāḍ) related the *ḥā'* as taking the (*fathah*) vowel on the verbal noun (*ḥaḍānatuka*) when, in such instances the *ḥā'* should take the (*kasrah*) vowel.

Example: (2)

In the narration in which the noun *waṣīfan* (male servant) loses the (*shaddah*) over the *Ṣād*.

4.6 Critical Comment in Mālikite Opinion

‘Iyāḍ’s methodology of critique centres on a scrutinisation of the evidence (*dalīl*) which the Mālikite *fuqahā*’ deduce from their sources for the purpose of supporting their opinions (‘*aqwāl*’).

‘Iyāḍ sees his task in the *Tanbīhāt* in terms of challenging this evidence and to find any weak links in the chain of authorities, so as to root out the unreliable evidence leaving that which the jurist (*faqīh*) might rely on for his derivation of new rules (‘*aḥkām*’) or, as was the most likely purpose, in confirming existing rules via clarification.

To this end ‘Iyāḍ takes an issue (*mas’alah*), setting forth the orthodox view and then the contrary view and (always ascribing opinions to their rightful authors), before commencing with his own analysis of the evidence provided by the various Mālikite *fuqahā*’.

Effective examples of ‘Iyāḍ’s methodology can be seen by referring to paragraphs [87], [110], [146] and [149] in the *Tanbīhāt*. Those paragraphs deal with the following issues:

(2) Para. [87]

This concerns the issue of the *ḥadīth* about ‘Ā’ishah who initiated a marriage, without an official guardian (*walī*), between her brother and Ḥafṣah Bint ‘Abd al-Raḥmān, which apparently contradicted the *ḥadīth* of the Prophet (P.B.U.H.), viz: “No marriage without the intervention of a guardian (*walī*)”.

‘Iyād declared that, in effect, ‘Ā’ishah’s action was not incompatible with Medinan tradition, as some Mālikite *fuqahā’* had suggested. ‘Ā’ishah drew up a contract of a marriage which she considered as protecting the interests of her clan (‘*ashīrah*).

‘Iyād pointed out that such a process involving either the son and his father, for kinship purposes, was not incompatible with Medinan tradition, as endorsed by the pupils of Mālik, most notably ‘Ibn al-Qāsim.

(3) Para. [110]

This issue relates to the juridical concept of *khiyār* (the right of a woman to withdraw from a marriage contract), about which the Mālikite *fuqahā’* tended to differ as to its validity in given circumstances, which are, in this case, the matter of a free woman wanting to exercise her power of *khiyār*. ‘Abū ‘Ishāq said that a free woman has this right but a slave girl

(*'amah*) does not. This is primarily because a free woman, in the case where her husband is also married to a slave girl (*'amah*) might not wish to mix socially with the slave girl or her relatives.

(4) Para. [146]

This concerns the issue of a slave (*'abd*) given to the wife of an eminent Muslim of some social standing as part of her dowry.

The wife discovers that the slave has from some kind of physical or mental deficiency (probably the latter). So she imprisons the slave and demands compensation (*ta'wīd*) from her husband for this apparent deficiency. (We are not told the nature of the deficiency or how it could be assessed.) Alternatively she could hand the slave back to her husband in exchange for a said sum of money. The ruling (*ḥukm*) which 'Iyād supports here, states that if the wife recognises the deficiency some time after the slave is given to her, then the loss the wife has suffered as a result of the slave's deficiency (which she failed to spot when the slave was offered to her as part of the dowry) should not be met by her husband. However, if the deficiency is discovered promptly, the ruling is that she should be awarded twenty five percent of the value of the slave on condition that the said deficiency in the slave can be identified or proved. The crucial issue here is the time lag between the handing over

of the slave to the wife and the wife's complaint.

4.7 The Treatment of Primary legal Issues (Fundamental *Fiqh* Issues Which 'Iyāḍ Covers in the *Tanbīhāt*)

'Iyāḍ uses the same methodology for issues of *fiqh* as he did for making critical comment on Mālikite opinion (see 4.6). Here we shall look at some examples of how he compares varying opinions to arrive at a definitive conclusion.

(1) Para. [233]

The question is posed here: Are non-believers (*kuffār*) subject to the *sharī'ah* (as interpreted according to the Mālikite manuals (*furū'*))? There are two opinions voiced on this matter.

The first opinion: That (while living in a Muslim community) non-Muslims are bound by religious observance, (*'ibādāt*).

This is the view of the majority amongst figures such as Mālik, al-Shafi'ī, 'Aḥmad, al-Rāzī, a group of Ḥanafis, some Mālikites, the majority of 'Ash'aris and the Mu'tazilah. Their argument is that they (*kuffār*) will be judged in the Hereafter for having neglected their religious duty and so it is the duty of Islam to ensure that they observe it. The evidence (*dalīl*) to support this claim is to be found in those passages of the Qur'ān considered to have a general purport (*'umūm*), as in the following:

(ما سلككم في سقر. قالوا لم نك من المصلين)⁴

This an indication that those who neglect their prayer will be punished. From this evidence (*dalīl*) one might safely assume that a widespread neglect of the *'ibādāt* would result in punishment in the Hereafter.

The second opinion: That the unbelievers, by their very behaviour, have laid themselves open to criticism and punishment from Allāh, and have disobeyed the dictates of the *Sharī'ah*, therefore it is not the responsibility of the courts to ensure they perform their religious observance. This is the view of 'Abū Hanīfah, al-Qādī 'Abū Ya'lā, and 'Abū Hamīd al-'Isfarā'inī.

Evidence (*dalīl*) to support this view is the premise that commitment to Islam is not retroactive. If an unbeliever converts to Islam he is not required to perform those prayers he should have performed when an unbeliever, since the unbeliever was in denial of prayer.⁵

(2) Para. [272]

Concerning the issue of *mut'ah* (a temporary marriage for a specified time, and exclusively for the purpose of sexual pleasure). According to Ziyād 'Ibn

⁴ Qur'ān, 74: 42-43 .

⁵ *'Irshād al-Fuḥūl*, 30; *Al-'Ibhāj*, 177; *Takhrij al-Furū' 'Alā al-'Uṣūl*, 98.

'Aslam the *mut'ah 'āyah* (verse) in the Qur'ān arises as a result of abrogation. According to 'Ibn al-Qāsim the *mut'ah* were traditionally drawn from divorced women. Hence the Qur'ānic *'āyah*:

(وللمطلقات متاع بالمعروف)⁶

Divorced women, according to custom (*'urf*), are best suited to the *mut'ah* marriage. According to Mālik if a divorced woman is from a marriage which was not consummated, then she is not entitled to *mut'ah*. Hence the Qur'ānic *'āyah* which makes an exception for those divorced in that manner:

(وإن طلقتموهن من قبل أن تمسوهن)⁷

Mālik saw this exceptive clause as specifying the general (*takhsīs al-'āmm*). Even the God fearing and the righteous may take a *mut'ah* partner for the purpose of sexual pleasure. *Mut'ah* is described juridically as *'istiḥbāb*, (a commendable act, whose neglect is not punished by God but whose performance is rewarded), as confirmed by 'Ibn al-Musayyib. Any Muslim make can take delight in a *mut'ah* woman, as endorsed by al-Shafi'i, 'Ibn 'Abbās and the Ḥanafites (of Iraq).

(3) Para. [520]

On the matter of *'ilā'* (annulment of a marriage after the husband's sworn

⁶ Qur'ān, 2: 241.

⁷ Qur'ān, 2: 237.

testimony to refrain from marital intercourse for a period of at least four months to enable reconciliation if possible and to ensure the wife does not leave the marriage in a state of pregnancy if reconciliation is not possible. The Qur'ān states:

⁸ (للذين يؤلون من نسائهم تربص أربعة أشهر)

At one stage the *fuqahā'* were confused by the general application (*'āmm*) of this oath of refrainment, until the general meaning was specified and it assumed its technical juridical purport.

Then there followed a debate as to how long (or short) the period of sexual refrainment on the part of the husband should be.

Some Mālikite *fuqahā'* stipulated four months exactly⁹. Others more than the four months as stipulated in the Qur'ān. According to Mālik if the husband has met the conditions of *'ilā'* then he is free to pursue a life separate from that of his (now) former wife.

⁸ Qur'ān, 2: 226.

⁹ *Mawāhib al-Jalīl*, edn., 4: 106, edn., *Dār al-Fikr*.

4.8 The Indexation of Scholars

(1) Para. [32]¹⁰ Al-Sariyy 'Ibn Yaḥyā

Full name, Al-Sariyy 'Ibn 'Iyās 'Ibn Ḥarmalah 'Ibn 'Iyās al-Shaybānī (d. 168 A.H.) better known as 'Abū Haytham or 'Abū Yaḥyā al-Baṣrī, as related on the authority of Thābit al-Binānī and al-Ḥasan al-Bṣrī.¹¹

(2) Para. [44] 'Ash'ath 'Ibn Sawwār¹²

No trace could be found.

(3) Para. [71] 'Umm Qurayz¹³

No trace could be found.

(4) Para. [4] 'Ashhal 'Ibn Ḥātim

A fishmonger by trade.

¹⁰ This number between brackets refers to the paragraph number in the Arabic Section.

¹¹ *Tahdhīb al-Tahdhīb*, no. 14319.

¹² *Tahdhīb al-Tahdhīb*, 1: 308.

¹³ *Al-Mudawwanah, Kitāb al-Nikāḥ*, 2: 113.

(5) Para. [104] 'Ibn Sandar¹⁴

In the name Sandar the letter (*sīn*) takes the *fathah* vowel and the letter (*nūn*) the *sukūn*, as confirmed by the majority of the Mālikite *fuqahā'*, although 'Aḥmad 'Ibn Dāwūd adds that the *tā' munfaṣilah* (*hā'*) to Sandar(ah).

(6) Para. [105 a.] Mujāhid 'Ibn Jubayr¹⁵

Some *fuqahā'* say the diminutive, Jubayr, is correct; others mention, Jabr. Qādī 'Iyād mentions both; and this difference was alluded to by al-Bukhārī in his book *al-Tārīkh al-Kabīr*.

(7) Para. [129] 'Abdullāh 'Ibn Sa'īd al-Jayshānī

In the name Jayshānī the *jīm* takes the *fathah* vowel, and the letter (*yā'*) takes the *sukūn*. Reference to 'Abdullāh is not found in the existing encyclopaedias, but his name does appear in the '*Mudawwanah*'¹⁶. And 'Ibn Ḥazm mentions him in the *Muḥallā*, but without details (9: 283).

¹⁴ *Al-Muqtanā Fī Sard al-Kunā*, 1: 87.

¹⁵ *Al-Tārīkh al-Kabīr*, 7: 411.

¹⁶ *Al-Mudawwanah*, 2: 144.

(8) Para. [132] ‘Abdullāh ‘Ibn Yazīd ‘Ibn Khurāmah

“This is according to my narration” said ‘Iyād. The letter khā’ takes the *ḍammah* vowel. But in the *Kitāb* of ‘Ibn Suhayl and ‘Ibn ‘Īsā the khā’ becomes a (*ḥā*).

(9) Para. [194] ‘Amr ‘Ibn Ḥafṣ ‘Ibn Khaldah

In the name Khaldah the letter (*lām*) takes the *sukūn* and the following letter *dāl fathah*. ‘Ibn Khaldah was a *qādī* of *al-Madīnah*. He appears as ‘Amr in the ‘*Mudahwwanah*’, but it is thought that ‘Umar is more correct. Al-Bukhārī disputed it to be ‘Umar ‘Ibn ‘Abd al-Raḥmān, but al-Dāraqutnī and ‘Abū Naṣr al-Ḥāfiẓ say: ‘Amr ‘Ibn Ḥafṣ ‘Ibn Khaldah.

(10) Para. [203] Sa‘īd ‘Ibn ‘Umar¹⁷

This is the name, as related on the authority of Sa‘īd ‘Ibn al-Musayyib in the *Mudawwanah*. In the *Muwatta’* of ‘Ibn Wahb, however, it is Sa‘d and this rendition appears to be correct (see, para. [116]), as confirmed by al-Bukhārī, as related on the authority of Bukayr ‘Ibn al-‘Ashajj.

¹⁷ *Tahdhīb al-Kamāl*, 27: 324.

(11) Para. [209] Rifā'ah 'Ibn Simaw'al¹⁸

In the name Simaw'al the letter *sīn* takes the *kasrah* vowel, as we related in the *Muwatta'* of 'Ibn Wahb. Or, in the narrative related on the authority of *shaykh* Sufyān, the letter *sīn* takes the *fathah* vowel. But the former spelling with a *kasrah* is thought to be the more correct, as confirmed by the great Sībawayh himself.

(12) Para. [220] Nā'ilah Bint al-Farāfiṣah¹⁹

In the name Farāfiṣah the letter *fā'* takes either the *fathah* or *dammah* vowel, but generally it is thought to be the former (*fathah*).

(13) Para. [221] 'Ibn Qurayz²⁰

No trace could be found.

(14) Para. [221] Qabāth 'Ibn Razīn²¹

In the name Qabāth the letter *qāf* and the letter *bā'* both take the *fathah* vowel, as confirmed by our Mālikite *shaykhs* and al-Bukhārī.

¹⁸ *Al-Mudawwanah*, 2: 220, *Kitāb al-Nikāh*.

¹⁹ *Al-Thiqāt*, 5: 486, ref. no. 'Alif 1660 mentioned by 'Ibn Ḥibbān in *Thiqāt al-Tābi'in*.

²⁰ *Al-Mudawwanah*, 2: 220.

²¹ *Mashāhīr 'Ulamā' al-'Amṣār*, 1: 190.

(15) Para. [269 a.] Muslim 'Ibn Şubayḥ²²

In the name Şubayḥ the letter *şād* takes the *ḍammah* vowel. His full name was Muslim 'Ibn Şubayḥ al-Qurashī al-Kūfī, *mawlā* of Sa'id 'Ib al-'Āş. Muslim was a prominent *faqīh* and Qur'ānic interpreter (*mufassir*) of his day. He died during the Caliphate of 'Umar 'Ibn 'Abd al-'Azīz.

(16) Para. [273] 'Ibn Ḥujayrah²³

In the name Ḥujayrah the letter *ḥā'* takes the *ḍammah* vowel, and the letter *jīm* a *fathah*.

(17) Para. [274] Rāfi' 'Ibn Khadīj²⁴

In the name Khadīj the letter *khā'* takes the *fathah* vowel. Rafi''s full name was Rāfi' 'Ibn Khadīj 'Ibn Rāfi' 'Ibn 'Adī ... al-'Anşārī, better known by his *kunyah* 'Abū 'Abdullāh or 'Abū Khadīj. Rāfi' was presented before the Prophet Muḥammad (P.B.U.H.) on the day of *Badr*, but the latter thought little of him.

²² *Siyar 'A'lām al-Nubalā'*, 5: 71.

²³ *Al-Mudawwanah*, 1: 245, *Şalāt al-'Īdayn*, *Bāb al-Mut'ahr*, See also *Ibid.*, 2: 240.

²⁴ *Al-'Işābah*, 2: 436; *Siyar 'A'lām al-Nubalā'*, 3: 181.

(20) Para. [276] Sawdah Bint Zam‘ah²⁵

In the name Zam‘ah the letter *zāy* takes *fathah* in both cases, and the letter *mīm* takes the apocopate. Her full name was Sawdah Bint Zam‘ah ‘Ibn Qays ‘Ibn ‘Abd Shams al-Qurashhiyyah. Her mother, al-Shamūs Bint Qays ‘Ibn Zayd al-‘Anṣāriyyah married the Prophet Muḥammad (P.B.U.H.) after Khadijah, as related on the authority of ‘Ibn ‘Ishāq.

(21) Para. [282] Kathīr the *mawlā* (client) of Samurah or the *mawlā* of ‘Ibn Samurah

The latter title is thought to be the more correct, as confirmed by al-Bukhārī. Whilst there is disagreement as to his patronymic: Kathīr ‘Ibn Kathīr or ‘Ibn ‘Abī Kathīr; there is general agreement that the letter *kāf* in Kathīr takes the *fathah* vowel. See, al-Bukhārī, *al-Tārīkh al-Kabīr*, (7:211), ref. No. (917).

(22) Para. [282] Kathīr ‘Ibn Kathīr or ‘Ibn ‘Abī Kathīr

Mawlā ‘Ibn Samurah, ‘Abd al-Raḥmān ‘Ibn Samurah al-Qurashī, as related on the authority of Qatādah and ‘Ayyūb. See, *al-Jarḥ Wa al-Ta‘dīl*, (7: 156), ref. No. (868).

²⁵ *Al-‘Iṣābah*, 8: 720, ref no. 11357.

(23) Para. [430] Al-Sariyy 'Ibn Yaḥyā

In the Sariyy the letter *sīn* takes the *fathah* vowel, as confirmed in the *Mudawwanah*, (2: 80). His full name was Sariyy 'Ibn Yaḥyā. His biographical details appear in the *Tahdhīb al-Kamāl*, (10: 532): “‘Abū ‘Ubaydah al-Sariyy 'Ibn Yaḥyā 'Ibn 'Iyās 'Ibn Ḥarmalah 'Ibn 'Iyās al-Shaybānī al-Maḥlamī”.

4.9 Qāḍī ‘Iyāḍ: His Juridical Endeavour, His Deductions, His Preferences

4.9.1 ‘Iyāḍ’s debate with Mālik

Qāḍī ‘Iyāḍ was considered an inventive and original *fiqh* scholar. A leading Mālikite *faqīh* of his day – he was a staunch advocate of the *Murābiṭūn* regime – and rarely disagreed with Mālik on *fiqh* issues. But when he did (on thirty one issues in all) he presented a logical argument (against Mālik), with conciseness and wit, employing the appropriate literary conventions of the day (*nukat, furūq*) to telling effect.

The cases on which ‘Iyāḍ disagreed with Mālik, are as follows:

Six concerned the matter of purity (*ṭahārah*), four the issues of prayer (*al-ṣalāh*), eight with funerals (*janāzah*), three marriage (*nikāḥ*), seven, on sale (*buyūʿ*) and purchase of goods (*shirāʿ*) and the final three issues on charity, alms, and funds (*zakāh*).

Qāḍī ‘Iyāḍ, in opposing the arguments of Mālik, adhered strictly to the Qur’ān and *ḥadīth*. It is from these sources that ‘Iyāḍ derived his evidence against Mālik’s opinion in the said thirty one cases. We shall now look at some of the issues upon which they disagreed.

4.9.1.1 The Question of Purity (*Ṭahārah*)

Prayer (*ṣalāh*), according to the Qur'ān and the *ḥadīth* of the Prophet (PBUH), is the means to the purification of the soul and the cleanliness of the body. Inward purity is the real aim, with outward purity being a necessary preparation. Hence the *ḥadīth* expressions, 'a pure mind is pure body', and 'purity is half the faith'.

In the case of major ritual impurity (*janābah*) caused by marital intercourse, the Muslim can only become pure again through the major ritual ablutions of *ghusl* (where water is available) or *tayammum* (where clean soil or sand is used in cases of water shortage). A Muslim cannot touch or even recite the Qur'ān until he is so purified.

In the case of minor ritual impurity (*ḥadīth*), Muslims who have been in contact with urine or sperm, Muslims cannot touch the Qur'ān but they may recite it, so that they might pursue prayer, the means to the purification of the soul, until such time as they can perform the minor ritual ablution (*wuḍū*).

'Iyāḍ uses the above criteria, for the removal of impurity, to illustrate several juridical arguments which differ from those held by Mālik. For example, the *Sharī'ah* requires Muslims to grow and retain their beards. Mālik suggested that the beard might be shaved or trimmed right down to the skin, thus

symbolically retaining the beard in shape and form. His interpretation (*ta'wīl*) of this legal point appears to have been based on an agricultural analogy; namely, that a strip in a field must be mowed down to the level so that access to the field is facilitated, making maintenance of the crop, harvesting and so on, possible. The rationality (*ḥikmah*) of this analogy appears to be cleanness leads to efficiency.

'Iyāḍ discussed the *ghuṣl* ritual where, it is said, the Muslim is required to use a piece of cloth (or alternative) to ensure that ritual purification is complete. He suggested, in opposition to Mālik, that the piece of cloth was not necessary in cases where the Muslim was engaged, for example, in travel and where he was able to completely submerge his body in water or experience standing in a sustained shower of rain, so that with one's hands, all parts of the body could be reached and accordingly cleansed. 'Iyāḍ was supported in this interpretation by, amongst others, al-Qārāfī.

4.9.1.2 The Question of Prayer (*Ṣalāt*)

'Iyāḍ supports and endorses the expedient, suggested in the *ḥadīth*, narrated on the authority of Jābir, of combining the early afternoon (*zuhr*) and late afternoon (*'aṣr*) prayers, and likewise with the sunset (*maghrib*) and night (*'ishā'*) prayers, particularly in the case of travel.

A good example of this is during the journey to be made by pilgrims at the *ḥajj* between Mecca and 'Arafāt where they spend the ninth day of *Dhū al-Ḥijjah*.

Legislation regarding prayer is not devoid of flexibility. Traditions show that Muḥammad (P.B.U.H.) shortened the prayer on one occasion when a child began to cry in the congregation²⁶.

Another instance of the combining (*jam'*) of *ẓuhr* with 'aṣr prayers occurs when the *ẓuhr* prayer is delayed as a result of the intense heat of the day.

'Iyād also propagated the idea that a blind *'imām* leading the prayer was more preferable than a sighted one, in the belief that being so afflicted he could not (in one respect) have possibly offended 'Allāh. Also because a blind man, (providing he stays on the straight and narrow path (*sunnah*), will surely gain a place in paradise. There was also the assumption that a blind man, unlike a deaf man or a cripple, not only retained his mental faculties, but that these somehow were heightened by the state of blindness to the extent that the blind man gained an inner perception or insight into humanity, denied to sighted people.

According to al-Bukhārī the blind man may well prove the better *'imām*, as

²⁶ *Al-Bukhārī, 'Adhān, bāb 65; Muslim, Ṣalāh 191,192.*

long as he is well grounded in knowledge and ‘possesses the greatest excellence’.²⁷

The blowing of one’s nose during prayers, according to Mālik, annulled the prayer. ‘Iyād, in differing with Mālik, pointed out that so long as the act was not needless, then it was permissible. Namely, that the state of one’s nose necessitated an appropriate response, to the effect that, were the nose not to be treated, then the state would interfere with the Muslim’s prayers. ‘Iyād was supported in this interpretation by al-Lakhmī.

4.9.1.3 The Question of Funerals (*Janāzah*)

The *ṣalāh* of a *janāzah* is an obligation incumbent on the community (*farḍ kifāyah*) and not on each individual concerned (*farḍ ‘ayn*). This prayer, said Mālik, involves no performance of *rak‘ah*. The *‘imām* stands upright facing the *qiblah* and recites “*‘Allāh ‘Akbar*” (*takbīrah*) four times. After the fourth he pronounces the final salutation (*taslīm*) at the close of prayer. ‘Iyād suggested that this fourth *takbīrah* could be followed by a supplication (*du‘ā*). This is in addition to the third *takbīrah* which is, in effect, a *du‘ā*. ‘Iyād’s objective in suggesting this amendment appears to have been the extension of *janāzah* prayers to the living Muslims also, wherein the supplication refers to the need

²⁷ *Al-Bukhārī*, 10: 46.

for co-operation (*ta'āwun*) between Muslims for the purpose of maintaining the faith.

Thus, the *'imām* would raise his hands to the level of his shoulders and recite, “My Lord, pardon and forgive our predecessors, and our trespasses and transgressions. Oh Lord, the one(s) whom you make live amongst us, let their faith endure. And the one whom you make die, let him/her die as a Muslim”. The legal precedent for introducing this supererogatory prayer, maintains ‘Iyād, lies with the *ḥadīth*, on the one hand, which states that ‘Allāh, to whom belongs all Glory, will surely not tire in answering your call (*du‘ā'*)” and, on the other, with the Qur’ānic ‘Āyah (verse): ‘And when my servants question you concerning me, then surely I am near. I answer the prayer of the supplicant when he cries out to Me’.²⁸

4.9.1.4 The *Ṣalāh al-Janāzah*

A dead body, on which the *ṣalāh al-janāzah* (funeral prayer) has been omitted, may be exhumed in order that it may be consigned to Heaven (or Hell) with the blessings of ‘Allāh. But the order for the exhumation, argues ‘Iyād, must have

²⁸ Qur’ān, 2: 186 .

a legal basis (*tashrī‘*) in order to prevent criminal actions. In this event the body may be exhumed even though in a state of partial or advanced decay. Objectors to the exhumation of a body must present their evidence before the court so that the judge can accordingly weigh the evidence for and against the case for exhumation.

‘Iyāḍ also maintained, against orthodox Mālikite opinion, that a dying non-Muslim child need not be blessed, for the innocent are bound for Paradise. Hence the *ḥadīth*, “As regards the children around ‘Ibrāhīm they are the children who die *‘alā al-fītrah*, (literally, in the state in which they are born)”.²⁹

Prayers are said over an infant if it has cried at least once. There is no dispute between the Mālikis on this point. Rather, the controversy centres round the children of polytheists. For ‘Iyāḍ these children are in Heaven. In support of his argument he cites the same *ḥadīth*.³⁰

‘Iyāḍ also expounded on the advantage and thus made it popular, of using scented aromatic woods or leaves in the ritual cleansing of the body before burial. These flora would be soaked in water sufficiently long enough for

²⁹ *Al-Bukhārī* 23: 92.

³⁰ *Al-Bukhārī*, 23: 93.

infusion to take place. The body was then ritually washed with the aromatic water, and cleansed of all dirty stains and smells. The body of the first Rightly Guided Caliph, 'Abū Bakr, was washed in this manner, several times over using water infused with *sidr* (lotus) leaves. Thus, 'Iyāḍ was not, by suggesting such a proposal, seeking to establish a legal precedent, but merely to popularise an existing custom.

The Mālikite scholar, 'Iyāḍ expounded, too, on the nature of the construction of the grave. Namely, he argued that the soil of the chosen burial site must be stable and not given to subsidence. 'Iyāḍ, in suggesting this, showed concern for the ritual of interring the body with sufficient depth so as to avoid slippage, odorous omission from the body and the scavenging of animals. This is bearing in mind the practice in Islam of interring the body in a seated position so that Munkar and Nakīr, the two angels, can sit either side of the dead body and interrogate him about his religion, and decide whether he goes to Heaven or Hell. Thus, the grave was a pit with a narrower trench at the bottom.

'Iyāḍ sees no purpose in repeating the *ṣalāh al-janāzah* for a deceased person believed to have been male but subsequently discovered to be a female, or vice versa. 'Allāh, he maintains, is satisfied with the intention (*niyyah*) to perform prayers, as laid down in the *Sharī'ah*. Therefore no further intervention is required on the part of the Muslim community.

4.9.1.5 Marriage

'Iyāḍ preferred fathers to marry their daughters (with their permission) to pious Muslims. Hence the Qur'ānic 'Āyah (verse), 'I would gladly have you marry one of these two daughters of mine, on condition that you hire yourself to me for the term of eight pilgrimages'. This as a measure of the future husband's piety, and as evidence of his suitability as a Muslim husband.

A father also had the right to marry a daughter against her will, if she was a virgin. In this case the father is *walī mujbir* (granted the power of coercion). It is probably against this particular notion of marriage that 'Iyāḍ advocates the marriage of a daughter to a pious person, the implication being that a pious person would refuse to marry an unwilling girl.

One must remember that the *walī* (guardian) was bound to assist in carrying out the contract of marriage demanded by a woman, if the bridegroom failed to fulfil certain legal conditions. A woman could also make a proposal of marriage to a man.³¹

³¹ *Al-Bukhari*, 67: 33.

Chapter Five

The Author's Sources for His Book the *Tanbīhāt*

- 5.1 A Summary of Mālikite *Fiqh* Sources in the *Tanbīhāt*
- 5.2 Commentary on 'Iyād's Sources
- 5.3 A Study of (19) Sources

Chapter Five

The Author's Sources for His Book the *Tanbīhāt*

Mālikite *Fiqh*

‘Iyāḍ, with regard to the derivation of his sources, profited above all from his teachers (*shuyūkh*) in the form of their anecdotes, opinion and *‘ijtihād* (personal striving). The reliability of some of these sources was unquestionable, but some were open to criticism. All of these sources appeared to have been received by ‘Iyāḍ in oral form (*mushāfahah*).

However, ‘Iyāḍ did not confine himself to calling upon Mālikite sources only but extended this invocation to the other three great schools of Islamic law, the Shafi’is, Ḥanbalis and the Ḥanafis, sometimes citing the authors, sometimes merely the book from which the source was derived.

The methods by which ‘Iyāḍ cites his sources are diverse and number three in all.

Viz:

- (i) Where he cites the title of the book only.
- (ii) Where he cites the author of the work only.
- (iii) Where he cites both the name of the author and the work.

5.1 A Summary of Mālikite *Fiqh* Sources in the *Tanbīhāt*

NB: The following sources, upon which 'Iyād relies in the composition of the *Tanbīhāt*, are follows:

- (1) *'Aḥkām al-Qur'ān*, by 'Abū 'Abdullāh 'Ibn 'Abd al-Ḥakam (d. 286 A.H.).
See para. [139]¹.
- (2) *Al-'Asadiyyah*, by 'Abū 'Abdullāh 'Asad 'Ibn al-Furāt 'Ibn Sinān al-Naysābūrī (d. 213 A.H.). See para. [9].
- (3) *Al-'Aṣl*, by 'Abū Bakr 'Aḥmad 'Ibn Muḥammad 'Ibn Maysir al-'Iskandarānī. (d. 339 A.H.). See para. [185].
- (4) *Al-'Ishrāf*, of 'Abū Bakr Muḥammad 'Ibn 'Ibrāhīm 'Ibn al-Mundhir al-Naysābūrī (d. 318). See para. [20].
- (5) *Sharḥ Kitāb 'Ibn 'Abd al-Ḥakam*, (extensively abridged) by 'Abū Bakr Muḥammad 'Ibn 'Abdullāh 'Ibn Muḥammad al-'Abhurī (d. 375 A.H.). See, para. [382].
- (6) *Al-'Utbiyyah*, by 'Abū 'Abdullāh Muḥammad 'Ibn 'Abd al-'Azīz 'Ibn 'Attāb al-Qurṭubī (d. 255 A.H.). See, para. [17].
- (7) The *Kitāb* of 'Ibn Saḥnūn 'Ibn Sa'īd al-Tanūkhī (d. 256 A.H.). See, para, [134].

¹ This number between brackets refer to the para. no. in the *Tanbīhāt* (Arabic Part).

- (8) The *Kitāb* of 'Ibn Shā'bān. Full name: 'Abū 'Ishāq Muḥammad 'Ibn al-Qāsim 'Ibn Sha'bān al-Miṣrī (known as 'Ibn al-Qurtī) (d. 355 A.H.). See, Para [205].
- (9) The *Kitāb* of 'Ibn 'Abd al-Ḥakam, of 'Abū Muḥammad 'Abdullāh 'Ibn 'Abd al-Ḥakam 'Ibn 'A'yun al-Laythī (d. 214 A.H.). See, para [115].
- (10) The *Kitāb* of 'Ibn al-Qaṣṣār (which covers those issues under disputation) by 'Abū al-Ḥasan 'Alī 'Ibn 'Aḥmad al-Baghdādī, better known by his *kunyah*, 'Ibn al-Qaṣṣār (d. 398 A.H.). See, para [19].
- (11) The *Kitāb* of 'Ibn Muzayn (In affect an explanation (*tafsīr*) of the Muwaṭṭa' of Mālik) by 'Abū Zakariyyā Yaḥyā 'Ibn Muzayn al-Qurtubī (d. 255 A.H.). See, para [73].
- (12) The *Kitāb* of 'Ibn al-Mawwāz (*Kitāb* Muḥammad), known by the designation, *al-Mawwāziyyah*. It was written by 'Abū 'Abdullāh Muḥammad 'Ibn 'Ibrāhīm 'Ibn Ziyād al-'Iskandarānī (known by his *kunyah*, 'Ibn al-Mawwāz), (d. 269 A.H.). Widely referred to by 'Iyād. See, paras. [16],[36], [74], [171 a.], [202].
- (13) The works of 'Aṣḥhab. His full name: 'Abū 'Amr Miskīn 'Ibn 'Abd al-'Azīz 'Ibn Dāwūd al-Qaysī (d. 204 A.H.). See, para. [64].
- (14) *Al-Mabṣūṭ* of al-Qādī 'Abī 'Ishāq 'Ibn 'Ismā'īl 'Ibn 'Ishāq al-Jahdamī al-'Azdī (d. 282 A.H.). See, para. [281].
- (15) The *Mumahhad* of 'Abū al-Ḥasan 'Alī 'Ibn Muḥammad 'Ibn Khalaf al-Ma'āfirī, better known as 'Ibn al-Qābisī (d. 403 A.H.). See, para. [6].

- (16) The '*Majmū'ah*' of 'Abū 'Abdullāh Muḥammad 'Ibn 'Ibrāhīm 'Ibn 'Abdūs al-Qayrawānī (d. 260 A.H.). See, para [178].
- (17) The *Mukhtaṣar*, of 'Ibn 'Abī Zayd. Full name: 'Abū Muḥammad 'Abdullāh 'Ibn 'Abī Zayd al-Qawrawānī (d. 386 A.H.). See, para. [10].
- (18) The '*Mudawwanah*' of Saḥnūn, related on the authority of 'Ibn al-Qāsim, covering the juridical issues discussed with Mālik 'Ibn 'Anas. Saḥnūn's full name: 'Abū Sa'īd 'Abd al-Salām 'Ibn Sa'īd al-Tanūkhī al-Qayrawānī (d. 240 A.H.).
- (19) The '*Masā'il al-Khilāf*' of 'Ibn al-Qaṣṣār; or the *Kitāb* 'Ibn al-Qaṣṣār. No para. (not mentioned in the *Tanbīhāt*)².
- (20) 'Abdullāh 'Ibn Wahb. Author most notably of: the *Riwāyāt* 'Ibn Wahb, [48]; the *Muwatta'* of 'Ibn Wahb, [203], and the '*Dhukira fī Kitāb 'Ibn Wahb*', [256].
- (21) The *Nawādir* of 'Ibn 'Abī Zayd al-Qayrawānī abridged [13] by *shaykh* 'Abū Muḥammad 'Ibn 'Abī Zayd. See, para. [358].
- (22) The *Wāḍiḥah* of 'Abd al-Mālik 'Ibn Ḥabīb, [8]. As mentioned by 'Ibn Ḥabīb in the *Wāḍiḥah*, [76] and [286].
- (23) 'Abū 'Imrān al-Fāsī, [59], 'Abū 'Imrān. The ponderation of two issues by 'Abū 'Imrān, [287].
- (24) Al-Qābisī. [453].

² The reason was that 'Iyāḍ sometimes mentions the authors name but not their works.

- (25) Al-Qāḍī 'Ismā'īl used to assist 'Iyād in explaining an issue pertaining to the *Kitāb al-Qāḍī 'Ismā'īl*, [383]. *The Mabsūṭ al-Qāḍī 'Ismā'īl*, [113].
- (26) Al-Bājī, [6]. Al-Qāḍī 'Abū al-Walīd al-Bājī relates, [115].
- (27) 'Abd al-Ḥamīd, [6]. 'Abū Muḥammad 'Abd al-Ḥamīd, [59].
- (28) Al-Sayyūrī, [6]. (Once only).
- (29) 'Ibn Lubābah, [8], [175].
- (30) 'Īsā 'Ibn Dīnār, ('Īsā 'Ibn Dīnār fī *al-Mabsūṭah*), [11]. Samā' 'Īsā (narrative received in the presence of the *shaykh*), [208]. Samā' 'Īsā fī *al-'Utbiyyah*, [82], [83].
- (31) 'Abū al-Walīd 'Ibn Rushd. (our *shaykh*, al-Qāḍī 'Abū al-Walīd 'Ibn Rushd, said), [14], [492].
- (32) Yaḥyā (*Khilāf Riwāyat Yaḥyā*), [172 c.]. Yaḥyā 'Ibn 'Amr, [191]. Yaḥyā 'Ibn Sa'īd, [208 b.], [226].
- (33) The Kitāb of Yaḥyā 'Ibn 'Ishāq, [15]. As occurred in the Kitāb of Yaḥyā 'Ibn 'Ishāq on the authority of 'Ibn al-Qāsim. [185].
- (34) 'Ibn Kinānah, [161]. 'Ibn Kinānah fī *al-Mabsūṭah*, [340].
- (35) Al-Makhzūmī, [16], [17].
- (36) Al-Qāḍī 'Abū al-Ḥasan 'Ibn al-Qaṣṣār, [138], [190].
- (37) 'Ibn al-Mundhir, [20], [239].
- (38) Madhhab 'Urwah 'Ibn al-Zubayr, [20], (once only).
- (39) 'Abū Ḥafṣ al-'Attār, [23].
- (40) 'Abū al-Qāsim 'Ibn Muḥriz, [24], [175].
- (41) Al-Qāḍī 'Abū Muḥammad 'Ibn Naṣr, [317], 'Ibn Naṣr, [501].

- (42) 'Alī 'Ibn Ziyād, [79]. 'Alī 'Ibn Ziyād *qāla* (said) [501].
- (43) Riwāyat 'Abd al-Raḥīm, [27]. His full name: 'Abd al-Raḥīm 'Ibn Khālid 'Ibn Yazīd, with the *kunya* Of 'Abū Yaḥyā. Of this Mālikite scholar al-Dāraquṭnī said: "He was one of the first scholars to spread the Mālikite doctrine in Egypt". 'Ibn Bakīr said Mālik was amazed by his knowledge of Mālikite *fiqh*. (d. 163 A.H.).
- (44) The report of al-Qāḍī 'Ismā'il, [6], [383].
- (45) Al-Juwaynī, [31]. His full name: 'Abd al-Malik 'Ibn 'Abdullāh 'Ibn Yūsuf 'Ibn Muḥammad al-Juwaynī, his *kunya* being 'Abū al-Ma'ālī. One of the outstanding Shafi'ite jurists of all time. A prolific author whose works include, *Ghiyāth al-'Umam Fī al-Siyāsah al-Shar'iyyah*, mostly covering the subject of *'Uṣūl al-Fiqh* (the principles of Islamic law) (d. 478 A.H.).³
- (46) Al-Sariyy 'Ibn Yaḥyā, [32]. His full name: al-Sariyy 'Ibn Yaḥyā 'Ibn 'Iyās al-Shaybānī, 'Abū al-Haytham. 'Abū Yaḥyā al-Baṣrī said of him: "He related on the authority of Thābit al-Binānī and al-Ḥasan al-Baṣrī" (d. 167 A.H.).⁴
- (47) 'Ibn Bāz, [33]. *Kitāb 'Ibrāhīm 'Ibn Muḥammad 'Ibn Bāz*, [165].

³ *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*, 3: 249.

⁴ *Tahdhīb al-Kamāl*, no. (2442); *Tahdhīb al-Tahdhīb*, no. (14319); *Taqrīb al-Tahdhīb*, no. (26438).

- (48) Al-Qāḍī 'Abū al-Faraj 'Ibn Muḥammad al-Laythī al-Baghdādī, a leading, prominent jurist. His pupils included 'Abū Bakr al-'Abhurī. Al-Qāḍī died in 330 or 331 A.H. [38].
- (49) *Shurayḥ fī al-Kitāb*. [43], [489]. His full name was 'Abū 'Umayyah *Shurayḥ* 'Ibn al-Ḥārith 'Ibn Qays 'Ibn al-Jahm 'Ibn Mu'āwiyah al-Kindī. He was appointed judge of *Kūfah* by 'Umar 'Ibn al-Khattāb. *Shurayḥ* died in 80 or 87 A.H.⁵
- (50) 'Ash'ath 'Ibn Siwwār. His full name was, 'Ash'ath 'Ibn Siwwār al-Kindī al-Najjār al-Kūfī, *mawlā* (client) of the *banī* *Thaqīf*. A popular carpenter and excellent coffin maker. He was a judge (*qāḍī*) of al-'Ahwāz. As related on the authority al-Ḥasan al-Baṣrī. 'Ash'ath died in 136 A.H.⁶
- (51) Faḍl, (al-Faḍl 'Ibn Salamah), [49], [59].
- (52) 'Ibn 'Abī Zamanīn, [120], [123].
- (53) 'Abū Bakr 'Ibn Yūnus, [157], [149].
- (54) 'Abū Muḥammad al-Sūsī, [56], [256].
- (55) 'Ibn Mughīth al-Ṭulayṭilī, [56].
- (56) *Al-Mabsūṭ*, [56], [144].
- (57) 'Ibn al-Kalbī, [62].
- (58) Al-Farrā', [62].
- (59) Al-Layth, [62], [139].

⁵ *Kitāb al-Wafīyyāt*, 98; *Kitāb al-Ma'ārif*, 433.

⁶ *Tahdhīb al-Tahdhīb*, no. (12365).

- (60) Al-Harawī, [257], [311].
- (61) 'Ibn Fāris *fī Mujmal al-Lughah*, [62].
- (62) Al-Ḥarbī, [62].
- (63) 'Ibn Nāfi', [63], [108].
- (64) Riwāyat 'Ashhab, [116], [117].
- (65) *Kitāb 'Ibn 'Attāb*, [166], [206].
- (66) 'Ibn 'Īsā, [208], [226]. *Kitāb 'Ibn 'Īsā*, [108], [132].
- (67) 'Aḥmad 'Ibn Khālid, [189], [317].
- (68) 'Ibn Muzayn, [73], [551].
- (69) 'Ashhal 'Ibn Ḥātim, [78], [283].
- (70) 'Ibn Sahl, [375], [403].
- (71) 'Abū Muṣ'ab, [82].
- (72) Al-Lakhmī, [82], [171 a.].
- (73) *Samā'Zawnān*, [82].
- (74) 'Ibn al-Mājishūn, [86], [265].
- (75) Ḥamdīs, [341], [416].
- (76) *Riwāyāt al-'Aṣilī al-'Abyānī*, [95], [208].
- (77) 'Ibn Masrūr, [95], [226].
- (78) 'Ibn al-Sakan, [95], (three times).
- (79) Al-Baghawī, [95].
- (80) Al-Bukhārī *fī Tārīkhīhī*, [210], [266].
- (81) 'Ibn 'Abī Ḥātim, [95].
- (82) 'Ibn Mufarraj, [95].

- (83) 'Abū 'Alī (*min Tārīkhīhī*), [95], [301].
- (84) *Kitāb al-'Udhri*, [95].
- (85) 'Abū 'Umar 'Ibn 'Abd al-Barr, [95].
- (86) Al-'Aṣīlī al-'Abyānī, [95], [208].
- (87) 'Ibn al-Sakan, [95].
- (88) Al-Qazwīnī, [98].
- (89) 'Aḥmad 'Ibn Khālid, [101], [173].
- (90) 'Ibn Waḍḍāḥ, [194], [207].
- (91) 'Ibn Sandar, [104].
- (92) 'Aḥmad 'Ibn Dāwūd, [104], [132].
- (93) Mujāhid 'Ibn Jubayr, [105], [458].
- (94) 'Abū 'Ishāq, [74], [215].
- (95) 'Abū al-Qāsim al-Ṭabarī, [112].
- (96) 'Abū Muḥammad 'Abd al-Ḥaqq, [171].
- (97) *Riwāyat Ziyād*, [26]. His full name was 'Abū 'Abdullāh Ziyād 'Ibn 'Abd al-Raḥmān al-Qurṭubī, an 'Andalusian jurist. He was present at the recital of the *Muwatta'* by Mālik himself. He composed a work in the *samā'* genre, as related on the authority al-Layth 'Ibn Sa'd. He was one of the first Mālikites to introduce the *Muwatta'* of Mālik to 'Andalus. His pupils included, Yaḥyā 'Ibn Yaḥyā. Ziyād died in 193 A.H.).
- (98) Several of our *shaykhs*, [115]. The '*Andalusian fuqahā'*', [47]. Several of our *shaykhs*, not mentioned in the *Mudawwanah* [240].
- (99) *Al-Mabsūṭ*, [281], [494], [501], [506].

(100) 'Ibn al-Labbād, lived 250/864-333 A.H./944 A.D. [189], [216].⁷

(101) Al-Mughīrah, [280], [370].

(102) 'Ibn al-Jallāb, [501], [541].

(103) *Dhahaba ba'd al-mashāyikh*, [73].

(104) *Al-Mukhtaṣarah*, [98].

(105) *Al-Mukhtaṣar*, [120], [144].

5.2 Commentary on 'Iyād's Sources

Reviewing the above pages one notes the extent to which 'Iyād relied heavily on Mālikite *fiqh* sources, and how he refers time and time again to key source, pertaining to the most prominent Mālikite *fuqahā'* of the period. One also notes that these sources are invariably employed to support the issues (*masā'il*) which 'Iyād is eager to emphasise.

⁷ *Tartīb al-Madārik*, 3: 304.

5. 3 A Study of 19 Sources

[1] *Al-'Utbīyyah* of Muḥammad al-'Utbī

Those derived from the '*Asmi'ah*', known as the '*Utbīyyah*' of Muḥammad 'Ibn 'Aḥmad al-'Utbī (d. 255 A.H.). The content of the '*Asmi'ah*' was largely based on al-'Utbī's collection of oral narratives (*samā'āt*) which he learnt from 'Ibn al-Qāsim, who in turn had memorised them at the feet of Mālik.

Al-'Utbī used the *samā'* genre which resembles the *ḥadīth* in that each narrator is accorded a chain of authority (*sanad*), and the authenticity of his account (*riwāyah*) is assessed according to the nature of his character, his skill in memory and so on.

Then the author registers each *samā'* narrative, and each register (*daftar*) is given a title, using the first word or expression of the narrative for the title itself. For example, the phrase, '*jā'a fa-bā' imra'atahū*' (he came and contracted a wife).⁸

No reference is made by al-'Utbī or his fellow commentator as to the nature of the method employed in organising the *fiqh* issues (*masā'il*). Namely, whether he deals with religious observation (*'ibādāt*) first and then commercial transactions (*mu'āmalāt*), or how he decides which issues in each category command priority over what is considered to be of lesser importance.

⁸ *Mawāhib al-Jalīl*, 41.

However, we are given an indication as to al-‘Utbī’s method of derivation from the sources. It is by deduction (*’istidlāl*) and the coverage (*’istī‘āb*) of those sources.

Deduction (*’Istidlāl*)

Al-‘Utbī deduces from various sources such as the *ḥadīth* of the Prophet (P.B.U.H.), the Medinan *’Āthār*, the opinions of Mālik and those of his adherents, to support his interpretation of the Mālikite issues that he covers.

Capacity (*’Istī‘āb*)

Al-‘Utbī covers a vast range of issues (*masā’i*) from both the *’ibādāt* (religious observation) and *mu‘āmalāt* (commercial transactions) categories of Mālikite *fiqh*.

The importance of the ‘*’Asmi‘ah*’ or ‘*’Utbiyyah*’, in the canon of Mālikite *fiqh* literature, is its collection of *’Āthār ḥadīth*, narrated on the authority of Mālik and that of his adherents. However, some of the narratives were considered irregular (*shādh*) in their chains of authorities (*’asānīd*) by al-‘Utbī’s contemporaries⁹, and they therefore tended to be disregarded. Then the book fell into the hands of ‘Ibn Rushd (some would say by divine providence) who revised and edited it, removing from the text all that was considered ambiguous (*’ishkāl*), until it

⁹ *Tartīb al-Madārik*, 4: 253.

became a sound (*ṣaḥīḥ*) bona fide source of Mālikite *fiqh*.¹⁰ The juridical character of the *'Asmi'ah* is said to match that of the *Mudawwanah*, since both constitute a collection of Mālik's juridical opinions (and that of his adherents) on the manifold issues presented to the Mālikite *fuqahā'* of the day.

[2] *Al-Tafrī'* of 'Ibn al-Jallāb

The methodology employed in the *Tafrī'* is divided into three sections.

The Arrangement (*tartīb*) of the Issues (*masā'il*)

Here 'Ibn al-Jallāb commences with ritual purity (*ṭahārah*), followed by prayer (*ṣalāh*), then poor tax (*zakāh*), fasting (*ṣiyām*), pilgrimage (*ḥajj*), holy war (*jihād*), followed by obsequies (*janā'iz*), oaths (*'aymān*), solemn pledges (*nudhūr*), foodstuffs (*'aṭ'imah*), manumission of slaves (*'itq*) and marriage (*nikāh*). Then the author moves onto the commercial transactions (*mu'āmalāt*), beginning with sale (*buyū'*), contract of lease (*'ijārah*) and sharecropping, (involving a contract over the lease of a plantation, limited to one crop period, (*musāqāh*)). In the last third of the book he deals with personal injury (*jirāh*), then with court judgements on matters like mortgage (*rahn*), and concludes with cases on morals (*'akhlāq*) and manners (*'adab*).

¹⁰ See, The Introduction of, *Taḥqīq al-Bayān Wa al-Taḥṣīl*, 1: 21.

Deduction (*'Istidlā*)

'Ibn al-Jallāb does not concern himself with the deductive process in this work, concentrating, as he does, on abridgement (*'ikhtisār*) alone.

Coverage (*'Istī'āb*)

In all 'Ibn al-Jallāb deals with approximately 18,000 issues (*masā'il*) 12,000 of which are covered in the *Mudawwanah*, and the remaining 6,000 cover new ground.¹¹ In addition 'Ibn al-Jallāb comments on the precepts (*qawā'id*) and general rules of Mālikite *fiqh*.¹²

The *Tafri'* of 'Ibn al-Jallāb is considered the standard work on the manuals (*furū'*) of Mālikite *fiqh*, and on it the Mālikite *fuqahā'* themselves heavily depended for guidance in their particular specialisation.

Primarily, the *Tafri'* confines itself to those issues (*masā'il*) which derive, by way of narration, from Mālik himself. Thus, the author invariably prefaces each treatment of a given issue with the expression, "Mālik said, ...", and only after covering that does he turn to the opinions of his adherents (*talāmīdh*).

¹¹ *Ibid*, 1: 120.

¹² *Ibid*, 1: 125-126.

[3] *Al-Risālah* of 'Ibn 'Abī Zayd al-Qayrawānī

'Ibn 'Abī Zayd arranges (*rattaba*) his issues, commencing with an introduction, in which he sets out the doctrine of the old Mālikite founders. Then he moves onto cover the legal judgements pertaining to religious observance (*'ibādāt*), beginning with purity (*ṭahārah*), prayer (*ṣalāh*), fasting (*ṣiyām*), poor tax (*zakāh*), the pilgrimage to Mecca (*ḥajj*), oaths (*'aymān*), solemn pledges (*nudhūr*) and marriage (*nikāh*).

This is followed by his comment on commercial transactions (*mu'āmalāt*), commencing with sale (*buyū'*), sharecropping (*musāqāh*), right of pre-emption (*shuf'ah*) and weregild (*dimā'*), concluding with a chapter on morals (*'akhlāq*) and manners (*'adab*), the latter covering such issues as table manners, greetings, and when not to avert or lower one's eyes.

Once again, as was the case with the *Tafrī'* of al-Jallāb, 'Ibn 'Abī Zayd's principal aim in the *Risālah* is to provide an abridgement rather than a lengthy commentary in which he would be obliged to support his arguments with the requisite evidence (*'adillah*) derived from the appropriate sources.

Coverage ('Istī'āb)

In all 'Ibn 'Abī Zayd covers some 4,000 issues (*masā'il*), following the conventional pattern of Mālikite argument described above, but adds to that a substantial section on doctrine ('aqā'id), manners ('adab) and conduct (*sulūk*).¹³

The *Risālah* is considered one of the most important abridgements in the field of Mālikite *fiqh*, for its coverage of the Mālikite manuals (*furū'*), its solid style, and its treatment of doctrine, morals and manners, such that aspiring students of Mālikite *fiqh* fought tooth and nail for the limited copies available, in what amounted to an excellent text book on Mālikite *fiqh*.¹⁴

[4] *Mukhtaṣar al-Mudawwanah* of 'Ibn 'Abī Zayd al-Qayrawānī

This book resembles in its method the chapter titled *Jāmi'* which cited at the end of the book *Risālah*, for the same author. Yet the *Mukhtaṣar* is deemed to be more comprehensive in its coverage of issues (*masā'il*). Its arrangement of issues resembles that of the *Mudawwanah*. The author's methodological approach is deductive, his evidence being derived from the Qur'ān, *sunnah* of the Prophet (P.B.U.H.), consensus of opinion ('ijmā') and so on, but 'Ibn 'Abī Zayd fails to provide a chain of authorities ('asānīd) for his narrations (*riwāyāt*), and neither does he classify them according to their degree of authenticity (*ṣaḥīḥ=sound*,

¹³ See, The Introduction to the *Risālah*, 8.

¹⁴ *Ma'ālim al-Īmān*, 3: 111.

da'if=weak).

Coverage (*'Istī'āb*)

The *Mukhtaṣar* is said to cover approximately 50,000 issues, some 14,000 issues more than are contained in the *Mudawwanah*. The importance of the *Mukhtaṣar* of 'Ibn 'Abī Zayd lies with its coverage of the *Mudawwanah* itself.

[5] *Al-Nawādir Wa al-Ziyādāt 'Alā Mā Fī Al-Mudawwanah* of 'Ibn 'Abī Zayd al-Qayrawānī

There exist various manuscript copies of this work, with each copy varying slightly one from the other in the subject matter covered. Scholars recommended that the manuscript lodged in the Jāmi' of al-Zaytūniyyah be used as the master copy on account of its coverage being more comprehensive than the other copies.

The author arranges his subject matter commencing with an introduction to the '*Nawādir*' (rare issues). The sources of the *Nawādir* were largely derived via the process of '*ijtihād*' (exertion), with the '*isnād*' supplied for each narration.

'Ibn 'Abī Zayd then moves on to the '*ibādāt*' (religious observance), commencing with purity (*ṭahārah*), prayer (*ṣalāh*) and so on, which constitutes the first volume of the book. The second volume commences with ritual slaughter (*ḍhabā'ih*), and hunting, followed by the issue of marriage (*nikāḥ*) and an extensive coverage of

divorce (*ṭalāq*). Divorce concludes the second volume and spills into the beginning of the third volume, covering such subjects as the waiting period of a divorced woman before re-marriage, (*'iddah*) and the *ḡihār* form of divorce. The third volume concludes with a chapter on sale (*buyū*). The fourth volume covers such issues as replevin (*'istiḡqāq*), property entrusted to some else's custody (*wadī'ah*), and treasure trove (*luḡaṭah*).

On close inspection of the '*Nawādir*' one notes the similarity with the *Mudawwanah* in terms of its arrangement of issues (*tartīb al-masā'il*), especially in the field of religious observances (*'ibādāt*), where the issue of fasting (*ṣawm*) is given precedence over that of tax (*zakāh*), as it is in the *Mudawwanah*. However in the *Nawādir*, 'Ibn 'Abī Zayd places the discussion of marriage (*nikāḡ*) ahead of divorce (*ṭalāq*) in importance whereas they are presented in the opposite order in the *Mudawwanah*.

Deduction (*'Istidlāl*)

In the '*Nawādir*' each discussion is prefaced with a verse from the Qur'ān, a *ḡadīth* of the Prophet (P.B.U.H.), or from the '*Āthār*'. These set the tone of the argument to follow.

Coverage (*'Istī'āb*)

All those issues which find expression in debate in the pages of the great Mālikite texts, such as the *Mudawwanah*, the '*Utbīyyah*, the *Mawwāziyyah* and the

Wāḍiḥah find expression in the '*Nawādir*' of 'Ibn 'Abī Zayd.

The *Nawādir* is considered one of the most important commentaries on Mālikite *fiqh*, being noted for its devotion to the collection of accounts (*riwāyāt*) narrated on the authority of Mālik himself, and that of his adherents and their followers. Whereby, the author compares one narration with that of another, weighing one opinion (*tarjīḥ*) against another, until the judgement (*ḥukm*) of a particular issue is either endorsed or reached.

[6] '*Uyūn al-'Adillah Fī Masā'il al-Khilāf Bayna Fuqahā' al-'Amṣār* of 'Ibn al-Qaṣṣār (d. 398 A.H.)

'Ibn Farḥūn said of this work, "The Mālikite *fuqahā'* have never come across such a learned book on disputation as this one".

[7] *Al-'Ishrāf 'Alā Masā'il al-Khilāf of Qāḍī 'Abd al-Wahhāb* (d. 422 A.H.)

In terms of the methodology employed by the author, the arrangement of issues (*tartīb al-masā'il*) is not conventional; viz, it commences with the '*ibādāt* – purity (*ṭahārah*), prayer (*ṣalāh*), poor tax (*zakāh*), fasting (*ṣiyām*) and pilgrimage (*ḥajj*). The author appears to revert back to the '*ibādāt* with coverage of arrest (*ḥabs*), marriage (*nikāḥ*), felony (*jināyāt*), and legal punishment (*ḥudūd*), followed by oaths ('*aymān*), solemn pledges (*nudhūr*), foodstuffs ('*aṭ'imah / ashribah*), testimonies in court (*shahādāt*), manumission of slaves ('*itq*), wills (*waṣāyā*) and finally, inheritance (*farā'id*).

On closer inspection, however, one comes to the conclusion that ‘Abd al-Wahhāb does not include marriage (*nikāḥ*), oaths (*‘aymān*), solemn pledges (*nudhūr*) and repast (*‘aṭ‘imah*) under the category of *‘ibādāt* at all.

The author, for the derivation of his sources (*‘istidlāl*), relies largely on the Mālikite *‘ulamā’*, bringing into the discussion of the issues their opinions, which he then weighs (*tarjīḥ*) one against the other.

Coverage (*‘Istī‘āb*)

‘Abd al-Wahhāb confines himself to fiqh issues alone. However, the importance of this book, in the canon of Mālikite *fiqh* literature, lies with its skilful comparison of opinion, both inside the Mālikite school of law itself and between that of the Mālikite school and the other three great schools, the Ḥanafites, the Shāfi‘ites and the Ḥanbalites.

This work bears a distinct Mālikite stamp, in which the author puts one opinion against an opposing one, relying heavily on deduction (*‘istidlāl*) to arrive at an opinion or piece of evidence (*dalīl*) which either supports a new ruling (*ḥukm*) or confirms an existing one, but in a pithy, concise manner.

[8] *Al-Talqīn* of Qādī ‘Abd al-Wahhāb

The book resembles in its derivation of sources the methodology of the Iraqi Ḥanafis (*tafrī‘*), bearing comparison with the *Ta‘rīf* of ‘Ibn al-Jallāb. The issues (*masā‘il*) are organised in the following manner: purity (*ṭahārah*), prayers (*ṣalāh*),

poor tax (*zakāh*), fasting (*ṣiyām*), pilgrimage (*ḥajj*), holy war (*jihād*), oaths (*'aymān*), solemn pledges (*nudhūr*), sacrificial slaughter (*dhabā'ih*), hunting (*ṣayd*) and foodstuffs (*'aṭ'imah*). Having dealt with the religious observances (*'ibādāt*) the author then moves seamlessly onto the *mu'āmalāt* (commercial transactions), beginning with sale (*buyū'*) and leasing (*'ijārah*). These are followed by sharecropping contract (*musāqāt*), hiring (*kirā'*), bankruptcy (*taflīs*), revivification of barren land (*'ihyā' al-mawāt*), property entrusted to someone's custody (*wadī'ah*), tort (*ta'addī*), replevin (*'istiḥqāq*), cession (*ḥawālah*), averment (*'iqrār*), treasure trove (*luqatah*), right of pre-emption (*shuf'ah*), felony (*jināyāt*), legal punishment (*ḥudūd*), false accusation (*qadhf*), religious endowment (*waqf*) and inheritance (*mawārīth*).

[9] *Al-Ma'ūnah 'Alā Madhāhib 'ahl al-Madīnah* of Qādī 'Abd al-Wahhāb

This book is modelled, in terms of its methodology, on the author's own *'talqīn'* wherein he confines himself to comment on Mālikite issues alone, deriving his sources by way of deduction (*'istidlāl*).

[10] *Al-Mumahhad Fī al-Fiqh* of Qādī 'Abd al-Wahhāb

This work, in effect, is a commentary on 'Ibn 'Abī Zayd's abridgement of the *Mudawwanah* entitled the *Mukhtaṣar* which was not completed by the author. Here 'Abd al-Wahhāb does not follow the conventional method in Mālikite commentaries (*shurūḥ*), Instead he tends to treat the issues therein entirely from an independent perspective, similar to that pursued in his work, entitled *'Ishrāf*,

but in the case of the *Mudawwanah* preferring abridgement (*'ikhtisār*) rather than deduction of sources, as I realised through a comparison of the two works in question.

[11] *Al-Tahdhīb Li Masā'il al-Mudawwanah* of Khalaf 'Ibn 'Abī al-Qāsim Sa'īd al-Barādhī'i (d. 438 A.H.)

This book was actually edited and arranged into chapters by 'Abdullāh 'Ibn Sa'īd 'Ibn al-'Āṣ al-Barādhī'i, the author himself having neglected this aspect of methodology (*shurūh*). The work commences with *'ibādāt*, with purity (*ṭahārah*), followed by prayer (*ṣalāh*), fasting (*ṣiyām*), holy war (*jihād*), oaths (*'aymān*), solemn pledges (*nudhūr*), hunting (*ṣayd*), sacrificial slaughter (*dhabā'ih*), pilgrimage (*ḥajj*), advanced purchase (*salam*) and sale of animal meats (*bay' al-laḥm bi-al-ḥayawān*).

One notices, observing the above arrangement (*tartīb*), that al-Barādhī'i places fasting (*siyām*) before *zakāt* in importance, and that he gives precedence to *jihād* over *ḥajj*.

With regard to the derivation of sources the author here concentrates on abridgement rather than on deduction. "When I read this work", remarked 'Ibn Sa'īd al-Barādhī'i "I note its fine style, its shrewd abridgement, its concentration on *'āthār* (Medinan) narrations, its lack of deduction (of evidence), with little repetition".

Coverage ('Istī'āb)

As an abridgement of the *Mudawwanah*, the '*Tahdhīb*' of al-Barādhī'ī is honed down to the bone. For example, there is hardly any coverage of tax (*zakāh*) in its manifold forms. No *zakāh* issue on pearls (*lu'lu'*), for example, or on jewels (*jawāhir*), ambergris (*'anbar*), spices (*tawābil*), saffron (*za'farān*), dues (*'uṣfur*), nuts (*jawz*), almonds (*lawz*), straw (*tibn*), vegetables (*khudār*), herbs (*buqūl*) or on dried fruits (*mā yaybas wa-yuddakhar min al-fawākih*).

In the *Mudawwanah*, however, by way of comparison, one notes how Saḥnūn devotes three pages to the subject, dividing it into three categories each supported by evidence (*'adillah*).

[12] *Al-Jāmi' Li Masā'il al-Mudawwanah Wa al-Mukhtaliṭah Wa Ziyādatihā Wa Nazā'irihā Wa Sharḥ Limā 'Ashkal Minhā*, of 'Abū Bakr Muḥammad 'Ibn 'Abdullāh 'Ibn Yūnus al-Ṣiqillī, (d. 451 A.H.), (MS)

In terms of its methodology this work resembles the *Nawādir* of 'Ibn 'Abī Zayd. As to its coverage (*'istī'āb*), the '*Jāmi'*' of al-Ṣiqillī brings together in one work those rare issues (*nawādir*), not included in the *Mudawwanah*, alongside the issues covered in the *Mudawwanah*, to produce a comprehensive work on Mālikite fiqh. Such that Mālikite *fuqahā'* designated it the '*Muṣḥaf al-Madhhab*' (the Qur'ān of Mālikite *fiqh*).

[13] *Al-Kāfī Fī Fiqh 'Ahl al-Madīnah*, of 'Abū 'Umar 'Ibn 'Abd al-Barr, (d. 463 A.H.)

The author begins his work by covering the issues on *'ibādāt*: purity (*ṭahārah*), prayer (*ṣalāh*), tax (*zakāh*), fasting (*ṣiyām*), pilgrimage (*ḥajj*), foodstuffs (*'aṭ'imah*), sacrificial slaughter (*dhabā'ih*), oaths (*'aymān*), solemn pledges (*nudhūr*), holy war (*jihād*) and marriage (*nikāh*), in that order. In the commercial transaction category (*mu'āmalāt*) he covers sale (*buyū'*), lease (*'ijārah*), property entrusted to someone else's, custody (*wadī'ah*), liability (*wathā'iq al-duyūn*), mortgaging (*rahn*), surety (*kafālah*), cession (*ḥawālah*), bankruptcy (*'aḥkām al-muflis*), treasure trove (*luqatah*), extortion (*ghaṣb*) and right of pre-emption (*shuf'ah*), moving onto issues like averment (*'iqrār*) and testimony in court (*shahādah*), manumission of slaves (*'itq*), legally prescribed alms tax (*ṣadaqāt*) voluntary donation (*hibah*), inheritance (*mawārith*) felony (*jināyāt*), finally concluding with a chapter on ethics or morals (*'akhlāq*) and manners (*'adab*).

In his coverage of the Mālikite issues, which form the *furū'* (manuals), 'Abd al-Barr pays little attention to deduction (*'istidlāl*), only rarely providing evidence (in the way of sources) to support his text.

Coverage (*'Istī'āb*)

All its sources are established and are drawn from the *furū'* (Mālikite manuals).

The work being, above all, an abridgement of Mālikite *fiqh*.

[14] *Al-'Ikhtilāf* (of) Mālik and (that) of His Adherents (of) 'Abū 'Umar 'Ibn 'Abd al-Barr (MS)

This work covers those issues under both the *'ibādāt* and *mu'āmalāt* categories which formed the subjects of dispute (*khilāf*) between Mālik and his pupils, and then between his pupils and their followers.

[15] *Al-Nukat Wa al-Furūq Li Masā'il al-Mudawwanah Wa al-Mukhtaliṭah* of 'Abd al-Ḥaqq al-Ṣiqillī (d. 466 A.H.)

The arrangement of issues in this work, covering such issues of advanced purchase (*salam*), barter (*ṣarf*), deferred dowry payment (*'ājāl*), sale (*buyū'*), liability (*midyān*) and extortion (*ghaṣb*), testifies to a strong commercial emphasis.

Deduction (*'Istidlāl*) and Coverage (*'Istī'āb*)

In this work 'Abd al-Ḥaqq felt the need to supply a text to the students of Mālikite *fiqh*, facilitating their understanding of two issues which, for the learner pupils, appeared frequently in their judicial outcomes as confusing. 'Abd al-Ḥaqq also felt that there existed a need to distinguish (*farq*) between the two issues with regard to the nature of their rulings (*'ahkām*). He decided that there was no better way to deal with this problem than through the employment of the *nukat* genre (by way of fine points).

[16] *Al-Tabṣīrah* of 'Abū al-Ḥasan al-Lakḥmī (d. 478 A.H.)

This work deals with those issues which have a both general and specific application with regard to their legal consequences. However, al-Lakḥmī appeared, in his treatment of the Mālikite issues, to have deviated somewhat from orthodox Mālikite opinion. Therefore, his work was reviled by the majority of Mālikites.

In addition, this work, on account of its so called heterodoxy, was forbidden as a source for the issuance of *fatwā* (formal legal opinion). It was reputed, however, that the author later corrected this deviance, in effect a euphemism for inaccuracy. The Mālikite *fuqahā'* in the late 6th and early 7th century A.H. such as Khalīl and 'Ibn 'Arafah, for example, relied on it in for their particular abridgements.

Despite the interest in this work expressed by academics specialising in Mālikite texts, the text itself has yet to be located, other than one part of it which is kept at the al-Khizānah al-'Āmmah in Rabat.

The part in Rabat begins with a coverage of judicial decisions (*'aḥkām al-qaḍā'*) and terminates on the issues of the felonies of slaves (*jināyāt al-'abīd*), from which one might extrapolate the near certainty that al-Lakḥmī's arrangement of issues in the whole book imitates that which is in the *Mudawwanah*. Being also an abridgement of the *Mudawwanah* there is not so much reliance by the author on deduction (*'istidlāl*) who, instead, tends to comment and clarify.

[17] *Al-Muqaddimāt al-Mumahhidāt Li Bayān Ma 'Iqtadathū Rusūm al-Mudawwanah Min al-'Aḥkām al-Shar'īyyāt Wa al-Taḥṣīlāt al-Muḥkamāt Li 'Ummahāt Masā'ilihā al-Mushkilāt*, of 'Ibn Ruṣhd (d. 520 A.H.)

The arrangement of issues in this work closely resembles that of the *Mudawwanah* except that 'Ibn Ruṣhd provides an introduction to the principles and precepts which underlie the science of Mālikite *fiqh*.

The author's sources are largely derived from the *Mudawwanah*, but by independent deduction (*'istidlāl*) he adds to those sources, as did 'Ibn 'Abī Zayd in his *Nawādir*.

Coverage (*'Istī'āb*)

As mentioned before, 'Ibn Ruṣhd covers those issues presented in the *Mudawwanah*. The importance of the *al-Muqaddimāt* lay with its explication of the principles and precepts on which Mālikite *fiqh* is based. It is presented in the context of an abridgement of the *Mudawwanah*.

[18] *Al-Bayān Wa al-Taḥṣīl Wa al-Sharḥ Wa al-Tawjīh Wa al-Ta'līl Fī Masā'il al-Mustakhrajah* of 'Abū al-Walīd 'Ibn Ruṣhd

The author's coverage of *fiqh* issues is conventional up to a point. Namely, he covers the *'ibādāt*: purity (*ṭahārah*), prayer (*ṣalāh*), fasting (*ṣiyām*), poor tax (*zakāh*), holy war (*jihād*), solemn pledges (*nudhūr*), hunting (*ṣayd*), sacrificial

slaughter (*dhabā'h*), pilgrimage (*hajj*), trade and commerce with non-Muslims (*al-tijārah 'ilā 'ard al-ḥarb*), marriage (*nikāḥ*), barter (*ṣarf*), advanced purchase (*salam*), sale (*buyū'*), lease (*'ijārah*), hiring of land or property (*kirā' al-dūr wa al-'araḍīn*), defrayment (*sadād*), liability (*midyān*), bankruptcy (*taflīs*), mortgage (*ruhūn*), replevin (*'ishtiqaq*), extortion (*ghaṣb*), cession (*ḥawālah*), surety (*kafālah*), right of pre-emption (*shuf'ah*), crop damage (*jawā'ih*), sharecropping contract (*musāqāh*), legal detention (*ḥabs*), religious inheritance (*farā'id*), manumission of slaves (*'itq*), contract for the lease of an orchard (*mughārasah*), felony (*jināyāt*) and legal punishment (*ḥudūd*).

'Ibn Ruṣhd places holy war (*jihād*), solemn pledges (*nudhūr*), hunting (*ṣayd*), and slaughter (*dhabā'ih*), between that of tax (*zakāh*) and pilgrimage (*hajj*), which is slightly unconventional, and that furthermore he gives precedence to fasting (*ṣiyām*), over tax (*zakāh*), when in the scheme of Mālikite *fiqh* literature the opposite case is the more orthodox.

By and large, 'Ibn Ruṣhd in this work derives his sources from the Qur'ān, the *sunnah* of the Prophet (P.B.U.H.), the *Mudawwanah*, and the *'Utbiyyah*.

Coverage (*'Istī'āb*)

'Ibn Ruṣhd covers all those issues in the *'Utbiyyah* and then compares them with the same issues in the *Mudawwanah*, with the aim of commenting on and clarifying these issues for the benefit of all Mālikite *fuqahā'*. Therein lies the

importance of this work. It is a clarification of Mālikite sources (*'ummahāt*) which, when invoked for purposes of *'iftā'* (deliverance of formal legal opinion), clarify that which (on the surface) appears to be contradictory in meaning, but which, when examined closely, reveal a measure of agreement. The converse is the case where two issues in their judicial outcomes may show similarities, but which, again on closer inspection, are shown to have irreconcilable differences.

[19] *Sharḥ al-Talqīn* of al-Māzarī (d. 536 A.H.), (MS)

A commentary on the *Talqīn* of Qāḍī 'Abd al-Wahhāb, in which al-Māzarī follows the issues laid out in the *Talqīn*, posing questions to which he then supplies the answers.

Chapter Six

The Author's Terminology in the *Tanbīhāt*

1. *Fiqh* terminology in the *Tanbīhāt*.
2. Juridical Inference.

Chapter Six

Fiqh terminology in the *Tanbīhāt*

6.1 *Fiqh* terminology in the *Tanbīhāt*

6.1.1 Definition of *Fiqh* Terminology in the *Tanbīhāt*

a. Enumeration of Definitions in the *Tanbīhāt*

- 1) [1] *Nikāḥ* (marriage) defined linguistically.
- 2) [2] *Nikāḥ* defined in the technical, legal sense.
- 3) [3] Definition of *ṣadāq* (bridal dower) and its synonym (*murādif*).
- 4) [4] Definition of *shighār* marriage. (see 6.2.1 for details in full).
- 5) [31] *Al-'Ayyim* – the status of widows/divorced women.
- 6) [60] The verb " *'ishtajarū* "(to differ) in the 3rd person plural..
- 7) [61] *Darar* (determent / loss / damage).
- 8) [62] *Al-'Aṣabah*, *al-'ashīrah*, *al-fakhdh* (see 6.2.1 for a full definition).
- 9) [70] *Al-Musālamah* – the feminine of Muslim.
- 10) [72] *Al-Muwallā 'alayhā* and *al-muwallā 'alayhī* - to be subject to the guardian (in the question of marriage).
- 11) [96] *Al-duff* – a musical instrument.
- 12) [97] *Al-Barābīt* – festivals of Persian songs.
- 13) [98] *Shahādat al-'abdā'* – an apriori witness of a marriage contract.
- 14) [103] *Dughā'uhā* – her sound / voice.

- 15) [105] *Raghā'ib al-'amwāl* – namely, its importance / significance.
- 16) [117] *'Alā darāmah* – according to (its) participation.
- 17) [124] *Al-'aql, al-qaran*. The former denotes a fleshy protuberance, the latter is a synonym which indicates the same thing.
- 18) [125] *Al-Rataq* – mucus / expectoration.
- 19) [126] *Al-Majbūb, al-khaṣiyy*. Both denote cut off genitals of a eunuch.
- 20) [127] *Al-'Innīn* – a man with a small penis.
- 21) [128] *Laghiyyah*, (without marriage). *Lazīnah* (embellishment in marriage). *Rashidah* (an illegal marriage). *Rashād* (a man denied the sexual pleasure of his wife).
- 22) [177] *'Ightazzat ṭalāq zawjihā* – divorce from a woman with her consent.
- 23) [191] [192] *Al-'Abā', al-ṣhamāl* – the former, a cloak of coarse woollen cloth, the latter being the same (a synonym for *'abā'*).
- 24) [193] *Al-'Utrubī* – a coarse woollen garment derived from 'Utrub, a small village in Egypt.
- 25) [223] *Nāhazū al-'Iḥtilām* – to reach sexual maturity.
- 26) [234] *Al-Radā'* – act of suckling a baby.
- 27) [240] *Al-Ghaylah* (or) *Ghīlah* – breast feeding during sexual intercourse.
- 28) [242] *Ḥattā yalfizahū al-ḥijr* – to be able to dispense with sleep.
- 29) [246] *Al-Ḥabr (Ḥibr)* – a non Muslim scholar / jurist.
- 30) [257] *Al-Zu'arah* – a wet nurse.
- 31) [260 a.] *'Irkhā' al-sutūr* – to loosen, let drop a veil.

- 32) [263 a.] *'Ijtlāhā* – to unveil a bride at the wedding ceremony.
- 33) [273 a.] *Al-Khul'* – (divorce at the instance of the wife, who must pay a compensation). (See 6.1.2 for details).
- 34) [275 a.] *Jalat* – to grow old or big.
- 35) [277] *Ḍannat* – (See 6.1.2. for details).
- 36) [300] *Ḥijrī lahū ḥiwā'* – a place of residence.
- 37) [304] *Al-Zamnā* – a chronically ill person.
- 38) [315] *Al-Ṭalāq* – the technical meaning of which will be supplied in (6.1.2.).
- 39) [319] *Qubul al-shay'* – no details are offered by 'Iyād, as to the definition of this particular expression.
- 40) [333] “*'In ta'arak 'arkatayn*” – (See 6.1.2. for details).
- 41) [339 a.] *Al-'Ihdād* – the limiting or preventing of something.
- 42) [342] *Al-Burūd, al-'aṣab* – dress from the Yemen.
- 43) [344] *Al-Zanbaq* – a bunch of lillies.
- 44) [345] *Al-Ḥinnā'* – sesame oil.
- 45) [346] *Al-Khatm* – a hair dye.
- 46) [347] *Al-Furqubī* - or (some say) *qurqubī* - a garment (dress) made of white flax.
- 47) [350] *Taftadd* – to overcome a girl's heart, a metaphor for seduction.
- 48) [353 a.] *Al-Muwā'adah* – proposing to a woman in her *'iddah*.
- 49) [371] *Yastahsin* – application of discretion in a legal decision.

- 50) [382] *Fī makān waḥsh* – in a place where one feels desolate.
- 51) [385] *Tudlij* – to set off before daybreak.
- 52) [391] *Al-Ṣarūrah fī al-ḥajj* – where legal evidence in the field of religious duty cannot be challenged.
- 53) [393] *Al-Mawājīz* – similar to the hospices for *ṣūfis* and travellers (*ribātāt*, *thughūr*) where one takes refuge.
- 54) [431] *Kharī‘ah* – injustice / tyranny.
- 55) [432] *Lā ni‘mata ‘ayn* – delight of the eyes.
- 56) [437] *Ṣāghiran qaminan* – base / vulgar.
- 57) [438] *Al-Ḥiwā’* – a place of congregation.
- 58) [490] *Al-Zihār* – pre-Islamic form of divorce.
- 59) [520] *Al-‘Īlā’*. For explanation, see (6.1.2).
- 60) [520 a.] *Fā’a* = *‘irjā’* – to return to the partner during *‘ilā’*.
- 61) [520 b.] *Fay’ah* – see (62).
- 62) [537 a.] *Al-Li‘ān* – oath of condemnation, in the matter of adultery.
- 63) [547] *‘Irq naza‘ah* – to yearn for.
- 64) [548] *Lam yurakhkhaṣ lahū fī al-‘intifāl*. (See 6.1.2.).
- 65) [366] *Al-Mun‘ā lahā zawjuhā* – with regard to the meaning of *mun‘ā*. (See 6.1.2. for details).
- 66) [307] *Yamūn* – money paid to couples about to marry, (a wedding gift).
- 67) [311] *Al-Ri‘ah* – one (he or she) who does not show deference or respect.
- 68) [321] *‘Asadd* – he made it perfect.

- 69) [334] *Tarqā al-ḥayḍah*, where menstruation does not occur for at least a year.

6.1.2 Definition of Fiqh Terminology

- 1) [1] *Ta'rif al-nikāḥ* in the linguistic sense. The term *nikāḥ* derives from the physical process of linking (*jam'*) two things or establishing a contract (*ḍamm*) between two people.
- 2) [2] *Nikāḥ* – legal definition. *Nikāḥ* indicates the validating of a union between a man and woman for the purposes of sexual intercourse.
- 3) [3] *Al-Ṣadāq*. The letter (*Ṣād*) taking either the *fathah* or *kasrah* vowel. It is said that *ṣadāq* (bridal dower) derives from the noun *ṣidq* (sincerity).
- 4) [4] *Al-shighār* – a double treaty of marriage common amongst the *Jāhili* Arabs. Namely, where a man marries a sister or a daughter off to another man, the latter returns the compliment by offering either his sister / daughter in return, in order for both men to avoid paying the bridal dower. Illegal in Islam.
- 5) [31] *Al-'Ayyim* – a widow, divorcee or a spinster, whether or not, according to 'Ismā'īl al-Qādī, she has reached her legal age, or whether

or not she be a virgin or a non-virgin. Even a man fits the description of *'ayyim* if he has not got a wife.

- 6) [60] *'Ish_htajarū* (they differed) synonymous with the verbs *tanāza'a* (to be at variance with) and *'ikh_htalafa* (to dispute).

- 7) [61] *Ḍarar* (harm). The dispute about this term invariably centres around the nature of the harm committed, i.e. was it unintentional or premeditated.

- 8) [62] *Al-'Aṣabah*, *al-'ashīrah*, *al-fakhidh*. These terms pertain to the description of the socio-political organisation and development of the Arab tribe, as confirmed by Muḥammad 'Ibn Qutaybah. 'Ibn al-Kalbī likens the development of a tribe to the source derived from the *kutub al-qawā'id al-fiqhiyyah* (fundamental rules of *fiqh*). The structure (*'imārah*) of the tribe is likened to the body. The whole is the most important. Then comes the stomach (*baṭn*), the family and then the body thigh part (*fakhidh*) the group, and so on. Al-Harawī says that the (*fakhidh*) is a group similar to a clan (*'ashīrah*), whilst also related to the notion of sedentarisation (of a tribe).

- 9) [70] *Al-Musālamah* – with the letter *mīm* taking the (*ḍammah*) vowel, although 'Aḥmad 'Ibn Khālid maintains that it takes the (*fathah*). *Musālamah* are, in short, those women who convert to Islam.
- 10) [72] *Al-Muwallā 'alayhī / 'alayhā* – to be subject to the guardian's influence in the act of marriage.
- 11) [96] *Al-Duff*. It originally pertained in meaning to the roundness of a piece of equipment, a sieve (*ghirbāl*) for example. Then, later, it began to take on the meaning of the Persian *mizhar* (musical instrument) whose legitimacy in Islamic law is questionable, because it is not Arabic like the 'ūd (musical instrument).
- 12) [97] *Al-Barābīt* – two festivals of Persian songs, with the first taking the *fathah*.
- 13) [98] *Shahādat al-'abdā'* – those people who witnessed the signing of the marriage contract between the bride and groom but who were absent from the ceremony where the guardian (*walī*) signed, yet their testimony is no less valid for that.

- 14) [103] *Ḍughā'uhā*, with the letter *ḍād* taking the (*ḍammah*) vowel, her shouting.
- 15) [105] *Raghā'ib al-'amwāl* – namely, its importance / significance.
- 16) [117] *'Alā ḌIrāmah*, is pronounced with the letter *ḍād* taking all three short vowels according to the differing accounts, but the *kasrah* vowel is thought to be the most correct. A conflagration.
- 17) [124] *Al-'aql, al-qaran*. In the former word the letter *'ayn* takes the *fathah* vowel. In the second term the letter *qāf* takes *fathah* and the letter *rā'* takes a *sukūn*. *'aql* and *qaran* are synonyms. These terms denote a fleshly or bony protuberance (like a hernia in a man).
- 18) [125] *Al-Rataq*. Here the letter *rā'* and *tā'* take a *fathah* vowel. It denotes sexual contact and the mucus generated thereby.
- 19) [126] *Al-Majbūb, al-khaṣiyy*. Synonyms, denoting the severed genitals of a eunuch, as confirmed by 'Ibn Ḥabīb.
- 20) [127] *Al-'Innīn*, a very small penis, likened to a tassel which, even when erect, (according to 'Ibn Ḥabīb) does not inflate any bigger. The Mālikite

fuqahā' denigrated opponents by calling them *mu'tarad*, i.e., a man afflicted with an illness in the nether regions which prevents the erection of the penis. The letter *rā'* in *mu'tarad* takes a *fathah*.

- 21) [128] *Laghiyyah, lazīnah, la rashidah*. In *laghiyyah* with the *lām* taking a *kasrah*, the *ghayn* a *kasrah* and the letter *yā'* a *shaddah* (so that the sound is repeated - *yy*). It denotes without marriage / unmarried. *Lazīnah*, with *zāy* takes *kasrah*, denoting embellishment in marriage. "*La rashidah*" an illegal marriage. In the word *rashād* the *rā'* takes *fathah* or *kasrah*, with the former being thought the more grammatically correct, as confirmed by 'Abū 'Ubayd who had never seen the *rā'* with a *kasrah*. *Rashād* means a man denied the sexual pleasure of his wife.
- 22) [177] *'Ightazat ṭalāq zawjihā*. In the word *'ightazat* the *zāy mukhaffafah*, reduced from the *shaddah*. It means divorce with the woman's consent.
- 23) [191] [192] *Al-'Abā', al-shamāl*. *'Abā'* and *shamāl* are synonyms for a cloak of coarse, woollen cloth.
- 24) [193] *Al-'Utrubī*, the *nisbah* (origin) referring to a small village in Egypt from where the *'Utrub*, a coarse, woolen garment, derives.

- 25) [234] *Al-Raḍā'*; the act of suckling, to feed a baby milk from the breast, hence the noun *raḍā'ah*,
- 26) [240] *Al-Ghīlah*. Here the letter *ghayn* takes a *kasrah* vowel. The term denotes the act of a mother breastfeeding her baby whilst the husband simultaneously has sexual intercourse with her. Some *fuqahā'* say the *ghayn* takes a *fathah* only when the *tā' al-munfaṣilah (hā')* has been elided. This is mentioned in the *Mudawwanah* by al-'Ājurri, as related on the authority of 'Abd al-Ḥaqq.
- 27) [242] *Ḥattā yalfīzahū al-ḥijr*. Here the *fā' (f)* takes a *kasrah*. It means to be able to dispense with sleep in the case of a mother with her new born baby who requires constant breastfeeding.
- 28) [242] *Al-Ḥabr / Ḥibr*. Here the *ḥā'* takes either a *kasrah* or *fathah*. 'Iyād offers no explanation as to the meaning of this term as a fiqh definition, but the dictionary (Wehr) defines it as a non-Muslim scholar, i.e., a Christian or a Jew.
- 29) [257] *Al-Zu'rah*. With the latter *zā'* taking *ḍammah* and the *wāw* a *fathah*, although, according to 'Abū al-Ḥusayn, the *wāw* is *sākin*

(apocopate). However, he admits that this is rare (*nādir*). In short, these *zu'rah* are wet nurses.

- 30) [260 a.] '*Irkhā*' *al-sutūr* - Pertains to the lifting of a woman's veil at the marriage ceremony. Namely the husband metaphorically consummates the marriage and thus the full dower is awarded to the woman.
- 31) [263 a.] '*Ijtalāhā*' - to unveil the bride at a wedding ceremony.
- 32) [273 a.] *Al-Khul'*. See enumeration for details.
- 33) [275 a.] *Jallat*, is pronounced with the *lām* taking the *shaddah*. It means to grow old or mature.
- 34) [277] *Ḍannat*, third person singular, feminine (verb), denoting a woman who is reluctant to part with her husband (when the matter of divorce between the two parties is presented in court).
- 35) [300] *Hijrī lahū ḥiwā'*, with the *ḥā'* taking *fathah* (*ḥajrī*) or *kasrah* and *ḥiwā'* taking *kasrah*. A place of congregation, originally (possibly) a house where snake charmers (*ḥuwāt*) resided.

- 36) [304] *Al-Zamnā*. Here the *mīm* takes a *sukūn* and the *zāy fathah*. The plural being *zumān*, which pertains to a person being chronically ill.
- 37) [315] *Al-Ṭalāq*, divorce. Hence the fourth form verb *'aṭlaqa (min wihāqihī)* he released (her) from his bond. A means whereby an unhappy / abused woman may escape from her husband, the latter having the remit to either initiate or agree to a divorce, whereby the husband's matrimonial authority over his wife is revoked.
- 38) [333] *'In ta'arak 'arkatayn*, two menstruations (one followed consecutively after the other). I.e. she suffered.
- 39) [339 a.] *Al-'Ilhād* - prevention of something. Namely, preventing someone from entering another's house, or prevention of harassment by banning an estranged husband from entry into the matrimonial home. The penalty (*ḥudūd*) for breaking this condition is fixed. Therefore *al-'iḥdād* is deriving from *ḥadd*.
- 40) [342] *Al-Burūd*, *al-'aṣab*. See, enumeration for details which were gleaned from 'Iyād's explication of the *al-janā'iz* prayer rite in Islamic burial ceremonies.

- 41) [344] *Al-Zanbaq*, with the letter *zāy* taking a *fathah*. It means a bunch of lillies.
- 42) [345] *Al-Ḥinnā'* = henna.
- 43) [346] *Al-Khatam*, with the letter *tā'* taking a *fathah*. The meaning is hair dye. 'Abū 'Ubayd says that the *tā'* is *mushaddad* (doubled), the dye itself being a red colour, not black as commonly believed.
- 44) [347] *Al-Furqubī / Qurqubī*, with the letter *fā'* taking a *ḍammah*, in the word *furqubī*. Some say, *qurqubī*, with two *qāf's*. al-Khattābī says it is a garment made of white flax, related to the word *furqūb*¹, but with the *wāw* elided.
- 45) [350] *Taftaḍḍu*, being the 3rd person feminine expression of the 8th form *'iftaḍḍa*, to deflower a girl. A metaphorical way of talking about seduction.
- 46) [353 a.] *Al-Muwā'adah*, a sexual rendezvous of a woman during her *'iddah* (waiting period), with the man she is next to be married. If the

¹ *Lisān al-'Arab*, 1: 657.

woman (*tuwāṭi'*) encourages him or at least agrees to the meeting, which is illegal / forbidden, then the two are both guilty. The *fuqahā'* differ here with respect to the punishment to be meted out to the man and the woman in the event of their being discovered. Some say that the forthcoming marriage should be annulled.

- 47) [371] *Yastaḥsin*, application of discretion in a legal decision.
- 48) [382] *Fī makān waḥsh*, in a place where one feels desolate.
- 49) [385] *Tudlij*, to set off before daybreak.
- 50) [391] *Al-Ṣarūrah fī al-ḥajj*, where legal evidence pertaining to religious duties cannot be challenged. See (6.1.1.).
- 51) [393] *Al-Mawājiz*. The ṣūfī hospices and *thughūr* set up the Murābīṭūn to defend and spread Islam. Sometimes warriors resided there as they sought to consolidate Islam in the region.
- 52) [431] *Khari'ah*. Meaning injustice, tyranny. The letter *khā'* takes a *fathah*, and the *rā'* a *kasrah*. It also means to effect a betrayal.

- 53) [432] *Lā nu'mata 'ayn*. In the word *nu'mata* the letter *nūn* takes the *ḍammah* vowel. In this delight of one's eye: or, in the negative, the opposite.
- 54) [437] *Ṣāghiran qaminan*. The *qāf* takes a *fatḥah* and the letter *mīm* is *takhfīf*. The expression denotes something base or vulgar.
- 55) [490] *Al-Zihār*. A pre-Islamic form of divorce (illegal in Islam). It is derived from the word *zahr* (back). Hence the words of repudiation (uttered by the husband) “*'antī 'alayya ka zahri 'ummī*” (you are to me like my mother's back).
- 56) [520] *Al-'Īlā'*. Originally an oath of refrain, but then it took on the technical, legal meaning (in marriage) of a man testifying to refrain from marital intercourse.
- 57) [520 a.] *Fā'a*. specifically related to the previous word, *'īlā'*, in the sense that if the husband undergoing *'īlā'* (the *mūlī*) breaks his vow and returns to his wife inside the stipulated four months, then this return is called *fay'ah* or *raj'ah*.
- 58) [520 b.] *Al-Fay'ah*. As above (see [520 a.]) as related by 'Ibn 'Attāb.

- 59) [537 a.] *Al-Li‘ān*. Derived from the word *la‘nah* (curse). Part of an oath of condemnation in the matter of adultery. The fifth line of the oath invokes the term under discussion; namely, “*’anna la‘nat Allāh ‘alayhī ‘in kān min al-kādhībīn*”. It is taken from the Qur’ān. “If I lie about my accusation of adultery may God curse me”. Similarly, the wife invokes a curse which she makes in response to the husband’s. The word *li‘ān* is related linguistically to *bu‘d* (distancing) and *ṭard* (repulsing). In the Qur’ān the term rather connotes a distancing from Allāh’s Mercy (*’ab‘adahū min raḥmatihī*).
- 60) [547] *’Irq naza‘ahū*. To yearn for, to incline to something. Its origin is in the word *māla ‘ilā* (to lean towards or opt out of something in favour of something else).
- 61) [366] *Al-Man‘ī lahā zawjuhā* - where news of the death of the bridegroom is brought to the intended bride. Some *fuqahā’* vowel the participle with the *mīm* taking a *ḍammah* and the *‘ayn* a *fathah*, but this is incorrect says *‘Iyāḍ*. The correct version being with the *mīm* taking a *fathah* and the *‘ayn* a *kasrah* with the *yā’* being doubled (*tashdīd*).
- 62) [307] *Yamūn*. Money, a provision for the intended bride and bridegroom.

- 63) [311] *Al-Ri'ah*. With the letter *rā'* taking a *kasrah*. The meaning, according to al-Harawī, is one who conducts himself immorally; one who shows a lack of respect to his elders.
- 64) [321] *'Asadd*. He made perfect.
- 65) [334] *Tarqā al-ḥayḍah* – the woman's period ceased.

6.2 ‘Iyāḍ’s Method of Deduction in the *Tanbīhāt*

6.2.1 Evidence derived from the Qur’ān

This evidence is derived for the purpose of supporting the author’s argument, and to clarify the sometimes obscure meaning behind certain expressions used by earlier Mālikite scholars. They are, however, derived in different ways for different purposes. Namely:

- (1) Derived for the purpose of linguistic clarification.
- (2) For the purpose of juridical clarification.
- (3) In order to determine the more correct of two similar opinions voiced by the Mālikite *fuqahā’*.
- (4) In order to rid Mālikite texts of ambiguities.
- (5) In order to refute the opinions of those who oppose Mālikite orthodoxy.

(1) For Linguistic Clarification

- Para. [76]. On the matter of high, exorbitant prices (*ghalā*):

“ولقد أخذنا آل فرعون بالسنين ونقص من الثمرات”²

“We punished the people of Pharaoh with years (of

² Qur’ān, 7: 130.

drought) and shortness of crops; that they might receive admonition”

(2) For Juridical Clarification

- Para. [2]

“ولا تنكحوا ما نكح آباءكم من النساء”³

“And marry not women whom your fathers married - except what is past: it was shameful and odious - an abominable custom indeed”

Set down in order to emphasise the fact that a marriage (*nikāḥ*) must be legally contracted. This emphasis is repeated in four other verses.

(3) Determining the Correct Opinion

- Para. [45]

This derivation is in respect of the forfeiture of (part of) the bridal dower (*ṣadāq*) in the case of divorce before the consummation of the marriage.

Does the divorced woman retain the dowry (or part of it)? Or does her guardian (*walī*) have entitlement to it (or part of)? ‘Iyād, quoting the Qur’ān, claims that the right to the amount of the dowry lay with the

³ Qur’ān, 4: 22.

newly divorced woman, on account of the following exceptive (*'istithnā'*) clause:

“إلا أن يعفون”⁴

“Unless they remit it”

‘Iyāḍ maintains that this applies to wives, the grammatical form of the verb being feminine plural.

(4) To Rid Texts of Ambiguities (*'Ishkāl*)

a. Para. [114]

This concerns the matter of abrogation (where one verse, the *nāsikh*, annuls another, the *mansūkh*). It was invoked by ‘Iyāḍ in order to clarify a particular juridical point. The verses involved are as follows:

“فانكحوا ما طاب لكم من النساء”⁵

“Marry women of your choice”

⁴ Qur’ān, 2: 237.

⁵ Qur’ān, 4: 3.

Which is then followed by the abrogating clause:

“أو ما ملكت أيمانكم”⁶

“then only one, or (a captive) that your right hands possess”

The latter clause, ‘Iyād claims, is evidence of the generality of those expressions which permit marriage, or draw reference to it. Namely, there is no need for specification (*takhṣīṣ al-‘āmm*).

b. Para. [112]

‘Iyād invokes the following verse:

“والمحصنات من المؤمنات والمحصنات من الذين أوتوا الكتاب من قبلكم”⁷

“(Lawful unto you in marriage) are (not only) chaste women who are Believers, but chaste women among the People of the Book, revealed before your time”

Here the verse is referring to the rights of Jewish and Christian women (in Islamic territories) to a legalised marriage.

⁶ *Ibid.*

⁷ Qur’ān, 5: 5.

c. Para. [82]

‘Iyāḍ invokes the following verse:

“ما لكم من ولايتهم من شيء”⁸

“As to those who believed but came not into exile; ye owe no duty of protection to them until they come into exile”

He does this to support the Mālikite opinion which refuses to legitimise a marriage between a Muslim man and a Christian woman.

6.2.2 Sources Derived from *Ḥadīth*

(1) Para. [23]

‘Iyāḍ invokes the following *ḥadīth* of the Prophet (P.B.U.H.), “As for Mu‘āwiyah, he is a vagabond (*ṣu‘lūk*) without money”, in order to emphasise poverty as an impediment to marriage.

(2) Para. [33]

The invocation of the following *ḥadīth*: “The Prophet Muḥammad (P.B.U.H.) married his two daughters off to ‘Uṯmān and they are no worse for that”. ‘Iyāḍ does not mention the cause for this deduction, but it appears to be related to either the last above mentioned point, namely

⁸ Qur’ān, 8: 72.

poverty ('Uthmān was rich) or to the concept of polygamy, wherein once again the Muslim is urged by the Qur'ān to restrict the number of wives he has unless he can provide for them.

(4) Para. [66]

The *ḥadīth* of 'Umar 'Ibn al-Khaṭṭāb that "Women of noble descent (*dhawāt al-'aḥsāb*), may only marry their equals (*'akfā'*)", again is assumed to be related to an issue (*mas'alah*) on marriage.

(5) Para. [87]

The *ḥadīth*: "A women cannot be married without the permission of her guardian (*walī*)" is said by some Mālikite *fuqahā'* to conflict with the *ḥadīth* of 'Ā'ishah, concerning the marriage of her brother to Ḥafṣah, the daughter of 'Abd al-Raḥmān. 'Iyāḍ states that there exists no contradiction here, since 'Ā'ishah, who initiated the marriage, is looking after the needs of her clan (*'ashīrah*), considered in this case to be compatible with Medinan tradition.

6.2.3 Evidence Gleaned From the Works of the Mālikite 'Ulamā'

(1) Para. [317]

This concerns the case of a man who has divorced his wife (in order to marry her again) but, before her waiting period (*'iddah*) has ran its

course, the man and the wife have illicit sexual intercourse, thus breaking the rules of purity (*ṭuhr*).

The point of dispute revolves around the claim made by some Mālikite *fuqahā'* that the husband under these circumstances should be forced back to his wife (thus avoiding the second marriage), or that he should be allowed to make that choice voluntarily.

Al-Qādī 'Abū Muḥammad 'Ibn Naṣr was of the opinion that a husband returning (*raj'ah*) to his wife voluntarily constituted a commendable act (*'istiḥbāb*). *Shaykh* 'Abū Muḥammad insisted that the husband should not be forced (*yujbar*) to go back to his wife, as would be the case with the husband who knowingly had sexual intercourse with his wife while she was in menstruation, (*ḥayḍ*). The correct option is for the husband to wait until the *'iddah* of the woman (he is going to marry) to run its course.

(2) Para. [352]

This case concerns the problem of a woman who has committed a serious sin (*min al-kabā'ir*). Should she be confined to the (matrimonial) house for a specified period (one year)? Furthermore should a slave girl (*'amah*)

in similar circumstances be treated like a free woman, on equal terms, or receive a worse punishment.

The general consensus of opinion amongst the Mālikite *fuqahā'* (Saḥnūn included) was that in the former case she should be punished and duly confined. 'Iyāḍ, with respect to the position of the slave girl, invoked the opinion of the reliable Mālikite *fuqahā'* who classed the slave girl as a Muslim, likely to receive her freedom in the future, and therefore (in respect of her punishment) she should be treated on equal terms with a free woman, (on account of her pending Muslim status).

6.2.4 Deduction from 'Iyāḍ's *Shaykhs*

(1) Para. [302 a.]

This concerns the case of a slave woman. First her husband dies; she then duly enters her waiting period (*'iddah*) before marrying again, the length of this period according to the Qur'ān to be four months and ten days (before contracting a new marriage). However, a hypothetical question is posed here. Viz, should the slave woman's master (*sayyid*) die before this *'iddah* period runs its course, then what should she do? In this instance how long should her *'iddah* waiting period be, not knowing whether she will be granted her freedom or not?

Sahnūn declared that if she has waited some two months and five nights from the first death (of her husband) to the second death (of her master), then she may be released from her *'iddah* for marriage. However, if this period of two months and five nights is not reached before the second death (of her master) then the widow is obliged to complete the fourth months and two days of waiting (as is the custom for slave wives). In this respect Sahnūn's opinion is supported by 'Ibn al-Qāsim, although some Mālikite *fuqahā'* claim that 'Ibn al-Qāsim did not subscribe to this point of view.

'Ibn Wahb's view was that the slave girl should wait until the third flow of (menstrual) blood confirmed her status or, failing that, wait nine months.

The general consensus of opinion, however, which prevails with regard to the above issue, provides 'Iyād with his necessary evidence (*dalīl*), that indeed the slave girl should wait the longer of the two periods stipulated above, before she can enter marriage once again. That is, she should experience at least three menstruations.

Chapter Seven

A Translation of the 'Īlā' Chapter from the *Tanbihāt*

Chapter Seven

Kitāb al-'Ilā'

(Divorce through 'Ilā')

When divorce is being considered by a married couple, whilst there are many aids to reconciliation, eventually divorce proceedings will have to begin. One of the stages of divorce is the oath of 'ilā discussed here as understood by the Mālikite school of law and in particular in the *Tanbīhāt*.

Definition:

'Ilā', literally, means the swearing or the taking of an oath by the husband that he shall not (sexually) enter his wife for a period of at least four months. If the husband does not resume conjugal relations ('irjā') within that stipulated period, the wife should be divorced. The divorce is thereby effected *ipso facto* without a decree of separation from the judge (*qāḍī*).

If the husband approaches his wife during the time (of 'ilā) he would be guilty of a breach (*ḥinth*) of 'ilā' and would incur a penalty for it. And the 'ilā' would cease after such an approach. Pronouncement of 'ilā' would remain effective if the husband did *kaffārah* eg., (did penance).

With regard to the revocation of 'ilā' ('irjā'), a pronouncement should be revoked where:

- a) The husband or wife was sick at the time of the pronouncement, and the illness continues until the expiry of the four month period, rendering either incompetent of matrimonial intercourse.
- b) Where matrimonial intercourse has been impossible due to some cause (other than illness) beyond the control of the husband.
- c) By resumption of matrimonial intercourse in all other cases.

The effects of *'ilā'* are that when pronouncement of *'ilā'* is made in respect of a wife, divorce will take effect at the expiry of the four month period from the date of *'ilā'*, i.e. a single, irrevocable divorce (*ṭalāq*). These are the principal issues around which a debate of *'ilā'* centres. As we shall see, the Mālikite interpretation of *'ilā'*, as evidenced in the *Tanbīhāt* of Qādī 'Iyād, differs slightly from that of the other three great schools of law.

The Mālikite interpretation of *'ilā'*, as described in the *Tanbīhāt*, is as follows:

'ilā' is the verbal noun of (*'ālā*), to entrust, to render someone a favour, to charge someone (to refrain) from something (*'imtinā' min shay*). Hence the Qur'ānic verse:

(وَلَا يَأْتَلِ أُولُوا الْفَضْلِ مِنْكُمْ)¹

¹ Qur'ān, 24: 22.

“Let not those among you who are endowed with grace
and amplitude of means resolve by”

Thereafter, the word came to mean an oath of abstention or continence... .

In time *'ilā'* assumed the technical, juridical meaning so described above, with regard to the annulment of a marriage. Hence the Qur'ānic verse:

(لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ)²

“For those who take an oath for abstention from their
wives, a waiting for four months is ordained”

The *'Ulamā'* debated as to the correct technical meaning of *'ilā'*. Namely, was it general (*'āmm*) in its application, covering every oath which touched on the issue of sexual intercourse with a wife, with regard, for example, to abuses? And did this oath of abstention extend beyond sexual intercourse to social intercourse?

It was said that *'ilā'* applied to oaths in general (*'āmm*), but was specific (*khāṣṣ*) with regard to sexual intercourse with the wife in a given set of familial circumstances. Namely, that the husband refrain, on the pronouncement of *'ilā'*, from sexual intercourse with his wife for at least four months.

² Qur'ān, 2: 226.

The Mālikis maintain that *'ilā'* has a general application with oaths (*per se*), but that it is specific in the matter of (unwelcome) sexual intercourse with a wife or abuse of a wife, and that refrainment from these actions is for a stipulated period, following the pronouncement of *'ilā'*.

Mālik's adherents differ in their interpretation (*ta'wīl*) of *'ilā'* with regard to its application. Some maintained that the sexual abstention on the part of the husband could extend beyond the four-month period, and the *'ilā'* would remain valid. Presumably the extension serves also to create more opportunity for a reappraisal of the situation by the husband.

This point is endorsed in the *ḥadīth* of the Prophet Muḥammad (P.B.U.H.) and in the *Mudawwanah* of Ṣaḥnūn. As for Mālik himself, he made it clear that if a husband completes the four month period of sexual abstention, he meets the conditions of *'ilā'*, and he then becomes *mūlī* (an oath taker), and the marriage is duly annulled.

Some say the stipulated period of the husband's sexual abstinence must extend beyond four months, if only for an extra day.

In the case of procrastination (*talawwum*) the *'ilā'* process becomes suspended. Once commenced, the full four-month period of sexual abstention on the part of the husband must be completed, the period of suspension of *'ilā'* is discounted but

the time on either side of the suspension can be counted if he is to meet the conditions of *'ilā'*.

The adherents of Mālik are all agreed on this (latter) interpretation, except 'Ashhab who narrated a *ḥadīth* on the authority of Mālik stating that, for the divorce to be valid, the stipulated period of four months should run uninterrupted. This view was endorsed by 'Ibn Nāfi' and 'Abd al-Malik, and as related by Khuwayzmindād on the authority of Mālik.

Certain Mālikite *shaykhs* (*fuqahā'*) interpret the situation otherwise, maintaining that as long as the four month period of sexual abstention is completed, irrespective of the number of interruptions or procrastinations that may occur, then the husband is said to have fulfilled the conditions of *'ilā'*, and therefore is classed as *mūlī*. But, argues Qādī 'Iyād, this interpretation is incorrect.

A Muslim husband cannot undertake the oath of *'ilā'* or pursue it to its legal conclusion, unless he is in a physical state to have sexual relations with his wife, or has access to her, making sexual relations possible; if sexual relations are not possible the *'ilā'* maybe revoked (*'irjā'*). The implication here is that if the husband (or wife) should go abroad, or undertake the *ḥajj*, after having sworn the oath of *'ilā'*, or if the husband is or be incapable of physical relations with his wife (ie, impotent) then he is not fulfilling the conditions of *'ilā'*, as confirmed in the *'Utbiyyah* and the *Kitāb* of 'Ibn Saḥnūn.

'*Īlā*' presumes a *priori* sexual proximity between the husband and wife for the oath to be rendered valid, as confirmed by the *ḥadīth* of the Prophet (P.B.U.H.), and as endorsed by 'Ibn Nāfi'.

However, if conversely, the husband wishes to restore conjugal relations with his wife and revoke ('*irjā*') the oath of '*īlā*', then no obstacles should be placed in his way. The distinction to be drawn here, surely, is between capability and integrity. The former presupposes a physical capacity on the part of the husband to perform sexual intercourse from which, according to the oath, he is obliged to abstain. In short, he is expected, as a man of integrity, to abide by the oath.

Where the period of '*īlā*' coincides with the *ḥajj*, or rather, where the pronouncement of the '*īlā*' precedes the *ḥajj* by a few days or weeks, and if the husband breaks the oath of '*īlā*' prior to the *ḥajj* date itself, then he is required to forsake the *ḥajj* for that year, having broken an oath (of Allāh). Instead, he is granted a triple divorce, (which prevents him from remarrying his wife ever again).

Thus, there exist three basic interpretations with regard to the oath taker vis-a-vis the conditions of '*īlā*', namely; (1) That he is prevented from having sexual relations with his wife because he took an oath of '*īlā*'. (2) That he is prevented from having sexual relations with his wife, in the knowledge that he is capable of such an action. (3) That he must not undertake an oath of '*īlā*' before the *ḥajj*

period.

In short, the *ḥajj* takes precedence over the oath of *'ilā'*. If a husband interrupts the *'ilā'* process to embark on the *ḥajj*, on his return he is required to start the process from the point of his return from the *ḥajj*, ensuring that he refrains from sexual intercourse with his wife for the full stipulated period of four months. There can be no concessions for the *ḥajj* pilgrimage, since this in itself, demeans one of the most important rituals in Islam. In the case of a husband or wife seeking an irrevocable divorce, this may be achieved by the husband breaking his vow (*ḥinth*), or even by a court pronouncing him a violator of his oath because he approached his wife, in which case the husband has not upheld the conditions of *'ilā'*. Thus, he would be denied the opportunity to restore matrimonial relations with his wife, the judge then granting him a three-fold divorce, which prevents him from remarrying his wife ever again. This is particularly the case where abuse of the wife by the husband exists.

An irrevocable divorce is granted when a husband breaks the vow of *'ilā'* (*ḥinth*). After such a violation the husband is denied the opportunity to restore matrimonial relations with his wife and a judge automatically grants the three-fold divorce which prevents him from remarrying his wife ever again.

This procedure of breaking the oath of *'ilā'* can be used by a husband who wants an irrevocable divorce. Or it can be used by a wife who is abused by her husband in

those cases of his oath.

Where a husband refuses to break the oath, by seeking restoration of conjugal relations, yet does not entirely meet the conditions of *'ilā'*, then he may be granted a triple divorce, rather than a divorce through *'ilā'*.

Para. [525]

Rendering the invocation of Allāh's protection, (*dhimmat Allāh*) as a *bona fide* oath in substitution of *'ilā'*:

It is said that Mālik saw it as a *bona fide* oath, although according to Qāḍī 'Iyāḍ none of his companions, students or adherents appear to have heard him debate this issue.

Rendering the making of a solemn pledge (*nadhhr*) to Allāh as a substitute oath for *'ilā'*:

Yaḥyā is of the opinion that the taking of the solemn pledge (*nadhhr*), by a husband, to refrain from sexual intercourse with his wife for a period of at least four months, is too general in its application, and is therefore invalid as a substitute oath for *'ilā'*. For 'Ibn al-Qāsim a pledge is not a sufficient deterrent against breaking an oath which, in the case of the invocation of *nadhhr*, could be too easily atoned for by way of *kaffārah*.

For 'Ibn al-Qāsim a pledge is not as binding as an oath. Because a broken pledge can easily be atoned for by way of *kaffārah* especially in the case of *nadhhr*.

Whereas the difficulty of performing *kaffārah* for a broken oath, in itself acts as a deterrent against breaking the oath.

With regard to the position of a (freed) man (*'itq*) debated by 'Abū Muḥammad: if, when he pronounced *'ilā'*, he was not in possession of a slave (*'abd*) or property, then he was not in the position to fulfill the conditions of *'ilā'*.

If he then breaks the oath (of *'ilā'*) by engaging in sexual intercourse with his wife, he is liable to pay her the full nuptial gift (*ṣadāq*), according to 'Ibn al-Qāsim. Whilst 'Abd al-Malik and 'Aṣbagh claimed that even if the freedman does not own property, he is not liable (under the circumstances described above) to return the *ṣadāq* to his wife.

Para. [526]

If a husband breaks his vow of *'ilā'* through sexual contact with his wife, he is required to fast by way of penance. The question arose whether the fasting should take place during the month in which the transgression occurred, or whether it should wait until the *'ilā'* has run its course.

One opinion has it that the transgressor, if the transgression occurred before the end of the period of *'ilā'*, must fast for the number of days spent in matrimonial intercourse with his wife immediately, so that once purified through the penance he might continue with the *'ilā'* process. But this approach is rejected by most

Mālikite commentators. Their opinion is that if the husband transgresses within the period of *'ilā'*, then the transgressor must fast immediately from the point of the transgression until the end of the period of *'ilā'*.

The making of the solemn pledge to refrain from sexual intercourse (with the wife) is cast in the following formula, “*wa Allāh, lā 'aqrabukī*”, (I swear by Allāh that I will not touch you), and is a substitute oath for *'ilā'*. After pronouncing this pledge before the wife, the husband adds, “If I do touch you, I am obliged to perform the greater or lesser *ḥajj*.”

If he breaks his vow to abstain but refuses to continue the *'ilā'* (*fay'ahl 'irjā'*) then, according to 'Ibn Waḍḍāḥ, he may be granted a single, irrevocable divorce.

In the case of a man who files for divorce in order that his son may not suffer at the hands of his wife's relatives, and his wife, in response, counter divorces, then he remarries her after the *'iddah* (waiting period): It is said that the *'ilā'* is suspended, and will remain so if his wife, for example, journeys to abroad. In which case he has to follow her and resume marital relations (*'irjā'*).

Para. [533]

With regard to the matter of revocation in which case the *'ilā'* process becomes invalid: This may occur when the husband (or wife) was sick at the time of the pronouncement of *'ilā'*, with the illness continuing until the end of the *'ilā'*

period of four months. Or where intercourse may have been impossible due to causes (other than illness) beyond the control of the husband. Namely, his (or his wife's) imprisonment. In such cases the oath so taken dissolves naturally. But where no excuse exists for revocation then the husband, according to 'Abd al-Malik, is obliged to see the oath through. In the case of an ill defined excuse or a nuptial gift (*ṣadāq*) or an undefined period of fasting, or a revocable divorce, all of which prevent the opportunity for the husband to break his vow, then the '*ilā*' cannot be annulled before its natural completion even though the husband might wish to atone for the breaking of a vow through fasting, and so on.

On the matter of dealing with a psychopath who wishes to divorce his wife, and who beats her, Saḥnūn says: "How can such a man be considered to be in a state of '*ilā*' when he has not sworn an oath to cease beating her, although the husband well may express a desire to reform himself, at least until his wife has completed the weaning of her children."

Certain Mālikite *shaykhs* have, on this point, expressed the view that such an '*ilā*', although genuine, is weak. In short the fact that the husband expresses a desire to reform himself does not make the juristic basis of such an '*ilā*' particularly sound.

The question of the conditions of '*ilā*', particularly with regard to the stipulation of time that the husband refrains from sexual intercourse with his wife for a period of at least four months, goes back to the days, according to 'Ibn al-Musayyib, of

the second Rightly Guided Caliph, 'Umar, who consulted various 'Anṣār³ and the Tābi'ūn as to the correct specified period (of four months).

Some stated that completion of only four months was insufficient for a divorce, but this opinion was counteracted in the *Muwatta'* of Mālik, as related on the authority of Sa'īd 'Ibn Musayyib, 'Abū Bakr 'Ibn 'Abd al-Raḥmān and Marwān 'Ibn 'Abd al-Ḥakam, as well as 'Ibn Shihāb.

³ Medinan Companions of the Prophet (P.B.U.H.).

Chapter Eight

A Translation of the *Li'ān* Chapter from the *Tanbīhāt*

Chapter Eight

Kitāb Al-Li'ān (Mutual Imprecation)

The noun “curse” (*la'nah*) derives its meaning principally from the Qur'ānic warning, “God will surely curse (*la'ana*) those who lie”, which is invoked by the husband after having sworn four times by Allāh that he is speaking the truth, with regard to an accusation by his wife of adultery (*zinā*).

Initially, the noun, *li'ān* (cursing, malediction) denoted ‘distance’ or ‘repulsion’. When applied in the religious context familiar to Muslims, it denotes removal from the sphere of Allāh’s Mercy. In pre-Islamic times, invariably a banished person (*ṭard*), an exile or a vagabond (*ṣu'lūk*) was devoid of tribal protection. Thus he was believed to be cursed (*mal'ūn*).

Li'ān can only take place in the mosque, and with the *'imām* present. There, the *li'ān* formula to be spoken there, is attributed by the *Qādī* to the Prophet (P.B.U.H.). Here the *wāw* of simultaneity (*wāw al-jam'*) is used, not the *wāw* of altercation (*wāw al-qasam*). The purpose of this simultaneity, the *Mālikite 'ulamā'* insisted, was to convey the gravity of the event, the *li'ān* being resorted to only in

extreme cases. Thus, all parties were to convene before the *'imām*, in the mosque. It is only there, before the *'imām*, that the gravity of such a situation can be sufficiently conveyed, claimed 'Iyād

Para. [539]

It is said that the pronouncement of the *li'ān* proves more effective if conducted during the afternoon (*'aṣr*) prayer rather than at noon (*ẓuhr*). 'Ibn Bāz confirmed this as being more juridically sound than holding it at noon, due to the fact that afternoon prayer takes place in the presence of many witnesses. Such comment may be found in the marginal gloss (*ḥāshiyah*) of 'Ibn 'Attāb's work, and likewise in the *Kitāb* of 'Ibn Ḥamdīn, as well as in the *Kitāb* of 'Ibn Waḍḍāḥ.

Para.[540]

It is said that a baby female (*jāriyah*) that (under certain circumstances) if she refuses to pronounce the *li'ān* formula (that corresponds to the husband's) then she might avoid the punishment of *ḥadd* for adultery. How can this be?

Mālik says, with regard to the alleged adulterous woman: if she produces a child, then the husband might issue a *li'ān*, but still he is obliged to acknowledge he is the father of the child, particularly if it is confirmed that he had sexual relations with his wife before the said adultery. Specifically if she produces the child two, three or five months after the pronouncement of the *li'ān*, then the husband is obliged to acknowledge the child

as his own, since the pregnancy is deemed to have occurred before the said adultery.

Then Mālik said: “If the birth of the child occurs approximately six months after the husband’s initial accusation, then still this obligation stands, namely that the child be the husband’s, indubitably. Presumably, the period is six months so as to identify the baby’s father through matching facial characteristics, and so on.

But what is to be done if the husband insistently denies the paternity of the child, even when the mother gives birth on or about this six month following the date of the accusation?

There are two juridical approaches to this problem. One option is to free the man from the obligation of divorce (*ṭalāq*). Option two obliges the husband to acknowledge the paternity of the child if born within the stipulated six month period, thus rendering the charge of adultery (*zinā*) invalid.

Mālik’s opinion, was, where the husband witnessed adultery on the part of his wife, and then she became clearly pregnant, the *li’ān* issued on that basis, remains valid. But there remains a third option (1) to release from divorce and (2) denial of paternity. That is the presentation before court of a detailed explanation by the husband (regarding his witness of his wife’s adulterous act) is required, if the *li’ān* is to remain valid. The denial of paternity by the husband even if his wife is

confirmed as pregnant, is accepted by 'Abd al-Malik.

'Abd al-Malik, however, is aware that, if the husband accepts the paternity of the child, there can be no *li'ān*. This opinion is shared by 'Ashhab and 'Ibn 'Abd al-Hakam. As for al-Makhzūmī, he says: where the woman becomes pregnant, the denial of paternity on the part of the husband must be supported by physical evidence which he himself personally gives; for example, the state of the marital bed. This is especially the case where pregnancy is not obvious or is not confirmed (as a sign of the woman's adulterous behaviour).

When a pregnancy does become obvious and the husband denies the paternity of the child (on the grounds that he has disengaged from sexual relations with his wife for a period sufficient to cause suspicion), then a *li'ān* can be pronounced.

The *Qādī 'Iyāḍ* expresses the opinion, in keeping with that of Mālik, that if the woman (accused of adultery) gives birth to the child within the six month period, then (without evidence) the child must be considered to have derived from the father's sperm. If the woman gives birth on or after the six month period following the pronouncement of *li'ān*, then the *li'ān* becomes invalid, since the three months preceding the *li'ān* are deemed to have been a sufficient period for the purposes of sexual penetration and fertilisation by the husband.

If a man accuses his wife of adultery and then issues a *li'ān* accordingly, and later

it is discovered that he has lied (on his own confession) then even if he voluntarily confesses his lie, he will still be subject to the punishment (*ḥadd*) for having slandered his wife.

Al-Mughīrah offers a second interpretation (*ta'wīl*) on this issue; namely, the husband admits to having sexual intercourse with his wife but denies the paternity of the child when his wife becomes pregnant, accusing her of adultery. With regard to this last issue *Qādī* 'Abd al-Wahhāb and 'Ibn al-Jallāb were of the opinion (*ta'wīl*) that if a husband, after the pronouncement of the *li'ān*, accuses his wife of adultery (based on the evidence of four witnesses) then recognises the child as his biological son, he would face punishment (*ḥadd*) for slander, in which case the *li'ān* would founder, on the understanding that for the *li'ān* to remain valid, the husband has to deny paternity. For the husband to deny paternity, and then subsequently recognise the child as his biological offspring, results in punishment for slander (*qadhf*), in which case the *li'ān* founders.

In the case of '*istibrā*' (originally, where a Muslim acquires a slave girl by purchase, wherein the law forbids him to cohabit with her until it is ascertained she is not pregnant in order that there is no uncertainty about paternity), the prescribed period of waiting ends after the first menstruation or, in case of pregnancy, after the birth of the child. Thus, '*istibrā*' is an inquiry as to whether the uterus of a woman is empty or not, as prescribed by the *Sharī'ah*). In the case of '*istibrā*' alone, the man is not obliged to accept paternity of the child, even

where he has not himself witnessed personally any acts of adultery by his wife. But, according to 'Ashhab (*kitāb* Muḥammad) denial is unacceptable since pregnancy can immediately follow menstruation.

Then there is the case where a husband finds his wife in the nude with a man, concealed by a blanket, but that this in itself does not constitute adultery (even where the woman subsequently becomes pregnant), and that for making the accusation of adultery the husband should be punished, but not with the full force of the law; i.e., he should merely be reprimanded.

Muḥammad stated (in this respect) that if the husband accuses his wife of adultery (or denies the paternity of the child) without being able to prove it (in the legally prescribed fashion) and she denies his charge, recourse is had to the process of *li'ān*.

Para. [546]

With regard to the question of inheritance (*mīrāth*) in the case of a child whose parent's marriage has been annulled through the process of *li'ān*. In this respect it is common knowledge that the child has only a relationship with the mother as regards kinship (*'aṣabah*) or inheritance (*mīrāth*). Namely, he is considered to be illegitimate. In this respect, even though the mother is of the Arabic race, her tribe does not receive the son's inheritance due to the latter lacking (after *li'ān*) paternal relations (*'aṣabah*) with his father.

Para. [548]

The performance of good deeds (*'ihsān*) is not permitted in cases of *li'ān*, with regard to mitigation in accusation of adultery. Namely, if the accusation proves false, then the accuser is to be flogged, as endorsed by 'Ibn Shihāb (in the *kitāb* of Muḥammad).

Li'ān pursued by an accuser who is a blind man (*'a'mā*) is an issue which has caused much controversy (*'ikhtilāf*). Thus the majority view, related by 'Ibn al-Qaṣṣār (on the authority of Mālik) has it that in this case there can be no *li'ān* until the wife or the lover of the accused woman admit that they have had sexual relations.

Para. [550]

Likewise, a question arises as to whether *li'ān* can only be performed orally or, in the case of a dumb person (*'akhras*), by gestures. Take the case of a dumb (*'akhras*), but not deaf person, who invokes *'istibrā'* when his wife gives birth to a child close on six months following his pronouncement (through gestures) of the *li'ān*, issued on the basis of the dumb husband personally witnessing the adultery of his wife:

The dumb man denies the paternity of the child, evidenced in his use (gesture) by pronouncing the denial alongside the *li'ān*. If this (*wāw*) is omitted then, according to 'Aḥmad 'Ibn Khālid, a second *li'ān* has to be pronounced (or

gestured) with a conjunctive (*wāw*) *‘āṭifah* linking the two *li‘ān* (with regard to the denial of paternity) otherwise the *li‘ān* process, based on the first *li‘ān*, would founder.

In the case of the husband falsely accusing his wife of adultery, but then retracting his statement, acknowledging the paternity of the child if and when it is born, what should the penalty be, in the knowledge that the accusation was made with the first *li‘ān*?

It is said, given that he had the opportunity to confess his untruth with the second *li‘ān* the accuser must face the legally prescribed punishment of flogging of eighty lashes, as endorsed by ‘Ibn Nāfi‘, Rabī‘ah and ‘Abd al-Raḥmān (in the *kitāb*), and in contrast to the opinion of Muḥammad¹. Namely, if the wife gives birth to a child within the six month legally stipulated period, and testifies in court that her husband, the accuser, is the true father, then the *li‘ān* process is carried through until the annulment of the marriage. Whereupon she receives half of the dower (*ṣadāq*).

This latter point became (among the Mālikite *fuqahā’*) a controversial issue and a matter of some debate. The question being: is the *li‘ān* in these circumstances considered invalid or does it in fact proceed until divorce (*ṭalāq*) occurs?

¹ His full name: Muḥammad ‘Ibn al-Mawwāz.

The fact that the wife is awarded half of the marriage dower (*mahr*), suggests that divorce occurs. The advocate (*qā'il*) of such an argument is, perhaps, defending the mother who is undergoing her *'iddah* (the legally prescribed period of waiting during which a woman may not remarry after having divorced), knowing that the divorce is final (or irrevocable), and that in this case provision needs to be made for her with regard to her daily existence and (permanent) residence.

However, the (Mālikite) *shaykhs* think otherwise, and deem the *li'ān* as void. Namely, that before the woman is awarded (half of) the *ṣadāq* her oath has to be renewed, whilst the man's denial of paternity of the child has to also be renewed.

Thus the respective allegations are re-stated (with regard to the distribution of the *ṣadāq*). Thereafter the *ṣadāq* may be divided equally between the man and the woman. In the case of a clear contradiction between the man's testimony and that of his wife, one seemingly telling the truth, the other a lie, one allegation (as it were) being matched by the other, then in the absence of a *li'ān* the man would retain half of the dower, on the strength of his allegation alone. If, however, the *li'ān* is considered valid, he is liable to return the whole dower to the woman.

The issue, however, in the final analysis revolves around the conflicting testimonies, when both appear to be reliable.

In the event of this impasse a negative view is taken and it is assumed that the

man, in issuing the *li'ān*, has a hidden agenda; namely, he wishes to divorce his wife and declare her as breaking the law via the *li'ān* in order to avoid paying the full *ṣadāq*.

Therefore, in the interests of justice (we) oblige him to return at least half of the dower (*mahr*) to his wife. We give her the benefit of the doubt, and err on the side of caution where two conflicting testimonies appear of equal reliability, even where the husband takes an oath denying the first coition in marriage.

Para. [551]

When the *li'ān* process is completed it is said by some (*fuqahā'*) that it leads to an irrevocable divorce (*bā'in*), and that in such circumstances the husband has to concede the full value of the dower (*mahr*) to his divorced wife, as supported by a group of Baṣran *fuqahā'*, 'Ubaydullāh 'Ibn al-Ḥasan and 'Abū Ḥanīfah. The latter deems the woman to have received an irrevocable divorce (after *li'ān*) on the strength of a single divorce pronouncement.

As for 'Ibn Nāfi' (in the *kitāb* of 'Ibn Muzayn) and 'Īsā, it is deemed more correct for the husband to divorce his wife, pronouncing the treble *ṭalāq*, which in any case is considered irrevocable, as evidenced in the *ḥadīth* (of the Prophet). If the husband refuses to pronounce the *ṭalāq* formula, he is considered to be in a state of separation from his wife, with no possibility of resumption of marital relations.

On this point of severance of marital relations, following the completion of the *li'ān* process, 'Abū Ḥanīfah and al-Shafi'ī state: that severance cannot occur unless directed by the ruler (*ḥākim*), as endorsed by 'Ibn Lubābah, even though re-marriage with one's own wife, who understandably might harbour hatred against the husband, constitutes a sensitive issue in itself.

According to 'Abdullāh 'Ibn 'Umar al-Zuhrī and al-Nakha'ī the continuance of marriage (after *li'ān*) is impossible. If the husband dies after the pronouncement of *li'ān* but before his wife has had an opportunity to present a counter *li'ān*, then she becomes his heir, as confirmed by Rabī'ah and the narrative *ḥadīth* of al-Barqī related on the authority of 'Aṣḥhab, on account of the fact that she remains his legal wife.

As for Saḥnūn (in the *'Utbiyyah*), he says that if the husband pronounces the *li'ān*, then retracts his allegation (in the knowledge that he has lied), and the wife concurs with him, then if he subsequently dies, there can exist no form of inheritance between the two parties.

'Aṣḥbagh mentions that if the woman marries during her *'iddah* (waiting period) and produces a child, and then her husband subsequently pronounces a *li'ān* against her, then she can never re-marry that particular man again. For following a *li'ān*, severance (of relations) takes place, kinship is annulled and the inheritance cancelled, as illustrated in the *Muwatta'* of Mālik.

Mālik stated that if a husband should issue a *li'ān* against his wife, then retract it on the grounds of committing a falsehood (*kadhīb*), but did not pronounce the fifth line of the *li'ān* formula, namely, that the curse of Allah may fall upon him should he be lying, then he was to be flogged (eighty lashes) but that the marriage would remain valid. This interpretation (*ta'wīl*) of the fifth line (*lafz*) by the Mālikite *fuqahā'* has caused some controversy (in the *Mudawwanah*), particularly with regard to the *ḥadīth* of 'Abdullāh 'Ibn 'Amr 'Ibn al-'Āṣ. The latter maintained that if the husband were to reveal his falsehood (against his wife) before the recital of the fifth line, then he was to be punished, but that the marriage remained intact. This would not be the case, however, if the husband, knowing his falsehood, recited the fifth line, as explained in the *Muwatta'*.

If the wife dies after the issuance of the *li'ān* (by her husband) her husband becomes her heir. If the husband dies, then she becomes his heir, providing she has not issued a *li'ān*, nor has had cause to be punished (for lying). But she forgoes the inheritance from her husband if she was found to have uttered the oath of condemnation (against her husband), as endorsed by the Egyptian (*Shāfi'i*) *fuqahā'*.

Conclusion

If one was, to pose a central question on the subject of this thesis, it perhaps would read as follows:

To what extent was Qāḍī 'Iyāḍ influenced in his choice of methodology in the '*Tanbīhāt*' by the prevailing politics of the era?

I consider I have answered this question in this thesis in a comprehensive and thorough manner, by providing a detailed biography of 'Iyāḍ and a political background to his life, combined with a critical examination of the '*Tanbīhāt*' and its literary and juristic influences. The Murābīṭūn rulers, from the outset imposed on the Maghrib and Andalusia regions a strict legalism where dogmatic theology was prescribed and where philosophical or theological inquiry was outlawed.

'Iyāḍ, as has been discussed in the chapters on methodology in the '*Tanbīhāt*', derived the majority of his sources (*maṣādir*) from the works of the Mālikite masters, which were based on the holy texts. In presenting the issues (*masā'il*) of Mālikite *fiqh* he was influenced by preceding methodologies and styles. By such Mālikite scholars, as we have seen, as 'Ibn 'Abd al-Barr and 'Abū Sulaymān al-Bājī.

'Iyāḍ's provision of an extensive biography of Mālikite *fuqahā'* is, as has been

acknowledged, an outstanding feature of the ‘*Tanbīhāt*’. That, with his flexible use of terminology employed in denominating the Mālikite scholars quoted therein, is an influence, one supposes, derived from ‘Iyād’s knowledge of *ḥadīth* science (‘*ulūm al-ḥadīth*), with its emphasis on distinguishing reliable narrators (*ruwāt*) from the unreliable.

A whole section on the ‘*Mudawwanah*’ covers the various stages of its compositions and its influence on the development of Mālikite *fiqh* in the Maghrib, not least because the ‘*Mudawwanah*’ – the so called bible of Mālikite *fiqh* – constitutes the *raison d’être* for ‘Iyād’s composition of the ‘*Tanbīhāt*’, the latter being, in effect, an abridgement (‘*ikhtisār*) of the ‘*Mudawwanah*’.

Despite the above mentioned restrictions faced by Mālikite writers there are several more points in favour of ‘Iyād’s style with regard to the composition of the ‘*Tanbīhāt*’.

Namely, that by synthesizing the two methodologies used in critiques of Mālik works (previous to ‘Iyād’s era), the *manhaj* (methodology system) al-Qayrawānī and the *manhaj* al-‘Irāqī, ‘Iyād introduced into this genre a much needed intellectual rigour, which leads to a clarification of individual terms (*mufradāt*) or issues (*masā’il*) rendered as ambiguous in such works as the ‘*Mudawwanah*’.

Secondly, ‘Iyād’s style in presenting, explaining and commenting on his material,

was influenced as much by his linguistic skills and passion for *ḥadīth* as by juridical predilection. He did not write purely from the limited perspective of a jurist.

The '*Tanbīhāt*', as an abridgement of the '*Mudawwanah*', clarifies what had previously been vague with regard to meaning, through the employment of such genres as *nukat* (fine points) and *furūq* (differentiation). 'Iyād's interpretation of issues (*masā'il*) provides a fascinating insight into not only those societies of his past governed by the Mālikite rite, from the Medina of Mālik to the Qayrawān of Saḥnūn, but also into the Maghribī and Andalusian society of 'Iyād's time.

It is from this angle that 'Iyād edits the '*Mudawwanah*'. His reappraisal of the opinions of the past Mālikite master can be gleaned from my editing of the '*Tanbīhāt*' sections covering marriage (*Nikāḥ*) and the oath of condemnation in adultery (*Li'ān*). He provides a new perspective on Mālikite *fiqh* and its influence in North Africa and southern Spain, where it shaped Mālikite reform.

Predictably, the desert-dwelling Murābīṭūn rulers lost their ascetic character in the relatively affluent society of 'Andalus, wherein they eventually succumbed to corruption and rapacity (*ḥubb al-māl*). This, combined with military incompetence, secured their downfall at the hands of the Almohads and, with it, the downfall of their most articulate advocate, Qādī 'Iyād.

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- [16] Al-Nabāhī, *Tārīkh Qudāt al-'Andalus*, ed., Lévi-Provencal, Cairo, 1948.
- [17] Al-Nuwayrī, "*nihāyat al-'irb fī funūn al-adab*", Granada, 1919.
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Appendices

Appendix [1]

Proper Names mentioned in the *Tanbīhāt*

(1) [6]¹ 'Ibn 'Abd al-Ḥakam:

'Ibn 'Abd al-Ḥakam ... 'Ibn 'A'yun, one of the *mawālī* (clients) of (the third Rightly Guided) Caliph, 'Uthmān. He sat at the feet of Mālik, and became head of the Mālikite in Egypt after 'Aṣḥab. His works on Mālikite *fiqh* include, *al-Mukhtaṣar al-Kabīr*, *al-Mukhtaṣar al-Ṣaghīr* and *al-Mukhtaṣar al-'Awṣaṭ* (d. 214 A.H.). See, *al-Madārik* (1: 15, 65).

(2) [6] 'Abū 'Imrān:

'Abū 'Imrān, Mūsā 'Ibn 'Īsā 'Ibn 'Abī Ḥājj, 'Abū 'Imrān al-Fāsī, one of the leading Mālikite *fuqahā'* of *Qayrawān* (d. 430 A.H.) His principle work is entitled, *al-Ta'liq 'Alā al-Mudawwanah*. See, *Tartīb al-Madārik*, (7: 243-252); *Jadhwat al-Muqtabis*, (338); *Bughyat al-Multamis*, (457); *al-Dībāj*, (2: 337-338)²; *Shajarat al-Nūr al-Zakiyyah*, (106), no. (276).

¹ This "[#]", # refers to the *para.* location in the Arabic Section of the Thesis. When [# x.]: x refers to arabic alfabatics; (a.) refers to ('*Alif*'), (b.) refers to (*Bā'*) and (c.) refers to (*Jīm*) etc., e.g., [320 c.] = [→ 320].

² Mentioned as: Mūsā 'Abū 'Imrān 'Ibn 'Īsā 'Ibn 'Abī Ḥajjāj.

(3) [6] Al-Qābisī:

Al-Qābisī 'Alī 'Ibn Muḥammad 'Ibn Khalaf al-Ma'āfirī, better known by his *kunyāh*, 'Ibn al-Qābisī. Despite being blind he was considered to be a formidable *muḥaddith* (transmitter of traditions) of the Prophet (P.B.U.H.) (d. unknown). See, *Tartīb al-Madārik* (7: 92-100).

(4) [6] Al-Qāḍī 'Ismā'il:

'Ismā'il 'Ibn 'Ishāq 'Ibn 'Ismā'il al-Jahḍamī al-'Azdi, about whom 'Ibn 'Abī Zayd remarked that he was one of the leading Mālikite *shaykhs* of his day. His works on Mālikite *fiqh* include, *al-Muwatta'*, *Aḥkām al-Qur'ān*, *Kitāb al-Qirā'āt*, *Kitāb al-Mabsūṭ Fī al-Fiqh* and *Kitāb Fī al-Radd 'Alā Muḥammad 'Ibn al-Ḥasan*. Al-Qāḍī 'Ismā'il died in (282 A.H.). See, *al-Dībāj*, (1: 282-287); *Tartīb al-Madārik*, (2: 278-292); *Tārīkh Baghdād*, (6: 284-290).

(5) [6] Al-Bājī:

'Abū al-Walīd Sulaymān 'Ibn Khalaf 'Ibn Sa'd 'Ibn 'Ayyūb 'Ibn Wārith al-Bājī. His works include, *Kitāb al-'Istifā' Sharḥ al-Muwatta'*, *Kitāb al-Muntaqā*, (an abridgement of *al-'Istifā'*), *Kitāb al-'Imā'*, *Kitāb al-'Ishārah Fī 'Uṣūl al-Fiqh* and *Kitāb al-Ḥudūd* (legal punishment) (d. 474 A.H.). See, *al-Dībāj*, (1: 377-385); *Tartīb al-Madārik*, (8: 117-127); *Nafḥ al-Ṭīb Fī Ghuṣn al-'Andalus al-Raṭīb*, (2:272); *al-Ṣilah*, (1: 200); *Bughyat al-Multamis*, (203-303)

(6) [6] 'Ibn Ḥabīb:

'Abdullāh 'Ibn Ḥabīb 'Ibn Sulaymān al-Sulamī (d. 208 A.H.). Studied under 'Ibn al-Mājashūn, 'Abdullāh 'Ibn 'Abd al-Ḥakam and 'Aṣbagh 'Ibn Faraj. His most renowned work is entitled, "*al-wāḍiḥah*". See, also, *Jadhwat al-Muqtabis*, (282-284); *al-Dībāj*, (2: 11-12); *Tartīb al-Madārik*, (4: 122-141); *Jadhwat al-Muqtabis*, (282-284); *Ṭabaqāt 'Ulamā' 'Ifriqiyyah*, (164).

(7) [6] 'Abd al-Ḥamīd:

'Abū Muḥammad 'Abd al-Ḥamīd 'Ibn Muḥammad al-Qayrawānī, known better by his kunyah, 'Ibn al-Ṣā'igh. A contemporary of 'Abū Bakr 'Ibn 'Abd al-Raḥmān and 'Abū 'Imrān al-Fāsī. Studied *fiqh* under 'Abū Ḥafṣ al-'Aṭṭār, 'Ibn Muḥriz and 'Abū 'Ishāq al-Tūnisī. Annotated the *Mudawwanah* (d. 486 A.H.). See, *Shajarat al-Nūr al-Zakiyyah*, (117), ref. no. (327).

(8) [6] Al-Sayyūrī:

'Abū al-Qāsim 'Abd al-Khāliq 'Ibn 'Abd al-Wārith al-Sayyūrī. One of the last great Qayrawān scholars. He studied *fiqh* under 'Abī Bakr 'Ibn 'Abd al-Raḥmān and 'Abū 'Imrān al-Fāsī. A leading muḥaddith and Qur'ān reciter, he annotated the *Mudawwanah*, which he completely memorised (d. 460 or 462 A.H.). See, *al-Dībāj*, (2: 22); *Tartīb al-Madārik*, (2: 770); *Shajarat al-Nūr al-Zakiyyah*, (116 or 97), no. (323);

(9) [8] Saḥnūn:

Al-'Imām Saḥnūn, 'Abd al-Salām 'Ibn Sa'id 'Ibn Ḥabīb al-Tanūkhī. He studied under the leading pupils of Mālik 'Ibn 'Anas, including 'Alī 'Ibn Ziyād, 'Ibn al-Qāsim, 'Aṣḥhab, 'Ibn Wahb, 'Abdullāh 'Ibn al-Ḥakam and 'Ibn al-Mājashūn. He is celebrated as the scholar who reconsolidated the Mālikite school of law in North Africa (d. 240 A.H.) See, *Ṭabaqāt al-Fuqahā'*, (16); *Tartīb al-Madārik*, (3: 585-626); *Ṭabaqāt 'Ulamā' 'Ifriqiyah Wa Tūnis*, (184-187); *Riyād al-Nufūs*, (1: 345-375); *Madārik B.*, no. (120); *Ma 'ālim al-'Īmān*, (2: 84).

(10) [8] 'Ibn al-Qāsim:

'Abū 'Abdullāh 'Abd al-Raḥmān 'Ibn al-Qāsim al-'Utaqī, companion of Mālik. He was one of the leading Egyptian Mālikis of his era (d. 191 or possibly 192 A.H.). His ancestors were slaves freed by the Prophet Muḥammad (P.B.U.H.) in *Ṭā'if*. See, *Tartīb al-Madārik*, (3: 244-260). *al-Dībāj*, (1: 464-488).

(11) [8] 'Ibn Lubābah:

Muḥammad 'Ibn 'Umar 'Ibn Lubābah, known better by his *kunyah*, 'Abū 'Abdullāh. Studied under al-'Utbī. He was a leading debator on *fiqh* matters. (d. 314 A.H.). See, *Tārikh 'Ulamā' al-'Andalus*, ref. no. (1189); *Tartīb al-Madārik*, (5: 153-157); *Tārikh 'Ulamā' al-'Andalus*, no. (1189); *Jadhwat al-Muqtabis*, (76).

(12) [8] 'Īsā 'Ibn Dīnār:

'Abū Muḥammad 'Īsā 'Ibn Dīnār 'Ibn Wahb al-Qurtubī. He helped

spread the Mālikite influence throughout 'Andalus. Sat at the feet (as a pupil) of 'Ibn al-Qāsim. Works include, *kitāb al-hidāyah*. (d. 212 A.H.) in Ṭulayṭilah. See, *Tārīkh 'Ulamā' al-'Andalus*, ref No. (975); *Tartīb al-Madārik*, (2: 16); *Shajarat al-Nūr al-Zakiyyah*, (46) No. (47); *al-Muqtabas*, (213).

(13) [8] 'Abū Zayd 'Ibn 'Abī al-Ghamr

'Abū Zayd 'Abd al-Raḥmān 'Ibn 'Abī al-Ghamr, *faqīh* and *muḥaddith*, as related on the authority of 'Ibn al-Qāsim and Ḥabīb, and referred to by al-Bukhārī in his *Ṣaḥīḥ*. His works include an abridgement of the *al-'Asadiyyah* (d. 234 A.H.). See, *Ṭabaqāt al-Fuqahā'*, (159); *Tartīb al-Madārik*, (1: 565); *Shajarat al-Nūr al-Zakiyyah*, (66), no. (61).

(14) [10] Yaḥyā 'Ibn Yaḥyā:

Yaḥyā 'Ibn Yaḥyā al-Laythī, better known by his *kunyah*, 'Abū Muḥammad. He helped to spread the Mālikite influence in 'Andalus (after 'Īsā 'Ibn Dīnār). An outstanding *muḥaddith* and judge (*qādī*). (d. 367 A.H.). See, *al-Dībāj*, (2: 357-358); *Tartīb al-Madārik*, (3: 379-394).

(15) [13] 'Abū Muḥammad 'Ibn 'Abī Zayd

'Abū Muḥammad 'Abdullāh 'Ibn 'Abī Zayd 'Abd al-Raḥmān al-Qayrawānī al-Nafzī. A Mālikite *'imām*, known as "Malik the junior". He abridged the *Mudawwanah* (d. 386 A.H.). See, *Tartīb al-Madārik*, (6: 215-221); *Ma'ālim al-'Īmān*, (3: 109-121); *Shadharāt al-Dhahab*, (3: 131); *Shajarat al-Nūr al-*

Zakiyyah, (96), no. (227); *Hadiyyat al-‘Ārifīn*, (1: 447).

(16) [14] Al-Qādī ‘Abū al-Walīd ‘Ibn Rushd:

Muḥammad ‘Ibn ‘Aḥmad ‘Ibn Muḥammad ‘Ibn Ruḥd al-Mālikī, his *kunya* being ‘Abū al-Walīd. His works include, *Kitāb al-Muqaddimāt Li ‘Awā’il al-Mudawwinah* (d. 520 A.H.). See, *al-Dībāj*, (2: 248); *al-Gḥunyah*, (54); *al-Ṣilah*, (2:576-577); *Bughyat al-Multamis*, (51).

(17) [16] ‘Ibn Kinānah:

‘Uṭhmān ‘Ibn ‘Īsā ‘Ibn Kinānah, *mawlā* (client) of ‘Uṭhmān ‘Ibn ‘Affān, He was a Medinan *faqīh* (jurist), studied under and was totally devoted to Mālik. He is said to have died 186 or 185 or 189 A.H. See, *Tabaqāt al-Fuqahā’*, (152).

(18) [16] Mālik ‘Ibn ‘Anas:

Mālik ‘Ibn ‘Anas ‘Ibn ‘Amr ‘Ibn al-Ḥārith ‘Ibn Ghaymān ‘Ibn Khuthayl ‘Ibn ‘Amr ‘Ibn al-Ḥārth al-‘Aṣbahī. See, *Tartīb al-Madārik*, (1: 121); *Siyar ‘A ‘lām al-Nubalā’*, (8: 48); *Tahdhīb al-Tahdhīb*, (10: 5).

(19) [16] Al-Makḥzūmī, ‘Ibn Bukayr:

Yaḥyā ‘Ibn Bukayr ‘Abū Zakariyyah al-Ḥāfiz al-Makḥzūmī al-Miṣrī. He was a man of integrity and character and a compiler of the first order. He sat at the feet of Mālik on seventeen occasions whilst the latter recited the *Muwatta’* (d. 232 A.H.). See, *al-Dībāj*, (2: 359); *Tahdhīb al-Tahdhīb*, (11: 137-138).

(20) [16] Muḥammad:

The renowned Muḥammad 'Ibn 'Ibrāhīm 'Ibn Ziyād al-'Iskandarānī, better known by his *kunyah*, 'Ibn al-Mawwāz. He studied *fiqh* under 'Ibn 'Abd al-Ḥakm, 'Aṣbagh and al-Ḥārith 'Ibn Miskīn. His works (on Mālikite *fiqh*) include the famous “*al-Mawwāziyyah*”, an accurate and comprehensive work on Mālikite issues (*masā'il*). (d. 296 A.H.) but possibly (d. 281 A.H.). See, *Tartīb al-Madārik*, (2: 72); *al-Dībāj*, (2: 166-167).

(21) [17] Yaḥyā 'Ibn 'Ishāq:

'Abū 'Isrā'īl, Yaḥyā 'Ibn 'Ishāq 'Ibn Yaḥyā al-Laythī al-Faqīh. He sat at the feet (as a pupil) of his father and Yaḥyā 'Ibn 'Amr amongst others. He wrote a detailed work on the adherents of Mālik (d. 303 A.H.) See, *Shajarat al-Nūr al-Zakiyyah*, (77), ref. no. (124).

(22) [19] 'Abū al-Ḥasan 'Ibn al-Qaṣṣār:

Al-Qādī 'Abū al-Ḥasan 'Ibn al-Qaṣṣār 'Alī 'Ibn 'Aḥmad al-Baghdādī, with the *kunyah* of 'Abū al-Ḥasan, but better known as 'Ibn al-Qaṣṣār. 'Ibn Farāḥūn mentions that 'Ibn al-Qaṣṣār work on disputation, “*al-Khilāf*” constitutes a text book among the Mālikite *fuqahā'* with regard to the evidence (*'adillāh*) supplied therein in support of the opinion expressed by the contending *fuqahā'* (d. 398 A.H.). See, *al-Dībāj*, (2: 100); *Shajarat al-Nūr al-Zakiyyah*, (92), no. (208).

(23) [20] 'Urwah 'Ibn Al-Zubayr

'Ibn al-'Awwām 'Ibn Khuwaylid al-'Asadī, as related on the authority of 'Usāmah 'Ibn Zayd 'Ibn Hārith and Bashīr 'Ibn Sa'īd was one of the noble successors (*tābi'ī*) to the companions of the Prophet Muḥammad (P.B.U.H.) and one of the great seven *fuqahā'* of Medīnah (d. 94 A.H.). See, *al-Wafīyyāt*, (89); *Tahdhīb al-Kamāl*, (13: 7); *Duwal al-'Islām*, (1: 65); *al-Bidāyah Wa al-Nihāyah*, (9: 113).

(24) [23] 'Abū Ḥafṣ 'Ibn al-'Aṭṭār:

Muḥammad 'Ibn 'Aḥmad 'Ibn 'Abdullāh, better known as 'Ibn al-'Aṭṭār. Was one of the leading Mālikite *fuqahā'* of his day (in *Qurtubah*). He was a versatile scholar with a mastery of the Islamic sciences, and in the field of Mālikite *fiqh* he had no compere among his contemporaries. (d. 399 A.H.). See, *Tartīb al-Madārik*, (7: 148-158); *al-Ṣilah*, (2: 484-485); *Jadhwat al-Muqtabis*, (80).

(25) [23] Fāṭimah Bint Qays al-Fihriyyah:

One of the *muhājir* (immigrants) (from Mecca to Medina). Once married to 'Abū 'Amr 'Ibn Ḥafṣ 'Ibn al-Mughīrah al-Makhzūmī, but he divorced her and she married (at the Prophet's -P.B.U.H.- bidding) Mu'āwiyah 'Ibn 'Abī Sufyān. She it was who related the *ḥadīth* on the matter of provision of housing and expenses (*nafaqah*) for the divorced woman. See, *Siyar 'A'lām al-Nubalā'*, (2: 319); *Tahdhīb al-Kamāl*, no. (11543); *Tahdhīb al-Tahdhīb*, no. (23782).

(26) [23] Mu'āwiyah 'Ibn 'Abī Sufyān:

Şakhr 'Ibn Ḥarb 'Ibn 'Umayyah al-'Umayī, 'Abū 'Abd al-Raḥmān was the first Umayyad Caliph and a Companion of the Prophet (P.B.U.H.) (d. 60 A.H. at the age of nearly eighty). See, *Tahdhīb al-Tahdhīb*, no. (19631); *Tahdhīb al-Kamāl*, no. (7435); *'Is'āf al-Mubaṭṭi' Bi Rijāl al-Muwatta'*, (27541).

(27) [24] 'Abū al-Qāsim 'Ibn Muḥriz:

'Abū al-Qāsim 'Abd al-Raḥmān 'Ibn Muḥriz al-Qayrawānī. He embarked on a *ṭalab al-'ilm* (seeking for knowledge) journey (*riḥlah*) to the East and annotated the *Mudawwanah*, under the title of *al-Tabṣirah* (d. 450 A.H.). See, *Shajarat al-Nūr al-Zakiyyah*, (110).

(28) [25] Al-Qādī 'Abū Muḥammad 'Ibn Naṣr:

'Abd al-Wahhāb 'Ibn Naṣr al-Baghdādī, his *kunyah* being 'Abū Muḥammad. He studied Islamic sciences under al-'Abhurī. His works include, *Kitāb al-'Adillah Fī Masā'il al-Khilāf*, *al-Talkhīṣ Fī 'Uṣūl al-Fiqh*, *al'Ishrāf 'Alā Masā'il al-Khilāf* and a commentary on the *Mudawwanah*, entitled *Kitāb al-Talqīn* (d. 422 A.H.). See, *Tārīkh Baghdad*, (2: 31-32); *al-Dībāj*, (2: 26-29); *al-Marqabah al-'Ulyā*, (40); *Siyar 'A'lām al-Nubalā'*, (17: 429-430).

(29) [26] Ziyād:

'Abū 'Abdullāh Ziyād 'Ibn 'Abd al-Raḥmān al-Qurtubī. He heard Mālik recite the *Muwatta'* and is the jurist who introduced the *Muwatta'* to 'Andalus (d. 193 A.H.). His pupils include Yaḥyā 'Ibn Yaḥyā. See, *Tartīb al-Madārik*, (1: 349); *Shajarat al-Nūr al-Zakiyyah*, (63), no. (42); *Bughyat al-Multamis*, (294).

(30) [27] 'Abd al-Raḥīm:

'Abd al-Raḥīm 'Ibn Khālid 'Ibn Yazīd, with the *kunyah* of 'Abū Yaḥyā. According to al-Dāraqutnī 'Abd al-Raḥīm (along with 'Uthmān 'Ibn 'Abd al-Ḥakam) was the first to introduce Mālikite *fiqh* to Egypt. He died in 163 A.H.) in 'Askandariyyah. See, *Tartīb al-Madārik*, (2: 310).

(31) [27] Yaḥyā 'Ibn Sa'īd:

Yaḥyā 'Ibn Sa'īd Farrūkh al-Qaṭṭān, was a client (*mawlā*) of the Banī Tamīm. His *kunyah* was 'Abū Sa'īd. He was one of the ruling class of Baṣrah and a leading reciter of the Qur'ān. (d. 198 A.H.). See, *Mashāhīr 'Ulamā' al-'Amsār*, (161), no. (1278).

(32) [27] Muṭarrāf:

'Ibn 'Abdullāh 'Ibn Sulaymān al-Yasārī al-Hilālī 'Abū Muṣ'ab was a client (*mawlā*) of Maymūnah 'Umm al-Mu'minīn, as related on the authority of Mālik. 'Aḥmad said that Muṭarrāf was placed high amongst the pupils of Mālik.

Muṭarrāf died in 229 A.H. See, *al-Dībāj*, (2: 340); *Tartīb al-Madārik*, (3: 133-135); *Ṭabaqāt al-Fuqahā'*, (153); *al-'Intifā'*, (58).

(33) [31] Al-Juwaynī:

'Abd al-Malik 'Ibn 'Abdullāh 'Ibn Yūsuf 'Ibn Muḥammad al-Juwaynī, his *kunyah* being, 'Abū al-Ma'ālī, was a leading Shāfi'ite whose prolific works include, *Qiyām al-'Umam Fī al-Siyāsah al-Shar'iyyah* and numerous works on *'uṣūl al-fiqh*. (d. 478 A.H.). See, *Ṭabaqāt al-Shāfi'yyah al-Kubrā*, (3: 249).

(34) [32] Al-Sariyy 'Ibn Yaḥyā:

'Ibn 'Iyās 'Ibn Ḥarmalah 'Ibn 'Iyās al-Shaybānī, with the *kunyah* of 'Abū al-Haytham, or (it is said) 'Abū Yaḥyā al-Baṣrī, as related on the authority of Thābit al-Binānī and al-Ḥasan al-Baṣrī. Al-Sariyy died in 167 A.H. See *Tahdhīb al-Tahdhīb*, no. (14319); *Tahdhīb al-Kamāl*, (2442); *Taqrīb al-Tahdhīb*, (26438).

(35) [33] 'Uthmān the third Caliph:

'Ibn 'Affān 'Ibn 'Abī al-'Āṣ 'Ibn 'Umayyah 'Ibn 'Abd Shams 'Ibn 'Abd Manāf al-Qurashī, his *kunyahs* being either, 'Abū 'Amr, 'Abū 'Abdullāh or 'Abū Laylā 'Amīr al-Mu'minīn.

He was a late convert to Islam and a migrant from Mecca to Medina. He married two of the Prophet's (P.B.U.H.) daughters, one after the other, as related on the authority of the Prophet (P.B.U.H.) himself. He was absent from the battle

of *Badr* because of his wife's (Ruqayyah) illness. He assumed the office of Caliph three days after the burial of 'Umar 'Ibn al-Khaṭṭāb in the year 42 A.H. He was assassinated in 53 A.H. 'Alī called him a most compassionate man. See, *Tahdhīb al-Tahdhīb*, no. (16989).

(36) [33] 'Ibn Bāz:

'Abū 'Ishāq 'Ibrāhīm 'Ibn Muḥammad, better known as 'Ibn Qazzāz al-Qurṭubī, was an outstanding jurist and *muḥaddith*. He studied (*samā'āt*) under Yaḥyā 'Ibn Yaḥyā and Sa'īd 'Ibn Ḥassān and the great Saḥnūn. He learned Qur'ānic recital from 'Abd al-Ṣamad 'Ibn al-Qāsim and he died in 274 A.H. See, *Tārikh 'Ulamā' al-'Andalus*, (10: 10); *Shajarat al-Nūr al-Zakiyyah*, (75), no. (115): *Tartīb al-Madārik*, (1: 16)

(37) [38] Al-Qādī 'Abū al-Faraj:

'Umar 'Abū al-Faraj 'Ibn Muḥammad al-Laythī al-Baghdādī. He was a most reliable jurist. His pupils included 'Abū Bakr al-'Abhurī. His works include, *al-Ḥāwī Fī madhhab Mālik*, and *al-Luma' Fī 'Uṣūl al-Fiqh*. (d. 330 A.H.) or possibly (331 A.H.). See, *Tartīb al-Madārik*, (5: 22-23).

(38) [43] Sharī'ah:

'Abū 'Umayyah, Sharī'ah 'Ibn al-Ḥārith 'Ibn Qays 'Ibn Jahm 'Ibn Mu'āwiyah al-Kindī. 'Umar 'Ibn al-Khaṭṭāb appointed him as a judge of *Kūfah*, where he presided for many years until the *fitnah* (temptation) of 'Ibn al-Zubayr.

He resigned during the governorship of the notorious al-Ḥajjāj. Sharī'ah died in 80 or possibly 87 A.H. See, *al-Wafīyyāt*, (98); *al-Ma'ārif*, (433); *Duwal al-'Islām* (1: 56); *Tahdhīb al-Kamāl*, (8: 318).

(39) [44] 'Ash'ath 'Ibn Siwwār

Al-Kindī al-Najjār al-Kūfī, He was a client (*mawlā*) of the Banī Thaqīf. His *kunya*s include 'Ash'ath al-Tābūtī and 'Ash'ath al-'Afraḡ. He was appointed judge at al-'Ahwāz, as related on the authority of some 400 Egyptians, Ḥijāzian and 'Irāqī *shaykhs*. He was a companion of Mālik for some 40 years or so until his death in 197 A.H. See, *Tahdhīb al-Kamāl*, (576); *Tahdhīb al-Tahdhīb*, (12365); *Taqrīb al-Tahdhīb*, (24562).

(40) [49] Faḡl 'Ibn Salamah:

'Ibn Ḥurayz 'Ibn Minkhal al-Juhanī. He sat at the feet of the Mālikite adherents of Saḡnūn. He produced abridgements of the *Mudawwanah* and *al-Wāḡihah*, as well as the *al-Mawwāziyyah*. (d. 319 A.H.). See, *Tārīkh 'Ulamā' al-'Andalus*, (1: 352-353); *Tartīb al-Madārik*, (5: 222-223); *al-Dībāj*, (2: 137-138).

(41) [55] 'Ibn 'Abī Zamanīn:

Muḡammad 'Ibn 'Abdullāh 'Ibn 'Abī Zamanīn, had the *kunya* of 'Abū 'Abdullāh. He was one of the many Mālikite *fuḡahā'* who excelled in both *ḡadīth* and *fiqh*, combining the two in the analysis of Mālikite issues. His works include, *'Ikhtisār Tafsīr al-Qāsim 'Ibn Sallām*, *Quḡwat al-ḡhāzī Fī 'Aḡkām al-Jihād*, and

'*Uṣūl al-Sunnah Fī al-'Aqīdah al-Salafiyyah*. He was described by al-Dhahabī as 'Abū 'Abdullāh Muḥammad 'Ibn 'Abdullāh 'Ibn 'Īsā 'Ibn Muḥammad al-Murri al-'Andalusī al-'Ilbīrī, *shaykh* of *Qurṭubah* (d. 324 A.H.) but some say (399 A.H.). See, *Siyar 'A'lām al-Nubalā'*, (17: 188); *Tartīb al-Madārik*, (7: 185); *al-Dībāj*, (2: 232-233); *al-'Ihāṭah*, (3: 173).

(42) [56] 'Abū Bakr 'Ibn Yūnis:

Muḥammad 'Ibn 'Abdullāh 'Ibn Yūnis al-Tamīmī al-Ṣiqillī studied under al-Ḥaṣā'iriyy al-Qādī and 'Atīq 'Ibn 'Abd al-Ḥamīd 'Ibn al-Farādī. He wrote a work on religious duties (*farā'id*) (d. 451 A.H.). See, *Shajarat al-Nūr al-Zakiyyah*, (111), no. (249); *Tartīb al-Madārik*, (8: 114); *al-Dībāj*, (2: 240-241).

(43) [56] 'Ibn Mughīth al-Ṭulayṭilī:

'Aḥmad 'Ibn Mughīth al-Ṭulayṭilī, had the *kunyah* of 'Abū Ja'far. He was a leading *faqīh* of his time in Toledo. (d. 459 A.H.) or possibly (406 A.H.). See, *al-Dībāj*, (40). Compare with: Yūnus 'Ibn 'Abdullāh 'Ibn Mughīth 'Abū al-Walīd. See, *Tartīb al-Madārik*, (4: 740); *al-Ṣilah*, (2: 684), no. (1512); *al-'Ibar*, (3: 269).

(44) [56] 'Aṣbagh:

'Aṣbagh's real name was 'Ibn al-Faraj 'Ibn Sa'īd 'Ibn Nāfi'. He journeyed to Medina to sit at the feet of Mālik and hear him recite, at first hand, the various traditions and issues (*masā'il*). These touched on the fields of religious observance (*'ibādāt*) and commercial transaction (*mu'āmalāt*). He was a companion of 'Ibn

al-Qāsim, 'Ibn Wahb and 'Aṣḥab (amongst others). 'Ibn al-Mawwāz studied *fiqh* under him. According to 'Ibn Mu'īn, 'Aṣḥab was an outstanding *faqīh* who knew Mālikite *fiqh* intimately and who used to debate with Mālik quite vigorously over Mālikite issues (*masā'il*). 'Aṣḥab wrote an interpretation (*tafsīr*) of the odd and rare terminology (*gharīb*) to be found in Mālik's *Muwaṭṭa'*. He also compiled a work on the recitations he personally heard (*samā'*) from the mouth of 'Ibn al-Qāsim which covered *fiqh* issues. He is said to have died in 225 A.H. but possibly 224 A.H. See, *Tartīb al-Madārik*, (4: 17-22).

(45) [95] 'Abū 'Umar 'Ibn 'Abd al-Barr:

Yūsuf 'Ibn 'Abdullāh 'Ibn 'Abd al-Barr al-Nimrī, his *kunyah* being 'Abū 'Umar. He was a leading 'Andalusian scholar and *muḥaddith* of his era. His works include, *al-Tamhīd*, *Kitāb al-'Istidhkār*, and the *Kitāb al-'Istī'āb* (d. 463 A.H.). See, *al-Dībāj*, (2: 367-370); *Tartīb al-Madārik*, (8: 127); *al-Ṣilah*, (2: 677-679); *Bughyat al-Multamis*, (489-491).

(46) [62] Al-Layth 'Ibn Sa'd:

'Ibn 'Abd al-Raḥmān, the incomparable memoriser and Egyptian scholar, with the *kunyah* of 'Abū al-Ḥārith al-Fahmī. He was a *muḥaddith* and once head of the Mālikite school of law in Egypt (d. 175 A.H.) See, *Siyar 'A'lām al-Nubalā'*, (8: 136, 143-163); *Mashāhīr 'Ulamā' al-'Amṣār*, (191).

(47) [64] 'Ashhab:

Miskīn 'Ibn 'Abd al-'Azīz 'Ibn Dāwūd al-Qaysī al-'Āmirī al-Ja'dī, his *kunya* being 'Abū 'Amr but better known by his honorific title, 'Ashhab. He was head of the Mālikite school of law in Egypt (after 'Ibn al-Qāsim). He learnt his *fiqh* under Mālik, the Medinan *fuqahā'* and then their Egyptian counterparts (d. 204 A.H.). See, *Shadharāt al-Dhahab*, (2: 12); *al-'Intiqā'*, (51-52); *Tartīb al-Madārik*, (3: 262-271); *Shajarat al-Nūr al-Zakiyyah*, (59); *al-Dībāj*, (1: 307-308).

(48) [67] Al-Mughīrah:

'Ibn 'Abd al-Raḥmān al-Makhzūmī. He was a close companion of Mālik. He fulfilled the office of *muftī* in Medina during Mālik's lifetime. He died in either 186 or 188 A.H. See, *al-Dībāj*, (2: 344); *Tartīb al-Madārik*, (3: 2-5).

(49) [70] 'Aḥmad 'Ibn Khālid:

'Iyāḍ mentions him in Para. [289], as 'Ibn Khālid.

(50) [82] 'Abū Muṣ'ab:

'Aḥmad 'Ibn 'Abī Bakr, his father's name being 'Abū Bakr al-Qāsim 'Ibn al-Ḥārith 'Ibn 'abd al-Raḥmān 'Ibn 'Awf, as related on the authority of Mālik (in the *Muwatta'*). 'Abū Muṣ'ab studied under the pupils of Mālik. He was an outstanding *muhaddith* (d. 242 A.H.). See, *Ṭabaqāt al-Fuqahā'*, (154).

(51) [82] Zūnān:

'Abd al-Malik 'Ibn al-Hasan was a Cordoban with the *kunya* of 'Abū Marwān. He studied in Medina under 'Aṣḥhab, listening to and memorising his narrations (*samā'āt*) and those of 'Ibn al-Qāsim. He was appointed Mālikite judge in Ṭulayṭilah (Toledo) (d. 332 A.H.) though some say (334 A.H.). See, *Tārīkh 'Ulamā' al-'Andalus*, ref. no. (815).

(52) [98] Al-Qazwīnī:

'Aḥmad 'Ibn Muḥammad 'Ibn Zayd al-Qazwīnī 'Abū Sa'id was a leading adherent of al-'Abharī. His principal work was entitled, *al-'Ilḥāq Fī Masā'il al-Khilāf*. He died approximately 390 A.H. See, *Ṭabaqāt al-Fuqahā'*, (169).

(53) [108] 'Ibn Nāfi':

'Abdullāh 'Ibn Nāfi' al-Ṣā'igh was at one time *muftī* of Medina. Saḥnūn studied under him. He was an authority of the Mālikite *samā'āt*. His death, is mentioned in *Tartīb al-Madārik* and was said to be in 186 A.H. but in *Ṭabaqāt al-Fuqahā'* the date mentioned is 206 A.H. The former date appears to be the more correct. See, *Ṭabaqāt al-Fuqahā'*, (152).

(54) [123] 'Abū Bakr 'Ibn 'Abd al-Raḥmān:

Al-Khawlānī, a Qayrawānī had the *kunya* of 'Abū Bakr. He studied Mālikite *fiqh* under 'Abī Muḥammad 'Ibn 'Abī Zayd and 'Abī al-Ḥasan al-Qābisī. His pupils included 'Ibn Muḥriz, 'Abū 'Ishāq al-Tūnisī and 'Abū Muḥammad

'Abd al-Ḥaqq. Date of his death unknown. See, *al-Dībāj*, (1: 177-178); *Shajarat al-Nūr al-Zakiyyah*, (107).

(55) [123] 'Ibn al-Kātib:

'Abd al-Raḥmān 'Ibn 'Alī 'Ibn Muḥammad al-Kittānī was better known as 'Ibn al-Kātib 'Abū al-Qāsim. He was one of the leading fuqahā' in Qayrawān and a great debator, especially with 'Abū 'Imrām al-Fāsī. 'Ibn al-Kātib died in 408 A.H. See, *al-Fikr al-Sāmī*, (2: 206).

(56) [155] 'Abū Muṭarrāf al-Sha'bi:

'Abd al-Raḥmān 'Ibn Qāsim al-Sha'bi al-Mālikī, with the *kunya* of 'Abū Muṭarrif. He possessed a vast knowledge of Mālikite issues on *fiqh* (*masā'il*) as well as proving a competent *muftī* and (*ḥadīth*) relator (*rāwī*) (d. 498 A.H.). See, *Tartīb al-Madārik*, (8: 186); *al-Ṣilah*, (2: 344); *Bughyat al-Multamis*, (370); *Shajarat al-Nūr al-Zakiyyah*, (123).

(57) [167] 'Ibn Sahl:

'Abū al-'Aṣbagh 'Īsā 'Ibn Sahl 'Abdullāh al-'Asdī was a resident of Cordoba where he studied *fiqh*. Eventually he was appointed judge at Tunjer and Miknāsah. He was an outstanding *faqīh* and *muḥaddith*, and an expert on judicial cases. He memorised the *Mudawwanah* in full (d. 486 A.H.). See, *Bughyat al-Multamis*, (403).

(58) [172] Zayd 'Ibn 'Aslam:

'Ibn 'Abdullāh 'Ibn 'Abī Salamah al-Mājashūn was a Medinan with the *kunyah* of 'Abū 'Abdullāh. He was a jurist, and studied under al-Zuhrī, 'Abd al-Raḥmān 'Ibn al-Qāsim and 'Abdullāh 'Ibn Dīnār. His pupils included, 'Abū Nu'aym, Yaḥyā 'Ibn Bukayr and 'Abd al-Raḥmān 'Ibn Maḥdī. Zayd 'Ibn 'aslam died in 164 A.H. See, *Ṭabaqāt al-Fuqahā'*, (67).

(59) [189] 'Ibn al-Labbād:

'Abū Bakr Muḥammad 'Ibn Muḥammad 'Ibn Muḥammad 'Ibn Wishāh had the *kunyah* 'Ibn al-Labbād. He was a very capable (mālikite) *faqīh* and an outstanding memoriser of Mālikite texts. His works include, *Kitāb al-'Āthār Wa al-Fawā'id* in ten parts (d. 333 A.H.). See, *Riyāḍ al-Nufūs*, (2: 283-292).

(60) [194] 'Ibn Maslamah:

Muḥammad 'Ibn Maslamah 'Ibn Hishām al-Makhzūmī, had the *kunyah*, 'Abū Hishām, but some say 'Abū 'Abdullāh. He was an adherent of Mālik and a leading Medina *faqīh* of his era. He studied under Mālik himself (d. 206 A.H.). See, *al-Dībāj*, (2: 156); (d. 216 A.H.); *Ṭabaqāt* (152).

(61) [208 a.] Al-Dimyātī:

'Abd al-Raḥmān al-Dimyātī, as related on the authority of Mālik. He studied under such Mālikite adherents as 'Ibn Wahb, 'Ibn al-Qāsim and 'Ashhab. His *al-Dimyāṭiyyah* is considered an authoritative work on Mālikite *fiqh*. See, *al-*

Dibāj, (1: 472).

(62) [226] 'Abū Wahb al-Jayshānī:

Namely, Dulaym al-Hawsa' (or al-Hawsha') 'Abū Wahb al-Jayshānī (the Banī Jayshān hailing from Yemen). He sat at the feet of al-Ḍaḥḥāk 'Ibn Fayrūz, as related on the authority of Yazīd 'Ibn 'Abī Ḥabīb. In his chain of authorities ('*isnād*) reference, according to al-Bukhārī, is made to 'Ibn Mu'īn recitations. The date of his death unknown. See, *al-Tāriikh al-Kabīr*, (3: 249).

(63) [226] Al-'Abyānī:

'Abdullāh 'Ibn 'Aḥmad 'Ibn 'Ibrāhim al-Tūnisī, had the *kunyah* being 'Abū al-'Abbās. He was a leading Mālikite jurist in North Africa. He studied under Yaḥyā 'Ibn 'Umar and 'Ibn al-Hārith, as related on the authority of al-'Aṣīlī, 'Abū al-Ḥasan al-Lawātī and al-Qābisī (d. 352 A.H.) at the age of 100. See, *al-Dībāj*, (1: 425-427).

(64) [226] Yaḥyā 'Ibn 'Umar:

'Ibn Yūsuf al-Kinānī al-Kindī had the *kunyah* of 'Abū Zakariyyah. He was an 'Andalusian who settled in Qayrawān. He was a *faqīh* and compiler extraordinaire. He was a pupil of Saḥnūn and was well liked (d. 289 A.H.) although some say (d. 285 A.H.). See, *Quḍāt Qurṭubah Wa 'Ulamā' 'Ifriqyah*, (184-185).

(65) [228] 'Ibn Miskīn:

'Abū 'Amr 'Ibn al-Ḥārith 'Ibn Miskīn, studied *fiqh* under 'Ibn al-Qāsim and 'Ashhab. He was a *mufī* and outstanding Mālikite jurist. A competent *muḥaddith*, he was eventually appointed (mālikite) judge in Egypt. He died in 250 A.H. but some say 248 A.H.

(66) [231] 'Abū al-Qāsim 'Ibn Shablūn:

'Abd al-Khāliq 'Ibn Khalaf 'Ibn Sa'īd 'Ibn Shablūn Studied *fiqh* under 'Ibn 'Akhī Hishām. The *Qayrawān fuqahā'* sought out his guidance in the matter of *fatwā* and *fiqh* instruction following the death of their Mālikite leader, 'Ibn 'Abī Zayd. 'Abū al-Qāsim was noted for his composition on Mālikite *fiqh*, under the title, *Kitāb al-Maqāsid* (d. 391 A.H.). See, *al-Dībāj*, (2: 22).

(67) [239] 'Ibn Sha'bān / 'Ibn al-Qurtī:

'Abū 'Ishāq Muḥammad 'Ibn al-Qāsim 'Ibn Sha'bān, was the leader of the Mālikite school in Egypt. He was a scholar endowed with a breadth of learning, and was renowned for his composition entitled *al-Zāhī al-Sha'bānī*, (d. 355 A.H.). See, *Siyar 'A'lām al-Nubalā'* (16: 78).

(68) [239] Al-Waqqār:

'Abū Bakr, Muḥammad 'Ibn 'Abī Yaḥyā Zakariyyā was a professional memoriser of Mālikite texts. He studied *fiqh* under the tutelage of 'Ibn 'Abd al-ḥakam and 'Aṣbagh. The (*qāf*) in "Waqqār" is "*takhfif*", ie. reduced from the

“*shaddah*” to a single “*Qāf*”. He was thought to have died either in 269 A.H., or 263 A.H. or 264 A.H. depending on the account. See, *Tartīb al-Madārik*, (4: 189).

(69) [256] 'Abū al-Ḥasan al-Lakhmī:

'Abū al-Ḥasan 'Alī 'Ibn Muḥammad al-Rab'ī was better known as al-Lakhmī, with the *kunyah* of 'Ibn Bint al-Lakhmī, a *Qayrawānī*. He was an expert in litigant cases and leader of the North African Mālikite school of law.

(70) [256] 'Ibn al-Mājashūn:

'Abū Marwān 'Abd al-Malik 'Ibn 'Abd al-'Azīz 'Ibn 'Abdullāh 'Ibn 'Abī Salamah al-Mājashūn was a *mufī* of Medina. Saḥnūn was his pupil. 'Ibn al-Mājashūn was a commentator on the works of Mālik's pupils. He was an authority on the *samā'āt* (unwritten, but derived from tradition). He is said have died in 212 A.H.), but possibly in 213/214 A.H. See, *al-'Intiqā'*, (57-58).

(71) [278] Rabī'ah:

'Ibn 'Abī 'Abd al-Raḥmān Farrūkh al-Taymī, had the *kunyah* 'Abū 'Uḥmān, as related on the authority of 'Anas and 'Ibn al-Musayyib. On his death in 136 A.H. Mālik commented, “He was the gentleman of *fiqh*. See, *Tahdhīb al-Tahdhīb*, (3: 258-259).

(72) [285] Al-Qādī 'Ibn Yabqā:

'Abū Bakr Muḥammad 'Ibn Yabqā 'Ibn Zarb was a judge of Cordoba. He

was a prolific memoriser of Mālikite issues (*masā'il*), and a competent *muftī*. See, *Bughyat al-Multamis*, (146-147).

(73) [330] 'Alī 'Ibn Ziyād:

'Alī 'Ibn 'Abī Ziyād was a Tunisian who sat at the feet of Mālik, Sufyān al-Thawrī, and al-Layth 'Ibn Sa'd. As a Mālikite jurist he had no compere in North Africa. He was influenced in his interpretation of Mālikite *fiqh* by Ḥanafite methodology then widespread in Tūnis. He was one of the first Mālikites in that area (d. 183 A.H.). See, *Ṭabaqāt 'Ulamā' 'Ifriqyah*, (220-230).

(74) [334] Sa'id 'Ibn al-Musayyib:

One of the great successors (*tābi'ūn*) to the Companions of the Prophet (P.B.U.H.), and a leading Medinan jurist of his time. Studied under 'Uthmān 'Ibn 'Affān, Zayd 'Ibn Thābit, 'Ā'ishah, 'Abū Hurayrah and Sa'd 'Ibn 'Abī Waqqās. A pious and versatile scholar. An expert on *mursal al-ḥadīth*, as confirmed by 'Aḥmad 'Ibn Ḥanbal. (d. 94 A.H.). But some say (105 A.H.). See, the *Ṭabaqāt al-Fuqahā'* of al-Shīrāzī, (57-58).

(75) [360] Al-'Utbī:

Muḥammad 'Ibn 'Aḥmad 'Ibn 'Abd al-'Azīz, had the *kunya* of 'Abū 'Abdullāh. He studied under Yaḥyā 'Ibn Yaḥyā and Saḥnūn, amongst others. He was a compiler of Mālikite *fiqh* issues (*masā'il*) (d. 255 A.H. though some say (d. 254 A.H.)).

(76) [396] 'Abū 'Umar 'Ibn al-Mukwā:

'Abū 'Umar 'Aḥmad 'Ibn 'Abd al-Malik al-'Ishbīlī (the Sevillan), was better known by his *kunyah*, 'Ibn al-Mukwā. He was a leading 'Andalusian *faqīh* of his era. He became leader of the Mālikite school of law where 'Andalus. (d. 401 A.H.). See, *Jadhwat al-Muqtabis*, (132-133); *Tartīb al-Madārik*, (7134: 123).

(77) [396] Al-'Aṣīlī:

'Abdullāh 'Ibn 'Ibrāhīm 'Ibn Muḥammad al-'Aṣīlī was a leading jurist of 'Andalus. He edited a work on contentious issues in *fiqh* involving Mālik, al-Shāfi'ī and 'Abū Ḥanīfah, entitled, *al-Dalā'il*. A Medinan, he excelled in the science of ḥadīth from the point of transmission (*'isnād*) (d. 392 A.H.). See, *Tārīkh 'Ulamā' al-'Andalus*, ref. no. (760).

(78) [467] 'Abū 'Amr 'Ibn al-Qaṭṭān:

'Aḥmad 'Ibn Muḥammad 'Ibn Yaḥyā 'Ibn Sa'īd al-Qaṭṭān and is mentioned in the *Al-Jarḥ Wa al-Ta'dīl*, (2: 74), as related on the authority of his grandfather Yaḥyā 'Ibn Sa'īd al-Qaṭṭān and Yūnis 'Ibn Bukayr and 'Abdullāh 'Ibn Numayr. 'Abū 'Amr died in 58 A.H. See, *Taqrīb al-Tahdhīb*, (84).

(79) [473 a.] 'Ibn al-Jahm:

Muḥammad 'Ibn 'Aḥmad 'Ibn al-Jahm al-Marwazī. He was a judge, better known by his *kunyah* 'Ibn al-Warrāq. He was an expert on the principles of Islamic law (*'uṣūl al-fiqh*). He studied under Qāḍī 'Ismā'īl and his works include,

Kitāb Fī Bayān al-Sunnah and *Kitāb Masā'il al-Khilāf* (d. 327 A.H.). See, *al-Dībāj*, (2: 185-186).

(80) [473 a.] 'Abū Yūsuf:

Ya'qūb 'Ibn 'Ibrāhīm 'Ibn Ḥabīb was a pupil of 'Abū Ḥanīfah. He was probably one of 'Abū Ḥanīfah's most famous pupils and adherents (d. 182 A.H.). See, *Ṭabaqāt*, (1: 141).

(81) [492] 'Ibn Jallāb:

'Abdullāh 'Ibn al-Ḥusayn 'Ibn al-Ḥasan 'Abū al-Qāsim. He was an Egyptian scholar who studied fiqh under al-'Abharī and was his most famous student (d. 378 A.H.). See, *al-Dībāj*, (1: 461).

(82) [534] 'Ibn 'Abī Ḥāzim

'Abū Tammām 'Abd al-'Azīz 'Ibn Salamah ('Abū Ḥāzim) 'Ibn Dīnār. He was an outstanding Mālikite *faqīh* after the death of Mālik. Mālik was asked who his successor would be (after his death) and he referred to 'Abū Tammām (d. 185 A.H.). See, *Tartīb al-Madārik*, (3: 9-12).

(83) [539] 'Ibn al-Hindī:

'Aḥmad 'Ibn Sa'īd 'Ibn 'Ibrāhīm al-Hamadānī 'Abū 'Umar was better known as 'Ibn al-Hindī. He was a Cordoban. As a *faqīh* he was considered in 'Andalus as unequalled in his time with regard to his mastery of the nuances of

Mālikite *fiqh* (d. 399 A.H.). See, *Tartīb al-Madārik*, (7: 146-147).

Appendix [2]

Modern References

- 1) E.I.2. (iv, pp 280-290), (1978), M. Talbī.
- 2) Sezgīn, in *Tārīkh al-Turāth al-'Arabī*, first volume, part three, (p. 151)³.
- 3) Muḥammad al-'Ābid, author of *Fihrist Makhtūtat Khazānat al-Qarawiyyīn*.
- 4) Al-Bal'amshī, 'Aḥmad Yakan, in his edition of *Mashāriq al-'Anwār*, (pp 8-9), published by *Wazārat al-Awqāf* edn., 1402 AH.
- 5) Dr. 'Ibn Sharīfah editor of *Madhāhib al-Ḥukkām Fī Nawāzil al-'Aḥkām*, (p. 22), published by *Dār al-Gharb al-'Islāmī*, 1st edn., 1990.
- 6) Hasan al-Warrākly in *'Abū al-Faḍl al-Qādī 'Iyāḍ al-Sabtī Mufasssiran*.
- 7) Muḥammad Ṣādiq al-Minshāwī editor of *Al-'Ilām Bi Ḥudūd Wa Qawā'id al-'Islām*, (p. 20), published by *Dār al-Faḍīlah*.
- 8) Muḥammad Sāliḥ, (*Dawrat al-Qādī 'Iyāḍ*), *Fiqh al-Qādī 'Iyāḍ Min Khilāl Kitāb al-Tanbīhāt*, (3: 135).
- 9) Al-Shinqīṭī, Muḥammad al-Mukhtār in *Dawrat al-Qādī 'Iyāḍ*, under this title: *Manhajīyyat al-Qādī 'Iyāḍ Fī Kitāb al-Tanbīhāt*, (3: 39). Also in his *Madkhāl 'Ilā 'Uṣūl al-Fiqh al-Mālikī*, (pp 137-159), published by *Dār al-Kitāb al-'Arabiyyah*, 1987.

³ This refers to the translated edn., by Al-Najjār.

- 10) Burukbah al-Sa'īd in Nadwat al-'Imām Mālik, Imām Dār al-Hijrah, Dawrat al-Qāḍī 'Iyāḍ, Makānat 'Iyāḍ al-'Ilmiyyah, (1: 59). Published by Wizārat al-'Awqāf, al-Mamlakah al-Maghribiyyah (Morocco).
- 11) 'A 'lām al-Fikr al-Sāmī, by Muḥammad 'Ibn al-Ḥasan al-Ḥajjawī, (p. 61).
- 12) Hasan al-Warrākly in his introduction to *Al-Qāḍī 'Iyāḍ Mufassiran*, (p. 8).
- 13) *Majallat al-'Imān*, special issue on: "al-Qāḍī 'Iyāḍ", (no. 8, pp 72-73), *Ṣafar / Rabī' Al-'Awwal*, January / February, 1978.
- 14) *Al-Manāhil*, special issue on "Qāḍī 'Iyāḍ", (No. 19, p. 7), *Ṣafar*, 1401/1980.

Appendix [3]

Al-Mudawwanah Related Books

a. The *Mukhtaṣarāt*

- (1) *'Ikhtisār* by 'Ibrāhīm 'Ibn 'Ajnas 'Ibn 'Asbāṭ al-Kilā'ī al-Ziyādī al-'Andalusī (d. 290 A.H.).⁴
- (2) Ḥamdīs 'Ibn 'Ibrāhīm 'Ibn 'Abī Muḥriz al-Lakḥmī al-Qafṣī. (d. 299 A.H.). According to 'Iyād he was well known.⁵
- (3) *Mukhtaṣar* by Faḍl 'Ibn Salamah 'Ibn Jarīr 'Ibn Mankhūl al-Juhanī al-Bujjānī. (d. 319 A.H.).⁶
- (4) The *Al-Mughrib Fī 'Ikhtisār al-Mudawwanah* of 'Abū 'Abdullāh Muḥammad 'Ibn 'Abdullāh 'Ibn 'Īsā 'Ibn 'Abī Zamanīn (d. 335 A.H.) which al-Ḥajawī described as an excellent source.⁷
- (5) *'Ikhtisār* of 'abū 'Abdullāh Muḥammad 'Ibn 'Abdullāh 'Ibn 'Ayshūn al-Tulaytilī (d. 341 A.H.).⁸

⁴ *Jadhwat al-Muqtabis*, 147; *Al-Dībāj*, 1: 277.

⁵ *Tartīb al-Madārik*, 5: 221-222; *Al-Dībāj*, 1: 342.

⁶ *Al-Dībāj*, 2: 137; *Shajarat al-Nūr al-Zakiyyah*, 82.

⁷ *Tartīb al-Madārik*, 7: 185; *Bughyat al-Multamis*, 77-78; *Jadhwat al-Muqtabis*, 53.

⁸ *Tartīb al-Madārik*, 6: 173; *Tārikh 'Ulamā' al-'Andalus*, 2: 62.

- (6) *'Ikhtisār* of 'abū 'Abdullāh Muḥammad 'Ibn Rabāḥ 'Ibn Sa'īd al'Umawī al-Ṭulayṭilī (d. 358).⁹
- (7) *'Ikhtisār* of Muḥammad 'Ibn 'Abd al-Malik al-Khawlānī, the grammarian, (d. 364 A.H.).¹⁰
- (8) *'Ikhtisār* of 'Abī Bakr Muḥammad 'Ibn 'Ishāq 'Ibn Mundhir 'Ibn al-Sulayyim (d. 367 A.H.).¹¹
- (9) *'Ikhtisār* of 'Abī al-Qāsim 'Ismā'il 'Ibn 'Ishāq 'Ibn 'Ibrāhīm al-Qaysī (d. 384 A.H.).¹²

⁹ *Tartīb al-Madārik*, 6: 177; *Tārikh 'Ulamā' al-'Andalus*, 2: 78-79.

¹⁰ *Ibid*, 7: 20; *Ibid*, 2: 75.

¹¹ *Tārikh Qudāt al-'Andalus*, 75; *Al-Dībāj*, 1:214-216.

¹² *Tartīb al-Madārik*, 6: 298; *Al-Dībāj*, 1: 290-291.

- (10) *Mukhtaṣar* by 'Abī Muḥammad 'Abdullāh 'Ibn 'Abī Zayd al-Qayrawānī. (d. 386 A.H.). Said by 'Ibn Farḥūn, to be well known.¹³
- (11) *'Ikhtisār* by 'Abī Marwān 'Ubaydullāh 'Ibn Faraj al-Ṭutālīqī, the Cordovan grammarian (d. 386 A.H.). Highly regarded by Qāḍī 'Abū Bakr 'Ibn Zarb.¹⁴
- (12) *Al-Taḥdhīb Fī 'Ikhtisār al-Mudawwanah* by Sa'īd Khalaf 'Ibn 'Abī al-Qāsim al-'Azdī, better known as al-Barādhi'ī, written in 372 A.H.¹⁵
- (13) *'Ikhtisār* by 'Abī 'Ishāq 'Ibrāhīm 'Ibn Muḥammad 'Ibn Ḥusayn 'Ibn Shinzīr al-'Umawī al-Ṭulayṭilī (d. 402 A.H.).¹⁶
- (14) The *Taqrīb* of 'Abū al-Qāsim Khalaf *mawlā* (client of) Yūsuf 'Ibn Bahlūl al-Balansī better known as *al-Barbālī* (d. 433 or 444 A.H.).¹⁷
- (15) *Mukhtaṣar* by 'Abī Marwān 'Ubaydullāh 'Ibn Muḥammad 'Ibn 'Ubaydullāh 'Ibn Mālik al-Qurṭubī (d. 460 A.H.). According to 'Ibn Farḥūn, a competent abridgement.¹⁸

¹³ *Tartīb al-Madārik*, 6: 217; *Nafḥ al-Ṭīb*, 1: 553; *Al-Dībāj*, 1: 427.

¹⁴ *Al-Ṣilah*, 1: 300; *Mu'jam al-Buldān*, 6: 72.

¹⁵ *Tartīb al-Madārik*, 7: 257; *Al-Dībāj*, 1: 349-351.

¹⁶ *Al-Ṣilah*, 1: 89-91.

¹⁷ *Tartīb al-Madārik*, 8: 164; *Bughyat al-Multamis*, 268; *Al-Dībāj*, 1: 352.

¹⁸ *Al-Ṣilah*, 1: 303-304; *Tartīb al-Madārik*, 8: 136.

- (16) The *Mulakhkhaṣ* of 'Abū al-Qāsim 'Abd al-Raḥmān 'Ibn Muḥammad al-Ḥaḍramī al-Qayrawānī, known as al-Lubaydī (d. 466 A.H.).¹⁹
- (17) '*Ikhtisār* by 'Abī al-Walīd Sulaymān 'Ibn Khalaf 'Ibn Sa'd al-Bājī al-'Andalusī (d. 474 A.H.). A competent abridgement, claims 'Iyād.²⁰
- (18) *Al-Tahdhīb 'Alā Tahdhīb al-Barādhī'ī* by 'Abū al-Ṭāhir 'Ibrāhīm 'Ibn 'Abd al-Ṣamad 'Ibn Baṣhīr al-Tanūkhī (d. 526 A.H.).²¹
- (19) *Nazm al-Durar* by 'Abdullāh 'Ibn 'Abd al-Raḥmān 'Ibn 'Umar al-Ma'arrī al-Sharamsāhī²² (d. 669 A.H.).²³
- (20) '*Ikhtisār* by Sulaymān 'Ibn Khalaf al-Tamīmī.²⁴
- (21) The '*Ikhtisār Sharḥ 'Ibn Nājī 'alā al-Mudawwanah* of 'Umar 'Ibn Sa'id.²⁵
- (22) *Mukhtaṣar* by 'Abī Ḥafṣ 'Umar 'Ibn Muslim *mawlā* (client of) Yaḥyā 'Ibn 'Ubayd al-Lakhmī.²⁶

¹⁹ *Tartīb al-Madārik*, 7: 254; *Shajarat al-Nūr al-Zakiyyah*, 109.

²⁰ *Tartīb al-Madārik*, 8: 124-125; *Shajarat al-Nūr al-Zakiyyah*, 121.

²¹ *Al-Dībāj*, 1: 265; *Shajarat al-Nūr al-Zakiyyah*, 126.

²² *Mu'jam al-Buldān*, 3: 329.

²³ *Al-Dībāj*, 1: 448-449; *Tārīkh al-'Adab al-'Arabī (GAL)*, Brockelmann, 3: 284.

²⁴ *Muḥāḍarāt Fī Tārīkh al-Madhhab al-Mālikī*, 188.

²⁵ *Ibid*, 187; *Shajarat al-Nūr al-Zakiyyah*, 413.

²⁶ *Muḥāḍarāt Fī Tārīkh al-Madhhab al-Mālikī*, 187.

b. Commentaries (*Sharḥ*) on the *Mudawwanah*

- (1) *Sharḥ* by 'Abī 'Abdullāh Muḥammad 'Ibn 'Ibrāhīm 'Ibn 'Abdūs 'Ibn Bashīr al-Qurashī (d. 258 A.H.). Commentary on the issues (*masā'il*) only.²⁷
- (2) *Sharḥ* by 'Abī 'Abdullāh Muḥammad 'Ibn 'Abdullāh 'Ibn 'Īsā 'Ibn 'Abī Zamanīn (d. 335 A.H.).²⁸
- (3) *Al-Muntakhab* by 'Abī 'Abdullāh Muḥammad 'Ibn Yaḥyā 'Ibn 'Umar 'Ibn Lubābah (d. 336 A.H.). According to 'Ibn Ḥazm he was the most magnanimous of men.²⁹
- (4) The *Tamhīd Li Masā'il al-Mudawwanah* of Khalaf 'Ibn 'Abī al-Qāsim al-'Azdī, better known as al-Barādhi'ī (d. 4th century A.H.).³⁰
- (5) *Sharḥ* by 'Abī Muḥammad 'Abd al-Wahhāb 'Ibn Naṣr al-Baghdādī (d. 430 A.H.). Uncompleted.³¹
- (6) *Sharḥ* 'Abī al-Qāsim Khalaf *mawlā* (client of) Yūsuf 'Ibn Bahlūl al-Balansī better known as al-Barbalī. (d. 444 A.H.).³²
- (7) *Sharḥ* by 'Abū Bakr Muḥammad 'Ibn 'Abdullāh 'Ibn Yūnus al-Tamīmī al-

²⁷ *Tartīb al-Madārik*, 4: 225; *Quḍāt Qurṭubah*, 182.

²⁸ *Tartīb al-Madārik*, 183-186; *Jadhwat al-Muqtabis*, 53.

²⁹ *Bughyat al-Multamis*, 144; *Tārikh 'Ulamā' al-'Andalus*, 2: 51-52.

³⁰ *Tartīb al-Madārik*, 7: 257; *Shajarat al-Nūr al-Zakiyyah*, 104.

³¹ *Tartīb al-Madārik*, 7: 257; *Shajarat al-Nūr al-Zakiyyah*, 104.

³² *Al-Ṣilah*, 1: 169; *Tartīb al-Madārik*, 1: 164.

Siqillī (d. 451 A.H.).³³

- (8) The *Tahdhīb al-Ṭālib* of 'Abū Muḥammad 'Abd al-Ḥaqq 'Ibn Muḥammad 'Ibn Hārūn al-Ṣiqillī (d. 466 A.H.).³⁴
- (9) *Sharḥ* by 'Abū al-Qāsim 'Abd al-Raḥmān 'Ibn Muḥammad al-Ḥaḍramī al-Qayrawānī, known as al-Lubaydī, (d. 466 A.H.). 'Ibn Farḥūn described him as an eloquent advocate of the Mālikite cause.³⁵
- (10) *Sharḥ* by 'Abū Ḥafṣ 'Umar 'Ibn 'Abd al-Nūr, better known as 'Ibn al-Ḥakkār al-Ṣiqillī (d. 5th century A.H.).³⁶
- (11) *Sharḥ* by al-Qāḍī 'Abū al-Walīd Sulaymān 'Ibn Khalaf 'Ibn Sa'īd al-Bājī al-'Andalusī (d. 474 A.H.).³⁷
- (12) The *Ṭirāz* of 'Abū 'Alī Sanad 'Ibn 'Inān 'Ibn 'Ibrāhīm al-'Azdī. (d. 541 A.H.).³⁸

³³ *Tartīb al-Madārik*, 8: 114; *Al-Dībāj*, 2: 240-241.

³⁴ *Tartīb al-Madārik*, 8: 72. MS in *Qayrawān* Script, Fez, under Ref. Old no. 854.

³⁵ *Ma'ālim al-'Imān*, 3: 175.

³⁶ *Tartīb al-Madārik*, 8: 115 *Al-Dībāj*, 77.

³⁷ *Tartīb al-Madārik*, 8: 124; *Nafḥ al-Ṭīb*, 2: 67.

³⁸ *Al-Dībāj*, 1: 399-400; *Kashf al-Ẓunūn*, 2: 164.

- (13) The *Jāmi' al-Basīṭ Wa Bughyat al-Ṭālib al-Nashīṭ* of 'Abū Muḥammad 'Āshir 'Ibn Muḥammad 'Ibn 'Āshir (or 'Āmir) 'Ibn Muḥammad 'Ibn 'Āmir 'Ibn Khalaf al-'Anṣārī al-Shāṭibī. (d. 567 A.H.). Unfinished.³⁹
- (14) The *Ḥāshiyah* of 'Abū Muḥammad Yaṣḥkur 'Ibn Mūsā al-Jarrā'ī al-Ghafjūnī al-Fāsī (d. 598 A.H.).⁴⁰
- (15) The *Minhāj al-Taḥṣīl* of 'Abū al-Ḥasan 'Alī 'Ibn Sa'īd al-Rajrājī.⁴¹
- (16) The *Takmilat al-Jāmi' al-Basīṭ Wa Bughyat al-Ṭālib al-Nashīṭ* of Muḥammad 'Ibn Yahyā al-Ghāfiqī al-Balansī (d. 624 A.H.).⁴²
- (17) The *Ḥāshiyah* of 'Abū al-Faḍl Rāshid 'Ibn 'Abī Rashid al-Wulaydī (d. 675 A.H.).⁴³
- (18) *Sharḥ* 'Abī al-Mawaddah Diyā' al-Dīn Khalīl 'Ibn 'Ishāq 'Ibn Mūsā (d. 776 A.H.).⁴⁴

³⁹ *Bughyat al-Multamis*, 438; *Mu'jam* of 'Ibn al-'Abbār, 310-311.

⁴⁰ *Wafiyāt* of 'Ibn Qunfudh, 300; *Nayl al-'Ibtihāj*, 360.

⁴¹ *Nayl al-'Ibtihāj*, 200.

⁴² *Al-Takmilah*, 334, MS, Madrid, taken from the *Muḥāḍarāt Fī Tārīkh al-Madḥhab al-Mālikī*, 184.

⁴³ *Nayl al-'Ibtihāj*, 117; *Al-Fikr al-Sāmī*, 2: 233.

⁴⁴ *Ibid*, 112-113; 2: 243-245.

- (19) *Sharḥ* by 'Abī 'Imrān Mūsā 'Ibn 'Abī 'Alī al-Zanātī al-Zammūrī (d. 802 A.H.).⁴⁵
- (20) *Sharḥ* by 'Abī 'Abdullāh Muḥammad 'Ibn Khalaf 'Ibn 'Umar al-Tūnisī 'Abū al-Washtānī (d. 828 A.H.).⁴⁶
- (21) *Sharḥ* by 'Abī al-'Abbās 'Aḥmad 'Ibn Muḥammad 'Ibn 'Abdullāh al-Qalshānī (d. 863 A.H.).⁴⁷
- (22) The *Ḥāshiyah* of 'Abd al-Raḥmān al-Ghurriyānī al-Ṭarābulsī.⁴⁸
- (23) *Sharḥ* by 'Abī al-'Abbās 'Aḥmad 'Ibn 'Alī 'Ibn Qāsim al-Zarqāq al-Tajīybī al-Fāsī. (d. 932 A.H.).⁴⁹

⁴⁵ *Al-Takmilah*, 163.

⁴⁶ *Shajarat al-Nūr al-Zakiyyah*, 244; *Nayl al-'Ibtihāj*, 287.

⁴⁷ *Ibid*, 258; *Ibid*, 78.

⁴⁸ *Nayl al-'Ibtihāj*, 171-172.

⁴⁹ *Ibid*, 90-91.

c. Explanatory Notes (*Ta'ālīq*)

- (1) 'Abū Ḥafṣ 'Umar 'Ibn Muḥammad Al-Tamīmī, better known as 'Ibn al-'Aṭṭār al-Tūnisī, whose work in this genre was considered outstanding (d. 427 or 428 A.H.).⁵⁰
- (2) 'Abū 'Imrān Mūsā 'Ibn 'Īsā 'Ibn 'Abī Ḥājj al-Gḥafjūmī al-Fāsī. Uncompleted.⁵¹
- (3) 'Abū 'Ishāq 'Ibrāhīm 'Ibn Ḥ. al-Tūnisī (d. 432 A.H.).⁵²
- (4) 'Abū al-Ṭayyib 'Abd al-Mun'im 'Ibn 'Ibrāhīm al-Kindī, better known as 'Ibn Bint Khaldūn, said to have produced a useful commentary (d. 435 A.H.).⁵³
- (5) 'Uṭhmān 'Ibn Mālik al-Fāsī (d. 444 A.H.).⁵⁴
- (6) 'Abū al-Qāsim 'Abd al-Raḥmān 'Ibn Muhriz al-Qayrawānī (d. approx. 450 A.H.). His annotation is entitled, *Al-Tabṣīrah*.⁵⁵

⁵⁰ *Tartīb al-Madārik*, 8: 67; *Ma'ālim al-'Īmān*, 3: 164.

⁵¹ *Tartīb al-Madārik*, 7: 243-252.

⁵² *Tartīb al-Madārik*, 8: 58; *Ma'ālim al-'Īmān*, 3: 177.

⁵³ *Tartīb al-Madārik*, 8: 67.

⁵⁴ *Tartīb al-Madārik*, 8: 78.

⁵⁵ *Ibid*, 8: 68.

- (7) 'Abū al-Qāsim 'Abd al-Khāliq 'Ibn 'Abd al-Wārith al-Sayyūrī (d. 460 A.H.).⁵⁶
- (8) 'Abū al-Ḥ. 'Alī 'Ibn Muḥammad al-Rab'ī, better known as al-Lakhmī al-Qayrawānī (d. 486 A.H.). A most comprehensive commentary entitled, *al-Tabṣirah*.⁵⁷
- (9) 'Abū Muḥammad 'Abd al-Ḥamīd 'Ibn Muḥammad al-Qarawī, (better) known by his *kunyah* (surname), 'Ibn al-Ṣā'igh. (d. 486 A.H.). A comprehensive commentary.⁵⁸
- (10) 'Abū 'Abdullāh Muḥammad 'Ibn Sa'dūn 'Ibn 'Alī 'Ibn Bilāl al-Qayrawānī (d. 486 A.H.).⁵⁹
- (11) 'Abū 'Abdullāh Muḥammad 'Ibn 'Alī 'Ibn 'Umar al-Tamīmī al-Māzarī (d. 536 A.H.).⁶⁰
- (12) 'Abū 'Abdullāh Muḥammad 'Ibn Sulaymān al-Saṭwā (d. 750 A.H.).⁶¹

⁵⁶ *Ibid*, 8: 65.

⁵⁷ *Ibid*, 8: 109.

⁵⁸ *Ibid*, 8: 105.

⁵⁹ *Ibid*, 8: 112.

⁶⁰ 'Azhār al-Riyāḍ, 3: 165; *Al-Dībāj*, 2: 250-251.

⁶¹ *Shajarat al-Nūr al-Zakiyyah*, 221; *Nayl al-'Ibtihāj*, 243-244.

(13) 'Abū al-Qāsim Muḥammad 'Ibn 'Abd al-'Azīz al-Tāz'adawī al-Ṭanjī (d. 832 A.H.). Has a commentary (*sharḥ*) on the explanation (*ta'liq*) of 'Abū al-A.H. al-Ṣaghīr.⁶²

(14) 'Abū 'Abdullāh Muḥammad 'Ibn 'Abī al-Qāsim al-Mishdhālī al-Zawāwī al-Bujā'ī (d. 866 A.H.).⁶³

d. Prefaces (*Tamhīdāt*)

(1) 'Abū al-Walīd Muḥammad 'Ibn 'Aḥmad 'Ibn Muḥammad 'Ibn Ruḥd al-Qurṭubī (d. 520 A.H.).⁶⁴

e. Notes (*Taqāyīd*)

(1) 'Abū al-Ḥasan 'Alī 'Ibn Muḥammad 'Ibn 'Abd al-Ḥaqq al-Zurwālī al-Ghimārī al-Khamsī.⁶⁵

(2) 'Alī 'Ibn 'Abd al-Raḥmān al-Yafrānī, better known as al-Ṭanjī (d. 734 A.H.).⁶⁶

⁶² *Ibid*, 252; *Ibid*, 290-291.

⁶³ *Nayl al-'Ibtihāj*, 314.

⁶⁴ *Al-Ghunyah*, 222; *Shajarat al-Nūr al-Zakiyyah*, 129.

⁶⁵ *Shajarat al-Nūr al-Zakiyyah*, 215; *Al-Fikr al-Sāmī*, 2: 237.

⁶⁶ *Nayl al-'Ibtihāj*, 204.

- (3) 'Abū Fāris 'Abd al-'Azīz 'Ibn Muḥammad al-Qayrawānī al-Fāsī (d. 750 A.H.).⁶⁷
- (4) 'Abū Zakariyyā al-Sirāj 'Abd al-Nūr 'Ibn Muḥammad 'Ibn 'Aḥmad al-Sharīf al-'Umrānī al-Fāsī born 685 A.H. but date of death unknown.⁶⁸
- (5) Mūsā 'Ibn Muḥammad 'Ibn Mu'tī al-'Abdūs (d. 776 A.H.).⁶⁹
- (6) Muḥammad 'Ibn 'Aḥmad 'Ibn Ghāzī al-'Uthmānī al-Miknāsī.⁷⁰
- (7) 'Imrān 'Ibn Mūsā al-Jānātī al-Miknāsī (d. 830 A.H.).⁷¹

f. Appendices (*Ziyādāt*)

- (1) 'Abū Muḥammad 'Abdullāh 'Ibn 'Abī Zayd al-Qayrawānī. (d. 386 A.H.).
Consisting of an appendix of rare expressions / words (*nawādir*) pertaining to the *Mudawwanah*.⁷²

⁶⁷ *Ibid*, 179.

⁶⁸ *Ibid*, 187.

⁶⁹ *Shajarat al-Nūr al-Zakiyyah*, 235; *Nayl al-'Ibtihāj*, 342-343.

⁷⁰ *Muḥādarāt Fī Tārīkh al-Madḥhab al-Mālikī*, 184.

⁷¹ *Nayl al-'Ibtihāj*, 217.

⁷² *Tartīb al-Madārik*, 6: 217; *Nafḥ al-Ṭīb*, 1: 553.

- (2) 'Abū al-Qāsim 'Abdullāh 'Ibn Muḥammad 'Ibn Rashīq. Provided an explanation of the appendices in the *Kitāb al-Mabsūṭ*, of Yaḥyā 'Ibn 'Ishāq 'Ibn Yaḥyā al-Laythī (d. 303 A.H.).⁷³

g. Annotations (*Tanābīh*)

- (1) 'Abū al-Ṭāhir 'Ibrāhīm 'Ibn 'Abd al-Ṣamad 'Ibn Bashīr al-Tanūkhī (d. 526 A.H.).⁷⁴
- (2) 'Abū 'Abdullāh Muḥammad 'Ibn 'Abī al-Khiyār al-'Abdārī al-Qurtubī (d. 529 A.H.). Annotated the *Mudawwanah*.⁷⁵

h. Extracts / Partial Copies (*Mustakhrajāt*)

- (1) 'Abū Salamah Faḍl 'Ibn Salamah 'Ibn Jarīr 'Ibn Munkhal al-Juhanī al-Bajjānī (d. 319 A.H.).⁷⁶
- (2) 'Abd al-Malik 'Ibn Siyānij al-Bajjānī al-'Andalusī. Extracts from the *Wāḍiḥah* of 'Abd al-Malik 'Ibn Ḥabīb (d. 238 A.H.). And from the *Mawwāziyyah* of 'Ibn al-Mawwāz Muḥammad 'Ibn 'Ibrāhīm al-'Iskandarānī (d. 269 or 281 A.H.). Not found, however, in the *Mudawwanah*

⁷³ *Ma'ālim al-'Imān*, 3: 186.

⁷⁴ *Al-Dībāj*, 1: 265-266.

⁷⁵ 'Ibn Rushd, see his work *al-Muqaddimāt*, 393.

⁷⁶ *Al-Dībāj*, 2: 137-138.

or the *'Utbiyyah* of 'Abū 'Abdullāh al-'Utbī al-Qurtubī (d. 254 or 255 A.H.).⁷⁷

⁷⁷ *Ibid*, 2: 20.

Appendix [4]

Nukat Related Books

(a) *Nukat* in Language, Literature, Rhetoric and Grammar

- 1) The *Nukat of Sībawayh* by 'Abū al-Ḥasan 'Alī 'Ibn 'Īsā, the grammarian (d. 384 A.H.).⁷⁸
- 2) The *Nukat* of Sa'īd 'Ibn al-Mubārak ('Ibn al-Dahhān) (d 569 A.H.) on the subject of grammar, entitled *al-Riyāḍah Fī al-Nukat al-Nahwiyyah*.⁷⁹
- 3) *Al-Nukat al-Hisān Fī Sharh Ghayat al-'Ihsān* by Abu Ḥayyān Muḥammad 'Ibn Yūsuf 'Ibn 'Alī al-Ghirmātī al-Mālikī (d 845 A.H.).⁸⁰
- 4) *Nukat al-'Amālī*.⁸¹
- 5) The *Nukat* on the '*Alfiyyah*, the *Kāfiyyah*, the *Shāfiyyah*, the *Nuzhat al-Ṭarf* and the *Shudhūr al-Dhahab* by Abdul Raḥmān Jalāl al-Dīn al-Suyutī al-Shafi'ī (d 911 A.H.).⁸²
- 6) The *Nukat al-Himyān Fī 'Adab al-'Umyān* by al-Ṣadafi.⁸³
- 7) The *Nukat al-Munajjamāt Fī Sharḥ al-Maqāmāt* by 'Abī al-Ḥasan Sumaym

⁷⁸ *'Inbāh al-Ruwāt 'Alā 'Anbāh Al-Nuḥāt*, 2: 295.

⁷⁹ *Kashf al-Zunūn*, 1: 939.

⁸⁰ '*Abdul al-Ḥusayn al-Fatlā, Muassasat al-Riyād*, Beirut, 1st edn., 1985.

⁸¹ *Fawāt al-Wafīyyāt*, 4: 78.

⁸² *Kashf al-Zunūn*, 2: 1977.

⁸³ Ed., by 'Aḥmad Zakī, Cairo edn., 1911.

al-Halabī.⁸⁴

- 8) The *Nukat* of Jalāl al-Dīn al-Suyutī al-Shafi‘ī on the abridgement of the "*Al-Miftah*" of Jalāl al-Dīn al-Qazwīnī Muḥammad ‘Ibn ‘Abd al-Raḥmān (d. 739 A.H).⁸⁵

(b) *Nukat* in Scholastic Theology and the Islamic Faith

- 1) *Al-Nukat al-Mufīdah Fī Sharḥ al-Khutbah Wa al-‘Aqīdah*.⁸⁶
- 2) *Nukat al-Ma‘ūnah Bi al-Ziyādāt* for ‘Ibn al-‘Ikhshīd, by ‘Abū al-Hasan al-Rummānī (d 384 A.H.).⁸⁷
- 3) *Nukat* on will power.⁸⁸
- 4) *Nukat* on the *‘uṣūl al-fiqh* (principles of Islamic jurisprudence).⁸⁹
- 5) The *nukat* of the Qāḍī Shams al-Dīn Muḥammad ‘Ibn Aḥmad al-Bustāmī al-Mālikī (d 843 A.H). on the *Ṭawālī‘ al-‘Anwār* of Qāḍī ‘Abdullāh ‘Ibn ‘Umar al-Bayḍāwī (d 685 A.H).⁹⁰

⁸⁴ *Wafīyyāt al-‘Ayān*, 7 : 321.

⁸⁵ *Kashf al-Zunūn*, 2: 1977.

⁸⁶ MS in *Dār al-Kutub al-Waṭaniyyah al-Tūnisiyyah* under ref. no., 535.

⁸⁷ *‘Inbāh al-Ruwāt ‘Alā ‘Anbāh al-Nuḥāt*, 2: 295-296.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Kashf al-Zunūn*, 2: 1117.

(c) *Nukat on Tafsīr*

- 1) *Al-Nukat on the Inimitability ('i'jāz) of the Qur'ān* by 'Abū al-Ḥusayn al-Rummānī.⁹¹
- 2) *Al-Nukat Wa al-'Uyūn Fī Tafsīr al-Qur'ān* by 'Abū al-Ḥasan 'Alī 'Ibn Muḥammad 'Ibn Ḥabīb al-Māwardī (d. 450 A.H.).⁹²
- 3) *Nukat in the Qur'ān* by Abū al-Ḥasan 'Alī 'Ibn Fidāl al-Mujāshī'i.⁹³
- 4) The *Nukat* of Burhān al-Dīn 'Ibrāhīm 'Ibn Mūsā al-Karkī (d. 893 A.H.) on the *Shātibīyyah* by Muḥammad al-Shātibī (d. 590 A.H.).⁹⁴
- 5) *Nukat on the Declension ('i'rāb) of the Qur'ān (Al-'I'rāb Fī Gharīb 'al-'I'rāb)* by 'Abū al-Qāsim Muḥammad 'Ibn 'Umar al-Zamakhsharī (d. 538 A.H.).⁹⁵

⁹¹ *'Inbāh al-Ruwāt 'Alā 'Anbāh al-Nuḥāt*, 2: 295. See also, *Kashf al-Zunūn*, 2: 1977.

⁹² Ed., by 'Abd al-Sattār 'Abū Ghuddah, *Wazarat al-'Awqāf al-Kuwaytiyyah*.

⁹³ *'Inbāh al-ruwāt*, 2: 300.

⁹⁴ *Ibid.*, 3: 266.

⁹⁵ *Kashf al-Zunūn*, 1: 646.

(d) *Nukat on Ḥadīth*

- 1) *Al-Nukat al-Kāfiyah Fī 'Aḥādīth Masā'il al-Khilāf* by 'Abū 'Abdullāh Muḥammad 'Ibn 'Atīq al-Ghirmāṭī.⁹⁶
- 2) *Nukat on the Work of 'Ibn al-Ṣalāḥ (Fī Mustalḥ al-Ḥadīth)* by 'Ibn Ḥajar al-'Asqalānī (d. 852 A.H.).⁹⁷
- 3) The *Nukat al-Zurāf 'Alā al-'Aṭrāf* by 'Ibn Ḥajar (d. 852 A.H.), with a commentary on the *Tuḥfat al-'Ashrāf Bi Ma'rifat al-'Aṭrāf* of 'Abū al-Ḥajjāj Yūsuf 'Ibn al-Zakī al-Mizzī (d. 742 A.H.).⁹⁸
- 4) *Nukat on a Work of 'Ibn Ṣilah* (MS on the technical terms in *ḥadīth*) by al-Zarkashī (d. 794 A.H.).⁹⁹
- 5) *Al-Nukat al-Wafiyah Fī Sharḥ al-'Alfiyyah* (on *ḥadīth* terminology) by al-Biqā'ī (d. 885 A.H.).¹⁰⁰

⁹⁶ *Siyar 'A 'lām al-Nubalā'*, 23: 257.

⁹⁷ Ed., Rabī' 'Ibn Hādī al-Madkhalī, Ph.D., 1984. *Al-Jāmi'ah al-'Islāmiyyah, Al-Madīnah*, K.S.A.

⁹⁸ Published along with *Tuḥfat al-'Ashrāf, Nashr al-Dār al-Qayyimah*, Bombay, India, 1384 AH, 1965 AD.

⁹⁹ *Al-Nukat 'Alā Kitāb 'Ibn al-Ṣalāḥ* of 'Ibn Ḥajar, Qism al-Dirāsah, 1: 13.

¹⁰⁰ *Ibid.*

- 6) *Al-Nukat al-Badī'āt 'Alā al-Mawḍū'āt* for 'Ibn al-Jawzī (d. 591 A.H.) compiled by Jalāl al-Dīn al-Suyūṭī (d. 911 A.H.).¹⁰¹
- 7) *The Nukat of Shaykh Shams al-Dīn Muḥammad 'Ibn Ṭūlūn al-Dimashqī 'Alā Ḥilyat al-'Abrār Wa Shi'ār al-'Akhyār Fī Talkhīṣ al-Da'awāt Wa al-'Adhkār Fī al-Ḥadīth* by al-Nawawī (d. 676 A.H.).¹⁰²
- 8) *Nukat* Jalāl al-Dīn al-Suyūṭī (d. 911 A.H.) entitled "*Tuḥfat al-'Abrār Bi Nukat al-'Akhyār*".¹⁰³

(e) *Nukat in Fiqh*

- 1) *Nukat al-'Adillah* of 'Abū Tammām 'Alī 'Ibn Muḥammad 'Ibn 'Aḥmad al-Baṣrī (*min 'aṣḥāb al-'Abhurī*).¹⁰⁴
- 2) *Nukat al-Maḥṣūl* of the Qāḍī 'Abū Bakr 'Ibn al-'Arabī (d. 543 A.H.).¹⁰⁵
- 3) *Al-Nukat al-'Uṣūliyyah Wa Majārī al-'Adillah al-Shar'iyyah* by Muḥammad 'Ibn 'Īsā al-'Aṣbagh.¹⁰⁶

¹⁰¹ *Ibid.*

¹⁰² *Kaṣḥf al-Zunūn*, 1: 689.

¹⁰³ *Ibid.*

¹⁰⁴ *Al-Dībāj*, 100.

¹⁰⁵ *Al-Mi'yār*, 12: 122.

¹⁰⁶ MS in *Dār al-Kutub al-Waṭaniyyah al-Tūnisiyyah* under ref. no. 998, 73 paper.

- 4) *Al-Nukat al-Lawāmi‘ ‘Alā al-Mukhtaṣar Wa al-Minhāj Wa Jam‘ al-Jawāmi‘*
by Jalāl al-Dīn al-Suyūṭī.¹⁰⁷
- 5) *Al-Nukat* of ‘Abū al-‘Abbās ‘Aḥmad ‘Ibn Lu‘lu’ ‘Ibn ‘Abdullāh (d. 769
A.H.).¹⁰⁸
- 6) *Al-Nukat* of ‘Abū Bakr ‘Ibn ‘Aḥmad (‘Ibn Qādī Shahbah al-Dimashqī) (d.
851 A.H.).¹⁰⁹
- 7) *Al-Nukat* of ‘Aḥmad ‘Ibn ‘Umar ‘Ibn ‘Aḥmad al-Nisā’ī (d. 757 A.H.) on the
Tanbīh.¹¹⁰
- 8) *Al-Nukat* of ‘Ibn ‘Ismā‘īl al-Yamanī (‘Ibn ‘Abū Ḍayf) (d. 617 A.H.) on the
Tanbīh.¹¹¹
- 9) *Al-Nukat on the Khilāf* (dispute) of ‘Abū ‘Ishāq ‘Ibrāhim ‘Ibn ‘Alī ‘Ibn
Yūsuf al-Shīrāzī.¹¹²
- 10) *Al-Nukat al-Zarīfah Fī Tarjīh Madhhab ‘Abū Ḥanīfah* by Muḥammad ‘Ibn
Muḥmūd ‘Akmal al-Dīn (d. 786 A.H.).¹¹³

¹⁰⁷ *Kashf al-Zunūn*, 2: 1977.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Kashf al-Zunūn*, 1: 492.

¹¹⁰ *Ibid*, 1: 493.

¹¹¹ *Ibid.*

¹¹² *Wafīyyāt al-‘A‘yān*, 1: 29.

¹¹³ *Kashf al-Zunūn*, 2: 1977.

- 11) *Nukat on Qiyās, Ta'līl, Taqlīd – a summary* by 'Ibn Ḥazm al-'Andalusī (d. 456 A.H.).¹¹⁴
- 12) *Al-Nukat Wa al-Fawā'id al-Sunniyyah 'Alā Mushkil Kitāb al-Muḥarrar Fī al-Fiqh* by Majd al-Dīn 'Ibn Taymiyyah (d. 652 A.H.), compiled by 'Abū 'Abdullāh Muḥammad 'Ibn Mufliḥ al-Ḥanbalī al-Maqdisī (d. 763 A.H.).¹¹⁵
- 13) *Al-Nukat 'Alā al-Muḥarrar Fī al-Fiqh* by 'Ibn Taymiyyah, compiled by Ḥamzah 'Ibn Shaykh al-Slāmiyyah (d. 732 A.H.).¹¹⁶
- 14) *The Nukat* of Qādī 'Abd al-Raḥmān 'Ibn 'Umar al-Balqīnīn (d. 665 A.H.).¹¹⁷
- 15) *Al-Nukat* of 'Izz al-Dīn Muḥammad 'Ibn 'Abū Bakr ('Ibn Jamā'ah) (d. 819 A.H.) on the *Rawḍah Fī al-Furū'* of al-Nawawī (d. 686 A.H.).¹¹⁸
- 16) *The Nukat Ziyādat al-Ziyādāt* of Shams al-'A'immaḥ 'Abū Bakr 'Ibn 'Aḥmad 'Ibn 'Abū Sahl al-Sarakhsī (d. 490 A.H.), and the *Ziyādāt* of Muḥammad 'Ibn Ḥasan al-Shaybānī (d. 189 A.H.) on the *Furū' al-Hanafīyyah*.¹¹⁹

¹¹⁴ *Siyar 'A'lām al-Nubalā'*, 18: 196.

¹¹⁵ See, *Al-Sunnah al-Muḥammadiyyah*, edn., 1950.

¹¹⁶ 'Ibn 'Abd al-Hādī, *Al-Dhayl 'Alā Ṭabaqāt 'Ibn Rajab*, 29.

¹¹⁷ *Kashf al-Zunūn*, 1: 626.

¹¹⁸ *Ibid*, 1: 929.

¹¹⁹ *Ibid*, 2: 963.

- 17) *Various Nukat on the Shāfi'ī School of Law* by 'Uṭhmān 'Ibn 'Abd al-Raḥmān 'Abū 'Amr 'Ibn al-Ṣalāh (d. 643 A.H.).¹²⁰

(f) *Nukat* in Sermons

- 1) *Nukat al-Majālis Fī al-Wa'z* by 'Abū al-Barakāt 'Abd al-Raḥmān 'Ibn Muḥammad al-'Anbārī (d. 577 A.H.).¹²¹
- 2) The *Nukat al-Funūn* of 'Abū 'Ishāq al-Shīrāzī.¹²²
- 3) The *Nukat al-'Islām* of 'Abu Muḥammad 'Alī 'Ibn 'Aḥmad 'Ibn Sa'īd 'Ibn Ḥazm al-'Andalusī (d. 456 A.H.).¹²³
- 4) *Al-Nukat Wa al-'Amālī Fī al-Radd 'Alā al-Ghazālī* by 'Abū 'Abdullāh Muḥammad 'Ibn Khalaf 'Ibn Mūsā al-'Awsī.¹²⁴

¹²⁰ Al-Ḥusaynī, *Ṭabaqāt al-Shāfi'iyyah*, 250.

¹²¹ *Fawāt al-Wafiyyāt*, 2: 294. See also, *'Inbāh al-Ruwāt*, 2: 171.

¹²² Al-Ḥusaynī, *Ṭabaqāt al-Shāfi'iyyah*, 247.

¹²³ Translated into Spanish, Granada, 1911. See also, Sa'īd al-'Afghānī, 2nd edn, 1969. *Dār al-Fikr*, pp 59, 131.

¹²⁴ *Al-Dībāj*, 302.

Appendix [5]

Furūq Related Books

a. *Furūq* in Language, Grammar, Literature and Logic

- 1) On language – *Kitāb al-Farq* by Thābit 'Ibn 'Abī Thābit (the linguist).¹²⁵
- 2) *Al-Furūq al-Lughawiyyah* by 'Abū Hilāl al-'Askarī al-Ḥasan 'Ibn 'Abdullāh 'Ibn Sahl.¹²⁶
- 3) *Farq Mā Bayna al-Khāṣṣ Wa al-Muṣhtarak Min Ma'ānī al-Shi'r* by 'Abū al-Qāsim al-Ḥasan Ibn Bishr 'Ibn Yaḥyā al-'Āmidī.¹²⁷
- 4) *Al-Mu'tabar Fī al-Farq Bayna al-Waṣf Wa al-Khayr* by 'Abd al-Raḥmān 'Ibn Muḥammad 'Ibn 'Ubaydullāh al-Barakān al-Naḥwī Kamāl al-Dīn 'Ibn al-'Anbārī.¹²⁸
- 5) *Ḥilyat al-'Uqūd Fī al-Farq Bayna al-Maqṣūr Wa al-Mamdūd* (by the same author).¹²⁹
- 6) *Zīnat al-Fuḍalā' Fī al-Farq Bayna al-Ḍaḍ wa al-Dhā'* (by the same author).¹³⁰

¹²⁵ Ed., by Ḥātim Ṣāliḥ al-Ḍāmin, 2nd edn., 1985, *Mu'assasat al-Risālah*, Beirut.

¹²⁶ Ed., by Ḥusām al-Dīn al-Qudsī, 1981, *Dār al-Kutub al-'Ilmiyyah*, Beirut.

¹²⁷ *'Inbāh al-Ruwāt*, 1: 323.

¹²⁸ *Fawāt al-Wafiyyāt*, 2: 293-294.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

- 7) *Al-Bulghah Fī al-Farq Bayna al-Mudhakkār Wa al-Mu'annath* (by the same author).¹³¹
- 8) *Al-Furūq Fī al-'Abniyah* by Majd al-Dīn 'Abū al-Sa'ādāt al-Mubārak 'Ibn Muḥammad al-Shaybānī ('Ibn al-'Athīr).¹³²
- 9) *Al-Farq Bayna al-Naḥw Wa al-Manṭiq* by 'Abū 'Abbās 'Aḥmad 'Ibn Muḥammad al-Sarakhsī.¹³³

b. *Furūq* in Dogmatics

- 1) *Al-Farq Bayna al-Khawāriq al-Thalāthah: al-Mu'jizah Wa al-Karāmah Wa al-Sihr* by 'Aḥmad 'Ibn al-Bannā' al-'Azdī al-Murrākishī.¹³⁴
- 2) *Taşarruf al-'Ibād Wa al-Farq Bayna al-Khalq Wa al-'Iqtibās* by 'Abū Muḥammad 'Ibn Ṭayyib (al-Qādī al-Bāqillānī).¹³⁵
- 3) *Al-Farq Bayna Mu'jizāt al-'Anbiyā' Wa Karāmāt al-'Awliyā'* (same author).¹³⁶

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Kashf al-Zunūn*, 2: 1256.

¹³⁴ *Jadhwat al-'Iqtibās*, 1: 152.

¹³⁵ *Tartīb al-Madārik*, 7: 69.

¹³⁶ *Al-Mi'yār*, 2: 443.

- 4) *Al-Farq Bayna al-Firaq* by 'Abd al-Qāhir 'Ibn Ṭāhir 'Ibn Muḥammad al-Baghdādī (d. 429 A.H.).¹³⁷

c. *Furūq* in Medicine

- 1) *Al-Farq Bayna al-'Ilal* by 'Ibn al-Jazzār 'Aḥmad 'Ibn 'Ibrāhīm al-Ṭabīb al-'Afrīqī.¹³⁸
- 2) *Al-Farq Bayna al-'Ādamiyyīn Wa Bayna Kull Dhī Rūḥ* by 'Abū Ḥātim Sahl 'Ibn Muḥammad al-Sijistānī.¹³⁹

d. *Furūq* in 'Uṣūl al-Fiqh

- 1) *Al-Layth al-'Ābir Fī Ṣadamāt al-Majālis* by 'Ismā'īl 'Ibn Mu'allā al-Maḥallī (d. 871 A.H.).
- 2) *Risālah Fī al-Furūq*, correspondence between 'Imām al-Balqīnī (d. 805 A.H.) and Sirāj al-Dīn 'Abū Ḥafṣ 'Umar 'Ibn Raslān 'Ibn Naṣīr al-Kinānī.¹⁴⁰

¹³⁷ *Fawāt al-Wafīyyāt*, 2: 379. *Dār al-Ma'ārif*, Beirut.

¹³⁸ *Kaṣḥf al-Zunūn*, 2: 1256.

¹³⁹ *'Inbāh al-Ruwāt*, 2: 62.

¹⁴⁰ MS in *Dār al-Kutub* under ref. no. 25597.

3) *Furūq al-'Uṣūl* by 'Awad 'Afandī.¹⁴¹

e. *Furūq* in the Principles of *Fiqh* (*Qawā'id Fiqhiyyah*)

1) *'Anwār al-Burūq Fī 'Anwā' al-Furūq* by 'Abū al-'Abbās Shihāb al-Dīn 'Aḥmad 'Ibn 'Idrīs al-Qarāfī (d. 684 A.H.) Abridgements of the above include:

2) *'Idrār al-Shurūq 'Alā 'Anwā' al-Burūq* by Sirāj al-Dīn Qāsim 'Ibn 'Abdullāh al-'Anṣārī ('Ibn al-Shāṭ al-Sibtī) (d. 727 A.H.).

3) *Tahdhīb al-Furūq Wa al-Qawā'id al-Sunniyyah Fī al-'Asrār al-Fiqhiyyah* by Muḥammad 'Alī 'Ibn Ḥusayn, *muftī* of *Makkah* (d. 727 A.H.).¹⁴²

4) *Tartīb Furūq* al-Qarāfī by 'Ibn 'Abdullāh 'Ibn 'Ibrāhīm al-Bāqūrī (d. 707 A.H.).¹⁴³

5) Abridgement of *'Anwār al-Burūq Fī 'Anwā' al-Furūq* by 'Abū 'Abdullāh Shams al-Dīn Muḥammad 'Ibn 'Abd al-Salām (d. 715 A.H.).¹⁴⁴

¹⁴¹ MS in *Dār al-Kutub al-Waṭaniyyah, Fī al-'Asrār*, Tūnis under ref. no. 7329, from A215 to B220.

¹⁴² Pub. Beirut, *'Ālam al-Kuttāb*.

¹⁴³ MS in *Dār al-Kutub al-Waṭaniyyah*, Tūnis under ref. no. 2188, 14982.

¹⁴⁴ *Ibid.*, under ref. no.14946.

- 6) *Fihrist Tahliī Bi Tartīb 'Abjadī Lī Masī'il al-Mudawwanah* by 'Abū al-Muntaṣir Muḥammad Rawwās Qal'ajī.¹⁴⁵
- 7) *Al-'Aḥkām Fī Tamyīz al-Fatāwā Min al-'Aḥkām Wa Taṣarrufāt al-Qādī Wa al-'Imām* by al-Qarāfī.¹⁴⁶

f. *Furūq* and the Issues of *Fiqh*

- 1) *Al-Nukat Wa al-Furūq* by 'Abū Muḥammad 'Abd al-Ḥaqq 'Ibn Muḥammad 'Ibn Hārūn al-Ṣiqillī (d. 466 A.H.). To be discussed further, below.
- 2) *Al-Muskit* by al-Zubayr 'Ibn 'Aḥmad 'Ibn Sulaymān 'Ibn 'Abdullāh al-Zubayrī.¹⁴⁷
- 3) *Al-Muṭārahāt* by 'Aḥmad 'Ibn Muḥammad 'Ibn 'Aḥmad al-Bghdādī ('Ibn al-Qattān) (d. 359 A.H.).¹⁴⁸
- 4) *Al-Furūq* by 'Abū 'Abdullāh Muḥammad 'Ibn Yūsuf al-Juwaynī (d. 438 A.H.).¹⁴⁹

¹⁴⁵ *Al-Furūq al-Fiqhiyyah*, al-Dimashqī, p. 39.

¹⁴⁶ 'Abd al-Fattāh 'Abū Ghuddah, *Maktab al-Maṭbū'āt al-'Islāmiyyah*, Beirut, 1967, p. 10.

¹⁴⁷ *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*, 3: 295.

¹⁴⁸ *Ibid.* 4: 375.

¹⁴⁹ MS in Tarjān ref. no. 146; Chesterbuitry ref. no 4613, quoted from, *Al-Furūq al-Fiqhiyyah*, 41.

- 5) *Al-Mu'āyāh* by 'Abū al-'Abbās 'Aḥmad 'Ibn Muḥammad al-Jurjānī (d. 482 A.H.).¹⁵⁰
- 6) *Al-Jam' Wa al-Farq* by 'Alī 'Ibn Yaḥyā al-Waḥalī al-Yamanī (d. 662 A.H.).¹⁵¹
- 7) *Al-'Istighnā' Wa al-'Istithnā'* by Badr al-Dīn Muḥammad 'Ibn 'Abū Bakr 'Ibn Sulaymān al-Zakī (d. 806 A. H.).¹⁵²
- 8) *Al-'Ashbāh Wa al-Nazā'ir* by Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī (d. 911 A.H.).¹⁵³
- 9) *Al-'Ashbāh Wa al-Nazā'ir* by Zayn al-'Ābidīn 'Ibrāhīm 'Ibn Nujaym (d. 970 A.H.).¹⁵⁴
- 10) *Al-Qawā'id Wa al-'Uṣūl al-Jāmi'ah Wa al-Furūq Wa al-Taqālīm al-Badī'ah al-Nāfi'ah* by 'Abd al-Raḥmān 'Ibn Nāṣir al-Sa'dī.¹⁵⁵

¹⁵⁰ MS in *al-Khazānah al-'Āmmah*, Rabat, under ref. no. *Dāl*913.

¹⁵¹ See *Kitāb Maṭāli' al-Daqā'iq*, p. 179.

¹⁵² Ph.D., Su'ūd al-Thubayṭī, 1414 A.H., *'Ibādāt* section, in part published by *Jāmi'at 'Umm al-Qurā*.

¹⁵³ 'Īsā al-Bābī al-Ḥalabī, *Dār 'Iḥyā' al-Kitāb a-'Arabiyyah*, n.d.

¹⁵⁴ 'Abd al-'Azīz Muḥammad Wakīl, *Mu'assasat al-Ḥalabī*, Cairo 1969. See *al-'Ashbāh wa al-Nazā'ri*, p. 418.

¹⁵⁵ Published by Maktabat al-Ma'ārif, Riyadh, 1985.

g. *Furūq* between the Four Schools

(a) The Ḥanafī School

- 1) *Kitāb al-Furūq* by 'Abū al-Faḍl Muḥammad 'Ibn Ṣāliḥ (al-Karābīsī al-Samarqandī) (d. 322 A.H.).¹⁵⁶
- 2) *Kitāb al-'Ajnās Wa al-Furūq* by 'Abū al-'Abbās 'Aḥmad 'Ibn Muḥammad al-Natafī al-Ṭabarī (d. 445 A.H.).¹⁵⁷
- 3) *Kitāb al-Furūq* by 'Abū al-Muẓaffar 'As'ad Ibn Mumidd 'Ibn al-Ḥusayn al-Karābīsī al-Naysābūrī (d. 570 A.H.).¹⁵⁸
- 4) *Talqīḥ al-'Uqūl Fī Furūq al-Nuqūl* by 'Aḥmad 'Ibn 'Ubaydullāh al-Maḥbūbī (d. 630 A.H.).¹⁵⁹
- 5) *Al-Furūq* by 'Aḥmad 'Ibn 'Uḥmān al-Turkumānī (d. 884 A.H.).¹⁶⁰
- 6) *Taḥrīr al-Furūq* by Najm al-Dīn 'Alī 'Ibn 'Abū Bakr al-Naysābūrī.¹⁶¹

¹⁵⁶ Currently the subject of a Ph.D. by 'Abd al-Muḥsin al-Zahrān at the University of 'Umm al-Qurā, Makkah, K.S.A

¹⁵⁷ *Miftāḥ al-Sa'ādah*, 2: 279-280. See also, *Al-Fawā'id al-Bahiyyah*, p. 36. MS in the Sulaymān Library, Istanbul, ref. no. 1371.

¹⁵⁸ See Muḥammad Ṭumūm, published by the Kuwait 'Awqāf Ministry, 1402 A.H.

¹⁵⁹ See, *'Īdāḥ al-Dalā'il*, 1: 29. The subject of Ph.D. by 'Abd al-Hādī Shīr al-'Afghānī at al-'Azhar University, 1405 A.H., Egypt.

¹⁶⁰ *Kaṣḥf al-Zunūn*, 2: 1257.

¹⁶¹ *'Īdāḥ al-Maknūn*, 1: 232; 2: 88.

- 7) *Al-Furūq* by Bā Yazīd 'Ibn 'Isrā'il 'Ibn Ḥājī Dāwūd Merghāyatī (d. 802 A.H.).¹⁶²
- 8) *Al-Furūq* by 'Aḥmad Muḥammad al-'Ardistānī.¹⁶³
- 9) *Al-Furūq 'alā madhhab 'Abū Ḥanīfah* (author unknown).¹⁶⁴

(b) *Furūq* in the Mālikī *Madhhab*

- 1) *Furūq Masā'il Mushtabihah Min al-Madhhab*, by 'Abū al-Qāsim 'Abd al-Raḥmān 'Ibn 'Alī al-Kinānī ('Ibn al-Kātib) (d. 408 A.H.).¹⁶⁵
- 2) *Al-Furūq Fī masā'il al-Fiḥ* by Qāḍī 'Abd al-Wahhāb 'Ibn 'Alī 'Ibn Naṣr al-Baḡhdādī (d. 422 A.H.).¹⁶⁶
- 3) *Al-Furūq al-Fiḥiyyah* by 'Abū al-Faḍl Muslim 'Ibn 'Alī al-Dimashqī (from 5th century A.H.).¹⁶⁷

¹⁶² Microfilm MS King Faisal Centre for Islamic Research, Riyadh, under ref. no. 812.

¹⁶³ MS in *Khazā'in Kutub al-'Awqāf* Library, Baghdad, under ref. no. 3677. Also, MS in the Berlin General Library, under ref. no. 4848.

¹⁶⁴ MS microfilm in the King Faisal Centre for Islamic Research, Riyadh, under ref. no. 2102.

¹⁶⁵ *Tartīb al-Madārik*, 7: 252-253.

¹⁶⁶ *'Īdāḥ al-Dalā'il*, 1: 31.

¹⁶⁷ Muḥammad 'Abū al-'Ajfān and Ḥamzah 'Abū Faris, *Dār al-Gharb al-'Islāmī*, 1st edn., 1992, Beirut.

- 4) *Al-Furūq* by 'Abū al-'Abbās 'Aḥmad 'Ibn 'Umar 'Ibn Surayj (d. 306 A.H.).¹⁶⁸
- 5) *Al-Wasā'il Fī Furūq al-Masā'il* by 'Abū al-Khayr Salāmah 'Ibn 'Ismā'il ('Ibn Jamā'ah al-Maqdisī) (d. 480 A.H.).¹⁶⁹
- 6) *Al-Kifāyah Fī al-Furūq* by al-Ḥusayn 'Ibn Muḥammad 'Ibn al-Ḥasan al-Ḥināṭī al-Ṭabarī (d. 495 A.H.).¹⁷⁰
- 7) *Al-Furūq* by 'Abd al-Wāhid 'Ibn 'Ismā'il 'Ibn 'Aḥmad 'Ibn Muḥammad al-Rawīyānī (d. 502 A.H.).¹⁷¹
- 8) *Al-Furūq* by 'Aḥmad 'Ibn Kashāshib 'Ibn 'Alī Kamāl al-Dīn al-Dazmārī (d. 643 A.H.).¹⁷²
- 9) *Al-Furūq* by 'Abū 'Abdullāh Muḥammad 'Ibn Yūsuf al-'Andalusī al-'Anṣārī.¹⁷³
- 10) *'Iddat al-Burūq Fī Jam' Mā Fī al-Madhhab Min al-Furūq* by 'Abū al-'Abbās 'Aḥmad 'Ibn Yaḥyā al-Wanṣharīsī (d. 910 A.H.).¹⁷⁴

¹⁶⁸ *Kashf al-Zunūn*, 2: 1257. See also, al-Ḥusaynī, *Ṭabaqāt al-Shāfi'iyyah*, p. 245.

¹⁶⁹ Al-'Isnawī, *Ṭabaqāt al-Shāfi'iyyah*, 2: 411.

¹⁷⁰ *Hadiyyat al-'Ārifīn*, 1: 311. See also, *Kashf al-Zunūn*, 2: 1499.

¹⁷¹ Al-Subkī, *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*, 7: 195.

¹⁷² *Ibid.*, 8: 20.

¹⁷³ *'Ilm al-Jadal Fī 'ilm al-Jadal*, p. 73. See also *'Idāḥ al-Dalā'il*, 1: 31.

¹⁷⁴ Ḥamzah 'Abū Faris, *Dār al-Gharb al-'Islāmī*, Beirut, 1st edn., 1410 A.H.

11) *Al-Furūq Fī al-'Aḥkām 'Alā Madhhab al-Mālikiyyah* (author unknown).¹⁷⁵

(c) *Furūq* in the *Madhhab al-Shāfi'ī* (Shāfi'ī School)

- 1) *Al-Furūq Fī Furū' al-Shāfi'iyyah* by 'Abū 'Abdullāh Muḥammad 'Ibn 'Alī al-Ḥākim al-Tirmidhī (d. 285 or 320 A.H.).¹⁷⁶
- 2) *Al-Jam' Wa al-Farq* by Yūnis 'Ibn 'Abd al-Majīd 'Ibn 'Alī 'Ibn Dāwūd al-Hudhalī (the Armenian) (d. 725 A.H.).¹⁷⁷
- 3) *Al-Furūq* by Muḥammad 'Ibn 'ali 'Ibn 'Abd al-Wāḥid al-Maghribī ('Ibn al-Naqqāsh) (d. 763 A.H.).¹⁷⁸
- 4) *Maṭāliq al-Daqā'iq Fī Ṭaḥrīr al-Jawāmi' Wa al-Fawāriq* by 'Abd al-Raḥīm 'Ibn al-Ḥasan 'Ibn 'Alī al-'Asnawī (d. 772 A.H.).¹⁷⁹
- 5) *Qurrat al-'Ayn Wa al-Sam' Fī Bayān al-Farq Wa al-Jam'* by Badr al-Dīn 'Ibn 'Umar 'ibn 'Aḥamd 'Ibn Muḥammad al-'Ādilī al-'Abbāsī al-Hurrīshī.¹⁸⁰

¹⁷⁵ MS in Chaastrabaytī Library under ref. no. *Fā'* 507.

¹⁷⁶ *Kashf al-Zunūn*, 2: 1258.

¹⁷⁷ Al-'Isnawī, *Tabaqāt al-Shāfi'iyyah*, 2: 29.

¹⁷⁸ 'Ibn Qādī *Shahbah*, *Tabaqāt al-Shāfi'iyyah*, 3: 176.

¹⁷⁹ Naṣr Farīd Wāṣil, Ph.D., Kulliyat al-Sharī'ah, al-'Azhar University, 1392 A.H. Egypt.

¹⁸⁰ *Fihrist Makḥṭūṭāt al-Baḥrayn*, 1: 99.

(d) *Furūq* in the Ḥanbalī *Madhhab* (Ḥanbalī School)

- 1) *Al-Furūq Fī al-Masā'il al-Fiqhiyyah* by 'Ibrāhim 'Ibn 'Abd al-Wāḥid 'Ibn 'Alī 'Ibn Surūr al-Maqdisī (d. 614 A.H.).¹⁸¹
- 2) *Al-Furūq* by Muḥammad 'Ibn 'Abdullāh 'Ibn al-Ḥusayn al-Sāmīrī 'Ibn Sanīnah (d. 616 A.H.).¹⁸²
- 3) *Al-Fuṣūl Fī al-Furūq* by 'Abū al-'Abbās 'Aḥmad 'Ibn Muḥammad 'Ibn Rājiḥ al-Maqdisī (d. 638 A.H.).¹⁸³
- 4) *Al-Furūq* by Muḥammad 'Ibn 'Abd al-Qawī 'Ibn Badrān al-Maqdisī (d. 699 A.H.).¹⁸⁴
- 5) *'Idāḥ al-Dalā'il Fī al-Farq Bayna al-Masā'il* by 'Abū Muḥammad Sharaf al-Dīn 'Abd al-Raḥīm 'Ibn 'Abdullāh 'Ibn Muḥammad al-Zurīrānī al-Baghdādī (d. 741 A.H.).¹⁸⁵

¹⁸¹ *Dhayl Ṭabaqāt al-Ḥanābilah*, 2: 93.

¹⁸² MS microfilm, *Markaz 'Iḥyā' al-Turāth al-'Islāmī*, Universty of 'Umm al-Qurā, Makkah, under ref. no. 36.

¹⁸³ *'Ilm al-Jadal Fī 'ilm al-Jadal*, p. 73.

¹⁸⁴ *Dhayl Ṭabaqāt al-Ḥanābilah*, 2: 342.

¹⁸⁵ Ph.D., by Shaykh 'Umar 'Ibn Muḥammad 'Ibn 'Abdullāh, Universtiy of 'Umm al-Qurā, Makkah, 1414 A.H.