KITĀB AL-TANBĪHĀT
BY
QĀDİ ‘IYĀḌ ‘IBN MŪṢĀ
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 Muḥammad ʻIbn 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-Tanbihāt* of Qādī 'Iyāḍ 'Ibn Mūsā, with an annotation therein, under the two subjects of Divorce (via 'īlā') 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 *Tanbihāt*, defining its content and style, and a commenting on its formative influences, in particular with regard to the *Mudawwanah* of Saḥnūn, which the *Tanbihāt* seeks to abridge, as well as listing the commentaries this work has spurned.

Chapter four discusses the methodology employed by 'Iyāḍ in the *Tanbihāt*, as illustrated by a number of examples. Chapter five deals with the sources invoked by 'Iyāḍ for the *Tanbihāt*, and chapter six discusses the nature of the *fiqh* terminology employed therein. Chapter seven and eight offers translations of the 'īlā' and *li`ān* chapters by way of illustrating style and methodology employed in the *Tanbihāt*. We conclude with a bibliography and relevant appendices.
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7
Method of Transliteration

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

Consonants

\[
\begin{array}{llllll}
\text{Short} & \text{Long} & \text{Doubled} & \text{iyy} \\
\hline
\dot{a} & \ddot{a} & (\text{final form}) & \ddot{i} \\
\dot{u} & \ddot{u} & \text{Diphthongs} & \ddot{a} = \text{aw} \\
\dot{i} & \ddot{i} & \ddot{y} & \ddot{a} = \text{ay} \\
\end{array}
\]
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 ‘Tanbihāt’ 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 ‘Tanbihāt’ was kept at the Khizānah al-‘Āmmah Institute in Rabat, with the ref. no. (Ḥā’ 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. (Ḥā’ Lām, 336), contained the fiqh issues (masā’il) from the section on delayed sale (Buyū‘ al-ʿĀjāl) to the end of the book, but did not include the section on marriage (Nikāh) to the oath of condemnation (Liʿān).

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 ‘Tanbihāt’. I obtained a microfilm copy from the Khizānah al-ʿAmmah, under the ref. no. (543). I also obtained a print out of the manuscript on microfilm already mentioned as ref. no. (Ḥā’ Lām, 333). Therefore I obtained my master copy from the Khizānahat 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 ‘Tanbihāt’ with which to work.

The Importance of the ‘Tanbihāt’

One observation that can be made, from studying the ‘Tanbihāt’, 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 (riwāyat) in the ‘Mudawwana’; with regard to their degree of authenticity and their reliability. This represents a very important and difficult task, given the bulk of evidence (dali‘) which confirmed existing ‘ahkām 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 ‘Tanbihāt’ is considered to be one of the important
works on Mālikite fiqh.

As for the ‘Mudawwānah’ of Sāhnu, the subject of the ‘Tanbihāt’: The ‘Tanbihāt’ is an abridgement (mukhtāsar) and commentary (sharḥ) on the ‘Mudawwānah’. 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 ‘Tanbihāt’, 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 ‘Tanbihāt’ of Qādi ‘Iyād.

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

The ‘Tartib’, in effect, offers approximately sixty percent coverage of the biographies of the eminent Mālikite fuqahā’ mentioned in the ‘Tanbihāt’, 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 *Iyāḍ* by Ḥasan al-Warakly, along with *'Azhār al-Riyāḍ Fī 'Akhbār *Iyāḍ*, 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 (*qādī*) by the Almoravids (*al-Murābitūn*), the ascendancy of the Almohads (*al-Muwahhidūn*) and the political situation affected thereby.

2. *Iyāḍ*’s intellectual standing: To study this aspect of *Iyāḍ*’s life is to bring into the discussion the leading lights of Mālikite *fiqh* (*Iyāḍ*’s *shaykhs*) active during the *Murābitūn* era, both in the Maghrib and al-’Andalus.

3. A sub-section then follows which introduces the *‘Tanbihāt* to the readers, i.e.:
a) A definition of the 'Tanbihät' and a comment on the sources contained therein.

b) Ascription of the 'Tanbihät' to 'Iyāḍ, as confirmed by evidence derived from ancient and modern sources.

c) The importance of the 'Tanbihät' 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 'Iyāḍ was at his most active. The Murābīṭūn were champions of the Mālikite school of law, and 'Iyāḍ, in turn, proved an ardent supporter of the Murābīṭūn regime (by way of returning the compliment). However, the activities of the Mālikite judges (quḍāṭ) 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 (Muwāḥḥidūn), and subsequent effect this political change had on the career of 'Iyāḍ.
The third chapter, the Study of the ‘Tanbihät’ is devoted to a detailed study of the ‘Tanbihät’ 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 ‘Tanbihät’ which is a superb example of this particular genre of Mālikite fīqh 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 ‘Tanbihät’. It covers the methodology and general characteristics employed in the ‘Tanbihät’ to present the issues of Mālikite fīqh (masā’il fīqhiyyah). 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. 'Iyāḍ also covers, in the 'Tanbihāt', 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 'Tanbihāt' represents a discussion about the sources in 'Tanbihāt' from which 'Iyāḍ deduces his evidence ('adillah), whether it be considered reliable or received through allusion. The majority of fiqh sources in the 'Tanbihāt' are derived either from the hadīth (traditions) of the Prophet Muḥammad (P.B.U.H.), from the narrations (riwāyāt) of the Mālikite fiqahā' or from the main body of the Mālikite manuals (furā'), as well as from the Qur'ān and linguistic sources.

Chapter six, Terminology ('Istilāhāt) in the 'Tanbihāt', provides an examination of the terminology of the 'Tanbihāt' employed by 'Iyāḍ and pertaining to Islamic jurisprudence in general but Mālikite fiqh in particular. Here I discuss the methods of deduction ('istiḍāl) 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 'Iyād'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 'i' lã' (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 'i'r ân (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 'i lã', 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' ân.

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 'Iyād and his contemporaries.

There will be one index provided, namely, the Index of Proper Names Mentioned in The 'Tanbīhait'.
Chapter One

Author’s Life

1.1 The Author

1.2 His Shaykhs

1.3 The Students of ‘Iyāḍ

1.4 The Author’s Books other than the Tanbihāt

1.5 The Book of the Tanbihāt
1.1 The Author

His full name was 'Abū al-Faḍl 'Iyāḍ 'Ibn Mūsā 'Ibn 'Iyāḍ 'Ibn 'Amrūn al-
Yahṣūbī al-Sabī al-Qādı. '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 'Iyāḍ, in al-Maqqarī's 'Azhār al-Riyāḍ (The Flowers of the
Gardens)\(^4\) also by several of his contemporary students, not least by 'Ibn
Bāshkuwāl in al-Šilah (The Link), 'Ibn al-Khatīb in al-‘Ihātah Fi 'Akhbār
Gharnāṭah (News of Granada) and 'Ibn Fārḥūn in al-Dībāj (The Golden Badge).\(^5\)

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

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\(^1\) Al-Ta’rif bi-al-Qādī ‘Iyāḍ, 4.


\(^3\) Wafiyyāt al-'A’yān, 3: 54.


\(^5\) For more ‘Iyāḍ’s biography see also: Tadhkirat al-‘Iluff4,4: 96; al-Dībāj al-Mudḥahhab,
Tabaqāt al-Ḥuffāz, 468; al-Mu’jam Fi ‘Aṣḥāb al-Šadafī, 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-Murābitūn) 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 Yahşub tribe, his family finally settled in Ceuta (Sabtah), having first resided in Başţah (Andalusia) and later Fez. His birth, into a family of legal scholars, occurred in Sabtah 476 A.H./1088 A.D. as confirmed by 'Ibn Bashkuwāl. '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.

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

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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‘riz, 4-5.
11 Al-Ṣilah, 2: 42
12 Al-‘Ibar wa-Diwān al-Mubtada’ wa al-Khabar, 6: 11.
received his formal education from his immediate family. His grandfather was a noted Qur'anic reciter, as was his father, and ‘Iyāḍ's education in the Qur'anic 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). These included judge ‘Abū ‘Abdullāh ‘Ibn ‘Īsā al-Tamīmī and the faqih ‘Ishāq ‘Ibn Ja'far al-Lawātī (better known as ‘Ibn al-Fāsī). In addition, as Sabtah was a centre of academic scholarship, ‘Iyāḍ would have met many scholars passing through it during their travels and benefited from their learning.

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

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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 Ḥamdīn\textsuperscript{17} (439/1047-508/1115) the vitriolic critic of the "'Iḥyā'" of al-Ghazālī, 'Ibn 'Attāb\textsuperscript{18}, 'Ibn Rushd\textsuperscript{19}, 'Abū al-Ḥusayn 'Ibn Sirāj 'Ibn Mughīth\textsuperscript{20} and 'Abū al-Qāsim 'Ibn al-Nakhkhās\textsuperscript{21}. From Qurtubah 'Iyād journeyed towards the East (of al-'Andalus) reaching Mursiyyah in 508 A.H., where he met the renowned traditionist (muḥaddith) 'Abū 'Alī al-Ṣadafi who was to exert a significant influence on him.\textsuperscript{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 qāḍī (judge) of Sabtah by the Murābitūn ruler, 'Alī 'Ibn Yusuf (500/1107-537/1143).\textsuperscript{23} 'Iyād became qāḍī of Granada in 531 A.H. By this time he had carved out for himself an

\textsuperscript{17} Al-Taʿrif, 7; His name was: Muḥammad 'Ibn 'Alī, 'Abū Muḥammad 'Ibn Ḥamdīn. See also: al-Ṣilah, 2: 529; 'Azhār al-Riyāḍ, 3: 95; al-Ghunyah, 45; Bughayt al-Multamis, 103.

\textsuperscript{18} Al-Ghunyah, 162; Al-Dibāj, 476; Al-Ṣilah, 2: 348, no. (749).

\textsuperscript{19} Al-Ghunyah, 54.

\textsuperscript{20} Al-Taʿrif, 6-7; al-Dibāj, 196; 'Azhār, 3: 8.

\textsuperscript{21} Al-Taʿrif, p. 122. His full name was: Khalaf 'Ibn Ibrāhīm, known as 'Ibn al-Nakhkhās, 'Abū al-Qāsim. See also: al-Muʿjam for 'Ibn al-'Abbār, 72; Bughayt al-Wuʿāṭ, 1: 513; al-Ghunyah, 77-81.

\textsuperscript{22} 'Azhār, 3: 10

\textsuperscript{23} Al-Taʿrif, 10.
excellent reputation as a *muhaddith* and Mālikite *faqih*. He was removed from his post, however, by the Granada Governor Tāshafīn 'Ibn 'Ali, who thought him too censorious in his judgements.  

'İyād was restored to his position of *qādi*, this time for Ceuta, by 'Ibrāhīm 'Ibn Tāshafīn in 539/1145\(^2_5\), wherein he played a political role of some importance, paradoxically at the time of *al-Murābiṭūn* decline.

A strict Mālikite, 'İyād, opposed the rise of the Almohads (*al-Muwahhidūn*), who exiled him to Tādlā, and thence to Marrākish, where he died in 544/1149\(^2_6\). A comment on the political situation in North Africa and Spain and the *Murābiṭūn* and *Muwahhidūn* administrations (during which 'İyād 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 *Muwahhidūn*.

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\(^{24}\) 'Azhār, 3: 10; Al-‘Ta‘rīf, 10.

\(^{25}\) *Al-Dībāj al-Mudhahhab*, 19; 'Azhār al-Riyād, 3: 11; Al-‘Ta‘rīf, 11.

\(^{26}\) *Muqaddimāt* 'Ībn Khaḍdān, 6: 230; Fahras al-Fahāris wa al-‘Aṭḥābāt, 121; Al-‘Ta‘rīf, 112.
The qādī ‘Iyāḍ described a Murābitūn 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 Murābitūn the study of the Qur‘ān and hadīth were relegated to second place in favour of the manuals of Mālikite applied fiqh (furūʿ), which al-Ghazālī vehemently denounced in (‘Īhyaʿ ‘Ulūm al-Dīn). 28 The basis of Mālikite law was the recognition of the effective and unanimous practice of Madīnah, (ʿamal ‘ahl al-Madīnah), which Mālik ‘Ibn ‘Anās 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 Sahnūn (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 commentaries 29, and its influence was decisive in the crystalization and diffusion of the madhhab (school

27 Tartīb al-Madārik, 4: 781.
29 EI2, Mālikiyyah, v VI, at 278b.
of law) of Mālik throughout the Muslim West.

The *Muwahhidūn* (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. The founder of the movement and originator of the *Muwahhidūn* 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 Muwahhidūn policy was the subject of my thesis, 'Iyād 'Ibn Mūsā.
1.2 His *Shaykhs*

‘Iyād had a hundred *shuyūkh* to whom he dedicated his *Ghunyah*.\(^{30}\) The *shuyūkh* of ‘Iyād, in terms of the influence they exerted on him, can be divided into four groups:

2. Those whose knowledge contributed to his educational progress, such as ‘Ibn al-‘Arabī.
3. Those who had some measure of influence on ‘Iyād, such as al-Ḥusayn ‘Ibn Muḥammad al-Ghassānī.
4. Those with whom contact was restricted to correspondence, such as ‘Abū Ṭāhir al-Silafi.

1.2.1 ‘Abū ‘Alī al-Ṣadafī\(^{31}\)

His full name was ‘Abū ‘Alī al-Ḥusayn ‘Ibn Muḥammad ‘Ibn Fīrruh\(^{32}\) al-Ṣadafī, born in *Saraqṣāth*\(^{33}\), in 454 A.H. He was raised there, learnt the Qur’ānic

\(^{30}\) *Al-Ghunyah*, 227. See also, *Al-T'rīf*, 119-133.

\(^{31}\) *Shajarat al-Nūr*, 128; *Al-Dībāj*, 104; *Al-Ṣilāh*, 1:143.

\(^{32}\) *Takmilat 'Ikmāl al-'Ikmāl*, 101.

\(^{33}\) *Mu'jām al-Buldān*, 3: 212.
sciences from the local *shuyūkh*, such as Sulaymān Ibn Khalaf al-Bāji\(^{34}\) 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-Šadafī 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-Ṣayraff and ‘Abū al-Ḥadīl ‘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-Šadafī 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-Šadafī 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-Dībāj, 1:377-385; Tartīb al-Madārik, 8: 117.

\(^{35}\) Al-Dībāj, 244-248; Naft al-Ṭīb, 2: 85-90; Al-Fikr al-Sāmi, 2: 220.

\(^{36}\) Al-Dībāj, 105.

\(^{37}\) Ibid.
Al-Ṣadafī returned to al-'Andalus in 490 A.H. as a fully qualified transmitter (rāwi) of hadīth. On his return, al-Ṣadafī undertook narration of hadīth 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.

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 hadīth with aplomb, his cause being supported by the Kings (‘Umarā’ al-Murābitīn) of this time, and he mediated in disputes between colleagues, and proved a boon to the education of their children”. 'Ibn Bāṣhkuwāl remarked, apropos the figure of al-Ṣadafī, “Although I never met him, I know (from his reputation) that he had a prodigious memory (for hadīth) and was fully in command of the various categorisations and the value of the chain of authorities (‘isnād). He is the most reverend of our shaykhs”.

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38 Ṭabagāt al-Muhaddithīn, p. 147, no. (1530). His full name was: 'Abū 'Ishāq 'Ibrahim 'Ibn Sa'īd al-Nu'mānī al-Ḥabbāl.
39 Al-Ghunyah, 8.
40 Al-Dibāj, 105.
41 Al-Ṣīlah, 1: 144.
Al-Ṣadafi is reported, by 'Iyād, to have said to some of his scholars: “Take the (sound) hadīth and ask me about any source you want and I will inform you about its support (ʾisnād).

The work of al-Ṣadafi 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-Ṣadafi was pardoned and his position restored. He did not stay in Mursiyyah for long, however, choosing to journey to 'Ishbiliyyah (Seville). His faithful students followed there.  

Al-Ṣadafi’s influence on the scholastic development of 'Iyād was significant, conveying to 'Iyād his vast learning (in hadīth science), as manifest in 'Iyād’s narration of the two great Ṣaḥīḥayn of al-Bukhārī and Muslim, the Ṣāmi’ of al-Tirmidhī, the Musḥtabah al-Nisbah of ‘Abd al-Ghani, the Nāṣikh Wa al-Mansūkh of Hibat 'Allāh, the Shamā'il al-Rasūl of al-Tirmidhī, the 'Istidrākát 'Alā al-Bukhārī Wa Muslim of al-Dāraquṭnī, and so on.  

'Iyād 'Ibn Mūsā derived his (hadīth) methodology from such above described

42 Al-Sīlah, 1: 144; Al-Ghunyah, 8.
43 Al-Mu’jam Fi ’Āṣhab al-Ṣadafi, 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
identification. Al-Ṣadafī met his death on the field of battle at Qatandah in 514
A.H., as confirmed by 'Abū Bakr 'Ibn al-'Arabī.

1.2.2 'Abd al-Rahmān 'Ibn 'Attāb

His full name is Muhammad 'Abd al-Rahmān 'Ibn Muḥammad 'Ibn 'Attāb 'Ibn
Muḥsin al-Judhāmi. He was born in 433 A.H. into a family of legal scholars in
the city of Qurṭubah. 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
Samāh al-Ghāfiqī and 'Abū 'Umar 'Ibn 'Abd al-Barr al-Namirī. In addition to
ḥadīth studies he became a proficient reciter of the Qur'ān (gāri') and interpreter
(mufassir). Like his father, 'Ibn 'Attāb held the position of muḥaddith in

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44 Al-Ṣilah, 1: 144.
45 Al-Ghunyah, 8.
46 Al-Ghunyah, 162; Al-Ṣilah, 2: 348; Bughyat al-Multamis, No.(986); al-Dībāj, 476.
47 For Muhammad 'Ibn 'Attāb (d. 462 A.H.), see: Tartīb al-Madārik, 4: 810, (Beirut edn.).
48 Al-Ṣilah, 1: 332.
49 Al-Ghunyah, 104.
Qurtubah.

'Ibn Bashkuwäl 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 *hadith* from 'Ibn ‘Attāb, in particular *hadith* in the form of the narration of the *Jāmi‘ al-Šāhih* of al-Bukhārī\(^51\) and the *Mulakhkhas* of al-Qābisi\(^52\), absorbing the rudiments of *fiqh* through the study of the *Muwat'at* of Mālik (or the Mālikite treatise *al-Mudawwanah al-Kubrā*).

According to 'Ibn Bashkuwäl, 'Ibn ‘Attāb died on Sunday the 5th of Jumādā al-‘Awwal, 520 A.H. He was buried in Rabaď, Qurtubah\(^53\), as confirmed by 'Iyād himself in the *Ghunyah*.\(^54\)

\(^50\) *Al-Šilah*, 1: 332.

\(^51\) *Al-Ghunyah*, 162.

\(^52\) *Ibid.*

\(^53\) *Al-Śilah*, 1: 332.

\(^54\) *Al-Ghunyah*, 164.
1.2.3 'Ibn Rushd\(^{55}\)

His full name was Muḥammad 'Ibn ʿAḥmad 'Ibn Rushd al-Mālikī, born in 540 A.H. He was one of the leading ṭuqahā' 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 (ʿuṣūl al-fiqh) and the science of obligatory duties (ʿilm al-farāʾid) he made an excellent advocate of Mālikite fiqh.

The works of 'Ibn Rushd include (Al-Bayān Wa Al-Taḥṣīl Limā Fī Al-Mustakhrājah Min Al-Tawjih Wa Al-Taʿīl Fī Sharḥ Al-ʿUtbiyyah Al-Mustakhrājah Min Al-ʿAsmiʿah).

This is a huge classification and commentary on fiqh consisting of some 20 volumes.\(^{56}\) Other publications include the (Muqaddimah) and ('Ikhtisār al-Mabsūṭah).\(^{57}\) Works on hadith included a commentary on Ṭahāwī's 'Ikhtisār Mushkil al-ʿĀṯār.\(^{58}\) 'Ibn Bashkuwāl described 'Ibn Rushd as a pioneering faqīh\(^{59}\), and 'Ibn Farḥūn, found him religious, retired and shy, but a man who

\(^{55}\) 'Azhār al-Riyāḍ, 3: 59-60; Al-Ṣīlah, 1: 546.

\(^{56}\) 'Azhār al-Riyāḍ, 3: 59.

\(^{57}\) Ibid.

\(^{58}\) Ibid.

\(^{59}\) Al-Ṣīlah, 1: 546.
enjoyed a good relationship with the ruler ('amīr al-mu'mīnīn)\(^{60}\) of the time.\(^{61}\) He might have described 'Ibn Rushd 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 Rushd, where he was inducted in the mysteries of fiqh methodology, as related in the Ghunyah.\(^{62}\) 'Ibn Rushd died in 520 A.H. Many people gathered round the graveside and wept for the loss of this revered qādī and outstanding fiqh scholar.

1.2.4 'Abū Bakr 'Ibn Al-'Arabi

His full name was 'Abū Bakr Muḥammad 'Ibn 'Abdullāh 'Ibn Muḥammad 'Ibn 'Abdullāh 'Ibn Ahmad 'Ibn al-'Arabi al-Maʿāfiri al-'Ishbili, an advocate of the madhhab of Mālik.\(^{63}\) As the nisbah (origin) suggests 'Ibn al-'Arabi 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-Ṭartūshī\(^{64}\). Likewise in Baghdad he sat

\(^{60}\) Refers to the Ruler of Almorsvids, see Chapter Three for more details.

\(^{61}\) Al-Dībāj, 279.

\(^{62}\) Al-Ghunyah, 54.

\(^{63}\) 'Azhār al-Riyāḍ, 3: 62; Al-Ṣilah, 1: 558; The Introduction of 'Aḥkām Al-Qur'ān, 4.

\(^{64}\) Al-Ṣilah, 1: 558.

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

On his return to al-'Andalus he passed through Alexandria where he met, amongst other shuyūkh, the celebrated faqih and muḥaddith al-Ṭūsī.65 'Abū Bakr's riḥlah (fi ẓalab al-ʿilm) journey in all consumed eight years of his life. Linguist, poet, faqih, 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 stem adjudicator ordering the court, on one occasion, to pierce the cheeks of a certain zamīr 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-Ṣīlah, 1: 558.
66 'Azhār al-Riyāḍ, 3: 64.
67 Ibid.
'al-Qānūn Fī Tafsīr al-Qur'ān, which deals with the methodology of tafsīr and Al-Nāṣikh 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-Masāḥīḥ Fī Sharḥ Muwatta’ Mālik. 70 His works on fiqh include Al-Maḥṣūl Wa al-Khilāfiyyāt, Al-Kāfī Bi ’Anna al-Dalīl ‘Alā al-Naff and Malja’at al-Mutafaqqīhin. Commentaries include Al-Subā‘iyyāt Sharḥ Gharib al-Risālah, Talkhīṣ al-Talkhīṣ and many others. His Al-‘Awāṣīm Min al-Qawāṣīm 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 shi‘ah. 71

'Abū Bakr was ‘Iyād’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 ‘Iyād 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-Dāraqūṭnī. 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 *Masʿalat al-ʿAynān al-Lāzīmah* and he accordingly congratulated me on the narration. I met him also in *Ishbīliyah*, and *Qurtubah* (Cordoba) when he referred me to his commentary on the *Rubāʿiyyāt* of al-Bukhārī*.72

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

1.2.5 Muḥammad ʾIbn ʿĪsā Al-Tamīmī

His full name was ʿAbū ʿAbdullāh ʾIbn ʿĪsā Ḥusayn al-Tamīmī al-Sabṭī. 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 *Sabṭah* ʾIbn ʿĪsā moved to *al-ʾAndalus* in order to augment and extend the range and breadth of his knowledge. In *Mūrsiyyah* he met his mentor, ʿAbū ʿAbdullāh ʾIbn al-Murābit, and also became a pupil of ʿAbū Marwān ʾIbn Sirāj.

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72 *Al-Ghunyah*, 34.

73 *ʿAzhār al-Riyyād*, 3: 64-65.

74 *Al-Ṣīlah*, 2: 572.
Ibn 'Isā returned to Sabtah in 490 A.H., reputedly with an academic reputation, for he was soon offered the post of qādi for the town, which he accepted. He fulfilled this function for six years but relinquished the post in 496 A.H. The governor then conferred on Ibn 'Isā the post of qādi 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.

'Iyād refers to his shaykh 'Ibn 'Isā in al-Ghunyah as having a prodigious memory (ḥāfiz), as an excellent faqīh and calligraphist, and considered knowledgeable in orthography.

'Iyād appears to have spent some time in the company of Ibn 'Isā, discussing with him the Mudawwanah, and the Mawwāziyyah. In the field of hadīth 'Iyād mentions the narration by Ibn 'Isā of the Sahih of ['Abū al-Husayn] Muslim ['Ibn al-Hajjāj] during which 'Iyād pointed out some discrepancies with regard to gharīb hadīth (strange hadīth), and 'Īslāh al-Ghalat (corrected hadīth) and his shaykh congratulated him on his industry and insight. They also discussed together the 'Ulūm al-Hadīth by al-Ḥākim, the Tabaqāt of Muslim 'Ibn al-Ḥajjāj,

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75 Al-Ghunyah, 3.

76 Ibid.

77 Ibid.

78 Al-Ghunyah, 33.
and al-Du‘afā‘ Wa al-Matrūkin (the weak and abandoned Rāwis) of ’Abū ‘Abd al-Rahmān al-Nāṣī’ī.  

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

1.2.6 Al-Ghassānī  

His full name was ’Abū ‘Alī al-Ḥusayn ’Ibn Muḥammad ’Ibn Aḥmad al-Ghassānī. His family settled in Cordoba, after having some time in the past resided in Jayyān, hence the nisbāh 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”. He was born in 427 A.H., as confirmed by ’Ibn Bashkuwāl (in al-Ṣilāḥ) and ‘Iyāḍ in al-Ghunyah.  

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

79 Ibid.  
80 Al-Ghunyah, 33; Al-Ṣilāḥ, 2: 572.  
81 Al-Ghunyah, 87; Al-Ṣilāḥ, 1: 141.  
82 Al-Ṣilāḥ, 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 ḥāfīz and musnid (reliable source). The process of evaluating the soundness of hadīth, 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

‘Iyād, his pupil, described him as meticulous with regard to hadīth sources and 'asānid (chain of authorities). ⁸⁷ 'Abū al-Ḥasan 'Ibn Mughith 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-Muḥmal Wa Tamyīz al-Mushkil. ⁸⁸

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

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⁸⁵ Al-Qhunyah, 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, ‘Iyāḍ. "He wrote to me", remarks ‘Iyāḍ, "about his biography al-Fihrisṭ al-Kubrā, and referred (me) to the narrations contained therein, on more than one occasion." Al-Ghassānī died in al-Mariyyah on the 12th of Sha‘bān, 498 A.H.  

89 Al-Ghunyah, 78-88.  

90 Al-Šilah, 1: 142; ‘Azhār al-Riyāḍ, 3: 150.
1.3 The Students of ‘Iyāḍ

As a shaykh in Sabtah ‘Iyāḍ 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’rif 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

‘Iyāḍ’s students valued not only his scholastic expertise and opinion, but his humility, tolerance and piety.

1.3.1 ‘Āḥmad ‘Ibn ‘Abd al-Rahmān ‘Ibn Maḍḍā

His full name was ‘Āḥmad ‘Ibn ‘Abd-Rahmān ‘Ibn Muḥammad ‘Ibn Maḍḍā ‘Ibn Muḥammad ‘Ibn ‘Umayr al-Lakhmī, better known as ‘Abū al-‘Abbās. He was born in Qurtubah, 511 A.H. Al-Lakhmī 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 ‘Iyāḍ whilst the latter was active in Sabtah, imbibing from his shaykh the mastery of narration, in both scope and reliability.93

‘Ibn Farhūn described him in Al-Dibāj as “good company, trustworthy,

91 Tadhkirat al-Huffāż, 4: 94.
93 Al-Dibāj al-Mudhahhab, 47.
dependable, a man who held no grudges". He died in 593 A.H., having held the posts of qāḍī at Fez and Marrākīsh.

1.3.2 ‘Abd Al-Rahmān ‘Ibn Al-Qaṣīr Al-Gharnāṭī


‘Ibn al-Qaṣīr was raised in a family of legal scholars. He was a pupil of ‘Iyāḍ’s in Granada where ‘Iyāḍ was qāḍī. He excelled as a faqīḥ, a man of letters (‘adīb) and muḥaddith, and was eventually appointed qāḍī for the town of the Ṭagyūs, near Tawz. 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

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94 Ibid.
95 Ibid.
97 ‘Azhār al-Riyāḍ, 3: 15.
98 Al-Dībāj al-Mudhahhab, 152.
99 Mu’jam al-Buldān, 2: 37.
100 Mu’jam al-Buldān, 2: 57-58.
1.3.3 Khalaf 'Ibn Bashkuwäl

His full name was Khalaf 'Ibn 'Abd al-Malik 'Ibn Mas'ūd 'Ibn Mūsā 'Ibn Bashkuwäl, 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 'Iyaq'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-Rahmān 'Ibn 'Attāb, 'Abū al-Walid 'Ibn Rushd, 'Ibn Mughīth and 'Ibn al-'Arabi.103 'Ibn Bashkuwäl was primarily a muhaddith, who excelled in narration and the science of hadīth. "He came to us", 'Ibn Bashkuwäl writes of his teacher, "To Cordoba in 531 A.H. and one day he related to us the narration of qādi 'Abū al-Ḥusayn 'Ibn Muḥammad al-Ṣadafi, related on the authority of the 'Imām 'Abū Muḥammad al-Tamīmī al-Baghḍādī 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

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101 Al-Dībāj al-Mudhahhab, 152; Azhār al-Riyāḍ, 3: 16.

102 'Ahmad 'Ibn Mughīth al-Ṭulayṭili, 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-Mudhahhab, 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 ʿAḥmad ʿIbn ʿAbd Al-Raḥmān ʿIbn Al-Ṣaqr Al-ʿAnṣārī Al-Khazrajī

He is better known by his kunyah ʿAbū Al-ʿAbbās. He was born in Māriyyah106 in 492 A.H.107 He excelled in the Qur'ān.108 He augmented his knowledge of fiqh and hadīth under the tuition of a number of shaykhs, ʿIyāḍ being one of the most influential.109

ʿIbn Farḥūn relates that ʿIbn al-Ṣaqr was the subject of an attempted bribe (as ʿIbn al-Ṣaqr felt it) by a rich man from Lamṭūnāh. The offered price was one thousand of Mūrābīṭūn gold ḍīnārs. The offer to ʿIbn al-Ṣaqr was to join the rich man as his personal assistant in his travels. ʿIbn 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-Dibāj al-Mudhahhab, 14.
106 Muʿjam al-Buldān, 3: 367.
107 Al-Dibāj al-Mudhahhab, 48-49, 50-51.
108 Al-Dibāj al-Mudhahhab, 48.
109 Ibid.
serving the seekers of knowledge".110

When the Muwahhidün 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-Dibāj al-Mudhahhab, 50.

111 Ibid.
1.4 The Author’s Books other than the *Tanbihät*

### 1.4.1 Printed Books

1. *Kitāb al-Ghunyah Fī Dhikr Shuyūkhīhī.*
2. *Al-Shifā Bi Ta’rif Ḥuqūq al-Muṣṭafā (P.B.U.H.).*
3. *Al-‘I‘lām Biḥudūd Wa Qawā‘id al-‘Islām.*
5. *Al-‘Ilmā Fī Ḍabṭ al-Riwayah Wa Taqyīd al-Samā‘.*
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-Tanbihät.*

### 1.4.3 Missing Books

2. *‘Ajwibatiḥī Fī Mā Nazal ‘Ayyām Qaḍā‘ihi Min Nawāzīl al-‘Aḥkām.*
3. *‘Ajwibat al-Qurṭubiyyīn.*

47
(7) 'Ikhtiṣār Ṣharaf al-Muṣṭafā (P.B.U.H.).
1.5 The Book of the Tanbihāt

1.5.1 Introduction to the Tanbihāt

This is known also as the Kitāb al-Mustanbatāh Fī Sharḥ Kalimāt Mushkilah Wā 'Alfāz Mughlatāh Mimmā Waqa‘a Fī Kitāb al-Mudawwanah Wa al-Mukhtalītah. The title ‘Tanbihāt’, 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-Maqārī in 'Azhār al-Riyāḍ designated it the ‘Kitāb al-Mustanbatāh Fī Sharḥ Kalimāt Mushkilah Wā 'Alfāz Mughlatāh Mimmā Waqa‘a Fī al-Mudawwanah Wa al-Mukhtalītah’, reflecting the significant influence of the latter on the development of the Tanbihāt. The title Tanbihāt, however, prevailed in the region of North Africa.112

Fu‘ād Sizgin designated it the Kitāb al-Tanbihāt al-Mustanbatāh Fī Sharḥ Mushkilāt al-Mudawwanah Wa al-Mukhtalītah113, while another variation is Kitāb al-Tanbihāt ‘Alā al-Kutub al-Mudawwanah Wa al-Mukhtalītah.114

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112 'Azhār al-Riyāḍ, 4: 347.
113 Tārikh al-Turāth al-'Arabi, 1st vol. 3: 151
1.5.2 Qādī 'Iyāḍ and the Tanbihāt

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


b. Author’s Ascription

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

c. The *Tanbihāt* of Qāḍī 'Iyāḍ Literary Allusion

The first scholar to draw the attention of the public to the *Tanbihāt* was 'Iyāḍ’s son, Muḥammad 'Ibn 'Iyāḍ in his work *Al-Ta'rif Bi al-Qāḍī 'Iyāḍ*, edited by Dr. Muḥammad 'Ibn Sharīfah. His son also mentioned *Tanbihāt* also in the *Kitāb Madhāhib al-Ḥukkām Fī Nawāzīl al-'Aḥkām*, pertaining to the judicial cases (nawāzīl) that 'Iyāḍ presided over, about which 'Iyāḍ 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-`İslāmî*, 1st edn., 1990.


1.5.3 The Importance of the Tanbihät

According to the introduction to the Tanbihät, ‘Iyāḍ’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 Mudawwanaḥ, in which two methodologies are combined: the Iraqi, which relies on analogy (qiyyās), genealogy (taṣīḥ), investigation of the issues and establishment of the evidence (dalā‘īl), and that of the Qayrawānīs, which relies on authentication of the ‘Isnād, (chain of transmission) analysis of the issues (masā‘īl), deduction, and separation of the issues, (furuq)”.

‘Ustādh Muhammad Sāliḥ described the style of the Tanbihät as fluid, constructed and written to facilitate easy comprehension, based (as it is) on the style of the preceding Mālikite fuqahāʾ who were keen to illumine the text rather than obscure it.

Although predominantly a Mālikite faqīh, ‘Iyāḍ (in the Tanbihät) 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., Gesichte der Arabischen Litteratur.
attention to the authentication of the narratives' chain of authorities (‘asānīd) and the classification and indexation of the narrators themselves (ruwāḥ), 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 Fugāhā during the Middle Ages.

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

The Manuscripts of the Tanbhāt According to Sezgin.

Sezgin lists the manuscripts as follows:


(3) Al-Qarawiyyīn. bi- Fās, under reference no. (333), (786 A.H.), Schacht, etal., or (1: 281).

(4) Marrākish, (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 Makḥṭūṭāt 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 Tanbihāt in Detail


(1) MS ref. no. (333): by ‘Iyāḍ ‘Ibn Müsā ‘Ibn ‘Iyāḍ al-Yahṣūbī al-Qāḍī ‘Abū al-Faḍl, under the title of Kitāb al-Tanbihāt al-Mustanbatah Fi Sharḥ Mushkilāt al-Mudawwanah Wa al-Mukhtalīḥah. 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 ‘Maghribi 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.


(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).


(1) MS ref. No. (534): One large volume, Maghribi 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.
1.5.5 Methodology adopted in the verification of the Tanbihät Manuscripts

a. Methodology in the Tanbihät

The methodology adopted by 'Iyāḍ in the Tanbihät 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 muḥaddithūn sometimes led to violence between those of different opinions. Men, 'Iyāḍ claims, were generally deficient in the
Islamic sciences, and in the science of *hadith* in particular.\textsuperscript{116}

Thus, ‘Iyād first identifies the issues in which these terms feature, and compares the various opinions of the *fuqahā’* so expressed in the *Mudawwana*. Then he enumerates them, weighing one opinion against another, until he identifies the element of confusion. Whereupon, his vast knowledge-of *hadith* 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 *Mudawwana*.

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.

\textsuperscript{116} *Fihris Makhțūtāt Khazānat al-Qarawīyīn*, 1: 328.
Fifthly, he seeks to provide comprehensive biographies of the scholars and the *muhaddithūn* who appear in the *Mudawwanah*, with regard to the provision of an accurate indexation of their names.

An example of ʿIyāḍ’s methodology is his definition of the term *sadāq* (bridal dower), in which he provides both the literal (linguistic) and technical meaning. The term, he says, has its linguistic origin in the nouns *ṣiddq* (sincerity) and *ṣīḥḥah* (integrity).

The legal meaning of the term pertains to the establishment of a contract (*ʿaqd*) legitimising sexual relations between the man and the woman.\(^{117}\)

Another example of this method is manifest in ʿIyāḍ’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 ʿIyāḍ 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

\(^{117}\) *Maṭbūʿ*, 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 (muwaththiqūn) 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 Qādi ‘Iyāḍ (d. 544 A.H) whose "Tanbihat" 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 Tāśhafīn (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 Tāśhafīn (d. 541 A.H.), when Qādi ‘Iyāḍ 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*. 

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

The dwellers of the (rubāt), according to 'Ibn Ḥawqal and al-Yaʿqūbī, were said to be flourishing along the African coast². The function of the ribāt was once purely military, serving to defend the Dār al-'Islām (The region of Islam). But, by the beginning of the 11th century, these ribāt had become centres of Islamic propagation, particularly in response to shi'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-Lamṭī (the real founder of the Dār al-Murābiṭūn) to defend the Muslims against the tyrannous amīr of Sijilmāsa, as 'Ibn Khaldūn confirms in the (Mugaddimah).³ Later, ‘Abdullāh 'Ibn Yāsīn was despatched by Yaḥyā 'Ibn 'Ibrāhīm⁴ as a missionary to Ṣanḥājah, 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).
deficient.  

Under 'Abdullah 'Ibn Yasin a militant Malikite orthodoxy arose to counter such heterodox groups as the Barghawat, whose doctrine contained Shi'ite and Kharijite influences. It was against the heretical group the Barghawat that 'Ibn Yasin was to lose his life in battle.

According to 'Ibn Khaldun, 'Ibn Yasin led "an ascetic life". Al-Bakri, seeing it differently, claimed 'Ibn Yasin 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 hudud.

Al-Bakri ultimately described 'Ibn Yasin's teachings as rigid and excessive.

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6 'Ibn Hawqal.

7 Al-Bakri, p. 168.

8 Muqaddimah, p. 238 (I. 1).

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

Qādī 'Iyād 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”.

An indication of the extent of 'Ibn Yāsīn’s strict application of the Sharī‘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”.

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.


In Sijilmāsah, for example, he ordered the destruction of musical instruments and houses where wine had been sold.\(^{14}\) Also in Sijilmāsah he abolished extra taxes which he considered heretical (\textit{bid`ah})\(^{15}\), namely the (\textit{mukūs}) and (\textit{maghārim}) taxes, which 'Ibn Khaldūn declared, caused the price of commodities to rise\(^{16}\). 'Ibn Yāsīn levied in their place the legally prescribed alms tax (\textit{şadaqah})\(^{17}\) which, along with the tithe and the booty tax (\textit{ghanā`im}), constituted the monies for the treasury (\textit{bayt al-māl}) which financed the army.\(^{18}\)

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\(^{14}\) \textit{Rawḍ al-Qirtās}, p. 81 (II. 19-20) trans., p. 176.

\(^{15}\) \textit{Ibid}, 79. 14.

\(^{16}\) \textit{Muqaddimah}, p. 216-218, a.

\(^{17}\) \textit{Rawḍ al-Qirtās}, p. 82 (12-13) trans., p. 178.

\(^{18}\) \textit{Ibid}, p. 80. (II. 8-11); p. 81 (II. 17-19) trans., pp 173-76.

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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.).

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 Ṣanḥājah, was now heterogenous in character. ‘Abū Bakr, for his part, preferred to remain in the Sahara South where he felt most at home. 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.

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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 Murābiḥūn (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 combating Christian incursions into 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 “muhīyī da‘wat al-khilāfah al-'imām,
‘amīr al-mu‘minīn’ restorer of the ‘Abbāsid 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 Murābiṭūn 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 Zallāhqah, famously defeating the Christians there in 479/1086, with a hundred thousand cavalrmen drawn from the Saharan tribes25, infantry, archers and lancers, and a praetorian guard of some

25 Rawd Al-Qirtās, p. 89.
two thousand men from Ghana. Yusuf occupied Granada in 483 A.H. 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 Mulük al-Ṭawā’if.

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


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


studied under al-Ghazālī in Damascus. It appears that 'Ibn al-‘Arabī approached al-Ghazālī, explaining to him the corruption widespread among the Mulūk al-Tawā'if which necessitated their sanction of Yūsuf as the Islamic leader in al-'Andalus. Yūsuf himself refused the honorific 'amīr al-Mu'mīnīn which he believed belonged to the ‘Abbāsid Caliph alone and, instead, chose the above mentioned title in 466 A.H. Almoravid gold coins were consequently altered to contain Yūsuf's new title 'amīr al-Muslimīn after the victory at Zallāqah in 479/1086.

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 Muslims. 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, "Majmā' 'Awwaluhū Kitāb al-'Ansāb".


departments. Thus, Yusuf was obliged to impose tribute taxes (ʼitāwāṭ) on the Andalusian natives, with the Jews notably suffering\textsuperscript{33}.

Yusuf referred all judgements to the quḍāt. The \textit{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 life\textsuperscript{34}. The 'amīr relied on them for guidance and advice on religious matters affecting the state. Yusuf also sought the opinions from such leading 'ulamā' as al-Ghazālī, 'Abū Bakr 'Ibn al-'Arabi and al-Ṭartūshī.

According to the \textit{hisbah} manual of 'Ibn 'Abdin, Yusuf 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

\textsuperscript{33} Muḥammad 'Anān, op cit, v1, p 420.

\textsuperscript{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-Ghazālī and 'Abū Bakr 'Ibn al-‘Arabī described him as a man of integrity and pious.37

‘Ali '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 ‘Ali '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.

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’ être) 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 Tāshafin was forced to invoke tribute taxes (‘ītāwāt) 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 (gabālāt) on the Andalusian populace. Namely, on commercial transactions involving merchandise such as soap, scents, copper, yarn and bulk purchases. ‘Alī ’Ibn Yūsuf even imposed a qabālah on locusts, a delicacy which the inhabitants of Murrākish particularly enjoyed, as well as on doughnuts.

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

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40 Ibid, p. 69 penult.

41 Al-Ḥulal al-Muwashshayāh, p. 61 (pub. In Tunis).
of recalcitrant tribes.\footnote{Ibn 'Adhārī, ed. Lévi-Provencal, MS 50.8 copied by the Hulal, 68-69.}

When Qādī 'Iyāḍ entered Cordoba in 507 A.H. in his quest for knowledge (fī ṭalab al-ʿilm) he would have found an Almoravid state dominated by the Mālikite ʿfuqahāʾ, and Mālikism itself crystallised into an inflexible doctrine opposed to any attempt at innovation (bidʿah), where the study of the Qurʾān, the ḥadīth and ʿijtihād was suppressed in favour of study of the Mālikite manuals (furūʿ).

From henceforth the daily juridical process would revolve entirely around religious worship (ʿibādāt) and general law (muʿāmalāt).

ʿAlī bin Yūsuf, who was entirely in thrall to the Mālikite ʿfuqahāʾ, never implemented a policy until he had consulted them first\footnote{ʿAsr al-Murābitūn Wa al-Muwaḥidīn, op cit, VI, p. 411. Also, Mālikī, Riyāḍ al-Nufūs, ed., Ḥusayn Muʿnis, Cairo, 1951 (part 1 only), p. 275.}. The poet of the era, ʿIbn al-Bannā, described their doctrinal influence as devious and grasping:

“Fa malaktum al-dunyā bi madhhab Mālik”\footnote{Al-Muʿjīb, p. 95.} ‘For they have aggrandized (all the wealth of) the world through the (good) offices of the Mālikite school
of law'.

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

The traditionist and šāfiʿī, 'Ibn al-ʿArif, who was based in Almeria, the focal point of opposition to the Almoravid fuqahāʿ, was summoned to Murrākish by ʿAli ʿIbn Yūsuf to be examined by his fuqahāʿ, not least for his pantheistic ideas and, beliefs. He was apparently reprieved, but died soon after in somewhat suspicions circumstances, possibly by poison.46

The most celebrated domestic incident of the Murābitūn rule, however, must surely be the banishment of al-Ghazālī and subsequent burning of the 'Iḥyāʿ 'Ulūm al-Dīn (Revival of the Religious Sciences) in 503 A.H. in Cordoba, some four years before Qādī ʿIyāḍ's arrival there. This was at the prompting of the Qādī of Cordoba, ʿAbū ʿAbdullāh Muḥammad ʿIbn Ḥamdīn, the traditionst 'Ibn Ḥamdīn under whom Qādī ʿIyāḍ studied ḥadīth in Granada.47 The 'Iḥyāʿ was thence forth declared by ʿAli ʿIbn Yūsuf to be forbidden reading. One was

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46 EI², v3, p. 712.
47 Al-Muʿjib, pp 95-96.
classed as a *kāfir* if caught reading it and faced execution and confiscation of property.\(^{48}\)

Al-Ghazālī directed the *'Ihyā'* 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 *fugahā* as buffoons (*muṣjān*) did not exactly endear him to them.\(^{49}\)

In short, the Almoravids had, under the leadership of *'Alī 'Ibn Yusuf*, turned away from the asceticism of the early period, best represented in the conduct of *'Ibn Yāsin* and *Yūsuf 'Ibn Tāshafin*. 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


\(^{49}\) *Al-Mu'nis Fi 'Akhbār 'Ilfriqiyah Wa Tūnis*, p. 106. See also, Goldziher, Mohamed Ibn Toumert et la Théologie de l' Islam daus le Maghrib au XI ème Siécle, pp 35-36.

\(^{50}\) *Rawd 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 commentator. 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.

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


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

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

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

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

Some three hundred years later we find ‘Iyāḍ, as qādī of Granada (531 A.H.)

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

Ibid., p. 324.

Mālikī, Riyāḍh al-Nufūs, ed., Husayn Mu’nis, Cairo, 1951 (part 1 only), p. 256.
similarly intransigent, but as a militant Mālikite apologist for the Almoravid regime. Indeed, it appears ‘Iyāḍ was too militant and too rigorous in the application of the law for ‘Alī 'Ibn Yusuf. 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 integrity.

Nevertheless, he left his post of qādi (or was pushed), marking his way back to Ceuta where he was re-appointed qādi 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 Muwahḥidūn (Almohads).

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\(^{56}\) See, MS under title “Kitāb Fi al-Ta'rif Bi 'Iyāḍ’ under ref no 553, Rabat Library, plate nos 7-14.

\(^{57}\) He originally became Qādi of Ceuta in 515/1121-1122.
2.3 The Decline of the Almoravids / Their Achievements

The Al-Muwahhidūn, 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), had made incursions into Spain as early as 539 A.H., under the leadership of ‘Abd al-Mu’mín (d. 559/1163) 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 Qādi ‘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 Yahyā '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’mín (after decades of vociferous defence of

58 'Ibn al-'Aṣḥāb, al-Kāmil, ed. Tornberg. x. pp 400-407. Also, Wafayāt al-'Aẓyma, Būlāq, 1299 A.H., v1, p 469; v2, pp 48-49. Also, al-Zarkashi, Tārikh al-Dawlatayn al-Muwahhidūn Wa al-Ḥaṣāṣiyah, Tunis, 1289 A.H.

59 Wafayāt al-'Aẓyma, op cit, v1, pp 390-391. Also, Muqaddimah, v6, 229.
the Almoravids) and ‘Abd al-Mu‘min is said to have received him cordially.

But no sooner had ‘Iyād returned when the residents of Ceuta rebelled against the Almohad governor, Yusuf 'Ibn Makhlūf al-Taynamlī who, as a result, was slain. ‘Abd al-Mu‘min despatched a force to subdue and overthrow the rebels but ‘Iyād intervened, renewing his pledge of allegiance to the Almohad ruler, thus saving the town from destruction. Ultimately, however, he was to be held responsible for the town’s continual opposition. The walls of Ceuta were ordered to be destroyed by ‘Abd al-Mu‘min and ‘Iyād himself was exiled in 543 A.H., first to Tādlā then to Murrākish, where he died exhausted and disillusioned in 544/1149. Pre-eminently a Mālikite traditionist and faqīh, for him there existed only one single truth: that which had been taught by the Mālikite school and his school.

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63 See, MS “Kitāb Fi al-Ta'rif Bi ‘Iyād”, op cit, slates 7-14.

64 Rawd al-Qirāṭs, 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 Yāsîn, 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 Arabon – 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 'Asbāṭ who was described as an outstanding rhetorician and poet. 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 Qādi 'Iyād's shayks, an outstanding muḥaddith and faqīh, who was despatched by Yūsuf as an emissary to the 'Abbāsid Caliph al-Mustaḍżhir in search of the Caliph's legitimisation of his title, discussed earlier on in this chapter.

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.

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65 Wafayāt al-'A ḳān, op cit, v2, p. 482.
Yūsuf 'Ibn Tāshafīn even employed slaves\(^{67}\) 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-Murrākīshī, 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 effetelessness, corruption and depravity among the

\(^{67}\) See, Cairo MS. 22031, of 'Ibn al-'Arabi's, \(al-Qawāsim Wa al-'Awāsim\), folio 7b, reproduced by Badawi, op cit 546.

\(^{68}\) Bay (Ḥaqī), 'Adhārī ed. Lévi-Provençal MS 50.7.

\(^{69}\) \(Al-Mu'jīb Fi Talkhis 'Akhbār al-Maghrib\), 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 Qādi ‘Iyād’s decision to relinquish his position of Qādi 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
Maddâ’70 and ‘Ahmad ‘Ibn Yâzîd ‘Ibn Baqiyy ‘Ibn Makhlad71. That these men were affirmed Mâlikites suggests that the discrimination of Mâlikites did not survive the reign of ‘Abd al-Mu’min and the last days of ‘Iyâd. In short, the Almohads, lacking vitality, appeared to have relied on the support of the Mâlikite fuqahā’, that no revision of the judicial code was undertaken to accommodate the new Almohad doctrine, and that Mâlikite 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’îd 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 Dibâj al-Dibâj al-Mudhahhab (Fi Ma’rifat ‘A’yân Al-Madhhab), Cairo, 1932.

71 Al-Nabâhi, Târikh Qudât 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. 'Ali 'Ibn Yusuf 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.

In the above respect Qādī '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 muḥaffith, 'Ibn 'Abd al-Barr (978-1071).

Of the surviving works Qādī 'Iyāḍ composed we must include his (tabaqah) 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 "Tanbīḥāt" (awakenings) is singled out by the commentators for the depth and breadth of learning, not least by the Andalusian historian, Shīhāb al-Dīn al-Maqqārī, in his work, 'Azhār al-Riyāḍ Fi 'Akhbār al-Qādī 'Iyāḍ.

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

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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\textsuperscript{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 Shífā, indeed, was studied as a text well into the 19\textsuperscript{th}
century by students of theology in the schools throughout al-'Andalus.\textsuperscript{77}

\textsuperscript{76} See, GAL, i, 455f; i, 630-632.

\textsuperscript{77} Al-'Aṭṭār, Al-'Inshā, Cairo, Māḥmūd Tawfīq, 1936, pp 62-66.
Chapter Three

Study of the Tanbihât

3.1 Definition of The Mudawwanah

3.2 Designation of The Mudawwanah

3.3 Works on The Mudawwanah prior to the Tanbihât

3.4 The Chain of Authenticity for 'Iyād in The Mudawwanah

3.5 The Importance of the Mudawwanah and its Commentaries

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

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

3.8 Furūq in Fiqh
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 diwān (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).

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\(^1\) 'Asās al-Balāghah, 139.

\(^2\) Al-Miṣbāḥ al-Munir, 1: 204. See also, Nūr al-BAṣar, for 'Abū 'Abbās al-Hilālī, 197.
The *Mudawwanah al-Kubrä* of Saḥnūn is also called the "*Mukhtaliţah*", 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 *fugahā*. Thus, when Ṣaḥnūn 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 *hadith*. Thus, Ṣaḥnūn, as mentioned above, using the *'Asadiyyah* of 'Ibn al Furāt as a basis, managed to present in the *Mudawwanah* and the *Mukhtalītah* 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.

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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 Malik 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 faqih, Muḥammad 'Ibn al-Ḥasan whose juridical emphasis was on (Ḥanafite) hypothesis of cases (qaḍāya), 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, Ḥānafīs: 'Ibn al-Qāsim, 'Ibn Wahb, 'Ashhab 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 Ḥanafī 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 ('ahkām) or confirm existing ones.

Although Saḥnūn was courteous to 'Asad he refused 'Asad’s request to evaluate and edit the Mudawwana 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 *Tanbīḥāt* is, in part, a commentary.⁴

⁴ *Tartib al-Mudārik*, 3: 367; *Al-Dībāj*, 161; *Tārikh al-Madhhab al-Mālikī*, 166.
3.3 Works on the *Mudawwanah* prior to the *Tanbihät*

Mālikite scholars paid close attention to the *Mudawwanah* of Sahnūn, 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 own. Ibn Rushd described the *Mudawwanah* as *the* text book for Mālikite *fiqh*, much in the same way as Sibawayh’s work constituted *the* text book for Arab grammarians.

One of the most prominent works on the *Mudawwanah* was the *'Asmiʿah* of Muḥammad Ibn 'Aḥmad al-ʿUtbi (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 *fuqahāʾ*, and its treatment of issues (*masāʾīl*) hitherto considered irregular (*shāḥdāḥ*).

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5 *Mawāhib al-Jalil*, 34.

6 *ʿIṣṭilāḥ al-Madhhab ʿInd al-Mālikiyyah*, 1: 81.

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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-Ziyādat*, which sought to fill in a lacuna in the *Mudawwanah*, by drawing from other sources, namely, the *Mawwāziyyah* and the *Wādiḥah*. It was praised by Muḥammad 'Ibn al-Fuḍayl 'Ibn Āshūr.

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, *Mukhtasar al-Mudawwanah* in which he added (despite the abridgement) a number of issues new to the *Mudawwanah*. This was followed by the abridgement of Khalaf 'Ibn 'Abī al-Qāsim Saʿīd al-Barādhiʿī (d. 438 A.H.), entitled, *Al-Tahdhib*. The work engaged the attention of Mālikite scholars so much with its erudite scholarship and skilled editing that some called it “The *Mudawwanah*”.

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

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7  See the *Muqaddimah* of 'Ibn Khaldūn, 254.
8  'Aʿlām al-Fikr al-ʿIslāmī, 450.
9  *Al-Fihrist* of 'Ibn al-Nadim, 201.
10  See, Nūr al-ʿAsar of al-Hilālī, 192; *Al-Dībāj*, 250.
Balansī, (d. 444 A.H.)\textsuperscript{11}. That of `Abdullāh Ibn Muḥammad al-Faraḍī (d. 460 A.H.) and that of the 'Imām Sulaymān Ibn Khalaf al-Bājī (d. 474 A.H.), in a work entitled, \textit{Al-Muhadhdhab}.

Notable commentaries on the \textit{Mudawwanah} included that of 'Imām Muḥammad 'Ibn Yaḥyā 'Ibn Lubābah (d. 336 A.H.), entitled \textit{Al-Muntakhabah}, the like of which, according to 'Ibn Farḥūn, Mālikite scholarship had not witnessed before\textsuperscript{12}. And also that of Khalaf Mawlā (client of) Yūsuf 'Ibn Bahlūl al-Balansī (the Valencian)\textsuperscript{13}.

Annotations of the \textit{Mudawwanah} include that of 'Umar 'Ibn Muḥammad al-Tamīmī, better known as 'Aṭṭār, the Tunisian\textsuperscript{14}, that of 'Uthmān 'Ibn Mālik, a notable \textit{faqih} of Fez and later the head of the Mālikite \textit{fuqahāʾ} in the Maghrib (d. 444 A.H.), and that of 'Abd al-Rāḥmān 'Ibn Muḥrīz al-Qayrawānī (d. 450 A.H.), entitled \textit{Al-Tabṣīrah}\textsuperscript{15}.

\footnotesize
12 \textit{Al-Dībāj}, 251.
13 \textit{Tartīb al-Madārik}, 8: 164.
14 \textit{Tartīb al-Madārik}, 8: 78.
15 \textit{Tartīb al-Madārik}, 8: 68.
Last, but not least among these annotations, we must include that of 'Imām 'Abd al-Ḥamīd 'Ibn al-Ṣā'īgh (d. 486 A.H.), perhaps the most comprehensive of all the annotations noted above\textsuperscript{16}. 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 Wādiḥah. 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.\textsuperscript{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-Naẓā‘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-Mukhtalītah.

\textsuperscript{16} Ma‘ālim al-‘Imān, 3: 201.

\textsuperscript{17} Al-Madhhab al-Mālikī, 204.
Al-Ṣiqilli 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 ‘Iyāḍ in The Mudawwanaah

3.4.1 Narrations from The Mudawwanaah

The narrations related on the authority of the Mālikite shaykhs in the Mudawwanaah are dealt with by ‘Iyāḍ in the Tanbihāt in conjunction with those sources separate from the Mudawwanaah 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 ‘Ībn ‘Aṭṭāb al-‘atīq, a pupil of ‘Abū Muḥammad. Another is the kitāb of ‘Ībn Murābit and the kitāb of ‘Ībn Sahl, in addition to the accounts (riwāyāt) of the Qayrawānīs and their commentaries.


A printed copy of the Mudawwanaah 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 ‘Ībn Rushd and ‘Iyāḍ, in the following formula,

¹⁹ Al-Ghunyah, 191, 216.
"Abd al-'Azîz 'Ibn 'Āmir who sat at the feet of 'Abû Marwân Mûsâ while he recited his narration, relating on the authority of 'Abû al-Ḥasan al-Qâbîsî, relating on the authority of 'Abû al-Ḥasan 'Alî 'Ibn Masrûr al-Dabbâgh, on the authority of 'Aḥmad, on the authority of Saḥnûn etc".

'Iyâd in particular relied (in his composition of the Tanbihât) on the abridgements of the Mudawwanah, as indicated by his often repeated refrain, "wâ 'alâ hâdhâ īkhaṣârahâ al-muḵtaṣârûn" (and so this text was abridged). In particular he was indebted to two abridgements, the 'Īkhtisâr of 'Ibn 'Abî Zayd and that of 'Ibn 'Abî Zamanîn, the latter being especially crucial with regard to the authentication (taṣḥîh) of the narratives' chain of authorities (īsnâd), and the correct indexing of Mâlikîte scholars.

Thus equipped, 'Iyâd, with his profound knowledge of Medinan hadîth ('āthâr), skilfully edited the Mudawwanah, removing ambiguities by thorough checks on morphology, syntax and diacritical pointing (taṅqîf). These deficiencies may have arisen from the likes of 'Ibn Waḍḍâḥ who was said to have lacked a basic grounding in Arabic grammar, and 'Ibn Bâz, 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 *Tanbīḥāt*.

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 *Tanbīḥāt*, 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.

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[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 'Iyāḍ says, "I heard many recitals of the works on the Mudawwanah in Qurtubah, related on the authority of shaykh Faqīh 'Abū Muḥammad 'Abd al-Rahmān 'Ibn Muḥammad 'Ibn 'Attāb (d. 507 A.H.). And I compared my book 'Tanbihät ' to the Mudawwanah, as related on the authority of 'Abū Bakr 'Ibn 'Abd al-Rahmān 'Ibn ... al-Tujībī, on the authority of 'Āḥmad 'Ibn Khālid, on the authority of Muḥammad 'Ibn Waḍṭāḥ"
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 (ʿadillah) derived from the ḥadīth of the Prophet (P.B.U.H.) and the ʿāthār (traditions) of Medina, the Maghrībi Mālikite fuqahāʾ considered the Mudawwanah to be indispensable as a juridical guide in their everyday life. They did, however, rely as much on its abridgements (mukhtāṣarāt) its commentaries (shurūḥ) and its annotations (tanābīḥ) as on the text itself, testifying to the overall importance of the Mudawwanah in the field of Mālikite law. As Qādi ʿIyāḍ 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 fiqīh."21

Qādi ʿIbn ʿAbd al-Raḍī al-Tūnisī said: "The Mudawwanah is the most exalted of all the works on (Mālikite) fiqīh, 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”.  

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.  

For further commentaries: See Appendix [3].

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22 Nayl al-'Ibtihāj Bi Tatriz al-Dībāj, 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 *faqih* '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 Fi Sharḥ Ghāyāt al-'Īhsān*".

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".  

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".  

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

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25 Mawāhib al-Jalīl, 6: 97.
comprehending *fiqh*"^{26}

The renowned *faqih* al-Tüfî al-Hanbali adds:

"The ability to differentiate (between issues which seemingly appear to share common characteristics) constitutes one of the pillars of *fiqh.*"^{27}

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^{27} *'Ilm al-Jadal Fi '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`)\(^{28}\) 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-Baqarā: "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 *hadīth* 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 *hadīth* 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 Muhammad al-Juwaynī. MS microfilm under ref. no. 35 in the Markaz 'Īhyā' al-Turāth al-'Islāmi, University of 'Umm al-Qurā, Paper 2B.

\(^{29}\) Qur'ān, 2: 275.

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.\textsuperscript{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 (hukm) or an ‘illah (qiyyās), especially in the field of applied fiqh (furū’).

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 (harām) then the marriage and contracts associated with the marriage up to discovery of its illegality, become null and void.\textsuperscript{32}

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

\textsuperscript{31} Al-Tirmidhī, Kitāb al-Ṭahārah, p. 610.

\textsuperscript{32} ‘Iṣṭāh al-Dalil, 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-ʿāmm), then the ruling (hukm) regarding punishment cannot be confirmed until the differences (furūq) regarding the case between ʿāmm (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 ʿIlm al-Jadal Fī ʿIlm al-Jadal.
In differentiating between issues of a similar nature al-'Amidi advises, in cases of contradiction, to look (in the case of analogy) at the old case (‘asli) or the new case (fur’i) rather than to the causative agent (‘illahi).\textsuperscript{34}

For works on \textit{Furūq}, see Appendix [5].

\textsuperscript{34} \textit{'Ilim al-Muwaqti'in}, 2: 75.
Chapter Four
The Author's Methodology in His Book the *Tanbihāt*

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

Qādī 'Iyād was not afraid, in the 'Tanbihät', to tackle the problem of those odd or rare expressions ('alfāz gharibah) 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. 'Iyād, in this respect, followed the structure of the Mudawwanah.

'Iyād covers the central debates of the Mālikite fuqahā' (munāzarāt), 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. 'Iyād compares the opinion of one faqīh with that of another, the one supported by the more convincing evidence (dalil) being considered the most correct.

At times 'Iyād 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 Tanbihät 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 (qiyyās), presenting the issues of fiqh (masā'il fiqhiyyah) 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 Tanbihät 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 (hujjah), 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 shaykhsh 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)

‘Iyâd differed from ‘Ibn al-Qâsim on the matter of the oath of zihâr (a pre-Islamic form of divorce). If, according to the dispute, the husband issues a zihâr, but breaks the vow, then he must do penance (kaftârah), and until he does so then his renunciation remains invalid.

According to the book of Muḥammad ‘Ibn al-Mawwâz (al-Mawâziyyah), it said that if the oath taker undertakes the zihâr 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’ânic interpreters (mufassirûn) and the commentators (mukhtasirûn) centres on the reputed correct occasioning factor (‘illah) in analogy (qiyas) which forbids shighâr. (Shigâr 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 (sadâq).
Shighār was forbidden by the Prophet Muḥammad (P.B.U.H.), because it deprived the woman of her dowry\(^1\). His proscription, shows that a woman’s dowry is a right (haqq) 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 (mithlāhā).

'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 Qurʿān. 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 (*shufʿah*) 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 (*shufʿah*). 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 *fugahā'* 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 (qiyyās), 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, not withstanding 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 fuqahāʾ 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 Qurʾān states:

“But if he who owes the debt is unsound in understanding (sahlī) ... then let his guardian (wall) 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 wali. This is known as a restriction (ḥāji) 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

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2 Qurʾān: 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 sadāq al-mithl when his son is declared incompetent (safīh). Unless, that is, the two parties, guided by their respective guardians (wāli), come to an agreement before the consummation of the marriage. Whereby, in that case, the dowry ceases to be sadāq 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 sadāq al-mithl. Namely, she would be compensated over and above the stipulated value of the sadāq 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 funghā' debated the validity of such marriages, some deeming them legal, others illegal or null and void (faskh). For example, the funghā' 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-á-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, Sahnūn 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 'Ali '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 *Tanbihāt*, 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) Sahnūn 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 fūqahā‘ dispute as to whether this judgement (hukm) might apply to the majority of cases or to all, but could not arrive at a definitive opinion.

11) In which the fūqahā‘ 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, 'aṭhār (purity) and hiyad (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 ‘Iyāḍ, the validity of the “occasioning factor” (‘illah) in determining (via the process of qiyyās) 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 Fugahā’

The Ascription of Mālikite Opinion

Qādi ‘Iyāḍ ascribes the juridical opinions covered in the Tanbihāt 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 (ruwāṭ). In it the fugahā’ 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 hadith of 'Ibn al-Musayyib, related on the authority of 'Ibn Lahi‘ah.

2) ‘Iyāḍ 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 mustahādah (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 (takhṣīṣ al-ʿāmm), 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 (masāʾiḥ) 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 'Iyād 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 qādī 'Iyād 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 qādī seeks to unravel and explain interpretations (ta'wilāt) 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 'īsnād 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 or 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 Šihāb, 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 'Iyāḍ 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 'iḥsān (the performance of good deeds) but more practically so as to provide her with a means of living.

(4) Where 'Iyāḍ 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 ('amāh), 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 fugahā', referred to in the Tanbihāt.
4.5 Narratives of the Mālikites (Narrative Ḥadīth in the Tanbihāt)

Nearly all the narratives related in the ‘Tanbihāt' 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-ʿilm (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 Tanbihāt.

‘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 Qarawīyīn (Maghribiyyah) narratives.
(3) Those narratives related on the authority of Malik and 'Ibn al-Qāsim.

(4) Narratives that are in the Mudawwanah not dealt with by 'Iyāḍ in the Tanbihāt.

(5) Those narratives (riwāyāt) dealt with by 'Iyāḍ.

4.5.1 Hadith Terminology

Example: (1)

In which the content (matn) of the hadith 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-'hsāb tazwijahunna '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 ja'akum man tarḏawna dinahū wa 'amānatahū fā 'ankiḥūhū". (“If a man of good standing and religion approaches you, then marry him")

Example: (2)

With regard to the expression: "'a-fatakūn tatliqah, qāla na‘am, yakūn tatliqan". 'Iyāḍ is of the opinion that such an expression is to be found in

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3 See, Nayl al-Awtār, 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-Thaqāfī 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 (alusakht) the "'Abī" is missing.

Example: (5)

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

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

Example: (1)

On the matter (mas'ālāh) 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 Qarawiyyin literature (citing the *Mudawwanah*) as did 'Abū Muḥammad al-Sūsī. It was reputed that 'Ibn Mughīṭh al-Ṭulayṭīlī cited it, but not in the *Mudawwanah*. The actual words were thought to be, "'in mittu min maraḍī fa qad zawwajtu 'Ibnatī min 'Ibn 'akhl". Wherein the *fugahā'* 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 (*dammah*). However, 'Aḥmad 'Ibn Khālid maintained that the first *mīm* should take the *fatḥa* 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 'Īyāḍ 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. ِIyāḍ 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). Sahnūn, 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 (‘istilḥāq).

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 'Isā, covered in the narration related by 'Ibn 'Attāb on the number of periods of waiting to be undergone by a divorced slave girl ('amāh). As for Rabi'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 'Ashhab 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 (ghusl), as related in KitābMuḥammad. In short, she is not subject to the ruling of purity (tuḥr) as a mustahādah (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 *Tanbihāt*

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 Näfi' 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, *ḥada*نا (to raise a child) features. 'Iyāḍ says: "He raised you (*ḥadānak*) well", which ('Iyāḍ) related the ħā' as taking the (*fatḥah*) vowel on the verbal noun (*ḥadān*tuka) when, in such instances the ħā' should take the (*kasrah*) vowel.

Example: (2)

In the narration in which the noun *waṣṭ*lawan (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 (dāliḥ) which the Mālikite fuqahā’ deduce from their sources for the purpose of supporting their opinions (‘agwāl).

‘Iyāḍ sees his task in the Tanbihāt 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 (faqīḥ) might rely on for his derivation of new rules (‘āhkām) 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 Tanbihāt. Those paragraphs deal with the following issues:
This concerns the issue of the hadīth about ‘Ā’ishah who initiated a marriage, without an official guardian (wāli), between her brother and Ḥafṣah Bint ‘Abd al-Rahmān, which apparently contradicted the hadīth of the Prophet (P.B.U.H.), viz: “No marriage without the intervention of a guardian (wāli”).

‘Iyād declared that, in effect, ‘Ā’ishah’s action was not incompatible with Medinan tradition, as some Mālikite fugahā 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.

This issue relates to the juridical concept of khīyār (the right of a woman to withdraw from a marriage contract), about which the Mālikite fugahā 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 khīyār. '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 (‘abda) 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’wif) 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 (hukm) 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
*Iyād* Covers in the *Tanbihāt*)

*Iyād* 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 (*fūrū*'))? 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-Shafī‘i,
'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:
This an indication that those who neglect their prayer will be punished. From this evidence (dalîl) one might safely assume that a widespread neglect of the 'ibâdât 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 Allâh, and have disobeyed the dictates of the Sharî‘ah, therefore it is not the responsibility of the courts to ensure they perform their religious observance. This is the view of 'Abû Ḥanîfah, al-Qâdi 'Abû Ya‘lâ, and 'Abû Hamîd al-‘Isfârâ‘înî.

Evidence (dalîl) 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 Ziyâd 'Ibn

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⁴ Qur‘ân, 74: 42-43.

⁵ Irshâd al-Fuhûl, 30; Al-‘Ibâj, 177; Takhrij al-Furû‘ ‘Alâ al-‘Usûl, 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:

\[\text{Qur'I'an, 2: 241.}\]

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:

\[\text{Qur'I'an, 2: 237.}\]

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 male can take delight in a *mut'ah* woman, as endorsed by al-Shafi‘ī, 'Ibn 'Abbās and the Ḥanafites (of Iraq).

(3) Para. [520]

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

(رئلذين يؤولون من نسائهم ترصي أربعة أشهر)\(^8\)

At one stage the fuqahāʾ were confused by the general application (ʿāmmi) 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 fuqahāʾ stipulated four months exactly\(^9\). Others more than the four months as stipulated in the Qurʾān. According to Mālik if the husband has met the conditions of Ḥalā then he is free to pursue a life separate from that of his (now) former wife.

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\(^8\) Qurʾān, 2: 226.

4.8 The Indexation of Scholars

(1) Para. [32] Al-Sariyy 'Ibn Yaḥyā

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

(2) Para. [44] 'Ash'ath 'Ibn Sawwār

No trace could be found.

(3) Para. [71] 'Umm Qurayz

No trace could be found.


A fishmonger by trade.

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10 This number between brackets refers to the paragraph number in the Arabic Section.  
11 Tahdhib al-Tahdhib, no. 14319.  
12 Tahdhib al-Tahdhib, 1: 308.  
(5) Para. [104] 'Ibn Sandar

In the name Sandar the letter (ṣin) takes the fāṭḥah 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 (ḥā') to Sandar(ah).

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

Some fuqahā' say the diminuitive, Jubayr, is correct; others mention, Jabr. Qāḍī 'Īyāḍ mentions both; and this difference was alluded to by al-Bukḥārī in his book al-Tārīkh al-Kabīr.

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

In the name Jayshānī the jīm takes the fāṭḥah 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).

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14 Al-Muqtanā Fi Sard al-Kunā, 1: 87.
16 Al-Mudawwanah, 2: 144.
(8) Para. [132] 'Abdullāh 'Ibn Yazīd 'Ibn Khurāmah

“This is according to my narration” said ‘Iyāḍ. The letter khā’ takes the 
dammah 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 fāṭahah. 'Ibn Khaldah was a qāḍī of al-Madīnah. He appears as 
'Amr in the ‘Mudawwannah’, but it is thought that 'Umar is more 
correct. Al-Bukhārī disputed it to be 'Umar 'Ibn 'Abd al-Rahmān, but al-

(10) Para. [203] Sa‘īd 'Ibn ‘Umar17

This is the name, as related on the authority of Sa‘īd 'Ibn al-Musayyib in 
the Mudawwannah. In the Muwatta’ of 'Ibn Wahb, however, it is Sa‘īd 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 Tahdhib al-Kamāl, 27: 324.
(11) Para. [209] Rifā'ah 'Ibn Simaw'al

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 fāṭḥah vowel. But the former spelling with a kasrah is thought to be the more correct, as confirmed by the great Sibawayh himself.

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

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

(13) Para. [221] 'Ibn Qurayz

No trace could be found.

(14) Para. [221] Qabāṭh 'Ibn Razīn

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

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19 Al-Thiqāt, 5: 486, ref. no. 'Alīf 1660 mentioned by 'Ibn Hibbān in Thiqāt al-Tābi‘īn.
20 Al-Mudawwanah, 2: 220.
21 Mashāhīr 'Ulamā' al-'Amsār, 1: 190.
(15) Para. [269 a.] Muslim ‘Ibn Ṣubayḥ

In the name Ṣubayḥ the letter sād takes the damaḥ vowel. His full name was Muslim ‘Ibn Ṣubayḥ al-Qurashi al-Kūfi, mawla of Sa‘īd ‘Ik al-‘Āṣ. Muslim was a prominent faqih and Qur’ānic interpreter (mufassir) of his day. He died during the Caliphate of ‘Umar ‘Ibn ‘Abd al-‘Azīz.


In the name Hujayrah the letter hā’ takes the damaḥ vowel, and the letter jīm a fathaḥ.


In the name Khadij the letter kha’ takes the fathaḥ vowel. Rāfi‘’s full name was Rāfi‘ ‘Ibn Khadij ‘Ibn Rāfi‘ ‘Ibn ‘Adī ... al-‘Anṣārī, better known by his kunyah ‘Abū ‘Abdullāh or ‘Abū Khadij. Rāfi‘ was presented before the Prophet Muḥammad (P.B.U.H.) on the day of Badr, but the latter thought little of him.


23 Al-Mudawwanah, 1: 245, Ṣalāt al-‘Idām, Bāb al-Mut‘ah, See also Ibid., 2: 240.

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-Qurashiyyah. Her mother, al-Shams Bint Qays 'Ibn Zayd al-'Ansāriyyah married the Prophet Muhammad (P.B.U.H.) after Khadijah, as related on the authority of 'Ibn 'Ishāq.

Kathīr the mawla (client) of Samurah or the mawla 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 fatha vowel. See, al-Bukhārī, al-Tārīkh al-Kabīr, (7:211), ref. No. (917).

Kathīr 'Ibn Kathīr or 'Ibn 'Abī Kathīr


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25 Al-'Īṣābah, 8: 720, ref no. 11357.
(23) Para. [430] Al-Sariyy 'Ibn Yaḥyā

In the Sariyy the letter sin takes the fathah vowel, as confirmed in the *Mudawwanah*, (2: 80). His full name was Sariyy 'Ibn Yaḥyā. His biographical details appear in the *Tahdhib al-Kamāl*, (10: 532): “ʿAbū 'Ubaydah al-Sariyy 'Ibn Yaḥyā 'Ibn 'Iyās 'Ibn Ḥarmalah 'Ibn 'Iyās al-Shaybānī al-Mahlāmī”.
4.9 Qādi ‘Iyād: His Juridical Endeavour, His Deductions, His Preferences

4.9.1 ‘Iyād’s debate with Mālik

Qādi ‘Iyād was considered an inventive and original fiqh scholar. A leading Mālikite faqīh of his day – he was a staunch advocate of the Murābitūn 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 ‘Iyād disagreed with Mālik, are as follows:

Six concerned the matter of purity (tahārah), four the issues of prayer (al-ṣalāh), eight with funerals (janāzah), three marriage (nikāh), seven, on sale (buyū) and purchase of goods (shirā) and the final three issues on charity, alms, and funds (zakāh).

Qādi ‘Iyād, in opposing the arguments of Mālik, adhered strictly to the Qur’ān and hadith. It is from these sources that ‘Iyād 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 (Tahārah)

Prayer (ṣalāh), according to the Qur'ān and the hadith 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 hadith 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 (hadith), 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 (wudū').

'Iyād uses the above criteria, for the removal of impurity, to illustrate several juridical arguments which differ from those held by Mālik. For example, the Shari'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’wil) 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 (hikmah) of this analogy appears to be cleanness leads to efficiency.

‘Iyāḍ discussed the ghusl 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 (Ṣalāṭ)

‘Iyāḍ supports and endorses the expedient, suggested in the hadith, narrated on the authority of Jābir, of combining the early afternoon (zuhr) and late afternoon (‘asr) 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 *hajj* between Mecca and ‘Arafāt where they spend the ninth day of *Dhū al-Hijjah*.

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 congregation.26

Another instance of the combining (*jam‘*) of *zuhr* with ‘*āṣr* prayers occurs when the *zuhr* prayer is delayed as a result of the intense heat of the day.

‘Iyād also propagated the idea that a blind *ʿimām* 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 Ḥillah. 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 *ʿimām*, 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 ṣalāḥ of a janāzah is an obligation incumbent on the community (fard kifāyah) and not on each individual concerned (fard ‘ayn). This prayer, said Mālik, involves no performance of rakʿah. 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 (duʿāʾ). This is in addition to the third takbīrah which is, in effect, a duʿāʾ. ‘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 ‘Iyāḍ, lies with the hadith, 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 Salāh al-Janāzah

A dead body, on which the salāh 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 ‘Iyāḍ, must have

²⁸ Qur‘ān, 2: 186.
a legal basis (tashrif) 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.

'Iyād 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 hadith, "As regards the children around 'Ibrāhīm they are the children who die 'alā al-fitrah, (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 'Iyād these children are in Heaven. In support of his argument he cites the same hadith. 30

'Iyād 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 salāh 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 Shari‘ah. Therefore no further intervention is required on the part of the Muslim community.
4.9.1.5 Marriage

'Iyād 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 wali mujbir (granted the power of coercion). It is probably against this particular notion of marriage that 'Iyād 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 wali (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 Tanbihāt

5.1 A Summary of Mālikite Fiqh Sources in the Tanbihāt

5.2 Commentary on 'Iyāḍ's Sources

5.3 A Study of (19) Sources
Chapter Five

The Author's Sources for His Book the \textit{Tanbihat}

Mālikite \textit{Fiqh}

'Iyāḍ, with regard to the derivation of his sources, profited above all from his teachers (\textit{shuyūkh}) in the form of their anecdotes, opinion and \textit{'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 (\textit{mushafahah}).

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 *Tanbihāt*

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

   See para. [139].

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


(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 Muwatta' of Mālik) by 'Abū Zakariyyā Yaḥyā 'Ibn Muzayn al-Qurtūbī (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-'Iskandārīnī (known by his kunyah, 'Ibn al-Mawwāz), (d. 269 A.H.). Widely referred to by 'Iyād. See, paras. [16],[36], [74], [171 a.], [202].


(19) The 'Masā'il al-Khilāf' of 'Ibn al-Qaṣṣār; or the Kitāb 'Ibn al-Qaṣṣār. No para. (not mentioned in the Tanbih).2

(20) 'Abdullāh 'Ibn Wahb. Author most notably of: the Riwāyāt 'Ibn Wahb, [48]; the Muwāţṭa' of 'Ibn Wahb, [203], and the 'Dhukira fi Kitāb 'Ibn Wahb', [256].


(22) The Wāḍiḥah of 'Abd al-Mālik 'Ibn Ḥābib, [8]. As mentioned by 'Ibn Ḥābib 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 'Iyād sometimes mentions the authors name but not their works.
(25) Al-Qādī 'Ismā'īl used to assist 'Iyādí in explaining an issue pertaining to the
Kitāb al-Qādī 'Ismā'īl, [383]. The Mabsūt al-Qādī 'Ismā'īl, [113].

(26) Al-Bājī, [6]. Al-Qādī '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].

received in the presence of the shaykh), [208]. Samā‘ 'Īsā fi al-'Utbīyyah,
[82], [83].

(31) 'Abū al-Walīd 'Ibn Rushd. (our shaykh, al-Qādī 'Abū al-Walīd 'Ibn Rushd,
said), [14], [492].

(32) Yaḥyā (Khilāf Riwayat 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].


(35) Al-Makhzūmī, [16], [17].

(36) Al-Qādī 'Abū al-Ḥasan 'Ibn al-Qaṣṣār, [138], [190].

(37) 'Ibn al-Mundhir, [20], [239].

(38) Madhhab 'Urwhah 'Ibn al-Zubayr, [20], (once only).

(39) 'Abū Ḥafṣ al-‘Attār, [23].

(40) 'Abū al-Qāsim 'Ibn Muḥriz, [24], [175].

(41) Al-Qādī 'Abū Muḥammad 'Ibn Naṣr, [317], 'Ibn Naṣr, [501].
(42) `Ali 'Ibn Ziyād, [79]. `Ali 'Ibn Ziyād qāla (said) [501].

(43) Riwayat 'Abd al-Rahīm, [27]. His full name: 'Abd al-Rahīm 'Ibn Khālid 'Ibn Yazīd, with the kūnyah 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 fīqh. (d. 163 A.H.).

(44) The report of al-Qādī 'Isāmīl, [6], [383].

(45) Al-Juwaynī, [31]. His full name: 'Abd al-Malik 'Ibn 'Abdullāh 'Ibn Yūsuf 'Ibn Muḥammad al-Juwaynī, his kūnyah being 'Abū al-Ma‘āli. One of the outstanding Shāfi‘ite jurists of all time. A prolific author whose works include, Ghiyāth al-'Ummam Fī al-Siyāsah al-Shar‘īyyah, mostly covering the subject of 'Usūl al-Fīqh (the principles of Islamic law) (d. 478 A.H.).


(47) 'Ibn Bāz, [33]. Kitāb 'Ibrāhīm 'Ibn Muḥammad 'Ibn Bāz, [165].

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(48) Al-Qādi 'Abū al-Faraj 'Ibn Muḥammad al-Laythī al-Baghdādi, a leading, prominent jurist. His pupils included 'Abū Bakr al-'Abhuri. Al-Qādi died in 330 or 331 A.H. [38].

(49) Shurayh fi al-Kitāb [43], [489]. His full name was 'Abū 'Umayyah Shurayḥ 'Ibn al-Ḥārīth 'Ibn Qays 'Ibn al-Jahm 'Ibn Muʿāwiyah al-Kindī. He was appointed judge of Kūfah by 'Umar 'Ibn al-Khaṭṭāb. Shurayḥ died in 80 or 87 A.H. ⁵

(50) 'Ash'ath 'Ibn Siwwār. His full name was, 'Ash'ath 'Ibn Siwār al-Kindī al-Najjār al-Kūfī, mawlā (client) of the bani Thaqif. A popular carpenter and excellent coffin maker. He was a judge (gāḍī) 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].

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⁵ Kitāb al-Wafiyāt, 98; Kitāb al-Maʾārif, 433.

⁶ Tahdīḥ al-Tahdīḥ, no. (12365).
(60) Al-Harawi, [257], [311].

(61) 'Ibn Fāris fi Mujimal 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 ʿĪsā, [208], [226]. Kitāb 'Ibn 'Īsā, [108], [132].

(67) 'Āḥmad '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-Lakhmi, [82], [171 a.].

(73) Samāʾ Zawnān, [82].

(74) 'Ibn al-Mājishūn, [86], [265].

(75) Ḥamdīs, [341], [416].

(76) Riwāyat al-'Aṣīlī al-'Abyānī, [95], [208].

(77) 'Ibn Masrūr, [95], [226].

(78) 'Ibn al-Sakan, [95], (three times).

(79) Al-Baghawī, [95].

(80) Al-Bukhārī fi Tārikhīhī, [210], [266].

(81) 'Ibn 'Abī Ḥātim, [95].

(82) 'Ibn Mufarraj, [95].
(83) 'Abū 'Alī (min Tārikhihl), [95], [301].

(84) *Kitāb al-′Udhrī*, [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) *Riwayat Ziyād*, [26]. His full name was 'Abū Abdullāh Ziyād 'Ibn 'Abd al-Rahmān al-Qurtubi, an 'Andalusian jurist. He was present at the recital of the *Muwatta* by Mālik himself. He composed a work in the *sama* 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, Yahyā 'Ibn Yahyā. Ziyād died in 193 A.H.).

(98) Several of our *shaykhs*, [115]. The *'Andalusian fugahā*’, [47]. Several of our *shaykhs*, not mentioned in the *Mudawwanah* [240].

(99) *Al-Mabsūt*, [281], [494], [501], [506].

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5.2 Commentary on ‘Iyāḍ’s Sources

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

\footnote{Tartīb al-Madārik, 3: 304.}
5.3 A Study of 19 Sources

[1] Al-'Utbiyyah of Muḥammad al-'Utbi

Those derived from the 'Asmi'ah', known as the 'Utbiyyah' of Muḥammad 'Ibn 'Aḥmad al-'Utbi (d. 255 A.H.). The content of the 'Asmi'ah' was largely based on al-'Utbi'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-'Utbi used the samā' genre which resembles the hadith 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'atūth' (he came and contracted a wife). 8

No reference is made by al-'Utbi 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.

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8 Mawāhib al-Jalīl, 41.
However, we are given an indication as to al-‘Utbi’s method of derivation from
the sources. It is by deduction (‘istidlal) and the coverage (‘isti`äb) of those
sources.

Deduction (‘Istidlâh)
Al-‘Utbi deduces from various sources such as the hadith of the Prophet (P.B.U.H.), the Medinan ‘Äthâr, the opinions of Mâlik and those of his adherents,
to support his interpretation of the Mâlikite issues that he covers.

Capacity (‘Istî`äb)
Al-‘Utbi covers a vast range of issues (masâ’il) from both the ‘ibâdat (religious
observation) and mu`amalât (commercial transactions) categories of Mâlikite fiqh.

The importance of the ‘‘Asmi‘ah’ or ‘‘Utbiyyah’, in the canon of Mâlikite fiqh
literature, is its collection of ‘Äthâr hadith, narrated on the authority of Mâlik and
that of his adherents. However, some of the narratives were considered irregular
(shâdîh) in their chains of authorities (‘asânîd) by al-‘Utbi’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 (‘ishkâl), until it

9 Tartib al-Madârik, 4: 253.
became a sound (ṣahīḥ) bona fide source of Mālikite fiqh.\textsuperscript{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.

\[2\] \textit{Al-Tafrī’} of 'Ibn al-Jallāb

The methodology employed in the \textit{Tafrī’} is divided into three sections.

The Arrangement (\textit{tartīb}) of the Issues (\textit{masā’il})

Here 'Ibn al-Jallāb commences with ritual purity (tahārah), 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 ('atīmah), manumission of slaves ('ītq) and marriage (nikāḥ). Then the author moves onto the commercial transactions (\textit{mu‘āmalāt}), beginning with sale (buyū‘), contract of lease ('ījārah) and sharecropping, (involving a contract over the lease of a plantation, limited to one crop period, \textit{musāqāt}). In the last third of the book he deals with personal injury (jirāḥ), then with court judgements on matters like mortgage (rahn), and concludes with cases on morals ('akhlāq) and manners ('adab).


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Deduction (‘Istidlāl)

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

Coverage (‘Isti‘āb)

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

The Tafrī is considered the standard work on the manuals (furū‘) of Mālikite fiqh, and on it the Mālikite fujahā themselves heavily depended for guidance in their particular specialisation.

Primarily, the Tafrī confines itself to those issues (masā‘īl) 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 (talāmi‘dh).

11 Ibid, 1: 120.
'Ibn 'Abi 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 (tahārah), prayer (salāh), fasting (ṣiyām), poor tax (zakāh), the pilgrimage to Mecca (hajj), oaths (‘aymān), solemn pledges (nudhūr) and marriage (nikāḥ).

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 (‘adāb), 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 'Abi Zayd’s principal aim in the Risālah is to provide on 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 (‘Isti‘āb)

In all ‘Ibn ‘Abī Zayd covers some 4,000 issues (masā‘iḥ), 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


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 Mukhtasār is deemed to be more comprehensive in its coverage of issues (masā‘iḥ). 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 (ṣāhīh=sound,

¹³ See, The Introduction to the Risālah, 8.

¹⁴ Ma‘ālim al-‘Imān, 3: 111.

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Coverage (Istī‘āb)

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


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 ijtiḥād (exertion), with the isnād supplied for each narration.

Ibn 'Abi Zayd then moves on to the ibādāt (religious observance), commencing with purity (tahārah), prayer (ṣalāh) and so on, which constitutes the first volume of the book. The second volume commences with ritual slaughter (dhabā'īḥ), and hunting, followed by the issue of marriage (nikāḥ) and an extensive coverage of
divorce (talāq). 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 zihār form of divorce. The third volume concludes with a chapter on sale (buyū'). The fourth volume covers such issues as replevin (‘istiḥqāq), property entrusted to some else's custody (wadī'ah), and treasure trove (lugātah).

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

Deduction (‘İstidlāl)

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

Coverage (‘İstī‘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


Wādiḥah 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 (riwāyat) 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 (tarjih) against another, until the judgement (ḥukm) of a particular issue is either endorsed or reached.


‘Ibn Farḥūn said of this work, “The Mālikite fuqahā’ have never come across such a learned book on disputation as this one”.


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 (tahārah), 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 (nikāh), felony (jingāyāt), and legal punishment (ḥudūd), followed by oaths (‘aymān), solemn pledges (nudhūr), foodstuffs (‘atīmah / ashribah), testimonies in court (shahādāt), manumission of slaves (‘ī’tq), wills (waṣāyā) and finally, inheritance (farā’īd).
On closer inspection, however, one comes to the conclusion that 'Abd al-Wahhab does not include marriage (nikāh), oaths ('aymān), solemn pledges (nudhūr) and repast ('āt 'imāh) 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-Wahhab 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 Shāfiʿites 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-Talqīna of Qādir 'Abd al-Wahhab

The book resembles in its derivation of sources the methodology of the Iraqi Ḥanafis (tafriʾ), bearing comparison with the Taʿrif of 'Ibn al-Jallāb. The issues (masāʾil) are organised in the following manner: purity (tahārah), prayers (ṣalāh),
poor tax (zákāh), fasting (ṣiyām), pilgrimage (ḥajj), holy war (jihād), oaths ('aymān), solemn pledges (nudhūr), sacrificial slaughter (dhabā'īḥ), hunting (sayd) and foodstuffs ('āt`imah). Having dealt with the religious observances ('ībādāt) 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 (kīrāʾ), bankruptcy (tāfsls), revivification of barren land ('īhyāʾ al-mawāt), property entrusted to someone’s custody (wadi`ah), tort (ta`addī), replevin (`istihqāq), cession (ḥawālah), averment (īqrāʾ), treasure trove (luqātah), right of pre-emption (shuf`ah), felony (jināyāt), legal punishment (hudūd), false accusation (qadhfi), religious endowment (waqfi) and inheritance (mawārīth).

[9]  *Al-Maʿūnah ʿAlā Madhāhib ʾahl al-Madīnah of Qāḍī ʿAbd 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 (`istīdāl`).

[10]  *Al-Mumahhad Fi al-Fiqh of Qāḍī ʿAbd al-Wahhāb*

This work, in effect, is a commentary on 'Ibn 'Abī Zayd's abridgement of the *Mudawwanah* entitled the *Mukhtācār* which was not completed by the author. Here ʿAbd 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.


This book was actually edited and arranged into chapters by ʿAbdullāh 'Ibn Saʿīd 'Ibn al-ʿĀṣ al-Barādhi‘ī, the author himself having neglected this aspect of methodology (*shūrūḥ*). The work commences with ʿibādāt, with purity (*ṭahārah*), followed by prayer (*salāh*), fasting (*siyām*), holy war (*jihād*), oaths (*'aymān*), solemn pledges (*nudhār*), hunting (*ṣayd*), sacrificial slaughter (*dhabā‘īth*), pilgrimage (*hajj*), advanced purchase (*salam*) and sale of animal meats (*bay‘ al-lahm bi-al-ḥayawān*).

One notices, observing the above arrangement (*tartīb*), that al-Barādhi‘ī places fasting (*siyām*) before zakāt in importance, and that he gives precedence to *jihād* over *hajj*.

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

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Coverage (‘Ist‘āb)

As an abridgement of the Mudawwanah, the ‘Tahdhīb’ of al-Barādhi‘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 (tawābīl), saffron (za‘farān), dues (‘usfūr), nuts (jawz), almonds (Jawz), straw (tībn), vegetables (khudār), herbs (buqūl) or on dried fruits (mā yaybas wa-yuddakhar min al-fawākıh).

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


In terms of its methodology this work resembles the Nawādir of 'Ibn 'Abī Zayd. As to its coverage (‘isti‘āb), the ‘Jāmi‘’ of al-Šiqillī 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).

The author begins his work by covering the issues on 'ibādāt: purity (taḥārah), prayer (ṣalāh), tax (zakāh), fasting (siyām), pilgrimage (ḥajj), foodstuffs ('aṭīmah), sacrificial slaughter (dḥabā‘īl), oaths ('aymān), solemn pledges (nudhūr), holy war (jihād) and marriage (nikāh), in that order. In the commercial transaction category (mu`tāmalāt) he covers sale (buyū‘), lease (‘ijārah), property entrusted to someone else’s, custody (wādī‘ah), liability (waṭḥā‘iq al-duyūn), mortgaging (rahn), surety (kafālah), cession (ḥawālah), bankruptcy (‘aḥkām al-muflis), treasure trove (luqatāh), extortion (ghaṣb) and right of pre-emption (shuf‘ah), moving onto issues like averment (‘iqrā‘) and testimony in court (shahādah), manumission of slaves (‘itq), legally prescribed alms tax (ṣadaqāt), voluntary donation (hibah), inheritance (mawārīth) 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 (‘isti`āb), only rarely providing evidence (in the way of sources) to support his text.

Coverage (‘Isti`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) Malik 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 Malik and his pupils, and then between his pupils and their followers.


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

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

In this work 'Abd al-Ḥaq felt the need to supply a text to the students of Malikite fiqh, facilitating their understanding of two issues which, for the learner pupils, appeared frequently in their judicial outcomes as confusing. 'Abd al-Ḥaq 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).
This work deals with those issues which have a both general and specific application with regard to their legal consequences. However, al-Lakhmī 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 fugahāʾ in the late 6th and early 7th century A.H. such as Khalil and 'Ibn 'Arafah, for example, relied on it in for their particular abridgements.

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

The part in Rabat begins with a coverage of judicial decisions ('ahkām al-qaḍāʾ) and terminates on the issues of the felonies of slaves (jīnāyāt al-ʿabīd), from which one might extrapolate the near certainty that al-Lakhmī’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.
The arrangement of issues in this work closely resembles that of the Mudawwanah except that 'Ibn Rushd 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 (‘istiḍlab) he adds to those sources, as did 'Ibn ’Abī Zayd in his Nawādir.

Coverage (‘Isti‘āb)

As mentioned before, 'Ibn Rushd 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.

The author’s coverage of fiqh issues is conventional up to a point. Namely, he covers the ‘ibādāt: purity (tahārah), prayer (ṣalāh), fasting (ṣiyām), poor tax (zakāh), holy war (jihād), solemn pledges (nudhūr), hunting (ṣayd), sacrificial
slaughter (dhabā'ih), pilgrimage (hajj), trade and commerce with non-Muslims (al-tijārah ‘ilā ‘ard al-ḥarb), marriage (nikāh), barter (ṣaraf), advanced purchase (salam), sale (buyū'), lease (‘ijārah), hiring of land or property (kīrā’ al-dūr wa al-‘araḍān), defrayment (sadād), liability (mīdān), bankruptcy (taflīs), mortgage (ruhūn), replevin ('ishtiqāq), extortion (ghaṣb), cession (ḥawālah), surety (kafālah), right of pre-emption (shuf‘ah), crop damage (jawā‘īl), sharecropping contract (musāqāh), legal detention (ḥabs), religious inheritance (farā‘īd), manumission of slaves (‘itq), contract for the lease of an orchard (mughārasah), felony (jinā‘āt) and legal punishment (hudūd).

'Ibn Rushd places holy war (jihād), solemn pledges (nudhūr), hunting (ṣayd), and slaughter (dhabā’iḥ), 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 fīqh literature the opposite case is the more orthodox.

By and large, 'Ibn Rushd in this work derives his sources from the Qurʾān, the sunnah of the Prophet (P.B.U.H.), the Mudawwanah, and the ‘Utbīyyah.

Coverage (‘Isti‘āb)

'Ibn Rushd covers all those issues in the ‘Utbīyyah 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-Māzārī (d. 536 A.H.), (MS)

A commentary on the *Talqīn* of Qādī ‘Abd al-Wahhāb, in which al-Māzārī follows the issues laid out in the *Talqīn*, positing questions to which he then supplies the answers.
Chapter Six

The Author's Terminology in the *Tanbihät*

1. *Fiqh* terminology in the *Tanbihät*.

2. Juridical Inference.
Chapter Six

Fiqh terminology in the Tanbihät

6.1 Fiqh terminology in the Tanbihät

6.1.1 Definition of Fiqh Terminology in the Tanbihät

a. Enumeration of Definitions in the Tanbihät

1) [1] Nikāh (marriage) defined linguistically.

2) [2] Nikāh defined in the technical, legal sense.

3) [3] Definition of ṣadāq (bridal dower) and its synonym (murādit).

4) [4] Definition of šighār (bridal marriage). (see 6.2.1 for details in full).

5) [31] Al-‘Ayyūm – 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-‘ashūrah, 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.


13) [98] Shahādat al-‘abdā’ – an apriori witness of a marriage contract.

14) [103] Dughā‘uḥā – her sound / voice.

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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.


20) [127] Al-‘Innīn – a man with a small penis.


22) [177] 'Ightazzat talāq zawjīhā – divorce from a woman with her consent.

23) [191] [192] Al-‘Abā’, al-shamāl – 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.


27) [240] Al-Ghaylah (or) Ghilah – breast feeding during sexual intercourse.

28) [242] Ḥattā yafīzū al-ḥijr – to be able to dispense with sleep.

29) [246] Al-Ḥabr (Ḥibr) – a non Muslim scholar / jurist.

30) [257] Al-‘U’arah – a wet nurse.

31) [260 a.] ‘Irkhā' al-sutūr – to loosen, let drop a veil.
32) [263 a.] 'Ijtāhā - 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 laḥū 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’rak ‘arkatayn” - (See 6.1.2. for details).

41) [339 a.] Al-‘Iḥdād - 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 ‘īddah.

49) [371] Yastahsin - application of discretion in a legal decision.

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50) [382] *Fi makān wahsh* – in a place where one feels desolate.

51) [385] *Tudlij* – to set off before daybreak.

52) [391] *Al-Šarūrah fi al-hajj* – where legal evidence in the field of religious duty cannot be challenged.

53) [393] *Al-Mawājīz* – similar to the hospices for *sūfis* and travellers (ribāṭāt, *thughūr*) where one takes refuge.

54) [431] *Khartah* – injustice / tyranny.

55) [432] *Lā ni’mata ‘ayn* – delight of the eyes.

56) [437] *Ṣāghiran qaminan* – base / vulgar.

57) [438] *Al-Ḥiwa’* – a place of congregation.

58) [490] *Al-Zihār* – pre-Islamic form of divorce.

59) [520] *Al-’Ilā*’. For explanation, see (6.1.2).

60) [520 a.] *Fā’a = ’irjā’* – to return to the partner during ’īlā’.

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 yurakhkhsah lahum fi al-intifāl.* (See 6.1.2.).

65) [366] *Al-Mun’ālahah zaujuhā* – 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] Tarqa al-ʰaydah, where menstruation does not occur for at least a year.

6.1.2 Definition of Fiqh Terminology

1) [1] Ta’rif al-nikāh in the linguistic sense. The term nikāh derives from the physical process of linking (jamʿ) two things or establishing a contract (damm) between two people.

2) [2] Nikāh – legal definition. Nikāh 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 sadāq (bridal dower) derives from the noun ṣiddq (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-‘Ayyīm – a widow, divorceé or a spinster, whether or not, according to 'Ismā‘īl al-Qādī, she has reached her legal age, or whether

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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] 'Ishtajarū (they differed) synonymous with the verbs tanāza‘a (to be at variance with) and 'ikhtalafa (to dispute).

7) [61] Darar (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-‘Aṣbah, 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-fiqhīyyah (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 *mīn* taking the (*dammah*) vowel, although 'Āhmad 'Ibn Khālid maintains that it takes the (*fathah*). Musālamah are, in short, those women who convert to Islam.

10) [72] *Al-Muwallā 'alayhi / '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 (*wallī*) signed, yet their testimony is no less valid for that.
14) [103] *Dughā’uhā*, with the letter *dād* taking the (*dammah*) vowel, her shouting.

15) [105] *Ragḥā’ib al-’amwāl* – namely, its importance / significance.

16) [117] ‘*Alā Dirāmah*, is pronounced with the letter *dād* 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 *fāṭmah* vowel. In the second term the letter *qāf* takes *fāṭmah* 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 *fāṭmah* vowel. It denotes sexual contact and the mucus generated thereby.

19) [126] *Al-Majbūb, al-khāsiyy*. 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'taraḏ, i.e., a man afflicted with an illness in the nether regions which prevents the erection of the penis. The letter rā' in mu'taraḏ takes a fathah.

21) [128] Laghiyyah, lazīnah, la rashīdah. 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 rashidāli" 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 talāq zawjiḥā. 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-'Utrubi, the nisbah (origin) referring to a small village in Egypt from where the 'Utrub, a coarse, woolen garment, derives.
25) [234] *Al-Radā*, the act of suckling, to feed a baby milk from the breast, hence the noun *radā'ah*.

26) [240] *Al-Ghilah*. 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 *fuqahāʾ* say the *ghayn* takes a *fatḥah* only when the *tāʾ al-munfaṣilah* (*hāʾ*) has been elided. This is mentioned in the *Mudawwanah* by al-ʿĀjurri, as related on the authority of ʿAbd al-Ḥaqq.

27) [242] Ḥattā yalfiḥ al-hijr. Here the *fāʾ* (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 l Ḥibr*. Here the *ḥāʾ* takes either a *kasrah* or *fatḥah*. ʿIyād 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-Zuʿrah*. With the latter *zāʾ* taking *dammah* and the *wāw* a *fatḥah*, although, according to ʿAbū al-Ḥusayn, the *wāw* is *sākin*
(apocopate). However, he admits that this is rare (nādir). In short, these zuʿrah are wet nurses.

30) [260 a.] 'Irkhāʾ 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.] 'Ijtālahā - 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] Dannat, 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 laḥū ḥiwaʾ, with the ḥāʾ taking fāṭah (ḥajrī) or kasrah and ḥiwaʾ taking kasrah. A place of congregation, originally (possibly) a house where snake charmers (ḥuwāl) resided.
36) [304] Al-Zamnā. Here the mim 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 withāqihī) 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‘rak '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 (hudūd) for breaking this condition is fixed. Therefore al-'ihdād is deriving from ḥadd.

40) [342] Al-Burūd, al-‘asab. 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 *tāʾ* taking a *fathah*. The meaning is hair dye. ’Abū ‘Ubayd says that the *tāʾ* is * mushaddad* (doubled), the dye itself being a red colour, not black as commonly believed.

44) [347] *Al-Furqubī / Qurqubi*, with the letter *fāʾ* taking a *dammah*, in the word *furqubī*. Some say, *qurqubī*, with two *qāf*’s. al-Ḵhaṭṭābī says it is a garment made of white flax, related to the word *furqūb*¹, but with the *wāw* elided.

45) [350] *Taftadḍu*, being the 3rd person feminine expression of the 8th form *‘iftadḍa*, 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

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¹  *Lisān al-‘Arab*, 1: 657.
woman (tuwäti') 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] Yastahsīn, application of discretion in a legal decision.

48) [382] Fī makān wahsh, in a place where one feels desolate.

49) [385] Tudlij, to set off before daybreak.

50) [391] Al-Ṣurūrah fī al-ḥajj, where legal evidence pertaining to religious duties cannot be challenged. See (6.1.1.).

51) [393] Al-Mawājīz. The ṣūfī hospices and ḥughūr set up the Murābitūn 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] Là nu’mata ‘ayn. In the word nu’mata the letter nün takes the
 dammah vowel. In this delight of one's eye: or, in the negative, the
 opposite.

54) [437] Şaghiran qaminan. The qäf takes a fathah and the letter mim is
takhřif. 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 ḥalyya ka zahri 'ummī" (you are to me
like my mother's back).

56) [520] Al-'Ilā. 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, 'ilā', in the sense
that if the husband undergoing 'ilā (the mūh) 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-Liʿān. Derived from the word laʿnah (curse). Part of an oath of condemnation in the matter of adultery. The fifth line of the oath invokes the term under discussion; namely, “ʾanna laʿnat Allāh ʿalayhī ʿin kān min al-kādhībin”. It is taken from the Qurʾān. “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 ʿiliʿān is related linguistically to buʿd (distancing) and ṭard (repulsing). In the Qurʾān the term rather connotes a distancing from Allāh’s Mercy (ʿabʿadāhū min rahmatihī).

60) [547] Ṣrq nazaʿahū. To yearn for, to incline to something. Its origin is in the word mālaʿilā (to lean towards or opt out of something in favour of something else).

61) [366] Al-Manʿī lahā zawjuhā - where news of the death of the bridegroom is brought to the intended bride. Some fuqahāʾ vowel the participle with the mīm taking a dammah and the ʿayn a fathāh, but this is incorrect says Ḣiyād. The correct version being with the mīm taking a fathāh and the ʿayn a kasrah with the yāʾ 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-Harawi, 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 ‘Iyād’s Method of Deduction in the *Tanbihät*

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*):

  "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“

“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 (wali) have entitlement to it (or part of)? ‘Īyāḍ, quoting the Qurʾān, claims that the right to the amount of the dowry lay with the

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3 Qurʾān, 4: 22.
newly divorced woman, on account of the following exceptive ('istithnā') clause:

"إلا أن يعفون"

"Unless they remit it"

‘Iyād 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 näsikh, annuls another, the mansūkh). It was invoked by ‘Iyād in order to clarify a particular juridical point. The verses involved are as follows:

"فانكحوا ما طاب لكم من النساء"

"Marry women of your choice"

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4 Qur‘ān, 2: 237.
5 Qur‘ān, 4: 3.
Which is then followed by the abrogating clause:

أَوْ مَا مَلَكَتْ أَيْمَانَكُمْ

“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 (takhsīs al-‘āmm).

b. Para. [112]

‘Iyād invokes the following verse:

وَأَنْخَصَنَتْ مِنَ الْمَوْلُودَاتِ وَأَنْخَصَنَتْ مِنَ الْمَوْلُودَاتِ مِنَ الَّذِينَ أُوتِوا الْكِتَابَ مِنْ قِبْلَكُمْ

“(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]

'Iyād invokes the following verse:

"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 Hadith

(1) Para. [23]

'Iyād invokes the following hadith 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 hadith: “The Prophet Muhammad (P.B.U.H.) married his two daughters off to ‘Uthmān and they are no worse for that”. ‘Iyād does not mention the cause for this deduction, but it appears to be related to either the last above mentioned point, namely

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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 hadith of ‘Umar ‘Ibn al-Khaṭṭāb that “Women of noble descent (dhawāt al-‘ahsāb), may only marry their equals (‘akfā’),” again is assumed to be related to an issue (mas‘alah) on marriage.

(5) Para. [87]

The hadith: “A women cannot be married without the permission of her guardian (wali)” is said by some Mālikite fuqahā’ to conflict with the hadith of ‘Ā’ishah, concerning the marriage of her brother to Ḥafṣah, the daughter of ‘Abd al-Rahmān. ‘Iyād 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 ‘Ulama’

(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 (\textit{tuhr}).

The point of dispute revolves around the claim made by some Malikite \textit{fuqah\ä'} 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-Q\ädi 'Abû Mu\̱ammad 'Ibn Na\̱sr was of the opinion that a husband returning (\textit{raj`ah}) to his wife voluntarily constituted a commendable act (\textit{'istihbâb}). \textit{Shaykh} 'Abû Mu\̱ammad insisted that the husband should not be forced (\textit{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, (\textit{hay\textbf{}}}d). The correct option is for the husband to wait until the \textit{`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 (\textit{min al-kab\textbf{}}}i}). Should she be confined to the (matrimonial) house for a specified period (one year)? Furthermore should a slave girl ('\textit{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 fūqahā’ (Ṣaḥnūn 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 fūqahā’ 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?
Saḥnūn 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 Saḥnūn'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 'Īyāḍ 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 'İlā' Chapter from the Tanbīḥāt
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 Tanbihāt.

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 (qādi).

If the husband approaches his wife during the time (of 'Ilā) he would be guilty of a breach (hintih) 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 (talāq). 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 Tanbihāt of Qādi `Iyād, differs slightly from that of the other three great schools of law.

The Mālikite interpretation of 'Ilā', as described in the Tanbihāt, is as follows:

'Ilā' is the verbal noun of ('alā), to entrust, to render someone a favour, to charge someone (to refrain) from something (‘imtinā‘ min shay’). Hence the Qur’ānic verse:

َوَلَا يَأْتِيَ أَوْلُوا الْقَضَالِ مِنَّا (Qur’ān, 24: 22).

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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:

(للذين يُؤلون مِن نَسائِهمْ تَرِضُونَ أَرْبَعَةَ أَشْهُرٍ)

"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 (khāss) 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.

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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'wil) 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 hadīth of the Prophet Muḥammad (P.B.U.H.) and in the Mudawwanah of Saḥnūn. 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 müllī (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 'īlā'.

The adherents of Mālik are all agreed on this (latter) interpretation, except 'Ashhab who narrated a hadīth 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 shaykhūn (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 'īlā', and therefore is classed as māli. But, argues Qādi 'Iyād, this interpretation is incorrect.

A Muslim husband cannot undertake the oath of 'īlā' 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 'īlā' may be revoked ('iżā'). The implication here is that if the husband (or wife) should go abroad, or undertake the hajj, after having sworn the oath of 'īlā', or if the husband is or be incapable of physical relations with his wife (ie, impotent) then he is not fulfilling the conditions of 'īlā', as confirmed in the 'Utbīyyah and the Kitāb of 'Ibn Saḥnūn.
' İlā' presumes a priori sexual proximity between the husband and wife for the oath to be rendered valid, as confirmed by the hadith of the Prophet (P.B.U.H.), and as endorsed by 'Ibn Näfi'.

However, if conversely, the husband wishes to restore conjugal relations with his wife and revoke ( 'irjā') the oath of ' İlā', 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 ' İlā' coincides with the hajj, or rather, where the pronouncement of the ' İlā' precedes the hajj by a few days or weeks, and if the husband breaks the oath of ' İlā' prior to the hajj date itself, then he is required to forsake the hajj 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 ' İlā', namely; (1) That he is prevented from having sexual relations with his wife because he took an oath of ' İlā'. (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 ' İlā' before the hajj.
In short, the *hajj* takes precedence over the oath of *'Ilā*. If a husband interrupts the *'Ilā* process to embark on the *hajj*, on his return he is required to start the process from the point of his return from the *hajj*, 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 *hajj* 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 (*hinthin*), 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* (*hinthin*). 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 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 Allah’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 Qādi ʻIyād none of his companions, students or adherents appear to have heard him debate this issue.

Rendering the making of a solemn pledge (nadhr) to Allāh as a substitute oath for 'ilā':

Yahyā is of the opinion that the taking of the solemn pledge (nadhr), 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 nadhr, 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 nadhr.
Whereas the difficulty of performing *kaффārah* for a broken oath, in itself acts as a deterrent against breaking the oath.

With regard to the position of a (freed) man (\textit{‘itq}) debated by 'Abū Muḥammad: if, when he pronounced \textit{‘ilā‘}, he was not in possession of a slave (\textit{‘abd}) or property, then he was not in the position to fulfill the conditions of \textit{‘ilā‘}.

If he then breaks the oath (of \textit{‘ilā‘}) by engaging in sexual intercourse with his wife, he is liable to pay her the full nuptial gift (\textit{sadāq}), 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 \textit{sadāq} to his wife.

Para. [526]

If a husband breaks his vow of \textit{‘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 \textit{‘ilā‘} has run its course.

One opinion has it that the transgressor, if the transgression occurred before the end of the period of \textit{‘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 \textit{‘ilā‘} process. But this approach is rejected by most
Malikite commentators. Their opinion is that if the husband transgresses within the period of 'īlā', then the transgressor must fast immediately from the point of the transgression until the end of the period of 'īlā'.

The making of the solemn pledge to refrain from sexual intercourse (with the wife) is cast in the following formula, "wa Allāh, lā 'agrubūt", (I swear by Allāh that I will not touch you), and is a substitute oath for 'īlā'. After pronouncing this pledge before the wife, the husband adds, "If I do touch you, I am obliged to perform the greater or lesser hajj."

If he breaks his vow to abstain but refuses to continue the 'īlā' (fay'ahl 'irjā) then, according to 'Ibn Waddāh, 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 'īlā' 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 'īlā' process becomes invalid: This may occur when the husband (or wife) was sick at the time of the pronouncement of 'īlā', with the illness continuing until the end of the 'īlā'.
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 (ṣadaq) 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, Sahnūn 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 'Anṣār and the Ṭābi‘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-Rahmān and Marwān Ibn ‘Abd al-Ḥakam, as well as ‘Ibn Shihāb.

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3 Medinan Companions of the Prophet (P.B.U.H.).
Chapter Eight

A Translation of the *Li‘ān* Chapter from the *Tanbihāt*
Chapter Eight

Kitāb Al-Liʿān (Mutual Imprecation)

The noun “curse” (laʿnah) derives its meaning principally from the Qurʾānic warning, “God will surely curse (laʿana) those who lie”, which is invoked by the husband after having sworn four times by Allâh that he is speaking the truth, with regard to an accusation by his wife of adultery (zīnā).

Initially, the noun, Liʿān (cursing, malediction) denoted ‘distance’ or ‘repulsion’. When applied in the religious context familiar to Muslims, it denotes removal from the sphere of Allâh’s Mercy. In pre-Islamic times, invariably a banished person (tard), an exile or a vagabond (ṣuʿlāk) was devoid of tribal protection. Thus he was believed to be cursed (malʿūn).

Liʿān can only take place in the mosque, and with the ‘imām present. There, the Liʿān formula to be spoken there, is attributed by the Qāḍī 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 ‘ulamāʾ insisted, was to convey the gravity of the event, the Liʿān 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 (‘asr) prayer rather than at noon (zuhr). '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 Waḍḍāh.

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 (talāq). 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 (zīnā) invalid.

Mālik's opinion, was, where the husband witnessed adultery on the part of his wife, and then she became clearly pregnant, the liʿān 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 liʿān 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 `an, This opinion is shared by 'Ashhab and 'Ibn "Abd al-
Ha'am. As for al-Makhzumi, 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 `an can be pronounced.

The Qadi 'Iyad expresses the opinion, in keeping with that of Malik, 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 `an, then the li `an becomes invalid, since the three months preceding the li `an 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 `an 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 (hadd) for having slandered his wife.

Al-Mughirah offers a second interpretation (ta'wil) 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 Qädi ‘Abd al-Wahhâb and ‘Ibn al-Jallâb were of the opinion (ta'wil) that if a husband, after the pronouncement of the li‘ân, accuses his wife of adultery (based on the evidence of four witnesses) then recognises the child as his biological son, he would face punishment (hadd) for slander, in which case the li‘ân would founder, on the understanding that for the li‘ân 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 (gadhâf), in which case the li‘ân founders.

In the case of 'istibrâ' (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, 'istibrâ' is an inquiry as to whether the uterus of a woman is empty or not, as prescribed by the Shari‘ah). In the case of 'istibrâ' 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 liʿān.

Para. [546]

With regard to the question of inheritance (mīrāṭh) in the case of a child whose parent’s marriage has been annulled through the process of liʿān. In this respect it is common knowledge that the child has only a relationship with the mother as regards kinship (‘aṣabah) or inheritance (mīrāṭh). 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 liʿān) paternal relations (‘aṣabah) with his father.

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The performance of good deeds ('ihsan) is not permitted in cases of li`än, 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 Shihâb (in the kitâb of Muḥammad).

Li`än pursued by an accuser who is a blind man ('a`mâ) is an issue which has caused much controversy ('ikhtilâf). Thus the majority view, related by 'Ibn al-Qaṣṣâr (on the authority of Mâlik) has it that in this case there can be no li`än until the wife or the lover of the accused woman admit that they have had sexual relations.

Likewise, a question arises as to whether li`än 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 'istibrâ' when his wife gives birth to a child close on six months following his pronouncement (through gestures) of the li`än, 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`än. If this (wâw) is omitted then, according to 'Aḥmad 'Ibn Khâlid, a second li`än has to be pronounced (or
gestured) with a conjunctional (wāw) ‘ātífah linking the two liʿān (with regard to the denial of paternity) otherwise the liʿān process, based on the first liʿān, 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 liʿān?

It is said, given that he had the opportunity to confess his untruth with the second liʿān the accuser must face the legally prescribed punishment of flogging of eighty lashes, as endorsed by 'Ībn Nāfīʿ, Rabīʿah 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 liʿān 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 fuqahāʾ) a controversial issue and a matter of some debate. The question being: is the liʿān in these circumstances considered invalid or does it in fact proceed until divorce (talāq) occurs?

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1 His full name: Muḥammad 'Ībn al-Mawwāz.

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The fact that the wife is awarded half of the marriage dower (*mahrt*), suggests that
divorce occurs. The advocate (*qā’īh*) 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) *shaykh*hs think otherwise, and deem the *li‘ān* as void.
Namely, that before the woman is awarded (half of) the *sadāq* 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
*sadāq*). Thereafter the *sadāq* 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 (*fugahā*) that it leads to an irrevocable divorce (*bā‘a*), 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 *fugahā*; ‘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 Nāfī (in the *kitāb* of ‘Ibn Muzayn) and ‘Īsā, it is deemed more correct for the husband to divorce his wife, pronouncing the treble *talāq*, which in any case is considered irrevocable, as evidenced in the *hadith* (of the Prophet). If the husband refuses to pronounce the *talāq* formula, he is considered to be in a state of separation from his wife, with no possibility of resumption of marital relations.

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On this point of severance of marital relations, following the completion of the *li‘ān* process, 'Abū Ḥanīfah and al-Shāfī‘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-Nakhaʻī 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 Rabi‘ah and the narrative *hadith* of al-Barqī related on the authority of 'Ashhab, 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.

'Aṣbagh 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 (*kadhib*), 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‘wil*) of the fifth line (*lafz*) by the Mālikite *fuqahā* has caused some controversy (in the *Mudawwanah*), particularly with regard to the *hadith* of `Abdullāh ‘Ibn ‘Amr ‘Ibn al-‘Ās. 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*.

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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 Qādī 'Iyāḍ influenced in his choice of methodology in the 'Tanbihāt' 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 'Tanbihāt' 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 'Tanbihāt', derived the majority of his sources (maṣāḍīr) from the works of the Mālikite masters, which were based on the holy texts. In presenting the issues (masāʾīl) 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 ‘Tanbihät’. That, with his flexible use of terminology employed in denominating the Mālikite scholars quoted therein, is an influence, one supposes, derived from ‘Iyāḍ’s knowledge of hadīth science (‘ulūm al-hadīth), 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 ‘Iyāḍ’s composition of the ‘Tanbihät’, 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 ‘Iyāḍ’s style with regard to the composition of the ‘Tanbihät’.

Namely, that by synthesizing the two methodologies used in critiques of Mālik works (previous to ‘Iyāḍ’s era), the manhaj (methodology system) al-Qayrawānī and the manhaj al-‘Irāqī, ‘Iyāḍ introduced into this genre a much needed intellectual rigour, which leads to a clarification of individual terms (mufradāt) or issues (masā’i) rendered as ambiguous in such works as the ‘Mudawwanah’.

Secondly, ‘Iyāḍ’s style in presenting, explaining and commenting on his material,
was influenced as much by his linguistic skills and passion for *hadith* as by juridical predilection. He did no write purely from the limited perspective of a jurist.

The *Tanbihāt*, 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). ‘Iyāḍ’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 Maghribi and Andalusian society of ‘Iyāḍ’s time.

It is from this angle that ‘Iyāḍ edits the *Mudawwanah*. His reappraisal of the opinions of the past Mālikite master can be gleaned from my editing of the *Tanbihāt* sections covering marriage (*Nikāh*) and the oath of condemnation in adultery (*Liʿān*). 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-māḥ*). This, combined with military incompetence, secured their downfall at the hands of the Almohads and, with it, the downfall of their most articulate advocate, Qāḍī ‘Iyāḍ.
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ed., 'Abd al-Sattār 'Abū Ghuddah,
[63] Al-Nukat al-zuräf 'alä al- 'aträf,
'Ibn Ḥajar, Ḥajar al-'Asqalānī al-Shāfi‘ī,
a commentary on the tuḥfat al-'ashräf bi maʿrifat al-'aträf of 'Abū al-
Ḥājjāj Yūsuf 'Ibn al-Zakī al-Mizzī (d. 742 AH),
published along with (tuḥfat al-`shräf),
published by al-Dār al-Qayyimah, Bombay, India, 1965 AD, 1384 AH.

[64] Al-Nukat al-ḥisän fi sharh ghāyät al-ʾiḥsän,
'Abū Ḥayyān Muḥammad 'Ibn Yūsuf 'Ibn 'Alī al-Gharnātī al-Mālikī (d. 745 AH),
ed., 'Abd al-Ḥusayn al-Fatlā,

[65] Qalāʾid al-ʾiqyän fi maḥāsin al-ʾaʿyān,
al-Fath 'Ibn Muḥammad, known as 'Ibn Khāqān,
ed., Muḥammad al-Ṣabbāgh,
Būlāq press, Cairo, n.d.

[66] Al-Qawāʾid wa al-ʿuşūl al-jaʿmiʾah wa al-furūq wa al-taqaṣīm al-badiʾah
al-nāfiʾah,
‘Abd al-Raḥmān 'Ibn Naṣīr al-Saʿdī,

[67] Mālikī, Riyāḍh al-Nufūs, ed.,
Husayn Muˈnis,
Cairo, 1951 (part 1 only).

[68] Sahih Muslim,
Muslim 'Ibn al-Ḥajjāj al-Naysābūrī,
ed., Muḥammad Fuʿād 'Abd al-Baqī,
Dār ʾIḥyāʿ al-Turāth al-ʿArabī, Beirut, n.d.
[69] Al-Šilah,
'Ibn Baškuwl,

[70] Siyar 'a'lam al-nubalā',
Muḥammad 'Ibn 'Ahmad al-Dhahabī,
Al-Risālah, Beirut, 1413 AH.

[71] Sunan al-tirmidhī,
Muḥammad 'Ibn 'Īsā al-Tirmidhī,
ed., 'Ahmad Shākir, et al.,
Dār 'Ihyā' al-Turāth al-'Arabī,

[72] Shadharāt al-dhahab fī 'akhbār man dhahab,
'Abd al-Ḥayy 'Ibn 'Ahmad al-'Akri al-Dimashqī,
Dār al-Kutub al-'Ilmiyyah, Beirut, n.d.

[73] Shajarat al-nūr al-zakiyyah,
Ḥusayn Muḥammad Makhlūf,

[74] Ṭabaqāt al-ḥuffāz,
Al-Dhahabī,
Dār 'Ihyā' al-Turāth al-'Arabī,
Beirut, n.d.

[75] Ṭabaqāt al-shāfi'īyyah,
'Abū Bakr 'Ibn Hidāyatullāh Al-Ḥusaynī,
[76] *Tabaqāt al-Shāfi‘iyyah*,
Al-’Asnawi,
ed., ‘Abdullāh al-Gabbūrī,
*Matba‘at al-‘Irshād*, Baghdad, 1st edn, 1970 AD, 1390 AH.

[77] *Tabaqāt al-Shāfi‘iyyah*,
‘Ibn Qāḍī Shahbah
ed., Dr. (al-Ḥāfiz) ‘Abd al-‘Alīm Khān,
‘Ālam al-Kutub, Beirut, 1st ed. 1407 AH.

[78] *Tabaqāt al-Shāfi‘iyyah al-kubrā*,
‘Abd al-Wahhāb Al-Subkī,

[79] *Tadḥkirat al-Ḥuffāz*,
‘Abū ‘Abdullāh Shams al-Dīn al-Dhahabī,
*Dār l-Iḥyā’ al-Turāth al-Arabiyyah*, Beirut, 1956 AD, 1376 AH.

[80] *Takmilat ‘Ikmal al-‘Ikmal*,
‘Ibn al-Ṣāhibī,
ed., Muṣṭafā Jawād
Baghdad, 1957 AD.

[81] *Al-Ta‘rīf bi-al-Qāḍī ‘Iyād*,
Muḥammad ‘Ibn ‘Iyāḍ ‘Ibn Mūsā al-Yāḥṣubī,
ed., Dr. Muḥammad ‘Ibn Sharifah,
Wazīrat al-‘Aqwāf wa al-Shu‘ūn al-‘Islāmiyyah wa al-Thaqāfa,
Morocco, Rabat, n.d.

[82] *Tārīkh al-Dawlātayn al-Muwaḥḥidūn Wa al-Ḥafaṣiyyah*,
Al-Zarkashī,
Tunis, 1289 A.H.


[83 a.]


[84 a.]

B. MSS

[1] *Al-Furūq*,
'Abū Muḥammad al-Juwaynī,
(microfilm) under ref. (35) in the *Markaz 'Iḥyāʾ al-Turāth al-İslāmī*, University of 'umm al-Qurā, Paper (2B).

[2] *Al-Furūq*,
'Aḥmad al-'Ardastānī,
*Khazāʾin Kutub al-'Awpāf*, Baghdad, ref. no. (3677), General Library, Berlin, ref. no. (4848).

[3] *Al-Furūq*,
Bā Yazīd 'Ībn 'Īsāʾ ilı Merghāyatī
King Faisal Centre for Islamic Research, Riyadh, ref. no. (812).

Muḥammad 'Ībn Yūsuf al-Juwaynī al-Shafi‘ī,
Tarjān, ref no. (146); Chesterbeatty, ref no. (4613).

'Awaḍ 'Afandī,
*Al-Maktabah al-Waṭaniyyah al-Ţūnisīyyah*, under ref. (7329).


[8] *Al-Layth al-'ābir fī ṣadamāt al-majālis,*
'Iṣmā‘īl 'Ibn Mu'allā al-Maḥallī,
(microfilm) under ref. (101), ('usūl, in the Markaz 'Iḥyā' al-Turāth al-'īslāmī, University of 'Umm al-Qurā.

[9] *Al-Mu‘āyāh,*
'Abū al-'Abbās ‘Alī Muhammad b. Khālid (d. 482 A.H.),
*al-Khazānah al-‘Āmmah,* Rabat, under ref. no. (Dā‘īl 913).

'Abū 'Abdullāh 'Ibn 'Abd al-Salām al-Rabbī,
*Dār al-Kutub al-Wataniyyah,* Tunis under ref. no. (14946).


[14] *Al-Nukat al-‘usūliyyah wa majārī al-‘adillah al-shar‘iyyah,*
Muḥammad 'Ibn ‘Īsā al-‘Aṣbagh,
*Dār al-Kutub al-Wataniyyah al-Tūnisīyyah,* under ref. (998), 73 paper.

named: (‘ithāf al-muqtanī bi al-qālī fī sharḥ mukhtasar khālīl),
'Abū 'Abbās 'Alī Muhammad b. Khālid (d. 482 A.H.),
Lithographic version (ḥajariyyah), Fās, Al-Maghrib, n.d.
[16] *Al-Qawāсим Wa al-Awāсим*, of 'Ibn al-'Arabi's, MS. 22031, folio 7b, reproduced by Badawi, op cit 546, Cairo.

C. Arabic Work Translated to English


D. European References


Appendices

Appendix [1]

Proper Names mentioned in the *Tanbihät*

(1) [6]¹ 'Ibn 'Abd al-Ḥakam:

'Ibn 'Abd al-Ḥakam ... 'Ibn 'A'yun, one of the *mawāli* (clients) of (the third Rightly Guided) Caliph, 'Uthmān. He sat at the feet of Mālik, and became head of the Mālikite in Egypt after 'Ashhab. His works on Mālikite *fiqh* include, *al-Mukhtasar al-Kabīr*, *al-Mukhtasar al-Ṣaghīr* and *al-Mukhtasar al-'Awṣat* (d. 214 A.H.). See, *al-Madārik* (1: 15, 65).

(2) [6]² 'Abū 'Imrān:


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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 (Ba) and (c.) refers to (Jim) etc., e.g., [320 c.] = [+ 320].

² Mentioned as: Mūsā 'Abū 'Imrān 'Ibn 'Īsā 'Ibn 'Abi Ḥajjāj.
(3) [6] Al-Qābisi:

Al-Qābisi 'Ali 'Ibn Muḥammad 'Ibn Khalaf al-Ma'āfīrī, better known by his kunyāh, 'Ibn al-Qābisi. 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-Qādī 'Ismā'īl:


(5) [6] Al-Bāji:


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(6) [6] ‘Ibn Ḥabīb:


(7) [6] ‘Abd al-Ḥamīd:


(8) [6] Al-Sayyūrī:

(9) [8] Sahnün:


(10) [8] ‘Ibn al-Qâsim:

‘Abû ‘Abdullâh ‘Abd al-Rahmân ‘Ibn al-Qâsim al-‘Utagi, companion of Mâlik. He was one of the leading Egyptian Mâlikis of his era (d. 191 or possibly 192 A.H.). His ancestors were slaves freed by the Prophet Muḥammad (P.B.U.H.) in Ṭâ’if. See, Tartîb al-Madârik, (3: 244-260). al-Dîbâj, (1: 464-488).

(11) [8] ‘Ibn Lubâbah:


(12) [8] ‘Isâ ‘Ibn Dînâr:

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 Tulaytīlah. See, Ṭārīkh 'Ulamā' al-'Andalus, ref No. (975); Tartīb al-Madārik, (2: 16); Shajarat al-Nūr al-Zakīyyah, (46) No. (47); al-Muqtabas, (213).

(13) [8] 'Abū Zayd 'Ibn 'Abī al-Ghamr

'Abū Zayd 'Abd al-Rahmān 'Ibn 'Abī al-Ghamr, faqih and muhaddith, as related on the authority of 'Ibn al-Qāsim and Ḥabib, and referred to by al-Bukhārī in his Sahīh. 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-Zakīyyah, (66), no. (61).

(14) [10] Yaḥyā 'Ibn Yaḥyā:


(15) [13] 'Abū Muḥammad 'Ibn 'Abī Zayd

(16) [14] Al-Qāḍī Ābū al-Walīd 'Ibn Rushd:

Muḥammad 'Ibn Āḥmad 'Ibn Muḥammad 'Ibn Rushd al-Mālikī, his kunyah being Ābū al-Walīd. His works include, Kitāb al-Muqaddimät Li 'Awā'il al-Mudawwinah (d. 520 A.H.). See, al-Dībāj, (2: 248); al-Ghunyah, (54); al-Šilah, (2:576-577); Bughyat al-Multamis, (51).

(17) [16] 'Ibn Kinānah:

ʿUṯmān 'Ibn ʿIsā 'Ibn Kinānah, mawlä (client) of ʿUṯmān 'Ibn ʿAffān, He was a Medinan faqīḥ (jurist), studied under and was totally devoted to Mālik. He is said to have died 186 or 185 or 189 A.H. See, Tabagāt al-Fugahā’, (152).

(18) [16] Mālik 'Ibn 'Anas:


(19) [16] Al-Makhzūmī, 'Ibn Bukayr:

Yaḥyā 'Ibn Bukayr 'Abū Zakariyyah al-Ḥafīẓ al-Makhzūmī al-Mīrī. 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] Muhammad:


(21) [17] Yahya Ibn 'Isaqa:

'Abu 'Israil, Yahya Ibn 'Isaqa Ibn Yahya al-Laythi al-Faqih. He sat at the feet (as a pupil) of his father and Yahya Ibn Amr amongst others. He wrote a detailed work on the adherents of Malik (d. 303 A.H.) See, Shajarat al-Nur al-Zakiyyah, (77), ref. no. (124).

(22) [19] 'Abu al-Hasan Ibn al-Qassar:


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(23) [20] ‘Urwah 'Ibn Al-Zubayr

'Ibn al-'Awwām 'Ibn Khuwaylid al-'Asadi, as related on the authority of 'Usāmah 'Ibn Zayd 'Ibn Ḥāriṣah and Bāshīr 'Ibn Sa'īd was one of the noble successors (tābī‘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); Tahdhib al-Kamāl, (13: 7); Duwal al-'Islām, (1: 65); al-Bidāya Wa al-Nihāyah, (9: 113).

(24) [23] 'Abn Hafs 'Ibn al-'Aṭṭār:

Muḥammad '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-Šīlah, (2: 484-485); Jadhwat al-Muqtabis, (80).

(25) [23] Fāṭimah Bint Qays al-Fihriyyah:

One of the muḥājir (immigrants) (from Mecca to Medina). Once married to 'Abū 'Amr 'Ibn Ḥāfs 'Ibn al-Mughirah al-Makhzūmī, but he divorced her and she married (at the Prophet’s –P.B.U.H.– bidding) Mu‘āwiyyah 'Ibn 'Abī Sufyān. She it was who related the hadith on the matter of provision of housing and expenses (nafaqah) for the divorced woman. See, Siyar 'A'lām al-Nubalā’, (2: 319); Tahdhib al-Kamāl, no. (11543); Tahdhib al-Tahdhib, no. (23782).
(26) [23] Mu‘awiyah ‘Ibn ‘Abi Sufyän:


(27) [24] ‘Abū al-Qāsim ‘Ibn Muhriz:


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Ziyād:


Abd al-Rahīm:


Yaḥyā ‘Ībn Sa‘īd:

Yaḥyā ‘Ībn Sa‘īd Farrūkh al-Qaṭṭān, was a client (mawlā) of the Bānī Tamīm. His kunyah was ‘Abū Sa‘īd. He was one of the ruling class of Başrāh and a leading reciter of the Qur’ān. (d. 198 A.H.). See, *Mashāhīr ‘Ulamā’ al-‘Amsār*, (161), no. (1278).

Mutarraf:

‘Ībn ‘Abdullāh ‘Ībn 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. ‘Āḥmad said that Muṭarraf was placed high amongst the pupils of Mālik.

(33) [31] Al-Juwaynī:  

(34) [32] Al-Sariyy ‘Ibn Yaḥyā:  

(35) [33] ʿUṭmān the third Caliph:  

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-Khattāb in the year 42 A.H. He was assassinated in 53 A.H. 'Ali called him a most compassionate man. See, Tahdhib al-Tahdhib, no. (16989).

(36) [33] 'Ibn Bāz:

'Abū 'Ishaq 'Ibrāhīm 'Ibn Muḥammad, better known as 'Ibn Qazzāz al-Qurṭubī, was an outstanding jurist and muḥaddith. He studied (samāʿāt) under Yahyā 'Ibn Yahyā and Saʿīd '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, Tārīkh 'Ulamā’ al-’Andalus, (10: 10); Shajarat al-Nūr al-Zakiyyah, (75), no. (115): Tartīb al-Madārik, (1: 16)

(37) [38] Al-Qādi 'Abū al-Faraj:


(38) [43] Shāri‘ah:

'Abū 'Umayyah, Shāri‘ah 'Ibn al-Ḥārīth 'Ibn Qays 'Ibn Jahm 'Ibn Mu‘āwiyyah 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 government of the notorious al-Hajjāj. Sharī‘ah died in 80 or possibly 87 A.H. See, al-Wafiyyāt, (98); al-Ma‘ārif, (433); Duwal al-‘Islām (1: 56); Taḥdīḥ al-Kamāl, (8: 318).


Al-Kindī al-Najjar al-Kūfī, He was a client (mawla) of the Banī Thaqīf. His kunyās include ‘Ash‘ath al-Tābūtī and ‘Ash‘ath al-‘Afraq. He was appointed judge at al-‘Ahwāz, as related on the authority of some 400 Egyptians, Hijāzian and ‘Irāqī shaykhs. He was a companion of Mālik for some 40 years or so until his death in 197 A.H. See, Taḥdīḥ al-Kamāl, (576); Taḥdīḥ al-Tahdīḥ, (12365); Taqrīb al-Taḥdīḥ, (24562).

(40) [49] Faḍl ‘Ibn Salamah:


(41) [55] ‘Ibn ‘Abī Zamaṇīn:

Muḥammad ‘Ibn ‘Abdullāh ‘Ibn ‘Abī Zamaṇīn, had the kunyah of ‘Abū ‘Abdullāh. He was one of the many Mālikite fuqahā’ who excelled in both ḥadīth and fiqḥ, combining the two in the analysis of Mālikite issues. His works include, ‘Ikhtilāf Tafsīr al-Qāsim ‘Ibn Sallām, Qudwat al-Ghāzī Fī ‘Aḥkām al-Jihād, and

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(42) [56] 'Abū Bakr ' Ibn Yūnīs:


(43) [56] ' Ibn Mughīṭ al-Ṭulayṭīlī:


(44) [56] 'Asbagh:

'Aṣbagh's real name was ' Ibn al-Faraj ' Ibn Sa'id ' 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 (ʿibādāt) and commercial transaction (muʿāmalāt). He was a companion of ' Ibn
al-Qāsim, 'Ibn Wahb and 'Aṣḥāb (amongst others). 'Ibn al-Mawwāz studied fiqh under him. According to 'Ibn Muʿīn, 'Aṣbagh was an outstanding faqīh who knew Mālikite fiqh intimately and who used to debate with Mālik quite vigorously over Mālikite issues (masāʾil). 'Aṣbagh wrote an interpretation (tafsīr) of the odd and rare terminology (gharīb) to be found in Mālik's Muwatta'. He also compiled a work on the recitations he personally heard (samāʾ) 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:


(46) [62] Al-Layth ‘Ibn Saʿd:

‘Ibn ‘Abd al-Raḥmān, the incomparable memoriser and Egyptian scholar, with the kunyah of 'Abū al-Ḥārīth al-Fahmī. He was a muḥaddith and once head of the Mālikite school of law in Egypt (d. 175 A.H.) See, Siyar ‘Aʿlām al-Nubalāʾ, (8: 136, 143-163); Mashāhīr ‘Ulamāʾ al-ʾAmsār, (191).
(47) [64] 'Ashhab:

Miskîn 'Ibn 'Abd al-'Azîz 'Ibn Dâwûd al-Qaysî al-'Amîrî al-Ja'dî, his kunyah being 'Abû 'Amr but better known by his honorific title, 'Ashhab. He was head of the Mâlikite school of law in Egypt (after 'Ibn al-Qâsim). He learnt his fiqh under Mâlik, the Medinan fuqaha' and then their Egyptian counterparts (d. 204 A.H.). See, Shadharât al-Dhahab, (2: 12); al-'Intiqâ', (51-52); Tartîb al-Madârik, (3: 262-271); Shajarat al-Nûr al-Zakiyyah, (59); al-Dîbah, (1: 307-308).

(48) [67] Al-Mughirah:

'Ibn 'Abd al-Rahmân al-Makhzûmi. He was a close companion of Mâlik. He fulfilled the office of muftî in Medina during Mâlik's lifetime. He died in either 186 or 188 A.H. See, al-Dîbah, (2: 344); Tartîb al-Madârik, (3: 2-5).

(49) [70] 'Ahnad 'Ibn Khâlid:

'Iyâd mentions him in Para. [289], as 'Ibn Khâlid.

(50) [82] 'Abû Muṣ'ab:

'Ahnad 'Ibn 'Abî Bakr, his father's name being 'Abû Bakr al-Qâsim 'Ibn al-Ḥârîth 'Ibn 'abd al-Rahmân 'Ibn 'Awf, as related on the authority of Mâlik (in the Muwatta'). 'Abû Muṣ'ab studied under the pupils of Mâlik. He was an outstanding muhaddith (d. 242 A.H.). See, Tabagât al-Fuqahâ', (154).
(51) [82] Zünän:

‘Abd al-Malik 'Ibn al-Hasan was a Cordoban with the kunyah of 'Abū Marwān. He studied in Medina under 'Aṣḥāb, listening to and memorising his narrations (samāʿāt) and those of 'Ibn al-Qāsim. He was appointed Mālikite judge in Ṣulayṭilah (Toledo) (d. 332 A.H.) though some say (334 A.H.). See, Ṭarīkh 'Ulamāʾ al-'Andalus, ref. no. (815).

(52) [98] Al-Qazwīnī:

‘Aḥmad 'Ibn Muḥammad 'Ibn Zayd al-Qazwīnī 'Abū Sa‘īd was a leading adherent of al-'Abhari. His principal work was entitled, al-‘Ilḥāq Fi Masā’il al-Khilāf. He died approximately 390 A.H. See, Ṭabaqāṭ 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 samāʿāt. His death, is mentioned in Tartīb al-Madārik and was said to be in 186 A.H. but in Ṭabaqāṭ al-Fuqahā’ the date mentioned is 206 A.H. The former date appears to be the more correct. See, Ṭabaqāṭ al-Fuqahā’, (152).

(54) [123] 'Abū Bakr 'Ibn ‘Abd al-Rahmān:

Al-Khawlānī, a Qayrawānī had the kunyah 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 'Iṣḥāq al-Tūnisī and 'Abū Muḥammad

(55) [123] 'Ibn al-Kātib:

‘Abd al-Rahmān ‘Ībn ‘Alī ‘Ībn Muḥammad al-Kittāni was better known as 'Ībn al-Kātib 'Abū al-Qāsim. He was one of the leading fuqahā' in Qayrawān and a great debater, especially with 'Abū 'Imrārn al-Fāsī. 'Ībn al-Kātib died in 408 A.H. See, *al-Fikr al-Sāmī*, (2: 206).

(56) [155] 'Abn Mutarrāf al-Sha'bī:

‘Abd al-Rahmān 'Ībn Qāsim al-Sha'bī al-Mālikī, with the kunyah of 'Abū Mutarrīf. He possessed a vast knowledge of Mālikite issues on fiqh (masā'ił) as well as proving a competent muftī and (ḥadīth) relator (rāwī) (d. 498 A.H.). See, *Tartib al-Madārik*, (8: 186); *al-Ṣīlah*, (2: 344); *Bughyat al-Multamis*, (370); *Shajarat al-Nūr al-Zakiyyah*, (123).

(57) [167] 'Ībn Sahl:

'Abū al-'Aṣbagh 'Īsā 'Ībn Sahl ‘Abdullāh al-'Asdī was a resident of Cordoba where he studied fiqh. Eventually he was appointed judge at Tunjer and Mīnkāsah. 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).

‘Ibn al-Labbäd:


Muḥammad ‘Ibn Maslamah ‘Ibn Hishâm al-Makhzûmî, had the kunyah, ‘Abû Hishâm, but some say ‘Abû ‘Abdulläh. He was an adherent of Malik and a leading Medina faqîh of his era. He studied under Mâlik himself (d. 206 A. H.). See, al-Dibâj, (2: 156); (d. 216 A. H.); Ṭabaqât (152).

‘Abd al-Rahmân al-Dimyâti, as related on the authority of Mâlik. He studied under such Mâlikite adherents as ‘Ibn Wahb, ‘Ibn al-Qäsim and ‘Ashhab. His al-Dimyâtiyyah is considered an authoritative work on Mâlikite fiqh. See, al-
(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-Tārīkh al-Kabīr, (3: 249).

(63) [226] Al-'Abyānī:

'Abdullāh 'Ibn 'Āhmad 'Ibn 'Ibrāhīm al-Tūnīsī, 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-Hārīth, as related on the authority of al-'Aṣūlī, 'Abū al-Ḥasan al-Lawāṭī and al-Qābīsī (d. 352 A.H.) at the age of 100. See, al-Dībāj, (1: 425-427).

(64) [226] Yahyā 'Ibn 'Umar:

'Ibn Yūṣuf al-Kinānī al-Kindī had the kunyah of 'Abū Zakāriyyah. He was an 'Andalusian who settled in Qayrawān. He was a faqīh and compiler extrordinaire. He was a pupil of Saḥnūn and was well liked (d. 289 A.H.) although some say (d. 285 A.H.). See, Quḍāt Qurtubah Wa 'Ulamā’ Iḥtiqyah, (184-185).

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(65) [228] 'Ibn Miskin:

'Abû 'Amr 'Ibn al-Ḫārītih 'Ibn Miskin, studied fiqh under 'Ibn al-Qāsim and 'Ashhab. He was a muftī 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] 'Abn al-Qāsim 'Ibn Shablūn:

'Abd al-Khäliq 'Ibn Khalaf 'Ibn Sa'id 'Ibn Shablūn Studied fiqh under 'Ibn 'Akḥī Hīshām. 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 'Aʿlām 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 "takhfīf", ie. reduced from the...
"shaddali" to a single "Qaf". He was thought to have died either in 269 A.H., or 263 A.H. or 264 A.H. depending on the account. See, Tartib al-Madarik, (4: 189).

(69) [256] 'Abū al-Ḥasan al-Lakhmī:

'Abū al-Ḥasan 'Alī 'Ibn Muḥammad al-Rabī'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-Mālik 'Ibn 'Abd al-'Azīz 'Ibn 'Abdullāh 'Ibn 'Abī Salamah al-Mājashūn was a muftī 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-Rahmān Farrūkh al-Taymī, had the kunyah 'Abū 'Uthmān, 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, Tahdhib al-Tahdhib, (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 (*masāʾīl*), and a competent *muftī*. See, *Bugḥyat al-Multamis*, (146-147).

(73) [330] ‘Ali 'Ibn Ziyād:

‘Ali 'Ibn 'Abi Ziyād was a Tunisian who sat at the feet of Mālik, Suṭyān al-Thawrī, and al-Layth 'Ībn 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’ ‘Ifrīqiyah*, (220-230).

(74) [334] Sa‘īd 'Ibn al-Musayyib:


(75) [360] Al-‘Utbī:

Muḥammad 'Ībn 'Aḥmad 'Ībn 'Abd al-‘Azīz, had the kunyah of 'Abū ‘Abdullāh. He studied under Yaḥyā 'Ībn Yaḥyā and Saḥnūn, amongst others. He was a compiler of Mālikite *fiqh* issues (*masāʾīl*) (d. 255 A.H. though some say (d. 254 A.H.).
(76) [396] ‘Abū ‘Umar ‘Ibn al-Mukwā:


(77) [396] Al-‘Aṣīlī:


(78) [467] ‘Abū ‘Amr ‘Ibn al-Qaṭṭān:


(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,

(80) [473 a.] 'Abū Yūsuf:

Yaʿqūb ʾIbn ʾIbrāḥīm ʾIbn Ḥabīb was a pupil of ʾAbū Ḥanīfah. He was probably one of ʾAbū Ḥanīfah’s most famous pupils and adherents (d. 182 A.H.). See, Ṭabaqāt, (1: 141).

(81) [492] ʾIbn Jallāb:

ʿAbdullāh ʾIbn al-Ḥusayn ʾIbn al-Ḥasan ʾAbū al-Qāsim. He was an Egyptian scholar who studied fiqh under al-ʿAbhari and was his most famous student (d. 378 A.H.). See, al-Dībāj, (1: 461).

(82) [534] ʾIbn ʾAbī Ḥāzim

ʾAbū Tammām ʿAbd al-ʿAzīz ʾIbn Salamah (ʾAbū Ḥāzim) ʾIbn 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 ʾAbū Tammām (d. 185 A.H.). See, Tartīb al-Madārik, (3: 9-12).

(83) [539] ʾIbn al-Hindi:

ʾĀḥmad ʾIbn Saʿīd ʾIbn ʾIbrāḥīm al-Hamadānī ʾAbū ʿUmar was better known as ʾIbn al-Hindi. 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

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Appendix [2]

Modern References


2) Sezgìn, in Târîkh al-Turâth al-‘Arabî, first volume, part three, (p. 151).3


5) Dr. 'Ibn Sârîfah editor of Madhâhib al-Ḥukkâm Fî Nawâzîl al-‘Aḥkâm, (p. 22), published by Dâr al-Ǧhârîb al-‘Islâmî, 1st edn., 1990.


7) Muḥammad Şâdîq al-Mînshâwî editor of Al-'I‘lâm Bi Ḥudûd Wa Qâwâ‘id al-‘Islâm, (p. 20), published by Dâr al-Ǧaḍîlah.


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3 This refers to the translated edn., by Al-Najjâr.


12) Hasan al-Warrakly in his introduction to Al-Qadi ‘Iyad Mufassiran, (p. 8).


Appendix [3]

Al-Mudawwanah Related Books

a. The Mukhtasarāt

(1) 'Ikhtisār by 'Ibrāhīm 'Ībn 'Ajnas 'Ībn 'Asbāṭ al-Kilā'ī al-Ziyādī al-Andalusī (d. 290 A.H.).

(2) Ḥamūdis 'Ībn 'Ibrāhīm 'Ībn 'Abī Muḥriz al-Lakhmī al-Qafṣī. (d. 299 A.H.). According to 'Iyāḍ he was well known.


(4) The Al-Mughrib Fi 'Ikhtisār al-Mudawwanah of 'Abū 'Abdullāh Muḥammad 'Ībn 'Abdullāh 'Ībn 'Isā 'Ībn 'Abī Zamanīn (d. 335 A.H.) which al-Ḥajawi described as an excellent source.

(5) 'Ikhtisār of 'abū 'Abdullāh Muḥammad 'Ībn 'Abdullāh 'Ībn 'Ayshūn al-Ṭulayṭīlī (d. 341 A.H.).

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4 Jadhwat al-Muqtābis, 147; Al-Dibāj, 1: 277.
5 Tartib al-Madārik, 5: 221-222; Al-Dibāj, 1: 342.
6 Al-Dibāj, 2: 137; Shajarat al-Nūr al-Zakīyyah, 82.
7 Tartib al-Madārik, 7: 185; Bughyat al-Multamiṣ, 77-78; Jadhwat al-Muqtābis, 53.
8 Tartib al-Madārik, 6: 173; Tārikh 'Ulāmā' al-'Andalus, 2: 62.
(6) 'Ikhtisār of 'ābū 'Abdullāh Muḥammad 'Ibn Rabāḥ 'Ibn Sa‘īd al’Umawī al-Ṭulayṭīlī (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-Sulayyīm (d. 367 A.H.). 11

(9) 'Ikhtisār of 'Abī al-Qāsim 'Ismā‘īl 'Ibn 'Ishāq 'Ibn 'Ibrāhīm al-Qaysī (d. 384 A.H.). 12


11 Tarīkh Qudāt al-‘Andalus, 75; Al-Dībājī, 1: 214-216.

12 Tartīb al-Mādārik, 6: 298; Al-Dībājī, 1: 290-291.

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(10) *Mukhtasār* 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-Ṭulāliqi, the Cordovan grammarian (d. 386 A.H.). Highly regarded by Qādī 'Abū Bakr 'Ibn Zarb.\(^{14}\)

(12) *Al-Tahdhib Fi 'Ikhtisār al-Mudawwanah* by Saʿīd Khalaf 'Ibn 'Abī al-Qāsim al-ʿAzdī, better known as al-Barādhiʿi, written in 372 A.H.\(^{15}\)

(13) *'Ikhtisār* by 'Abī 'Ishāq Ibrāhīm 'Ibn Muḥammad 'Ibn Ḥusayn 'Ibn Shīnāzīr al-ʿUmawī al-Ṭulayṭīli (d. 402 A.H.).\(^{16}\)

(14) The *Taqrīb* of 'Abū al-Qāsim Khalaf mawlā (client of) Yūsuf 'Ibn Bahlūl al-Balansi better known as al-Barbālī (d. 433 or 444 A.H.).\(^{17}\)

(15) *Mukhtasār* by 'Abī Marwān 'Ubaydullāh 'Ibn Muḥammad 'Ibn 'Ubaydullāh 'Ibn Mālik al-Qurtubī (d. 460 A.H.). According to 'Ibn Farḥūn, a competent abridgement.\(^{18}\)

\(^{13}\) *Tartīb al-Madārik*, 6: 217; *Naṯṣ al-Ṭīb*, 1: 553; *Al-Dībāj*, 1: 427.

\(^{14}\) *Al-Šilah*, 1: 300; *Muʿjam al-Buldān*, 6: 72.

\(^{15}\) *Tartīb al-Madārik*, 7: 257; *Al-Dībāj*, 1: 349-351.

\(^{16}\) *Al-Šilah*, 1: 89-91.

\(^{17}\) *Tartīb al-Madārik*, 8: 164; *Bughayt al-Multamis*, 268; *Al-Dībāj*, 1: 352.


(20) *Ikhtisār* by Sulaymān Ibn Khalaf al-Tamīmī.


(22) *Mukhtāsar* by 'Abī Ḥafṣ 'Umar 'Ibn Muslim mawlā (client of) Yahyā 'Ibn 'Ubayd al-Lakhmī.

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20 Tartīb al-Madārik, 8: 124-125; Shajarat al-Nūr al-Zākiyyah, 121.
21 Al-Dībāj, 1: 265; Shajarat al-Nūr al-Zākiyyah, 126.
22 Mu'jam al-Buldān, 3: 329.
23 Al-Dībāj, 1: 448-449; Tārikh al-'Adab al-'Arabī (GAL), Brockelmann, 3: 284.
24 Muhādarat Fi Tārikh al-Madhhab al-Mālikī, 188.
25 Ibid, 187; Shajarat al-Nūr al-Zākiyyah, 413.
b. Commentaries (Sharḥ) on the Mudawwannah

(1) Sharḥ by 'Abī 'Abdullāh Muḥammad 'Ibn 'Ibrāhīm 'Ibn 'Abdūs 'Ibn Bashīr al-Qurašī (d. 258 A.H.). Commentary on the issues (masā'il) only. 27

(2) Sharḥ by 'Abī 'Abdullāh Muḥammad 'Ibn 'Abdullāh 'Ibn 'Isā 'Ibn 'Abī Zamanīn (d. 335 A.H.). 28

(3) Al-Muntakhab by 'Abī 'Abdullah Muhammad 'Ibn Yahyā 'Ibn 'Umar 'Ibn Lubābah (d. 336 A.H.). According to 'Ibn Ḥazm he was the most magnaminous of men. 29

(4) The Tamhīd Li Masā'il al-Mudawwannah of Khalaf 'Ibn 'Abī al-Qāsim al-'Azdī, better known as al-Barādhī (d. 4th century A.H.). 30

(5) Sharḥ by 'Abī Muḥammad 'Abd al-Wahhāb 'Ibn Naṣr al-Baghdādi (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; Qudāt Qurtubah, 182.


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-Silah, 1: 169; Tartīb al-Madārik, 1: 164.
Sigilli (d. 451 A.H.).


(9) *Sharḥ* by 'Abû al-Qâsim 'Abd al-Rahmân 'Ibn Muḥammad al-Ḥadrāmî al-Qayrawâni, known as al-Lubaydî, (d. 466 A.H.). 'Ibn Farhûn described him as an eloquent advocate of the Mâlikite cause.

(10) *Sharḥ* by 'Abû Ḥafṣ 'Umar 'Ibn 'Abd al-Nûr, better known as 'Ibn al-Ḥakkâr al-Ṣiqillî (d. 5th century A.H.).


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33 Tartîb al-Madârik, 8: 114; Al-Dībāj, 2: 240-241.

34 Tartîb al-Madârik, 8: 72. MS in Qayrawân Script, Fez, under Ref. Old no. 854.

35 Maʿâlim al-ʿIman, 3: 175.

36 Tartîb al-Madârik, 8: 115 Al-Dībāj, 77.

37 Tartîb al-Madârik, 8: 124; Naṣf al-Ṭib, 2: 67.

38 Al-Dībāj, 1: 399-400; Kasha f al-Zanân, 2: 164.

(14) The Ḥāshīyah of 'Abū Muḥammad Yāshkur '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-Raŷājī.\(^41\)


(17) The Ḥāshīyah of 'Abū al-Fadl Rāshīd 'Ibn 'Abī Rāshīd al-Wulaydī (d. 675 A.H.).\(^43\)

(18) Sharḥ 'Abī al-Mawaddah Diyā‘ al-Dīn Khalīl 'Ibn 'Ishāq 'Ibn Mūsā (d. 776 A.H.).\(^44\)

\(^39\) Bugḥyat al-Multamīs, 438; Mu‘jam of 'Ibn al-'Abbār, 310-311.

\(^40\) Wafiyyāt of 'Ibn Qunfūdh, 300; Nayl al-'Ībīḥāj, 360.

\(^41\) Nayl al-Ībīḥāj, 200.

\(^42\) Al-Takmilah, 334, MS, Madrid, taken from the Muhādārāt Fi Tārikh al-Madhhab al-Mālikī, 184.

\(^43\) Nayl al-Ībīḥāj, 117; Al-Fikr al-Sāmī, 2: 233.

\(^44\) Ibid, 112-113; 2: 243-245.

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(19) *Sharh* by 'Abî 'Imrân Mûsâ 'Ibn 'Abî 'Alî al-Zanâtî al-Zammûrî (d. 802 A.H.).


(21) *Sharh* by 'Abî al-'Abbâs 'Ahmad 'Ibn Muḥammad 'Ibn 'Abdullâh al-Qalshânî (d. 863 A.H.).

(22) The Ḥāshiyah of 'Abd al-Rahmân al-Ghurriyânî al-Ṭarâbulsi.

(23) *Sharh* by 'Abî al-‘Abbâs 'Ahmad 'Ibn 'Alî 'Ibn Qâsim al-Zârqâq al-Tâjiybi al-Fâsî. (d. 932 A.H.).

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45 *Al-Takmilah*, 163.

46 *Shajarat al-Nûr al-Zakiyyah*, 244; *Nayl al-*Ibtïhâj*, 287.


48 *Nayl al-*Ibtïhâj*, 171-172.

c. Explanatory Notes (Taʿāliq)

(1) 'Abū Ḥafṣ ʿUmar 'Ibn Muḥammad Al-Tamīmī, better known as 'Ibn al-ʿAttār al-Tūnīsī, whose work in this genre was considered outstanding (d. 427 or 428 A.H.).

(2) 'Abū ʿImrān Mūsā 'Ibn ʿĪsā 'Ibn Abī Ḥājj al-Ghafjūmī al-Fāsī. Uncompleted.

(3) 'Abū ʿIṣḥāq Ibrāhīm 'Ibn ʿAbī Aḥ Ħ. al-Tūnīsī (d. 432 A.H.).

(4) 'Abū al-Ṭayyib 'Abd al-Muʿīn 'Ibn Ibrāhīm al-Kindī, better known as 'Ibn Bint Khaḍān, said to have produced a useful commentary (d. 435 A.H.).

(5) ʿUthmān 'Ibn Mālik al-Fāsī (d. 444 A.H.).

(6) 'Abū al-Qāsim 'Abd al-Raḥmān 'Ibn Muhriz al-Qayrawānī (d. approx. 450 A.H.). His annotation is entitled, Al-Tabṣīrah.

50 Tartib al-Madārik, 8: 67; Maʿālim al-ʾImān, 3: 164.
51 Tartib al-Madārik, 7: 243-252.
52 Tartib al-Madārik, 8: 58; Maʿālim al-ʾImān, 3: 177.
53 Tartib al-Madārik, 8: 67.
54 Tartib 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.).


(10) 'Abū 'Abdullāh Muḥammad 'Ibn Sa‘dūn 'Ibn 'Alî 'Ibn Bilāl al-Qayrawānî (d. 486 A.H.).


(12) 'Abū 'Abdullāh Muḥammad 'Ibn Sulaymān al-Saṭwâ (d. 750 A.H.).

56 Ibid, 8: 65.
58 Ibid, 8: 105.
59 Ibid, 8: 112.
60 'Azhār al-Riyyāḍ, 3: 165; Al-Dībāj, 2: 250-251.
61 Shajārat al-Nūr al-Zakīyyah, 221; Nayl al-'Iḥbāṣ, 243-244.


d. Prefaces (Tāmhidāt)

(1) 'Abū al-Walīd Muḥammad 'Ibn 'Aḥmad 'Ibn Muḥammad 'Ibn Rushd al-Qurtūbī (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-Ṭanji (d. 734 A.H.).66 

63 Nayl al-‘Ibtihāj, 314. 
64 Al-Ghunyah, 222; Shajarat al-Nūr al-Zakiyyah, 129. 
66 Nayl al-‘Ibtihāj, 204. 

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(3) 'Abū Fāris 'Abd al-'Azīz 'Ibn Muḥammad al-Qayrawānī al-Fāsī (d. 750 A.H.).


(7) 'Imrān 'Ibn Mūsā al-Jānātī al-Mīknāsī (d. 830 A.H.).

f. Appendices (Ziyādāt)

(1) 'Abū Muḥammad 'Abdullāh 'Ibn 'Abī Zayd al-Qayrawānī. (d. 386 A.H.). Consisting of an appendix of rare expressions / words (nawādr) pertaining to the Mudawwanah.

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67 Ibid, 179.
68 Ibid, 187.
70 Muḥādarat Fī Tārikh al-Madhhab al-Mālikī, 184.
71 Nayl al-'Ibtiḥāj, 217.
72 Tartīb al-Madārik, 6: 217; Nafḥ al-Ṭib, 1: 553.

g. Annotations (Tanābīḥ)

(1) 'Abū al-Ṭāhir 'Ibrāhīm 'Ibn 'Abd al-Ṣāmād 'Ibn Bashīr al-Tanūkhī (d. 526 A.H.).

(2) 'Abū 'Abdullāh Muḥammad 'Abī al-Khiyār al-'Abdārī al-Qurtubi (d. 529 A.H.). Annotated the Mudawwanah.

h. Extracts / Partial Copies (Mustakhrajāt)


or the 'Utbiyyah of 'Abū 'Abdullāh al-'Utbi al-Qurṭubī (d. 254 or 255 A.H.).

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Appendix [4]

*Nukat* Related Books

(a) *Nukat* in Language, Literature, Rhetoric and Grammar

1) The *Nukat of Sibawayh* by 'Abū al-Ḥasan 'Alī 'Ibn 'Isā, the grammarian (d. 384 A.H.).


4) *Nukat al-ʿĀmāt*.  

5) The *Nukat* on the 'Alfiyyah, the Kāfīyah, the Shāfiyyah, the Nuzhat al-Ṭarf and the *Shudhūr al-Dhahab* by Abdul Raḥmān Jalāl al-Dīn al-Suyūṭī al-Shāfiʿī (d 911 A.H.).


7) The *Nukat al-Munajjamāt Fi Sharḥ al-Maqāmāt* by 'Abī al-Ḥasan Sumaym

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78 'Inbāh al-Ruwāt 'Alāʾ 'Anbāh Al-Nuḥāt, 2: 295.


81 *Fawāt al-Wafiyāt*, 4: 78.


83 Ed., by 'Aḥmad Zakl, Cairo edn., 1911.
al-Ḥalabī. 84


(b) Nukat in Scholastic Theology and the Islamic Faith

1) Al-Nukat al-Mufidah Fi Sharḥ al-Khutbah Wa al-'Aqīdah. 86

2) Nukat al-Ma‘ūnah Bi al-Ziyādāt for 'Ībūn al-'Ikhshīd, by 'Abū al-Ḥasan 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


84 Wafiyyāt al-'Ayān, 7: 321.
86 MS in Dār al-Kutub al-Waṭaniyyah al-Tūnisīyyah under ref. no., 535.
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-Rummāni. 91


3) *Nukat in the Qur'ān* by Abū al-Ḥasan 'Alī 'Ibn Fidāl al-Mujāshi. 93

4) The *Nukat of Burhān al-Dīn 'Ibrāhīm 'Ibn Mūsā al-Karkī* (d. 893 A.H.) on the *Shāṭibiyah* by Muḥammad al-Shāṭibī (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-Zamakhshārī (d. 538 A.H.). 95

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93 'Inbāh al-ruwāt, 2: 300.

94 Ibid., 3: 266.

95 *Kashf al-Zunūn*, 1: 646.
(d) Nukat on Hadith

1) *Al-Nukat al-Kāfiyah Fi 'Aḥādīth Masā'iil al-Khilāf* by 'Abū 'Abdullāh Muḥammad 'Ibn 'Atīq al-Ghirmāṭī. 96


4) *Nukat on a Work of 'Ibn Ṣilah* (MS on the technical terms in ḥadīth) by al-Zarkashi (d. 794 A.H.). 99

5) *Al-Nukat al-Wafiyyah Fi Sharḥ al-ʿAlfiyyah* (on ḥadīth terminology) by al-Biqāʿī (d. 885 A.H.). 100

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98 Published along with *Tuḥfat al-ʿAshrāf*, Nashr al-Dār al-Qāyyimah, Bombay, India, 1384 AH, 1965 AD.


100 Ibid.
compiled by Jalāl al-Dīn al-Suyūtī (d. 911 A.H.).

7) *The Nukat of Shaykh Shams al-Dīn Muḥammad ‘Ibn Taḥlīn al-Dīmashqī*
‘Alā Hīlyat al-‘Abrār Wa Shi‘ār al-‘Akhīyār Fī Talkhīṣ al-Da‘awāt Wa al-
‘Adhkār Fī al-Ḥadīth* by al-Nawawī (d. 676 A.H.).

8) *Nukat Jalāl al-Dīn al-Suyūtī* (d. 911 A.H.) entitled “*Tuhfāt al-‘Abrār Bi Nukat al-‘Akhīyār*”.

(e) **Nukat in Fīqh**

Baṣrī (*min ‘aṣḥāb al-‘Abbāsī*).


3) *Al-Nukat al-‘Usūliyyah Wa Majārī al-‘Adillah al-Shar‘īyyah* by

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102 *Kashf al-Zunūn*, 1: 689.


104 *Al-Dība‘*, 100.

105 *Al-Mi‘yār*, 12: 122.

106 MS in *Dār al-Kutub al-Wataniyyah al-Tūnisīyyah* under ref. no. 998, 73 paper.

320

5) *Al-Nukat* of 'Abū al-'Abbās 'Aḥmad 'Ibn Lu'l'ū 'Ibn 'Abdullāh (d. 769 A.H.). 108


7) *Al-Nukat* of 'Aḥmad 'Ibn 'Umar 'Ibn 'Aḥmad al-Nisā'i (d. 757 A.H.) on the *Tanbih*. 110

8) *Al-Nukat* of 'Ibn 'Ismā'il al-Yamanī ('Ibn 'Abū 'Dayf) (d. 617 A.H.) on the *Tanbih*. 111

9) *Al-Nukat on the Khilāf* (dispute) of 'Abū 'Ishāq 'Ibrāhīm 'Ibn 'Alī 'Ibn Yusuf al-Shīrāzī. 112

10) *Al-Nukat al-Zarīfah Fī Tarjīḥ Madhhab 'Abū Ḥanīfah* by Muḥammad 'Ibn Muḥmūd 'Akmal al-Dīn (d. 786 A.H.). 113

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117 Kashf al-‘Zunūn, 1: 626.
118 Ibid, 1: 929.
119 Ibid, 2: 963.

(f) Nukat in Sermons


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120 Al-Ḥusaynī, Ṭabaqaṭ al-Shāfi‘īyyah, 250.

121 Fawāt al-Wafīyyāt, 2: 294. See also, ‘Inbāḥ al-Ruwa‘t, 2: 171.

122 Al-Ḥusaynī, Ṭabaqaṭ al-Shāfi‘īyyah, 247.


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


3) Farq Mā Bayna al-Khāṣṣ Wa al-Muṣḥtarak Min Ma`āni al-Shi’r by 'Abū al-Qāsim al-Hasan Ibn Bishr 'Ibn Yaḥyā al-'Āmidī. 127


5) Hilyat al-'Uqūd Fi al-Farq Bayna al-Maqṣūr Wa al-Mamdūd (by the same author). 129

6) Zīnat al-Fuḍalā' Fī al-Farq Bayna al-Ḍād wa al-Ḍāh (by the same author). 130


127 'Ībāh al-Ruwāt, 1: 323.


129 Ibid.

130 Ibid.
7) *Al-Bulghah Fi al-Farq Bayna al-Mudhakkar Wa al-Mu’annath* (by the same author).\(^{131}\)

8) *Al-Furq\u00e6 Fi -’Abniyah* by Majd al-Din ’Ab\u00f6 al-Sa‘\u00e1d\u00e4t al-Mubarak ’Ibn Muhammad al-Shayb\u00e1n\u00e1 (’Ibn al-’Ath\u00e1r).\(^{132}\)

9) *Al-Farq Bayna al-Nahw Wa al-Mant\u00e9q* by ’Ab\u00f6 ’Abb\u00e1s ’Ahmad ’Ibn Muhammad al-Sarakhsi.\(^{133}\)

b. *Fur\u00e6q* in Dogmatics

1) *Al-Farq Bayna al-Khaw\u00e1riq al-Thal\u00e2thah: al-Mu’jizah Wa al-Kar\u00e1mah Wa al-Si\u00e7r* by ’Ahmad ’Ibn al-Banna’ al-’Azdi al-Murrakishi.\(^{134}\)

2) *Ta\u00e7arruf al-’Ib\u00e6d Wa al-Farq Bayna al-Khalq Wa al-’Iqtib\u00e6s* by ’Ab\u00f6 Muhammad ’Ibn Tayyib (al-Qad\u00e9i al-Baqqill\u00e1n).\(^{135}\)

3) *Al-Farq Bayna Mu’jiz\u00e6t al-’Anbiy\u00e6’ Wa Kar\u00e4m\u00e6t al-’Awliy\u00e6* (same author).\(^{136}\)

\(^{131}\) Ibid

\(^{132}\) Ibid.

\(^{133}\) *Kashf al-Zun\u00f6n*, 2: 1256.

\(^{134}\) *Jadhwat al-’Iqtib\u00e6s*, 1: 152.

\(^{135}\) *Tartib al-Mad\u00e9rik*, 7: 69.

\(^{136}\) *Al-Mi’y\u00e6r*, 2: 443.

**c. Furūq in Medicine**


**d. Furūq in ‘Usūl al-Fiqh**


140 MS in Dār al-Kutub under ref. no. 25597.
3) *Furūq al-ʿUṣūl* by ʿAwaḍ ʿAfandi.

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e. *Furūq* in the Principles of *Fiṣḥ* (*Qawāʿid Fiṣḥiyah*)

1) *ʿAnwār al-Burūq Fī ʿAnwāʾ al-Furūq* by ʿAbū al-ʿAbbās Shihāb al-Dīn ʿAḥmad ʿĪbn ʿĪdrīs al-Qarāfī (d. 684 A.H.) Abridgements of the above include:


4) *Tartīb Furūq al-Qarāfī* by ʿĪbn ʿAbdullāh ʿĪbn ʿĪbrahim al-Bāqūrī (d. 707 A.H.).


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141 MS in *Dār al-Kutub al-Wataniyyah, Fi al-ʿAsrār*, Tunis under ref. no. 7329, from A215 to B220.


143 MS in *Dār al-Kutub al-Wataniyyah*, Tunis under ref. no. 2188, 14982.

144 *Ibid.*, under ref. no.14946.
6) *Fihrīst Tahlīlī Bi Tartīb 'Abjadī Lī Mas'īlīl al-Mudawwanah* by 'Abū al-Muntaṣīr Muḥammad Rawwās Qāl'ājī.\(^{145}\)

7) *Al-'Aḥkām Fī Tamyīz al-Fatāwā Min al-'Aḥkām Wa Taṣāurrūt al-Qāḍī Wa al-'Imām* by al-Qārāfī.\(^{146}\)

**f. Furūq and the Issues of Fiqh**

1) *Al-Nukāt 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-Mutaḥārat* by 'Aḥmad 'Ibn Muḥammad 'Ibn 'Aḥmad al-Bghdādi ('Ibn al-Qaṭṭān) (d. 359 A.H.).\(^{148}\)

4) *Al-Furūq* by 'Abū 'Abdullāh Muḥammad 'Ibn Yūsuf al-Juwaynī (d. 438 A.H.).\(^{149}\)

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\(^{145}\) *Al-Furūq al-Fiqhiyyah*, al-Dimashqī, p. 39.


\(^{147}\) *Taḥaqāt al-Shāfi'īyyah al-Kubrā*, 3: 295.


\(^{149}\) MS in Tarjān ref. no. 146; Chesterbuity ref. no 4613, quoted from, *Al-Furūq al-Fiqhiyyah*, 41.

328
5) *Al-Muʿāyāh* by ʿAbū al-ʿAbbās ʿАhmad b. Muḥammad al-Jurjāni (d. 482 A.H.).


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150 MS in *al-Khazānah al-ʿĀmmah*, Rabat, under ref. no. Dāl 913.

151 See *Kitāb Matāliʿ al-Dagāʾiq*, p. 179.

152 Ph.D., Suʿūd al-Thubaytī, 1414 A.H., ʿIbādāt section, in part published by ʿUmm al-Qurā.

153 ʿIsā al-Bābī al-Ḥalabī, Dār ʿIḥyāʾ al-Kitāb a-ʿArabiyyah, n.d.


155 Published by Maktabat al-ʿArif, Riyadh, 1985.
g. Furūq between the Four Schools

(a) The Ḥanafi School

1) Kitāb al-Furūq by 'Abū al-Fadl Muḥammad 'Ibn Şāliḥ (al-Karābīšī al-Samarqandi) (d. 322 A.H.).


4) Talqīḥ al-`Uqūl Fi Furūq al-Nuqūl by 'Aḥmad 'Ibn 'Ubaydullāh al-Mahbūbī (d. 630 A.H.).

5) Al-Furūq by 'Aḥmad 'Ibn 'Uṯmān al-Turkumānī (d. 884 A.H.).


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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-Fawa'id al-Bahiyyah, p. 36. MS in the Sulaymān Library, Istanbul, ref. no. 1371.

158 See Muḥammad Tūmūm, published by the Kuwait 'Awqāf Ministry, 1402 A.H.


160 Kashf al-Zunūn, 2: 1257.

7) *Al-Furūq* by Bā Yazīd 'Ibn 'Isrā`il 'Ibn Ḥāji Dāwūd Merghāyati (d. 802 A.H.).

8) *Al-Furūq* by 'Aḥmad Muḥammad al-'Ardistānī.

9) *Al-Furūq* 'alā madhhab 'Abū Ḥanīfah (author unknown).

(b) *Furūq* in the Mālikī *Madhhab*


2) *Al-Furūq Fī masā'il al-Fīqh* by Qādi 'Abd al-Wahhāb 'Ibn 'Alī 'Ibn Naṣr al-Baghdādī (d. 422 A.H.).

3) *Al-Furūq al-Fiqhiyyah* by 'Abū al-Faḍl Muslim 'Ibn 'Alī al-Dimashqī (from 5th century A.H.).

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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.


166 'Īḍāh al-Dalā'īl, 1: 31.

4) *Al-Furūq* by 'Abū al-'Abbās 'Aḥmad 'Ibn 'Umar 'Ibn Surayj (d. 306 A.H.).


9) *Al-Furūq* by 'Abū 'Abdullāh Muḥammad 'Ibn Yūsuf al-'Andalusī al-'Anṣārī.


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168 *Kashf al-Zunūn*, 2: 1257. See also, al-Ḥusaynī, Ṭabaqāt al-Shāfiʿīyyah, p. 245.

169 Al-Isnawi, Ṭabaqāt al-Shāfiʿīyyah, 2: 411.


172 Ibid., 8: 20.

173 *'Ilm al-Jadal Fī 'ilm al-Jadal*, p. 73. See also *'Idāh al-Dalā'īl*, 1: 31.

174 Ḥamzah 'Abū Faris, Dīr al-Gharb al-İslāmî, Beirut, 1st edn., 1410 A.H.
11) *Al-Furūq Fī al-‘Aḥkām ‘Alā Madhhab al-Mālikīyyah* (author unknown).\(^{175}\)

(c) *Furūq* in the *Madhhab al-Shāfi‘i* (Shāfi‘i School)

1) *Al-Furūq Fī Furū‘ al-Shāfi‘iyyah* by ’Abū Abdullāh Muḥammad ’Ibn ‘Alī al-Ḥākim al-Tirmidḥī (d. 285 or 320 A.H.).\(^{176}\)

2) *Al-Jam` Wa al-Farq* by Yūnīs ’Ibn ‘Abd al-Majīd ’Ibn ‘Alī ’Ibn Dāwūd al-Hudhali (the Armenian) (d. 725 A.H.).\(^{177}\)

3) *Al-Furūq* by Muḥammad ’Ibn ‘ali ’Ibn ‘Abd al-Wāḥid al-Māghribī (’Ibn al-Naqqāsh) (d. 763 A.H.).\(^{178}\)


\(^{175}\) MS in Chastrabayt Library under ref. no. Fā‘507.

\(^{176}\) *Kashf al-Zunan*, 2: 1258.


\(^{179}\) Naṣr Farid Wāṣil, Ph.D., *Kulliyat al-Shari‘ah*, al-‘Azhar University, 1392 A.H. Egypt.

\(^{180}\) *Fihrist Makhtūtāt al-Baḥrayn*, 1: 99.
(d) *Furūq* in the Ḥanbali *Madhhab* (Ḥanbalī School)


2) *Al-Furūq* by Muḥammad 'Ībn ‘Abdullāh 'Ībn al-Ḥusayn al-Sāmirī 'Ībn Sanīnah (d. 616 A.H.).

3) *Al-Fuṣūl Fī al-Furūq* by 'Abū al-‘Abbās 'Aḥmad 'Ībn Muḥammad 'Ībn Rāţīh al-Maqdisī (d. 638 A.H.).


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2. MS microfilm, *Markaz ‘Iḥyā’ al-Turāth al-‘Islāmī*, University of 'Umm al-Qurā, Makkah, under ref. no. 36.
3. *‘Ilm al-Jadal Fī ‘ilm al-Jadal*, p. 73.
5. Ph.D., by Shaykh ‘Umar 'Ībn Muḥammad 'Ībn ‘Abdullāh, University of 'Umm al-Qurā, Makkah, 1414 A.H.